

Illegal Aliens in Federal, State, and Local Criminal Justice Systems

Summary

by Rebecca L. Clark and Scott A. Anderson
The Urban Institute
2100 M Street, NW, Washington, DC 20037

OVERVIEW OF PROBLEM

With the rising concern about the numbers and impacts of illegal aliens in the United States — as evidenced by the sweeping passage of Proposition 187 in California, the immigrant provisions in 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), and Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) — *criminal* illegal aliens have become a subject of particular focus. These individuals have not only entered or resided in the United States without the knowledge or permission of the U.S. government, but, while here, they have also violated the laws of the nation, its states, or municipalities.

At state and local levels, the costs of arresting, prosecuting, sentencing, and supervising criminal illegal aliens has become a major issue. Six states have filed suits to force the federal government to reimburse them for criminal justice costs associated with illegal aliens. They have argued that it is the federal government's responsibility to keep illegal aliens out of this country and to expel illegal aliens who have gained entry, and that, therefore, the federal government should offset any fiscal impacts that these illegal aliens have on lower levels of government through direct reimbursement. None of these suits has been successful.

The federal government has taken some steps to reimburse states for some of the costs associated with criminal illegal aliens. Section 510 of the Immigration Reform and Control Act of 1986 (IRCA) authorized the Attorney General to reimburse states for the criminal justice costs attributable to undocumented persons. No appropriations for illegal aliens were made until 1994, when the Violent Crime Control and Law Enforcement Act (Public Law 103-317 or the Crime Act of 1994) authorized \$1.8 billion over six years to reimburse states for criminal justice costs associated with illegal aliens. The State Criminal Alien Assistance Program (SCAAP) was established to allocate and distribute these monies.

This research describes the characteristics of illegal aliens in the criminal justice system at federal, state, and local levels. A goal of this project is to be as nationally representative as possible, given the limits of existing data sets. The federal-level analysis is based on two data sets, from the Pretrial Services Act Information System (PSAIS) and the U.S. Sentencing Commission (USSC), which are representative of individuals involved in the federal criminal justice system. (The PSAIS contains information on defendants charged with federal offenses

whom pretrial service officers interview, investigate, or supervise. The USSC Monitoring Data Base contains information on criminal defendants sentenced according to the Sentencing Reform Act of 1984.) The state-level analysis is based on data collected for the SCAAP on the seven states with the most illegal aliens, Arizona, California, Florida, Illinois, New Jersey, New York, and Texas (Warren 1997). All of these states except Illinois filed suits to force the federal government to reimburse them for criminal justice costs associated with illegal aliens. The local-level analysis is limited to one site, Cook County, Illinois, and is based on data collected from the INS District Office and the Cook County Department of Corrections.

KEY FINDINGS

1. How many illegal aliens are there in prison and elsewhere in the criminal justice system?

USSC

- ▶ In 1995, there were 4,081 illegal aliens sentenced in federal district courts, 11 percent of the total sentenced.

PSAIS

- ▶ As in the USSC data, in 1995, illegal aliens represented a high share (14.4 percent) of individuals entering the Pretrial Services Act Information System (PSAIS).

SCAAP

- ▶ The INS identified 14,262 illegal aliens among state prisoners in 1995 from California, Texas, New York, Florida, Illinois, Arizona, and New Jersey. INS was unable to determine the legal status of 48 percent of foreign-born prisoners in these states.
- ▶ California contained a disproportionately large share of illegal alien state prisoners, 71 percent of illegal aliens identified by the INS, which appears to reflect its large share of the resident illegal alien population and the relatively large share of the state's submissions for which the INS was able to determine immigrant/legal status.

Cook County

- ▶ There were 228 bookings of individuals identified as illegal aliens by the Cook County Department of Corrections (CCDC) between 1994 and 1996.

2. Between 1991 and 1995, how and why has the number of illegal aliens entering the criminal justice system changed?

USSC

- ▶ The number of illegal aliens sentenced in federal courts increased by 167 percent, compared with 13 percent for citizens. The number of legal aliens declined by 18 percent over this period.
- ▶ The share of defendants in federal courts who were illegal aliens rose from 4 percent to 11 percent while the share who were legal aliens declined from 12 percent to 9 percent.
- ▶ The number of illegal aliens sentenced increased for 89 of the 94 federal district courts, for all major offense categories, and for all major country of citizenship groups.
- ▶ The increase in the number of illegal aliens appears to be partially attributable to improved border enforcement on the Southwest border—where increases were largest; growth in the resident illegal alien population; and improved identification of illegal aliens in the USSC data and by law enforcement officials.
- ▶ The sharp increase in the number of illegal aliens sentenced is responsible for more than half of the overall increase in the number of defendants sentenced in federal courts and 44 percent in the growth in costs of federal post-sentencing incarceration and supervision.

PSAIS

- ▶ The number of illegal aliens entering the PSAIS increased by 45 percent, more than the increase for the resident undocumented alien population, 30 percent. Most of the increase occurred between 1994 and 1995.
- ▶ Almost the entire increase in the number of illegal aliens entering the PSAIS can be explained by an increase in the number of illegal aliens arrested for immigration offenses between 1994 and 1995; most of the new apprehended immigration offenders in 1995 were from California.

3. What types of offenses have illegal aliens been convicted of? How do the types of offenses compare with the general population?

USSC

- ▶ The major offenses for which illegal aliens were convicted in federal court in 1995 were unlawfully entering the United States (47 percent of the total), drug trafficking (27 percent), other immigration offenses (11 percent) and fraud (5 percent).

- ▶ Illegal aliens sentenced in federal courts were more likely than legal aliens or U.S. citizens to have at least one prior conviction resulting in a sentence of at least 60 days.
- ▶ For U.S. citizens and legal aliens, drug trafficking and fraud were the most common major federal offense conviction.

PSAIS

- ▶ In 1995, illegal aliens were more likely to be charged with an immigration offense (60 percent) or drug trafficking (22 percent) than any other offense. Legal aliens and citizens were most likely to be charged with drug trafficking offenses (50 percent and 35 percent respectively).

SCAAP

- ▶ The most common offenses for which illegal aliens were convicted were drug offenses in all states except Florida. For states distinguishing among types of drug offenses, drug trafficking was more common than drug possession, except in Texas.
- ▶ In Florida, the most common offense among illegal aliens in state prisons was murder. Both illegal and legal aliens in Florida were far more likely than aliens in other states to have been convicted of violent offenses against a person.
- ▶ In Florida, the high share of murders, and other violent crimes against individuals, among illegal aliens cannot be attributed to any one country of origin group. For each major country of origin groups murder and other violent crimes were substantially more common in Florida than they were in the other major immigrant states. The large share of violent offenders in Florida may be related to Florida's policies on deporting criminal aliens.

Cook County

- ▶ About 14 percent of CCDC illegal aliens have at least one prior conviction.
- ▶ Like the general CCDC population, the most common charges for illegal aliens are drug offenses. Among illegal aliens, Mexicans are less likely than non-Mexicans to have been charged with drug offenses.

4. What *types* of illegal aliens are in the criminal justice system? What are their characteristics?

USSC

- ▶ In 1995, California accounted for more illegal aliens sentenced in federal courts than any other state, 31 percent of the total. Texas had the next highest number of illegal aliens, 18 percent; together these two states accounted for about half of the illegal aliens sentenced. Other states with large number of illegal aliens sentenced were New York, Arizona, Florida, Oregon, and Washington.
- ▶ Mexicans made up the largest share of illegal aliens sentenced in federal court. The second largest group was Colombians, followed by Dominicans, Jamaicans, and Nigerians. Mexicans dominated in most of the major immigration states, but Colombians were the largest group in New York, Florida, and New Jersey.
- ▶ Major offenses among illegal aliens differed significantly by country of citizenship. In 1995, Mexicans were the only group for which unlawful entry was the dominant offense. Colombians were the only group for which drug trafficking was the dominant offense and for which a substantial share were convicted of money laundering. Nigerians were the only group for which fraud constituted a major offense.

SCAAP

- ▶ Mexico was the dominant country of origin among illegal alien state prisoners in Arizona, California, Texas, and Illinois. In New York, Florida, and New Jersey, illegal immigrants from the Caribbean and from Central and South America constituted the largest shares of illegal aliens in state prisons, although in these states no single country or country group dominated.
- ▶ The vast majority of illegal alien state prisoners entered the United States illegally, rather than entering the country legally and then remaining after their authorized period of stay had expired. Texas and California had the largest share of illegal aliens who entered without inspection — 94–95 percent — while shares for Illinois and New Jersey were the lowest — 85–86 percent.
- ▶ Types of offense committed differed by country of origin. Colombians and Dominicans were especially likely to have been imprisoned for drug-related offenses. Among Haitians and Nicaraguans, drug offenses were relatively uncommon.

Cook County

- ▶ Eighty-five percent of illegal aliens detained by the CCDC were citizens of Mexico. The second most common country of citizenship was Colombia, accounting for 4 percent.

- ▶ Among Mexican illegal aliens, most are from the interior Mexican states, such as Guerrero, the largest contributor with 12 percent of the total. Few are from states bordering the United States.
- ▶ Eighty-nine percent of illegal aliens in the CCDC entered the United States entered without inspection. Mexicans were substantially more likely to have entered without inspection than illegal aliens from other countries.
- ▶ Nearly half of illegal aliens in the CCDC (46 percent) entered the United States at San Ysidro, California near San Diego. Other major points of entry were El Paso, Texas (13 percent), Nogales, Arizona (11 percent), and Laredo, Texas (9 percent).
- ▶ An overwhelming majority of illegal aliens in the CCDC appear to be U.S. residents. Ninety percent had been in the United States for at least a year; none been in this country for less than a month. Furthermore, 14 percent have one or more U.S. citizen children.
- ▶ About 8 percent of illegal aliens in the CCDC have already been deported at least once.

5. What are the socioeconomic and demographic characteristics of illegal aliens in prison or in other parts of the criminal justice system? How do they compare with others in the criminal justice system?

USSC

- ▶ Sentenced illegal aliens, compared with legal aliens and U.S. citizens, were poorer, had lower educational attainment, were younger, were more likely to be Hispanic, were more likely to be male, and were less likely to have dependents.

PSAIS

- ▶ Illegal aliens entering the PSAIS were less educated, younger, and more likely to be white and Hispanic than legal aliens and citizens. The illegal aliens were more likely to be married than citizens but less likely than legal aliens.

SCAAP

- ▶ In most states, illegal aliens in state prisons were younger, on average, than legal aliens.

Cook County

- ▶ Illegal aliens are younger on average than the general CCDC population; 44 percent are under age 25, compared with 32 percent overall.
- ▶ A majority of illegal aliens in the CCDC are involved in construction trades, most often as laborers.

DISCUSSION

Accuracy in identifying illegal aliens

One potential problem with this analysis is that it is not clear that all aliens are identified as such, particularly in the PSAIS, USSC, and SCAAP data. If law enforcement officials misidentify some aliens as natives, then the process of ascertaining exact immigrant/legal status is never begun, so illegal aliens are not identified. Misidentification as natives would probably be limited to aliens who are not arrested for immigration offenses and who, among those charged with federal offenses, at least, could produce a social security number.

According to the federal officials we spoke with, there are no formally established policies to ensure that all aliens, particularly illegal aliens, are identified as such in the USSC and PSAIS. The procedures they described seem adequate, especially USSC procedures such as investigating all individuals who cannot produce a social security number and asking detailed questions about defendants' family members, especially the location of their parents. Establishing standard guidelines for deciding whether an individual's immigration status should be determined would probably reduce the likelihood that aliens are misidentified as natives, especially in areas where few aliens are apprehended.

Federal officials told us that, once an individual was identified as possibly being an alien, their status was determined by either talking to INS officials or accessing INS records. Given the INS's own difficulties in determining the immigrant/legal status of the prisoners whose names were submitted by states for reimbursement under SCAAP, which lead to a match rate of only 52 percent in 1995 for the seven states we examined, it is surprising that the missing data rates for the PSAIS and USSC data were so low. We were unable to determine the exact procedures used for PSAIS and USSC status determination, but it seems likely that defendants who could not be matched to INS records were assumed to be illegal aliens, although our research suggests that some individuals who cannot be matched to INS records are not illegal aliens. One explanation for the high level of immigrant/legal status determination in the USSC and PSAIS data is that a large share of the individuals identified as illegal aliens in the data bases were charged or convicted of unlawfully entering the United States, which, as an offense that only applies to illegal aliens, contains within it the immigrant/legal status identification of the defendant. At the state level, there are no offenses that can be used to automatically assign immigrant/legal status. One method of further investigating the accuracy of immigrant/legal status determination would be to match defendants in the USSC and PSAIS data to INS records in a process similar to that used for SCAAP. (The match rate for state SCAAP submissions rose to 70 percent by 1995, suggesting matching procedures have improved.)

Improving the efficiency of identifying illegal aliens

One issue that we were not able to resolve is whether there is duplication of effort involved in identifying the immigrant/legal status of federal defendants. It is possible that for some defendants, immigrant/legal status is determined three times, once in the pretrial period, another time before sentencing, and a final time after conviction, by INS officials screening for potentially deportable criminal aliens. Putting in place a system through which the information

from each status determination, including its source, is passed along through the different stages of the criminal justice system could potentially cut down on the time it takes to process foreign-born prisoners and would allow refinement of the procedures used to identify aliens, particularly illegal aliens.

One problem we identified was the difficulty in consistently recording names that follow Spanish surname conventions, which often include two-part last names. Matching individuals within and across data sets would be considerably easier and more efficient if a single convention for recording these last names was developed and disseminated to all governmental law enforcement agencies who have responsibility for dealing with large numbers of foreign-born individuals. Adoption of such a convention would be advantageous to all levels of government because it would facilitate the identification of potentially deportable criminal aliens.

Recent General Accounting Office reports have identified difficulties the INS has in tracking potentially deportable criminal aliens (U.S. General Accounting Office, 1997a, 1998). Recent improvements in making status determinations for SCAAP submissions suggests the INS's performance is improving. Having integrated, up-to-date INS data systems would reduce the workload of pretrial services officers and would improve the information magistrates and judges have when making the decision whether to detain or release federal defendants.

Explaining why the number of illegal aliens in the federal criminal justice system has increased

While this analysis of federal data sets has shown that the number of illegal aliens in the federal criminal justice has increased sharply, our ability to explain this increase was limited. It appears to be due in part to increased border enforcement, better identification of illegal aliens, and the growth of resident illegal alien population, although other factors may play a role. Data such as the PSAIS and USSC are only of limited use in determining the causes for changes in criminal activity. We were able to show that, following the introduction of Operations Hold the Line and Gatekeeper, the number of illegal alien defendants charged with and convicted of unlawful border crossing increased, although convictions for this offense also rose in virtually all districts, not just the two that were home to the initiatives. Lacking any details in the data sets about the law enforcement initiatives that were associated with each arrest, conclusions about the link between enforcement and arrests are suggestive, but not conclusive. However, ability to track changes in levels of criminal activity among illegal aliens would be improved if more data about aliens were collected.

With the PSAIS and USSC data, it is not possible to calculate prosecution or conviction rates for the entire illegal alien population. While these data sets provide estimates of the number of illegal aliens charged with and convicted of federal offenses, the denominator for the rate cannot be calculated. The INS produces estimates of the *resident* illegal alien population of the United States, but it is clear from the description of offenses, specifically the large share of illegal aliens convicted of unlawful entry in border states, that a tremendous share of the illegal aliens appearing in the PSAIS and USSC are not resident illegal aliens; they are recent border crossers. An unknown share of illegal aliens convicted of other offenses are also recent arrivals. In order to calculate prosecution and conviction rates for resident illegal aliens, it would be

necessary to add information for illegal aliens' length of stay in the United States to the PSAIS and USSC data sets. Attributing all offenses committed by illegal aliens to the resident illegal alien population would result in a gross overestimate of the criminal propensity of this population.

The PSAIS and USSC data also cannot be used to assess the level of criminal involvement of immigrants who entered the country legally. Using these data would underestimate criminal involvement among immigrants admitted legally because the data sets do not distinguish between naturalized citizens and U.S. natives.

The number of legal aliens sentenced in federal court declined dramatically between 1994 and 1995. This decline took place in virtually all districts, not just in border areas. More research should be done to determine the reasons for this decline, whether it was also observed at state and local areas, and whether it continued through the rest of the 1990s. Since legal aliens' crime rates were already declining when the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 was passed, it may be difficult to assess whether this law will have an effect on legal aliens' criminal activity.

Implications for developing strategies for reducing crimes committed by illegal aliens

The analysis of Cook County and of the SCAAP data from California, New York, Texas, Florida, Illinois, New Jersey, and Arizona shows that the vast majority of illegal alien offenders in these areas were individuals who entered without the knowledge or permission of the U.S. government ("EWIs" for entered without inspection) rather than individuals who were admitted legally but remained in the United States after their authorized period of stay had ended ("overstays"). If a primary goal of detecting and removing illegal aliens is to reduce criminal activity, then resources are better expended targeting EWIs rather than overstays.

Our Cook County analysis suggests that a large proportion of illegal aliens apprehended at the local level are long-term settlers. Further research needs to be done in order to assess whether this finding also holds true in other areas and in the federal courts. Assessing the relative impact of long-term and short-term illegal aliens on overall level of crime in the United States would be useful in two ways. First, it would help policy makers and law enforcement officials assess the effects of increased border enforcement activities on illegal aliens' participation in crimes other than unlawful entry. Second, when deciding whether to seek out and deport long-term illegal residents, policy makers should have access to accurate assessments of their criminal activity; the costs of the resident illegal aliens will be overestimated if all crimes committed by illegal aliens, regardless of their length of residence, are ascribed to the resident illegal alien population.

The increase in prosecutions and convictions of illegal aliens appears to have significantly affected both the number and the estimated costs of incarcerating and supervising of defendants convicted in federal courts. Since a substantial share of the increase in illegal aliens convicted appears to be due to increased border enforcement, this increased burden on the federal criminal justice system can be seen as a secondary cost of such border enforcement.

If border interdiction efforts successfully reduce attempted illegal entry, this negative impact on the federal criminal justice system may be short-term. Furthermore, by reducing the number of EWIs, whom our analysis suggests are responsible for more criminal offenses than overstays, successful border control efforts would probably have a particularly large impact on reducing the amount of criminal activity among illegal aliens.

Reducing the number of illegal aliens entering the United States may affect crime rates far beyond the U.S.-Mexican border. The Cook County analysis shows that 46 percent of illegal aliens arrested had entered at San Ysidio, near San Diego and part of Operation Gatekeeper, and 13 percent had entered at El Paso, home of Operation Hold the Line. If these and similar operations actually reduce illegal entry, rather than simply shifting it to other regions, Cook County, and probably other areas, will eventually see a reduction in the number of illegal aliens apprehended for criminal activity.

A recent General Accounting Office (1997) report suggests that the effects of INS's southwest border strategy are inconclusive. Analysis based on INS I-213 forms, similar to our analysis for Cook County, may be enlightening because these forms include information on legal status and date of entry for foreign-born arrestees. Rather than relying on overall crime trends, as has been done in the past, analysts would be able to track whether, in border areas, arrests of recently arrived illegal aliens have declined since these border efforts have been introduced. A complete assessment would also include adjacent areas, which have become more popular entry points for illegal aliens, and selected other non-border sites, such as Cook County, where illegal aliens who entered at or near San Diego and El Paso dominate the apprehended illegal aliens.