

## Summary

Over the last several decades, criminal and immigration laws in the United States have disproportionately burdened marginalized racial and ethnic minorities such as African Americans and Latinos. This policy brief reviews the sociological and public health research on the health effects of various criminal and immigration laws, policies, and practices. We argue that scholars and policy makers should understand the law as a fundamental cause of health disparities operating through two broad mechanisms: (1) primary effects on those who hold a stigmatized legal status; and (2) spillover effects on racial and ethnic in-group members, regardless of their own legal status. We conclude that the massive expansion of punitive legal control should be treated as a public health crisis. To address this, policy should reduce the material and stigmatic burdens of criminal and immigration statuses on those directly impacted, as well as their legally-unmarked families and communities.

## Author Biography

Matthew Clair ([mclair@stanford.edu](mailto:mclair@stanford.edu)) completed a fellowship at the Quattrone Center at the University of Pennsylvania Law School before joining the faculty of Stanford University as Assistant Professor of Sociology in 2019. His research examines how cultural meanings constitute and reproduce social inequality.

Asad L. Asad ([asadasad@stanford.edu](mailto:asadasad@stanford.edu)) completed a fellowship at the Center for the Study of Inequality at Cornell University before joining the faculty of Stanford University as Assistant Professor of Sociology in 2019. His research examines the relationship between immigration law, race and ethnicity, and social inequality.

© 2019 Matthew Clair & Asad L. Asad

## Criminal and Immigration Laws Shape Health Outcomes of Racial and Ethnic Minorities

Matthew Clair, University of Pennsylvania & Stanford University  
Asad L. Asad, Cornell University & Stanford University

The expansion of the United States' punitive criminal and immigration laws over the last several decades has disproportionately affected marginalized racial and ethnic minorities. In 2014, African American and Hispanic men aged 18-19 years old were, respectively, ten and three times more likely to be imprisoned than white men of the same age. In 2010, Latin American immigrants accounted for 94 percent of all removals or deportations from the U.S. Mexican nationals alone constituted 73 percent of these deportations.

Criminal and immigration laws contribute to racial and ethnic health disparities by creating what we term "racialized legal statuses" (RLS), or discredited social positions that disproportionately impact marginalized racial and ethnic minorities. Statuses such as "ex-felon" or "undocumented immigrant" restrict social and political rights (e.g., many of the formerly incarcerated lack the right to vote and many undocumented immigrants lack access to public assistance). These statuses also stigmatize racial minorities who are legally-unmarked but are nevertheless assumed to hold the status (e.g., when black job applicants are assumed to have criminal records or Latino U.S. citizens are assumed to be undocumented). These legal statuses—and the legal control mechanisms these statuses entail (e.g., apprehension, detention, and surveillance)—have negative health consequences. Accordingly, we argue that the law itself should be treated as a public health issue and a fundamental cause of racial and ethnic health disparities.

Based on a critical review of the research to date, we conceptualize two broad ways RLS contributes to racial and ethnic health disparities.

### 1. *Primary effects on those who hold a discredited legal status.*

The primary effect of RLS is through direct negative effects on individuals who hold discredited statuses. More likely to be marked by these statuses, minorities are more likely to experience their negative health consequences.

In the context of criminal law, criminal justice statuses that result from arrest to incarceration impact individual health. The risk of death in police custody is higher among blacks and Latinos compared to whites. Incarceration itself has also been shown to have mostly negative health effects. Although some studies suggest that incarceration improves mortality rates among some minority groups who lack access to healthcare outside prison, morbidity rates and exposure to infectious diseases are higher among the incarcerated. Incarceration is also associated with stress and depression. For those leaving prison, the mark of a criminal record reduces their chance of employment and integration into other health-promoting institutions, such as post-secondary education and the family.

With respect to immigration law, deportation and its possibility impact the health of individual immigrants. Although research shows that immigrants enter the U.S. with a health advantage over native-born Americans, this health advantage dissipates over time. Immigrants who lack citizenship, including many lawful permanent residents, have limited access to the social safety net and are vulnerable to deportation. This legal precarity contributes to their declining health advantage. For immigrants who experience detention and/or deportation, stays in unsafe and unsanitary facilities contribute to post-

## Source

Asad, Asad L., and Matthew Clair. 2018. "Racialized Legal Status as a Social Determinant of Health." *Social Science & Medicine* 199:19–28.

## Further Reading

Castañeda, Heide, Seth M. Holmes, Daniel S. Madrigal, Maria-Elena DeTrinidad Young, Naomi Beyeler, and James Quesada. 2015. "Immigration as a Social Determinant of Health." *Annual Review of Public Health* 36:375–392.

Massoglia, Michael, and William Alex Pridemore. 2015. "Incarceration and Health." *Annual Review of Sociology* 41:291–310.

Perreira, Krista M., and Juan M. Pedroza. 2019. "Policies of Exclusion: Implications for the Health of Immigrants and Their Children." *Annual Review of Public Health* 40:147–166.

Waters, Mary C., and Philip Kasinitz. 2015. "The War on Crime and the War on Immigrants: Racial and Legal Exclusion in the Twenty-First-Century United States." Pp. 115–142 in *Fear, Anxiety, and National Identity*, edited by Nancy Foner and Patrick Simon. New York: Russell Sage.

Wildeman, Christopher, and Christopher Muller. 2012. "Mass Imprisonment and Inequality in Health and Family Life." *Annual Review of Law and Social Science* 8:11–30.

## Suggested Citation

Clair, Matthew, and Asad L. Asad. 2019. "Criminal and Immigration Laws Shape Health Outcomes of Racial and Ethnic Minorities." Policy Brief No. 02-2019, *Sociology Policy Briefs*, June 1.

## Acknowledgements

This research was supported by the Radcliffe Institute for Advanced Study and the Harvard Graduate School of Arts and Sciences Merit Fellowship.

traumatic stress and depression. If deportation results in family separation, deportees risk death should they attempt to reenter the U.S. through a border that is as desolate as it is militarized.

## 2. Spillover effects on racial and ethnic in-group members, regardless of their own legal status.

RLS also has spillover effects on legally-unmarked racial and ethnic in-group members. This operates through two pathways.

First, RLS entails negative health effects for the families and communities of those who hold them. Researchers have found that male incarceration increases AIDS infection rates among female partners, as well as infant mortality rates among their children. Aggressive policing of neighborhoods has been associated with psychological distress even among neighborhood residents who have no direct contact with police. Meanwhile, children born to immigrants with precarious immigration statuses have been found to suffer from anxiety, depressive symptoms, and lower cognitive development. These outcomes are thought to be the result of parents passing on their worries about immigration enforcement to their children (many of whom are U.S. citizens). Research has also suggested that communities with large proportions of same-race U.S- and foreign-born group members may experience the negative consequences of a RLS, particularly if they live in locales where immigration enforcement is highly visible and active.

Second, negative health effects of RLS may arise through the law's symbolic production of racial categories. RLS affects those who are legally-unmarked but nevertheless experience discrimination when their race is used as a stand-in for their legal status. This is called statistical discrimination, whereby employers and other gatekeepers rely on perceived average differences between racial groups to make hiring and other decisions about individual members of racial groups. Little health research has considered this potential pathway, but other work on racial discrimination more broadly has found that statistical discrimination on the basis of legal status occurs to the disfavor of racial and ethnic minorities. For instance, in the absence of information about job applicants' criminal records, studies have suggested that employers may discriminate against black job seekers on the assumption that they are more likely to hold criminal records than white job seekers. More germane to health inequality, one study suggests that Latino lawful permanent residents may not seek medical attention due to a fear of being misrecognized as—and then punished for being—undocumented immigrants.

## Policy Implications

Mass incarceration and mass deportation are public health crises. The country's current level of punitive legal control worsens the health of its racially marginalized residents while providing little benefit in terms of the reduction of crime and violence. Policy makers should consider the overwhelmingly negative health consequences of current policies when enacting legal changes. Policy makers should also account for the way policy effects spill over to implicate family members, neighbors, and entire racial categories trapped by the negative symbolic meanings attached to RLS. Reducing excessive punitive legal control would likely reduce disparities.

## Policy Recommendations

- Treat mass incarceration and deportation as public health crises.
- Scale back enforcement practices that do not reduce violence.
- Broaden health and social policies to consider not only those directly impacted by the law but also their families and communities.
- Prioritize social interventions that destigmatize legal statuses.