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CHAPTER 10

Why Black Immigrants Matter  
*Refocusing the Discussion on Racism and Immigration Enforcement*

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SINCE SEPTEMBER 11, 2001, social justice activists and academics have emphasized how immigration enforcement has adversely affected South Asian, Arab, and Muslim immigrants.<sup>1</sup> Some have gone so far as to suggest that they are the primary targets of the Bush administration's "war on terror."<sup>2</sup> The recent political battle over illegal immigration, ushered in by various congressional bills, has also kept the discussion of immigrants' rights in the spotlight. While some activists have pointed out that anti-immigrant legislation proposals will adversely affect *all* immigrants, it is generally understood that debates about illegal immigration are really about Latinos, and specifically Mexicans. Taken together, activist conversations about immigrants' rights in the post-9/11 period have focused primarily on South Asians, Arab-Muslim groups, or Mexican-Latino groups.

The racist treatment of these groups merits attention, but the tendency to focus *only* on these groups limits our understanding of the scope of immigration enforcement today. As I explain in this chapter, recent trends in the policing, incarceration, and deportation of noncitizens cannot be explained simply by the post-9/11 "war on terror" or concerns about the rise of undocumented labor because there is a steadily increasing number of immigrants who enter the United States legally and are deported as a consequence of their encounters with the criminal justice system. I propose that the latter process, which is occurring most intensely for black immigrants, reflects the growing intersection between immigration enforcement and the forms of crime control to which black populations in the United States (both immigrant and native born) have been historically subjected.<sup>3</sup> This connection

among the criminal justice system, immigration enforcement, and institutional racism is not as clearly apparent when our attention is focused only on the experiences of Asian/Arab-Muslim and Latino noncitizens. Thus, an exploration of black immigrants' experiences may help us trace the expansion of immigration enforcement and how it relates to the criminal justice system.

Immigrants' rights activists have generally neglected the experiences of black immigrants when it comes to making comparative claims about immigration enforcement and its impact on racialized communities. Nor do many engage data that is publicly available. Instead, much of the recent discussion focuses on enforcement actions and sting operations that are specific to particular regional and racial-ethnic groups. While these enforcement activities deserve activist attention, they do not necessarily speak to the broad continuities in patterns of enforcement across different groups.

A closer look at available data reveals that there are, indeed, trends in apprehension, incarceration, and deportation that span a number of groups and which precede 9/11. As I argue here, this data also suggests that we cannot understand the expansion of immigration enforcement without understanding what is happening to black immigrants. That is, it is important to consider how black immigrants experience enforcement—both to understand their experiences and to identify the myriad factors informing the expansion of immigration enforcement, a process that affects all immigrant groups. One such factor that will be emphasized here is the accelerated growth of the prison-industrial complex in the post-civil rights era.

In this chapter, I provide a selective review of government data on immigration enforcement and incarceration trends for a variety of immigrant groups. This review focuses on apprehensions by local police and federal agents, convictions and sentencing for immigration-related crimes, incarceration, and final removals (a form of deportation) for different immigrant groups. I also draw on some of the critical literature on race, citizenship, and incarceration to point out important continuities between the incarceration of black immigrants and native-born black Americans. In the conclusion, I show how an understanding of contemporary anti-crime measures and the growth of the prison-industrial complex, which has disproportionately incarcerated black populations, can expand our understanding of the factors driving the expansion of immigration enforcement today.

### *Apprehensions by Local Police and Federal Agencies*

Data on apprehensions by local police and federal agents shows that Caribbean and African immigrants are among those identified as immigration violators, whether through arrests for criminal violations or strategies for locating immigration absconders that were originally developed as so-called antiterrorism measures. Although local police have been involved in the monitoring of immigrants for civil immigration violations for the past two decades,<sup>4</sup> they became even more involved in the process after September 11, 2001. Many local police departments and state governments have begun collaborating with the U.S. Department of Justice (DOJ) to enforce immigration laws and to supply information to the National Crime Information Center (NCIC) database. A Federal Bureau of Investigation (FBI) system, the NCIC keeps records of both citizens and noncitizens who have outstanding warrants and immigration violations, as well as of criminal history information. By involving local police in immigration enforcement, the DOJ was able to make more arrests of immigrants on the ground as well as increase the information entered into the NCIC and therefore accessible to police nationwide.

Before 2001, the inclusion of civil immigration records in the NCIC had not yet been approved by Congress. Less than a year after September 11, 2001, data on criminal and civil immigration violations began to be integrated into the NCIC system, culminating in the creation of the National Security Entry-Exit Registration System (NSEERS) in 2002. NSEERS is a database of registrations, fingerprints, and photographs of noncitizen men and boys from Arab and Muslim countries. The database now includes records of (1) those with convicted felonies who had been deported; (2) absconders, or those who remain in the country despite being subject to exclusion or orders of final deportation or removal; and (3) those who violate the NSEERS requirements. During routine police activity, such as traffic stops or arrests, police officers may arrest individuals whose names are in the NCIC as NSEERS violators, as well as any other noncitizen with an outstanding immigration violation.<sup>5</sup>

*Although "anti-terrorism" was one of the main reasons cited by the DOJ and the Bush administration for including immigration violations in the NCIC, the process mainly affected Mexican and black immigrants. Indeed, immigrants from nations identified as possible "terrorist threats" (mostly Asian, Mid-*

dle Eastern, and "Muslim" countries) compose only 4 percent of the total number of those who were accurately identified through the NCIC as immigration violators—and only a very small number of these persons were apprehended for reasons of "national security." In contrast, Mexican nationals alone made up 71 percent of the total group of immigration violators apprehended through the NCIC in 2004. Noncitizens from the Caribbean or Africa composed 8 percent of immigration violators during this same period.<sup>6</sup>

Compared with Mexican immigrants, the percentage of Caribbeans is relatively small. Nevertheless, the figure should give us pause, since it is over six times the representation of Caribbean immigrants in the national population.<sup>7</sup> It also indicates that there were twice as many black immigrants apprehended through the NCIC as noncitizens from Asian or Arab/Middle Eastern nations—despite the fact that post-9/11 national-security measures have focused primarily on Asian and Arab/Middle Eastern nationals.<sup>8</sup> While the latter groups have certainly been the victims of state violence since 9/11, black immigrants, with some exception, are rarely considered to be adversely affected by antiterrorism measures; hence the tendency among immigrants' rights activists to treat the post-9/11 period as the historical domain of South Asians, Arabs, and Muslims. Yet this data reveals that even when state measures are initiated to address terrorism, they have a negative impact on black immigrants. The massive scope of Mexican and Latin American apprehensions further underscores the relative insignificance of antiterrorism as the premise for these newly expanded enforcement practices.

Only a minority of immigrant apprehensions are actually conducted by state and local law enforcement agents. The bulk of immigrant apprehensions are conducted by federal agents attached to the Department of Homeland Security (DHS). In 2005 1,291,142 immigrant apprehensions were carried out by federal agencies. The DHS agencies primarily responsible for these apprehensions include Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE).<sup>9</sup> This number included foreign nationals from 188 countries. About 85 percent of those apprehended were Mexican nationals.<sup>10</sup> These figures for 2005 are also consistent with trends for 2001–2004, when Mexican nationals were the overwhelming majority of immigration violators apprehended by the Federal government, with most of these apprehensions occurring at or near the U.S.–Mexico border.

TABLE 10.1  
*Alien Apprehensions (by nationality), October 1, 2001–September 30, 2004*

| Country            | Total Alien Apprehensions | Percentage of Criminal Apprehensions |
|--------------------|---------------------------|--------------------------------------|
| Canada             | 4,725                     | 58                                   |
| Colombia           | 33,540                    | 15                                   |
| Cuba               | 23,893                    | 17                                   |
| Dominican Republic | 16,372                    | 55                                   |
| El Salvador        | 58,013                    | 17                                   |
| Guatemala          | 47,923                    | 13                                   |
| Honduras           | 65,313                    | 13                                   |
| Jamaica            | 7,734                     | 74                                   |
| Mexico             | 480,563                   | 54                                   |
| Nicaragua          | 5,227                     | 25                                   |
| Philippines        | 4,792                     | 42                                   |

Source: Department of Homeland Security, "Detention and Removal of Illegal Aliens," April 2006, [http://www.dhs.gov/soig/assets/img/ntrpts/OIG\\_06-33\\_Apr06.pdf](http://www.dhs.gov/soig/assets/img/ntrpts/OIG_06-33_Apr06.pdf) (accessed November 18, 2007).

After Mexican nationals, nationals of Honduras, El Salvador, Guatemala, and Colombia were the most represented among total apprehensions for the same time period (see Table 10.1). However, the majority of apprehensions for nationals from these countries were *not* for reasons of criminal conduct. Conversely, immigrants from the Dominican Republic and Jamaica were apprehended more often for criminal offenses between 2001 and 2004. Out of 16,372 apprehensions of Dominican nationals, 55 percent were because of criminal conduct. During the same period, 74 percent of the apprehensions of Jamaican nationals were for criminal conduct. Despite not being the largest number of immigrants apprehended, both Dominicans and Jamaicans are nevertheless apprehended more because of criminal conduct than not, a dubious honor shared only with those from Canada and Mexico.<sup>11</sup>

Whereas criminal apprehension means becoming entangled in criminal justice proceedings, the option of voluntary departure allows many noncitizens to avoid this possibility. Almost a million of the noncitizens apprehended were given the option of voluntary departure, which allows a

noncitizen to avoid a formal order of removal. In exchange for legally acknowledging "removability" and taking care of departure expenses, noncitizens granted voluntary departures are permitted to seek admission in the future. It is generally acknowledged that the vast majority of voluntary departures are issued to Latino noncitizens attempting to cross the U.S.–Mexico border without authorization.<sup>12</sup> This difference is important because it indicates that, even though Mexican-Latino noncitizens are deported in higher numbers, the terms of deportation and possibilities for reentry are more flexible than what is typically meted out to black immigrants. This issue is addressed in more detail in the next three sections.

### *Convictions and Sentencing for Immigration-Related Crimes*

Immigrants who are not granted voluntary departures are much more likely to become entangled with the U.S. criminal justice system.<sup>13</sup> In 2005 there were 9,874 criminal arrests and 6,763 convictions for immigration-related violations, such as smuggling and trafficking and identity and benefit fraud. These individuals were routed into deportation proceedings as a result of these convictions but were not necessarily deported in the same year. Of the 208,521 individuals who were formally removed from the United States in 2005, about 43 percent, or 89,406, were deported as criminal aliens. Of those criminally removed, 77 percent were from Mexico.<sup>14</sup> It should be emphasized that although Mexican nationals made up a large share of criminal-related formal removals, this is completely separate from the number of Mexican nationals who were granted formal departures for unauthorized border crossing (which is a much larger number). In addition, data should not be misconstrued as involving the *same* immigrants for apprehensions, arrests, convictions, and deportations. This is because the DHS does not have a tracking system that monitors cases from apprehension to final disposition—a process that may last at least several months or, in some cases, several years.<sup>15</sup>

Nevertheless, data is available regarding the detention, conviction, and incarceration of immigrants. While definitive conclusions may not be easily drawn, patterns regarding immigration enforcement are identifiable and instructive. *These patterns show that incarceration trends, which are most intense for black immigrants, are also becoming a more pervasive feature of immigration enforcement in general, affecting a broad range of national-origin*

groups. Further, this expansion in immigrant incarceration has been influenced by a growing intersection between federal enforcement activities—which have historically targeted black populations—and immigration enforcement. To this end, we need to consider how noncitizens are represented in both immigrant detention centers and other incarceration facilities, such as federal prisons and state and local jails.

Regarding the former, immigration detention centers are similar to jails in that they house people who are going through immigration court proceedings or are being processed for removal. Overall, the daily population in immigrant detention has steadily increased between 1994 and 2005, with the exception of the small decrease between the years 2001 and 2002 and a larger decrease between 2004 and 2005. While the average daily population in detention increased by over 200 percent in a decade, the average number of immigrants detained daily remains relatively low, with 19,619 immigrants detained in 2005.<sup>16</sup>

In 2005 the ICE detained a total of 237,667 immigrants. As reported by the Office of Immigration Statistics of the DHS, Mexican nationals made up 50 percent of all detainees but only 24 percent of detention bed days because of short stays.<sup>17</sup> In terms of bed days, nationals from Honduras, Guatemala, and El Salvador made up 9 percent, 8 percent, and 8 percent, respectively. Cuba and China made up 5 percent and 4 percent, respectively, of all bed days. And nationals from the Dominican Republic, Haiti, Jamaica, and Brazil each comprised 3 percent of all bed days in immigrant detention.<sup>18</sup> This distribution of nationalities in immigration detention centers has remained consistent for the past few years.<sup>19</sup>

Pertaining to immigrants in other incarceration facilities, the Bureau of Justice Statistics (BJS) reports that there were 91,117 noncitizens in either federal or state prisons by midyear 2005. Out of this number, 35,285 are in federal prison, making noncitizens about 19.3 percent of all federal inmates.<sup>20</sup> As Table 10.2 shows, this figure represents a steady increase in the overall number of noncitizens in prisons.

While the numbers of noncitizens in federal and state prisons has increased since September 11, 2001, the steady growth of this population may also be traced back to the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA). IIRAIRA increased spending for law enforcement efforts by the Immigration and Naturalization Service (INS).<sup>21</sup> After IIRAIRA, the number of INS law enforcement agents grew by 40 percent, with practically two-thirds of new officers hired by the CBP. This increase in spending also, predictably, produced an increase in

TABLE 10.2  
Noncitizens Incarcerated (by type of prison), 1998–2005

| Year | Total  | Percentage in Federal Prison | Percentage in State Prison |
|------|--------|------------------------------|----------------------------|
| 2005 | 91,117 | 39                           | 61                         |
| 2004 | 91,815 | 37                           | 63                         |
| 2003 | 90,568 | 38                           | 62                         |
| 2002 | 88,677 | 38                           | 62                         |
| 2001 | 87,917 | 39                           | 61                         |
| 2000 | 89,676 | 40                           | 60                         |
| 1999 | 88,811 | 38                           | 62                         |
| 1998 | 77,099 | 36                           | 64                         |

Source: Bureau of Justice Statistics, *Compendium of Federal Justice Statistics, 2004* (2006), 5.

immigration-related prosecutions. Between 1996 and 2000, the number of individuals prosecuted for immigration offenses increased by almost 150 percent from 6,607 to 15,613.<sup>22</sup> In 2004, immigration-related offenses became the largest group of all federal prosecutions (at 32 percent of all prosecutions), followed closely by drug-related offenses (at 27 percent). Thus, it appears that at this moment, issues of immigration enforcement, drug enforcement, and national security have become administratively coordinated to a degree previously unmatched. For example, the DHS has recently outpaced the FBI as the federal agency that conducts the most drug enforcement actions and has also become the fastest-growing employer of all federal law enforcement agents.<sup>23</sup>

With regard to demographics, prison data also shows that individuals categorized as Hispanic made up the overwhelming percentage (87 percent) of individuals charged with an immigration offense.<sup>24</sup> It is possible to see how the size of the incarcerated Hispanic population is tied to general increases in immigration-related prosecutions. Keep in mind that this increase is completely separate from border control practices that are geared toward apprehending unauthorized migrants. It is also significant that only legal immigrants can be jailed and deported because of criminal conduct, since unauthorized migrants are detained and deported solely on the basis of their “Improper Entry.” This steady increase in Hispanic incarceration is best viewed in light of broader trends that are also having an

impact on native-born blacks and black immigrants—and which are closely tied to the way that anticrime measures have begun to influence immigration enforcement.

For example, between 1985 and 2000, the incarceration rate for those convicted of immigration offenses increased from 57 percent to 91 percent. As John Scalia and Marika F.X. Litras explain, "These increases were due in part to changes in federal sentencing policy during the 1980s and 1990s, which increased the likelihood that immigration offenders would be sentenced to prison and that their sentences would be longer."<sup>25</sup> These changes in federal sentencing policy were built on legal precedents already established by the contemporary War on Drugs, which severely increased sentencing for drug-related crimes. As recounted by Eric Sterling of the Criminal Justice Policy Foundation, Democratic congressmen capitalized on the cocaine-related death of college basketball player Len Bias in 1986 to push a "tough on drugs" agenda to outmuscle their Republican counterparts.<sup>26</sup>

Subsequently, the Anti-Drug Abuse Act was passed by Congress in 1986, and mandatory minimums for drug offenses were introduced. A mandatory minimum sentence is a minimum number of years—generally five to ten—that must be served in prison as punishment for particular crimes. Sentencing for drug offenses is presumably calculated according to type and quantities. However, drug laws have translated into large numbers of people being sentenced under mandatory minimum laws even though many of them were purportedly not the original targets of anti-drug policies. As Sterling explains, "The idea behind mandatory minimum sentences was to encourage the government to prosecute high level drug offenders. However, the amounts that can trigger a substantial sentence are often lower than those a high level trafficker would be dealing in. . . . Most drug cases involve low level offenders."<sup>27</sup> As Marc Mauer explains, the "advent of a renewed generation of mandatory minimum sentencing statutes, now in place in all states and in the federal system, has led to dramatic increases in the number of incarcerated drug offenders."<sup>28</sup>

In 1988 another Anti-Drug Abuse Act was passed, this time introducing the category of aggravated felony. Over the years, the list of criminal offenses that are categorized as aggravated felonies has expanded to include crimes previously treated as misdemeanors. Today, aggravated felonies are determined by the length of sentences and the amount of money involved for various crimes.<sup>29</sup>

Both the 1986 and 1988 Anti-Drug Abuse Acts and subsequent modifications have had a profound impact on the growth of the prison-industrial

complex—the incarcerated population grew dramatically after the late 1980s. Additionally, the building of more prisons since the passage of the Anti-Drug Abuse Acts has accelerated the growth of incarcerated individuals; 318 adult prisons were opened between 1989 and 1994.<sup>30</sup> Since 1991, despite a decreasing crime rate, the prison incarceration rate has increased by 50 percent.<sup>31</sup>

The passage of the Anti-Drug Abuse Acts also reinforced existing racial disparities in both arrests and sentencing. Drug arrests grew exponentially following the passage of the Anti-Drug Abuse Acts, increasing from 471,000 in 1980 to 1,247,000 by the end of the decade. African Americans bore the brunt of drug arrests, and by 1993 they made up 39 percent of all drug arrests, whereas in 1980 they accounted for 24 percent.<sup>32</sup> The pattern of blacks being overrepresented among those arrested for drug activity continues. Today, despite the lack of significant difference in illegal drug use for whites and blacks, the latter are arrested for drug activities at a number that is proportionally 150 percent more than the size of the black population. Conversely, whites are arrested for drug activities at a number commensurate with their population size.<sup>33</sup> In addition, blacks are much more likely to be convicted and to receive longer sentences than whites who are apprehended for similar drug-related violations.<sup>34</sup> The near-exclusive focus on low-level drug sellers, as opposed to users and big-time dealers, has also resulted in the targeted enforcement of blacks.<sup>35</sup> These trends have led some researchers to conclude that the primary aim of the War on Drugs has not been to curtail the illegal drug trade but to maintain existing racial hierarchies via incarceration and social control.<sup>36</sup>

The intersection of the War on Drugs and immigration enforcement is also apparent in increased prosecutions of immigrants for drug-related offenses. Between 1985 and 2000, prosecution of immigrants for drug-related offenses increased by almost 400 percent, from 1,799 to 7,803.<sup>37</sup> Subsequent amendments to the Anti-Drug Abuse Acts have intensified these trends by dictating tougher sentencing guidelines for repeat offenders, including those suspected of immigration violations committed in the United States following deportation for an aggravated felony conviction.<sup>38</sup>

This data indicates that more attention needs to be given to tracing the relationship between immigration enforcement and the growth of the prison-industrial complex. Such an investigation would take several angles that are outside the scope of this chapter. However, in the next section, I will pursue this line of inquiry by reviewing data regarding immigrant arrests and

sentencing and consider how this data challenges activist discourse about immigration enforcement after September 11, 2001.

### *Particulars of Immigrant Arrests, Bookings, and Sentencing*

In general, immigrants' rights activists have neglected some of the data relevant to a discussion about immigration enforcement and its relationship to the growth of the prison-industrial complex. This data may help trace how criminal justice proceedings inform the expansion of immigration enforcement vis-à-vis some of the anticrime policies addressed in the previous section. Data about the particulars of immigrant arrests, bookings, and sentencing is made available in the BJS's *Compendium of Federal Justice Statistics*, with the most recent edition reviewing the period from 2003 to 2004. In that year, there were 65 federal agencies that employed 105,000 full-time officers—an increase of almost 15 percent from 2003—who had the authority to carry arms and make arrests.<sup>39</sup>

The U.S. Marshals Service (USMS) is generally responsible for the booking, processing, and detention of all federal suspects, regardless of which agency makes the arrest. Out of the 140,755 suspects arrested for violating federal laws, the agencies the DHS comprises were responsible for a little over a third of all arrests and bookings. Out of 140,755 suspects transferred to the custody of the USMS, 40,000 came from CBP, 39,000 from the USMS, 12,000 from the Drug Enforcement Agency, 10,000 from ICE, and 9,700 from the FBI.<sup>40</sup> The majority booked by the USMS were processed for immigration violations (29 percent), followed by drug offenses (25 percent), supervision violations (17 percent), property offenses (12 percent), weapons offenses (7 percent), public-order offenses (7 percent), securing and safeguarding a material witness (4 percent), and violent offenses (4 percent).<sup>41</sup>

Noncitizens made up 43 percent of the total number of arrestees booked by the USMS. Not surprisingly, noncitizens accounted for the overwhelming majority (94 percent) of suspects booked for immigration violations.<sup>42</sup> Of the arrests and bookings for immigration offenses, 83 percent were for illegal entry, followed by 11 percent for smuggling, 4 percent for other immigration violations, and 3 percent for false claims of citizenship.<sup>43</sup>

In addition, noncitizens made up 29 percent of all suspects booked for drug-related offenses. Unfortunately, data showing the combination of the variables of race and citizenship status are not available, but in terms of ra-

cial background of offenders, whites (including white Hispanics) made up 72 percent of all arrestees, followed by blacks (24 percent), American Indians or Alaska Natives (1.7 percent), and Asian/Native Hawaiian or Pacific Islanders (1.6 percent). Out of these statistics, we see that only blacks and American Indians or Alaska Natives are represented in arrest figures at percentages double the size of their overall populations (see Table 10.3).<sup>44</sup>

Out of the 74,782 total offenders sentenced in 2004, 78 percent were sentenced to incarceration. Of those sentenced for felonies, about a third were for drug-related offenses and about a fifth for immigration violations. Those convicted of drug, violent, immigration, and weapons felonies tended to be imprisoned whereas probation rates were higher for those convicted of public-order offenses and property crimes. Among those felonies most likely to earn a prison sentence, immigration offenders were 90 percent likely and drug, violent, and weapons offenses were 93–94 percent likely.<sup>45</sup> The length of prison sentences varied depending on the felony (see Table 10.4).<sup>46</sup>

Unfortunately, data regarding the demographics of those sentenced in 2004 is not available in the compendium for that year, but it is for 2003. Noncitizens made up about a third of those convicted and sentenced to incarceration in 2003. Regardless of the offense, 77 percent of convicted U.S. citizens were incarcerated, whereas 85.5 percent of noncitizens were. When convictions were for violent, drug, or weapons offenses, the overwhelming majority of all those arrested were incarcerated, regardless of race.<sup>47</sup> Overall, average prison sentences were longest for males, blacks, non-Hispanics, and those with U.S. citizenship. Blacks were most likely, of all groups, to be incarcerated after being convicted of violent offenses, drug offenses, public-order offenses, and weapons offenses. Indeed, 72 percent of blacks who were convicted of immigration offenses were incarcerated, compared with 37 percent of Asian/Pacific Islanders who were convicted for the same offense (see Table 10.5).<sup>48</sup>

As Table 10.5 shows, there is more parity in the sentencing of blacks and Asians convicted of property crimes, particularly those categorized as “fraudulent.” Fraudulence includes welfare fraud and forgery, both of which may be categorized as aggravated felonies.<sup>49</sup> Studies show that the welfare reform bill signed into law by President Bill Clinton in 1996 has had a grave impact on immigrant communities, including entangling them in the criminal justice system.<sup>50</sup> While all working-class and poor communities that received welfare money or services were adversely affected by changes in welfare policy, it is important to note that

TABLE 10.3

Percentage of Convicted Offenders Sentenced to Incarceration in Criminal Cases Terminated During 2003

| Immigration Offenses | Weapon Offenses | Other Offenses | Public Order Offenses | Regulatory Offenses | Other Offenses | Drug Offenses | Property Offenses | Other Offenses | Other Offenses | Violent Offenses | All Offenses | Offenders | Race of Offender        | Citizenship | Not U.S. Citizen |
|----------------------|-----------------|----------------|-----------------------|---------------------|----------------|---------------|-------------------|----------------|----------------|------------------|--------------|-----------|-------------------------|-------------|------------------|
| 97.1                 | 47.2            | 74.5           | 83.3                  | 7.6                 | 7.9            | 66.1          | 59.2              | 34.1           | 4.6            | 15.0             | 101.043      | 140,755   | White                   | 74,700      | 55,504           |
| 2.2                  | 50.6            | 20.3           | 2.4                   | 2.7                 | 0.9            | 31.0          | 31.6              | 34.1           | 4.6            | 17               | 34,024       | 2,398     | Black                   | 74,700      | 55,504           |
| 0.1                  | 1.3             | 2.4            | 2.4                   | 2.7                 | 0.9            | 31.0          | 31.6              | 34.1           | 4.6            | 15.0             | 101.043      | 140,755   | Indian or Alaska Native | 74,700      | 55,504           |
| 0.6                  | 0.9             | 0.9            | 1.2                   | 2.7                 | 0.9            | 31.0          | 31.6              | 34.1           | 4.6            | 15.0             | 101.043      | 140,755   | Asian/Pacific Islander  | 74,700      | 55,504           |
| 5.7                  | 94.6            | 89.8           | 87.9                  | 12.1                | 29.2           | 70.8          | 93.4              | 6.6            | 19.0           | 7.9              | 42.6         | 100.0     | U.S. Citizen            | 74,700      | 55,504           |
| 94.3                 | 5.4             | 10.2           | 12.1                  | 29.2                | 29.2           | 70.8          | 93.4              | 6.6            | 19.0           | 7.9              | 42.6         | 100.0     | Not U.S. Citizen        | 74,700      | 55,504           |

Source: Bureau of Justice Statistics, *Compendium of Federal Justice Statistics, 2004* (2006) 19, <http://www.ojp.usdoj.gov/bjs/pub/pdf/cfjs04.pdf> (accessed November 18, 2007).

TABLE 10.4

Offenders Convicted and Sentenced to Prison and Time in Prison, October 1, 2003–September 30, 2004

| Category of Offense | Percentage of Convicted Defendants Sentenced to Prison | Average Months of Prison Sentence |
|---------------------|--|-----------------------------------|
| Violent             | 94   | 96.2                              |
| Drug                | 93   | 83.6                              |
| Weapon              | 93   | 84.3                              |
| Immigration         | 90   | 26.9                              |
| Public-order        | 71   | 43.6                              |
| Property            | 60   | 27.4                              |

Source: Bureau of Justice Statistics, *Compendium of Federal Justice Statistics, 2004* (2006) 69, <http://www.ojp.usdoj.gov/bjs/pub/pdf/cfjs04.pdf> (accessed November 18, 2007).

a historical feature of immigration policy is the fear that immigrants will become “public charges” and drain the state’s resources.<sup>51</sup> This anxiety has continued to inform current debates about immigrants’ and refugees’ uses of welfare, as well as debates about the possibility of immigrants “importing” crime to the United States.<sup>52</sup> Indeed, embedded in celebrations of Asian refugees as hardworking and pro-American “model minorities” is an anxiety of their possible propensity to exploit the welfare system.<sup>53</sup>

Regardless of which immigrant or refugee group is being scrutinized, anxieties about the public coffers being drained are driven by the racist and sexist image of blacks as lazy and lacking ambition—except when it comes to exploiting the system. Because of this, the increasing criminalization of welfare use has been driven by specific attacks on African Americans and the deployment of antiblack imagery. While the most obvious example of these antiblack attacks is the stereotype of the black welfare queen, organized efforts to keep blacks from accessing welfare go back to the days of its establishment under the New Deal.<sup>54</sup> Contemporary concerns about immigrants’ exploitation of the welfare system are informed, then, by the specter of immigrants “being like blacks.” In this sense, antiblack rhetoric is employed in debates about welfare use and fraud, even when nonblack groups are being discussed.



### *Aggravated Felonies and Immigrant Removals*

The Anti-Drug Abuse Act of 1988 introduced the concept of the aggravated felony and made its use more specific in immigration proceedings. Specifically, the 1988 policy established a separate basis for deportation due to crimes such as murder, drug trafficking, or illegal trafficking of firearms or destructive devices.<sup>60</sup> Eight years later, the IIRAIRA amended the definition of an aggravated felony to be consistent with the provisions of the Antiterrorism and Effective Death Penalty Act, which was passed months before.<sup>61</sup> As many know, IIRAIRA was a draconian immigration policy that made aggravated felonies the basis of deportation and those convicted of them ineligible for relief from deportation. In addition, IIRAIRA was retroactive, meaning that immigrants convicted of crimes before 1996 are still subject to deportation, even if they have already served their sentences.<sup>62</sup> Since 1996, the category of aggravated felony has had an "evolving definition."<sup>63</sup> Today, aggravated felonies include crimes that formerly were considered misdemeanors. Thus, there are an increasing number of stories about immigrants being deported for crimes such as shoplifting or writing bad checks.<sup>64</sup>

As Bill Ong Hing points out, aggravated-felony provisions should not be underestimated in terms of their devastating impact on immigrants:

Conviction of an aggravated felony results in harsh immigration consequences. For example, an aggravated felon is ineligible for release on bond, is ineligible for asylum, is ineligible for discretionary cancellation of removal, can be deported without a hearing before an immigration judge (if the person is not a permanent resident), and is not eligible for a waiver of moral turpitude offenses upon applying for re-admission. One of the worst consequences of aggravated felonies applies if the person returns to the United States illegally. A person who is convicted of an aggravated felony and removed, and then returns illegally to the United States can be sentenced up to twenty years in federal prisons just for the illegal re-entry.<sup>65</sup>

Unfortunately, data about the relationship between aggravated felony convictions and deportation data is not made readily available to the public by the U.S. government. Employing the Freedom of Information Act (FOIA), the research organization Transactional Records Access Clearinghouse was able to obtain data for 156,713 individuals who were in removal

proceedings for aggravated felony charges between mid-1997 and May 2006.<sup>66</sup> Since aggravated felony policies do not apply to individuals who enter the United States without authorization, all these cases involve legal immigrants.

This data includes over two hundred nationalities. However, Latin American and Caribbean nations figured prominently in these numbers with Mexican nationals making up 43 percent in removal proceedings for aggravated felonies. Black immigrants, again a small part of the legal immigration flows, were well-represented among the larger shares of immigrants who had aggravated felony charges used during deportation proceedings; Dominicans made up 8 percent and Jamaicans 5.5 percent. *It is also significant that the majority of those charged were long-term residents, with the median length of residence in the United States being 14 years.* Indeed, 45 percent of those charged with aggravated felonies reported the language they spoke as English; almost 25 percent of Mexicans and Dominicans combined reported not Spanish but English as their primary language.

Of the total number of immigrants charged, almost 50 percent were charged only for being an aggravated felon—details of their particular offenses are not made available—and 33 percent were also charged as having been convicted for drug-related charges. Convictions for controlled substances range from drug trafficking or being in possession of a relatively small quantity of illegal drugs. Overall, the number of cases of aggravated felonies being utilized in immigration court proceedings has declined in recent years, a trend that noticeably emerges between 1999 and 2000. However, researchers suggest that this might be due to the greater jurisdiction of DHS to use administrative deportation orders against convicted aggravated felons as granted by the IIRAIRA.<sup>67</sup> Whatever the reason, these findings further demonstrate the growing relationship between immigration enforcement and criminal justice proceedings.

Some telling patterns are also revealed when looking at formal removals, more popularly referred to as deportations, which were introduced to U.S. immigration policy in 1891.<sup>68</sup> As already discussed, formal removals differ from voluntary departure in important ways. Those undergoing formal removals are processed through the immigration court system, which may result in rulings that often debar the deported individual from reentering the United States under any conditions. Conversely, voluntary departures usually leave the door open for the removed noncitizen to reenter the United States through legal channels and may be less stigmatizing for the individual. It also bears noting that most noncitizens granted voluntary departures

TABLE 10.6  
Percentage of Total Formal Removals (by region), 1998–2005

| Region          | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 |
|-----------------|------|------|------|------|------|------|------|------|
| Africa          | 1.0  | 1.0  | 1.0  | 1.0  | 1.0  | 1.0  | 1.0  | 1.0  |
| Asia            | 2.0  | 2.0  | 2.0  | 2.0  | 3.0  | 3.0  | 2.0  | 2.0  |
| Caribbean       | 3.0  | 4.0  | 4.0  | 4.0  | 5.0  | 4.0  | 4.0  | 3.0  |
| Central America | 10.0 | 6.5  | 8.0  | 8.0  | 10.0 | 11.0 | 12.0 | 17.0 |
| Mexico          | 81.0 | 83.0 | 81.0 | 80.0 | 73.0 | 74.0 | 73.0 | 69.0 |
| South America   | 2.5  | 3.0  | 3.0  | 4.0  | 5.0  | 5.0  | 6.0  | 6.0  |

Source: Department of Homeland Security, "Table 41: Aliens Formally Removed by Criminal Status and Region and Country of Nationality: Fiscal Years 1998 to 2005," 2005 Yearbook of Immigration Statistics, <http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2005/table41.xls> (accessed November 18, 2007).

are unauthorized migrants, whereas most noncitizens who are put through the process of formal removal had some sort of legal status at one point in time (such as a temporary visa or legal permanent residency).

Not surprisingly, data shows that race plays an important role in formal removal proceedings. In 2005 Mexicans bore the brunt of formal removals (69 percent), followed by Central Americans (17 percent), and South Americans (6 percent) (see Table 10.6).<sup>69</sup>

This ranking of regions remained consistent between 1998 and 2005. However, differences between the regions become much more apparent when one looks at the percentage of immigrants deported because of criminal conduct. Specifically, black immigrants have high percentages of criminal deportations, even when their absolute numbers of deportations are relatively low. In 2005, criminal removals made up 74 percent of Caribbean removals and 48 percent for Mexico, 41 percent for Africa, and 35 percent for both Asia and Central America. Although Mexican nationals make up the highest absolute number of formal removals, the reasons for deportation remain fairly evenly divided between criminal and noncriminal offenses. Meanwhile, African migrants, who composed barely 1 percent of all formal removals, were much more likely to be removed for criminal

TABLE 10.7  
Percentage of Criminal Formal Removals (by region), 1998–2005

| Region          | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 |
|-----------------|------|------|------|------|------|------|------|------|
| Africa          | 41   | 41   | 41   | 39   | 34   | 36   | 39   | 41   |
| Asia            | 26   | 34   | 30   | 31   | 27   | 28   | 32   | 35   |
| Caribbean       | 67   | 71   | 69   | 60   | 63   | 65   | 67   | 74   |
| Central America | 27   | 42   | 36   | 36   | 33   | 29   | 32   | 21   |
| Mexico          | 34   | 37   | 38   | 41   | 52   | 46   | 47   | 48   |
| South America   | 49   | 45   | 39   | 33   | 32   | 27   | 29   | 35   |

Source: Department of Homeland Security, "Table 41: Aliens Formally Removed by Criminal Status and Region and Country of Nationality: Fiscal Years 1998 to 2005," 2005 Yearbook of Immigration Statistics, <http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2005/table41.xls> (accessed November 18, 2007).

reasons than were Asian, South American, and Central American nationals (see Table 10.7).<sup>70</sup>

It is evident that deportation patterns for Caribbean nationals are distinct from those of all other regions. Between 1998 and 2005, more than 50 percent of the removals of Caribbeans each year were for criminal reasons, the only regional group for which this was the case. Between 2004 and 2005, the percentage of criminal removals increased from 67 percent to 74 percent. Indeed, despite the emphasis on South Asians, Arabs, and Muslims after 9/11, Caribbean immigrants saw the biggest increase out of all of the regions in criminal deportations since 2001.

The greatest disparity is evident when Caribbean and Asian nationals are compared. For example, a greater absolute number of Caribbeans are deported each year than Asian nationals, despite the fact that the U.S. Asian population is much larger than the U.S. Caribbean population.<sup>71</sup> Immigrants who are Asian nationals also are among the least likely to be removed for criminal reasons. It is significant, however, that Asian groups that have the highest removal rates—and the highest proportion of removals for criminal reasons—tend to be, but are not restricted to, the lowest-income Asian populations.<sup>72</sup> A similar pattern holds for Latin American

nationals. Mexicans, who tend to be among the poorest segments of the U.S. Latino population, are more likely to be removed for criminal reasons than Central American and South American nationals (although there are individual nations within these regions whose criminal removal rates exceed that of Mexico). These trends suggest that for some groups, such as Latinos and Asians, nationality and its relationship to economic mobility is a factor in removal rates.

Yet when looking at Caribbean immigrants, we find no significant differences between nationalities in terms of criminal deportations. Or, at least, between 1998 and 2005, Caribbean immigrants are consistently deported at least 50 percent of the time for criminal reasons, regardless of nationality. With the exception of instances in which data was not available, there are only four instances in which criminal deportations fall below 50 percent for a Caribbean nationality (see Table 10.8).<sup>73</sup>

That Caribbeans, regardless of nationality, are deported so often for criminal reasons illustrates that their position in U.S. society is not as secure as it may otherwise appear. Although some have argued that Caribbeans are harder working, culturally superior, and more successful at addressing discrimination than African Americans,<sup>74</sup> it does not save Caribbeans from excessive incarceration. Even when looking at specific nationalities among Caribbeans, we see no major difference in terms of degrees of criminalization. That this dubious honor may not be claimed by any other regional group suggests that perhaps Caribbean immigrants and African Americans are similarly criminalized and that the former have, at best, a tenuous position in U.S. society.

### Conclusion

The purpose of this discussion has not been to provide a definitive statement on race and immigration enforcement, but to discuss trends that complicate some of the existing narratives about the "post-9/11 immigrant." After September 11, 2001, much emphasis was placed on enforcement practices that specifically targeted South Asian/Middle Eastern or Mexican immigrants. Standing in for "types," the latter has become the face of the "illegal immigrant" while the former has become the face of those immigrants targeted as suspected "terrorists" and vaguely defined as "national security threats." At times, both the illegal immigrant and the terrorist have been conflated for ideological and policy purposes.<sup>75</sup> What-

ever the case, the emphasis on these two sets of immigrant groups has translated into an implicit statement about racism and immigration enforcement. By focusing on groups who, for different reasons, are racialized as "brown" or "nonblack" some activists and scholars are contributing to a discourse that suggests that antiblack racism and anti-immigrant discrimination belong to two relatively distinct worlds. This dichotomization results in a tendency to treat the expansion of immigration enforcement and the expansion of the prison-industrial complex as two separate processes; the former pertaining to immigrants' rights issues and the latter pertaining to racial justice activism.<sup>76</sup>

This chapter has attempted to show that such distinctions are false, namely because the rise in immigrant incarceration in general, the rise in the number of immigrants being deported for criminal reasons (and specifically for drug offenses), and the leading role that federal immigration agencies are playing in coordinating drug and criminal prosecutions clearly points toward a growing connection between immigration enforcement and criminal law enforcement. While this point is acknowledged by different scholars and activists,<sup>77</sup> more attention needs to be given to how racism shapes this process.

As Aristide Zolberg reminds us, "from colonial times onward, Americans actively devised policies and laws that effectively shaped the country's population and hence its overall makeup."<sup>78</sup> The data reviewed here suggests that immigration policies are still being used to shape the U.S. population. However, this effort is currently being accomplished through strengthening the intersection of immigration enforcement and criminal enforcement, as opposed to explicit national-origins quotas. This is not to suggest that criminalization of immigrants is a new phenomenon, because it is not. However, although immigrants were criminalized during more restrictive periods of immigration, they did not necessarily face the same possibilities of punishment as post-1965 immigrants do. Nevertheless, even when nonwhite immigrants were able to enter the United States during restrictive periods, they were policed and at times punished more severely than their white counterparts. And as research shows, the technology and methods used to monitor all immigrants were developed primarily by monitoring nonwhite immigrants.<sup>79</sup> Because of this, immigration enforcement has always been characterized by a preoccupation with the nonwhite immigrant. And the total number of annual deportations and the percentage triggered by criminal convictions has increased steadily over the past four decades—precisely after the 1965 Immigration Act made

TABLE 10.8  
 Percentage of Criminal Formal Removals (by Caribbean country), 1998–2005

| Country                | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 |
|------------------------|------|------|------|------|------|------|------|------|
| Antigua-Barbuda        | 71   | 81   | 82   | 76   | 88   | 79   | 75   | 82   |
| Aruba                  | 100  | —    | —    | 100  | —    | —    | —    | 100  |
| Bahamas                | 83   | 73   | 87   | 84   | 76   | 80   | 81   | 90   |
| Barbados               | 88   | 93   | 83   | 71   | 88   | 83   | 96   | —    |
| Bermuda                | 50   | 100  | —    | —    | —    | —    | 79   | —    |
| British Virgin Islands | —    | —    | 100  | —    | —    | 100  | —    | —    |
| Cayman Islands         | —    | —    | —    | —    | —    | —    | —    | —    |
| Cuba                   | 79   | 87   | 82   | 92   | 85   | 66   | 85   | 55   |
| Dominica               | 67   | 78   | 69   | 61   | 83   | 85   | 37   | 71   |
| Dominican Republic     | 68   | 73   | 66   | 54   | 57   | 65   | 72   | 79   |
| Grenada                | 68   | 75   | 71   | 52   | 77   | 68   | 83   | 71   |

Source: Department of Homeland Security, "Table 41: Aliens Formally Removed by Criminal Status and Region and Country of Nationality: Fiscal Years 1998 to 2005," 2005 Yearbook of Immigration Statistics, <http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2005/table41.xls> (accessed November 18, 2007).

|                                  |    |     |     |     |     |     |    |    |
|----------------------------------|----|-----|-----|-----|-----|-----|----|----|
| Guadeloupe                       | —  | —   | —   | —   | —   | 100 | —  | —  |
| Haiti                            | 61 | 65  | 81  | 77  | 62  | 50  | 27 | 54 |
| Jamaica                          | 66 | 68  | 70  | 65  | 72  | 74  | 73 | 83 |
| Martinique                       | —  | —   | —   | —   | —   | —   | —  | —  |
| Montserrat                       | —  | —   | 100 | —   | 100 | —   | —  | —  |
| Netherlands Antilles             | —  | 100 | —   | 100 | —   | 100 | —  | —  |
| Puerto Rico                      | 75 | —   | —   | —   | —   | —   | —  | —  |
| Saint Kitts-Nevis                | 81 | —   | —   | 100 | 89  | —   | —  | —  |
| Saint Lucia                      | 59 | 74  | 67  | 57  | 63  | 71  | 42 | 63 |
| Saint Vincent and the Grenadines | 72 | 66  | 62  | 51  | 67  | 70  | 78 | 79 |
| Trinidad and Tobago              | —  | 69  | 59  | 51  | 48  | 33  | 65 | 77 |

it possible for more nonwhites to be legally admitted and as more illegal nonwhite immigrants from countries affected by foreign policies and capitalist globalization sought entry.<sup>80</sup>

Also relevant to this chapter is that practices of immigration enforcement have been developed in response to antiblack anxieties regarding African Americans. As Vilna Bashi points out, immigration policies of many Western countries, including the United States, have been especially restrictive toward black immigrants because of the fear that they will import problems associated with African Americans, such as racial conflict, protest, and "social unrest."<sup>81</sup> While Bashi does not focus on the current period, methods of control used on black immigrants nevertheless have implications for contemporary immigration enforcement. For example, before the 1980s, the INS tended to detain immigrants it determined to be a security risk or likely to flee. But during Ronald Reagan's presidency, the INS began to use detention as a means of deterring illegal immigration—a gesture spurred by the arrival of Haitians and Mariel Cubans.<sup>82</sup> In 1987 a group of the latter, who could not be returned to Cuba, rioted in a Louisiana prison built specifically to hold them. In response, officials dispersed groups of Mariel Cubans to local jails—one of the first times immigration enforcement relied on local facilities to hold immigrants.<sup>83</sup> Finally, the expansion of immigration enforcement is informed by the exponential growth of the imprisoned population and the racist policies that are responsible for it.<sup>84</sup>

As already described, these anticrime initiatives have adversely affected everyone, including immigrants of all races. However, sentencing policies, while used against all racial-ethnic populations, affect black immigrants to a greater degree than other groups. Most activist challenges to immigrant criminalization do not seriously address the relationship between the growth of the prison-industrial complex and immigration enforcement and the role of antiblack racism in the expansion of both. Yet the data presented in this chapter certainly suggests that there is such a relationship.

Thus, there is a need for more comparative research that documents both differences and similarities in the way that native-born and immigrant racial minorities encounter the criminal justice system. This would also require some acknowledgement, as noted in the introduction, that the targeted enforcement of South Asians, Middle Easterners, and Arab/Muslim immigrants, while certainly racist, repressive, and condemnable, does not tell the entire story of what is happening with immigration enforce-

ment today. In this regard, the roundups, sting operations, and violations of civil liberties that have been widely documented by activists and scholars since September 11, 2001, should not be confused with the more sustained and broad-based trends of immigration enforcement.<sup>85</sup>

South Asian and Arab/Muslim immigrant communities have been targeted based on race and, in some cases, religion—by both citizens and the state—as purported terrorists, a practice that preceded 9/11.<sup>86</sup> Yet South Asian and Arab/Muslim immigrants are not incarcerated, detained, and deported as *regularly* as black Americans or Caribbean, South American, Central American, or Mexican immigrants. Moreover, there has been relatively little change in U.S. immigration flows, from September 11, 2001, to the present—even for nationalities that have been the target of post-9/11 "security" measures.<sup>87</sup>

Following these trends, Mexicans are still a major share of U.S. immigration flows, both in terms of those admitted legally and those who enter without authorization.<sup>88</sup> There are also many similarities in terms of trends in immigrant incarceration for black immigrants and Mexicans (and Latinos more generally). However, deportations for criminal convictions still tend to be proportionally higher for black immigrants than for Mexicans. Further, since most black immigrants are deported through formal removal proceedings, rather than the voluntary departures offered to many of the unauthorized Mexican migrants, the outcome of deportation is often more final and severe and, in turn, potentially more stigmatizing. The fact that 41 percent of Africans and 74 percent of Caribbean nationals are deported as "criminal aliens"—the highest proportion of any nationality—means that there are virtually no conditions under which they may lawfully reenter the United States.

*Taken as a whole, these findings suggest that black immigrants, particularly those from the Caribbean, experience something in the United States that non-black immigrant groups do not, or at least not to the same degree.* Despite this empirical data, activists generally do not give attention to black immigrant groups except to absorb them into a broad category of immigrants "of color." Indeed, immigrants' rights activism actually focuses more on African Americans as necessary allies than on black immigrants as targets of enforcement.<sup>89</sup> Whatever the motives, such gestures serve to universalize issues of racism instead of dealing with antiblack racism as a major factor driving the expansion of immigration enforcement vis-à-vis the growth of the criminal justice system. The data reviewed here indicates that despite contemporary immigrants' rights discourse that marginalizes them, black

immigrants matter in and of themselves and also because their experiences may provide valuable insights into the relationship between racism and the expansion of immigration enforcement. Overall, it would perhaps be more instructive to look at how black immigrants, like African Americans, are positioned as legitimate targets for law enforcement and, ostensibly, to consider how antiblack racism informs enforcement policies used, to varying degrees, against all immigrant communities.

### Notes

I want to thank Philip Kretsedemas for soliciting this chapter and for providing valuable feedback and encouragement.

1. Louise Cainkar, "The Impact of the September 11 Attacks and Their Aftermath on Arab and Muslim Communities in the United States," *GSC Quarterly* 13 (Summer/Fall 2004); Louise Cainkar and Sunaina Maitra, "Targeting Arab/Muslim/South Asian Americans: Criminalization and Cultural Citizenship," *Amerasia Journal* 31 (2005): 1-27; Human Rights Watch, "Presumption of Guilt: Human Rights Abuses of Post-September 11 Detainees, August 2002," <http://www.hrw.org/reports/2002/us911/USA0802.pdf>; Tram Nguyen, "Detained or Disappeared?" *Colorlines* 17 (Summer 2002); Belizad Yaghmaian, "Suspected and Feared: Muslim Migrants after 9/11," [http://www.motherjones.com/commentary/columns/2005/12/muslim\\_migrants\\_after\\_september\\_11.html](http://www.motherjones.com/commentary/columns/2005/12/muslim_migrants_after_september_11.html).

2. Cainkar and Maitra, "Targeting Arab/Muslim/South Asian Americans."

3. I use the term *black* here to refer to immigrants from Africa and the Caribbean. I realize that I am using race and national origins interchangeably and that there are some limitations to this approach. For one, many immigrants from both regional areas may not identify as black. This is especially the case for people from the Caribbean, given that census data and anecdotal evidence show that many deny being black. Second, some African countries (especially South Africa and Zimbabwe) and some Caribbean countries are multiracial, which may be reflected among the immigrating populations. Finally, black immigrants are not limited to Africa or the Caribbean but may also be among immigrants from other regions, including but not limited to Canada, Central America, Europe, Mexico, and South America. Despite these limitations, I find that my operationalization of *black* is nevertheless useful for several reasons. First, the Department of Homeland Security data provides figures on national origins but not on race. Second, we know that blacks are well-represented in, if not the numerical majorities in, most African and Caribbean countries. Indeed, Latin America is home to the largest concentration of African descendants outside the African continent. Third, immigrants from both regions, re-

gardless of how they identify, are interpreted through the prism of race in the United States, which is guided by the fundamental antagonism between black and white. In regard to the last point, immigrants from the Caribbean may be perceived as black even if they do not identify as such. Taken together, my operationalization of *black* uses the available data, recognizes the limitations, and still has something useful to say about how immigrants from countries with high concentrations of African descendants fare under U.S. immigration enforcement.

4. Julie Su, "The INS and the Criminalization of Immigrant Workers," in *States of Confinement: Policing, Detention, and Prisons*, ed. Joy James (New York: Palgrave, 2002), 245-257.

5. Hannah Gladstein, Annie Lai, Jennifer Wagner, and Michael Wishnie, "Blurring the Lines: A Profile of State and Local Police Enforcement of Immigration Law Using the National Crime Information Center Database, 2002-2004," Migration Policy Institute Occasional Paper, December 2005, 7.

6. Gladstein et al., "Blurring the Lines," 14.

7. Approximately 2.8 million first-generation Caribbean immigrants live in the United States, composing little more than 8 percent of the national black population and little more than 1.2 percent of the total U.S. population (Migration Policy Institute, Migration Information Source, "United States Stock of Foreign Country by Birth, 1995-2005," <http://www.migrationinformation.org/GlobalData/countrydata/country.cfm> [accessed November 7, 2007]).

8. Gladstein et al., "Blurring the Lines," 13.

9. The Border Patrol has a jurisdiction of about 8,000 miles, which includes areas around the U.S.-Canada border. Mary Dougherty, Denise Wilson, and Amy Wu, "Immigration Enforcement Actions: 2005," Office of Immigration Statistics, November 2006, 1. Both Immigration and Customs Enforcement (ICE) and Customs and Border Protection have seen significant increases in their budgets over the last twenty years, especially after the 9/11 attacks (Migration Policy Institute, "Immigration Enforcement Spending Since IRCA," November 2005, 2, [http://www.migrationpolicy.org/ITFIA/FactSheet\\_Spending.pdf](http://www.migrationpolicy.org/ITFIA/FactSheet_Spending.pdf) [accessed November 7, 2007]). In 2005 the Border Patrol made 92 percent of all apprehensions, 99 percent of them along the southwest border (Dougherty, Wilson, and Wu, "Immigration Enforcement Actions," 3). That the Border Patrol has made the overwhelming number of apprehensions has been a consistent feature of immigration enforcement for the past twenty years (Migration Policy Institute, "Immigration Enforcement Spending," 1). Whereas the Border Patrol's focus is to police the borders, ICE investigates how immigration laws are enforced in the interior, with an emphasis on immigrants involved in criminal activity (Dougherty, Wilson, and Wu, "Immigration Enforcement Actions," 1-2).

10. Dougherty, Wilson, and Wu, "Immigration Enforcement Actions," 3.

11. Department of Homeland Security, "Detention and Removal of Illegal Aliens," April 2006, [http://www.dhs.gov/xoig/assets/mgmtprts/OIG\\_06-33\\_Apr06.pdf](http://www.dhs.gov/xoig/assets/mgmtprts/OIG_06-33_Apr06.pdf) (accessed November 7, 2007).

12. Dougherty, Wilson, and Wu, "Immigration Enforcement Actions," 4.
13. And conversely, immigrants who are already detained, or who have been previously incarcerated, are often unable to make use of voluntary departure if it is offered to them. See chapter 9 for a discussion.
14. Dougherty, Wilson, and Wu, "Immigration Enforcement Actions," 1.
15. *Ibid.*, 3.
16. As with immigrant detention, the average daily population in local jails has steadily increased between the years 1995 and 2005. The average daily population in jail has not increased as rapidly as the numbers of immigrants detained. Between 1995 and 2005, the average number of inmates held in jails has increased by around 50 percent, compared with the 200 percent increase in immigrant detentions during the same time period. However, the sheer number of people in jails is significantly higher than the number in immigrant detention. For example, in 2005 the average daily population of immigrants in detention was 19,619, compared with the 733,442 who were held in jail. Put another way, out of the total average daily populations for both jails and immigrant detention centers, 97 percent of the inmates are held in jail. It is important to remember that inmates in jail may also be immigrants but that the percentage of noncitizens in jail is relatively small compared with that of legal citizens. Moreover, racial groups are disproportionately represented in local jails: whites 44 percent, blacks 39 percent, Hispanics 15 percent, and "other" (which includes Asians and Pacific Islanders) 17 percent (Page Harrison and Allen Beck, "Prison and Jail Inmates at Midyear, 2005," Bureau of Justice Statistics, May 2006). <http://www.ojp.usdoj.gov/bjs/pub/pdf/piim05.pdf> [accessed November 7, 2007].
17. Some immigrants may have more bed days in detention because their countries may have policies that either block or inhibit the return of immigrants from the United States. Some of the countries who refuse to accept repatriated nationals or who are slow to cooperate with the process include China, Cuba, Eritrea, Ethiopia, India, Iran, Jamaica, Laos, and Vietnam. Nationals representing these countries were detained for a total of 981,202 days in 2003. In that year, Chinese nationals used 366,540 detention days, Jamaican nationals 241,114 days, and Vietnamese 137,280. A large number of immigrants from these countries who have or are pending final orders of removal are eventually released into the public and, according to the DHS, are unlikely to ever be repatriated because the countries refuse to provide documents relevant to the repatriation process. As of 2004 133,662 immigrants had been released into the United States despite pending or final orders of removal, with the majority of this group being nationals of China, India, and Jamaica (Department of Homeland Security, "Detention and Removal of Illegal Aliens," 17–19.
18. Dougherty, Wilson, and Wu, "Immigration Enforcement Actions," 4.
19. Alison Siskin, "Immigration-Related Detention: Current Legislative Issues," Congressional Research Service Report for Congress, Library of Congress, April 28, 2004, 12. <http://www.fas.org/irp/crs/RL32369.pdf> (accessed November 7, 2007).

20. Harrison and Beck, "Prison and Jail Inmates at Midyear," 5.
21. The Immigration and Naturalization Service (INS) was disbanded and reincorporated into the new Department of Homeland Security in 2002.
22. John Scalia and Marika Litras, "Immigration Offenders in the Federal Criminal Justice System, 2000," Bureau of Justice Statistics, August 2002, 1, <http://www.ojp.usdoj.gov/bjs/pub/pdf/fofcjsoo.pdf> (accessed November 7, 2007).
23. Transactional Records Access Clearinghouse (TRAC), "Prosecution of Immigration Cases Surge in U.S. 2005," <http://trac.syr.edu/tracins/latest/131/> (accessed November 7, 2007).
24. Scalia and Litras, "Immigration Offenders in the Federal Criminal Justice System," 4. It is not clear whether race is self-reported during the criminal justice proceedings but this may have an impact on the numbers given here. More, if race is self-reported, many of the Hispanic immigrant prisoners may be phenotypically read as black but may not report themselves as such.
25. Scalia and Litras, "Immigration Offenders in the Federal Criminal Justice System," 2.
26. Eric Sterling, "Drug Laws and Snitching: A Primer," *PBS Frontline*, December 2006, <http://www.pbs.org/wgbh/pages/frontline/shows/snitch/primer/> (accessed November 7, 2007).
27. *Ibid.*
28. Marc Mauer, "Young Black Americans and the Criminal Justice System," in James, *States of Confinement*, 75–93.
29. (TRAC), "Prosecution of Immigration Cases Surge in U.S. 2005." For a detailed description of the list of crimes labeled as aggravated felonies, see Bill Ong Hing, "Deporting Our Souls and Defending Our Immigrants," *Amerasia Journal* 31 (2005): xi–xxxii.
30. David Goldberg, "Surplus Value: The Political Economy of Prisons and Policing," in James, *States of Confinement*, 205–221.
31. Sentencing Project, "New Incarceration Figures: Thirty-Three Consecutive Years of Growth," May 2006, <http://www.sentencingproject.org/pdfs/1044.pdf> (accessed November 7, 2007).
32. Mauer, "Young Black Americans and the Criminal Justice System," 77.
33. Bureau of Justice, *Compendium of Federal Justice Statistics*, 2004 (2006), 19, <http://www.ojp.usdoj.gov/bjs/pub/pdf/cfjso4.pdf> (accessed November 7, 2007).
34. American Civil Liberties Union, "ACLU Releases Crack Cocaine Report, Anti-Drug Abuse Act of 1986 Deepened Racial Inequality in Sentencing," press release, October 2006, <http://www.aclu.org/drugpolicy/gen/27194prts20061026.html> (accessed November 7, 2007); Judith Scully, "Killing the Black Community: A Commentary on the United States War on Drugs," in *Policing the National Body: Race, Gender, and Criminalization*, ed. Anannya Bhattacharjee and Jael Silliman, 55–80 (Cambridge: South End Press, 2002).
35. Marc Mauer, *Race to Incarcerate* (New York: New Press, 1999).

36. ACLU, "ACLU Releases Crack Cocaine Report"; Mauer, "Young Black Americans and the Criminal Justice System"; Scully, "Killing the Black Community"; Scalia and Litras, "Immigration Offenders in the Federal Criminal Justice System," 1.
37. For example, after these amendments were passed, the months sentenced to prison for unlawfully reentering the United States after a previous conviction for an aggravated felony increased from 57 to 71 months (Scalia and Litras, "Immigration Offenders in the Federal Criminal Justice System," 5).
38. Bureau of Justice Statistics, *Compendium of Federal Justice Statistics*, 2004, 13; Bureau of Justice Statistics, *Compendium of Federal Justice Statistics*, 2003 (2005), 1, <http://www.ojp.usdoj.gov/bjs/pub/pdf/cfjs03.pdf> (accessed November 7, 2007).
39. Bureau of Justice Statistics, *Compendium of Federal Justice Statistics*, 2004, 13.
40. *Ibid.*, 1.
41. *Ibid.*, 19.
42. *Ibid.*, 13.
43. *Ibid.*, 19.
44. *Ibid.*, 73.
45. *Ibid.*, 69.
46. *Ibid.*, 70.
47. *Ibid.*, 76.
48. *Ibid.*, 76.
49. Hing, "Deporting Our Souls and Defending Our Immigrants."
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