

When it comes to U.S. punishment, noncitizens may be the new face of legal inequality

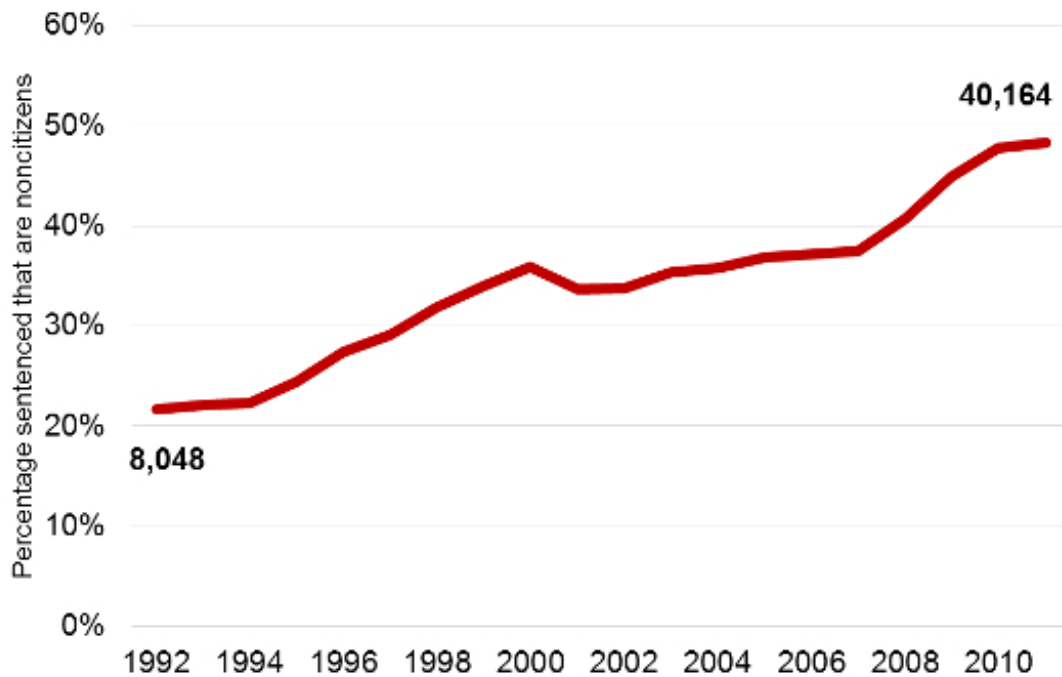
While there has been a great deal of discussion and commentary on the recent increase in the numbers of undocumented immigrants coming to the U.S., there is little understanding of their experiences in America, especially within the justice system. In new research, [Michael T. Light](#) finds that nearly half of those sentenced in a U.S. district court are noncitizens, and that they are given harsher sentences. He writes that noncitizens are far more likely to be imprisoned than U.S. citizens, and that this sentencing gap is larger than the gap between racial/ethnic minorities and whites, between men and women, and between college-educated offenders and high school dropouts. In addition, he finds that on average, noncitizens receive sentences that are 3-4 months longer than citizens, when imprisoned.



In the wake of the most recent wave of undocumented immigration, a substantial amount of public and media attention has focused on the U.S. response to unlawful migrants, particularly the role of deportation. However, increasing numbers of non-U.S. citizens are being brought before the criminal justice system, and lost in this discussion is a full understanding of what actually happens to them when they are punished under U.S. law.

This is a major gap given that the number of noncitizens sentenced in U.S. federal courts has increased nearly five-fold over the past two decades. As Figure 1 shows, by 2011 nearly 1 out of every 2 people sentenced in a U.S. district court lacked U.S. citizenship. Even scholars and politicians interested in legal inequality have largely overlooked the importance of citizenship, instead focusing on issues such as race and ethnicity.

Figure 1 – Number and Proportion of Non-U.S. Citizens Sentenced in U.S. Federal Courts (1992-2011)



Source: U.S. Sentencing Commission Data Files, 1992-2011

However, in new [research](#) my colleagues and I analyzed nearly two decades of federal court records to examine whether citizenship has implications for differential treatment under the law. Three notable findings emerged.

First, national membership is now an influential marker of legal inequality in U.S. District courts, such that non-U.S. citizens – and especially undocumented immigrants – receive harsher penalties at sentencing than U.S. citizens. For example, in 2008 96 percent of convicted non-citizens received a prison sentence, compared to 85 percent of U.S. citizens.

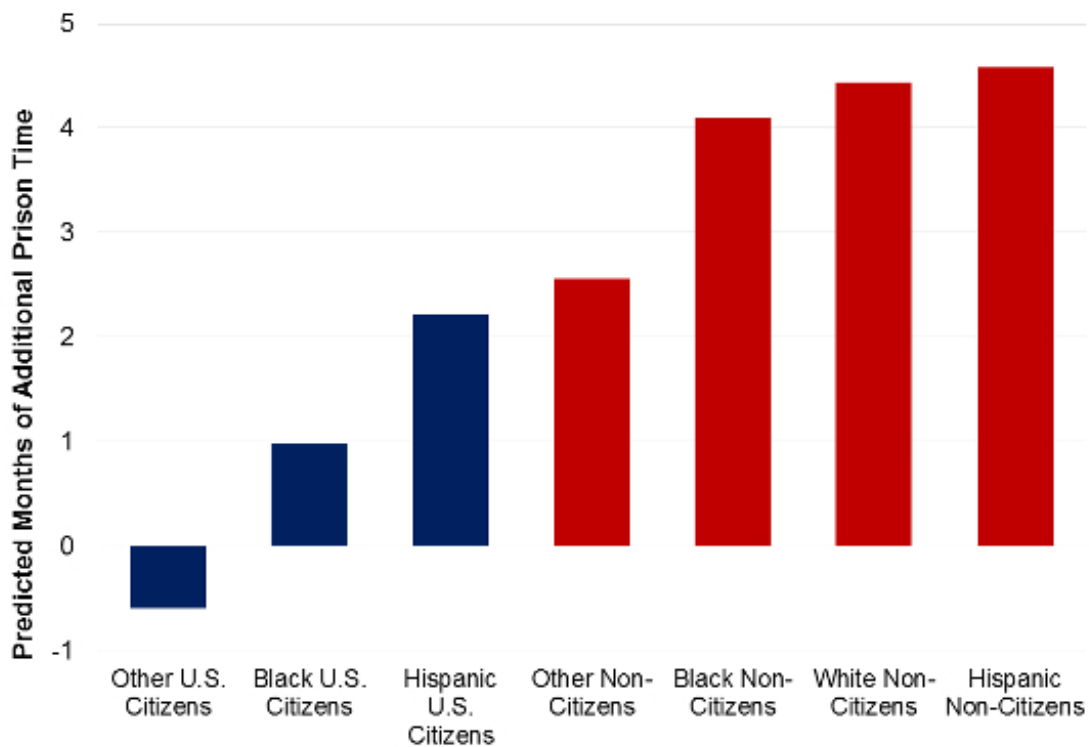
One explanation for this sentencing gap could be that it is a reflection of differences in criminal offending – noncitizens may, on average, commit more serious crimes or have more severe criminal histories. However, we found that even after we account for a host of factors that could potentially explain this difference, such as offense severity and criminal history, non-U.S. citizens were still significantly more likely to be sentenced to incarceration than comparable U.S. citizens. Further still, we found that among those who are imprisoned, non-citizens received an additional 3-4 months of prison time on average.

It's important to put these results in perspective. When deciding whether or not to incarcerate, the sentencing gap between citizens and noncitizens is larger than the gap between racial/ethnic minorities and whites, between men and women, and between college-educated offenders and high school dropouts.

Second, citizenship status is more consequential for sentencing outcomes today than it was two decades ago, a finding that holds for both legal and undocumented immigrants. For example, in 1992 the odds that a non-U.S. citizen would be incarcerated by a federal judge were roughly two times higher than a comparable U.S. citizen. By 2008, the odds were over four times higher. This sentencing gap was most pronounced in federal districts that experienced the largest influx of non-U.S. citizens since 2000. This suggests that part of the increased punitiveness against non-U.S. citizens in recent decades can be linked to judicial responses to the changing demography of the U.S. population, which witnessed an increase of roughly 4 million non-U.S. citizens between 2000 and 2010.

Third, the punishment gap between citizens and non-citizens is not simply a reflection of well-known patterns of racial or ethnic inequality. Several factors point to this conclusion. One, because the federal courts collect information on both race and citizenship, we were able to separate out the independent effects of each in our analyses. Two, accounting for citizenship explains a substantial amount of the sentencing gap observed between white and Hispanic defendants, while race and ethnicity account for virtually none of the sentencing disparity between citizens and non-citizens. Three, as Figure 2 shows, every group lacking U.S. citizenship—including *white* non-citizens—receives tougher sanctions compared to white citizens. In addition, for all races, noncitizens are sentenced more harshly compared to their citizen counterparts. For instance, while black citizens received an additional month of incarceration compared to white citizens, black non-citizens received 4 extra months. By focusing mainly on racial and ethnic differences under the law, previous research had underestimated the significance of national membership.

Figure 2 – Predicted Months of Additional Prison Time Compared to White-U.S. Citizens



Source: Adapted from [Light, Massoglia, and King 2014](#).

The Future of Legal Inequality

With over 22 million non-citizens currently in the U.S. and international migration unlikely to cease any time soon, our findings offer important lessons for understanding the future of inequality under the law. For starters, it calls for a reorientation to our understanding of legal inequality. While the U.S. Attorney General Eric Holder has decried racial and ethnic disparities in sentencing as “shameful” and has launched a series of [reforms](#) aimed at reducing bias in the justice system, the growing numbers of non-state members in U.S. prisons and their treatment within the courts has received little political or public attention. Our research suggests a broader view of legal inequality is needed, one that includes national membership right alongside factors that have dominated conversations on disparities in the criminal justice system, such as race, class, gender.

In addition, our results may have implications beyond just U.S. court rooms. As countries and economies continue to become more interdependent, international migration is becoming a permanent feature of many Western societies. And while the U.S. often stands out on an international stage when it comes to crime and punishment, [reports](#) indicate that across Europe non-citizen prisoners have increased rapidly in recent decades – in both absolute and relative terms, similar to trends in the U.S. Understanding how non-state members fare in court beyond the United States will shed light on why we see these incarceration patterns, and hopefully in the process, help identify solutions for ensuring everyone receives equal protection of the law.

*This article is based on the paper ‘[Citizenship and Punishment: The Salience of National Membership in U.S. Criminal Courts](#)’, in the *American Sociological Review*.*

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