



**NATIONAL
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The discriminatory and broken criminal justice system has cascading immigration consequences

- ✓ **Immigration is a racial justice issue. The immigration laws disproportionately lead to the targeting, jailing, and destruction of families of color.**
 - Discriminatory policing practices like **stop & frisk, broken windows policing**, and racially-driven vehicular stops (“**driving while black or brown**”) have cascading immigration consequences. Because even minor contact with the criminal system can result in deportation, **racially biased policing practices** place immigrants of color at greater risk of both criminal arrest *and* prolonged immigration detention and deportation.

- ✓ **Immigration detention is the fastest growing incarceration system in the U.S.¹ Reducing mass incarceration requires reducing detention.**
 - Despite broad bipartisan consensus that it’s time to reduce mass incarceration, the Trump administration continues to detain increasing numbers of people. In 2017 the US Government recorded an unprecedented high for the number of immigrants incarcerated for the second year in a row.²
 - Mass detention is mass incarceration. Though technically in civil custody, immigrants in detention are held in the same jail cells, wear the same jumpsuits and shackles, are subjected to the same coercive techniques including solitary confinement³, the same physical and sexual violence⁴, and even die in detention from lack of access to adequate health care⁵.
 - Entire families are detained in immigration jails: children⁶, mothers, and fathers.
 - 71% of people in ICE custody are held in detention facilities are run by private prison companies, criticized for their utter lack of oversight.⁷ Corporations are profiting from the detention and destruction of families.

There is bipartisan support for criminal justice reform. But until Congress reforms the immigration laws, they will continue to thwart bipartisan criminal justice reform efforts.

The discriminatory criminal justice system leads to immigration consequences at every stage:

Stage 1: Discriminatory Policing

Discriminatory policing practices like stop and frisk and racial profiling⁸ are a gateway to deportation proceedings. A **black person is almost 10 times as likely as a white person to be arrested** for loitering, disorderly conduct, trespassing, or marijuana possession.⁹ Although only 7% of non-citizens are black they represent 20% of people in deportation proceedings on criminal grounds.¹⁰ Latinos are imprisoned at a rate of 1.4 times the rate of whites; one study in California found that Latino drivers are 30% more likely than white drivers to be ticketed for driving offenses.¹¹

Stage 2: Minor conduct is criminalized

States and cities have advanced efforts to decriminalize certain conduct, including marijuana possession and traffic infractions.¹² **Diversion programs** such as drug treatment courts and mental health courts provide individuals with alternatives to traditional case processing, including education, therapy, treatment, and/or community service.¹³ Regardless of these efforts, many people are still deported for conduct which has been decriminalized. Because of the draconian definition of “conviction” in the federal immigration law,¹⁴ many pleas still trigger deportation even after a plea has been dismissed upon successful completion of a diversion program.

Stage 3: Overcharging and pressures to plead guilty

Federal prosecutors are twice as likely to charge black defendants with offenses that carry mandatory minimum sentences than otherwise-similar whites.¹⁵ Many defendants choose to plead guilty – even if they are innocent – because the risk of trial is too high, or they don’t have the money for bail. Blacks and Latinos are more likely than whites to be denied bail and to be set a higher money bond.¹⁶ Even if there are no further criminal consequences to a plea, it could have drastic immigration consequences. A person could be transferred immediately to immigration detention, and face deportation.

Stage 3: Disproportionate Sentencing

Prosecutors, judges, and juries often treat defendants of color more harshly in their sentencing decisions. Sentencing laws dictate harsher punishments for crimes for which people of color are disproportionately arrested. For example, black men in federal court receive prison sentences that are on average 19.1% longer than similarly situated white men.¹⁷ For certain crimes, immigration law only considers the sentence.²⁸ Even if a judge discretionarily sentences at the low range of sentencing guidelines, the immigration consequence may remain unchanged.

Stage 4: Obstacles to moving forward after a conviction

The rippling collateral consequences of a conviction have been compared to an “invisible cage” that continues to confine people with criminal records long after their release from prison. This cage can prevent a person from securing a job or home, and other necessary aspects of living fully in society. Many states have passed “ban the box” legislation or taken other efforts to address exclusionary policies to limit the ability of people with convictions to reenter society. Harsh immigration laws undercut the commitment to reentry and rehabilitation that many cities and states are making. An expunged or sealed conviction is still a conviction for immigration purposes.¹⁹ Even a pardon cannot remove the immigration consequences of all convictions.²⁰

We must reform current immigration laws and reject further criminalization.

Veteran green card holder deported after a one-time marijuana offense

Howard Bailey came to the U.S. in 1989 at the age of 17 as a Lawful Permanent Resident with his U.S. Citizen mother. After graduating from high school he joined the navy during which time he was awarded the National Defense Service Medal.



In 1995, shortly after his return from the Persian Gulf, Howard was convicted of a first-time drug offense. With Virginia's strict mandatory minimum sentencing laws for drug crimes, Howard didn't have many options. His lawyer advised him to plead guilty and take 15 months in a state work camp rather than risk going to trial and a much higher sentence.

After completing his sentence, Howard returned to his family and worked hard to rebuild his life. He devoted himself to his loving wife and two children, started two small businesses, and employed seven people. In 2005 Howard applied to become a US citizen, and disclosed his old conviction. In 2010, after five years of delays, his application was denied. At 6AM one morning ICE agents handcuffed and detained him at his home in front of his wife and children.

After two years fighting his case in immigration detention, far away from his family, Howard was deported to a country he hadn't seen in 24 years. Howard lives in constant fear of violence as deportees are stigmatized in Jamaica. He is unable to support his family, his business has shut down, his home is under foreclosure, and his teenage children are struggling emotionally and academically without him. Howard remains in Jamaica, and the current immigration laws provide him with almost no option for an opportunity to return home and be reunited with family.

Endnotes

1. PBS, *The US Immigration Detention Boom* (October 18, 2011).
2. In November 2017, ICE reported that its total average daily population for FY 2018 was 39,322 people. This marks the second year in a row the U.S. government hit an unprecedented high in how many immigrants it incarcerates. NIJC, *ICE Released Its Most Comprehensive Immigration Detention Data Yet. It's Alarming* (Mar. 13, 2018), <http://immigrantjustice.org/staff/blog/ice-released-its-most-comprehensive-immigration-detention-data-yet>. See also, NIJC, *The Trump Administration's Deadly Bid to Expand Immigration Detention* (June 2017) (reporting bid for increased detention funding).
3. Reports have uncovered many instances of the misuse of solitary confinement in immigration detention, especially among vulnerable populations such as those with mental illness or medical disability, LGBT immigrants, and survivors of torture and domestic violence. NIJC and Physicians for Human Rights, *Invisible in Isolation: The Use of Segregation and Solitary Confinement in Immigration Detention* (Sept. 2012), <http://www.immigrantjustice.org/publications/report-invisible-isolation-use-segregation-and-solitary-confinement-immigration-detenti#.Uwz9Am2B4sh>. A growing chorus of ICE detainees have alleged that they have been forced to work in for-profit ICE prisons or else risk punishment with solitary confinement.

- Spencer Woodman, *The Intercept*, *Private Prison Continues to Send ICE Detainees to Solitary Confinement for Refusing Voluntary Labor* (Jan. 11, 2018).
4. See Gaby Del Valle, *The Outline*, *Asylum Seekers are Being Sexually Assaulted in U.S. Detention* (Jan. 27, 2018); Molly Redden, *Mother Jones*, *No Water, No Toilet Paper, No Tampons: How the US Treats Border Detainees* (June 5, 2014) (reporting that 97% of complaints of physical, sexual, and verbal abuse lodged by detainees between January 2009 and January 2012 resulted in no punishment).
 5. Investigations have revealed that dangerous health conditions and systematic failures in health care provision at detention centers. Human Rights Watch, *Systemic Indifference: Dangerous & Substandard Medical Care in U.S. Immigration Detention* (May 8, 2017). In 2017, deaths in immigration detention centers reached the highest number since 2009. Jeanne Kuang, *Houston Chronicle*, *Immigration Detention Deaths Reach the Highest Total Since 2009* (Jan. 16, 2018).
 6. Recent studies found that in recent years ICE has detained dozens of children in juvenile jails for many months on end, in remote locations far from family and any accessible legal representation. NIJC, *ICE Released Its Most Comprehensive Immigration Detention Data Yet. It's Alarming*. (Mar. 13, 2018).
 7. NIJC, *ICE Released Its Most Comprehensive Immigration Detention Data Yet. It's Alarming* (Mar. 13, 2018), <http://immigrantjustice.org/staff/blog/ice-released-its-most-comprehensive-immigration-detention-data-yet>.
 8. See e.g., *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013), finding that stop & frisk policing practices in New York City were unconstitutional.
 9. ACLU, *The War on Marijuana in Black and White: Billions of Dollars Wasted on Racially Biased Arrests 9* (2013); ACLU-NJ, *Selective Policing: Racially Disparate Enforcement of Low-Level Offenses in New Jersey 4* (2015).
 10. Jeremy Raff, *The Atlantic*, *The 'Double Punishment' for Black Undocumented Immigrants* (Dec 30 2017).
 11. The Sentencing Project, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (June 14 2016), <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>; See also, Richard Winton, *L.A. Times*, *Black and Latino drivers are searched based on less evidence and are more likely to be arrested, Stanford researchers find*, (June 19 2017) <http://www.latimes.com/local/lanow/la-me-ln-stanford-minority-drive-disparties-20170619-story.html>.
 12. Twenty-two states and Washington, D.C. have enacted laws to stop jailing their residents for possession of modest amounts of marijuana. Marijuana Policy Project, *Decriminalization*, <https://www.mpp.org/issues/decriminalization/>. In nine of those states, marijuana is legal for adults 21 and older, while 13 have “decriminalized” simple possession of marijuana. *Id.* Since 1970 twenty-two states have decriminalized minor traffic violations by removing criminal sanctions, reclassifying the violations as noncriminal offenses, and streamlining their adjudication to the administrative realm. Jordan Blair Woods, *Decriminalization, Policy Authority, and Routine Traffic Stops*, 62 *UCLA L. Rev.* 672 (2015). New York City has decriminalized the following offenses: drinking alcohol in public, spitting, urinating and littering on the street or in building lobbies. Will Bredderman, *Observer*, *De Blasio Administration Agrees to Decriminalization of Low-Level Offenses* (Jan. 25, 2016). See also, Max Rivlin-Nadler, *The Village Voice*, *Yes, New Yorkers CAN Be Deported for Jumping a Turnstile* (Feb. 27, 2017).
 13. Michael Rempel et al., *Center for Court Innovation*, *NIJ's Multisite Evaluation of Prosecutor-Led Diversion Programs* (Oct. 2017), https://www.courtinnovation.org/sites/default/files/media/document/2017/Pretrial_Diversion_Overview_ProvRel.pdf.
 14. 8 U.S.C. § 1101(48)(A) (defining conviction for immigration purposes).
 15. The Sentencing Project, *Black Lives Matter: Eliminating Racial Inequity in the Criminal Justice System* (2015).
 16. *Id.*
 17. United States Sentencing Commission, “Demographic Differences in Sentencing: An Update to the 2012 Booker Report,” November 14, 2017, 2.
 18. 8 U.S.C. § 1227(a)(2)(A)(i)(II) (classifying some crimes as deportable offense based on the *possible* sentence, not actual sentence imposed).
 19. 8 U.S.C. § 1101(48)(A) (defining conviction for immigration purposes).
 20. 8 U.S.C. § 1227(a)(2)(A)(vi) (2008) (discussing pardons); See, e.g., *Matter of Suh*, 23 I. & N. Dec. 626 (BIA 2003) (cannot pardon child abuse offense); *Eskite v. District Director*, 901 F.Supp. 530 (E.D.N.Y. 1995) (cannot pardon drug offense).