

# Anti-AAPI Racism in Immigration and Criminal Law

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**A** basic truth about the history of the United States is that its immigration laws have embodied and amplified racism. Asian American and Pacific Islander (AAPI) communities were one of the first targets of such laws, particularly laws attaching immigration consequences to contact with the criminal legal system. Although federal laws in the early 20th century permitted deporting AAPI individuals based on perceived association with prostitution or opium, California passed some of the country's first drug laws as early as the 1870's, targeting Chinese Californians.

This legacy is present today in the ways California AAPI communities are impacted by immigration detention and deportation. Between 2017 and February 2022, for example, 2,596 Californians were deported to East Asia, and 1,201 Californians were deported to Southeast Asia.

## Key Findings

Federal immigration and criminal laws continue to harm AAPI communities in California today. These laws, with their origins in anti-AAPI racism, first laid the foundation to cast AAPI communities as “perpetual foreigners.”

This has not only led to a societal view of AAPI communities that contributed to increased instances of anti-AAPI violence during the COVID-19 pandemic, but has also produced direct and devastating immigration consequences — including arrest, detention, deportation, and ultimately, family separation. California law allows federal immigration and criminal laws — in spite of their racist underpinnings — to lead to these harmful results. The following California laws and policies are especially troubling.

1. **State and Local Transfers to ICE:** California permits state and local law enforcement to transfer individuals to Immigration and Customs Enforcement (ICE) if an individual has certain criminal convictions. Second, the California Department of Corrections and Rehabilitation, though not other law enforcement agencies, may use its resources for immigration enforcement.
2. **Lack of Universal Representation:** California's statewide representation program does not permit funds to be used to represent individuals in removal proceedings who have certain criminal convictions. Some counties and cities have programs which provide representation regardless of criminal history, but these local programs do not reach all Californians.
3. **Gang Databases:** California's gang database (CalGang) marks certain Californians as gang members, which can carry adverse immigration consequences. CalGang has stopped including LA Police Department (LAPD) data due to significant errors in the data, but continues to include questionable information from other local law enforcement agencies.



*Chinese butcher and grocery shop, Chinatown, San Francisco, 1880. San Francisco History Center, San Francisco Public Library.*

**CALGANG**<sup>®</sup>

## Recommendations

1. **Stop Transfers to ICE.** One example of positive legislation is the VISION Act (AB 937), which the California legislature considered in 2022. It helps ensure local and state resources are not used to separate families. The VISION Act prevents immigrants from being transferred to ICE immigration prisons and from potentially being deported and exiled from their families. It includes the California Department of Corrections and Rehabilitation in this prohibition. This kind of legislation stopping all transfers of Californians from local jails and state prisons to ICE, without exception, is essential to protecting immigrant communities.
2. **Universal Representation for All Californians.** California's immigration services funding must reach all Californians – irrespective of past contact with the criminal legal system. California should amend Welfare and Institutions Code section 13303 to remove this limitation on funding.
3. **Discontinue CalGang.** Inclusion in the CalGang database can have negative immigration consequences. In light of the significant errors identified in a 2016 audit of CalGang, as well as in the 2020 audit of LAPD data, use of CalGang should be discontinued altogether.
4. **Amend State Criminal Laws to Eliminate or Mitigate Immigration Consequences.** California should amend state criminal statutes which can lead to deportation. The California legislature in 2022 considered AB 2195, which provides an alternate offense to drug convictions and thus does not carry immigration consequences. These kinds of smart alternatives to offenses like drug convictions are essential. California can also amend its criminal statutes so that they do not “match” federal definitions for a given crime. According to a special methodology that courts use in immigration cases, if a state criminal statute is broader than the federal definition, the state criminal conviction cannot create immigration consequences, like deportation. This kind of amendment, however, must be implemented carefully so as not to expand the number of people who can be criminally prosecuted.



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