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MONTEREY, CALIFORNIA

THESIS

**CIVIL RESTITUTION AS AN OBJECTIVE OF
DEPARTMENT OF HOMELAND SECURITY MISSION 3**

by

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June 2014

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DEPARTMENT OF HOMELAND SECURITY MISSION 3**

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ABSTRACT

Rates of illegal immigration recidivism by previously convicted and removed noncitizens—criminal immigration recidivists—are disconcerting. Enforcement strategies such as prosecution and removals do not appear to prevent and deter this population's reoffending behavior as much as expected. Meanwhile, resources are continually strained—at the taxpayers' expense—due to re-enforcement of immigration, criminal, and other laws.

As a result, this thesis argues in favor of introducing civil restitution (CR) as an enforcement strategy against criminal immigration recidivism. In support of this argument, the author employed a hybrid experimental and causal design methodology to research the history of restitution as an alternative sanction in the criminal justice system. The feasibility of developing a strategy against criminal immigration recidivism modeled after restitution's theoretical underpinnings was explored and tested.

The CR strategy borrows from restitution's focus on holding offenders accountable for the financial losses their offenses have caused to their victims, and, as per the research findings, its potential to lower recidivism rates, thereby reducing the costs of re-enforcing or reinitiating the removal process at the Department of Homeland Security's (DHS) expense.

The thesis concludes by recommending the implementation of a CR policy model strategy. The strategy will become part of the DHS Mission 3's "prevention of unlawful immigration" goals and objectives.

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TABLE OF CONTENTS

I.	INTRODUCTION.....	1
A.	PROBLEM STATEMENT.....	9
	1. Interventions: Prosecutions and Removals	11
	2. Criminal Immigration Recidivists in the Federal Justice System.....	12
	3. Immigration Law Violators.....	16
	4. Expenditures on Enforcement.....	18
	a. <i>Statistical and Other Limitations</i>	19
B.	HYPOTHESIS: CIVIL RESTITUTION AS A STRATEGIC TOOL TO LIMIT CRIMINAL IMMIGRATION RECIDIVISM	22
C.	PURPOSE OF THE STUDY.....	23
	1. Burden on Society	23
	2. The Need for Alternatives	24
D.	RESEARCH QUESTIONS	25
E.	OVERVIEW OF UPCOMING CHAPTERS.....	25
II.	LITERATURE REVIEW	27
A.	RESTITUTION TO DETER RECIDIVISM.....	27
	1. Civil vs. Criminal Restitution	27
	2. Criminal Justice Enforcement vs. Immigration Enforcement.....	27
	3. Restorative Justice.....	28
B.	RESTITUTION AS EFFECTIVE.....	29
C.	RESTITUTION AS NOT EFFECTIVE	30
D.	MIXED RESULTS STUDIES.....	31
E.	LITERATURE LIMITATIONS	33
III.	RESEARCH DESIGN	35
A.	EXPLORATORY RESEARCH DESIGN	36
B.	CAUSAL RESEARCH DESIGN.....	38
	1. Target Sample Population.....	39
	2. Control Population Sample Characteristics	40
	3. Intervention	40
	4. Comparison.....	41
C.	RESULTS.....	41
D.	LIMITATIONS OF RESEARCH DESIGN	55
IV.	POLICY DEVELOPMENT.....	57
A.	RESEARCH FINDINGS	57
	1. Expected Findings.....	59
	2. Surprising Findings.....	60
B.	CURRENT PRACTICE AND LIMITATIONS	61
C.	MODEL DEVELOPMENT	65
D.	DETAILS	68

E.	SELECTION AND ELIGIBILITY.....	69
F.	PILOT PROGRAM: IMPLEMENTING CIVIL RESTITUTION.....	70
1.	Preliminary Procedures	70
2.	Civil Restitution Awards	71
3.	Travel and Notification Procedures	71
4.	Conditions	72
5.	Information Sharing: Data Transmission, Quality, and Integrity	73
6.	Costs.....	75
7.	Outcome Measures: Collaborative Oversight	75
G.	ADVANTAGE AND DISADVANTAGES	77
1.	Possible Advantages.....	80
2.	Possible Risks	81
H.	POSSIBLE STAKEHOLDER OBJECTIONS: MODEL TRADEOFFS	84
1.	The Public.....	84
2.	DHS Law Enforcement Personnel	85
3.	Detention Facilities.....	85
4.	NGOs	86
5.	International Carriers	89
6.	Legitimate and Clandestine Agendas	90
a.	<i>Foreign Governments</i>	90
b.	<i>Immigration Attorneys</i>	91
c.	<i>Criminal Organizations/Enterprises</i>	91
V.	FUTURE OUTLOOK.....	93
A.	IMPLICATIONS.....	94
B.	FUTURE RESEARCH.....	96
1.	Terrorists and Immigration Recidivism	96
2.	Interventions	97
3.	Conclusion	98
	APPENDIX A. LIST OF CRIMINAL OFFENSES ELIGIBLE FOR IMMIGRATION ENFORCEMENT ACTION.....	99
	APPENDIX B. DEFINITION OF KEY IMMIGRATION ENFORCEMENT TERMS.	101
	APPENDIX C. AMOUNT AND PERCENT OF OFFENDERS RECEIVING RESTITUTION AS A SOLE SANCTION OR IN COMBINATION IN U.S. DISTRICT COURT	103
	LIST OF REFERENCES.....	105
	INITIAL DISTRIBUTION LIST	113

LIST OF FIGURES

Figure 1.	Mission 3: Enforcing and Administering Our Immigration Laws, “Prevention of Unlawful Immigration,” Goals and Objectives: An Overview	4
Figure 2.	FY 2012 Total Removal Data by Priorities. Immigration Recidivists (Priority III) Represent the Second Largest Proportion of Removals Although Not the Highest Priority for Enforcement.	9
Figure 3.	Overview of Federal Criminal Cases FY 2012.....	16
Figure 4.	FY 2008–FY 2012 Total Removal Data by Priority.....	18
Figure 5.	Differences and Similarities Between Immigration Violators and Criminal Immigration Recidivists.....	20
Figure 6.	FY 2013 Interior Removal Data by Priority.	22
Figure 7.	Basic Overview of the Immigration Enforcement Process for Most First Time Offenders. Criminal Immigration Recidivists Have Their Original Removal Orders Re-instated, and Do Not Undergo This Process Anew.	42
Figure 8.	The U.S. Federal Criminal Justice Process, a Basic Overview.	43
Figure 9.	FY 2008 New Prosecutions for Criminal Recidivists in the Districts of Arizona Southern California, and Southern Texas.....	45
Figure 10.	Noncitizens Incarcerated in Federal Prison, by Offence Type, 1985–2010.	46
Figure 11.	Imprisonment Rates of Offenders Eligible for Non-Prison Sentences in Selected Offense Types, FY 2012.	52
Figure 12.	Restitution Collections Nationwide FY 2004–FY 2010.	53
Figure 13.	USAOs FY2011 Criminal Case Workload.	62
Figure 14.	USAOs Restitution Collections FY 2004 to FY 2011.	65
Figure 15.	Mission 3’s CR Pilot Program Model Overview.	70
Figure 16.	Mission 3 Proposed CR Implementation Model.....	74

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LIST OF TABLES

Table 1.	Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens. Priority I, Levels 1–2 Offenders Are a Top Enforcement Priority.	8
Table 2.	Trends in Immigration Prosecutions for Illegal Re-entry.....	12
Table 3.	Percentage of Criminal Immigration Recidivists by Criminal History Category (and Applicable Points) Based on Prior Sentence Length. .	15
Table 4.	FY 2013 Interior Removal Data by Priority.	22
Table 5.	Top Five Districts Illegal Re-entry Offenders FY 2012.....	44
Table 6.	District of Arizona, FY 2012 Guideline Sentences.....	47
Table 7.	District of Southern California, FY 2012 Guideline Sentences.	48
Table 8.	District of New Mexico, FY 2012 Guideline Sentences.....	49
Table 9.	District of Texas Southern, FY 2012 Guideline Sentences.....	50
Table 10.	District of Texas Western, FY 2012 Guideline Sentences.	51
Table 11.	Percent of Offenders Returning to Federal Prison within Three Years of Release by Type of Offense at Release, and Return, 2008.	54
Table 12.	List of Criminal Offenses Eligible for Immigration Enforcement Action	99
Table 13.	Amount and Percent of Offenders Receiving Restitution As a Sole Sanction or in Combination in U.S. District Court	103

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LIST OF ACRONYMS AND ABBREVIATIONS

ABA	American Bar Association
ACLU	American Civil Liberties Union
ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
AUSO	Attorneys Office
BJS	Bureau of Justice Statistics
BMIS Web	Bond Management Information System-Web
BOP	Bureau of Prisons
CBP	Customs and Border Protection
CDCS	Consolidated Debt Collection System
CHDS	Homeland Defense and Security
CFR	Code of Federal Regulations
CR	civil restitution
CRS	Congressional Research Service
DACA	Deferred Action for Childhood Arrival
DEA	Drug Enforcement Administration
DHS	Department of Homeland Security
DOJ	Department of Justice
DOS	Department of State
EARM	ENFORCE Alien Removal Module
eBONDS	Bonds Online System
ERO	Enforcement and Removal Operations
FBI	Federal Bureau of Investigation
FLU	Financial Litigation Unit
GAO	Government Accountability Office
HRF	Human Rights First
ICE	Immigration and Customs Enforcement
IIRIRA	Illegal Immigration Reform and Immigrant Responsibility Act
IJ	Immigration Judge
INA	Immigration and Nationality Act
JPI	Justice Policy Institute
LII	Legal Information Institute
LPR	Legal Permanent Resident

MPI	Migration Policy Institute
MVRA	Mandatory Victims Restitution Act
NCJRS	National Criminal Justice Reference Service
NGO	Non-governmental Organizations
NIF	National Immigration Forum
NIJ	National Institute of Justice
NPS	Naval Postgraduate School
OAS	Organization of American States
OIG	Office of Inspector General
OIS	Office of Immigration Statistics
OJJDP	Office of Juvenile Justice Delinquency Prevention
OJP	Office of Justice Programs
OVC	Office of Victims of Crime
STU	Statistical Tracking Unit
TRAC	Transactional Records Access Clearinghouse
UNHRC	United Nations Human Rights Commission
UNODC	United Nations Office on Drugs and Crime
U.S.	United States
U.S.C.	United States Code
USC	University of Southern California
USAO	United States Attorneys Office
USMS	United States Marshal Service
USSC	United States Sentencing Commission
USSS	United States Secret Service
VWPA	Victim Witness Protection Act
WRC	Women's Refugee Commission

EXECUTIVE SUMMARY

The Department of Homeland Security (DHS) Mission 3: Enforcing and Administering Our Immigration Laws' goals and objectives include the "prevention of unlawful immigration." As a result, Mission 3 enforcement strategies focus on arresting, detaining, prosecuting, and removing repeat immigration violators;¹ the most dangerous criminals (i.e., those who pose a threat to this country's national security and public safety; human rights violators; fugitives), and the like. Prosecutions and subsequent removal are used as enforcement tools against repeat immigration violators.

Repeat immigration violators include non-citizens² who repeatedly re-enter the United States (U.S.) without previous authorization after prior removal or deportation. A history of violent and non-violent criminal behavior (convictions) prior to, or after illegal re-entry, aggravates this immigration offense. Although immigration violators include non-criminal persons, those with a history of violent and non-violent criminal behavior are the focus of this thesis. Throughout this document, they are referred to as "criminal immigration recidivists,"³ and their history of repeat immigration violations or behavior, as "criminal immigration recidivism."

¹ Throughout this thesis, the author used "DHS" instead of the name of the enforcement component (s); the focus is not agency, but Mission 3-specific. DHS defines "repeat and egregious" immigration law violators, and immigration fugitives as individuals who return to this country after having been previously removed, those who engage in immigration fraud, and those who flagrantly ignore an immigration court's order to leave the country. U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, "Removal Statistics," April 1, 2013, <http://www.ice.gov/removal-statistics/>.

² Throughout the paper, and due to the author's preference, the term "non-citizen" replaces the term alien. The term "alien" is used only when citing policy. In immigration law, the term alien refers to non-citizens (legal and illegal or undocumented). Legal Information Institute, "Rights, Privileges, and Duties of Aliens," *Cornell University Law School*, November 16, 2012, <http://www.law.cornell.edu/wex/alien>.

³ The author refers to repeat immigration violators without a criminal history simply as "immigration recidivists."

Rates of immigration recidivism are confounding. Prosecutions for immigration violations provide temporary incapacitation⁴ of further criminal behavior within this population, but do not seem to affect the underlying behavior as much as expected. In fiscal year (FY) 2011 alone, the United States Attorneys Office filed 28, 806 cases involving immigration offenses. Other crimes involving non-citizens included drugs (15,213), violent crimes (11,885), white-collar crimes (6,516), and, others (6,536).⁵ The average sentence length for immigration recidivists (criminal and non-criminal) ranges between 16 and 10 months, respectively.⁶ However, according to a Bureau of Justice Statistics report⁷ about immigration offenders in the federal justice system published in 2012, defendants charged with illegal re-entry were more likely to have a prior conviction (85 percent).⁸

Removal from the United States represents “finality” since the non-citizen is no longer a threat to the community; however, removal numbers continue to increase. For FY 2013, DHS removal statistics estimate the number of removed

⁴ Incapacitation refers to the effect of a sanction to stop people from committing crime by removing [an] offender from the community. U.S. Department of Justice, National Institute of Justice, “Topics: Corrections. Recidivism: Core Concerns,” November 14, 2012, <http://www.nij.gov/nij/topics/corrections/recidivism/core-concern.htm>.

⁵ U.S. Department of Justice, *United States Attorneys FY 2013 Performance Budget Congressional Submission* (Washington, DC: U.S. Department of Justice, United States Attorney’s Office), February 11, 2014, <http://www.justice.gov/jmd/2013justification/pdf/fy13-usa-justification.pdf>.

⁶ United States Sentencing Commission, “Sentence Length in Each Primary Offense Category, United States Sentencing Commission’s 2012 Sourcebook of Federal Sentencing Statistics—Table 13 (Online),” June 14, 2013, http://www.ussc.gov/Research_and_Statistics/Annual_Reports_and_Sourcebooks/2012/Table13.pdf.

⁷ The full study is available from U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, “Federal Justice Statistics Program, Immigration Offenders in the Federal Justice System, 2010,” Revised October 22, 2013, <http://bjs.ojp.usdoj.gov/content/pub/pdf/iofjs10.pdf>.

⁸ Ibid.

repeat immigration violators at 159,624.⁹ For FY 2012, the number of recidivists removed was estimated at 149,000.¹⁰

Re-enforcement costs provide yet another perspective on this issue. A 2013 report published by the Migration Policy Institute (MPI) indicated that the U.S. government spends more on immigration related enforcement than on all its criminal federal law enforcement agencies combined.¹¹ The DHS immigration enforcement budget for FY 2012 was approximately \$18 billion, exceeding by almost 24 percent total spending by the Federal Bureau of Investigations (FBI), the U.S. Drug Enforcement Administration (DEA), the U.S. Secret Service (USSS), the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the U.S. Marshals Service (USMS).¹² Moreover, the *DHS FY 2012 Budget Justification* show the department's intended plans for detention expansion: "By adding 600 beds to the administration's request, Congress's enacted budget added expenditures of \$27 to \$36 million."¹³

Depending on how these statistics are interpreted, enforcement tools, such as prosecution and removals, are producing outstanding results; or, the criminal immigration recidivism problem is in need of a new or additional strategic approach. The author has chosen the latter interpretation.

⁹ U.S. Department of Homeland Security, Office of Immigration Statistics Policy Directorate, *Immigration Enforcement Actions: FY 2012* (Washington, DC: U.S. Department of Homeland Security, Office of Immigration Statistics Policy Directorate, December 2013). Note that the author did not use "criminal immigration recidivist" to cite FY 12–13 figures, as the report containing the data does not make this distinction clear.

¹⁰ *Written Testimony of ICE Enforcement and Removal Operations Executive Associate Director Thomas Homan for a House Committee on Oversight and Government Reform, Subcommittee on National Security Hearing Titled "Border Security Oversight: Identifying and Responding to Current Threats"*, 113th Cong., 1st sess. (June 26, 2013).

¹¹ *Immigration Enforcement in the United States: The Rise of a Formidable Machinery* (Washington, DC: The Migration Policy Institute, January 2013), 37, <http://www.migrationpolicy.org/research/immigration-enforcement-united-states-rise-formidable-machinery>.

¹² *Ibid.*

¹³ U.S. Department of Homeland Security, *Congressional Budget Justification: Salaries and Expenses FY 2012* (Washington, DC: U.S. Department of Homeland Security, 2011), <http://www.dhs.gov/xlibrary/assets/dhs-congressional-budget-justification-fy2012.pdf>.

Criminal immigration recidivism statistics are demoralizing, but do not seem to raise the alarm to the problem loud enough. Criminal immigration recidivists have been assigned the lowest category for enforcement; perhaps, the data fails to paint the entire picture about the extent of the problem. In other words, although recidivism rates are high, as are re-enforcement costs, the problem is not as critical to national security as to necessitate a higher priority; possibly a valid argument. At first glance, however, the statistics serve to provide a general overview on how resources are continually drained over the same offenders.

If rates of criminal immigration recidivism are not as critical to national security at the moment, but resources are being taxed within this population anyways, why not do something about it now before the situation turns into a critical incident? If a new strategic plan has the potential to offset some of the financial burden on the American taxpayers, while potentially reducing recidivism within this group, why explore its advantages and disadvantages in greater detail? The author is recommending developing and implementing a civil restitution (CR) policy model as one of Mission 3's Prevention of Unlawful Immigration goals and objectives.

CR would serve as an intervention or enforcement strategy, in lieu of or as an alternative to prosecution against criminal immigration recidivists. CR would grant to DHS the authority to demand and collect reimbursement from criminal immigration recidivists, for the costs of re-enforcing or reinitiating the removal process at its expense. The offender's reimbursement would mainly cover detention and transportation costs to the country of origin. CR would grant to DHS the authority to act on behalf of the "victims" (i.e., the American taxpayers) who are the parties directly affected or burdened by repeated immigration enforcement costs.

APPROACH

In support of implementing CR as an enforcement strategy within Mission 3 against criminal immigration recidivism, the author employed a hybrid experimental and causal design methodology. She first researched the history of restitution as an alternative sanction in the criminal justice system, and then explored the feasibility of developing a strategy against criminal immigration recidivism modeled after restitution's theoretical underpinnings. The CR strategy borrows from restitution's focus on holding offenders accountable for the financial losses their offenses have caused to their victims, and its potential cost-savings due to lower recidivism rates. She researched the literature on restitution, which included experimental, and meta-analysis research studies on its effects in deterring criminal re-offending.

Secondly, she studied the offenses most likely to receive restitution as a sentencing option in the federal system. The goal was to identify whether restitution is applied in immigration cases, or the likelihood that an immigration offender would receive an order of restitution as a sentencing option.

She also researched the top five immigration recidivists' prosecuting districts in the nation. The District of Arizona, the Southern Districts of California, the District of New Mexico, and the Southern and Western District of Texas represent the top five districts for illegal re-entry cases prosecutions for 2012.¹⁴ The goal was to identify the feasibility of deploying a CR implementation pilot based on the current application of restitution in repeat immigration violation cases, if at all imposed.

RESULTS

The research showed that, when compared to other approaches against criminal behavior, restitution is effective in reducing recidivism or the likelihood of reoffending. Operational costs were thereby reduced, as seen in Randy Barnett,

¹⁴ United States Sentencing Commission, *Illegal Re-entry Offenses, 2008 through 2012 Datafiles, Quickfacts* (Washington, DC: United States Sentencing Commission), 1–2.

“Restitution: A New Paradigm of Criminal Justice”; Gail Caputo, *Intermediate Sanctions in Corrections* in chapter 15); Jeff Latimer, Craig Dowden, and Danielle Muise, “The Effectiveness of Restorative Justice Practices: A Meta-Analysis”; R. Barry Ruback and Mark H. Bergstrom, “Economic Sanctions in Criminal Justice: Purposes, Effects, and Implications”; Alison, Cares, Stacy Hoskins, and R. Barry Ruback, “Economic Sanctions and Recidivism”; Yvon Dandurand and Curt T. Griffiths, “Handbook on Restorative Justice Programmes”; Crime Victims Institute in 2006; National Institute of Justice in 2007; National Center for Victims of Crime, “Making Restitution Real: Five Case Studies on Improving Restitution Collection”; Vivienne Chin, “Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders”; and others. This reduction is particularly the case when restitution is used as an alternative sentencing option in juvenile criminal and delinquent populations, as seen in Anne L. Schneider and Peter R. Schneider, “The Impact of Restitution on Recidivism of Juvenile Offenders: An Experiment in Clayton County, Georgia”; and Laurie Ervin and Anne Schneider, “Explaining the Effects of Restitution on Offenders: Results from a National Experiment in Juvenile Courts.”

The United States Sentencing Commission data showed that restitution is currently imposed in federal immigration cases, albeit in a minimal or small percentage of all cases. Therefore, implementing a scheme modeled after restitution, such as CR, is feasible.

IMPLICATIONS

The research findings suggest that the feasibility exists for implementing a CR Policy Model within Mission 3’s “prevention of unlawful immigration” goals and objectives against criminal immigration recidivists. As a result, certain implications follow from this recommendation.

- If CR implementation is successful, the main difference it will make is to shift the fiscal burden of reinforcement from the taxpayer to the recidivist.

- The success of this intervention will be determined by factors, such as the long-term financial impact brought upon the criminal immigration recidivist, the accompanying psychological effects towards desistance, and the offenders' ability, willingness, and desire to comply with the CR agreement in lieu of risking prosecution.
- A CR pilot program should be implemented for no less than two years. It should begin with the non-violent criminal immigration recidivists as the primary target population to aid adaptation of this somewhat radical method of enforcement.
- The two-year period calculation is estimated to provide enough data to assess CR's full applicability and effectiveness, and allow for iterations accordingly. The 1975 Georgia's Restitution Center Program, and the 1977 Georgia's Non-Residential Sole Sanction Restitution Program¹⁵ could serve as comprehensive blueprints on how to make adjustments during the pilot program.
- If the pilot period is a success, and preliminary data shows CR's effectiveness as a tool against criminal immigration recidivism, the next challenge will be to implement it across the other category of criminal immigration recidivists (i.e., the violent population). Implementing CR within the violent criminal immigration recidivist population will not only challenge traditional enforcement strategies, but also its success will also serve to refocus Mission 3's goals and objectives drastically.
- Another challenge will be determining whether to impose CR as a one-time option, in addition to, in lieu of prosecution, and how many times, re-applying CR would have to be decided based on metrics' results throughout and after the pilot period.
- The decision to re-grant CR, and if so, how many times, instead of opting for prosecution, will be very challenging. Granting CR in multiple instances will diminish one of the purposes behind the strategy, i.e., lowering criminal immigration recidivism. However, if the general attitude remains that criminal immigration recidivism is not a critical national security issue, at least the taxpayers will not be burdened with the costs of reinforcement. Regardless, this decision will necessitate strong leadership, advocacy, and bi-partisan collaboration, as the nation's risk-tolerance will be tested.

¹⁵ For a description of these programs, see Bill Read, *Restitution As it Meets Public Expectations in Georgia's Restitution Programs* (Atlanta, GA: American Correctional Association Congress, 1977), Office of Justice Programs, National Criminal Justice Reference Service: NCJ 045621, May 18, 2013, <https://www.ncjrs.gov/pdffiles1/Digitization/45621NCJRS.pdf>.

- Whether DHS and policy-makers reconsider the priority currently given to criminal immigration recidivists or not, at least this management or strategic approach may serve to open the subject to future research. According to the National Criminal Justice Reference Service (NCJRS), “Despite the passage of federal and state legislation, restitution remains one of the most under enforced and underused alternative sanction [emphasis added]. Evidence of this is apparent both in decisions to order restitution and in efforts to monitor, collect, and disperse restitution payments...”¹⁶

CONCLUSION

This thesis does not claim to be the solution to the criminal immigration recidivism problem, just a different management approach.

CR is not a benefit or relief from removal, and must be understood in this manner. CR in no way provides impunity to criminal immigration recidivists. The best way to understand CR’s goals and objectives is to interpret it as a form of prosecutorial discretion, but with a focus on “benefiting” the American taxpayer, not “rewarding” the offender. CR is an enforcement strategy geared towards desistance of criminal immigration recidivism from a financial accountability, rather than from a pure “punitive” perspective.

Implementing a CR pilot within the top five prosecution districts may be the most commonsensical approach to testing the strategy. Piloting CR in these regions will provide reliable statistical outcome measures regarding the strategy’s effect on criminal immigration recidivism rates.

CR’s goal is to apply an unconventional management approach to a persistent threat, i.e., criminal immigration recidivism. CR strikes a balance between the need to tend to this matter, and the need for well-developed, and ethical strategies. The CR strategy is meant to strengthen Mission 3’s “prevention of unlawful immigration” goals and objectives; thereby, furthering DHS homeland security principles.

¹⁶ The National Criminal Justice Reference Service, “New Directions from the Field: Restitution,” Chapter 15, (archives), January 29, 2013, https://www.ncjrs.gov/ovc_archives/directions/pdfxt/chap15.txt.

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Lastly, I would like to dedicate this thesis to my mentor, Gregory J. Kendrick. Thank you for standing by me, for always knowing just what to say, and for being the great human being I one day inspire to be.

I hope God is watching over you, may your soul rest in peace.

I. INTRODUCTION

Since its creation in 2002, the U.S. Department of Homeland Security (DHS) has worked toward achieving its core missions, goals, and objectives. DHS five core homeland security areas are Mission 1) prevent terrorism and enhance security; Mission 2) secure and manage our borders; Mission 3) enforce and administer our immigration laws; Mission 4) safeguard and secure cyberspace; and Mission 5) ensure resilience to disasters.¹ Although equally important, these missions have encountered a myriad of domestic and global challenges that have, at times, dictated their priority. Illegal immigration and border security are current and relevant examples within DHS Mission 3 (Mission 3).

DHS mission goals and objectives are to prevent, protect, respond, recover, build and strengthen security, develop resilience to disasters, and facilitate trade.² This thesis specifically focuses on Mission 3's goal to "prevent unlawful immigration."³ The Black's Law Online Dictionary defines "unlawful" as: *"That which is contrary to law; 'unlawful' and 'illegal' are frequently used as synonymous terms, but, in the proper sense of the word, 'unlawful,' denotes acts which, although not illegal (i.e., positively forbidden) are disapproved of by the law, and are therefore not recognized as the ground of legal rights, either because they are immoral or because they are against public policy."*⁴

The *Homeland Security Act of 2002* grants to the Secretary of Homeland Security the responsibility for establishing national immigration enforcement policies, priorities, and administering the lawful immigration system to include

¹ U.S. Department of Homeland Security, *Quadrennial Homeland Security Review (QHSR)* (Washington, DC: U.S. Department of Homeland Security, 2010), x. (from hereon referred to as QHSR 2010).

² *Ibid.*, 37.

³ *Ibid.*, 50–53.

⁴ The Black's Law Online Dictionary, 2nd ed., s.v, "Unlawful," September 11, 2013, <http://thelawdictionary.org/unlawful/>. [Emphasis added.]

establishing and administering rules governing the granting of visas, refugee, and asylum or other forms of permission to enter the United States.⁵ The strategic approach to balance, and achieve, these responsibilities appears to depend on the administration in power.⁶ It may also be a matter of political opinion; presently, representatives of the Executive and Legislative branches of the U.S. government provide an example. Since the start of the 21st century, ongoing debates about immigration reform strategies⁷ (for both legal and against illegal immigration, and desired outcomes)⁸ have placed, and kept Mission 3 goals and objectives on the homeland security spotlight.

The *Immigration and Nationality Act of 1952* (INA), as amended, is the legal framework underpinning Mission 3. The INA is divided into titles, chapters, and sections. “Although it stands alone as a body of law, the Act is also contained in the United States Code (U.S.C.).⁹ The code is a collection of all the laws of the United States. It is arranged in 50 subject titles by general alphabetic order. Title 8 of the U.S. Code is but one of the 50 titles and deals with “aliens¹⁰ and nationality.”¹¹

⁵ *Homeland Security Act of 2002*, Public Law 107-296, 2002 U.S.C.C.A.N. (116 Stat.) 2135.

⁶ For example, see White House, *Summary of Presidential Memorandum Deterring Illegal Immigration Under the Clinton Administration* (Washington, DC: White House, 2011); White House, *State of the Union Policy Initiatives: President Bush's Plan for Comprehensive Immigration Reform* (Washington, DC: White House, 2007), <http://georgewbushwhitehouse.archives.gov/stateoftheunion/2007/initiatives/immigration.html>; White House, *Building a 21st Century Immigration System* (Washington, DC: White House, 2011).

⁷ *Border Security, Economic Opportunity, and Immigration Modernization Act*, 113th Cong. 1st sess. (June 7, 2013), S. Doc. No. 113–40.

⁸ White House, *Building a 21st Century Immigration System*.

⁹ Excerpt from *U.S. Immigration and Citizenship Services, Laws: Immigration and Nationality Act*. U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, “Immigration and Nationality Act,” last reviewed/updated September 10, 2013, <http://www.uscis.gov/laws/immigration-and-nationality-act>. When browsing the INA or other statutes, often seen are references to the U.S.C. citation. For example, Section 208 of the INA deals with asylum, and is also contained in 8 U.S.C. 1158. Although it is correct to refer to a specific section by either its INA citation or its U.S.C. code, the INA citation is more commonly used.

¹⁰ Throughout this thesis, and due to the author's preference, the term “alien” is replaced with the term non-citizen or undocumented persons. Terms, such as “alien” or “illegal alien” (a commonly used phrase) is only used when citing existing policy or for referencing sections of law.

¹¹ *U.S. Code: Title 8 § 1-15—Aliens and Nationality*.

The INA provides the Secretary with authority to administer the immigration laws of the United States. It authorizes the arrest, detention, prosecution, and removal¹² of “aliens” present in the United States, especially those identified as criminals, fugitives, and otherwise dangerous.¹³ The term “alien” is used to refer to non-citizens¹⁴ (documented and undocumented¹⁵). Section 101 (3) of the INA defines “aliens” as: “Any person not a citizen or national of the United States.”¹⁶

¹² The author uses the term “removal” throughout the document to mean a deportation, *The Immigration Act of 1917* (Public Law 64-301) and subsequent legislation made certain inadmissible aliens subject to ‘exclusion’ [not allowed entry by otherwise legal means], and certain aliens within the United States subject to ‘deportation.’ Pursuant to §§ 301-309 of the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996* (IIRIRA, Public Law 104-208, Div. C), deportation and exclusion proceedings were combined into a unified ‘removal’ proceeding.” Marc R. Rosenblum and William A. Kandel, *Interior Immigration Enforcement: Programs Targeting Criminal Aliens*, CRS Report R42057 (Washington, DC: Library of Congress, Congressional Research Service, October 21, 2011), 2, <https://www.fas.org/sgp/crs/homesecc/R42057.pdf>. A removal is an immigration judge (IJ)-ordered expulsion. Removal orders require that non-citizens receive advanced authorization from the Attorney General before attempting to return to the United States. Depending on the section of law under which a non-citizen is ordered removed (i.e., criminal behavior), a removal order may trigger a 3- to 20-year bar. In cases of subsequent removals, the bar may be permanent: A review of *The 1996 Illegal Immigration Reform and Immigrant Responsibility Act* (IIRIRA) amendments to the Act and prior statutes and case law regarding permission to reapply for admission reflects that Congress has [among other things] imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted...Congress has placed a high priority on deterring aliens from overstaying their authorized period of stay and from being present in the United States without lawful admission, Vermont Service Center, *Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. 5 1182(a)(9)(A)*, (Washington, DC: U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, 2008 (Redacted), 4.

¹³ Ibid.

¹⁴ Ibid. Non-citizens include permanent immigrants (i.e., legal permanent residents (LPRs), or “green card” holders), legal nonimmigrants (i.e., temporary visa holders), and those undocumented or unauthorized (i.e., entered the United States without authorization or overstayed a temporary visa).

¹⁵ By “undocumented,” the author means a non-citizen who entered the United States without authorization, (i.e., avoided inspection at a port of entry, used fraudulent documents, etc.), or who overstayed a temporary visa.

¹⁶ INA § 101 (3)—Definitions.

Mission 3 enforcement strategies focus on arresting, detaining, prosecuting, and removing repeat¹⁷ immigration violators (see Figure 1) that include the most dangerous criminals (i.e., those who pose a threat to U.S. national security and public safety), human rights violators, fugitives, and the like. Prosecutions and subsequent removal are used as enforcement tools against repeat immigration violators.

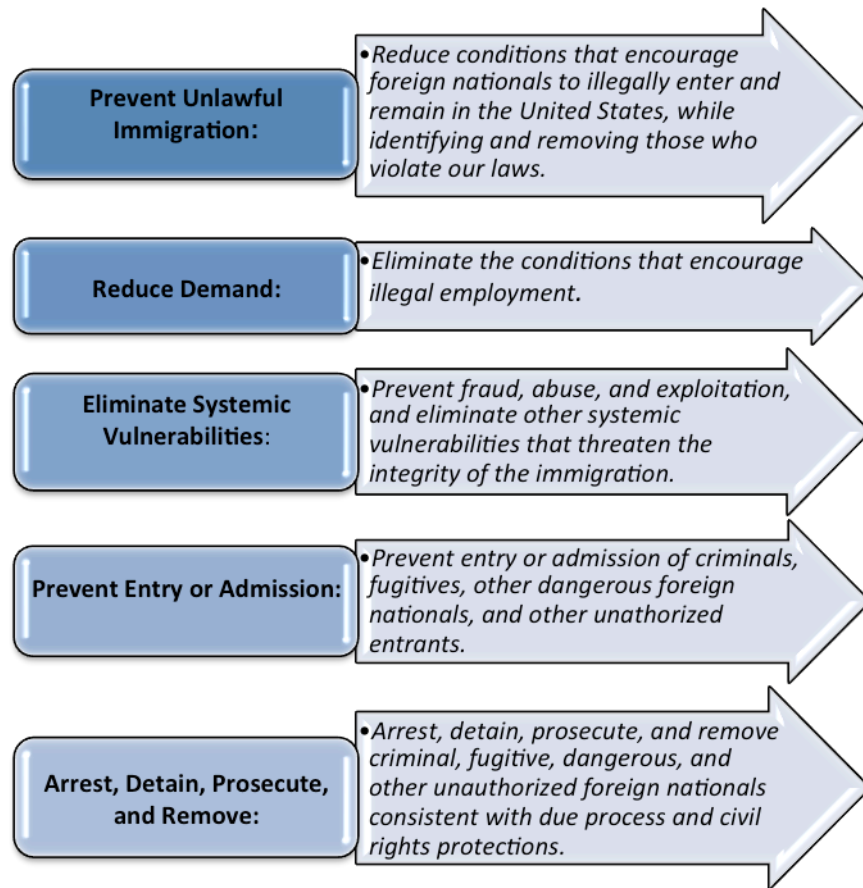


Figure 1. Mission 3: Enforcing and Administering Our Immigration Laws, "Prevention of Unlawful Immigration," Goals and Objectives: An Overview¹⁸

¹⁷ Throughout this thesis, the author uses "DHS" instead of the name of the enforcement component (s); the focus is not agency, but Mission 3-specific. DHS defines "repeat and egregious" immigration law violators, and immigration fugitives as "Individuals who return to our country after having been previously removed; those who engage in immigration fraud; and, those who flagrantly ignore an immigration court's order to leave the country," U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, "Removal Statistics," April 1, 2013, <http://www.ice.gov/removal-statistics/>.

¹⁸ U.S. Department of Homeland Security, *Quadrennial Homeland Security Review (QHSR)*.

Repeat immigration violators include non-citizens¹⁹ who repeatedly re-enter²⁰ the United States without previous authorization, after prior removal or deportation.²¹ A history of violent and non-violent criminal behavior (convictions) prior to, or after illegal re-entry, aggravates this immigration offense. Although immigration violators include non-criminal persons, those with a history of violent and non-violent criminal behavior are the focus of this thesis²² throughout this document. They are referred to as “criminal immigration recidivists,”²³ and their history of repeat immigration violations or behavior, as “criminal immigration recidivism.”

More specifically, a criminal immigration recidivist is a previously removed non-citizen who: (1) has been removed one or more times due to a conviction for a criminal offense (s), in addition to the undocumented status, or (2) re-entered the United States after removal for a conviction of a criminal offense—without authorization—and was encountered as a result of an additional criminal conviction(s). (See Appendix A for a list of applicable criminal or “aggravated” felony offenses that trigger immigration enforcement.)

Criminal immigration recidivists and “immigration recidivists” are not the same, and should not be confused. The former have been convicted of a criminal offense (in addition to the immigration violation), while the latter may be a repeat immigration law violator, but without a criminal conviction or record. Criminal

¹⁹ Throughout the paper, and due to the author’s preference, the term “non-citizen” replaces the term alien. The term “alien” is used only when citing policy. In immigration law, the term alien refers to non-citizens (legal and illegal or undocumented). Legal Information Institute, “Rights, Privileges, and Duties of Aliens,” *Cornell University Law School*, November 16, 2012, <http://www.law.cornell.edu/wex/alien>.

²⁰ See, INA § 276—Re-entry of Removed Alien.

²¹ Same as “removal.”

²² U.S. Department of Justice, Office of the United States Attorneys, “1912 8 U.S.C. § 1326—Re-entry After Deportation (Removal): Title 9. Criminal Resource Manual 1912,” Updated September 2008, http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm01912.htm.

²³ The author addresses recidivists without a criminal history simply as “immigration recidivists.”

immigration recidivists are usually “encountered” at correctional institutions or “apprehended” through enforcement operations, respectively.²⁴

According to Rosenblum and Kandel, the term “criminal alien” is not specifically defined in immigration law or regulation, and its use is very broad, “At the broadest level, a ‘criminal alien’ is any noncitizen who has ever been convicted of a crime in the United States.”²⁵ DHS defines a criminal alien²⁶ as “An alien convicted for one or more crimes. This category includes individuals who, in addition to have been convicted of a crime, also may have been immigration fugitives, border removals, or were previously removed from the United States.”²⁷ This comprehensive definition demands prioritization of resources to maximize operational efficiencies.

DHS prioritizes its enforcement resources to manage immigration violators most effectively, including criminal immigration recidivists. Immigration enforcement priorities (“civil enforcement priorities”)²⁸ are a law enforcement strategy designed to further Mission 3’s “prevention of unlawful immigration” goals and objectives, while at the same time, maximize available resources. “In light of the large number of administrative violations the agency is charged with addressing, and the limited enforcement resources the agency has available, [DHS] must prioritize the use of its enforcement personnel, detention space, and

²⁴ For sentencing and other purposes, “immigration recidivists” are also known as “illegal re-entrants.” However, the term may denote criminal and non-criminal persons.

²⁵ Rosenblum and Kandel, *Interior Immigration Enforcement: Programs Targeting Criminal Aliens*, 2.

²⁶ Appendix B lists DHS common immigration enforcement terminology used throughout this document.

²⁷ U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, “Removal Statistics.”

²⁸ Immigration and Customs Enforcement (ICE) enforce civil enforcement priorities, but immigration enforcement involves more than one agency within DHS.

removal resources to ensure that removals [represent] the highest enforcement priorities, namely national security, public safety, and border security.”²⁹

Civil enforcement priorities focus on a non-citizen’s pre- and post-removal criminal history, as well as immigration violations. DHS “Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens”³⁰ lists three enforcement priority levels ranging from highest to lowest. Priority I Aliens, are those who pose a danger to national security or a risk to public safety. This category includes three levels: Level 1 Offenders: Aliens convicted of aggravated felonies,³¹ or of two or more crimes, each punishable by more than one year, commonly referred to as felonies. Level 2 Offenders: Aliens convicted of any felony, or three or more crimes, each punishable by less than one year, commonly referred to as misdemeanors. Level 3 Offenders: Aliens are convicted of crimes punishable by less than one year. Priority II Aliens include recent illegal entrants, and Priority III Aliens include fugitives (or those non-citizens) who otherwise obstruct immigration controls.³²

According to DHS, in FY 2012,³³ 96 percent of all removals fell into a priority category: “A record achievement for the department.”³⁴ Table 1 shows an overview of categories included in each priority. Noteworthy, is that criminal immigration recidivists fall in the lowest category for enforcement (listed and highlighted on Table 1 as “Priority III B”). However, and as shown on Figure 2,

²⁹ U.S. Department of Homeland Security, Immigration and Customs Enforcement, Enforcement and Removal Office, “Civil Immigration Enforcement Priorities,” March 2, 2011, 1–4, [Emphasis added], <http://ice.gov/doclib/news/releases/2011/110302washingtondc.pdf>.

³⁰ Ibid.

³¹ “Aggravated” felonies as defined in §101(a)(43) of the INA include crimes of violence (i.e., homicide), drug trafficking, firearms offenses, etc. (See Appendix B).

³² U.S. Department of Homeland Security, Immigration and Customs Enforcement, Enforcement and Removal Office, “Civil Immigration Enforcement Priorities,” 1–4.

³³ FY refers to the period between October 1 to September 30.

³⁴ *Written Testimony of ICE Enforcement and Removal Operations Executive Associate Director Thomas Homan for a House Committee on Oversight and Government Reform, Subcommittee on National Security Hearing Titled “Border Security Oversight: Identifying and Responding to Current Threats*, 113th Cong., 1st sess. (June 26, 2013).

even when listed as a separate category—and without specifying criminal history—immigration recidivists resulted in the second largest removed group.

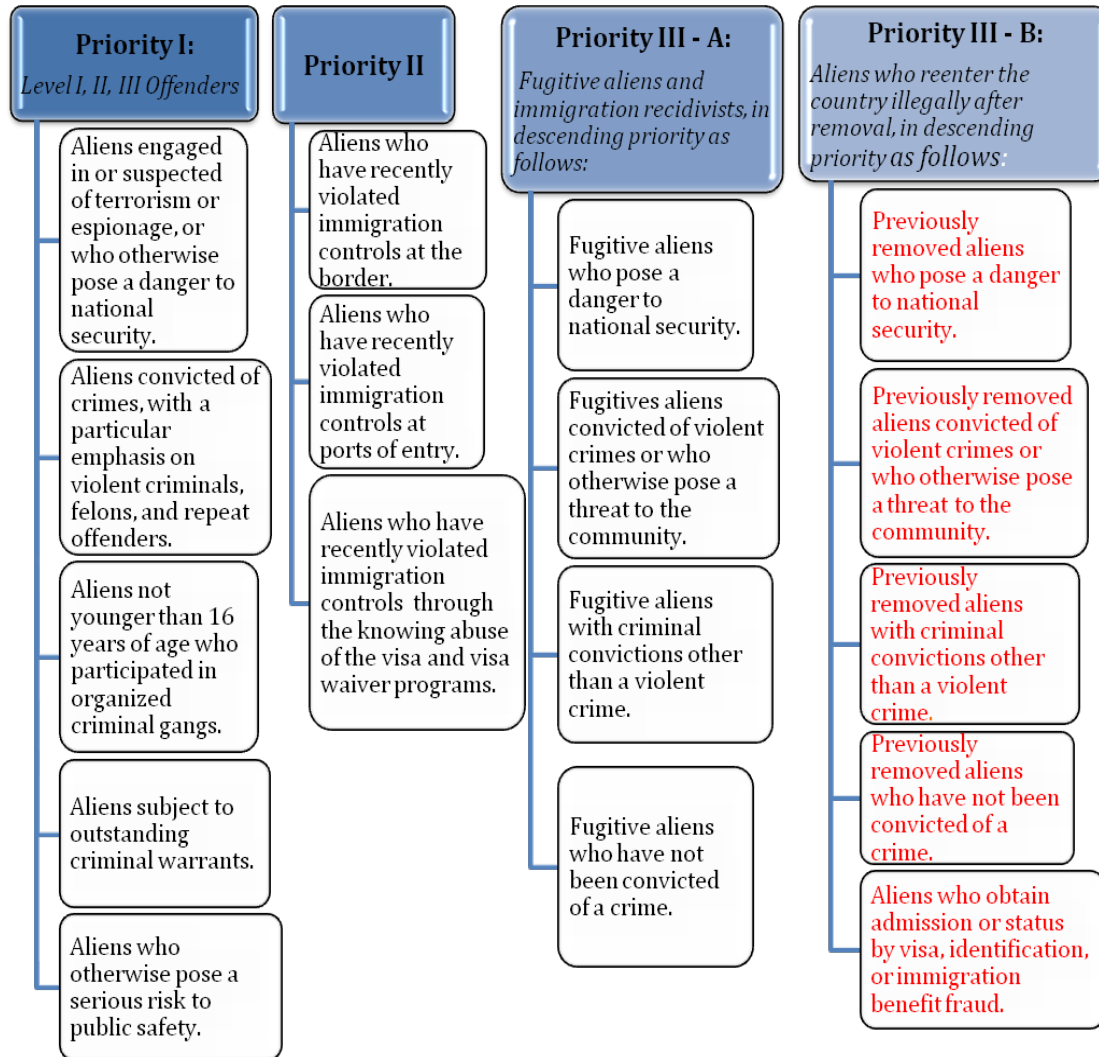


Table 1. Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens. Priority I, Levels 1–2 Offenders Are a Top Enforcement Priority.³⁵

³⁵ John Morton, *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens* (Washington, DC: U.S. Immigration and Customs Enforcement, 2011), <http://www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf>.

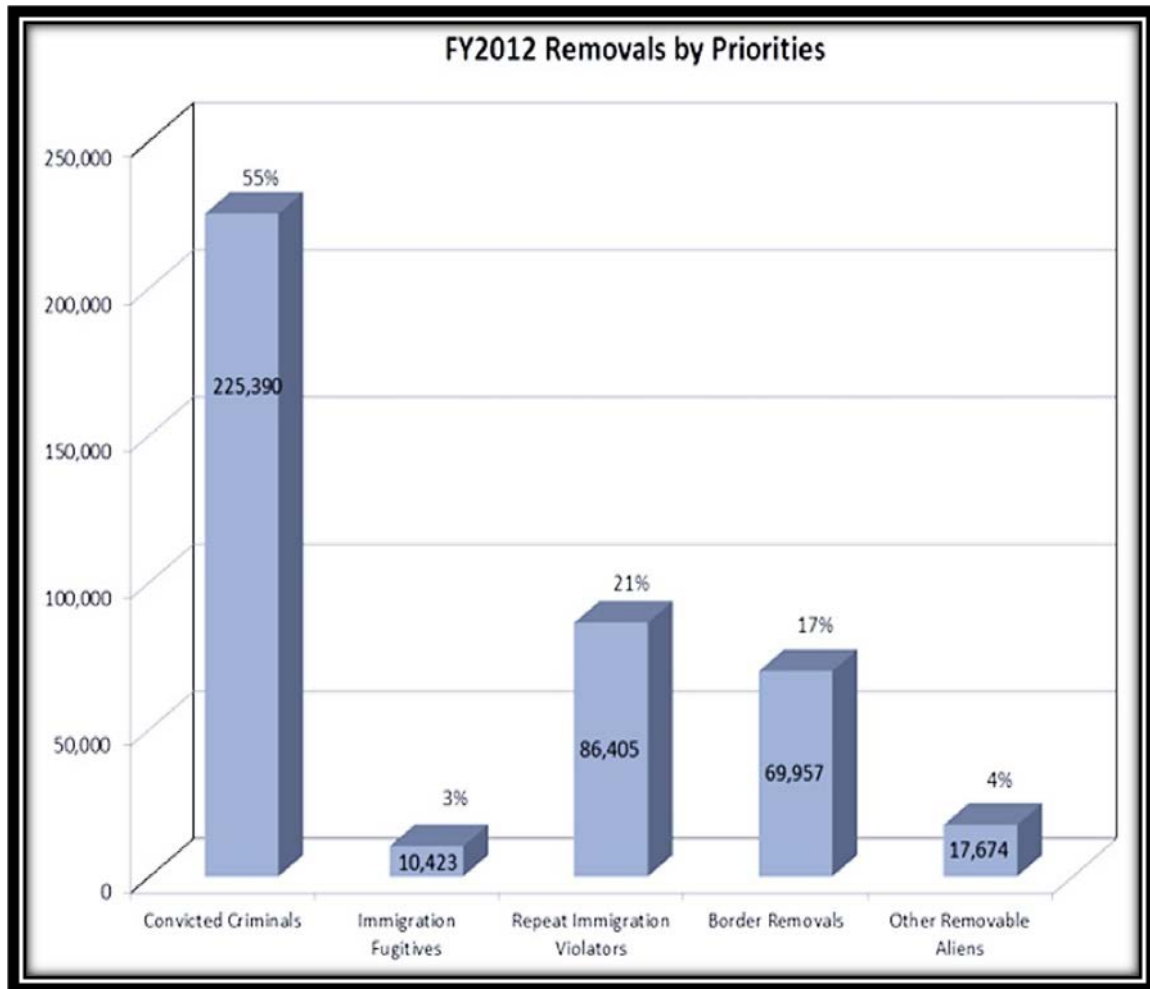


Figure 2. FY 2012 Total Removal Data by Priorities. Immigration Recidivists (Priority III) Represent the Second Largest Proportion of Removals Although Not the Highest Priority for Enforcement.³⁶

A. PROBLEM STATEMENT

Rates of immigration recidivism are confounding. Prosecutions for immigration violations appear to provide temporary incapacitation³⁷ of further criminal behavior within this population, but do not seem to affect the underlying

³⁶ U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, "Removal Statistics."

³⁷ Incapacitation refers to the effect of a sanction to stop people from committing crimes by removing [an] offender from the community, U.S. Department of Justice, National Institute of Justice, "Topics: Corrections. Recidivism: Core Concerns," November 14, 2012, <http://www.nij.gov/nij/topics/corrections/recidivism/core-concern.htm>.

behavior as much as expected. Removal from the United States represents “finality” since the non-citizen is no longer a threat to the community; however, the numbers seem to indicate that re-enforcing immigration, and other federal laws, against criminal immigration recidivists continue to increase.

Criminal immigration recidivists deplete too many resources within the federal, state, and local governments; the lack of public awareness to this issue has not raised the alarm or resulted in a demand for action.

Although listed within the lowest priority for enforcement, prevention and deterrence of criminal immigration recidivism is no less critical to the safety and security of the nation than priorities one and two. Perhaps criminal immigration recidivists have been assigned the lowest category for enforcement because the data fails to paint the entire picture about the extent of the problem. In other words, recidivism rates may be high, but the problem is not as critical to national security as to necessitate a higher priority; or it may be that congressionally mandated budgetary and other limitations restrict sustainable enforcement against this population; thereby, justifying its lower priority. These arguments are valid.

If rates of criminal immigration recidivism are not as critical to national security, at the moment, but resources are being taxed within this population anyways, why do not do something about it now before the situation becomes a critical incident? If a new strategic plan has the potential to offset some of the financial burden on the American taxpayers, while potentially reducing recidivism within this group, why not explore its advantages and disadvantages in greater detail?

Mission 3 enforcement strategies need to include options or alternatives with the potential to provide DHS with additional “returns on its investments.” In other words, resources allocated to counter criminal immigration recidivism provide for the safety and security of this nation’s communities is the main “return on investment.” However, enforcement strategies should also strive for self-

sustainability to maximize Mission 3's limited resources against criminal immigration recidivism.

1. Interventions: Prosecutions and Removals

Prosecution and removal of criminal immigration recidivists seek to prevent and deter further recidivism. These interventions or forms of "punishment" exist or are meted-out in lieu of rehabilitation or treatment programs.

Although it may seem paradoxical, as an institution of social control, the immigration enforcement system does not seek to correct non-citizens' behavior to restore them back to the community. The system seeks to prosecute leading to temporary incapacitation, and then removes with the intention to effect permanent incapacitation. For incapacitation to be effective long term, however, prosecution, subsequent incarceration, and removal need to have a permanent impact on behavior; clearly, and increasingly, they are not.

Based on the number of prosecutions initiated by the U.S. Department of Justice (DOJ) on DHS' behalf, and on individual interpretation of the statistics, immigration recidivism is either: a) on the rise, b) prosecution efforts have exponentially lower recidivism rates, or c) no significant changes have occurred in recidivism levels due to these interventions. The increase in prosecutions and removals as a mechanism to prevent and deter further recidivism among the criminal immigration recidivists population is a double-edged sword. On the one hand, an increase in prosecutions, and subsequent removals, could be seen as having the desired enforcement effect. On the other hand, more prosecutions and removals could also be interpreted as a failure of existing strategies towards this population.

In November 2013, the Transactional Records Access Clearinghouse (TRAC), a data gathering, data research, and data distribution organization at Syracuse University in New York, reported on the prosecution trends against

recidivists dating back 20 years (see Table 2). As shown, prosecutions for illegal re-entry after previous removal under 8 U.S.C.1326 have steadily increased.

Prosecutions	Total	Lead Charge - Illegal Re-entry 8 USC 1326
FY 2013	97,384	37,346
FY 2012	91,941	37,123
% Change from previous year (FY 2011)	5.9%	0.6%
% Change from 5 years ago	22.6%	76.2%
% Change from 10 years ago	367%	233%
% Change from 20 years ago	1420%	1557%

Table 2. Trends in Immigration Prosecutions for Illegal Re-entry.³⁸

2. Criminal Immigration Recidivists in the Federal Justice System

Criminal immigration recidivists in correctional institutions may be serving a sentence related only to immigration, criminal offenses, or both. Title 9 of the United States Attorneys' Manual, *The Criminal Resource Manual* §1912, describes the legal framework for handling immigration recidivists in the federal system as follows:

³⁸ Transactional Records Access Clearinghouse (TRAC), "At Nearly 100,000, Immigration Prosecutions Reach All-time High in FY 2013," November 25, 2013, <http://trac.syr.edu/immigration/reports/336/>.

The basic statutory maximum penalty for re-entry after deportation is a fine under title 18, imprisonment for not more than 2 years, or both. However, with regard to an alien whose 'removal' was subsequent to a conviction for commission of three or more misdemeanors involving drugs, crimes against the person, or both, or a felony (other than an aggravated felony), the statutory maximum term of imprisonment is 10 years. Moreover, if deportation was subsequent to conviction for an aggravated felony, the statutory maximum term of imprisonment is 20 years.³⁹

In FY 2012, the United States Sentencing Commission (USSC) reported that illegal re-entry sentences were "increased in 74.7 percent of all [immigration] cases because of the offender's criminal history."⁴⁰ The federal sentencing guidelines consider both the seriousness of the offense, and criminal history to assign offenders to one of six criminal history score categories.⁴¹ Depending on the extent of an offender's past criminal violations, points are assigned within categories I through VI (from low to high). Certain prior convictions receive higher point-scores, "The number of points scored for a prior sentence (from one to three) is based primarily on the length of the prior sentence."⁴² Criminal history category I is the least serious category and includes many first-time offenders. Criminal history category VI is the most serious, and includes offenders with serious criminal records.⁴³

In 2012, the DOJ, Office of Justice Programs (OJP), Bureau of Justice Statistics (BJS), published a study focused on immigration offenders in the

³⁹ U.S. Department of Justice, Office of the United States Attorneys, "1912 8 U.S.C. § 1326—Re-entry After Deportation (Removal): Title 9. Criminal Resource Manual 1912."

⁴⁰ United States Sentencing Commission, *Illegal Re-entry Offenses, 2008 through 2012 Datafiles, Quickfacts* (Washington, DC: United States Sentencing Commission), 1–2.

⁴¹ An in-depth discussion of sentencing categories is outside the scope of this thesis. The sentencing categories are only mentioned briefly to provide an overview of where criminal immigration recidivists fall in the spectrum.

⁴² United States Sentencing Commission, Office of General Counsel, "Criminal History Primer," April 2013, 1–21, http://www.ussc.gov/Legal/Primers/Primer_Criminal_History.pdf.

⁴³ United States Sentencing Commission, Office of General Counsel, "An Overview of the Federal Sentencing Guidelines: How the Sentencing Guidelines Work," 1–4, February 19, 2014, http://www.ussc.gov/About_the_Commission/Overview_of_the_USSC/Overview_Federal_Sentencing_Guidelines.pdf.

federal justice system in 2010.⁴⁴ The findings revealed that criminal immigration recidivists charged with illegal re-entry were more likely to have a prior conviction (85 percent); 65 percent had a prior felony conviction (at least three), and 34 percent had two or more prior felony convictions. The study's findings also revealed that the most common immigration offense charged in U.S. district court in 2010 was illegal re-entry (81 percent).⁴⁵

From FY 2008 to FY 2012, criminal immigration recidivists accounted for 29.3 percent of all offenders in category III, with four to six criminal history points.⁴⁶ Table 3 shows the percentages for the rest of the categories. A description of criminal offenses in federal court (FY 2012) is shown in Figure 3. As shown, in comparison to other crimes, immigration offenses rank highest (at 32.2 percent).⁴⁷ The majority of criminal immigration recidivists fall between categories II and V.

⁴⁴ Office of Justice Programs, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, "Federal Justice Statistics Program, Immigration Offenders in the Federal Justice System, 2010," Revised October 22, 2013, <http://bjs.ojp.usdoj.gov/content/pub/pdf/iofjs10.pdf>.

⁴⁵ Ibid.

⁴⁶ United States Sentencing Commission, *Illegal Re-entry Offenses, 2008 through 2012 Datafiles, Quickfacts*, 1–2.

⁴⁷ Glenn R. Schmitt and Jennifer Dukes, "Overview of Federal Criminal Cases Fiscal Year 2012," *United States Sentencing Commission*, December 11, 2013, http://www.ussc.gov/Research_and_Statistics/Research_Publications/2013/FY12_Overview_Federal_Criminal_Cases.pdf.

Percentage	Category	Criminal History Points
18.3%	I (Least Serious)	0 or 1
22.7%	II	2 or 3
16.2%	IV	7,8,9
8.1%	V	10,11,12
5.4%	VI (Most Serious)	13 or more

Table 3. Percentage of Criminal Immigration Recidivists by Criminal History Category (and Applicable Points) Based on Prior Sentence Length.⁴⁸

Moreover, criminal immigration recidivists are sentenced to imprisonment almost exclusively; in 98.5 percent of cases, imprisonment seems to be the preferred method used to punish, deter and modify criminal immigration recidivists' behavior, with the remainder sentenced to probationary sentences (1.5 percent).⁴⁹ Moreover, the average sentence length for immigration recidivists ranged between 16 and 10 months, respectively.⁵⁰

⁴⁸ United States Sentencing Commission, *Illegal Re-entry Offenses, 2008 through 2012 Datafiles, Quickfacts*.

⁴⁹ United States Sentencing Commission, "Sentence Length in Each Primary Offense Category," U. S. Sentencing Commission's 2012 Sourcebook of Federal Sentencing Statistics—Table 13 (Online)," June 14, 2013, http://www.ussc.gov/Research_and_Statistics/Annual_Reports_and_Sourcebooks/2012/Table13pdf.

⁵⁰ Ibid.

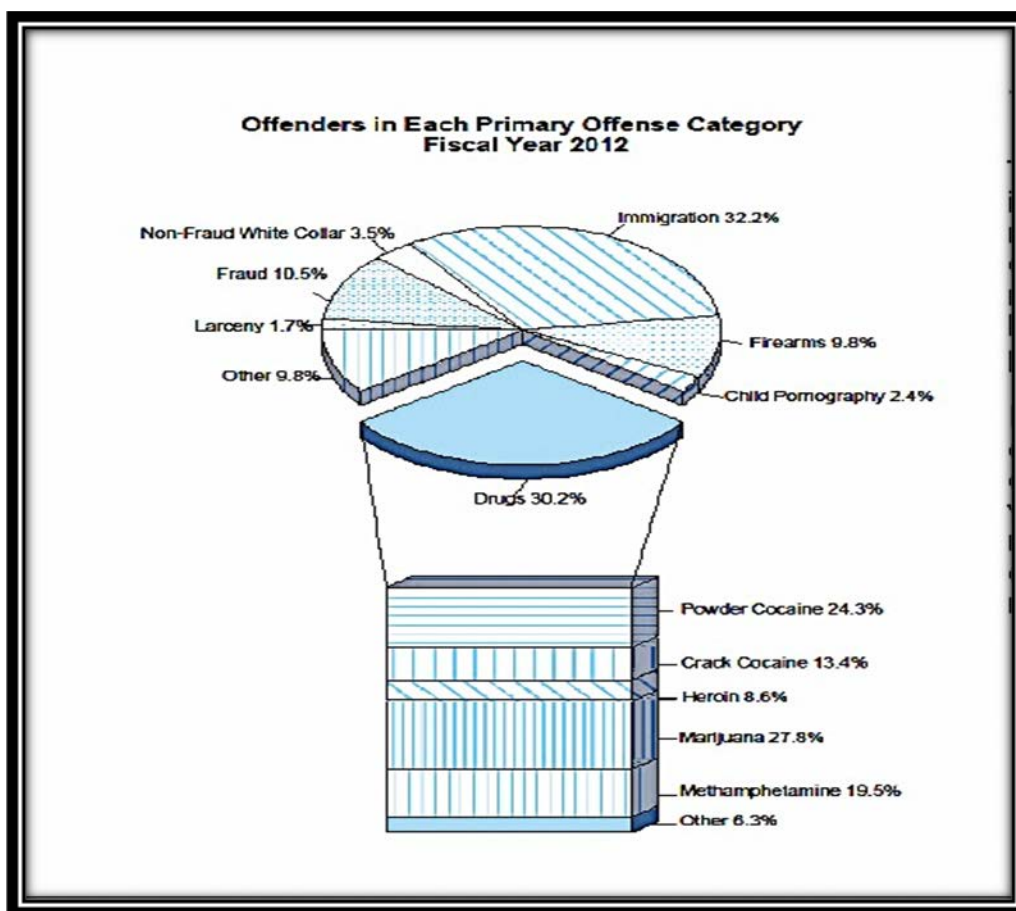


Figure 3. Overview of Federal Criminal Cases FY 2012.⁵¹

3. Immigration Law Violators

In FY 2013, DHS removed a total of 368,644⁵² non-citizens from the United States; of these, 159,624⁵³ were immigration recidivists.⁵⁴ According to

⁵¹ United States Sentencing Commission, "Offenders In Each Primary Offense Category Fiscal Year 2012," U. S. Sentencing Commission's 2012 Sourcebook of Federal Sentencing Statistics—Figure A (Online).

⁵² These removal statistics only pertain to ICE.

⁵³ U.S. Department of Homeland Security, Office of Immigration Statistics Policy Directorate, "Immigration Enforcement Actions: FY 2012," December 2013, http://www.dhs.gov/sites/default/files/publications/ois_enforcement_ar_2012_1.pdf. Note that the author did not use "criminal immigration recidivist" to cite FY 12–13 figures, as the report containing the data does not clearly make this distinction.

⁵⁴ U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Enforcement and Removal, "FY 2013 ICE Immigration Removals, ERO Annual Report," December 19, 2013, <http://www.ice.gov/doclib/about/offices/ero/pdf/2013-ice-immigration-removals.pdf>.

the department, many of the criminal non-citizens removed from the interior of the United States (not from a port of entry or at “the border”) also fell into other priority categories. For example, out of 133, 551 were apprehended in the interior, and 82 percent were previously convicted of a criminal offense. Further, in FY 2012, DHS removed 409,849 individuals overall; of these, 149,000 or 36 percent were immigration recidivists. Closely to 55 percent, or 225,390, had a criminal conviction, which represents “almost double the total removals of criminals in FY 2008.”⁵⁵

In FY 2011, immigration recidivists accounted for 130,000, or 33 percent, of all removals.⁵⁶ For the same fiscal year, the number of non-citizens who were either immigration recidivists or immigration fugitives was 96,529.⁵⁷ Figure 4 shows a time-line of total removals by priority from FY 2008 to FY 2012.

These statistics indicate that an undeterred population of immigration recidivists (criminal and non-criminal) is found within all three civil immigration priorities and levels, even though such are outlined separately. These statistics also provide an overview of the large number of criminal removals conducted every year, and the need to look more closely at immigration recidivists. The overview presented on removal, prosecution, and sentencing data serves to illustrate immigration enforcement general operational system, and opportunities for alternatives.

⁵⁵ *Written Testimony of ICE Enforcement and Removal Operations Executive Associate Director Thomas Homan for a House Committee on Oversight and Government Reform, Subcommittee on National Security Hearing Titled “Border Security Oversight: Identifying and Responding to Current Threats.”*

⁵⁶ U.S. Department of Homeland Security, Office of Immigration Statistics Policy Directorate, *Immigration Enforcement Actions: FY 2011* (Washington, DC: U.S. Department of Homeland Security, Office of Immigration Statistics Policy Directorate, September 2012).

⁵⁷ *Ibid.*

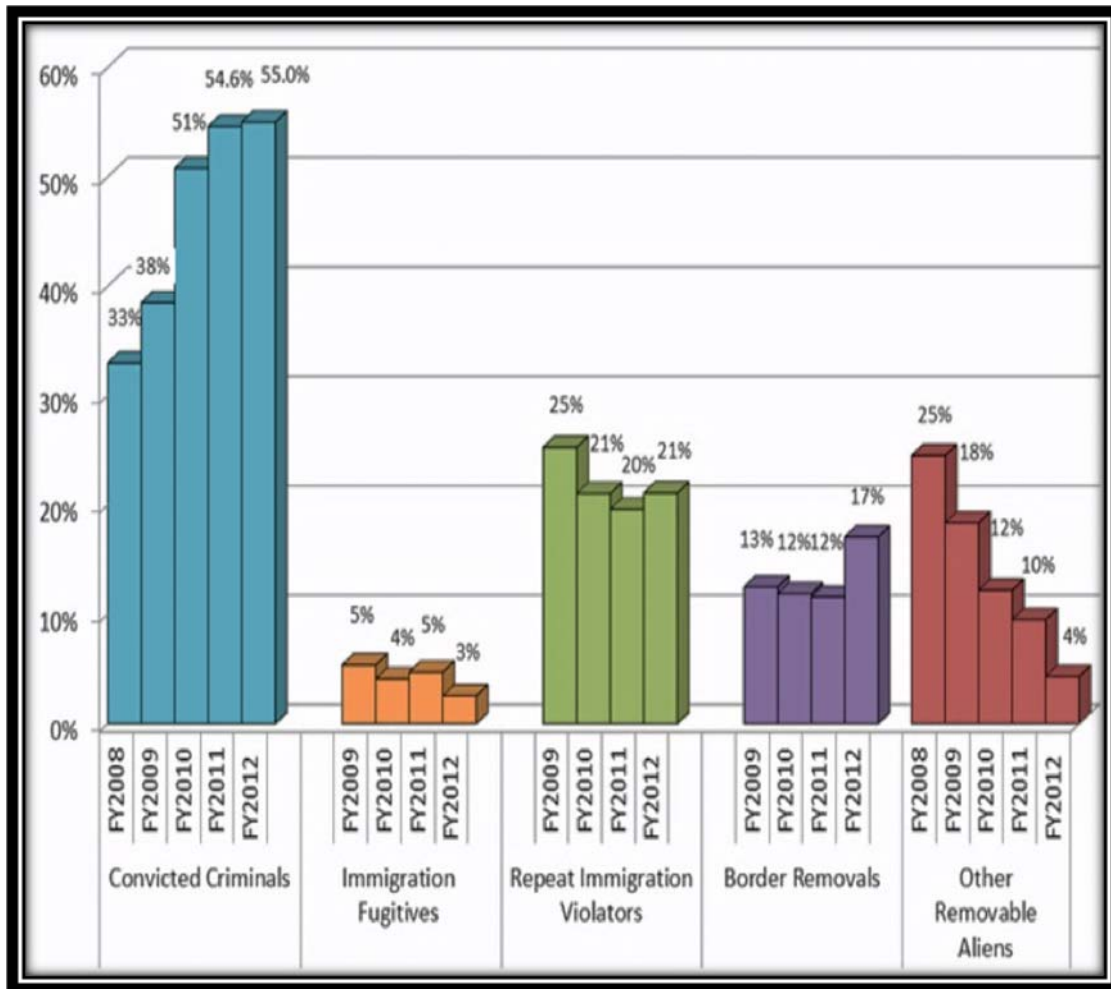


Figure 4. FY 2008–FY 2012 Total Removal Data by Priority.⁵⁸

4. Expenditures on Enforcement

When compared to other law enforcement agencies' budgets, DHS leads spending on enforcement within the federal government. A 2013 report conducted by the MPI indicated that the U.S. government spends more on immigration related enforcement than on all its criminal federal law enforcement agencies combined. MPI also noted that based on FY 2012 budget requests and allocations, the DHS immigration enforcement budget was approximately

⁵⁸ U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, "Removal Statistics."

\$18 billion, exceeding by almost 24 percent total spending by the FBI, the DEA, the USSS, the ATF and the USMS.⁵⁹

In immigration detention alone, DHS spends approximately USD \$160 million a year to fund 33,400 detention beds.⁶⁰ Some might argue that this figure is low (i.e., about \$4,800 per year, per bed); however, it is important to keep in mind that detention costs are only a “small” part of the overall immigration enforcement budget; transportation, healthcare, prosecutions, removal, etc., are other costs that need to be considered.⁶¹

Although staggering, this figure is able to cover the costs of enforcing the removal of about 400,000 priority immigration offenders a year.⁶² The high cost and limited number of available detention space further restricts enforcement against criminal immigration recidivists.

a. Statistical and Other Limitations

The DHS definition of immigration recidivists includes both criminal and non-criminal non-citizens. Likewise, its definition of criminal non-citizens includes both immigration recidivists and non-recidivists.⁶³ These differences play a factor in how the statistics on criminal immigration recidivists should be examined.⁶⁴

⁵⁹ Doris Meissner, Donald M. Kerwin, Muzaffar Chishti, and Claire Bergeron, “Immigration Enforcement in the United States, The Rise of a Formidable Machinery,” *Migration Policy Institute*, January 2013, 37, <http://www.migrationpolicy.org/research/immigration-enforcement-united-states-rise-formidable-machinery>.

⁶⁰ U.S. Department of Homeland Security, “Congressional Budget Justification: Salaries and Expenses FY2012,” April 4, 2013, <http://www.dhs.gov/xlibrary/assets/dhs-congressional-budget-justification-fy2012.pdf>.

⁶¹ These figures include ICE detention expenses only, not those of other DHS components such as U.S. Customs and Border Protection (CBP), and the Border Patrol.

⁶² A review of the DHS budget proposal did not show any allocations (in dollar amounts) devoted to operations against criminal immigration recidivists specifically. U.S. Department of Homeland Security, “Congressional Budget Justification: Salaries and Expenses FY2012.”

⁶³ The DHS definition is based on the INA § 276: “Re-entry of Removed Alien.”

⁶⁴ Immigration recidivists may be undocumented (illegal) but not have any criminal history; likewise, they may have a criminal history in addition to being undocumented.

Based on the research, it appears the same methods are used to account for criminals, non-criminals, recidivists, and first time offenders. By itself, an arrest does not trigger a criminal conviction. This is an important observation because the author's definition of criminal immigration recidivists includes convictions not arrests. As a result, an immigration recidivist may not necessarily be a criminal. Likewise, an immigration violator may be a recidivist, but not a criminal. To aid the reader, Figure 5 shows the differences and similarities between these categories.

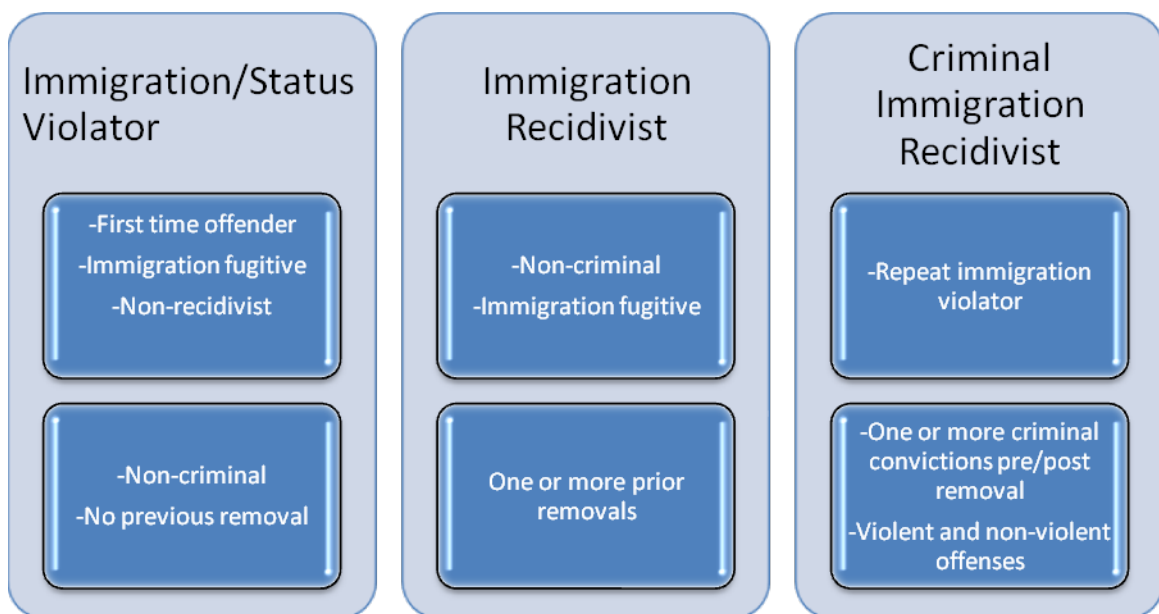


Figure 5. Differences and Similarities Between Immigration Violators and Criminal Immigration Recidivists.

To further complicate analysis, convicted terrorists are included within removal data statistics, but as a separate category (i.e., national security threat, status violator, etc.); that is, the reported number of total removals in a fiscal year may include first-time criminal offenders, non-criminals, fugitives, recidivists, non-recidivists, terrorists, etc. From this total, the number of fugitives, convicted criminals, non-criminals, immigration recidivists, and terrorists are drawn; however, the distinction between who among these groups falls specifically into a criminal immigration recidivist (violent and non-violent) category, or in more than

one category, is not made. Other than adding to the confusion of determining who is who, or what is what, all these categories may inevitably lead to statistical inflation (“double counting”).

As seen in Figures 2 and 4, the data seemed to indicate that the highest consumers of immigration enforcement resources are criminal non-citizens, followed by repeat violators (recidivists), and recent border crossers. However, this interpretation may be misleading. Figure 6 and Table 4 show the most recent statistics (FY 2013) based on priority and level; the pie shows that recidivists account for the majority of removals on Priority I, Level III. However, the table shows that, overall, criminals account for the bulk of all removals. Whether the data on recidivists’ removals include non-citizens with criminal histories, or criminal data includes a history of immigration, recidivism cannot be determined by just analyzing the statistics. This is a major shortcoming of the project.

Prosecution numbers further add to the difficulty in differentiating increases in immigration recidivism among criminal non-citizens, as opposed to non-criminal or first time immigration violators. In other words, statistics on prosecutions for illegal re-entry are not broken down by level of previous criminal history since illegal re-entry after removal, in and of itself, is a criminal offense.

Due to these and other significant limitations on what constitutes a criminal immigration recidivist, the high number of prosecutions and removals among this population should be examined with skepticism. In general, the point the author is trying to make is that whether criminal immigration recidivists are considered a top priority for enforcement or not is irrelevant; resources are being spent within this population regardless. As a result, developing strategic options for targeting this population is a must.

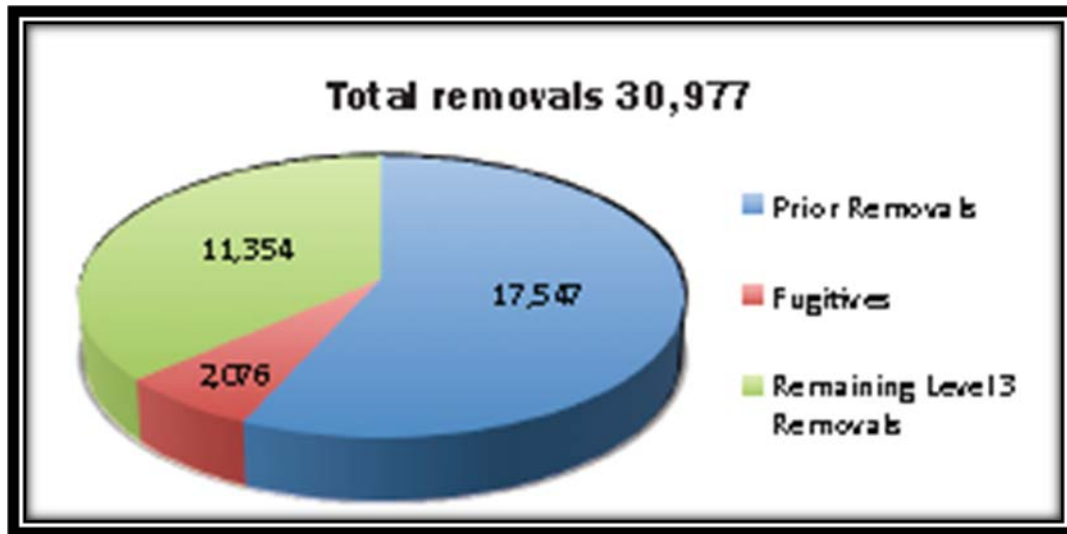


Figure 6. FY 2013 Interior Removal Data by Priority.⁶⁵

Threat Level/Priority		Removals
Convicted Criminal	Level 1	52,935
	Level 2	26,203
	Level 3	30,977
Immigration Fugitives		2,742
Repeat Immigration Violators		10,358
Other Removals		10,336

Table 4. FY 2013 Interior Removal Data by Priority.⁶⁶

B. HYPOTHESIS: CIVIL RESTITUTION AS A STRATEGIC TOOL TO LIMIT CRIMINAL IMMIGRATION RECIDIVISM

The reported high rate of criminal immigration recidivism, coupled with enforcement limitations, and depletion of resources result in operational handicaps. Prosecution and removal appear to have a limited impact on the criminal immigration recidivist population. As a result, this thesis argues in favor

⁶⁵ Enforcement and Removal, "FY 2013 ICE Immigration Removals, ERO Annual Report."

⁶⁶ Ibid.

of introducing a CR policy model to Mission 3's "prevention of unlawful immigration" goals and objectives.

The concept of CR is modeled after restitution's theoretical underpinnings as an alternative sanction in the criminal justice system. CR borrows from restitution's focus on holding offenders accountable for the financial losses their offenses have caused to their victims, and its potential cost-savings due to lower recidivism rates.

As proposed by the author, CR is an enforcement strategy used in lieu of, or as an alternative to prosecution against criminal immigration recidivists. CR would grant to DHS the authority to demand and collect reimbursement from criminal immigration recidivists, for the costs of re-enforcing or reinitiating the removal process. The offender's reimbursement would mainly cover detention and transportation costs to the country of origin. CR would authorized DHS to act on behalf of the "victims" (i.e., the American taxpayers) who are the parties directly affected or burdened by repeated immigration enforcement costs.

The thesis posits and seeks to validate several assumptions regarding the development and implementation of a CR policy model within Mission 3: (1) that it is feasible to implement a CR scheme within the immigration enforcement system, (2) that CR will shift the costs of repeat enforcement from the taxpayers to the recidivists; thereby, serving to self-sustain Mission 3's goals and objectives, and (3) that as a result of transferring the costs of reinitiating the removal process from DHS to the recidivists, CR's outcomes will result in lower rates of criminal immigration recidivism.

C. PURPOSE OF THE STUDY

1. Burden on Society

The effects of restitution (or the modified version proposed in this thesis) on criminal immigration recidivism have not been studied thus far. This thesis project seeks to open the door for research on this subject. This project is

tailored to this population due to increase prosecution workloads for illegal re-entry after removal (as per INA §276) in federal district court.

Managing the criminal immigration recidivist population is a critical social issue that must be addressed immediately. Taxpayers should not be responsible for the costs of reinitiating the removal process against criminal immigration recidivists, even though it is in their communities' best interest to remove them.

CR critics will probably argue that if the government wants these individuals removed, then the status quo has to remain. That is, the government should be responsible for all expenses related to reinforcement; after all, funds are allocated towards this endeavor for this reason, right? This argument is not without merit, but it misses the big picture. The data raises awareness to more than just the problem of illegal and criminal immigration recidivism in the nation; the economic impact to this nation's society needs to become part of the discourse.

CR in lieu of prosecution considers the human condition, global influences, diversity management, and multiculturalism; it proposes a win-win situation in an ethical and humane manner.

2. The Need for Alternatives

It is important to explore implementing the concept of CR within the immigration enforcement system, and its potential benefits for homeland security. Criminal immigration recidivists discredit the legitimacy of the immigration enforcement system; they do so by re-entering the country illegally, in large numbers, and often committing new crimes. When a criminal immigration recidivist is re-apprehended and prosecuted, too many resources are taxed at the federal, state, local, territorial, and tribal levels.

It could be said that criminal immigration recidivists defy homeland security and public safety goals. Criminal immigration recidivism warrants further research to ascertain whether an opportunity exists for strategic policy

improvements in the area of immigration enforcement. The time is ripe to implement any policy changes in the immigration enforcement arena, as the country is abuzz with immigration reform talks.⁶⁷

D. RESEARCH QUESTIONS

For a population that appears undeterred by the threat of apprehension, prosecution, detention, and removal, perhaps a different or additional approach could be incorporated into policy. This thesis explored the merits of the addition of CR as an intervention against criminal immigration recidivism into Mission 3's "prevention of unlawful immigration" goals and objectives.

This research project started with the assumption that the general criminal and the criminal immigration populations behaved the same (in terms of recidivism); as a result of this assumption, the author sought to answer the following questions.

- In general, what is restitution's utility for the criminal justice system?
- Given the similarities between the criminal justice and immigration enforcement systems, to what extent is the addition of a CR Policy Model to Mission 3's "prevention of unlawful immigration" goals and objectives feasible?
- Assuming that adding a CR Policy Model to Mission 3 is feasible, what strategic recommendations or core factor modifications would be required to develop and implement it?

To search for the answers to these questions, the author reviewed the literature on restitution as applied within the American system of justice: its purpose, use, application, expectations, and challenges.

E. OVERVIEW OF UPCOMING CHAPTERS

The thesis is divided into five chapters (I–V). Chapter II discusses the literature on restitution, its origins, evolution, use, application, expectations, limitations, etc., in the criminal justice system. The literature review section

⁶⁷ White House, *Building a 21st Century Immigration System*; also see the *Border Security, Economic Opportunity, and Immigration Modernization Act*, June 7, 2013.

explored the varied schools of thought on restitution's effectiveness in modifying criminal behavior, and thus, recidivism. Concepts explored in this section include civil versus criminal restitution, criminal justice enforcement versus immigration enforcement, and restorative justice.

Chapter III describes the thesis' methodology. The project relies on statistical data on criminal immigration recidivists' prosecutions, sentencing, and removals to argue in favor of implementing CR as alternative enforcement strategy within Mission 3. The research designs include exploratory and causal elements to describe the target sample population, control population sample characteristics, interventions, and comparisons. The chapter concludes with a discussion on methods' limitations.

Chapter IV discusses the CR policy model development and implementation, which is the key chapter of the thesis. The research designs' findings, current enforcement practices and limitations, and the model development and implementation steps are discussed. The chapter illustrates how a pilot program with a selected sample (e.g., non-violent criminal immigration recidivists) may be ideal to introduce this radical enforcement approach.

Chapter V concludes the thesis project. The chapter summarizes the research findings, CR's implementation main goals, pros, cons, and implications for homeland security. It closes by suggesting further areas of research in the area of recidivism and immigration enforcement.

II. LITERATURE REVIEW

A. RESTITUTION TO DETER RECIDIVISM

1. Civil vs. Criminal Restitution

Definitions of restitution are context-specific. The Cornell University Law School, Legal Information Institute (LII) offers two divergent definitions for civil and criminal restitution. In civil cases, restitution refers to “a remedy associated with unjust enrichment in which the amount of recovery is typically based on the defendant’s gain rather than the plaintiff’s loss.”⁶⁸ On the other hand, in criminal cases, restitution refers to “full or partial compensation for loss paid by a criminal to a victim that is ordered as part of a criminal sentence or as a condition of probation.”⁶⁹ The CR policy model derives elements from both definitions, since civil and criminal law apply to immigration offenses.

2. Criminal Justice Enforcement vs. Immigration Enforcement

Just as immigration enforcement policy goals seek to reduce criminal immigration recidivism, so too do the criminal justice system’s policies against criminal recidivism. The latter’s methods for achieving these goals are notably multifaceted. Besides punishment, the most common include retribution, just deserts, rehabilitation (treatment), and restitution. One of the philosophies behind these interventions is to serve not only social functions—e.g., justice and order—but also restore the offender(s) back into society.

Depending on the seriousness of an offense, restitution is imposed alone or in combination with other non-economic sanctions. The 2012 *Sourcebook of*

⁶⁸ Legal Information Institute, “Restitution,” *Cornell University Law School*, May 13, 2013, <http://www.law.cornell.edu/wex/restitution>.

⁶⁹ *Ibid.*

Federal Sentencing Statistics, published by the USSC, illustrates that a fine or restitution was ordered in 21.7 percent of all cases in that year.⁷⁰

In contrast, immigration enforcement interventions are more rigid, in that they are void of mutually beneficial alternatives; a criminal immigration recidivist is prosecuted and removed, but no additional options can be drawn upon if these sanctions fail. CR seeks to change this.

3. Restorative Justice

Criminal justice programs are founded on the concept of Restorative Justice with restitution being one of many strategic options.⁷¹ In “The Effectiveness of Restorative Justice Practices: A Meta-Analysis,” they wrote, “Arguably, one of the most important outcome variables for any form of criminal justice intervention is recidivism.”⁷²

Restitution serves to fulfill key criminal justice goals, mainly deterrence of criminal behavior. Restitution as a restorative justice concept is rooted in philosophical doctrines; “some of the values in which this concept rests include the axioms of human cognition and rationality, fairness, morality, and ethics.”⁷³

Cares, Hoskins, and Ruback argue that restitution and other economic sanctions are popular because of the goals they serve. In recent years, [economic sanctions] have become more common because they serve multiple criminal justice system goals: (a) having the offender offset some of the costs of prosecution and corrections, (b) restoring victims, (c) allowing for cheaper alternatives to incarceration, and (d) meeting the traditional objectives of punishment, deterrence, and rehabilitation. If these goals are being realized,

⁷⁰ In and of themselves, apprehension, and/or fines are not considered punishment for immigration purposes, but their use may lead to possible prosecution and removal.

⁷¹ Jeff Latimer, Craig Dowden, and Danielle Muise, “The Effectiveness of Restorative Justice Practices: A Meta-Analysis,” *The Prison Journal* 85, no. 2 (June 2005).

⁷² Ibid.

⁷³ United Nations Office on Drugs and Crime, “Training Manual on Alternative Dispute Resolution and Restorative Justice,” 2007, http://www.unodc.org/documents/nigeria/publications/Otherpublications/Trainin_manual_on_alternative_dispute_resolution_and_restorative_justice.pdf.

offenders who pay their ordered economic sanctions should be less likely to recidivate.⁷⁴

The upcoming literature review provides an overview on how economic sanctions (restitution specifically) have been correlated to lower criminal recidivism rates. Restitution's ineffectiveness in lowering recidivism, as well as the literature on mixed results, is also presented.

B. RESTITUTION AS EFFECTIVE

Several publications cite empirical and experimental studies that have examined the effectiveness of restitution in reducing offender recidivism in both adult and juvenile populations, as seen in Anne L. Schneider and Peter R. Schneider, "The Impact of Restitution on Recidivism of Juvenile Offenders: An Experiment in Clayton County, Georgia"; Laurie Ervin and Anne Schneider, "Explaining the Effects of Restitution on Offenders: Results from a National Experiment in Juvenile Courts"; R. Barry Ruback and Mark H. Bergstrom, "Economic Sanctions in Criminal Justice: Purposes, Effects, and Implications"; Yvon Dandurand and Curt T. Griffiths, "Handbook on Restorative Justice Programmes" Crime Victims Institute in 2006; National Institute of Justice in 2007; National Center for Victims of Crime, "Making Restitution Real: Five Case Studies on Improving Restitution Collection"; Vivienne Chin, "Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders," and others. These studies have been cited in journal articles, books, and government publications and reports, etc., in support of restitution programs as alternative sanctions to incarceration.

In addition to providing several advantages over other types of penalties to both the offender and the criminal justice system, restitution offers greater

⁷⁴ Alison Cares, Stacy Hoskins, and R. Barry Ruback, "Economic Sanctions and Recidivism," paper presented at the Annual Meeting of the American Society of Criminology, Atlanta Marriott Marquis, Atlanta, GA, November 13, 2007. Unpublished article, ed. American Society of Criminology, 2007.

accountability to victims and society.⁷⁵ During its early developmental years as a criminal justice sanction, Barnett predicted that restitution would save taxpayers' funds, as it would shift the burden to offenders. He argued, "The savings to taxpayers would be enormous. No longer would the innocent taxpayer pay for the apprehension and internment of the guilty. The cost of arrest, trial, and internment would be borne by the criminal himself."⁷⁶

Experimental studies on restitution and criminal recidivism have shown significant effects, particularly in criminal juvenile and delinquent offenders. Findings from a Clayton County, Georgia, experiment indicate that juveniles required to make restitution to their victims have lower recidivism rates than those given more traditional juvenile court dispositions.⁷⁷

C. RESTITUTION AS NOT EFFECTIVE

Another body of literature offers counter-arguments on restitution's effectiveness as a crime control strategy, particularly against recidivism. Barnett argued that those who criticized restitution as a crime control strategy did so based on assumptions about punishment's effectiveness as the sole deterrent to criminal behavior.⁷⁸ Studies criticizing the use of restitution are mostly victim-focused not offender-focused; they argue for the use of restitution from a non-punitive and rehabilitative perspective "as crime is a violation of people and relationships,"⁷⁹ rather than a "mere violation of law."⁸⁰ Galaway in, "The Use of

⁷⁵ R. Barry Ruback and Mark H. Bergstrom, "Economic Sanctions in Criminal Justice: Purposes, Effects, and Implications," *Criminal Justice and Behavior* 33, no. 2 (April 2006): 242–273; National Center for Victims of Crime, "Making Restitution Real: Five Case Studies on Improving Restitution Collection," Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime, National Center for Victims of Crime, 2011, http://www.victimsofcrime.org/docs/Reports%20and%20Studies/2011_restitutionreport_web.pdf.

⁷⁶ Randy E. Barnett, "Restitution: A New Paradigm of Criminal Justice," *Ethics* 87, no. 4 (July 1977): 279–301.

⁷⁷ Anne L. Schneider and Peter R. Schneider, "The Impact of Restitution on Recidivism of Juvenile Offenders: An Experiment in Clayton County, Georgia," *Criminal Justice and Behavior* 10, no. 1 (Spring 1985): 242–273.

⁷⁸ Barnett, "Restitution: A New Paradigm of Criminal Justice," 294–296.

⁷⁹ Howard J. Zehr, *Changing Lenses: A New Focus for Crime & Justice*, 3rd ed. (Scottsdale, PA: Herald Press, 2005).

Restitution,” furthered this argument by asserting that restitution’s goal is obtaining justice for victims and not eradication of all crime.

On the other hand, Caputo argued that intermediate sanctions (such as restitution) are usually no more effective at reducing recidivism than probation, parole, or incarceration.⁸¹ Farrington, Petrosino, and Welsh argued that as correctional interventions, alternative sanctions are ineffective in reducing recidivism. They claimed that changes in research methodology have resulted in false-positive results regarding their effectiveness:

The advent of meta-analysis meant that statistical techniques could be applied to systematic reviews, especially to the results of correctional program evaluations. Meta-analytic methods of evaluating the effectiveness of correctional treatments focused on effect size rather than statistical significance, which is heavily influenced by factors that have little to do with effectiveness, such as sample size. Given this change in the criteria for success, there was little surprise that meta-analyses began to report evidence of correctional effectiveness. Meta-analyses since 1985 have consistently reported that correctional programs generally reduce recidivism and have examined the influence of different types of treatments and other study features on results.⁸²

D. MIXED RESULTS STUDIES

A body of literature exists that neither advocates, nor proposes, the use of restitution as a crime control strategy against recidivism; some are not completely oppose to its use, while others recommend its use only if supplemented with some other types of sanctions, or further research. First, Caputo argues that research on restitution is “virtually non-existent, probably

⁸⁰ United Nations Office on Drugs and Crime, “Training Manual on Alternative Dispute Resolution and Restorative Justice,” 2007, http://www.unodc.org/documents/nigeria/publications/Otherpublications/Trainin_manual_on_alternative_dispute_resolution_and_restorative_justice.pdf.

⁸¹ Gail A. Caputo, *Intermediate Sanctions in Corrections* (Denton, TX: University of North Texas Press, 2004), ch. 10, “Conclusion,” 190.

⁸² David P. Farrington, Anthony Petrosino, and Brandon C. Welsh, “Systematic Reviews and Cost-Benefit Analyses of Correctional Interventions,” *The Prison Journal* 81, no. 3 (September 2001): 344–345.

because most restitution programs do not aim to divert offenders from prison.”⁸³ Very few offenders have participated in intermediate sanctions (such as restitution) to determine its effects on criminal recidivism.⁸⁴

Ferrara, in “Retribution and Restitution: A Synthesis,” opposes expansion of restitution programs until its purpose, relationship to other sanctions, the role of the victim, and a properly designed classification system are developed. Similarly, Dagger argues against the use of restitution as a sole criminal sanction because it lacks both punishment and retribution elements, which are essential in an effective system of justice. He advocates for the creation of a justice system that combines elements of both, restitution and punishment.⁸⁵

On the other hand, Latimer, Dowden, and Muise, in “The Effectiveness of Restorative Justice Practices: A Meta-Analysis,” conducted a meta-analysis on previous empirical studies on restitution’s effectiveness against recidivism. The authors questioned the reliability of statistical methods employed in the literature to test the effectiveness of restitution as a deterrent to criminal behavior, and thus, recidivism. The authors argued that narrative and qualitative approaches to summarizing empirical research are unreliable and lack objectivity. Instead, the researchers proposed utilizing meta-analytic techniques to analyze restitution’s effects on recidivism.⁸⁶

After aggregating data from existing studies that compared restorative approaches to criminal behavior (including restitution), Latimer, Dowden, and Muise concluded that restorative programs were found to be significantly more effective than non-traditional approaches.⁸⁷ However, the authors cautioned that such positive effects could have been influenced by what they called “self-selection bias.” In this regard, the authors explained, “Self-selection bias is an

⁸³ Caputo, *Intermediate Sanctions in Corrections*, ch. 7, 146.

⁸⁴ *Ibid.*, ch. 10, 187–195.

⁸⁵ Richard Dagger, “Restitution: Pure or Punitive?” *Criminal Justice Ethics* 10, no. 2 (1991).

⁸⁶ *Ibid.*, 130.

⁸⁷ *Ibid.*, 138.

inherent problem in restorative justice research as it is not possible to truly randomly assign participants to treatment and control conditions.”⁸⁸

E. LITERATURE LIMITATIONS

The available literature on restitution defends its use as an intervention in the criminal justice system because it is effective against criminal recidivism, and it may result in operational cost-s. Restitution is not imposed as a sole sanction (or in lieu of imprisonment)—contrary to the author’s CR policy model proposal for Mission 3. Restitution is victim-oriented, and its application is meant to benefit the victim—although, it also “benefits” the offender since it is imposed as a condition for probation or parole from confinement.

Some criticize its use because of the emphasis placed on the offender and the crime committed, and not solely on the victim. In contrast, some contend that restitution is ineffective as a criminal justice sanction because it lacks the required elements of punishment and retribution. As such, it cannot be used as a sole intervention because offenders will view it “as a soft approach” on crime.

Middle-ground literature neither advocates nor opposes restitution’s use as an effective intervention against recidivism; instead, it asks for more comprehensive studies that can show its effectiveness in lowering recidivism across different populations, and in reducing operational costs.

Nonetheless, the scholarly, experimental, and empirical literature on restitution leaves many questions unanswered. Although the literature suggests restitution may be a deterrent against criminal recidivism, it concedes that its effectiveness may be questionable due to lack of randomized and representative samples. It is unclear from the literature, and the diverse points of views, whether the research methods or the actual intervention have failed to produce statistically significant effects on criminal recidivism.

⁸⁸ Dagger, “Restitution: Pure or Punitive?,” 138

In addition, the literature is either lacking, dated, or not clear on whether restitution is as effective in adult criminal populations as in juvenile populations, or to what extent. The literature did not address restitution's impact on the types of offenses or the threshold monetary amount (on average) that causes the greatest impact on offenders' behavior.

A key question the literature did not address was the outcome—in terms of re-offending—of an offender's financial ability to satisfy an order of restitution. It is unknown whether offenders who are able to satisfy an order of restitution are more or less likely to reoffend, in comparison to offenders financially unable to do so.

Nevertheless, the lack of relevant studies on restitution's effect on criminal behavior serves to support, rather than nullify, the author's hypothesis. Since restitution's effectiveness in lowering criminal recidivism has not been thoroughly studied across criminal populations, testing its applicability within the immigration enforcement system (i.e., on previously convicted criminal offenders) is an opportunity not to be missed. Developing and implementing a CR policy model would set in motion further research on this important area of offender-management.

As a result, this thesis focuses on analyzing the feasibility (i.e., pros and cons) of developing and implementing a CR policy model within the immigration enforcement system. The CR model is designed to transfer the costs of re-enforcing the removal process from DHS to the criminal immigration recidivist. After implementation and testing, outcome measures would determine CR's effectiveness in other operational enforcement areas.

The upcoming section, discusses the methodology used to research and design the proposed CR policy model.

III. RESEARCH DESIGN

The author employed a hybrid design that integrated an exploratory and causal path to test the thesis' hypothesis, and search for the answers to the research questions. The working hypothesis is: (1) that it is feasible to implement a CR scheme within the immigration enforcement system, (2) that CR will shift the costs of repeat enforcement from the taxpayers to the recidivists; hereby, serving to self-sustain Mission 3's goals and objectives, and, (3) that as a result of transferring the costs of reinitiating the removal process from DHS to the recidivists, CR's outcomes will result in lower rates of criminal immigration recidivism.

The project is divided into three research parts: part one included immigration enforcement, part two, the criminal justice system's use of restitution, and part three, the likelihood or frequency of immigration offenders receiving restitution orders as a sanction in federal district court. The third section was further divided into four subsections to identify any association between feasibility and intervention. Subsection (1) presents the target population sample characteristics. Subsection (2) presents the control population sample characteristics. Subsection (3) presents the applied intervention Subsection (4) presents the comparison between samples and applied intervention.

A structured research plan was followed that allowed for a review a wide variety of materials, and compilation of as many results as possible. The research plan relied on primary, secondary, open and restricted sources.⁸⁹ Electronic and hard copy materials were reviewed, and unpublished documents were obtained from various libraries, databases, as well as personally owned material relating to immigration enforcement.

As previously mentioned, the focus of this research project is on criminal immigration recidivists (violent and non-violent). Data collection on federal

⁸⁹ Access to restricted material provided by the Dudley Knox Library.

prosecutions for criminal immigration recidivists' was narrowed to the nation's top five districts. According to the United States Sentencing Commission, the District of Arizona, the Southern District of California, the District of New Mexico, and the Southern and Western Districts of Texas represent the top five districts for illegal re-entry prosecutions in 2012.⁹⁰ The author hypothesized that if restitution is shown to lead a decline in recidivism rates among the criminal population in the same regions, narrowing the scope to these top five districts for illegal re-entry prosecutions would make the best argument in favor of developing and implementing a CR model pilot program. The exploratory design methodology is discussed first.

A. EXPLORATORY RESEARCH DESIGN

According to the University of Southern California (USC), an exploratory design is "conducted about a research problem when there are few or no earlier studies to refer to. The focus is on gaining insights and familiarity for later investigation..."⁹¹ As previously mentioned, this research did not find any studies relating to immigration enforcement and restitution. This research choice was useful in providing insight and familiarity with basic concepts, details, settings, issues, and challenges relating to restitution, recidivism, and immigration enforcement. The information gathered made it possible to address the research questions, develop conceptual definitions (e.g., CR), and propose recommendations for future research.

The author collected, compiled, and reviewed DHS removal and enforcement statistics from 2007 to 2012. According to the Office of Immigration Statistics (OIS), official or formal data collection on repeat immigration violators found in the interior of the United States (as opposed to being encountered at the border) began in FY 2006, and reported the following year. Data on immigration

⁹⁰ United States Sentencing Commission, *Illegal Re-entry Offenses, 2008 through 2012 Datafiles, Quickfacts*, 1.

⁹¹ University of California, "Organizing Your Social Sciences Research, Types of Research Designs," September 23, 2013, <http://libguides.usc.edu/content.php?pid=83009&sid=818072>.

enforcement actions (i.e., prosecutions and removals), detention population and policies, budget, expenditures and allocations, etc., were also obtained from open-source documents, such as congressional hearings or transcripts, reports from government oversight agencies, DHS, think-tanks, peer-reviewed journals, and non-governmental organizations (NGOs).

Specifically, the author reviewed reports published by the General Accounting Office (GAO) in 1998 and 2011; the DHS Office of Inspector General (OIG) in 2011; Carl F. Horowitz in “An Examination of U.S. Immigration Policy and Serious Crime”; the American Bar Association (ABA) in 1996; the Migration Policy Institute (MPI) in 2011 and 2013; the American Civil Liberties Union (ACLU) in 2013; for the ACLU in Georgia in 2012, and the ACLU in Arizona in 2011; the Detention Watch Network, “The History of Immigration Detention in the U.S. A Rapidly-Expanding Detention System”; the National Immigration Forum, “The Math of Immigration Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies”; for the Transactional Records Access Clearinghouse (TRAC), “At Nearly 100,000, Immigration Prosecutions Reach All-time High in FY 2013”; Marc R. Rosenblum and William A. Kandel, “Interior Immigration Enforcement: Programs Targeting Criminal Aliens,” the Congressional Research Service (CRS) in 2012; Human Rights First, “Jails and Jumpsuits: Transforming the U.S. Immigration Detention System-A Two Year Review,” the Justice Policy Institute (JPI) in 2011; Teresa Hayter, “No Borders: The Case Against Immigration Controls”; David Alan Sklansky, “Crime, immigration, and ad hoc instrumentalism”; Robert Bach, “Transforming Border Security: Prevention First”; Sarah Gryll, “Immigration Detention Reform: No Band-Aid Desired”; Geoffrey Heeren, “Pulling Teeth: The State of Mandatory Immigration Detention”; Bridget Kessler, “In Jail, No Notice, No Hearing . . . No Problem? A Closer Look at Immigration Detention and the Due Process Standards of the International Covenant on Civil and Political Rights”; Stephen H. Legomsky, “The New Path of Immigration Law: Asymmetric Incorporation of

Criminal Justice Norms”; Kant’s Legal Positivism, “The Immigration Crisis: Detention As an Emerging Mechanism of Social Control,” and others.

Also reviewed were criminal justice websites and manuals on corrections management as the starting points to gather information on restitution. Electronic searches on the terms “restitution” and “recidivism,” were conducted and many results obtained from Google; Google Scholar; government and inter-governmental portals; journals, etc. For example, searches in the National Institute of Justice (NIJ), the Office of Juvenile Justice and Delinquency Prevention (OJJDP), and others, provided many useful resources. *The National Criminal Justice Reference Service* (NCJRS), “New Directions from the Field: Restitution,” Chapter 15 (archives); the United Nations Office on Drugs and Crime (UNODC), Yvon Dandurand and Curt T. Griffiths, “Handbook on Restorative Justice Programmes”; and the Office of Victims of Crime (OVC), *Ordering Restitution to the Crime Victim*, provided the author with the historical, and theoretical context, on restitution’s evolution and utility for the American system of justice.

After gaining a broader understanding of criminal immigration recidivism, and reviewing the literature on restitution, the author proceeded to the second part of the methodology, the causal research design.

B. CAUSAL RESEARCH DESIGN

To gain an understanding of restitution’s possible effects on behavior, a causal research design process was employed, “Causality studies may be thought of as understanding a phenomenon in terms of conditional statements in the form, ‘if X, then Y.’ This type of research is used to measure what impact a specific change will have on existing norms and assumptions.”⁹² This part of the methodology sought to identify the impact that implementing a CR policy model (independent variable) would have on criminal immigration recidivists (dependent

⁹² University of California, “Organizing Your Social Sciences Research, Types of Research Designs.”

variable), as they absorb from DHS the costs of re-enforcing the removal process.

This thesis assumed no behavioral differences existed between criminal offenders and criminal immigration recidivists. As a result, she wanted to correlate restitution's application in the criminal justice system and its potential applicability to similar populations, but in the immigration enforcement system.

She hypothesized that if, as an intervention or sanction, restitution reduced reinforcement costs, which resulted in lower recidivism rates among criminal populations, then it can also lower recidivism within criminal immigration recidivist populations.

Data collection for this part of the research methodology was subdivided into four sections: target sample population, control population sample characteristics, interventions, and comparison.

1. Target Sample Population

The author reviewed the offenders' characteristics of criminal immigration recidivists as compiled by the BJS in *Immigration Offenders in the Federal Justice System 2010*; the United States Sentencing Commission's *Annual Reports* from 2010 to 2012; and in the *2012 Sourcebook of Federal Sentencing Statistics*.

BJS reports offer the most comprehensive data regarding immigration offenders' characteristics in the federal justice system, such as criminal history, recidivism rates, nationality, gender, etc. Similarly, the Sentencing Commission Annual reports and Sourcebook detail the sentencing breakdown imposed on all types of federal cases, and across offenders' categories. Whenever possible, for the purposes of consistency with the BJS report, the author tried to cite sentencing data from 2010 through 2012 reports.

2. Control Population Sample Characteristics

The characteristics' of criminal recidivists were reviewed in terms of offense type, and criminal history in the top five districts for illegal re-entry prosecutions. The author wanted to analyze whether any similarities existed between criminal immigration and criminal recidivists in terms of offense type, offenders' characteristics, or rate of re-offending. The data was obtained from the United States Sentencing Commission *Annual Reports*; the 2012 *Sourcebook*; the TRAC, and the BJS.

3. Intervention

The type of sanctions applied to criminal recidivists in the same districts as criminal immigration recidivists were reviewed. Specifically, the author highlighted the types of offenses or offenders who received restitution, and whether it was imposed as a primary, secondary sanction, or in lieu of confinement. This step made it possible to cross-reference offenses with outcomes to conduct a comparative assessment between criminal and immigration offenders.

For this subsection, the author mostly analyzed peer-reviewed journals, think tanks, and inter-governmental publications on restitution's impact on re-enforcement costs, and subsequent reductions in criminal recidivism. For example, the review included publications from *Crime & Delinquency* in 1997 and 2010; *Criminal Justice Review* in 1985; *Criminal Justice Ethics* in 1991; the *Brennan Center for Justice* in 2010; "Restitution in Texas: A Report to the Legislature," in 2006; the *National Center for Victims of Crime* in 2011; and in *Boom: A Journal of California* in 2011.

Also reviewed were articles published in *Criminal Justice and Behavior* in 2006; the *Criminal Justice Policy Review* in 2011; the *Prison Journal* in 2001 and 2005; the *Justice Professional* in 2000; *Justice Strategies* in 2012; the *University of Chicago Law Review* in 2013; *Political Behavior* in 2012; *The Prisoner Re-entry Institute* at John Jay College of Criminal Justice in 2007; *Criminal Justice*

Studies in 2012; *Ethics* in 1977; the *American Sociological Review* in 1989; the United Nations Office on Drugs and Crime (UNODC) in 2007; and the *Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders* in 2012.

Lastly, empirical and meta-analysis studies, articles, and reports on restitution, recidivism, and immigration enforcement were examined. Some of these included the DOJ, OJP, Office of Victims of Crime (OVC) in 2011; the *Council on Foreign Relations* in 2013; the *Journal of Contemporary Criminal Justice* in 2004; the *Journal of Libertarian Studies* in 1982; the *Internet Journal of Criminology* in 2010; the *Howard Journal of Criminal Justice* in 2004; the James A. Baker III Institute for Public Policy in 2013; the *Journal of Offender Counseling, Services & Rehabilitation* in 1981; *Law, Culture and the Humanities* in 2005; and *Criminology and Criminal Justice* in 2006.

4. Comparison

After collecting, organizing, reviewing, analyzing, and summarizing the research data on removals, prosecutions, sentencing, restitution, etc., the author detailed the results. The results of subsections one through three were summarized to test the hypothesis, and determine the feasibility of modeling a policy for implementing Mission 3's own version of restitution (i.e., CR) as an enforcement strategy against criminal immigration recidivism. The upcoming section describes the results of this research.

C. RESULTS

Figures 7 and 8 highlight the main similarities between the immigration enforcement and the criminal justice systems; the similarities outweigh the differences, with ineligibility for release on bond, no right to an attorney at

government's expense,⁹³ and removal from the United States representing key variations. The research showed the criminal justice and the immigration enforcement systems' relationship in terms of constitutional processes, the foundations for criminal and immigration laws' treatment of non-citizens, the political climate's demands and expectations from both systems, the effects of demands and expectations on enforcement priorities and outcome measures, and the feasibility of implementing a CR policy model within the immigration enforcement system.

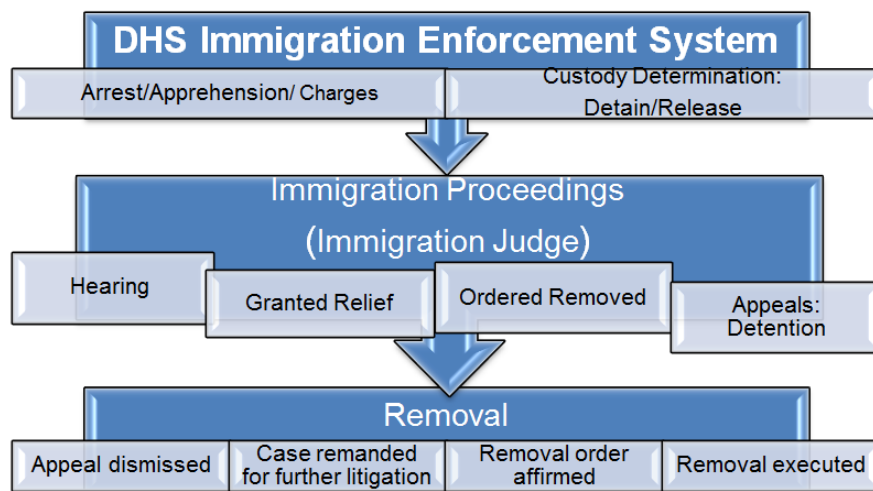


Figure 7. Basic Overview of the Immigration Enforcement Process for Most First Time Offenders. Criminal Immigration Recidivists Have Their Original Removal Orders Re-instated, and Do Not Undergo This Process Anew.⁹⁴

⁹³ Immigration offenders do not receive legal representation/counsel at the government's expense in immigration proceedings, unless mentally ill. See U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, *Civil Immigration Detention: Guidance for New Identification and Information-Sharing Procedures Related to Unrepresented Detainees with Serious Mental Disorders or Conditions* (Washington, DC: U.S. Department of Homeland Security, April 2013), http://www.ice.gov/doclib/detention-reform/pdf/11063.1_current_id_and_infosharing_detainess_mental_disorders.pdf.

⁹⁴ This illustration is just an overview; not all non-citizens are eligible for a hearing before an IJ—their eligibility depends on authorized status at the time of entry. Not included in this overview are other procedures in which no hearing occurs before an IJ, such as stipulated removals, voluntary returns, visa waiver removals, administrative removals, etc. Criminal immigration recidivists may be eligible for a hearing before a judge or asylum officer to determine whether fear of prosecution claims can be substantiated.

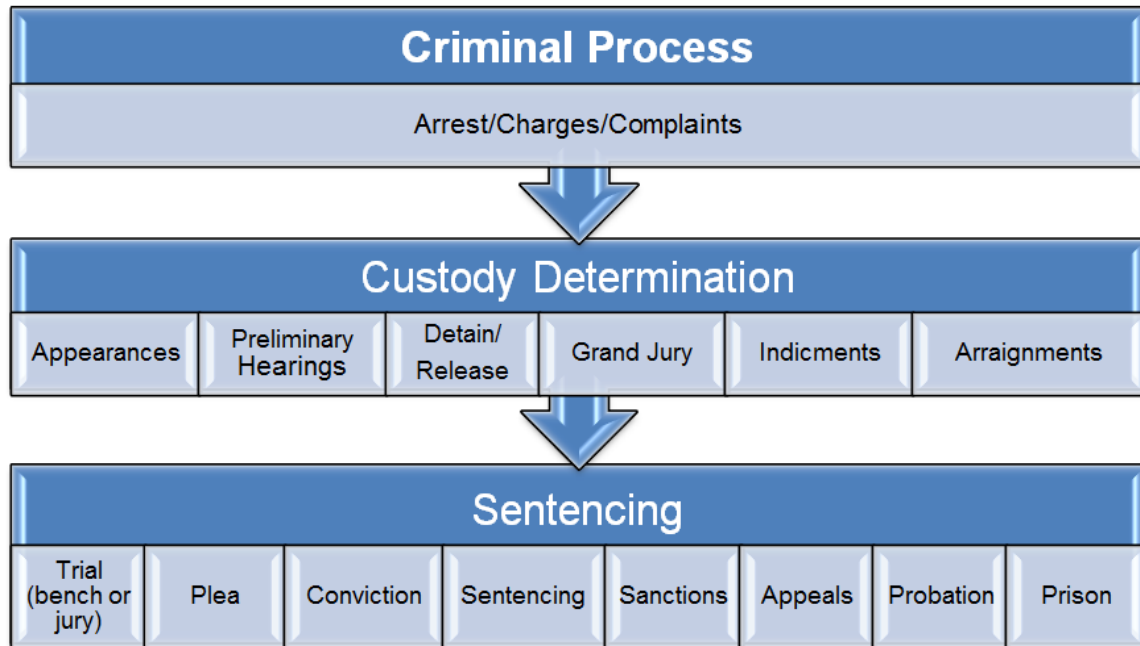


Figure 8. The U.S. Federal Criminal Justice Process, a Basic Overview.⁹⁵

The research indicates that the vast majority of prosecutions for immigration violations are occurring along the southwest border region. Table 5 highlights the five districts in FY 2012⁹⁶ with the highest prosecution rates for criminal immigration recidivists in the nation. The District of Arizona ranked first, followed by the Western and Southern Districts of Texas, the District of New Mexico, and the Southern District of California, respectively.

On the other hand, and as shown in Figure 9, only the districts⁹⁷ of Arizona, followed by Southern California, and Southern Texas, ranked as the highest for new criminal recidivists' prosecutions.

⁹⁵ Not all steps apply in all cases, and additional steps may apply in others, Federal Bureau of Investigation, "Victim Justice, A Brief Description of the Federal Criminal Justice Process," May 18, 2013, http://www.fbi.gov/stats-services/victim_assistance/a-brief-description-of-the-federal-criminal-justice-process.

⁹⁶ As tabulated by the United States Sentencing Commission, *Illegal Re-entry Offenses, 2008 through 2012 Datafiles, Quickfacts*, 1.

⁹⁷ Based on the Bureau of Justice Statistics study; FY 2008 is the most recent study of this kind.

FY2012 ILLEGAL RE-ENTRY PROSECUTIONS
District of Arizona (N=3,873)
Western District of Texas (N=3,664)
Southern District of Texas (N=3,387)
District of New Mexico (N=1,907)
Southern District of California (N=1,339)

Table 5. Top Five Districts Illegal Re-entry Offenders FY 2012.⁹⁸

⁹⁸ United States Sentencing Commission, *Illegal Re-entry Offenses, 2008 through 2012 Datafiles, Quickfacts*.

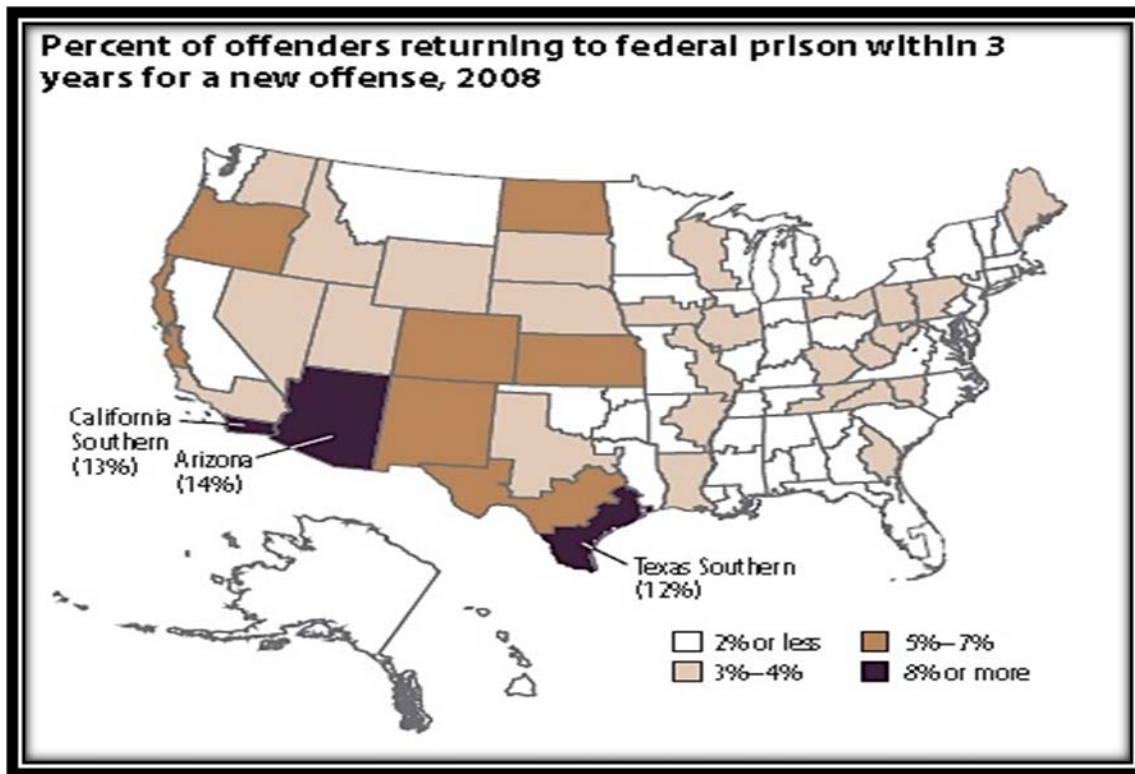


Figure 9. FY 2008 New Prosecutions for Criminal Recidivists in the Districts of Arizona Southern California, and Southern Texas.⁹⁹

Figure 10 highlights the offense-type characteristics of non-citizen offenders from 1985 to 2010 across the nation. In FY 2012, immigration offenses ranked first in the federal system, followed by drug offenses (see Figure 3 in Chapter I).¹⁰⁰ In all federal cases in the top five districts, the particulars of the offense drove the sanction's severity. As shown in Tables 6 through 10, drugs and immigration offenses carried the harshest sanctions (i.e., prison sentences in lieu of other sanctions).

⁹⁹ Office of Justice Programs, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, "Federal Justice Statistics Program, Immigration Offenders in the Federal Justice System, 2010."

¹⁰⁰ Schmitt and Dukes, "Overview of Federal Criminal Cases Fiscal Year 2012," *United States Sentencing Commission*. Many cases are excluded from the statistics due to variables relating to the sentencing guidelines.

On the other hand, the bottom sections of Tables 6–10 also illustrate the offenses receiving other sanctions in lieu of prison in the same districts; as shown, restitution and fines are imposed together in a variety of cases, including immigration offenses.

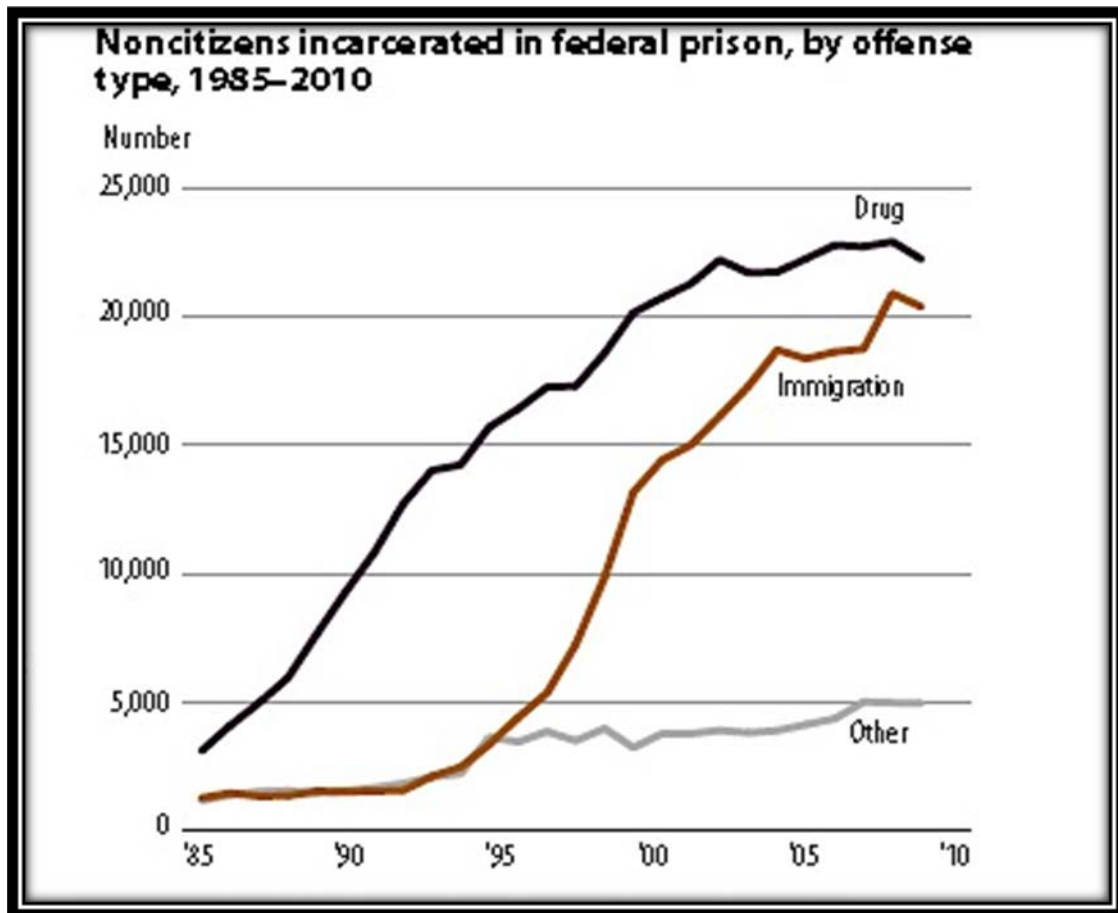


Figure 10. Noncitizens Incarcerated in Federal Prison, by Offence Type, 1985–2010.¹⁰¹

¹⁰¹ Office of Justice Programs, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, “Federal Justice Statistics Program, Immigration Offenders in the Federal Justice System, 2010.”

SENTENCING INFORMATION BY PRIMARY OFFENSE ¹⁰²										
	TOTAL	Robbery	Larceny	Embezzlement	Fraud	Drug Traffick	Counterfeiting	Firearms	Immigration	All Other
	8,919	19	30	10	419	2,364	6	220	4,458	1,393
CASES INVOLVING PRISON⁶										
Total Receiving Prison	8,633	19	18	5	393	2,310	5	172	4,426	1,285
Prison	8,573	19	18	3	391	2,283	5	164	4,415	1,275
Prison/Community Split	60	0	0	2	2	27	0	8	11	10
Prison Term Ordered										
Up to 12 Months	3,754	0	7	3	342	381	3	42	1,988	988
13-24 Months	2,643	3	6	2	19	1,277	2	47	1,185	102
25-36 Months	874	3	2	0	13	190	0	22	594	50
37-60 Months	970	10	2	0	11	274	0	30	581	62
Over 60 Months	341	3	0	0	6	181	0	30	59	62
Mean Sentence	20	53	20	11	8	25	11	46	18	17
Median Sentence	13	46	21	10	3	13	6	24	14	6
CASES INVOLVING PROBATION										
Total Receiving Probation	273	0	11	5	24	52	1	48	32	100
Probation Only	223	0	8	5	21	44	1	40	21	83
Probation and Confinement	50	0	3	0	3	8	0	8	11	17
CASES INVOLVING FINES AND RESTITUTION⁷										
Total Receiving Fines and Restitution	337	15	25	10	69	29	2	29	13	145
Median Dollar Amount	\$4,826	\$2,200	\$10,000	\$42,996	\$180,923	\$2,000	-	\$2,100	\$1,500	\$2,950

Table 6. District of Arizona, FY 2012 Guideline Sentences.¹⁰²

¹⁰² United States Sentencing Commission, *Illegal Re-entry Offenses, 2008 through 2012 Datafiles, Quickfacts*.

SENTENCING INFORMATION BY PRIMARY OFFENSE ¹⁰³										
	TOTAL	Robbery	Larceny	Embezzlmt	Fraud	Drug Trafck	Counterftng	Firearms	Immigratr	All Other
	5,309	25	7	2	131	1,731	3	43	3,075	292
CASES INVOLVING PRISON⁶										
Total Receiving Prison	5,031	24	2	0	96	1,682	3	40	2,922	262
Prison	4,781	19	2	0	81	1,553	2	37	2,845	242
Prison/Community Split	250	5	0	0	15	129	1	3	77	20
Prison Term Ordered										
Up to 12 Months	1,535	0	0	0	40	252	2	5	1,177	59
13-24 Months	1,022	3	1	0	18	268	1	4	681	46
25-36 Months	654	8	0	0	2	301	0	6	312	25
37-60 Months	869	7	0	0	5	492	0	10	302	53
Over 60 Months	432	6	0	0	1	316	0	14	32	63
Mean Sentence	29	46	-	-	13	44	10	55	18	51
Median Sentence	24	37	-	-	8	36	6	51	12	30
CASES INVOLVING PROBATION										
Total Receiving Probation	276	1	5	2	35	49	0	3	153	28
Probation Only	230	1	5	1	26	32	0	2	139	24
Probation and Confinement	46	0	0	1	9	17	0	1	14	4
CASES INVOLVING FINES AND RESTITUTION⁷										
Total Receiving Fines and Restitution	199	19	5	1	48	59	2	5	25	35
Median Dollar Amount	\$1,519	\$3,423	\$2,335	-	\$226,918	\$800	-	\$16,250	\$1,000	\$1,000

Table 7. District of Southern California, FY 2012 Guideline Sentences.¹⁰³

¹⁰³ United States Sentencing Commission, *Illegal Re-entry Offenses, 2008 through 2012 Datafiles, Quickfacts*.

SENTENCING INFORMATION BY PRIMARY OFFENSE ³										
	TOTAL	Robbery	Larceny	Embezzlmt	Fraud	Drug Traffc	Counterftng	Firearms	Immigratn	All Other
	3,052	19	9	4	49	544	0	157	2,097	173
CASES INVOLVING PRISON⁶										
Total Receiving Prison	2,970	18	2	1	40	513	0	151	2,088	157
Prison	2,893	18	1	0	37	473	0	142	2,085	137
Prison/Community Split	77	0	1	1	3	40	0	9	3	20
Prison Term Ordered										
Up to 12 Months	2,091	2	1	1	28	178	0	17	1,826	38
13-24 Months	311	2	0	0	6	98	0	30	136	39
25-36 Months	143	1	1	0	3	41	0	20	59	18
37-60 Months	225	9	0	0	1	99	0	34	63	19
Over 60 Months	198	4	0	0	2	96	0	50	3	43
Mean Sentence	18	80	-	-	14	38	-	71	5	55
Median Sentence	3	49	-	-	4	21	-	41	2	27
CASES INVOLVING PROBATION										
Total Receiving Probation	80	1	7	2	9	31	0	6	8	16
Probation Only	45	1	6	0	6	15	0	5	3	9
Probation and Confinement	35	0	1	2	3	16	0	1	5	7
CASES INVOLVING FINES AND RESTITUTION⁷										
Total Receiving Fines and Restitution	125	15	6	3	21	10	0	17	1	52
Median Dollar Amount	\$5,000	\$1,706	\$19,022	\$40,569	\$87,726	\$1,700	-	\$7,765	-	\$3,616

Table 8. District of New Mexico, FY 2012 Guideline Sentences.¹⁰⁴

¹⁰⁴ United States Sentencing Commission, *Illegal Re-entry Offenses, 2008 through 2012 Datafiles, Quickfacts*.

SENTENCING INFORMATION BY PRIMARY OFFENSE ^b										
	TOTAL	Robbery	Larceny	Embezzlmt	Fraud	Drug Trafck	Counterftng	Firearms	Immigratn	All Other
	6,586	11	24	6	241	1,424	6	299	4,245	330
CASES INVOLVING PRISON⁶										
Total Receiving Prison	6,383	11	9	6	206	1,401	6	282	4,162	300
Prison	6,274	11	9	6	193	1,381	6	264	4,118	286
Prison/Community Split	109	0	0	0	13	20	0	18	44	14
Prison Term Ordered										
Up to 12 Months	1,392	1	5	2	52	47	0	42	1,193	50
13-24 Months	1,765	0	2	3	47	145	2	43	1,454	69
25-36 Months	822	0	1	0	31	164	2	39	556	29
37-60 Months	1,392	1	1	0	32	466	1	91	748	52
Over 60 Months	938	9	0	0	39	572	1	67	153	97
Mean Sentence	38	95	17	12	46	71	69	53	24	65
Median Sentence	24	97	12	12	27	60	32	37	18	37
CASES INVOLVING PROBATION										
Total Receiving Probation	203	0	15	0	35	23	0	17	83	30
Probation Only	122	0	13	0	23	14	0	11	34	27
Probation and Confinement	81	0	2	0	12	9	0	6	49	3
CASES INVOLVING FINES AND RESTITUTION⁷										
Total Receiving Fines and Restitution	423	7	20	6	177	60	1	26	30	96
Median Dollar Amount	\$19,490	\$27,261	\$2,070	\$29,791	\$118,600	\$2,500	-	\$2,500	\$2,000	\$3,500

Table 9. District of Texas Southern, FY 2012 Guideline Sentences.¹⁰⁵

¹⁰⁵ United States Sentencing Commission, *Illegal Re-entry Offenses, 2008 through 2012 Datafiles, Quickfacts*.

SENTENCING INFORMATION BY PRIMARY OFFENSE²										
	TOTAL	Robbery	Larceny	Embezzlment	Fraud	Drug Traffick	Counterfeiting	Firearms	Immigratn	All Other
	9,329	17	60	5	518	2,216	51	290	5,627	545
CASES INVOLVING PRISON⁶										
Total Receiving Prison	8,296	17	25	1	431	2,116	35	279	4,993	399
Prison	8,199	17	24	1	430	2,059	35	275	4,965	393
Prison/Community Split	97	0	1	0	1	57	0	4	28	6
Prison Term Ordered										
Up to 12 Months	2,889	1	19	1	113	186	13	17	2,422	117
13-24 Months	1,584	2	3	0	35	402	14	53	1,021	54
25-36 Months	682	2	2	0	18	326	2	21	269	42
37-60 Months	1,108	6	1	0	18	567	5	76	389	46
Over 60 Months	951	6	0	0	12	626	0	112	93	102
Mean Sentence	34	57	11	-	18	59	17	79	16	68
Median Sentence	18	51	8	-	6	37	13	51	10	30
CASES INVOLVING PROBATION										
Total Receiving Probation	1,026	0	35	4	86	100	16	11	628	146
Probation Only	924	0	32	4	76	48	14	9	612	129
Probation and Confinement	102	0	3	0	10	52	2	2	16	17
CASES INVOLVING FINES AND RESTITUTION⁷										
Total Receiving Fines and Restitution	1,215	16	47	5	147	505	43	118	99	235
Median Dollar Amount	\$2,000	\$3,710	\$1,000	\$9,474	\$46,608	\$1,800	\$1,200	\$1,077	\$1,000	\$1,000

Table 10. District of Texas Western, FY 2012 Guideline Sentences.¹⁰⁶

In FY 2012, immigration offenders prosecuted nationwide were eligible for alternative sanctions (in lieu of prison) more than 90 percent of the time (see Figure 11), as was the case even when no minimum sentence term was specified in the sentencing guidelines.¹⁰⁷

¹⁰⁶ United States Sentencing Commission, *Illegal Re-entry Offenses, 2008 through 2012 Datafiles, Quickfacts*.

¹⁰⁷ Zones A and B refer to sentencing zones in which no minimum monthly prison term is specified or is at least one but no more than six months, respectively.

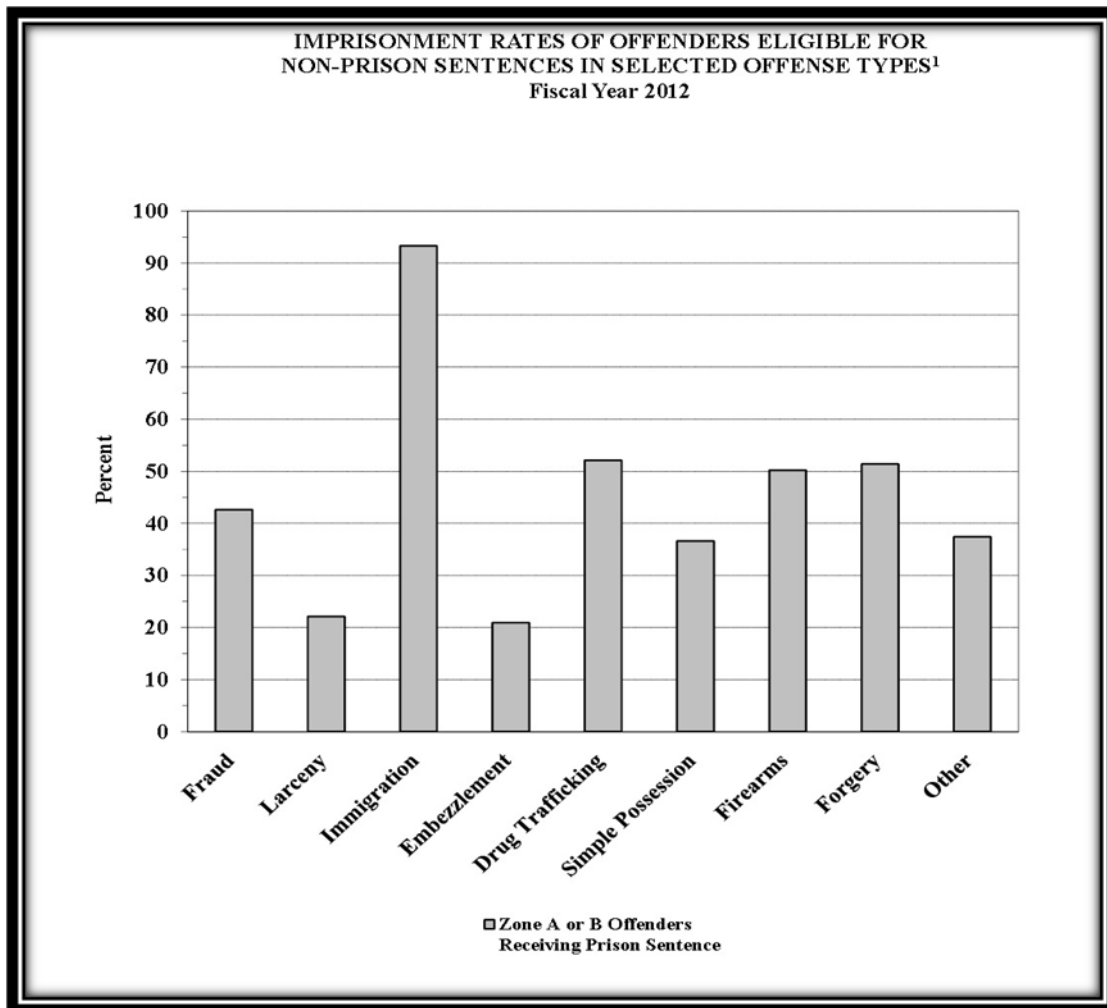


Figure 11. Imprisonment Rates of Offenders Eligible for Non-Prison Sentences in Selected Offense Types, FY 2012.¹⁰⁸

On the other hand, trends in nationwide imposition and collection of restitution have varied. Figure 12 shows a breakdown of criminal and civil restitution collections by the United States Attorneys Office (AUSO), Financial

¹⁰⁸ United States Sentencing Commission, *Illegal Re-entry Offenses, 2008 through 2012 Datafiles, Quickfacts*.

Litigation Units (FLUs) from FY 2004 to FY 2010.¹⁰⁹ Table 12 shows the percent of offenders returning to federal prison within three years of release by type of offense at release, and return, for the year 2008.

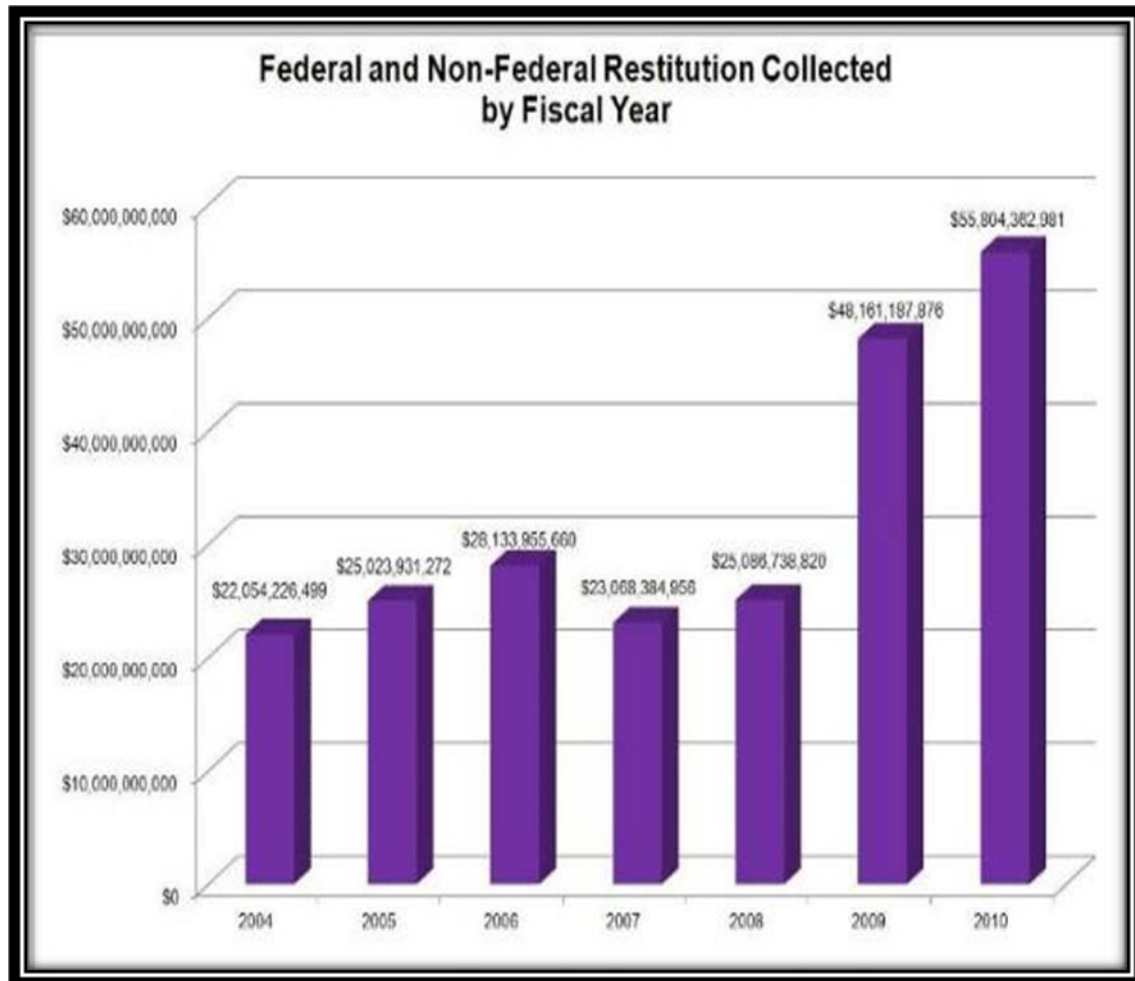


Figure 12. Restitution Collections Nationwide FY 2004–FY 2010.¹¹⁰

¹⁰⁹ “Data on this table excludes asset forfeitures. Collected amount includes payments received by the United States attorneys, the courts, and other agencies. Effective FY 2007, statistics were generated from the department-wide Consolidated Debt Collection System (CDCS). CDCS centralized all debt collection information from previously used debt collection systems,” Office of the United States Attorneys, “Victims’ Rights: Returning Money to Victims—Restitution,” December 12, 2013, http://www.justice.gov/usao/briefing_room/vw/returning_money_restitution.html.

¹¹⁰ Office of the United States Attorneys, “Victims’ Rights: Returning Money to Victims—Restitution.”

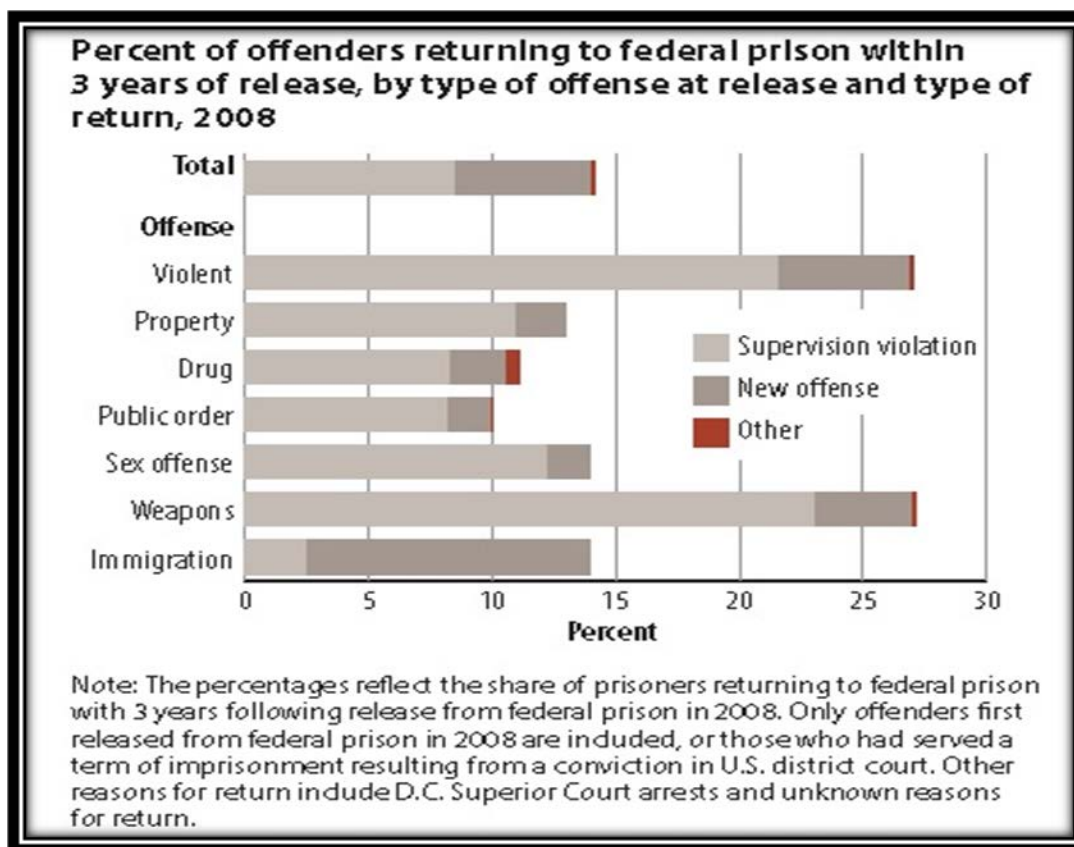


Table 11. Percent of Offenders Returning to Federal Prison within Three Years of Release by Type of Offense at Release, and Return, 2008.¹¹¹

The results section provides a current overview regarding immigration offenders in the federal justice system; it described the top districts, as of 2010, where criminal immigration recidivists' prosecutions are occurring. The section also described the increase in immigration offenses throughout the nation, and the types of sanction most likely to be imposed. Lastly, the results section provided a brief description of restitution collection trends across state and federal districts, and immigration offenders' recidivism patterns overtime.

The upcoming section discusses the limitations of employing the selected research design.

¹¹¹ Office of Justice Programs, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, "Federal Justice Statistics Program, Immigration Offenders in the Federal Justice System, 2010."

D. LIMITATIONS OF RESEARCH DESIGN

Sample composition, data description, selection, interpretation, and self-bias may have affected the research results.

An important limitation of the research design is the sample composition itself. As shown on sentencing data, immigration offenders include citizens and non-citizens. Specifically, this study was narrowed to non-citizens previously convicted of a criminal offense and illegal re-entry after previous removal from the United States. From the data, it is unclear who is a non-citizen “criminal” due to a violation of a criminal statute, as opposed to a violation of immigration law, or both.

It is also unclear what factor citizenship plays (if any) for those offenders who receive restitution as a sole sanction or in combination, but in lieu of a prison sentence (see Appendix C for a list of offenses in which restitution was imposed along with other sanctions at the national level). Research addressing these variables, and making these distinctions, is necessary.

The author’s bias may have played a role in the design’s outcome, and subsequent recommendations as well. As an immigration enforcement officer, many key possibilities may have been overlooked. She also did not conduct any case studies on foreign nations’ use of restitution within their criminal justice or immigration enforcement systems.

Other key limitations of the research design are the subject areas it did not cover; for example, variables, such as gender, economic status, educational attainment, race, ethnicity, age, etc., and their potential effects on behavior and desistance, were not addressed. It is unknown whether considering any of these variables would have affected the outcome of the research.

The upcoming section discusses the findings of the research as an introduction to Chapter IV: Policy Development.

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IV. POLICY DEVELOPMENT

This section represents the core of the thesis. It begins by discussing the research findings to introduce a policy model for CR. The findings are presented at the beginning of this chapter to guide the reader in understanding the model's foundations; current strategies and limitations are presented, followed by implementation steps, and possible challenges.

A. RESEARCH FINDINGS

Restitution is not regularly imposed as a sole sanction. Although restitution is said to be an effective means to reduce recidivism, it is mainly used as an “alternative sanction;” its use has been historically restricted or limited to certain offenses—such as theft, vandalism, property crimes—or to specific category of offenders (non-violent adult populations, and juveniles).¹¹² Caputo argues that restitution's origins explain its limited applicability to certain offenses and types of offenders: [Restitution] “can be used in response to violent crimes, but the difficulty of estimating the financial value of physical and emotional injuries and ancillary loss to victims has traditionally limited its use for victims of violent crimes. This is not to say violent and repeat offenders are always excluded.”¹¹³ This statement raises an important point because the author's definition of CR applies to violent and non-violent criminal immigration offenders.

When applied to divert offenders from prison, restitution is said to be a cost-effective alternative.¹¹⁴ However, restitution's operational cost-savings are minimal, because as currently used, it benefits the victim not the government.¹¹⁵ This was an interesting key finding in the study. The author's proposal for a CR policy model allows DHS to act on behalf of the victim (i.e., the taxpayers); as

¹¹² Caputo, *Intermediate Sanctions in Corrections*, ch. 7, 145.

¹¹³ Ibid., 139.

¹¹⁴ Ibid., 145.

¹¹⁵ Ibid.

such, if Caputo's argument is valid, CR's operational cost-savings should be significant.

On the other hand, in the few instances where imposed, fulfilling an order of restitution benefits the offender also, as restitution is not a criminal conviction per se, and as such, it removes the stereotype of a "criminal record." However, criminal immigration recidivists are less likely to receive an alternative sanction, such as a fine or restitution than criminal recidivists.

When restitution is imposed, sentencing data do not isolate the offenders' criminal history, and citizenship status. For example, the data does not indicate whether the offender receiving restitution is a U.S. citizen charged with an immigration violation, such as alien smuggling, or whether the offender is an immigration recidivist without a criminal history, other than the immigration offense. Federal sentencing data on criminal recidivists, based on offense-type, include immigration violators, but data on criminal immigration recidivists does not include criminal recidivists.

In other words, when prosecuted for illegal re-entry (a felony), criminal immigration recidivists fall under the "immigration offenses" category, but are categorized under other applicable category when prosecuted first for an offense other than immigration (i.e., drugs, fraud). As a result, it is unknown or difficult to determine whether illegal re-entry is the only criminal offense for which an offender has been prosecuted. The overlaps and omissions in the data may help explain the steady recidivism rates seen in one category, but not in another.

Nationwide sentencing data does not include recidivism patterns based on the imposition of restitution; neither does the data from the top five districts for prosecution of criminal immigration recidivists. The likelihood of reoffending after restitution is imposed, and the rate at which offenders' recidivate is unknown. However, the findings showed that criminal immigration recidivists returned to federal custody for a new offense at a higher rate than criminal recidivists (see Table 11 in Chapter III); yet, it was shown that prison is the most common

sanction for this population, not alternative sanctions, such as restitution. Nevertheless, the variables affecting the rate of return to prison between citizens and non-citizens remain unknown.

Lastly, the data does not indicate the number of cases transferred between jurisdictions from other regions. This practice may significantly skew prosecution, conviction, and sentencing numbers, and thus, affect the research findings.

1. Expected Findings

Figure 11 (in Chapter III) showed that in 2012, over 90 percent of immigration offenders sentenced to prison were eligible for non-prison sentences. This finding helps validate some of the author's assumptions.

Although eligible for other sanctions, prison continues to be the option of choice for criminal immigration recidivists, but why? Sentences for illegal re-entry after removal by an aggravated felon or criminal immigration recidivists have historically ranged, on average, from a few days to up to 19 months;¹¹⁶ four-fifths of convicted immigration offenders receive a prison sentence, with half sentenced to 15 months or more."¹¹⁷

However, if over 90 percent of immigration offenders are eligible for non-prison sentences, cannot be placed on probation or parole due to their citizenship status, are not being treated or rehabilitated in any way to prevent them from re-offending, and are not being fined as often as allowed under the law (not nearly at the same rate as other offenders), why not try a new approach?

¹¹⁶ United States Sentencing Commission, "Sentence Length in Each Primary Offense Category," U. S. Sentencing Commission's 2012 Sourcebook of Federal Sentencing Statistics—Table 13 (Online)."

¹¹⁷ Ibid.

If restitution is an available alternative, and its imposition is not legally restricted to a specific population, why not incorporate it into the immigration enforcement system to test its cost-savings potential within that population?

2. Surprising Findings

Restitution is not a novel proposition against immigration offenses. That is, restitution is currently a sentencing option for criminal immigration violators; however, as mentioned, and as shown in Appendix C, it appears that restitution is imposed very rarely in illegal re-entry cases (only in about .002 percent). Nevertheless, this number shows that the feasibility for implementing a CR scheme within immigration enforcement does exist.

An unexpected finding was the amount of restitution collected by the federal government. For FY 2010 alone, the FLUs in the USAOs collected over \$2.8 billion in criminal debt collections, and \$3.8 billion as a result of civil debt collections efforts, respectively.¹¹⁸ However, the data did not offer a breakdown of how much any of these totals came directly from the offenders.¹¹⁹

In general, however, the research findings support developing and implementing a modified version of restitution—i.e., CR—into Mission 3’s “prevention of unlawful immigration” goals and objectives against criminal immigration recidivists. Introducing a CR policy model is feasible due to the similarities—in terms of processes—between the criminal and immigration enforcement systems.

As proposed in this thesis, restitution would continue to benefit the “victim” (i.e., the taxpayer); it will also open the door for research in this area of alternative sanctions and recidivism, but within criminal immigration recidivist populations. Although current studies and data collection practices have

¹¹⁸ Office of the United States Attorneys, “Victims’ Rights: Returning Money to Victims—Restitution.”

¹¹⁹ Ibid. As opposed to victim’s or government’s compensation funds.

limitations, the findings do not prevent the development of a CR policy model for testing or for further research.

B. CURRENT PRACTICE AND LIMITATIONS

DHS (and ultimately the taxpayers) incurs all the costs associated with re-enforcing the removal process. This process includes re-arrest, re-apprehension, detention, prosecution, and removal, among other logistics. Title 8 U.S.C. 1326 makes unlawful re-entry a criminal felony, which is the fastest growing immigration charge. Federal courts located in 11 cities on the U.S./Mexico border handle more than 80 percent of the people arrested on immigration charges.¹²⁰ To give a reader an additional frame of reference, Figure 13 shows the FY 2011 USAOs criminal workload for the entire nation. As shown, immigration offenses represent the majority of prosecutions at almost half the total.

However, and as previously mentioned, not all unlawful re-entry cases involve non-citizens convicted of previous criminal offenses. That is, some non-citizens charged with illegal re-entry may be immigration recidivists, but not criminal immigration recidivists. For a non-citizen to fit the author's description of a criminal immigration recidivist—and thus be eligible for CR—he must have been previously removed, and have a prior criminal conviction for a violent or non-violent offense—not just the criminal immigration conviction.

¹²⁰ Based on United States Sentencing Commission, *Illegal Re-entry Offenses, 2008 through 2012 Datafiles, Quickfacts*.

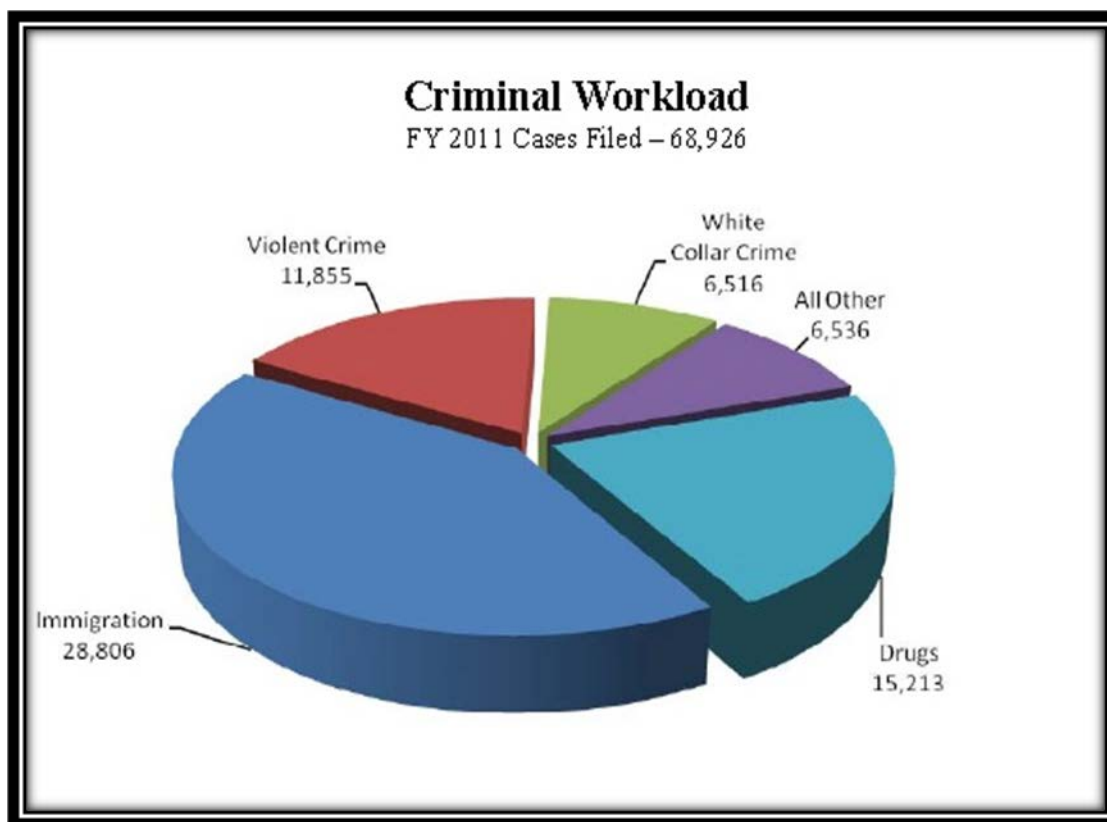


Figure 13. USAOs FY2011 Criminal Case Workload.¹²¹

The author assumes that intermingling offense categories may serve to make enforcement statistics look productive for funding justification purposes; yet, this approach hinders scholarly research, and interest in developing potentially efficient crime-control strategies.

Currently, a lack of consistency exists across the nation in prosecuting both criminal and non-criminal immigration recidivists. The USAO decides which cases to accept for prosecution; those rejected are re-processed for removal (at the government's expense) without further consequences for the determined recidivist.¹²²

¹²¹ U.S. Department of Justice, *United States Attorneys FY 2013 Performance Budget Congressional Submission*.

¹²² "No further consequences," as used in this context, means other than the acknowledgement of possible fines and confinement for unauthorized re-entry after removal.

The USAO has the power to charge, and federal magistrates have the option to impose, restitution, and fines during illegal re-entry prosecutions and sentencing phases (for criminal and non-criminals cases), but this option is rarely imposed; restitution's limited use appears symbolic rather than punitive. According to the *Sourcebook of Criminal Justice Statistics*, out of 28,500 cases in which the primary offense was immigration, no fines or restitution were ordered in 98.5 percent of all cases. Restitution without fines was ordered for 49 defendants (or in 0.2 percent of cases),¹²³ while fines without restitution were imposed in 1.3 percent of total cases. Fines and restitution were ordered in less than 0.05 percent of cases.

Although the *Sourcebook* lists "immigration" as the primary offense triggering restitution or a fine, it does not specify the kind of immigration violation incurred. That is, the data does not differentiate between illegal re-entry after deportation of aggravated felony cases (i.e., violent and non-violent criminal recidivists), as opposed to cases involving illegal re-entry offenders without a prior criminal history.

Another limit of current practice is the lack of available information on collection protocols. The USAOs collect restitution payments from private individuals and entities ordered in federal court, and owed to the United States and non-federal parties. USAOs are required to enforce restitution orders on behalf of all federal crime victims.¹²⁴ However, due to the limited number of cases in which restitution is actually imposed (or along with fines), answers to key questions remain unclear. For instance, information on compliance with

¹²³ University at Albany, State University of New York, "Sourcebook of Criminal Justice Statistics Online, Table 15 (Fines and Restitution Ordered in U.S. District Courts for U.S. Sentencing Commission Guideline Cases, by Primary Office, Fiscal Year 2010)," accessed May 30, 2013, <http://www.albany.edu/sourcebook/pdf/t5322010.pdf>.

¹²⁴ U.S. Department of Justice, *United States Attorneys FY 2013 Performance Budget Congressional Submission* (Washington, DC: U.S. Department of Justice, United States Attorney's Office), February 11, 2014, <http://www.justice.gov/jmd/2013justification/pdf/fy13-usa-justification.pdf>.

restitution or fine orders is lacking for criminal and non-criminal immigration recidivist cases, it is not clear how restitution payments are collected and disbursed to victims—if at all—and when. It is also unclear what the consequences for failure to pay are, if any, or how much variation exists between jurisdictions across the country. Figure 14 shows an illustration of USAOs restitution collection trends from 2004 through 2011. Overall, civil restitution collections surpass criminal collections; whether the differences are a result of lack of compliance by criminal offenders is unknown.

With a high degree of awareness regarding these limitations, the author introduces the CR policy model developmental and implementation phases. By doing so, she expects to show how these data and statistical limitations can be overcome.

The upcoming sections focus on the third research question, what recommendations or core factor modifications are needed to design, develop, and implement a CR strategy within the immigration enforcement system?

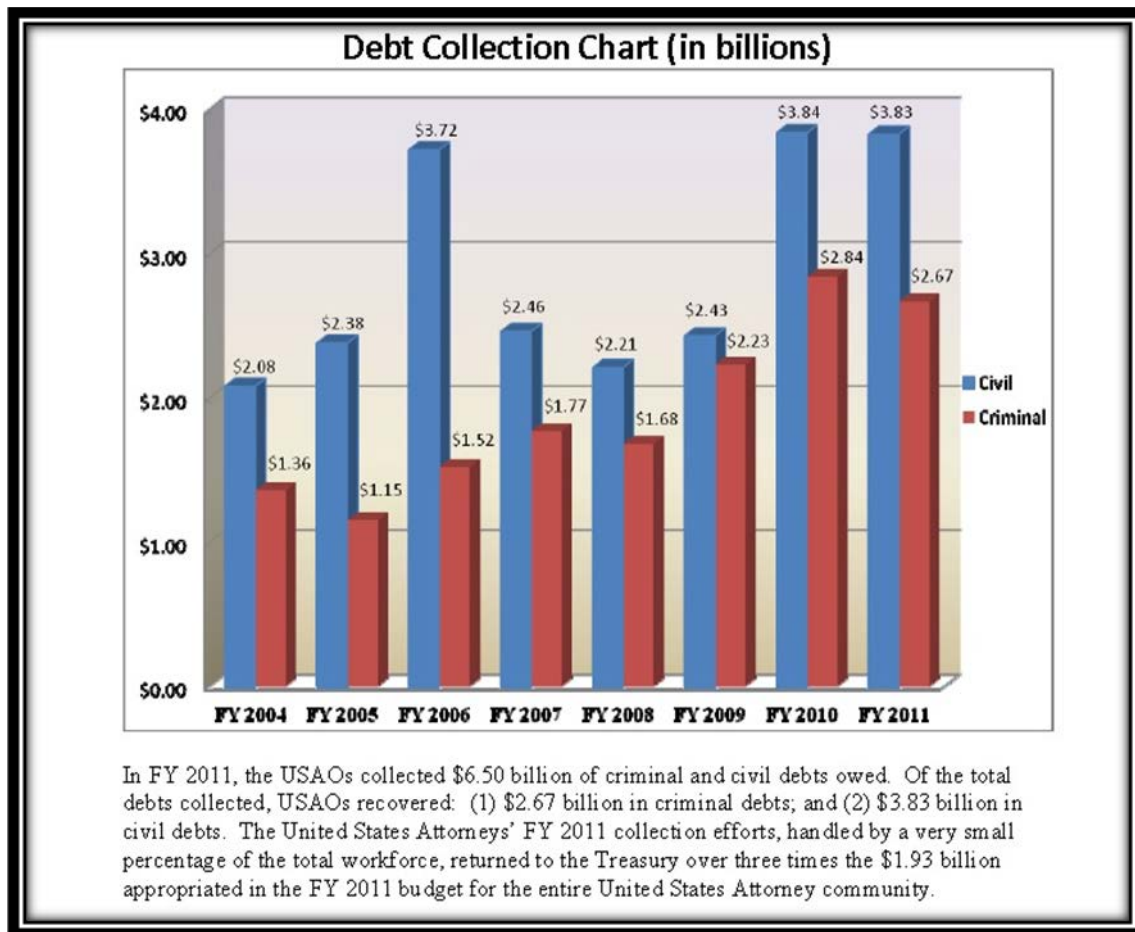


Figure 14. USAOs Restitution Collections FY 2004 to FY 2011.¹²⁵

C. MODEL DEVELOPMENT

The model development section discusses the steps necessary to develop and implement a CR policy model within Mission 3, designed after restitution's ideals as an alternative sanction in the criminal justice system. It explored whether a CR scheme could allow DHS to transfer the fiscal burden of re-enforcement to the recidivist legitimately, thereby, reducing operational costs and lowering recidivism.

¹²⁵ U.S. Department of Justice, *United States Attorneys FY 2013 Performance Budget Congressional Submission*.

The thesis sought to research the answers to the following research questions in support of developing and implementing the model strategy against criminal immigration recidivism.

- In general, what is restitution's utility for the criminal justice system?
- Given the similarities between the criminal justice and immigration enforcement systems, to what extent is the addition of a CR Policy Model to Mission 3's "prevention of unlawful immigration" goals and objectives feasible?
- Assuming that adding a CR Policy Model to Mission 3 is feasible, what strategic recommendations or core factor modifications would be required to develop and implement it?

To summarize, the answer to the first question—restitution's utility for the American criminal justice system—is as follows. Restitution is one of many sanctions used to deter and prevent crime along with retribution, incapacitation, just desserts, and punishment. Restitution focuses on the victim. As currently imposed and enforced, restitution is said to restore the victim, while allowing the offender to accept responsibility for actions perpetrated.¹²⁶ This process triggers a sort of psychological response that helps an offender desist from future criminal behavior.¹²⁷

The answer to the second question—restitution's feasibility as a strategy within Mission 3—is as follows. The processes involved in the criminal justice and immigration enforcement systems are intertwined. At the criminal level, immigration recidivists enjoy the constitutional and due process rights provided to citizens since the issue(s) at stake involve the deprivation of life or liberty at the hands of the government.¹²⁸ At the immigration level (also federal), a number of constitutional protections apply as well (i.e., the 4th, 5th, 6th, 7th, 8th, and 14th

¹²⁶ United Nations Office on Drugs and Crime, "Handbook on Restorative Justice Programmes" (2006), May 27, 2013, http://www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf.

¹²⁷ Ruback and Bergstrom, "Economic Sanctions in Criminal Justice: Purposes, Effects, and Implications," 242–273; U.S. Department of Justice, Office of Justice Programs, National Institute of Justice "Promising Practices in Restorative Justice: Restitution," May 18, 2013, <http://www.nij.gov/nij/topics/courts/restorative-justice/promising-practices/restitution.htm>.

¹²⁸ Cornell University Law School, Legal Information Institute, "Rights, Privileges, and Duties of Aliens."

amendment rights),¹²⁹ except recidivists do not go through the immigration court system upon each apprehension; instead, the original order of removal stands.

During immigration proceedings, the right to an attorney at government's expense is not automatic, nor is a criminal immigration recidivist eligible to be released on bond.¹³⁰ Normally, the final outcome is the offender's removal. Nonetheless, the similarities outweigh the differences, and serve to support introducing a CR policy model as an immigration enforcement strategy.

The design, development, and recommendations for implementing a CR model will serve to answer the final research question; that is, having determined restitution's utility within the criminal justice system, and its feasibility as an intervention against criminal immigration recidivism, what is the overall strategic approach? As a start, the author proposes deploying a pilot CR program.

DHS should implement CR as an enforcement tool against criminal immigration recidivism in lieu of prosecution. Implementing CR will serve to shift the financial burden of reinforcement to the recidivist, and thereby, free DHS resources to increase its investigative personnel, expand enforcement and intelligence programs, detention capacity, air fleet, and other enforcement-related programs. CR is an unconventional approach to criminal immigration enforcement, and it will explore an untested enforcement alternative.¹³¹

Failing to implement CR as enforcement tool will continue to send the wrong global message; an implicit unspoken message indicating that the revolving door for criminal immigration recidivists will always be open because

¹²⁹ Cornell University Law School, Legal Information Institute, "Rights, Privileges, and Duties of Aliens."

¹³⁰ There are legal exceptions, such as humanitarian, medical, etc., or if the government is unable to remove the offender for other reasons.

¹³¹ Although not discussed as part of this thesis, DHS' "consequence delivery system" also aims to reduce recidivism among criminal non-citizens. For an overview of the program, see *Testimony of Michael J. Fisher, Chief, U.S. Border Patrol, U.S. Customs and Border Protection, before the House Committee on Homeland Security, Subcommittee on Border and Maritime Security: "Does Administrative Amnesty Harm Our Efforts to Gain and Maintain Operational Control of the Border?"* October 4, 2011, <http://www.dhs.gov/news/2011/10/04/written-testimony-cbp-house-homeland-security-subcommittee-border-and-maritime>.

the “threat” of prosecution, longer sentences, and fines is just that, a threat. Current enforcement strategies need diversity to affect this determined population, but must benefit the taxpayers (self-sustain).

D. DETAILS

CR involves granting a criminal immigration recidivist the option of covering the costs associated with removal, instead of prosecuting for illegal Re-entry. CR in lieu of prosecution is not a “benefit.” CR does not expunge or voids an offenders’ criminal record, nor does its acceptance reduce any time in a criminal sentence.

Specifically, CR allows an offender to reimburse the taxpayers (through DHS) the costs of reinforcement; unlike traditional restitution—where payment is made to a victim(s)—in CR cases, DHS would represent the collective. CR would serve to pay for an offender’s pre-removal detention expenses, while in DHS custody, and outbound transportation costs to the country of origin.

CR will consist of an agreement between the offender and DHS, which among other stipulations, lists the amount to be paid by the offender, and applicable deadlines. CR award determinations will be executed 60–90 days before an offender’s release from federal, state, or local custody, or within 48 hours of arrest, if the apprehension occurred during the course of enforcement operations.

CR will be collected upon signing of the agreement, which will be no more than a page in length, in a language that the offender can understand. CR costs will be determined by current detention rates charged to DHS,¹³² and carriers’ charges and fees to the destination country.

¹³² Although daily bed-rates vary by jurisdiction, the National Immigration Forum (NIF) reported that as of August 2012, the current detention bed-rates charged to DHS was, on average, \$164.00. National Immigration Forum, “The Math of Immigration Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies,” 2012, 2, <http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf>. *Travel expenses vary by transportation method and carrier.

Exceptions, waivers, and exempted cases will be determined on a case-by-case basis, although limiting CR's intended purpose. Overall, these procedures aim to establish consistency and uniformity across immigration enforcement field operations.

E. SELECTION AND ELIGIBILITY

The CR pilot program will follow a simple yet methodical course; it is to be implemented in phases. Phase I could be piloted with the non-violent criminal immigration recidivist category first to test the economic impact on the offender, i.e., compliance with U.S. laws in the form of lower recidivism rates.

Depending on the success of the pilot program, Phase II would then include violent criminal immigration recidivists encountered in correctional institutions, and during enforcement operations. Other phases may be implemented as needed.

Just as the number of apprehensions and prosecutions is seen as a “victory” against the fight on illegal immigration, so too can successful implementation of a CR program. Figure 15 offers an overview of the proposed CR pilot program model (starting at 1 clockwise).

The next section describes the implementation of the CR pilot program in more detail.

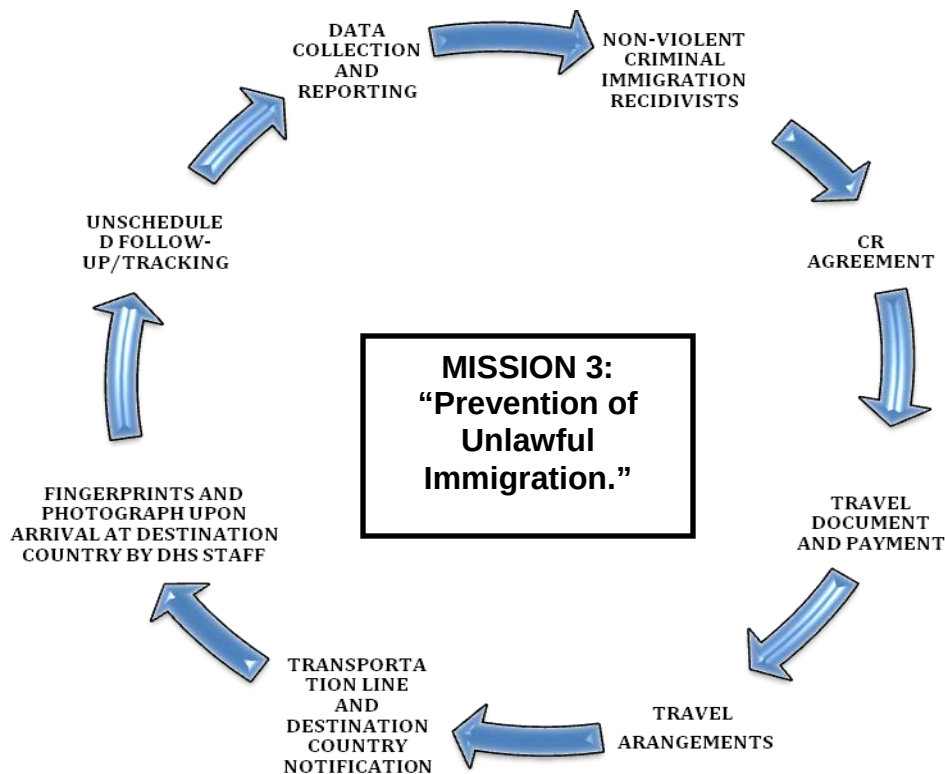


Figure 15. Mission 3's CR Pilot Program Model Overview.

F. PILOT PROGRAM: IMPLEMENTING CIVIL RESTITUTION

1. Preliminary Procedures

During the CR pilot implementation period, non-violent criminal recidivist cases will be identified by each immigration enforcement jurisdiction. Interviews will be conducted to explain the CR agreement, and place special emphasis on the consequences for violating the terms of the agreement, such as the inability to receive a refund for any monies submitted to DHS up to that point. The preliminary interview will also serve to confirm the individuals' economic solvency to comply with the CR terms, and to secure travel documents. Indigence claims and waiver requests will also be addressed at this stage.

If the individual declines or opts out of CR, DHS will withdraw the CR grant, and at its discretion, may then decide to pursue prosecution as an alternative, or continue the status quo and remove the offender at its expense.

This last option, of course, defeats the purpose of CR, but it is one of the unavoidable risks of implementing this approach.

2. Civil Restitution Awards

During a follow-up interview, the amount due will be provided to the individual. The amount will cover transportation costs to the country of origin, and projected costs of days spent at the detention facility, calculated at then daily rates charged to the government. The amount is subject to change if payment is not submitted to DHS within the projected travel or departure date.

Individuals will be provided with different options for payment, which may include submitting payments via kiosks placed in detention facilities (similar technology already exists for inmates and detainees to receive commissary funds);¹³³ other options may also include submitting payments by telephone with a credit card, by money order, or cash paid in person at a DHS field office. (These last options obviously involve a third party.)

3. Travel and Notification Procedures

Once payment has been secured, travel arrangements will be finalized. Transportation carriers will be notified as per current regulations, but following a new protocol that identifies the traveler as a “removal at self-expense.” This classification will signal to the transportation carrier that the individual is a self-paying customer, while at the same time allowing DHS to comply with notification requirements.

DHS staff will escort the offender until the last port of departure from the United States (witness departure), and in unavoidable cases in which it is necessary to make a connection, arrange for staff in the connecting destination to meet the offender to ensure that travel continues as planned. Interestingly, this process is currently in place for voluntary departure cases under “safeguards

¹³³ Detainees are persons held in custody due to civil violations (i.e., immigration detention); inmates are persons held in custody for convictions due to violations of criminal laws.

(VRs).”¹³⁴ Continuing these partial escort duties may serve to quell enforcement staff criticisms regarding their national security mission. Nonetheless, this option may not serve to assuage any safety or security concerns related to the criminal immigration recidivists traveling without DHS escorts to the final country of origin.

4. Conditions

Moving up from the target category during the pilot period (i.e., conviction of a violent offense), would serve to automatically disqualify a CR recipient or previously eligible offenders.

In addition, and as currently practiced, the CR recipient must be an active participant in obtaining travel documents as a “private citizen.”

As soon as an order of CR is executed, the offender’s information will be forwarded to the Department of State (DOS), and DHS personnel stationed abroad for record keeping and follow up. Periodic checks on the offender during the pilot period, and after, will be conducted with the cooperation of local law enforcement contacts, other sister agencies, and intelligence gathering tools.

CR agreement conditions could include unannounced interviews by DHS personnel stationed throughout the world, which would allow DHS enforcement staff to track the offenders’ location, even though, legally, the U.S. government has no jurisdiction over foreign nationals abroad. Tracking individuals will possibly not violate any privacy or international laws for two reasons, 1) unannounced visits will be stated as stipulations in the CR agreement, and 2) the U.S. C. Title 8—*Aliens and Nationality*, and Title 8 of the United States Code § 1104—*Powers and Duties of Secretary of State*¹³⁵ require removed non-citizens to remain outside the United States for a certain period of time after removal,

¹³⁴ “Voluntary departure under safeguards” refers to individuals who may be permitted to leave the country at their own expense, under monitored conditions, in lieu of removal proceedings before an IJ 8 USC § 1229 c—Voluntary Departure.

¹³⁵ The U.S.C. provides rulemaking authority to the Code of Federal Regulations (CFR). *CFR Title 22 Part 40, Subpart J—Aliens Previously Removed Addresses Immigration Recidivists (Criminal and Non-Criminals)*, 22 CFR §40.91—Certain Aliens Previously Removed lists the exact bars to re-entry into the U.S. after removal.

which is required to be eligible to apply for permission to re-enter. Tracking an offender's location will serve to confirm the persons' place of residence, although the burden of prove is always on the applicant.

Moreover, if the offender immigrates to another country, DHS can chose to verify the location via current databases or through personnel stationed in the receiving country. This process may appear cumbersome, and to place an additional burden on DHS staff to track and report; however, the point of this pilot period is to make adjustments as needed to test the strategy fully.

5. Information Sharing: Data Transmission, Quality, and Integrity

Once travel arrangements are finalized, the information will be simultaneously submitted to DHS enforcement staff abroad who will then meet the individual upon arrival in the receiving country, alongside local immigration officials. This process will allow DHS officials to verify the citizen's arrival, obtain fingerprints, verify place of residence, and obtain other pertinent information for tracking purposes. Figure 16 shows the proposed CR implementation model strategy.

Perhaps the most difficult part of the pilot implementation will be logistics. Advanced technological systems will be needed to maintain accurate data records. CR's ultimate outcomes will be measured by the incidence of criminal immigration recidivism pre- and post-implementation within the selected population. As shown in Figure 16, the bulk of the strategy is centered on data transmission, quality and integrity, in terms of timeliness, accuracy, and completeness.

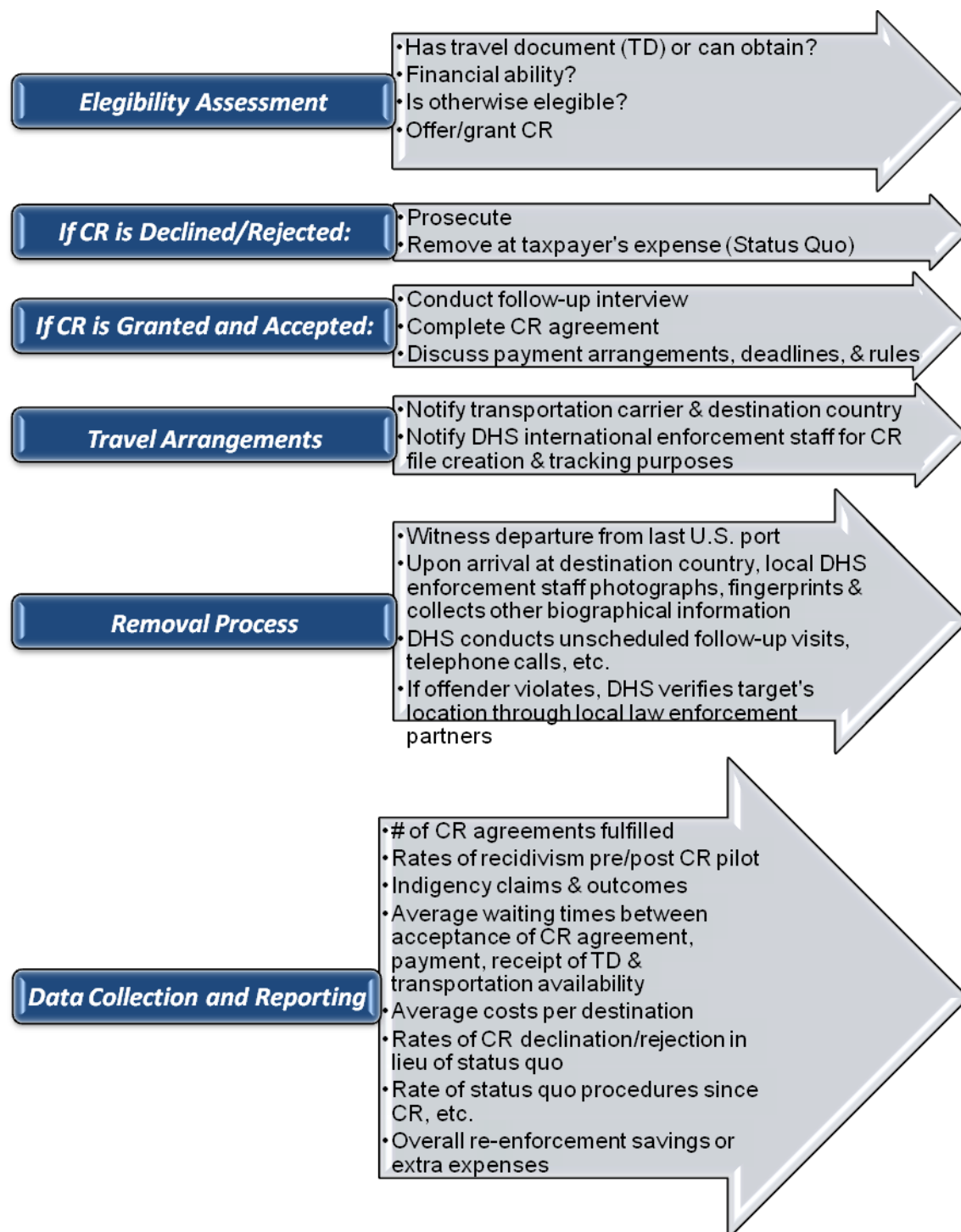


Figure 16. Mission 3 Proposed CR Implementation Model.

6. Costs

The expected operational expenses related to the CR pilot implementation are minimal; at a maximum, expenses envisioned by the CR pilot implementation will include the creation of new forms, public affairs campaigns, equipment upgrades, and synchronization or acquisition of technological equipment to support metrics; supplies acquisition, staff-training—on both eligibility, collection, processing, tracking and liaison protocols—may also be included.

Expenses related to tracking the offenders abroad, including additional staff, informants, etc., are possibilities that need to be considered.

7. Outcome Measures: Collaborative Oversight

To measure CR's success, a new set of metrics will need to be developed, which will replace the current process of measuring success based on volume. In other words, CR could be measured not only by completed removals paid for by the offenders (and not the taxpayer), but by recidivism trends.

Once individuals are removed, a dedicated CR unit will need to be created to focus solely on handling the target population. During the pilot period, enforcement staff already covering the receiving country or region will fulfill staffing needs. After the pilot period is over, staffing adjustments can be made as needed.

To measure CR's impact on the target population, an independent auditing entity, such as the GAO, or the DHS OIG, should conduct a preliminary survey 12 months after pilot implementation. This time period is ideal to identify any issues that need to be immediately addressed, and any potential future long-term problems.

The preliminary survey will measure CR's impact on criminal immigration recidivists on the following dimensions: rate of acceptance, fiscal compliance, time period between grant and acceptance of a CR agreement and removal, type of eligible cases processed (i.e., types of crimes), issues relating to CR case

processing and logistics, CR's system set-up and logistic issues domestically and abroad, best practices, unexpected results, and other issues.

The DHS Statistical Tracking Unit (STU) will distribute, collect, analyze, and forward the results of the surveys to DHS management for questions, comments, and for dissemination to appropriate executive and legislative bodies. DHS enforcement and respective agencies' mission support staff will be responsible for providing the information to DHS STU. The information will be obtained from databases currently used for enforcement purposes, such as the alien booking and removal modules.¹³⁶ As an alternative, during the pilot period, separate divisions could be created within the bond collection units of each field immigration enforcement office; these units will be responsible for handling only CR reporting to DHS STU.

The final measure of success for the CR pilot program will expand on the preliminary survey, but will also include metrics for attempted or confirmed recidivism data by the end of the 24-month period. Attempted recidivism data will include any attempt by a previously removed criminal non-citizen at illegally re-entering the United States, but prevented from doing so due to successful CR's tracking or enforcement efforts. (The author expects tracking alerts and information to be disseminated through intelligence and secure channels.)

Other outcome measures include recidivism rates post-CR implementation among the target population; indigence claims and outcomes, rates of status quo cases, ongoing logistics issues throughout the CR pilot period (i.e., forms development), and other reported miscellaneous issues that affected or may

¹³⁶ The Bonds Online System (eBONDS) is an ICE web-based application used primarily by surety agents and ICE ERO to facilitate the ICE immigration bond management process. The basic function of eBONDS is to allow surety companies to post immigration bonds online for aliens that ERO has determined are eligible for release on bond. eBONDS is linked to the Bond Management Information System-Web (BMIS Web) and the ENFORCE Alien Removal Module (EARM) to complete the bond application process, Department of Homeland Security, U.S. Information and Customs Enforcement, "Immigration Bond," March 7, 2014, <http://www.ice.gov/doclib/news/library/forms/pdf/i352.pdf>.

affect the short- or long-term success of CR as an effective enforcement tool against criminal immigration recidivism.

Depending on the results of the outcomes measured, policymakers will be able to determinate the need to create a nationwide centralized CR account within the Treasury's Immigration Enforcement Account,¹³⁷ or allow each DHS field office to create individual CR accounts. Alternatively, create dedicated or individual field processing and reporting units, determine the need for additional staff, the timeline for the next audit, to gauge the cost-benefits and effectiveness of CR (and iterate accordingly), or eliminate CR all together.

The upcoming section discusses the impact that a CR scheme may have on immigration enforcement across various domains.

G. ADVANTAGE AND DISADVANTAGES

To reiterate, the term criminal immigration recidivists refers to undocumented non-citizens previously removed due to a criminal conviction; however, illegal immigration recidivism, in general, includes both criminal and non-criminal persons. The focus of this thesis is on the former, since more enforcement, harsher penalties, longer sentences, and so on, have not reduced recidivism among criminal immigration recidivists as much as expected. So what can be done?

The thesis validated several assumptions regarding the development and implementation of a pilot CR model program within Mission 3: (1) that it was feasible to implement a CR scheme within the immigration enforcement system, (2) that CR would serve to shift the costs of repeat enforcement from the taxpayers to the recidivists; thereby, serving to self-sustain Mission 3's goals and objectives, and (3) that as a result of transferring the costs of reinitiating the removal process from DHS to the recidivists, CR's outcomes will result in lower rates of criminal immigration recidivism.

¹³⁷ INA § 280 (b) (1)—Collection of Penalties and Expenses.

Policymakers responsible for enacting immigration enforcement legislation currently have options at their disposal. So why should they look at CR as a strategic option? In addition to the arguments expressed heretofore, the author would argue they should do so because CR would benefit both parties, the taxpayer and the criminal immigration recidivist. Current strategies do not seek to achieve this balance.

Examples of policymakers who should be interested in CR are found within the House Judiciary and Homeland Security Committees responsible for homeland security, border security, and immigration enforcement such as: the House of Representatives Committee on Appropriations Subcommittee on Homeland Security; the House of Representatives Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement; the House of Representatives Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, and other relevant committees.

However, current options—besides prosecution and removal—include amending the INA to increase penalties for illegal re-entry after removal, implementing a consistent and uniform system for imposing penalties against criminal immigration recidivists, and aggressively enforcing the collection of fines. Others include aggressively and consistently imposing economic sanctions on foreign states that do not prevent removed citizens from returning to the United States without authorization, limiting or suspending visa issuance to uncooperative governments,¹³⁸ etc. These latter options are powers conferred to the Attorney General, the Secretary, and the Under Secretary of State under the INA.¹³⁹ Although currently available and sometimes used, these options place, albeit directly or indirectly, all accountability for compliance with the law on the U.S. taxpayer, and not necessarily on the offender.

¹³⁸ INA § 243 (c) (1) (d)—Penalties Related to Removal.

¹³⁹ INA § 103—Powers and Duties of the Attorney General and the Commissioner—INA §104—Powers and Duties of the Secretary of State.

Domestic and international governmental and non-governmental, human rights, non-profit and faith-based organizations, such as the United Nations Human Rights Commission (UNHRC); the Organization of American States (OAS); Inter-American Commission on Human Rights; the ACLU; Human Rights First (HRF); the Women's Refugee Commission (WRC); the ABA; scholars, and many others, would certainly be interested in the CR approach to manage criminal immigration recidivists.

Homeland security articles written or published by the ABA in 2004; Stephen H. Legomsky, "The New Path of Immigration Law: Asymmetric Incorporation of Criminal Justice Norms"; Mark Dow, "Designed to Punish: Immigrant Detention and Deportation"; Donald Kerwin and Serena Yi-Ying Lin, "Immigrant Detention: Can ICE Meet Its Legal Imperatives and Case Management Responsibilities?"; Bridget Kessler, "In Jail, No Notice, No Hearing . . . No Problem? A Closer Look at Immigration Detention and the Due Process Standards of the International Covenant on Civil and Political Rights"; Geoffrey Heeren, "Pulling Teeth: The State of Mandatory Immigration Detention"; Sarah Gryll, "Immigration Detention Reform: No Band-Aid Desired"; Human Rights First, "Jails and Jumpsuits: Transforming the U.S. Immigration Detention System-A Two Year Review"; Karen Tumlin, Linton Joaquin, and Ranjana Natarajan, "A Broken System: Confidential Reports Reveal Failures in U.S. Detention Centers"; the ACLU of Arizona, "In Their Own Words, Enduring Abuse in Arizona Immigration Detention Center"; and the ACLU of Georgia, "Prisoners of Profit, Immigrants, and Detention in Georgia," have argued that criminal non-citizens' due process and civil rights are violated when they are prosecuted for illegal re-entry after deportation. In their views, since criminal non-citizens have already served a period of incarceration for a criminal offense, prosecuting and incarcerating them for illegal re-entry is unconstitutional. In essence, the claim is that prosecuting criminal recidivists after they have served a criminal sentence is

tantamount to double jeopardy in violation of the 5th Amendment to the United States Constitution.¹⁴⁰

As a result, these groups, institutions, and individuals may welcome CR, and may even consider it a best practice, because it would limit the use of prosecution in illegal re-entry cases.

1. Possible Advantages

On the other hand, implementing a CR pilot program has numerous advantages. It may potentially decrease immigration recidivism, especially criminal immigration recidivism rates, reduce reinforcement costs at government's expense, and open the path to research on restitutions' behavioral effects on criminal immigration recidivists, in violent and non-violent populations. Such research will serve conclusively to correlate the psychological effects on behavior across criminal populations brought upon by government-imposed financial responsibilities.

Importantly, CR can be applied retroactively, which thus frees detention space for violent criminal immigration violators (i.e., recidivists and non-recidivists). Doing so will serve to garner support from the public, policymakers, foreign states, the prison and transportation industries, as well as from DHS enforcement staff, immigrant advocacy groups, anti-immigrant organizations, and others.

Although limited in depth and scope, the literature on restitution's effect as a behavior modifier indicates that restitution is effective in lowering recidivism because it serves a rehabilitative purpose, as well as to hold offenders accountable for their behavior.¹⁴¹ Cares, Hoskins, and Ruback “argue that restitution and other economic sanctions are popular because of the goals they

¹⁴⁰ Judith Greene and Alexis Mazón, *Privately Operated Federal Prisons for Immigrants: Expensive. Unsafe. Unnecessary* (Brooklyn, NY: Justice Strategies, 2012), <http://www.justicestrategies.org/sites/default/files/publications/Privately%20Operated%20Federal%20Prisons%20for%20Immigrants%209-13-12%20FNL.pdf>.

¹⁴¹ Caputo, *Intermediate Sanctions in Corrections*, ch. 7, ch 10.

serve. The authors posit that, “In recent years [economic sanctions] have become more common because they serve multiple criminal justice system goals: (a) having the offender offset some of the costs of prosecution and corrections, (b) restoring victims, (c) allowing for cheaper alternatives to incarceration, and (d) meeting the traditional objectives of punishment, deterrence, and rehabilitation. If these goals are being realized, offenders who pay their ordered economic sanctions should be less likely to recidivate.”¹⁴²

CR aims to reduce immigration enforcement operations reinforcement costs, not to increase them. After all, it is one of the general advantages in support of restitution. Caputo emphasizes this point when discussing restitution’s cost effectiveness. She argues, “Restitution is inexpensive to administer compared to most other sanctions, including probation, parole, imprisonment, boot camps, and halfway houses. This is especially true when offenders successfully complete restitution.”¹⁴³

Another advantage of CR is that it will require minimal organizational changes, in terms of personnel; at least during the pilot period, the need for additional enforcement personnel is unforeseen. DHS mission support staff already responsible for arranging removal arrangements, and collecting bonds, and staff responsible for non-citizens’ transportation to immigration detention facilities, can manage CR collection and pre-removal duties. However, CR will require adaptation to a new organizational culture, due to its unconventional approach to enforcement.

2. Possible Risks

The risks of implementing CR within the immigration enforcement system are many. CR may result in an increase in both types of immigration recidivism (criminal and non-criminal) due to misconceptions about its intended purpose; that is, some offenders may interpret CR to mean that the only penalty for the

¹⁴² Cares, Hoskins, and Ruback, “Economic Sanctions and Recidivism.”

¹⁴³ Caputo, *Intermediate Sanctions in Corrections*, ch. 7, 145.

offense of illegal re-entry after removal is payment of reinforcement costs. As a result, the CR agreement must clearly emphasize that this interpretation is not the case.

Regardless of how many recidivists accept CR's terms and conditions, the status quo may remain due to indigence claims; retaining the status quo, of course, will defeat the purpose of this strategic option, and possibly result in additional reinforcement costs (i.e., if DHS decides to prosecute). On the other hand, if CR is accepted, but defaulted on at the last minute—or declined from the start—DHS will have to decide whether to begin prosecution efforts, or just proceed with removal at its expense. This situation is a very likely and common scenario, but one that does not differ from situations in which non-criminal, non-recidivists, immigration detainees remain in detention after the granting of a bond, due to their inability to post it; the offenders' inability to pay does not prevent the granting of a bond. CR should be approached in this same manner.

An offender's financial inability should not prevent the government from offering or granting CR. In fact, the *Mandatory Victims Restitution Act* of 1996 (MVRA) changed the federal restitution statutes since the *Victim Witness Protection Act* of 1982 (VWPA), which it amended.¹⁴⁴ As a result, “perhaps the most significant amendment to the restitution statutes in MVRA was the addition to § 3664 of a phrase that previously had only occurred in mandatory restitution statutes for specific Title 18 offenses. The MVRA added § 3664(f)(1)(A) that provides: ‘In each order of restitution, the court shall order restitution to each victim in the full amount of each victim’s losses as determined by the court and without consideration of the economic circumstances of the defendant, (emphasis added).’”¹⁴⁵ Since DHS is to act on behalf of the “victims” (i.e., the taxpayers) for the purposes of the CR strategy, the author believes the general

¹⁴⁴ The MVRA was actually *Title II of the Antiterrorism and Effective Death Penalty Act of 1996*, Public Law 104-132, 110 Stat. 1214(1996). The MVRA was effective April 24, 1996,” As stated in the United States Attorneys’ Bulletin, “An Update on Restitution Issues,” 2003, 15.

¹⁴⁵ Ibid.

language of the MVRA and the VWPA applies—even though immigration offenses, per se, are not listed in Title 18.¹⁴⁶

On the contrary, waving CR for humanitarian or special circumstances (i.e., medical emergencies), can be an option in limited cases, but should not be the norm.

Another risk of implementing CR could be difficulties or delays in obtaining travel documents from the country of nationality. Not being in possession of a travel document (or not having the ability to obtain one promptly) can be grounds for CR ineligibility; this caveat will severely restrict or limit CR's intended purpose however. Travel document delays will defeat or diminish CR's effectiveness, especially if a criminal immigration recidivist has abided by the terms of the agreement; such delays will extend an offender's detention period in DHS custody pending removal. However, DHS may utilize its power to issue sanctions against countries that refuse to issue travel documents to its citizens for removal purposes.¹⁴⁷ This authority should be exercised as a matter of routine since criminal immigration recidivism is a national security matter, even though is categorized as a lower priority.

Another risk of implementation—as proposed in this document, is the unknown or projected operational enforcement cost savings, if any. This data will not be available at least until the mid-term and final surveys are completed. CR is expected to reduce DHS enforcement expenses among the target population, but it is difficult to project the short-term and long-term savings in terms of dollar amounts, which is both an advantage, and one of its caveats. Although CR operational expenses are expected to be minimal, it is difficult to project exact enforcement expenditures unless the pilot program is deployed first, and its outcomes then measured.

¹⁴⁶ Legal Information Institute, "18 U.S. Code Part I—"Crimes," *Cornell University Law School*, November 16, 2012, <http://www.law.cornell.edu/uscode/text/18/part-I>.

¹⁴⁷ See INA § 243 (c) (1) (d)—Penalties Related to Removal; INA § 103—Powers and Duties of the Attorney General and the Commissioner; and INA §104—Powers and Duties of the Secretary of State.

Infrastructure constraints in the receiving country can limit or nullify CR's expected outcomes. The lack of cooperation from the host government, and unexpected costs can all affect CR's full implementation success, and CR's influence in lowering criminal immigration recidivism. Although speculation or projected estimates are possible statistical approaches, the author chose not to make any premature speculations due to the significant logistical variations involved in her proposed strategy.

Data collection at the end of the CR pilot period could prove to be a challenge as well. Data quality and integrity, timeliness, processing uniformity, recordkeeping and maintenance, etc., may require an extended period of time to develop, assess, implement, analyze, audit, and eventually, report and disseminate. This challenge will affect how data collection is approached when CR is fully implemented. Likewise, determining tracking and follow-up periods post-pilot implementation, as well as file retention periods, will need to conform to current records management federal regulations.

As discussed, implementing CR into the realm of immigration enforcement policy will be challenging and risky. Success will necessitate strong leadership, bi-partisan support, and consistency in the manner in which it is applied across the nation, which is essential to overcome underlying assumptions surrounding its use as a "soft approach to criminal immigration recidivism."

H. POSSIBLE STAKEHOLDER OBJECTIONS: MODEL TRADEOFFS

1. The Public

The taxpayers—whom CR aims to protect—as well as some members of the nation's legislative bodies, are likely to oppose the implementation of CR as an enforcement tool against criminal immigration recidivists. The idea of not "punishing" repeat criminal immigration offenders with a period of incarceration may be seen as a risk to public safety, as incentive to others to offend or re-offend, and as government bias and show of favoritism for criminal non-citizens. In other words, opponents will probably claim that unlike criminal recidivists who

are incarcerated, sometimes obtaining life sentences for their offenses,¹⁴⁸ criminal non-citizens will get a “free pass” by avoiding prison.

2. DHS Law Enforcement Personnel

Strong opposition will also likely derive from DHS enforcement personnel responsible for removal operations. CR will eliminate the need for officers to escort the criminal immigration recidivist to the country of origin. Criminal escort duties are one of the most satisfying aspects of immigration enforcement (after arrest and apprehension) because it represents finality and closure; the non-citizen is no longer a homeland security threat. CR will be seen as another hindrance to effective enforcement,¹⁴⁹ and as disruptive to organizational culture.

DHS staff will likely oppose CR on the grounds of its lack of current use as an enforcement strategy. That is, law enforcement personnel will argue that the reason restitution is underused in the criminal justice system because it does not serve any deterrent or preventive purposes.

3. Detention Facilities

The prison industry will certainly oppose the implementation of CR as an enforcement tool in immigration enforcement. DHS¹⁵⁰ is tasked with ensuring the safe and effective custody management for more than 30,000 undocumented

¹⁴⁸ A *New York Times* article, titled “Number of Life Terms Hit Record,” describes how the large number of criminal recidivists sentenced to life terms is impacting the prison system: “More prisoners today are serving life terms than ever before—140,610 out of 2.3 million inmates being held in jails and prisons across the country—under tough mandatory minimum-sentencing laws and the declining use of parole for eligible convicts.” Solomon Moore, “Number of Life Terms Hits Records,” *New York Times*, July 22, 2009, <http://www.nytimes.com/2009/07/23/us/23sentence.html?pagewanted=all>.

¹⁴⁹ The Deferred Action for Childhood Arrival process (DACA) or the Development, Relief, and Education for Alien Minors DREAM Act are examples of recent controversial immigration legislation.

¹⁵⁰ *Homeland Security Act of 2002*, Public Law 107-296, 2002 U.S.C.C.A.N. (116 Stat.) 2135. U.S. Government Printing Office, “Public Law 107-296,—NOV. 25, 2002,” November 08, 2012, <http://www.gpo.gov/fdsys/pkg/PLAW-107publ296/pdf/PLAW-107publ296.pdf>. For an overview of ICE/ERO functions, see U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, U.S. Department of Homeland Security, Immigration and Customs Enforcement, “Enforcement and Removal Operations,” August 23, 2012, <http://www.ice.gov/about/offices/enforcement-removal-operations/>.

persons in custody each day in DHS-owned, dedicated, and contracted detention facilities across the United States.¹⁵¹ Currently, DHS houses detainees in more than 250 for-profit local and state facilities. Nearly 67 percent of the detained population are housed in local or state facilities, 17 percent are housed in contract detention facilities (exclusively used for immigration detention), 13 percent are housed in DHS-owned facilities (service processing centers or SPCs), and three percent are housed in Bureau of Prisons (BOP) facilities, which are funded either through congressional appropriations to the bureau or through DHS reimbursement.¹⁵²

According to a report issued by the Detention Watch Network, facilities operated by private prison companies (for-profit) currently house nearly 50 percent of the more than 30,000 immigrants detained by DHS at any given time.¹⁵³ In a report criticizing DHS expenses on immigration detention, the National Immigration Forum (NIF) argued, “if DHS limited its use of detention to individuals who have committed violent crimes, the agency could save nearly \$4.4 million a night or \$1.6 billion annually—an 82 percent reduction in costs.”¹⁵⁴

4. NGOs

Pro-immigrant and anti-immigrant organizations may oppose implementation of CR, but for disparate motives. Pro-immigration organizations, such as Amnesty International; Human Rights Watch; the American Civil Liberties Union, and others, will view CR as a government abuse of power, and

¹⁵¹ Based on FY 2011 statistics. For a description of ICE/ERO detention management functions, see U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, “Fact Sheet: A Day in the Life of ICE Enforcement and Removal Operations,” February 23, 2013, <http://www.ice.gov/doclib/news/library/factsheets/pdf/day-in-life-ero.pdf>.

¹⁵² As described by ICE. See U.S. Department of Homeland Security, ICE, “Fact Sheet: Detention Management,” November 10 2011, <http://www.ice.gov/news/library/factsheets/detention-mgmt.htm>.

¹⁵³ Detention Watch Network, “The Influence of the Private Prison Industry in the Immigration Detention Business,” May 2011, <http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/PrivatePrisonPDF-FINAL%205-11-11.pdf>.

¹⁵⁴ National Immigration Forum, “The Math of Immigration Detention: Runaway Costs for Immigration Detention do Not Add Up to Sensible Policies,” 8.

will argue that CR is a civil rights violation against criminal immigration recidivists, as well as an unjust practice. The argument will be based mainly on the target population's presumed lack of financial resources, and the organizations' view that the least the government can do for this population is to ensure their safe return to the country of origin, particularly, since it was the government that failed to prevent their re-entry in the first place.

In short, since the government failed to protect Americans against these individuals, the government should not expect these persons to reimburse it for the lack of effective preventive measures. However, the average citizen may disagree with these arguments; the government should not be made responsible for the choices a non-citizen makes when deciding to re-enter the United States after removal without authorization.

Pro-immigrant organizations will also bring about legal arguments against the implementation of CR. Restitution is a victim-oriented intervention, imposed by the court during a criminal or civil procedure as per the MVRA. As such, CR has no place in the immigration enforcement system. Delineated offenses have been determined for which restitution applies, and illegal re-entry by previously deported criminal non-citizens is not one of them, a strong counter-argument. However, it is important to keep in mind that CR is only modeled after restitution's theoretical foundations. CR is not the same (nor is to be applied in the same manner) as current restitution programs.

Pro-immigrant organizations will also argue against CR from a geopolitical or economic perspective; that of requiring third-world poor immigrants or their families (regardless of criminal background) to pay CR to a wealthy nation—such as the United States, is tantamount to slavery, and therefore, unacceptable.¹⁵⁵ In some way or another, CR will inevitably affect innocent, non-criminal family members, since it will force them to pay on behalf of their detained relatives.¹⁵⁶

¹⁵⁵ Emphasis added; Comments by Dr. Rodrigo Nieto-Gomez on original CR implementation manuscript. Cited with his authorization; email communication dated January 16, 2014.

¹⁵⁶ Ibid.

However, pro-immigrant organizations should utilize CR indigence claims to assist individuals in obtaining funding to avoid prosecution and further detention. Although the priority for many (if not all) non-profit pro-immigrant organizations, NGOs, law firms, and academic law clinics have historically been asylum seekers, children, women, human trafficking victims, non-criminal and non-violent immigrants, among other cases, CR may lead to the development of a new criteria for assistance. The author realizes, however, that this suggestion may not be well received. These groups and organizations have limited resources, which are used to assist other “more qualified” clients (such as asylum seekers, human trafficking victims, etc.) than criminal immigration recidivists. Extra resources to assist criminal immigration recidivists with funding may not be available.

On the other hand, anti-immigrant organizations, such as the Federation for American Immigration Reform, the Center for Immigration Studies, etc., will argue that CR will lead to an even more dysfunctional immigration enforcement system, and thus, result in additional enforcement expenses. The argument will center on CR’s logic as an enforcement tool. That is, these groups will claim that criminal immigration recidivists will rather take a gamble, and allow DHS to attempt prosecution than sign a CR agreement; chances are that prosecution will be declined, or the length of sentence minimal (if at all imposed). Therefore, why would they want to rush removal, and on top of that, lose their money on CR?

Anti-immigrant groups will further argue that criminal immigration recidivists will do whatever is necessary to remain in the United States, even if in prison, rather than be returned to their countries of origin, especially if the return is at their own expense.

These groups will also counter that CR is an alternative to prison that will encourage recidivism. Alternative programs, such as CR, have no strategic benefit within immigration enforcement; only imprisonment will serve to punish and deter criminal immigration recidivists for violating U.S. laws, and threatening American communities.

5. International Carriers

The transportation industry will likely oppose CR's implementation within immigration enforcement as well. The argument will center on security concerns. DHS law enforcement personnel escort criminal non-citizens via commercial carriers¹⁵⁷ to the country of origin, and the number of offenders allowed per trip is restricted.¹⁵⁸ Currently, commercial carriers are notified of any escorted removals in advance.¹⁵⁹ CR will eliminate these procedures, as the criminal immigration recidivist will be traveling just like any other fare-paying customer. Thus, the industry—supported by DHS enforcement staff and the taxpayers—will argue that CR will jeopardize the safety of the traveling public.

An alternative will be not to notify transportation carriers at all of the criminal immigration recidivists' travel. Doing so, however, will not only be considered dangerous to the safety of the traveling public, but also unethical, and will run contrary to regulations, and the transparency model espoused by DHS.

On the other hand, once released, many convicted criminals—more dangerous or as dangerous as criminal immigration recidivists—travel freely without any advanced notifications to transportation carriers. The same argument can be made about CR's target population. Nonetheless, it is another challenge to CR implementation, and one that, depending on the program's final outcomes, may be difficult to justify.

Transportation carriers, as well as DHS enforcement staff responsible for escorted removals, will further argue that unexpected events, such as emergency landings or weather-related complications, will serve to provide CR recipients with the opportunity to abscond. However, if properly coordinated between DHS and the transportation carriers, DHS staff at the detour site can provide coverage

¹⁵⁷ DHS threat assessment policy and classification level determines the person's need for an escort. In other words, not all criminal removals are escorted, and not all escorted persons are criminals.

¹⁵⁸ Restrictions are carrier-specific.

¹⁵⁹ Advanced notification requirements and times vary among carriers.

to prevent the individual from absconding. The risk of utilizing this alternative is that if the detour occurs outside the United States (i.e., during temporary stops or plane changes, etc.), and the individual absconds on international territory on which the United States has no jurisdiction, then the CR strategy can turn into a foreign policy issue. Nevertheless, DHS can always collaborate with the host country, and provide any necessary information regarding the fugitive—even assist in search efforts.

Another alternative may appear more appealing to the transportation industry (in part), and to DHS enforcement staff. DHS can avoid the use of commercial transportation carriers, unless unavoidable or not cost-effective, and instead use DHS Air Operations¹⁶⁰ to conduct CR removal cases during the pilot period. DHS can set a fixed monetary amount—depending on its current expenses to the country of destination, and other transportation and detention expenses—and weigh the advantages and disadvantages of utilizing this approach.

6. Legitimate and Clandestine Agendas

a. Foreign Governments

CR will certainly affect the legitimate and clandestine agendas of certain groups or parties involved in or influenced by immigration enforcement. For instance, foreign governments will oppose CR for two main reasons, 1) the impact on their country's economies due to the loss of revenue from remittance flows,¹⁶¹ and 2) the sudden influx of criminal citizens into their societies.

¹⁶⁰ See *Written Testimony of ICE Enforcement and Removal Operations Executive Associate Director Thomas Homan for a House Committee on Oversight and Government Reform, Subcommittee on National Security Hearing Titled "Border Security Oversight: Identifying and Responding to Current Threats."*

¹⁶¹ Ralph Chami, Connel Fullenkamp, and Samir Jahjah, *Are Immigrant Remittance Flows a Source of Capital for Development* (Washington, DC: International Monetary Fund, 2003).

These governments will likely claim that they do not have the infrastructure or the resources to manage more “sophisticated U.S.-trained” convicted criminals.

b. Immigration Attorneys

Immigration attorneys as well will perceive CR as a business challenge. They will argue that the target population will forgo legal representation in lieu of CR—thus jeopardizing their due process rights. As a result, CR will encourage DHS staff to violate criminal immigration recidivists’ civil rights. However, the author disagrees with this argument. Immigration attorneys should use CR as an opportunity to help their clients understand the intent of the policy, and the benefits to both the offender and the government.

In addition, immigration attorneys will argue that the target population will not retain legal counsel (an extra expense), when it would rather use available funds to accept and fulfill a CR agreement.

c. Criminal Organizations/Enterprises

Depending on how CR’s intended purpose is received among criminal organizations, it can affect their agendas as well. Criminal immigration recidivists are a “commodity” to criminal enterprises. Losing this commodity to prison—due to prosecution for illegal re-entry after removal—is an inconvenience. CR will allow the criminal immigration recidivist to leave the United States, and continue to provide its services to the criminal outfit from a new location.

Of critical concern, however, is the potential for these organizations to create a source of revenue at the expense of CR recipients. Criminal organizations may use CR debts to create a type of “indenture slavery” program; that is, as a condition to facilitate CR payments to offenders (or their family members). These organizations may end up demanding forced labor, human and sex trafficking, kidnappings, and other types of criminal activities.

Of course, while not all the possible opposing views, they represent the primary stakeholders' potential arguments against the implementation of CR as an enforcement tool against criminal immigration recidivism. The answers to some of these arguments will remain unknown until CR is piloted. CR's acceptance, adaptability, functionality, effectiveness, arguments pro and con, operational efficiency, tradeoffs, necessary adjustments, and other issues addressed in this document, will remain unknown until the new strategy is deployed and tested.

Nevertheless, implementing and piloting CR needs to start immediately while the current administration is heavily involved in reforming the immigration system. The opportunity for CR implementation is now. The sooner CR is implemented; the sooner outcomes can be measured.

The upcoming section, Chapter V, concludes this thesis project. The chapter summarizes the research findings, CR's implementation main goals, pros cons, and implications for homeland security. It closes by suggesting further areas of research in the area of recidivism and immigration enforcement.

V. FUTURE OUTLOOK

This project focused on researching the answers to the following questions.

- In general, what is restitution's utility for the criminal justice system?
- Given the similarities between the criminal justice and immigration enforcement systems, to what extent is the addition of a CR policy model to Mission 3's "prevention of unlawful immigration" goals and objectives feasible?
- Assuming that adding a CR policy model to Mission 3 is feasible, what strategic recommendations or core factor modifications would be required to develop and implement it?

The thesis validated several assumptions regarding the development and implementation of a CR policy model within Mission 3: (1) that it was feasible to implement within the immigration enforcement system, (2) that it would shift the costs of repeat enforcement from the taxpayers to the recidivists, thereby, serving to self-sustain Mission 3's goals and objectives, and, (3) that as a result of transferring the costs of reinitiating the removal process from DHS to the recidivists, CR's outcomes would result in lower rates of criminal immigration recidivism.

Introducing a CR policy model, as part of Mission 3's "prevention of unlawful immigration" goals and objectives is feasible due to the similarities—in terms of processes—between the criminal and immigration enforcement systems. As proposed in this thesis, restitution would continue to benefit the "victim" (i.e., the taxpayer); it will also open the door for research in this area of alternative sanctions and recidivism, but within criminal immigration recidivist populations.

Based on restitution's conceptual foundations, feasibility, and the proposed implications of its introduction, the author developed the concept of CR to recommend a strategic initiative against criminal immigration recidivism—thereby, answering research question number three. The implementation plan

detailed the steps to follow, including the recommendation of a pilot program to test the strategy.

The CR implementation plan considers the advantages, disadvantages (or risks), caveats, challenges, possible supporters and detractors. The author's goal was to offer objective recommendations on how to overcome opposition to CR implementation.

The next section details the implications of implementing a CR strategic scheme against criminal immigration recidivists within Mission 3.

A. IMPLICATIONS

The main difference successful CR implementation would make is to shift the fiscal burden of reinforcement from the taxpayer to the recidivist. The success of this intervention will be determined by factors, such as the long-term financial impact brought upon the criminal immigration recidivist, the accompanying psychological effects towards desistance, and the offenders' ability, willingness, and desire to comply with the CR agreement in lieu of risking prosecution.

A CR pilot program should be implemented for no less than two years, and as previously suggested, should begin with the non-violent criminal immigration recidivists as the primary target population to aid the adaptation to this somewhat radical method of enforcement.

The two-year period calculation is estimated to provide enough data to assess CR's applicability and effectiveness, and allow for iterations accordingly. The 1975 *Georgia's Restitution Center Program*, and the 1977 *Georgia's Non-Residential Sole Sanction Restitution Program*¹⁶² could serve as comprehensive blueprints on how to make adjustments during the pilot program.

¹⁶² For a description of this program, see Bill Read, *Restitution As it Meets Public Expectations in Georgia's Restitution Programs* (Atlanta, GA: American Correctional Association Congress, 1977), Office of Justice Programs, National Criminal Justice Reference Service: NCJ 045621, May 18, 2013, <https://www.ncjrs.gov/pdffiles1/Digitization/45621NCJRS.pdf>.

If the pilot period is a success, and preliminary data shows CR's effectiveness as a tool against criminal immigration recidivism, the next challenge will be to implement it across the other category of criminal immigration recidivists (i.e., the violent population). Whether to impose it as a one-time option, in addition to in lieu of prosecution, or more than once, will have to be decided based on metrics' results. It is in this area in which leadership, advocacy, bi-partisan collaboration, and the nation's risk-tolerance will be really put to the test. Implementing CR within the violent criminal immigration recidivist population will not only challenge traditional enforcement strategies, but also its failure or success will serve to re-focus Mission 3's "prevention of unlawful immigration" goals and objectives.

Although notable differences exist, the similarities and inter-relationship between the criminal justice and immigration enforcement systems are undeniable. The latter strives to be known as a "civil system," which is completely unrelated to the former. Immigration enforcement handles the administrative side of immigration law (removals) as opposed to the criminal side, which is enforced by DOJ (prosecutions). Implementing an alternative sanction, such as CR within the immigration enforcement system, will be another step in further separating the two systems, and thus, achieving this distinction.

Restitution is underutilized in the criminal justice system. CR will represent an innovative enforcement strategy within the immigration enforcement system based on "old theory." According to the NCJRS, "Despite the passage of federal and state legislation, restitution remains one of the most under enforced and underused alternative sanction [emphasis added]. Evidence of this is apparent both in decisions to order restitution and in efforts to monitor, collect, and disperse restitution payments..."¹⁶³

¹⁶³ The National Criminal Justice Reference Service, "New Directions from the Field: Restitution," Chapter 15 (archives), January 29, 2013, https://www.ncjrs.gov/ovc_archives/directions/pdfxtxt/chap15.txt.

The pilot program's main outcome measures may be surprising across all spectrums; for example, using recidivism rates as one of the main measures of success could be misleading because tracking procedures may affect CR's outcomes. That is, currently, non-citizens are not tracked after removal. As CR will require tracking, the process will inevitably affect the overall impact of the strategy on the results.

Based on the pilot's outcomes, deciding to re-grant CR, and if so, how many times before attempting prosecution, may be challenging; thus, perpetuating the status quo. Similarly, CR will require that DHS and policymakers reconsider the current priority given to criminal immigration recidivists; after all, they are a special population, and managing it requires innovative approaches, whether such are already authorized under existing law or need to be. If, on the other hand, at this moment, criminal immigration recidivism is not as critical to national security as other priorities, CR should still be tested to show DHS' proactive efforts to develop and implement fiscally conscientious strategies in times of economic austerity.

The upcoming section offers suggestions on a future area of research related to immigration enforcement and recidivism.

B. FUTURE RESEARCH

1. Terrorists and Immigration Recidivism

For the purposes of charging removal offenses, alien terrorists are listed as a separate category from criminal aliens. The INA,¹⁶⁴ as amended, Section 237 (a) (4) (B), *General Classes of Deportable Aliens, Security and Related Grounds*, refers to Section 212 (a) (3) (B) and (F) for a list of what constitute terrorist activities, and for a definition of terrorist representatives, and terrorist organizations. However, a definition of who is an alien terrorist is not provided.

¹⁶⁴ INA § 237 (a) (4) (B).

Although categorized separately and distinct from each other under the INA, criminal and terrorist aliens fall under the same priority category for immigration enforcement (the highest in priority 1). Alien terrorists' removals do not appear to be counted as a separate category, but appear to be cited within criminal removal numbers. As a result, the rate of recidivism among previously removed alien terrorists in comparison to that of criminal immigration recidivists is unknown.

One of the USAOs' strategic goals is to "prevent terrorism and enforce the rule of law." Toward this end, DOJ requested USD\$ 52,788,000 in FY 2013 to prosecute terrorists; the author assumes citizenship status is irrelevant towards achieving this goal. The critical issue to consider is the reoffending rates of non-citizens removed due to a terrorism conviction. Assuming that not all terrorists are convicted to life in prison, not all are U.S. citizens, and that at some point, most are removed upon completion of any criminal sentence for terrorism, why is it uncommon to read or hear about a "re-apprehended terrorist who was previously removed?"

2. Interventions

Incidence or precedent of recidivism among previously removed terrorists is unknown. This lack of data may be due to the manner in which DHS accounts for these particular removals. As the author previously mentioned, terrorists and criminal non-citizens are included in the same priority category.

Another possibility may be that prosecutions and removals have a deterrent effect among previously removed non-citizen terrorists not seen within the criminal immigration recidivist population.

Another possibility may be that interventions to reduce or eliminate recidivism among previously removed alien terrorists are classified, although this research did not uncover evidence of such practice.

Yet, another possibility may be that interventions against this population—whether secret or not—are so effective that illegal immigration recidivism ceases after removal.

Further research should explore whether the lack of research on this subject is due to lack of interest in the area, a matter of data access, collection, or privacy issues, or a matter of choosing to harden one target over another based on case-by-case risks assessments.

Moreover, further research in this area will serve to explore this subject-matter area better. Finding out if a recidivism problem exists within this population will be significant, as it will encourage an interest in further research and comparisons between this and the criminal immigration recidivists populations; similarly, finding out the lack of a problem will also be significant, as it will uncover strategic best practices that may be replicated in other offender categories.

3. Conclusion

CR is not a benefit or relief from removal, and must be understood in this manner. CR in no way provides impunity to criminal immigration recidivists. The best way to understand CR's foundations is to interpret it as a form of prosecutorial discretion, but with a focus on “benefiting” the American taxpayer, not on “rewarding” the offender. CR is an enforcement strategy geared towards desistance of criminal immigration recidivism from a financial accountability, rather than from a pure “punitive” perspective.

CR's goal is to apply an unconventional management approach to a persistent threat, i.e., criminal immigration recidivism.

CR strikes a balance between the need for urgency to tend to this matter, and the need for well developed, and ethical strategies. The CR strategy is meant to strengthen Mission 3's “prevention of unlawful immigration” goals and objectives; thus, furthering DHS homeland security principles.

APPENDIX A. LIST OF CRIMINAL OFFENSES ELIGIBLE FOR IMMIGRATION ENFORCEMENT ACTION

Level 1 Crimes (NCIC Code)	Level 2 Crimes (NCIC Code)	Level 3 Crimes (NCIC Code)
National Security* (0101-0199, 1602, 5204-5299)	Arson (2001-2099)	Military (0201, 0299)
Homicide (0901-0999)	Burglary (2201-2299)	Immigration (0301-0399)
Kidnapping (1001-1099)	Larceny (2301-2399)	Extortion (2102-2199)
Sexual Assault (1101-1199)	Stolen Vehicles (2401-2411, 2499)	Damage Property (2901-2903)
Robbery (1201-1299)	Forgery (2501-2599)	Family Offenses (3801, 3804-3899)
Aggravated Assault (1301-1399)	Fraud (2601-2699)	Gambling (3901-3999)
Threats (1601)	Embezzlement (2701-2799)	Commercialized Sex Offenses (4001-4099)
Extortion –Threat to Injure Person (2101)	Stolen Property (2801-2899)	Liquor (4101-4199)
Sex Offenses (3601-3699)	Damage Property w/Explosive (2904-2906)	Obstructing the Police (4802-4899)
Cruelty Toward Child, Wife (3802,3803)	Traffic Offenses (5402-5499)	Bribery (5101-5199)
Resisting an Officer (4801)	Smuggling (5801-5899)	Health and Safety (5501-5599)
Weapon (5201-5203)	Money Laundering (6300)	Civil Rights (5699)
Hit and Run (5401)	Property Crimes (7199)	Invasion of Privacy (5701-5799)
Drugs (Sentence >1 year)	Drugs (Sentence < 1 year)	Elections Laws (5999)
		Conservation (6201-6299)
		Public Order Crimes (7399)
*National Security violations include the NCIC coded offenses of Sabotage, Sedition, Espionage, and Treason (0101-0199); Terrorist Threats (1602); and Weapons, Arson/Incendiary Devices, and Bombing offenses (5204-5299).		

Table 12. List of Criminal Offenses Eligible for Immigration
Enforcement Action¹⁶⁵

¹⁶⁵ U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, "National Crime Information Center (NCIC)," December 12, 2013, <http://www.fas.org/irp/agency/doj/fbi/is/ncic.htm>. The FBI describes NCIC as "A computerized index of criminal justice information (i.e.- criminal record history information, fugitives, stolen properties, missing persons). It is available to Federal, state, and local law enforcement and other criminal justice agencies and is operational 24 hours a day, 365 days a year; the purpose for maintaining the NCIC system is to provide a computerized database for ready access by a criminal justice agency making an inquiry, and for prompt disclosure of information in the system from other criminal justice agencies about crimes and criminals. This information assists authorized agencies in criminal justice and related law enforcement objectives, such as apprehending fugitives, locating missing persons, locating and returning stolen property, as well as in the protection of the law enforcement officers encountering the individuals described in the system."

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APPENDIX B. DEFINITION OF KEY IMMIGRATION ENFORCEMENT TERMS

These definitions can be found in various sources.¹⁶⁶

Border removal: An individual removed by ICE who is apprehended while attempting to illicitly enter the United States at or between the ports of entry by a Customs and Border Protection (CBP)¹⁶⁷ officer or agent. These individuals are also referred to as “recent border crossers.”

Criminal alien: An individual convicted in the United States for one or more criminal offenses. This does not include civil traffic offenses.

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

Detention: The seizure and incarceration of an alien in order to hold him/her while awaiting judicial or legal proceedings or return transportation to his/her country of citizenship.

Inadmissible alien: An alien seeking admission into the United States who is ineligible to be admitted according to the provisions of INA § 212.

Immigration fugitives: An individual who has failed to leave the United States based upon a final order of removal, deportation or exclusion, or who has failed to report to ICE after receiving notice to do so.

¹⁶⁶ John F. Simanski and Lesley M. Sapp, “Immigration Enforcement Actions 2012, Box 1. Definitions of Immigration Enforcement Terms,” *Department of Homeland Security, Office of Immigration Statistics*, December 2013, 2, http://www.dhs.gov/sites/default/files/publications/ois_enforcement_ar_2012_0.pdf; John F. Simanski and Lesley M. Sapp, “Immigration Enforcement Actions 2011,” *Department of Homeland Security, Office of Immigration Statistics*, September 2012, 2, http://www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement_ar_2011.pdf; Rosenblum and Kandel, *Interior Immigration Enforcement: Programs Targeting Criminal Aliens*.

¹⁶⁷ CBP is another agency within DHS. It includes Customs and Border Protection officers (i.e., at ports of entries, such as airports, seaports and land borders), and Border Patrol agents throughout the United States and its possessions.

Interior removal: An individual removed by ICE who is identified or apprehended in the United States by an ICE officer or agent. This category excludes those apprehended at the immediate border while attempting to unlawfully enter the United States.

Other removable alien: An individual who is not confirmed to be a convicted criminal, recent border crosser or fall under another ICE civil enforcement priority category. This category may include individuals removed on national security grounds or for general immigration violations.

Previously removed alien: An individual previously removed or returned who has re-entered the country illegally again.

Reinstatement of final removal order: The removal of an alien based on the reinstatement of a prior removal order, where the alien departed the United States under an order of removal and illegally re-entered the United States [INA § 241(a)(5)]. The alien may be removed without a hearing before an immigration court.

Removal: The compulsory and confirmed movement of an inadmissible or deportable alien out of the United States based on an order of removal. An individual who is removed may have administrative or criminal consequences placed on subsequent re-entry owing to the fact of the removal.

Return: The confirmed movement of an inadmissible or deportable alien out of the United States not based on an order of removal.

APPENDIX C. AMOUNT AND PERCENT OF OFFENDERS RECEIVING RESTITUTION AS A SOLE SANCTION OR IN COMBINATION IN U.S. DISTRICT COURT

PRIMARY OFFENSE	TOTAL	NO FINE OR RESTITUTION ORDERED		RESTITUTION ORDERED/NO FINE		FINE ORDERED/ NO RESTITUTION		BOTH FINE & RESTITUTION ORDERED		AMOUNT OF PAYMENT ORDERED ²			
		N	%	N	%	N	%	N	%	Total	Mean	Median	Sum
TOTAL	84,147	65,944	78.4	10,905	13.0	6,370	7.6	928	1.1	17,291	\$778,899	\$7,458	\$13,467,943,601
Murder	65	36	55.4	24	36.9	5	7.7	0	0.0	27	\$249,993	\$3,616	\$6,749,813
Manslaughter	50	20	40.0	30	60.0	0	0.0	0	0.0	25	\$12,912	\$3,464	\$322,804
Kidnapping/Hostage Taking	49	22	44.9	23	46.9	4	8.2	0	0.0	24	\$397,867	\$6,062	\$9,548,813
Sexual Abuse	428	341	79.7	58	13.6	28	6.5	1	0.2	80	\$13,894	\$2,449	\$1,111,510
Assault	713	492	69.0	157	22.0	59	8.3	5	0.7	198	\$34,177	\$4,000	\$4,787,015
Robbery	852	150	17.6	675	79.2	14	1.6	13	1.5	693	\$22,916	\$5,095	\$15,880,466
Arson	48	8	16.7	39	81.3	1	2.1	0	0.0	40	\$2,263,854	\$170,554	\$90,554,146
Drugs - Trafficking	24,730	22,373	90.5	430	1.7	1,902	7.7	25	0.1	2,189	\$49,511	\$2,000	\$108,378,682
Drugs - Communication Facility	373	327	87.7	8	2.1	38	10.2	0	0.0	40	\$4,245	\$1,000	\$169,818
Drugs - Simple Possession	1,450	1,178	81.2	6	0.4	261	18.0	5	0.3	272	\$1,234	\$1,000	\$335,632
Firearms	8,103	6,697	82.6	667	8.2	715	8.8	24	0.3	1,321	\$55,271	\$2,000	\$73,013,023
Burglary/B&E	42	16	38.1	24	57.1	1	2.4	1	2.4	25	\$13,850	\$1,450	\$346,252
Auto Theft	61	22	36.1	35	57.4	3	4.9	1	1.6	36	\$65,854	\$15,586	\$2,370,753
Larceny	1,396	184	13.2	858	61.5	234	16.8	120	8.6	1,183	\$110,510	\$13,539	\$130,733,640
Fraud	8,627	2,273	26.3	5,493	63.7	494	5.7	367	4.3	6,029	\$1,950,652	\$95,348	\$11,760,483,477
Embezzlement	325	21	6.5	255	78.5	21	6.5	28	8.6	296	\$135,982	\$27,261	\$40,250,735
Forgery/Counterfeiting	876	275	31.4	520	59.4	48	5.5	33	3.8	582	\$49,186	\$3,520	\$28,626,406
Bribery	229	86	37.6	76	33.2	52	22.7	15	6.6	136	\$332,232	\$34,735	\$45,183,585
Tax	608	134	22.0	329	54.1	76	12.5	69	11.3	462	\$589,444	\$127,728	\$272,323,293
Money Laundering	822	534	65.0	162	19.7	114	13.9	12	1.5	259	\$2,618,548	\$84,598	\$678,203,935
Racketeering/Extortion	910	593	65.2	181	19.9	121	13.3	15	1.6	297	\$134,730	\$5,539	\$40,014,920
Gambling/Lottery	45	28	62.2	1	2.2	15	33.3	1	2.2	17	\$42,404	\$2,000	\$720,867
Civil Rights	53	39	73.6	10	18.9	2	3.8	2	3.8	13	\$5,193	\$600	\$67,509
Immigration	26,546	26,184	98.6	45	0.2	309	1.2	8	0.0	329	\$22,026	\$2,000	\$7,246,570
Child Pornography	2,013	1,537	76.4	214	10.6	226	11.2	36	1.8	431	\$17,492	\$2,677	\$7,539,093
Prison Offenses	429	403	93.9	3	0.7	23	5.4	0	0.0	24	\$1,469	\$641	\$35,256
Administration of Justice Offenses	1,338	1,018	76.1	106	7.9	208	15.5	6	0.4	288	\$181,581	\$2,518	\$52,295,216
Environmental/Wildlife	204	54	26.5	14	6.9	96	47.1	40	19.6	147	\$13,815	\$5,000	\$2,030,861
National Defense	114	90	78.9	3	2.6	21	18.4	0	0.0	24	\$34,766	\$3,000	\$834,385
Antitrust	20	0	0.0	1	5.0	19	95.0	0	0.0	20	\$42,750	\$20,000	\$855,000
Food & Drug	60	27	45.0	5	8.3	24	40.0	4	6.7	33	\$75,051	\$5,000	\$2,476,679
Other Miscellaneous Offenses	2,568	782	30.5	453	17.6	1,236	48.1	97	3.8	1,751	\$48,232	\$500	\$84,453,447

Table 13. Amount and Percent of Offenders Receiving Restitution As a Sole Sanction or in Combination in U.S. District Court.¹⁸⁴

¹⁸⁴ United States Sentencing Commission, "Offenders Receiving Fines and Restitution in Each Primary Offense Category U.S. Sentencing Commission's 2012 Sourcebook of Federal Sentencing Statistics—Table 15 (Online)," June 14, 2013, http://www.ussc.gov/Research_and_Statistics/Annual_Reports_and_Sourcebooks/2012/Table15.pdf.

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