

Assessing Disparity in the Federal Court Processing of Immigration Cases

by

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ABSTRACT

In recent decades, the United States has experienced a wave of immigration, an economic recession, and several terroristic attacks. In response, the government has scapegoated and blamed undocumented immigrants of color for recent social ills. As a result, a large share of government resources has been allocated to the enforcement and processing of immigration violations. Consequently, the number of immigration cases processed in U.S. federal courts has spiraled to nearly 50% of bookings and 34% of federal sentencing cases. Yet, immigration offenses have received little empirical attention in the courts and sentencing literature due in part to differences in the way immigration offenses are processed compared to other federal offense types, and relatedly, the empirical difficulties immigration offenses pose for analysis. Nevertheless, the increased representation of immigration offenses in federal courts, along with the punitive rhetoric and heightened social control targeting undocumented immigrants of color, warrants a comprehensive assessment of how immigration cases are processed in U.S. federal courts. Accordingly, this dissertation seeks to identify inequality in the processing of immigration cases by examining: 1) cumulative disadvantage within immigration cases; 2) contextual disparity and how social context interacts with ethnicity to influence multiple federal court outcomes within immigration cases; and 3) ethnic disparity within immigration cases over time.

Data come from the Federal Justice Statistics Program Data Series, the U.S. Census, the Uniform Crime Reports, Leip's Atlas of U.S. Presidential Elections, the National Judicial Center, and the U.S. Department of Justice. The quantitative analysis addresses the first question by employing a cumulative disadvantage approach where

multiple decision points are considered and the effects of prior stages on subsequent outcomes. The quantitative analysis proceeds to address the second question by using multilevel modeling for multiple court outcomes. The longitudinal analysis is separately conducted on sentence length for 18-year data, from 1994 through 2012, to assess racial and ethnic disparity over time.

The results indicate that cumulative disadvantage is present within immigration cases, that social context influences certain decision points, and that ethnic disparity has diminished over time in some districts.

DEDICATION

“Because of the Lord’s great love we are not consumed, for his compassions never fail.

They are new every morning; great is your faithfulness.” Lamentations 3:22-23

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CHAPTER 1: INTRODUCTION

“Give me your tired, your poor, your huddled masses yearning to breathe free”

-Emma Lazarus

The past three decades have seen an unprecedented number of immigration cases processed in U.S. federal courts due in part to the intersection of the criminal justice and civil immigration systems – a process that has been termed crimmigration (see Stumpf, 2006). Crimmigration refers to recent policies and legislation that have criminalized many civil immigration violations and have attached civil sanctions to criminal offenses committed by noncitizens (Legomsky, 2007). In addition, enforcement of criminal immigration offenses has significantly increased at the local, state, and federal levels (Provine, Varsanyi, Lewis, & Decker, 2016), and the criminal and civil court systems have become dependent on one another in a way that diminishes the due process rights of defendants in criminal immigration offenses (Eagly, 2010).

Crimmigration has mainly been in response to several social, economic, and political changes in the past several decades. First, a large wave of immigration from the U.S.-Mexico border occurred in the 1980s and 1990s (Flores, 2015). Second, several domestic terroristic incidents transpired throughout the 1990s culminating in the 9/11 terrorist attacks (Welch, 2003). Third, the United States has experienced a gradual economic decline since the 1950s, and a rising national debt has facilitated the narrative that nations in Asia are going to eclipse the United States as the world power (Lilly, Cullen, & Ball, 2015). Moreover, economic inequality vastly increased with the loss of manufacturing jobs due to changes in technology and two economic recessions – one in the early 1980s and the other in 2008 (Castells, 2010). Together, these social, economic,

and security issues coalesced to increase perceived economic and political threat from immigrants. In response, politicians and the media have blamed immigrants of color for terrorism and the poor economy and have turned to restrictionist policies and legislation as a way to address economic and security crises (Longazel, 2012; Stumpf, 2006; Welch, 2012; Zatz & Smith, 2012).

Against this backdrop, immigration offenders now comprise one of the largest categories of offenders at federal booking and sentencing (U.S Sentencing Commission, 2016). Because of the punitive rhetoric aimed at noncitizens of color and increasing crimmigration, immigration scholars have voiced concerns about at unjust practices, such as racial and ethnic profiling in law enforcement and inequality in the administration of justice (Aranda & Vaquera, 2015; Garcia Hernandez, 2013; Hagan, Castro, & Rodriguez, 2010; Johnson, 2012; Provine et al., 2016; Zatz & Rodriguez, 2015; Zatz & Smith, 2012). Very little empirical research, however, has examined whether immigrants of color receive harsher treatment in federal immigration cases. Therefore, the purpose of this dissertation is to provide an exhaustive empirical assessment of racial and ethnic disparity within immigration cases in U.S. federal courts.

The Historical Development of Immigration Law

Prior to 1875, immigration regulation was mainly concerned with a mix of state and federal affairs, such as the movement of criminals and the regulation of public health and slavery (Neuman, 1993). Exclusion was not a priority, and immigrants for the most part freely entered the United States (Cleveland, 2002; Weissbrodt, Danielson, & Myers, 2017). The nature of immigration regulation changed in 1875 when the Supreme Court decided in *Chy Lung v. Freeman* to place the power over immigration with the federal

government (Gulasekaram & Ramakrishnan, 2013). The Supreme Court designated immigration law as a matter of foreign policy and reasoned that the relationship between the United States and other nations should not be determined at the state level (Stumpf, 2006). Later Supreme Court decisions would further cement the federal government's authority over immigration law through the plenary power doctrine.

The plenary power doctrine was established in a series of decisions about Chinese immigration beginning with the Chinese Exclusion Act of 1882 (Legomsky, 1984; Motomura, 1990). With the passage of this act, Congress banned Chinese laborers from entering the United States for a period of 10 years (Motomura, 1990). The ban was later contested in *Chae Chan Ping v. United States* on several grounds, one being that Congress did not have the authority to pass exclusionary laws (Motomura, 1990). Notably, the Constitution does not explicitly state who has authority over immigration law (Cleveland, 2002); however, the Supreme Court decided that Congress has the power to govern the inclusion and exclusion of noncitizens based on the principle of sovereignty (*Chae Chan Ping v. United States*, 1889). Sovereignty has been defined as “a recognized set of international rules regarding the definition and authority of a nation state and its interactions with other states” (Cleveland, 2002, p. 15), and limiting sovereignty is believed to diminish a country's standing internationally and with other nation states (Cleveland, 2002). By linking immigration with the principle of sovereignty, the Supreme Court established the precedence of plenary power for the next 100 years and insulated Congress from judicial review in matters where plenary power was warranted (Motomura, 1990).

The Supreme Court continued to expand the reach of immigration law and plenary power in the decades following the *Chinese Exclusion Case*. Congress passed the Immigration Act of 1891 that created deportation as a procedure to expel noncitizens who entered without permission (Chacon, 2007). Following this act, *Fong Yue Ting v. United States* in 1893 broadened plenary power to cover the expulsion of noncitizens after entry (Aleinikoff, 1989), and *Bugajewitz v. Adams* (1913) demarcated deportation as a civil matter that was not to be treated as criminal punishment (Stumpf, 2007). Consequently, deportation was divested of the procedural safeguards afforded to criminal cases (Stumpf, 2007). The plenary power doctrine remained securely in place throughout the beginning of the 20th century and was reaffirmed through a set of cases during the McCarthy Era (Cox, 2007; Medina, 2006).

While the principles of civil immigration law were established, several legal precedents also developed that delineated how the criminal law applies to noncitizens. In two decisions, *Yick Wo v. Hopkins* in 1886 and *Wong Wing v. United States* in 1896, the Supreme Court determined that noncitizens were subject to full Constitutional protection for criminal offenses (Chacon, 2007). Thus, civil and criminal aspects of immigration were viewed as separate issues that initiate different institutional processes (Stumpf, 2007).

Crimmigration

The 1980s ushered in an era where the criminal and civil divide on issues of immigration began to overlap in a process that has become known as “crimmigration” (Stumpf, 2006). The term crimmigration refers to several spheres of change in

immigration law: 1) restrictionist federal policies that added civil sanctions to criminal offenses and that broadened immigration violations deemed criminal offenses, 2) a flurry of subfederal policies that attempted to regulate immigration at the local and state levels, and 3) the increased intersection of the criminal justice and civil immigration systems.

Restrictionist Policies

Criminal offenses with civil sanctions. Regarding crimes with civil sanctions, the first deportation policy was passed in 1917 that subjected felonies and later crimes of moral turpitude to deportation (Cook, 2003). In 1952, the McCarran-Walter Act, also known as the Immigration and Nationality Act, further shaped the structure and procedures of the civil immigration system, but the commission of felonies and crimes of moral turpitude committed within five years of entry remained the main grounds for deportation (Cook, 2003; Transactional Records Access Clearinghouse, 2006). The first major expansion of criminal offenses with attached civil sanctions began with the passage of the Immigration and Nationality Act and Anti-Drug Abuse Act of 1988, which created a category of aggravated felonies (Cook, 2003; Legomsky, 2007). At first, aggravated felonies comprised three broad offense types: drug trafficking, weapons trafficking, and murder (Transactional Records Access Clearinghouse, 2006). Later, multiple offense types were added with the passages of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and Antiterrorist and Effective Death Penalty Act (AEDPA) in 1996 (Cook, 2003).

Today, the list of aggravated felonies has been further expanded, and the roster of civil consequences associated with aggravated felonies has expanded to include

ineligibility for relief from deportation, inability to apply for legal status, mandatory detention, lack of judicial review, and a permanent ban from the United States (Legomsky, 2007; Transactional Records Access Clearinghouse, 2006). In addition to expanding aggravated felonies, the IIRIRA and AEDPA also repealed habeas corpus, amplified detention practices for asylum seekers, and increased the time prohibited to return to the United States for expired visa holders (Dobkin, 2007; Lofgren, 2005; Palmer, 2006).

Immigration violations considered criminal offenses: Overall, the list of criminal offenses that trigger civil consequences grew substantially from 1980 to the present. By contrast, legislators also expanded the immigration violations considered to be criminal offenses. Criminalization of immigration first began in 1929 when Congress declared the act of unauthorized entry a misdemeanor and the act of unauthorized reentry a felony (Chacon, 2007; Fan, 2013; Stumpf, 2006). Throughout the 1980s and 1990s, however, legislation (e.g. Immigration Reform and Control Act of 1986, Immigration Marriage Fraud Amendments (DATE), Immigration Act of 1990, Violent Crime Control and Law Enforcement Act of 1994, IIRIRA, and AEDPA) continued to add criminal sanctions to the list of immigration violations (Legomsky, 2007; Stumpf, 2006). Criminal immigration offenses now include the hiring of noncitizens, false documentation to avoid employment-related sanctions, marriage fraud, enterprises involved in evading immigration laws, concealing undocumented immigrants, assisting in illegal entry, driving above the speed limit when driving away from an immigration checkpoint, the

non-disclosure of assistance in fraudulent immigration documentation, false citizenship, and the lack of cooperation with removal orders (Legomsky, 2007).

Subfederal Policies

At the same time, new legislation began to blend civil and criminal statutes, and state and local governments across the nation issued subfederal policies regulating immigration, such as the well-known Proposition 187 in California in 1994 and later SB1070 in Arizona in 2010 (Chacon, 2012; Rodriguez, 2008). Proposition 187 banned undocumented immigrants from receiving social services (Calavita, 1996), and SB1070 required local and state law enforcement to question and detain someone suspected of being in the United States illegally (Campbell, 2011). Local and state policies were in part a frustrated reaction to the lack of federal enforcement, especially in Southwest border states where the population of immigrants was rapidly increasing (Provine et al., 2016). Although the Supreme Court struck down most subfederal policies, arguing that they encroached upon federal authority, Proposition 187 laid the groundwork for the restrictive IIRIRA and AEDA in 1996 (Chacon, 2012; Provine et al., 2016). As part of the 1996 legislation, the Supreme Court permitted state and local law enforcement to arrest previously convicted felons who were caught illegally reentering the United States, to arrest for civil immigration offenses if provided training, and to arrest without training if an influx of immigration occurred (Stumpf, 2007). A decade later, the Supreme Court made a further concession to local and state enforcement of criminal and civil immigration law by upholding the part of SB1070 that authorizes local police to question immigration status (Provine et al., 2016). Overall, the federal government began to share

its federal power over immigration enforcement with state and local law enforcement, which Motomura (2011) argues is where the greatest discretion and authority to enforce immigration law lies.

Intersection of Criminal Justice and Civil Immigration Systems

In a similar vein, the blurring of the criminal and civil divide also characterizes the practice of immigration law in the criminal justice and civil systems. Legomsky (2007) argues that as these two systems increasingly intersect, asymmetry characterizes the process where the civil system is based on a criminal justice model without the same procedural protections. From the criminal justice side, Eagly (2010) describes how the criminal justice system has not provided the full range of protections for criminal immigration offenses. Instead, Eagly (2010) proposes that criminal justice actors have taken advantage of what the civil system offers by providing a substandard level of justice. Moreover, she contends that the previous picture of two separate systems is inaccurate. More precisely, the two systems collaborate with one another in an enmeshed system.

Law enforcement. At the law enforcement stage, the 9/11 terrorist attacks resulted in a government-initiated overhaul of immigration services that replaced the Immigration and Naturalization Service with the Department of Homeland Security and its three subdivisions: U.S. Customs and Border Protection, U.S. Citizenship and Immigration Services, and U.S. Immigration Customs Enforcement (ICE) (Meissner, Kerwin, Chishti & Bergeron, 2013). Two of the branches specialize in immigration enforcement. ICE focuses on interior enforcement of unlawful immigration and is

invested with both civil and criminal enforcement powers (U.S. Immigration and Customs Enforcement, n.d.; Wadhia, 2010), and the U.S. Customs and Border Protection oversees customs, immigration, and border security as well as agricultural protection (U.S. Customs and Border Protection, n.d.). The third branch, U.S. Citizenship and Immigration Services, is in charge of the lawful immigration process (U.S. Citizenship and Immigration Services, n.d.). In the years after the founding of the Department of Homeland Security, ICE nearly doubled its federal court referrals, while U.S. Customs and Border Protection nearly tripled its federal court referrals (Meissner et al., 2013). Today, the Department of Homeland Security which is part of both the civil immigration and criminal justice systems has become the primary source of arrest and bookings into U.S. federal courts (U.S. Sentencing Commission, 2012).

Courts and sentencing. At the courts and sentencing stage, Eagly (2010) provides several examples of how the two systems have integrated. In the detention process, the civil and criminal justice systems in immigration cases work together in a way that severely restricts defendants' freedom. For example, the criminal justice system is required to evaluate eligibility for bail, but the civil immigration system does not always guarantee a right to bond, and in some situations, the civil system calls for mandatory detention. Moreover, the wait period for a bond hearing is often lengthy. If the defendant begins in the criminal justice system, the civil system will place a retainer on the defendant and transfer them into immigration custody after their bail hearing. Therefore, defendants in criminal immigration cases are often detained in immigration

custody regardless of whether they are granted bail and pretrial release in the criminal justice system.

The nature of bail hearings in the criminal justice system can also be different. Eagly (2010) describes how some district courts conduct bail hearings for groups of immigration offenders simultaneously rather than individually; other districts require thousands of dollars in cash bonds or authorize bail release while relying on immigration retainers to detain defendants in immigration cases, thus resulting in diminished due process standards.

In the prosecution of immigration offenses, Eagly (2010) provides more examples of civil and criminal justice system integration. First, at case acceptance in nonimmigration related offenses, federal prosecutors usually screen cases and decide whether to bring charges against the defendant. By comparison, case acceptance in immigration cases is often left to the referral agency (e.g. the Department of Homeland Security), where it is decided whether certain cases meet the criteria for a federal offense. Once the referral is received, U.S. attorneys then push cases either through the magistrate court or through fast-track plea bargaining.

Second and relatedly, the heavy use of magistrate court for the prosecution and sentencing of misdemeanor immigration (primarily illegal entry) cases and the use of early disposition/fast-track departure for the prosecution of felony immigration (primarily illegal reentry) cases has also diminished criminal due process. With respect to magistrate court, Eagly (2010) reports on how it was designed in 1968 to accelerate illegal entry cases through the criminal justice process after a wave of immigration overwhelmed the

federal court system. In anticipation of the establishment of the magistrate court system, Congress reduced illegal entry from a misdemeanor to a petty offense in the Immigration and Nationality Act of 1952 to circumvent the grand jury process. Together, these two developments facilitated a swift process to adjudicate illegal entry cases.

With respect to early disposition/fast-track departure, several requirements speed up the criminal justice process and afford fewer Constitutional protections (Eagly, 2010). For example, early disposition/fast-track departure requires pleading guilty within 30 days after charges are filed, an agreement not to file any motions, and the waiving of the right to argue for a variance along with rights to a grand jury indictment and jury trial (Cole, 2012; Eagly, 2010).¹ As part of the plea agreement, the prosecutor is permitted to add civil consequences that frequently call on the defendant to waive their civil immigration rights to due process (Eagly, 2010). In sum, the civil and criminal justice systems have intersected in a way that is detrimental to defendants in immigration cases and diminishes the Constitutional protections afforded in other types of federal offenses.

Race, Ethnicity, and the Evolution of Immigration Law

Restrictionist immigration policies and the recent crimmigration crisis can partially be attributed to perceived threat from a rapidly growing immigrant population that resulted in the construction of a “moral panic” (Welch, 2012; Zatz & Smith, 2012;

¹ “A variance is a sentence imposed outside the applicable guideline range based upon the statutory sentencing factors found at 18 U.S.C. § 3553(a). As explained by the Ninth Circuit: ‘A “departure” is typically a change from the final sentencing range computed by examining the provisions of the Guidelines themselves. It is frequently triggered by a prosecution request to reward cooperation . . . or by other factors that take the case “outside the heartland” contemplated by the Sentencing Commission when it drafted the Guidelines for a typical offense. A “variance,” by contrast, occurs when a judge imposes a sentence above or below the otherwise properly calculated final sentencing range based on application of the other statutory factors in 18 U.S.C. § 3553(a)’ (U.S. Sentencing Commission, 2016, pgs. 1-2).

Kubrin, Zatz, & Martinez, 2012; on moral panic see Cohen, 1972). According to the minority threat perspective, as a minority population grows in size, the majority perceives a threat to their economic resources and political power (Blalock, 1967). In response to perceived threats, the majority group mobilizes their resources to keep their position of privilege (Blalock, 1967), and constructing a moral panic is one means to justify their authority and legitimize the mobilization of resources (Longazel, 2012; Welch, 2012). More recently, minority threat scholars have recognized that perceived criminal threat is also a source of fear because historical stereotypes and media portrayals have associated immigrants and racial and ethnic minorities with crime (Crawford, Chiricos, & Kleck, 1998). As Zatz and Smith (2012) note, moral panic enables politicians to evoke fear and anxiety over immigrants of color and racial and ethnic minorities without explicitly appealing to racist sentiments.

Throughout history, perceived threat and moral panics have shaped and continue to shape immigration law and policy to the detriment of immigrants of color. Indeed, perceived threat and moral panic were driving forces behind the construction of plenary power in the *Chinese Exclusion Act of 1882* (Zatz & Smith, 2012). *The Chinese Exclusion Act of 1882* emerged in the context of an economic recession after the Pacific Railroad was completed (Calavita, 2000). A number of Chinese laborers had entered the United States to work on the railroad, and in the wake of a recession, public sentiment turned hostile and blamed Chinese laborers for the lack of jobs (Calavita, 2000).

After the construction of plenary power, immigration law became more vulnerable to reactionary policies because of the lack of checks and balances from the

judiciary (Legomsky, 1984). Consequently, sweeping social changes (e.g. industrialization, World War I, and a wave of immigration) in the early twentieth century sparked the quota system mandated by Congress in 1924 (Weissbrodt, et al., 2017). The quota system restricted immigration from certain nations and excluded immigrants of color from citizenship (Ngai, 1999). Essentially, it was a source of control over the racial and ethnic makeup of the United States during a time when the nation was becoming more diverse (Ngai, 1999). Correspondingly, Congress criminalized illegal entry and reentry as a means to enforce the quota system (Chacon, 2007).

Another example of how perceived threat and moral panics led to new immigration legislation is the Alien Registration Act of 1940, which targeted former Communist Party members for deportation during the McCarthy Era (Johnson, 1997; Welch, 2003). Similarly, Haitian refugees received exceptionally severe treatment when a military coup forced thousands of them to seek asylum in the United States (Johnson, 1998). To stop the incoming stream of immigrants of color, the Bush Administration ordered interdiction, mandatory detention, and repatriation upon arrival (Johnson, 1998).

More recently, a flow of Hispanic immigrants into the southwest coincided with domestic terrorist incidents that led to the harsh restrictionist legislation in the 1980s and 1990s (e.g. IIRIRA and AEDPA) (Vasquez, 2015). Subsequently, the media and government officials blamed the 9/11 terrorist attacks on recent immigration and created the Department of Homeland Security (Johnson, 1997; Welch, 2003). Mexican immigrants have especially been demonized (Medina, 2006; Zatz & Smith, 2012). While Mexican immigrants have a lengthy history of oppression and discrimination in the

United States, especially since World War II (Kanstroom, 2007; Portes & Rumbaut, 2006), recent security crises have clouded the lines between crime, terror, and immigration to amplify fear of Mexican immigrants (Chacon, 2007; Medina, 2006; Provine & Doty, 2011). In fact, Welch (2012) further contends that the pervasive rhetoric evoking fear along with the extreme measures to combat immigration and terror in the past three decades has elevated the United States beyond moral panic to what he calls a “risk society.” He asserts that moral panics eventually subside, but risk societies are marked by enduring social and legal changes and transformation of mechanisms of control. He observes that immigration law has been used to dismantle Constitutional protections, essentially altering the criminal justice system.

Consequences of Crimmigration

The move toward crimmigration has resulted in numerous consequences. One consequence has been the separation of immigrant families and their children (Zatz & Rodriguez, 2015). The U.S. Sentencing Commission (2015) recently issued a report describing the characteristics of illegal reentry offenders, finding that 67% had relatives and 49% had children in the United States. In fact, a greater portion of illegal reentry offenders had children located in the United States than in their country of origin. Additionally, approximately 50% spoke English, and more than 50% had initially entered the United States before the age of 17 (U.S. Sentencing Commission, 2015). With heightened enforcement and deportation of criminal immigration offenders, undocumented parents and their children have been increasingly separated (Zatz & Rodriguez, 2015). In the aftermath of separation, some children have been placed in

foster care, and their families have experienced economic and emotional distress (Hagan, Castro, & Rodriguez, 2010; Zatz & Rodriguez, 2015). Furthermore, deportation of undocumented immigrants has negatively affected the communities in which they live by inducing fear and decreasing business and use of services (Hagan, Castro, & Rodriguez, 2010).

A second consequence of crimmigration has been increased punishment for and expenditures on non-violent crimes and civil offenses. Restrictionist policies and the intersection of the civil and criminal systems have resulted in a draconian process of punishment for immigration offenders who are mostly filtered into the federal court process for non-violent crimes. As a result, defendants in immigration cases are detained and sentenced at high rates and are confined for lengthy periods of time (Eagly, 2010). For example, immigration offenders remain confined in immigration custody for an average of 30 days (Schiriro, 2009), and between the years 2004 and 2012, immigration offenders received an average sentence length of a year and eight months (U.S. Sentencing Commission, 2012). In addition, expanded infrastructure and enforcement of civil immigration offenses and crimes has increased federal expenditures. The federal government on average spends \$18 billion per year on immigration enforcement, and ICE is the largest law enforcement agency at the federal level (Meissner, et al., 2013).

Relatedly, a third consequence is the encroachment on civil liberties. Vast discretion characterizes immigration enforcement (Motomura, 2011), and a body of literature has documented how decision making in both the civil and criminal justice systems is racially and ethnically biased against immigrants of color in the forms of

police stops and workforce and home raids (Aranda & Vaquera, 2015; Garcia Hernandez, 2013; Hagan, Castro, & Rodriguez, 2010; Johnson, 2012; Provine et al., 2016; Zatz & Rodriguez, 2015). Inequality in the application of law raises issues of civil liberties, as due process prohibits discrimination based on race, ethnicity, or national origin (see Civil Rights Act, 1964).

Immigration Cases and the Federal Court System

The criminalization and intensified enforcement of immigration has drastically increased the number of immigration cases entering the federal court system. In 2012, immigration offenses comprised 49.6% of federal arrests and bookings and 34% of federal court sentencing cases (U.S. Sentencing Commission, 2012). Even though immigration offenses form one of the largest categories of offenses in federal courts, very few studies have examined immigration cases empirically since most studies in the courts and sentencing literature have removed immigration cases from analysis (see Light, 2014; Ulmer, Eisentsten & Johnson, 2009; Ulmer, Light, & Kramer, 2011a, 2011b). This oversight is due in part to the many unique aspects that differentiate immigration cases from other federal offense types, such as the overlap with the civil system, the use of early disposition or fast-track departures, the demographic background of the defendants, and the reliance on detention and incarceration (Demuth, 2002; Doerner & Demuth, 2014; Motomura, 2011; Maxfield & Burchfield, 2002; McClellan & Sands, 2006).

Knowing the legal and extra-legal factors that influence court outcomes for immigration offenses, however, is critical to shed light on any problematic practices, such as inequality in the administration of justice. Given that immigration policy has often

been developed from anti-immigrant attitudes and moral panics, legal scholars have documented their concerns with racial bias and discriminatory practices as the number of immigration offenders processed through the criminal justice system increases (Arnold, 2007; Wishnie, 2004). Findings from the few studies that have examined immigration cases at sentencing further this concern. For example, Hartley and Tillyer (2012) found that black and Hispanic defendants, in comparison to white defendants, receive longer sentences; however, in some federal districts Hispanic defendants received shorter sentence lengths.

Unwarranted disparity in the court processing of immigration cases places undue burden on defendants who are on the receiving end of harsher punishment. Considering the context of crimmigration, immigration offenders who are processed through the criminal justice system may be assigned an extended period of confinement, mandatory deportation, ineligibility to obtain a green card in the future, and a lengthy exclusionary period from reentering the country (Motomura, 2011). These sanctions are exceedingly harsh for defendants who have already established work and family ties in the United States and for those who have immigrated from extremely disadvantaged circumstances (Bosworth & Kaufman, 2011; Chacon, 2007; Stumpf, 2006; see also Zatz & Rodriguez, 2014, 2015). Moreover, *Yick Wo v. Hopkins* and *Wong Wing v. United States* have long established that noncitizens and immigrants of color possess full Constitutional rights when exposed to the criminal justice system. Accordingly, any unwarranted disparity in the case processing or court outcomes of immigration cases also encroaches upon civil rights and undermines the legitimacy of the justice system.

Present Study

The purpose of this dissertation is to provide a comprehensive study of immigration cases in U.S. federal district courts with a focus on whether racial and ethnic disparity exists within the federal court processing of immigration cases. To do so, the present study draws on the focal concerns and minority threat perspectives. This dissertation has three objectives: to assess cumulative disadvantage within immigration cases, to assess contextual disparity within immigration cases, and to assess racial and ethnic disparity within immigration cases over time.

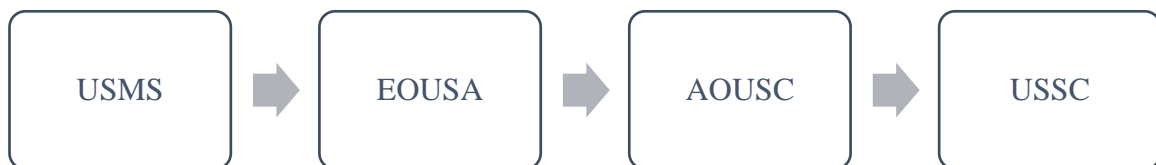
Data

The data for this dissertation come from the Federal Justice Statistics Program (FJSP) data series (1994-2012) that were obtained from the Inter-university Consortium for Political and Social Research (ICPSR). The FJSP is a data-linking system funded by the Bureau of Justice Statistics and designed by the Urban Institute that enables defendants to be followed across multiple federal agencies. The Urban Institute recently updated their linking approach by employing Jaro-Winkler algorithms that use a defendant's identifying information to find a match between agencies. Once matched, the unique case identifiers from each agency are paired together as a dyad in a crosswalk file that allows the sequential merging of data (see Kelly, 2012). Given the purpose of examining the federal court processing of immigration cases, the main agencies of interest for the present study are the United States Marshalls Service (USMS), the Executive Office for United States Attorneys (EOUSA), the Administrative Office of the

U.S. Courts (AOUSC), and the United States Sentencing Commission (USSC). Figure 1 presents the linking order of the agency data.

At the earliest stage, the USMS is considered the law enforcement component of the federal criminal justice system and contains information regarding basic demographics, offense type, and arrest agency on suspects arrested and booked in U.S. Federal Courts. Following the USMS, the EOUSA documents criminal matters concluded and cases terminated by U.S. Magistrates and U.S. Attorneys. In addition, the EOUSA contains information on whether a case was declined for prosecution or was filed in district or magistrate court. The AOUSC also records criminal cases terminated by U.S. Attorneys. In addition, the AOUSC collects data on charging decisions, such as the most severe filing charge and the most severe terminating charge. Accordingly, the EOUSA is used to examine filing decisions, while the AOUSC is used to look at charging decisions. Lastly, the USSC holds a wealth of background information on defendants as well as the sentence received, mode of conviction, and whether the defendant was detained prior to sentencing. The richness of the data and the availability of immigration cases across multiple agencies and decision points make the FJSP ideal for this dissertation. In addition, data are also pulled from the U.S. Census and other sources and combined with the FJSP for district-level analysis.

Figure 1: Flow of agency-linked data sets



Organization

The remainder of the dissertation is organized into four chapters. Chapter Two investigates cumulative disadvantage within the processing of immigration cases. The chapter draws on the focal concerns perspective to examine if white Hispanic, black non-Hispanic, black Hispanic, and Asian defendants are treated more harshly than white non-Hispanic defendants at multiple stages throughout the court processing of immigration offenses. Outcomes include case filing, presentence detention, early disposition, charge reduction, guideline departure, and sentencing.

Chapter Three investigates whether district-level context has an impact on multiple decision points and whether the effects of ethnicity are contextualized according to district. Specifically, the minority threat perspective provides a framework to assess if percent foreign-born and percent Hispanic facilitate harsher treatment of defendants at case filing, presentence detention, early disposition, charge reduction, guideline departure, and sentence length. The influence of absolute changes in threat are also examined for these six outcomes. Lastly, cross-level interactions are conducted to see whether Hispanic defendants are treated more severely in districts with a larger Hispanic or foreign-born population and with a greater absolute change in percent Hispanic and percent foreign-born.

Chapter Four assesses ethnic disparity over time and builds on Chapter Three by examining whether Hispanic defendants receive more severe sentences over time in districts with an absolute change in the Hispanic population size. Chapter Five concludes the dissertation with a comprehensive discussion and final remarks. The chapter begins

with a summary of findings from Chapters Two, Three, and Four, then proceeds to theoretical and policy implications. Chapter Five also addresses limitations, future directions, and ends with a final conclusion.

CHAPTER 2: CUMULATIVE DISADVANTAGE WITHIN IMMIGRATION OFFENSES

Overview

Fueled in part by the implementation of state-level determinate sentencing and federal sentencing guidelines that were created to make punishment a fairer and more uniform process (Stith & Cabranes, 1998), a large body of literature has accumulated on racial and ethnic disparity in sentencing decisions (see Baumer, 2013; Mitchell, 2005; Pratt, 1998; Spohn, 2000; Ulmer, 2012; Zatz, 2000). Because the effects of race and ethnicity have become more implicit over time and are often dependent upon other factors, the most recent wave of research has examined the various contexts, decision points, and offense types under which racial and ethnic disparity emerges (Baumer, 2013; Mitchell, 2005; Ulmer, 2012).

Compared to the literature on other federal offenses, such as violent, drug, and weapon crimes (see Albonetti, 1997, 2002; Cassidy, 2009; Farrell, 2003; Froyd, 1999; Hartley, 2008; Hartley et al., 2007; Hartley & Miller, 2010; Hofer, 2000; Kautt, 2002; Kautt & Spohn, 2002; Mustard, 2001), immigration cases have been understudied and commonly removed from courts and sentencing research. The lack of research on immigration offenses is largely due to the empirical difficulties that immigration cases present because of fast-track departures, demographic uniformity, and differences in case-processing (Hartley & Tillyer, 2012).

Despite the empirical challenges, neglecting immigration cases is problematic for at least three reasons. First, recent legislation, enhanced enforcement, and the moral panic

surrounding criminal immigration have led to an influx of immigration cases in the federal court system in the past two decades (Stumpf, 2006; U.S. Sentencing Commission, 2012). Second, immigration cases may be particularly vulnerable to unequal treatment because criminal immigration has become highly politicized, and the term “criminal illegal alien” has become associated with immigrants of color (Johnson, 1996). Third and relatedly, the interconnection with the civil system has further enabled unequal treatment within immigration cases by diminishing the Constitutional protections of defendants (Eagly, 2010).

Against this backdrop, the purpose of the present study is to provide a comprehensive examination of racial and ethnic disparity in federal immigration cases. Drawing on the focal concerns perspective and using a cumulative disadvantage approach, a series of hypotheses are developed to test whether black Hispanic, black non-Hispanic, white Hispanic, and Asian defendants receive harsher treatment than non-Hispanic whites over six federal decision points. The Federal Justice Statistics Program (FJSP) data series is used to conduct analysis. Findings are discussed as well as implications for theory, research, policy, and practice.

Judicial and Prosecutorial Discretion

The 1980s and 1990s ushered in an era of sentencing reform that had a profound impact on the courts and sentencing process. Until that point, indeterminate sentencing stood at the heart of the criminal justice process and provided judges with flexibility in imposing sentences (Cullen & Gilbert, 2013; Stith & Koh, 1993). In the years leading up to sentencing reform, the indeterminate sentence came under attack by conservatives and

liberals alike but for very different reasons. Liberals were concerned with abuse of the indeterminate sentence, claiming that judicial discretion led to unwarranted disparity (Stith & Koh, 1993; Tonry, 1996; Walker, 1998). Conservatives, on the other hand, had always been critical of indeterminate sentencing, claiming that it facilitated judicial leniency (Beckett & Sasson, 2000; Stith & Koh, 1993; Tonry, 1996). Criticisms of indeterminate sentencing eventually led to the bipartisan creation of the federal sentencing guidelines implemented in the Sentencing Reform Act of 1984 (Tonry, 1996).

The main objective behind the creation and implementation of the sentencing guidelines was to reduce unwarranted disparity and to make the process of assigning punishment equal and uniform (Nagel & Schulhofer, 1992; Stith & Cabranes, 1998). Therefore, the Sentencing Reform Act of 1984 created sentencing guidelines based on real offense behavior, such as offense seriousness and relevant conduct (Stith & Cabranes, 1998). In practice, the sentencing guidelines contain 43 base-level offense categories that adjust for criminal history and conduct (Stith & Cabranes, 1998; U.S. Sentencing Commission, 2016). Beginning in the 21st century, however, the U.S. Supreme Court in a series of decisions made the guidelines advisory and introduced discretion back into the sentencing process (Hofer, 2007; Ulmer, et al.; 2011a; 2011b; Kim, Cano, Kim, & Spohn, 2016).

The exceptional focus on judicial discretion as a source of unwarranted disparity, however, ignored discretion practiced at other points in the criminal justice process. As many scholars have argued, the sentencing guidelines simply displaced discretion and the possibility of unwarranted disparity to legislators and other courtroom actors – formally

termed “hydraulic displacement” (Miethe, 1987; Savelsburg, 1992; Zatz, 1984, 1987). A legislative example of this is the crack-cocaine sentencing policy adopted by Congress in the 1980s that built unwarranted disparity into the sentencing guidelines (Engen, 2011; U.S. Sentencing Commission, 2007). For example, a sale of crack-cocaine resulted in a sentence length 100 times greater than a sale for an equal amount of powder cocaine when crack- and powder cocaine are essentially the same drug but in different forms (King & Maure, 2006). The primary difference between the two drugs is that crack-cocaine has been associated with the African American community while powder cocaine has been associated with the white community (King & Mauer, 2006).

More frequently, “hydraulic displacement” refers to the unfettered discretion held by prosecutors whose decisions are largely hidden from the public view (Albonetti, 1987; Hartley, Maddan, & Spohn, 2007; Shermer & Johnson, 2010; Spohn & Fornango, 2009). Federal prosecutors play an important role in federal case processing and sentencing. They have the authority to decide whether to accept or decline a case, what charges to bring against a defendant, and whether to dismiss charges (Kim, Spohn, & Hedberg, 2015; Shermer & Johnson, 2010; Piehl & Bushway, 2007). Prosecutors can also decide whether to file a motion for a substantial assistance departure and whether to negotiate plea offers (Hartley, et al., 2007; Kim, et al., 2015; Spohn & Fornango, 2009; Ulmer, Eisenstein, & Johnson, 2009). Therefore, their decisions can significantly shape the final outcome of a case regardless of whether judicial discretion is constrained.

One courtroom actor that has received less attention than either federal prosecutors or district judges is the federal magistrate judge. Like U.S. attorneys, federal

magistrate decisions are hidden from public view, and federal magistrates are only held accountable by the federal district judge, who has the authority to reverse any decisions made by the magistrate judge (McCabe, 2014). Federal magistrate judges have four main duties. They can 1) decide petty and misdemeanor offenses; 2) preside over pretrial matters and detention decisions; 3) perform initial proceedings in criminal cases; and 4) determine civil cases if agreed on by those involved in the case (McCabe, 2014). Importantly, initial proceedings and detention decisions have been shown to significantly influence subsequent court outcomes (Sacks & Ackerman, 2014; Spohn, 2009; Williams, 2003).

Because case processing and sentencing is a collaborative and dynamic process composed of multiple actors, sentencing scholars have advocated for a cumulative disadvantage approach to sentencing research (Baumer, 2013; Brennan, 2006; LaFree, 1985; Lizotte, 1978; Spohn, 2009; Spohn, Gruhl, & Welch, 1981-1982; Zatz, 1985). The cumulative disadvantage approach is a paradigm that considers the whole court process and recognizes that examining different stages of the justice system separately cannot provide a complete picture of the many complex and subtle ways different parts of the process integrate and affect one other (Baumer, 2013; Hagan, 1974; Ulmer, 2012; Spohn, 2015a; Zatz, 1987, 2000). Typically, cumulative disadvantage is applied to sentencing research by examining each stage of the court process. Subsequently, the influence of prior stages on later court outcomes is investigated as well as the general effect of the key variable of interest on combined court outcomes (see Kutateladze et al., 2014; Sutton, 2013; Wooldredge et al., 2015). The cumulative disadvantage approach overcomes

limitations in investigating a single decision point because it accounts for subtle, indirect, and cumulative effects within the criminal justice system.

Immigration Cases in the Federal Court System

Parallel to sentencing reform, Congress passed legislation that broadened the categories of criminal immigration offenses (Zatz & Rodriguez, 2015). In addition, the U.S. government expanded its capacity to enforce immigration cases by creating the Department of Homeland Security and its subsector Immigration and Customs Enforcement (ICE) in 2002 (Wadhia, 2010). Accordingly, expenditures on immigration enforcement increased substantially to the point where ICE now comprises the largest enforcement mechanism of the U.S. federal government (Meissner et al., 2013). As a result, the number of immigration cases prosecuted in U.S. federal courts increased exponentially and now comprise the largest primary offense category (Beckett & Evans, 2015; Hagan, Rodriguez, & Castro, 2011; Stumpf, 2013).

Immigration offenses differ from other federal offense types in a number of ways because of their interdependency with the civil system. First, as previously discussed, the intersection of the criminal and civil courts has resulted in the differential prosecution of immigration cases compared to other offense types. For example, civil actors are involved in the screening and referral of immigration cases compared to that of other offense types, where U.S. attorneys oversee screening, declination, and filing (Eagly, 2010). In this study, case declinations represent less than .01% of immigration cases, whereas case declinations comprise 4% of other federal offense types. Relatedly, nearly

60% of immigration cases are filed in magistrate court. By comparison, 10% of nonimmigration cases are filed in magistrate court.

Additionally, early disposition typically only applies to illegal reentry cases; early disposition is essentially a type of plea bargain that speeds up the federal court process and deportation and results in a fast-track departure that reduces the length of sentence served. Early disposition occurs in approximately 25% of immigration cases filed in district court (Maxfield & Burchfield, 2002; McClellan & Sands, 2006; see descriptive statistics below). By contrast, early disposition and fast-track departures are only granted in 3% of nonimmigration cases filed in district court. Because fast-track departures prevent defendants from receiving other types of departures, federal prosecutors hold more discretion over the departure decision in immigration cases compared to other offense types.

Second, immigration cases differ from other offense types, especially other nonviolent offense types, in the ubiquity of detention and incarceration (Chin, 2011). In this study, 98% of immigration defendants are held in presentence detention, while 68% of defendants in other offense types are held in presentence detention. Similarly, 93% of immigration cases filed in district court result in incarceration, whereas 44% of all other offense types filed in district court lead to incarceration. Third, the primary demographic of immigration cases consists of Hispanic noncitizens (Hartley & Tillyer, 2012). Noncitizens comprise 20% of defendants in nonimmigration offenses but are 97% of defendants in immigration offenses.

Overall, due to their qualitatively distinct nature, immigration cases have received little empirical attention (Hartley & Tillyer, 2012). Nevertheless, the discretion afforded to prosecutors in immigration cases and the continued growth of immigration cases in U.S. Federal Courts call for an empirical understanding of how these cases are processed and whether race and ethnicity impact decision making.

Theoretical Framework

Focal Concerns. The focal concerns perspective connects the use of discretion to unwarranted racial and ethnic disparity in decision making and explains how and why race and ethnicity influence court outcomes. According to this perspective, criminal justice actors depend on three focal concerns to arrive at decisions (Steffensmeier, Ulmer, & Kramer, 1998). These encompass the blameworthiness of the defendant, protection of the community, and practical constraints on and consequences of decisions (Steffensmeier, Ulmer, & Kramer, 1998). Courtroom actors, however, are limited in their decision making by time constraints and available information leading to “bounded rationality” (Albonetti, 1987). Because decision makers often have limited time and information to process all aspects of the case, they may rely on extralegal characteristics to determine defendants’ culpability and future dangerousness to the community, especially when race, gender, age, and case characteristics interact to provoke negative stereotypes (Albonetti, 1991; Steffensmeier, Ulmer, & Kramer, 1998). Due to the United States’ lengthy history of using the criminal justice system as a tool of racial oppression and control, young, black males have been singled out as dangerous and criminally prone,

and media portrayals of crime continue to perpetuate stereotypes of black male offenders (Russell-Brown, 2009).

In the context of immigration offenses, other racial/ethnic groups have been the recipients of stereotyping. In particular, the Latino population has been associated with undocumented immigration, drug trafficking, and criminality (Chavez, 2013; Roman, 2000; Russell-Brown, 2009). Several scholars have noted that in the public's mind, the term criminal illegal alien is synonymous with Hispanic ethnicity, and with Mexican migrants especially (Fan, 2013; Chacon, 2007; Zatz & Smith, 2012). Similarly, Wu and Kim (2012) have also documented how an increase in Asian immigration during the 20th century facilitated a stereotype of Asian immigrants as smugglers and visa overstayers. This negative stereotype of Asian immigrants has operated simultaneously with the image of the "model minority" to the detriment of Asian defendants charged with immigration offenses. Consistent with this observation, Wu and Kim (2012) found no evidence of preferential treatment for Asian defendants within immigration offenses.

Black immigrants, immigrating mostly from Haiti, Jamaica, and continental Africa (Bryce-Laport, 1972; Palmer, 2017), are fewer in number than Hispanic immigrants and have received less attention in the immigration literature. In fact, Palmer (2017) argues that black immigrants have been erased from the conversation and their plight has been invisible. Nevertheless, they are overrepresented in the criminal justice system (Palmer, 2017). Calavita (2007) asserts that Americans do not cognitively separate black immigrants from African Americans, thus the historical oppression of African Americans is transferred onto black immigrants (see also Waters, 1994).

Consequently, black immigrants are similarly viewed as dangerous and criminally prone (Calavita, 2007).

Steffensmeier and Demuth (2000) demonstrated the importance of taking a more nuanced approach toward race and ethnicity by arguing that the perceived distinctiveness of racial and ethnic minority status may combine to the disadvantage of black Hispanic defendants. Courtroom actors may perceive black Hispanic defendants as more dangerous and blameworthy because their minority status is amplified not only by race but also by the linguistic and cultural differences associated with ethnicity. The authors' findings supported their claims. In relating Steffensmeier and Demuth (2000)'s findings to defendants in immigration offenses, however, the distinction by race and ethnicity may be less pronounced because immigration offenses are disproportionately committed by noncitizens and cultural and linguistic differences characterize all racial and ethnic groups. Therefore, whether race and ethnicity within immigration cases combine to the disadvantage of black Hispanic noncitizens remains an empirical question.

Review of the Literature

Courts and sentencing research has focused on how race and ethnicity influence sentencing and whether policy changes that made the guidelines advisory reintroduced unwarranted disparity in the sentencing process (see Baumer, 2013; Spohn, 2000; Ulmer, 2012; Zatz, 2000 for an overview). Generally, studies have found that racial and ethnic disparity in sentencing has become less overt over time (Spohn, 2000, 2015b; Zatz, 1987, 2000). Instead, the relationship between offender race/ethnicity and sentencing is often dependent on other factors, such as, the offender's gender, age, and employment status,

victim characteristics, environmental context, or prior decision points (Baumer, 2013; Mitchell, 2005; Pratt, 1998; Spohn, 2000, 2015b; Ulmer, 2012; Zatz, 2000). Despite the decrease in explicit discrimination, Van Cleve (2016) demonstrates that implicit bias is no less insidious. Literature has also found that racial and ethnic disparity in sentencing decisions has remained relatively stable in the wake of *Booker/ Fanfan v. United States* and *Gall v. United States* (Fischman & Schanzenback, 2012; Starr & Rehavi, 2013; Kim et al., 2016; Ulmer et al., 2011a, 2011b).

Because prior decision points often shape later decisions and U.S. attorneys are afforded great discretion in case acceptance, charging, and plea bargaining, a body of literature began to examine the influence of race and ethnicity in prosecutorial decision making (Albonetti, 1986, 1987; Albonetti & Hepburn, 1996; Spears & Spohn, 1997; Spohn & Spears, 1996; Ulmer, Kurlychek, & Kramer, 2007; Wright & Engen, 2006). The findings have been mixed in federal court research. Some studies show racial and ethnic disparity in case acceptance or dismissal, plea bargaining, charging decisions, and substantial assistance departures (e.g. Hartley et al., 2007; Kutateladze, Andiloro, & Johnson, 2016; Starr & Rehavi, 2014; Ulmer et al., 2011b); other studies do not (e.g. Franklin, 2010; Shermer & Johnson, 2010). By comparison to studies on prosecutorial discretion, only a few studies have looked at pretrial and presentence detention decisions. The few studies on detention decisions have consistently found that black and Hispanic defendants are more likely to be detained compared to white non-Hispanic defendants (Demuth, 2003; Lizotte, 1978; Schlesinger, 2005; Ulmer, Painter-Davis, & Tinik, 2016; but see Reitler et al., 2013).

A smaller number of studies have used a cumulative disadvantage approach to detect how racial and ethnic disparity accumulates over multiple decision points. Recent studies that have used a more comprehensive and dynamic method by assessing cumulative disadvantage have garnered support for this approach. For example, Spohn (2009) found that race directly impacted pretrial detention. In turn, pretrial detention significantly increased sentence length for black, male offenders. Therefore, race indirectly influenced sentence length through pretrial detention and had a cumulative effect. Similarly, Stolzenberg, D'Alessio, and Eitle (2013) found that race significantly affected sentence length and the decision to incarcerate in addition to having an overall cumulative effect. Kutateladze et al. (2014) also found evidence for cumulative disadvantage and strengthened prior findings by uncovering racial and ethnic disparities at some decision points (pretrial detention, plea offers, and incarceration). Wooldredge et al. (2015) found particularistic rather than systematic race effects on court outcomes (bond amounts, pretrial detention, and nonsuspended prison sentences) and an overall significant cumulative effect.

Notably, only two studies have examined racial and ethnic disparity within immigration cases. Hartley and Tillyer (2012) found that sentence length varied by race and ethnicity in immigration offenses, where black and Hispanic defendants were more likely to receive a lengthier sentence compared to white defendants. In some federal districts, however, Hispanic defendants received shorter sentence lengths. By contrast, Tillyer and Hartley (2016) examined the use of fast-track departures and found no differences based on race and ethnicity. Together, the two studies found that racial and

ethnic disparity within immigration cases depends on the decision point, which further supports the need for a more comprehensive approach. In sum, the application of the cumulative disadvantage approach to immigration cases can help inform future immigration research, policy, and practice on relevant predictors for multiple court outcomes and can identify the location and mechanisms of any unwarranted disparity.

Hypotheses

The purpose of the present study is to conduct a comprehensive examination of racial and ethnic disparity in immigration cases to identify the location and mechanisms of any unwarranted disparity. Drawing on the focal concerns perspective and using a cumulative disadvantage approach, the following hypotheses are derived.

Hypothesis 1: *Black defendants and Asian defendants will be more likely to have their cases filed in district court compared to their white counterparts.*²

Hypothesis 2: *Black non-Hispanic, black Hispanic, white Hispanic, and Asian defendants will experience harsher treatment within immigration cases at each stage of the federal court process compared to their white non-Hispanic counterparts.*

Hypothesis 2a: *Black Hispanic, black non-Hispanic, white Hispanic, and Asian defendants will be more likely to be detained prior to sentencing.*

Hypothesis 2b: *Black Hispanic, black non-Hispanic, white Hispanic, and*

² Black non-Hispanic and black Hispanic defendants are combined to represent black defendants at case filing because ethnicity is not available in the USMS. Similarly, white non-Hispanics and white Hispanics are also combined to represent white defendants for the same reason.

*Asian defendants will be less likely to receive early disposition than white non-Hispanic defendants.*³

Hypothesis 2c: *Black Hispanic, black non-Hispanic, white Hispanic, and*

Asian defendants will be less likely to receive a charge reduction than white non-Hispanic defendants.

Hypothesis 2d: *Black Hispanic, black non-Hispanic, white Hispanic, and*

Asian defendants will be less likely to receive a guideline departure (i.e. downward, substantial assistance, and other government assistance) than white non-Hispanic defendants.

Hypothesis 2e: *Black Hispanic, black non-Hispanic, white Hispanic, and*

Asian defendants will be more likely to receive a lengthier sentence than white non-Hispanic defendants.

Hypothesis 3: *Black Hispanic, black non-Hispanic, white Hispanic, and Asian*

defendants will receive harsher treatment indirectly through the influence of prior stages on later stages.

Hypothesis 3a: *Black Hispanic, black non-Hispanic, white Hispanic, and*

Asian defendants will be more likely to receive presentence detention and that will in turn, decrease the likelihood of an early disposition.

Hypothesis 3b: *Black Hispanic, black non-Hispanic, white Hispanic, and Asian*

³ Early disposition results in a shorter sentence length, yet it is also an avenue for deportation and has been associated with crimmigration. On the one hand, defendants of color may be less likely to receive early disposition because of the leniency in sentence length. On the other hand, they may be more likely to receive early disposition because of deportation.

*defendants will be more likely to receive presentence detention and less likely to receive early disposition and that will, in turn, indirectly decrease the likelihood of a charge reduction.*⁴

Hypothesis 3c: *Black Hispanic, black non-Hispanic, white Hispanic, and Asian defendants will have an increased likelihood of presentence detention and a decreased likelihood of charge reduction and that will, in turn, decrease the likelihood of a guideline departure.*

Hypothesis 3d: *Black Hispanic, black non-Hispanic, white Hispanic, and Asian defendants will have an increased likelihood of presentence detention and a reduced likelihood of early disposition, charge reduction, and guideline departure and those will, in turn, increase sentence length.*

Hypothesis 4: *The effects of race and ethnicity combined over multiple decision points – presentence detention, early disposition, charge reduction, guideline departure, and sentence length – will accumulate to the detriment of black non-Hispanic, black Hispanic, white Hispanic and Asian defendants.*

Hypothesis 4a: *The total effect of race and ethnicity will decrease the likelihood of early disposition for black Hispanic, black non-Hispanic, white Hispanic, and Asian defendants.*

Hypothesis 4b: *The total effect of race and ethnicity will decrease the likelihood of a*

⁴ Prior research has shown that detention decisions have resulted in more punitive treatment of defendants in subsequent outcomes. Although this relationship has more often been examined on sentencing decisions, prosecutors may also view detention status as an indicator that the defendant poses a greater threat than those who are released and may be less likely to reduce the charges.

charge reduction for black Hispanic, black non-Hispanic, white Hispanic, and Asian defendants.

Hypothesis 4c: *The total effect of race and ethnicity will decrease the likelihood of a guideline departure for black Hispanic, black non-Hispanic, white Hispanic, and Asian defendants.*

Hypothesis 4d: *The total effect of race and ethnicity will increase sentence length for black Hispanic, black non-Hispanic, white Hispanic, and Asian defendants.*

Data and Methods

Data

To test the above hypotheses, the Federal Justice Statistics Program (FJSP) data series is used. This contains data across various federal agencies, such as the U.S. Marshals Service (USMS), the Executive Office of U.S. Attorneys (EOUSA), the Administrative Office of U.S. Courts (AOUSC), and the U.S. Sentencing Commission (USSC). The FJSP is ideal for studying cumulative disadvantage within immigration offenses because it follows defendants throughout the court process, including early decision points. Moreover, weaknesses inherent in a single data set can be overcome through merging data across agencies. For example, the EOUSA and AOUSC have important prosecutorial decision points and court processing information, but neither has defendant background and demographic information. The USMS and USSC contain demographic and background information on defendants. Therefore, merging together the USMS, EOUSA, AOUSC, and USSC facilitates the examination of racial and ethnic disadvantage over multiple decision points (see Johnson, 2012). Relatedly, the FJSP is the only data set to include case processing information on immigration cases.

The USMS, EOUSA, AOUSC, and USSC are merged for a cohort of defendants drawn from the USMS who were arrested in the years 2004 through 2010. The years 2004 through 2010 were chosen for two reasons. First, the cohort of arrested defendants begins in 2004 because early disposition was not uniformly tracked until the PROTECT Act was passed in April of 2003. Second, the cohort of defendants ends in 2010 because this ensures that all the defendants have completed the court process through sentencing. For example, the full federal court process often takes a year or two to complete where defendants arrested in 2010 are sentenced in 2011 or 2012. If the years 2011 or 2012 are included in the cohort of arrested defendants, a large portion will drop out of the sample because they have not yet been charged or sentenced.⁵

After the data are merged, defendants whose primary offense at arrest is an immigration offense are selected from the full sample. Immigration offenses in the USMS consist of illegal entry/illegal reentry, smuggling of aliens, false citizenship, and other immigration offenses comprised mostly of visa and marriage fraud and other types of fraudulent documentation. In addition, American Indian defendants and citizens are removed from the analysis due to their small numbers represented in immigration offenses.⁶ Since multiple cases in the EOUSA match with a single USMS case (Kelly, 2012), duplicates are deleted from analysis, and cases residing in the four district territories (Guam, Puerto Rico, Virgin Islands, and North Mariana Island) are also removed, restricting the analysis to 90 federal district courts. Because of the small

⁵ When this project first began, the FJSP was available until the year 2012.

⁶ Future research should also examine how type of immigrant status affects federal court processing of immigration offenders.

number of case declinations, the analysis is restricted to cases that were accepted. Lastly, the year of arrest does not necessarily coincide with the year that the matter or case was filed or sentenced in the EOUSA, AOUSC, and USSC. As a result, a very small number of cases in the EOUSA, AOUSC, and USSC occur prior to the PROTECT period (prior to April 30th, 2003). Defendants whose matters or cases were filed or sentenced prior to 2003 are removed from analysis because early disposition was not uniformly tracked prior to this time period. Ultimately, the final sample contains 309,002 defendants at case filing. After case filing, the FJSP does not contain outcome information for cases concluded in federal magistrate court, which drop out of the sample – 102,274 cases were filed in district court and matched to the USSC data. Cases with missing data on the dependent variables were removed, and crosstabs were performed to compare differences between defendants who remained in the sample and those who did not. Presentence detention had the most data missing (9,255 cases) followed by early disposition (1,821 cases) and sentencing (114 cases). No data was missing on charge reduction. Defendants with missing information on presentence detention were more likely to be white Hispanic, female, younger, without children, and referred for illegal reentry from the Department of Homeland Security. Together, these variables indicate that missing information on presentence detention may be more likely for defendants who are held in immigration custody. Therefore, interpretation of findings for presentence detention must be qualified within this context. Few differences emerged between defendants with missing data on early disposition or sentence length.

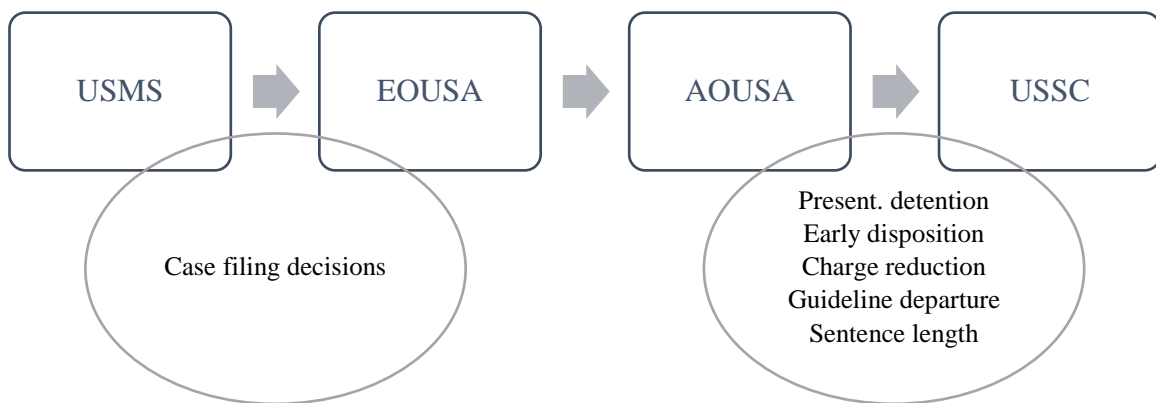
Dependent Variables

In accordance with a cumulative disadvantage approach, a series of dependent variables are used to capture multiple stages of the court process. Decision points are based on prior cumulative disadvantage research as well as prior federal courts and sentencing literature (see Hartley & Tillyer, 2012; Johnson, 2012; Johnson & Betsinger, 2009; Kutateladze et al., 2014; Shermer & Johnson, 2010). The first dependent variable is *filed in district court* indicating whether a case is filed in magistrate court or filed in district court (1 = filed in district court, 0 = filed in magistrate court).

Here it is important to distinguish between magistrate and district court because the two are qualitatively different. Federal magistrate judges are selected by a panel of lawyers and citizens and are appointed for a term of eight years (McCabe, 2014). Federal magistrate judges can rule on petty and misdemeanor offenses, which depending on the severity of the offense, can be sentenced for up to one year of incarceration (McCabe, 2014). Federal magistrate judges cannot try or sentence felony cases, yet they can preside over civil issues when defendants agree to it. They are held accountable by the federal district judge (McCabe, 2014). As a result, federal magistrate judges play a significant role in immigration cases because of the large volume of petty and misdemeanor illegal entry cases and the distinct interconnection between civil and criminal issues in immigration cases. By contrast, cases filed in federal district court can be petty, misdemeanor, or felony cases and are presided over by U.S. attorneys and judges who are presidentially appointed. The most severe cases are subject to life in prison or the death penalty. While prosecutors are afforded latitude in their decisions, federal district judges

answer to the federal sentencing guidelines. Overall, extra-legal differences in the filing of cases in district court as opposed to magistrate court would suggest exposure of defendants to harsher treatment. Below, Figure 2 displays the linked flow of agency data and their corresponding decision points.

Figure 2 Agency-linked data sets and their corresponding decision points



The second dependent variable consists of *presentence detention*, reflecting whether a defendant is detained or released (1 = detained, 0 = released). The detention decision is usually made at two different time points – a few days after arrest and after a guilty plea is entered – but can happen at any time prior to sentencing (Reitler, Sullivan, & Frank, 2013). Only in very rare circumstances does the detention status of a defendant change after their initial pretrial hearing, especially in the case of immigration offenses (Garcia Hernandez, 2015; Reitler, Sullivan, & Frank, 2013). Therefore, presentence detention is examined prior to charge reduction, guideline departure, and sentence length.

The third dependent variable is *early disposition* (1 = early disposition, 0 = early disposition). *Early disposition* under 5K3.1 is a program that fast-tracks criminal immigration defendants through the federal court system. Early disposition was first implemented in southwestern border districts in the 1990s as a solution to increase efficiency in federal district courts with a large percentage of immigration cases (Cole, 2012; McClellan & Sands, 2006). Technically, early disposition is considered a type of guideline departure but has several unique features that distinguish it from other types of departures. First, early disposition is given at the discretion of the prosecutor and requires the defendant to plead guilty within 30 days of being charged, to agree to not file any motions, and to waive the right to argue for a variance. In return, a defendant with a criminal history category below six can receive a four-level downward departure, and a defendant with a criminal history category of six can receive a two-level downward departure (Cole, 2012). This means a four-level reduction in the offense gravity score. Second and relatedly, early disposition falls temporally prior to other guideline departures. Third, for the years of the present study, early disposition is only an option in certain districts. By passing the PROTECT Act in 2003, Congress officially approved early disposition programs in select districts where the United States Attorney could demonstrate that the program would save the government significant resources (McClellan & Sands, 2006). In 2012, the U.S. Deputy Attorney sent a mandate that approved fast-track early disposition programs nationwide. For these reasons, *early disposition* is analyzed separately from other guideline departures and prior to charge reduction; however, participating in an early disposition program precludes the defendant

from qualifying for other types of guideline departures. Thus, the indirect effect of early disposition is assessed on charge reduction and sentence length but not on guideline departure.

The fourth dependent variable is *charge reduction*, measuring whether charge severity is reduced from initial filing to termination (1 = reduced, 0 = not reduced). Charge severity is computed on a scale with 78 possible values where murder is the most severe charge, and a Class C misdemeanor is the least severe charge. To calculate charge reduction, the most severe charge at case filing is subtracted from the most severe charge at case termination. Then this variable is dichotomized with cases with a negative value coded as “1” and cases with a positive or zero value coded as “0.”⁷

The timing of charge reduction when measured as statutory severity is ambiguous. Most often charge bargaining occurs during plea negotiations prior to arraignment and departure decisions, but there are notable exceptions in the case of an early disposition agreement or a substantial assistance departure, which are wholly or partially determined by the prosecutor (Administrative Office of U.S. Courts; Boss & Angarella, 2006). The temporal order issue is partly accounted for in the circumstance of an early disposition agreement by separating early disposition out from other guideline departures and placing it temporally prior to charge reduction. Because downward and upward departures are applied after the final charge is decided upon (Office of General Counsel, 2014), charge reduction is placed between early disposition and guideline

⁷ The variable was dichotomized to reflect whether or not a charge reduction was received because most charges were decreased from a two-year to one-year period of incarceration. Charge reductions greater than a year were rare.

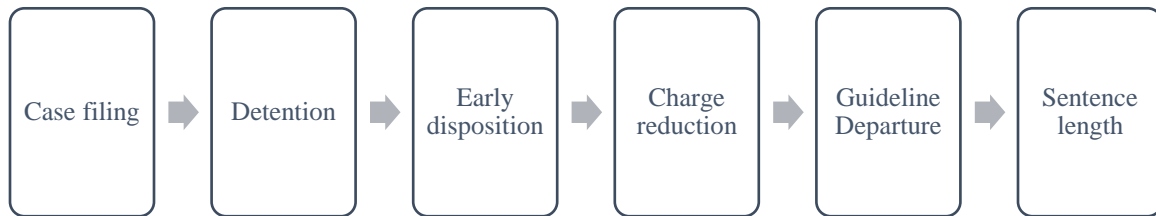
departures. Nevertheless, it should be noted that in some instances of substantial assistance and other government sponsored departures, charge reduction may come afterward.

The fifth dependent variable is *guideline departure*. *Guideline departure* is coded into a multinomial outcome (1 = no departure within guidelines, 2 = downward departure, 3 = substantial assistance departure, 4 = government assistance departure, 5 = upward departure).⁸ Cases ineligible for a guideline departure and cases given variances (sentences outside the guidelines that are not departures) post-Booker are removed from the guideline subsample (see Johnson, Ulmer, & Kramer, 2008; Office of General Counsel, 2014).

The last variable is *sentence length*. Following previous federal sentencing work (Kim et al., 2016; Starr & Rehavi, 2013), *sentence length* is composed of a continuous variable ranging from 0 months representing probation and capped at 470 months. Because illegal reentry cases – the largest portion of immigration cases at sentencing – are concentrated on baseline offense level 8, sentence length is logged to reduce skew. Cases with zero months of imprisonment are assigned as .01. Below, Figure 3 presents the order of decision points for the present study.

⁸ There are two ways to examine guideline departures. When both upward and downward departures are of interest, they are investigated separately because they have different eligibility requirements (e.g. Johnson, 2003, 2005). When downward departures are the primary focus, upward and downward departure are examined together as a four-category multinomial outcome (e.g. Johnson, Ulmer, & Kramer, 2008). I follow the second approach by including upward and downward departures together in my analyses because upward departures are extremely rare and only occur in less than 1% of immigration cases. Therefore, the focus and discussion centers on downward and substantial assistance departures.

Figure 3: Analytic order of decision points



Independent Variables

The primary variables of interest are the defendant's *race* and *ethnicity*. Ethnicity is not available in the USMS data, thus only race (white, black, and Asian) effects are examined at case filing. Ethnicity is added in the subsequent stages that rely on USSC background information. A series of dummy variables represent black non-Hispanic, black Hispanic, white non-Hispanic, white Hispanic, and Asian defendants; white non-Hispanics are the reference category (see Johnson & Betsinger, 2009; Steffensmeier & Demuth, 2000).

Control Variables

A number of variables are controlled for that have been previously established as correlates of federal court processing outcomes (see Johnson, 2012; Johnson et al., 2008; Shermer & Johnson, 2010) to ensure that the effects of race and ethnicity are not spurious. The USMS and EOUSA differ from the AOUSC and USSC in the information and data they contain. Therefore, different variables are employed depending on the agency data and decision point. The following section is structured by listing the control variables and how they are constructed according to each dependent variable.

Filed in district court. The control variables for *filed in district court* are drawn from both the USMS and the EOUSA, which contain several demographic and legal factors including national priority status, multiple initial charges, offense type, arresting agency, and year the matter was concluded. Age and gender serve as demographic controls. *Age* is measured as a continuous variable, and a squared term for age is included to assess if the effect of age is nonlinear (Steffensmeier, Kramer, & Ulmer, 1995). *Gender* is a dichotomous variable representing female and male defendants (1 = female, 0 = male).

National priority indicates whether a prosecutor assigns a case as a national or district priority (1 = national/district priority, 0 = neither national/district priority), and any type of offense can be assigned priority status under certain conditions (Johnson, 2012). *Multiple initial charges* captures whether the defendant initially received multiple charges (1 = multiple charges, 0 = single charge). *Offense type* reflects the offense category of the primary charge. The primary offense type can change from arrest to charging because a defendant may be arrested for multiple offenses, such as citizenship fraud and a drug offense. At arrest, the primary offense may be citizenship fraud, but the primary charge may change to a drug offense which is why the primary charge does not always coincide with an immigration offense. Accordingly, offense type is coded separately at each stage of the court process. For example, offense type at case filing depends on the primary charge at arrest, whereas offense type for charge reduction depends on the primary charge after case filing. In addition, offense types coded after case filing consist of other offense categories outside of immigration cases. Nine dummy

variables are created to measure offense type consisting of Illegal Reentry, Alien Smuggling, False Citizenship, Immigration-Other, Violent, Property, Drug, Weapon, and Other, with Illegal Entry cases designated as the reference category.

A control variable is also included for arrest agency. *Arrest agency* indicates whether an arrest was made by the Department of Homeland Security, which is responsible for the majority of arrests, or another type of agency, such as the U.S. Marshals, the Drug Enforcement Administration, or local law enforcement agency (1 = other type of arrest agency, 0 = Department of Homeland Security). Type of law enforcement agency is used as a control for case filing decisions for two reasons. First, Johnson (2012) noted that the source of arrest had a significant influence on case filing decisions. This may have to do with different relationships between prosecutors and referral agencies. Second, the Department of Homeland Security has a heavy hand in the screening of cases in some districts where their actors may actually preside over petty or misdemeanor cases. The year of case filing, charging, or sentencing is also included depending on the outcome of interest.⁹

Presentence detention through sentence length. The remaining control variables are pulled from the AOUSC and USSC. For each dependent variable after case filing (i.e. presentence detention, guideline departure, charge reduction, and sentence length), the following control variables are included: age, gender, level of education, number of dependents, type of counsel, multiple charges or convictions, offense type, offense severity, criminal history, acceptance of responsibility, and conviction by trial.

⁹ Year and guideline reform era were highly collinear. Therefore, the final models only contain the year dummies.

Following prior research (Johnson et al., 2008), *level of education* is dichotomized into whether some college education was completed compared to no college education (1 = some college education, 0 = no college education). Similarly, *number of dependents* measures whether the defendant has financial dependents or not (1 = financial dependents, 0 = no financial dependents).¹⁰

Legal variables are also based on prior federal court research that examines both charging and sentencing decisions (see Johnson, 2012; Shermer & Johnson, 2010). *Type of counsel* reflects defense counsel provided by a private attorney (1 = private attorney, 0 = other type of counsel).¹¹ *Multiple charges* is drawn from the EOUSA and is included as a control for presentence detention, early disposition, and charge reduction (1 = multiple charges, 0 = single charge). For guideline departure and sentence length, *multiple convictions* is pulled from the USSC and indicates whether the defendant was convicted of multiple offenses (1 = multiple convictions, 0 = single conviction). In addition, *offense type* of the most serious filing charge is controlled for in the presentence detention, early disposition, and charge reduction models through nine dummy variables for Illegal Entry, False Citizenship, Immigration-Other, Violent, Property, Drug, Weapon, and Public.

Illegal reentry becomes the reference category because most illegal entry cases drop from the analysis after being concluded in magistrate court. Subsequent stages after case filing

¹⁰ Prior research has suggested that whether the defendant has dependents is an important factor in courtroom decision making, yet 9% of cases have missing data. Thus, I follow previous sentencing research that has addressed this issue and add a dummy indicator for missing data to both keep the integrity of the sample and keep the estimates unbiased (see Johnson et al., 2008; Ulmer, Eisenstein, & Johnson, 2009).

¹¹ As with dependents, type of counsel is very important to case processing but 18% of cases has missing values. Therefore, a dummy variable is added for data missing on type of counsel (see Johnson et al., 2008; Ulmer, Eisenstein, & Johnson, 2009). The dummy variables for both dependents and type of counsel are included in the analysis, but not presented in the tables.

only examine cases filed in district court because the FJSP does not contain outcomes for cases filed in magistrate court. Using the same coding scheme, *offense type* of the most serious convicted offense is also included in the models for guideline departure and sentence length.

Offense severity is measured in two ways (see Johnson, 2012). First, for presentence detention, early disposition, and charge reduction, *offense severity* is a continuous scale measuring the maximum severity level of the most serious filing charge.¹² Second, for guideline departure and sentence length, *offense severity* is measured through the presumptive guideline sentence (Engen & Gainey, 2000). Like sentence length, the presumptive guideline sentence is logged to reduce skew, and cases with a value of zero are assigned to .01. While the presumptive guideline sentence takes criminal history and acceptance of responsibility into account, several studies have shown that both legal factors have independent effects on courtroom actors' decision making (Hartley & Tillyer, 2012; Shermer & Johnson, 2010; Johnson et al., 2008). In the case of immigration offenses, criminal history and acceptance of responsibility are particularly salient because they can determine the offense type and offense severity level (Hartley & Tillyer, 2012; Kim et al., 2015; U.S. Sentencing Commission, 2015). Accordingly, the defendant's *criminal history* is controlled for through the six-level criminal history score. In addition, a variable is included that captures whether the defendant *accepts*

¹² The most serious filing charge was introduced for the original models examining presentence detention, early disposition, and charge reduction, but it was too collinear (VIF = 21) with offense type. Bivariate correlations demonstrated that illegal entry was the culprit ($r = -.8$). Illegal entry is a misdemeanor, and all misdemeanors are their own separate category on the offense severity scale. The findings did not significantly change once offense severity was removed from analyses.

responsibility for the offense (1 = does not accept responsibility, 0 = accepts responsibility). Acceptance of responsibility indicates whether the defendant provided timely notification of his or her intentions to plead guilty (United States Sentencing Commission, 2015). *Convicted by trial* (1 = trial conviction, 0 = guilty plea) controls for whether the defendant was convicted by trial or was convicted by a guilty plea.

Finally, as the analyses are conducted, prior case processing decisions are added to each subsequent stage. For example, *presentence detention* is included as a control in early disposition, charge reduction, guideline departure, and sentence length. Likewise, *early disposition* is controlled for in the models predicting charge reduction and sentence length, and *charge reduction* is included in the models predicting guideline departure and sentence length. Similarly, *guideline departure* (with the full sample) is added to the model predicting sentence length.

Analytic Strategy

White Hispanic defendants are disproportionately represented in immigration cases, constituting approximately 90% of immigration cases. Because the hypotheses state that black non-Hispanic, black Hispanic, white Hispanic, and Asian defendants are treated more harshly than white non-Hispanic defendants, it is necessary to assign white non-Hispanic defendants as the reference category. Due to the large size of white Hispanic defendants in the sample, a random 20% subsample of white Hispanic defendants is selected for stages after case filing – 18,363 cases remain for analysis on outcomes from presentence detention through sentence length.¹³

¹³ Analyses were also run using the full sample with white Hispanics assigned as the reference category to ensure the robustness of the results. No differences emerged.

Importantly, selection bias has been a primary issue of concern in sentencing literature because of multiple case processing stages where defendants are not randomly filtered out of the criminal justice system (e.g. case acceptance and the decision to incarcerate) (Bushway, Johnson, & Slocum, 2007). Scholars have used various techniques to account for any bias that may result from analyzing a subsample systematically different from the original population, such as Heckman's (1979) two-step modeling (see Berk, 1983; Heckman, 1979). Significant difficulty arises, however, when trying to estimate selection models for sentencing studies because theoretical variables that affect the selection outcome and not the dependent variable are typically unavailable. Consequently, the lack of exclusion restrictions can introduce significant multicollinearity into the models (Bushway et al., 2007).

An additional issue specific to immigration cases is that sample attrition primarily occurs at case filing, and the FJSP does not contain information on outcomes for cases concluded in magistrate court where most immigration cases are filed. Moreover, ethnicity is not available at the case filing stage making it impossible to employ selection modeling that includes ethnicity (in other words, a model that predicts case filing using ethnicity and other variables). Because the present study does not meet the requirements to conduct selection models without exclusion restrictions (see Bushway et al., 2007; Stolzenberg & Relles, 1997), selection bias remains unaccounted for in the present study. Therefore, findings from presentence detention through sentence length should be interpreted as being conditional upon selection after the case filing stage.

Analyses begin with diagnostic tests to detect any multicollinearity issues. Diagnostic tests include variance inflation factors (VIF) and condition index values (Belsley, Kuh, & Welsch, 1980). Once diagnostic tests are conducted, a series of multivariate regressions proceed in the following stages. To address Hypotheses 1 and 2, race and ethnicity are first regressed on each decision point from case filing (ethnicity is included after case filing) through sentence length to establish a baseline relationship between the independent and dependent variables.¹⁴ Second, the full multivariate models are run to determine the main effects of race and ethnicity on court outcomes, net of controls. Logistic regression is used to model case filing, presentence detention, early disposition, and charge reduction. Multinomial regression is used for guideline departure, and ordinary least squares regression is employed for sentence length. Because defendants are nested within districts, fixed effect models are run for all models.¹⁵

Hypotheses 3 and 4 assess cumulative disadvantage through the indirect and total effects of race and ethnicity from *presentence detention* through *sentence length*. In this second part of the analysis, the present study follows Wooldredge et al.'s (2015) lead by including the full sample across all decision points. As Wooldredge et al. (2015, p. 17) state, "Because our interest in this segment of the analysis involved evaluating race effects across decision points rather than treating these decisions as discrete, the entire sample...was used for estimating all paths." After employing structural equation models,

¹⁴ Baseline models can be seen in the Appendix.

¹⁵ Missing data can harm the validity of a study, and there are several ways to deal with this issue. For the present study, listwise deletion is used because this method follows prior federal sentencing research (e.g. Doerner & Demuth, 2010; Feldmeyer & Ulmer, 2009; Ulmer, Eisenstein, & Johnson, 2010). To my knowledge, all studies to date that use the federal court data employ listwise deletion.

the indirect and total effects of race and ethnicity are calculated in Stata 13 using nlcom commands. To test Hypothesis 3, the total indirect effect is estimated by adding the impact of all previous decision points together for each individual stage of the court process. To test Hypothesis 4, the indirect and direct effects of race and ethnicity are summed to determine the total effect for *early disposition* through *sentence length*.

Results

Table 1 presents the descriptive statistics for the variables used at case filing that come from the USMS and EOUSA. As mentioned previously, the USMS and EOUSA contain different information than the AOUSA and USSC. Table 2 presents the descriptive statistics for variables from presentence detention through sentence length which were drawn from the AOUSA and USSC. Descriptive statistics are based on the full data before a random sample of white Hispanic defendants were pulled. Model diagnostic tests indicate no harmful levels of multicollinearity. Specifically, variance inflation factors (VIF) among all the variables were below the standard ceiling of 4 (Wooldridge, 2009), and the condition index values were under the cutoff of 30 (Belsley et al., 1980).

Table 1. Descriptive Statistics for Case Filing based on the USMS and EOUSA

Variable	N	Percent
Cases Filed in Magistrate Court	198,097	64%
Cases Filed in District Court	110,769	36%
	<u>M</u>	<u>SD</u>
White	.991	.091
Black	.007	.083
Asian	.001	.038
Female	.090	.286
Age	30.78	8.767
Age-squared	1024.210	610.185
Multiple charges	.141	.348
Illegal entry	.566	.496
Illegal reentry	.369	.483
Citizenship fraud	.005	.071
Other immigration	.048	.213
Violent	.020	1.730
Weapon	.080	2.844
Drug	.002	.041
Public	.002	.047
Property	.007	.083
Priority	.343	.475
Other arrest agency	.021	.144
Year 2004	.087	.282
Year 2006	.109	.311
Year 2007	.129	.335
Year 2008	.187	.390
Year 2009	.206	.404
Year 2010	.197	.398

Table 2. Descriptive Statistics for AOUSA and USSC

Variable	N	Percent
Presentence Detention	76,959	98%
Early Disposition	20,212	25%
Charge reduction	1,716	2%
No departure	53,323	66%
Downward	2,931	4%
Substantial assistance	786	1%
Government sponsored	2,946	3%
Upward Departure	435	.005%
	<u>M</u>	<u>SD</u>
Sentence Length	20.32	20.52
White non-Hispanic	.013	.114
White Hispanic	.968	.176
Black Non-Hispanic	.011	.103
Black Hispanic	.005	.073
Asian	.003	.003
Female	.038	.193
Age	33.572	8.758
Age-squared	1203.769	647.890
Dependents	.568	.495
Missing dependents	.213	.409
Education	.089	.284
Conviction count	.031	.173
AOUSC Illegal entry	.772	.419
AOUSC Citizenship fraud	.009	.096
AOUSC Other immigration	.116	.320
AOUSC Violent	.003	.054
AOUSC Weapon	.003	.058
AOUSC Drug	.004	.066
AOUSC Property	.022	.146
AOUSC Public order	.002	.045
USSC Illegal entry	.775	.418
USSC Citizenship fraud	.008	.089
USSC Other immigration	.114	.319
USSC Violent	.001	.036
USSC Weapon	.004	.059
USSC Drug	.004	.064
USSC Property	.027	.161
USSC Public order	.002	.049
Presumptive guideline	22.418	23.555
Criminal history	2.838	1.544
Private counsel	.016	.125
Missing counsel	.139	.346
Trial	.007	.082
No acceptance	.012	.108
AOUSC 2003	.019	.138
AOUSC 2004	.110	.313
AOUSC 2005	.113	.317
AOUSC 2006	.110	.313
AOUSC 2007	.125	.331
AOUSC 2008	.158	.374
AOUSC 2009	.193	.394
AOUSC 2010	.160	.367
USSC 2004	.063	.243
USSC 2005	.107	.310
USSC 2006	.113	.317
USSC 2007	.112	.316
USSC 2008	.149	.356
USSC 2009	.180	.285
USSC 2010	.198	.399
USSC 2011	.074	.261
USSC 2012	.003	.049

Hypothesis 1

Case Filing. Turning to the effect of race on case filing, Table 3 reveals that as hypothesized, black and Asian defendants are more likely to have their cases filed in district courts. As discussed earlier, information on ethnicity is unavailable at this stage because the data for the analysis of case filing are from the USMS, so the comparison category includes both white Hispanics and white non-Hispanics. Nevertheless, statistically significant racial differences exist indicating that black ($b = 2.098, p < 0.001$) and Asian defendants ($b = 1.872, p < 0.01$) are further processed into the federal court system, thereby being exposed to harsher treatment, such as the possibility of a lengthier incarceration.

Hypothesis 2

Hypothesis 2a: Presentence Detention. Table 4 displays the results of race and ethnicity on presentence detention. Inspection of Table 4 suggests that in support of Hypothesis 2a, white Hispanic ($b = .967, p < 0.001$) and black non-Hispanic defendants ($b = .545, p < 0.05$) are more likely to be detained than white non-Hispanic defendants prior to sentencing; however, both black Hispanic and Asian defendants are treated similarly to white non-Hispanic defendants.

Hypothesis 2b: Early Disposition. Table 5 presents the effects of race and ethnicity on early disposition. Investigation of Table 5 indicates that in support of Hypothesis 2b, black non-Hispanic ($b = -1.674, p < 0.001$), black Hispanic ($b = -.936, p < 0.01$), and Asian ($b = -1.492, p < 0.001$) defendants are less likely to receive early

Table 3. The Effects of Race on Case Filing Decisions

Variable	b	S.E.
Black	2.098 ***	.582
Asian	1.872 **	.658
Female	-.710 ***	.151
Age	.036 **	.012
Age-squared	-.001 **	.000
Multiple charges	-2.397	1.580
Illegal reentry	5.693 ***	.758
Citizenship fraud	6.462 ***	1.241
Other immigration	7.167 ***	1.354
Violent	7.571 ***	1.823
Weapon	7.848 ***	1.351
Drug	7.348 ***	1.484
Public	2.053 ***	.598
Property	6.685 ***	1.483
Priority	-1.637 ***	.467
Other arrest agency	2.721 ***	.351
Year 2004	.454	.420
Year 2006	-.735 ***	.191
Year 2007	-.817 **	.257
Year 2008	-1.148 ***	.242
Year 2009	-1.220 ***	.148
Year 2010	-1.405 ***	.133
Constant	-1.733 **	.564

Note: *p<.05; **p<.01; ***p<.001

†Multiplied by 100

Table 4. Effects of Race and Ethnicity on Presentence Detention

Variable	b	S.E.
White Hispanic	.967 ***	.286
Black Non-Hispanic	.545 *	.228
Black Hispanic	.386	.321
Asian	-.203	.323
Female	-.740 ***	.237
Age	-.016 **	.006
Age-squared†	-.030	.031
Dependents	-.108	.164
Missing dependents	1.281 *	.645
Education	-.399 *	.149
Multiple charges	.013	.181
Illegal entry	-.635 *	.303
Citizenship fraud	-.712	.375
Other immigration	-1.048 ***	.300
Violent or weapon	-.030	.604
Drug	.407	.770
Property	-.974 ***	.228
Public order	-.632	.478
Criminal history	.137	.075
Private counsel	-1.043 ***	.138
Missing counsel	.621	.348
Trial	-.679 *	.300
No acceptance	.164	.272
Year 2003	.331	.316
Year 2004	-.149	.153
Year 2006	-.010	.176
Year 2007	.356	.259
Year 2008	-.042	.212
Year 2009	.396 *	.174
Year 2010	.531 ***	.123
Constant	2.87 ***	.361

Note: *p<.05; **p<.01; ***p<.001

†Multiplied by 100

Table 5. Effects of Race and Ethnicity on Early Disposition

Variable	b	S.E.
White Hispanic	.286 *	.143
Black Non-Hispanic	-1.674 **	.506
Black Hispanic	-.936 **	.305
Asian	-1.492 ***	.334
Female	-.342 *	.157
Age†	-.046	.306
Age-squared†	.002	.012
Dependents	.087	.060
Missing dependents	.863	.448
Education	-.017	.070
Multiple charges	-.378	.417
Illegal entry	-1.681 *	.823
Citizenship fraud	-.175	.787
Other immigration	.236	.437
Violent or weapon	-1.41 *	.633
Drug	-1.676 **	.606
Property	-3.391 ***	.638
Public order	-.517	.686
Criminal history	.185 **	.067
Private counsel	-.638	.378
Missing counsel	-1.186 *	.586
No acceptance	-1.45 ***	.412
Year 2003	-.502 *	.255
Year 2004	.106	.164
Year 2006	-.092	.127
Year 2007	-.060	.132
Year 2008	-.156	.133
Year 2009	-.260	.165
Year 2010	-.209	.171
Presentence detention	.998 **	.373
Constant	-2.620 ***	.446

Note: *p<.05; **p<.01; ***p<.001

†Multiplied by 100

disposition than white non-Hispanic defendants. Yet, further investigation of Table 5 shows that contrary to Hypothesis 2b, white Hispanic defendants are more likely to receive early disposition than white non-Hispanic defendants ($b = .286, p < 0.05$). Except for white Hispanic defendants, Hypothesis 2b is supported.

Hypothesis 2c: Charge Reduction. Table 6 presents the effects of race and ethnicity on charge reduction. No significant effect exists for white Hispanic, black Hispanic, black non-Hispanic, or Asian defendants, thus suggesting no support for Hypothesis 2c at charge reduction.

Hypothesis 2d: Guideline Departure. The next stage examined is guideline departure. As noted previously, the analysis for guideline departure is conducted on a subsample of cases eligible for departure. Because early disposition occurs quickly (within 30 days of being charged) and prevents defendants from being eligible for other departure types, defendants who received early disposition are also removed from the analysis. Four departure types are examined: downward departure, substantial assistance departure, other government assistance departures, and upward departures. Upward departures comprise less than 1% of all cases. Therefore, the focus is on downward, substantial assistance, and other government assistance departures.

Turning to Table 7, Model 1 displays the impact of race and ethnicity on downward departures and demonstrates that race and ethnicity have no significant impact on downward departures. Proceeding to Model 2, the model highlights the impact of race and ethnicity on substantial assistance departures. Model 2 reveals that black Hispanic ($b = -1.07, p < 0.05$) and white Hispanic ($b = -1.006, p < 0.001$) defendants are significantly

Table 6. Effects of Race and Ethnicity on Charge Reduction

Variable	b	S.E.
White Hispanic	-.165	.193
Black Non-Hispanic	-.097	.345
Black Hispanic	-.663	.355
Asian	-.261	.413
Female	.526 *	.172
Age	.002	.007
Age-squared†	.065	.044
Dependents	.286	.089
Missing dependents	.339	.429
Education	-.234	.214
Multiple charges	2.35 ***	.361
Illegal entry	6.649 ***	.939
Citizenship fraud	7.782 ***	1.095
Other immigration	5.054 ***	.737
Violent	7.243 ***	.385
Weapon	7.063 ***	.872
Drug	7.579 ***	.718
Property	7.230 ***	.767
Public order	7.412 ***	.580
Criminal history	.126	.083
Private counsel	-.332	.408
Missing counsel	1.058 ***	.272
Trial	-.078	.605
No acceptance	-.697	.472
Year 2003	.492	.348
Year 2004	.304	.245
Year 2006	.231	.283
Year 2007	.463	.281
Year 2008	.320	.241
Year 2009	.391	.289
Year 2010	.392	.269
Presentence detention	-.006	.266
Early disposition	.764 *	.342
Constant	-11.068 ***	1.019

Note: *p<.05; **p<.01; ***p<.001

†Multiplied by 100

Table 7. Effects of Race and Ethnicity on Guideline Departure

Variable	Downward		Substantial Assist.		Government Spons.		Upward	
	b	S.E.	b	S.E.	b	S.E.	b	S.E.
White Hispanic	.011	.249	-1.006 ***	.230	.420	.223	1.335	.803
Black Non-Hispanic	-.084	.289	-0.722	.430	-.562	.416	.758	.875
Black Hispanic	-.147	.342	-1.075 *	.527	-.373	.321	.250	1.184
Asian	.589	.431	0.595	.340	.349	.534	1.517	.992
Female	.605 ***	.158	0.564	.299	.352	.259	.700	.339
Age	-.017 **	.007	-0.012	.009	-.018	.008	.024	.024
Age-squared†	.031	.029	-0.062	.039	.067	.022	-.074	.081
Dependents	.100	.091	0.266	.167	.260	.084	.025	.149
Missing dependents	.384	.310	0.292	.903	.205	.303	-15.695	.650
Education	.149	.159	0.625	.189	-.734	.369	-.108	.407
Conviction count	-1.445 **	.417	-0.267	.280	-.670	.331	.229	.734
Illegal entry	-.667	.449	0.299	.562	.958	1.011	-.915	1.256
Citizenship fraud	.067	.674	1.362	.607	-.092	1.008	-15.344	.430
Other immigration	-.599 *	.235	1.477	.400	.057	.606	1.545	.517
Violent or weapon	-.622	.694	1.688	.644	-.566	.927	-15.202	.387
Drug	-.918	.677	1.572	.410	-.186	.524	1.245	1.113
Property	-.154	.499	1.892 ***	.409	-.077	.798	.908	.926
Public order	.438	.677	1.953 **	.593	-.577	1.247	2.431	.735
Presumptive guideline	.880 ***	.090	1.081 ***	.152	.551	.121	-.200	.181
Criminal history	-.009	.074	-0.208 ***	.063	-.177	.071	.235	.135
Private counsel	-.162	.244	0.115	.276	.184	.185	-.886	.937
Missing counsel	-.230 *	.151	-0.072	.222	-.556	.557	.426	.403
Trial	-.230	.504	-14.758 ***	.858	-.580	.803	-1.017	.991
No acceptance	-.517	.492	-2.297 *	.935	-1.637	.741	.775	.476
Year 2004	.644 **	.241	-.025	.323	.585	.426	.720	1.037
Year 2006	.361	.244	0.231	.280	.183	.260	2.340	.763
Year 2007	.508	.229	0.064	.226	.708	.372	2.171	.716
Year 2008	.163	.228	0.142	.266	.988	.623	.618	.683
Year 2009	.423 *	.198	0.098	.279	.465	.172	1.641	.622
Year 2010	.555 *	.226	-0.208	.276	.173	.222	1.536	.772
Year 2011	.464 *	.181	-0.158	.325	.179	.190	.955	.367
Year 2012	1.283 *	.542	1.441 **	.492	.700	.827	-14.133	.665
Presentence Detention	-.471 *	.219	-0.959 **	.296	-.370	.216	1.179	1.055
Charge reduction	-.280	.229	-0.073	.341	-.392	.368	.869	.447
Constant	-5.323 ***	.596	-5.551 ***	.855	-4.408	1.093	-9.336	1.410

Note: *p<.05; **p<.01; ***p<.001

†Multiplied by 100

less likely to receive a substantial assistance departure than white non-Hispanic defendants. Last, Model 3 presents the results for other government sponsored departures where race and ethnicity have no statistically significant impact. Overall then, partial support exists for Hypothesis 2d at guideline departure.

Hypothesis 2e: Sentence Length. Table 8 presents the effects of race and ethnicity on sentence length. Table 8 suggests that black Hispanic defendants ($b = .203, p < 0.05$) receive a longer sentence than white non-Hispanic defendants. By contrast, white Hispanic, black non-Hispanic, and Asian defendants exhibit no statistically significant relationship with sentence length. The findings lend partial support to Hypothesis 2e.

Hypothesis 3

Hypothesis 3a: Early Disposition. Recall that Hypothesis 3 begins to investigate cumulative disadvantage by examining the indirect effect of race/ethnicity through prior stages. Table 9 presents indirect race/ethnicity effects from early disposition through sentence length as well as the total indirect effect (the sum of all previous stages). Model 1 in Table 9 shows a significant indirect effect of presentence detention on early disposition for white Hispanic ($b = .816, p < 0.001$) and black non-Hispanic defendants ($b = .442, p < 0.05$). Nevertheless, the findings are opposite of what was predicted by Hypothesis 3a. White Hispanic and black non-Hispanic defendants are *more* likely than white non-Hispanic defendants to receive early disposition through their increased likelihood of being detained. No significant indirect effect exists at early disposition for black Hispanic and Asian defendants. Together, the findings for white Hispanic, black non-Hispanic, black Hispanic, and Asian defendants do not support Hypothesis 3a.

Table 8. Effects of Race and Ethnicity on Sentence Length

Variable	b	S.E.
White Hispanic	.023	.041
Black Non-Hispanic	.077	.076
Black Hispanic	.204 *	.082
Asian	-.117	.156
Female	-.273	.079
Age	.005 ***	.001
Age-squared†	-.010 *	.005
Dependents	-.039 *	.019
Missing dependents	.055	.052
Education	-.054	.033
Conviction count	.401 ***	.077
Illegal entry	-.192 **	.115
Citizenship fraud	-.496 **	.156
Other immigration	-.108 *	.047
Violent	.925 ***	.171
Weapon	-.192	.115
Drug	.740 ***	.088
Property	-.183	.144
Public order	-.352	.261
Presumptive guideline	.338 ***	.014
Criminal history	.104 ***	.009
Private counsel	-.158 *	.075
Missing counsel	.059	.038
Trial	-.004	.109
No acceptance	.323 ***	.080
Year 2004	.049	.046
Year 2006	.032	.026
Year 2007	-.027	.032
Year 2008	-.094 *	.039
Year 2009	-.126 **	.041
Year 2010	-.175 ***	.037
Year 2011	-.120 **	.042
Year 2012	.191	.164
Presentence Detention	1.119 **	.381
Charge reduction	.066	.070
Early disposition	-.244 **	.061
Downward departure	-.305 ***	.048
Substantial assistance	-.603 ***	.103
Government sponsored	-.427 ***	.082
Upward	.738 ***	.081
Constant	.684	.386

Note: *p<.05; **p<.01; ***p<.001

†Multiplied by 100

Table 9. Total and Indirect Effects of Race and Ethnicity

Variables	Model 1		Model 2		Model 3		Model 4	
	White Hispanic		Black non-Hispanic		Black Hispanic		Asian	
	b	S.E.	b	S.E.	b	S.E.	b	S.E.
Pretrial Detention								
Direct	1.04 ***	.150	0.561 *	.221	.457	.316	-.262	.238
Early Disposition								
Total Effect	1.005 ***	.250	-1.725	.310	-.974 **	.341	-1.365 **	.522
Direct Effect	.188	.101	-2.17 ***	.234	-1.334 ***	.216	-1.158 *	.485
Total Indirect	.816 ***	.231	0.442 *	.204	.360	.264	-.206	.194
Charge Reduction								
Total Effect	.042	.347	-1.691 **	.553	-1.598 **	.512	-1.122 *	.549
Direct Effect	-.160	.199	-.097	.240	-.624	.375	-.237	.340
Total Indirect	.202	.296	-1.594 ***	.501	-.974 **	.343	-.885 *	.436
Indirect Via								
Present. Det.	.061	.286	.033	.155	.027	.128	-.015	.074
Early Disp.	.141	.084	-1.627 **	.469	-1.001 **	.313	-.870 *	.432
Downward								
Total Effect	-.434	.341	-.358	.315	-.245	.418	.650	.504
Direct Effect	.026	.199	-.125	.250	-.177	.293	.501	.482
Total Indirect	-.460	.283	-.232	.193	-.068	.303	.149	.158
Indirect Via								
Present. Det.	-.483	.276	-.262	.178	-.214	.189	.122	.129
Charge Red.	.023	.060	.029	.073	.146	.236	.027	.091
Substantial Assistance								
Total Effect	-2.056 ***	.352	-1.331 **	.415	-1.276 *	.612	1.005 *	.446
Direct Effect	-1.07 ***	.205	-.843 **	.285	-1.195 **	.424	.672 *	.300
Total Indirect	-.981 **	.331	-.488	.308	-.082	.454	.333	.328
Indirect Via								
Present Det.	-1.042 **	.394	-.564 *	.263	-.460	.339	.264	.248
Charge Red.	.061	.130	.076	.159	.378	.301	.070	.215
Government Assistance								
Total Effect	.027	.352	-.785 *	.400	-.223	.528	.304	.570
Direct Effect	.351	.214	-.655 *	.331	-.450	.386	.132	.514
Total Indirect	-.324	.290	-.130	.231	.228	.369	.172	.252
Indirect Via								
Present. Det.	-.389	.254	-.130	.231	-.172	.161	.098	.109
Charge Red.	.065	.138	-.210	.158	.399	.330	.074	.228
Sentence Length								
Total Effect	1.633 ***	.262	1.983 ***	.364	1.948 ***	.504	-.803	.474
Direct Effect	.031	.032	.055	.045	.192 ***	.055	-.164 *	.075
Total Indirect	1.602 ***	.261	1.975 ***	.367	1.757 ***	.501	-.639	.469
Indirect Via								
Present. Det.	1.162 ***	.175	.629 *	.249	.512	.355	-.294	.267
Early Disp.	-.046	.025	.527 ***	.064	.324 ***	.058	.282 *	.120
Charge Red.	-.008	.018	-.010	.022	-.051	.045	-.009	.029
Downward	-.008	.061	.038	.077	.054	.090	-.154	.149
Subs. Assist.	.653 ***	.141	.512 **	.181	.725 **	.268	-.407	.187
Govern. Assis	-.150	.092	.279	.143	.192	.165	-.056	.219

Note: *p<.05; **p<.01; ***p<.001

†Multiplied by 100

Hypothesis 3b: Charge reduction. Table 9 presents the indirect and total indirect effect of race/ethnicity on charge reduction. Although race/ethnicity has no direct impact on charge reduction, black non-Hispanic ($b = -1.627, p < 0.01$), black Hispanic ($b = -1.001, p < 0.01$), and Asian ($b = -.887, p < 0.05$) defendants are less likely to receive a charge reduction through the decreased likelihood of receiving early disposition. The total indirect effect is also significant for black non-Hispanic ($b = -1.594, p < 0.01$), black Hispanic ($b = -.974, p < 0.01$), and Asian defendants ($b = -.885, p < 0.05$). Notably, no significant indirect effect exists for white Hispanics primarily because they are more likely to receive early disposition than white non-Hispanic defendants. With the exception of white Hispanic defendants, Hypothesis 3b is supported at charge reduction.

Hypothesis 3c: Guideline Departure. Next, the indirect effects of race/ethnicity are examined for guideline departures. Table 9 indicates that race/ethnicity has no impact on downward departure through presentence detention, charge reduction, or the total indirect effect. Turning to substantial assistance departures, the findings reveal that white Hispanic defendants ($b = -1.042, p < 0.01$) and black non-Hispanic defendants ($b = -.564; p < 0.05$) are significantly less likely to receive a substantial assistance departure through presentence detention. In addition, the total indirect effect is significant for white Hispanic defendants ($b = -.981, p < 0.01$). No significant indirect effects exist for black Hispanic and Asian defendants at substantial assistance departure.

Lastly, Table 9 also presents the effects for government assistance departures. Again, no statistically significant indirect effect of race/ethnicity through prior decision

points emerges for white Hispanic, black non-Hispanic, black Hispanic, and Asian defendants at government assistance departure. Minimal support for Hypothesis 3c is garnered at guideline departure.

Hypothesis 3d: Sentence Length. Turning to sentencing, presentence detention emerges as a significant indirect pathway by which white Hispanic ($b = 1.162, p < 0.001$) and black non-Hispanic ($b = .629, p < 0.001$) defendants receive longer sentences. The decreased likelihood of early disposition also results in lengthier sentences for black non-Hispanic ($b = .527, p < 0.001$), black Hispanic ($b = .324, p < 0.001$), and Asian defendants ($b = .282, p < 0.05$). In addition, race/ethnicity decreases the likelihood of a substantial assistance departure which in turn increases sentence length for white Hispanic ($b = .613, p < 0.001$), black non-Hispanic ($b = .521, p < 0.01$), and black Hispanic ($b = .725, p < 0.01$) defendants. Finally, white Hispanic ($b = 1.602, p < 0.001$), black non-Hispanic ($b = 1.975, p < 0.001$), and black Hispanic defendants ($b = 1.757, p < 0.001$) receive lengthier sentences through the total indirect effect of presentence detention, early disposition, charge reduction, and guideline departure. By contrast, the total indirect effect of race through prior stages is insignificant for Asian defendants. In sum, Hypothesis 3d is partially supported at sentence length.

Hypothesis 4

Hypothesis 4 continues to examine cumulative disadvantage for white Hispanic, black Hispanic, black non-Hispanic and Asian defendants through the total effect of race and ethnicity. The total effect is calculated by adding the total indirect effect from previous stages and the direct effect of race/ethnicity.

Hypothesis 4a: Early disposition. At early disposition, the total effect of race/ethnicity is significant for white Hispanic defendants, black Hispanic, and Asian defendants. Contrary to what Hypothesis 4a would predict, the total effect of ethnicity is positive for white Hispanic defendants. Through a cumulative impact of race/ethnicity, white Hispanic defendants are more likely to receive early disposition ($b = 1.005, p < .001$). By contrast, the total effect of race/ethnicity for black Hispanic ($b = -.974, p < 0.01$) and Asian ($b = -1.365, p < 0.01$) defendants is negative meaning that black Hispanic and Asian defendants are less likely to receive early disposition than white non-Hispanic defendants. The total effect for black non-Hispanic defendants at early disposition is not statistically significant. Hypothesis 4a is partially supported at early disposition.

Hypothesis 4b: Charge Reduction. At charge reduction, cumulative disadvantage operates through race/ethnicity's total effect for Black non-Hispanic ($b = -1.691, p < 0.001$), black Hispanic ($b = -1.598, p < 0.01$), and Asian defendants ($b = -1.122, p < 0.05$). White Hispanic defendants displayed no statistically significant total effect at charge reduction. Except for white Hispanic defendants, Hypothesis 4b is supported.

Hypothesis 4c: Guideline Departure. The total effects of race/ethnicity are next examined at guideline departure. The total effect of race/ethnicity is not significant for downward departure; however, cumulative disadvantage is present at substantial assistance departure. The findings reveal that white Hispanic ($b = -.2056, p < 0.01$), black non-Hispanic ($b = -1.331, p < 0.01$), and black Hispanic ($b = -1.276, p < 0.01$)

defendants are less likely to receive a substantial assistance departure through the total effect of race/ethnicity. By contrast, Asian defendants are *more* likely to receive a substantial assistance departure through the total effect of race ($b = 1.005, p < 0.05$). In sum, Hypothesis 4c is partially supported for substantial assistance departure.

Hypothesis 4d: Sentence Length. Turning to the cumulative effects of race/ethnicity on sentence length, white Hispanic ($b = 1.633, p < 0.001$), black non-Hispanic ($b = 1.983, p < 0.001$), and black Hispanic defendants ($b = 1.948, p < 0.001$) receive a lengthier sentence through the total effect of race/ethnicity. Lastly, there is no total race effect on sentence length for Asian defendants. In sum, Hypothesis 4d is partially supported at sentence length.

Discussion

Summary

Table 10. Summary of Hypotheses Testing

Race (case filing)			Black	Asian
Race and Ethnicity	White Hispanic	Black Hispanic	Black non-Hispanic	Asian
Hypothesis 1 Increased likelihood of filing in district court			✓	✓
Hypothesis 2 Direct effects				
Hypothesis 2a Increased likelihood of presentence detention	✓		✓	
Hypothesis 2b Reduced likelihood of early disposition		✓	✓	✓
Hypothesis 2c Reduced likelihood of charge reduction				
Hypothesis 2d Reduced likelihood of guideline departure	✓	✓		
Hypothesis 2e Increased sentence length		✓		
Hypothesis 3 Total indirect effects				
Hypothesis 3a Reduced likelihood of early disposition				
Hypothesis 3b Reduced likelihood of charge reduction		✓	✓	✓
Hypothesis 3c Reduced likelihood guideline departure	✓			
Hypothesis 3d Increased sentence length	✓	✓	✓	
Hypothesis 4 Total effects				
Hypothesis 4a Reduced likelihood of early disposition		✓		✓
Hypothesis 4b Reduced likelihood of charge reduction		✓	✓	✓
Hypothesis 4c Reduced likelihood guideline departure	✓	✓	✓	
Hypothesis 4d Increased sentence length	✓	✓	✓	

The goal of this paper was to complete a comprehensive assessment on whether racial and ethnic disparity exist in an understudied group of offenses—immigration cases. Both the social and political context surrounding immigration cases as well as their unique embeddedness with the civil system call for a closer examination of racial and ethnic differences in the processing of immigration cases. Accordingly, four overarching hypotheses were developed. The results of the hypotheses test are summarized in Table 10. Upon examination of Table 10, some patterns emerge from the results. First, black Hispanic and black non-Hispanic defendants consistently receive harsher treatment than white non-Hispanic defendants throughout the federal court process. The total effect for black non-Hispanic and black Hispanic defendants is particularly pronounced. In fact, cumulative disadvantage is present at every stage of the court process for black Hispanic defendants. By contrast, the treatment of white Hispanic and Asian defendants is less predictable and dependent on the outcome.

Theoretical and Policy Implications

With a few exceptions, the findings regarding black non-Hispanic and black Hispanic defendants support the hypotheses and are consistent with the general courts and sentencing literature and the focal concerns perspective (see Steffensmeier et al., 1998; Steffensmeier & Demuth, 2000). The findings are also consistent with Calavita's (2007) argument that implicit racial stereotypes of African Americans as more dangerous and criminally prone may be transferred onto black and black Hispanic noncitizens in immigration cases; however, additional data with direct measures of courtroom actor

perceptions are necessary to confirm the mechanisms linking race/ethnicity to harsher court outcomes.

The findings for white Hispanic defendants also align with the focal concerns perspective. Overall, white Hispanic defendants were on the receiving end of harsher treatment at various stages. Notably though, they were more likely to receive early disposition compared to white non-Hispanic defendants which significantly reduces sentencing severity. This finding may facially appear to benefit white Hispanic defendants; however, deportation is often included in early disposition agreements (Eagly, 2010; Logue, 2009). Therefore, the increased likelihood of early disposition may simply reflect a different avenue of social control in the form of deportation. White Hispanics may be targeted for deportation through early disposition because they are most likely to be from Mexico where proximity to the United States border enables an expedited deportation process (Logue, 2009). In a similar vein, early disposition and fast-track departures were created primarily for handling the rapidly growing number of illegal reentry cases imposed on Southwest federal courts (McClellan & Sands, 2006), and Hispanic defendants are typically associated with illegal reentry (Chacon, 2007).

The results were mixed for Asian defendants. At some decision points, Asian defendants received harsher treatment consistent with Wu and Kim's (2012) research, but at other stages, the findings align more with sentencing research that has found a "model minority" effect (e.g. Johnson & Betsinger, 2009), thus negating some of the harsher punishment for Asian defendants that was observed for black non-Hispanic and black Hispanic defendants.

The results from the present study further builds on literature that promotes a cumulative disadvantage approach in the study of racial and ethnic disparity (e.g. Baumer, 2013, Kutateladze et al., 2014; Stolzenberg et al., 2013; Wooldredge et al, 2015). If the analysis only examined a single stage or the direct effects of race and ethnicity, the results would be misleading. For example, one may conclude that white Hispanic, black non-Hispanic, or black Hispanic defendants were treated similarly to white non-Hispanic defendants if charge reduction or sentence length were the only outcomes examined in this study. Therefore, the indirect and total effects of race and ethnicity were especially enlightening. Although there was no direct effect for white Hispanic defendants or black non-Hispanic defendants at charge reduction or sentence length, through the cumulative effects of prior stages, they were assigned longer sentences that would otherwise have been masked.

The findings also support the descriptive literature on immigration cases by shedding empirical light on how they are uniquely handled at each stage of the court process and how criminal justice actors have taken advantage of the civil immigration system to decrease Constitutional protections of immigration cases (Eagley, 2010; Legomsky, 2007; Stumpf, 2006). Specifically, illegal entry cases are mostly handled in U.S. Magistrate Court, and the majority of immigration cases are sent through magistrate rather than district court. Moreover, cases that are arrested by an agency (e.g., U.S. Marshalls Service, local law enforcement agency, and the Drug Enforcement Agency) outside of the U.S. Department of Homeland Security have a greater likelihood of being filed into U.S. District Court. This may be due to the increasing heavy hand that the U.S.

Department of Homeland Security plays in adjudicating cases in U.S. Magistrate Court (Eagly, 2010). Moreover, 25% of cases receive an early disposition plea agreement that decreases sentence length but is also contingent on bypassing many Constitutional protections that may have civil consequences which is unable to be ascertained from the current data.

Relatedly, another result unique to immigration offenses is the fact that going to trial decreases the likelihood of being detained prior to sentencing and has no significant relationship with sentence length. In addition, the use of a private attorney also decreases the likelihood of being detained and the length of a sentence. Together, these findings suggest that immigration defendants who activate their Constitutional rights and who have the resources of a private attorney have significantly better outcomes than those who do not. In particular, their time in confinement is significantly reduced through release prior to sentencing and receiving a shorter sentence length. One way then to combat some of the consequences of crimmigration may be educating and assisting immigration defendants with knowing and utilizing their Constitutional protections and providing access to private attorneys.

One direction for future research would be to take a further nuanced approach to examining unwarranted disparity by focusing on national origin. Through investigation of general categories of race and ethnicity, Hispanic defendants are lumped into two racial and ethnic groups, when in actuality Hispanic ethnicity comprises individuals from various countries with different cultures and relationships to the United States (Logue, 2009, 2017), and the United States has historically formed immigration policies based on

their political and social standings with certain countries (Ogletree, 2000). For instance, the United States' political stance on communism led to a more welcoming policy toward refugees seeking relief from communist countries (Ogletree, 2000). Country of origin has also been used as a method to indirectly identify race and stem the flow of immigration from countries that contained a larger portion of immigrants of color (Ngai, 1999).

In particular, the current study exemplifies the need for research using national origin in the treatment of black Hispanic defendants. While black Hispanic defendants were assigned harsher treatment at every stage of the court process, they were no more likely to receive presentence detention than white non-Hispanic defendants. Because presentence detention is particularly interdependent with deportation status and the civil immigration system, this finding for black Hispanic defendants may be related to civil immigration issues and national origin. Self-identified black Hispanics are concentrated in Cuba, Brazil, and the Dominican Republic (Lopez & Gonzalez-Barrera, 2016), and Cuba has a unique political standing with the United States. Historically, the United States has taken a deferential approach in immigration policy toward Cuban immigrants manifested in the 1966 Cuban Readjustment Act (Ogletree, 2000). In the present study, white Cuban noncitizens are mixed in with other white Hispanic defendants, such as Mexican noncitizens who constitute an overwhelming percentage of the white Hispanic defendants and who have been the primary targets for deportation. Thus, black Hispanic defendants may benefit from their national origin at presentence detention. Examining national origin would clarify these results.

A second direction for future research would be to examine the interaction effects between race, ethnicity, gender, age, and other extra-legal characteristics. While the present study focused on racial and ethnic disparity, the findings also found preferential treatment for female defendants, defendants with dependents and higher levels of education, and a curvilinear association with age. This is consistent with previous literature on the extralegal factors associated with sentencing (Bontrager, Barrick, & Stupi, 2013; Bushway & Piehl, 2007; Daly & Bordt, 1995; Spohn & Holleran, 2000; Steffensmeier et al., 1995). Indeed, most research has found that the effects of race and ethnicity are dependent upon other extralegal characteristics (see Baumer, 2013; Ulmer, 2012; Spohn, 2000; Zatz, 2000). Therefore, findings from this study may be further amplified by gender, age, employment, and educational status. Certainly, academic attainment may play a salient role within immigration cases and should be further examined because Hispanic noncitizens are most likely to have the lowest levels of education than any other racial/ethnic group (Covarrubias & Lara, 2013). To that end, future research investigating how education affects courts and sentencing practices should incorporate a more nuanced measure of educational attainment that includes middle school, years of high school, and college.

Conclusion

In conclusion, immigration offenses comprise the largest portion of cases entering U.S. Federal Courts, and the results from the present study indicate that race and ethnicity are clear factors in decision making throughout the court process. Direct effects of race and ethnicity were more prevalent at stages presided over by prosecutors, such as case

filing, early disposition, and substantial assistance departures. In turn, race and ethnicity had indirect and total effects on sentence length. The findings are also consistent with the criminology literature that describes a diminished form of justice for defendants in criminal immigration cases. Accordingly, the present study upholds immigration scholars' concerns over the harsher treatment of immigrants of color, and it exposes unfair practices in handling one of the primary offense types in federal district courts.

CHAPTER 3: CONTEXTUAL DISPARITY WITHIN FEDERAL IMMIGRATION CASES

Overview

Since 1980, the number of immigrants entering the United States has rapidly increased. According to current statistics, the foreign-born population has more than doubled in size from 14.1 million (6.2% of the total population) to 40 million in 2010 (12.9% of the total population) (Gibson & Jung, 2006; Grieco et al., 2012), and the undocumented immigrant population has expanded from 3.5 million in 1990 to 11.3 million in 2010 (Pew Research Center, 2014). In response to the changing demographics, politicians and the media have evoked the general public's fear by playing to stereotypes of immigrants as criminal and dangerous, disregarding the robust empirical research that has demonstrated a negative or insignificant link between immigration and crime (Hagan, Levi, & Dovitzer, 2008; Hagan & Palloni, 1999; Ousey & Kubrin, 2009; Wang, 2012). As a result, immigration scholars have focused on how perceived threat of immigrants has resulted in the irrational criminalization of immigration. Furthermore, literature has begun to accumulate on how locations in the United States with the greatest relative increases in immigration have taken the harshest stance toward immigration regulation (Zatz & Smith, 2012).

At the same time, because of advances in multilevel modeling, the number of sentencing studies investigating contextual disparity and environmental factors that facilitate racial and ethnic disparity proliferated (Britt, 2000; Fearn, 2005; Feldmeyer, Warren, Siennick, & Neptune, 2015; Helms & Jacobs, 2002; Johnson, 2005, 2006;

Johnson et al., 2008; Kautt, 2002; Ulmer & Johnson, 2004; Wooldredge, 2007; Wooldredge & Thistlewaite, 2004). Recent research on both immigration and sentencing commonly draw on the minority threat perspective. The minority threat perspective asserts that as the size of a minority population increases, the majority feels threatened and deploys social control to minimize perceived threat. Despite the common themes running through both immigration and sentencing research, the two have rarely intersected. On the one hand, immigration literature has provided rich descriptions of how the recent wave in immigration has led to moral panic and increasingly punitive attitudes toward immigrants particularly in new immigrant destinations, but quantitative assessments have been lacking. On the other hand, sentencing research has investigated how the racial and ethnic composition of federal district courts affects equality in the administration of justice, but studies on contextual disparity within immigration cases have been scarce.

Accordingly, the purpose of the present study is to merge immigration and sentencing literature by empirically examining how immigrant and ethnic composition affect the federal court processing of immigration cases. Courtroom actors in districts with a large or growing immigrant population may be influenced by the increasing punitiveness toward immigrants of color in their handling of immigration cases, thus resulting in unequal treatment of defendants according to district. Furthermore, the district-level size of the Latino or foreign-born population may interact with the race and ethnicity of individual defendants to amplify more severe treatment of immigrants of color within immigration cases. To this end, the present study draws on the minority

threat and courts as communities perspectives to develop hypotheses. Empirical analysis then examines whether foreign-born population size and Hispanic population size increase the likelihood of punitive outcomes for defendants in immigration cases and whether foreign-born population size and Hispanic population size interact with ethnicity, respectively, to increase severity in punishment for Hispanic defendants in immigration cases.

Theoretical Framework

The minority threat perspective is part of the broader conflict perspective paradigm that views the level of social control in an area as a product of perceived threat from economically, culturally, or racially dissimilar groups (Liska, 1992). Blalock (1967) developed the minority threat perspective and the mechanisms of perceived threat posed from racial and ethnic minority groups. He posited that the majority group may perceive minority outsiders as a threat to their political power and economic resources (Blalock, 1967). Accordingly, minority threat becomes most imminent as the minority group grows in size and is perceived, by the majority, to encroach upon whites' economic capital and political power. As a result, the majority group may employ social control to minimize perceived threat (Blalock, 1967), and the criminal justice system has become a primary form of social control (Blalock, 1967; see also Liska, 1992; Stults & Baumer, 2007). While Blalock (1967) was mostly concerned with economic and political threat during the political turmoil of the 1960s, minority threat scholars later observed that "law and order" politics in the 1980s and 1990s renewed and amplified stereotypes of racial and ethnic minorities as criminally prone (Crawford, Chiricos, & Kleck, 1998; Jackson 1989).

Therefore, perceived criminal threat has also been included as a type of threat that activates greater levels of social control in an area.

Not only did Blalock (1967) develop the mechanisms of perceived threat on social control, he also argued that the functional form of the relationship between perceived threat and social control would vary by the type of threat. He asserted that both economic and political threat would have a curvilinear relationship with social control, but economic threat would have a decelerating relationship whereas political threat would have an accelerating effect. Blalock argued that economic threat is characterized by a decelerating relationship because informal social control, such as workplace discrimination and exclusion, begins to marginalize the targeted minority group, thereby reducing the need to employ formal social control. On the other hand, Blalock asserted that political threat should have an accelerating effect where increments of social control become higher as levels of threat increase because the majority group will respond with escalating mobilization to maintain dominance. Other minority threat scholars have argued that as a minority population increases, social control also increases until the size of the minority population eclipses the predominant majority group and gains more political and economic strength (Jackson & Carroll, 1981; Jacobs, Carmichael, & Kent, 2005). Beyond examining functional form, recent research on the minority threat perspective has also emphasized the importance in distinguishing stable levels of minority threat from changes in minority threat, observing that changes in threat may be more pronounced than static levels of threat (Liska, 1992; Wang & Mears, 2010b).

Minority Threat and Immigration

Immigration scholars have documented how periods of immigrant population growth have fueled perceptions of immigrant threat (Calavita, 1996; Chavez, 2013; Stewart, Martinez, Baumer, & Gertz, 2015). Throughout history, perceived immigrant threat has resulted in a backlash toward both documented and undocumented immigrants manifested in policies aimed at restricting, criminalizing, and enforcing immigration violations (Chavez, 2013). During the most recent wave of Latino immigration beginning in the 1980s and extending through the early 2000s, nationwide policies (e.g. Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and Antiterrorist and Effective Death Penalty Act (AEDPA)) broadened the number of civil immigration violations also considered criminal offenses and attached civil sanctions to a number of criminal offenses. In addition, the federal government granted local and state law enforcement more authority in policing immigration (Stumpf, 2006).

The recent wave of Latino immigration also coincided with several national security crises which the federal government scapegoated onto undocumented Latino immigrants leading to the view of undocumented Latino immigrants as a national security threat (Chacon, 2007; Chavez, 2013; Welch, 2012). Therefore, national political rhetoric has focused on the necessity of convicting and expelling “criminal illegal aliens” (Chavez, 2013). Consequently, the Bush Administration established the Department of Homeland Security and allocated extensive government resources to the enforcement of immigration especially along the U.S.-Mexico border. Undocumented Latino immigrants have been the main targets, but documented immigrants and Hispanic citizens have also

been stereotyped and adversely affected by the punitive rhetoric and targeted enforcement (Chavez, 2013; Roman, 2000).

Although perceived threat toward undocumented immigrants has increased nationwide in response to the recent wave of Latino immigration and terroristic incidents, the intensity of perceived threat and punitive action toward undocumented Latino immigrants also varies locally according to the size of and growth in the immigrant and Latino populations. To give some background, with the recent wave of immigration, Latino immigrants have ventured into new destination areas - outside of the traditional receiving areas (Singer, 2004). This is due to three primary factors 1) saturation of traditional receiving areas and stagnation of employment in ethnic enclaves, 2) greater opportunities outside the enclave in the meatpacking industry, and 3) tighter enforcement along the U.S.-Mexico border where immigrants traditionally cross (see Durand, Massey, & Charvet, 2000; Harris & Feldmeyer, 2013; Reid, Weis, Adelman, & Jaret, 2005; Shihadeh & Barranco, 2010a, b; Ulmer, Harris, & Steffensmeier, 2012). Immigration scholars have reported how new destinations with a rapidly growing immigrant or Latino population have employed some of the harshest policies toward undocumented immigrants (Chin & Miller, 2011; Kim, 2010; Michaud, 2010; Rodriguez, 2008; Varsanyi, 2010). For example, Longazel (2016) describes how perceived Latino threat gave rise to Hazleton, Pennsylvania's Illegal Immigration Relief Ordinance (IIRO) – an ordinance that restricted immigrants from living and working in Hazleton. Racialized justifications for the IIRO linked Latino immigrants to crime, economic competition, and tax burden.

Indeed, empirical research has linked perceived threat, punitive attitudes, and the size and growth of the immigrant or Latino population. Stewart and colleagues (2015) found that Latino population growth increased punitive Latino sentiment and that punitive Latino sentiment was more pronounced in areas experiencing a rapid growth in the Latino population. Similarly, Stupi, Chiricos, and Gertz (2016) found that punitive attitudes toward undocumented immigrants are partially a function of change in percent Latino, and perceived criminal threat from undocumented immigrants mediates this relationship. Chiricos, Stupi, Stults, and Gertz (2014) found that support for social control targeting undocumented immigrants is a function of increased Latino contact, and this relationship is mediated by perceived economic and cultural threat. Last, Wang (2012) found that perceived size of the undocumented immigrant population increased perceptions of undocumented immigrants as criminal threats; however, the actual or objective size of the immigration population did not necessarily influence this relationship.

Minority Threat and Sentencing

Sentencing scholars have long documented how courtroom actors do not act in isolation but are influenced by other actors in the court process and through the social and political environment in which they work (Ulmer, 1997). Eisentstein, Fleming, and Nardulli (1999) advanced the framework of courts as communities by qualitatively describing how decision making and legal practices vary between courts. Courts develop their own practices based on the local legal culture, which in turn is formed through courtroom actors' interactions with the surrounding political and social context and

among members of the courtroom workgroup consisting of judges, prosecutors, and defense attorneys.

In the past two decades, methodological advancements in multilevel modeling have prompted sentencing researchers to identify environmental factors that influence sentencing decisions and the presence of racial and ethnic disparity in sentencing. The minority threat perspective has played a predominant role in this research. Sentencing scholars have tested the minority threat perspective by assessing whether minority population size has facilitated harsher treatment in various courts and sentencing outcomes. In addition, sentencing scholars have examined whether racial and ethnic disparity between districts can be amplified by black and Hispanic population size. For example, Ulmer and Johnson (2004) argued that blacks and Hispanics in areas with higher levels of threat may be viewed as representatives of a class of “dangerous offenders” and thus face tougher sentencing than whites (Ulmer and Johnson, 2004: 145).

The findings from this research are mixed (Ulmer, 2012). While some studies have found a significant effect between minority population size and punitive sanctions for all defendants (Britt, 2000; Weidner, Frase, & Schultz, 2005) or for black and Hispanic defendants in particular (Bontrager, Bales, & Chiricos, 2005; Johnson, 2005; Johnson et al., 2008; Ulmer & Johnson, 2004), other studies have found no significant relationship (Fearn, 2005; Kautt, 2002; Weidner & Frase, 2003; Feldmeyer & Ulmer, 2011; Helms & Jacobs, 2002). The mixed findings have led to a call for a more nuanced approach to testing the minority threat perspective, such as, accounting for nonlinearity, separating types of threat, and examining changes in threat (Ulmer, 2012; Wang &

Mears, 2010a, 2010b). Indeed, studies have found empirical support for a more nuanced approach. For instance, Wang and Mears (2010a) found that political threat and size of the minority population increased more punitive sentencing while economic threat had little effect on sentencing practices. In addition, prior studies have demonstrated the importance of examining changes in minority threat, but they revealed mixed findings associated with the static levels of threat. Whereas some studies have found that both static and dynamic measures of minority threat exhibited independent effects (e.g. Caravelis, Chiricos, & Bales, 2011), other studies reported that absolute change was the only predictor of social control in an area (e.g. Golden, 2012; Johnson, Stewart, Pickett, Bratton, & Gertz, 2011), and Wang and Mears (2010b) found that the two were interdependent.

While a body of research has examined how racial and ethnic context influence sentencing practices, less research has applied the minority threat perspective to immigrant context and sentencing. One study by Feldmeyer, Warren, Siennick, and Neptune (2015) examined the link between immigrant threat and sentencing. The authors found evidence of racial threat for black defendants but no evidence that immigrant concentration had any effect on sentencing practices. Although current literature has been mixed, perceptions of offender blameworthiness and dangerousness may be particularly salient for immigration offenders. Jurisdictions with a growing number of immigrants may be more punitive toward defendants charged with offenses directly related to the size of the immigrant population (e.g., illegal entry and reentry). Moreover, because of the racialized undertones of punitive rhetoric, immigrants of color may be handled more

punitively compared to white immigrants. Therefore, the present study merges minority threat literature on immigration and sentencing to examine whether immigrant concentration and ethnic threat influence courts and sentencing outcomes within immigration cases and for Hispanic noncitizens within immigration cases.

Minority Threat and the Federal Court Processing of Immigration Cases

The federal court system is unique in several ways compared to state courts. Most relevant to the present study is that federal district courts cover a large geographic area (Shermer & Johnson, 2010). Some scholars have raised concerns over studying inter-district variation in federal courts due to the large unit of analysis and to the fact that the federal sentencing guidelines are applicable to all courts (Johnson et al., 2008; Kautt, 2002). For example, the federal court system is structured with 94 federal district courts at the bottom, nested within 12 circuit courts in the middle, and the Supreme Court at the top, and federal district courts may cover an entire state (e.g. Arizona) (see www.uscourts.gov). Nevertheless, Kautt (2002) describes how some policies and procedures are set forth by individual circuit courts, but the majority are decided at the bottom by individual federal district courts. Because of the decentralized nature of the federal court system, district courts are vulnerable to the surrounding context (Kautt, 2002, see also Farrell & Ward, 2011).

Regarding immigration cases, practices vary rather dramatically between federal district courts in several aspects. First, depending on the district, a bail hearing may be held for individual defendants or for a group of defendants; however, districts may have stringent requirements, such as paying in cash, or deny bail to noncitizens all together

(Chin, 2011; Eagly, 2010). Second, only certain districts have an early disposition program. Until 2012 when early disposition programs were approved nationwide (Cole, 2012), the Attorney General was invested with the authority to implement an early disposition program based on constraints the court faced (McClellan & Sands, 2006). McClellan and Sands (2006) describe how this discretion resulted in vastly different sentence lengths for the same offense based solely on the district in which the defendant was sentenced. Third, district courts also vary in the role that courtroom actors play in deciding cases. In some districts, magistrate judges outnumber district judges, and magistrate judges and officials from the Department of Homeland Security decide the majority of immigration cases (Eagly, 2010). As noted previously, the process of electing magistrate judges is more political, which may make them more vulnerable to the surrounding social context. Fourth, some districts restrict noncitizens from alternative programs (e.g. probation or work release) leaving prison as the only sanction type available for defendants convicted of immigration offenses (Chin, 2011). Indeed, a recent study has found that ethnic disparity within immigration cases exists between districts. Specifically, Hartley and Tillyer (2012) examined differences in sentencing outcomes between the five Southwest border districts, and found that two of the districts gave significantly harsher sentences to Hispanic defendants.

To my knowledge, only one study has examined whether district-level context partially accounts for variation in how immigration cases are handled between districts. Tillyer and Hartley (2016) reported that district-level use of fast-track departures affected sentence length while prosecutorial and judicial caseloads had no significant impact on

sentencing. Although Tillyer and Hartley did not directly test immigrant or ethnic threat, their findings indicate that context influences decision making in immigration cases and can partially explain inter-district variation. Accordingly, the present study builds on previous immigration and sentencing literature by focusing on whether ethnic and immigrant compositions influence the severity of punishment for immigration offenders at case filing, presentence detention, early disposition, charge reduction, guideline departure, and sentence length. Furthermore, the present study assesses the interaction between ethnic and immigrant threat measures and ethnicity to see whether punitiveness is targeted toward Hispanic defendants.

Hypotheses

Hypothesis 1: *Defendants processed for immigration offenses in federal districts with a larger Hispanic and foreign-born population will be treated more harshly at multiple stages of the court process. Nevertheless, the relationship between the Hispanic and foreign-born population size and severity in court outcomes will be curvilinear in nature, such that once the Hispanic and foreign-born population reaches a threshold or tipping point, the outcomes will diminish in severity.*

Hypothesis 1a: *Defendants in districts with a larger Hispanic or foreign-born population size will be more likely to have their cases filed in district court until the size of the Hispanic and foreign-born populations reaches a critical threshold where the likelihood of having a case filed in district court will diminish.*

Hypothesis 1b: *Defendants in districts with a larger Hispanic or foreign-born population*

will be more likely to be detained prior to sentencing until the size of the Hispanic and foreign-born populations reaches a critical threshold where the likelihood of being detained will diminish.

Hypothesis 1c: *Defendants in districts with a larger Hispanic or foreign-born population will be less likely to receive early disposition until the size of the Hispanic and foreign-born populations reaches a critical threshold where the likelihood of being detained will diminish.*

Hypothesis 1d: *Defendants in districts with a larger Hispanic and foreign-born population will be less likely to receive a charge reduction until the size of the Hispanic and foreign-born populations reaches a critical threshold where the likelihood in charge reduction will diminish.*

Hypothesis 1e: *Defendants in districts with a larger Hispanic and foreign-born population will be less likely to receive a guideline departure until the size of the Hispanic and foreign-born populations reaches a critical threshold where the likelihood of guideline departure will diminish.*

Hypothesis 1f: *Lastly, defendants in districts with a larger Hispanic and foreign-born population will receive a lengthier sentence until the size of the Hispanic and foreign-born populations reaches a critical threshold where the likelihood of guideline departure will diminish.*

Hypothesis 2: *Defendants processed for immigration cases in federal districts with a larger growth in the size of the Hispanic and foreign-born populations will receive harsher outcomes at each stage of the federal court process.*

Hypothesis 2a: *Defendants in districts with a larger growth in the size of the Hispanic and foreign-born populations will be more likely to have their cases filed in district court.*

Hypothesis 2b: *Defendants in districts with a larger growth in the size of the Hispanic and foreign-born populations will be more likely to be detained.*

Hypothesis 2c: *Defendants in districts with a larger growth in the size of the Hispanic and foreign-born populations will be less likely to receive early disposition.*

Hypothesis 2d: *Defendants in districts with a larger growth in the size of the Hispanic and foreign-born populations will be less likely to receive a charge reduction.*

Hypothesis 2e: *Defendants in districts with a larger growth in the size of the Hispanic and foreign-born populations will be less likely to receive a guideline departure.*

Hypothesis 2f: *Defendants in districts with a larger growth in the size of the Hispanic and foreign-born populations will be more likely to receive a lengthier sentence.*

Hypothesis 3: *The size of the Hispanic and foreign-born population will interact with a defendant's ethnicity to amplify severity of treatment for Hispanic defendants processed for immigration offenses compared to their white non-Hispanic counterparts.*

Hypothesis 3a: *Hispanic defendants in federal districts with larger Hispanic and foreign-born populations will be more likely to be detained prior to sentencing.*

Hypothesis 3b: *Hispanic defendants in federal districts with larger Hispanic and foreign born populations will be less likely to receive early disposition.*

Hypothesis 3c: *Hispanic defendants in federal districts with larger Hispanic and foreign-born populations will be less likely to receive a charge reduction.*

Hypothesis 3d: *Hispanic defendants in federal districts with larger Hispanic and foreign-born populations will be less likely to receive a guideline departure.*

Hypothesis 3e: *Hispanic defendants in federal districts with larger Hispanic and foreign-born populations will receive a lengthier sentence.*

Hypothesis 4: *In federal district courts with a greater increase in the size of the Hispanic and foreign-born populations, harsher treatment will be magnified for Hispanic defendants processed for immigration offenses.*

Hypothesis 4a: *Specifically, Hispanic defendants in districts with a greater increase in the size of the Hispanic and foreign-born populations will be more likely to be detained prior to sentencing.*

Hypothesis 4b: *Hispanic defendants in districts with a greater increase in the size of the Hispanic and foreign-born populations will be less likely to be granted early disposition.*

Hypothesis 4c: *Hispanic defendants in districts with a greater increase in the size of the Hispanic and foreign-born populations will be less likely to receive a charge reduction.*

Hypothesis 4d: *Hispanic defendants in districts with a greater increase in the size of the Hispanic and foreign-born populations will be less likely to be given a guideline departure.*

Hypothesis 4e: *Hispanic defendants in districts with a greater increase in*

the size of the Hispanic and foreign-born populations will receive a lengthier sentence.

Data and Methods

The present study uses data at both the individual and district levels. The individual-level data are drawn from the Federal Justice Statistics Program (FJSP) data series for a cohort of defendants arrested in years 2004 through 2010. The FJSP is particularly opportune for studying social context because it covers immigration defendants processed in 94 U.S. federal districts allowing for sufficient variation between districts.

Contextual-level data were pulled from multiple county-based sources. Specifically, ethnic and foreign-born composition and pertinent social structural characteristics were extracted from the 2000 and 2010 U.S. Census. Political election data were gathered from Leip's Atlas of U.S. Presidential Elections, and crime rates were obtained from the Uniform Crime Reports (UCR). Finally, judicial information and court size came from the National Judicial Center. The county-level data were then aggregated to the district level, and once aggregated, the contextual-level data were then merged to the FJSP using district identifiers.

Dependent Variables

The influence of ethnic and immigrant threat are examined on six decision points consisting of the decision to file a case in a magistrate or a district court, presentence detention, charge reduction, early disposition, guideline departure, and sentence length. Please refer to Chapter 2 for a detailed description of each dependent variable.

Independent Variables

The key contextual variables are levels and changes in ethnic and immigrant threat. Levels of ethnic and immigrant threat reflect the percent Hispanic and the percent foreign-born in each district in 2010. A quadratic term for both percent Hispanic and percent foreign born is added to assess the possibility of a curvilinear relationship between ethnic and immigrant threat and federal court decision points. Absolute changes in ethnic and immigrant threat measure district-level changes in percent Hispanic and percent foreign-born that were computed by taking the difference between each district's ethnic and immigrant composition from 2000 to 2010 (see Wang & Mears, 2010b). For cross-level interactions, a dummy variable is included for Hispanic defendants (1 = Hispanic, 0 = white non-Hispanic).¹⁶

Contextual-level control variables. The increased focus on multilevel sentencing research in the past two decades has brought to light several important contextual factors that may affect courtroom decision making (see Helms and Jacobs, 2002; Johnson, Ulmer, & Kramer, 2008; Kautt, 2002; Myers & Talarico, 1986; Ulmer & Johnson, 2004; Wang & Mears, 2010a, 2010b). Specifically, conservative political context is controlled for through the district percentage that voted for McCain in 2008. A measure is also created for resource deprivation that consists of percent below poverty, percent receiving public assistance, percent unemployed in civilian populations above 16 years old, per capita income, median household income, and median family income. In addition, the average UCR index crime rate in a district is used to control for the possible

¹⁶ Hispanic defendants are not further separated into white Hispanic and black Hispanic because there are not enough black Hispanic defendants in each district to conduct cross-level interactions.

impact that district-level crime rates may have on decision making, and two variables are constructed to measure court size and caseload rate. Court size is controlled for through the average number of authorized judges in the district from 2004 through 2010. Court caseload rate is then computed by dividing the average number of criminal cases for the same period of time by the average number of authorized judges in a district. Last, a dummy variable that captures whether the district contains an early disposition/fast-track program is added to the analysis. A number of individual-level control variables were also included and are described in depth in Chapter 2. Please refer to Chapter 2.

Analytic Strategy

Hierarchical generalized linear modeling (HGLM) in HLM 7.0 was used for the analysis which accounts for the nested nature of the data where individual defendants are at level one, and districts are at level two. Individual- and district-level predictors are grand-mean centered to assess the effect of ethnic and immigrant composition on federal court outcomes (Baumer & Martin, 2013). The analysis then proceeds in three stages. First, the main effects of levels of ethnic and immigrant threat on the six dependent variables of interest are examined. Second, the main effects for absolute change of ethnic and immigrant threat are assessed for each outcome. Third, cross-level interactions between ethnic and immigrant threat and ethnicity are conducted for each decision point from presentence detention to sentence length on a subsample of randomly selected Hispanic defendants.¹⁷ For the cross-level interactions, black and Asian defendants are removed from analysis because there are too few within each district.

¹⁷ Because Hispanic defendants comprise over 90% of immigration offenders, I conduct a random 20% sample of Hispanic defendants so white non-Hispanic defendants could serve as the reference category

Results

Table 11 displays the descriptive statistics for variables pulled from the USMS and EOUSA data, and Table 12 displays the descriptive statistics for the AOUSC and USSC data. Before turning to the results, percent foreign-born had no significant effects at any stage in the court process, thus the following section only includes the results for ethnic composition. For parsimony, the tables present district-level variables; however, all individual-level controls were also included in each model. The models for Hispanic population size and the absolute change in percent Hispanic were run separately due to collinearity.

when examining cross-level interaction effects. It should be noted that the USMS and EOUSA which are used to investigate case filing decisions do not contain information on ethnicity. Accordingly, the random sample of Hispanic defendants was drawn for the remaining outcomes which are based on the AOUSC and USSC data.

Table 11. Descriptive Statistics for Case Filing based on the USMS and EOUSA

Dependent Variable	N	Percent
Cases Filed in Magistrate Court	198,097	64%
Cases Filed in District Court	110,769	36%
	<u>M</u>	<u>SD</u>
Contextual-level Variables (N=90)		
Percent Hispanic	10.838	11.261
Percent Hispanic ²	125.391	261.343
Asolute Change	2.817	1.610
Conservative	.531	.114
Resource Deprivation	0	1.938
Index crime rate	.049	.016
Case load	1448.708	1879.849
Court size	7.456	5.651
Fast-track district	.756	.432
Individual-level Variables		
White	.991	.091
Black	.007	.083
Asian	.001	.038
Female	.090	.286
Age	30.78	8.767
Age-squared	1024.210	610.185
Multiple charges	.141	.348
Illegal entry	.566	.496
Illegal reentry	.369	.483
Citizenship fraud	.005	.071
Other immigration	.048	.213
Violent	.020	1.730
Weapon	.080	2.844
Drug	.002	.041
Public	.002	.047
Property	.007	.083
Priority	.343	.475
Other arrest agency	.021	.144
Year 2004	.087	.282
Year 2006	.109	.311
Year 2007	.129	.335
Year 2008	.187	.390
Year 2009	.206	.404
Year 2010	.197	.398

Table 12. Descriptive Statistics for AOUSA and USSC

	N	Percent
Presentence Detention	76,959	98%
Early Disposition	20,212	25%
Charge reduction	1,716	2%
No departure within guidelines	53,323	66%
Downward	2,931	4%
Substantial assistance	786	1%
Government sponsored	2,946	3%
Upward Departure	435	.005%
	<u>M</u>	<u>SD</u>
Contextual-level Variables (N=90)		
Percent Hispanic	10.838	11.261
Percent Hispanic ²	125.391	261.343
Asolute Change	2.817	1.610
Conservative	.531	.114
Resource Deprivation	0	1.938
Index crime rate	.049	.016
Case load	1448.708	1879.849
Court size	7.456	5.651
Fast-track district	.756	.432
Individual-level variables		
Sentence Length	20.32	20.52
White Non-Hispanic	.013	.114
White Hispanic	.968	.176
Black Non-Hispanic	.011	.103
Black Hispanic	.005	.073
Asian	.003	.003
Female	.038	.193
Age	33.572	8.758
Age-squared	1203.769	647.890
Dependents	.568	.495
Missing dependents	.213	.409
Education	.089	.284
Conviction count	.031	.173
AOUSC Illegal entry	.772	.419
AOUSC Citizenship fraud	.009	.096
AOUSC Other immigration	.116	.320
AOUSC Violent	.003	.054
AOUSC Weapon	.003	.058
AOUSC Drug	.004	.066
AOUSC Property	.022	.146
AOUSC Public order	.002	.045
USSC Illegal entry	.775	.418
USSC Citizenship fraud	.008	.089
USSC Other immigration	.114	.319
USSC Violent	.001	.036
USSC Weapon	.004	.059
USSC Drug	.004	.064
USSC Property	.027	.161
USSC Public order	.002	.049
Presumptive guideline	22.418	23.555
Criminal history	2.838	1.544
Private counsel	.016	.125
Missing counsel	.139	.346
Trial	.007	.082
No acceptance	.012	.108
AOUSC 2003	.019	.138
AOUSC 2004	.110	.313
AOUSC 2005	.113	.317
AOUSC 2006	.110	.313
AOUSC 2007	.125	.331
AOUSC 2008	.158	.374
AOUSC 2009	.193	.394
AOUSC 2010	.160	.367
USSC 2004	.063	.243
USSC 2005	.107	.310
USSC 2006	.113	.317
USSC 2007	.112	.316
USSC 2008	.149	.356
USSC 2009	.180	.285
USSC 2010	.198	.399
USSC 2011	.074	.261
USSC 2012	.003	.049

Hypothesis 1

Hypothesis 1a: Case Filing. The analysis begins by examining the effects of percent Hispanic and percent Hispanic squared on case filing decisions. The results are displayed in Table 13 Model 1. Hispanic population size has no linear or curvilinear effect on case filing decisions, thus lending no support for Hypothesis 1a at this stage in the court process.

Hypothesis 1b: Presentence Detention. The results of Hispanic population size on presentence detention are presented in Table 14 Model 1. The results indicate that percent Hispanic has a significant relationship with presentence detention. Specifically, percent Hispanic increases the likelihood of presentence detention ($b = .063, p < 0.05$), but this relationship is curvilinear in nature where the effect of percent Hispanic on use of detention levels off once the Hispanic population reaches a threshold ($b = -.182, p < 0.05$). The findings support Hypothesis 1b at presentence detention.

Hypothesis 1c: Early Disposition. Next, the effects of percent Hispanic and its quadratic term are investigated for early disposition. Table 15 Model 1 shows that percent Hispanic has a significant linear effect on early disposition ($b = .201, p < 0.05$). Contrary to Hypothesis 1c, percent Hispanic exhibits a positive relationship with early disposition. Early disposition is employed more frequently in districts with a larger Hispanic population size.

Table 13: Effects of Race and Ethnicity on Case Filing Decisions

Variable	Model 1		Model 2	
	Percent Hispanic		Absolute Change	
	b	SE	b	SE
Intercept	1.700 ***	.356	1.681 ***	0.355
Percent Hispanic	.031	.053		
Percent Hispanic ²	-.001	.002		
Absolute change			.239	.181
Conservative	-1.896	3.307	-3.118	3.512
Resource deprivation	.245	.211	.276	.191
Index crime rate	7.767	18.168	.973	19.015
Case load *	-.032 *	.015	-.031 *	.012
Court size	-.016	.051	-.017	.046
Fast-track district	-1.036	.661	-1.100	.656
Random effect intercept	2.212 ***	4.894	2.177 ***	4.738
X^2	41652.700		40907.896	

Note: *p<.05; **p<.01; ***p<.001

Table 14: Effects of Percent Hispanic, and Absolute Change on Presentence Detention

Variable	Model 1		Model 2		Model 3		Model 4	
	Percent Hispanic Main Effects b	SE	Absolute Change Main Effects b	SE	Percent Hispanic Interaction Effects b	SE	Absolute Change Interaction Effects b	SE
Intercept	5.053 ***	.257	5.072 ***	.260	5.759 ***	.478	5.827 ***	.479
Pct. Hispanic	.063 *	.025			-.008	.050		
Pct. Hispanic ² *	-.182 *	.091			-.070	.131		
Hispanic x Pct. Hispanic					-.085	.065		
Hispanic x Pct. Hispanic ² *					.095	.188		
Absolute change			.109	.097			-.290	.191
Hispanic x Absolute change							-.566 **	.212
Conservative	-.221	1.530	.315	1.841	-2.071	2.272	-.573	2.479
Resource deprivation	-.047	.099	-.130	.099	.027	.176	-.057	.161
Index crime rate	-16.847	9.417	-13.847	9.844	-3.624	16.729	4.797	16.319
Case load **	-.022	.057	.007	.053	.003	.052	-.023	.041
Court size	-.050	.025	-.040 *	.019	-.032	.032	-.037	.024
Fast-track district	-.558	.296	-.486	.291	-.071	.477	.161	.479
Hispanic	1.156 ***	.309	1.161 ***	.309	2.398 ***	.457	2.292 ***	.476
Random effect intercept	.760 ***	.577	.806 ***	.650	.823 ***	.678	.789 **	.623
X ²	762.321		1418.553		200.224		234.339	

Note: *p<.05; **p<.01; ***p<.001

Table 15: Effects of Percent Hispanic and Absolute Change on Early Disposition

Variable	Model 1		Model 2		Model 3		Model 4	
	Percent Hispanic Main Effects b	SE	Absolute Change Main Effects b	SE	Percent Hispanic Interaction Effects b	SE	Absolute Change Interaction Effects b	SE
Intercept	-5.880 ***	.351	-5.922 ***	.360	-5.234 ***	.391	-5.317 ***	.544
Percent Hispanic	.201 *	.093			.207 *	.085		
Percent Hispanic ²	-.004	.003			-.004	.003		
Hispanic x Pct. Hispanic					-.018	.043		
Hispanic x Pct. Hispanic ² *					.030	.083		
Absolute change			.846 *	.377			.949 **	.352
Hispanic x Absolute change							-.052	.138
Conservative	-2.917	4.357	-5.551	4.671	-3.157	3.922	-6.546	5.374
Resource deprivation	.083	.270	.057	.266	-.106	.243	-.120	.356
Index crime rate	-30.130	30.611	-47.605	35.147	-16.328	30.256	-40.102	40.499
Case load *	.032	.024	.048 **	.016	.028	.022	.045 *	.018
Court size	-.115	.088	-.068	.094	-.162	.084	-.117	.084
Hispanic	-.060	.095	-.060	.095	.252	.642	.103 **	.320
Random effect intercept	2.862 ***	8.192	2.847 ***	8.107	2.570 ***	6.604	2.526 **	6.382
X ²	29463.792		29233.762		5503.362		4819.191	

Note: *p<.05; **p<.01; ***p<.001

Hypothesis 1d: Charge Reduction. Table 16 Model 1 reveals that percent Hispanic and percent Hispanic squared exhibit no significant relationship with charge reduction. Hypothesis 1d is not supported at this stage in the federal court process.

Hypothesis 1e: Guideline Departure. The results for guideline departure can be viewed in Tables 17 through 19 Model 1. As with charge reduction, no significant effect of Hispanic population size emerges for downward departure, substantial assistance departure, or other government assistance departure. Accordingly, no support for Hypothesis 1e exists at guideline departure.

Hypothesis 1f: Sentence Length. Table 20 Model 1 displays the effects of percent Hispanic and its quadratic term on sentence length. Neither percent Hispanic nor percent Hispanic squared has a statistically significant relationship with sentence length, thus no support is found for Hypothesis 1f at sentencing.

Hypothesis 2

Hypothesis 2a: Case filing. Following the analysis for Hispanic population size, the effects of absolute change in percent Hispanic from 2000 to 2010 are investigated for the same six outcomes. Table 13 Model 2 suggests that no statistically significant relationship exists between absolute change and case filing decisions. Accordingly, Hypothesis 2a is not supported at this stage.

Hypothesis 2b: Presentence Detention. Similar to case filing, Table 14 Model 2 demonstrates that absolute change in percent Hispanic has no statistically significant

Table 16: Effects of Percent Hispanic and Absolute Change on Charge Reduction

Variable	Model 1		Model 2		Model 3		Model 4	
	Percent Hispanic Main Effects b	SE	Absolute Change Main Effects b	SE	Percent Hispanic Interaction Effects b	SE	Absolute Change Interaction Effects b	SE
Intercept	-7.473 ***	.392	-7.469 ***	.394	-7.705 ***	.500	-7.709 ***	.501
Percent Hispanic	.024	.031			.004	.040		
Percent Hispanic ² *	-.125	.120			-.044	.112		
Hispanic x Pct. Hispanic					.011	.038		
Hispanic x Pct. Hispanic ²					-.001	.001		
Absolute change			.027	.124			-.017	.171
Hispanic x Absolute change							.022	.114
Conservative	-.044	1.882	.300	1.844	.860	2.217	1.225	2.330
Resource deprivation	.010	.092	-.037	.086	-.043	.148	-.068	.147
Index crime rate	6.479	13.586	8.183	15.789	8.677	17.797	10.469	20.638
Case load **	.015	.054	-.010	.038	.007	.081	-.007	.063
Court size	-.048	.284	-.054 *	.023	-.077	.040	-.085 *	.033
Fast-track district	.275	.366	.281	.382	.390	.503	.394	.519
Hispanic	-.206	.186	-.206	.186	-.234	.315	-.273	.318
Random effect intercept	1.096 ***	1.201	1.097 ***	1.203	1.075 ***	1.157	1.060 ***	1.123
X ²	676.668		658.330		210.404		206.492	

Note: *p<.05; **p<.01; ***p<.001

Table 17: Effects of Percent Hispanic and Absolute Change on Downward Departure

Variable	Model 1		Model 2		Model 3		Model 4	
	Percent Hispanic Main Effects b	SE	Absolute Change Main Effects b	SE	Percent Hispanic Interaction Effects b	SE	Absolute Change Interaction Effects b	SE
Intercept	-3.782 ***	.126	-3.778 ***	.126	-4.502 ***	.259	-4.535 ***	.260
Percent Hispanic	-.022	.025			.020	.029		
Percent Hispanic ² *	.093	.095			.087	.103		
Hispanic x Pct. Hispanic					.020	.037		
Hispanic x Pct. Hispanic ²					.001	.001		
Absolute change			-.053	.093			-.014	.115
Hispanic x Absolute change							.340 *	.132
Conservative	-3.087 *	1.452	-3.131 *	1.541	-2.987	1.710	-3.036	1.820
Resource deprivation	-.255 *	.097	-.228 *	.090	-.210	.117	-.184	.110
Index crime rate	-6.821	9.012	-6.751	9.384	-1.942	11.093	-2.211	11.807
Case load *	.013	.007	.015	.006	.013	.007	.015	.006
Court size	-.009	.026	-.007	.023	-.016	.029	-.013 *	.026
Fast-track district	-.137	.319	-.131	.317	-.564	.395	-.610	.396
Hispanic	.052 ***	.198	.050	.198	-.533	.283	-.472	.262
Random effect intercept	.892 ***	.796	.885 ***	.783	.823 ***	.678	.814 ***	.663
X^2	1317.358		1737.849		280.193		353.902	

Note: *p<.05; **p<.01; ***p<.001

Table 18: Effects of Percent Hispanic and Absolute Change on Substantial Assistance Departure

Variable	Model 1		Model 2		Model 3		Model 4	
	Percent Hispanic Main Effects b	SE	Absolute Change Main Effects b	SE	Percent Hispanic Interaction Effects b	SE	Absolute Change Interaction Effects b	SE
Intercept	-4.576 ***	.135	-4.584 ***	.135	-4.634 ***	.337	-4.707 ***	.340
Percent Hispanic	-.007	.023			.012	.034		
Percent Hispanic ² *	-.007	.084			-.058	.113		
Hispanic x Pct. Hispanic					.031	.039		
Hispanic x Pct. Hispanic ² *					-.087	.141		
Absolute change			.013	.085			.137	.125
Hispanic x Absolute change							.094	.118
Conservative	-1.624	1.359	-1.837	1.441	-3.482	1.967	-4.344	2.089
Resource deprivation	.111	.095	.119	.088	.238	.146	.263	.137
Index crime rate	-12.435	8.637	-14.358	9.290	3.130	12.852	-3.839	14.481
Case load **	-.001	.060	-.027	.050	-.029	.069	-.051	.056
Court size	-.016	.024	-.026	.021	-.040	.033	-.051	.030
Fast-track district	.550	.304	.500	.301	.395	.449	.302	.444
Hispanic	-.786	.201	-.792 ***	.201	-.759	.295	-.795 ***	.289
Random effect intercept	.724 ***	.524	.719 ***	.517	.704 ***	.495	.693 ***	.481
X ²	261.192		268.245		105.862		107.835	

Note: *p<.05; **p<.01; ***p<.001

Table 19: Effects of Percent Hispanic and Absolute Change on Government Sponsored Departure

Variable	Model 1		Model 2		Model 3		Model 4	
	Percent Hispanic Main Effects	SE	Absolute Change Main Effects	SE	Percent Hispanic Interaction Effects	SE	Absolute Change Interaction Effects	SE
Intercept	-3.846 ***	.164	-3.862 ***	.166	-3.851	.266	-3.878 ***	.270
Percent Hispanic	-.016	.034			-.014	.044		
Percent Hispanic ²	.001	.001			.002	.002		
Hispanic x Pct. Hispanic					.056	.058		
Hispanic x Pct. Hispanic ²					-.002	.002		
Absolute change			.040	.126			.102	.166
Hispanic x Absolute change							.062	.178
Conservative	-.231	1.996	-1.152	2.128	-1.445	2.624	-2.784	2.835
Resource deprivation	-.268 *	*0.132	-.195	.124	-.205	.178	-.111	.171
Index crime rate	9.071	12.216	4.592	12.846	10.821	16.931	4.847	18.136
Case load *	.008	.010	.010	.008	-.001	.012	.006	.010
Court size	-.053	.036	-.049	.032	-.037	.046	-.055	.041
Fast-track district	.303	.432	.255	.434	.106	.597	.094	.605
Hispanic	.505 *	.238	.503 *	.238	.457	.350	.492	.340
Random effect intercept	1.229 ***	1.511	1.234 ***	1.523	1.366 ***	1.867	1.387 ***	1.924
X ²	7004.799		8690.136		1189.984		1804.031	

Note: *p<.05; **p<.01; ***p<.001

Table 20: Effects of Percent Hispanic and Absolute Change on Sentence Length

Variable	Model 1		Model 2		Model 3		Model 4	
	Percent Hispanic Main Effects b	SE	Absolute Change Main Effects b	SE	Percent Hispanic Interaction Effects b	SE	Absolute Change Interaction Effects b	SE
Intercept	2.550 ***	.025	2.550 ***	.025	2.315 ***	.032	2.315 ***	.033
Percent Hispanic	.001	.005			-.003	.005		
Percent Hispanic ² **	-.035	.202			.061	.209		
Hispanic x Pct. Hispanic					-.002	.011		
Hispanic x Pct. Hispanic ² **					-.002	.402		
Absolute change			-.001	.017			-.011	.018
Hispanic x Absolute change							-.010	.037
Conservative			-.134	.261	-.237	.329	-.207	.336
Resource deprivation	.032	.019	.030	.017	.026	.023	.027	.021
Index crime rate	2.684	1.720	2.827	1.798	1.866	1.978	2.028	2.054
Case load **	-.021	.012	-.020 *	.010	-.016	.014	-.018	.011
Court size *	.023	.488	.056	.353	-.043	.603	-.094	.454
Fast-track district	.004	.059	.007	.058	-.028	.067	-.029	.066
Hispanic	.089 ***	.045	.089	.045	.143	.085	.139	.083
Random effect intercept	.191 ***	.037	.190 **	.036	.174 ***	.030	.172 ***	.029
X ²	2382.609		2427.282		529.681		531.335	

Note: *p<.05; **p<.01; ***p<.001

impact on presentence detention. Therefore, Hypothesis 2b is not supported at presentence detention.

Hypothesis 2c: Early Disposition. Turning to Table 15 Model 2, absolute change in percent Hispanic is significantly related to the likelihood of receiving early disposition ($b = .377, p < 0.05$). Defendants are more likely to receive early disposition with an absolute increase in percent Hispanic. This finding is opposite of Hypothesis 2c but consistent with the previous finding for Hypothesis 1c that examined the effects of Hispanic population size on early disposition.

Hypothesis 2d: Charge Reduction. Inspection of Table 16 Model 2 reveals that absolute change in percent Hispanic does not influence whether charges are reduced, thus there is no support for Hypothesis 2d at charge reduction.

Hypothesis 2e: Guideline Departure. Likewise, Model 2 in Tables 17 through 19 indicate that absolute change in percent Hispanic does not affect downward departure, substantial assistance departure, or other government assistant departure suggesting no support for Hypothesis 2e at guideline departure.

Hypothesis 2f: Sentence Length. Last, absolute change in percent Hispanic has no statistically significant relationship with length of sentence. Accordingly, Hypothesis 2f is not supported at sentence length.

Hypothesis 3

Hypothesis 3a: Presentence Detention. In the following section, cross-level interactions between Hispanic population size and Hispanic ethnicity are examined to determine whether Hispanic defendants receive more severe sanctions in districts with a

large Hispanic population. No significant interaction effect is detected in Table 14 Model 3, suggesting no support for Hypothesis 3a at presentence detention.

Hypothesis 3b: Early Disposition. Investigation of Table 15 Model 3 demonstrates that there is no significant interaction between percent Hispanic or its quadratic term with Hispanic ethnicity. No support for Hypothesis 3b exists at early disposition.

Hypothesis 3c: Charge Reduction. Table 16 Model 3 presents the results for the interactions between percent Hispanic and ethnicity and percent Hispanic squared and ethnicity. Hypothesis 3c is not supported at charge reduction as there is no statistically significant relationship between Hispanic population size and charge reduction.

Hypothesis 3d: Guideline Departure. Similar to all previous models testing Hypothesis 3, Tables 17 through 19 indicate that percent Hispanic and percent Hispanic squared do not significantly influence whether Hispanic defendants receive a guideline departure. Therefore, Hypothesis 3d is not supported at the guideline departure.

Hypothesis 3e: Sentence Length. Table 20 Model 3 shows that percent Hispanic exerts no statistically linear or curvilinear relationship with sentence length. Overall, no support is found for Hypothesis 3.

Hypothesis 4

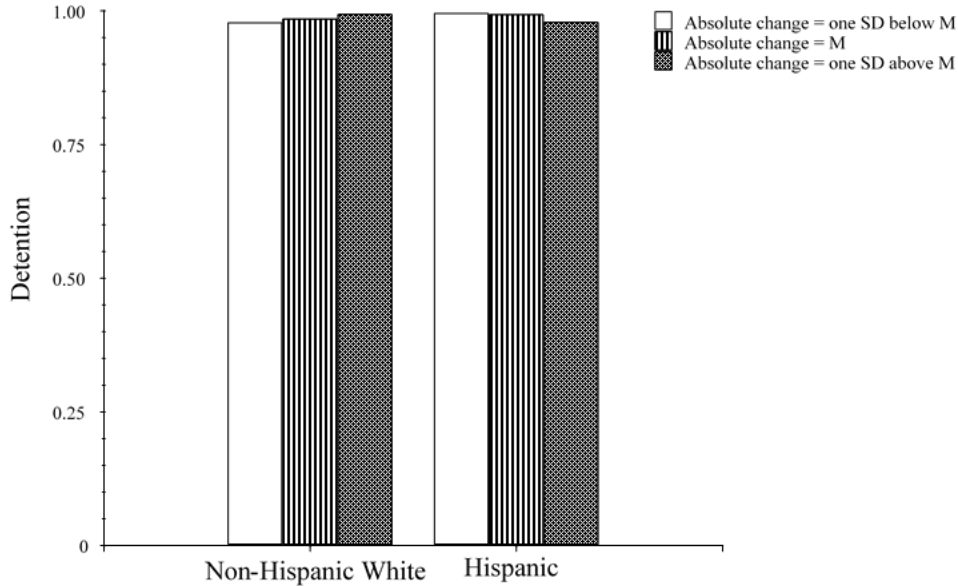
Hypothesis 4a: Presentence Detention. Finally, cross-level interactions between absolute change in percent Hispanic and Hispanic ethnicity are conducted to determine whether Hispanic defendants receive harsher treatment in districts with a greater absolute change in percent Hispanic. Table 14 Model 4 demonstrates that the absolute change in

percent Hispanic does significantly impact presentence detention; however, the direction is contrary to Hypothesis 4. As percent Hispanic increases, Hispanic defendants are less likely to be detained. Figure 4 presents the interaction between absolute change in percent Hispanic and Hispanic ethnicity. The figure reports the likelihood of receiving detention by ethnicity and three levels of absolute change in percent Hispanic (one standard deviation below mean, at mean, and one standard deviation above mean). For non-Hispanic white defendants, presentence detention is less likely at one standard deviation below mean absolute change in percent Hispanic and more likely when absolute change in percent Hispanic is one standard deviation above the mean. Conversely, for Hispanic defendants, detention is more likely at one standard deviation below mean absolute change in percent Hispanic and less likely when absolute change in percent Hispanic is one standard deviation above the mean. That said, the differences in predicted probabilities of receiving a presentence detention across these three levels are relatively small.

Hypothesis 4b: Early Disposition. Table 15 Model 4 reveals no support for Hypothesis 4b at early disposition. Absolute change in percent Hispanic does not significantly influence the effect of Hispanic ethnicity on the likelihood of receiving early disposition.

Hypothesis 4c: Charge Reduction. Inspection of Table 16 Model 4 indicates that the interaction between absolute change in percent Hispanic and Hispanic ethnicity is not statistically significant at charge reduction, thus no support is found for Hypothesis 4c.

Figure 4: Likelihood of Presentence Detention by Ethnicity at Three Levels of Absolute Change in Hispanic Population Growth



Hypothesis 4d: Guideline Departure. Turning to guideline departure, Tables 17 through 19 Model 4 displays the interaction between absolute change in percent Hispanic and Hispanic ethnicity on downward departure, substantial assistance departure, and other government assistance departure. The results reveal that the absolute change in percent Hispanic significantly influences whether Hispanic defendants receive a downward departure compared to white non-Hispanic defendants. The findings are opposite to Hypothesis 4d. Figure 5 displays the relationship between absolute change in percent Hispanic and Hispanic ethnicity. At one standard deviation above the mean absolute change in percent Hispanic, Hispanic defendants are more likely to receive a downward departure than white non-Hispanic defendants. Further investigation of Figure

Figure 5a: Likelihood of Receiving a Downward Departure by Ethnicity at Three Levels of Absolute Change in Hispanic Population Growth

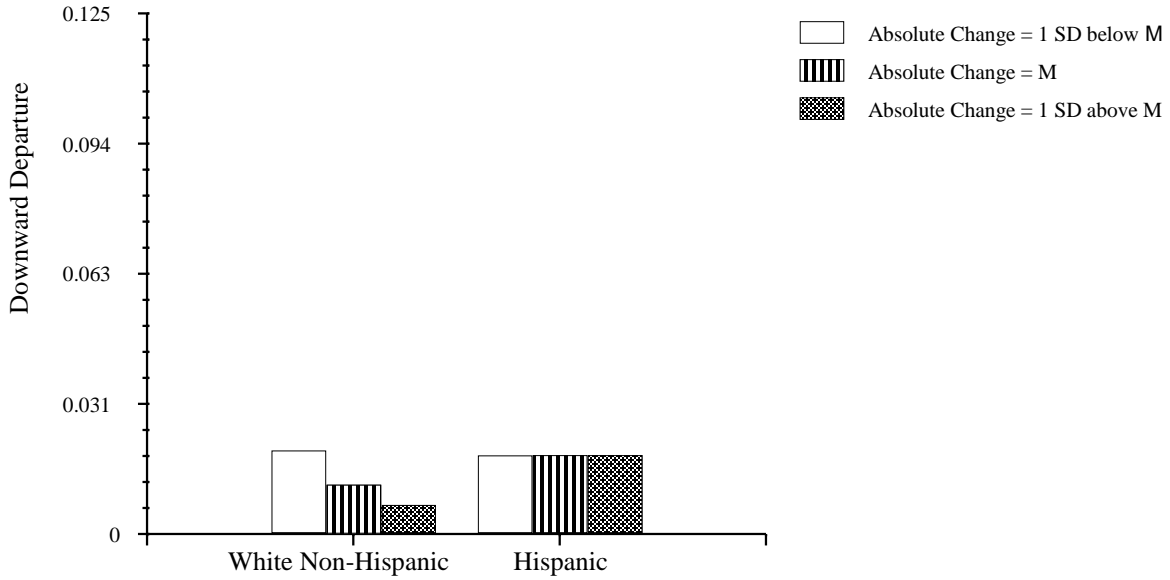


Figure 5b: Likelihood of Receiving a Substantial Assistance Departure by Ethnicity at Three Levels of Absolute Change in Hispanic Population Growth

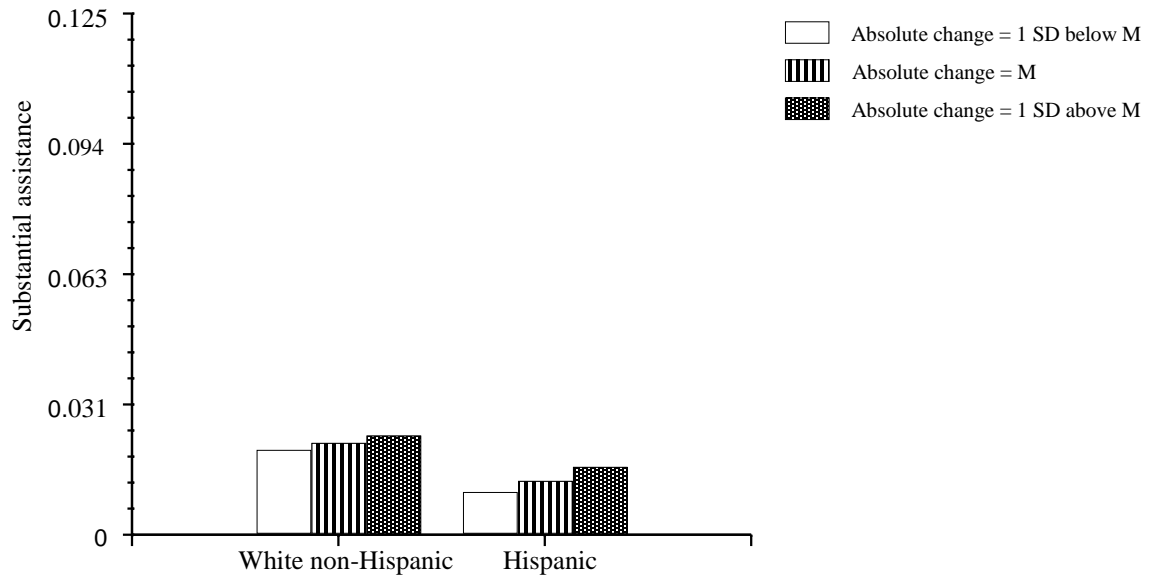
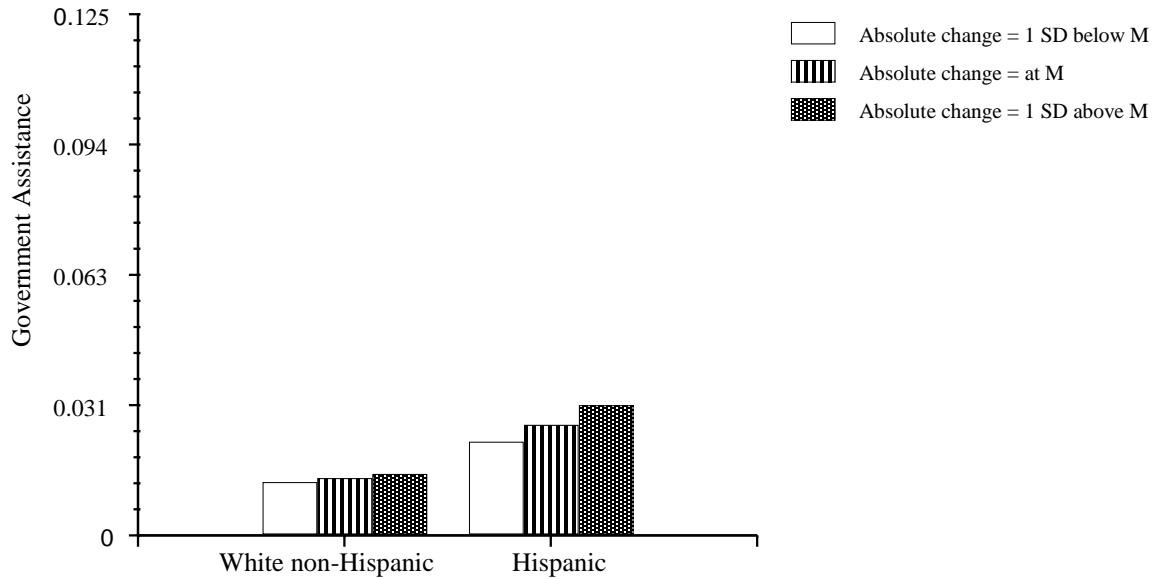


Figure 5c: Likelihood of Receiving a Government Assistance Departure by Ethnicity at Three Levels of Absolute Change in Hispanic Population Growth



5a reveals that the gap in the likelihood of receiving a downward departure between Hispanic defendants and white non-Hispanic defendants is reduced at mean absolute change in percent Hispanic. At one standard deviation below mean absolute change in percent Hispanic, there is no difference in the likelihood of receiving a downward departure between Hispanic defendants and white non-Hispanic defendants.

With respect to substantial assistance and other government sponsored departures, absolute change in percent Hispanic has no significant effect on Hispanic ethnicity. Hypothesis 4d is not supported at guideline departure.

Hypothesis 4e: Sentence length. Table 20 displays the interaction between absolute change in percent Hispanic and Hispanic ethnicity on sentence length. No

statistically significant relationship emerges between absolute change and ethnicity. Hypothesis 4e is not supported at sentencing.

Discussion

Summary

The goal of the present study was to examine whether ethnic and immigrant threat influences federal court decision making in immigration cases. The punitive rhetoric surrounding criminal immigration, the harsh subfederal policies toward immigrants in new destination areas, and the most recent literature demonstrating that perceived threat and punitiveness are a function of the Hispanic and immigrant population size suggest that an in-depth assessment of how context influences the handling of immigration cases is warranted. To this end, four overarching hypotheses were developed into 22 total hypotheses. Limited and mixed support was found for the hypotheses with some notable exceptions. Hispanic population size had a curvilinear relationship with presentence detention where size of the Hispanic population increased the likelihood of being detained then leveled off, thus supporting Hypothesis 1b. By contrast, Hispanic population size had a direct and positive relationship with use of early disposition, which was opposite of what was predicted by Hypothesis 1c. No support was found for any part of Hypotheses 2 or 3. In fact, similar to Hypothesis 1c, absolute change in percent Hispanic led to an increase in early disposition contrary to what was hypothesized according to Hypothesis 2c. Similarly, no support was found for Hypothesis 4 although two significant findings emerged. Against what was proposed in Hypotheses 4a and 4d, Hispanic defendants were less likely to be detained and were more likely to receive a

downward departure in areas where there was a greater absolute change in percent Hispanic.

Theoretical and Policy Implications

Findings from this study suggest that a modest amount of contextual disparity does exist in the federal court processing of immigration cases. Defendants charged with immigration offenses were treated more harshly or more leniently depending on the size or increase of the Hispanic population at presentence detention, early disposition, and downward departure; however, the patterns observed in this study were not always consistent with the minority threat perspective. While all defendants were more likely to receive presentence detention in districts with a larger Hispanic population size, all defendants were also more likely to receive early disposition in districts where percent Hispanic was greater and the absolute change in percent Hispanic increased. Moreover, the interactions between Hispanic ethnicity and absolute change in percent Hispanic indicated that Hispanic defendants were treated more leniently than white non-Hispanic defendants where there was a larger increase in percent Hispanic.

The reason the main effect of ethnic threat is salient to presentence detention and no other decision point may reflect the primary concern of decision makers at this stage of the court process. For example, the Bail Reform Act of 1984 provides guidelines for presentence release. The factors to be considered are the nature and circumstances of the offense charged, the weight of evidence against the person, the history and characteristics of the person, and the nature and seriousness of the danger to any person or the community that would be posed by the person's release (Bail Reform Act, 1984). While

legal factors, such as offense type and seriousness determine whether the first requirements are met, the magistrate judge holds the discretion to decide whether the defendant poses a danger to the community. Relying on factors like the person's criminal history, characteristics, and dangerousness to the community may bring perceptions of threat to the forefront of decisions. Accordingly, factors that influence perceptions of threat, such as ethnic composition, may be particularly germane to detention decisions compared to other decision points. In addition, the appointment process of federal magistrate judges is more political than that of U.S. attorneys and judges, which may open the federal magistrate up to outside influences (McCabe, 2014). Moreover, it may be that federal magistrate judges are only selected if they are known to reflect the views of the district.

By contrast, the finding that early disposition is more likely in districts where percent Hispanic is larger is opposite of what the minority threat perspective would predict. Instead, the linear term suggests early disposition may be used to address constraints on the court. In fact, early disposition programs were created for handling large numbers of immigration cases. With the passage of the PROTECT Act in 2003, Congress officially approved early disposition programs in select districts where the U.S. Attorney could demonstrate that the program would save the government significant resources (McClellan & Sands, 2006). Relatedly, the context of early disposition is unique because it allows for the use of deportation as part of its stipulation (Eagly, 2010), thus early disposition may be used more frequently in districts with a larger Hispanic population size because it addresses constraints on the court and is a convenient means to

assign to deportation. Therefore, punitiveness may be manifest in increased civil sanctions that are not available at other decision points, and the leniency associated with early disposition programs may be misleading.

The interaction between Hispanic ethnicity and percent Hispanic is also opposite of what would be suggested by the minority threat perspective. Hispanic defendants received more lenient treatment at presentence detention and downward departure where there is a larger absolute change in percent Hispanic. Some other studies have found similar results (see Feldmeyer & Ulmer, 2011; Helms, 2009). For example, Feldmeyer and Ulmer (2011) examined cross-level interactions between Hispanic population size and defendant ethnicity and found that Hispanic defendants were treated more harshly in areas with a lower percent Hispanic. The authors suggested two explanations. On the one hand, perceived cultural differences according to ethnicity may be amplified when there are fewer Hispanic residents in an area. As the Hispanic population grows in size, perceived cultural differences between Hispanics and whites may lessen. On the other hand, courtroom actors may become concerned with political and social backlash by targeting members of a growing minority population.

Relatedly, another reason for the more lenient treatment of Hispanic defendants in districts with a greater absolute change in percent Hispanic may be the lack of controls for baseline levels of threat due to collinearity between the measures. If absolute change in percent Hispanic is occurring more frequently in districts that already have a large Hispanic population, then an increase in the Hispanic population may indicate that a critical threshold has been reached where Hispanics have more power and economic

influence, thus resulting in more lenient treatment of Hispanic defendants as Hispanic population size increases.

Directions for Future Research

The results from the present study bring up three necessary areas for future research. The first is an empirical examination of how the criminal justice and civil immigration systems work together. The need for a joint investigation of both systems is exemplified in the differential impact of ethnic composition on presentence detention as opposed to early disposition. Eagly (2010) describes how early disposition is used to facilitate deportation, but information on deportation is not available in the FJSP. Consequently, looking at how immigration cases are handled from the stance of the criminal justice system excludes the harsh civil consequences that may be enforced at certain decision points, such as early disposition. An empirical investigation of both the criminal justice and civil systems could shed light on whether districts with a large percentage of Hispanics are increasing the use of deportation as part of early disposition stipulations or whether early disposition is primarily being used to address constraints on the court.

A second direction for future research is an examination of how the absolute change in percent Hispanic affects the handling of immigration cases when accounting for baseline levels of threat. Due to collinearity between baseline levels and changes, the present study was unable to do so; however, several studies have demonstrated the importance of accounting for both (e.g. Caravelis et al., 2011; Golden, 2012) and assessing interactions between the two (Wang & Mears, 2010b). For example, Wang and

Mears (2010b) found that in areas with higher baseline threat, growth in percent black was more likely to result in a prison sentence for all defendants. Therefore, including baseline levels of threat in future studies of contextual disparity and criminal immigration cases would help clarify the present study's results.

Lastly, more research is needed on immigrant concentration and sentencing in immigration cases. The present study found no statistically significant influence of percent foreign-born in any of the models. This may be due to the lower degree of variation in the size of the foreign born-populations across districts. In addition, percent foreign-born only comprised a very low percentage of the district population overall. Therefore, immigrant concentration on courts and sentencing outcomes may need to be examined at a lower level of aggregation.

Conclusion

In conclusion, a large number of immigrants entered the United States in the last three decades and began to disperse into new destination areas (Gibson & Jung, 2006; Grieco et al., 2012; Pew Research Center, 2014; Singer, 2004). Recent immigration scholarship has drawn on the minority threat perspective to examine the impact that the most recent wave of immigration has had on perceived immigrant and ethnic threat and punitiveness toward immigrants. This literature has indicated that perceptions of threat posed by immigrants are more prevalent in areas within the United States characterized by a large or growing foreign-born or Hispanic population (Chiricos et al., 2014; Stewart et al., 2015; Stupi et al., 2014; Wang, 2012). Moreover, new destination areas have

implemented some of the most punitive policies toward immigrants (Zatz & Smith, 2012).

Applying this research to a comprehensive examination of the impact of ethnic and immigrant threat on courts and sentencing decisions, the present study found mixed results that depended on the stage of the courts and sentencing process. Contextual disparity surfaced at decision points presided over by federal magistrate judges and prosecutors but were not always consistent with the minority threat perspective. Overall, this study suggests that decision making at certain stages in the court processing of immigration cases is influenced by the surrounding ethnic and immigrant context, but more clarity is needed on why certain patterns emerged.

CHAPTER 4: RACIAL AND ETHNIC DISPARITY WITHIN IMMIGRATION CASES OVER TIME

Overview

Research has demonstrated that punitive attitudes toward immigrants and immigration are partly a function of the social structure (Sobczack, 2010). Prominent social structural characteristics that have been found to influence punitive attitudes toward immigrants include economic hardships, immigrant population growth, and terroristic incidents (Esses, Dovidio, & Hodson, 2002; Esses, Dovidio, Jackson, & Armstrong, 2001; Quillian, 1995; Sobczack, 2010; Wang, 2012). In the past 35 years, the United States has experienced all three. First, a major shift in the social structure began when a wave of immigration in the 1980s changed the demographic composition in the United States (Gibson & Jung, 2006; Grieco et al., 2012). Second, the United States experienced several domestic terroristic incidents throughout the 1990s, then 9/11 occurred in 2001 (Chacon, 2007). The 9/11 attacks had a lasting impact on the economy and on the criminal justice and immigration systems (Esses et al., 2002; Wadhia, 2010). Third and relatedly, an economic recession occurred in 2008 that left many in the United States struggling for jobs and resources (Esses et al., 2002).

Current punitive rhetoric and policies targeting undocumented Latino immigrants indicate that the demographic and economic shifts, along with terroristic attacks in the United States, may have intensified punitive attitudes and social control toward undocumented Latino immigrants over the past several decades. Punitive rhetoric toward undocumented Hispanic immigrants has increasingly conflated ethnicity and immigration

status with crime and terror (Chacon, 2007; 2009; 2012). Indeed, group threat theory predicts that punitive attitudes and social control change across time and place (Bobo & Hutchings, 1996; Quillian, 1995), and longitudinal research has indicated that punitive attitudes fluctuate over time (Ceobanu & Escandell, 2010; Schuman, Steeh, Bobo, & Krysan, 1997). Nevertheless, longitudinal research on punitive attitudes, group threat, and social control targeting undocumented immigrants has been scarce and has mainly focused on European countries (Ceobanu & Escandell, 2010).

Accordingly, the purpose of the present paper is to assess whether Hispanic noncitizens who are defendants in immigration cases are sentenced more harshly over time compared to white noncitizens, and whether ethnic disparity within immigration cases over time is exacerbated in areas with the greatest increase in Hispanic population growth. Incarceration and sentencing practices have been a main source of social control over undocumented immigrants alongside deportation (Eagly, 2010), and the increased punitive stance toward undocumented immigrants in both the civil and criminal justice systems suggests that time may play an important role in the treatment of Latino noncitizens at sentencing.

Theoretical Framework

Group threat theory provides a framework to understand the sources of punitive attitudes toward Hispanic noncitizens and what causes them to change over time. Group threat theory contends that punitive attitudes result from concern over a group's position relative to other groups in a social hierarchy (Bobo & Hutchings, 1996). Moreover, individual perceptions of a group's position in the social hierarchy develop through

public and political rhetoric on group superiority, out-group stereotyping, rights to desired resources, and perceived threat to desired resources (Blumer, 1958; Bobo & Hutchings, 1996).

Accordingly, punitive attitudes are highest when the outgroup is perceived to threaten the ingroup's advantageous position and access to resources (King & Wheelock, 2007). Sources of threat include the size of the outgroup's population, economic conditions, and terroristic threat (Blalock, 1967; Esses et al., 2002; King & Wheelock, 2007; Quillian, 1995). Blalock (1967) explicated how the size of minority population affects punitiveness. He asserted that as the size of the minority population increases, the dominant group will perceive two types of threats: political and economic (Blalock, 1967). Political threat occurs because majority members feel that their political dominance and control is threatened as the minority group becomes more politically powerful with increased numbers (Blalock, 1967). Economic threat arises because members of the majority group perceive that their economic well-being is threatened through competition for jobs and economic resources as the presence of a minority population increases (Blalock, 1967). Later, minority threat theorists expanded the minority threat perspective to also include criminal threat where large numbers of a minority population are asserted to pose a criminal threat to majority members (Bontrager et al., 2005; Crawford et al., 1998; Jackson, 1989).

Economic conditions and terrorism are other sources of perceived threat. Quillian (1995) explained the connection between the economy and perceived threat. When economic conditions worsen, the dominant group either scapegoats the blame for the

state of the economy onto the minority group, or they perceive the minority group as competition for scarce resources (Quillian, 1995). Regarding terrorism, Esses and colleagues (2002) describe how terroristic incidents induce extreme perceptions of threat to the basic preservation of the majority group. In sum, group threat theory offers an explanation as to why immigration, economic downturn, and terrorism in the past several decades have coincided with increased punitiveness toward undocumented Hispanic immigrants.

Punitive Attitudes toward Undocumented Immigrants Over Time

Although longitudinal research on punitive attitudes toward undocumented immigrants has been lacking, one study by Fussell (2014) compiled several decades of data in the United States from the General Social Survey (GSS) and found that at the national level, American attitudes toward immigration generally have become more positive over time. Nevertheless, assessing attitudes toward immigration in general is problematic because research has found that punitive attitudes toward immigration and immigrants depend on documented status and their race and ethnicity (Citrin & Sides, 2008; Hainmueller & Hopkins, 2014; Wright, Levy, & Citrin, 2015).

One study by Citrin and Sides (2008) found no differences between the United States and other European countries in attitudes toward immigration generally; when asked about unauthorized immigration, attitudes in the United States were decidedly negative. In a similar vein, Wright, Levy, and Citrin (2016) found that opinions of undocumented immigrants were developed differently compared to opinions formed of authorized immigrants; a portion of participants disregarded all undocumented

immigrants based on moral grounds but welcomed authorized immigrants based on ascribed characteristics. In another study, Hainmueller and Hopkins (2014) synthesized several studies and found a trend in the mid-1990s and after the 9/11 attacks, when punitive attitudes toward immigrants became focused on Hispanic noncitizens. In sum, attitudes in the United States toward immigration generally may have become more positive while punitive attitudes toward Hispanic noncitizens specifically may have intensified over time.

Longitudinal Sentencing Research

Criminal justice actors are significantly impacted by their surrounding context (Eisenstein et al., 1999), and a body of research has accumulated demonstrating the impact that levels of threat and punitiveness have on social control (D'Alessio, Eitle, & Stolzenberg, 2005; Eitle, D'Alessio, & Stolzenberg, 2002; Jackson & Carroll, 1981; Kane, 2003; Kent & Jacobs, 2005; Liska & Chamlin, 1984; Liska, Lawrence, & Benson, 1981; Parker, Stults, & Rice, 2005; Stolzenberg, D'Alessio, & Eitle, 2004; Stults & Baumer, 2007). Sentencing decisions stand at the heart of the criminal justice system and have long been used as a method of social control through incapacitation and disenfranchisement (Alexander, 2012; Western, 2006). While most sentencing research has examined how sentencing practices vary by place (e.g. Britt, 2000; Felmeyer & Ulmer, 2011; Helms, 2009; Kautt, 2002; Jacobs, Carmichael, & Kent, 2005; Ulmer & Johnson, 2004; Wang & Mears, 2010a, 2010b), time is also important.

Courtroom practices have been shown to vary over time (Hofer, 2007, Light, 2014). One example is the increased use of departures during the 1990s; scholars have

contended that downward departures were one way to mitigate the severity of punishment imposed by the sentencing guidelines (Hofer, 2007). Another example is the influence of race in sentencing over time. Several reviews have indicated that over the past century racial disparity has become more indirect and institutionalized though no less harmful as courtroom actors are no longer able to blatantly consider race in their decision-making (Spohn, 2015b; Van Cleve, 2016; Zatz, 1987, 2000). Overall, longitudinal studies are important because they can detect trends and changes in sentencing. Otherwise, whether a relationship is observed between key variables of interest that fluctuates over time would depend on the years selected (Light, 2014).

Although sentencing scholars have demonstrated the importance of longitudinal research while examining sentencing practices, such research has been scarce in comparison to cross-sectional sentencing research and has generally been conducted to examine whether racial and ethnic disparity increased after the federal sentencing guidelines were made advisory (e.g. Kim et al., 2016; Lynch & Omori, 2014; Ulmer et al., 2011a, 2011b; Starr & Rehavi, 2013; Yang, 2014, 2015). Instead, sentencing scholars have relied on cross-sectional methods that provide insights on sentencing practices during a window of time. Once enough studies have accumulated, then sentencing scholars assess the state of the literature and any patterns that have emerged (e.g. Baumer, 2013; Chiricos & Crawford, 1995; Hagan, 1974; Ulmer, 2012; Spohn, 2000, 2015b; Zatz, 1987, 2000). While this research has significantly contributed to our understanding of courtroom decision making, especially in the area of inequality in the administration of justice, it requires an adequate number of studies to accumulate over

multiple years. For sentencing trends that have received little empirical examination, a longitudinal method is necessary to detect patterns over time.

Because literature has indicated that punitive attitudes toward Hispanic noncitizens has increased over time (Chacon, 2007; Medina, 2006; Provine & Doty, 2011; Stumpf, 2006), the influence of ethnicity within immigration cases may strengthen rather than weaken over time. Furthermore, the increase in ethnic disparity within immigration cases may be heightened in areas with the largest demographic shifts in ethnic composition. Indeed, two sentencing studies have indicated that in matters related to immigration, sentencing trends have become more punitive toward noncitizens, who received harsher sentences over time and in districts with the largest growth in the Hispanic population (Light, 2014; Light, Massoglia, & King, 2014).

Hypotheses

Hypothesis 1: *Ethnic disparity within immigration cases will increase over time.*

Specifically, Hispanic defendants will receive longer sentence terms compared to similarly situated white defendants, and this disparity will increase over time.

Hypothesis 2: *Ethnic disparity within immigration cases will have a greater increase over time in districts that had a larger growth in the Hispanic population from 1990 to 2010.*

Data and Methods

The data for the present study come from the Federal Justice Statistics Program (FJSP) data series. Because the focus of this study is on sentence length, the United States Sentencing Commission portion of the FJSP is used. The FJSP is especially suitable for a longitudinal examination of ethnic disparity and sentencing outcomes

within immigration cases because it has a wealth of legal and extra-legal information that covers a wide span of years. After merging the data for the 18 available years (1994 through 2012), immigration cases sentenced in federal court were culled from the full data set, and citizen defendants were removed because of their inadequate number for analysis. In addition, American Indian, black, and Asian defendants were removed because there were too few in each district to allow a three-level interaction. Further, cases in the four district territories of Guam, Puerto Rico, the Virgin Islands, and North Mariana Island were also removed along with districts that have too few immigration cases to carry out the three-level interaction. The final sample consists of 236,649 defendants across 89 federal districts.

To assess if ethnic disparity within immigration cases has increased over time in districts that had a larger growth in the Hispanic populations, ethnic composition was obtained from the 1990 and 2010 U.S. Census and was aggregated from the county-level to the district-level. The district-level indicators were then merged to the FJSP using unique district identifiers. In addition, information on control variables was gathered from the National Judicial Center.

Dependent Variable

The dependent variable is sentence severity which was fashioned after prior sentencing research that uses a one-stage model (Johnson & Betsinger, 2009; Kim et al., 2014; Schanzenbach & Tiller, 2007; Starr & Rehavi, 2013; USSC, 2010). Therefore, sentence length was measured in months and capped at 470 months, and probation and alternative outcomes were incorporated as zero months. To reduce skew, sentence length

was logged and zero values were assigned to .01 prior to the log transformation (see Ferketich & Verran, 1994).

Independent Variables

The main independent variable is the defendant's ethnicity which was indicated by a dummy variable identifying whether the defendant is Hispanic with white non-Hispanic defendants designated as the reference category (1=Hispanic, 0=white non-Hispanic). To assess the interaction of ethnicity with both time- and district-level factors, two more independent variables were included in the analysis. One variable was a continuous measure representing the year (1994-2012) that the defendant was sentenced with the year 1994 coded as "1" and the year 2012 coded as "19". The other variable is a district-level indicator of the growth of the Hispanic population from 1990 to 2010 reflecting the difference in percent Hispanic from 1990 to 2010.

Control Variables

To assess ethnic disparity over time, a number of individual, time varying, and district-level variables were included in the models based on prior longitudinal, contextual, and individual-level sentencing research (e.g. Kim et al., 2016; Light, 2014; Light et al., 2014; Starr & Rehavi, 2013; Ulmer et al., 2011a, 2011b). At the individual-level, offense severity was measured through the presumptive guideline sentence that accounts for the recommended sentence length adjusting for any mandatory minimum trumps or enhancements (Engen & Gainey, 2000). To reduce skew, the presumptive guideline sentence was logged, and zero values were allocated to .01 prior to the log transformation (Ferketich & Verran, 1994). Because criminal history has been shown to

exert a unique effect beyond its consideration in the presumptive guideline, a measure for the six-level criminal history category was also included. In addition, offense type was controlled for through a set of dummy variables created for Person, Property, Drugs, Other, Smuggling, Fraud, and Immigration-Other offenses, with Illegal Entry/Reentry serving as the reference category. Illegal Entry/Reentry was not able to be separated into two categories as they were not tracked separately during the 1990s.

Four other legal and case processing variables were added as controls. Dichotomous variables were created to capture whether the defendant was convicted of multiple convictions (1 = multiple convictions, 0 = single conviction) and whether the defendant was convicted by trial or guilty plea (1 = trial, 0 = guilty plea). Guideline departure was controlled for through a set of dummy variables representing downward departure, a government assistance/early disposition departure, and upward departure, with no departure assigned as the reference group. A dichotomous variable was added to control for whether a defendant accepted guilt. Last, demographic controls were included for gender and age. Gender was coded dichotomously (1 = female, 0 = male), and age was measured continuously in years.

One time-varying variable was added to the cross-level analyses that investigated ethnic disparity over time and over time in districts with a larger growth in the Hispanic populations. Based on prior longitudinal sentencing work (see Helms & Jacobs, 2002; Johnson, Ulmer, & Kramer, 2008; Kautt, 2002; Myers & Talarico, 1986; Ulmer & Johnson, 2004; Wang & Mears, 2010a, b), variations in the court caseload rate was

calculated by dividing the number of incoming cases for each year from 1994 to 2012 by the number of authorized judges for each year.

Several district-level control variables were also included. First, a variable reflecting average court size was computed for the average number of authorized judges from 1994 to 2012. Second, a variable was included for whether a case was processed in a Southwest border district. Last, a variable for the baseline percent Hispanic in 1990 was included into the three-level analysis.

Analytic Strategy

A three-level analysis was employed with individual defendants at level one, trend in years was at level two, and district-level growth in the Hispanic population at level three. Using hierarchical linear modeling in HLM 7.0, the analysis proceeded in three stages. First, using the full set of controls at the individual-level, time, and district level, the main effects of ethnicity were assessed. Second, cross-level interactions between ethnicity and trend in years were conducted to determine whether ethnic disparity has increased over time (see Light, Massoglia, & King, 2014). Third, a three-way cross-level interaction was employed that included defendant ethnicity, trend in years, and growth in the Hispanic population from 1990 to 2012.

Results

Turning to the results, the main effect of ethnicity on sentence length is displayed in Model 1 in Table 21. Hispanic defendants received a lengthier sentence than their white non-Hispanic counterparts ($b = .293$; $p < .001$) from the years 1994 through 2012. In addition, the main effect of trend in years is significant ($b = -.101$; $p < .001$), indicating

that sentence length decreased from 1994 through 2012. None of the district-level main effects were significant.

Next, a cross-level interaction term is included for trend in years and Hispanic ethnicity to assess Hypothesis 1. Model 2 in Table 21 suggests no support for Hypothesis 1. Ethnic disparity does not significantly increase from 1994 through 2012. Last, a three-way cross-level interaction term is included to examine whether ethnic disparity increased over time in districts with the largest growth in the Hispanic population.

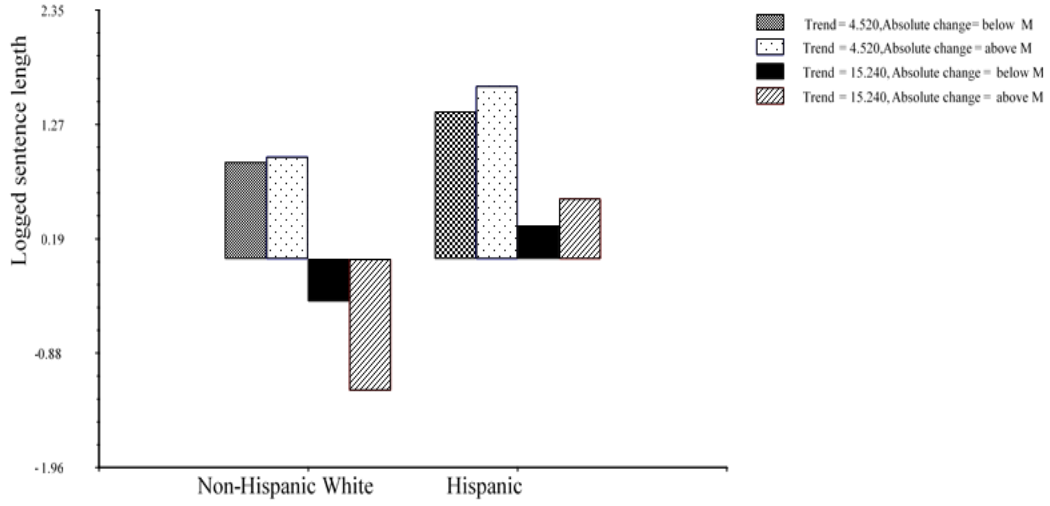
Turning to Model 3 in Table 21, the interaction term among ethnicity, trend in years, and change in percent Hispanic is statistically significant ($b = .013$; $p < .001$); however, the direction of the effects is unexpected. As can be seen in Figure 6, ethnic disparity is most pronounced in districts with the greatest change in percent Hispanic but decreased over time, thus partially supporting Hypothesis 2.

Table 21: Effects of Ethnicity, Trend in Years, and Absolute Change in Percent Hispanic on Sentence Length

Variable	Model 1		Model 2		Model 3	
	b	SE	b	SE	b	SE
Intercept	1.523 ***	.064	1.520 ***	.065	1.574 ***	.068
Percent Hispanic 1990	-.010	.010	-0.01	.010	-.009	.016
Absolute change	.032	.024	.033	.024	.023	.025
Percent Hispanic 1990 x trend					.001	.001
Absolute change x trend					.006	.002
Percent Hispanic 1990 x Hispanic					.001	.011
Absolute change x Hispanic					-.031	.028
Percent Hispanic 1990 x trend x Hispanic					-.003	.002
Absolute change x trend x Hispanic					.013 *	.006
Court size	.011	.010	.010	.010	.005	.011
Southwest	-.082	.206	-.073	.205	.173	.254
Trend	-.101 ***	.012	-.100 ***	.012	-.112 ***	.011
Trend x Hispanic			.016	.018	-.004	.024
Case rate	.001 *	.001	.001	.001	.000	.001
Hispanic	.293 ***	.088	.269 ***	.094	.442 ***	.121
Random effect intercept 1	2.300	5.294	2.300	5.290	2.300	5.290
Random effect intercept 2	.672 ***	.452	.671 ***	.451	.631 ***	.399
χ^2	6188.730		6168.060		5220.348	
Random effect intercept 3	.561 ***	.315	.562 ***	.316	.572 ***	.328
χ^2	511.800		513.726		508.350	

Note: *p<.05; **p<.01; ***p<.001

Figure 6: Three-way Interaction Predicting Sentence Length by Trend in Years, Absolute Change in Percent Hispanic, and Ethnicity



Discussion

The aim of the present study was to examine time trends in the sentencing of Hispanic noncitizens because of the increase in punitive attitudes toward undocumented Hispanic immigrants in the past two decades. Accordingly, two hypotheses were developed that stated ethnic disparity within immigration cases should increase over time and that the trend in ethnic disparity should be more pronounced in districts with a large Hispanic population. The findings partially supported the hypotheses. While the three-way interaction model suggested that Hispanic noncitizens were treated more leniently over time, Hispanic defendants received the harshest treatment in districts with the greatest growth in the ethnic composition, thus partially supporting group threat theory.

There are several reasons that Hispanic noncitizens may have received harsher treatment in the 1990s in districts with the greatest growth in the Hispanic population. First, the most rapid growth of undocumented Hispanic immigrants occurred during the 1990s and leveled off at the turn of the decade. While punitive rhetoric and perceptions have increased over time, the pattern of Hispanic population growth would indicate that a threshold effect may have been reached that would account for the decrease in ethnic disparity over time.

Second, Eagly (2010) predicted that sentence lengths for immigration cases should decrease over time as the criminal and immigration law increasingly intersect. She describes how federal courts reorient toward border screening when immigration prosecutions peak. Border screening focuses on rapid conviction and deportation in “assembly line” type fashion. Accordingly, the rights of the accused and due process

diminish, whereas guilty pleas increase for illegal entry and reentry offenses and sentence lengths for immigration cases decrease. Eagly (2010) provides examples where defendants begin to be processed and deported in large groups. Her description of the federal court as a border screening agent aptly applies to the current sentencing of immigration cases. The majority of immigration cases are illegal entry or reentry offenses that are rapidly processed through federal magistrate court or through fast-track plea bargaining. In addition, the current study occurred during the time period where the criminal justice and civil system increasingly intersected, especially in districts with a large and growing Latino population (Stumpf, 2006). Therefore, the decrease in sentence lengths over time in districts with the greatest change in percent Hispanic may indicate that civil sanctions, such as deportation, may have shortened the length of time that Hispanic noncitizens were incarcerated.

The findings from this study offer two avenues for future research. First, the present study only examined time and immigrant population growth linearly. Examining nonlinear sentencing and ethnic population growth trends would provide a more accurate depiction of when precisely sentence lengths began decreasing. If punitive sentences increase then diminish over time and in districts where the Hispanic population reached a threshold, then group threat theory would be the more likely explanation of why sentence lengths decreased over time. Second, future studies should include information on deportations and prosecutorial practices when examining time trends in the sentencing of immigration cases. If trends in sentence lengths decrease while deportations increase and

time to conviction decreases, then the federal court orientation toward immigration screening may be the more likely explanation.

Conclusion

Prior research on citizenship, minority threat, and sentencing has demonstrated the importance of time for detecting sentencing disparity. Moreover, punitive attitudes toward undocumented Hispanic immigrants have increased in recent decades. Together, these two bodies of research suggest that ethnic disparity may have increased over time and within districts with the largest growth in the Hispanic population. While the present study did find an interaction between ethnicity, time, and Hispanic population growth, the findings were unexpected and inconsistent with prior research. Further research is needed to parse out the reason why Hispanic noncitizen defendants in immigration cases received more lenient sentences over time in districts with the greatest growth in Hispanic population size.

CHAPTER 5: DISCUSSION AND CONCLUSION

Summary of findings

A growing concern among immigration scholars is that the civil and criminal justice systems have intersected in a way that is detrimental to immigration offenders, particularly immigrants of color. Because of the overlap between the criminal and civil immigration systems, immigration cases in the federal court are uniquely handled. Consequently, quantitative studies have been noticeably absent in the crimmigration literature and observations on the increasing punitive context surrounding immigration cases in the federal courts have been speculative. This dissertation attempted to fill this gap by conducting a comprehensive analysis in the federal courts that separated immigration cases from other offense types. The analysis proceeded in three stages by examining cumulative disadvantage within immigration cases, contextual disparity within immigration cases, and ethnic disparity over time within immigration cases.

Overall, the findings revealed that cumulative disadvantage exists within immigration cases, contextual disparity is present within immigration cases but depends on the court outcome, and ethnic disparity decreases over time in districts with larger Hispanic population growth. Regarding cumulative disadvantage within immigration cases, black Hispanic noncitizens consistently received more severe sanctions than white non-Hispanic noncitizens over multiple federal decision points. Similarly, black non-Hispanic noncitizens were also disadvantaged at multiple stages throughout the federal court process. White Hispanic noncitizens were treated more harshly than white non-Hispanic noncitizens at most federal court decision points. Lastly, Asian defendants were

treated more harshly than white non-Hispanic noncitizens for some court outcomes, but the overall effect for Asian noncitizen defendants was not significantly different than white non-Hispanic noncitizens.

For contextual disparity within immigration cases, Hispanic population size affected presentence detention and early disposition, and absolute change in Hispanic population size was also significantly related to early disposition. Specifically, Hispanic population size positively impacted presentence detention then leveled off. Hispanic population size and absolute change in percent Hispanic also exhibited positive but linear relationships with early disposition. Moreover, absolute change in percent Hispanic significantly interacted with ethnicity for presentence detention and guideline departure where absolute change in percent Hispanic decreased the likelihood of presentence detention and increased the likelihood of downward departure for Hispanic noncitizens.

Finally, although the three-way interaction model demonstrated that ethnic disparity decreased over time in districts with a greater absolute change in percent Hispanic, overall little support for the hypotheses was found from the longitudinal analysis that examined ethnic disparity over time.

Theoretical Implications

The findings from this dissertation have several theoretical implications. First, the results are consistent with the focal concerns perspective and support the use of a cumulative disadvantage approach. Second, support for the minority threat perspective is limited. Third, together the findings point to larger institutional factors where racial and

ethnic bias is structured into the practices and interactions of the courtroom workgroup beyond any individual actor. The following section will address each point.

The harsher treatment of black Hispanic, black non-Hispanic, and white Hispanic noncitizens within immigration cases may suggest support for the focal concerns perspective. The focal concerns perspective was originally formulated to address harsher sentencing of young, black males (Steffensmeier et al., 1998). Steffensmeier, Ulmer, and Kramer (1998) noted that prevailing racial stereotypes associate young, black males with crime and influence judicial decision making. Stereotypes of young, black males as criminally prone stem from the United States' prolonged history of using the criminal justice system as a tool of racial oppression (Kennedy, 1997; Massey, 2007). In the wake of emancipation, African Americans were often targeted for petty and minor crimes that resulted in lengthy sentences in contract labor prisons (Oshinsky, 1996). Essentially, the criminal justice system became a new form of slavery in the South. Overt racism continued to characterize the criminal justice process throughout the early 20th century exemplified in cases like the Scottsboro Boys where nine African American young men were falsely accused of rape and sentenced to death in a matter of days (Acker, 2008).

Overt racism by actors in the criminal justice system seemed to dissipate in the later part of the 20th century with advances through the Civil Rights Movement and reforms aimed at making the criminal justice system equal and more uniform (Spohn, 2015; Zatz, 1987). Nevertheless, the perceptual link between race and crime persisted and has been exploited by politicians for political gain (Jacobs & Helms, 1996; Tonry, 2011). Sparked by Barry Goldwater's campaign in the 1960s, the Republican Party added

getting “tough-on-crime” to their platform to widen their political base by appealing to white Southern voters (Jacobs & Helms, 1996; Tonry, 1995, 2011). Based on the Republican Party’s success of law-and order politics, the Democratic Party also included crime as an issue in their platform (Beckett & Sasson, 2000). As a result, the 1980s and 1990s ushered in an era of punitive policies with racialized undertones, such as the War on Drugs, the War on Crime, habitual offender laws, truth-in-sentencing, mandatory minimums, and determinant sentencing (Alexander, 2012; Chambliss, 1995; Tonry, 1995, 2011). In practice, law enforcement targeted poor, minority communities and young, minority males received the brunt of “tough-on-crime” policies (Alexander, 2012; Chambliss, 1995).

While race is deeply embedded with the concept of crime in America and has led to a robust body of research on race and punishment, sentencing scholars have also applied the focal concerns perspective to ethnicity and citizenship. The recent interest in ethnic disparity and citizenship has been sparked in part by the wave of immigration beginning in the 1980s (Mears, 2001; Sampson, 2008) and a nation-wide political agenda that harshly responded to the growing number of Latino immigrants (Hagan et al., 2008; Stumpf, 2006). As Russell-Brown (2009) observed, Latino males have become “second in line – behind African Americans – as the face of the feared American criminal” (Russell-Brown, 2009, p. 16). Indeed, recent courts and sentencing studies have demonstrated that the focal concerns perspective can be generalized to ethnicity and citizenship status. Research reveals that Hispanic defendants receive harsher treatment than white non-Hispanic defendants, and that noncitizen defendants receive more severe

treatment than citizen defendants (Demuth, 2003; Demuth & Steffensmeier, 2004; Feldmeyer & Ulmer, 2011; Light, 2014; Light, et al., 2014; Spohn & Holleran, 2000; Steffensmeier & Demuth, 2000, 2001; Ulmer, Kurlychek, & Kramer, 2007; Wolfe, Pyrooz, & Spohn, 2011).

The present study builds on previous work by finding that racial and ethnic disparity exists within a sample of noncitizen defendants and within immigration cases. Immigration scholars have noted that citizenship status is more nuanced than simple binary categories. Instead, citizenship has been cast in terms of race and ethnicity, where noncitizens and “illegal aliens” refer to immigrants of color (Chacon, 2007; Hainmueller & Hopkins, 2014; Johnson, 1996). Linking immigrants of color to crime extends back to the act of criminalizing unauthorized entry into the United States – a method used to enforce the quota system established to control the racial makeup of the country during a wave of immigration in the early 20th century (Chacon, 2007; Ngai, 1999). Since then, criminal stereotypes of immigrants of color have resurfaced during periods of rapid immigrant population growth or terroristic threat (Chacon, 2007).

The past three decades have seen an unprecedented focus on immigrants of color when a wave of immigration in the 1980s and 1990s coincided with a series of terroristic incidents (Wadhia, 2010; Welch, 2003). As a response, criminalization of immigration has expanded drastically, and immigrants of color have been further demonized (Kubrin, Zatz, & Martinez, 2012; Martinez & Valenzuela, 2006; Medina, 2006; Zatz & Smith, 2012). While immigration scholars have observed that criminal stereotypes of noncitizens of color have influenced equality in the administration of justice (Chacon, 2007; Hagan,

et al., 2008; Hagan & Palloni, 1999; Ousey & Kubrin, 2009; Stumpf, 2006; Zatz & Smith, 2012; Wang, 2012), little empirical work has assessed the influence of race and ethnicity within noncitizens and within immigration cases. The present study supports immigration scholars' claims by finding that variation exists according to race and ethnicity within noncitizens and within immigration cases. Findings indicate that prevailing criminal stereotypes of noncitizens of color may influence courtroom actors' assessment of blameworthiness and dangerousness, thereby resulting in harsher treatment of noncitizens of color throughout the federal court system.

The present study also supports using a cumulative disadvantage approach because racial and ethnic disparity was not uniform across all decision points. For example, disparity was present at presentence detention, early disposition, and at guideline departure for certain racial and ethnic groups. Moreover, stages that did not exhibit significant direct effects of race and ethnicity were influenced through previous stages. Accordingly, inaccurate conclusions could be drawn if the empirical analysis had examined a singular decision point. If charge reduction or sentence length was the only stage examined, then the conclusion could be that defendants of color are treated similarly to white non-Hispanic defendants. In reality, defendants of color received harsher treatment than white non-Hispanic defendants at multiple stages of the federal court process. A cumulative disadvantage approach accounts for the unique context of each decision point and the dynamic process of federal court decision making. Moreover, it can identify subtle disparities that accumulate to the detriment of defendants of color that may not be detectable at a single stage.

Overall, a cumulative disadvantage approach revealed that federal court outcomes presided over by prosecutors and federal magistrate judges were consistently influenced by race and ethnicity, and early disposition is a unique decision point for white Hispanic defendants. Racial and ethnic disparity at the front end of the federal court system is unsurprising given the authority, greater discretion, and lack of accountability that prosecutors and federal magistrate judges carry in disposing immigration cases (see Albonetti, 1987; Hartley, et al., 2007; Shermer & Johnson, 2010; Spohn & Fornango, 2009). Differential treatment of white Hispanic defendants at early disposition may represent the greater likelihood of deportation as part of their early disposition deals. As discussed in greater detail, the cumulative disadvantage approach is equipped to provide quantitative patterns of racial and ethnic disparity, but other methods or data are needed to explain why these patterns exist.

Evidence for the minority and group threat perspectives is limited. What the findings suggest is that context matters for certain decision points but not always in theoretically expected ways. The effect of ethnic context on presentence detention suggests support for the minority threat perspective when examined for all defendants (see Blalock, 1967). As the Hispanic population size increased, so did the likelihood of receiving presentence detention until the Hispanic population size reached a tipping point and leveled off. For early disposition and the subsequent significant interaction terms, however, early disposition was more likely to occur as the Hispanic population size and absolute change in the Hispanic population increased. Regarding the interaction terms between ethnic composition and ethnicity, results were opposite of what was predicted.

Hispanic defendants received more lenient treatment at presentence detention and downward departure where there was a greater absolute change in percent Hispanic. In addition, sentencing of Hispanic defendants became more lenient over time in districts with the greatest absolute change in percent Hispanic. Although the findings were contrary to what would be expected according to the minority threat perspective, previous research testing this perspective has been mixed (see Ulmer, 2012). Therefore, the results align with some previous studies.

Together, the results reveal a pattern that suggests support for the crimmigration literature that proposes the civil and federal systems have intersected to create a diminished form of justice. Crimmigration is reflected in the lack of a trial penalty within immigration cases, improved outcomes when using a private attorney, the low case declination rate, the high rate of detention, missing data in presentence detention, the less severe punishment for those who are referred from the Department of Homeland Security, and high rates of early disposition. Moreover, crimmigration has disparately impacted noncitizens of color who are more likely to be detained, are disadvantaged at early disposition, and who are less likely to receive a charge reduction or sentence length because of the indirect or total effect of race/ethnicity. The results point to institutionalized racial and ethnic bias in the federal court processing of immigration cases. The findings parallel Nicole Gonzalez Van Cleve's (2016) recent work that illuminates how racial and ethnic bias is embedded in the criminal justice system's structure that informs the norms, values, and routines of the courtroom workgroup

ultimately shaping their practices and decisions. Overall, the findings leave several avenues for future research.

Limitations and Directions for Future Research

First, future research should use qualitative methods to shed light on the reasons behind the quantitative patterns uncovered by this dissertation. Sentencing scholars have recently called for qualitative methods to better understand courtroom actors' decision making (Baumer, 2013). Besides a handful of studies that have answered recent calls (e.g. Clair & Winter, 2016), qualitative or mixed-methods sentencing work has been limited. Qualitative methods could confirm whether noncitizens of color are linked to harsher sentencing outcomes through the three focal concerns or whether other mechanisms are at play. Furthermore, qualitative methods could illuminate if the reason white Hispanic noncitizens are more likely to receive early disposition compared to their white non-Hispanic counterparts is due to harsher civil sanctions, such as deportation. Similarly, qualitative methods could enlighten if Hispanic defendants are more likely to receive early disposition and downward departures in districts with a greater absolute change in the size of the Hispanic population because of constraints on the courts, changes in perceptions of dangerousness, or increased use of civil sanctions.

Second and relatedly, future research that examines the processing of immigration cases needs to incorporate data from the civil courts. As previously discussed at length, the criminal and civil systems have integrated in a detrimental way to noncitizens entering the civil or criminal justice systems for immigration related violations. The civil immigration system has mirrored the criminal justice system in its processing of civil

immigration cases through increased enforcement, detention, and attached criminal sanctions (Eagly, 2010; Legomsky, 2007; Stumpf, 2006). On the other hand, diminished due process for criminal immigration cases is reflected in case screening by civil actors, detention without a proper hearing or using the civil system for detention, and the use of early disposition agreements that may include deportation (Eagly, 2010).

Only studying one system involved in the processing of immigration cases does not provide a full picture of the extent to which noncitizens of color may be disadvantaged in comparison to their white non-Hispanic counterparts. For example, white Hispanic noncitizens are more likely to receive early disposition agreements. While early disposition agreements result in decreased sentence lengths, they may also result in an increased likelihood of deportation. In the same vein, areas with a greater absolute change in the Hispanic population may also use early disposition to increase deportations. Without civil data to supplement criminal justice outcomes, a full understanding of how immigration cases are processed in federal courts cannot be reached.

Third, future empirical research on the processing of immigration cases should focus on arrest. This dissertation began with outcomes after immigration cases entered federal courts. While federal court actors have a hand in shaping the way federal immigration cases are concluded, law enforcement officers arguably have the greatest discretion in determining who is processed for civil and criminal immigration offenses (Motomura, 2011; Provine et al., 2016). Law enforcement officers are the gatekeepers in all criminal cases (Mastrofski, 2004), but this is particularly true for immigration offenses considering the restricted variation in federal court outcomes within immigration cases.

Moreover, recent controversial policies, such as Arizona's SB 1070, facilitate racial and ethnic profiling in arrests for immigration cases (Provine et al., 2016). Therefore, knowing the factors that influence arrest decisions in immigration cases may expose a potentially significant source of racial and ethnic inequality in the processing of noncitizens for immigration offenses. Moreover, the lack of arrest data and available measures of ethnicity at case filing presents issues with selection bias. Future research that has available information on arrest and ethnicity at the front end of the court process should replicate this study to determine the influence selection has on later stages.

Fourth, a measure indicating whether a community is a new or traditional receiving community would make a great addition to the current analysis because recent literature suggests new destinations may perceive the greatest threat and respond punitively. Unfortunately, because federal districts are so large, some districts contain old and new destinations. For example, the district of Southern Florida contains both Miami, an old destination, and West Palm Beach, a new destination (see Singer, 2004). Accordingly, the effects of new receiving areas may be masked by the effects of traditional receiving areas. Nevertheless, future research may address this limitation by examining the impact of racial/ethnic threat within immigration cases at a lower level of aggregation, such as at the city or county level. In addition, perceptual measures of minority threat should be used to identify the mechanisms linking Hispanic population size to presentence detention and early disposition.

Similarly, prior research has measured immigrant concentration in many ways. Some studies measure immigrant concentration as percent foreign-born and percent

Hispanic in one combined measure (MacDonald, Hipp, & Gill, 2013; Sampson, Raudenbush, & Earls, 1997). Others have measured it as percent Hispanic who are foreign-born or percent foreign-born (Feldmeyer, 2009). Because percent Hispanic has more variation than percent foreign-born across federal districts, the present analysis kept them separated, thus future research should see if a combined measure would result in different findings.

Policy Implications

One of the main takeaways from the current dissertation is that noncitizens of color receive harsher treatment at multiple stages throughout the federal court process within immigration cases compared to their white non-Hispanic counterparts. Given the punitive rhetoric surrounding immigration cases and the dismantling of due process protections for criminal immigration offenders, inequality in the administration of justice is not surprising. Nevertheless, the perception of noncitizens of color as perceived criminal threats stands in stark contrast to research that has empirically examined whether immigrants and whether Latino immigrants in particular pose an objective criminal threat.

In the past decade, a proliferation of research has been conducted on the link between Latino immigration and crime due in part to the reemergence of social disorganization theory and to the moral panic surrounding immigration since the 1990s. Most of the empirical research has been at the macro-level and has tested associations between concentrated immigration and crime rates controlling for possible confounding variables. This body of research has found that areas of concentrated Latino immigration

were either negatively linked with crime (Graif & Sampson, 2009; Hagan & Palloni, 1999; MacDonald, Hipp, & Gill, 2012; Martinez & Lee, 2000; Nielsen, Lee, & Martinez, 2005; Ousey, & Kubrin, 2009; 2017) or exhibited null effects (Akins, Rumbaut, & Stanfield, 2009; Alaniz, Cartmill, & Parker, 1998; Lee, Martinez, & Rosenfeld, 2001; Martinez, 2000). The consistent negative or null relationship between immigration and crime has become known as the “Latino Paradox”.

Several researchers have further investigated areas of concentrated immigration and observed that ethnic enclaves contain dense ties (Feldmeyer, Madero-Hernandez, Rojas-Gaona, & Sabon; Sampson, Morenoff, & Raudenbush, 2005). Families in these areas also have close relationships with neighbors who share similar values and help to increase social control (Shihadeh & Barranco, 2010a; Chiswick & Miller, 2005; Jones-Webb & Wall, 2008). Shihadeh and Barranco (2010a) found that new immigration activates social ties through increased communication and networking. In addition, ethnic enclaves often contain an economy of ethnic foods and goods which offer job opportunities even though these opportunities are usually located in the secondary labor market (Martinez, Lee, & Nielson, 2004). Martinez, Lee, and Nielson (2004) found that working in the secondary labor force in ethnic enclaves reduced the likelihood of violence compared to disadvantaged areas which did not have a self-sustaining secondary labor market.

More recently, however, immigrants have begun to settle in new destinations (see Durand, Massey, & Charvet, 2000; Harris & Feldmeyer, 2013; Reid, Weis, Adelman, & Jaret, 2005; Ulmer, Harris, & Steffensmeier, 2012). Settlement in emerging immigrant

destinations is partially a result of labor stagnation in ethnic enclaves as well as tighter enforcement along the U.S.-Mexico border where immigrants traditionally cross (Shihadeh & Barranco, 2010b). In these new locations, one study found that immigration was positively associated with violence (Harris & Feldmeyer, 2013), yet studies that further investigated crime in new destinations found that over time immigration had a similar crime reducing effect and a positive economic impact in non-traditional receiving areas (Crowley & Lichter, 2009; Ferraro, 2016; MacDonald, Hipp, & Gill, 2013).

Macro-level research, however, does not provide insight into whether immigrants are likely to commit crime at the individual-level, and little research has examined whether noncitizens of color individually are more likely to commit crime. An informative body of literature *has* examined the effect of immigrant generation status on crime, and foreign-born immigrants have been repeatedly less likely to commit delinquency compared to their native-born counterparts (Alba & Nee, 1997; Bersani, 2014; Bui & Thongniramol, 2012; Butcher & Piehl, 1998; DiPietro & McGloin, 2012; Martinez & Lee, 2000; Miller & Gibson, 2011; Myers et al., 2009; Samaniego & Gonzales, 1999; Zhou, 1997).

Together then, the empirical literature on the link between immigration and crime contradicts the punitive rhetoric vilifying Hispanic immigrants as national security and criminal threats. Instead, Sampson (2008) notes that rather than posing harmful threats, “immigration and the increasing cultural diversity that accompanies it generate the sorts of conflicts of culture that lead not to increased crime but nearly the opposite. In other words, selective immigration in the current era may be leading

to greater visibility of competing non-violent mores that affect not just immigrant communities but diffuse and concatenate through social interactions to tamp down violent conflict in general (p. 33).”

Accordingly, the negative relationship between Latino immigration and crime indicates that the amount of resources spent on enforcing and processing immigration related offenses may be unnecessary from a security standpoint. Meissner and colleagues (2013) have documented the tremendous growth in spending during the shift from the Immigration and Naturalization Service (INS) to the Department of Homeland Security (DHS). Spending on immigration enforcement increased to \$17.9 billion in 2012 which is over 15 times greater than spending on immigration enforcement during the INS. Not only is immigration enforcement a financial burden, the focus on convicting and deporting for civil and criminal immigration offenses may be doing the country a disservice since research has revealed that Latino immigrants have a positive influence on the areas they settle in.

Nevertheless, the 2016 presidential election of Donald Trump drove the United States in a more punitive direction regarding immigration from the U.S.–Mexico border. A Gallup Poll showed that the two words most associated with President Trump’s campaign in the months prior to his win over Presidential Candidate Hillary Clinton were “immigration” and “Mexico” (Newport, Singh, Soroka, Traugott, & Dugan, 2016). Since his inauguration, Hispanic noncitizens have continued to be targeted with the repeal of Deferred Action for Childhood Arrivals (DACA) – a program granting safety to undocumented immigrants brought to the United States as children (Kopan, 2017). In

addition, President Trump has taken a hardline stance toward undocumented immigration through aggressive arrests and deportation from within the United States (Sacchetti, 2017). More recently, the Trump Administration has pledged to reduce the backlogs to the civil immigration system by speeding up deportation delays and adding more judges to immigration courts (Sacchetti, 2017).

Indeed, it has become apparent that immigration policy and legislation have not been informed by research. Instead, policy and research on immigration have diverged in opposite directions over the past decade. Ironically, while research has repeatedly refuted the stereotype of Hispanic immigrants as dangerously criminal (see Hagan & Palloni, 1999; Sampson, 2008), immigration policy and legislation have further criminalized immigration, sending an unprecedented number of immigration cases through the federal courts (see Eagly, 2010; Stumpf, 2006). Consequently, the results from this dissertation show that racial and ethnic inequality exists within immigration cases where noncitizens of color are treated more harshly than their white counterparts. Therefore, as immigration offenses become a larger portion of cases in the federal court system, fairness and equality in the administration of justice become an ever-pressing issue as immigration and crime research provides no justification for the more punitive treatment of immigrants of color.

Conclusion

Historically, the United States has a conflicting narrative on immigration: on the one hand, welcoming immigration; on the other hand, employing social control to exclude certain types of immigrants from changing the racial and ethnic makeup of the

United States (Ogletree, 2000). Recent decades have seen an exceptional effort to criminalize and police immigrants of color resulting in fundamental changes to both the criminal justice and civil immigration systems (Stumpf, 2006; Welch, 2012). The punitive context targeting immigrants has elicited concern over civil liberty issues. Accordingly, the purpose of this dissertation was to provide a comprehensive assessment on racial and ethnic disparity in the federal court processing of immigration cases. The findings revealed cumulative disadvantage within immigration cases, contextual disparity for some decision points within immigration cases, and diminished ethnic disparity within immigration cases over time in districts with a greater absolute change in Hispanic population growth. The findings further bolster arguments that noncitizens of color have been unduly burdened by the increasingly punitive enforcement of criminal immigration offenses.

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