CHAPTER 16

THE POLITICS OF IMMIGRATION AND CRIME

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Americans have long believed that immigrants are more likely than natives to commit crimes and that rising immigration thus leads to rising crime. This belief is remarkably resilient to the evidence that immigrants are no more likely than natives, and in most cases much less likely than natives, to commit crimes. Undocumented immigrants are called “illegal aliens” and many, if not most Americans believe that it is a crime to exist in the United States as an undocumented immigrant. Most Americans also believe that these undocumented immigrants cause crime to increase in areas where they settle. Politically, these beliefs have resulted in three consequences—negative attitudes toward immigration and political mobilization of groups like the Tea Party, support for local ordinances that seek to criminalize undocumented people and those who would help undocumented people, and a growing trend of treating people in detention for immigration violations in the same way as criminals, blurring the line between detention centers and prisons.

These contemporary consequences have strong historical roots in xenophobic political discourse, which was often the buffer for major anti-immigrant policies excluding the flow of immigrants to the United States for several decades. However, the association between crime and immigration exists solely in the political discourse; when researchers evaluate the available data, immigrants demonstrate the exact opposite trend (see Sampson [2008] for a review). The weak (and generally nonexistent) empirical relationship between immigration and crime is nevertheless rivaled by the persistent and overwhelming public opinion that immigrants do in fact cause or, at the very least, increase the possibility of crime. Is this because most Americans believe that “illegal immigrants” are by definition criminals? Or because Americans believe that immigrants tend toward criminal activity more than natives, net of an immigrant’s legal status? These questions are in many ways difficult to answer because of a lack of available public opinion data, as well as a lack in administrative records regarding what criminal activity immigrants actually commit, with a full knowledge of the person’s immigration status and country of origin.
In spite of the declining number of illegal entries to the United States, recent punitive state laws, as well as the dramatic rise in deportations, point toward the need to examine the role of politics in shaping immigration policies, particularly when the notion of criminality is concerned. Because local policing agents are often tasked with the job of identifying and apprehending undocumented immigrants, it is crucial to explicate the relationship between immigration and crime.

We explore the myth of immigrants' propensity toward crime and the reasons why both ordinary Americans and scholars have believed it over time. Then we discuss the political consequences of this belief—the laws and social policies that have been enacted to cope with the supposedly criminal aliens. We also discuss the growth of undocumented immigrants in the United States in the past two decades and describe how this trend feeds into the mistaken notion that immigrants cause crime, while also discussing the implications for incarceration and detention practices in the United States. We conclude with the following points:

- The stereotype of the criminal immigrant is historically rooted in political discourse and surfaces in contemporary politics and attitudes; this stands in contrast to the empirical evidence that does not find a strong link between immigration and crime.
- These attitudes not only shape immigration policies, but also criminal justice and welfare policies pertaining to the rights and protection of all groups, especially immigrants.
- Immigration policy has transformed since 1965; the past 50 years—an era that also included rapid social changes—ushered in a new economy of postindustrial urban decline, rising incarceration rates, and a new politics of punitive criminal policy. These changes have had wide-ranging implications for immigrants, particularly in that immigrants are becoming the targets of criminal and antiterrorist policies.
- Policy changes arguably result from the public opinion that there is a positive, causal link between immigration and crime, which is reflected in contemporary state policies.
- A major lesson from an examination of the politics of immigration and crime is that, without a presentation of clear evidence to the public about the empirical relationship between immigration and crime, misinformation and stereotypes will continue to inform and pervade policies and practices. Thus, we strongly urge that policy makers and researchers provide accurate information about immigrant criminality to help dispel this widely believed and incorrect assumption.

I. The Stereotype of the Criminal Immigrant: Past and Present

One of the oldest social science hypotheses in the United States is that immigration is a disorganizing force resulting in unwanted social problems, particularly violent crime.
This matches a common and persistent stereotype—the notion that immigrants are more likely to be criminals than are natives, and, therefore, immigration causes crime to increase (Lee, Martinez, and Rosenfeld 2001). For instance, California’s Proposition 187, a law designed to crack down on undocumented immigrants explicitly stated, “the people of California...have suffered and are suffering economic hardship [and] personal injury and damage caused by the criminal conduct of illegal aliens in this state” (Rumbaut et al. 2006). Numerous scholars over the past century have examined this hypothesis, using theoretical analysis and empirical tools to test the mechanisms linking immigration and crime. Although scholarly research across disciplines has largely established that immigration inversely relates to crime rates throughout various historical and social contexts in the United States, public opinion and social policy reflect the mistaken belief that immigrants are more likely to participate in criminal behavior than are natives (Lee, Martinez, and Rosenfeld 2001; Rumbaut et al. 2006).

The stereotype of the criminal alien has deep historical roots. Common stereotypes of immigrants in the late 19th and early 20th centuries were that they were much more likely to be criminals than were the native born. Immigration to the United States was virtually unrestricted throughout the 18th and early 19th centuries. One of the very first laws that established federal control of immigration was the Page Act in 1875, and it specifically excluded criminals and prostitutes from admission. The first comprehensive law for national control of immigration, the Immigration Act of 1891, added felons and persons convicted of other crimes and misdemeanors to the list of people inadmissible to the country. This reflected the belief of many law makers that other nations were encouraging convicts to emigrate.

The criminal stereotype applied to a number of different ethnic groups. The term “paddy wagon,” slang for a police van, began as an ethnic slur against the criminal Irish in the mid-19th century. Stereotypes about Italian Americans focused on organized criminal activity and the mafia, but all southern and eastern European immigrants were commonly thought to bring crime to America’s cities. Social scientists such as Thorsten Sellin (1938) attributed these supposedly higher crime rates to the cultural conflict thought to characterize immigration. Immigrants were thought to be torn between two cultures, which led to a loosening of social norms. They were generally poor, and their neighborhoods were thought to be highly disorganized and anomic. Harwich (1912) cites the words of the superintendent of the state prisons of New York, “A large proportion of the vicious and ignorant...make the large cities their headquarters. Thus there is forced upon New York State and upon its charitable and penal institutions more than their due proportion of the undesirable classes of immigrants: the lawless, the illiterate, and the defective” (p. 478). A crime threat was one of the chief reasons cited by law makers who passed the Immigration Act of 1924. The 1911 Dillingham Commission held hearings leading to the sharp restriction of immigration; it concluded that federal laws had not prevented the entry of convicted criminals and proposed strengthening restrictions. The American Bar Association issued a statement in 1916 on the relationship between immigration and crime, “the volume of crime in the United States is disproportionately increased by immigration, and that, in consequence to reduce crime, immigration must
be reduced” (Abbott 1916, p. 116). This proposes a causal link between immigration and crime, one with direct implications for both policy and political discourse.

Although the image of the criminal alien was very common, empirical investigations at the time questioned the link. In an 1896 article published in the American Journal of Sociology, Hastings H. Hart, General Secretary of the National Conference of Charities and Correction, wrote:

The foreign-born population furnishes only two-thirds as many criminals in proportion as the native born; that while it is true that the native-born children of foreign-born parents as a whole furnish more criminals proportionately than those whose parents are native born, yet in more than half of the states the showing is in favor of the children of the foreign born; that the combined ratio of prisoners of foreign birth and those born of foreign-born parents to the same classes in the community at large is only 84 percent of the ratio of native-born prisoners to the same class in the community at large. It is true that these propositions are contrary to the popular impressions, and contrary to the apparent showing of the census on a superficial view (emphasis added). (pp. 369–70)

Hart’s study provided empirical evidence to contradict the popular notion that immigrants and the children of the foreign born participate in crime at higher rates than the native-born population. He was not alone. Other sociologists and criminologists questioned the empirical reality of the link between immigration and crime and also worked to identify exactly what mechanisms (if any) explained a relationship between immigration and crime.

Taft writes, “It was therefore an achievement for the National Commission on Law Observance and Enforcement (the Wickersham Commission) to have demonstrated that the popular view of the role of the immigrant in crime is grossly exaggerated if not altogether erroneous” (1933, p. 70). Referring to the Commission’s 1931 “Report on Crime and the Foreign Born” and the unfavorable political climate toward immigrants, Taft nevertheless accuses the Commission of a pro-alien bias within the report—what he argued was a latent sentimentality toward immigrants unfairly painting them in a favorable light.

The early Chicago School extensively studied and theorized about immigrant experiences. These seminal works by Park, Burgess, and McKenzie (1925), among others, discussing immigration and social disorganization led to specific studies about the nexus between immigration and crime (Kobrin 1951; Suttles 1968). There are at least three strands of sociological theory that inform empirical study of the crime-immigration nexus: social disorganization, cultural, and strain theories (for an extensive review, see Thomas [2011]). Taken together, these three theoretical traditions inform most contemporary studies of immigration and crime.

Social disorganization theory, regarding immigration and disorder, posits that diversity within a given locale often hinders collective community functions and certain kinds of social control, since racial and ethnic relationships are fraught with durable tension and conflict. Putnam (2007) carries this argument into the 20th century, arguing
that diversity may hinder social capital and social relations, causing individuals to “hunker down” and fail to engage in social relations both within and across groups, although Putnam does not make any claims about a link between diversity and crime.

Cultural theories proposed by Sellin (1938) and later Shaw and McKay (1972) argue that crime is in large part the direct result of cultural contradictions and conflicts (Thomas 2011). Sellin’s work focuses on the immigrant experience of being thrust into a milieu in which norms and cultures clash, particularly when rural immigrants find themselves in a cosmopolitan city setting. This is the basis for Shaw and McKay’s work, which discusses how cultural heterogeneity, brought on by influxes of immigrant groups, produces high levels of disorder via the weakening of social ties and informal social control.

Finally, strain theories proposed mainly by Merton (1938) are pertinent to the immigration–crime nexus. The general theory suggests that individuals who adhere to socially acceptable material goals within a society but are deprived of the means to achieve those goals will more likely partake in criminal activity and deviance. Immigrants may experience an increased pressure (more than the native-born) to succeed under circumstances that limit their ability to do so, which in turn may produce higher than expected crime rates.

Yet the theories explaining the link between immigration and crime continue to lack strong empirical foundation. Current researchers have reexamined the theoretical link between immigrants and crime proposed by policy makers in the early 20th century. Identifying several methodological flaws in the turn of the century commissions on immigration and crime, Moehling and Piehl (2010) use time-series data from prison censuses between 1904 and 1930 to question the link between immigration and crime. They found that, in 1904, prison commitment rates for serious violent offenses were comparable between native and non-native born persons, except for 18- to 19-year-olds, where immigrants were more likely to offend. However, by 1930, commitment rates among the foreign born remained stable over the period of study, and the commitment rates of the native born began to sharply increase. In a current working paper, these authors examine individual-level data within the same time period and have preliminary results suggesting that the likelihood an immigrant was incarcerated increased with time spent in the United States, and, moreover, the children of immigrants—i.e., the second generation—had incarceration rates that were the same or even higher than those of their peers with native parents. They also find that the odds of incarceration were lower for immigrants who arrived in the 1920s, post-immigration restrictions and quotas, than for those who had arrived earlier (Moehling and Piehl 2011). They attribute several possible confounding and often-neglected factors, such as immigrant self-selection, to account for variation in the inverse relationship between immigration and crime. The early theories of Merton, Sellin and Shaw, and McKay are therefore not supported. Immigrants are far less likely than natives and than their more assimilated children to commit crimes.

The attitudes just described that associate immigration with crime persist into the present day. Despite the fact that the past 20 years have been marked by
significant decreases in crime rates along with large influxes of new immigrant populations (Sampson 2008), polling data during this period show that Americans believe that immigration increases crime.

Table 16.1 displays multiyear polling data by Gallup asking the following question: “Will immigrants to the United States make [the crime situation] better, worse, or not have much effect?” In 2001, before September 11, 50 percent of all respondents believed that immigrants would worsen the crime situation. By 2007, that number reached 58 percent, with 63 percent of whites believing immigrants would worsen the crime situation in the United States. An interesting fact is that from 2001–2002, black respondents were the only racial group to see a rise in the belief that immigrants would worsen the crime situation, from 44 percent to 49 percent. By 2007, 52 percent of blacks believed immigrants to the United States would worsen the crime situation.

In 3 years of the General Social Survey, 1996, 2000, and 2004, respondents were asked a variant of the question: Do immigrants cause crime to increase? The following histograms depict the variation in response. Figure 16.1 displays the responses for 1996. In 1996, 7.5 percent of respondents strongly agreed, and nearly 26 percent agreed; thus,
a third of respondents believed that immigrants would increase the crime rate in the United States.

Figure 16.2 displays the responses from 2000. Although phrased differently from 1996 ("Do more immigrants cause higher crime rates"), the responses change dramatically. In 2000, a quarter of respondents said it was "very likely" that an increase in immigration would cause higher crime rates. An overwhelming 48 percent said it was somewhat
likely, which means 72 percent of all responses in 2000 thought more immigrants were likely, if not very likely, to cause higher crime rates.

Figure 16.3 displays the same responses to the question posed in 1996, but here in 2004. There seems to be a slight shift in the attitudes toward immigrant criminality here. Seven percent of respondents strongly agreed immigrants increase crime rates, and 20 percent agreed, which is a 6 percent decrease from 1996.

What accounts for these differences in attitudes? It is difficult to compare the data from 2000 to the 1996 and 2004 samples because the wording of the question changed. For example, perhaps it is not the mere existence of immigrants, but the notion of "increase" of immigrants that presents the criminal threat to respondents. The flow of immigrants through the metaphorical floodgates often discussed in political discourse conjures greater fear than the already settled immigrant groups. Respondents from 1996 may have shown a greater bias against immigrants because the survey was conducted at the height of the Clinton administration's anti-immigrant legislation.

Another Gallup question addressed whether illegal immigration and providing aid to illegal immigrants should be criminal, and how changes to immigration law might affect overall crime rates. Respondents were asked in a 2006 Gallup poll: "Should illegal immigration be a crime, and moreover, should aiding/providing assistance to illegal immigrants be a crime?" Sixty-one percent of respondents said illegal immigration should be a crime, and 52 percent of those polled said it should be a crime to provide assistance to illegal immigrants.

These polling data suggest that Americans tend to conflate illegality and criminality, and moreover continue to associate immigration with increased social disorder and crimes. Republicans and whites have the strongest beliefs in the relationship between immigration and crime, although Democrats and nonwhites overwhelmingly support this assumption.
Table 16.2 Should the U.S. government make the following a crime

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<thead>
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<th>Yes, should (%)</th>
<th>No, shouldn’t (%)</th>
<th>No opinion (%)</th>
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<tr>
<td>Illegal immigration</td>
<td>61</td>
<td>35</td>
<td>4</td>
</tr>
<tr>
<td>For U.S. citizens to</td>
<td>52</td>
<td>43</td>
<td>5</td>
</tr>
<tr>
<td>provide assistance to</td>
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<td>people they know are</td>
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<td>illegal immigrants?</td>
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Source: Gallup, 2006.

The data from Table 16.2 indicate that the belief in a causal relationship between immigration and crime crosscuts political and social divides that often predict public attitudes in the United States. This explains the often wide-ranging public support for criminal justice that is not clearly supported by a single party, economic bracket, or racial group (Western 2006). These attitudes greatly influence policies, and, as we will discuss, have shaped not only immigration policy, but also criminal justice and welfare policies.

II. POST-1965 IMMIGRATION AND CRIME

The politics of recent decades pertaining to crime and immigration are preceded by major shifts in the economic, demographic, and sociopolitical landscape of the postwar United States. In short, these changes included rapid deindustrialization, large increases in immigrant populations after the passage of sweeping immigration reform in 1965, the growth of a large undocumented immigrant population in the 1990s and 2000s, and a dramatic shift toward a punitive criminal justice policy. As a result, attitudes toward both social welfare and public safety reflected a new law-and-order politics and an intensified resentment toward those—particularly immigrants—who in the eyes of voters were not entitled to social benefits (Gilens 1999; Western 2006). Welfare reform and immigration reform came together in 1996 with the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. This Clinton-era law transformed national welfare policy by ending Aid to Families with Dependent Children (AFDC) and replacing it with work requirements and temporary aid for needy families (TANF). It also established restrictions on the eligibility of legal immigrants for means-tested public assistance and broadened the restrictions on public benefits for illegal aliens and nonimmigrants. The 1996 Illegal Immigration Reform and Immigrant Responsibility Act also had far reaching effects on both immigrants and benefits—increasing the ability of the government to deport both criminals and undocumented people and further restricting access to government benefits.
In addition, the growth of undocumented immigrants complicated the politics of immigration and crime. For many Americans "illegal immigrants" are by definition criminals because existing in the United States without proper documentation is often considered to be a criminal act. Yet the reality of how undocumented immigrants are treated by the law is much more complex. Historically, the regulation of immigration has been a civil, not a criminal matter. The Supreme Court ruled in 1893 in Fong Yue Ting vs. United States, "the order of deportation is not punishment for a crime." The current situation is a complex mix of legal requirements and administrative flexibility, but the key point is that most undocumented people are never caught by Homeland Security, and most people who are caught are not charged with a criminal offense.

It is estimated that between 30 and 50 percent of undocumented immigrants are people who entered the country with a legal visa but overstayed it. They thus did not enter the country illegally, and although they are unauthorized, they are not guilty of a crime. Among people who did cross the border illegally, even if they are caught, most are not charged with a criminal offense. As Redburn, Reuter, and Majmundar (2011) summarize in a National Academy of Science report, people who are caught having crossed the border without authorization can be dealt with primarily in three ways: they can be offered voluntary departure, they can be formally removed from the country through standard removal process or accelerated removal, or they can be criminally charged with either criminal entry into the United States (a misdemeanor) or criminal reentry into the United States (a felony). Although many people, both researchers and lay people alike, describe the process of expelling people from the United States as "deportations," the legal term for this process is now "removal."

Those who are offered voluntary departure are usually people found within 100 miles of the Mexican border. They "voluntarily" agree to be taken back over the border, and they are released with no further sanctions or charges. They do not see an immigration judge, and the decision to remove them comes from Department of Homeland Security (DHS) personnel. Those who are formally removed can be ordered removed by DHS personnel (accelerated removal), or they can see an immigration judge who issues the ruling (standard formal removal). They are kept in detention until the formal ruling by the judge and then they are immediately taken over the border. If they are formally removed, a record is kept of that ruling, which has serious implications if they are apprehended crossing the border again.

The third option is that an individual can be charged with criminal entry or criminal reentry. These people are seen before a magistrate or district court judge, they are criminally charged, and their detention is paid for by the Department of Justice, not the DHS.

Aside from being apprehended at the border, the other way in which undocumented people are found in the United States is through screening by local police during arrests or by screening by prison or local jail personnel. These programs (Secure Communities or 287(g)) can also lead to voluntary return or accelerated or standard removals. Many people apprehended for crimes that are not serious (speeding, driving without a license) are offered voluntary departure, at the discretion of the Customs and Border Patrol personnel.
Undocumented immigrants who are deported are not being punished; they do not have "criminal" trials but rather "administrative hearings." They are not allowed the protections of criminal law—the right to a lawyer, the right to a warrant before the police can search them, or other aspects of due process. Currently, it is a civil matter to overstay a visa, a misdemeanor to illegally enter the country, and a felony to reenter the country after having been caught here illegally and deported. Chacon (2009) argues that the vastly increased use of deportation and the internal enforcement of immigration law created the worst of all worlds for undocumented people. They are kept in detention and they are brought before administrative judges, but they are not given the due process protections that people charged with a crime are afforded. The increasing "criminalization" of undocumented immigrants is reflected in increased deportations and tougher policies at the state and federal level, but, legally, most of these deportations are not technically punishments for crimes. Redburn, Reuter, and Majmundar (2011) report "about 90 percent of deportable immigrants located since 1980 have been allowed voluntary return" (p. 48). People who have been convicted of serious crimes, including aggravated felonies, drug offenses, terrorism, or crimes of moral turpitude are considered inadmissible to the United States; they are not allowed voluntary departure and are formally removed. Nevertheless, removal, whether voluntary, accelerated, or standard is a civil proceeding, not a criminal one. People are not guaranteed due process or access to a lawyer, even though they can be detained for long periods, sometimes in state and local jails, but most often in federal "detention facilities" until they are removed.

Removals have been increasing since the 1996 Immigration Law and since greater attention to border security following the attacks of September 11, 2001. Removals averaged 22,000 per year in the 1980s; 79,000 per year in the 1990s; and 238,000 per year during the 2000s. Removals in fiscal year 2011 reached an all-time high of 396,906 (Redburn, Reuter, and Majmundar 2011, p. 52). These represent some of the largest numbers of deportations or removals in the history of the United States, despite historically decreasing numbers of estimated illegal entries to the United States.

When political entities declare war on a particular social or political problem (i.e., poverty, drugs, or terror), the resultant shifts in the policy domain tend to disproportionately impact marginalized groups. After September 11, 2001, particular attention to the criminalization of immigrant groups as part of national security policy went into effect, giving federal and state jurisdiction increased power to surveil immigrants through new legal tools presented by the PATRIOT Act and other policies at the state and federal level for immigrant detention and deportation (Schirro 2009). Although the desire for border control and nativist policies that target immigrants existed before September 11, 2001, the political will to implement changes in how immigrants are treated was strengthened in the aftermath of the attacks, and a number of new laws and administrative rules were created.

Because the hijackers who perpetrated the attacks on the United States had entered the country legally but overstayed their visas, the question of border control and undocumented immigrants in the United States was tied to antiterrorist legislation. Congress and the president reacted to the 9/11 attacks by passing the PATRIOT Act in October

A few months later, Congress also passed the Enhanced Border Security and Visa Entry Reform Act (EBSVERA). This act set up the National Security Entry–Exit Registration System (NSEERS). Male immigrants from 25 countries were required to register annually with the government and provide biometric data and in-person interviews.

The post-9/11 period led to an administrative change that affected immigration—the creation of the DHS and the replacement of the Immigration and Naturalization Service with the Immigration and Customs Enforcement agency. These post-9/11 changes created new ways in which legal immigrants were treated substantially differently than citizens and created new limitations on people seeking visas to visit the United States, particularly if people came from states suspected of anti-American terrorist activities. Politically, these restrictions were made possible by the conflation of immigrant and terrorist crimes in both the political rhetoric of the time and in the debates on the floor of the Congress.

The belief that being in the United States without papers is a crime has contributed to the increased treatment of undocumented immigrants as criminals and a blurring of the line between immigration enforcement and criminal law enforcement. This period of rapid social change ushered in both a new economy of postindustrial urban decline and a new politics of punitive criminal policy, effects of which remain far-reaching today. Next, we review the politics of this era of mass incarceration, rising legal immigration, and rising undocumented immigration and the subsequent shifts in immigration policy.

### III. The Politics of Mass Incarceration and Mass Immigration

The United States experienced unprecedented increases in the U.S. prison population in the past five decades. According to the Bureau of Justice Statistics (2010) on December 31, 2010, state and federal correctional authorities had jurisdiction over 1,612,395 prisoners, and in 2010, 7.1 million adults were under some form of correctional supervision. This quantity demonstrates a rise of over 500 percent in 25 years (Bureau of Justice Statistics 2010). These rates of incarceration began in the mid-1970s but took dramatic hold in the 1980s and early 1990s (Western 2006). Western (2006) outlines the political regime—a largely nonpartisan shift in criminal justice policy—leading to the massive increase in incarceration, particularly among low-skilled, low-income minority men.

Incarceration rates were increasing at the same time that immigration was also rapidly increasing. The Immigration Act of 1965 (also known as the Hart Celler Act) fundamentally changed American immigration rules and created the basic structure
of immigration law still in place today. Before 1965, immigration from the western hemisphere (Latin America and the Caribbean) was unlimited, and there were also racially based quotas for countries from the eastern hemisphere that severely restricted immigration from most countries, allowing large numbers of immigrants only from Northern and Western Europe. The 1965 law ended racial quotas and gave every country in the world a similar quota. It also allowed for unlimited family reunification above the per country quota. The law thus allowed immigration from Asia and Africa in appreciable numbers for the first time. At first, immigrants came under the occupational visas subject to numerical quotas, however family reunification soon led to large flows from throughout the developing world. Immigration to the United States grew rapidly, and the sources of immigrants also changed. Before 1965, most immigration was from Europe. Following 1965, most immigrants were non-European and defined in the United States as nonwhite. By 2010, figures from the U.S. Census Bureau’s American Community Survey show that the foreign-born population totaled 39.9 million people, 33 percent of the population. Another 33 million people (11 percent of the total population) were second generation, the children of at least one foreign-born parent. By 2010, only 12 percent of the foreign-born were from Europe, 2 percent were from Canada, 53 percent were from Latin America, 28 percent from Asia, and 5 percent from the rest of the world (Greico et al. 2012). Thus, a visible, nonwhite immigration flow was coming to the United States at the same time that the number of people in prison was growing at a very fast rate.

The 1965 law also limited immigration from the western hemisphere for the first time. This turned a long-standing circular immigration pattern from Mexico to the United States into an illegal immigration flow and created the problem of “illegal immigration” because the need for Mexican workers continued unabated, especially in agriculture, and the pressure for emigration from Mexico and other countries in Central America also continued and grew (Massey, Durand, and Malone 2002). By 1986, the numbers of undocumented people were large enough that a legalization program was passed that ultimately regularized the status of 2.3 million people. But the forces leading to undocumented immigration continued, and the numbers of people crossing into the United States also continued. Beginning in the 1990s, the problem of undocumented immigrants gained sustained national attention, and a number of restrictive pieces of legislation were introduced, including Prop 187 in California in 1994, a bill that denied undocumented immigrants health care, education, and other public services and required providers to report suspected undocumented persons to authorities. Although it passed with a 58.9 percent majority (Jones 1994), it was later struck down as unconstitutional in the same year it passed.

In addition to the actual increase in undocumented people, the attention of the news media was disproportionately focused on illegal as opposed to the much larger flows of legal immigrants. Roberto Suro (2011, p. 11) reports, “an analysis of 1,848 Associated Press stories on immigration topics from 1980 to 2007 showed that 79 percent fit into the framework on illegality. Of 2,614 stories on immigration in the New York Times over the same period, 86 percent dealt with illegality in various forms.” It is no wonder then
that the majority of Americans erroneously believe that most immigrants to the United States are undocumented.

The growth in incarceration and the growth in immigration intersected, and the numbers of immigrants behind bars rose. By 2009, a reported 94,498 immigrants were held in federal and state prisons (Schuck 2011). Peter Schuck (2011) estimates that more than 25 percent of federal prisoners are immigrants, as well as 4 percent of state prisoners.

A number of factors therefore came together at the turn of the century to convince most Americans that immigrants were causing increases in crime in the United States. These include the long-standing stereotype that immigrants are more likely to be criminals than are natives; the stereotype associating nonwhites with crime, together with the growth in the Latino population; the real growth of immigrants in the nation’s prisons; the actual growth in undocumented “illegal” immigrants; and the disproportionate attention paid to illegal immigration and criminal immigrants in the press. There is only one problem with the conclusion that immigrants are causing crime—it is not true.

Numerous contemporary studies have estimated the relationship between immigration and urban violent crime in the United States (Butcher and Piehl 1998; Martinez 2000; Lee, Martinez, and Rosenfeld 2001; Reid et al. 2005; Butcher and Piehl 2007; Piehl 2007; Ousey and Kubrin 2009; Bersani 2010; Leerkes and Bernasco 2010; Stowell et al. 2010; Wadsworth 2010). With the exception of the work by Piehl and other economists who focus on factors such as self-selection, all of these studies find that immigration inversely relates to crime rates. Using a wide range of methods, data, and levels of aggregation, these studies also find that the crime drop observed between 1990 and 2000 can partially be explained by increases in immigration. Economists have largely argued that the available empirical work fails to consider how legal immigrants are screened for prior criminal history prior to entry into the United States. Moreover, they contend, the almost certain probability for both legal and illegal immigrants of deportation if convicted of a crime may act as a major deterrent for criminal behavior among immigrant groups (Piehl 2007).

The relationship among immigration status, race, and incarceration is highly complex. It is widely documented that members of dispossessed groups (particularly African Americans) are disproportionately represented in the prisoner population (see Western 2006) and that Latinos are the most rapidly increasing population in the prison system today (Morin 2010). As Rumbaut et al. (2006) note, few studies have attempted to relate patterns of incarceration and immigration. Is it simply that minority groups with low skills and education are at risk for incarceration? Does immigration have an effect on incarceration patterns for the native population? Borjas et al. (2006) found that immigration patterns can partially explain the increased rates of incarceration among African Americans due to the job shortages for native-born blacks. However, because most data on prisoners are presented by race or by nativity status but not by the intersection of the two, there are empirical gaps in our knowledge of this issue. Future studies may wish to address the issue of mass incarceration and immigration by considering how non-native and native-born persons within the same racial categories compare in criminal justice outcomes.
Hagan and Palloni (1999) examine the factors that have led many Americans to believe that Hispanics, and most especially Mexicans, are overrepresented in crime and in the prison population. Because young males are overrepresented among immigrants, Hagan and Palloni point out that any comparison of prison populations that does not control for the age of the population as a whole would be misleading. Because young males are the most likely group to commit crimes and to serve time in prison, any group that is concentrated in that age range would be overrepresented in crime statistics. They also point to the fact that immigrants are much more likely to be held in pretrial detention when they are arrested and charged because they represent more of a flight risk than natives and because, once they are arrested for a crime, their immigration status is investigated. This would lead to greater numbers of Hispanic immigrants being held in confinement than natives. They also note that pretrial detention is known to lead to a greater chance of conviction and imprisonment, thus leading to a greater likelihood that an immigrant who commits the same crime would be more likely than a native to end up in prison, all else equal. They conclude that “the growing proportions of noncitizens in prison populations, especially Hispanic and Mexican immigrants, had much more to do with the increased entrance into the United States of disproportionately young immigrants and their vulnerability to pretrial detention, conviction, and imprisonment, than with the over-representation of crime among immigrants. None of this is apparent from prison statistics alone...which have become the primary lens through which growing concerns about immigration and crime are filtered in the 1990s” (Hagan and Palloni, 1999, p. 620).

In addition, Hagan and Palloni identify another factor that could lead to the erroneous belief that immigrants are more likely to commit crimes. In 1994, the Violent Crime Control and Law Enforcement Act began to reimburse states and localities for the costs of incarcerating illegal aliens. This led to an acute interest on the part of state and local officials to identify any undocumented people in the system. There followed an increase in the "reported" number of undocumented aliens in state and local prisons, not necessarily an actual increase in the numbers during the late 1990s. Of course, this was also a period of rising undocumented immigration, so probably both trends were contributing to an increase in recorded and reported numbers of incarcerated undocumented Hispanic immigrants.

The other popular belief in the 1990s and 2000s was that immigrants, and especially undocumented immigrants, were heavily involved in the drug trade. A bestselling book by Peter Brimelow, *Alien Nation*, tied the increase in crime in the 1990s to increased immigration and asserted that “immigrants dominate the drug business in the U.S.” (Brimelow 1995, p. 183). This stereotype continues today. Governor Jan Brewer of Arizona stated in 2010, “we all know that the majority of people coming into Arizona and trespassing are now (becoming) drug mules.” In an examination of the causes of arrests of noncitizen legal immigrants and of undocumented immigrants in El Paso and San Diego, Hagan and Palloni find that there is no evidence for the widespread belief in recent decades that immigrants are much more likely to commit crimes related to the drug trade than are natives. In fact, they conclude that "drug crime is not characteristic
of legal immigrants, and is actually uncharacteristic of illegal immigrants," who are, in fact, most likely to be arrested for property crimes.

IV. Undocumented as Criminals

Following the legalization program of IRCA in 1986, the numbers of undocumented immigrants began to grow again as the need for unskilled labor in the United States continued and the numbers of people applying as unskilled workers for legal immigration from Mexico and other parts of Latin America far outstripped the supply of visas. In the 1990s, as the economies of the United States and Mexico became more integrated, especially after the passage of the North American Free Trade Agreement (NAFTA) in 1994, the numbers of undocumented people in the United States grew, and they began to disperse into “new destinations” outside of the West and Southwest (Massey, Durand, and Malone 2002). Growing public attention paid to this population, as well as concerns about terrorism following the first World Trade Center attack, led to the passage of a number of restrictive laws in the 1990s that targeted both legal and illegal immigrants. The net effect of these laws was to create what Kanstroom (2007) described as a system of “post-entry social control” and Buff (2008) has described as “deportation terror.” Although deportations of those apprehended trying to cross the border had been growing, beginning in the mid-1990s, authorities began trying to find undocumented people already living and working in the country. This lends a whole new meaning to the concept of “crime and immigration.” According to the DHS, in 2000, there were 188,000 removals, but by 2009, that number reached 395,000, and 387,000 in 2010 (U.S. Department of Homeland Security 2009). The criminalization of being undocumented has led to new methods of identifying undocumented people, new systems of detention throughout the country, and mass deportations unseen before in U.S. history.

The 1996 Illegal Immigration Reform and Responsibility Act (IIRIRA), the 1996 Anti-Terrorism and Effective Death Penalty Act (AEDPA), along with the 2001 PATRIOT Act laid the legal groundwork for mass deportations of undocumented immigrants, as well as greatly increasing the ways in which legal immigrants who are not yet citizens must be deported if they are convicted of a felony. The 1996 Immigration and Nationality Act (INA), which was part of IIRIRA, contained the controversial section 287(g), which authorizes state and local police to screen people for immigration status, to detain them until the federal government takes custody, and to generate the charges that will result in their removal from the country. At first, few local jurisdictions agreed to the program, but, over time, more signed up. As of 2011, there were 72 local governments signed up, 65 of which signed on after 2006. The rise in detention and deportation of immigrants resulting from these laws has led to a blurring of the line in practice between “criminals” and “illegals.”

The IIRIRA of 1996 broadened the definition of “aggravated felony” that justifies deportation of immigrants, both documented and undocumented, and expanded the
categories of noncitizens eligible for deportation (Hagan, Rodriguez, and Castro 2011). The 1996 AEDPA removed judicial review for most categories of immigrants subject to deportation. The PATRIOT Act of 2001 further increased the power of the federal government by allowing the federal government to apprehend, detain, and deport immigrants who are deemed a threat to national security. Since then, deportations have risen dramatically; from 2001 to 2009, the number of deportations more than doubled (U.S. Department of Homeland Security 2009).

In 2003, the INS was replaced by the Bureau of Immigration and Customs Enforcement. The INS had been under control of the Justice Department. The new bureau (referred to as ICE) was put under the control of the newly formed DHS. ICE saw its mission as apprehending, detaining, and deporting “criminal and fugitive” noncitizens (Kanstroom 2007). They launched three programs that aimed to identify whether undocumented people had broken the law and if they were in state or local custody. The Criminal Alien Program (CAP) places ICE officials at state prisons to conduct immigrant screening. The Secure Communities program has set up a joint database between the Federal Bureau of Investigation (FBI) and ICE into which local police can enter the fingerprints of people they arrest. The 287(g) program delegates the federal power of immigration enforcement to state and local personnel. It authorizes state and local law enforcement to screen people for immigration status, detain them until they can be transferred to federal authorities, and allows state and local authorities to generate the charges that will lead to removal of the unauthorized people (Capps et al. 2011, p. 17). Although all three programs involve integrating state and local law enforcement with the federal immigration enforcement system, 287(g) is the only program in which state and local authorities can make immigration-related arrests.

The 287(g) program is controversial. As Capps and colleagues (2011) argue, the program has been unclear both in the initial guidelines that set it up and in statements by members of the Obama administration about whether it is designed to focus on capturing immigrants who have committed felonies and other serious crimes or whether it is designed to capture the greatest number of ordinary undocumented immigrants. They write, “Public statements by the Secretary of Homeland Security and the Assistant Secretary for Immigration and Customs Enforcement have emphasized the program’s focus on ‘dangerous criminals’ but also highlighted its usefulness in identifying and removing large numbers of unauthorized immigrants” (Capps et al. 2011, p. 1). Although the program is portrayed as targeting criminals, Capps and colleagues analyzed ICE data on people apprehended through the program and found that only half of those apprehended through the program had committed felonies or other crimes deemed serious by ICE; the other half were people who had committed misdemeanors such as traffic offenses. The program is controversial because many local police and politicians believe that it reduces community cooperation with the police and because the fear it instills in immigrant communities also makes people less likely to report crimes to the police. As a result, a number of big-city mayors have refused to sign 287(g) agreements with ICE or to accept the program in their cities.
In their study of the implementation of the 287(g) program, Capps and colleagues find a great deal of variation in how local communities institute the program. Some adopt a targeted approach, focusing on apprehending ICE’s top enforcement priorities—“national security threats, serious or dangerous criminals (i.e., felons), and other threats to public safety, as well as noncitizens with existing orders of removal” (Capps et al. 2011). Other local communities, particularly those in the South, characterized as “new destinations,” having seen steep increases in the number of immigrants in recent years, have adopted a “universal” approach to enforcement. This means that they try to find every unauthorized immigrant they can and detain and deport them. Capps et al. argue that this yields public safety benefits because they attribute crime to undocumented immigrants and believe they are removing them before they have a chance to commit crimes.

The program designed to catch “dangerous criminals,” defined by a 2007 ICE fact sheet to be people involved in “violent crimes, human smuggling, gang/organized crime activity, sexual-related offenses, narcotics smuggling, and money laundering” evolved into one based on finding every undocumented person happened in those jurisdictions where immigration was a politically sensitive and visible issue. This is especially true in the Southeast, where immigration has been increasing rapidly in areas that had no previous experience with immigration. Behind the whole program was the false idea that undocumented immigrants were disproportionately behind criminal activity. Politically, many local officials used that fear of crime and the 287(g) program to create a climate of fear and intimidation that would lead to “self-deportation” among undocumented people afraid of being caught.

The result of these laws and programs is an unprecedented number of deportations each year, averaging 400,000 people per year. In 2009, only 35 percent of the deported population had criminal convictions, in 2010, 50 percent did; although 23 percent of those criminal convictions were for misdemeanor offenses, some of which were immigration-related crimes such as repeated illegal entry (Capps et al. 2011, p. 6). The number of people detained by ICE has risen greatly since 1994, when there were 6,785 beds available per night, to 33,400 in 2008.

When people are detained for immigration violations, either through detection by ICE officials, through local police in the 297(g) program, or after an arrest on another charge and a screening for immigration status, they are held before it is decided whether they should be deported. It is important to note that people who are criminal aliens and who are convicted of a crime serve their criminal sentence before they come into ICE custody. Yet people who have not committed any serious crimes are often held for long periods of time in the immigrant detention system. The detention system consists of agreements (intergovernmental service agreements [ISGAs]) between ICE and state and local prisons to house people, a system of privately run contract detention facilities (CDFs), and ICE-run detention centers (called Service Processing Centers [SPCs]). A recent study by Kerwin and Lin (2009) of the Migration Policy Institute using ICE data obtained through a Freedom of Information Act request found that 58 percent of the 32,000 detainees in custody as of January 29, 2009 did not have any criminal record.
Four hundred people who had no criminal record had been held for over a year. They found that “the most serious convictions for 20 percent of criminal aliens in ICE custody were for traffic-related (13 percent) and immigration-related (6 percent) offenses” (Kerwin and Lin 2009). The most common criminal conviction of those in detention was driving under the influence of alcohol. Nevertheless, these detainees were primarily held in facilities designed for people who have committed serious crimes—70 percent were in state and local prisons, 17 percent in contract detention facilities, 10 percent in SPCs, 2 percent in federal prisons, and 3 percent in “soft” detention centers, such as medical centers or shelters.

The detention system is administered by officers of the ICE Enforcement and Removal Operations (ERO) program. In their job description, ERO “identifies and apprehends illegal aliens, fugitive aliens, and other criminal aliens; manages cases in immigration proceedings; and enforces orders of removal from the United States” (U.S. Department of Homeland Security 2011, p. 2). In a 2009 report ICE acknowledged the “penal” nature of detention and issued promises to revamp the system so as to make it more “civil” (“Fact Sheet: 2009 Immigration Detention Reforms”).

In addition to being held for unspecified periods in prisons and other detention facilities, people who are detained also suffer other abuses and indignities. A Human Rights Watch report (2009) estimated that more than 1 million family members had been separated through detention and deportation. Sometimes, family members vanish when they are taken in workplace raids, and it is difficult for people to find their loved ones. Julia Preston, the immigration reporter for the New York Times, describes the terror and uncertainty the raids produce: “It can be risky, for example, simply to live in an immigrant neighborhood in a house or apartment where a previous tenant may have had an old deportation order. Immigration agents may show up at the door with a photograph of someone who hasn’t lived there for years, roust people from bed to demand papers and take away in handcuffs anyone who cannot produce the right documents. In the aftermath of such raids, relatives, employers, even lawyers have to struggle to find out where those detained are being held” (Bernstein [citing Preston] 2011, p. 29).

In an interview study with a random sample of deportees to El Salvador, Phillips, Hagan, and Rodriguez (2006) found that a substantial percentage of people were subject to verbal or physical harassment during arrest and detention and that the likelihood of abuse was much higher (2.5 times higher use of force) when local officials detained people than when ICE personnel did so. They found that “among deportees arrested by INS, 13 percent were subject to force—no different than citizens. Among deportees arrested by the police, 26 percent were subject to force—almost double the rate for citizens.” Twenty-five percent of respondents reported racial slurs during arrest, 26 percent reported slurs during detention.

Immigrant detention is legally considered an administrative, civil measure taken solely for the purpose of deportation (Bernstein 2011). Thus, legally, detention is not “punishment.” Yet immigrants who are rounded up are kept in prisons alongside criminals who have many more rights to due process and legal representation. Because almost all of this happens with little public scrutiny, and because most Americans are not aware
of the subtleties of the laws, the fact that people can be held for civil violations in state and federal prisons for unspecified periods of time without access to a lawyer has not led to any public outcry or political movements to improve the situation.

V. State-Level Immigration Politics: An Analysis of Arizona and Alabama Criminal Statutes

For the past few decades, Congress has been unable to reach agreement on comprehensive immigration reform. President Bush tried to broker a deal that allowed a path to legalization for the millions of undocumented people living in the United States, along with tougher enforcement measures at the border, but two bipartisan attempts at passing a law, one in 2006 and another in 2007, failed to pass. As undocumented immigration hit an all-time high before the recession of 2008, these immigrants spread out to many new areas of the country that had little experience with immigration, including places in the South and Midwest. Because of the deadlock on immigration reform at the federal level, states and local areas began to pass many laws relating to legal and illegal immigrants (Fix 2007; Newton and Adams 2009). Many of these laws are unconstitutional because the Supreme Court has consistently ruled that regulating immigration is the province of the federal government alone (Rodriguez, Chishti, and Nortman 2010). In the summer of 2012, the Supreme Court struck down major elements of Arizona’s restrictive immigration law. Ambiguity exists because the federal government governs immigration policy, but state and local governments can make policy with respect to resident immigrants. When state and local police are directed at apprehending undocumented immigrants, however, they are generally found to be impinging on exclusive federal rights (Williamson 2011). Although restrictive ordinances that include things like sanctioning landlords for renting to undocumented people, penalizing businesses for hiring the undocumented, and authorizing local police to enforce immigration laws receive the most attention, there have also been many state and local governments passing pro-immigrant legislation that welcome immigrants or that state an intention not to enforce federal immigration laws against the undocumented (Ebsenshade and Obrutz 2007; Ramakrishnan and Wong 2010). Most research on these local ordinances finds that localities that have seen large increases in immigrant populations are most likely to pass restrictive ordinances (Hopkins 2010; Williamson 2011). The most restrictive ordinances criminalize being undocumented and contribute to the blurring of the line between immigration violations and crime that we discussed earlier. We review the Arizona and Alabama laws below.

Arizona Senate Bill 1070 (2010), called the Support Our Law Enforcement and Safe Neighborhoods Act, addressed topics related to immigration such as trespassing, harboring, and transporting illegal immigrants; alien registration documents; employer
sanctions; and human smuggling. It made the failure of noncitizens to carry immigration documents a crime and gave the police broad power to detain anyone suspected of being in the country illegally. Section 6 of the law authorized the warrantless arrest of noncitizens when there is probable cause to believe the person has committed a public offense that makes the person removable from the United States. Prior to its going into effect, the U.S. Department of Justice filed a lawsuit requesting an injunction, arguing that the laws were unconstitutional because preempted by federal law. The injunction was granted by a federal district court and upheld by the Ninth U.S. Circuit Court of Appeals (Morse 2011). In Arizona v. United States, 132 S. Ct. 2492 (2012), the U.S. Supreme Court upheld a provision requiring immigration status checks during law enforcement stops but struck down three other provisions as violations of the Supremacy Clause of the United States Constitution.

The Obama administration challenged the law and, before it could go into effect, several of its more extreme provisions were prevented from becoming law because of a preliminary injunction by a federal judge.

A 2010 New York Times poll inquired as to whether individuals believed that the Arizona law would reduce crime. Fifty-four percent of all respondents responded in the affirmative. For Republicans, 24 percent said that it was very likely, with 65 percent saying it is at least likely to reduce crime. Of the Democrats polled, 50 percent said it was at least likely to reduce crime, and the same proportion of independents held the same belief (see Table 16.3).

Alabama House Bill 56 (2011), the Hammon-Beason Alabama Taxpayer and Citizen Protection Act, is commonly described as the strictest immigration law in the United States. It authorized a large number of anti-immigrant measures. The title of the bill is a metonym for the politics surrounding its passage: the protection from criminal immigrants of those who pay taxes and maintain legal rights as citizens. It requires school-teachers to ascertain the immigration status of their students and report the numbers of undocumented students in their classes to state authorities, it prohibits landlords from renting to undocumented people, and it prohibits undocumented people from applying

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<td>Independents</td>
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for work. It also decrees that all contracts with undocumented people are unenforceable. It requires law enforcement officers to stop anyone who "appears illegal."

The U.S. Department of Justice sought an injunction against implementation of House Bill 56 (U.S. Department of Justice 2011). The Federal District Court for the Northern District of Alabama granted the request in part and denied it in part, finding that parts of the law were potentially preempted by federal law (United States v. State of Alabama, 813 F. Supp. 2d 1282 [N.D. Ala. 2011]). Portions of the law were later rescinded by the Alabama legislature. Some provisions were declared unconstitutional by the federal Eleventh Circuit Court of Appeals (Hispanic Interest Coalition of Alabama v. Governor of Alabama, 691 F.3d 1236 [C.A.11 2012]), but key elements remain in force.

Alabama also fits the profile of a new destination area ripe for anti-immigrant beliefs and actions. According to the American Community Survey, foreign-born persons accounted for a mere 3.1 percent of Alabama's population. However, between 2000 and 2009, the foreign-born population shifted from 87,772 to 146,999, a 67 percent increase—sizable greater than the national growth rate of foreign-born groups (roughly 24 percent in the same time period). These statistics provide some support for the hypothesis that it is not the existence of immigrants but the growth of an immigrant presence that creates policy backlash against immigrants, particularly those who utilize public benefits or commit crimes.

VI. NEW DIRECTIONS FOR RESEARCH

New research has been focused around the effect of citizenship status on arrest patterns (Kposowa et al. 2010) and sentencing or conviction outcomes (Vargas 2006; Ulmer 2011; Wolfe et al. 2011). Wolf et al. (2011) estimate the effect of citizenship status on the decision to incarcerate and sentence length, finding that both legal and nonlegal immigrants have a higher probability of incarceration than similarly situated U.S. citizens, and sentences imposed on nonlegal immigrants are shorter than those imposed on citizens. However, once they partitioned the data by citizenship status, they also discovered that judges imposed shorter sentences on Latino citizens (than on non-Latino citizens) and longer prison sentences on Latino nonlegal immigrants. This study is one of the first of its kind to look at the impact of citizenship status on criminal sentencing outcomes.

Although these studies are excellent beginnings for understanding the role of citizenship status on criminal sentencing and incarceration outcomes, they all rely on cross-sectional data. It is extremely important to understand how these change over time, and what conditions—legal, political, and social—might affect the outcomes of native and non-native groups. We need longitudinal studies that track the treatment of the foreign born in the criminal justice system over time.

Another area for further research is an analysis of ICE immigration detention and the U.S. criminal justice system—how immigrants experience detention (both criminally sentenced and non-criminally sentenced). An important consideration is the role
of immigrant detention in determining criminal sentencing outcomes. A key question is: Do judges give harsher or lighter sentences to those who will be detained in ICE-operated facilities? ICE operates the largest detention and supervised release program in the country. A total of 378,582 immigrants from 221 countries were in custody or supervised by ICE in 2008, and, of those, 66 percent were subject to mandatory detention. Fifty-one percent were felons, of which 11 percent had committed violent crimes. However, the vast majority of the population is characterized as “low custody,” or having a low propensity for violence. A key question is interested in how immigrant detention has changed sentencing patterns over time as the use of federal immigrant detention has sharply increased in the past 10 years. How and when is it determined that a state inmate should be handed over to ICE jurisdiction? Are certain demographic characteristics of inmates (certain country of origin, for example) determining this process?

VII. Conclusion

The growth of immigration in the past 50 years has been a very visible phenomenon. In the past few decades, immigration has spread to new destinations—rural and suburban American counties with little experience with prior immigration. It has not only transformed the demographics and everyday life of major gateway cities such as New York, Los Angeles, and Miami, but also wide parts of the Midwest and the South which are coping with English-as-a-second-language classes in schools and demographic diversity beyond black and white for the first time. Most Americans are ambivalent about immigration. In times of high unemployment, public opinion becomes more restrictionist, but most Americans support legal immigration and report good relations with immigrants they do know.

Yet Americans are not positive about undocumented immigration and, for some people, it has become a very strong emotional and political issue. Undocumented immigration and the belief that immigrants, both legal and illegal, receive government benefits they did not work for has fueled the growth of right-wing movements such as the Tea Party (Skocpol and Williamson 2011). The belief that immigrants are more likely to be criminal than natives and that undocumented immigrants are by definition “criminals” is a strong source of anti-immigrant ideology in America. In addition to unfairly stigmatizing the vast majority of law-abiding immigrants, this stereotype of immigrant criminality has led to harsh laws targeting immigrants, to large numbers of people held in detention in prisons, and to the largest number of deportations in our country’s history. The consequences of a “get tough” policy toward legal immigrants who commit crime and all undocumented immigrants further reinforce the belief in the link between crime and immigration. This blinds most Americans to the fact that many criminologists believe part of the reason for our declining crime rate is the rise in immigrants in our population. In addition to the political consequences of these beliefs, the current broken immigration system has resulted in hundreds of thousands of people being held in prisons and detention centers without having committed any crimes. This is a much
less visible consequence of our current immigration regime, one that shows no sign of abating any time soon.

A major deficit to the political discourse is the lack of consistent and available data and documentation regarding immigrant criminality. Data on corrections, arrests, violations, and general criminal activity should not simply consider race and ethnic origin. Rather, collecting and disseminating data on immigration status and national origin would better inform the discourse on what actually constitutes criminal activity among immigrant groups. The glaring issue in the politics of immigration and crime is misinformation and improper understanding regarding what is criminal and what is an administrative violation. This, too, should be further clarified by increased awareness about why immigrants are detained and for what violations, criminal or civil.

NOTE

1. It is indeed a crime to enter or reenter the country illegally (U.S. Code Section 1326). However, residing in the United States as an undocumented person is actually a civil offense, not a criminal offense. In 1996, the U.S. Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which imposes civil penalties on any legal aliens in the United States overstaying their visa. To date, there are no criminal penalties associated with overstaying one's visa.

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