



Deportation Numbers Unwrapped

Raw Statistics Reveal the Real Story of ICE Enforcement in Decline

By Jessica M. Vaughan

A key talking point for proponents of amnesty for illegal aliens is that the Obama administration has made historic improvements to border security and immigration enforcement, leading to “record” numbers of deportations that surpass the performance of earlier administrations. In December 2012, John Morton, then-director of U.S. Immigration and Customs Enforcement (ICE), announced that his agency had removed nearly 410,000 illegal aliens that year. Major news outlets, pro-amnesty lawmakers, and other Obama administration allies heralded this apparent milestone as evidence that the border and illegal immigration were now under control.

On the same day, to far less fanfare, Morton also announced the implementation of new restrictions on how the agents and officers working under him could use their authority to enforce immigration laws. They were told to curtail the use of detainers, or immigration holds, which give ICE officers the opportunity to question and take custody of illegal aliens identified after arrest by a local law enforcement agency. This directive built on an earlier memo, issued in June 2011, which ordered ICE agents not to arrest certain broad categories of illegal aliens, including minor criminals, long-time residents, students, parents, caregivers, and a long list of other excepted categories for whom there was otherwise no statutory basis for special treatment. These and other directives have been euphemistically characterized as “prosecutorial discretion.”

This report examines data from a collection of mostly unpublished internal Department of Homeland Security (DHS) and ICE statistics, to provide an alternative evaluation of the administration’s record on immigration enforcement that is based on raw statistics rather than pre-packaged press kits. These statistics show that, contrary to what is commonly believed, in fact immigration enforcement in the interior has slowed significantly in the last few years. ICE is arresting and removing noticeably fewer illegal aliens from the interior now than was the case five years ago, and even two years ago. Its focus has shifted away from interior enforcement in favor of processing aliens who are apprehended by the Border Patrol.

While the agency claims that it has stewarded resources effectively by guiding agents to hone in on criminals, in fact the number of criminal aliens removed from the interior also has declined, even as ICE’s Enforcement and Removal Operations division (ERO) is notified of more arrested criminal aliens than ever before, through the Secure Communities program. These statistics stand in stark contrast to claims of “record deportations,” which largely have been taken at face value by the news media and many lawmakers.

The report also presents previously unpublished statistics disclosing the startlingly large number of cases on ICE’s post-final-order docket of aliens who have been ordered removed, but who remain living here in defiance of immigration enforcement. These “non-departed” illegal aliens are emblematic of the dysfunction in our immigration system, and must become a priority for enforcement before public trust in our system can be restored.

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Key Findings

- The number of deportations resulting from interior enforcement by ICE declined by 19 percent from 2011 to 2012, and is on track to decline another 22 percent in 2013.
- In 2012, the year the Obama administration claimed to break enforcement records, more than one-half of removals attributed to ICE were the result of Border Patrol arrests that would never have been counted as a removal in prior years. In 2008, under the Bush administration, only one-third of removals were from Border Patrol arrests.
- Total deportations in 2011, the latest year for which complete numbers are available, numbered 715,495 – the lowest level since 1973. The highest number of deportations on record was in 2000, under the Clinton administration, when 1,864,343 aliens were deported.
- When claiming record levels of enforcement, the Obama administration appears to count only removals, which are just one form of deportation, and only a partial measure of enforcement. Beginning in 2011, a shift of some of the routine Border Patrol case load to ICE enabled the administration to count an artificially high number of removals.
- Homeland Security Investigations (HSI), the division of ICE that is responsible for work site enforcement, combating transnational gangs, overstay enforcement, anti-smuggling and trafficking activity, and busting document and identity theft rings, now contributes very little to immigration enforcement. In 2013 HSI has produced only four percent of ICE deportations, making just a few thousand arrests per year throughout the entire country.
- ICE is doing less enforcement with more resources. Despite reporting more encounters in 2013 than 2012, ICE agents pursued deportation of 20 percent fewer aliens this year than last.
- Enforcement activity declined in every ICE field office from 2011 to 2013, with the biggest declines in the Atlanta, Salt Lake City, Washington DC/Virginia, and Houston field offices.
- Criminal alien arrests declined by 11 percent from 2012 to 2013, despite the completion of the Secure Communities program, which generates more referrals of arrested aliens than ever before. ICE agents took a pass on hundreds of thousands of aliens who were arrested by local authorities in those years.
- ICE is carrying a case load of 1.8 million aliens who are either in removal proceedings or have already been ordered removed. Less than two percent are in detention, which is the only proven way to ensure departure.
- As of the end of July 2013 there were 872,000 aliens – nearly half of ICE’s total docket – who had been ordered removed but who had not left the country.
- The State Department continues to issue tens of thousands of visas annually to citizens of countries that refuse to take back their countrymen who are ordered removed from the United States. Many of these are violent criminals.

The statistics in the tables and charts in this report are taken from internal DHS documents obtained by the Center, including:

- a series of reports prepared by the ICE/ERO Statistical Tracking Unit as part of the discovery process for *Crane v. Napolitano*, the lawsuit brought by ICE agents to challenge the Obama administration’s “prosecutorial discretion” and Deferred Action for Childhood Arrivals (DACA) policies;
- two editions of the *Weekly Departures and Detention Report* covering the same 10-month period of fiscal years 2011-2013 (October 1 to the end of July), prepared by the Statistical Tracking Unit of the ICE Enforcement and Removals Operations division; and
- the *Yearbook of Immigration Statistics* published by DHS.

Total Deportations: Lowest Number Since 1973

Figure 1 shows the total number of expulsions from the United States from 1982 to 2011. This action is commonly known as a “deportation.” In technical immigration law jargon, a deportation is actually just one form of expulsion that is a subset of removals, but for the purposes of this paper, the term deportation refers to all forms of expulsion.¹ They are grouped into two broad categories: removals and returns.

These enforcement actions were carried out by agents of the Customs and Border Protection (CBP) and ICE. They include aliens who were caught in the act of entering the country illegally and those who were arrested in the interior. These individuals were apprehended by or referred to agents of Border Patrol, ICE or other DHS component agencies, including: ICE’s Enforcement and Removal Operations (ERO); ICE, Homeland Security Investigations (HSI); CBP Office of Field Operation (CBP-OFO) agents at the ports of entry; officers of U.S. Citizenship and Immigration Services (USCIS), which adjudicates applications for green cards, work permits, and citizenship; or local law enforcement officers working in partnership with ICE and Border Patrol.

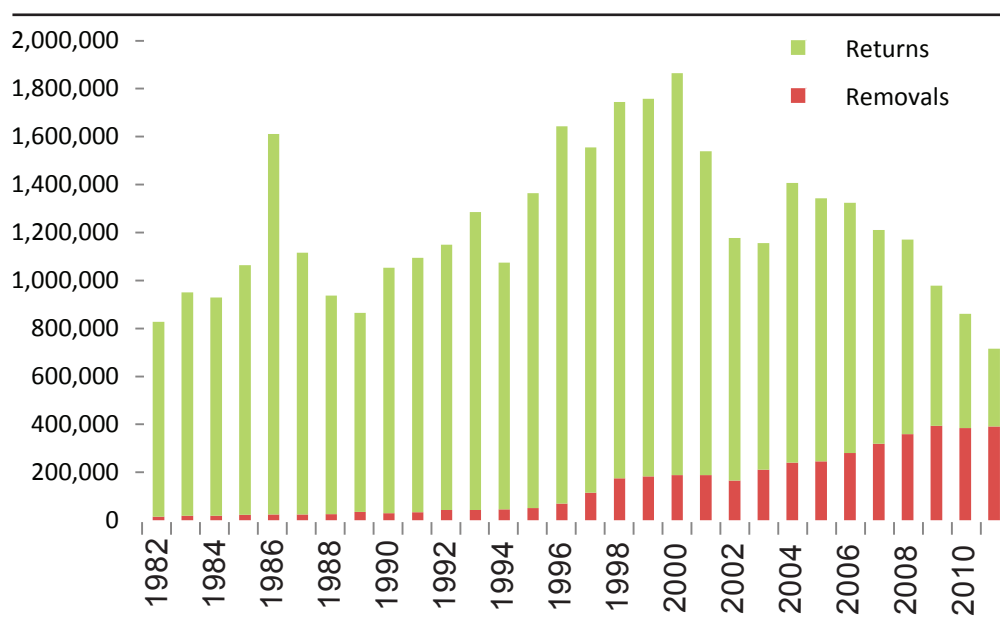
Deportation totals have fluctuated over the last 30 years, peaking in 1986, 2000, and 2004. The all-time record year was 2000, the last year of the Clinton administration. In 2011, the most recent year for which all ICE and CBP totals have been reported, deportations numbered 715,495. This was the lowest year since 1973, when 585,351 deportations were effected.

Figure 1 also shows that the proportion of removals relative to returns has increased significantly since 1997. A removal is a harsher consequence than return, because it bars the deportee from re-entry for a certain number of years and carries the potential for prison time if the deportee re-enters illegally. Aliens who are granted return are not automatically barred from coming back.

Both forms of deportation are used by both the Border Patrol and ICE. As is shown in Table 3 below, about half of the removal cases attributed to ICE are aliens who were apprehended by the Border Patrol and then turned over to ICE for processing. In addition, the Border Patrol and CBP officers handle some removal cases independently of ICE. As for returns, according to the Border Patrol statistics in Table 1, about 40 percent of returns in 2011 were cases that originated as Border Patrol apprehensions, with the other 60 percent completed by ICE and CBP.

To support the claim of “record” deportations in 2012, the Obama administration and its supporters cite the 409,000

Figure 1. Deportations: 1982 - 2011



Source: DHS

removals attributed to ICE that year. This is the highest number of removals credited to ICE in a single year; however, the number is higher because it includes the largest number of Border Patrol cases that ever have been transferred to ICE for processing in a single year (see Table 3). It does not reflect an increase in enforcement activity. In past years, these cases would have been handled by the Border Patrol, and counted in total deportations, but not as removals. Removals are at best half the number of total deportations, and do not represent the entire scope of enforcement actions taken by DHS enforcement agencies.

The President himself confirmed this statistical manipulation in 2011, speaking at a roundtable for Hispanic reporters:

“The statistics are actually a little deceptive because what we’ve been doing is, with the stronger border enforcement, we’ve been apprehending folks at the borders and sending them back. That is counted as a deportation, even though they may have only been held for a day or 48 hours, sent back — that’s counted as a deportation.” he said.²

Border Patrol Metrics: More Consequences for Fewer Cases

Table 1 shows the case disposition, or outcome, for each alien apprehended by the Border Patrol in 2012. Two-thirds of the aliens caught that year were processed as a formal removal – either expedited removal or the reinstatement of a prior order of removal. About one-fifth were granted the more lenient treatment of voluntary return. As shown in Table 2 and the accompanying Figure 2, 2012 (the year of “record” deportations) was the first year ever in which a majority of Border Patrol apprehensions resulted in the formal removal of the alien, as opposed to voluntary return. Historically, the vast majority of aliens apprehended by the Border Patrol were allowed to return rather than face removal. Programs that were set up in 2011 to process more border apprehension cases as formal removals were implemented with the stated purpose of deterring repeated crossing attempts, but had the side benefit of boosting ICE’s removal statistics.³

The other significant trend in the Border Patrol case dispositions is that the number of reinstatements of prior removal orders has increased noticeably over the decade, both in absolute numbers and as a share of the total case load. These are cases of individuals who have been caught and removed on multiple occasions. Once a tiny share of the Border Patrol case load, now about one-fourth of those arrested at the border are processed as reinstatements. This could indicate that the rewards of illegal entry still are believed to outweigh the risk of apprehension, or the consequences of apprehension.

Reinstatements are a significant share of ICE’s interior case dispositions as well. In 2012, more than 40,000 of the removals that resulted from an interior arrest were processed as reinstatements, representing about 24 percent of the interior removal case load⁴ Clearly, a large number of previously deported aliens have managed to re-enter illegally and carry on for some time before detection, typically after arrest for another crime or traffic offense.

Outcome	Number	%
Expedited Removal	145,245	40
Reinstatement of Prior Removal Order	99,420	27
Voluntary Return	80,516	22
Warrant of Arrest/Notice to Appear	28,339	8
Expedited Removal with Credible Fear	4,065	1
Other	7,183	2
Total	364,768	100

Source: Border Patrol

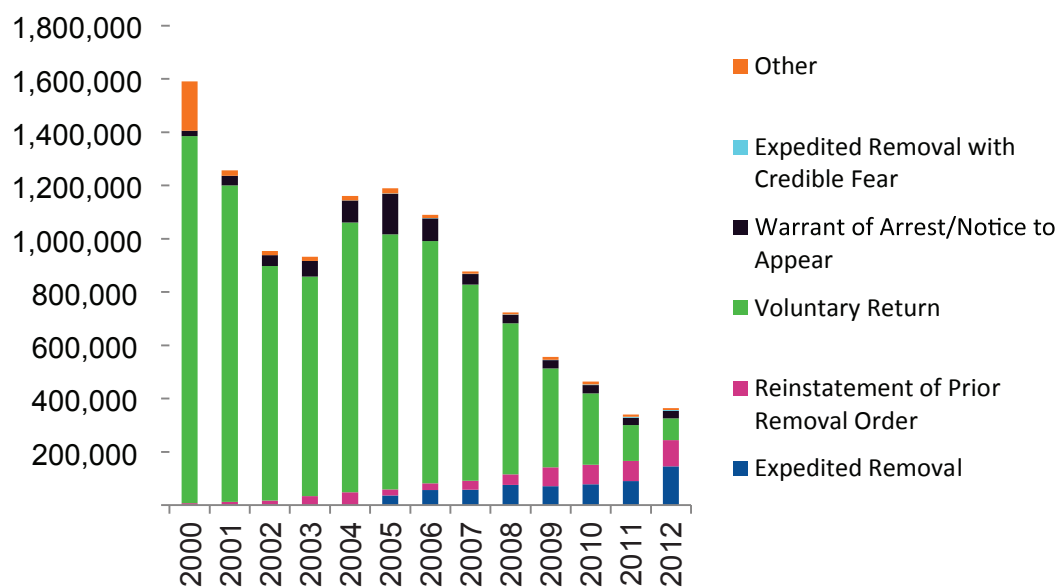
Table 2. Border Patrol Apprehensions by Disposition: 2000-2012

Outcome	2000	2001	2002	2003	2004	2005	2006
Expedited Removal	9	24	12	19	633	35,936	57,116
Reinstatement of Prior Removal Order	7,389	12,626	17,673	33,531	47,649	23,434	25,017
Voluntary Return	1,378,133	1,187,944	879,302	824,098	1,012,516	956,471	908,626
Warrant of Arrest/Notice to Appear	19,497	35,639	41,879	59,219	83,094	153,309	85,074
Expedited Removal with Credible Fear				1	57	634	1,489
Other	185,665	19,863	14,880	15,055	16,379	19,178	11,786
Total	1,590,693	1,256,096	953,746	931,923	1,160,328	1,188,962	1,089,108

Outcome	2007	2008	2009	2010	2011	2012
Expedited Removal	57,950	75,646	71,257	78,133	90,499	145,245
Reinstatement of Prior Removal Order	34,063	39,648	70,325	73,700	75,404	99,420
Voluntary Return	736,138	567,000	371,509	268,142	134,108	80,516
Warrant of Arrest/Notice to Appear	38,958	32,846	30,687	30,157	28,291	28,339
Expedited Removal with Credible Fear	1,711	1,470	1,973	2,828	3,701	4,065
Other	7,929	7,255	10,207	10,422	8,249	7,183
Total	876,749	723,865	555,958	463,382	340,252	364,768

Source: Border Patrol

Figure 2. Border Patrol Apprehensions by Disposition: 2000-2012



Source: Border Patrol

Interior Enforcement Metrics: Doing Less with More

Americans understand that immigration enforcement in the interior is vital to the rule of law, preventing illegal employment, public safety, and national security. Experts estimate that about 60 percent of the approximately 11.7 illegal aliens who are residing here originally entered the country by illegally crossing a land border, and about 40 percent were admitted through an official port of entry and overstayed their visa or authorized admission. Most illegal aliens do not live in the border region; they are dispersed throughout the nation. Besides the seven million or so aliens who are working illegally, there are more than one million removable criminal aliens who are at large in U.S. communities as a result of release from jail or prison, or after having re-entered illegally after deportation.⁵

To address this problem, Congress has provided ICE with increased funding to enforce immigration laws and remove illegal aliens. In 2008, ICE received \$5.6 billion and 17,938 full-time equivalent (FTE) positions. This grew to \$5.9 billion and 20,271 FTE positions in 2012 – a growth rate of five percent in funding and 13 percent in staff.⁶ With additional funding, ICE has been able to launch new technology-based initiatives such as the Secure Communities program, which has dramatically increased its ability to locate illegal aliens who have been arrested and/or booked into jail by local officers for local crimes.

The resource and programmatic enhancements did contribute to increases in interior enforcement from 2008 to 2010, but this activity has declined considerably since 2010. As shown in Table 3 and Figure 3, the number of deportations that resulted from interior enforcement by the two primary agencies of ICE (ERO and HSI) declined by 19 percent from 2011 to 2012, and are projected to fall another 22 percent in 2013.

Table 3 also confirms President Obama’s statement that the primary driver of the removal numbers is Border Patrol arrests, not interior enforcement. In 2012, more than half (52%) of deportations were the result of a Border Patrol arrest. In 2008, only 33 percent of deportations were the result of a Border Patrol arrest; at that time most illegal border crossing cases were processed by the Border Patrol rather than transferred to ICE.

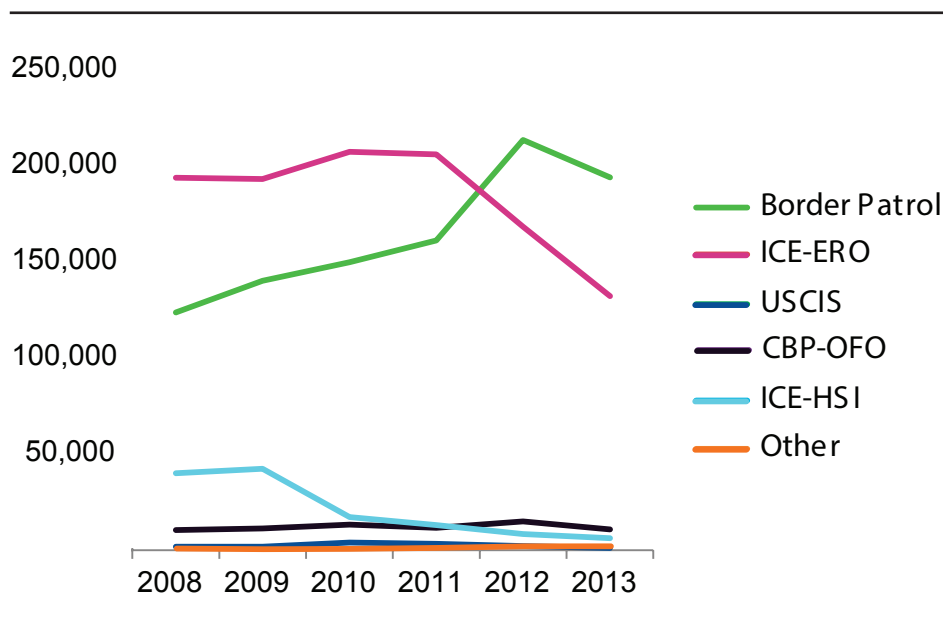
These statistics also reveal that under the Obama administration, the resources of HSI, which is the division of ICE that is responsible for work site enforcement, combating transnational gangs, overstay enforcement, anti-smuggling and trafficking activities, and busting document and identity theft rings, have been diverted to other activities. As a result HSI now makes only a negligible contribution to immigration enforcement. In 2008, HSI arrests produced 17 percent of ICE-initiated deportations; in 2013 they are projected to produce only four percent of ICE-initiated deportations.

Table 3. Removals by Program: 2008-2013

Program	2008	2009	2010	2011	2012	2013 projected
Total	371,235	389,834	392,862	396,906	409,849	347,102
Border Patrol	123,985	140,473	150,240	161,454	213,834	194,407
CBP-OFO	10,466	11,420	13,387	11,697	15,045	10,948
USCIS	1,935	1,929	4,008	3,438	2,207	1,191
ICE-ERO	194,234	193,465	207,680	206,314	168,613	132,546
ICE-HSI	39,223	41,494	16,417	12,287	7,584	5,441
Other	1,392	1,053	1,130	1,716	2,566	2,570

Source: ICE

Figure 3. Removals by Program: 2008-2013



Source: ICE

ICE Metrics Under “Prosecutorial Discretion”

Table 4 presents some of the key metrics for interior immigration enforcement, which come from internal ICE reports that cover the first 10 months of fiscal years 2012 and 2013 (October 1 to the end of July) – the same time period for each year.

These figures provide a more detailed accounting of the drop-off in enforcement activity by ICE/ERO, the division of ICE that is the primary source of interior enforcement. In addition to processing cases referred by other agencies, ERO is responsible for screening aliens who are in jail or prison after committing local crimes, aliens arrested for local offenses such as drunk driving or other traffic offenses, and aliens who have absconded from immigration proceedings. These activities represent the vast majority of current interior enforcement activity.

The first indicator, departures, is the equivalent of deportations (removals plus returns). As of July 2013, ICE had deported nine percent fewer aliens than at the same point in 2012. As discussed above, about half of these deportation cases are aliens apprehended by the Border Patrol.

Departures of criminals have remained nearly constant, but “non-criminal” removals dropped by about 15 percent. In ICE nomenclature, the term “criminal alien” applies to aliens who have been convicted of a felony or misdemeanor. “Non-criminals” includes those with lesser offenses such as traffic infractions, those who admitted to crimes but were not sentenced to jail, those who were not prosecuted, repeat immigration violators, those who skipped out on immigration hearings, those who ignored orders to depart, and a small number of individuals who merely were found to be here illegally or who violated the terms of their legal admission by working or overstaying.

According to the metrics that measure ICE/ERO activity – Encounters, Detainers, Arrests, and Charging Documents Issued⁷ – interior enforcement has declined to a greater degree than indicated by the Departures metric alone. Even though ICE agents had encountered slightly more aliens at this point in 2013 than in 2012, they pursued deportation of about 20 percent fewer of them compared to the year before.

These metrics again confirm that the recent increase in the number of ICE removals is driven by the increase in Book-Ins

from other agencies – namely the Border Patrol – and not by an increase in ICE arrests. In each of the two partial years, the number of Book-Ins (to ICE custody) reported is much larger than the number of detainers, arrests, or charging documents issued by ICE itself. According to these records, ICE took custody of more than 200,000 aliens who were apprehended by another agency (the Border Patrol).

These statistics reveal that ICE pursues deportation for only a fraction of the illegal aliens encountered by its agents. In the period of 2012 studied, ICE issued charging documents for 35 percent of the aliens that were encountered. In the same period in 2013, ICE pursued deportation of 27 percent of the aliens encountered. In other words, over the last two years, ICE has allowed about two-thirds of the aliens encountered or referred to its agents to go free and escape deportation. Considering that these encounters are mostly the result of referrals from local jails and police departments, or due to fingerprint matches after arrest, this should be a serious public safety concern to federal and local lawmakers alike, as well as the public. The restrictions imposed on ICE agents as a result of prosecutorial discretion mandates are allowing literally hundreds of thousands of illegal alien offenders to return to U.S. communities each year in defiance of our laws.

**Table 4. Comparison of ICE/ERO Metrics:
Oct.-July, FY2012 and FY2013**

Metric	2012	2013	Change
Total Departures	334,249	305,578	-9%
Criminal Departures	174,858	169,385	-3%
Non-Criminal Departures	159,391	136,193	-15%
Total Docket	1,705,332	1,802,660	6%
Pending Final Order	848,416	930,511	10%
Post Final Order	856,916	872,149	2%
Avg. Daily Population Detained	33,839	33,978	0%
Avg. Length of Stay (in days)	26	29	8%
Encounters	591,613	597,005	1%
Detainers	236,087	176,901	-25%
Arrests	221,656	176,194	-21%
Charging Documents Issued	208,728	162,610	-22%
Book-Ins (includes cases from other agencies)	395,824	368,174	-7%

Source: ICE

Enforcement Activity Declined in Every ICE Field Office

Table 5 shows the steep decline in the number of aliens selected by ICE for deportation in each Field Office from 2011 to 2013. The figures show the number of charging documents issued in the first 10 months of each fiscal year (October to July).⁸

Overall, ICE/ERO initiated deportation for 34 percent fewer aliens in 2013 than the same period in 2011.

The Field Offices that saw the largest declines in the number of aliens put on the path to removal were Atlanta, Salt Lake City, Washington DC/Virginia, and Houston. The smallest declines were in the San Antonio and New York City Field Offices. No Field Office increased the number of aliens charged, even though the Secure Communities program was expanded in most of these jurisdictions over the three-year time period.

**Table 5. Charging Documents Issued by ICE Field Office:
Oct.-July FY2011, 2012 and 2013**

	2011	2012	2013	% Change
Total	226,411	208,281	149,475	-34%
Atlanta	19,307	17,539	7,293	-62%
Baltimore	1,944	1,859	1,328	-32%
Boston	3,063	3,415	2,525	-18%
Buffalo	1,279	1,151	1,086	-15%
Chicago	14,064	11,244	8,402	-40%
Dallas	13,703	11,701	9,552	-30%
Denver	5,692	4,718	3,447	-39%
Detroit	5,071	4,642	3,452	-32%
El Paso	4,540	4,460	2,927	-36%
Houston	13,384	12,148	7,680	-43%
Los Angeles	23,319	21,398	14,379	-38%
Miami	10,494	11,144	7,933	-24%
New Orleans	10,630	9,595	6,696	-37%
New York City	6,910	6,379	6,594	-5%
Newark	3,996	3,849	3,022	-24%
Philadelphia	4,464	3,893	3,470	-22%
Phoenix	11,686	10,456	7,854	-33%
Salt Lake City	6,019	5,086	3,097	-49%
San Antonio	11,197	13,177	10,745	-4%
San Diego	10,435	9,038	6,213	-40%
San Francisco	22,239	19,348	14,459	-35%
Seattle	6,873	5,985	4,775	-31%
St. Paul	5,714	5,032	3,816	-33%
Washington, DC	6,306	5,652	3,424	-46%
Other	4,082	5,372	5,306	30%

Source: ICE

Prosecutorial Discretion Results in Fewer Criminal Alien Arrests

The Obama administration has rationalized its policy of “prosecutorial discretion” and amnesty for certain groups of illegal aliens as necessary to maintain a focus on deporting criminal aliens and those who pose a threat to public safety. Yet the total number of criminal alien arrests also declined by 11 percent from 2012 to 2013, as shown in Table 6, which covers activity for the first 10 months of 2012 and 2013.

The biggest declines in criminal alien arrests occurred in the San Diego, Washington DC/Virginia, Miami, and El Paso field offices. Only three field offices increased criminal alien arrests: Dallas, Philadelphia, and Phoenix.⁹

**Table 6. Convicted Criminal Arrests by Field Office:
Oct.-July FY2012 and FY2013**

	2012	2013	% Change
Total	143,598	128,441	-11%
Atlanta	8,944	7,874	-12%
Baltimore	1,308	1,150	-12%
Boston	2,384	1,914	-20%
Buffalo	992	968	-2%
Chicago	7,614	6,958	-9%
Dallas	10,272	11,026	7%
Denver	4,039	3,462	-14%
Detroit	4,090	3,283	-20%
El Paso	2,181	1,720	-21%
Houston	8,454	7,043	-17%
Los Angeles	13,771	12,500	-9%
Miami	6,962	5,466	-21%
New Orleans	5,711	5,133	-10%
New York City	3,631	3,110	-14%
Newark	2,008	1,655	-18%
Philadelphia	2,708	2,963	9%
Phoenix	4,262	5,044	18%
Salt Lake City	4,144	4,128	0%
San Antonio	17,387	17,332	0%
San Diego	4,972	3,062	-38%
San Francisco	14,830	12,210	-18%
Seattle	4,379	3,769	-14%
St. Paul	3,898	3,444	-12%
Washington, DC	3,822	2,852	-25%
Other	835	375	-55%

Source: ICE

Secure Communities Increases Criminal Alien Referrals

Some defenders of the administration’s lackluster enforcement record have suggested that the lower ICE interior deportation numbers are the result of better enforcement at the southwest border taking the pressure off of ICE in the interior, plus the implementation of the Deferred Action for Childhood Arrivals amnesty (known as DACA). This explanation is unconvincing. First of all, the Border Patrol reported an increase in apprehensions in 2012, which is generally taken as an indication that illegal crossing attempts (and successful illegal crossings) have increased. A recent study by the Pew Hispanic Center seemed to corroborate the start of a new upward trend in illegal immigration, estimating that the size of the settled illegal alien population is back on the rise.¹⁰ Moreover, even if new illegal arrivals had slackened, the population of established illegal residents is still large enough to keep ICE very busy – even if it focused only on the estimated 1.9 million criminal aliens living in the United States.

Moreover, in 2012 ICE completed the implementation of the Secure Communities program, which alerts ICE whenever a non-citizen is arrested and fingerprinted by a law enforcement agency. As shown in Table 7, this initiative generated more than 400,000 referrals of arrested aliens to ICE in 2012. This does not include the large number of criminal aliens who do not have fingerprints on file with DHS who also are discovered by local law enforcement or ICE officers working in jails. With the help of this program, ICE’s interior criminal alien removal numbers should be increasing, not decreasing, especially considering that illegal alien criminals can be removed expeditiously if ICE personnel are encouraged and trained to do so properly.

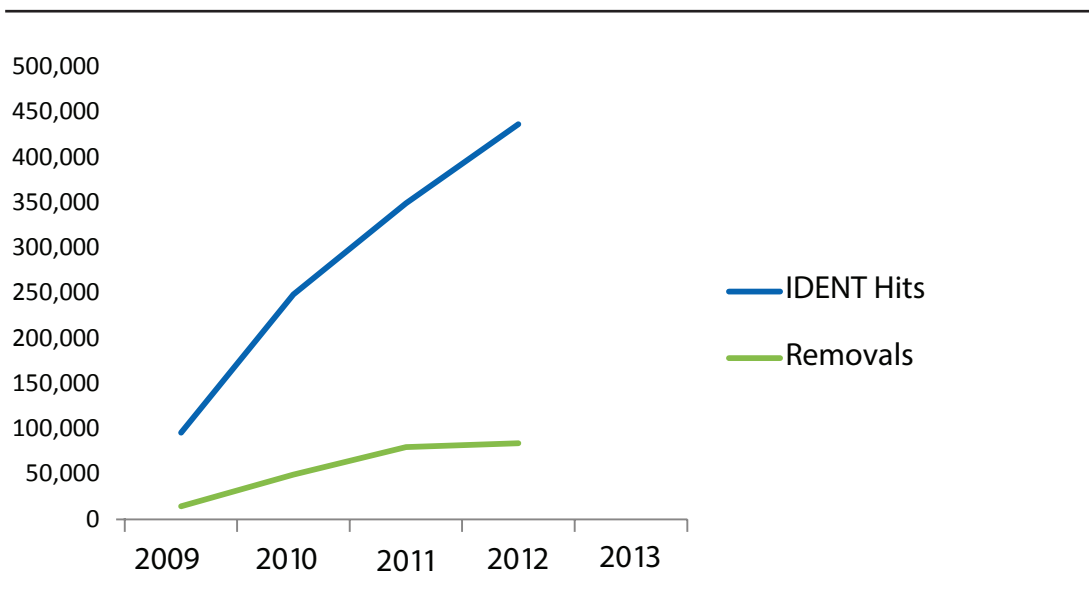
Yet program data published by ICE indicate that removals generated by Secure Communities are also declining, and are projected to be 17 percent lower in 2013 compared with 2012, even though the number of aliens identified is larger than ever.

Table 7. Arrested Aliens Identified via Secure Communities: 2009-2013

	2009	2010	2011	2012	2013* Partial	2013 Projected
IDENT Hits	95,664	248,166	348,970	436,377	344,499	459,332
Jurisdictions Added	88	570	937	1,479	106	
Removals	14,364	49,511	79,900	83,815	51,892	69,189**
Removal/Hit Rate	15%	20%	23%	19%	15%	

*as of May 31, 2013
 ** projected decrease of 17%
 Source: ICE

Figure 4. Arrested Aliens Identified via Secure Communities: 2009-2013



Source: ICE

Few Dreamers Needed Deferred Action

Some have claimed that the decline in enforcement is to be expected following the implementation of the DACA program. According to former DHS Secretary Janet Napolitano, the program was needed in order to spare hundreds of thousands of long-resident illegal aliens from the threat of deportation, and free up ICE agents to work higher priority cases of criminals and national security threats.

The statistics do not support this claim. Relatively few DACA-eligible illegal aliens actually were facing the threat of deportation. According to ICE records released for *Crane v. Napolitano*, as of March 30, 2013, more than seven months after the launch of the program, there were 4,594 active cases of illegal aliens on ICE’s docket who were granted deferred action under DACA. These are much too small a share of the case load to have suppressed enforcement to the degree that has occurred. And, as discussed above, the number of criminal removals has declined, not increased, after DACA.

Clearly, the DACA program was neither needed nor intended to save low-risk illegal aliens from deportation, nor to allow ICE to focus on higher priority cases. The obvious purpose of DACA was to provide work permits and legal presence to hundreds of thousands of long-resident illegal aliens under age 31. DACA has had no noticeable effect on ICE’s workload; instead, it has contributed to the “catch and release” nature of immigration enforcement today.¹¹

ICE’s Docket: The Non-Departed

Table 8 is a snapshot of ICE’s case load at the end of July in 2012 and 2013. This table illustrates the enormity of the immigration enforcement case load – more than 1.8 million cases in 2013.

Of these 1.8 million aliens on the path to deportation in 2013, fewer than 30,000 were in detention at any one time, or about 1.7 percent. Those detained the aliens on ICE’s docket who are most likely to actually depart the country.

Just over half of ICE’s daunting docket of cases is made up of individuals who are in proceedings and have not yet been ordered removed (or granted relief). The other half is made up of people who have already been ordered removed – but who are still here. A tiny share (1.5%) of these post-final-order cases are in detention; while awaiting travel documents or acceptance by their home country, but most of them will ultimately be removed.

	2012	2013
Pending Final Order		
Detained	21,499	16,528
Non-Detained	826,917	913,983
Total	848,416	930,511
Post Final Order		
Detained	14,771	13,370
Non-Detained	842,145	858,779
Total	856,916	872,149
TOTAL DOCKET	1,705,332	1,802,660
% Detained	2.1	1.7
Source: ICE		

The group that should be of greatest concern for policy makers is the enormous number of non-detained, post-final-order cases. These are aliens who have been accorded due process, exhausted appeals, and received a final order of removal, but who remain here in defiance of that order. As of the end of July 2013, there were 872,000 individuals on ICE’s docket in this category. A relatively small share cannot be removed, either because their home country won’t take them back, or because the government there is insufficiently organized to issue travel documents (see below). The vast majority of the 872,000 have simply absconded, skipped out on hearings, and continue to live here as illegal aliens. This number grew by more than 15,000 from 2012 to 2013.

The Impact of *Zadvydas v. Davis*

Some aliens cannot be removed, or their removal takes a very long time, either because of limitations in bilateral repatriation treaties (as is the case with Cambodia), or because the home country refuses to issue or deliberately slow-walks travel documents for the alien (Cuba and Bangladesh), or because the home country government is dysfunctional (Somalia). In 2001, the Supreme Court ruled in *Zadvydas v. Davis* that such aliens may not be detained for more than six months if their removal is not imminent, except in certain uncommon circumstances.¹²

Because of the *Zadvydas* restrictions, and because DHS and the State Department have declined to follow a statutory mandate to put pressure on recalcitrant countries to take back their citizens, ICE has released more than 17,000 essentially un-removable aliens from detention since 2010 (See Table 9). Most of these aliens are convicted criminals. There is also an unknown number of non-criminal and/or non-detained removable aliens on the docket whose departure is prevented by their home country’s recalcitrance or dysfunction. Some additional unknown number of aliens from these countries are treated as exempt from enforcement under the guidance in the Morton Memo of 2011, and thus simply are not arrested by ICE agents who encounter them.

Meanwhile, the State Department continues to issue and renew tens of thousands of visas for citizens of these countries (See Table 10). For example, in 2012 it took an average of 436 days for the government of Malaysia to issue travel documents to its citizens who were ordered removed from the United States. If any of those aliens were detained, at \$120 per day those 436 days of waiting for travel documents cost U.S. taxpayers more than \$52,000 per detained Malaysian. In 2012, the State Department issued 47,000 temporary visas to Malaysians, approving 95 percent of all applicants. Even if an unusually high number complied with their visas and returned home, and just three percent overstayed, that would add another 1,400 illegal aliens to the population who are very difficult to remove, even if they commit crimes. This could be why ICE succeeded in deporting only 31 Malaysians in 2012.¹³

Table 9. Removable Aliens Released Due to *Zadvydas*: 2010-Present

Year	
2010	4,946
2011	4,695
2012	5,346
2013 (thru March)	2,311
Total	17,298

May include multiple releases for a single alien.
 Does not include removable aliens not in detention who cannot be removed.
 Source: ICE

Table 10. Worst Countries for Travel Document Issuance

Average Days to Issue Travel Documents 2010-2012		Average Days to Issue Travel Documents in 2012		Non-Immigrant Visas Issued in 2012	Visitor Visa Approval Rate
Qatar	800	Cambodia	558	3,663	66%
Cambodia	522	Iran	545	25,446	62%
St. Kitts & Nevis	410	Iraq	487	10,399	67%
Kuwait	376	Bangladesh	476	15,911	74%
Vietnam	368	St. Kitts & Nevis	467	1,390	73%
Turkmenistan	354	Malaysia	436	47,027	95%
The Gambia	350	Ivory Coast	417	4,622	72%
Sudan	339	Liberia	405	3,168	54%
Somalia	331	Niger	340	1,200	64%
Djibouti	328	Vietnam	315	58,117	78%
Burma	324	Yemen	308	3,497	52%
Iran	303	Burkina Faso	303	2,588	65%
Liberia	295	Haiti	293	29,213	46%
Iraq	269	Djibouti	286	538	35%
Niger	253	Belarus	283	11,018	80%
Yemen	252	Dem. Rep. of Congo	274	5,320	63%
Haiti	245	Somalia	273	202	38%
Sierra Leone	241	Sierra Leone	253	1,807	50%
Burkina Faso	234	Algeria	249	7,364	76%
Ivory Coast	229	Montenegro	244	3,699	69%
Zimbabwe	222	Cuba	241	20,200	61%
Lebanon	202	Kosovo	238	4,328	68%

Source: ICE and the State Department

Traffic Offenders

Since the implementation of Secure Communities, advocates who are opposed to immigration enforcement have alleged that the program has served as an unfair and overzealous dragnet that results in the deportation of harmless people who have been turned over to ICE as a result of “minor” traffic offenses, such as a broken taillight. Advocates often imply or contend that such traffic stops were baseless, illegitimate, or trumped up in discriminatory practices by local police and sheriffs.

These claims are not supported by ICE records, which are summarized in Table 11.¹⁴ In each of the last three years (2011 through 2013), about 14 percent of all aliens deported were identified due to a conviction for a traffic offense, as opposed to a misdemeanor or felony, and numbered between 40,000 and 60,000 in each of those years.

The records show that the majority of traffic offenses committed by these removed aliens were far from minor. Sixty-four percent of the aliens deported after traffic offenses were convicted of driving under the influence of alcohol or drugs. Thousands of others were convicted of hit and run.

It would be a mistake to assume that the nearly 60,000 individuals who were deported in the last four years after being convicted of mere unspecified traffic offenses were somehow unfairly or inappropriately targeted by ICE. All had immigration violations as well and it is possible, even likely, that most of these offenders had either been deported before or had skipped out on hearings.

Table 11. Traffic Offenders Removed: 2010-2013

	2010	2011	2012	2013 (Oct-March)	Total	Percent
Most Serious Conviction						
Hit & Run	992	1,334	1,312	479	4,117	2%
Transporting Dangerous Material	3	6	5	3	17	<1%
DUI - Drugs	681	684	733	342	2,440	1%
DUI - Alcohol	27,635	35,927	36,166	14,246	113,974	63%
Other Traffic Offense	13,028	19,041	20,044	7,487	59,600	33%
Total	42,339	56,992	58,260	22,557	180,148	100%

Source: ICE

Conclusion

The Obama administration has sought to portray its performance on immigration enforcement as smarter, better, and more successful than previous administrations. To support this claim, it has presented a few statistical nuggets in clever packaging that have been artificially padded by transferring cases from the Border Patrol to ICE. To use the proverbial “apples and oranges” analogy, the Obama administration, in order to give the impression of a “record” apple harvest, has counted both apples (ICE cases) and oranges painted to look like apples (Border Patrol cases), while leaving a large number of actual apples on the trees.

A better picture of the true state of immigration enforcement in the interior, where most illegal aliens have settled and where most Americans notice the impact, emerges from this analysis of ICE’s internal statistics and metrics. Interior enforcement activity, including arrests and removals of criminal aliens, which are ICE’s highest priority, has declined significantly. More than 870,000 aliens who have been ordered removed are still living here in defiance of our laws. This dysfunction must be addressed before consideration of more mass amnesties or expansions in admissions of any kind. Until we achieve better control of illegal immigration, and the laws we have are taken seriously and enforced, there is no point in passing new ones.

End Notes

¹ For definitions and details on the immigration enforcement process, see *Deportation Basics*, by W.D. Reasoner: <http://www.cis.org/deportation-basics>.

² <http://www.washingtontimes.com/news/2011/oct/5/napolitano-us-will-set-record-deportations-2011/#ixzz2i7xLpOIQ>

³ One of these programs was the Alien Transfer Exit Program (see <http://articles.latimes.com/2011/sep/29/local/la-me-immigrant-deport-20110930>).

⁴ Internal ICE statistics obtained for *Crane v. Napolitano*.

⁵ ICE statistics cited in <http://www.cis.org/vaughan/secure-communities-please>.

⁶ DHS Budgets in Brief, 2009 and 2013.

⁷ Encounters occur when an alien comes into contact with an ICE officer in an official setting, such as in a jail or street operation, or when an ICE agent is notified about an inmate in local custody, such as through a query to the ICE Law Enforcement Support Center.

⁸ Figures do not include cases generated by the 287(g) programs operating in these districts.

⁹ The increase in criminal arrests in Phoenix may be due to the cancellation of several 287(g) programs in Arizona. These programs formerly handled a significant share of ICE's criminal work load before their cancellation in 2012, and following the termination of the programs, the workload shifted back to ICE. See <http://www.cis.org/vaughan/stopping-immigration-enforcement>.

¹⁰ <http://www.pewhispanic.org/2013/09/23/population-decline-of-unauthorized-immigrants-stalls-may-have-reversed/>.

¹¹ See <http://www.cis.org/vaughan/lawsuit-documents-criminal-alien-releases-decline-enforcement-cooked-statistics>.

¹² See <http://www.cis.org/stopping-release-of-criminal-aliens> for more details.

¹³ Interestingly, since 2004, Malaysia has been trying to crack down on its own illegal immigration problem. Illegal aliens there reportedly are subject to harsh treatment, including large fines and caning. Amnesty International claims that 10,000 people have been caned in Malaysia for immigration violations.

¹⁴ The source of these figures is the set of ICE reports released under discovery in *Crane v. Napolitano*.

Overall removal numbers include individuals arrested by ICE in the interior of the country and individuals apprehended by immigration officials at the border and turned over to ICE ...Â Homan attributed the overall decline in deportations to a border thatâ€™s "under better control." There were fewer southwest border apprehensions in fiscal year 2017 than in 2016, according to data from U.S. Customs and Border Protection. ICE administrative arrests increased under Trump.Â But book-ins based on ICEâ€™s interior enforcement efforts went up about 29 percent in 2017 versus 2016. Southwest border apprehensions: lowest since 1971. Trump has touted "unprecedented" declines in illegal immigration during his time in office, often crediting his Jan. FY2017 Enforcement and Removal Statistics. As directed in the EO and implementation memorandum, ICE no longer exempts classes or categories of removable aliens from potential enforcement. This policy change is reflected in EROâ€™s FY2017 enforcement statistics, which show increases in the following enforcement actions: (1) ICE ERO administrative arrests; (2) book-ins of aliens to ICE detention facilities resulting from ICE arrests; and (3) ICE ERO removals of aliens as a result of ICEâ€™s interior enforcement.Â The decrease in ICEâ€™s overall removal numbers from FY2016 to FY2017 was primarily due to the decline in border apprehensions in 2017. "ICE has taken the gloves off, and they are going after whoever they want and for whatever reason," said Ray Ybarra Maldonado, an immigration attorney in Phoenix. "It's a free-for-all now." There appear to be several factors that explain why deportations have declined despite the increase in arrests, according to policy experts, immigration attorneys and current and former ICE officials. The number of people attempting to sneak across the U.S. border with Mexico fell dramatically in the months following Trump's inauguration, reducing the supply of easy-to-deport