



Mass Criminalization and Immigration

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I. EXECUTIVE SUMMARY

Mass criminalization is a societal issue that has been a controversial topic of debate in the United States since the 1970s and 80s ¹. Currently, with a new wave of anti-immigration policies, mass criminalization has reemerged at the forefront of political and public discourse. This brief examines how immigration policies systematically target immigrant communities through carceral mechanisms, perpetuating structural inequalities and undermining due process.

II. OVERVIEW

Mass criminalization fuels the private prison industry of the United States, with more private prison contracts being created every day. Although the U.S. holds approximately 4.22% of the world's population ³, it accounts for a quarter of prisoners worldwide. Since 1970 alone, the incarcerated population of the United States has increased by over 700%, with the most people being held in prisons today than at any other time in American history ². A significant number of these arrests came from the heightened policies against drugs, due to which the title the *War on Drugs* emerged, the first instance of mass criminalization. These policies legitimized the role of racial and economic prejudice in determining who was arrested, resulting in the majority of incarcerated individuals being from

disadvantaged communities or communities of color ². Former Nixon domestic policy chief, John Erlichman, was even quoted to say, “We knew we couldn’t make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then, criminalizing both heavily, we could disrupt those communities. ⁸” Mass criminalization also comes into play when discussing immigration. It refers to using criminal law and enforcement mechanisms to address minor offenses, leading to the detention and deportation of immigrants. The convergence of immigration and criminal law — often referred to as “crimmigration” — has normalized the treatment of immigrants as criminals, eroding legal protections and amplifying state-sanctioned violence against noncitizens. Hence, this paper investigates the phenomena of mass criminalization and its intersection with immigration, comparing both current U.S. immigration policy with the historical roots of mass criminalization, focusing on the racialized construction of “illegality” and the use of incarceration as a tool of border control

A. Relevance

Laws that have been enacted for decades display bias in targeting both newly arrived migrants and long-term immigrants within our country. Immigration laws enacted in 1996 create an unfair system of ‘double punishment’, taking out

due process for immigrants and mandating that once immigrants with convictions complete their sentences in U.S. prisons, they often can still face deportation without a hearing ⁴. In addition to this, many immigrants are not informed of these laws when persuaded to plead guilty; coerced or misinformed plea deals often result in long-term legal harm, including detention, deportation, and family separation, outcomes vastly disproportionate to the original offense. These laws are only one example of the extreme criminalization and exploitation of immigrants in the United States.

III. HISTORY

A. Current Stances

Xenophobia has been a long-standing issue within the United States. As far back as 1750, Benjamin Franklin was recorded worrying about the ‘swarthy’ foreigners who he believed would swamp the colonies and their British subjects. It doesn’t just stop there, as historian Erika Lee asserts in *America for Americans: A History of Xenophobia in the United States*, xenophobia is not merely a matter of individual prejudice; it is a systemic form of racism embedded within the nation’s legal and political infrastructure ⁵. Particularly with the increase in anti-immigration sentiments from the White House, it is more important now than ever to understand this country’s long history of bigotry.

Since President Donald Trump entered the White House in January, he has maintained his campaign promise of cutting down immigration. According to the New York City Bar Association, President Trump has “aggressively pursu[ed] removal of noncitizens, pressuring states and localities to cooperate in immigration

enforcement, limiting access to humanitarian forms of relief, and closing the southern border, to name just a few actions to date. Through a series of executive orders (EO), policy memoranda, and other actions, the administration is taking major steps to reshape immigration policy and practices that test the limits of executive power ⁶”.

Through these legal practices criminalizing immigrants, the term ‘racialization of illegality’ comes into view. The racialization of illegality refers to when the word ‘illegal’ gets tagged onto certain ethnic and racial minorities. This largely happens because of media portrayals and legislation targeting certain groups of people. For example, much of the media – popular television shows and movies, along with news broadcasts – make jokes about illegal immigrants, usually using the example of a Hispanic or Latino individual. Through this type of stereotyping, the general public gets increasingly suspicious about these groups of people, which can influence who is arrested based on who ‘seems’ illegal. As a result, immigration enforcement disproportionately impacts individuals from Mexico, Guatemala, Honduras, and El Salvador – according to the American Academy of Arts and Sciences, immigrants from the countries of Mexico, Guatemala, Honduras, and El Salvador make up 70% of the undocumented population of the United States; yet over 90% of ICE removals and 88.6% of detainees are from those 4 countries⁷.

IV. POLICY PROBLEM

A. Stakeholders

There are a multitude of stakeholders in this issue, ranging from media groups to foreign

nations; yet, it is given that the primary stakeholders are immigrants themselves, especially those who are incarcerated or detained in ICE custody. Even those not included in the former groups, or those with permanent resident status, are at risk of ‘crimmigration’. Simple acts such as jaywalking or running a red light have turned into constant moments of fear and anxiety for all people of color.

The government, particularly the administrations between Nixon and Trump, is at the core of the criminalization and racialization of illegality. While entering the country illegally is a criminal misdemeanor, living in the United States ‘unlawfully’ is only a civil offense – immigration law is civil law. Yet, recent administrations have associated undocumented immigrants with criminals, being victimized with state practices akin to those of sex offenders and murderers ⁹.

B. Risks of Indifference

The risk of indifference to the criminalization of immigration lies in the perpetuation of existing biases and the resulting loss of civil liberties. If stakeholders continue to neglect the problem at hand, it is a given that the societal conditions of bias and prejudice would worsen. The cycle of exclusion and discrimination for immigrants, in all areas of daily life, would continue unhindered. Indifference would cause the issue to spread wider, leading to consequences befalling the United States’ citizens. This criminalization of immigration is allowing for the normalization of practices that bypass constitutional rights: indefinite detention without trial, coerced plea deals, deportations without hearings; these are all ways of control, and with no pushback, it sets dangerous precedents that all residents of the U.S.

should be wary of. Most critically, indifference represents a moral failure. Tolerating a system that criminalizes survival, migration, and difference, and awards xenophobic behaviors, erodes the foundation of democracy upon which the United States claims to stand.

C. Nonpartisan Reasoning

Because immigration issues affect not only individuals but also societies and communities themselves, nonpartisan intervention must take place. The benefits of such intervention include, but are not limited to, the following:

- 1) **Economic efficiency:** The private prison system flourishes in the United States, and a main driver of this success is immigrant detention. With the new policies of ‘crimmigration’, immigration enforcement and detention waste billions of U.S. taxpayer dollars annually. Redirecting this money from immigration to other sectors, such as education or healthcare, would result in a greater return on public investment and advancement. Reducing restrictions and taking away unnecessary detention/processing time for immigrants also allows them to stay in the workforce, stimulating the economy of critical sectors such as agriculture or construction. According to the 2022 American Community Survey, immigrants in the United States have a combined household income of \$2.1 trillion and contribute \$382.9 billion to federal taxes and \$196.3 billion in state and local taxes, all of which helps the U.S. economy tremendously ¹⁴.
- 2) **Improvement in community stability and public safety:** When immigrants are wary

of the government and law officials, they are less likely to report crimes, cooperate with the police, or seek medical help. In the current state of politics, most immigrants, even those with green cards or other forms of permanent resident status, are afraid of the threat of deportation. Nonpartisan involvement that reduces criminalization cultivates trust and safety. According to many studies, decriminalization reduces violence and organized crime ¹⁰.

- 3) International credibility and human rights: The U.S. has been a leader in human rights advocacy for the last decades, with its residents known for peaceful protests and humanitarian help. Aligning domestic immigration practices with these same international standards of human rights raises credibility. Practices such as the right to asylum and a just trial, among others, would restore the United States' place at the top.

V. TRIED POLICY

An important piece of legislation enacted by the Obama administration in 2012 was the Deferred Action for Childhood Arrivals or DACA program. DACA allows certain undocumented immigrants who came to the U.S. as children to apply for temporary protection from deportation, and allows them to receive work permits. Although this is not a path to citizenship, it reduced the criminalization of immigrants and allowed those who were more 'culturally American' to continue their lives in the United States ¹¹.

However, DACA received persistent legal and political backlash. In 2017, the Trump administration attempted to terminate the program, arguing that it overstepped executive power since it was an executive order by President Obama and not passed through Congress ¹². Although the Supreme Court blocked that attempt, lower courts continue to debate the existence of the program, with some states like Texas completely blocking their residents from access to DACA rules. While it reduced deportation risk for some, it failed to address long-term security for most.

VI. POLICY OPTIONS

Implementation of Prosecutorial Discretion Guidelines

The constant racialization of illegality has allowed for low-level immigration violations to be treated as serious charges. This results in detention and deportation for immigrants who pose no threat to public safety while allowing for resources to be taken away from arresting the genuine criminals.

To overcome this, a national standard for prosecutorial discretion – the power that allows prosecutors to consider various factors beyond just evidence, such as the seriousness of the offense, the defendant's criminal history, and the impact on the community – should be created. This allows for clear guidelines to be implemented for ICE and immigration judges to prioritize cases that involve serious criminal behavior rather than non-violent immigration violations. Something like this is in place currently, but it needs to be regulated in a better way. This would be overseen by the Department of Homeland Security's Office for Civil Rights

and Civil Liberties.

Funding immigration legal services

Although providing a public defender is a well-known practice in American criminal courts, individuals in immigration proceedings or front of an immigration court do not have access to a government-funded attorney¹³. This necessitates that many face legal proceedings alone without any counsel, usually indicating negative outcomes for the individual. These largely negative outcomes again result in the same stereotype of the criminalization of immigrants. Funding immigration legal services in communities and mandating a certain amount of pro bono cases allows for this issue to be resolved, and fewer mistakes to be made in legal proceedings with immigrants.

VII. CONCLUSIONS

In this paper, I have explored a plethora of topics underlying the targeted prosecution of noncitizens in America and the history of mass criminalization, going into an in-depth analysis of xenophobia and consequent policy options for the same. Out of these options, the one that is most implementable in its scope is funding immigration legal services.

The mass criminalization of immigration is not just a political issue, but a humanitarian one. The United States was built on the backs of immigrants, and policies that tie immigration to criminality perpetuate a tradition of racism, fear, and systemic inequality. The ethicality of the United States was founded on democracy and equality for all, and through nonpartisan intervention, it can continue to hold the values of justice, equity, and human dignity.

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REFERENCES

- [1] Vera Institute of Justice. (n.d.). *American history, race, and prison*. In *Reimagining Prison Web Report*. Retrieved June 29, 2025, from <https://www.vera.org/reimagining-prison-web-report/american-history-race-and-prison#:~:text=In%201970%2C%20the%20era%20of,population%20was%20a%20deliberate%20policy>
- [2] **Ballard Brief**. (n.d.). *Mass incarceration in the United States*. <https://ballardbrief.byu.edu/issue-briefs/mass-incarceration-in-the-united-states>
- [3] **Worldometer**. (n.d.). *U.S. population (live)*. <https://www.worldometers.info/world-population/us-population/>
- [4] **Immigrant Justice**. (n.d.). *Decriminalize immigration*. <https://immigrantjustice.org/issues/decriminalize-immigration/>
- [5] **Tufts Now**. (2020, September 24). *A long history of xenophobia in America*. <https://now.tufts.edu/2020/09/24/long-history-xenophobia-america>
- [6] **NYC Bar Association**. (n.d.). *The Trump Administration's early-2025 changes to immigration law*. <https://www.nycbar.org/reports/the-trump-administrations-early-2025-changes-to-immigration-law/>

- [7] American Academy of Arts & Sciences. (Spring 2021). *The racialization of “illegality”*. *Dædalus*, 150(2).
<https://www.amacad.org/publication/daedalus/racialization-illegality>
- [8] Lozada, C. (2016, March 23). Nixon aide reportedly admitted drug war was meant to target Black people. *CNN Politics*. Retrieved July 19, 2025, from
<https://www.cnn.com/2016/03/23/politics/john-ehrllichman-richard-nixon-drug-war-blacks-hippie>
- [9] Aranda, E., & Vaquera, E. (n.d.). *Racialized illegality: The social construction of race, criminality, and illegality in the U.S.* Harvard University DEIB Explorer Project. Retrieved July 19, 2025, from
https://projects.iq.harvard.edu/files/deib-explorer/files/aranda_and_vaquera.pdf
- [10] Number Analytics. (2023, April 12). *Decriminalization and crime: What the data tells us*. Retrieved July 19, 2025, from
<https://www.numberanalytics.com/blog/decriminalization-and-crime>
- [11] KFF. (n.d.). *Key facts on Deferred Action for Childhood Arrivals (DACA)*. Retrieved July 19, 2025, from
<https://www.kff.org/racial-equity-and-health-policy/fact-sheet/key-facts-on-deferred-action-for-childhood-arrivals-daca/#:~:text=DACA%20was%20originally%20established%20via...>
- [12] Boundless. (2023, September 13). *Federal judge again rules DACA program is illegal*. Retrieved July 19, 2025, from
<https://www.boundless.com/blog/federal-judge-again-rules-daca-program-is-illegal/#:~:text=As%20we%20have%20long%20maintained,helpful%20resources%20about%20the%20program>
- [13] American Immigration Council. (n.d.). *Protecting immigrant communities at the state and local level*. Retrieved July 19, 2025, from
<https://www.americanimmigrationcouncil.org/blog/protecting-immigrant-communities-at-the-state-and-local-level/>
- [14] Hubbard, S. (2024, April 15). *Immigrants contribute billions to federal and state taxes each year*. American Immigration Council.
<https://www.americanimmigrationcouncil.org/blog/immigrants-contribute-billions-federal-state-taxes/>