

REPORT: THE WAR ON DRUGS MEETS IMMIGRATION

(a Drug Policy Alliance publication)



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INTRODUCTION

The United States simultaneously holds itself out as a land of opportunity where “everyone” is welcome but also unjustly blames and demonizes certain immigrants for various societal problems. For over 100 years, certain classes of immigrants have been falsely associated with drug use and activity. The underlying assumptions behind this tactic and resulting policies are that immigrants, particularly immigrants of color, are dangerous, undesirable people who bring drugs into the country that harm U.S. citizens (read: white U.S. citizens); people who use drugs need to be removed from our communities, and when possible, country; and an immigrant cannot be a good community member if they use drugs or have a criminal record. This mentality has helped to create the world’s largest immigrant exclusion, detention, and deportation apparatus.

This report highlights the convergence of the domestic war on drugs and anti-immigration policies, with a focus on the harsh immigration consequences associated with drug law enforcement for both documented and undocumented immigrants. The Drug Policy Alliance offers this report in the hopes that it will lead to a deeper discussion of the individual and collective harms that have been caused by a half-century of the drug war and its infiltration of our immigration system.

THE FEDERAL STORY

U.S. drug prohibition and exclusionary immigration policies share a long and ignominious history grounded in racially-based criminalization.¹ The nation’s first restrictive immigration laws, the Page Act of 1875 and Chinese Exclusion Act of 1882, drew heavily on negative public attitudes towards Chinese immigrants, including association with opium, to justify banning their entry into the country.² In 1875, the same year as the Page Act, the city of San Francisco passed the country’s first drug criminalization law, an ordinance prohibiting opium dens, based on the false rationale that Chinese people were corrupting white people with opium.³ Marijuana and alcohol prohibition also have their roots in racist anti-Black and anti-immigrant fervor with the frequent blaming of drug trafficking on racialized outsiders and dangerous others, including Mexicans and communists, and associating marijuana with violent crime by Mexicans and Black people despite the lack of evidence to support such claims.⁴

The growing ties of anti-immigrant sentiment with drug control, as well as tying cocaine use with anti-Black racism, led to the federal criminalization of narcotics in the 1900s.⁵ Drug law violations became a new category of immigration penalties in the Narcotic Drugs Import and Export Act of 1922.^{6*} And in 1952, the passage of the Immigration and Nationality Act expanded upon previous

* This law both criminalized the importation of narcotic offenses and the deportation of immigrants based on these offenses.

To this day, almost any drug law violation, including simple possession, subjects legal permanent residents to deportation and makes people ineligible for lawful status.

drug provisions for deportation, including banning those who immigration officers had “reason to believe” were “illicit trafficker(s)” as well as “drug addicts.”⁷ Since the mid-1950s, U.S. officials have used the threat of drug trafficking across the U.S.-Mexico border as a justification for a continual increase in border fortification and militarization.⁸

The escalation of the war on drugs in the 1970s, 1980s, and 1990s vastly expanded the drug-offense-to-deportation pipeline. Two trends in U.S. public discourse and policymaking coalesced. In the 1970s, as U.S. policies overseas (including the drug war’s destabilizing role abroad) fueled a significant increase in migration to the United States – particularly from Mexico, Central America, and the Caribbean – public officials railed against it with language that evoked a nation under “siege.”⁹ Leo R. Chavez, through a classic media analysis, found a steady rise of negative portrayals of Latinx immigrants through the 1970s and 1980s and the framing of immigration as a “crisis” for the nation.¹⁰ A dominant theme during this period was the dovetailing of the war on drugs and border policing.¹¹

This growing focus on migration converged with the rapid rise of drug policing in the mid-1980s.¹² Politicians and the media began to closely associate a drug “crisis” with the smuggling of cocaine into the United States by Latin American “drug cartels.” New York Senator Alfonse D’Amato, in the midst of the Cuban refugee crisis and growing prison overcrowding in the early 1980s due to harsh drug laws, waged a campaign that led to the increased targeting of immigrants with criminal convictions.¹³ Congressman Lawrence Smith of Florida expressed a sentiment reminiscent of the earlier linking of immigrants and drugs when he stated during a 1989 hearing before the House Judiciary Committee that “aliens coming across the border seem to be prone to more violent kinds of crime, more drug-related types of crime,” and that by allowing them to remain in the

U.S., “we are unleashing an army of criminal aliens on [U.S.] citizens.”¹⁴ These attitudes led to a series of laws that created harsh immigration consequences for people with criminal convictions, particularly those with drug convictions.

In 1986, Congress passed the Immigration Reform and Control Act (IRCA). Best known for creating an avenue to legal status for unauthorized immigrants – dubbed “Reagan’s Amnesty” by its detractors – it also required the U.S. Attorney General to deport immigrants with criminal convictions as quickly as possible and laid the groundwork for the current political context of criminalization and punishment of immigrants.¹⁵ Shortly after, the federal government established a system designed to identify, detain, and begin removal proceedings against non-citizens, whether they be documented or undocumented immigrants, within federal, state, and local prisons and jails.¹⁶

Subsequent drug and immigration laws vastly expanded the criminal convictions that bar someone from legal entry or subject someone to deportation. The Anti-Drug Abuse Act of 1986, which set mandatory minimums for drug law violations, including exceptionally harsh penalties for crack cocaine, also contained anti-immigrant provisions. It expanded drug exclusion and deportability grounds to include a conviction of any violation of a law involving a controlled substance as defined by the federal drug schedule.¹⁷ To this day, almost any drug law violation, including simple possession, subjects legal permanent residents to deportation and makes people ineligible for lawful status.¹⁸

The next significant policy development came with the passage of the Anti-Drug Abuse Act of 1988. Passed in the midst of drug war hysteria, it created the category of “aggravated felony” – a term of art specific to immigration law, which currently includes offenses that may be neither “aggravated” nor “felonies.” Certain convictions for drug offenses that many would consider to be low level may be considered an aggravated felony, including possessing \$10 worth of marijuana for sale.¹⁹ Aggravated felonies are perhaps the most detrimental convictions for immigration purposes, and “a drug trafficking aggravated felony conviction is perhaps the single most damaging type of conviction after murder.”²⁰ Anyone convicted of an aggravated felony is subject to mandatory detention (meaning they must remain in an immigration detention center while their case is pending) and deportation.²¹

Anyone deported from the United States due to an aggravated felony is permanently barred from returning.^{22*} Congress has never removed a criminal offense from this list; rather it has continued to add offenses.²³

As a result of these laws, the number of non-citizens deported annually grew more than 400 percent, from 17,379 in 1981 to 69,680 in 1996.²⁴ The 1990s brought even more hardline immigration laws.

Two laws signed into law by President Bill Clinton in 1996 – the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Antiterrorism and Effective Death Penalty Act (AEDPA) – set the stage for the mass deportation of immigrants. These laws vastly expanded the list of convictions that subject non-citizens to mandatory detention, and the list now includes any drug law violation that makes someone deportable (which is essentially any drug law violation, including possession).²⁵ Consequently, the vast majority of immigrants with a drug conviction are now subject to mandatory detention for anywhere from months to several years while they fight their immigration case.²⁶ Under the law, an immigration judge cannot consider letting non-citizens out on bond if they have a drug conviction that makes them deportable.²⁷

Moreover, Congress streamlined the deportation of non-citizens by eliminating any pretense of fairness and due process:

- It eliminated eligibility for relief from deportation through an individualized hearing before an immigration judge for virtually anyone convicted of an aggravated felony, thereby impairing judicial oversight.
- It broadened the definition of “conviction” to include dispositions that the criminal legal system does not consider a conviction, such as initial pleas that have been expunged following diversion programs like those offered by drug courts.
- It disqualified people with “aggravated felony” convictions from seeking asylum, regardless of the severity of their asylum claims.

* Although technically the Department of Homeland Security may issue a special waiver to allow an immigrant deported after an aggravated felony conviction to reenter the United States, this is very rare.

The vast majority of immigrants with a drug conviction are now subject to mandatory detention for anywhere from months to several years while they fight their immigration case.

- It made no distinction between drug law violations committed recently and those committed many years ago.^{28**}
- It forever barred those who are deported after conviction of an aggravated felony from returning to live in the U.S. Anyone prosecuted for “illegal entry” is subject to an enhanced prison sentence.²⁹

SPOTLIGHT: ELIAN'S STORY

Elian has lived in the United States, with a green card, since he was three. Fifteen years ago, he was convicted for smoking a joint in public. This year, recreational use of marijuana became legal where he lived, and he went to the Dominican Republic to say goodbye to his dying grandmother. When arriving home, he was arrested at the airport by immigration on grounds that he was deportable – based on that 15-year-old marijuana conviction. After he was arrested, Elian was sent to an immigration detention center, a local county jail that contracted with Immigration and Customs Enforcement (ICE) to jail immigrants while the government tries to deport them. He waited for weeks before his first court date. Finally, he was brought to an Immigration Court wearing an orange jumpsuit and shackled at the wrists and ankles. The judge told him this was only the beginning of the process: Elian was told that he was not entitled to a free attorney and had to prove that he fit the narrow legal qualifications to keep his green card or he would be deported.

** In 2001, the U.S. Supreme Court ruled that the restrictions imposed by IIRIRA and AEDPA did not apply to removal proceedings brought against immigrants whose convictions preceded the statutes' enactments in 1996.

The Harsh Immigration Consequences of Drug Convictions

A conviction for a drug offense can be extremely damning for a non-citizen. The consequences of a drug conviction include:

- **Permanent residents can be deported or stripped of their residency after a trip abroad, based on any drug conviction.**

Permanent residents can be subject to deportation upon conviction of any drug law violation.³⁰ There is one exception – those who can prove they were deemed deportable for a single drug conviction that involved 30 grams or less of marijuana are spared from deportation based on that conviction.³¹ However, permanent residents who travel abroad any time after a drug conviction, even one that meets this exception, can be placed in deportation proceedings and lose their residency as a result of their conviction.³²

- **Drug convictions create obstacles for people trying to obtain legal status or become citizens.**

Individuals with a drug conviction, including a single marijuana possession conviction, are ineligible for a green card.³³ Waivers, which allow people to get legal status despite a drug conviction, are available only for those who have proof that their only drug-related conviction involved less than 30 grams of marijuana and that they qualify for a family hardship waiver.^{34*} Individuals with a conviction for a controlled substance offense other than marijuana, regardless of the amount, cannot access any waiver. In addition, permanent residents can be denied citizenship for drug use or other activities deemed illegal under federal law, even if state law has legalized the drug.³⁵

- **People can be deported for offenses that are not convictions under state law.**

Immigration law counts some offenses as convictions for deportation purposes, even if the state does not consider the offense to be a conviction. For example, New York has decriminalized some marijuana possession offenses by making them violations. But these offenses continue to be considered drug convictions, which under federal immigration law carry harsh consequences, like deportation and ineligibility for legal

* The waiver requires that the immigrant prove that they have a U.S. citizen or lawful permanent resident family member who would suffer hardship that is over and above the normal hardships related to deportation and family separation. The only family members who may be considered are a spouse, parent, or adult child. Showing hardship to a U.S. citizen minor child alone is insufficient.

status. And during New York City's marijuana arrest crusade from 1997 to 2016, the police department made more than 500,000 racially skewed arrests for marijuana possession. The majority were advised by their public defender to plead guilty to low-level possession so that they could go home faster after being credited with time served while in jail.³⁶ Non-citizens were not advised of the enormous immigration consequences of a guilty plea.³⁷

- **People can be deported for very old convictions because there is no statute of limitations.**

In criminal and civil contexts, the law generally limits the time during which the government may bring charges against someone. Under immigration law, there is no statute of limitations. That means almost any drug conviction, no matter how old, can allow the government to put someone in deportation proceedings.³⁸ In addition, the government can use a drug law violation to deport a person even if they have lived in the U.S. for a long time, have children or family in the U.S., or own a business. In deportation proceedings there are no automatic exceptions based on a person's links to the U.S. or how much time has elapsed.

- **It does not matter if a guilty plea is vacated through drug court or if a conviction has been expunged.**

Many states have begun to use alternatives to immediate incarceration, such as drug courts, which allow people to enter drug treatment in lieu of serving time in jail or prison if they plead guilty. In the majority of immigration cases, however, a commitment to rehabilitation and a vacated conviction is irrelevant. For immigrants, admitting to a drug law violation in a court setting and entering court-ordered treatment is enough to trigger harsh consequences. Anything that the state does to mitigate criminal consequences as a result of completing a court-ordered program, like reducing, dismissing, or expunging a conviction or eliminating or reducing incarceration time is irrelevant in the immigration context.³⁹

- **Immigration law deems a wide range of offenses to be proof that someone is a drug trafficker who should face the harshest immigration consequences.**

Immigration law allows for automatic deportation and ineligibility for asylum for those convicted of drug trafficking offenses. The range of offenses deemed "drug trafficking" is broad and can include selling \$10 worth of marijuana and possessing drugs in a quantity assumed to mean that the person intends to sell the drugs.⁴⁰

Under the Obama administration, more than three million people were deported, over one million more than under his predecessor. This was largely driven by deportations of people with drug convictions.

Immigration laws of the 1980s and 1990s were designed to maximize the government's ability to exclude and exile people, and therefore, the laws severely limited rights and avenues to freedom.⁴¹ When mandatory detention was expanded after the passage of harsh immigration laws in 1996, the daily average detention rate was 8,500.⁴² In 2020, close to 50,000 immigrants nationwide were in detention on any given day, enabled by a detention budget of \$4.1 billion.⁴³ For many, the mandatory detention provisions of immigration law prevent an immigration judge from allowing release on bond.⁴⁴ The immigration detention system is rife with abuses and dangerous conditions, including substandard medical care. A recent study found that more people died in immigration detention in fiscal year 2017 than any year since 2009.⁴⁵ While people may be detained near their place of residence, Immigrations and Custom Enforcement (ICE) can also transfer them to faraway detention facilities in the rural South and Southwest, with little to no justification or outside checks on the hardship that it creates.⁴⁶ People can be held for months and even years awaiting their day in court.⁴⁷

After 9/11 and the founding of the Department of Homeland Security (DHS), the federal government vastly expanded surveillance and border criminalization, leading to the world's largest immigrant exclusion, detention, and deportation apparatus.^{48*} The agency issued a plan, Operation Endgame, to identify, arrest, and eventually deport every immigrant that could be exiled over a 10-year period.⁴⁹ DHS identified and detained massive numbers of immigrants, often using drug law convictions as the justification for deportation and detention.⁵⁰ The budget and scale of the agency has grown dramatically since its founding.⁵¹

Under the Obama administration, more than three million people were deported, over one million more than under his predecessor George W. Bush (compared to just over 2.6 million deported from 1892 to 2000).⁵² This was largely driven by deportations of people with drug convictions. Deportations of non-citizens whose most serious conviction was for a drug offense increased 22 percent from 2007 to 2012, totaling more than 260,000 deportations.⁵³ The zenith came in 2010 during the first Obama administration, when 49,555 non-citizens

with drug convictions were deported.^{54**} Possession convictions were the most common drug conviction resulting in deportation at 38 percent. In fact, the number of deportations based on drug possession alone increased more between 2007 and 2012 as compared to other types of drug law violations.⁵⁵ Marijuana was the drug involved in 25 percent of those cases, representing 34,337 people deported for marijuana possession during those years.⁵⁶ In 2013, low-level marijuana possession was the fourth most common offense for which people with convictions were deported.⁵⁷

The policing-to-deportation pipeline is a key feature of the deportation apparatus. Not only has the federal government invested heavily in an ever-growing immigration police force that arrests people at home, work, on the street, and in the courts; it has also vastly expanded the role of local police in immigration policing.^{58***} Immigrants who come into contact with police are at heightened risk of being targeted by ICE due to expanded data-sharing channels – through the nationwide implementation of ICE's fingerprint sharing program, known as Secure Communities, the federal government has effectively created a virtual ICE presence at every police precinct and jail.⁵⁹ ICE's Secure Communities program alerts DHS of an arrest every time fingerprints are taken by police at booking, whether or not the person is charged or convicted.⁶⁰ DHS has also encouraged local and state police to act as a "force multiplier" by deputizing police to act as immigration agents through the 287(g) program.^{61****}

* Well over five million people have been exiled in the past 20 years, more than double the number of people deported in the previous 100 years.

** The total number of deportations that year was 393,000, so non-citizens with drug convictions constituted 13 percent of the total.

*** Since its founding in 2002, the DHS had been working to use the local policing apparatus as "force multipliers" to expand the reach of the deportation machine.

**** The 287(g) program is named for Section 287(g) of the Immigration and Nationality Act (INA) and became law as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Through the 287(g) program, state and local police officers collaborate with the federal government to enforce federal immigration laws. ICE has recently developed a variation of the 287(g) program, the Warrant Service Officer Program.

After illegal entry, drug offenses were the most common criminal offense among people deported for a conviction in 2019.

Even in jurisdictions that do not sign on to 287(g) agreements, ICE enlists the help of police by requesting the local agency detain immigrants, done through ICE detainer requests, in order to facilitate ICE arrests.^{62*}

Offenses involving drugs remain the most common reasons for ICE arrests. In fiscal year 2019, ICE made over 74,000 arrests of people convicted of or charged with driving under the influence and over 67,000 arrests of people convicted of or charged with a non-traffic drug offense.⁶³ After illegal entry, drug offenses were the most common criminal offense among people deported for a conviction in 2019.⁶⁴ Unsurprisingly, deportations for drug possession and sale are by far the highest in states with the most border policing and overall deportations.⁶⁵

Over the past few decades, we have experienced a “Great Expulsion” – the largest peacetime outflow of people in U.S. history.⁶⁶ Among those expelled are people with deep ties to the United States. The drug war has played a principal role in harsh immigration policies by both providing justification for deporting people and increasing the number of people with deportable drug offenses. Hundreds of thousands of people have been deported for having a drug conviction, often back to countries where they have little connection and may face threats to their lives. New York has contributed to this ugly reality, as detailed in the next section.

* ICE detainees are authorized under Section 287(d) of the Immigration and Nationality Act (INA), which allows the issuance of a detainer, a request to detain an immigrant, if that person is charged with violating a controlled substance offense and is undocumented. However, detainees have been used to facilitate ICE’s arrest of immigrants after any contact with local police, regardless of the local charges or the person’s immigration status.

CASE STUDY: THE NEW YORK STORY

Immigrants are an integral part of the New York community. One-third of New York State’s U.S.-born children under 18 have an immigrant parent.⁶⁷ Twenty-two percent of New York’s population is non-citizens. That’s 4.4 million people.⁶⁸ Immigrants in New York come from 150 different countries, and every year 144,000 of them apply for legal permanent residence.⁶⁹ New York’s waging of the war on drugs has created a huge pool of non-citizens now in peril of being seized, detained, and summarily deported by the federal immigration system. The Rockefeller Drug Laws of the 1970s, the Tactical Narcotics Team dragnets of the 1980s, and the marijuana arrest crusade of the 1990s and 2000s all focused the state’s power on punishing Black and Latinx neighborhoods, ensnaring untold numbers of people into the police-to-deportation pipeline. Given the history of policing in New York, the war on drugs has played an outsized role in feeding non-citizen New Yorkers into the federal deportation machine.⁷⁰

In the midst of the 1980s crack cocaine media-driven hysteria, two publicity-minded politicians, Rudolph Giuliani, the U.S. Attorney for the Southern District of New York, and Alfonse D’Amato, the U.S. Senator from New York, donned disguises and, accompanied by 30 federal law enforcement agents and police officers, went to the Washington Heights neighborhood and bought several vials of crack cocaine from a street seller.⁷¹ The purpose of this “intelligence gathering operation” was, according to the two officials, to show how blatant crack cocaine sales were in northern Manhattan.⁷²

The location for this ruse was significant. Washington Heights has one of the largest concentrations of immigrants from the Dominican Republic in the entire country.⁷³ The Giuliani-D’Amato crack cocaine buys generated enormous publicity and reinforced the longstanding media stereotype of Latinx people as criminals, gang members, and drug traffickers.⁷⁴ A week later, New York City Mayor Edward Koch published an op-ed in the *New York Times* urging the federal government to use the military for drug interdiction, establish special “narcotics prisons,” and “see to it that the Immigration and Naturalization Service is capable of detecting and deporting [non-citizens] convicted of drug crimes in far better numbers than it does now.”⁷⁵

SPOTLIGHT: CREATING A CRISIS IN NEW YORK'S DOMINICAN COMMUNITY

New York State is home to the largest population of Dominican-Americans in the U.S. Washington Heights, a historically Dominican, low-income community in northern Manhattan, was the target of staged drug buys by Senator D'Amato and U.S. Attorney Giuliani and active police operations in the 1980s. During the years of New York City's marijuana arrest crusade, the 33rd Precinct covering Washington Heights had one of the highest arrest rates in the city.^{76*} In 2012, there were over 23 times more marijuana arrests per capita in Washington Heights compared to the neighboring middle- and upper-income Upper West Side.^{77**} Three decades of hyper-policing and aggressive drug law enforcement have created tremendous hardships for this community as the federal government has relied on drug, and other, convictions to fuel its agenda of mass detention and deportation.

Dominicans have been migrating to New York in large numbers since the 1960s, and many of those deported have lived in the U.S. for decades as legal permanent residents. More than 86,000 Dominicans have been deported from the U.S. since 1996.⁷⁸ This is in part because the harsh immigration laws of the 1980s and 1990s enable the government to deport longtime permanent residents for almost any drug law violations, while eliminating due process rights in most cases and leaving very few avenues to fight to remain. Their roots in New York are deep, and they leave behind spouses, children, and elderly parents. In many cases, they are the principal breadwinners for their families. As deportees, they face stigma and discrimination in the Dominican Republic, a country practically unknown to many of them.⁷⁹ These life-changing, negative consequences are wildly disproportionate to the drug law violations they may have committed in the past.

* New York City's marijuana arrest crusade began under Mayor Giuliani in the mid-1990s and escalated enormously during Mayor Bloomberg's tenure. It continued during the first years of the de Blasio mayoralty.

** There were 1,446 marijuana arrests per 100,000 in Washington Heights compared to only 62 per 100,000 on the Upper West Side.

The New York City Police Department (NYPD) focused drug law enforcement in communities with large percentages of immigrants. For example, NYPD's Operation Pressure Point targeted the Lower East Side, then a predominantly Latinx neighborhood with a mix of citizens and non-citizens. The NYPD assigned hundreds of uniformed and plainclothes officers to the area, and for the first six weeks of the operation, they averaged 65 arrests per day. Most of the people arrested were small-time sellers and buyers. By August 1986, the police had made a total of 21,000 arrests.⁸⁰

In 1988, the NYPD launched a new anti-drug program in East Harlem and other low-income communities with many immigrant residents called the Tactical Narcotics Team (TNT). TNT flooded the streets with investigators and undercover officers who conducted so-called buy and bust operations, arresting people for mostly low-level drug sales.⁸¹ By 1992, the city was reportedly disillusioned with these ineffective tactics:

"Frustrated with soaring arrests and no discernible improvement in New York City's drug problem, Police Commissioner Lee P. Brown has quietly shifted emphasis away from the once-vaunted Tactical Narcotics Teams that swept into neighborhoods to arrest street-level dealers. Instead the Commissioner is focusing on stopping higher-level drug traffickers."⁸²

By then, TNT and other NYPD-led drug law enforcement had already funneled tens of thousands of people, citizens and non-citizens alike, into the criminal legal system.

Rudolph Giuliani's ascension to the Mayor of New York City in 1994 ushered in a new wave of arrests concentrated in low-income communities of color and immigrant communities. He and his first Police Commissioner, William Bratton, adopted an aggressive strategy of arresting people for minor quality-of-life offenses. This involved crackdowns on offenses such as graffiti, turnstile jumping, marijuana possession, panhandling, and disorderly conduct.⁸³ These kinds of arrests contributed to a huge spike in the city's jail population: by the middle of Giuliani's first term, the Rikers Island jail population had ballooned to 24,000 people.^{84***}

*** The surge in jail admissions in New York City was mirrored in other urban areas in the state. In Erie County, for example, admissions jumped from 8,969 in 1980 to 26,905 in 1998; in Onondaga County, from 5,220 to 20,022; and in Nassau County, from 7,744 to 16,330.

Bratton also brought CompStat to New York City, a crime mapping technology that targets areas deemed high crime by an algorithm, for intensified law enforcement.⁸⁵ It led to years of hyper-policing in low-income communities of color and immigrant communities, and to the initiation of a marijuana arrest crusade which arrested and jailed more than 353,000 people – overwhelmingly people of color – for simple possession between 1997 and 2006.⁸⁶ An explosion of “stop-and-frisk” encounters between the police and residents of housing projects and other poor Black and Latinx neighborhoods, and a de facto arrest quota system imposed on officers by precinct commanders, swept thousands more people into the criminal legal system.⁸⁷

Through vigorous and targeted enforcement of the war on drugs in communities with high proportions of non-citizens, New York law enforcement has ensured that thousands of immigrants receive drug convictions. These convictions have been used to feed the federal deportation machine for decades, tearing apart families and New York communities.

WHERE WE ARE TODAY

The drug war remains a powerful driver of immigration policy and discourse. As a presidential candidate in 2015, Donald Trump stated, “When Mexico sends its people, they’re...bringing drugs. They’re bringing crime. They’re rapists. And some, I assume, are good people.”⁸⁸ As a president, Trump inherited the expansive surveillance capabilities and enforcement power of DHS.⁸⁹ He used this power to dramatically increase immigration arrests and raids in co-called “sanctuary cities,” encouraging immigration officers to arrest and deport as many people as possible.⁹⁰ Drug convictions have been a reliable and consistent way to ensure removal of non-citizens and support these operations.

Due to immigration enforcement being within the purview of the federal government, states are somewhat limited in how they can protect non-citizens. Governors have the authority to correct the injustices of the criminal legal and immigration systems and use their power of clemency to eliminate criminal convictions and end excessive punishments.⁹¹ For immigrants who face deportation because of a past offense, a pardon may be the only way to fight permanent exile.⁹² California

By making a person who has been convicted of essentially any drug conviction subject to automatic deportation and mandatory detention, the drug war has provided a critical tool for immigration enforcement to remove non-citizens.

Governors and New York Governor Andrew M. Cuomo have taken a public stance on the depredations of ICE and the federal government and have used their pardon power to protect immigrant rights, although not to the extent they could have. Since 2013, Governor Cuomo has issued 66 pardons to prevent deportations, many of them drug-related.⁹³

Another way in which local and state governments have taken steps to protect immigrant communities has been through providing funding for legal representation in immigration proceedings. Immigrants do not have the right to an attorney under immigration law and have to represent themselves if they cannot afford one. Studies show that immigrants with attorneys fare better at every stage of the court process.⁹⁴ In 2013, after years of advocacy by immigrant rights organizations, New York City started to fund the New York Immigrant Family Unity Project (NYIFUP), providing free legal representation to low-income New Yorkers facing deportation.⁹⁵ In 2017, Governor Cuomo announced the launch of the Liberty Defense Project with an \$11.4 million initial investment from the state budget, providing pro bono legal and additional resources for immigrants.

State and local governments can limit their criminal legal system from coordinating with federal immigration enforcement. In New York, local governments, including the cities of New York, Albany, and Ithaca and the county of Westchester, have taken steps to protect their residents by limiting local law enforcement’s cooperation with ICE.⁹⁶ On October 31, 2017, the New York City Council passed Intro 1568-2017, establishing that no New York City resources can be used for federal immigration enforcement purposes.⁹⁷ A bill titled “The Protect Our Courts Act” that restricts ICE arrests in and around courthouses was signed into law in 2020.⁹⁸

Cities and states can also invest in alternative practices and policies around drug use that do not rely on carceral practices. Regardless of existing laws that criminalize drugs, jurisdictions can stop policing and prosecuting drug use. For example, Albany has chosen to employ harm reduction models through the Law Enforcement Assistance Diversion (LEAD) program – diverting people to support services – rather than the traditional policing and prosecution cycle.^{99*}

CONCLUSION

For decades, the war on drugs has been a principal driver of anti-immigrant animus and exclusionary policies. By making a person who has been convicted of essentially any drug conviction subject to automatic deportation and mandatory detention, the drug war has provided a critical tool for immigration enforcement to remove non-citizens. Drug offenses continue to account for a large share of immigration arrests and deportations. These policies cruelly tear people away from their families and homes without any consideration of individual circumstances. Unless we uproot the drug war from immigration policy, enforcement will continue to wreak irreparable harm on immigrants, their families, and communities across the nation.

* Law Enforcement Assisted Diversion (LEAD) is a pre-booking diversion pilot program developed with the community to address low-level drug and sex work law violations. The program allows police officers to redirect people engaged in low-level drug or sex work activity to community-based services, instead of jail and prosecution. Services include treatment for substance use disorders, housing, mental health services, and case management.

Acknowledgments

Almost five years after Drug Policy Alliance’s “White Faces, Black Lives” conference and 50 years after Richard Nixon’s declaration of the war on drugs, DPA releases these historical reports and accompanying resources to document the massive reach of the drug war, both within and beyond the criminal legal system. As more and more of the public calls for an end to decades of punitive drug policy, we must understand the deep roots of the drug war across systems, and we must stay attuned to ways in which the drug war warps and sinks its roots deeper into our lives.

In 2016, DPA’s New York Policy Office and the Department of Research and Academic Engagement hosted “White Faces, Black Lives,” a conference that convened organizers, researchers, and policymakers to combat the increasingly popular but misguided viewpoint that we were entering a kinder, gentler era of the drug war because the face of the opioid crisis was white. Black people, particularly Black people who use drugs and their family members, knew that not only were Black people being impacted by the overdose crisis but that, despite decades of positive reforms, the drug war was far from over. After meetings with people directly impacted by the drug war and family law, education, employment, immigrant, housing, treatment, and justice movement partners, DPA then launched “Color of Pain,” a website documenting the role of racism in drug policy and mapping the wide scope of the drug war.

The publication of “Uprooting the Drug War” is possible because of a rich legacy of writers, thinkers, partners, and doers within and beyond the drug policy reform movement. This project - and past, present, and future organizing and advocacy to end the drug war - is enriched by the experience and expertise of people who use drugs, incarcerated and formerly incarcerated people, and all people harmed by the drug war. A profound thank you to Elizabeth Brico, Lauren Johnson, Steven Mangual, Miguel Perez Jr., Emily Ramos, and Jasmin Reggler for sharing and documenting their stories in these reports of how the drug war has impacted their lives and the lives of their loved ones. Deep gratitude to our movement partners who shared their insight and expertise and were willing to review drafts of these reports and provide indispensable feedback: Mizue Aizeki, Erin Burn-Maine, Gabrielle de la Guéronnière, Jeanette Estima, Tommasina Faratro, Kesi Foster, Nancy Ginsburg, Shayna Kessler, Emma Ketteringham, Amber Khan, Pamela Lachman, Marie Mark, Roberta “Toni” Meyers Douglas, Erin Miles Cloud, Tracie Gardner, Johanna Miller, Jeffrey A. Nemetsky, Victoria Palacio, Lisa Sangoi, Christopher Watler, and Alison Wilkey. We are also grateful to the organizations who took part in building our understanding in so many areas: Bronx Defenders, Brooklyn Community Housing and Services, Center for Employment Opportunities, Federation of Protestant Welfare Agencies, Immigrant Defense Project, John Jay College Institute for Justice and Opportunity, Legal Action Center, Legal Aid Society, Make the Road New York, Movement for Family Power, National Advocates for Pregnant Women, New York Civil Liberties Union, and Vera Institute. Current and former members of DPA’s New York Policy Office conceptualized this project and saw it through until its publication: thank you to Chris Alexander, Kassandra Frederique, Dionna King, Kristen Maye, Melissa Moore, Elena Riecke, Christiana Taylor, and Tejas Venkat-Ramani. Members of DPA’s Policy Team Aliza Cohen, Lindsay LaSalle, Jules Netherland, and Kellen Russoniello assisted in editing these reports. DPA expresses profound appreciation to Loren Siegel, a longtime DPA thought partner and the principal author of these historical reports.

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