

# THE STATE OF BLACK IMMIGRANTS

PART II: BLACK IMMIGRANTS IN THE  
MASS CRIMINALIZATION SYSTEM

 **NYU | LAW**  
IMMIGRANT RIGHTS CLINIC

**BAJI**  
BLACK ALLIANCE  
FOR JUST IMMIGRATION



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# about

## **Black Alliance for Just Immigration**

The Black Alliance for Just Immigration (BAJI) is a racial justice and migrants' rights organization that engages in education, advocacy, and cross-cultural alliance-building in order to end racism, mass criminalization, and economic disenfranchisement of African American and Black Immigrant communities. BAJI's headquarters are in Brooklyn, NY with additional offices in Oakland, CA, Atlanta, GA, and Los Angeles, CA.

## **NYU School of Law Immigrant Rights Clinic**

The Immigrant Rights Clinic is a leading institution in both local and national struggles for immigrant rights. Students engage in direct legal representation of immigrants and community organizations as well as in immigrant rights campaigns at the local, state and national levels. Students have direct responsibility for all aspects of their cases and projects and the opportunity to build their understanding of legal practice in the field of immigrant rights law and organizing.

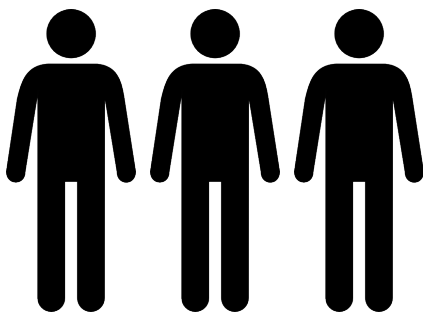




## executive summary

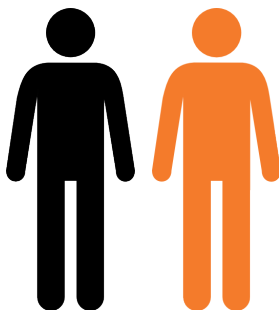
**B**lack immigrants are one of the fastest growing demographics in the United States. Nonetheless, this group remains a novelty in the broader immigration discourse. This report aims to elevate the conditions facing Black immigrants in the United States, drawing particular attention to their experience in the criminal law and immigration systems. This report argues that like African-Americans, Black immigrants experience disparate, often negative, outcomes within various social and economic structures in the U.S., including the country's mass criminalization and immigration enforcement regimes.

This report focuses on policing, mass incarceration, immigrant detention, and deportations, as these issues are most pertinent in our current political and social context. Due to racial discrimination, over-policing of Black communities, and invisibility within the public consciousness, Black immigrants face egregious conditions in the U.S., particularly within the nation's immigration enforcement system. Some of our key findings include:



- **More than one out of every five noncitizens facing deportation on criminal grounds before the Executive Office for Immigration Review is Black.**

- Black immigrants are more likely to be detained for criminal convictions than the immigrant population overall.
- Black immigrants in removal proceedings for a criminal conviction often have lived in the U.S. for a long time and established strong community ties; many are apprehended and placed in deportation proceedings long after the triggering criminal conviction occurred.
- Black immigrants are much more likely than nationals from other regions to be deported due to a criminal conviction.



It is imperative that the U.S. adopt policies that end the mass criminalization of Black and other marginalized communities, provide a safety net for Black immigrants, and address racial disparities in the immigration enforcement system.



# introduction

In an era where #BlackLivesMatter and #Not1More have become rallying cries for racial justice and immigrants' rights activists respectively, it's important that we uplift the common challenges that cross both movements - mass incarceration, policing, immigrant detention, deportations, deprivation of civil rights and civil liberties, economic inequality, and the destruction of families and communities. These problems are prevalent in all communities of color in the U.S. But unlike Black Americans and immigrants of other backgrounds, Black immigrants face the aforementioned challenges in ways that are unique and consequential.

For over a decade, the Black Alliance for Just Immigration (BAJI) has sought to raise the public consciousness around issues impacting Black immigrants through education, advocacy, grassroots organizing, and storytelling. Despite our successes, which include consolidating Black immigrant power and mobilizing the Black diaspora around the human rights issues that transcend our communities, Black Americans and Black immigrants remain at the margins of society.

When it comes to Black immigrants, terms such as "marginalization" and "oppression" understate the difficulties faced by this community. Simply put, Black immigrants are invisible. They are absent from the mainstream and media representation of immigrants. Their narratives are merged with the stories of other communities of color in the United States. Research and readily available data on Black immigrants is scant. Even the notion of "Black immigrants" as an identity group is foreign to most.

For this reason, we recognized that any research report about Black immigrants – and this report in particular – must serve two purposes: (1) to provide basic demographic information about Black immigrants and (2) to highlight the unique social and economic challenges facing this immigrant group.

This report confirms our hypothesis: Black immigrants, one of the fastest growing demographic groups in the U.S., face a myriad of challenges that parallel those of Black Americans. While this report is substantive, it is only the beginning. Our hope is that we will be able to build on the body of research available on the Black immigrant experience in the U.S. and that this report, in particular the recommendations toward the end, will lay the groundwork for a Black immigrant policy agenda over the coming years.



# methodology

The background information on Black immigrants in the U.S. came primarily from the 2014 American Community Survey (ACS) one-year Public Use Microdata Sample (PUMS) data and the 2014 Yearbook of Immigration Statistics published by the U.S. Department of Homeland Security (DHS). The report analyzes the ACS and DHS data and calculated the results regarding Black immigrants based on either self-identification or country of origin. Since the PUMS data represents about one percent of the American population, results based on the total population estimates were calculated by replicating the weight variable within the dataset, subject to standard errors of inferential statistics.<sup>1</sup>

Other conclusions on Black immigrants were analyzed based on data included in the DHS Yearbook and the Transactional Records Clearing House (TRAC), which were both categorized by region and/or nationality. All data regarding Black immigrants from the DHS source was calculated based on immigrants from African and Caribbean countries. Since the data on immigration courts available on TRAC was obtained through a Freedom of Information Act (FOIA) request to the Executive Office for Immigration Review (EOIR) within the Department of Justice, the data was similarly organized by nationality, and the results regarding Black immigrants were calculated based on all African and Caribbean countries.

Information on immigration detention was collected primarily from the Case Access System for EOIR (CASE) database, which was originally obtained by BuzzFeed News through a Freedom of Information Act (FOIA) request. The authors analyzed the raw data with the support of a Python analyst to derive conclusions on immigrants from different regions of the world.

The authors used the 2014 ICE Enforcement and Removal Operations Report published by the U.S. Immigration and Customs Enforcement, as well as various TRAC data tools on immigration court proceedings, to calculate numbers regarding removals and deportations based on country of origin. The authors also cite to reports from organizations including the Pew Research Center, the Migration Policy Institute, and others listed in the bibliography, and spoke with several professors and experts in the relevant fields.



# definitions

## A

### Affirmative Asylum

**A**ffirmative Asylum refers to the process in which asylum-seekers in the U.S. voluntarily present themselves to the U.S. Government to ask for asylum. The affirmative application for asylum is made to the Asylum Office of the Citizenship and Immigration Services (CIS) division of the U.S. Department of Homeland Security (DHS).

### African Countries

**A**frican Countries includes Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cabo Verde (Cape Verde), Cameroon, Central African Republic, Chad, Comoros (Comoros Islands), Congo, Cote d'Ivoire (Ivory Coast), Democratic Republic of the Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Réunion, Rwanda, Saint Helena, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, South Sudan, Sudan, Swaziland, Togo, Tunisia, Uganda, United Republic of Tanzania, Western Sahara, Zambia, and Zimbabwe.

### Apprehension

**A**pprehension is an immigration term that refers to the administrative arrest of an individual whom DHS believes is in violation of civil immigration laws. Administrative arrests made at or near land borders or at "interior border checkpoints" are generally made by Border Patrol agents with the Customs and Border Protection (CBP) of DHS. In addition, agents within the Immigration and Customs Enforcement (ICE) division of DHS apprehend persons in the "interior" of the U.S., usually further from the border.



## B

### Black Immigrant

**B**lack Immigrant, unless otherwise specified in this report, refers to any person who was born outside the United States, Puerto Rico or other U.S. territories and whose country of origin is located in Africa or the Caribbean. Immigrant population estimates include all immigrants regardless of current citizenship or legal status.

This definition is used because federal immigration enforcement data is categorized by country of origin rather than by race. While the U.S. Census Bureau collects some data on individual's racial self-identification and immigration status, most of the government sources relied upon in the report—including the U.S. Department of Justice Executive Office for Immigration Review and the U.S. Department of Homeland Security, both of which track data on deportation and detention rates—categorize individuals by their country of origin.

Because of these limitations, the definition of “Black immigrant” used in this report is both over-inclusive and under-inclusive. It is over-inclusive because not every immigrant in the United States from a country in Africa or the Caribbean is of African heritage, nor does every individual of African heritage self-identify as Black. This is particularly true for immigrants from Cuba and the Dominican Republic, where 9.3%<sup>2</sup> and 18.3%<sup>3</sup> of the population identifies as Black, respectively.

The definition is under-inclusive because it fails to include Black immigrants in the United States from countries outside of Africa and the Caribbean. People of African heritage make up a significant percentage of the population of many countries outside Africa and the Caribbean, including Guyana (30.2%, or 227,062),<sup>4</sup> Nicaragua (9%, or 532,000)<sup>5</sup>, Brazil (7.6%, or 15 million)<sup>6</sup>, and Honduras (2%, or

175,000)<sup>7</sup>, as well as within the indigenous groups in countries like Belize and Guatemala. These percentages are even higher when accounting for mixed heritage.

Where possible, this report uses self-identification Census data in order to avoid the over- and under-inclusivity problems described above. Where Census data is available, “Black immigrant” is defined as any person who was born outside the United States, Puerto Rico or other U.S. territories and self-identified as “Black or African American alone” in 2000 and later U.S. Census Bureau surveys. Reliance on Census data is specified in the report (primarily in the demographic discussion in Part I). However, because the analysis of deportation and detention data throughout the report relies on data from federal immigration agencies, the majority of data in the report is limited to country of origin categories.



# definitions, cont'd.

## Caribbean Countries

**C**aribbean Countries include Anguilla, Antigua and Barbuda, Aruba, Bahamas, Barbados, Bonaire, British Virgin Islands, Cayman Islands, Cuba, Dominica, Dominican Republic, Grenada, Guadeloupe, Haiti, Jamaica, Martinique, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, and Turks and Caicos Islands.

## Diversity Visa

**D**iversity visa is a United States congressionally-mandated lottery program for receiving a United States Permanent Resident Card. Each fiscal year, the Diversity Visa Program makes 55,000 immigrant visas available to people from countries that have low rates of immigration to the United States. Applicants who meet the eligibility requirements are entered into a random drawing.

## Inadmissible

**I**nadmissible refers to the immigration status of someone who federal immigration officials believe is subject to bars to entry or admission to the U.S. because of a prohibited status or activity. U.S. law contains a list of “grounds of inadmissibility”, including those based on criminal convictions, violations of immigration laws and national security.

## Interior Removal

**I**nterior Removal happens when an individual, who is identified or apprehended inside the United States by an ICE officer or agent, is deported.

## Immigration Court

**I**mmigration court is an administrative court responsible for adjudicating immigration cases in the U.S. Cases involve non-citizens who generally have been charged by DHS with being in violation of immigration law.

The court is part of the Executive Office for Immigration Review (EOIR). Appeals of Immigration Judge decisions can be made to the Board of Immigration Appeals (BIA), which is also part of EOIR. Some BIA decisions can be appealed further, to the federal courts.

## Immigration Judge

**I**mmigration judge is an attorney appointed by the Attorney General to act as an administrative judge within EOIR. Immigration Judges conduct adversarial proceedings in deciding whether a noncitizen should be allowed to enter or remain in the U.S., in determining bond amounts in certain situations, and in considering various forms of relief from removal.

## Lawful Permanent Residents

**L**awful permanent residents (LPRs) are persons who have been granted lawful permanent residence in the United States. They are also known as “green card” holders.

## Naturalization

**N**aturalization refers to the process by which immigrants become U.S. citizens. To be naturalized under U.S. laws, a person generally must be 18 and older, have been a green card holder for at least five years, possess “good moral character,” and meet additional requirements.

## Foreign-Born

**F**oreign-born refers to people in the U.S. born outside the U.S., Puerto Rico or other U.S. territories. The terms “foreign-born” and “immigrant” are used interchangeably.

## Non-Citizen

**N**on-citizen refers to people born outside the U.S., Puerto Rico or other U.S. territories, excluding people who are U.S. citizens.

## Refugees and Asylees

**R**efugees and asylees are persons who sought residence in the United States in order to avoid persecution in their country of origin. Persons granted refugee status applied for admission

while outside the United States. Persons granted asylum applied either at a port of entry or at some point after their entry into the United States.

## Removal

**R**emoval refers to the expulsion of a person from the U.S. who is not a U.S. citizen. The more common term is “deportation.” The process may be non-adversarial and led by an immigration officer, or it may involve an adversarial hearing before an Immigration Judge who also may determine whether any exceptions to deportation should be applied. An individual who is removed may have administrative or criminal consequences placed on subsequent re-entry.

## Temporary Protected Status

**T**emporary Protected Status (TPS) is a temporary immigration status granted to eligible nationals of certain countries (or parts of countries) who are already in the United States. The Secretary of Homeland Security may designate a foreign country for TPS due to conditions in the country that

temporarily prevent the country’s nationals from returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals adequately. The current list of 11 countries includes one Caribbean country, Haiti (designated with TPS, set to expire in July 2017 unless renewed), and six African countries, namely Guinea, Liberia, and Sierra Leone (designated with TPS in connection with Ebola, set to expire in March 2017 unless renewed), Sudan and South Sudan (TPS also set to expire in November 2017 unless renewed), and Somalia (TPS set to expire in March 2017 unless renewed).

# i. targeting immigrants with criminal convictions



## “Good” vs. “Bad” Migrants

In creating a “good” versus “bad” migrant binary, President Obama sought to justify a detention and removal campaign that oversaw the deportation of a record 438,421 immigrants in fiscal year 2013<sup>10</sup> —an increase that has led some to refer to President Obama as “deporter-in-chief.”<sup>11</sup> Since the start of Obama’s administration in 2008, 2.9 million immigrants have been deported from the United States, a majority of whom (58%) have a criminal record.<sup>12</sup>

## “Felons” vs. “Families”

In a national address in November 2014, President Obama announced that he would focus immigration enforcement resources on individuals with criminal records—“felons, not families.”<sup>8</sup> This phrase has been widely criticized as devaluing and dehumanizing individuals with criminal convictions.<sup>9</sup> After all, “felons” have families, too.





## Anti-Blackness

The government's increasing focus on immigrants with criminal records disproportionately impacts Black immigrants, who are more likely than immigrants from other regions to have criminal convictions, or at least to be identified through interactions with local law enforcement, because of rampant racial profiling.



## Tougher Enforcement

President Obama's address to the nation coincided with the Department of Homeland Security's release of a memo outlining new immigration enforcement priorities. DHS noted that it would continue to prioritize national security, border security, and public safety<sup>13</sup>, and went on to rank certain classes of immigrants in order of enforcement priority, with a significant focus on targeting people with criminal records.



# Intensification of ICE Removals

Following the November 2014 DHS memo, ICE implemented the revised Civil Immigration Enforcement Priorities (CIEP) in FY 2015, which intensified the focus on removing people with criminal convictions and recent entrants. The highest priority for enforcement resources, known as “Priority 1,” groups together immigrants “engaged in or suspected of terrorism or espionage” along with individuals “apprehended at the border while attempting to unlawfully enter the United States.” This includes asylum seekers, immigrants convicted of a felony offense and immigrants convicted of an “aggravated felony” as defined in section 101(a) (43) of the Immigration and Nationality Act. The term “aggravated felony” includes offenses that are neither aggravated nor felonies and has been expanded over time to include, for example, a single theft offense with a suspended one-year sentence involving no actual jail time. The memo’s second-highest priority for detention and deportation, “Priority 2,” includes immigrants convicted of three or more misdemeanor offenses, individuals with a “significant misdemeanor” including drug “distribution” offenses, and people who entered the United States unlawfully after January 1, 2014. The final category, “Priority 3,” includes immigrants who were ordered deported after January 1, 2014. ICE continues to remove individuals who do not fall under these revised categories if their removal would serve an important “federal interest.”

## Removals by CIEP Priority: Fiscal Year 2015

CIEP Priority	“Convicted Criminal” Removals	Total Removals	% of Total “Convicted Criminal” Removals
Priority 1	113,385	202,152	81%
Priority 2	14,869	18,536	11%
Priority 3	7,770	9,960	6%
Federal Interest	32	67	0%
Unknown	3,312	4,698	2%
Total	139,368	230,715	100%

Source: U.S. IMMIGRATIONS AND CUSTOMS ENFORCEMENT, ICE ENFORCEMENT AND REMOVAL OPERATIONS REPORT 2 (Dec. 22, 2015), available at <https://www.ice.gov/sites/default/files/documents/Report/2016/fy2015removalStats.pdf>



# Blacks are Disproportionately Represented in the Criminal Enforcement System

Black people are far more likely than any other population to be arrested, convicted, and imprisoned in the U.S. criminal enforcement system—the system upon which immigration enforcement increasingly relies.<sup>14</sup> Black people are arrested at 2.5 times the rate of whites.<sup>15</sup> They are more likely than whites to be sentenced to prison, and less likely to be sentenced to probation.<sup>16</sup> According to the FBI Criminal Justice Information Services Division, of the total individuals arrested in 2014, 69.4% were white, 27.8% were Black or African American, and 3% were of another race.<sup>17</sup> These arrest rates demonstrate that Black and African American individuals are arrested at a higher rate than their overall percentage in the population. These disparities exist even when crime rates are the same; for example, although Blacks and whites use marijuana at roughly equal rates, Black people are 3.7 times more likely than whites to be arrested for marijuana possession.<sup>18</sup>

## Representation by Gender

**Black men and boys in particular are criminalized in disproportionate numbers. Imprisonment rates for Black males at year-end 2014 were 3.8 to 10.5 times greater at every age group than white males, and 1.4 to 3.1 times greater than rates for Hispanic males.**<sup>19</sup>

At that time, Black men accounted for 37% of the male prison population.<sup>20</sup> Black youth, as well, are disproportionately punished in school; according to data collected by the Department of Education, Black males were suspended more than three times as often as their white peers during the 2011-2012 school year.<sup>21</sup>

**Black women and girls also face significant criminalization. Black women, for example, are imprisoned at more than twice the rate of white women.**<sup>22</sup> Black girls were the fastest growing segment of the juvenile population in secure confinement between 1985 and 1997.<sup>23</sup> Although confinement rates for youth have been dropping since 1997, the rate has declined less for African American girls than white girls.<sup>24</sup> Racial disparities are also evident in education; during the 2011-2012 school year, Black girls were suspended six times as often as their white counterparts.<sup>25</sup>



# TARGETING IMMIGRANTS WITH CRIMINAL RECORDS



Despite racial disparities in criminal enforcement, the federal government prioritizes the deportation and detention of individuals with criminal records. In FY 2015, ICE deported 139,368 people with criminal convictions, which represented 59% of all ICE removals.<sup>26</sup> The percentage of people targeted for deportation by ICE based on their criminal records rose from 82% in FY 2013 to 91% in FY 2015.<sup>27</sup> Many of their records involved drug-related convictions. In FY 2003-2013, drug offenses, including simple drug possession, accounted for almost a quarter of all criminal removals.<sup>28</sup>

Three federal agencies are tasked with enforcing immigration laws: U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Patrol (CBP), and U.S. Citizenship and Immigration Services (USCIS).

Although immigration law is federal, the U.S. government has instructed state and local law enforcement agencies to assist with immigration enforcement.

**In 2009, the “Criminal Alien Program” was responsible for about half (48%) of immigrants detained and deported by ICE; “287(g)” accounted for an additional 12%.<sup>29</sup> Both of these programs are explained in the next section. Notably, however, not every immigrant detained through these programs has a criminal conviction.<sup>30</sup>**

The high proportion of immigrants with criminal records who are targeted for immigration enforcement is the result on an intentional and pervasive reliance on the machinery of the criminal enforcement system to identify people for deportation. The criminal enforcement system—each stage of which has been shown to target Black people disproportionately—has become a funnel into the immigration detention and deportation system.

## STOPS

Immigrants are exposed to more risks and vulnerability when they are stopped by the police for minor offenses, such as broken taillights and traffic violations. When the police decide to take on the duties of federal immigration enforcement, they often use these stops to question people about their immigration status and to turn immigrants over to ICE. Several federal programs have made it easier for police to expose immigrants with past criminal records.

**Section 287(g)** of the Immigration and Nationality Act authorizes the Department of Homeland Security to partner with state and local law enforcement agencies. The 287(g) Program’s Jail Enforcement Teams interview arrestees regarding their immigration status. A review of the 287(g) program by the DHS Office of the Inspector General (OIG), published in March 2010 and updated several times since then, found that 287(g) resources had not focused on immigrants who fell within the purported highest risk categories; just 9% of immigrants identified through the 287(g) program at four sites that the OIG visited were within Level 1 (the highest priority).<sup>31</sup>

**The National Fugitive Operations Program (NFOP)** was established on January 25, 2002. Immediately following the events of September 11, 2001, the Justice Department increased efforts to deport immigrants with old removal orders.<sup>32</sup> These individuals, deemed “fugitive aliens,” had their names entered into the National

Crime Information Center (NCIC) database—a system created for criminal dispositions and warrants. This commingling of the criminal and immigration enforcement systems would allow, for example, an individual stopped on the street by a police officer to be turned over to ICE and deported if his or her name appeared in the NCIC.<sup>33</sup> Many individuals identified and deported through this program lived in the United States for many years and have significant family and community ties. NFOP also dispatches Fugitive Operations Teams (FOTs) across the country to arrest “**fugitives**” and specifically focuses on “residential operations.”<sup>34</sup> In late 2006, FOTs began conducting raids more aggressively and demanding document checks on long-distance buses and trains. They also arrest people on the streets, in their homes, and at their workplaces if they cannot produce status documents. FOT practices have been challenged, especially for home raids, based on the lack of judicial warrants or probable cause.<sup>35</sup> The program was still in effect at the time of this report’s publication.

## ARRESTS

When an individual is arrested and booked by a police officer, his or her fingerprints are sent to the FBI. Through the **Priority Enforcement Program (PEP)**, state and local law enforcement agencies share data with immigration enforcement. PEP replaced its predecessor program, Secure Communities, in July 2015. Under PEP, this same information is sent to the Department of Homeland Security, which checks its own databases to determine whether the individual is a “priority for removal” as described in Secretary Jeh Johnson’s November 20, 2014 memorandum<sup>36</sup> ICE will then ask the law enforcement agency to notify ICE of the individual’s release—or detain the individual past the time that he or she otherwise would have been released—so ICE may pick the individual up, resulting in his or her immediate transfer to ICE custody. Because fingerprints are sent to DHS during booking, this program ensures that ICE identifies individuals even when their charges are eventually dismissed.

Many jails and prisons also participate in the **Criminal Alien Program (CAP)**, which seeks to identify, arrest, and deport individuals who are incarcerated in federal, state, and local prisons and jails, as well as “at-large criminal aliens that have circumvented identification.”<sup>37</sup> Law enforcement agencies notify ICE’s office of Detention and Removal Operations, which administers CAP, of foreign-born detainees in their custody. ICE then attempts to secure their final orders of removal before they are released from criminal custody.

The programs described in this section employ the use of “**detainers,**” also known as “immigration holds,” to facilitate ICE’s capture of the immigrants that the agency identifies. Detainer use peaked in March 2011 and then fell steadily; however, it stabilized as of October 2015, with ICE issuing approximately 7,000 detainers per month.<sup>38</sup> About half of detainers are sent to county jails; 8% are sent to city and local jails; and federal law enforcement agencies and state prisons each receive about 15%.<sup>39</sup> Though these programs purportedly enable ICE to fulfill its mandate and focus efforts on immigrations with criminal convictions, a recent study found that individuals with criminal convictions become significantly less common among detainers issued during April 2015 than they were between FY 2012 and 2013.<sup>40</sup>

## CRIMINAL CHARGES AND DISPOSITION

Immigration enforcement is increasingly present in local jails. Often, an ICE officer will try to interview noncitizens while in custody and then initiate paperwork for the removal process if an individual is determined to be deportable. After an individual or person charged with a crime, he or she may be confronted with a choice to plead guilty to a lesser offense. Immigrants are particularly vulnerable to guilty pleas that may later lead to removal proceedings. In 2010, the Supreme Court held in *Padilla v. Kentucky* that the Constitution requires criminal defense attorneys to advise their clients of the immigration consequences of their criminal charges.<sup>41</sup> However, this does not always happen, and noncitizens are still sometimes pressured to sign plea bargains that may damage a subsequent immigration case.

A criminal conviction could trigger mandatory detention, deportation and ineligibility to reenter the United States. It may also serve as a bar to U.S. citizenship, eligibility to obtain a green card, and various forms of relief from deportation, such as asylum or withholding of removal. A conviction will remain permanently in an individual's immigration file unless it can be "vacated," that is removed, by a judge on the basis of some error in the underlying criminal proceeding.<sup>42</sup>

## POST-CONVICTION

Serving a sentence may result in further immigration scrutiny or even removal prior to release. **The Institutional Removal Program (IRP)** is a nationwide Department of Homeland Security initiative that purports to identify removable immigrants who are incarcerated, ensure they are not released into the community, and remove them upon completion of sentences.<sup>43</sup> IRP has the effect of forcing incarcerated noncitizens into deportation proceedings from within the very prisons to which they are confined, often in the form of "video hearings" that take place from a room within prison. As a result, inmates are isolated from all other parties, including the judge, the prosecutor, the interpreter, witnesses, and sometimes even their own lawyer. In 2011, IRP was responsible for placing 221,122 immigrants in removal proceedings—six times more than the arrests enforced by the 287(g) and NFOP programs.<sup>44</sup>

The release from jail or prison often triggers a notification request or immigration detainer, and noncitizens are transferred directly into ICE custody and immigration detention. Immigrants may also be sent to ICE following drug rehabilitation or another alternative program. ICE officers are increasingly coordinating with probation and parole departments to identify immigrants who are on parole or serving a sentence of probation.

Individuals who are not placed in removal proceedings while in jail or prison or upon release may still face deportation later based on their criminal record. Traveling or applying for immigration status or citizenship can trigger a background check and placement in removal proceedings months or years following a criminal conviction.

# by the numbers

Black immigrants are disproportionately represented among immigrants facing deportation in immigration court on criminal grounds.

Unauthorized Population in the U.S.

**BLACK**  
5.4%



More than one out of every five people facing deportation on criminal grounds before the EOIR is Black.



Facing Detention on Criminal Grounds

**BLACK**  
20.3%



Nearly one in every three Black immigrants in deportation proceedings in FY 2015 had a criminal ground of removability.







## ii. black immigrants & deportation

### Deportation Proceedings

Immigrants face deportation, also known as “removal,” through a series of different processes. The data from the Executive Office for Immigration Review (EOIR) that is included in this section reflects individuals who are deported through a removal hearing process. However, the data does not include individuals who are deported through reinstatement of removal or expedited removal. Demographic data on country of origin is not currently available for these forms of administrative removal.

According to ICE’s 2015 Enforcement and Removal Operations statistics, 235,413 people were removed in 2015, 59% of whom had a criminal conviction.<sup>45</sup> Of the 235,413 individuals removed in FY 2015, 3,448 were from the Caribbean and 937 from Africa.<sup>46</sup>

**Although Black immigrants comprise just 5.4% of the unauthorized population in the United States<sup>47</sup>, and 7.2% of the total noncitizen population<sup>48</sup>, they made up a striking 10.6% of all immigrants in removal proceedings between 2003 and 2015.<sup>49</sup>**

Black immigrants are disproportionately represented among immigrants facing deportation in immigration court on criminal grounds.<sup>50</sup> There is no evidence that Black immigrants commit crime at greater rates than other immigrants. **Yet while Black immigrants make up only 7.2% of the noncitizen population in the U.S., they make up 20.3% of immigrants facing deportation before the EOIR on criminal grounds.** That’s compared to 10% of all immigrants in deportation proceedings before EOIR who have criminal grounds of removability.<sup>51</sup> **More than one out of every five people facing deportation on criminal grounds before the EOIR is Black.<sup>52</sup>**

A person who is placed in immigration deportation proceedings does not have the right to free legal representation. As a result, immigrants often have no other choice but to represent themselves in court, and are left to navigate a notoriously complex and bureaucratic system on their own. Immigrants are afforded few procedural protections, and are often detained during these proceedings.

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## Deportation Outcomes

Of all the cases that were completed in immigration court in 2015—meaning that the individual in question was either ordered deported, granted relief, or their case was terminated or closed—Black immigrants comprised 7.5% of the total, or 14,945 individuals.<sup>53</sup> Ultimately, 35.7% of these Black immigrants (4,180) were ordered deported.<sup>54</sup> As noted below, one of the driving factors of deportability appears to be the connection between criminal and immigration enforcement.

## Criminal Records and the Basis of Removal

Black immigrants are more likely than immigrants overall to be deported on criminal versus immigration grounds of removability. **In FY 2013, more than three quarters of Black immigrants were removed on criminal grounds<sup>55</sup>, in contrast to less than half of immigrants overall.<sup>56</sup>** Table 1 details the percentage of individuals deported on criminal grounds of removability as compared to the total number removed overall, by region of origin.

In FY 2015, three times as many African immigrants were removed for an immigration charge as for a criminal charge.<sup>57</sup> Notably, the reverse was true for Caribbean immigrants: that same year, twice as many Caribbean immigrants were removed for a criminal charge than for an immigration charge.

TABLE 1 (FY 2013)

Region of Origin	Total Removed	Total Removed for Criminal Grounds	Percent Removed for Criminal Grounds
Africa	1,164	592	51%
Asia	2,933	1,110	38%
Caribbean	4,345	3,588	83%
Europe	2,009	1,074	54%
North America (excluding the Caribbean)	421,925	189,116	45%
Oceania	237	193	81%
South America	5,775	2,705	47%
Black Immigrants	5,509	4,180	76%
Total	438,388	198,378	45%



Black immigrants placed in removal proceedings on criminal grounds of removability often have lived in the United States for a long time and established strong community ties prior to their arrest. Many are apprehended and placed in deportation proceedings long after the triggering criminal conviction occurred. Between 2003 and 2013, the median timing for immigration apprehensions for criminal record-based removals was over a year following a criminal conviction.<sup>58</sup>

Studies of Black immigrant deportees with criminal records demonstrate longstanding ties to the United States. One study found that among Jamaican deportees with criminal records, the average time living in the United States was 12 years.<sup>58</sup> Another study found that three-quarters of Dominicans deported on criminal grounds were lawful permanent residents of the United States, and about 80 percent had spent over five years in the United States before their first arrest.<sup>60</sup>

#### **Criminal Records in the Context of Returns versus Removals**

The Department of Homeland Security defines “returns” as the “confirmed movement of an inadmissible or deportable alien out of the United States not based on an order of removal.”<sup>61</sup> Immigrants who are returned can reapply to enter the United States but may face additional bars when they are present in the U.S. A removal, on the other hand, is defined as the “compulsory and confirmed movement of an inadmissible or deportable alien out of the United States based on an order of removal.”<sup>62</sup> Being deported based on a removal order subjects a person to bars to reentry ranging from five years to a permanent bar, depending on the basis of the order, and can subject an individual to enhanced criminal penalties (including up to twenty years in jail if previously deported on the basis of an aggravated felony) if he or she reenters the country without authorization.<sup>63</sup> An individual who is deported based on a removal order and reenters the country again can also be deported without any new immigration court proceedings.

There are additional consequences for individuals who are removed subsequent to certain criminal convictions who reenter the country unlawfully. A person with a felony conviction, or with three or more misdemeanors convictions involving drugs or crimes against the person, faces ten years in prison.<sup>64</sup> And an individual who was removed after a conviction that was deemed to be an “aggravated felony” faces twenty years in prison.<sup>65</sup>





In FY 2013, Black immigrants were much more likely to be removed than returned. Table 1 demonstrates that Black immigrants were also more likely than immigrants from other regions to be removed—an outcome that has harsher consequences than returns. The increase in removals is part of a nationwide trend; in 2011, for the first time since 1941, the United States removed more people than it returned.<sup>66</sup>

In FY 2013, 1,496 immigrants from Africa, and 1,909 from the Caribbean, were returned.<sup>67</sup> Immigrants from every other region, with the exception of Oceania, saw a greater percentage of immigrants returned that year. About twice as many Black immigrants were removed as were returned. The inverse was true for immigrants from other regions, who were much more likely to be returned than removed. For example, in FY 2013 there were 15 Asian immigrants returned for every one removed. The ratio was similar for European immigrants: more than 13 were returned for every one removed. Table 2 includes the FY 2013 ratios of removals to returns for immigrants from every region.

TABLE 2 (FY 2013)

Region	Total Removed	Total Returned	Ratio Removed to Returned
Africa	1,164	1,496	1:1.3
Asia	2,933	44,520	1:15.2
Caribbean	4,345	1,909	1:0.4
Europe	2,009	12,387	1:6.2
North America (excluding the Caribbean)	421,925	115,168	1:0.27
Oceania	237	609	1:2.6
South America	5,775	2,201	1:0.38
Black Immigrants	5,509	3,405	1:0.62
Total	438,388	178,290	



## iii. black immigrants in immigration detention

**T**he detention of thousands of immigrants per year is a phenomenon that takes place within the context of mass incarceration, which disproportionately affects Black communities. Although skyrocketing imprisonment rates have done little to decrease crime, they have resulted in the imprisonment of one in four Black males born since the late 1970s.<sup>68</sup> Immigration detention centers do not differ in any significant way from criminal correctional facilities.

**I**n fact, many detention contracts are given to local jails or private prisons. ICE's standards of command and control are based on those of correctional organizations.<sup>69</sup> As a result, immigrants living in detention facilities often endure subpar conditions.



**A**ccording to data from the Executive Office of Immigration Review's "CASE" database, which was originally obtained by BuzzFeed News through a Freedom of Information Act request, between January 1, 2003 and January 1, 2015, more than 2.6 million immigrants were in removal proceedings in the United States, and 1.5 million were detained at some point during those proceedings.<sup>70</sup>

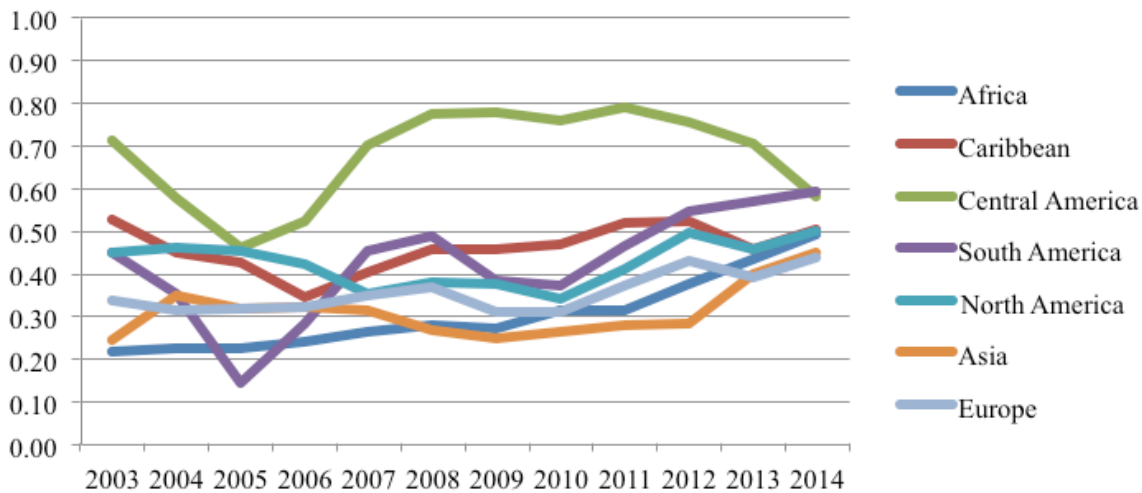




**Black immigrants are disproportionately represented among detained immigrants facing deportation in immigration court on criminal grounds.**



**G**raph 1 demonstrates that the percent of immigrants in removal proceedings who are detained each year has increased, on average, for every single region since 2003:



The data further reveals that Black immigrants are more likely than the overall immigrant population to be detained for criminal convictions than immigration violations.<sup>71</sup> **While within the immigrant population, individuals are 3.5 times more likely to be detained for an immigration violation than a criminal conviction, the reverse is true for Caribbean immigrants in particular, who are almost twice as likely to be detained for a criminal conviction than an immigration violation.**

African immigrants, a greater percentage of whom are recent arrivals than Caribbean immigrants,<sup>72</sup> are twice as likely to be detained for an immigration violation than a criminal conviction.<sup>73</sup>

In 2014, according to the CASE database, there were 226,404 immigrants in removal proceedings. More than half (128,872) of these individuals were detained at some point during those proceedings; about 5 percent of those detained (6,223) were Black immigrants.<sup>74</sup>

Black immigrants are disproportionately represented among detained immigrants facing deportation in immigration court on criminal grounds. While Black immigrants make up only 4.8% of detained immigrants facing deportation before the EOIR, they make up 17.4% of detained immigrants facing deportation before the EOIR on criminal grounds.<sup>75</sup> Nearly one out of every five people detained while facing deportation on criminal grounds before the EOIR is Black.<sup>76</sup>

**While 14% of immigrants detained while facing deportation proceedings before EOIR have criminal grounds of removability, a full half of all Black immigrants detained during removal proceedings have criminal grounds of removability.<sup>77</sup>**



# iv. recommendations

**W**e have concluded from the overwhelming amount of data that the racialized criminalization evident in the immigration enforcement system has an acute impact on the state of Black immigrants in the U.S.. This result is partially due to discriminatory policing practices and criminal penalties that adversely affect all Black people. Simultaneously, our analysis of the data suggests that racial inequities, evidenced by disproportionate, negative outcomes for Black people, in removal proceedings, also persist in the immigration enforcement system.

**It is the Black Alliance for Just Immigration's view that the immigration system must be upended and redesigned to ensure that those entering the U.S. seeking work, refuge or reunification with their families and communities, are treated fairly and with dignity.** This transformation can begin by divorcing the U.S. mass criminalization and immigration enforcement regimes. For this reason, the repeal of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIR-IRA") and Anti-terrorism and Effective Death Penalty Act ("AEDPA"), commonly known as the "1996 immigration laws," in favor of policies that shift the focus away from criminal contact as the deciding factor as it pertains to one's immigration status in the US by Congress, is BAJI's primary policy recommendation.

The 1996 immigration laws expanded the grounds for deportation, broadened classes of mandatory detention, stripped away judicial discretion and the right to due process and retroactively punished those who already served time for their offenses. As this report has highlighted, Black immigrants have been disproportionately affected by these laws. The 20th anniversary of IIR-IRA and AEDPA, along with the current political climate, presents an opportunity to reinvigorate the movement to upend the nation's immigration enforcement system.

## **An initial step toward this goal involves rolling back the 1996 Immigration Laws. BAJI and fellow advocates have articulated a set of demands which include:**

- ✓ Removing convictions as grounds for deportation and/or exclusion, including aggravated felonies and drug offenses.
- ✓ Ending the retroactive application of the 1996 laws.
- ✓ Restoring judicial discretion and due process for all individuals who come into contact with the criminal law and immigration systems.
- ✓ Ending permanent deportation.
- ✓ Ending mandatory detention.
- ✓ Ending police/ICE collaboration programs such as 287g.
- ✓ Eliminating the three and ten year bars, which prohibit return to the U.S. and create barriers to obtaining status.
- ✓ Providing a "right to counsel" in immigration proceedings.

## Additional Federal Recommendations



- As Congress works to end the criminalization of Black immigrants through the rollback of punitive deportation and detention policies, Congress should also enact and expand positive immigration programs specifically aimed at protecting all Black immigrants escaping war, egregious social, political, and economic conditions, public health and infrastructure crises, and domestic violence. In doing so, Congress should eliminate the criminal bars that prevent individuals from seeking access to these kinds of programs.
- The President should create and expand executive action programs that will provide relief for Black immigrants. This includes providing an additional 18-month renewal of Temporary Protected Status (TPS) for Guinea, Haiti, Liberia, Sierra Leone, Somalia, Sudan and South Sudan.
- The President should extend the number of visa petitions expedited under the Haitian Families Reunification Parole program.
- The President should eliminate the criminal bars to executive action programs such as Deferred Action for Childhood Arrivals.

## State Recommendations



- Where relevant, states should amend criminal laws such that the maximum sentence for certain criminal offenses is less than one year, so that those offenses no longer constitute grounds for deportability.
- States should legalize acts that the broader public no longer believes should constitute a crime or violation, including marijuana possession, and implement pre-plea diversion programs for a wide range of offenses so that individuals do not face harsh immigration consequences as a result of their involvement in the criminal system.
- States should also cancel contracts with ICE that allow ICE officials to have access to state prisons.

## Local Recommendations



- Municipalities should move away from the Broken Windows Policing Model, in favor of real community-controlled policing, which prioritizes restorative justice and rehabilitation.
- Municipalities should also divest from traditional uniformed policing and invest in programs that have been shown to produce real public safety including jobs, vocational training, mental health and harm reduction services, and education.
- Local law enforcement agencies should cancel contracts with ICE that allow immigration detention centers to be housed within local jails.
- Municipalities should pass laws prohibiting local law enforcement agencies from collaborating and sharing information with ICE.

# v. conclusion

Just as African-Americans suffer disproportionately high arrest, prosecution and incarceration rates, so too are Black immigrants. This occurs despite no evidence that they engage in more criminalized activities in comparison to any other racial group. Black immigrants are also disproportionately impacted by the compounding impact of the immigration enforcement system. Numerous federal agencies and programs work in conjunction with local law enforcement to criminalize, detain and deport immigrants. The racism present in the criminal legal system spills over and informs the immigration enforcement system, and thus it naturally and unjustly targets Black immigrants at all stages of the process. As the number of Black immigrants living in the United States continues to rise, debates around immigration must acknowledge and rectify the injustice inherent in these enforcement and deportation systems.

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## ENDNOTES

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