

# Included, but Deportable: A New Public Health Approach to Policies That Criminalize and Integrate Immigrants

There has been a burst of research on immigrant health in the United States and an increasing attention to the broad range of state and local policies that are social determinants of immigrant health. Many of these policies criminalize immigrants by regulating the “legality” of their day-to-day lives while others function to integrate immigrants through expanded rights and eligibility for health care, social services, and other resources.

Research on the health impact of policies has primarily focused on the extremes of either criminalization or integration. Most immigrants in the United States, however, live in states that possess a combination of both criminalizing and integrating policies, resulting in distinct contexts that may influence their well-being.

We present data describing the variations in criminalization and integration policies across states and provide a framework that identifies distinct but concurrent mechanisms of deportability and inclusion that can influence health. Future public health research and practice should address the ongoing dynamics created by both criminalization and integration policies as these likely exacerbate health inequities by citizenship status, race/ethnicity, and other social hierarchies. (*Am J Public Health*. 2019;109:1171–1176. doi: 10.2105/AJPH.2019.305171)

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See also Ferrer, p. 1156; and Allen, p. 1177.

Conceptual models about the impact of immigrant policies on health have not kept up with the proliferation of policies over the past 20 years. There has been a burst in research on immigrant health in the United States and an increasing attention to the broad range of state and local policies that are social determinants of health.<sup>1</sup> This research has primarily focused on individual restrictive (e.g., police collaboration with immigration enforcement) or inclusionary (e.g., access to health care) policies.<sup>2,3</sup> Most states and localities, however, possess a mix of policies: those that are restrictive and criminalize immigrants by regulating the “legality” or permissibility of their lives, putting day-to-day activities like working and driving under the surveillance and control of immigration enforcement, and those that are inclusive and integrate immigrants by expanding eligibility and rights, facilitating access to health care, social services, education, and workplaces.<sup>4</sup> In this article, we used state-level data and a framework to consider how the intersections of criminalization and integration policies may create distinct mechanisms that shape health.

Criminalization policies create mechanisms of surveillance and immigration enforcement that put noncitizens at risk for deportation. All noncitizens experience deportability—“the protracted possibility of being

deported”<sup>5(p14)</sup>—and contend with uncertainty regarding their ability to remain in the country, even when they have a green card or naturalize.<sup>6,7</sup> They are also targeted because of racialized concepts of immigrants of color as either criminals or exploitable workers,<sup>8,9</sup> creating inequitable policy impacts based on legal status and race/ethnicity. For example, 95% of people deported are from Latin America, although only an estimated 75% of undocumented immigrants are from Latin America.<sup>10,11</sup> The result of criminalization policies are mechanisms that can create acute stressors, as well as long-term patterns of discrimination that marginalize immigrants’ racial and legal status position.

Integration policies, by contrast, expand mechanisms of eligibility and rights that incorporate immigrants into society, facilitating access to health-promoting resources, regardless of citizenship status.<sup>12</sup> Integration policies create inclusion by which noncitizens possess a similar constellation of rights, access, and protections as that of citizens. In contexts of

inclusion, the inequality in rights between noncitizens and citizens is reduced.

## CATEGORIZING POLICIES ACROSS STATES

An examination of policies across US states and the District of Columbia (hereafter “states”) illustrates patterns of how criminalization and integration policies coincide. We focus on state policies (e.g., legislation, regulations, court rulings) because, while the federal government has exclusive authority to regulate who enters the country and assign their legal status, states have discretion in how to apply a variety of public programs and policies to noncitizens. Each state’s contexts produce semi-independent influences on immigrants’ lives, allowing for comparative research to understand the impact of policy on health. Counties and localities have some discretion in areas such as policing and health care; they are often constrained, however,

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by state policies.<sup>13</sup> While our focus is state policy, local policies also fit into the framework.

We conducted a systematic review of policies for which states have discretion to determine (1) rights based on citizenship or a proxy (e.g., possession of a social

security number) and (2) the extent of collaboration with federal immigration enforcement. Table 1 presents the policies classified as criminalization or integration, organized by sector, and accompanied by the indicator used to assess if the policy existed. We

classified 6 policies as criminalization because they shaped the authorization of noncitizens' day-to-day activities (e.g., driving, seeking work), increasing their exposure to enforcement, and we classified 14 as integration because they conferred residents access to

state institutions, regardless of citizenship status. These resided in sectors of identification and licensing, immigration enforcement and criminal justice, health and social service benefits, education, labor and employment, and language access.

**TABLE 1—State Immigrant Criminalization and Integration Policies by Sector, Enacted by December 31, 2015: United States**

Sector	Policy	Indicator That Policy Exists (Yes = 1; No = 0)
<b>Criminalization policies</b>		
Identification and licensing	State driver's licenses	Does the state require a social security number to obtain a driver's license? <sup>14</sup>
	Compliance with the federal Real ID Act of 2005, which sets standards for state licenses and IDs	Does the state comply with Real ID? <sup>15</sup>
Work authorization	Use of employment authorization database, E-Verify	Does the state mandate employers use E-Verify? <sup>16</sup>
Immigration enforcement and criminal justice	Law enforcement collaboration with federal enforcement	Does the state fully collaborate with federal immigration authorities? <sup>17</sup>
	Law enforcement inquiry about legal status	Does the state require or allow that law enforcement verify individuals' legal status at the time of a stop or arrest? <sup>18</sup>
	Sentencing laws	Does the state sentence nonviolent criminal offenses at least 365 d? <sup>18,a</sup>
<b>Integration policies</b>		
Health and social service benefits	State Children's Health Insurance Program (SCHIP)	Does the state provide health insurance to children regardless of legal status? <sup>19</sup>
	Medicaid—prenatal care	Does the state provide care to pregnant women regardless of legal status? <sup>19</sup>
	Supplemental Nutrition Assistance Program	Does the state count a prorated share of ineligible noncitizen income to determine family eligibility for benefits? <sup>20</sup>
Education	In-state college and university tuition	Does the state provide most students in-state tuition regardless of legal status? <sup>21</sup>
	Financial aid for colleges and universities	Does the state provide students scholarships or financial aid regardless of legal status? <sup>21</sup>
Labor and employment	Citizenship requirements for peace officers	Does the state require peace officers be citizens? <sup>b</sup>
	Citizenship requirements for teachers	Does the state require teachers be citizens? <sup>c</sup>
	Worker's compensation	Does the state include undocumented immigrants in the definition of employee? <sup>22,a</sup>
	Extension of protections for agricultural workers	Does the state extend wage and hour protections for agricultural workers? <sup>23</sup>
	Extension of protections for domestic workers	Does the state extend wage and hour protections for domestic workers? <sup>23</sup>
	Domestic Worker's Bill of Rights	Does the state have a Domestic Worker's Bill of Rights? <sup>23</sup>
	Protection against immigration-related employer retaliation	Does the state have laws that protect noncitizen workers from employer retaliation related to their legal status? <sup>24</sup>
Professional licensing of undocumented and DACAmented professionals	Does the state allow licensing of undocumented or DACAmented professionals? <sup>24</sup>	
Language access	Payment of interpreters through Medicaid or SCHIP	Does the state pay for interpreters through Medicaid or SCHIP? <sup>25</sup>
	English language-only legislation	Does the state have English as the official language? <sup>26</sup>

Note. DACA = Deferred Action for Childhood Arrivals.

<sup>a</sup>And author's review of state statutes.

<sup>b</sup>Author's review of state law enforcement agency hiring requirements and legislative codes.

<sup>c</sup>Author's review of state department of education hiring requirements and legislative codes.

The indicators established the criteria and scoring of whether a policy existed (yes = 1 and no = 0). These included the presence of a policy (e.g., state provides in-state tuition for qualified undocumented students) as well as lack of a policy (e.g., state prohibits undocumented immigrants from obtaining driver's licenses by not having enabling legislation). We reviewed secondary sources to determine the existence of the policies in each state and included those enacted by December 31, 2015. We summed the total number of criminalization and integration policies separately, producing measures of overall context. The strength of this approach, used elsewhere, is that it considers the composition of a state's environment; its limitation is that it does not account for variation in the impact of individual policies, although there is no established methodology to do so.<sup>27</sup> Appendix A (available as a supplement to the online version of this article at <http://www.ajph.org>) provides the number of policies per state. States had a median of 4 criminalization (mean = 3.5) and 4 integration policies (mean = 4.9).

To show patterns of how criminalization and integration policies coincide in US states, we created 2 dichotomous variables at the median number of policies: states with 4 or more versus fewer than 4 criminalization policies and states with 4 or more versus fewer than 4 integration policies. Crossing these variables creates a typology of 4 policy context types: high integration, low criminalization (18 states); high integration, high criminalization (13 states); low integration, high criminalization (16 states), and low integration, low criminalization (4 states). Appendix B (available as a supplement to the online version

of this article at <http://www.ajph.org>) provides a map that shows states' policy context type.

High-integration, high-criminalization states, such as New York and Texas, despite being politically and demographically different, subject noncitizens to potential surveillance and reinforce collaboration with federal immigration enforcement while also having policies that promote access to some health care, social welfare, education, and—to a lesser extent—labor and employment protections. When one considers only criminalization policies, a low-integration, high-criminalization state, such as Georgia, may appear like Texas or New York; however, in these states, noncitizens not only experience a heightened threat of surveillance, policing, or deportation but are also blocked from many rights and opportunities. By contrast, in high integration, low criminalization states, such as California, policy mechanisms expand rights and eligibility for resources that may advance well-being while actively buffering against criminalization. A handful of states had few policies of either type, indicating that they defer to the default federal mix of criminalization and integration policies.

## A FRAMEWORK OF HEALTH AND POLICY CONTEXTS

States that have multiple criminalizing policies create contexts in which immigrants experience greater deportability because state-level institutions and agencies reinforce enforcement and surveillance. States that have numerous integration policies create contexts in which

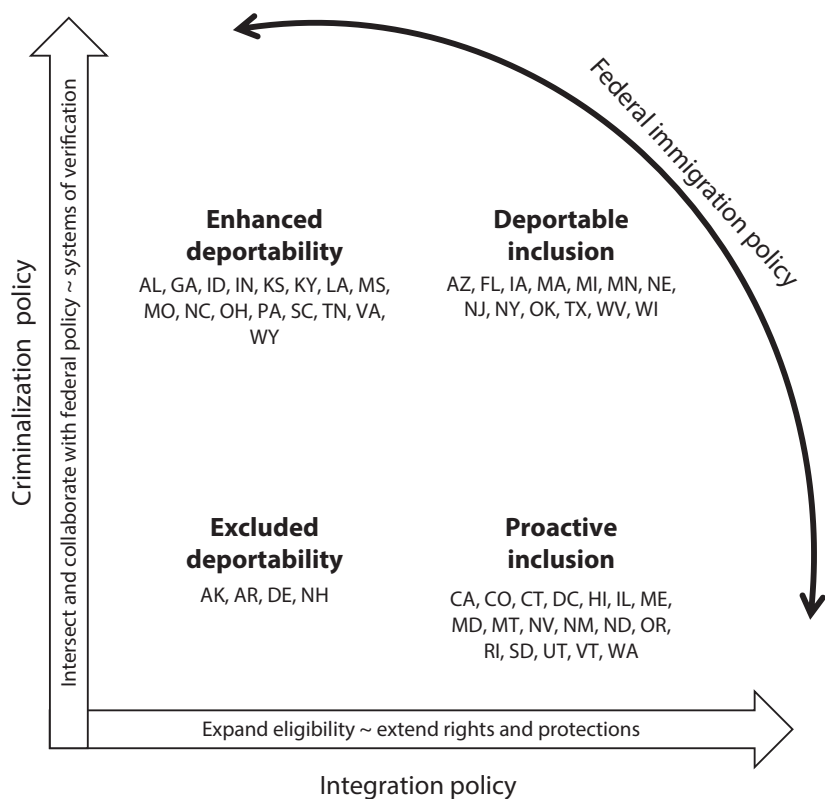
immigrants experience greater inclusion because policymakers proactively increase access and rights within health, education, labor, and other sectors. Within each state, despite the level of criminalization, immigrants possess variable rights and eligibility for services; despite the level of integration, immigrants still face variable risks for deportation. Because of these distinct dynamics, immigrants may simultaneously experience deportability and inclusion in which states' overall policy contexts coincide to produce a unique policy and social environment.

Figure 1 identifies the intersecting contexts of deportability and inclusion that immigrants experience living under the distinct but concurrent dynamics of criminalization and integration. The framework shows that the overall process by which immigrants experience criminalization or integration is the result of more than 1, not mutually exclusive, policy process. These experiences may unfold at the state or local level and always are embedded within the overarching, baseline federal immigration policy context, which in recent years is increasingly criminalizing and less integrating. The result is a policy-driven environment that shapes how immigrants' daily lives unfold as they experience both threats of enforcement and a mix of resources that can improve their life chances in multiple domains.

States with high numbers of integration and criminalization policies create contexts of deportable inclusion. Noncitizens are subject to enforcement and surveillance while possessing rights and protections in other areas of their lives. In other words, the presence of many integration policies grants numerous rights and protections

but does not curtail criminalization. States with numerous criminalization policies and few integration policies create contexts of enhanced deportability in which noncitizens face enforcement and surveillance with few rights, protections, or eligibility for the services that citizens receive. The presence of few criminalization policies and few integration policies creates contexts of excluded deportability in which noncitizens are subject to the federal baseline of relatively exclusionary policies. Finally, in states with numerous integration policies and few criminalization policies, the context is one of proactive inclusion in which noncitizens are buffered from deportability and proactively included. In states such as California or Washington, immigrant incorporation is based not solely on expansion of rights and protections but also on decriminalization.

The experience of deportable inclusion, enhanced deportability, excluded deportability, and proactive inclusion are likely related to distinct health mechanisms. First, in contexts of deportable inclusion and enhanced deportability, surveillance and enforcement may limit or nullify the positive public health impact of any or all integration efforts in access to health care and social services, educational opportunities, or workplace protections. This concern has been the primary focus of recent public health research on immigrant policy. Deportability results in entire immigrant populations experiencing uncertainty and discrimination, regardless of how many individuals ultimately experience direct surveillance, enforcement, and deportation.<sup>5</sup> For example, immigrants experience immediate barriers to health care, such as concerns about driving to



**FIGURE 1—Framework of Immigrant Policy Contexts Created by Criminalization and Integration Policies: United States**

medical visits or distrust of health care and other providers.<sup>28–30</sup> In addition, research shows that the specter of deportability can result in a racialized environment that is harmful to people of color, regardless of citizenship status. One study found that Latinos, regardless of nativity or citizenship, were targeted by immigration enforcement because of their ethnicity.<sup>31</sup> Deportability, regardless of inclusion, has a wide-reaching, even universal, impact on populations based on their citizenship status or race/ethnicity.

Another possible dynamic at the intersection of criminalization and integration is that health inequities between noncitizens, not only in comparison with citizens, are exacerbated in contexts of deportable inclusion and proactive inclusion. The harms and benefits

of criminalization and integration policies are not equally distributed. Integration may be accessed more easily by some noncitizens while, in practice, others are more often criminalized. In these states, the processes of racialization and “deserved” incorporation may produce or reinforce inequities among noncitizens based on factors such as race/ethnicity, gender, age, and class (e.g., employment sector or access to education).<sup>5,31,32</sup> Despite the wide-reaching effects of deportability, specific immigrant populations remain the most vulnerable to criminalization.<sup>9,33</sup> These vulnerabilities to deportation are not random but are shaped by social hierarchies. For example, extensive research has demonstrated how immigrant day laborers experience extreme structural disadvantage at the

intersection of legal status, race, gender, and socioeconomic status.<sup>33</sup>

The division of immigrant populations into those who are labeled “criminals” and those who are labeled “deserving” places noncitizens who may share the same legal status into distinct and inequitable social positions—each with unique and varying risks to their well-being. For example, policies to limit law enforcement collaboration with immigration enforcement tend to exclude certain classes of criminal offenders (e.g., those who committed felonies), perpetuating the risk of deportation for some immigrants who are involved in the criminal justice system and their families, while producing a potential sense of safety among others who can

then more readily benefit from integration policies. The dual dynamics of criminalization and integration likely increase inequities not only between citizens and noncitizens but also within categories of noncitizens, as the motivations and targets of these policies reinforce race, gender, and class inequities within immigrant groups.

These dynamics point to future directions for research, practice, and advocacy. Because criminalization and integration policies have distinct characteristics and implications, it is important in research not to combine them into a single construct and in public health practice to pursue action in both domains. Research can assess the competing influences of criminalization and integration on health outcomes. To what extent does criminalization policy harm the benefits of integration policy and how could integration policy buffer the impact of criminalization? Although current research shows a negative impact of criminalization policies, this has not been examined in the context of existing integration policies. Research can also examine variations in the impact of policies on different racial/ethnic groups, as well as other structural factors such as gender and class. Most research has exclusively focused on Latinos, despite the rapid growth of migration from Asia. In addition, studies of single policies suggest spillover effects from criminalizing state immigrant policy adoption on the health of nonimmigrants.<sup>30</sup> While there is a logical link between criminalizing immigrant policies with generalized stress and discrimination throughout the population, there is also a theoretical link that has not yet been tested between integrating state immigration policies and

broader community health.<sup>34</sup> Finally, immigrant integration is likely to have positive effects on people's ability to contribute to the larger community through greater social mobility, which leads to paying more taxes and greater community engagement. But the spillover effects of the interaction between the criminalizing and integrating policies remains an open question.

The state immigrant policy data in Appendix A (available as a supplement to the online version of this article at <http://www.ajph.org>) provides a tool to assess criminalization and integration as distinct constructs. Research on the intersection of these policies can inform public health practitioners who are developing policies and interventions. Practitioners can assess the extent to which public health programs are able to advance health despite criminalizing contexts. Recent efforts include health clinics establishing "sanctuary policies" and the development of a guide for health departments to protect people from immigrant enforcement actions.<sup>35,36</sup> At the policy level, as advocates advance health and other social policies, they can adapt policies to include elements of decriminalization to ensure that integration policies do not exclude groups targeted by criminalization policies. Researchers, practitioners, and advocates can advance efforts to reduce the deportability of all groups of immigrants toward improving health and well-being and achieving health equity.

## CONCLUSIONS

Patterns of state-level criminalization and integration show that most jurisdictions are not exclusively criminalizing or integrating. Rather, they create contexts in which noncitizens may

experience enhanced deportability or proactive inclusion but also deportable inclusion or excluded deportability. The dual processes of criminalization and integration may exacerbate social, economic, and health disparities by citizenship status within immigrant populations based on race/ethnicity and other social hierarchies and have spillover effects to the broader community.<sup>37</sup> Criminalization policies at state and local levels reinforce federal immigration enforcement, giving state or local governments a de facto role in shaping federal deportation policies.<sup>38</sup> Integration policies, by contrast, expand noncitizens' rights to accessing certain resources regardless of citizenship but do not buffer individuals against enforcement or surveillance.

It is likely that varied, and even contradictory, state and local immigrant policies will continue to be enacted as existing policies continue to shape immigrants' well-being. It will be critical for public health researchers and practitioners to understand the unique impact of mixed policy environments, as immigrants and their families navigate the complexities of criminalization and integration in their daily lives. Both integration and decriminalization are necessary for achieving health equity. **AJPH**

### CONTRIBUTORS

M.-E. Young conceptualized the article, collected the data, and wrote the first draft of the article. S. P. Wallace assisted with the conceptualization of the article and the writing.

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### CONFLICTS OF INTEREST

We declare no conflicts of interest.

### HUMAN PARTICIPANT PROTECTION

Institutional review board approval was not needed because no human participants were involved in the research.

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