

New Numbers from U.S. Sentencing Commission Reveal Dysfunction of U.S. Immigration System

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The broken U.S. immigration system is flooding federal courts with low-level cases involving non-violent defendants, and inundating federal prisons with individuals whose only crime was to enter or remain in the country without permission. Thanks to this ever-widening immigration dragnet, a disproportionate share of the Latinos and non-U.S. citizens who wind up in federal courts and prisons are there solely because of immigration violations. In other words, the federal government is wasting its limited law-enforcement and criminal-justice resources on immigrants who do not pose a threat to public safety or national security.

These are the inescapable conclusions to emerge from a statistical report released in September by the U.S. Sentencing Commission. The statistics, which cover the first nine months of Fiscal Year (FY) 2011, illustrate the degree to which immigration cases are being channeled into federal court rooms. Immigration offenses accounted for more than one third (35.1 percent) of all federal sentences handed down during this period.¹ In comparison, immigration offenses comprised one in five (19.6 percent) of all sentences in FY 2000.

The statistics in the report also illustrate the degree to which Latinos find themselves in the cross-hairs of this misguided immigration-enforcement drive. Although Latinos (both native-born and foreign-born) comprise about 15 percent of the U.S. population,³ they accounted for half (50.3 percent) of all individuals sent to federal prison during the first nine months of FY 2011. The reason for this imbalance is simple: Latinos are being swept up for immigration violations rather than serious crimes. According to the report, 28,468 Latinos were sentenced in the first three quarters of FY 2011, of whom 16,964 (or 59.6 percent) were sentenced for immigration violations.⁴ By way of comparison, Latinos accounted for 41 percent of individuals sent to federal prison in FY 2000. During that year, 24,222 Latinos were sentenced, of whom 10,506 (43.4 percent) were sentenced for immigration violations.

Not surprisingly, non-U.S. citizens are the primary targets of federal immigration enforcement efforts. Non-citizens (of any ethnicity or race) account for roughly 12 percent of the total population,⁶ but constituted just under half (47.6 percent) of all people sent to federal prison during the first three quarters of FY 2011. Once again, this imbalance stems from the fact that non-citizens are being incarcerated for immigration violations and not serious crimes. Out of the 28,648 non-citizens sentenced during the first nine months of FY 2011, 20,303 (or 70.9 percent) were sentenced for immigration violations.⁷ In comparison, non-citizens were just over one-third (35.8 percent) of individuals sent to federal prison in FY 2000. In that year, 20,655 non-citizens were sentenced, of whom 10,616 (51.4 percent) were sentenced for immigration violations.

As the report describes, a wide range of immigration offenses are lumped together in these numbers: "trafficking in U.S. passports; trafficking in entry documents; failure to surrender naturalization certificate; fraudulently acquiring U.S. passports; smuggling, etc.; unlawful alien; fraudulently acquiring entry documents; and unlawfully entering U.S." However, data from other sources suggest that most of these immigration cases involve unauthorized presence in the United States and nothing more. For instance, statistics compiled by the Transactional Records Access Clearinghouse (TRAC) at Syracuse University reveal not only that immigration offenses now account for the majority of federal prosecutions, but that illegal entry and illegal reentry account for the majority of immigration offenses. There were 15,173 federal criminal cases filed in April 2011. Illegal entry accounted for 4,782 of these cases (31.5 percent), followed by illegal reentry at 3,047 (20.1 percent).

Predictably, Immigration Courts also have been negatively affected by the federal emphasis on unlawful presence over criminal conduct. According to TRAC, the backlog of cases in Immigration Courts reached a record high of 285,526 at the end of July 2011. Moreover, only 8.3 percent of these cases were criminal. Roughly 90 percent (or 259,038) involved violations of immigration rules: entering the country illegally, overstaying a visa, etc. Thanks to the crush of cases involving unlawful presence, the average wait time for a pending case in Immigration Court stood at 490 days (up from 482 days at the beginning of May).

Perhaps the most unfortunate aspect of numbers such as these is that they are nothing new. The “criminalization” of unauthorized immigration has proven to be a defining feature of both the Bush and Obama administrations. Under President Obama, the Department of Homeland Security deported a record 395,165 people in FY 2009. That figure dropped slightly (to 387,242) in FY 2010. For many of these deportees, removal from the country came only after they were first diverted into the federal criminal justice system, where they were prosecuted and imprisoned for unlawful entry or reentry into the country

However, ramping up deportations and criminal prosecutions is not going to solve the problem of unauthorized immigration. There are roughly 11 million unauthorized immigrants in the United States, comprising over one-quarter (28 percent) of the foreign-born population. Three-fifths of unauthorized immigrants have been in the United States for more than a decade. Roughly 4.5 million native-born U.S.-citizen children have at least one unauthorized parent. In other words, unauthorized immigrants are an increasingly settled population with deep roots in U.S. society and the U.S. economy. Attempting to remove them from the country would be a monumentally expensive and destructive undertaking. The Center for American Progress has estimated that it would cost \$200 billion over five years to remove that many people from the United States. And that figure does not include the damage done to the U.S. economy by removing so many workers, consumers, entrepreneurs, and taxpayers.

The U.S. immigration system and criminal justice system are in dire need of reform. Locking up unauthorized immigrants in federal prisons is pointless and inhumane. Unauthorized immigration will not be stopped by further criminalizing unauthorized immigrants. It will be stopped when we have flexible limits on employment-based and family-based immigration, and when we deal honestly with the fact that the millions of unauthorized immigrants already living in the United States are not going away.

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