



BIAS IN THE CRIMINAL LEGAL SYSTEM

**A Report on Racial Bias in the Criminal Process and its Impact on
Noncitizens of Color in Removal Proceedings**



MillsLegalClinic

Stanford Law School

Immigrants' Rights Clinic

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INTRODUCTION

Racial bias exists at each stage of the criminal process—from stops and arrests through to charges and convictions. As Attorney General Merrick Garland explained, “there is discrimination and widespread disparate treatment of communities of color and ethnic minorities in this country,” and it is “plain” that the legal system does not “treat people equally.”¹

This report aggregates decades of research conducted by social scientists, government agencies, and nonpartisan organizations on racial bias in the criminal legal system. This research overwhelmingly suggests that racial bias—both implicit and explicit—infests every stage of the criminal process. Black and Latinx people are subject to more policing and arrests, increased pretrial detention, and harsher sentences than similarly situated white individuals. Racial disparities are especially stark for minor traffic, drug, and property offenses.² And empirical analyses do not support the notion that people of color are disproportionately represented in the criminal legal system solely as a result of committing more crime.³ Rather, individual and systemic racial biases drive disparities in the criminal legal system. Because of pervasive racial bias, Black and Latinx individuals are more likely to have had contact with the criminal legal system than their white counterparts, regardless of any other factor.

For Black and Latinx noncitizens, the consequences of racial-biased policing and prosecution can be far-reaching and devastating.

Immigration Judges (IJs) routinely consider noncitizens’ criminal history when exercising discretion for relief, waivers, and bond.⁴ For Black and Latinx noncitizens, the consequences of racially biased policing and prosecution can be far-reaching and devastating. Contact with the criminal legal system is often a precursor to removal proceedings, and convictions can disqualify a person from immigration relief.⁵ Where relief is available, criminal

history is a relevant factor in the discretionary adjudication of applications for relief. For example, when deciding whether to grant or deny relief as a matter of discretion, IJs typically consider the “totality of the circumstances,” including evidence of the noncitizen’s contact with the criminal legal system.⁶ IJs similarly consider criminal records when deciding whether to release noncitizens on bond. Specifically, IJs evaluate the nature, recency, and seriousness of the criminal offenses to determine whether the noncitizen poses a danger to the community or is a flight risk.⁷ The same is true for consideration of waivers: when weighing favorable and unfavorable factors in consideration of an application for a waiver under § 212(c) of the Immigration and Nationality Act, for instance, IJs must consider the “nature, recency, and seriousness” of any crimes committed by the applicant.⁸

Evidence of racial bias in the criminal legal system should be relevant to discretionary immigration determinations. For Black and Latinx noncitizens, evidence of bias in policing suggests that criminal records stemming from arrests and stops may not be reliable indicators of the noncitizen’s moral character, dangerousness, propensity to recidivate, or ability to rehabilitate. Similarly, because the consequences defendants experience differ drastically based on race, for Black and Latinx defendants, evidence of racial bias is a relevant feature of the criminal legal system that should be considered alongside criminal records in immigration discretionary determinations.

IJs can mitigate the racial bias embedded in the criminal legal system from invading decision-making in immigration court. Under governing legal standards, IJs have broad discretion to consider racial bias in the criminal legal system in discretionary determinations. This report is meant to assist IJs in assessing the comprehensive circumstances surrounding a criminal history to ensure their final decisions are fair, just, accurate, and impartial, as encouraged by Executive Office for Immigration Review standards.⁹ By synthesizing a large body of research on racial bias in the criminal legal system, this report presents compelling evidence that IJs should consider when evaluating the impact of criminal records in discretionary determinations.

STAGES OF THE CRIMINAL LEGAL SYSTEM

ARRESTS

Noncitizens of color are more likely to be arrested.

Stat: Black youths, for example, who account for 17% of the U.S. juvenile population, make up over 50% of arrests for many common crimes.¹⁰



BAIL

Of people arrested, noncitizens of color are also more likely to receive higher bail.

Stat: For example, after Kentucky implemented a pretrial risk assessment tool to predict an individual's risk of failing to appear in court or committing a crime while on bail, the racial gap in the granting of release without bail between Black and white defendants increased from about 2% to 10%.¹¹



SENTENCING, PROBATION, PAROLE

This disproportionate impact culminates in noncitizens of color receiving harsher sentences and less lenient probation or parole arrangements.

Stat: Black people are incarcerated in state prisons at nearly 5 times the rate of white people and Latinx people are incarcerated in state prisons at 1.3 times the incarceration rate of white people.¹³



CHARGES & PLEAS

Those who receive higher bail are also more likely to receive more serious charges and less favorable plea offers.

Stat: For instance, Denver County prosecutors were found to be twice as likely to offer white defendants the chance of deferred judgment.¹²



COLLATERAL CONSEQUENCES

Black and Latinx individuals also suffer extensive collateral consequences as a result of their criminal record.

Stat: For example, men who were incarcerated for more than 6 months were much less likely (50-58%) to have a job a year and a half post-release compared to men who were never incarcerated (82-87%).¹⁴



RACIAL BIAS IMPACTS POLICE STOPS & ARRESTS

Criminal records that result from police stops—including traffic citations, arrest records, and police reports—are likely to be tainted by racial bias. Individuals are introduced to the criminal legal system when police stop them, an encounter studies demonstrate is deeply biased.¹⁵ Police then have the discretion to decide whether to arrest the individual, and this too happens in a racially disproportionate manner. Black and Latinx individuals are stopped, arrested, and cited with disproportionate frequency. Consequently, people of color are more likely than other individuals to have records of these encounters.

Black and Latinx people are stopped and searched frequently by police officers because of implicit and explicit racial biases.

A 2020 study of nearly 100 million traffic stops across the country found evidence of “persistent racial bias” in police stops.¹⁶ Specifically, the researchers found that Black drivers were much more likely than white drivers to be stopped during daylight hours when it is easier for law enforcement officers to distinguish drivers by race.¹⁷ After sunset, when a “veil of darkness” masks drivers’ race, Black drivers are less likely to be stopped than white drivers.¹⁸ These findings are consistent with numerous other studies from across the country that have found disparate treatment of Black and Latinx individuals attributable to implicit and explicit bias.¹⁹ For example, in 2023, the California Racial Identity and Profiling Advisory (RIPA) Board reviewed data 3.2 million stops in California between January and December 2021 and found that “Black and Hispanic/Latine(x) individuals represented a higher proportion of stopped individuals than their relative proportion of the weighted California population.”²⁰ Similarly, a 2022 study of 130 million police traffic stops in 1,413 U.S. counties compared data from police stops with regional data on racial prejudice and found that Black drivers were stopped at disproportionately high rates and that “racial disparities in police traffic stops were related to white people’s local levels of racial bias.”²¹

Black and Latinx people are stopped and searched frequently by police officers because of implicit and explicit racial biases.

Once stopped, Black and Latinx individuals are searched more frequently and experience harsher treatment because of biased policing practices.

Across the country, Black and Latinx drivers are searched “about twice as often as stopped white drivers,” but the threshold for searching Black and Latinx drivers is significantly lower than for searching white drivers.²² That is, law enforcement officers search Black and Latinx individuals on the basis of less evidence, which is indicative of racial bias. For example, in California, law enforcement officers reported “no action taken” after stops of Black individuals more than 2.2 times as often as they did for white individuals, indicating that Black individuals were stopped regardless of whether they were engaged in criminal activity.²³ Similarly, a 2018 study of 2.9 million stops conducted by the New York City Police Department found that Black and Latinx individuals were disproportionately represented in searches that failed to turn up evidence of contraband.²⁴ After controlling for other factors, researchers attributed this, in part, to racially discriminatory enforcement.²⁵ Black and Latinx people also more frequently report experiencing harsh treatment—including the threat or use of force—when stopped.²⁶ And a recent study of body camera footage from 981 stops found that Black community members are 61% more likely to hear disrespectful utterances from police officers during stops and that “police officers’ interactions with [B]lacks tend to be more fraught” generally.²⁷ The low threshold required to search Black and Latinx individuals combined with evidence of harsher treatment suggest that such stops are influenced by implicit and explicit racial bias.

Black and Latinx individuals are arrested at disproportionate rates but are not engaged in more criminal activity. According to the Federal Bureau of Investigations, Black and Latinx people are “overrepresented among persons arrested for nonfatal violent crimes” relative to their representation in the general population while white people were underrepresented.²⁸ This overrepresentation occurs across age ranges, as even Black youths, who account for 17% of the U.S. juvenile population, make up over 50% of arrests for many common crimes.²⁹ Despite being arrested at disproportionately high rates, empirical evidence does not suggest that Black or Latinx individuals are engaged in correspondingly high levels of criminal activity. For example, relying on data from 8,984 youth in the National Longitudinal Survey of Youth, researchers found that Black and Latinx people were “more likely to be arrested for drug distribution, but less likely to be involved in drug offenses.”³⁰ Similarly, a 2019 study found that “black men were more likely than white men to be arrested and report no illegal activity” while in contrast “white men were more likely than black men to indicate engaging in criminal offenses but not being arrested.”³¹

Though IJs are allowed to consider arrest records in discretionary contexts, the pervasive evidence of racial bias in police stops, searches, and arrests undermines the probative value of these records in discretionary determinations. While arrest records may reliably indicate that a noncitizen was stopped by the police, for Black and Latinx noncitizens, the overwhelming body of research demonstrates that they may not indicate that the noncitizen was engaged in criminal or even suspicious activity. They are, therefore, not probative of a noncitizen’s dangerousness, rehabilitation, or likelihood of reoffending and should be given less weight in discretionary determinations.

Racial bias is not the only reason why IJs should give less evidentiary weight to arrest reports. If racial bias motivated the initial stop, it is likely such bias also colors the arrest report’s narrative. BIA precedent cautions against relying heavily on these documents as evidence of a noncitizen’s danger to society or potential to recidivate, particularly where no conviction results. See *In re Catalina Arreguin De Rodriguez*, 21 I. & N. Dec. 38, 42 (BIA 1995) (explaining court was “hesitant to give substantial weight to an arrest report, absent a conviction or corroborating evidence of the allegations contained therein” and subsequently giving document “little weight”); *Avila-Ramirez v. Holder*, 764 F.3d 717 (8th Cir. 2014) (determining BIA erred by not following its own binding precedent of *Arreguin* when it gave significant weight to arrest reports in denying individual discretionary relief from removal under former INA §212(c)). Given this precedent, in addition to considering the racially-biased atmosphere when exercising discretion, IJs should give even less evidentiary weight to arrest records or police reports at the outset of a discretionary determination and consider excluding them entirely.

BAIL

Criminal court decisions about pretrial detention, including defendants’ access to bail, differ drastically based on the defendant’s race and economic circumstances. Black and Latinx defendants are more likely to be subject to punitive bail requests, are subject to higher bail requests, and are more likely to be incarcerated pretrial than similarly situated white defendants. Poor outcomes at the bail stage negatively impact Black and Latinx defendants at subsequent stages of the criminal process. Individuals detained pretrial are more likely to be convicted, incarcerated, and receive longer sentences after conviction.³² Those who experience pretrial detention also experience negative downstream consequences. Individuals who are unable to post bail are more likely to lose income, housing, and employment.³³

Black and Latinx people experience disparate outcomes at the pretrial phase of criminal proceedings because of implicit and explicit racial bias. According to a study by the U.S. Department of Justice, Bureau of Justice Statistics, Black and Latinx jail inmates are overrepresented among the “unconvicted” jail population, which includes those unable to afford bail.³⁴ This overrepresentation of people of color is explained, in part, by racially biased pretrial practices that produce worse pretrial outcomes—including higher and more punitive bail requests—for non-white defendants.³⁵ For example, one 2018 study of 162,836 cases from 93,914 unique defendants in Philadelphia and 93,417 cases from 65,944 unique defendants in Miami-Dade found “substantial bias against [B]lack defendants,” even after controlling for statistical discrimination.³⁶ As a result, “[B]lack defendants are 3.6 percentage points more likely to be assigned monetary bail compared with white defendants and receive bail amounts that are \$7,281 greater than white defendants.”³⁷ Researchers also found that Black defendants were less likely to be released on their own recognizance or assigned nonmonetary conditions of release.³⁸ Similarly, a 2023 study of pretrial decisions from federal district court over a ten-year period found that Latinx defendants were released at lower rates than white defendants of similar safety and nonappearance risk.³⁹

Black and Latinx individuals experience worse outcomes in criminal pretrial because of biased risk assessments. Some jurisdictions employ “risk assessment tools” to predict an individual’s risk of failing to appear in court or committing a crime while on bail. These mechanisms often rely on data that may reflect racial disparities in law enforcement and criminal justice (e.g., historical arrests or convictions records).⁴⁰

Black and Latinx individuals experience worse outcomes in criminal pretrial because of biased risk assessments.

Consequently, these tools can unintentionally perpetuate these disparities by leading to higher risk scores, higher bail amounts, and higher rates of pretrial detention for individuals from these groups.⁴¹ For example, a study of a pretrial risk assessment tool adopted in Kentucky found that the racial gap in the granting of release without bail between Black and white defendants increased after implementing the tool from about 2% to 10%.⁴²

Poverty, not dangerousness, is a primary reason why individuals of color cannot post criminal bail. Even when Black and Latinx defendants are offered bail, they are less likely to be able to make bail than white defendants.⁴³ Poverty is frequently a driver of a failure to post bail,⁴⁴ and Black and Latinx populations are more likely to be indigent.⁴⁵

Evidence of racial bias in pretrial decisions is relevant to discretionary immigration determinations. For Black and Latinx defendants, bias at the pretrial stage carries through the entire criminal process. Negative pretrial outcomes increase the likelihood of conviction, regardless of whether or not the defendant committed the offense, particularly when the defendant is facing minor charges.⁴⁶

Pretrial detention is also correlated with harsher and longer sentences, even when controlling for factors such as charge type and criminal history.⁴⁷ Given the significant impact that pretrial decisions can have on case outcomes, for Black and Latinx noncitizens, pervasive evidence of racial bias at the pretrial stage is a relevant consideration when evaluating the impact of criminal convictions on discretionary determinations. Evidence that a noncitizen has had contact with the criminal legal system should be balanced against evidence of pervasive racial bias and afforded correspondingly less weight in discretionary decisions.

CHARGING & PLEAS

Empirical evidence suggests that because of implicit and explicit racial bias, Black and Latinx individuals are more likely to be charged for the same offense as similarly situated white individuals and receive harsher charges, less favorable pleas, and more severe sentences, as compared to white defendants.

Prosecutors have significant discretion in deciding what charges to assign to an individual and what plea deal to offer them, and these decisions are often tainted by racial bias. Prosecutors have broad discretionary power to decide whether to bring charges against an individual, what charges to file, and whether to seek severe penalties or agree to defer prosecution or suspend a sentence. Numerous studies have shown that “similarly situated defendants of different races were treated differently at . . . initial case screening, charging, [and] plea offers.”⁴⁸ Black and Latinx defendants are charged more frequently and are less likely to have their cases dismissed than white defendants, but do not have a higher propensity for criminal behavior.⁴⁹ For instance, a 2020 study conducted in Wisconsin found that Black and Latinx defendants were 11% more likely to have misdemeanor drug case filed against them than white defendants,⁵⁰ despite similar rates of drug use across racial groups.⁵¹ Similarly, a 2021 study found that “relative to their engagement in alcohol-impaired driving, Latino men are convicted of DUI more frequently than are white men.”⁵² The disproportionately high rate of conviction result suggests bias in decisions to stop, test, and arrest drivers and at the charging and ruling stages of the case.⁵³ Black and Latinx defendants also receive more severe initial charges than white defendant for similar conduct.⁵⁴ For example, federal prosecutors are 1.75 times more likely to charge Black defendants with offenses carrying higher mandatory minimum sentences than white defendants with the same criminal records.⁵⁵ The discretion prosecutors have in deciding what initial charges to bring accounts for most of the persistent, nationwide racial disparity in sentencing.⁵⁶ And these racial disparities suggest that inherent racial bias shapes individual prosecutors’ decision-making.⁵⁷

Individuals of color are given less favorable options to plead, and consequently plead to charges with harsher punishments because of racial bias.

Individuals of color are given less favorable options to plead, and consequently plead to charges with harsher punishments because of racial bias. Over 90% of federal and state court cases are resolved through pleas.⁵⁸ Prosecutors’ tendency to charge Black and Latinx defendants with more severe charges and the overrepresentation of Black and Latinx individuals in pretrial detention have a compounding effect when it comes to plea bargaining.

Where a prosecutor chooses to bring severe charges, such as those that carry mandatory minimums, “the threat of the initial charges may induce the defendant to plead guilty on less favorable terms.”⁵⁹ Individuals subjected to pretrial custody are less likely to have charges against them dropped during plea bargaining and more likely to agree to a plea.⁶⁰ During plea bargaining, prosecutors are also less likely to give Black and Latinx individuals a reduced charge and the benefits of reduced sentences than similarly situated white individuals.⁶¹ For instance, a study in Denver County found that prosecutors were twice as likely to offer white defendants the chance of deferred judgment – a favorable plea agreement

in which a defendant, in exchange for completing supervision and maintaining a clean criminal record, can choose to have their entire case or most severe charges dismissed.⁶²

The pervasive racial bias in criminal proceedings during the plea and charging phase should be a consideration in discretionary immigration determinations. Evidence of racial bias against Black and Latinx defendants in the charging and plea stages is a relevant factor that should be considered alongside criminal records in discretionary determinations. Because of entrenched racial bias, for Black and Latinx noncitizens, charging documents—and convictions more generally—may not be reliable indicators of the noncitizen’s dangerousness, propensity to recidivate, or ability to rehabilitate. IJs should consider the pervasive racial bias of the criminal legal system, including at the plea and charging phase, when determining whether Black and Latinx noncitizens are entitled to a favorable exercise of discretion.

SENTENCING, PROBATION & PAROLE

The impact of racial bias at each stage of the criminal legal process culminates in racial disparities in sentencing, probation, and parole. People of color are held under correctional supervision at higher rates and for greater periods of time than white people.

Because of racial bias throughout the criminal process, Black and Latinx individuals receive harsher sentences. Black and Latinx male defendants receive sentences that are on average 19% longer than white defendants who are arrested for the same crimes.⁶³ Sentencing enhancements partially explain the disparities in sentencing,⁶⁴ but regardless Black adults are being sentenced to increasingly long sentences compared to white adults for most offenses.⁶⁵ Moreover, while the disparity ratios have fallen, there are still racial differences in rates of sentencing for drug crimes, property crimes, and violent offenses.⁶⁶ Black people are incarcerated in state prisons at nearly 5 times the rate of white people and Latinx people are incarcerated in state prisons at a rate that is 1.3 times the incarceration rate of white people.⁶⁷ Additionally, 1 in 19 Black individuals are under correctional supervision compared to 1 in 62 white individuals who are under correctional supervision.⁶⁸

Black and Latinx people are more likely to be subjected to parole and probation than similarly situated white individuals and for longer periods of time. Community supervision is also marked by significant racial disparities and is a major contributor to mass incarceration.⁶⁹ Black people are more than twice as likely to be on probation and nearly 4 times more likely to be on parole than white people.⁷⁰ Black probationers are revoked,⁷¹ charged with parole violations, and returned to prison for a parole violation at higher rates than white and Latinx probationers.⁷² Black and Latinx people remain on probation and parole longer than similarly situated white people.⁷³ The persistence of racial bias throughout the criminal legal system results in longer terms of community supervision for people of color and the disproportionate impacts on these communities is central to an IJ’s review of a noncitizen of color who has been on probation or parole.

Black and Latinx people are more likely to be subjected to parole and probation than similarly situated white individuals and for longer periods of time.

Evidence of pervasive racial bias in criminal proceedings, including in the sentencing phase, is a relevant consideration in discretionary immigration determinations. The racially disparate treatment of Black and Latinx defendants in sentencing decisions undermines the probative value of sentencing records when evaluating a noncitizen’s dangerousness, ability to rehabilitate, or risk of recidivism. And under a “totality of the circumstances” test, evidence of pervasive racial bias against Black and Latinx defendants is a relevant circumstance that should be considered and weighed against criminal records in discretionary determinations.

COLLATERAL CONSEQUENCES

Contact with the criminal legal system can impact all aspects of someone’s life and “creates barriers to jobs, occupational licensing, housing. . . higher education opportunities,” and other factors that tend to be viewed positively in discretionary assessments.⁷⁴ Racial bias can explain not just the existence of an individual’s criminal record, but also the absence of certain positive equities, such as a long-term employment history, steady income, and stable housing.

Racial bias from the criminal legal system unfairly affects individuals even after they have served their sentences because they may struggle to obtain and retain jobs. For individuals with a criminal history, it can be difficult to obtain steady employment. According to the U.S. Department of Justice, incarcerated people are “are unemployed at a rate of over 27 percent, higher than the total U.S. unemployment rate during any historical period, including the Great Depression.”⁷⁵

The impact of racial bias within the criminal legal system, particularly at the sentencing phase, heightens the unfair disadvantage people of color experience during their job search.

The impact of racial bias within the criminal legal system, particularly at the sentencing phase, heightens the unfair disadvantage people of color experience during their job search. Studies suggest this disparity in employment rates is linked not only to the presence of a conviction, but also to the length of one’s prison sentence. For example, the U.S. Bureau of Labor Statistics (BLS) has determined that men who were incarcerated for more than 6 months were much less likely (50-58%) to have a job a year and a half post-release compared to

men who were never incarcerated (82-87%).⁷⁶ This downstream consequence disproportionately impacts Black and Latinx men, who are 13.6% and 6.4% more likely than white men to receive prison sentences longer than 6 months.⁷⁷ As the white House acknowledged, “combined with undue disparities in the criminal legal system, these barriers leave people of color... disproportionately locked out of gainful employment after release” from prison.⁷⁸

A criminal record unjustly impacts a person of color’s earning potential and ability to secure stable housing. In the first full year after release, individuals had an average annual income half the size of their peers who had no high school degree but also had not spent time in prison.⁷⁹ Low earnings impact an individual’s “ability to cover basic costs like childcare, transportation and housing, and can perpetuate or exacerbate household poverty.”⁸⁰ A criminal record can also independently bar housing opportunities. Landlords and homeless shelters frequently deny housing to people with a criminal history, and laws that criminalize homelessness further place an individual at risk of adding to their criminal record.⁸¹ As such, a criminal record creates multiple compounding factors that hinder an individual from obtaining stable housing.

Evidence of pervasive racial bias is a relevant consideration when balancing equities in discretionary immigration determinations. For Black and Latinx noncitizens, evidence of pervasive racial bias throughout the criminal legal process offers important context for understanding the existence of negative equities—like arrest records and convictions—as well as the potential absence of positive equities. Because of pervasive racial bias in the criminal legal system, Black and Latinx individuals bear the brunt of the well-documented collateral consequences of contact with the criminal legal system. Evidence of pervasive racial bias is, therefore, one factor among many, that should be considered when exercising discretion.

CONCLUSION

As this report demonstrates, decades of empirical research have concluded that racial bias pervades every stage of the criminal legal system. This racial bias has lasting consequences for noncitizens of color when their criminal records are considered by IJs in the exercise of discretion. In discretionary immigration proceedings, criminal records can be used as evidence of a noncitizen's dangerousness, the potential to rehabilitate, and the likelihood of recidivism. Criminal records may also be used as evidence against the positive exercise of discretion. However, evidence of pervasive racial bias in the criminal legal system cautions against overreliance on criminal records in discretionary determinations. Because of the pervasive bias embedded within the criminal system, evidence that a noncitizen has had contact with the criminal system must be considered in context and is not probative of the noncitizen's character. IJs can mitigate the disproportionate impact that racial bias within the criminal legal system has long had on noncitizens of color as they make their way through the immigration system by considering evidence of pervasive racial bias when evaluating the totality of circumstances and assigning criminal records less weight in discretionary determinations.

ENDNOTES

- 1 Merrick Garland, Attorney General Confirmation Hearing – Day 1, at 03:03:16; 04:11:42 (Feb. 22, 2021), <https://www.c-span.org/video/?508877-1/attorney-general-confirmation-hearing-day-1>.
- 2 See, e.g., Decriminalization and Policing, HARVARD KENNEDY SCHOOL MALCOLM WIENER CTR. FOR SOC. POL’Y (last visited May 26, 2023), <https://www.hks.harvard.edu/centers/wiener/programs/criminaljustice/research-publications/roundtable-racial-disparities-ma-criminal-courts/decriminalization-and-policing> (analyzing this phenomenon in a Massachusetts study).
- 3 See data cited herein.
- 4 See, e.g., *Matter of Marin*, 16 I&N Dec. 581, 584 (BIA 1978) (finding that waiver requires “balanc[ing] the adverse factors evidencing the alien’s undesirability as a permanent resident with the social and humane considerations presented in his [or her] behalf”); *Matter of C–V–T–*, 22 I&N Dec. 7 (BIA 1998) (adopting the same standard for cancellation of removal).
- 5 See, e.g., *Pereida v. Wilkinson*, 592 U.S. 224 (2021); IMMIGRANT DEFENSE PROJECT AND NAT’L IMMIGRATION PROJECT, PRACTICE ALERT: OVERVIEW OF *PEREIDA V. WILKINSON* FOR IMMIGRATION AND CRIMINAL DEFENSE COUNSEL (2021), <https://nipnl.org/work/resources/overview-pereida-v-wilkinson-immigration-and-criminal-defense-counsel>.
- 6 See *Matter of Pula*, 19 I&N Dec. 467, 473 (BIA 1987).
- 7 See *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). See also *Singh v. Holder*, 638 F.3d 1196, 1206 (9th Cir. 2011).
- 8 *Tipu v. I.N.S.*, 20 F.3d 580, 584 (3d Cir. 1994).
- 9 EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, *Immigration Court Practice Manual*, 13(c) (last updated June 27, 2023), <https://www.justice.gov/eoir/reference-materials/ic/chapter-1/3> (“Immigration Judges strive to act honorably, fairly, and in accordance with the highest ethical standards, thereby ensuring public confidence in the integrity and impartiality of Immigration Court proceedings.”).
- 10 CHARLES PUZZANCHERA ET AL., NAT’L CTR. JUV. JUST., YOUTH AND THE JUVENILE JUSTICE SYSTEM: 2022 NATIONAL REPORT, 108 (2022), <https://ojjdp.ojp.gov/publications/2022-national-report.pdf> (detailing how Black youths account for “62% of juvenile arrests for robbery and stolen property offenses, and 50% of arrests for murder and motor vehicle theft”).
- 11 Megan Stevenson, *Assessing Risk in Assessment in Action*, 103 MINN. L. REV. 303, 363 (2018).
- 12 STACEY J. BOSICK, UNIV. OF DENVER COLO. EVALUATION AND ACTION LAB, RACIAL DISPARITIES IN PROSECUTORIAL OUTCOMES 19 (2021), https://www.denverda.org/wp-content/uploads/news-release/2021/Racial-Disparities-in-Prosecutorial-Outcomes_March2021_final-002.pdf.
- 13 *Employment of Young Men After Arrest or Incarceration*, U.S. BUREAU OF LAB. STAT. (last updated May 20, 2019), <https://www.bls.gov/opub/ted/2019/employment-of-young-men-after-arrest-or-incarceration.htm>.
- 14 ASHLEY NELLIS, THE SENT’G PROJECT, THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS (2021), <https://www.sentencingproject.org/reports/the-color-of-justice-racial-and-ethnic-disparity-in-state-prisons-the-sentencing-project/>.
- 15 NAT’L CONF. OF STATE LEGISLATURES, THE LEGISLATIVE PRIMER SERIES FOR FRONT-END JUSTICE: RACIAL AND ETHNIC DISPARITIES IN THE JUSTICE SYSTEM 1 (2022), https://documents.ncsl.org/wwwncsl/Criminal-Justice/Racial-and-Ethnic-Disparities-in-the-Justice-System_v03.pdf (“[P]eople of color are far more likely to enter the nation’s justice system than the general population.”).
- 16 Pierson et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, 4 NATURE HUM. BEHAV. 736, 736 (2020).
- 17 *Id.*
- 18 *Id.*
- 19 See Kate Antonovics & Brian Knight, *A New Look at Racial Profiling: Evidence from the Boston Police Department* 19 REV. ECON. & STAT. 163, 177 (2009) (“[O]ur results strongly suggest that officers are

more likely to conduct a search if the race of the motorist differs from the race of the officer...our results suggest that preference-based discrimination plays a role in explaining differences in the rate at which motorists from different racial groups are searched during traffic stops.”); Andrew Gelman et al., *An Analysis of the New York City Police Department’s “Stop and Frisk” Policy in the Context of Claims of Racial Bias* 102 J. AM. STAT. ASS’N 813, 822 (“[T]he NYPD’s records indicate that they were stopping blacks and Hispanics more often than whites, in comparison to both the population of these groups and the best estimates of the rates of crimes committed by each group.”).

20 CALIFORNIA RACIAL IDENTITY PROFILING ADVISORY BOARD (RIPA), ANNUAL REPORT 8 (2023) [hereinafter “RIPA ANNUAL REPORT”], <https://oag.ca.gov/system/files/media/ripa-board-report-2023.pdf>.

21 Marleen Stelter et al., *Racial Bias in Police Traffic Stops*, 33 PSYCHOL. SCI. 483, 492 (2022)

22 Pierson et al., *supra* note 16 at 739.

23 RIPA ANNUAL REPORT, *supra* note 20.

24 Sharad Goel et al., *Precinct or Prejudice? Understanding Racial Disparities in New York City’s Stop and Frisk*, 10 ANNALS APPLIED STATS. 365, 367 (2016).

25 *Id.*

26 BUREAU OF JUST. STAT., CONTACT BETWEEN POLICE AND PUBLIC, 2020 10 (2022), <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cbpp20.pdf>.

27 Rob Voigt et al., *Language From Police Body Camera Footage Shows Racial Disparity in Officer Respect*, 114 PNAS 6521, 6524 (2017).

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