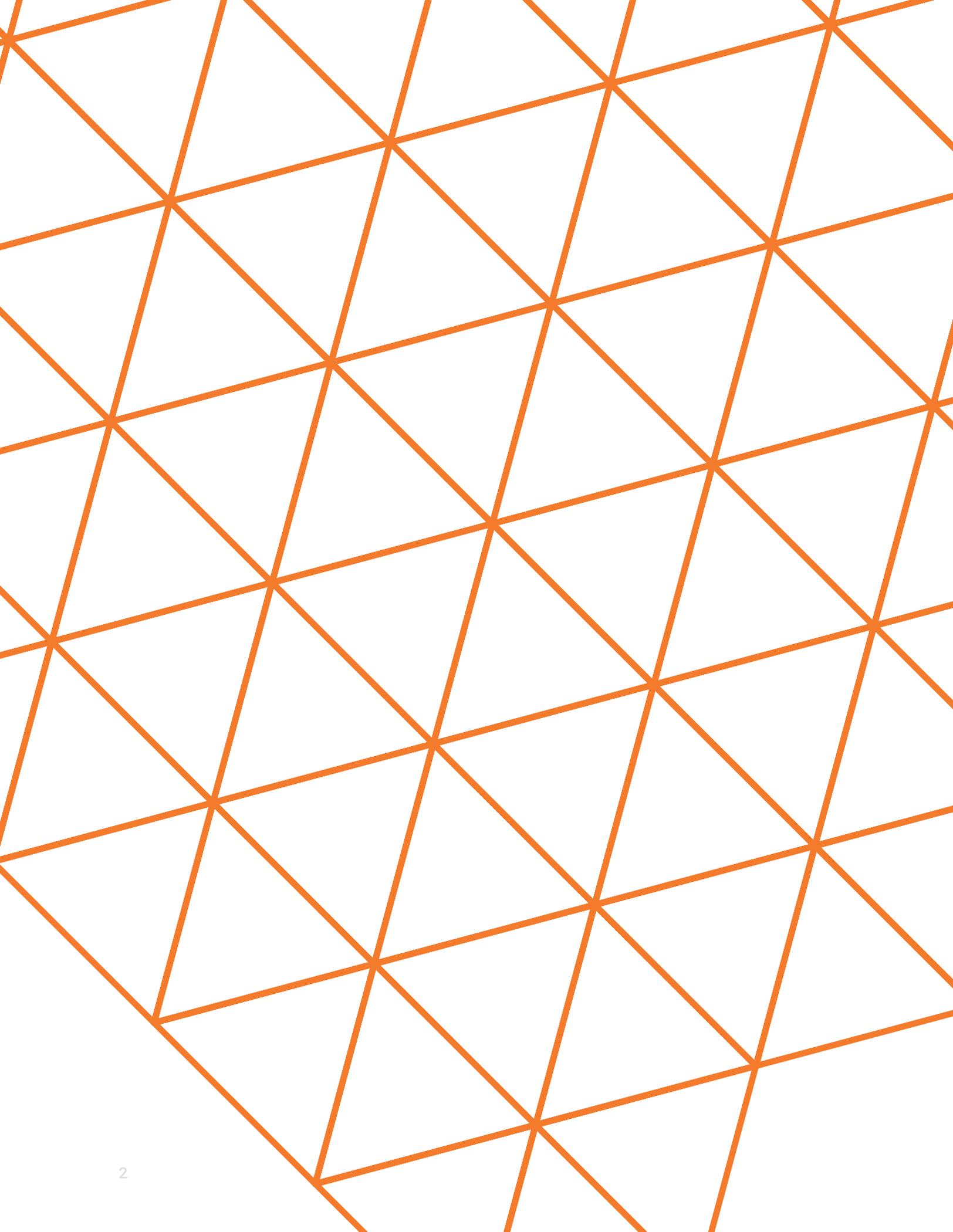


THE STATE OF BLACK IMMIGRANTS

PART I STATISTICAL PORTRAIT OF BLACK IMMIGRANTS IN THE UNITED STATES
PART II BLACK IMMIGRANTS IN THE MASS CRIMINALIZATION SYSTEM



THE STATE OF BLACK IMMIGRANTS

**PART I: A STATISTICAL PORTRAIT OF
BLACK IMMIGRANTS IN THE UNITED STATES**



contents

METHODOLOGY 3

DEFINITIONS 3

CURRENT STATE OF BLACK IMMIGRANTS IN THE U.S. 3

I. SIZE AND GROWTH OF BLACK IMMIGRANT POPULATION 3

*Size and Growth of the Overall Population
Percentage of Black Population
Percentage of the Foreign-Born Population*

II. CHARACTERISTICS OF THE BLACK IMMIGRANT POPULATION 3

*Diversity Based on Country or Region of Origin
Length of Residency in the U.S.
Geographic Dispersion in the U.S.*

III. EDUCATIONAL BACKGROUND 3

IV. ECONOMIC SNAPSHOT 3

V. IMMIGRATION STATUS AND MEANS OF ENTRY 4

- A. UNAUTHORIZED POPULATION
- B. LAWFUL PERMANENT RESIDENT AND NATURALIZED POPULATION
- C. DIVERSITY VISA
- D. TEMPORARY PROTECTED STATUS
- E. ASLYEE OR REFUGEE STATUS

VI. ACCESS TO RELIEF FROM DEPORTATION 6

A. DISCRETIONARY RELIEF OR TERMINATION IN REMOVAL PROCEEDINGS

*Relief and Termination Generally
Defensive Asylum Applications*

B. DACA Eligibility, Applications and Grants

*Eligibility
Approvals*

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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.



methodology

This background report aims to provide basic descriptive statistics regarding Black or African American immigrants based on the American Community Survey (ACS), the 2014 Yearbook of Immigration Statistics published by the U.S. Department of Homeland Security (DHS), and immigration data available on the Transactional Records Access Clearinghouse (TRAC) website developed by Syracuse University.

ACS 2014 1-year Public Use Microdata Sample (PUMS) data was used to conduct the research on specific information of the immigrant communities in the U.S. and the untabulated data was downloaded from the U.S. Census Bureau website¹ and then analyzed in Stata and R programs. Information about immigrants' population, education, poverty rate, citizenship status, place of birth, geographic location and other demographics were analyzed. Since the PUMS data represents about 1% of the American population, results on the total population estimates were calculated by replicating the weight variable within the dataset, subject to standard errors of inferential statistics.²

Other conclusions on Black immigrants were analyzed based on the DHS Yearbook and TRAC data, which were both categorized by regions and/or nationalities. All data on 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) under the Department of Justice, the data was similarly organized by nationalities and the results on Black immigrants were calculated based on all African and Caribbean countries.

definitions

A-C

Affirmative Asylum

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

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.

Black Immigrants

Black Immigrants, 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. Where Census data is available, the definition of "Black immigrant" is 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. Immigrant population estimates include all immigrants regardless of current citizenship or legal status.

Caribbean Countries

Caribbean 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.

definitions

D-N

Defensive Asylum

Defensive Asylum refers to the process in which asylum-seekers who are in removal proceedings before EOIR of the Department of Justice submit an application for asylum.

Deferred Action for Childhood Arrivals (DACA)

DACA is a U.S. immigration policy that allows certain undocumented immigrants who entered the country before their 16th birthday and before June 2007 to receive a renewable two-year work permit and exemption from deportation. Diversity Visa

Diversity Visa

Diversity 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.

Foreign-Born

Foreign-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.

Immigration Court

Immigration 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 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

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

Lawful Permanent Resident

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

Naturalizations

Naturalizations refers to the process by which immigrants become U.S. citizens. To be



N-T

naturalized under U.S. laws, a person generally must be 18 and older, have been a green card holder for at least five years and possess an acceptable background with regard to criminal and national security concerns.

Non-Citizen

Non-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

Refugees 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.

Relief Granted

Relief granted refers to cases in which an Immigration Court judge finds the original charges are sustained but finds provisions in the immigration law entitle the individual to relief from removal, allowing them to remain in this country.

Removal

Removal 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 Protection Status

Temporary Protection 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.

Termination (No Grounds for Removal)

Termination (no grounds for removal) refers to cases in which an Immigration Court judge finds the charges against the individual are not sustained and terminates the case. Situations where the alien has established eligibility for naturalization can be grounds for termination.



CURRENT STATE OF BLACK IMMIGRANTS IN THE U.S.

The last four decades have represented a period of significant demographic change in the United States. Now more than ever, Black immigrants compose a significant percentage of both immigrant and Black populations in the U.S. overall. This report presents a statistical snapshot of the Black immigrant population, drawing upon recent studies and original analysis.

I. Size and Growth of Black Immigrant Population

Size and growth of the overall population. The number of Black immigrants in the United States has increased remarkably in recent decades. Population data on Black immigrants is difficult to ascertain, as the U.S. Citizenship and Immigration Services does not track immigration data by race. But our analysis suggests that there are approximately 5 million foreign-born Black individuals living in the U.S. This analysis includes both non-citizens and Black immigrants who have naturalized. According to the 2014 American Community Survey (ACS) there are 3.7 million Black non-citizens.¹ While this analysis is conservative, it still represents a four-fold increase when compared to the number of Black immigrants who lived in the U.S. in 1980 (which was only about 800,000) and a 54% increase from 2000 (roughly 2.8 million).²

Percentage of Black population. The overall growth of the Black immigrant population represents a significant change in the demographics of both the Black population and the immigrant population more broadly in the United States. First, Black immigrants represent an increasing percentage of Black people in

the United States as a whole. The ACS data shows that while Black immigrants accounted for only 3.1% of the Black population in the U.S. in 1980,⁵ Black immigrants now account for nearly 10% of the nation's Black population.⁶ This growth is particularly significant in states with the largest number of Black immigrants. For example in New York, Black immigrants make up almost 30% of the total Black population in the state, making it the top state for Black immigrants in the U.S. Florida seconds the list with over 20% of its Black population being foreign-born.⁷ The Census Bureau projects that by 2060, 16.5% of America's Black population will be foreign-born.⁸

Percentage of the foreign-born population. Second, Black immigrants make up a significant portion of the overall immigrant and non-citizen population in the U.S. According to the 2014 one-year estimates from ACS, the estimated total of foreign-born population in the U.S. was 42 million, within which 8.7% were Black immigrants.⁹ In addition, about 22 million of the U.S. foreign-born population were non-citizens, among whom 7.2% were Black.¹⁰

II. Characteristics of the Black Immigrant Population

Diversity based on country or region of origin. While Black immigrants in the U.S. come from diverse backgrounds and regions of the world, immigrants from African and Caribbean countries comprise the majority of the foreign-born Black population. According to the 2014 ACS data, Jamaica was the top country of origin in 2014 with 665,628 Black immigrants in the U.S., accounting for 18% of the national total.¹¹ Haiti seconds the list with 598,000 Black immigrants, making up 16% of the U.S. Black immigrant population.¹²

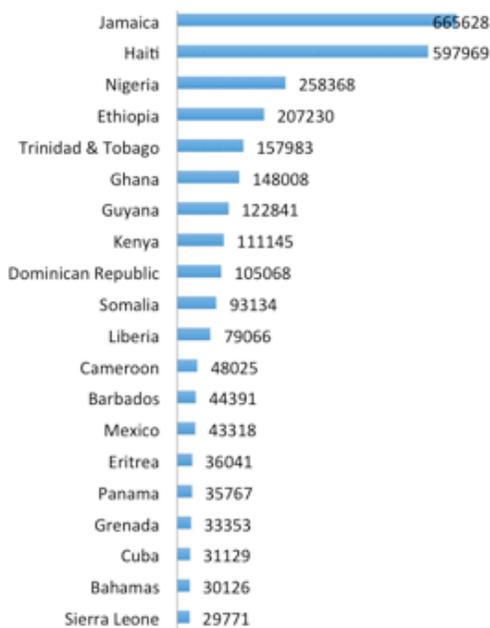
Although half of Black immigrants are from the Caribbean region alone, African immigrants drove much of the recent growth of the Black immigrant population and made up 39% of the total foreign-born Black population in 2014.¹³ The number of African immigrants in the U.S. increased 153%, from 574,000 in 2000 to 1.5 million in 2014, with Nigeria and Ethiopia as the two leading countries of origin.¹⁴

Besides African and Caribbean regions, an estimated 4% of Black immigrants are from South America, another 4% are from Central America, 2% are from Europe and 1% from Asia.¹⁵

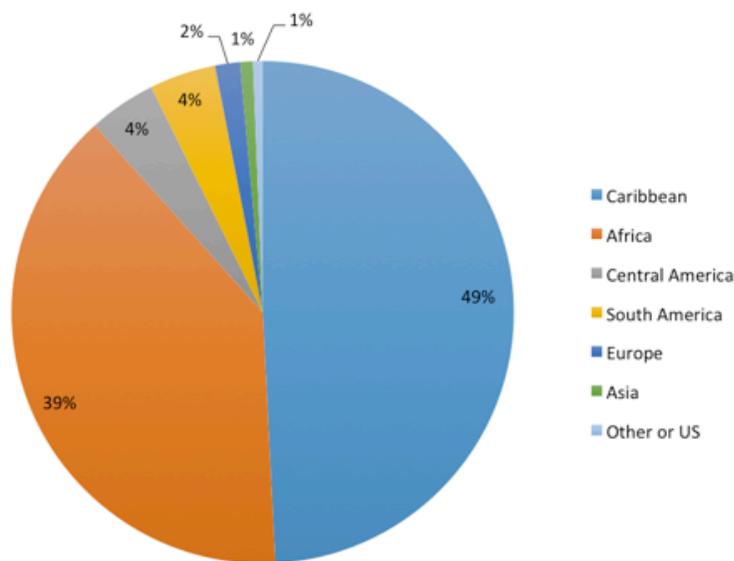
Length of residency in the U.S. Black immigrants tend to have lived in the U.S. for long periods of time, although there are some regional differences in length of residency. As more African immigrants are recent arrivals, those from the Caribbean have generally lived in the U.S. longer. According to a Pew study of 2013 and prior ACS data, more than half (63%) of Black African immigrants arrived in the U.S. in 2000 or later, and more than one-third (36%) arrived in 2006 or later. By contrast, 42% of Caribbean immigrants arrived in the U.S. before 1990, while only 18% arrived in 2006 or later. Black immigrants from Jamaica, Haiti and the Dominican Republic increasingly began moving to the U.S. in the 1960s.¹⁶

Geographic dispersion in the U.S. The geographic dispersion of Black immigrants is highly concentrated. New York State is home to 846,730 (23%) Black immigrants, making it the top state of residence. Florida has the second largest foreign-born Black population (18%), followed by Texas (6%) and Maryland (6%).¹⁷ Some Black immigrant communities tend to cluster together around certain metropolitan areas. For example, according to the Pew study of 2013 ACS data, New York City is home to nearly 40% of all foreign-born black Jamaicans in the U.S.; Miami has the nation's largest Haitian immigrant community; Washington D.C. has the largest Ethiopian immigrant community; and Somalian immigrants concentrate in metropolitan areas of Minnesota and Wisconsin.¹⁸

Top Birth Countries for Black Immigrants in 2014



Regions of Birth for Black Immigrants



III. Educational Background of Black Immigrants

A significant percentage of Black immigrants have obtained degrees through higher education, but the percentage remains lower than the U.S. population as a whole. According to the ACS 2014 data, more than a quarter (27%) of Black immigrants age 25 and older have a bachelor’s degree or higher, three points below the percentage of the overall U.S. population.¹⁹ However, the proportion with an advanced degree is similar among all Americans (11%) and Black immigrants (10%).²⁰ When comparing Black immigrants with Asian and Hispanic immigrants, the differences are more apparent. About 30% of Asian immigrants age 25 and older have completed at least a four-year degree, whereas only 11% of Hispanic immigrants have done so. Within Black immigrants, educational attainment also varies among different regions of birth.²¹ About 34% of African immigrants age 25 and older have at least a bachelor’s degree, including 14% with an advanced degree. In comparison, only 6.2% of Caribbean immigrants age 25 and older have an advanced degree. Nonetheless, education attainment for Black immigrants from Africa is still lower than those from Europe and Asia, with 16.7% and 18.6% of them have an advanced degree respectively.²²

IV. Economic Snapshot of Black Immigrants

Household income. Black immigrants have a lower median annual household income than the median U.S. household and all immigrants in the U.S. Based on the Pew study of ACS 2013 data, the median annual household income for foreign-born blacks was \$43,800. That’s roughly \$8,000 less than the \$52,000 median for American households and \$4,200 less than that of all U.S. immigrants. While the median household income for Black immigrants is higher than it is for Hispanic immigrants (\$38,000), both groups’ numbers are substantially below that of Asian immigrants, whose median household income is \$70,600.²³ Additionally, poverty rate among Black immigrants is higher than it is among all Americans but similar to that for all U.S. immigrants. One-in-five

(20%) Black immigrants live below the poverty line, according to the Pew Research Center analysis of Census Bureau data, a rate that falls between that of Asian immigrants (13%) and Hispanic immigrants (24%).

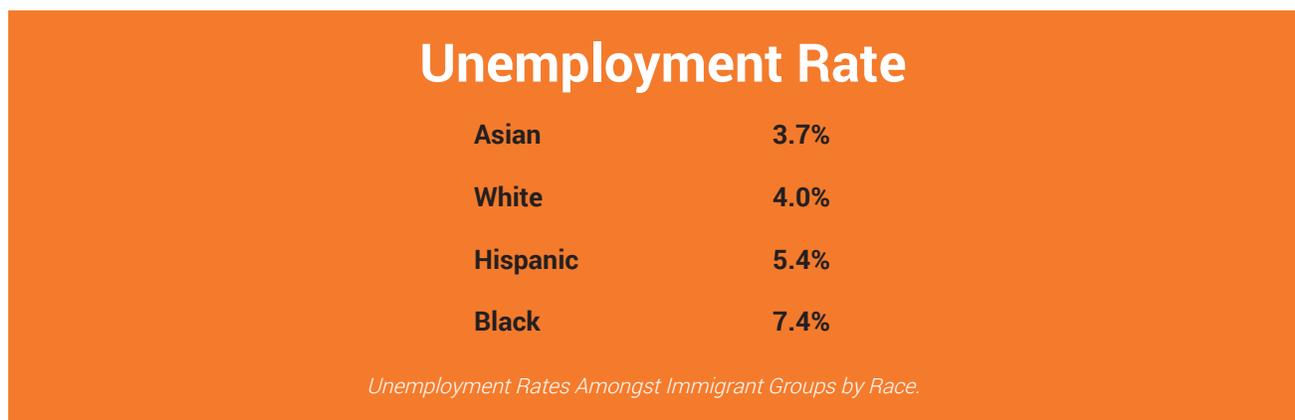
Black women across the board earn lower wages than U.S.-born non-Hispanic white women.

According to a 2011 study by the Economic Policy Institute, Caribbean women earn 8.3% less than U.S. born non-Hispanic white women; African women earn 10.1% less. When we consider subsets of Black immigrants, the differences become even more dramatic.²⁴ For example, Haitian women earn 18.6% less than U.S. born non-Hispanic white women.²⁵

Similarly, Black immigrant men earn lower wages than U.S. born non-Hispanic white men. Caribbean men earn 20.7% less than U.S. born non-Hispanic white men and African men 34.7%.²⁶ Notably, as of 2011 Black immigrant men also earned lower wages than African American males. While earnings for Caribbean men were just 1% less than those of African-Americans, African men earned nearly 15% less than US Born Black men.²⁷

Black Immigrants in the Workforce. Black immigrants are more likely to participate in the labor force than the overall immigrant population. The Bureau of Labor Statistics reports that 70.8% of Black immigrants participate in the civilian labor force.²⁸

Despite their participation rates in the workforce, Black immigrants have the highest unemployment rates amongst all immigrant groups.²⁹



Black immigrants also reported a joblessness rate of 9.9% - the highest among all immigrant groups.³⁰

Black immigrants maintain higher rates of employment in service and sales positions than their counterparts of other immigrant backgrounds.³¹⁻³² Other areas of employment for Black immigrants include management, finance, and construction.

Unionization. The percentage of unionized Black immigrants has nearly doubled over the last 20 years from 7% in 1994 to 15.4% in 2015.³³ Black immigrants are more likely than Black Americans to be unionized. 16.9% of Black immigrants are union members, compared to 13.8% of Black Americans.³⁴ Unionization has proven to have a positive impact on the livelihood of Black workers. On average Black union members, earn nearly \$7 more per hour than non-union Black workers.³⁵ 71.4% of Black union members have employer-provided health care, compared to 47.7% of non-union Black workers.³⁶ 61.6% of Black union members have employer-sponsored retirement plans, compared to 38.2% of non-union Black workers.³⁷

V. Immigration Status and Means of Entry

The majority of Black immigrants are living in the U.S. with formal immigration authorization. According to a Pew study, about 84% of the Black immigrant population are living in the U.S. with authorization.³⁸ This section of the report presents details about Black immigrants by immigration status.

A. Undocumented Community Members

When compared with the overall share of undocumented immigrants in the country—about a quarter of the total immigrant population—Black immigrants are less likely to be in the U.S. unlawfully. An estimated 575,000 Black immigrants were living in the U.S. without authorization in 2013, according to the Pew Research Center study, making up 16% of all Black immigrants population. Among Black immigrants from the Caribbean, 16% are undocumented immigrants and as are 13% of Black immigrants from Africa.³⁹ Despite the smaller percentage of unauthorized Black immigrants relative to the national share, the number of undocumented immigrants from Africa and the Caribbean is rising more quickly than the overall foreign-born Black population. Between 2000 and 2013, the total number of unauthorized African and Caribbean immigrant population climbed from 389,000 to 602,000, an increase of 162% (although the Caribbean immigrant population only contributed to 1% of the increase).⁴⁰ During the same period, the total number of foreign-born Black immigrants increased by only 56%.

When compared with the increase of undocumented immigrant population from other regions of the world, African and Caribbean unauthorized immigrants are growing at a lower rate since 2000 than those from Central America (194% without Mexico) and Asia (202%), but faster than those from South America (39%) and Europe (62%).⁴¹

B. Lawful Permanent Resident and Naturalized Population

In FY 2014, according to the U.S. Department of Homeland Security yearbook, 232,290 Black immigrants in the U.S. obtained lawful permanent resident (LPR) status. They represented 23% of all individuals who became lawful permanent residents in FY 2014.⁴² The basis for obtaining lawful permanent resident status was diverse itself. Among the African and Caribbean immigrants who obtained LPR status, a majority of them were immediate relatives of U.S. citizens (36%) or otherwise family-sponsored (23%); 27.3% obtained their status through refugee and asylee adjustment; 10.2% were based on “diversity visas” (see below); and 2.7% were employment-based.⁴³

A similar percentage of African and Caribbean immigrants were naturalized in 2014. According to the DHS statistics, out of the 653,416 persons naturalized, 145,530 or 22.3% were immigrants from African or Caribbean countries.⁴⁴ The ACS data also show that the proportion of foreign-born Black immigrants who are naturalized U.S. citizens has increased from 44% in 2000 to 55% in 2014 (total number of Black naturalized citizens is about 2 million), a higher share than among immigrants in the U.S. (47%).⁴⁷ Black immigrants from South America and the Caribbean have the highest citizenship rates among all Black immigrants, 67% and 61% respectively. About half of Black immigrants from Africa are U.S. citizens, possibly because they generally arrived more recently than other Black immigrants.⁴⁶

C. Diversity Visas

Many Black immigrants, primarily from Africa, arrive through the “diversity visa,” a lottery system designed to increase immigration from underrepresented nations. The diversity immigrant category was added to the Immigration and Nationality Act (INA) by the Immigration Act of 1990 to stimulate “new seed” immigration.⁴⁷ The yearly number of permanent resident “green cards” offered through the program is capped at 55,000, with 5,000 of those going to beneficiaries of the Nicaraguan Adjustment and Central American Relief Act (NACARA). Nonetheless, in FY 2005-2014, Africa saw an allotment of nearly 46% of all diversity visas. In contrast, only 0.02% of diversity visas were issued to Caribbean immigrants during the same period.⁴⁸ As mentioned above, 10.2% of African and Caribbean immigrants gained LPR status in 2014 through this program. And between 2000 and 2013, about one-in-five sub-Saharan African immigrants who obtained LPR entered the country on a diversity visa, whereas a higher percentage of Caribbean immigrants entered through family-sponsored visa.⁴⁹

The diversity visa is believed to have contributed to the high educational background of Black immigrants in the U.S. as applicants of the diversity visa program must have at least a high school degree or two year’s work experience in a career that requires vocational training. Many Sub-Saharan African immigrants have considerably more education: about 38% have a bachelor’s degree or higher, compared to 28% of the total U.S. foreign-born population and 30% of the U.S.-born population, according to the MPI.⁵⁰

D. Temporary Protected Status

Temporary Protected Status (TPS) also contributed to more status granted to Black immigrants, especially nationals from several African countries. The U.S. Secretary of Homeland Security currently designates countries, which due to a temporary condition such as an ongoing armed conflict or an environmental disaster, are unsafe for their nationals to return from the U.S. 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 May 2016 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).⁵¹





E. Asylee or Refugee Status

A significant percentage of Black immigrants arrived in the U.S. as refugees or asylees, primarily from Africa. Between 2000 and 2013, about three-in-ten (28%) Sub-Saharan African immigrants entered as refugees or asylees, compared to only 5% for Caribbean immigrants and 13% for the overall immigrant population.⁵² In 2014 alone, DHS documented 17,501 refugee arrivals from Africa and 4 from the Caribbean (all of whom were from Haiti), constituting 25% of the total 69,975 refugees arrived in the U.S.⁵³ Immigrants who are physically present in the United States without a removal order, including arrivals at points of entry, may apply for affirmative asylum regardless of immigration status. In 2014, DHS granted 14,758 affirmative asylum applications, within which 33% were granted to Black immigrants (4,296 to African immigrants and 533 to Caribbean immigrants).⁵⁴

VI. Access to Relief from Deportation

A. Discretionary Relief or Termination in Removal Proceedings

Relief and termination generally. Immigrants who are charged with deportability or inadmissibility in removal proceedings in immigration court with the Executive Office for Immigration Review (EOIR) may request several forms of discretionary relief or termination of proceedings as defenses against deportation. A significant percentage of Black immigrants were granted such relief.⁵⁵ While Black immigrants made up 5.5% of the cases completed in immigration courts in 2015, they made up 16.2% of all cases in which relief was granted by immigration courts across the U.S. Among all Black immigrants who were in removal proceedings, about 23% were granted relief in 2015, which was 13 points higher than the percentage of people in removal proceedings who were granted relief. In addition, Black immigrants made up 10.9% of all cases in which immigration courts terminated proceedings in 2015 because there were no grounds for removal.⁵⁶ The percentage of Black immigrants whose case was terminated (24%) was 10 points higher than the percentage of termination among all people in removal proceedings in 2015.

Defensive asylum applications. While data is not disaggregated by all of the different forms of discretionary relief in removal proceedings, EOIR does track defensive asylum claims (asylum applications that are adjudicated by an immigration judge as part of removal proceedings). In 2014, EOIR received a total number of 41,920 defensive asylum applications, out of which 8.5% are from Black immigrants. For asylum granted by EOIR, Black immigrants make up 17.7% of the 8,775 total, and among those, virtually all grants went to African immigrants.⁵⁷

B. DACA Eligibility, Applications and Grants

On June 15, 2012, the Obama Administration created a new policy calling for deferred action for certain undocumented young people who came to the U.S. as children. The program, called Deferred Action for Childhood Arrivals (DACA), does not provide lawful status but allows individuals who meet several criteria to apply deferral from removal for a period of two years, subject to renewal.⁵⁸

Eligibility. Mexican immigrants made up an overwhelming majority of all DACA categories according to eligibility estimates by MPI and DHS application and approval data, including 65% of the immediately eligible candidates⁵⁹ and 62% applications rates⁶⁰ and 78% of DACA approvals.⁶¹ By stark contrast, according to MPI, African immigrants constituted only 3% (or about 36,000) of the population who were immediately eligible for DACA (total 1.2 million eligible), and Caribbean immigrants constituted 2% of the immediate eligible pool.⁶² The total percentage of African and Caribbean immigrants eligible for DACA corresponds exactly with their proportion within the unauthorized immigrant population.

Nonetheless, Mexican immigrants are over-represented among the DACA-eligible population (65% v. 56% of all unauthorized immigrants and just 29% of the total foreign-born population).

Applications. USCIS generally reports quarterly data on the top 25 countries of origin of DACA applications. Since the program's launch in August 2012 until the first quarterly report in 2016, among all African and Caribbean countries, only Jamaica, Nigeria, Trinidad and Tobago and the Dominican Republic have ever made the top 25 list for applications. Taken together, USCIS accepted a total number of 11,844 initial applications from these four countries, or 1.5% of the total initial applications accepted among the top 25 countries.⁶³ (The top 25 countries represent approximately 96.5% of all initial DACA applications accepted.)

Approvals. Similarly, USCIS generally reports quarterly data on the top 25 countries of origin of DACA approvals. Since the program's launch in August 2012 until the first quarterly report in 2016, among all African and Caribbean countries, only Jamaica, Nigeria, Trinidad and Tobago and the Dominican Republic have ever made the top 25 list for approvals. Up to the first quarter of 2016, Jamaican nationals had 5,302 total approvals, including both initial and renewal applications, or 84% of Jamaican nationals' applications; Nigeria had 2,095 total approvals, or 88% of applications; Trinidad and Tobago had 4,077 total approvals, or 89% of applications; and the Dominican Republic had 4,580 total approvals, or 87% of applications. While approximately 87% of applications from these four countries were approved, about 91% of DACA applications from all of the top 25 countries tracked by USCIS were approved. (The approvals listed in the top 25 countries list represent 97% of the 1,198,605 approvals to date.)⁶⁴

Although African and Caribbean immigrants constituted only a small percentage of the immediately eligible population for DACA, the rates of application accepted and status approved for Black immigrants are lower when compared to all top 25 countries listed by USCIS. While using the numbers of the four African and Caribbean countries that have appeared on the top 25 list may not be the most accurate calculation, all other countries of origin whose nationals have submitted a DACA request but do not appear on the list only make up less than 4% of the total.⁶⁵ The authors have also submitted a FOIA application to USCIS requesting the full list of countries of origin, but final response has not been produced by the agency yet.

ENDNOTES

1. U.S. Census Bureau, American Community Survey, 2014 ACS 1-Year PUMS. http://factfinder.census.gov/bkmk/navigation/1.0/en/d_dataset:ACS_14_1YR/d_product_type:PUMS
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THE STATE OF BLACK IMMIGRANTS

**PART II: BLACK IMMIGRANTS IN THE
MASS CRIMINALIZATION SYSTEM**



contents

EXECUTIVE SUMMARY 3

METHODOLOGY 7

DEFINITIONS 8

**I. TARGETING IMMIGRANTS WITH
CRIMINAL CONVICTIONS 12**

BLACKS ARE DISPROPORTIONATELY REPRESENTED IN
CRIMINAL ENFORCEMENT SYSTEM 15
TARGETING IMMIGRANTS WITH CRIMINAL RECORDS 10
STOPS 16
ARRESTS 17
CRIMINAL CHARGES AND DISPOSITION 18
POST-CONVICTION 18

**II. BLACK IMMIGRANTS AND
DEPORTATION 20**

DEPORTATION PROCEEDINGS 20
DEPORTATION OUTCOMES 21
CRIMINAL RECORDS AND THE BASIS OF REMOVAL 21
CRIMINAL RECORDS IN THE CONTEXT OF RETURNS VERSUS
REMOVALS 22

**III. BLACK IMMIGRANTS IN
IMMIGRATION DETENTION 24**

IV. RECOMMENDATIONS 27

V. CONCLUSIONS 29

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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

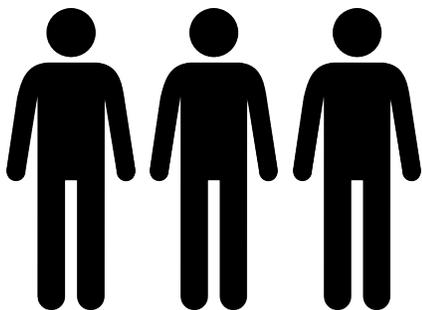
The Immigrant Rights Clinic is a leading institution in both local and national struggles for immigrant rights. Students engage in direct legal representation of immigrants and community organizations as well as in immigrant rights campaigns at the local, state and national levels. Students have direct 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

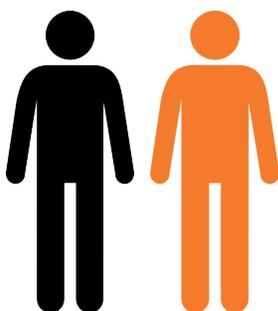
Black immigrants are one of the fastest growing demographics in the United States. Nonetheless, this group remains a novelty in the broader immigration discourse. This report aims to elevate the conditions facing Black immigrants in the United States, drawing particular attention to their experience 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.¹

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

Affirmative 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

African 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

Apprehension 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

Black 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%² and 18.3%³ 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),⁴ Nicaragua (9%, or 532,000)⁵, Brazil (7.6%, or 15 million)⁶, and Honduras (2%, or

175,000)⁷, 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

Caribbean 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

Diversity 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

Inadmissible 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

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

Immigration Court

Immigration 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

Immigration 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

Lawful 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

Naturalization 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

Foreign-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

Non-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

Refugees 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

Removal 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

Temporary 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 2013¹⁰ —an increase that has led some to refer to President Obama as “deporter-in-chief.”¹¹ 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.¹²

“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.”⁸ This phrase has been widely criticized as devaluing and dehumanizing individuals with criminal convictions.⁹ 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 safety¹³, 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.¹⁴ Black people are arrested at 2.5 times the rate of whites.¹⁵ They are more likely than whites to be sentenced to prison, and less likely to be sentenced to probation.¹⁶ 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.¹⁷ 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.¹⁸

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.¹⁹

At that time, Black men accounted for 37% of the male prison population.²⁰ 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.²¹

Black women and girls also face significant criminalization. Black women, for example, are imprisoned at more than twice the rate of white women.²² Black girls were the fastest growing segment of the juvenile population in secure confinement between 1985 and 1997.²³ Although confinement rates for youth have been dropping since 1997, the rate has declined less for African American girls than white girls.²⁴ 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.²⁵



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.²⁶ The percentage of people targeted for deportation by ICE based on their criminal records rose from 82% in FY 2013 to 91% in FY 2015.²⁷ 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.²⁸

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%.²⁹ Both of these programs are explained in the next section. Notably, however, not every immigrant detained through these programs has a criminal conviction.³⁰

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).³¹

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.³² 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.³³ 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.”³⁴ 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.³⁵ 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 memorandum³⁶ 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.”³⁷ 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.³⁸ 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%.³⁹ 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 2013.⁴⁰

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.⁴¹ 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.⁴²

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.⁴³ 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.⁴⁴

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

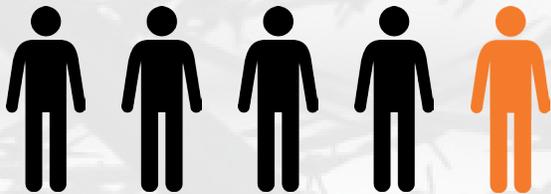
Black immigrants are disproportionately represented among immigrants facing deportation in immigration court on criminal grounds.

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.

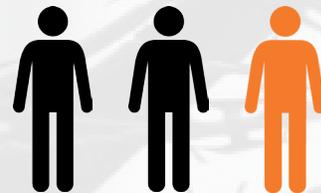


Facing Detention
on Criminal Grounds

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.⁴⁵ Of the 235,413 individuals removed in FY 2015, 3,448 were from the Caribbean and 937 from Africa.⁴⁶

Although Black immigrants comprise just 5.4% of the unauthorized population in the United States⁴⁷, and 7.2% of the total noncitizen population⁴⁸, they made up a striking 10.6% of all immigrants in removal proceedings between 2003 and 2015.⁴⁹

Black immigrants are disproportionately represented among immigrants facing deportation in immigration court on criminal grounds.⁵⁰ 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.⁵¹ **More than one out of every five people facing deportation on criminal grounds before the EOIR is Black.⁵²**

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.⁵³ Ultimately, 35.7% of these Black immigrants (4,180) were ordered deported.⁵⁴ 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 grounds⁵⁵, in contrast to less than half of immigrants overall.⁵⁶** 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.⁵⁷ 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.⁵⁸

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.⁵⁸ 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.⁶⁰

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.”⁶¹ 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.”⁶² 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.⁶³ 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.⁶⁴ And an individual who was removed after a conviction that was deemed to be an “aggravated felony” faces twenty years in prison.⁶⁵



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.⁶⁶

In FY 2013, 1,496 immigrants from Africa, and 1,909 from the Caribbean, were returned.⁶⁷ 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

The 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.⁶⁸ Immigration detention centers do not differ in any significant way from criminal correctional facilities.

In 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.⁶⁹ As a result, immigrants living in detention facilities often endure subpar conditions.

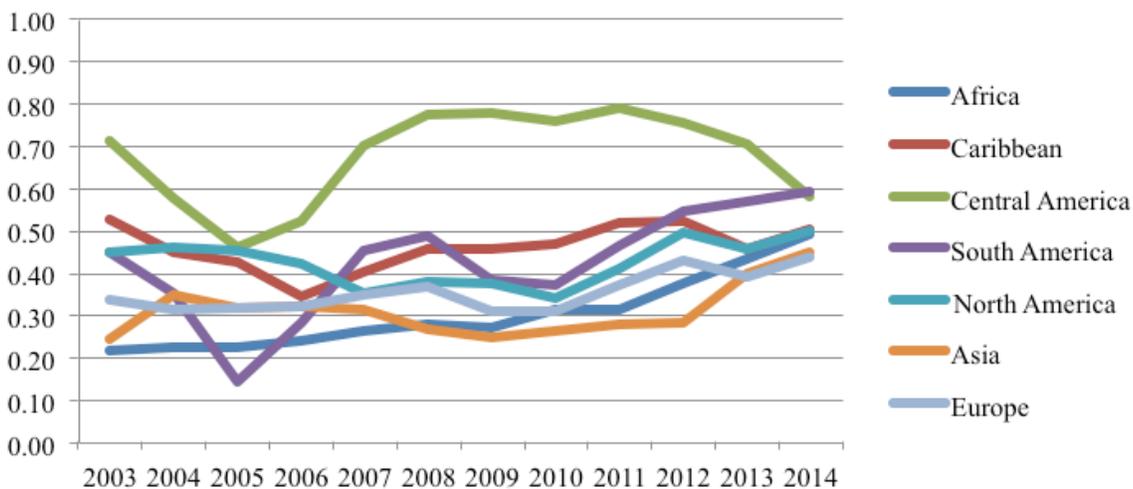


According to data from the Executive Office of Immigration Review's "CASE" database, which was originally obtained by BuzzFeed News through a Freedom of Information Act request, between January 1, 2003 and January 1, 2015, more than 2.6 million immigrants were in removal proceedings in the United States,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



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

Graph 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.⁷¹ **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,⁷² are twice as likely to be detained for an immigration violation than a criminal conviction.⁷³

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.⁷⁴

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.⁷⁵ Nearly one out of every five people detained while facing deportation on criminal grounds before the EOIR is Black.⁷⁶

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.⁷⁷



iv. recommendations

We 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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57. According to IRC Analysis of data provided by the Transactional Records Access Clearinghouse, FY 2015 TRAC U.S. Deportation Outcomes by Charge, 504 African immigrants were deported for a criminal, national security or terrorism charge, versus 1535 removed that year for an immigration charge. 2246 Caribbean immigrants were deported for any of the above criminal charges, as opposed to just 1065 for an immigration charge.
58. Marc R. Rosenblum & Kristen McCabe, *Deportation and Discretion: Reviewing the Record and Options for Change*, *Migration Policy Institute* 4 (Oct. 2014).
59. Tanya Golash-Boza & Pierrette Hondagneu-Sotelo, *Latino Immigrant Men & the Deportation Crisis: A Gendered Racial Removal Program*, *11 Latino Studies* 274-75 (2013) (citing another source).
60. *Id.*
61. 2013 Yearbook of Immigration Statistics, Department of Homeland Security, 103.
62. *Id.*
63. *Id.*
64. *Criminal Resource Manual* 1912.8 U.S.C. 1326—Reentry after Deportation (Removal), Offices of the United States Attorneys, Department of Justice, available at <https://www.justice.gov/usam/criminal-resource-manual-1912-8-usc-1326-reentry-after-deportation-removal> (last visited Apr. 4, 2016).
65. *Id.*
66. Tanya Golash-Boza & Pierrette Hondagneu-Sotelo, *Latino Immigrant Men and the Deportation Crisis: A Gendered Racial Removal Program*, *11 Latino Studies* 276-77 (2013).
67. IRC Analysis of 2013 Yearbook of Immigration Statistics, Department of Homeland Security, 104-06.
68. Ta-Nehisi Coates, *The Black Family in the Age of Mass Incarceration*, *The Atlantic* (Oct. 2015), available at <http://www.theatlantic.com/magazine/archive/2015/10/the-black-family-in-the-age-of-mass-incarceration/403246/>.
69. Dora Schriro, *Immigration Detention Overview and Recommendations*, *Immigration & Customs Enforcement* 2, 4 (Oct. 6, 2009).
70. IRC analysis of data provided by the Executive Office of Immigration Review (EOIR) pursuant to a Freedom of Information Act Request [hereinafter "IRC Analysis of EOIR Data"].
71. IRC Analysis of EOIR Data. The ratio of African immigrants detained for a criminal conviction to those detained for an immigration violation was 1:2 (10,587:21,548), whereas the ratio of Caribbean immigrants detained for a criminal conviction to those detained for an immigration violation was 1.7:1 (49,266:28,923). Overall, the ratio of immigrants detained for a criminal conviction versus an immigration violation is 1.3:5 (340,554:1,189,699).
72. Monica Anderson, *A Rising Share of the U.S. Black Population is Foreign Born; 9 Percent Are Immigrants; And While Most Are from the Caribbean, Africans Drive Recent Growth*, *Pew Research Center* 11 (Apr. 2015).
73. IRC Analysis of EOIR Data.
74. IRC Analysis of EOIR Data. In 2014, 2,615 African immigrants and 3,608 Caribbean immigrants were detained.
75. IRC Analysis of EOIR Data. There were 17,883 immigrants detained while facing deportation proceedings before the EOIR on criminal grounds; 3,116 were Black (704 from Africa and 2,412 from the Caribbean).
76. IRC Analysis of EOIR Data.
77. *Id.*



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