A COMPARATIVE LOOK OF SENTENCING OUTCOMES BASED ON THE

DEFENDANT'S COUNTRY OF CITIZENSHIP

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ABSTRACT

In the wake of negative stereotypes of immigrants from lower status countries, this study used federal sentencing data for 2015 to examine the effects of the defendant's country of citizenship on sentence outcomes. Although the United States Sentencing Commission has long stipulated that national origin isn't a relevant factor in determining sentence, a growing body of sentencing research has found evidence that a defendant's country of citizenship continues to influence sentence outcome. Findings of the current study revealed partial support that national origins do matter. Specifically, after controlling for a number of legally relevant, case processing and extralegal factors, defendants from Africa, the Caribbean, Europe, and Middle-East/North Africa were found to receive more favorable sentences than those given to their Mexican counterparts. However, a second model that compared the Mexican region to all other regions failed to reach statistical significance. Policy implications and directions for future research are discussed.

DEDICATION

This thesis is dedicated to my grandfather, Greg Ridley, who instilled the value of education in me before he passed. I am grateful for the opportunity to have learned from such an incredible person; may he rest in peace. Also, I'd like to dedicate this thesis to my brother, KeyVonte' Cunningham, who lived life to the fullest and worked the hardest. He inspired me to keep pushing for my dreams even after the pain of his death.

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CHAPTER I

INTRODUCTION

There are a lot of fears concerning immigrants and immigration, especially when it comes to the realistic and symbolic threats to the majority group (Berg, 2015; Murray & Marx, 2012; Stephan, Ybarra, & Bachman, 1999). According to Murray and Marx (2012), realistic threats are threats that "challenge the welfare of the majority group" (p. 332), and symbolic threats are threats that "represent challenges to the morals, values, and identity of the majority community" (p. 333). Additionally, according to Stephan et al. (1999), the combination of realistic threats, symbolic threats, intergroup anxiety, and negative stereotypes may help explain the way people perceive Cubans, Mexicans, and Asians. These perceptions of immigrants are the basis for prejudicial attitudes towards them (Stephan, Ybarra, & Bachman, 1999).

These potential threats can influence the U.S. public's perception of immigrants. For example, immigrants are viewed as being more crime-prone than native-born citizens (Hagan, Levi, & Dinovitzer, 2008) even though immigrants are no more likely to commit crime than citizens (Reid, Weiss, Adelman, & Jaret, 2005). However, immigrants from European and Asian countries are not perceived to be a threat, nor are they perceived negatively by U.S. citizens. According to Lee and Fiske (2006), immigrant groups from France, Germany, Russia, Vietnam, and Eastern Europe do not have clear stereotypes associated with them whereas immigrant groups from "lower-status" countries such as Africa, Latin America, Mexico, and South America have more negative stereotypes.

When discussing immigrants and the need to make immigration policies stricter, government officials are not referring to immigrants from all countries. For example, according to Short and Magana (2002), people have more lenient immigration attitudes when an immigrant from Canada commits a misdemeanor crime, but harsher immigration attitudes when an immigrant from Mexico commits a misdemeanor crime (Short & Magana, 2002). Discriminatory immigration attitudes are not limited to civilians; in fact, government officials also discriminate against immigrants based on country of origin. For example, President Donald Trump's current wife (Melania Trump) is an immigrant from Solvenia and his first wife (Ivana Zelnickova) is from Czechoslovakia. However, the president has been extremely vocal about the need to make stricter immigration policies. According to Shear and Nixon (2017), Trump has placed a travel ban on six different countries: Iran, Libya, Somalia, Sudan, Syria, and Yemen (Shear & Nixon, 2017). Additionally, Trump has been clear on his goal to significantly cut refugee admissions into the United States (Davis & Sengupta, 2017). This is an indication that only immigrants from certain countries are the targets of these stricter immigration policies.

The views of the president and other government officials have an impact not only on the way immigration policies are made, also these perceptions impact the way immigrants are treated by the criminal justice system, specifically in sentencing. For example, if an immigrant is going to be deported, then he or she would receive a shorter sentence than an immigrant who is not being deported (Orrick, Compofelice, & Piquero, 2016). This could be due to the immigrants helping the government with other cases, or it could be due to the immigrants being deported due to their illegal status. Additionally, noncitizens are sentenced harsher than citizens, and the sentencing gap has increased since the 1990s (Light, 2014; Light, Massoglia, & King, 2014). Noncitizens are seen as being more crime prone than citizens (Hagan, Levi, & Dinovitzer, 2008),

which leads to judges sentencing them harsher than citizens. It is within this backdrop of potentially harsher sentences of immigrants that the current study is conducted. More specifically, negative sentiments of immigrants from certain countries led to an inquiry into whether or not a defendant's country of origin can negatively influence sentence length. It begins with a review of the literature as it relates to the sentencing of immigrants.

CHAPTER II

LITERATURE REVIEW

The Federal Sentencing Commission was established with the Sentencing Reform Act (SRA) of 1984, which is a provision of the Comprehensive Crime Control Act of 1984 (United States Sentencing Commission, n.d.). The Commission was given a mandate to create Federal Sentencing Guidelines (FSG). One reason for the creation of the FSG was to incorporate the purposes of sentencing, which include just punishment, deterrence, incapacitation and rehabilitation (United States Sentencing Commission, n.d.). The FSG was also created to provide certainty and fairness in regards to sentencing by avoiding unwarranted disparities among offenders who have similar characteristics and were convicted of similar criminal acts, while permitting judges the flexibility to take into account legally relevant aggravating and mitigating factors (United States Sentencing Commission, n.d.). Another goal of the FSG was to reflect, to a practical extent, the advancement of knowledge of the human behavior in relation to the criminal justice process (United States Sentencing Commission, n.d.). The FSG went into effect on November 1, 1987 (United States Sentencing Commission, 2016).

Section 5H1.10 of the FSG stipulates that factors such as race, sex, national origin, creed, religion, and socioeconomic status are irrelevant in the determination of sentencing (United States Sentencing Commission, 2016). This is to prevent judges from discriminating against a defendant based on irrelevant sentencing factors. Although the sentencing guidelines specifically stipulate that national origin is extraneous in determining a defendant's sentence, evidence suggests that judges still use that particular extralegal factor when determining the sentence of

certain defendants, specifically immigrants. The following is a brief discussion of the extant literature on citizenship status as well as national origin as it relates to sentencing outcomes.

Citizenship Status

Sentencing disparities in federal courts can occur due to an offender's citizenship status, specifically among natural born U.S. citizens, legal aliens, or illegal aliens. The citizenship status of the offender can influence the judge's decision during sentencing due to the fact that immigrants are seen as being more prone to criminal activity than (Hagan, Levi, & Dinovitzer, 2008). Therefore, judges' perception of immigrants as being dangerous and prone to crime may cause them to sentence immigrants more harshly than other offenders (Wolfe, Pyrooz, & Spohn, 2011).

Immigrants are given longer sentences than U.S. citizens and are treated harsher (Light, 2014; Logue, 2009; Wolfe, Pyrooz, & Spohn, 2011). According to Light (2014), noncitizens are treated more harshly at sentencing in relation to citizens, and the difference in sentencing among citizens and noncitizens is greater than that of whites and minorities. More evidence that immigrants are treated harsher than citizens is shown in a study done by Light, Massoglia, and King (2014) where citizenship status was found to be a powerful determinant in sentencing outcomes; moreover, this study revealed that citizenship status had a more profound impact on sentencing outcomes than race and ethnicity. Additionally, the difference in length of sentence is widening between citizens and noncitizens, and has widened significantly over the past two decades (Light, 2014; Light, Massoglia, & King, 2014). This means that noncitizens are being punished more severely as time passes, and this may be due to the punitiveness against

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noncitizens in federal courts. However, some research shows that noncitizens receive shorter

sentences than citizens (Wolfe, Pyrooz, & Spohn, 2011; Wu & D'Angelo, 2014).

In particular cases, natural born citizens receive harsher sentences than noncitizens

(Orrick & Piquero, 2015; Wu & D'Angelo, 2014). This can be especially true when it comes to

Mexican vs. native-born citizens. According to Orrick and Piquero (2015), Mexican-born

citizens received shorter sentences than their native-born counterparts. Moreover, citizenship

plays a significant role in sentencing, but noncitizens are more likely to be incarcerated;

however, illegal aliens get shorter sentences when incarcerated. This may be due to illegal

immigrants being deported or receiving plea bargains in exchange for information about drug

distribution (Wolfe, Pyrooz, & Spohn, 2011). The current study goes in-depth on the connection

between sentencing disparities, citizenship status, and national origin.

National Origin

Sentencing disparities among immigrants is not limited to citizenship status; sentencing

disparities also happen with immigrants from different nationalities. Hispanics tend to receive

longer sentences than their non-Hispanic counterparts (Iles, 2009; Logue, 2009). A study done

by Iles (2009) in the U.S. Virgin Islands showed that legal aliens from the Dominican Republic

received significantly harsher sentences than other legal alien groups such as South Americans,

West Indians, and other nations. This is due to the large number of immigrants from the

Dominican Republic, and the fact that those immigrants have been convicted for drug-related

offenses (Iles, 2009). These disparities are not limited to the U.S. Virgin Islands; even in the

states, there are sentencing disparities between Latinos from different countries, especially

Mexicans. According to Logue (2009), Mexicans are treated differently than non-Mexican

Latinos, and the predictors of sentence length are different for Mexican and non-Mexican Latinos potentially due to the fact that Mexicans represent a greater share of the noncitizen, Latino offending population (Logue, 2009). National origin and citizenship status can interact to generate more sentencing disparities between immigrants.

The interaction of citizenship status and national origin can produce disparities in sentencing between immigrants. According to Logue (2009), "immigration status plays a role in perpetuating disparities among defendants with the same national origin" (p. 442). Moreover, when these disparities emerge, it is to the detriment of Mexicans in comparison to other non-Mexican Latinos (Logue, 2009). Sentencing disparities among illegal immigrants of different national origins exist as well. Wolfe et al. (2011) found that Latino illegal aliens received longer sentences than white illegal aliens. This result indicates that there are inconsistent perceptions about immigrants of different ethnicities.

A more recent study conducted by Iles and Adegun (2018) examined the outcomes of federal drug traffickers sentenced in 2008. Their study was a major deviation from previous studies in that rather than limiting the observation to citizen versus noncitizen, they grouped defendants' country of citizenship into eight geographical regions (Africa, Asia, Canada, Caribbean, Europe, Middle East/North Africa, Mexico, and South/Central America). They found that defendants from the Mexican and South/Central American regions constituted the largest percentage of illegal aliens. With regards to the influence of national origin on sentence length, they found statistically significant differences across the defendants' geographical region of citizenship. With Mexico serving as the reference category, the Caribbean region emerged as the second, only to gender, strongest predictor of sentencing outcome among extralegal factors. They found that citizens from countries in the Caribbean region were given sentences that are

7.8% shorter than sentences imposed on defendants from the Mexican region. Although the coefficients for the other regions were statistically insignificant, the high b-coefficients suggest that national origins had more influence over length of sentence than did other extralegal factors (e.g., race/ethnicity and even citizenship status). The stronger influence of national origin, compared to race/ethnicity, on sentence longevity is consistent with the finding of Light (2014), who similarly found evidence that unwarranted sentencing disparities were bigger between citizens and noncitizens than between Whites and Blacks.

The current study built upon the sentencing literature in two important ways. First, previous studies have limited their focus to citizens versus noncitizens or have only looked at disparities among offenders from a few Latino countries. The current study dived further into the national origin of offenders by comparing the sentences received by people of different nationalities. Since it is not feasible to study all 127 countries represented in the sample, like Iles and Adegun (2018), the current study took a more practical approach by grouping the countries into geographical regions. Second, unlike Iles and Adegun (2018), who focused solely on drug trafficking, the current study examined all offenses. Attention is now devoted to a brief discussion of the focal concerns perspective used as a theoretical framework of the study.

CHAPTER III

THEORETICAL FRAMEWORK

The focal concern perspective is a useful conceptual framework for understanding the decision making-processes of judges. The foundation of the perspective is that judges' sentencing decisions are guided by three focal concerns: (1) blameworthiness of the defendant and the degree of harm suffered by the victim, (2) protection of the community, and (3) practical/organizational constraints and consequences or social costs of the sentencing decision (Steffensmeier, Ulmer, & Kramer, 1998). First, judges are said to be concerned with the blameworthiness or culpability of the defendant and the degree of harm suffered by the victim. This concern is allied with the retributive philosophy of punishment and supports the notion that punishment should fit the crime. The sense is that the more culpable the offender and the more severe the offense, so too would be the austerity of the punishment. Second, judges are believed to be concerned with protecting the community. Here attention to the defendant's criminal history is taken into consideration and becomes an important factor in determining whether or not to incarcerate the offender, and if so, for how long. The intention is to guard against future deviant behavior and relies on predicting the risk of recidivism based on factors such as the nature of the offense and the type of weapon used in the commission of the crime. Lastly, judges are said to take into consideration practical constraints/consequences and organizational concerns. This focal concern relates to the daily intricacies that courts, correctional facilities, and other social institutions may encounter as a result of the judges' decision. This may include, for example, judges' consideration of jails/prisons overcrowding, availability of intermediate sanctions, and disruption of family ties.

As decision-makers, judges are expected to use the pillars of the focal concern perspective, in conjunction with sentencing guidelines, as a guiding principle in their decision-making process. The reality, however, is that judges are not always equipped with all the information necessary to make a well-informed decision. Their decision-making environment is uncertain, which creates impediments to rationally constructed sentences about defendants. In an effort to address this limitation, judges engage in uncertainty avoidance by relying on shortcuts to guide them in their decision-making process (Albonetti, 1991). More specifically, according to Albonetti (1991), judges embrace the focal concerns of sentencing but do so by basing their decisions on a perceptual shorthand. This perceptual shorthand is employed through "patterned responses" that are largely based on stereotypes and prejudices, which in turn are predicated on the physical attributes of the offender (i.e., race/ethnicity, gender and citizenship status) (Albonetti, 1991). The end result is that limited information about defendants may cause judges to link stereotypes and prejudicial biases to sentencing outcomes as they make decisions regarding the offender's culpability, degree of dangerousness, and risk of recidivism.

Within the context of the current study, negative perceptions of, for instance, Mexicans as "rapists" (Washington Post Staff, 2015), South Americans as "drug traffickers" (*United States v. Borrero-Isaza, 1989*) and Middle-Easterners as "terrorists" (Welch, 2016) have the potential of negatively influencing the sentences imposed upon defendants from certain countries or geographical regions. For example, then-presidential candidate Donald Trump announced his bid for presidency by boldly asserting that Mexican immigrants have lots of problems, are rapists, and are responsible for bringing crime to the United States (Washington Post Staff, 2015). Within the theoretical framework of the focal concerns perspective, his statements suggest that defendants who are Mexican nationals are deserving of harsher punishment due to their

blameworthiness and high risk of recidivism. This is evident in the case of *United States v. Borrero-Isaza* (1989), where the sentencing judge remarks insinuated that Mr. Borreo-Isaza, a citizen of Columbia, was deserving of stiff punishment because, as he put it "…people who are selling narcotics, particularly from source countries have to know that we in the United States mean business, and we are going to put a stop to this." Similarly, and as Welch (2016), so clearly articulated, "it is plausible that stereotypes related to those perceived to be Arab, Muslim, or Middle Eastern are partially responsible for some degree of punitiveness toward terrorism and for the diminished civil liberties and harsh treatment of suspected terrorists" (p. 117).

These examples of an association between national origin and immigrants' propensity to commit certain types of crime, suggests that if judges embrace the stereotypical views and link them to the focal concerns of judicial decision-making, their doing so can create the type of unjustified sentencing disparities that the now advisory FSG were implemented to curtail. For that purpose, the goal of this study was to extend the body of sentencing research to explore the effects of national origins on federal sentencing outcomes. The objective was to explore whether or not sentencing outcomes vary depending upon the defendants' country of citizenship and to what extent. Based on the review of the literature, two hypotheses were presented,

1. Due to tough rhetoric against immigrants from certain countries there will be significant mean differences in length of sentence across the geo-regional groups of defendants.

2. Due to negative stereotypes that shadow immigrants from the southern border, it is hypothesized that defendants from the Mexican region will be subject to harsher penalties than their counterparts in other regions.

CHAPTER IV

METHODOLOGY

The data used for this analysis were derived from the 2015 Monitoring of Federal

Sentencing data series. The dataset contains over 500 district, case, and individual-level pieces of

information, including the defendants' country of citizenship. In 2015, a total of 71,003

defendants were processed in the U.S. federal courts. As the primary focus of the current study is

the treatment of Non-U.S. citizens, the 59% of cases involving U.S. citizens were eliminated.

Additionally, there are two distinct outcomes that can come from a sentencing decision, the first

being a decision on whether or not to incarcerate the defendant, and if so, for how long.

However, since only 2.5% of the defendants did not receive a prison sentence, this study focused

solely on the 97.5% of the defendants who were convicted and sentenced to prison. After the

elimination of cases with missing values the final sample size was reduced to 22,445.

The dependent variable was length of sentence. This outcome variable was measured in

months and is capped at 470. The focal independent variable was the defendant's geographical

region of citizenship. To create this variable, the citwhere (defendant's country of citizenship)

variable was used to group the defendant's country of citizenship into geographical regions. Due

to the large number of Mexican cases, an early decision was made to separate Canada and

Mexico rather than to group them into a single North American region. Since North African

countries are generally viewed as culturally dissimilar from sub-Saharan Africa, the decision was

also made to separate North African countries from other African countries. The small number of

cases from the Oceania region (Australia and New Zealand) forced the elimination of that region.

Therefore, the eight geographical regions are Africa, Asia, Canada, Caribbean, Europe, Middle East/North Africa, Mexico and South/Central America. Further extralegal variables to be analyzed encompassed individual characteristics of the offender. These include the race/ethnicity of the defendant (White, Black, Hispanic, and other), gender dummy-coded "0" for male and "1" for female, age measured as a categorical variable (less than 21, 21-30, 31-40, 41 and over), educational attainment (less than high school, high school graduate, some college/college graduate), and legal status (resident/legal aliens, illegal aliens, and unknown alien). In addition to attributes of the offender, this study also controlled for characteristics of the case (pretrial detention status - bail "0" and custody "1") and whether or not the case was adjudicated via a plea agreement (0) or trial (1)).

Previous literature has consistently depicted legally relevant factors as the strongest predictors of sentencing outcomes. For that reason, a number of legal factors were also scrutinized. The first of these is the presumptive sentence which is the recommended sentence established by the sentencing guidelines. It accounts for the 43-point offense severity level, the 6-point criminal history scale, and any sentencing adjustments that may arise from the consideration of aggravating (i.e., mandatory minimum penalties) and mitigating (i.e., acceptance of responsibility) factors. Although the criminal history scale is taken into consideration in the presumptive sentence, scholars (Bushway & Morrison-Piehl, 2011; Demuth, 2002; Ulmer, 2000) have argued that the presumptive sentence and other measurements of criminal history can both be included separately. For that reason, the defendant's prior record was also entered as a dichotomous variable (no prior record=0, having a prior record=1). The number of counts of convictions is also included as a continuous variable. To capture potential variation, guideline departures were categorized as no departures, government sponsored

downward departures (this includes substantial assistance), downward departures, and upward departures. Lastly, offense type is added as a legally-relevant indictor. The seven categorical groups of offenses are violent, drugs, immigration, property, economic, sexual and other.

Given the explorative nature of the study, a combination of univariate, bivariate and multivariate analysis were employed. Ordinary Least Squares (OLS) were used for the multivariate analysis. While seven categories of offenses were used in the univariate analysis to provide a more descriptive picture of the type of offenses defendants are sentenced for, the seven offense categories in the multivariate analysis are collapsed into four categories (immigration, drug, economic and other) for the purpose of increasing cell sizes. This step was necessary to ensure there is enough power to detect statistical differences. Additionally, since defendants from the Mexican region accounted for the largest proportion of defendants in the study, two regression models are created. The first model included all eight regional variables while the second model compared the Mexican region to all other regions.

Limitations

This research was not perfect; therefore, it has some limitations. One of the biggest limitations is that the majority of defendants were from Mexico. This study was also limited in the fact that immigration offenses made up the majority of crimes committed and most of the defendants who committed immigration crimes were from Mexico.

CHAPTER V

RESULTS

Univariate Analysis

The descriptive analysis is displayed in Table 1. The table shows a mean sentence length

of 29.4 months. The table also reveals that the typical offender was Hispanic (93.7 %), male

(94.3%), between the age of 31-40 (37.7%), had less than a high school education (77.5%), was

an illegal alien (88.1%), was a citizen of Mexico (76.6%), had no prior record, and contrary to

popular belief, less than 1% of the defendants in the sample were convicted of violent are sexual

offenses. Rather, the majority of offenders were convicted of immigration offenses (69.2%)

followed by drugs (22%).

Concerning the main variable of interest (geographical regions of citizenship), Mexico's

geographical proximity to the United States combined with its poverty level might explain why

over three-fourths of the defendants are from the Mexican region, whereas Canada, who shares

the northern border with the United States had less than 1% representation. Defendants from

South/Central American countries made up the second largest group of defendants (13.9%)

followed by those from Caribbean countries (5.3%). Asian countries made up approximately 1%,

while those from African countries and Middle East/North African countries made up less than

1% (.9% and .4%, respectively).

Not surprisingly, an overwhelming 96.3% of defendants remained in custody prior to trial

and 98.6% of the cases were disposed of via plea agreements. With regards to legally-relevant

factors, the average number of counts of conviction was 1.15 and the majority of defendants did

not have a prior record (85.4%). More than half (51.9%) of defendants were sentenced within the

guidelines, while 42.6% received downward departures (29.7 for government sponsored and

16.5% other downward departures). Just a small fraction (2%) received above range departures.

Table 1   Descriptive Statistics for Dependent and Independent Variables

Variable	N	%	Mean	SD
Dependent Variable				
Sentence Length			29.4	43.1
Independent Variables				
Extralegal Factors				
Race/Ethnicity				
Whites	527	2.3		
Blacks	582	2.6		
*Hispanics	21025	93.7		
Other	304	1.4		
Gender				
*Male	21165	94.3		
Female	1273	5.7		
Age				
Less than 21	708	3.2		
*21-30	6,692	29.8		
31-40	8,448	37.7		
41 and over	6,590	29.4		
Education				
*Less than HS	17,381	77.5		
HS Grad	3,220	14.4		
Some College	1,311	5.8		
College Grad	526	2.6		
Alien Status				
Resident/Legal Alien	2,188	9.8		
*Illegal Alien	19,779	88.1		
Unknown Alien Status	294	1.3		
Extradited Alien	177	.8		
Region of Citizenship				
Africa	208	.9		
Asia	321	1.4		
Canada	103	.5		
Caribbean	1190	5.3		
Europe	232	1.0		
*Mexico	17,180	76.6		
Middle East/N Africa	93	.4		
South/Central America	3,111	13.9		
Mid-range Extralegal Factors (Case Processing)				
Pretrial Dent. Status				
Bail	827	3.7		
*In Custody	21,611	96.3		
Mode of Disposition				
*Plea	22,116	98.6		
Trial	322	1.4		

Table 1 (Continued)

Legally Relevant Factors				
# Cts. Of Convictions			1.15	1.288
Criminal History				
Yes	3,279	14.6		
*No	19,159	85.4		
Departures				
*Within Range	11,647	51.9		
Above Range	422	1.9		
Govt. Sponsored	6,672	29.7		
Below Range	3,697	16.5		
Offense Type				
Violent	89	.4		
Drug	4,934	22.0		
*Immigration	15,523	69.2		
Property	54	.2		
Economic	1,115	5.0		
Sexual	119	.5		
Other	604	2.7		
Presumptive Sentence			37.5	55.7

N= 22,438

* Reference Categories

Bivariate Analysis

Table 2 displays the bivariate analysis. This cross-tabulation was conducted on the
independent and dependent variables by country of origin. As expected, the vast majority of
Hispanic defendants were concentrated in the Mexican (99.6%) and South/Central American
regions (97.6%), while the majority of blacks derived from African (89.4%) countries. A large
percentage of defendants from the Caribbean region were classified as Hispanics (70.9%)
compared to blacks (28.5%). This finding was to be expected given that both Cuba and the
Dominican Republic are geographically located in the Caribbean and both countries have a large
Hispanic population. In fact, 70.8% of the 1190 defendants from the Caribbean region were from
those two countries (Cuba – 19.7%, n=234; Dominican Republic – 51.1%, n=608).

More than half of the defendants in the Canadian (58.3%) and Asian regions (52%) were over the age of 41, while the Mexican (3.6%) and South/Central American (2.2%) were those regions with the highest percentage of defendants who were under the age of 21. In terms of educational attainment, the most educated defendants were from the African region, with over half (58.2%) of defendants having some college or a college degree while only 5% of defendants from the Mexican region have some college or graduate from college. The highest percentage of legal aliens were from the Asian region (60.1%) whereas over 90% of defendants from the Mexican region were classified as illegal aliens. The largest percentage of extradited aliens were from Canada (6.8%) followed by Middle East/North Africa (5.4%) and Europe (4.7%). The Mexican region was the only region to show zero cases of extradited aliens.

Turning now to the quasi-legal and legally relevant factors, almost 100% of defendants from Mexico (98.5%) and the South/Central American regions (97%) were held in custody prior to trial. Both geographical regions also had a higher percentage of its defendants pleading guilty; Mexico (99.2%) and South/Central America (98.3%). Noteworthy is the observation that the Middle East/North African region was the only region where less than 90% of defendants plead guilty. Said differently, defendants in the Middle East/North Africa region had a higher percentage (15.1%) of defendants who took their cases to trial. Defendants from Mexico (87.8%) and South/Central America (85.2%) had a higher percentage of prior records compared to Asians (48.4%) and Canadians (48.5%). In terms of departure, over three-fourths of Canadians (75.8%) received downward departures followed by 59.8% of Asians compared to 41.4% of defendants from South/Central America, 46.1% from Mexico, and 46.3% from the Middle East/North Africa.

With regards to offenses, the table reveals relatively few violent offenses and the percentages across the regions were quite similar. Specifically, it shows that just 1.5% of offenses committed by defendants from the Caribbean region are violent, followed by 1.1% by defendants from the Middle East/North African region. Notably is the observation that aside from Canada, which had no cases of violent offenders, Mexico had the lowest with just 0.2% of its offenders being sentenced for a violent offense. The regions with the highest percentage of sexual offenders were Canada (5.8%), Europe (4.7%) and Asia (3.7%). The region with the lowest percentage was again Mexico (0.2%). Lastly, as you may recall from Table 1, the univariate analysis displayed a mean sentence length of 29.4 months. The results of Table 2 show that Mexican defendants received sentences that were four months shorter (26.6 months) than the overall average. In fact, their sentences are almost half of that imposed on their counterparts from Asia (45.0 months) and less than half of those given to defendants from the Caribbean (49.5%), and Europe (47.2%).

Table 2   Characteristics by Regions

	Africa %	Asia %	Canada %	Caribbean %	Europe %	Mid E/N. Africa %	Mexico %	So./Central Am %
Whites	1.9	16.8	77.7	0.5	80.2	83.9	0.4	1.4
Blacks	89.4	1.2	9.7	28.5	6.9	2.2	0.0	0.8
Hispanics	7.7	0.6	1.9	70.9	8.6	2.2	99.6	97.6
Other races	1.0	81.3	10.7	0.1	4.3	11.8	0.0	0.2
Male	87.5	86.9	79.6	92.9	91.4	91.4	94.7	95.0
Female	12.5	13.1	20.4	7.1	8.6	8.6	5.3	5.0
Less than 21	0.5	0.6	1.9	0.5	0.9	1.1	3.6	2.2
21-30	27.4	17.4	15.5	19.2	24.6	17.2	31.0	30.0
31-40	38.9	29.9	24.3	34.5	36.2	32.3	37.7	40.0
41 and over	33.2	52.0	58.3	45.8	38.4	49.5	27.6	27.8
Less than HS	23.6	18.7	21.4	49.1	22.8	28.0	82.6	77.0
HS grad	18.3	24.9	29.1	32.8	28.9	26.9	12.4	14.6
Some College	31.3	23.4	32.0	14.6	28.9	26.9	4.0	6.2
College Grad	26.9	33.0	17.5	3.5	19.4	18.3	1.0	2.2
Legal aliens	42.8	60.1	28.2	38.9	40.5	50.5	6.2	6.7
Illegal aliens	47.6	34.0	46.6	53.9	48.7	37.6	93.1	87.8
Unknown status	4.8	4.7	18.4	5.0	6.0	6.5	0.6	2.0
Extradited alien	4.8	1.2	6.8	2.1	4.7	5.4	0.0	3.6
Bail	20.7	39.3	23.3	17.1	21.6	36.6	1.5	3.0
In custody	79.3	60.7	76.7	82.9	78.4	63.4	98.5	97.0
Plea	90.9	91.9	95.1	95.3	94.8	84.9	99.2	98.3
Trial	9.1	8.1	4.9	4.7	5.2	15.1	0.8	1.7
# of counts	1.83	1.92	2.77	1.61	1.91	1.98	1.07	1.16
Prior record	62.0	48.9	48.5	75.2	54.3	66.7	87.8	85.2
No priors	38.0	51.1	51.5	24.8	45.7	33.3	12.2	14.8
Within range	50.0	37.7	24.3	45.9	42.7	53.8	52.1	56.2
Above range	1.4	2.5	0.0	1.4	1.7	0.0	1.8	2.4
Gov. Sponsored	24.0	31.5	40.8	23.7	28.0	22.6	32.0	20.0
Below range	24.5	28.3	35.0	29.0	27.6	23.7	14.1	21.4
Violent	0.5	1.2	0.0	1.5	0.4	1.1	0.2	0.9
Drug	14.4	22.7	42.7	38.8	19.0	18.3	21.7	17.1
Immigration	27.4	13.7	11.7	33.3	13.4	10.8	81.9	72.5
Property	3.4	2.5	1.0	1.6	1.3	2.2	0.0	0.3
Economic	46.6	39.6	30.1	17.3	56.5	46.2	1.8	5.4
Sexual	1.0	3.7	5.8	0.6	4.7	1.1	0.2	1.2
Other	6.7	16.5	8.7	6.9	4.7	20.4	1.9	2.6
Presumptive Sentence	49.22	62.07	64.11	68.47	65.28	58.52	33.31	42.13
Sentence length	35.72	45.02	40.24	49.54	47.24	43.27	26.62	33.24

Multivariate Analysis (OLS Regression)

Table 3, Model 1 presents the results of the OLS regression with all regional variables. An R-square of .859 indicates that 86% of the variation in sentencing can be explained by the included variables. When it comes to race/ethnicity, the model shows that black defendants received sentences that were 8.3% longer than the sentences conferred upon Hispanics, while the Other race group receive sentences that were 19.7% shorter than that imposed on their Hispanic counterparts. The *b*-coefficient representing sex was also statistically significant and reveals that women received sentences that were 13.3% shorter than the sentences given to men.

Turning the attention now to the influence of age, the results disclosed that defendants under the age of 21 were awarded sentences that were less than 1% shorter than defendants between the ages of 21 and 30. Meanwhile, defendants 31 to 40 and defendants 41 and over, were receipients of sentences that are 2.3% and 46.4% longer, respectively, than the sentences imposed on defendants between the ages of 21 and 30. In terms of education, defendants with some college and college graduates received sentences 3% shorter than defendants who had less than a high school education. None of the measures of citizenship status were statistically significant. With regards to the main independent variable, the coefficients for four of the six geographical regions of interest reached statistical significance, all of which showed shorter sentences when compared to the Mexican region. Specifically, the results reveal that the sentences for defendants from Africa, the Caribbean, Europe, and the Middle East/North Africa are all beneficiaries of sentences that were 13.3%, 14.2%, 9.5%, and 16.7%, respectively, shorter than the sentences awarded to their Mexican peers.

Consistent with previous literature, all of the legally-relevant factors emerged as the strongest predictors of sentencing outcomes. As expected, the presumptive sentence lead the way with a *b*-coefficient of .922 with the departure status following closely behind (above range-.819). Pertaining to the case characteristics variables, defendants who were denied bail received sentences that are 74.5% longer than those who were released prior to trial. Consistent with the trial penalty, those defendants who went to trial were subject to longer sentences compared to those who plead guilty (defendants who went to trial received sentences that are 16.9% longer than those who had their cases disposed of via plea agreement). As expected, defendants with a criminal history received sentences that were harsher (3.9% longer) than defendants who did not have a criminal history. Unexpectedly, drug offenders, economic offenders, and other offenders were found to have receive shorter sentences than those given for immigration offenders (9.8%, 11.1%, and 6.0% respectively). Although the offense categories were ultimately collapsed from seven to four for the purpose of increasing cell sizes, caution must still be exercised in the interpretation of this finding due to the overwhelmingly large number of immigration offenses (69.2% of the cases involved immigration offenses).

Table 1, Model 2 compares Mexico to all other countries. Similar to Model 1, the corresponding R-square of .859 for Model 2 indicated that 86% of the variance can be explained by the variables included in the model. For the race/ethnicity categories, the only racial/ethnic group to reach statistical significance was Other race, showing defendants classified as Other race were receiving sentences that were 16.5% shorter than the sentence given to Hispanics. Females received sentences that were 16.5% shorter than males. Compared to defendants 21 to 30, defendants under 21 received sentences that were 10.6% shorter; defendants between the ages of 31 and 40 received sentences that are 2.2% longer; defendants ages 41 and over received

sentences that were 3.7% longer. As was revealed in Model 1, Model 2 shows that more educated defendants (defendants with some college or a college degree) were sentenced less harshly (4.4% shorter) than those with less than a high school education. Citizenship again emerged as a statistically insignificant factor and when the Mexican region was compared to all other regions it too failed to reach statistical significance. Noteworthy was the small size of the b-coefficient indicating little influence on the length of sentence.

As should be expected and consistent with the goals of sentencing, all legally relevant factors in model emerged as the strongest predictor of sentencing outcomes. The large *b*-coefficients of the presumptive sentence (.922) and the departure statuses indicated that legally-relevant factors exert the most influence on the severity of the punishment. With regards to pretrial detention status, defendants who were denied bail receive sentences that were 75.9% longer than those who were released prior to trial. Consistent with the trial penalty, those defendants who exercised their right to a trial received sentences that were 16.5% longer than defendants whose cases were adjudicated via plea agreements. Also not surprising was the finding that defendants with a prior criminal history received sentences that were 3.7% longer than those without a prior record. Akin to the unexpected finding of harsher sentences meted out to immigrant offenses compared to the other offense types in the Model 1, Model 2 again depicted drug offenders, economic offenders, and other offenders being awarded shorter sentences compared to immigration offenders (9.8%, 9.9%, and 5.5% respectively).

Table 3   OLS Regression Models for Length of Sentence

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	Model 1		Model 2	
Variables	b	SE	b	SE
White	.025	.038	-.043	0.25
Black	.080*	.029	.007	.023
Other race	-.219***	.063	-.180***	.032
Female	-.143***	.015	-.141***	.015
Less than 21	-.113***	.021	-.112***	.001
31-40	.023*	.009	.022*	.009
41 and over	.038***	.009	.036***	.009
H.S. Grad	.003	.010	.001	.010
Some College and College Grad	-.030**	.014	-.035**	.014
Illegal Aliens	.000	.014	.006	.014
Unknown Alien S.	-.029	.032	-.032	.032
Extradited Aliens	.078*	.041	.066	.041
Africa	-.145**	.046		
Asia	.052	.062		
Canada	-.112*	.062		
Caribbean	-.043**	.018		
Europe	-.100**	.048		
Mid E./N. Africa	-.183**	.065		
Mexico vs. all other countries			.010	.009
Bail	.557***	.021	.565***	.020
Settled by Plea or Trial	.157***	.030	.153***	.030
# Cts. Of conviction	-.005*	.003	-.006**	.003
Criminal History	.038***	.012	.036**	.012
Presumptive Sentence	.922***	.003	.922***	.003
Above range	.819***	.026	.821***	.026
Govt. Sponsored	-.759***	.009	-.758***	.009
Below range	-.606***	.011	-.607***	.011
Drug Offenses	-.104***	.011	-.103***	.011
Economic Offenses	-.118***	.019	-.104***	.019
Other Offenses	-.062**	.019	-.057**	.019
R^2	.859		.859	

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*p<0.1   **p<0.05   ***p<0.001

CHAPTER VI

DISCUSSION AND CONCLUSION

The current study is an examination of federal sentencing that compares sentencing

outcomes of defendants from different regions, specifically Africa, Asia, Canada, the Caribbean,

Europe, Middle East/North Africa, Mexico, and South/Central America. Consistent with the first

hypothesis, there were significant mean differences in length of sentence across geo-regional

groups of defendants. First, although the univariate analysis reveals an average sentence length

of two years and five months (29.4 months), the bivariate analysis shows that defendants from

Mexico are benefactors of sentences that are three months shorter (26.6 months). The second

shortest sentences were awarded to defendants from the South/Central American region (33.2

months). The longest sentences are awarded to defendants from the Caribbean (49.5 months) and

Europe (47.2 months).

Did these differences hold up in the multivariate analysis? The OLS models shows partial

support of the hypothesis. The full model in Table 1, for example, supports the hypothesis in that

four of the six regional variables were found statistically significant. In fact, among the

extralegal factors aside from Other races, the African and the Middle East/North African regions

have the biggest b-coefficient, indicating that these factors have a stronger influence on the

sentence length than the other included extralegal factors. This is unfortunate because according

to section 5H.10 of the FSG, a defendant's national origin should be irrelevant in the

determination of sentencing. Yet, as observed in this study, national origin does matter. Despite

the support of the hypothesis observed in Model 1, the first hypothesis was rejected in Model 2.

More specifically, the regional variable in Model 2, which compares Mexico to all other regions,

was statistically insignificant, indicating that there are no statistically significant differences between the sentencing outcomes.

This brings the discussion to the second hypothesis, which hypothesizes that defendants from the Mexican region will be subject to harsher penalties compared to their counterparts in the other regions. The full model in Table 1 supports the hypothesis in that defendants from the Caribbean, Europe and the Middle East/North Africa all received sentences that were shorter than the sentences given to defendants from the Mexican region (13.5%, 4.2%, 9.5% and 16.7% shorter, respectively). It is suspected that a number of factors converge to trigger harsher sentences for the defendants from Mexico. For example, Table 2 reveals that 81.9% of Mexican offenders are convicted and sentenced for immigration offenses and Model 1 of Table 3 reveals that immigration offenses are penalized more heavily than other offenses. Second, given that the vast majority of illegal immigrants hail from the Mexican region (93.1% of Mexican defendants are classified as illegal aliens) it is possible that judges are using the tough rhetoric and negative stereotypes of Mexicans in society as a proxy for dangerousness. In other words, consistent with the focal concerns of sentencing, judges are concerned with the blameworthiness of the defendant and the degree of harm suffered by the victim. If society perceives themselves as victims of illegal immigration (e.g, illegal immigrants are draining society of finite resources such as jobs, healthcare, education), judges may then see just cause for blaming Mexican immigrants and thus sentencing them more harshly.

Aside from the hypothesis, other major points can be made. First, results from the bivariate analysis revealed that the most educated offenders are from the African region (58.2 had some college or a college degree). This is noteworthy because, immigrants are often stereotyped as possessing very little education. Despite negative stereotypes about immigrants,

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there are areas in which they excel over native-born American citizens. An example of this would be in the area of education. According to Kristof (2018), immigrants that come to the U.S. from Africa have a passion for education. In fact, African immigrants are more likely to earn a college degree than native-born American citizens. Thirty-nine percent of Sub-Saharan African born citizens who immigrate to the United States earn a college degree, compared to 31% of native-born American citizens (Kristof, 2018). This is why future research should be careful in aggregation of immigrant groups. As all immigrant groups are not the same, the traditional practice of using a dichotomous citizen vs. noncitizen is problematic as it tends to mask important differences between immigrant groups.

In closing, while this study shed some much-needed light on national origins and their impact on sentencing outcomes, more research is needed. Advance statistical techniques, such as Hierachichal Linear Modeling, could be employed to examine complex factors such as percentage of conservatism in the society, percentage of immigrants in society, and other contextual features. Although the FSG is now advisory, it nonetheless holds that factors such as national origin should not matter. The fact that the influence of national origin was observed in this and previous studies suggests that steps are needed to reduce the effects of this and other extralegal factors.

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VITA

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