

HOW THE CRIMINAL JUSTICE SYSTEM IS ANTI-IMMIGRANT

Immigrants in the United States are frequently deprived of basic human rights and face many problems when dealing with the criminal justice system. These problems have noticeably increased in the years after the attacks on the World Trade Center and the Pentagon on September 11, 2001. Undocumented and documented immigrants are unjustly targeted by both state and federal agencies, including the U.S. Immigration and Customs Enforcement (ICE is the agency formerly known as the INS, or the Immigration and Naturalization Service) and the police. Immigrants, especially from non-European countries, face harassment and violence, along with unfair detention and deportation. Immigrants with prior or current criminal convictions are often punished twice through incarceration and deportation. Much of the backlash can be traced back to the Illegal Immigration Reform & Immigrant Responsibility Act of 1996 (IIRIRA), passed by the “liberal” Clinton Administration.

ANY NON-CITIZEN CAN BE DEPORTED FOR HAVING COMMITTED A FELONY EVEN IF THEY HAVE ALREADY SERVED TIME IN PRISON FOR IT.

- ***A non-citizen immigrant (including permanent residents or “green card” holders) can be permanently exiled for having ever committed a felony.*** The Illegal Immigration Reform & Immigrant Responsibility Act of 1996 (IIRIRA) subjects all non-citizen immigrants—including immigrants who are long-term and have legal status—to mandatory deportation if convicted of an aggravated felony. Under the IIRIRA, immigrants can also be deported even if they had already served time in prison for their crime, the applications of which are retroactive.¹
- ***The 1996 Laws also expanded the crimes for which an immigrant may be subjected to mandatory deportation.*** Prior to 1996, the working definition of an aggravated felony included crimes such as murder, rape, drug trafficking crimes, and firearms (or destructive devices) trafficking crimes. After the IIRIRA and Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA) were adopted, the list of aggravated felonies rose by about 50 classes of crime, including crimes that are nonviolent or non-drug related, such as shop-lifting.²
- ***Immigrants detained for aggravated felonies are not given their day in court.*** Immigration courts are not even allowed to hear a case in which the accused is subject to mandatory deportation, nor are Federal courts allowed to review most of the decisions made by law enforcement officials in such matters.³

THE ICE AND LAW ENFORCEMENT ARE INCREASINGLY WORKING TOGETHER TO TARGET IMMIGRANTS, CREATING INTENSE FEAR WITHIN IMMIGRANT COMMUNITIES.

- ***The campaign against immigrants succeeds by appealing to the White middle class.***⁴ During the early 1990s in California, numerous efforts were made to restrict rights to illegal immigrants and their children (for instance, Proposition 187 in 1994) that reflected a return to nativism.⁵
- ***There is greater interagency collaboration.*** Different agencies of law enforcement, such as ICE (formerly INS), local police, and state police are becoming increasingly integrated to make it easier for an immigrant stopped for a traffic violation to be directly sent to a deportation hearing.⁶ This type of cooperation can make it especially dangerous for undocumented immigrants to call the police, since the call could possibly result in deportation.
- ***The role of government agencies is expanding.*** For example, prior to 1990 the INS was in charge of policing immigration and nothing else – they were barred from interfering or involving themselves in the work of other

government agencies. ICE can now act in the capacity of Drug Enforcement Agency and Customs agents. The primary result of this expansion of power is an increase of fear and anxiety within the immigrant working class.⁷

- ***The “Absconder Initiative” gives local police access to information that can be used to detain and deport immigrants.*** The Alien Absconder Initiative gives local police the names of some 314,000 immigrants who have deportation or removal orders. By entering those names into the National Crime and Information Center database, local police will be able to enforce immigration policy even during routine traffic stops.⁸ Such a practice creates a climate of intense fear in which immigrants are scared to leave their homes for fear their families will be ripped apart by deportation.
- ***Such collaboration between agencies allows them to use each other (unlawfully) to target immigrants.*** For example, if a suspect is picked up by ICE, and is found to be a legal resident of the U.S., their criminal record can be checked by local police. Also, since local police do not have the right to initiate police action in order to determine immigration status, they may contact an ICE agent who can find a reason for an immigration stop. Some of the explanations for “reasonable suspicion” have been known to include a “heavily laden car, traveling near the border, with a Latino driver who wouldn’t make eye contact.”⁹
 - Since the late 1990s immigration enforcement at the U.S.-Mexico border as well as within the U.S. has become increasingly militarized. The ICE is working with police SWAT teams and the U.S. military to begin using police surveillance and enforcement tactics that sometimes involve helicopters and dogs.¹⁰

THE 2001 WORLD TRADE CENTER AND PENTAGON ATTACKS LEGITIMIZED INCREASED TARGETING OF MUSLIM, ARAB, AND SOUTH ASIAN IMMIGRANTS, ALTHOUGH POLICING OF MOST NON-EUROPEAN IMMIGRANTS ALSO INTENSIFIED.

- ***Hate crimes, particularly those directed at immigrants or perceived immigrants, escalated after September 11th.*** According to the National Asian Pacific American Legal Consortium, hate crimes specifically targeting Asian Pacific Americans, particularly South Asian Americans, doubled in the three months after the attacks.¹¹ Reports of Anti-Muslim discrimination-related incidents in 2002 increased by 15% from 2001 and by 64% from 2000 (the year preceding the World Trade Center and Pentagon attacks).¹²
- ***The Bush Administration has made it possible for federal agencies and police departments to infringe on the civil liberties and civil rights of Arab, Muslim, and South Asian immigrants.***¹³ New policies include conducting questionable interrogations and arrests, secret detentions, and indiscriminate raids. Many critics believe the mass rounding up and questioning of Muslims following the World Trade Center and Pentagon attacks was, in the words of one organization, “intended more for public relations purposes than for curbing terrorism.”¹⁴
 - ***The Special Call-In Registration System is a discriminatory initiative that requires non-immigrant men from certain Muslim countries to register with the federal government.*** This program requires men over the age of 16 from 18 Muslim countries, North Korea and Eritrea to appear in person for fingerprinting, photographs, and interrogation under oath.¹⁵ When many Arab-American men voluntarily came forward to register throughout Southern California, hundreds were instead arrested, detained and allegedly mistreated.¹⁶ Many accuse the creation of this program as an excuse to harass, target and deport people of a certain ethnic, national or religious background.¹⁷
 - ***The overwhelming majority of the more than 1,000 Arab, Muslim, and South Asian men detained secretly*** (and indefinitely without charges, access to counsel, or trial) not only had no connection to terrorism, but were also physically and mentally abused while in custody, according to the Justice Department’s own Inspector General’s office.¹⁸
 - ***Law enforcement has selectively applied the Alien Absconder Initiative to target Arab, Muslim and South Asian immigrant communities.*** This initiative was launched to target the 300,000 people currently residing in the United States that have outstanding orders of deportation. Among the 300,000, some 6,000 people from countries with “active al Qaeda” networks are of specific priority. The initiative

also does not include countries such as the United Kingdom, Germany and Spain—all nations where the terrorists thought to be behind the attacks at one point resided.¹⁹

- ***The Senate recently passed the Real ID Act. The Real ID is anti-privacy, anti-asylum, and anti-property rights.*** It forces states to link their databases, containing every licensed driver's personal information, with other states, with no guidelines as to who will have access to that information.²⁰ This would prevent undocumented immigrants from getting driver's licenses and impose new federal mandates on states to enforce federal immigration laws, empowering private police forces to enforce immigration laws.²¹ It would end the Constitutional right to *habeas corpus* for the first time since the Civil War, prevent people fleeing persecution from seeking asylum in the United States, and increase deaths at the border.²²
- ***The attacks on the World Trade Center and Pentagon also gave the Bush Administration sympathy within Congress to pass repressive legislation that denies immigrants even more rights.*** The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) allows for non-citizens to be detained indefinitely for periods of six months at a time if the Attorney General deems them a "reasonable threat to national security."²³

ICE IS BECOMING INCREASINGLY MILITARIZED.

- ***The U.S. Mexico border has become more militarized with armed, uniformed members of the National Guard and the U.S. Marines supplementing a Border Patrol presence.*** In April, 2005, the Minutemen, a self-appointed group of armed, volunteer patrollers of the border, stationed themselves alongside of representatives of these government agencies to "assist" in identifying undocumented border crossers. Despite being labeled as "vigilantes" by President Bush, these volunteers were unimpeded by law enforcement.²⁴
- ***Border vigilantes in Southern Arizona dress like Border Patrol agents, use military weapons and strategies to hunt down and capture people who they believe are undocumented migrants, and turn them in to border enforcement agencies.***²⁵ Border vigilantes travel in small groups and have beaten, threatened, and fired warning shots at immigrants coming across the border. Groups include Ranch Rescue, Civil Homeland Defense, and, most famously, the Minuteman Project. None of their members have ever been arrested or put on trial in Arizona.²⁶
- ***Border Patrol works in tandem with the military to target Mexican immigrants under the pretext of fighting the "war on drugs."*** The Joint Task Force-6 (JTF-6) was established in 1989 in order to integrate law enforcement with the military, and oversees when and where military troops are deployed. Troops that are deployed are not under the command of law enforcement, but under military control, and can be deployed by the Secretary of Defense without notification to Congress or the public.²⁷ Since its inception and until its redesignation as JTF North, it completed over 5,800 missions aiding more than 430 federal, state, and local law enforcement agencies.²⁸
- ***At least one teenager has died as a result of Marine involvement in the war on drugs.*** Esequiel Hernandez of Redford, Texas, was killed by a group of four Marines who mistook him for an enemy combatant in May 1997. Hernandez, who was not part of the drug trade, was tending to his goats when he noticed movement several hundred yards away. Most likely thinking it was wild dogs, Hernandez fired two shots with his 70-year old rifle in the general direction of the fully-camouflaged Marines, who responded by "taking him down," without identifying themselves or firing a warning shot, (both within the context of the Rules of Engagement). This example demonstrates the extreme dangers of border militarization.²⁹

IMMIGRANT WOMEN AND CHILDREN ARE MISTREATED BY THE CRIMINAL JUSTICE SYSTEM.

- ***Immigrant women detained in the facilities run by the ICE suffer abuse by guards and other workers.*** The Women's Commission for Refugee Women and Children reported in 2000 that women detained in INS facilities often suffered verbal, physical, emotional, and even in some cases sexual abuse by guards or ICE (formerly INS) officers.³⁰
 - Children who arrive in the United States unaccompanied by a parent or guardian are detained indefinitely in juvenile corrections facilities.
 - **48%** of facilities housing child detainees reported that they often house these children in the same cells as juvenile offenders.³¹
 - **57%** of facilities admitted using solitary confinement to punish unaccompanied children.³²
 - **83%** of facilities admitted to restraining unaccompanied children whenever they left the facility.³³
 - **Only 13%** of facilities offered weekly psychological counseling that is required.³⁴
 - **Only 35%** of facilities informed unaccompanied children why they are being held in a corrections facility and that they have the right to a judicial review of their case.³⁵

IMMIGRANT CRIME VICTIMS ARE FRIGHTENED OF REPORTING CRIMES TO POLICE.

- ***Because of differences in language, expectations, and treatment by officials, immigrant victims face disproportionate challenges when dealing with the police and courts.***³⁶ The problems recent immigrants face when reporting crimes to police or appearing in court include language barriers, cultural differences, and insufficient knowledge of the U.S. justice system.³⁷
- ***Recent immigrants are less likely to report crimes.*** 67% of officials responding to a national survey by the National Criminal Justice Reference Service agreed that recent immigrants report crimes less frequently than other victims, even though they are victimized at comparable levels.³⁸

JAILS AND PRISONS PROFIT FROM SPECIFICALLY IMPRISONING IMMIGRANT DETAINEES.

- ***County jails are rented out to the ICE for immigrant detention.*** Of the approximately 15,000 detainees incarcerated by the INS in 1998, approximately 9,000 were housed in local jails. At an average cost of \$58 per day per detainee, INS pays local jails more than \$10,000 every six months per detainee.³⁹ This also provides a source of money to local counties which can act as an incentive to house more detainees.⁴⁰
- ***Private prisons also stand to profit from the increased targeting of immigrants.*** Although there have been repeated reports detailing the prisoner abuse and gross mismanagement in private prisons, the federal government continues to rush "to the industry's rescue," even though most states acknowledge their deficiencies.⁴¹ Private prisons view immigrant prisoners as good for business because the same kinds of education and counseling programs that are required in regular federal prisons are not necessary given the fact that immigrant prisoners face deportation at the end of their sentences.⁴²

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