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# Interior Immigration Enforcement: Criminal Alien Programs

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## Summary

Congress has long supported efforts to identify, detain, and remove criminal aliens, defined as noncitizens who have been convicted of crimes in the United States. The apprehension and expeditious removal of criminal aliens has been a statutory priority since 1986, and the Department of Homeland Security (DHS) and one of its predecessor agencies have operated programs targeting criminal aliens since 1988. Investments in DHS's Immigration and Customs Enforcement (ICE) interior enforcement programs since 2004 have increased the number of potentially removable aliens identified within the United States.

Inconsistencies in data quality, collection, and definitions prevent a precise enumeration of total criminal aliens and key subgroups such as criminal aliens convicted of removable offenses and aggravated felonies. It is also not known what portion of these groups consists of legally present noncitizens and unauthorized aliens. Noncitizens incarcerated in federal and state prisons and local jails—a subset of all criminal aliens—totaled 142,463 in 2013 (the most recent year for which complete data are available), with state prisons and local jails each accounting for more incarcerations than federal prisons. Until recently, the proportion of noncitizens incarcerated in U.S. prisons and jails corresponded closely to that of noncitizens in the U.S. population, but unreported incarceration data since 2013 has hindered such comparisons.

To direct immigration enforcement efforts toward the criminal alien population, ICE operates the *Criminal Alien Program (CAP)*, an umbrella program for marshaling agency resources to identify and remove criminal and other removable aliens. CAP is guided by the *Priority Enforcement Program (PEP)*, which represents a set of immigration enforcement priorities that describe which foreign nationals should be removed and in what priority order. PEP also employs “interoperability,” which is a data sharing infrastructure between DHS and the Department of Justice that screens individuals for immigration-related violations when they pass through law enforcement jurisdictions. PEP replaced the former *Secure Communities*, which many jurisdictions with large foreign-born populations had opposed.

ICE also uses the §287(g) program, which allows the agency to delegate certain immigration enforcement functions to specially trained state and local law enforcement officers, under federal supervision. PEP and the §287(g) program both screen for immigration violations as people pass through the criminal justice system.

The *National Fugitive Operations Program (NFOP)* pursues known at-large criminal aliens and fugitive aliens outside of controlled settings (i.e., administrative offices or custodial settings). NFOP is not part of CAP, although ICE officers in its workforce use the same DHS resources and databases as ICE officers working for CAP.

PEP, its predecessor Secure Communities, and the §287(g) program have all contributed to DHS removing large numbers of aliens in the past decade. Yet, these programs also have been controversial. Because interoperability screens all people passing through law enforcement jurisdictions, critics often charged ICE with removing many people who either committed minor crimes or who had no criminal record apart from unauthorized presence in the United States. Other critics charge that revisions to the set of enforcement priorities through PEP have since contributed to declining numbers of enforcement actions.

The §287(g) program has raised concerns over inconsistent policies and practices among jurisdictions and allegations of racial profiling, among other issues. Such concerns caused ICE to revise the program in FY2012 and allow certain §287(g) agreements with law enforcement agencies to expire. Since then, immigration enforcement advocates have questioned why ICE has curtailed the program's use. ICE has recently expressed interest in expanding it.

For these and other reasons, Congress may be interested in measures of enforcement levels by program, the level of appropriations for different criminal alien programs, and the role of state and local law enforcement agencies in immigration enforcement.

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## Introduction

Congress has long supported efforts to identify, detain, and remove noncitizens<sup>1</sup> who have been convicted of crimes in the United States. More generally, all unauthorized aliens<sup>2</sup> within the United States are potentially subject to removal, and “interior enforcement” (i.e., alien removals originating from within the United States) is a basic element of immigration control.

The criminal alien population, to which such enforcement efforts are targeted, is complex. It is defined in broad terms, challenging to quantify, and sufficiently large and diverse in its criminality that priorities have been established or modified to direct law enforcement efforts.

This report discusses four programs operated by the Department of Homeland Security’s (DHS) Immigration and Customs Enforcement (ICE) to identify and remove criminal and other removable aliens. The *Criminal Alien Program (CAP)* is an umbrella program for marshaling the agency’s resources to identify and remove criminal and other removable aliens. CAP is guided by the *Priority Enforcement Program (PEP)*,<sup>3</sup> which represents a set of enforcement priorities that describe which foreign nationals should be removed and in what priority order. PEP also comprises a data sharing infrastructure or “interoperability” between DHS and the Department of Justice that screens for immigration violations when individuals are booked into jails.<sup>4</sup> ICE’s *§287(g) program*<sup>5</sup> allows DHS to delegate certain immigration enforcement functions to specially trained state and local law enforcement officers, under federal supervision. The *National Fugitive Operations Program (NFOP)* pursues known at-large criminal aliens and fugitive aliens outside of controlled settings (i.e., administrative offices or custodial settings).

PEP, its predecessor Secure Communities, and the §287(g) program have all contributed to DHS removing large numbers of aliens in the past decade. Yet, these programs also have been controversial. Because interoperability screens 100% of people passing through law enforcement jurisdictions, critics often charged ICE with removing many people who either committed minor

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<sup>1</sup> Noncitizens include *lawful permanent residents (LPRs)* (also referred to as “immigrants” or “green card holders”) who are admitted to the United States or who adjust status from within the United States to reside permanently and lawfully in the United States; *legal nonimmigrants* who are admitted on temporary visas for a specific purpose and a limited period of time; and *unauthorized aliens* who are foreign nationals who enter the United States unlawfully without inspection (or with inspection but with false documents) or who enter the United States lawfully but overstay the terms of their temporary visa.

<sup>2</sup> In this report, the terms “alien” and “foreign national” are used interchangeably.

<sup>3</sup> PEP is not a formal program per se. It consists of a data sharing infrastructure and a set of enforcement priority and policy guidelines. Throughout this report, the term “program” is necessarily embedded within “PEP” for linguistic ease.

<sup>4</sup> PEP replaced the former Secure Communities program, which some jurisdictions—particularly those with sizable foreign-born populations—had opposed. Begun in 2008, Secure Communities had the same database interoperability as PEP but used a broader set of enforcement priorities. Immigrant advocacy groups criticized Secure Communities from its inception for removing relatively large numbers of unauthorized aliens who had committed minor or nonviolent crimes and who often had family ties in the United States. Some law enforcement officials argued that the program hampered community policing within immigrant communities, because it helped to conflate immigration enforcement with general law enforcement. Supporters of Secure Communities saw it as an efficient and impartial way of identifying criminal aliens. Following its replacement with PEP, criticism shifted toward concerns about insufficient enforcement, with some observers criticizing ICE’s use of prosecutorial discretion that emphasizes enforcement for only the most serious criminal aliens. They argue that such priorities come at the expense of removing other criminal aliens and unauthorized aliens more generally, and that all unauthorized aliens have violated U.S. immigration law and should be subject to removal. For more discussion on Secure Communities, see archived CRS Report R42057, *Interior Immigration Enforcement: Programs Targeting Criminal Aliens*, by Marc R. Rosenblum and William A. Kandel. For more discussion on alien removals and returns, see CRS Report R43892, *Alien Removals and Returns: Overview and Trends*, by Alison Siskin.

<sup>5</sup> The formal program name is *Agreements entered into pursuant to Immigration and Nationality Act (INA) §287(g)*.

crimes or who had no criminal record apart from unauthorized presence in the United States. Other critics charge that revisions to the set of enforcement priorities through PEP have since contributed to a sizable decline in the number of enforcement actions.

The §287(g) program has raised concerns about the role of state and local law enforcement agencies in immigration enforcement. Inconsistent policies and practices among jurisdictions and allegations of racial profiling, among other issues, caused ICE to revise the program in FY2012 and allow certain §287(g) agreements with law enforcement agencies to expire. Since then, immigration enforcement advocates have questioned why ICE has curtailed the program's use. ICE has recently expressed interest in expanding it.

For these and other reasons, Congress may be interested in measures of enforcement levels by program, the level of appropriations for different criminal alien programs, and the role of state and local law enforcement agencies in immigration enforcement.

This report begins by defining the criminal alien population and quantifying a portion of it with the limited publically available data. Next it presents the most recent ICE enforcement priorities that emerged with the introduction of PEP in November 2014. The report then describes the major ICE immigration enforcement programs that target criminal aliens. The final section discusses selected policy considerations for programs targeting criminal aliens. This includes a discussion of current levels of enforcement and program appropriations, as well as state and local involvement in immigration enforcement.

## Defining “Criminal Aliens”

U.S. immigration law identifies certain crimes that make an alien ineligible for admission to the United States and/or subject to removal. Such crimes include crimes of “moral turpitude”; crimes involving controlled substances; certain firearm offenses; and crimes related to espionage, sabotage, and related offenses.<sup>6</sup> Yet the term “criminal alien” is not specifically defined in immigration law or regulation, and people use it to refer to several different types of noncitizen offenders. At the broadest level, a “*criminal alien*” is any noncitizen who has ever been convicted of a crime in the United States. This report adopts this broad definition unless otherwise noted. (See **Appendix A** for a glossary of additional related terms.)

Criminal aliens can be further distinguished by legal status,<sup>7</sup> which in turn affects removability. Unauthorized aliens have made up roughly half of all U.S. noncitizens in recent years.<sup>8</sup> The unauthorized alien population includes not only persons who entered without inspection or overstayed the terms of their temporary visas but also persons who have what some refer to as a “quasi-legal” status (e.g., temporary protected status, parole, deferred action) that affords them

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<sup>6</sup> Whether a crime involves moral turpitude has been determined by judicial and administrative case law rather than a statutory definition. In general, if a crime manifests an element of baseness or depravity under current mores, it involves moral turpitude. For a fuller discussion, see (archived) CRS Report RL32480, *Immigration Consequences of Criminal Activity*.

<sup>7</sup> Noncitizen legal status includes lawful permanent resident status, lawful temporary status, and unauthorized status.

<sup>8</sup> Estimates for the 2014 unauthorized resident alien population in the United States ranged from 10.9 to 11.3 million. See Robert Warren, “US Undocumented Population Drops Below 11 Million in 2014, with Continued Declines in the Mexican Undocumented Population,” *Journal on Migration and Human Security*, vol. 4 (2016), pp. 1-15; and Jeffrey Passel and D’Vera Cohn, “Unauthorized immigrant population stable for half a decade,” Pew Research Center, Washington, DC, July 18, 2015. Noncitizens in 2014 numbered an estimated 22.4 million persons. Source: 2014 American Community Survey 1-year estimates, computed by CRS using the U.S. Census Bureau’s American Factfinder website, <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>.

relief from immediate removal. Hence, not all unauthorized aliens living in the United States are subject to removal. Most unauthorized aliens, however, are removable; but few have been convicted of a crime and are classified as criminal aliens (unlawful presence in the United States itself is a civil violation, not a criminal offense).<sup>9</sup>

Three groups of criminal aliens can be distinguished.

- *All criminal aliens* include both unauthorized aliens, most of whom are potentially removable, and legal aliens<sup>10</sup> who may or may not be removable depending on specific crimes committed. This population contains the set of criminal aliens who are removable on the basis of specific crimes committed.
- *Criminal aliens who have been convicted of removable criminal offenses* are subject to removal under the Immigration and Nationality Act (INA) even if they are otherwise legally present.<sup>11</sup> For example, a legal permanent resident (LPR) convicted of cocaine possession is subject to removal,<sup>12</sup> but an LPR convicted of public intoxication is not. This population also includes aggravated felons.
- *Criminal aliens who have been convicted of aggravated felonies*<sup>13</sup> are ineligible for most forms of relief from removal<sup>14</sup> and are ineligible to be readmitted to the United States.<sup>15</sup>

As noted above, all three of these subpopulations—criminal aliens, removable criminal aliens, and aggravated felons—comprise an unknown mix of legally present noncitizens and unauthorized aliens.

In addition, criminal aliens can be distinguished by whether they are currently incarcerated in federal and state prisons and local jails. Accordingly, the criminal alien population can include noncitizens convicted of crimes but who are not incarcerated,<sup>16</sup> noncitizens convicted of crimes who are currently incarcerated, and noncitizens who have ever been convicted of crimes in the past, who have served their sentences, and who have been released from prison and reside in the United States.

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<sup>9</sup> Unlawful presence is only a criminal offense when an alien is found in the United States after having been formally removed or after departing the country while a removal order was outstanding. See CRS Report R43892, *Alien Removals and Returns: Overview and Trends*, by Alison Siskin.

<sup>10</sup> Legal aliens include aliens admitted as lawful permanent residents (LPRs) and aliens admitted on temporary visas, including tourists, temporary workers, and foreign students.

<sup>11</sup> Section 237(a)(2) of the Immigration and Nationality Act (INA, codified at 8 U.S.C. §1227 (a)(2)) enumerates a list of criminal offenses that make aliens subject to removal. Criminal offenses in the context of immigration law cover violations of federal, state, or, in some cases, foreign criminal law.

<sup>12</sup> INA §237(a)(2)(B)(i); 8 U.S.C. §1227(a)(2)(B)(i).

<sup>13</sup> Aggravated felonies refer to a class of serious criminal alien offenses created per INA §101(a)(43) and include murder, drug trafficking, or illegal trafficking in firearms or destructive devices. Subsequent measures passed by Congress expanded the definition of aggravated felonies and created additional criminal grounds for removal. See CRS Report RL32480, *Immigration Consequences of Criminal Activity*. For a critique of this classification, see American Immigration Council, *Aggravated Felonies: An Overview*, accessed by CRS at <http://www.immigrationpolicy.org/just-facts/aggravated-felonies-overview> on July 13, 2016.

<sup>14</sup> Relief from removal refers to mechanisms under the INA that allow certain removable aliens to remain in the United States, either permanently or temporarily. For more information on forms of and eligibility for relief, see CRS Report R43892, *Alien Removals and Returns: Overview and Trends*, by Alison Siskin.

<sup>15</sup> INA §§238(b) and 212(a)(9); 8 U.S.C. §§1228(b) and 1182(a)(9).

<sup>16</sup> These can include criminal aliens who, while not incarcerated, are under the supervision of the criminal justice system, such as through parole or probation.

## Quantifying the Criminal Alien Population

Having defined the criminal alien population, this report next turns to the issue of quantifying its size. This issue is complicated by the lack of data and published estimates on the criminal alien population. CRS is not aware of any authoritative current estimate for the *total criminal alien population*. DHS has produced its own estimates of the *removable criminal alien population*, a subgroup of the total criminal alien population. In 2013, ICE published estimates indicating that approximately 900,000 aliens were arrested for crimes every year; that approximately 550,000 criminal aliens convicted of crimes exited law enforcement custody every year;<sup>17</sup> and that 1.9 million removable criminal aliens currently resided in the United States.<sup>18</sup>

This CRS report presents data on authoritative published measures that quantify one portion of the criminal alien population—the noncitizen population incarcerated in federal and state prisons and local jails.<sup>19</sup> Incarcerated noncitizens represent a subset of criminal aliens, but given the paucity of data on the criminal alien population, it represents one consistent annual measure that can be compared both across time and relative to the total U.S. incarcerated population. This section presents incarceration data from 2002 through 2013. It then discusses the quality and limitations of publically available data pertaining to the criminal alien population.

### Federal, State, and Local Incarceration Data

**Table 1** presents CRS tabulations of the total year-end U.S. citizen and noncitizen populations in federal and state prisons and local jails publicly reported by the Bureau of Justice Statistics for 2002 through 2013 (the most recent year for which complete data are available). This population includes an unknown portion of persons who fall into each of the three criminal alien populations discussed above: total criminal aliens, removable criminal aliens, and aggravated felons. This population also includes both persons lawfully present in the United States and unauthorized aliens.

Federal prison data come from annual published BJS reports that compile year-end data collected from the Bureau of Prisons (BOP) under the auspices of BJS's National Prisoner Statistics (NPS) program. State prison data also come from annually published BJS reports that compile mid-year and year-end data collected by the NPS program from the correctional departments of all 50 states. Local jail data come from an annual BJS survey, the *Annual Survey of Jails*, from which it creates national-level estimates of the number of inmates incarcerated in local jails. In addition, it conducts a complete count of the local jail population every five years through its *Census of Jails*. Together, these two local jail counts provide a consistent annual series of the total number of persons incarcerated in local jails.

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<sup>17</sup> U.S. Department of Homeland Security, *Annual Performance Report, Fiscal Years 2011-2013, U.S. Immigration and Customs Enforcement Salaries and Expenses*, p. 61. The estimates for the number of arrests and the number of criminal aliens exiting law enforcement custody each year were computed using the Secure Communities Criminal Alien Population Projection Analysis (CAPPA), which reportedly relied on data from the 2007 FBI Uniform Crime Report, the 2008 Census Bureau American Community Survey (ACS), the 2006 Bureau of Justice Statistics Felony Defendants in Large Urban Counties, and the 2008 Federal Justice Statistics Resource Center.

<sup>18</sup> Ibid. The citation above states that the estimate was adjusted for ACS undercount of the noncitizen population using the (unspecified) DHS Office of Immigration Statistics methodology, and Thomas P. Bonczar, *Prevalence of Imprisonment in U.S. Population, 1974-2001*, Bureau of Justice Statistics, Special Report, August 2003. The citation did not specify if methods or data or both were used from the latter publication.

<sup>19</sup> Individuals housed by Immigration and Customs Enforcement (ICE) are beyond the scope of this report because they are not officially part of the U.S. criminal justice system.



**Table 1** indicates that as of December 31, 2013, a total of 2,308,158 prisoners (U.S. citizens and noncitizens) were incarcerated: 215,866 in federal prisons; 1,361,084 in state prisons; and 731,208 in local jails. The 142,463 noncitizens reported in federal and state prisons and local jails at year-end 2013 represented 6.2% of the total incarcerated population.<sup>20</sup>

Noncitizen inmates comprised 23.5% of the total federal prison population, 3.5% of the total state prison population, and 6.0% of the total local jail population in 2013. The large noncitizen proportion in federal prisons occurs for two reasons. First, immigration offenses, which are prosecuted at the federal level, represent a disproportionate share of federal offenses for which convicted individuals can be incarcerated in federal prisons.<sup>21</sup> Second, data on noncitizens incarcerated in federal prisons are tabulated more accurately and completely than data on those incarcerated in state prisons and local jails, because federal data are collected consistently by one administrative unit using a single definition of noncitizen. Conversely, data collected on noncitizen status at the state level varies by state and in some cases is not reported at all, resulting in widespread underreporting of noncitizens. At the local level, such shortcomings are magnified over an even larger number of jail facilities and information collection policies.<sup>22</sup>

Between 2002 and 2012, the noncitizen percentage of the incarcerated population (ranging from 6.7% to 7.4% over this period) mapped closely to the noncitizen percentage of the U.S. population overall (ranging from 6.3% to 7.6% over the same period). However, in 2013 several states, including California, did not report their noncitizen incarcerated populations, causing the total state-level noncitizen incarcerated population to be understated for that year, and making it difficult to compare with that of previous years.<sup>23</sup> As a basis for comparison, noncitizens comprised 7.0% of the total U.S. population in 2013.<sup>24</sup>

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<sup>20</sup> Figures for the federal noncitizen prison population from 2002-2013 are as of year-end and include sentenced as well as non-sentenced inmates, and inmates under jurisdiction as well as inmates in custody (see **Table 1** notes for the distinction between these two groups). Figures for the state noncitizen prison population are as of mid-year and include the same types of inmates as those in the federal figures. Figures for the local noncitizen jail population are as of mid-year and only include sentenced inmates and inmates in custody. As of July 26, 2016, published data on the entire 2013 state-level noncitizen incarcerated population were incomplete because California (a state with one of the largest noncitizen incarcerated populations), Arkansas, and Nevada did not report their 2013 figures, thereby preventing a complete tally of the national total.

<sup>21</sup> In 2013, for example, of the 188,164 persons arrested for violation of federal laws, 91,551 (or 51%) were arrested for immigration-related offenses. Source: BJS, Federal Criminal Case Processing Statistics, accessed by CRS at <http://www.bjs.gov/fjsrc/> on July 25, 2016.

<sup>22</sup> In addition to inconsistencies in data collection and noncitizen status definition at the local level, many of the surveyed jails in the Annual Survey of Jails did not collect data on noncitizen status. For example, in 2013, of the 859 jails sampled, 160 (19%) did not report noncitizen data.

<sup>23</sup> California's noncitizen state prisoner population averaged 16,871 prisoners between 2008 and 2012. If this average figure is added to the 2013 state noncitizen prisoner total of 47,861, the resulting state-level total of 64,732 would represent 4.8% of that population instead of the 3.5% shown in **Table 1**. Similarly if the same total were added to the 2013 total noncitizen prisoner population in federal, state, and local institutions of 142,463, the resulting total of 159,334 would represent 6.9% of that population instead of 6.2%.

<sup>24</sup> CRS analysis of the 2013 American Community Survey, 1-Year Estimates, accessed by CRS on the U.S. Census Bureau's American Factfinder website on July 25, 2016. The foreign-born population in the United States grew from 32.5 million to 41.3 million between 2002 and 2013, and represented 13.1% of the total U.S. population in 2013. That percentage excludes over 10 million native-born children born to at least one foreign-born parent. See CRS Report R41592, *The U.S. Foreign-Born Population: Trends and Selected Characteristics*, pp. 14-16.

**Table 1. Total and Noncitizen Incarcerated Population, Federal and State Prisons and Local Jails, 2002-2013**

	Total Incarcerated Population				Noncitizen Incarcerated Population				Percentage Noncitizen of Total Incarcerated Population			
	Total	Federal Prisons	State Prisons	Local Jails	Total	Federal Prisons	State Prisons	Local Jails	Total	Federal Prisons	State Prisons	Local Jails
2002	2,105,619	163,528	1,276,616	665,475	142,104	40,051	54,804	47,249	6.7%	24.5%	4.3%	7.1%
2003	2,159,902	173,059	1,295,542	691,301	143,279	42,232	56,112	44,935	6.6%	24.4%	4.3%	6.5%
2004	2,211,090	180,328	1,316,772	713,990	148,033	42,803	57,393	47,837	6.7%	23.7%	4.4%	6.7%
2005	2,273,439	187,618	1,338,292	747,529	143,484	44,323	55,804	43,357	6.3%	23.6%	4.2%	5.8%
2006	2,334,493	193,046	1,375,628	765,819	155,693	44,734	57,352	53,607	6.7%	23.2%	4.2%	7.0%
2007	2,377,009	199,618	1,397,217	780,174	161,595	45,756	55,766	60,073	6.8%	22.9%	4.0%	7.7%
2008	2,393,815	201,280	1,407,002	785,533	181,851	46,466	64,687	70,698	7.6%	23.1%	4.6%	9.0%
2009	2,382,921	208,118	1,407,369	767,434	176,823	48,740	66,688	61,395	7.4%	23.4%	4.7%	8.0%
2010	2,362,531	209,771	1,404,032	748,728	176,852	47,569	65,641	63,642	7.5%	22.7%	4.7%	8.5%
2011	2,334,381	216,362	1,382,418	735,601	180,791	51,885	72,265	56,641	7.7%	24.0%	5.2%	7.7%
2012	2,314,921	217,815	1,352,582	744,524	171,822	51,305	63,933	56,584	7.4%	23.6%	4.7%	7.6%
2013	2,308,158	215,866	1,361,084	731,208	142,463	50,730	47,861	43,872	6.2%	23.5%	3.5%	6.0%

**Sources:** **Total federal and state prison population:** 2002-2004: DOJ-BJS, *Prisoners in 2009*, December 2010 (revised October 27, 2011), Table 1; 2005-2013: DOJ-BJS, *Prisoners in 2014*, September 2015, Table 1; **Total local jail population:** DOJ-BJS *Jail Inmates at Midyear 2014*, June 2015, Table 1; **Noncitizen federal prison population:** 2002-2013: DOJ-BJS, Federal Criminal Case Processing Statistics (FCCPS), Prisoners in Federal Prison at year-end (trends), accessed by CRS at <http://www.bjs.gov/fjsrc> on July 25, 2016; **Noncitizen local jail population:** 2002-2008: DOJ-BJS, *Jail Inmates at Midyear 2008*, March 2009, Table 8; 2009-2014: computed by CRS using DOJ-BJS *Annual Survey of Jails*, individual years, microdata (see notes below).

**Notes:** Figures presented are the most current available (for noncitizen inmates) as of July 25, 2016. *Federal and state total prison population figures and federal noncitizen population figures* measure the incarcerated population as of December 31. Figures include inmates under jurisdiction of federal or state prisons or in the custody of federal or state prisons or local jails. *Jurisdiction* refers to prisoners under the legal authority of state and federal correctional officials, regardless of where a prisoner is held. *Custody* refers to the number of inmates held in state or federal prisons or local jails, regardless of sentence length or the authority having jurisdiction. *State noncitizen prison and local jail population figures* measure the incarcerated population as of June 30 each year. Because total counts of noncitizens in local jails are not available for many local jurisdictions, CRS imputed the noncitizen local jail figures by multiplying the total local jail population by the noncitizen percentage in local jails obtained from the sources noted above. In 2013, the mid-year and year-end figures at both the federal and state levels differed by less than 0.1%. The 2013 state noncitizen figure excludes noncitizen state prisoners in AR, CA, and NV, which did not report in that year. Noncitizen prisoners in AR and NV amounted to 35 in 2011, the last year both states reported. The number of noncitizen prisoners in CA averaged 16,871 persons between 2008 and 2012.

## Data Quality and Limitations

Several obstacles challenge and limit the ability of researchers to accurately enumerate the criminal alien population or compare its criminal activity to other U.S. populations. For example, federal BOP data include information on citizenship status according to a single noncitizen definition. In contrast, state and local criminal justice jurisdictions differ in how they classify noncitizen prisoners, and not all collect such information; this creates substantial inconsistencies in data quality and completeness at the state and local level.

No single and consistent national enumeration of prisoners exists in the United States similar to the decennial census or the Current Population Survey—much less one that focuses on subpopulations such as noncitizens.<sup>25</sup> Attempts to quantify the U.S. criminal alien population have relied on estimation techniques, assumptions about the criminal alien proportion of the total criminal population, and federal surveys and censuses of prison inmates. This section discusses several data limitations associated with quantifying the criminal alien population.

## Imperfect Measures of Immigrant Criminality

Incarcerations imperfectly measure criminality, because some people initially incarcerated in local jails—a sizable portion of the total incarcerated population—have not yet been charged or convicted of crimes. Conversely, incarceration data understate the number of convicted criminals because they exclude persons on parole and persons sentenced to probation. For instance, of the 6,899,000 individuals included by BJS in its 2013 count of the total correctional population, 3,910,600 were on probation (56%), 853,200 were on parole (12%), and 2,220,300 were incarcerated in federal and state prisons or local jails (32%).<sup>26</sup>

Caution must be exercised when examining incarceration data because changing numbers of incarcerations do not always indicate changes in the level of criminal activity. They may indicate changes in enforcement policy. For instance, a reduction in incarcerations for illegal immigration entry may stem from fewer persons attempting to enter the United States illegally, but it may also reflect changes in resources or enforcement priorities. It is also noteworthy that some crimes are never reported: incarcerations only reflect the number of offenses known to law enforcement.

## Inconsistent State and Local Data Reporting

Data availability and reliability represent key obstacles to quantifying the national criminal alien population and its level of criminality. For example, no recent and complete publicly available data exist on two potentially useful indicators—arrests and convictions—at the state and local levels that distinguish between U.S. citizens and noncitizens.<sup>27</sup> Consequently, this report limits its analysis to incarcerations.

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<sup>25</sup> John Hagan and Alberto Palloni, *Sociological Criminology and the Mythology of Hispanic Immigration and Crime*, *Social Problems*, vol. 46 (1999), pp. 617-632.

<sup>26</sup> U.S. Department of Justice, Bureau of Justice Statistics, *Correctional Populations in the United States, 2013*, Table 1, December 2014. In this series, counts for probation, prison, and parole populations are for December 31, and jail population counts are as of June 30. Figures for the probation, parole, and incarcerated populations do not add up to the total presented above or in **Table 1** because of rounding and because BJS adjusts the total to account for offenders with multiple correctional statuses. See the methodology section in the above-cited BJS report.

<sup>27</sup> Recent public-use data on criminal aliens can be obtained from two sources: the U.S. Department of Justice's Bureau of Justice Statistics, which publishes the annual *Prison and Jail Inmates at Midyear* report, and the National Archive of Criminal Justice Data (NACJD), which provides to the public the raw data for analysis. The aggregation of state- and

BJS's state and local incarceration data are based on the voluntary participation of each state's department of corrections and local jails. While all states contribute data to BJS on their prison population, states' definitions vary, posing challenges to estimating the size and character of the criminal alien population. For instance, while some states report noncitizen incarcerations, others report all foreign-born prisoners, including naturalized U.S. citizens, potentially inflating counts of the criminal alien population.<sup>28</sup>

Local jail reporting practices are likely to be even more inconsistent than state practices given the far greater number of jurisdictions. And not all local jurisdictions report on their foreign-born criminal populations. For these reasons, the Government Accountability Office (GAO) concluded in 2005 that "there [are] no reliable population ... data on criminal aliens incarcerated in all state prisons and local jails."<sup>29</sup>

## **DHS Enforcement Priorities and Discretion**

Because ICE screens 100% of people passing through most law enforcement jurisdictions, it identifies potential removable aliens (including criminal aliens (see **Table 2**)). Given the relative size and the range of criminality of potentially removable unauthorized and criminal aliens, ICE's parent agency DHS—like one of its predecessor agencies, the Immigration and Naturalization Service (INS)<sup>30</sup>—has prioritized certain aliens for removal. It has done so by publishing agency memoranda on enforcement priorities and criteria for exercising prosecutorial discretion.<sup>31</sup> The most current enforcement priorities are guided by the President's 2014 Immigration Accountability Executive Action, which is discussed below.

### **Enforcement Priorities in the President's 2014 Executive Action<sup>32</sup>**

On November 20, 2014, the DHS Secretary published a memorandum announcing new department-wide policies for enforcement priorities of unauthorized aliens.<sup>33</sup> These priorities

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local-level criminal justice data into meaningful datasets requires consistent definitions of specified populations and criminal activities, as well as consistent reporting practices. Moreover, it often relies on the voluntary participation of state criminal justice agencies. Definitional inconsistencies, reporting differences, and differing participation levels all reduce the reliability and comparability of state level data on the criminal alien population.

<sup>28</sup> U.S. Department of Justice, Bureau of Justice Statistics, *Prison Inmates at Midyear 2012 - Statistical Tables*, U.S. Department of Justice, Washington, DC, June 2013. As of April 13, 2016, an updated version of this report was not publically available.

<sup>29</sup> U.S. Government Accountability Office (GAO), *Information on Criminal Aliens Incarcerated in Federal and State Prisons and Local Jails*, GAO-05-337R, April 7, 2005, p.2. For a more recent GAO analysis of criminal alien-related data, see U.S. Government Accountability Office (GAO), *Criminal Alien Statistics: Information on Incarcerations, Arrests, and Costs*, GAO-11-187, March 24, 2011.

<sup>30</sup> Prior to the enactment of the Homeland Security Act of 2002 (P.L. 107-296), immigration enforcement activities were primarily the responsibility of the Immigration and Naturalization Service (INS) within the Department of Justice. The INS was dissolved on March 1, 2003 and made part of the Department of Homeland Security (DHS). Although the immigration agencies have issued guidance regarding enforcement priorities since at least 1975, analysis of the evolution of enforcement priorities is beyond the scope of this report.

<sup>31</sup> See CRS Report R42924, *Prosecutorial Discretion in Immigration Enforcement: Legal Issues*. See CRS Report R42057, *Interior Immigration Enforcement: Programs Targeting Criminal Aliens*, by Marc R. Rosenblum and William A. Kandel for a more extensive discussion of previous memos issued by ICE regarding broad enforcement priorities, detention, and criteria for the exercise of prosecutorial discretion.

<sup>32</sup> This section was initially authored by Alison Siskin, CRS Specialist in Immigration Policy.

<sup>33</sup> U.S. Department of Homeland Security, Memorandum to Thomas S. Winkowski, Acting Director, U.S. Immigration and Customs Enforcement, R. Gil Kerlikowske, Commissioner, U.S. Customs and Border Protection, Leon Rodriguez,

guide immigration enforcement efforts involving alien removals undertaken through the CAP program, the §287(g) program, and NFOP. The memorandum laid out three enforcement priorities and mandated that unless certain circumstances occur, aliens described in *Priority 1 (threats to national security, border security, and public safety)* must be prioritized for removal, those in *Priority 2 (misdemeanants and new immigration violators)* should be removed, and those in *Priority 3 (aliens issued final orders of removal on or after January 1, 2014)* should generally be removed.<sup>34</sup> These enforcement priorities revised, rescinded, and superseded earlier policies promulgated by former ICE director John Morton in 2011.<sup>35</sup>

Among the most substantive changes, an alien who was issued a final order of removal prior to 2014 is no longer an enforcement priority, provided he or she is neither a criminal nor a national security concern. Other changes include increasing the priority level of aliens apprehended at or between ports of entry while attempting to illegally enter the country, and specifying the types of misdemeanor offenses that make an alien a focus for removal.

## DHS Programs Targeting Criminal Aliens

Using its enforcement priorities to guide immigration enforcement efforts, ICE operates the following programs targeting criminal aliens. As noted above, the *Criminal Alien Program (CAP)* is an umbrella program that marshals ICE agency resources to identify, detain, and remove criminal aliens. CAP is guided by the *Priority Enforcement Program (PEP)*.

ICE's §287(g) program allows DHS to enter into partnerships with local law enforcement agencies. As such, the program acts as a force multiplier for ICE that can expand its capabilities. The delegation of such enforcement authority occurs through memoranda of agreements that allow ICE to train and rely upon state and local law enforcement officers to handle certain immigration enforcement functions, under federal supervision.

Another program that ICE operates to target criminal aliens, the *National Fugitive Operations Program (NFOP)*, pursues known at-large criminal aliens and fugitive aliens identified and targeted for removal by ICE. While CAP operates mostly within administrative or controlled custody settings, ICE officers who work for NFOP are generally field-based.

### Criminal Alien Program (CAP)

The Criminal Alien Program (CAP) is an umbrella program that includes systems for identifying and initiating removal proceedings for priority criminal aliens who are incarcerated within federal, state, and local prisons and jails, as well as at-large criminal aliens who have avoided identification. CAP is intended to prevent the release of criminal aliens from jails and prisons into

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Director, U.S. Citizenship and Immigration Services, and Alan D. Bersin, Acting Assistant Secretary for Policy, from Jeh Charles Johnson, Secretary of Homeland Security, *Policies for the Apprehension, Detention, and Removal of Undocumented Immigrants*, November 20, 2014.

<sup>34</sup> The policy gives DHS personnel discretion, even with Priority 1 aliens. The policy states that an alien should be prioritized for removal unless he or she may be eligible for relief from removal or factors exist that, in the judgment of DHS personnel, indicate the person should not be an enforcement priority. Notably, Priority 1 requires “compelling and exceptional factors that clearly indicate the alien is not a threat to national security, border security, or public safety and should not therefore be an enforcement priority,” while Priority 3 requires that “the alien is not a threat to the integrity of the immigration system or there are factors suggesting the alien should not be an enforcement priority.”

<sup>35</sup> John Morton, *Memorandum on Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens*, US Immigration and Customs Enforcement, Washington, DC, March 2, 2011.

U.S. communities by securing final orders of removal either prior to the termination of aliens' criminal sentences or subsequently whenever possible, and by taking custody of and removing priority aliens who complete their criminal sentences.<sup>36</sup> Identifying and processing incarcerated criminal aliens before their release from jails and prisons is intended to reduce or eliminate time spent in ICE custody and reduce related overall costs to the federal government.

CAP jail enforcement officers screen people to identify and prioritize potentially removable aliens as they are being booked into jails and prisons and while they are serving their sentences. Such screening covers almost all persons booked into federal and state prisons and local jails.<sup>37</sup> CAP officers search biometric and biographic databases to identify matches in DHS databases and interview arrestees and prisoners to identify potentially removable aliens without DHS records.<sup>38</sup>

When CAP officers identify a removable alien, they may issue a *request for notification* to state or local law enforcement agencies formally asking to be contacted prior to an alien's release from custody. Issuance of a request for notification depends on whether removal of the flagged individual accords with CAP priorities.<sup>39</sup> CAP officers may issue an *immigration detainer* if an individual is subject to a final order of removal.<sup>40</sup>

As of April 2016, approximately 1,300 CAP officers were monitoring 100% of federal and state prisons, a total of over 4,300 facilities.<sup>41</sup> This total also includes some local jails but, because of their larger numbers, CAP does not have personnel in local facilities to the extent that it does in the federal and state prisons. In addition to onsite deployment of some ICE officers and agents, CAP uses video teleconference (VTC) equipment that connects jails and prisons to ICE's Detention Enforcement and Processing Offenders by Remote Technology (DEPORT) Center in Chicago, IL. CAP also works with state and local correctional departments that provide inmate roster data which ICE then compares to its immigration databases. CAP manages the *Law Enforcement Support Center (LESC)*, a 24/7 call-center that conducts database checks on the identity and immigration status of arrestees for ICE officers and law enforcement agencies.

CAP also encompasses a number of specialized programs targeting high-priority criminal aliens. For example, CAP's *Criminal History Information Sharing (CHIS)* allows ICE to negotiate with

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<sup>36</sup> U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE), *Criminal Alien Program*, <http://www.ice.gov/criminal-alien-program>, accessed by CRS in July 2016.

<sup>37</sup> Criminal aliens who have no previous record may elude detection through interoperability because they may not appear in DHS databases. This shortcoming is overcome by having ICE agents visit or stationed in prisons and selected jails who can interview individuals in these custodial settings.

<sup>38</sup> Aliens who overstay a nonimmigrant visa or who have previously been removed typically have records in one or more DHS databases and may be identified through a biographic or biometric search. A person who enters without inspection and has had no previous contact with DHS often can only be identified as an unauthorized alien based on an interview with an experienced immigration officer.

<sup>39</sup> Revised enforcement priorities outlined in the Secure Communities memorandum of the President's Immigration Accountability Executive Action of November 20, 2014, specify that ICE should only seek a transfer for an alien in state or local custody if he or she has been *convicted* of a *Priority 1* offense or of multiple or significant misdemeanors. (See "Enforcement Priorities in the President's 2014 Executive Action" above.) Thus, enforcement actions should only be taken against individuals convicted of these specified crimes unless they pose a demonstrable national security risk.

<sup>40</sup> 8 C.F.R. 287.7. An "immigration detainer" is a document advising law enforcement agencies of ICE's interest in individuals whom these agencies are detaining, and to request such agencies take actions (such as holding the alien temporarily) to facilitate their removal. Typically, the request involves holding the individual for up to 48 hours. See CRS Report RL32369, *Immigration-Related Detention*, by Alison Siskin. Despite the new PEP policy of issuing *requests for notification*, ICE continues to issue large numbers of *immigration detainees*, even for criminal aliens held within "sanctuary" jurisdictions that may not honor them. ICE briefing to CRS on the Criminal Alien Program, April 7, 2016.

<sup>41</sup> *Ibid.*

partner countries for criminal conviction information on foreign nationals who are being repatriated from the United States.<sup>42</sup> The *Institutional Hearing and Removal Program (IHRP)* coordinates attorneys, immigration judges, and incarcerated aliens to expedite removals by completing removal proceedings prior to the completion of an alien's incarceration. This process reduces or eliminates the need for prolonged immigration detention once inmates enter ICE custody to be removed. Other programs include the *Violent Criminal Alien Section (VCAS)* for prosecuting recidivist criminal aliens;<sup>43</sup> the *Rapid Removal of Eligible Parolees (REPAT)* program for facilitating the early release of certain aliens who agree to waive appeals and be removed voluntarily from the United States;<sup>44</sup> and *Criminal Alien Program Removal Surge Operations (CAPRSO)* for targeting priority criminal aliens who agree to immediate removal.<sup>45</sup>

## Priority Enforcement Program (PEP)

The Priority Enforcement Program (PEP) has two components. First, PEP includes enforcement priorities that guide immigration enforcement. Second, PEP uses interoperability, a biometric information sharing program between DOJ and DHS that screens for potentially removable aliens when individuals are arrested by state and local law enforcement agents.

ICE takes enforcement action against individuals unlawfully present or removable due to a criminal conviction in accordance with its immigration enforcement priorities. Individuals prioritized for removal must either be threats to national security, border security, and public safety (Priority 1); misdemeanants and new immigration violators (Priority 2); or aliens issued final orders of removal on or after January 1, 2014 (Priority 3).

Under CAP, when law enforcement agencies book (i.e., take custody of) an arrestee and submit the person's fingerprints to the FBI for a criminal background check,<sup>46</sup> the fingerprints also are automatically checked against DHS's Automated Biometric Identification System (IDENT) database.<sup>47</sup> Potential matches are forwarded to the Law Enforcement Support Center (LESC, see "Criminal Alien Program (CAP)").<sup>48</sup> ICE agents at the LESL confirm the identity of matched

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<sup>42</sup> Active CHIS foreign partners include El Salvador, Guatemala, Honduras, Mexico, the Dominican Republic, Jamaica, and the Bahamas. DHS, *Congressional Budget Justification FY2017*, vol. II, p. 76.

<sup>43</sup> The program secured 5,671 convictions in FY2015. U.S. Department of Homeland Security, *Congressional Budget Justifications FY2017*, p. 71.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> The Integrated Automated Fingerprint Identification System (IAFIS) conducts criminal and terrorist background checks in response to requests from federal, state, and local law enforcement agencies by checking fingerprints against the IAFIS database of fingerprints, criminal histories, photographs, and biographic information. The IAFIS database includes the records of more than 66 million subjects in its criminal master file, along with more than 25 million civil fingerprints. See Federal Bureau of Investigation, "Integrated Automated Fingerprint Identification System," [http://www.fbi.gov/about-us/cjis/fingerprints\\_biometrics/iafis/iafis](http://www.fbi.gov/about-us/cjis/fingerprints_biometrics/iafis/iafis).

<sup>47</sup> The Automated Biometric Identification System (IDENT) database is DHS's primary department-wide biometric database, and includes photographs, fingerprints, biographic name and personal identifier data, citizenship and nationality information, and derogatory information, if applicable. See U.S. Department of Homeland Security, *Privacy Impact Assessment Update for the Biometric Interoperability between the U.S. Department of Homeland Security and the U.S. Department of Justice, DHS/NPPD/USVISIT/PIA-007(b)*, October 13, 2011. According to ICE, IDENT included over 186 million unique records as of June 10, 2015.

<sup>48</sup> The Law Enforcement Support Center (LESC) is ICE's national point of contact for local, state, and federal law enforcement agencies, corrections systems, and court systems seeking information about aliens suspected, arrested, or convicted of criminal activity. The LESL staffs a 24-hour phone line to respond to queries, and provides customs, immigration, and identity information based on ICE records. See ICE, "Law Enforcement Support Center," <http://www.ice.gov/lesc/>.

fingerprints and screen their records for immigration violations and criminal histories. If the LESC determines that the arrestee may be a removable alien, it notifies one of ICE's Enforcement and Removal Operations (ERO) field offices for the arresting jurisdiction about the match.

After being notified that a removable alien has been arrested, the local ERO supervisor reviews the record and decides how to proceed based on the individual's criminal conviction record, DHS enforcement priorities, and the office's available resources (see "DHS Enforcement Priorities and Discretion"). If the office decides to initiate removal proceedings against an alien, it will typically issue a *request for notification* to be alerted within 48 hours of the individual's release from law enforcement custody. Under some circumstances, ICE may issue an *immigration detainer*, which requests that state and local law enforcement agencies detain individuals flagged by ICE for removal for 48 hours.<sup>49</sup>

Since August 2015, ICE also has been using a *Request for Voluntary Transfer* for certain cases falling outside of the PEP priority categorization.<sup>50</sup> Priority noncriminal subcategories that are not covered under PEP, but for which ICE may seek transfer from cooperative jurisdictions, are

- aliens apprehended while attempting to illegally enter the country;
- unlawfully present aliens who have not resided continuously in the United States since January 1, 2014;
- aliens who have significantly abused the visa or visa waiver programs; and
- aliens issued final removal orders on or after January 1, 2014.

## §287(g) Program

The §287(g) program is based upon §287(g) of the Immigration and Nationality Act (INA) and permits DHS to delegate certain immigration enforcement functions to state and local law enforcement agencies. Agreements entered pursuant to INA §287(g) (or "§287(g) agreements") enable specially trained state or local officers to perform specific functions related to the investigation, apprehension, or detention of aliens, over a specified period (renewable at ICE's discretion) and under federal supervision.<sup>51</sup> As of January 2016, ICE had §287(g) agreements with 32 law enforcement agencies in 16 states.<sup>52</sup> ICE officials expect that those figures—relatively unchanged since 2013—will increase in 2016.<sup>53</sup> At least 1,675 state and local law enforcement officers had completed ICE's four-week §287(g) training program and had been certified to conduct certain immigration enforcement duties.<sup>54</sup>

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<sup>49</sup> Under current policy, this 48-hour period is inflexible and, as such, *includes* weekends and holidays, unlike the 48-hour detention period prior to November 2014, which excluded weekends and holidays.

<sup>50</sup> See U.S. Immigration and Customs Enforcement, *Priority Enforcement Program*, accessed by CRS on March 25, 2016, at <https://www.ice.gov/pep>.

<sup>51</sup> INA §287(g)(5), 8 U.S.C. §1357(g)(5); see CRS Report R41423, *Authority of State and Local Police to Enforce Federal Immigration Law*. Although §287(g) agreements were authorized as part of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (P.L. 104-208, Div. C, IIRIRA), the first §287(g) agreement was implemented in 2002.

<sup>52</sup> ICE, "Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act," <http://www.ice.gov/factsheets/287g>, accessed by CRS on June 14, 2016.

<sup>53</sup> ICE briefing to CRS on the Criminal Alien Program, April 7, 2016.

<sup>54</sup> U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE), "Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act," <http://www.ice.gov/factsheets/287g>, accessed by CRS on June 14, 2016.



Prior to 2013, the §287(g) program also encompassed “task force” agreements that allowed deputized local law enforcement officers to question and arrest alleged noncitizens encountered in the field who were suspected of violating immigration laws. ICE allowed all such §287(g) task force agreements to expire by the end of 2012.<sup>55</sup> In 2013, responding to a report by DHS’s Office of the Inspector General,<sup>56</sup> ICE revised the §287(g) Memorandum of Agreement to foster clarity and consistency with current ICE policies among state and local law enforcement agencies.

Under the current remaining “jail enforcement” agreements, specially trained officers within state and local corrections facilities are authorized to identify criminal aliens by interviewing them and screening their biographic information against the same DHS databases used by CAP agents and officers. Section 287(g) officers also use ICE’s database and Enforcement Case Tracking System (ENFORCE) to enter information about aliens in their custody and to generate the paperwork for an immigration detainer and a notice to appear (NTA, initiating the formal removal process). State and local corrections officers are supervised by CAP officers.

## **National Fugitive Operations Program**

The National Fugitive Operations Program (NFOP) pursues known at-large criminal aliens and fugitive aliens.<sup>57</sup> Unlike the §287(g) program, which is part of CAP, NFOP is a separate program, although ICE officers working for NFOP access the same DHS databases and other information sources to select criminal aliens targeted for removal. Unlike CAP, which operates mostly within controlled settings (i.e., administrative offices or custodial settings), ICE officers who work for NFOP apprehend people similar to other field-based law enforcement officers, outside of controlled settings.

ICE created NFOP in 2003 to expand the agency’s ability to locate, arrest, and remove fugitive aliens. In 2009, with support from Congress,<sup>58</sup> NFOP expanded its focus to include locating, arresting, and removing at-large convicted criminal aliens, aliens who pose a threat to national security and community safety, members of transnational gangs, child sex offenders, and aliens with prior convictions for violent crimes.<sup>59</sup> NFOP also currently prioritizes aliens with removal orders issued on or after January 1, 2014, who have failed to depart the United States.<sup>60</sup> As of April 2016, NFOP consisted of 129 fugitive operations teams covering all 24 ERO field offices.<sup>61</sup>

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<sup>55</sup> For a critique of the §287(g) program before it was revised, see American Immigration Council, “The 287(g) Program: A Flawed and Obsolete Method of Immigration Enforcement,” November 29, 2012.

<sup>56</sup> U.S. Department of Homeland Security, Office of Inspector General, *The Performance of 287(g) Agreements FY2012 Follow-Up*, OIG-12-130, September 2012.

<sup>57</sup> ICE defines a fugitive alien as “any alien who has failed to leave the U.S. following the issuance of a final order of removal, deportation or exclusion, or has failed to report to ICE after receiving notice to do so.” See U.S. Department of Homeland Security, *Fugitive Operations*, <https://www.ice.gov/fugitive-operations>, accessed by CRS on April 11, 2016.

<sup>58</sup> In 2009, House appropriators moved the NFOP from the general Detention and Removal Operations budget to include it among a set of programs for the “Identification and Removal of Criminal Aliens;” see U.S. Congress, House Committee on Appropriations, Subcommittee on Homeland Security, *Department of Homeland Security Appropriations Bill, 2009*, Report to Accompany H.R. 6947, 110<sup>th</sup> Cong., 2<sup>nd</sup> sess., September 18, 2008, H.Rept. 110-862 (Washington: GPO, 2008), pp. 51-53.

<sup>59</sup> U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE), *Fugitive Operations, Key ICE Fugitive Operations Initiatives*, <https://www.ice.gov/fugitive-operations>, accessed by CRS on May 27, 2016.

<sup>60</sup> U.S. Department of Homeland Security, *Congressional Budget Justification FY2017*, vol. 2, p. 60.

<sup>61</sup> ICE briefing to CRS on interior immigration enforcement, April 7, 2016.

Fugitive operations teams use data from the National Crime Information Center (NCIC)<sup>62</sup> and other intelligence sources and work in partnership with federal, state, local, and international law enforcement partners to pursue criminal aliens and other priority cases. Based on these leads, NFOP teams make arrests and conduct other enforcement actions at worksites, in residential areas, and at other locations. According to ICE, NFOP has helped to reduce the total backlog of fugitive alien cases from 632,726 in FY2006 to about 506,000 in FY2016.<sup>63</sup> However, PEP's revised enforcement priorities have narrowed the scope of NFOP operations. Consequently, many of the non-criminal fugitive aliens present in the United States before November 2014, who made up most of the fugitive alien backlog, are no longer a focus of attention (see "DHS Enforcement Priorities and Discretion"). Criminal aliens now account for an estimated 90% of all fugitive operation arrests.<sup>64</sup>

## Select Policy Issues<sup>65</sup>

Policy issues for criminal alien programs involve the enforcement levels and costs of the various programs, and the appropriate role of state and local law enforcement agencies in enforcing immigration laws.

### Levels of Enforcement

**Table 2** presents data on primary enforcement actions by the four programs discussed in this report from 2004 through 2015, where available.<sup>66</sup> The table presents data on administrative arrests<sup>67</sup> by CAP, Secure Communities, §287(g), and NFOP, as well as data on alien identifications, and removals and returns<sup>68</sup> resulting from PEP/Secure Communities.

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<sup>62</sup> The National Crime Information Center (NCIC) is the Federal Bureau of Investigation's (FBI) national clearinghouse of crime data. It includes 12 person files including Supervised Release, National Sex Offender Registry, Foreign Fugitive, Immigration Violator, Missing Person, Protection Order, Unidentified Person, U.S. Secret Service Protective, Gang, Known or Appropriately Suspected Terrorist, Wanted Person, and Identity Theft. By the end of 2014, NCIC included 14 million active records and was averaging 12 million transactions per day. See FBI, "National Crime Information Center," <http://www.fbi.gov/about-us/cjis/ncic>, accessed by CRS on April 11, 2016.

<sup>63</sup> ICE briefing to CRS on the Criminal Alien Program, April 7, 2016. The fugitive backlog is reduced through alien removals and by eliminating cases related to individuals who are known to have left the country, adjusted to legal status, died, or been taken into custody. Of the 469,151 cases in the backlog as of October 1, 2012, 8,791 had been previously convicted of an aggravated felony or of two or more felonies; 11,955 had been convicted of one felony or of three or more misdemeanors; 9,338 had been convicted of one or two misdemeanors; and 439,073 had no criminal record; see U.S. Department of Homeland Security, *Congressional Budget Justification FY2014*, pp. 55-56. DHS has not updated these figures in subsequent budget justifications.

<sup>64</sup> *Ibid.*

<sup>65</sup> See archived CRS Report R42057, *Interior Immigration Enforcement: Programs Targeting Criminal Aliens*, by Marc R. Rosenblum and William A. Kandel, for greater detail on policy issues and debates surrounding Secure Communities prior to its replacement with the Priority Enforcement Program, as well as the §287(g) program prior to its modifications in 2012.

<sup>66</sup> CRS has requested from ICE the figures missing in Table 2 and will update this report upon their receipt.

<sup>67</sup> An administrative arrest refers to the arrest of an alien charged with an immigration violation who is then typically placed in removal proceedings.

<sup>68</sup> Removals typically involve a civil judicial proceeding in which an immigration judge from the Department of Justice's Executive Office of Immigration Review (EOIR) determines whether an alien is removable. Returns refer to streamlined removal procedures that involve either voluntarily departure or withdrawal of petition for admission. For more information, see CRS Report R43892, *Alien Removals and Returns: Overview and Trends*, by Alison Siskin.

**Table 2. Primary Interior Enforcement Actions, by Program, FY2004-FY2015**

Fiscal Year	CAP	PEP/Secure Communities			§287(g)	NFOP
	Arrests	Identifications	Arrests	Removals and Returns	Arrests <sup>a</sup>	Arrests
2004	4,269	NA	NA	NA	0	6,584
2005	25,339	NA	NA	NA	2	7,959
2006	28,493	NA	NA	NA	5,685	15,462
2007	164,296	NA	NA	NA	20,815	30,407
2008	221,085	NA	NA	NA	45,105	34,155
2009	232,796	95,664	42,135	14,364	56,116	35,094
2010	219,477	248,166	111,093	49,511	46,467	35,774
2011	221,122	348,970	73,466	79,900	33,180	40,102
2012	200,253	436,377	98,117	83,815	31,478	37,371
2013	NA	530,019	NA	79,072	NA	NA
2014	122,836	551,669	NA	74,744	NA	NA
2015 <sup>b</sup>	NA	209,237	NA	25,035	NA	NA

**Source:** Data for FY2004-FY2012 provided by ICE Office of Congressional Affairs July 22, 2013, except for PEP/Secure Communities Identifications and Removal and Return data, which are from PEP/Secure Communities IDENT/IAFIS Interoperability Monthly Statistics through February 28, 2015. CAP Arrests for FY2014 from DHS FY2016 Budget Justification.

**Notes:** CAP refers to the Criminal Alien Program; PEP refers to the Priority Enforcement Program; NFOP refers to the National Fugitive Operations Program; §287(g) refers to agreements entered pursuant to INA §287(g) for jail screening or task force programs. The same cases may be counted multiple times in Table 2. CAP data are for the Institutional Removal Program in FY2004-FY2006. Secure Communities data are unavailable for FY2004-FY2008 because the program was created in FY2008 and reported its first identifications and removals in FY2009. NA = data requested from ICE but not available as of publication (for FY2013-FY2015).

- a. Arrests through the 287(g) program continue to be made but are tracked within CAP arrests. ICE briefing to CRS on the Criminal Alien Program, June 25, 2015.
- b. FY2015 includes five months of data through February 2015.

Data in Table 2 should be interpreted with caution, particularly the interoperability functions of PEP/Secure Communities, which identify potentially removable aliens but are not involved in arrests or placing aliens in removal proceedings. Partly for this reason, the same individual may be counted as an identification, a removal, or an arrest by the different programs in Table 2. An individual also may be identified or arrested on multiple occasions, causing additional over-counts. In addition, some removable aliens are arrested or placed in removal proceedings outside of these programs, and some aliens are returned or removed in a fiscal year after the year in which they are identified and/or arrested.

With these qualifications, the data in Table 2 indicate consistent increases in the number of aliens identified and arrested by these four programs. The data indicate that CAP made over 1.3 million administrative arrests between FY2004 and FY2012, while the §287(g) program and NFOP made about 240,000 and 243,000 administrative arrests, respectively.

From FY2009 through the first five months of FY2015, about 47.1 million sets of biometric data were submitted to Secure Communities, resulting in the identification of about 2.4 million

matches in the IDENT database (i.e., potentially removable aliens).<sup>69</sup> These identifications led to 324,811 administrative arrests at least through FY2012 and 406,441 aliens removed or returned through the first five months of FY2015.<sup>70</sup> Thus, from FY2009 through the first five months of FY2015, about 5% of all submissions to Secure Communities were identified as potentially removable aliens, and about 17% of people so identified (i.e., about 1% of all submissions) were removed or returned.

## Appropriations

Funding for immigration enforcement in the U.S. interior has increased substantially since FY2004, the first year in which DHS received dedicated funding for the directorate under which criminal alien programs are located.<sup>71</sup> **Table 3** presents funding figures for the CAP, PEP/Secure Communities, §287(g), and NFOP programs.<sup>72</sup>

Congress substantially increased funding levels, particularly for CAP and NFOP, from FY2004 through FY2006. In FY2006, appropriators directed ICE to conduct a study of how CAP could be expanded nationwide.<sup>73</sup> In 2008, appropriators expressed concern that ICE was “losing perspective on which aliens represent the most significant threat to the nation’s social and economic fabric” and questioned “why a significant number of illegal aliens serving sentences in State and local correctional facilities after conviction for various non-immigration crimes are still released from custody without efforts made to deport those who are deportable.”<sup>74</sup>

Accordingly, appropriators increased funding for the existing Criminal Alien Program in FY2008; and set aside \$200 million in additional funding for a program to “improve and modernize efforts to identify aliens convicted of a crime, sentenced to imprisonment, and who may be deportable, and remove them from the United States once they are judged deportable.”<sup>75</sup> ICE applied the additional funding to develop the former Secure Communities.

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<sup>69</sup> Secure Communities IDENT/IAFIS Interoperability Monthly Statistics through February 28, 2015, p. 2. An unknown number of individuals may appear more than once in these figures.

<sup>70</sup> Ibid.

<sup>71</sup> As noted above, immigration enforcement was previously managed by the former Immigration and Naturalization Service in the Department of Justice.

<sup>72</sup> CAP, PEP/Secure Communities, and NFOP are funded program activities within DRO/ERO; and §287(g) is funded under ICE’s Office of State, Local, and Tribal Government Coordination. DRO/ERO refers to Detention and Removal Operations/Enforcement and Removal Operations. Detention and Removal Operations was renamed Enforcement and Removal Operations in 2010.

<sup>73</sup> CAP was known as the Institutional Review Program prior to FY2007. See U.S. Congress, Senate Committee on Appropriations, Subcommittee on Department of Homeland Security, *Department of Homeland Security Appropriations Bill, 2006*, Report to accompany H.H. 2360, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., June 16, 2005, 109-83 (Washington: GPO, 2005), p. 36.

<sup>74</sup> U.S. Congress, House Committee on Appropriations, *Department of Homeland Security Appropriations Bill, 2008 H.Rept. 110-181*, 110<sup>th</sup> Cong., 2008 (Washington: GPO, 2008).

<sup>75</sup> U.S. Congress, House Committee on Rules, *Providing for the consideration of the Senate amendment to the bill (H.R. 2764) making appropriations for the Department of State, foreign operations, and related programs for the fiscal year ending September 30, 2008, and for other purposes*, 110<sup>th</sup> Cong., December 17, 2007.

**Table 3. Appropriations for Programs Targeting Criminal Aliens, FY2004-FY2017**  
(Millions of dollars)

Fiscal Year	CAP <sup>a</sup>	PEP/ Secure Communities <sup>b</sup>	§287(g) <sup>c</sup>	NFOP	Total
2004	\$6.6	NA	NA	\$16.9	\$23.4
2005	\$33.7	NA	NA	\$35.2	\$69.0
2006	\$93.0	NA	\$5.0	\$101.9	\$199.9
2007	\$137.5	NA	\$15.0	\$183.2	\$335.7
2008	\$180.0	\$200.0	\$42.1	\$218.9	\$641.1
2009	\$189.1	\$150.0	\$54.0	\$226.5	\$619.5
2010	\$192.5	\$200.0	\$68.0	\$229.7	\$690.2
2011	\$192.5	\$200.0	\$68.0	\$229.7	\$690.2
2012	\$196.7	\$189.1	\$68.0	\$154.6	\$608.4
2013 <sup>d</sup>	\$216.5	\$138.1	\$68.0	\$145.3	\$567.9
2014	\$294.2	\$25.3	\$24.3	\$128.8	\$472.6
2015	\$327.2	\$0.0	\$24.0	\$142.6	\$493.8
2016	\$317.2	\$0.0	\$24.0	\$156.5	\$497.7
2017 <sup>e</sup>	\$347.5	\$0.0	\$24.0	\$133.1	\$504.6

**Sources:** *FY2004-FY2013:* U.S. Immigration and Customs Enforcement “Fact Sheet: Updated Facts on ICE’s 287(g) Program,” S.Rept. 108-280, S.Rept. 109-83, S.Rept. 109-273, H.Rept. 109-699, S.Rept. 110-396, S.Rept. 111-31, S.Rept. 111-222, S.Rept. 112-169, P.L. 113-6, and Senate Explanatory Statement accompanying P.L. 113-6; *FY2014:* FY2016 DHS Budget Justification; *Congressional Record*, House of Representatives, January 15, 2014; *FY2015:* S.Rept. 114-68. *FY2016-FY2017:* DHS Congressional Budget Justification FY2017, Vol. 2, p. 3.

**Notes:** **CAP** refers to the Criminal Alien Program; **PEP** refers to the Priority Enforcement Program; **NFOP** refers to the National Fugitive Operations Program; **§287(g)** refers to agreements entered pursuant to INA §287(g).

- The Criminal Alien Program was known as the Institutional Review Program prior to FY2007.
- Secure Communities was also known as the Comprehensive Identification and Removal of Criminal Aliens (CIRCA) program and received its first appropriation in FY2008. It was incorporated into the Criminal Alien Program in FY2015 and replaced with the Priority Enforcement Program (PEP) in the same fiscal year.
- The §287(g) program received its first appropriation in FY2006. Initial amounts included §287(g) task force programs which were not renewed after FY2012.
- FY2013 data reflect across-the-board rescissions included in P.L. 113-6 to comply with discretionary budget caps, but exclude effects of sequestration as required by P.L. 112-25 because post-sequester data were not available for all programs.
- FY2017 figures represent the Administration’s budget request, not appropriations.

Funding for CAP and Secure Communities increased 58-fold from just \$6.6 million in FY2004 to \$392.5 million in FY2010 and FY2011 before dropping to \$317.2 million in FY2016. Altogether, the four criminal alien programs saw their funding grow from \$23.4 million in FY2004 to a high of \$690.2 million in FY2010 and FY2011, before declining to \$497.7 million in FY2016.

## State and Local Involvement in Interior Immigration Enforcement

The §287(g) and former Secure Communities programs have leveraged state and local law enforcement agencies to identify and detain removable aliens, enhancing ICE's enforcement capacity but also raising concerns about police-community relations and civil rights.<sup>76</sup>

Proponents of cooperation between ICE and state and local law enforcement agencies have embraced interoperability and the §287(g) program as powerful tools to combat illegal immigration and associated criminal activity.<sup>77</sup> They argue that it allows a relatively small number of ICE agents to leverage a much larger law enforcement group with closer links to local communities.<sup>78</sup> They cite the efficiency of interoperability and §287(g), which used biographic and biometric records created when individuals are arrested and in law enforcement custody to check for possible immigration violations.<sup>79</sup> They argue that both CAP components allow ICE to place additional immigration enforcement agents directly in state and local jurisdictions as well as identify unauthorized aliens who may have eluded interoperability detection because they entered the United States without inspection.<sup>80</sup>

Detractors of such cooperation argue that the programs lack sufficient federal oversight and siphon local law enforcement resources away from preventing and prosecuting local crime.<sup>81</sup> They contend that if the foreign born come to associate state and local law enforcement agencies with immigration enforcement, they will hesitate to report crimes or to cooperate in policing activities.<sup>82</sup> Such behavior is expected especially among those who lack legal status and/or come from countries with weak public trust in law enforcement agencies.<sup>83</sup>

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<sup>76</sup> Certain state and local laws designed to deter unlawful immigration also have raised constitutional questions and have been the subjects of legal challenges; these legal issues and selected court cases are discussed in other CRS reports and are beyond the scope of this report. See CRS Report R41423, *Authority of State and Local Police to Enforce Federal Immigration Law*.

<sup>77</sup> See, for example, Major County Sheriff's Association, "Major County Sheriffs' Association Resolution: Secure Communities," [http://www.ice.gov/doclib/secure-communities/pdf/sc-major\\_county\\_sheriffs\\_assoc.pdf](http://www.ice.gov/doclib/secure-communities/pdf/sc-major_county_sheriffs_assoc.pdf).

<sup>78</sup> In 2008, state and local law enforcement personnel numbered roughly 1,134,000, including 765,000 sworn personnel with arrest powers, compared to 16,065 ICE agents, including 5,681 employed in enforcement and removal operations. State and local law enforcement data are for full time employees in 2008 according to Brian A. Reaves, *Census of State and Local Law Enforcement Agencies, 2008*, U.S. Department of Justice Bureau of Justice Statistics, NCJ 233982, Washington, DC, July 2011. ICE data are for full time employees in FY2008 according to U.S. Department of Homeland Security, *Budget Details, Fiscal Year 2009*. Note that more recent counts of state and local law enforcement personnel were not available as of June 2015.

<sup>79</sup> According to ICE, electronic checks against DHS databases occur within minutes of fingerprint data being submitted to the Law Enforcement Support Center (LESC). The LESL usually reviews any electronic matches and notifies an ICE agent or ICE field office within four hours from when a potentially removable alien has been identified. ICE briefing to CRS on the Criminal Alien Program, April 7, 2016.

<sup>80</sup> U.S. Department of Homeland Security, Office of Inspector General, *The Performance of 287(g) Agreements FY2012 Follow-Up*, OIG-12-130, September 2012.

<sup>81</sup> American Immigration Council, "The 287(g) Program: A Flawed and Obsolete Method of Immigration Enforcement," November 29, 2012.

<sup>82</sup> See, for example, Chuck Wexler, "Critical Issues in Policing Series: Police Chiefs and Sheriffs Speak Out," *Police Executive Research Forum*, April 2008; National Community Advisory Commission, *Restoring Community: A National Community Advisory Report on ICE's Failed "Secure Communities Program*, Washington, DC, August 2011 (hereinafter referred to as "National Community Advisory Commission, *Restoring Community*"); DHS Secure Communities Task Force Report, p. 24; and Nik Theodore, "Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement," University of Illinois at Chicago, Department of Urban Planning and Policy, May 2013, p. i.

<sup>83</sup> National Community Advisory Commission, *Restoring Community*; Debra A. Hoffmaster, Gerard Murphy, and

They also argue that despite most law enforcement officers' best intentions, state and local law enforcement agency involvement with immigration law enforcement would increase the likelihood that biased officers will engage in racial profiling.<sup>84</sup> They contend that by ensuring all arrestees are screened for immigration violations, jail enforcement programs may incentivize officers to arrest persons suspected of being unauthorized aliens based wholly or partly on racial or ethnic characteristics.<sup>85</sup>

Such concerns about the §287(g) program surfaced soon after it was introduced. The program faced criticism because it delegated authority to state and local law enforcement agents over what many considered solely a federal responsibility and allowed such agents to use what was often perceived as undue discretion to shape immigration enforcement decisions.<sup>86</sup> This resulted in different standards for immigration enforcement across jurisdictions, and raised civil liberties concerns.<sup>87</sup> Such criticism prompted reviews by the Government Accountability Office (GAO), the DHS Inspector General (IG), and an independent DHS Task Force.<sup>88</sup>

In response, beginning in July 2009, ICE required participating law enforcement agencies to sign revised §287(g) Memorandums of Agreement (MOAs), which increased training requirements and ICE supervision, to continue participating in the program.<sup>89</sup> Other program changes included new record-keeping requirements and other tools to prevent pretextual arrests and racial profiling, new training materials and new detainer forms to further reduce the risk of racial profiling and

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Shannon McFadden, et al., *Police and Immigration: How Chiefs are Leading Their Communities through the Challenges*, Police Executive Research Forum, Washington, DC, 2010; U.S. Department of Justice, *Enhancing Community Policing with Immigrant Populations: Recommendations from a Roundtable Meeting of Immigrant Advocates and Law Enforcement Leaders*, New Orleans, LA, August 27, 2008; US Department of Justice, Office of Justice Programs, *Community Policing and 'The New Immigrants': Latinos in Chicago*, Washington, DC, 1998; and Chuck Wexler, "Critical Issues in Policing Series: Police Chiefs and Sheriffs Speak Out," Police Executive Research Forum, April 2008."

<sup>84</sup> See, for example, Rights Working Group, *Faces of Racial Profiling: A Report from Communities Across America*, Washington, DC, September 2010; National Community Advisory Commission, *Restoring Community*; racial profiling is difficult to document, especially where jurisdictions may not collect detailed arrest and search data. Most research on the topic is anecdotal. Previous research by scholars and advocacy organizations has found evidence of racial profiling following the implementation of CAP and the §287(g) program. See, for example, Trevor Gardner II and Aarti Kohli, *The C.A.P. Effect: Racial Profiling in the ICE Criminal Alien Program*, The Chief Justice Earl Warren Institute on Race, Ethnicity, and Diversity, Berkeley, CA, September 2009; Azadeh Shahshahani et al., *Terror and Isolation in Cobb: How Unchecked Police Power under 287(g) has Torn Apart Families and Threatened Public Safety*, American Civil Liberties Union Foundation of Georgia, Atlanta, GA, October 2009. Evidence of racial profiling through Secure Communities is less established. See Charis E. Kubrin, "Secure or Insecure Communities: 7 Reasons to Abandon the Secure Communities Program," *Criminology and Public Policy*, September 6, 2014, pp. 9-10.

<sup>85</sup> Yet, ICE and supporters of jail screening programs emphasized that because immigration screening occurs for *all individuals* arrested in participating jurisdictions, it does not lead to racial profiling. See, for example, U.S. Congress, Senate Committee on Appropriations, Subcommittee on Homeland Security, *Department of Homeland Security Appropriations Bill, 2012*, Report to accompany H.R. 2017, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., September 7, 2011, p. 59.

<sup>86</sup> See Randy Capps, Marc R. Rosenblum, and Cristina Rodríguez, et al., *Delegation and Divergence: A Study of 287(g) State and Local Immigration Enforcement*, Migration Policy Institute, Washington, DC, January 2011.

<sup>87</sup> *Ibid.*

<sup>88</sup> U.S. Government Accountability Office, *Immigration Enforcement: Better Controls Needed over Program Authorizing State and Local Enforcement of Federal Immigration Laws*, GAO-09-109, January 2009; Department of Homeland Security, Office of Inspector General, *The performance of 287(g) Agreements*, OIG-10-63, March 2010; DHS Secure Communities Task Force Report.

<sup>89</sup> See ICE, *Fact Sheet: Updated Facts on ICE's 287(g) Program*, <http://www.ice.gov/news/library/factsheets/287g-reform.htm>, accessed by CRS on February 23, 2016; also see Randy Capps, Marc R. Rosenblum, and Cristina Rodríguez, et al., *Delegation and Divergence: A Study of 287(g) State and Local Immigration Enforcement*, Migration Policy Institute, Washington, DC, January 2011.

misuse of these enforcement programs, and the establishment of an Internal Advisory Committee to review and assess ICE field office recommendations on 287(g) applications.<sup>90</sup>

Under these new procedures, ICE approved new §287(g) agreements more slowly beginning in 2010 and allowed its §287(g) task force agreements to expire by the end of 2012.<sup>91</sup> Consequently, the total number of §287(g) agreements has diminished from a peak of 64 in 2012<sup>92</sup> to 32 in 2015.<sup>93</sup> ICE's remaining §287(g) agreements that are currently active are all jail enforcement agreements, for which jail officers' powers under the agreements are limited to custodial settings. In the Secure Communities memorandum of November 20, 2014, the DHS Secretary directed the Office of Civil Rights and Civil Liberties to develop and implement a plan to monitor state and local law enforcement agencies participating in the transfer of foreign nationals to ICE.

Some Members have questioned why the agency has reduced its use of §287(g) agreements. According to ICE, resistance to and legal action stemming from both the §287(g) and Secure Communities programs caused the agency to curtail the §287(g) program.<sup>94</sup> Following implementation of the changes and safeguards described above, the agency may consider expanding the program in the future.<sup>95</sup> Others have argued that revisions to the §287(g) program, which include meeting the physical infrastructure requirements under the Prison Rape Elimination Act,<sup>96</sup> and a total of five weeks of required training imposes onerous costs that deter many smaller jurisdictions from participating in the program.<sup>97</sup>

## Conclusion

Some of ICE's major immigration enforcement programs that target criminal aliens contain components that have been controversial with both immigrant advocacy groups and immigration enforcement advocates. In response, the Obama Administration, like earlier administrations, has modified and revised the program's policies and priorities.

Although CAP began three decades ago, it received greater scrutiny in 2008 with the inception of Secure Communities. Immigrant advocates contended the program frequently removed noncitizens who either had committed minor crimes or had no criminal records, and that many of those removed had established family and community ties in the United States, including U.S.-

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<sup>90</sup> Ibid.

<sup>91</sup> The §287(g) program peaked at about 72 agreements in 2011, and 69 agreements remained in effect in December 2012; but only 39 agreements were renewed following their expiration at the end of that month.

<sup>92</sup> Department of Homeland Security, Office of the Inspector General, OIG-13-116, *The Performance of 287(g) Agreements FY 2013 Update*, September 2013.

<sup>93</sup> ICE briefing to CRS on the Criminal Alien Program, June 25, 2015.

<sup>94</sup> U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Immigration, Border Security, and Citizenship, *Oversight of the Administration's Criminal Alien Removal Policies*, testimony of DHS Director of U.S. Immigration and Customs Enforcement Sarah R. Saldaña, 114<sup>th</sup> Cong., 2<sup>nd</sup> sess., December 2, 2015.

<sup>95</sup> Ibid., and ICE briefing to CRS on the Criminal Alien Program, April 7, 2016.

<sup>96</sup> The Prison Rape Elimination Act of 2003 (PREA) is the first U.S. law to address the problem of sexual assault of prisoners. Local law enforcement agencies that sign 287(g) agreements with ICE must comply with PREA's physical infrastructure requirements, which for small facilities can represent a relatively large financial burden. See U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Immigration, Border Security, and Citizenship, *Oversight of the Administration's Criminal Alien Removal Policies*, testimony of Executive Director of National Sheriff's Association Jonathan F. Thompson, 114<sup>th</sup> Cong., 2<sup>nd</sup> sess., December 2, 2015, pp. 69-70.

<sup>97</sup> Ibid.



born children. After several years of modifying Secure Communities, the Obama Administration ultimately replaced it with a revised set of priorities under the Priority Enforcement Program.

Similarly, the §287(g) program has raised concerns among immigrant advocacy groups about local law enforcement's involvement in immigration enforcement, specifically inconsistent policies, possible racial profiling, and possible damage to community policing through the conflation of immigration enforcement and general law enforcement.<sup>98</sup> In response, the Administration tempered its §287(g) program by revising all Memoranda of Agreements to ensure greater consistency across jurisdictions. In response, however, immigration enforcement advocates have raised questions about why a potentially useful "force multiplier" has been limited rather than expanded.

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<sup>98</sup> See American Immigration Council, "The 287(g) Program: A Flawed and Obsolete Method of Immigration Enforcement," November 29, 2012.

## Appendix A. Glossary of Terms

Definitions are based on CRS's analysis of statutory definitions where noted and of DHS usage and prevailing definitions in other cases.

**Absconder:** See "fugitive alien."

**Aggravated felon:** A noncitizen who has been convicted of an aggravated felony (see below); aggravated felons are subject to removal from the United States, ineligible for certain forms of immigration relief, and ineligible to be readmitted to the United States.

**Aggravated felony:** A crime identified in §101(a)(43) of the Immigration and Nationality Act (INA), a provision that includes numerous state and federal offenses ranging from murder, rape, and trafficking in controlled substances to theft, bribery, and obstruction of justice. Crimes committed outside the United States may also be considered aggravated felonies if the term of imprisonment was completed within the previous 15 years.

**At-large criminal alien:** A noncitizen who has been convicted of a crime in the United States and is not currently incarcerated. Not all at-large criminal aliens are removable.

**Civil immigration offense:** A violation of federal immigration law under Title 8 of the U.S. Code, the most common being residing in the United States without authorization. A person cannot be sent to prison for a civil immigration offense. They can be penalized by being deported from the United States, which technically is not classified as punishment.

**Criminal alien:** A noncitizen who has been convicted of a crime in the United States. Not all criminal aliens are removable (see "Defining 'Criminal Aliens'"). Despite its widespread use, no consistent definition of the term "criminal alien" exists. In this report, *CRS uses "criminal aliens" to refer to any noncitizen who has ever been convicted of a crime in the United States.* Certain criminal offenses also have immigration-related consequences, such as being grounds for removal; and certain categories of criminal (and noncriminal) aliens are also the subjects of special ICE enforcement programs, including those described in this report.

**Criminal immigration offense:** A violation of federal criminal immigration law under Title 8 or Title 18 of the U.S. Code. The most common of such violations for which aliens are convicted are 8 U.S.C. §1326 (reentry of a deported alien), 8 U.S.C. §1324 (bringing in and harboring certain aliens), 15 U.S.C. §1546 (fraud and misuse of visas, permits, and other documents), and 8 U.S.C. §1325 (entry of alien at improper time or place).

**Fugitive alien:** An alien who has failed to leave the United States following the issuance of a final order of removal, deportation, or exclusion. Fugitive aliens were referred to as "absconders" prior to FY2007. Fugitive aliens may or may not have criminal records.

**Removable alien:** An alien subject to formal removal (deportation) from the United States. This includes aliens who are inadmissible under INA §212 or deportable under INA §237, including nonimmigrant aliens who enter legally but violate the terms of their visas or overstay their visas. Most removable aliens have never been convicted of a criminal offense.

**Removable criminal alien:** An alien who has been convicted of a removable criminal offense; such an alien is subject to removal from the United States.

**Removable criminal offense:** A criminal offense described in §237(a)(2) of the Immigration and Nationality Act (INA), including crimes of moral turpitude, aggravated felonies, high-speed flight from an immigration checkpoint, failure to register as a sex offender, drug offenses, firearm offenses, and immigration-related document fraud, among others.

## Appendix B. History of Criminal Alien Removal Programs

In 1986, with passage of the Immigration Reform and Control Act (P.L. 99-603), Congress made deporting aliens who had been convicted of certain crimes a formal enforcement priority. The law required the Attorney General “in the case of an alien who is convicted of an offense which makes the alien subject to deportation ... [to] begin any deportation proceeding as expeditiously as possible after the date of the conviction.”<sup>99</sup>

The former Immigration and Naturalization Service (INS) established a pair of programs in 1988 to comply with this requirement: the Institutional Removal Program (IRP) and the Alien Criminal Apprehension Program (ACAP).<sup>100</sup> The programs forged partnerships with corrections facilities to identify deportable aliens convicted of crimes before their release from prison. They also worked with the Department of Justice’s Executive Office for Immigration Review (EOIR) to initiate deportation proceedings against aliens serving sentences for deportable offenses during their period of incarceration.<sup>101</sup>

The IRP and ACAP initially focused on aggravated felons, a class of serious criminal aliens created in immigration law by the Anti-Drug Abuse Act of 1988 (P.L. 100-690) and enumerated in §101(a)(43) of the INA. The Anti-Drug Abuse Act defined aggravated felonies to include aliens convicted of murder, drug trafficking, or illegal trafficking in firearms or destructive devices.

Between 1990 and 1996, Congress enacted a series of measures that expanded the definition of aggravated felons and created additional criminal grounds for removal.<sup>102</sup> The mandates of the IRP and ACAP likewise expanded to include this broader list of offenses.

In 1999, the INS issued an Interior Enforcement Strategy, which named as the agency’s top interior enforcement priority the identification and removal of criminal aliens and the minimization of recidivism (i.e., illegal reentry by previously removed aliens).<sup>103</sup> Accordingly, between 1998 and 2002 the INS devoted more resources to the removal of criminal aliens than to all other interior enforcement priorities combined.<sup>104</sup>

In the wake of the September 11 terrorist attacks, the new Department of Homeland Security (DHS) focused its enforcement activities on suspected terrorists and homeland defense, but with

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<sup>99</sup> P.L. 99-603, §701.

<sup>100</sup> Prior to the enactment of the Homeland Security Act of 2002 (P.L. 107-296), immigration enforcement was primarily the responsibility of the former Immigration and Naturalization Service (INS) within the Department of Justice. The INS was dissolved on March 1, 2003, and its functions were incorporated into the Department of Homeland Security (DHS) through three DHS agencies: U.S. Immigration and Customs Enforcement (ICE); U.S. Citizenship and Immigration Services (USCIS), and U.S. Customs and Border Protection (CBP).

<sup>101</sup> The Institutional Removal Program, originally known as the Institutional Hearing Program, focused on a small number of federal and state prisons that held the largest number of criminal aliens; the Alien Criminal Apprehension Program covered other jails and prisons.

<sup>102</sup> Immigration Act of 1990, P.L. 101-649 (1990); Immigration and Nationality Technical Correction Act of 1994, P.L. 103-416 (1994); Antiterrorism and Effective Death Penalty Act of 1996, P.L. 104-132 (1996); Illegal Immigrant Reform and Immigrant Responsibility Act of 1996, P.L. 104-208, Div. C (1996). See CRS Report RL32480, *Immigration Consequences of Criminal Activity*.

<sup>103</sup> U.S. General Accounting Office, *Homeland Security: Challenges to Implementing the Immigration Interior Enforcement Strategy*, GAO-03-660T, April 2003.

<sup>104</sup> *Ibid.*

the continued growth of the foreign-born population after 2000, programs targeting criminal aliens also remained an enforcement priority. Within DHS, the IRP and ACAP initially were managed jointly by Immigration and Customs Enforcement's (ICE) Detention and Removal Operations (DRO) and its Office of Homeland Security Investigations. Between 2005 and 2007, the IRP and ACAP were combined into a single Criminal Alien Program (CAP) program within DRO.<sup>105</sup> In 2010, DRO was renamed Enforcement and Removal Operations (ERO).

On November 20, 2014, the President issued his Immigration Accountability Executive Order that ended the Secure Communities program and replaced it with the Priority Enforcement Program (PEP). DHS fully implemented PEP in July 2015.

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<sup>105</sup> See U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Immigration, Border Security, and Citizenship, *Strengthening Interior Enforcement: Deportation and Related Issues*, testimony of Department of Homeland Security Acting Director of Detention and Removal Operations, U.S. Immigration and Customs Enforcement, Victor Cerda, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., April 14, 2005.

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