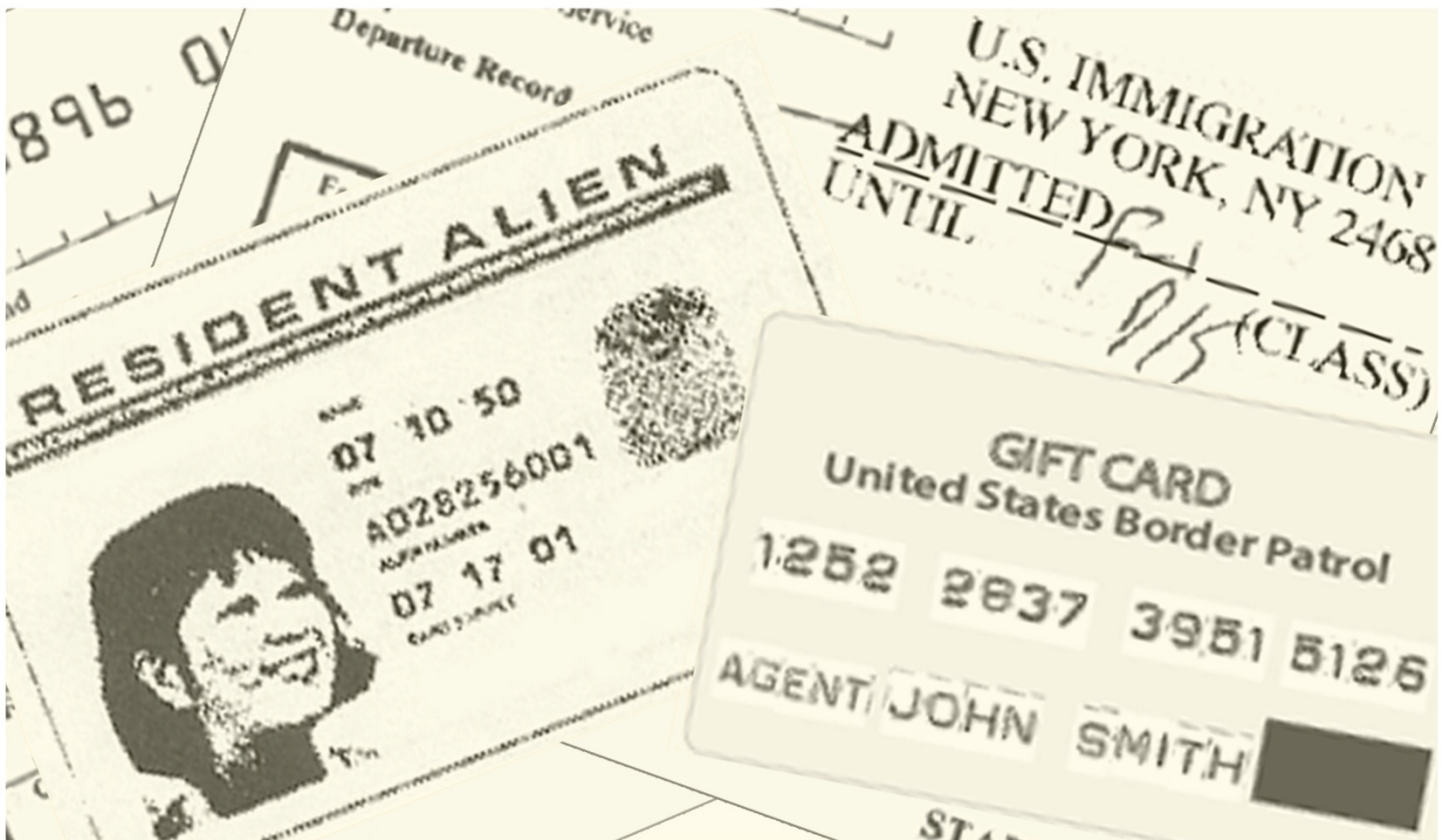




UNCOVERING USBP

Bonus Programs for United States Border Patrol Agents and the Arrest of Lawfully Present Individuals



January 2013

ABOUT THE AUTHORS

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FAMILIES FOR FREEDOM

Families for Freedom is a New York-based multi-ethnic defense network by and for immigrants facing deportation. Founded in September 2002, Families for Freedom is a membership-based organization with approximately 100 members, made up of immigrants who are in or have been in immigration removal proceedings, their families and loved ones, and individuals at risk of deportation. Families for Freedom's mission is to educate and organize families and communities affected by deportation. It uses community education and mobilization, legal advocacy, and media work to forge collective campaigns and build support and awareness of the issues facing immigrant communities.



IMMIGRANT RIGHTS CLINIC AT NEW YORK UNIVERSITY SCHOOL OF LAW

The Immigrant Rights Clinic at New York University School of Law is a leading institution in both local and national struggles for immigrant rights. Its students engage in direct legal representation of immigrants and community organizations in litigation at the agency, federal court, and where necessary Supreme Court level, and in immigrant rights campaigns at the local, state, and national level.¹

This report draws on data gathered by the NYU Immigrant Rights Clinic over the course of four years of proceedings under the Freedom of Information Act (FOIA). The students who have contributed to the FOIA proceedings are Ada Añon, Anthony Enriquez, Maribel Hernandez, Carly Leinheiser, Benjamin Locke, Julie Mao, Jeanette Markle, Anna Schoenfelder and Alba Villa.

¹ The name of the Law School is provided solely for purposes of identification of the clinic's affiliation. The views expressed in this report should not be regarded as the position of the Law School.

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EXECUTIVE SUMMARY

For almost four years, Families for Freedom (FFF) has been seeking information about the policies, practices and consequences of United States Border Patrol's (USBP) operation in which they demand to see "papers" from persons traveling and living in Northern New York. In our last report, co-authored by the New York Civil Liberties Union, we showed that of the thousands of individuals placed in removal proceedings after being questioned by USBP agents on trains and buses, only a miniscule percentage were recent entrants to the United States. But that report relied solely on the information that USBP released early in litigation about USBP practices.

This report now adds crucial information about USBP's aggressive internal enforcement practices. Using information gathered from depositions of senior officials, and data and documents released after years of litigation, this report shows the following:

- USBP uses three different bonus programs to reward its agents. The programs include cash bonuses, vacation awards and distribution of gift cards of up to \$100. As part of the settlement of our case, CBP gave us tallies for each of these for the Buffalo Sector (which covers northern New York). We also obtained the documents for approving the cash and time off awards, which provide no justification for which agents are awarded year-end bonuses of up to \$2,500 or 40 hours of vacation time. The sums spent on these programs in the Buffalo Sector alone amount to over \$200,000 a year. The gift card program, which was not funded in 2009, resumed in 2010.
- USBP has adopted a protocol for documenting arrests of individuals who are later determined to have legal status. Through FFF's lawsuit, we obtained copies of forms – called "I-44" forms – for persons arrested by agents at the Rochester Station. An analysis of those forms shows that the vast majority of those wrongfully arrested were from South Asian, East Asian, African, and Caribbean backgrounds. In just one program (train and bus arrests) in one station, almost 300 persons who had a form of legal status were arrested and transported to USBP offices prior to being released. The actual number is probably far higher because CBP did not formally instruct its agents to document these arrests until June 2010. These legally present individuals include 12 U.S. citizens, 52 Legal Permanent Residents, 28 tourist visa holders, 37 student visa holders, 39 work visa holders, 51 individuals in immigration proceedings, 26 with pending immigration applications, and 32 individuals that had been granted asylum, withholding or temporary protective status. Eleven individuals had other forms of status, including diplomatic visas, special visas for victims of domestic violence, and special status provided to the citizens of former US territories. Many of these people were arrested because of USBP database errors. The report includes stories about the experiences of these people, including those who are arrested in the middle of the night, and many who are forced to depend on family or employers to fax documents to USBP in order to be released.
- Contrary to sworn statements submitted in the federal district court stating that the agency did not maintain an array of arrest statistics, including annual totals for the Rochester Station, the depositions ordered by the Court revealed that arrest statistics are the primary measure employed by local USBP stations and their Sector supervisors in the Buffalo Sector. The Agent in Charge in Rochester testified that recording the

station's daily arrest statistics and sending them to the Sector is the last job of the supervisor at the end of the day. The next morning, the Buffalo Sector office sends summary arrest statistics out to each station in time for each Patrol Agent in Charge to review when he first opens his e-mail in the morning. Meanwhile, the Chief of Staff of USBP testified that the national office of USBP tracks arrest statistics and distributes reports through mass emails on a twice daily basis. The Agent in Charge for the Rochester Station, which is the subject of much of the data in this report, stated that the Station does not keep any other regular measure of performance.

- The documents show that USBP agents act on the assumption that no matter where they operate within the United States, they may arrest any noncitizen—whether a tourist or a long-term legal resident with a driver's license—whenever that person is not carrying detailed documentation that provides proof of status. But USBP's records also show that the agents are not genuinely interested in what documents the law might require noncitizens to carry. Instead, USBP's demand for "papers" is universal, resulting in an enforcement culture that maximizes arrest rates.

Altogether, the documents show that USBP's policies send a message to the foreign born that is ugly and untenable. This is especially so in New York State, where more than one in five persons was born abroad, and one in ten is a foreign-born U.S. citizen. The remedy is clear: it is time for USBP to leave its unjustified mission of policing the interior of the United States and to end its unregulated bonus programs. USBP should not be allowed to transform the areas of the United States that are adjacent to the border into a police state in which persons are forced to carry papers at all times to be ready for a demand by a USBP agent to "show me your papers." Otherwise, as the data shows, USBP will continue to arrest US citizens, lawful permanent residents and countless others who should not live in fear of traveling or living near the border.

I. INTRODUCTION

Over the past decade, the United States Border Patrol (USBP) has become an increasing day-to-day presence in communities across the nation. Residents who are walking to the store, going to work, or traveling to and from school find themselves questioned by Border Patrol agents demanding to see their “papers.”² While USBP’s expansion into internal enforcement and aggressive policing tactics has been well-documented,³ the internal workings of USBP’s internal enforcement program have remained a mystery. Advocates also lacked statistical evidence on the impact of USBP’s “show me your papers” policy on citizens, lawful permanent residents and vast numbers of other legally present individuals.

This report begins to fill this gap. Through litigation focused on the train and bus arrests by the USBP station in Rochester, New York, the advocacy organization Families for Freedom has uncovered evidence regarding the reward programs and monitoring systems that are integral to USBP’s rapidly expanding interior enforcement regime. As detailed below, we now have proof that USBP has instituted a monitoring system that closely tracks arrest numbers and awards cash bonuses of thousands of dollars a year to certain arresting agents. USBP’s focus on arrest rates and its discretionary reward system are disturbing features of an agency that has deviated from its stated mission of border security and given its agents the green light to harass and arrest individuals anywhere in the interior United States.

There has long been anecdotal evidence that USBP’s “show me your papers” policing results in the harassment, arrest and detention of many individuals who are lawfully present. As a result of FFF’s lawsuit, USBP⁴ has now produced its own documentation of the mistaken arrests made by USBP agents on trains and buses along the northern border. Those caught in USBP’s dragnet include U.S. citizens, lawful permanent residents, tourists, student visa-holders and persons with proper authorization to work in the United States. As this report details, in just one USBP enforcement program in one station along the northern border, USBP documented its arrest and detention of almost 300 legally present individuals between 2006 and 2011. The actual number is probably far higher because USBP did not formally instruct its agents to document these arrests until June 2010.⁵

The problems with USBP’s “show me your papers” policies extend well beyond trains and buses. USBP claims that its train and bus operations begin as “non-intrusive consensual conversations”—the same claim that it makes when it questions northern border residents on a street corner. In one report obtained through the FOIA litigation, a refugee from Myanmar was approached by a USBP agent while he was waiting at a bus stop on a street corner. He was

² See, e.g. First Amended Complaint, *Muniz v. CBP*, No. 3:09 – 02865 (N.D. Ohio, March 1, 2010), (describing targeting of Latinos by USBP agents at gas stations, bus stations, and on the streets, including of a parent walking a child from a Head Start program) *dismissed for lack of jurisdiction*, Opinion and Order (Oct. 19, 2012); National Immigration Forum, *Misbehavior at the Border: Are Those Who Control Immigration Out of Control Themselves?* (Nov. 2012)(describing reports of USBP’s excessive use of force, sexual abuse, destruction of evidence, and use of offensive language towards immigrants); Letter from Northern Borders Coalition to Secretary Napolitano, (Feb. 7, 2012)(describing, for example, USBP detention at a church, detention of a US citizen providing translation services, detention of a US citizen of Mexican descent after a traffic stop based on disbelief of his citizenship).

³ See, e.g., National Immigration Forum, *The “Border Bubble”: A Look at Spending on U.S. Borders*, 6 (November 2012)(Border Patrol doubled its personnel between 2008 and 2012); Lisa Graybill, *Border Patrol Agents as Interpreters Along the Northern Border: Unwise Policy*, *Illegal Practice* 11-14 (Sept. 2012)(describing buildup of personnel in the Northern Border).

⁴ Families for Freedom’s FOIA litigation named Customs and Border Protection (CBP) as the defendant, since USBP is a component of CBP. The documents relevant to this report were created by USBP and the depositions were of USBP officials.

⁵ As is discussed later in this report, it was not until 2010 that the Buffalo Sector clearly instructed its agents to complete forms documenting arrests in which the individual has legal presence. In that year, over ten percent of arrests on train and bus operations were for persons who were lawfully present.

unable to speak English and presented the USBP agent with his Social Security card. The agent arrested the man because he was not carrying proof of his immigration status. The agent detained the refugee and transported him to his home to prove his status, which he was then able to do. In USBP's world, this was business as usual.

The documents from USBP show that USBP agents act on the assumption that they may arrest *any* noncitizen—whether a tourist or a long-term legal resident with a driver's license—whenever that person is not carrying detailed documentation that provides proof of status. But USBP's records *also* show that the agents are not genuinely interested in what documents the law might require noncitizens to carry. Instead, USBP's demand for "papers" is universal, resulting in an enforcement culture that maximizes arrest rates. Indeed, USBP agents are encouraged to arrest first and verify status later, which they accomplish by forcing the arrestee, employers, schools and family members to send in papers proving legal presence. The message to the foreign born is ugly and untenable. This is especially so in New York State, where more than one in five persons was born abroad,⁶ and one in ten is a foreign-born U.S. citizen.⁷

A. Background

In 2009, Families for Freedom filed a Freedom of Information Act (FOIA) suit against the USBP to shed light on the purpose and result of USBP's aggressive practices of stopping and questioning people about their immigration status on trains and buses in upstate New York. Families for Freedom and the NYCLU published a report in 2011 showing that less than 1% of those arrested by USBP on trains or buses and subsequently placed into removal proceedings had recently crossed the border. In fact, the vast majority of arrests were made far from any land border, and most of the arrestees had spent at least a year—and often as many as ten years—as residents of the United States⁸. As the report concluded, USBP's aggressive transportation arrest policy has nothing to do with its stated objective (border security). Rather, its policy—and single-minded focus on arrests—was unconnected to any coherent theory of domestic immigration enforcement.⁹

In this report, Families for Freedom sheds light on the internal agency programs designed to reward USBP agents and monitor arrest rates. During the FOIA litigation, USBP denied that it had any documented incentive programs, and stated that the agency did not keep records of arrest statistics. In depositions, however, local USBP officials admitted that the only statistics they kept on a regular basis related to arrests.¹⁰ USBP officials also admitted to having several bonus programs, including a cash bonus program. The documents produced in the litigation show that this program allows station managers to recommend cash bonuses to arresting agents on a discretionary basis. These bonuses are for up to \$2,500 a year per agent. The bonuses are subject to approval, but the relevant forms do not require any written justification for selecting the agents who receive payments. In the Buffalo Sector, this program has been ramped up from a few thousand dollars in 2003 to nearly \$200,000 in 2011. In

⁶ See MPI Data Hub – New York, available online at <http://migrationinformation.org/datahub/state.cfm?ID=NY> (noting that twenty two percent of New Yorkers are foreign born).

⁷ *Id.* (noting that 51.7 percent of the foreign born are naturalized citizens, or 11.4 percent of all New Yorkers).

⁸ Indeed, in a deposition taken after this report was released, a CBP official conveyed his view of the scope of CBP arrest power. "My authority goes throughout the whole United States. We could arrest them in Kansas, because we have the authority as immigration agents." Barbagallo Dep., 164.

⁹ New York Civil Liberties Union, *Justice Derailed: What Raids on New York's Trains and Buses Reveal About Border Patrol's Interior Enforcement Practices* (Nov. 2011) (hereinafter, "*Justice Derailed*"), at 19

¹⁰ See Werthman Dep., 227

addition, the documents show that USBP has instituted other discretionary incentive programs that allow supervisors to reward agents.

The FOIA documents also provide conclusive evidence that USBP tracks arrest numbers extremely closely. At the start of the FOIA litigation, agency representatives offered sworn statements that USBP did not keep documents relating to arrest numbers at the Rochester Station.¹¹ We now know that USBP not only keeps such records on an annual basis, but that it also maintains meticulous records on the numbers of arrests made every day, thereby demanding close attention to arrest numbers at the local level. National tracking of arrest numbers is even more frequent. These records are distributed twice daily in mass emails to USBP officials.¹²

This evidence regarding USBP's focus on arrest rates—including its policy of rewarding agents with cash bonuses—adds to the growing body of literature on USBP sprawl and misconduct. USBP has for years demanded high arrest rates from its agents in order to justify past and future budgetary increases.¹³ Internal agency pressure has resulted in aggressive policing far from the border; it targets not recent border crossers, but people who have been in this country for years.¹⁴ The newly discovered cash bonus program suggests that border agents have even more incentive to arrest individuals than previously believed. As our report demonstrates, the aggressive internal enforcement policies adopted by USBP over the past decade have – predictably – resulted in the arrest and detention of hundreds of legally present people, based on little or no evidence of wrongdoing.

Through the course of its FOIA litigation, Families for Freedom also became aware that, at least in the Buffalo Sector, USBP stations maintain a separate system for documenting arrests of individuals who are released from detention when USBP discovers they are legally present. The arrests documented in that system, on what are called I-44 forms, include people who USBP agents took from trains and buses, transported to USBP offices, and detained, only to later confirm that they were U.S. citizens, tourists, lawful permanent residents, or otherwise legally present in the United States. It appears that this second system was informally used for several years before being officially implemented by the Buffalo Sector in 2010.¹⁵ In 2010, the most recent year for which we have data, the USBP Rochester Station (which is part of the Buffalo Sector) completed I-44 forms for about ten percent of its total bus and train arrests.¹⁶ This represents a minimum number of persons who should not have been arrested, since USBP transfers some people to ICE before confirming their status as legally present.¹⁷

As a result of Families for Freedom's FOIA suit, USBP released hundreds of I-44 forms and related documents. According to a memo distributed by Chief Patrol Agent Kevin Oaks,

¹¹ Declaration of Edward Castillo, dated Oct. 22, 2010 (claiming that the agency did not maintain arrest data at a station level); Letter of David Bober to Nancy Morawetz, dated Sept. 21, 2010 (claiming that the agency did not have existing documents on the arrest numbers at the Rochester Station).

¹² The daily arrest reports, termed "dailies," are sent out to a large list of CBP agents daily from National Headquarters. Lewandowski Dep. 101 – 103.

¹³ *Justice Derailed* at 18-19.

¹⁴ *Id.*

¹⁵ The I-44s produced to us include all those created between the years 2006 and 2011. The number of I-44s increases in the year 2010, indicating that the formal memorandum regarding their implementation increased the number of improper arrests reported.

¹⁶ Of approximately 700 transportation arrests made in fiscal year 2010, USBP created 74 I-44s documenting those who were apprehended and then released.

¹⁷ *Justice Derailed*, at 20 (reporting case of a doctor who had received an extension of his status but who was nonetheless transferred to ICE detention).

these records are required in order to document the facts that gave rise to the arrest. Moreover, they are designed to “allay and alleviate inaccurate allegations against the agency and its personnel,” and therefore describe the circumstances of the arrest in a manner that is most favorable to the agency. Nonetheless, the I-44 forms illustrate the many harmful effects of USBP’s “show me your papers” policies. And they tell powerful stories about the hundreds of foreign-born, legally present individuals who have been pulled from trains or buses, arrested, and detained.

The I-44 forms further demonstrate that USBP uses a defunct registration scheme as a pretext to detain and scrutinize the immigration status of hundreds of individuals each year. These individuals are legally present in the United States, but are often arrested and detained because of USBP agents’ misunderstanding of what documents they should be carrying, how the immigration law operates, or what information is contained in USBP databases. For those wrongfully arrested by CBP, the process—from being taken to the Border Patrol station to being release from custody—often takes hours. This is true even in the simplest of cases, where a person’s status can be established through a database search. Individuals whose status is not recorded in any of the databases accessed by USBP must call a family member or attorney to attempt to have documents faxed to the USBP office. If they are unable to do so, they are kept in detention. Agents frequently conduct train and bus raids in the middle of the night or early morning hours, which poses additional burdens on those arrested, who may be unable to reach family or employers in possession of their paperwork.

B. Key findings

- USBP’s policy of closely monitoring and circulating arrest numbers encourages stations and individual agents to focus their efforts on making as many arrests as possible.
- USBP allocates significant amounts of agency money to fund discretionary bonuses to arresting agents, in the form of cash bonuses, vacation time and gift cards.
- USBP’s policies result in the wrongful arrest, detention, and harassment of hundreds of lawfully present individuals including, but not limited to, U.S. citizens, LPRs, student-visa holders, work visa holders, tourist visa holders, asylees, refugees, diplomats, those with TPS, and those with pending or incipient claims to legal status.
- These wrongful arrests result from a combination of the following factors:
 - USBP’s aggressive use of practices that are geared to interior enforcement of the immigration laws.
 - USBP’s reliance on immigration databases which are woefully inadequate to the task of verifying on-the-spot the immigration status of individuals aboard trains and buses.
 - USBP’s misapprehension and misapplication and federal immigration law. USBP’s reliance on a largely defunct federal registration scheme as pretext for profiling and harassing all foreign-born individuals, a population that constitutes over one-fifth of New York State’s population.

II. USBP AWARDS ARRESTING AGENTS CASH BONUSES, VACATION TIME AND GIFT CARDS THROUGH SEVERAL DISCRETIONARY INCENTIVE PROGRAMS

The FOIA litigation uncovered documents showing that USBP allocated large amounts of funds to the Buffalo Sector (and presumably other sectors) to distribute as discretionary bonuses to agents. In depositions, USBP agents indicated that the agency protocol does not require any written justification for these awards.

USBP uses several different types of discretionary awards: cash bonuses of up to \$2,500; time off awards; and gift cards of up to \$100. The total budget allocated to these award programs in Buffalo Sector has grown tremendously over the last several years, from a few thousand dollars in 2003 to over \$200,000 in 2011.

A. Cash awards

Certain USBP agents are awarded – at the discretion of the station manager – a cash bonus in addition to their salary.¹⁸ These awards generally range from \$1,500 to \$2,500, and vary for each awardee.¹⁹ Awardees receive the cash bonus in their payroll paycheck, and are not formally given notice or explanation of why they received the bonus unless they request it from their supervisor.²⁰ According to the Acting Patrol Agent in Charge of the Rochester Station, Michael Werthman, these awards are completely discretionary. Despite the large amounts of cash that Buffalo allocates to this program, USBP can offer no document showing the criteria on which agents are judged.²¹ Total cash awards allotted among Buffalo Sector stations was \$6,000 in 2003 and increased exponentially to \$194,890 in fiscal year 2011.

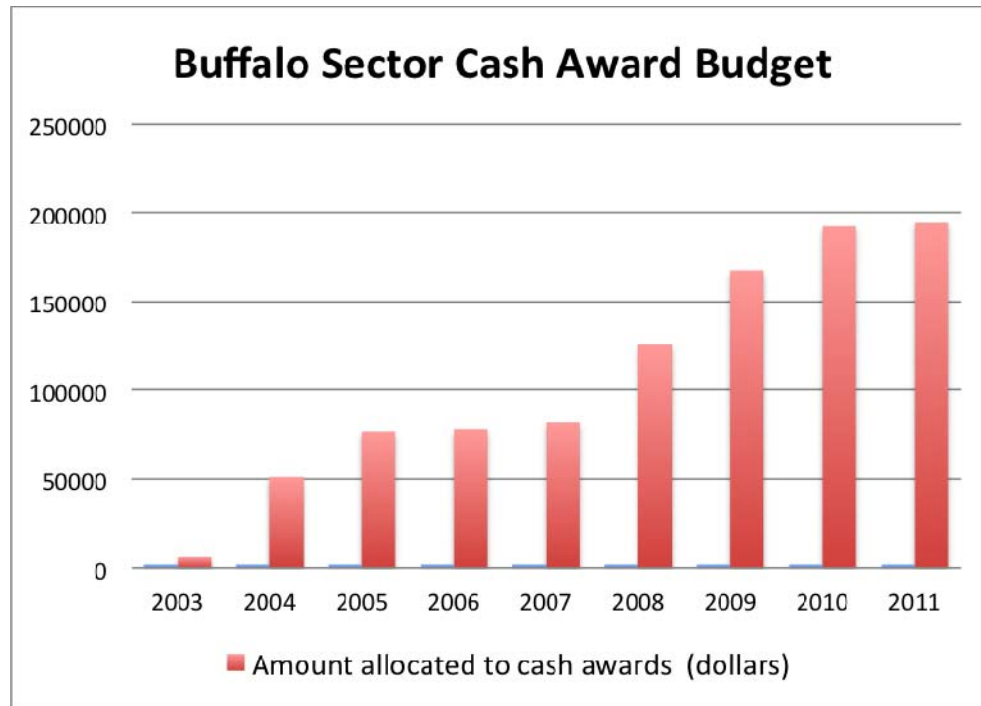


Figure 1. Funds allocated for cash awards in Buffalo Sector increased from the years 2003-2011.

¹⁸ Lewandowski Dep. 187.

¹⁹ Barbagallo Dep. 59.

²⁰ Werthman Dep. 86; Barbagallo Dep. 95.

²¹ Barbagallo Dep. 60.

The bonus program is especially troubling because it lacks any articulable criteria for determining which agents receive an award, and the size of that award. In depositions, agency officials were unable to cite to any specific criteria for the awards or to documents that provided written justification for selecting the agents who would receive an award.²² One deposed agent stated that he chose awardees based on vague, subjective standards such as “quality of work” and denied knowledge of any sort of documented guidance from the agency for determining which agents deserved bonuses.²³ While the nominated agents were reviewed by USBP officials at the sector level, the deposed agents were unable to articulate any specific criteria used by the sector to approve or reject these nominations.²⁴ This complete absence of objective standards is disturbing for an expanding program that disburses hundreds of thousands of dollars.

B. Vacation time awards

The Time Off Award program allows station managers to award extra vacation time to agents on a discretionary basis.²⁵ Through this program, Buffalo Sector distributed 1,080 hours of time off in fiscal year 2010 and 1,048 hours in fiscal year 2011. Assuming an average salary of \$49,000 (for a GL-9 level employee), these vacation awards amounted to over \$20,000 each year for these two years.²⁶ Agents who receive vacation time awards are nominated at the discretion of the arresting agents’ immediate supervisor, typically the Patrol Agent in Charge at each station. These nominations are sent to the sector level for approval without any justification for why a particular agent deserves an award.

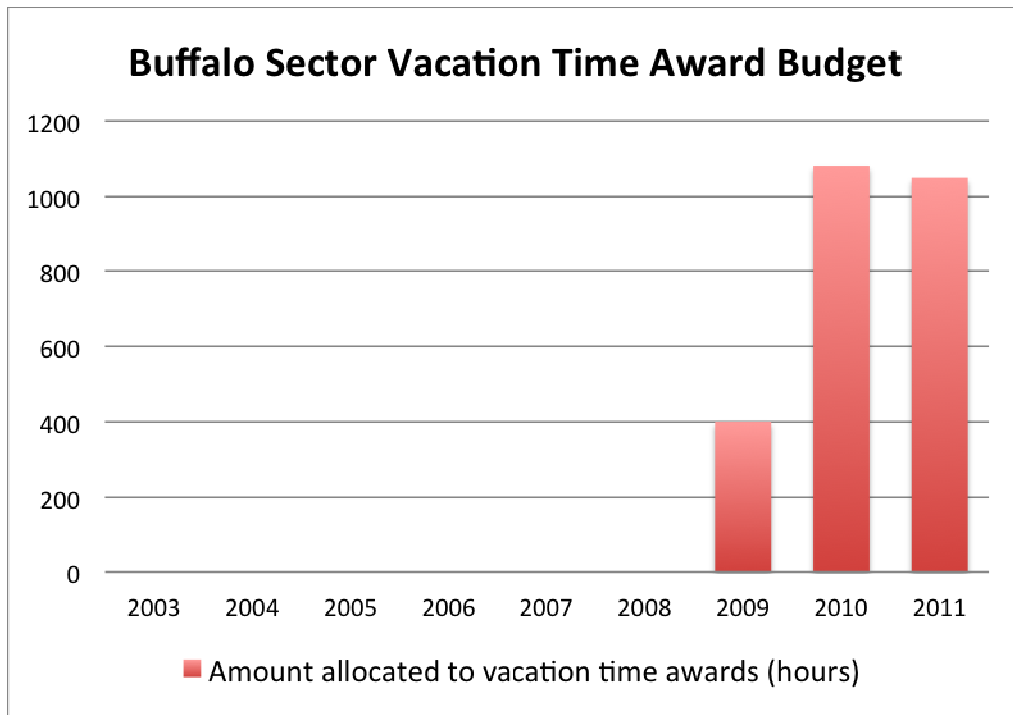


Figure 2. Station leaders awarded bonus vacation time to certain arresting agents between 2009 and 2011, amounting to thousands of dollars’ worth of agent salary.

²² Barbagallo Dep. 60.

²³ Barbagallo Dep. 64.

²⁴ Barbagallo Dep. 86.

²⁵ Barbagallo Dep. 72.

²⁶ See note 48 on dollar calculation for time off awards.

C. Gift card awards

The so-called “On-the-Spot Award” program allows supervisors to award shopping gift cards at values up to \$100 to agents under their supervision.²⁷ The gift cards are for online shopping or commercial retailers such as Home Depot, and are purchased at the sector level and then distributed to each station.²⁸ The total budget allocated to purchasing these gift cards reached a high in 2007. The program was defunded in 2010, but then resuscitated in 2011 at a budget of about \$3000. These awards are given to individual agents on an *ad hoc* basis with no consistent documentation and no oversight from the agency headquarters.²⁹

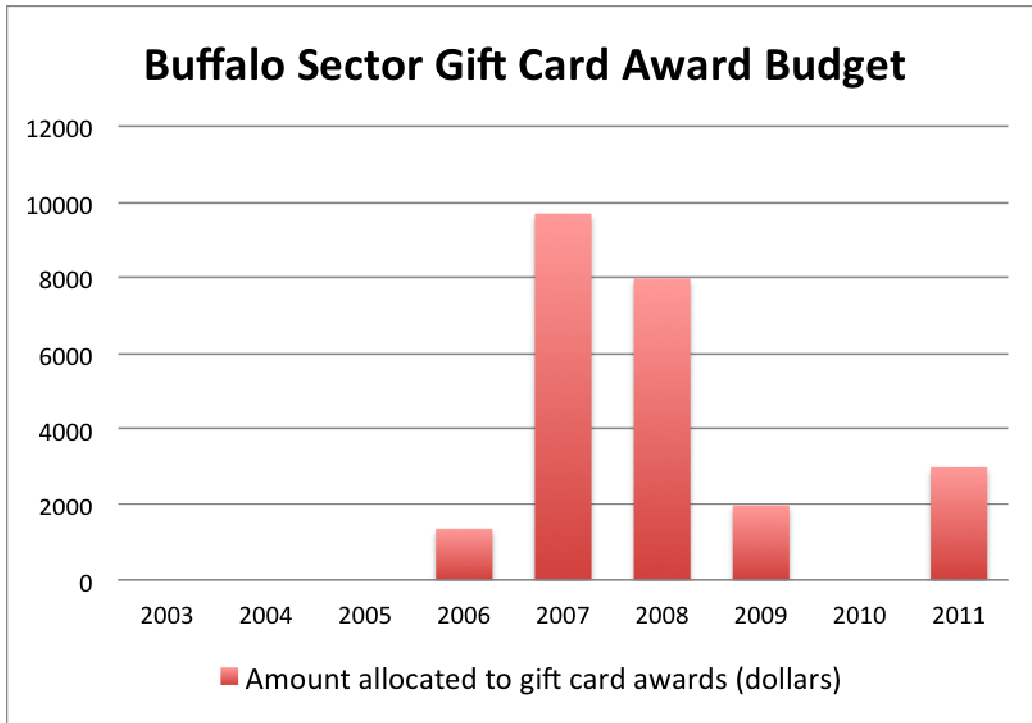


Figure 3. Stations in Buffalo Sector were given a certain number of gift cards, ranging in amount from \$25 to \$100³⁰ that station leaders distributed on a discretionary basis.

These bonus programs instituted by USBP in Buffalo Sector provide individual stations with enormous power to reward agents who fall into line with the station’s objectives. The programs all together amounted to over \$200,000 for the fiscal year 2011, which was disbursed to stations – and then to arresting agents – with little supervision from the sector level. These programs allow the arresting agent’s supervisor to decide who gets a bonus and how much the bonus will be. The lack of objective criteria to guide supervisors in choosing awardees is disturbing in light of the agency’s focus on station and sector-level arrest rates.

²⁷ Barbagallo Dep. 93

²⁸ Wethman Dep. 138-9.

²⁹ Lewandowski Dep. 168, Werthman Dep. 137.

³⁰ Werthman Dep. 138.

III. USBP ENCOURAGES UNNECESSARY ARRESTS BY CLOSELY MONITORING ARREST NUMBERS

The FOIA litigation uncovered evidence that USBP has instituted an intensive, agency-wide monitoring system for arrest rates, contrary to repeated denials by the agency of the existence of documents containing arrest statistics. The agency's reliance on arrest rates as the sole quantifiable measure of station performance is a troubling internal policy that it sought, during the nearly three years Families for Freedom spent in litigation, to keep from public view.

USBP produced the documents that show the extent of this monitoring system after years of obfuscation.³¹ Before the district court permitted depositions it "repeatedly granted defendants' request for more time and for more and better declarations." The Court noted that that "after nearly two years of inadequate searches, six sworn declarations, numerous letters and briefs and in-person conferences, the Court's patience has worn out."³² The government first claimed that it did not keep certain statistics, such as the total arrests at the Rochester Station. Later, it admitted that such information was kept in daily reports maintained by the Buffalo Sector.³³

But it was not until plaintiffs were able to conduct depositions of the head of the Rochester station that they learned of the depth of the agency's attention to arrest data. The last supervisor to leave the station each evening was charged with sending in a daily report on all arrests for the next day's "Morning Report".³⁴ That information was collated for all of the Buffalo Sector stations during the night. The supervisor stated that when he arrives at his desk in the morning and opens his e-mail, the first thing he would see each day was the sector report on each station's arrests the prior day.³⁵ The station head also reported that there was no other numerical data kept by the Sector on his station's performance. This tracking of data was far from being data that was not kept at all, even on an annual basis as the agency claimed at the start of the FOIA suit. Instead the arrest data was kept on a daily basis and shared with those charged with carrying out the agency's mission.

Apprehension numbers are, in fact, the *only* numerical data monitored at the station level in Rochester.³⁶ Apprehension numbers are also the only numerical data communicated to the Buffalo Sector office from Rochester Station.³⁷ These tallies are collected at the Buffalo Sector level and then redistributed to supervisors at each station within the sector. Over the years, the Buffalo Sector has sent these daily reports to an increasingly long list of supervisory agents.³⁸ Buffalo Sector and Rochester Station officials stated in depositions that they are unaware of any regular reports – other than daily reports of arrest numbers – that reflect station and sector performance.³⁹

³¹ See Opinion & Order of 9/30/11 [Docket No. 56], *Families for Freedom et al. v. United States Customs and Border Protection et al.*, 1:10cv02705 at 3 and Opinion and Order of 6/16/11 [Docket No. 35] at 4.

³² *Families for Freedom v. U.S. Customs & Border Prot.*, 837 F. Supp. 2d 331 (S.D.N.Y. 2011)

³³ Letter of David Bober to Hon. Shira Scheindlin dated Dec. 16, 2010.

³⁴ Werthman Dep. 55-56.

³⁵ Werthman Dep. 183.

³⁶ Werthman Dep. 210

³⁷ Werthman Dep. 227

³⁸ In 2007, the daily reports were sent to 16 high level supervisory agents. By 2010, they were sent to 45 different agents, extending down through the ranks of supervisory officials.

³⁹ Werthman Dep. 227.

IV. USBP POLICIES HAVE RESULTED IN THE WRONGFUL ARREST, DETENTION, AND HARASSMENT OF HUNDREDS OF LAWFULLY PRESENT INDIVIDUALS—INCLUDING U.S. CITIZENS, LPRS, STUDENTS, TOURISTS, DIPLOMATS, AND ASYLEES.

A. “Caught in the Dragnet: “Show Me Your Papers” Policing and the Wrongful Arrest of Those with Status

The FOIA lawsuit uncovered a separate set of arrest documents – I-44 Forms – which document arrests of citizens and persons with lawful status. The I-44 Forms obtained by Families for Freedom paint a disturbing picture about what happens to these individuals when USBP agents engage in “show me your papers” policing. In just one enforcement program in one station in one sector, “show me your papers” policing resulted in the wrongful arrest of *hundreds* of persons who have lawful status. Agents in full uniform approach whomever they like, for whatever reason, and engage them in what USBP calls “consensual, non-intrusive conversation.” Each encounter begins with a variation of the same basic questions: “Where were you born?” or “What is your citizenship?” These interactions are, of course, highly intrusive. And while no one is required to share his or her citizenship information or place of birth in the course of such “consensual” conversation, many are intimidated into believing that they must reveal this information or face consequences for noncooperation. Others simply want to cooperate with officials. However, such cooperation is not rewarded: Any person who admits to foreign birth or citizenship in these “consensual” encounters will then be asked for proof of legal status. Those who are not carrying passports, permanent resident cards, or other documents on their person or whose status is not quickly verified are arrested, detained, and placed in databases.

The documents produced by USBP to Families for Freedom provide definitive proof that USBP’s “show me your papers” enforcement regime results in arrests of lawfully present persons, including citizens. Those wrongfully arrested by USBP agents include U.S. citizens, longtime lawful permanent residents, tourists, student-visa holders, work-visa holders, asylees, foreign diplomats, and individuals with pending or incipient claims to status. In this section, we detail their stories.

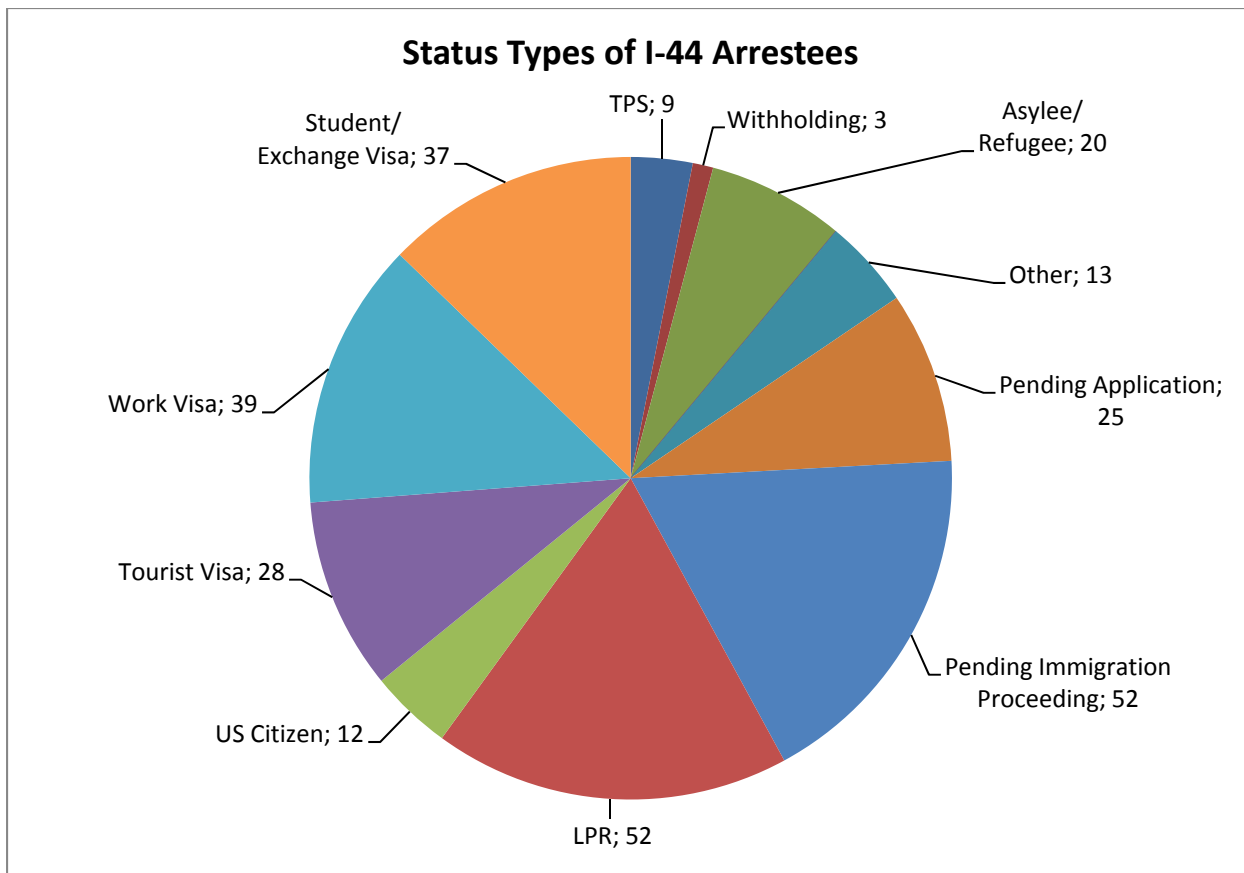


Figure 4. Number of individuals arrested by Rochester USBP on trains and buses from 2006-2010 who were documented in the I-44s as having various forms of legal status.⁴⁰

B. U.S. Citizens

There are twelve documented arrests of U.S. citizens in the I-44s produced by USBP. These citizens include persons born in the United States, naturalized citizens, and those who have derived citizenship. The following stories are illustrative:

- On March 17, 2009 a U.S. citizen born in Texas was arrested while traveling on a Greyhound bus. A USBP agent questioned the citizen about whether he was a citizen of the United States and reported that the man “stared” back at him. The agent repeated the question in Spanish, at which point the man responded “yes” and handed over a valid Georgia driver’s license. Despite the man’s assertion of his U.S. citizenship and his offer of a valid form of identification, the man’s interrogation did not cease. The agent later claimed that he continued the encounter because he noticed that the man was “shaking” and “avoiding eye contact,” which, according to the agent, was the “sort of behavior” exhibited by “undocumented aliens illegally present in the United States.” Again, the agent asked the man in Spanish where he was from. The man responded that he was born in Brownsville, a prominent border city in Texas. The agent proceeded to arrest the man and brought him to the station. Later, the agent was able to use the man’s social security number to confirm that he was, as he stated, a U.S. citizen.

⁴⁰ For an explanation of this analysis, see Methodology, *infra* pages 30-31.

- **A naturalized U.S. citizen was arrested aboard a Greyhound bus on October 6, 2009. In this case, the arrestee admitted to being born in Macedonia when questioned by a USBP agent. After calling the station, the agent confirmed that the name matched naturalization records, but he was told that the results were “inconclusive” because one name in the system that matched was for a person who had since died. The agent proceeded to arrest the man and take him back to station for fingerprinting and further checks. At the station, the agent concluded that the man had in fact naturalized. The agent—in an apparent attempt to justify why a U.S. citizen had been arrested and detained—explained in the I-44 that there were “three options” (i.e., three people of the same name).**
- **Yet another arrest of a U.S. citizen occurred on October 1, 2009. In this case, a USBP agent boarded a Greyhound bus and engaged in “consensual conversation” with a man who admitted to being born in Jamaica and stated that he was a lawful permanent resident. USBP arrested the man because he could not prove his immigration status. The individual was taken to USBP’s Rochester station for further processing, at which point the USBP agent found that the man, like many lawful permanent residents, had derived U.S. citizenship status from his mother when she naturalized.**

C. Lawfully Present Non-Citizens

Wrongful arrests are a predictable consequence of USBP’s “show me your papers” policing. Indeed, USBP presumes the existence of immigration documents that many lawfully present noncitizens simply will not have—because their cases are being processed by the federal government, because such documents do not exist, because the noncitizen has not been instructed (or is not required to carry) the documents, or because the noncitizen reasonably fears carrying vital documents that could be lost or stolen. As a result, USBP’s policies expose to wrongful arrest and detention noncitizens who are legally present or are in the process of having their applications considered by the appropriate agencies. Those harmed include tourists, nonimmigrants on employment visas, longtime lawful permanent residents, individuals from nations experiencing crisis, and asylum seekers.

Lawful Permanent Residents (LPRs)

Fifty-two of the arrests documented in the I-44s were of Lawful Permanent Residents (LPRs). Many of these individuals have been living in the United States for decades.

- **On November 26, 2007, an LPR from the Dominican Republic was questioned by a USBP agent when his train stopped at the Amtrak station in Rochester. He explained to the agents that he immigrated to the United States in 1973 when he was twelve years old. The LPR was arrested when the USBP agent could not confirm his date of arrival. They were also unable to find his fingerprints at the station, perhaps because there was no record of the fingerprints of a twelve year old. The LPR was arrested, given a \$10,000 bond and placed in immigration detention. The I-44 reports that two weeks later “it was learned” that the man was indeed an LPR as he had stated from the start.**

- On April 4, 2010, a USBP agent questioned a woman who had been an LPR since 1978 regarding her immigration status. She stated that she was a Canadian and a longtime LPR, but that she did not have any documents with her. This was the beginning of a long and difficult detention: The agent first initiated a database search, but was unable to verify her identity or immigration status. At this point, the woman called her husband, who faxed a copy of her permanent resident card. However, the agents were not satisfied with this document and contacted the National Records Center to verify her identity. The National Records Center confirmed that she had been an LPR for decades. After being detained for five hours, she was picked up by her brother-in-law, who happened to live in Rochester.
- On January 17, 2010, a newly approved LPR was questioned by USBP at 4:30 in the morning while traveling by bus. He explained that he was a citizen of Peru. When asked for documentation, he produced his valid Employment Authorization Card (EAD). When the Buffalo Sector office reported that the man had no pending applications, the agents on the bus arrested the man and took him to the Border Patrol station. At the station, the USBP agents found that the man's application for permanent resident status had been granted one month earlier. The man was "in the final stages" of receiving his permanent resident card, but had not yet received it.

Tourists

Twenty-eight of the individuals documented in the I-44s were tourists. Tourists make up an important segment of the foreign born population. According to government statistics, over five million tourists arrive each year in the United States with New York as their destination. These tourists are a vital part of New York's economy.⁴¹ Yet when they travel on domestic train routes, they are arrested simply because they are not carrying their passports.

- On October 5, 2010, a Russian tourist was riding on a bus that stopped in Rochester, New York. When questioned by USBP agents, she explained that she was a citizen of Russia and that she did not have her passport with her. USBP agent arrested her for further "investigation." After taking her to the Border Patrol Station, they found that she had arrived less than two weeks earlier and was in valid visitor status for the next five months.
- At 5:00 A.M. on March 29, 2009, USBP agents questioned a tourist from the United Kingdom traveling by bus. The tourist explained that he had arrived in the United States just seven days earlier, but was not carrying his passport. USBP agents arrested him. At the USBP station, a database search confirmed that the tourist's account was correct.
- On November 8, 2007, a tourist from South Korea was questioned by USBP agents when her train stopped in Rochester. She explained that she was a citizen of South

⁴¹ See, e.g., Goldman, H., "New York City Set to Draw Record 50.2 Million Tourists in 2011," Bloomberg Online, *available online at* <http://www.bloomberg.com/news/2011-12-20/new-york-city-set-to-draw-record-50-2-million-tourists-in-2011-mayor-says.html> (recognizing the economic value of tourism).

Korea, and that she had arrived as a non-immigrant visitor the previous month. USBP agents deemed that her status was “inconclusive”, arrested her, and transported her to the station. She was held in custody until a complete set of record checks confirmed that she had legal status as a visitor for the next two months.

Employment Visas Holders

Thirty-nine of the arrests documented in the I-44s were of individuals who held valid employment visas – including H1, H-1B, H2, L-2, P, and R-1 visas. These visas cover a wide range of types of employment. In some cases, the visa holders are employees of companies who have been granted permission to work in offices in the United States. In other cases, the visas are for work in special occupations, such as artists or religious workers. Still others are for temporary work in fields approved by the federal government as valuable for the economy. In 2011, 337,389 persons were admitted under these types of visas with New York as their destination.⁴² Since many of these visas provide permission to work for several years, the actual number of employment visa holders in New York State is even greater.

- **On May 5, 2009, an employee of Brandeis University was questioned by USBP agents when his train arrived in the Rochester Amtrak station. He stated that he was a citizen of China, and presented his driver’s license as a form of identity. He explained that he was in the United States legally working on an H visa at Brandeis University. The USBP agents state in the I-44 that they placed this man under arrest because they could not verify his status. They described the arrest as “investigative detention” until the man’s status could be “ascertained.” The worker was finally released when his employer at Brandeis University faxed a copy of his I-94, visa and passport.**
- **On October 4, 2008 at 2:00 in the morning, an H1B visa holder and his wife were questioned by USBP agents while traveling by bus through Rochester. They presented their Indian passports, explained that they had H1-B and H-4 visas and that they had timely applied for an extension of their status. The USBP agent later stated that because he could not “determine their status” they would be transported to the Border Patrol Station to “further investigate.” At the station, the USBP agent confirmed that they had applied for and received an extension of their employment visa.**
- **On September 7, 2009, at 1:45 in the morning, an artist from Kenya with a valid performers’ visa was questioned by USBP agents while traveling by bus. She explained that she held a valid P-1 visa but that she was not carrying her passport. She was arrested and transported to the Border Patrol Station. At the station, record checks confirmed that she had valid P-1 immigration status.**

⁴² United States Department of Homeland Security. *Yearbook of Immigration Statistics: 2010*. Washington, D.C.: U.S. Department of Homeland Security, Office of Immigration Statistics, 2011, at 81.

Students

Thirty-seven arrests of student and exchange visa holders are documented in the I-44s. Student visas allow foreign students to study in the United States. They are approved at entry for the duration of the student's status. Foreign students make up an important segment of both public and private universities throughout New York State.

- **On October 7, 2010, a Japanese student with an F-1 visa was traveling by bus two months after she had arrived in the United States to pursue her studies. When questioned by USBP agents, she explained that she was a student and that her immigration documents were at home. USBP agents were not able to confirm her account and arrested her. At the station, they confirmed her account through a data check, which showed that she had legal status through 2013.**
- **On February 25, 2009, at 20 minutes past midnight, a Jamaican student with an F-1 visa was questioned by USBP agents while traveling by bus. She explained that she was in valid F-1 status. The agents were unable to confirm her status and proceeded to arrest her, placing her in handcuffs when she resisted arrest. At the station, the agents confirmed what the student had stated from the start, namely that she was an F-1 visa holder. They did not release her until 3:00 A.M., when they returned her to the bus depot to wait for a 4:45 A.M. bus back to New York City.**
- **On December 4, 2008, a student enrolled in the University of Cleveland doing radiology research was questioned while traveling by bus. He explained that he was a citizen of Iran, that he had entered the United States on a J-1 visa. The USBP agents did a data check that confirmed the student's account. But they nonetheless arrested the student because they were not able to confirm with record checks when the program began or ended.**

Asylees, Refugees and Persons Granted Withholding of Removal

Twenty of the arrests documented in the I-44s were of asylees and refugees. An additional three cases were of persons who had been granted withholding of removal based on threats in their country of origin. Each of these forms of legal protection is based on threats of persecution. As a result of USBP's "show me your papers" policies, many members of this vulnerable population have been subjected to wrongful harassment, detention and arrest due to no fault of their own.

- **On October 19, 2007, a student who had arrived in the United States as a child from China and was granted asylum with his family in 2001, was questioned by USBP agents while traveling by bus through Rochester. When questioned, the asylee presented an EAD. The individual was brought to the station because on-site database checks failed to confirm his statements. At the station, record checks showed that an immigration judge granted asylum in 2001.**
- **On December 20, 2007, USBP agents questioned an asylee from China at Rochester International Airport. She presented a valid EAD and explained that she was an asylee. Her visa and I-94 had been checked with her baggage; her EAD—itsself valid**

evidence of registration—was the only document available to her. Nevertheless, she was arrested and taken to the Rochester station. She provided the receipt number for her asylum approval letter, and USBP agents at the station found the record of approval. Still, they continued to detain her because they could not ascertain who the beneficiary of the approval letter was. She was held at the station until her lawyer was able to fax her I-797A, conclusively demonstrating that she had been granted asylum.

- **On June 13, 2007, a recipient of withholding of removal was questioned by USBP agents while traveling by train through Rochester. He produced a copy of the order of the immigration judge that granted him withholding of removal. For some individuals granted withholding, this document from the court will be the only document they have to demonstrate their legal presence. The USBP agent arrested him because of the poor quality of the withholding document, which had been issued in 2004. The man was transported to the Border Patrol Station for “further investigation.” At the station, an inquiry into relevant databases showed that the man had been granted withholding.**

Individuals with Temporary Protected Status

Nine arrests of individuals who had been granted Temporary Protective Status (TPS) were documented in the I-44s.⁴³ Temporary Protected Status (“TPS”) is a benefit granted to immigrants in the United States from countries with extraordinary conditions—such as armed conflicts or natural disasters—which prevent such individuals from safely returning.⁴⁴ TPS is available to persons with removal orders and those who entered without inspection. Recipients of TPS do not receive any documents on the regulatory list of “evidence of registration” unless they apply for work authorization. Recipients of TPS who do not work—like children and the elderly—lack any registration documents. TPS status is often extended automatically pursuant to Federal Register notices, which do not lead to individualized documents for the TPS holders.⁴⁵ The government also has provided across the board Deferred Enforced Departure on the basis of each country of origin, without individualized notice.⁴⁶ This renders travelers with TPS status particularly vulnerable to arrest by USBP officials. The following stories are illustrative:

- **On October 25, 2009, USBP agents questioned a citizen of El Salvador who presented a valid EAD. Even though this is a valid registration document, agents arrested him after a record check performed at the bus terminal suggested he had entered without inspection. At the station, agents confirmed that he in fact had TPS, which was the basis for the award of temporary protected status.**
- **On February 7, 2011, two individuals from Liberia were questioned by USBP agents, who asked them to produce documents proving their status. Both**

⁴³ Two of the nine persons profiled in this section were granted “Deferred Enforced Departure” (DED). DED allows qualified individuals who previously held TPS to remain in the United States in accordance with a presidential directive.

⁴⁴ 8 U.S.C. § 1254a(b).

⁴⁵ See, e.g., Extension of Designation of Haiti for Temporary Protected Status, 77 Fed. Reg. 59943 (Oct. 1, 2012) (extending expired EAD’s through July 22, 2013).

⁴⁶ See, e.g., Filing Procedures for Employment Authorization and Automatic Extension of Existing Employment Authorization Documents for Liberians Provided Deferred Enforced Departure. 76 FR 53145 (describing provisions for Liberians granted deferred enforced departure).

presented Pennsylvania identification cards. They were taken off the bus and detained at the Rochester Border Patrol Station, where they were fingerprinted and run through immigration databases. The records check at the station showed that they had had Temporary Protective Status, and that their statuses had been automatically extended under Deferred Enforced Departure.

Individuals with pending applications

Twenty-five of the documented arrests were of individuals with pending applications for change of status or other relief. In many cases, people whose applications are pending have no document that evidences a pending application.

- **On August 13, 2010, a Ukrainian asylum seeker was questioned by USBP while traveling by bus. He explained that he was from the Ukraine and provided a New York State Driver's License and an EAD. The agent still arrested him and took him back to the station. At the station, it became clear that he had an asylum application pending, and also that he had applied for adjustment of status.**

Individuals in ongoing immigration proceedings

Fifty-two of the I-44s documented arrests of people who were legally present because they were in immigration proceedings. Under the immigration law, a person who is in immigration proceedings is permitted to remain in the United States until the proceedings conclude, at which point they might be provided with relief that allows them to remain permanently.

- **On April 11, 2007, a man from Guatemala was traveling by train to an immigration hearing in Chicago when he was stopped and questioned by USBP agents. He explained to the agent that he was in the process of adjusting his status, and that he was on his way to his immigration hearing. When on-site record checks failed, the USBP agents arrested the man. At the station, record checks showed that his hearing was scheduled for a few days later, and that he had an I-485 pending for adjustment of status to lawful permanent residence.**
- **On May 24, 2008, a woman from Russia was stopped by USBP agents while traveling by bus through Rochester. She presented the agents with her Illinois identification card and explained that she had an asylum case pending and that her lawyer had all of her documentation. She was arrested and taken to the Border Patrol Station for "further processing and verification of her claims." At the station, the agents confirmed that the woman had a hearing in immigration court scheduled for the next day.**

Other Persons with Legal Status

The USBP documents also included other persons who held a variety of forms of legal status. These include diplomatic visas, special visas for victims of domestic violence, and special status provided to the citizens of former US territories. Thirteen persons fell into these other categories of status.

- On December 26, 2010, a Guatemalan national with an approved I-360 special immigrant petition was questioned by a USBP agent while she traveled by bus through Rochester. An I-360 petition is used by persons who have been subjected to domestic violence and are seeking to self-petition under the Violence Against Women Act. The USBP agent asked the woman if she had documents to be in the United States legally. She said yes, but was unable to explain what documents she had. The USBP agent sought to verify the woman’s status and found no record with her name and date of birth. The woman was arrested and taken to the Border Patrol Station. At the station, the agent determined that the woman had an approved I-360 petition and had filed an I-485 application for adjustment of status.

Each of these categories of persons arrested by USBP illustrates how USBP’s *de facto* presumption of unlawful status for the foreign born is based on the false, and deeply problematic notion that foreign birth often or usually means that an individual is present unlawfully. This is simply not that case: Demographic data from New York State makes clear that the vast majority of those who are foreign born are lawfully present. According to census data from 2010, 4.3 million New York residents were born in other countries. That is roughly 22% of all New Yorkers, or more than one in five. Most of these individuals have lawful status: Over half (roughly 51%) of foreign-born New Yorkers are naturalized U.S. citizens.⁴⁷ And 1.6 million New Yorkers are lawful permanent residents.⁴⁸ As for the rest of the foreign born population, hundreds of thousands have lawful status through student, employment, or tourist visas; asylum; or temporary protected status. Many others have duly submitted applications for extensions, change of status, asylum or other categories of relief, and have permission to be in this country while their requests are processed.⁴⁹ The I-44s show that each of these categories of foreign-born persons has suffered at the hands of USBP’s “show me your papers” regime.

V. USBP’S ARREST PRACTICES AFFECT NATIONALS FROM A WIDE RANGE OF COUNTRIES, BUT IMPOSE PARTICULARLY UNFAIR CONSEQUENCES ON INDIVIDUALS OF COLOR

The I-44 data shows that USBP’s arrest practices affect lawfully present noncitizens from all over the globe.⁵⁰ The greatest impact, however, appears to be on noncitizens of color.⁵¹ The vast majority of those wrongfully arrested were from South Asian, East Asian, African, and Caribbean backgrounds. Moreover, the arrest rates for persons with visas far outstrips the proportion of visas that are granted to persons from regions that are predominantly made up of persons of color. For example, African citizens make up one percent of visitors to the United States, one percent of persons granted temporary work permits and two percent of students.⁵² But they made up twenty three percent of the persons arrested who had valid visitor’s visas, eight percent of those arrested with work visas and eighteen percent of those arrested who

⁴⁷ See MPI Data Hub – New York, available online at <http://migrationinformation.org/datahub/state.cfm?ID=NY>.

⁴⁸ See Estimates of the Legal Permanent Resident Population in 2011, DHS Office of Immigration Statistics, available online at http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_lpr_pe_2011.pdf.

⁴⁹ See 8 C.F.R. § 274A.12(b)(20)(permitting nonimmigrants who have filed a timely request for an extension to continue to work for their employers for a 240 day period while their application is processed.)

⁵⁰ The statistics in Figures 3 and 4 are for the I-44s in which CBP listed the country of nationality. There were ten cases in which the documents did not list the country of citizenship.

⁵¹ Unlike the I-213 data analyzed in *Justice Derailed*, the I-44 data does not list those arrested by “complexion.”

⁵² The share of visas for each region was calculated based on the 2010 Yearbook of Immigration Statistics.

hold student visas. Similarly the percent of persons from Asian countries that were arrested in each of these forms of status was two to three times the share of visa holders from those countries in each of the visa categories.⁵³ This data is consistent with other reports on the disparate racial impact of CBP enforcement. Indeed, these reports have found that transportation raids lead primarily to the arrests of individuals with a “medium or black” complexion.⁵⁴

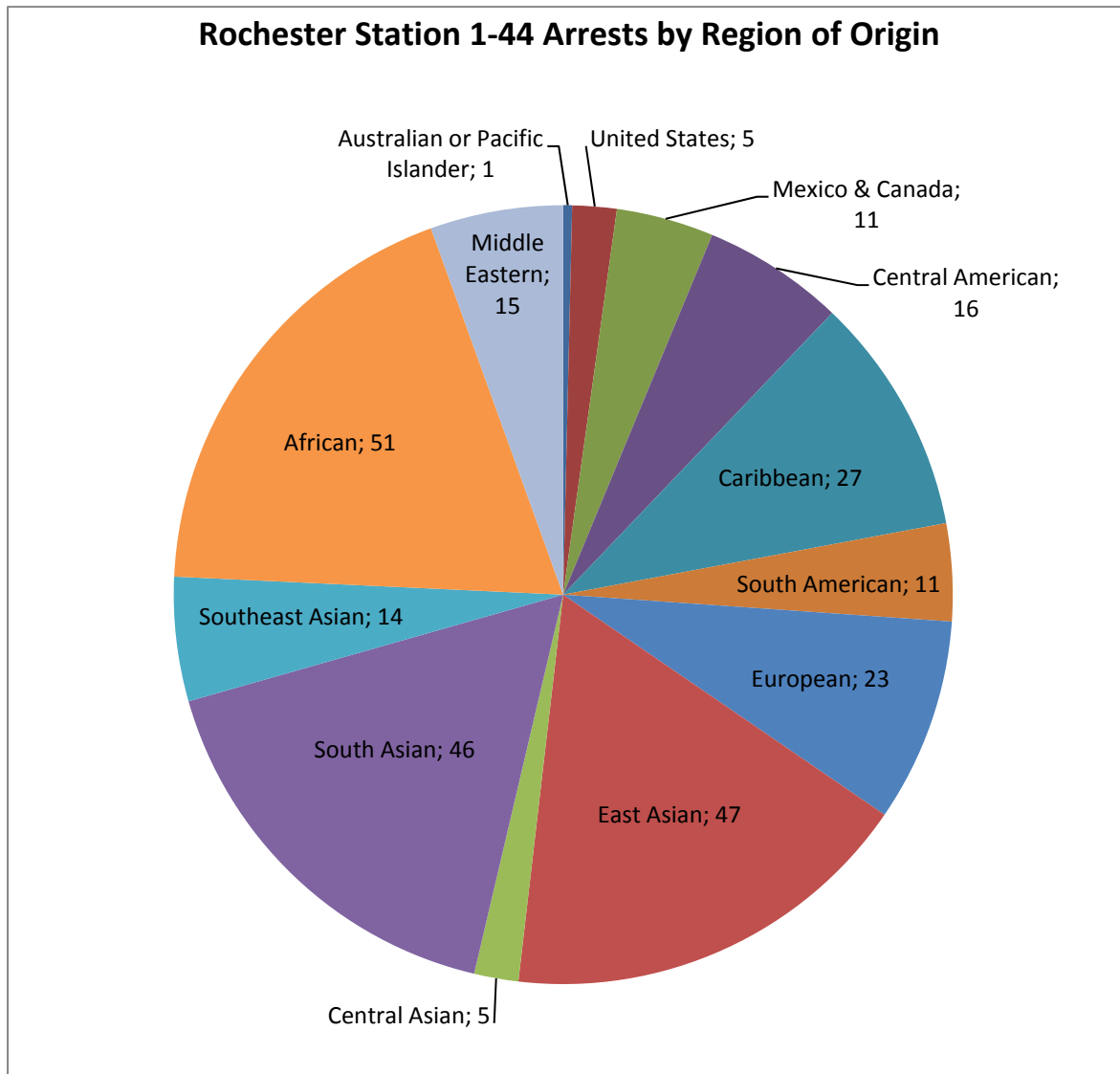


Figure 5. Geographic region of the country of origin of the arrestees documented in the I-44s.⁵⁵

Every one of these people arrested suffers the humiliation and inconvenience of being taken from trains and buses carrying their belongings, often in the middle of the night and holding the hands of small children. At the station they are required to provide a full set of fingerprints, which are entered into a database. Because of this arrest, they will have official, permanent “arrest” records attached to their names and fingerprints, even when the arrest was due to USBP error. If they are unable to contact family members or an attorney to have proof of

⁵³ Citizens of Asian countries make up 19% of visitors, 25% of work visas, and 38% of student visa holders. Of those arrested who are documented in the I-44s, citizens of Asian countries made up 58% of the arrested visitors, 74% of the arrested holders of work visas, and 64% of the holders of student visas.

⁵⁴ *Justice Derailed*, at 16.

⁵⁵ For an explanation of how this analysis was performed, see Methodology at page 30.

their citizenship or other status sent to USBP in time, they could be detained for extended periods of time or transferred to ICE.

For noncitizens who are nationals of certain countries, including Bangladesh, Somalia, the Philippines, Yemen, and Iran, the consequences are greater. Even when these individuals are able to establish their status, they are subjected to an additional round of scrutiny based solely on their country of origin. In one case, for example, after USBP agents confirmed that a nonimmigrant from the Philippines held a valid employment visa, they nonetheless entered his name in a Joint Terrorism Task Force database. His name and the arrest will remain in that database even though USBP agents confirmed that he is in fact in valid immigration status and found no other reason to be focused on him. Similarly, USBP agents entered the name of a recipient of withholding of removal from Bangladesh in the Joint Terrorism Task Force database even after they confirmed that he had in fact received withholding. In these cases, individuals are entered into databases targeting terrorists solely because they were caught in USBP's dragnet and happen to be born in one of a certain list of countries.

VI. MANY LEGALLY PRESENT PASSENGERS ARE ARRESTED AND DETAINED BECAUSE OF USBP'S RELIANCE ON INACCURATE AND INCOMPLETE DATABASES THAT ARE NOT DESIGNED TO IDENTIFY ALL WHO ARE LAWFULLY PRESENT IN THE UNITED STATES

The I-44 narratives released by USBP reveal that the databases USBP relies on are often inaccurate or incomplete. Individuals are therefore frequently detained unnecessarily, despite the fact that they are legally present. These database flaws are exacerbated by USBP's presumption that it may place the burden on the passenger to prove his or her status. The I-44 documents show that when an agent's radio call to the station requesting that the passenger's name be searched is "inconclusive," the agent arrests the passenger. Database searches conducted after the individual's detention often reveal that the person has legal status. USBP's policy fails to recognize that the flaws in its databases inevitably result in improper arrest and detention of legally present individuals. USBP's policy also fails to recognize that the databases are not designed to include all persons who are lawfully present in the United States.

A. USBP unnecessarily detains many passengers because of flaws and inaccuracies in its databases

USBP agents operate on the presumption that unless they can conclusively establish a person's status through database checks, that person should be arrested on the spot and hauled down to the Border Patrol station. However, the I-44s show that the immigration databases USBP agents rely upon often contain erroneous, incomplete, or out-of-date information. Indeed, many of the arrestees documented in the I-44s explained to the agent during questioning that they have a type of status that USBP agents know (or should know) is unlikely to be uncovered by a database search.

Despite the predictable failure of USBP databases in determining, for example, that an individual has an appeal pending with an immigration judge or with USCIS, agents typically detain the passenger when the database search fails. Current USBP policy unfairly burdens legal residents with the failure of its own inaccurate databases.

- On August 3, 2009, a visitor from India was detained when he was questioned by an agent and did not have his passport available. USBP agents were unable to find his name in the database, so the individual was detained until USBP agents finally ascertained that he had valid visitor status. The agents were unable to verify his status on site because his name had previously been entered into the database incorrectly.
- On May 30, 2009, a visitor born in Ghana was arrested for failing to carry an I-94 even though he presented a valid U.S. visa and explained that he had never been issued an I-94. An I-94 form is an Arrival-Departure Record—used by both USBP and U.S. Citizenship and Immigration Services (USCIS). At the Rochester station, USBP confirmed with a bus driver that the individual had not been issued I-94 because of USBP error and record checks confirmed that he was legally present.
- On August 12, 2011, national of Benin who had been granted withholding of removal was questioned by a USBP agent while traveling by bus through Rochester New York. The agents conducted what they called a “telephonic record check” and were told that the man had been ordered removed. The agent proceeded to arrest the man and take him to the station. Only afterwards did USBP discover that the immigration judge ordered that removal be withheld.

In several cases, USBP ultimately released persons it had arrested only after those individuals contacted lawyers, employers, the university or friends for documents.

- On March 17, 2009, a student attending the University of Rochester was arrested after a database flaw suggested that the student was no longer enrolled. Luckily, the student had been arrested at about 11:00 A.M., so a university official was able to contact the station and explain that the student was, in fact, enrolled. The entry in the database was a mistake.
- On March 1, 2007 an H1B visa holder from China was questioned by USBP agents. He explained that he had entered the country in December 2005. When the record checks suggested that this visa had expired, the man explained that he had sought and received an extension. The USBP agents were unable to confirm this fact through what they described as “exhaustive” record checks. They placed the man under arrest. At the Border Patrol station the agents permitted the man to contact his lawyers which he was able to do because the arrest took place during office hours. The man’s lawyer faxed over a copy of the approved visa extension.
- On March 25, 2007, an employee at Sloan Kettering Memorial Cancer Institute, who was traveling with his United States citizen fiancée, was questioned by USBP when his train stopped in Rochester, New York. He explained that he was a citizen of Germany, that he had entered the country as a J-1 visitor and that he had changed his status to an H-1 worker. He presented his driver’s license as identification. The agents nonetheless arrested the man because

“the information could not be corroborated” and took him to the USBP station. The man contacted a friend who was able to get into the man’s apartment to retrieve his immigration paperwork. The entire process took almost three hours.

B. USBP relies on data systems that are not designed for the purpose of identifying who is lawfully present in the United States

The I-44s also illustrate how the data systems USBP relies on are not designed as a complete registration scheme for noncitizens in the United States. A workable registration system would be organized by the name of the individual. But as the I-44 forms illustrate, documentation of legal status under the current system is sometimes filed under the name of the employer or the name of a spouse. As a result, persons with legal status may wait hours under arrest while USBP agents seek to investigate their status.

- **On December 10, 2009 at 4:45 in the morning, an F-2 visa holder from Ghana was questioned by USBP agents while traveling by bus. She explained that she was the wife of a student and in valid immigration status. The USBP agents conducted a record check that showed the woman’s prior F-1 student visa, which was canceled when she stopped attending school. Not able to confirm the woman’s F-2 status, the agents arrested her. At the station, after what the agents described as “exhaustive records checks” in which they used her husband’s name the agent found that the woman was an active F-2 visa holder, as she had initially stated.**
- **On April 17, 2010 at 11:30 P.M., a student from South Korea was questioned by USBP while traveling by train. He explained that he had arrived in the United States as a visitor in 2004 and had changed his status to that for a student. When USBP agents could not confirm the information they arrested the student. At the station, they also were at first unable to confirm his status. Ultimately, after the student obtained a receipt number, the agents concluded that the student had status as an F-2 under his mother.**

The high rate of failure for verifying these claims to status highlights the disconnect between USBP’s “show me your papers” policing and the state of the U.S. system of documentation. The system for supplying documentation to non-citizens is far more fragmented and disjointed than USBP policy contemplates. It involves several agencies—which often fail to communicate and share data effectively—and many types of status, which are increasingly difficult to track in real-time. USBP databases are particularly deficient in providing current information about the status of immigration court cases, pending applications for asylum, extension or change of status, adjustment, and TPS status. USBP’s use of these faulty databases turns a blind eye to the complexity of the current immigration system, and unsurprisingly results in many unjustified arrests.

VII. USBP Agents Make Arrests Based on Erroneous Understandings of Federal Immigration Law and Procedure

The problems with USBP databases are compounded by USBP agents misunderstanding immigration law and procedure. The data from the I-44s show numerous instances in which USBP agents did not understand the explanations that individuals offered about their status. In addition, the data show numerous cases in which USBP agents did not know how to read either the documents individuals presented or the data the agents obtained through their inquiries. USBP agents also misread their power to demand documents and the duty of noncitizens to carry definitive proof of all aspects of their immigration status. As a result, USBP agents arrested a wide range of people who were lawfully present in the United States.

A. USBP agents misunderstand the kind of documentation that is available to many noncitizens

The I-44s show that USBP agents often expect noncitizens to have documentation that is not available to them. This misunderstanding is prominent in cases involving Temporary Protected Status (TPS). TPS is provided to nationals of designated countries based on a finding that there has been a disaster or other occurrence that counsels in favor of allowing persons from that country to remain in the United States.⁵⁶ Temporary Protected Status is therefore available even to those who entered without inspection or who have previously been ordered deported.⁵⁷ The I-44s show, however, that USBP agents arrested persons who explained that they had TPS when USBP agents learned from a database inquiry that the individual had entered without inspection. This fact, however, was completely consistent with the claim of TPS status.⁵⁸

USBP agents may also be unaware of rules and policies of USCIS, the agency that adjudicates visas and issues some of the documents that the USBP agents ask travelers to produce. If USCIS has a policy that automatically extends a visa or an employment authorization document, the individual cannot possess an individualized document that offers the proof that USBP agents demand.

For example, in one case, a USBP agent confirmed that a citizen of India had arrived on an H1B visa and had filed an I-485 application for adjustment of status to that of a lawful permanent resident. Nonetheless, the agent arrested the person because there was “no records of extension or adjustment of status.” Following the arrest, the USBP agents learned that several years earlier USCIS had instituted a program that allowed persons with H1B and L1 visas to file for adjustment of status if their employers sponsored them. Under this policy the person who had been arrested was lawfully present pending resolution of his application. Had the agents been aware of that policy prior to the arrest, the individual would never have been arrested.

While demanding documents that might not exist, USBP agents often refused to credit documents that established the legal status of the noncitizen. For example, in the TPS cases, the USBP agents made arrests even in the face of clear evidence of TPS status. Those granted

⁵⁶ 8 U.S.C. § 1254.

⁵⁷ 8 U.S.C. § 1254a(c)(1).

⁵⁸ 8 U.S.C. § 1254a(c)(2) (listing eligibility criteria for TPS).

TPS are not automatically provided with documentation of their status. But those who also seek employment authorization may eventually receive an Employment Authorization Document (EAD). The EAD is recognized by regulations as serving as evidence of registration.⁵⁹ But even in the face of a valid EAD, USBP agents made arrests that deprived persons of their liberty and disrupted their travel.⁶⁰ The USBP agents appeared to treat the EAD as little more than proof of foreign birth.

B. USBP agents showed a misunderstanding of technical aspects of immigration law

By presuming that they may arrest anyone who does not conclusively establish his or her status, USBP agents arrest and detain persons where the law is complex and the agents lack the necessary technical knowledge. For example, the immigration law includes special provisions for residents of countries that are former United States territories and possessions. Citizens of these countries have special rights to travel and work in the United States. In one case, a USBP agent questioned a woman who stated she was born in Palau and that her embassy had informed her that she would have no trouble travelling, working and living in the United States. Through a telephone check, the USBP agents confirmed that there was no end date on the woman's entry document. But because the woman had no "current, valid immigration documentation," the agents arrested her and transported to the Rochester Border Patrol station. At the station, the agents learned through the USCIS website that citizens of Palau are permitted to live and work in the United States. The USCIS website information simply confirmed what the United States promised to citizens of Palau.⁶¹ USBP's refusal to credit the woman's explanation led her to be detained.

In another case, a USBP agent questioned a woman on June 27, 2011 who presented a Haitian passport and an EAD. The agent learned that the woman had arrived on a B-2 visa and presumed that she had overstayed her visa because of the date of her arrival in the United States. But he ignored the fact that the United States government had declared Temporary Protected Status for residents of Haiti who had been in the United States before January 21, 2010 (a date that was later extended to July 23, 2011). The woman's EAD was completely consistent with an application for Temporary Protected Status. But the agents nonetheless arrested the woman and brought her to the station. At the station he learned that she had in fact applied for Temporary Protected Status, and that her application was pending.

USBP's policy of arresting individuals first and ask questions later is particularly egregious when the arrest is based on its own ignorance of the law. Often, agents realize their error by searching the public USCIS website while the detained individual waits for them to "verify" that they are legally present. These arrests are intimidating and humiliating for the persons detained, and are an enormous waste of public resources that could be spent on USBP's stated mission of border security.

⁵⁹ 8 C.F.R. § 264.1(b)

⁶⁰ There are 16 cases documented in the I-44s where a person is arrested under §1304 after presenting a valid EAD.

⁶¹ 48 U.S.C.A. § 1931 (describing rights of habitual residence in the United States offered to citizens of Palau).

C. USBP agents erroneously presume that all noncitizens are required to carry their passports and detailed documentation at all times

In arguments eerily similar to those made by the State of Arizona in *Arizona v. United States*,⁶² USBP agents erroneously presume that any noncitizen who is not carrying a “registration” document is in violation of federal alien registration laws, codified at 8 U.S.C. §1304. Over half of the I-44s cite this statute as justification for the arrest. USBP agents erroneously presume that a comprehensive registration scheme that existed in the 1950’s continues to be implemented today. In fact, there is no such comprehensive scheme and it is simply wrong to engage in investigative arrests.

There are three problems with USBP’s use of section 1304 as justification for its arrests. First, as the federal government successfully argued in its challenge to the Arizona scheme, there are many person with valid status for whom current federal regulations include no “registration” document. In *Arizona*, the federal government explained, for example, that an applicant for TPS does not complete any document that is considered a “registration” document and that unless the TPS applicant seeks work authorization he or she will not receive any “registration” document after the application is granted.⁶³ Yet, as shown in the I-44s, USBP arrested persons with TPS because they lacked a “registration” document. Similarly, in the *Arizona* case, the government explained that a VAWA self-petitioner (based on abuse by a citizen spouse) would not receive a “registration” document until more than seven months after filing the appropriate paperwork⁶⁴. Yet in the I-44s, USBP arrested a woman who had filed the necessary papers for a VAWA self-petitioner for not carrying a registration document. Furthermore, agency practice does not assure that those who fall into categories that match a possible document will actually receive that document. For example, contrary to the presumption of USBP agents, not everyone who enters the United States will be issued an I-94, which is one of the documents listed in current regulations as “evidence” of registration. The I-44s include several cases of noncitizens who arrived by bus or on foot and did not have an I-94. In each case, the USBP agent arrested the person and then engaged in extensive research to find out why USBP had failed to issue an I-94. In one case, after confirming that the I-94 had not been issued, USBP continued to hold a tourist and transport him to a port of entry so that an I-94 could be issued after the fact. USBP, like Arizona, relies on the false assumption that there is a comprehensive registration scheme that provides “registration” documents to all noncitizens that file applications with the government or have been granted some form of legal status.

Second, the I-44s show that USBP agents are often uninterested in whether the document a noncitizen proffers is on the regulatory list of documents that are “evidence” of registration.⁶⁵ USBP agents demand all sorts of documents that are not on the list while failing to recognize those that are. For example, in cases involving students, USBP agents frequently asked to see the individual’s I-20 form, which is not on any registration list. In fact, students are advised by regulation not to carry their I-20 forms. The regulations instruct students that they

⁶² 132 S.Ct. 2492 (2012).

⁶³ Declaration of Michael Aytes, *United States v. Arizona*, ¶18 (D. Ariz.), dated June 22, 2010, avail. at <http://www.justice.gov/opa/documents/declaration-of-michael-aytes.pdf>.

⁶⁴ *Id.* ¶8.

⁶⁵ The regulatory list is found at 8 C.F.R. § 264.1(b). It states: (b) Evidence of registration. The following forms constitute evidence of registration: I-94, Arrival-Departure Record; I-95, Crewmen’s Landing Permit; I-184, Alien Crewman Landing Permit and Identification Card; I-185, Nonresident Alien Canadian Border Crossing Card; I-186, Nonresident Alien Mexican Border Crossing Card; I-221, Order to Show Cause and Notice of Hearing; I-221S, Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien; I-551, Permanent Resident Card; I-766, Employment Authorization Document.; Form I-862, Notice to Appear; and Form I-863, Notice of Referral to Immigration Judge.

are expected to “safekeep the initial I–20 ID bearing the admission number and any subsequent copies which have been issued to him or her.”⁶⁶ USBP agents who question student visa holders, however, often ask to see the I-20 ID that the student was supposed to keep in a safe place and instruct students that they are required to carry that document. Conversely, many USBP agents refuse to treat an Employment Authorization Document as a registration document, even though it is on the list of forms of “evidence of registration.” In many of the I-44s, noncitizen presented their laminated EAD cards when they were asked for documents. But the USBP agents treated the cards as little more than proof of alienage and an excuse for detention and “further investigation.” USBP’s invocation of §1304 is therefore plainly disingenuous. What they demand is that noncitizens carry conclusive proof of all aspects of their status irrespective of whether a document is one that they could plausibly be expected to carry.

Finally, USBP’s reliance on §1304 to justify its arrests presumes that the regulatory list of documents that are deemed “evidence” of registration must be carried on penalty of criminal sanctions. This assumption misunderstands the way in which the immigration law has evolved and the federal government’s abandonment of a regulation that deemed all sorts of fragile paper documents to be the kind of alien registration receipt that must be carried at all times.

Under the Immigration and Nationality Act, the carry requirement is only triggered when the agency provides a noncitizen with a “certificate of registration” or an “alien registration receipt card” after completing a registration process. Back in 1952, agency regulations included a comprehensive scheme under which any noncitizen could go into a post office and register.⁶⁷ The 1952 regulations also deemed any document that was “evidence of registration” to be a “certificate” that must be carried on penalty of criminal arrest. But in 1960, the government abandoned that scheme. There are no more registration agents, registration offices, or registration “certificates.” Instead, the current regulations simply deem a variety of documents, including applications for status, to be ways of “registering.”⁶⁸ Although they also list some documents as “evidence” of registration, the regulations no longer say that this assortment of paper documents is subject to the statute’s carry requirement.⁶⁹

There is good reason not to treat the documents listed in current regulations as subject to a carry requirement. For many noncitizens on nonimmigrant visas, the only relevant document in the current list is the paper I-94 form that they received when arriving in the United States and which is typically placed inside the person’s passport. That form, which is called an “arrival departure form” states nowhere that it should be carried at all times.⁷⁰ Instead it emphasizes with bold script that it should be surrendered upon departure from the United States. Visitors have good reason to safeguard this important slip of paper, much as they safeguard their passports. And safeguarding documents means not carrying them at all times.

⁶⁶ 8 C.F.R. 214.2(f)(2).

⁶⁷ Fed. Reg. 11519, 11532-33 (Dec. 19, 1952) (adding 8 C.F.R. § 264.2(registration agents) and § 264.3(places of registration)).

⁶⁸ Fed. Reg. 7180-81 (July 29, 1960). Current regulations have continued the scheme in which there are a variety of documents that are listed as “prescribed registration forms” while others are listed as “evidence of registration.” 8 C.F.R. § 214.1.

⁶⁹ Compare Fed. Reg. 11533 (Dec. 19, 1952) (stating that the provisions of 264 of the INA apply to the documents referred to by regulation as evidence of alien registration) with Fed. Reg. 7180-81 (July 29, 1960)(deleting registration process and provision delineating that documents which are deemed “evidence of registration” are subject to the carry requirement).

⁷⁰ See I-94 Instructions, U.S. Customs and Border Protection, *available at* <http://forms.cbp.gov/pdf/arrival.pdf> (stating generally in small print that the form must be retained in one’s possession and surrendered on departure but not that it must be in one’s personal possession at all times). USBP’s view that all visitors are required to carry their passport and I-94 on their person at all times is stated on their website, *available at* http://www.cbp.gov/xp/cgov/travel/id_visa/i-94_instructions/filling_out_i94.xml.

Indeed, the U.S. State Department recognizes that basic common sense in its advice to Americans who travel abroad. The State Department advises American travelers: “Your passport, cash and credit cards are most secure when locked in a hotel safe.”⁷¹

Noncitizens also face high fees if they lose their important documents. As of 2012, it cost \$450 to replace a lost or stolen green card,⁷² and LPRs face lack of any documentation during the pendency of the process for replacing a lost or stolen card. Immigrants seek to protect their documents much as tourists seek to protect their passports.

The current list of so-called registration documents also contains documents that could not stand up to be carried at all times. Take “an order to show cause for a person in proceedings.” Today, one might hardly notice the small print, which explains that it constitutes a registration document whereas under original regulations, there was a stamp put on the document clearly indicating it was proof of registration.⁷³ But even if the role of the document as proof of registration were clear, a person would have to fold up this paper and keep it in his or her wallet for years, during which time it would degrade. Such a document would eventually be impossible to decipher and would hardly serve to establish registration. Indeed, in one of the I-44s produced in the FOIA, a noncitizen who had been granted withholding of removal was arrested “because of the poor condition and quality” of the document showing the judge’s decision.

In sum, the very premise of USBP arrests—that foreign-born noncitizens who cannot prove their status on the spot are subject to arrest—is faulty and anachronistic. There is no longer a comprehensive registration scheme and the documents that would accompany such a scheme. Arrests based on nothing more than failure to carry proof of status are improper and should be stopped.

⁷¹ See “A Safe Trip Abroad,” U.S. Department of State, available at http://travel.state.gov/travel/tips/safety/safety_1747.html.

⁷² 8 C.F.R. § 103.7(b)(1)(i)(G)(\$365 application fee) & (C)(\$85 biometric fee).

⁷³ Fed. Reg. 3253 (June 3, 1954)(providing for endorsement of order to show cause for document to be evidence of registration).

VIII. CONCLUSION

Families for Freedom's FOIA suit yielded documents and official statements that show the underpinnings of USBP's rapid and unchecked expansion into interior enforcement. As USBP has grown exponentially in manpower and spatial scope, it has instituted disturbing internal policies and sought to conceal them from the public, prior to and even during the FOIA litigation. From 2006 to 2011, USBP allocated hundreds of thousands of dollars to discretionary award programs for arresting agents. The agency keeps meticulous track of sector-level arrest rates, and reports these arrest numbers in mass emails to hundreds of USBP officials every day. These arrest reports are the only regularly communicated measure of sector performance.

The I-44 forms document the practical consequences of Border Patrol's recent expansion. Individuals with lawful status are seized and detained at any time of the day—including in the wee hours of the night. While some are U.S. citizens or longtime residents of the United States, many others are tourists who have spent only limited time in the United States and often speak little or no English. Despite their attempts to explain their lawful status to USBP agents, they are taken to the Border Patrol Station to be fingerprinted, interrogated, and run through the system. Again, such policing, which places special burdens upon non-native English speakers, disparately impacts persons of color.

In some cases, officials at the station are able to confirm the lawful status of those wrongfully arrested at by contacting federal databases; it is unclear, however, why those databases cannot be accessed before the wrongful arrest and detention occurs. In other cases, the detained are forced to contact teachers, principals, lawyers or employers to fax over documents that will satisfy USBP agents' suspicions about their status. The I-44s document the cases of the lucky ones—who were able to establish their status before being booked into a detention center. But they all suffered the harrowing experience of being arrested and, at the very least, having their travel or vacation plans interrupted.

Underlying all of these problems is USBP's misguided expansion into interior enforcement. The train and bus arrests studied in this report have little to do with policing the border. Instead they are little more than programs that boost the arrest rates of local USBP stations while doing damage to our principles as a free and open society. The consequences of these wrongful arrests continue far after the point USBP releases these individuals from custody. All of those caught in USBP's dragnet will have an arrest record that will follow them for life. Some of those wrongfully arrested will be placed permanently in immigration and/or terrorism databases, subjecting them to heightened police scrutiny in the future. And, for many tourists, such ordeals will forever mar their experience of visiting the United States.

The remedy is to return USBP to its job along the border and to remove standardless incentive programs. We therefore recommend:

- USBP should end its bonus programs. These programs are standardless and encourage local agents to respond to the only measure that USBP tracks closely: the number of persons arrested without regard to priorities or the consequences for persons living and traveling in the regions where USBP operates.

- USBP should stop engaging in interior enforcement of the immigration laws. These programs are not tied to any enforcement priorities and impose hardship on all persons, and especially persons of color who seek to live and travel throughout the United States.
- USBP should stop enforcement programs that are based on suspicionless questioning of persons. As this report shows, these programs lead to proven arrests of citizens, permanent residents and other persons of status and are not justified.
- Congress and Department of Homeland Security should institute programs that will oversee and demand accountability from USBP's programs and policing practices.
- The Department of Homeland Security should establish mechanisms and structures for redress of wrongful harassment, arrest and detention of individuals. USBP agents should be held accountable for those they arrest who have proper status.

METHODOLOGY

As a result of the FOIA litigation, USBP produced the following types of documents, which were used in our analyses.

Individual agent bonus documents

These documents were created during the nomination and approval process for the cash bonus and vacation award programs. They show that the nomination form consists of agent names, positions and award amounts, with no indication of the justification for each nomination or award amount.

Sector-wide bonus budget documents

These documents indicated the amount Buffalo Sector allocated to the cash bonus program, the time-off award bonus program and the gift card bonus program for fiscal years 2006-2011. These documents were used to create Figures 1-3.

I-44 Forms

As a result of the litigation, USBP prepared redacted copies of I-44 forms from Rochester station that record train and bus arrests and were created between fiscal years 2006 and 2011. The I-44 forms produced were typically created when a person was arrested on a train but was not issued an I-213 because they were not found to be deportable. The documents used for our analysis include individuals who were arrested, taken to a Border Patrol station, and then released. These documents were used to create Figures 4-6.

The I-44 forms produced by USBP indicate the date and time of the arrest, the place of arrest, and the statutory basis for the arrest. In addition, the narrative section provides the country of citizenship of the arrestee and other details regarding the apprehension, including the agent's stated reason for suspicion. Eighteen I-44s were missing data on country of origin.

For our data comparing I-44 arrestees to the total number of visa holders, region and status were categorized according to the conventions of the Statistical Yearbook.⁷⁴

Status classifications

- The "other" category includes individuals from Palau, individuals carrying I-95 forms as crewmen, individuals with V visas, T visas, and G visas; and individuals that USBP determined were legally present but did not note the type of status on the I-44.
- Conditional LPRs are categorized as LPRs.
- A person with a timely application to extend an existing status is categorized as continuing to have that status. A person seeking a new status is categorized as pending application.
- "Pending immigration proceeding" refers to individuals with cases pending at IJ, BIA or federal court level, as well as cases where an individual is under a pending order of supervision, the individual has been granted time for voluntary departure (and is within the time period to depart), or the individual is under an order of supervised release.
- When Deferred Enforced Departure (DED) had been granted to an individual who previously had Temporary Protective Status (TPS), that individual is classified as having TPS.
- Our prior report addressed those arrested who were found to be removable.⁷⁵ This report therefore excludes 16 individuals for whom an I-44 was created, who were found removable, but who were then extradited or transferred to another agency.

Buffalo Sector daily arrest report recipient list

This document showed the number of individuals to whom Buffalo Sector station-level arrest data was sent during fiscal years 2006-2010.

Deposition transcripts

The depositions referred to in this report were of Michael Werthman, the Acting Patrol Agent in Charge at Rochester Station;⁷⁶ Gregory Barbagallo, the Assistant Chief Patrol Agent at Buffalo Sector office;⁷⁷ and Robert Lewandowski, the Chief of Staff of U.S. Border Patrol.⁷⁸ All depositions were taken during Families for Freedom's litigation with CBP.⁷⁹

⁷⁴ United States Department of Homeland Security. *Yearbook of Immigration Statistics: 2010*. Washington, D.C.: U.S. Department of Homeland Security, Office of Immigration Statistics, 2011, at 80.

⁷⁵ New York Civil Liberties Union, *Justice Derailed: What Raids on New York's Trains and Buses Reveal About Border Patrol's Interior Enforcement Practices*, 18-19 (Nov. 2011).

⁷⁶ Werthman Dep., Mar. 8, 2012.

⁷⁷ Barbagallo Dep., Mar. 9, 2012.

⁷⁸ Lewandowski Dep., Feb. 22, 2012.

⁷⁹ *Families for Freedom et al. v. United States Customs and Border Protection et al*, 1:10cv02705 (S.D.N.Y.).

ROCHESTER STATION I-44 ARRESTS BY COUNTRY OF CITIZENSHIP

COUNTRY OF CITIZENSHIP	NO. OF I-44'S
Afghanistan	2
Albania	1
Antigua and Barbuda	1
Azerbaijan	1
Bangladesh	9
Barbados	2
Belgium	1
Benin	1
Bolivia	1
Brazil	1
Burma	1
Burundi	1
Cambodia	1
Cameroon	1
Canada	4
Chad	2
China	33
Colombia	2
Congo	5
Cuba	1
Dominican Republic	6
Ecuador	2
Egypt	2
El Salvador	6
France	1
Germany	1
Ghana	4
Greece	2
Guatemala	5
Guinea	2
Guyana	3
Haiti	8
Honduras	5
India	30
Iran	3
Israel	3
Ivory Coast	2
Jamaica	8
Japan	3
Kenya	3
Korea	5
Kosovo	1
Kyrgyzstan	1
Laos	2

COUNTRY OF CITIZENSHIP	NO. OF I-44'S
Liberia	3
Macedonia	1
Malaysia	1
Mexico	7
Moldova	2
Myanmar	1
Nepal	4
Niger	2
Nigeria	5
Pakistan	1
Palau	1
Peru	2
Philippines	3
Russia	2
Rwanda	1
Saint Kitts	1
Scotland	1
Singapore	1
Somalia	4
South Africa	1
South Korea	2
Sudan	5
Taiwan	2
Tajikistan	1
Tanzania	3
Thailand	2
Tibet	2
Togo	5
Turkey	3
Uganda	1
Ukraine	2
United Kingdom	4
United States	5
Uzbekistan	2
Vietnam	2
Yemen	7
Yugoslavia	1

*Figure 6. Number of I-44 Arrests by Country of
Citizenship*

Rochester Station Transportation Arrests FY 2006-2011

FISCAL YEAR	# OF I-44 TRAIN AND BUS ARRESTS	# OF 213 TRAIN AND BUS ARRESTS	TOTAL TRAIN AND BUS ARRESTS	1-44 ARRESTS AS PERCENT OF TOTAL ARRESTS
2006	3	383	386	0.78%
2007	23	776	799	2.88%
2008	68	986	1054	6.45%
2009	69	647	716	9.64%
2010	74	633	707	10.47%
2011 ⁸⁰	52	—	—	—

Figure 7. Number of transportation arrests at Rochester Station by fiscal year

⁸⁰ Under the terms of the settlement of *FFF v. CBP*, CBP provided copies of the I-44's through fiscal year 2011, but only provided comprehensive I-213 information through fiscal year 2010.