

Noncitizens in the U.S.: Public Information on Federal Incarcerations

GAO-24-107598

Q&A Report to Congressional Requesters

September 3, 2024

Why This Matters

Depending on the nature of the offense, noncitizens in the U.S. who are arrested and convicted of crimes may be incarcerated by federal, state, or local authorities, which bear the costs of incarcerating them. Since 2005, we have periodically reported available information on the number of noncitizens incarcerated in the U.S. and the cost of incarcerating them.¹ For example, we previously reported on the number and nationality of noncitizens incarcerated in the U.S., the types of offenses for which they were arrested and convicted, and their potential removability at the time of incarceration. We also previously reported on the estimated costs to the federal government and to states of incarcerating noncitizens.

We were asked to provide an update to our previous work and are in the process of conducting the relevant analyses, the results of which we anticipate issuing in winter 2025. In the interim, this report provides information on the agencies that collect and maintain information about the citizenship of individuals incarcerated in the U.S. and publicly reported information on the number of noncitizens incarcerated by the Federal Bureau of Prisons (BOP) at year-end of each year for 2017 through 2022; the number of noncitizens sentenced for federal offenses from fiscal year 2018 through fiscal year 2023; and the types of offenses for which they were sentenced.²

Though related, this report has some key differences from our past and ongoing work on noncitizens incarcerated in the U.S. For example, data in this report rely exclusively on publicly reported summary-level information from the Department of Justice's (DOJ) Bureau of Justice Statistics (BJS) and the U.S. Sentencing Commission (USSC), whereas in our past work on this topic, we analyzed individual-level data from DOJ and the Department of Homeland Security (DHS). In addition, in this report, information on individuals incarcerated by BOP includes individuals held prior to their conviction and sentencing, whereas our past work focused on individuals who were convicted and sentenced for an offense. As a result, some information described in this report is not directly comparable to past related work and may not be comparable to information developed for our ongoing effort.

Key Takeaways

- Components of the judicial branch, DOJ, and DHS collect or maintain information about the citizenship of individuals incarcerated by BOP. Federal agencies do not collect or maintain comprehensive information about the citizenship of individuals incarcerated in state prisons and local jails. According to a DOJ and DHS report about noncitizens incarcerated in the U.S., the lack of comprehensive information about state and local incarcerations was a noteworthy data limitation considering that approximately 90 percent of the total population incarcerated in the U.S. were in state and local facilities.

- According to BJS reports about incarcerations in the U.S., the number of noncitizens incarcerated by BOP decreased approximately 33 percent from year-end 2017 (36,000 noncitizens) to year-end 2022 (24,000 noncitizens). According to a BJS report about selected characteristics of individuals incarcerated in the U.S., the proportion of noncitizens incarcerated by BOP decreased from 19 percent of the federal prison population at year-end 2018 to 15 percent of the federal prison population at year-end 2022.
- The number of noncitizens sentenced for federal crimes varied from fiscal year 2018 through fiscal year 2023. However, compared to fiscal year 2018, the number of noncitizens sentenced for federal crimes in fiscal year 2023 decreased 27 percent, from approximately 29,500 to 21,500.
- For approximately three-quarters of noncitizens sentenced for a federal crime from fiscal year 2018 through fiscal year 2023, the most serious offense they were convicted of—referred to throughout as “offense type”—was immigration-related (76 percent). Drug trafficking was the second most common offense type (14 percent).

What information do federal agencies collect and maintain about the citizenship of individuals incarcerated in federal prisons?

Judicial branch entities collect and maintain information about the citizenship of individuals sentenced for federal offenses and share it with DOJ, which in turn shares it with DHS.³

The Administrative Office of the U.S. Courts’ Probation and Pretrial Services Office collects data on citizenship status at two stages. A federal probation and pretrial services officer collects information—including citizenship information—from an individual arrested for a federal offense during a pretrial interview. Following a conviction, a federal probation and pretrial services officer collects information—including citizenship information—when preparing the individual’s presentence report. In general, citizenship is self-reported by the individual defendant. However, federal probation and pretrial services officers may also use information from other sources, such as charging documents or records of arrest and conviction, if the individual does not participate in a pretrial interview or to confirm or verify information collected from the individual defendant.

The USSC and DOJ’s BOP use the information from the presentence report—including citizenship information—in the data each agency maintains. Specifically, the USSC—an independent judicial branch agency created, among other things, to reduce sentencing disparities and promote transparency and proportionality in sentencing—maintains data about all individuals convicted of felonies and class A misdemeanors in federal court in an internal data collection system.⁴ BOP maintains data about all individuals in federal prisons in its case management database.

Since 2018, BOP has provided information about foreign-born individuals in its custody, including noncitizens, to DHS’s U.S. Immigration and Customs Enforcement (ICE), according to ICE officials. Each day, BOP sends a roster of foreign-born individuals in its custody to ICE, including biographic and other identifying information such as alien number, as applicable, according to ICE officials.⁵ ICE uses the information to search available DHS databases and classify those individuals based on their citizenship and immigration status. ICE then returns its findings to BOP. According to ICE officials, ICE also has access to BOP’s case management database and uses it to run individual inquiries or formulate rosters of incarcerated individuals in BOP custody.

What information do federal agencies collect and maintain about the citizenship of individuals incarcerated in state prisons and local jails in the U.S.?

Federal agencies do not collect or maintain comprehensive information about the citizenship of individuals incarcerated in state prisons or local jails. In their most recent report on noncitizens incarcerated in the U.S., DOJ and DHS stated that the lack of comprehensive information about state and local incarcerations was a noteworthy data limitation considering that approximately 90 percent of the total population incarcerated in the U.S. were in state and local facilities.⁶

DOJ's BJS includes information about the citizenship of federal and state prison populations in its annual report on incarcerated individuals in the U.S., but it has identified limitations to this reporting. As part of its National Prisoner Statistics effort, BJS collects information from state and territory correctional authorities about the individuals under their jurisdiction on December 31 of each year.⁷ However, not all states consistently reported information on citizenship, and states did not all use the same methodologies when reporting. For example, some states relied on self-reported citizenship information, while others were subject to validation from government data sources. Additionally, some, but not all, states included individuals held in local jails and some, but not all, included individuals held in private facilities.

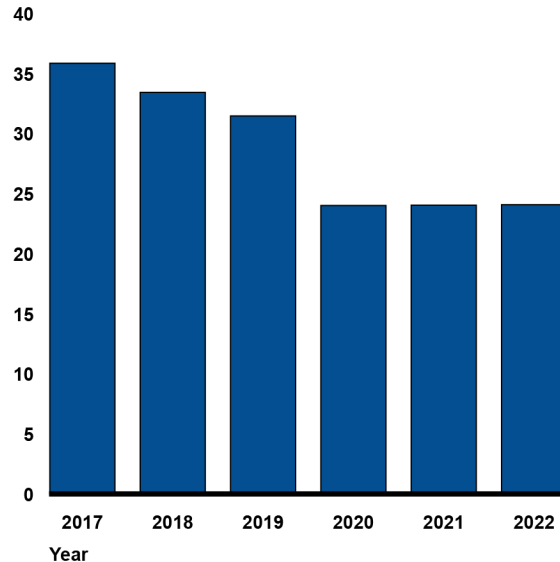
DOJ's Bureau of Justice Assistance collects information about certain noncitizens in state prisons and local jails as part of its administration of the State Criminal Alien Assistance Program (SCAAP), but not all noncitizens meet the criteria for the program and not all states and localities participate in it. SCAAP provides federally funded payments to participating states and localities as reimbursement for a portion of the correctional officer salary costs associated with incarcerating certain noncitizens. Specifically, for costs to be eligible for reimbursement, the noncitizen must (1) meet the statutory definition for inclusion—that is, individuals who entered the U.S. without being inspected by immigration authorities, individuals who stayed in the U.S. after their visa had expired, or individuals who were the subject of exclusion or deportation proceedings at the time they were taken into custody by the state or locality; (2) have at least one felony or two misdemeanor convictions for violations of state or local law; and (3) be incarcerated for at least 4 consecutive days during the reporting period.⁸ In addition, not all states and localities participate in the program. As a result, the data do not reflect all noncitizens incarcerated in state prisons and local jails.

How has the number of noncitizens incarcerated by BOP changed from 2017 through 2022?

According to BJS reports about incarcerations in the U.S., the number of noncitizens incarcerated by BOP decreased approximately 33 percent from year-end 2017 (36,000 noncitizens) to year-end 2022 (24,000 noncitizens) (see figure 1).⁹ The latter part of this time period coincided with executive actions intended to decrease the number of individuals entering the U.S. and reduce the transmission of COVID-19.¹⁰ These actions included a Centers for Disease Control and Prevention order in place from March 2020 through May 2023 that suspended the introduction of certain noncitizens traveling from Canada or Mexico who would otherwise be detained in congregate settings. Instead, these individuals were to be immediately expelled to their country of last transit or country of origin.^{11,12}

Figure 1: Number of Noncitizens Incarcerated by the Federal Bureau of Prisons (BOP) at Year-End, 2017–2022

Number of noncitizens (in thousands)



Source: Bureau of Justice Statistics reported data. | GAO-24-107598

Note: For the purposes of this report, “incarcerated by BOP” refers to individuals under the jurisdiction of BOP, meaning they are under the legal authority of BOP, regardless of where they are held. Individuals incarcerated by BOP can be held in public or privately-operated secure or nonsecure facilities, including local jails, state-operated facilities, and home confinement. The figure reflects information from Bureau of Justice Statistics (BJS) reports that use data from its National Prisoner Statistics effort. As part of that effort, BJS collects information annually from BOP about the individuals under the agency’s jurisdiction at year-end of that year. Therefore, data reflect point-in-time information on individuals incarcerated and do not reflect the total number of individuals incarcerated during the year. BJS reports characterize the data as reflecting the number of individuals incarcerated on December 31 of each year; however, according to supplements to those reports, BOP has submitted data reflecting the number of individuals incarcerated on other year-end dates—specifically, December 30, 2017; December 29, 2018; December 28, 2019; December 26, 2020; December 25, 2021; and December 24, 2022. The BJS report reflecting incarcerations at year-end 2022 was the most recent publicly available information as of August 2024.

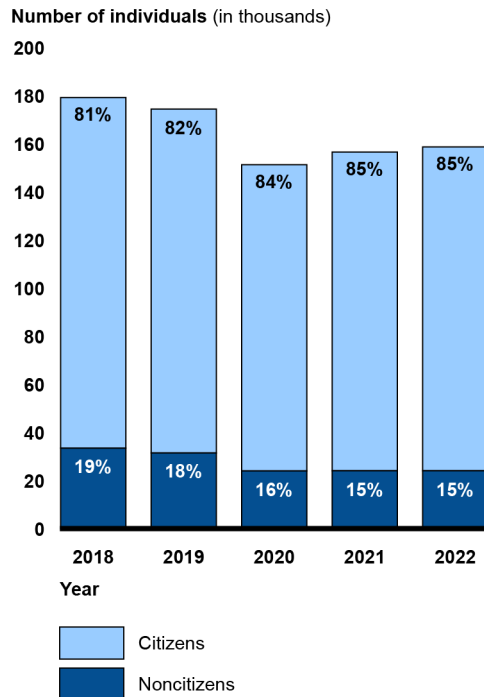
The number of individuals incarcerated by BOP includes individuals convicted and sentenced for an offense, as well as individuals who are held by BOP before their conviction and/or sentencing. The number of individuals incarcerated by BOP also includes individuals sentenced for a felony in the District of Columbia. If an individual was incarcerated more than once during this time period, they may be counted in the data for multiple years.

How has the proportion of noncitizens incarcerated by BOP changed from 2018 through 2022?

According to a BJS report about selected characteristics of individuals incarcerated in the U.S., the proportion of noncitizens incarcerated by BOP decreased from 19 percent of the federal prison population at year-end 2018 to 15 percent of the federal prison population at year-end 2022.¹³ Comparable information about the number of citizens incarcerated by BOP at year-end 2017 was not available, and as a result, we were not able to report the number of noncitizens relative to the number of citizens for that year.

According to the same BJS report, the number of individuals—citizens and noncitizens—incarcerated by BOP decreased approximately 11 percent, from approximately 179,000 at year-end 2018 to approximately 159,000 at year-end 2022. During that time, the number of noncitizens incarcerated by BOP decreased approximately 28 percent, and the number of U.S. citizens incarcerated by BOP decreased approximately 8 percent (see fig. 2).

Figure 2: Number of Individuals Incarcerated by the Federal Bureau of Prisons (BOP) at Year-End by U.S. Citizenship Status, 2018–2022



Source: Bureau of Justice Statistics reported data. | GAO-24-107598

Note: The figure reflects information reported in the Bureau of Justice Statistics' (BJS) *Federal Prisoner Statistics Collected Under the First Step Act, 2023*, NCJ307305 (Washington, D.C.: Nov. 2023). According to that report, the information is based on data from BJS's National Prisoner Statistics effort. As part of that effort, BJS collects information annually from BOP about the individuals under the agency's jurisdiction at year-end of that year. Therefore, data reflect point-in-time information on individuals incarcerated and do not reflect the total number of individuals incarcerated during the year. BJS's annual reports about data from the National Prisoner Statistics effort characterize the data as reflecting the number of individuals incarcerated on December 31 of each year; however, according to supplements to those reports, BOP has submitted data reflecting the number of individuals incarcerated on other year-end dates—specifically, December 29, 2018; December 28, 2019; December 26, 2020; December 25, 2021; and December 24, 2022. The BJS report reflecting incarcerations at year-end 2022 was the most recent publicly available information as of August 2024. Percentages are rounded to the nearest whole number.

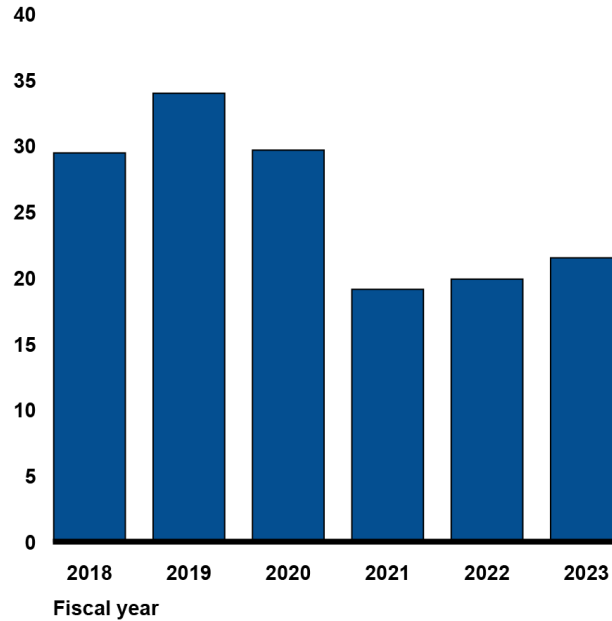
For the purposes of this report, "incarcerated by BOP" refers to individuals under the jurisdiction of BOP, meaning they are under the legal authority of BOP, regardless of where they are held. Individuals incarcerated by BOP can be held in public or privately-operated secure or nonsecure facilities, including local jails, state-operated facilities, and home confinement. The number of individuals incarcerated by BOP includes individuals convicted and sentenced for an offense, as well as individuals who are held by BOP before their conviction and/or sentencing. The number of individuals held by BOP also includes individuals sentenced for a felony in the District of Columbia. If an individual was incarcerated more than once during this time period, they may be counted in the data for multiple years. The figure does not include individuals with unknown citizenship information.

How has the number of noncitizens sentenced for federal crimes changed from fiscal year 2018 through fiscal year 2023?

The number of noncitizens sentenced for federal crimes varied from fiscal year 2018 through fiscal year 2023. However, compared to fiscal year 2018, the number of noncitizens sentenced for federal crimes in fiscal year 2023 decreased 27 percent (see fig. 3).¹⁴ In fiscal year 2018, approximately 29,500 noncitizens were sentenced for federal crimes compared to approximately 21,500 who were sentenced in fiscal year 2023.

Figure 3: Number of Noncitizens Sentenced for Federal Offenses, Fiscal Years 2018–2023

Number of noncitizens (in thousands)



Source: GAO analysis of U.S. Sentencing Commission data. | GAO-24-107598

Note: Numbers include noncitizens sentenced in federal court for a felony or class A misdemeanor offense. Felonies are a sentencing classification of offenses which, under federal law, have a maximum term of imprisonment of at least more than a year. Class A misdemeanors are a sentencing classification of offenses which, under federal law, have a maximum term of imprisonment of at least 6 months and no more than 1 year. Numbers do not include noncitizens sentenced in federal court for a class B or class C misdemeanor offense. If an individual was sentenced for a felony or class A misdemeanor more than once in the same fiscal year, but in a separate case, each sentencing would be included in the fiscal year's data, according to U.S. Sentencing Commission officials. If an individual was sentenced for a felony or class A misdemeanor offense more than once and in different fiscal years, each sentencing would be included in the respective fiscal year's data.

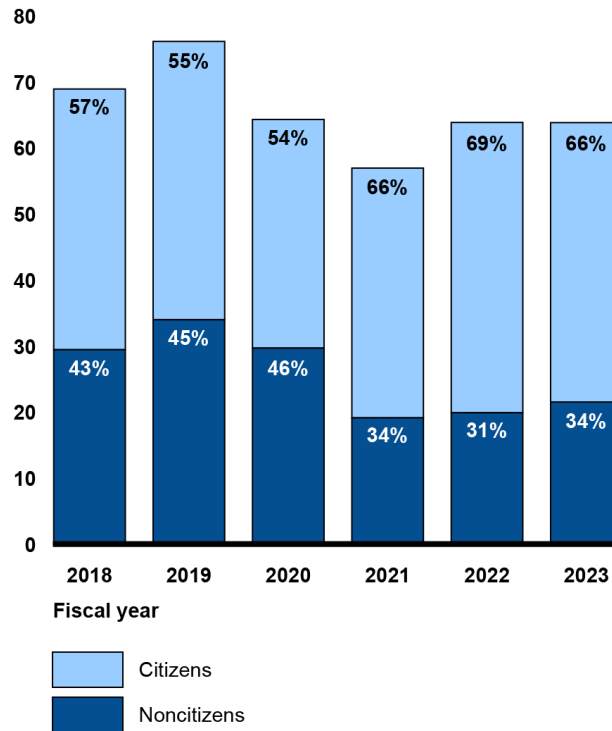
What do data show about the number of citizens and noncitizens sentenced for federal crimes from fiscal year 2018 through fiscal year 2023?

The total number of individuals—U.S. citizens and noncitizens—sentenced for federal crimes varied from fiscal year 2018 through fiscal year 2023. Based on USSC reported data, the number of individuals sentenced for federal crimes ranged from approximately 57,000 in fiscal year 2021 to 76,000 in fiscal year 2019. Compared to fiscal year 2018, the total number of individuals sentenced for federal crimes in fiscal year 2023 decreased by approximately 7 percent (see fig. 4). In fiscal year 2018, approximately 69,000 individuals were sentenced for federal crimes compared to approximately 64,000 in fiscal year 2023.

Though the numbers varied during the time period, compared to fiscal year 2018, the number of noncitizens sentenced for federal crimes in fiscal year 2023 decreased and the number of citizens increased. Compared to fiscal year 2018, the number of noncitizens sentenced for federal crimes in fiscal year 2023 decreased 27 percent, from approximately 29,500 to approximately 21,500. Over this same time period, the number of U.S. citizens sentenced for federal crimes increased 7 percent, from approximately 39,500 to approximately 42,000. As such, the proportion of noncitizens decreased from 43 percent of the federally sentenced population in fiscal year 2018 to 34 percent of the federally sentenced population in fiscal year 2023.¹⁵

Figure 4: Number of U.S. Citizens and Noncitizens Sentenced for Federal Offenses by U.S. Citizenship Status, Fiscal Years 2018–2023

Number of individuals (in thousands)



Source: GAO analysis of U.S. Sentencing Commission data. | GAO-24-107598

Note: Numbers include individuals sentenced in federal court for a felony or class A misdemeanor offense. Felonies are a sentencing classification of offenses which, under federal law, have a maximum term of imprisonment of at least more than a year. Class A misdemeanors are a sentencing classification of offenses which, under federal law, have a maximum term of imprisonment of at least 6 months and no more than 1 year. Numbers do not include individuals sentenced in federal court for a class B or class C misdemeanor offense. If an individual was sentenced for a felony or class A misdemeanor more than once in the same fiscal year, but in a separate case, each sentencing would be included in the fiscal year's data, according to U.S. Sentencing Commission officials. If an individual was sentenced for a felony or class A misdemeanor offense more than once and in different fiscal years, each sentencing would be included in the respective fiscal year's data. The figure does not include individuals with missing citizenship information. Percentages are rounded to the nearest whole number.

What types of federal crimes were noncitizens sentenced for from fiscal year 2018 through fiscal year 2023?

For approximately three-quarters of noncitizens sentenced for a federal crime from fiscal year 2018 through fiscal year 2023, the most serious offense they were convicted of—referred to throughout as “offense type”—was immigration-related (76 percent) (see table 1).¹⁶ Each year, between 73 percent and 81 percent of these noncitizens were sentenced for immigration-related crimes, the vast majority for unlawfully entering or remaining in the U.S. The second most common offense type for which noncitizens were sentenced was drug trafficking, followed by fraud, theft, and embezzlement offenses.

Table 1: Number of Noncitizens Sentenced for Federal Offenses by Offense Type, Fiscal Years 2018–2023

	2018	2019	2020	2021	2022	2023
TOTAL	29,445	33,974	29,668	19,121	19,894	21,504
Immigration^a	21,835	26,775	23,945	14,160	14,501	15,711
Drug trafficking	4,588	4,198	3,284	3,045	3,199	3,429
Fraud/theft/embezzlement	1,172	1,212	1,068	724	844	745
Firearms	379	394	316	308	306	321
Money laundering	352	348	278	308	317	393

Drug possession	339	139	144	11	15	8
Administration of justice^b	164	171	115	87	125	146
Robbery	64	64	46	45	60	57
National defense	61	70	77	83	52	67
Murder	57	61	42	32	63	73
Other miscellaneous offenses^c	57	128	79	48	67	205
Assault	56	46	39	30	49	46
Sexual abuse	45	61	42	48	76	52
Extortion/racketeering	42	35	19	21	14	18
Tax	42	43	27	18	48	31
Child sexual abuse material^d	30	51	32	34	35	54
Forgery/counter/copyright	25	26	17	14	6	4
Prison offenses	21	24	24	21	8	23
Bribery/corruption	20	30	20	13	25	29
Commercialized vice	20	11	2	14	12	10
Environmental	19	25	21	14	18	33
Kidnapping	17	7	5	11	13	18
Obscenity/other sex offenses	14	18	8	7	12	8
Individual rights	7	20	3	17	4	10
Stalking/harassing	6	3	8	6	6	4
Burglary/trespass	4	6	2	1	7	0
Food and drug	3	2	1	1	1	3
Antitrust	2	2	3	0	1	0
Arson	2	2	1	0	5	4
Manslaughter	2	2	0	0	5	2

Source: U.S. Sentencing Commission data. | GAO-24-107598

Note: Offense type is the most serious crime the individual was convicted of based on the sentencing guideline applied. Numbers include noncitizens sentenced in federal court for a felony or class A misdemeanor offense. Felonies are a sentencing classification of offenses which, under federal law, have a maximum term of imprisonment of at least more than 1 year. Class A misdemeanors are a sentencing classification of offenses which, under federal law, have a maximum term of imprisonment of at least 6 months and no more than 1 year. Numbers do not include individuals sentenced in federal court for a class B or class C misdemeanor offense. If an individual was sentenced for a felony or class A misdemeanor more than once in the same fiscal year, but in a separate case, each sentencing would be included in the fiscal year's data, according to U.S. Sentencing Commission officials. If an individual was sentenced for a felony or class A misdemeanor offense more than once and in different fiscal years, each offense type would be included in the respective fiscal year's data. As such, there could be more than one offense type per unique noncitizen sentenced for a federal offense.

^a"Immigration" refers to offenses including trafficking in U.S. passports; trafficking in entry documents; failure to surrender a naturalization certificate; fraudulently acquiring U.S. passports; smuggling, transporting, or harboring of certain noncitizens; fraudulently acquiring entry documents; and unlawfully entering or remaining in the U.S.

^b"Administration of justice" refers to various offenses such as contempt, obstruction of justice, perjury, and bribery of a witness, among others.

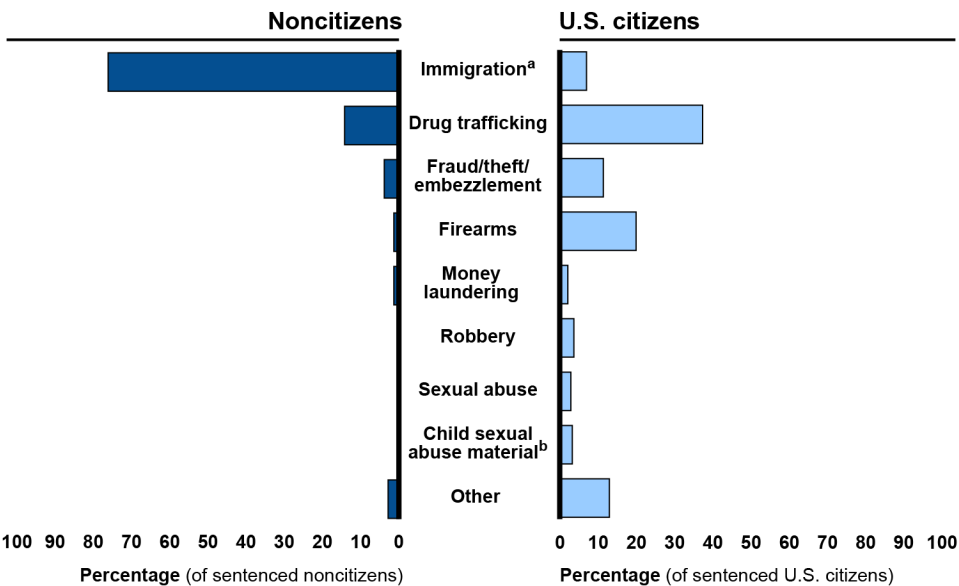
^c"Other miscellaneous offenses" includes offenses such as unlawful sale or importation of drug paraphernalia, as well as all other felony and miscellaneous offenses not previously listed in any of the other categories.

^d"Child sexual abuse material" refers to offenses related to trafficking in material involving the sexual exploitation of a minor; receiving, transporting, shipping, or advertising material involving the sexual exploitation of a minor; possessing material involving the sexual exploitation of a minor with intent to traffic; and possessing material involving the sexual exploitation of a minor. U.S. Sentencing Commission, Guidelines Manual, § 2G2.2. It does not include cases where offenders are convicted of producing material involving the sexual exploitation of a minor.

How do the federal crimes for which noncitizens were sentenced from fiscal year 2018 through fiscal year 2023 compare to those for which U.S. citizens were sentenced?

The most common offense type for noncitizens sentenced for federal crimes from fiscal year 2018 through fiscal year 2023 was immigration (76 percent); the most common offense type for U.S. citizens was drug trafficking (37 percent), followed by firearms offenses (20 percent).¹⁷ See figure 5.

Figure 5: Common Federal Offense Types for Which Individuals were Sentenced by U.S. Citizenship Status, Fiscal Years 2018–2023



Source: GAO analysis of U.S. Sentencing Commission data. | GAO-24-107598

Note: Offense type is the most serious crime the individual was convicted of based on the sentencing guideline applied. Numbers include individuals sentenced in federal court for a felony or class A misdemeanor offense. Felonies are a sentencing classification of offenses which, under federal law, have a maximum term of imprisonment of at least more than 1 year. Class A misdemeanors are a sentencing classification of offenses which, under federal law, have a maximum term of imprisonment of at least 6 months and no more than 1 year. Numbers do not include individuals sentenced in federal court for a class B or class C misdemeanor offense. Offense types listed are the most common offense types for all individuals sentenced for fiscal years 2018 through 2023. The majority of immigration offenses for which U.S. citizens were sentenced were offenses related to the smuggling, transporting, or harboring of certain noncitizens (U.S. Sentencing Commission, Guidelines Manual, § 2L1.1). For the purposes of this analysis, “Other” includes assault, murder, bribery, and tax offenses, as well as other offenses not listed. If an individual was sentenced for a felony or class A misdemeanor more than once in the same fiscal year, but in a separate case, each sentencing would be included in the fiscal year’s data, according to U.S. Sentencing Commission officials. If an individual was sentenced for a felony or class A misdemeanor offense more than once and in different fiscal years, each offense type would be included in the respective fiscal year’s data. As such, there could be more than one offense type per unique individual sentenced for a federal offense. The analysis does not include individuals with missing citizenship information.

^a“Immigration” refers to offenses including trafficking in U.S. passports; trafficking in entry documents; failure to surrender a naturalization certificate; fraudulently acquiring U.S. passports; smuggling, transporting, or harboring of certain noncitizens; fraudulently acquiring entry documents; and unlawfully entering or remaining in the U.S.

^b“Child sexual abuse material” refers to offenses related to trafficking in material involving the sexual exploitation of a minor; receiving, transporting, shipping, or advertising material involving the sexual exploitation of a minor; possessing material involving the sexual exploitation of a minor with intent to traffic; and possessing material involving the sexual exploitation of a minor. U.S. Sentencing Commission, Guidelines Manual, § 2G2.2. It does not include cases where offenders are convicted of producing material involving the sexual exploitation of a minor. U.S. Sentencing Commission, Guidelines Manual, § 2G2.1.

Agency Comments

We provided a draft of this report to DHS, DOJ, and judicial branch entities for review and comment. Each provided technical comments that we incorporated, as appropriate.

How GAO Did This Study

To conduct this work, we analyzed summary statistics from DOJ and USSC, reviewed relevant agency documents, and interviewed knowledgeable agency officials. Specifically, to identify the information federal agencies collect and

maintain about noncitizens incarcerated in the U.S., we reviewed documentation from DOJ and DHS and their component agencies, as well as from USSC, about the collection and maintenance of information about noncitizens incarcerated in the U.S. We also interviewed knowledgeable officials from those entities to better understand information collection processes.

To describe the number of noncitizens incarcerated by BOP at year-end of each year for 2017 through 2022, we identified publicly available summary statistics from DOJ's BJS reports, including its annual reports on the prison population that use data from BJS's National Prisoner Statistics effort.¹⁸ As part of its National Prisoner Statistics effort, BJS collects information annually from BOP about the individuals under the agency's jurisdiction at year-end. Therefore, data reflect point-in-time information on individuals incarcerated and do not reflect the total number of individuals incarcerated during the year. BJS reports characterize the data as reflecting the number of individuals incarcerated on December 31 of each year; however, according to supplements to those reports, BOP has submitted data reflecting the number of individuals incarcerated on other year-end dates.

We selected the time frame of 2017 through 2022 because BOP changed the way it reported noncitizens to BJS starting in 2017, meaning data could not be compared to prior years. Specifically, starting in 2017, BOP provided BJS counts reflecting the individual's current country of citizenship; in prior years, BOP provided counts reflecting the individual's country of birth. The BJS report reflecting incarcerations at year-end 2022, was the most recent publicly available as of August 2024.

To describe the proportion of noncitizens incarcerated by BOP at year-end of each year for 2018 through 2022, we identified publicly available summary statistics from BJS's publications related to the First Step Act of 2018, which also use data from BJS's National Prisoner Statistics effort.¹⁹ BJS did not publish information on citizens incarcerated in federal facilities for 2017. Because comparable data were not available, we did not include 2017.

Generally, to describe the sentencing of noncitizens for federal offenses, we analyzed publicly available summary statistics from USSC's annual Sourcebook, which contains descriptive statistics on the application of federal sentencing guidelines. To describe the number of individuals sentenced and the types of crimes for which individuals were sentenced, we analyzed these data for fiscal year 2018 through fiscal year 2023. We selected this time frame because USSC changed how it assigned offense type and how it referred to certain categories of offenses, among other changes, starting in fiscal year 2018, meaning data could not be compared to prior years. Fiscal year 2023 data were the most recent publicly available as of August 2024.

To assess these data, we interviewed DOJ and USSC officials and reviewed documentation about data collection. We determined that DOJ and USSC data were both sufficiently reliable to describe incarcerations in federal prisons and sentencing for federal offenses, respectively.

We conducted this performance audit from May 2024 to August 2024 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings based on our audit objectives.

List of Addressees

The Honorable Pete Sessions
Chairman
Subcommittee on Government Operations and the Federal Workforce
Committee on Oversight and Accountability
House of Representatives

The Honorable Andy Biggs
House of Representatives

The Honorable Michael T. McCaul
House of Representatives

The Honorable Josh Brecheen
House of Representatives

The Honorable Nathaniel Moran
House of Representatives

The Honorable Michael Cloud
House of Representatives

The Honorable Troy E. Nehls
House of Representatives

The Honorable Dan Crenshaw
House of Representatives

The Honorable Andrew Ogles
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The Honorable Monica De La Cruz
House of Representatives

The Honorable Mike Rogers
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The Honorable Jake Ellzey
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The Honorable David Rouzer
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The Honorable Pat Fallon
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The Honorable Chip Roy
House of Representatives

The Honorable Lance Gooden
House of Representatives

The Honorable Keith Self
House of Representatives

The Honorable Kay Granger
House of Representatives

The Honorable Tom Tiffany
House of Representatives

The Honorable Clay Higgins
House of Representatives

The Honorable Randy K. Weber, Sr.
House of Representatives

The Honorable Doug Lamborn
House of Representatives

The Honorable Roger Williams
House of Representatives

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the appropriate congressional committees, the Attorney General, the Director of the Administrative Office of the U.S. Courts, and the Secretary of Homeland Security. In addition, the report is available at no charge on the GAO website at <https://www.gao.gov>.

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Endnotes

¹GAO, *Criminal Alien Statistics: Information on Incarcerations, Arrests, Convictions, Costs, and Removals*, GAO-18-433 (Washington, D.C.: July 17, 2018); *Criminal Alien Statistics: Information on Incarcerations, Arrests, and Costs*, GAO-11-187 (Washington, D.C.: Mar. 24, 2011); *Criminal Aliens Incarcerated in Federal and State Prisons and Local Jails*, GAO-05-337R (Washington, D.C.: Apr. 7, 2005); and *Information on Certain Illegal Aliens Arrested in the United States*, GAO-05-646R (Washington, D.C.: May 9, 2005).

²The public reports describing the number of individuals incarcerated by BOP reflect point-in-time information on incarcerations on a date in late December of each year—specifically, December 30, 2017; December 29, 2018; December 28, 2019; December 26, 2020; December 25, 2021; and December 24, 2022. The information in these reports does not reflect the total number of individuals incarcerated during the year.

³Generally, federal offenses are crimes defined by Congress, as opposed to states, and for which Congress prescribes punishment.

⁴Felonies are a sentencing classification of offenses which, under federal law, have a maximum term of imprisonment of at least more than 1 year. Class A misdemeanors are a sentencing classification of offenses which, under federal law, have a maximum term of imprisonment of at least 6 months and no more than 1 year. 18 U.S.C. § 3559(a).

⁵An alien number, or alien registration number, is a unique number DHS assigns to a noncitizen's administrative file for tracking purposes.

⁶DHS and DOJ, *Alien Incarceration Report Fiscal Year 2019*, (Washington, D.C.: Oct. 16, 2020).

⁷Here, jurisdiction refers to the legal authority of state or federal correctional officials over an incarcerated individual, regardless of where the incarcerated individual is held. Incarcerated individuals under the jurisdiction of state or federal correctional officials can be held in public or privately-operated secure or nonsecure facilities, including treatment facilities, hospitals, local jails, or another state's facilities. BJS's National Prisoner Statistics effort also collects and reports on individuals under the jurisdiction of BOP.

⁸8 U.S.C. § 1231(i)(3). For their incarceration to be eligible for reimbursement under SCAAP, the incarcerated noncitizen must (1) have entered the U.S. without inspection or at any time or place other than as designated by the Attorney General; (2) have been the subject of exclusion or deportation proceedings at the time he or she was taken into custody by the State or a political subdivision of the State; or (3) have been admitted as a nonimmigrant and at the time he or she was taken into custody by the State or a political subdivision of the State failed to maintain the nonimmigrant status in which the individual was admitted or to which it was changed under 8 U.S.C. § 1258, or to comply with the conditions of any such status. The minimum period of consecutive incarceration days is established in the Bureau of Justice Assistance's reimbursement eligibility definition.

⁹For the purposes of this report, “incarcerated by BOP” refers to individuals under the jurisdiction of BOP, meaning they are under the legal authority of BOP, regardless of where they are held. Individuals incarcerated by BOP can be held in publicly- or privately-operated secure or nonsecure facilities, including local jails, state-operated facilities, and home confinement. As part of its National Prisoner Statistics effort, BJS collects information from BOP about the individuals under the agency’s jurisdiction at year-end of each year. Therefore, data reflect point-in-time information on individuals incarcerated and do not reflect the total number of individuals incarcerated during the year. BJS reports characterize the data as reflecting the number of individuals incarcerated on December 31 of each year; however, according to supplements to those reports, BOP has submitted data reflecting the number of individuals incarcerated on other year-end dates—specifically, December 30, 2017; December 29, 2018; December 28, 2019; December 26, 2020; December 25, 2021; and December 24, 2022. The BJS report reflecting incarcerations at year-end 2022 was the most recent publicly available information as of August 2024.

The number of individuals incarcerated by BOP includes those convicted and sentenced for an offense, as well as individuals who are held by BOP before their conviction and/or sentencing. The number of individuals held by BOP also includes individuals sentenced for a felony in the District of Columbia.

BJS, *Prisoners in 2017*, NCJ 252156 (Washington, D.C.: Apr. 2019); BJS, *Prisoners in 2018*, NCJ 253516 (Washington, D.C.: Apr. 2020); BJS, *Prisoners in 2019*, NCJ 255115 (Washington, D.C.: Oct. 2020); BJS, *Prisoners in 2020—Statistical Tables*, NCJ 302776 (Washington, D.C.: Dec. 2021); BJS, *Prisoners in 2021—Statistical Tables*, NCJ 305125 (Washington, D.C.: Dec. 2022); BJS, *Prisoners in 2022—Statistical Tables*, NCJ 307149 (Washington, D.C.: Nov. 2023).

¹⁰See e.g., No Sail Order and Suspension of Further Embarkation, 85 Fed. Reg. 16,628 (Mar. 24, 2020); No Sail Order and Suspension of Further Embarkation: Notice of Modification and Extension and Other Measures Related to Operations, 85 Fed. Reg. 21,004 (Apr. 15, 2020); No Sail Order and Suspension of Further Embarkation: Third Modification and Extension of No Sail Order and Other Measures Related to Operations, 85 Fed. Reg. 62,732 (Oct. 5, 2020); Proclamation No. 9984: Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus and Other Appropriate Measures To Address This Risk, 85 Fed. Reg. 6,709 (Jan. 31, 2020).

¹¹In March 2020, the Centers for Disease Control and Prevention issued an order, under Title 42 of the U.S. Code, which allows the government to suspend the introduction of individuals from foreign countries to prevent the spread of communicable diseases. The Title 42 order was lifted when the COVID-19 Public Health Emergency ended in May 2023. See 85 Fed. Reg. 16,559 (Mar. 24, 2020); 85 Fed. Reg. 17,060 (Mar. 26, 2020); 88 Fed. Reg. 31,314 (May 16, 2023) (discussing the expiration of the Title 42 order); see also, e.g., 85 Fed. Reg. 65,806 (Oct. 13, 2020). The Title 42 order did not apply to U.S. citizens or legal residents, but to those who would be held in processing centers or otherwise detained by U.S. Customs and Border Protection.

¹²In addition to executive actions taken in response to COVID-19, in March 2020, the CARES Act removed the time limit (6 months or 10 percent of the total sentence time) for eligibility for home confinement and granted BOP’s director authority to allow certain individuals nearing the end of their sentences to be placed in home confinement earlier in their sentences than usual. Pub. L. No. 116-136, div. B, tit. II, § 12003(b)(2), 134 Stat. 515; see 18 U.S.C. § 3624(c)(2). However, these individuals remained under the jurisdiction of BOP while on home confinement and are included in the data reported.

¹³The analysis does not include individuals with unknown citizenship information. BJS, *Federal Prisoner Statistics Collected Under the First Step Act, 2023*, NCJ307305 (Washington, D.C.: Nov. 2023).

¹⁴The numbers of noncitizens include individuals sentenced in federal court for a felony or class A misdemeanor offense. The numbers do not include individuals sentenced in federal court for a class B or class C misdemeanor offense. If an individual was sentenced for a felony or class A misdemeanor more than once in the same fiscal year, but in a separate case, each sentencing would be included in the fiscal year’s data, according to USSC officials. If an individual was sentenced for a felony or class A misdemeanor offense more than once and in different fiscal years, each sentencing would be included in the respective fiscal year’s data.

¹⁵The analysis does not include individuals with missing citizenship information.

¹⁶The source of this information is USSC’s annual Sourcebook, which contains descriptive statistics on the application of federal sentencing guidelines.

¹⁷The analysis does not include individuals with missing citizenship information.

¹⁸BJS, *Prisoners in 2017*, NCJ 252156 (Washington, D.C.: Apr. 2019); BJS, *Prisoners in 2018*, NCJ 253516 (Washington, D.C.: Apr. 2020); BJS, *Prisoners in 2019*, NCJ 255115 (Washington, D.C.: Oct. 2020); BJS, *Prisoners in 2020—Statistical Tables*, NCJ 302776 (Washington, D.C.: Dec. 2021); BJS, *Prisoners in 2021—Statistical Tables*, NCJ 305125 (Washington, D.C.: Dec. 2022); BJS, *Prisoners in 2022—Statistical Tables*, NCJ 307149 (Washington, D.C.: Nov. 2023).

¹⁹See First Step Act of 2018, Pub. Law No. 115-391, 132 Stat. 5194. BJS, *Federal Prisoner Statistics Collected Under the First Step Act, 2023*, NCJ 307305 (Washington, D.C.: Nov. 2023).