SNAP "Program Integrity"
How Racialized Fraud Provisions Criminalize Hunger
Executive Summary

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I. Introduction

Health care, food, secure housing, and a livable wage are basic human needs. Seeking the help you need to succeed is a statement of human dignity and justice. However, coded language, dog-whistling, and racist stereotypes have reinforced the lie that folks receiving public benefits are exaggerating how poor they really are and that they are likely committing fraud. People experiencing poverty, particularly people of color, have routinely been profiled and policed, leading to higher rates of arrests and fines due to minor offenses.[1] Over-policing and criminalization of people experiencing poverty and hunger also shows up in public benefit programs, including the Supplemental Nutrition Assistance Program (SNAP).

Historically, anti-hunger advocates have been afraid to criticize the negative consequences of the focus by government officials on "program integrity" and its disproportionate impact on people of color for fear of being accused of defending fraud or legitimizing racist tropes. The reality is that we must properly discuss and address fraud, program integrity, and the over-policing of people experiencing poverty or the proliferation of "aporophobia"[2]—the rejection of people who live in poverty. Doing so will allow us to

achieve policies that reflect equity, trust, and truth instead of mistrust, mistreatment, and systemic oppression.

In, "SNAP 'Program Integrity': How Racialized Fraud Provisions Criminalize Hunger," CLASP takes on the racialized history behind SNAP fraud, details the significant damage caused by efforts to "rein in" this perceived problem, and offers policy recommendations for reversing the harm.

II. SNAP Fraud is Rare, but Garners Disproportionate Attention

SNAP fraud is quite rare. Political and media discussions frequently lump all forms of SNAP errors or violations as "fraud," but this is inaccurate and misleading. According to testimony before the U.S. House Committee on Oversight and Government Reform, "the overwhelming majority of SNAP errors that do occur result from mistakes by recipients, eligibility workers, data entry clerks, or computer programmers, not dishonesty or fraud by recipients."

Stories about benefits fraud receive disproportionate attention in the media and are often dramatized—like what happened in the 1980s with the "welfare queen" trope used to denigrate recipients of public benefits. Although anomalies, these sensationalized stories can transform into permanent policies.

A. SNAP eligibility process focuses on preventing fraud

The SNAP program has rigorous application and eligibility review processes. While justified as the first line of defense against fraud, these processes can also present barriers to applicants and prove burdensome to the workers processing applications.

Despite the rarity of fraud, federal and state legislators prioritize fraud prevention with millions of dollars in grants and targeted funding for "program integrity."[3] Fraud protections are generally robust. In fact, case workers are more likely to be penalized or threatened with losing their jobs for accidentally approving recipients for more benefits than they are for denying people benefits.

B. Fraud hotlines are dog whistles that have no value in combating fraud

All states and the federal government have SNAP fraud hotlines. But the public's perception of what constitutes fraud is often different from the legal definition and can be deeply biased. In practice, nearly all fraud reports are for purchases of foods considered "luxury" or the use of SNAP benefits by someone who is well dressed or driving a nice car.[4] Of course, neither "luxury" foods nor being well dressed or having a nice car is prohibited in the SNAP program.

Although many states have under-resourced or insufficiently staffed call centers for SNAP applicants and recipients, they seem to have no problem finding the resources to run call lines for reporting fraud.

III. Intentional Program Violations

According to federal regulation, intentional program violations (IPVs) consist of having intentionally: (1) Made a false or misleading statement, or misrepresented, concealed, or withheld facts; or (2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing, or trafficking of SNAP benefits or EBT cards.[5]

However, recipients are not supposed to be charged with IPVs when they make mistakes—or inadvertent household errors (IHEs)—by accident, oversight, or not understanding the rules.

In practice, states often charge recipients with IPVs even when it is not clear that recipients knew what they were doing was wrong. But the difference between a IPV and an IHE often comes down to caseworker discretion. And this discretion creates opportunity for racial discrimination.[6]

Moreover, states have a financial incentive to treat overpayments as IPVs instead of IHEs or agency errors since they get to retain 35 percent of any overpayments.

A. Guilty until proven innocent

When dealing with IPVs and overpayments in public benefits, recipients are unfortunately often considered guilty until proven innocent and, in most cases, don't have the resources to prove themselves innocent.

B. Lawyers unequipped to handle the complexities of SNAP law

Most criminal defense attorneys know little or nothing about the complexities of SNAP law that would be essential to mounting a defense in these cases. Therefore, it is likely that many of those criminal convictions result from trials that do not focus on the merits of the case and that are defended by lawyers who don't understand the complexities of SNAP.

C. Over-policing

SNAP recipients have reported over-policing, privacy invasions, and other mistreatment—all in the name of "program integrity."

D. Artificial intelligence systems create presumption of guilt

States are increasingly using artificial intelligence and other automated systems for eligibility decisions to further surveil public benefits recipients and find instances of fraud. Unfortunately, these new technological systems are error-prone, racially biased, and automatically assume criminal intent.[7]

E. Consequences of IPVs

The penalty for an IPV is disqualification from SNAP eligibility for a set period of time and can have ripple effects across an entire household.

IV. Racialized History of Public Benefits, Fraud, and Program Integrity

The perception of fraudulence based on poverty and race has a long history in this country. For decades, racist narratives have been employed to garner support from Americans to cut programs like SNAP based on who is perceived as deserving or undeserving.

A. *Deserving vs. undeserving and the racialization of public benefits*

The origin of our laws regarding poverty go back to English poor laws, which classified settlers experiencing poverty into two classes: the worthy and the unworthy. The worthy consisted of orphans, widows, people with disabilities, and elderly people. The unworthy consisted of people who were perceived to be lazy, vagrants, drunkards, or shiftless.[8]

Consequently, criminalizing poverty played into the narrative of who is deserving and undeserving of government aid and has been a practice since the genesis of this country.

B. *False racist narratives and exclusion from the New Deal*

Another horrendous system shaped by the false concept of deservingness and un-deservingness is slavery. As a racialized system of forced labor, slavery paved the way for what are now known as "work requirements" by popularizing stereotypes of Black people to justify their forced labor for more than 200 years.[9]

This, in turn, helped spawn a harmful myth about the work ethic of African-Americans that contributed to the FDR Administration's deliberate exclusion of Black people from New Deal era policies, which created our modern public benefits programs.

C. *"Ending welfare as we know it"*

"Ending welfare as we know it," a rallying cry of the 1990s, further cemented the framing of poverty as exclusively a consequence of individual choices and circumstances—rather than structural conditions—by relying on racial narratives about poverty for its popular support. Building on President Ronald Reagan's "welfare queen" myth, policymakers in the 1990s drew misleading associations in the popular imagination between welfare and Black criminality, laziness, and irresponsibility.

V. Conclusion

The survival of SNAP and other programs certainly depends on taking program integrity seriously. That requires using a more evolved definition of program integrity that includes restitution and repair for racist, historic, and systemic issues that have perpetuated over-policing, discrimination, fear, disenrollment, and innocent people being sanctioned for IPVs.

VI. Recommendations

CLASP ends the report by proposing a series of equitable and anti-racist recommendations for the Biden Administration, Congress, U.S. Department of Agriculture, Food and Nutrition Services, and state agencies to consider and enact.

Endnotes

[1] Balko, R., "There's overwhelming evidence that the criminal justice system is racist. Here's the proof." The Washington Post, June 10, 2020, **https://www.washingtonpost.com/graphics/2020/opinions/systemic-racism-police-evidence-criminal-justice-system/.**

[2] Aporophobia is a neologism created by the renowned Spanish philosopher Adela Cortina to describe "rejection of the poor". It articulates a wide range of social phenomena that shapes the interaction between the poor and the non-poor, such as aversion, antipathy, contempt, disgust, disregard, fear, and hate. Aporophobic speeches select their victims not for their personal features but for "being poor" (however one might measure their poverty). As such, aporophobia thrives on inequality and social asymmetric relations. *Call for Papers*, IQS Private Foundation, June 20, 2020, Retrieved January 1, 2022, from **https://www.iqs.edu/en/aporophobia.**

[3] The USDA defines "program integrity" as "Improving stewardship of federal money by reducing recipient fraud, reducing retailer fraud, ensuring accurate eligibility determinations, and reducing improper payments." *Program Integrity*, U.S. Department of Agriculture: Food and Nutrition Services, January 15, 2021, Retrieved January 24, 2022, from **https://www.fns.usda.gov/program-integrity.**

[4] *How Can I Report SNAP Fraud?*, U.S. Department of Agriculture: Food and Nutrition Services, September 4, 2013, Retrieved January 24, 2022, from **https://www.fns.usda.gov/snap/integrity/fraud-reporting.**

[5] 7 C.F.R. § 273.16, 2011, **https://www.law.cornell.edu/cfr/text/7/273.16**.

[6] Super, D., Thoughts on Race and SNAP IPVs, Personal Communication, June 5, 2021, **https://www.clasp.org/sites/default/files/David%20Super%20-%20Thoughts%20on%20Race%20and%20SNAP%20IPVs%20-%2006.05.21.pdf.**

[7] Gilman, Michele, *AI algorithms intended to root out welfare fraud often end up punishing the poor instead*, The Conversation, February 14, 2020, **https://theconversation.com/ai-algorithms-intended-to-root-out-welfare-fraud-often-end-up-punishing-the-poor-instead-131625**.

[8] Gilman, Michele, *AI algorithms intended*.

[9] Minof, Elisa, The Racist Roots of Work Requirements, Center for the Study of Social Policy, 2020, **https://cssp.org/wp-content/uploads/2020/02/Racist-Roots-of-Work-Requirements-CSSP-1.pdf.**