

NEW YORK STATE

DEPARTMENT OF CORRECTIONS & COMMUNITY SUPERVISION



Research Report

The Foreign-Born Under Custody

Population & The IRP

- 2010 -



The Division of Program Planning, Research and Evaluation

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EXECUTIVE SUMMARY

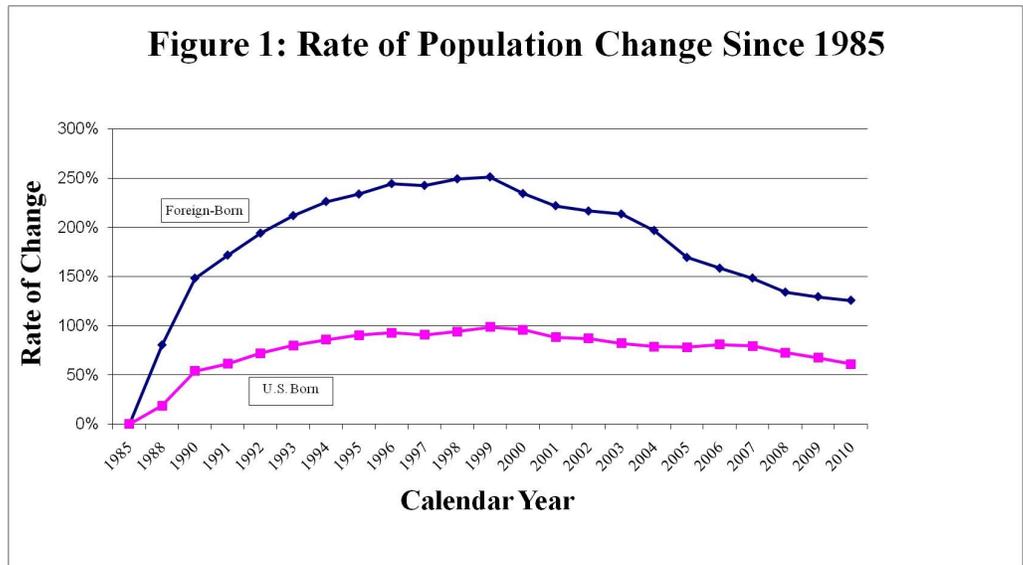
- The proportion of foreign-born inmates in the Department's under custody population has been declining since 2000. Foreign-born inmates now represent 11% of the total under custody population. The decline in the proportion of foreign-born inmates in the under custody population is largely attributable 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 12,986 criminal aliens to the Bureau of Immigration and Customs Enforcement (ICE) between 2002 and 2010 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 foreign-born under custody population has risen dramatically, from 4% in 1994 to 19% in 2010. This dramatic increase in the proportion of naturalized and derivative citizens in the Department's foreign-born 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 2,155 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 DOCCS \$151 million in operating and capital costs as of December 31, 2010.
- The total estimated cost savings attributable to the televideo deportation hearing program is \$4.2 million.
- The Department received \$17.9 million in SCAAP reimbursement in 2009. From 1995 to date, the Department has received over \$621 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 2010 dropped 18%, from 61,169 in 2000, to 50,232 in 2010. During the same time period, the foreign-born under custody population dropped 32%, from 8,786 in 2000 to 5,933 in 2010, or nearly 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 11% of the total under custody population (see Table 1).

TABLE 1

NUMBER OF INMATES UNDER DOCS CUSTODY BY PLACE OF BIRTH AT YEAR END

Place of Birth	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
U.S. Born	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%	50,232 89%
Foreign-Born	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%	5,933 11%
Not Yet Known	169 0%	90 0%	74 0%	82 0%	90 0%	62 0%	53 0%	120 0%	88 0%	150 0%
Total	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%	56,315 100%

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 IRP 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, 2010.

TABLE 2

ALIEN STATUS OF THE FOREIGN-BORN POPULATION 2002-2010

	2002	2003	2004	2005	2006	2007	2008	2009	2010
Awaiting Determination	375 5%	383 5%	471 6%	371 5%	376 6%	360 6%	300 5%	378 6%	390 7%
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%	2,186 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%	2,140 36%
Naturalized Citizen	862 10%	877 11%	868 11%	914 13%	986 15%	1,033 16%	1,074 17%	1,141 19%	1,107 19%
Mariel Cuban	232 3%	203 2%	174 2%	178 3%	170 3%	155 2%	143 2%	134 2%	110 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%	5,933 100%

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.

TABLE 2
ALIEN STATUS OF THE FOREIGN-BORN POPULATION 2002-2010

	2002	2003	2004	2005	2006	2007	2008	2009	2010
Awaiting Determination	375 5%	383 5%	471 6%	371 5%	376 6%	360 6%	300 5%	378 6%	390 7%
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%	2,186 37%
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Naturalized Citizen	862 10%	877 11%	868 11%	914 13%	986 15%	1,033 16%	1,074 17%	1,141 19%	1,107 19%
Married Cuban	232 3%	203 2%	174 2%	178 3%	170 3%	155 2%	143 2%	134 2%	110 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%	5,933 100%

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.

TABLE 3
FOREIGN-BORN INMATES
UNDER DOCS CUSTODY ON
DECEMBER 31, 2010
BY REGION OF BIRTH

	FREQUENCY	PERCENT
NORTH AMERICA	581	10%
CARIBBEAN	3,016	51%
CENTRAL AMERICA	664	11%
SOUTH AMERICA	761	13%
EUROPE	353	6%
AFRICA	147	2%
NEAR EAST	78	1%
ASIA	312	5%
SOUTH PACIFIC	21	0%
TOTAL	5,933	100%

COUNTRIES
OF
ORIGIN

The majority (51%) 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-five percent of the foreign-born inmates under Department custody come from the Dominican Republic, Jamaica, and Mexico.

TABLE 4
TOP TEN COUNTRIES OF ORIGIN
OF FOREIGN-BORN INMATES
UNDER DOCS CUSTODY ON
DECEMBER 31, 2010

	FREQUENCY	PERCENT
DOMINICAN REPUBLIC	1,314	22%
JAMAICA	849	14%
MEXICO	523	9%
GUYANA	289	5%
EL SALVADOR	245	4%
CUBA	242	4%
TRINIDAD AND TOBAGO	237	4%
HAITI	201	3%
EQUADOR	189	3%
COLOMBIA	168	3%
TOP TEN TOTAL	4,257	72%
OTHER COUNTRIES OF BIRTH	1,676	28%
TOTAL FOREIGN-BORN POPULATION	5,933	100%

COMMITMENT OFFENSES

Seventy-four percent of the foreign-born inmate population were committed for violent felony offenses. In contrast, 61% 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 15%, respectively).

TABLE 5

**FOREIGN-BORN INMATES UNDER DEPARTMENT CUSTODY
ON DECEMBER 31, 2010
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	1,341 30%	0 0%	100 14%	0 0%	0 0%	9 90%	1,450 24%
A-II FELONY	8 0%	0 0%	207 28%	0 0%	0 0%	0 0%	215 4%
CLASS B FELONY	1,840 42%	37 11%	308 42%	32 8%	0 0%	1 10%	2,218 37%
CLASS C FELONY	707 16%	71 21%	64 9%	46 11%	0 0%	0 0%	888 15%
CLASS D FELONY	496 11%	134 40%	48 7%	171 43%	0 0%	0 0%	849 14%
CLASS E FELONY	6 0%	91 27%	11 1%	152 38%	0 0%	0 0%	260 4%
YOUTHFUL OFFENDER	0 0%	0 0%	0 0%	0 0%	53 100%	0 0%	53 1%
TOTAL	4,398	333	738	401	53	10	5,933
ROW PERCENT	74%	6%	12%	7%	1%	0%	100%

TABLE 6

**US BORN INMATES UNDER DEPARTMENT CUSTODY
ON DECEMBER 31, 2010
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	6,483 21%	0 0%	195 2%	0 0%	0 0%	123 69%	6,801 14%
A-II FELONY	62 0%	1 0%	575 7%	0 0%	0 0%	0 0%	638 1%
CLASS B FELONY	10,678 35%	148 3%	3,718 47%	68 1%	0 0%	46 26%	14,658 29%
CLASS C FELONY	7,697 25%	458 11%	1,918 24%	241 4%	0 0%	8 4%	10,322 21%
CLASS D FELONY	5,751 19%	2,146 50%	1,271 16%	3,079 50%	0 0%	1 1%	12,248 24%
CLASS E FELONY	105 0%	1,563 36%	225 3%	2,815 45%	0 0%	0 0%	4,708 9%
YOUTHFUL OFFENDER	0 0%	0 0%	0 0%	0 0%	857 100%	0 0%	857 2%
TOTAL	30,776	4,316	7,902	6,203	857	178	50,232
ROW PERCENT	61%	9%	16%	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 12,986 criminal aliens to ICE between 2002 and 2010 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 \$621 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 2,155 ECPDO releases from Department custody between July 1, 1995 and December 31, 2010. The felony class breakdown of ECPDO releases is as follows:

ECPDO RELEASES BY FELONY CLASSIFICATION

Felony Class*	1995-1999	2000-2004	2005-2010	Total
A-1	140	35	17	204
A-2	417	418	289	1,127
B	216	142	167	538
C	111	37	33	182
D	74	10	26	112
E	16	1	6	26
Total	974	643	538	2,155

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

The 2,155 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, 2010.

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
Time Frame	January 1, 2010 - December 31, 2010
Early Releases	48
Average Savings Per Release to PE Date in Months	23.6
Marginal Cost Savings Per Inmate Per Month	\$333
Operational Savings	\$377,222
Bed Savings**	85
Total Savings January 1, 1995 - December 31, 2010	\$151,514,377

* Capital Construction Avoidance is calculated from 1995 through 2000.

** As of December 31, 2010

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, 2010, there were 23,213 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.

TABLE 9

**NUMBER OF TELEVIDEO HEARINGS
BY HUB**

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	Total
Clinton Hub	98	407	322	335	299	247	538	389	269	288	296	305	3,793
Elmira Hub	4	9	0	0	39	52	173	97	140	118	95	54	781
Great Meadow Hub	5	174	187	179	187	218	420	278	230	223	235	204	2,540
Green Haven Hub	0	0	0	0	0	0	0	0	0	0	0	4	4
New York City Hub	0	0	0	0	0	0	1	0	4	0	0	0	5
Oneida Hub	4	0	348	243	188	276	374	246	260	252	259	201	2,651
Watertown Hub	619	576	508	313	164	348	496	384	318	293	310	300	4,629
Wende Hub	1,000	1,226	1,013	665	559	628	1,059	652	613	528	478	389	8,810
Total	1,730	2,392	2,378	1,735	1,436	1,769	3,061	2,046	1,834	1,702	1,673	1,457	23,213

The total estimated cost savings attributable to the televideo deportation hearing program is \$4,503,322
 (\$4,572,961 transportation, staff, and housing costs minus \$69,639 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									
	2002	2003	2004	2005	2006	2007	2008	2009	2010	Total
Release to Community	448 19%	485 21%	465 20%	342 15%	271 14%	243 14%	258 15%	235 15%	270 18%	3,017 17%
Release to ICE	1,664 72%	1,567 69%	1,601 70%	1,782 77%	1,439 76%	1,405 78%	1,305 76%	1,155 75%	1,068 72%	12,986 74%
Release to Other Warrant Authority	77 3%	90 4%	100 4%	99 4%	109 6%	74 4%	79 5%	78 5%	80 5%	786 4%
Other Release	115 5%	129 6%	135 6%	96 4%	71 4%	72 4%	81 5%	74 5%	62 4%	835 5%
Total	2,304 100%	2,271 100%	2,301 100%	2,319 100%	1,890 100%	1,794 100%	1,723 100%	1,542 100%	1,480 100%	17,624 100%

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. An additional 4% of foreign-born releasees were released from the Department directly to the custody of a warrant issuing law enforcement authority.

THREE YEAR FOLLOW-UP OF 2006 FIRST RELEASES

IMPACT OF THE IRP ON RETURN RATES

The Department follows annual release cohorts for three years to determine their return rates. These return-to-custody analyses include both first releases for new commitments as well as releases for returned 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 38 percent of the native-born inmates released during calendar year 2006 and 29 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 2 percent of the foreign-born releases to ICE custody returned within three years, (one) 1 ECPDO inmate was returned to custody, and no CPDO releases were returned to custody. Consequently, these data show that criminal aliens released to ICE custody as the result of conditional paroles for deportation only or ICE warrants, rarely return to Department custody.

	Number Released	Number Returned	Percent Returned
U.S. Born Releases			
Release to Community	15,023		
Return, New Commitment		1,531	10%
Return, Parole Violator		4,194	28%
Total		5,725	38%
Foreign-Born Releases			
Release to Community	201		
Return, New Commitment		22	11%
Return, Parole Violator		36	18%
Total		58	29%
ECPDO	114		
Return, New Commitment		1	1%
Return, Parole Violator		0	0%
Total		1	1%
CPDO	36		
Return, New Commitment		0	0%
Return, Parole Violator		0	0%
Total		0	0%
Release to ICE Warrant	1,192		
Return, New Commitment		13	1%
Return, Parole Violator		13	1%
Total		26	2%
Release to Other Warrant	93		
Return, New Commitment		3	3%
Return, Parole Violator		3	3%
Total		6	6%
Total	16,659	5,816	35%

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 \$621 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.

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.

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 recommended \$336 million for SCAAP in FFY 2011. As of this writing Congress has not passed a budget for FFY 2011. Rather, Congress has been passing Continuing Resolutions that have contained reductions in discretionary spending. Since SCAAP is a discretionary spending program it is unclear whether SCAAP will be funded in FFY 2012 and if so, how much that funding will be.

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.