

# The Rise of Federal Immigration Crimes

Unlawful Reentry Drives Growth

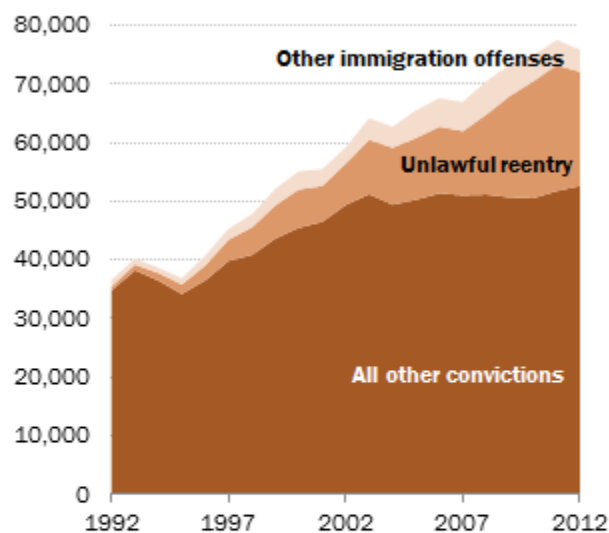
<http://www.pewhispanic.org/2014/03/18/the-rise-of-federal-immigration-crimes/>

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FIGURE 1

## Federal Convictions, 1992-2012

Number of convictions



Note: Analysis is of sentenced offenders for whom a USSC sentencing guideline was applied. "Other immigration offenses" includes smuggling, transportation or harboring of unlawful aliens, trafficking in identity documents or making false statements with respect to citizenship. "All other convictions" includes violent, property, white collar, fraud, firearms, and all other crimes.

Source: Pew Research Center analysis of United States Sentencing Commission Monitoring of Federal Criminal Sentences data.

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—Dramatic growth over the past two decades in the number of offenders sentenced in federal courts has been driven primarily by enforcement of a particular immigration offense—unlawful reentry into the United States—according to an analysis of data from the United States Sentencing Commission (USSC) by the Pew Research Center.

Between 1992 and 2012, the number of offenders sentenced in federal courts more than doubled, rising from 36,564 cases to 75,867.<sup>1</sup> At the same time, the number of unlawful reentry convictions increased 28-fold, from 690 cases in 1992 to 19,463

in 2012.<sup>2</sup> The increase in unlawful reentry convictions alone accounts for nearly half (48%) of the growth in the total number of offenders sentenced in federal courts over the period. By contrast, the second fastest growing type of conviction—for drug offenses—accounted for 22% of the growth.

Immigrants charged with unlawful reentry—a federal crime—have entered or attempted to enter the U.S. illegally more than once. They may also have attempted to reenter the U.S. after having been officially deported.<sup>3</sup> Many of those charged with unlawful reentry were apprehended at the U.S. border by the U.S. Border Patrol ([Rosenblum, 2013](#)).

As unlawful reentry convictions increased, the demographic composition of sentenced offenders changed ([Lopez and Light 2009](#)). In 1992, Latinos made up 23% of sentenced offenders; by 2012, that share had grown to 48%. Over the same period, the share of offenders who did not hold U.S. citizenship increased from 22% to 46%. Among federal sentenced offenders in 1992, 12% were unauthorized immigrants. By 2012, that share had increased to 40%.

### **The United States Sentencing Commission**

The United States Sentencing Commission (USSC) was established in 1984 to create sentencing guidelines for the federal courts as part of the Sentencing Reform Act. One of its missions is to collect data on all federal criminal cases sentenced under the Federal Sentencing Guidelines (USSC, 2012). The data files available from the USSC include all cases that resulted in a sentence from fiscal 1992 through fiscal 2012.

Nearly all of those sentenced for unlawful reentry in federal courts received a prison sentence. On average, the sentence length for these offenders was about two years. As the number of offenders sentenced in federal courts for unlawful reentry increased, so too did the number of immigration offenders incarcerated in federal prisons. Between 1998 and 2010 alone, growth in the number of immigration offenders accounted for 56% of the increase in federal prison admissions ([Mallik-Kane, Parthasarathy and Adams, 2012](#)).

The data for this report comes from the USSC and covers all federal felony and misdemeanor cases between 1992 and 2012 for which the offense category is known and the offender is sentenced in federal courts.<sup>4</sup> These data include all criminal immigration offenses sentenced under the U.S. Sentencing Guidelines, but do not include civil immigration charges that are heard before U.S. immigration courts.<sup>5</sup>

## More Criminal Convictions, Fewer Voluntary Returns

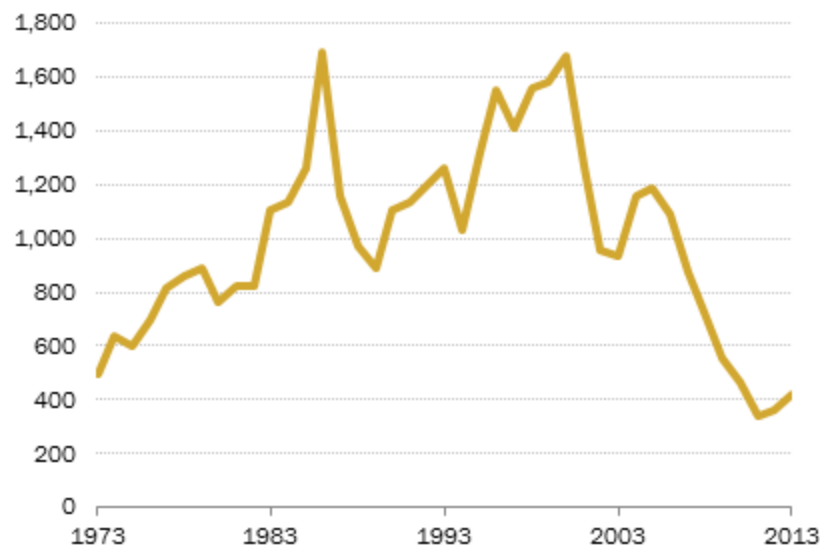
Unlawful reentry convictions in federal courts are part of a broader stepped up enforcement effort from the U.S. Border Patrol begun in 2005.<sup>6</sup> Prior to this change, immigrants apprehended at the border were largely allowed to voluntarily return to Mexico—without any penalty.<sup>7</sup>

Since 2005, however, the Border Patrol has reduced voluntary returns for immigrants it apprehends, while increasing the use of other strategies. These include criminally charging immigrants apprehended at the border with unlawful reentry and increasing the use of expedited removals (which do not require a judicial review). And for those immigrants who are apprehended at the border and removed, the Border Patrol has used remote repatriation as an additional strategy, sending deported immigrants to border ports many miles away from where they were apprehended, or, in the case of Mexican nationals, repatriating immigrants into the interior of Mexico ([Rosenblum, 2013](#)). These strategies are intended to break the smuggling cycle and deter an apprehended immigrant from attempting further illegal entries into the U.S.

FIGURE 2

### Border Apprehensions, 1973-2013

*In thousands*



Source: [United States Border Patrol, Fiscal Year 2013 Statistics](#)

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Many immigrants convicted in federal courts of unlawful reentry in recent years were processed under a Border Patrol program called “Operation Streamline.” This program,

implemented in five Border Patrol Southwest sectors<sup>8</sup> in conjunction with federal courts and attorneys, allows up to 40 unauthorized immigrants charged with unlawful reentry to be prosecuted at the same time. This program alone has accounted for nearly half (45%) of all federal immigration-related prosecutions in Southwest border districts between 2005 and 2012 ([Rosenblum, 2013](#)).

Border enforcement efforts have increased even as the number of apprehensions at U.S. borders declined. Between 2005 and 2011, the number of border apprehensions fell by more than half, from 1.2 million to 340,000.<sup>9</sup>

Since 2011, though, border apprehensions have begun to rise again, reaching 421,000 in 2013. Much of the recent increase is among non-Mexican immigrants ([Passel, Cohn and Gonzalez-Barrera, 2013](#)).

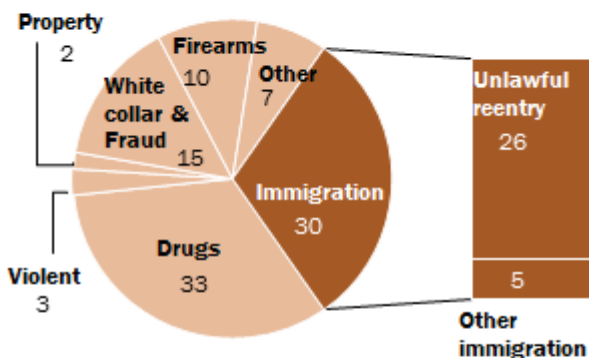
The federal government has deported nearly 400,000 unauthorized immigrants a year since the start of the Obama administration. A growing share of those deported were convicted of a criminal offense, including some related to immigration crimes ([Gonzalez-Barrera, 2014](#)). There were an estimated 11.7 million unauthorized immigrants living in the U.S. in 2012, according to Pew Research Center estimates ([Passel, Cohn and Gonzalez-Barrera, 2013](#)). Most, about three-quarters, are from Latin America.

### **Growth in Unlawful Reentry Cases Changing the Federal Case Load**

FIGURE 3

### Federal Convictions by Offense Type, 2012

%



Note: Analysis is of sentenced offenders for whom the offense type is known and a USSC sentencing guideline was applied. Other immigration offenses include smuggling, transportation or harboring of unlawful alien, trafficking in identity documents or making false statements with respect to citizenship. Figures may not add to net due to rounding.

Source: Pew Research Center analysis of United States Sentencing Commission Monitoring of Federal Criminal Sentences data.

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The rising number of convictions for unlawful reentry has altered the offense composition of federal offenders. In 2012, immigration offenses—of which unlawful reentry is the largest category—represented 30% of offenders, up from 5% in 1992.

Unlawful reentry cases alone accounted for 26% of sentenced federal offenders—second only to drug offenses in 2012. This is up 13-fold since 1992, when offenders sentenced for unlawful reentry made up just 2% of sentenced offenders. These trends match the population growth in the Federal Bureau of Prisons system.

This report examines the characteristics and trends of offenders sentenced in federal courts. The data for this report are from the United States Sentencing Commission’s Monitoring of Federal Criminal Sentences data files for fiscal years 1992 through 2012. These files contain information on sentencing decisions for all federal felony and Class A misdemeanor cases. Only those cases with documentation compiled by the USSC are included in the data files.

Among the report’s other findings:

### Offense Convictions in Federal Courts

- Among unauthorized immigrants sentenced in federal courts in 2012, 68% were convicted of “unlawfully entering or remaining in the United States,” 19% were sentenced for drug offenses, 7% were sentenced for other immigration related offenses and the remainder (6%) were sentenced for other crimes.<sup>10</sup>
- In 2012, 74% of all unlawful reentry cases were sentenced in just five of the nation’s 94 U.S. district courts. All five were located along the U.S.-Mexico border: the Southern and Western Districts of Texas, the District of Arizona, the District of New Mexico, and the Southern District of California.

### **Demographics of Sentences Federal Offenders**

- Hispanics accounted for 48% of sentenced federal offenders in 2012, the single largest racial/ethnic group represented. Non-Hispanic whites constituted 27% of federal sentenced offenders and non-Hispanic blacks made up 20%. The remainder (4%) are Asians, Native Americans, and those whose race and ethnicity are indeterminate.
- In 2012, 92% of unlawful reentry offenders were Hispanic.

### **Prison Sentences**

- Non-U.S. citizens sentenced in federal courts were more likely to receive a prison sentence than U.S. citizens—97% versus 86%.
- Unauthorized immigrants were somewhat more likely to be incarcerated after conviction than immigrants who were in the U.S. legally—98% versus 91%.
- Hispanic offenders are more likely than non-Hispanic offenders to receive a prison sentence in 2012—97% versus 87%.

### **About This Report**

This report examines trends in convictions by offense type in U.S. federal courts. The data for this report are from the United States Sentencing Commission’s (USSC) Monitoring of Federal Criminal Sentences data for fiscal years 1992 to 2012. The findings presented are for those sentenced offenders for whom the sentencing guideline used is known. The USSC data is the main source of information about the characteristics of offenders sentenced in federal courts. The report does not provide an examination of trends in state or local courts, or in U.S. civil courts, such as immigration courts.

This report was written by [Michael T. Light](#), Assistant Professor of Sociology, Purdue University, and Mark Hugo Lopez and Ana Gonzalez-Barrera of the Pew Research Center. The authors thank Alan Murray, Paul Taylor, Claudia Deane, Michael Dimock and Jens Manuel Krogstad for comments on earlier drafts of the report. Anna Brown number checked the report. Caroline Klibanoff was the copy editor. Find related reports from the Pew Research Center’s Hispanic Trends Project online at [pewresearch.org/Hispanic](http://pewresearch.org/Hispanic).

## **A Note on Terminology**

The terms “Latino” and “Hispanic” are used interchangeably in this report.

The terms “unauthorized immigrant” and “undocumented immigrant” are used interchangeably in this report to describe immigrants who are living in the U.S. illegally.

Non-U.S. citizens are individuals who are legal (resident) aliens, unauthorized immigrants or individuals without U.S. citizenship whose immigration status is unknown.

U.S. citizens are citizens by birth or are naturalized citizens.

1. These figures reflect only sentenced offender cases for which a sentencing guideline was applied. In 2012, there were 84,173 offenders convicted in federal courts. Among them, according to USSC data, 75,867 offenders had a USSC sentencing guideline applied while 8,306 offenders did not. [↵](#)
2. Not all criminal prosecutions filed in federal courts lead to a criminal conviction. According to an analysis by the Transactions Records Access Clearinghouse (TRAC) at Syracuse University, of all the federal criminal prosecutions filed between 2008 and 2011, more than half were immigration related. (Cited by [Meissner et al., 2013](#)) [↵](#)
3. Immigrants apprehended at the border may face federal criminal charges for illegal entry (8 U.S.C. §1325) or illegal reentry (8 U.S.C. §1326). They may also face charges related to human smuggling (8 U.S.C. §1324), or document fraud (8 U.S.C. §1546). For more on immigration offenses and federal courts, see Appendix D. [↵](#)
4. The USSC files only include Class A misdemeanors. Other misdemeanor cases or cases brought before immigration courts are not included. Under 18

U.S. Code § 3559, a Class A misdemeanor includes cases where the statutory maximum term of imprisonment authorized is one year or less but more than six months. [↵](#)

5. Immigration courts generally determine removability and adjudicate applications for relief from removal. Unlike federal district courts that are responsible for handling criminal immigration charges, immigration courts do not have the authority to issue prison sentences. [↵](#)
6. See testimony of Michael J. Fisher, U.S. Border Patrol Chief before the U.S. House Committee on Homeland Security, Subcommittee on Border and Maritime Security on October 4, 2011.  
<https://www.dhs.gov/news/2011/10/04/written-testimony-cbp-house-homeland-security-subcommittee-border-and-maritime> [↵](#)
7. For more on voluntary return trends, see Appendix A. [↵](#)
8. Operation Streamline was first established in the Border Patrol's Del Rio Section of the western District of Texas in December 2005. Subsequently, it was expanded to the Yuma Sector in Arizona (December 2006), the Laredo Sector in Texas (October 2007), the Tucson Sector in Arizona (January 2008) and the Rio Grande Valley Sector in Texas (June 2008). [↵](#)
9. Border apprehensions by the U.S. Border Patrol peaked in 2000, when 1.7 million immigrants were apprehended ([U.S. Border Patrol, 2013](#)). [↵](#)
10. See Appendix B for descriptions of federal offense type categories.  
[↵](#)