

**NEW YORK STATE
DEPARTMENT OF CORRECTIONAL SERVICES**



Research Report
***The Foreign-Born Under Custody
Population & The IRP***



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EXECUTIVE SUMMARY

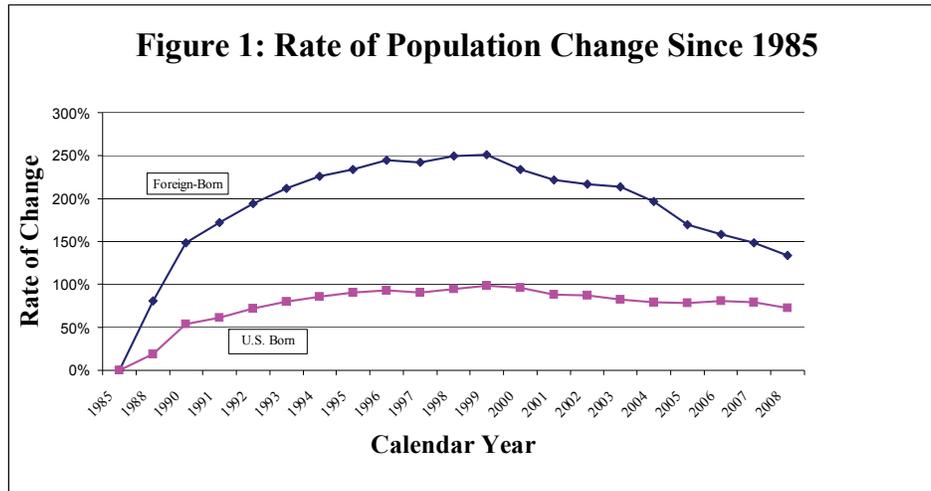
- The proportion of foreign-born inmates in the Department's under custody population has been declining since 2000. Foreign-born inmates now represent 10% of the total under custody population. The decline in the proportion of foreign-born inmates in the under custody population is largely attributable to the Institutional Removal Program (IRP).
- The Institutional Removal Program (IRP) is a comprehensive program designed to efficiently process criminal aliens while under Department custody for the purpose of preparing them for deportation from the United States immediately upon their release from Department custody.
- The goal of the IRP is to promote public safety by removing criminal aliens from the United States. The Department has released 10,762 criminal aliens to the Bureau of Immigration and Customs Enforcement (ICE) between 2002 and 2008 for either immediate deportation or transfer to ICE or the United States Marshals Service.
- Not all foreign-born inmates are amenable to deportation. Foreign-born inmates who fall into this category include those who obtain citizenship through the naturalization process and those who derive citizenship through their parents.
- The proportion of naturalized citizens in the Department's under custody population has risen dramatically, from 4% of the foreign-born under custody population in 1994 to 17% in 2008. This dramatic increase in the proportion of naturalized and derivative citizens in the Department's under custody population is at least in part, the product of a federal initiative that began in 1996 called Citizenship USA.
- The 2,036 non-violent foreign-born ECPDO inmates were released an average of 27.3 months prior to the completion of their minimum term of imprisonment. It is estimated that the ECPDO program has resulted in a \$146.4 million savings in operating and capital costs as of December 31, 2008.
- The total estimated cost savings attributable to the televideo deportation hearing program is \$3.9 million.
- The Department received \$24 million in SCAAP reimbursement in 2008. From 1995 to date the Department has received over \$577 million in Federal reimbursement under the SCAAP program.
- The effectiveness of the IRP and annual SCAAP reimbursements have eased the financial burden on the Department that prompted the Department to initiate a law suit against the federal government in the early 1990's.

PROFILE OF NEW YORK STATE'S FOREIGN-BORN PRISON POPULATION

FOREIGN-BORN UNDER CUSTODY POPULATION

This report had its origins in the early 1990's when the Department's under custody population was experiencing tremendous growth. Between 1985 and 1999 the native-born under custody population increased 99%, from 31,213 in 1985 to 62,007 in 1999. In contrast, the foreign-born under custody population increased 251%, from 2,629 inmates in 1985 to 9,231 in 1999, or more than double the rate of increase in the native-born under custody population.

However, beginning in 2000, the pattern began to reverse. The native-born under custody population between 2000 and 2008 dropped 12%, from 61,169 in 2000, to 53,834 in 2008. During the same time period, the foreign-born under custody population dropped 30%, from 8,786 in 2000 to 6,156 in 2008, or more than double the rate of *decrease* in the native-born under custody population. This trend is graphically displayed in Figure 1.



The proportion of foreign-born inmates in the Department's under custody population has been declining since 2000. Foreign-born inmates now represent 10% of the total under custody population (see Table 1).

Place of Birth	2000	2001	2002	2003	2004	2005	2006	2007	2008
U.S. Born	61,169 87%	58,764 87%	58,335 87%	56,882 87%	55,817 88%	55,562 89%	56,451 89%	56,018 89%	53,805 90%
Foreign-Born	8,786 13%	8,461 13%	8,320 12%	8,241 13%	7,800 12%	7,080 11%	6,791 11%	6,528 10%	6,156 10%
Not Yet Known	198 0%	169 0%	90 0%	74 0%	82 0%	90 0%	62 0%	53 0%	120 0%
Total	70,153 100%	67,394 100%	66,745 100%	65,197 100%	63,699 100%	62,732 100%	63,304 100%	62,599 100%	60,081 100%

The decline in the proportion of foreign-born inmates in the under custody population is largely attributable to the Institutional Removal Program (IRP). The IRP, a joint effort involving the Department, the Bureau of Immigration and Customs Enforcement (ICE), and the Executive Office for Immigration Review (EOIR), is designed to efficiently process criminal aliens while under Department custody for the purpose of preparing them for deportation from the United States immediately upon their release from Department custody. The data presented above suggest that the IRP goal of reducing the number and proportion of deportable criminal aliens in the under custody population has been successful. The impact of the IPR will be discussed in a later section of this report.

IMMIGRATION STATUS

Foreign nationals who enter the United States without a visa and without presenting themselves for inspection to Border Patrol or ICE agents are classified as illegal aliens. In addition, foreign nationals who enter the United States with a temporary visa are classified as illegal aliens if they overstay the duration of their visa. Both of these illegal alien status categories make the foreign national summarily deportable. Cubans who entered the United States during the mass emigration between April and October of 1980 are classified as Mariel Cubans. A small proportion of the Cubans emigrating in 1980 had been in Cuban prisons before the Castro regime inserted them into the flotilla. These Cuban criminals presented a significant public safety problem, which led the federal government to develop a separate classification for them known as Mariel Cubans.

Foreign nationals who are granted legal permanent resident status are permitted to stay in the United States indefinitely. However, legal permanent residents who are convicted of specified crimes are subject to deportation.

Finally, there are two classes of foreign-born inmates who obtain the status of United States citizen: (1) those foreign-born inmates who obtain citizenship through the process of naturalization, and (2) those foreign-born inmates who derive citizenship through parents who became United States citizens through the process of naturalization.

The proportion of naturalized citizens in the Department’s under custody population rose dramatically, from 4% of the foreign-born under custody population in 1994 to 17% in 2008.

ALIEN STATUS OF THE FOREIGN-BORN POPULATION 1994-2000							
	1994	1995	1996	1997	1998	1999	2000
Awaiting Determination	1,084 13%	1,195 14%	1,253 14%	1,006 11%	755 8%	889 10%	585 7%
Illegal Alien	2,650 31%	2,637 30%	2,094 23%	2,387 27%	2,673 29%	2,811 30%	2,808 32%
Legal Permanent Resident	4,047 47%	4,098 47%	4,724 52%	4,633 51%	4,677 51%	4,561 49%	4,358 50%
Naturalized Citizen	383 4%	445 5%	532 6%	566 6%	671 7%	692 7%	758 9%
Mariel Cuban	410 5%	339 4%	449 5%	411 5%	404 4%	278 3%	277 3%
Total	8,574 100%	8,714 100%	9,052 100%	9,003 100%	9,180 100%	9,231 100%	8,786 100%

ALIEN STATUS OF THE FOREIGN-BORN POPULATION 2001-2008								
	2001	2002	2003	2004	2005	2006	2007	2008
Awaiting Determination	349 4%	375 5%	383 5%	471 6%	371 5%	376 6%	360 6%	300 5%
Illegal Alien	2,841 34%	2,868 34%	2,940 35%	2,818 36%	2,561 36%	2,464 36%	2,382 36%	2,310 38%
Legal Permanent Resident	4,179 49%	3,983 48%	3,838 46%	3,469 44%	3,056 43%	2,795 41%	2,598 40%	2,329 38%
Naturalized Citizen	840 10%	862 10%	877 11%	868 11%	914 13%	986 15%	1,033 16%	1,074 17%
Married Cuban	252 3%	232 3%	203 2%	174 2%	178 3%	170 3%	155 2%	143 2%
Total	8,461 100%	8,320 100%	8,341 99%	7,800 100%	7,080 100%	6,791 100%	6,528 100%	6,156 100%

This dramatic increase in the proportion of naturalized and derivative citizens in the Department's under custody population is, at least in part, the product of a federal initiative that began in 1996 called Citizenship USA. Under this plan, the Immigration and Naturalization Service (the forerunner of ICE) encouraged immigrants to apply for citizenship. However, the United States Department of Justice Inspector General report (2000) noted problems with the criminal background check that was supposed to be done for all naturalization applicants. A review of citizenship USA naturalization applications supervised by independent auditor KPMG found that 10,800 persons (or 1%) had been arrested for at least one felony and probably should not have been granted citizenship.

COUNTRIES OF ORIGIN

The majority (53%) of foreign-born inmates under Department custody originate from countries in the Caribbean. South America and Central America provide the second and third largest regions of origin (13% and 11% respectively). Sixty-three percent of the foreign-born inmates under Department custody come from the Dominican Republic, Jamaica, and Mexico.

FOREIGN-BORN INMATES UNDER DOCS CUSTODY ON DECEMBER 31, 2009 BY REGION OF BIRTH		
	FREQUENCY	PERCENT
NORTH AMERICA	558	9%
CARIBBEAN	3,274	53%
CENTRAL AMERICA	663	11%
SOUTH AMERICA	771	13%
EUROPE	369	6%
AFRICA	121	2%
NEAR EAST	72	1%
ASIA	308	5%
SOUTH PACIFIC	20	0%
TOTAL	6,156	100%

TOP TEN COUNTRIES OF ORIGIN OF FOREIGN-BORN INMATES UNDER DOCS CUSTODY ON DECEMBER 31, 2009		
	FREQUENCY	PERCENT
DOMINICAN REPUBLIC	1,403	31%
JAMAICA	932	21%
MEXICO	505	11%
CUBA	294	7%
GUYANA	280	6%
TRINIDAD AND TOBAGO	254	6%
EL SALVADOR	247	5%
COLOMBIA	210	5%
HAITI	205	5%
ECUADOR	173	4%
TOP TEN TOTAL	4,503	100%
TOTAL FOREIGN-BORN	6,156	73%

COMMITMENT OFFENSES

Seventy-two percent of the foreign-born inmate population was committed for violent felony offenses. In contrast, 57% of the native-born inmate population was committed for violent felony offenses. Moreover, the foreign-born inmate population was twice as likely as the native-born inmate population to be convicted of a Class A felony offense, the most serious classification (28% and 14%, respectively).

US BORN INMATES UNDER DEPARTMENT CUSTODY ON DECEMBER 31, 2008 BY CRIME CLASS AND TYPE OF COMMITMENT OFFENSE							
CRIME CLASS	TYPE OF COMMITMENT OFFENSE						TOTAL
	VIOLENT FELONY	OTHER COERCIVE	DRUG OFFENSES	PROPERTY & OTHER OFFENSES	YOUTHFUL OFFENDER	JUVENILE OFFENDER	
A-I FELONY	6,632 21%	0 0%	163 1%	0 0%	0 0%	130 75%	6,925 13%
A-II FELONY	17 0%	0 0%	657 6%	0 0%	0 0%	0 0%	674 1%
CLASS B FELONY	11,162 36%	167 4%	4,590 42%	68 1%	0 0%	39 22%	16,026 30%
CLASS C FELONY	7,124 23%	460 10%	3,124 28%	216 3%	0 0%	5 3%	10,929 20%
CLASS D FELONY	5,761 19%	2,215 50%	2,165 20%	3,260 51%	0 0%	0 0%	13,401 25%
CLASS E FELONY	205 1%	1,547 35%	305 3%	2,906 45%	0 0%	0 0%	4,963 9%
YOUTHFUL OFFENDER	0 0%	0 0%	0 0%	0 0%	883 100%	0 0%	883 2%
TOTAL	30,901	4,389	11,004	6,450	883	174	53,801
COLUMN PERCENT	100%	100%	100%	100%	100%	100%	100%
ROW PERCENT	57%	8%	20%	12%	2%	0%	100%

FOREIGN-BORN INMATES UNDER DEPARTMENT CUSODY ON DECEMBER 31, 2008 BY CRIME CLASS AND TYPE OF COMMITMENT OFFENSE							
CRIME CLASS	TYPE OF COMMITMENT OFFENSE						TOTAL
	VIOLENT FELONY	OTHER COERCIVE	DRUG OFFENSES	PROPERTY & OTHER OFFENSES	YOUTHFUL OFFENDER	JUVENILE OFFENDER	
A-I FELONY	1,380 31%	0 0%	104 11%	0 0%	0 0%	9 82%	1,493 24%
A-II FELONY	2 0%	0 0%	245 27%	0 0%	0 0%	0 0%	247 4%
CLASS B FELONY	1,947 44%	43 13%	355 39%	24 6%	0 0%	2 18%	2,371 39%
CLASS C FELONY	661 15%	65 20%	137 15%	43 11%	0 0%	0 0%	906 15%
CLASS D FELONY	459 10%	139 42%	66 7%	164 43%	0 0%	0 0%	828 13%
CLASS E FELONY	9 0%	82 25%	12 1%	149 39%	0 0%	0 0%	252 4%
YOUTHFUL OFFENDER	0 0%	0 0%	0 0%	0 0%	59 100%	0 0%	59 1%
TOTAL	4,458	329	919	380	59	11	6,156
COLUMN PERCENT	100%	100%	100%	100%	100%	100%	100%
ROW PERCENT	72%	5%	15%	6%	1%	0%	100%

THE INSTITUTIONAL REMOVAL PROGRAM

The dramatic increase in the Department's foreign-born population between the mid-1980's and the early 1990's led New York State to file a lawsuit against the federal government which sought to force the federal government to take custody of all illegal aliens and Mariel Cubans under the Department's custody. The Clinton Administration sought a negotiated settlement with New York State when additional states filed or threatened to file similar law suits.

Attorney General Reno told New York State that the federal government did not have enough prison space to take New York's illegal alien prison population but offered a two prong strategy to solve the problem. First, the U.S. Justice Department would assign additional resources to identify illegal aliens under the Department's custody, charge them, and lodge deportation orders against them before the completion of their term of imprisonment. This strategy was designed to physically remove the criminal aliens from the United States thereby reducing both the number and proportion of illegal aliens in New York State's under custody prison population. Second, the federal government would appropriate funds through the State Criminal Alien Assistance Program (SCAAP) that would provide partial reimbursement to the states for costs associated with incarcerating illegal criminal aliens.

The resulting Institutional Removal Program (IRP) was the product of the cooperative efforts of the Department, the Bureau of Immigration and Customs Enforcement (ICE), and the Immigration Court (also known as the Executive Office for Immigration Review – EOIR). The Department has released 10,762 criminal aliens to ICE between 2002 and 2008 for either immediate deportation or transfer to the custody of ICE or the United States Marshals Service.

In addition to the public safety goal, the IRP saves the Department money in the following ways.

1. efficiently processing criminal aliens through the Immigration Court and generating deportation orders for them prior to their release from Department custody;
2. minimizing transportation costs through the televideo deportation hearing program (see *Research In Brief series, Televideo Deportation Hearings*);
3. maximizing the number of criminal aliens deported from the United States, thereby reducing the foreign-born under custody population by minimizing the annual number of return parole violators and new court commitments admitted to Department custody (see *Research In Brief series, IRP Releases & Return Rates*);
4. saving more than \$146 million in operational costs through Early Conditional Parole for Deportation Only (ECPDO) by deporting criminal aliens convicted of non-violent offenses prior to their initial parole hearing (see *Research In Brief series, Early Conditional Parole for Deportation Only*), and
5. offsetting the operational costs associated with incarcerating undocumented criminal aliens by securing over \$577 million through a federal reimbursement program known as the State Criminal Alien Assistance Program (SCAAP) (see *Research In Brief series, SCAAP*).

The New York IRP as it has come to be known, is promoted by ICE as a model program. ICE proactively encourages other states to adopt the New York IRP model which has led other jurisdictions to contact the Department for information about the program. The Washington Times published an editorial on January 16, 2008 which highlighted the cost savings directly attributable to the IRP.

**EARLY CONDITIONAL PAROLE FOR
DEPORTATION ONLY (ECPDO)**

One of the key components of the New York IRP is the statutory authorization to release certain non-violent criminal aliens to ICE for purposes of deportation only. The relevant section of the Sentencing Reform Act of 1995 was codified in the New York State Executive Law §259-i(d)(i) authorizes the New York State Board of Parole to release criminal aliens who have been convicted of non-violent felony offenses and have a final order of deportation prior to the completion of their earliest possible release date. These pre-parole eligibility releases are referred to as Early Conditional parole for Deportation Only (ECPDO) releases.

There were, 2,036 ECPDO releases from Department custody between July 1, 1995 and December 31, 2008. The felony class breakdown of ECPDO releases by calendar year is as follows:

ECPDO RELEASES BY FELONY CLASSIFICATION				
Felony Class*	1995-1999	2000-2004	2005-2008	Total
A-1	140	35	6	181
A-2	417	418	234	1,069
B	216	142	128	486
C	111	37	23	171
D	74	10	23	107
E	16	1	5	22
Total	974	643	419	2,036

* Class A-1 felonies are the most serious and Class E felonies are the least serious.

The 2,036 non-violent foreign-born inmates were released an average of 27.3 months prior to the completion of their minimum term of imprisonment. It is estimated that the ECPDO program has resulted in a \$146 million savings in operating and capital costs as of December 31, 2008.

**ESTIMATED COST SAVINGS
FOR EARLY CONDITIONAL PAROLE
FOR DEPORTATION ONLY RELEASES**

EARLY RELEASE PRIOR TO PE DATE	ECPDO
Time Frame	January 1, 1995 - December 31, 2008
Early Releases	2,036
Average Savings Per Release to PE Date In Months	27.3
Annual Cost Per Inmate	\$29,000
Operational Savings	\$134,325,100
Monthly Capital Cost Per Bed	\$363
Capital Construction Avoidance Savings*	\$12,127,830
COMBINED SAVINGS	\$146,452,930
Bed Savings	168

* Capital Construction Avoidance is calculated from 1995 through 2000.

TELEVIDEO DEPORTATION HEARINGS

Another cost savings component of the IRP is the televideo deportation hearing initiative. Beginning in April 1998, a pilot program was implemented in which initial deportation hearings were conducted via video teleconferencing equipment at selected facilities. The pilot program was successful and televideo deportation hearings now cover every Department correctional facility. All ICE and Immigration Court IRP activities are centered in the Downstate and Ulster reception centers for male foreign-born inmates and the Bedford Hills reception center for female inmates.

Between January 1, 1999 and December 31, 2008, there were 20,083 televideo deportation hearings conducted. The increase in televideo deportation hearings in 2005 was due to greater administrative efficiencies introduced by ICE which resulted in an increase in deportation charges being lodged against criminal aliens under the Department's custody. The decrease in televideo hearings since 2005 is attributable to three factors:

1. a reduction in the backlog of cases ICE needed to refer to the Immigration Court that was a direct result of the administrative improvements made by ICE in 2004,
2. a decline in the Department's foreign-born admissions and under custody population, and
3. an increase in the proportion of naturalized and derivative foreign-born citizens who are not amenable to deportation.

NUMBER OF TELEVIDEO HEARINGS BY HUB											
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	Total
Clinton Hub	98	407	322	335	299	247	538	389	269	288	3,192
Elmira Hub	4	9	0	0	39	52	173	97	140	118	632
Great Meadow Hub	5	174	187	179	187	218	420	278	230	223	2,101
New York City Hub	0	0	0	0	0	0	1	0	4	0	5
Oneida Hub	4	0	348	243	188	276	374	246	260	252	2,191
Watertown Hub	619	576	508	313	164	348	496	384	318	293	4,019
Wende Hub	1,000	1,226	1,013	665	559	628	1,059	652	613	528	7,943
Total	1,730	2,392	2,378	1,735	1,436	1,769	3,061	2,046	1,834	1,702	20,083

The total estimated cost savings attributable to the televideo deportation hearing program is \$3,896,102 (\$3,956,351 transportation, staff, and housing costs minus \$60,249 televideo equipment connection costs).

THE IMPACT OF THE IRP ON MAXIMIZING RELEASES OF FOREIGN-BORN INMATES TO ICE

The Department has historically reported on all foreign-born inmates in its statistical reports. However, since naturalized citizens are not deportable, it is necessary to remove foreign-born citizens from the base when reporting on the effectiveness of the policy of deporting criminal aliens.

CATEGORY OF RELEASE BY LATEST RELEASE YEAR EXCLUDING NATURALIZED CITIZENS								
	LATEST RELEASE YEAR							Total
	2002	2003	2004	2005	2006	2007	2008	
Release to Community	525 23%	576 25%	567 25%	441 19%	382 20%	314 18%	331 19%	3,136 21%
Release to ICE	1,663 72%	1,567 69%	1,601 70%	1,782 77%	1,439 76%	1,405 78%	1,305 76%	10,762 74%
Other Release	115 5%	128 6%	133 6%	96 4%	71 4%	75 4%	87 5%	705 5%
Total	2,303 100%	2,271 100%	2,301 100%	2,319 100%	1,892 100%	1,794 100%	1,723 100%	14,603 100%

When foreign-born naturalized citizens are excluded, nearly three-quarters (74%) of the foreign-born inmates released since 2002 have been released to ICE custody. From 2002 through 2008, an average of over 1,500 foreign-born inmates per year have been released to ICE custody rather than directly into the community.

IMPACT OF THE IRP ON RETURN RATES

The Department follows annual release cohorts for three years to determine their return rates. These return-to-DOCS custody analyses include both first releases for new commitments as well as releases for return parole violators. The data provided herein, however, consist solely of new court commitment first releases because too few ECPDO and CPDO releases return to custody to necessitate an examination of ECPDO and CPDO return parole violators.

The Department return-to-custody data indicate that 40 percent of the native-born inmates released during calendar year 2004 and 17 percent of the foreign-born inmates released to the community (i.e., inmates not amenable to deportation at the time of their release) returned to Department custody within three years. In stark contrast however, only 3 percent of the foreign-born releases to ICE custody returned within three years, 2 ECPDO inmates were returned to custody, and no CPDO releases were returned to custody.

THREE YEAR FOLLOW-UP OF 2004 FIRST RELEASES			
	Number Released	Number Returned	Percent Returned
U.S. Born Releases			
Released to Community	14,514	5,744	40%
Foreign-Born Releases			
Released to Community	718	121	17%
ECPDO	157	2	1%
CPDO	48	0	0%
Released to ICE Warrant	1,313	38	3%

STATE CRIMINAL ALIEN ASSISTANCE PROGRAM

As stated above, Attorney General Reno dedicated additional resources to the IRP in New York which has reduced both the number and proportion of criminal aliens under the Department's custody. The second prong of Attorney General Reno's plan to reduce the cost to the states for incarcerating illegal aliens to the form of the State Criminal Alien Assistance Program (SCAAP) which provides partial reimbursement to states and localities. The cost to the Department for incarcerating undocumented criminal aliens during the 2008 SCAAP reimbursement year (July 1, 2007 through June 30, 2008) was \$63.5 million while the SCAAP reimbursement received by the Department for that time period was only \$24 million (or 38 percent of the operating costs incurred).

From 1995 to date the Department has received over \$577 million in Federal reimbursement under the SCAAP program. Congress appropriated \$410 million for SCAAP in federal fiscal year (FFY) 2008 which was \$5 million more than the 2007 SCAAP appropriation.

Congress has consistently recognized the problem faced by the states and localities and has funded SCAAP at various levels since 1995, despite the fact that the Bush administration recommended the elimination of SCAAP. The Obama administration has continued the Bush policy of recommending the elimination of SCAAP. Therefore, the New York State Governor's Office of Federal Affairs has listed SCAAP as one of the top five Public Safety priorities for its 2009-2010 Federal Agenda.

Given the Department's declining undocumented alien population, it can be expected that the Department will receive lower SCAAP awards for the foreseeable future. More importantly, the Department's declining foreign-born inmate population (which is due in part to the Institutional Removal Program) is significantly reducing state expenditures for this alien population, which SCAAP only partially reimburses.

CONCLUSION

The foreign-born inmate population increased dramatically between 1985 and 1999. Beginning in 2000, the overall under custody population began to decline, and the foreign-born population has decreased at a faster rate than the native-born population.

The precipitous decline in the foreign-born population as compared with the native-born population can largely be attributed to the success of a joint federal-state partnership referred to as the Inmate Removal Program (IRP). The goal of the IRP is to identify criminal aliens and lodge deportation orders against them prior to their release from Department custody. The successful removal of criminal aliens from the United States has greatly contributed to the decline in the Department's foreign-born under custody population. This decline in the Department's foreign-born under custody population saves the Department money because SCAAP provides only partial reimbursement for the costs of incarcerating criminal aliens. The effectiveness of the IRP and annual SCAAP reimbursements have eased the financial burden on the Department that prompted the Department to initiate a law suit against the federal government in the early 1990's.