



## Bureau of Justice Statistics Special Report

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# Noncitizens in the Federal Criminal Justice System, 1984-94

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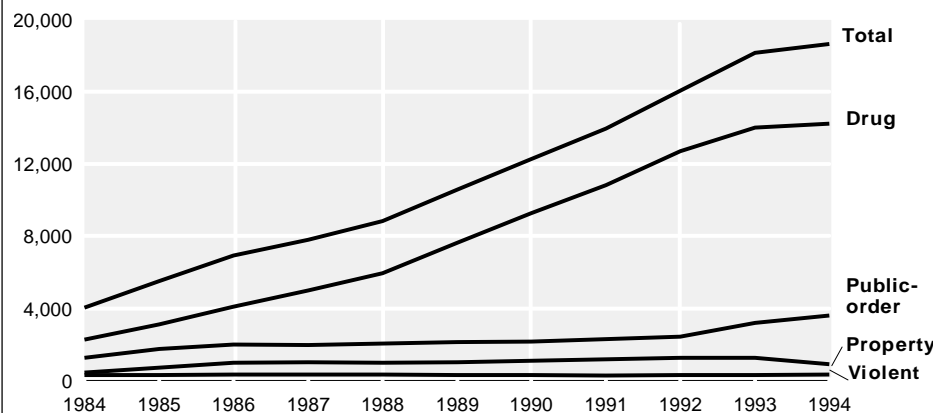
The number of noncitizens processed in the Federal criminal justice system increased an average 10% annually from 1984 to 1994. During 1984, 3,462 noncitizens were prosecuted in U.S. district courts; during 1994, more than 10,000 were prosecuted. The greatest part of this increase occurred between 1986 and 1989, when the number increased by almost 6,000. Since 1989 the number has remained fairly stable.

In contrast to the substantial increase in the number of noncitizens prosecuted, the overall Federal criminal caseload increased at a much slower rate between 1984 and 1994 — an average of less than 2% annually. During 1984 approximately 49,000 defendants were prosecuted in U.S. district courts; during 1994 approximately 59,000 were prosecuted.

The increase in the overall number of noncitizens prosecuted is primarily the result of the increase in the number of noncitizens charged with drug offenses — particularly between 1986 and 1989. The number of noncitizens charged with a Federal drug offense increased at an average 13% annually

### Highlights

#### Noncitizens in Federal prisons, 1984-94



- Between 1984 and 1994, the number of noncitizens serving a sentence of imprisonment in a Federal prison increased an average of 15% annually — from 4,088 to 18,929; the overall Federal prison population, by contrast, increased an average 10% annually — from 31,105 to 87,437.

- 55% of the noncitizens prosecuted in Federal court during 1994 were in the United States legally.

- During 1984 about 35% of noncitizens prosecuted in Federal court were charged with a drug offense. By 1994 the proportion charged with a drug offense had increased to 45%.

- Nearly all (93%) prosecutions for immigration offenses involved noncitizens.

- 1.4% of noncitizens prosecuted in Federal court were charged with a violent crime compared with 8.5% of citizens.

- Noncitizens convicted of a Federal drug offense were more likely than citizens to have played a minor role in the drug conspiracy. Approximately 29% of noncitizens convicted of a drug offense received a downward sentencing adjustment for "mitigating role," compared with 14% of U.S. citizens.

from 1984 to 1994. During 1984, 1,204 noncitizens were charged with a drug offense; during 1994 more than 4,600 were charged with a drug offense.

Noncitizens convicted of a Federal drug offense were more likely than citizens to have played a minor role in the drug conspiracy. Approximately 29% of noncitizens convicted of a drug offense received a downward sentencing adjustment for "mitigating role," compared with 14% of U.S. citizens. Similarly, among Federal prison inmates serving a sentence for a drug conspiracy, 69% of noncitizens, compared with 56% of U.S. citizens, identified their role in the conspiracy as low-level.

During 1994, 4,322 noncitizens convicted of a Federal drug offense received a prison sentence with an average term of 69.9 months (table 9). U.S. citizens convicted of a Federal drug offense received prison sentences with an average term of 85.2 months. By law, Federal prisoners must serve at least 85% of the sentence before being released.<sup>1</sup> Therefore, a noncitizen convicted of a drug offense and sentenced to the average term of imprisonment could expect to serve 61 months before being released and deported.

<sup>1</sup>The 85% rule applies to all defendants sentenced pursuant to the Sentencing Reform Act of 1984. Of all defendants convicted of a felony offense during 1993, approximately 96% were sentenced pursuant to the Sentencing Reform Act.

Because of the increases in the number of noncitizens convicted and in time served by offenders, the number of noncitizens serving a sentence in Federal prison increased an average 15% annually between 1984 and 1994. During 1984, 4,088 noncitizens were serving a sentence of imprisonment — 56% for a drug offense; during 1994, 18,929 were incarcerated — 75% for a drug offense.

The number of noncitizens serving a sentence of imprisonment increased at a faster rate than the overall Federal prison population. While the number of noncitizens incarcerated increased an average 15% annually, the overall population increased by 10% annually — from 31,105 during 1984 to 87,437 during 1994.

The average cost to incarcerate an inmate in a Federal correctional institution during 1994 was approximately \$21,300. Therefore, the U.S. Government expended an estimated \$400 million during 1994 to incarcerate 18,929 noncitizens who were convicted of a Federal offense.

### Types of noncitizens

Federal law identifies three major types of noncitizens:

- (1) *immigrants* — persons who migrate to the United States and who are granted legal permanent residence
- (2) *refugees* and *asylees* — persons who are outside of their country of nationality and are unable or unwilling to return to that country for fear of persecution

(3) *nonimmigrants* — persons who are admitted to the United States for a temporary period but not for permanent residence, for example, tourists, students, foreigners working in the United States, and Mexican and Canadian citizens with Border Crossing Cards.

The vast majority of noncitizens legally admitted to the United States are nonimmigrants. Excluding *border crossers*, many of whom make numerous entries annually, about 23 million noncitizens were admitted during 1994: approximately 800,000 were immigrants, 126,000 were refugees and asylees, and more than 22 million were nonimmigrants (table 1). The majority (78%) of nonimmigrants admitted to the United States were tourists. The number of noncitizens legally admitted to the United States increased at an average of 8% annually from approximately 10 million during 1984 to 23 million during 1994.

### Status of noncitizens

The U.S. Immigration and Naturalization Service (INS) assigns a status to identify the legality of a noncitizen's presence in the United States. The two statuses used include:

- (1) *legal aliens* — noncitizens who enter the United States after inspection and have not violated the terms of their admission;
- (2) *illegal aliens* — noncitizens who (a) enter the United States without having been admitted after inspection or without presenting themselves for inspection or

**Table 1. Number of noncitizens admitted to the United States, 1984-94 (in thousands)**

Type of entry	1984	1985	1986	1987	1988	1989	1990	1991 <sup>c</sup>	1992 <sup>c</sup>	1993 <sup>c</sup>	1994
Total	9,917	10,179	11,135	12,947	15,322	17,346	19,226	20,850	22,012	22,580	23,048
<b>Immigrants</b>	544	570	602	602	643	1,091	1,536	1,827	974	904	804
<b>Refugees and asylees</b>	80	69	62	72	87	110	116	103	127	120	126
Refugees <sup>a</sup>	68	62	58	67	80	101	110	100	123	113	114
Asylees <sup>b</sup>	12	7	4	5	7	9	6	3	4	7	12
<b>Nonimmigrants</b>	9,293	9,540	10,471	12,273	14,592	16,145	17,574	18,920	20,911	21,556	22,118
Tourists	6,595	6,609	7,342	8,887	10,821	12,115	13,418	14,618	16,441	16,918	17,154
Business	1,623	1,797	1,938	2,132	2,376	2,553	2,661	2,616	2,788	2,961	3,164
Other	1,075	1,134	1,191	1,254	1,395	1,477	1,495	1,686	1,682	1,677	1,800

<sup>a</sup>The number of refugees reported represents the number admitted.  
<sup>b</sup>The number of asylees reported represents the number of individuals granted asylum by INS district directors and asylum officers.

<sup>c</sup>The number of nonimmigrants admitted during 1991-93 reflects the revised numbers published by INS in the 1994 *Statistical Yearbook*. Source: United States Department of Justice, Immigration and Naturalization Service, *Statistical Yearbook*, annual.

(b) legally enter the United States but who subsequently violate a condition of their visa, for example, by remaining in the United States beyond the period authorized or by committing a criminal offense.

*Criminal aliens* are noncitizens who have been convicted of certain felonies, such as, for example, crimes of moral turpitude (like murder, manslaughter, rape), drug trafficking offenses, certain firearms offenses, or certain offenses relating to national security.<sup>2</sup>

By law, noncitizens classified as *criminal aliens* are deportable once criminal proceedings against them have been terminated or after they have completed serving their sentence.

Fifty-five percent of the noncitizens prosecuted in U.S. district courts were identified by pretrial service officers as *legal aliens* at the beginning of their prosecution.

### Processing illegal aliens

The vast majority of noncitizens entering the United States from 1984 to 1994 were *legal aliens* — primarily tourists. While the exact number of *il-*

<sup>2</sup>A *criminal alien* is defined by statute at 8 U.S.C § 1251(a)(2). The statute describes specific offenses for which noncitizens can be deported.

*legal aliens* in the United States is not known, INS estimates their number to be between 3 and 4 million.<sup>3</sup> During a 4-year period beginning October 1988, the estimated number of *illegal aliens* in the United States increased approximately 299,000 per year.<sup>4</sup> INS apprehends and expels more than 1 million *illegal aliens* annually. Approximately 97% of those apprehended during 1994 were Mexican nationals intercepted at the border attempting to enter without inspection.<sup>5</sup> Additionally, approximately 5,500 persons were denied entry into the United States for cause: 47% for prior criminal convictions and 47% for entry without inspection.<sup>6</sup>

INS has several options for removing an *illegal alien* from the United States. Fewer than 3% of those apprehended are actually deported. The most commonly used method for removing an

<sup>3</sup>Robert Warren, "Estimates of the Unauthorized Immigrant Population Residing in the United States, by Country of Origin and State of Residence: October 1992," U.S. Immigration and Naturalization Service (April 29, 1994) as cited in Rebecca L. Clark, Jeffrey S. Passel, Wendy N. Zimmermann, and Michael E. Fix, *Fiscal Impacts of Undocumented Aliens: Selected Estimates for Seven States*, The Urban Institute (September, 1994).

<sup>4</sup>Warren (1994).

<sup>5</sup>United States Immigration and Naturalization Service, *Statistical Yearbook*, 1994.

<sup>6</sup>INS (1994).

illegal alien is *voluntary return with safeguards*. Under this method, aliens admit to their illegal status and agree to leave the United States voluntarily. Unlike deportation, voluntary departure does not require adjudication by an immigration judge. Aliens who are voluntarily returned at no expense to the

**Table 2. Country of citizenship of noncitizens convicted of an offense in U.S. district courts, 1994**

Country of citizenship	Number	Percent
Total	8,594	100.0%
Mexico	4,178	48.6
Colombia	879	10.2
Dominican Republic	493	5.7
Nigeria	340	4.0
Cuba	337	3.9
Jamaica	284	3.3
Canada	188	2.2
China	84	1.0
El Salvador	82	1.0
Vietnam	77	.9
Great Britain	77	.9
Guyana	64	.7
Philippines	59	.7
Venezuela	56	.7
Korea	54	.6
Trinidad	52	.6
Other	1,290	15.0

Notes: Of the 8,784 noncitizens convicted in U.S. district courts during 1994, 200 were excluded due to missing data describing country of origin. Data source: United States Sentencing Commission, Monitoring data file, annual.

### Apprehending and deporting criminal aliens

The Immigration and Nationality Act of 1990 authorizes the INS to apprehend and deport *criminal aliens*.<sup>\*</sup> The number of criminal aliens living in the United States is unknown. Identification of criminal aliens who are deportable requires cooperation between the INS and Federal, State, and local law enforcement agencies. INS generally relies upon these other law enforcement agencies to identify individuals who have come in contact with the criminal justice system and whom the agencies believe to be aliens.

While aliens can be identified at different stages of the criminal justice process, INS tends to concentrate attention on those aliens who have been charged with, or convicted of, a deportable crime. Once a deportable alien is identified, INS issues a detainer. An alien under an INS detainer is deported after the criminal proceeding or sentence has been completed. INS reported that nearly 32,000 criminal aliens were deported during 1995.

To address the increasing number of *criminal aliens*, INS developed a comprehensive strategy. INS's *Criminal Alien Apprehension Program*, implemented in 1991, was designed

<sup>\*</sup>See 8 USC § 1252(h).

(1) to improve INS's reactive approach to identifying aliens charged with, or convicted of, a crime, and (2) to develop a more proactive approach for identifying criminals who are aliens by focusing law enforcement resources in areas of criminal activity with high concentrations of alien participants.

In addition, INS submits information to the Federal Bureau of Investigation's National Crime Information Center (NCIC). NCIC is a national database for information on crime, particularly whether a person is wanted by law enforcement. INS reports information to NCIC on aliens under deportation orders for previous criminal activity as well as aliens who have entered the United States without inspection and for whom a warrant of deportation has been issued. Because these aliens are included in the NCIC system, many apprehensions result from routine traffic stops or relatively minor offenses. As of March 1994, INS had entered 2,640 aliens into the NCIC database. Of these 2,640 aliens, 344 were arrested by State and local police officers — 199 were deported and 8 were placed under an INS detainer.

United States are not prohibited from legally entering at a later time. During 1994 more than 39,000 aliens were deported and more than 1 million voluntarily departed.<sup>7</sup>

Under Federal law a *deported* alien may not be admitted to the United States for 5 years after deportation. Entry by a previously deported alien within 5 years of deportation is a criminal offense subject to a maximum term of 2 years' imprisonment.<sup>8</sup> Entry by a previously deported alien with a criminal history including a drug offense is a criminal offense subject to a maximum term of 10 years' imprisonment. Entry by a previously deported alien with a criminal history including an aggravated felony is a criminal offense subject to a maximum term of 20 years' imprisonment.<sup>9</sup> During 1994, 1,450 noncitizens were convicted for illegal entry into the United States after a previous deportation: 54.8% of these noncitizens had a criminal history including a drug offense but not including an aggravated felony, and 23.8%, a criminal history including an aggravated felony.

### Characteristics of noncitizens prosecuted in U.S. district courts

#### Country of citizenship

Noncitizens convicted of a Federal offense during 1994 were from more than 75 countries. Nearly half (48.6%) of all noncitizens convicted were from Mexico (table 2). Additionally, 14.6% of the noncitizens convicted were from South America, 14.2% were from the Caribbean Islands, and 2.2% were from Canada. (Not all countries are shown in the table.)

#### Demographic characteristics

Most noncitizens prosecuted in U.S. district courts were from Latin America. Hispanics comprised 75.7% of noncitizens prosecuted (table 3). Eleven percent of the noncitizens prosecuted were black non-Hispanic; 7.9% were white non-Hispanic; and 5.3% were Asian. Those noncitizens identified as black were primarily from Nigeria

(31.3%) and Jamaica (29.9%), and those noncitizens identified as Asian were primarily from China (16.5%), Vietnam (15.3%), Korea (11.1%), and the Philippines (10.3%) (not shown in a table).

Among defendants prosecuted in U.S. district courts, noncitizens tended to be younger and less educated than citizens: 51% of noncitizens were under age 30, compared with 42% of citi-

**Table 3. Selected demographic characteristics of citizen and noncitizen defendants prosecuted in U.S. district courts, 1994**

	U.S. citizens		Noncitizens	
	Number	Percent	Number	Percent
Total <sup>a</sup>	32,401	100.0%	10,352	100.0%
<b>Race/ethnicity<sup>b</sup></b>				
White	15,998	49.6	814	7.9
Black	11,121	34.5	1,135	11.1
Hispanic	4,009	12.4	7,760	75.7
Other <sup>c</sup>	1,119	3.5	548	5.3
<b>Age<sup>d</sup></b>				
Under 19 years	548	1.7%	183	1.8%
19 to 20 years	1,719	5.5	457	4.6
21 to 30 years	11,059	35.1	4,433	44.4
31 to 40 years	9,132	29.0	3,347	33.5
41 years or older	9,030	28.7	1,557	15.6
<b>Educational level<sup>e</sup></b>				
College graduate	2,805	9.6%	550	7.2%
Some college	6,944	23.7	982	12.9
High school graduate	10,916	37.3	1,593	20.9
Not high school graduate	8,627	29.5	4,483	58.9

Note: Of the 59,351 defendants prosecuted in U.S. district courts and terminating pretrial supervision or detention during 1994 data were available for 45,169. An additional 2,416 were excluded because of missing data describing citizenship.

<sup>a</sup>Includes cases for which demographic characteristics were unavailable.

<sup>b</sup>Excludes 95 noncitizens and 154 citizens for whom information describing race/ethnicity was unavailable.

<sup>c</sup>Noncitizens in the "other" racial group were primarily Asian.

<sup>d</sup>Excludes 175 noncitizens and 913 citizens for whom information describing age was unavailable.

<sup>e</sup>Excludes 2,744 noncitizens and 3,109 citizens for whom information describing educational level was unavailable.

Data source: Administrative Office of the U.S. Courts, Pretrial Services Agency.

**Table 4. Criminal history of citizen and noncitizen defendants prosecuted in U.S. district courts, 1994**

	U.S. citizens		Noncitizens	
	Number	Percent	Number	Percent
Total <sup>a</sup>	32,401	100.0%	10,352	100.0%
<b>No known criminal history</b>	10,707	38.6%	4,975	56.3%
<b>Prior criminal history</b>				
Misdemeanor only	5,765	20.8%	1,153	13.0%
Felony	11,245	40.6	2,714	30.7
Nonviolent	6,336	22.9	1,891	21.4
Violent	4,909	17.7	823	9.3
<b>Number of prior convictions</b>				
1	5,582	32.8%	1,444	37.3%
2 to 4	7,008	41.2	1,595	41.2
5 or more	4,420	26.0	828	21.4

Note: Of the 59,351 defendants prosecuted in U.S. district courts and terminating pretrial supervision or detention during 1994 data were available for 45,169. An additional 2,416 were excluded because of missing data describing citizenship.

<sup>a</sup>Includes 1,510 noncitizens and 4,684 citizens for whom information describing criminal history was unavailable.

Data source: Administrative Office of the U.S. Courts, Pretrial Services Agency data file, annual.

<sup>7</sup>INS (1994).

<sup>8</sup>See, 8 U.S.C. § 1326(a).

<sup>9</sup>See, 8 U.S.C. § 1326(b).

zens. (The median age of noncitizens prosecuted was 30 years; the median age of citizens was 33 years.) Almost 60% of noncitizens did not have a high school education, or its equivalent, compared with less than 30% of citizens.

### Criminal history

Noncitizens prosecuted in U.S. district courts are less likely to have a *known* criminal history than U.S. citizens (table 4). Approximately 44% of noncitizens and 60% of U.S. citizens had a known criminal history. This difference in criminal histories may be attributable to incomplete or unavailable records describing convictions for criminal offenses in other countries.

Because of the possibility that a non-citizen will have a foreign arrest and/or

conviction, Federal probation officers are instructed to request an arrest check from INTERPOL — the coordinating group for international law enforcement.<sup>10</sup>

Of those noncitizens with known criminal histories, less than 30% had a prior conviction for only a misdemeanor offense: 48.9% had a prior conviction for a nonviolent felony; and 21.3% had a prior conviction for a violent felony (table 4).

### Prosecution of noncitizens in U.S. district courts

The number of noncitizens whose cases were terminated in U.S. district courts tripled from 1984 to 1994

<sup>10</sup>See, Administrative Office of the U.S. Courts, *The Presentence Investigation Report*, II-58 (July, 1995).

(table 5). Between 1984 and 1994, the number of noncitizens increased an average 10% annually — from 3,462 to 10,352. The number of noncitizens prosecuted increased at a faster rate than the overall Federal caseload. Over the same period the overall Federal caseload (both citizens and noncitizens) increased an average 2% annually — from approximately 49,000 during 1984 to more than 59,000 during 1994. (BJS, *Federal Criminal Case Processing, 1982-93*, NCJ-160088)

The greatest part of the increase in the number of noncitizens prosecuted occurred between 1986 and 1989, when the number increased by almost 6,000. Since 1989 the number of noncitizens prosecuted has remained fairly stable. The growth in the number of

**Table 5. Noncitizens prosecuted in U.S. district courts, 1984-94**

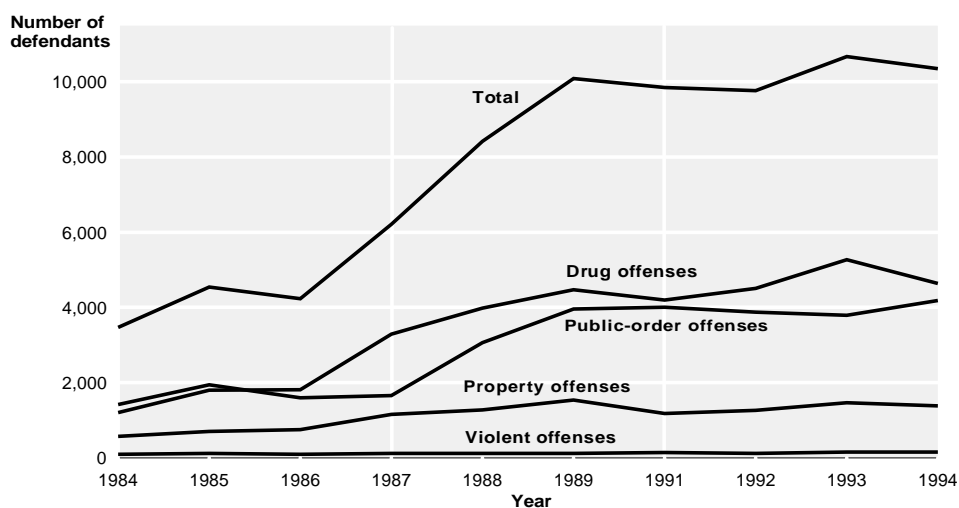
Most serious offense charged	1984	1985	1986	1987	1988	1989	1991	1992	1993	1994
Total <sup>a</sup>	3,462	4,539	4,230	6,215	8,419	10,087	9,583	9,761	10,679	10,352
<b>Violent offenses</b>	88	108	92	116	111	120	142	114	150	144
<b>Property offenses</b>	564	697	744	1,152	1,274	1,541	1,172	1,263	1,463	1,378
Fraudulent	431	558	594	1,009	1,102	1,356	1,024	1,112	1,279	1,163
Other	133	139	150	143	172	185	148	151	184	215
<b>Drug offenses</b>	1,204	1,799	1,805	3,287	3,980	4,473	4,182	4,506	5,274	4,633
<b>Public-order offenses</b>	1,406	1,935	1,589	1,660	3,054	3,953	4,087	3,878	3,789	4,177
Regulatory	49	96	138	178	212	256	207	185	197	173
Other	1,357	1,839	1,451	1,482	2,842	3,697	3,880	3,693	3,592	4,004
Immigration <sup>b</sup>	1,186	1,636	1,240	1,166	2,474	3,309	3,453	3,183	3,022	3,477

<sup>a</sup>Includes cases for which data describing offense charged were unavailable.

Because of changes in the structure of the Pretrial Services Agency database during 1990, data describing defendants processed during 1990 were unavailable.

<sup>b</sup>Includes only those noncitizens charged with felonies and class A misdemeanors. Approximately 7,000 noncitizens are prosecuted annually for class B and C immigration violators — primarily illegal entry.

Data source: Administrative Office of the U.S. Courts, Pretrial Services Agency, data file, annual.



noncitizens prosecuted between 1986 and 1989 was generally attributable to an increase in the number of noncitizens charged with drug and immigration offenses.

Drug and immigration offenses account for the majority of the offenses for which noncitizens are prosecuted.

During 1984 drug and immigration offenses accounted for 69% of the offenses for which noncitizens were prosecuted. By 1994 these two offenses accounted for over 78% of the offenses for which noncitizens were prosecuted.

**Table 6. Type of drug involved in drug offenses committed by noncitizens sentenced in U.S. district courts, 1994**

Type of drug	Number	Percent
Total	4,491	100.0%
Cocaine powder	1,604	35.7
Crack cocaine	271	6.0
Heroin	793	17.7
Marijuana	1,556	34.6
Methamphetamine	203	4.5
Other	64	1.4

Data source: United States Sentencing Commission, Monitoring data file, annual.

Noncitizens prosecuted in U.S. district courts were primarily concentrated in the judicial districts near the Southwestern border (figure 1, page 6).

The District of Arizona (15.3% of all noncitizens prosecuted), the Southern District of California (10.0%), the Southern District of Texas (9.4%), the Western District of Texas (7.2%), the Central District of California (7.1%), and the District of New Mexico (4.0%) together accounted for more than half of the total noncitizen federal caseload during 1994. The other judicial districts where a substantial number of noncitizens were prosecuted included the following: the Southern District of Florida (6.8%), the Eastern District of New York (3.5%), the Southern District of New York (2.9%), the Eastern District of California (2.2%), and the District of Oregon (2.0%).

#### Offense committed

##### Drug offenses

Between 1984 and 1994 the number of noncitizens who were charged with drug offenses and whose cases were

terminated increased at an average 13% annually — increasing from 1,204 to 4,633 (table 5). The number of noncitizens charged with drug offenses increased at a faster rate than the overall number of Federal drug prosecutions. Over the same period, the overall number of Federal drug prosecutions increased 7% annually — from approximately 10,000 during 1984 to more than 20,000 during 1994. (BJS, *Federal Criminal Case Processing, 1982-93*, NCJ-160088)

Noncitizens convicted of a drug offense were primarily involved with the distribution or importation of cocaine powder (35.7%), marijuana (34.6%), and heroin (17.7%) (table 6). Few (6%) noncitizens were involved with crack cocaine.

Among noncitizens convicted of drug offenses, about 41% involved with cocaine powder were sentenced for having less than 5 kilograms; 62% involved with heroin, having less than 1 kilogram; and 72% involved with marijuana, less than 100 kilograms.

**Noncitizens prosecuted in U.S. district courts, 1994**



Note: Alaska, Hawaii, the Commonwealth of Puerto Rico, and the U.S. territories are not depicted.

Figure 1

These drug quantities correspond to the minimum quantity necessary to invoke a 10-year mandatory minimum sentence.<sup>11</sup>

Few data are available describing the defendant's role in a drug offense, as, for example, whether the defendant was a dealer or a "mule" or "courier." However, the available data indicate that noncitizens were more likely than citizens to have played a minor role in drug offenses. Approximately 29% of the noncitizen Federal drug defendants who were convicted received a downward sentencing adjustment for a "mitigating role," compared with 14% of U.S. citizen drug defendants (not shown in a table).

Additionally, noncitizen Federal inmates identifying themselves as being involved in drug conspiracies were more likely than citizens to describe their role as low-level: approximately 69% of noncitizens compared with 56% of U.S. citizens, identified their role in the drug offense as low-level. (BJS, *Comparing Federal and State Prison Inmates, 1991*, NCJ-145864)

#### Immigration offenses

Between 1984 and 1994 the number of noncitizens who were charged with an immigration offense and whose cases were terminated increased an average 10% annually — from 1,186 to 3,477 (table 5).

Noncitizens prosecuted for an immigration offense are typically charged with illegally reentering the United States. Although any illegal entry into the United States is a criminal offense, illegal entry cases are rarely prose-

<sup>11</sup>See, 21 U.S.C. § 841(a) and 960(a). Proportions of noncitizens subject to a mandatory minimum sentence are presented in table 10 on page 8.

cuted unless the noncitizens had made multiple illegal entries.

Illegal reentry into the United States is a criminal offense if the noncitizen was previously deported by INS for illegally entering the United States or for being a *criminal alien*. Illegal reentry by a noncitizen who had previously been deported is a criminal offense subject to a maximum penalty of 2-years' imprisonment.<sup>12</sup> Illegal entry by a noncitizen who is a *criminal alien* (as defined by statute) is a criminal offense subject to a maximum penalty of 10-years' imprisonment, or 20-years' imprisonment if the noncitizen was previously convicted of an aggravated felony.<sup>13</sup> Approximately 67% of noncitizens convicted of an immigration offense were convicted of illegally entering the United States or reentry after deportation (table 7).

Of those noncitizens convicted of illegally entering the United States, 78.6% had a prior criminal conviction: 54.8% had a prior conviction for a criminal offense other than an aggravated felony, and 23.8% had a prior conviction for an aggravated felony (not shown in a table).

Smuggling, transporting, or harboring illegal aliens is a criminal offense subject to a maximum penalty of 10 years' imprisonment for each alien smuggled.<sup>14</sup> During 1994, 18.7% of the noncitizens convicted of an immi-

<sup>12</sup>See, 8 U.S.C. § 1326(a).

<sup>13</sup>See, 8 U.S.C. § 1326(b). According to statute, an *aggravated felony* means murder; any illicit trafficking in controlled substances; any illicit trafficking in any firearms or destructive devices; any offense relating to the laundering of monetary instruments; a fraud involving a loss of \$200,000 or more; or any crime of violence for which a term of imprisonment imposed was at least 5 years (8 U.S.C. § 1101(a)(43)).

<sup>14</sup>See, 8 U.S.C. § 1324(a).

gration offense were convicted of alien smuggling. Of those noncitizens convicted of alien smuggling, 26.4% were sentenced for smuggling fewer than 6 aliens; 49.2%, for smuggling between 6 and 24 aliens; 16.8%, for between 25 and 99 aliens; and 7.7%, for 100 or more aliens (not shown in a table).

#### Other offenses

Apart from drug and immigration offenses, noncitizens were generally not prosecuted for other criminal conduct within Federal jurisdiction. During 1994, 1.4%, 13.3%, and 6.8% of noncitizens were prosecuted for violent offenses, property offenses, and public-order offenses other than immigration offenses, respectively (table 5).

#### Disposition

Of the noncitizens adjudicated in U.S. district courts during 1994, 87.3% were convicted (not shown in a table). Of those noncitizens convicted, 92.3% pleaded guilty to the offense charged and 7.6% were convicted at trial. Of the 12.7% who were not convicted, the charges were dismissed in 91.3% of the cases, and the defendant was acquitted at trial in 8.7% of the cases.

#### Sanctions imposed

During 1994, 87.9% of noncitizens convicted of a Federal offense received a sentence that included a term of imprisonment; 11% received a sentence of probation (including probation imposed in conjunction with community

**Table 7. Type of immigration offense committed by noncitizens sentenced in U.S. district courts, 1994**

Type of drug	Number	Percent
Total	2,182	100.0%
Illegal entry or re-entry	1,450	66.5
Harboring, transporting, or smuggling noncitizens	409	18.7
Trafficking in, or acquiring, fraudulent passports	52	2.4
Trafficking in, or acquiring, fraudulent entry documents	271	12.4

Data source: United States Sentencing Commission, Monitoring data file, annual.

**Table 8. Sentence imposed on noncitizens in U.S. district courts, 1994**

Type of sentence imposed	Number	Percent
Total	8,766	100.0%
Imprisonment only	7,532	85.9
Split sentence	171	2.0
Probation only	676	7.7
Probation with community confinement	290	3.3
No prison or probation	97	1.1

Notes: Of the 8,794 noncitizens convicted in U.S. district court during 1994, 28 were excluded due to missing data describing the type of sentence imposed. Data source: United States Sentencing Commission, Monitoring data file, annual.

**Table 9. Imprisonment imposed on noncitizens sentenced in U.S. district courts, 1994**

Most serious offense of conviction	Number of defendants	Prison term imposed	
		Mean	Median
Total	7,647	50.1 mos.	27 mos.
<b>Violent offenses</b>	96	81.1	52
<b>Property offenses</b>	689	14.2	10
Fraudulent	581	13.5	10
Other	108	17.6	12
<b>Drug offenses</b>	4,283	69.9	51
<b>Public-order offenses</b>	2,579	25.6	21
Regulatory	62	11.0	6
Other	2,577	26.6	24
Immigration	1,978	22.6	21

Note: Of the 7,703 noncitizens convicted in U.S. district courts during 1994 who received a sentence that included a term of imprisonment, 11 were excluded because of missing data describing the term of imprisonment and 45 were excluded because the defendant received a sentence of life imprisonment.  
Data source: United States Sentencing Commission, Monitoring data file, annual.

confinement);<sup>15</sup> and 1.1% received a sentence that included neither imprisonment nor probation (table 8).

Noncitizens received prison sentences with an average term of 50.1 months (table 9). Noncitizens convicted of violent offenses and drug offenses received the longest prison sentences, with an average of 81.1 months and 69.9 months, respectively. Noncitizens convicted of immigration offenses received prison sentences with an average term of 22.6 months.

<sup>15</sup>Sentences of community confinement include home detention, work release, and intermittent confinement. (See, U.S.S.G., § 5C1.1)

The Anti-Drug Abuse Act of 1986 requires that defendants convicted of distributing or importing controlled substances be sentenced to a mandatory minimum 5- or 10-year term of imprisonment depending upon the quantity of drugs involved.<sup>16</sup> Almost 60% of the noncitizens convicted of a drug offense during 1994 were subject to a mandatory minimum prison sentence: 0.3% were subject to a mandatory minimum of 1 year; 25.4% were subject to a mandatory minimum of 5 years; and

<sup>16</sup>See, Pub. L. No. 99-308 100 Stat 449 as codified, in relevant part, at 21 U.S.C. §§ 841 and 960.

32.4% were subject to a mandatory minimum of 10 years or more (table 10).<sup>17</sup>

*Departures from the Federal sentencing guidelines*

Approximately 27% of the noncitizens sentenced during 1994 received a departure from the applicable sentencing range established by the Federal sentencing guidelines (table 11). The most common reason cited for departing from the guidelines was substantial assistance to the Government: 16.3% of noncitizens sentenced received a substantial assistance departure.

(A substantial assistance departure is awarded when the defendant assists the Government in the prosecution or investigation of another individual.<sup>18</sup>) Almost 10% received a downward departure for reasons other than substantial assistance and less than 1% received an upward departure. The most frequently cited reason for the "other" downward departures was "pursuant to a plea agreement"; the most frequently cited reasons for the upward departures were the defendant's extensive criminal history and the large quantity of drugs (not shown in a table).

<sup>17</sup>Pursuant to 21 U.S.C. §§ 859, 860, and 861, defendants convicted of employing a minor or distributing drugs to pregnant women or near schools are subject to a 12-month mandatory minimum term of imprisonment.

<sup>18</sup>See, 18 U.S.C. § 3553(e) and U.S.S.G. § 5K1.1.

**Table 10. Noncitizen drug defendants sentenced in U.S. district courts subject to a mandatory term of imprisonment, 1994**

	Number	Percent
Total	4,491	100.0%
No mandatory minimum applicable	1,881	41.9%
Mandatory minimum applicable	2,610	58.1%
Minimum of 1 year	13	.3
Minimum of 5 years	1,140	25.4
Minimum of 10 years or more	1,457	32.4

Data source: United States Sentencing Commission, Monitoring data file, annual.

**Table 11. Noncitizens sentenced in U.S. district courts who received a departure from the Federal sentencing guidelines, 1994**

Most serious offense of conviction	Number of defendants	No departure	Departures		
			Upward	Substantial assistance	Downward Other
Total	8,125	73.4%	.8%	16.3%	9.5%
<b>Violent offenses</b>	89	75.3%	2.2%	9.0%	13.5%
<b>Property offenses</b>	1,070	83.8%	.7%	11.4%	4.0%
Fraudulent	903	84.5	.4	11.2	3.9
Other	167	80.2	2.4	12.6	4.8
<b>Drug offenses</b>	4,181	62.3%	.7%	25.4%	11.6%
<b>Public-order offenses</b>	2,774	85.9%	1.0%	4.6%	8.4%
Regulatory	116	79.3	0	11.2	9.5
Other	2,658	86.2	1.1	4.3	8.4
Immigration	2,022	89.7	1.1	1.2	8.0

Note: Of the 8,794 noncitizens convicted in U.S. district courts during 1994, 669 were excluded due to missing data describing departure status.  
Data source: United States Sentencing Commission, Monitoring data file, annual.



**Table 12. Noncitizens serving a sentence of imprisonment in a Federal prison, 1984-94**

Most serious offense of conviction	Noncitizen Federal prison inmates										
	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994
Total*	4,088	5,561	6,966	7,851	8,871	10,658	12,349	14,046	16,117	18,218	18,929
<b>Violent offenses</b>	290	298	329	349	338	313	298	270	295	316	343
<b>Property offenses</b>	228	357	483	507	497	509	541	592	622	622	658
Fraudulent	144	245	327	363	369	376	411	459	482	479	522
Other	84	112	156	144	128	133	130	133	140	143	136
<b>Drug offenses</b>	2,270	3,111	4,099	4,978	5,948	7,647	9,284	10,817	12,706	14,012	14,226
<b>Public-order offenses</b>	1,251	1,740	2,003	1,967	2,049	2,125	2,154	2,285	2,431	3,197	3,614
Regulatory	69	82	95	118	109	96	104	110	100	108	95
Other	1,182	1,658	1,908	1,849	1,940	2,029	2,050	2,175	2,331	3,089	3,519
Immigration	872	1,275	1,469	1,345	1,363	1,542	1,515	1,549	1,568	2,118	2,478

Note: Data represent the Federal prison population on December 31.  
 \*Includes cases for which the offense category could not be determined.  
 Data source: United States Department of Justice, Bureau of Prisons, SENTRY System data file, annual.

Noncitizens convicted of drug offenses were more likely to receive a departure from the Federal sentencing guidelines than noncitizens convicted of other offenses. Over a third of noncitizen drug defendants received a departure from the Federal sentencing guidelines: 25.4% of drug offenders received a substantial assistance departure; 11.6% received a downward departure for reasons other than substantial assistance; and 0.7% received an upward departure (table 11).

### Impact of noncitizens on the Federal prison population

Between 1984 and 1994, the number of noncitizens serving a sentence of imprisonment in a Federal prison (or contract facility) increased an average 15% annually — from 4,088 to 18,929 (table 12). The number of noncitizens incarcerated increased at a faster rate than the overall Federal prison population. Over the same period, the overall Federal prison population increased an average 10% annually — from 31,105 during 1984 to 87,437 during 1994. (BJS, *Compendium of Federal Justice Statistics*, annual, NCJ-160089)

During 1994, 75% of noncitizens serving a sentence of imprisonment were convicted of a drug offense; 13% were convicted of an immigration offense; and less than 2% were convicted of a violent offense. At the expiration of their sentences, those noncitizens

identified as *criminal aliens* are deported.<sup>19</sup> Additionally, pending review by an immigration judge, many of the other noncitizens incarcerated may be required to depart from the United States upon release because they either entered the United States illegally or violated the terms of their admittance.<sup>20</sup>

The increase in the number of noncitizens incarcerated reflects a general increase in imprisonment imposed — especially for drug offenders — and changes in time-served requirements.<sup>21</sup> In addition to establishing the Federal sentencing guidelines, the Sentencing Reform Act of 1984 requires that defendants sentenced to a term of imprisonment must serve at least 85% of the imposed sentence before being released.<sup>22</sup>

For example, a noncitizen sentenced to the average term of 50 months could expect to serve at least 44 months before release. Similarly, a noncitizen convicted of a drug offense and sentenced to the average term of 70 months could expect to serve at least 61 months before being released.

Given the increase in the number of noncitizens convicted and the time-served requirements, the number of noncitizens incarcerated in the Federal prisons is expected to continue to increase over the next 10 years. The Federal Bureau of Prisons projects that the increase will be approximately 4% annually over the next 10 years, increasing from 18,929 incarcerated during 1994 to more than 28,000 in 2005.<sup>23</sup> Preliminary data for 1995 indicate that the number of noncitizens serving a sentence in a Federal prison (or contract facility) was 21,421 as of September 30, 1995.

<sup>23</sup>Eric Simon, Chief, Public Policy and Applied Research, United States Department of Justice, Bureau of Prisons (March 14, 1996).

<sup>19</sup>See, 8 U.S.C. § 1252a.

<sup>20</sup>See, 8 U.S.C. § 1251.

<sup>21</sup>See generally, Bureau of Justice Statistics, *Federal Criminal Case Processing, 1982-93* (1996).

<sup>22</sup>See, Pub. L. No. 98-473 §§ 211-239 98 Stat 1837 as codified, in relevant part, at 18 U.S.C. § 3624(b). Pursuant to the Sentencing Reform Act, Federal inmates serving a sentence of more than 1 year (but not life imprisonment) can earn up to 54 good conduct days per year served.

## Noncitizens in State correctional facilities

A study by the Urban Institute estimated that approximately 86% of the illegal aliens living in the United States are concentrated in seven states: Arizona (1.7%), California (42.6%), Florida (9.5%), Illinois (5.2%), New Jersey (3.4%), New York (13.2%), and Texas (10.6%). The Institute estimated that 2.8% of the combined population of these States are illegal aliens.<sup>1</sup>

Reacting to a perceived increase in the costs of social services and public education for illegal aliens, during 1994 California enacted legislation prohibiting illegal aliens from receiving such social services.<sup>2</sup> Under the California law, individuals may not receive public social services until their legal status has been verified as (1) a citizen of the United States, (2) an alien lawfully admitted as a permanent resident, or (3) an alien lawfully admitted for a temporary period.<sup>3</sup>

As a response to costs incurred by States for incarcerating illegal aliens, the Immigration Reform and Control Act of 1986 authorized the Attorney General to reimburse the States for some of those costs.<sup>4</sup> The Violent Crime Control and Law Enforcement Act of 1994 expanded the reimbursement program to include local jurisdictions and to provide the U.S. Attorney General the option of incarcerating a State's illegal aliens in Federal prisons if a State were unable to incarcerate these aliens due to inadequate facilities or lack of space.<sup>5</sup>

### State Criminal Alien Assistance Program awards, fiscal year 1995

State	Reimbursable inmates	Total cost to State <sup>a</sup> (in millions)	Award <sup>b</sup> (in millions)
All applicants	37,679	\$796	\$129
<b>Seven States with the highest number of illegal aliens</b>			
California	18,593	\$396	\$64
Texas	6,228	105	17
New York	2,390	83	13
Florida	2,323	41	7
Illinois	1,445	27	4
Arizona	1,384	23	4
New Jersey	601	18	3

<sup>a</sup>Represents average cost per inmate multiplied by the number of inmates for whom the State was eligible for reimbursement.

<sup>b</sup>Represents the FY 1995 appropriation less 1% or administrative costs.

Source: U.S. Department of Justice, Bureau of Justice Assistance.

<sup>1</sup>Rebecca L. Clark, Jeffrey S. Passel, Wendy N. Zimmermann and Michael E. Fix, *Fiscal Impact of Undocumented Aliens: Selected Estimates for Seven States*, The Urban Institute (September 1994).

<sup>2</sup>CAL. WELF. & INST. CODE § 10001.5 (1994).

<sup>3</sup>CAL. WELF. & INST. CODE § 10001.5(b) (1994).

<sup>4</sup>8 U.S.C. § 1365.

<sup>5</sup>See, Pub. L. No. 103-322 108 Stat 1823 as codified at 8 U.S.C. § 1252(j).

Congress first appropriated funds for this program (the *State Criminal Alien Assistance Program*) for fiscal year 1995. As part of the fiscal year 1995 appropriation for the Department of Justice, Congress appropriated \$130 million for reimbursement to the States.<sup>6</sup> For fiscal year 1996, Congress appropriated \$300 million for reimbursement to the States. Additionally, the President's fiscal year 1997 budget requested \$330 million for the *State Criminal Alien Assistance Program*.<sup>7</sup>

Under the *State Criminal Alien Assistance Program*, the Department of Justice's Bureau of Justice Assistance awarded \$128.7 million to 45 States during fiscal year 1995 to help defray the costs of incarcerating 38,000 illegal aliens. California, which was reimbursed for more than 18,000 illegal alien inmates, received almost 50%, or \$64 million, of the \$130 million appropriated by Congress. Six other States received approximately 38% of the remaining funds awarded.

A greater proportion of noncitizens in State prisons (35.1%) than in Federal prisons (1.9%) were convicted of violent offenses, according to the BJS Survey of Inmates in State Correctional Facilities, 1991. In both systems, noncitizens convicted of drug offenses comprised a large proportion of the convicted noncitizen population.

### Current offense of sentenced noncitizens in Federal and State prisons, 1991

Current offense	Federal	State
Violent offenses	1.9%	35.2%
Property offenses	2.4	13.0
Drug offenses	85.1	45.2
Public-order offenses	7.4	6.6
Other	3.3	5.1
Number of noncitizen inmates	9,916	30,718

Notes: Excludes 159 noncitizens (49 in Federal prisons and 110 in State prisons) for whom the current offense was unavailable.

Source: 1991 Survey of Inmates in State and Federal Correctional Facilities.

<sup>6</sup>See, Pub. L. No. 103-317 108 Stat. 1724, 1778 (1994).

<sup>7</sup>Office of the President, *Budget of the United States Government Fiscal Year 1997*, Appendix, p. 665. Additional funds may also be transferred from the State corrections programs to the *State Criminal Alien Assistance Program*.

## Methodology

The primary source of the data for tables presented in this report is the BJS Federal Justice Statistics Program database. The FJSP database is presently constructed from source files provided by the Executive Office for United States Attorneys, the Administrative Office of the United States Courts, the United States Sentencing Commission, and the Federal Bureau of Prisons. The Administrative Office of the U.S. Courts also maintains the data collected by the Pretrial Services Agency. Data tabulations, except where otherwise indicated, were prepared from BJS staff or contractor analysis of source agency datasets.

The offense categories used in this report are based primarily on the offense codes established by the Administrative Office of the U.S. Courts. The *Compendium of Federal Justice Statistics* (NCJ-160089) provides a detailed description of the United States Criminal Code titles and sections included in each offense category.

In tables 3-5 and figure 1, the data describing noncitizens prosecuted were derived from the database maintained by the Pretrial Services Agency. Unlike other FJSP tabulations of defendants in cases terminated, table 5 relies upon data from the Pretrial Services Agency rather than the criminal court data file. Therefore, table 5 and other FJSP tables reporting defendants in case terminated may not be directly comparable.

The Pretrial Services Agency maintains data describing criminal defendants adjudicated in U.S. district courts who were processed by Federal pretrial services officers. Not all defendants prosecuted in U.S. district court are interviewed by a Federal pretrial services officer — some defendants refuse to be interviewed and, in some districts, pretrial services officers are not required to interview every defendant.

In the Pretrial Services Agency database, information describing citizenship status was available for approximately 95% of the defendants processed during a given year. Because of changes to the structure of the Pretrial Services Agency database during 1990, data describing defendants processed during 1990 were unavailable.

In tables 2 and 6-11, the data describing convicted noncitizens were derived from the database maintained by the United States Sentencing Commission. The Commission maintains data describing those defendants convicted in U.S. district courts and who were sentenced pursuant to the Federal sentencing guidelines. In the Commission's database, data describing citizenship status were available for over 97% of the defendants sentenced during calendar year 1994 and included in the Commission's database.

In table 12 the data describing imprisoned noncitizens were derived from the database maintained by the Federal Bureau of Prisons. The Bureau of Prisons maintains data describing all persons who were committed to Federal prison to serve a sentence of imprisonment. In the Bureau of Prisons' database, information describing citizenship status was available for over 98% of the inmates incarcerated during a given year.

In the section entitled *Noncitizens in State Correctional Facilities*, the data were derived from the Bureau of Justice Statistics' 1991 surveys of inmates in State and Federal correctional facilities.

The Bureau of Justice Statistics is the statistical agency of the U.S. Department of Justice. Jan M. Chaiken, Ph.D., is director.

BJS Special Reports address a special topic in depth from one or more datasets that cover many topics.

John Scalia of the Bureau of Justice Statistics wrote this report. William J. Sabol of the Urban Institute and Kevin Strom of BJS provided statistical review. Tom Hester, Tina Dorsey, and Yvonne Boston edited the report. Marilyn Marbrook, assisted by Jayne Robinson, administered production.

The Immigration and Naturalization Service reviewed this report. John Bjerke of the Statistical Division provided comments.

The projection of the number of noncitizens incarcerated in the Federal prisons was provided by Eric Simon, Chief, Public Policy and Applied Research, of the Bureau of Prisons. The estimate was derived using the Bureau's prison population projection model, FEDSIM.

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Data presented in this report may be obtained from the National Archive of Criminal Justice Data at the University of Michigan, 1-800-999-0960. The report and data are also available on the Internet:

<http://www.ojp.usdoj.gov/bjs/>