

Report reveals federal jailing crisis that disproportionately affects people of color

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The Federal Criminal Justice Clinic at the University of Chicago Law School has announced the release of the first national investigation of federal pretrial detention. The [report](#), which identifies a "federal jailing crisis" that disproportionately impacts poor people of color, was authored and researched by Prof. Alison Siegler and a team of FCJC

students. "Freedom Denied: How the Culture of Detention Created a Federal Jailing Crisis" drew upon two years of court-watching and interviews.

"In our [legal system](#), everyone who enters the courtroom is presumed innocent and is entitled to certain [legal rights](#) and protections. But in federal courtrooms across the country, judges are ignoring the presumption of innocence and violating people's rights, and marginalized communities are paying the price," said Siegler, founding director of the Federal Criminal Justice Clinic and Clinical Professor of Law at the University of Chicago Law School. "This work is about bringing to light a 'culture of detention' that exists in the federal legal system and helping judges to realign their practices so that justice-involved individuals do not face illegal and inequitable detention."

Since the enactment of the Bail Reform Act of 1984, the pretrial incarceration rates of those charged with federal offenses skyrocketed from 29% to 75%, with the impact falling most heavily on people of color, those from low-income backgrounds and non-citizens, according to the report. In addition to the human cost of pretrial detention, taxpayers spend an estimated \$1 billion per year to keep those without convictions behind bars, the report notes. The result is a federal jailing crisis that fuels mass incarceration and inflicts lasting harm on presumptively innocent people, families, communities and society.

The report's findings are based on evidence gathered over the past two years at 600 bail hearings across four federal district courts in Boston, Baltimore, Miami and Salt Lake City, as well as interviews with nearly 50 federal judges and practitioners. Key findings include:

- Federal judges regularly disregard the law that protects against a person being jailed due to their inability to pay bail, directly impacting people of color and people from low-income

backgrounds. In 37% of cases, judges imposed monetary bail conditions, including bail bonds, and over one third of those people remained in jail because they were too poor to make bail. Black and Latino people were much more likely to face financial burdens than [white people](#); 95% of those judges saddled with money bail were people of color.

- Federal judges regularly disregard the [legal requirement](#) to ensure that anyone who cannot afford a lawyer is represented by court-appointed counsel during their initial appearance hearing. Judges in more than one-quarter of federal district courts routinely lock people in jail during the initial bail appearance without first providing them with a lawyer. With 90% of those charged with a federal crime unable to afford a lawyer, the failure of judges to appoint counsel leads to higher jailing rates for people from low-income backgrounds. In one district, every single person deprived of counsel was locked in jail, and 92% of those who suffered this fate were people of color.
- Federal judges often overlook legal requirements at initial bail hearings, leading to unlawful detention. In 81% of the initial hearings, prosecutors asked judges to lock someone in jail without citing any legal basis and faced no challenges, leading to detention in 99% of those cases. In 12% of the initial hearings, judges jailed people unlawfully. Even worse, non-white arrestees were detained unlawfully at twice the rate of white arrestees.
- Federal judges routinely misapply the "presumption of detention" statute that applies in drug cases, improperly treating it as a mandate for jailing and fueling racial disparities. In detention hearings observed by the FCJC, judges detained people of color in 73% of presumption cases while detaining white individuals in such cases just 68% of the time.

The report offers recommendations for how federal judges can rectify instances of unlawful [detention](#) occurring in their courts. These

recommendations call on judges to follow the federal bail laws, to appoint lawyers for all indigent people and to cease imposing monetary bail conditions that someone who is arrested cannot afford to pay.

"An important role of the judiciary is to ensure that the law is fairly and impartially applied to each person entering the courtroom. Failure to do so can undermine the integrity of our legal system," said Hon. Jonathan E. Hawley, United States Magistrate Judge for the Central District of Illinois and Chairperson of the Magistrate Judge Education Advisory Committee of the Federal Judicial Center. "Professor Siegler and her team are giving those of us in the judiciary an opportunity to evaluate our practices with empirical data that illustrates the reality of what happens in the courtroom. This work will assist judges in making certain that our practices are better aligned with the goal of equal justice for all."

Provided by University of Chicago

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