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GOVERNING THE "ALIEN THREAT": A MULTILEVEL ANALYSIS OF PUNITIVENESS TOWARD NON-CITIZEN FEDERAL DRUG OFFENDERS ACROSS TIME AND PLACE

by

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A Dissertation Submitted to the Faculty of
Old Dominion University in Partial Fulfillment of the
Requirements for the Degree of

DOCTOR OF PHILOSOPHY

CRIMINOLOGY AND CRIMINAL JUSTICE

OLD DOMINION UNIVERSITY
May 2016

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ABSTRACT

GOVERNING THE "ALIEN THREAT": A MULTILEVEL ANALYSIS OF PUNITIVENESS TOWARD NON-CITIZEN FEDERAL DRUG OFFENDERS ACROSS TIME AND PLACE

Melanie M. Holland
Old Dominion University, 2016
Director: Dr. Randy Gainey

Though frequently disadvantaged across a plethora of various institutions throughout history, noncitizens have become increasingly targeted with recent political rhetoric refocusing on immigration as a threat to homeland security. The latent effects of this renewed political platform has been a heightened awareness of the "immigration threat" that has infiltrated the criminal justice system.

Previous research has found that citizenship status is related to sentencing outcomes despite the identification of this variable as extralegal by the USSC, though research remains largely divided on the extent and manifestation of this disparity. Furthermore, only a very few of these studies have examined potential mediating and moderating effects within noncitizens. Because political rhetoric emphasizes "illegal immigrants from Mexico," ethnicity, country of origin, and documentation status are likely to influence sentencing outcomes. This dissertation is the first known study to control for each of these potential mediators in the analysis of noncitizen federal sentencing disparities.

Because the emphasis on foreign populations is not immutable but rather fluctuates according to the existing sociocultural context, aggregated sentencing data fails to acknowledge nuanced patterns of disadvantage, often masking disparities. This study is among the first to examine the effects of citizenship status on federal sentencing outcomes over time and across districts and is the first study to do so while controlling for spatial autocorrelation. Multilevel

modeling techniques are employed to examine cases nested within sentencing districts. A queen contiguity spatial weight matrix is included to control for geographic proximity. Finally, a series of growth models are used to examine longitudinal patterns in sentencing outcomes across districts over time.

The results of this study support the contention that noncitizens receive more severe sentencing outcomes across numerous outcomes including incarceration, prison alternatives for eligible offenders, sentence length, and departures. Ethnicity, country of origin, and documentation status were also frequently found to be significant predictors of sentencing severity though fail to explain citizenship effects in their entirety. Sentencing outcomes have fluctuated over time, with sentencing outcomes demonstrating increased severity. Furthermore, variations in district caseloads and offender demographics demonstrate unique effects on noncitizen sentencing outcomes, though not always in the anticipated direction.

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This dissertation is dedicated to my family who have encouraged me every step of the way.

Thank you for your support. I love you all!

ACKNOWLEDGMENTS

There are so many people who have contributed directly and indirectly to this project. First, I want to acknowledge my wonderful dissertation committee who have dedicated so much to this project. I would like to thank Dr. Randy Gainey for the infinite patience, energy, and brainpower spent on this dissertation. Your mentorship kept me grounded and focused even during the most overwhelming of times. I would also like to thank Dr. Scott Maggard. Your support and guidance are appreciated more than you will ever know. Thank you Dr. Jeffery Ulmer for investing your time and energy into this project. Your feedback has been an invaluable contribution to this endeavor.

Second, I would like to thank the Old Dominion University department of Sociology and Criminal Justice. Thank you Jonathan Lopez for your tutelage on spatial data analysis. Your contribution was instrumental to the completion of this project. To Dr. Ruth Triplett and Dr. Garland White, our lunch dates were a treasured break from the long hours of writing. To Drs. Dawn Rothe, Allison Chappell, Mona Danner, Elizabeth Monk-Turner, Roderick Graham, Meghan McDowell, Randy Myers, Vanessa Panfil, Katie Slauson-Blevins, Melvina Sumter, and all of the other faculty who have contributed to the PhD program, thank you for the compassion demonstrated toward and sacrifices made for your students.

Third, I must thank my fellow PhD students. Your empathy has kept me sane in spite of the rigor of academia. To Kaitlin Robison, Lindsay Upton, Travis Milburn, Justin Turner, Kimberlee Waggoner, Anne Lee, Amanda Farrell, Favian Martín, Maryann White, Jesse McKee, Angela Overton, and Jessica Huffman, I treasure every adventure we shared. I would also like to thank my exceptional friends outside of academia who have had the unfortunate chore of tolerating and ameliorating my anxieties. Thank you Susan Hamilton and Ashley Catrett.

Fourth, I would like to acknowledge my family. There are no words that can effectively construe my gratitude and adoration for you, but I shall try. Thank you Carolyn and Thomas Holcomb for always pushing me to be my very best. Your faith in my abilities never wavered, even if mine did. Thank you Owen and Lynn Holland for your counsel. Despite the multitude of calls, you never failed to respond with the sagely wisdom I needed to hear. Thank you Charles Kupfer for doing such a wonderful job of taking care of the family while I was away. To Helen Holland, Ellen Holcomb, Bobbie Jean Connell, and Nelle Murphy, thank you for teaching me patience, persistence, and tolerance, some of which may have been absorbed. Thank you Caitlin Holcomb for being the most incredible person I know. Since the commencement of my time in the PhD program, I have turned to you to celebrate my triumphs, mourn my losses, and dissect my conundrums. With each issue, you consistently responded as passionately as if it were your own. Your compassion and intellect have been fundamental assets throughout the pursuit of my degree. To Cindy Stringer and Joe Ketchum, thank you for taking me into your family and accepting me as one of your own. Your enthusiasm and support are cherished immensely.

Finally, I would like to thank Richard Stringer. Thank you for everything: your intellectual input on my work, your patience and compassion throughout the difficult times, your unwavering support during the unsteady ones, your experienced advice on complex issues, your insight into social problems, and above all, your consistent dependability. You are my rock.

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CHAPTER 1

INTRODUCTION

"A nation that cannot control its borders is not a nation."

— Ronald Reagan

IMMIGRATION IN A CRIME-CONTROL ERA

Social and Political Apprehension over "the Immigration Problem"

Attitudes toward immigration, as reflected in social and political discourse, have become severely polarizing. According to the July 2014 Gallup poll, immigration is ranked as the greatest problem facing the United States, with nearly 17% of participants identifying this issue as the greatest concern facing America (Gallup, 2014b). Apprehension over immigration has outranked government corruption, the economy, and unemployment, among several others, as the most important problem confronting Americans. When asked whether the participant believes that the number of immigrants who move to the United States should be kept at the present level, increased, or decreased, only about 4% claim to have no opinion on the topic. This number has decreased by nearly 80% since June of 1965 when nearly 20% of participants demonstrated no opinion on the topic (Gallup 2014a).

Though society appears united in the importance placed on immigration, they diverge when addressing how best to respond to this matter. Roughly 41% of respondents in 2014, an increase from 33% in 1965, believe that immigration levels should be reduced. Only 22% suggest that this population should increase, though this has risen from 7% in 1965. Finally,

about 33% of respondents are satisfied with the present level of immigrants. This percentage has declined from 39% in 1965 (Gallup 2014a). These attitudes vary according to education level, income, and race (Espenshade and Hempstead 1996), though demographic predictors may disappear when controlling for beliefs that immigration impacts employment and taxation (Citrin et al. 1997).

Much of the fervor evident in societal attitudes toward immigration is both a product of, and trigger for, political rhetoric. Ronald Reagan, George H. W. Bush, Bill Clinton, George W. Bush, and Barack Obama are merely a few of the presidents who have taken important immigration stances, several of whom established policies providing amnesty for immigrants meeting specific criteria. Policies and political discourse are usually divided among political affiliations, with republicans often demonstrating tough immigration stances while democrats often favor less restrictive policies. Currently, President Barack Obama has submitted an immigration bill that would provide amnesty for numerous undocumented immigrants meeting specific criteria. This policy is under heavy scrutiny by society, the media, and fellow politicians. According to data from the Pew Research Center, a higher percentage of respondents paid very close attention to President Barack Obama's immigration policy than those who paid very close attention to the Ebola outbreak and the Islamic militant group named ISIS (Dost 2014). Those who oppose policies perceived as lenient toward undocumented immigrants, such as President Obama's recent bill, often associate weak border control with terrorism and lawlessness, a message that is often incited by the media.

While immigration concerns provide a platform for political leaders, the televised media exploit fear of crime and mistrust of immigrants in order to increase viewership by promoting controversial and heated entertainment. Logue (2009) argues that there exists a "reciprocal

transmission of attitudes and beliefs" (Logue 2009: 426) between the government/media and public. Politicians use the media to disseminate ideologies which are consumed by the public. The media, however, must in turn provide entertainment in order for viewers to participate in the process. Such entertainment is often proffered under the guise of provocative, inciting commentary. For example, in 2006, Glenn Beck, an American television personality, was quoted as saying "[Mexico] has been overtaken by lawbreakers from the bottom to the top. And now, what you're protesting for is to have lawbreakers come here" (Dimond 2006). Rhetoric such as this is merely an example of the myriad of anti-immigration messages being fed to the public. These attitudes are likely to have lasting impacts on immigrants, proliferating xenophic, nativistic, and isolationist ideologies at the risk of marginalizing and stigmatizing noncitizens.

Fear that this "dangerous" population is increasing may further stimulate negative attitudes toward noncitizens. Roughly 1 in 5 marriages include a foreign-born spouse, though this varies according to region with higher proportions found in some states, such as Florida, Illinois, and Texas (Larsen and Walters 2013). According to a report by Larsen and Walters (2013), the population of U.S. residents who were born outside of the country has increased from 14.1 million to 40 million between 1980 and 2010. As of 2011, 40.4 million immigrants are present in the United States. Roughly 11.1 million of these immigrants are present without authorization, a number which has increased from 8.4 million in 2000 (Pew Research Center 2011b). About 65% of the increase in foreign-born residents consisted of those from Latin America and the Caribbean, while the rest are of Asian descent (Larsen and Walters 2013). As of 2012, however, only 3.5% of the U.S. population consists of unauthorized immigrants, representing only 26% of the foreign born population (Passel and Cohn 2014). American citizens often overestimate the number of immigrants present (Massey 2007). Furthermore, the

number of unauthorized noncitizens from Mexico has steadily declined since 2007 from almost 7 million to a little over 5.8 million in 2012 (Pew Research Center 2014). This imagery of mass immigration of undocumented, predominately Mexican, immigrants suggests that the immigration issue is uncontrollable and, therefore, greater than it actually is (Johnson 1996). These messages permeate societal dialogue which intensifies political fixation on the immigration problem, further exacerbating concerns while contributing to the cycle of anti-immigrant attitudes. It is this fear of crime and association of immigrants with crime that enhances public advocacy for homeland security and border control.

The Intersectionality of Ethnicity and Citizenship

Within the United States, Hispanic has become synonymous with immigrant; this term, however, is often misleading. The label of Hispanic encapsulates a plurality of ethnicities and racial backgrounds, creating an identity that is actually an amalgamation of many. Discussing shifts in the Hispanic population distorts the unique nuances of population changes within each ethnic group (Morín 2009). Unfortunately, due to reporting limitations, the Hispanic grouping is often the only measurement available. With this in mind, it does appear as though the vast majority of U.S. noncitizens are of Latino decent (Massey 2007; Musto 1999), and that this population does not appear to be declining anytime in the near future. Feldmeyer and Ulmer (2011) identify the Hispanic population as the largest and "fastest growing racial/ethnic minority groups in the U.S." (244). As a result, Hispanic men and women represent about 15% of the population and are now the largest minority in this country (Johnson, Steward, Pickett and Gertz 2011). However, while U.S. policy was cracking down on undocumented Mexican immigration during the 1990s, concerns over Canadian immigration failed to illicit governmental response

(Johnson 1996), suggesting the "immigration crisis" is actually one concerning race. In light of findings such as these, Demleitner and Sands (2002) argue that examining racial distinctions between citizens and non-citizens is of particular importance. Because political and media rhetoric have created an association between dangerousness and immigration status, society often relies upon these racial/ethnic labels in order to identify these "outsiders" via perceptual shorthand.

The local populace not only creates a strong connection between race and immigration, it also often fails to acknowledge a distinction within common rhetoric between legal and illegal noncitizens as well as immigrant and temporary noncitizens. Not all noncitizens are immigrants. Noncitizens may also include foreign students, tourists, business visitors, or green-card holders (Demleitner and Sands 2002). According to Johnson (1996), terminology such as 'alien' incorporates multiple categories of noncitizens into one label that identifies an outgroup who can be denied the rights of citizens.

Informal Responses to Noncitizens

Immigration controversy has the potential to result in dire consequences for both legal and illegal noncitizens, some of which are already evident within the United States. Immigrants, often Latinos, currently experience substantial economic, social, and political disadvantage. For example, fear of repercussions for hiring undocumented workers has led many employers to avoid hiring Latino employees or those who appear Latino (Massey 2007). On average, Latino employees receive less pay compared to white employees, suggesting that those who do hire foreign employees often participate in wage discrimination to compensate for the increased risk (Massey 2007). It is not uncommon for employers to hire subcontractors to reduce the risk of

punitive action. In doing so, employers reap the benefits of paying low wages without the legal liability of hiring an undocumented worker. As a result of employment discrimination, poverty rates among Latino citizens and noncitizens are high, possibly exceeding those of African-Americans (Massey 2007). The children of immigrants are disproportionately more likely to drop out of school (Massey 2007). Many of them do so to provide additional income for their families. Latino citizens and non-citizens also suffer from housing discrimination via linguistic profiling. If a potential buyer or renter sounds foreign to the seller, he or she may refuse an offer. In doing so, this profiling has contributed to the hypersegregation of immigrants.

Much of these injustices are exacerbated by formal and informal discourse identifying immigrants as an economic burden on the United States. According to Johnson (1996), the Supreme Court claims that undocumented Mexicans increase economic and social problems (285). As a result of rhetoric such as this, immigration is often discussed through an economic lens (Citrin et al 1997). Demleitner and Sands (2002) acknowledge that increases in immigration place a significant strain on resources, especially for Border States. If negative attitudes were a direct response to actual strains placed on a community, however, then anti-immigrant attitudes should be highest among those most frequently in competition with noncitizens for employment. Research suggests that this is not the case. Socioeconomic status is not a predictor of negative attitudes toward noncitizens (Citrin et al 1997). Furthermore, anti-immigration attitudes are not limited to regions with higher percentages of noncitizen residents (Espenshade and Calhoun 1993), suggesting that disproportionate numbers of immigrant job seekers is not related to punitive immigration ideologies.

Formal Responses to Noncitizens

The U.S. government appears to parallel societal-level hostility toward immigrants under the guise of homeland security. Border control along the Southern border has experienced an increase in funds and resources, the militarization of immigration control, and the reframing of immigration as a terrorism threat. In fact, in response to the terrorist threat posed by immigrants, congress passed the USA PATRIOT act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism act). This policy, arguably, calls for the sacrifice of several basic human rights in order to increase homeland security.

When federal border control policies are perceived to fail to alleviate the immigration problem, state and local lawmakers appear to address concerns at the local level. As noted by Martín (2009), "…local governments have also sought to usurp federal authority over immigration policy by attempting to enact anti-immigrant laws" (169). Several states, particularly those along the border, have proposed bills designed to enhance the ability of law enforcement to better identify immigrants and enforce stringent immigration policies at the risk of jeopardizing the freedom of non-citizens including: California's 1994 Proposition 187, Arizona's SB 1070, and Alabama's HB 56, each of which were designed to enforce anti-illegal immigration policies. Several of these bills failed, however. The city of Hazleton, Pennsylvania is another example of the failure of overly strict immigration policies at a local level. This city attempted to enact ordinances which would ban immigrants from working and renting property. This law was struck down by federal court in 2007 (Martín 2009).

Some have interpreted the failure of the laws to pass as evident that President Barack Obama is excessively lenient toward noncitizens (Passel and Cohn 2014). Therefore, when attempts to control border access appear ineffectual, the CJ system may be intentionally or

unintentionally abused in order to control immigration through crime. Supporters of achieving immigration control via the criminal justice system suggest that citizenship status should be a crucial consideration in punitive decision making. One such advocate, Susana Martinez, the republican governor of New Mexico argues that "The criminal justice system should have the authority to determine the immigration status of all criminals, regardless of race or ethnicity, and report illegal immigrants who commit crimes to federal authorities" (Silver City Sun-News 2011). If federal authorities fail to satiate the perceived needs of the local jurisdiction, those in positions of authority may control immigration through de facto removal from society via incarceration. Such actions may receive support due to a double stigmatization of offenders who are viewed as deviant for entering the country illegally as well as for the crime committed. These sanctions will not only remove unwelcome immigrants from society, but will also demonstrate to society that noncitizens are more dangerous and criminal than U.S. citizens (Demleitner and Sands 2002) while simultaneously sending a message to current and future immigrants that they are not welcome.

As advocated by Governor Martinez, the criminal justice system appears to be increasingly involved in the sanctioning of immigrant offenders. Punitive responses toward noncitizens are mirrored in the criminal justice system. The bulk of immigration violation increases have occurred at the federal level (Demleitner and Sands 2002). From 1994 to 2000, the number of defendants charged with immigration violations increased from 2500 to 12000 (Demleitner and Sands 2002). Immigration offenses increased from 5.1% of convictions in 1993 to 13.7% in 1997 (Maxfield and Burchfield 2002). Of the 396,096 individuals deported in 2011, about 216,698 (55%) were convicted of a crime (U.S. Immigration and Customs Enforcement 2014). With about 102,024 deported immigrants convicted of a crime in 2007, this number has

more than doubled in the past five years. Logue (2009) suggests that immigrants may receive more severe sentencing outcomes for these offenses as a result of a double stigmatization in the courtroom, one for delinquency/deviance and another for their ethnicity.

Due to the symbolic function of the court, disproportionality in sentencing will likely validate pre-existing fear of immigrants. As acknowledged by Eisenstein, Flemming, and Nardulli (1988) when referring to the role of the courts, "their decisions are authoritative because they are 'legitimate,' that is, they are actions of government backed by the ultimate right to employ force" (10). Furthermore, imagery of mass immigration of undocumented Mexican immigrants has resulted in public perceptions that this issue is uncontrollable and greater than it actually is (Johnson 1996). These examples of punitive immigration attitudes may be indicative of 'fear of noncitizens,' with many members of society often failing to distinguish between legal and illegal presence within immigration and criminal justice rhetoric. As a result, such punitive reactions can be expected to extend to documented as well as undocumented immigrants.

FIGHTING INEQUALITY IN THE COURTROOM

In response to concerns over disproportionate sentencing, the Comprehensive Crime Control Act of 1984 created the Federal Sentencing Reform Act which established the United States Sentencing Commission (USSC) (Albonneti 2011; Kautt 2002; Paternoster 2011; Spohn 2011). The USSC enforces sentencing guidelines in federal courts via Federal sentencing guidelines created in 1987 (Albonetti 2011; Spohn 2011). The USSC ultimately limited judicial discretion with the intent of extending conformity across districts via sentencing guidelines. According to 18 U.S.C. § 3553(a) of the Federal sentencing guidelines, certain characteristics of the case can and should be used to reach sentencing decisions (Albonetti 2011). Such legal

variables include the seriousness of the offense, criminal history, and aggravating circumstances, to name a few. Other characteristics have been recognized as unrelated to criminal culpability, and should not be included in sentencing decisions. These extralegal variables include characteristics such as race, gender, and education among others.

According to USSC section 5H1.10, prosecutors and judges should not "use race and national origin as criteria in making sentencing decisions" (Demuth 2002: 272). Furthermore, "judges may depart from the guidelines only on a finding that 'there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines'" (Cano and Spohn 2012: 309; 18 U.S.C. section 3553[b]). However, the guidelines state that these variables, as well as several others including gender and education, should not be "ordinarily relevant" (Cano and Spohn 2012: 309); but such language is clearly ambiguous.

The United States Sentencing Commission (USSC) has yet to define the concept of "ordinarily relevant" (Demleitner and Sands 2002), leaving each jurisdiction to interpret this policy as it sees fit. The inevitable outcome is differential interpretation of this concept. In 1986, the 7th circuit, permitted the use of citizenship-based decisions under the guise of deterrence in 1986 *United States v. Gomez* (Logue 2009). The 1991 *United States v. Onwuemene* permitted the use of citizenship status in determining sentencing outcomes (Demleitner and Sands 2002; Logue 2009). This decision was reversed, however, by the 8th circuit. Such legal ambiguity was further subject to judicial discretion after the 2005 *United States v. Booker,* 2005 *United States v. Fanfan,* and 2007 *Gall v. United States* which permit judges to sentence outside of the guideline range (Albonetti 2011; Paternoster 2011; Spohn 2011). These cases ultimately provided judges with more sentencing discretion (Wu and

DeLone 2012).

It is becoming increasingly evident that future research should examine sentencing disparities at the Federal level in response to the overwhelming number of noncitizens found within the Federal justice system despite legal attempts to reduce courtroom disadvantage. Furthermore, Feldmeyer and Ulmer (2011) argue it is also necessary to study Federal sentencing practices because of the sheer number of men and women in Federal prisons. More than 250,000 men and women currently reside in federal prisons. Likewise, Federal decisions substantially affect social attitudes as a result of "visibility and legal prominence-coupled with its symbolic representation of national criminal justice policy" (Feldmeyer and Ulmer 2011; 239). Federal policies may directly and indirectly influence state law. It is also an opportunity to examine whether stringent policies are effective in curving discrimination. Federal law assumes that the same policies will be applied by culturally diverse regions/districts in a uniform manner. Therefore, research is needed to ensure a modicum degree of conformity is present in the application of the law.

Despite the importance of understanding disproportionality between citizens and noncitizens at the Federal level, few studies have successfully done so. Of research studies that do include citizenship status, "most treat citizenship as a control" (Wu and DeLone 2012: 215). Demuth (2002) argues that this may be a result of a lack of interest in protecting this group from legal injustices. However, he argues that it is more likely a matter of practical constraints including, but not limited to, difficulties in gathering information on citizenship status at the state level, as well as difficulties collecting information on criminal histories and comparing the different outcomes of citizens on non-citizens. Despite numerous studies examining racial disparities in the sentencing phase of the criminal justice system, most research has focused on a

black/white dichotomy, with the omission of Hispanic defendants (Johnson et al. 2011). This is particularly surprising considering that the Hispanic population is now larger than the African-American population. Those who have included Hispanic defendants in their research have identified significant degrees of inequality (Albonetti 1997; Steffensmeier and Demuth 2006). This dearth of research is particularly concerning because non-citizens represent a large portion of federal cases, this percentage is growing, and as stated previously, citizenship status is an extralegal variable that should not influence sentencing outcomes (Demuth 2002).

RESEARCH AGENDA

This study examines regional and longitudinal trends in federal sentencing disparities among non-citizen drug offenders. As previously acknowledged, few studies have examined the effects of citizenship status on sentencing outcomes. Of these studies, nearly none have examined longitudinal or regional effects beyond mere control variables. Because noncitizens are so dramatically represented within Federal prisons for drug offenses, the sample will focus on Federal drug offenders.

Federal law is expected to apply equally and uniformly across the United States. However, it is unlikely that all districts have the same values and abilities to apply such laws consistently. Different districts struggle with different types and levels of crime and can therefore be expected to prioritize policies differently. As Feldmeyer and Ulmer (2011) state, "this diverse array of social contexts may result in localized justice meted out in context-specific ways" (240). As a result, current inclinations toward stringent immigration policies are likely a result of important contextual elements including both local and national political and economic climates. Such climates, however, are subject to change over time.

Courtroom actors are not immune to these regional and longitudinal attitude shifts. As such, judges and attorneys are likely to be influenced by their surroundings. Though federal judges are not obligated to consider state laws in their decisions, the local ideologies that promote get-tough policies are likely to influence the cognitive framework within which the judge interprets federal law. Despite the increased prominence of federal mandatory sentencing strategies and sentencing guidelines, judges maintain a sufficient amount of discretion in interpretation for critical decisions, particularly with regard to awarding substantial departures. Because judges are subject to local and cultural influences, it is likely that federal judges' decisions will mirror local ideologies and priorities. Attitudes toward non-citizens are no exception. Federal sentencing outcomes are likely to vary according to local and current reactions toward foreign residents.

This study examines whether non-citizens receive harsher sentencing outcomes compared to U.S. citizens as well as within noncitizen variations for federal drug offenses, whether this sentencing disparity varies by district, and whether these disparities change over time. Chapter 2 provides the socio-historical context in which the relationship between drug policies and immigration has evolved. Chapter 3 briefly summarizes the limited research that has examined the effects of citizenship on sentencing outcomes. I then examine how such variation may be influenced by defendant ethnicity, region, and time. Chapter 4 outlines the theoretical framework within which judicial discretion is likely to exist. Particularly, I argue that punitive reactions toward noncitizens are a result of socially agreed upon fears of economic, social, and political competition. This competition influences individual level interpretations of blameworthiness and recidivism via perceptual shorthand. Such perceptions, however, will vary across districts as a result of differential experiences with noncitizens. I lay out my analytical

and methodological strategy in Chapter 5. Sentencing disparities between citizens and noncitizens are examined at the case level in Chapter 6, the results of which frequently support many of the theoretical premises with noncitizens receiving more severe sentencing outcomes than their U.S. citizen counterparts across all dependent variables. I then examine geographic predictors of sentencing disparities in Chapter 7. Longitudinal patterns in sentencing outcomes are discussed in Chapter 8. Finally, the findings from the data analysis are synthesized within the theoretical framework in Chapter 9. Limitations and policy implications are also acknowledged in this final chapter.

CHAPTER 2

SOCIO-HISTORICAL OVERVIEW

"Reflecting on the earlier wave of drug intolerance, one cannot help but be concerned that the fear of drugs will again translate into a simple fear of the drug user and will be accompanied by draconian sentences and specious links between certain drugs and distrusted groups within society...."

— David F. Musto 1999: 171

The proliferation of anti-immigration sentiments has permeated societal attitudes, local and government policies, as well as the criminal justice system. The extent and manifestation of these sentiments, however, appear to be both region and time specific. Some states appear to demonstrate disproportionate punitiveness toward noncitizens and Latinos. Punitive attitudes toward noncitizens appear to be more pronounced in states that are closer to the Mexican border. These Border States appear to apply stricter penalties for crimes committed by noncitizens. For instance, almost 49% of unlawful re-entry federal convictions by "prior aggravated felons" are in the following jurisdictions: California South, Texas West, and Arizona (Maxfield and Burchfield 2002). As of 2012, roughly 60% of unauthorized immigrants lived in California, Florida, Illinois, New Jersey, New York, and Texas (Passel and Cohn 2014). Conversely, Maine, Montana, North Dakota, South Dakota, Vermont, and West Virginia have fewer than 5,000 unauthorized immigrants per state (Passel and Cohn 2014). As a result, Demleitner and Sands (2002) argue that the Southwest Border has focused greatly on border control. District level variation appears to exist even within Border States, however, with the Southern district of

California exhibiting removal rates of almost 16%, the western district of Texas about 48%, and the rates for Arizona over 95%, (Maxfield and Burchfield 2002).

Even within border states, responses toward immigration are likely to vary across time. From 2009-2012, only Florida, Idaho, Maryland, Nebraska, New Jersey, Pennsylvania, and Virginia saw an increase in unauthorized immigrants (Passel and Cohn 2014). Alabama, Arizona, California, Colorado, Georgia, Illinois, Indiana, Kansas, Kentucky, Massachusetts, Nevada, New Mexico, New York, and Oregon demonstrated noticeable declines in unauthorized immigrants. The remaining states showed no significant population changes among unauthorized immigrants (Passel and Cohn 2014). The restrictionist attitudes observed during the Post WWII era and the 1980s (Espenshade and Calhoun 1993) have not yet become obscure. The post 9-ll wave and anti-immigration policies continue to limit opportunities for noncitizens. Tough immigration policies appear to vary in intensity and frequency by location and time. As observed by Kevin Johnson (1996), "…the beauty (if one can call it that) of anti-illegal alien rhetoric is its ability to tap into the specific racial fears in a particular region and allow for consensus on national solutions to the 'alien problem' (290). It is this very rhetoric that may also place noncitizens at a disadvantage within the courtroom.

THE NONCITIZEN-DRUG NEXUS

According to Demuth (2002), there exists an important relationship between citizenship status and sentencing outcomes for drug offenders which he refers to as a noncitizen-drug nexus. In fact, politicians have used immigration and crime concerns interchangeably, so that immigrants are frequently associated with crime, particularly drug and gun crimes (Johnson et al 2011), resulting in the differential application of drug sentencing between citizens and

noncitizens. Chief Justice Burger once stated that the nation "is powerless to stop the tide of illegal aliens - and dangerous drugs - that daily and freely crosses our 2000- mile southern boundary" (as cited by Johnson 1996: 284). Though there are often mandatory minimum sentences for certain drug offenses that vary by type and amount, judges may apply discretion for those who provide a substantial assistance according to the United States sentencing guidelines section 5K.1.1 (Cano and Spohn 2012). This clause provides an opportunity for judges to circumvent mandatory drug minimums as well (Cano and Spohn 2012). While immigration violations result in longer prison terms than drug violations for noncitizens, this variation disappears for U.S. citizens (Wu and DeLone 2012). White-collar criminals received longer sentences than drug violations for citizens, but this disappeared for noncitizens.

While drug laws appear to be the legal mechanism through which the targeting of noncitizens is justified, race and ethnicity appear to be proxies through which to identify noncitizens. Ethnic disparities may be greater among drug charges compared to non-drug offenses (Demuth 2002). Because noncitizens are often presumed to be of Latino descent, the war on drugs has disproportionately affected Hispanic stereotypes (Feldmeyer and Ulmer 2011). "Current political discourse regarding national security threats from Mexican drug cartels and a concurrent media induced panic regarding immigration and crime has produced a fear of immigrants in the United States" (Hartley and Armendariz 2011: 47). Though the current association within the U.S. between certain drugs, specifically marijuana, and Mexican immigrants appears absolute, the connection between undesirable substances and immigrants of various ethnicities has fluctuated extensively throughout history.

Early Colonists and Native Americans (1600s-1830s)

Originally, upon the arrival of the early colonists, immigration and substance abuse were of little concern. Throughout most of the 17th and 18th century, the colonies were expanding. Rather than fearing "outsiders," the colonists faced territorial disputes against the Native Americans. The first immigration law did not occur until the 1790s. The Alien and Sedition Acts were among the first policies to limit immigration, and was a result of reducing French radicalism (Johnson 1996). Citizenship status was limited to white men, excluding other ethnicities as well as women. These acts also required residency of at least 14 years prior to obtaining citizenship, and permitted the deportation of dangerous aliens. The residency requirement was reduced to 5 years in 1802.

While immigration policies were of little concern to the early colonists, substance use was cause of even less distress. Domestic production of hemp was encouraged. Opium, a narcotic with a calming effect, was used as a form of medical treatment (Musto 1999). Morphine was being extracted from opium by 1803. Alcoholic beverages, on the other hand, were far from uncommon during this time. The earliest substance control policy was formed during the 1830s, and forbade the sale of alcohol to "Indians."

Potato Famine and Irish Immigrants (1830s-1850s)

The early and mid-19th century brought an expansion of both diverse immigration as well as new medicinal and recreational substances, with few policies enacted to control either. The potato famine occurring in the 1840s brought many Irish immigrants to North America,

eventually resulting a substantial hostilities directed toward the Irish (Johnson 1996). The Chinese population was expanding at a rapid pace (Musto 1999). The newly freed slaves began to raise questions of citizenship, though the Dred Scott decision made it clear in 1857 that society would not accept freed black men as U.S. citizens at this time. It was during this time period that the first Mexican citizens were established. The signing of the Treaty of Guadalupe Hidalgo in 1848 ended the Mexican-American war (1846-1848). This treaty granted the U.S. several new territories that had previously belonged to Mexico. In doing so, many Mexican inhabitants were forced to choose between Mexican or U.S. citizenship. Roughly 90% chose U.S. citizenship, creating 50,000 new Mexican-Americans. Due to their small population and distance from the major communities, these new citizens were not considered to be a threat.

During this time, very little focus was placed on substance control. Alcohol consumption began to wane in popularity while synthetic drugs such as Opium and Morphine grew, particularly because they were inexpensive and compact (Musto 1999). Some, however, criticized opium for being "un-American" and "non-Western" (Musto 1999: 2) indicating an association of drug use among noncitizens. Codeine was synthesized in 1831. Policies designed to curtail the use of these substances were mostly absent.

Profiteering off of China (1860s-1880s)

Toward the late 19th century, law makers began considering regulating both incoming immigrants as well as mind-altering substances. Some of these regulations were progressive. After the civil war (1861-1865), African-Americans gained citizenship via the 14th amendment. The 1864 contract labor law allowed businesses to recruit foreign labor. New York declared state immigration laws to be unconstitutional after the 1875 case of Henderson v. Mayor of New

York. These tolerant policies did not extend to every nationality, however. For instance, the permissiveness of bringing in foreign labor did not extend to Chinese workers. Though Chinese immigrants were at first welcomed by the U.S. in order to take up jobs that many U.S. citizens did not want, these immigrants soon became a concern. Many felt as though the Chinese were too industrious (Massey 2007). They would work hard and rise to higher positions, taking desirable jobs. To deter Chinese recruitment, the anti-coolie act required a tax for those who hire Chinese workers. Furthermore, Chinese immigrants were denied citizenship status even after the 1870 Naturalization act which broadened citizenship. Finally, by 1882, all immigrants were required to pay a 50 cent tax upon reaching port.

While several policies were enacted to deter the immigration of the overly industrious Chinese, anti-opium attitudes began to spread. Opium, a narcotic popularized in China, was banned in some states, including San Francisco, during the 1870s. Some states, such as Pennsylvania, enacted antimorphine law in 1860s (Musto 1999). Alcohol legislation also began during this time. Heroin was being marketed in the U.S. during this period, and the hypodermic needle was popularized.

Excluding Asia (1880s-1914)

When employment taxes failed to curtail Chinese immigrants sufficiently, various policies were soon enacted to entirely limit the entrance of the Chinese as well as most of Asia and the substances associated with them. The 1882 Chinese exclusion act suspended Chinese immigration for 10 years, and was renewed in 1892 for another 10 years. Furthermore, the alien contract labor law forbade the importing of unskilled aliens, though this did not apply to the Canadian and Mexican borders. In order to ensure compliance with these laws, the bureau of

immigration was created in 1891. In 1902, the anarchist exclusion act prohibited anyone believed to be associated with anarchist ideology. By 1906, the ability to speak fluent English became a requirement for naturalization. The exclusion of Chinese immigration soon expanded to include Japanese immigrants as a result of the 1907 Gentlemen's agreement. These nativist attitudes were so entrenching that even women who were U.S. citizens would lose their citizenship status if they marry a "foreigner" as a result of the 1907 expatriation act. Also during 1907, the head tax for noncitizens was raised, the exclusion list was further expanded, and the Dillingham report identified certain Europeans as inferior and Mexican immigrants as nonassimilable. In 1913, California's alien land law made it illegal for anyone ineligible for citizenship to own land, which mostly effected Asian immigrants (Musto 1999).

As immigration laws were becoming less tolerant, so were drug policies. During this time, opium importation declined. Morphine and cocaine, which had traditionally been popular for medical treatment as well as certain beverages including Coca Cola and some wines, were beginning to become controlled by the end of the 19th century. Society began to worry that these drugs were spurring violence and taking away the users' humanity. States began forming policies to ban mind-altering substances due to fears of addiction and immorality. In 1880, Ohio banned smoking opium. Illinois prohibited cocaine in 1897 (Musto 1999). The emphasis on substance control at the federal level, however, was focused on opium. In 1909, the International opium commission, also known as the Shanghai opium commission, met to address international drug concerns, particularly that of opium. Partially in response to the findings of the commission, a meeting was called at the Hague in 1912 to address taking action, which ultimately lead to the Harrison act. These restrictions on opium, morphine, and cocaine created a market for a new recreational herbal substance from Mexico, Marijuana, to be introduced. By

1906, the Pure Food and Drug Act required the labeling of products containing opiates, cocaine, and cannabis, resulting in the decline in distribution and use (Musto 1999). This policy was amended in 1912 to make false claims of therapeutic powers illegal.

Recruiting Mexican Immigrants (1914-1920s)

The early 1900s witnessed an increase in Mexican immigration as well as marijuana regulation. The exclusion of Asian immigrants presented a discernable absence of employees willing to work in lower tier occupations. This need for workers reached significant altitude in 1914 as the U.S. entered World War I. With vast numbers of working men joining the military, women and those left behind filled the gaps. Several official labor recruitment programs aimed at bringing in Mexican immigrants began, though Asian immigrants continued to be omitted. The 1917 immigration act added literacy tests and instilled an Asiatic Barred zone. Restrictions began to tighten once again at the end of World War I in 1918, a period referred to by Musto (1999) as Post WWI hysteria. In 1921, the quota act further restricted both eastern and southern Europe, though this act seems to have had no impact on Western immigration.

At the same time that Mexican immigration increased, marijuana regulation became more frequent. In 1914, the Harrison tax act further regulated opiates and coca products, limiting sales to licensed physicians and requiring a tax. These physicians must now keep records of drugs sold. Several concerns arose with disagreements over legitimate and illegitimate prescriptions. Many felt that prescribing substances for addiction maintenance was a legal loophole. According to Musto (1999), the period from 1914 to 1931 marks the beginning of anti-marijuana movement, during with Marijuana was associated with Mexicans, jazz, and vices.

The Roaring 20s (1920s)

During the 1920s, an increase in anti-immigrant sentiment as well as more substance control was evident. After the war, many of those enlisted in the military returned to their families. No longer an active part of the military, many men expected to resume their former lives and jobs. Anti-immigrant attitudes soon resurfaced as the returning men found themselves in competition with the immigrants who had migrated to the U.S. in order to fill jobs. Furthermore, much of society was fearful of immigrants as a result of the 1919 Red scare (Musto 1999). Policies constricting citizenship and immigration return as the Mexican population continues to increase, establishing Barrios in Los Angeles and Chicago (Massey 2007). The Mexican immigrant population is becoming more visible during this decade. Their presence was accepted, however, because employers appreciated the cheap Mexican labor. Society, however, associated their presence with crime (Musto 1999). Asian immigration restrictions remained present throughout this decade. Although the 1922 cable act reversed the expatriation act for women who married most immigrants, it did not include those who marry an Asian man. Japanese immigrants continue to be ineligible for citizenship, and in 1923, U.S. v. Bhaghat Singh Thind decided that immigrants from India are also ineligible for citizenship. By 1924, those who are ineligible for citizenship are not permitted to enter the county and immigration quotas are reduced. These reductions are made permanent in 1929.

During the 1920s, alcohol was prohibited due to its associated with jazz, flappers, and hedonism. This prohibition did not end until 1933. In the absence of liquor, recreational marijuana use became increasingly popular.

The Great Depression (1930s)

Anti-immigrant and anti-marijuana attitudes reached a peak in the 1930s with the introduction of deportation campaigns followed by the 1937 Marijuana Tax Act which effectively made marijuana illegal. While competition over jobs increased after the war, the economic surplus resulting from WWI provided enough opportunities that ethnic tensions were somewhat tolerable during the 1920s. This suddenly changed when the stock market crashed in 1929. The Great Depression of the 1930s created such an extensive shortage of work that competition over even the most undesirable of jobs ensued. Due to the Asiatic Bar, many of the noncitizens were of Western descent, particularly Mexican. Deportation campaigns cut the Mexican population by nearly half. Those who remain behind were marginalized and scapegoated. The Great Depression resulted in the loss of the few pro-immigration supporters that remained (Musto 1999). Mexican immigrants were no longer welcome in the United States.

As deportation campaigns focused on removing Mexican immigrants, Marijuana, a drug associated with Mexico, became increasingly regulated via the 1937 Marijuana Tax Act. This act required all sellers to register and pay taxes, maintain written order forms, and tax transfers. Simultaneously, the creation of the Federal Bureau of Narcotics in 1930 emphasized stringent enforcement (Musto 1999). This combination resulted in a de facto ban. In order to reduce the potential for the media's promotion of the drug, the 1934 Production Code of the Motion Picture Association banned the inclusion of narcotics in movies and film (Musto 1999).

WWII and the Braceros (1940s)

The negative attitudes directed at Mexican immigrants as well as strict drug policies began to ebb into the 1940s. The deportation campaigns were quickly placed on hiatus after the

U.S. entered WWII toward the end of 1941. By 1942, the U.S. Departments of State, Labor, and Justice had enacted the Bracero program which was created to bring in temporary workers from Mexico to once again fill the jobs of those who joined the military. This increased the Mexican population and provided discretionary income. Many Mexican immigrants began to use this income to purchase extravagant outfits, popularizing the pachuco and zoot suit. It was not long before anti-Mexican riots began to occur, and local law enforcement often defended the instigating U.S. military men rather than protect the victimized immigrants. Despite the resulting violence, bracero programs continued throughout the 1940s and some employers recruited workers illegally into the early 1950s.

Though few substance control laws were enacted during this time, Marijuana use declined throughout the 1940s and 50s. In 1942, the opium poppy act regulated opium poppy cultivation in U.S. During this time period, film restrictions on narcotics began to relax and some films depicted narcotics (Musto 1999).

The Disposable Work Force (1950s)

The 1950s were met with the militarization of U.S. borders as well as increasing substance control, particularly for opiates and cocaine. With the economy once again thriving after the war, Mexican migrants were no longer needed. By the mid-1950s, Operation Wetback had begun. The U.S. immigration and Naturalization service militarized the borders. Despite the increased border patrol, temporary work visas continued to increase, resulting in fewer apprehensions overall (Massey 2007).

Once again, drug policies paralleled anti-immigration ideologies. In 1951, the Boggs act set a 2 year minimum for the 1st conviction of narcotic. In 1956, the federal penalty for selling

heroin to a minor if the seller is an adult was death at the jury's discretion (Musto 1999), though the courts focused more on opiates and cocaine which were viewed as more dangerous (Musto 1999). This decade represented the peak of anti-drug attitudes (Musto 1999).

Civil Protest (1960s)

The 1960s was marked by an awareness of inequality, civil protest, and political changes toward immigration as well as illicit drug use. The Civil Rights Movement reached great strides within the African-American community, abolishing segregation and bringing attention to the extensive discrimination faced by many African-Americans. This new society also acknowledged the exploitive nature of the bracero program, resulting in a drastic reduction of temporary migrant workers. The 1965 Immigration and Nationality Act abolished origins quotas and finally permitted Asian and African immigrants. The new quotas included racially neutral ones such as Western and Eastern hemispheres. Despite the good intentions of these policies, the racial neutral quotas left Mexican immigrants to compete with other nationalities along the Western hemisphere for a finite number of admissions. Without the Bracero programs, legal access was limited. Because employers value the cheap source of labor, many chose to hire immigrants illegally. Furthermore, because the penalty for doing so was of relatively little consequence, many immigrants crossed the border to work illegally for little pay. This lead to an increase in undocumented Mexican workers. As a result of this increase, the stigmatization and demonization of Mexican immigrants heightened. Undocumented workers began to be seen as a security threat (Massey 2007).

Attitudes toward substance use during the 1960s were also more relaxed. Responses toward drugs shifted from punitive crime control to rehabilitative and treatment oriented. Less

emphasis was placed on law enforcement. Methadone maintenance was popularized as a treatment for heroin. Marijuana use began to increase in popularity again, reaching a peak in the 1970s along with alcohol. Minor marijuana possession was decriminalized in some states. President Kennedy funded research on therapy and psychiatric responses to drug addiction. In 1965, the Drug Abuse Act was amended, and in 1968, the Federal Bureau of Narcotics moved to the Justice Department and became the Bureau of Narcotics and Dangerous Drugs (Musto 1999).

The War on Drugs (1970s-1980s)

Though the 1970s saw relatively little immigration reform, the 1980s is marked by clear conservative attempts to control this social problem deemed as a threat. In fact, President Ronald Reagan declared illegal immigration to be a threat to security, linking noncitizens to terrorism. As a result, the Immigration Reform and Control Act (IRCA) of 1986 provided more funding for border control, created programs for short term and long term legalization, and criminalized the hiring of undocumented workers. It also provided amnesty for those residing in the U.S. (Hagan and Phillips 2008). This legislation, however, did not reduce immigration long term. Despite a brief drop in immigration during the 1980s, immigration was back up by the 1990s.

While immigration was being reframed as a terrorist threat, substance control was simultaneously emphasized despite the fact that alcohol, cigarettes, and drug use were declining after the mid-1970s. The 1970 Comprehensive Drug Abuse Prevention and Control Act addressed drug research via funding to public health services hospitals, funded a 2 year study to examine the impact of certain drugs, and provided the National Commission on Marijuana and Drug Abuse. Of particular importance is the creation of categories, or schedules, of drugs.

These schedules ranked drugs on a scale of I-IV according to a risk-benefit analysis, with marijuana identified as a schedule I substance. Schedule I drugs were those that offer the least health benefits and are associated with the most harms. Prior to the 1970s, heroin was associated with Turkish immigrants. The control of this drug was associated with national security. During the 70s, this association changed. Heroin soon became associated with Mexican poppy fields. The office of Drug Abuse Law Enforcement was created in 1972. Methadone clinics increased. Drug education was emphasized in an effort to reduce demand. Cocaine use increased.

The War on Drugs is generally marked as beginning in 1982 during President Ronald Reagan's presidency (Alexander 2010). During this decade, noticeable pro-substance control sentiments are evident. Alcohol and cigarette ads began to be restricted. Some states began recriminalizing marijuana. Reactions toward users shifted from a focus on treatment to that of enforcement. The change in societal reactions from treatment to enforcement is reflected in several prominent drug laws. In 1984 the Comprehensive Crime Control Act increased the penalty for possession or sale of crack cocaine, which is more frequently found in poor neighborhoods, to 100 times greater than that for powder cocaine, which is often found in more prominent locations (Logan 1999). This law was updated two years later to create the Office of National Drug Control Policy and established what has since become known as the National Youth Anti-Drug Media Campaign (HR5210) (Kautt 2002; Paternoster 2011). The Anti-Drug Abuse Act of 1986 provided mandatory minimums for drug use and increased the penalty for crack. It also recriminalized marijuana as well as designer drugs (Albonneti 2011; Kautt 2002; Paternoster 2011). Nancy Reagan's "Just say no campaigns" was a preventive effort to deter youths from drug use. Crack cocaine appeared during the mid-1980s. The appeal of this drug is that it is cheap and, because it is not intravenous, is not associated with the spread of aids. Drug

arrests spiked and crime declined, though whether the link is direct or indirect is debatable.

The Gulf War and the Middle East (1990s-Present Day)

Immigration concerns intensified throughout the 1990s and the new millennium while attitudes toward marijuana shifted. Funding for removal expanded greatly during the 1990s and deportation for those with a criminal history broadened with the passing of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Anti-Terrorism and Effective Death Penalty Act (AEDPA) (Hagan and Phillips 2008). The Department of Homeland security was created in 2002. Because the 9-11 terrorists were of middle-eastern descent, anti-immigration attitudes have been redirected toward Muslims, though Mexican immigrants continue to be marginalized and disadvantaged as well. By 2011, almost 400,000 immigrants were removed, returned, or deported in one year (U.S. Immigration and Customs Enforcement 2014). This is a total of 105,846 more than were removed five years before then in 2007. The vast majority of this increase is driven by removals while returns and voluntary leave via the Mexican Interior Repatriation Program (MIRP) have been modestly decreasing (U.S. Immigration and Customs Enforcement 2014).

Numerous immigration policies were proffered in effort to control immigration. Bill Clinton's 1993 "Prevention through Deterrence" essentially militarized border control (Hagan and Phillips 2008). Blockades were set up during the 1990s to reduce illegal crossings including: Operation Blockade near El Paso in 1993, Operation Gatekeeper in the San Diego area in 1994, and Operation Rio Grande in the Brownsville area in 1997 (Hagan and Phillips 2008). Several states also began to attempt to pass laws that would restrict immigrants' privileges during this period. California's 1994 proposition 187, or the Save our State initiative, would have

prohibited noncitizens use of several social services including health care and public schooling. Though it failed, this proposition set the framework for controversy to come. Arizona's 2010 SB 1070, or the Support Our Law Enforcement and Safe Neighborhoods Act, resulted in the creation of a misdemeanor charge for undocumented immigrants to be merely be in the state, permitted law enforcement to request proof of legal status under reasonable suspicion, and permit the detention of anyone believed to enter the country illegally (Kubrin 2014).

Immigration policies became excessively severe post September 11, 2001. The terrorist attack left much of the U.S. united in their apprehension of immigration. As a result, the USA PATRIOT Act essentially permitted the removal of any immigrant believed to have committed or intend to commit an act of terrorism without due process (Massey 2007). Under the guise of protecting the U.S. from terrorism, this policy has been used to justify the failure to uphold one's right to jury trial and right to counsel as well as property seizures without due process for noncitizens (Whitehead and Aden 2002). Furthermore, new screening requirements were added for non-immigrants, intelligence reports to congress were delayed, and domestic terrorism was redefined. It allows the U.S. to refuse entry to anyone who supports or promotes groups that undermine the United States' effort to reduce terrorism; this policy also extends to their families (Whitehead and Aden 2002). The PATRIOT act reassigned several crimes (including threats of homicide, intimidation, bombing, and malicious mischief against U.S. government property to name a few) that were originally under the jurisdiction of other agencies to that of the Attorney General, extending his investigative authority (Whitehead and Aden 2002). It also permits the indefinite detention for non-citizens without due process. Some argue that the PATRIOT act permits the government to essentially spy on citizens via the Foreign Intelligence Surveillance Act (FISA) and the expansion of the Wiretap Act (Whitehead and Aden 2002). Despite the

relatively strict response toward immigration from the federal government, many argue that more should be done to defend our borders.

Bush's 2005 "Secure Border Initiative" provided more resources for border control, including the creation of fencing in the Southwest. The 2008 "Secure Communities" was implemented to better identify undocumented immigrants through fingerprinting (Kubrin 2014).

The relationship between substance and immigration control began to diverge slightly during the 1990s and new millennium. Although historically, drugs affiliated with unwanted minorities have been demonized and thus heavily criminalized, with marijuana being no exception, the permeation of marijuana into White culture resulted in shifting attitudes toward the substance. While both state and federal laws attempt to increase national security, drug policies appear to be lessening. Some states have once again decriminalized marijuana use (California's proposition 215 and Arizona's proposition 200). Other states of legalized medical marijuana. A few, Colorado and Washington, have even legalized recreational use. Drug arrests appear to be declining (Musto 1999).

FEDERAL DRUG ARRESTS OF NONCITIZENS

Despite the current decline in drug arrests, noncitizens are disproportionately represented for many federal offenses, but this is especially true for drug charges. Within federal court, most noncitizen charges are for immigration and drug violations (Demleitner and Sands 2002). Of noncitizen offenders processed in federal court, nearly 88% are charged with a drug or immigration violation each year (Wu and DeLone 2012). A little fewer than half of noncitizens convicted of a crime in federal court were found guilty of drug charges (Katzenelson, Conley, and Martin 1996). Of those convicted of drug trafficking, simple possession, and use of a

communication facility in a drug transaction, noncitizens represented more than 1 in 4 of those convicted (Katzenelson et al 1996). Because politicians have used immigration concerns and drug concerns interchangeably within political rhetoric (Johnson 1996) and because a large portion of noncitizens entangled within the criminal justice system are accused of drug offenses, such crimes provide ample opportunity for the disproportionate sentencing of noncitizens.

CHAPTER 3

EXTANT LITERATURE REVIEW

"You are not a citizen of this country. This country was good enough to allow you to come in here and to confer upon you… a number of the benefits of this society, form of government, and its opportunities, and you repay that kindness by committing a crime like this. We have got enough criminals in the United States without importing any."

— United States v. Onwuemene

THE EFFECT OF CITIZENSHIP STATUS ON SENTENCING OUTCOMES

It appears as though noncitizens suffer from a distinct disadvantage throughout the criminal justice process across numerous decision making stages. In fact, Maxfield and Burchfield (2002) argue that prosecutorial charging policies may be to blame for regional variations in sentencing disparities. Likewise, noncitizens are at a disadvantage within corrections. A large number of noncitizens are currently on probation. Noncitizens face additional hurdles while on probation, often as a result of difficulties with assimilation, employment restrictions, and difficulties with welfare (Demleitner and Sands 2002). These disparities, however, fall outside of the control of the USSC guidelines and are beyond judicial discretion. When examining disparities for noncitizens within sentencing outcomes, however, research is at best inconclusive, suggesting severe incarceration decisions, lenient sentence lengths, and mixed findings for departures (Albonetti 1997; Cano and Spohn 2012; Demuth 2002; Katzenelson et al 1996; Maxfield and Burchfield 2002; Wolfe, Pyrooz, and Spohn 2011; Wu and DeLone 2012).

Noncitizens are disproportionately more likely than U.S. citizens to receive a prison sentence compared to alternative sanctions even when controlling for legally relevant variables (Albonetti 1997; Demuth 2002; Wolfe, Pyrooz, and Spohn 2011). This finding remains consistent across a variety of studies examining various timeframes. For instance, Albonetti's 1997 study examined extralegal factors related to sentencing outcomes for federal drug offenders using the United States Sentencing Commission's Monitoring of Federal Sentencing data from 1991-1992. Using tobit analysis, she found that noncitizens were 2% more likely to receive an imprisonment outcome than citizens. Demuth (2002) found similar disparities in incarceration between citizens and noncitizens. Using data from the Monitoring of Federal Sentencing from 1996-1999, Demuth (2002) found noncitizens were more likely to receive a prison sentence than U.S. citizens. Using logistic and OLS regressions, the study found significant effects for the decision to imprison non-citizens while controlling for legally relevant variables including the minimum presumptive sentence, sentencing departures, criminal history points, trial/plea, sentencing guideline zone (A-D), and multiple charges as well as extralegal variables such as age and education; though he argues that these legal predictors were stronger than citizenship status. He found that legal aliens were 30%, and illegal aliens 44%, more likely to receive a prison sentence than citizens.

Using the 2006 data, Wolfe and colleagues (2011) found that legal noncitizens were 37% more likely to go to prison than U.S. citizens and illegal noncitizens were 9.5 times more likely to be imprisoned. This finding is particularly true for drug offenses, with drug offenses demonstrating a greater increase in imprisonment decisions for undocumented noncitizens than for U.S. citizens. Katzenelson and colleagues (1996) argue that the disproportionality in imprisonment decisions between citizens and noncitizens exists even when alternatives to

incarceration are present, suggesting that disparities between citizens and noncitizens within incarceration decision continues to exist even in in the presence of judicial discretion.

Conversely, noncitizens appear to receive shorter prison sentences when incarcerated (Demuth 2002; Katzenelson et al 1996; Wu and DeLone 2012), though some variations are discernible. Albonetti's 1997 study is an outlier, representing one of the few studies suggesting that noncitizen defendants receive longer sentences when compared to U.S. citizens. The vast majority of research examining the effects of citizenship status on sentence length has found the reverse to be true. Using the Monitoring of Federal Sentencing data for the year 1995, Katzenelson and colleagues (1996) argue that the average sentencing length for citizens (69.5 months) is longer than that for noncitizens (47.4 months). In Demuth's (2002) study examining MoF data from 1996-1999, he also found that prison sentence lengths were generally shorter for non-citizens than for citizens. More recently, Wu and DeLone (2012) found that noncitizens received shorter sentences than U.S. citizens in a study examining border states from 2006-2008. While shorter sentence lengths for noncitizens may be interpreted as leniency, it may be an artifactual inference. Shorter sentence lengths may be driven by disproportionate immigration arrests, which are associated with shorter sentence lengths than many other criminal offenses, and by trafficking drugs associated with lower penalties (Katzenelson et al 1996).

The effects of citizenship status for the use of sentencing departures from the guidelines are somewhat more ambiguous than the effects for incarceration decisions and sentence length. It appears as though a relationship is present; the direction of this relationship, however, is disputed. This is likely because judicial departures are one particular variable for which sentencing guidelines provide the most judicial discretion. Downward departures allow judges to assign sanctions below that which would be expected within the sentencing guidelines.

Substantial assistance departures reward defendants who are able to provide information that can aid in the prosecution or conviction of an offender. When examining federal immigration violations from 1993-1997, Maxfield and Burchfield (2002) suggest that noncitizens benefit from downward departures. The researchers find that one in four immigration offenders receive a downward departure and 34.4% of noncitizens accused of unlawful entry receive a departure compared to only 13.6% of other offenses (Maxfield and Burchfield 2002). Conversely, Katzenelson et al (1996) find that U.S. citizens are more likely to receive substantial assistance departures, while noncitizens are more likely to receive downward departures. Noncitizens are more likely to receive a sentence within the federal guideline range than U.S. citizens. A study conducted by Cano and Spohn (2012) examined the effects of extralegal variables on federal sentencing departures using OLS and logistic regression for three districts in the Midwest from 1998 to 2000. Like Katzenelson et al (1996), Cano and Spohn (2012) found that citizens are more likely to receive a substantial assistance departure than noncitizens. They also found significant results for gender, number of dependent children, and educational achievement. Race and ethnicity were not significant, suggesting that citizenship status is more influential than race. Of granted departures, US citizens received a 22% larger reduction than non-citizens (Cano and Spohn 2012).

Several explanations have been suggested for why such variations in findings have occurred. These variations are likely a result of methodological, regional, and temporal dissimilarities. Different studies control for different legal variables. For instance, the appearance of noncitizen leniency may be artifactually driven by left censoring, with the criminal history of many noncitizens remaining unknown to the court. Another issue with comparing citizen effects across studies is the differing samples. Several of these studies examine data prior

to the 2005 Booker decision which permits judges to step beyond the guidelines under certain circumstances. Therefore, it comes as no surprise when research examining pre-Booker and post-Booker data differ. Likewise, some of the studies examine different districts while others look at national data. Regional variation, however, is likely to exist with regard to the effects of citizenship status as a result of differential experiences, interactions, and priorities. A third explanation for differences in research findings involves the various crimes for which the defendant has been accused. For instance, studies examining immigration violations find an increase in the use of departures for noncitizens compared to U.S. citizens while research examining drug violations often find a reduction in the use of departures. Even while controlling for legal variables, however, not all unexpected findings are explained. Demuth (2002) acknowledges that with noncitizens receiving lower guideline minimum scores and criminal history scores, it remains unclear why non-citizens are more likely to receive a prison sentence.

CITIZENSHIP STATUS AS A MODERATING EFFECT

Because ethnicity and immigration status are so thoroughly intertwined, race and ethnicity are often used informally as a proxy for citizenship within discourse and policy application. The majority of immigrants are of Latino descent. When referring to the "immigration problem," many assume Mexican arrivals. Logic might dictate that immigration concerns will disproportionately affect Latino citizens as well. Wolfe et al (2011) suggest that this group might receive more severe sentencing outcome as a result of their racial minority status interacting with their citizenship status. Research suggests that this might be the case. Though few studies have directly tested racial/ethnic differences in sentencing outcomes within noncitizen defendants, several studies have found that Hispanic defendants are differentially

sentenced within the United States, with mixed findings regarding the potential moderating effects of citizenship status. For instance, Albonetti (1997) found that the effects of citizenship status are dependent upon the ethnicity of the defendant. Citizenship status does not appear to be as important for white defendants compared to other races. According to this study, being a noncitizen only increases sentencing severity for black and Hispanic defendants. She found a slightly stronger, though statistically nonsignificant, effect for black defendants with regard to imprisonment decisions and sentence length. Demuth (2002) also found a relationship between citizenship status and race when examining sentencing outcomes. According to this study, Demuth (2002) found that when examining the effects of citizenship status and sentencing outcomes by race, black and Hispanic defendants are more frequently incarcerated compared to white defendants, regardless of citizenship status, though race effects were found to be more prominent for citizens than for non-citizens. While higher guideline minimums and criminal history scores may explain harsher sentences for black defendants, the minimums and criminal history scores for Hispanic defendants are more comparable to white defendants. Wolfe et al (2011) find that Latino citizen receive shorter sentences than white citizens, but Latino undocumented noncitizens receive longer sentences. Wu and DeLone (2012) also find that important racial disparities exist. For instance, noncitizen Hispanics received longer sentences while noncitizen Asians received shorter ones. Wu and DeLone (2012) did not find that racial differences varied by citizenship status, finding instead that noncitizens received shorter sentences regardless of race.

Hispanic defendants are not always sentenced more punitively, however. Once imprisoned, Demuth (2002) found that white and Hispanic defendants receive similar sentence lengths, both of which are shorter than that of black defendants. Once again, this finding is

similar for citizens and noncitizens. Logue (2009) also found that noncitizen Mexican defendants receive shorter sentences and are more likely to be convicted on marijuana and powder cocaine than non-Mexican Latino noncitizens. The researcher also found noncitizen Mexican defendants to be more likely to receive a downward departure and less likely to receive a substantial assistance departure than non-Mexican Latino noncitizens.

CONTEXTUAL VARIATIONS IN FEDERAL SENTENCING OUTCOMES

Variations in sentencing outcomes are likely to vary according to context across time and place. District and circuit level variations in disparities between citizens and noncitizens as well as within noncitizens are likely to drive differential responses to these populations. Some sentencing jurisdictions comprise very few noncitizens, including the 4th circuit with only 8.3%, while others interact with a much greater number, such as the 9th circuit with nearly 44.3% (Katzenelson et al 1996). The few studies that have controlled for region have found significant effects. Though few studies have empirically examined change over time in citizen-noncitizen sentencing disparities, those that have seem to demonstrate temporal variation.

Cano and Spohn (2012) emphasize the importance of region when examining sentencing variation. The researchers suggest that "aggregating data across all district courts may distort the reality of decision making in each district court" (327). A study conducted by Albonetti (1997) examining extralegal effects on federal sentencing outcomes found significant between-circuit variation for certain predictors. In her study, eight of the eleven circuits examined were statistically more punitive than the District of Columbia, a finding interpreted as indicative of "substantial circuit-specific sentencing outcomes" (809). No circuit variation was apparent for sentencing outcomes for Hispanic defendants, but variations were found for black and white

defendants in this study. Likewise, Cano and Spohn's (2012) findings of regional variation in the application of substantial assistance departures may also be indicative of contextual variations influencing punitiveness. Maxfield and Burchfield's (2002) study found that the effects of criminal history on sentencing length for immigration violations are larger in Arizona and Texas than California. Departures reduce sentence length for noncitizens in Arizona, are not statistically different for Texas, and increase the sentence for California. Ultimately, the researchers found substantial regional variation.

According to Cano and Spohn (2012), the court district was "strongly associated with whether the prosecutor filed a motion for substantial assistance" (322). For instance, prosecutors in the District of Minnesota are less likely to file the motion than those in the Southern District of Iowa. Likewise, Demleitner and Sands (2002) find that the District of Arizona uses departures much more often for re-entry than other regions. The finding that districts can differ so greatly in practice suggests that each district may have boundaries that define the community culture, suggesting "localized justice meted out in context-specific ways" (Cano and Spohn 2012; 329).

Demleitner and Sands (2002) argue that fast-track procedures, such as those commonly used in the Southern District of California, may explain regional variations in observed leniency. Observed leniency may also be a result of deportation (Demleitner and Sands 2002; Maxfield and Burchfield 2002; Wu and DeLone 2012). In some jurisdictions, defendants may receive a departure for waiving a formal deportation hearing which will allow the defendant to avoid prison while saving the government money on prison expenses (Demleitner and Sands 2002). Demleitner and Sands (2002) acknowledge, however, that jurisdictional variations should be examined cautiously as many fail to report all case decisions to the USSC.

Variations are also likely to vary over time. Feldmeyer and Ulmer (2011) acknowledge

that “longitudinal analyses may be particularly useful for identifying how changes in racial/ethnic populations influence the application of social controls for minorities—especially considering the theoretical importance that demographic change plays in racial threat arguments” (261).

Though research on the effects of citizenship status has progressed over the past decade, such studies have remained inconclusive, perhaps a result of variations in methods, location, and time. Furthermore, while researchers are becoming increasingly aware of the importance of context, studies incorporating both regional and longitudinal effects within Federal sentencing have remained sparse. Finally, as a result of the omission of regional and longitudinal context within Federal sentencing literature, a theoretical framework has not yet been applied to the empirical study of citizen effects that acknowledge micro as well as varying degrees of macro level decision making.

Variations in immigration attitudes are likely to be partially explained by differences in context across time and region. Only one study has tested longitudinal and district level variation in sentencing outcomes between citizens and noncitizens. Using data from the USSC’s Monitoring of Federal Sentences, Michael T. Light (2014) analyzed differential incarceration and sentence lengths across districts from 1992-2009. Mirroring previous studies, the author found that noncitizens are 3 times more likely to be sentenced to prison compared to U.S. citizens. Contrary to most of the previous studies on citizenship effects, however, Light (2014) found that noncitizens receive 8.5% longer sentences, roughly equating to 6.5 months. Furthermore, these sentencing gaps seem to vary across time and place. According to this study, roughly 62% of variance within incarceration decisions, and 53% of variance within sentence length, are a result of time and district changes. The incarceration gap increases by about 6%

each year. Variations in sentence length, however, have not changed significantly over time. Changes in disparities between citizens and noncitizens across time are district specific. Districts with recent increases in noncitizens appear to demonstrate more hardening effects for incarceration decisions. Surprisingly, the reverse is true for sentence length; districts with increases in noncitizen populations provide shorter sentence lengths. Light (2014) argues that this may be a product of deportation upon release.

This study is an invaluable contribution to sentencing literature, shedding light on many of the intricate contributions of context on understanding federal sentencing disparities between U.S. citizens and noncitizens. However, many crucial themes remain unexplored. While incarceration decisions appear to be a prominent contributor of disadvantage, this sentencing gap between citizens and noncitizens sentenced to prison appears even greater when alternatives to incarceration are an option (United States Sentencing Commission). Furthermore, following the works of Katzenelson (1996), Maxfield and Burchfield (2002), and Cano and Spohn (2012), understanding the role of citizenship status in departure decisions can also illuminate the extent and cause of noncitizen sentencing disadvantage. Because departures are indicative of judicial discretion, examining the effects of citizenship status on this decision across time and place may provide insight into sentencing disparities. Additionally, within-noncitizen variations may persist. Important racial and ethnic distinctions persist within noncitizen sentencing outcomes. In fact, the effects of citizenship may partially drive Latino sentencing disparities. According to Light (2014), "…what appears to be increasing severity against Hispanics is largely attributable to increases in citizenship disparity" (465). However, researchers have traditionally included race as a trichotomy comprising Hispanic, Black, and White as control variables. Doing so neglects the complexity of ethnicity by oversimplifying unique cultural distinctions into arbitrary

racial terms. A more useful strategy for measuring ethnicity would be to include one's country of origin in addition to race. Another important distinction within noncitizens is the documentation status. Following Wolfe et al (2011), the inclusion of whether the individual is in the country legally or illegally in studies examining the impacts of citizenship status across time and place is imperative. The significant findings suggesting that the district in which the sentence is decided contributes toward disparities present a constructive addition to the broader impacts of the effects of citizenship. However, although Light (2014) examined federal cases across years using growth models, research has not yet examined changes across districts within time. Because individual cases change from year to year, examining districts within years can be expected to be more advantageous than cases within years. Finally, the omission of population data may obscure some of the contextual effects on these sentencing decisions. The inclusion of general population as well as noncitizen population growths may impact disadvantages beyond offense statistics.

CHAPTER 4

THEORETICAL FRAMEWORK

Several theories have proffered an explanation for the relationship between race/ethnicity and sentencing disparities. Because immigration discourse is so frequently racialized, these theories are likely to apply to disparities between citizens and noncitizens as well. Many of the theories that have been applied to explain racial/ethnic inequality within the criminal justice system fall short of explaining variations at multiple levels of analysis. For instance, some identify the primary cause of disparity as occurring predominately within individual level sentencing decisions, often leaving structural level impacts to the periphery. Others isolate macro-level structures as the origins of inequality while failing to elaborate on the means in which structure influences agency. Effective theoretical explanation of the effects of citizenship status on sentencing outcome should identify micro level causal factors as well as external macro elements. Both micro and macro level theories, however, are often unsuccessful at recognizing the likelihood that the extent and manifestation of inequality will vary across place. Those within close proximity are likely to share similar concerns and attitudes, resulting in the potential for clustering of attitudes which may vary over time. Furthermore, sufficient theoretical conceptualization of racial/ethnic inequality within the criminal justice system should also take into account the interdependencies of macro and micro level effects on cumulative inequality.

GROUP THREAT THEORY

At the meso/macro level, Group Threat Theory, has been applied to explain the disproportionate application of social control to the disadvantage of certain feared populations.

This theory, which has also been referred to as minority threat, racial threat, ethnic threat, gender threat, and power-threat depending on the outgroup being analyzed, is a critical theory used to explain previously found racial, ethnic, and/or gender disparities among the application of sanctions. Group Threat theory ultimately assumes that "intergroup competition" is the source of disproportionately applied policies (Berg 2013). This theory has traditionally been applied to examine differences in criminal sanctions applied to enforce social control as a result of economic and political competition over limited resources (Rockques and Paternoster 2011). Social control is often applied through formal controls such as policing, laws, courts, and corrections within the criminal justice system. According to this theory, noncitizens are anticipated to receive more punitive sanctions compared to U.S. citizens as their population within society increases in an effort to limit their growing economic and political power.

The origins of Group Threat theory has traditionally been traced to Blalock's 1967 work *Toward a Theory of Minority Group Relations* (Wang and Mears 2009). Blalock (1967) argues that as the population of a racial minority increases, so does the level of threat perceived by the majority. The majority then attempts to reduce the threat via formal control (Wang and Mears 2009). Like conflict theories, Group Threat assumes that "subordinate groups are likely to be perceived as threats to the established social order, fueling group conflict prejudice, and discrimination in contexts in which they are most prevalent" (Johnson et al. 2011: 407). Policies are then created to limit the mobility and opportunity of the perceived threat.

The underlying cause of this threat can be traced to the assumption that the "dominant ethno-racial group feels ownership over important and finite resources such as jobs and cultural traditions," and eventually comes to view the other races as a threat when they "desire these resources" (Berg 2013: 1). This threat may be economic or political. Examples of threat may

include “political mobilization, economic competition, and the threat of black-on-white crime…” (Johnson et al 2011: 409). For economic threats, a decelerating threat effect, in which an increase in the population of a minority group is associated with a slower increase in “inter-group competition,” is expected. For political threats, however, an accelerating threat effect, in which an increase in the population of a minority group is associated with a faster increase in “inter-group competition,” is expected (Wang and Mears 2009). Rockques and Paternoster (2011) argue that, although the threat is usually limited to economic and political concerns within etiological research, it could apply to cultural concerns as well.

Furthermore, the relationship between group threat and formal control is predicted to be curvilinear. Competition over resources increases along with increases in racial composition (Berg 2013). Once the minority population increases beyond a certain threshold, the majority becomes threatened (Rockques and Paternoster 2011). The threatened group begins to lash out at the incoming group in order to maintain dominance through social control. Group Threat theory assumes such discrimination would not occur in communities that have been traditionally nonwhite. Though researchers often test the theory with linear models, assuming that as the proportion of minorities increase so does the level of threat, Group Threat theory actually implies a curvilinear relationship in which threat increases along with the outgroup population until a particular point (Feldmeyer and Ulmer 2011).

According to this theory, as noncitizens move into traditionally racially homogenous communities, the economic, cultural, and political levels of threat can be expected to increase. Noncitizens will be disproportionately punished in an attempt to maintain control of resources. If noncitizens from a particular country were to increase to the extent that they were no longer the minority, sentencing outcomes for this particular group would begin to mirror those of the

previous residents. Group Threat, however, may depend on whether those in a given community are aware of the increase in the minority population. It is possible that individuals within a given community remain unaware of actual increases in a minority population or that they may assume a particular group is increasing in size when it is not. Regardless of whether the threat is actual or perceived, such concerns can result in real outcomes for noncitizen defendants.

Empirical tests of this theory are somewhat divided. Previous research has predominately tested this theory by examining race effects at the exclusion of identifying effects on ethnicity (Johnson et al 2011). When examining race effects, researchers almost always examine whites as the majority (Wang and Meares 2009). They have also focused on aggregate findings over individual ones, emphasizing population change over perceptions (Johnson et al 2011; Wang and Mears 2009). Finally, researchers frequently fail to distinguish between economic and political threats (Wang and Mears 2009). As previously stated, researchers often examine only linear effects, resulting in model misspecification (Wang and Meares 2009).

As a result of these limitations, researchers have reached mixed conclusions regarding the validity of the theory. In a recent study, Justin Allen Berg (2013) used logit regression to examine whether Group Threat Theory or Symbolic Racism theory, which argues that negative stereotypes explain discriminatory policies and attitudes, best explains anti-immigration attitudes. Using data from the 1994 General Social Survey and the 2004 Immigration Survey, the inclusion of variables designed to test Group Threat Theory was found to increase the explained variation by 4-10% while Symbolic Racism Theory added only 3-4%, depending on the dependent variable examined. Berg (2013) also found an increase in support of anti-immigration policies from 1994 to 2004, suggesting that discriminatory attitudes increase along with an increase in immigration rates. Furthermore, the study found that it is concern over

economic resources that appears to drive the threat. Berg also found that in areas marked by immigration declines, native-born participants are less likely to support anti-immigrant policies.

Johnson and colleague's 2011 study yielded similar results. Using multilevel logistic regression to examine data collected via telephone surveys, the researchers found support for Group Threat theory. Relying on the aggregate variable for minority population size, which has frequently been used as evidence of social and political power, Johnson et al (2011) found that the percent of the population that is Hispanic was not a significant predictor of support for using ethnicity in sentencing decisions. However, increases in population are a predictor of support for using ethnicity in sentencing decisions. A one unit increase in Hispanic population change resulted in a 55% increase in odds of policy support (Johnson et al 2011). Furthermore perceptions of criminality and economic threats are related to this policy support, though political threat was not. The researchers acknowledge that this finding may be artifactual, resulting from the selected measurement of the construct. The researchers also found interaction effects between perceptions of threat and population changes, so that criminal and economic threats were stronger with increases in Hispanic populations (Johnson et al 2011).

Not all research has found support for Group Threat Theory. Feldmeyer and Ulmer (2011), for instance, found that Hispanic and white defendants receive similar sentences, and while the effects of race vary according to region, it does not do so in a manner consistent with Group Threat Theory. In fact, Hispanic defendants appear to receive leniency when they represent a larger percentage of the population than when they represent a smaller percentage. Using data from the USSC's standardized research files from 2000-2002, the researchers argue that this finding contradicts Group Threat theory because it is evidence that as minority groups gain power they are better able to thwart racist forms of social control. They argue that small

populations of a given minority may seem more "alien" and therefore in more need of control. The researchers ultimately argue that Group Threat theory oversimplifies the relationship between minorities and formal controls. The researchers also acknowledge, however, that data for this study was collected prior to the Booker and Fanfan decisions, which permit judges to sentence outside of the guideline, resulting in greater discretion. Furthermore, the researchers only examined sentence length while omitting incarceration decisions.

FOCAL CONCERNS

While Group Threat theory explains how punitive attitudes may spread at the aggregate level, the Focal Concerns perspective is a useful means of understanding punitive attitudes among individuals. Like Group Threat theory, Focal Concerns has been used to explain racial and gender variations in sentencing outcomes. Focal Concerns ultimately assumes that disproportionality is a result of courtroom actors carefully weighing decisions based on assumptions of the defendants as well as practical constraints. Whether consciously or subconsciously attempting to maintain social control via formal controls, this perspective argues that disparities are a result of criminal justice agents attempting to effectively reach a legitimate decision based on limited information.

The origins of Focal Concerns can be traced to Steffensmeier's 1980 article "Assessing the Impact of the Women's Movement on Sex-based Differences in the Handling of Adult Criminal Defendants," in which the author argues that chivalry, naiveté, practicality, recidivism, and perceptions of danger account for disparities. These five qualities were eventually subsumed under three focal concerns in Steffensmeier, Ulmer, and Kramer's 1998 article applying focal concerns to understanding other demographically based disparities such as race and age. The

researchers argue that judges and courtroom actors rely on the following three concerns to reach courtroom decisions: defendant blameworthiness, community protection/dangerousness, and practical constraints (Steffensmeier et al 1998). Blameworthiness is the extent to which the defendant deserves the punishment. Such decisions may be based on legal factors such as the severity of the offense or whether aggravating factors are present as well as extralegal factors such whether the defendant's mannerisms or whether he/she appears repentant. This decision is often retributive in nature. Another concern, protecting the community, may also be determined by legal factors such as whether the offense was violent as well as extralegal factors including whether the individual might recidivate. Such decisions are often reached with the purpose of incapacitating the offender. Decision makers strive to keep dangerous offenders off of the streets. There may exist some overlap with blameworthiness and protecting the community. For example, legal variables such as criminal history, sentencing guidelines, and offense severity to name a few have been used to measure both dangerousness and blameworthiness (Feldmeyer and Ulmer 2011). The final focal concern is practical constraints and consequences. Such concerns include the costs of courts, the separation of defendants from their children, and the judge's career standing (Steffensmeier and Demuth 2006).

Focal concerns theory "…expands upon Albonetti's uncertainty avoidance (1986) and causal attribution (1991) theories…" (Feldmeyer and Ulmer 2011: 242). The uncertainty avoidance thesis argues that "…controlling for legal and extralegal variables, case information that decreases uncertainty concerning victim/witness management will increase the probability of continued prosecution" when applied to prosecutorial discretion (Albonetti 1986: 623). These two perspectives argue that when courtroom actors lack the evidence necessary to make accurate decisions, they rely on perceptual shorthand. This shorthand may include stereotypes.

Therefore, racial and ethnic disparities are a result of judicial decisions based on stereotypes or previous experiences with analogous cases (Albonetti 1991).

This theory may be particularly useful for examining micro-level sentencing decisions for noncitizens. According to uncertainty avoidance/causal attribution, judges often have limited information on noncitizens' criminal histories with which to make decisions, and must use a "perceptual shorthand" (Hartley and Armendariz 2011: 47). This shorthand is based on blameworthiness, protecting the community, and practical considerations. For instance, noncitizens may be viewed as more blameworthy than U.S. citizens for their law violations as a result of a double stigmatization in which they are punished for committing a crime as well as for violating their guest status within the country. They may also be viewed as more dangerous. Political rhetoric may have framed immigrants as more threatening and "politically volative" (Hartley and Armendariz 2011: 48). As previously acknowledged in Chapters 1 and 2, media and political depictions of immigrants as drug offenders in conjunction with rhetoric associating drug offenders and violent crimes have exacerbated a cognitive connection between noncitizens and violence. Media depictions of violent crimes lead people to feel vulnerable, and so they seek reassurance that they are safe (Eisenstein et al 1988). Finally, noncitizens may be more of a flight risk, suggesting a practical consideration for disproportionately imprisoning them.

Empirical research testing the Focal Concerns theory is relatively promising. Overall, Steffensmeier and Demuth (2006) found support for the focal concern theory in their study. Albonetti (1997) interpreted her findings that ethnicity conditioned the effects of other variables as compatible with the uncertainty avoidance/causal attribution perspective. Cano and Spohn (2012) interpreted their findings as supporting Nagel and Schulhofer's argument that substantial departures are disproportionately provided to those who appear sympathetic and/or salvageable.

Rhetoric is often used to influence interpretations of sympathetic and salvageable offenders, which may be proxies for dangerousness and blameworthiness. Furthermore, Cano and Spohn's (2012) findings of regional variation in the application of substantial assistance departures may be evidence of practical concerns. For instance, prison overcrowding within certain regions may increase the availability of departures. Wu and DeLone (2012) also argue that their findings support focal concern theory, as well as the liberation hypothesis. The (2013) Berg study examining Group Threat found that individual racist attitudes were a significant predictor in 2004 attitudes toward immigration policies, though stronger support was found for Group Threat Theory.

COURTROOMS AS COMMUNITIES

While Focal Concerns argues that courtroom actors rely on judgments regarding blameworthiness, culpability, and practical constraints to reach decisions, these judgments are not formed within a vacuum. Historical and cultural contexts mold these judgments. It is not the actual blameworthiness or dangerousness of the offender that determines sentencing outcomes, however, as much as the PERCEPTION of these ambiguous traits that fuels punitiveness. Feldmeyer and Ulmer (2011) acknowledge the subjectivity with which determinations of the elements of Focal Concerns Theory are applied. Therefore, the Courtroom Communities perspective, which suggests that subjectivity varies across courtrooms because courtroom actors exhibit similar norms and values which are spread as a result of a shared workplace environment, is necessary to further understanding regional differences and longitudinal variation in sentencing disparities.

Court communities originated with Eisenstein, Flemming, and Nardulli's (1988) *The Contours of Justice: Communities and their courts*. According to this perspective, sentencing variations across courts result from courtroom actors, including judges as well as attorneys, forming working relationships and demonstrating a distinct "legal and organizational culture" as a product of working within a shared space (Wang and Mears 2010: 526). This theory is often identified as exhibiting a social interactionist perspective by arguing that networks are defined by lines of communication (Ulmer 1997). "The court communities perspective also describes a pathway by which perceptions of racial or ethnic threat might influence sentencing outcomes for minority groups. This perspective explains that criminal courts and their personnel are embedded in larger communities and environments which are likely to shape the effects of extralegal factors in sentencing" (Feldmeyer and Ulmer 2011: 243). Ultimately the unique contextual elements surrounding a particular courtroom will influence sentencing propensities within that courtroom community for various trends, including citizenship disparities, via shared ideologies and politics that spread as a result of the shared environment.

According to Eisenstein et al (1988), theoretical explanations of sentencing decisions often assume the "law metaphor." This metaphor assumes that the sentencing process is a functional machine that operates efficiently according to the law. They argue that the "law metaphor," which most of society subscribes to, envisions the law as "transcending time, geography, and the circumstances surrounding specific cases" (5). This metaphor further assumes that courtroom actors apply evidence and information uniformly, resulting in the "right" verdict. The authors argue that a "community metaphor" better illustrates courtroom procedures. Such a metaphor acknowledges that all courts have a shared trait, but that the means in which the trait manifests itself differs across locations. They are similar because they share a "national

legal culture" in which "shared values and attitudes about how persons charged with crimes should be treated" (13). Like a community, there is also power/status structure/hierarchy, with judges on top.

Courts vary substantially, however. For instance, courts are political; therefore, we must keep in mind that "…career ambitions, the influence of constituencies, personal values and political beliefs, personalities, and pressures exerted by organizational superiors to understand how courts process defendants" (11). Like a community, courtrooms demonstrate "interdependencies," defined as familiarity which vary by quality and degree, resulting from "geographical locality" because the actors share a "common workplace" (25). According to Eisenstein et al (1988), courtrooms vary across five thematic characteristics: Self-Awareness defined as "the degree to which members consciously recognize the existence of a court community…" (28), Common Beliefs about interpersonal relations defined as "shared beliefs on how community members treat one another and generally conduct themselves…" (29), shared attitudes about how cases are processed including the "handling of cases" and the "going rate" of certain offenses (30), special language including word choice as well as nonverbal communication, and culture and a sense of tradition including a shared history with which to recall (Eisenstein et al 1988).

This perspective assumes that regional variation in sentencing disparities for noncitizens are a result of differing priorities and contextual elements within courtrooms. That said, certain patterns can be expected to emerge. Courtrooms located in geographical proximity may demonstrate similar values and norms as a result of transmitted information via "grapevines." Therefore, neighboring districts may demonstrate similar sentencing patterns as a result of similar political rhetoric that has been dispersed via shared lines of communication such as local

news channels. There also exists a national legal culture that creates the nationwide similarities. This legal culture may effect national values and legal decisions dictating drug policies, for example. "Agreement about the perception of, and the need to respond to, a minority threat constitutes a type of substantive rationality, one that may become embedded in the normative operations of court communities" (Wang and Mears 2010: 527). Furthermore, certain states have attempted to pass legislation that would overrule federal immigration laws (Hartley and Armendariz 2011). Therefore, it may be the case that courtroom actors in these locations apply legal means to accomplish an objective that differs from nationally applied laws. Though empirical research examining the Courtroom Communities perspective is limited, both theoretical and empirical findings suggest that the regional and longitudinal trends in policies and sentencing outcomes suggested by this perspective exist.

THEORETICAL SYNTHESIS

Each of these three theories contributes an important element of sociological understanding of citizen/noncitizen sentencing disparities. According to Group Threat theory, punitive reactions toward noncitizens are a result of socially constructed fears of political and economic loss of resources. These fears create and exacerbate stereotypes of the criminal immigrant. According to Focal Concerns, these stereotypes influence perceptions of blameworthiness and dangerousness used to reach decisions. Proponents of the Focal Concerns perspective also argue that practical concerns and constraints influence sentencing decisions. Furthermore, differential experiences and interactions with immigrants can be expected to vary across districts, further influencing perceptions of blameworthiness and dangerousness. These

differential experiences create variations across courtrooms according to Courtroom Communities.

HYPOTHESES

With this theoretical framework in mind, this study will examine four hypotheses. Focusing on drug offenders, I expect that:

H1: Noncitizens will receive harsher sentencing outcomes than U.S. citizens

H1a: Noncitizens will be more likely to receive a prison sentence than citizens.

H1b: Noncitizens will be more likely to receive a prison sentence even when nonprison alternatives are present

H1c: Noncitizens will receive longer prison sentences than citizens.

H1d: Noncitizens will be less likely to receive a downward departure than citizens.

H2: The sentencing disparities between noncitizens and U.S. sentence will vary according to context.

H2a: Sentencing disparities between citizens and noncitizens will vary by district. Districts serving a higher caseload of noncitizen defendants will demonstrate more disparity than those with fewer noncitizen defendants, as predicted by Group Threat Theory.

H2b: District level sentencing disparities will demonstrate spatial autocorrelation so that those situated within close proximity to one another will demonstrate more similar sentencing outcomes than those further away.

H2c: Sentencing disparities between citizens and noncitizens will vary over time. Due to increasing concerns over the "immigration problem" across time, districts are expected to demonstrate more punitive attitudes toward noncitizens across time.

H3: Sentencing outcomes will differ according to the ethnicity of Noncitizens

H3a: Hispanic immigrants will be more likely to receive a prison sentence compared to white defendants.

H3b: Hispanic immigrants will be more likely to receive a prison sentence even when nonprison alternatives are present compared to other ethnicities.

H3c: Hispanic immigrants will receive longer prison sentences compared to other ethnicities.

H3d: Hispanic immigrants will be less likely to receive a downward departure compared to other ethnicities.

H4: The sentencing disparities among differing ethnicities within noncitizens will vary according to context.

H4a: Sentencing disparities within noncitizens among various ethnicities will vary by district. Districts serving a higher caseload of Hispanic defendants will demonstrate more disparity than those with fewer Hispanic defendants, as predicted by Group Threat Theory.

H4b: District level sentencing disparities will demonstrate spatial autocorrelation so that those situated within close proximity to one another will demonstrate more similar sentencing outcomes than those further away.

H4c: Sentencing disparities within noncitizens among various ethnicities will vary over time. Because the growing immigration population has been led by Latino

immigrants, districts are expected to demonstrate more punitive attitudes toward Hispanic noncitizens across time.

CHAPTER 5

METHODS

Previous research examining punitive sentencing outcomes for noncitizens are largely divided. Unfortunately, methodological limitations have greatly limited analyses of this relationship. Wu and DeLone (2012) argue that inconsistent findings in citizenship research are likely a result of "variations in methodology and research purposes" (215). One such variation in methodological approach is the time period analyzed.

Research examining the effects of citizenship status on federal sentencing outcomes utilize data dating as far back as 1991 and as recently as 2008. It is likely that variations may be a product of differences in sentencing outcome across time. Research examining data during a particular time period may reach conclusions undermining those in a different one. That which appears to be contradicting findings may actually be indicative longitudinal variations. However, in the absence of sufficient longitudinal analysis, sentencing disparities between citizens and noncitizens demonstrates the illusion of inconclusive outcomes. Several of these studies use only one year of data (Albonetti 1997; Katzenelson et al 1996; Wolfe et al 2011). Of those who do include multiple years, most include fewer than four years (Cano and Spohn 2012; Demuth 2002; Maxfield and Burchfield 2002; Wu and DeLone 2012). Studies that have incorporated multiple years of data often are limited to data from pre-Booker (Demuth 2002; Maxfield and Burchfield 2002). Because judicial discretion to sentence outside of the guidelines is more permissible as a result of the Booker decision, sentencing disparities may be more pronounced post-Booker. Time-varying research is merely one of the major criticisms levied at research examining federal sentencing disparities.

The absence of research effectively controlling for contextual level variations is particularly disconcerting. The few existing studies examining the relationship between citizenship status and federal sentencing outcomes often rely upon standard Logistic or OLS regression (Kautt 2002). This is problematic for several reasons. First, it fails to account for within district clustering. It is likely that cases within a particular district are more similar than those within another district. A particular district can be expected to exhibit similar outcomes as a product of caseload size and/or similarity in cases brought forth. Therefore, analyses assuming the independence of observations are likely to be misleading. Research examining sentencing disparity should incorporate nested models.

Second, single level analyses fail to adequately consider contextual level variation across years. At any given point in time, a particular district will experience differential caseloads as well as case-specific characteristics. In the same way that a particular decision may be influenced by district level data, a decision can also be expected to vary across years. Growth curve analysis can allow researchers to examine sentencing disparities across time.

Third, single level analysis fails to control for the likelihood of spatial autocorrelation. It assumes that each observation is independent, and therefore unaffected by others which is unlikely given continuous borders and spatial units within large units such as districts or states which can be highly problematic (Kautt 2002). Sentencing outcomes for a given area are likely to be more similar than, or even influenced by, those in nearby jurisdictions. As one district demonstrates a particular response to crime, neighboring districts may conform as a product of shared ideologies spreading via lines of communication so that those within closer proximity share similar ideologies. As one district demonstrates more punitive responses toward noncitizens, others may soon follow, much like a chain reaction. Therefore, jurisdictional

interdependence can be expected. Covariance-based spatial statistical models can be of particular utility in disentangling similarities in sentencing outcomes across districts. For these reasons, multilevel modeling is necessary to more accurately examine sentencing disparities across time and place.

DATA

Level 1 Data

The level 1 Data for this study was collected from the Monitoring of Federal (MoF) Criminal Sentences program. This data was collected by the United States Sentencing Commission, created in 1984 with the obligation to form neutral sentencing guidelines (Demuth 2002). It includes data from 1999 to 2013. Compiled by the United States Sentencing Commission (USSC), this data includes all federal cases within the United States that were reported between October 1, 1998 and September 30, 2013 for a total of 1,081,779 federal cases over 15 years. This data was collected to examine sentencing practices and policies, to offer advice on more efficient policies, and to collect a vast array of information to be used as an information resource for future studies. The data presented includes demographics, sentencing details, and guideline information.

The USSC's MoF data was chosen for this study because it is the longest running dataset that provides accurate and extensive information on federal sentencing decisions as well as information on the offender's citizenship status. The sample for this study includes all drug-related offenses reported to the USSC, a total of 388,229 cases (35.9%). However, due to the scope of this dissertation, certain groups will be omitted from this study for various reasons.

Following Doerner and Demuth (2010), juveniles (ages 16 and 17 years) will be excluded because these cases are accompanied by unique circumstances that are likely to differ in substantial ways from adult cases. Only 88 cases from 1999-2013 included juvenile defendants, representing less than 0.1% of reported cases. Furthermore, cases in which the citizenship of the defendant is unknown will also be omitted. Once again, this population is relatively small, comprising of roughly 2% of cases. Likewise, those who were extradited (1,191 or 0.1%) will have been removed from this study.

Level 2 Data

The level 2 data was created by aggregating individual level measures from the MoF data to the district level for each of the districts. A total of 94 districts are present in the United States with each state housing between 1 and 4 districts. However, state and territories are likely to differ in various ways. Following Kautt (2002) and Ulmer et al (2010), the Northern Mariana Islands, Guam, Puerto Rico, the Virgin Islands, and Washington DC are omitted. Thus, this study examines 89 of the 94 districts.

MEASURES

Dependent variables

Four dependent variables regarding sentencing outcome are analyzed in this study. Because several researchers have suggested that noncitizens are disproportionately more likely to be incarcerated compared to U.S. citizens (Albonetti 1997; Demuth 2002; Wolfe, Pyrooz, and Spohn 2011), the first dependent variable included is the decision to incarcerate (PRISDUM).

This variable is coded dichotomously as no prison or prison received. The majority of drug cases resulted in incarceration (357,044 or 94.7%) with only 5.3% (19,941) receiving nonprison sentences.

The second dependent variable examines the decision to incarcerate when non-prison sentencing options are available. According to the United States Sentencing Commission's annual report (2013), the gap between citizens and noncitizens is particularly large when examining citizenship effects for those who have the option of prison alternatives. Like the PRISDUM variable, it is coded dichotomously as yes/no. This variable, however, includes data on those who are capable of receiving a non-prison option which equates to only roughly 6% of the drug cases. Therefore, defendants who would receive a prison sentence regardless due to mandatory sentencing laws are excluded from this variable. A little over 44%, (10,263) received a non-prison sentence and over 55% (12,759) of drug users who were eligible for a nonprison option were incarcerated.

The third variable is the sentence length (SENTTOT0). Previous research has reached mixed findings with regard to disparities between citizens and noncitizens for sentence length. Most suggest that noncitizens may receive leniency (Demuth 2002; Katzenelson et al 1996; Wu and DeLone 2012) while some find the reverse to be true (Albonetti 1997). This variable is continuous, ranging from 0 month to 2,880 months, with 0 representing the absence of incarceration. For the purposes of this study, those receiving 0 months in prison were removed. Furthermore, any sentences over 470 months were considered life sentences and were therefore included within the 470 month cap. The average months of time sentenced is 74 months. Due to the skewness of this variable, the natural log will be used for sentence length.

The fourth and final dependent variable is the departure status. This variable is

particularly important because it demonstrates judicial discretion. Like sentence length, disparities between citizens and noncitizens for this legal decision are often mixed with some finding that noncitizens receive more leniency (Maxfield and Burchfield 2002) and others finding U.S. citizens receive more leniency (Cano and Spohn 2012; Katzenelson et al 1996). Because so few cases result in upward departures, less than 1%, this study will focus solely on downward departures. This variable is operationalized differently depending on the year. From 1999 until 2003, the variable (DEPART) includes no departure, upward departure, downward departure, substantial assistance, and inapplicable. However, from 2004 until 2013, the DEPART variable is operationalized differently (see Appendix A for the specific operationalization). Both the 1999-2003 as well as the 2004-2013 DEPART variables are recoded as a dummy variable (DOWNWARD) that is coded as downward departure (1) if the offender received any form of downward or substantial assistance departure and no downward departure (0) if the offender received no departure, an upward departure, or the response is inapplicable. Most of the defendants did not receive a downward departure (281,314 or 83.8%) with 54,282 (16.2%) receiving either a downward or substantial assistance departure.

Theoretical variables

Because noncitizens are expected to receive harsher sentences and are less likely to be beneficiaries of leniency, citizenship status is the primary explanatory variable. Noncitizen is a dichotomous variable (created from NEWCIT) with U.S. citizens omitted as the reference category. Because current rhetoric focusing on "illegal immigrants," documentation status is also included. Undocumented is a dichotomous variable (created using CITIZEN) that refers to undocumented noncitizens. Documented noncitizens are omitted as the reference category.

Roughly 70% (258,595) of the drug cases involved U.S. citizens. Of the remaining 30%, a little more than 30% (33,050) are legal immigrants, 57.6% (63,226) are illegal immigrants, and only 12.3% (13,447) are of unknown citizenship. Those with unknown citizenship status are removed from the study.

The effects of citizenship status may be mediated and/or moderated by ethnicity. Therefore, two measures of ethnicity are included. Using the NEWRACE variable, a dummy variable for Hispanic (43.4%) is included in the study. A dummy for African-American (Black) (27.9%) is later added to the model. White (25.9%) is omitted as the reference category. Of particular interest to this study is the defendant's nationality. Because Hispanic fails to acknowledge unique geographic and cultural distinctions, a more specific measure of ethnicity is incorporated into the study. Data is provided that examines the offender's country of origin for all noncitizens (CITWHERE). This variable includes 199 countries. This variable was originally recoded into 9 categories including Africa (1.2% or 1,349), Canada (1.7% or 1,889), the Caribbean (13,715 or 12.4%), Central/Southern/Western Asia (0.8% or 906), Eastern/Southeastern Asia (1,859 or 1.7%), Europe (1.5% or 1,690), Latin America (11,781 or 10.7%), Mexico (69.8% or 77,025), and Oceana (.1% or 107) using the United Nations Statistics Division (2013) identification of countries.

The majority of noncitizen drug offenders are from Latin America, Mexico, and the Caribbean. Central/Southern/Western Asia and Eastern/Southeastern Asia were joined due to low samples. Canada, Europe, and Oceana were included within other countries, due to variability concerns across districts. Several of the districts included so few of these populations that a near singularity occurred during analysis. Surprisingly, Africa was not affected despite the small sample size. The final country of origin variable consists of Africa, Asia, the Caribbean,

Latin America, Mexico, and other countries (see Appendix B) with Mexico omitted as the reference category.

In order to examine geographic variations, the district in which the offender is sentenced is included. This variable (CRICDIST) is coded as a numeric value ranging from 1 through 94. Each value represents a corresponding district. Districts 1 (DC), 5 (Puerto Rico), 18 (Virgin Islands), 69 (Guam), and 74 (Northern Mariana Island) are omitted. The percent of cases processed in each district vary from as few as 0.1% (Oklahoma East) to as many as 8.9% (Texas West). The year in which the individual was sentenced, ranging from 1999-2013, is also included in order to examine how the effects of these variables may have changed over time. The percent of cases processed in each year vary from as few as 5.9% to as much as 7%, demonstrating relative consistency across time with no dramatic increases in any given year.

Control Variables

Several legal variables are considered in this study. Because judges are expected to offer a specific sentence according to sentencing guidelines, the presumptive sentence is included as a legal control. This variable provides a measure of offense severity and criminal history. Without controlling for the presumptive sentence, the effects of extralegal characteristics on sentencing outcomes will likely be grossly exaggerated (see Engen and Gainey 2000). Because one of the sentencing measures in this study examines downward departures, the minimum guideline sentence (XMINSOR) will be included as a control variable. The guideline minimum is coded in months, averaging 125.53 months. Although the severity of the crime and the offender's criminal history are included in the calculation of the guidelines, it is possible that crime severity and criminal history may influence sentencing outcomes beyond the presumptive

sentence and are included in the study. The number of counts (NOCOUNTS), which is operationalized numerically, is included (with a mean of 1.35) as well as criminal history (CrimHist) which is measured dichotomously with 1 indicating the presence of a criminal history (with a mean of .74). Because so few cases consisted of more than one count, the variable was recoded dichotomously with multiple counts included in the analysis and single count omitted as the reference category. The case disposition (NEWCNVTN), which examines whether the case was resolved by trial (1) or by plea agreement (0), is also included. The vast majority of cases (96%) accepted a plea. In order to examine whether sentencing outcomes vary according to the type of crime, the drug offense (COMBDRG2) is included. This variable consists of cocaine (23.2%), crack (19.7%), heroin (7.1%), marijuana (27.5%), methamphetamine (17.7%), and other (4.8%), each of which were included as a dummy variable with the exception of marijuana.

Finally, several extralegal control variables that have been identified within the academic sentencing literature as being related to sentencing outcomes are included. Gender (MONSEX) is included as a dichotomous variable coded as male (86.8%) and female (13.2%). Education status (NEWEDUC) originally included four categories: those with less than a high school degree (49%), those with a high school degree (33.3%), and those with a few years of college (14.9%), and college graduates (2.7%). Because so few offenders were college graduates, this category was subsumed under those with some college as well. Age is a continuous variable ranging from 18 years to 103 years, with a mean of 33.3 years.

Table 1: Case Level Descriptive Statistics

Variables	Mean	Range	S.D.	Total
Dependent Variables				
Prison	.95	1	.22	376985
INOUT (alternatives)	.45	1	.50	23022
Logged Length	3.60	8.81	1.21	353692
Downward Departure	.16	1	.36	377861
Citizenship				
Noncitizens	.30	1	.45	369154
Documented	.42	1	.28	377861
Undocumented	.58	1	.37	377861
Legal Variables				
Logged Presumptive	3.54	9.21	1.50	335581
Number of Counts	1.35	432	1.86	377814
Criminal History	.74	1	.43	366803
Trial	.04	1	.19	377547
Drug Offense				
Cocaine	.23	1	.42	377861
Crack	.20	1	.39	377861
Heroin	.07	1	.26	377861
Marijuana	.28	1	.44	377861
Meth	.18	1	.38	377861
Other	.05	1	.21	377861
Extralegal Variables				
Female	.13	1	.33	374358
Education				
No HS degree	.49	1	.50	377861
Completed HS degree	.33	1	.47	377861
Some/Completed College	.18	1	.37	377861
Race				
White	.26	1	.43	377861
Black	.28	1	.45	377861
Hispanic	.43	1	.49	377861
Other	.03	1	.16	377861
Age	33.3	80	9.94	375799

Between Group Variations

When comparing the means for citizens and noncitizens across several level 1 predictors, unique distinctions are apparent (see Table 2). While most federal cases resulted in incarceration (94%), this average is somewhat greater for noncitizens (99%). Inversely, noncitizens (16%) received prison alternatives less frequently compared to U.S. citizens (57%). The average logged sentence length assigned is somewhat shorter for noncitizens than U.S. citizens. Finally, though comparable, noncitizens demonstrate a slightly greater average for downward departures (16%) compared to citizens.

Of court related variables, noncitizens appear to commit somewhat less severe offenses. The guideline minimum, which incorporates criminal history and offense severity scores, are somewhat lower for noncitizens. Noncitizens also have lower criminal history scores and less frequently are charged with multiple counts. There is no discernable difference between citizen and noncitizen cases going to trial. Of drug violations, noncitizens are more frequently charged with a marijuana violation (39%) than citizens (22%). They are also more often charged with cocaine violations (27%) than are citizens (21%) and are slightly more often charged with heroin. Noncitizens are less frequently charged with crack, methamphetamine, and other violations.

Citizens and noncitizens also differ across several of the extralegal control variables. Fewer noncitizen drug offenders are female (28%) compared to U.S. citizens (36%). Noncitizens also have a greater average of offenders without a high school degree (66%) than citizens (40%). The average for completed high school degrees and some/completed college are less for noncitizens than for U.S. citizens. As expected, unique racial and ethnic distinctions are apparent between citizens and noncitizens. Noncitizens are much more frequently Hispanic

(82%) compared to U.S. citizens (26%). U.S. citizens are much more often identified as White or Black compared to noncitizens, though those identified as other ethnicities are comparable for citizens and noncitizens. Lastly, no dramatic differences in age averages are evident, with both groups averaging about 33 years of age.

Table 2: Between Groups Descriptive Statistics

Variable	Citizen Mean	Noncitizen Mean
Dependent Variables		
Prison	.94	.99
INOUT (alternatives)	.57	.16
Logged Length	3.96	3.66
Downward Departure	.15	.16
Citizenship		
Documented	----	.30
Undocumented	----	.57
Legal Variables		
Logged Presumptive	4.15	3.89
Number of Counts	.20	.17
Criminal History	.85	.47
Trial	.04	.04
Drug Offense		
Cocaine	.21	.27
Crack	.26	.03
Heroin	.06	.10
Marijuana	.22	.39
Meth	.18	.16
Other	.06	.03
Extralegal Variables		
Female	.36	.28
Education		
No HS degree	.40	.66
Completed HS	.39	.17
Some/Completed	.20	.12
Race		
White	.34	.07
Black	.37	.06
Hispanic	.26	.82
Other	.03	.02
Age	33.37	33.25

District Level Variables

Several caseload district level variables are included in this study, including the trial caseload, the guideline minimum, multiple offenses, and drug caseloads. The trial caseload is measured by aggregating the micro level dichotomous trial variable to the district level. It is likely that districts with greater trial caseloads may rely more heavily on heuristic decision making techniques in an effort to reach quick sentencing decisions and reduce the case backlog. Table 3 presents the district level averages for each level 2 predictor. Trial caseloads range from as few 1.1% (Arizona) as to as many as 10% (Florida North). Furthermore, following Light (2014), the average offense severity score is included for each district. This variable is calculated by aggregating the minimum presumptive sentence length for each district and ranges from as low as 40.35 months in district 80 (New Mexico) to as high as 292.99 months in district 90 (Florida North). The case level variable for whether multiple charges were brought forward was also aggregated to the district level as an additional measure of district level caseload severity. This variable ranges from a high of 66.1% in Pennsylvania East to a low of 5.8% if California South.

The drug-crime caseload is also included. This variable is measured as the percent of specific drug offenses brought forward per district. It is possible that districts serving a higher portion of certain drug offenders may be inclined to demonstrate more punitive sentencing decisions for these offenses. Furthermore, because certain drug violations are associated with foreign offenders (see Chapter 2), it is likely that greater caseloads of these drug violations will disproportionately impact noncitizen outcomes. Because so few level cases exist at level 2 (89 districts), it is not feasible to include a measure for all drug violations. Therefore, the two drugs most frequently associated with foreign populations are included: cocaine and marijuana.

Cocaine violations range from 6.4% (Nebraska) to 50.3% (Florida South). Marijuana violations also vary across district with some districts demonstrate as little as 4.6% (Connecticut) and other demonstrating as much as 76% (Arizona).

Several theoretical variables are also included in the study. In order to examine whether increases in noncitizen, and noncitizen proxies, are related to sentencing inequality, the noncitizen, Hispanic, Mexico, and undocumented populations are included. Each of the variables are aggregated to the district level using case level dichotomous measures. Unique district level variation is observed for each of these variables with Arizona frequently demonstrating greater numbers of these cases and West Virginia's southern district frequently representing the least. The noncitizen population varies greatly with a low of 1.8% (West Virginia South) and 65% (Arizona). The population of Hispanic defendants range from 4% in district 27 (West Virginia South) to 87% in district 35 (Texas South) and the population of Noncitizen defendants range from 3% in district 27 (West Virginia South) to 77% in district 64 (Arizona). Like ethnicity, variation in undocumented populations are evident with a range of less than 1% in West Virginia's southern district to a high of 46.4% in Arizona. Mexican offender populations range from 0.2% (Maine and Vermont) to 63.4% (Arizona). According to group threat theory, districts with larger populations of a minority group can be expected to demonstrate more severe outcomes toward that population in an attempt to increase social control.

Finally, a few additional district level controls were added. It may be the case that greater numbers of white offenders in a given jurisdiction will lower sentencing severity for noncitizens, many of whom are nonwhite, because attributions of the criminal immigrant may be lower in these locations. The average age is also included. Because age is so frequently found to

be related to sentencing outcomes at the individual level, this variable could very well demonstrate aggregate level effects. Furthermore, previous research has found a relationship between citizenship status and education with noncitizens having disproportionately less educational attainment compared to their citizen counterparts. Therefore, it may be the case that districts with greater numbers of offenders without high school degrees rely more heavily on stereotypes within these districts.

Table 3: District Level Descriptive Statistics

Variables	Mean	Range	S.D.	Total
Courtroom Variables				
% Prison	.94	.24	.04	89
% INOUT (alternatives)	.54	.71	.13	89
Logged Length Avg	4.03	1.66	.36	89
% Downward Departure	.15	.30	.07	89
Logged Presumptive Avg	4.20	1.45	.31	89
% Number of Counts	.23	.60	.13	89
% Trial	.05	.09	.02	89
% Cocaine	.22	.45	.10	89
% Crack	.25	.55	.14	89
% Heroin	.06	.36	.07	89
% Marijuana	.16	.63	.12	89
% Meth	.23	.75	.21	89
% Other Drugs	.06	.23	.04	89
Demography Variables				
% Noncitizens	.21	.67	.15	89
% Documented	.06	.27	.05	89
% Undocumented	.12	.44	.09	89
% Female	.13	.18	.04	89
% No HS degree	.43	.36	.07	89
% Completed HS degree	.36	.36	.07	89
% Some/Completed College	.18	.17	.04	89
% White	.31	.65	.14	89
% Black	.34	.70	.20	89
% Hispanic	.29	.80	.19	89
% Other Race	.04	.59	.08	89
Age Avg	33.65	6.16	1.07	89
% Asia Origin	.03	.01	.01	89
% Africa Origin	.05	.00	.01	89
% Caribbean Origin	.25	.03	.05	89
% Latin America Origin	.20	.02	.03	89
% Mexico Origin	.64	.13	.13	89
% Other Origins	.13	.01	.02	89

EXPLORATORY DIAGNOSTICS

Before conducting the multilevel analyses, several assumptions must be met. All continuous variables were tested for skewness. Age, criminal history, and offense severity met the criteria for normality with values ranging between -1 and 1. The sentence length and guideline minimum were severely skewed and were transformed using the log of the variables. The number of counts were also skewed; however, few cases incorporated more than one counts. Therefore, the number of offenses was transformed into a dummy variable that consists of those with only one count and those cases with multiple counts.

Next, each variable was examined for multicollinearity. Of the variables, only offense severity and guideline minimum were found to be collinear with a VIF value over 4. Because sentencing guidelines take into account the severity of the offense as well as criminal history, the collinearity between severity and sentencing guidelines is expected. Offense severity is dropped from the models. Surprisingly, criminal history was not found to be collinear with the guideline minimum and is included in the model.

ANALYTIC STRATEGY

In order to analyze the effects of citizenship status on sentencing outcomes, several models will be examined. First, legal and extralegal case level effects on the likelihood of incarceration, receiving a prison alternative, sentence length, and the application of downward departures are examined (H1a-d and H3a-d). A series of single-level random effects models with grand mean centering is conducted for each of these four dependent variables as well as fixed effects models for comparison purposes (see Tables 4-11). Because cases are nested within districts, district level predictors will be added to the model for each of the four dependent

variables (H2a and H4a). In order to examine covariance across districts, a spatial weight matrix will be included in the HLM analysis for the level 2 models examining variations between citizens and noncitizens as well as noncitizen proxies (see Tables 12-20). Because states share borders as well as vertices, a queen contiguity matrix will calculated with Geoda (H2b and H4b). Finally, growth models will be used to examine changes in disparities across districts over time for each of the dependent variables (H2c and H4c) (see Tables 21-24).

Goodness of fit statistics are calculated for several of the models. First, an unconditional model is run to identify the components variance (tau) for each of the Bernoulli models and the components variance and residual variance components (sigma) for the linear model. These values are used to calculate the R-squared for each of the models (Behavioral Research and Teaching 2012). To determine the explained variance, the level 1 r-squared is calculated for each linear model by subtracting each model's sigma from the null model and then dividing the total by the null's sigma. R-squared values are calculated using Kreft and de Leeuw's (1998) equation:

$$R^2 = (\text{unrestricted error} - \text{restricted error}) / \text{unrestricted error}$$

Unfortunately, the sigma value is not provided in the Bernoulli models; thus, no level 1 variance is available for the dichotomous dependent variables. The level 2 model fit is determined by subtracting each model's tau from the null model and then dividing the total by the null's tau. This value was only calculated for the multilevel analyses.

CHAPTER 6

UNRAVELING INDIVIDUAL LEVEL PREDICTORS

In order to examine whether, and to what extent, noncitizens receive harsher sentencing outcomes compared to their US counterparts (Hypothesis 1) and whether noncitizen sentencing disparities vary across ethnicity and country of origin (Hypothesis 3), several level 1 models were run for each of the four dependent variables using HLM 7. The first model for incarceration, prison alternatives, sentence length, and downward departures examines the main effects of the theoretical variables (citizenship, ethnicity, and documentation status) without control variables. Next, additional extralegal predictors such as age, gender, race, education, country of origin, and whether the case went to trial were included. Legal controls, including the guideline minimum, criminal history, type of drug offense, and whether multiple charges were brought forward are added in the third model. Finally, a dummy variable for each year is included in the 4th model, with 1999 omitted as the reference category. This chapter focuses on Models 1-3 for each dependent variable. Model 4 is discussed in greater detail in Chapter 8 which examines longitudinal trends in sentencing.

Each of these models were first run so that all variables were fixed, and then later run with some variables permitted to vary. Each variable was selected to random one at a time; chi-square statistics were examined to determine which variables would remain fixed and which would random. Those significant at the $p<.05$ level were left random (see Raudenbush, Bryk, Cheong, Congdon, du Toit 2004) and have been bolded to demarcate the random effects. A level 1 fixed effects and level 1 mixed effects table is provided for each of the four dependent variables. These findings are presented in Tables 4-11. Because the effects of various predictor

variables are likely to vary across districts, this analysis focuses on the mixed effects model, acknowledging fixed effects only when noteworthy distinctions are apparent.

Tables 4 through Table 11 include the Beta values for each variable with the standard errors in parentheses. Asterisks are used to denote significance at varying levels as identified within each table. The model fit for each series of analyses is examined using reliability estimates and level 1 R-squared values for the linear models. R-squared values are calculated using Kreft and de Leeuw's (1998) equation:

$$R^2 = (\text{unrestricted error} - \text{restricted error}) / \text{unrestricted error}$$

Level 1 R-squared values are calculated only for sentence length. Unfortunately, Bernoulli models fail to provide an estimate for the residual variance components (sigma) (see Raudenbush, Bryk, Cheong, Congdon, du Toit 2004). Thus no level 1 pseudo R-squared is provided for the three dichotomous dependent variables.

INCARCERATION DECISIONS

Like previous research (Albonetti 1997; Demuth 2002; Light 2014; Wolfe et al. 2011), the results of this study indicate that citizenship status is significantly related to incarceration. This relationship is consistently expressed in the projected manner, with higher odds of incarceration for noncitizens. This finding persists when controlling for numerous legal and extralegal variables. Furthermore, when the sample is limited to only those cases in which prison alternatives are optional, noncitizens continue to be the recipients of punitive incarceration decisions.

The extent of the disparity varies across districts, however. Noncitizens, Hispanic offenders, and undocumented offenders (the three theoretical variables) vary significantly across

districts for incarceration decisions in Model 1 and Model 2, according to Table 5. Once legal variables are added to the model, however, only noncitizens, of the three theoretical variables, remains random. This suggests that these legal controls explain the variations in intercepts across districts for Hispanic and undocumented offenders but not for noncitizens (see Snijders and Bosker 1999; Raudenbush et al 2004). Likewise, Latin America origins, origins from other countries, being Black, having some or a completed college degree, and going to trial vary in Model 2 of Table 5, but not in Model 3 or Model 4. Age, Caribbean origins, and being female vary across all models. Of legal variables, only criminal history and the logged guideline minimum are fixed, demonstrating that the intercepts for these variables do not statistically differ across districts.

Hypothesis 1A

Noncitizens are statistically significantly more likely to be incarcerated than their U.S. counterparts according to both the fixed and mixed effects models, though to a slightly lesser extent in the mixed effects models. The odds of incarceration for noncitizens are more than three and a half times higher than U.S. citizens in the fixed effects independent variables model. When permitted to vary, the odds of incarceration are reduced to a little more than two times higher for noncitizens.

The inclusion of additional demographic variables greatly increases the effects of citizenship. The odds of incarceration for noncitizens rise from 2.27 to 5.18 with the introduction of additional extralegal factors. Age, though not initially significant, is related to a decreased odds of incarceration when controlling for legally relevant variables. The odds of being incarcerated are nearly 3 times higher for black offenders compared to their white

counterparts before controlling for legally relevant variables. Inversely, the odds of being incarcerated are nearly 70% less for women compared to men. Incarceration odds are nearly 1.36 times higher for those without a high school degree compared to those with a completed degree while these odds are roughly 40% less for those with some and/or a completed college degree compared to those with a high school degree.

Particularly noteworthy is the finding that the introduction of legal controls increase the impact of citizenship status on incarceration outcomes rather than explaining it. The inclusion of legal variables increases the odds of incarceration from 4.79 to 9.26 in the fixed effects model and 5.18 to 6.64 in the mixed effects model. Rather than explaining sentencing disparities between citizens and noncitizens, legal variables appear to exacerbate the relationship, demonstrating an unexpected suppression effect (see MacKinnon, Krull, and Lockwood 2000). All court related control variables are statistically significantly related to incarceration outcomes for the fixed and mixed effects models. An increase in criminal history score, an increase in the guideline minimum, being charged with multiple offenses, and being charged with a cocaine, crack, heroin, and methamphetamine are related to an increased odds of incarceration across all models. The odds of incarceration are lower for other drugs compared to marijuana.

Hypothesis 3A

Though the odds of incarceration are greater for noncitizens than for U.S. citizens, the results of the level 1 analysis suggests that sentencing disadvantages may not be static across all noncitizens. Those of Hispanic descent are more likely to be incarcerated even when controlling for citizenship status. When examining only the theoretical variables in model 1 of the mixed effects model, Hispanic offenders are about 2.1 times more likely to be incarcerated. The odds

of incarceration for Hispanic offenders are slightly lower in the fixed effects models. The odds of incarceration rise to more than 2.5 times higher when extralegal factors are included. The inclusion of legal variables, however, reduces the odds of incarceration for Hispanic offenders from 2.53 to 1.49, though the relationship continues to be significant at the .001 level.

While ethnicity is related to incarceration, important patterns are discernable within the broader ethnic categories. According to the mixed effects model, those from Asia, Africa, the Caribbean, Latin America, and other countries are less likely to receive a prison sentence compared to those from Mexico. Only African origins are no longer statistically significant with the inclusion of legal variables. Of country origins, those of Asian descent demonstrate the lowest odds of incarceration compared to Mexican offenders with a decreased odds of incarceration of almost 75%.

Furthermore, sentencing outcomes are more severe for undocumented noncitizens compared to noncitizens who enter the country legally. The odds of incarceration for undocumented noncitizens are more than 4 times higher, though the odds quickly decrease with the addition of extralegal variables. The odds drop 4.37 to 2.634 with legal variables.

Table 4: Models Predicting Incarceration at Level 1 with Fixed Effects

	Model 1 Theoretical	Model 2 Demographic	Model 3 Legal Controls	Model 4 Full Level 1
Noncitizen	3.628*** (.136)	4.794*** (.065)	9.258*** (.122)	9.391*** (.072)
Hispanic	1.644*** (.061)	2.037*** (.025)	1.528*** (.031)	1.516*** (.031)
Undocumented	3.890*** (.176)	2.900*** (.081)	3.029*** (.087)	2.975*** (.087)
Age	-	1.004*** (.001)	.993*** (.001)	.993*** (.001)
Asia	-	.322*** (.132)	.210*** (.164)	.207*** (.164)
Africa	-	.479*** (.212)	.663 (.250)	.647 (.250)
Caribbean	-	.474*** (.095)	.322*** (.107)	.320*** (.107)
Latin America	-	1.002 (.129)	.463*** (.142)	.463*** (.142)
Other Countries	-	.477*** (.106)	.377*** (.121)	.368*** (.121)
Black	-	2.913*** (.024)	1.637*** (.032)	1.635*** (.032)
Female	-	.342*** (.019)	.412*** (.023)	.412*** (.023)
No High School	-	1.359*** (.021)	1.364*** (.026)	1.366*** (.026)
College	-	.605*** (.021)	.739*** (.026)	.735*** (.026)
Trial	-	4.891 (.097)	2.986*** (.122)	2.984*** (.122)
Criminal History	-	-	1.678*** (.024)	1.686*** (.024)
Guideline Min	-	-	3.600*** (.009)	3.619*** (.009)
Multiple Offenses	-	-	1.551*** (.037)	1.536*** (.038)
Cocaine	-	-	1.098** (.033)	1.100** (.033)
Crack	-	-	1.400*** (.045)	1.394*** (.045)
Heroin	-	-	1.421*** (.050)	1.426*** (.050)
Meth	-	-	1.532*** (.040)	1.500*** (.040)
Other Drugs	-	-	.714*** (.037)	.709*** (.038)
2000	-	-	-	.978 (.056)
2001	-	-	-	.965 (.055)
2002	-	-	-	1.029 (.055)
2003	-	-	-	1.287*** (.056)
2004	-	-	-	1.494*** (.060)
2005	-	-	-	1.387*** (.059)
2006	-	-	-	1.492*** (.060)
2007	-	-	-	1.486*** (.060)
2008	-	-	-	1.167** (.058)
2009	-	-	-	1.148* (.057)
2010	-	-	-	1.122* (.058)
2011	-	-	-	1.101 (.056)
2012	-	-	-	1.217*** (.057)
2013	-	-	-	1.160* (.060)
Reliability	.972	.972	.948	.949
n (Level I)	376985	376985	376985	376985
χ^2	6794.154***	6299.02542***	4094.62207***	4134.30613***

*p < .05, **p < .01, ***p < .001

Table 5: Models Predicting Incarceration at Level 1 with Mixed Effects

	Model 1 Theoretical	Model 2 Demographic	Model 3 Legal Controls	Model 4 Full Level 1
Noncitizen	**2.272*** (.098)**	**5.177*** (.157)**	**6.638*** (.146)**	**6.880*** (.145)**
Hispanic	**2.117*** (.750)**	**2.533*** (.055)**	1.494*** (.032)	1.487**** (.032)**
Undocumented	**4.365*** (.141)**	**2.903*** (.151)**	2.634*** (.090)	2.640**** (.090)**
Age	-	**.9995 (.002)**	**.992*** (.002)**	**.991*** (.002)**
Asia	-	.243*** (.164)	.252*** (.194)	.243**** (.194)**
Africa	-	.214*** (.243)	.630 (.292)	.571 (.292)
Caribbean	-	**.344*** (.179)**	**.355*** (.179)**	**.367*** (.183)**
Latin America	-	**.512** (.219)**	.348*** (.176)	.339**** (.175)**
Other Countries	-	**.435*** (.191)**	.432*** (.164)	.395**** (.162)**
Black	-	**2.890*** (.051)**	1.591*** (.033)	1.565**** (.033)**
Female	-	**.327*** (.042)**	**.389*** (.037)**	**.386*** (.037)**
No High School	-	1.355*** (.022)	1.347*** (.026)	1.357**** (.026)**
College	-	**.587*** (.031)**	.745*** (.026)	.744**** (.027)**
Trial	-	**5.318*** (.132)**	3.038*** (.123)	3.014**** (.124)**
Criminal History	-	-	1.726*** (.025)	1.740**** (.025)**
Guideline Min	-	-	3.637*** (.010)	3.712**** (.010)**
Multiple Offenses	-	-	**1.647*** (.054)**	1.616**** (.053)**
Cocaine	-	-	**1.231*** (.063)**	**1.240*** (.065)**
Crack	-	-	**1.525*** (.068)**	**1.518*** (.067)**
Heroin	-	-	**1.453*** (.076)**	**1.497*** (.079)**
Meth	-	-	**1.718*** (.065)**	**1.652*** (.067)**
Other Drugs	-	-	**.715*** (.060)**	**.691*** (.058)**
2000	-	-	-	**.963 (.083)**
2001	-	-	-	**.894 (.076)**
2002	-	-	-	**1.056 (.087)**
2003	-	-	-	**1.181 (.096)**
2004	-	-	-	**1.435*** (.103)**
2005	-	-	-	**1.304** (.083)**
2006	-	-	-	**1.434*** (.095)**
2007	-	-	-	**1.440*** (.097)**
2008	-	-	-	**1.138 (.104)**
2009	-	-	-	**1.237 (.112)**
2010	-	-	-	**1.141 (.103)**
2011	-	-	-	**1.080 (.104)**
2012	-	-	-	**1.219 (.111)**
2013	-	-	-	**1.119 (.116)**
Reliability	.830	.758	.753	.740
n (Level I)	376985	376985	376985	376985
χ^2	2105.186***	645.36822***	896.98007***	685.94543***

*p < .05, **p < .01, ***p < .001

Hypothesis 1B

As a product of determinate sentencing policies for certain drug violations, it is possible that incarceration disparities are not truly a product of judicial discretion, but rather prosecutorial discretion in charging practices. By examining decisions to assign alternative sanctions for those who are eligible, a more accurate measure of judicial discretion is observable. While noncitizens are disadvantaged regarding the odds of incarceration, this disparity is much greater for the discretionary incarceration alternative outcome for those who are eligible for nonincarceration sentencing outcomes. The odds of receiving a prison alternative for noncitizens are 78% less than their U.S. citizen counterparts according to the fixed effects model (see Table 6). When permitted to vary, the disparity is somewhat lessoned (see Table 7). The odds of receiving a prison alternative are 36% less for noncitizens.

The inclusion of extralegal factors further increases noncitizen disadvantage according to the mixed effects model. The odds of receiving a prison alternative drop to 63% less than citizens once age, race, gender, education, country of origin, and attending trial are added. Age, Black, female, no high school, and college are statistically significantly related to prison alternatives. An increase in age is related to slightly lower odds of receiving a prison alternative. The odds of receiving an incarceration alternative are 51% less for Black offenders compared to white offenders. Women receive a 1.78 times increased odds of receiving an incarceration alternative. The odds of receiving a nonprison outcome are nearly 20% less for those without a high school degree and 1.36 times higher for those with some college compared to those with a high school degree.

The inclusion of legal variables slightly reduces the odds of receiving a prison alternative to 64% less for noncitizens. This suppression effect mirrors that of the incarceration outcomes, though to a much smaller extent. While all of the legal variables were significant predictors of incarceration, the same is not true for incarceration alternatives. As expected, criminal history, multiple offenses, and increased guideline minimums are related to decreased odds of receiving a nonprison outcome. Those charged with crack, heroin, and methamphetamine are less likely to receive a prison alternative compared to marijuana offenses. Only cocaine and other drugs do not differ significantly from marijuana in the odds of receiving a prison alternative in Model 3 of Table 7.

Hypothesis 3B

The within noncitizen and ethnic variations evident within prison alternative outcomes further mirrors that for incarceration. Those of Hispanic descent are less likely to receive a nonincarceration sentencing outcome, even when prison alternatives are an option, compared to other races. The odds of receiving a prison alternative are 89% less for Hispanic offenders before legal and extralegal variables are included according to the fixed effects model. The disparity is reduced to 34% less when ethnicity is allowed to vary. The odds of receiving a prison alternative is somewhat reduced from 34% to 38% with the inclusion of extralegal factors. The inclusion of legal factors reduces the disparity to only 22% reduced odds for Hispanic offenders compared to their white counterparts.

Once again, variations exist within ethnicity. These variations appear to be particularly disadvantageous for those of Mexican origins. African, Caribbean, Latin American, and other country origins are much more likely to receive a prison alternative with Mexico as the reference

category. Unlike incarceration decisions, those of African descent have much higher odds of receiving a prison alternative than the other countries, with an increased odds of 3.21 at the .05 level of significance. Only Asia does not differ from Mexico in the mixed effects demographics model. The inclusion of legally relevant variables limits the significant origin predictors to only the Caribbean and Latin America. The advantage for those from Africa and other countries are explained by criminal history, the number of offenses, the guideline minimum, and the drug type with African origins failing to achieve significance when introducing these variables.

The importance of documentation status on prison alternatives is less consistent than the other theoretical variables. According to the fixed effects models, undocumented citizens are statistically significantly less likely to receive a nonincarceration alternative. This relationship persists when controlling for legal and extralegal factors. When permitted to vary, however, documentation status is only significant for Model 1. When examining only the theoretical variables in the mixed effects model, the odds of receiving a prison alternative are more than 40% less than the odds for their documented counterparts. Once extralegal variables were included, this variable failed to achieve significance. Documentation status is the only theoretical variable that varies across all models for nonincarceration outcomes.

Table 6: Models Predicting Prison Alternative at Level 1 with Fixed Effects

	Model 1 Theoretical	Model 2 Demographic	Model 3 Legal Controls	Model 4 Full Model
Noncitizen	.223*** (.067)	.370*** (.086)	.319*** (.090)	.323*** (.090)
Hispanic	.110*** (.049)	.636*** (.054)	.746*** (.057)	.755*** (.058)
Undocumented	.152*** (.084)	.709*** (.090)	.771** (.091)	.781** (.091)
Age	-	.994*** (.002)	.998 (.002)	.999 (.002)
Asia	-	1.52 (.236)	1.393 (.242)	1.359 (.239)
Africa	-	1.910* (.314)	1.138 (.320)	1.130 (.321)
Caribbean	-	1.784*** (.141)	1.837*** (.146)	1.789*** (.147)
Latin America	-	1.885*** (.170)	2.311*** (.175)	2.291*** (.175)
Other Countries	-	1.534* (.168)	1.537* (.172)	1.498* (.173)
Black	-	.491*** (.047)	.668*** (.053)	.677*** (.054)
Female	-	1.781*** (.043)	1.543*** (.045)	1.558*** (.046)
No High School	-	.819*** (.041)	.874** (.043)	.870*** (.043)
College	-	1.354*** (.046)	1.178*** (.048)	1.191*** (.048)
Trial	-	.813 (.119)	1.117 (.127)	1.097 (.128)
Criminal History	-	-	.639*** (.045)	.644*** (.045)
Guideline Min	-	-	.785*** (.012)	.781***(.020)
Multiple Offenses	-	-	.870* (.060)	.878* (.060)
Cocaine	-	-	1.089 (.056)	1.063 (.056)
Crack	-	-	.803** (.074)	.792** (.074)
Heroin	-	-	.858 (.087)	.847 (.087)
Meth	-	-	.842* (.068)	.826** (.069)
Other Drugs	-	-	1.343*** (.062)	1.362*** (.062)
2000	-	-	-	1.132 (.126)
2001	-	-	-	.930 (.121)
2002	-	-	-	1.043 (.120)
2003	-	-	-	.659*** (.110)
2004	-	-	-	.703** (.116)
2005	-	-	-	.585*** (.118)
2006	-	-	-	.652*** (.120)
2007	-	-	-	.748* (.122)
2008	-	-	-	.770* (.119)
2009	-	-	-	.761* (.113)
2010	-	-	-	.650*** (.122)
2011	-	-	-	.694** (.120)
2012	-	-	-	.571*** (.118)
2013	-	-	-	.531*** (.124)
Reliability	.809	.801	.764	.771
n (Level I)	23022	23022	23022	23022
χ^2	749.512***	730.270***	733.408***	765.223***

*p < .05, **p < .01, ***p < .001

Table 7: Models Predicting Prison Alternative at Level 1 with Mixed Effects

	Model 1 Theoretical	Model 2 Demographic	Model 3 Legal Controls	Model 4 Full Level 1
Noncitizen	**.638*** (.120)**	.367*** (.088)	.362*** (.093)	.348*** (.093)
Hispanic	**.656*** (.076)**	.622*** (.055)	.775*** (.059)	.836** (.058)
Undocumented	**.591*** (.114)**	**.853 (.130)**	**.932 (.133)**	**1.003 (.138)**
Age	-	.994*** (.002)	.510 (.002)	.998 (.002)
Asia	-	**1.689 (.276)**	1.252 (.247)	1.336 (.252)
Africa	-	**3.217* (.496)**	**2.497 (.559)**	**1.662 (.535)**
Caribbean	-	1.754*** (.145)	1.367* (.158)	1.380* (.159)
Latin America	-	1.804*** (.175)	1.800** (.188)	1.955*** (.188)
Other Countries	-	1.638** (.174)	1.328 (.186)	1.348 (.187)
Black	-	.491*** (.047)	.681*** (.054)	.708*** (.055)
Female	-	1.778*** (.044)	1.542*** (.046)	1.526*** (.047)
No High School	-	.816*** (.041)	.881** (.043)	.869*** (.044)
College	-	1.357*** (.046)	1.169*** (.049)	1.191*** (.049)
Trial	-	.795 (.119)	1.084 (.127)	1.101 (.128)
Criminal History	-	-	**.565*** (.062)**	**.581*** (.058)**
Guideline Min	-	-	.787*** (.012)	.793*** (.021)
Multiple Offenses	-	-	.877* (.060)	.896 (.061)
Cocaine	-	-	**.914 (.083)**	**.966 (.073)**
Crack	-	-	**.728*** (.097)**	.811** (.076)
Heroin	-	-	**.740** (.109)**	.802* (.091)
Meth	-	-	**.699*** (.099)**	**.770** (.092)**
Other Drugs	-	-	**1.191 (.091)**	**1.305** (.084)**
2000	-	-	-	1.098 (.130)
2001	-	-	-	.917 (.126)
2002	-	-	-	1.097 (.125)
2003	-	-	-	.714** (.115)
2004	-	-	-	.685** (.121)
2005	-	-	-	.557*** (.123)
2006	-	-	-	.627*** (.125)
2007	-	-	-	.734* (.127)
2008	-	-	-	.768* (.125)
2009	-	-	-	**.612*** (.137)**
2010	-	-	-	.647*** (.128)
2011	-	-	-	**.634** (.139)**
2012	-	-	-	.554*** (.123)
2013	-	-	-	.519*** (.130)
Reliability	.646	.846	.583	.780
n (Level I)	23022	23022	23022	23022
χ^2	405.805***	256.655***	64.588***	252.324***

*p < .05, **p < .01, ***p < .001

SENTENCE LENGTH

Though most research finds that noncitizens are disproportionately incarcerated, the effects of the variable on sentence length remains a point of contention in the sentencing literature. The results of this study may proffer an explanation for what appears to be contradictory findings. At first glance, it appears as though noncitizens receive shorter sentence lengths (see Table 8 and Table 9). This continues to be the case even when country of origin and other extralegal predictors are included. The relationship between citizenship and sentence length is mediated by legal factors. Once legal predictors are included, noncitizens receive longer sentences than their citizen counterparts.

Not only are not citizens more likely to receive a prison sentence compared to U.S. citizens, even when alternatives are optional, they also receive longer sentences. The majority of previous research indicates that noncitizens receive shorter sentences (Demuth 2002; Katzenelson et al 1996; Wu and DeLone 2012). Though shorter sentences were found for noncitizens in this study, the inclusion of legal variables acts as a moderating effect, reversing the direction of the relationship. Rather than the anticipated inverse correlation, the results of this study indicate that, with proper legal controls, the relationship is positive, supporting the findings of Albonetti (1997).

The following variables were allowed to vary in all models: noncitizen, Hispanic, undocumented, age, other countries, Black, female, college, and trial. Criminal history, multiple offenses, cocaine, crack, heroin, methamphetamine, and other drugs vary in model 3, and Asia, Africa, Caribbean, Latin America, and no high school vary in model 2, but not model 3.

Hypothesis 1C

Noncitizens appear to receive shorter sentences than their U.S. counterparts at first glance. Noncitizens receive a 4.9% sentence reduction for the logged sentence length in the mixed effects theoretical model ($p<.05$). This coefficient is reduced to -.094 in the fixed effects model ($p<.001$).

When extralegal controls are included to the mixed model, being noncitizen is associated with a small 3.5% decrease in sentence length. As with incarceration decisions, age, race, gender, education, and going to trial are statistically significantly related to sentence length. Before the introduction of legal variables, age is related to a slight increase in sentence length. Black offenders receive 43% longer sentences than their white counterparts while women receive 60% shorter sentences. Education is only statistically significant for those with a college degree. Offenders with some or a completed college degree receive 20% shorter sentences. Those with no high school degree do not receive statistically significantly different sentence lengths than those with a completed high school degree. Furthermore, a trial penalty does appear to exist, with those who appear in court receiving a 98% increase in logged sentence length.

The leniency that noncitizens seem to reap in regard to sentence length disappears with the introduction of legal variables. Noncitizens receive a 7.4% increase in the logged sentence length. This finding is the same in both the fixed effects and mixed effects models. Not only does the inclusion of legal variables alter the direction of the relationship between noncitizens and sentence length, it also increases statistical significance from .05 to .001. All legal variables were statistically significant at the .001 level, with the exception of other drugs which did not statistically differ in sentence length from marijuana. Cocaine, crack, heroin, and methamphetamine receive longer sentences. As anticipated, an increase in criminal history is

related to a 12.6% increase in sentence length. Offenders with multiple offenses receive a 14.7% increase in logged sentence length. An increase in the logged guideline minimum is related to an increase in the logged sentence length.

Hypothesis 3C

While the effects of citizenship change directions with the introduction of legal variables, ethnic and documentation variations respond in a more predictable manner. Hispanic offenders receive a 6.4% increase in the logged sentence length according to the theoretical mixed effects model. This disparity is greater in the fixed effects model. The inclusion of extralegal variables further exacerbate the sentence length severity for Hispanic offenders from 6.4% to 25.3%. The inclusion of legal variables reduces the impact of being Hispanic on sentence length to 10.5%.

Though country of origin is initially a significant predictor, any disparities are explained by legal predictors in the mixed effects models. According to the demographics model, those from Africa and other countries receive shorter sentences compared to those of Mexican descent. Asia, the Caribbean, and Latin America do not differ from Mexico. None of the variables are significant in the final mixed effects model. The results of the fixed effects findings differ greatly. According to the final fixed effects models, only Asia failed to achieve significance. Africa, the Caribbean, Latin America, and other countries are each associated with longer sentence lengths compared to Mexico in the final fixed effects model.

Documentation also status appears to be related to sentence length, though only in the theoretical models. The inclusion of extralegal and legal variables negates the impact of documentation status on sentence length for the mixed effects models. Undocumented noncitizens receive a 4.5% longer sentence length than documented noncitizens The findings are

slightly lower in the fixed effects models, with undocumented noncitizens receive a 2.3% longer sentence than documented noncitizens. Documentation status is significant at the .001 level across all fixed effects models.

Table 8: Models Predicting Sentence Length at Level 1 with Fixed Effects

	Model 1 Theoretical	Model 2 Demographic	Model 3 Legal Controls	Model 4 Full Level 1
Noncitizen	-.094*** (.006)	-.187*** (.007)	.038*** (.005)	.040*** (.005)
Hispanic	.016*** (.005)	.187*** (.005)	.081*** (.004)	.084*** (.004)
Undocumented	.023*** (.007)	.034*** (.006)	.022*** (.004)	.023*** (.004)
Age	-	.007*** (.0002)	.0006*** (.0001)	.001*** (.0001)
Asia	-	.145*** (.025)	.015 (.016)	.011 (.016)
Africa	-	-.172*** (.029)	.062*** (.019)	.056** (.019)
Caribbean	-	.122*** (.011)	.056*** (.007)	.053*** (.007)
Latin America	-	.300*** (.011)	.066*** (.007)	.063*** (.007)
Other Countries	-	-.025 (.017)	.040*** (.011)	.035*** (.011)
Black	-	.413*** (.005)	.096*** (.004)	.100*** (.004)
Female	-	-.495*** (.005)	-.250*** (.003)	-.248*** (.003)
No High School	-	.006 (.004)	.020*** (.003)	.018*** (.003)
College	-	-.183*** (.005)	-.073*** (.003)	-.074*** (.003)
Trial	-	.967*** (.009)	.246*** (.006)	.244*** (.006)
Criminal History	-	-	.132*** (.003)	.137*** (.003)
Guideline Min	-	-	.776*** (.001)	.776*** (.001)
Multiple Offenses	-	-	.120*** (.003)	.118*** (.004)
Cocaine	-	-	.152*** (.004)	.152*** (.004)
Crack	-	-	.204*** (.005)	.200*** (.005)
Heroin	-	-	.192*** (.005)	.196*** (.005)
Meth	-	-	.201*** (.004)	.201*** (.004)
Other Drugs	-	-	.015 (.006)	.020*** (.006)
2000	-	-	-	.006 (.006)
2001	-	-	-	.029*** (.006)
2002	-	-	-	.037*** (.006)
2003	-	-	-	.065*** (.006)
2004	-	-	-	.090*** (.006)
2005	-	-	-	.059*** (.006)
2006	-	-	-	.057*** (.006)
2007	-	-	-	.059*** (.006)
2008	-	-	-	.056*** (.006)
2009	-	-	-	.010 (.006)
2010	-	-	-	.004 (.006)
2011	-	-	-	.025*** (.006)
2012	-	-	-	-.010 (.006)
2013	-	-	-	-.029*** (.006)
Reliability	.996	.995	.993	.993
n (Level I)	353692	353692	353692	353692
R^2 (Level I)	.02	.11	.63	.63
χ^2	72688.846***	61722.262***	27957.802***	27646.011***

*p < .05, **p < .01, ***p < .001

Table 9: Models Predicting Sentence Length at Level 1 with Mixed Effects

	Model 1 Theoretical	Model 2 Demographic	Model 3 Legal Controls	Model 4 Full Level 1
Noncitizen	**-.049* (.019)**	**-.035* (.016)**	**.074*** (.009)**	**.067*** (.010)**
Hispanic	**.064** (.021)**	**.253*** (.018)**	**.105*** (.007)**	**.111*** (.008)**
Undocumented	**.045* (.017)**	**.023 (.015)**	**.009 (.008)**	**.015* (.007)**
Age	-	**.004*** (.0005)**	**.000003 (.0002)**	**.0003 (.0002)**
Asia	-	**.032 (.034)**	-.014 (.017)	-.014 (.017)
Africa	-	-.297*** (.032)	-.029 (.020)	-.016 (.019)
Caribbean	-	**-.032 (.028)**	-.025 (.008)	-.023** (.008)
Latin America	-	**-.016 (.028)**	-.007 (.008)	-.003 (.008)
Other Countries	-	**-.129*** (.035)**	**.002 (.017)**	**-.002 (.016)**
Black	-	**.430*** (.020)**	**.111*** (.009)**	**.117*** (.009)**
Female	-	**-.584*** (.023)**	**-.308*** (.016)**	**-.307*** (.016)**
No High School	-	**.011 (.007)**	.018*** (.003)	.017*** (.003)
College	-	**-.206*** (.010)**	**-.073*** (.005)**	**-.072*** (.005)**
Trial	-	**.984*** (.022)**	**.251*** (.015)**	**.238*** (.014)**
Criminal History	-	-	**.126*** (.008)**	**.135*** (.008)**
Guideline Min	-	-	.771*** (.009)	.772*** (.001)
Multiple Offenses	-	-	**.147*** (.009)**	**.144*** (.101)**
Cocaine	-	-	**.086*** (.010)**	**.082*** (.011)**
Crack	-	-	**.155*** (.012)**	**.148*** (.012)**
Heroin	-	-	**.114*** (.014)**	**.122*** (.013)**
Meth	-	-	**.128*** (.013)**	**.126*** (.014)**
Other Drugs	-	-	**-.026 (.013)**	**-.013 (.014)**
2000	-	-	-	**.004 (.009)**
2001	-	-	-	**.023* (.010)**
2002	-	-	-	**.040*** (.010)**
2003	-	-	-	**.047*** (.013)**
2004	-	-	-	**.076*** (.013)**
2005	-	-	-	**.039** (.013)**
2006	-	-	-	**.043* (.016)**
2007	-	-	-	**.046** (.015)**
2008	-	-	-	**.038* (.017)**
2009	-	-	-	**-.010 (.018)**
2010	-	-	-	**-.032 (.019)**
2011	-	-	-	**-.021 (.018)**
2012	-	-	-	**-.051** (.018)**
2013	-	-	-	**-.065** (.020)**
Reliability	.991	.984	.971	.971
n (Level I)	353692	353692	353692	353692
R^2 (Level I)	.02	.14	.64	.64
χ^2	41441.604***	18746.824***	7573.321***	7850.978***

*p < .05, **p < .01, ***p < .001

DOWNWARD DEPARTURES

The sentence length outcomes are determined by the federal sentencing guidelines. Though guidelines incorporate a range from which the judge may choose, it remains a limited measure of discretion. Conversely, judicial decisions to depart from the guidelines is a much more definitive measure of discretion. Therefore, if sentencing inequality is truly a product of direct and/or underlying judicial prejudices, sentencing disparities are expected to be more pronounced for this outcome.

Like Cano and Spohn (2012) the results of this study indicate that noncitizens are less likely to receive a downward departure than citizens. In fact, of the theoretical variables, citizenship is the only consistently significant predictor of receiving a downward departure. All theoretical variables are significantly related to downward departures in the fixed effects model. However, only citizenship status is a significant predictor of receiving a downward departure in the mixed effects models, demonstrating the importance of multilevel modeling. Noncitizens, Hispanic, undocumented, age, Asia, Black, female, and no high school vary in Model 2 and Model 3. Crack, methamphetamine, and other drugs are also permitted to vary in Model 3.

Hypothesis 1D

The odds of receiving a downward departure are much less for noncitizens according to the fixed effects model. Noncitizens receive an 83% decreased odds of a downward departure (see Table 10). When permitted to vary, the odds of receiving a downward departure are only 12% less than those for U.S. citizens (see Table 11).

The odds of receiving a downward departure are 14% less for noncitizens with the inclusion of extralegal variables in the mixed effects model. This disparity is even less in the

fixed effects model. Several of the extralegal variables were found to be significantly related to the receipt of a downward departure. For instance, the odds of receiving a downward departure increase with age. Prior to the introduction of legal variables, women have a 1.4 times increased odds of receiving a downward departure compared to men. Those without a high school degree have a slightly greater than 4% decreased odds of receiving a downward departure, but this relationship is significant only at the .05 level. The odds of receiving a downward departure are 1.05 times greater for those with some or a completed college degree compared to those with a high school degree. Those who appear in court are more likely to receive a downward departure. While age, race, gender, education, and trial are significant predictors of downward departures according to the mixed effects models, this is the only outcome variable in which race is not statistically significant in the mixed effects model. The odds of receiving a downward departure are higher for Black offenders than for white offenders according to the fixed effects model.

Noncitizens have a 16% decreased odds of receiving a downward departure with the introduction of legal variables. All legal variables are significant predictors of being a departure recipient with the exception of being charged with a methamphetamine violation. Cocaine, crack, and heroin violations are less likely to receive a downward departure compared to marijuana offenses. Other drugs, however, is related to a 1.28 increase in departures. Those with a criminal history and multiple offenses are less likely to receive a downward departure. Surprisingly, an increase in the logged guideline minimum is related to increased odds of receiving a departure.

Hypothesis 3D

Though ethnic variation exists across other sentencing decisions, the importance of ethnicity and within-citizen variation on downward departure decisions are less straightforward. Several of these variables are significant across all fixed effects models, but none of the mixed effects models. The odds of receiving a downward departure are 1.2 times higher for Hispanic in the theoretical fixed effects model. The importance of ethnicity on departure outcomes are greater with the introduction of extralegal and legal variables. According to the full fixed effects model, the odds of receiving a departure are 1.3 times higher for Hispanic offenders. All of these effects disappear when ethnicity varies.

Though ethnicity does not appear to impact opportunities for downward departures, country of origin was found to be significant in certain circumstances. Those from Asia are 1.24 times more likely to receive a departure compared to Mexican offenders, though this finding disappears with the introduction of legal variables. Offenders of Latin American origins do not differ from Mexican offenders in either mixed model. Being from Africa and other countries are associated with increased odds of receiving a departure. Only Caribbean offenders are less likely to receive a downward departure compared to their Mexican counterparts.

Like ethnicity, documentation status appears to be related to sentence length in the fixed effects models, but not the mixed effects model. The odds of receiving a downward departure are about 12% less for undocumented noncitizens compared to documented noncitizens in the fixed effects model. This relationship is significant at the .001 level. This finding is not substantially altered with the introduction of extralegal and legal variables. Documentation fails to achieve significance in any of the mixed effects models.

Table 10: Models Predicting Downward Departure at Level 1 with Fixed Effects

	Model 1 Theoretical	Model 2 Demographic	Model 3 Legal Controls	Model 4 Full Level 1
Noncitizen	.170*** (.016)	.937*** (.019)	.903*** (.019)	.904*** (.020)
Hispanic	1.160*** (.013)	1.267*** (.015)	1.297*** (.015)	1.303*** (.015)
Undocumented	.882*** (.018)	.892*** (.018)	.883*** (.018)	.872*** (.019)
Age	-	1.003*** (.001)	1.003*** (.001)	1.002*** (.001)
Asia	-	1.086 (.068)	1.008 (.068)	1.043 (.069)
Africa	-	1.260*** (.070)	1.284*** (.071)	1.324*** (.072)
Caribbean	-	.752*** (.031)	.782*** (.031)	.787*** (.031)
Latin America	-	.841*** (.031)	.845*** (.032)	.853*** (.032)
Other Countries	-	1.216*** (.044)	1.090 (.045)	1.105* (.045)
Black	-	1.111*** (.014)	1.124*** (.017)	1.119*** (.017)
Female	-	1.373*** (.014)	1.421*** (.014)	1.418*** (.014)
No High School	-	.950*** (.011)	.955*** (.012)	.962*** (.012)
College	-	1.043** (.014)	1.038* (.014)	1.042** (.014)
Trial	-	1.278*** (.024)	1.132*** (.025)	1.167*** (.025)
Criminal History	-	-	.799*** (.012)	.782*** (.013)
Guideline Min	-	-	1.193*** (.006)	1.195*** (.006)
Multiple Offenses	-	-	.939*** (.014)	.952*** (.014)
Cocaine	-	-	.721*** (.016)	.711*** (.017)
Crack	-	-	.844*** (.020)	.858*** (.020)
Heroin	-	-	.797*** (.023)	.769*** (.023)
Meth	-	-	.838*** (.018)	.820*** (.018)
Other Drugs	-	-	1.226*** (.024)	1.172*** (.025)
2000	-	-	-	.948 (.029)
2001	-	-	-	1.158*** (.028)
2002	-	-	-	1.128*** (.028)
2003	-	-	-	.744*** (.030)
2004	-	-	-	2.311*** (.026)
2005	-	-	-	.628*** (.031)
2006	-	-	-	.725*** (.029)
2007	-	-	-	.756*** (.029)
2008	-	-	-	.908*** (.029)
2009	-	-	-	1.228*** .027)
2010	-	-	-	1.475*** (.027)
2011	-	-	-	1.360*** (.027)
2012	-	-	-	1.362*** (.027)
2013	-	-	-	1.480*** (.028)
Reliability	.983	.983	.984	.984
n (Level I)	377861	377861	377861	377861
χ^2	17865.656***	17993.742***	18063.847***	18078.243***

*p < .05, **p < .01, ***p < .001

Table 11: Models Predicting Downward Departure at Level 1 with Mixed Effects

	Model 1 Theoretical	Model 2 Demographic	Model 3 Legal Controls	Model 4 Full Level 1
Noncitizen	**.875*** (.035)**	**.856*** (.037)**	**.835*** (.037)**	**.850*** (.033)**
Hispanic	**.974 (.034)**	**1.026 (.037)**	**1.044 (.037)**	**.979 (.031)**
Undocumented	**.990 (.037)**	**1.030 (.038)**	**1.034 (.037)**	**.992 (.031)**
Age	-	**1.004*** (.0009)**	**1.004*** (.0009)**	**1.001 (.001)**
Asia	-	**1.236* (.096)**	**1.182 (.101)**	1.020 (.073)
Africa	-	1.298*** (.074)	1.272** (.076)	**.906 (.121)**
Caribbean	-	.861*** (.039)	.893** (.039)	.906* (.039)
Latin America	-	.958 (.038)	.954 (.039)	.967 (.039)
Other Countries	-	1.258*** (.049)	1.145** (.050)	1.153** (.050)
Black	-	**1.029 (.031)**	**1.028 (.029)**	**.985 (.028)**
Female	-	**1.353*** (.025)**	**1.416*** (.024)**	**1.418*** (.025)**
No High School	-	**.958* (.017)**	**.963* (.017)**	**.983 (.016)**
College	-	1.049*** (.014)	1.047*** (.014)	1.065*** (.015)
Trial	-	1.280*** (.024)	1.113*** (.025)	1.159*** (.026)
Criminal History	-	-	.797*** (.013)	.760*** (.013)
Guideline Min	-	-	1.212*** (.006)	1.235*** (.006)
Multiple Offenses	-	-	.939*** (.014)	.939*** (.014)
Cocaine	-	-	.759*** (.017)	.776*** (.018)
Crack	-	-	**.908*** (.029)**	**.961 (.028)**
Heroin	-	-	.841*** (.024)	.846*** (.024)
Meth	-	-	**.951 (.041)**	**.974 (.040)**
Other Drugs	-	-	**1.283*** (.043)**	**1.244*** (.042)**
2000	-	-	-	**.460*** (.101)**
2001	-	-	-	**.522*** (101)**
2002	-	-	-	**.498*** (.100)**
2003	-	-	-	**.345*** (.101)**
2004	-	-	-	**2.569*** (.128)**
2005	-	-	-	.587**** (.031)**
2006	-	-	-	.688**** (.030)**
2007	-	-	-	.721**** (.030)**
2008	-	-	-	.879**** (.029)**
2009	-	-	-	1.218**** (.028)**
2010	-	-	-	1.501**** (.027)**
2011	-	-	-	1.429**** (.027)**
2012	-	-	-	1.485**** (.027)**
2013	-	-	-	1.536**** (.028)**
Reliability	.968	.966	.952	.957
n (Level I)	377861	377861	377861	377861
χ^2	12543.813***	9041.496***	4662.538***	4019.573***

*p < .05, **p < .01, ***p < .001

DISCUSSION

The results of this study support a great deal of the previous research examining sentencing disparities between citizens and noncitizens. Like the findings of Albonetti (1997), Demuth (2002), Light (2014), and Wolfe and colleagues (2011), noncitizens are more likely to receive a prison sentence. As the first study to examine the effects of citizenship status on receiving prison alternatives for eligible offenders, this study finds that sentencing inequality is exacerbated within this dependent variable associated with higher discretion. Contrary to Demuth (2002), Katzenelson and colleagues (1996), and Wu and DeLone (2012), the results of this study find that noncitizens receive longer sentences once legal variables are introduced to the model, complementing the findings of Albonetti (1997). Like Cano and Spohn (2012) this study found that noncitizens are less likely to receive a downward departure. In sum, noncitizens are disadvantaged across all four courtroom decision-making variables.

Furthermore, the inclusion of legal variables fails to negate these relationships, demonstrating that differential offending patterns do not explain sentencing disparities between citizens and noncitizens. The finding that noncitizens are disproportionately incarcerated even when eligible for prison alternatives and are less likely to receive a downward departure suggests that discretion does, in fact, play a key role in sentencing inequality.

Though legal variables do not explain the citizenship disparity, these variables are frequently significantly related to sentencing severity. As anticipated by Focal Concerns, most courtroom related variables are significantly related to sentencing outcomes including the guideline minimum, multiple offenses, going to trial, and the type of drug offense. Only a few of the drug violations did not differ significantly compared to the reference category. Even when controlling for the guideline minimum, those who have a criminal history and those who have

committed multiple offenses frequently receive more severe sentencing outcomes. Offenders who emulate aggressive and/or recidivist propensities are likely to be identified as dangerous, and therefore receive more severe penalties.

Even when controlling for legal variables, several theoretical extralegal predictors remain significant. Legal variables fail to alleviate the importance of citizenship status, ethnicity and documentation status. Undocumented noncitizens are more likely to receive a prison sentence above and beyond citizenship status. They also receive longer sentences and are less likely to receive a departure. This punitiveness toward undocumented noncitizens is likely a product of the double stigmatization of this subgroup (Hartley and Armendariz 2011). The double stigmatization of undocumented noncitizens is particularly targeted toward those of Mexican descent. Many of the other country origins demonstrate lower odds of incarceration, greater odds of nonprison alternatives, shorter sentences, and increased odds of receiving a downward departure compared to Mexican offenders. Such a penalty is illustrative of the heightened "blame" placed on "illegal Mexican immigrants." Therefore, the increased risk of incarceration for this subgroup may be demonstrative of Steffensmeier's blameworthiness postulate.

In the process of running the case level analyses, it became clear than unique discrepancies exist across place. Several of the variables vary significantly according to the χ^2 values. In fact, while the effects of the case level theoretical variables vary across district for several of the dependent variables, all four of these measures demonstrate random effects for sentence length and downward departures. Furthermore, permitting these variables to vary somewhat alters the findings from the fixed effects models demonstrating that traditional regression analyses fail to account for these relationships in their entirety. In order to correct for

this shortcoming, Chapter 7 examines district level impacts while Chapter 8 acknowledges longitudinal variations.

CHAPTER 7

GEOGRAPHIC VARIATIONS

While sentencing disparities between U.S. citizens and noncitizens persist at the aggregate level, these disparities often vary across place. The omission of level 2 predictors neglects to address the complexities of inter-district variations. This chapter examines whether and to what extent disparities between citizens and noncitizens as well as disparities across ethnicity and country of origin vary across place. Several models are examined. First, the broader impacts of place on sentencing outcomes are examined for each of the dependent variables (incarceration, prison alternative, sentence length, and downward departure). Level 1 mixed effects are added in Model 2 with random effects bolded. Cross level interactions are examined in Model 3. The final model consists of only significant predictors in order to maximize degrees of freedom and statistical power.

INCARCERATION DECISIONS

At first glance, very few district level variables are related to incarceration outcomes when controlling for spatial autocorrelation (see Table 12). Only the average guideline minimum and no high school mean are statistically significant in the first model. None of the remaining variables, including the means for noncitizens, Hispanic populations, Mexican populations, undocumented noncitizens, trials, multiple offenses, cocaine and marijuana cases, white populations, and age, are statistically significantly related to incarceration decisions. The guideline minimum and no high school means are only significant in the first model, however.

Once individual level predictors are included, the guideline mean and the population without a high school degree are no longer statistically significant. Only the measure for marijuana caseloads is significant, although the percent Hispanic approaches significance. Districts with larger marijuana caseloads demonstrate an increased odds of incarceration while Hispanic offender populations are inversely related to incarceration odds. No other demographic predictors, including the percentage of noncitizens, Mexico, undocumented, white, and no high school degree nor the age mean were significant. Likewise, of court related predictors, the means for trial, guideline minimum, multiple offenses, and cocaine offenses failed to significantly impact incarceration decisions.

With the introduction of level 1 variables in Model 2, all case level predictors were found to be statistically significant at the .001 level except for African offender origins which failed to achieve significance. Noncitizens, Hispanic, Undocumented, Black, those without a high school degree, cases that go to trial, those with a criminal history, higher guideline minimums, and multiple offenses were related to an increase in the odds of incarceration. Likewise, cocaine, crack, heroin, and methamphetamines were affiliated with higher odds of incarceration compared to marijuana offenses. Those from Asia, the Caribbean, Latin America, and other countries demonstrate lower odds of incarceration compared to those from Mexico. Women, those with college degrees, and those who commit other drug violations are less likely to receive a prison sentence compared to men, those with high school degrees and those who commit marijuana violations respectively. Age is also inversely related to incarceration odds.

Hypothesis 2A

Once the effects of district level variables were included in the model for noncitizens, unique cross-level interactions emerge. Although Mexican populations do not impact incarceration odds at the broader level, this variable is significant for noncitizen odds of incarceration. Districts with greater percentages of Hispanic offenders have a decreased odds of incarceration overall, but this district variable specifically increases these odds for noncitizens. This finding is even greater for districts with large numbers of undocumented noncitizens. The odds of incarceration for noncitizens soar with the introduction of district level undocumented population percentages. Due to the extremity of this finding, it is likely that is value is inflated due to severe variations in undocumented populations across districts (see Menard 2002) While the marijuana caseload demonstrates a significant impact overall on incarceration odds, this variable is also related to an increase in incarceration odds specifically for noncitizens. Inversely, districts with larger white offender populations are related to a decrease in incarceration odds. The populations of noncitizens, trial caseloads, guideline minimums, multiple offense averages, cocaine, age, and no high school degrees do not significantly impact incarceration odds for noncitizens. The introduction of cross-level interactions does not substantially alter the level 1 findings with the exception of African origins which become statistically significantly related to a decreased odds of incarceration in the final model.

The exclusion of nonsignificant variables does not alter the findings substantially. Once again, marijuana caseloads increase overall incarceration odds as well as noncitizen incarceration odds. Increases in the percent of Hispanic offenders per district decrease incarceration odds overall and for noncitizens. Undocumented populations greatly increase incarceration odds for noncitizens. Increases in the percentage of Mexican offenders decrease incarceration odds for

noncitizens. Each of these relationships demonstrate an increase in statistical significance once nonsignificant predictors are omitted.

Table 12: Models Predicting Incarceration at Level 2 with Spatial Weighting

	Model 1 L2 Only	Model 2 Full	Model 3 Interactions	Model 4 Final Model
NONCIT $\bar{x}$	3.158 (1.77)	6.206 (1.287)	10.240† (1.234)	-
HISPANIC $\bar{x}$	.866 (.847)	.286† (.663)	.214* (.639)	.269* (.635)
MEXICO $\bar{x}$	1.506 (1.498)	.675 (1.169)	.866 (1.119)	1.251 (.873)
UNDOC $\bar{x}$	.289 (3.561)	.561 (2.624)	.243 (2.514)	5.874 (1.646)
TRIAL $\bar{x}$	25.402 (4.391)	259.945 (3.985)	405.988 (3.898)	-
GUIDE MIN $\bar{x}$	1.005** (.002)	1.001 (.002)	1.001 (.002)	-
MULTIPLE $\bar{x}$	1.154 (.603)	.895 (.528)	.854 (.510)	-
COCAINE $\bar{x}$	.772 (3.561)	.346 (.870)	.395 (.845)	-
MARIJ $\bar{x}$	.667 (.771)	5.446** (.636)	5.013* (.613)	4.488** (.515)
WHITE $\bar{x}$	3.189 (.737)	2.527 (.645)	2.156 (.627)	1.929 (.490)
AGE $\bar{x}$	.893 (.075)	.984 (.065)	.976 (.063)	-
NO HS $\bar{x}$	43.661* (1.596)	1.894 (1.372)	2.124 (.1323)	-
Noncitizen	-	**6.667*** (.145)**	**21.954 (3.005)**	**7.703*** (.303)**
NONCIT $\bar{x}$	-	-	2.343 (1.248)	-
HISPANIC $\bar{x}$	-	-	.149* (.782)	.070*** (.499)
MEXICO $\bar{x}$	-	-	.014** (1.338)	.007*** (.684)
UNDOC $\bar{x}$	-	-	304.518* (2.597)	69053.551*** (1.016)
TRIAL $\bar{x}$	-	-	38.059 (5.927)	-
GUIDE MIN $\bar{x}$	-	-	1.001 (.002)	-
MULTIPLE $\bar{x}$	-	-	1.316 (.733)	-
COCAINE $\bar{x}$	-	-	.421 (1.191)	-
MARIJ $\bar{x}$	-	-	6.959* (.812)	16.202*** (.398)
WHITE $\bar{x}$	-	-	.125* (.888)	.182*** (.512)
AGE $\bar{x}$	-	-	.968 (.091)	-
NO HS $\bar{x}$	-	-	1.853 (1.811)	-
Hispanic	-	1.483*** (.032)	1.488*** (.032)	1.497*** (.033)
Undocumented	-	2.651*** (.090)	2.626*** (.090)	2.500*** (.089)
Age	-	**.991*** (.002)**	**.991*** (.002)**	**.991*** (.002)**
Asia	-	.241*** (.196)	.238*** (.200)	.244*** (.195)
Africa	-	.620 (.296)	.590 (.300)	.551* (.287)
Caribbean	-	**.395*** (.186)**	**.327*** (.209)**	**.321*** (.195)**
Latin America	-	.348*** (.176)	.328*** (.181)	.356*** (.179)
Other Countries	-	.402*** (.162)	.395*** (.166)	.416*** (.160)
Black	-	1.567*** (.033)	1.573*** (.033)	1.571*** (.033)
Female	-	**.380*** (.037)**	**.382*** (.038)**	**.384*** (.037)**
No High School	-	1.353*** (.026)	1.354*** (.026)	1.358*** (.026)
College	-	.742*** (.027)	.742*** (.027)	.743*** (.027)
Trial	-	3.008*** (.125)	3.006*** (.125)	2.992*** (.124)
Criminal History	-	1.743*** (.025)	1.744*** (.025)	1.734*** (.025)
Guideline Min	-	3.705*** (.010)	3.705*** (.010)	3.701*** (.010)
Multiple Offenses	-	**1.619*** (.055)**	**1.567*** (.053)**	**1.588*** (.053)**
Cocaine	-	**1.246*** (.066)**	**1.256*** (.067)**	**1.262*** (.065)**
Crack	-	**1.500*** (.067)**	**1.499*** (.068)**	**1.548*** (.068)**
Heroin	-	**1.544*** (.078)**	**1.540*** (.078)**	**1.502*** (.079)**
Meth	-	**1.639*** (.068)**	**1.641*** (.068)**	**1.663*** (.067)**
Other Drugs	-	**.705*** (.057)**	**.708*** (.056)**	**.698*** (.057)**
2000	-	**.972 (.084)**	**.951 (.083)**	**.957 (.082)**
2001	-	**.915 (.076)**	**.914 (.076)**	**.902 (.076)**
2002	-	**1.073 (.087)**	**1.055 (.088)**	**1.054 (.088)**
2003	-	**1.191 (.097)**	**1.171 (.096)**	**1.175 (.095)**
2004	-	**1.434*** (.104)**	**1.402*** (.103)**	**1.396** (.102)**

Table 12. (continued)

	Model 1 L2 Only	Model 2 Full	Model 3 Noncitizen Effects	Model 4 Final Model
2005	-	**1.309** (.0822)**	**1.298** (.083)**	**1.297** (.082)**
2006	-	**1.436*** (.948)**	**1.441*** (.096)**	**1.431*** (.094)**
2007	-	**1.454*** (.098)**	**1.430*** (.099)**	**1.444*** (.098)**
2008	-	**1.136 (.105)**	**1.114 (.106)**	**1.123 (.103)**
2009	-	**1.234 (.113)**	**1.212 (.113)**	**1.225 (.111)**
2010	-	**1.156 (.105**	**1.146 (.105)**	**1.134 (.104)**
2011	-	**1.089 (.106)**	**1.083 (.105)**	**1.067 (.104)**
2012	-	**1.231 (.111)**	**1.223 (.112)**	**1.209 (.110)**
2013	-	**1.126 (.117)**	**1.116 (.118)**	**1.113 (.115)**
Reliability	.964	.729	.720	.813
n (Level I)	335,308	335,308	335,308	335,308
n (Level II)	89	89	89	89
R^2 (Level II)	.20	.18	.25	.09
χ^2	3835.000***	619.653***	592.927***	1098.177***

*p < .05, **p < .01, ***p < .001, † significant at p < .10

Hypothesis 2B

The importance of controlling for spatial autocorrelation is particularly pronounced when comparing these findings to those without the weight matrix. The district level predictors appear greatly exaggerated without controlling for geographic proximity (see Table 13). Initially both analyses appear similar. When only examining level 2 predictors, the sentencing guideline mean is the only significant predictor. Like the weighted analysis, this variable is no longer significant across any of the other modes. The percent of offenders without a high school degree is also not significant in any of the unweighted models.

Once case level predictors are included in the analysis, unique distinctions begin to emerge. The district level predictors demonstrate much greater impacts on incarceration odds. For instance, while the percent of noncitizens increase incarceration odds by six times in the weighted Model 2, this increase reaches 37 for the unweighted model. Several of the district level predictors that are not significant in the weighted models appear statistically significant in the unweighted final model including the Hispanic, trial, and cocaine averages. That said, the values for main effects of trial and the cross-level interaction of documentation status on case level noncitizen outcomes appear highly inflated which is likely a product of severe variations in cases across districts (see Menard 2002). District level findings for the percent of noncitizen offenders and offender populations without high school degrees suggest cross-level interaction effects on incarceration odds for noncitizens unique to the final unweighted model.

Table 13: Models Predicting Incarceration at Level 2 without Spatial Weighting

	Model 1 L2 Only	Model 2 Full	Model 3 Interactions	Model 4 Final Model
NONCIT $\bar{x}$	7.095 (1.801)	36.706** (1.200)	32.495** (1.130)	29.398** (1.059)
HISPANIC $\bar{x}$	.883 (.907)	.158** (.664)	.130** (.638)	.129*** (.614)
MEXICO $\bar{x}$	2.830 (1.472)	.432 (1.067)	.248 (1.022)	.474 (.955)
UNDOC $\bar{x}$	.036 (3.397)	.211 (2.293)	.459 (2.176)	.209 (2.090)
TRIAL $\bar{x}$	44.938 (4.388)	1003.309† (3.733)	1205.284† (3.747)	1755.732* (2.898)
GUIDE MIN $\bar{x}$	1.005** (.002)	1.001 (.001)	1.001 (.001)	-
MULTIPLE $\bar{x}$	1.383 (.597)	.922 (.490)	1.021.488)	-
COCAINE $\bar{x}$	.578 (.974)	.190* (.795)	.176* (.780)	.229† (.753)
MARIJ $\bar{x}$	.537 (.749)	4.117* (.574)	5.046** (.557)	4.530 (.483)**
WHITE $\bar{x}$	1.619 (.687)	1.836 (.564)	1.313 (.554)	1.109 (.511)
AGE $\bar{x}$	.915 (.076)	.939 (.061)	.942 (.060)	-
NO HS $\bar{x}$	13.030 (1.567)	1.555 (1.281)	2.215 (1.259)	2.865 (1.142)
Noncitizen	-	**6.096*** (.128)**	**3.111 (3.085)**	**3.806 (.682)**
NONCIT $\bar{x}$	-	-	.238 (1.169)	.192† (.899)
HISPANIC $\bar{x}$	-	-	.182* (.800)	.228* (.710)
MEXICO $\bar{x}$	-	-	.006*** (1.274)	.010*** (.944)
UNDOC $\bar{x}$	-	-	8292.333*** (2.181)	4335.328*** (1.874)
TRIAL $\bar{x}$	-	-	10.794 (6.141)	-
GUIDE MIN $\bar{x}$	-	-	.999 (.002)	-
MULTIPLE $\bar{x}$	-	-	2.093 (.764)	-
COCAINE $\bar{x}$	-	-	.642 (1.154)	-
MARIJ $\bar{x}$	-	-	4.143† (.752)	3.109* (.547)
WHITE $\bar{x}$	-	-	.162* (.813)	.202* (.675)
AGE $\bar{x}$	-	-	1.004 (.087)	-
NO HS $\bar{x}$	-	-	14.479 (1.853)	14.990† (1.565)
Hispanic	-	1.461*** (.033)	1.462*** (.033)	1.462*** (.033)
Undocumented	-	**3.110*** (.149)**	**3.004*** (.145)**	**2.987*** (.143)**
Age	-	**.991*** (.002)**	**.991*** (.002)**	**.990*** (.002)**
Asia	-	.280*** (.190)	.271*** (.200)	.271*** (.199)
Africa	-	.627 (.284)	.589 (.293)	.585 (.292)
Caribbean	-	.363*** (.148)	.325*** (.168)	.325*** (.166)
Latin America	-	.445*** (.170)	.404*** (.184)	.404*** (.183)
Other Countries	-	.419*** (.152)	.408*** (.165)	.405*** (.163)
Black	-	**1.464*** (.049)**	**1.471*** (.048)**	**1.470*** (.048)**
Female	-	**.380*** (.037)**	**.380*** (.038)**	**.380*** (.038)**
No High School	-	1.347*** (.026)	1.347*** (.026)	1.347*** (.026)
College	-	.743*** (.027)	.743*** (.027)	.743*** (.027)
Trial	-	3.089*** (.126)	3.108*** (.126)	3.104*** (.126)
Criminal History	-	**1.810*** (.033)**	**1.809*** (.035)**	**1.810*** (.034)**
Guideline Min	-	**3.986*** (.030)**	**3.990*** (.030)**	**3.986*** (.030)**
Multiple Offenses	-	**1.598*** (.052)**	**1.593*** (.052)**	**1.587*** (.052)**
Cocaine	-	**1.183* (.066)**	**1.181* (.066)**	**1.180* (.066)**
Crack	-	**1.483*** (.071)**	**1.487*** (.071)**	**1.484*** (.071)**
Heroin	-	**1.487*** (.082)**	**1.484*** (.082)**	**1.488*** (.082)**
Meth	-	**1.536*** (.071)**	**1.547*** (.071)**	**1.545*** (.071)**
Other Drugs	-	**.683*** (.062)**	**.680*** (.061)**	**.679*** (.061)**
2000	-	**.932 (.084)**	**.933 (.084)**	**.937 (.084)**
2001	-	**.891 (.077)**	**.887 (.077)**	**.888 (.077)**
2002	-	**1.031 (.088)**	**1.030 (.089)**	**1.029 (.089)**
2003	-	**1.125 (.092)**	**1.124 (.94)**	**1.131 (.094)**
2004	-	**1.431*** (.104)**	**1.428*** (.105)**	**1.429*** (.104)**

Table 13. (continued)

	Model 1 L2 Only	Model 2 Full	Model 3 Interactions	Model 4 Final Model
2005	-	**1.262** (.086)**	**1.258* (.882)**	**1.265** (.088)**
2006	-	**1.407*** (.098)**	**1.401*** (.097)**	**1.409*** (.097)**
2007	-	**1.415*** (.097)**	**1.421*** (.097)**	**1.426*** (.098)**
2008	-	**1.095 (.107)**	**1.083 (.106)**	**1.083 (.106)**
2009	-	**1.192 (.114)**	**1.187 (.115)**	**1.188 (.115)**
2010	-	**1.106 (.108)**	**1.103 (.109)**	**1.108 (.109)**
2011	-	**1.044 (.106)**	**1.042 (.107)**	**1.046 (.107)**
2012	-	**1.174 (.112)**	**1.167 (.112)**	**1.718 (.112)**
2013	-	**1.071 (.115)**	**1.063 (.116)**	**1.067 (.115)**
Reliability	.964	.716	.718	.719
n (Level I)	335,308	335,308	335,308	335,308
n (Level II)	89	89	89	89
R^2 (Level II)	.32	.04	.04	.07
χ^2	3961.778***	833.660***	845.325***	821.540***

*p < .05, **p < .01, ***p < .001, † significant at p < .10

Hypothesis 4A & 4B

The assumption that demographics serving as proxies for citizenship status, or lack thereof, will disproportionately affect sentencing disparities is partially supported. Of district variables, the district mean for noncitizen offenders does not significantly impact incarceration odds. However, ethnicity, country of origin, and documentation mean are statistically significant predictors of noncitizen incarceration outcomes. While Hispanic, Mexican, and undocumented offender populations are frequently related to incarceration outcomes, this relationship is not always revealed in the anticipated direction. Of ethnicity proxies, only undocumented populations increase incarceration odds for noncitizens. Mexican and Hispanic offender populations are actually related to reduced odds of incarceration. This may be indicative of a nonlinear function for these populations as suggested by Feldmeyer and Ulmer (2011). Once again, this relationship is mediated by geographical proximity. Once spatially weighted, the strength of the relations declines, though remains statistically significant.

PRISON ALTERNATIVES

Greater district level variation is apparent for prison alternatives than for the overall incarceration outcome variable. This finding is congruent with expectations. The decision to incarcerate an offender when nonincarceration alternatives are available is a better measure of discretion than simple incarceration outcomes.

Districts with a greater number of marijuana cases demonstrate lower odds for prison alternatives (see Table 14). An increase in the guideline mean is related to a slight decrease in prison alternatives. Districts with a greater number of offenders with no high school degree demonstrate decreased odds of receiving a prison alternative. The remaining court related

district level predictors (trial mean and multiple offenses mean) are not related to the odds of receiving a prison alternative. Increases in white offender populations are related to a decrease in prison alternative odds. No other demographic predictors, including noncitizen, Hispanic, Mexico, undocumented, cocaine, and age are related to nonincarceration outcomes in the Model 1 (see Table 15).

The impact of district level variables is even greater with the introduction of level 1 predictors. The marijuana caseload continues to be affiliated with a decreased odds of prison alternatives. Cocaine, which was nonsignificant, is now approaching statistical significance. The guideline minimum continues to be inversely related to prison alternatives. Multiple offenses continue to fall short of statistical significance. Noncitizen means are now statistically related to decreased odds of receiving a prison alternative. An increase in the percent of Hispanic offenders is related to increased odds of nonincarceration options. An increase in white offenders are related to decreased odds of incarceration alternatives at a level approaching significance. Mexican populations, undocumented populations, trial caseloads, age averages, and the percent of offenders without a high school fail to achieve significance.

While most level 1 variables were found to be significant predictors of prison alternatives prior to the inclusion of level 2 variables (see Table 4), substantially fewer level 1 variables are related to the odds of receiving a prison alternative. Noncitizens, Hispanic offenders, Black offenders, those without a high school degree, those with a criminal history, higher guideline minimum, multiple offenses, and those who commit crack, heroin, and methamphetamine violations have significantly lower odds of receiving a prison alternative. Those from the Latin America, women, those with college degrees, and offenders who commit other drug violations have greater odds of receiving a prison alternative. Documentation status, age, Asian, African,

Caribbean, and other country origins, going to trial, and cocaine violations are not related to prison alternatives.

Hypothesis 2A

Although numerous district level predictors are related to the odds of receiving a prison alternative, some of these appear to specifically impact noncitizens. For instance, the Mexican origin mean is significantly related to an increased odds of prison alternatives for noncitizens. Increases in white offenders are related to increased odds of prison alternatives for noncitizens. The district level age mean is related to an increase in prison alternatives for noncitizens. This is one of the few instances in which the mean age of a district significantly predicts one of the four outcome variables. Greater marijuana caseloads are related to decreased odds of prison alternatives for noncitizens.

Several of these level 2 variables are also significance beyond interaction effects, demonstrating unique main effects on sentencing severity. Higher populations of noncitizen are related to reduced odds of receiving a prison alternative, though no interactions are discernable. Main effects can also be found for populations of offenders of Mexican descent at a level approaching significance. Greater numbers of Mexican and Hispanic offenders are related to increased odds of receiving prison alternatives. Undocumented, trial, multiple, white, age, and no high school means do not demonstrate any main effects. Of court related level 2 predictors, guideline minimums continue to reduce prison alternatives; however, trial caseloads and multiple offense means are not statistically significant. Cocaine caseloads increase the odds of prison alternatives while marijuana caseloads decrease these odds. The only level 1 change worth noting in Model 3 is documentation status and Latin American origins. Once level 2 effects on

noncitizen prison alternative outcomes are introduced, undocumented offenders demonstrate a statistically significant decrease in these odds, but Latin American offenders no longer differ from those of Mexican descent.

Once nonsignificant variables are removed from the model, a few minor changes become discernable. The Hispanic district mean is no longer significant in Model 4. The Mexican mean, which had previously approached significance, becomes statistically related to an increase in prison alternatives odds. Likewise, the guideline minimum mean, which previously approached significance, is related to a significant decrease in prison alternatives. All other district level predictors remain consistent.

Table 14: Models Predicting Prison Alternatives at Level 2 with Spatial Weighting

	Model 1 L2 Only	Model 2 Full	Model 3 Interactions	Model 4 Final Model
NONCIT $\bar{x}$	.155 (1.175)	.055*** (.805)	.062*** (.789)	.219** (.507)
HISPANIC $\bar{x}$	1.997 (.581)	2.262* (.404)	2.416* (.412)	2.070 (.374)
MEXICO $\bar{x}$	3.031 (1.028)	3.001 (.719)	3.778† (.721)	5.107** (.536)
UNDOCUME $\bar{x}$	2.145 (2.373)	19.179 (1.637)	13.933 (1.607)	-
TRIAL $\bar{x}$	.080 (3.167)	.031 (2.435)	.031 (2.635)	-
GUIDE MIN $\bar{x}$	.996** (.001)	.998* (.001)	.998† (.001)	.997*** (.001)
MULTIPLE $\bar{x}$	1.075 (.432)	1.362 (.330)	1.507 (.352)	-
COCAINE $\bar{x}$	2.387 (.714)	2.852† (.541)	3.731* (.568)	2.854* (.527)
MARIJ $\bar{x}$	.151*** (.531)	.247*** (.390)	.212*** (.396)	.152*** (.350)
WHITE $\bar{x}$	.341* (.520)	.485† (.394)	.696 (.426)	.634 (.371)
AGE $\bar{x}$	1.073 (.054)	1.012 (.041)	1.043 (.043)	1.042 (.039)
NO HS $\bar{x}$	.038** (1.124)	.467 (.837)	.369 (.870)	-
Noncitizen	-	.363*** (.094)	.0002** (2.985)	.00003*** (2.343)
NONCIT $\bar{x}$	-	-	.577 (1.030)	-
HISPANIC $\bar{x}$	-	-	2.052 (.689)	-
MEXICO $\bar{x}$	-	-	39.924** (1.277)	3.914* (.609)
UNDOCUME $\bar{x}$	-	-	.096 (2.054)	-
TRIAL $\bar{x}$	-	-	.299 (5.811)	-
GUIDE MIN $\bar{x}$	-	-	1.003 (.002)	-
MULTIPLE $\bar{x}$	-	-	1.581 (.786)	-
COCAINE $\bar{x}$	-	-	5.490 (1.155)	-
MARIJ $\bar{x}$	-	-	.107** (.784)	.110*** (.542)
WHITE $\bar{x}$	-	-	7.895* (.898)	5.565*** (.458)
AGE $\bar{x}$	-	-	1.241* (.091)	1.250*** (.067)
NO HS $\bar{x}$	-	-	.456 (1.680)	-
Hispanic	-	.763*** (.060)	.721*** (.061)	.717*** (.061)
Undocumented	-	**.922 (.137)**	**.596*** (.127)**	**.614*** (.124)**
Age	-	.998 (.002)	.999 (.002)	.999 (.002)
Asia	-	1.271 (.629)	.699 (.285)	.658 (.280)
Africa	-	**2.412 (.162)**	**1.799 (.662)**	1.581 (.638)
Caribbean	-	1.343 (.190)	.819 (.217)	.753 (.203)
Latin America	-	1.819** (.188)	1.279 (.222)	1.156 (.214)
Other Countries	-	1.289 (.188)	.778 (.214)	.735 (.206)
Black	-	.685*** (.055)	.686*** (.056)	.683*** (.055)
Female	-	1.557*** (.047)	1.569*** (.047)	1.575*** (.047)
No High School	-	.883** (.044)	.880** (.044)	.881** (.044)
College	-	1.192*** (.049)	1.199*** (.049)	1.197*** (.049)
Trial	-	1.085 (.129)	1.063 (.128)	1.055 (.128)
Criminal History	-	**.576*** (.063)**	**.596*** (.062)**	**.594*** (.062)**
Guideline Min	-	.783*** (.020)	.785*** (.021)	.786*** (.020)
Multiple Offenses	-	.875* (.062)	.878* (.062)	.886* (.061)
Cocaine	-	**.915 (.083)**	**.890 (.082)**	**.888 (.083)**
Crack	-	**.722*** (.098)**	**.727** (.098)**	**.723*** (.098)**
Heroin	-	**.712** (.112)**	**.718** (.114)**	**.714** (.113)**
Meth	-	**.793*** (.100)**	**.691*** (.097)**	**.691*** (.096)**
Other Drugs	-	**1.249* (.090)**	**1.254* (.090)**	**1.252* (.090)**
2000	-	1.080 (.129)	1.078 (.129)	1.087 (.129)
2001	-	.937 (.125)	.935 (.126)	.938 (.126)
2002	-	1.036 (.123)	1.028 (.124)	1.036 (.123)
2003	-	.687*** (.114)	.689*** (.115)	.689*** (.114)
2004	-	.696** (.120)	.688** (.120)	.692** (.120)
2005	-	.582*** (.122)	.568*** (.122)	.571*** (.122)

Table 14. (continued)

	Model 1 L2 Only	Model 2 Full	Model 3 Interactions	Model 4 Final Model
2006	-	.651*** (.123)	.638*** (.124)	.642*** (.123)
2007	-	.757* (.126)	.742* (.126)	.747* (.126)
2008	-	.800 (.123)	.789 (.123)	.797 (.123)
2009	-	.767* (.116)	739** (.117)	.741* (.116)
2010	-	.659*** (.126)	.665*** (.127)	.667*** (.127)
2011	-	.699** (.124)	.684** (.124)	.689** (.124)
2012	-	.575*** (.122)	.569*** (.122)	.572*** (.122)
2013	-	.537*** (.128)	.525*** (.129)	.532*** (.128)
Reliability	.782	.538	.505	.501
n (Level I)	15,823	15,823	15,823	15,823
n (Level II)	89	89	89	89
R^2 (Level II)	.35	.62	.68	.69
χ^2	485.081***	42.331***	42.137***	47.970***

*p < .05, **p < .01, ***p < .001, † significant at p < .10

Hypothesis 2B

These district level effects on incarceration alternatives are uniquely different when compared to the unweighted models (see Table 15). Without controlling for spatial autocorrelation, district level predictors appear over-exaggerated for the main effects while concealing several level 2 interactions. In the final unweighted model, Hispanic, and undocumented population means are significantly related to increased odds of receiving a prison alternative, but are not significantly in the final weighted model. Furthermore, the case level measure of citizenship status is not significant when spatial autocorrelation is not included. Finally age interaction effects, which are prominent in the weighted model, disappear in the unweighted model.

Table 15: Models Predicting Prison Alternatives at Level 2 without Spatial Weighting

	Model 1 L2 Only	Model 2 Full	Model 3 Interactions	Model 4 Final Model
NONCIT $\bar{x}$	.108† (1.168)	.216** (.561)	.162** (.569)	.195*** (.492)
HISPANIC $\bar{x}$	.536 (.612)	1.873† (.335)	1.930† (.356)	1.986* (.328)
MEXICO $\bar{x}$	2.652 (.991)	3.211* (.575)	3.943* (.606)	-
UNDOCUME $\bar{x}$	7.404 (2.217)	5.303 (1.087)	6.122 (1.114)	15.890*** (.800)
TRIAL $\bar{x}$	.086 (3.105)	.013* (2.133)	.004* (2.462)	.029* (1.763)
GUIDE MIN $\bar{x}$	.997** (.001)	.999 (.0001)	.999 (.001)	-
MULTIPLE $\bar{x}$	.039 (.418)	1.644† (.282)	1.758† (.316)	-
COCAINE $\bar{x}$	3.539† (.675)	2.320† (.439)	2.465† (.484)	-
MARIJ $\bar{x}$	.181*** (.506)	.248*** (.320)	.208*** (.344)	.272*** (.222)
WHITE $\bar{x}$	.536 (.474)	.722 (.322)	.899 (.362)	.844 (.268)
AGE $\bar{x}$	1.041 (.054)	.984 (.033)	1.001 (.037)	-
NO HS $\bar{x}$	.066* (1.089)	.880 (.687)	.885 (.773)	-
Noncitizen	-	**.646** (.160)**	**.004 (3.800)**	**.651 (.273)**
NONCIT $\bar{x}$	-	-	.200 (1.635)	-
HISPANIC $\bar{x}$	-	-	1.244 (.999)	-
MEXICO $\bar{x}$	-	-	13.544 (1.66)	-
UNDOCUME $\bar{x}$	-	-	.620 (3.025)	-
TRIAL $\bar{x}$	-	-	.002 (6.923)	-
GUIDE MIN $\bar{x}$	-	-	1.003 (.002)	-
MULTIPLE $\bar{x}$	-	-	1.948 (.910)	-
COCAINE $\bar{x}$	-	-	1.925 (1.329)	-
MARIJ $\bar{x}$	-	-	.148* (.917)	.117*** (.417)
WHITE $\bar{x}$	-	-	5.244† (.969)	4.385* (.584)
AGE $\bar{x}$	-	-	1.144 (.106)	-
NO HS $\bar{x}$	-	-	.936 (2.241)	-
Hispanic	-	.759*** (.063)	.753*** (.063)	.746*** (.062)
Undocumented	-	**.670** (.133)**	**.678** (.129)**	**.673** (.130)**
Age	-	.999 (.002)	.999 (.002)	.999 (.002)
Asia	-	.724 (.278)	.716 (.285)	.671 (.278)
Africa	-	.602 (.365)	.600 (.368)	.539 (.362)
Caribbean	-	.843 (.202)	.900 (.221)	.773 (.200)
Latin America	-	1.290 (.209)	1.380 (.223)	1.200 (.210)
Other Countries	-	.870 (.211)	.898 (.220)	.799 (.205)
Black	-	**.740*** (.070)**	**.731*** (.069)**	**.730*** (.069)**
Female	-	1.529*** (.047)	1.531*** (.047)	1.528*** (.047)
No High School	-	.878** (.044)	.877** (.044)	.877**(.044)
College	-	1.194*** (.049)	1.196*** (.050)	1.194*** (.049)
Trial	-	1.061 (.129)	1.060 (.129)	1.054 (.129)
Criminal History	-	.597 *** (.047)	.595*** (.047)	.595*** (.047)
Guideline Min	-	.798*** (.021)	.798*** (.021)	.798*** (.021)
Multiple Offenses	-	.900 (.062)	.900 (.062)	.909 (.061)
Cocaine	-	**.940 (.075)**	**.932 (.075)**	**.940 (.074)**
Crack	-	.796** (.078)	.799** (.078)	.798** (.078)
Heroin	-	**.764* (.116)**	**.753* (.119)**	**.764* (.116)**
Meth	-	**.741** (.096)**	**.737** (.095)**	**.729*** (.094)**
Other Drugs	-	**1.279** (.085)**	**1.297** (.085)**	**1.292** (.086)**
2000	-	1.108 (.130)	1.103 (.130)	1.105 (.130)
2001	-	.924 (.125)	.916 (.126)	.921 (.126)
2002	-	1.094 (.124)	1.092 (.124)	1.099 (.124)
2003	-	**.871 (.130)**	**.854 (.131)**	**.860 (.131)**
2004	-	.699** (.120)	.696** (.120)	.699** (.120)
2005	-	.566*** (.122)	.559*** (.123)	.560*** (.122)

Table 15. (continued)

	Model 1 L2 Only	Model 2 Full	Model 3 Interactions	Model 4 Final Model
2006	-	.643*** (.124)	.636*** (.124)	.639*** (.124)
2007	-	**.685* (.152)**	**.695* (.153)**	**.698* (.153)**
2008	-	**.871 (.149)**	**.876 (.149)**	**.866 (.149)**
2009	-	**.593*** (.136)**	**.593*** (.137)**	**.593*** (.137)**
2010	-	.672** (.128)	.669** (.128)	.671** (.128)
2011	-	**.658** (.140)**	**.654** (.140)**	**.655** (.139)**
2012	-	.565*** (.123)	.557*** (.123)	.558*** (.123)
2013	-	.542*** (.129)	.534*** (.129)	.539*** (.129)
Reliability	.778	.693	.679	.674
n (Level I)	15,823	15,823	15,823	15,823
n (Level II)	89	89	89	89
R^2 (Level II)	.47	.07	.04	.16
χ^2	487.817***	295.742***	261.540***	262.510***

*p < .05, **p < .01, ***p < .001, † significant at p < .10

Hypothesis 4A & 4B

Compared to incarceration decisions, noncitizen proxies are less frequently related to sentencing disparities for prison alternatives. District level Hispanic and undocumented population means are not significant predictors of this sentencing outcome. Neither main effects nor interaction effects are observed for ethnicity or documentation status. Of noncitizen proxies, only the Mexican country of origin mean is a significant predictor of prison alternatives. Increases in this population do not exhibit the hypothesized decrease in leniency. Instead, greater Mexican populations are related to increases the odds of receiving a departure broads as well as specifically for noncitizens. According to the unweighted model, Mexican population means are not related to prison alternatives. Instead, these models suggest that Hispanic and undocumented means are better predictors of prison alternatives, with no cross-level interaction effects among noncitizen proxies. This finding once again demonstrates the importance of controlling for geographic proximity.

SENTENCE LENGTH

Both court related and demographic variables appear to influence sentence length outcomes. Greater numbers of noncitizen offenders, white offenders, and larger marijuana caseloads are related to shorter sentence lengths prior to the addition of level 1 variables; though noncitizen and white means approach significance (see Table 16). Greater trial caseloads and higher guideline minimum means are also related to longer sentence lengths. Hispanic, documentation, multiple offense means, cocaine caseloads, white populations, and no high school means are not significant.

The inclusion of level 1 predictors reduces the impact of several of the district level variables. Trial caseloads, which were significant at the .05 level of significance, is reduced to a level approaching significance. Higher trial caseloads are related to longer sentences at a level approaching significance. The marijuana caseload is no longer statistically significantly related to sentence length. In fact, this is one of the few series of analysis in which the level 2 measures for cocaine and marijuana caseloads fail to achieve statistical significance. The guideline minimum mean, which was significant at the .001 level, is now significant at the .05 level. Noncitizen and documentation means are not significant. Ethnicity is significantly related to sentence length with increases in Hispanic and white offender means decreasing sentence length. The multiple offenses mean is not related to sentence length. Education and age also fail to achieve significance at the district level.

While nearly all of the level 1 legal variables are statistically significant with the additional of district level variables, several of the demographic predictors are not. Criminal history, guideline minimums, multiple offenses, and cocaine, crack, heroin, and methamphetamine violations are associated with longer logged sentence lengths. Hispanic offenders receive longer sentences compared to white offenders. Those from the Caribbean receive shorter sentences than their Mexican counterparts. Black offenders, those with no high school degree, and those who go to trial receive longer sentence lengths. Women and those with college degrees receive shorter sentences. Documentation status, age, Asian, African, Latin America, other country origins, and other drug violations are not statistically significant.

Hypothesis 2A

The inclusion of level 2 variables on the logged sentence length outcomes for noncitizens alters the significance of the level 1 noncitizen variable. According to Model 3 in Table 3, noncitizens receive longer sentences than their citizen counterparts, though citizenship status is not statistically significant. Of district level variables, the average of Hispanic and Mexican offenders as well as the guideline minimum average per district is significantly related to sentence length for noncitizens specifically, each of which reduce the sentence length for this population. None of the remaining district level variables appear to interact with citizenship for sentence length. The inclusion of district level interaction for noncitizens does not appear to substantially alter the level 2 main effects. Larger averages of Hispanic and white offenders are related to shorter overall sentence lengths. Conversely, districts with larger trial caseloads and higher guideline minimum averages often exhibit longer sentence lengths. Other than citizenship status, the inclusion of level 2 interactions does not alter any of the level 1 predictors substantially.

Several noteworthy trends emerge with the exclusion of nonsignificant predictors. The average number of cases with noncitizens becomes statistically related to a decrease in overall sentence lengths. Hispanic and white populations continue to be related to a decrease in sentence length. The guideline minimum average, though approaching significance, is no longer statistically significant. Conversely, the mean for Mexican origins and trial caseloads become significant in the final model. Being a noncitizen is also significant in the final model. While the noncitizen mean now increases sentence length for noncitizens, the Mexican mean, guideline minimum mean, and marijuana caseload continue to decrease sentence length for noncitizens.

Table 16: Models Predicting the Logged Sentence Length at Level 2 with Spatial Weighting

	Model 1 L2 Only	Model 2 Full	Model 3 Interactions	Model 4 Final Model
NONCIT $\bar{x}$	-1.147† (.631)	-.408* (.178)	-.227 (.146)	-.242** (.088)
HISPANIC $\bar{x}$	-.060 (.300)	-.155 (.097)	-.172* (.077)	-.138* (.069)
MEXICO $\bar{x}$	.859 (.532)	.027 (.158)	.189 (.142)	.219** (.080)
UNDOCUME $\bar{x}$	.540 (1.266)	.336 (.338)	-.0001 (.298)	-
TRIAL $\bar{x}$	3.215* (1.550)	1.635** (.536)	.877† (.486)	1.093* (.422)
GUIDE MIN $\bar{x}$	.002*** (.001)	.0001** (.000)	.0004* (.000)	.0003† (.000)
MULTIPLE $\bar{x}$	.135 (.213)	-.100 (.070)	.073 (.065)	-
COCAINE $\bar{x}$	-.532 (.355)	-.092 (.112)	-.102 (.105)	-
MARIJ $\bar{x}$	-1.438*** (.273)	-.117 (.082)	.018 (.077)	-.048 (.067)
WHITE $\bar{x}$	-.443† (.260)	-.355*** (.084)	-.332*** (.081)	-.273*** (.063)
AGE $\bar{x}$	-.009 (.026)	.007 (.009)	.012 (.008)	-
NO HS $\bar{x}$	.266 (.565)	.202 (.185)	.106 (.167)	-
Noncitizen	-	**.071*** (.009)**	**.283 (.174)**	**.120*** (.021)**
NONCIT $\bar{x}$	-	-	-.138* (.068)	.164*** (.032)
HISPANIC $\bar{x}$	-	-	.055 (.042)	-
MEXICO $\bar{x}$	-	-	-.199* (.077)	-.107* (.042)
UNDOCUME $\bar{x}$	-	-	.113 (.140)	-
TRIAL $\bar{x}$	-	-	-.223 (.337)	-
GUIDE MIN $\bar{x}$	-	-	-.0003* (.000)	-.0004*** (000)
MULTIPLE $\bar{x}$	-	-	-.046 (.043)	-
COCAINE $\bar{x}$	-	-	-.031 (.066)	-
MARIJ $\bar{x}$	-	-	-.072 (.045)	-.071* (.031)
WHITE $\bar{x}$	-	-	.031 (.055)	-
AGE $\bar{x}$	-	-	-.004 (.005)	-
NO HS $\bar{x}$	-	-	-.127 (.103)	-
Hispanic	-	**.111*** (.008)**	**.111*** (.008)**	**.111*** (.007)**
Undocumented	-	**.013 (.008)**	**.013 (.008)**	**.013 (.008)**
Age	-	**.0002 (.000)**	**.0002 (.000)**	**.0002 (.000)**
Asia	-	-.014 (.017)	-.019 (.017)	-.018 (.017)
Africa	-	-.033 (.020	-.035 (.020)	-.035 (.020)
Caribbean	-	-.030*** (.008)	-.033*** (.009)	-.033*** (.009)
Latin America	-	-.010 (.008)	-.011 (.009)	-.012 (.009)
Other Countries	-	**-.005 (.012)**	-.006 (.017)	**-.007 (.016)**
Black	-	**.116*** (.009)**	**.115*** (.009)**	**.116*** (.009)**
Female	-	**-.307*** (.016)**	**-.307*** (.016)**	**-.307*** (.016)**
No High School	-	**.016*** (.003)**	**.016*** (.003)**	**.016*** (.003)**
College	-	**-.074*** (.005)**	**-.074*** (.005)**	**-.074*** (.005)**
Trial	-	**.247*** (.006)**	**.248*** (.015)**	**.248*** (.015)**
Criminal History	-	**.135*** (.008)**	**.134*** (.008)**	**.134*** (.008)**
Guideline Min	-	**.770*** (.008)**	**.770*** (.009)**	**.770*** (.009)**
Multiple Offenses	-	**.144*** (.009)**	**.147*** (.009)**	**.148*** (.009)**
Cocaine	-	**.086*** (.010)**	**.087*** (.010)**	**.087*** (.010)**
Crack	-	**.151*** (.012)**	**.151*** (.013)**	**.151*** (.012)**
Heroin	-	**.128*** (.014)**	**.131*** (.014)**	**.131*** (.014)**
Meth	-	**.128*** (.013)**	**.130*** (.013)**	**.129*** (.013)**
Other Drugs	-	**-.020 (.013)**	**-.018 (.013)**	**-.019 (.014)**
2000	-	.001 (.006)	.0004 (.006)	.0004 (.006)
2001	-	.022*** (.006)	.021*** (.006)	.021*** (.006)
2002	-	.035*** (.006)	.035*** (.006)	.035*** (.006)
2003	-	.049*** (.006)	.080*** (.006)	.048*** (.006)
2004	-	.081*** (.006)	.080*** (.006)	.080*** (.006)
2005	-	.050*** (.006)	.050*** (.006)	.050*** (.006)

Table 16. (continued)

	Model 1 L2 Only	Model 2 Full	Model 3 Interactions	Model 4 Final Model
2006	-	.050*** (.006)	.050*** (.006)	.050*** (.006)
2007	-	.052*** (.006)	.051*** (.006)	.051*** (.006)
2008	-	.046*** (.006)	.045*** (.006)	.045*** (.006)
2009	-	.002 (.006)	.002 (.006)	.002 (.006)
2010	-	-.013* (.006)	-.013* (.006)	-.013* (.006)
2011	-	-.00003 (.006)	-.001 (.006)	-.001 (.006)
2012	-	-.040*** (.006)	-.042*** (.006)	-.042*** (.006)
2013	-	-.051*** (.006)	-.052*** (.006)	-.052*** (.006)
Reliability	.988	.968	.967	.966
n (Level I)	323,772	323,772	323,772	323,772
n (Level II)	89	89	89	89
R^2 (Level I)	-	.64	.65	.65
R^2 (Level II)	.64	.80	.81	.81
χ^2	17177.289***	8839.841***	7668.139***	7335.624***

*p < .05, **p < .01, ***p < .001, † significant at p < .10

Hypothesis 2B

Like incarceration and prison alternative decisions, sentence length outcomes differ with the omission of spatial autocorrelation (see Table 17). Although the main effects of the noncitizen mean are similar in both analyses, the unweighted model trivializes the main effects of the Hispanic and Mexican means on sentence length as well as interaction effects for marijuana and Hispanic district means for noncitizens. Furthermore, the unweighted models indicate significant main effects for multiple offenses as well as significant interactions for undocumented and multiple offense means. Failure to control for geographic proximity paints a very different picture of district level effects on sentence length.

Table 17: Models Predicting the Logged Sentence Length at Level 2 without Spatial Weighting

	Model 1 L2 Only	Model 2 Full	Model 3 Interactions	Model 4 Final Model
NONCIT $\bar{x}$	-1.193† (.617)	-.241* (.117)	-.277* (.124)	-.217* (.094)
HISPANIC $\bar{x}$	-.063 (.309)	-.035 (.067)	-.029 (.070)	-
MEXICO $\bar{x}$	.875† (.502)	.016 (.113)	.138 (.118)	.133† (.077)
UNDOCUME $\bar{x}$	.550 (1.161)	.120 (.227)	-.060 (.241)	-.076 (.208)
TRIAL $\bar{x}$	4.056** (1.491)	.394 (.414)	.445 (.422)	-
GUIDE MIN $\bar{x}$	.002*** (.001)	.001** (.000)	.001*** (.001)	.001*** (.000)
MULTIPLE $\bar{x}$	.101 (.203)	.114* (.054)	.142* (.055)	.175*** (.049)
COCAINE $\bar{x}$	-.364 (.330)	-.023 (.084)	-.020 (.086)	-
MARIJ $\bar{x}$	-1.408*** (.255)	.028 (.061)	.036 (.064)	-
WHITE $\bar{x}$	-.334 (.234)	-.117† (.065)	-.129† (.066)	-.086† (.048)
AGE $\bar{x}$	-.011 (.026)	.011 (.007)	.012† (.007)	-
NO HS $\bar{x}$	.526 (.533)	.164 (.139)	.203 (.143)	-
Noncitizen	-	**.071*** (.009)**	**.408* (.185)**	**.106*** (.019)**
NONCIT $\bar{x}$	-	-	.093 (.071)	-
HISPANIC $\bar{x}$	-	-	-.001 (.046)	-
MEXICO $\bar{x}$	-	-	-.305*** (.077)	-.330*** (.044)
UNDOCUME $\bar{x}$	-	-	.400** (.136)	.486*** (.064)
TRIAL $\bar{x}$	-	-	-.274 (.345)	-
GUIDE MIN $\bar{x}$	-	-	-.0002† (.000)	-.0002* (.000)
MULTIPLE $\bar{x}$	-	-	-.083† (.043)	-.102** (.036)
COCAINE $\bar{x}$	-	-	-.106 (.064)	-
MARIJ $\bar{x}$	-	-	-.037 (.045)	-
WHITE $\bar{x}$	-	-	.020 (.052)	-
AGE $\bar{x}$	-	-	-.007 (.005)	-
NO HS $\bar{x}$	-	-	-.145 (.107)	-
Hispanic	-	**.112*** (.007)**	**.112*** (.007)**	**.112*** (.007)**
Undocumented	-	**.015* (.007)**	**.015* (.007)**	**.015* (.007)**
Age	-	**.0003 (.000)**	**.0003 (.000)**	**.0003 (.000)**
Asia	-	-.018 (.017)	-.020 (.017)	-.019 (.017)
Africa	-	-.032 (.019)	-.034 (.020)	-.034 (.020)
Caribbean	-	-.031*** (.008)	-.034*** (.009)	-.034*** (.009)
Latin America	-	-.011 (.008)	-.014 (.009)	-.014 (.009)
Other Countries	-	**-.002 (.017)**	**-.005 (.017)**	**-.004 (.017)**
Black	-	**.115*** (.009)**	**.115*** (.009)**	**.115*** (.009)**
Female	-	**-.307*** (.016)**	**-.308*** (.016)**	**-.308*** (.016)**
No HS	-	**.014*** (.003)**	**.014 (.003)**	**.014*** (.003)**
College	-	**-.075*** (.005)**	**-.075*** (.005)**	**-.075*** (.005)**
Trial	-	**.242*** (.015)**	**.242*** (.015)**	**.243*** (.015)**
Criminal History	-	**.136 (.008)**	**.136*** (.008)**	**.136*** (.008)**
Guideline Min	-	**.771*** (.009)**	**.771*** (.009)**	**.771*** (.009)**
Multiple Offenses	-	**.147*** (.009)**	**.147*** (.009)**	**.147*** (.009)**
Cocaine	-	**.080*** (.010)**	**.080*** (.010)**	**.080*** (.010)**
Crack	-	.148*** (.011)	.148*** (.011)	.148*** (.011)
Heroin	-	**.123*** (.012)**	**.124*** (.012)**	**.123*** (.012)**
Meth	-	**.123*** (.013)**	**.124*** (.012)**	**.123*** (.012)**
Other Drugs	-	**-.019 (.013)**	**-.019 (.013)**	**-.019 (.013)**
2000	-	**.004 (.009)**	**.004 (.009)**	**.038 (.009)**
2001	-	**.023* (.010)**	**.023* (.009)**	**.022* (.009)**
2002	-	**.041*** (.010)**	**.040*** (.010)**	**.040*** (.010)**
2003	-	**.044*** (.012)**	**.043*** (.012)**	**.043*** (.012)**
2004	-	**.074*** (.013)**	**.074*** (.013)**	**.073*** (.013)**
2005	-	**.038** (.013)**	**.038** (.013)**	**.038** (.013)**

Table 17. (continued)

	Model 1 L2 Only	Model 2 Full	Model 3 Interactions	Model 4 Final Model
2006	-	**.039* (.016)**	**.039* (.016)**	**.038* (.016)**
2007	-	**.044** (.015)**	**.044** (.015)**	**.044** (.015)**
2008	-	**.036* (.017)**	**.035* (.017)**	**.035* (.017)**
2009	-	**-.011 (.018)**	**-.011 (.018)**	**-.012 (.018)**
2010	-	**-.035 (.019)**	**-.035 (.019)**	**-.036 (.019)**
2011	-	**-.026 (.017)**	**-.026 (.017)**	**-.026 (.017)**
2012	-	**-.056** (.018)**	**-.056** (.018)**	**-.056** (.018)**
2013	-	**-.071*** (.020)**	**-.071*** (.020)**	**-.070*** (.020)**
Reliability	.988	.968	.967	.967
n (Level I)	323,772	323,772	323,772	323,772
n (Level II)	89	89	89	89
R^2 (Level I)	-	.65	.65	.65
R^2 (Level II)	.66	.80	.80	.80
χ^2	16230.729***	7499.689***	7344.802***	7439.006***

*p < .05, **p < .01, ***p < .001, † significant at p < .10

Hypothesis 4A & 4B

While several theoretical population predictors associated with immigration, including country of origin and documentation status, are significantly related to sentencing severity, these district level predictors are not necessarily limited to noncitizens as anticipated. Increases in Mexican origins are related to more severe sentencing outcomes regarding sentence length. However, increases in Mexican offender populations appear to provide leniency for noncitizens to some extent. The percentage of Hispanic offenders, however, appears to decrease sentence length overall while demonstrating no notable effects on noncitizens specifically. While country of origin is the only proxy variable that specifically impacts sentence length for noncitizens in the weighted model, it is worth noting that the unweighted analysis finds significant interactions for noncitizens with Mexican and undocumented populations

DOWNWARD DEPARTURES

Like incarceration, downward departures do not initially appear to vary greatly across district. Of level 2 predictors, only the noncitizen mean is a significant predictor prior to the introduction of level 1 predictors (see Table 18). As the average number of noncitizen offenders increases, the odds of receiving a downward departure appears to decrease initially. All other district variables fail to achieve significance.

Once individual level predictors are included, the guideline minimum becomes significant at the .05 level. Like the noncitizen mean, guideline averages appear related to a decrease in the odds of receiving a downward departure. Noncitizen populations demonstrate an even greater reduced odds of departures in Model 2. Even with the introduction of district level predictors, noncitizens continue to be significantly less likely to receive a downward departure at

the individual level. Hispanic and documentation status are not significantly related to the odds of receiving a downward departure, however. Furthermore, offenders from Africa and other countries are more likely to receive a departure compared to Mexican offenders. Those from the Caribbean are less likely to receive a departure. Asia and Latin America are not statistically different from those from Mexico. Downward departures is the only dependent variable in which Black offenders do not differ from white offenders in their propensity to receive a downward departure. The odds of receiving a downward departure are greater for women compared to their male counterparts. Education is also related to departures. Those with some or a completed college degree are more likely to receive a departure compared to those with a high school degree, though those without a high school do not differ significantly. Most of the court related predictors remain significant. The odds of receiving a downward departure are lower for those with a criminal history as well as those with multiple offenses. Increases in guideline minimums actually increase the odds of receiving a sentencing departure. Of drug violations, cocaine, crack, and heroin are related to decreased odds of receiving a departure compared to marijuana. Other drugs are associated with greater odds of departures. Only methamphetamine violations do not differ significantly from marijuana.

Hypothesis 2A

While district level predictors do not initially appear to be valuable contributions to understanding citizenship disparities, once these effects on departures for noncitizens are included in the model, district level variables explain away the importance of citizenship status. The district's noncitizen offender mean, which was previously related to decreased odds of receiving a departure, is now related to a sizable increase in departure odds. As the only

remaining significant district level predictor, the guideline minimum average continues to be inversely related to departure odds. Only the Mexican offender population and marijuana caseloads demonstrate a cross level interaction for noncitizens. Mexican means are related to a decrease in departures while marijuana means increase these odds, but at a level approaching significance.

Once the model is limited to significant predictors, a few noteworthy changes are discernable. The main effects of the noncitizen mean is substantially smaller and reduced to a level approaching significance. The marijuana caseload becomes significant for the first time at the main level. The guideline minimum continues to be related to reduced departure odds. The interaction effects remain steady with Mexican means decreasing departure odds for noncitizens and marijuana means increasing these odds. Of level 1 predictors, only the guideline minimum differs from previous models. This variable is not significantly related to the odds of receiving a downward departure in Model 4. All other level 1 predictors remain similar.

Table 18: Models Predicting Downward Departures at Level 2 with Spatial Weighting

	Model 1 L2 Only	Model 2 Full	Model 3 Interactions	Model 4 Final Model
NONCIT $\bar{x}$	.972** (1.332)	.538* (1.148)	12.733* (1.122)	3.393† (.662)
HISPANIC $\bar{x}$	1.272 (.635)	1.886 (.564)	1.839 (.557)	1.120 (.531)
MEXICO $\bar{x}$	.691 (1.124)	.304 (.987)	.285 (.973)	-
UNDOCUME $\bar{x}$	.019 (2.676)	.230 (2.310)	.272 (2.255)	-
TRIAL $\bar{x}$	1.828 (3.291)	4.534 (3.038)	2.960 (3.035)	-
GUIDE MIN $\bar{x}$	.999 (.001)	.997* (.001)	.998* (.001)	.997** (.001)
MULTIPLE $\bar{x}$	.937 (.452)	.755 (.413)	.774 (.411)	-
COCAINE $\bar{x}$	1.872 (.753)	2.403 (.683)	2.470 (.679)	-
MARIJ $\bar{x}$	.696 (.578)	.425 (.519)	.476 (.514)	.251** (.434)
WHITE $\bar{x}$	1.713 (.552)	1.426 (.501)	1.436 (.499)	-
AGE $\bar{x}$	.972 (.056)	.956 (.051)	.964 (.051)	-
NO HS $\bar{x}$	.402 (1.199)	.538 (1.095)	.561 (1.089)	-
Noncitizen	-	**.840*** (.038)**	**.540 (.949)**	**.920 (.060)**
NONCIT $\bar{x}$	-	-	1.366 (.424)	-
HISPANIC $\bar{x}$	-	-	.459** (.260)	.705** (.120)
MEXICO $\bar{x}$	-	-	1.192 (.416)	-
UNDOCUME $\bar{x}$	-	-	2.088 (.867)	-
TRIAL $\bar{x}$	-	-	.180 (1.880)	-
GUIDE MIN $\bar{x}$	-	-	1.001 (.001)	-
MULTIPLE $\bar{x}$	-	-	1.086 (.234)	-
COCAINE $\bar{x}$	-	-	1.120 (.356)	-
MARIJ $\bar{x}$	-	-	1.661* (.249)	1.268† (.138)
WHITE $\bar{x}$	-	-	1.096 (.286)	-
AGE $\bar{x}$	-	-	1.013 (.028)	-
NO HS $\bar{x}$	-	-	.715 (.594)	-
Hispanic	-	**1.025 (.038)**	**1.017 (.039)**	**1.010 (.038)**
Undocumented	-	**.999 (.038)**	**.998 (.037)**	**.998 (.038)**
Age	-	**1.002* (.001)**	**1.002 (.001)***	**1.002* (.001)**
Asia	-	**1.170 (.109)**	**1.179 (.106)**	**1.170 (.104)**
Africa	-	1.283*** (.077)	1.277** (.079)	1.290*** (.078)
Caribbean	-	.883** (.039)	.894** (.043)	.890** (.040)
Latin America	-	.943 (.039)	.952 (.041)	.947 (.040)
Other Countries	-	1.123* (.051)	1.113* (.053)	1.120* (.051)
Black	-	**1.012 (.030)**	**1.011 (.030)**	**1.010 (.030)**
Female	-	**1.410*** (.025)**	**1.412*** (.025)**	**1.412*** (.026)**
No High School	-	**.976 (.016)**	**.975 (.017)**	**.982 (.012)**
College	-	1.052*** (.015)	1.053*** (.015)	1.047** (.015)
Trial	-	1.149*** (.026)	1.148*** (.026)	1.149*** (.026)
Criminal History	-	.774*** (.013)	.774*** (.013)	.773*** (.013)
Guideline Min	-	1.214*** (.006)	1.214*** (.006)	1.214 (.006)
Multiple Offenses	-	.954*** (.014)	.954*** (.014)	.954 (.014)
Cocaine	-	.752*** (.017)	.751*** (.017)	.753*** (.017)
Crack	-	**.934* (.030)**	**.936* (.030)**	**.938* (.030)**
Heroin	-	.816*** (.024)	.940*** (.024)	.817*** (.024)
Meth	-	**.941 (.041)**	**.940 (.041)**	**.943 (.041)**
Other Drugs	-	**1.204*** (.041)**	**1.202*** (.041)**	**1.205*** (.042)**
2000	-	.953 (.029)	.953 (.029)	.952 (.030)
2001	-	1.172*** (.028)	1.172**** (.028)	1.172**** (.028)
2002	-	1.132*** (.028)	1.132 **** (.028)	1.132**** (.028)
2003	-	.765*** (.030)	.765**** (.030)	.765**** (.030)
2004	-	2.394*** (.027)	2.394**** (.270)	2.393**** (.027)
2005	-	.633*** (.032)	.633**** (.032)	.633**** (.032)

Table 18. (continued)

	Model 1 L2 Only	Model 2 Full	Model 3 Interactions	Model 4 Final Model
2006	-	.743*** (.030)	.742*** (.020)	.743*** (.030)
2007	-	.770*** (.030)	.770*** (.030)	.770*** (.030)
2008	-	.968 (.029)	.968 (.029)	.968 (.029)
2009	-	1.334*** (.028)	1.3333*** (.028)	1.334*** (.028)
2010	-	1.615*** (.027)	1.614*** (.027)	1.615*** (.027)
2011	-	1.501*** (.027)	1.500*** (.027)	1.501*** (.027)
2012	-	1.537*** (.027)	1.536*** (.027)	1.538*** (.027)
2013	-	1.580*** (.029)	1.579 *** (.028)	1.581*** (.028)
Reliability	.979	.936	.936	.943
n (Level I)	335,596	335,596	335,596	335,596
n (Level II)	89	89	89	89
R^2 (Level II)	.21	.05	.19	.08
χ^2	9343.220***	3979.357***	3969.013***	3491.691***

*p < .05, **p < .01, ***p < .001, † significant at p < .10

Hypothesis 2B

Without the inclusion of a weight matrix addressing geographic proximity, several of the district level interactions on the odds of receiving a downward departure for noncitizens are suppressed while others are exaggerated (see Table 19). While the final weighted model found district level interactions for only Mexico and marijuana, several significant district level predictors are observable in the unweighted model. For instance, noncitizen and Mexican means are related to a decreased departure odds for noncitizens. Hispanic means are related to increased odds for this population. Marijuana means continue to increase departure odds for noncitizens. Likewise, several of the main effects differ greatly between the weighted and unweighted models. Mexican origins and greater populations of those without high school degrees are related to decreased departure odds that are not present in the weighted models. Undocumented populations and cocaine caseloads are related to increased odds that are not present in the weighted models.

Table 19: Models Predicting Downward Departures at Level 2 without Spatial Weighting

	Model 1 L2 Only	Model 2 Full	Model 3 Interactions	Model 4 Final Model
NONCIT $\bar{x}$	54.651** (1.329)	.290† (.669)	.427 (.689)	.290* (.621)
HISPANIC $\bar{x}$	1.460 (.667)	2.294* (.371)	1.910† (.382)	1.953† (.347)
MEXICO $\bar{x}$	.659 (1.084)	.095*** (.598)	.096*** (.618)	.102*** (.555)
UNDOCUME $\bar{x}$	.026 (2.504)	304.786*** (1.275)	242.385*** (1.316)	389.518*** (1.212)
TRIAL $\bar{x}$	.737 (3.230)	6.038 (2.147)	2.273 (2.224)	
GUIDE MIN $\bar{x}$	.999 (.001)	.997*** (.001)	.998** (.001)	.998*** (.001)
MULTIPLE $\bar{x}$	.985 (.439)	.949 (.279)	1.020 (.288)	
COCAINE $\bar{x}$	1.421 (.714)	2.082† (.438)	1.742 (.454)	2.369* (.394)
MARIJ $\bar{x}$	.743 (.551)	.308*** (.323)	.387** (.335)	.355*** (.311)
WHITE $\bar{x}$	1.407 (.505)	.910 (.326)	.841 (.337)	
AGE $\bar{x}$	.981 (.056)	.970 (.035)	.976 (.037)	
NO HS $\bar{x}$	.296 (1.154)	.183* (.728)	.142* (.752)	.195* (.655)
Noncitizen	-	**.845*** (.034)**	**.453 (.948)**	**.816*** (.056)**
NONCIT $\bar{x}$	-	-	2.460* (.375)	1.926** (.209)
HISPANIC $\bar{x}$	-	-	.561* (.244)	.595** (.177)
MEXICO $\bar{x}$	-	-	.916 (.383)	-
UNDOCUME $\bar{x}$	-	-	1.053 (.749)	-
TRIAL $\bar{x}$	-	-	.045† (1.780)	-
GUIDE MIN $\bar{x}$	-	-	1.001† (.001)	-
MULTIPLE $\bar{x}$	-	-	1.202 (.212)	-
COCAINE $\bar{x}$	-	-	.610 (.320)	-
MARIJ $\bar{x}$	-	-	1.798* (.230)	1.368* (.122)
WHITE $\bar{x}$	-	-	.799 (.261)	-
AGE $\bar{x}$	-	-	1.029 (.027)	-
NO HS $\bar{x}$	-	-	.477 (.532)	-
Hispanic	-	**.939* (.027)**	**.938* (.028)**	**.938* (.028)**
Undocumented	-	**.955 (.028)**	**.954 (.028)**	**.955 (.028)**
Age	-	**.999 (.001)**	**.999 (.001)**	**.999 (.001)**
Asia	-	**1.228 (.104)**	**1.215 (.108)**	**1.223 (.106)**
Africa	-	1.196* (.081)	1.194* (.083)	1.191* (.082)
Caribbean	-	**.978 (.063)**	**1.001 (.072)**	**.976 (.065)**
Latin America	-	1.027 (.041)	1.028 (.044)	1.025 (.042)
Other Countries	-	1.167** (.051)	1.160** (.054)	1.159** (.053)
Black	-	**.947 (.028)**	**.947 (.028)**	**.948 (.028)**
Female	-	**1.454*** (.026)**	**1.453*** (.026)**	**1.453*** (.026)**
No High School	-	**.993 (.016)**	**.993 (.016)**	**.993 (.016)**
College	-	1.083*** (.015)	1.083*** (.015)	1.083*** (.015)
Trial	-	**1.190*** (.052)**	**1.190*** (.052)**	**1.191*** (.052)**
Criminal History	-	**.784*** (.025)**	**.783*** (.026)**	**.784*** (.025)**
Guideline Min	-	**1.272*** (.017)**	**1.272*** (.017)**	**1.272*** (.017)**
Multiple Offenses	-	**.918** (.031)**	**.918** (.031)**	**.918** (.031)**
Cocaine	-	**.880*** (.029)**	**.879*** (.029)**	**.880*** (.029)**
Crack	-	**1.051 (.037)**	**1.051 (.037)**	**1.050 (.037)**
Heroin	-	**.890* (.045)**	**.890* (.045)**	**.890* (.045)**
Meth	-	**1.024 (.040)**	**1.024 (.040)**	**1.024 (.040)**
Other Drugs	-	**1.303*** (.049)**	**1.303*** (.049)**	**1.303*** (.048)**
2000	-	**1.064 (.054)**	**1.063 (.054)**	**1.062 (.054)**
2001	-	**1.192* (.067)**	**1.190* (.670)**	**1.188* (.067)**
2002	-	**1.139* (.060)**	**1.137* (.060)**	**1.137* (.060)**

Table 19. (continued)

	Model 1 L2 Only	Model 2 Full	Model 3 Interactions	Model 4 Final Model
2003	-	**.777*** (.062)**	**.777*** (.062)**	**.776*** (.062)**
2004	-	**5.955*** (.154)**	**5.951*** (.155)**	**5.945*** (.155)**
2005	-	**1.400** (.111)**	**1.397** (.111)**	**1.396** (.111)**
2006	-	**1.635*** (.102)**	**1.635*** (.102)**	**1.632*** (.102)**
2007	-	**1.645*** (.106)**	**1.645*** (.106)**	**1.642*** (.106)**
2008	-	**2.045*** (.107)**	**2.043*** (.107)**	**2.040 *** (.107)**
2009	-	**2.833*** (.112)**	**2.828*** (.112)**	**2.827*** (.112)**
2010	-	**3.593*** (.118)**	**3.587*** (.118)**	**3.587*** (.118)**
2011	-	**3.451*** (.114)**	**3.447 *** (.115)**	**3.444*** (.115)**
2012	-	**3.630*** (.119)**	**3.629*** (.119)**	**3.626*** (.119)**
2013	-	**3.802*** (.121)**	**3.800*** (.121)**	**3.796*** (.121)**
Reliability	.979	.916	.913	.913
n (Level I)	335,596	335,596	335,596	335,596
n (Level II)	89	89	89	89
R^2 (Level II)	.32	.05	.09	.09
χ^2	9946.190***	2663.850***	2487.260***	2604.745***

*p < .05, **p < .01, ***p < .001, † significant at p < .10

Hypothesis 4A & 4B

As with the previous outcome variables, noncitizen proxies only somewhat appear related to sentencing disparities. Mexican and undocumented district means do not appear related to departure leniency. Only ethnicity mediates the effects of citizenship status on departure outcomes. Larger Hispanic offender populations are related to a decrease in the odds of receiving a departure for noncitizens, but demonstrate no main effects in the weighted model. All three proxies (ethnicity, country of origin, and undocumented populations) demonstrate significant main effects without the spatial weight matrix. Hispanic and undocumented populations appear to increase departure odds while Mexican populations decrease these odds. Research examining these district level proxies without controlling for spatial proximity would likely reach the conclusion that minority threat not only applies through increases in the disadvantaged subgroup, but is impacted by increases in populations associated with the subgroup as well. Weighting these findings, however, limits the significance of these predictors.

DISCUSSION

Noncitizens are disproportionately punished within the criminal justice system. This disparity is frequently influenced by the district in which the case is decided, supporting the work of Albonetti (1997), Cano and Spohn (2012), Demleitner and Sands (2002), Light (2014), and Maxfield and Burchfield (2002). Upon examination of key variables, Hypothesis 2a is partially supported with noncitizen populations frequently influencing sentencing outcomes. Furthermore, the effects of citizenship status on sentencing severity appears to fluctuate greatly with the introduction of district level predictors. Likewise, Hypothesis 4a is only somewhat supported with ethnicity rarely impacting sentencing severity, though country of origin and

documentation status demonstrate more promising results. Even when theoretically relevant district variables are associated with sentencing outcomes, these variables do not consistently reveal themselves in a manner compatible with theoretical expectations.

Caseload Predictors

Several district level measures were included to examine whether caseload predictors are related to sentencing severity. It is possible that districts with high caseloads can be prone to attributional errors more so than districts with smaller caseloads. With fewer cases going to trial, judges will be less inclined to speed through cases, suggesting that the "assembly line justice" may exacerbate inequality (Lydgate 2010). However, the results of this study rarely support this argument. The trial caseloads do not demonstrate any main effects or cross-level interactions for decisions to incarcerate, utilization of prison alternatives, or applications of downward departures. Only sentence length is potentially influenced by trial caseloads. The relationship between caseload and sentence length does exhibit the hypothesized relationship with increases in trial related to increases in the logged sentence length. While this relationship demonstrates main effects, the trial caseload penalty does not demonstrate any cross-level interactions for noncitizens. Therefore, if the number of cases that go to trial are related to sentencing severity, this penalty is not specific to noncitizens but rather impacts all offenders suggesting that a hurried court system is not the primary mechanism under which inequality is manifested.

Although the overall trial caseload is not often related to sentencing severity, the type of cases per district may influence the frequency in which attributions are applied. Districts that must manage more severe offenses might be more cautious with sentencing decisions considering that the penalty for such crimes is more severe. Because federal sentencing

guidelines are determined according to criminal history and offense severity, the aggregated guideline minimum average is able to act as a proxy for district level severity. Thus districts with higher guideline scores are expected to be related to overall sentencing severity, but should not demonstrate any interaction effects for noncitizens while controlling for legally relevant level 1 variables. The results of this study are mixed. The main effects of the guideline minimum average is either significant or approaching significance for all variables except for incarceration outcomes, though the effects are somewhat small in all models. As predicted, the caseload severity does not increase citizenship effects for incarceration, prison alternatives, or downward departure outcomes. An interaction effect is present for sentence length. Districts with higher measures for the severity proxy have lower sentence lengths for noncitizens suggesting that noncitizens may demonstrate a slight advantage in districts with more severe cases.

Finally, because this study focuses on drug violations, it may be the case that districts plagued with specific types of drug crimes might be quicker to rely on attributions and stereotypes. Immigrants of various ethnicities have long been associated with drug violations (see Chapter 2). Currently, Mexican and Latino immigrants are of particularly concern within political rhetoric and are often associated with marijuana and cocaine respectively (Patenostro 1995). Therefore, districts with greater numbers of drug violations associated with these populations are expected to rely on stereotypes and attributions to a greater extent than other districts. Specific drug caseloads are expected to demonstrate multiplicative effects in which noncitizens are more likely to receive severe sentences in districts with greater cocaine and marijuana caseloads. The results of this study partially supports this argument. Marijuana caseloads demonstrate main effects for incarceration outcomes and prison alternatives, but not sentence length or departures while cocaine caseloads exhibit main effects only for prison

alternatives. Not only does the marijuana caseload demonstrate overarching effects in several models, this variable appears to particularly impact noncitizens. Noncitizens are disproportionately more likely to receive a prison sentence and less likely to receive a prison alternative in districts with greater amounts of marijuana violations. While marijuana caseloads appear to increase severity for noncitizens for two of the dependent variables, cocaine caseloads are not significant for noncitizens in any of the models. This is likely because rhetoric identifying an immigration threat emphasizes Mexican immigrants more frequently than their Latin American counterparts and thus there are more attributions from which to reference for this nationality.

Theoretical Predictors

The results of this analysis further demonstrates that districts serving greater portions of noncitizens and foreign proxies demonstrate differential sentencing practices to some extent. Districts with larger noncitizen populations may demonstrate more severe sentencing outcomes overall; however, the impact of noncitizen populations on sentencing severity is expected to exhibit a more prominent effect on noncitizens. This finding is partially supported. Only the use of prison alternatives is entirely unaffected by noncitizen populations in the final model for both main effects and interactive ones. For incarceration effects, the noncitizen average does not broadly impact incarceration decisions but rather slightly decreases the odds of incarceration specifically for noncitizens. Conversely, the noncitizen average broadly increases the odds of receiving a downward departure but does not specifically influence these odds for noncitizens. Only the sentence length findings support Group Threat theory in the anticipated manner. Contrary to the findings of Light (2014), increases in the noncitizen population are related to

significant sentence length reductions in the main model but sentence length increases for noncitizens. These findings suggest that, to some extent, larger populations of noncitizen offenders in a given district not only frequently increase the severity for noncitizens but can be affiliated with leniency for other populations.

Terminology affiliated with the "illegal immigrant" debate is rarely ethnically neutral. The rhetoric often references or draws imagery suggestive of Hispanic, often Mexican, immigrants. The underlying message is that these outsiders enter the U.S. "illegally" and are therefore a threat (see Chapter 1). It is possible that increases in the populations associated with immigrants may place noncitizens at disadvantage. Therefore, these district level variables were included. The average percent of noncitizen offenders are frequently related to increased severity while the percent of Hispanic offenders per district is often associated with leniency. In fact, of the four dependent variables, the Hispanic population demonstrates lenient main effects for incarceration and sentence length. When examining the population effects on noncitizens, increases in the percent Hispanic decrease incarceration odds and increase prison alternative odds, but reduce the odds of a departure for noncitizens. Increases in the percent of noncitizens per district are related to a decrease in prison alternatives but do not specifically effect noncitizens, a decrease in overall sentence length but an increase in sentence length for noncitizens, and an increase in overall departures but no effects for noncitizens.

Increases in undocumented offenders in a given district rarely impacts sentencing outcomes. Though not significant at the main level, increases in the undocumented averages are related to an exorbitant spike in the odds of incarceration specifically for noncitizens. Larger percentages of undocumented noncitizens does not appear to affect any other sentencing decisions in the weighted models. This finding is contrary to expectations. Although political

rhetoric focuses on "illegal immigrants," noncitizen and Hispanic offender populations appear to influence sentencing outcomes to a much greater extent than undocumented populations, suggesting the potential lack of distinction between these two groups at the aggregate level, although documentation status often remains a significant case level predictor.

Although ethnicity and documentation demonstrate inconsistent effects on sentencing outcomes for noncitizens, the country of origin is of particular importance. Increases in Mexican offenders surprisingly decrease the odds of incarceration for noncitizens but do not appear to impact incarceration odds overall. The percent of offenders from Mexico demonstrates main effects increasing the odds of receiving a prison alternative. This variable also increases the odds of receiving a prison alternative for noncitizens. Likewise, the district average measurement for Mexican offenders are related to a decrease in sentence length as well as a decrease in sentence length for noncitizens. Increases in the Mexican population is related to a decreased odds of receiving a downward departure in general, but increase departure odds for noncitizens.

In sum, district level caseloads impact sentencing severity. The importance of these variables not only influence sentencing outcomes for all drug offenders but frequently mediate and moderate the effects of citizenship status on sentencing outcomes. Of the district level measures, caseload proxies frequently influence incarceration decisions, prison alternatives, and sentence length. The implications of these relationships reinforce the importance of practical limitations within sentencing decisions as anticipated by Focal Concerns. However, demographic proxies are more valuable for understanding the effects of citizenship status on sentencing decisions. Of demographic predictors, Mexican populations are particularly influential for noncitizen sentencing outcomes. Not all demographics operate in the direction theoretically assumed. Increases in noncitizen and Mexican populations often provide

noncitizens with a sentencing advantage. This counterintuitive finding may be a product of the curvilinear nature of these populations. As these populations begin to increase, formal controls are more heavily relied upon. Once the outgroup reaches a certain growth point, however, the increase in political and social power negate the previous disadvantage (see Chapter 4). Furthermore, because this dataset is an aggregation of sentencing outcomes over a 15 year span, unique temporal distinctions may exist. Chapter 8 will utilize growth models to examine longitudinal trends in the effects of citizenship status on sentencing disparities.

CHAPTER 8

LONGITUDINAL TRENDS

Sentencing disparities between citizens and noncitizens vary in prevalence across time. With the so many significant district level and caseload predictors impacting sentencing outcomes (see Chapter 7), longitudinal variation is likely present. Caseload predictors and district demographics are not static, but rather time variant. Therefore, this entire chapter is dedicated to exploring Hypothesis 2C and Hypothesis 4C.

INCARCERATION DECISIONS

The utilization of incarceration as a means of social control has shifted across time, ultimately escalating since 1999. This trend is far from linear, however. According to the growth curve analysis (see Table 20), time as a linear predictor fails to achieve significance across all of the models. The inclusion of the squared term is positive and statistically significant ($p<.01$). Thus, viewing time as curvilinear suggests that the effect of time is convex with an overall increase. This curvilinear shape is not perfectly symmetrical, though. The cubed year term is also statistically significant ($p<.001$), demonstrating that the effects of year on incarceration outcomes are actually much more complex than a mere U-shaped pattern.

A series of dummy variables were added to the level 1 and level 2 tables so that distinct annual variations could be scrutinized. The year 1999 was omitted as the reference category so that yearly changes could be compared to the earliest source of data. According to the fixed models, (see Table 4), all of the years, with the exception of 2000-2002 and 2011, demonstrate a significant increase in the use of incarceration. Only the years 2000 and 2001 appear to

demonstrate a decreased use of incarceration, though these years fail to achieve statistical significance. A similar pattern emerges when year is permitted to vary, though to a somewhat lesser extent (see Table 5). Years 2000 through 2003 do not differ significantly from 1999. Beginning in 2004, however, a distinct increase in the application of incarceration becomes apparent with an increased likelihood of incarceration of 1.4 times. This trend continues for four years with comparable increased odds until 2008, after which no years demonstrate statistically significant shifts in the use of incarceration compared to 1999. These findings do not differ in the level 2 unweighted or weighted models (see Tables 12 and 13).

Several district level predictors were also included within the growth curve analysis, several of which were found to be significantly related to incarceration outcomes. For instance, cocaine and marijuana district means are both related to a decrease in incarceration at a level approaching significance. The guideline minimum mean is inversely related to an increase in incarceration. The trial caseload and multiple offense district variable were not statistically significantly related to incarceration, however. Furthermore, while the education and White population means failed to achieve significance, age averages are related to a decrease in imprisonment. Of theoretical variables, only the Hispanic mean achieved significance, with noncitizens, Mexico, and undocumented averages failing to effect incarceration. In accordance with the aforementioned hypotheses, increases in Hispanic populations are related to an increase in incarceration means.

Table 20: Models Predicting Incarceration using Growth Curve Analysis

	Model 1 Year	Model 2 Theoretical Variables	Model 3 Demographics	Model 4 Caseload	Model 5 Final Model
Year	-.001 (.002)	-.001 (.002)	-.001 (.002)	-.001 (.002)	-.001 (.002)
Year²	.0009** (.000)	.0009** (.000)	.0009** (.000)	.0009** (.000)	.0009** (.000)
Year³	-.00005*** (.000)	-.00005*** (.000)	-.00005*** (.000)	-.00005*** (.000)	-.00005*** (.000)
NONCITIZEN $\bar{x}$	-	-.008 (.079)	.030 (.082)	.011 (.081)	-
HISPANIC $\bar{x}$	-	.013 (.044)	.011 (.044)	.055 (.045)	.045* (.017)
MEXICO $\bar{x}$	-	.041 (.044)	.044 (.044)	.047 (.051)	-
UNDOCUMENT $\bar{x}$	-	-.017 (.156)	-.095 (.157)	-.087 (.156)	-
WHITE $\bar{x}$	-	-	-.013 (.026)	-.006 (.027)	-
AGE $\bar{x}$	-	-	-.005* (.002)	-.005* (.002)	-.005* (.002)
NO HS $\bar{x}$	-	-	-.020 (.055)	-.042 (.058)	-
TRIAL $\bar{x}$	-	-	-	.061 (.108)	-
GUIDE MIN $\bar{x}$	-	-	-	.00004 (.000)	.00005* (.000)
MULTIPLE $\bar{x}$	-	-	-	.020 (.026)	-
COCAINE $\bar{x}$	-	-	-	-.040 (.033)	-.051† (.027)
MARIJUANA $\bar{x}$	-	-	-	-.043† (.025)	-.041† (.023)
Reliability	.924	.936	.928	.928	.924
n (Level I)	89	89	89	89	89
n (Level II)	15	15	15	15	15
R^2 (Level I)	.32	.32	.32	.32	.32
R^2 (Level II)	.02	.02	.06	.14	.19
χ^2	1360.648	1313.683***	1214.731***	1048.981***	1087.018***

*p < .05, **p < .01, ***p < .001, † significant at p < .10

PRISON ALTERNATIVES

As anticipated, the reliance on prison alternatives inversely mirrors that of incarceration. The linear measure of year, though positive, is not statistically significant. The squared term, however, is negatively related to the use of prison alternatives ($p<.05$), demonstrating a non-linear decline. As with incarceration outcomes, prison alternatives exhibit asymmetrical patterns, with a positive cubed value for year.

The mirrored similarities persist when examining the dichotomous measures for year in the level 1 and level 2 tables. Like imprisonment outcomes, prison alternatives do not differ significantly from 1999 during years 2000-2002 (see Table 6). In 2003, a significant decline in the utilization of prison alternatives for drug offenders becomes apparent, occurring only one year prior to the change in incarceration outcomes. Each year since 2003 demonstrates lower odds of imprisonment alternatives compared to 1999. One unique divergence from incarceration is apparent in the lack of variation across year. Unlike imprisonment outcomes, only 2009 and 2011 vary across time for alternatives to prison (see Table 7). Permitting these two years to vary does not substantially alter the composition of the findings. Furthermore, while the inclusion of level 2 variables does not transform the outcome for incarceration, notable variations are present in the level 2 tables for prison alternatives. For instance, the decline in the use of prison alternative does not begin until 2004; the year 2009 is also no longer significant (see Table 15). This suggests that differential caseloads across these years may explain the decline in prison alternatives. These two years are outliers, however, with all other years (beginning in 2004) demonstrating a continued significant decline in alternatives to incarceration compared to 1999 in both unweighted and weighted models.

While controlling for time, increases in district level noncitizen means continue to be related to a decline in prison alternatives. Though the Mexican mean initially appears significantly related, the effects of this variable fade with the introduction of other demographic district factors including the White mean and age average. Like noncitizens, increase in White populations reduce the use of prison alternatives. Increases in the age average increase the use of prison alternatives. Finally, the drug caseload impacts the use of prison alternatives. Surprisingly, higher cocaine caseloads are related to an increase in prison alternatives while higher marijuana caseloads are related to a decrease in alternatives, though the cocaine variable only approaches significance.

Table 21: Models Predicting Prison Alternative using Growth Curve Analysis					
	Model 1 Year	Model 2 Theoretical Variables	Model 3 Demographics	Model 4 Caseload	Model 5 Final Model
Year	.011 (.016)	.010 (.016)	.011 (.016)	.011 (.016)	.011 (.016)
Year^2	-.006* (.003)	-.006* (.003)	-.006* (.003)	-.006* (.003)	-.006* (.003)
Year^3	.0003* (.000)	.0003* (.000)	.0003* (.000)	.0003* (.000)	.0003* (.000)
NONCITIZEN $\bar{x}$	-	.229 (.291)	-.003 (.297)	-.171 (.278)	-..0003* (.000)
HISPANIC $\bar{x}$	-	-.157 (.162)	-.158 (.162)	-.058 (.157)	-
MEXICO $\bar{x}$	-	-.346* (.162)	-.268 (.163)	.010 (.178)	-
UNDOCUMENT $\bar{x}$	-	.214 (.577)	.425 (.572)	.129 (.541)	-
WHITE $\bar{x}$	-	-	-.219* (.097)	-.209* (.094)	-.162* (.078)
AGE $\bar{x}$	-	-	.017* (.009)	.016† (.008)	.015* (.007)
NO HS $\bar{x}$	-	-	.039 (.200)	.164 (.201)	-
TRIAL $\bar{x}$	-	-	-	.257 (.377)	-
GUIDE MIN $\bar{x}$	-	-	-	-.0002† (.000)	
MULTIPLE $\bar{x}$	-	-	-	.002 (.089)	-
COCAINE $\bar{x}$	-	-	-	.244* (.112)	.170† (.095)
MARIJUANA $\bar{x}$	-	-	-	-.319*** (.086)	-.324*** (.072)
Reliability	.668	.641	.620	.540	.528
n (Level I)	89	89	89	89	89
n (Level II)	15	15	15	15	15
R^2 (Level I)	.06	.06	.06	.06	.06
R^2 (Level II)	.07	.18	.25	.46	.49
χ^2	268.603***	235.522***	214.294***	166.343***	179.308***

*p < .05, **p < .01, ***p < .001, † significant at p < .10

SENTENCE LENGTH

While the application of incarceration and prison alternatives reveal the nuanced complexities of longitudinal change, sentence length exhibits a much more direct pattern. Both the squared and cubed year measures fail to achieve significance (see Table 22). Only the linear predictor achieves statistical significance with an increased value of 2.2. This finding is consistent with the introduction of theoretical, demographic, and caseload predictors.

According to level 1 mixed effects table (see Table 9), the length of incarceration increases every year for eight years beginning in 2001. Furthermore, each of these annual increases is greater than its predecessor from 2001 to 2004. Though the extent of the increase drops in 2005, the sentence length remains longer than the reference group until 2008. The sentence length is not significant for years 2009 through 2011. It is not until 2012 and 2013 that a notable decline in sentence length is apparent compared to 1999. Similar patterns emerge in the fixed effects models (see Table 8) with the exception of years 2011 and 2012. When year is not permitted to vary, 2011 is significantly related to longer sentences than the reference category and 2012 becomes nonsignificant. As with the previous dependent variables, the inclusion of district level predictors does not modify these findings.

Several district level predictors were found to be significant when controlling for year. Of theoretical variables, the percent of noncitizen offenders is the only variable that is consistently nonsignificant across all models. The Hispanic mean is related to a decrease in sentence length, though this disappears in Model 4 with the introduction of caseload predictors. The average for undocumented offenders is related to a decrease in sentence length while the mean for Mexico is related to an increase. Interestingly, both marijuana and cocaine caseload

proxies were found to be inversely related to sentence lengths. As expected, the guideline minimum mean is positively related to sentence length.

Table 22: Models Predicting Sentence Length using Growth Curve Analysis					
	Model 1 Year	Model 2 Theoretical Variables	Model 3 Demographics	Model 4 Caseload	Model 5 Final Model
Year	.022* (.010)	.022* (.010)	.022* (.010)	.022* (.010)	.022* (.010)
Year^2	.0001 (.002)	.0001 (.002)	.0001 (.002)	.0001 (.002)	.0001 (.002)
Year^3	-.0002 (.000)	-.0002 (.001)	-.0002 (.000)	-.0002 (.000)	-.0002 (.000)
NONCITIZEN $\bar{x}$	-	.538 (.773)	.477 (.817)	.156 (.658)	-
HISPANIC $\bar{x}$	-	-.876* (.430)	-.916* (.444)	-.088 (.369)	-
MEXICO $\bar{x}$	-	.469 (.426)	.538 (.443)	.753† (.418)	.627† (.359)
UNDOCUMENT $\bar{x}$	-	-1.307 (1.525)	-1.490 (1.569)	-1.789 (1.273)	-1.567* (.623)
WHITE $\bar{x}$	-	-	-.290 (.264)	-.246 (.219)	-
AGE $\bar{x}$	-	-	-.009 (.023)	-.0009 (.019)	-
NO HS $\bar{x}$	-	-	.109 (.546)	-.238 (.471)	-
TRIAL $\bar{x}$	-	-	-	.732 (.881)	-
GUIDE MIN $\bar{x}$	-	-	-	.0005* (.000)	.0006*** (.000)
MULTIPLE $\bar{x}$	-	-	-	.160 (.208)	-
COCAINE $\bar{x}$	-	-	-	-.722 (.264)	-.711815** (.236)
MARIJUANA $\bar{x}$	-	-	-	-1.160 (.205)	-1.204*** (.190)
Reliability	.984	.981	.981	.969	.968
n (Level I)	89	89	89	89	89
n (Level II)	15	15	15	15	15
R^2 (Level I)	.08	.08.033	.39	.19	.34
R^2 (Level II)	.002	.14	.75	.75	.75
χ^2	5409.291***	4470.268***	4188.836***	2484.8552***	2607.385***

*p < .05, **p < .01, ***p < .001, † significant at p < .10

DOWNWARD DEPARTURES

The popularity of downward departures is especially interesting. The application of downward departures portrays a particularly complex trend, one that is somewhat bimodal in appearance. All three year measures (linear, squared, and cubed) were found to be statistically significant. The linear and cubed year variables are positively related to departures while the squared measure indicated a negative correlation, suggesting a lack of linearity.

Furthermore, when examining each dichotomous year, the emerging trend for downward departures is particularly unique. This is the only dependent variable for which every year differs from the reference category in both the fixed and random effects models. According to the mixed effects findings (see Table 11), from 2000 through 2008, each year demonstrates a reduced odds of receiving a downward departure compared to the year 1999 (with the brief exception of the year 2004). For the majority of this time span, each passing year is associated with a smaller decreased odds of receiving a departure. This pattern reverses in 2009 with an increased odds of receiving a departure compared to 1999. The odds of receiving a departure continue to be greater for the years 2010 until 2013. Only the year 2004 appears to be an outlier with a particularly sharp increase in departure odds of 2.6 times. Findings are differ somewhat in the fixed effects models (see Table 10). According to this table, departure odds demonstrate a brief increase in odds for 2001 and 2002, then shift to an odds reduction from 2003 through 2008. The odds then increase once again from 2009 through 2013, though 2004 continues to stand out with a sharp odds increase. The inclusion of district level predictors does not appear to alter this pattern (see Table 19).

Even when controlling for year, several district level variables remain significantly related to the downward departure mean. Of theoretical variables, only ethnicity is significant.

This relationship was not revealed to demonstrate the anticipated inverse relationship. Instead, increases in Hispanic offenders are related to greater means of downward departures. Citizenship, Mexico, and Undocumented means fail to achieve significance. None of the caseload predictors (including trial caseload, average guideline minimum, multiple offense mean, and cocaine and marijuana caseloads) were found to be significant. Finally, of the remaining district level predictors, including the percentage of White offenders, the average age, and the percentage of offenders without a high school degree, only education was found to be related to downward departures. Increases in the district mean for no high school are related to reductions in downward departures.

Table 23: Models Predicting Downward Departure using Growth Curve Analysis					
	Model 1 Year	Model 2 Theoretical Variables	Model 3 Demographics	Model 4 Caseload	Model 5 Final Model
Year	.019*** (.006)	.019*** (.004)	.019*** (.006)	.019*** (.006)	.019*** (.006)
Year^2	-.002* (.001)	-.002** (.001)	-.002* (.001)	-.002* (.001)	-.002* (.001)
Year^3	.0001* (.000)	.0001* (.000)	.0001* (.000)	.0001* (.000)	.0001* (.000)
NONCITIZEN $\bar{x}$	-	.072 (.142)	.121 (.146)	.095 (.153)	-
HISPANIC $\bar{x}$	-	.077 (.079)	.117 (.079)	.133 (.086)	.192*** (.042)
MEXICO $\bar{x}$	-	-.168* (.078)	-.161* (.079)	-.111 (.097)	-
UNDOCUMENT $\bar{x}$	-	.249 (.280)	.235 (.280)	.195 (.296)	-
WHITE $\bar{x}$	-	-	.036 (.079)	.049 (.051)	-
AGE $\bar{x}$	-	-	-.003 (.004)	-.003 (.004)	-
NO HS $\bar{x}$	-	-	-.218* (.097)	-.217† (.109)	-.226* (.092)
TRIAL $\bar{x}$	-	-	-	-.102 (.205)	-
GUIDE MIN $\bar{x}$	-	-	-	.00007 (.000)	-
MULTIPLE $\bar{x}$	-	-	-	.015 (.048)	-
COCAINE $\bar{x}$	-	-	-	.050 (.061)	-
MARIJUANA $\bar{x}$	-	-	-	-.009 (.048)	-
Reliability	.832	.795	.786	.792	.794
n (Level I)	89	89	89	89	89
n (Level II)	15	15	15	15	15
R^2 (Level I)	.14	.14	.14	.14	.14
R^2 (Level II)	.05	.19	.24	.21	.20
χ^2	524.691***	409.647***	377.632***	364.809***	416.844***

*p < .05, **p < .01, ***p < .001, † significant at p < .10

DISCUSSION

Time is statistically significantly related to sentencing severity for all four dependent variables. The strength and appearance of this variable differs for each outcome variable. Incarceration outcomes exhibit a convex curvilinear trend which is mirrored by the concave curvilinear pattern observable for prison alternatives. Neither of these variables are perfectly symmetrical with both variables demonstrating more than one curve. Unlike incarceration and prison alternatives, sentence length appears to be increasing over time in a somewhat linear fashion. Like prison alternatives, downward departures demonstrate an asymmetrical concave trend. Overall, it appears as though federal sentencing practices have become more severe over time.

Furthermore, the introduction of time mediates several of the district level effects on the dependent variables. Once year is included, the percent of noncitizen offenders per district is no longer significant, indicating that this variable changes a great deal over time. Inversely, age and guideline minimum become significant in the growth curve models demonstrating that changes in time fail to explain the importance of these variables for incarceration outcomes. Similar findings are apparent for prison alternatives. When controlling for year, the average offender age, the percentage of White offenders, and the cocaine caseload become significant. Ethnicity and documentation status, however, are no longer significant in the growth models. Citizenship status is significant in both the nested and growth models.

The effects of time on sentencing outcomes are not limited to incarceration and prison alternative decisions. Though significant in the nested models, citizenship status, multiple offenses, and White district caseloads are no longer significant predictors of sentence length in the growth models. Surprisingly, several of the district level variables are no longer significant

predictors in the growth models. Only ethnicity and educational attainment are significant for the growth models while citizenship status, Mexico, documentation, guideline average, cocaine, and marijuana measures disappear in these models.

CHAPTER 9

DISCUSSION AND CONCLUSION

Inequality at the sentencing level is apparent, with noncitizens and Latino/a defendants experiencing a distinct disadvantage. This inequality, however, is influenced by the sociohistorical context of time and place. The results of this study support nearly all of the hypothesized relationships, contributing to current theoretical understandings of sentencing inequality. Though limitations exist, the findings from this study can be used to identify several policy modifications.

ANALYTICAL SYNOPSIS

The results of this study support many of the hypotheses of this study. Hypothesis 1, which argued that noncitizens receive more severe sentencing outcomes, is fully supported. Of theoretical variables, citizenship status is the only variable significant across all level 1 fixed effects and mixed effects models. Specifically, noncitizens suffer from consistent disadvantage across all four sentencing decisions. Though occasionally mediated by legal and extralegal predictors, the effects of citizenship status are never fully explained by these factors. In fact, noncitizen disadvantage is frequently worsened with legal controls, demonstrating a suppression effect.

This disadvantage is not consistent across all districts, frequently supporting Hypothesis 2. Noncitizen offender populations demonstrate main effects on weighted prison alternatives, sentence length, and downward departure as well as unweighted incarceration, prison alternatives, sentence length, and downward departure. While these populations are related to

shorter sentence lengths and increases in downward departures (according to the weighted models), increases in these populations are related to more punitive incarceration decisions, even when prison alternatives are an option. Despite the introduction of level 2 main effects, case level citizenship status continues to be frequently related to sentencing severity in the weighted models. It is not until cross-level interactions are examined that the effects of being a noncitizen disappear. The noncitizen offender population appears to demonstrate a cross level interaction for case level noncitizens for the weighted sentence length as well as for the unweighted downward departure outcomes. The inclusion of district level predictors on citizenship status negates the significance of this case level variable for weighted downward departures and unweighted incarceration and prison alternative outcomes. The variations in level 2 effects between the weighted and unweighted models demonstrates that spatial autocorrelation does play a role in sentencing outcomes. District level predictors not only vary according to geographical proximity, but shift over time as well. According to the growth curve analysis, time is statistically significant across all models. When examining longitudinal variation in the growth models, noncitizen offender populations are no longer significant for incarceration, sentence length, or downward departures.

Sentencing disadvantage is also frequently evident for Hispanic offenders, providing moderate support for Hypothesis 3. Hispanic defendants receive more punitive sentencing outcomes across all decisions with the exception of departures, for which they do not differ from their white counterparts in the mixed effects models. Although the importance of ethnicity is not entirely explained by legal variables, it does appear to be somewhat mediated with a distinct lessoning of severity once these factors are included in the analysis.

Once again, the effects of ethnicity vary across time and district as anticipated in Hypothesis 4. Hispanic offender populations demonstrate main effects for weighted incarceration outcomes and sentence length as well as unweighted incarceration, prison alternatives, and downward departure decisions. This variable is also interacts with noncitizens for weighted downward departures and unweighted incarceration and downward departures. Like citizenship status, the effects of ethnicity vary between the weighted and unweighted models, demonstrating the importance of spatial autocorrelation. Time further impacts the effects of ethnicity on sentencing severity. Hispanic populations are not significant in the growth models for prison alternatives and sentence length but does appear to be related to increases in incarceration and downward departures. The accumulation of these findings synthesizes several unique theoretical perspectives into a cohesive understanding of sentencing disparities resulting from differential decision making.

Focal Concerns

Blameworthiness, the extent to which the defendant deserves punishment, is one of the three elements focal concern. The results of this study support the contention that sentencing severity is likely affected by courtroom actors' interpretations of blameworthiness (Feldmeyer and Ulmer 2011; Steffensmeier et al 1998). Because noncitizen offenders are perceived as being particularly deviant as a product of violating the laws in a country for which he/she is not a citizen, they are frequently perceived as being more at fault for their crimes (Demleitner and Sands 2002; Hartley and Armendariz 2011; Logue 2009). In support of this theory, the results of this study indicate that noncitizens are disadvantaged across all four sentencing outcomes. In

fact, this is the only theoretical variable that is significant across all level 1 fixed effects and mixed effects model (see Table 4 and Table 5).

The effects of citizenship status on the likelihood of receiving a prison sentence is significant, with an increase in incarceration odds for noncitizens. This relationship is astounding with an increased odds of incarceration of 6.64 times greater than their citizen counterparts in the final level 1 mixed effects model. Though the effects of being a noncitizen are less in the mixed effects model than the fixed effects model, it remains the strongest predictor of incarceration outcomes, surpassing both legal and other extralegal factors by far. Likewise, of those eligible for prison alternatives, noncitizens are less likely to receive a nonincarceration sentence compared to U.S. citizen. The odds of receiving a prison alternative are 64% lower for noncitizens. Once incarcerated, noncitizens receive longer sentences. Noncitizens receive a 7.4% increase in sentence length when controlling for legal factors. Finally, noncitizens are less likely to receive a downward departure.

Not only are noncitizens perceived as more deserving of severe sentencing, this punitiveness is especially directed at undocumented noncitizens who suffer from a double stigmatization as a result of crime commission while entering the country illegally (Demleitner and Sands 2002; Hartley and Armendariz 2011; Logue 2009). Those who enter the country without documentation are often portrayed as especially blameworthy throughout rhetoric. Therefore, documentation status is expected to affect severity beyond citizenship status. The results of this study only somewhat support this theoretical argument.

Undocumented offenders are more likely to receive a prison sentence with an increased odds of 2.63 according to the final mixed effects model (see Table 5). Likewise, undocumented offenders are less likely to receive a prison alternative, receive longer sentence lengths, and are

less likely to receive a downward departure according to the fixed effects models. However, unlike with citizenship, documentation status is not statistically significantly related to the odds of receiving a prison alternative, the sentence length, or the odds of receiving a downward departure once legal variables are added to the mixed effects models.

Steffensemeier and colleagues (1998) not only argue that blameworthiness impacts sentencing outcomes, but legal factors are suggested to contribute to sentencing decisions as well in an effort to protect the community. To ensure public safety, those who participate in particularly severe crimes are more likely to be punished severely. Likewise, those with a propensity for future criminality are also likely to be severely sentenced. Of case level predictor variables, legal factors are among the most consistently significant effects in this study. Criminal history, the guideline minimum, and the violation of multiple offenses increase the odds of incarceration and the length of the sentence, while decreasing the odds of receiving a nonincarceration outcome. Both criminal history and the commission of multiple violations decrease the odds of receiving a downward departure; however, the guideline minimum is surprisingly related to an increase in the odds of receiving a downward departure.

Likewise, the type of drug offense committed is often related to sentencing outcomes. Violations involving Crack and Heroin are more likely to result in incarceration, are less likely to receive a prison alternative, receive longer sentence lengths, and are less likely to receive a downward departure compared to Marijuana violations. Cocaine related offenders are more likely to be incarcerated, receive longer prison sentences, and are less likely to receive a downward departure compared to marijuana offenders, but do not differ for prison alternatives. Methamphetamine violations are associated with increased odds of incarceration, reduced odds of receiving a prison alternative, and longer sentences, but do not differ from marijuana

violations for departure decisions. All other drug offenders are less likely be incarcerated and are more likely to receive a downward departure, but do not differ from marijuana for prison alternatives or sentence length.

While legal variables are significant predictors of sentencing severity, they fail to entirely explain inequality, suggesting that protecting the community is not the most important concern for decision makers. The importance of ethnicity is slightly mediated by legal factors in the anticipated direction, but persists for all but one outcome. The relationship between being Hispanic and receiving a downward departure is the only one in which ethnicity is not significant. Likewise, documentation status remains significant for incarceration outcomes despite legal controls. This variable is not significant in any of the other full models in the mixed effects tables. Interestingly, being a noncitizen is the only variable consistently related to more severe effects with the introduction of legal variables. Once legal variables are introduced, noncitizen disadvantage is exacerbated for incarceration outcomes, prison alternatives, sentence length, and departure outcomes.

The third element of focal concern is practical limitations (Steffensmeier et al 1998; Steffensmeier and Demuth 2006). Larger caseloads, limited prison space, and countless other restrictions influence decision making. Because these practical constraints are likely to vary across place, the means for the predictors are likely to vary. In partial support of this hypothesis, many of the case level variables, including both legal and extralegal factors, were found to vary significantly. When specific caseload variables are included in the level 2 models, caseload proxies are only somewhat related to sentencing severity. The district mean for trial caseloads is only significantly related to sentence length in the weighted model, but related to incarceration and prison alternatives in the unweighted models. The severity average for each district

significantly impacts prison alternatives and downward departures in the weighted models and downward departures in the unweighted models. Multiple offense caseloads is only related to sentence length outcomes in the unweighted model. Of caseload measures, marijuana and cocaine district means were among the most frequently significant variables. Cocaine caseloads effects prison alternatives in the weighted models and incarceration and downward departures in the unweighted models. Marijuana caseloads are related to the unweighted incarceration, prison alternative, and downward departure and the weighted incarceration prison alternative, and downward departure.

Attribution theory, from which focal concern was inspired, states that variations in caseloads will likely increase the utilization and application of stereotypes (Albonetti 1986; Albonetti 1991). Ethnicity and country of origin may be used as proxies for criminality (Demuth 2002; Johnson et al 2011). Because various drugs are often affiliated with Mexican and Latin American countries, offenders from these countries may be construed as especially criminogenic. Furthermore, because those from the Mexico and Latin America are labeled as Hispanic (Feldmeyer and Ulmer 2011; Hartley and Armendariz 2011), all members of this ethnicity may be assumed to be from these countries.

As anticipated, sentencing disadvantage is particularly discernible for Hispanic offenders as well as those from Mexico. In fact, the inclusion of the country of origin in the level 1 models, though often significant, fails to explain the effects of ethnicity. This finding is likely a product of the overgeneralization of Mexican stereotypes to all Latinos. The effects of citizenship status are particularly severe for Mexican offenders, with all other country origins, except for Africa, demonstrating lower odds of incarceration compared to this reference category. Those from the Caribbean and Latin America are more likely to receive a prison

alternative with no countries demonstrating lower odds than Mexico. Surprisingly, no relationship was found for country of origin and sentence length. Africa and other countries have greater odds of receiving a downward departure. The only instance in which a particular country is treated more severely is the Caribbean which has lower odds of receiving a departure compared to Mexico.

Even when controlling for country of origin, Hispanic offenders continue to demonstrate sentencing disadvantage. Hispanic offenders are more likely to receive a prison sentence, less likely to receive a prison alternative, and receive longer sentence length compared to white offenders. In fact, the odds of receiving a downward departure outcome is the only variable in which ethnicity is nonsignificant in the final mixed model. Though Hispanic offenders are more likely to receive a departure in the fixed model, once allowed to vary, this relationship is no longer significant.

In sum, each of the focal concerns postulates were at least partially supported. Legal variables are statistically significant and related to each of the four dependent variables, demonstrating that courtroom decision makers do, in fact, consider the safety of the community when reaching decisions. However, these legal variables do not explain the effects of extralegal variables on sentencing outcomes. As frequently suggested in the literature (see Demleitner and Sands 2002; Hartley and Armendariz 2011; Logue 2009), noncitizen offenders, and especially undocumented noncitizen offenders, are viewed as particularly at fault for their crimes. The consistent severity faced by noncitizens, and frequent severity directed toward undocumented noncitizens, supports the notion that offenders portrayed as especially blameworthy receive more punitive outcomes. Finally, the finding that both legal and extralegal factors frequently vary across districts and that permitting them to vary in the analytical model often alters the outcome

is suggestive that courtroom variations influence sentencing outcome, a finding consistent with the practical constraints argument of focal concerns. Furthermore, though not directly testing this theoretical assertion, stereotypes and attributions appear to affect sentencing outcomes. Ethnicity and country of origin are related to sentencing outcomes.

That said, when examining the effects of caseload measures specifically on sentencing severity for noncitizens, only marijuana caseloads frequently interact with this variable. Trial caseloads, sentencing severity, and multiple offense averages rarely indicate a specific effect on sentencing outcomes for noncitizens, a finding somewhat incompatible with attribution theory. It may be that noncitizens are disproportionately blamed for spikes in marijuana offenses, a drug violation often associated with Mexican immigrants (Musto 1999).

Group Threat

Supporters of group threat theory argue that increases in the population of a particular outgroup will be met with heightened punitiveness in an effort to control this population (Berg 2013; Blalock 1967; Johnson et al 2011; Wang and Mears 2009). Therefore, communities with larger numbers of noncitizens are likely to apply more severe punishment for this group. Because courtrooms can be viewed as unique communities, it may be the case that growing numbers of noncitizens adjudicated in a given district are also likely to affect severity for this demographic. Districts with greater noncitizen means are expected to punish noncitizens more severely. This district level variable, however, is not expected to impact sentencing outcomes for other populations. The results of this study partially support this theory.

Once district level measures are introduced, unique contextual variations emerge. Noncitizen offender populations somewhat influence severity for noncitizen sentencing severity,

though not always in the hypothesized direct. For instance, district level noncitizen means do not demonstrate an overall impact on incarceration, but actually decrease the odds of incarceration for noncitizens. In support of this theory, however, districts with larger noncitizen means are associated with a decrease in overall sentence length, but an increase in sentence length for noncitizens. Increases in this population do not impact prison alternatives. Noncitizen mean increases are related to an increase in overall utilization of downward departures, but not disproportionately impact noncitizens.

Though it is possible that undocumented noncitizen population increases could demonstrate a greater hardening effect for noncitizens, this was only occasionally found to be the case. Districts with greater numbers of undocumented noncitizens demonstrate an overall increase in incarceration odds. This relationship is astoundingly high for noncitizens. However, the relationship is not manifested in the anticipated manner for any other outcome variables. Undocumented averages are not related to prison alternatives or downward departures. Though districts with greater caseloads with undocumented noncitizens are related to an increase in sentence length, this is not specific to noncitizens.

Increases in attributions often associated with noncitizens are somewhat related to sentencing severity for noncitizens. In fact, as the only district level variable consistently found to be significant, offender populations of Mexican descent demonstrate a particularly noteworthy effect on sentencing severity. Increased Mexican populations are related to both an increase in overall incarceration odds but a decrease in incarceration odds for noncitizens. Likewise, an increase in this population is related to increased overall sentence lengths but decreased lengths for noncitizens. Counterintuitively, this population is related to an increase in the overall odds of receiving a prison alternative as well as the odds of receiving a prison alternative for noncitizens.

Furthermore, increased Mexican offender populations decrease the overall odds of receiving a downward departure but increase it for noncitizens, though the effects of citizenship status are nonsignificant in this model. Increases in marijuana caseloads also decrease prison alternative odds for noncitizens.

Finally, in order to examine whether caseload factors impact sentencing inequality, several district level controls were included some of which impact sentencing severity. Of these variables, the marijuana caseload is the only variable related to incarceration outcomes. Increases marijuana cases are related to higher overall odds of incarceration as well as higher odds for noncitizens. Increases in the guideline minimum mean and the marijuana caseload are related to overall decreased odds of receiving a prison alternative while cocaine caseloads increase these odds. An increase in the average trial caseload and guideline minimum mean increase overall sentence lengths. While trial caseloads do not impact sentence lengths for noncitizens, increases in guideline minimums actually decrease sentence lengths for this population. Of downward departures, the only district level predictor even approaching significance is the guideline minimum mean which is related to a slight reduction in the odds of receiving a downward departure overall with no interaction effects for noncitizens.

District level measures for white, age, and no high school were also included. Increases in white offender populations as well as the average offender age increase the odds of receiving a prison alternative for noncitizens but demonstrate no main effects. Increased white offender populations are related to a decrease in overall sentence lengths. None of these are related to departures.

Courtroom Communities

Though not a direct test of the courtroom communities perspective, the finding that spatial autocorrelation is apparent is compatible with this theoretical premise. Courtrooms within closer proximity are more like to demonstrate similarities as a product of shared spaces and lines of communication as well as similarities in demographic populations (Eisenstein et al 1988; Ulmer 1997). This perspective is likely to also apply at the federal district level. Districts that are closer in proximity are more likely to demonstrate similar sentencing outcomes as a product of geographic proximity increasing lines of communication. The distinct difference apparent between the models with the spatial autocorrelation component and those without indicate that the inclusion of this weight matrix is important. Future research examining variations across place should continue to flesh out the effects of geographic proximity.

LIMITATIONS AND FUTURE RESEARCH

Despite the unique contributions of this study, a few discernible limitations are present. These limitations include an inconsistent data coding with the USSC data, a lack of variability within key constructs, a small level 2 N, and potential omitted variable bias. For instance, as one of the dependent variables, it is unfortunate that the departure variable began to be coded differently in 2005 than it had in previous years. This change in coding is likely a product of the Booker decision which altered the use of the application of sentencing departures. Recoding the variable as a dichotomous measure for whether someone received a downward departure limits some of the initial concerns of inconsistency. Likewise, the lack of variability within country of origin obfuscated some of the nuances anticipated to exist within this variable. Specifically, examining trends in sentencing outcomes for defendants of middle-eastern decent would have

been particularly fascinating. Unfortunately, few cases were included in this category, and many districts had so few cases with this demographic that a near singularity became apparent when this group was included in the multilevel analysis. The same finding occurred with those from the United Kingdom and Oceana. That said, the unique distinctions arising between those from Asia, Africa, the Caribbean, Mexico, and all remaining countries were extremely insightful.

Further difficulties arise when using multilevel techniques. The small number of level 2 cases occasionally limited some of the ideal strategies. While several hundreds of thousands of cases were available to examine drug violations over the course of 15 years, only 89 districts are included. The smaller number of level 2 cases reduce the statistical power of the analysis. For this reason, variables that approach significance are also acknowledged in this study. Also, as a product of a smaller level 2 N, fewer district level variables were able to be included. Ideally, numerous caseload and control predictors would be included. For instance, the inclusion of squared and cubed measures for noncitizen, Hispanic, undocumented, and Mexican district means would have provided interesting data on the nature of these effects. However, the inclusion of so many level 2 variables with so few cases deteriorates the degrees of freedom, limiting statistical power. With this in mind, each district level predictor was carefully selected according to theoretical implications.

Future research should examine disparities across other offenses, especially for mala in se offenses. While unique citizenship and ethnicity sentencing outcomes are present across federal drug violations, this disparity may disappear for violations with which societal consensus identifies as morally wrong. Future research should also examine country of origin variations in sentencing outcomes for immigration violation. This study found that those of Mexican descent receive more severe sentencing outcomes. This finding might be exacerbated within

immigration violations. When examining inequality in drug violations across citizenship and especially ethnicity, state level data may provide additional insight into geographic variations in sentencing outcomes since there is no shared sentencing guidelines across states. Likewise, examining within state variations across courts will further contribute to empirical analysis of courtroom communities. While this study examined offender populations as the level 2 data, it may be that broader demographic populations should be included. Group threat may be exacerbated by overall population changes above and beyond offender populations. Therefore, district level census population data could be included in future research.

Future research should also apply unique methodological approaches to examining this social problem. For instance, mapping programs may further provide additional insight into geographic variations in sentencing outcomes. In order to continue to examine the focal concerns perspective, qualitative interviews from decision makers would be an invaluable asset. Because this study does not account for inflated charging practices or disproportionate arrests nor does it examine demeanor/behavior, these qualitative components could offer more depth into the manifestation and causes of these disparities. Finally, unique differences may exist between the groups that remain unaccounted for within the findings. One of the luxuries of a larger level 1 sample is the ability to include several important control variables. That said, it might be fruitful to employ propensity score matching to match citizens and noncitizens on specific criteria. In creating a control and experimental group, this method would approach the topic from a quasi-experimental approach, further reducing spuriousness.

POLICY IMPLICATIONS

Critics of Existing Policies

The controversy over criminal justice punishment disparities in conjunction with a dedication to ensuring sociological equality has led to several criminological policies designed to ensure justice and fairness in an attempt to reify the legitimacy of the criminal justice system. In doing so, judicial discretion has become increasingly limited. The emphasis on mandatory drug sentences as well as the establishment of sentencing guidelines are examples of this limited discretion. Unfortunately, strategies such as these seem to leave policy wanting for several reasons.

First, some researchers argue that the sentencing guidelines and mandatory drug sentences are excessively harsh (Bowman 2005; Cassell 2004; Steiker 2013). "Incarcerative sentences are imposed far more often than they were before the guidelines, and the length of imposed sentences has nearly tripled" (Bowman 2005, 1328). Incarceration involves the deprivation of freedom and the destruction of the family unit to force the prisoner into harsh prison conditions (Cassell 2004) and should therefore not be taken lightly. This "human toll" (Cassell 2004, p 1032) does not end with incarceration, but rather will have long term damaging effects for the offender, impacting future employment opportunities, relationships, and housing opportunities among others. Though not ideal, there are those who argue that incarceration serves several goals including retribution and crime control (Cassell 2004). However, the steep penalties associated with several mandatory drug sentences and long sentencing guideline minimums appears unjust to some (Bowman 2005; Cassell 2004; Steiker 2013). For instance, the infamous "100 to 1" penalty in which far less crack cocaine resulted in the same punishment

severity reserved for much larger amounts of powder cocaine was perceived as both excessive and prejudicial (Steiker 2013). This discrepancy was later reduced to 18 to 1, but has yet to be eliminated. Not only is such a steep sentence unwarranted for a mala prohibita offense, the emphasis on a drug associated with lower income offenders violated much of society's sense of justice.

Other countries, "particularly European countries" (Cassell 2004, p. 1030) apply less severe sentencing policies. Not only do these countries apply shorter sentences, they are also less plagued with crime, though Cassell (2004) argues that this disparity has declined over time. Ruback and Wroblewski (2001) argue that the guidelines are based on dated data and broad economic policies. Structured sentencing with required incarceration time for drug violations continues to be a controversial topic.

The federal guidelines may be unnecessarily complex as well (Bowman 2005; Ruback and Wroblewski 2001). These guidelines involve a grid-based system founded upon criminal history and offense severity scores. Various crimes begin with a base severity score which is then adjusted depending upon numerous aggravating and mitigating factors ranging from the presence of firearms, resulting injuries, and vulnerable victims, among many others (Ruback and Wroblewski 2001). Downward adjustments are also applied in cases in which the offender accepts responsibility. The offense severity consists of 43 categories, more than any state structured sentencing guidelines. Even the criminal history score is unnecessarily complicated with formulaic calculations with different weights provided for various convictions. Ruback and Wroblewski (2001) argue that the guidelines are based on dated data and broad economic policies.

Second, practical limitations diminish the utility of these strategies. The cost of incarcerating offenders is not without expenses (Cassell 2004). Concerns over harsh sentences for nonviolent drug offenders recognize that severe punishments effect not only the individual as well as concerns of legitimacy, but also demonstrate finite limitations. If the reduction in crime is not worth the funding spent, excessive sentences should be reevaluated. Though some argue that the money spent on incarceration is less (or balanced) by the money spent on crime response (Cassell 2004). This argument assumes that imprisonment will reduce future crimes, which relies on a leap of logic. Furthermore, prison overcrowding has become an increasing concern. In fact, prisons have become so overcrowded, a trend not reduced by mandatory sentencing policies, that privatized prisons have begun to increase in demand (Anderson 2009), leading to further concerns over the future of the prison industry. Advocates of the current system argue that Federal offenders are the "high rate offenders" (1039) and that the criminal history category of the sentencing guideline ensures that these are the ones more severely punished (Cassell 2004). He also argues that more expensive crimes are punished more severely. This perspective, however, emphasizes a cost-benefit analysis of incarceration that trivializes the humanity of those suffering, reducing human lives to dollars and cents. Furthermore, such a strategy is not sustainable in the long term.

Third, these policies fail to alleviate sentencing disparities. An abundance of literature exists acknowledging a wide variety of sentencing inequality that persists within federal sentencing outcomes across various time periods and geographic locations while controlling for the presumptive sentence (e.g. Albonetti 1997; Demuth 2002; Doerner and Demuth 2010; Feldmeyer and Ulmer 2011; Katzenelson et al 1996; Kautt 2002; Light 2014; Logue 2009; Maxfield and Burchfield 2002; Paternoster 2011; Wolfe et al 2011). This study found that

noncitizens and Latino/a offenders receive more severe sentencing outcomes across almost all sentencing outcomes. Federal sentencing guidelines fail to alleviate sentencing inequality. Ruback and Wroblewski (2001) argue that sentencing decisions using the federal guidelines demonstrate low reliability. Even with the complex guidelines, disparities persist.

Alternative Strategies

Despite the initial popularity of sentencing guidelines and mandatory minimums among the governing populace, this strategy may have outlived its utility. Rather than incarcerating vice crimes such as drug violations, better approaches than incarceration may be an option for these offenses. For instance, several states have begun to decriminalize marijuana use (Bretteville-Jensen 2006), and in fact, some states are even legalizing recreational use (Deveaux and Mostad-Jensen 2015). The federal government could follow suit. Doing so will reduce the number of mala prohibita offenders in prison, decrease district caseloads, provide a taxable commodity, and affect the black market. Revisiting rehabilitative ideals may also achieve similar desirable outcomes. Treating drug addiction as a psychological disorder rather than a criminal offense can improve the life of the individual while contemporaneously reduce federal caseloads (Brown 2011). Although society appears to be moving in this direction, more immediate sentencing policies should be addressed during the interim.

Though sentencing guidelines may not be the most effective strategy for confronting inequality in the criminal justice system, eliminating this policy in its entirety may not be practical for several reasons. Ruback and Wroblewski (2001) acknowledge that structured decision making is often more effective than none at all. Cassell (2004) argues that the current federal guidelines are an effective mechanism for establishing retribution and crime control. The

author credits these guidelines for reducing potential recidivism as well as being compatible with societal values of justice.

If the current structured sentencing strategy cannot be eliminated, it might be best to at least modify and update it. Ruback and Wroblewski (2001) advocate retaining the outcome range for various offenses, but reduce the micromanaging of judges. Instead, the authors argue that a simplified version of the current guidelines can be implemented. In this scenario, judges would be permitted to consider the totality of the circumstances and select sentences within new mitigating and aggravating ranges. The number of offenses would be reduced from 43 to 8-12 with each offense demonstrating a mitigating, normal, and aggravating range. While judges may weigh certain decisions differently, they will likely balance out to an extent that most judges would agree (Ruback and Wroblewski 2001).

While these immediate policy shifts demonstrate the potential to remedy many of the current sentencing issues, they fail to address the underlying cause of noncitizen and ethnic inequality. In order to resolve inequality, broader reform must occur concomitantly. In order to truly reduce criminological inequality, sociological discourse must be modified. Framing immigrants as a threat at the national level contributes toward xenophobic policies advocating for isolationist solutions to the problem.

FINAL THOUGHTS

This study contributes to the sentencing literature substantively, theoretically, and methodologically. This project is the first known examination of cross origin effects on sentencing severity. It is also the first known study to examine district level effects of on noncitizen sentencing disparities while controlling for spatial autocorrelation. The findings of

this study contribute to current literature examining the focal concern, group threat, and courtroom community theoretical perspectives. The implications from this study can aid policy makers as they strive to achieve justice and legitimacy within the criminal justice system. Finally, this study can aid advocacy researchers in their efforts to bring attention to disadvantaged populations, highlighting the importance of changing discourse to contribute to a more holistic and accepting society.

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APPENDICES

Appendix A: Downward Departure Recode		
Year	MoF Code	New Code (Downward)
1999-2003	No departure (0) Upward departure (0) Downward departure (1) Substantial assistance (1) Inapplicable (0)	Downward departure (1) No downward departure (0)
2004-2013	No departure (0) Upward departure (0) Downward departure (1) Substantial assistance/§5K1.1 (1) Early disposition program (EDP)/§5K3.1 (1) Substantial assistance/§5K1.1 AND other downward departure (1) EDP/§5K3.1 AND other downward departure (1) EDP/§5K3.1 AND substantial assistance/§5K1.1 (1) Inapplicable (0) EDP/§5K3.1 AND substantial assistance/§5K1.1 AND other downward departure (0)	Downward departure (1) No downward departure (0)

Appendix B: Country of Origin Recode	
Africa	Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Cote d'Ivoire, Djibouti, Egypt, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritius, Mauritania, Morocco, Mozambique, Namibia, Niger, Nigeria, Republic of Tanzania, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, South Sudan, Swaziland, Togo, Tunisia, Uganda, Zambia, Zimbabwe
Asia	Afghanistan, Armenia, Azerbaijan, Bahrain, Bangladesh, Bhutan, Brunei Darussalam, Cambodia, China, Cyprus, Georgia, Hong Kong, India, Indonesia, Iran, Iraq, Israel, Japan, Jordan, Kazakhstan, Korea, Kyrgyzstan, Kuwait, Laos, Lebanon, Malaysia, Maldives, Mongolia, Myanmar, Nepal, Oman, Pakistan, Philippines, Qatar, Saudi Arabia, Singapore, Sri Lanka, Syria, Taiwan, Tajikistan, Thailand, Turkey, Turkmenistan, United Arab Emirates, Vietnam, Yemen, Uzbekistan
Caribbean	Antigua and Barbuda, Bahamas, Barbados, Cuba, Dominica, Dominican Republic, Grenada, Haiti, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago
Latin America	Argentina, Belize, Bermuda, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, Venezuela
Mexico	Mexico
Others	Albania, Andorra, Australia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Czech Republic, Canada, Croatia, Denmark, Estonia, France, Fiji, Finland, Germany, Gilbert Islands, Greece, Guam, Hungary, Iceland, Ireland, Italy, Kosovo, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Marshall Islands, Micronesia, Monaco, Moldova, Montenegro, Netherlands, New Zealand, Northern Mariana Islands, Norway, Other, Palau, Papua New Guinea, Poland, Portugal, Romania, Russia, Samoa, San Marino, Serbia, Slovakia, Slovenia, Solomon Islands, Spain, Sweden, Switzerland, Tonga, Ukraine, Great Britain/UK, United States, Vanuatu (208), Yugoslavia

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EDUCATION

Ph.D., Criminology and Criminal Justice. Old Dominion University, May 2016
M.S., Criminal Justice. The University of Alabama, May 2010.
B.S., Criminal Justice and Psychology. The University of Alabama, May 2008

TEACHING EXPERIENCE

Introduction to Criminal Justice (CJ 100), Introduction to Criminology (CRJS 215s), Judicial Processes (CJ 250), Social Research Methods (SOC 337), The American Jury (CRJS 416), Criminological Theory (CRJS 426w)

PUBLICATIONS

Stringer, R. and Holland, M. "It's Not All Black and White: A Propensity Score Matched, Multilevel Examination of Racial Sentencing Disparities." Forthcoming in the *Journal of Ethnicity in Criminal Justice.*

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HONORS AND AWARDS

Graduate Student Summit Scholarship, Academy of Criminal Justice Sciences, 2016.

Elliott Currie Paper Award for Criminology in the Pursuit of Social Justice, 2015

Graduate Student Travel Award, Student Engagement and Enrollment Services, Old Dominion University, November 2013.

Graduate Student Research Award, Old Dominion University, Department of Sociology and Criminology, May 2013.

Doctoral Fellowship, Old Dominion University, August 2010- May 2011.

Criminal Justice Undergraduate Research Competition (2nd place), University of Alabama, 2008.