

# WOMEN IN PRISON PROJECT

## Correctional Association of New York

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### Immigration and the Criminal Justice System Fact Sheet

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#### United States

- According to the Bureau of Justice Statistics, at midyear 2005, State and Federal correctional authorities held 91,117 non-U.S. citizens (6.7% of all prisoners).<sup>i</sup>
- From 1984 to 1994, the number of non-U.S. citizens serving sentences in Federal prisons increased from 4,088 to 18,929 – an average annual increase of 15%. During this same period, the overall Federal prison population grew from 31,105 to 87,437 – an average annual increase of 10%.<sup>ii</sup> From 1995 to 2005, the Federal prison population jumped from 89,538 to 175,954, an average annual increase of 7.4%.<sup>iii</sup>
- The increase in the overall number of non-U.S. citizens in the criminal justice system has been primarily driven by an increase in the number of non-U.S. citizens charged with drug offenses. Non-U.S. citizens convicted of a Federal drug offense are more likely than U.S. citizens to have played a minor role in the offense.<sup>iv</sup>
- In 1996, Congress passed two laws, the Anti-terrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA), that had a significant impact on immigrants charged with crimes.<sup>v</sup> The laws: 1) expanded the grounds for deportation to include a broader range of offenses; 2) removed the ability of an immigrant defendant to ask a judge to overturn a deportation decision; and 3) eliminated the ability of an immigrant defendant to be released on bail, even if she or he is not considered a flight risk.<sup>vi</sup>
- Between 1993 and 2004, the U.S. government deported 1,584,470 people – 705,247 (45%) of whom were removed for criminal violations.<sup>vii</sup>
- The fear of arrest, detention and deportation has a severe chilling effect on immigrants' willingness to seek assistance and services during a crisis. For example, according to the U.S. Department of Justice, about half of domestic violence survivors in the general population report their abusers to the police.<sup>viii</sup> In contrast, according to a large-scale research project conducted between 1992 and 1995 by Ayuda, Inc., a policy and legal services organization for immigrants in Washington, D.C., only 27% of immigrant survivors of domestic violence were willing to call the police for help.<sup>ix</sup>
- In 1994, the Federal Violent Crime Control and Law Enforcement Act (VCCLEA) authorized the establishment of the State Criminal Alien Assistance Program (SCAAP) which allows the federal government to reimburse states for costs they incur as a result of incarcerating “undocumented criminal aliens” – people who would otherwise fall under the jurisdiction of the Federal prison system.<sup>x</sup>
- From 1997 to 2000, Congress raised the level of SCAAP appropriations to \$650 million per year. Between 1995 and 2004, New York State received roughly \$468 million in total SCAAP awards.<sup>xi</sup>

#### New York State

- As of December 31, 2004, there were 7,800 foreign-born inmates in custody of the New York State Department of Correctional Services (DOCS) – 12% of the total inmate population.<sup>xii</sup>
- DOCS estimates that as of January 2005, about 9% (239) of the roughly 2,800 women who are incarcerated in New York State prisons are “foreign-born.”<sup>xiii</sup>
- Between 1984 and 2004, about 11% of foreign-born inmates in DOCS custody were naturalized citizens, 36% were undocumented, and 44% entered the U.S. legally.<sup>xiv</sup>
- Between 1985 and 2004, the number of foreign-born inmates in DOCS custody increased by 5,171 – an increase of 197%. During this same time period, the number of U.S.-born inmates increased by 23,911 – an increase of 79%.<sup>xv</sup>

- Foreign-born inmates in DOCS custody come from 119 different countries. 71% of foreign-born inmates come from either the Caribbean or South America. Three out of every five foreign-born inmates were born in one of the following countries: Columbia, Cuba, the Dominican Republic, Jamaica or Mexico.<sup>xvi</sup>
- Currently, 27% of foreign-born inmates come from countries where English is the dominant language, and 57% come from countries where Spanish is the dominant language. 16% come from countries where the dominant language is neither English nor Spanish.<sup>xvii</sup>
- As of December 2004, of the 7,800 foreign-born inmates in DOCS custody, 2,328 (30%) were convicted of class A felonies – crimes which carry the longest sentences.<sup>xviii</sup>

**Especially in light of the fact that a large percentage of foreign-born inmates are incarcerated for crimes that carry long sentences, DOCS should expand its services to more effectively meet the needs of non-English dominant inmates – including increasing its English as a Second Language (ESL) educational classes, providing medical translation services, and hiring more Spanish-speaking teachers, counselors, and medical and mental health staff.<sup>xix</sup>**

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<sup>i</sup> P. Harrison and A. J. Beck, *Prison and Jail Inmates at Midyear 2005*, (Bureau of Justice Statistics, U.S. Department of Justice, May 2006).

<sup>ii</sup> J. Scalia, *Noncitizens in the Federal Criminal Justice System, 1984-94*, (Bureau of Justice Statistics, U.S. Department of Justice, August 1996).

<sup>iii</sup> See note i, *Prison and Jail Inmates at Midyear 2005*.

<sup>iv</sup> *Id.*

<sup>v</sup> Pub. Law No. 104-132, 110 Stat. 1214 (1996) (codified in scattered sections of 8, 18, 22, 28, 40, and 42 U.S.C.) and Pub. L. No. 104-208, div. C, 110 Stat. 3009-546 (1996) (codified in scattered sections of 8 and 18 U.S.C.) as cited in N. Morawetz, *Understanding the Impact of the 1996 Deportation Laws and the Limited Scope of Proposed Reforms*. Harvard Law Review, Volume: 113. Issue: 8, 2000.

<sup>vi</sup> *Id.*, N. Morawetz

<sup>vii</sup> *Yearbook of Immigration Statistics: 2004*, Table 43: Aliens removed by criminal status and region and country of nationality: fiscal years 1998-2004, and, *Fiscal Year 2000 Statistical Yearbook of the Immigration and Naturalization Service*. Table 66: Aliens removed by criminal status and region and country of nationality: fiscal years 1993-2000, U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services' Office of Immigration Statistics.

<sup>viii</sup> C. M. Rennison, and S. Welchans, *Intimate Partner Violence*, (Bureau of Justice Statistics, U.S. Department of Justice, May 2000), Revised 01/31/02.

<sup>ix</sup> L. E. Orloff, M. A. Dutton, G. Aguilar Hass and Nawal Ammar, "Battered Immigrant Women's Willingness to Call for Help and Police Response," *UCLA Women's Law Journal*, Vol. 13. No. 1 (Fall/Winter 2003).

<sup>x</sup> *The State Criminal Alien Assistance Program, July 2004*, (State of New York Department of Correctional Services, 2004).

<sup>xi</sup> *Id.*

<sup>xii</sup> *The Impact of Foreign-Born Inmates on the New York State Department of Correctional Services, May 2005*, (State of New York Department of Correctional Services, 2005).

<sup>xiii</sup> *Hub System: Profile of Inmate Population Under Custody on January 1, 2005*, (State of New York Department of Correctional Services, 2005).

<sup>xiv</sup> *Id.*

<sup>xv</sup> See note xi, *Impact of Foreign-Born Inmates 2005*.

<sup>xvi</sup> *Id.*

<sup>xvii</sup> *Id.*

<sup>xviii</sup> *Id.*

<sup>xix</sup> See *Coalition for Women Prisoners 2006 Proposals for Reform*, Women in Prison Project, Correctional Association of New York, March 2006 (on file at Women in Prison Project).