

ABSTRACT

Title of Thesis: DOES PRESIDENTIAL POLICY CHANGE FEDERAL IMMIGRATION ENFORCEMENT? DOCUMENTING THE SEVERITY OF ALLEGED OFFENCES BY ICE IMMIGRATION ARRESTEES IN THE OBAMA AND TRUMP ADMINISTRATIONS

Adam D. Neal, Master of Arts in Criminology and Criminal Justice, 2018

Thesis directed by: Doctor Lawrence W. Sherman
Department of Criminology and Criminal Justice

The federated nature of U.S. immigration enforcement invites tensions between levels of government, which both cooperate and clash with each other. A hierarchical description would claim that states and localities are responsive to federal authority, yet that argument presumes that federal agencies themselves are actually implementing the policies of senior officials like the president. Whether either or both of those hypotheses is correct, however, is an empirical question.

Using federal arrest data from FY2015–FY2017, the present research explores for these hypotheses by asking whether executive changes to enforcement priorities led to more (or less) serious noncitizen offenders being arrested by federal authorities in relation to those policies. Using an innovation from policing literature known as the crime harm index (CHI), analysis in arrestee crime from before to during and after a Presidential policy, nor were any changes observed consistent when disaggregated by 24 regional jurisdictions of Immigration and Customs Enforcement.

DOES PRESIDENTIAL POLICY CHANGE FEDERAL IMMIGRATION
ENFORCEMENT? DOCUMENTING THE SEVERITY OF ALLEGED OFFENCES
BY ICE IMMIGRATION ARRESTEES IN THE OBAMA AND TRUMP
ADMINISTRATIONS

by

Adam D. Neal

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Advisory Committee:

Dr. Lawrence Sherman, Chair

Dr. James Lynch

Dr. Min Xie

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Table 1

Table of ICE Area of Responsibility (AOR) Jurisdictions

Area of Responsibility	Jurisdiction
Atlanta	Georgia, North Carolina, South Carolina
Baltimore	Maryland
Boston	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
Buffalo	Upstate New York
Chicago	Illinois, Indiana, Wisconsin, Missouri, Kentucky, Kansas
Dallas	North Texas, Oklahoma
Denver	Colorado, Wyoming
Detroit	Michigan, Ohio
El Paso	West Texas, New Mexico
Houston	Southeast Texas
Los Angeles	Los Angeles Metropolitan Area (Counties of Los Angeles, Orange, Riverside, San Bernardino), and Central Coast (Counties of Ventura, Santa Barbara and San Luis Obispo)
Miami	Florida, Puerto Rico, U.S. Virgin Islands
New Orleans	Alabama, Arkansas, Louisiana, Mississippi, Tennessee
New York City	The five boroughs (counties of NYC) and the following counties: Dutchess, Nassau, Putnam, Suffolk, Sullivan, Orange, Rockland, Ulster, and Westchester
Newark	New Jersey
Philadelphia	Delaware, Pennsylvania, West Virginia
Phoenix	Arizona
Salt Lake City	Utah, Idaho, Montana, Nevada
San Antonio	Central South Texas
San Diego	San Diego County, Imperial County
San Francisco	Northern California, Hawaii, Guam, Saipan
Seattle	Alaska, Oregon, Washington
St. Paul	Iowa, Minnesota, Nebraska, North Dakota, South Dakota
Washington	District of Columbia and Virginia

Table 2

Timeline of U.S. Immigration Enforcement Programs & Priorities, 2010–Present Period

	Pre-PEP	PEP	Post-PEP
Duration	June 30, 2010–November 20, 2014	November 20, 2014–February 20, 2017	February 2017–present
Associated Directive	Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens	<ul style="list-style-type: none"> ○ Secure Communities ○ Policies for the Apprehension, Detention and Removal of Undocumented Immigrants 	Enforcement of the Immigration Laws to Serve the National Interest (per Executive Order)
Issuing Administrator	John Morton, DHS Asst. Secretary	Jeh Johnson, DHS Secretary	John Kelly, DHS Secretary
Active Programs	287(g) Criminal Alien Program Secure Communities	287(g) Criminal Alien Program Secure Communities (curbed) Priority Enforcement Program	287(g) Criminal Alien Program Secure Communities (restored)
Priority Levels (highest -lowest)	<p>1. Terrorism, espionage, national security threats, violent or aggravated felony, gang membership (16+), outstanding criminal warrants; public safety risks.</p> <p>2. Recent illegal entry (recent immigration violation at borders & ports of entry) and visa abuse.</p> <p>3. Fugitive, other immigration violations.</p>	<p>1. Terrorism, espionage, national security threats, violent or aggravated felony, illegal entry at border or port.</p> <p>2. 3+ separate misdemeanors (not traffic offenses or immigration status offenses), illegal entry/reentry, abuse of visa or visa waiver program.</p> <p>3: Other immigration violations, noncompliance with final order of removal issued on or after January 1, 2014.</p>	<p>any criminal conviction</p> <p>any criminal offense</p> <p>acts that constitute chargeable offense</p> <p>fraud or willful misrepresentation before any govt. agency</p> <p>public benefits abuse</p> <p>noncompliance with final order of removal</p> <p>national security or public safety risk</p>

Table 3

National Distribution of Arrestees by Enforcement Period (n=94,326)

Enforcement Period	Date of Oldest Case	Date of Newest Case	Number of Cases	Percent of Total
Pre-PEP	10/1/2014	11/19/2014	5962	6.3%
PEP	11/20/2014	2/19/2017	87406	92.7%
Post-PEP	2/20/2017	2/28/2017	958	1.0%

Table 4.

Comparison of Mean CHI for the Years of 2014-2017, by AOR (Ranked Greatest-Least 2014-2015 Change)

AOR	μ_{2014}	% Change 2014-2015	μ_{2015}	% Change 2015- 2016	μ_{2016}	% Change 2016- 2017	μ_{2017}
Washington	20.755	44%	29.977	-16%	25.113	-11%	22.225
New Orleans	28.014	31%	36.704	-12%	32.330	-24%	24.602
New York City	18.946	31%	24.809	-20%	19.961	-15%	16.946
Boston	22.910	29%	29.576	-6%	27.747	-32%	18.952
Atlanta	23.438	29%	30.253	-24%	23.048	-14%	19.753
Newark	24.139	28%	31.018	-2%	30.433	-40%	18.252
Baltimore	22.087	17%	25.868	-21%	20.516	-18%	16.887
Dallas	24.534	14%	28.065	-1%	27.692	-10%	24.968
ALL AORs	23.253	8%	25.113	-6%	23.716	-2%	23.200
El Paso	25.325	8%	27.333	-4%	26.356	-10%	23.623
San Diego	22.470	6%	23.801	-7%	22.253	-9%	20.143
Phoenix	47.193	5%	49.618	-33%	33.315	53%	51.002
Miami	24.403	4%	25.395	-14%	21.892	-19%	17.643
Philadelphia	37.624	3%	38.826	0%	38.695	-15%	32.751
Chicago	23.262	2%	23.835	-14%	20.579	-9%	18.801
San Antonio	12.615	1%	12.693	26%	15.963	16%	18.494
Buffalo	30.906	-1%	30.529	0%	30.673	-1%	30.397
Los Angeles	28.720	-4%	27.469	3%	28.389	-9%	25.724
Houston	18.080	-5%	17.162	-2%	16.743	23%	20.517
San Francisco	31.621	-7%	29.435	-2%	28.910	-3%	28.001
Seattle	27.878	-8%	25.621	-8%	23.682	-1%	23.519
St. Paul	22.625	-9%	20.637	-5%	19.668	-5%	18.745
Denver	31.453	-9%	28.643	-1%	28.321	-39%	17.346
Salt Lake City	19.947	-10%	17.985	18%	21.262	1%	21.542
Detroit	24.622	-16%	20.648	-6%	19.462	-17%	16.176

Table 5

Percent Differences Across Three Enforcement Periods, by AOR (Ranked Greatest-Least Pre-PEP PEP Change)

Area of Responsibility	$\mu_{\text{Pre-PEP}}$	% change (Pre-PEP to PEP)	μ_{PEP}	% change (PEP to Post-PEP)	$\mu_{\text{Post-PEP}}$	% change (Pre-PEP to Post-PEP)
Washington	16.219	66.840	27.060	-23.491	20.703	27.647
Boston	16.852	66.308	28.026	-42.712	16.056	-4.726
Newark	18.385	61.685	29.726	-15.978	24.976	35.851
El Paso	19.295	38.839	26.790			
New York City	16.120	34.659	21.706	-54.832	9.804	-39.177
Atlanta	21.168	24.899	26.439	-31.381	18.142	-14.296
New Orleans	27.448	22.942	33.745	-40.260	20.159	-26.555
St. Paul	18.216	12.646	20.520	-31.689	14.017	-23.050
Miami	20.693	12.468	23.273	-47.316	12.261	-40.747
All AORs	22.064	10.480	24.377	-13.983	20.968	-4.968
Salt Lake City	17.328	9.952	19.053	41.078	26.879	55.119
Philadelphia	35.200	9.808	38.653	-33.082	25.866	-26.518
Dallas	25.220	9.215	27.544	-11.591	24.352	-3.444
San Antonio	13.077	5.213	13.759	-36.666	8.714	-33.364
Buffalo	29.590	4.484	30.916	-22.020	24.109	-18.523
Baltimore	21.152	2.980	21.783	-59.389	8.846	-58.179
Phoenix	43.367	2.878	44.615	30.119	58.053	33.864
Denver	28.295	-0.863	28.051	-51.051	13.731	-51.473
San Diego	22.156	-0.986	21.938	-3.684	21.130	-4.634
Chicago	22.206	-1.144	21.952	-10.855	19.569	-11.874
Los Angeles	28.288	-1.760	27.790	-8.370	25.464	-9.983
Houston	17.859	-3.916	17.160	7.286	18.410	3.085
San Francisco	31.089	-6.010	29.221	-43.922	16.386	-47.292
Detroit	23.182	-12.617	20.257	-41.225	11.906	-48.641
Seattle	30.708	-19.508	24.718	-17.248	20.455	-33.391

*AOR El Paso had no cases in the Post-PEP period

**Note: green fill marks percent increase; red, decrease

Table 6

Comparison of Means for Pre-PEP and PEP Periods, by AOR (Ranked by value)

Area of Responsibility	t	df	Mean CHI Difference (PEP)-(Pre-PEP)	SE	95% Conf. Interval	
Newark	3.358	159.766	11.341	3.377	4.671	18.010
Boston	4.179	155.461	11.174	2.674	5.892	16.456
Washington	6.223	304.190	10.841	1.742	7.413	14.269
El Paso	1.435	24.410	7.494	5.224	-3.277	18.265
New Orleans	2.390	148.893	6.297	2.635	1.091	11.503
New York City	2.769	182.096	5.587	2.018	1.605	9.568
Atlanta	4.452	764.084	5.271	1.184	2.947	7.595
Philadelphia	1.342	243.357	3.453	2.573	-1.615	8.521
Miami	1.260	441.971	2.580	2.047	-1.443	6.603
Dallas	1.570	590.258	2.324	1.481	-0.584	5.232
St. Paul	1.013	183.493	2.304	2.275	-2.184	6.792
All AORs	5.653	6813.730	2.276	0.403	1.487	3.066
Salt Lake City	0.957	211.175	1.725	1.803	-1.829	5.278
Buffalo	0.393	89.057	1.327	3.373	-5.376	8.029
Phoenix	0.472	226.205	1.248	2.642	-3.958	6.454
San Antonio	0.750	628.318	0.682	0.909	-1.103	2.466
Baltimore	0.129	50.515	0.630	4.871	-9.150	10.411
San Diego	-0.099	168.892	-0.218	2.197	-4.556	4.120
Denver	-0.070	95.531	-0.244	3.506	-7.203	6.715
Chicago	-0.115	249.317	-0.254	2.218	-4.622	4.114
Los Angeles	-0.305	401.246	-0.498	1.634	-3.711	2.715
Houston Area	-0.916	1218.190	-0.699	0.763	-2.197	0.798
San Francisco	-0.640	171.140	-1.869	2.921	-7.633	3.896
Detroit	-0.920	108.456	-2.925	3.181	-9.230	3.380
Seattle	-1.196	88.658	-5.990	5.009	-15.943	3.962

* p<.05 (right-tailed; diff > 0)

Table 7

Comparison of Means for Post-PEP and PEP Periods, by AOR (Ranked by Value)

Area of Responsibility	t	df	Mean CHI Difference (PEP) - (Post-PEP)	SE	95% Conf. Interval	
El Paso	-	-	-	-	-	-
Denver	2.562	12.728	14.320	5.590	2.217	26.423
New Orleans	2.622	21.610	13.586	5.182	2.827	24.345
Baltimore	3.657	15.035	12.936	3.537	5.398	20.475
San Francisco	2.547	21.654	12.834	5.039	2.374	23.294
Philadelphia	2.974	41.715	12.787	4.299	4.110	21.465
Boston	2.241	27.458	11.971	5.341	1.021	22.920
New York City	3.113	23.735	11.902	3.823	4.007	19.797
Miami	3.618	50.060	11.012	3.044	4.899	17.125
Detroit	1.820	15.971	8.351	4.589	-1.378	18.081
Atlanta	2.691	75.079	8.297	3.083	2.155	14.438
Buffalo	1.408	23.585	6.808	4.836	-3.184	16.799
St. Paul	1.647	29.632	6.503	3.949	-1.566	14.571
Washington	1.376	32.282	6.357	4.619	-3.049	15.762
San Antonio	2.877	20.860	5.045	1.753	1.397	8.693
Newark	0.495	20.589	4.750	9.597	-15.233	24.733
Seattle	0.523	10.250	4.263	8.146	-13.828	22.355
All AORs	3.912	983.585	3.411	0.872	1.700	5.122
Dallas	1.769	258.117	3.193	1.805	-0.362	6.747
Chicago	0.475	35.787	2.383	5.015	-7.790	12.555
Los Angeles	0.627	56.002	2.326	3.709	-5.104	9.756
San Diego	0.126	26.493	0.808	6.431	-12.398	14.014
Houston Area	0.566	111.508	-1.250	2.208	-5.626	3.126
Salt Lake City	1.546	28.297	-7.827	5.063	-18.193	2.540
Phoenix	2.173	18.368	-13.438	6.184	-26.412	-0.463

* p<.05 (right-tailed; diff > 0)

**AOR El Paso had no cases in
the Post-PEP period

Table 8

Correlations of Mean CHI Score and Mean Proportion of U.S. Population Subject to Sanctuary Policies, by Enforcement Period

	Pre-PEP	PEP	Post-PEP
r	0.080	0.061	-0.0100

Table 9

One-Way ANOVA of Arrestee CHI Score over Enforcement Period

Enforcement Period	Mean	Std. Dev.	n	
Pre-PEP	22.064	30.079	5,962	
PEP	24.377	30.086	87,406	
Post-PEP	20.968	26.803	958	
	Sum of Squares	df	Mean Square	F
Between Groups	39,923.602	2	19,961.801	22.10*
Within Groups	85,197,370.600	94,323	903.251	
Total	8,5237,294.300	94,325	903.655	

*p<.05

Table 10

One-Way ANOVA of Arrestee CHI Score over Area of Responsibility

	Sum of Squares	df	Mean Square	F
Between Groups	4,511,766.930	23	196163.780	229.15*
Within Groups	80,725,527.300	94302	856.0320	
Total	85,237,294.300	94325	903.655	

*p<.05

Table 11

Two-Way ANOVA of Arrestee CHI Score over Area of Responsibility

	Paternal Sum of Squares	df	Mean Square	F
Model	90.736	23	3.945	16.21*
AOR	90.736	23	3.945	16.21*
Residual	22,955.983	94,302	.243	
Total	23,046.719	94,325	.244	

*p<.05

List of Figures

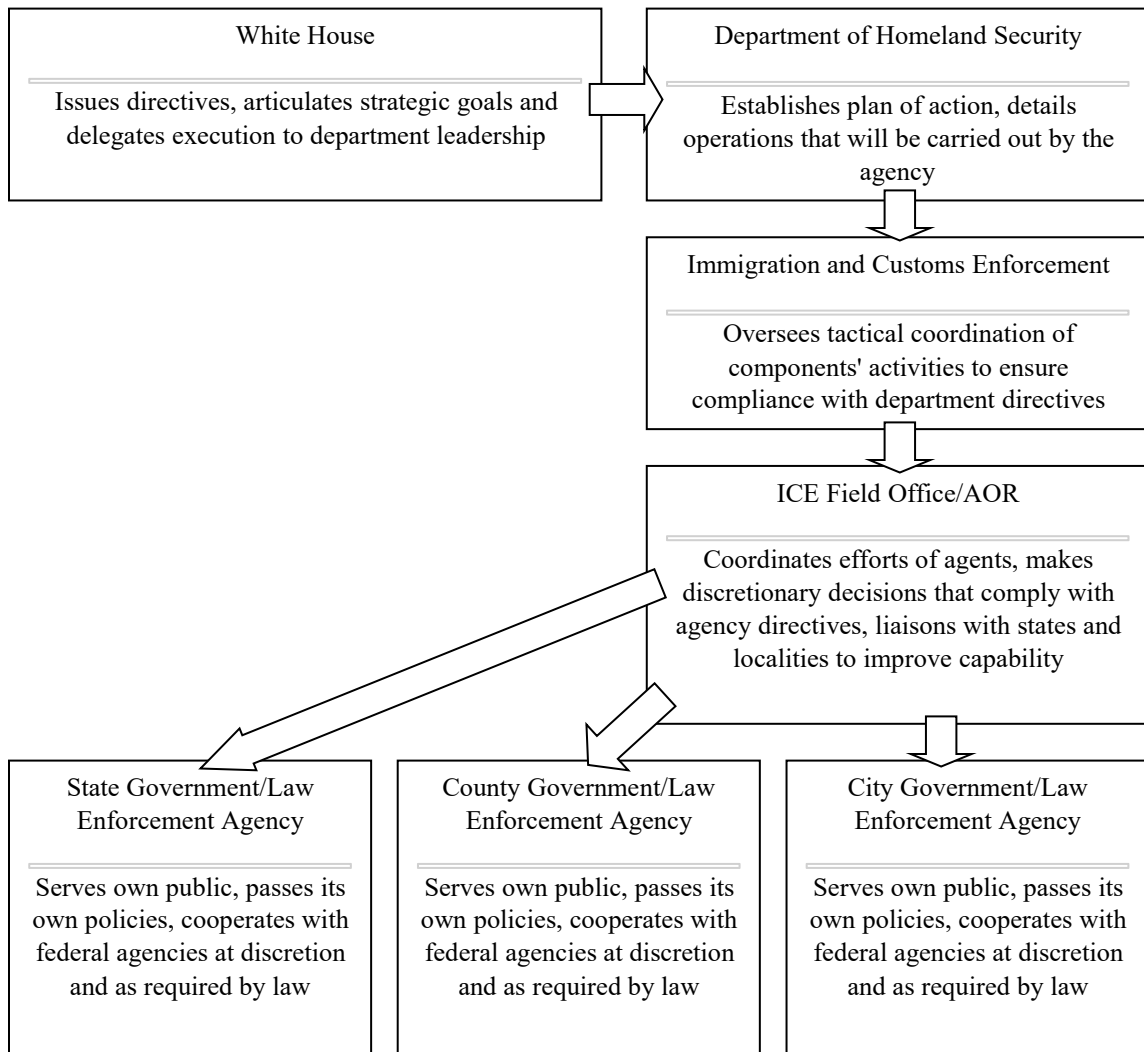


Figure 1. A Hierarchical View of U.S. Immigration Enforcement (Hypothesized)

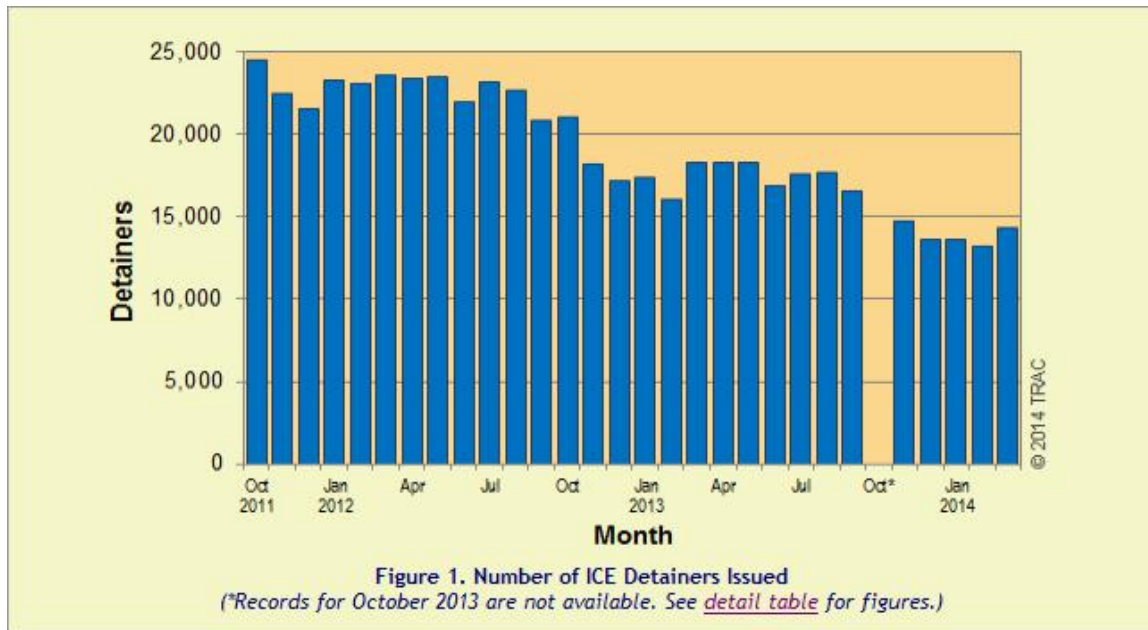


Figure 2. Detainer Issuances, October 2011–March 2014. (Note. From "Detainer Issuances Nationwide by Month, FY2012–FY2014," by TRAC Immigration)

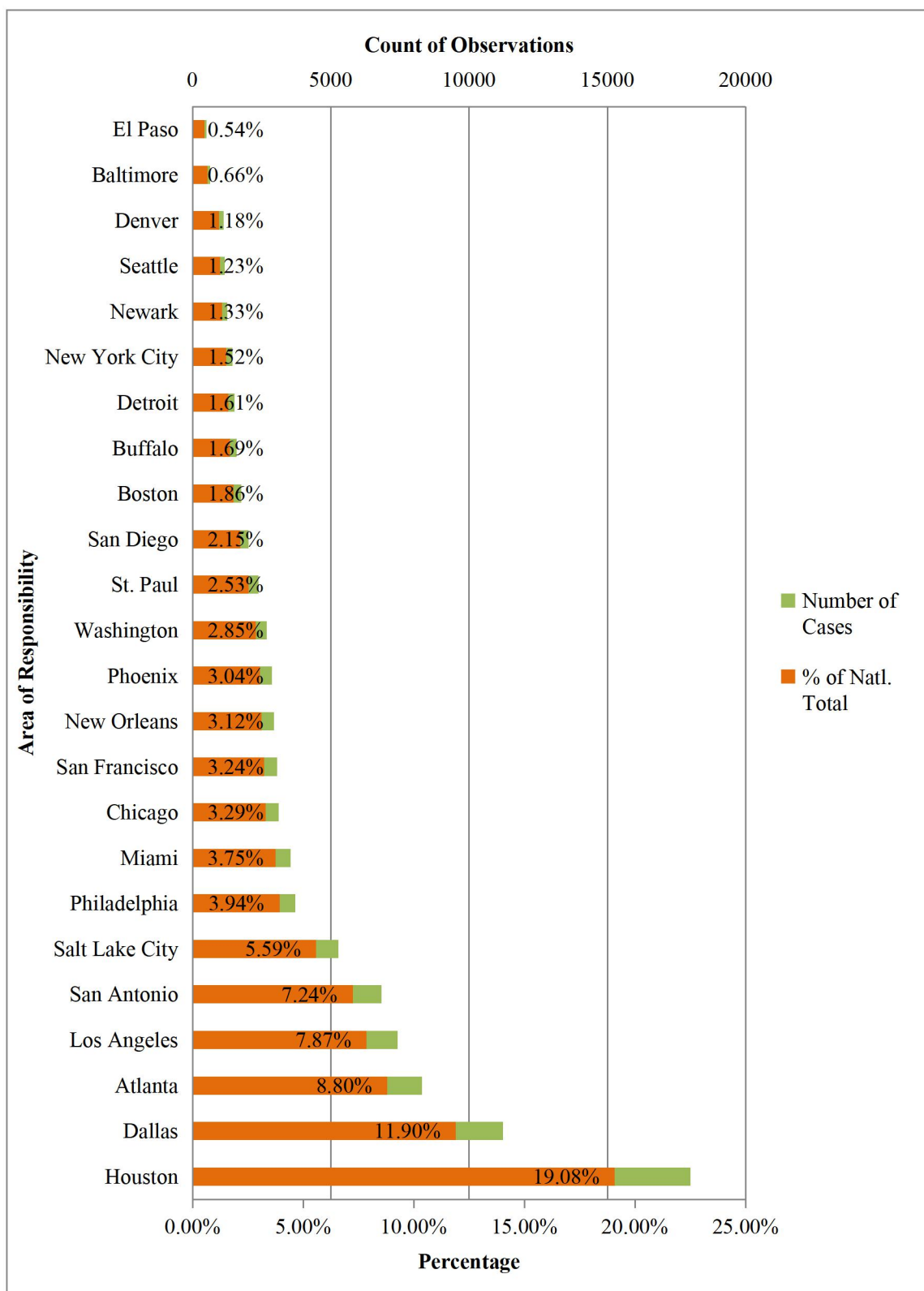


Figure 3. Distribution of Arrestees by ICE Jurisdiction (Oct. 2014- Feb. 2017, n=94,326)

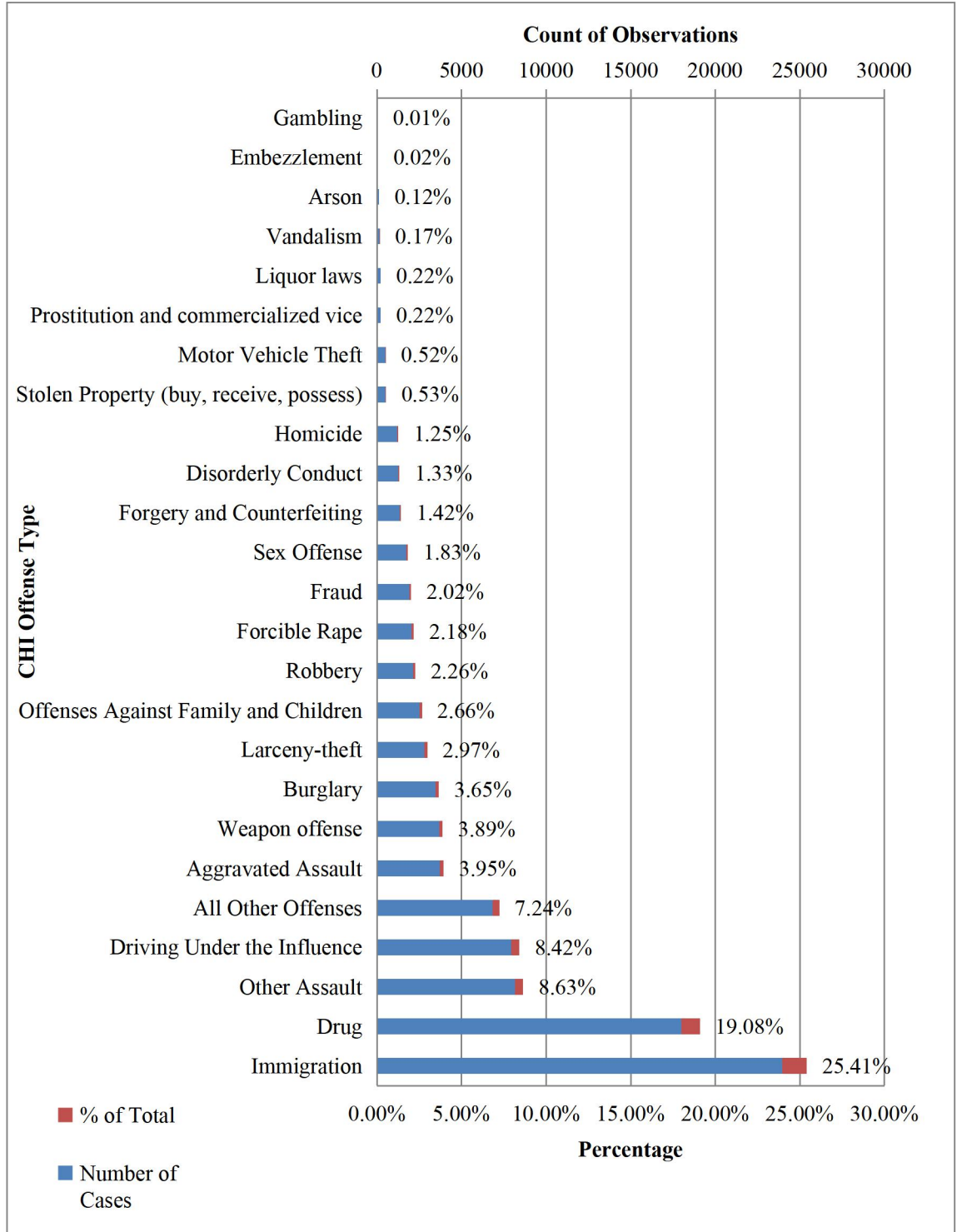


Figure 4. Distribution of Arrestees by CHI Offense Type (Oct. 2014- Feb. 2017, n=94,326)

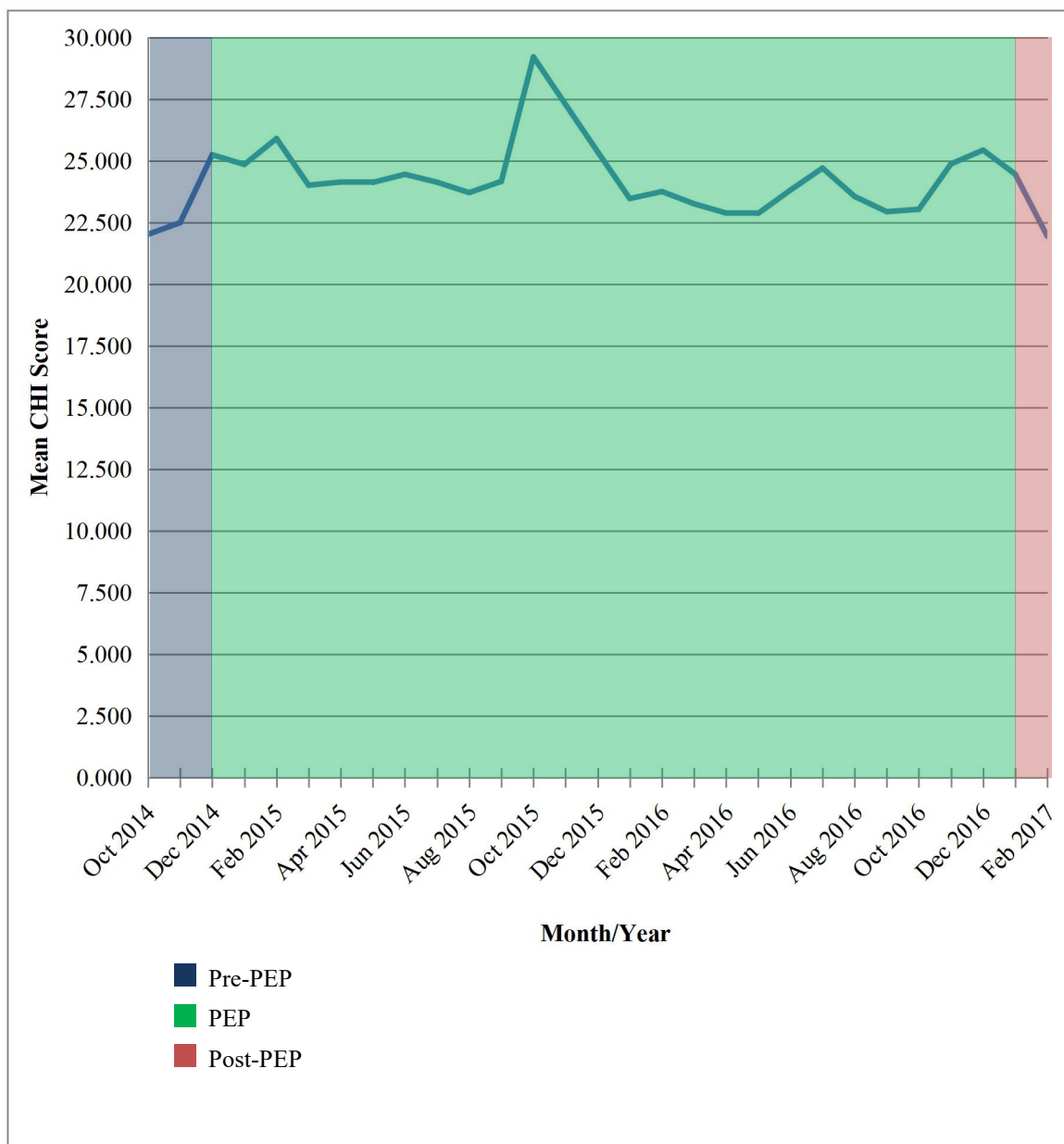


Figure 5. Mean CHI for All AORs, Over Time

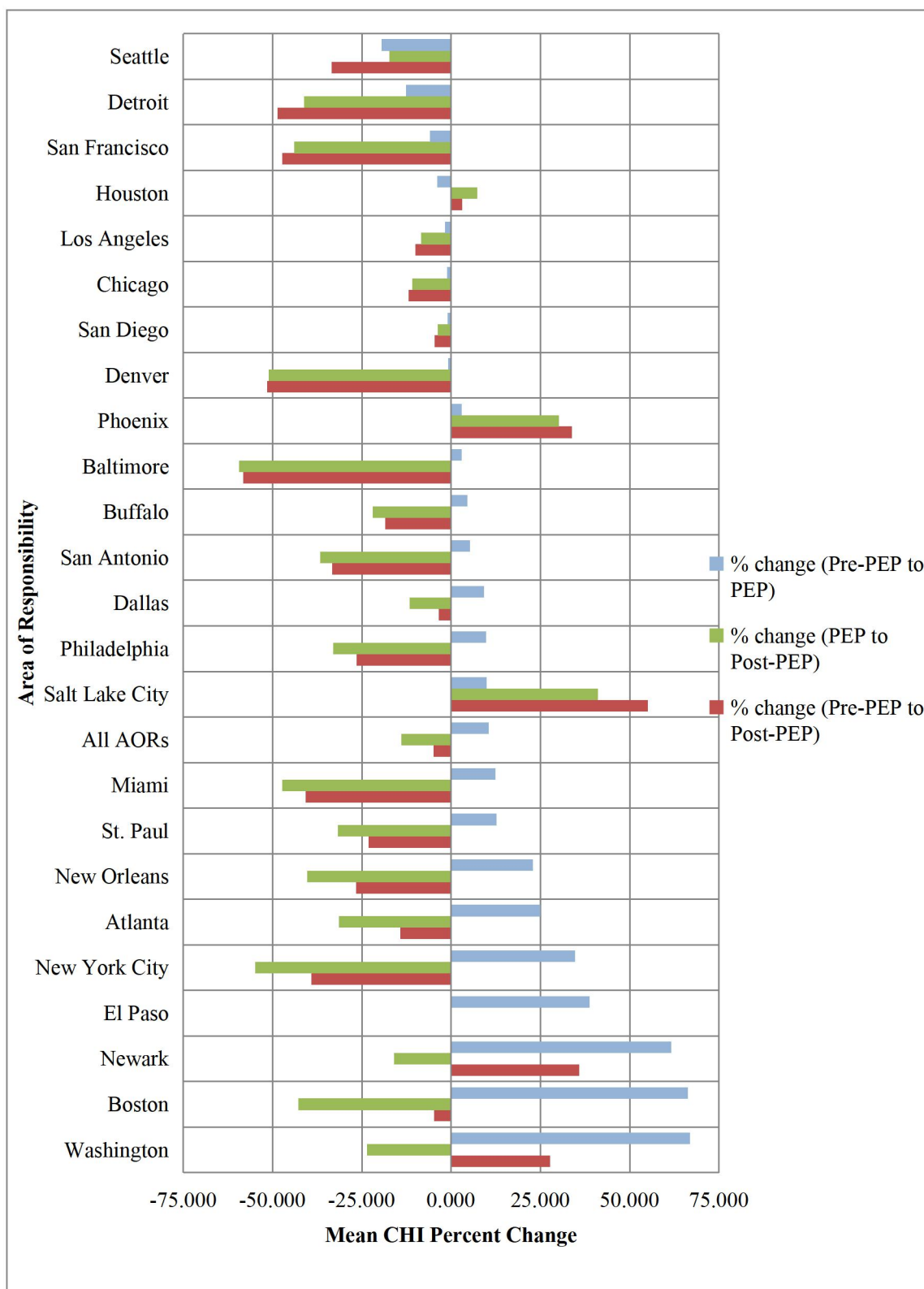


Figure 6. Mean CHI Score Percent Changes From Pre-PEP Baseline, by AOR (Ordered Least-Greatest Pre-PEP/PEP Change)

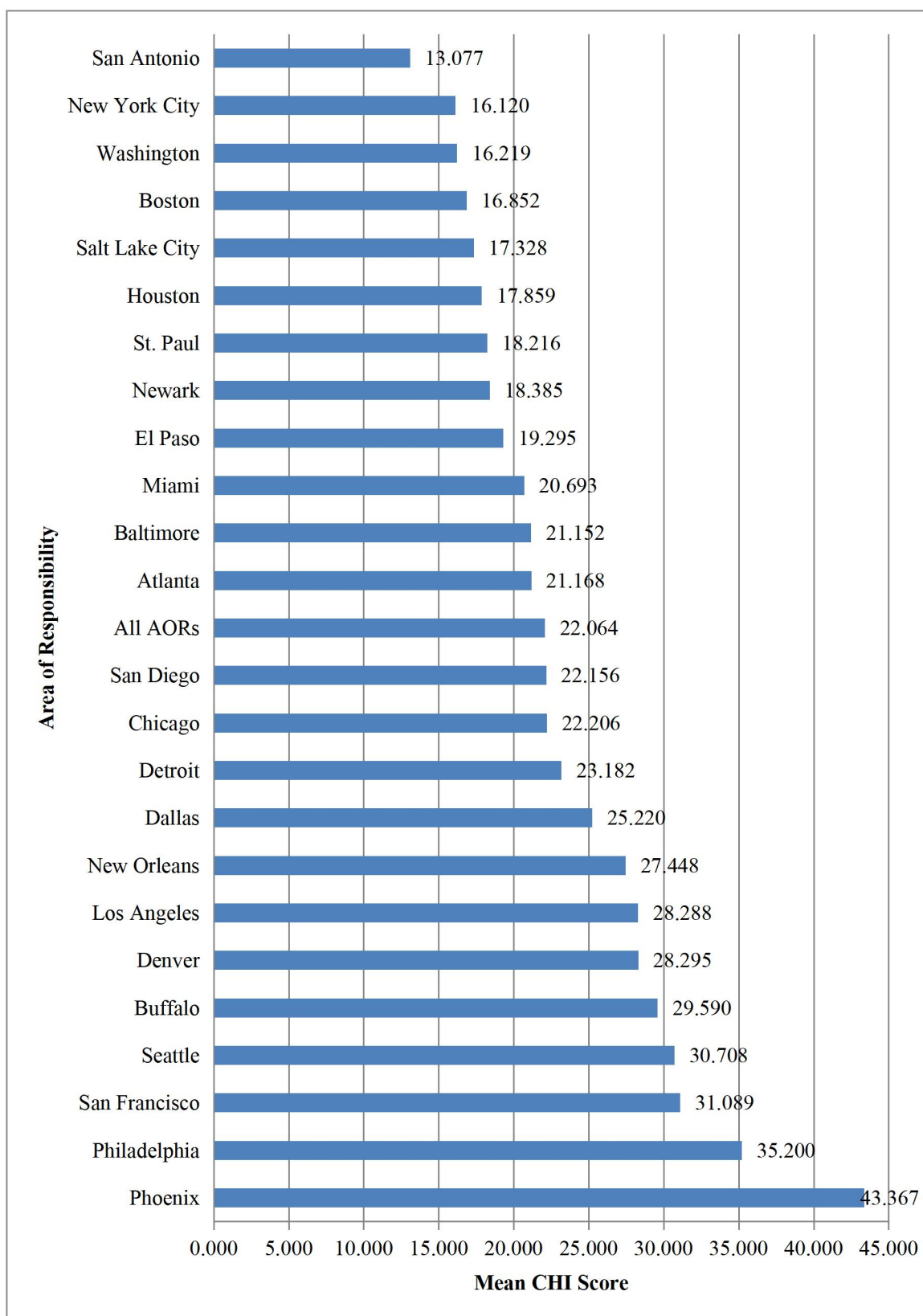


Figure 7. Mean Pre-PEP CHI Scores, by AOR (Ranked by Value)

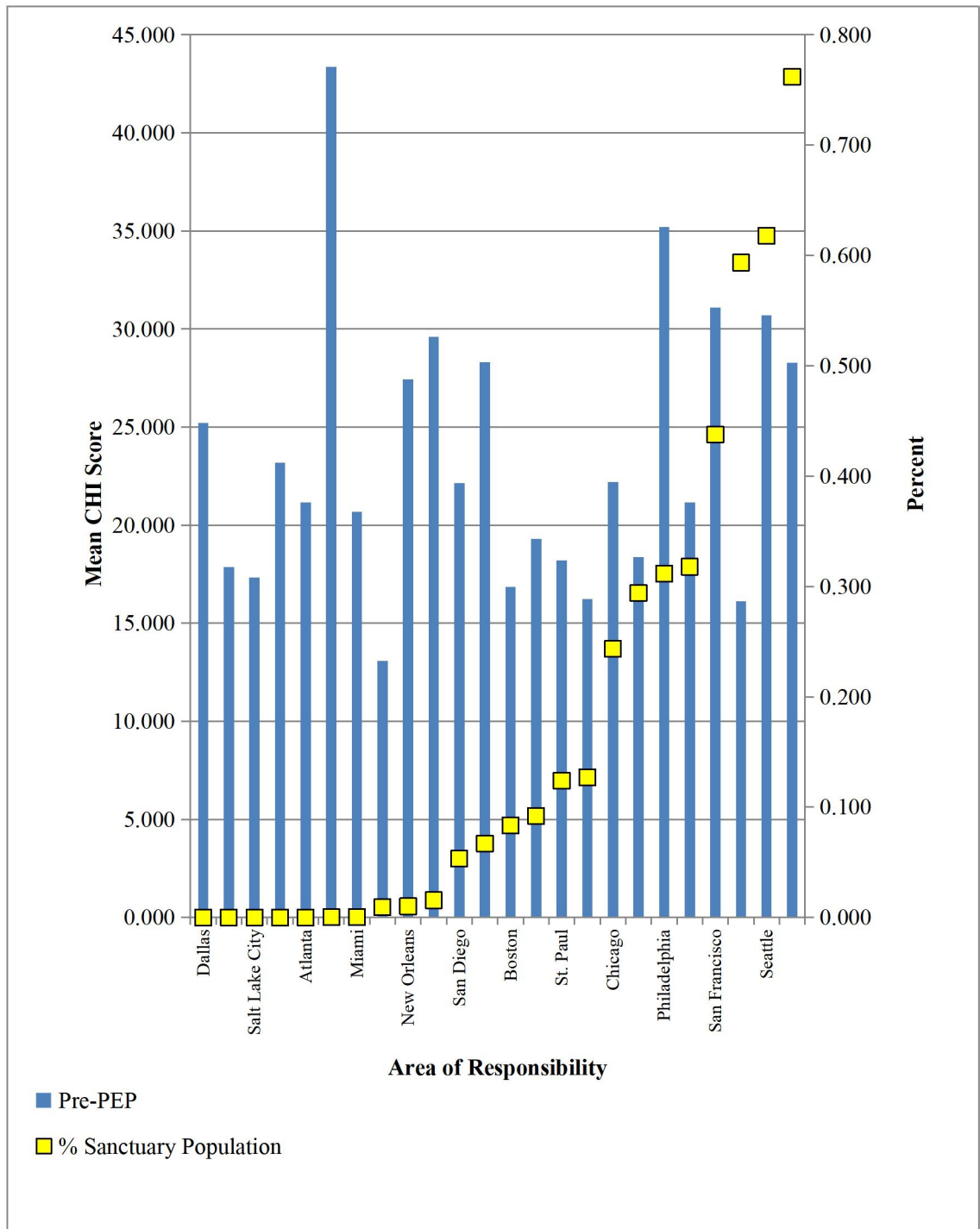


Figure 8. Mean CHI Scores for Pre-PEP Period Relative to Sanctuary Population Ratio, by AOR ($r=0$)

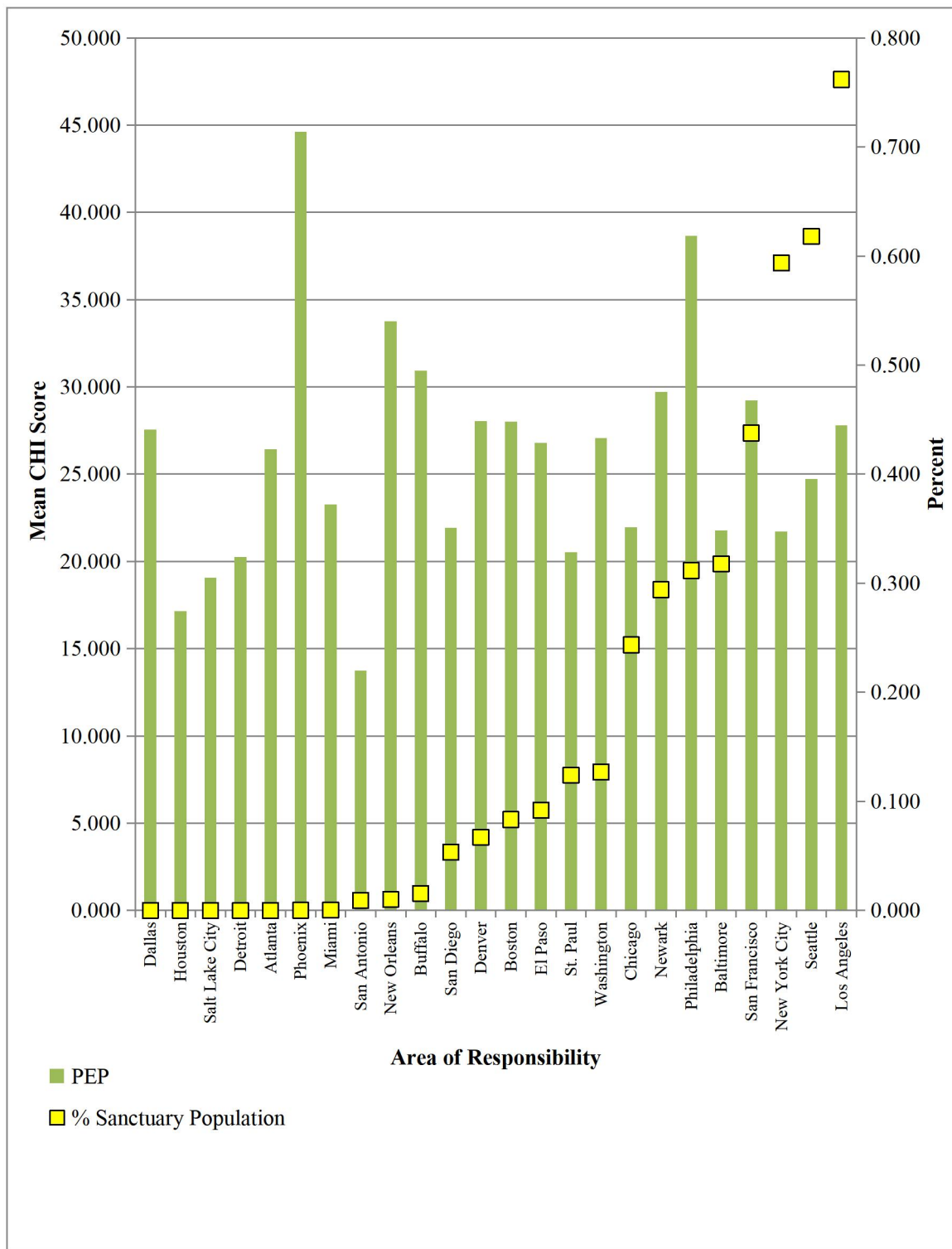


Figure 9. Mean CHI Scores for PEP Period Relative to Sanctuary Population Ratio, by AOR ($r=0.048$)

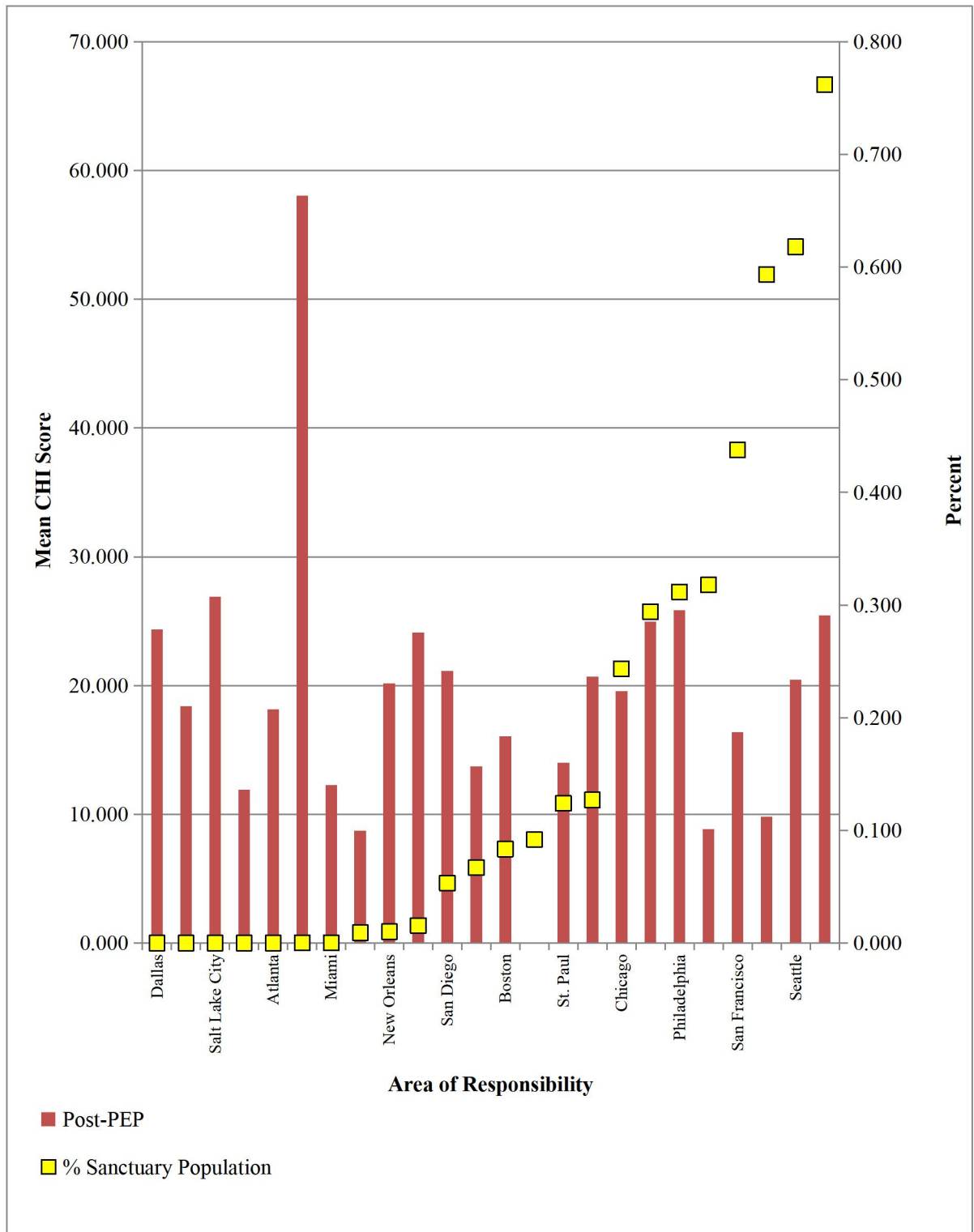


Figure 10. Mean CHI Scores for Post-PEP Period Relative to Sanctuary Population Ratio, by AOR ($r=-0.096$)

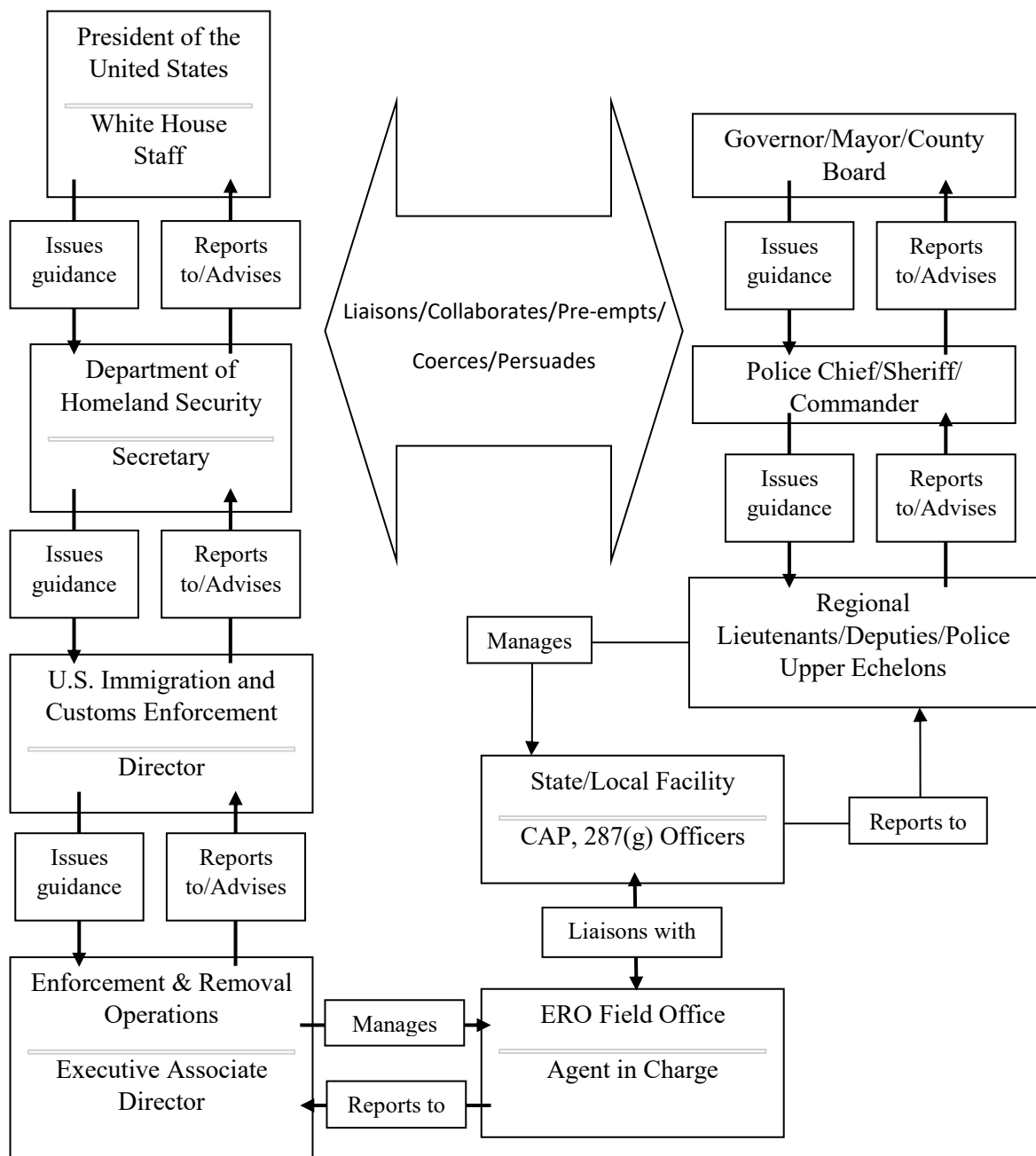


Figure 11. A “Coercive Federalism” Illustration of Institutional Relationships and Policy Flow in Immigration Enforcement Consistent With Enforcement Data Analysis from Pre-PEP to PEP to Post-PEP periods 2014-2017.

List of Abbreviations

CAP	Criminal Alien Program
CBP	U.S. Customs and Border Protection
DHS	U.S. Department of Homeland Security
DOJ	U.S. Department of Justice
EOIR	Executive Office for Immigration Review
ERO	Enforcement and Removal Operations
FOIA	Freedom of Information Act
GAO	U.S. Government Accountability Office
ICE	U.S. Immigration and Customs Enforcement
IIRAIRA	Illegal Immigration Reform and Immigrant Responsibility Act
INS	Immigration and Naturalization Service
LEA	Law Enforcement Agency
MSCC	Most Serious Criminal Conviction
SC	Secure Communities
SCAAP	State Criminal Alien Assistance Program
TRAC	Transactional Records Access Clearinghouse
USCIS	U.S Citizenship and Immigration Services

Introduction

In the United States, the purpose of the immigration enforcement system is to regulate the flow of noncitizens into the country and ensure that those individuals (whether inside or outside its jurisdiction) comply with the immigration laws (Siskin et al., 2006). This broad mission entails many tasks: preventing unauthorized access at borders and ports, maintaining records of noncitizens who visit or reside in the U.S., detecting individuals who ought to be removed for unauthorized presence or criminal behavior, and apprehending/detaining those individuals so that they may be deported to their country of origin. The purpose of the present research is to explore how the immigration enforcement system performs these last functions—detection, apprehension, and detention—and, in particular, what factors determine who becomes subject to these enforcement actions.

This thesis is organized into four sections: 1) an overview of immigration enforcement; 2) a review of theories of presidential power over “federated” law enforcement linked to a discussion of prior research on immigration enforcement targeting, with the research question and central hypothesis that have been tested; 3) the methods and analysis plan employed; and 4) the results and a discussion thereof.

The first section provides a brief overview of the federal immigration enforcement bureaucracy—its functions, history, and structure. This overview also delves into the programs that are central to interior enforcement operations by expediting the identification and apprehension of deportable individuals. These programs are highlighted as examples of a federated law enforcement system since they rely heavily on

partnerships between federal and nonfederal agencies. This working knowledge of the enforcement system enables a discussion of executive-level policies from the Obama and Trump administrations that sought to affect the operations of those programs by ordering federal immigration authorities to prioritize the apprehension of some individuals over others—individuals who have committed serious criminal offenses, for example. These policies are presented as a timeline of subtle but significant changes to the definitions of enforcement priorities.

The second section introduces the research question and hypothesis in the context of theoretical explanations for the behavior of a federal law enforcement bureaucracy, first by referencing presidential dominance models that claim the President (and, by extension, presidential policy) holds great influence over federal agency activity. This influence, in theory, is made possible by the formal and informal powers granted to Presidents, as well as the experience they may accumulate through the course of managing their staff. It follows that presidential policy can directly control the operations of the immigration enforcement system, and that any changes to the latter can be associated with the former. However, it is necessary to discuss the limitations of this theoretical perspective. Because presidential dominance necessarily focuses on the President himself, it excludes the role of the other parties integral to federated immigration enforcement, that is, nonfederal institutions, as well as passive resistance in federal agencies. A framework of coercive federalism is introduced as a means for understanding the extent and nature of Presidential influence on the execution of federal policy. This framework posits that the behavior of states and localities can be explained in terms of self-interest, due to the historical erosion of cooperative administration and

polymaking between different levels of government. Therefore, it can be expected that the immigration enforcement efforts of states and localities will only reflect presidential policy insofar as it appeals to their own constituents. To illustrate this point, real-world examples of coercive federalism are presented, where the federal government has clashed with states and localities who in turn have attempted to thwart enforcement efforts. This perspective is important because it demonstrates that a federated law enforcement system guarantees different agencies serve different publics and officials. Any agency at any level of government may adopt policies or practices that advance their own agendas, but annul any change that presidential policy intended to create. Together, the presidential dominance and coercive federalism frameworks form the theoretical basis for the main hypotheses: that change occurs from presidential policy, and that states and localities who limit their cooperation with federal authorities temper that change within their own jurisdiction. These theories are then related to prior research on immigration enforcement, the research questions, and central hypothesis of the study.

The third section introduces the data and methods that were used to answer the study's research questions. The Crime Harm Index (CHI) is also introduced as a preferred metric for measuring the impact of presidential policy on immigration enforcement targeting.

The study's analysis uses the CHI to calculate the seriousness of criminal offenses (if any) committed by noncitizens who have been targeted by immigration enforcement, and to determine if there are any associations between changes in CHI values and the creation or termination of presidential policies. These analyses are then replicated across different federal immigration enforcement jurisdictions, testing for the sensitivity of the

hypothesis at different parts of the political mosaic that comprises the United States. The analysis is followed by the conclusions and discussion, which address the shortcomings of the present research and suggest additional avenues through which empirical understanding of immigration enforcement can be further improved in future research.

The importance of the present research can be summarized by the following points:

1. U.S. immigration enforcement is a complex and opaque system that deserves increased scrutiny from researchers who are concerned with institutional justice, especially as it relates to the apprehension and detention of noncitizens.
2. The quantity and detail of empirical research on immigration enforcement has lagged behind the bureaucracy's growth in size and importance in the realm of public policy. Current measures for immigration enforcement too often conflate serious and nonserious immigrant offenders when describing the size and nature of immigrant crime, all the while providing little insight on the efficacy of the system in executing executive policy of any kind.
3. Improving the available metrics, especially the application of a Crime Harm Index, will be an important step to discovering evidence for holding federal immigration agencies to higher levels of accountability and public policy debates.

I. Federal Immigration Enforcement: An Overview

According to estimates from 2015, the United States' foreign-born population is approximately 44.7 million, or 13.4 percent of the total U.S. population (Krogstad, Passel & Cohn, 2017). Of those 44.7 million, 33.8 (75.5 percent) are either naturalized citizens, lawful permanent residents, or temporary lawful residents. The estimated remaining 11 million are unauthorized immigrants who either entered the United States without inspection or possessing valid authorization, or who overstayed the time period allowed by their authorization. These same estimates have concluded that the unauthorized immigrant population has not seen any significant growth since the 1990s. Despite this lack of growth, federal spending on immigration enforcement has increased more than twofold, from 8.2 billion in 2003 to 19.3 billion in 2016 (AIC, 2017b), as measured by the combined annual budgets of Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP), the two agencies that constitute the bulk of federal immigration enforcement efforts.

As this bureaucracy has grown in size, so too has political and public interest in the immigration issue. For decades, immigration has stood as a major point of contention; disagreements over immigration programs and spending in the legislature have routinely slowed the passing of other bills (Mascaro, 2018), while state and local noncooperation with federal immigration authorities has brought new light to the ongoing debate about the reach of executive authority in law enforcement matters (Rosenberg, 2017). The present research explores this relationship as it pertains to immigration enforcement operations specifically.

In the United States, these policies must be filtered through a decentralized structure of law enforcement agencies at multiple levels of government, from the White House, through one or more cabinet departments, the operating federal agencies, 50 states (and their own laws), elected county sheriffs or executives and councils, municipal mayors, councils and police chiefs, individual law enforcement officers, and so on until policies eventually reach local governments and police departments across the country. In the execution of policy, many complex interactions between competing conceptions of the mission of immigration enforcement complicate what some might see as the clear divides between administrative and operational levels, combined with the supremacy of federal law. Such clarity may over-simplify reality by implying a hierarchy wherein the decisions made even by the highest federal administrators will affect the operations of state and local agents. Figure 1 illustrates what may be called the hierarchy hypothesis, which this thesis attempts to test. The purpose of this research, in essence, is to examine the extent to which such a hierarchy can be observed in the wake of two separate Executive Orders signed by two very different Presidents of the United States.

Changes in enforcement policies, marked by the termination and replacement of programs across presidential administrations, provide an opportunity to explore how those policies are promulgated at an agency level. More specifically, programs central to ICE operations during the Obama administration alleged that they prioritized immigrants who had committed serious crimes, while the transition of power to the Trump administration marked a departure from that posture to one of full enforcement (wherein every unauthorized noncitizen is a "priority"). This shift provides an opportunity to study the impact of accompanying policy changes on ICE activity over time, as measured by

the number and criminality of the individuals the agency arrested, as well as regional variations in that impact.

Because U.S. immigration enforcement is so dispersed, it is necessary to discuss its complex inner mechanisms. Unpacking the agencies and practices who are involved in the execution of national-level policy reveals the extent to which federalism explains this bureaucracy's formal structure. In turn, analyzing immigration enforcement as a federated system allows for a more nuanced understanding than simply the Executive Orders of U.S. Presidents.

Immigration Enforcement in the United States: A Federated System

Prior to 2003, all U.S. federal immigration activity—including visa and citizenship services, border security, and interior enforcement—was consolidated within the Immigration and Naturalization Service (INS). Following the September 11th attacks in 2001, the creation of the Department of Homeland Security (DHS) under the *2002 Homeland Security Act* dissolved INS in the following year. The INS immigration functions were transferred to three new DHS agencies. Immigration and Customs Enforcement (ICE) assumed the investigative and interior enforcement functions of INS, and Customs and Border Protection (CBP) its border and port security functions. The last agency, U.S. Citizenship and Immigration Services (USCIS), took over the naturalization and visa services. With the exception of the immigration court system, known as the Executive Office for Immigration Review (EOIR), a Department of Justice (DOJ) agency, federal immigration functions are concentrated in DHS.

Though smaller than CBP, ICE can be regarded as the primary enforcement arm of DHS by virtue of its broad mission: investigating domestic and international crimes, apprehending removable aliens, and legally representing the United States in immigration court against those aliens (Strategic Plan). ICE has powers to arrest and detain removable individuals it has identified through direct action (popularly known as 'raids') conducted by its own agents. In addition, it has made substantial investments in programs that treat state and local law enforcement agencies (LEAs) as force multipliers. These programs can range from passive information sharing that require no action from the LEA, to active cooperation in the form of holding and interrogating an individual for suspected immigration violations. For the entirety of the United States and its territories, interior operations of ICE are administered 'locally' by 25 Enforcement and Removal Operations (ERO) field offices or "Areas of Responsibility" (AORs) across 18 states. Some states, such as Texas, have multiple offices; others share the attention of an office with their neighbors (Table 1).

Immigration Detainers

At the heart of ICE's force multiplier strategy and its respective programs is *DHS Form I-247*: the immigration detainer (AIC, 2017c). A detainer is a formal request that an LEA hold an individual who is suspected of being removable (i.e., deportable) up to 48 business hours past the time they would otherwise have been released (i.e., when charges have been disposed of through a finding of guilt or innocence; when charges have been dropped; when bail has been secured; or when convicted individuals have served out their sentence). A detainer is issued by an authorized immigration official or

local police officer who has been specially authorized by ICE through one of its force multiplier programs (see section titled '287(g)'). In effect, a detainer is the immigration analogue of an arrest warrant, but is issued by ICE to an LEA and carries none of the legal mandate of a warrant.

In order to issue a detainer, ICE must have probable cause that the individual is removable. ICE has probable cause if

- It receives an order from an EOIR immigration judge (IJ) to remove the individual,
- the individual is currently in removal proceedings, or
- there is other evidence supporting probable cause.

Issuing a detainer, however, does not initiate deportation proceedings. If ICE does not come to assume physical custody of the individual, the LEA is required to release him/her. Each LEA, furthermore, has discretion as to which detainers to honor (or not) and under what circumstances. Under the Obama administration, there were multiple detainer types that could be issued:

1. I-247N, which only requested that the LEA notify ICE of an alien's release 48 business hours prior to the release;
2. I-247D, which requested notification 48 hours prior and detention for up to 48 hours; and
3. I-247X, which concerned individuals who DHS sought transferred for a proceeding or investigation.

All detainer types were replaced by a single general form, I-247A, per the directive of DHS Secretary Kelly in February 2017 (Kelly, 2017). Despite minor changes to its

contents and means of delivery, the detainer continues to be an important tool in ICE strategy. How the agency employs detainers in its various programs is discussed in the three following subsections.

287(g)

In 1996, the *Illegal Immigration Reform and Immigrant Responsibility Act* (IIRAIRA) was passed into law. Contained within the IIRAIRA was section 287(g), which empowered ICE to enter formal agreements (Memoranda of Agreements or MOAs) with state and local LEAs. The primary purpose of these agreements was to delegate immigration enforcement functions to a select number of the LEA's officers. The powers that could be delegated were once broad, but were narrowed in 2009 in response to a Government Accountability Office (GAO) report that highlighted deep flaws in ICE's implementation of the program. Currently, officers deputized under 287(g) may only interrogate alleged noncitizens who have been arrested on state or local charges, and place detainers on those believed to be subject to removal. According to ICE's public-facing website, as of 2018, the agency has entered into 287(g) agreements with 76 law enforcement agencies in 20 states, with more than 1,822 state and local officers deputized.

Criminal Alien Program (CAP)

Of all ICE's programs, the Criminal Alien Program is the largest, oldest, most widespread, and most loosely defined. Consolidating existing programs, ICE formally created CAP in 2006 with the goal of identifying removable noncitizens who are incarcerated in jail and prisons, as well as initiating removal proceedings against them

(AIC, 2013). To this end, CAP empowers ICE to liaison with corrections facilities where it may screen and interview inmates to identify those that may be removable. Between institutions, there is no single model for how CAP functions; the extent and manner of information sharing is an ad hoc process. Cooperation from the institution can vary from flagging suspected noncitizen detainees to simply granting CAP officers access to all detainees and facility records. Federal correctional institutions, however, report all self-identified foreign born inmates to DHS, while state and local facilities typically cooperate with DHS by providing ICE with a list of people in custody, whom ICE agents then interview to determine removability. As of April 2016, the CAP program has grown so that all federal and state prisons, as well as a small number of local jails, are now monitored by some 1,300 ICE officers, totaling in approximately 4,300 facilities (Kandel, 2016).

Secure Communities (SC) & Priority Enforcement Program (PEP)

Acting essentially as a technology-intensive version of CAP, Secure Communities allows for automatic, instantaneous information sharing among LEAs, ICE, and the FBI. During booking, an arrestee's fingerprints are checked against DHS databases in addition to those of the FBI, with the system automatically notifying the LEA and ICE if the arrestee is wanted for removal (Dep't of Homeland Security, 2006). In response to a "hit," ICE will usually lodge a detainer against the arrestee.

The central product of SC is performing this procedure for every individual who is arrested by police. It also formally established enforcement priority levels by directing ICE to target national security threats and serious offenders. Unlike either 287(g) or CAP,

the information sharing facilitated by SC is, in a sense, mandatory for states and localities. The agreement that forms the foundation for SC is between the FBI and DHS. ICE's online overview of SC stresses that once an LEA submits information requests to the federal government, it cannot control where else that information is sent or what it will be used for. Therefore, a jurisdiction cannot choose to have fingerprints it submits processed for only criminal history checks, nor can it request that positive identification not be shared with an ICE field office.

The program was piloted in 2008 under the George W. Bush administration and was continued under President Obama. It was fully implemented in all fifty states and five U.S. territories by January 2013. Though SC has since continued to operate at capacity, ICE's operational posture towards it changed in Nov 2014 with the creation of the Priority Enforcement Program (PEP). Despite its name, PEP is better described as a directive from ICE leadership to continue the biometric-based information sharing of SC, but only seek the transfer of an individual in the custody of an LEA when the he/she has been convicted of a felony, three or more misdemeanors, or a significant misdemeanor. PEP also directed ICE, as a general rule, to replace requests for detention with requests for notification of release, much like the defunct I-247N. In cases where ICE requested detention, it would have to specify to the LEA that the individual was subject to a final order of removal or that there was other sufficient probable cause to find him/her removable (a requirement that was created in response to 4th Amendment concerns brought against ICE). Both the detainer form reflecting PEP priorities and the alternate 'notification only' form became available in June 2015. Despite the language of the directive claiming SC would be "discontinued," PEP did not formally prevent, discourage,

or prohibit ICE from seeking transfer of an individual to its custody. The program was terminated when Secure Communities was reinstated to its original posture by DHS Secretary Kelly (Kelly, 2017).

Implications and Challenges for Research

The machinery of U.S. immigration enforcement, though diffused, is no more complex than that of the U.S. police system itself. Rather, the challenge of examining ICE's police activities lies with factors unrelated to its broad mission or jurisdiction. In its relatively brief period of existence, the agency has implemented a myriad of programs (not all of which have been mandatory or nationwide), and since many policies originate in agency leadership or higher, policy *changes* have been frequent, sudden, and subject to the whims of the political landscape. What is more, ICE's force-multiplier strategy has blurred the line between definitions of proactive and reactive policing. As it stands, detection, identification, and detention of removable individuals is heavily automated and activated by the state/local LEA that encounters the individual, but whether ICE assumes custody for him/her is left to the federal agency's discretion. Presumably, ICE assumes custody when it has probable cause that the individual is removable, and intends to place him/her in removal proceedings. However, taken against extralegal factors such as institutional norms, operational demands, and inter-agency relationships, the circumstances that lead to a transfer of custody become less obvious. The third factor especially should remind researchers that ICE, by virtue of being in a federated system and of relying on other LEAs, is not a closed system. Noncompliance by state and local governments and/or LEAs may have as much an impact as executive policy on the types

of individuals that are transferred into ICE custody. The first step in unraveling any policy impact is a clear description of those policies; that is, what they directed ICE to do, and how they differed from one other as products of their respective administrations.

A Question of Presidential Policy Impact: from Obama to Trump

When PEP was established, it directed ICE to rely on notifications of release more than detainers and to require more serious criminal activity before taking enforcement action against an individual. Though Secure Communities' central operation, automated information-sharing on arrested individuals, continued throughout the 2013–2017 period, PEP's creation can be said to have created three distinct sub-periods of ICE enforcement posture: pre-PEP (2010–2014), PEP (2014–2017), and post-PEP (2017–present). In the pre-PEP period, enforcement priorities were defined by the directives of SC, which were less discriminating in their targeting and put no constraints on the issuing of detainers. In the PEP period, enforcement priorities and standards were tightened to target more serious offenders; and in the Post-PEP period, enforcement priorities saw not only a return to those of Secure Communities, but expansion into a full enforcement posture. A full examination and comparison of all three sub-periods follows.

Pre-PEP Period (2010–2014)

On June 30, 2010, DHS Assistant Secretary John Morton formally introduced Secure Communities as a full-fledged program (Morton, 2010). Morton's memo outlined ICE's enforcement priorities with regard to all stages of enforcement (i.e., apprehension,

detention, and removal). The SC enforcement priorities that defined the pre-PEP period were as follows (from highest priority to lowest):

Priority 1. Aliens engaged in or suspected of terrorism or espionage, or who otherwise pose a danger to national security; aliens convicted of crimes, with a particular emphasis on violent criminals, felons, and repeat offenders; aliens not younger than 16 years of age who participated in organized criminal gangs; aliens subject to outstanding criminal warrants; and aliens who otherwise pose a serious risk to public safety.

Priority 2. Recent illegal entrants (recent immigration violators at borders, ports of entry) and visa abusers.

Priority 3. Aliens who are fugitives or otherwise obstruct immigration controls. The memo stressed that the enforcement actions taken by ICE personnel should reflect these enforcement priorities when allocating resources towards removing an individual, exercising prosecutorial discretion, and employing alternatives to detention when detaining an individual would not serve the public interest (e.g., because the individual is handicapped or the primary caretaker of a child).

PEP Period (2014–2017)

Four years later, on November 20, 2014, DHS Secretary Jeh Johnson issued two memos in response to state and local pushback to Secure Communities (Johnson, 2014). The first memo changed ICE's operational posture towards the program by directing the

agency to no longer seek detention when issuing detainers except when they met priority criteria defined in the second memo. Specifically, ICE was directed to only seek detention when the individual posed a national security risk, had committed an offense involving a criminal gang, or had committed a felony or aggravated felony. Furthermore, the memo directed ICE to specify a final order of removal or probable cause that alien is removable when seeking detention (as explained in the previous section). Detainer forms were also modified so that the 48-hour period no longer excluded weekends and holidays. The definitions of enforcement priority levels were also slightly altered from those of SC.

Priority 1. National security threats, gang members not under 16, and felony offenders (identical to SC); aliens apprehended at the border or a port of entry.

Priority 2. (i.e., misdemeanants) Aliens convicted of three or more separate misdemeanors other than traffic offenses or offenses for which an essential element was the his/her immigration status; those convicted of significant misdemeanors; unlawfully present individuals who illegally entered or reentered the U.S.; and aliens who are deemed by an ICE officer to have significantly abused the visa or visa waiver program.

Priority 3: (i.e., other immigration violations) Aliens who have been issued a final order of removal on or after January 1, 2014—unless they qualify for asylum or other relief; individuals deemed not a threat to the integrity of the immigration system or otherwise an enforcement priority.

The directives to ICE as they related to detainers and the changes to the priority levels collectively formed PEP. With regard to the latter, the key difference between PEP and SC was the substitution of recent illegal entrants for misdemeanants in the second priority level.

Post-PEP (2017–Present)

In January 2017, the Trump administration issued an Executive Order entitled "Enhancing Public Safety in the Interior of the United States." The order directed DHS to prioritize for removal individuals who match the following criteria (Executive Order No.13768, 2017):

- convicted of any criminal offense
- charged with any criminal offense, where such charge has not been resolved
- committed acts that constitute a chargeable offense
- engaged in fraud or willful misrepresentation in connection with any official matter or application before a governmental agency
- abused any program related to receipt of public benefits
- subject to final order of removal, but have not complied
- poses a risk public safety or national security

The order was soon followed by a directive then-DHS Secretary Kelly issued in February, less than one month later. The Kelly memo, whose main function was to relay the Executive Order, officially terminated PEP and directed ICE leadership to hire more personnel, as well as to expand the agency's existing programs to all possible

jurisdictions. The breadth of the criteria put forth by the Executive Order and Kelly memo effectively makes any unauthorized immigrant an enforcement priority, marking a clear shift away from the notion of prioritizing serious offenders.

Does Presidential Policy Matter?

It is clear that ICE's enforcement posture in the 2013–2017 period is defined by two major policy shifts, marked respectively by the creation and termination of PEP. The first was an increase enforcement efforts against felony offenders and repeat misdemeanants, and seeking detention only for such individuals. The second shift was an increase in enforcement efforts against all potentially removable individuals without regard for their criminal offending (or lack thereof). Both of these policy shifts took the form of presidential directives handed down to ICE by way of senior DHS leadership (Table 2 highlights these changes in the form of a short timeline). Knowing the diffuse bureaucracy through which these policies must travel raises the following question: can a President's policies truly change who ICE decides to arrest? Answering that specific question requires a more general discussion of whether *any* policies that originate with the President, not just immigration enforcement ones, correspond with changes in the activity of federal agencies. Section II explores the literature that argues for the affirmative, as well as perspectives that posit other influences acting in tandem.

II. Theories of Presidential Power and Coercive Federalism: Context for the Research Questions and Central Hypothesis

Empirical examination of immigration enforcement operations as they relate to Presidential policies might reveal whether those policies 'work,' but they will not reveal *how* they work, nor will they identify other potentially important factors. Political scientists have expounded upon different causal mechanisms linking Presidential policy to operational change, some of which have focused on the President himself. This notion has led to the rise of a so-called *Presidential dominance* perspective, which offers that the President's authority and disposition as the most senior administrator of the executive branch can explain President-driven policy change. The Presidential dominance model, however, leaves no room for any role of states and localities to influence the execution of policy. For the discussion of a federated law enforcement system, this exclusion is too great to overlook. A *coercive federalism* framework supplements the explanation that "Presidential dominance" provides by presenting the activity of nonfederal governments as a separate, hindering influence on the downstream execution of Presidential policy. This section begins with the separate consideration of both the Presidential dominance and coercive federalism perspectives. Their respective answers to the question "how does Presidential policy produce change in immigration enforcement practices?" are weighed and combined to produce a single hypothesis test of 1) whether ICE changed its targets in response to PEP *or* 2) whether the policies of different geographic ICE regions, as well as governments of states and localities, created enduring barriers to a direct reflection of Presidential Executive Orders.

Presidential Dominance & the Power to Persuade

A single model for explaining the behavior of federal bureaucracy remains a point of contention among political scientists (Hammond & Knott, 1996). Some scholars present the controlling force as Congress, others, the President, others the courts, and others the agency's own autonomy. Similarly, advocates of each approach suggest that arguments for other power centers overstate that institution's influence. When a president enacts a policy to further his administration's goals, he does so believing that he either directly or indirectly influences the activity of federal agencies. This tacit assumption has invited scholars to theorize on how this control operates. The rule-based, hierarchical perspective offered by models of presidential dominance offer one possible explanation for why immigration enforcement priorities would change in the wake of presidential directives: the President influences the bureaucracy because he has authority over it. Scholars have long entertained the notion that the President controls the bureaucracy, since he has considerable latitude when appointing senior administrators (Moe, 1987), influencing agency budget submissions (Kiewiet & McCubbins, 1988), exploiting congressional divisions within agency-relevant committees, and manipulating administrative procedures (Cooper & West, 1989; Moe & Howell, 2004; Nathan, 1983; Waterman, 1989). PEP is an example of the last method, showing how a president may extend his control to as fine a level as an individual agency's rules and procedures.

Despite the President's seemingly unilateral authority, political scientists have also pointed out that his formal powers alone do not give him the power to enact policy (Neustadt, 1991). The execution of presidential policy rests on the cooperation, persuasion, and willingness of all individuals engaged in the administrative process. To

that end, a President cannot hope to accomplish anything if he resorts to commanding his staff, comprised of hundreds of men and women who have their own independent sources of shared power. Neustadt's account of Truman's predictions for Eisenhower's presidency illustrates this point:

"He'll [Eisenhower] sit here," Truman would remark..."and he'll say, 'Do this! Do that!' *And nothing will happen*. Poor Ike—it won't be a bit like the Army. He'll find it very frustrating...I sit here all day trying to persuade people to do the things they ought to have sense enough to do without my persuading them...That's all the powers of the President amount to." (Neustadt, 1991, p. 10)

This view does not render the formal powers of the President meaningless, but places them in a context of shared power between the President, cabinet officers, agency administrators, and bureau chiefs at the sub-department level. Each agency has an influence over policy on par with the President, albeit limited to its own statutory sphere. The President may have nominal central control over its budget and personnel, but he is only one of the constituents (the others being the agency's own staff, subcommittees of Congress, and clients inside and outside the government) to which the agency answers. Within the executive branch, therefore, the "outnumbered" President bears the greater task of negotiating and granting favors in the hopes of convincing each and every administrator that what he wants (e.g., an action taken or a policy enacted) is what they want as well, whereas they only have one President to deal with. However, since many people require favors from the President in turn, he is able to concentrate his bargaining power.

Analyses that take an organizational learning approach to federal policy suggest that a President's power to persuade can be supplemented through the exercise of his formal powers over personnel. These studies have suggested that administrations evolve

over time, and that with experience, Presidents become more effective at directing and managing the bureaucracy by appointing more loyal administrators who will actually carry out their vision. Krause & O'Connell (2016) make this argument in an analysis of 1,372 Senate-confirmed appointees from 1997 to 2009. Using biographical information to generate variables about the appointee's loyalty, policy expertise, education and/or experience, and managerial competence, it was found that, on average, newer Presidents tolerated more uncertainty in appointee loyalty vis-à-vis uncertainty in competence, a relationship that inverted with tenure in office. Other analyses offer a caveat, however: though loyal appointees may be trusted to safely pass down these directives, there is evidence that they may not be as competent at managing their agencies as career professionals who not only have more experience, but more of their own persuasion power from professional reputation and prestige (Gallo & Lewis, 2011; Gilmour & Lewis, 2006).

The literature on Presidential power presents a complex and conflicted reality. On one hand, the president's formal powers do not allow him to pass off his decisions as dogma, because other administrators have their own status and powers on which they may influence policy regardless of the President's directives. As a result, a President's only option for executing policy is to persuade. At the same time, those formal powers can indirectly push through policy by surrounding the President with staff over whom he may have more persuasive power. A model that considers both these points holds promise for explaining bureaucratic change driven by presidential policy. Before forming a hypothesis based on this framework, however, it is first necessary to consider an opposing perspective. The notion that the federal bureaucracy has several 'masters,' of

which only one is the President, provides an avenue for discussing others, specifically nonfederal entities.

Coercive Federalism

Just as power is shared between the President and his administrators, so too is power shared across all levels of government according to the principle of federalism, which is ingrained into the Constitution by the Supremacy Clause (U.S. Const. art. VI, § 2) and the Tenth Amendment (U.S. Const. amend. X). Together, the Constitution requires that laws and actions of the federal government prevail when done so with powers granted expressly by the Constitution, and that all other powers and authority lie with the States or the people. Still, there is little guidance on how to balance federal and state power for any given instance, a fact which has contributed to the ubiquitous overlaps of authority in many areas of policy (Waxman & Morrison, 2003). It has fallen to scholars to create models for defining the role that states, localities, and the federal government may be expected to play in federalist issues, as well as predicting their behavior when faced with the ambiguity of statute.

One explanation for how different levels of government behave in the event of federal-local differences emphasizes the influence of *self-interest*. Scholars exploring intergovernmental relationships have largely adopted a historical approach to tracking the decline of cooperation between levels of government. Historical evidence has led researchers to theorize that the current political landscape is better described from a 'coercive' or 'opportunistic' perspective, in which the political interests of an individual

jurisdiction supersede the goals shared by all levels of government, explains both federal efforts to control the states and vice versa.

Kincaid (1990) defines coercive federalism as the decline of the federal government's reliance on using fiscal tools to stimulate cooperative policymaking—in favor of using regulatory tools to ensure the primacy of federal policy. Using the context of economic and public service policy, Kincaid highlights the 1954–1978 period as the high point of intergovernmental *cooperation*, which was characterized by great expansions to federal power by the judiciary, peaks in federal aid to states and localities (both in absolute terms and as proportions of jurisdictions' revenues), and the proliferation of those grants to a variety of governmental and nongovernmental institutions. A combination of factors—postwar affluence, memories of the Depression, and a growing call for reforms to promote equity and individual rights—fueled the transformation of American polity with the national government cast as the providing partner. This success, Kincaid argues, also assisted the demise of cooperative federalism, as it ultimately placed the federal government in a position of dominance. Policy preferences became increasingly defined by a federal government that was becoming less tolerant of intergovernmental friction. On the states' side, a tax revolt in California, as well as the establishment of an international trade and foreign relations committee by the National Governors' Association in the 1960s and 1970s signaled resistance to the federal management of policy on behalf of states and localities, a feeling that was aggravated by the decline of affluence and a corresponding rise in conservatism during the Cold War. As evidence for this change, Kincaid points out the number of federal preemptions of state and local authority, which more than doubled after 1969. He also notes that more

than half of preemptions enacted since 1789 emerged during the 1970s and 1980s, 10 percent of the nation's 200-year history, and that these preemptions coincided with reductions of federal aid that had formed the basis of intergovernmental relationships. However, he also acknowledges that cooperation is still possible in contemporary government, and that competition between levels of government may in time promote policy coordination.

Conlan (2006) provides a parallel history, beginning with the creation of the Commission on Intergovernmental Relations during the Eisenhower administration. When it submitted its first report in 1955, the Commission endorsed a federated government as being adaptable and empowering for its citizens. The Commission also articulated the challenges of federalism, especially administrative complexity. In studying the role of the federal government in relation to the states, it stressed the importance of cooperation and coordination between governments, and recommended the creation of a federal board, which would perform consultative and analytical functions to sustain dialogue between all levels of government. From there, Conlan echoes Kincaid's points about the proliferation of federal statutory preemptions, with an emphasis on how those regulations also became more intrusive. Where Conlan diverges from Kincaid is in his characterization of the phenomenon. He acknowledges that the federal system today is more coercive than it once was, but posits that self-interested intergovernmental behavior is too nuanced to be described purely in terms of coercion. Federal mandates and highly prescriptive grant programs, he argues, are driven by opportunistic policymakers (irrespective of ideology) who are trying to serve their own immediate interests, while states and localities co-opt federal grants in turn to serve equally narrow

ends (on the federal side, Conlan provides the example of how performance measures have become tied to budgetary consequences for jurisdictions who receive federal block grants by policymakers seeking to diminish these programs). The choice policymakers make—to put the interests of their constituents first by creating policy that benefits their voters—compels them to adjust the distribution of power between levels of government so as to exercise authority that once rested elsewhere, leads Conlan to describe it as *opportunistic* federalism.

Outside the realm of grants and preemptions, recent times have shown a shift away from a cooperative paradigm and a movement back to disputes that hark back to as far as the Reconstruction period. In one of the earliest examples of coercive federalism, President Grant chose to deploy federal troops to combat the persecution of freed Memphis blacks in the wake of the Civil War. Those troops were instructed to confine the policemen instigating the violence until civil authorities were willing to prosecute them. In anticipation that local police elsewhere would not be swayed by the federal government's stance on the matter, Grant also generalized this order to all southern states, stressing to federal authorities that strict and prompt enforcement of that order would be required (Chernow, 2017, p. 572). Grant's preemption of local officials by using federal troops illustrates that coercive federalism has old roots as a guide to the flow of policy; it also anticipated Eisenhower's own use of federal army power to nationalize the Arkansas National Guard to enforce the US Supreme Court decision of *Brown v. Board of Education*. These 19th and 20th century examples demonstrate that even a 21st century president cannot assume that local police will respect his preferences, and that they might

even resist within the bounds of their own power and legal authority to defy federal directives.

The arguments of Kincaid and Conlan have since been repeated, stressing that the second half of the twentieth century was marked by an explosion of federal policy decisions that imposed upon the rights and powers of states (Zimmer, 2005): direct order mandates, grant conditions, hundreds of statutory preemptions, and regulatory actions. These impositions also corresponded with a decreasing federal deference to state and local governments (Posner, 2007). There is ample evidence that coercive/opportunistic federalism did not end after the Reconstruction period, but rather became normal in the interactions between the federal and state governments. Through this framework, the question of whether states or localities influence the federal bureaucracy through their resistance to Presidential policy can be explored—in a way that is complementary to the explanation provided by the presidential dominance perspective.

Presidential Power and Federalism in Immigration Enforcement

Theories of presidential power and coercive federalism can both be applied to immigration enforcement. There is no reason to expect that the flow of policy from the President to ICE is any less reliant on persuasion than other spheres of policy, or that the President's formal powers are somehow diminished when dealing specifically with immigration enforcement. Likewise, ICE programs that rely on state and local cooperation have also introduced a federalism issue by creating an overlap of authority that invites conflict and opportunism. The coercive federalism perspective suggests that the federal government attempts to control the states in order to enhance its own

enforcement capability, and that states may take actions to subvert that control in the interests of its own public.

There exists ample historical evidence for coercive federalism at play in immigration enforcement. While ICE has seen the value of treating states and localities as force multipliers, it has largely ignored the values and interests of those jurisdiction that are uninterested in enforcing federal immigration law. This indifference is apparent with regard to programs ICE has made mandatory (i.e., Secure Communities), but has taken more subtle forms. With respect to granting local officers enforcement powers through 287(g), ICE has often neglected to inform LEAs of their rights and responsibilities when performing immigration functions. As a result, there have been incidents where police have detained individuals in excess of the legal 48 hours allowed by detainers due to either ignoring, or not understanding, the law, such as when an officer misinterprets the detainer as an order rather than a request.

In a similar vein, problems stemming from the costs of these programs—material and immaterial—for states and localities has not been a priority for the federal government. The State Criminal Alien Assistance Program (SCAAP), whose goal is to reimburse states and localities for the costs (travel, housing, technology) associated with participating in federal immigration enforcement, has never been fully funded, nor are the reimbursements that emerge sufficient to cover all costs (Morse, 2013). Likewise, the toxic effect of federal immigration enforcement programs on police-community relations is well documented, especially with regard to 287(g) (AIC, 2017a). The presence of ICE, even if that presence is only technological (e.g., Secure Communities), creates an association between local police and immigration enforcement that can discourage crime

victims and witnesses from assisting law enforcement—for fear that any contact may lead to discovery by ICE. This mistrust in turn threatens public safety and community policing efforts. In response to these criticisms, as well as legal challenges that have emerged from those criticisms, ICE has maintained that it targets only serious offenders and that its efforts ultimately enhance public safety.

In response to these concerns, some states and localities have passed so-called "sanctuary" policies that obstruct ICE activity or prohibit state LEAs from participating in immigration enforcement (AIC, 2017d). More specifically, sanctuary policies may prohibit LEA compliance with detainers, or impose higher standards on detainer acceptance, or deny ICE access to facilities where they may interview incarcerated individuals, or otherwise impede communication and info exchange between an LEA and ICE. Contrary to popular belief (Park, 2018), sanctuary policies do not conceal or shelter unauthorized immigrants, nor do they prevent police from enforcing criminal law against noncitizen offenders. Furthermore, many sanctuary jurisdictions still send booking information to ICE and lease jail space for housing immigrant detainees.

Despite allegations to the contrary by the Trump administration, sanctuary jurisdictions are in compliance with federal law, and do not violate 8 U.S.C §1373, which prohibits state and local governments from enacting laws or policies that limit communication about “information regarding the immigration or citizenship status” of individuals with DHS. Rather, it is the federal government that cannot compel jurisdictions to enforce federal immigration law. The legal basis for this separation in enforcement has been established by cases such as *New York v. United States* (1992) and

Alden v. Maine (1999), which have served to define state sovereignty and the degree to which federal law binds state legislature.

In response to sanctuary policies, the federal government has more recently made efforts to compel cooperation with ICE. In August 2017, Attorney General Sessions and DOJ attempted to withhold federal grant money meant for local enforcement from jurisdictions that had enacted sanctuary policies. In the ensuing case, the Supreme Court upheld a preliminary injunction issued by the U.S. District Court for the Northern District of Illinois on the basis that sanctuary policies do not affirmatively interfere with federal law enforcement, and that the allocation of local law enforcement resources is ultimately the decision of state and local authorities. The court also ruled that DOJ has no authority to interpret the statute (34 U.S. Code § 10151) in such a way that gives it the power to withhold grants on such grounds (*City of Chicago v. Sessions*, 2017). Given evidence that sanctuary policies have no effect on crime rates (Gonzalez et al., 2017), the insistent criticisms of those policies by the Attorney General and ICE casts doubt on the sincerity of claims that prioritization is the agency's foremost concern.

In addition to assistance from Presidential-level initiatives, ICE itself employs a variety of tactics for identifying and locating individuals in the face of state and local noncompliance. In the past, ICE agents have made a practice of waiting at courthouses for individuals who have a court appointment (even as witnesses or victims). Only in 2018 did agency leadership (DHS, 2018) clarify the procedure so that ICE would no longer arrest friends and family members of the target immigrant unless they posed a threat to public safety or interfered with ICE actions. ICE officers were also directed to avoid carrying out enforcement actions in areas that are dedicated to non-criminal

proceedings, such as family court. The directive, however, did allow agents to make exceptions without prior approval from supervisors, and recommended that arrests be made out of public view. An ICE spokesman also stated that witnesses to crimes would not be targeted even if they had outstanding immigration violations (Rosenberg, 2018).

Such attestations, however, do not represent the entirety of ICE operational posture, with new initiatives appearing frequently since January 2017. One example: ICE's New York office sent letters to the homes of several individuals shortly after they had interactions with the New York City Police Department, requesting that they come to the immigration agency's office in Manhattan. Once there, some were detained and, in at least two cases, placed in removal proceedings (Devereaux & Knefel, 2018). ICE has also subpoenaed Facebook to obtain data that the agency used to identify wanted individuals. It has also accessed data collected privately from automated license plate readers. (Maass, 2018).

There is also anecdotal evidence that opportunism shapes ICE's enforcement. Across presidential administrations, there have been multiple high-profile incidents in which immigration raids against employees sprouted from unrelated criminal investigations of their employer, raids which were made possible by the referral of another federal agency to ICE (Garrett, 2018).

These tactics, some of which have been employed only recently, are not an exhaustive list. The purpose of describing them here is to illustrate the fluidity (and uncertainty) of multi-level policy cooperation in a federated system that appears to operate on coercion and opportunism from both levels of government. This relationship is further complicated by the transition of power to a new administration, which

inevitably introduces new initiatives and priorities, initiating a long sequence of actions and reactions as it is passed down from department to agency, and from management to operations.

Though the executive branch of the federal government appears to be a strict hierarchy, the articulation of policy even within that hierarchy is not so simple. While the highest levels of the executive branch articulate goals, they do not necessarily instruct the agency and its components on how to accomplish those goals. The specific means are left to agency leadership, whose directives in turn are left for the lower echelons to translate into practice. At the operational level, decisions may be based on a jurisdiction's discretion and an agent's imagination, as the above innovations demonstrate. In the pursuit of their short-term operational goals, whether increasing arrests or filling detention quotas (Chan, 2017), these agents and offices cooperate and clash with nonfederal entities in ways that may not have been not anticipated by the original directive's authors. As a result, a policy's original goals may not be fully realized, or ignored altogether as they become sidelined by the conflicting interests of a tiered law enforcement system, wherein different agencies serve different publics.

Prior Research on Policy Changes in Immigration Enforcement

To date, most studies of policy changes governing ICE enforcement patterns have been largely outside the main criminological literature. Though they track enforcement activity over time and often frame their results in relation to the enactment of some federal program or policy (as the present research does), they do not reference theories of Presidential dominance or federalism in their reports. The explanations these studies

offer for their trends are therefore heavily speculative and with little empirical support. Still, these speculations are welcomed as potential further insight into factors influencing enforcement activity—whether they are rooted in presidential dominance and coercive federalism theories or not.

The Transactional Records Access Clearinghouse (TRAC) has released numerous reports on ICE activity as measured by apprehensions, removals, and detainer issuances. Associated with Syracuse University, TRAC maintains a library of immigration enforcement and adjudication records that have been obtained via monthly Freedom of Information Act (FOIA) requests to ICE, CBP, USCIS, and EOIR. Using data from the 2002 to 2015 period, TRAC found that ICE's detainer use had been steadily dropping well before PEP was established (TRAC, 2014a), as shown by a month-by-month tabulation of detainer issuances prior to PEP's implementation (see Figure 2). The report also found that the decline occurred in most states, and for those that experienced a percentage increase in ICE detainer use, the increase in terms of actual detainer issuances was either small, or later reversed in FY2014.

To explain the pre-PEP decline, TRAC has suggested that past enforcement has already led to the removal of many serious offenders, leaving fewer such individuals to detain and locate, but admits that there are insufficient data to support such a claim. The organization has also posited that the decline was a response to criticism (from unspecified LEAs, immigration rights groups, etc.) and litigation against Secure Communities, and thus ICE was issuing fewer detainers where it felt that LEAs would not comply with them (which would support a coercive federalism perspective). Shifts in the geographic distribution of apprehensions have also been presented as an explanation

for the pre-PEP decline; in FY2013, ICE reported that an increasing number of individuals removed were being transferred directly from those CBP had arrested, which would preclude the need for issuing a detainer.

Most of the factors TRAC speculates could explain a pre-PEP decline in detainer issuances—a shrinking offender population, political pressure from activist groups, litigation, shifts in the geographic distribution of apprehensions—are based in long-term trends or processes that are outside the explanations presented by presidential dominance and coercive federalism theories. Resistance from LEAs, however, does fall into the latter category, which is why the present research includes the role of state and local resistance in its analysis. In addition, the possibility that changes in the geographic distribution of arrests may influence enforcement activity suggests that the location of an arrest may play a role *other* than as an indicator of state and local resistance.

Central Hypothesis and Research Questions

The focus of the present research is understanding how ICE's enforcement activity, across its various programs, reflected policy changes as they relate to the Presidential directives of the 2013–2017 period. To that end, the present research tests the following hypothesis: that

Presidential directives about the role of the seriousness of crimes associated with individuals arrested nationwide by ICE actually changed ICE practices when PEP was implemented, as well as when it was terminated—with seriousness rising during PEP and declining after its termination.

This hypothesis is based on the logic of the presidential dominance model. To further explore the consistency, if any, of the hypothesized impact of coercive federalism, two additional questions are posed that inform the test of the central hypothesis:

1. Were any national-level changes that occurred uniform across ICE jurisdictions, or did they all vary across the 25 ICE operational regions?
2. Did state and local noncooperation with ICE have any effects on the types of individuals being arrested in any specific jurisdictions?

This study further hypothesizes that for a given jurisdiction, relative to national-level trends and irrespective of the number of arrestees per Area of Responsibility (AOR), a greater level of noncooperation will be associated with higher seriousness, which in turn predicts greater bureaucratic compliance under the Obama administration, by virtue of the former President's tenure at the time PEP was enacted. This logic rests on the basis that ICE would limit its enforcement efforts to more serious offenders in states and localities that have passed policies limiting cooperation with the agency.

The present research contributes to existing knowledge of immigration enforcement by providing insight into the role of federalism in enforcement operations—either by showing that executive policy does indeed shape behavior at the lowest operations echelons of the enforcement bureaucracy, or by showing that policy failed to have any impact. The present research is also an important step to understanding how the decentralized nature of a federated system allows nonfederal governments to leverage the authority they possess over their own jurisdiction to thwart federal policy decisions.

While this part of the analysis may be more speculative in relation to differences across geographic areas, it is at least one plausible explanation of any such differences that may be found.

III. Methods and Analysis Plan

The present research explores patterns and trends of ICE decisions to arrest certain individuals. Therefore, the effectiveness of enforcement as either a deportation or crime reduction tool is *not* the purpose of the analysis. Rather, its purpose is to discover whether there was a trend in the seriousness of criminal behavior of ICE arrestees in association with the introduction and/or termination of the 2013–2017 executive policies (using data from 2014 to 2017, as the analysis plan details). Exploring this association also invites a comparison of changes caused by the Obama administration's policy compared to the Trump administration's. This section begins by discussing the ideal and proposed dataset, followed by a description of the analysis plan that includes a discussion of the Crime Harm Index (CHI) as a way of comparing and aggregating arrestee crime.

Data & Variables

To test the hypotheses that have been put forth, a data source was selected on the basis that it contained information about individuals against whom ICE has taken direct enforcement action. Analyses in policy and immigration circles have tended to describe trends of ICE activity using counts of detainer issuances or removals as their primary measures, independent of the severity of any criminal charges associated with the persons being deported. The TRAC Immigration Project is an illustration. As the largest

academic repository for ICE enforcement data, TRAC has released numerous reports on ICE removals and detainer issuances over time and in relation to various policies.

An analysis relying on *detainer* issuances presents a problem, however, because it encompasses a universe of cases that do not necessarily reflect ICE activity. Detainers issued by 287(g) or CAP officers offer little insight on the impact of PEP or other changes to enforcement priorities, since those officers are not ICE agents and are therefore not subject (or perhaps even privy) to changes in federal enforcement policies. These locally-generated detainers primarily reflect the decision making of that individual 287(g) officer, making those data less useful to understanding the impact of policy on ICE operations.

Studies using *removal* as the unit of analysis, in contrast, suffer from the methodological challenge of accounting for time delay caused by the unique circumstances of every immigrant's case with regard to their detention and adjudication: court backlog, procedural rules, ongoing relief/asylum claims, or outstanding criminal sentences. Without knowing those circumstances, it would not be appropriate to attribute their removal to a program's implementation because the two events coincided with each other.

Due to the shortcomings of using removal and detainer data, the present research uses neither detainers nor removals; it uses data on *ICE arrests*—that is, data on individuals whom ICE has chosen to arrest and transfer into its own custody. The eligibility criterion for this study is therefore an ICE action that separates arrest data from all detainer issuances and removals without ICE arrests.

The study then links each ICE arrest to a way of measuring offense seriousness for arrested aliens—so as to track changes in that seriousness level over time and through the course of the policy changes. The analysis also separates arrests and their crime seriousness levels by region. In order to compare the Areas of Responsibility for separate tests of the central hypothesis, the study examines both the number and type of offenses for which arrests were made across the AORs. To that end, the present research uses a combination of descriptive methods, one and two-way analysis of variance (ANOVA), and t-tests to determine the magnitude of those impacts.

Source of Data

The ICE Freedom of Information Act (FOIA) library provides readily available data on immigration enforcement that fit the given criteria and can support the construction of a seriousness variable. The ICE FOIA library is a collection of datasets, agreements, and records that ICE has made available to the public in response to various FOIA requests. Most of the quantitative data are located under the "Immigration Statistics" section of the library. Most of those statistics report aggregate arrests and other enforcement actions by region, AOR, or year. Fortunately, however, the library also allows users to download large volumes of *disaggregated* data that delineate data on each individual offender.

The analysis was performed on a dataset titled "Apprehension of Individuals with Outstanding Removal Orders - FY2015 through Feb. 2017," which is stored in the format of a Microsoft Excel spreadsheet. The universe of cases consists of individuals with final removal orders from an Immigration Judge against persons who have been arrested by

ICE (i.e., actually transferred into the agency's custody, not just detained by an LEA) from October 2014 to February 2017. That sample consists only of individuals with final removal orders, a point which merits clarification. An Immigration Judge (IJ) issues a final removal order at the end of a removal hearing when the noncitizen has not been granted some form of relief. The IJ may issue the order to that individual in the courtroom, or *in absentia*, thus instructing ICE to execute it. Those with final orders are not by definition more likely to have criminal convictions than those who do not, or those at any other step of the enforcement process. ICE does not need final removal orders to arrest someone, so an arrest has no direct association with an individual's criminal offending. Therefore, their arrest remains a reflection of ICE decision-making on selecting targets for apprehensions by ICE itself.

Though the data include arrestees from every ICE jurisdiction (i.e., nationwide), they do exclude other segments of the unauthorized immigrant population: removable individuals who have not entered the system, subjects of detainer requests who have not yet been transferred into ICE custody, those whom ICE has arrested without final removal orders from an IJ, those currently detained in immigration facilities or are awaiting adjudication, and those who have been removed from the United States.

Variables

Attached to each individual case (i.e., arrestee) is the date at which they were apprehended by ICE. Knowing when the arrest was made and the start/end dates of policies from the 2013–2017 supported the creation of a categorical variable with three categories identifying each arrest as occurring during one (and only one) of the Pre-PEP,

PEP, or Post-Pep periods. This variable is the measure of what federal policies were active when an arrest was made.

The location of each arrest is recorded in a variable that lists one of the 24 ICE AORs. Referencing the DHS Declined Detainer Outcome Report for the week of February 11–February 17, 2017, the analysis identified which states and localities passed sanctuary policies and the approximate time it was passed (month and year). Using this information, the analysis created a variable expressing the percent of population in each region covered by jurisdictions with active sanctuary policies in the AOR where an individual was arrested, when they were arrested, and assigned that percentage to each case respectively. The result is a ratio-level variable measuring state and local resistance to ICE by AOR, which is the primary avenue for exploring the hypothesized influence of coercive federalism on enforcement activity.

Together, the enforcement period and the measure of state/local resistance comprise the parameters of the analysis. The dependent variable, the seriousness of arrestee crime, requires more exhaustive discussion, for it involved the creation of a Crime Harm Index (CHI) built from the dataset's existing information on an individual's most serious criminal conviction.

The Logic of a Crime Harm Index

The analysis required a way of measuring seriousness for the crimes of arrested individuals. The simplest method would have been to categorize offenses based on type (homicide, robbery, theft, etc.) and count how many offenders/incidents there are for each type. Differences over time and between jurisdictions would then be made by comparing

each period or jurisdiction's respective counts. ICE typically tracks its activity using this method; it provides counts of how many individuals with criminal offenses have been arrested, deported, or detained in a given region and period of time, then compares it to previous counts. However, for any measure of enforcement that uses a count of individuals, someone whose only offense is illegal entry contributes to the overall criminality of arrested aliens as much as one who has committed murder. Policies that are based on this oversimplified reporting are likely to overestimate both the prevalence and severity of criminal acts committed by the unauthorized population.

An alternative method exists that avoids this problem. Summing all crimes into a single count or total has long been criticized by scholars such as Sherman (2007, 2010, 2011, & 2013) as a misleading metric that distorts policing decisions. In a supplement to crime counts, Sherman proposes, a weighted Crime Harm Index (CHI) could be created to provide a very different understanding of the harm done by crime.

The method of a CHI is to determine the harm of each crime reported to police by victims or witnesses. By including only crimes that are reported at the initiative of private citizens, the CHI isolates its measurements from the influence that changes in police operations have on the number and types of crimes discovered (e.g., for such proactively enforced crimes as drug smuggling or traffic speeding violations). The CHI calibrates the harm of each crime type based on the number of recommended number of prison days that crime would entail for one incident for one first-time offender (if convicted). To avoid the costs of constantly computing an actual sentence lengths each year, as the Canadian Crime Severity Score does, the Cambridge Crime Harm Index (Sherman et al., 2016) relies on the number of days on judicial sentencing guidelines.

Ideally, the specific weighting comes from a 'starting point' method (used in some US states, such as North Carolina, as well as in England and Wales). This “starting point” is associated with the relative severity of the offense on its own compared to all other offense types, without consideration of any specific offender’s prior criminal history or aggravating or mitigating circumstances of a specific offense. In addition to being less expensive than relying on actual average sentence lengths for each offense type, the standardization of the sentence length ensures a consistent measure of harm across offenders of varying lengths or seriousness of criminal offending history. A homicide inflicts the same harm on a victim or community regardless of whether it was a first-time or repeat offense (Sherman et al, 2016), so that the CHI creates a metric of societal costs rather than a measure of the offender’s entire life history.

Multiplying the harm weight of each offense type by the number of unique incidents of that offense type produces a single metric of the total harm done by that crime type—a CHI total for a jurisdiction. Take, for example, an individual whose offending history includes illegal entry and three instances of trafficking in fraudulent immigration documents, both of which are federal offenses. Referencing the US sentencing guidelines for federal crimes shows that those two offense types have a severity level of eight and eleven, respectively, and that their presumptive sentences (irrespective of criminal history and circumstances) are zero to six months and eight to fourteen months. Taking the median of each presumptive sentence range, the CHI value of the illegal entry is four months, and the value of the document trafficking is thirty-three months (3 incidents x 11 months). Combining the harm done by the individual's total of four convictions, as measured by the CHI, the weighting is thirty-seven prison

months (or about 1100 days). As this example shows, the CHI can be used not only to calculate and compare the harm done by an individual's different offenses, but also a total harm for that individual, which can be compared to other individuals, or aggregated and averaged to create CHI value averages per person or total weights per 100,000 per year for groups, regions, and time periods.

The value of a CHI is that it creates a common currency metric across a vast range of diverse offense types. Using the CHI allows analysts to compare instantly the harm done in different units or populations, without having to weigh every circumstance and detail of the respective or constituent offenses. The CHI can also be used to show the offense types where harm is concentrated. For instance, a count of homicides in a given region might show that such incidents are rare, but when weighed by sentence prison days and placed in a CHI, it may reveal that those few incidents account for a significant portion of the total harm crime does to that area.

With the specific information available about the offenses committed (or charged) by each individual ICE has arrested, the analysis computed a CHI for each one. The specific form of a CHI can be constructed to better understand how ICE arrests are prioritized in terms of harm. The CHI analyses also show how ICE might change its enforcement practices to better ensure that the number of individuals being arrested corresponds more closely to the amount of harm their offending does. That, in turn, comprises a direct test of the Presidential policy hypothesis that is central to the study.

Constructing a CHI for ICE FOIA Data

The dataset consists of individuals who have committed criminal offenses as well as those with only noncriminal immigration violations. Illegal entry, re-entry, and false documents/statements are *criminal* immigration violations which have sentencing guidelines, even though they would normally be excluded from a CHI because they are generated by proactive enforcement (Sherman et al 2016).

But the ICE arrest data also include *nonoffenders* who have been charged with no crime at all. These nonoffenders in the data are individuals who have committed *civil* immigration violations, such as being present in the US without authorization. A common example of these civil offenders would be individuals who overstay a legal student or visitor visa, or foreign crewmen who leave their vessel at port. Instead of a prison sentence, the punishment for these individuals tends to be barred entry to the United States. Their presence in the data merits consideration.

Since the priority levels from the SC and PEP eras included noncriminal violators, excluding them from the analysis would not have provide a complete description of how these priorities were realized. The lack of a prison sentence also implies that the CHI values for these individuals would be zero, irrespective of the number of individuals. To provide that civil immigration violators are represented in the CHI, a weight of zero months was assigned to them.

Like the UCR, ICE reports only the alien's most serious offense. It was therefore impossible to calculate a CHI for an individual's total offending history, which is one of data's shortcomings, and where the proposed analysis deviates slightly from the CHI as presented by Sherman. However, since the data are uniformly restricted in this way,

there will be no bias towards any individual by the omission or inclusion of offenses that would distort their CHI value. Another shortcoming is the temporal and spatial distribution of the cases; for the October 2014–February 2017 period that the data cover, the majority of cases fall under 2015 and 2016 when PEP was active, leaving fewer Pre- and Post-PEP cases to provide a comparison. Grouping the cases by AOR also reveals that almost a third of arrests for the entire period were made in the Houston and Dallas AORs, which posed a challenge to answering questions involving regional variation in policy impact.

The first step of the analysis was creating a CHI for the data, integrating the most recent editions of the US Sentencing Guidelines for federal crimes with Minnesota state sentencing guidelines for nonfederal crimes. As a matter of practicality, using one state's guidelines as a surrogate for all others was preferable to matching an arrestee's offenses to those defined in the statute of the state in which they were arrested. The latter method was actually impossible, since the data only provide the AOR, not an individual state. Using guidelines from multiple states would have also introduced the risk that the proportion of the CHI attributable to one offense type become a product of a jurisdiction's leniency or severity towards that offense, rather than the prevalence of that offense.

The development and application of Minnesota guidelines made it an attractive surrogate for those of other states. Historically, the creation of the Minnesota guidelines was part of a larger movement in the mid-twentieth century towards legislatively-mandated sentencing commissions, which were hailed as an important step towards criminal justice reforms by virtue of being comprised of subject matter experts. Such a commission would not only be protected from political influence, but its duties would be

entirely focused on developing, evaluating, and monitoring the guidelines. When the Minnesota guidelines were first constructed, they eschewed the conservatism of the so-called Albany approach, which emphasized calculating equations and patterns that best modeled past sentencing decisions. Instead, they view guideline development "as the articulation of public policy rather than as the discovery of past practice" (Knapp, 1982). As a result, the Minnesota guidelines are built to realize legislative intent, and to consider the consequences of sentencing policies on the rest of the criminal justice system, such as the size and composition of the corrections population. In their comparison of simulated sentences under Minnesota, Pennsylvania, and Washington guidelines, which share similar structures and formats, Kramer et al. (1989) make several key points:

- despite their structural similarities, the three guidelines vary in terms of the overall severity of sentence recommendations and the amount of discretion retained by the judge;
- Minnesota guidelines were designed so that sentence severity was directly proportional to the seriousness of the offense, less dependent on criminal history, and irrespective of extralegal factors (race, sex, age, employment, etc.);
- Compared to Pennsylvania, Minnesota prescribes slightly less severe sentences on average, though this may be due to the greater role of judicial discretion in the former; compared to Washington, Minnesota treats violent offenses less severely;
- Among all three states, Minnesota guidelines showed the greatest ranges for nonviolent offenses and the narrowest for violent ones.

The second point above deserves emphasis, for it made the Minnesota guidelines more consistent with the logic of a CHI based purely on offense severity rather than complicated by offender history. Pairing the Minnesota guidelines (which place less emphasis on offending history than found in many other states) with data that do not include offending history aided in a consistent measurement. The determinacy of the guidelines was also useful to the analysis. Since less serious crimes are expected to have smaller sentences than serious ones, the Minnesota guidelines' variance for them were expected to have less impact. Likewise, their narrower range for serious crimes helped prevent the CHI values of violent crimes from dominating the description of arrestee crime.

Using the principles of the CHI, the Minnesota-recommended number of months of imprisonment for each state offense was combined with Federally-recommended imprisonment for federal crimes, which in turn was used in combination to create a weighted index of the state and federal offense seriousness associated with each ICE arrestee. Those data were then aggregated to assess the seriousness levels of all individuals in any given time period or geographic area.

Once the CHI was constructed, every observation (i.e., each individual arrestee) had a single associated CHI value of the specific offense listed in the data. The data also contain the AOR responsible for the individual's arrest, as well as the date when they were arrested, allowing the aggregated CHI values to be plotted over time and across AORs. The end product of this part of the analysis is a thorough quantitative description of how arrestee harm was distributed across the United States in the 2013–2017 period.

The second part of the analysis tested the before-after change associated with Presidentially-initiated programs on ICE operations, using the CHI value of arrestees as the dependent variable. A series of dichotomous measures was used as the set of primary independent variables indicating whether a given executive program was active when the individual was arrested.

The central product of the analysis is a comparison of CHI values over time and across ICE AORS, with specific attention paid to the points at which PEP was implemented, terminated, and replaced by the full enforcement posture. With this description, the analysis was able to gain insight into whether these policies had any effect as through presidential power, and whether state and local resistance exerted their own influence as resistant partners in a federalist relationship.

Methods

The analysis began with a quantitative description and summary of the data, which included a count of viable cases (i.e., without missing values in vital variables), as well as their geographic and temporal distribution. Each unique crime in the dataset was listed, along with its CHI value and the crime type category in which it was placed. Finally, the absolute and average CHI values for each crime type calculated and plotted as trend lines over time for each AOR, as well as the nation in aggregate. Vertical lines were used to demarcate federal policy changes in the trend lines.

The analysis delineated the major classes of violent crime (e.g., homicide, assault, criminal sexual conduct, theft, robbery), property crime (e.g., theft, fraud, burglary), and

drug crimes. Since this sample is unique by virtue of being comprised entirely of noncitizens, the analysis also included an immigration offenses category in the CHI.

The end product of the analysis is a comparison of 25 mean trends in CHI levels across the Pre-PEP, PEP, and Post-PEP periods for each of the 24 AORs and the United States as a whole. The analysis also point outs specific categories within each CHI that either contributed greatly to the mean's value or changed dramatically over time. To test the statistical significance of any changes that occurred in the composition of the mean CHI values, the analysis performed separate variance t-tests. That analysis was selected on the assumption that the imbalance of sample sizes between the three periods would systematically give the PEP-period cases lower variance. Sensitivity analyses were also performed by tracking percentage changes in mean CHI values. With these results, the analysis is able to discuss whether any changes that occurred were consistent, as well as discuss each region specifically as they relate to factors such as the prevalence of sanctuary policies or proximity to national borders.

Building the CHI and Sanctuary Variables

To each arrestee, a CHI sentence weight was assigned according to the individual's most serious criminal conviction (MSCC). This process first required codifying the MSCC by matching its description to that of an offense described in Minnesota statute (for nonfederal crimes) or the U.S. Criminal Code (for federal crimes). After pairing the offenses as described in the data with their statutory equivalents, the respective sentencing guidelines (i.e., Minnesota or U.S.) was consulted to identify the severity level of that offense. The grids used by both the Minnesota and U.S. guidelines

calculate sentence length (in months) as a product of the severity level and a criminal history score (with higher scores indicating a longer criminal history and a longer sentence). For the analysis, the sentence weight of *every* offense, both federal and nonfederal, was calculated by identifying the presumptive stayed sentence for a crime with its associated severity level and no criminal history.

A ratio variable was created to measure state and local resistance to immigration enforcement efforts by dividing the population of the sanctuary jurisdictions by that of their respective AORs. The Declined Detainer Outcome Report provides a list of nonfederal jurisdictions that have passed policies limiting cooperation with ICE, as well as a description of the policy, the ICE AOR in which the jurisdiction is located, and the month and year the policy was created. The population (according to the 2010 census) of each sanctuary jurisdiction and its respective AOR was obtained from the U.S. Census Bureau online data tool, FactFinder. The end product is that each observation is associated with a ratio value describing, at the time of arrest, the portion of the responsible AOR's population under the influence of sanctuary policies.

IV. Results

The data contain 94,326 observations with complete information on their AOR, date of apprehension (i.e., the enforcement period in which they were arrested), and offending history. Almost a third of cases are concentrated in the Houston and Dallas AORs, and no other AOR exceeds 10 percent of the national total (Figure 3). In terms of enforcement period, the number of cases that fall under the PEP period greatly exceeds

that of the Pre- and Post- periods, comprising approximately 93 percent of the total (Table 3).

The distribution of offense types is more varied. The Most Serious Criminal Conviction variable, which is the data's primary measure of an arrestee's criminal activity, describes 363 unique offenses. Grouping these offense into 24 categories shows that immigration offenders make up approximately 25 percent of the total number of cases. Of these 23,965 cases, 7,411 (approximately 31 percent) are civil offenders with a CHI score of zero. The category with the second greatest contribution of cases is drug offenses (19 percent). No other offense category contributes 10 percent or more to the national total of cases (Figure 4).

Comparisons of Mean CHI Scores (Percent Differences), by Month, Enforcement Period, and Area of Responsibility

A national month-by-month trend line (Figure 5) shows that under President Obama, the mean CHI scores of the MSCC associated with each arrestee rose, relative to Pre-PEP levels, by approximately 10.5% after PEP was enacted, while it dropped by approximately 5% within the first month after President Trump signed the Executive Order nullifying PEP. In the two months of data available prior to the PEP period, the mean CHI score was approximately 22 months per arrestee. In the twenty-five months of the PEP period, the mean CHI score rose to approximately 24 months per arrestee. In the one month after PEP was revoked, the mean CHI score dropped to approximately 21 months per arrestee. Whether it continued to drop even further after that first month cannot be ascertained from the data that are currently available.

The data's two endpoints, October 2014 and February 2017, had the lowest mean CHI scores at approximately 22 and 21 months (respectively), while October 2015 had the highest score, at approximately 29 months. Organized by year, 2015 had the highest mean, followed by 2016, 2014, and 2017. The reason for this surge during the middle of PEP's life and its subsequent decline is not clear, but disaggregation by AOR shows that a select few may have influenced this trend (Table 4). While 16 of the 24 AORs saw either decreases or increases of no more than 10 percent CHI value from 2014 to 2015, the AORs of Washington, D.C., New Orleans, New York City, Boston, Atlanta, Newark, Baltimore, and Dallas all saw increases upwards of 14 percent, and as large as 44 percent. PEP's decline in CHI value after the 2015 peak was driven in a similar manner; 16 AORs showed either increases or decreases of no more than 10 percent CHI value from 2015 to 2016. The remaining 8 AORs had decreases ranging from 12 in New Orleans to 33 percent in Phoenix. The discovery of these "power few" regions suggest that the effects of PEP not only wavered over time, but that the impact continually varied from one region to another.

The notion that PEP's effect varied across AORs holds when CHI scores are aggregated by enforcement period, rather than by month and year as discussed in the previous paragraph (Table 5). Comparing the Pre-PEP/PEP and PEP/Post-PEP changes offers a noteworthy parallel. From the Pre-PEP to PEP period, 17 of the 24 AORs had increases in their respective means, whereas from the PEP to Post-PEP period, 21 AORs saw decreases. The range of changes in mean CHI scores were similarly varied. The Pre-PEP to PEP period changes varied from increases as large as 11 months to decreases as large as 6 months. In the PEP to Post-PEP period, changes varied from increases as

large as 13 months to decreases as large as 14 months. Percent differences were calculated to describe these changes in the PEP and Post-PEP periods for reach AOR and the United States as a whole (Figure 6). The results of these comparisons can be summarized as follows:

- In the Pre-PEP period, AOR Phoenix had the greatest mean score, at 43.367 months, and San Antonio the least, at 13.077 months (Figure 7).
- With a Pre-PEP baseline, the nationwide aggregate's mean CHI score from the Pre-PEP to PEP period *increased* by approximately 10% (Table 5). Of the 24 AORs, 16 had percentage *increases*. These AORs, ranked from greatest to least change, were: Washington DC ($\Delta=69\%$), Boston ($\Delta=66\%$), Newark ($\Delta=62\%$), El Paso ($\Delta=39\%$), New York City ($\Delta=35\%$), Atlanta ($\Delta=25\%$), New Orleans ($\Delta=23\%$), St. Paul ($\Delta=13\%$), Miami ($\Delta=12\%$), Philadelphia ($\Delta=10\%$), Salt Lake City ($\Delta=10\%$), Dallas ($\Delta=9\%$), San Antonio ($\Delta=5\%$), Buffalo ($\Delta=4\%$), Baltimore ($\Delta=3\%$), and Phoenix ($\Delta=3\%$). Decreases in CHI mean values were observed in the AORs of Chicago, Denver, Detroit, Houston, Los Angeles, San Diego, San Francisco, and Seattle.
- Using a *PEP* baseline (Table 5) shows that the nationwide aggregate's mean CHI score *decreased* by approximately 14% from the PEP to Post-PEP period. Of the 24 AORs, 20 had percentage *decreases*. These AORs, ranked from greatest to least change, were: Baltimore ($\Delta=-59\%$), Denver New York City ($\Delta=-55\%$), ($\Delta=-51\%$), Miami ($\Delta=-47\%$), San Francisco ($\Delta=-44\%$), Boston ($\Delta=-43\%$), Detroit ($\Delta=-41\%$), New Orleans ($\Delta=-40\%$), San Antonio ($\Delta=-37\%$), Philadelphia ($\Delta=-33\%$), St. Paul ($\Delta=-32\%$), Atlanta ($\Delta=-31\%$), Washington DC

($\Delta=-23\%$), Buffalo ($\Delta=-22\%$), Seattle ($\Delta=-17\%$), Newark ($\Delta=-16\%$), Dallas ($\Delta=-12\%$), Chicago ($\Delta=-11\%$), Los Angeles ($\Delta=-9\%$), and San Diego ($\Delta=-4\%$). AOR Houston, Phoenix, and Salt Lake City had percentage increases.

- A Pre-PEP/Post-PEP comparison produces similar results *in terms of direction* to the PEP/Post-PEP comparison. Between the Pre and Post-PEP periods, the nationwide aggregate's mean CHI score *decreased* by approximately 5% (Table 5). Of the 24 AORs, 18 had percentage *decreases*. These AORs, ranked from greatest to least change, were: Baltimore ($\Delta=-58\%$), Denver ($\Delta=-51\%$), Detroit ($\Delta=-49\%$), San Francisco ($\Delta=-47\%$), Miami ($\Delta=-41\%$), New York City ($\Delta=-39\%$), San Antonio ($\Delta=-33\%$), Seattle ($\Delta=-33\%$), New Orleans ($\Delta=-27\%$), Philadelphia ($\Delta=-27\%$), St. Paul ($\Delta=-23\%$), Buffalo ($\Delta=-19\%$), Atlanta ($\Delta=-14\%$), Chicago ($\Delta=-12\%$), Los Angeles ($\Delta=-10\%$), Boston ($\Delta=-5\%$), San Diego ($\Delta=-5\%$), Dallas ($\Delta=-3\%$). Increases in CHI mean values were observed in the AORs of Houston, Newark, Phoenix, Salt Lake City, and Washington.

While there are exceptions, the mean CHI scores of most AORs (and the United States as a whole) over enforcement periods, tend to show an increase following PEP's implementation, then a decrease following its termination.

T-Tests of AOR Mean CHI Scores, by Enforcement Period

The findings from these descriptive comparisons between regions and enforcement periods become less meaningful if they are the product of chance. In order to determine the size of differences between CHI score means across enforcement periods, and whether they are the result of actual differences in the composition of each AOR-

Enforcement Period group, a series of independent sample t-tests (using Satterthwaite's approximation for unequal variance) was conducted to compare the mean CHI scores in the three enforcement periods—for each AOR and the United States as a whole. The results of these tests are as follows:

- From the Pre-PEP to PEP period, there was a significant *increase* in the mean CHI for the nationwide aggregate of all AORs of approximately 2.276 prison months (Table 6).
 - Disaggregated, there were significant increases in six AORS: Atlanta ($\Delta=5.271$), Boston ($\Delta=11.174$), New Orleans ($\Delta=6.297$ months), New York City ($\Delta=5.587$), Newark ($\Delta=11.341$ months), and Washington DC ($\Delta=10.841$ months).
- From the PEP to the Post-PEP period, there was a significant *decrease* in the mean CHI for the nationwide aggregate of approximately 3.411 prison months (Table 7).
 - Disaggregated, there were significant decreases in 12 AORs: Atlanta ($\Delta=8.297$), Baltimore ($\Delta=12.936$), Boston ($\Delta=11.971$), Dallas ($\Delta=3.193$), Denver ($\Delta=14.320$), Detroit ($\Delta=8.351$), Miami ($\Delta=11.012$), New Orleans ($\Delta=13.586$), New York ($\Delta=11.902$), Philadelphia ($\Delta=12.787$), San Antonio ($\Delta=5.045$), and San Francisco ($\Delta=3.411$).

In addition to the nationwide aggregate, there were four AORs that had significant differences across all three periods and in the hypothesized directions (i.e., increase during PEP and decrease during Post-PEP): Atlanta, Boston, New Orleans, New York City. Percent change from Pre-PEP to PEP was the most pronounced in Boston, which

had the smallest Pre-PEP/Post-PEP percent change. New York had the second greatest Pre-PEP/PEP change, but the greatest Pre-PEP/Post-PEP and PEP/Post-PEP changes.

Correlations between CHI Mean Scores and Sanctuary Policies, by AOR and Enforcement Period

No strong correlations in either direction were found between the size of an AOR's sanctuary population and mean CHI score during any enforcement period (Figures 8, 9, 10), nor were there strong correlations in the nationwide aggregate (Table 8).. Calculating the proportion of each AOR's population that had passed sanctuary policies shows that, over all three enforcement periods, the prevalence of sanctuary policies was greatest in AOR Los Angeles, with approximately 76% of its population living in sanctuary jurisdictions, followed by Seattle (62%), New York City (60%), and San Francisco (44%). The AORs of Miami, Phoenix, Detroit, Atlanta, Houston, Dallas, and Salt Lake City collectively had the lowest mean proportions; none of their constituent jurisdictions passed any sanctuary policies during the October 2014–February 2017 period.

Analysis of Variance for Enforcement Periods and Area of Responsibility

Using CHI score as the dependent variable, a series of ANOVAs were conducted to produce the following results (see Tables 9, 10 & 11):

- A one-way ANOVA using enforcement period as the factor variable (Table 9), which classified arrestees into three groups—the Pre-PEP (n=5,962), PEP (n=87,406), and Post-PEP (n=958) period—produced a statistically significant

difference between the enforcement period groups ($F(2,94,323)=22.10$, $p=0.000$).

A Tukey post-hoc test revealed that CHI score was statistically significantly higher in the PEP period compared to the Pre-PEP and Post-PEP periods.

However, there was no statistically significant difference between the Pre-PEP and Post-PEP periods.

- A one-way ANOVA using Area of Responsibility as the factor variable (Table 10), which classified arrestees into 24 groups according to their respective AOR, produced a statistically significant difference between the enforcement period groups ($F(23,94,302)=229.15$, $p=0.000$).
- A two-way ANOVA using Area of Responsibility and enforcement period as factor variables (Table 11) revealed that there was a significant interaction between the effects of enforcement period and AOR on CHI score ($F(24, 94,255)=2.55$, $p=0.000$). Simple main effects analysis revealed also produced similar findings to the one-way ANOVAs; there were significant differences between both enforcement periods and AORs.

These results should be considered with caution, however, as the distribution of CHI scores violates the ANOVA assumption of normality, based on the results of the Shapiro-Wilk test for normal data.

Discussion

This study examined the Presidential dominance hypothesis that, under the principles of Presidential power, Presidents Obama and Trump would be able to effect change in ICE operations through a top-down flow of policy illustrated in Figure 1. The highly-

televised signatures of Executive Orders attract attention precisely because that hypothesis is assumed to be correct. Yet the results of this analysis largely falsify that hypothesis. While there are some small indications of change, the present research concludes that on balance, the *seriousness* of criminal charges of ICE arrestees did not change consistently or substantially in relation to the two Executive Orders. A stronger case could be made for the hypothesis on the basis that the prevalence of criminal charges associated with ICE arrestees did increase under Obama and decline under Trump, but the balance of the other evidence supports the competing “coercive federalism” hypothesis: that the enduring differences between the regions made them highly insensitive to the spirit and rhetorical objectives of the Presidential Executive Orders.

With regard to the secondary research questions, regional variance was substantial. This variance is perhaps the strongest evidence against the Presidential dominance hypothesis. The regional variance in severity of arrestee crime was so large, before during and after the policy changes, that it was greater in magnitude from AOR to AOR than it was nationally over time, as demonstrated by the difference in means and the results of the ANOVA. The analysis shows that Presidential power is limited, indeed almost statistical noise, in the face of enduring differences between regions.

A major limitation of the study is the availability of the data, which is far more available during the years of 2014, 2015, and 2016 than in 2017 and beyond. This means that these data offer far more insight about the fate of Obama's policies than of Trump's. The latter's could be just as ineffectual, but there insufficient data to support or refute any predictions. Regardless, the results still merit some interpretation as they relate to Presidential power and coercive federalism.

Interpreting Enforcement Period Differences

Because of the large sample sizes involved, absolute changes in the mean CHI were predictably modest relative to the large range of possible sentence weights each offense could have. The percentage differences in AORs provide a slightly more favorable description of Presidential power across enforcement periods, which produced mean CHI increases upwards of 60 percent, and decreases upwards of 50 percent. Likewise, the percent changes in the proportion of civil offenders, and the results of the ANOVA using enforcement period as a factor variable suggest that enforcement activity under PEP changed, and produced fewer arrests of nonoffenders. Regardless of the way changes are described quantitatively (i.e., absolute vs. percent), changes become more apparent when taken from a conceptual standpoint of the CHI scores.

Determining whether or not PEP 'worked' in the context of each AOR's average CHI values requires not just a comparison of those scores relative to each other across enforcement periods, but comparison to a CHI value that matches the program's purported goals. PEP's highest enforcement priorities were violent felony offenders, national security threats, and gangs. Calculating a mean CHI that includes none of the offenses that fall under those criteria can be calculated approximately 22 months, analogous to the presumptive sentence for aggravated burglary and other serious property crimes. During the Pre-PEP period, 12 AORs fell short of this low standard. The PEP period saw this number shrink modestly to 9 AORs, and the Post-PEP period saw it grow and surpass the Pre-PEP period, with 16 AORs showing a mean CHI less than 22 months.

These findings provide evidence that executive policymaking produced modest changes in the intended directions for both presidents. Each of the executive policies were followed by statistically significant changes in the severity or type of crimes targeted by ICE, based on the absolute changes in mean CHI values. Whether these changes are small or large may be a matter of perspective. But with each new executive policy enacted, the federal bureaucracy responded.

The results of the t-tests for the nationwide aggregate do show a *statistically* significant increase in mean CHI value during the PEP period and an accompanying decrease in the Post-PEP period, but that significance is far from the aspirations of the PEP order. The effects are discernible but very small—two and three months of average recommended imprisonment, respectively—and the consistency of mean CHI scores of the offense types over all three periods also suggests that neither PEP's implementation nor its termination yielded arrests of more or less serious criminal offenders.

Interpreting AOR Differences

Table 12 presents a final test of the Presidential dominance hypothesis, based solely on the extent to which ICE made fewer civil arrests of persons with no criminal charges during PEP than before or after. Like the mean CHI scores themselves, the percentage of arrestees with no criminal offense varied greatly from one AOR to another, with 45 percent of AOR Newark's arrestees being nonoffenders and 3 percent in AOR Buffalo during the Pre-PEP period. The results show that, in fact, ICE did respond to Presidential directives with remarkable consistency, at least compared to the CHI scores. When President Obama's PEP order took effect, 18 of the 24 AORs (75%) reduced the

percentage of ICE arrestees who had no criminal charges and were being removed solely on the basis of a civil immigration violation (from an average of 12% nonoffenders to an average of 7%). Similarly, when President Trump's Executive Order revoked PEP, 20 out of 23 (excluding El Paso which had no reported ICE arrests in that period) or 87% of the active AORs reported increases in the proportion of arrestees who had no criminal charges (from an average of 7% during PEP to 19% after PEP).” Like the percent differences in mean CHI, these findings present a more favorable view of Presidential power (by suggesting that PEP led to fewer civil offenders being arrested by ICE). Indeed, these changes in the proportion of civil arrestees were the strongest evidence for the Presidential dominance hypothesis, but on balance, the evidence produced by analysis weighs against it.

Limitations & Relation to Existing Literature

Findings from the t-tests are consistent with TRAC's own report on PEP (TRAC, 2016), which concluded that PEP only had a modest impact on the number of detainees ICE was issuing each month. It was found that, based on data from the first two months of 2016, half of detainer issuances were against individuals with no criminal record, and that four out of five issuances requested detention, in defiance of the stricter criteria that PEP required for detention requests.

The present analysis was able to supplement these findings by using data that included the rest of 2016, as well as the first two months of 2017, providing an opportunity to make an 'after' comparison for ICE activity under PEP's termination, both at the national and regional level. The ability to track ICE activity in individual AORs allowed for the inclusion of state and local factors whose influence has gone largely

unexplored. The analysis results, however, show that a ratio of an AOR's population under sanctuary jurisdiction to its total population is not a predictor of mean CHI. This failure may come from a flaw in the how the nonfederal resistance variable was operationalized. Using the DHS report for declined detainers produced a variable that was static over time for each AOR, which mischaracterizes an ongoing and active debate by reducing it to the implementation of a loosely defined family of policies. In addition, relying on sanctuary policies alone may not capture the various means by which states and localities resist ICE and federal policy. Manipulating political/institutional cultures, litigating, and exercising administrative discretion are all potential sources of resistance that nonfederal officials can (and indeed have) used to defy the federal government, regardless of the actors' political leanings.

It is worth noting that there were five AORs with a sanctuary population proportion of one-third or greater: Los Angeles, Seattle, New York City, San Francisco, Baltimore, and Philadelphia. These same AORs all showed percentage decreases in the Post-PEP period (regardless of baseline), with Baltimore showing the greatest decreases in both (PEP/Post-PEP=-59%, Pre-PEP/Post-PEP=-58%). Of these five AORs, only the changes in Baltimore and San Francisco were significant across all three periods. Depending on the enforcement period being used for comparison, their mean CHI scores decreased by 13 to 15 months in the Post-PEP period. These findings, however, do reflect any larger pattern in the data and may be considered incidental as they relate to the search for an improved operationalization of the variable.

In addition to the shortcomings of the state and local resistance variable, the analysis is further limited by the unbalanced sample sizes between enforcement periods.

Without data from outside the October 2014–February 2017 period, there remains the possibility that the data from the Pre- and Post-PEP periods do not capture the full range of individuals that ICE arrested preceding and following the period when PEP was active. In other words, there may be fewer serious offenders in the Pre-PEP and Post-PEP simply because ICE had not yet had the chance to arrest them in the limited time period the data cover. The analysis also did not consider longer-term historical trends in the volume or criminality of arrestees, which is one of the explanations TRAC has posited for changes in ICE detainer issuances. Despite these shortcomings, the data source used by this analysis was unique in its completeness among other sources located in ICE's FOIA library. Other datasets lacked information crucial to the analysis; some did not disaggregate nationwide arrests, others did not pair criminality with the AOR. The analysis strongly considered using individual-level detainer data that covered the same period as the arrest data used by analysis, but the former omitted information about an individual's specific offenses. A FOIA request was submitted to ICE for data that would address these shortcomings, but did not receive a reply.

The avenues for future research on immigration enforcement are varied and plentiful. Likewise, the challenges encountered by this research are not insurmountable. If not state and local resistance, one factor driving regional differences could be the geographic distribution of unauthorized noncitizens in the United States. Estimates based on the 2014 American Community Survey suggest that most of the unauthorized population is concentrated in 20 metropolitan areas (Passel & Cohn, 2017), with the New York-Newark-Jersey City area leading at an estimated 1.15 million unauthorized individuals, followed by the Los Angeles-Long Beach-Anaheim area (est. 1 million

individuals) with no other area approaching 1 million. These estimates also noted that unauthorized immigrants tend to live in the same areas as lawful ones. Future analyses may benefit from considering this information—specifically, with respect to how population composition may influence the number and types of individuals who are available for ICE to target.

The lack of offending information in the detainer data could also be overcome by focusing on the classification of an individual's offending into one of the three Secure Communities threat levels, which the detainer data do include. Analyses that elect to use arrest data could likewise look at other policy changes that occurred during the PEP period, such as staffing and leadership changes in ICE. Regardless of the specific data used, future analyses might consider the historical migration and deportation trends that TRAC has offered in conjunction with the other factors offered in the previous section: forms of state and local resistance other than sanctuary policies, as well as the concentration and composition of unauthorized populations across the United States.

Conclusion

The primary purpose of this study was to find out whether Presidential directives about how ICE should prioritize (or not prioritize) individuals for arrest based on criminality actually changed ICE practices, based on when PEP was implemented, as well as when it was terminated. It was hypothesized that, based on the breadth and depth of Presidential power over the enforcement bureaucracy, operational changes would occur that matched the intent of those directives, with the seriousness of crimes rising during PEP and declining after its termination.

By measuring the seriousness of crimes in terms of guideline-mandated prison sentences, the results of the analysis provide an answer to this question. Whether considering the United States as a whole, or in terms of individual ICE AORs, arrests under PEP were not systematically directed towards the kind of serious offenders (or level of seriousness of those offenders) that the directive described, as shown in Figures 5 and 6 (as well as Table 5), despite some statistically significant between-period changes in some AORs.

One criticism of these conclusions may be that, regardless of whether the CHI is a 'superior' metric for comparing arrestee crime or not, using it to assess the implementation of PEP (whose goals were based around targeting specially-defined categories of unauthorized individuals) is an inappropriate or unfair test. Yet the present research, like the Obama Executive Order, was focused on a quantitative concept of targeting immigration violators based on the amount of harm they had previously done to crime victims while present in the U.S. As a matter of both policy and practicality, an immigration enforcement system that wishes to protect U.S. citizens and residents by removing dangerous individuals requires a continuous variable for identifying which individuals (or classes of individuals) are causing the most harm to the public. That is precisely what the CHI provides, and what the three ICE priority levels fail to provide. Making enforcement decisions based on the CHI findings is a crucial first step towards measuring how much prioritization was actually implemented before, during and after the PEP. A count-based system that ignores harm would not be an appropriate fit for answering this study's research question.

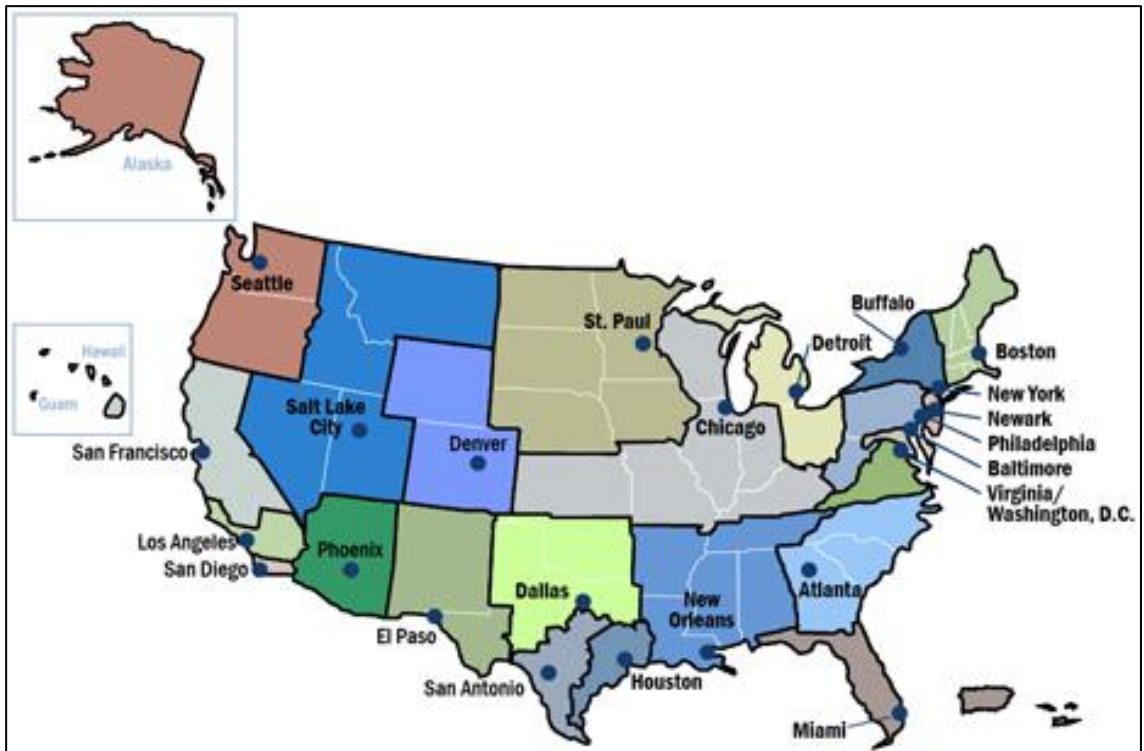
The results of the analysis regarding the second research question—whether any national-level changes that occurred were uniform across ICE jurisdictions—suggest that they were not. The effect sizes of PEP when it was active and when it was rescinded varied greatly from one jurisdiction to another. The hypothesized cause for this variation,

that state and local noncooperation with ICE affected the types of individuals being arrested in their respective jurisdiction, did not find support in the analysis results, as Figure 8, 9, and 10 illustrate. The lack of strong correlations in either direction between the size of an AOR's sanctuary population and mean CHI score suggest that state and local resistance neither increased nor decreased prioritization of serious offenders. This finding presents the possibility that some other factor outside the coercive federalism perspective drove the regional variation in PEP's impact, such as changes in state and local governance or LEA resources.

Rather than making a statement about the power of presidents to create change, these results suggest that Presidential power faces great obstacles even as it travels the formal channels of the executive branch, let alone through the informal interface that exists between federal agents and nonfederal institutions. Indeed, the main contribution of this research to the existing literature is to further demonstrate how regional differences in immigration enforcement *endure* in the face of federal policy changes. Faced with the quasi-independence of other elected, appointed, and career administrators, all of whom are legally empowered to influence policy at their discretion (Figure 11), it seems unlikely that presidents can overcome these regional differences to create a very high level of consistency—at least not without a major changes to the American paradigm of shared but separate powers.

Appendix A

ICE AOR Map



Appendix B

Table of Nonfederal Offenses

ICE-Listed Offense	CHI Offense Category	Minnesota Guidelines Analogue Offense	Guidelines Severity Level	Sentence (in months)
Abduct-No Ransom or Assault	All Other Offenses	Kidnapping (Safe Release)	6	21
Abortifacient (selling, mfg., delivering, etc.)	All Other Offenses	Abortion	U	3
Aggravated Assault - Family-Gun	Aggravated Assault	Assault 1st Degree	9	86
Aggravated Assault - Family-Strongarm	Aggravated Assault	Assault 1st Degree	9	86
Aggravated Assault - Family-Weapon	Aggravated Assault	Assault 1st Degree	9	86
Aggravated Assault - Gun	Aggravated Assault	Assault 1st Degree	9	86
Aggravated Assault - Non-family-Gun	Aggravated Assault	Assault 1st Degree	9	86
Aggravated Assault - Non-family-Strongarm	Aggravated Assault	Assault 1st Degree	9	86
Aggravated Assault - Non-family-Weapon	Aggravated Assault	Assault 1st Degree	9	86
Aggravated Assault - Police Officer-Gun	Aggravated Assault	Assault 1st Degree	9	86
Aggravated Assault - Police Officer-Strongarm	Aggravated Assault	Assault 1st Degree	9	86
Aggravated Assault - Police Officer-Weapon	Aggravated Assault	Assault 1st Degree	9	86
Aggravated Assault - Public Officer-Gun	Aggravated Assault	Assault 1st Degree	9	86
Aggravated Assault - Public Officer-Strongarm	Aggravated Assault	Assault 1st Degree	9	86
Aggravated Assault - Public Officer-Weapon	Aggravated Assault	Assault 1st Degree	9	86
Aggravated Assault - Weapon	Aggravated Assault	Assault 1st Degree	9	86
Aiding Prisoner Escape	All Other Offenses	Aiding Offender to Avoid Arrest	1	12
Altering Identification On Weapon	Weapon offense	Remove or Alter Serial Number on Firearm	1	12
Arson	Arson	Arson 3rd degree	3	12
Arson - Business	Arson	Arson 3rd degree	3	12
Arson - Business-Defraud Insurer	Arson	Arson 3rd degree	3	12
Arson - Business-Endangered Life	Arson	Arson 3rd degree	3	12

Arson - Public Building-Endangered Life	Arson	Arson 3rd degree	3	12
Arson - Public-Building	Arson	Arson 3rd degree	3	12
Arson - Residence	Arson	Arson 3rd degree	3	12
Arson - Residence-Defraud Insurer	Arson	Arson 3rd degree	3	12
Arson - Residence-Endangered Life	Arson	Arson 3rd degree	3	12
Assault	Other Assault	Assault 4th degree	1	12
Assembly - Unlawful	Disorderly Conduct	Misd	2	12
Bail - Personal Recognizance	All Other Offenses	Misd	U	3
Bail - Secured Bond	All Other Offenses	Misd	U	3
Battery	Other Assault	Assault 4th degree	1	12
Bestiality	Sex Offense	Misd	U	3
Body Armor (possession or use in furtherance of crime)	All Other Offenses	Bullet-Resistant Vest During Commission of Crime	1	12
Bribe	All Other Offenses	Bribery	4	12
Bribe - Giving	All Other Offenses	Bribery	4	12
Bribe - Offering	All Other Offenses	Bribery	4	12
Bribe - Receiving	All Other Offenses	Bribery	4	12
Bribery	All Other Offenses	Bribery	4	12
Burglary	Burglary	Burglary 3rd Degree (Non Residential)	4	12
Burglary - Banking-Type Institution	Burglary	Aggravated Robbery 2nd Degree	6	21
Burglary - Forced Entry-Non-Residence	Burglary	Aggravated Robbery 2nd Degree	6	21
Burglary - Forced Entry-Residence	Burglary	Aggravated Robbery 2nd Degree	6	21
Burglary - No Forced Entry-Non-Residence	Burglary	Burglary 3rd Degree (Non Residential)	4	12
Burglary - No Forced Entry-Residence	Burglary	Aggravated Robbery 2nd Degree	6	21
Burglary - Safe-Vault	Burglary	Aggravated Robbery 2nd Degree	6	21
Burglary Tools - Possession	Burglary	Poss. of Burglary Tools	3	12
Burning Of (Identify object in comments)	All Other Offenses	Dangerous Smoking	3	12

Carjacking-Armed	Motor Vehicle Theft	Aggravated Robbery 1st Degree	8	48
Carrying Concealed Weapon	Weapon offense	Certain Persons not to have Firearms or Ammunition	3	12
Carrying Prohibited Weapon	Weapon offense	Certain Persons not to have Firearms or Ammunition	3	12
Commercial Sex	Prostitution and commercialized vice	Prostitution Crime	1	12
Compounding Crime	All Other Offenses	Aiding Offender	1	12
Conceal Stolen Property	Stolen Property; buying, receiving, possessing	Receiving Stolen Goods (\$5,000 or Less)	2	12
Conditional Release Violation	All Other Offenses	Misd	U	3
Conspiracy [use when no underlying offense, such as 18 U.S.C. SEC. 371]	All Other Offenses	Misd	U	3
Contempt Of Court	All Other Offenses	Failure to appear in court	1	12
Contributing to Delinquency of Minor	All Other Offenses	Misd	U	3
Counterfeiting	Forgery and Counterfeiting	Counterfeiting of Currency	U	3
Counterfeiting Of (identify in comments)	Forgery and Counterfeiting	Counterfeiting of Currency	U	3
Crimes Against Person	All Other Offenses	Misd	U	3
Cruelty Toward Child	Offenses Against Family and Children	Malicious Punishment of Child (Substantial Bodily Harm)	4	12
Cruelty Toward Disabled	Offenses Against Family and Children	Criminal Abuse of Vulnerable Adult (Substantial Bodily Harm)	4	12
Cruelty Toward Elderly	Offenses Against Family and Children	Criminal Abuse of Vulnerable Adult (Substantial Bodily Harm)	4	12
Cruelty Toward Wife	Offenses Against Family and Children	Domestic Assault	4	12
Damage Property	Vandalism	Damage to Property (Service to Public, Over \$1,000, Over \$500 and	2	12

		Subsequent)		
Damage Property - Business	Vandalism	Criminal Damage to Property Motivated by Bias	1	12
Damage Property - Business- With Explosive	Vandalism	Arson 3rd Degree	3	12
Damage Property - Private	Vandalism	Criminal Damage to Property Motivated by Bias	1	12
Damage Property - Private- With Explosive	Vandalism	Arson 3rd Degree	3	12
Damage Property - Public	Vandalism	Criminal Damage to Property Motivated by Bias	1	12
Damage Property - Public- With Explosive	Vandalism	Arson 3rd Degree	3	12
Deceptive Business Practices (to include False Advertising)	Fraud	Collusive Bidding/Price Fixing	U	3
Disorderly Conduct	Disorderly Conduct	Misd	U	3
Domestic Violence	Offenses Against Family and Children	Domestic Assault	4	12
Driving Under Influence Drugs	Driving Under the Influence	Felony Driving While Impaired 1st Degree	7	36
Driving Under Influence Liquor	Driving Under the Influence	Felony Driving While Impaired 1st Degree	7	36
Drugs - Adulterated	All Other Offenses	Adulteration	4	12
Drugs - Health or Safety	All Other Offenses	Adulteration	4	12
Drugs - Misbranded	All Other Offenses	Misd	U	3
Embezzle	Embezzlement	Embezzlement of Public Funds (\$2,500 or Less)	2	12
Embezzle - Public Property (U.S., state, city property)	Embezzlement	Embezzlement of Public Funds (\$2,500 or less)	2	12
Enticement of Minor for Indecent Purposes	Sex Offense	Solicitation of Children to Engage in Sexual Conduct	G	15
Enticement of Minor for Indecent Purposes - via Telecommunications	Sex Offense	Solicitation of Children to Engage in Sexual Conduct (Electronic)	G	15
Enticement of Minor for Prostitution	Sex Offense	Engage or Hire a Minor to Engage in	9	86

		Prostitution		
Escape (identify type institution in comments)	All Other Offenses	Escape from Civil Commitment	1	12
Escape From Custody	All Other Offenses	Escape from Civil Commitment	1	12
Establish Gambling Place	Gambling	Gambling Acts	U	3
Evidence - Destroying	All Other Offenses	Aiding Offender	1	12
Exploitation of a Minor	Sex Offense	Criminal Sexual Conduct 5th Degree	F	18
Explosives - Possession	All Other Offenses	Explosive Device or Incendiary Device	6	21
Explosives - Teaching Use	All Other Offenses	Explosive Device or Incendiary Device	6	21
Explosives - Transporting	All Other Offenses	Explosive Device or Incendiary Device	6	21
Explosives - Using	All Other Offenses	Explosive Device or Incendiary Device	6	21
Extortion	All Other Offenses	Coercion (Prop. Value \$301 - \$2500)	2	12
Extortion - Threat Accuse Person Of Crime	All Other Offenses	Coercion (Prop. Value \$301 - \$2500)	2	12
Extortion - Threat Injure Person	All Other Offenses	Coercion (Threat Bodily Harm)	3	12
Failing to Move On	All Other Offenses	Misd	U	3
Failure Report Crime	All Other Offenses	Failure to Report	U	3
Failure To Appear	All Other Offenses	Failure to appear in court	1	12
Failure To Register As A Sex Offender	Sex Offense	Failure to Register as a Predatory Offender	H	12
False Imprisonment	All Other Offenses	False Imprisonment (Restraint)	3	12
False Imprisonment-Minor-Nonparental	All Other Offenses	False Imprisonment (Restraint)	3	12
Family Offense	Offenses Against Family and Children	Misd	U	3
Firing Weapon	Weapon offense	Discharge of Firearm (Reckless)	1	12
Flight - Escape	All Other Offenses	Escape from Civil Commitment	1	12
Flight To Avoid (prosecution, confinement, etc.)	All Other Offenses	Fleeing a Peace Officer	1	12
Forcible Purse Snatching	Robbery	Simple Robbery	5	18
Forgery	Forgery and Counterfeiting	Forgery	1	12
Forgery Of (identify in	Forgery and	Forgery	1	12

comments)	Counterfeiting			
Forgery Of Checks	Forgery and Counterfeiting	Forgery	1	12
Fraud	Fraud	Fraudulent or Improper Financing Statements	U	3
Fraud - False Statement	Fraud	Fraudulent Statements	1	12
Fraud - Illegal Use Credit Cards	Fraud	Financial Transcation Card Fraud	1	12
Fraud - Impersonating	Fraud	Falsely Impersonating Another	U	3
Fraud - Insufficient Funds Check	Fraud	Fraudulent or Improper Financing Statements	U	3
Fraud - Swindle	Fraud	Theft From Person	4	12
Fraud and Abuse - Computer	Fraud	Computer Theft (\$2500 or Less)	2	12
Fraud By Wire	Fraud	Theft From Person	4	12
Frequent House Ill Fame	Prostitution and commercialized vice	Misd	U	3
Gambling	Gambling	Gambling Acts	U	3
Gambling Device - Possession	Gambling	Gambling Acts	U	3
Gang Activity	All Other Offenses	Crime Committed for Benefit of Gang	1	12
Harassing Communication	All Other Offenses	Violation of Harassment Restraining Order	4	12
Harboring Escapee/Fugitive	All Other Offenses	Aiding Offender to Avoid Arrest	1	12
Health - Safety	All Other Offenses	Hazardous Wastes	U	3
Hit and Run	Other Assault	Accidents (Great Bodily Harm)	1	12
Homicide	Homicide	Manslaughter 2nd Degree	8	48
Homicide-John/Jane Doe-No Warr	Homicide	Manslaughter 2nd Degree	8	48
Homicide-Negligent Manslaughter-Vehicle	Homicide	Manslaughter 2nd Degree	8	48
Homicide-Negligent Manslaughter-Weapon	Homicide	Manslaughter 2nd Degree	8	48
Homicide-Willful Kill-Family-Gun	Homicide	Murder 2nd Degree	11	306
Homicide-Willful Kill-Family-Weapon	Homicide	Murder 2nd Degree	11	306

Homicide-Willful Kill-Gun	Homicide	Murder 2nd Degree	11	306
Homicide-Willful Kill-Non-family-Gun	Homicide	Murder 2nd Degree	11	306
Homicide-Willful Kill-Non-family-Weapon	Homicide	Murder 2nd Degree	11	306
Homicide-Willful Kill-Police Officer-Gun	Homicide	Murder 2nd Degree	11	306
Homicide-Willful Kill-Police Officer-Weapon	Homicide	Murder 2nd Degree	11	306
Homicide-Willful Kill-Public Official-Gun	Homicide	Murder 2nd Degree	11	306
Homicide-Willful Kill-Public Official-Weapon	Homicide	Murder 2nd Degree	11	306
Homicide-Willful Kill-Weapon	Homicide	Murder 2nd Degree	11	306
Homosexual Act With Boy	Sex Offense	Criminal Sexual Conduct 1st Degree	A	144
Human Slavery or Trafficking	All Other Offenses	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree	B	144
Identity Theft	Larceny-theft	Identity Theft	8	48
Illegal Arrest	All Other Offenses	False Imprisonment (Substantial Bodily Harm)	4	12
Incendiary Device - Possession	All Other Offenses	Explosive Device or Incendiary Device	6	21
Incendiary Device - Using	All Other Offenses	Explosive Device or Incendiary Device	6	21
Incest With Minor	Sex Offense	Criminal Sexual Conduct 4th Degree	E	24
Indecent Exposure	Sex Offense	Indecent Exposure	G	15
Indecent Exposure to Adult	Sex Offense	Indecent Exposure	G	15
Indecent Exposure to Minor	Sex Offense	Criminal Sexual Conduct 5th Degree	F	18
Interstate Transportation of Stolen Vehicle	Stolen Property; buying, receiving, possessing	Bringing Stolen Goods into State	3	12
Intimidation	All Other Offenses	Tampering with Witness in the First Degree	5	18
Invade Privacy	All Other Offenses	Interference with Privacy (Subsequent Violations & Minor Victim)	1	12
Keeping House Ill Fame	Prostitution and commercialized	Misd	U	3

	vice			
Kickback	All Other Offenses	Bribery	4	12
Kickback - Receiving	All Other Offenses	Bribery	4	12
Kidnap Adult	All Other Offenses	Kidnapping (Safe Release/No Great Bodily Harm)	6	21
Kidnap Adult For Ransom	All Other Offenses	Kidnapping (Great Bodily Harm)	9	86
Kidnap Adult To Sexually Assault	All Other Offenses	Kidnapping (Great Bodily Harm)	9	86
Kidnap Hostage For Escape	All Other Offenses	Kidnapping (Great Bodily Harm)	9	86
Kidnap Minor	All Other Offenses	Kidnapping (Not in Safe Place or Victim Under 16)	8	48
Kidnap Minor For Ransom	All Other Offenses	Kidnapping (Not in Safe Place or Victim Under 16)	8	48
Kidnap Minor To Sexually Assault	All Other Offenses	Kidnapping (Not in Safe Place or Victim Under 16)	8	48
Kidnap Minor-Parental	Offenses Against Family and Children	Kidnapping (Not in Safe Place or Victim Under 16)	8	48
Kidnapping	All Other Offenses	Kidnapping (Safe Release/No Great Bodily Harm)	6	21
Larceny	Larceny-theft	Theft Crimes	2	12
Larceny - From Auto	Larceny-theft	Theft Crimes	3	12
Larceny - From Banking-Type Institution	Larceny-theft	Theft Crimes	4	12
Larceny - From Building	Larceny-theft	Theft	1	12

		from Abandon ed or Vacant Building (\$1,000		
Larceny - From Mails	Larceny-theft	Mail Theft	2	12
Larceny - From Yards	Larceny-theft	Theft Crimes	2	12
Larceny - Parts from Vehicle	Larceny-theft	Theft Crimes	2	12
Larceny - Postal	Larceny-theft	Mail Theft	2	12
Larceny On US Government Reserves	Larceny-theft	Theft Crimes	2	12
Lewd or Lascivious Acts with Minor	Sex Offense	Indecent Exposure	G	15
Licensing - Registration Weapon	Weapon offense	Certain Persons not to have Firearms or Ammunit ion	6	21
Licensing Violation	All Other Offenses	Misd	U	3
Liquor	Liquor laws	Unlawful Acts Involvin g Liquor	1	12
Liquor - Possession	Liquor laws	Unlawful Acts Involvin g Liquor	1	12
Liquor - Sell	Liquor laws	Unlawful Acts Involvin g Liquor	1	12
Liquor - Transport	Liquor laws	Unlawful Acts Involvin g Liquor	1	12
Lottery - Operating	Gambling	Gamblin g Acts	U	3
Mail Fraud	Fraud	Theft From Person	4	12
Making False Report	All Other Offenses	Perjury	5	18
Misconduct - Judicial Officer	All Other Offenses	Misd	U	3

		Criminal Sexual Conduct 5th Degree	F	
Molestation of Minor	Sex Offense			18
Money Laundering-Remarks	All Other Offenses	Misd	U	3
Morals - Decency Crimes	Sex Offense	Misd	U	3
Neglect Child	Offenses Against Family and Children	Child Neglect/Endangerment	5	18
Neglect Family	Offenses Against Family and Children	Nonsupport of Spouse or Child	1	12
Non-support of Parent	Offenses Against Family and Children	Nonsupport of Spouse or Child	1	12
Obscene Communication	Sex Offense	Obscene Materials ; Distribution	U	3
Obscene Material	Sex Offense	Obscene Materials ; Distribution	U	3
Obscene Material - Distribution	Sex Offense	Obscene Materials ; Distribution	U	3
Obscene Material - Possession	Sex Offense	Obscene Materials ; Distribution	U	3
Obscene Material - Sell	Sex Offense	Obscene Materials ; Distribution	U	3
Obscene Material - Transport	Sex Offense	Obscene Materials ; Distribution	U	3
Obstruct (specify Judiciary, Congress, Legislature,	All Other Offenses	Obstructing Legal	3	12

Commission in comments)		Process, Arrest, Firefighting, or		
Obstruct Criminal Invest	All Other Offenses	Obstructing Legal Process, Arrest, Firefighting, or	3	12
Obstruct Police	All Other Offenses	Obstructing Legal Process, Arrest, Firefighting, or	3	12
Obstructing Court Order	All Other Offenses	Obstructing Legal Process, Arrest, Firefighting, or	3	12
Obstructing Justice	All Other Offenses	Obstructing Legal Process, Arrest, Firefighting, or	3	12
Parole Violation	All Other Offenses	Misd	U	3
Pass Counterfeited (identify in comments)	Forgery and Counterfeiting	Forgery	1	12
Pass Forged (identify in comments)	Forgery and Counterfeiting	Forgery	1	12
Peeping Tom	All Other Offenses	Interference with Privacy (Subsequent Violations & Minor Victim)	1	12
Perjury	All Other Offenses	Perjury	5	18
Perjury - Subornation Of	All Other Offenses	Perjury	5	18
Possession Counterfeited (identify in comments)	Forgery and Counterfeiting	Forgery	1	12
Possession Forged (identify in comments)	Forgery and Counterfeiting	Forgery	1	12
Possession Of Weapon	Weapon offense	Dangerous	3	12

		Weapons /Certain Persons Not to Have Firearms or Ammunition		
Possession Stolen Property	Stolen Property; buying, receiving, possessing	Receiving Stolen Goods (\$5,000 or Less)	2	12
Possession Stolen Vehicle	Stolen Property; buying, receiving, possessing	Receiving Stolen Goods (Over \$5,000)	3	12
Possession Tools For Forgery/Counterfeiting	Forgery and Counterfeiting	Aggravated Forgery (Misc. Non-Check)	2	12
Probation Violation	All Other Offenses	Misd	U	3
Procure For Prostitute (pimping)	Prostitution and commercialized vice	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 2nd Degree	C	48
Procure for Prostitute Who Is a Minor	Prostitution and commercialized vice	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 2nd Degree	C	48
Procure for Prostitute Who is	Prostitution and	Solicits,	C	48

an Adult	commercialized vice	Promotes , or Receives Profit Derived from Prostituti on; Sex Trafficki ng 2nd Degree		
Property Crimes	All Other Offenses	Misd	U	3
Prostitution	Prostitution and commercialized vice	Misd	U	3
Public Order Crimes	Disorderly Conduct	Misd	U	3
Public Peace	Disorderly Conduct	Misd	U	3
Rape - Disabled	Forcible Rape	Criminal Sexual Conduct 1st Degree	A	144
Rape - Drug-Induced	Forcible Rape	Criminal Sexual Conduct 1st Degree	A	144
Rape - Elderly	Forcible Rape	Criminal Sexual Conduct 1st Degree	A	144
Rape - Gun	Forcible Rape	Criminal Sexual Conduct 1st Degree	A	144
Rape - Remarks	Sex Offense	Indecent Exposure	G	15
Rape - Strongarm	Forcible Rape	Criminal Sexual Conduct 1st Degree	A	144
Rape With Weapon	Forcible Rape	Criminal Sexual Conduct 1st Degree	A	144
Receive Stolen Property	Stolen Property; buying, receiving, possessing	Receive Stolen goods	2	12

		(\$5000 or less)		
Receiving Stolen Vehicle	Stolen Property; buying, receiving, possessing	Receiving Stolen Goods (Over \$5000)	3	12
Refusing To Aid Officer	All Other Offenses	Refusal to Assist	U	3
Resisting Officer	All Other Offenses	Obstructing Legal Process, Arrest, Firefighting, or	3	12
Riot	Disorderly Conduct	Riot 2nd degree	2	12
Riot - Engaging in	Disorderly Conduct	Riot 2nd degree	2	12
Riot - Interfere Officer	Disorderly Conduct	Riot 2nd degree	2	12
Robbery	Robbery	Simple Robbery	5	18
Robbery - Banking-Type Institution	Robbery	Aggravated Robbery 1st Degree	8	48
Robbery - Business Weapon	Robbery	Aggravated Robbery 1st Degree	8	48
Robbery - Business-Gun	Robbery	Aggravated Robbery 1st Degree	8	48
Robbery - Business-Strongarm	Robbery	Aggravated Robbery 2nd Degree	6	21
Robbery - Residence-Gun	Robbery	Aggravated Robbery 1st Degree	8	48
Robbery - Residence-Strongarm	Robbery	Aggravated Robbery	6	21

		2nd Degree		
Robbery - Residence-Weapon	Robbery	Aggravated Robbery 1st Degree	8	48
Robbery - Street-Gun	Robbery	Aggravated Robbery 1st Degree	8	48
Robbery - Street-Strongarm	Robbery	Aggravated Robbery 2nd Degree	6	21
Robbery - Street-Weapon	Robbery	Aggravated Robbery 1st Degree	8	48
Sale Of Stolen Property	Stolen Property; buying, receiving, possessing	Theft Crimes	2	12
Sales Tax	All Other Offenses	Tax Evasion Laws	3	12
Selling Weapon	Weapon offense	Theft Crimes	2	12
Sex Assault	Forcible Rape	Criminal Sexual Conduct 5th Degree	F	18
Sex Assault - Carnal Abuse	Forcible Rape	Criminal Sexual Conduct 5th Degree	F	18
Sex Assault - Disabled	Forcible Rape	Criminal Sexual Conduct 1st Degree	A	144
Sex Assault - Elderly	Forcible Rape	Criminal Sexual Conduct 1st Degree	A	144
Sex Assault - Sodomy-Boy-Strongarm	Forcible Rape	Criminal Sexual	A	144

		Conduct 1st Degree		
Sex Assault - Sodomy-Girl-Gun	Forcible Rape	Criminal Sexual Conduct 1st Degree	A	144
Sex Assault - Sodomy-Girl-Strongarm	Forcible Rape	Criminal Sexual Conduct 1st Degree	A	144
Sex Assault - Sodomy-Girl-Weapon	Forcible Rape	Criminal Sexual Conduct 1st Degree	A	144
Sex Assault - Sodomy-Man-Strongarm	Forcible Rape	Criminal Sexual Conduct 1st Degree	A	144
Sex Assault - Sodomy-Man-Weapon	Forcible Rape	Criminal Sexual Conduct 1st Degree	A	144
Sex Assault - Sodomy-Woman-Gun	Forcible Rape	Criminal Sexual Conduct 1st Degree	A	144
Sex Assault - Sodomy-Woman-Strongarm	Forcible Rape	Criminal Sexual Conduct 1st Degree	A	144
Sex Assault - Sodomy-Woman-Weapon	Forcible Rape	Criminal Sexual Conduct 1st Degree	A	144
Sex Offender Registration Violation	Sex Offense	Failure to Register as a Predator y Offender	H	12
Sex Offense	Sex Offense	Criminal Sexual	E	24

		Conduct 4th Degree		
Sex Offense - Disabled	Forcible Rape	Criminal Sexual Conduct 4th Degree	E	24
Sex Offense Against Child- Fondling	Sex Offense	Criminal Sexual Conduct 5th Degree	F	18
Sexual Assault - Drug-Induced	Forcible Rape	Criminal Sexual Conduct 4th Degree	F	18
Sexual Exploitation of Minor - Exhibition of Minor	Sex Offense	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 2nd Degree	C	48
Sexual Exploitation of Minor - Material - Film	Sex Offense	Use Minors in Sex Performance	E	24
Sexual Exploitation of Minor - Material - Photograph	Sex Offense	Use Minors in Sex Performance	E	24
Sexual Exploitation of Minor - Material - Transport	Sex Offense	Dissemination of Child Pornography	E	24
Sexual Exploitation of Minor - Prostitution	Sex Offense	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 2nd Degree	C	48
Sexual Exploitation of Minor - Sex Performance	Sex Offense	Use Minors in Sex Performance	E	24
Sexual Exploitation of Minor - Via Telecommunications	Sex Offense	Solicitation of Children to Engage in Sexual Conduct (Electronic)	G	15
Shoplifting	Larceny-theft	Theft Crimes	2	12
Simple Assault	Other Assault	Assault 4th degree	1	12
Smuggle Contraband	All Other Offenses	Bring Contraband into State Prison	4	12
Smuggle Contraband Into Prison	All Other Offenses	Bring Contraband into State Prison	4	12
Smuggling	All Other Offenses	Bring Contraband into State Prison	4	12
Statutory Rape - No Force	Sex Offense	Criminal Sexual Conduct 5th Degree	F	18
Stolen Property	Stolen Property; buying, receiving, possessing	Receiving Stolen Goods (\$5000 or Less)	2	12
Stolen Vehicle	Stolen Property; buying, receiving,	Receiving Stolen Goods (Over \$5000)	3	12

	possessing			
Tax Revenue	All Other Offenses	Tax Evasion Laws	3	12
Terrorism	All Other Offenses	Threats of Violence (Terror/Evacuation)	4	12
Theft And Sale Vehicle	Motor Vehicle Theft	Theft of Motor Vehicle	4	12
Theft And Strip Vehicle	Motor Vehicle Theft	Theft of Motor Vehicle	4	12
Theft And Use Vehicle Other Crime	Motor Vehicle Theft	Theft of Motor Vehicle	4	12
Theft Of US Government Property	Larceny-theft	Larceny, Embezzlement, and Other Forms of Theft	6	21
Threat Terroristic State Offenses	All Other Offenses	Threats of Violence (Terror/Evacuation)	4	12
Threat To Bomb	All Other Offenses	Threats of Violence (Terror/Evacuation)	4	12
Threat To Burn	All Other Offenses	Threats of Violence (Terror/Evacuation)	4	12
Traffic Offense	All Other Offenses	Misd	U	3
Transmit Wager Information	Gambling	Gambling Acts	U	3
Transport Interstate for Sexual Activity	Sex Offense	Misd	U	3
Transport Interstate Stolen Property	Stolen Property; buying, receiving, possessing	Bringing Stolen Goods into State	2	12
Treason Misprision	All Other Offenses	Misd	U	3
Trespassing	All Other Offenses	Misd	U	3
Unauthorized Use of Vehicle (includes joy riding)	Motor Vehicle Theft	Motor Vehicle Use Without Consent	3	12
Vehicle Theft	Motor Vehicle Theft	Theft of Motor Vehicle	4	12
Violation of a Court Order	All Other Offenses	Failure to appear in court	1	12
Voluntary - Manslaughter	Homicide	Manslaughter 1st Degree	8	48
Voyeurism	All Other Offenses	Interference with Privacy (Subsequent Violations & Minor Victim)	1	12
Weapon Offense	Weapon offense	Dangerous Weapons/Certain Persons Not to Have Firearms or	3	12

		Ammunition		
Witness - Dissuading	All Other Offenses	Tampering with Witness, Aggravated 1st Degree	9	86

Appendix C

Table of Federal Offenses and CHI Scores

ICE-Listed Offense	CHI Crime Type	Federal Guidelines Analogue Offense	Guidelines Severity Level	Median Sentence (in months)
Amphetamine	Drug	Quantity Table	6	4
Amphetamine - Manufacturing	Drug	Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses)	26	70.5
Amphetamine - Possession	Drug	Quantity Table	6	4
Amphetamine - Sell	Drug	Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses)	26	70.5
Antitrust	All Other Offenses	Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors	12	13
Barbiturate - Manufacturing	Drug	Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses)	26	70.5
Barbiturate - Possession	Drug	Quantity Table	6	4
Barbiturate - Sell	Drug	Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses)	26	70.5
Cocaine	Drug	Quantity Table	6	4
Cocaine - Possession	Drug	Quantity Table	6	4
Cocaine - Sell	Drug	Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses)	26	70.5
Cocaine - Smuggle	Drug	Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses)	26	70.5
Conservation - Animals	All Other Offenses	Offenses Involving Fish, Wildlife, and Plants	6	4
Conservation - Birds	All Other Offenses	Offenses Involving Fish, Wildlife, and Plants	6	4
Conservation - Environment	All Other Offenses	Offenses Involving Fish, Wildlife, and Plants	6	4
Conservation - Fish	All Other	Offenses Involving Fish, Wildlife, and Plants	6	4

	Offenses			
Conservation - License-Stamp	All Other Offenses	Offenses Involving Fish, Wildlife, and Plants	6	4
Dangerous Drugs	Drug	Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses)	26	70.5
Drug Possession	Drug	Quantity Table	6	4
Drug Trafficking	Drug	Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses)	26	70.5
Espionage	All Other Offenses	Gathering or Transmitting National Defense Information to Aid a Foreign Government	37	236
False Citizenship	Immigration	Fraudulently Acquiring Documents Relating to Naturalization, Legal Resident Status, or a United States Passport; False Statement in Citizenship, or Legal Resident Status for Own Use; False Personation or Fraudulent Marriage by Alien to Evade Immigration Law; Fraudulently Acquiring or Improperly Using a United States Passport	11	11
Hallucinogen - Distribution	Drug	Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses)	26	70.5
Hallucinogen - Manufacturing	Drug	Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses)	26	70.5
Hallucinogen - Possession	Drug	Quantity Table	6	4
Hallucinogen - Sell	Drug	Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses)	26	70.5
Heroin	Drug	Quantity Table	6	4
Heroin - Possession	Drug	Quantity Table	6	4
Heroin - Sell	Drug	Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses)	26	70.5
Heroin - Smuggle	Drug	Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses)	26	70.5
Illegal Entry (INA SEC.101(a)(43)(O), 8USC1325 only)	Immigration	Unlawfully Entering or Remaining in the United States	8	4
Illegal Re-Entry (INA	Immigration	Unlawfully Entering or Remaining in the United States	8	4

SEC.101(a)(43)(O), 8USC1326 only)				
Immigration (Possess of Fraud. Immigration Docs)	Immigration	Fraudulently Acquiring Documents Relating to Naturalization, Citizenship, or Legal Resident Status for Own Use; False Personation or Fraudulent Marriage by Alien to Evade Immigration Law; Fraudulently Acquiring or Improperly Using a United States Passport	8	4
Immigration (Trafficking of Fraud. Immigration Documents)	Immigration	Trafficking in a Document Relating to Naturalization, Citizenship, or Legal Resident Status, or a United States Passport; False Statement in Respect to the Citizenship or Immigration Status of Another; Fraudulent Marriage to Assist Alien to Evade Immigration Law	11	11
Kidnap-Hijack Aircraft	All Other Offenses	Aircraft Piracy or Attempted Aircraft Piracy	38	264
Marijuana	Drug	Quantity Table	6	4
Marijuana - Possession	Drug	Quantity Table	6	4
Marijuana - Sell	Drug	Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses)	26	70.5
Marijuana - Smuggle	Drug	Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses)	26	70.5
Marijuana (describe offense)	Drug	Quantity Table	6	4
Narcotic Equip - Possession	Drug	Quantity Table	6	4
Opium Or Derivatives	Drug	Quantity Table	6	4
Opium Or Derivatives - Possession	Drug	Quantity Table	6	4
Opium Or Derivatives - Sell	Drug	Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses)	26	70.5
Opium Or Derivatives - Smuggle	Drug	Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses)	26	70.5
Racketeer Influenced and Corrupt Organizations Act (RICO)	All Other Offenses	Unlawful Conduct Relating to Racketeer Influenced and Corrupt Organizations	19	33.5
Sabotage	All	Destruction of, or Production of Defective, War	32	136

	Other Offenses	Material, Premises, or Utilities		
Smuggling Aliens	Immigration	Smuggling, Transporting, or Harboring an Unlawful Alien	12	13
Synthetic Narcotic	Drug	Quantity Table	6	4
Synthetic Narcotic - Possession	Drug	Quantity Table	6	4
Synthetic Narcotic - Sell	Drug	Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses)	26	70.5
Synthetic Narcotic - Smuggle	Drug	Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses)	26	70.5
Transport Counterfeited (identify in comments)	Forgery and Counterfeiting	Trafficking in a Document Relating to Naturalization, Citizenship, or Legal Resident Status, or a United States Passport; False Statement in Respect to the Citizenship or Immigration Status of Another; Fraudulent Marriage to Assist Alien to Evade Immigration Law	11	11
Transport Forged (identify in comments)	Forgery and Counterfeiting	Trafficking in a Document Relating to Naturalization, Citizenship, or Legal Resident Status, or a United States Passport; False Statement in Respect to the Citizenship or Immigration Status of Another; Fraudulent Marriage to Assist Alien to Evade Immigration Law	11	11
Transporting Dangerous Material	All Other Offenses	Mishandling of Hazardous or Toxic Substances or Pesticides; Recordkeeping, Tampering, and Falsification; Unlawfully Transporting Hazardous Materials in Commerce	8	4
Treason	All Other Offenses	Treason	43	360
Weapon Trafficking	Weapon offense	Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition	6	4

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