

Citizenship and Punishment: The Salience of National Membership in U.S. Criminal Courts

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Abstract

When compared to research on the association between immigration and crime, far less attention has been given to the relationship between immigration, citizenship, and criminal punishment. As such, several fundamental questions about how noncitizens are sanctioned and whether citizenship is a marker of stratification in U.S. courts remain unanswered. Are citizens treated differently than noncitizens—both legal and undocumented—in U.S. federal criminal courts? Is the well-documented Hispanic-white sentencing disparity confounded by citizenship status? Has the association between citizenship and sentencing remained stable over time? And are punishment disparities contingent on the demographic context of the court? Analysis of several years of data from U.S. federal courts indicates that citizenship status is a salient predictor of sentencing outcomes—more powerful than race or ethnicity. Other notable findings include the following: accounting for citizenship substantially attenuates disparities between whites and Hispanics; the citizenship effect on sentencing has grown stronger over time; and the effect is most pronounced in districts with growing noncitizen populations. These findings suggest that as international migration increases, citizenship may be an emerging and powerful axis of sociolegal inequality.

Keywords

citizenship, punishment, social control

During the past two decades, the United States has experienced its largest wave of immigration since the turn of the twentieth century. The foreign-born population has nearly doubled since 1990 and now stands at approximately 38 million, and the estimated number of unauthorized immigrants has more than tripled, from 3.5 to 10.8 million (Kandel 2011). These trends coincide with a growing body of research on immigrants, including work on immigrant family relations (Dreby 2010), assimilation (Waters and Jiménez

2005), and deportation (King, Massoglia, and Uggen 2012). The steep rise in immigration also coincides with a growing body of case

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law related to states' rights and due process (e.g., *Padilla v. Kentucky* 2009; *U.S. v. State of Arizona* 2011), along with intense political wrangling and calls for tough legislation, as exemplified by the passage of Arizona's contentious SB 1070. Yet normative arguments about the proper role of immigrants in society (e.g., Huntington 2004) and their entitlement to due process and equal legal protection (Kanstrom 2007) have outpaced empirical research on how noncitizens are treated under U.S. criminal law. The present work takes a step toward addressing this gap by investigating the relationship between punishment and citizenship status in U.S. federal courts.

We are primarily concerned with four related questions. First, are citizens and noncitizens punished differently in criminal courts? The vast literature on sentencing tells us much about race and ethnicity but comparatively less about the punishment of noncitizens. Although national membership and racial/ethnic boundaries often overlap, with more than 30,000 non-U.S. citizens from approximately 150 countries sentenced each year since 2008, the federal courts provide an opportunity to assess the independent influence of race, ethnicity, and citizenship on punishment for a diverse group of criminal offenders.

Second, we know almost nothing about whether citizenship mediates the sentencing penalty paid by some racial and ethnic groups. Of particular interest is the perceived Hispanic penalty that some contemporary scholarship has found. For instance, Steffensmeier and Demuth (2000, 2001) find that Hispanics are sentenced more harshly than whites, and national data indicate substantially higher incarceration rates for Hispanics relative to whites (Oliver 2011). At the same time, the influx of noncitizens into the federal criminal justice system far outpaced overall prison growth in recent decades (Scalia 1996; Sourcebook of Criminal Justice Statistics 2011b). Today, approximately half of all offenders sentenced in federal courts are non-U.S. citizens (U.S. Sentencing Commission [USSC] 2010), and a large proportion are from Latin America.¹ We suggest that an analysis of ethnicity, in particular one focused on Hispanics, absent a

consideration of citizenship paints an incomplete picture, and we test whether differential treatment of Hispanics is attributable to citizenship status.

Third, to the extent that noncitizens are treated differently than citizens, has this association changed over time? Immigration has become an increasingly divisive issue and the public discourse has been vitriolic at times. In 2010, 63 percent of Americans viewed undocumented immigration as a "very" or "extremely" serious threat to the future well-being of the United States (Sourcebook of Criminal Justice Statistics 2010), and the proportion of Americans viewing immigration as a "bad thing" increased from 31 to 36 percent between 2001 and 2009 (Morales 2009). Given that prior research indicates judges—including unelected judges—are often influenced by shifts in public opinion (Mishler and Sheehan 1993), we investigate whether sentencing practices follow a pattern that reflects the trend in anti-immigrant sentiment.

Finally, we consider the demographic context around the punishment of noncitizens. The group threat perspective (Blalock 1967; Blumer 1958) suggests dominant group members feel threatened—economically, politically, criminally, or culturally—and will step up efforts to maintain social control when minority group populations are increasing. We link court files to demographic data on noncitizen population changes over the past decade to test whether this thesis, which has been widely supported in the study of race and punishment, helps explain the punishment of noncitizens as well.

This investigation is timely for several reasons. For one, the sociology of punishment has seemingly elided a sustained focus on citizenship at a time when the number of noncitizens caught up in the federal criminal justice system has reached an all-time high (Sourcebook of Criminal Justice Statistics 2011a). As the single largest system of formal social control in the United States, punishment decisions made within federal courts are consequential to individuals and theoretically informative.²

Second, and more generally, this work contributes to debates about contemporary stratification and assimilation processes in the United States. Citizenship, aside from defining group membership, can confer or deny life opportunities (Smith 1997), and legal categories that define membership create a stratified system of rights and belonging (Portes and Zhou 1993). As a result, these categories can become markers of exclusion and suggest that citizenship may be an axis of stratification in the contemporary United States (Massey 2007; Menjivar 2006). In this article, we empirically test whether citizenship, like other markers of stratification such as race and class, has implications for differential treatment under the law.

Finally, we contribute to three lines of theoretical work: the focal concerns perspective, Black's theory of law, and group threat theory. Each has been instrumental in the study of race and punishment, but they are less frequently employed in the study of immigration, citizenship, and law. We derive specific hypotheses about whether and how citizenship matters, for whom it matters most, and whether any citizenship effect is context-specific. In the discussion we also speak about the implications of our work for the broader study of citizenship in an era of globalization. Has citizenship become a marker of stratification akin to race in the halls of justice? Or, conversely, are we now postnational (Soysal 1994), that is, does citizenship exert weak and waning effects on legal outcomes?

PRIOR WORK ON CITIZENSHIP AND SENTENCING

The bulk of prior work on sentencing focuses on racial disparities (Crawford, Chiricos, and Kleck 1998; Kautt and Spohn 2002; Kramer and Steffensmeier 1993; Spohn, Gruhl, and Welch 1981–1982; Steffensmeier, Ulmer, and Kramer 1998), although interest in ethnicity has steadily grown in tandem with the influx of Latin American immigrants (Albonetti 1997, 2002; Demuth 2003; Johnson 2003; Spohn and Holleran 2000;

Steffensmeier and Demuth 2000, 2001). Mindful of some inconsistencies in prior work, the weight of the evidence suggests that blacks and Hispanics are disadvantaged at sentencing compared to whites, particularly when determining whether a defendant is incarcerated. These findings generally hold when controlling for legal factors such as offense severity and prior criminal record, although research suggests the effects of offender characteristics are often more subtle and indirect than legally prescribed measures (for a review, see Mitchell and MacKenzie 2004).

Only recently has research on citizenship and punishment garnered attention, and that work serves as a springboard for our inquiry. One line of work suggests noncitizens are disadvantaged at sentencing. Using federal data, Wolfe, Pyrooz, and Spohn (2011) find evidence of a citizenship penalty at incarceration. In an analysis of federal drug offenders, Demuth (2002) reaches similar conclusions. He finds that documented and undocumented immigrants are more likely than citizen offenders to be incarcerated, but he finds no difference in their sentence lengths (see also Albonetti 1997). Other work suggests noncitizens are disadvantaged with respect to sentence length and departure decisions (Albonetti 2002; Hartley and Armendariz 2011; Kautt and DeLone 2006; Mustard 2001; Schanzenbach 2005; Ulmer 2005).

Yet this set of findings is balanced by other research suggesting no association or that the citizenship effect is in the opposite direction. Kautt and Spohn (2002) find no significant differences in punishment outcomes by citizenship status for federal drug offenders, and Everett and Wojtkiewicz's (2002) analysis of federal courts finds that sentencing disparities by citizenship status are completely explained by offense type and factors related to sentencing guidelines. Most recently, Wu and DeLone (2012) find that noncitizens receive *shorter* prison sentences in district courts (Wu and Spohn [2010] and Wolfe and colleagues [2011] reach similar conclusions regarding sentence length). Prior work is thus inconsistent on the fundamental question of whether citizenship influences sentencing.

Various factors may account for the mixed findings in the extant literature. Perhaps most notably, prior studies often vary considerably in their methodological approaches by analyzing specific offense types (e.g., drug trafficking) or focusing on select districts (often border districts; Wu and DeLone 2012). Substantively, this means much prior work disproportionately selects offenses or geographic areas that oversample noncitizens. As a result, how citizenship matters for a broad range of crimes or across diverse district contexts is less well understood. Moreover, several studies remove noncitizens from their analysis entirely, or include offenses for which there is no citizen/noncitizen counterfactual comparison, such as crimes for “unlawfully entering or remaining” in the United States (USSG §2L1.2) for which only non-U.S. citizens are eligible.³

That extant research yields disparate findings implies a need for further inquiry, but we think two additional points are even more noteworthy. First, most research to date treats citizenship as a control variable, most often used to isolate the unique effects of race and ethnicity. In other cases, noncitizens are omitted from analysis (Steffensmeier and Demuth 2000). As a result, prior work infrequently places citizenship at the core of a theoretically grounded, empirical investigation, and hence citizenship remains under-theorized. This is particularly evident when comparing work on citizenship to the voluminous literature on race and ethnicity.

More importantly, several questions remain unanswered and the findings bear on theoretical debates relating to citizenship in the contemporary United States. We develop specific and testable hypotheses on whether and to what extent citizenship is an emerging axis of legal inequality. Specifically, we test whether Hispanic-white disparities are confounded by citizenship status, and we examine if citizenship affects punishment similarly for all racial and ethnic groups. Finally, we are the first to assess whether the association between citizenship and sentencing changed over time, and if the demographic context of the court affects the punishment of non-U.S. citizens.

THEORIZING CITIZENSHIP AND PUNISHMENT

Focal Concerns

The focal concerns perspective (Steffensmeier et al. 1998) on criminal justice processing assumes that judges have limited time and imperfect knowledge about all aspects of a defendant’s background, and hence they simplify decision-making by focusing on three characteristics imperative for sentencing: the blameworthiness of the convicted defendant, the degree of danger posed to the community if the defendant were released, and practical issues such as whether the convicted person could reasonably “do time” (Steffensmeier and Demuth 2000). These characteristics are often impressionistic and judges rely on factors such as a defendant’s race and social class as proxies when making evaluations about these concerns. Prior work has thus applied this perspective to explain why blacks are treated more harshly than similarly situated whites (Spohn and Holleran 2000).

The focal concerns perspective is also relevant to the case of citizenship, and we see little distinction between perceptions regarding the dangerousness of racial minorities and perceptions of immigrants as threats to public safety. For instance, the 2000 General Social Survey indicates that 73 percent of U.S. respondents think immigrants are somewhat or very likely to cause higher crime rates, and nearly 90 percent of Americans today agree that “protecting our borders is important to prevent drug trafficking and organized crime” (Ipsos Public Affairs 2010). Because noncitizens are likely to be viewed as criminal threats, the focal concerns perspective suggests that *noncitizens will be sentenced more harshly than citizens*.

We therefore also draw on focal concerns theory to test a second hypothesis, that *Hispanics are sentenced more severely because they are more likely than other racial/ethnic groups to be noncitizens*. Research shows that Hispanics, on average, receive harsher punishments than non-Hispanic whites, even when controlling for crime severity and criminal record

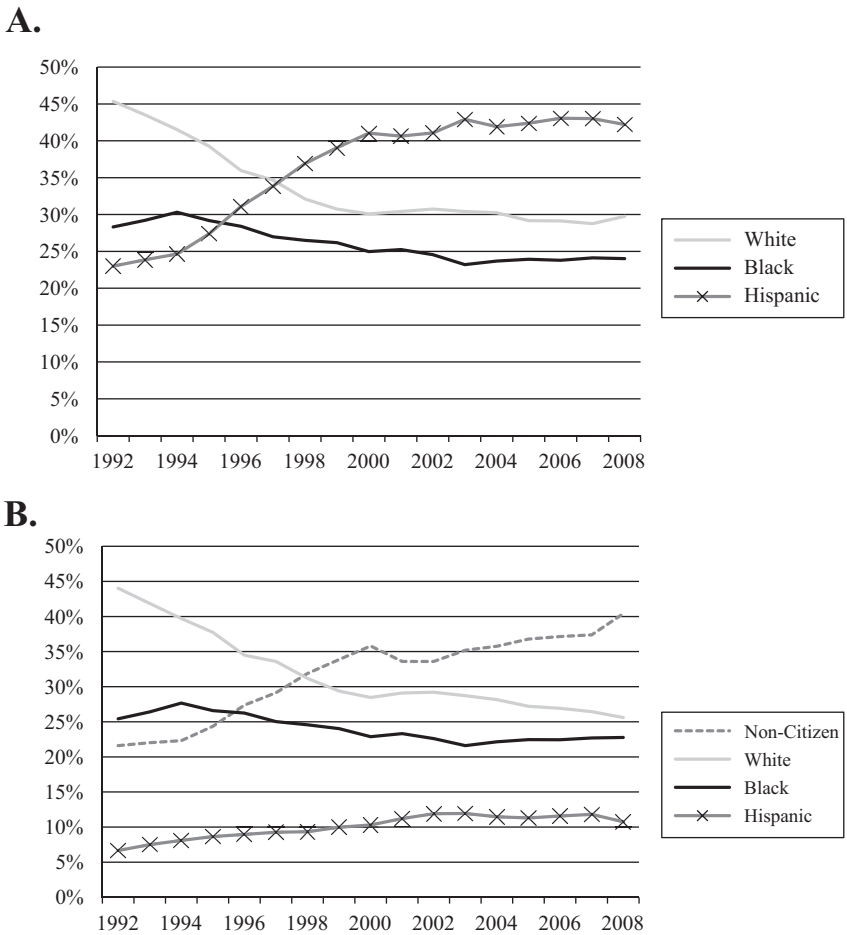


Figure 1. Panel A. Proportion of Federal Offenders Who Are White, Black, and Hispanic; Panel B. Proportion of Federal Offenders Who Are White (U.S. citizens), Black (U.S. citizens), Hispanic (U.S. citizens), and Non-U.S. Citizens (all races), 1992 to 2008
Source: Authors’ compilation of USSC data for fiscal years 1992 through 2008.

(Doerner and Demuth 2010; Steffensmeier and Demuth 2000). Yet that work has not fully considered the extent to which this association is attributable to citizenship status. Steffensmeier and Demuth (2000:710) argue that the “specific social and historical context involving Hispanic Americans, particularly their recent high levels of immigration, exacerbates perceptions of their cultural dissimilarity and the ‘threat’ they pose” and will result in “harsher treatment in criminal courts.” However, Steffensmeier and Demuth (2000) removed noncitizens from their analysis, which precludes an assessment of whether and how citizenship influences the association

between ethnicity and punishment. Figure 1, which shows the growth of Hispanics punished in federal courts, is instructive in this regard. Contrasting Panels A and B in Figure 1, nearly 80 percent of the growth of Hispanics punished in federal courts is attributable to punishing noncitizens. Rather than stressing ethnic distinctions, our framework suggests that the punishment gap between Hispanics and whites is driven primarily by citizenship status.

The Social Periphery

The focal concerns perspective points to general factors that judges consider at sentencing,

yet it provides little guidance with respect to documentation status of immigrants or the joint effect of citizenship and race. We thus draw from a distinct but related theoretical perspective to develop hypotheses about undocumented immigrants and interactions between citizenship and race/ethnicity.

More specifically, Black's (1976) theory of law implies that the social world has a center and a periphery. Less integrated and marginalized groups occupy the periphery of social life, and as a result are disproportionately subjected to harsher treatment in the justice system. Akin to organizational theorists recognizing a "hierarchy of status" that helps separate core and peripheral institutions (DiMaggio and Powell 1983:153), Black's theory posits that demographic and status criteria bring some populations closer to the core of society's power structure, and hence members of such groups are less prone to stereotyping, discrimination, and disparate treatment by legal officials. Marginalized populations—for instance based on race, ethnicity, employment status, and perhaps citizenship—are more susceptible to punitive sanctions.

Black's (1976) work on cultural distance and legal outcomes is particularly relevant to this analysis. He states that "it is possible to measure the distance between a citizen and law itself" (p. 44) such that natives of a group, tribe, or country show leniency toward others with similar backgrounds. In addition, one's position relative to the social center can confer legal privileges or disadvantages. Black suggests that legal officials, including judges and prosecutors, are more conciliatory toward insiders and more punitive toward those on the periphery. More specifically, Black (1976:59) argues that "those who are marginal to social life are more likely to be blamed. In general, their conduct is more likely to be defined as deviant, and whatever they do is more serious."

While there are consistencies with the focal concerns perspective, Black's work points to more nuanced hypotheses. He suggests that, relative to noncitizens in the country legally, the social and cultural distance

between citizens and *undocumented* immigrants will be greater and the undocumented will be more marginalized due to their lack of legal recognition by the state, and hence they are at greater risk of severe sanctioning. Building on this line of work, we hypothesize that *undocumented noncitizens receive harsher punishments than noncitizens who are legal immigrant residents*. In addition, Black's theory implies a multiplicative effect, in which race may condition any citizenship penalty such that non-white immigrants may be viewed as more culturally distant from the dominant culture than white immigrants. Two predictions logically follow: *citizenship is a salient factor for all racial and ethnic groups, including whites; but non-white noncitizens may be sentenced more harshly than white noncitizens*.

Group Threat and Demographic Context

With intellectual roots in the classic work of Blalock (1967) and Blumer (1958), the group threat perspective posits that outgroup discrimination occurs when a dominant group feels its position is in jeopardy because of the actions or presence of another group. Blalock argued that majority groups perceive numerically large minorities as potential economic and political threats. In turn, under such threatening conditions, some members of the majority harden and act on their prejudices, for instance by voting for extremist candidates (Giles and Buckner 1993), supporting or passing laws that adversely affect the minority (Manza and Uggen 2006), or through harsher criminal punishment (Jacobs, Carmichael, and Kent 2005; Jacobs and Helms 1996). Research suggests the threat perspective also applies to immigrants. For instance, Quillian (1995) finds that minority group size and economic conditions partly explain prejudice toward immigrants in Europe. This general finding is consistent with other research in U.S. and European contexts that investigates discrimination against immigrants (Citrin et al. 1997; McLaren 2003), as well as the specific case of perceptions of immigrant

criminality in southwest U.S. states (Wang 2012). In summary, there is ample reason to apply the notion of group threat to the case of anti-immigrant prejudice, punishment, and in our case, the punishment of non-U.S. citizens.

We build from these ideas and test whether the noncitizen population size in a court's jurisdiction is associated with case outcomes for noncitizens. In line with the central tenets of group threat theory, we acknowledge that population size is potentially consequential, but we expect the *change* in group size to be particularly salient, a position supported by recent research (Hopkins 2010; Wang 2012). Building on the classic group threat framework and empirical work on group size and anti-immigrant prejudice, we hypothesize that *noncitizens receive harsher punishments than citizens in courts located in jurisdictions with growing noncitizen populations*.

Finally, and also consistent with the threat perspective, we expect that *noncitizens are sentenced increasingly harshly over the study period* (1992 to 2008). Immigration has emerged as a defining social and political issue during the past two decades, with many politicians echoing Huntington's (2004:30) sentiment that recent immigrants "have not assimilated into mainstream U.S. culture, forming instead their own political and linguistic enclaves . . . and rejecting the Anglo-Protestant values that build the American dream." Perceptions of immigrant threat coincide with punitive public opinion responses to unwanted immigration and increasing criminalization of immigrants by state and federal authorities in recent decades (Stumpf 2006). As a result, more than one-in-four federal prisoners lack U.S. citizenship today, an increase of 34 percent since 2000. Given these dramatic punitive shifts, we test whether any noncitizen effect on criminal sentencing has increased over time.

DATA AND METHODS

We empirically examine our research questions using data from the U.S. Sentencing Commission's (USSC) Standardized Research

Files. Our primary analysis uses data from 2008, and our time trend analysis uses data from 1992 to 2008. We use one year of data to reduce any confounding effects from year to year policy and legal changes, but in our supplemental analyses we use three years of data to ensure an adequate sample size (see Table S1 in the online supplement [<http://asr.sagepub.com/supplemental>]).⁴ The unit of analysis is each sentenced case, and the universe is all offenders sentenced in U.S. federal courts. The USSC data are a rich source of information on federal sentencing and provide detailed information on the offense and legal characteristics associated with a crime (e.g., offense type and guideline recommended sentence) as well as defendants' extralegal characteristics (e.g., race/ethnicity, age, and gender). These detailed measures allow for an extensive and comprehensive set of controls to assess whether and how citizenship affects sentencing outcomes. As a practical matter, this analysis removes offenders charged for unlawfully entering or remaining in the United States (USSC, § 2L1.2), because U.S. citizens are not at risk of being sentenced under this provision, and thus there is no appropriate comparison group.

Since the late 1980s, sentencing discretion has been curtailed by the U.S. Sentencing Guidelines, which were designed, in theory, to be "entirely neutral as to race, sex, national origin, creed, and socioeconomic status of offenders" [28 U.S.C. § 994(d)]. Among the primary goals of federal sentencing reform was a reduction in sentencing disparities (USSC 2004), and both sentencing guidelines and federal courts have consistently held that citizenship status is not a legitimate criterion for punishment decisions. Most directly, the U.S. Supreme Court has consistently ruled that noncitizens are afforded due process protections under the Constitution (Rubio-Marín 2000) in matters relating to criminal law and punishment.⁵

Dependent Variables

We follow previous research and examine sentencing as a two-stage process: whether to

incarcerate and for how long (Steffensmeier and Demuth 2000; Ulmer and Johnson 2004).⁶ We therefore examine sentencing disparities using two dependent variables: (1) the decision to incarcerate, and (2) sentence length for those incarcerated. As is conventionally done, incarceration is a dichotomy indicating whether an offender was sentenced to prison. Sentence length is the number of months of incarceration (capped at 470). To reduce skewness we follow prior research and use the natural log of sentence length (Bushway and Piehl 2001). Coding and descriptive statistics for all variables in the analysis are shown in Table 1.

Independent Variables

Focal predictor variables. We have two focal independent variables, citizenship and legal status. Citizenship status is coded 1 for non-U.S. citizens and 0 for all those holding U.S. citizenship at the time of sentencing. We further code noncitizens along two different dimensions, resident legal immigrants (temporary and permanent) and undocumented immigrants,⁷ with U.S. citizens serving as the reference group. To test whether race or ethnicity moderates the relationship between citizenship and sentencing, we also created dummy terms for each citizenship status by race and ethnicity (e.g., black citizen, black noncitizen), with white U.S. citizens as the reference group.

Legal and case characteristics. Consistent with prior research, we control for the *recommended sentence* set forth by the sentencing guidelines by including a measure of the presumptive sentence length after adjusting for whether the offender was convicted under a federal mandatory minimum (Engen and Gainey 2000; Johnson and Betsinger 2009; USSC 2004). This approach accounts for the 43-point offense severity level, the 6-point criminal history scale, and sentencing adjustments (e.g., mandatory minimum penalties and obstruction of justice enhancements) that affect the final presumptive sentence. In short, this measure accounts for

the complexity of the guideline sentence calculation and represents the minimum length of incarceration judges can sentence an offender within the specified guideline range. As with sentence length, we cap the presumptive sentence variable at 470 months and take the natural log to reduce positive skewness.⁸ While criminal history is included in the presumptive sentence measure, we follow previous research and include an additional control for the offender's criminal history score.⁹ These two measures are profoundly important control variables, because they allow us to explicitly account for the recommended sentence for a given crime as well as a host of government (e.g., obstruction) and individual-level (e.g., extensive criminal past) factors that influence punishment decisions.

Previous research shows that sentencing disparities vary by offense type (Steffensmeier and Demuth 2000), so we control for the sentencing offense (drug, immigration,¹⁰ violent, fraud, firearms, and other offenses, with property offenses as the reference category). We further control for whether individuals were convicted at trial (coded 1) as opposed to a guilty plea (coded 0), and whether they were sentenced for multiple convictions (1 = yes). We control for departures from the guideline range using a series of dummy variables for whether the offender received a departure from the presumptive sentence length, which can be upward or downward.

Finally, we account for a number of offender characteristics, including the offender's race/ethnicity, age, and the highest level of education achieved (see Table 1 for coding descriptions). While the USSC has been the basis for a number of important studies, these data do not contain information on victim characteristics, an issue we devote significant attention to in our supplemental analyses. In particular, we direct interested readers to results in Table S3 and our discussion at point 5 in the online supplement, where we demonstrate the consistency and robustness of our findings among "victimless crimes," which are entirely consistent with the findings and conclusions we report here.¹¹

Table 1. Descriptive Statistics for U.S. and Non-U.S. Citizens Sentenced in U.S. Federal Courts, 2008

Variables	Coding and Description	Descriptive Statistics		
		Total	U.S. Citizen	Noncitizen
<i>Dependent Variables</i>				
Incarcerated	1 = yes, offender sentenced to incarceration	87.6%	85.4%	95.5%
(ln) Sentence Length (N = 44,598)	Natural log of the total months of imprisonment (capped at 470)	Mean 3.77	3.88	3.43
		Standard deviation 1.07	1.06	1.03
<i>Independent Variables</i>				
Offender Characteristics				
Legal Immigrant	1 = yes, offender is a legal non-U.S. citizen	6%		28%
Undocumented Immigrant	1 = yes, offender is an undocumented non-U.S. citizen	16%		72%
White (reference)	1 = yes, offender is white non-Hispanic	35%	41%	14%
Black	1 = yes, offender is black non-Hispanic	30%	37%	6%
Hispanic	1 = yes, offender is Hispanic	30%	17%	75%
Other Race	1 = yes, offender is other-race non-Hispanic	5%	5%	5%
Male	1 = male, dummy indicator for sex	85%	83%	90%
Age	Continuous measure of age (in years) at time of sentencing	35	36	34
Less Than High School	1 = yes, offender did not graduate high school	41%	34%	66%
High School Graduate	1 = yes, offender is a high school graduate	34%	38%	18%
Some College	1 = yes, offender attended some college	18%	21%	10%
College Graduate (reference)	1 = yes, offender is a college graduate	6%	7%	5%
Legal/Case Characteristics				
Trial	1 = yes, offender was convicted at bench or jury trial	5%	5%	4%
Property (reference)	1 = yes, most serious offense was property crime	3%	3%	1%
Drug	1 = yes, most serious offense was drug crime	44%	41%	53%
Immigration	1 = yes, most serious crime was immigration offense	8%	4%	23%
Violent	1 = yes, most serious crime was violent offense	4%	5%	1%
Fraud	1 = yes, most serious crime was fraud offense	19%	20%	13%
Firearms	1 = yes, most serious crime was firearms offense	14%	17%	5%
Other Offense	1 = yes, most serious crime was other offense	8%	9%	4%
Upward Departure	1 = yes, offender received an upward departure	2%	2%	1%
Substantial Assistance Departure	1 = yes, offender received a pre-prosecutorial downward departure	18%	19%	12%
Other Downward Departure	1 = yes, offender received a non-prosecutorial downward departure	24%	22%	28%
Multiple Counts of Conviction	1 = yes, dummy for those convicted of multiple offenses	23%	24%	20%
Criminal History	USSC scale rating prior criminal history 1 to 6 (6 is most severe)	2.3	2.6	1.4
Presumptive Sentence (months)	Adjusted minimum number of months of incarceration recommended by the guidelines	71.7	76.7	53.8
Ln (presumptive sentence)	Natural log of adjusted minimum number of months of incarceration recommended by the guidelines	3.57	3.65	3.29
Number of Cases		54,237	42,184	12,053

Methods and Logic of Analysis

Cases in the federal system are nested within 94 districts, and hence they cannot be treated as independent in analysis. We include dummy variables for each federal district (save one as the reference category) to capture any inter-district variation in sentencing. By fixing the district effects, we capture the unmeasured, time-stable characteristics of districts and account for the intra-class correlation between individuals punished in the same district (Johnson and Betsinger 2009). Additionally, in all models we adjust the standard errors to account for the unmeasured interdependence of individuals sentenced within the same district court. We employ two different estimation procedures to model sentencing. We use logistic regression to model the incarceration decision, which is a dichotomous outcome. The sentence length (logged) approximates a normal distribution and is modeled using OLS regression.

Our treatment of incarceration and sentence length as distinct decisions raises the possibility of selection. That is, defendants in the sentence length model may represent a non-random selection of those sentenced generally; some prior research attempts to deal with this potential bias using the Heckman two-step selection procedure (Bushway, Johnson, and Slocum 2007). While we provide a detailed discussion of this issue in the online supplement, we note here that this type of selection is likely less problematic in federal courts, as almost 90 percent of offenders in our analysis received some form of incarceration. Consistent with other research, our supplemental models demonstrate that the Heckman correction is likely inappropriate because the selection term introduces problematic collinearity into the model, suggesting the uncorrected estimates are preferable (for a detailed discussion, see Bushway et al. 2007). For the same reason, recent studies using federal data exclude the correction factor from sentence length models (Johnson and Betsinger 2009; Johnson et al. 2008; Wu and DeLone 2012). However, we note that the

estimates derived when using the Heckman selection parameter are identical to those presented here (see Table S1, Model 11 in the online supplement).

Our analysis proceeds in several stages. For the incarceration and sentence length decisions, our first model includes all measures discussed earlier *except* citizenship status. We then add citizenship to (1) assess the direct effect of citizenship and (2) compare coefficients across models. This allows us to test our core hypothesis concerning the punishment of noncitizens and our hypothesis that any observed Hispanic penalty is largely attributable to citizenship. Next, we break down the citizenship effect by examining if offenders were legal or undocumented immigrants. We then test our hypothesis on the salience of citizenship for all races and ethnicities using a series of dichotomous variables for each citizenship status by racial/ethnic combination. Next we estimate identical main effects models for the incarceration decision for each year from 1992 to 2008 to test our prediction about the increased punitiveness against noncitizens during this period (results displayed graphically). Finally, we use multilevel modeling to test whether the citizenship penalty is most pronounced in districts where the immigrant population increased by supplementing our federal data with information from the U.S. Census on the size of the non-U.S. citizen population in each federal district.

RESULTS

As Table 1 shows, absent any controls, non-citizen offenders appear more likely to be incarcerated but receive slightly shorter imprisonment terms. Whether these differences are due to citizenship status or other factors, however, remains an open question. Relative to citizens, noncitizens are less likely to have completed high school, are more likely to be convicted of a drug offense, and are far more likely to be Hispanic. Thus, in Table 2 we assess if differences in sentencing remain after controls related to citizenship status and punishment are included.

Model 1 of Table 2 presents coefficients from a logistic regression model of incarceration with citizenship status omitted. These results present a picture consistent with prior research: offenders who have more severe criminal histories, those convicted at trial, and those with higher presumptive sentences are more likely to be sentenced to prison. Interestingly, relative to property offenders, defendants convicted of immigration violations were more likely to be sentenced to prison, a finding consistent with other research noting the increased use of state control against immigrants (Ellermann 2009; Miller 2002). In addition, male offenders, those with less than high school education, and younger offenders are more likely to be incarcerated. We also find differences based on ethnicity; relative to non-Hispanic whites, Hispanic offenders are more than twice as likely to receive a prison sentence (odds ratio = 2.26; $p < .001$).

Model 2 adds our focal independent variable, citizenship status, and the results are striking. Compared to U.S. citizens, noncitizen offenders are over *four times* more likely to be incarcerated, and this effect is larger than the effects for race, ethnicity, gender, age, education, being convicted at trial, and any of the offense types. In short, using methods and model specifications virtually identical to much published work in the area, the effects of citizenship status are stronger than nearly all of the extra-legal variables that factor prominently in prior research. Perhaps most notably given prior research, the magnitude of the citizenship penalty is over four times stronger than Hispanic ethnicity; moreover, including citizenship status in the model weakens the Hispanic effect by over 60 percent. Supplementary analyses further reveal that the relationship between Hispanic ethnicity and citizenship status is not symmetrical (or driven simply by the correlation between the two); Hispanic ethnicity explains virtually none of the overall citizenship effect.¹² The importance of citizenship is observed for other factors as well, as citizenship status explains a considerable amount of the other

extra-legal disparities shown in Model 1. For instance, introducing citizenship status into the model reduces the education effect (less than high school) by 25 percent and the immigration offense effect by 27 percent.

Model 3 further analyzes the effect of citizenship status by assessing sentencing differences between legal and undocumented immigrants (compared to U.S. citizens). These results show that both noncitizen types have significantly higher odds of being incarcerated, and these effects are again stronger than the race, gender, and education effects. While both groups have elevated rates, the undocumented are seven times more likely to be incarcerated, whereas legal immigrants are twice as likely to be imprisoned. In support of our hypothesis, results in Table 2 suggest that citizenship status is a consequential sentencing factor.

In Table 3, the dependent variable is sentence length and OLS regression coefficients are presented in the same format as in Table 2. Coefficients in Model 1 are again consistent with prior research; males, the poorly educated, and black and Hispanic minorities receive longer prison sentences. In Model 2 of Table 3 we introduce citizenship, and results are consistent with those in Table 2; the coefficient for citizenship status ($b = .042$; $p < .001$) is larger than the race/ethnicity measures (black = .013; Hispanic = .026). Interpreted substantively, noncitizens receive roughly an additional 3.5 months of incarceration when holding all variables at their means.¹³ As a point of comparison, Hispanics receive between one and two months of additional prison time compared to whites (64.8 months for average white offender $\times e^{(.026)} = 66.5$). The citizenship effect corresponds to an aggregate increase of 3,680 prison years for noncitizens punished in our study. When combining the citizenship penalty across the incarceration and length decisions, the cumulative increase in incarceration is 5,765 total prison years for 2008 alone.¹⁴

Similar to the incarceration decision, introducing citizenship status to Model 2 mediates a substantial portion of the Hispanic effect

Table 2. Logistic Regression Models of Incarceration Decisions for Federal Offenders, 2008

Measure	Incarceration					
	Model 1		Model 2		Model 3	
	<i>b</i>	OR	<i>b</i>	OR	<i>b</i>	OR
Non-U.S. Citizen			1.453*** ^a	4.28		
			(.123)			
Legal Immigrant					.797*** ^a	2.22
					(.133)	
Undocumented Immigrant					2.009*** ^{a,b}	7.46
					(.147)	
Black	.078	1.08	.069	1.07	.073	1.08
	(.063)		(.060)		(.060)	
Hispanic	.817***	2.26	.316***	1.37	.275***	1.32
	(.073)		(.061)		(.062)	
Other Race	.394***	1.48	.198	1.22	.248*	1.28
	(.114)		(.110)		(.109)	
Male	.621***	1.86	.499***	1.65	.484***	1.62
	(.051)		(.043)		(.043)	
Age	-.016***	.98	-.014***	.99	-.013***	.99
	(.002)		(.002)		(.002)	
Less Than High School	.440***	1.55	.331***	1.39	.299***	1.35
	(.072)		(.068)		(.067)	
High School Graduate	.005	1.01	.048	1.05	.043	1.04
	(.057)		(.059)		(.057)	
Some College	.005	1.01	.045	1.05	.037	1.04
	(.058)		(.057)		(.056)	
Trial	.505***	1.66	.482***	1.62	.508***	1.66
	(.153)		(.151)		(.148)	
Drug	1.023***	2.78	.931***	2.54	.931***	2.54
	(.172)		(.156)		(.154)	
Immigration	1.491***	4.44	1.094***	2.99	.961***	2.61
	(.153)		(.158)		(.158)	
Violent	1.002***	2.72	1.026***	2.79	1.013***	2.75
	(.177)		(.177)		(.179)	
Fraud	.747***	2.11	.653***	1.92	.638***	1.89
	(.088)		(.093)		(.094)	
Firearms	.841***	2.32	.813***	2.25	.798***	2.22
	(.127)		(.133)		(.134)	
Other Offense	.244*	1.28	.169	1.18	.174	1.19
	(.097)		(.103)		(.102)	
Upward Departure	2.717***	15.13	2.693***	14.77	2.707***	14.99
	(.487)		(.475)		(.474)	
Substantial Assistance Dep.	-1.939***	.14	-1.891***	.15	-1.882***	.15
	(.131)		(.125)		(.130)	
Downward Departure	-1.224***	.29	-1.193***	.30	-1.190***	.30
	(.130)		(.127)		(.127)	
Multiple Counts	.458***	1.58	.459***	1.58	.455***	1.58
	(.053)		(.027)		(.053)	

(continued)

Table 2. (continued)

Measure	Incarceration					
	Model 1		Model 2		Model 3	
	<i>b</i>	OR	<i>b</i>	OR	<i>b</i>	OR
Criminal History	.403*** (.023)	1.50	.458*** (.027)	1.58	.462*** (.027)	1.59
Presumptive Sentence	.099*** (.011)	1.10	.101*** (.011)	1.11	.101*** (.011)	1.11
Constant	-1.912*** (.144)		-2.202*** (.152)		-2.179*** (.155)	
Pseudo <i>R</i> ²	.49		.51		.51	
Chi-square test	4486.3***		139.8***		211.0***	
<i>N</i>	54,237		54,237		54,237	

Note: Standard errors (in parentheses) are clustered on judicial district. All models include controls for district.

^aEffect is significantly different from Hispanic coefficient based on Wald test ($p < .001$).

^bEffect is significantly different from legal alien coefficient based on Wald test ($p < .001$).

* $p < .05$; ** $p < .01$; *** $p < .001$ (two-tailed tests).

(40 percent). Also consistent with our findings from Table 2, relative to their citizen counterparts, both types of noncitizens are considerably disadvantaged at sentencing, with undocumented immigrants receiving longer sentences than noncitizens residing here legally.

In summary, results in Tables 2 and 3 show three clear patterns. First, consistent with our hypothesis, the application of law is differentially applied depending on an offender's citizenship status, with noncitizens more likely to be incarcerated and to receive longer prison sentences compared to U.S. citizens. We also find notable differences when disaggregating noncitizens by legal status, with undocumented immigrants being most at risk for severe punishment compared to legal immigrant residents. Second, the magnitude of the citizenship and legal status effects exceed factors traditionally emphasized in prior work, including race and ethnicity. Third, including noncitizens in the model redefines our understanding of existing literature by showing that the harsher punishments Hispanics receive are largely attributable to their citizenship status.

These findings demonstrate that noncitizens fare worse at sentencing; our next analysis examines whether this pattern holds across racial and ethnic groups. Our hypothesis concerning the role of social distance and punishment suggests that *all* noncitizen groups will receive more severe punishment. We move to a specific test of this hypothesis in Table 4.

Citizenship across Racial and Ethnic Groups

Table 4 reports incarceration and sentence length models using a series of dichotomous variables for each combination of citizenship and minority status (note that both models include all controls reported in Tables 2 and 3). Two clear patterns emerge. First, every group lacking U.S. citizenship—including *white* noncitizens—receives tougher sanctions compared to white citizens. Second, for all races, noncitizens are sentenced more harshly compared to their citizen counterparts, net of legally relevant controls.¹⁵ Despite some variation related to increased punishment for minority noncitizens, the general pattern from Table 4 shows a relatively

Table 3. OLS Models of Sentence Length Decisions for Federal Offenders, 2008

Measure	Model 1		Model 2		Model 3	
	ln Length		ln Length		ln Length	
	<i>b</i>	SE	<i>b</i>	SE	<i>b</i>	SE
Non-U.S. Citizen			.042***	(.011)		
Legal Immigrant					.029***	(.011)
Undocumented Immigrant					.048***	(.013)
Black	.013*	(.006)	.013*	(.006)	.013*	(.006)
Hispanic	.043***	(.010)	.026**	(.008)	.025**	(.009)
Other Race	-.005	(.016)	-.010	(.017)	-.008	(.017)
Male	.063***	(.009)	.058***	(.009)	.058***	(.009)
Age	.000	(.000)	.000	(.000)	.000	(.000)
Less Than High School	.048***	(.011)	.045***	(.012)	.044***	(.011)
High School Graduate	.043***	(.012)	.044***	(.012)	.044***	(.012)
Some College	.027*	(.011)	.028**	(.010)	.028**	(.010)
Trial	.055***	(.010)	.054***	(.010)	.055***	(.010)
Drug	.034	(.032)	.031	(.032)	.031	(.032)
Immigration	.052	(.045)	.044	(.044)	.042	(.044)
Violent	.052	(.027)	.053	(.028)	.052	(.027)
Fraud	-.043	(.027)	-.044	(.027)	-.044	(.027)
Firearms	.001	(.027)	-.001	(.028)	-.001	(.028)
Other Offense	.003	(.030)	.004	(.030)	.004	(.030)
Upward Departure	.726***	(.056)	.726***	(.056)	.726***	(.058)
Substantial Assistance Dep.	-.634***	(.022)	-.633***	(.022)	-.633***	(.022)
Downward Departure	-.443***	(.012)	-.443***	(.013)	-.443***	(.013)
Multiple Counts	.045***	(.007)	.045***	(.007)	.045***	(.007)
Criminal History	.022***	(.002)	.023***	(.002)	.023***	(.002)
(ln) Presumptive Sentence	.946***	(.009)	.947***	(.009)	.947***	(.009)
Constant	-.063	(.040)	-.071	(.040)	-.070	(.040)
<i>R</i> ²	.904		.904		.904	
F-test	3223.8***		15.1***		7.6***	
<i>N</i>	44,598		44,598		44,598	

Note: Standard errors (in parentheses) are clustered on judicial district. All models include controls for district.

* $p < .05$; ** $p < .01$; *** $p < .001$ (two-tailed tests).

uniform and substantial citizenship penalty for all racial and ethnic groups.

Salience of Citizenship over Time

Having demonstrated the robustness of the citizenship effect across all race/ethnic groups, we next consider the salience of citizenship over time. Figure 2 shows race, ethnicity, and citizenship trends for incarceration decisions from 1992 to 2008 (based on models including all control variables).¹⁶ Without

accounting for citizenship, Panel A shows a clear, stable, and substantial Hispanic effect, with Hispanic offenders approximately twice as likely to be incarcerated as whites.

The story changes remarkably when we introduce citizenship status (Panel B). By far the most significant trend shown is the dramatic increase in the citizenship penalty. From 1992 to 2008, this penalty increased in near linear fashion, more than doubling during our period of inquiry. In addition, and consistent with results shown in Tables 2 and

Table 4. Citizenship–Race/Ethnicity Joint Effects on Punishment Outcomes for Federal Offenders, 2008

	Incarceration		ln Sentence Length	
	<i>b</i>	SE	<i>b</i>	SE
White U.S. Citizens				
Black U.S. Citizens	.070	(.061)	.015*	(.006)
Hispanic U.S. Citizens	.140*	(.062)	.033***	(.008)
Other U.S. Citizens	.307*	(.128)	–.009	(.020)
White Noncitizens	1.139***	(.121)	.065***	(.012)
Black Noncitizens	1.160***	(.209)	.060***	(.017)
Hispanic Noncitizens	1.983***	(.143)	.067***	(.016)
Other Noncitizens	1.147***	(.197)	.038*	(.019)
<i>N</i>	54,237		44,598	

Note: Standard errors (in parentheses) are clustered on judicial district. Models include all variables shown in Tables 2 and 3 plus controls for district. We used logistic regression to model the incarceration decision and OLS regression to model the sentence length decision.

* $p < .05$; ** $p < .01$; *** $p < .001$ (two-tailed tests).

3, citizenship status mediates the majority of the Hispanic effect. Note that the upward trend for Hispanics depicted in Panel A of Figure 2 is no longer apparent once we account for citizenship status in Panel B. Instead, the Hispanic trend is relatively flat while the citizenship coefficient grows over time. Taken together, results in Figure 2 suggest that what emerged most dramatically in recent decades is not a Hispanic sentencing penalty, but a citizenship penalty.

Finally, Panel C shows trends for legal and undocumented immigrants. Three relevant findings stand out and support the propositions at the core of our article. First, we find a substantial difference between the treatment of legal and undocumented immigrants; the undocumented are far more likely to be incarcerated compared to legal immigrants and U.S. citizens. Second, both types of noncitizenship are significantly more influential in determining whether an offender is incarcerated than are race or ethnicity. Third, these effects have grown considerably stronger over time.

The increasing citizenship penalty demonstrated in Figure 2 coincides with the dramatic influx of noncitizens and undocumented immigrants over the past two decades. While

this provides partial and indirect support for our group threat framework, a more formal test is needed to assess whether the punishment of noncitizen offenders is conditioned by these demographic shifts. According to the threat model, non-U.S. citizens should receive harsher penalties in districts where the relative population of noncitizens has recently increased. As a final empirical test, we provide a direct assessment of this hypothesis in Table 5.

Table 5 presents results from a two-level hierarchical logistic regression model of incarceration (estimated in HLM), with cases nested within federal districts.¹⁷ Hierarchical modeling is appropriate for this analysis, because it includes a unique random effect for each district that directly incorporates district-level processes while also accounting for the statistical dependence of individuals punished in the same court and allowing for specific tests of district-level measures.

We focus only on our focal predictors, but the model includes all individual-level controls, as well as additional district-level community controls taken from the 2000 Census, the American Community Survey 2005–2009, and the FBI Uniform Crime Reports.¹⁸ Specifically, we account for a district's

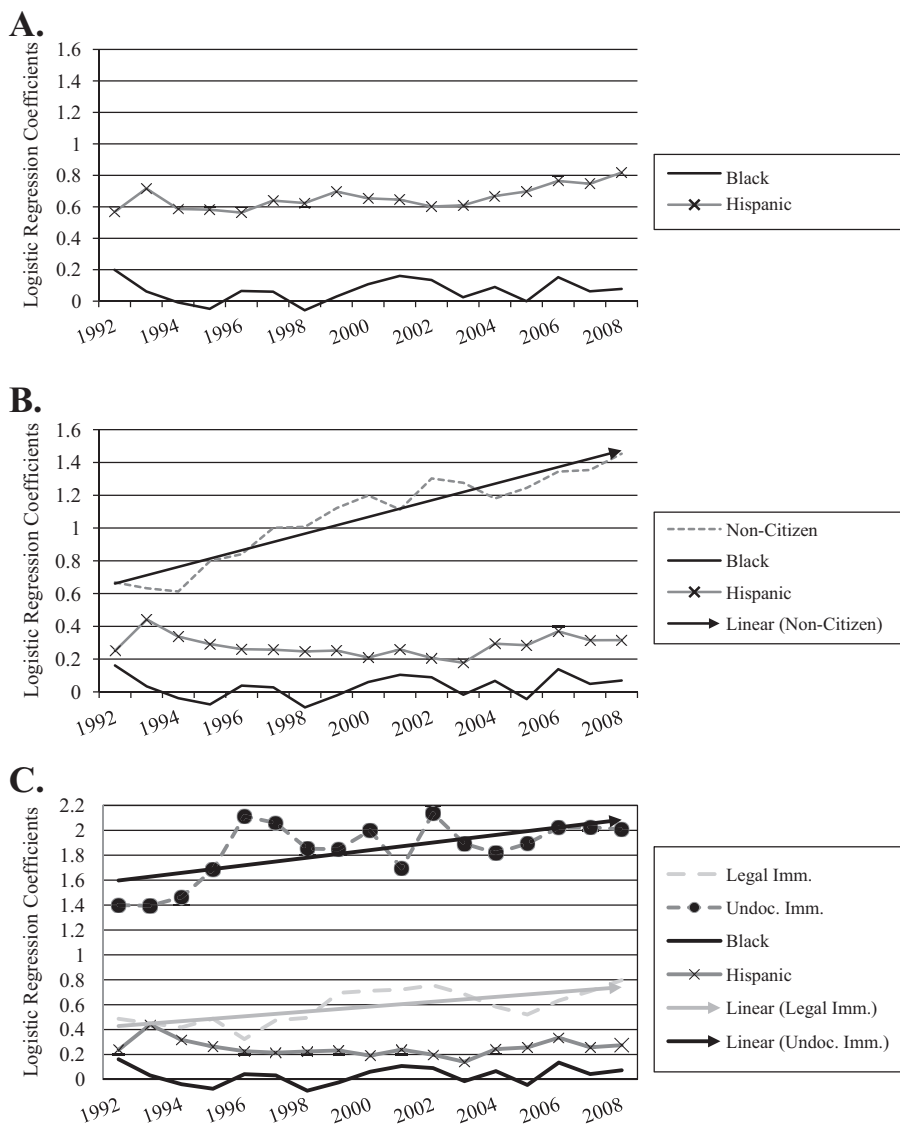


Figure 2. Race, Ethnicity, and Citizenship Effects for Incarceration Decisions, 1992 to 2008
Note: Results are based on year-to-year models. Models include all controls shown in Table 2.

unemployment rate, the percent Hispanic, and the homicide rate in 2008. Our focal district-level measure is the percent change in the non-U.S. citizen population since 2000.

Findings in Table 5 support the group threat hypothesis: the punishment gap between citizens and noncitizens widens in districts that received a larger influx of non-U.S. citizens in recent years. This can be seen by the positive interaction between citizenship status and the percent change in the noncitizen population

($b = .246; p < .001$). These results suggest that part of the increased punitiveness against non-U.S. citizens in recent decades can be linked to judicial responses to the changing demography of the U.S. population.

DISCUSSION AND CONCLUSIONS

Despite considerable scholarly attention to immigration issues and a large volume of

Table 5. Two-Level Hierarchical Logistic Regression Model of Incarceration

Focal Measures	Model 1. Incarceration	
	<i>b</i>	SE
Level 1. Offender		
U.S. Citizen (reference)		
Non-U.S. Citizen	1.784***	(.066)
Level 2. District		
Unemployment	.005	(.045)
Homicide Rate	-.009	(.014)
Percent Hispanic	-.002	(.005)
Δ Percent Non-U.S. Citizen	.125	(.085)
Interaction		
Noncitizen x Δ Percent Noncitizen	.246***	(.060)
Intercept	3.147***	(.058)
<i>N</i>	54,195	

Note: Model includes all controls shown in Table 2. Estimates based on unit-specific model. With the exception of the non-U.S. citizen measure, all individual-level variables are fixed across district. The model is limited to the 90 district courts in the United States (see note 18 for details).

****p* < .001 (two-tailed tests).

work on punishment and race, our knowledge about how noncitizens fare when punished under U.S. law is comparably limited. With more than 22 million non-U.S. citizens residing in the United States, and 26 percent of individuals currently incarcerated in federal prisons lacking U.S. citizenship, it is important to understand the extent to which state membership connotes legal advantages. In this article, we derived hypotheses from three distinct yet related strands of theoretical work—focal concerns, Black’s theory of law, and group threat theory—on whether citizenship matters for punishment, for whom it matters most, and whether any citizenship effect is contextualized by time and place.

Through a series of empirical tests with different analytic approaches and additional robustness checks, one finding unambiguously emerges: citizenship status is a powerful determinant of punishment outcomes. Even when using extensive controls and a range of different model specifications, noncitizens—particularly undocumented immigrants—are far more likely to be incarcerated and sentenced for longer periods than are

U.S. citizens. Moreover, these findings are not simply a reflection of well-known patterns of racial or ethnic stratification; noncitizens are sentenced more harshly than citizens among all racial and ethnic groups in our study. This set of findings is consistent with our hypotheses derived from Black’s theory of law and the focal concerns perspective.

Two additional findings support central tenets of group threat theory. First, citizenship status is more consequential for sentencing outcomes today than it was two decades ago, a finding that holds for both legal and undocumented immigrants. Second, results from our multilevel model show that the punishment consequences of lacking U.S. citizenship were particularly pronounced in districts with growing noncitizen populations. Taken together, these findings contribute to a growing body of research documenting the utility of the group threat perspective for explaining attitudes toward and actions against noncitizens.

Although our citizenship findings are remarkably strong and consistent, we interpret these results with appropriate caution. The inclusion of additional information could

reduce the magnitude of the observed effects, although the USSC data are among the most widely used in the sentencing literature, in part, because the data are exceptionally inclusive with regard to controls for case characteristics and other relevant factors, and our findings hold across different modeling approaches and alternative analyses (see the online supplement). Along similar lines, our analysis is necessarily limited to post-conviction punishment outcomes; additional case processing information would help shed light on the nuanced and cumulative effect of citizenship throughout the criminal justice system. Future research could build on this study by examining how citizenship affects arrest, charging, and release decisions. A particularly important consideration is how the prospect of deportation alters criminal case processing for non-U.S. citizens. Our results clearly suggest that incarceration of noncitizens is not wholly attributable to their criminal behavior, and it is possible that eventual deportation acts as a practical constraint for judges, making incarceration more likely. To the extent that the possibility of deportation plays a role in the process leading to more punitive sentences, this would be entirely consistent with our larger theoretical point—lacking U.S. citizenship confers legal disadvantages that result in harsher punishment.

Research using data from state courts would further clarify our understanding of citizenship and punishment, as noncitizens represent sizeable populations in several of the largest state prison systems, including New York, Texas, California, and Florida (Guerino et al. 2011). Although studies of the state and federal systems generally show comparable results with respect to sentencing disparities, external validity of our findings in state courts awaits future research. More importantly, external validity is dependent on future data collection efforts, as information on citizenship is rarely (if ever) collected in state court datasets. Similarly, investigating the punishment consequences of citizenship beyond U.S. courtrooms could be an especially fruitful avenue for future research. The U.S. increase in foreign

prisoners is characteristic of many other Western countries (van Kalmthout, Hofstee-van der Meulen, and Dünkel 2007), yet it remains unknown whether the findings shown here hold across diverse legal, cultural, and bureaucratic contexts.

Mindful of these limitations and calls for future work, our results have several sociological implications. First, these findings suggest that the traditional purview of legal inequality and stratification research should be expanded to include citizenship. As the United States continues to receive increasing numbers of international migrants, an exclusive focus on the traditional markers of stratification, such as race, ethnicity, and class, appears to miss important and consequential distinctions based on legal status and national membership. We draw particular attention to our findings concerning Hispanic ethnicity. While our results indicate that Hispanics are disadvantaged relative to whites, we showed that Hispanic differences are dwarfed by citizenship, a finding we think is underappreciated and in some cases neglected in previous work. To this end, our analysis suggests that many Hispanics in federal courts fare worse than other groups largely *because* they are more often noncitizens. These findings, combined with the enhanced punishment for *white* noncitizens, suggest that citizenship appears to trump race and ethnicity when determining punishments for those who violate U.S. law.

Our results also inform ongoing debates on the link between judicial discretion and sentencing disparities. Recent reports by the USSC suggest the disparity between citizens and noncitizens has increased in recent years in the aftermath of the U.S. Supreme Court decision *U.S. v. Booker* (2005), which declared the sentencing guidelines “advisory.” Our findings confirm the widening punishment gap between citizens and noncitizens, but they demonstrate that the increasing citizenship disparity began well before *Booker* and is therefore likely unrelated to recent changes in sentencing discretion.

These results also inform ongoing debates about the legal relevance of citizenship in a

globalized world. During the past several decades, the relevance of a nation-state based approach to citizenship has been increasingly challenged. Several scholars argue that the basis for legal rights are now postnational and rooted in universal norms of personhood, effectively eroding the distinction between citizen and noncitizen under the law (Jacobson 1996; Soysal 1994). Others, however, are critical of this perspective and suggest that “postnational scholars appear to be . . . outlining a normative desire, rather than describing objective conditions,” and that “future research needs to address the gap between philosophy and practice” (Bloemraad, Korteweg, and Yurdakul 2008:160, 166). The present work speaks directly to this gap by examining whether legal ideals correspond to legal reality for noncitizens. Our results leave little doubt about the significance of citizenship in legal institutions. While we do not question the larger notion that legal recognition of international laws and treaties rooted in universal human rights are important and potentially transformative in some respects, our results suggest that despite equal *rights*, noncitizens do not receive equal *treatment* in U.S. federal courts. We suggest that the burgeoning cross-national research on citizenship and immigrant rights be complemented by a sustained research effort on how states respond *in practice* to the challenges of immigration. The results presented in this article provide a strong reminder that the rule of law and the practice of law are not necessarily one and the same.

Finally, we contribute to ongoing theoretical and empirical debates about citizenship as an emerging mechanism of stratification. Our results align with scholars who suggest the boundary of national membership produces inequality, literally distinguishing insiders from outsiders and determining allocation of the state’s legal, political, and economic resources. In line with this view, Massey (2007) argues that lack of legal status is now a central axis of stratification in U.S. society. Our analyses support this proposition, at least when looking at the federal criminal justice system. We know from prior research on race and ethnicity that differential treatment in the

legal system often mirrors broader patterns of inequality. We have shown here that citizenship yields disparate treatment in the justice system on par with, or in some cases exceeding, the traditional statuses that dominate sociological discourse. As international migration increases, these findings suggest citizenship may now be a central axis of sociolegal inequality. Future work should examine whether such disparities are indicative of a larger pattern of stratification apparent in other social institutions.

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Notes

1. Among all noncitizen nationalities, the largest groups in 2008 were from Mexico, Honduras, the Dominican Republic, Guatemala, Colombia, El Salvador, and Cuba (authors’ calculations).
2. The federal prison system held more than 215,000 offenders in 2010, over 35,000 more than any state system (Guerino, Harrison, and Sabol 2011). Although the federal system incarcerates only 13 percent of all prisoners in the United States, it holds 32 percent of all incarcerated non-U.S. citizens.
3. Some previous research includes these cases in their analyses (Wolfe et al. 2011; Wu and DeLone 2012), but we think this is problematic because there is no U.S. citizen counterfactual comparison. For example, the statutory language of the federal laws referenced in the guidelines under §2L1.2 [8 U.S.C. § 1325(a) and 8 U.S.C. § 1326] both refer specifically to “aliens.” By contrast, all offenses included in our analysis apply equally to citizens and noncitizens.
4. Using 2006 to 2008 data for the main analysis produced substantively identical results to those shown here.
5. While previous sentencing research questions whether citizenship is a legally relevant factor, because the guidelines reference only the exclusion of national origin in sentencing considerations

- (Demuth 2002), there is no ambiguity under federal law that noncitizens tried in U.S. criminal courts are afforded the same due process rights. According to legal scholar David Cole (2003:379), “there is no dispute that noncitizens are entitled to equal protection of the laws.”
6. Several scholars argue that this dichotomy is not appropriate for modeling sentencing under guideline regimes, and instead propose using Tobit regression to model incarceration and sentence length decisions simultaneously (Bushway and Piehl 2001). We choose to present the two-stage models because previous research shows that important measures have differential effects across these two stages (for a recent meta-analysis, see Mitchell and MacKenzie 2004). However, as we note in the online supplement, our pattern of results is the same whether we examine sentencing as two separate decisions using logistic and OLS regression or simultaneously using Tobit regression.
 7. Undocumented immigrants are people who entered the country without valid documents, or who arrived with valid visas but stayed past their visa expiration date or otherwise violated the terms of their admission. This definition reflects standard usage by the Department of Homeland Security (Passel and Cohn 2011).
 8. We added a 1 to all values of the guideline recommended sentence variable before logging to retain defendants whose recommended sentence was 0 but who still received a prison sentence.
 9. Previous research shows that defendant criminal history has an independent effect beyond that captured by the presumptive sentence measure (Hofer and Blackwell 2001). Its inclusion did not result in problematic collinearity. Moreover, this method is consistent with previous analyses of federal sentencing decisions (Albonetti 2002; Doerner and Demuth 2010; Feldmeyer and Ulmer 2011; Johnson and Betsinger 2009; Johnson, Ulmer, and Kramer 2008; Ulmer 2005).
 10. Because “unlawful enterers” were removed from the analysis, the remaining offenses in the immigration category include crimes such as smuggling or harboring undocumented immigrants, trafficking in false documents, and fraudulently acquiring false documents.
 11. Space constraints limit the full inclusion of our supplemental analyses. However, we direct interested readers to the online supplement for further elaboration of the robustness of our results. Aside from demonstrating that our results are unbiased by the lack of victim characteristics, we also address, in detail, a host of other possible confounders, such as pre-sentencing detention and sentences for time served, lack of social capital, clustering of noncitizens in select districts, our estimation procedure, and possible confounding effects of Hispanic ethnicity.
 12. Supplementary analysis indicates this is not simply an issue of collinearity and that the bulk of the Hispanic effect is actually attributable to lacking citizenship status. We direct interested readers to the online supplement, where we discuss in detail models that demonstrate the trivial mediating effect of Hispanic ethnicity on the citizenship effect.
 13. Based on results in Table 3, if the average U.S.-citizen offender is sentenced to 78 months in prison, the average noncitizen receives a sentence length of just over 81 months ($78 \times e^{(.042)} = 81.3$).
 14. The 3,680 prison year estimate is derived from a model identical to those in Table 3 but uses months of imprisonment as the dependent variable. The citizenship coefficient for this model is 4.3. We then multiplied 4.3 by the number of noncitizens in the analysis (10,269) and divided by 12 to estimate the approximate number of prison years attributable to citizenship (cf. Huber and Gordon 2004). The cumulative estimate combines incarceration and length using Tobit analysis and suggests noncitizens receive 5.7 months of additional incarceration. This corresponds to an aggregate effect of 5,765 prison years ($(+/- 703)$ based on the following calculation $([5.74 \times 12,053] / 12)$).
 15. Wald tests confirm that all noncitizen effects are significantly stronger than citizenship effects for each racial/ethnic group ($p < .001$) for both the incarceration and length models (although other race differences across citizenship status in the length model is significant at a more modest .10 alpha level).
 16. In a supplemental analysis, we replicated these trends by combining all data years and running interactions with citizenship status by year. Results were substantively identical.
 17. The unconditional model revealed significant variation across courts ($b = 1.81$; $p < .001$), with districts accounting for just over 9 percent of the overall variance in the incarceration decision.
 18. Because districts are divided by counties, all district measures are aggregated from county estimates. This required us to eliminate districts outside the United States (Puerto Rico, Virgin Islands, Guam, and North Mariana Islands). The variables in this analysis are identical to those in Table 2 with one exception: we control for presumptive disposition (1 = guidelines recommend prison; 0 otherwise) as opposed to presumptive sentence, because the model failed to converge using the latter measure. Previous research using HLM in federal courts utilizes this same variable (Ulmer, Light, and Kramer 2011) and the pattern of results is identical regardless of the measure used.

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