

**NEW YORK STATE
DEPARTMENT OF CORRECTIONAL SERVICES**



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



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EXECUTIVE SUMMARY

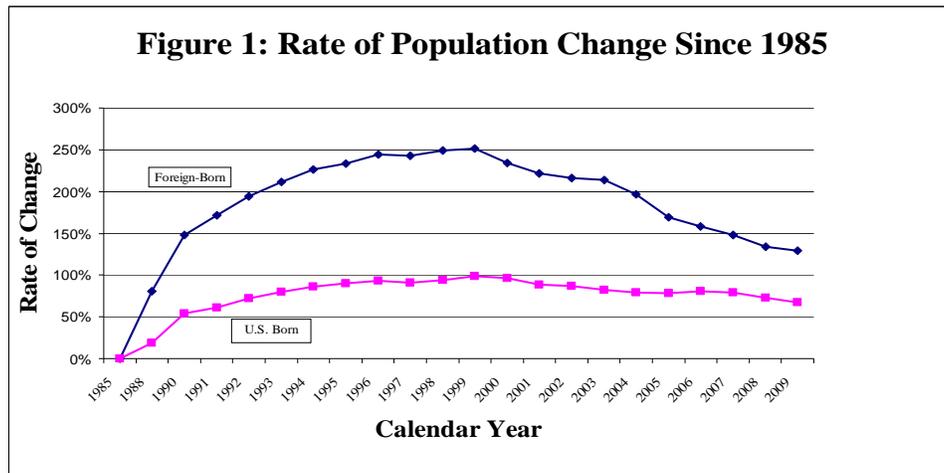
- The proportion of foreign-born inmates in the Department's under custody population has been declining since 2000. Foreign-born inmates now represent 10% of the total under custody population. The decline in the proportion of foreign-born inmates in the under custody population is largely attributable 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 11,918 criminal aliens to the Bureau of Immigration and Customs Enforcement (ICE) between 2002 and 2009 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 are not amenable to deportation 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 19% in 2009. This dramatic increase in the proportion of naturalized and derivative citizens in the Department's under custody population is, at least in part, a product of a federal initiative that began in 1996 called Citizenship USA.
- It is estimated that the 2,107 non-violent foreign-born inmates released under the ECPDO program were released an average of 27.3 months prior to the completion of their minimum term of imprisonment and saved DOCS \$151 million in operating and capital costs as of December 31, 2009.
- The total estimated cost savings attributable to the televideo deportation hearing program is \$4.2 million.
- The Department received \$26 million in SCAAP reimbursement in 2009. From 1995 to date the Department has received over \$603 million in Federal reimbursement under SCAAP.
- 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 2009 dropped 15%, from 61,169 in 2000, to 52,259 in 2009. During the same time period, the foreign-born under custody population dropped 31%, from 8,786 in 2000 to 6,031 in 2009, 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	2009
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%	52,259 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%	6,031 10%
Not Yet Known	198 0%	169 0%	90 0%	74 0%	82 0%	90 0%	62 0%	53 0%	120 0%	88 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%	58,378 100%

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 foreign-born under custody population rose dramatically, from 4% in 1994 to 19% on December 31, 2009.

	1994	1995	1996	1997	1998	1999	2000	2001
Awaiting Determination	1,084 13%	1,195 14%	1,253 14%	1,006 11%	755 8%	889 10%	585 7%	349 4%
Illegal Alien	2,650 31%	2,637 30%	2,094 23%	2,387 27%	2,673 29%	2,811 30%	2,808 32%	2,841 34%
Legal Permanent Resident	4,047 47%	4,098 47%	4,724 52%	4,633 51%	4,677 51%	4,561 49%	4,358 50%	4,179 49%
Naturalized Citizen	383 4%	445 5%	532 6%	566 6%	671 7%	692 7%	758 9%	840 10%
Mariel Cuban	410 5%	339 4%	449 5%	411 5%	404 4%	278 3%	277 3%	252 3%
Total	8,574 100%	8,714 100%	9,052 100%	9,003 100%	9,180 100%	9,231 100%	8,786 100%	8,461 100%

TABLE 2

ALIEN STATUS OF THE FOREIGN-BORN POPULATION 2002-2009

	2002	2003	2004	2005	2006	2007	2008	2009
Awaiting Determination	375 5%	383 5%	471 6%	371 5%	376 6%	360 6%	300 5%	378 6%
Illegal Alien	2,868 34%	2,940 35%	2,818 36%	2,561 36%	2,464 36%	2,382 36%	2,310 38%	2,213 37%
Legal Permanent Resident	3,983 48%	3,838 46%	3,469 44%	3,056 43%	2,795 41%	2,598 40%	2,329 38%	2,165 36%
Naturalized Citizen	862 10%	877 11%	868 11%	914 13%	986 15%	1,033 16%	1,074 17%	1,141 19%
Mariel Cuban	232 3%	203 2%	174 2%	178 3%	170 3%	155 2%	143 2%	134 2%
Total	8,320 100%	8,341 99%	7,800 100%	7,080 100%	6,791 100%	6,528 100%	6,156 100%	6,031 100%

This dramatic increase in the proportion of naturalized and derivative citizens in the Department's under custody population reflects, at least in part, the cumulative impact 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 (52%) 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). Forty-six percent of the foreign-born inmates under Department custody come from the Dominican Republic, Jamaica, and Mexico.

TABLE 3

**FOREIGN-BORN INMATES
UNDER DOCS CUSTODY ON
DECEMBER 31, 2009
BY REGION OF BIRTH**

	FREQUENCY	PERCENT
NORTH AMERICA	562	9%
CARIBBEAN	3,129	52%
CENTRAL AMERICA	666	11%
SOUTH AMERICA	765	13%
EUROPE	354	6%
AFRICA	139	2%
NEAR EAST	83	1%
ASIA	313	5%
SOUTH PACIFIC	20	0%
TOTAL	6,031	100%

TABLE 4

**TOP TEN COUNTRIES OF ORIGIN
OF FOREIGN-BORN INMATES
UNDER DOCS CUSTODY ON
DECEMBER 31, 2009**

	FREQUENCY	PERCENT
DOMINICAN REPUBLIC	1,347	22%
JAMAICA	881	15%
MEXICO	513	9%
GUYANA	294	5%
CUBA	275	5%
EL SALVADOR	245	4%
TRINIDAD & TOBAGO	238	4%
HAITI	198	3%
COLOMBIA	191	3%
ECUADOR	171	3%
TOP TEN TOTAL	4,353	72%
OTHER COUNTRIES OF BIRTH	1,678	28%
TOTAL FOREIGN-BORN	6,031	100%

COMMITMENT OFFENSES

Seventy-three percent of the foreign-born inmate population were committed for violent felony offenses. In contrast, 59% of the native-born inmate population were 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).

TABLE 5
FOREIGN-BORN INMATES UNDER DEPARTMENT CUSTODY
ON DECEMBER 31, 2009
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	1,362 31%	0 0%	100 12%	0 0%	0 0%	9 82%	1,471 24%
A-II FELONY	5 0%	0 0%	217 26%	0 0%	0 0%	0 0%	222 4%
CLASS B FELONY	1,893 43%	37 12%	358 43%	25 6%	0 0%	1 9%	2,314 38%
CLASS C FELONY	660 15%	66 21%	95 11%	52 13%	0 0%	1 9%	874 14%
CLASS D FELONY	488 11%	143 45%	53 6%	171 43%	0 0%	0 0%	855 14%
CLASS E FELONY	8 0%	74 23%	9 1%	146 37%	0 0%	0 0%	237 4%
YOUTHFUL OFFENDER	0 0%	0 0%	0 0%	0 0%	58 100%	0 0%	58 1%
TOTAL	4,416	320	832	394	58	11	6,031
ROW PERCENT	73%	5%	14%	7%	1%	0%	100%

TABLE 6
US BORN INMATES UNDER DEPARTMENT CUSTODY
ON DECEMBER 31, 2009
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	6,572 21%	0 0%	184 2%	0 0%	0 0%	128 78%	6,884 13%
A-II FELONY	41 0%	0 0%	633 7%	0 0%	0 0%	0 0%	674 1%
CLASS B FELONY	10,840 35%	144 3%	4,221 45%	70 1%	0 0%	32 19%	15,307 29%
CLASS C FELONY	7,467 24%	461 11%	2,539 27%	240 4%	0 0%	5 3%	10,712 21%
CLASS D FELONY	5,793 19%	2,188 50%	1,642 17%	3,314 51%	0 0%	0 0%	12,937 25%
CLASS E FELONY	146 0%	1,544 36%	257 3%	2,906 45%	0 0%	0 0%	4,853 9%
YOUTHFUL OFFENDER	0 0%	0 0%	0 0%	0 0%	875 100%	0 0%	875 2%
TOTAL	30,859	4,337	9,476	6,530	875	165	52,242
ROW PERCENT	59%	8%	18%	12%	2%	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 11,918 criminal aliens to ICE between 2002 and 2009 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 and SCAAP save 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 \$151 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. Off setting the operational costs associated with incarcerating undocumented criminal aliens by providing New York State over \$603 million through 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, 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 2,107 ECPDO releases from Department custody between July 1, 1995 and December 31, 2009. The felony class breakdown of ECPDO releases by calendar year is as follows:

ECPDO RELEASES BY FELONY CLASSIFICATION				
Felony Class*	1995-1999	2000-2004	2005-2009	Total
A-1	140	35	13	188
A-2	417	418	267	1,102
B	216	142	152	510
C	111	37	29	177
D	74	10	24	108
E	16	1	5	22
Total	974	643	490	2,107

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

The 2,107 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 \$151 million savings in operating and capital costs as of December 31, 2009.

**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, 2009
Early Releases	2,107
Average Savings Per Release to PE Date In Months	27.3
Annual Cost Per Inmate	\$29,000
Operational Savings	\$139,009,325
Monthly Capital Cost Per Bed	\$363
Capital Construction Avoidance Savings*	\$12,127,830
COMBINED SAVINGS	\$151,137,155
Bed Savings**	116

* Capital Construction Avoidance is calculated from 1995 through 2000.

** As of December 31, 2009

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, 2009, there were 21,756 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.

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Total
Clinton Hub	98	407	322	335	299	247	538	389	269	288	296	3,488
Elmira Hub	4	9	0	0	39	52	173	97	140	118	95	727
Great Meadow Hub	5	174	187	179	187	218	420	278	230	223	235	2,336
New York City Hub	0	0	0	0	0	0	1	0	4	0	0	5
Oneida Hub	4	0	348	243	188	276	374	246	260	252	259	2,450
Watertown Hub	619	576	508	313	164	348	496	384	318	293	310	4,329
Wende Hub	1,000	1,226	1,013	665	559	628	1,059	652	613	528	478	8,421
Total	1,730	2,392	2,378	1,735	1,436	1,769	3,061	2,046	1,834	1,702	1,673	21,756

The total estimated cost savings attributable to the televideo deportation hearing program is \$4,220,664 (\$4,285,932 transportation, staff, and housing costs minus \$65,268 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	2009	
Release to Community	525 23%	576 25%	567 25%	441 19%	382 20%	314 18%	331 19%	302 20%	3,438 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%	1,156 75%	11,918 74%
Other Release	115 5%	128 6%	133 6%	96 4%	71 4%	75 4%	87 5%	84 5%	789 5%
Total	2,303 100%	2,271 100%	2,301 100%	2,319 100%	1,892 100%	1,794 100%	1,723 100%	1,542 100%	16,145 100%

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 2009, an average of 1,490 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 took 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 \$603 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, but reduced the FFY 2009 SCAAP appropriation to \$330 million due to the recession.

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 2010-2011 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 in New York State 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.