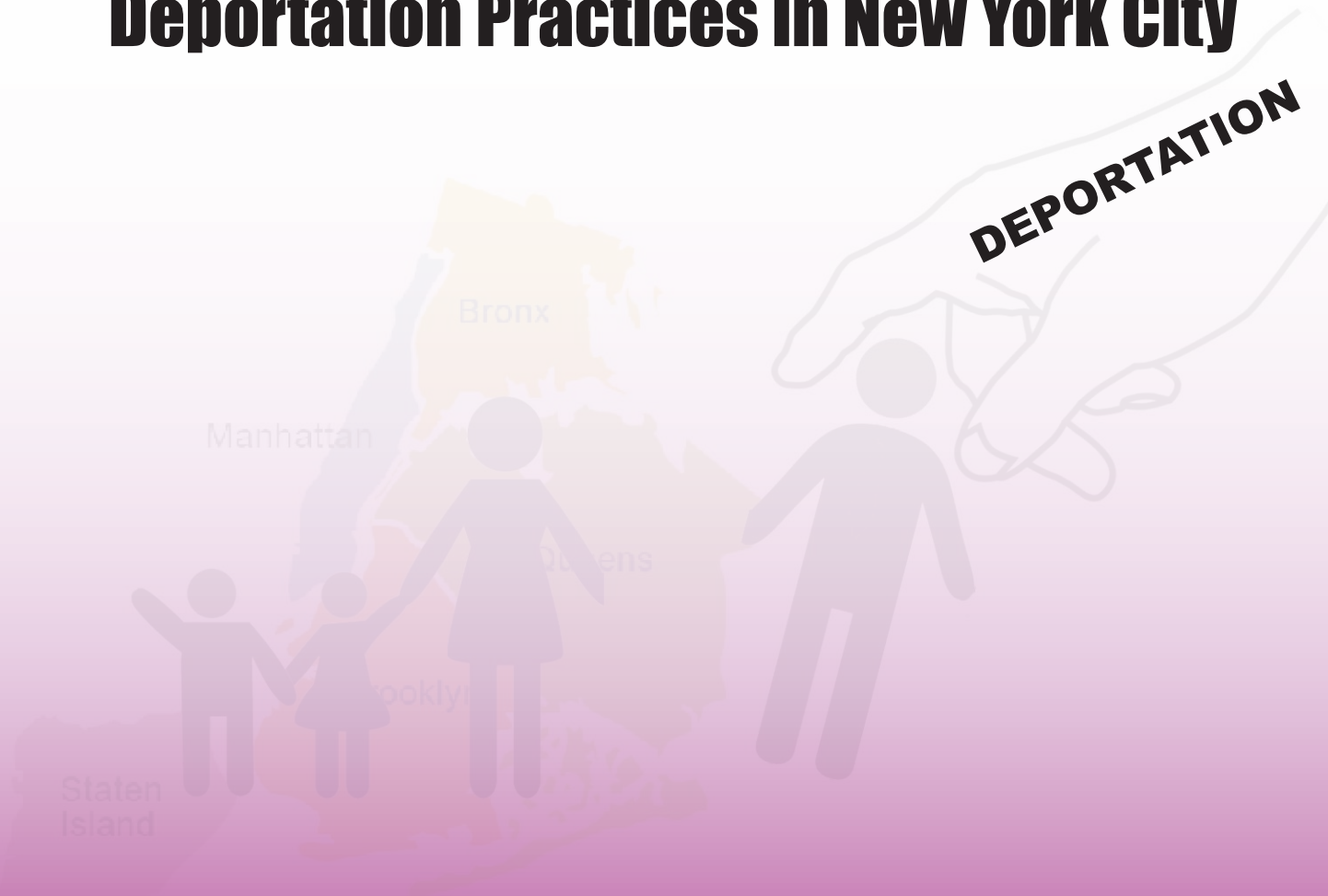


# **INSECURE COMMUNITIES, DEVASTATED FAMILIES**

## **New Data on Immigrant Detention and Deportation Practices in New York City**



**JULY 23, 2012**

**NYU School of Law Immigrant Rights Clinic  
Immigrant Defense Project  
Families for Freedom**



## About Families for Freedom

Founded in September 2002, Families for Freedom is a New York-based multi-ethnic defense network by and for immigrants facing and fighting deportation. We are immigrant prisoners (detainees), former immigrant prisoners, their loved ones, or individuals at risk of deportation. We come from dozens of countries, across continents. FFF seeks to repeal the laws that are tearing apart our homes and neighborhoods; and to build the power of immigrant communities as communities of color, to provide a guiding voice in the growing movement for immigrant rights as human rights. FFF has evolved into an organizing center against deportation. We are source of support, education, and campaigns for directly affected families and communities—locally and nationally.



## About the Immigrant Defense Project

The Immigrant Defense Project is a former initiative of the New York State Defenders Association (NYSDA), that strives to promote fundamental fairness for immigrants accused or convicted of crimes. We seek to minimize the harsh and disproportionate immigration consequences of contact with the criminal justice system by 1) working to transform unjust deportation laws and policies and 2) educating and advising immigrants, their criminal defenders, and other advocates. In pursuit of these goals, we serve as a legal resource and training center for criminal defense attorneys, advocates, and immigrants and their loved ones, challenge overreaching government interpretations of criminal-immigration laws through impact litigation, engage in policy advocacy efforts to scale back criminal grounds of deportation and to return to a more proportional, fair, and discretionary immigration system, and build the capacity of community-based organizations to understand and respond to criminal-immigration issues.



The data from this report is the result of a Freedom of Information Act lawsuit filed by Joshua Occhiogrosso-Schwartz and Frances Kreimer, students at the New York University School of Law Immigrant Rights Clinic, under the supervision of Nancy Morawetz. Joshua Occhiogrosso-Schwartz researched and wrote the report with the contribution of Families for Freedom members' stories collected by Abraham Paulos. Alisa Wellek of the Immigrant Defense Project edited the report. Design by Mizue Aizeki of the Immigrant Defense Project.

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# INTRODUCTION

New York City is home to over three million foreign-born residents.<sup>1</sup> Yet, immigrant New Yorkers have been forced to struggle with the harsh realities of Immigration and Customs Enforcement (“ICE”) operations in their city for years—families broken apart by midnight raids, parents of U.S. citizen children sent to far-away detention facilities in Texas and Louisiana and held without bond, immigrants arrested after a “stop-and-frisk” encounter with the NYPD, only to find themselves thrown into a pipeline that sends thousands of New Yorkers from Rikers Island to ICE detention every year. However, even as advocates, the City Council, and other city stakeholders debate how to limit the damage that ICE policies inflict on New York and the city’s large immigrant community, there has been little data on what exactly happens to immigrant New Yorkers who are apprehended by ICE, and the extent of the agency’s enforcement operations in the city.

In response to this urgent need for information, the community groups Families for Freedom and the Immigrant Defense Project filed a request for information with ICE under the Freedom of Information Act (“FOIA”). The agency initially did not comply with the request, instead stating that the organizations needed to pay over \$1.3 million in fees to secure the necessary documents.<sup>2</sup> The organizations filed a lawsuit in federal district court against ICE, and the case was settled in May of 2011. As a condition of the settlement, ICE provided data to the Vera Institute for Justice, for use in conjunction with immigration court data for a wide-ranging study on immigrant New Yorkers’ access to counsel. That study was released in early 2012.<sup>3</sup> ICE also provided a spreadsheet of data on every individual apprehended by the New York City Field Office from October 2005 through December 2010. Nineteen distinct data fields were included for each individual apprehended, and that never before released data is the subject of this report.

The data provided by ICE, as a condition of the settlement of the lawsuit, is significant in two key ways. First, it allowed researchers at the Vera Institute to accurately assess the impact of detention and, in particular, ICE’s transfer policy, on the issues that face immigrant New Yorkers in immigration court, such as access to legal counsel and the availability of relief from deportation.<sup>4</sup> Second, the spreadsheet provided by ICE that is the basis of this report provides hard evidence of the effects of immigration detention and deportation on New York City communities. For example, there had previously been no way for local leaders and community members to assess how many individuals of a certain nationality were detained by ICE in New York or how many individuals in a given New York City zip code or neighborhood were detained. Likewise, there was no way for them to know how many parents of U.S. citizen children were swept into the system. Other issues, like the frequency of bond settings for New Yorkers and ICE transfers of New Yorkers to far-away detention facilities, remained equally murky. However, while the data is in many respects new, it only confirms what groups like Families for Freedom and the Immigrant Defense Project have known for years: that ICE enforcement in New York City is terrorizing the city’s immigrant community.

## TOP-LINE FINDINGS

### ICE detains and deports thousands of immigrant New Yorkers every year.

- From October 2005 through December 2010, ICE apprehended **over 34,000 New Yorkers**.
- Since 2008, ICE has detained well **over 7,000 New Yorkers each year**.
  - From 2008 to 2010, ICE averaged 7,417 apprehensions per year, nearly a **60% increase since 2006**, the first full year covered by the data.
- **91%** of New Yorkers detained by ICE are deported.

### The New York City criminal justice system has become a pipeline to immigration detention. Rapidly increasing numbers of immigrants are being swept into immigration detention and deportation after encounters with the criminal justice system.

- Almost **77% of all ICE apprehensions** occur via the so-called Criminal Alien Program (CAP).

### Bond data demonstrates that ICE detains the overwhelming majority of New Yorkers without any opportunity of release from detention.

- **4 out of 5 New Yorkers** in immigration detention are never given a bond setting.
- In the rare instance bond is set, the amount is prohibitively high.
  - Only 45% of those who receive a bond setting are able to pay it.
  - 75% of all bonds are \$5,000 or more.
  - 35% of all bonds are \$10,000 or more.
  - Less than 1% are released on their own recognizance.
- New Yorkers in New York City Criminal Courts **are 75 times more likely** to be released on their own recognizance than New Yorkers in ICE detention.
  - Even those facing serious felony charges in New York City **are 37 times more likely** to be released on their own recognizance than those in immigration detention.
  - Despite having the **discretion to set bond in 91% of cases**, during the period covered by the data, **ICE detained over 31,000 New Yorkers** without a bond setting, or with a bond amount that was prohibitively high.

## **New Yorkers are transferred to far-away detention facilities, outside of New York and New Jersey, at alarming rates. Those who are transferred almost never obtain relief from deportation.**

- From October 2005 through December 2010, ICE transferred over 18,000 New Yorkers, or more than half of all those apprehended, to detention facilities in far-away jurisdictions like Texas and Louisiana.
- 94.5% of all of those transferred outside of New York and New Jersey are deported.
  - Those who are not transferred are **70% more likely** to be granted relief.
  - Those who are not transferred are **41% more likely** to receive bond.
- ICE transfers immigrant New Yorkers out of the state *regardless of whether or not they have U.S. citizen children*.
  - Just shy of 23% of those detained in New York have U.S. citizen children, while **nearly 21% of those transferred out of state have U.S. citizen children**.

## **ICE's detention and deportation policies are breaking apart New York City families and neighborhoods.**

- From October 2005 through December 2010, the parents of **13,521 U.S. citizen children** were apprehended in New York. This data is often not obtained by the agency, so the actual number is likely much higher.
  - The parents of **at least 7,111 U.S. citizen children** were deported during this same period.
  - The parents of **at least 10,208 U.S. citizen children** were detained without bond.
  - **At least 7,186 New Yorkers** detained by ICE had U.S. citizen children.
  - **87%** of the resolved cases of individuals with U.S. citizen children have resulted in deportation.
- The available data shows that approximately 35% (12,000) of all apprehensions in New York City were of residents of Queens, while 29% (10,000) were of residents of Brooklyn, 19% (6,600) were residents of the Bronx, 14% were residents of Manhattan (4,600), and 3% (1,000) were residents of Staten Island.
  - Extrapolating from this data, approximately 1,800 residents of Washington Heights/Inwood were apprehended by ICE during this period, which accounts for almost 40% of all apprehensions in Manhattan.
  - In Jamaica, Queens, about 1,500 residents were apprehended by ICE during the period covered by the data.
  - In Brooklyn, Bedford-Stuyvesant/Crown Heights saw an estimated 1,300 individuals detained by ICE, and Flatbush/East Flatbush saw an estimated 1,500 residents detained.
  - In the Bronx, Hunts Point/Mott Haven accounts for approximately 700 apprehensions and Fordham/Bronx Park accounts for an estimated 1,400 apprehensions.

## PART I. ICE OPERATIONS IN NEW YORK CITY

### A. Background

From 2001 to 2010, the yearly rate of actual deportations rose well over 100%, to almost 400,000 removals per year.<sup>7</sup> During that time, New York City's criminal justice system operated as a pipeline through which the city's immigrant community was funneled into ICE detention. The ICE data shows that 60% of the New Yorkers apprehended by ICE from October 2005 through December 2010 had "detainers" placed on them—or requests by ICE, without any showing of evidence, that immigrants in custody of local authorities be held for a set amount of time until the agency can take custody of them. 20,582 total detainers were issued by ICE during the period covered by this data.

The data also makes clear that the overwhelming majority of New Yorkers detained during this period were apprehended under the Criminal Alien Program (CAP). CAP is a nationwide mass deportation program that operates primarily (although not exclusively) through cooperation between ICE and local jails and prisons, whereby ICE officials detain immigrants who have been caught up in the criminal justice system after receiving their information from local authorities.<sup>8</sup> The program has been widely criticized as a "dragnet."<sup>9</sup> For example, according to one case study by The Chief Justice Earl Warren Institute on Race, Ethnicity, and Diversity, CAP has resulted in a disproportionate rise in the number of Hispanics arrested for low-level misdemeanors.<sup>10</sup> The study, which focused on CAP enforcement 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."<sup>11</sup> An internal study by ICE in 2009 found that close to 60% of immigrants detained through CAP had no criminal convictions whatsoever.<sup>12</sup>

In New York City, CAP and other forms of local cooperation between the New York City Department of Correction (DOC) and ICE, have been hotly contested, with advocates warning that these programs create a barrier between the city's large and vibrant immigrant community and law enforcement.<sup>13</sup> The New York City Council passed a bill in late 2011 that limited New York City jails' role in cooperating with ICE.<sup>14</sup> However, that bill only limits transfers of immigrant New Yorkers to ICE detention for individuals with no prior criminal convictions and no pending criminal charges.<sup>15</sup>

Moreover, efforts to limit ICE's ability to sweep immigrants from police custody into immigration detention have taken a huge blow, with the implementation of Secure Communities in New York. After the Department of Homeland Security initially claimed that the program was optional for localities, and Governor Andrew Cuomo suspended New York's agreement to implement the program, DHS activated Secure Communities in New York City in May of 2012.<sup>16</sup> Secure Communities effectively links immigration enforcement to all police precincts-- under the program, police send fingerprints at booking to DHS databases, allowing ICE to determine rapidly if someone is potentially deportable.

Given the history of the discriminatory policing practices and policies that have targeted communities of color, such as the frequency of police encounters in immigrant communities through tactics such as stop-and-frisk, discussed below, the activation of the Secure Communities program will likely result in a massive expansion of the immigration detention and deportation system in New York City and exacerbate problems with the criminal justice

Wilfredo, a Families for Freedom member from the Dominican Republic, entered the country in 1973 at the age of 5 as a lawful permanent resident (green card holder). In 2005 he pleaded guilty on the advice of his attorney to a minor drug charge, for which he received court-ordered community service and no jail time. His attorney never told him that under federal immigration law, his conviction would render him deportable. Several years later, Wilfredo received a letter from the government stating that he needed to report to 26 Federal Plaza in New York City to correct an error with an immigration application. When he arrived, he was apprehended, detained, and transferred to a remote facility in South Texas, thousands of miles from his U.S. citizen wife, children, and grandchildren.

system. The Center for Constitutional Rights released a statement condemning the policy in New York City, in which the organization explained that:

“Data gathered from CCR’s lawsuit challenging the NYPD’s use of stop-and-frisk shows Latino and Black communities are already disproportionately affected by the NYPD’s practice of racial profiling and unconstitutional stops-and-frisks. The combination of racially discriminatory police practices like “stop-and-frisk” with faulty ICE programs like Secure Communities turns New York police into immigration agents. With Secure Communities, thousands of arrests and summons for minor offenses, which ultimately may not be prosecuted or were the result of unlawful racial profiling, will result in referral for deportation. The impact on communities of color whose families Secure Communities rips apart is devastating.”<sup>17</sup>

A study on the implementation of Secure Communities in other jurisdictions found that the deportation program had a strong racial bias: 93% of those arrested under the program were Latino, while Latinos make up only 77% of the undocumented community.<sup>18</sup> Furthermore, almost 40% of those apprehended under Secure Communities report having U.S. citizen children.<sup>19</sup>

Thus, despite recent efforts to curb the ability of ICE to funnel New Yorkers from the criminal justice system into immigration detention, Secure Communities will likely lead to further expansion of ICE enforcement in New York.

## **B. The New York Police Department’s Stop-and-Frisk Policy Underlines the Danger of Programs Like CAP and Secure Communities**

The New York Police Department’s well-documented pattern of unconstitutional arrests, especially in communities of color, highlights the danger in bringing ICE and local law enforcement closer together. “Stop-and-frisk,” is a widely-criticized practice by which New York Police Department officers stop individuals on the street to search and interrogate them, and has likely resulted in the arrest of thousands of immigrants who were subsequently detained by ICE.<sup>20</sup> Despite the fact that New York City is only 26% black and 27% Latino, 53% of all stop-and-frisk encounters target black residents and 31% target Latinos.<sup>21</sup> Recent analysis done by the New York Civil Liberties Union shows that 90% of these stops result in no arrest.<sup>22</sup> However, despite the small percentage of those actually arrested, NYPD’s widespread use of the practice, particularly with young black and Latino men in New York City, still results in tens of thousands of arrests every year.<sup>23</sup> Stop-and-frisk encounters in New York City have risen 72% since 2005, recently jumping 14% in 2011 for a total of 685,724 encounters, which resulted in a record-high 80,000 arrests.<sup>24</sup>

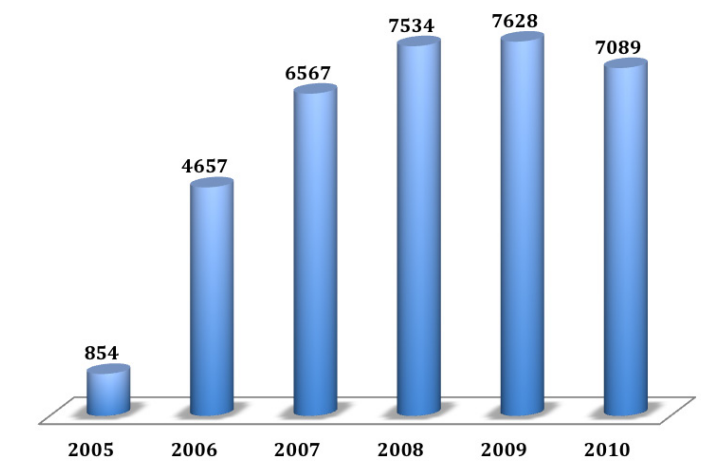
Although 36% of those arrested through this practice are never convicted, once individuals are arrested by NYPD, they are fingerprinted and their arrest can be shared with ICE, which then can place a detainer on them regardless of a conviction.<sup>25</sup> Thus, all individuals who, through stop-and-frisk or other police actions end up into New York City jail, regardless of whether their cases end in conviction, face a strong risk of ICE detention. In fact, 37% of all apprehensions through CAP, or 9,716 individuals apprehended during the period covered by the data, had no criminal history. As discussed in Parts II and III, nine times out of ten, those individuals will remain in ICE detention without bond, and more than half the time they will be transferred to far-away detention facilities.

## **C. ICE Data Highlights the Clear Link Between the New York City Criminal Justice System and Immigration Enforcement**

The ICE data used for this report covers all apprehensions by the agency from October 2005 through December 2010. During that time, a total of 34,329 New Yorkers were apprehended by ICE. After the first full year covered by the data, 2006, apprehensions rose 41% and continued to rise through 2009, where they peaked at 7,628, a 70% increase over 2006. Over the last three years, apprehensions totaled more than 7,000 in each year. This is a marked increase over the 4,657 apprehended in 2006.

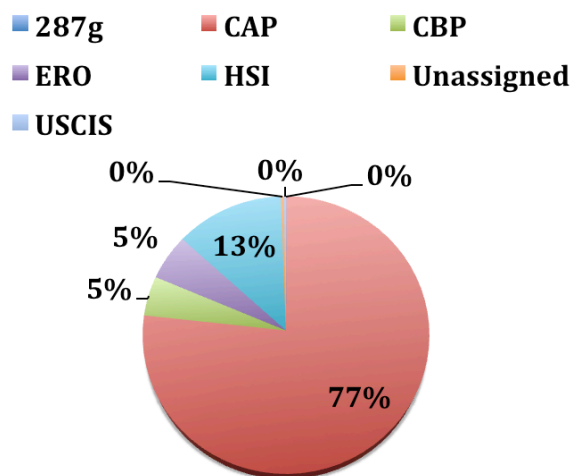


## ICE Apprehensions, by Year

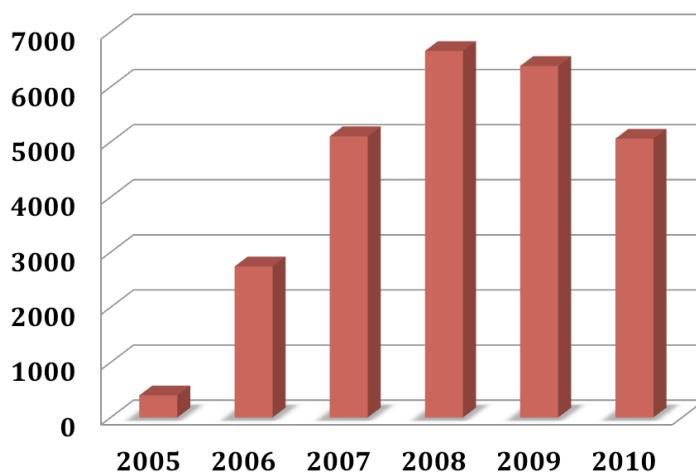


The primary program used by ICE to apprehend New Yorkers is the Criminal Alien Program (“CAP”). CAP accounts for almost 77% of all ICE apprehensions in New York, or 26,326 individuals. Homeland Security Investigations (“HSI”) accounts for 13%, while Enforcement and Removal Operations (“ERO”) and Customs and Border Patrol (“CBP”) account for just 5% each. 287g programs, and apprehensions through United States Citizenship and Immigration Service (“USCIS”) account for less than 1% of apprehensions.

### ICE Program of Apprehension



### CAP Apprehensions, by Year



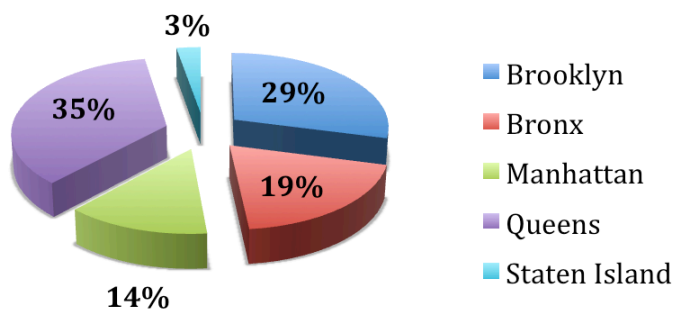
## D. Demographics: the Effects of ICE Enforcement on New York City Communities

As a part of the settlement of the Freedom of Information Act lawsuit brought by Families for Freedom and the Immigrant Defense Project in this case, ICE provided the zip codes for the place of residence for those who were apprehended by the agency.<sup>A</sup> That data shows that approximately 35% of all apprehensions in New York City were of residents of Queens, while 29% were of residents of Brooklyn, 19% were residents of the Bronx, 14% were residents of Manhattan, and 3% were residents of Staten Island.

<sup>A</sup> The data does not include zip codes for every individual detained, and some of the zip codes provided are of the detention facilities (often out-of-state) where individuals are typically sent. However, just shy of 37% of all 34,329 entries include a New York City zip code that does not correspond to a detention facility. New York City zip codes 10014, which corresponds to the Varick Street Detention Center, and 11371, which corresponds to Rikers Island, were not counted as valid due to the inability to distinguish between the true home address of an individual and address of the detention facility.

An extrapolation from this data indicates that, from October 2005 through December 2010, approximately 12,000 residents of Queens, 10,000 residents of Brooklyn, 6,600 residents of the Bronx, 4,600 residents of Manhattan, and 1,000 residents of Staten Island were apprehended by ICE. Some neighborhoods were hit particularly hard by ICE enforcement. Roughly 1,800 residents of Washington Heights/Inwood were apprehended by ICE during this period, which accounts for almost 40% of all apprehensions in Manhattan. In Jamaica, Queens, about 1,500 residents were apprehended by ICE during the period covered by the data. In Brooklyn, Bedford-Stuyvesant/Crown Heights saw an estimated 1,300 individuals detained by ICE, and Flatbush/East Flatbush saw an estimated 1,500 residents detained. In the Bronx, Hunts Point/Mott Haven accounted for more than 700 apprehensions, and Fordham/Bronx Park accounts for more than 1,400 apprehensions during the period covered by the ICE data.

### Percentage of Apprehensions, by Borough



The ICE data also shows the nationality of everyone apprehended from October 2005 through December 2010. The top fifteen nationalities, listed below, account for 25,797, or 75%, of the 34,329 total individuals.

#### Top Fifteen Nationalities

1. <b>Mexico</b> - 6,795 total	19.8%	9. <b>China</b> - 940 total	2.7%
2. <b>El Salvador</b> - 3,375 total	9.8%	10. <b>Guyana</b> - 715 total	2%
3. <b>Dominican Republic</b> - 3,038 total	8.8%	11. <b>Cuba</b> - 707 total	2%
4. <b>Ecuador</b> - 2,590 total	7.5%	12. <b>Trinidad &amp; Tobago</b> - 697 total	2%
5. <b>Guatemala</b> - 2,229 total	6.5%	13. <b>Haiti</b> - 490 total	1.4%
6. <b>Honduras</b> - 2,219 total	6.5%	14. <b>Peru</b> - 428 total	1.2%
7. <b>Jamaica</b> - 1,900 total	5.5%	15. <b>Pakistan</b> - 389 total	1.1%
8. <b>Colombia</b> - 1,028 total	3%		

Many individuals detained by ICE have legal status. The data covered by this report includes the status at the time of entry into the United States. From October 2005 through December 2010, 3,123 of those apprehended *entered* the country as lawful permanent residents (“LPRs”). According to ICE data over the last three years, 57% of LPRs do not enter the country with that status, but adjust to LPR status after entry.<sup>26</sup> Therefore, we can estimate that approximately 7,200 New Yorkers detained by ICE during the period covered by the data were LPRs. Over 70% of all resolved cases involving LPRs resulted in deportation. ICE currently does not publicly report the number of LPRs in a given locality deported each year, despite the fact that certain localities have significant LPR populations affected by immigration enforcement. The State of New York is home to 14% of all of those granted LPR status in 2011, trailing only California, which is home to 20% of the new LPR population.<sup>27</sup> New York City has a large LPR community, and the data demonstrates that thousands of New York City LPRs have been swept into ICE detention in recent years.

## PART II. BOND DATA

### A. Background

In 2010 ICE detained approximately 363,000 individuals.<sup>28</sup> Unlike the criminal justice system however, those apprehended by ICE are rarely given an opportunity to post bond, or be released from detention on their own recognizance. Both ICE and immigration courts have the legal authority to release the vast majority of detained individuals on bond, and yet choose not to do so. In the rare instance in which a bond is set, it is often prohibitively high. Thus, even the few individuals who do receive a bond setting often cannot pay it, and remain in detention throughout the duration of their case, separated from their families, friends, communities, and legal counsel. While in immigration detention, access to visitors, such as legal counsel and family, are severely limited, and those who remain locked up face extreme difficulty and hardship navigating the complex immigration law system, and are deprived of access to much-needed family, community, and legal support.<sup>29</sup> The lack of bond settings in immigration detention affects all immigrant New Yorkers apprehended by ICE, regardless of whether they have U.S. citizen children, or their years of residence in the United States, or their lack of criminal convictions.

Dave, a Families for Freedom member, was detained by ICE in September of 2010. He was transferred seven times in a matter of just 25 days, to detention facilities in Alabama, Louisiana and Pennsylvania. After seven facility transfers and over a year in detention, Dave finally managed to find a pro bono attorney who was able to secure him a bond hearing. Dave has U.S. citizen children—in fact, two of his children have fought in the U.S. military. After months of trying to secure a bond hearing, when he finally had his day in court, his family traveled from New York to the immigration court at the detention facility in Pennsylvania where he was held. The immigration judge would not even let them enter the courtroom. Furthermore, despite telling Dave that he did not find that he was a threat to the community, and did not find him to be a flight risk, the immigration judge set a bond of \$100,000. Dave and his family cannot pay the exorbitant amount. As a result, more than a year and a half after first being apprehended, Dave must remain in ICE detention while he fights his case.

### B. Bail and Bond in New York City

When an individual is arrested for a state-law crime in New York, she is given a bail hearing before a judge in which an individualized determination is made, based on the particulars of that individual's case and personal equities, on whether to set bond and how high of a bond amount to set. As discussed below, these determinations often result in a decision by a court that the justice is best served by the release of individual pending the outcome of the criminal charge. According to New York Criminal Procedure Law § 510.30, when making a bond determination, a court “must consider” a litany of factors:

- “(i) The principal's character, reputation, habits and mental condition;
- (ii) His employment and financial resources; and
- (iii) His family ties and the length of his residence if any in the community; and
- (iv) His criminal record if any; and
- (v) His record of previous adjudication as a juvenile delinquent, [omitted]; and
- (vi) His previous record if any in responding to court appearances when required or with respect to flight to avoid criminal prosecution; and

- (vii) If he is a defendant, the weight of the evidence against him in the pending criminal action and any other factor indicating probability or improbability of conviction; or, in the case of an application for bail or recognizance pending appeal, the merit or lack of merit of the appeal; and
- (viii) If he is a defendant, the sentence which may be or has been imposed upon conviction.”

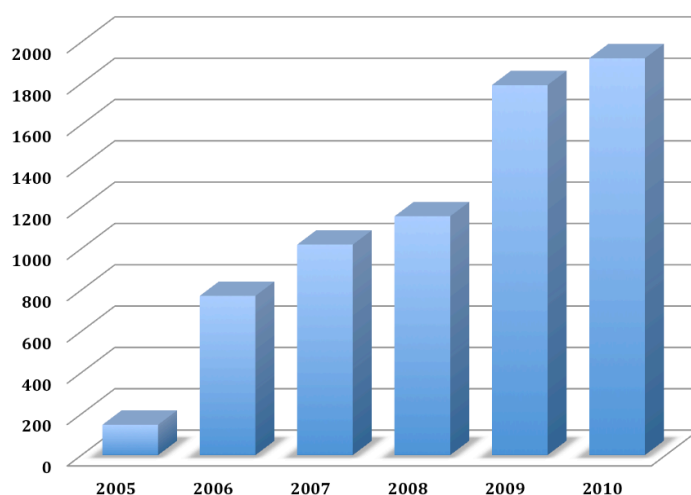
New York Criminal Procedure Law § 510.10 makes this determination *mandatory*. Thus, every individual in custody for pending criminal proceedings must have an individualized bond determination that evaluates the equities and factors enumerated above, such as ties to the community, financial resources, and whether the individual poses any sort of threat to the community.

In immigration detention, however, individuals are rarely even given a bond setting. In the unusual instance that bond is granted, it is so high that more than half of those that receive a bond are unable to pay it. As a result, the overwhelming majority of those apprehended in ICE remain in detention, regardless of whether bond is ever set.

### C. Individuals in Immigration Detention are Almost Never Released Pending The Resolution of Their Case

Less than 20%, or less than one in five, of every New Yorker detained by ICE from October 2005 through December 2010 received a bond setting. This means that 80% of New Yorkers remained in detention, without ever having a bond amount set, or after being denied bond. Over that time period, 27,524 New Yorkers were detained by ICE with no bond setting, and with no opportunity for release. Since 2006, the first full year covered by the data, ICE detentions of New Yorkers without bond have increased nearly 150%, from 771 in 2006 to 1,921 in 2010. Detentions have increased each year, with by far the biggest increase coming in 2009, where detentions of New Yorkers without bond rose from 1,156 the previous year, to 1,791—an increase of 55%. Even after skyrocketing in 2009, detentions without bond continued to increase, rising another 7%, from 2009 (1,791) to 2010 (1,921).

**New Yorkers Detained by ICE without Bond, by Year**



The detention of immigrant New Yorkers without bond has severe ramifications for New York City families and shows little or no regard for individuals’ ties to their communities. Many of those detained without bond have U.S. citizen children. From October 2005 through December 2010, ICE detained at least 10,208 parents of U.S. citizen children without bond. As discussed in more detail in Part IV, this figure likely significantly undercounts the number of U.S. citizen children affected by ICE detentions. However, the numbers still reveal a systemic detention, without bond, of parents of American citizens—during the period covered by the data, at least 5,410 individuals detained without bond had U.S. citizen children. Less than one in four individuals with U.S. citizen children receive a bond

setting. Moreover, approximately half of all of those detained by ICE without bond entered the country before the year 2000, and had resided here for years, sometimes decades, prior to their apprehension. Thirty-nine percent of those detained without bond have no criminal history.

## **D. Immigration Bond Policies Are Far Harsher Than the Those in the Criminal Justice System**

New York City criminal courts have been the subject of intense criticism for overly harsh bail and bond determinations; yet New Yorkers are released from ICE custody during the pendency of their cases at far lower rates than defendants in criminal courts.<sup>30</sup> In the criminal justice system, incarcerating a person without any chance of posting bond is a severe measure used in only a small number of cases. In 2010, of all New York City criminal cases that continued past arraignment, only 1% of defendants were remanded, or held without bail.<sup>31</sup> Yet, in immigration detention, New Yorkers are held without a bond setting in over 80% of cases. In New York City Criminal Courts, 68% of individuals are released on their own recognizance, where a defendant is released without having to actually pay a bond, but with a promise to return to court.<sup>32</sup> In immigration detention, New Yorkers are released on their own recognizance in less than 1% of cases. Defendants in New York City Criminal Courts are almost 75 times more likely to be released on their own recognizance than New Yorkers in immigration detention.<sup>33</sup> Even when looking to the most serious criminal offenses, Class A and B felonies, which are only charged in 5% of cases, New Yorkers in Criminal Court *are 37 times as likely to be released on their own recognizance than New Yorkers in immigration detention.*<sup>34</sup>

## **E. Federal Agencies in Charge of Determining Bond Have the Authority to Either Release Immigrant New Yorkers or to Grant Them a Bond Setting**

Releasing individuals on their own recognizance is well within the power of immigration authorities. ICE, which is responsible for the detention of immigrants, is permitted to release individuals on recognizance, as are immigration judges under the Executive Office of Immigration Review (“EOIR”).<sup>35</sup> The exception to this rule is the so-called “mandatory detention” statute, INA § 236(c), which states that immigrants who are deportable or inadmissible under certain criminal grounds must be taken into “custody.” However, ICE and EOIR have chosen to adopt a controversial, broad reading of who is covered by that statute to include many individuals who would not otherwise be covered by the law.<sup>36</sup> Moreover, the data in both this study, and other recent studies, demonstrates that most individuals denied bond are eligible for release.<sup>37</sup>

## **F. The Overwhelming Majority of Individuals in ICE Custody Could Be Granted Bond**

Irrespective of INA § 236(c), most individuals detained by ICE could be released, even under the agencies’ current broad interpretation of the law. According to the New York Immigrant Representation Study, researchers with access to a wide range of data from EOIR concluded that, “*at least* three out of every five individuals detained by ICE who are put into removal proceedings could be released.”<sup>38</sup> That data showed that *at least* 60% of individuals were not subject to ICE’s so-called “mandatory detention” policy under INA § 236(c).<sup>39</sup>

In the data provided to Families for Freedom and the Immigrant Defense Project, which covers both those who are in immigration court proceedings, and those who never receive a hearing in court, ICE’s own recording system shows that *only* 9% of individuals are considered subject to mandatory detention. Thus, 91% of immigrants are eligible for bond, and yet 80% are detained without any bond setting. However, despite the fact that the overwhelming majority of New Yorkers detained by ICE could be released, the agency chooses to keep thousands of New Yorkers every year in immigration detention. As discussed in Part III, ICE detention often means separating individuals from their families, not just by incarcerating them, but also by transferring them to remote detention facilities in far-away jurisdictions.

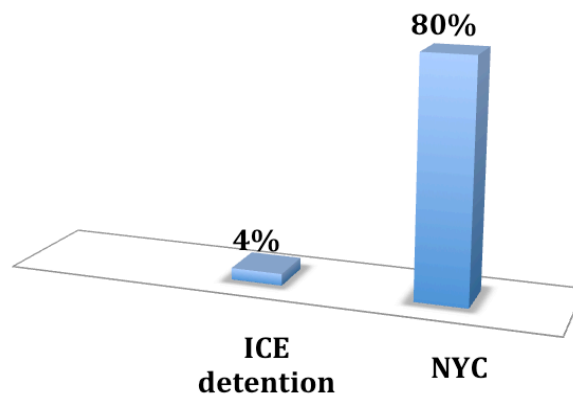
## G. When Bond is Granted, it is Prohibitively High

In the 20% of cases in which bond is granted, which totaled 6,805 during the time period covered by the data, most individuals who receive bond are unable to pay the often-exorbitant amounts. In 3 out of 4 cases, bond is \$5,000 or more, and in more than a third of cases, bond was set at \$10,000 or more.

- Less than 1% of those who have a bond setting are released on their own recognizance
- Only 3.3% had bonds below \$1,000
- 21.3% had bonds of \$1,000 or more, but under \$5,000.
- Over 75% of all bond settings are \$5,000 or more
  - 40.4% had bonds of \$5,000 or more, but under \$10,000
  - 35% of all bonds are \$10,000 and above

A comparison of the bond amounts set by ICE and immigration judges to those set by judges in the criminal justice system reveals just how crushingly high the rates in immigration detention are. Bonds over \$7,500 are *550% more likely* to occur in immigration court than in New York City Criminal Courts. 5.8% of bond settings in New York City are over \$7,500, while 37.7% of those in ICE detention have bond amounts over \$7,500.<sup>40</sup> 80% of bond settings in New York City Criminal Courts are \$1,000 and below. In immigration detention, only 4% of bond settings are \$1,000 or lower. Thus, a New Yorker in criminal court is *19 times more likely* to receive a bond amount \$1,000 and below, than an individual in immigration detention. EOIR's Benchbook, a guide for immigration judges, lists immigrants' ability to pay bond among the "less significant factors" to be considered. Immigration court data has shown that bond rates in New York City immigration courts are the highest in the country, averaging more than \$10,000.<sup>41</sup>

### Percentage of Bond Settings \$1,000 or Lower



As a result of the high bond rates in immigration detention, 55% of those who receive bond are unable to pay it. Less than 38% of those who received a bond of \$10,000 and above were able to pay it. More than one in five of all New Yorkers detained who have bond set, but are unable to pay it, have U.S. citizen children, and yet still remain in detention because of the prohibitive cost of securing their release. Overall, 3,747 individuals received a bond that they were unable to pay.

Therefore, *a total of 31,271 New Yorkers, from October 2005 through December 2010, were detained without bond or with a bond amount that was simply too high to pay.* These 31,271 New Yorkers represent 91% of all those detained by ICE.

Looking to the most common countries of citizenship for those apprehended by ICE, there is a significant disparity in the ability to pay bond. The ability to post bond varied widely with the country of citizenship of the individual apprehended. Among the top thirteen nationalities, the biggest variance was between those of Mexican citizenship, who paid bond at under 25%, and those of Chinese citizenship, who paid bond at over 70%. Mexico, Guatemala (at 30.7%), Honduras (at 37.1%), and Haiti (at 39.4%), all posted bond at rates significantly lower than the overall rate of 44.5%. Thus, while ICE and EOIR’s bond policies resulted in a mere 44.5% actually posting bond, those policies disproportionately affected certain communities in New York.

<b>Country of Citizenship</b>	<b>Percent that Pay Bond</b>
MEXICO	24.9%
EL SALVADOR	45.7%
DOM. REPUBLIC	66.4%
ECUADOR	47.1%
GUATEMALA	30.7%
HONDURAS	37.1%
JAMAICA	48.9%
COLOMBIA	63.7%
CHINA	70.4%
GUYANA	47.0%
CUBA	63.6%
TRINIDAD & TOBAGO	45.0%
HAITI	39.4%
<b>TOTAL</b>	<b>44.5%</b>

ICE and EOIR’s bond policies have clear and dire consequences for immigrant New Yorkers—less than one in ten are able to secure release from detention during the pendency of their case. Even the criminal justice system in New York City, which is often criticized precisely for its unrealistically high bond settings, pales in comparison to draconian nature of bond in immigration detention. Those in New York City criminal courts are far more likely to obtain bond or to be released on their own recognizance—in fact the overwhelming majority do exactly that. While, in immigration detention, the overwhelming majority of individuals never even have an opportunity to secure their release, and are left to fight their cases, find counsel, gather evidence, communicate with family to establish claims for relief in immigration court, all while in detention, often hundreds or even thousands of miles from New York City.

## PART III. ICE'S TRANSFER POLICY

### A. Background

For years ICE has transferred immigrant New Yorkers to far-away detention facilities in the rural south and southwest. Recent reports have examined the general scope of the problem, but ICE had never publicly disclosed how many individuals are transferred out of a specific locality, like New York City. A study by Human Rights Watch in 2009 used then newly-released data to outline the scope of the problem with ICE's transfer policy, stating:

“Although non-citizens are often first detained in a location near to their place of residence, for example, in New York or Los Angeles, they are routinely transferred by ICE hundreds or thousands of miles away to remote detention facilities in, for example, Arizona, Louisiana, or Texas. Detainees can also cycle through several facilities in the same or nearby states. Previously unavailable data obtained by Human Rights Watch show that over the 10 years spanning 1999 to 2008, 1.4 million detainee transfers occurred. The large numbers of transfers are due to ICE's broad use of detention as a tool of immigration control, especially after restrictive immigration laws were passed in 2006, and the absence of effective policies and standards to prevent unnecessary transfers.”<sup>42</sup>

However, as local governments, such as New York City, debated how to grapple with federal programs such as Secure Communities and the Criminal Alien Program, they were left unable to account for how many of their residents would be transferred to detention facilities in distant jurisdictions after being swept up by ICE. While immigrant New Yorkers, advocates, and attorneys knew from experience that ICE's transfer policy was growing in New York, there was no way to know how many people were affected by detainee transfers.

Even recent studies showed a clear gap in the available data. As part of the settlement of the lawsuit with ICE that generated the data for this report, the agency also provided data to the Vera Institute for Justice. That data allowed Vera to analyze, for the first time, the scope of ICE's transfer policy in New York. Those findings were published in a report earlier this year by the New York Immigrant Representation Study, and found that 64% of New Yorkers who appear in immigration court are detained and transferred to far-away jurisdictions like Texas and Louisiana.<sup>43</sup> From October of 2005 through July of 2011, the total number of New Yorkers in immigration court proceedings who were transferred out of New York immigration courts topped 9,000.<sup>44</sup>

However, many New Yorkers apprehended and detained by ICE do not even have their day in court, and are simply deported through administrative or expedited removal procedures. The New York Immigrant Representation Study found that approximately 40% of immigrants never make an appearance in immigration court.<sup>45</sup> ICE's own data shows that, in 2010, 29% of individuals were deported via expedited removal procedures.<sup>46</sup> Administrative removal procedures are not included in that figure, but would explain why the number is short of the estimated 40%, as administrative and expedited removal are both the measures that allow ICE to deport individuals without a hearing in immigration court. Therefore, previous data has been unable to show the true extent of ICE's transfer policy in New York City.

Hanson, a Families for Freedom member, served seven days in jail for disorderly conduct in 2010. Despite the minor nature of his conviction (disorderly conduct is not a crime in the state, but rather a non-criminal violation), Hanson was transferred immediately to ICE detention after his serving his jail sentence in New York. While he served only a week in jail in New York City, Hanson spent almost a year and half in ICE detention in South Texas, before being transferred to a facility in Alabama, where he remains to this day, almost two years after his initial detention.

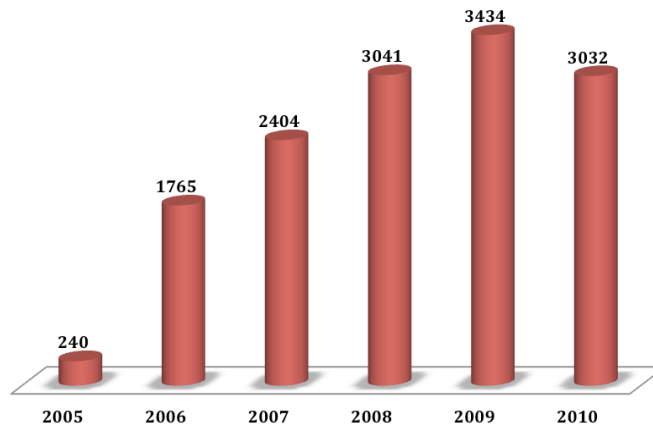


## B. ICE Transfers More Than Half of Immigrant New Yorkers to Far-Away Detention Facilities

The ICE data for this report shows that over half of all New Yorkers apprehended by ICE are transferred to detention facilities outside of New York and New Jersey. 53% of all of those detained by ICE are transferred, for a total of 18,159 individuals from October 2005 through December 2010.<sup>47</sup>

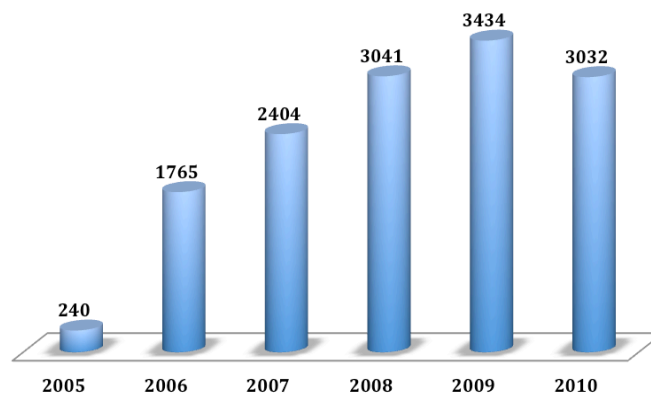
ICE transfers peaked in 2008 at 4,393, more than doubling the amount of transfers in 2006, the first full year covered by the data. Even after a slight drop off in 2009 and 2010, ICE transfers are still up 76% from 2006, at 3,828 individuals in 2010.

**ICE Transfers out of NY/NJ, by Year**



As of December 2010, the agency had already deported 13,916 individuals who had been apprehended during the time period covered by the data, and transferred out of New York and New Jersey. While some cases remained pending, 94.5% of the resolved cases of those who had been transferred resulted in deportation. A breakdown by year of apprehension for those transferred and then deported by ICE shows a sharp increase between 2006 and 2010. For the last three years covered by the data, ICE apprehended, transferred out of New York and New Jersey, and subsequently deported more than 3,000 individuals per year.

**Deportations of Transferred New Yorkers, by Year**



ICE transfers immigrant New Yorkers out of the state regardless of whether or not they have U.S. citizen children. Just shy of 23% of those detained in New York have U.S. citizen children, while nearly 21% of those transferred out of state have U.S. citizen children. The parents of 6,772 U.S. citizen children, or a total of 3,706 New Yorkers, were transferred to detention facilities outside of New York and New Jersey from October 2005 through December 2010. At least one in five New Yorkers apprehended by ICE and transferred to an out-of-state detention facility has a U.S. citizen child.

ICE’s 2012 Guidelines on Detainee Transfers are unlikely to slow the rate at which New Yorkers apprehended by the agency are transferred out of the area. Those guidelines identify factors to evaluate in determining whether to transfer individuals, such as family in the area, however, they also explicitly allow for a transfer “to relieve or prevent facility overcrowding.”<sup>48</sup> Limited bed space is the exact justification for transfers by ICE before these new guidelines and it is the loophole through which ICE will be able to circumvent its purportedly new policy.<sup>49</sup>

The following chart indicates the top detention locations for New Yorkers, as well as the number of New Yorkers detained in each state.

State of Detention	Total Detainees
Arizona	556
Colorado	419
Florida	285
Georgia	866
Louisiana	3,786
New Jersey	6,679
New Mexico	1,078
New York	9,444
Pennsylvania	2,637
Texas	7,282
Texas/Iowa <sup>A</sup>	768
Grand Total	33,800 <sup>B</sup>

<sup>A</sup> Texas/Iowa was designated for a facility, Polk County Jail, in the data field that was added to show the state of final detention location (See Methodology section for more detailed explanation). Facilities by that name exist in both states, and both house immigrant detainees, so for 768 individuals, it was impossible to determine whether they were detained in Iowa or Texas.

<sup>B</sup> This field was left blank in rare instances, so the total number is slightly under the total apprehensions of 34,329.

Texas detained 7,282 New Yorkers from October 2005 through December 2010. This accounts for 40% of those who are transferred out of New York and New Jersey, and 21% of all individuals apprehended by ICE during that period. Louisiana detained 3,786 New Yorkers during this period, which accounts for 21% of all transferred detainees, and 11% of all apprehended New Yorkers. Pennsylvania detained 2,637 New Yorkers during this period, accounting for 15% of all transfers and 8% of all apprehended individuals. New Mexico detained 1,078 New Yorkers during the same period, and Georgia detained 886, accounting for 6% and 5% of transferred detainees, respectively.

### C. The Effects of ICE's Transfer Policy

The problems arising out of ICE's transfer policies are clear. Anyone transferred by ICE to facilities in far-away states will have little or no ability to defend themselves in immigration proceedings. For example, hearings on discretionary relief often involve the testimony of family members, while hearings on removability could involve obtaining court documents from one's home jurisdiction.<sup>50</sup> Not only are transferred individuals isolated from their families, friends, and communities, but access to legal counsel diminishes greatly with transfer, which is possibly the most significant barrier to immigrants prevailing in their cases and obtaining legal relief. Whether an individual is an asylum seeker, or a longtime lawful permanent resident, or a young person applying for special status, or a victim of trafficking, he or she will have incredible difficulty finding counsel in rural Texas, Louisiana, or Pennsylvania.

Even those detained in New York City have difficult finding attorneys to represent them, as opposed to those who are released while their cases are pending. The New York Immigrant Representation Study found that 60% of detained individuals in New York City lack attorneys in immigration court, as opposed to 27% of non-detained individuals who lack legal counsel for their proceedings.<sup>51</sup> Those who are detained and transferred out of the New York immigration courts are unrepresented 79% of the time.<sup>52</sup> Those who are released from detention and allowed to remain in New York City obtain relief 74% of the time, while those who are detained and transferred only obtain relief 3% of the time.<sup>53</sup> Thus, those who are released in New York City are nearly 24 times as likely to obtain relief as those detained in far-away jurisdictions.<sup>54</sup>

The ICE data that is the basis of this report, which covers both those who are in immigration court, and those who never have their day in court, shows that 94.5% of all individuals who are transferred and detained out of New York and New Jersey are deported. Individuals detained outside of New York and New Jersey are 21% less likely to obtain relief than those who are detained within the two states. 78% of those detained in New York and New Jersey are deported. Although that figure is still remarkably high, it is far short of the 94.5% of those who are detained outside of the two states and subsequently deported. Those detained in New York and New Jersey are also 41.1% more likely to be granted bond than those who are transferred to detention facilities in other jurisdictions.

Despite the clear harms done by transfer, detention in any form greatly hinders immigrant New Yorkers' ability to obtain legal counsel and relief. While plans are underway for expanded ICE detention in Essex, New Jersey, the data from the New York Immigrant Representation Study shows that once individuals leave the New York immigration courts (those detained in New Jersey could be venued in either New York or New Jersey immigration courts), they are far less likely to obtain counsel and obtain relief. Those detained in New Jersey and who have their proceedings in New Jersey immigration courts are unrepresented 78% of the time, while those detained outside of New York and New Jersey, are unrepresented 81% of the time.<sup>55</sup> Detention in New Jersey is hardly an attractive alternative for immigrant New Yorkers. ICE is essentially gearing up for an expansion of detention in the New York metropolitan area, despite the fact that "detention inhibits the attainment of legal representation more than any other factor."<sup>56</sup> The increase in detention capacity, combined with the activation of the Secure Communities program, points towards a continued increase in ICE enforcement in New York.

## PART IV. ICE ENFORCEMENT AND NEW YORK CITY FAMILIES

### A. Overview

The data shows the widespread devastating effect of ICE's policies on U.S. citizen children in New York. A recent report by the Applied Research Center detailed the results of ICE's increase in enforcement.<sup>57</sup> Between 1998 and 2007 (fiscal years), of the 2.2 million individuals deported, 8% were the parents of U.S. citizen children.<sup>58</sup> In 2011 (fiscal year), that number was 22%, almost tripling the previous rate.<sup>59</sup> The rate of removal of the parents of U.S. citizens has skyrocketed 400%; between 1998 and 2007, 180,000 parents of U.S. citizens were removed, according to the study.<sup>60</sup> Yet, in 2011 alone, that number was over 46,000.<sup>61</sup> The ICE data that is the basis for this report demonstrates that New York City has been no exception to ICE's dramatic increase in the apprehension and deportation of the parents of U.S. citizen children.

While no data had previously been made publicly available about the effects of ICE's policies on specific cities, the data obtained in this lawsuit demonstrates definitively that New York City has been hit hard by ICE's escalation in the apprehension, detention, and deportation of parents of U.S. citizens. New Yorkers who are parents of U.S. citizen children are apprehended and detained at shocking rates. Once detained, almost nine times out of ten, the parents of U.S. citizen children are held without bond and deported. Many are transferred to far-away jurisdictions like Texas and Louisiana while their cases are pending. The removal of parents of U.S. citizen children has well-documented human and economic costs that New York City bears as the result of ICE's policies.

Fatoumata is a longtime Families for Freedom member with an asylum case pending in immigration court. She is a survivor of female genital cutting, and fears that her U.S. citizen daughters will face the same violence if she were deported back to Senegal. In 2007, ICE agents raided the family's New York City home just before dawn. The ICE agents arrested Fatoumata's husband Sory that day and deported him just a few months later. Sory had resided in the U.S. for almost two decades before his apprehension. After ICE deported Sory, Fatoumata has struggled to support their six U.S. citizen children as a single mother. Without her husband's support, Fatoumata and her family were evicted from their home and have had to stay in shelters. They are currently at risk of being evicted from their shelter in the Bronx.

### B. The ICE Data Likely Understates the Effect of the Agency's Policies on U.S. Citizen Children

The spreadsheet of data that ICE released to Families for Freedom and the Immigrant Defense Project, and is the basis for the this report, contains a data field titled "number and nationality of children." Because the field is "free text," the data is entered in many different forms. For our purposes, we looked at all 34,329 data fields, determined if the nationality and number of children could be definitively discerned from the field, and, if so, entered a numerical value in a corresponding data field. Therefore, the results likely undercount the actual number of U.S. children affected by ICE enforcement in New York. For example, some fields would indicate a number, without the nationality of the children. That field would not be counted as representing a U.S. citizen child. Other fields included ambiguous information, such as "Detainee has two children in the United States." That field also does not indicate definitively that those children are citizens, and would not be counted. Many fields were left blank, or ICE had affirmatively indicated that there was no information available.

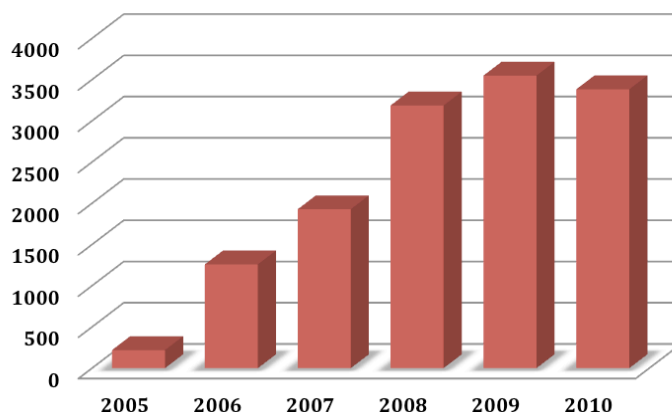
## C. Findings

From October 2005 through December 2010, ICE apprehended a significant number of immigrant New Yorkers with U.S. citizen children. Despite the likelihood of undercounting in the data, when looking only to clear cases in which an apprehended individual has U.S. citizen children, the numbers are still in the thousands.

At least 7,186 individuals detained by ICE in New York City, or more than one in five, have U.S. citizen children. *The parents of at least 13,521 U.S. citizen children were detained by ICE from October 2005 through 2011.* This number does not include noncitizen children with lawful immigration status, such as lawful permanent residence. Despite the fact that a significant percentage of cases remain unresolved, out of the 23,173 cases that have been resolved, *3,887 have resulted in the deportation of an immigrant New Yorker who is also the parent of a U.S. citizen child.* Thus, between 2005 and 2010, over 17% of all resolved cases of those apprehended in the New York Area of Responsibility resulted in the removal of the parent of a U.S. citizen children.

In 2010 alone, the parents of at least 3,382 U.S. citizen children were apprehended in New York City, *a 169% increase over 2006* (the first full-year in the data range). From 2008 through 2010, the parents of well over 3,000 U.S. citizen children were apprehended by ICE, with the high coming in 2009. In that year, the parents of 3,548 U.S. citizen children were apprehended by ICE in New York City. Data from 2005 only covers October through December, and thus is the lowest figure, at 219.

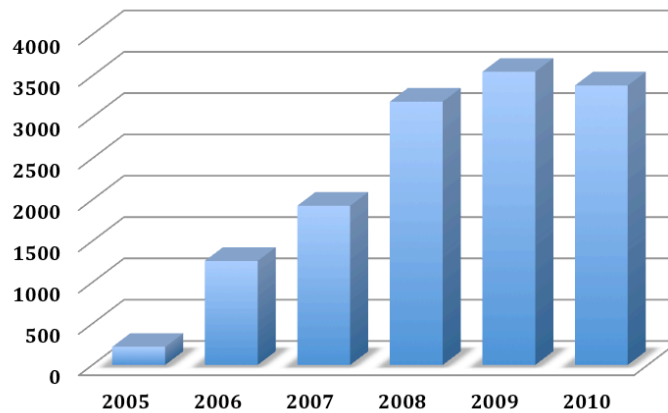
**Number of U.S. Citizen Children of Apprehended New Yorkers, by Year**



Parents of U.S. citizen children have little chance of remaining the country after apprehension by ICE. 87% of the parents of U.S. citizen children apprehended by ICE are deported. The overall deportation rate for all those apprehended is only slightly higher, at 91%. Furthermore, those without U.S. citizen children are essentially no less likely to be transferred to detention facilities far away from their families in New York. Just shy of 23% of those detained in New York have U.S. citizen children, while nearly 21% of those transferred out of state have U.S. citizen children.

In fact, immigrant New Yorkers with U.S. citizen children are frequently transferred by ICE to far-away jurisdictions. During the period covered by the data, at least 3,706 New Yorkers with U.S. citizen children were transferred to detention facilities outside of New York and New Jersey. Collectively, these individuals have *at least 6,772 U.S. citizen children.* 61% of those who are transferred out of New York and New Jersey are detained in Texas and Louisiana. Pennsylvania is the next-highest receiving state of the parents of U.S. citizen children, at just over 13%.

### Number of U.S. Citizen Children with Parents Transferred out of NY/NJ, by Year



ICE also detains a shocking number of parents of U.S. citizen children without bond. From October 2005 through December 2010, the parents of at least 10,208 U.S. citizen children were detained without bond. Less than one in four parents of U.S. citizen children even receive a bond setting. Because of the prohibitive bond rates, the few who do receive a bond setting often remain in detention simply because they are unable to pay the high bond amount. Overall, 55% of those with bond set are unable to pay it, and 20% of those individuals have U.S. citizen children. Of the 13,521 U.S. citizen children who saw their parents detained by ICE during this period, over 87% had their parents detained without bond.

#### D. The Effects of ICE Enforcement on New York City Families

ICE’s policies have devastating effects on families in New York City. U.S. citizen children are forced to endure the trauma of possibly permanent separation from a parent. Parents risk losing their parental rights while in detention. The city is forced to pay millions in additional social services when families lose economic support. According to the Applied Research Center, when parents of U.S. citizen children are detained, their children can end up in the care of local child welfare departments, like New York City’s Administration for Children’s Services.<sup>62</sup> In every case that was studied, parents detained by ICE were unable to appear at dependency hearings, even when detained in the same jurisdiction as those hearings.<sup>63</sup> On top of the burdens of physical incarceration itself, ICE’s “inconsistent” policy of providing phone access to parents for a telephonic appearance causes detainees to miss important hearings vital to the maintenance of their parental rights.<sup>64</sup> ICE detention on its own, even without deportation, “can result in children moving into permanent placements and ultimately into adoption.”<sup>65</sup> The study also emphasized the “traumatic effects on both parent and child” of separation due to immigration detention.<sup>66</sup>

These traumatic effects have been well documented by researchers. For example, in a 2010 psychological study on the impact of immigration detention on children, the Urban Institute found that children with parents who are detained “experienced severe challenges, including... adverse behavioral changes.”<sup>67</sup> Within months of their parents’ apprehension by ICE, “about two-thirds of children [in the study] experienced changes in eating and sleeping habits. More than half of children in [the] study cried more often and were more afraid, and more than a third were more anxious, withdrawn, clingy, angry, or aggressive. A majority of children experienced four or more of these behavior changes.”<sup>68</sup>

There are economic costs to ICE’s policies as well. According to the Citizens Committee for Children of New York, Inc., New York City spends \$36,000 per child, per year, on foster care.<sup>69</sup> While not all of the 7,111 children who

had a parent deported between October 2005 and December 2010 ended up in foster care, the Applied Research Center has found that, nationally, approximately 1.25% of all children in foster care have a parent who is detained or has been deported by ICE.<sup>70</sup> As of 2011, there were almost 28,000 children in foster care in New York City, and if 1.25% of those children have a parent detained or deported by ICE, that means at a given time 350 children are in foster care in New York City because of ICE's policies.<sup>71</sup> The yearly cost to the city would therefore be an estimated \$12.6 million dollars for foster care services alone. This does not even factor in the fact that New York City has a much higher percentage of immigrant residents than the nation as a whole.<sup>72</sup>

Costs for other services, such as welfare, housing assistance, and food stamps, the latter of which cost New York City almost \$2,000 per family, per year, have likely been dramatically affected by the 13,521 U.S. citizen children who saw their parents detained or deported during the time period covered by the data.<sup>73</sup> The overall costs may be difficult to estimate, but it is clear that ICE's policies are costing New York City millions of dollars per year in social services; U.S. citizen children are losing their primary economic support and New York City is paying the price for ICE's practice of breaking apart families.

## CONCLUSION

Raul, a Families for Freedom member from Guatemala, came to the U.S. at the age of 9. He is an LPR, and lived here lawfully since 1990. After a minor drug conviction in New York City, Raul was put into deportation proceedings. The government aggressively pursued its case against him, despite the fact that his entire family lawfully resides in the U.S., as citizens and LPRs. Another Families for Freedom member, Robert, came to the U.S. from Trinidad in 1990. After more than 20 years in New York City, he was convicted of a minor offense, and subsequently detained by ICE. Despite being eligible for legal relief in immigration court, Robert was transferred to a remote facility in rural Louisiana, where he was unable to find an attorney to represent him in his case. Robert has a child in New York who is a U.S. citizen. In both of these cases, and many more like them, New York City's criminal justice system has served as an accomplice in ICE's efforts to detain and deport longtime residents with close ties to the city.

John Feinblatt, Mayor Michael Bloomberg's chief policy advisor, and a frequent and vocal supporter of programs like CAP, has called New York "the most immigrant-friendly city in the nation."<sup>74</sup> However, the data presented in this report clearly demonstrates that, due to a massive increase in ICE enforcement in New York City, that statement rings hollow. While the data has shed light on the scope and effects of ICE enforcement in New York, it has only confirmed a truth that groups like Families for Freedom and the Immigrant Defense Project have been dealing with for years—that New York City, contrary to its reputation as an immigrant-friendly city, has become home to a dragnet by which immigrants are funneled into ICE detention, mainly through the local criminal justice system, in a haphazard way that has little to do with public safety. With the introduction of new programs, like Secure Communities, the problem is likely only to deepen in coming years. As a result, more families in New York City will be thrown into upheaval, and the city will bear the costs and burdens for additional social services, as well as the costs of complying with ICE's constant requests for assistance in detaining immigrant New Yorkers. Absent a fundamental change in policy and attitude, New York, a city that prides itself on its large, vibrant, diverse immigrant community, and on its reputation as one of the friendliest cities for immigrants the nation, will remain anything but.



## METHODOLOGY

The data was transmitted to Families for Freedom and the Immigrant Defense Project, by ICE, in a sortable spreadsheet. Each row of data represents an individual detained by ICE during the period covered by the data. Some fields are left blank and where data is unavailable or unclear, it is noted within the report. Each row of data contains 19 distinct fields:

- Zip code
- Number and nationality of children
- Charge code
- Detainer
- Status at entry
- First location of detention
- Final location of detention
- INA section of law
- Nationality (Primary Citizenship)
- Case Status
- Program under which an individual was apprehended
- Bond set
- Bond posted
- Mandatory detention
- Age
- Gender
- Date of entry into the United States
- Book-in date (calendar year)
- ICE office monitoring the case

Three additional fields were added for the purpose of analyzing the data. The first was a field on the number of U.S. citizen children. The field ICE provided, “number and nationality” of each apprehended individuals’ children, was a free-text field. Data was not entered in a consistent manner. For example, an individual with two U.S. citizen children might have the notation, “2-American,” or “Two- U.S.,” or “One child born in U.S., one child naturalized.” Spelling errors and other inconsistencies made the field impossible to sort with the other data. Therefore, a new data was added, where each field was assessed, and, if it was clear that the field indicated that an individual had a U.S. citizen child, a numeric value was entered. Fields where the nationality of the child was ambiguous, such as “One child, living in the United States,” were not counted, and numeric values were only entered for fields that clearly stated the number and nationality of a detainee’s children. Many of the fields were left blank by ICE, which has implications discussed in more detail in Part IV.

The second additional data field added was the state of final detention location. ICE provided the location of the detention centers where individuals were ultimately held, but the field simply contained the name of the facility. Publicly available information was used to input the state of each detention facility in a corresponding field to assist in analyzing the data.

The last additional field added for the purpose of analysis was an indicator of the New York City borough that corresponds to the zip code of the detained individual. ICE provided a substantial number of New York City zip codes for the place of residence for those apprehended. As explained in Part I, the data does not include zip codes for every individual detained, and some of the zip codes provided are of the detention facilities (often out-of-state) where individuals are typically sent. However, just shy of 37% of all 34,329 entries include a New York City zip code that does not correspond to a detention facility. New York City zip codes 10014, which corresponds to the Varick Street Detention Center, and 11371, which corresponds to Rikers Island, were not counted as valid due to the inability to distinguish between the true home address of an individual and address of the detention facility. Approximated apprehensions from specific neighborhoods were based on extrapolations from this data subset to the whole data set. To determine to which neighborhoods the zip codes corresponded, The City of New York Department of Health and Mental Hygiene NYC Zip Code Area map was used. It can be found here: [http://www.nyc.gov/html/doh/downloads/pdf/survey/uhf\\_map\\_100604.pdf](http://www.nyc.gov/html/doh/downloads/pdf/survey/uhf_map_100604.pdf). The following zip codes were used for the listed neighborhoods:

- Washington Heights/Inwood: 10031, 10032, 10033, 10040, 10034
- Jamaica, Queens: 11435, 11436, 11432, 11433, 11434, 11423, 11412, 11430
- Bedford-Stuyvesant/Crown Heights: 11238, 11216, 11213, 11233, 11212
- Flatbush/ East Flatbush: 11225, 11226, 11203, 11210
- Hunts Point/Mott Haven, Bronx : 10454, 10455, 10459, 10474
- Fordham/Bronx Park: 10468, 10458, 10467.

## ENDNOTES

- 1 U.S. BUREAU OF THE CENSUS, AM. CMTY. SURVEY: NEW YORK CITY FACT SHEET I (2008), *available at* <http://factfinder.census.gov/servlet/>.
- 2 *See* Complaint at ¶ 54, *Families For Freedom v. ICE* (S.D.N.Y. 2010) (No. Civ. 10-8354).
- 3 New York Immigrant Representation Study Steering Committee, *Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings*, 33:2 CARDOZO L. REV. 357 (2012).
- 4 *See id.*
- 5 For more information, please see <http://www.familiesforfreedom.org>
- 6 For more information, please see <http://immigrantdefenseproject.org>
- 7 DHS ANNUAL REPORT, IMMIGRATION ENFORCEMENT ACTIONS: 2010, U.S. DEP'T OF HOMELAND SEC. 4 (2010), *available at* <http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement-ar-2010.pdf>
- 8 FACT SHEET, CRIMINAL ALIEN PROGRAM, IMMIGRATION AND CUSTOMS ENFORCEMENT (2011), *available at* <http://www.ice.gov/news/library/factsheets/cap.htm>
- 9 Sarah Kate Kramer, *Criminal Alien Program Likely to Be Limited at New York City Jails*, FEET IN 2 WORLDS, Oct. 4, 2011, *available at* <http://news.feetintwoworlds.org/2011/10/04/criminal-alien-program-likely-to-be-limited-at-new-york-city-jails/>.
- 10 TREVOR GARDNER II AND AARTI KOHLI, THE CHIEF JUSTICE EARL WARREN INS. ON LAW AND SOCIAL POLICY, THE C.A.P. EFFECT: RACIAL PROFILING IN THE ICE CRIMINAL ALIEN PROGRAM I (2009), *available at* [http://www.law.berkeley.edu/files/policybrief\\_irving\\_FINAL.pdf](http://www.law.berkeley.edu/files/policybrief_irving_FINAL.pdf).
- 11 *Id.*
- 12 Nina Bernstein, *Report Critical of Scope of Immigrant Detention*, N.Y. TIMES, Oct. 6, 2009, *available at* <http://www.nytimes.com/2009/10/07/us/politics/07detain.html>
- 13 Sam Dolnick, *In Change, Bloomberg Backs Obstacle to Deportation*, N.Y. TIMES, Sept. 30, 2011, *available at* [http://www.nytimes.com/2011/10/01/nyregion/law-expected-in-new-york-city-would-hamper-inmate-deportations.html?\\_r=1](http://www.nytimes.com/2011/10/01/nyregion/law-expected-in-new-york-city-would-hamper-inmate-deportations.html?_r=1).
- 14 *Id.*
- 15 *Id.*
- 16 Kirk Semple, *Cuomo Ends State's Role in Checking Immigrants*, N.Y. TIMES, June 1, 2011, *available at* <http://www.nytimes.com/2011/06/02/nyregion/cuomo-pulls-new-york-from-us-fingerprint-checks.html>; Alison Bowen, *Will Secure Communities Make NYC the Next Arizona for Immigrants?*, METRO, May 14, 2012, *available at* <http://www.metro.us/newyork/local/article/1143061--pointing-the-finger-at-illegal-immigrants>.
- 17 *CCR Condemns Activation of Secure Communities in New York City*, COMMON DREAMS, May 14, 2012, *available at*, <https://www.commondreams.org/newswire/2012/05/14-6>.
- 18 AARTI KOHLI, PETER L. MARKOWITZ, AND LISA CHAVEZ, THE CHIEF JUSTICE EARL WARREN INS. ON LAW AND SOCIAL POLICY, SECURE COMMUNITIES BY THE NUMBERS: AN ANALYSIS OF DEMOGRAPHICS AND DUE PROCESS 4 (2011), *available at* [http://www.law.berkeley.edu/files/Secure\\_Communities\\_by\\_the\\_Numbers.pdf](http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf).
- 19 *Id.*
- 20 *See generally* N.Y. CIVIL LIBERTIES UNION, NYPD STOP AND FRISK ACTIVITY IN 2011 (2012), *available at* [http://www.nyclu.org/files/publications/NYCLU\\_2011\\_Stop-and-Frisk\\_Report.pdf](http://www.nyclu.org/files/publications/NYCLU_2011_Stop-and-Frisk_Report.pdf).
- 21 N.Y. CIVIL LIBERTIES UNION, STOP-AND-FRISK CAMPAIGN: ABOUT THE ISSUE (2012), *available at* <http://www.nyclu.org/issues/racial-justice/stop-and-frisk-practices>.
- 22 *Id.*
- 23 *Id.*
- 24 *Id.*

- 25 *See id.*
- 26 RANDALL MONGER AND JAMES YANKAY, DHS ANNUAL FLOW REPORT, U.S. LEGAL PERMANENT RESIDENTS: 2011, U.S. DEP'T OF HOMELAND SEC. 2 (2012), *available at* [http://www.dhs.gov/xlibrary/assets/statistics/publications/lpr\\_fr\\_2011.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/lpr_fr_2011.pdf).
- 27 *Id.* at 4.
- 28 DHS Annual Report, *supra* note 6.
- 29 NEW YORK UNIVERSITY SCHOOL OF LAW IMMIGRANT RIGHTS CLINIC, LOCKED UP BUT NOT FORGOTTEN 1 (2010), *available at* [http://www.law.nyu.edu/ecm\\_dlv1/groups/public/@nyu\\_law\\_website\\_\\_news\\_\\_media/documents/documents/ecm\\_pro\\_065626.pdf](http://www.law.nyu.edu/ecm_dlv1/groups/public/@nyu_law_website__news__media/documents/documents/ecm_pro_065626.pdf).
- 30 HUMAN RIGHTS WATCH, THE PRICE OF FREEDOM: BAIL AND PRE-TRIAL DETENTION OF LOW INCOME DEFENDANTS IN NEW YORK CITY (2010), *available at* [http://www.hrw.org/sites/default/files/reports/us1210webwcover\\_0.pdf](http://www.hrw.org/sites/default/files/reports/us1210webwcover_0.pdf).
- 31 N.Y. CRIMINAL JUSTICE AGENCY, INC., Annual Report 2010 16 (2011), *available at* <http://www.cjareports.org/reports/annual10.pdf>.
- 32 *Id.*
- 33 These statistics are based on a comparison to those provided in the CJA Annual Report, *supra* note 33, and the bond statistics provided to Families for Freedom by ICE.
- 34 *See* CJA Annual Report, *supra* note 33, at 16, 21.
- 35 *See, e.g.*, AMNESTY INT'L, JAILED WITHOUT JUSTICE: IMMIGRATION DETENTION IN THE U.S.A. 15-16 (2009), *available at* <http://www.amnestyusa.org/pdfs/JailedWithoutJustice.pdf>.
- 36 NYIRS Report, *supra* note 3, at 373 n.35.
- 37 *Id.* The NYIRS Report found, for example, that *at least* 63% of New Yorkers apprehended, detained, and transferred to far-away jurisdictions by ICE were not subject to mandatory detention. The ICE data that is the subject of this report, as discussed below, shows an even higher number of individuals eligible for release from ICE detention.
- 38 *Id.* at 374.
- 39 *Id.*
- 40 These figures are based on a comparison between the ICE data, and data from the CJA Annual Report, *supra* note 33. That report contains data for all of those with bail settings above \$0 in New York City *Id.* at 21. Those figures were added to number of cases of individuals being released on their own recognizance (a bail amount of \$0), and the overall numbers represented the total percentage of defendants that received certain bail amounts, and were then compared to the ICE data. *Id.* at 16.
- 41 *See* JAILED WITHOUT JUSTICE, *supra* note 37, at 17.
- 42 HUMAN RIGHTS WATCH, LOCKED UP FAR AWAY 30 (2009), *available at* <http://www.hrw.org/en/node/86760/section/1>.
- 43 NYIRS Report, *supra* note 3, at 363.
- 44 *Id.* at 367.
- 45 *Id.* at 410.
- 46 DHS ANNUAL REPORT, *supra* note 6, at 1.
- 47 This data differs from the data analyzed by the Vera Institute, in that includes all individuals apprehended by ICE in New York City, and not just those who have hearings in immigration court. The time periods covered by the different data also differ by several months.
- 48 IMMIGRATION AND CUSTOMS ENFORCEMENT, POLICY 11022.1: DETAINEE TRANSFERS 3 (2012) *available at*, <http://www.ice.gov/doclib/detention-reform/pdf/hd-detainee-transfers.pdf>.

- 49 Peter L. Markowitz, *Barriers to Representation for Detained Immigrants Facing Deportation: Varick Street Detention Facility, A Case Study*, 78 *FORDHAM L. REV.* 541, 558 (2009).
- 50 See *LOCKED UP BUT NOT FORGOTTEN*, *supra* note 31. The report also highlights the difficulties of immigration detention, explaining that, “the reality of the current immigration detention system is that it impedes access to the outside world and fails to provide immigration detainees a level of access to family that can help them maintain the morale needed to withstand the human costs of immigration detention and pursue legitimate claims for relief against deportation.”
- 51 NYIRS Report, *supra* note 3, at 363.
- 52 *Id.*
- 53 *Id.* at 363-64.
- 54 *Id.*
- 55 *Id.* at 364.
- 56 *Id.* at 372.
- 57 APPLIED RESEARCH CENTER, *SHATTERED FAMILIES: THE PERILOUS INTERSECTION OF IMMIGRATION ENFORCEMENT AND THE CHILD WELFARE SYSTEM* (2011), *available at* <http://act.colorlines.com/acton/form/1069/0041:d-0001/0/index.htm>.
- 58 *Id.* at 11.
- 59 *Id.*
- 60 *Id.*
- 61 *Id.*
- 62 *Id.* at 37.
- 63 *Id.*
- 64 *Id.*
- 65 *Id.* at 40.
- 66 *Id.* at 42.
- 67 AJAY CHAUDRY ET AL., *THE URBAN INSTITUTE, FACING OUR FUTURE: CHILDREN IN THE AFTERMATH OF IMMIGRATION ENFORCEMENT* (viii) (2010), *available at*, [www.urban.org/uploadedpdf/412020\\_FacingOurFuture\\_final.pdf](http://www.urban.org/uploadedpdf/412020_FacingOurFuture_final.pdf).
- 68 *Id.* at ix.
- 69 CITIZENS’ COMMITTEE FOR CHILDREN INC., *TESTIMONY OF ASSOCIATE EXECUTIVE DIRECTOR STEPHANIE GENDELL 1* (Nov. 12, 2010), *available at* <http://www.ccnnewyork.org/publications/assemblyprev.pdf>.
- 70 Applied Research Center, *supra* note 58, at 6.
- 71 Children’s Defense Fund, *Children in New York 1* (2011), *available at* <http://www.childrensdefense.org/child-research-data-publications/data/state-data-repository/cits/2011/children-in-the-states-2011-new-york.pdf>.
- 72 U.S. Census Data, *supra* note 1.
- 73 NYC CENTER FOR ECONOMIC OPPORTUNITY, *POLICY AFFECTS POVERTY: THE CEO POVERTY MEASURE, 2005-2009 87* (2011), *available at* [http://www.nyc.gov/html/ceo/downloads/pdf/poverty\\_measure\\_20](http://www.nyc.gov/html/ceo/downloads/pdf/poverty_measure_20)