



Immigration Enforcement in the United States

CRS Presentation for
The House Committee on the Judiciary
April 27, 2006

What is Immigration Enforcement?

- Authority
- Interior v. Border
- Select Major Legislation
 - Immigration Reform and Control Act of 1986 (IRCA; P.L. 99-603);
 - Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322);
 - Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA; P.L. 104-208);
 - USA Patriot Act of 2001 (P.L. 107-56);
 - Enhanced Border Control and Visa Reform Act of 2002 (P.L. 107-173);
 - Homeland Security Act of 2002 (P.L. 107-296);
 - National Intelligence Reform Act of 2004 (P.L. 108-458); and
 - REAL ID Act of 2005 (P.L. 109-13).

Aspects of Immigration Enforcement

- Removal
 - Detention
 - Alien Smuggling and Trafficking
 - Fraud Investigations
 - Worksite Enforcement
 - Enforcement at Ports of Entry (POEs)
 - Enforcement between POEs
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Removal/Deportation

- An alien is “removable” if: (1) the alien has not been admitted to the United States and is inadmissible under INA §212; or (2) the alien has been admitted to the United States and is deportable under INA §237
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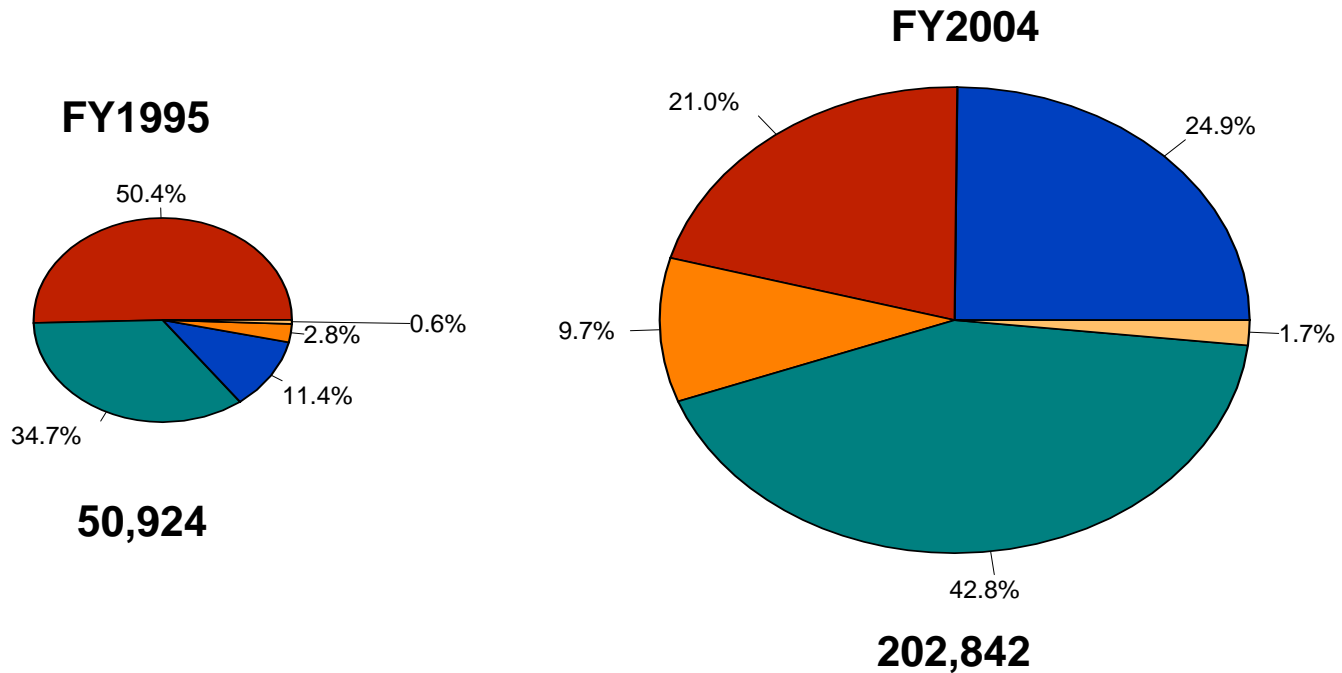
Grounds for Deportation

- Inadmissible at time of entry
 - Violate immigration status
 - Certain criminal offenses (aggravated felony, crime of moral turpitude)
 - Failure to register (if required under law)
 - Document fraud
 - Security risk
 - Public charge within 5 years of entry
 - Unlawful voting
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Formal Removal Proceedings (INA Sec. 240)

- Notice to appear
 - Detention or release on bond or own recognizance
 - Master calendar hearing
 - Executive Office of Immigration Review (EOIR), immigration judge
 - Individual merits hearing
 - Appeals
 - EOIR, Board of Immigration Appeals (BIA)
 - Judicial review
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Reason for Formal Removal: FY1995 and FY2004



Source: DHS Office of Immigration Statistics, *FY2004 Yearbook of Immigration Statistics*, Jan. 2006.

Expedited Removal (ER)

- Aliens entering without proper documentation or with willful misrepresentation of facts are inadmissible, and shall be removed without any further hearings. (INA §235)
 - Under law *may* be applied to any alien who was not admitted, and cannot prove that they have been present in the U.S. for 2 years.
 - Aliens subject to ER are subject to mandatory detention
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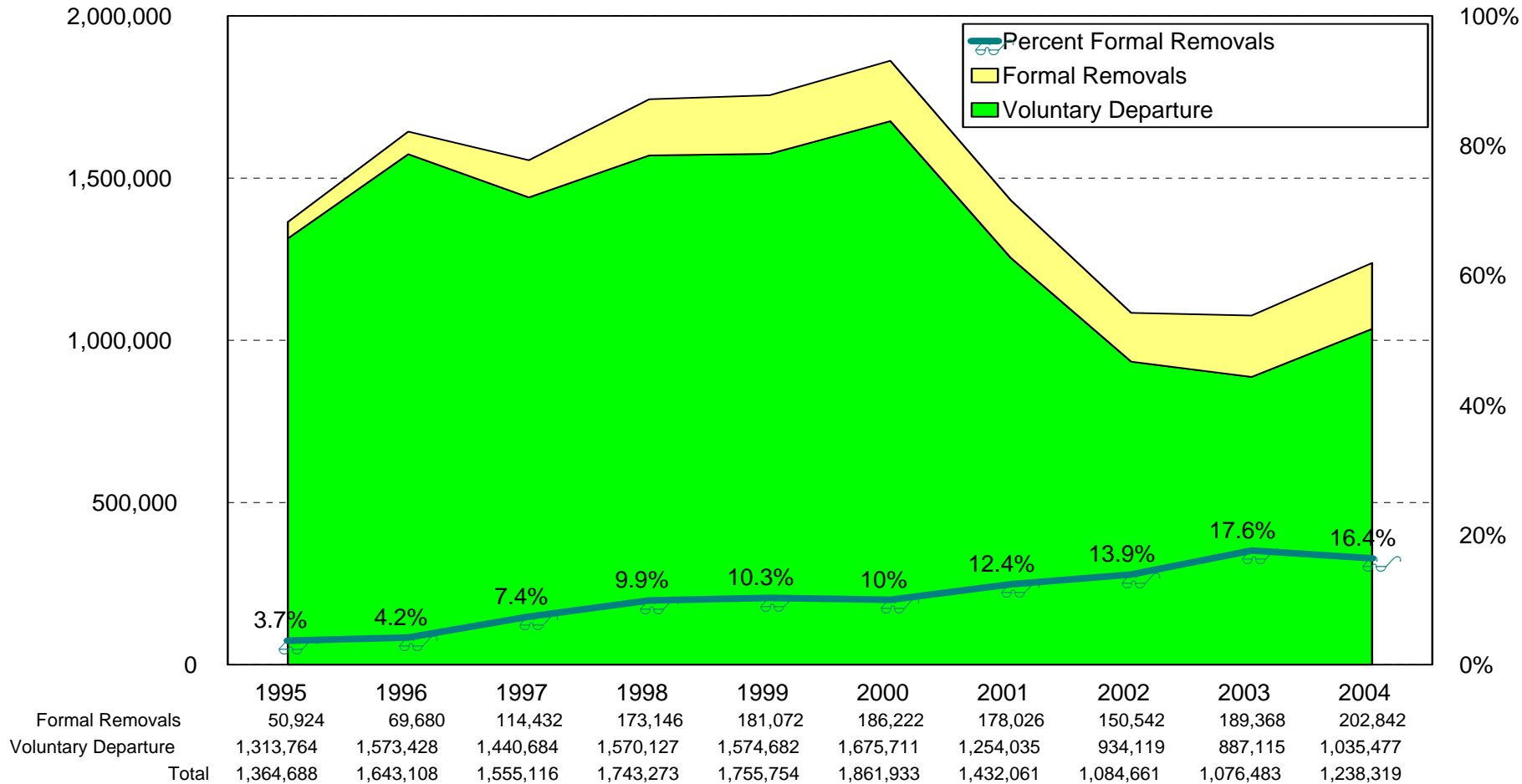
Expedited Removal Has Been Applied to...

- Aliens at ports of entry (1997)
 - Aliens arriving by sea (2002)
 - Aliens within 100 miles of the Southwest land border who cannot show that they have been present for 14 days. (Aug. 2004, fully implemented Sept. 2005)
 - Aliens within 100 miles of *all* land borders who cannot show that they have been present for 14 days. (Jan. 2006)
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Voluntary Departure

- Majority of removals
 - At border, only Mexicans and Canadians
 - Interior, all nationalities
 - Alien must request
 - At alien's expense
 - Different requirements for before and after completion of removal hearing.
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Type of Removal: FY1995-FY2004

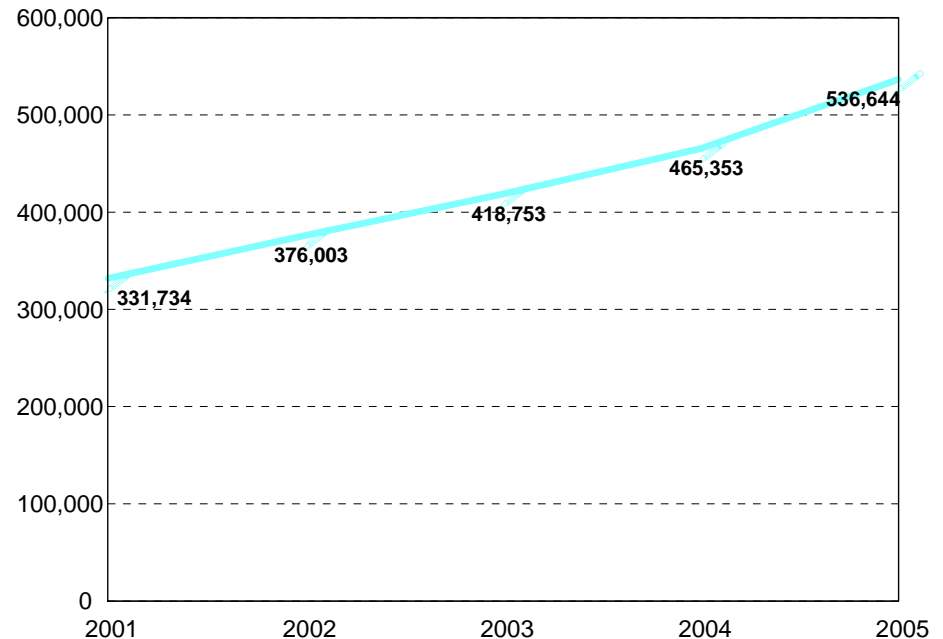


Source: DHS Office of Immigration Statistics, *FY2004 Yearbook of Immigration Statistics*, Jan. 2006, p. 159.

Absconders

- Aliens with final orders of deportation that are unconfirmed to have left the country
- Absconder Initiative

Number of Alien Absconders:
FY2001-FY2005



Source: CRS presentation of unpublished data from DHS.

Selected Removal Issues

- Long-term residents
 - Unauthorized alien children
 - Executive Office of Immigration Review (EOIR)
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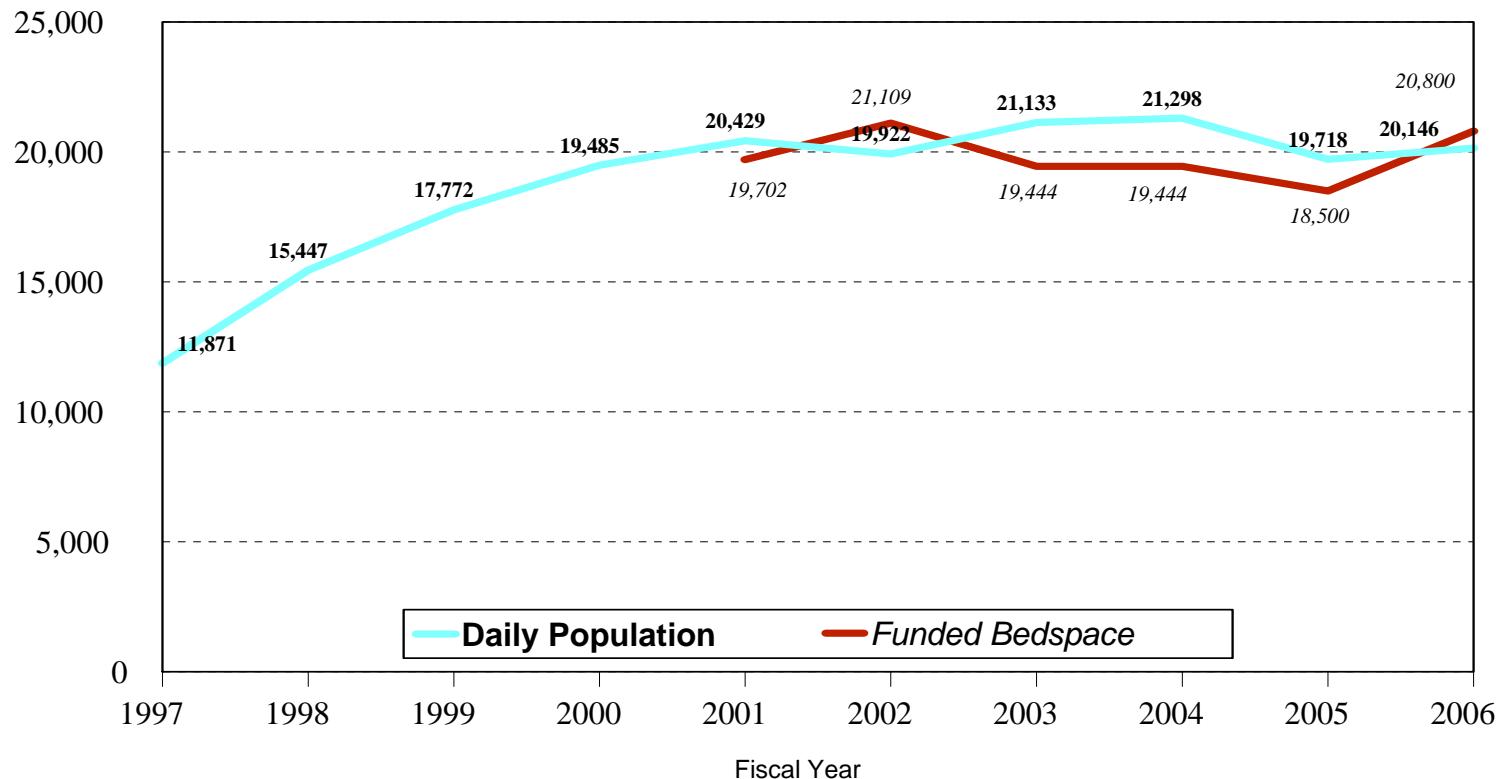
Detention

- INA § 236 allows detention of any alien while awaiting determination of removal
 - The Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRIRA, P.L. 104-208) established mandatory detention for certain categories of aliens
 - If not subject to mandatory detention
 - Release on bond, parole, own recognizance
 - Continued detention
 - Released aliens can be re-detained at any time
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Aliens Subject to Mandatory Detention

- Criminals
 - Terrorists
 - Expedited removal
 - Final orders of deportation
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- June 2005, 87% of detainees were mandatory
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Daily Detention Population and Funded Bedspace: FY1997-FY2006



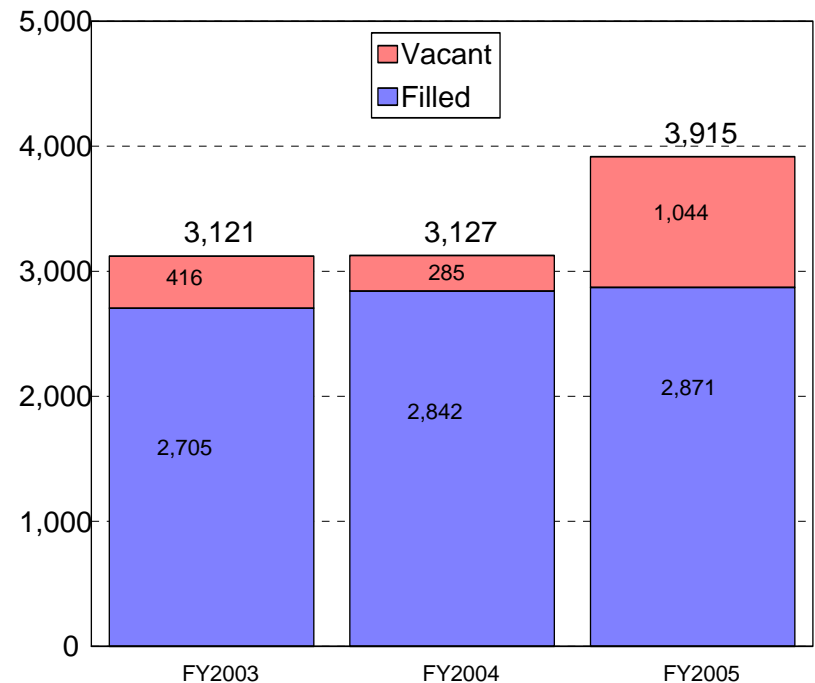
Source: FY1997 through FY2002 CRS presentation of published DHS data. FY2004 through FY2006 CRS presentation of unpublished DHS data.

Note: FY2006 is the average daily population in detention through January 30, 2006.

Detention Issues

- Mandatory detention
 - In FY2005, 60% nondetained aliens failed to appear
 - 18% of released aliens with receive final orders left country
- Unaccompanied minors
- Resources
 - Coordination
 - Effect on CBP and ICE initiatives

Number of Law Enforcement Positions in Office of Detention and Removal: FY2003-FY2005



Source: CRS presentation of unpublished data from DHS.

Alien Smuggling

- INA §274 prohibits and specifies penalties for any person who
 - attempts to bring in an alien at any place other than a POE;
 - knowing or in reckless disregard that an alien is illegally present transports the alien within the United States;
 - knowing or in reckless disregard that an alien is illegally present, conceals, harbors or shields the alien; or
 - encourages or induces an alien to come to the United States, knowing or in reckless disregard that the alien will be illegally present.
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Alien Smuggling (continued)

- Increasing complexity of smuggling organizations
 - Collateral crimes and damage
 - Cases include language and humanitarian issues

 - Selected Issues
 - Coordination between ICE and CBP
 - Controlled delivery
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Human Trafficking

- An estimated 14,500 to 17,500 people are trafficked into the United States annually
 - VTVPA defines a “severe form of trafficking in persons” as
 - sex trafficking in which a commercial sex act is induced by force, fraud or coercion or in which the person induced to perform such act has not attained 18 years of age,
 - the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
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Human Trafficking (continued)

- Trafficked aliens are victims
 - Selected Issues
 - Cooperation of sending countries
 - Information
 - T-visas
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Defining Immigration Fraud

- Immigration-related document fraud includes the counterfeiting, sale, and/or use of identity documents or "breeder documents" as well as alien registration documents, work authorizations, passports, or visas to circumvent immigration laws.
 - Benefit fraud includes willful misrepresentation of a material fact to obtain an immigration benefit in the absence of lawful eligibility for that benefit.
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Measuring Immigration Fraud

- Reportedly widespread, but pervasiveness not known
 - Large-scale black market enterprises of counterfeit immigration documents and "breeder" documents grew following IRCA of 1986
 - Reasonable to assume that most of the 11-12 million unauthorized resident aliens are committing document fraud
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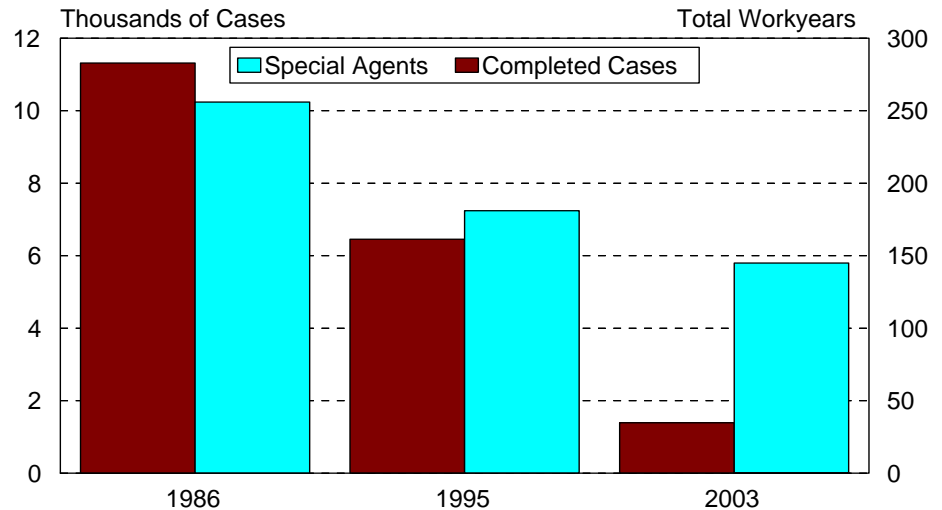
Investigating Immigration Fraud

- Facilitators, i.e., those who sell, distribute, or manufacture counterfeit or altered documents
 - Criminal organizations that broker large-scale illegal schemes such as sham marriage rings or bogus job offers
 - Individual immigration benefit applications
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Declining Fraud Investigations

- FY1986 -- There were 256 special agent workyears, completing 11,316 fraud cases.
- FY1995 -- There were 181 special agent workyears, completing 6,455 cases.
- FY2003 -- There were 145 special agent workyears, completing 1,389 cases

Comparison of Special Agent Workyears and Completed Cases for Selected Years

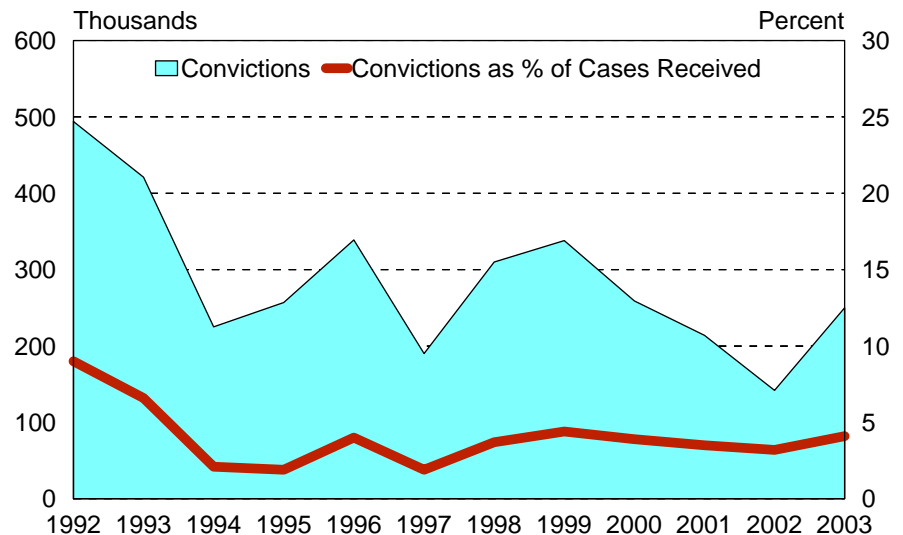


Source: CRS analysis of DHS Office of Immigration Statistics PAS data.

Decreasing Fraud Prosecutions

- Successful prosecutions of fraud cases declined from 494 convictions in FY1992 to 250 convictions in FY2003.
- The number of convictions compared to the number of fraud cases received annually exhibited a similar trend, falling from 9.0% in FY1992 to 4.1% in FY2003.

Total Fraud Convictions and Convictions per Cases Received, FY1992-FY2003



Source: CRS analysis of DHS Office of Immigration Statistics PAS data.

Fraud: Evolving Issues

- Well-documented lack of coordination between USCIS and ICE in the area of fraud and national security investigations.
 - ICE reportedly will not pursue single cases of benefit fraud.
 - USCIS had to establish the Office of Fraud Detection and National Security to handle national security and criminal "hits" on aliens and to identify systemic fraud -- duties formerly performed by the INS enforcement arm in ICE.
 - DHS Inspector General found problems in the USCIS background checks.
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Fraud: Concluding Comments

- Some maintain that going after purveyors who primarily are providing false identification so that unauthorized aliens can work should not be a top priority given limited enforcement resources.
 - Others argue that it is critical to investigate the black market in counterfeit documents and benefit fraud because it is especially important to international terrorists, organized crime syndicates, and alien smuggling rings -- all of whom rely on fraudulent documents to minimize detection.
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Prohibitions on Unlawful Employment

- Prohibitions on unlawful employment added to the INA by IRCA (1986).
 - It is unlawful to hire, to continue to employ, or to recruit or refer for a fee an alien knowing the alien is not authorized to work.
 - It is unlawful to hire an individual without verifying employment eligibility by examining documents and completing I-9 forms.
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Worksite Enforcement: Policy Changes

- 1988: Beginning of full enforcement
 - Early and mid-1990s: Periods of strengthened enforcement
 - Late 1990s: Focus on alien smuggling and other criminal violations
 - Post Sept. 11, 2001: Focus on critical infrastructure facilities
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Worksite Enforcement Program Performance: FY1999-FY2003

Fiscal Year	Criminal Employer Cases Presented for Prosecution	Notices of Intent to Fine (NIFs) Issued	Fine Amounts Collected
1999	182	443	\$3,690,575
2000	109	213	\$2,234,181
2001	239	141	\$1,599,323
2002	21	73	\$509,835
2003	4	16	\$212,322

Source: CRS presentation of data from Department of Homeland Security.

Worksite Enforcement: Employer Fines Imposed and Collected

Fiscal Year	Number of Final Orders	Fine Amounts Collected
1995	909	N/A
1996	823	N/A
1997	778	N/A
1998	535	N/A
1999	297	\$3,690,475
2000	180	\$2,248,193
2001	78	\$1,705,359
2002	13	\$585,224
2003	124	\$253,706
2004	0	\$118,528
2005	10	\$62,232

Source: CRS presentation of data from Department of Homeland Security.

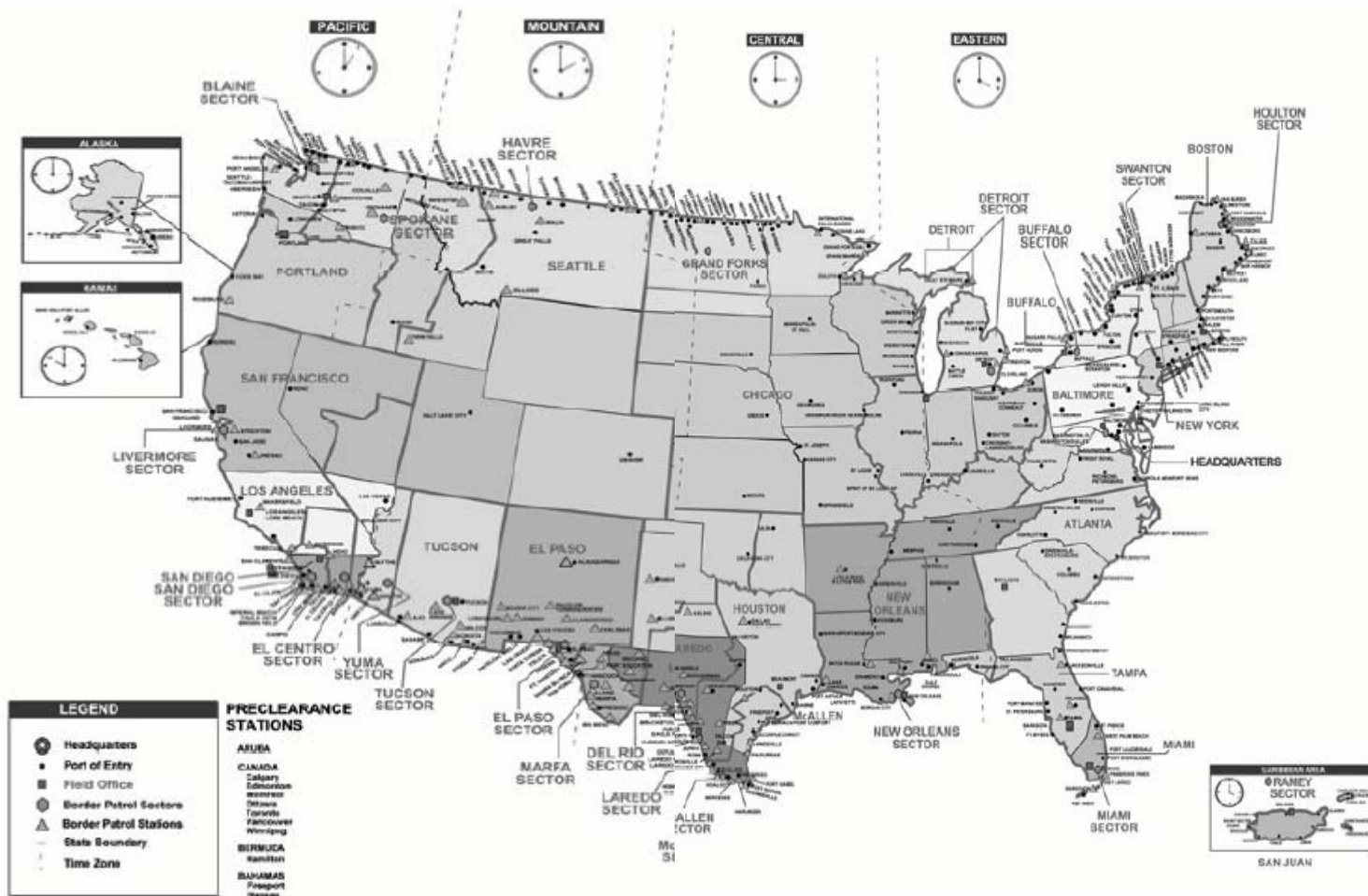
Worksite Enforcement: Policy Issues and Options

- Resources
 - Employment Eligibility Verification Process
 - Role of Other Federal Agencies
 - Employer Penalties
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Immigration Enforcement at the Border

- DHS Secretary has the “power and duty to control and guard the boundaries and borders of the United States against the illegal entry of aliens.” INA §103(a)(5)
 - Within DHS, Customs and Border Protection (CBP) is the lead federal agency charged with securing our nation’s land borders.
 - At official Ports of Entry (POE) CBP Officers inspect all individuals attempting to enter the country.
 - Between POE United States Border Patrol (USBP) Agents patrol the border to apprehend individuals attempting to enter the country illegally.
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CBP POEs and Border Patrol Sectors



Source: CBP Performance and Annual Report - Fiscal Year 2004

Enforcement At Ports of Entry

- There are more than 300 Official land, air, and sea POE
 - INA §234 authorizes the Secretary to designate POE
 - INA §235 requires that all aliens presenting themselves for admission be inspected by an Immigration Officer
 - INA §287 authorizes Immigration Officers to search, interrogate, and arrest unauthorized aliens
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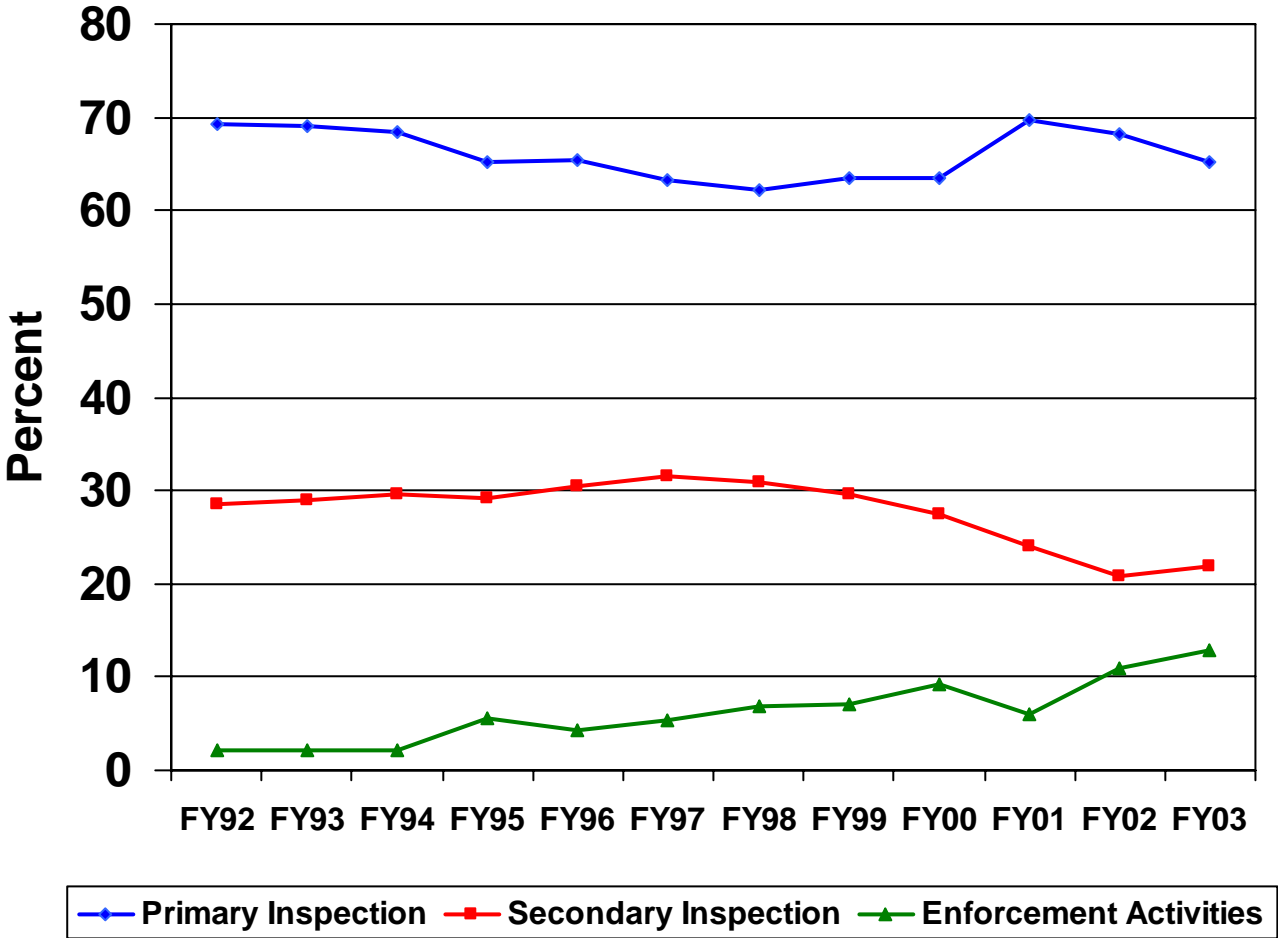
Primary Inspection

- When travelers arrive into the United States, they must undergo a primary inspection undertaken by a CBP Officer
 - The purpose of the inspection is to determine the admissibility of a traveler to the United States
 - At all POE, certain categories of aliens' photographs and two index fingerprints are entered into the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) program to confirm their identity.
 - At all POE, all aliens' information is run through the Interagency Border Inspection System (IBIS)
 - A decision is made whether to admit the individual or remand them to a secondary inspection
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Secondary Inspection

- If the CBP Officer during the primary inspection is not satisfied that the individual has a legal right to enter the country, they can require a secondary inspection.
 - Secondary inspection includes:
 - Extensive questioning;
 - Running the individual's fingerprints through various databases, including the FBI National Crime Information Center (NCIC) database; and
 - Careful Inspection of documentation, sometimes by contacting the Forensic Document Laboratory.
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Percentage of Inspector Hours by Activity



Source: CRS Analysis of DHS's PAS Data

Cases Referred to Investigations for Prosecution and Interception of Smuggled Aliens, Narcotics, and Contraband: FY2000-FY2003

Year	Cases Referred	Intercepted Aliens	Intercepted Narcotics	Intercepted Contraband
2000	636	19,857	3,764	N.A.
2001	1,676	31,261	4,892	320
2002	1,782	32,173	3,913	945
2003	1,028	34,473	1,988	1,359

Source: CRS analysis of PAS data.

Note: Contraband includes weapons and explosives. Data on contraband not available for FY2000.

Selected Issues at POE

- Adequacy of Infrastructure
 - Training of Personnel
 - One Face at the Border
 - Database Technology and Interoperability
 - US-VISIT Exit Control
 - Western Hemisphere Travel Initiative
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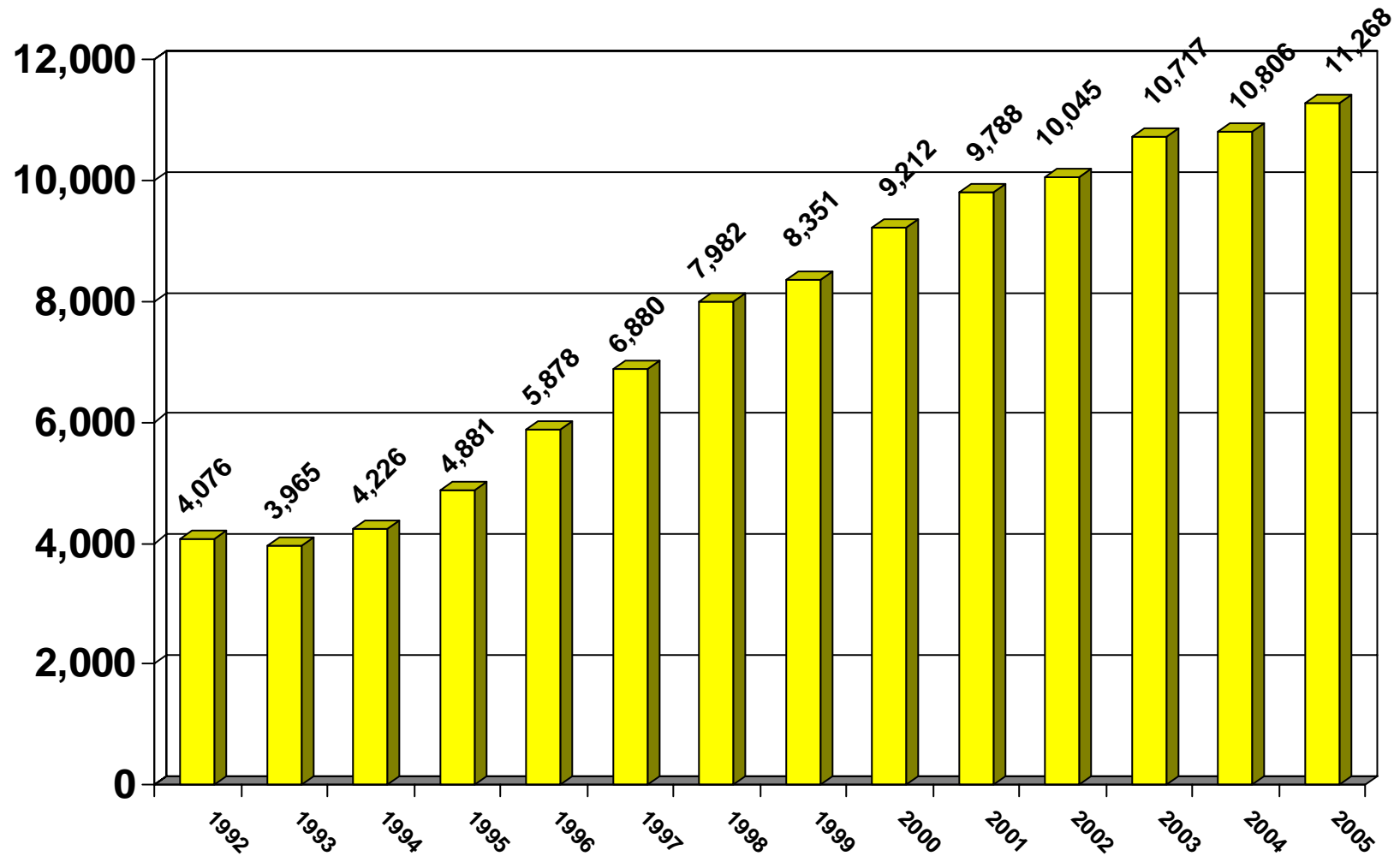
What does the USBP Patrol?

- Area within *reasonable distance* of the U.S. border (INA §287a)
 - 1,952 Mile Southwest border
 - 3,000 Mile Northern border (excluding Alaska)
 - Maritime border around the Gulf Coast, Florida and Puerto Rico
 - Regulations define *reasonable distance* to be within 100 miles of the border, at the chief patrol officer's discretion
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Border Patrol Strategy: Prevention Through Deterrence

- In the early 1990s there was a growing sense that illegal immigration along the Southwest border was out of control.
 - The USBP began deploying agents and other resources directly on the border along population centers to deter illegal entry.
 - Congress authorized and appropriated funding for additional agents and other resources
 - This had the effect of pushing illegal entry away from populated centers to more remote areas.
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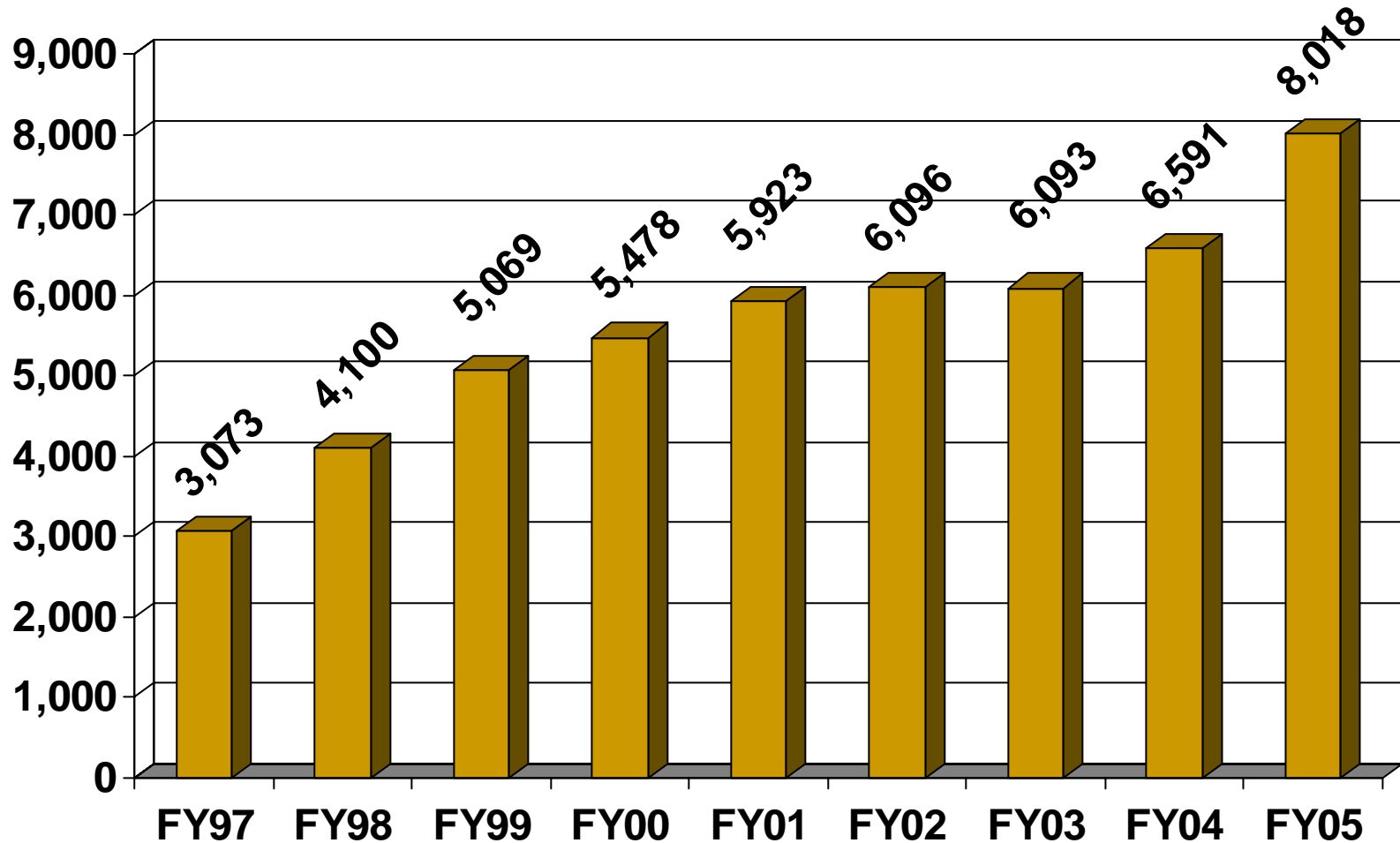
Border Patrol Agents (includes Pilots)



Source: CRS analysis of unpublished Customs and Border Protection data.

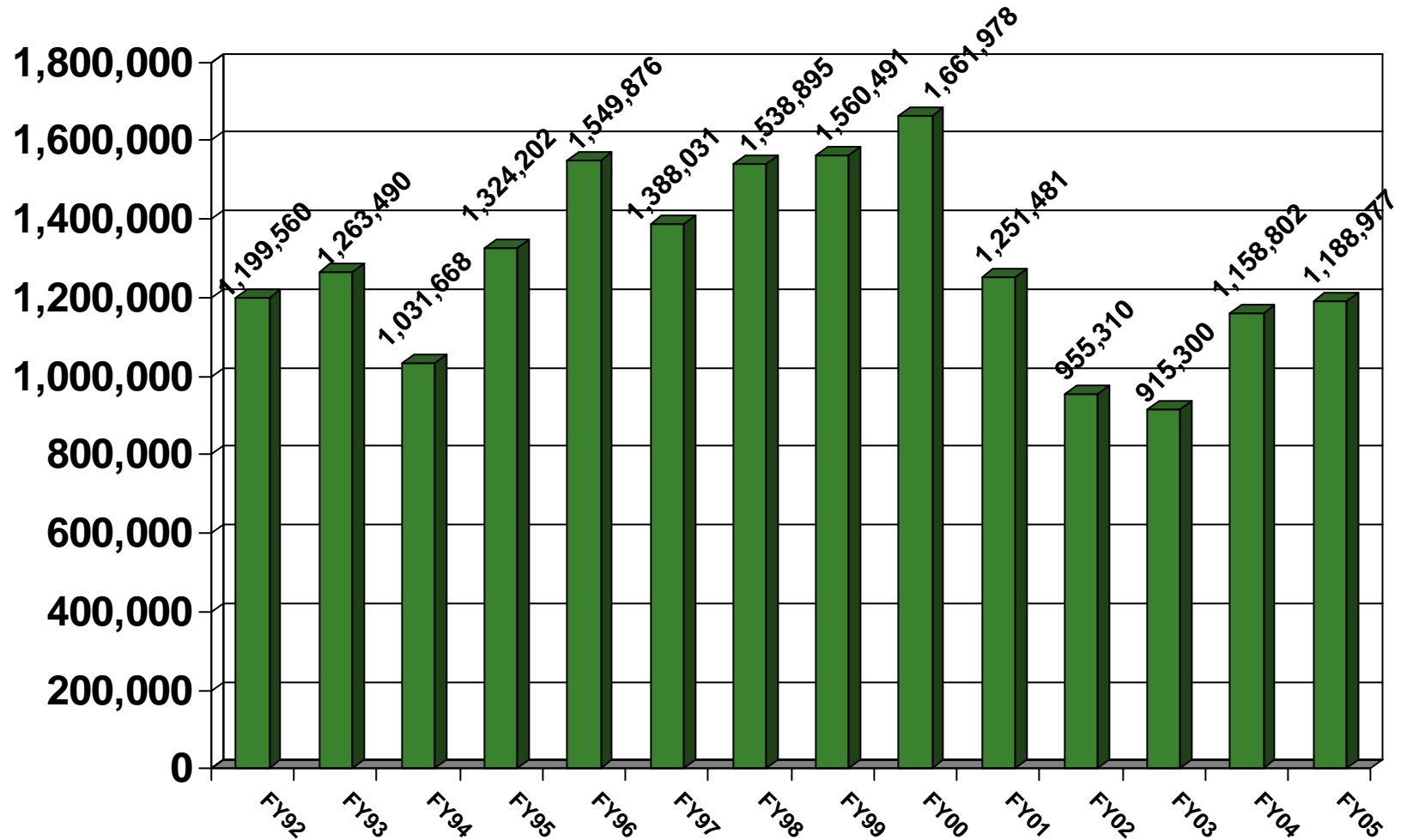
Border Patrol Border Enforcement Workyears

FY1997 through FY2005



Source: CRS analysis of data from DHS's Performance Analysis System (PAS).

Border Patrol Apprehensions



Source: CRS analysis of unpublished data from Customs and Border Protection.

Role of State and Local Law

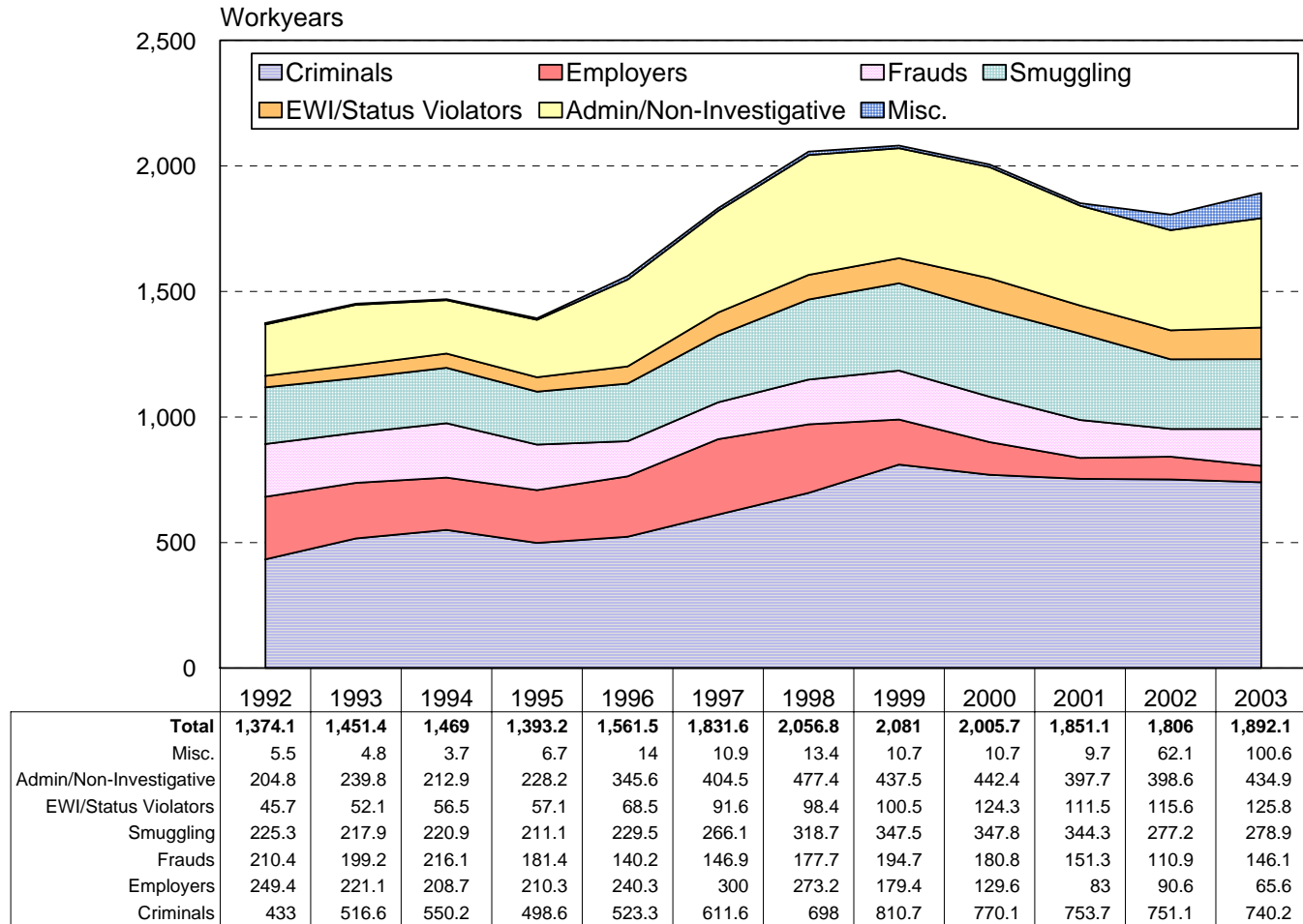
Enforcement

- In general, enforcement of criminal (not civil) violations of the INA
 - INA §287(g) allows AG to enter into written agreements with states and localities to allow law enforcement to perform certain immigration functions
 - Training required
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Selected Issues of State and Local Immigration Law Enforcement

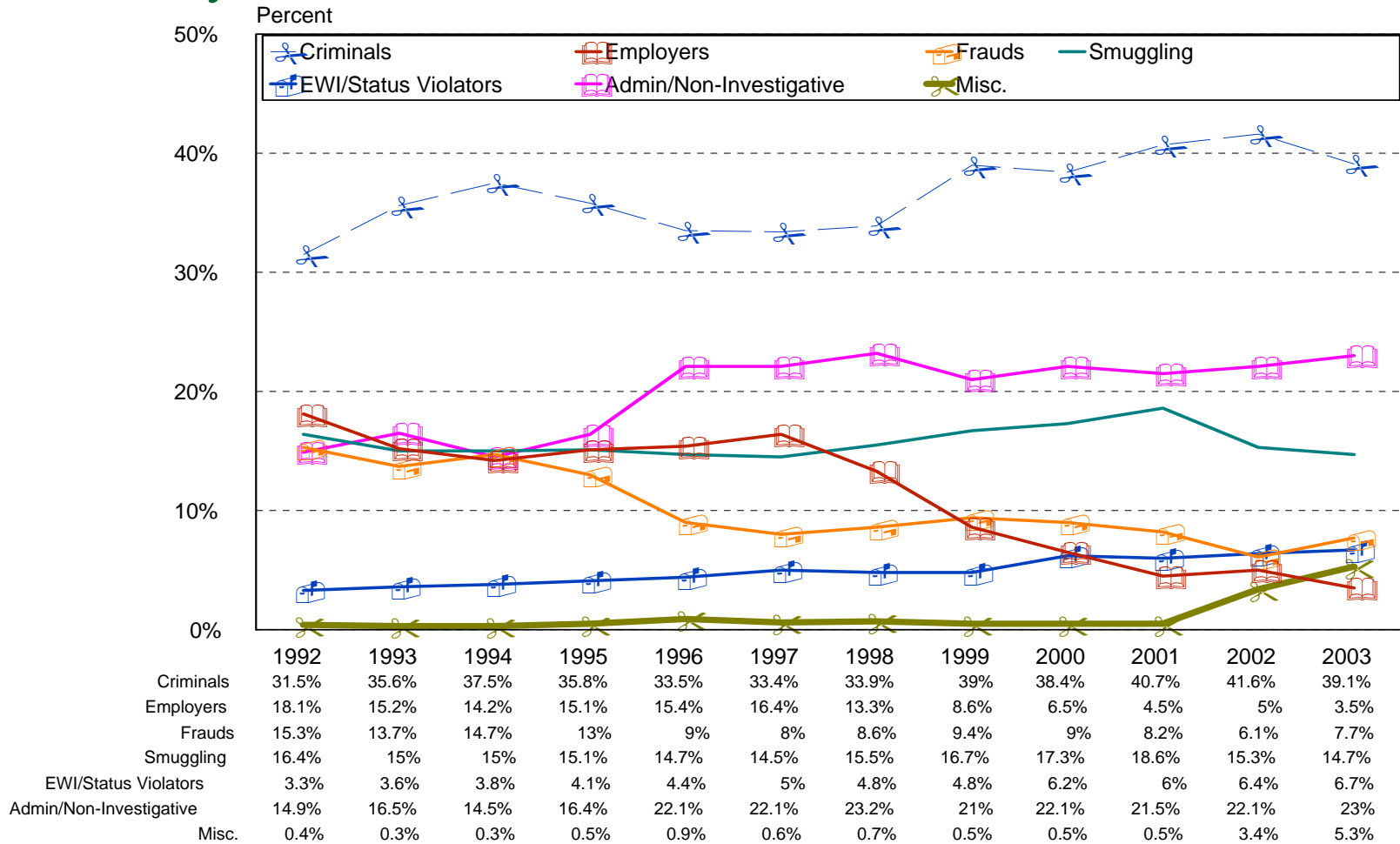
- Enhance limited DHS resources
 - Cooling effect
 - Sanctuary cities
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Workyears Devoted to Interior Enforcement Activities: FY1992-FY2003



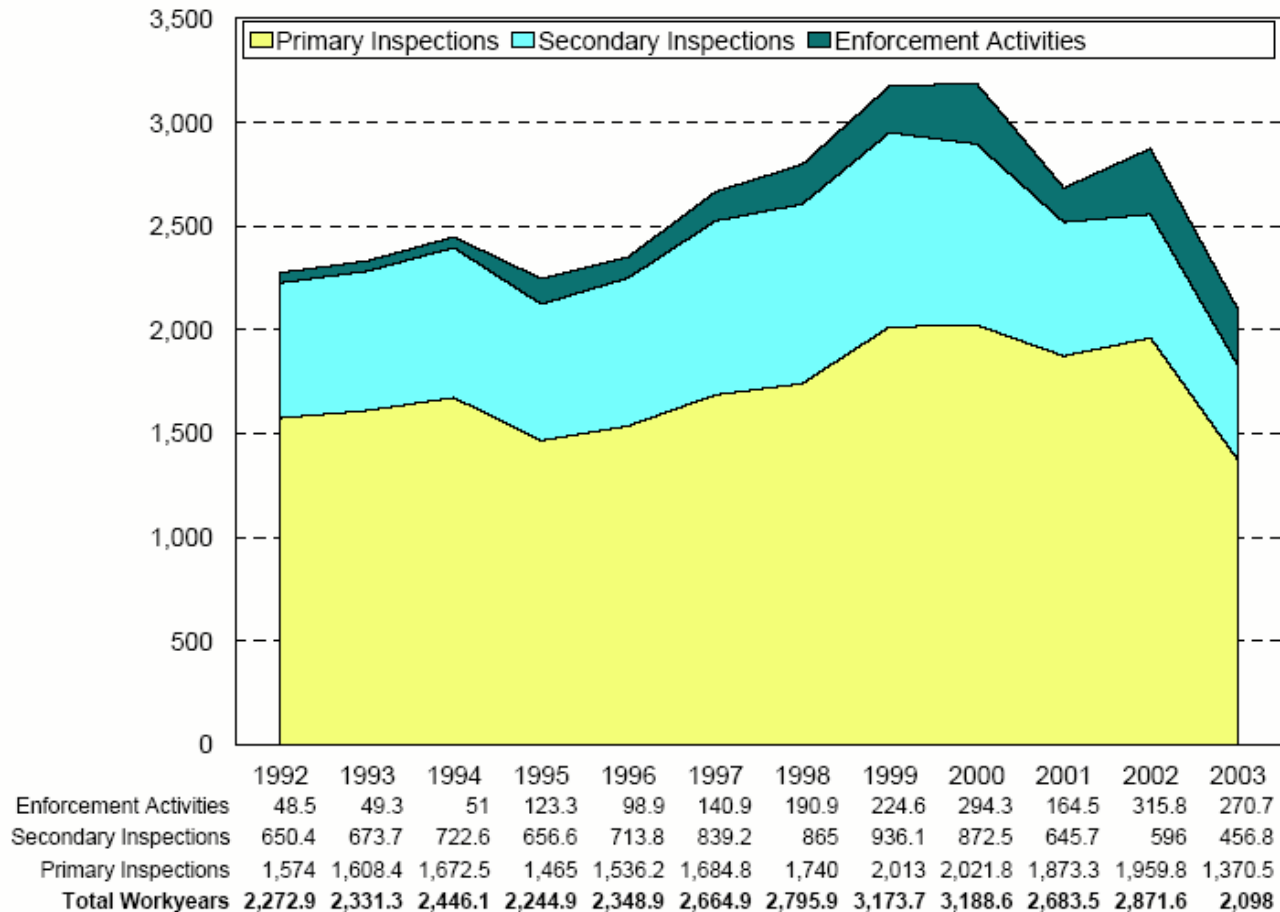
Source: CRS analysis of data from DHS' Performance Analysis System (PAS).

Percent of Workyears by Enforcement Activity: FY1992-FY2003



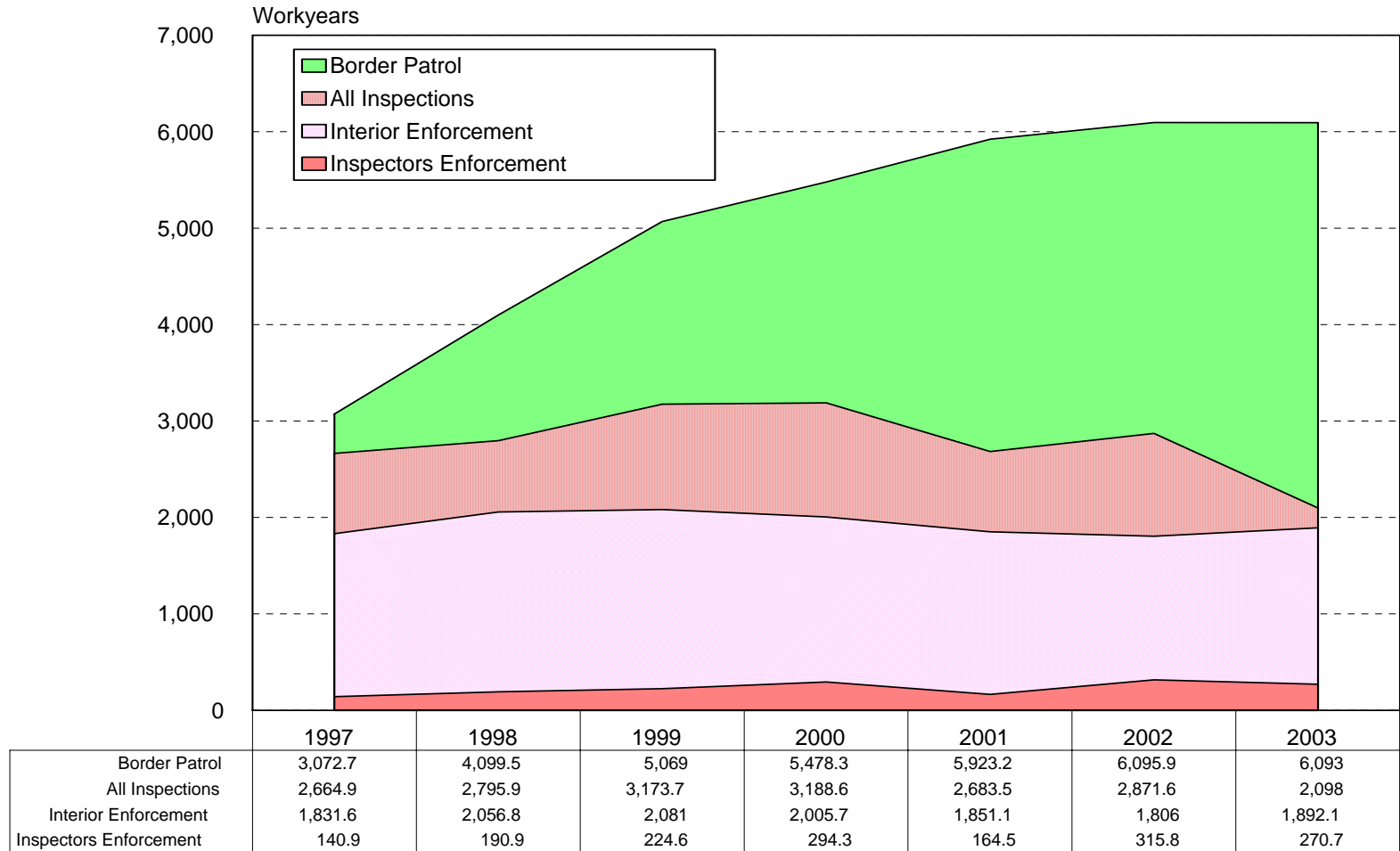
Source: CRS analysis of data from DHS's Performance Analysis System (PAS).

Inspector Workyears by Type: FY1992-FY2003



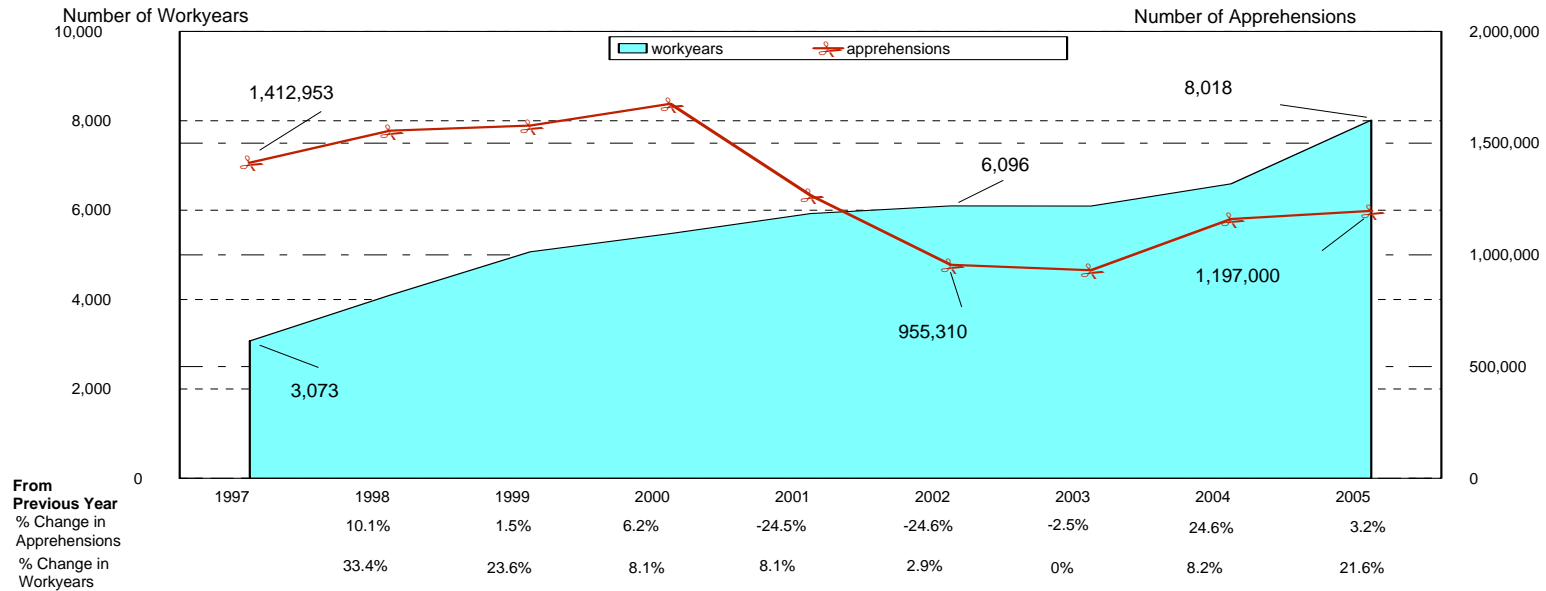
Source: CRS Analysis of data from DHS's Performance Analysis System (PAS).

USBP, Inspectors, and Interior Enforcement Workyears: FY1997-FY2003

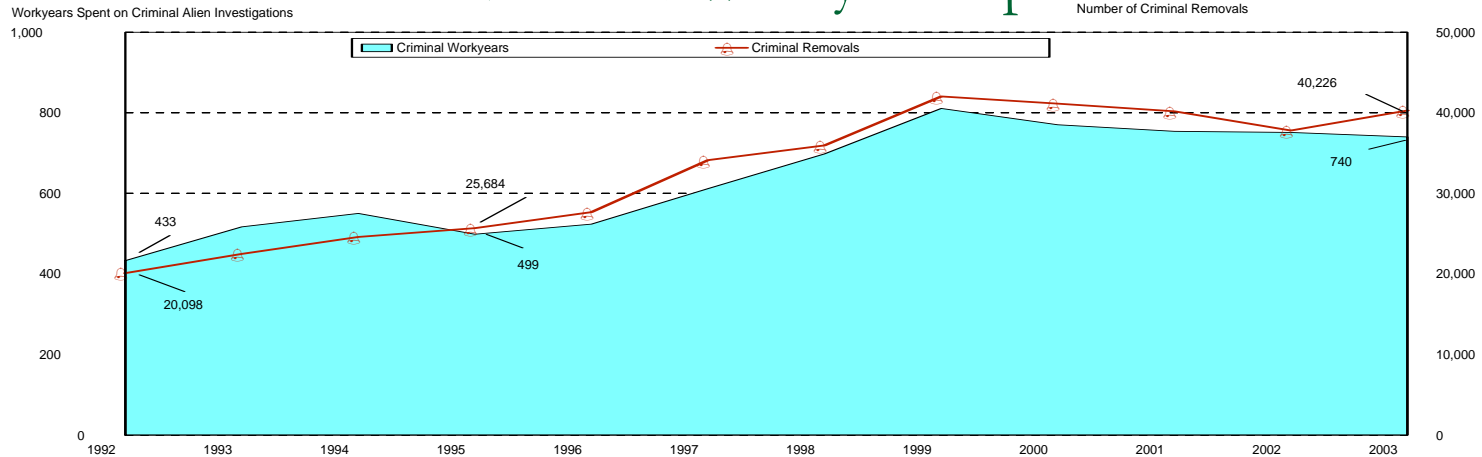


Source: CRS analysis of data from the Performance Analysis System (PAS).

USBP Workyears and Apprehensions



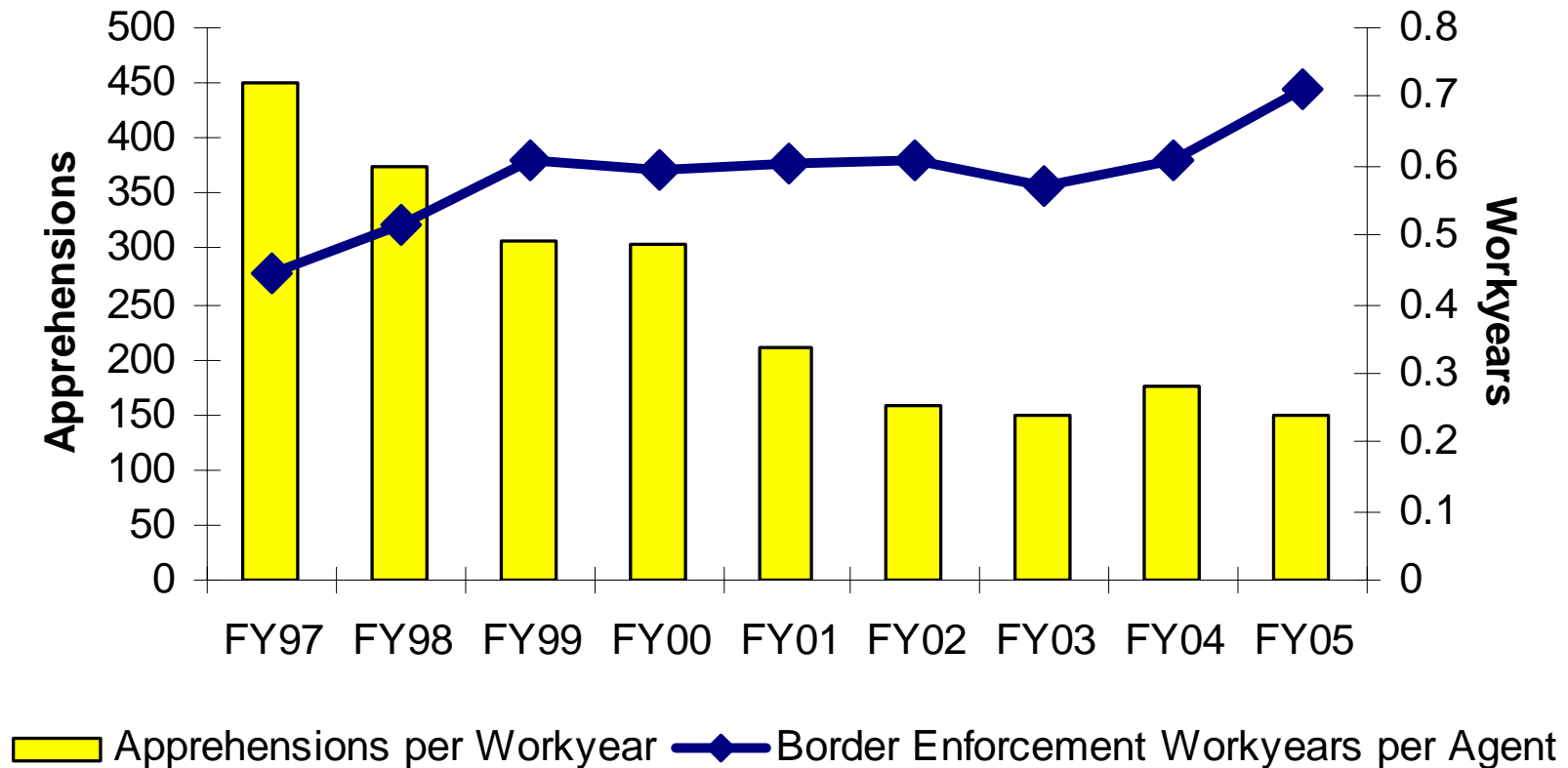
Criminal Alien Removals and Workyears Spent on Criminal Aliens



Source: CRS analysis of data from DHS's Performance Analysis System (PAS).

Border Enforcement

Apprehensions per Workyear versus Workyears per Agent



Source: CRS Analysis of unpublished Customs and Border Protection Data.

Immigration Enforcement Issues

- DHS Organizational Structure
 - Inherited Issues
 - ICE and CBP
 - Resources
 - Increasing role of other federal agencies or local law enforcement
 - Economy
 - Desire for enforcement
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