

THE PENNSYLVANIA STATE UNIVERSITY  
SCHREYER HONORS COLLEGE

DEPARTMENT OF CRIMINOLOGY AND SOCIOLOGY

THE EFFECT OF NATIONAL ORIGIN ON SENTENCING FOR NON-CITIZENS

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with honors in Criminology

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## **ABSTRACT**

In a world where the political climate is constantly in flux, immigration is a constant. Because of this, understanding the impact of immigration is crucial. This study will focus on the immigration-crime nexus and how national origin affects sentencing outcomes for all noncitizens in the United States. Using Racial Threat Theory and Integrated Threat Theory, I assume to find that certain national origins like Mexico, Africa, and the Middle East will have longer sentences than their European, Canadian and other regional counterparts. My research questions are as follows: Are there differences in sentencing based on an immigrant's ethnicity? Does the national origin of the immigrant affect sentencing outcomes? I used United States Sentencing Commission Data from 2010-2012 to analyze my data. I ran multivariate regressions to analyze the effects of national origin on sentencing impacts for noncitizens during this time frame.

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## Introduction

Despite an ever-changing political climate, immigration remains a hot button issue. As minority populations increase, so does the perceived threat of illegal immigration and elevation of crime. This perceived threat then brings the public to cry out in fear because they feel that the undocumented immigrant is a serious danger to American society (Light, Massoglia, King, 2014). Is the public's fear justified? I will be exploring this question by looking at how immigration relates to crime and sentencing. My research questions are as follows: Are there differences in sentencing based on an immigrant's ethnicity? Does the national origin of the immigrant affect sentencing outcomes? These questions aim to discover whether America's perception of immigrants is one that is accurate and rooted in fact.

There is no doubt that racial disparities run rampant throughout the criminal justice system. However, the vast majority of the research in this field tends to neglect immigrants in their respective studies. With immigration being of such importance to citizens and political debates around the country, it seems that empirical research focusing on immigration and its effects on sentencing disparities should have a larger presence. The idea that immigrants increase or commit more crime than native citizens has been largely debunked. In fact, studies show that immigrants may even reduce crime levels in some neighborhoods (Graif and Sampson, 2009). Graif and Sampson's study focuses on Chicago neighborhoods and they found that neighborhoods with 40 percent or more immigrants were actually 20 percent less likely to commit crime than immigrant free neighborhoods (Graif and Sampson, 2009). This supports the fact that the immigration-crime nexus is largely a political opinion issue. This research is important because it aims to shed some more light on the misconceptions and negative attitudes of immigration and crime (Espenshade and Calhoun, 1993).

This issue fits into the theoretical framework of racial threat theory and integrated threat theory. As the concentration of minorities in an area increase, the more whites perceive them as a threat to their

economic, political and social situations (Blalock 1967; Stolzenberg, D'Alessio, Eitle, 2004). Minority immigrant's then become an alleged threat to society, explaining the inaccurate fear of immigrants and their effect on crime. Further, integrated threat theory states that a perceived conflict stems from prejudice of outside groups. Immigration poses many threats, some of which are real and others supposed. The introduction of outside groups to citizens then effect how citizens view these groups without knowing much about them (Stephan, Diaz-Loving, Duran 2000). This allows room for snap judgments and social stratification of immigrants regardless of whether the public is informed of the more accurate relationship between immigrants and crime. I am going to conduct this research by analyzing United States Federal Court Data from 2010-2012. I'm going to test the following hypotheses: 1) The national origin of the immigrant will affect the sentencing outcome. 2) Immigrants of minority status will receive harsher sentences than European immigrants.

### **Literature Review**

Because of this idea that immigrants commit more crime than citizens, they often are punished much harsher as well. The number of immigrants charged with a crime in the federal system has increased by 34 percent from 1994 to 2000. The vast majority of non-citizen charges are drug or immigration offenses, leaving about ten percent of all other charges for non-citizens. Non-citizens are also less likely to be put in halfway houses and are more likely to have higher security classifications because they are considered a more extreme danger, regardless of the crime (Demleitner and Sands, 2002). Not only are immigrants not given the same rehabilitation opportunities as citizens, but the United States has chosen to prosecute more and more immigrants. In 2016, 42 percent of the federal court docket involved noncitizens (Light and King, 2019). However, past research has shown that illegal immigrants actually receive shorter prison sentences than legal immigrants. This is likely because of deportation. When judges know that an offender will be deported, they often sentence them to shorter sentences allowing the

noncitizens to be deported faster. Because of this caveat, this study will not be looking at immigration offenses or dealings of deportation and focusing instead solely on federal offenses of noncitizen offenders. Findings show that immigrants, both legal and illegal, have a higher rate of incarceration than citizens. Non-citizens were also found to be more likely to receive sentences if they were detained prior to sentencing. Latino illegal aliens were also more likely to be seen as more dangerous than white illegal aliens (Wolfe, Pyrooz, and Spohn, 2011). These findings support the idea that judges tend to look down on immigrants more than citizens. They seem to be considered as more of a flight-risk and particularly more dangerous. In Light's 2017 article analyzing the effect of citizenship status and sentencing in the United States and Germany, he found that not only are noncitizens considered to be more dangerous but they are also seen as more blameworthy. This likely stems from the thinking that because noncitizens are living under a country's jurisdiction and receiving the benefits, they have an extreme obligation to obey the law. When they do not obey, it is perceived as an even greater offense because they are a noncitizen. This is the theory of "double punishment". Not only are they an immigrant but they are a delinquent immigrant, allowing judges to discern their offenses with an even greater negative connotation. This is rooted in state thought, or the general cultural consensus of any given country. When there is cultural dissimilation and social marginalization, these noncitizens are considered more threatening, unpredictable, risky and dangerous. Interestingly enough, Light found that both Germany and the United States had these negative perceptions of immigrants and both punished noncitizens more harshly than their citizen counterparts. However, this disparity was less pronounced in Germany (Light, 2017). This could explain why we see this large public misconception that immigrants commit significantly more crime even though opposite of this is true (Lee and Martinez 2000).

Past research has provided us with contrasting findings on the role of race and ethnicity in sentencing. However, it is a known fact that race and ethnicity certainly play a role in sentencing decisions. Blacks and Hispanics are more likely than whites to receive sentences and when they do, they are slightly more severe. Blacks are also arrested at a higher rate than whites although the black and white



disparity is most pronounced on the in-out decision rather than the sentence length itself (Light and King, 2019). However, all of this varies significantly across courts – with dependency on jurisdiction, type of crime and judge but there is not any substantial uniformity to the way they do vary. Much of the disparity found in the criminal justice system is contingent on many different extralegal factors (Ulmer, 2012; Light and King, 2019). One study found that blacks make up a significantly higher percentage of those incarcerated than do any other minority group and they are disproportionately represented in prisons compared to their percentage of the population (Tonry, 1994). Steffensmeier and Demuth in a 2004 study found that Hispanic and black offenders are sentenced more harshly than white offenders and are also more likely to be detained pretrial (Steffensmeier and Demuth, 2004). Feldmeyer and Ulmer in a 2011 study found that Hispanic defendants receive the harshest sentences when they make up the smallest percentage of the population, yet they receive the lightest sentences when they make up more than 27 percent of the population (Feldmeyer and Ulmer, 2011). There is much conflicting evidence about the relationship between Hispanics and whites in relation to sentencing disparities. Young Hispanic and black males are the most likely group to be incarcerated. However, Hispanics receive 25 fewer months in prison than whites. Looking at noncitizens, they receive harsher penalties than US citizens which could help to explain the Hispanic-white gap (Light and King 2019). In regard to immigrants, white illegal aliens were found to receive shorter sentences than Latino illegal aliens. However, Latino citizens received shorter sentences than white citizens (Wolfe et. al, 2011) This exemplifies that the issue of the role of race and ethnicity in sentencing is not cut and dry. These relationships are very nuanced and vary across jurisdictions, weighing legal and extralegal factors differently. Much of the disparity between Hispanics and whites can be attributed to the negative perception many Americans hold of immigrants.

Mike Light and others conducted a study focusing on the incarceration and sentencing of noncitizens post 9/11. Interestingly enough, the severity of sentences did not change nationwide but did significantly change in New York and Washington D.C. courts. There was also a five percent increase in presentencing detention for noncitizens in New York and D.C. In fact, this change in severity was

pronounced for four years after the attack. The study also found that there was a significant increase in attacks on individuals based on national origin as well as an increased overall negative perceptions of immigrants. This not only supports the fact that the way race/ethnicity is factored into sentencing varies by courts but also that national origin plays an important role in incarceration and sentencing decisions. It further supports both integrated threat theory and racial threat theory. With a constant increase in immigration to the United States, national origin is not a factor to be overlooked.

There is very little literature on the topic of national origin. Technically, judges are not allowed to consider national origin when sentencing (Wolfe et al., 2010). However, one study has found that national origin does, in fact, effect sentencing outcomes. More specifically, "...immigration status is contingent on national origin for the decision to grant a downward departure", however national origin was not found to significantly impact the magnitude of sentence reductions (Logue, 2016). This study gives us conflicting evidence of how national origin is used in the courts when considering sentencing.

There is a voluminous amount of research about the relationship between sentencing and noncitizens. However, there is very little literature on the way in which national origin affects this relationship. This study will aid in filling this gap by looking at how national origin affects sentencing decisions using United States Sentencing Commission Data from 2010-2012.

## **Data and Methods**

I used existing data from the 2010-2012 United States Sentencing Commission report. This report contains the national origin as well as documentation status of each offender convicted in the federal database. For the purposes of this study, I will be factoring out immigration offenses and only analyzing federal criminal offenses of just non-citizens. My dependent variables are imprisonment and length of sentence. Imprisonment is coded as 1 = sentenced and 0 = not sentenced. However, 96% of noncitizens in this dataset are sentenced to prison. There is not enough variation for us to analyze so this will not be

included in the multivariate regression analysis. Length of sentence is measured by the average in months but capped at 470 months. My independent variable is national origin which I have coded into separate sections of the country based on geographic region. The regions are as follows: Mexico, South America, Caribbean, Africa, Middle East, Europe, Asia, South Pacific, and Canada. I am controlling for extralegal variables including race/ethnicity, sex, age and education. I am also controlling for legally relevant variables including presumptive guidelines, documentation status, type of crime, and criminal history. I am controlling for all of the above in order to isolate nationality to see its explicit effects on sentencing.

In previous literature, sex has been shown to have an effect on sentencing in many facets, thus I am controlling for sex and it is coded as 0 = male and 1 = female. Age is also a relevant factor and is coded into ranges: 1 = <21, 2 = 21 – 25, 3 = 26 – 30, etc. in increments of five until age 50 and greater. Criminal history is a pertinent consideration in the context of sentencing decisions and is included in this research, coded in ranges 1 thru 6 based on the category of their previous crimes. Guideline minimums play an unmatched level of importance in sentencing decisions so it was necessary to include this in the research. These minimums are coded in ranges from zero thru 9,996 months. For education, I am only using those that are college graduates. Documentation status undoubtedly is an essential part of this research and is coded as 0 = citizen and 1 = non-citizen. In this study, I included four types of criminal offenses – violent crimes, drug crimes, crimes involving firearms and fraud. It goes without saying that the type of offense plays the largest part in the sentencing decision. Seeing how different types of crimes result in different sentences dependent on national origin is an indispensable part of this research study. I will be analyzing this data using multivariate regression analysis.

## Findings

<b>Variable</b>	<b>N(%)</b>	<b>Mean (SD)</b>
Detained	79%	
Not Detained	9.8%	
Guilty Plea	96.7%	
Trial	3.3%	
Offense Severity		19.94 (9.435)
Guideline Minimum		59.36 (71.86)
Criminal History Category		1.39 (0.952)
Prison	96%	
No Prison	4%	
Male	88.5%	
Female	11.5%	
Documented	35.6%	
Undocumented	64.4%	
Mandatory imposed	84.4%	
Mandatory not imposed	15.6%	
Mexico	68%	
South and Central America	9%	
Caribbean	9.3%	
Africa	1.8%	
Middle East	1.5%	
Europe	2.2%	
Asia	3.2%	
Canada	0%	
South Pacific	0.7%	
Length		46.3 (59.8)

**Table 1. Descriptive Statistics**

Table 1 shows the descriptive statistics of the variables in this study. Of the noncitizens that are convicted, a resounding 96% are sent to prison. 68% of this subset of convicted immigrants are from Mexico. The next highest percentage of similar national origins is the Caribbean with only 9.3%. European immigrants make up only 2.2% of convicted noncitizens. However, the lowest percentage (not including Canada), is the South Pacific making up only 0.7% of immigrants. It is also significant to note

that more than half of these convicted noncitizens are undocumented. 79% of these convicted immigrants were detained and 96% pleaded guilty rather than going to trial. The overwhelming majority of these convicted immigrants are male, with only 11.5% female. The average criminal history of this group is low. Criminal history is determined by categories one thru six and the average here is 1.39 with a standard deviation of 0.9. The severity of the offense is rated on a scale from 1 thru 99. The average offense severity is 19.94 with a standard deviation of 9.4. The average length of these convicted immigrant's sentences is 46.3 months with a standard deviation of 59.8.

<b>In_length</b>	<b>Coefficient</b>	<b>Standard Error</b>	<b>p&gt; t </b>	<b>Beta</b>
South America	0.578683	0.0402228	0	0.1308643
Caribbean	0.5008096	0.0399385	0	0.1156094
Africa	0.2942237	0.0612994	0	0.0303097
Middle East	-0.0627411	0.0696867	0.368	-0.005448
Asia	0.1399897	0.0523558	0.008	0.0182696
Mexico	0.0240587	0.0342339	0.482	0.0087386
Canada	0.2029295	0.0630911	0.001	0.0200911
South Pacific	-0.0896915	0.2216584	0.686	-0.002188
_cons	3.131886	0.0332865	0	

**Table 2. Multivariate Regression Analysis w/o Controls**

<b>In_length</b>	<b>Coefficient</b>	<b>Standard Error</b>	<b>P&gt; t </b>	<b>Beta</b>
South America	0.1919543	0.0205087	0	0.0538385
Caribbean	0.878972	0.0201809	0	0.254769
Africa	0.1515171	0.0301539	0	0.0193548
Middle East	-0.0560642	0.033977	0.099	-0.0061169
Asia	-0.1067094	0.0259089	0	-0.0172564
Mexico	0.128909	0.0184434	0	0.0572648
Canada	-0.0534206	0.0308943	0.084	-0.006628
South Pacific	0.0777386	0.1087753	0.475	0.0023461
Undocumented	0.0536759	0.0076428	0	0.0245792
Sex	-0.1874175	0.0129191	0	-0.0478751
Age	0.0041249	0.0003593	0	0.039531
Criminal History	0.0611061	0.003579	0	0.0577003
Guideline Minimum	0.6524535	0.0029335	0	0.8094686
College Graduate	-0.0578094	0.01677	0.001	-0.118198
Violent Offense	0.1719845	0.031198	0	0.194055
Drug Offense	0.0388696	0.133537	0.004	0.0163413

Firearm Offense	0.0407551	0.183932	0.027	0.0095118
Fraud Offense	0.1303659	0.162397	0	0.038002
_cons	0.72777133	0.262291	0	

**Table 3. Multivariate Logistic Regression Analysis with Controls**

Table 2 shows the multivariate regression analysis without control variables and table 3 shows the multivariate logistic regression analysis with control variables. Of all the regions, defendants from the Caribbean, followed by Mexico and South America receive the longest prison sentences. Interestingly, immigrants from the Middle East and Asia do not receive longer sentences than those from Europe, the control group. Violent offenses result in longer sentences. With age, the trend was similar, showing that as the age increases so does the sentence. Females seem to receive less severe sentences than their male counterparts. Only a very small number of cases went to trial so that was not included in this analysis because of the lack of variation. College education does not seem to have much effect on the sentence given. As noted in the literature review, Hispanics receive harsher sentences than their white counterparts and this data supports this because the regions that are largely Hispanic have longer sentences. In fact, the top three regions with the longest sentence lengths are all primarily Hispanic regions. Documentation also has a significant effect on sentence length, as well as criminal history. This data shows that both legally relevant and extralegal factors have a significant effect on sentence length.

## **Conclusion**

Knowing that race and ethnicity certainly play a role in sentencing outcomes, we expect the same to be true with immigrants. This data seems to support that. Largely Hispanic countries and regions like Mexico, the Caribbean and South America receive the longest sentences compared to European immigrants, showing that the effect of national origin is somewhat of a Hispanic effect. The top three countries with the largest sentences are all those of Hispanic descent. This is likely no coincidence.

However, knowing that blacks and other non-white individuals typically receive harsher sentences, we could also assume that those from the Middle East or Africa would have longer sentences than average. The data does not support this, however. In fact, offenders from the Middle East did not have a significant difference in sentencing outcomes at all and Africa's was relatively small. This could be because of a number of reasons. Maybe these offenders were not involved in higher level crimes thus resulting in smaller sentences. It could also be because of access to the United States. Africa and the Middle East are generally poorer regions with less access to resources so it is a possibility that there are less immigrants of African or Middle Eastern descent in general. The data also supports normal trends in sentencing. For example, 96% of offenders entered a guilty plea which is not any different than the typical percentage of guilty pleas versus trial. Criminal history and documentation seem to play a significant role in sentencing outcomes, as does age and sex. Violent offenses receive the longest sentences, followed by drugs, fraud and then firearm offenses. These are very typical trends in the criminal justice system. Although, the criminal history dynamic is worth noting. Criminal history is determined through categories one thru six with an average of 1.39 and a standard deviation of 0.9. So, even the highest or most amount of criminal history is still relatively small. It seems that non-citizens are sentenced longer even for smaller crimes.

This data reinforces both racial threat theory and integrated threat theory. People feel more threatened when minority groups increase in number. So, it is likely that as immigration of Hispanic countries increase, so do their sentence lengths. As noted in the literature review, people feel threatened by immigrants so they are likely punished in a manner that reflects this perceived threat. This supports the idea that the immigration-crime nexus is largely a public opinion issue. Immigrants have not been shown to actually commit more crime than citizens, however this is what much of the public believes to be true. That is why this research is so important. The idea that immigrants are significantly more dangerous than citizens is just not shown to be true and more research needs to be done to shed even more light on this large misconception.

There are several limitations to this study. The data was only collected from the federal court of those who are already convicted. It does not show arrest or charging of these individuals. This study also did not include deportation or immigration offenses. Other studies may want to research the frequency and effects on sentencing with deportation. This study also did not include a comparison group of citizens. Future research should aim to include a comparison group of citizens of varying national origin and see how it compares to sentencing outcomes of immigrants.

The hypotheses of this study are definitely supported. The ethnicity of the immigrant certainly plays a huge role in sentencing outcomes and immigrants that come from minority origins received longer sentences than their European counterparts. This study shows that the effect of race and ethnicity is on all persons in the criminal justice system, not just citizens. The effect is just as large and maybe even more pronounced among the immigrant population. This is important because America has claimed that it is the country of opportunity – a place where everyone can pursue their own “American Dream”. However, with a disproportionate amount of minorities, both citizens and non-citizens, being disparaged because of their skin or national origin, does not support that this is a country of opportunity or free will. More research needs to be done to show this disparity and needs to be brought into the public sphere so average citizens can understand that immigrants are not a threat to them or their communities. Immigrants are a positive addition to our country and economy and have been for decades.



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## ACADEMIC VITA

### EMMA (NIKKI) AIGELDINGER

#### Objective

Hard working, creative and dedicated undergraduate student passionate about law and its impact on society. Eager to work in a law firm environment.

#### Education

##### The Pennsylvania State University

##### University Park, PA

*Schreyer Honors College* | BS in Criminology – Concentration in Legal Studies                      Graduation: May 2020

*College of Liberal Arts* | Certificate in Holocaust and Genocide Studies

Senior Research Thesis: The Demographic Impacts of Sentencing Outcomes for Immigrants

#### Experience

Research Assistant at the Quattrone Center for the Fair Administration of Justice | May – July 2019

- Aided the Center in their project about Prosecutorial Misconduct
- Focused on issues of Open File Policies, Model Rules, and other reform proposals

United States Federal District Court for the Eastern District of Pennsylvania | May – July 2018

Summer Intern

- Worked in the Chambers and under the supervision of the Honorable Gene E.K. Pratter.
- Helped conduct legal research to contribute to court opinions.
- Helped write jury instructions, memorandums, and attended legal conferences.

Highland Orchards

Manager of Pick Your Own, Member of Special Projects Team | July 2015 - July 2018

- Oversee all facets of the orchard including running the bakery, working the registers, opening and closing the store, scheduling staff, training incoming employees, and inventory management.
- Manage the Pick Your Own program which includes signing in guests, supervising the fields, assisting customers in identifying and picking fruit, and checking out guests. Customer reviews consistently messaged high level customer service.
- Work independently and as a part of a team to achieve superior customer experience.
- Work with the Special Projects Team to improve the facility. Tasks include painting, building, cleaning and other beautification projects.

#### Volunteer Activities

Penn State University

THON, the Penn State IFC/Panhellenic Dance Marathon

Executive Chair (President), Ohana, Academic Year 2019-2020

- Oversee the entire 400-member organization and it's 30-member leadership team
- Main point of contact for entire organization
- Run the organization and deal with any problems that may arise
- Implement new ideas to facilitate a positive environment for Ohana's members
- Run and oversee all facets of the organization including executive team and general body meetings, fundraising efforts, member morale, special events, and support for our Four Diamonds families

#### Executive Fundraising Chair, Ohana, Academic Year 2018-2019

- Implement and oversee all fundraising efforts for the largest THON organization.
- Responsible for creatively conceiving all fundraising strategies including, but not limited to, “canning” weekends, athletic competitions, restaurant sponsorships and College Game Day Live.

#### Family Facilitator, Ohana, Academic Year 2017-2018

- Responsible for overseeing 50 student volunteers, a subset of the four-hundred-member organization, which has an overall fundraising goal of \$150,000 to engage in philanthropic activities for the benefit of curing pediatric cancer.
- Facilitate integration of new members into broader organization by engaging in team building and mission driven activities in support of Four Diamonds Families.

#### Savoir Faire

- Member, Savior Faire, Penn State’s only all-female acapella group.

#### Harmony

- Member, a student run organization at Penn State which works with special needs youth to enhance development and knowledge of cognitive musical skills.

### **Honors and Awards**

#### Penn State University

- Gene and Roz Chaiken Endowment for the Study of the Holocaust
- Dean’s List – All semesters

### **Skills**

- Exceptional written and verbal communication skills
- Proficient with Microsoft Office and iOS
- Outstanding interpersonal skills
- Collaborative team member

