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# ORGANIZATIONAL EFFICIENCY AND EARLY DISPOSITION PROGRAMS IN FEDERAL COURTS

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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 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

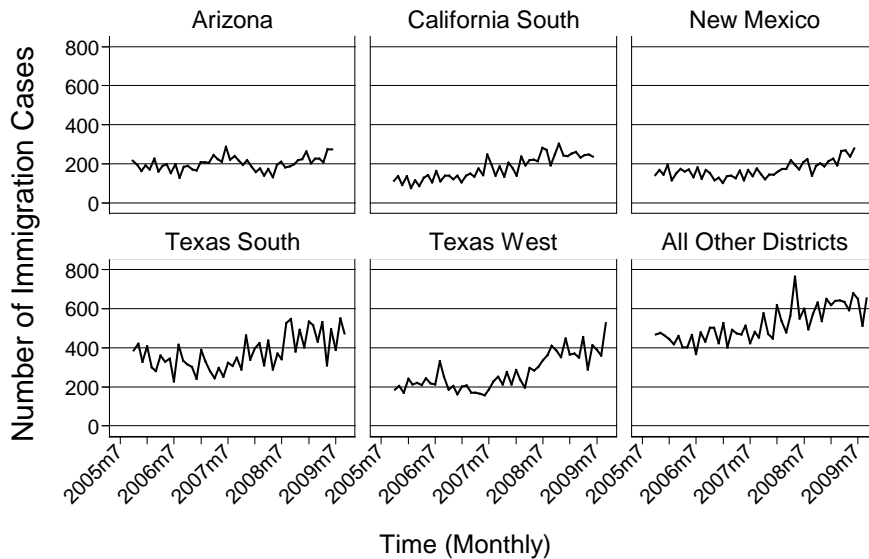
federal cases from FY2006 to FY2009, counterfactual analyses were developed to assess the impact of fast-track programs among immigration offenders.

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.

## 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



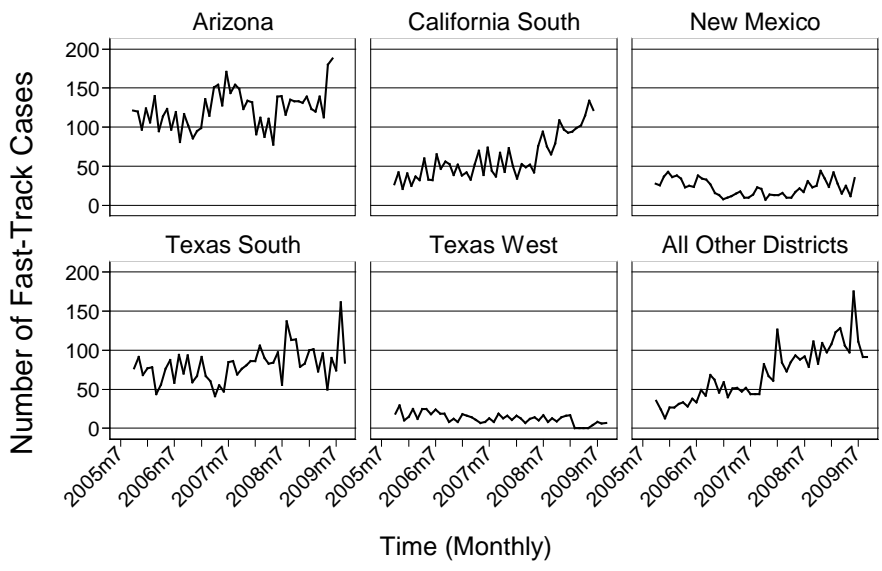
cases originated from five federal districts: Southern California, Arizona, New Mexico and Western and Southern Texas.

- A considerable variation in the volume and processing of immigration cases existed across all districts. Based on FY2006 through 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).

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

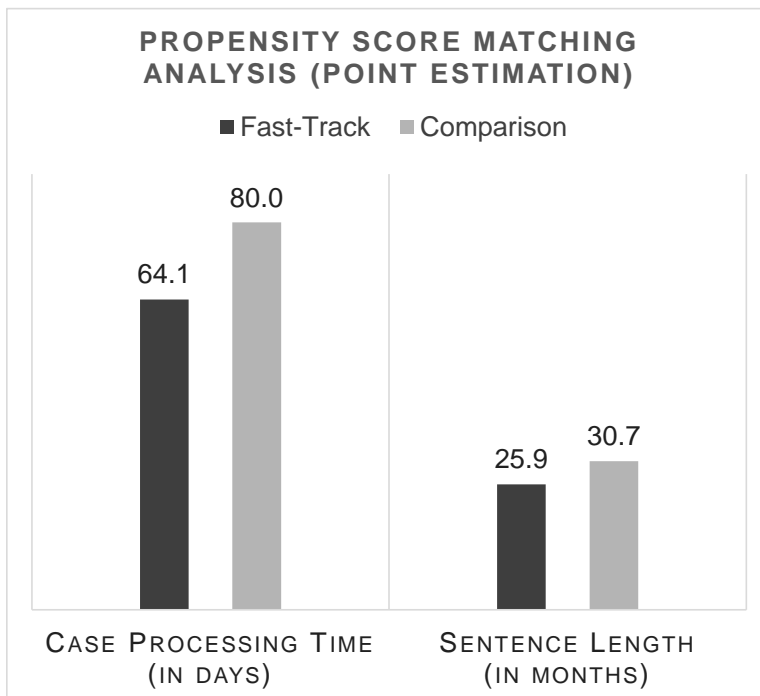
through fast-track programs (89 and 74 percent, respectively) whereas other districts, such as the Western District of Texas (4 percent) and the Middle District of Florida (10 percent), relied minimally on fast-track programs to dispose of such cases.

- 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 six 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 and 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.



## 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,

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 example, Hispanics received significantly longer sentences compared to

Whites and Blacks but fast-track programs exacerbated the disparate sentencing for Hispanics.

### **Implications for Policy and Research**

- Although the recent fast-track policy change upholds the DOJ's position on reducing 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 counterintuitive 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 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.

## 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

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.