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ORGANIZATIONAL EFFICIENCY AND EARLY DISPOSITION PROGRAMS IN FEDERAL COURTS

2010-IJ-CX-0013

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FINAL REPORT DECEMBER 2013

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ABSTRACT

Early disposition or “fast-track” programs in federal sentencing allow a prosecutor to offer a below-Guideline sentence in exchange for a defendant’s prompt guilty plea and waiver of certain pre-trial and post-conviction rights. Fast-track programs have long been authorized for implementation in some, but not all, federal districts. They are used mostly for immigration offenses, based on the premise that their use saves the government significant resources by shortening case processing time. However, the extent to which fast-track programs alleviate the burden of the federal justice system is largely unknown. There has been growing concern about sentencing disparities resulting from such programs because not everyone can benefit from fast-track programs. The primary purpose of this study is to examine the impact of fast-track programs on two outcomes, case processing time and sentence length. This study is among the first empirical attempts to evaluate how much efficiency is gained and how much sentencing disparity is created by fast-track treatment among immigration offenders.

Based on Federal Justice Statistics Program data from FY2006 to FY2009, this study examines multiple yearly cohorts of defendant-cases prosecuted and sentenced under the Sentencing Guidelines. Data analysis relies on merged data from defendants in federal criminal cases terminated in district courts (Administrative Office of the United States Courts, AOUSC) and defendants sentenced under the Sentencing Guidelines (United States Sentencing Commission, USSC).

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For the impact evaluation, this study employs counterfactual analyses that assess program impact based on the comparison between those who received fast-track treatment and matched defendants who did not receive fast-track treatment but otherwise have similar characteristics as fast-track participants. Within a conventional statistical approach, known as the potential outcomes framework, the two comparison groups developed in this study represent what would have happened to fast-track participants had they not received fast-track treatment.

This study employs several approaches to estimating the impact of fast-track treatment, including nearest neighbor matching and inverse probability weighting based on the propensity scores of receiving fast-track treatment. Different test specifications yielded consistent results regarding the impact of fast-track programs on case processing outcomes. Results indicate that, as expected, the use of fast-track programs reduced case processing time and increased sentencing disparity. However, the extent of program impact on these outcomes was fairly modest. Fast-track participants who waived the due process right to appeal in exchange for a reduced sentence did not receive as much of a reduction in sentence length as anticipated. The estimated reduction in case processing time was also of moderate consequence to the government.

Overall, much more attention should be given to how fast-track programs are exercised. There is significant variation in the use of fast-track programs across districts. Furthermore, although immigration offenses have become the largest offense category in the federal justice system, little is known about how immigration cases are processed.

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Federal prosecutors exert substantial control over the processing of these types of cases, raising concern for defendants and the criminal justice system. It is recommended that the federal government demand higher standards of accountability, efficiency, and equity in the processing of immigration cases. Moreover, scholarly inquiries should be pursued to better understand the process of prosecutorial and judicial decision-making in federal courts as well as to evaluate cost-effectiveness of sentencing options.

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EXECUTIVE SUMMARY

Overview

The number of immigration offenses sentenced in federal courts has significantly increased in recent decades. Specifically, the number of non-citizens prosecuted for immigration offenses grew exponentially among states along the Southwest border. In response to such a dramatic increase in immigration-related cases, several U.S. attorneys created an early disposition or "fast-track" program to alleviate caseload pressures. The fast-track program allows a federal prosecutor to offer a below-Guideline sentence in exchange for a defendant's prompt guilty plea and waiver of certain pre-trial and post-conviction rights. The concern that fast-track programs exacerbate sentencing disparity has fueled legal controversies over the legitimacy of such programs. However, little is known as to how successful fast-track programs are at easing caseload burdens or the degree to which such programs contribute to sentencing disparity. This study therefore aims to develop empirical knowledge about the impact of fast-track programs on court case processing.

Research Questions

The primary research questions of this study are: (1) to what extent do fast-track programs impact the efficient processing of immigration cases? and (2) to what extent does prosecutorial discretion, exercised in fast-track processing, contribute to sentencing disparity? Two competing norms motivate these questions – efficiency and

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equity. Efficient case disposition is an overriding organizational goal for agencies within the criminal justice system. Given the caseload pressures of criminal immigration cases, an incentive system for plea inducement, such as fast-track programs, is a natural policy option that can be promoted among courtroom actors in the interest of organizational efficiency. However, this perspective has been criticized by those concerned about fast-track programs arguably exacerbating sentencing disparity. Until recently, the Department of Justice (DOJ) authorized fast-track programs in select districts, thereby allowing similarly situated offenders to have different sentencing outcomes depending on the districts in which they were sentenced. The equity perspective raises the issue of fairness and certainty in meeting the purposes of sentencing. In this study, these two perspectives are discussed by comparing case outcomes between defendants that received fast-track treatment, defendants that did not receive fast-track treatment in authorized districts, and defendants sentenced in districts that were not authorized to implement fast-track programs.

Research Methods and Data

Based on the Federal Justice Statistics Program data available through the Inter-University Consortium for Political and Social Research (ICPSR), this study merged data on defendants in federal criminal cases terminated in district courts (Administrative Office of the United States Courts, AOUSC) with those of defendants sentenced under the Sentencing Guidelines (United States Sentencing Commission, USSC). Based on

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federal cases from FY2006 to FY2009, counterfactual analyses were developed to assess the impact of fast-track programs among immigration offenders.

To this end, propensity score methods were used to construct a comparison group of defendants who did not receive fast-track treatment but had similar characteristics as those who received fast-track treatment. Within the potential outcomes framework, these non-fast-track defendants represent what would have happened to fast-track cases had they not received fast-track treatment. This study employed several approaches, including nearest neighbor matching and inverse probability weighting, to estimate the impact of fast-track treatment. Data analysis was conducted based on two comparisons, each of which addresses a different selection process. The first comparison is between fast-track cases and non-fast-track cases within districts where fast-track programs were available. The second comparison is between fast-track cases and otherwise similar cases from the districts where fast-track programs were not available. The final analysis incorporates multiple propensity scores from a multinomial logistic model so as to make a comparable evaluation from the two different comparison groups. Across different model specifications and test settings, this study found consistent results regarding the impact of fast-track programs on case processing outcomes. Key findings of this study are listed below.

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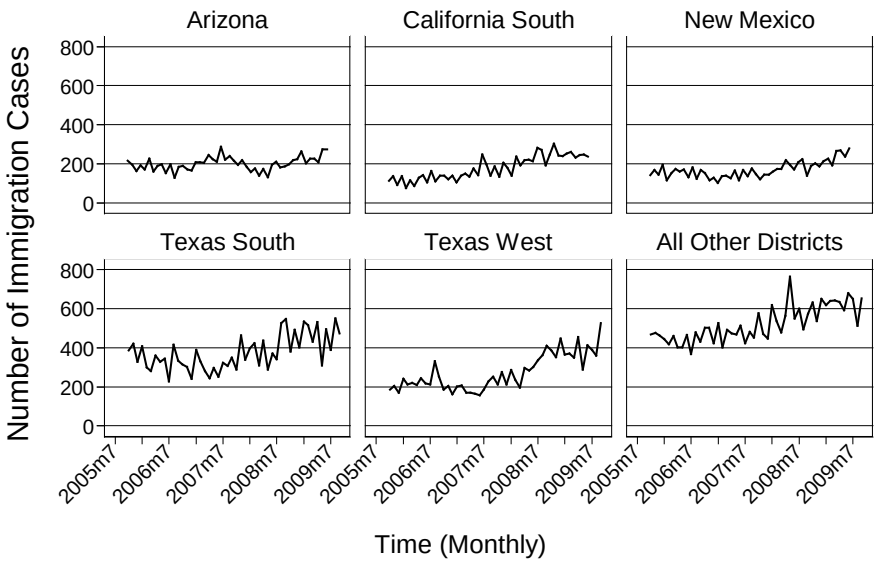
Summary of Findings

Trends in Immigration Cases

- Approximately 27 percent of all criminal cases between FY2006 and FY2009 were primarily convicted of immigration crimes. Nearly 70 percent of these cases originated from five federal districts: Southern California, Arizona, New Mexico and Western and Southern Texas.



- A considerable variation in the volume and processing of immigration cases existed across all districts. Based on FY2006 and FY2009 data, the average processing time from filing to disposition for cases involving unlawful entering or remaining in the United States (2L1.2) was longest in Massachusetts (222.9 days, n=95) and shortest in North Dakota (7.5 days, n=87). The average sentence length of these cases was longest in the Southern District of Indiana (47.3 months, n=31), approximately 15 times greater than the average sentence length in the District of North Dakota (3.2 months, n=102).

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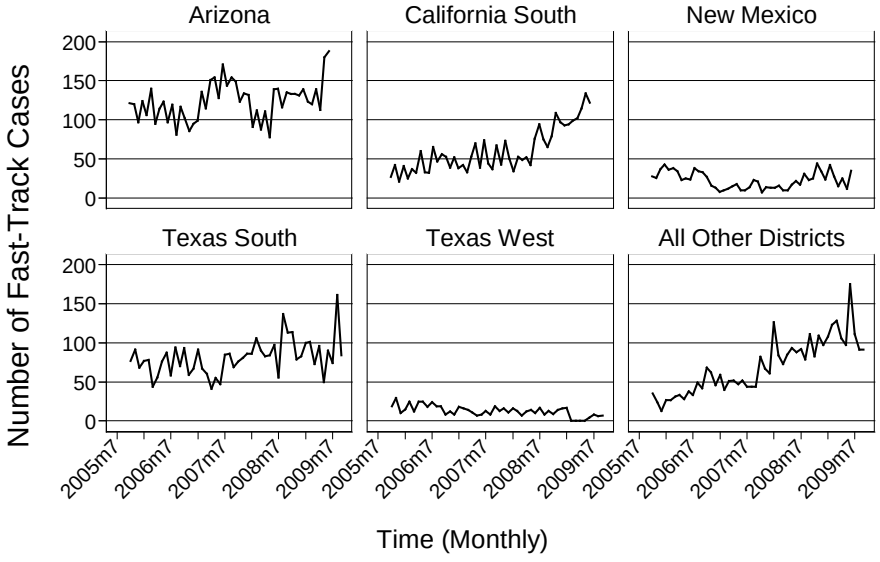
Use of Fast-Track Treatment

- As of May 29, 2009, 27 fast-track programs in 17 judicial districts were authorized for full implementation. Most of those programs were for "illegal reentry after deportation" cases.
- DOJ determined whether or not to implement fast-track programs in each district. For districts with approved fast-track programs, whether a defendant received fast-track treatment was largely a matter of prosecutorial discretion. After the initial appearance of defendants in court and appointment of counsel, prosecutors would inform the defense counsel whether or not the government sought a sentencing departure pursuant to an early disposition program.
- Among the districts with approved fast-track programs, the chance of receiving fast-track treatment varied considerably across districts. The Eastern District of California and District of Arizona disposed of the majority of illegal reentry after deportation cases through fast-track programs (89 and



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74 percent, respectively) whereas other districts, such as the Western District of Texas (4 percent) and the Middle District of Florida (10 percent), relied minimally on fast-track programs to dispose of such cases.

- The chance of receiving fast-track treatment also varied across defendants. As expected, defendants whose alleged charges posed a greater threat to public safety (i.e., serious indictment charges) were less likely to receive fast-track treatment while controlling for all other case characteristics.
- Self-represented defendants were considerably less likely than those represented by public defenders to receive fast-track treatment. On average, 1 in 4 immigration cases (25 percent) in fast-track districts would receive fast-track treatment. The estimated chance of receiving fast-track treatment for self-represented defendants was approximately 6 percent while holding all other case characteristics constant.
- In addition to legal and procedural factors, the age of defendants and their family/social status, as measured by the number of dependents for whom they were responsible, were both associated with the chance of receiving fast-track treatment. Younger offenders were more likely to receive fast-track treatment while defendants who had dependents to support were more likely to be processed through fast-track treatment. However, the impact of both of these factors was marginal.

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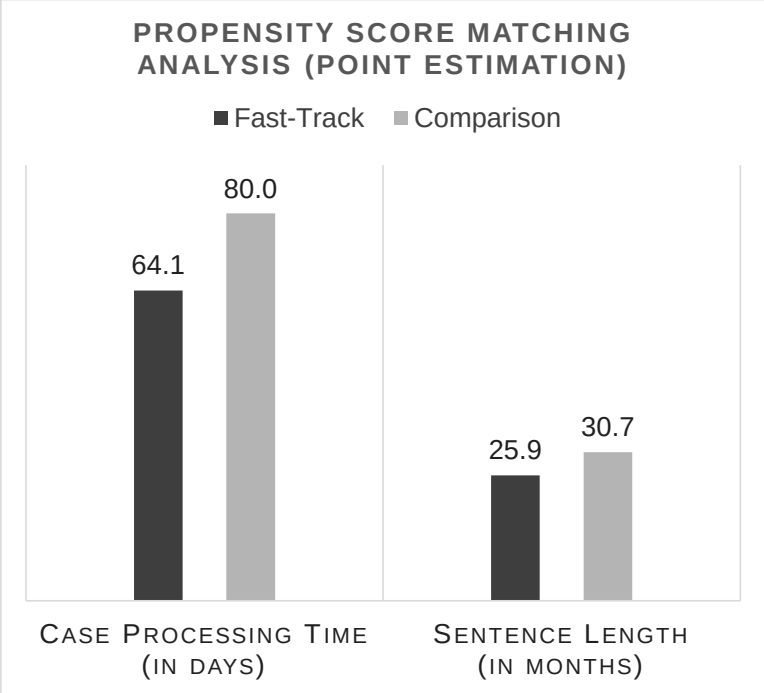
Impact of Fast-Track Treatment

- The Sentencing Guidelines determine sentence length by offense seriousness and criminal history points. There are 43 levels of offense seriousness overall. Fast-track treatment may yield up to a 4-level reduction in offense seriousness, which, according to the Federal Sentencing Guidelines, can be translated into a 0-to-18 month reduction in sentence length for base level illegal reentry cases (8 U.S.C. § 1326). For illegal reentry cases with a 16-level enhancement, the 4-level reduction can be as much as a 6-year reduction in sentence length.

- Participation in fast-track programs resulted in a modest reduction in case processing time and sentence length. Based on propensity score matching analysis, the estimated reduction in case processing time, which is a saving to the government, ranges from approximately 10 to 21 days (confidence intervals). The estimated reduction in sentence length,



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which constitutes the sentencing disparity between fast-track and non-fast-track cases, ranges from approximately 4 to 6 months (confidence intervals).

Sentencing Disparities

- The recent (January 2012) fast-track policy established baseline eligibility requirements for any defendant who qualifies for fast-track treatment, regardless of where the defendant is prosecuted. The primary motivation for this policy change was growing concern over sentencing disparities occasioned by the selective implementation of fast-track programs in some, but not all, districts.
- This study found supporting evidence for the presence of sentencing disparities between districts with and without fast-track programs. However, sentencing disparities were substantially greater between fast-track and non-fast-track cases within districts with approved fast-track programs than between fast-track cases and similar cases from non-fast-track districts. In other words, the selective practice of fast-tracking some, but not all, cases within fast-track districts resulted in greater sentencing disparity than did the selective implementation of fast-track programs in some districts and not others.
- It is also important to note that demographic characteristics were more likely to influence sentence length in conjunction with fast-track treatment. For

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example, discriminatory sentencing against Hispanic defendants is more pronounced for those disposed of through fast-track programs.

Implications for Policy and Research

- Although the recent fast-track policy change upholds the DOJ's position on sentencing disparities in close accord with Congress's intent to achieve uniformity in sentencing outcomes, its implementation may create more room for prosecutorial discretion. At the outset, the policy notes that individual U.S. Attorneys retain discretion in deciding how fast-track will be implemented in their districts. This study recommends that more uniform guidelines be exercised across all districts as to the application of fast-track treatment.
- A more fundamental resolution to the dilemma between organizational efficiency and equity would be to revise sentencing guidelines for immigration offenses. There are many sentence enhancements applied to immigration offenses, which lead to excessive sentences. It is not intuitive to exercise the practice of imposing a harsh sentence for a large number of immigration offenses while, at the same time, offering sentence reduction incentives through fast-track programs.
- It is recommended that uniform standards (with fewer sentence enhancements) be applied to charging and sentencing decision-making for immigration cases. Further, given that the burden of proof lies with the government, prosecutorial or judicial discretion should be exercised when

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establishing a basis to impose a harsh sentence for immigration offenders who pose a greater risk to public safety, not when identifying lower-risk or cooperating offenders deemed appropriate to participate in an incentive program for plea inducement.

- In accord with an emerging consensus that recognizes the importance of prosecutorial discretion in curbing extralegal disparities concerning race, gender, or class, this study raises a number of questions about how to understand prosecutorial discretion and its implications in the context of the processing of immigration offenses. More research attention should be given to how sentencing policy is practiced by prosecutors, and how that varies across individual case characteristics and districts.
- As fast-track programs have a direct implication for the costs of court operations, one priority for future research is to develop reliable estimates for the growing costs of processing immigration cases in the federal justice system, which would vary across districts. The development of elaborate cost estimates, coupled with the impact analysis on fast-track programs, can advance our understanding of how to achieve organizational efficiency in the federal justice system.

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Limitations

- The conclusions of this study should be balanced with its limitations. This study is limited to fast-track cases by the government's motion for a downward sentence departure. Due to data unavailability, fast-track cases by a charge bargaining program could not be reliably identified through this study. This limitation could have potentially led to more conservative estimates of program impact if at all.
- This study provides a quantitative assessment of program impact. To better appreciate the implications of fast-track programs, one should look beyond the theory of what fast-track programs are supposed to do. What happens in the courtroom among courtroom actors remains largely unknown. Future research should examine the process of implementing fast-track programs and courtroom dynamics in the processing of immigration cases.
- There are fast-track programs for other offense types. As this study only examines immigration offenses, however, its results should not be generalized to other types of fast-track programs.

Conclusions

- This study is among the first empirical efforts to quantify the impact of fast-track programs. Based on a quasi-experimental design that relies on innovative use of propensity score methods and statistical controls, this study

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provides rigorous analyses that should be of interest to policymakers, sentencing scholars, and the public.

- Most sentencing research focuses on the impact of extra-legal factors on sentencing outcomes and theoretical development of courtroom decision-making. Drawing upon existing research and data on sentencing, this study contributes to our scholarly understanding of sentencing by (1) addressing the tension between competing and often conflicting goals of organizational efficiency and fair treatment of defendants, (2) reinforcing the need to further our understanding on prosecutorial discretion, and (3) applying methodological innovations to federal court data.
- From a policymaking point of view, this study raises a challenge about the effectiveness of fast-track programs. The use of sentencing enhancement mechanisms and plea incentives can be utilized in harmony such that the government can efficiently and effectively handle a large volume of criminal cases without compromising public safety. However, the use of fast-track programs within a broader context of federal sentencing policies appears to be far from optimal. Although fast-track programs function as intended, their impact on organizational efficiency is modest and is potentially offset by suboptimal management of sentencing practices and policies in federal courts.

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CHAPTER 1: INTRODUCTION

1.1. Statement of the Problem

The number of immigration offenses sentenced in the federal justice system has significantly increased in recent decades. Between 1985 and 2000, the number of non-citizens charged with an offense in federal courts quadrupled (Rosenbaum, 2002; Scalia & Litras, 2002). Specifically, the number of non-citizens prosecuted for immigration offenses grew substantially in the mid-1990s within the states along the southwest border. In response to this dramatic increase in immigration-related cases, United States Attorneys' Offices and the Department of Justice developed early disposition or "fast-track" programs in the 1990s as a matter of prosecutorial discretion to alleviate caseload pressures of criminal immigration cases (DOJ, 2012).

The number of immigration cases processed in the federal justice system has continued to grow. In FY 2003, there were 15,708 individuals sentenced for immigration offenses, comprising 21.5 percent of all cases sentenced under federal sentencing guidelines (USSC, 2006). Congress recognized the role of fast-track programs through the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003, which directed the United States Sentencing Commission (USSC) to promulgate a policy statement authorizing a "downward departure" from recommended sentence levels, pursuant to an early disposition program (also referred to as §5K3.1 departure).

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Currently, immigration offenses represent the single largest category of crime in the federal justice system, followed by drug offenses.[1] The efficient processing of offenders facing immigration-related charges is therefore increasingly relevant, as are the implications of fast-track programs. However, there is little known about the impact of fast-track programs.

This study provides an overview of the use of fast-track programs and discusses the impact of fast-track programs on case outcomes such as sentence length and case processing times. By examining what would have happened to those cases disposed of through fast-track had they not been processed through these programs, we attempt to address questions of direct policy relevance. How does prosecutorial discretion occasioned by fast-track programs affect case outcomes? To what extent do fast-track programs facilitate the efficient disposition of immigration cases or exacerbate sentencing disparities among similar cases?

To these ends, this report is organized as follows: The remainder of Chapter 1 introduces the history of fast-track programs and presents theoretical perspectives by which to evaluate normative arguments and considerations surrounding the use of fast-track programs. Chapter 2 discusses the analytic strategy and data used in this study to examine the impact of fast-track programs on case outcomes. Chapter 3 reports findings from the data analysis. Finally, Chapter 4 provides a discussion on the policy implications of fast-track programs.

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1.2. Background

Surge in Immigration Offenses

Illegal immigration has been the fastest growing federal offense in recent decades. Between 2005 and 2009, the number of immigration offenses increased annually by an average rate of 23 percent (Motivans, 2011). In 2009, 84,749 suspects were arrested and booked for immigration offenses, up from 38,041 in 2005. This is nearly ten times as many as the number of suspects referred to U.S. attorneys for immigration offenses as the most serious charge in 1985 (Scalia & Litras, 2002).

There may be several explanations for this surge. Generally, economic incentives are among the primary motivations for unauthorized immigration across U.S. borders. However, it is important to acknowledge that changes in immigration policies in recent decades have widened the net of immigration-related law enforcement. Passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 resulted in a substantial increase in law enforcement for border patrol and immigration violations. The government has also taken a tougher stance on border control through approaches such as Operation Streamline, which is a “zero-tolerance” border enforcement program started in mid-2000 that orders persons crossing the border illegally to be charged with federal criminal charges, instead of being routed into civil deportation proceedings.

The growth of illegal immigration and the increased enforcement of immigration laws have dramatically changed the landscape of the federal criminal justice system. Immigration offenses are now the most common offense in the federal system, followed

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by drug offenses. It is critical to acknowledge that most federal defendants are detained prior to case disposition, and that the detention rate is particularly high for defendants charged with an immigration offense (95 percent), followed by defendants charged with a violent crime (87 percent). To put this into context, the Department of Homeland Security's system of immigration detention, operated by Immigration and Customs Enforcement (ICE), spends an average of $5.5 million per day to maintain its current detention capacity of 33,400 beds in over 250 facilities. This is a steep increase from fewer than 7,500 beds in 1995 (Schriro, 2009). These immigration cases are concentrated in five federal judicial districts along the U.S.-Mexico border (Southern California, Arizona, New Mexico and Western and Southern Texas), and so are criminal cases involving non-citizens charged with immigration offenses. The court proceedings of such cases have increasingly strained the resources of judges, U.S. attorneys, U.S. Marshals, and court staff throughout the United States, with particular intensity in the five border districts.

Fast-Track Programs

In response to the dramatic increase in immigration-related cases, the U.S. Attorney's Office and the Department of Justice created early disposition or "fast-track" programs to alleviate caseload pressures in the 1990s (Gorman, 2010). These programs were initially implemented along the southwestern border of the United States as a matter of prosecutorial discretion. In return for a prompt guilty plea and a waiver of certain legal rights, federal prosecutors offered eligible defendants an opportunity to

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have their charges reduced. The legitimacy of these programs is based on the premise that a defendant who promptly agrees to participate in such a program saves the government significant and scarce resources which can be used to prosecute other defendants. In addition, a defendant participating in the fast-track program is deemed to have demonstrated an acceptance of responsibility above and beyond what is already taken into account by the adjustments contained in the Sentencing Guidelines.

The importance of fast-track programs was recognized by the PROTECT Act of 2003, which directed USSC to promulgate a policy statement authorizing a downward departure from recommended sentence levels according to the Sentencing Guidelines. Attorney General Ashcroft released a memorandum which provided rationales and directives for implementing fast-track programs, after which DOJ approved and denied fast-track applications in individual districts. As a result, not all districts were authorized to implement fast-track programs.[2] Since the issuance of this memorandum, however, the legal and operational circumstances surrounding fast-track programs have changed. In January 2012, the Deputy Attorney General announced that fast-track programs were no longer limited to the southwestern border districts. Non-border districts have sought and received authorization to implement fast-track programs even though the southwestern border districts still comprised the majority of fast-track districts.

Furthermore, the implementation of fast-track programs has been offense-specific and time-limited. Districts seeking authorization from the U.S. Attorney General for the implementation of a fast-track program were required to submit an application on an annual basis. As of May 29, 2009, 27 fast-track programs in 17 judicial districts were

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authorized for full implementation, mostly for "illegal reentry after deportation" cases.[3] Between 2003 and 2009, the following districts had implemented a fast-track program for immigration-related offenses at some point: Arizona, Central California, Eastern California, Northern California, Southern California, Middle Florida, Southern Florida, Northern Georgia, Idaho, Kansas, Nebraska, New Mexico, North Dakota, Oregon, Puerto Rico, Southern Texas, Western Texas, Utah, Eastern Washington, and Western Washington.

Sentencing disparity resulting from fast-track programs has led to substantial debate. The selective implementation of fast-track programs in the districts listed above has generated concern among legal practitioners that defendants can be treated differently depending on where they are charged and sentenced. In other words, similarly situated defendants may receive different sentencing outcomes, depending on the availability of a fast-track program in the judicial district where they are sentenced. This policy, which allows for sentencing disparities, is inconsistent with the objective of achieving uniform sentencing outcomes for similar defendants. Defendants in non-fast-track districts have argued that the unavailability of fast-track programs constitutes an unwarranted inequity. In response to these concerns, it has been argued that sentencing judges in non-fast-track districts should exercise discretion to mitigate any sentencing disparity arising from fast-track programs, particularly since *United States v. Booker* (543 U.S. 220, 2005) ended mandatory application of the Sentencing Guidelines in 2005.[4]

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Arguments proposing increased discretion for sentencing judges, however, are further complicated by the fact that federal courts of appeals are divided on whether a sentencing court in a non-fast-track district should be allowed to deviate from the Guidelines range to address disparities for defendants who would be eligible to receive a fast-track sentencing discount. The Fifth, Ninth, and Eleventh Circuits hold that sentencing courts may not consider such disparity occasioned by fast-track programs because Congress implicitly intends for the disparity in sentencing to exist.[5] The First, Third, Sixth, and Seventh Circuits, however, conclude that sentencing judges in non-fast-track districts have the discretion to consider a variance sentence on the basis that federal sentencing, post-*Booker*, should rely on a number of sentencing factors set forth in 18 U.S.C. § 3553, one of which is the need to avoid any unwarranted disparity in sentencing outcomes among defendants with similar records who have been found guilty of similar conduct.[6] Because of this split in opinion across federal districts, U.S. Attorney's Offices in non-fast-track districts have routinely faced motions for variances based on fast-track programs in other districts.[7]

Acknowledging the importance of this controversy, DOJ has recently revised its fast-track policy such that the implementation of fast-track programs is no longer bounded by where a defendant is sentenced. Based on a set of uniform requirements, federal prosecutors may now exercise discretion to extract a prompt guilty plea in felony illegal reentry cases (Title 8, United States Codes, Section 1326). On the one hand, this policy change is a significant improvement in that it recognizes the selective authorization of fast-track programs as contradictory to the Department's position on the

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Sentencing Guidelines. It is also in accordance with the intent of the Sentencing Reform Act of 1984, which charged USSC with achieving reasonable uniformity in sentencing by narrowing the wide disparity in the imposition of sentences for similar criminal offenses committed by similar offenders.

On the other hand, this policy change could invite greater prosecutorial discretion than before. One of the critical issues with fast-track programs is that their implementation varies considerably across districts. Aside from the disparity between fast-track and non-fast-track districts, there is substantial variation in the practice and outcome of different fast-track programs. For defendants who committed an illegal entry after a deportation offense in violation of Title 8 U.S.C. § 1326, some districts (e.g., the Central District of California) did not pursue prosecution under Title 8 U.S.C. § 1326 and allowed these individuals to enter guilty pleas to one or two counts of a lesser charge, 8 U.S.C. § 1325 (improper entry by alien), instead. Rather than dropping a charge, other districts (e.g., the Southern District of Texas) recommended a reduction of up to four levels in the total offense level, pursuant to U.S. Sentencing Guidelines §5K3.1 (Early Disposition Program). The reduction level varied across districts as the policy explicitly provided for prosecutorial discretion. Further, some districts, such as the Western District of Texas, only applied fast-track treatment to defendants from certain regions within the district. These variations in the use of fast-track programs add complexity to the task of understanding the impact of fast-track programs.

McClelland and Sands (2006, p. 524) provide an illustrative example of how fast-track programs would work in theory. This line of argument motivated public debates,

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as well as the DOJ's policy change, on sentencing disparities caused by fast-track programs:

> Assume three illegal aliens came across the Mexican border: Diego, Angelo, and Francisco. All of them have the same criminal history category of V and all have a prior aggravated felony conviction for a crime of violence. They go to the bus station in San Diego. Diego is immediately picked up by the Border Patrol. His recommended sentencing range if he goes to trial and is found guilty (with no reduction for acceptance of responsibility) would be ninety-two to one hundred and fifteen months, based on an offense level of twenty-four and criminal history category of V, and if he pleads guilty and receives a three-level reduction for acceptance of responsibility, then his sentencing range would be seventy to eighty-seven months.
>
> However, Diego is lucky. He is prosecuted in a district with a fast-track program, and so he is offered a "fast-track" deal involving charge-bargaining, for which he receives a thirty-month sentence. His two friends, Angelo and Francisco, continue north. Angelo gets off the bus in Los Angeles, where he is arrested. Angelo is not so fortunate. There is no "fast-track" deal offered. He pleads guilty, receives the standard three-level reduction for acceptance of responsibility, and is given a sentence of between seventy and eighty-seven months. Only Francisco remains, and he continues up the coast and gets off in San Francisco, where he too is arrested. He is in another fast-track district; however, in this district the fast-track deal is for a four-level reduction from the offense level in addition to the three-level reduction for acceptance of responsibility, which results in an adjusted offense level of seventeen, and thus a possible sentencing range of forty-six to fifty-seven months.
>
> The resulting sentencing ranges are summarized below:

Name	Location	Plea Offer
Diego	San Diego	30 months
Angelo	Los Angles	70 to 87 months
Francisco	San Francisco	46 to 57 months

As further discussed in Chapter 3 of this report, however, there is a wide discrepancy between theory and practice in terms of the impact of fast-track programs

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on case outcomes. In the next section, prior research on federal sentencing and prosecutorial discretion is reviewed to frame research questions about the impact of fast-track programs. This study provides a discussion of two normative perspectives and alleged consequences of fast-track programs – sentencing disparity and efficiency in case disposition.

1.3. Two Competing Norms: Efficiency and Equity

The revised policy statement regarding the implementation of fast-track programs resolved the DOJ's inconsistency in its position on federal sentencing. The main arguments of both advocates and opponents of fast-track programs nonetheless remain relevant. For proponents of fast-track programs, the underlying premise can be understood in the same way as sentence reductions for defendants who provide substantial assistance to authorities. That is, the government may create sentence reduction incentives for offenders who assist in the investigation or prosecution of another person committing a criminal offense (Maxfield & Kramer, 1998). Although not as tangible as the apprehension or conviction of another criminal, the benefit of fast-track programs to the government is the averted cost of lengthy case processing. There are two normative considerations arising from this premise. First, to what extent does fast-track treatment facilitate the efficient processing of immigration cases? By extension, to what extent does the submission of a prompt guilty plea save the government resources? Should these potential government savings justify the discretion granted to prosecutors to reduce charges for defendants to extract a guilty plea?

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Second, to what extent does prosecutorial discretion exercised through fast-track treatment contribute to sentencing disparity? These questions, motivated by the competing norms of efficiency and equity, provide a sound basis for evaluating the implications of fast-track programs.

First, the efficiency claim rests largely on a utilitarian perspective that the interest of the government coincides with the increasing demand for cost-efficient management of criminal cases in federal courts, even at the cost of increased sentencing disparity. Implicit in the efficiency claim is the assumption that less efficient handling of the influx of immigration offenses would yield greater disadvantages. For instance, the extended detention of criminal defendants awaiting trial could delay prompt hearings and disposition of cases, resulting in violations of due process. In addition, the over-population of detention facilities could lead to inhumane treatment of pretrial defendants. Such infringements upon basic liberties, referred to as external injustices (Kipnis, 1976), are by no means less serious than unwarranted sentencing disparity.

Further, the time required for a case to traverse the criminal justice system has been of great importance to scholars and policymakers alike, as a given case's time to completion relates directly to its cost (Zatz & Lizotte, 1985). The organizational maintenance theory of sentencing most clearly supports this point (Flemming, Nardulli, & Eisenstein, 1992; Hagan, Hewitt, & Alwin, 1979; Krislov, 1983; LaFree, 1985). Dixon (1995) remarks that courtroom elites would uphold the goals of organizational maintenance and naturally come to share common interests in disposing of cases. Hence, an elaborate incentive system for plea inducement, such as fast-track programs,

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would naturally emerge among courtroom actors in the interest of organizational efficiency. Efficient case disposition is therefore an overriding organizational goal for agencies within the criminal justice system (Johnson, Ulmer, & Kramer, 2008).

However, arguments emphasizing the importance of maintaining efficient court systems have been censured by legal scholars and professionals. While fast-track programs may contribute to more efficient court systems, opponents argue that such programs may create or deepen sentencing disparities, as similarly situated defendants may be treated differently based on the availability of fast-track programs. An amicus curiae brief, for instance, was recently filed in the U.S. Court of Appeals for the Seventh Circuit in Wisconsin in support of the rectification of sentencing disparities created by the selective implementation of fast-track programs in illegal reentry cases.[8] This equity-based objection raises issues of fairness and certainty in meeting the purposes of sentencing.

Although not widely acknowledged, this perspective also applies to when federal prosecutors selectively make a fast-track offer to defendants, thereby increasing uncertainty in sentencing decision-making. While fast-track programs are now available to all districts, prosecutors have wide discretion in deciding who should receive fast-track treatment and how much of a charge reduction or departure from the Sentencing Guidelines should be offered.

This equity-based perspective is vested in decades of research devoted to understanding and controlling sentencing disparity (Albonetti, 1997; Chiricos & Waldo, 1975; Hagan, 1974; Johnson, 2003; Steffensmeier & Demuth, 2000; Ulmer & Kramer,

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1996). Policymakers, practitioners, and scholars have arduously studied the extent and causes of sentencing disparity.[9] A number of studies have examined the role of extra-legal factors (e.g., gender, race, or age) in sentencing decision-making (Albonetti, 1998; Bushway & Piehl, 2001; Kleck, 1981; Kramer & Ulmer, 1996; Mustard, 2001; Peterson & Hagan, 1984; Schanzenbach, 2005; Steffensmeier & Demuth, 2000; Steffensmeier, Ulmer, & Kramer, 1998; Zatz, 2000) and the impact of sentencing guidelines on sentencing disparity (Anderson, Kling, & Stith, 1999; Bushway & Piehl, 2007; Griswold, 1987; Hagan & Bumiller, 1983; Hofer, Blackwell, & Ruback, 1999; Knapp, 1984; Parent, Dunworth, McDonald, & Rhodes, 1996; Schanzenbach & Tiller, 2008).

A number of those studies have reported that both legal factors (e.g. offense type) and extra-legal factors (e.g. gender, race, or age) influence sentencing outcomes. Particularly since recent Supreme Court decisions such as *Booker v. United States* (543 U.S. 220, 2005), *Gall v. United States* (552 U.S. 38, 2007), *and Kimbrough v. United States* (552 U.S. 85, 2007), strict adherence to sentencing guidelines has been relaxed, thereby creating room for more discretionary sentencing. In fact, the USSC (2010) reports that male offenders and black offenders tend to receive longer sentences than their counterparts, and that the differences in sentence length among offenders charged with similar offenses have steadily increased since the sentencing guidelines changed to advisory from mandatory. Coupled with such sentencing practices, the selective implementation of fast-track programs can certainly exacerbate sentencing disparity.

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1.4. Prosecutorial Discretion

Prosecutors may wield powerful influence over the sentencing of criminal defendants through discretionary decisions made at multiple stages of a criminal prosecution, including case acceptance/declination policies, charging decisions, plea agreements, and sentencing recommendations (Feeley, 1992; Free, 2002). As such, some prior research has examined the different stages of case processing which are pervious to prosecutorial discretion, such as case convictability (Albonetti, 1987; Frohmann, 1997; Nagel & Hagan, 1983; Spohn & Holleran, 2001) and charging practices (Albonetti, 1992; Bishop & Frazier, 1984). However, the literature on sentencing has centered disproportionately on judicial discretion. There is relatively little appreciation for how prosecutorial discretion can influence the case outcomes of criminal defendants.

Some concern has thus occasionally been voiced over the importance of prosecutorial discretion. Frase (2000) posits that prosecutors have virtually unchecked discretion to process cases. Forst and Bushway (2010) also remark that discretionary decisions are frequently made by agents on the front line, such as police officers or prosecutors, on the basis of practical considerations such as competing demands for service and resource constraints. Fast-track programs are one such example wherein prosecutors take an active role in disposing cases in order to address resource constraints.

In response to the call for more attention to prosecutorial discretion, a growing body of literature on prosecutorial discretion has emerged (Hartley, Maddan, & Spohn,

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2007; O'Neill Shermer & Johnson, 2010; Piehl & Bushway, 2007; Ulmer, Kurlychek, & Kramer, 2007). Several of these studies draw on the notion of focal concerns, such as defendant blameworthiness, defendant dangerousness/community protection, and practical constraints and consequences connected to legal proceedings (Steffensmeier, et al., 1998).[10] The focal concerns perspective maintains that situational features of cases can influence the use of discretion in courtroom decision-making and is thus particularly relevant to the decision to offer a fast-track option to eligible defendants. As intended by early disposition programs, prosecutors are motivated by practical constraints, such as caseload pressures, when considering whether to file a motion for a §5K3.1 departure.

Hartley and his colleagues (2007) find supporting evidence for the focal concerns perspective in their examination of drug offenders adjudicated in U.S. district courts. The extent to which federal prosecutors request a downward departure on the basis of substantial assistance (§5K1.1 departure) is explained by several case characteristics, including the severity of offense, as well as race. These characteristics may be used to explain the perceived blameworthiness or dangerousness of defendants. Given that the value of substantial assistance is held constant, it seems feasible to posit that such circumstantial factors may exert an influence over the prosecutor's decision to reduce the charge, number of charges, or the recommended sentence of a particular defendant.

Similarly, a prosecutor's decision to request a downward departure from sentencing guidelines pursuant to an early disposition program can be explained by case characteristics and practical constraints. Given the efficiency-based origin and

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motivation for fast-track programs, heavy caseloads and organizational norms for case management can be particularly significant circumstantial factors to explain prosecutorial discretion in the disposition of fast-track eligible cases. According to Jacoby (1980), system efficiency is one of the four distinct strategic perspectives that drive the decisions made in any prosecutorial office. When courts are overloaded and resources strained, a system efficiency policy may dictate that weak cases – in terms of legal and trial sufficiency, not in terms of the seriousness of a case – be disposed of as early as possible. Hence, there is all the more reason to believe that fast-track-eligible cases are particularly pervious to prosecutorial discretion, which is mostly undetectable and unreviewable.

1.5. Current Focus

The purpose of this study is to understand the impact of fast-track programs on case processing outcomes among immigration offenses sentenced under the federal Sentencing Guidelines. Motivated by two competing norms in the implementation of fast-track programs – efficiency and equity – we focus on the timing of case processing and sentence length. When Congress recognized the importance of fast-track programs in the PROTECT Act of 2003, the rationale for early dispositions became explicit and legally bounded. The act authorized federal prosecutors to facilitate a prompt guilty plea from eligible defendants in exchange for filing a motion to reduce the recommended sentence level. Given the Act's emphasis on the efficient utilization of court resources,

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understanding the extent to which fast-track treatment shortens case processing time and sentence length is of fundamental importance.

Although the examination of case processing time admittedly cannot capture the full complexity of organizational efficiency, it is a reasonable proxy measure of how court resources are used. It should also be mentioned that this study focuses on immigration cases, particularly illegal reentry cases, as most fast-track programs are specifically intended to address an overwhelming caseload of immigration offenses. When a defendant is convicted in a fast-track district after returning to the United States subsequent to deportation, federal prosecutors may file a motion to reduce the minimally required sentencing level set by the USSC, and the court may depart downward up to 4 levels. As illustrated in McClelland and Sands (2006)'s example, the 4-level reduction for those immigration cases can be translated into a substantial reduction in incarceration, possibly ranging from several months to years. However, the reduction in sentence length resulted from fast track programs has yet to be examined in any systematic fashion. This study aims to develop plausible estimates of the impact of fast-track programs.

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CHAPTER 2: RESEARCH METHODS

2.1. Analytic Framework and Design

The most straightforward way to assess the impact of fast-track programs would be to compare an outcome of interest between cases disposed of through a fast-track program (treatment) and cases disposed of traditionally (control). However, such an approach would be unsatisfactory, as fast-track cases and non-fast-track cases are likely to differ in ways that may result in different outcomes, independent of the impact of fast-track programs. This challenge has been addressed in evaluative research with reference to "potential outcomes." That is, each eligible offender has two potential outcomes, one under treatment (fast-track processing) and the other under control (non-fast-track processing). The difference between the potential outcomes is, unequivocally, a causal effect of treatment. The fundamental problem of this framework is that study subjects can only be in either the treatment or control conditions, and thus one of the potential outcomes can never be observed (Epstein & King, 2002; Holland, 1986). In other words, if offenders receive fast-track treatment, we cannot observe the counterfactual outcome of how they might have fared in non-fast-track proceedings.

As such, the potential outcomes framework highlights the importance of an experimental template for causal analysis. The key feature of a randomized experiment is that treatment is randomly assigned to study units, thereby precluding other competing explanations for change in the outcome of interest. Therefore, the control group can plausibly serve as the counterfactual of how the treatment group would have

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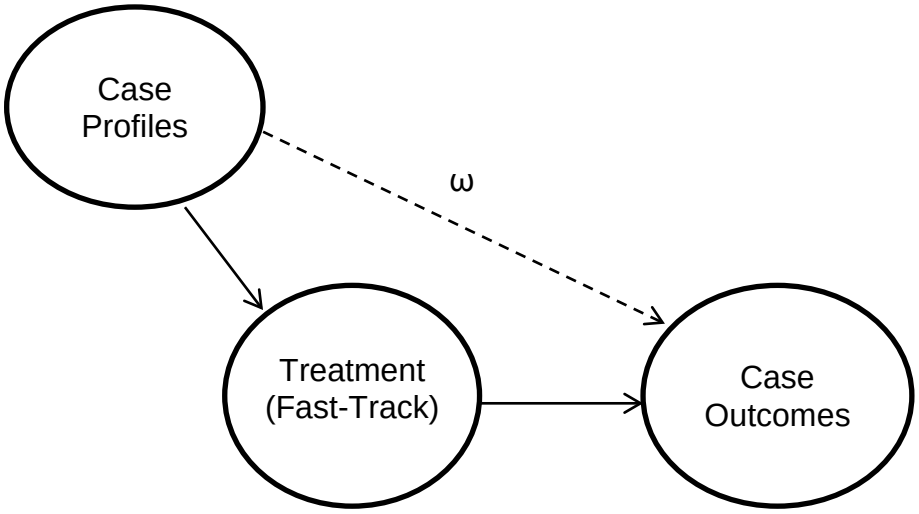
fared had it not received treatment. In non-experimental settings, the focal interest of causal analysis becomes how closely “the counterfactual” resembles that of the experimental template.

Exhibit 1. Treatment Effect on Case Outcomes Conditional on Case Profiles



The current study employs propensity score methods to mimic the experimental framework by which to interpret the difference between treatment and control groups as a causal effect of treatment. Matching involves pairing treatment and comparison units that are similar in terms of their observed characteristics (Dehejia & Wahba, 1999; Rosenbaum & Rubin, 1983). By “balancing” the characteristic differences (pretreatment) between treatment and comparison units, one can ascribe the difference in the outcome of interest to treatment. As denoted in Exhibit 1, the crucial assumption in this approach relates to the notion of unconfoundedness (also referred to as exogeneity, ignorability,

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or selection on observables). That is, if treatment is independent of potential outcomes given a priori knowledge about treatment assignment, one can assume that treatment assignment is not confounded ($\omega=0$).

In this study, propensity score analysis is conducted in two schemes. As prosecutors reserve the right to file a motion for downward departure, not all eligible cases receive fast-track treatment in districts with an approved fast-track program. In the first scheme, we match fast-track cases to non-fast-track cases that could have received fast-track treatment, conditional on case characteristics. Given that treatment is well-balanced on case characteristics, it would be plausible to assume that the effect of fast-track treatment on case outcomes would not be biased. Notable in this matching scheme is that all fast-track-eligible cases originate from the districts authorized for implementation of fast-track programs. These fast-track districts tend to be more similar to each other than to other non-fast-track districts. Therefore, the process of treatment assignment would be substantially driven by individual-level case characteristics, which makes it all the more critical to achieve balance on case characteristics.

The second scheme involves matching fast-track cases to similar, yet ineligible cases. There were a substantial number of immigration cases ineligible for fast-track treatment because the districts in which they were convicted were not authorized to exercise a §5K3.1 departure. Although the geographic limitation of fast-track programs is no longer in effect, the selective authorization process exercised for the past decade creates a large pool of control cases that can be used for matching. It is important to note that the treatment assignment mechanism in this scheme is different because

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control units could not have been assigned to treatment even if case characteristics were deemed fit for fast-track treatment. This comparison extends our discussion about the impact of fast-track programs. That is, fast-track districts and non-fast-track districts may be intrinsically different since they have different priorities and constraints (and therefore different focal concerns). The difference in case outcomes between treatment and control units can be, in part, ascribed to district-level variation in sentencing practices.

Hence, comparing results from the second matching scheme with those from the first would be informative to shed light on the extent of district-level disparities. Johnson and Kurlychek (2012) demonstrate a similar approach to matching two essentially different groups who should nonetheless be treated similarly in criminal case processing – youth offenders transferred to adult criminal court and adult offenders. On the premise that those offenders should be treated equally in sentencing, conditional on relevant legal and procedural factors (e.g., offense type, criminal history, acceptance of responsibility, etc.), Johnson and Kurlychek (2012) examine the extent of disadvantages in sentencing among youth offenders transferred to adult criminal court. Similarly, this study examines the extent of district-level disparities that are experienced by those who could not participate in fast-track programs.

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2.2. Data and Measures

Data

This study relies on Federal Justice Statistics Program (FJSP) data available through the Inter-university Consortium for Political and Social Research. USSC is among the federal agencies contributing data to FJSP. USSC collects sentencing information on felony defendants in the federal criminal justice system, sentenced pursuant to provisions of the Sentencing Reform Act (SRA) of 1984. These data contain detailed defendant-specific information from the Judgment and Conviction order submitted by the court, background and guideline information collected from the Presentencing Report (PSR), and the report on the sentencing hearing in the Statement of Reasons (SOR). Such information regarding defendants sentenced under the Guidelines is critical to understanding the use and impact of fast-track programs.

This study supplements the USSC data with defendant-case characteristics obtained from the Administrative Office of U.S. District Courts (AOUSC) data. As another contributing agency to FJSP, AOUSC maintains records of defendants in criminal cases within the U.S. In the current analysis, we employ four fiscal years of federal sentencing data from FY2006 to FY2009 by combining multiple yearly cohorts of defendant-cases. In an attempt to avoid potential complexity in both data analysis and interpretations, we focus on the post-*Booker* period. These data were restricted to 89 federal districts located within the U.S. Further, as fast-track programs are mostly utilized for immigration offense cases, particular attention is given to defendants

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charged with an immigration offense as a primary offense type. This study operationalizes fast-track cases as those who received a downward departure from the Sentencing Guidelines pursuant to an early disposition program (United States Sentencing Commission, Guidelines Manual, § 5K3.1).

Operationalizing fast-track cases as those that involved a downward departure from the Sentencing Guidelines pursuant to an early disposition program has a limitation. Under the fast-track program, defendants could receive a reduced sentence either by charge bargaining or by the government's motion for a downward sentence departure. The vast majority of fast-track programs are "downward departure" cases[11] and are reliably identifiable in USSC data based on the recorded measure of sentence departures. However, fast-track cases disposed of through "charge bargaining" cannot easily be identified in USSC data. We thus focus our analysis exclusively on downward departure cases in this study. As such, the results reported in this study could be subject to potential selection bias if the underlying characteristics of "charge bargaining" cases are meaningfully different from those of "downward departure" cases. Since the mode of fast-track treatment varies at the district level, we nevertheless believe this limitation can be ameliorated in our models by including district-level fixed effects to account for unobserved district-level characteristics.[12]

Measures

This study is primarily interested in two outcome measures: sentence length and case processing time. Sentence length is defined as the minimum number of months of

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incarceration imposed.[13] Case processing time is measured by the number of days from filing to disposition, which has implications for the cost of court operations as well as timely and fair access to court services. When a person is arrested in the federal justice system, a pretrial services or probation officer of the court interviews the defendant and conducts an investigation of the defendant's background. Concurrently or shortly after, federal prosecutors lodge the case with the court (filing), and a judge advises the defendant of the charges filed at an initial appearance and determines whether to detain or release the defendant while awaiting trial. A heavy caseload could prolong the initial intake process - which is typically expected to take place within no more than a few days - and produce an even more considerable delay in the process of scheduling court proceedings until the case is resolved. According to the AOUSC's 2010 Annual Report, the median amount of time from filing to disposition of criminal defendants in U.S. District Courts is approximately 6 months for guilty plea cases and 15 months for jury trial cases (AOUSC, 2011, pp. 252-254). Thus, the time from filing to disposition is a suitable measure to assess efficiency in case processing. Exhibit 2 provides a description of key variables and descriptive statistics of those variables used in the final analysis of this report.

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Exhibit 2. Descriptive Statistics of Key Variables (N=57,505)

Source	Variable	Description		MEAN	SD	MAX	MIN
SC	booker6	Binary Indicator for Early Disposition Departure		0.25	0.43	1	0
SC	c_senttot	Sentence Length in Month Capped at 470(life)		22.64	19.37	470	0.03
AO-SC	time2disp	Time from Filing to Disposition (in days)		77.69	136.29	11552	0
AO	mx_charge1	Highest Severity Filing Charge		3.59	1.04	12	0
		A = no sentence	1				
		B = through six months	2				
		C = greater than six months through one year	3				
		0 = greater than one year through two years	4				
		1 = greater than two years through three years	5				
		2 = greater than three years through five years	6				
		3 = greater than five years through 10 years	7				
		4 = greater than 10 years through 15 years	8				
		5 = greater than 15 years through 20 years	9				
		6 = greater than 20 years through 25 years	10				
		7 = greater than 25 years but less than life	11				
		8 = life	12				
		9 = death penalty cases	13				

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Source	Variable	Description		MEAN	SD	MAX	MIN
AO	min_charge1	Lowest Severity Filing Charge		3.46	0.90	12	0
		A = no sentence	1				
		B = through six months	2				
		C = greater than six months through one year	3				
		0 = greater than one year through two years	4				
		1 = greater than two years through three years	5				
		2 = greater than three years through five years	6				
		3 = greater than five years through 10 years	7				
		4 = greater than 10 years through 15 years	8				
		5 = greater than 15 years through 20 years	9				
		6 = greater than 20 years through 25 years	10				
		7 = greater than 25 years but less than life	11				
		8 = life	12				
		9 = death penalty cases	13				
SC	cat_crimpts	Categorized Criminal History Points (crimpts) (0=0) (1=1) (2=2) (3=3) (4 and 5=4) (6 thru 9 =5) (10 or more =6)		2.96	2.02	6	0
SC	cat_nocount	Categorized Number of Convictions (nocounts) (0 and 1 =1) (2=2) (3 or more =3)		1.05	0.26	3	1
SC	cat_nocomp	Categorized Number of Guideline Computations (nocomp) (1 =1) (2 or more =2)		1.01	0.08	2	1
SC	cat_noustat	Number of Unique Statutes Caped at 10 (noustat)		1.78	0.71	10	1
SC	monaccep	Acceptance of Responsibility value 0=no acceptance 3=highest level of acceptance		2.46	0.59	3	0
SC	prelockup	Detained During Pretrial		0.95	0.21	1	0

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Source	Variable	Description	MEAN	SD	MAX	MIN
AO	cnsl_cja	Counsel Type: Criminal Justice Act Attorney	0.27	0.45	1	0
AO	cnsl_pri	Counsel Type: Private	0.02	0.15	1	0
SC	cat_age	Age Capped at 65	33.75	8.94	65	16
SC	white	Defendant Race (White)	0.94	0.24	1	0
SC	hispanic	Defendant Ethnicity (Hispanic)	0.91	0.28	1	0
SC	gender	Gender (0=Male, 1=Female, monsex)	0.06	0.23	1	0
SC	cap_numdep	Number of Dependents Whom Offender Supports Capped at 5 (numdep)	1.94	1.65	5	0
SC	neweduc	Level of Education 1 = Less Than High School Graduate 3 = High School Graduate 5 = Some College 6 = College Graduate	1.47	1.09	6	1
AO	monyr	Time of Filing - Month/Yr				

Note. There were 70,021 defendant-cases in the select 89 federal districts whose primary offense type was immigration. A further refinement of the sample and the listwise deletion of missing observations led to the final N of 57,505 for the study.

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All of the listed variables were collected during standard pre-investigation or court procedures. The severity of the most serious charge at indictment was coded based on the AOUSC data; the higher the value, the more serious the charge. This coding scheme has been used in prior research (Shermer & Johnson, 2010). The AOUSC data also provide information about the type of counsel. The reference category omitted was public attorney.

Continuous or ordinal variables were recoded based on the distribution of variables. Categorical variables were dummy-coded to true (1) or false (0) for each possible response. Although Exhibit 2 shows, for illustration purposes, the original USSC variable names and coding schemes for several variables, most variables were further broken down to a set of dummy indicators and inserted into propensity score models. The next section provides a detailed discussion on the propensity score models.

2.3. Propensity Score Matching and Weighting

Propensity score (PS) methods are widely used to estimate the impact of a policy or program by comparing treatment subjects to non-treatment subjects (Rosenbaum & Rubin, 1983). There are multiple propensity score-based strategies to balance the differences between treated and untreated subjects. This study relies on nearest neighbor matching and reweighting.

The goal of PS matching is to construct a comparison group from a pool of untreated subjects in a way that achieves equivalence between treatment and comparison groups. Therefore, any difference in mean outcomes between the two

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groups can be ascribed to treatment. PS reweighting, also known as inverse probability weighting (IPW), produces conceptually similar estimates, but does not discard subjects who could not be paired. It reweights untreated subjects such that their characteristics become similar to those of treated subjects. The difference in mean outcomes between the treatment and comparison groups can therefore be attributed to the treatment, not to a difference in case characteristics.

This study employs the combined use of propensity score-based techniques and regression adjustments, which is, in essence, analogous to what is referred to as a "doubly robust" method in the literature (Lunceford & Davidian, 2004). This approach can be particularly effective at estimating unbiased program impact when either the reweighting or regression adjustments strategy shows less than satisfactory performance in terms of balancing pre-treatment differences between treatment and comparison groups. Regression adjustments after matching or weighting are also likely to produce more precise estimates of program impact.

In this study, the propensity score, or the probability of treatment conditional on covariates, was estimated in a few different ways. Generally, however, the list of variables shown below was used in a binary regression predicting treatment status and the predicted probabilities of treatment were saved as propensity scores:

- District-level fixed effects
- Demographics of defendants (age, gender, race, and Hispanic origin)
- Counsel type
- Criminal history points
- Number of unique statutes

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- Number of dependents to support
- Level of acceptance of responsibility
- Level of education
- Severity of indictment charges
- Pretrial detention
- Month/year of filing

These variables were manipulated in the binary regression such that the model was highly saturated with all possible values of and interaction terms between many of the variables. With respect to the selection and specification of the use of such variables in propensity score models, the literature on propensity score methods offers somewhat conflicting perspectives as to the roles that theory and statistics should play in the decision for covariate selection. On the one hand, Rosenbaum (2002) suggests that adding more covariates causes no harm, especially when they are significant predictors of treatment status. One of the latest developments in PS methods also involves iteratively applying a different specification of covariates without a theoretical motivation to impose any particular relationship between covariates and treatment status (Diamond & Sekhon, Forthcoming). On the other hand, Pearl (2010) cautions that the "experimentalist" approach of including covariates in the propensity score estimation based solely on statistical properties may actually amplify bias.

We used all available, relevant covariates in the estimation of propensity scores without imposing much restriction on the specification of the covariates because those covariates, as shown above, were not completely irrelevant in explaining court case processing. Once the propensity scores were estimated, inverse probability weights

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were calculated in the following steps. First, the weight was calculated for untreated units by $\hat{\lambda}$ / (1-$\hat{\lambda}$), where $\hat{\lambda}$ is a vector of predicted probabilities of receiving treatment. The treatment weights were set to 1.0. The inverse probability weight was then rescaled to approximately preserve proportions in the treatment and comparison groups by multiplying treatment weights by p / (1-p), where p is the proportion of the sample receiving treatment. The appropriateness of the selection model that estimated propensity scores and inverse probability weights is further discussed in the next chapter.

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CHAPTER 3: RESULTS

The organization of this chapter is as follows. First, we portray the volume of immigration cases in federal courts and the processing of illegal reentry cases (2L1.2) in each district. An illustrative review of district-level case outcomes can demonstrate how immigration cases are processed differently across districts. We then examine who is more likely to receive fast-track treatment at the individual-level. Causal analysis estimating the impact of fast-track treatment on sentencing outcomes may be confounded if fast-track treatment is associated with certain case characteristics. In other words, it is difficult to determine whether any observed effects on outcomes are due to fast-track programs or other case characteristics associated with fast-track treatment. Understanding the relationship between case characteristics and fast-track treatment is therefore critical for accounting for selection bias, if any, in evaluating fast-track programs.

The next section presents results from a series of propensity score analyses, showing what sentencing outcomes would have been observed for fast-track cases had they not been processed through fast-track treatment. Further, the length of sentence is compared across three different groups of defendant-cases in an attempt to understand the extent of sentencing disparities resulting from discrepancies in the application of fast-track treatment at both the individual and district levels. All multivariate analyses reported herein are limited to illegal reentry cases (2L1.2) that have valid guideline application information.

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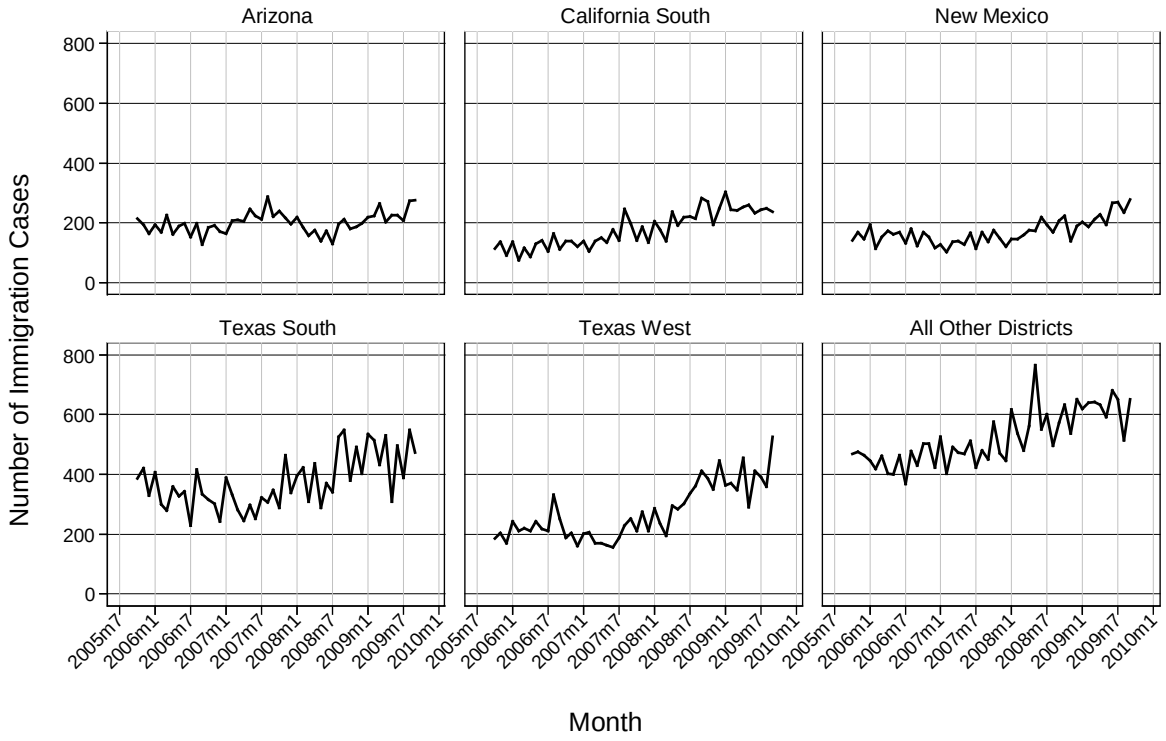
3.1. Case Processing across Districts

From FY 2006 to FY 2009, 27 percent of all cases that resulted in a conviction were for immigration offenses. The geographic concentration of these cases is intense. Nearly 70 percent of all immigration cases originated from five federal districts: Southern California, Arizona, New Mexico and Western and Southern Texas. Exhibit 3 shows the number of immigration cases per month in the five districts over time.

Exhibit 3. Number of Immigration Offenses Over Time



The number of immigration offenses has increased substantially in all districts since 2005. In particular, the number of immigration offenses in the two districts in

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Texas has grown considerably. The Western District of Texas had over 500 immigration offenses per month at year-end of 2009, more than twice the level in 2005. Compared to the District of Arizona, the Southern District of California, and the District of New Mexico, it is notable that the two Texas districts experienced greater fluctuations over time.

The temporal trend shown in Exhibit 3 provides an intriguing contrast to the number of cases disposed of through an immigration-related fast-track program. Exhibit 4 displays the temporal trend in the number of fast-track cases in the five districts. The data indicate that the temporal trend in the number of fast-track cases does not correspond to the growth rate in the number of immigration offenses. The rate at which each district disposed of immigration cases through fast-track programs varies considerably (see Exhibit 6). While the number of immigration offenses in the District of Arizona has been relatively stable, the number of fast-track cases has fluctuated erratically. Similarly, the persistent increase in the number of immigration offenses in the Western District of Texas is contrasted by the markedly lower rate of fast-track treatment. However, it is notable that the rest of the districts experienced a persistent increase in the number of immigration cases they received while simultaneously increasing their reliance on fast-track programs to dispose of those cases.

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Exhibit 4. Number of Immigration Fast-Track Cases

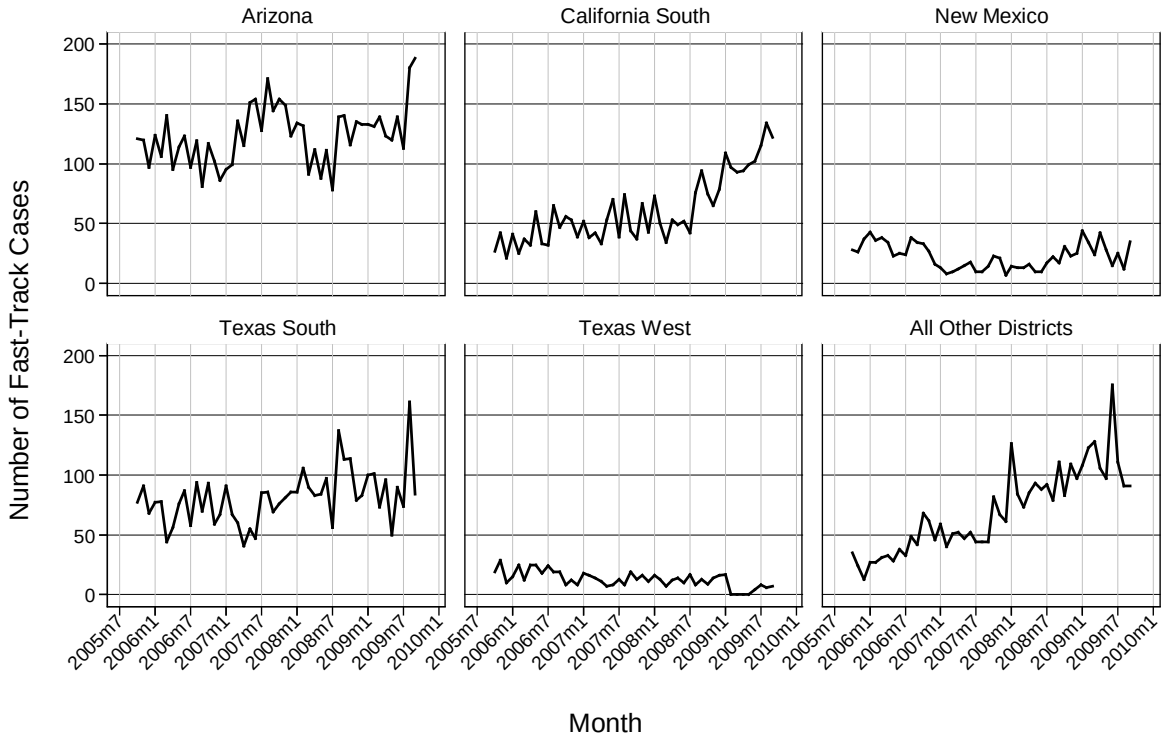

Exhibit 5 shows the average sentence length for immigration cases. Except for the District of New Mexico, the average sentence length oscillated between approximately 15 months and 30 months. It is notable that the average sentence length for immigration cases has decreased in all the districts. Particularly, the District of New Mexico and the Western District of Texas showed a considerable drop in the average sentence length for immigration cases. Given that both districts only minimally relied on fast-track programs to dispose of the growing caseload of immigration offenses, the greater reduction in sentence length for immigration cases seems indicative of genuine

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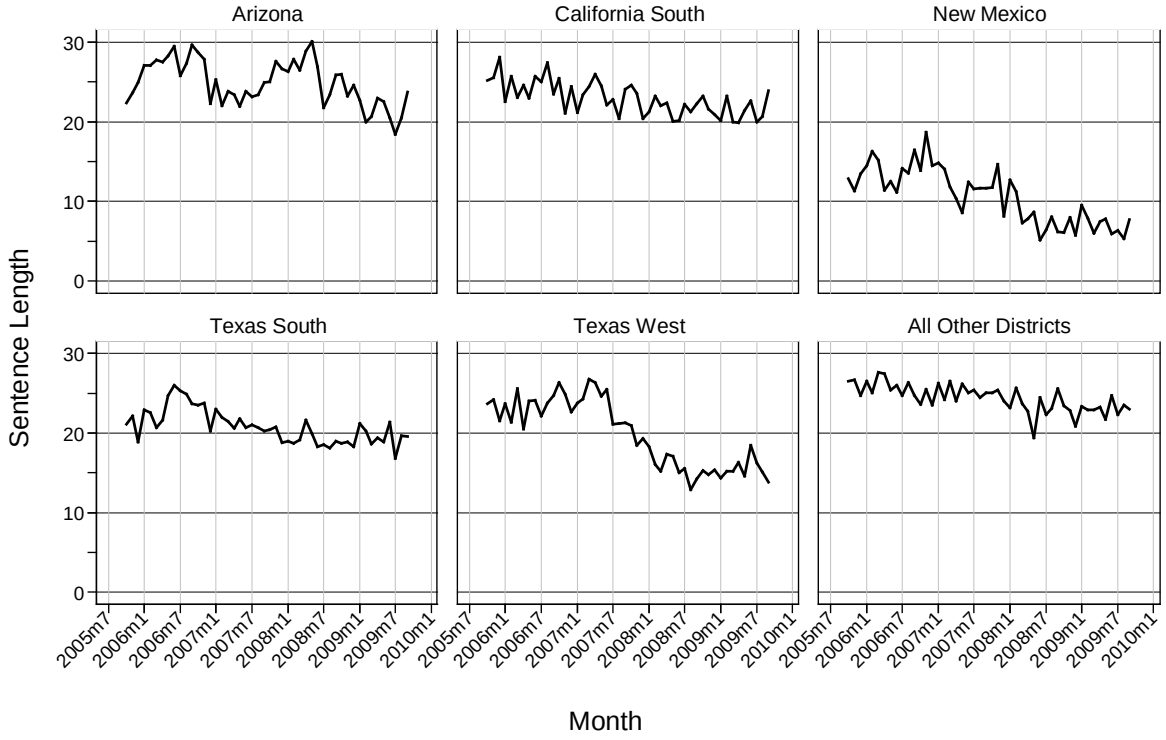
differences in case characteristics and sentencing practice in the District of New Mexico and the Western District of Texas.[14]

Exhibit 5. Average Sentence Length for Fast-Track Cases



Overall, considerable variation exists across districts in the volume and processing of immigration cases, even among those districts that handled the majority of the immigration caseload in federal courts. There are two sources of variation relevant to examining the impact of fast-track cases on case processing outcomes: (1) differences in case characteristics and (2) differences in the practice of case processing across districts. In reviewing the court outcomes of fast-track cases, this report will

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closely examine how these variations account for the differences between fast-track and non-fast-track cases.

To further illustrate how immigration cases are processed differently in each district, Exhibit 6 shows the number of cases involving unlawful entering or remaining in the United States (2L1.2) by district. The Southern District of Texas shows the largest number of cases (n=13,205), 600 times greater than New Hampshire (n=22) and nearly 100 times greater than Maryland (n=140). As shown earlier, five southwestern districts - the Southern and Western Districts of Texas, the Southern District of California, the District of Arizona, and the District of New Mexico - account for the majority of all 2L1.2 cases in federal districts. The high concentration of these cases in a few districts would imply that the between-district variation in sentencing outcomes as well as case characteristics could be quite considerable.

In addition, Exhibit 6 displays the number and proportion of cases disposed of through an immigration-related fast-track program (EDP). On average, 38% of 2L1.2 cases in fast-track districts were disposed of through fast-track processing. Similar to the number of immigration cases, the use of fast-track processing varies widely across districts. As illustrated above, the rate at which a downward departure is exercised pursuant to fast-track programs varies considerably even among southwestern border districts: 24.3% for the Southern District of Texas, 73.6% for the District of Arizona, 15.3% for the District of New Mexico, and 3.8% for the Western District of Texas.

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Exhibit 6. Processing of Illegal Reentry After Deportation Cases by Districts

	Number of 2L1.2 Cases	Number of EDP Cases	Percent EDP Processed	Case Processing Time (in days)		Sentence Length (in months)	
District	N	N	%	Mean	SD	Mean	SD
Alabama Mid	30	.	.	72.0	69.3	14.7	17.0
Alabama North	59	.	.	66.2	42.3	29.6	23.4
Alabama South	46	.	.	54.4	17.1	22.6	19.8
Arizona	7,151	5,265	73.6%	63.8	97.4	28.2	17.6
Arkansas East	54	.	.	86.4	70.3	25.3	23.4
Arkansas West	190	.	.	70.4	274.7	25.4	23.3
California Central	1,309	939	71.7%	64.0	143.8	35.6	16.3
California East	864	771	89.2%	153.1	174.2	36.4	14.7
California North	391	138	35.3%	119.3	129.2	34.0	20.5
California South	2,312	358	15.5%	105.0	113.7	34.6	16.7
Colorado	534	.	.	118.9	108.5	30.5	19.1
Connecticut	44	.	.	83.6	93.1	28.4	20.0
Delaware	60	.	.	110.3	79.5	26.0	20.0
Florida Mid	802	81	10.1%	101.8	180.3	20.6	22.7
Florida North	82	.	.	62.6	158.5	23.0	24.7
Florida South	459	.	.	78.8	84.6	29.5	23.3
Georgia Mid	24	.	.	188.8	112.2	40.0	26.1
Georgia North	235	.	.	100.1	110.6	33.6	22.8
Georgia South	39	.	.	101.7	53.7	39.4	25.3
Hawaii	24	.	.	53.9	44.5	16.8	20.2
Idaho	297	137	46.1%	122.4	88.4	23.1	19.1
Illinois Central	47	.	.	85.1	57.5	34.6	22.0
Illinois North	215	.	.	126.2	130.2	44.5	22.0
Illinois South	47	.	.	78.6	48.3	23.3	22.6
Indiana North	29	.	.	156.3	275.1	30.0	22.5
Indiana South	31	.	.	147.5	122.9	47.3	24.1
Iowa North	154	.	.	85.3	96.3	21.0	23.0
Iowa South	120	.	.	89.5	81.5	32.6	23.8
Kansas	257	.	.	97.1	115.2	33.0	24.0
Kentucky East	70	.	.	105.1	269.9	13.6	13.7
Kentucky West	28	.	.	130.0	79.5	33.8	23.7
Louisiana East	191	.	.	62.9	38.8	17.4	19.8
Louisiana West	60	.	.	88.2	66.1	32.1	28.8
Maine	46	.	.	26.4	53.3	9.4	12.7
Maryland	140	.	.	101.9	64.9	37.8	19.7
Massachusetts	95	.	.	222.9	155.8	36.8	19.7
Michigan East	94	.	.	91.3	124.7	33.0	23.7
Michigan West	166	.	.	52.2	44.8	21.7	19.1
Minnesota	99	.	.	70.4	58.6	37.4	18.9

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District	Number of 2L1.2 Cases N	Number of EDP Cases N	Percent EDP Processed %	Case Processing Time (in days) Mean	SD	Sentence Length (in months) Mean	SD
Miss. North	5	.	.	110.7	70.7	12.8	8.4
Miss. South	58	.	.	81.0	83.9	28.8	21.3
Missouri East	134	.	.	64.0	23.0	17.8	17.7
Missouri West	182	.	.	72.6	97.6	27.1	25.7
Montana	126	.	.	102.3	80.9	19.1	22.1
N Carolina East	71	.	.	125.9	156.6	40.1	26.1
N Carolina Mid	98	.	.	63.6	70.5	46.0	24.1
N Carolina West	145	.	.	110.8	125.5	33.8	23.6
Nebraska	223	125	56.1%	60.7	64.1	24.5	18.7
Nevada	254	.	.	176.3	122.1	29.2	20.1
New Hampshire	22	.	.	89.8	79.1	16.2	14.0
New Jersey	119	.	.	72.9	143.1	37.7	20.9
New Mexico	7,094	1,082	15.3%	12.5	64.3	10.7	14.4
New York East	230	.	.	129.2	144.5	36.1	21.8
New York North	216	.	.	35.0	50.0	12.3	17.2
New York South	599	.	.	174.8	471.4	31.8	20.3
New York West	127	.	.	31.1	106.0	17.7	17.8
North Dakota	87	14	16.1%	7.5	17.0	3.2	4.9
Ohio North	102	.	.	126.8	206.3	29.6	22.0
Ohio South	66	.	.	58.1	65.7	29.0	23.3
Oklahoma East	6	.	.	17.7	16.6	36.3	32.4
Oklahoma North	15	.	.	41.5	14.7	31.2	21.0
Oklahoma West	46	.	.	49.5	28.9	37.2	19.8
Oregon	248	76	30.6%	187.5	115.1	30.4	19.7
Penn. East	172	.	.	117.8	173.8	28.4	19.6
Penn. Mid	116	.	.	101.1	96.4	16.6	18.3
Penn. West	93	.	.	71.5	68.5	13.8	17.5
Puerto Rico	242	50	20.7%	95.1	81.9	24.3	17.4
Rhode Island	59	.	.	78.5	66.9	28.4	21.0
South Carolina	109	.	.	82.7	157.9	20.2	21.3
South Dakota	112	.	.	53.8	55.9	14.4	20.8
Tennessee East	92	.	.	139.7	238.1	37.2	24.0
Tennessee Mid	103	.	.	169.4	112.9	38.1	20.1
Tennessee West	38	.	.	149.3	98.3	36.3	19.0
Texas East	247	.	.	96.2	148.6	31.5	24.7
Texas North	581	.	.	80.2	88.0	42.7	26.5
Texas South	13,205	3,208	24.3%	63.1	67.1	21.5	18.4
Texas West	8,434	323	3.8%	69.0	73.9	21.5	18.7
Utah	942	543	57.6%	83.7	48.1	24.3	17.5
Vermont	37	.	.	75.4	115.5	11.2	14.0
Virginia East	304	.	.	51.6	48.2	24.6	24.9

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	Number of 2L1.2 Cases	Number of EDP Cases	Percent EDP Processed	Case Processing Time (in days)		Sentence Length (in months)	
District	N	N	%	Mean	SD	Mean	SD
Virginia West	19	.	.	132.4	105.6	47.0	25.1
W Virginia North	15	.	.	54.1	33.7	16.0	16.9
W Virginia South	7	.	.	90.3	34.8	38.3	51.4
Washington East	433	233	53.8%	124.9	134.0	31.1	19.7
Washington West	325	91	28.0%	36.8	34.5	20.4	9.9
Wisconsin East	60	.	.	147.2	108.8	35.2	19.8
Wisconsin West	45	.	.	92.3	47.5	35.6	26.7
Wyoming	165	.	.	120.5	129.0	14.9	18.7
Average	604	790	38.1%	92.9	101.3	27.8	20.8

Exhibit 6 also reports two case sentencing outcomes: (1) case processing time from filing and disposition, measured in days and (2) sentence length, measured in months. The average processing time for cases involving unlawful entering or remaining in the United States is longest in Massachusetts (222.9 days) and shortest in North Dakota (7.5 days). The District of North Dakota also has the shortest average sentence length (3.2 months) for these cases. The average sentence length is nearly 15 times longer in the Southern District of Indiana (47.3 months). These observations demonstrate that a great deal of variation exists across districts in the way immigration cases are processed. Each district is likely under different levels of pressure to dispose of immigration cases. It is also conceivable that the characteristics of immigration cases may differ across districts, which could contribute to the district-level variation in case outcomes.

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3.2. Use of Fast-Track Processing

Each district has different circumstances under which illegal (re)entry cases are processed. It therefore seems reasonable to posit that fast-track processing is not a random process. In other words, certain case or contextual characteristics may be associated with a greater likelihood of receiving fast-track treatment in the federal justice system. Prosecutors working under a different set of circumstantial constraints may vary in their practice of determining the eligibility or suitability of illegal (re)entry cases for fast-track processing. Similarly, defendants who are optimistic about their chances of acquittal or lenient sentencing at trial may be unwilling to accept the offer of fast-track processing (McClellan & Sands, 2006).

Exhibit 7 reports the results from logistic models predicting the use of fast-track processing. The models include a number of case characteristics and a linear function of time measured by month. A focal interest in these analyses is to identify any systematic pattern according to which immigration cases have received fast-track treatment. Given that the existence of systematic differences in the characteristics of fast-track and non-fast-track cases could affect their respective chances of receiving fast-track treatment, failure to identify and control for these differences would preclude this study's ability to attribute differences in the outcome of interest between the comparison and treatment groups to fast-track program participation.

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Exhibit 7. Logistic Regressions Predicting Fast-Track Processing

	Model 1	Model 2
Filing Charge Level	0.635*	0.686+
	(-2.43)	(-1.89)
Number of Counts of Conviction	0.307+	0.444
	(-1.83)	(-1.59)
Criminal History Category (I-VI)	1.126+	1.032
	(1.70)	(0.58)
Acceptance of Responsibility Value	3.784**	3.455**
	(10.16)	(7.84)
Detained During Pretrial	1.843*	1.408**
	(2.25)	(7.48)
Counsel Type: CJA Appointment	2.545**	1.283
	(2.83)	(0.94)
Counsel Type: Private	0.789	1.024
	(-1.25)	(0.13)
Counsel Type: Self	0.818	0.212*
	(-0.21)	(-2.13)
Age	0.990**	0.997*
	(-3.41)	(-2.33)
Black	1.243	0.698
	(1.02)	(-0.73)
Hispanic	1.644	0.768
	(1.26)	(-1.33)
Gender	0.935	1.123
	(-0.26)	(0.47)
Education: Below High School	0.936	1.022
	(0.62)	(0.13)
Education: High School	0.923	1.029
	(-0.97)	(0.20)
Number of Dependents	1.031*	1.040**
	(2.07)	(7.30)
Temporal Trend	1.006+	1.001
	(1.68)	(0.21)
Constant	0.001*	0.204
	(-2.32)	(-0.54)
N	34,395	34,395
AIC	38483.3	30293.7
BIC	38610.0	30420.4
Log Likelihood	-19226.7	-15131.8
Area Under ROC Curve	0.73	0.85

Note: Exponentiated coefficients; t statistics in parentheses; Model 2 includes district-level fixed effects; The reference category for the level of education is “some college or above”; + $p < 0.10$, * $p < 0.05$, ** $p < 0.01$

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A few observations are noteworthy. First, the models examine the impact of several legal and extra-legal factors on the likelihood of receiving fast-track treatment. The legal factors refer to case or defendant characteristics relevant to legal processing, such as the severity of charges or criminal history. A defendant with severe charges and an extensive criminal history would pose a higher level of threat to public safety and culpability. As such, prosecutors may consider bringing a criminal action against such a defendant to be worthwhile. One can thus hypothesize that prosecutors would be less willing to incentivize defendants perceived to be highly culpable to participate in the fast-track program. A couple of legal factors yielded supporting evidence for this hypothesis.

In Model 1, the severity of filing charges has a negative impact on the chance of fast-track treatment. Similarly, the number of counts of conviction would considerably reduce the chance of fast-track treatment. In Model 2, which controls for district-level uniqueness, the impact of the conviction count failed to reach statistical significance by a small margin. However, the negative impact of the charge severity remained persistent and statistically significant.

The positive impact of the criminal history category is contrary to expectations. It was speculated that, after controlling for other legal and criminogenic characteristics, the criminal history variable would closely reflect the extent to which the defendant has been exposed to criminal justice processing, because more experienced defendants who have formally been exposed to court proceedings and prosecutorial behavior may be more willing to work with the system. However, this marginally significant impact

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quickly disappears after introducing district-level fixed effects in the model, which implies some between-district variability in the way criminal history is considered in the process of fast-tracking eligible defendant-cases.

Another similar finding sensitive to district-level uniqueness emerges from the type of counsel for defendants. There are four main types of counsel available to defendants in the federal system. If the defendant can establish that he or she cannot afford the necessities of life for himself or herself and any dependents in addition to the cost of counsel, the district must provide legal representation at the expense of the federal government pursuant the Criminal Justice Act (CJA) Plan of 1964. This indigent defense system relies on salaried government workers (public defenders) and hourly-wage earning, court-appointed attorneys (CJA panel attorneys). Outside the indigent defense system, the defendant may hire a private attorney or represent himself or herself. In Models 1 and 2, the reference (omitted) category is public defenders. There exists no meaningful difference among cases represented by private attorneys and public defenders in terms of the likelihood of receiving fast-track treatment. However, Model 1 indicates that defendants represented by CJA panel attorneys had a much higher chance of receiving fast-track treatment than those represented by public defenders. After district-level fixed effects were taken into consideration, this relationship diminished considerably. In the case of self-representation, defendants were significantly less likely to be processed through fast-track programs. This is probably because the defendants who represent themselves are both less experienced

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than professional attorneys in courtroom negotiation as well as less risk-averse in their willingness to settle their case through non-fast-track approaches.

Lastly, two case-processing variables were positively associated with the likelihood of fast-track treatment. To the extent that defendants accept responsibility, the level of offense can be adjusted downwards. In both models, defendants with a higher acceptance level tended to have a higher chance of receiving fast-track treatment. It is conceivable that those who willingly accept responsibility would be likely to be compliant with the terms of indictment and conviction, thereby yielding a higher chance of fast-track treatment. Prosecutors would also be likely to make a fast-track offer to defendants who are compliant and willing to accept responsibility.[15] Similarly, those who were able to secure pretrial release while awaiting trial were less likely to receive fast-track treatment. Obviously, there would be no saving in detention costs by fast-tracking defendants who are not held in the detention facility. Those detained while awaiting trial thus have a higher chance of fast-track treatment than those released to the community.

Taken together, it is clear that fast-track processing is not exercised at random. Defendants of certain characteristics have a higher chance of receiving fast-track treatment, which is important for two reasons. First, although fast-track programs are now available in all districts, the concern about the selective use of fast-track programs still remains. In particular, extra-legal factors such as the type of counsel (i.e. CJA panel attorneys) and the age of defendants were associated with the high likelihood of fast-track processing. If the districts previously ineligible to dispose of cases through fast-track programs discretionally select cases for fast-track treatment, the overall extent of

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sentencing disparities would not necessarily decrease by lifting the restriction on which districts can exercise fast-track processing. Findings from this study are therefore relevant regardless of whether fast-track programs are available in select districts or all districts. Second, when assessing the impact of fast-track programs, it is important to account for the non-random selection into fast-track processing. Given that fast-track cases were characteristically different from non-fast-track cases to begin with, it is not reasonable to ascribe the difference in outcomes between the two groups to fast-track treatment. The results from Exhibit 7 will thus guide the following analyses assessing the impact of fast-track treatment on case outcomes.

3.3. Adequacy of Propensity Score Model

The impact of fast-track treatment is assessed in several different schemes. First, immigration cases disposed of through fast-track programs (treatment) were matched to similar immigration cases (comparison) that could have received fast-track treatment but did not. Results from this comparison speak to the extent to which fast-track treatment affected case processing and sentencing outcomes. Propensity score matching procedures achieved the balance on observed case characteristics between the two groups, thereby yielding unbiased estimates for program impact. An extensive combination of the main effect of covariates and their interactions with district-level fixed terms was used to develop propensity scores.

As depicted in Exhibit 8, the treatment and comparison groups were well-balanced based on these propensity scores. The standardized percent bias[16] indicates

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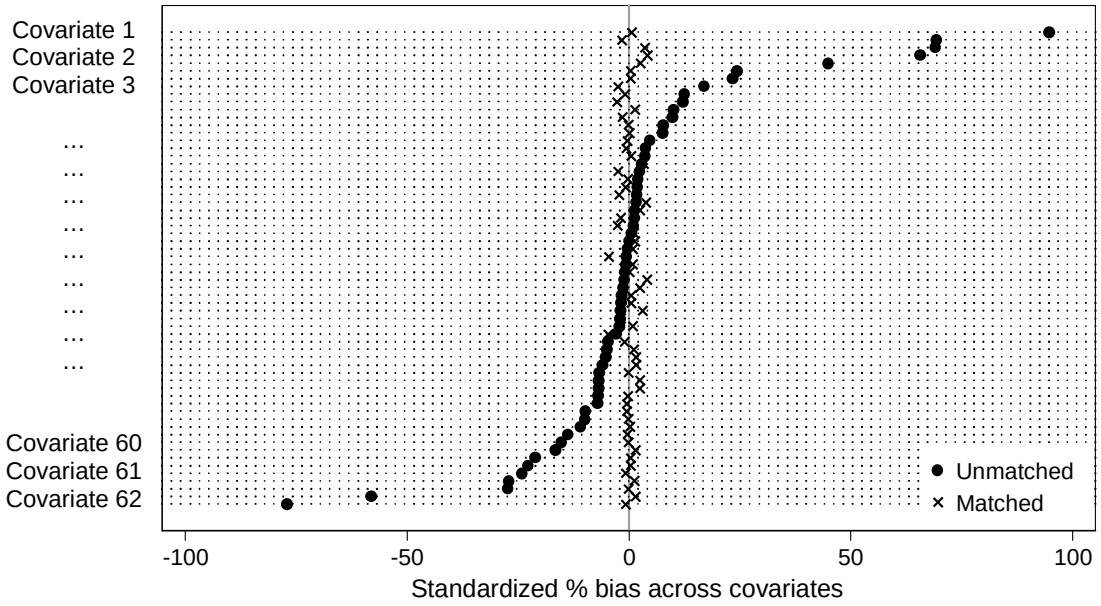
the extent to which the treatment and comparison groups are (in)comparable to each other. Prior to matching, the treatment and comparison groups were considerably different on several of the 62 covariates used in the estimation of propensity scores. However, the matched sample denoted by an ‘x’ mark shows a sufficiently high level of equivalence between the treatment and control groups. The standardized percent bias is nearly zero for all the covariates after matching.

Exhibit 8. Balancing Fast-Track Treatment and Comparison Groups



Moreover, as reported in Exhibit 9, the observed characteristics of defendants explained the variation of the outcome (treatment receipt) quite considerably before matching ($R^2 = 0.347$). After matching, R^2 became nearly zero and the extent of

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systematic differences between the treatment and comparison groups, measured by Mean Bias and Median Bias, reduced substantially (14.6 to 1.4 and 6.8 to 0.9, respectively). These statistics indicate that the propensity model explaining treatment status was sufficiently adequate.

Exhibit 9. Performance of PS Matching

Sample	Pseudo R^2	LR X^2	p> X^2	Mean Bias	Median Bias
Raw	0.347	15170.24	0.00	14.6	6.8
Matched	0.004	135.34	0.00	1.4	0.9

Note. Pseudo R^2 was estimated from probit regression estimating the treatment status; the bias refers to the absolute standardized bias as defined in (Rosenbaum & Rubin, 1985).

As another measure of model adequacy, we examined the extent to which the propensity model accurately predicts treatment status given the set of covariates used in the propensity score mode. Exhibit 10 shows the area under the receiver operating characteristic curve (AUC). The estimated AUC (0.87) shows an excellent fit (Hosmer & Lemeshow, 2000). It implies that there is an 87 percent likelihood that a randomly selected fast-track case will be scored higher on the propensity score than a randomly selected non-fast-track case. In other words, the estimated propensity score has high fidelity in terms of discriminating treated cases against untreated cases.

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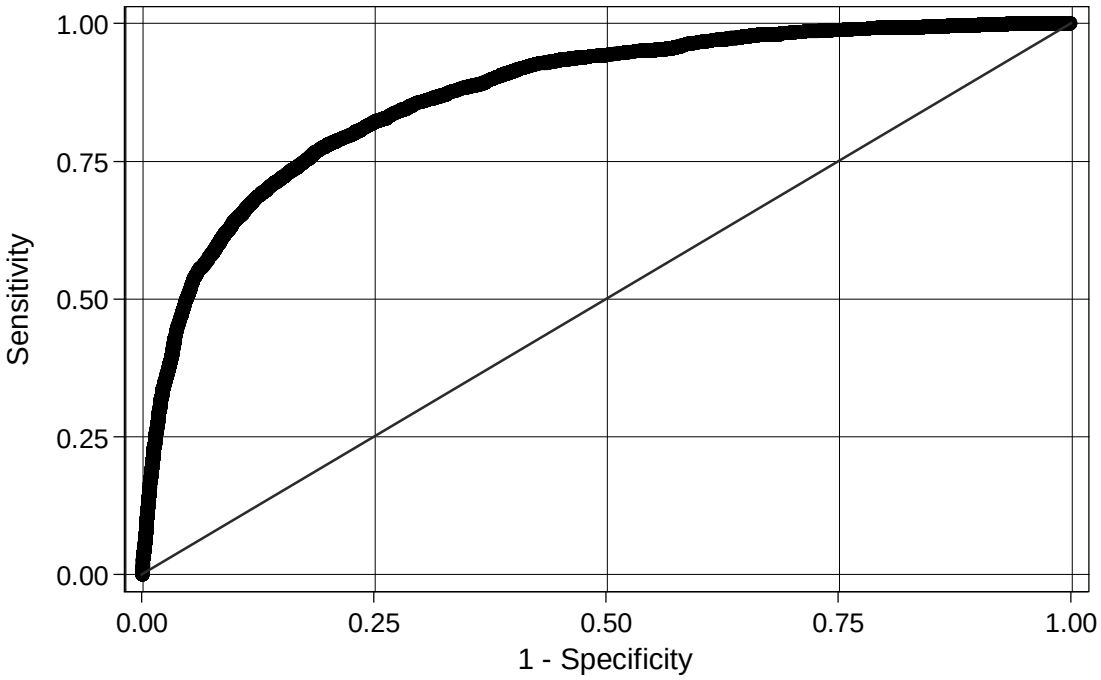
Exhibit 10. Predictive Validity of PS Model (AUC)



3.4. Impact of Fast-Track Treatment

Exhibit 11 shows the results from propensity score matching analysis. The average processing time from filing to disposition is approximately 64 days for fast-track cases and 80 days for similar, non-fast-track cases. The estimated treatment effect indicates that fast-track treatment reduced the case processing time by approximately 15 days. As expected, fast-track treatment also reduced the average length of sentence. Downward sentencing departures of no more than four levels were translated in practice into a reduction of nearly 5 months in sentence length (mean=4.82). The average sentence length for fast-track cases is approximately 26 months, while that of their

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matched control cases was 31 months. It is notable that the average sentence length for non-fast-track cases was 23 months before matching, more than three months shorter than that of fast-track cases.

Exhibit 11. Impact of Fast-Track Treatment

Outcome	Sample	Mean		Program Impact		
		Treated	**Controls**	**Difference**	**Lower**	**Upper**
Case Processing Time (in days)	Before Matching	64.13	66.04	-1.09 (1.03)		
	After Matching	64.13	80.00	-15.85** (2.79)	-21.33	-10.37
Sentence Length (in months)	Before Matching	25.90	22.57	3.32** (0.22)		
	After Matching	25.90	30.72	-4.82** (0.49)	-5.78	-3.86

Note. Standard errors are in parentheses; + p < 0.10, * p < 0.05, ** p < 0.01; After Matching indicates average treatment effect on the treated (n=11,215) based on 1:1 nearest neighbor matching with a caliper of 0.025; Number of treated cases unmatchable to equivalent comparison units (=2).

While this finding may seem counter to general expectations on the surface, it can be explained by the existence of preexisting differences in the characteristics of fast-track and non-fast-track cases. Fast-track cases tend to have more extensive criminal history and offense charges than non-fast-track cases. In practice, their average sentence length was thus longer than that of non-fast-track cases, even after applying a downward sentencing departure. This implies that the extent of selection bias would have been substantial if the systematic difference between the two groups had

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not been taken into consideration. The propensity score matching analysis reported herein sufficiently reduced this bias on the observed characteristics of fast-track cases.[17]

Another noteworthy finding is that the estimated impact of fast-track treatment on sentence length is fairly precise. The standard error of the estimate is only 0.49, constructing a narrow confidence interval around the estimated reduction in sentence length due to fast-track treatment. One can reasonably conclude that fast-track cases would receive a range of 4 to 6 months of reduction in sentence length. This can be translated as the extent of sentencing disparity occasioned by fast-track programs.

3.4. Alternative Strategies to Estimate Treatment Effects

The above analysis relies on the comparison between fast-track treatment cases and control cases that could otherwise have been processed through fast-track programs but did not. There is another comparison that is potentially quite informative. Fast-track cases can be compared to otherwise similar cases from the districts where fast-track programs were not available ("fast-track-ineligible cases" hereafter).[18] The fast-track eligibility primarily hinged upon the location of where defendants were prosecuted. It is conceivable, on the one hand, that prosecutors in this alternative comparison could not have sorted defendants into fast-track or non-fast-track conditions, or that defendants could not have selected themselves into the fast-track or non-fast-track conditions. In this scenario, what would distinguish fast-track cases from fast-track-ineligible cases would only be the location in which defendants were prosecuted.

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One can thus suggest that the comparison between fast-track cases and fast-track ineligible cases would be less subject to selection bias.

On the other hand, it is important to note that the districts eligible for the implementation of fast-track programs were largely southwestern border districts that had different caseloads, as well as organizational priorities and resources. If immigration cases in those districts were processed differently or if their profiles were systematically different from all other districts, there would be different levels of non-random selection into fast-track treatment.

This nuanced difference in the alternative comparison between fast-track cases and fast-track ineligible cases can yield results complementary to the earlier analysis based on the comparison between fast-track and non-fast-track cases. Particularly, the alternative comparison provides a context for discussion about the implications of the new policy change regarding fast-track programs.

As all other federal districts can now exercise a downward sentencing departure in qualifying immigration cases, the comparison between fast-track and fast-track ineligible cases would be informative as to the extent of district-level disparities in sentencing practice or, more broadly, organizational climate. In order to facilitate a comparison between results from this alternative specification and those reported earlier, a series of weighted regression models was constructed based on estimated propensity scores.[19] Not only does this alternative approach facilitate intuitive comparisons, but it also provides a sense of robustness, or sensitivity, in our findings. Exhibit 12 reports the effect of fast-track treatment on case processing time and sentence length.

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Exhibit 12. Weighted Regressions Predicting Case Processing Time and Sentence Length

	Model 1 Case Processing Time	Model 2 Case Processing Time	Model 3 Sentence Length	Model 4 Sentence Length
	FT vs. Non-FT	**FT vs. FT Ineligible**	**FT vs. Non-FT**	**FT vs. FT Ineligible**
Adjusted Mean	70.44 [68.96, 71.94]	83.81 [81.73, 85.89]	30.07 [29.85, 30.28]	29.22 [28.98, 29.47]
Fast-Track	-12.81 [-16.36,-9.26]	-7.40 [-17.10, 2.31]	-5.80 [-6.27, -5.34]	-5.82 [-7.26, -4.39]
Yearly Trend	-6.06 [-7.39,-4.73]	-4.34 [-6.12, -2.56]	-0.02 [-0.21, 0.16]	-0.15 [-0.36, 0.06]
N	34,667	13,973	34,667	13,973
R^2	0.098	0.106	0.528	0.591
AIC	413982.7	171855.1	277868.7	110142.5
BIC	414303.9	172639.7	278189.9	110927.2
Log Likelihood	-206953.3	-85823.5	-138896.3	-54967.2

Note. Confidence intervals are in brackets; Included controls are the severity of criminal charges, the extent of prior criminal history, the level of responsibility acceptance, the type of counsel, the level of educational attainment, the number of dependents to support, the gender and race of defendants.

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In order to examine results from two independent comparisons in a comparable way, we provide estimates based on inverse probability weighting that uses all cases available for analysis. The matching approach, which requires a removal of unmatched cases from analysis, would yield results sensitive to the performance of matching, thereby adding complexity to the interpretations of results.[20] Equivalent to the results reported in Exhibit 11, Models 1 and 3 compare fast-track and non-fast-track cases. These two models are provided for comparison with the results from Models 2 and 4, which examine fast-track cases and fast-track ineligible cases. All the models shown in Exhibit 12 are based on the same model specification of covariates and the same weighting scheme.[21]

Several points emerge which allow inferences on the implications of fast-track treatment. First, it is important to acknowledge that the estimated impacts of fast-track treatment in Models 1 and 3 are markedly similar to those reported in Exhibit 11. The estimated reduction in case processing time is 15.47 days in the matching approach and 12.81 days in the weighting approach. Both point estimates are well within the confidence bounds of either approach. The estimated impact on sentence length is also fairly compatible across the matching (-4.88) and weighting (-5.80) results. This provides some level of confidence to our approach to estimating program impact based on propensity score weights in the alternative comparison between fast-track cases and fast-track ineligible cases.

Second, the adjusted mean reflects the average value of an outcome in each respective column, conditional on all covariates such as case characteristics and district-level uniqueness. In Model 1, for example, an average case would take roughly

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70 days from filing to disposition. It is salient that the processing time for the average case is much longer in Model 2. This finding makes perfect sense, because fast-track districts - which suffer from a high volume of immigration cases -would be under greater pressure to dispose those cases more quickly than non-fast-track districts. While controlling for case characteristics and district-level fixed effects, the average sentence length for defendants charged with an illegal entry after a deportation offense is approximately 30 months in Model 3 and 29 months in Model 4. Few differences exist between Model 3 and Model 4. It is conceivable that district-level fixed effects may absorb discretionary sentencing practices unique to each district, which could otherwise have created a substantial difference in the adjusted mean length of sentence between Models 3 and 4. The inclusion of district-level fixed effects nonetheless seems reasonable because it helps obtain an unbiased estimate of the effect of fast-track treatment, which is of primary interest in this analysis.

Third, as in the previously reported findings, the average case processing time is shorter in fast-track districts than non-fast-track districts, probably due to inherent characteristics unique to fast-track districts. Model 1 suggests that the use of fast-track treatment would further shorten case processing time in fast-track districts by nearly 13 days. However, Model 2 reveals no significant impact of fast-track treatment on case processing time, which begs the question: To what extent are fast-track ineligible districts similar or fundamentally different from fast-track districts? The null effect of fast-track treatment in Model 2 implies that, at least for case processing time, the new policy change enabling previously ineligible districts to exercise an early disposition sentencing departure may not have yielded an expected impact or similar impact as

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seen in fast-track districts. The border districts are under great pressure to relieve the high caseload of immigration cases. The benefit of saving case processing time through fast-track processing may not convey the same connotation for border districts and other districts where immigration cases do not pose a threat to the maintenance of court systems.

Fourth, the impact of fast-track treatment on sentence length is remarkably similar between Model 3 and 4. This is an intriguing contrast to the findings on case processing time. Given that the length of sentence is largely determined by the Sentencing Guidelines, it is not surprising that Models 3 and 4, which control for several guideline computation factors such as offense severity and criminal history, explained over 50 percent of variation in sentence length. The consistent effect of fast-track treatment on sentence length across Models 3 and 4 can also be understood in the context of sentencing outcomes controlled by the Sentencing Guidelines. With much regularity in the process of sentencing decision-making, the effect of fast-track treatment may not vary much across different comparisons. In both Models 3 and 4, fast-track treatment reduced sentence length by nearly 6 months.

3.5. Comparison between Districts with and without Fast-Track Programs

The Department of Justice acknowledged that the existence of fast-track programs in some, but not all, districts has generated a concern that defendants are being treated differently depending on where in the United States they are charged and sentenced (DOJ, 2012). Undoubtedly, this concern about unwarranted sentencing disparities was the primary motivation for revising the fast-track policy. However, there

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is an intriguing policy question regarding the source of sentencing disparities. The new policy change anticipated that sentencing disparities that existed between districts with and without fast-track programs would be avoided by making fast-track programs available to all districts. It can be inferred from this tenet that sentencing outcomes should be similar between immigration cases in the districts where fast-track programs were not available (fast-track ineligible) and otherwise similar non-fast-track cases in fast-track districts. Therefore, sentencing outcomes should be indistinguishable between fast-track ineligible and non-fast-track cases with similar case characteristics. To the extent they differ in sentencing outcomes, one can suspect the generic difference in sentencing practice between districts with and without fast-track programs.

To provide an overall comparative assessment on sentencing disparity, the following analysis examines a two-way comparison between (1) non-fast-track cases and fast-track ineligible cases and (2) non-fast-track cases and fast-track cases. Because comparing separate analyses based on different subsamples would not yield valid inferences, a new indicator for trichotomous treatment condition (0=non-fast-track, 1=fast-track, and 2=fast-track ineligible) was created for the simultaneous estimation of two models for each comparison. A multinomial logistic regression (with the reference group being non-fast-track cases) was used to develop propensity scores for each comparison.

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Exhibit 13. Weighted Regressions Predicting Sentence Length

	Model 1 Baseline	Model 2 FTT Interactions	Model 3 FTI Interactions
Fast-Track Treatment (FTT)	-6.186**	-7.096**	-6.175**
	(-4.30)	(-6.11)	(-4.27)
Fast-Track Ineligible (FTI)	2.491*	2.464*	1.371
	(2.38)	(2.36)	(0.97)
Age	0.095**	0.115**	0.091**
	(8.47)	(7.23)	(8.26)
Black	1.597	0.686	2.348
	(0.99)	(0.40)	(0.82)
Hispanic	3.052**	1.844*	2.988**
	(5.51)	(2.01)	(5.06)
Gender	-2.822**	-2.523**	-2.590**
	(-8.74)	(-5.01)	(-7.38)
FTT x Age		-0.068**	
		(-3.38)	
FTT x Black		-0.016	
		(-0.01)	
FTT x Hispanic		3.658**	
		(3.18)	
FTT x Gender		-0.892	
		(-0.75)	
FTI x Age			0.027
			(0.59)
FTI x Black			-1.366
			(-0.44)
FTI x Hispanic			0.312
			(0.29)
FTI x Gender			-1.570+
			(-1.69)
N	56,005	56,005	56,005
R^2	0.550	0.551	0.550
AIC	446349.7	446236.6	446348.5
BIC	446537.3	446459.9	446571.8
Log Likelihood	-223153.8	-223093.3	-223149.2

Note. T statistics in parentheses; Included controls are the severity of criminal charges, the extent of prior criminal history, the level of responsibility acceptance, the type of counsel, the level of educational attainment, and the number of dependents to support; + $p < 0.10$, * $p < 0.05$, ** $p < 0.01$

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Following the same procedures used earlier, the two resulting propensity scores for each comparison were reweighted and combined for use in the weighted regression models reported in Exhibit 13. Based on all subsamples, including those who received and did not receive fast-track treatment either because they were ineligible or because they were not offered to participate, the models assess the difference between (1) fast-track and non-fast-track cases and (2) fast-track ineligible and non-fast-track cases.

First, it is important to note that the estimated impact of fast-track treatment is remarkably consistent (-6.186) with the earlier estimates. The estimated reduction in sentence length due to fast-track treatment is approximately 6 months. A moderate change in model specification was necessary to accommodate the comparable parameterization of covariates across the two comparisons. The estimated difference in sentence length between fast-track cases and non-fast-track cases nonetheless remains relatively unchanged from the previous models. The results seem robust and not sensitive to model specification, which also provides confidence to the current analysis examining the difference between non-fast-track cases and fast-track ineligible cases.

Second, the key variable of interest in Exhibit 13 is Fast-Track Ineligible (FTI) in Model 1. While controlling for case characteristics, Model 1 indicates that fast-track ineligible cases received, on average, a 2.5-month longer sentence than otherwise similar immigration cases that were not processed through fast-track programs. This is due to the disparate exercise of discretion in sentencing decision-making between districts with and without fast-track programs. This difference, which is above and beyond the expected level given the differences in legal and extra-legal characteristics

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of immigration cases, introduces another source of sentencing disparity between the districts with and without fast-track programs.

Third, to further explore the ramifications of disparate sentencing practices between fast-track and fast-track ineligible districts, Models 2 and 3 investigate the extent to which demographic factors influence sentence length. Demographic factors such as age, gender, and race have long been a point of debate for sentencing researchers as well as policymakers and the public. According to Model 1, older defendants are treated more punitively than younger defendants (0.095); Hispanic defendants more punitively than white defendants (3.052); and male defendants more punitively than female defendants (-2.822). The key question in Models 2 and 3 is whether or not these individual disparities would be any more or less pronounced when comparing (1) fast-track cases to non-fast-track cases and (2) fast-track ineligible cases to non-fast-track cases. Model 2 reports two significant interaction effects of fast-track treatment with age and race (Hispanic). These findings indicate that the effects of age on sentence length are slightly smaller for fast-track cases than for non-fast-track cases, but also that harsh sentencing for Hispanic defendants is more pronounced for those disposed of through fast-track programs. However, the interactions with demographic factors were not significant in the comparison between fast-track and fast-track ineligible cases although gender was approaching statistical significance (Model 3). What differentiates the comparison between fast-track vs. non-fast-track cases and the comparison between fast-track vs. fast-track ineligible cases is prosecutorial discretion as prosecutors have substantial control over who should receive fast-track treatment in the first comparison, but not in the second comparison. Therefore, these findings hint

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that existing disparate sentencing outcomes among immigration cases could be exacerbated, especially for Hispanic defendants, when prosecutorial discretion is allowed in fast-track processing.

Taken together, it is evident that the implications of the new fast-track policy are far-reaching. Making fast-track programs available to all districts is highly commendable as it theoretically resolves the issue of equity at the policy level. It also upholds the DOJ's position on sentencing disparities in close accord with Congress' intent to achieve uniformity in sentencing outcomes. However, whether or not the policy change actually ameliorates sentencing disparities remains to be seen. As shown above, there exists a significant difference in sentencing outcomes between those who received and did not receive fast-track treatment in districts with approved fast-track programs. This difference in sentence length was greater in size than the difference between fast-track cases and fast-track ineligible cases.

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CHAPTER 4: CONCLUSIONS

There has been a sharp increase in federal criminal prosecutions of immigration offenses. The federal justice system has been inundated with an ever-growing pool of illegal immigrants entering the U.S. in recent years. There are currently 11.9 million unauthorized immigrants living in the U.S., with an average of 500,000 new entrants arriving annually over the last decade (Passel & Cohn, 2009). While only a small fraction of the aliens who illegally enter the U.S. are prosecuted in the federal justice system, that stream of cases still numbers in the tens of thousands. As an attempt to deal with the increasing number of immigration cases with limited resources, early disposition programs, otherwise known as fast-track programs, have been selectively used in some districts. Under these programs, defendants who provide full cooperation, submit a prompt guilty plea, and give up procedural protections such as the right to appeal are considered candidates for fast-track treatment, which leads to favorable sentences outside the range of the Sentencing Guidelines. This study is among the first to empirically assess the impact of fast-track treatment on case outcomes. Specifically, this study examined the impact of fast-track programs on (1) case processing time from filing to disposition and (2) sentence length. Major findings from the impact evaluation are summarized below, beginning with substantive results regarding program effects. Limitations of the analysis are also discussed.

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4.1. Summary of Findings

Trends in Immigration Cases

Approximately 27 percent of all criminal cases were primarily convicted of immigration crimes between FY2006 and FY2009. Nearly 70 percent of those cases originated from five federal districts: Southern California, Arizona, New Mexico and Western and Southern Texas. Considerable variation exists across the five districts in terms of the volume and processing of immigration cases. Beyond the five districts, the variation in case processing is even more pronounced. The average processing time for cases involving unlawful entering or remaining in the United States is longest in Massachusetts (222.9 days) and shortest in North Dakota (7.5 days). The average sentence length of these cases is longest in the Southern District of Indiana (47.3 months), approximately 15 times greater than the average sentence length in the District of North Dakota (3.2 months).

Use of Fast-Track Treatment

After the initial appearance of defendants in court and appointment of counsel, prosecutors inform defense counsel whether or not the government seeks a sentencing departure pursuant to early disposition programs. As this is a matter of prosecutorial discretion, the chance of receiving fast-track treatment varies across defendants. As of May 29, 2009, 27 fast-track programs in 17 judicial districts were authorized to fully implement fast-track programs, most of which were for “illegal reentry after deportation” cases. While controlling for all other case characteristics, defendants whose alleged charges pose a greater threat to public safety were less likely to receive fast-track

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treatment. Self-represented defendants were considerably less likely than those represented by public defenders to receive fast-track treatment. In addition to legal factors, the age of defendants and family/social status, measured by the number of dependents, were predictive of the likelihood of fast-track treatment. Younger offenders were more likely to receive fast-track treatment, while the number of dependents was also positively associated with the chance of receiving fast-track treatment.

Impact of Fast-Track Programs on Case Processing Outcomes

The effectiveness of fast-track programs was measured in multiple ways. The foremost intuitive, unbiased assessment answers the following question: What would have happened to fast-track cases had they not been disposed of through fast-track programs? The findings from this study show that participation in fast-track programs resulted in a moderate reduction in case processing time as well as sentence length. The estimated reduction in case processing time, which presumably translates into government savings, ranges from approximately 10 to 21 days. The estimated reduction in sentence length, which constitutes sentencing disparity between fast-track and non-fast-track cases, ranges from approximately 4 to 6 months.

Sentencing Disparities

The recent fast-track policy established baseline eligibility requirements for any defendant who qualifies for fast-track treatment, regardless of where that defendant is prosecuted. The primary motivation for this policy change was a growing concern over sentencing disparities resulting from the selective implementation of fast-track programs in some, but not all, districts. This study found supporting evidence for sentencing

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disparities between districts with and without fast-track programs. However, it also found that sentencing disparities were prompted considerably by prosecutorial discretion in fast-tracking some, but not all, eligible defendants within fast-track districts. Sentencing disparities due to inter-district variation in the availability of fast-track programs were relatively smaller in size.

4.2. Implications for Policy and Research

A considerable amount of resources is allocated to the enforcement of immigration laws. In 2009, the budgets for US Customs and Border Protection (which oversees border enforcement) and US Immigration and Customs Enforcement (which oversees interior enforcement) were $9.5 billion and $5.4 billion, respectively.[22] Given the need for low-skilled labor in industries such as farming, construction, low-end manufacturing, hospitality, and building cleaning and maintenance, illegal immigration is not likely to disappear anytime soon. Coupled with heightened attention to terrorism, enforcement against illegal immigration will therefore continue to be an issue of national concern.

The consequences of sustained immigration enforcement unavoidably entail significant resource constraints and due process concerns for the federal criminal justice system. In particular, southwestern border districts face the challenge of handling increasingly large numbers of criminal immigration cases. Hence, the speedy processing of immigration cases is a primary rationale for implementing fast-track programs, and proponents of fast-track programs accepted the trade-off of potentially increased sentencing disparity.

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As such, this study addresses several questions of direct policy relevance. This study found that fast-track programs contributed to an estimated average reduction in case processing time ranging from 10 to 21 days, which roughly translates to a 10-25 percent reduction in case processing time. These findings support the common belief that fast-track treatment considerably reduces case processing time. Based on one of the cost estimates for detaining an immigrant per day (=$164) available as of this writing, one may project the savings to the government due to fast-track programs between FY2006 and FY2009 to be in the range of $18.4 million and $38.6 million.[23] This cost saving is not trivial. However, its relative size to the total detention cost for immigrants[24] is not of major consequence.

Similarly, fast-track treatment has the potential to reduce Guidelines sentences by up to four offense levels. This four-level reduction in the offense level could be fairly substantial, depending on the level of prior criminal history. Yet, the actual reduction in sentence length was relatively moderate (4 to 6 months). As discussed in McClelland and Sands (2006), fast-track programs are expected to result in a more dramatic reduction in sentence length as well as case processing time. However, the data suggest that the implementation of fast-track programs did not result in as large a decrease in case processing time or sentence length as expected.

What could explain this discrepancy between the expected and observed reductions in sentence length and case processing time? Although anecdotal examples are often too simple or extreme to draw conclusions from, it is important to realize that the interaction between prosecutors and defense counsel as well as the organizational culture of district courts can offset fast-track benefits. Further, prosecutors may not offer

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every fast-track defendant the fullest extent of fast-track benefits. Although this study cannot provide qualitative insights into the process of negotiation or execution of fast-track agreement among courtroom actors, empirical evidence indicates that the benefits of fast-track programs for the government (reduced case processing time) and for participating defendants (reduced sentence length) were not as substantial as widely expected.

Second, an emerging consensus among sentencing researchers is that the field should have a better understanding of how prosecutorial discretion influences courtroom decision-making and case outcomes (Forst & Bushway, 2010). This study found that prosecutorial discretion has crucial implications for fast-track programs. As criticism from legal professionals and rights advocates has pointed out, sentencing disparities exist between districts with and without fast-track programs. However, the extent of sentencing disparities caused by the selective implementation of fast-track programs was relatively marginal compared to the extent of disparities present between fast-track cases and non-fast-track cases in districts where fast-track programs were available. In other words, sentencing disparities that originated from prosecutorial discretion were of greater consequence in sentencing decision-making than those from the selective implementation of fast-track programs at the district level.

This begs the question of how the new fast-track policy can promote uniformity in sentencing. At the outset, the new policy notes that individual U.S. Attorneys preserve discretion in deciding how fast track will be implemented in their districts. They also retain the discretion to limit or deny a defendant's participation in a fast-track program based on a number of factors, such as prior criminal history, pending charges, and prior

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history of deportation and immigration-related offenses, and circumstances at the time of the defendant's arrest or any other aggravating factors identified by the U.S. Attorney. The last category of other aggravating circumstances is a poorly defined standard that allows for substantial discretion. Although abolishing the geographic restriction regarding which districts can exercise a downward sentencing departure pursuant to early disposition programs is a welcome policy change, the new policy change undoubtedly created more room for prosecutorial discretion. Hence, the revised policy's instruction that federal prosecutors retain the discretion to limit or deny a defendant's participation in a fast-track program warrants continued attention and further discussion.

Third, there are many sentence enhancements applied to immigration offenses, which lead to excessive sentences. It is not efficient to have a system in which the government offers sentence reduction incentives through fast-track programs while seeking to enhance sentences for a large volume of offenders. Not to mention conceptual inconsistency at the organizational level, such practice would be likely to exacerbate disparities. The efficient management of immigration cases has increasingly become the subject of policy discussions, as has the idea of fair, accountable governments. One fundamental resolution to the competing concepts of organizational efficiency and equity would therefore involve revising sentencing guidelines for immigration offenses. Based on the findings from this study, it is recommended that uniform standards for charging and sentencing be exercised across all districts with fewer exclusion criteria.

Lastly, as fast-track programs have a direct implication for the costs of court operations, one priority for future research is to develop reliable estimates for the costs

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of processing immigration cases in the federal justice system. Although this study only presents findings of limited scope regarding organizational efficiency, future research is encouraged to evaluate the costs of court operations, including detention costs. Each district has different fiscal constraints and caseloads. Therefore, the costs and benefits of efficient case processing may also vary across districts. The development of comprehensive cost estimates, coupled with impact analysis on fast-track programs, can advance our understanding of how to achieve organizational efficiency in the federal justice system.

4.3. Limitations

The conclusions of this study should be balanced with its limitations, of which there are several worth mentioning. First, this study is limited to fast-track cases by the government's motion for a downward sentence departure. Due to data unavailability, fast-track cases by a charge bargaining program could not be reliably identified in this study. If the proportion of these cases is substantial, they could have created more variation between the matching and weighting results, because they would have been more likely to be matched with the treated cases. However, different test specifications yielded highly consistent results in this study. Although the lack of ability to distinguish such cases is a key limitation, it is of limited consequence for the study.

Second, this study mainly provides a quantitative assessment of program impact. To better appreciate the implications of fast-track programs, one should look beyond the theory of what fast-track programs are supposed to do. What happens in the courtroom among courtroom actors remains largely unknown. Future research should examine the

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process of implementing fast-track programs and courtroom dynamics in the processing of immigration cases.

Third, there are fast-track programs for other offense types. As this study only examines immigration offenses, however, its results should not be generalized to other types of fast-track programs, which may involve different courtroom dynamics and result in different outcomes. These fast-track programs should be evaluated separately.

Fourth, regressions weighted by propensity scores are likely to increase random error in the estimates and bias the estimated standard errors downward (Freedman & Berk, 2008). The matching results reported in this study are also subject to the same bias, as they allowed non-treatment cases to be used more than once for matching. There is no fully satisfactory solution to this issue, but these well-known issues with propensity score-based techniques have motivated the use of bootstrap standard errors. We examined results from 1,000 bootstrap replications of the main analyses discussed in this report and did not find anything that would lead to completely different conclusions about the impact of fast-track programs.[25] Nonetheless, it is advised to take findings of this study with mild caution.

4.4. Concluding Remarks

This study is among the first attempts to evaluate the effectiveness of fast-track programs. Based on rigorous analytic strategies and case-level population data on defendants sentenced under the Guidelines, this study offers strong evidence regarding how fast-track programs improve the efficiency of case processing and lead to sentencing disparities. However, it should be clearly acknowledged that the results

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discussed in this study should be balanced by important limitations in administrative data as well as data analysis. Most notably, the inability to distinguish downward departure cases from charge bargaining cases in data analysis provides a basis to suspect that the estimated program impact on case processing time and sentence length could be overly conservative.

The conclusions discussed in this report should not be taken as a definitive answer to policy questions regarding the operations of fast-track programs or, more broadly, the effective management of immigration offenses. If anything, the major contribution of this report to the field and policy discussion should be a recognition of the need for more research into how courtroom actors interact with one another in disposing of immigration offenses and how the federal justice system can be optimized for efficient and fair processing of such cases.

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APPENDIX A. APPROVED FAST-TRACK PROGERAMS INVOLVING IMMIGRATION OFFENSES

	10/2003-10/2004	10/2004-8/2006	8/2006-1/2008	1/2008-1/2009	1/2009-5/2009	5/2009-12/2009
Arizona	X	X	X	X	X	X
California: Central	X	X	X	X	X	X
California: Eastern	X	X	X	X	X	X
California: Northern	X	X	X	X	X	X
California: Southern	X	X	X	X	X	X
Florida: Middle			X	X		
Florida: Southern		X	X	X		
Georgia: Northern	X	X	X	X	X	X
Idaho	X	X	X	X	X	X
Kansas			X	X	X	
Nebraska	X	X	X	X	X	X
New Mexico	X	X	X	X	X	X
North Dakota	X	X	X			
Oregon	X	X	X	X	X	X
Puerto Rico				X	X	X
Texas: Southern	X	X	X	X	X	X
Texas: Western	X	X	X	X		X
Utah			X	X	X	X
Washington: Eastern			X	X	X	X
Washington: Western	X	X	X	X	X	X

Note: This table is constructed from six memorandums issued from DOJ to authorize the implementation of fast-track programs involving immigration offenses.

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APPENDIX B. DESCRIPTIVE SUMMARY OF ANALYTIC SAMPLES

The following table reports summary statistics of key measures for each analytic sample used in data analyses. The descriptive statistics were weighted by the inverse probability weights used for analyses reported in Exhibit 13.

Descriptive Statistics of Key Measures

	FT N=13,950		Non-FT N=31,496		FT-Ineligible N=10,599	
	Mean	SE	Mean	SE	Mean	SE
Highest severity filing charge	3.39	0.80	3.45	0.89	3.31	0.80
Acceptance of Responsibility	2.83	0.38	2.58	0.50	2.69	0.47
# unique statutes	1.88	0.47	1.75	0.68	1.64	0.62
# guideline computations	1.00	0.03	1.00	0.07	1.01	0.10
# counts of conviction	1.00	0.05	1.01	0.10	1.01	0.12
Criminal history points	4.68	3.87	4.38	4.01	4.60	3.98
Detained during pretrial	0.98	0.14	0.97	0.18	0.98	0.14
Counsel: CJA appointment	0.37	0.48	0.23	0.42	0.12	0.33
Counsel: Private	0.01	0.10	0.02	0.14	0.02	0.15
Counsel: Self-representation	0.00	0.06	0.01	0.08	0.00	0.06
Age	33.80	9.02	33.95	9.09	34.64	8.67
Black	0.00	0.06	0.01	0.10	0.03	0.18
Hispanic	0.88	0.32	0.91	0.29	0.87	0.34
Gender	0.04	0.19	0.04	0.21	0.03	0.17
Below high school graduate	0.81	0.39	0.81	0.39	0.74	0.44
High school graduate	0.14	0.35	0.14	0.35	0.18	0.39
Number of dependents	1.87	1.80	1.93	1.80	1.83	1.71
Year	2,007.39	1.21	2,007.42	1.19	2,007.48	1.29

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APPENDIX C. ALTERNATIVE MODELING

The table shown below reports results from propensity score matching analysis based on an alternative selection model specification. The alternative model does not consider acceptance of responsibility as it may be potentially subject to simultaneous causality with fast-track treatment.

Impact of Fast-Track Treatment based on Alternative Specification

		Mean		Program Impact		
Outcome	**Sample**	**Treated**	**Controls**	**Difference**	**Lower**	**Upper**
Case Processing Time (in days)	Before Matching	64.13	66.04	-1.91+ (1.03)		
	After Matching	64.13	87.21	-23.08** (2.48)	-27.94	-18.22
Sentence Length (in months)	Before Matching	25.90	22.58	3.32** (0.22)		
	After Matching	25.90	28.05	-2.14** (0.44)	-3.00	-1.28

Note. Standard errors are in parentheses; + $p < 0.10$, * $p < 0.05$, ** $p < 0.01$; "After Matching" indicates average treatment effect on the treated (n=11,212) based on 1:1 nearest neighbor matching with a caliper of 0.025; Number of treated cases unmatchable to equivalent comparison units (=5).

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[1] The growth of immigration cases is even more pronounced at an early stage of the criminal justice system. In 1998, immigration offenses accounted for 20 percent (20,942 arrestees) of all arrestees booked by the U.S. Marshals Service, but the number of immigration-related arrests nearly quadrupled in size over the following decade. In 2008, there were 78,037 persons arrested and booked by the U.S. Marshals Service for immigration offenses, comprising 45 percent of all cases.

[2] Memorandum from Attorney General John Ashcroft, Department Principles for Implementing an Expedited Disposition or 'Fast-Track' Prosecution Program in a District (Sept 22, 2003), reprinted in Federal Sentencing Reporter, Vol. 21(5): 318-339.

[3] Memorandum from Deputy Attorney General David W. Ogden, Authorization for Certain Early Disposition Programs (May 29, 2009), reprinted in Federal Sentencing Reporter, Vol. 21(5): 337-338. See Appendix A for a list of districts authorized for a fast-track program(s) involving immigration offenses.

[4] See *U.S. v. Reyes-Hernandez*, 624 F.3d 405 (7th Cir. 2010); *U.S. v. Camacho-Arellano*, 614 F.3d 244 (6th Cir. 2010); *U.S. v. Arrelucea-Zamudio*, 581 F.3d 142 (3d Cir. 2009); *U.S. v. Rodriguez*, 527 F.3d 221 (1st Cir. 2008).

[5] See *U.S. v. Gomez-Herrera*, 523 F.3d 554, 562-63 (5th Cir. 2008); *U.S. v. Vega-Castillo*, 540 F.3d 1235, 1239 (11th Cir. 2008); *U.S. v. Gonzalez-Sotelo*, 556 F.3d 736, 739-41 (11th Cir. 2009).

[6] See *U.S. v. Reyes-Hernandez*, 624 F.3d 405 (7th Cir. 2010); *U.S. v. Camacho-Arellano*, 614 F.3d 244 (6th Cir. 2010); *U.S. v. Arrelucea-Zamudio*, 581 F.3d 142 (3d Cir. 2009); *U.S. v. Rodriguez*, 527 F.3d 221 (1st Cir. 2008).

[7] Memorandum from Deputy Attorney General, DOJ (2012)

[8] *U.S. v. Julio Ortega-Vargas*. No. 08-2886. Court of Appeals, 7th Circuit (2009)

[9] A systematic review of prior research on judicial decision-making is beyond the scope of this research. More complete reviews of the sentencing disparity literature have been well-documented elsewhere (see (Engen, Gainey, Crutchfield, & Weis, 2003).

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[10] The focal concerns perspective has been discussed extensively elsewhere. For more complete discussion, see Bontrager Ryon, Bales, and Chiricos (2005), Engen et al. (2003), Johnson (2005), Kramer and Ulmer (2002), Steffensmeier and Demuth (2000), Steffensmeier and Demuth (2000), Ulmer and Johnson (2004).

[11] *United States v. Perez-Chavez*, 422 F. Supp. 2d 1255, 1269 app. A (D. Utah 2005).

[12] It is relevant to note that the inability to distinguish downward departure cases from charge bargaining cases in data analysis would be likely to yield conservative estimates of program impact.

[13] Due to the skewedness of the outcome measures, the natural log transformation was applied in some of the analyses discussed in this report. Results were virtually indistinguishable before and after the log transformation. For simplicity, results based on raw scores are presented in this report.

[14] The two districts were not authorized for charge bargaining programs.

[15] An anonymous reviewer provided valuable comments on the use of "acceptance of responsibility" in our analysis as one of the matching variables. One may argue that the causal ordering of acceptance of responsibility and fast-track participation is not entirely clear because the offer of fast-track treatment should be made prior to the level of acceptance of responsibility is determined. However, it is important to note that the intervention of interest in this study is defined as fast-track participation, an essential prerequisite of which is acceptance of responsibility by agreeing to plead guilty and waiving certain rights. Regardless of whether judges' acceptance-of-responsibility finding and fast-track placement occur simultaneously or in a quick succession in practice, it is unequivocal that defendants must demonstrate acceptance of responsibility in order to receive fast-track treatment. Further, in district courts, sentencing adjustments on the basis of acceptance of responsibility are largely mechanical in that there is an automatic discount (or a conventionally established discount rate) following agreement to submit a guilty plea (O'Hear, 1997), potentially rendering the relationship between acceptance of responsibility and fast-track participation simultaneous, but not reversed. Admittedly, adjusting for an inherently relevant and contemporaneous covariate would prevent researchers from discerning subtle yet otherwise theoretically

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meaningful variation in the outcome. However, for the purpose of policy evaluation, it stands to reason to constrain test settings to the extent reasonable so as to yield conservative estimates of program impact as opposed to relaxing them. Hence, results reported in this study rely on propensity score matching procedures that include acceptance of responsibility as one of the matching variables. For comparison, Appendix C shows the program impact of fast-track treatment without matching on acceptance of responsibility. Although the effect sizes differ somewhat, the direction and statistical significance of the estimated program impact remain unchanged.

[16] The standardized percent bias is the percent difference of the sample means in the treatment and control groups as a percentage of the square root of the average of the sample variances in the treatment and control groups (Rosenbaum & Rubin, 1985).

[17] It should be acknowledged, however, that the propensity score matching approach requires an assumption that there is no unobserved heterogeneity that differentiates a treatment group from its control group. Otherwise stated, the results reported above are unbiased to the extent that the included covariates sufficiently capture the selection process in which defendants are sorted into fast-track or non-fast-track conditions.

[18] The term, fast-track ineligible cases, can be equivocal as fast-track districts might have established internal guidelines by which to determine which cases to process through fast-track programs. For simplicity, the reference of “eligibility” is limited in this study to the cases whose district did not have authority to implement fast-track programs.

[19] Making a direct comparison between the results from different propensity score matching analyses would be accompanied by statistical complications and therefore not desirable.

[20] Although the matching (Exhibit 11) and weighting (Models 1 and 3 of Exhibit 12) approaches yielded fairly similar, coherent estimates for program impact, it is important to recognize that the matching results are generally superior to weighting results in the current study. By construction, the matching results would have a higher internal validity. Since only a few treatment cases could not be matched, the cost of

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attenuating external validity that often occurs in the matching procedures is also non-significant. Further, weighting could potentially increase random error in the estimates and underestimate standard errors (Freedman & Berk, 2008).

[21] There are multiple different ways to construct weights based on propensity scores. Typically, a binary model of selection into treatment is first estimated. This model produces the predicted probability of receiving treatment (otherwise known as propensity scores). While the weight for treatment group is set to 1, the inverse probability is then applied to the control group to make the mean of each covariate used in the estimation of propensity scores approximately equal across the treatment and control groups. The analyses reported in Exhibit 12 are based on a re-scaled weight that approximately preserves proportions in the treatment and control samples.

[22] GPO Access, "Budget of the United States Government: Detailed Functional Tables Fiscal Year 2010," http://www.gpoaccess.gov/usbudget/fy10/fct.html.

[23] The cost estimate was calculated by the National Immigration Forum ("The Math of Immigration Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies," 2012). The estimated reduction of 10 to 21 days is the confidence interval of the estimated average treatment effect from the propensity score matching analysis presented in Exhibit 11. The number of treated defendant-cases (i.e., fast-track cases) analyzed in the propensity score matching analysis was 11,215.

[24] The Department of Homeland Security requested about $2 billion in funding for immigration detention for FY2013 (DHS, 2012).

[25] Results are not presented in this report but available upon request.

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