

ENFORCEMENT OVERDRIVE

**A Comprehensive Assessment
of ICE's Criminal Alien Program**

By Guillermo Cantor, Ph.D., Mark Noferi, Esq., and Daniel E. Martínez, Ph.D.

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Executive Summary

The Criminal Alien Program (CAP) is a massive enforcement program administered by U.S. Immigration and Customs Enforcement (ICE) and has become the primary channel through which interior immigration enforcement takes place. Between two-thirds and three-quarters of individuals removed from the interior of the United States are removed through CAP.¹ Each year, Congress allocates hundreds of millions of dollars to fund this program. Until now, however, little has been known about how CAP works, whom CAP deports, and whether CAP has been effective in meeting its goals.

Based on government data and documents obtained through the Freedom of Information Act (FOIA), this report examines CAP's evolution, operations, and outcomes between fiscal years 2010 and 2013. That data shows that through CAP's enormous web, ICE has encountered millions and removed hundreds of thousands of people. Yet, CAP is not narrowly tailored to focus enforcement efforts on the most serious security or safety threats—in part because CAP uses criminal arrest as a proxy for dangerousness and because the agency's own priorities have been drawn more broadly than those threats.

As a result, the program removed mainly people with no criminal convictions, and people who have not been convicted of violent crimes or crimes the Federal Bureau of Investigation (FBI) classifies as serious. CAP also has resulted in several anomalies, including that it appears biased against Mexican and Central American nationals. Moreover, the number of CAP removals differs significantly from state to state.

ICE's reliance on CAP to achieve its goals will likely continue as ICE further narrows its focus on removing noncitizens with criminal convictions and continues to seek partnerships with state and local law enforcement to find them. This examination of CAP's outcomes from fiscal years 2010 to 2013 offers important insights into CAP's operations over time and its potential impact on communities moving forward. In particular, it raises questions about the ability of a broad "jail check" program to effectively remove serious public safety threats without resulting in serious unintended consequences, such as those described in this report.

Background: CAP's Expansion over Time

While CAP was originally conceived as a "jail check" program narrowly tailored to remove noncitizens incarcerated for serious criminal convictions, it has become a massive enforcement web—indeed, the primary mechanism through which ICE removes people from the U.S. interior.

- When the former U.S. Immigration and Naturalization Service (INS) established CAP's predecessor programs in 1988, only a limited number of crimes rendered a person removable. These crimes were commonly considered "serious" or "violent." Subsequently, between 1990

and 1996, Congress expanded the criminal grounds for removal to potentially include minor crimes such as drug possession, simple assault, shoplifting, turnstile jumping, and disorderly conduct.

- The scope of CAP ballooned when Congress dramatically increased its funding nearly thirty-fold between fiscal years 2004 and 2008, from \$6.6 million to \$180 million. In fiscal year (FY) 2013, Congress began to dedicate the funding that Secure Communities had received towards CAP, resulting in a 64 percent increase in CAP funding, from \$196.7 million in FY 2012 to \$322.4 million in FY 2015.

CAP's Outcomes: Large Web, Few Removals of Immigrants with Serious or Violent Convictions

- Between FY 2010 and FY 2013, ICE encountered over 2.6 million persons through CAP, but removed fewer than 508,000. Of that number, 87,426 individuals had a conviction for a violent crime or a crime the FBI classifies as serious (a mere 3 percent of the total number of encounters).
- Out of more than half a million CAP removals that took place between FY 2010 and FY 2013, ICE classified the largest share (27.4 percent) as not “definite criminals”—i.e., ICE recorded no criminal conviction. The second- and third-most prevalent categories of CAP removals were of individuals whose “most serious” criminal conviction involved a “traffic offense” (20 percent) and “dangerous drugs” (18 percent), followed by “assault” (6 percent) and “immigration” (5 percent).
- During this time period, over 4 out of 5 CAP removals were of individuals with either no conviction or of individuals who have not been convicted of a violent crime or one that the FBI classifies as serious.
- Conversely, a very low percentage of individuals removed through CAP were convicted of extremely serious crimes. Specifically, 1.7 percent were convicted of burglary, 1.6 percent were convicted of robbery, 1.5 percent were convicted of sexual assault (including rape), 0.5 percent were convicted of homicide, 0.4 percent were convicted of kidnapping, and 0.1 percent were convicted of arson.

Do CAP Removals Match ICE's Removal Priorities?

- ICE has justified its interior removal efforts by stating that its intention is to remove “those convicted of the most serious crimes,” ranking immigrants with convictions as “Level 1, 2, or 3” offenders (in order of decreasing seriousness), and publicly emphasizing that an increasing share of its removals are of Level 1 or 2 offenders. But, in recent years, ICE's criminal removal

priorities have still encompassed many offenders besides those who had committed violent crimes or crimes the FBI classifies as serious.

- While the largest proportion (33 percent) of CAP removals falls into Level 1, almost two-thirds of all Level 1 removals were not associated with convictions for a violent crime or a crime that the FBI classifies as serious. Of all Level 2 removals, 76 percent involved individuals who have not been convicted of a violent crime or a crime classified as serious by the FBI. And among Level 3 removals, crimes other than those categorized as violent or serious accounted for 95 percent of removals.

CAP Appears to Be Biased against Mexican and Central American Nationals

- Mexican and Central American nationals are overrepresented in CAP removals compared to the demographic profiles of those populations in the United States. People from Mexico and the Northern Triangle (Guatemala, Honduras, and El Salvador) accounted for 92.5 percent of all CAP removals between FY 2010 and FY 2013, even though, collectively, nationals of said countries account for 48 percent of the noncitizen population in the United States. Nationals of those countries, however, are not markedly more likely to be convicted of violent crimes or crimes the FBI classifies as serious.

The Geography of Removals: State-by-State Results

- The number of CAP removals differs significantly from state to state. And this discrepancy is not associated with the size of the states' noncitizen populations.
- The states with the highest rates of removals include several with smaller immigrant populations (i.e., Mississippi, Wyoming, and West Virginia), as well as two with large immigrant populations (Texas and Arizona).
- Although further research is needed to explain these discrepancies in CAP removal rates, it is plausible that the state-by-state outcomes of CAP are related to local cooperation with ICE; ICE's local capacity and presence in those states; and the availability of public transportation and driver's licenses for undocumented immigrants.

Introduction

The Criminal Alien Program (CAP) has become the primary program through which Immigration and Customs Enforcement (ICE), a component of the U.S. Department of Homeland Security (DHS), conducts immigration enforcement in the interior of the United States. Between two-thirds and three-quarters of individuals ICE removes from the interior of the United States are removed through CAP²—the vast majority in cooperation with state and local law enforcement. Each year, Congress allocates hundreds of millions of dollars to fund CAP. And ICE’s reliance on CAP to achieve its goals will likely continue as ICE further narrows its focus on removing noncitizens with criminal convictions and continues to seek partnerships with state and local law enforcement to find them.³

There are reasons to question CAP’s efficacy and efficiency, and to look closely at unintended consequences. As this report discloses, CAP is not narrowly tailored to focus enforcement efforts on the most serious security or safety threats—in part because CAP uses criminal arrest as a proxy for dangerousness and because the agency’s own priorities have been drawn more broadly than those threats. As a result, the program is overbroad and arguably inefficient. CAP also has resulted in several anomalies, including an apparent bias against Mexican and Central American nationals, and the number of CAP removals differs significantly from state to state.

Prior to this report, little was known about how CAP works, whom CAP deports, and whether CAP has been effective in meeting its goals. As the debate grows over whether state and local cooperation with ICE helps or hinders public safety,⁴ this report provides crucial information regarding CAP’s evolution, operations, and outcomes between fiscal year (FY) 2010 and August 17, 2013, based on never-before-released government data⁵ and documents obtained by the American Immigration Council and the American Immigration Lawyers Association’s Connecticut Chapter through the Freedom of Information Act (FOIA). Yet, as this report highlights, much is still unknown about CAP, and the government’s lack of transparency and poor data collection and sharing means that a full assessment of CAP remains elusive.

What the data does show, however, is that from FY 2010 to August 17, 2013, ICE officers encountered over 2.6 million persons, and removed nearly 508,000 through CAP. As an initial matter, it is unclear why, in a program designed to target removable noncitizens in jails, ICE spends so much time, money, and resources encountering those whom ICE does not even arrest, let alone remove. Moreover, despite this massive enforcement web, only 3 percent of the total number of CAP encounters resulted in removal of an individual with a conviction for a violent crime⁶ or a crime the Federal Bureau of Investigation (FBI) classifies as serious. Indeed, strikingly, CAP removed mainly people with no criminal convictions and people who have not been convicted of violent crimes or crimes the FBI classifies as serious. Over four out of five CAP removals from FY 2010 to August 17, 2013—83 percent—fell into these categories.⁷ Among those noncitizens whom ICE removed through CAP, the most common “most serious” conviction that ICE recorded was none (27 percent).

Of those removed with a conviction, a sizable proportion had not been convicted of a violent crime or a crime the FBI classifies as serious. The most prevalent “most serious” convictions that ICE recorded were traffic offenses (20 percent) and drug offenses (18 percent).⁸ And among those persons removed with traffic and drug convictions, many had committed lesser offenses. For example, 30 percent of those whose most serious conviction was a traffic offense were convicted of non-DUI offenses, and 39 percent of those whose most serious convictions were drug offenses were convicted of possession, with another 23.2 percent not specified. Among all removed individuals whose most serious convictions were marijuana offenses, 53.6 percent were convicted of possession. This data complements other reports showing that DHS’ removals of those with criminal convictions have largely been removals of those who committed drug or lesser offenses—in some cases, with harsh impact compared to their equities in the United States.⁹ And even though this report shows that ICE, over time, began better tailoring its CAP removals to its own priorities, still, most removed through CAP did not commit violent crimes or crimes the FBI classifies as serious.

In addition to removing large numbers of minor offenders, ICE has removed through CAP disproportionately high numbers of Mexicans, Guatemalans, and Hondurans compared to the composition by national origin of both the foreign-born and the undocumented populations in the United States. Interestingly, the data also shows that nationals of those countries are not markedly more likely to be convicted of violent crimes or crimes the FBI classifies as serious.

Finally, as states and localities have adopted differing policies regarding cooperation with ICE, state-by-state disparities in CAP removals have emerged. CAP led to the removal of a disproportionately high number of noncitizens in certain states in FY 2013. In particular, states including Mississippi, Wyoming, West Virginia, Kentucky, South Dakota, Nebraska, Texas, and Arizona experienced the highest rates of CAP removals per 1,000 noncitizens. Meanwhile, some states with substantial immigrant populations, including Massachusetts, New York, Maryland, New Jersey, Washington D.C., Connecticut, Florida, and Illinois, experienced comparatively lower rates of CAP removals per 1,000 noncitizens. A possible explanation is the emergence of “community trust” policies in FY 2013, such as the introduction of anti-detainer policies by urban localities, which reduced local cooperation with ICE regarding non-serious offenders, as well as those charged but not convicted. Possible explanations also include ICE’s detention capacity in different states, and the necessity for immigrants to drive in rural states, which increases the chances of contact with local law enforcement or ICE.

Looking forward, as Congress, states, and localities debate the impact of state and local cooperation with ICE on public safety, and ICE attempts to further narrow its enforcement priorities, excluding from removal those with no convictions or only minor convictions, the data in this report is crucial to understand. ICE asserts that it is protecting public safety in the interior of the United States by removing the “worst criminals.”¹⁰ Most noncitizens removed through CAP, however, were not the worst criminals, and many were not criminals at the time of removal. The data calls into question whether CAP is designed to effectively and efficiently achieve the government’s stated policy goals. Given the comparatively few CAP removals involving individuals who committed violent crimes or crimes the FBI classifies as serious, relative to the financial and human cost of deporting minor offenders, the value of current CAP funding levels is questionable.

Background

While CAP was originally conceived as a “jail check” program narrowly tailored to remove noncitizens incarcerated for serious criminal convictions, it has become a massive enforcement web—indeed, the primary mechanism through which ICE removes people from the U.S. interior. ICE has both expanded the target population of CAP’s core “jail check” activities to include those charged with any crime, whether convicted or not, and expanded CAP’s mission outside jails into immigrant communities.¹¹ Meanwhile, Congress has consistently fueled those expansions with dramatic funding increases.

Rather than operating CAP as a freestanding program with specialized CAP officers, ICE merely designates its CAP work separately for budgetary purposes.¹² In other words, ordinary ICE officers record their work as CAP work when performing CAP duties. As CAP’s former unit chief stated, “[a]ny [ICE] ERO [Enforcement and Removal Operations] officer at any time can conduct a Criminal Alien Program duty,”¹³ if (s)he is pursuing removal of a noncitizen with a criminal history.¹⁴ Thus, in FY 2014, CAP was funded for 1,495 full-time employees nationwide,¹⁵ even though, as of 2013, CAP only operationally employed a unit chief and 10 staff officers who oversaw the program from ICE headquarters in Washington, D.C.¹⁶

CAP’s Traditional “Jail Check” Role

In CAP’s traditional “jail check” function, ICE identifies removable noncitizens who are incarcerated in jails or prisons and initiates removal proceedings against them.¹⁷ To this end, ICE collaborates with over 4,000 federal, state, and local facilities that provide ICE information about the foreign nationals in their custody.¹⁸ Federal facilities are required to report all self-identified foreign inmates to ICE, under an agreement between ICE and the federal Bureau of Prisons.¹⁹ Additionally, certain state and local facilities voluntarily provide ICE with lists of foreign nationals in custody, targeted lists of suspected noncitizens, or access to detainees or records, depending on the level of cooperation.²⁰ State and local law-enforcement agencies have provided the bulk of CAP’s work. From FY 2010 to FY 2013, only 6.4 percent of CAP encounters were referred from federal facilities, compared to 91.8 percent referred from state or local law enforcement.²¹

Once receiving information, the ICE officer ascertains a noncitizen’s removability either by screening records or traveling to a jail or prison to interview the noncitizen.²² Before November 2014, if the ICE officer found a noncitizen to be removable, the officer would typically lodge a “detainer” request for state or local law enforcement to hold the noncitizen, interview the noncitizen if necessary, and subsequently initiate removal proceedings if appropriate.²³ Under new November 2014 guidance ending Secure Communities and announcing the Priority Enforcement Program (PEP), ICE officers are directed to request state or local law enforcement to notify ICE of the noncitizen’s release, rather than issue a detainer request (absent special circumstances).²⁴

CAP's Reach into Immigrant Communities

Though CAP primarily functions in jails and prisons nationwide, ICE also has extended the program's reach into communities through what the agency terms "at-large" activities, including pursuing individuals on criminal probation or parole, and working with other ICE enforcement initiatives, such as the National Fugitive Operations Program.²⁵ In FY 2013, 97 percent of CAP removals appear to have been executed through CAP's traditional jail check functions.²⁶ It is generally unclear, though, when ICE arrests and removes noncitizens in the community, whether ICE counts those arrests as "CAP removals."

CAP's Dramatic Expansion in Mission, Scale, and Funding

CAP's expansion of its "jail check" targets, as well as its activities in communities, evolved out of several events: (1) Congress broadening the legal grounds for criminal deportability, (2) subsequent dramatic funding increases for CAP, (3) ICE establishing the controversial "Secure Communities" program, with its mission to remove every noncitizen deportable for a criminal offense, (4) ICE prioritizing the removal of noncitizens with criminal convictions, and (5) ICE folding Secure Communities' technology and operations into CAP, and apparently Secure Communities' broad mission, too.

U.S. immigration-enforcement agencies have prioritized the removal of noncitizens with criminal convictions since at least 1986.²⁷ When the former U.S. Immigration and Naturalization Service (INS) established CAP's predecessor programs in 1988, the crimes that resulted in removal were a limited number commonly considered "serious" or "violent"—i.e., murder, gun trafficking, and drug trafficking, which had been designated by Congress as "aggravated felonies."²⁸ Subsequently though, between 1990 and 1996, Congress expanded the criminal grounds for removal to potentially include less serious crimes such as drug possession, simple assault, shoplifting, turnstile jumping, and disorderly conduct.²⁹

The scope of CAP then ballooned when Congress dramatically increased CAP funding nearly thirty-fold from fiscal years 2004 through 2008, from \$6.6 million to \$180 million; and in FY 2009 began to allocate to ICE \$1 billion per year (and more in later years) through CAP and other programs to identify and remove "criminal aliens"³⁰ (albeit prioritized "by the severity of [their] crime") (Table 1).³¹

Table 1: Appropriations for ICE, CAP, and Secure Communities, FY 2004-2016 (in millions)

Fiscal Year	Overall ICE Appropriations	CAP	Secure Communities
2004	\$3,669.6	\$6.6	-
2005	\$3,127.1	\$33.7	-
2006	\$3,866.4	\$93.0	-
2007	\$4,696.6	\$137.5	-
2008	\$5,054.3	\$180.0	\$200.0
2009	\$5,968.0	\$189.1	\$150.0
2010	\$5,741.8	\$192.5	\$200.0
2011	\$5,805.4	\$192.5	\$200.0
2012	\$5,983.0	\$196.7	\$189.1
2013	\$5,878.2	\$205.0	\$138.1
2014	\$5,610.7	\$294.2	\$25.3
2015	\$5,932.8	\$322.4	--
2016 (requested)	\$5,881.1	\$320.3	--

One of those other programs was “Secure Communities,” through which the fingerprints of those arrested by local law enforcement were shared with ICE.³² ICE established Secure Communities in 2008 following Congress’ directive to “identify and remove every deportable criminal alien”³³—not just those convicted of serious or violent crimes. Secure Communities’ mission also included targeting noncitizens in the community,³⁴ not just those incarcerated in jails. Both these functions were later integrated into CAP, expanding its massive reach.

In June 2010, ICE Director John Morton published a memorandum setting new civil enforcement priorities, with the goal of focusing removals on public safety and other threats. The priorities set out a three-tiered framework, with noncitizens who have criminal convictions as Priority 1—and, within Priority 1, individuals with convictions ranked by the severity of their crimes into three levels (Levels 1, 2, and 3).³⁵ Subsequently, though, when ICE management set numeric goals for removals with convictions, overall goals were set rather than goals by level. This may have resulted in ICE removing more offenders at lesser levels. For example, ICE management for FY 2012 set an aggressive goal of 225,000 removals with convictions,³⁶ stated that that goal was “[t]he only performance measure that will count,” and directed officers to “reallocate all available resources” to meet it.³⁷ In response, an ICE Assistant Field Director in Atlanta offered to “process more petty offenses,” among other proposals.³⁸

CAP's unit chief also testified in 2013 that CAP had targeted "any alien convicted of any crime" since 2010.³⁹ Additionally, ICE's internal "Criminal Alien Program Handbook" (May 2013) made clear that CAP targets included individuals "**regardless of the status of conviction**" (emphasis in original), i.e., even where the criminal charge was pending.⁴⁰ CAP's unit chief confirmed this practice.⁴¹ This guidance exists even though ICE has defined "criminality" in terms of a "recorded criminal conviction," following Morton's 2010 memorandum.⁴²

On January 22, 2013, ICE completed nationwide deployment of Secure Communities in all local jurisdictions.⁴³ ICE then stated that it would transfer "full responsibility" of the day-to-day management of Secure Communities to CAP,⁴⁴ and began to realign Secure Communities funding towards CAP.⁴⁵ In FY 2013, Congress began to direct the funding that Secure Communities had received towards CAP, resulting in a 64 percent increase in CAP funding from \$196.7 million in FY 2012 to \$322.4 million in FY 2015. By February 2014, CAP had assumed operational responsibility for Secure Communities.⁴⁶ In November 2014, DHS Secretary Jeh Johnson then stated that DHS was discontinuing the "Secure Communities program, as we know it," although it replaced it with PEP.⁴⁷

As CAP subsumed Secure Communities operationally, it appears that CAP also assumed its broad mission. Today, CAP's stated mission is essentially coextensive with ICE's general priorities—to remove noncitizens that in ICE's view are public safety threats, by using criminal history as a proxy for danger.⁴⁸ CAP also targets noncitizens not only in jails, but also in the community.⁴⁹

CAP's Outcomes: Large Web, Few Removals of Immigrants with Serious or Violent Convictions⁵⁰

Between October 1, 2009, and August 17, 2013, ICE encountered 2.6 million individuals under CAP. Such encounters consisted of an interview and/or screening of a person or his or her records to determine citizenship status, nationality, lawful presence, and legal right to remain in the United States.⁵¹ During the same period, ICE arrested over three-quarters of a million individuals through CAP, and removed more than half a million.⁵²

Over time, while the number of encounters through CAP has remained relatively high, the number of CAP arrests and removals has gone down. For instance, in FY 2010 there were roughly 329 arrests and 256 removals per 1,000 encounters. By 2013, that rate had decreased to 250 arrests and 139 removals per 1,000 encounters. In other words, CAP's web has remained large while its arrests—and particularly removals—have decreased (Table 2).

Table 2. CAP Encounters, Arrests, and Removals by Fiscal Year

FY	Encounters	Arrests	Removals
2010	668,079	219,477	171,281
2011	701,473	221,122	138,971
2012	674,368	200,254	120,371
2013*	556,708	139,375	77,231
Total	2,600,628	780,228	507,854

*Data provided for FY 2013 covers the period of October 1, 2012, through August 17, 2013.

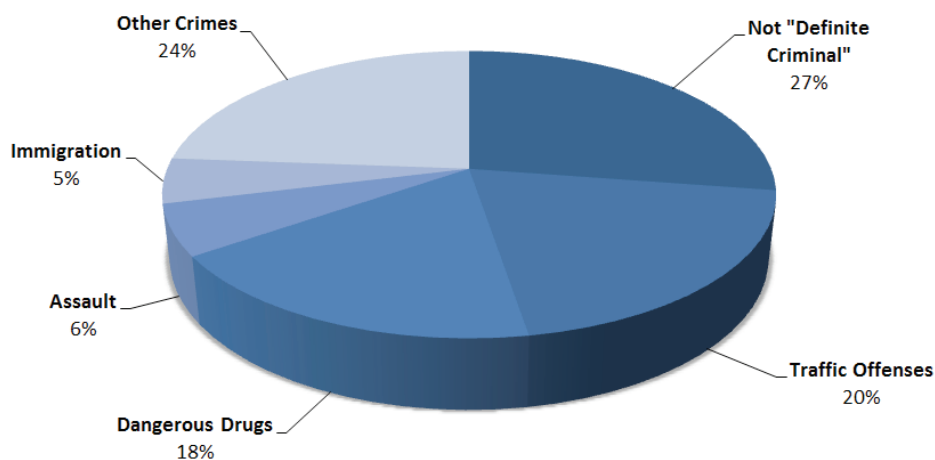
It is unclear why, in a program designed to target removable noncitizens in jails, ICE spends so much time, money, and resources encountering those whom ICE does not even arrest, let alone remove. Indeed, CAP's massive enforcement web even has ensnared U.S. citizens. In 2012, CAP and ICE management identified 278 U.S. citizens upon whom ICE had placed detainees.⁵³

That said, these overall numbers tell us little about the population that CAP has targeted and removed. Examining the details underlying the general numbers tells us more about CAP's effectiveness and efficiency in identifying, apprehending, and removing genuine public safety threats.⁵⁴

Most interestingly, of the over half-million CAP removals that took place between FY 2010 and FY 2013, ICE classified the largest percentage (27.4%) as not "definite criminals"—i.e., ICE recorded no criminal conviction in its ENFORCE database.⁵⁵ The second- and third-most prevalent categories of CAP removals were of individuals whose "most serious" criminal conviction, according to ICE, involved a "traffic offense" (20 percent) and "dangerous drugs" (18 percent), followed by "assault"

(6 percent) and “immigration” (5 percent). The FBI’s National Crime Information Center (NCIC) crime coding scheme, and ICE’s internal coding based upon it, classify all drug offenses under the rubric of “dangerous drugs,” without any “non-dangerous” category.⁵⁶ Collectively, people with no recorded conviction, or a drug, traffic, or immigration conviction, constituted 70.5 percent of all removals ICE attributed to CAP between FY 2010 and FY 2013 (Figure 1).

Figure 1: Most Serious Criminal Offense Convictions, FY 2010-2013



To more precisely examine CAP’s efforts to remove public safety threats, we classified removed individuals into three broad categories, following the Migration Policy Institute (MPI) and the FBI classification schemes:

1. **Individuals with no conviction:** I.e., “definite criminal” no, according to ICE.
2. **Serious or violent:** Individuals whose “most serious” conviction was a serious or violent conviction according to independent classification schemes.⁵⁷ These include (a) crimes that the FBI classifies as Part I; (b) a subset of those the FBI classifies as Part II (i.e., Part II-violent); and (c) domestic abuse crimes. According to the FBI’s decades-old crime classification system, “Part I”⁵⁸ includes eight types of crimes, which criminal scholars have commonly understood to represent the most serious crimes.⁵⁹ Those eight categories are murder and non-negligent homicide, forcible rape, robbery, aggravated assault, burglary, motor vehicle theft, larceny-theft, and arson.⁶⁰ Part II, on the other hand, includes a broad spectrum of crimes that range from more to less serious. In an effort to further disaggregate the broad universe of FBI-Part II crimes, MPI classifies them as violent or nonviolent. Part II-violent includes crimes such as assault, battery, kidnapping, hit and run, weapons offenses, and sex offenses. Following MPI’s approach, we included these crimes (Part II-violent), as well as domestic abuse crimes, in our “serious or violent” category.⁶¹
3. **Other:** Individuals whose “most serious” conviction was for (a) a FBI Part 2 crime that is not violent according to MPI; (b) drug possession; (c) drug sale, distribution, or transportation; (d) an immigration crime (e.g., illegal entry or re-entry); (e) a nuisance crime; (f) driving under the influence (DUI); or (g) traffic offenses other than DUI.⁶²

Between FY 2010 and 2013, more individuals were removed through CAP without a criminal conviction (27.4 percent) than with a serious or violent conviction (17.2 percent). Put another way, based on this categorization, over 4 out of 5 CAP removals between FY 2010 and 2013 involved individuals with either no conviction or individuals who were not convicted of a crime classified as violent (following MPI’s definition) or serious, according to the FBI (Table 3).

Table 3: Removals by Broad Type of Crime, FY 2010-2013

Crime Category	2010	2011	2012	2013 (through Aug. 17, 2013)	Total	Percent increase/ decrease of share (2010-2013)
<i>Not Definite Criminal</i>	64,867 (37.9%)	38,095 (27.4%)	25,280 (21%)	11,054 (14.3%)	139,296 (27.4%)	-62.3%
FBI Part 1	13,349 (7.8%)	10,226 (7.4%)	9,619 (8.0%)	6,557 (8.5%)	39,751 (7.8%)	9.0%
FBI Part 2 (Violent)	12,293 (7.2%)	10,631 (7.6%)	9,627 (8.0%)	7,008 (9.1%)	39,559 (7.8%)	26.4%
Domestic Abuse	2,314 (1.4%)	2,065 (1.5%)	2,224 (1.8%)	1,513 (2.0%)	8,116 (1.6%)	48.1%
<i>Total—Serious or Violent</i>	27,956 (16.3%)	22,922 (16.5%)	21,470 (17.8%)	15,078 (19.5%)	87,426 (17.2%)	19.5%
FBI Part 2 (Nonviolent)	13,127 (7.7%)	12,677 (9.1%)	11,705 (9.7%)	7,727 (10.0%)	45,236 (8.9%)	29.9%
Nuisance Crime	3,728 (2.2%)	4,106 (3.0%)	3,896 (3.2%)	2,428 (3.1%)	14,158 (2.8%)	40.9%
Drugs- Possession	19,085 (11.1%)	16,359 (11.8%)	15,251 (12.7%)	11,183 (14.5%)	61,878 (12.2%)	30.6%
Drugs- Sale, Distribution	11,814 (6.9%)	9,144 (6.6%)	9,690 (8.1%)	7,222 (9.4%)	37,870 (7.5%)	34.8%
Immigration	6,594 (3.8%)	6,240 (4.5%)	5,562 (4.6%)	4,379 (5.7%)	22,775 (4.5%)	50.0%
Traffic (DUI)	17,043 (10.0%)	20,694 (14.9%)	18,455 (15.3%)	12,657 (16.4%)	68,849 (13.6%)	65.7%
Traffic (Other than DUI)	7,061 (4.1%)	8,733 (6.3%)	9,062 (7.5%)	5,503 (7.1%)	30,359 (6.0%)	73.2%
<i>Total—Other</i>	78,452 (45.8%)	77,953 (56.1%)	73,621 (61.2%)	51,099 (66.2%)	281,125 (55.4%)	44.6%
Total	171,275 (100%)	138,970 (100%)	120,371 (100%)	77,231 (100%)	507,847 (100%)	

Moreover, although over time CAP removed fewer individuals overall and a higher percentage of them with convictions, it essentially replaced removals of people who had not been convicted of a crime with removals of people who had not been convicted of a violent crime or of a crime that the FBI classifies as serious. Specifically, while the share of those removed under CAP *without* a conviction decreased 62.3 percent over time—from 37.9 percent in FY 2010 to 14.3 percent in FY 2013—the share of those removed under CAP who had not been convicted of a serious or violent crime increased 44.6 percent over time—from 45.8 percent in FY 2010 to 66.2 percent in FY 2013.

Furthermore, the proportion of individuals removed through CAP whose most serious criminal conviction related to traffic, drug, or immigration offenses increased from FY 2010 to FY 2013. The proportion of individuals removed with a traffic offense conviction increased each year, from 14.4 percent to 24.0 percent; the proportion of individuals removed with a drug conviction grew from 17.2 percent to 20.5 percent; and the proportion of individuals removed with an immigration-related criminal conviction grew from 4.4 percent to 6.5 percent (Appendix 1).

Additionally, breaking down those most prevalent convictions by specific offense types reinforces that a sizable proportion of the individuals ICE removed through CAP, if convicted, were convicted of less serious crimes.⁶³ For example, 30 percent of all removed individuals whose most serious conviction was a traffic offense were convicted of non-DUI traffic offenses. Among “dangerous drug” offenders, 38.8 percent were convicted of possession and 23.2 percent did not have a “specified” conviction. Only 33.1 percent of the convictions were associated with selling, smuggling, or distributing drugs. Further, among all marijuana offenders, 53.6 percent were convicted for possession compared to 37 percent convicted of smuggling or selling drugs.

Lastly, a very low percentage of individuals removed through CAP were convicted of extremely serious crimes. Specifically, 1.7 percent were convicted of burglary, 1.6 percent of robbery, 1.5 percent of sexual assault (including rape), 0.5 percent of homicide, 0.4 percent of kidnapping, and 0.1 percent of arson (see Appendix 1).

In sum, given that the overwhelming majority of those removed through CAP do not fall within the most serious categories of crimes, as identified by the FBI, the data casts doubt on ICE officials’ assertions that ICE removals had narrowed to the worst public safety threats.

Do CAP Removals Match ICE’s Removal Priorities Targeting “Serious Criminals” or Public Safety Threats?

Although CAP removals have increasingly matched ICE’s removal priorities over time, ICE’s removal priorities did not necessarily correlate to the most serious criminal convictions or public safety threats.

When ICE Director Morton’s June 2010 memorandum classified all noncitizens with criminal convictions as “Priority 1,” it sub-classified offenders into three Criminal Offense Levels (“COLs”), with Level 1 and 2 receiving principal attention:

- Level 1 offenders: noncitizens convicted of “aggravated felonies,” as defined in §101(a)(43) of the Immigration and Nationality Act, or two or more crimes each punishable by more than one year, commonly referred to as “felonies”;
- Level 2 offenders: noncitizens convicted of any felony or three or more crimes each punishable by less than one year, commonly referred to as “misdemeanors”; and
- Level 3 offenders: noncitizens convicted of crimes punishable by less than one year.⁶⁴

The data indicates that CAP removal patterns increasingly reflected Morton’s prioritization. Specifically, between FY 2011 and FY 2013 the share of ICE Level 1 and Level 2 offenders among all CAP removals increased—while the share of individuals with no conviction declined (Table 4).⁶⁵

Table 4. Removal Criminal Offense Level by Fiscal Year

Criminal Offense Level	2011	2012	2013 (through Aug. 17, 2013)	Total
Level 1	39,584 (28.5%)	41,282 (34.3%)	31,299 (40.5%)	112,165 (33.3%)
Level 2	24,056 (17.3%)	22,504 (18.7%)	15,916 (20.6%)	62,476 (18.6%)
Level 3	37,245 (26.8%)	31,303 (26.0%)	18,959 (24.6%)	87,507 (26.0%)
NA	38,086 (27.4%)	25,280 (21.0%)	11,057 (14.3%)	74,423 (22.1%)
Total	138,971	120,369	7,231	336,571
(%)	(100%)	(100%)	(100%)	(100%)

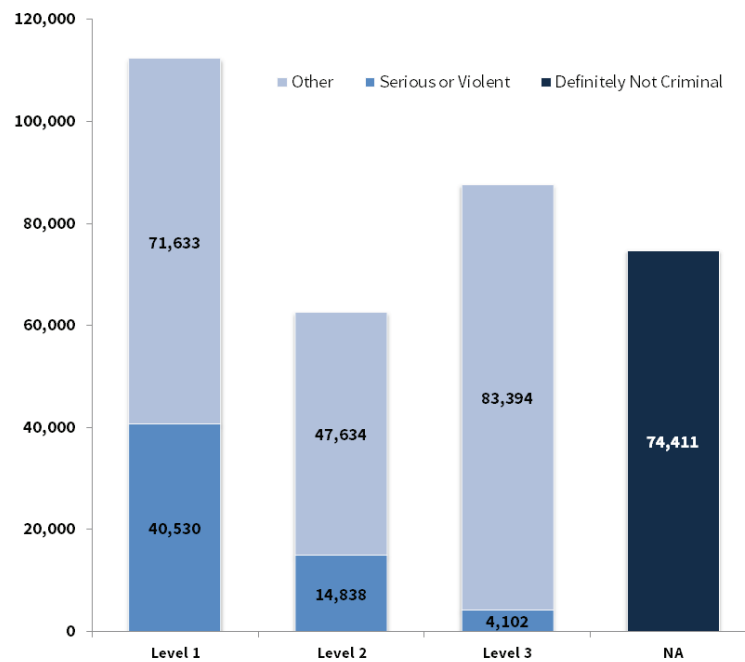
However, the majority of ICE Level 1 or Level 2 offenders removed by CAP did not commit offenses that were “violent,” according to MPI’s categorization, or “serious,” according to the FBI’s classification (Table 5, Figure 2).

Table 5. Removals by Broad Type of Crime and Removal Criminal Offense Level, 2011-2013

Crime Category	Removal Case Criminal Offense Level				Total
	Level 1	Level 2	Level 3	NA	
Not Definite Criminal	2	4	10	74,411	74,427
	(0.0%)	(0.0%)	(0.0%)	(100%)	(22.1%)
FBI Part 1	20,393	6,009	0	0	26,402
	(18.2%)	(9.6%)	(0.0%)	(0.0%)	(7.8%)
FBI Part 2 - Violent	17,540	7,379	2,347	0	27,266
	(15.6%)	(11.8%)	(2.7%)	(0.0%)	(8.1%)
Domestic abuse	2,597	1,450	1,755	0	5,802
	(2.3%)	(2.3%)	(2.0%)	(0.0%)	(1.7%)
Total - Serious or Violent	40,530	14,838	4,102	0	59,470
	36.1%	23.7%	4.7%	0.0%	17.7%
FBI Part 2 - Nonviolent	17,292	7,679	7,127	11	32,109
	(15.4%)	(12.3%)	(8.1%)	(0.0%)	(9.5%)
Drugs - possession	16,565	13,783	12,445	0	42,793
	(14.8%)	(22.1%)	(14.2%)	(0.0%)	(12.7%)
Drugs - sale, dist, trans	25,035	268	752	1	26,056
	(22.3%)	(0.4%)	(0.9%)	(0.0%)	(7.7%)
Immigration (strict)	2,165	4,293	9,723	0	16,181
	(1.9%)	(6.9%)	(11.1%)	(0.0%)	(4.8%)
Nuisance crime	1,542	2,266	6,622	0	10,430
	(1.4%)	(3.6%)	(7.6%)	(0.0%)	(3.1%)
Traffic (DUI)	6,159	12,716	32,931	0	51,806
	(5.5%)	(20.4%)	(37.6%)	(0.0%)	(15.4%)
Traffic (other than DUI)	2,875	6,629	13,794	0	23,298
	(2.6%)	(10.6%)	(15.8%)	(0.0%)	(6.9%)
Total - Other	71,633	47,634	83,394	12	202,673
	63.9%	76.2%	95.3%	0.0%	60.2%
Total	112,165	62,476	87,506	74,423	336,570
	(100.0%)	(100.0%)	(100.0%)	(100.0%)	(100.0%)

Note: Percentages may not sum to 100 due to rounding

Figure 2: Removals by Broad Type of Crime and Removal Criminal Offense Level, 2011-2013



In practice, among those removed through CAP, this data shows a sharp disconnect between ICE’s Criminal Offense Level prioritizations and independent classifications of “violent or serious” crime. For instance, while the largest proportion (33.3 percent) of CAP removals are classified as ICE Level 1, almost two-thirds of all ICE Level 1 removals (63.9 percent) involved individuals who had not been convicted of a violent crime or a crime that the FBI classifies as serious. Of all ICE Level 2 removals, 76.2 percent involved individuals who had not been convicted of such a violent or serious crime. And of all ICE Level 3 removals, 95.3 percent involved individuals who had not been convicted of such a violent or serious crime.

This disconnect largely existed because ICE classified many common FBI Part II-nonviolent offenses or drug offenses as “Level 1.” More than half (52.5 percent) of Level 1 offenders removed through CAP were convicted of FBI Part II-nonviolent offenses or drug offenses. In particular, drug offenders removed through CAP were overwhelmingly classified as “Level 1.” Namely, 38.7 percent of drug possession offenders, and 96.1 percent of drug sale, distribution, or transportation offenders, were classified as “Level 1”—even though drug “distribution” can encompass minor conduct such as sharing without money changing hands, as a Human Rights Watch report points out.⁶⁵ ICE still places a high priority on removing drug offenders, even as states have moved to decriminalize drugs such as marijuana.⁶⁷

Thus, while CAP has achieved some success in prioritizing removals according to ICE Levels, it has been less successful in narrowing enforcement removals to those who have been convicted of a violent crime or a crime that the FBI classifies as serious. Thus, CAP—and, in a broader sense, ICE’s prioritizations—may have facilitated to some extent ICE’s goal of removing the most “serious criminals” or public safety threats.⁶⁸ However, by using criminal convictions as a proxy for danger, CAP also has resulted in the removal of a large number of individuals who did not meet those criteria.

Mexican and Central American Nationals are Overrepresented in CAP Removals

Additionally, the data shows that Mexican and Central American nationals are overrepresented in CAP removals compared to the demographic profiles of those populations in the United States. Collectively, people from Mexico and the Northern Triangle (Guatemala, Honduras, and El Salvador) accounted for 92.5 percent of all CAP removals between FY 2010 and FY 2013 (Table 6).

Table 6. Top Seven Countries Represented Among Persons Removed Through CAP, FY 2010-2013

Country	No.	Percent
Mexico	396,629	78.1%
Guatemala	32,003	6.3%
Honduras	24,357	4.8%
El Salvador	16,777	3.3%
Dominican Republic	5,374	1.1%
Colombia	3,561	0.7%
Jamaica	2,911	0.6%
All Other Countries	26,242	5.1%
Total	507,854	100%

When we compare this distribution to the composition by nationality of the noncitizen population, and that of the unauthorized population in particular, the disparities in national origin among CAP removals become evident. For example, the share of Mexicans removed through CAP is higher by almost 39 percent points than the proportion of Mexicans among foreign-born noncitizens living in the country, according to American Community Survey (ACS) estimates for 2011-2013. In addition, the proportion of Mexican nationals among CAP removals is significantly greater than the share of Mexicans among the undocumented population residing in the United States. The difference ranges from 19.1 percent points, when comparing to DHS estimates, to 25.7 percent points, when comparing to the Pew Research Center's estimates. Guatemalans and Hondurans also are overrepresented in CAP removals compared to their share among the noncitizen and the undocumented population living in this country (Table 7).

Table 7. Comparison of Top Seven Countries Represented Among CAP Removals and Other Data Sources, by Country of Origin

	CAP Removals (FY 2010-2013)	2012 Pew Estimates of Unauthorized Population⁶⁹	2012 CMS Estimates of Unauthorized Population⁷⁰	January 2011 DHS Estimates of Unauthorized Population⁷¹	2011-2013 ACS Estimates of Noncitizen Population⁷²
Country	(%)	(%)	(%)	(%)	(%)
Mexico	78.1%	52.4%	55.0%	59.0%	39.3%
Guatemala	6.3%	4.7%	4.4%	5%	3.0%
Honduras	4.8%	3.1%	2.8%	3%	1.8%
El Salvador	3.3%	6.1%	5.4%	6%	3.9%
Dominican Republic	1.1%	1.5%	1.8%	NA	2.2%
Colombia	0.7%	1.3%	1.3%	NA	1.4%
Jamaica	0.6%	0.9%	0.9%	NA	1.2%
All Other Countries	5.1%	30.0%	NA	NA	47.2%

Moreover, regardless of nationality, the proportion of individuals removed through CAP with convictions for violent crimes or for crimes that the FBI classifies as serious is relatively low, even across nationalities. For example, the share of Mexicans, Guatemalans, Dominicans, and Colombians among all people removed through CAP with a “violent or serious” conviction is slightly smaller than the share of nationals of the same countries among all CAP removals. Conversely, the proportion of nationals of Honduras, El Salvador, Jamaica, and “all other countries combined” among all people removed through CAP with a “violent or serious” conviction is slightly greater than the share of nationals of the same countries among all CAP removals (Table 8).

Table 8. Top Seven Countries by Broad Type of Crime, FY 2011-2013

Country	Percent of individuals removed	Not definite criminal	Serious (FBI) or violent	Other
Mexico	78.1%	76.3%	74.4%	80.1%
Guatemala	6.3%	8.4%	5.8%	5.4%
Honduras	4.8%	5.2%	5.3%	4.4%
El Salvador	3.3%	2.7%	5.4%	3.0%
Dominican Republic	1.1%	0.4%	1.0%	1.4%
Colombia	0.7%	0.7%	0.5%	0.8%
Jamaica	0.6%	0.2%	0.8%	0.7%
All Other Countries	5.1%	6.1%	6.9%	4.2%
Total	100%	100%	100%	100%

All in all, these data suggest that, considering their demographic profiles, nationals of Mexico, Guatemala, and Honduras seem to be overrepresented among overall CAP removals, while the proportion of those nationals in each broad category of crime is not very different from the representation of their nationality among overall CAP removals.

Further research is needed to establish why nationals of certain countries tend to be overrepresented among CAP removals. For example, reports have questioned whether local law-enforcement officers have racially profiled minority residents or conducted pre-textual arrests so that ICE’s officers would check residents’ immigration status, once residents’ information was shared with ICE through CAP. A 2009 study of arrest data in Irving, Texas, found “strong evidence to support claims that Irving police engaged in racial profiling of Hispanics in order to filter them through the CAP screening system.”⁷³ Our data raises concerns about whether racial disparities among arrests that lead to immigration enforcement may be more generalized practices.

The Geography of Removals: State-by-State Results

To identify the regions of the country in which CAP has been most active, we analyzed the location where individuals were apprehended prior to arrest and removal through CAP in FY 2013.⁷⁴ In order to account for the fact that a higher proportion of noncitizens are living in certain states, we estimated CAP arrest and removal rates standardized to 1,000 noncitizens in each state, utilizing 2013 ACS estimates of the noncitizen population (Table 9).

Table 9. DHS Criminal Alien Program Removals By U.S. State, FY 2013

State	CAP Arrests	CAP	Noncitizen Population	Arrests per 1,000 Noncitizens	Removals Per 1,000 Noncitizens
1,000,000+ Noncitizen Population					
Texas	39,169	18,513	2,791,229	14.0	6.6
California	31,623	18,812	5,384,868	5.9	3.5
Florida	5,977	2,665	1,826,711	3.3	1.5
New York	1,365	2,153	2,043,941	0.7	1.1
500,000 - 999,999 Noncitizen Population					
Arizona	6,148	3,566	544,807	11.3	6.6
Georgia	3,990	2,252	596,693	6.7	3.8
North Carolina	1,770	1,223	500,007	3.5	2.5
Illinois	1,924	1,439	995,759	1.9	1.5
New Jersey	2,519	1,158	911,565	2.8	1.3
250,000 - 499,999 Noncitizen Population					
Colorado	3,035	1,978	313,412	9.7	6.3
Pennsylvania	2,605	1,394	370,228	7.0	3.8
Washington	3,201	1,506	486,424	6.6	3.1
Virginia	2,960	1,351	482,627	6.1	2.8
Michigan	901	651	302,714	3.0	2.2
Maryland	1,324	528	434,148	3.0	1.2
Massachusetts	691	484	490,848	1.4	1.0
Nevada	2,175	266	296,213	7.3	0.9
100,000 - 249,999 Noncitizen Population					
Louisiana	953	649	104,788	9.1	6.2
Tennessee	1,784	1,137	192,749	9.3	5.9
Alabama	1,059	643	114,406	9.3	5.6
Kansas	991	683	126,512	7.8	5.4
Utah	1,237	783	150,978	8.2	5.2
New Mexico	1,068	688	134,929	7.9	5.1

South Carolina	1,374	717	147,292	9.3	4.9
Oklahoma	925	665	139,764	6.6	4.8
Minnesota	1,595	989	210,177	7.6	4.7
Ohio	1,870	925	233,939	8.0	4.0
Missouri	632	486	133,029	4.8	3.7
Indiana	1,670	726	200,505	8.3	3.6
Oregon	2,070	806	233,939	8.8	3.5
Wisconsin	670	332	153,641	4.4	2.2
Connecticut	544	368	254,839	2.1	1.4
Hawaii	125	77	106,779	1.2	0.7
50,000 - 99,999 Noncitizen Population					
Kentucky	1,565	737	93,159	16.8	7.9
Nebraska	957	548	76,064	12.6	7.2
Idaho	521	367	60,794	8.6	6.0
Iowa	789	454	84,966	9.3	5.3
Arkansas	581	348	93,717	6.2	3.7
Washington D.C.	131	72	51,343	2.6	1.4
Rhode Island	103	12	68,712	1.5	0.2
25,000 - 49,999 Noncitizen Population*					
Mississippi	697	770	44,198	15.8	17.4
Delaware	238	102	42,391	5.6	2.4
New Hampshire	114	54	34,488	3.3	1.6
10,000 - 24,999 Noncitizen Population*					
Wyoming	212	121	12,044	17.6	10.1
West Virginia	400	131	14,062	28.4	9.3
South Dakota	190	107	14,375	13.2	7.4
North Dakota	76	34	12,027	6.3	2.8
Maine	28	11	10,155	2.8	0.6
Vermont	9	3	10,519	0.9	0.3
Alaska	27	6	23,385	1.2	0.3
Less than 10,000 Noncitizen Population*					
Montana	22	42	9,241	2.4	4.5

Sources: DHS Criminal Alien Removals, 2013; American Community Survey, 2009-2013.

*Results should be interpreted with caution due to small cell sizes for ACS noncitizen estimates.

States with similar noncitizen population sizes do not necessarily present similar rates of CAP removals. In fact, a Pearson correlation test shows no statistically significant correlation between the two variables. In other words, whether the foreign-born population living in a particular state is large or small does not explain whether the state would have a higher or lower CAP removal rate.

The states with the highest rates of removal per 1,000 noncitizens include several with smaller immigrant populations—e.g., Mississippi (17.4 per 1,000 noncitizens), Wyoming (10.1 per 1,000), West Virginia (9.3 per 1,000), Kentucky (7.9 per 1,000), South Dakota (7.4 per 1,000), and Nebraska (7.2 per 1,000)—as well as two with large immigrant populations, Texas (6.6 per 1,000) and Arizona (6.6 per 1,000). The states with the lowest rates of removals per 1,000 noncitizens include several with comparatively small immigrant populations—e.g., Rhode Island (0.2 per 1,000), Alaska (0.3 per 1,000), Vermont (0.3 per 1,000), Maine (0.6 per 1,000), and Hawaii (0.7 per 1,000)—as well as several with comparatively larger immigrant populations—Nevada (0.9 per 1,000), Massachusetts (1.0 per 1,000), New York (1.1 per 1,000), Maryland (1.2 per 1,000), New Jersey (1.3 per 1,000), Washington D.C. (1.4 per 1,000), and Connecticut (1.4 per 1,000).

Several state-specific factors may have contributed to these varying arrest and removal patterns in FY 2013. Most relevant may be the extent of local cooperation with ICE generally, through programs such as 287(g) that deputize local officers to enforce immigration law,⁷⁵ and CAP specifically, through “jail check” agreements and policies regarding ICE detainer requests. For example, from 2011 to 2013, several large U.S. cities limited ICE’s access to their jails,⁷⁶ and stopped honoring ICE detainer requests for some or all noncitizens—particularly those with criminal charges, but not convictions, or those with lesser charges or convictions.⁷⁷ Other state-specific factors may include availability of public transportation and ICE’s detention capacity. Although these are plausible explanatory factors, further research is needed to understand the varying impact of CAP at the state level.

Conclusion and Looking Forward

This examination of CAP's outcomes from fiscal years 2010 to 2013 offers important insights into CAP's operations over time and its potential impact on communities moving forward. Understanding CAP is critical to understanding ICE's overall interior enforcement activities. This understanding takes on added importance as ICE begins implementing its 2014 enforcement priorities and engages state and local law enforcement through PEP.

Since the years for which this report examined data, CAP has remained the primary program through which ICE conducts enforcement in the interior of the United States. In FY 2014, CAP was responsible for 524,522 encounters, 122,826 arrests, and 68,244 removals, according to ICE⁷⁸—compared to ICE's 102,224 overall “interior removals” (in other words, removals of individuals apprehended in the interior).⁷⁹ With ICE still focusing on removing noncitizens with criminal convictions by leveraging state and local law-enforcement arrests,⁸⁰ and with Secure Communities (and now PEP) fingerprint-sharing from state and local law enforcement subsumed into CAP's operations, CAP will likely remain a key (if not the) linchpin of ICE's efforts to achieve interior removals.

That said, CAP's target population and removal processes will likely change. On November 20, 2014, DHS Secretary Johnson, among other actions, (1) narrowed ICE's removal priorities from any noncitizen convicted of any crime to those “convicted of specifically enumerated crimes,”⁸¹ and (2) changed CAP's enforcement processes after CAP receives information from local law enforcement, by replacing ICE “detainer” requests (i.e., to hold a noncitizen) with requests for notification of release, absent special circumstances.⁸²

Johnson's first change, the narrowing of ICE's priorities, could significantly reduce the numbers of noncitizens targeted through CAP in two key groups: (1) those without convictions (e.g., those only arrested or charged), which constituted 27.4 percent of those CAP removed from FY 2010 to 2013, and (2) those convicted of certain lesser offenses that no longer meet ICE's priorities, potentially as many as 34.4 percent of those CAP removed from FY 2010 to 2013. These latter individuals are those whose most serious conviction is for a Part II-nonviolent offense, a nuisance offense, drug possession, an immigration-related criminal offense, or a non-DUI traffic offense⁸³—but who do not remain an ICE priority because they have not committed a criminal felony, an “aggravated felony” under immigration laws, three misdemeanor offenses arising on separate occasions, or a misdemeanor with a 90-day sentence or longer.⁸⁴

The likelihood of a decline in the number of noncitizens targeted by CAP, however, depends on ICE's effective implementation of the 2014 Johnson Memo priorities. ICE would have to adjust CAP's daily work so as to **not** target and remove some of those individuals whom CAP has been removing in large numbers. For example, it is unclear whether the May 2013 CAP guidance that targets those without convictions remains in place following the 2014 Johnson

Memo.⁸⁵ Additionally, ICE would have to adjust its daily work based on criminal offense level classifications (i.e., Level 1-2-3), since a significant amount of Level 1 and Level 2 offenders will no longer meet ICE’s new priorities⁸⁶—namely, 36.1 percent of Level 1 offenders and 55.5 percent of Level 2 offenders that CAP removed from FY 2011 through FY 2013.

But tellingly, this report shows that CAP encounter numbers have remained oversized relative to CAP removals—in FY 2014, nearly eight times as large, suggesting that the program may not be narrowly designed to target those who fall within the government’s priorities. Logically, if CAP is targeting fewer individuals, encounters should drop. Whether reductions in encounters occur or not, since large numbers of encounters appear either unnecessary or inefficient, Congress may want to more closely examine current levels of CAP funding.

As to Johnson’s second change—ICE’s replacement of detainer requests with notification requests—the impact upon CAP will likely be state-specific, depending on the willingness of state and local authorities to cooperate with ICE. Many local law-enforcement leaders,⁸⁷ and the President’s Task Force on 21st Century Policing,⁸⁸ note that cooperation with ICE inhibits community trust and thus local immigrant reporting of crimes.⁸⁹ States and localities have, to date, implemented a range of protocols regarding ICE cooperation.⁹⁰ Indeed, the state-by-state CAP arrest and removal data in this report may reflect differing levels of cooperation with ICE.

If ICE’s goal is to remove serious public safety threats, a broad “jail check” program such as CAP may not be an efficient way to do it. Jail check or arrest check programs, by their nature, funnel into immigration enforcement those noncitizens apprehended by local law enforcement⁹¹—and those apprehended by local law enforcement tend to overwhelmingly be apprehended for lesser offenses. Congress should more closely examine CAP funding, given these dynamics. The government also should report on a regular basis statistics on encounters, arrests, and removals by specific types of criminal convictions. Finally, there must be more oversight over DHS’s steps to forestall racial profiling, given the disproportionate numbers of Mexicans and Central Americans removed through CAP.⁹²

Glossary

Encounters: “An ICE encounter of a person is defined as the interview, screening, and determination of his/her citizenship, nationality, and lawful presence (i.e., whether or not the alien is present in the United States after the expiration of the period of stay authorized by the Secretary or is present in the United States without being admitted or paroled), and legal right to remain in the United States of America. An encounter, detainer or charging documents issued by ICE does not necessarily result in the individual being placed into ICE custody.”⁹³

Arrests: “The arrest date refers to the date in which an individual was either booked into ICE custody or processed prior to being booked into ICE custody.”⁹⁴

Removals: “FY2010-2013 Removals include Returns, which include Voluntary Returns, Voluntary Departures and Withdrawals under Docket Control.”⁹⁵

Lead Type: “The Lead Type is a category of event, incident, or anything of interest to immigration authorities. The Lead Source is a category of the origin of information regarding an occurrence.”⁹⁶

ICE Criminal Offense level: Since FY 2011, ICE has defined criminality as whether or not an alien has an ICE Threat Level (convicted criminal) or not (non-criminal immigration violator). For purposes of prioritizing the removal of aliens convicted of crimes, ICE personnel refer to the following offense levels: Level 1, Level 2, and Level 3 offenders. Level 1 offenders are those aliens convicted of “aggravated felonies,” as defined in § 101(a)(43) of the Immigration and Nationality Act, or two (2) or more crimes each punishable by more than 1 year, commonly referred to as “felonies.” Level 2 offenders are aliens convicted of any other felony or three (3) or more crimes each punishable by less than 1 year, commonly referred to as “misdemeanors.” Level 3 offenders are aliens convicted of “misdemeanor” crime(s) punishable by less than 1 year.⁹⁷

“Definite Criminal”: “The “Definite Criminal Yes No” column is populated based on whether a criminal conviction is recorded in ENFORCE’s Crime Entry Screen. Aliens may have criminal convictions that have not been recorded in the Crime Entry Screen.”⁹⁸

“Most Serious Criminal Charge”: Reflects “the most serious convicted criminal charge on record at the time of removal.”⁹⁹ These categories are drawn from the NCIC criminal charge code that ICE reported to us within its removals data. We used a list describing ICE’s internal “business rules” for using NCIC codes, publicly available and posted on TRAC’s website.¹⁰⁰ ICE’s data stated that this NCIC code reflects “the most serious convicted criminal charge on record at the time of removal.”¹⁰¹

NCIC code: Classification of criminal offenses based on codes from the Department of Justice’s National Crime Information Center (NCIC).

Aggravated Felony: An “aggravated felony” is a term of art, defined by an immigration statute, used to describe a category of criminal offenses carrying particularly harsh immigration consequences for noncitizens convicted of such crimes. Regardless of their immigration status, noncitizens who have been convicted of an “aggravated felony” are prohibited from receiving most forms of relief that would spare them from deportation, including asylum, and from being readmitted to the United States at any time in the future. An “aggravated felony” need not be aggravated nor a felony under criminal laws.¹⁰²

Reference Guide

CAP Initiatives

During its existence, ICE's Criminal Alien Program has engaged in several initiatives that complement its traditional "jail check" activities, expand its "at-large" activities in the community, or both. These initiatives include:

CAP Surges: A "CAP Surge" represents ICE's effort to focus resources to intensify and augment CAP's traditional "jail check" removals within a short time period. ICE does this within a particular geographical Field Office through a "Removal Surge Operation" (CAPRSO),¹⁰³ and, since FY 2014, has added ICE officers from across the country to a Field Office through the CAP "Surge Enforcement Team" (CAPSET).¹⁰⁴ The goal of a CAP Surge is to ensure that "100 percent of all priority criminal aliens booked into targeted facilities that are amenable to immediate removal obtain a removal order" (CAPRSO), or to "[i]ncrease the number of priority criminal aliens identified and fully processed prior to their release from custody" (CAPSET).¹⁰⁵

Threats to the Community (TC): CAP's new "Threats to the Community" (TC) initiative—an "at-large" initiative—consists of "targeted at-large enforcement operations led by CAP to investigate, arrest, and remove criminal aliens that pose the greatest threats to the community." The initiative "targets criminal aliens utilizing ICE priorities, focusing on at-large criminal aliens identified through interoperability" [i.e. Secure Communities fingerprint-sharing], "as well as those jurisdictions which limit or refuse ICE access to their facilities."¹⁰⁶ ICE first publicly disclosed the initiative in February 2015, in its FY 2016 budget request.

Joint Criminal Alien Removal Taskforce (JCART): In ICE's words, "ICE's Joint Criminal Alien Removal Taskforce (JCART) focuses on locating and arresting at-large criminal aliens with convictions for drug trafficking, violent crimes and sex offenses. Working closely with other agencies, JCART conducts special operations including criminal aliens who have been released from federal, state, or local custody."¹⁰⁷ In February 2013, ICE stated that JCART was then currently "active in the Los Angeles and New York Field Offices."¹⁰⁸ It appears that ICE may have since replaced JCART with the "Threats to the Community" (TC) initiative,¹⁰⁹ although ICE's website still lists JCART as an active initiative.¹¹⁰

Violent Criminal Alien Section (VCAS): CAP's Violent Criminal Alien Section (VCAS) initiative exists to facilitate federal criminal prosecutions of criminal violations that are discovered through ICE enforcement activities.¹¹¹ VCAS focuses on "recidivist" noncitizens with convictions (i.e. those who have offended more than once),¹¹² so as to "enhance public safety" and deter future recidivism—either by deterring crime through prosecution, or simply incarcerating offenders.¹¹³ VCAS screens for recidivists encountered not only through CAP, but through local law enforcement or Fugitive Operations raids.¹¹⁴ VCAS then refers cases to federal prosecutors (i.e. the United States' Attorneys' Offices) for prosecution.¹¹⁵

Rapid Removal of Eligible Parolees Accepted for Transfer (Rapid REPAT Program): In ICE’s words, the “Rapid Removal of Eligible Parolees Accepted for Transfer (REPAT) Program is a joint partnership with state correctional/parole agencies designed to expedite the process of identifying and removing criminal aliens from the U.S. by allowing selected non-violent criminal aliens incarcerated in U.S. prisons and jails to accept early release in exchange for voluntarily returning to their country of origin.”¹¹⁶

Detention Enforcement and Processing Offenders by Remote Technology (DEPORT): In ICE’s words: “Approximately 27 percent of inmates in Federal Bureau of Prisons (BOP) custody are non-U.S. citizens. ERO created the Detention Enforcement and Processing Offenders by Remote Technology (DEPORT) Center in Chicago to process this population through CAP. ERO officers and agents assigned to the DEPORT Center conduct interviews of BOP inmates nationwide using video teleconference equipment. Through the combined effort of the DEPORT Center and local ERO resources, criminal aliens from all federal detention facilities are taken into ERO custody upon completion of their sentences.”¹¹⁷

Phoenix Law Enforcement Area Response (LEAR):¹¹⁸ This initiative, specific to ICE’s Phoenix, Arizona field office, “provides a method for state and local law enforcement agencies (LEAs) in Arizona to directly contact ICE regarding suspected immigration violators.”¹¹⁹ ICE’s LEAR staff would respond to local agencies 24/7; ICE officers would determine nationality, immigration status, and removability, place detainers, and process noncitizens for removal.¹²⁰ It is unclear if LEAR is still in operation. Since February 2013, ICE has not listed it in its annual budget requests.

APPENDIX 1: Most Serious Criminal Charge Category, by Fiscal Year

Most Serious Criminal Charge	2010		2011		2012		2013		Total	
	Freq.	%	Freq.	%	Freq.	%	Freq.	%	Freq.	%
Not "Definite Criminal"	64,867	37.9	38,095	27.4	25,280	21.0	11,054	14.3	139,296	27.4
Traffic Offenses	24,699	14.4	30,142	21.7	28,116	23.4	18,554	24.0	101,511	20.0
Dangerous Drugs	29,479	17.2	24,352	17.5	21,755	18.1	15,807	20.5	91,393	18.0
Assault	8,376	4.9	7,884	5.7	7,558	6.3	5,355	6.9	29,173	5.7
Immigration	7,510	4.4	6,967	5.0	6,281	5.2	5,000	6.5	25,758	5.1
Larceny	3,580	2.1	3,391	2.4	2,926	2.4	1,881	2.4	11,778	2.3
Burglary	2,960	1.7	2,189	1.6	2,064	1.7	1,373	1.8	8,586	1.7
Robbery	2,768	1.6	2,017	1.5	2,051	1.7	1,395	1.8	8,231	1.6
General Crimes	2,168	1.3	2,314	1.7	2,125	1.8	1,296	1.7	7,903	1.6
Sexual Assault	2,551	1.5	1,896	1.4	1,896	1.6	1,448	1.9	7,791	1.5
Fraudulent Activities	2,278	1.3	2,218	1.6	1,909	1.6	1,195	1.5	7,600	1.5
Family Offenses	2,373	1.4	1,927	1.4	1,325	1.1	750	1.0	6,375	1.3
Public Peace	1,723	1.0	1,691	1.2	1,655	1.4	1,022	1.3	6,091	1.2
Weapon Offenses	1,953	1.1	1,599	1.2	1,387	1.2	1,021	1.3	5,960	1.2
Forgery	1,737	1.0	1,626	1.2	1,233	1.0	799	1.0	5,395	1.1
Sex Offenses (Not Assault or omm .sex	1,818	1.1	1,212	0.9	1,281	1.1	1,007	1.3	5,318	1.0
Obstructing the Police	1,220	0.7	1,485	1.1	1,433	1.2	852	1.1	4,990	1.0
Obstructing Judiciary, Congress, Legislat.	920	0.5	1,073	0.8	957	0.8	614	0.8	3,564	0.7
Stolen Vehicle	1,220	0.7	867	0.6	740	0.6	461	0.6	3,288	0.6
Health & Safety	1,675	1.0	800	0.6	433	0.4	238	0.3	3,146	0.6
Invasion of Privacy	920	0.5	814	0.6	828	0.7	494	0.6	3,056	0.6
Stolen Property	934	0.5	697	0.5	620	0.5	375	0.5	2,626	0.5
Homicide	844	0.5	475	0.3	530	0.4	437	0.6	2,286	0.5
Kidnapping	531	0.3	468	0.3	566	0.5	496	0.6	2,061	0.4
Liquor	327	0.2	531	0.4	487	0.4	324	0.4	1,669	0.3
Commercialized Sexual Offenses	469	0.3	396	0.3	347	0.3	235	0.3	1,447	0.3
Flight & Escape	375	0.2	351	0.3	386	0.3	249	0.3	1,361	0.3
Damage Property	353	0.2	374	0.3	326	0.3	230	0.3	1,283	0.3
Threat	139	0.1	111	0.1	101	0.1	70	0.1	421	0.1
Smuggling	110	0.1	85	0.1	81	0.1	77	0.1	353	0.1
Arson	106	0.1	50	0.0	52	0.0	46	0.1	254	0.1
Conservation	49	0.0	48	0.0	36	0.0	24	0.0	157	0.0
Obscenity	53	0.0	26	0.0	30	0.0	30	0.0	139	0.0
Embezzlement	49	0.0	36	0.0	23	0.0	17	0.0	125	0.0
Extortion	38	0.0	25	0.0	20	0.0	24	0.0	107	0.0
Juvenile Offenders	35	0.0	21	0.0	31	0.0	16	0.0	103	0.0
Gambling	23	0.0	17	0.0	28	0.0	10	0.0	78	0.0
Bribery	18	0.0	14	0.0	17	0.0	9	0.0	58	0.0
Tax Revenue	15	0.0	10	0.0	10	0.0	8	0.0	43	0.0
Sovereignty	8	0.0	5	0.0	5	0.0	1	0.0	19	0.0
Military	1	0.0	1	0.0	2	0.0	1	0.0	5	0.0
Abortion	1	0.0	2	0.0	0	0.0	1	0.0	4	0.0
Civil Rights	1	0.0	2	0.0	0	0.0	0	0.0	3	0.0
Antitrust	0	0.0	1	0.0	0	0.0	1	0.0	2	0.0
Missing	7	0.0	666	0.5	3,440	2.9	2,934	3.8	7,047	1.4
Total	171,281	100	138,971	100	120,371	100	77,231	100	507,854	100.0

APPENDIX 2: “Most Serious Criminal Charge Category” by “Removal Criminal Offense Level”, FY2011-2013

Most Serious Criminal Charge	Level 1	%	Level 2	%	Level 3	%	NA	%	Total	%
Traffic Offenses	9,558	12.4	20,529	26.7	46,725	60.8	0	0.0	76,812	30.1
Dangerous Drugs	38,399	62.0	12,998	21.0	10,516	17.0	1	0.0	61,914	24.3
Assault	11,874	57.1	5,407	26.0	3,516	16.9	0	0.0	20,797	8.2
Immigration	4,232	23.2	4,293	23.5	9,723	53.3	0	0.0	18,248	7.2
Larceny	3,756	45.8	3,546	43.3	896	10.9	0	0.0	8,198	3.2
General Crimes	934	16.3	1,434	25.0	3,367	58.7	0	0.0	5,735	2.2
Burglary	4,487	79.8	1,077	19.1	62	1.1	0	0.0	5,626	2.2
Robbery	5,221	95.6	242	4.4	0	0.0	0	0.0	5,463	2.1
Fraudulent Activities	4,346	81.7	976	18.3	0	0.0	0	0.0	5,322	2.1
Sexual Assault	4,990	95.2	250	4.8	0	0.0	0	0.0	5,240	2.1
Public Peace	705	16.1	913	20.9	2,750	63.0	0	0.0	4,368	1.7
Weapon Offenses	3,079	76.8	928	23.2	0	0.0	0	0.0	4,007	1.6
Family Offenses	2,275	56.8	1,183	29.6	544	13.6	0	0.0	4,002	1.6
Obstructing the Police	1,277	33.9	1,436	38.1	1,057	28.0	0	0.0	3,770	1.5
Forgery	2,591	70.8	1,067	29.2	0	0.0	0	0.0	3,658	1.4
Sex Offenses (Not Involving Assault or Commercialized Sex)	2,723	77.8	745	21.3	32	0.9	0	0.0	3,500	1.4
Obstructing Judiciary, Congress, Legislature, Etc.	695	26.3	560	21.2	1,389	52.5	0	0.0	2,644	1.0
Invasion of Privacy	468	21.9	454	21.3	1,214	56.8	0	0.0	2,136	0.8
Stolen Vehicle	1,189	57.5	693	33.5	186	9.0	0	0.0	2,068	0.8
Stolen Property	1,020	60.3	672	39.7	0	0.0	0	0.0	1,692	0.7
Kidnapping	1,234	80.7	184	12.0	112	7.3	0	0.0	1,530	0.6
Health & Safety	266	18.1	307	20.9	898	61.0	0	0.0	1,471	0.6
Homicide	1,233	85.5	209	14.5	0	0.0	0	0.0	1,442	0.6
Liquor	165	12.3	293	21.8	884	65.9	0	0.0	1,342	0.5
Flight & Escape	807	81.8	69	7.0	110	11.2	0	0.0	986	0.4
Commercialized Sexual Offenses	239	24.4	165	16.9	574	58.7	0	0.0	978	0.4
Damage Property	228	24.5	226	24.3	476	51.2	0	0.0	930	0.4
Threat	268	95.0	3	1.1	0	0.0	11	3.9	282	0.1
Smuggling	24	9.9	86	35.4	133	54.7	0	0.0	243	0.1
Arson	131	88.5	17	11.5	0	0.0	0	0.0	148	0.1
Conservation	16	14.8	23	21.3	69	63.9	0	0.0	108	0.0
Obscenity	12	14.0	38	44.2	36	41.9	0	0.0	86	0.0
Embezzlement	40	52.6	36	47.4	0	0.0	0	0.0	76	0.0
Extortion	34	49.3	35	50.7	0	0.0	0	0.0	69	0.0
Juvenile Offenders	17	25.0	19	27.9	32	47.1	0	0.0	68	0.0
Gambling	8	14.5	10	18.2	37	67.3	0	0.0	55	0.0
Bribery	23	57.5	8	20.0	9	22.5	0	0.0	40	0.0
Tax Revenue	7	25.0	4	14.3	17	60.7	0	0.0	28	0.0
Sovereignty	11	100.0	0	0.0	0	0.0	0	0.0	11	0.0
Military	0	0.0	3	75.0	1	25.0	0	0.0	4	0.0
Abortion	0	0.0	2	66.7	1	33.3	0	0.0	3	0.0
Antitrust	0	0.0	0	0.0	2	100.0	0	0.0	2	0.0
Civil Rights	2	100.0	0	0.0	0	0.0	0	0.0	2	0.0
Total	108,584	42.6	61,140	24.0	85,368	33.5	12	0.0	255,104	100

Endnotes

1. In FY 2014, ICE reported that it conducted 102,224 “interior removals,” i.e., “removals of individuals apprehended in the interior of the United States.” U.S. DHS, Immigration and Customs Enforcement (ICE), “ICE Enforcement and Removal Operations Report, Fiscal Year 2014,” December 19, 2014, <https://www.ice.gov/doclib/about/offices/ero/pdf/2014-ice-immigration-removals.pdf>, p. 7. ICE separately reported that its CAP arrests in FY 2014 led to 68,244 removals. U.S. DHS, Immigration and Customs Enforcement “Fiscal Year 2016 Congressional Justification, Salaries and Expenses,” February 5, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>, p. 59. In FY 2012, ICE conducted 164,127 interior removals. Marc Rosenblum and Kristen McCabe, *Deportation and Discretion: Reviewing the Record and Options for Change*, (Washington, DC: Migration Policy Institute, October 2014), <http://www.migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change>, p. 38. Based on the data analyzed in this report, of the 164,127 interior removals, ICE removed 120,371 through CAP—73 percent of the total number of interior removals. Similarly, in FY 2011, the number of CAP removals (138,971) constituted 74 percent of the total number of ICE interior removals. *Infra*, Table 2.
2. In FY 2014, ICE reported that it conducted 102,224 “interior removals,” i.e. “removals of individuals apprehended in the interior of the United States.” U.S. DHS, Immigration and Customs Enforcement (ICE), “ICE Enforcement and Removal Operations Report, Fiscal Year 2014,” December 19, 2014, <https://www.ice.gov/doclib/about/offices/ero/pdf/2014-ice-immigration-removals.pdf>, p. 7. ICE separately reported that its CAP arrests in FY 2014 led to 68,244 removals. U.S. DHS, Immigration and Customs Enforcement, “Fiscal Year 2016 Congressional Justification, Salaries and Expenses,” February 5, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>, p. 59. In FY 2012, ICE conducted 164,127 interior removals. Marc Rosenblum and Kristen McCabe, *Deportation and Discretion: Reviewing the Record and Options for Change*, (Washington, DC: Migration Policy Institute, October 2014), <http://www.migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change>, p. 38. Based on the data analyzed in this report, of the 164,127 interior removals, ICE removed 120,371 through CAP—73 percent of the total number of interior removals. Similarly, in FY 2011, the number of CAP removals (138,971) constituted 74 percent of the total number of ICE interior removals. *Infra*, Table 2.
3. Jeh Johnson, Secretary, Department of Homeland Security, Memorandum, “Policies for the Apprehension, Detention and Removal of Undocumented Immigrants,” November 20, 2014, http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf.
4. Compare statements of Richard Biehl, Chief of Police, Dayton Police Department, and Scott Jones, Sheriff, Sacramento County. *Sanctuary Cities: A Threat to Public Safety: Hearing Before the Committee on the Judiciary Subcommittee on Immigration and Border Security, House of Representatives*, 114th Cong., 1 (July 23, 2015) (Statements of Richard Biehl, http://judiciary.house.gov/?a=Files.Serve&File_id=F535F46D-35BE-466F-9270-D32CD7AD9582, and Scott Jones, http://judiciary.house.gov/?a=Files.Serve&File_id=079C632B-EC40-494A-9DED-4D3D31AEE569).
5. This report analyzes CAP-specific data provided by ICE in three separate datasets—namely, “CAP encounters,” “CAP removals,” and “CAP arrests.” Period covered: October 1, 2009 – August 17, 2013. AIC vs. DHS (CAP) FY2010-2013 (on file with American Immigration Council).
6. The classification of “violent” we use in this report is made according to the FBI’s Uniform Crime Reporting program, which states “The seven Part I offense classifications [include] the violent crimes of murder and nonnegligent manslaughter, rape, robbery, and aggravated assault as well as the property crimes of burglary, larceny-theft, and motor vehicle theft. By congressional mandate, arson was added as the eighth Part I offense category in 1979.” U.S. Department of Justice Federal Bureau of Investigation, “Summary of the Uniform Crime Reporting (UCR) Program,” 2014, https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/about-ucr/aboutucrmain_final.pdf, p. 2.
7. Marc Rosenblum and Kristen McCabe, *Deportation and Discretion: Reviewing the Record and Options for Change*, (Washington, DC: Migration Policy Institute, October 2014), <http://www.migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change>, p. 14-15, 44-47.
8. The remaining 55.4% consists of other offense categories, including Traffic-DUI (13.6%), Drug Possession (12.2%), Part 2-Nonviolent (8.9%), Drug Sale and Distribution (7.5%), Non-DUI Traffic (6.0%), Immigration (4.5%), and Nuisance Crime (2.8%). *Ibid.*, p. 14-15.
9. Human Rights Watch, “A Price Too High: US Families Torn Apart by Deportations for Drug Offenses,” June 2015, <https://www.hrw.org/report/2015/06/16/price-too-high/us-families-torn-apart-deportations-drug-offenses>; Dallas Morning News, “Deportations of minor offenders soared even as Obama targeted serious criminals, analysis finds,” April 6, 2014, <http://www.dallasnews.com/news/local-news/20140406-deportations-of-minor-offenders-soared-even-as-obama-targeted-serious-criminals-analysis-finds.ece>; Marc Rosenblum and Kristen McCabe, *Deportation and Discretion: Reviewing the Record and Options for Change*, (Washington, DC: Migration Policy Institute, October 2014), <http://www.migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change>, p. 11-20.
10. Testimony of Sarah Saldaña, Director, U.S. Immigration and Customs Enforcement. *Oversight Of U.S. Immigration And Customs Enforcement: Hearing Before the Committee on the Judiciary, House of Representatives*, 114th Cong., 1, (April 14, 2015), <http://www.c-span.org/video/?325332-1/hearing-immigration-customs-enforcement>, at 32:35 (“In the United States in 2014, more than 102,000 were apprehended in the interior of the United States, and perhaps more importantly, 85% of those were immigrants previously convicted of a criminal offense. This demonstrates our renewed focus on the worst criminals...”).
11. ICE recently stated that CAP’s mission encompasses two functions: (1) supporting ICE in “apprehending and removing criminal aliens who are incarcerated within local, state, and federal prisons and jails,” and (2) to “actively investigate and arrest at-large criminal and other priority aliens that pose a significant risk to public safety and national security, or otherwise meet ICE priorities.” U.S. DHS, Immigration and Customs Enforcement, “Fiscal Year 2016 Congressional Justification, Salaries and Expenses,” February 5, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>, p. 58, 60.
12. American Immigration Council, “The Criminal Alien Program (CAP): Immigration Enforcement in Prisons and Jails,” August 2013, http://immigrationpolicy.org/sites/default/files/docs/cap_fact_sheet_8-1_fin_0.pdf, p. 4; *Am. Immig. Council v. Dep’t of Homeland Security*, Deposition, Jamison Matuszewski, 12-cv-355, February 1, 2013, http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/12-Matuszewski_Jamison_Deposition.pdf, p. 46:16-47:5 (Q: “. . .if anyone within ERO could be doing CAP duties, what makes them different from somebody specifically designated as a CAP official?” A. “There’s nothing. There’s no one specifically designated except for dealing with monetary purposes and budgetary issues.” Q. “Okay. So being specifically designated as a CAP officer, all that means is that your salary is coming from the pot of money that’s specified for CAP officers?” [objection] A. “Yes.”).
13. *Ibid.*, p. 45:13-18.
14. *Ibid.*, p. 46:4-14 (Q: “What does it mean to be a CAP officer now?” A: “It means that you’re conducting Criminal Alien Program duties, either within a jail or dealing with the criminal justice system. Somebody that circumvented the criminal justice system got released, somebody that has been identified but is no longer in jail, or someone that’s being prosecuted for any Title within the United States Code.”). Previously, CAP had conducted its work through a team-based model, under which dedicated “CAP teams,” a 10-person team with a supervisor, several agents, and assistants, pursued the removal of noncitizens with criminal convictions. *Ibid.*, 38:9-39:15; Around 2009 and 2010, however, ICE discarded that team-based model in favor of the current task-based model. *Ibid.*, 39:21-23, 44:17-25. See also U.S. DHS, Immigration and Customs Enforcement, “Budget-In-Brief, Fiscal Year 2008,” February 7,

- 2007, http://www.dhs.gov/xlibrary/assets/budget_bib-fy2008.pdf, p. 38.
15. U.S. DHS Immigration and Customs Enforcement, “Fiscal Year 2016 Congressional Justification, Salaries and Expenses,” February 5, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>, p. 55.
 16. *Am. Immig. Council v. Dep’t of Homeland Security*, Deposition, Jamison Matuszewski, 12-cv-355, February 1, 2013, http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/12-Matuszewski_Jamison_Deposition.pdf, p. 48:12-49:6; see also *Am. Immig. Council v. Dep’t of Homeland Security*, Declaration, Jamison Matuszewski, 12-cv-355, July 13, 2012, ¶ 20, http://www.legalactioncenter.org/sites/default/files/docs/lac/27-2_Matuszewski_Declaration_%282%29.pdf.
 17. American Immigration Council, “The Criminal Alien Program (CAP): Immigration Enforcement in Prisons and Jails,” August 2013, http://immigrationpolicy.org/sites/default/files/docs/cap_fact_sheet_8-1_fin_0.pdf, p. 1-2; Marc R. Rosenblum and William A. Kandel, Interior Immigration Enforcement: Programs Targeting Criminal Aliens, (CRS Report No. R42057) (Washington, DC: Congressional Research Service, 2012), <https://www.fas.org/sgp/crs/homsec/R42057.pdf>, p. 13-19.
 18. *Ibid.*, p. 14, 28-29.
 19. *Am. Immig. Council v. Dep’t of Homeland Security*, Declaration, Jamison Matuszewski, 12-cv-355, July 13, 2012, ¶ 18, 20, http://www.legalactioncenter.org/sites/default/files/docs/lac/27-2_Matuszewski_Declaration_%282%29.pdf (“mandatory reporting by federal correctional institutions to DHS of foreign-born inmates continues today”); *Am. Immig. Council v. Dep’t of Homeland Security*, Deposition, Jamison Matuszewski, 12-cv-355, February 1, 2013, http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/12-Matuszewski_Jamison_Deposition.pdf, p. 228:20-230:2.
 20. American Immigration Council, “The Criminal Alien Program (CAP): Immigration Enforcement in Prisons and Jails,” August 2013, http://immigrationpolicy.org/sites/default/files/docs/cap_fact_sheet_8-1_fin_0.pdf, p. 4.
 21. Most of the CAP encounters were referred from local rather than state law enforcement (85.8 percent of all encounters). *Encounters Spreadsheet, AIC vs. DHS (CAP) FY2010-2013* (on file with American Immigration Council).
 22. *Am. Immig. Council v. Dep’t of Homeland Security*, Deposition, Jamison Matuszewski, 12-cv-355, February 1, 2013, http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/12-Matuszewski_Jamison_Deposition.pdf, p. 59:16-60:2, 228:2-19; U.S. DHS, Immigration and Customs Enforcement, “Fiscal Year 2016 Congressional Justification, Salaries and Expenses,” February 5, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>, February 5, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>, p. 61 (“CAP officers are still required to work these facilities on a daily basis— both to physically interview those criminal aliens identified through interoperability, as well as those for which there is a “no-match” (indicates foreign-birth, but no records to confirm this)”); U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, Criminal Alien Division, “Criminal Alien Program Handbook, Version 1.0,” Doc. No. ERO 11157.1 (effective date May 14, 2013), http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/22-ERO_CAP_Handbook_5-14-13.pdf, p. 6-7 (on file with American Immigration Council, obtained through FOIA) (“However the interview is conducted, it must follow a distinct line of questioning that ultimately leads to a determination of alienage and removability.”).
 23. *Am. Immig. Council v. Dep’t of Homeland Security*, Deposition, Jamison Matuszewski, 12-cv-355, February 1, 2013, http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/12-Matuszewski_Jamison_Deposition.pdf, p. 34:25-36:6
 24. U.S. Immigration and Customs Enforcement, “Priority Enforcement Program,” <https://www.ice.gov/pep> (accessed August 2015). The Secretary also noted that nothing “shall prevent ICE from seeking the transfer of an alien from a state or local law enforcement agency when ICE has otherwise determined that the alien is a priority... and the state or locality agrees to cooperate with such transfer.” Jeh Johnson, Secretary, Department of Homeland Security, Memorandum, “Secure Communities,” November 20, 2014, http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf.
 25. In 2012, DHS’ budget requests began to state more broadly that “CAP also pursues at-large criminal aliens found removable after release based on criminal convictions.” U.S. DHS Immigration and Customs Enforcement, “Fiscal Year 2013 Congressional Justification, Salaries and Expenses,” February 13, 2012, <http://www.dhs.gov/xlibrary/assets/mgmt/dhs-congressional-budget-justification-fy2013.pdf>, p. 49.
 26. U.S. DHS Immigration and Customs Enforcement, “Fiscal Year 2014 Congressional Justification, Salaries and Expenses,” April 10, 2013, <http://www.dhs.gov/sites/default/files/publications/MGMT/DHS-%20Annual%20Performance%20Report%20and%20Congressional-Budget-Justification-FY2014.pdf>.
 27. Marc R. Rosenblum and William A. Kandel, Interior Immigration Enforcement: Programs Targeting Criminal Aliens, (CRS Report No. R42057) (Washington, DC: Congressional Research Service, December 20, 2012), <https://www.fas.org/sgp/crs/homsec/R42057.pdf>, p. 12-13.
 28. INS created the Alien Criminal Apprehension Program (ACAP) and Institutional Removal Program (IRP) in 1988, after the 1986 Immigration Reform and Control Act (IRCA) included a provision that sought to expedite the deportation of noncitizens convicted of a criminal offense. Immigration Reform and Control Act, Pub. L. No. 99-603, 100 Stat. 3359, §701 (1986); 8 U.S.C. § 1252(i) (2005) (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.”). ACAP identified removable noncitizens that were in federal, state, or local custody, while IRP worked to initiate deportation proceedings during the noncitizen’s criminal incarceration. U.S. Department of Homeland Security, *Criminal Alien Program (CAP) Draft Transition Plan*, February 2006, <http://legalactioncenter.org/sites/default/files/docs/lac/CAP%20FOIA%2027-68.pdf>, p. 6. Concurrently, in 1988 Congress had created a new criminal ground for immigration removal, “aggravated felonies,” which then included murderers, drug traffickers and gun traffickers. *Anti-Drug Abuse Act of 1988*, Pub. L. No. 100-690, Sec. 7342 (1988).
 29. Mark Noferi, “Cascading Constitutional Deprivation: The Right to Appointed Counsel for Mandatorily Detained Immigrants Pending Removal Proceedings,” *Michigan Journal of Race & Law* 18:63-129, 2012, <http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1015&context=mjrl>, p. 89-94. See also Human Rights Watch, “Forced Apart: Families Separated and Harmed by United States Deportation Policy,” July 2007, <http://www.hrw.org/reports/2007/us0707/us0707web.pdf>, p. 16-34 (citing *Immigration Act of 1990*, Pub. L. No. 101-649 (1990)); *Immigration and Nationality Technical Correction Act of 1994*, Pub. L. No. 103-416 (1994); *Antiterrorism and Effective Death Penalty Act of 1996*, Pub. L. No. 104-132 (1996); *Illegal Immigrant Reform and Immigrant Responsibility Act of 1996*, Pub. L. No. 104-208, Div. C (1996).
 30. *Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009*, Pub. L. No. 110-329, 122 Stat 3659 (2008), <https://www.congress.gov/bill/110th-congress/house-bill/2638/text>, (“not less than \$1,000,000,000 ... shall be available to identify aliens convicted of a crime, and who may be deportable, and to remove them... once they are judged deportable...”). See also Jennifer E. Lake and Blas Nuñez-Neto, *Homeland Security Department: FY2009 Appropriations*, (CRS Report No. RL34482) (Washington, DC: Congressional Research Service, 2009), <http://fas.org/sgp/crs/homsec/RL34482.pdf>, p. 37-39. Currently, DHS’ FY 2015 appropriations act directs ICE to spend a minimum of \$1.6 billion. *Department of Homeland Security Appropriations Act, 2015*, Pub. L. No. 114-4, 129 Stat. 43 (2015), <https://www.congress.gov/bill/114th-congress/house-bill/240/text>.
 31. *Ibid.*
 32. See generally Michele Waslin, *The Secure Communities Program: Unanswered Questions and Continuing Concerns*, (Washington, DC: American Immigration Council, November 2011 (updated)), <http://immigrationpolicy.org/special-reports/secure-communities-program-unanswered-questions-and-continuing-concerns>.
 33. *Consolidated Appropriations Act of 2008*, Pub. L. No. 110-161, 121 Stat. 1844, 2050-51 (2007) <http://www.gpo.gov/fdsys/pkg/PLAW-110publ161/pdf/PLAW-110publ161.pdf>.

34. In February 2010, DHS stated explicitly that Secure Communities also sought to “identify, detain, and remove criminal aliens” held “at large,” whether “fugitives [from immigration proceedings] or not.” U.S. DHS Immigration and Customs Enforcement, “Fiscal Year 2011 Congressional Justification, Salaries and Expenses,” http://www.dhs.gov/xlibrary/assets/dhs_congressional_budget_justification_fy2011.pdf, p. 3, 67.
35. John Morton, Assistant Secretary, U.S. Immigration and Customs Enforcement, Memorandum, “Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens,” June 30, 2010, https://www.ice.gov/doclib/detention-reform/pdf/civil_enforcement_priorities.pdf. Morton then updated the memo in March 2011, although the ranking of individuals with convictions into Levels remained the same. John Morton, Director, U.S. Immigration and Customs Enforcement, Memorandum, “Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens,” March 2, 2011, http://www.ice.gov/doclib/foia/prosecutorial-discretion/civil-imm-enforcement-priorities_app-detrn-reml-aliens.pdf, p. 1-2.
36. Gary Mead, Executive Associate Director, ICE Office of Enforcement and Removal Operations, Email, “ERO Progress,” March 13, 2012, http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/36-Mead_Gary_EROPProgress_email.pdf (“For FY 2012, to further the safety of our communities, it is my goal to build upon our past success and surpass last year’s accomplishments. This year we should effect nearly 225,000 convicted criminal alien departures and increase the percentage of alien departures for other priority cases.”).
37. David Venturella, Assistant Director for Field Operations, ICE Office of Enforcement & Removal Operations, Email chain, “Criminal Alien Removals,” April 17-19, 2012, http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/37-Venturella_David_emails_April-2012.pdf, p. 187-188; see also *Ibid.*, p. 205-206 (“There is a lot of concern that criminal removals will fall below not only target but possibly lower than last year’s output. . . . what else would you need from HQ to help you accomplish this? More resources is a no brainer so need to ask; however, are there any standing orders or directives we have issued that need to be rescinded that may prevent you from carrying out this order?”).
38. Email, “RE: Criminal Alien Removals–ATL Fug Ops Suggestions,” April 18, 2012, http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/37-Venturella_David_emails_April-2012.pdf, p. 202.
39. *Am. Immig. Council v. Dep’t of Homeland Security*, Deposition, Jamison Matuszewski, 12-cv-355, February 1, 2013, http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/12-Matuszewski_Jamison_Deposition.pdf, p. 221:9-25.
40. The CAP Handbook defines a “CAP case” as “any removable alien identified in a federal, state, and local jail/prison or at-large in the community, **regardless of the status of conviction.**” U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, Criminal Alien Division, “Criminal Alien Program Handbook, Version 1.0,” Doc. No. ERO 11157.1 (effective date May 14, 2013), http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/22-ERO_CAP_Handbook_5-14-13.pdf, p. 50 (emphasis intact).
41. *Am. Immig. Council v. Dep’t of Homeland Security*, Deposition, Jamison Matuszewski, 12-cv-355, February 1, 2013, http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/12-Matuszewski_Jamison_Deposition.pdf, p. 222:4-223:3 (Q: “Does CAP identify individuals as removal noncitizens who have not been convicted of a crime?” A: “Yes.” Q: “Individuals who have been -- are in prisons or jails but have charges pending?” A: “Yes.” Q: “So if a person is identified by CAP but never convicted of a crime, are they included in those statistics of CAP removals?” A: “If they’re removed.”).
42. U.S. DHS, Immigration and Customs Enforcement, “ICE Enforcement and Removal Operations Report, Fiscal Year 2014,” December 19, 2014, <https://www.ice.gov/doclib/about/offices/ero/pdf/2014-ice-immigration-removals.pdf>, p. 19.
43. U.S. Immigration and Customs Enforcement, “Secure Communities,” <http://www.ice.gov/secure-communities> (accessed August 2015).
44. U.S. DHS, Immigration and Customs Enforcement, “Fiscal Year 2014 Congressional Justification, Salaries and Expenses,” April 10, 2013, <http://www.dhs.gov/sites/default/files/publications/MGMT/DHS-%20Annual%20Performance%20Report%20and%20Congressional-Budget-Justification-FY2014.pdf>, p. 3 (“The program will continue its strategy, business transformation, and analytical roles by maturing and leveraging its analytic capabilities and systems.”).
45. The Administration accordingly proposed to realign \$74.3 million of funding from Secure Communities into CAP for FY 2014. U.S. DHS, Immigration and Customs Enforcement, “Fiscal Year 2014 Congressional Justification, Salaries and Expenses,” April 10, 2013, <http://www.dhs.gov/sites/default/files/publications/MGMT/DHS-%20Annual%20Performance%20Report%20and%20Congressional-Budget-Justification-FY2014.pdf>, p. 57. Secure Communities ultimately received minimal transitional funding for FY 2014 (\$25 million). The Administration did not request separate Secure Communities funding for FY 2015. *Ibid.*, p. 140.
46. U.S. DHS, Immigration and Customs Enforcement, “Fiscal Year 2015 Congressional Justification, Salaries and Expenses,” <http://www.dhs.gov/sites/default/files/publications/DHS-Congressional-Budget-Justification-FY2015.pdf>, p. 3 (“CAP is also responsible for the day-to-day management of IDENT/IAFIS interoperability (Secure Communities), previously managed by Comprehensive Identification and Removal of Criminal Aliens (CIRCA) program.”). ICE stated that in FY 2015 ICE would “transition the remaining infrastructure components of Secure Communities” into CAP. *Ibid.*, p. 59.
47. Jeh Johnson, Secretary, Department of Homeland Security, Memorandum, “Secure Communities,” November 20, 2014, http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf.
48. Jeh Johnson, Secretary, Department of Homeland Security, Memorandum, “Policies for the Apprehension, Detention and Removal of Undocumented Immigrants,” November 20, 2014, http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf.
49. Immigration and Customs Enforcement, “Criminal Alien Program overview,” <http://www.ice.gov/criminal-alien-program> (accessed April 1, 2015) (“the Criminal Alien Program (CAP) provides ICE-wide direction and support in the biometric and biographic identification, arrest, and removal of priority aliens who are incarcerated within federal, state, and local prisons and jails, **as well as at-large criminal aliens.**”) (emphasis added); see also Wes Bruer, “ICE arrests more than 2,000 fugitive immigrants,” *CNN.com*, March 9, 2015, <http://www.cnn.com/2015/03/09/politics/ice-arrests-immigrants/> (“[ICE] arrested more than 2,000 people as part of a five-day sweep aimed at detaining fugitive immigrants associated with gangs and other criminal backgrounds. The enforcement operation was called “Cross Check” and targeted “the worst of the worst criminals,” said Alejandro Mayorkas, deputy secretary of Homeland Security. . . .”); see also U.S. DHS, Immigration and Customs Enforcement, “Fiscal Year 2016 Congressional Justification, Salaries and Expenses,” February 5, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>, p. 58 (CAP targets “at-large” noncitizens in the community).
50. Data for fiscal years 2010 through 2012 are complete. All data for fiscal year 2013 are updated through August 17, 2013. Thus, the 2013 data is 45 days (12.3 percent) short of a full fiscal year (45/365). The *Removals Spreadsheet* states, in the “General Notes” section, that “FY2013 data are updated through 08/17/2013 (ICE Integrated Decision Support (IIDS) v. 1.14 run date 08/19/2013; ENFORCE Integrated Database as of 08/17/2013). FY2010-2012 data are historic and remain static.” (obtained through FOIA request, on file with American Immigration Council). The *Encounters Spreadsheet* states, in the “General Notes” section, that “FY2013 data are updated through 08/17/2013 (ICE Integrated Decision Support (IIDS) v. 1.14 run date 08/19/2013; ENFORCE Integrated Database as of 08/17/2013). FY2010-2012 data are historic and remain static.” (obtained through FOIA request, on file with American Immigration Council). The *Arrests Spreadsheet* indicates in the “General Notes” section that “FY2013 data are updated through 08/17/2013 (ICE Integrated

- Decision Support (IDS) v. 1.14 run date 08/19/2013; ENFORCE Integrated Database as of 08/17/2013). FY2010-2012 data are historic and remain static.” (obtained through FOIA request, on file with American Immigration Council).
51. *Am. Immig. Council v. Dep’t of Homeland Security*, Deposition, Jamison Matuszewski, 12-cv-355, February 1, 2013, http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/12-Matuszewski_Jamison_Deposition.pdf, p. 58:3-60:2 (unit chief of the Criminal Alien Program stated that a “CAP encounter would be an individual screening of an individual done by a Criminal Alien Program assigned officer at the time...” Q: “a CAP encounter would be an officer either talking to someone, an interview, or looking at, for example, information in an ICE database screening?” A: “An ICE database or any other database available to that officer. ...An encounter can be anything from an at-large interview where a person’s on the street and you’re talking to the person on the street, going down to a screening of an individual’s records that is not incarcerated, and then on the reverse side doing the same thing to somebody that is incarcerated, either talking to or screening records.”); U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, Criminal Alien Division, “Criminal Alien Program Handbook, Version 1.0,” Doc. No. ERO 11157.1 (effective date May 14, 2013), http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/22-ERO_CAP_Handbook_5-14-13.pdf, p. 6-7 (“Interviews conducted by ERO officers can take place in any number of environments. ... However the interview is conducted, it must follow a distinct line of questioning that ultimately leads to a determination of alienage and removability.”).
 52. Data for encounters, arrests, and removals was provided by ICE in three separate datasets. Because a unique identifier was not provided, it is not possible to track cases across datasets. In February 2015, ICE publicly reported for the first time CAP encounters data since FY 2010. For FY 2010 and FY 2011, ICE’s public data on encounters matches this data that ICE provided to the Council. For FY 2012, ICE publicly reported 661,506 CAP encounters, while ICE’s provided data reported 674,368 CAP encounters. For FY 2013, ICE publicly reported 620,903 CAP encounters, which is not out of line with ICE’s provided part-year data of 556,708 CAP encounters. For FY 2014, ICE publicly reported 524,522 CAP encounters and 122,836 CAP arrests. AIC vs. DHS (CAP) FY2010-2013 (obtained through FOIA, on file with American Immigration Council); U.S. DHS, Immigration and Customs Enforcement, “Fiscal Year 2016 Congressional Justification, Salaries and Expenses,” February 5, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>, p. 59-60.
 53. A chart titled “FY 12 – Detainers for Citizenship of: UNITED STATES vs UNKNOWN,” reflecting data pulled as of Sept. 20, 2012, appears in multiple emails with the subject header “CAP Data Request.” Email, “CAP Data Request,” October 4, 2012, http://www.immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/53-USC_Detainer_Issue_email-9-26-12.pdf; A September 26, 2012 email, from the Acting Unit Chief of Field Operations-East, ICE ERO HQ, attached a spreadsheet and asked the recipient to “ensure that all of the cases have been updated by Friday, September 28, 2012.” Acting Unit Chief of Field Operations-East, Email, “USC Detainer Issue,” September 26, 2012, http://www.immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/53-USC_Detainer_Issue_email-9-26-12.pdf.
 54. Additionally, ICE recorded that 93.3 percent of CAP removals involved detention. Studies have shown that individuals who are detained typically have a more difficult time securing counsel, and are less likely to succeed in their case. Jayashri Srikantiah et al., *Access to Justice for Immigrant Families and Communities: Study of Legal Representation of Detained Immigrants in Northern California*, (Stanford, CA: Northern California Collaborative for Immigrant Justice, October 2014) <http://www.lccr.com/wp-content/uploads/NCCIJ-Access-to-Justice-Report-Oct.-2014.pdf>, p. 17-18.
 55. Definition used by ICE in the *Removals Spreadsheet*, AIC vs. DHS (CAP) FY2010-2013, CAP Removals Notes section (on file with American Immigration Council).
 56. Compare “ICE Criminal Offense Levels Business Rules,” April 24, 2013, http://trac.syr.edu/immigration/reports/330/include/DocumentReleased_13-15734_Criminal_Offense_Level_Business_Rules.pdf, with National Crime Information Center (NCIC) Public List of Uniform Offense Classification Code, <https://wi-recordcheck.org/help/ncicoffensecodes.htm>. The NCIC is a national electronic clearinghouse of crime data. U.S. Federal Bureau of Investigation (FBI), “National Crime Information Center,” <https://www.fbi.gov/about-us/cjis/ncic>.
 57. We classify these individuals using ICE’s recording of the NCIC Uniform Offense Classification Code (a.k.a. NCIC offense code) for the “most serious criminal charge” crimes. Offenses are given a four-digit NCIC offense code number, of which there are hundreds. See U.S. Federal Bureau of Investigation (FBI), “Part 7: Uniform Offense Codes,” in *National Crime Information Center (NCIC) Code Manual*, First Edition (December 1982), <https://www.ncjrs.gov/pdffiles1/Digitization/87571NCJRS.pdf>. However, ICE uses a slightly hybrid version of NCIC codes, with some crimes classified into general “catch-all” categories.
 58. The FBI’s Uniform Crime Reporting (UCR) Program developed a system for collecting information about crimes nationwide in the 1920s. U.S. Federal Bureau of Investigation (FBI), “Crime in the United States 2011, About the Uniform Crime Reporting (UCR) Program,” <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/aboutucrmain> (accessed August 2015). Today, the FBI collects offense information for eight crimes, which it terms “Part I offenses” (also known as “index offenses”). U.S. Federal Bureau of Investigation (FBI), “UCR Frequently Asked Questions,” https://www2.fbi.gov/ucr/ucr_general.html (accessed August 2015). The FBI designated those eight crimes as Part I crimes because they are “serious crimes by nature and/or volume.” *Ibid.* Part II crimes include all other, less serious crimes, “except traffic violations.” U.S. Federal Bureau of Investigation (FBI), “Crime in the United States 2011, About the Uniform Crime Reporting (UCR) Program,” <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/aboutucrmain> (accessed August 2015). The majority of serious crimes committed, numerically, are not violent crimes. Paul E. Tracy and Vincent Morgan, “Big Brother and His Science Kit: DNA Databases for 21st Century Crime Control,” 90 *J. Crim. L. & Criminology* 635, (2000), <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7047&context=jcl>, p. 647-48 (“the vast majority of serious crime is committed against property and not people... Violent Index crimes... account for only 12.4% of all Index crimes.”). Further, although the FBI notes that “some serious crimes,” such as kidnapping, are not Part I crimes because they “occur infrequently,” kidnapping and other crimes of a violent nature are separately classified by the Migration Policy Institute (MPI) as “violent” crimes. Compare U.S. Federal Bureau of Investigation (FBI), “Crime in the United States 2011, About the Uniform Crime Reporting (UCR) Program,” <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/aboutucrmain>, with Marc Rosenblum and Kristen McCabe, *Deportation and Discretion: Reviewing the Record and Options for Change*, (Washington, DC: Migration Policy Institute, October 2014), <http://www.migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change>, note 1, p. 44-47 (classifying kidnapping crimes as “FBI, Part 2, Violent”). Thus, the Part I crimes that the FBI has identified as serious and the crimes classified by MPI as violent together reflect crimes considered to be “serious” or violent” by independent assessors.
 59. John S. Baker, Jr., “United States v. Morrison and Other Arguments Against Federal “Hate Crime” Legislation,” 80 *B.U. L. Rev.* 1191, 1203 n. 71 (2000) (“Part 1 offenses are the more serious crimes,” while “Part 2 offenses are less serious...”); see also Paul E. Tracy and Vincent Morgan, “Big Brother and His Science Kit: DNA Databases For 21st Century Crime Control,” 90 *J. Crim. L. & Criminology* 635, (2000), p. 647-48 (“Index offenses are deemed to be the most serious offenses and are classified as Index crimes, or Part I crimes.”).
 60. U.S. Federal Bureau of Investigation (FBI), “Crime in the United States 2011, About the Uniform Crime Reporting (UCR) Program,” <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/aboutucrmain>.
 61. Marc Rosenblum and Kristen McCabe, *Deportation and Discretion: Reviewing the Record and Options for Change*, (Washington, DC: Migration Policy Institute, October 2014), <http://www.migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change>, p. 44-47. While MPI termed these crimes “violent,” we term them “serious or violent.”
 62. *Ibid.*, p. 47. In our dataset of CAP removals provided by ICE, all crimes

- listed fell into one of the categories classified by MPI except the following four crimes: (1) “Marijuana-Producing” (2,061 cases), which we classified under “Drugs—Sale, Distribution, Transportation”; (2) “Amphetamine (describe offense)” (945 cases), which we classified under “Drugs—Possession” (similar to MPI’s method of classifying “marijuana (describe offense)” under “Drugs—Possession”; (3) “Barbiturate (describe offense)” (four cases), which we similarly classified under “Drugs—Possession”; and (4) “1702--Federal-Material Witness” (11 cases), which we classified under “FBI Part 2—Nonviolent,” as similar to other obstruction of justice crimes. See *ibid.*, p. 44-47.
63. We did so by referring to the NCIC offense code that ICE recorded. U.S. Federal Bureau of Investigation (FBI), “Part 7: Uniform Offense Codes,” in *National Crime Information Center (NCIC) Code Manual*, First Edition (December 1982), <https://www.ncjrs.gov/pdffiles1/Digitization/87571NCJRS.pdf>.
 64. John Morton, Assistant Secretary, U.S. Immigration and Customs Enforcement, Memorandum, “Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens,” June 30, 2010, https://www.ice.gov/doclib/detention-reform/pdf/civil_enforcement_priorities.pdf.
 65. Data for FY 2010 is not available, since Morton announced these “Secure Communities” levels partway through FY 2010. *Ibid.*
 66. Human Rights Watch, “A Price Too High: US Families Torn Apart by Deportations for Drug Offenses,” June 2015, <https://www.hrw.org/report/2015/06/16/price-too-high/us-families-torn-apart-deportations-drug-offenses>, p. 27-33.
 67. Christie Thompson, “Get Caught with Pot, Face Deportation,” *The Marshall Project*, June 16, 2015, <https://www.themarshallproject.org/2015/06/16/get-caught-with-pot-face-deportation> (“War-On-Drugs-era legislation left immigration judges unable to weigh the difference between a major drug trafficker and a kid who sold a little pot while smoking a little pot.”) (internal quotations omitted).
 68. ICE’s prioritizations did not capture the length of time since a conviction, which may also relate to the level of threat to public safety. Mark Noferi and Robert Koulisch, “The Immigration Detention Risk Assessment,” *Georgetown Immigration Law Journal*, 29: 45-94, 79 (2014) (“immigration proceedings are not necessarily triggered by recent criminal activity as criminal proceedings commonly are, since no statutes of limitations exist regarding immigration detention or deportation”); Shima Baradaran and Frank McIntyre, “Predicting Violence,” *Texas Law Review*, 90: 497-570, 560 (2012) (older criminal pretrial defendants are over-detained compared to their public safety risk).
 69. Jeffrey S. Passel and D’Vera Cohn, “Unauthorized Immigrant Totals Rise in 7 States, Fall in 14: Decline in Those From Mexico Fuels Most State Decreases,” Pew Research Center’s Hispanic Trends Project, November 2014, http://www.pewhispanic.org/files/2014/11/2014-11-18_unauthorized-immigration.pdf, p. 18.
 70. Robert Warren, “Democratizing Data about Unauthorized Residents in the United States: Estimates and Public-Use Data, 2010 to 2013,” *Journal on Migration and Human Security* (2014), <http://jmhs.cmsny.org/index.php/jmhs/article/view/38>, p. 310.
 71. Michael Hoefler et al., “Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2011,” *Population Estimates*, Department of Homeland Security (March 2012), http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2011.pdf.
 72. U.S. Census Bureau; American Community Survey 3-Year Estimates; Public Use Microdata Sample, 2011-1013; generated by the American Immigration Council (September 3, 2015).
 73. Trevor Gardner II and Aarti Kohli, “The CAP Effect: Racial Profiling in the ICE Criminal Alien Program,” The Chief Justice Earl Warren Institute on Race, Ethnicity, & Diversity, Berkeley Law Center for Research and Administration, September 2009, http://www.motherjones.com/files/policybrief_irving_FINAL.pdf, p. 1. Local police collaborating with ICE may erode community trust and increase a community’s fear of reporting crime to police. Andrea Guttin, Esq., “The Criminal Alien Program: Immigration Enforcement in Travis County, Texas,” American Immigration Council, February 2010, http://www.immigrationpolicy.org/sites/default/files/docs/Criminal_Alien_Program_021710.pdf, p. 14.
 74. Data on removal landmarks was only provided for 2013 in the “removals” data set, therefore we only focus on 2013 to allow for reasonable comparison between the “arrests” and “removals” data sets. *Removals Spreadsheet*, AIC vs. DHS (CAP) FY2010-2013, CAP Removals Notes section (on file with American Immigration Council).
 75. Marc R. Rosenblum and William A. Kandel, Interior Immigration Enforcement: Programs Targeting Criminal Aliens (CRS Report No. R42057) (Washington, DC: Congressional Research Service, 2012), <https://www.fas.org/sgp/crs/homesec/R42057.pdf>, p. 16-17.
 76. In 2014, New York City terminated the ICE office at its main jail at Rikers Island. Jillian Jorgensen, “Council Passes Bills to Stop Cooperation with Federal Immigration Detainers,” *New York Observer*, October 22, 2014, <http://observer.com/2014/10/council-passes-bills-to-stop-cooperation-with-federal-immigration-detainers/>. Los Angeles also terminated ICE’s office at its main jail in May 2015. Kate Lenthicou and Joseph Tanfani, “L.A. County ends contract with ICE, then OKs future collaboration,” *Los Angeles Times*, May 12, 2015, <http://www.latimes.com/local/lanow/la-me-ln-ice-los-angeles-287g-20150512-story.html>.
 77. House Committee on Appropriations, Department of Homeland Security Appropriations Bill, 2015, H.R. Rep. No. 113-481, (2014), <http://www.gpo.gov/fdsys/pkg/CRPT-113hrpt481/pdf/CRPT-113hrpt481.pdf>, p. 55-58 (compiling list of localities and states that had adopted anti-detainer policies as of April 2014). Those localities included Chicago (in July 2012, stopped cooperating regarding misdemeanor charges, unless an outstanding criminal warrant existed); Washington, DC (in July 2012, stopped cooperating regarding any charges); Berkeley, CA (in October, 2012, stopped cooperating regarding any charges that were not a “serious or violent felony”); Los Angeles, CA (in December, 2012, stopped cooperating regarding any charges except for “serious offenses”); New York City (in November 2011, passed a law under which it refused ICE detainers for those without any criminal convictions, and in May 2013, stopped cooperating regarding some misdemeanor charges, with exceptions); Newark, NJ (in July 2013, stopped cooperating with all ICE detainer requests); New Orleans, LA (in August 2013, stopped cooperating regarding any charges except for first or second degree murder, aggravated rape, aggravated kidnapping, treason, or armed robbery with the use of a firearm). *Ibid.*; see also Mirela Iverac, “City Limits Cooperation With Federal Immigration Officials at Rikers,” *WNYC News*, November 22, 2011, <http://www.wnyc.org/story/171985-blog-city-limits-cooperation-ice-rikers/>. Conversely, in Texas, all counties cooperate with ICE detainer requests on the basis of *de facto*, local decisions. “ICE Detainers FAQs,” Travis County Sheriff’s Office, <https://www.tcsheiff.org/inmate-a-jail-info/ice-detainers-faq> (accessed December 2, 2014) (In response to the question “How many sheriff’s offices in Texas do not participate in this program?” the Sheriff’s Office stated that it is “not aware of any Texas Sheriff who has decided that they will no longer honor federal detainers or not send in fingerprints in accordance with the law.”); see generally “States and Localities That Limit Compliance With ICE Detainer Requests,” Catholic Legal Immigration Network, November 2014, <https://cliniclegal.org/resources/articles-clinic/states-and-localities-limit-compliance-ice-detainer-requests-jan-2014> (listing states and counties that limited compliance with ICE detainers as of October 2014). Arizona counties have adopted a patchwork of policies on immigration detainers in the years since its pro-immigration enforcement law, SB 1070, was struck down in 2012. Most famously, Maricopa County (including Phoenix) grants the highest number of detainers in the nation. “Immigration Holds at Maricopa County Jail in Arizona Top Nation, Study Says,” *The Huffington Post*, February 26, 2013, http://www.huffingtonpost.com/2013/02/26/immigration-holds-at-maricopa-county-jail_n_2767417.html. South Tucson, however, limited its detainer practices as the result of a lawsuit brought on behalf of a detainee by the ACLU. See South Tucson Police Department, “Immigration Policy 2014,” http://www.ilrc.org/files/documents/1_-_south_tucson_policy.pdf, p. 4-5. See generally Ming H. Chen, “Secure Communities and State Noncooperation as Policy (re)making in Immigration Enforcement,” 91 Chicago Kent L Review Symposium Issue, forthcoming 2015 (draft on file with authors).
 78. U.S. DHS, Immigration and Customs Enforcement, “Fiscal Year 2016 Congressional Justification, Salaries and Expenses,” February 5, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>, p. 59-60. Separately, ICE attributed 68,073 removals to Secure

- Communities information-sharing in FY 2014. *Ibid.*, p. 62. It is not clear if each of these removals through Secure Communities was also attributed to CAP.
79. U.S. DHS, Immigration and Customs Enforcement, “ICE Enforcement and Removal Operations Report, Fiscal Year 2014” December 19, 2014, <https://www.ice.gov/doclib/about/offices/ero/pdf/2014-ice-immigration-removals.pdf>, p. 7.
 80. Secretary Johnson stated that “the goal of Secure Communities [to more effectively identify and facilitate the removal of criminal aliens in the custody of state and local law enforcement agencies] remains in my view a valid and important law enforcement objective.” Jeh Johnson, Secretary, U.S. Department of Homeland Security, Memorandum, “Secure Communities,” November 20, 2014, http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf, p. 1.
 81. *Ibid.*, p. 2; compare John Morton, Assistant Secretary, U.S. Immigration and Customs Enforcement, Memorandum, “Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens,” June 30, 2010, https://www.ice.gov/doclib/detention-reform/pdf/civil_enforcement_priorities.pdf, p. 2 (prioritizing “aliens convicted of crimes”).
 82. *Ibid.*, p. 2-3.
 83. Jeh Johnson, Secretary, U.S. Department of Homeland Security, Memorandum, “Secure Communities,” November 20, 2014, http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf, p. 2, citing Jeh Johnson, Secretary, U.S. Department of Homeland Security, Memorandum, “Policies for the Apprehension, Detention and Removal of Undocumented Immigrants,” November 20, 2014, http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf, ¶¶ 1(a), 1(c), 1(d), 1(e), 2(a), and 2(b). Most likely, those offenders who have committed violent offenses according to MPI or serious offenses according to the FBI will remain priorities. See *ibid.*, note 2 ¶ 1(d) (criminal felonies remain priorities), ¶ 1(e) (“aggravated felonies” under the immigration laws remain priorities), ¶ 2(b) (domestic violence, sex offenses, burglary and weapons offenses remain priorities, even if a misdemeanor; and DUI offenses and drug distribution and trafficking offenses remain a priority, even if a misdemeanor).
 84. *Ibid.*
 85. U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, Criminal Alien Division, “Criminal Alien Program Handbook, Version 1.0,” Doc. No. ERO 11157.1 (effective date May 14, 2013), http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/22-ERO_CAP_Handbook_5-14-13.pdf, p. 50; *Am. Immig. Council v. Dep’t of Homeland Security*, Deposition, Jamison Matuszewski, 12-cv-355, February 1, 2013, http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/12-Matuszewski_Jamison_Deposition.pdf, p. 222:4-223:3. Morton’s June 2010 memo made all those with convictions Priority One, and also included “outstanding criminal warrants” in Priority One. John Morton, Assistant Secretary, U.S. Immigration and Customs Enforcement, Memorandum, “Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens,” June 30, 2010, https://www.ice.gov/doclib/detention-reform/pdf/civil_enforcement_priorities.pdf, p.2. Johnson’s 2014 memo scales back the priorities to certain convictions, and does not include those with “outstanding criminal warrants,” but leaves open removal based on “important federal interests.” Jeh Johnson, Secretary, U.S. Department of Homeland Security, Memorandum, “Policies for the Apprehension, Detention and Removal of Undocumented Immigrants,” November 20, 2014, http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf, p. 2, 5.
 86. ICE’s criminal offense level classifications appear to remain the same following the 2014 Johnson memoranda. Notably, Johnson’s memoranda did **not** rescind Morton’s June 2010 memorandum that set out ICE’s criminal offense level classifications into Level 1, 2 and 3. *Ibid.*, p. 2. Additionally, ICE published its FY 2014 enforcement statistics report, which used ICE’s current criminal offense level classifications, in December 2014, about a month after Johnson’s memo. U.S. DHS, Immigration and Customs Enforcement, “ICE Enforcement and Removal Operations Report, Fiscal Year 2014,” December 19, 2014, <https://www.ice.gov/doclib/about/offices/ero/pdf/2014-ice-immigration-removals.pdf>, p. 19.
 87. National Immigration Forum, “Law Enforcement Immigration Task Force Principles,” January 28, 2015, <http://immigrationforum.org/blog/leitf-principles/>.
 88. President’s Task Force on 21st Century Policing, *Final Report*, (Washington, DC: Office of Community Oriented Policing Services 2015), http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf, p. 18 (“when ever possible, state and local law enforcement should not be involved in immigration enforcement... Immigrants often fear approaching police officers when they are victims of and witnesses to crimes and when local police are entangled with federal immigration enforcement.”).
 89. *Examining the Adequacy and Enforcement of Our Nation’s Immigration Laws: Hearing Before the Committee on the Judiciary, House of Representatives*, 114th Cong., 1 (2015) (statement of Paul Babeu, Sheriff, Pinal County, http://judiciary.house.gov/_cache/files/3f5d0b44-bb28-493a-9412-050d19e6dc9d/babeu-testimony.pdf).
 90. Some honor no ICE detainers; some honor detainers for those with criminal convictions, but not charges; some honor detainers for more serious convictions, or charges; some honor detainers only supported by a warrant based on probable cause, with judicial review; while some honor all detainers, or go further to cooperate with ICE in other ways. See House Committee on Appropriations, Department of Homeland Security Appropriations Bill, 2015, H.R. Rep. No. 113-481 (2014), <http://www.gpo.gov/fdsys/pkg/CRPT-113hrpt481/pdf/CRPT-113hrpt481.pdf>, p. 55-58.
 91. Marc R. Rosenblum and William A. Kandel, Interior Immigration Enforcement: Programs Targeting Criminal Aliens (CRS Report No. R42057) (Washington, DC: Congressional Research Service, 2012), <https://www.fas.org/sgp/crs/homesecc/R42057.pdf>.
 92. U.S. DHS, Office of Civil Rights and Civil Liberties, “Mission Statement,” <http://www.dhs.gov/office-civil-rights-and-civil-liberties> (accessed August 2015).
 93. Definition used by ICE in the *Encounters Spreadsheet*, AIC vs. DHS (CAP) FY2010-2013, CAP Encounters Notes section (on file with American Immigration Council).
 94. Definition used by ICE in the *Arrests Spreadsheet*, AIC vs. DHS (CAP) FY2010-2013, CAP Arrests Notes section (on file with American Immigration Council).
 95. Definition used by ICE in the *Removals Spreadsheet*, AIC vs. DHS (CAP) FY2010-2013, CAP Removals Notes section (on file with American Immigration Council). The inclusion of “voluntary returns” here matches the definition used by ICE in reporting ICE’s statistics, but differs from the definition used by the DHS Office of Immigration Statistics. Compare U.S. DHS Immigration and Customs Enforcement, “ERO Annual Report: FY 2013 ICE Immigration Removals,” <https://www.ice.gov/doclib/about/offices/ero/pdf/2013-ice-immigration-removals.pdf>, p. 5 (similar language), with U.S. DHS Office of Immigration Statistics, “Immigration Enforcement Actions: 2013,” September 2014, https://www.dhs.gov/sites/default/files/publications/ois_enforcement_ar_2013.pdf, p. 1-2, fn. 2 (“Removals and returns are counted separately); see also Marc Rosenblum and Kristen McCabe, *Deportation and Discretion: Reviewing the Record and Options for Change*, (Washington, DC: Migration Policy Institute, October 2014), <http://www.migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change>, p. 22, n. 42 (explaining difference between DHS and ICE data). However, “Any voluntary return on or after June 1, 2013, whose case does not have an ICE book-in will not be recorded as an ICE removal.” Definition used by ICE in the *Removals Spreadsheet*, AIC vs. DHS (CAP) FY2010-2013, CAP Removals Notes section (on file with American Immigration Council).
 96. Definition used by ICE in the *Encounters Spreadsheet*, AIC vs. DHS (CAP) FY2010-2013, CAP Encounters Notes section (on file with American Immigration Council).
 97. Definition used by ICE in the *Removals Spreadsheet*, AIC vs. DHS (CAP) FY2010-2013, CAP Removals Notes section (on file with American

- Immigration Council); Definition used by ICE in the *Arrests Spreadsheet*, AIC vs. DHS (CAP) FY2010-2013, CAP Arrests Notes section (on file with American Immigration Council). For an overview of ICE's use of "criminal offense levels," see Marc Rosenblum and Kristen McCabe, *Deportation and Discretion: Reviewing the Record and Options for Change*, (Washington, DC: Migration Policy Institute, October 2014), <http://www.migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change>, p. 9, 12-15.
98. Definition used by ICE in the *Removals Spreadsheet*, AIC vs. DHS (CAP) FY2010-2013, CAP Removals Notes section (on file with American Immigration Council).
 99. *Ibid.*
 100. ICE's usage of NCIC codes differs slightly from standardized usage of NCIC codes, in that ICE since FY 2011 has used hybrid NCIC codes with an "AA" or "AB" suffix—for example, "03AA" and "03AB," which seem to be some sort of catch-all for "immigration crimes" (0301, 0302, 0303, and 0399). Compare "ICE Criminal Offense Levels Business Rules," April 24, 2013, http://trac.syr.edu/immigration/reports/330/include/DocumentReleased_13-15734_Criminal_Offense_Level_Business_Rules.pdf, with National Crime Information Center (NCIC) Public List of Uniform Offense Classification Code, <https://wi-recordcheck.org/help/ncicoffensecodes.htm>.
 101. Definition used by ICE in the *Removals Spreadsheet*, AIC vs. DHS (CAP) FY2010-2013, CAP Removals Notes section (on file with American Immigration Council).
 102. "Aggravated Felonies: An Overview," American Immigration Council, March 2012, <http://www.immigrationpolicy.org/sites/default/files/docs/aggravated-felony-fact-sheet-march-2012.pdf>, p. 1 (citing 8 U.S.C. § 1101(a)(43)(A)-(U)).
 103. U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2016 Congressional Justification, Salaries and Expenses," February 5, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>, p. 61 ("CAPRSO is a focused deployment of local CAP resources used to ensure 100 percent of all priority criminal aliens booked into targeted facilities that are amenable to immediate removal obtain a removal order, or are voluntarily returned to their country of citizenship once released from local law enforcement custody, or otherwise are placed into removal proceedings.").
 104. *Ibid.*
 105. *Ibid.*
 106. *Ibid.*, p. 60.
 107. U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2013 Congressional Justification, Salaries and Expenses," February 13, 2012, <http://www.dhs.gov/xlibrary/assets/mgmt/dhs-congressional-budget-justification-fy2013.pdf>, p.49. ICE first publicly mentioned JCART in its FY 2011 budget request, published in February 2010. U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2011 Congressional Justification, Salaries and Expenses," http://www.dhs.gov/xlibrary/assets/dhs_congressional_budget_justification_fy2011.pdf, p. 57-58.
 108. U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2014 Congressional Justification, Salaries and Expenses," April 10, 2013, <http://www.dhs.gov/sites/default/files/publications/MGMT/DHS-%20Annual%20Performance%20Report%20and%20Congressional-Budget-Justification-FY2014.pdf>, p. 60.
 109. ICE's FY 2015 budget request did not mention JCART, and ICE's FY 2016 budget request mentioned TC but not JCART. U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2016 Congressional Justification, Salaries and Expenses," February 5, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>, p. 60.
 110. See U.S. Immigration and Customs Enforcement, "Criminal Alien Program: Key Initiatives," <http://www.ice.gov/criminal-alien-program> (accessed August 2015).
 111. U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2016 Congressional Justification, Salaries and Expenses," February 5, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>, p. 63 ("Violent Criminal Alien Section (VCAS) enforces violations of the United States Criminal Code discovered through ICE's enforcement activities."). ICE's first mention of VCAS was in its FY 2010 budget request. U.S. DHS Immigration and Customs Enforcement, "Fiscal Year 2010 Congressional Justification, Salaries and Expenses," February 2009, http://www.dhs.gov/xlibrary/assets/dhs_congressional_budget_justification_fy2010.pdf, p. 44.
 112. U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2013 Congressional Justification, Salaries and Expenses," February 13, 2012, <http://www.dhs.gov/xlibrary/assets/mgmt/dhs-congressional-budget-justification-fy2013.pdf>, p. 50.
 113. *Ibid.*; U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2016 Congressional Justification, Salaries and Expenses," February 5, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>, p. 63.
 114. U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2013 Congressional Justification, Salaries and Expenses," February 13, 2012, <http://www.dhs.gov/xlibrary/assets/mgmt/dhs-congressional-budget-justification-fy2013.pdf>, p. 50.
 115. U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2016 Congressional Justification, Salaries and Expenses," February 5, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>, p. 63.
 116. *Ibid.* In FY 2013, additional language read: "Eligible aliens must agree to waive appeal rights associated with their state convictions. If aliens re-enter the country following removal under the Rapid REPAT program, state statutes may provide for revocation of parole and incarceration for the remainder of the alien's original sentence. Additionally, aliens illegally re-entering may face additional federal charges and penalties. Rapid REPAT also helps participating states reduce the costs associated with detention." U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2013 Congressional Justification, Salaries and Expenses," February 13, 2012, <http://www.dhs.gov/xlibrary/assets/mgmt/dhs-congressional-budget-justification-fy2013.pdf>, p. 51.
 117. U.S. Immigration and Customs Enforcement, "Criminal Alien Program: Key Initiatives," <http://www.ice.gov/criminal-alien-program> (accessed August 2015). The DEPORT program is not mentioned in ICE budget requests.
 118. First mentioned in 2011, despite being founded in 2006. U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2011 Congressional Justification, Salaries and Expenses," http://www.dhs.gov/xlibrary/assets/dhs_congressional_budget_justification_fy2011.pdf, p. 57-58 and U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2012 Congressional Justification, Salaries and Expenses," <http://www.dhs.gov/xlibrary/assets/dhs-congressional-budget-justification-fy2012.pdf>, p. 41. In 2013 and 2014, listed as an "initiative" in the CAP Program Performance Justification. U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2013 Congressional Justification, Salaries and Expenses," <http://www.dhs.gov/xlibrary/assets/mgmt/dhs-congressional-budget-justification-fy2013.pdf>, p. 50 and U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2014 Congressional Justification, Salaries and Expenses," April 10, 2013, <http://www.dhs.gov/sites/default/files/publications/MGMT/DHS-%20Annual%20Performance%20Report%20and%20Congressional-Budget-Justification-FY2014.pdf>, p. 60. Not found in the 2015 or 2016 ICE budget requests.
 119. U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2013 Congressional Justification, Salaries and Expenses," February 13, 2012, <http://www.dhs.gov/xlibrary/assets/mgmt/dhs-congressional-budget-justification-fy2013.pdf>, p. 50.
 120. *Ibid.*