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Sentencing the “Other”: Punishment of Latinx Defendants

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ABSTRACT

Some recent state and federal sentencing studies have turned up an interesting puzzle: Contrary to a prominent sociological group threat theory, Latinx defendants seem to be punished most harshly relative to white defendants in court jurisdictions where Latinx populations are smallest. In this Article, we briefly review literature on punishment disparities between Latinx and white defendants (Latinx-white disparity) at the individual case level. Next, we highlight some recent studies that show how Latinx-white disparity in criminal punishment is often conditional on U.S. citizenship status. Third, we describe recent research suggesting that Latinx-white punishment disparities are conditioned by characteristics of social contexts, especially local jurisdictions' Latinx population presence and immigration characteristics. We then present findings from two current research projects: (1) a study of the relationship between Latinx-white punishment disparity in federal courts and changes in Latinx immigration in federal districts; and (2) a study of differences in the punishment of Latinx defendants in Pennsylvania state courts across counties that differ in terms of Latinx population size, immigration, and court caseload presence. A key theme of these empirical findings is that Latinx disadvantage in federal court sentencing (for non-immigration offenses) appears to concentrate among non-U.S. citizens (especially those who are undocumented) and in places that are not traditional Latinx immigration destinations. In Pennsylvania state courts, Latinx disadvantage in incarceration relative to white defendants appears to concentrate in counties with small Latinx populations, little or no Latinx population growth, or both. In fact, some of the most severe Latinx-white punishment disparities can be found in places where Latinx people are least numerous.

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INTRODUCTION

Empirical research on criminal punishment disparity between Latinx and white defendants in federal and state courts (Latinx-white disparity) was relatively uncommon until the past two decades. Reviews at the turn of the twenty-first century called for more research on these disparities, for both incarceration and sentence length decisions in federal and state courts. In general, research since 2000 has found that Latinx defendants are disadvantaged relative to white defendants in criminal punishment outcomes. Furthermore, research has moved beyond simply assessing Latinx-white disparity in criminal punishment to analyzing how such disparity is conditional on other social statuses, especially U.S. citizenship status. Still other research suggests that Latinx-white punishment disparity varies across the social contexts of trial court jurisdictions. In fact, some recent federal and state sentencing studies have turned up an interesting puzzle: Contrary to a prominent sociological group threat theory, Latinx defendants seem to be punished most harshly relative to whites in court jurisdictions where Latinx populations are smallest and where Latinx immigrant presence is comparatively less prominent.

In this Article, we briefly review literature on Latinx-white punishment disparity at the individual case level. Next, we highlight some recent studies that show the conditionality of such disparity on U.S. citizenship status. Third, we describe recent research suggesting that Latinx-white punishment disparity is conditional on social contexts, especially local jurisdictions' Latinx population presence and immigration characteristics.

The major portion of our Article then presents findings from two current research projects: (1) a study of the relationship between Latinx-white punishment disparity in federal courts and changes in Latinx immigration in federal districts; and (2) a study of differences in the punishment of Latinx defendants in Pennsylvania state courts across counties that differ in terms of Latinx population size, immigration, and court caseload presence. A key theme of these empirical findings is that Latinx disadvantage in federal sentencing relative to white defendants (for non-immigration offenses) appears to concentrate among non-U.S. citizens (especially those who are undocumented) and in places that are not traditional Latinx immigration destinations. In fact, some of the largest Latinx-white punishment disparities are found in places where Latinx immigrants are least numerous. An empirical analysis of state court sentencing data from Pennsylvania, one example of a nontraditional Latinx immigrant destination, also displays this pattern of more severe sentences for

Latinx defendants in places where Latinx residents and immigration are least prominent. Our research shows that Latinx defendants face greater punishment disadvantage relative to white defendants (particularly in imprisonment decisions) in Pennsylvania counties with small Latinx populations, little or no immigration, and where Latinx defendants make up a comparatively small share of court caseloads.

I. RESEARCH ON LATINX-WHITE PUNISHMENT DISPARITY AT THE INDIVIDUAL CASE LEVEL

Reviews of sentencing literature at the turn of the twenty-first century called for more research that included Latinx defendants and examined Latinx-white punishment disparity.¹ Many studies beginning in the early 2000s heeded this call, and several included black, white, and Latinx sentencing comparisons.² In such studies, scholars found evidence of disparities in criminal punishment disadvantaging individual Latinx defendants relative to their white counterparts.³

Several recent reviews of the sentencing literature show that Latinx defendants receive more severe sentences than comparable white defendants receive.⁴ As is true of research on black-white punishment disparity, the largest differences in outcomes are found in incarceration decisions.⁵ In addition, there is substantial evidence of heterogeneity in the sentencing of Latinx defendants

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1. See, e.g., Cassia C. Spohn, *Thirty Years of Sentencing Reform: The Quest for a Racially Neutral Sentencing Process*, 3 CRIM. JUST. 427, 480–81 (2000); Marjorie S. Zatz, *The Convergence of Race, Ethnicity, Gender, and Class on Court Decision making: Looking Toward the 21st Century*, 3 CRIM. JUST. 503, 529–31 (2000).
 2. See Ryan D. King & Michael T. Light, *Have Racial and Ethnic Disparities in Sentencing Declined?*, 48 CRIME & JUST. 365, 374–76 (2019); Jeffery T. Ulmer, *Recent Developments and New Directions in Sentencing Research*, 29 JUST. Q. 1, 13–14 (2012).
 3. See, e.g., JOHN H. KRAMER & JEFFERY T. ULMER, SENTENCING GUIDELINES: LESSONS FROM PENNSYLVANIA 114 (2009); Spohn, *supra* note 1, at 474; Cassia Spohn & David Holleran, *The Imprisonment Penalty Paid by Young, Unemployed Black and Hispanic Male Offenders*, 38 CRIMINOLOGY 281, 291–93 (2000); Darrell Steffensmeier & Stephen Demuth, *Ethnicity and Judges' Sentencing Decisions: Hispanic-Black-White Comparisons*, 39 CRIMINOLOGY 145, 170 (2001) [hereinafter Steffensmeier & Demuth, *Hispanic-Black-White Comparisons*]; Darrell Steffensmeier & Stephen Demuth, *Ethnicity and Sentencing Outcomes in U.S. Federal Courts: Who is Punished More Harshly?*, 65 AM. SOC. REV. 705, 726 (2000) [hereinafter Steffensmeier & Demuth, *Punished More Harshly*].
 4. King & Light, *supra* note 2, at 370, 374; Cassia Spohn, *Race, Crime, and Punishment in the Twentieth and Twenty-First Centuries*, 44 CRIME & JUST. 49, 77 (2015) (discussing evidence from multiple studies showing Latinx-white disparities in sentencing). Ulmer, *supra* note 2, at 18.
 5. King & Light, *supra* note 2, at 374, 386. For a discussion of black-white sentencing disparity, see Ojmarrh Mitchell, *A Meta-Analysis of Race and Sentencing Research: Explaining the Inconsistencies*, 21 J. QUANTITATIVE CRIMINOLOGY 439, 462 (2005).

related to age and gender. That is, a handful of studies examine the intersectionality of Latinx ethnicity, gender, and age; these show that such ethnic punishment disparity concentrates among younger Latino males,⁶ a set of findings that parallels research on black-white punishment disparity.⁷

The focal concerns framework is a predominant sociological perspective used to explain the role of extralegal factors in sentencing (and sometimes other criminal justice decisions, such as charging, probation revocation, and parole). It describes a decision-making model in which race, ethnicity, citizenship, and other extralegal factors may influence punishment decisions and sentencing outcomes, even under constraining systems like federal and state sentencing guidelines.⁸ The focal concerns perspective argues that sentencing decisions are structured by court actors' interpretations of three focal concerns of punishment: (1) perceived defendant blameworthiness, (2) protection of the community or perceived defendant dangerousness, and (3) perceptions of practical constraints.⁹ Legally relevant factors that most directly connect to blameworthiness and dangerousness (for example, offense-related factors, criminal history, and legal structures like sentencing guidelines) are likely the dominant influences on sentencing outcomes. The ultimately subjective and interpretive nature of the focal concerns, however, makes it likely that stereotypes and biases based on ethnicity, citizenship, or other extralegal defendant characteristics such as race, gender, and age can influence the sentencing process.¹⁰ In this way, certain social statuses can become equated with criminality, culpability, dangerousness, and social pathology in the perceptions of court decisionmakers.

In this view, Latinx defendants are likely to receive harsher sentences for example, than white defendants if judges and prosecutors hold stereotypical perceptions of Latinx defendants as more dangerous or threatening, morally blameworthy, and likely to recidivate. Some sociological studies show that court

6. See, e.g., KRAMER & ULMER, *supra* note 3, at 77, 82–83, 181; Cassia Spohn, *The Effects of the Offender's Race, Ethnicity, and Sex on Federal Sentencing Outcomes in the Guidelines Era*, 76 LAW & CONTEMP. PROBS. 75, 77, 98–100 (2013); Steffensmeier & Demuth, *Punished More Harshly*, *supra* note 3, at 716; Steffensmeier & Demuth, *Hispanic-Black-White Comparisons*, *supra* note 3, at 166–68; Darrell Steffensmeier et al., *Intersectionality of Race, Ethnicity, Gender, and Age on Criminal Punishment*, 60 SOC. PERSP. 810, 812 (2017); Jill K. Doerner & Stephen Demuth, *The Independent and Joint Effects of Race/Ethnicity, Gender, and Age on Sentencing Outcomes in U.S. Federal Courts*, 27 JUST. Q. 1, 21 (2010).

7. Ulmer, *supra* note 2, at 6.

8. KRAMER & ULMER, *supra* note 3, at 7–8.

9. Darrell Steffensmeier et al., *The Interaction of Race, Gender, and Age in Criminal Sentencing: The Punishment Cost of Being Young, Black, and Male*, 36 CRIMINOLOGY 763, 766–67 (1998).

10. KRAMER & ULMER, *supra* note 3, at 185.

officials and society at large often view black and Latinx offenders as violence-prone, threatening, disrespectful of authority, and more criminal in their lifestyles.¹¹ Of relevance here is Eduardo Bonilla-Silva's concept of "racialized social systems" which helps explain how racial ideologies—for example, seeing Latinx defendants as more dangerous or exhibiting greater criminal propensity—may become "embedded in normal operations of institutions" (such as courts) in ways that foster racially charged actions even if the motivations are race-neutral.¹² Furthermore, Latinx defendants may receive harsher sentences because they may face added practical barriers in navigating the justice system (such as difficulty with the English language) and may lack social and monetary resources to, for example, secure bail or pay court costs.

II. LATINX-WHITE PUNISHMENT DISPARITY SHAPED BY CITIZENSHIP STATUS

As mentioned above, the degree of Latinx punishment disadvantage relative to white defendants is often found to be heterogeneous, varying by gender and age. More recent research suggests that another major factor shaping Latinx-white punishment disparity is citizenship status.¹³ In federal sentencing, disadvantage has been found to concentrate among Latinx defendants who lack U.S. citizenship.¹⁴ Moreover, such citizenship-linked disparities affecting Latinx defendants in federal punishment have grown since the early 1990s.¹⁵

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11. See George S. Bridges & Sara Steen, *Racial Disparities in Official Assessments of Juvenile Offenders: Attributional Stereotypes as Mediating Mechanisms*, 63 AM. SOC. REV. 554, 555–56 (1998).
 12. Eduardo Bonilla-Silva, *Rethinking Racism: Toward a Structural Interpretation*, 62 AM. SOC. REV. 465, 469, 476 (1997).
 13. King & Light, *supra* note 2, at 424 ("Recent work, including our analyses . . . suggests that accounting for citizenship fundamentally changes the picture of Hispanic-white sentencing disparities. Noncitizens receive substantially harsher penalties than US citizens, especially for incarceration decisions, and citizenship explains the majority of the punishment gap between Hispanic and white offenders." (citation omitted)).
 14. Michael T. Light et al., *Citizenship and Punishment: The Salience of National Membership in U.S. Criminal Courts*, 79 AM. SOC. REV. 827, 843 (2014); Mercedes Valadez & Xia Wang, *Citizenship, Legal Status, and Federal Sentencing Outcomes: Examining the Moderating Effects of Age, Gender, and Race/Ethnicity*, 58 SOC. Q. 670, 686 (2017); Scott E. Wolfe et al., *Unraveling the Effect of Offender Citizenship Status on Federal Sentencing Outcomes*, 40 SOC. SCI. RES. 349, 360 (2011).
 15. See Michael T. Light, *The New Face of Legal Inequality: Noncitizens and the Long-Term Trends in Sentencing Disparities Across U.S. District Courts, 1992–2009*, 48 LAW & SOC'Y REV. 447, 465 (2014) ("[W]hereas racial disparity has been relatively stable . . . there appears to be a very clear trend indicating increased Hispanic disparity [T]aken at face value, these results align with the current emphasis in extant research on the increasing importance of Hispanic ethnicity. However, the results . . . [also] show that

In fact, studies of federal court sentencing by Michael Light and colleagues have shown (1) non-U.S. citizens receive substantially harsher penalties than U.S. citizens, especially for incarceration decisions; (2) citizenship status primarily explains the punishment gap between Latinx and white defendants; and (3) most of the increase in Latinx-white disparity in federal punishment since 1992 is attributable to the treatment of noncitizens.¹⁶ In addition, Scott Wolfe and colleagues examined U.S. Sentencing Commission data from 2006 and found that sentence lengths imposed on Latinx defendants differed by both citizenship status and whether non-U.S. citizens were documented or undocumented.¹⁷ Latinx U.S. citizens received slightly shorter (5 percent) sentences than white defendants, but Latinx defendants who were undocumented immigrants (convicted of non-immigration offenses) received 13 percent longer average sentences than white defendants.¹⁸

Citizenship status may shape perceptions of the focal concerns of sentencing among judges and prosecutors. Latinx noncitizens may be seen by some court actors as more threatening, dangerous, morally blameworthy, and may face more practical disadvantages in the system, such as securing effective counsel, pretrial release, and other considerations. Research by Michael T. Light, in fact, found that federal judges viewed defendants who were non-U.S. citizens, including but not limited to Latinx immigrants, as more morally blameworthy and offensive in that they were seen as having violated the hospitality of the United States by committing crimes.¹⁹ Light also found that such immigrants were also seen as more threatening and dangerous.²⁰

what appears to be increasing severity against Hispanics is largely attributable to increases in citizenship disparity.”).

16. *Id.* at 469–71; *see also* Light et al., *supra* note 14, at 844.

17. Wolfe et al., *supra* note 14, at 352, 356.

18. *See id.* at 357 tbl.4. Table 4 shows the coefficient for Latinx “illegal aliens” in column 3 as 0.13. *Id.* Since the sentence length variable is logged, it has a proportional interpretation, and thus, it translates into a sentence length difference of +13 percent for Latinx undocumented defendants, compared to white U.S. citizens, the reference category.

19. *See* Michael T. Light, *Punishing the “Others”: Citizenship and State Social Control in the United States and Germany*, 58 *EUR. J. SOC.* 33, 59 (2017) (“The criminality of non-state members engendered responses that explicitly linked citizenship status and punishment. Specifically, many of the judges resented that those who were not members of their society, especially those who entered unlawfully, would compound their status by committing crimes. This was often framed by judges in terms of violating their countries’ hospitality.”).

20. *See id.* at 37.

III. LATINX-WHITE PUNISHMENT DISPARITY SHAPED BY IMMIGRATION CONTEXTS

Research on federal courts,²¹ and to a lesser extent state courts,²² has shown that the degree of Latinx punishment disadvantage relative to white defendants varies according to court contextual characteristics. The major social contextual characteristic that seems to condition this disparity is the local prevalence of Latinx communities within a given jurisdiction. In terms of public perceptions of immigration, Xia Wang found that the perceived size of the undocumented Latinx immigrant population (as opposed to the actual immigrant population size) was associated with greater public perceptions of Latinx and overall criminal threat.²³

But the research on how the degree of Latinx-white punishment disparity relates to jurisdictional social contexts has revealed some puzzling patterns. Research on federal guideline departures reports that federal judicial districts with larger Latinx populations were less likely to grant more lenient downward departures to individual Latinx defendants.²⁴ But Paula Kautt found that the Latinx percentage of a federal district's population did not significantly affect sentence lengths imposed in federal drug cases in the late 1990s.²⁵ Similarly, Xia Wang and Daniel Mears examined nationwide state court data from the early 2000s and did not find any significant pattern for Latinx sentencing in relation to the size of local Latinx communities.²⁶ By contrast, Ben Feldmeyer and Jeffery Ulmer found that Latinx-white disparity in federal sentence lengths was greatest in districts where Latinx communities were smallest, while no significant Latinx-white disparities were evident in districts with comparatively large Latinx

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21. See, e.g., Ben Feldmeyer & Jeffery T. Ulmer, *Racial/Ethnic Threat and Federal Sentencing*, 48 J. RES. CRIME & DELINQ. 238, 259 (2011); Richard D. Hartley & Rob Tillyer, *Defending the Homeland: Judicial Sentencing Practices for Federal Immigration Offenses*, 29 JUST. Q. 76, 94–97 (2012); Brian D. Johnson et al., *The Social Context of Guidelines Circumvention: The Case of Federal District Courts*, 46 CRIMINOLOGY 737, 737–38 (2008).
 22. See, e.g., Ben Feldmeyer et al., *Racial, Ethnic, and Immigrant Threat: Is There a New Criminal Threat on State Sentencing?*, 52 J. RES. CRIME & DELINQ. 62, 84 (2015) (noting that, contrary to expectations, Latinx defendants sentenced in counties with increasing immigrant populations were less likely to receive a custodial sentence); Jeffery T. Ulmer & Brian Johnson, *Sentencing in Context: A Multilevel Analysis*, 42 CRIMINOLOGY 137, 145–46 (2004); Xia Wang & Daniel P. Mears, *A Multilevel Test of Minority Threat Effects on Sentencing*, 26 J. QUANTITATIVE CRIMINOLOGY 191, 192 (2010).
 23. Xia Wang, *Undocumented Immigrants as Perceived Criminal Threat: A Test of the Minority Threat Perspective*, 50 CRIMINOLOGY 743, 764 (2012).
 24. Johnson et al., *supra* note 21, at 766–67.
 25. Paula M. Kautt, *Location, Location, Location: Interdistrict and Intercircuit Variation in Sentencing Outcomes for Federal Drug-Trafficking Offenses*, 19 JUST. Q. 633, 658–59 (2002).
 26. Wang & Mears, *supra* note 22, at 207.

communities.²⁷ But none of this prior research on Latinx-white punishment disparity in relation to local Latinx population presence has addressed larger changes in Latinx immigration patterns of the 1990s and 2000s.

These studies are typically motivated by sociological theories of racial group threat. Group threat argues that majorities protect their privileged positions of power and suppress the growing strength of minority racial or ethnic groups using a variety of social controls at their disposal.²⁸ Group threat theories predict greater majority punitiveness toward minority groups seen as threatening, and this greater punitiveness is said to be conditioned by the prominence or growth in the size or salience of those minority groups in a locality. Hugh Blalock's classic political/social threat pattern entailed an inverted U-shaped relationship between minority group population size and repression or punitive social control toward that minority group.²⁹ In other words, minority group members experience little punitiveness when their numbers are small and increasing punitiveness when their local presence is growing in size and salience. But when a minority group becomes large enough to become institutionally established in local power structures, it then experiences less repression and punitive social control compared to the places in the middle of the distribution of population presence.

Almost all sentencing studies that examine group threat focus on comparing the relative size of black or Latinx populations at a given point in time in connection with the degree of black or Latinx punishment disadvantage relative to white defendants at the individual case level.³⁰ Heightened punishment of Latinx defendants, especially non-U.S. citizens, may depend not so much on the population presence of Latinx people in a jurisdiction at a given time, but might

27. Feldmeyer & Ulmer, *supra* note 21, at 259; cf. Ronald Helms, *Modeling the Politics of Punishment: A Conceptual and Empirical Analysis of 'Law in Action' in Criminal Sentencing*, 37 J. CRIM. JUST. 10, 16 (2009) ("The results showed that sentences were more severe in jurisdictions with a larger Black population, but in jurisdictions most heavily populated by African Americans punishments were less severe.").

28. See, e.g., HUBERT M. BLALOCK, JR., TOWARD A THEORY OF MINORITY-GROUP RELATIONS 109–33, 159 (1967); Stephanie L. Kent & David Jacobs, *Social Divisions and Coercive Control in Advanced Societies: Law Enforcement Strength in Eleven Nations From 1975 to 1994*, 51 SOC. PROBS. 343, 346–47 (2004).

29. BLALOCK, *supra* note 28, at 147.

30. Ben Feldmeyer & Joshua C. Cochran, *Racial Threat and Social Control: A Review and Conceptual Framework for Advancing Racial Threat Theory*, in 24 ADVANCES IN CRIMINOLOGICAL THEORY 283, 307–08 (James D. Unnever, Shaun L. Gabbidon, & Cecilia Chouhy eds., 2018) ("Sentencing studies . . . have commonly used cross-level interactions to assess whether Black (or Latino) defendants receive harsher outcomes in areas with higher percentages of Black (or Latino) residents."). For a notable exception, see Light, *supra* note 15. This study examined federal sentencing disparities by race, ethnicity, and citizenship status over time and across districts. *Id.* at 499, 465.

be influenced more by changes in Latinx immigration. Feldmeyer and colleagues call this process "immigrant threat."³¹ According to them:

[R]esearch on racial threat (particularly within sentencing literature) has given almost no attention to the ways that *immigrant* context shapes perceptions of threat and application of social controls toward minority groups [M]any Americans believe that immigration contributes to social problems in U.S. communities, such as increased levels of crime and violence³²

Feldmeyer and colleagues examined Florida state court sentencing outcomes for black and Latinx defendants from 2000–2006 in relation to county racial and ethnic composition and county percent change in immigrant population from 1990–2000.³³ They found that Latinx defendants had decreased odds of jail and prison incarceration in Florida counties with growing Latinx immigrant populations.³⁴ By contrast, Latinx defendants had significantly greater odds of incarceration in counties with less Latinx immigration.³⁵ Thus, Latinx defendants experienced the greatest punishment disadvantage relative to white defendants when sentenced in court contexts where Latinx immigration was less pronounced rather than more prominent.³⁶ This finding does not coincide with the predictions of group threat theory but instead points to heightened punishment disparity between Latinx and white defendants in communities where Latinx people are least numerous rather than where they are more numerous and/or growing more prominent. Unfortunately, Feldmeyer and colleagues did not differentiate between Latinx citizens and noncitizens.³⁷ This reflects a shortcoming of most state-level court data.³⁸

31. Feldmeyer et al., *supra* note 22, at 62.

32. *Id.* at 67.

33. *Id.* at 68–69.

34. *Id.* at 82 ("In sharp contrast to immigrant threat positions . . . we find that Latino defendants are significantly more advantaged when they are sentenced in counties with growing immigrant populations. The significant negative interaction term between Latino ethnicity and county immigrant growth indicates that an increase in the immigrant population actually decreases a Latino defendant's chances of being sentenced to prison or jail relative to Whites.").

35. *Id.* ("Figures 1C and 2C . . . show that Latinos have 30 to 50 percent greater odds of jail and prison sentences (compared to Whites) in counties with low immigrant growth but actually have similar or lower odds of incarceration compared to Whites in high immigrant growth counties.").

36. *Id.* at 82.

37. *Id.*

38. King & Light, *supra* note 2, at 424 ("Efforts to understand the effects of citizenship on punishment mostly involve the federal system, because of data constraints; few state court systems record citizenship status throughout case processing.").

IV. LATINX-WHITE PUNISHMENT DISPARITY AND IMMIGRANT DESTINATIONS

Why would patterns of Latinx immigration in court jurisdictions shape Latinx-white punishment disparity? The past three decades have seen major changes in Latinx immigration patterns. Not only has Latinx immigration increased overall, but Latinx immigrants have increasingly been settling in nontraditional destinations—places that had previously seen little or no Latinx immigration. Latinx immigration increased dramatically during the 1990s and continued to increase in the 2000s, and the shift in Latinx immigration from traditional immigration destinations to new, nontraditional destinations has been a major demographic shift in the United States.³⁹ Recent sociological and demographic research on Latinx immigration has made important distinctions between types of Latinx immigrant destinations. Traditional immigrant destinations are those with stable, relatively large populations of Latinx immigrants before 1990. New immigrant destinations are those experiencing relatively large increases in Latinx immigrant populations from 1990–2000, while emerging destinations are those with large increases in Latinx immigrant populations from 2000–2010 but not 1990–2000.

Until the 1990s, Latinx immigration heavily concentrated in states such as California, Florida, New York City, and Chicago.⁴⁰ In these traditional destinations, established Latinx communities have relatively stable local social organization and institutions.⁴¹ By contrast, in the 1990s and throughout the 2000s, Latinx immigrants increasingly relocated away from traditional destinations to new destinations in the Southeast, Midwest, and Northeast, and in exurbs and smaller towns.⁴² Some reports have characterized the reception of Latinx immigrants in newer, nontraditional immigrant destinations as less welcoming and supportive than in traditional destinations.⁴³ In these new destinations, Latinx immigrants have often met with contentious local

39. AUDREY SINGER, BROOKINGS INST., CTR. ON URBAN AND METRO. POLICY, *THE RISE OF NEW IMMIGRANT GATEWAYS* 1–2, 7–8, 12–13, 14 tbl.3 (2004).

40. Charles Hirschman & Douglas S. Massey, *People and Places: The New American Mosaic in NEW FACES IN NEW PLACES: THE CHANGING GEOGRAPHY OF AMERICAN IMMIGRATION* 1, 3 (Douglas S. Massey ed., 1st papercover ed. 2010) (noting that established immigrant-ethnic communities and economic niches fostered continued immigration to the same places by offering immigrants housing, jobs, and familiarity); see also Jorge Durand & Douglas S. Massey, *New World Orders: Continuities and Changes in Latin American Migration*, 630 ANNALS AM. ACAD. POL. & SOC. SCI. 20, 32 (2010).

41. See Hirschman & Massey, *supra* note 40, at 3.

42. See SINGER, *supra* note 39.

43. See Hirschman & Massey, *supra* note 40, at 12.

responses.⁴⁴ According to Charles Hirschman and Douglas Massey, "[M]any new immigrants are not being completely welcomed nor even accepted in new destination communities."⁴⁵ Helen Marrow also depicts a qualitative difference in Latinx immigrant experiences in such new destinations: "In contrast, scholarship conducted after 2006 poignantly documents Latinos' rising levels of fear, sharpening perceptions of institutional and interpersonal mistreatment, and frustration with blocked doors."⁴⁶ Moreover, new destinations tend to lack the established institutional, social, and political presence found in traditional immigrant destinations.⁴⁷ In addition, there are nondestinations for Latinx immigrants. That is, many jurisdictions do not have appreciable Latinx populations and have not experienced growth in Latinx immigration.

Latinx defendants who are not U.S. citizens might be especially likely to elicit constellations of intersecting ethnic and anti-immigrant stereotypes linked to focal concerns of punishment, a possibility raised by the prior research reviewed above showing that Latinx punishment disadvantage in federal sentencing appears to concentrate among noncitizens. Different types of Latinx

44. See David M. Ramey, *Immigrant Revitalization and Neighborhood Violent Crime in Established and New Destination Cities*, 92 SOC. FORCES 597, 603-04 (2013) ("[E]stablished destinations are home to large immigrant populations, encouraging the growth of strong co-ethnic community ties that extend across neighborhood boundaries. These communities may be positioned to provide the economic and social context for immigrant revitalization. Social and governmental institutions in established destinations are organized in such a manner as to encourage immigrant incorporation and social cohesion, rather than conflict and mistrust. By contrast, such arrangements are less likely to prevail in new destinations, rendering some neighborhoods less able to integrate new arrivals into the local community . . ."); see also Katherine Fennelly, *Prejudice Toward Immigrants in the Midwest*, in NEW FACES IN NEW PLACES, *supra* note 40, at 151, 174 ("In some cases . . . immigration led to xenophobia and prejudice among natives, who perceived them as threatening competitors for resources, group identity, and power.") ("In . . . settings [where competition for jobs is particularly evident], contact and proximity to immigrants are likely to produce conflicting attitudes among low income white residents because they make the economic threat of foreign-born workers appear more immediate and more serious. The end result is that many Euro-Americans may have friendly relations with some individual immigrants, while simultaneously harboring resentment and supporting broad negative stereotypes of groups."); David Griffith, *New Midwesterners, New Southerners: Immigration Experiences in Four Rural American Settings*, in NEW FACES IN NEW PLACES, *supra* note 40, at 188 ("Some in the state have backed English-only initiatives and other anti-immigration policies, and newspapers around the state continue to run editorials portraying Iowa's immigrants in negative terms.").

45. Hirschman & Massey, *supra* note 40, at 11.

46. Helen B. Marrow, *On the Line: Latino Life in New Immigrant Destinations After 2005*, 46 CONTEMP. SOC. 265, 265 (2017) (reviewing VANESA RIBAS, *ON THE LINE: SLAUGHTERHOUSE LIVES AND THE MAKING OF THE NEW SOUTH* (2016)).

47. Ramey, *supra* note 44, at 603.

immigration destinations, however, might exhibit different patterns of punishment disparity affecting Latinx defendants. In other words, the degree to which Latinx defendants, especially noncitizens, are disadvantaged in court punishment decisions relative to white defendants may depend on the jurisdiction's Latinx immigration context.

First, in traditional destinations, Latinx defendants may not be seen as strange, threatening "others" and court actors might be less likely to perceive Latinx citizens or even noncitizens as more threatening per se. This may occur because Latinx communities are more numerous, institutionally integrated, and perhaps more politically enfranchised in traditional immigrant destinations. Empirically, this expectation is supported by Feldmeyer and Ulmer's findings showing that Latinx defendants sentenced in federal districts where Latinx populations were largest received the most favorable outcomes.⁴⁸ It is also supported by Feldmeyer and colleagues' study of Florida sentencing.⁴⁹ These studies are consistent with the pattern of less sentencing disadvantage for Latinx defendants in places where Latinx communities are larger and more integrated, which would be expected if they are not perceived as threatening in these contexts.

In addition, there are possible patterns by which Latinx-white punishment disparity may be heightened that are also not anticipated by traditional group threat theory. First, punishment disadvantage affecting Latinx noncitizens may be particularly pronounced in the new Latinx immigration destinations, a pattern Jeffery Ulmer and Brandy Parker call "recent threat."⁵⁰ In this pattern, Latinx-white punishment disparities would be small or nonexistent in traditional Latinx immigrant destinations, but they would be substantial in court jurisdictions located in new immigration destinations.⁵¹

Ulmer and Parker identify a second threat pattern—which they call persistent threat—in which Latinx defendants may experience enduring punishment disadvantage relative to white defendants in jurisdictions that showed heightened Latinx-white disparities following increases in Latinx immigration.⁵² Although related, the recent and persistent threat patterns are analytically distinct. While both patterns anticipate heightened Latinx punishment disadvantage relative to white defendants following increases in Latinx immigration, they differ in their predictions regarding the trajectory of

48. Feldmeyer & Ulmer, *supra* note 21, at 258–59.

49. See Feldmeyer et al., *supra* note 22, at 82.

50. Jeffery T. Ulmer & Brandy R. Parker, *Federal Sentencing of Hispanic Defendants in Changing Immigrant Destinations*, JUST. Q., June 2019, at 1, 8–9.

51. *Id.* at 8–9.

52. *Id.* at 9.

such disparities. Under the persistent threat pattern, heightened Latinx-white punishment disparities precipitated by increased Latinx immigration would persist over time, whereas the recent threat pattern anticipates that the magnitude of said disparities would subside as time passes.⁵³

Finally, Ulmer and Parker identify an exotic threat pattern, which they use to describe situations in which Latinx defendants may be perceived as "most threatening where they are least numerous."⁵⁴ Where Latinx defendants, especially noncitizens, are infrequently encountered, they may be more likely to be viewed as strange, threatening others and perceived as especially dangerous and blameworthy. That is, federal judges and prosecutors might rely more on threatening and fearful stereotypes about Latinx people in terms of focal concerns of sentencing when they have less real-world experience with Latinx defendants or even community members. The notion of exotic threat would therefore anticipate heightened Latinx-white punishment disparity in nonimmigrant destinations. This logic is somewhat consistent with Gordon Allport's influential minority contact hypothesis in the sociology of race and ethnic relations.⁵⁵ This contact hypothesis states that, under certain conditions, intergroup contact and interaction erodes prejudice, while lack of contact incubates it. More generally, greater majority-minority contact, interaction, and integration within communities may foster greater appreciation of the diversity of experiences, personality characteristics, preferences, and activities among members of minority groups and less reliance on stereotypes and group attributions. In other words, greater minority group presence and integration into communities would make it more likely that members of the majority recognize minority group members as unique individuals, rather than in terms of group stereotypes.

Little research has examined the sentencing of Latinx individuals specifically in nonimmigrant destinations where there are not prominent Latinx communities, there is little immigration, and Latinx defendants make up a very small share of court caseloads. A pair of studies, however, found that Latinx defendants received the most severe punishment outcomes relative to white defendants when sentenced in jurisdictions with comparatively small Latinx

53. *Id.*

54. *Id.*

55. See GORDON W. ALLPORT, THE NATURE OF PREJUDICE 281 (1954). Per Allport, contact can erode prejudice when the parties interact as equals in status. Not all contact necessarily erodes prejudice, though.

populations.⁵⁶ In the remainder of this Article, we present findings from two current research projects that further delve into the question of how Latinx-white punishment disparity varies in relation to immigration and population contexts. We first provide an overview and highlights from an ongoing study of Latinx-white disparity in federal sentencing in relation to Latinx immigrant destinations. We then present evidence from an exploratory study of Latinx-white punishment disparity across Pennsylvania courts, which are located in counties that differ in terms of local Latinx population size and immigration patterns.

V. LATINX/CITIZENSHIP PUNISHMENT DISPARITY VARIATION IN FEDERAL COURTS

Ulmer and Parker examined whether federal courts located in different types of Latinx immigrant destinations exhibit differing levels of Latinx punishment disadvantage relative to white defendants during two time periods.⁵⁷ They examined federal sentencing of Latinx defendants in both new and emerging destinations compared to those in traditional immigrant destinations and in nonimmigrant destinations and assessed Latinx U.S. citizen and noncitizen disadvantage relative to the three hypothetical patterns described above: recent threat, persistent threat, and exotic threat.⁵⁸ They used data from the U.S. Sentencing Commission from 2000–2002 and 2010–2012, as well as county-level data from the U.S. Census, American Community Survey, and Uniform Crime Reports, aggregated to the federal court district level.⁵⁹

Ulmer and Parker predicted that Latinx noncitizens would be least disadvantaged in federal punishment when processed in districts located in traditional Latinx immigrant destinations circa 2000 and 2010.⁶⁰ Their findings suggested that different patterns of threat may operate simultaneously and are not mutually exclusive. As expected, the traditional Latinx immigration destinations consistently showed no significant disparity between Latinx citizens and noncitizens (both documented and undocumented) and white defendants compared to the other destinations. Of the three hypothetical threat patterns, their findings were most consistent with the patterns of persistent and

56. One of the studies examined Latinx-white punishment disparity in federal courts, Feldmeyer & Ulmer, *supra* note 21, at 259, while the other analyzed the same disparity in Florida state courts, Feldmeyer et al., *supra* note 22, at 67–68.

57. Ulmer & Parker, *supra* note 50, at 7–10.

58. *Id.* at 8–10.

59. *Id.* at 10–12.

60. *Id.* at 8–10.

exotic threat rather than recent threat. Latinx noncitizens in particular received longer average sentences in the districts that were new destinations circa 2000, as well as in nondestinations during both time periods. In particular, undocumented Latinx noncitizens experienced the greatest sentencing disadvantage relative to white defendants in the new destinations of 2000 and in nonimmigrant destinations. These patterns are shown in Figure 1 and Figure 2.

Figure 1: Latinx-White Federal Sentence Length Disparity Across Different Latinx Immigration Destinations (traditional destinations = reference category): 2000–2002

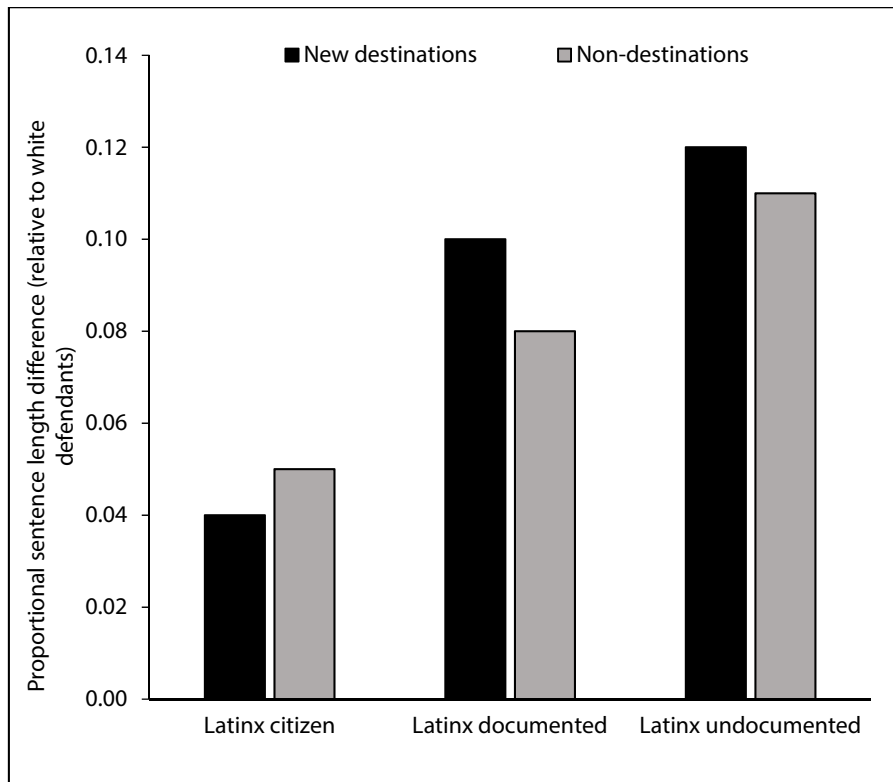
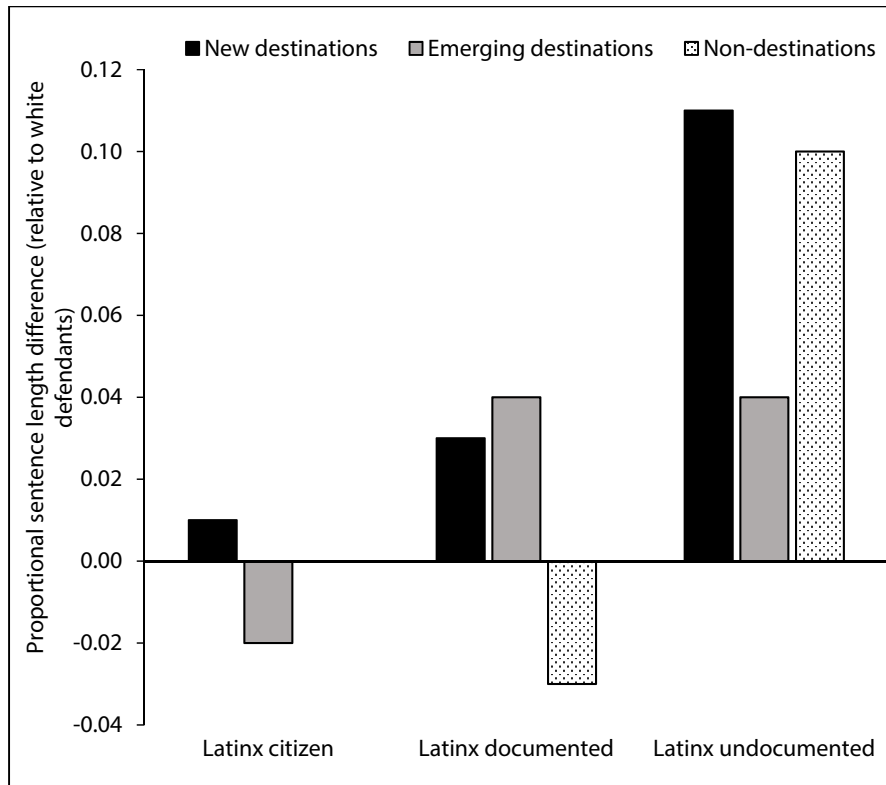


Figure 2: Latinx-White Federal Sentence Length Disparity Across Changing Latinx Immigration Destinations (traditional destinations = reference category): 2010–2012



Ulmer and Parker especially highlight the exotic threat pattern as one not previously anticipated by group threat theory. From both 2000–2002 and 2010–2012, districts with comparatively small Latinx foreign-born populations and which saw comparatively little increase in Latinx immigration exhibited greater sentence length disadvantage relative to white defendants for Latinx noncitizens in particular, especially those who were undocumented. While the recent and persistent threat patterns suggest that increases in local Latinx immigration foster heightened disparities, the exotic threat pattern is distinct in that nonimmigrant destinations are, by definition, places with comparatively little Latinx immigration and comparatively few Latinx residents overall. As such, heightened Latinx-white disparities observed in these jurisdictions would not logically be tied to increases in local Latinx immigration. Rather, it may be that such disparities reflect fear or distrust of so-called exotic others with whom majority members have little experience. Consistent with this, Feldmeyer and

Ulmer, who also examined federal sentencing during the 2000–2002 time period, found that Latinx-white sentence length disparity was greatest in districts with the smallest Latinx populations and was least pronounced in districts with relatively large Latinx populations.⁶¹ By contrast, Latinx citizens and noncitizens did not receive significantly harsher sentences in the emerging immigrant destinations of 2010–2012 compared to the traditional destinations. This does not support the recent threat pattern.

On one hand, there is clear evidence that the federal sentencing of Latinx defendants, especially undocumented noncitizens, is conditioned by contexts of Latinx immigration. Thus, group threat theory clearly is onto something. In addition, Ulmer and Parker's findings support the proposition that minority group members experience less (or no) punishment disadvantage relative to members of the white majority in places where they are most established and numerous. On the other hand, recent studies, including Ulmer and Parker's, have certainly problematized the typical group threat pattern that is usually discussed and tested, namely, linear or curvilinear relationships between punitiveness toward members of an outgroup and the size or salience of that outgroup's population. While traditional group threat theory proposes that little punitive threat response occurs where minority group members are least numerous or prominent, evidence that Latinx-white punishment disparities may actually be heightened in such contexts (the exotic threat pattern) calls into question the applicability of this proposition as an accurate description of Latinx punishment outcomes. Ulmer and Parker's findings also lend support to the pattern they call persistent threat, in that courts exhibit heightened punishment disparities for Latinx noncitizens both during and well after substantial increases in Latinx immigration.⁶²

Ulmer and Parker's findings suggest that federal sentencing is another site of disadvantage affecting Latinx noncitizens, a disadvantage that particularly affects those processed in federal courts located in new Latinx immigrant destinations and in places where Latinx immigration is least pronounced.⁶³ Next,

61. Feldmeyer & Ulmer, *supra* note 21, at 259.

62. See Ulmer & Parker, *supra* note 50, at 22 ("Our findings are also mostly consistent with the patterns of persistent and exotic threat . . . Hispanic undocumented non-citizens in particular received longer average sentences in the districts that were new destinations circa 2000 and in non-destinations, in both time periods.")

63. See *id.* and accompanying text ("In both time periods, districts where Hispanic foreign-born people made up a comparatively small portion of the population, and which saw comparatively little increase in Hispanic immigration, exhibited greater sentence length disadvantage for Hispanic non-citizens in particular.")

we turn to Latinx sentencing in the court system of a state that represents a new or emerging Latinx immigrant destination: Pennsylvania.

VI. LATINX-WHITE PUNISHMENT DISPARITY VARIATION IN PENNSYLVANIA COURTS

In this Part, we explore the possibility that Latinx defendants might experience differential state sentencing outcomes depending on county Latinx population size, changes in immigration, and prominence in local caseloads. In particular, we seek to investigate whether the pattern found by Ulmer and Parker, as well as by Feldmeyer and colleagues—namely, greater Latinx-white disparity in places where there is little or no Latinx presence or immigration—characterizes a new or emerging destination like Pennsylvania.⁶⁴ Using individual-level sentencing data from the Pennsylvania Commission on Sentencing (PCS), we compare sentencing outcomes for Latinx defendants sentenced in Pennsylvania state courts across counties with varying levels of Latinx population size, population growth, and caseload presence during two periods, 2006–2010 and 2011–2016.⁶⁵ Within each of these periods, we examine Latinx-white disparities in the outcomes of two sentencing decisions across these contextual classifications—the incarceration decision and, for those incarcerated, the sentence length imposed.

We classify counties based on Latinx population size using U.S. Census data from 2000 and 2010 to analyze sentencing patterns from 2006–2010 and 2011–2016, respectively. In light of the possibility that Latinx sentencing disadvantage is tied to local Latinx immigration and population changes, we also classify counties according to the difference between the percent of the county population accounted for by Latinx residents in 2000 versus 2010 and compare outcomes across these groups during the 2006–2010 period. Finally, we classify counties according to Latinx caseload presence, measured as the percent of convicted defendants identified as Latinx.⁶⁶ Counties in which fewer than ten Latinx defendants were sentenced during the time periods under examination were excluded from analysis. During the 2006–2010 period, 48 of Pennsylvania's 67 counties were eligible for analysis according to this standard. More counties, 60 of 67, were eligible for inclusion during the 2011–2016 period.

In 2000, Latinx residents made up 2 percent or less of the overall population in nearly half of Pennsylvania counties ($n = 33$) and only 6 counties had Latinx

64. See *id.*; Feldmeyer et al., *supra* note 22, at 82.

65. See *infra* Appendix.

66. See *infra* Appendix.

populations exceeding 5 percent of the overall population. Although the overall number of counties in the lowest population group was similar in 2010 ($n = 32$), it is noteworthy that Latinx residents accounted for more than 5 percent of the overall population in 14 counties in 2010 (up from 6 in 2000), and another 14 counties fell somewhere in the middle (compared to 9 in 2000). During this period, 21 counties experienced virtually no change in Latinx immigration or population growth (less than 1 percent difference in Latinx population size).

Looking across the two time periods, general patterns of sanctioning exhibit some degree of stability, both overall and for Latinx defendants specifically. For instance, both the proportion of convictions involving Latinx defendants and the average sentences imposed are similar during both periods. Latinx defendants accounted for 5 percent of convictions statewide from 2006–2010 and 6 percent from 2011–2016. During both time periods, the mean sentence length overall was about 13 months, whereas the mean sentence length imposed on Latinx defendants was slightly higher, at around 16 months. Overall, about 41 to 43 percent of convicted defendants are sentenced to prison or jail, while a little more than half receive probation or some other noncustodial sanction (such as fines, probation supervision, or intermediate punishments) during the two time periods. During both periods, more than half of convicted Latinx defendants were sentenced to incarceration in prison or jail instead of receiving a noncustodial sanction.

A. Multivariate Analysis: Incarceration Decision

We estimate a series of logistic regression models predicting the odds of receiving a prison or jail sentence (as opposed to a noncustodial sentence) across the aforementioned contextual classifications within each time period.⁶⁷ We then use z -tests to compare the Latinx incarceration effect at different levels of Latinx population size, immigration, and caseload presence within each time period.⁶⁸

The results of the incarceration decision models show some consistencies across all models regardless of county classification or time period, all of which

67. For full models, *see infra* Appendix.

68. For example, we estimated separate models for defendants processed in counties with small, midsized, and large Latinx populations; we then compared the estimates using z -tests to determine whether there are statistically significant differences in Latinx punishment disparities across counties with different size Latinx populations. *See also* Raymond Paternoster et al., *Using the Correct Statistical Test for the Equality of Regression Coefficients*, 36 *CRIMINOLOGY* 859, 862 (1998) (discussing the correct z -test equation to use when testing for differences between regression coefficients across independent samples). For all z -test comparisons, *see infra* Appendix.

are congruent with past research. Defendants with multiple current convictions, longer presumptive sentences, and more serious or extensive criminal histories (as indicated by a higher Prior Record Score) have greater odds of receiving a sentence of incarceration, as do those convicted at trial, recipients of a mandatory minimum, and those whose top conviction charge (that is, the most serious charge in a judicial proceeding) is a violent offense. In addition, the odds of receiving an incarceration sentence are consistently lower among female defendants and among defendants whose top conviction charge is a drug offense as compared to those whose top conviction charge is an offense not categorized as a property, drug, or violent crime. On average, white defendants have the lowest odds of incarceration of all racial/ethnic groups.

During the 2006–2010 period, Latinx defendants appear to be most disadvantaged relative to white defendants when sentenced in jurisdictions where Latinx residents made up a comparatively small portion of the population or where Latinx defendants made up a comparatively small portion of local caseloads (shown below in Figure 3).

Z-test comparisons across population size groups show that these differences are statistically significant: Latinx-white incarceration disparity is significantly greater in counties with smaller proportions of Latinx residents compared to counties with midsized or large Latinx populations. Jurisdictions with midsized versus large Latinx populations do not differ significantly from one another. Similarly, Latinx-white incarceration disparity is most pronounced where Latinx defendants are least represented in local caseloads and the magnitude of this disparity is smallest where Latinx defendants have a relatively large caseload presence. Latinx-white incarceration disparity is significantly greater in counties where Latinx defendants are least prominent in local caseloads compared to counties with midsized or large Latinx caseload presence. Latinx defendants have the lowest odds of incarceration relative to white defendants when sentenced in counties where Latinx caseload presence is relatively large.

Figure 3: Odds of Incarceration for Latinx Defendants in Pennsylvania (Relative to White Defendants), by Varying Levels of County Latinx Population Size (2000 Census) and Court Caseload Presence (PCS 2006–2010), *N* = 338,140

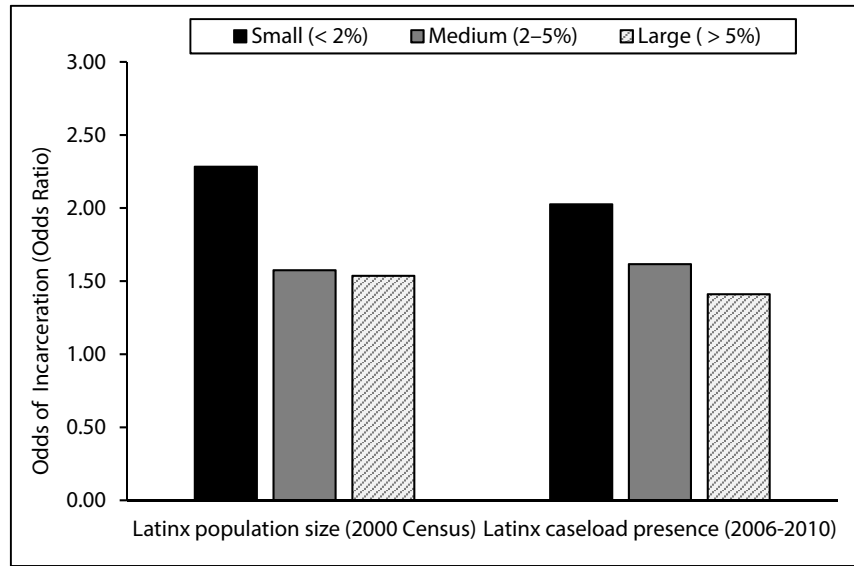
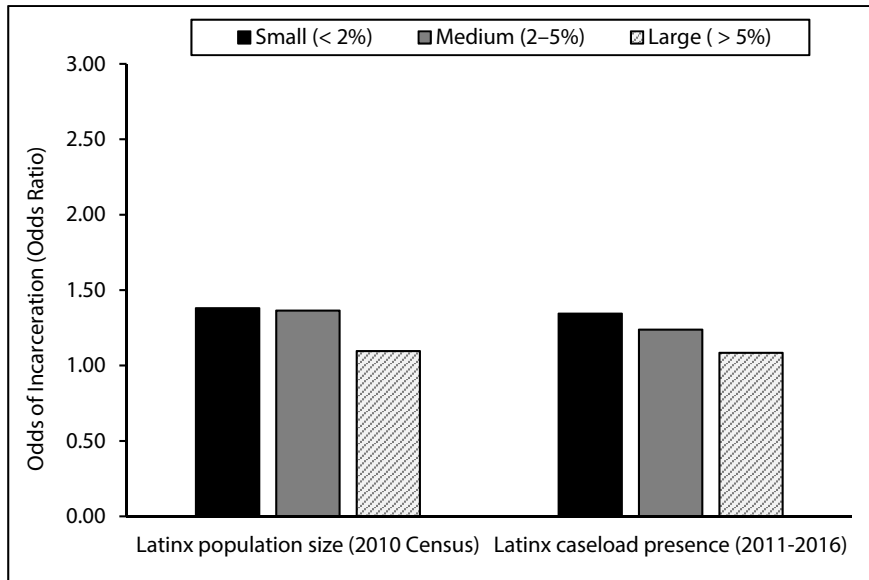


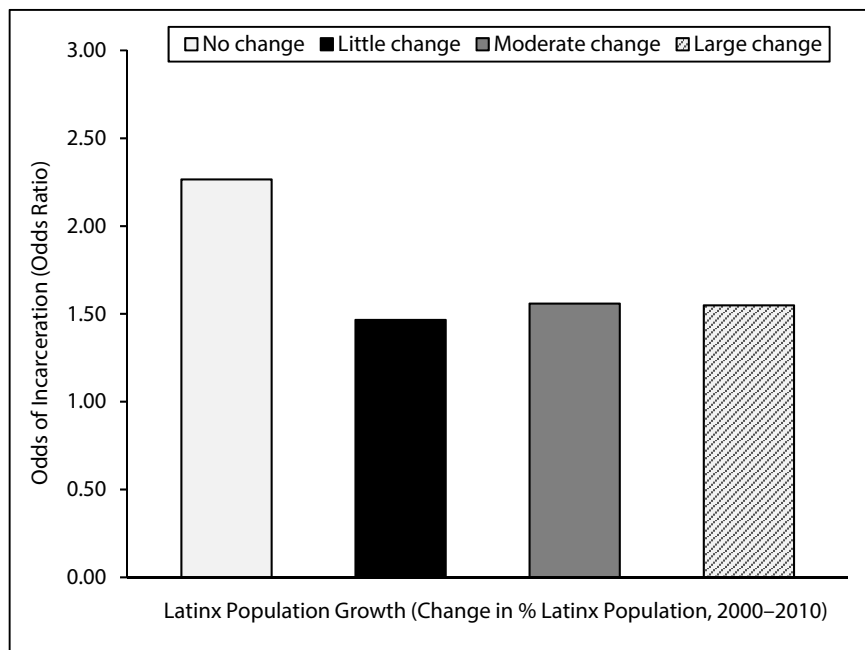
Figure 4: Odds of Incarceration for Latinx Defendants in Pennsylvania (Relative to White Defendants), by Varying Levels of County Latinx Population Size (2010 Census) and Court Caseload Presence (PCS 2011–2016), *N* = 403,616.



Similar general patterns can be seen among those sentenced during the 2011–2016 period. Latinx-white incarceration disparity is least pronounced where Latinx individuals make up a comparatively large portion of the population and a comparatively large portion of defendants in local court caseloads (shown in Figure 4, above).

In these jurisdictions, the odds of incarceration are 8 to 9 percent higher for Latinx defendants than for white defendants, while the Latinx-white incarceration disparity ranges from 21 to 32 percent in jurisdictions where Latinx people make up a small or mid-sized portion of the residential population or local caseloads. Z-tests demonstrate that Latinx-white incarceration disparity in jurisdictions with relatively large Latinx populations is significantly different than Latinx-white incarceration disparity in jurisdictions with mid-sized or small Latinx populations (although the mid-sized and small population groups do not differ significantly from one another). Comparisons between jurisdictions with different levels of Latinx caseload presence show the same pattern.

Figure 5: Odds Of Incarceration for Latinx Defendants in Pennsylvania (Relative to White Defendants) by Varying Levels of Latinx Population Growth (Change in Percent Latinx Population, 2000–2010) (US Decennial Census), PCS 2006–2010, $N = 338,140$.



In counties that experienced little or no Latinx population growth from 2000 to 2010 (specifically, those showing less than 1 percent difference in percent Latinx population), Latinx defendants have significantly higher odds of incarceration relative to white defendants (shown above in Figure 5). But it is difficult to say whether this is related to little or no growth in Latinx population size because of the substantial overlap between this group and counties classified as having the smallest Latinx populations in 2000 (shown above in Figure 3).

Thus, the comparably high odds of incarceration seen among this group may reflect the overlap between the groups on which these effects were estimated. In other words, it is difficult to determine from the data whether the greater Latinx disadvantage in incarceration relative to white defendants is associated with very small Latinx populations, insubstantial growth in such populations, or both.

B. Multivariate Analysis: Sentence Length

We estimate (OLS) regression models predicting sentence length among defendants who were sentenced to incarceration. As with the incarceration analysis, we compare estimates across different levels of the county contextual classifications using *z*-tests.⁶⁹ Per convention, we take the natural log of the minimum incarceration sentence, measured as the number of months, to address skewness.⁷⁰

The results indicate that Latinx-white punishment disparities also exist in sentence length decisions, but unlike the disparities seen in incarceration decisions, these differences are not significant across all contextual classifications. On average, Latinx defendants receive sentences that are between 6 and 16 percent longer than those imposed on white defendants. This sentence length difference is not statistically significant among those sentenced in jurisdictions where Latinx defendants make up a small portion of local caseloads in both 2006–2010 and 2011–2016, nor is it statistically significant among those sentenced in jurisdictions where there was little or no Latinx population growth from 2000 to 2010. It is also not statistically significant among those sentenced in counties with small Latinx populations in 2010 or among those sentenced in counties with mid-sized Latinx caseload presence in years 2011–2016. While these results indicate that there are Latinx-white disparities in sentence length outcomes in some contexts, they provide little evidence to suggest that such

69. For full models and all *z*-test comparisons, see *infra* Appendix.

70. See *infra* Appendix.

disparities are more pronounced in counties characterized by varying levels of Latinx population, caseload presence, and immigration.

For example, looking at Latinx-white sentence length disparity during the 2006–2010 period across locales categorized according to the local Latinx population size in 2000, it appears that Latinx-white sentence length disparity decreases slightly as Latinx population size increases—from 0.110 in the smallest population group (counties with 2 percent Latinx population or less) to 0.097 in the largest (counties with more than 5 percent Latinx population). But *z*-tests reveal that the estimates of Latinx-white sentence length disparity for the three population-size groups are not significantly different from one another. This is true of the majority of comparisons between Latinx-white sentence length disparities across the other contextual classifications during both time periods. The primary exceptions are comparisons made with groups that did not show significant Latinx-white sentence length disparity to begin with. That Latinx defendants appear to be more disadvantaged relative to white defendants in incarceration decisions than in sentence length decisions is consistent with previous studies in Pennsylvania, as well as research on extralegal disparity in other state court systems. This body of research commonly finds that extralegal factors have more influence on the decision to incarcerate than on decisions regarding sentence length.⁷¹

CONCLUSION

We began by providing an overview of studies on Latinx-white disparity in criminal punishment that demonstrate how such disparities are shaped by U.S. citizenship status, as well as by the characteristics of local jurisdictions, namely, local Latinx population presence and immigration. We reviewed three hypothetical patterns by which Latinx-white disparities in sentencing could vary according to immigration contexts: recent threat, persistent threat, and exotic threat. We then summarized findings from two current research projects: (1) a study by Ulmer and Parker of variation in Latinx-white federal punishment

71. Spohn, *supra* note 1, at 455 (stating that both black and Latinx defendants sentenced in state courts are “much more likely to be disadvantaged at the initial decision to incarcerate . . . than at the subsequent decision concerning length of the sentence”); see also Mitchell, *supra* note 5, at 462 (noting that unwarranted sentencing disparities are much larger when studies examine imprisonment decisions). For a recent example, see Jeffery T. Ulmer et al., *Disproportional Imprisonment of Black and Hispanic Males: Sentencing Discretion, Processing Outcomes, and Policy Structures*, 33 JUST. Q. 642, 674 (2016).

disparity across federal districts' immigration contexts,⁷² and (2) a study of Latinx-white punishment disparity among defendants sentenced in Pennsylvania state courts, across counties with varying levels of Latinx population, immigration, and court caseload presence.

Ulmer and Parker's findings were most consistent with the patterns of persistent and exotic threat rather than recent threat. In federal sentencing, the traditional Latinx immigration destinations consistently showed little or no Latinx citizen and noncitizen disparity vis-à-vis white defendants compared to the other destinations. In contrast, Latinx undocumented noncitizens in particular received longer average sentences in the districts that were new destinations circa 2000 and in nonimmigrant destinations in both time periods. Disparity concentrated among Latinx undocumented noncitizens by 2010–2012, however, rather than characterizing all Latinx defendants. Perhaps perceptions of threat in new destinations became more specifically connected to undocumented Latinx noncitizens by the early 2010s.

In Pennsylvania courts, Latinx defendants were particularly disadvantaged relative to white defendants in the incarceration decision, and this disadvantage appears to be concentrated in counties with small Latinx populations, little or no increase in Latinx foreign-born population from 2000 to 2010, or both. In addition, there appears to be a pattern of lesser Latinx-white punishment disparity in Pennsylvania counties with relatively large Latinx populations and caseload presence.

We find the exotic threat pattern particularly interesting. In both studies, courts located in jurisdictions where Latinx foreign-born people made up a comparatively small portion of the population, and which experienced comparatively little increase in Latinx immigration or had less prominent Latinx caseload presence, exhibited greater punishment disadvantage for Latinx defendants (largely noncitizens in the federal courts) relative to their white counterparts. This coincides with the findings of Feldmeyer and Ulmer, who also examined federal sentencing from 2000–2002, that Latinx-white federal sentence length disparity was greatest where Latinx people were least numerous (in the district population) and disparity was least in districts with relatively large Latinx populations.⁷³ These patterns also coincide with the findings of Feldmeyer and colleagues in Florida state courts.⁷⁴

72. Ulmer & Parker, *supra* note 50, at 21–25.

73. Feldmeyer & Ulmer, *supra* note 21, at 259.

74. See Feldmeyer et al., *supra* note 22, at 82.

Clearly, it appears that the degree of Latinx punishment disadvantage relative to white defendants is context dependent. This is not surprising, since much punishment disparity varies across court sociopolitical and organizational contexts.⁷⁵ It also is becoming more apparent that Latinx punishment disadvantage is intimately tied to citizenship status.⁷⁶ In addition, it is becoming clear that older sociological theories of racial/ethnic threat do not accurately depict the variation in Latinx-white punishment disparities across immigration contexts. A theme from some recent research, including that presented here, indicates that Latinx defendants are punished more severely relative to their white counterparts when sentenced in jurisdictions where there are comparatively small Latinx communities and where there is relatively little immigration. To a lesser extent, Latinx defendants may face greater punishment disadvantage relative to white defendants in the new immigrant destinations of the 1990s and 2000s, which saw rapid and substantial increases in Latinx foreign-born populations where there were virtually none before. In both of these contexts, Latinx defendants may be perceived as threatening, so-called exotic others. Along with other features of social marginality, Latinx people in such locales may face harsher punishments relative to whites when convicted of criminal offenses. Within states, as well, Latinx-white punishment disparity varies widely across counties, as demonstrated in the examination in Part VI of a new destination state, Pennsylvania.

We suggest that our understanding of how minority/majority population contexts shape punishment should evolve to consider new patterns beyond the extant thinking of traditional group threat theory. This would include further testing the ideas of recent, persistent, and exotic threat. We should also assess whether immigrant threat is distinctive from other types of group threat or racial/ethnic threat. We need more research on the criminal justice system treatment that Latinx individuals receive in social contexts where Latinx communities are smallest, Latinx people most marginalized, and where immigration was not previously prominent but is growing. These contexts should be contrasted with places where Latinx communities have long been

75. See Ulmer, *supra* note 2, at 14 (italics omitted) (“Overall, the recent literature on contextual variation in sentencing shows that local variation permeates many aspects of sentencing, both under sentencing guideline jurisdictions and non-guideline jurisdictions. . . . Many published multilevel sentencing studies find that the effects of race and ethnicity in sentencing decisions do indeed vary significantly across courts.”); Jeffery T. Ulmer & Brian D. Johnson, *Organizational Conformity and Punishment: Federal Court Communities and Judge-Initiated Guidelines Departures*, 107 J. CRIM. L. & CRIMINOLOGY 253, 286 (2017) (discussing implications of results showing contextual variation in judicial conformity to the federal sentencing guidelines, which produces interjurisdictional disparities in punishment outcomes for individual defendants).

76. Light, *supra* note 15, at 469.

prominent and where Latinx people may have more political power, institutional embeddedness, and sociocultural presence. Comparative quantitative and especially qualitative research should unpack how and why the former contexts show substantial Latinx punishment disadvantage relative to white defendants while the latter, on average, exhibit little or none.

Future research could incorporate data on preconviction outcomes in order to examine differences in policing and prosecutorial discretion affecting Latinx U.S. citizens and noncitizens and how this might vary by immigration destinations. Most importantly, research should strive to find and incorporate more precise and meaningful measures of Latinx immigration contexts. For example, it would be useful to include population data on the specific nationalities of Latinx immigration by district. It would also be useful to incorporate data on immigrant employment patterns in order to assess the extent to which immigrant economic integration affects punishment patterns. Research could also incorporate survey data on public attitudes toward Latinx immigration and crime.⁷⁷

Finally, little research examines the role of citizenship in Latinx sentencing in state courts, largely because state courts often do not collect data on citizenship status.⁷⁸ This is true of the analysis of state court sentencing in this Article as well, because—unlike federal sentencing data—Pennsylvania's sentencing data do not include measures of defendant citizenship status. This is a major gap in our knowledge, since state prisons hold many more noncitizens than do federal prisons.⁷⁹ Serious efforts should be made to provide the public with (deidentified) statistical data that includes the citizenship status of state court defendants, and research should monitor citizenship-based disparities in state courts.

Latinx immigration and social responses to it have powerfully shaped public discourse and political dynamics in recent years, including heightened, but largely debunked, concerns about the criminality of Latinx immigrants. As we consider Latinx defendants and criminal punishment, we should pay attention to larger demographic and social shifts in Latinx immigration. Our findings regarding courts in different immigration destinations are especially interesting because the intersection of Latinx ethnicity, immigration, and citizenship is so salient and consequential in the criminal justice system.⁸⁰ Punishment disparities

77. See Wang, *supra* note 23, at 763–64.

78. See *supra* note 38 and accompanying text.

79. *Id.* at 424.

80. See, e.g., Light et. al, *supra* note 14, at 842 (“While our results indicate that Hispanics are disadvantaged relative to whites, we showed that Hispanic differences are dwarfed by citizenship 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

appear to be a previously overlooked facet of how Latinx immigration contexts matter in the legal treatment of Latinx people.

citizenship appears to trump race and ethnicity when determining punishments for those who violate U.S. law.”); *see also* Michael T. Light, *Legal Inequality’s Newest Face*, 14 CONTEXTS 32, 37 (2015) (“[O]ur research suggests a broader view of legal inequality is needed, one that includes national membership right alongside factors . . . such as race, class, gender. As international migration increases, the central axes of legal inequality may be shifting from internal societal divisions to divisions between state and non-state members.”). *See generally id.* (noting that the author’s interviews with judges in the United States and Germany illustrate how defendants who are noncitizens receive a “double punishment” . . . “one for their crime and one for their immigrant status.”). These articles describe how citizenship has become more salient for inequalities in criminal punishment, as much or more than race or ethnicity.

APPENDIX

PENNSYLVANIA STATE COURT SENTENCING DATA AND ANALYSIS

Data. Individual-level state sentencing data come from the Pennsylvania Commission on Sentencing (PCS). These data contain information on almost all felony and misdemeanor convictions statewide that were sentenced in Pennsylvania state courts and reported to the Commission.

Sample restrictions. For purposes of the present analyses, cases were restricted to the most serious offense per judicial proceeding⁸¹ and DUI and traffic offenses are excluded. As noted in text, given our interest in patterns across sentencing jurisdictions, counties that processed fewer than 10 Latinx defendants during either of the two time periods are excluded from analyses specific to that time period.

Coding of dependent variables. The incarceration decision is measured as a dichotomous indicator on which individuals sentenced to confinement in county jail or state prison are coded as 1. Sentence length is measured as the number of months corresponding to the minimum length of incarceration ordered and is top-coded at 240 months. The sentence length decision only applies to those who receive a sentence of incarceration. A natural log transformation is applied to sentence length to address problems with skewness.

Coding of key independent variables. Changes in how sentences are reported to the PCS starting in 2008 resulted in large declines in the number of Latinx defendants identified as such in the years that followed because of differences in how the system treated defendant race and ethnicity before and after the changes.⁸² To address this issue, defendants with last names found on the U.S. Census Bureau’s list of 639 Spanish surnames classified as “Heavily Hispanic” are

81. See 204 PA. CODE § 303.2(b) (1982) (“A judicial proceeding is a proceeding in which all offenses for which the offender has been convicted are pending before the court for sentencing at the same time.”).

82. See PA. COMM’N ON SENTENCING, SGS WEB DATA CODEBOOK: 2001–2015, VERSION 7.1 13 (2017), <http://pcs.la.psu.edu/data/understanding-the-data/code-books/sentencing-data/sgs-web-code-book-v7.1-2017/view> [https://perma.cc/7MEU-Q283] (stating that individuals who report case information to SGS Web increasingly import it directly from the Administrative Office of PA Courts, which records defendant race and ethnicity separately; thus to report Latinx ethnicity they must choose to manually edit the combined race/ethnicity category and it appears that this extra step is infrequently taken).

included as Latinx alongside defendants in the PCS data presently identified as such.⁸³ This approach has precedent in past sentencing research.⁸⁴

County classifications. Counties were categorized according to: (1) the percent Hispanic in the county population according to the 2000 U.S. Census, (2) the percent Hispanic in the county population according to the 2010 U.S. Census, (3) growth in the Hispanic population in the county from 2000 to 2010, and (4) the proportion of cases sentenced in a given court involving Latinx defendants across two time periods (2006–2010 and 2011–2016).

Methods. Models were replicated for each of the groups formed using the aforementioned categorization strategies—Latinx population size, population growth, and caseload presence—and are analyzed during both time periods, with the exception of the population growth groups. The varying levels of Latinx population size, immigration, and caseload presence within each time period are compared using *z* tests.⁸⁵

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83. David L. Word & R. Colby Perkins, Jr., *Building a Spanish Surname List for the 1990's—A New Approach to an Old Problem* 15 (U.S. CENSUS BUREAU, Technical Working Paper No. 13, 1996) (“Persons with those surnames represent more than two-thirds of the Hispanic origin population and approximately 80 percent of the Spanish surnamed population.”).
84. See Stephanie Bontrager, William Bales & Ted Chiricos, *Race, Ethnicity, Threat and the Labeling of Convicted Felons*, 43 *CRIMINOLOGY* 589, 600 (2005); see also, e.g., Ulmer et al., *supra* note 71, at 649 (using this approach to identify Latinx defendants more recently).
85. See e.g., Paternoster et al., *supra* note 68, at 862 (providing the equation for an unbiased test of the equality of regression coefficients); Robert Brame et al., *Testing for the Equality of Maximum-Likelihood Regression Coefficients Between Two Independent Equations*, 14 *J. QUANTITATIVE CRIMINOLOGY* 245 (1998).

Table 1: Pennsylvania County Classifications

<i>County Classifications</i>	<i>Counties</i>	<i>Latinx Defendants</i>	<i>Total Defendants</i>
PCS 2006–2010			
<i>Percent Latinx Population (2000 Census)</i>			
≤ 2%	33	2,944	169,695
2–5%	9	3,625	73,257
> 5%	6	10,748	74,731
<i>Latinx Caseload Presence (% of defendants)</i>			
≤ 2%	18	865	111,954
2–5%	18	2,671	86,116
> 5%	11	13,781	119,613
<i>Change in % Latinx population (2000–2010)</i>			
No change	21	704	91,648
1–2%	11	1,528	62,500
2–5%	12	8,847	130,756
> 5%	4	6,238	32,779
PCS 2011–2016			
<i>Percent Latinx Population (2010 Census)</i>			
≤ 2%	32	1,531	138,941
2–5%	14	4,515	117,134
> 5%	14	19,160	143,936
<i>Latinx Caseload Presence (% of defendants)</i>			
≤ 2%	28	1,359	133,756
2–5%	19	4,247	119,586
> 5%	13	19,600	146,669

Table 2: Descriptive Statistics (Pennsylvania Sentencing Variables)

<i>PA Sentencing Variables</i>	<i>PCS 2006–2010</i>		<i>PCS 2011–2016</i>	
	<i>Freq. (Mean)</i>	<i>% (SD)</i>	<i>Freq. (Mean)</i>	<i>% (SD)</i>
<i>Dependent Variables</i>				
Incarceration	145,122	42.9%	164,269	40.7%
Sentence length (months)	(13.2)	(19.7)	(13.0)	(20.4)
Sentence length (ln)	(1.7)	(1.5)	(1.7)	(1.5)
<i>Defendant Characteristics</i>				
Race/ethnicity	—	—	—	—
Latinx	17,415	5.2%	25,240	6.3%

<i>PA Sentencing Variables</i>	<i>PCS 2006–2010</i>		<i>PCS 2011–2016</i>	
	Freq. (Mean)	% (SD)	Freq. (Mean)	% (SD)
Black	103,340	30.6%	115,090	28.5%
White (ref.)	201,402	59.6%	249,341	61.8%
Other/unknown	15,983	4.7%	13,945	3.5%
Sex	—	—	—	—
Female	72,250	21.4%	92,097	22.8%
Male (ref.)	265,890	78.6%	311,519	77.2%
Age	(31.6)	(10.8)	(32.4)	(11.1)
Age ²	(1,115.4)	(799.3)	(1,169.7)	845.4
<i>Legally Relevant Factors</i>				
Presumptive sentence (ln)	(0.8)	(1.22)	(0.9)	(1.2)
Criminal history (PRS)	(1.5)	(1.9)	(1.7)	(2.0)
<i>Case Processing</i>				
Mode of conviction	—	—	—	—
Trial	9,778	2.9%	9,828	2.4%
Guilty plea (ref.)	273,485	80.9%	382,864	94.9%
Other/unknown	54,877	16.2%	10,924	2.7%
Mandatory sentence	10,168	3.0%	3,854	1.0%
Year sentenced	(2008)	(1.4)	(2014)	(1.7)
<i>Offense Characteristics</i>				
Offense type	—	—	—	—
Violent	50,500	14.9%	56,652	14.0%
Property	114,922	34.0%	140,746	34.9%
Drug	97,893	29.0%	121,322	30.1%
Other (ref.)	76,488	22.6%	87,356	21.6%
Multiple convictions	29,289	8.7%	147,064	36.4%
<i>N</i> =	338,140		403,616	

Table 3: Logistic Regressions of Incarceration by Pennsylvania Latinx Population Size (2000, U.S. Census)

	<i>Small (< 2%)</i>	<i>Med. (2–5%)</i>	<i>Large (>5%)</i>
<i>Incarceration decision</i>	<i>Odds Ratio (SE)</i>	<i>Odds Ratio (SE)</i>	<i>Odds Ratio (SE)</i>
Latinx	2.283*** (0.099)	1.574*** (0.065)	1.536*** (0.041)
Black	1.008 (0.013)	1.241*** (0.026)	1.031 (0.022)
Other race/ethnicity	0.675***	0.980	0.658***

	<i>Small (< 2%)</i>	<i>Med. (2-5%)</i>	<i>Large (>5%)</i>
<i>Incarceration decision</i>	<i>Odds Ratio (SE)</i>	<i>Odds Ratio (SE)</i>	<i>Odds Ratio (SE)</i>
	(0.022)	(0.048)	(0.023)
Female	0.618*** (0.009)	0.606*** (0.014)	0.584*** (0.014)
Age	0.999 (0.003)	1.029*** (0.005)	1.035*** (0.005)
Age ²	1.000** (0.000)	0.999*** (0.000)	0.999*** (0.000)
Presumptive sentence (ln)	2.173*** (0.014)	2.329*** (0.025)	2.050*** (0.018)
Prior Record Score	1.122*** (0.004)	1.186*** (0.007)	1.187*** (0.007)
Multiple convictions	1.773*** (0.038)	1.740*** (0.057)	1.710*** (0.056)
Violent offense	1.741*** (0.035)	1.611*** (0.049)	2.033*** (0.058)
Drug offense	0.731*** (0.012)	0.618*** (0.016)	0.612*** (0.015)
Property offense	1.092*** (0.017)	1.147*** (0.027)	1.344*** (0.032)
Trial	2.410*** (0.133)	2.799*** (0.224)	1.657*** (0.065)
Other/unknown MOC	0.518*** (0.009)	0.906*** (0.025)	1.062** (0.024)
Year sentenced	0.943*** (0.004)	0.936*** (0.006)	0.938*** (0.006)
Mandatory received	11.424*** (0.987)	31.520*** (6.146)	11.104*** (0.864)
<i>N</i> =	169,695	73,257	74,731

† $p < 0.10$; * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$

Exponentiated coefficients; Standard errors of logit coefficients in parentheses. Reference groups are (1) white defendant, (2) other offense type, and (3) guilty plea.

Table 4: Logistic Regressions of Incarceration by Pennsylvania Latinx Caseload Presence (PCS 2006–2010)

	<i>Small (< 2%)</i>	<i>Med. (2–5%)</i>	<i>Large (>5%)</i>
<i>Incarceration decision</i>	<i>Odds Ratio (SE)</i>	<i>Odds Ratio (SE)</i>	<i>Odds Ratio (SE)</i>
Latinx	2.026*** (0.162)	1.616*** (0.076)	1.410*** (0.032)
Black	1.067*** (0.017)	1.079*** (0.021)	1.084*** (0.018)
Other race/ethnicity	0.754*** (0.027)	0.839** (0.047)	0.664*** (0.020)
Female	0.641*** (0.012)	0.579*** (0.012)	0.618*** (0.011)
Age	0.983*** (0.004)	1.026*** (0.005)	1.030*** (0.004)
Age ²	1.000 (0.000)	1.000*** (0.000)	0.999*** (0.000)
Presumptive sentence (ln)	2.075*** (0.016)	2.664*** (0.028)	2.021*** (0.015)
Prior Record Score	1.122*** (0.005)	1.148*** (0.006)	1.225*** (0.006)
Multiple convictions	1.732*** (0.045)	1.882*** (0.058)	1.694*** (0.044)
Violent offense	1.697*** (0.042)	1.643*** (0.047)	2.005*** (0.046)
Drug offense	0.792*** (0.016)	0.621*** (0.015)	0.622*** (0.012)
Property offense	1.116*** (0.022)	1.092*** (0.024)	1.253*** (0.023)
Trial	2.601*** (0.169)	2.498*** (0.203)	1.522*** (0.055)
Other/unknown MOC	0.442*** (0.010)	0.921** (0.025)	0.978 (0.018)
Year sentenced	0.922*** (0.005)	0.960*** (0.006)	0.942*** (0.005)
Mandatory received	14.850*** (1.722)	17.197*** (2.577)	10.203*** (0.707)
N =	111,954	86,116	119,613

† $p < 0.10$; * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$

Exponentiated coefficients; Standard errors of logit coefficients in parentheses. Reference groups are (1) white defendant, (2) other offense type, and (3) guilty plea.

Table 5: Logistic Regressions of Incarceration by Latinx Population Size (2010, U.S. Census)

	<i>Small (< 2%)</i>	<i>Med. (2–5%)</i>	<i>Large (>5%)</i>
<i>Incarceration decision</i>	<i>Odds Ratio (SE)</i>	<i>Odds Ratio (SE)</i>	<i>Odds Ratio (SE)</i>
Latinx	1.380*** (0.083)	1.365*** (0.049)	1.096*** (0.022)
Black	0.662*** (0.011)	1.312*** (0.020)	1.008 (0.015)
Other race/ethnicity	0.981 (0.040)	1.018 (0.039)	0.656*** (0.022)
Female	0.675*** (0.011)	0.654*** (0.011)	0.566*** (0.010)
Age	0.986*** (0.004)	1.012** (0.004)	1.026*** (0.004)
Age ²	1.000 (0.000)	1.000*** (0.000)	1.000*** (0.000)
Presumptive sentence (ln)	2.117*** (0.015)	2.404*** (0.021)	2.292*** (0.015)
Prior Record Score	1.112*** (0.005)	1.153*** (0.005)	1.117*** (0.005)
Multiple convictions	1.287*** (0.018)	1.351*** (0.021)	1.400*** (0.018)
Violent offense	1.712*** (0.038)	1.974*** (0.050)	1.835*** (0.040)
Drug offense	0.703*** (0.013)	0.668*** (0.013)	0.627*** (0.011)
Property offense	1.133*** (0.020)	1.118*** (0.021)	1.210*** (0.021)
Trial	2.264*** (0.127)	1.492*** (0.089)	1.672*** (0.066)
Other/unknown MOC	0.597*** (0.030)	0.574*** (0.028)	0.713*** (0.025)
Year sentenced	0.985*** (0.004)	0.996 (0.004)	0.994 (0.004)
Mandatory received	16.054***	8.416***	18.619***

	<i>Small (< 2%)</i>	<i>Med. (2–5%)</i>	<i>Large (>5%)</i>
<i>Incarceration decision</i>	<i>Odds Ratio</i> <i>(SE)</i>	<i>Odds Ratio</i> <i>(SE)</i>	<i>Odds Ratio</i> <i>(SE)</i>
	(2.278)	(1.324)	(2.528)
<i>N</i> =	138,941	117,134	143,936

† $p < 0.10$; * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$

Exponentiated coefficients; Standard errors of logit coefficients in parentheses. Reference groups are (1) white defendant, (2) other offense type, and (3) guilty plea.

Table 6: Logistic Regression of Incarceration by Latinx Caseload Presence (PCS 2011–2016)

	<i>Small (< 2%)</i>	<i>Med. (2–5%)</i>	<i>Large (>5%)</i>
<i>Incarceration decision</i>	<i>Odds Ratio</i> <i>(SE)</i>	<i>Odds Ratio</i> <i>(SE)</i>	<i>Odds Ratio</i> <i>(SE)</i>
Latinx	1.344*** (0.086)	1.238*** (0.046)	1.084*** (0.021)
Black	0.668*** (0.011)	1.337*** (0.021)	1.001 (0.015)
Other race/ethnicity	1.001 (0.041)	0.992 (0.039)	0.658*** (0.022)
Female	0.669*** (0.011)	0.668*** (0.011)	0.565*** (0.009)
Age	0.989** (0.004)	1.011** (0.004)	1.025*** (0.004)
Age ²	1.000* (0.000)	1.000*** (0.000)	1.000*** (0.000)
Presumptive sentence (ln)	2.123*** (0.015)	2.449*** (0.021)	2.243*** (0.015)
Prior Record Score	1.110*** (0.005)	1.155*** (0.005)	1.118*** (0.004)
Multiple convictions	1.309*** (0.019)	1.380*** (0.021)	1.344*** (0.017)
Violent offense	1.677*** (0.038)	1.992*** (0.050)	1.829*** (0.039)
Drug offense	0.703*** (0.014)	0.675*** (0.013)	0.631*** (0.011)
Property offense	1.144*** (0.021)	1.120*** (0.021)	1.192*** (0.020)
Trial	2.323***	1.538***	1.606***

	<i>Small (< 2%)</i>	<i>Med. (2-5%)</i>	<i>Large (>5%)</i>
<i>Incarceration decision</i>	<i>Odds Ratio (SE)</i>	<i>Odds Ratio (SE)</i>	<i>Odds Ratio (SE)</i>
	(0.132)	(0.091)	(0.063)
Other/unknown	0.621***	0.584***	0.670***
MOC	(0.032)	(0.028)	(0.024)
Year sentenced	0.983***	0.999	0.991*
	(0.004)	(0.004)	(0.004)
Mandatory received	17.391***	8.977***	16.392***
	(2.610)	(1.487)	(2.052)
N =	133,756	119,586	146,669

† $p < 0.10$; * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$

Exponentiated coefficients; Standard errors of logit coefficients in parentheses. Reference groups are (1) white defendant, (2) other offense type, and (3) guilty plea.

Table 7: Logistic Regression of Incarceration by Latinx Population Growth (2000–2010, US Census)

	<i>No change (<1% diff.)</i>	<i>Small (1-2%)</i>	<i>Med. (3-5%)</i>	<i>Large (>5%)</i>
<i>Incarceration decision</i>	<i>Odds Ratio (SE)</i>	<i>Odds Ratio (SE)</i>	<i>Odds Ratio (SE)</i>	<i>Odds Ratio (SE)</i>
Latinx	2.266***	1.466***	1.559***	1.549***
	(0.203)	(0.089)	(0.042)	(0.057)
Black	0.739***	1.391***	1.061***	1.509***
	(0.015)	(0.030)	(0.016)	(0.054)
Other race/ethnicity	0.593***	1.017	0.717***	0.777***
	(0.026)	(0.052)	(0.022)	(0.059)
Female	0.604***	0.651***	0.600***	0.584***
	(0.013)	(0.015)	(0.010)	(0.021)
Age	0.972***	1.019***	1.036***	1.019*
	(0.005)	(0.005)	(0.004)	(0.008)
Age ²	1.000**	1.000***	0.999***	1.000***
	(0.000)	(0.000)	(0.000)	(0.000)
Presumptive sentence (ln)	2.189***	2.393***	2.118***	2.872***
	(0.019)	(0.030)	(0.015)	(0.052)
Prior Record Score	1.149***	1.171***	1.191***	1.141***
	(0.006)	(0.007)	(0.005)	(0.011)
Multiple convictions	2.122***	1.771***	1.577***	1.797***
	(0.058)	(0.063)	(0.043)	(0.082)

	<i>No change (<1% diff.)</i>	<i>Small (1-2%)</i>	<i>Med. (3-5%)</i>	<i>Large (>5%)</i>
<i>Incarceration decision</i>	<i>Odds Ratio (SE)</i>	<i>Odds Ratio (SE)</i>	<i>Odds Ratio (SE)</i>	<i>Odds Ratio (SE)</i>
Violent offense	1.673*** (0.046)	1.766*** (0.057)	1.928*** (0.043)	1.717*** (0.077)
Drug offense	0.695*** (0.017)	0.702*** (0.019)	0.640*** (0.012)	0.633*** (0.025)
Property offense	1.012 (0.023)	1.169*** (0.029)	1.253*** (0.022)	1.145*** (0.041)
Trial	3.540*** (0.258)	2.022*** (0.164)	1.520*** (0.057)	2.406*** (0.275)
Other/unknown MOC	0.487*** (0.012)	0.797*** (0.022)	0.806*** (0.017)	1.768*** (0.063)
Year sentenced	0.904*** (0.006)	0.983* (0.007)	0.932*** (0.005)	1.088*** (0.012)
Mandatory received	14.592*** (1.646)	24.260*** (6.258)	8.662*** (0.585)	72.801*** (23.506)
<i>N</i> =	91,648	62,500	130,756	32,779

† $p < 0.10$; * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$

Exponentiated coefficients; Standard errors of logit coefficients in parentheses. Reference groups are (1) white defendant, (2) other offense type, and (3) guilty plea.

Table 8: OLS Regression of Incarceration Length by Latinx Population Size
(2000, U.S. Census)

	<i>Small (< 2%)</i>	<i>Med. (2-5%)</i>	<i>Large (>5%)</i>
<i>Sentence length (ln)</i>	<i>b (SE)</i>	<i>b (SE)</i>	<i>b (SE)</i>
Latinx	0.110*** (0.026)	0.071** (0.024)	0.097*** (0.014)
Black	-0.039*** (0.009)	-0.012 (0.012)	0.057*** (0.011)
Other race/ethnicity	-0.033 (0.025)	0.004 (0.033)	0.040* (0.020)
Female	-0.217*** (0.012)	-0.223*** (0.016)	-0.245*** (0.015)
Age	0.001 (0.002)	0.007* (0.003)	0.014*** (0.003)
Age ²	-0.000	-0.000**	-0.000***

	<i>Small (< 2%)</i>	<i>Med. (2-5%)</i>	<i>Large (>5%)</i>
<i>Sentence length (ln)</i>	<i>b</i> (SE)	<i>b</i> (SE)	<i>b</i> (SE)
	(0.000)	(0.000)	(0.000)
Presumptive sentence (ln)	0.765*** (0.004)	0.740*** (0.005)	0.656*** (0.004)
Prior Record Score	-0.033*** (0.002)	-0.003 (0.003)	-0.049*** (0.003)
Multiple convictions	0.265*** (0.013)	0.207*** (0.017)	0.231*** (0.014)
Violent offense	0.139*** (0.013)	0.154*** (0.018)	0.158*** (0.014)
Drug offense	-0.120*** (0.012)	-0.074*** (0.017)	-0.075*** (0.014)
Property offense	0.069*** (0.011)	0.060*** (0.015)	0.061*** (0.013)
Trial	0.440*** (0.024)	0.275*** (0.031)	0.275*** (0.016)
Other/unknown MOC	0.088*** (0.013)	-0.037* (0.018)	0.003 (0.012)
Year sentenced	0.000 (0.003)	-0.003 (0.004)	-0.008* (0.004)
Mandatory received	0.925*** (0.020)	0.914*** (0.024)	0.863*** (0.016)
N =	66,475	31,679	37,315

† $p < 0.10$; * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$

Standard errors in parentheses. Reference groups are (1) white defendant, (2) other offense type, and (3) guilty plea.

Table 9: OLS Regression of Incarceration Length by Latinx Caseload Presence (PCS 2006–2010)

	<i>Small (< 2%)</i>	<i>Med. (2-5%)</i>	<i>Large (>5%)</i>
<i>Sentence length (ln)</i>	<i>b</i> (SE)	<i>b</i> (SE)	<i>b</i> (SE)
Latinx	-0.055 (0.050)	0.107*** (0.027)	0.089*** (0.012)
Black	-0.102*** (0.011)	0.074*** (0.012)	0.027** (0.009)
Other race/ ethnicity	-0.054†	0.043	0.042*

	<i>Small (< 2%)</i>	<i>Med. (2–5%)</i>	<i>Large (>5%)</i>
<i>Sentence length (ln)</i>	<i>b</i> (SE)	<i>b</i> (SE)	<i>b</i> (SE)
	(0.028)	(0.037)	(0.019)
Female	-0.217*** (0.016)	-0.200*** (0.015)	-0.256*** (0.012)
Age	-0.010** (0.003)	0.009** (0.003)	0.013*** (0.002)
Age ²	0.000* (0.000)	-0.000** (0.000)	-0.000*** (0.000)
Presumptive sentence (ln)	0.767*** (0.005)	0.764*** (0.005)	0.694*** (0.004)
Prior Record Score	-0.041*** (0.003)	-0.023*** (0.003)	-0.027*** (0.002)
Multiple convictions	0.310*** (0.016)	0.225*** (0.016)	0.223*** (0.012)
Violent offense	0.152*** (0.017)	0.113*** (0.017)	0.157*** (0.012)
Drug offense	-0.125*** (0.016)	-0.043** (0.016)	-0.106*** (0.012)
Property offense	0.045** (0.015)	0.082*** (0.014)	0.071*** (0.011)
Trial	0.489*** (0.029)	0.366*** (0.032)	0.259*** (0.015)
Other/unknown MOC	0.085*** (0.016)	0.005 (0.017)	0.043*** (0.011)
Year sentenced	0.001 (0.004)	0.011** (0.004)	-0.013*** (0.003)
Mandatory received	0.957*** (0.025)	0.876*** (0.024)	0.874*** (0.015)
<i>N</i> =	40,401	35,697	59,371

† $p < 0.10$; * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$

Standard errors in parentheses. Reference groups are (1) white defendant, (2) other offense type, and (3) guilty plea.

Table 10: OLS Regression of Incarceration Length by Latinx Population Size (2010, U.S. Census)

	<i>Small (< 2%)</i>	<i>Med. (2–5%)</i>	<i>Large (>5%)</i>
<i>Sentence length (ln)</i>	<i>b</i> (<i>SE</i>)	<i>b</i> (<i>SE</i>)	<i>b</i> (<i>SE</i>)
Latinx	0.029 (0.039)	0.103*** (0.024)	0.070*** (0.011)
Black	-0.087*** (0.011)	-0.044*** (0.011)	0.024** (0.009)
Other race/ethnicity	-0.029 (0.029)	-0.161*** (0.029)	-0.002 (0.021)
Female	-0.192*** (0.013)	-0.253*** (0.014)	-0.263*** (0.012)
Age	0.005† (0.003)	0.008** (0.003)	0.010*** (0.002)
Age ²	-0.000** (0.000)	-0.000** (0.000)	-0.000*** (0.000)
Presumptive sentence (ln)	0.737*** (0.004)	0.787*** (0.005)	0.699*** (0.003)
Prior Record Score	-0.036*** (0.003)	-0.020*** (0.003)	-0.029*** (0.002)
Multiple convictions	0.223*** (0.009)	0.209*** (0.010)	0.220*** (0.008)
Violent offense	0.171*** (0.014)	0.144*** (0.015)	0.164*** (0.011)
Drug offense	-0.002 (0.014)	-0.118*** (0.014)	-0.041*** (0.011)
Property offense	0.091*** (0.012)	0.073*** (0.013)	0.031** (0.010)
Trial	0.433*** (0.026)	0.304*** (0.029)	0.344*** (0.016)
Other/unknown MOC	0.137*** (0.036)	0.021 (0.035)	0.031 (0.020)
Year sentenced	-0.017*** (0.003)	-0.029*** (0.003)	-0.024*** (0.002)
Mandatory received	0.903*** (0.034)	0.908*** (0.037)	0.860*** (0.023)
<i>N</i> =	46,450	51,073	65,084

† $p < 0.10$; * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$

Standard errors in parentheses. Reference groups are (1) white defendant, (2) other offense type, and (3) guilty plea.

Table 11: OLS Regression of Incarceration Length by Latinx Caseload Presence (PCS 2011–2016)

	<i>Small (< 2%)</i>	<i>Med. (2–5%)</i>	<i>Large (>5%)</i>
<i>Sentence length (ln)</i>	<i>b</i> (<i>SE</i>)	<i>b</i> (<i>SE</i>)	<i>b</i> (<i>SE</i>)
Latinx	0.052 (0.041)	0.039 (0.025)	0.064*** (0.011)
Black	-0.090*** (0.011)	-0.041*** (0.011)	0.019* (0.009)
Other race/ethnicity	-0.033 (0.029)	-0.144*** (0.029)	-0.018 (0.021)
Female	-0.195*** (0.013)	-0.237*** (0.014)	-0.268*** (0.012)
Age	0.006* (0.003)	0.006* (0.003)	0.011*** (0.002)
Age ²	-0.000** (0.000)	-0.000* (0.000)	-0.000*** (0.000)
Presumptive sentence (ln)	0.728*** (0.004)	0.803*** (0.004)	0.691*** (0.003)
Prior Record Score	-0.039*** (0.003)	-0.021*** (0.003)	-0.025*** (0.002)
Multiple convictions	0.220*** (0.010)	0.227*** (0.010)	0.203*** (0.008)
Violent offense	0.185*** (0.014)	0.139*** (0.015)	0.163*** (0.011)
Drug offense	0.002 (0.014)	-0.112*** (0.015)	-0.049*** (0.010)
Property offense	0.080*** (0.012)	0.108*** (0.013)	0.017 (0.010)
Trial	0.435*** (0.026)	0.329*** (0.028)	0.331*** (0.016)
Other/unknown MOC	0.098** (0.036)	0.092** (0.033)	0.009 (0.021)
Year sentenced	-0.018*** (0.003)	-0.030*** (0.003)	-0.021*** (0.002)
Mandatory received	0.880***	0.929***	0.859***

	<i>Small (< 2%)</i>	<i>Med. (2-5%)</i>	<i>Large (>5%)</i>
<i>Sentence length (ln)</i>	<i>b</i> (SE)	<i>b</i> (SE)	<i>b</i> (SE)
	(0.034)	(0.039)	(0.022)
<i>N =</i>	44,466	50,349	67,792

† $p < 0.10$; * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$

Standard errors in parentheses. Reference groups are (1) white defendant, (2) other offense type, and (3) guilty plea.

Table 12: OLS Regression of Incarceration Length by Latinx Population Growth (2000–2010, U.S. Census)

	<i>No change (<1% diff.)</i>	<i>Small (1-2%)</i>	<i>Med. (3-5%)</i>	<i>Large (>5%)</i>
<i>Sentence length (ln)</i>	<i>b</i> (SE)	<i>b</i> (SE)	<i>b</i> (SE)	<i>b</i> (SE)
Latinx	0.018 (0.053)	0.070† (0.038)	0.088*** (0.015)	0.115*** (0.018)
Black	-0.064*** (0.014)	-0.078*** (0.014)	0.036*** (0.009)	0.053** (0.018)
Other race/ ethnicity	-0.076* (0.033)	0.007 (0.036)	0.063*** (0.019)	0.026 (0.044)
Female	-0.190*** (0.018)	-0.220*** (0.018)	-0.262*** (0.012)	-0.181*** (0.021)
Age	-0.007* (0.003)	-0.004 (0.004)	0.015*** (0.002)	0.006 (0.004)
Age ²	0.000 (0.000)	0.000 (0.000)	-0.000*** (0.000)	-0.000† (0.000)
Presumptive sentence (ln)	0.735*** (0.006)	0.785*** (0.006)	0.709*** (0.004)	0.688*** (0.007)
Prior Record Score	-0.045*** (0.003)	-0.008* (0.004)	-0.032*** (0.002)	-0.024*** (0.004)
Multiple convictions	0.260*** (0.017)	0.342*** (0.021)	0.220*** (0.013)	0.208*** (0.019)
Violent offense	0.116*** (0.018)	0.173*** (0.020)	0.158*** (0.012)	0.153*** (0.022)
Drug offense	-0.105*** (0.018)	-0.160*** (0.019)	-0.057*** (0.011)	-0.119*** (0.022)
Property offense	0.057*** (0.016)	0.016 (0.018)	0.114*** (0.011)	0.006 (0.020)

	<i>No change (<1% diff.)</i>	<i>Small (1-2%)</i>	<i>Med. (3-5%)</i>	<i>Large (>5%)</i>
<i>Sentence length (ln)</i>	<i>b (SE)</i>	<i>b (SE)</i>	<i>b (SE)</i>	<i>b (SE)</i>
Trial	0.475*** (0.031)	0.487*** (0.036)	0.263*** (0.015)	0.382*** (0.039)
Other/unknown MOC	0.069*** (0.018)	0.117*** (0.019)	0.041*** (0.012)	0.084*** (0.019)
Year sentenced	0.027*** (0.005)	-0.023*** (0.005)	-0.008** (0.003)	0.014* (0.006)
Mandatory received	0.956*** (0.028)	0.938*** (0.033)	0.837*** (0.015)	0.963*** (0.027)
<i>N</i> =	29,801	29,130	61,131	15,407

† $p < 0.10$; * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$

Standard errors in parentheses. Reference groups are (1) white defendant, (2) other offense type, and (3) guilty plea.

Table 13: z-test Comparisons of Latinx Incarceration Model Coefficients

PCS 2006–2010			
<i>Latinx Population Size (2000 Census)</i>			
	<i>Small (< 2%)</i>	<i>Med. (2–5%)</i>	<i>Large (>5%)</i>
<i>b</i> =	0.825***	0.454***	0.429***
	<i>Small vs. Med</i>	<i>Med. vs. Large</i>	<i>Large vs. Small</i>
<i>z</i> =	6.24***	0.51	-7.80***
<i>Latinx Caseload Presence</i>			
	<i>Small (< 2%)</i>	<i>Med. (2–5%)</i>	<i>Large (>5%)</i>
<i>b</i> =	0.706***	0.480***	0.344***
	<i>Small vs. Med</i>	<i>Med. vs. Large</i>	<i>Large vs. Small</i>
<i>z</i> =	2.44*	2.62**	-4.36***
PCS 2011–2016			
<i>Latinx Population Size (2010 Census)</i>			
	<i>Small (< 2%)</i>	<i>Med. (2–5%)</i>	<i>Large (>5%)</i>
<i>b</i> =	0.322***	0.311***	0.092***
	<i>Small vs. Med</i>	<i>Med. vs. Large</i>	<i>Large vs. Small</i>
<i>z</i> =	0.16	5.32***	-3.64***
<i>Latinx Caseload Presence</i>			
	<i>Small (< 2%)</i>	<i>Med. (2–5%)</i>	<i>Large (>5%)</i>
<i>b</i> =	0.296***	0.213***	0.081***
	<i>Small vs. Med</i>	<i>Med. vs. Large</i>	<i>Large vs. Small</i>
<i>z</i> =	1.12	3.17**	-3.22**

† $p < 0.10$; * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$

Statistically significant z indicates that Latinx incarceration model coefficients (b) are significantly different based on two-tailed z -test. All comparisons are made across contextual classifications within the same time period.

Table 14: z -test Comparisons of Latinx Sentence Length Model Coefficients

PCS 2006–2010			
<i>Latinx Population Size (2000 Census)</i>			
	<i>Small (< 2%)</i>	<i>Med. (2–5%)</i>	<i>Large (>5%)</i>
$b =$	0.110***	0.071**	0.097***
	<i>Small vs. Med</i>	<i>Med. vs. Large</i>	<i>Large vs. Small</i>
$z =$	1.10	-0.94	-0.44
<i>Latinx Caseload Presence</i>			
	<i>Small (< 2%)</i>	<i>Med. (2–5%)</i>	<i>Large (>5%)</i>
$b =$	-0.055	0.107***	0.089***
	<i>Small vs. Med</i>	<i>Med. vs. Large</i>	<i>Large vs. Small</i>
$z =$	-2.85**	0.61	2.80**
PCS 2011–2016			
<i>Latinx Population Size (2010 Census)</i>			
	<i>Small (< 2%)</i>	<i>Med. (2–5%)</i>	<i>Large (>5%)</i>
$b =$	0.029	0.103***	0.070***
	<i>Small vs. Med</i>	<i>Med. vs. Large</i>	<i>Large vs. Small</i>
$z =$	-1.62	1.25	1.01
<i>Latinx Caseload Presence</i>			
	<i>Small (< 2%)</i>	<i>Med. (2–5%)</i>	<i>Large (>5%)</i>
$b =$	0.052	0.039	0.064***
	<i>Small vs. Med</i>	<i>Med. vs. Large</i>	<i>Large vs. Small</i>
$z =$	0.27	-0.92	0.28

† $p < 0.10$; * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$

Statistically significant z indicates that Latinx incarceration model coefficients (b) are significantly different based on two-tailed z -test. All comparisons are made across contextual classifications within the same time period.