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ARTICLE

Prosecutors, court communities, and policy change: The impact of internal DOJ reforms on federal prosecutorial practices*

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Abstract

The current study examines how key internal U.S. Department of Justice (DOJ) policy changes have been translated into front-line prosecutorial practices. Extending courts-as-communities scholarship and research on policy implementation practices, we use U.S. Sentencing Commission data from 2004 to 2019 to model outcomes for several measures of prosecutorial discretion in federal drug trafficking cases, including the use of mandatory minimum charges and prosecutor-endorsed departures, to test the impact of the policy changes on case processing outcomes. We contrast prosecutorial measures with measures that are more impervious to discretionary manipulation, such as criminal history, and those that represent judicial and blended discretion, including judicial departures and final sentence lengths. We find a significant effect of the policy reforms on how prosecutorial tools are used across DOJ policy periods, and we find variation across districts as a function of contextual conditions, consistent with the court communities literature. We also find that a powerful driver of changes in prosecutorial practices during our most recent period is

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the confirmation of individual Trump-appointed U.S. Attorneys at the district level, suggesting an important theoretical place for midlevel actors in policy translation and implementation.

KEYWORDS

prosecutors, court communities, policy change

The power of federal prosecutors was substantially enhanced in the 1980s when Congress authorized a rigid sentencing guidelines system and passed several mandatory minimum sentencing statutes (Stith & Cabranes, 1998), shifting a significant share of discretionary power from judges to prosecutors (Johnson et al., 2016; Stith & Cabranes, 1998). At the micro-organizational level, these policy reforms triggered dramatic changes to day-to-day federal criminal justice. U.S. Attorneys' offices brought many more criminal matters to federal court, especially drug cases, where they could get easy convictions by wielding their enhanced adjudicatory power (Lynch, 2016). And even though guideline sentences are now advisory rather than mandatory, prosecutors' influence over the parameters of convictions and sentences remains strong (Hofer, 2019; Starr & Rehavi, 2013), and the guidelines continue to anchor sentencing outcomes (Bennett, 2014).

Although a growing body of research examines the role of prosecutors in the federal system, few studies have examined how different policy directives shape their criminal charging, plea bargaining, and sentencing advocacy practices. Given the outsized influence of the 93 U.S. Attorneys' offices¹ in the day-to-day functioning of the federal criminal system, the internal policy prerogatives of the Department of Justice (DOJ) can have huge sway in how cases are adjudicated. Over the last three presidential administrations, several key policy changes have aimed to direct U.S. Attorneys' offices as to how federal criminal cases should be handled. First, in 2003, George W. Bush's first Attorney General (AG), John Ashcroft, issued a memorandum that required U.S. Attorneys to pursue the most serious charges that are readily provable, seek the maximum possible sentence allowed, and obtain DOJ approval for plea bargains that deviated from those mandates (Ashcroft, 2003). Then, in 2010 under the Obama administration, AG Eric Holder issued a general memorandum that reversed these mandates and encouraged individual U.S. Attorneys' offices to exert more individualized discretion in charging and plea-bargaining practices (Holder, 2010). Three years later, AG Holder issued a more targeted memorandum on drug cases, directing U.S. Attorneys' offices not to charge drug weight when it would trigger a mandatory minimum prison sentence for low-level drug defendants who met qualifying criteria (Holder, 2013). Finally, soon after Trump's inauguration, AG Jeff Sessions issued a memorandum that rescinded both Holder policies and generally resurrected the 2003 Ashcroft policy mandates (Sessions, 2017a).

In this article, we empirically examine how these key internal DOJ policy changes have translated into prosecutorial practices on the ground for federal drug trafficking cases sentenced between 2005 and 2019. We have three goals with these analyses. First, we contribute to the criminological literature on how policy reform, especially internal policy reform, gets put into action

¹ Prosecutors in the federal criminal system operate under the Offices of the U.S. Attorneys, with one office located in each federal district except Guam and the Northern Mariana Islands, which share an office. U.S. Attorneys are presidential appointees who serve as the "chief federal law enforcement officer[s] of the United States within [their] particular jurisdiction[s]," directing prosecutorial efforts in each district (U.S. Department of Justice, 2016).

at the micro-organizational level (e.g., Rengifo et al., 2017). Second, we add to the growing body of empirical research (e.g., Johnson, 2018) that teases out how prosecutorial power impacts case processes and outcomes within the “inhabited institutions” (Ulmer, 2019, p. 483) of federal criminal courts. Finally, we methodologically expand and enhance the approaches used to define, conceptualize, and measure legal processes and outcomes in federal court. Similar to studies that highlight the role of different court actors’ discretion in the state (Bushway & Piehl, 2001; Ulmer et al., 2007) and federal (Hartley et al., 2007; Rehavi & Starr, 2014) systems, we capture several measures of prosecutorial discretion, including final offense levels, mandatory minimums, and prosecutor-endorsed departures, and contrast them with measures that are more impervious to discretionary manipulation and those that represent judicial and blended discretion in the federal system. As we demonstrate, a powerful driver of changes to prosecutorial practices during the most recent policy period is the confirmation of individual Trump-appointed U.S. Attorneys at the district level, suggesting an important theoretical place for midlevel actors in policy translation and implementation.

1 | FEDERAL PROSECUTORS, THE COURTROOM WORKGROUP, AND THE COURT COMMUNITY

Eisenstein and Jacob (1977) developed the concept of the “courtroom workgroup” to describe the interdependent relationship between judges, prosecutors, and defense attorneys, as well as key courtroom staff, in how they process and dispose of cases in criminal court. Courtroom workgroups are characterized by their shared goals, specialized roles among workgroup members, and coordination to complete tasks and achieve those goals (Eisenstein & Jacob, 1977). Within these social units, the discretionary power of any given member is relational, and within the triad of judge–prosecutor–defense attorney, the balance of power is shaped by external forces like the jurisdiction’s substantive criminal codes, procedural rules, and sentencing policies, as well as by internally developed norms and relations (Ulmer, 2019).

Eisenstein et al. (1988) further contextualized the courtroom workgroup by arguing that local court jurisdictions, in which courtroom workgroups are embedded, operate as “court communities,” or somewhat insular social worlds that develop their own procedures, ideologies, and understandings. The courts-as-communities metaphor captures the enduring relations, interdependencies, and norms that develop among organizational actors in a given court, and marks the differences that exist between how different courts do business and produce outcomes, even under the same penal code (Ulmer, 2012, 2019; Ulmer & Johnson, 2017). To that end, the court–communities scholarship highlights the importance of localized norms, mores, and scripts in both meaning-making and strategic action (Hester, 2017; Ulmer, 2005). It also suggests that local courtroom workgroups, which develop, maintain, and transmit those norms, partially account for the relative stability within courtroom communities over time as well as for the between-locale variation that has been observed within legal jurisdictions (Hester, 2017; Lynch & Omori, 2014; Ulmer, 2012).

Although the prosecutor role is constrained both by the interpersonal dynamics of the courtroom workgroup and by the local cultural norms and expectations about appropriate outcomes in criminal cases, the role comes with immense discretion (Johnson et al., 2016). In that regard, prosecutors hold a distinct power advantage over others in court (Flemming, 1990). Prosecutors have the sole discretion to bring charges, or not, against potential defendants and to determine the substance of the charges (Lynch, 2018; McCoy et al., 2012; Stemen & Escobar, 2018). Prosecutors also have considerable discretion in steering the terms of guilty pleas (Davis, 2007;

Metcalfe & Chiricos, 2018; Shermer & Johnson, 2010; Wright & Engen, 2006). Decision-making regarding charges and the terms of plea bargains is especially insular, and it has been relatively impervious to the pressures imposed by other courtroom actors or by the larger community (Davis, 2007; Johnson & Larroulet, 2019), even though such discretion explains a substantial amount of variation in sentencing decisions (Johnson & Larroulet, 2019; Kutateladze, 2018; Rehavi & Starr, 2014; Shermer & Johnson, 2010; Stemen & Escobar, 2018; Wright & Engen, 2006).

Empirical examinations of prosecutorial practices remain sparse, primarily as a result of data access challenges (Baumer, 2013; Johnson, 2018). Existing studies indicate that a variety of factors influence prosecutorial decisions regarding whether to file charges (Hartley & Tillyer, 2018; Kutateladze et al., 2015; Lynch, 2018) and/or reduce charges (Kutateladze, 2018; Johnson, 2018; Johnson & Larroulet, 2019; Shermer & Johnson, 2010). Not surprisingly, evidentiary factors play a role in that decision-making (Hartley & Tillyer, 2018; Kutateladze et al., 2015), as do perceived witness and victim cooperation with the prosecutor (Davis et al., 2003; Spohn et al., 2001). Additionally, race, gender, and age of suspects and/or victims, as well as victims' perceived "moral" characteristics, can influence the likelihood of criminal charges being filed (Beichner & Spohn, 2005; Frohmann, 1997; McCoy et al., 2012; Spohn et al., 2001; Spohn & Holleran, 2001; Worrall et al., 2006).

Charging and plea-bargaining practices vary considerably by locality, at both the county (Kramer & Ulmer, 2002; Ulmer & Johnson, 2004) and federal district levels (Johnson, 2018; Johnson et al., 2008; Kautt, 2002; Spohn & Fornango, 2009), suggesting that prosecutors wield their power differently in part as a result of the insular worlds of their court communities. In regard to variations in plea bargaining, Johnson (2018) found that prosecutors' rate of charge reductions in the plea process was quite disparate across the federal districts, ranging from approximately 3 percent to more than 35 percent of a district's caseload. Additionally, prosecutors in larger districts and those with more caseload pressure were more likely to use charge reductions. The most significant predictor, however, was historical use of charge reductions in a given district, suggesting enduring norms about modes of plea bargaining. Researchers have also found variation in substantial assistance departure rates both by individual prosecutors and by district (Spohn & Fornango, 2009), and that substantial assistance departures are more likely to be granted in districts with higher caseload pressure (Johnson et al., 2008; see also, Hartley et al., 2007).

Qualitative field research has fleshed out how differences in district-level prosecutorial norms and practices shape case outcomes. In a comparative study of four federal districts, Ulmer (2005) examined how several prosecutor-controlled legal mechanisms were differentially deployed as a function of local court context. He found that although the guidelines structured the parameters of plea negotiations, the meanings and values assigned to the components of the guidelines (particularly around items central to plea bargaining such as "substantial assistance") varied by local district (Ulmer, 2005). More recent comparative field research confirms that federal prosecutors develop localized norms as to the terms of plea agreements, including the use and value of departures, and how "relevant conduct" to calculate offense levels is determined, resulting in significant differences between districts in both processes and outcomes (Lynch, 2016).

1.1 | Translating criminal justice policy change into local action

Research examining how laws and policies are put into action at the front lines of the criminal system makes clear that policy implementation takes shape in myriad ways, and that policy reforms get implemented through localized worldviews and operational norms (Grattet & Jenness, 2005;

Rengifo et al., 2017; Verma, 2015). This line of research suggests that resistance to policy change is especially likely when it increases workload (Gebo et al., 2006); limits discretionary power of frontline actors (Steiner et al., 2011); and/or challenges accepted norms and values held by front-line staff (Bell, 2002; Rengifo et al., 2017).

This body of research also highlights the importance of local actors' translation processes as to how any policy change is interpreted, absorbed, and acted on (Cheliotis, 2006), and demonstrates how the mandates of policy are transformed by various modes of adaptation and circumvention (Young, 2013). Verma's (2015) comparative analysis of how county-level practitioner workgroups translated California's criminal justice "Realignment" statute, designed to reduce use of state imprisonment, into local policy plans illustrates this process. She demonstrates that historical penal practices at the county level served as a lens through which local workgroup members made sense of the new law and devised plans for its implementation. The interpretation processes of local organizational leaders in turn shape how front-line actors put policy into action (Grattet & Jenness, 2005). Field research examining reform efforts in policing (Willis et al., 2007) and reentry (Rengifo et al., 2017) highlight the pivotal role that those in management and supervisory roles play in translating reforms into actionable policy and its implementation.

Analyses of policy change in the federal system have primarily focused on exogenous policy reforms imposed on courtroom workgroups, most notably the mandatory federal guideline sentencing system, authorized by Congress in 1984 and designed by the United States Sentencing Commission. Soon after the guidelines went into effect, Schulhofer and Nagel (1989, 1996; Nagel & Schulhofer, 1992) found that although sentences were made to look policy compliant, federal prosecutors sometimes circumvented the guidelines through localized plea-bargaining practices. One of these practices involved the manipulation of how offense-level scores were calculated, even though offense levels were intended to mechanically reflect the culpability of a defendant's crimes. Guideline circumvention was most common where the guideline sentences were especially out of line with preguideline local sentencing norms. Along those lines, Anderson et al. (1999) found that although inter-judge sentencing disparity between different locales was reduced somewhat after the guidelines' implementation, this formal back-end reduction appeared to mask increased front-end disparities produced through prosecutorial charging practices and other presentencing discretionary decision-making (see also Hofer et al., 1999).

The second major policy reform that has generated empirical analysis was the U.S. Supreme Court-imposed change to the federal guidelines announced in *U.S. v. Booker* (2005). In the *Booker* case, the U.S. Supreme Court ruled that the federal sentencing guidelines as then implemented violated defendants' 6th Amendment rights, and the Court's remedy was to render the guidelines advisory, rather than mandatory. *Booker* was followed by two cases that made clear that judges could deviate from the guidelines (*Gall v. U.S.*, 2007; *Kimbrough v. U.S.*, 2007). Research suggests that prosecutors responded to these policy changes by using other tools at their disposal, including their autonomy over charging and bargaining practices, to maintain control over sentencing outcomes. For example, Starr and Rehavi (2013) examined how *Booker* impacted prosecutorial charging practices as well as final sentences. The researchers found that directly following *Booker*, prosecutors were significantly more likely to lodge charges subject to mandatory minimums against Black defendants, contributing to an increase in Black-White sentencing disparity, which then waned as prosecutors began to charge more mandatory minimum cases against White defendants. Fischman and Schanzenbach (2012) also found more frequent use of mandatory minimums largely explained observed increases in Black-White sentencing disparity after the *Booker* line of cases. Similarly, Ulmer and colleagues (Ulmer et al., 2011a, 2011b) found that sentencing

disparities in the post-*Booker* period appeared to be primarily a result of prosecutorial behavior, not of increased judicial discretion (Ulmer & Light, 2011; see also, Hofer, 2019).

Three recent studies have analyzed district-level variation in response to the *Booker* line of decisions. Lynch and Omori (2014) found that districts maintained considerable internal stability in case outcomes across several policy periods, including the post-*Booker* period, while consistently varying from each other. The mechanisms used to maintain that stability, however, changed as a function of policy period, suggesting that court actors adapted adjudication practices to both meet the demands of policy reform mandates while maintaining their local case norms for actual sentence outcomes. Kim et al. (2016) found that several district-level contextual factors moderated the effect of the *Booker* line of cases on sentence lengths, including the Black population percentage, socioeconomic disadvantage, and political conservatism in the district. The authors concluded that their results “add to a growing body of research demonstrating that sentencing policies are interpreted and implemented in different ways in different court systems” (Kim et al., 2016, p.1098 [internal citations omitted]). Most recently, in an interview study of adaptations to *Booker* in four federal districts, Lynch (2019) found that a dynamic, proactive adaptation process took place, conditioned by local norms. Among other strategies, prosecutors across the districts tried to limit judges’ increased sentencing discretion through the use of binding plea agreements, as well as threats of mandatory minimum charges and enhancements that were intended to effectuate defense compliance.

Taken together, the research on responses to policy change in the federal system suggests that federal prosecutors play an important role in translating how external policy mandates impact case processing among courtroom workgroups and court communities. Although early in the guidelines period, prosecutors worked with defense attorneys to tame the punitive outcomes dictated by the new guideline system (Schulhofer & Nagel, 1989, 1996; Nagel & Schulhofer, 1992), over time, they came to use the guidelines and mandatory minimums to ensure harsh punishment (Fischman & Schanzenbach, 2012). Post-*Booker*, prosecutors have used their charging and plea-bargaining power to limit the increased judicial discretion that came with advisory guidelines (Fischman & Schanzenbach, 2012; Lynch, 2019; Lynch & Omori, 2014; Starr & Rehavi, 2013). This latter observation highlights not only federal prosecutors’ vast power to shape sentencing outcomes through front-end decision-making but also how prosecutors wield this power in response to policy change. Finally, these studies illustrate how local organizational practices, workgroup dynamics, and community factors moderate the impact of exogenous policy mandates on local district courts (Kim et al., 2016; Lynch & Omori, 2014; Lynch, 2019).

What remains an empirical question is how *internal* policies, devised and imposed from within the DOJ, are received and implemented by the disparate U.S. Attorneys’ offices that are responsible for prosecuting federal crimes. Although there is legal writing about these policies and their implications for prosecutorial practice (e.g., Ely, 2004, on the Ashcroft memo; Schraub, 2012, on the 2010 Holder memo; Hotaling, 2015, on the Holder 2013 memo), no empirical analyses to date have examined how internal DOJ policy change impacts charging, plea negotiation, and/or sentence outcomes. Moreover, even though a growing body of work has begun to directly examine front-line prosecutorial behavior in the federal system (e.g., Johnson et al., 2008; Lynch, 2016; Ulmer, 2005; Wu & Spohn, 2010), questions remain as to the role of district-level organizational leaders—the appointed U.S. Attorneys—in whether and how macro-level policy, whether internally or externally imposed, gets translated and put into practice. As research in other settings has demonstrated (e.g., Rengifo et al., 2017; Verma, 2015), this represents an important mechanism in the policy implementation process.

1.2 | The present study

The overarching goal with the present research is to assess whether and how internal DOJ policy change impacts both adjudication practices and processes, as well as outcomes, with a focus on how formal top-down policy is translated into localized, on-the-ground legal action. We seek to answer the following broad question in this research: How are DOJ internal policy directives that aim to change criminal adjudication procedures translated into district-level practice, and how do those adaptations vary as a function of local legal settings?

We focus on three DOJ policy changes over two recent presidential administrations. First, under President Obama, AG Holder issued a memorandum in 2010 designed to reduce the punitiveness of federal sentences. Reversing prevailing policy under President Bush, the memo encouraged federal prosecutors to conduct an individualized assessment of the proper charges and sentences to pursue in each case, rather than pursuing only the maximum possible penalty (Holder, 2010). Although the memo authorized more individualized discretion by prosecutors, it gave few details as to how this discretion should be exercised. A second memorandum, issued by Holder in 2013, was more specific, stating explicitly that prosecutors should not pursue mandatory minimum charges in drug trafficking cases where the offense did not involve violence, when the defendant was not a leader of a criminal organization, had no significant ties to drug trafficking organizations, and did not have a significant criminal history (Holder, 2013). The 2013 memorandum also directed prosecutors to decline seeking recidivist enhancements pursuant to 21 U.S.C. § 851 that required significantly longer mandatory minimums, unless these enhancements were fully justified by the severity of conduct.²

In May 2017, under then-AG Jeff Sessions, the DOJ issued a memorandum that explicitly rescinded the Holder policies and returned to a more punitive approach. Specifically, it aimed to reduce local discretion in charging, plea negotiation, and adjudication practices by requiring federal prosecutors to charge and seek convictions on “the most serious, readily provable offense” (Sessions, 2017a). This included maximizing the potential punishment in cases that U.S. Attorneys bring to federal court, seeking mandatory minimum sentences for all eligible defendants, and requiring supervisor approval to deviate from the directive. In rescinding the Holder memos, the Sessions memo effectively reinstated the charging policy guidance established by AG John Ashcroft in a charging policy memo issued in 2003 (Ashcroft, 2003).

Following the approach of several recent studies of the federal system (Fischman & Schanzenbach, 2012; Rehavi & Starr, 2014; Yang, 2015), we include multiple outcomes that are designed to capture prosecutorial behavior likely to change in response to DOJ policy memos. We contrast these with other measures that better represent either judicial or more blended discretion between prosecutors and judges, which are less likely to change as a function of DOJ policies. We first examine *offense levels*, which are designed to reflect the seriousness of a defendant’s criminal conduct and serve as one of the two criteria that are used to determine the recommended sentence length under the federal sentencing guidelines. Although probation officers and judges also have influence over offense levels through discretionary fact-finding processes, in practice prosecutors wield significant influence over offense levels via the facts they choose to disclose to probation for guideline calculation (Lynch, 2016; Ulmer, 2005). We contrast this measure with

² When prosecutors sought it, the so-called “851” enhancement at that time doubled the 10-year drug mandatory minimum to 20 years where the defendant had one prior qualifying drug conviction, and it mandated a life without parole sentence for drug trafficking defendants with two or more qualifying drug priors. In 2014, Holder issued a memorandum that barred prosecutors from using the threat of this enhancement as a plea-bargaining tool (Holder, 2014).

the second component of guidelines-recommended sentences, *criminal history categories*, which are largely impervious to manipulation by legal actors in the adjudication process (Ouziel, 2017).

We then analyze changes in the use of particular prosecutorial tools. Although *binding mandatory minimum sentences* are intended to apply mechanically whenever evidentiary criteria are met, in reality the application of a binding mandatory minimum sentence is largely within the purview of federal prosecutors, who control both the disclosure of facts that trigger mandatory minimum eligibility and the application of 5K1.1 substantial assistance motions that permit defendants to be sentenced below the statutory minimum (Fischman & Schanzenbach, 2012; Lynch & Omori, 2014; Rehavi & Starr, 2014; Yang, 2015). We also consider how charging policy mandates might influence *prosecutor-endorsed downward departures* from the guideline-recommended sentence. Endorsement of downward departures is one of the primary mechanisms whereby federal prosecutors can exert influence over final sentence lengths. We contrast these measures of prosecutorial practices with *judicial downward departures* from the guidelines recommended sentence, which are less likely to change as a result of DOJ policies.

We also include three sentencing measures to capture both absolute and relative changes to sentencing. We include a dichotomous measure for whether the defendant received a sentence of *incarceration*, as opposed to probation or another alternative sentence. For defendants who were incarcerated, we analyze final *sentence lengths* in months.³ Both of these measures reflect the amalgamation of decision-making by the full courtroom workgroup, and therefore may change in response to DOJ policies, but not likely to the same degree as changes in prosecutorial behavior alone. We also examine the *proportion of the guideline minimum* to analyze changes in sentences relative to guidelines recommendations. This variable refers to the proportion of the guideline minimum recommended sentence actually imposed by the court at sentencing. This proportion largely reflects judicial discretion exercised in relation to the formal guideline calculation, and therefore, it is unlikely to change substantially over the DOJ policy periods.

Our hypotheses regarding these outcomes can be summarized as follows:

- H1:** Prosecutor-driven outcomes, including average *offense levels*, *binding mandatory minimums*, and *prosecutor-endorsed downward departures*, will change significantly over policy periods.
- H2:** Average *criminal history categories*, which are relatively impervious to manipulation, and judicially determined outcomes, including *judicial downward departures* and average *proportion of the guideline minimum imposed*, will not change significantly over policy periods.
- H3:** Outcomes reflecting blended prosecutorial and judicial discretion, including *incarceration* and *average sentence lengths*, will change significantly over policy periods but not as substantially as prosecutor-driven outcomes.
- H4:** Based on literature regarding court communities and local actors' translation processes, district-level organizational and contextual factors, including the installation of a Trump-appointed U.S. Attorney, will moderate the impact of the Sessions 2017 memo on our outcomes of interest.

³ We estimate separate models for incarceration and sentence length because it allows for predictors to have different effects on the likelihood of incarceration relative to sentence lengths (Ulmer et al., 2011b). Additionally, the USSC data do not provide exclusion restrictions theoretically relevant to incarceration but not sentence lengths, and use of a selection bias correction without exclusion restrictions results in multicollinearity in the second stage equation (Bushway et al., 2007). In these circumstances, Bushway et al. (2007, p. 173) concluded that "it is better to simply acknowledge the threat of selection and estimate the simple Two-Part Model," as we do here.

2 | DATA AND METHOD

Our primary data are sourced from the U.S. Sentencing Commission (USSC) records on defendants sentenced in U.S. District Courts during fiscal years 2005–2019 (October 2004–September 2019), including a final sample of 327,943 drug trafficking defendants in 90 districts.⁴ We identified cases where drug trafficking was the primary offense, as defined by the guidelines (2D.1).⁵ We supplemented these individual data with yearly district-level measures from the Federal Judicial Center, Federal Court Management Statistics, Uniform Crime Reports, and U.S. Attorney appointment information from the DOJ, as well as time-invariant district characteristics from the 2010 U.S. Census.

2.1 | Variables

2.1.1 | Outcomes of interest

Offense levels and *criminal history categories* are modeled as continuous outcomes, with offense levels ranging 1–43 and criminal history categories ranging 1–6. We coded *binding mandatory minimum* status as a binary indicator, with defendants receiving a 1 if they were eligible for a statutory mandatory minimum and received a sentence at or above the statutory minimum.⁶ We include a binary variable for *prosecutor-endorsed downward departures*, which includes 5K1.1 substantial assistance motions, as well as other departures below the guideline-recommended sentence that were justified on the basis of either a plea agreement, a motion from the federal prosecutor, or a defense motion to which the federal prosecutor did not object. Although the lack of an objection does not constitute explicit endorsement of the departure motion, in practice this is how such silence is often interpreted by judges in federal district courts (Lynch, 2016). We exclude fast track departures, which are applied largely as a function of location in a border district (Fischman & Schanzenbach, 2012; Lynch, 2016).

We coded a binary *judicial downward departure* as any other departure below the guidelines recommended sentence that was not justified on the basis of support from the federal prosecutor. Prosecutor-endorsed departures and judicial downward departures are mutually exclusive because judges do not make departure determinations until after the prosecution and defense have presented the plea agreement and/or their sentencing motions. Accordingly, we exclude defendants who received a prosecutor-endorsed departure from our judicial downward departure models.

For our binary *incarceration* measure, defendants receive a 1 if they were sentenced to some period of incarceration. For incarcerated defendants, we then analyzed final *sentence length* in

⁴We excluded courts in the territories of Puerto Rico, Guam, the Northern-Mariana Islands, and the Virgin Islands, and then we employed casewise deletion, removing 1.5 percent of cases.

⁵Specifically, we defined drug trafficking cases as cases where the controlling Guideline was one of the following: 2D1.1, 2D1.2, 2D1.5, 2D1.6, 2D1.8, 2D1.10, and 2D1.14.

⁶Because the available federal data do not code for whether the “851” mandatory-minimum enhancement was applied, we were unable to directly examine whether there were changes to its use across policy periods.

months.⁷ Following the U.S. Sentencing Commission and prior federal sentencing research, we cap sentence length at 470 months. The *proportion of the guideline minimum* was constructed by dividing a defendant's final sentence length by the minimum sentence recommended under the sentencing guidelines. Both sentence length and the proportion of the guideline minimum imposed were log-transformed to better approximate a normal distribution.

2.1.2 | Policy period variables

Our models include a series of binary indicators reflecting the policy period in which a defendant was sentenced. These include the periods following the Holder 2010 memo (May 2010–July 2013), the Holder 2013 memo (August 2013–April 2017), and the 2017 Sessions memo (May 2017–September 2019), with the pre-Holder 2010 memo period (October 2004–April 2010) serving as the reference category. To better isolate the independent effects of these charging policies from trends driven by changes in presidential administrations, we also include binary variables indicating whether a defendant was sentenced during the Obama administration (January 2009–December 2016) or Trump administration (January 2017–September 2019), with the Bush administration (October 2004–December 2008) serving as the reference category.

We also control for two important drug policy changes introduced during our sample period. First, we control for the effects of the 2010 Fair Sentencing Act on crack cocaine cases by interacting our crack cocaine dummy with a dummy reflecting whether the defendant was sentenced after the passage of the Fair Sentencing Act. Second, we control for the across-the-board decreases in drug offense levels included in the 2014 USSC Guidelines Amendments by including a binary indicator for defendants sentenced after the 2014 amendments in our offense-level model. Finally, we include a running time variable corresponding to fiscal year (FY2005 = 1; FY2006 = 2; etc.), along with a time-squared term, to control for gradual time trends across our entire sample period, independent of policy changes (see Kim et. al., 2016; Starr & Rehavi, 2013).

2.1.3 | Individual-level controls

We include several individual-level measures from the USSC sentencing data to control for changes in the defendant pool over our sample period. These include dummy variables for conviction at trial and pretrial detention, as well as controls for primary drug type (powder cocaine, crack cocaine, heroin, methamphetamine, and other drug, with marijuana as the reference category). We also include dummy variables for defendant race/ethnicity (Black, Latinx, and other race, with Whites serving as the reference category), male gender, and noncitizen status. Age is included as a continuous predictor, along with an age-squared term to control for potential curvilinear effects. For our offense-level and criminal history models, we include a dummy variable for career offender status since that impacts both of these measures. We estimate sentence models both with and without prior case decision controls, including logged guideline presumptive sentence, binding mandatory minimum status, and prosecutor-endorsed downward departures.

⁷ In FY2018, the USSC altered the calculation of its primary sentencing variable “senttot.” To establish a uniform sentence length outcome for our sample, we recreated the original “senttot” variable by uniformly scaling and summing together its individual components—“timeservd,” “timeservm,” “ch5g13st,” “totprsn,” and “totdays”—across our full sample.

2.1.4 | Organizational and contextual variables

From the USSC sentencing data, we derive several district-level annual drug trafficking caseload characteristics, each of which is designed to capture different aspects of local context and courtroom dynamics. These include percent non-White defendants, percent sentenced to a binding mandatory minimum, percent judicial downward departure recipients, average sentence length, and average proportion of the guidelines minimum imposed. From the Federal Court Management Statistics, we include the annual district-level criminal caseload per judge to reflect caseload pressures (Johnson, 2018). From the Federal Judicial Center biographical data on federal district court judges, we derive an annual measure of the percentage of district court judges appointed by Republican presidents. From the 2010 U.S. Census, we also include two district-level, time-invariant measures of socioeconomic disadvantage and the Black population percentage (Feldmeyer & Ulmer, 2011). We compiled an annual measure of the state-level violent crime rate per 100,000 residents from Uniform Crime Reports by dividing the annual number of violent crimes by the state population as determined by the 2010 U.S. Census and then multiplying by 100,000.⁸ All continuous organizational and contextual variables were mean centered and standardized by year.⁹ We used a series of dummy variables to capture U.S. geographical regions (Midwest, South, and West, with the Northeast as reference category).

We also include a binary variable indicating whether the defendant was sentenced after a Trump-appointed U.S. Attorney was sworn into the district. Relative to previous administrations, U.S. Attorney appointments under the Trump administration were extremely staggered and drawn out, allowing us to examine the role of local organizational leaders in policy change. At the conclusion of fiscal year 2019, Trump-appointed U.S. Attorneys were installed in only 81 of the 90 districts, with appointment dates spanning August 2017 to May 2019. These appointments showed no clear pattern as none of the district-level factors included in the study exhibited even a moderate correlation to U.S. Attorney appointment dates.¹⁰

⁸ Because UCR data were only available through 2018, we employ prior year rather than current year measures for this variable. We employ state-level crime data primarily out of ease of data collection. Although aggregating county-level crime data to the district-level would avoid imputing crime totals from larger geographic units (i.e., states) to smaller subunits (i.e., federal districts), at the time of writing, county-level UCR data on ICPSR were only available through 2016. We felt that using state-level data to include more recent years was a worthwhile trade-off.

⁹ USSC data are organized by fiscal year (October–September), whereas our other annual level-2 variables were organized by calendar year (January–December). We merged the latter set of variables to our USSC data based on a numerical match between fiscal and calendar year, thereby maximizing the number of overlapping months between the two sets of data (January–September).

¹⁰ A potential endogeneity issue arises from the fact that the Trump administration may have appointed U.S. attorneys earlier in districts that were already likely to be responsive to the punitive mandates included in the Sessions 2017 memo. To test for this issue, we also ran supplemental models that focused only on later U.S. Attorney appointments made 12 and 18 months (respectively) after the Trump administration assumed office. The results for these supplemental models were almost identical to those reported below, indicating that observed U.S. Attorney effects were not driven by early appointments in districts already predisposed to policy responsiveness.

2.2 | Modeling strategy

We employ a multilevel modeling strategy with sentenced individuals at level 1 nested in federal districts at level 2. Our level-1 models take the following functional form:

$$Y_{ij} = \beta_{0j} + \beta_{1j} (\textit{Sessions 2017}) + \beta_{20} (\textit{Trump US Attorney}) + \Gamma_{10} (\textit{Holder Memos}) \\ + \Gamma_{20} (\textit{Presidential Administration}) + \Gamma_{30} X_{ij} + \varepsilon_{ij} \quad (1.1)$$

where Y_{ij} represents the outcome of interest for an individual i in federal district j ; β_{0j} represents the random intercept, which varies across districts; β_{1j} represents the effect of the Sessions memo, which varies across districts; β_{20} represents the fixed effect of having a Trump-appointed U.S. Attorney sworn into the district after the Sessions memo; X_{ij} represents a vector of individual-level control variables with coefficients, Γ_{30} , fixed across districts; and ε_{ij} is the individual-level error term. Both *Holder Memos* and *Presidential Administration* refer, respectively, to sets of dummy variables for the Holder charging policy memos and the presidential administration. Models for continuous outcomes employ an identity link function, while models for our binary outcomes employ a logit link function (Raudenbush & Bryk, 2002).

The random intercept and random slope equations at level-2 are specified as follows:

$$\beta_{0j} = \gamma_{00} + \Gamma_{40} Z_{1j} + \mu_{0j} \quad (1.2)$$

$$\beta_{1j} = \gamma_{10} + \Gamma_{50} Z_{1j} + \mu_{1j} \quad (1.3)$$

For the random intercept equation 1.2, γ_{00} represents the average intercept value across federal districts; Z_{1j} represents a vector of district- and state-level variables with a Γ_{40} vector of effects on the random intercept β_{0j} ; and μ_{0j} represents the residual district-level variation. For the random slope equation 1.3, γ_{10} represents the average policy effect across federal districts; Z_{1j} represents the vector of district- and state-level predictors with a Γ_{50} vector of moderating effects on the random coefficient β_{1j} ; and μ_{1j} represents the residual district-level variation. Although we ultimately tested all Z_{1j} level-2 predictors for significant effects, our final models include only level-2 predictors that exhibited statistically significant effects on our Sessions 2017 coefficient.

All models were estimated with robust standard errors to insulate fixed-effects estimates from potential deviations from normality in random effects distributions (Raudenbush & Bryk, 2002). For all outcomes, we begin by fitting a fully unconditional model to estimate the district-level variation for each outcome, σ^2_{u0} (see Raudenbush & Bryk, 2002). We then estimate a model that includes our level-1 controls as well as our level-2 predictors of the random intercept (β_{0j}) to assess policy period effects independent of changes in these observed caseload characteristics. In this model, we also allow the coefficient for the Sessions memo (β_{1j}) to vary across districts in order to examine variation in the memo's district-specific effects. Finally, we estimate a model that includes our level-2 predictors of the Sessions memo effect (equation 1.3) to assess the degree to which contextual and organizational factors account for differences in the memo effect across districts.

In the Results section that follows, we start with descriptive statistics for our variables of interest. We then explore our first hypothesis model results for prosecutor-driven outcomes (offense levels, binding mandatory minimums, and prosecutor-endorsed departures). We then turn to the

second hypothesis model results for criminal history category and judicially determined outcomes (judicial downward departures and the proportion of the guidelines minimum imposed). Finally, we examine the third hypothesis model results on blended discretion sentencing outcomes of incarceration and sentence length. Throughout these model results, we also explore the fourth hypothesis about whether district-level organizational and contextual factors moderate the impact of the Sessions 2017 memo.

3 | RESULTS

3.1 | Descriptive statistics

Table 1 includes summary statistics by policy period for the drug trafficking cases in our sample. Prosecutor-driven outcomes indicate different responses to policy time periods in general. Although average offense levels did not change substantially over the policy periods, the imposition of mandatory minimums decreased after the 2010 and 2013 Holder memos relative to the pre-2010 Holder memo period, and they rose again after the 2017 Sessions memo. Prosecutor-endorsed downward departures increased over the Holder memo policy periods and then dipped in the Sessions memo period. Conversely, the average guideline minimum sentence (and sentence length) decreased after the Holder memo periods and increased after the Sessions memo. Notable differences are also evident among individual-level case characteristics. In particular, not only did the number of drug cases decline over the memo time periods, but also the primary drug types in federal trafficking cases changed dramatically. The proportion of trafficking cases primarily involving powder or crack cocaine declined across policy periods, whereas the proportion of heroin and methamphetamine cases more than doubled.

Additionally, the racial and ethnic composition of the caseload changed from the pre-Holder memo period, with Black defendants proportionately decreasing and Latinx defendants increasing. The percentage of defendants convicted at trial declined from 4.4 percent in the pre-Holder 2010 period to 2.5 to 2.6 percent in the Holder 2013 and Sessions 2017 memo periods. Although this difference is small, it is nonetheless noteworthy in light of the considerable “trial penalties” that accompany sentences following a trial conviction in federal court (Ulmer et al., 2010). Approximately 54.4 percent of defendants sentenced in the Sessions memo period were sentenced after a sworn Trump-appointed U.S. Attorney had been installed in the district.

3.2 | Prosecutor-driven outcomes

Table 2 includes model results for our prosecutor-driven outcomes: offense levels (models 1–2), binding mandatory minimums (models 3–4), and prosecutor-endorsed departures (models 5–6).

Figure 1 shows trends in monthly average offense level across time periods. Mean offense levels fell slightly during the Holder 2010 memo period before rising again in the Holder 2013 and Sessions memo periods. As reflected in model 1, contrary to our expectations, none of the DOJ policy memos were associated with significant average effects on offense levels. Individual districts, however, exhibited significant variation in their responses to the Sessions memo ($\sigma^2_{u1} = .930$; $p < .001$). We introduce level-2 predictors of this district-level variation in model 2. Districts with higher judicial departure rates saw significant increases in offense levels after the Sessions memo, whereas districts with lower judicial departure rates saw significant decreases in offense levels

TABLE 1 Descriptive statistics for drug trafficking sample (FY2005–FY2019; *N* = 327,943)

| | Pre- Holder 2010 | | Holder 2010 | | Holder 2013 | | Sessions 2017 | |
|-------------------------------------|--------------------|----------|-------------------|----------|-------------------|----------|-------------------|----------|
| Percent of Total Federal Caseload | 32.51% | | 28.76% | | 28.35% | | 26.61% | |
| Cases per Month | 2,038 | | 1,968 | | 1,651 | | 1,567 | |
| Sample Size | <i>n</i> = 134,498 | | <i>n</i> = 76,148 | | <i>n</i> = 73,448 | | <i>n</i> = 43,849 | |
| Level-1 Variables | | | | | | | | |
| Drug Type | | | | | | | | |
| Marijuana | 24.91% | - | 26.57% | - | 17.63% | - | 9.86% | - |
| Powder Cocaine | 23.29% | - | 22.68% | - | 19.12% | - | 18.00% | - |
| Crack Cocaine | 22.42% | - | 15.49% | - | 9.77% | - | 7.84% | - |
| Heroin | 6.10% | - | 8.24% | - | 13.14% | - | 13.75% | - |
| Meth | 18.96% | - | 20.45% | - | 32.73% | - | 42.43% | - |
| Other Drug | 4.32% | - | 6.58% | - | 7.62% | - | 8.12% | - |
| Demographics | | | | | | | | |
| White | 25.54% | - | 24.52% | - | 24.01% | - | 24.29% | - |
| Black | 30.49% | - | 27.14% | - | 25.16% | - | 26.49% | - |
| Latinx | 40.66% | - | 45.48% | - | 47.87% | - | 46.30% | - |
| Other Race | 3.31% | - | 2.87% | - | 2.96% | - | 2.93% | - |
| Male | 87.76% | - | 86.69% | - | 84.58% | - | 83.94% | - |
| Noncitizen | 28.62% | - | 30.43% | - | 26.92% | - | 24.14% | - |
| Age | 33.42 | (9.80) | 34.33 | (10.08) | 35.48 | (10.29) | 36.08 | (10.35) |
| Trial | 4.42% | - | 3.22% | - | 2.53% | - | 2.62% | - |
| Pretrial Detention | 78.86% | - | 78.37% | - | 78.62% | - | 81.93% | - |
| Career Offender | 7.19% | - | 7.32% | - | 7.83% | - | 6.95% | - |
| GL Minimum Without Statutory Trumps | 113.39 | (483.88) | 109.21 | (500.92) | 126.40 | (613.75) | 150.82 | (732.57) |
| GL Minimum With Statutory Trumps | 187.67 | (951.64) | 154.08 | (799.00) | 143.00 | (705.85) | 159.04 | (746.41) |
| Presidential Administration | | | | | | | | |
| Bush | 76.14% | - | - | - | - | - | - | - |
| Obama | 23.86% | - | 100% | - | 91.20% | - | - | - |
| Trump | - | - | - | - | 8.80% | - | 100% | - |
| Level-2 Variables | | | | | | | | |
| Trump-Appointed U.S. Attorney | - | - | - | - | - | - | 54.41% | - |
| Republican-Appointed Judge % | 61.91% | (14.25%) | 60.14% | (16.03%) | 53.73% | (18.63%) | 52.75% | (19.76%) |
| Annual Criminal Caseload per Judge | 152.38 | (139.85) | 187.45 | (180.10) | 148.28 | (148.94) | 172.51 | (182.34) |

(Continues)

TABLE 1 (Continued)

| | Pre- Holder 2010 | | Holder 2010 | | Holder 2013 | | Sessions 2017 | |
|---|------------------|----------|-------------|----------|-------------|----------|---------------|----------|
| District Socioeconomic Disadvantage | -.10 | (.70) | -.10 | (.67) | -.08 | (.66) | -.09 | (.69) |
| District Percent Black | 11.78% | (9.16%) | 11.16% | (8.98%) | 11.08% | (8.90%) | 11.47% | (9.10%) |
| District-Level Drug Trafficking Caseload | | | | | | | | |
| % Non-White | 74.43% | (16.63%) | 75.42% | (20.52%) | 76.03% | (18.00%) | 75.26% | (18.17%) |
| % Binding Mandatory Minimum | 30.72% | (14.02%) | 26.79% | (12.87%) | 23.23% | (11.63%) | 28.62% | (12.40%) |
| % Judicial Departure Recipients | 11.60% | (7.59%) | 15.04% | (9.92%) | 16.60% | (10.69%) | 18.50% | (11.99%) |
| Average Sentence Length (Months) | 83.03 | (29.87) | 73.76 | (26.08) | 71.47 | (24.13) | 79.81 | (25.51) |
| Average Proportion of GL Min Imposed | .85 | (.11) | .83 | (.13) | .79 | (.15) | .82 | (.16) |
| State-Level Predictor | | | | | | | | |
| Violent Crime Rate per 100,000 Residents | 151.67 | (78.30) | 150.41 | (71.45) | 141.58 | (69.33) | 145.36 | (69.77) |
| Region | | | | | | | | |
| Northeast | 13.08% | - | 13.17% | - | 12.75% | - | 12.69% | - |
| Midwest | 18.48% | - | 14.94% | - | 15.84% | - | 16.75% | - |
| South | 48.04% | - | 45.49% | - | 46.62% | - | 47.55% | - |
| West | 20.40% | - | 26.39% | - | 24.79% | - | 23.02% | - |
| Sentencing Variables | | | | | | | | |
| Offense Level | 24.81 | (7.31) | 24.16 | (7.37) | 24.60 | (7.45) | 25.57 | (7.20) |
| Criminal History Category | 2.36 | (1.74) | 2.33 | (1.72) | 2.47 | (1.77) | 2.59 | (1.81) |
| Mandatory Minimum Sentence | 36.07% | - | 31.78% | - | 27.97% | - | 34.99% | - |
| Prosecutor-Endorsed Downward Departure | 31.19% | - | 34.38% | - | 42.84% | - | 38.08% | - |
| Judicial Downward Departure | 11.56% | - | 15.13% | - | 16.51% | - | 18.45% | - |
| Incarcerated | 96.26% | - | 94.86% | - | 93.55% | - | 96.40% | - |
| Sentence Length (Months) | 83.44 | (75.67) | 74.06 | (67.23) | 71.66 | (63.48) | 80.44 | (66.75) |
| Proportion of GL Min Imposed | .85 | (.55) | .83 | (.64) | .79 | (.77) | .82 | (.85) |

Notes: Dichotomous variables are summarized as percentage of drug trafficking sample with value of 1. Continuous variables are summarized by sample means with standard deviations in parentheses.

TABLE 2 Multilevel model results: Prosecutor-driven outcomes

| | Offense Level | | Binding Mandatory Minimum | | Prosecutor-Endorsed Departure | |
|--|-----------------------|-----------------------|---------------------------|-----------------------|-------------------------------|-----------------------|
| | Model 1 Coef./(SE) | Model 2 Coef./(SE) | Model 3 Coef./(SE) | Model 4 Coef./(SE) | Model 5 Coef./(SE) | Model 6 Coef./(SE) |
| Unconditional Model | | | | | | |
| District-Level Variation in Intercept (σ^2_{i0}) | 4.199 (.718)*** | | .289 (.043)*** | | .373 (.065)*** | |
| Intraclass Correlation | 8.1% | | 8.1% | | 10.2% | |
| Policy Memo Effects | | | | | | |
| Holder 2010 | .157 (.168) | .146 (.168) | -.009 (.031) | .003 (.032) | .092 (.040)* | .093 (.038)* |
| Holder 2013 | .114 (.163) | .086 (.155) | -.384*** (.057) | -.332*** (.059) | .550 (.070)*** | .552 (.067)*** |
| Sessions 2017 | .327 (.194) | .344 (.189) | -.135 (.079) | .173 (.161) | .446 (.072)*** | .444 (.071)*** |
| Level-2 Predictors of Sessions 2017 Memo Effect | | | | | | |
| Trump-Appointed U.S. Attorney | | -.105 (.130) | | .167 (.061)** | | .007 (.041) |
| Drug Trafficking Caseload: % Judicial Departure Recipients | | .302 (.117)* | | | | -.111 (.041)** |
| Drug Trafficking Caseload: % Non-White | | -.300 (.104)** | | | | |
| Midwest | | | | -.291 (.167) | | |
| West | | | | -.333 (.172) | | |
| South | | | | -.454 (.169)** | | |
| Other Time Period Controls | | | | | | |
| Obama Administration | -.225 (.097)* | -.223 (.097)* | -.003 (.036) | -.007 (.035) | .024 (.055) | .023 (.056) |
| Trump Administration | -.181 (.164) | -.198 (.164) | -.033 (.050) | -.001 (.051) | -.028 (.087) | -.027 (.084) |
| Time | -.041 (.056) | -.049 (.059) | -.016 (.014) | -.005 (.014) | .072 (.017)*** | .073 (.018)*** |
| Time-Squared | .004 (.003) | .005 (.004) | .002 (.001) | .001 (.001) | -.005 (.001)*** | -.005 (.001)*** |
| Post-2014 Guidelines Amendment | -1.113 (.164)*** | -1.137 (.162)*** | | | | |

(Continues)

TABLE 2 (Continued)

| | Offense Level | | Binding Mandatory Minimum | | Prosecutor-Endorsed Departure | |
|---|------------------------------|------------------------------|------------------------------|------------------------------|-------------------------------|------------------------------|
| | | | | | | |
| Level-1 Predictors | | | | | | |
| Powder Cocaine | 6.318 (.474) ^{***} | 6.318 (.474) ^{***} | -.204 (.114) | -.204 (.114) | .107 (.074) | .106 (.074) |
| Crack Cocaine | 8.012 (.395) ^{***} | 8.012 (.395) ^{***} | .221 (.111) [*] | .221 (.111) [*] | -.096 (.080) | -.096 (.080) |
| FSA*Crack Cocaine | -2.512 (.185) ^{***} | -2.511 (.185) ^{***} | -.216 (.061) ^{***} | -.217 (.061) ^{***} | -.031 (.052) | -.031 (.052) |
| Heroin | 5.048 (.483) ^{***} | 5.048 (.483) ^{***} | -.231 (.112) [*] | -.230 (.113) [*] | -.012 (.075) | -.012 (.075) |
| Meth | 9.368 (.464) ^{***} | 9.366 (.464) ^{***} | -.104 (.117) | -.103 (.117) | -.009 (.064) | -.009 (.064) |
| Other Drug | 4.547 (.331) ^{***} | 4.547 (.331) ^{***} | -1.717 (.148) ^{***} | -1.718 (.148) ^{***} | .166 (.075) [*] | .166 (.075) [*] |
| Black | -.032 (.143) | -.032 (.143) | .270 (.038) ^{***} | .270 (.038) ^{***} | -.448 (.033) ^{***} | -.448 (.033) ^{***} |
| Latinx | 1.232 (.154) ^{***} | 1.231 (.154) ^{***} | .164 (.037) ^{***} | .165 (.037) ^{***} | -.438 (.029) ^{***} | -.437 (.029) ^{***} |
| Other Race | .273 (.302) | .274 (.302) | .017 (.071) | .018 (.071) | -.189 (.068) ^{**} | -.189 (.068) ^{**} |
| Male | 1.444 (.143) ^{***} | 1.444 (.143) ^{***} | .733 (.033) ^{***} | .733 (.033) ^{***} | -.509 (.050) ^{***} | -.509 (.050) ^{***} |
| Non-U.S. Citizen | -.039 (.290) | -.038 (.290) | -.465 (.050) ^{***} | -.465 (.050) ^{***} | -.062 (.045) | -.062 (.045) |
| Age | .268 (.024) ^{***} | .268 (.024) ^{***} | .027 (.009) ^{**} | .027 (.009) ^{**} | .003 (.007) | .003 (.007) |
| Age-Squared | -.003 (.000) ^{***} | -.003 (.000) ^{***} | -.000 (.000) ^{***} | -.000 (.000) ^{***} | -.000 (.000) | -.000 (.000) |
| Trial | 5.917 (.161) ^{***} | 5.918 (.161) ^{***} | 1.408 (.057) ^{***} | 1.408 (.057) ^{***} | -2.826 (.168) ^{***} | -2.826 (.168) ^{***} |
| Pretrial Detention | 1.836 (.148) ^{***} | 1.837 (.148) ^{***} | .799 (.038) ^{***} | .798 (.038) ^{***} | -.729 (.026) ^{***} | -.729 (.026) ^{***} |
| Career Offender | 5.523 (.145) ^{***} | 5.524 (.145) ^{***} | | | | |
| Logged Guideline Presumptive Sentence | | | 1.285 (.090) ^{***} | 1.285 (.090) ^{***} | .692 (.029) ^{***} | .693 (.029) ^{***} |
| Level-2 Predictors of Random Intercept | | | | | | |
| Republican-Appointed Judge % | -.401 (.130) ^{**} | -.401 (.130) ^{**} | -.014 (.054) | -.012 (.054) | -.029 (.087) | -.030 (.087) |
| Annual Criminal Caseload per Judge | -.249 (.207) | -.247 (.208) | -.041 (.041) | -.043 (.043) | -.024 (.065) | -.024 (.065) |
| District Socioeconomic Disadvantage | -.198 (.149) | -.205 (.149) | -.107 (.058) | -.106 (.058) | .030 (.106) | .031 (.106) |
| District Percent Black | .227 (.193) | .233 (.194) | .017 (.061) | .017 (.061) | .087 (.092) | .085 (.093) |
| Violent Crime Rate per 100,000 Residents | -.079 (.111) | -.085 (.110) | -.086 (.038) [*] | -.085 (.038) [*] | .049 (.044) | .050 (.044) |
| Midwest | 1.028 (.406) [*] | 1.025 (.407) [*] | .563 (.189) ^{**} | .569 (.190) ^{**} | -.670 (.195) ^{***} | -.667 (.195) ^{***} |
| West | .188 (.448) | .183 (.448) | .509 (.195) ^{**} | .516 (.196) ^{**} | -.354 (.187) | -.350 (.188) |

(Continues)

TABLE 2 (Continued)

| | Offense Level | | Binding Mandatory Minimum | | Prosecutor-Endorsed Departure | |
|---|-----------------|-----------------|---------------------------|------------------|-------------------------------|------------------|
| South | .894 (.459) | .881 (.460) | .615 (.177)*** | .623 (.178)*** | -.890 (.172)*** | -.884 (.172)*** |
| Drug Trafficking Caseload: % Non-White | .121 (.037)** | .128 (.038)*** | -.049 (.034) | -.049 (.033) | -.009 (.017) | -.009 (.017) |
| Drug Trafficking Caseload: % Binding Mandatory Minimum | .620 (.085)*** | .612 (.086)*** | | | | |
| Drug Trafficking Caseload: % Judicial Departure Recipients | -.210 (.085)* | -.228 (.086)** | -.002 (.024) | -.002 (.024) | -.247 (.040)*** | -.239 (.041)*** |
| Drug Trafficking Caseload: Average Proportion of GL Min Imposed | -.550 (.095)*** | -.545 (.095)*** | | | | |
| Intercept | 9.268 (.651)*** | 9.289 (.651)*** | -8.377 (.535)*** | -8.400 (.536)*** | -1.873 (.293)*** | -1.879 (.291)*** |
| District-Level Intercept Variance (σ^2_{u0}) | 1.420 (.241)*** | 1.422 (.240)*** | .194 (.037)*** | .194 (.037)*** | .345 (.064)*** | .345 (.064)*** |
| District-Level Sessions 2017 Slope Variance (σ^2_{u1}) | .930 (.167)*** | .997 (.185)*** | .183 (.040)*** | .162 (.031)*** | .133 (.019)*** | .137 (.020)*** |
| AIC | 2,066,128 | 2,066,109 | 302,383 | 302,353 | 365,735 | 365,726 |
| BIC | 2,066,556 | 2,066,569 | 302,768 | 302,781 | 366,120 | 366,133 |
| N | 327,943 | 327,943 | 327,943 | 327,943 | 327,943 | 327,943 |

Notes: Intraclass correlation measures for dichotomous outcome models are calculated by assuming an individual level variance of $\pi^2/3$ (see, e.g., Johnson, 2018).

*** $p < .001$;

** $p < .01$;

* $p < .05$.

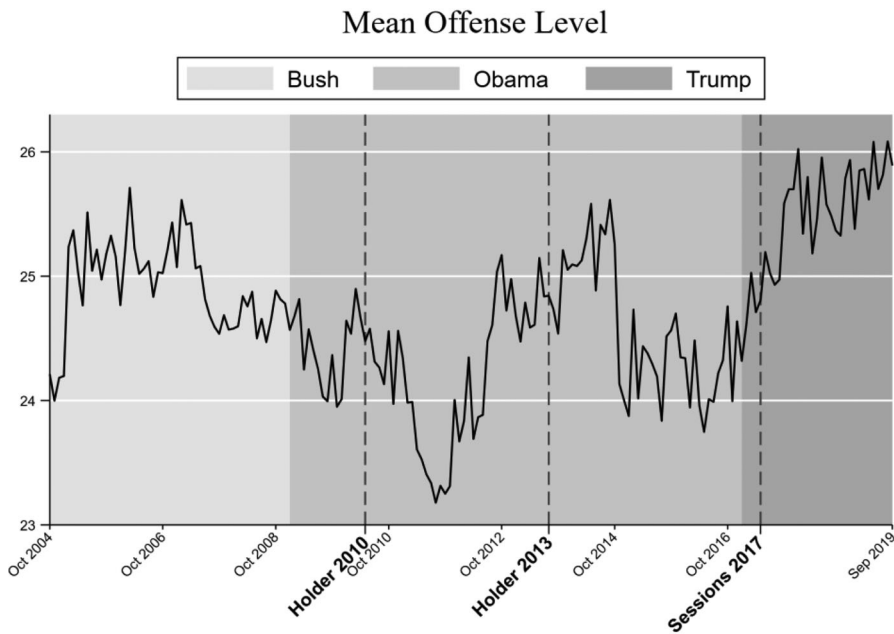


FIGURE 1 Mean offense level ($N = 327,943$)

($b = .302$; $p < .05$). This suggests that changes to offense levels in the Sessions memo period may have been motivated in part by prosecutors' desire to counter the downward pressure of judicial departures on final sentence lengths. Offense levels in districts with larger proportions of non-White drug trafficking defendants were also significantly lower following the Sessions memo, relative to districts with smaller proportions of non-White defendants ($b = -.300$; $p < .01$). This may indicate that differential case selection processes are at work in these districts, wherein prosecutors may be federally pursuing cases against lower level street dealers who otherwise would be handled in state court. This was a prevalent practice in the "war on drugs" era (Lynch, 2016; Ouziel, 2017).

Figure 2 shows temporal trends in the proportion of our sample sentenced to a binding mandatory minimum. The proportion of binding mandatory minimums fell in the Holder 2010 memo period and decreased even further in the Holder 2013 memo period before rising precipitously in the Sessions memo period. After controlling for temporal changes in our level-1 and level-2 variables in model 3, we find that the Holder 2013 memo was associated with a 32 percent decrease in the odds of receiving a binding minimum relative to the pre-Holder 2010 period ($b = -.384$; OR = .68; $p < .001$). The odds of receiving a binding minimum subsequently increased following the Sessions memo, such that these odds did not significantly differ from the highs of the pre-Holder 2010 memo period.

Additionally, the results in model 3 indicate that responses to the Sessions memo varied significantly and substantially across districts ($\sigma^2_{u1} = .183$; $p < .001$). We introduce our level-2 predictors of this district-level variation in model 4. Following the Sessions memo, districts in the South on average experienced a significant decrease in the odds of receiving a binding mandatory minimum relative to the Holder 2013 period. This unexpected finding may be a correction to the higher rate of mandatory minimum use in southern districts, relative to other districts in the previous policy period. These regional effects were also significantly moderated by the installation of a

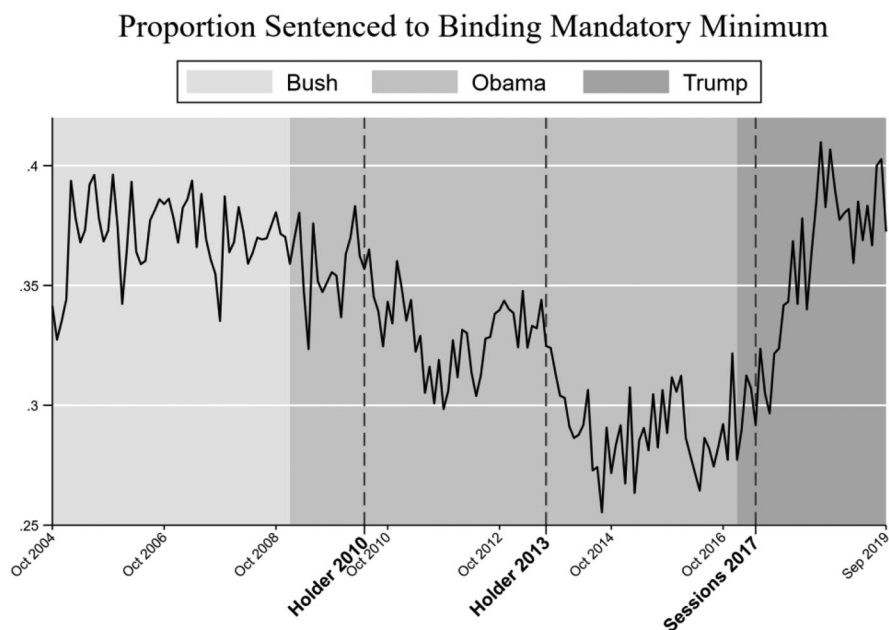


FIGURE 2 Proportion sentenced to binding mandatory minimum ($N = 327,943$)

Trump-appointed U.S. Attorney in the district. Over and above the Sessions memo effect and regional moderating factors, the odds of receiving a binding minimum were 18 percent higher after a U.S. Attorney was installed ($b = .167$; $OR = 1.18$; $p < .01$).

Figure 3 depicts monthly trends in the proportion of drug trafficking defendants who received a prosecutor-endorsed departure. Government departure rates increased in both Holder memo periods before flattening in the Sessions memo period. Departure rates spiked between March and October 2014, most likely a result of federal prosecutors anticipating and applying in advance the drug-offense-level reductions included in the 2014 Guidelines Amendments, which took effect November of that year. We introduce our level-1 and level-2 controls in model 5. Prosecutor-endorsed departures significantly increased following the Holder 2010 and 2013 memos and only moderately declined following the Sessions memo, suggesting that federal prosecutors were not willing to entirely cede the power to influence final sentence lengths through this mechanism. The Holder 2010 memo was associated with a modest 10 percent increase in the odds of receiving a prosecutor-endorsed departure relative to the pre-Holder 2010 period ($b = .092$; $OR = 1.10$; $p < .05$), whereas the Holder 2013 memo was associated with an additional 63 percent increase over the Holder 2010 period ($b = .550$; $OR = 1.73$; $p < .001$). The odds of receiving a prosecutor-endorsed departure fell following the Sessions memo but remained 56 percent higher relative to the pre-Holder 2010 memo period ($b = .446$; $OR = 1.56$; $p < .001$).¹¹

The results in model 6 also indicate that the effect of the Sessions memo was partially contingent on the rate of judicial downward departures in the district. Districts with higher rates of judicial downward departures saw greater decreases in prosecutor-endorsed departures following the Sessions memo, whereas districts with lower rates of judicial departures saw

¹¹ Excluding the outlier months between March and October 2014 reduces the magnitude of these effects, but the relationship between the Holder 2013 and Sessions periods holds.

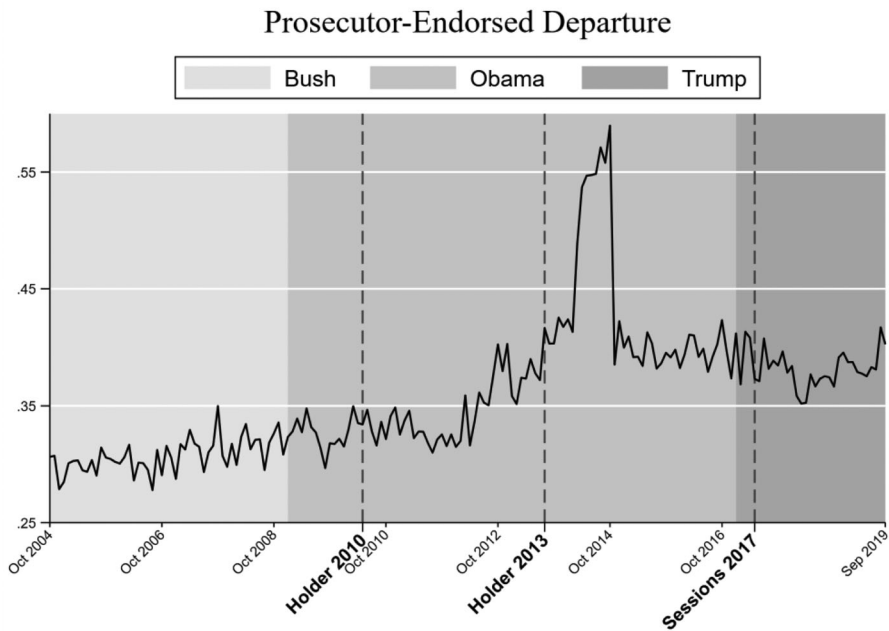


FIGURE 3 Prosecutor-endorsed departure ($N = 327,943$)

comparatively fewer changes in prosecutor-endorsed departures ($b = -.111$; $OR = .89$; $p < .01$). As was the case with offense levels, changes in prosecutor-endorsed departures after the Sessions memo may have been calibrated to offset the downward pressure of judicial departures on final sentence lengths.

3.3 | Criminal history category and judicially determined outcomes

Table 3 includes model results for criminal history category (models 7–8) and our judicially determined outcomes: judicial downward departures (models 9–10) and the proportion of the guidelines minimum imposed (models 11–13).

Figure 4 displays trends in the monthly mean criminal history category across all districts. Criminal history categories generally remained flat through the Holder 2010 memo period before increasing in the Holder 2013 and Sessions memo periods. The results in model 7, however, indicate that these period differences are not statistically significant once our level-1 and level-2 controls are introduced. Although we did not detect a significant average Sessions memo effect across all districts, districts still exhibited significant variation in their responses to the Sessions memo ($\sigma^2_{u1} = .017$; $p < .001$). The results in model 8 indicate that this variation is partially accounted for by the district-level proportion of the drug trafficking caseload involving non-White defendants. Districts with larger proportions of non-White drug trafficking defendants exhibited significant decreases in criminal history scores following the Sessions memo, whereas districts with smaller proportions of non-White defendants exhibited significant increases in criminal history scores ($b = -.046$; $p < .01$). This provides further evidence that districts prosecuting proportionately more non-Whites were increasingly targeting less serious drug defendants in the Sessions period because criminal history scores are especially unlikely to be subject to manipulation.

TABLE 3 Multilevel model results: Criminal history category and judicially determined outcomes

| | Criminal History Category | | Judicial Departure | | Proportion of Guideline Minimum (Logged) | | |
|--|---------------------------|-----------------|--------------------|-----------------|--|------------------|------------------|
| | Model 7 | Model 8 | Model 9 | Model 10 | Model 11 | Model 12 | Model 13 |
| | Coef./(SE) | Coef./(SE) | Coef./(SE) | Coef./(SE) | Coef./(SE) | Coef./(SE) | Coef./(SE) |
| Unconditional Model | | | | | | | |
| District-Level Variation in Intercept (σ^2_{i0}) | .154 (.023) *** | | .487 (.061) *** | | | .041 (.009) *** | |
| Intraclass Correlation | 5.2% | | 12.9% | | | 7.1% | |
| Policy Memo Effects | | | | | | | |
| Holder 2010 | -.003 (.014) | .004 (.014) | -.008 (.036) | .003 (.036) | .014 (.008) | -.009 (.010) | .011 (.008) |
| Holder 2013 | -.026 (.033) | .033 (.034) | .249 (.089) ** | .295 (.090) ** | -.010 (.012) | -.100 (.016) *** | -.021 (.013) |
| Sessions 2017 | .030 (.049) | .029 (.049) | .317 (.154) * | .299 (.157) | .014 (.021) | .020 (.042) | .080 (.040) * |
| Significant Level-2 Predictors of Sessions 2017 Memo Effect | | | | | | | |
| Trump-Appointed U.S. Attorney | | .023 (.022) | | .157 (.059) ** | | -.038 (.009) *** | -.037 (.009) *** |
| Drug Trafficking Caseload: % Non-White | | -.046 (.015) ** | | | | | |
| Midwest | | | | | | -.071 (.038) | -.063 (.037) |
| West | | | | | | -.167 (.040) *** | -.137 (.040) *** |
| South | | | | | | -.061 (.038) | -.048 (.037) |
| Drug Trafficking Caseload: Average Sentence Length | | | | .170 (.043) *** | | -.038 (.013) ** | -.034 (.011) ** |
| Other Time Period Controls | | | | | | | |
| Obama Administration | .025 (.017) | .024 (.016) | .424 (.070) *** | .420 (.070) *** | -.042 (.009) *** | -.039 (.010) *** | -.042 (.009) *** |
| Trump Administration | .068 (.025) ** | .072 (.025) ** | .373 (.104) *** | .399 (.104) *** | -.043 (.015) ** | -.044 (.018) * | -.050 (.015) *** |
| Time | -.010 (.006) | -.009 (.006) | .105 (.027) *** | .116 (.027) *** | -.005 (.004) | -.016 (.004) *** | -.007 (.004) |
| Time-Squared | .001 (.000) *** | .001 (.000) ** | -.004 (.002) * | -.005 (.002) ** | .000 (.000) | .001 (.000) *** | .000 (.000) |

(Continues)

TABLE 3 (Continued)

| | Criminal History Category | | Judicial Departure | | Proportion of Guideline Minimum (Logged) | | |
|---|---------------------------|-----------------|--------------------|------------------|--|-----------------|-----------------|
| Level-1 Predictors | | | | | | | |
| Powder Cocaine | -.059 (.070) | -.059 (.069) | -.028 (.073) | -.027 (.074) | .088 (.018)*** | -.022(.022) | .088 (.018)*** |
| Crack Cocaine | .529 (.060)*** | .529 (.060)*** | .258 (.069)*** | .261 (.068)*** | .046 (.016)** | -.063 (.021)** | .046 (.016)** |
| FSA*Crack Cocaine | -.092 (.030)** | -.092 (.030)** | -.190 (.071)** | -.192 (.071)** | .022 (.012) | .049 (.013)*** | .022 (.012) |
| Heroin | .179 (.081)* | .180 (.081)* | -.090 (.087) | -.088 (.087) | .125 (.019)*** | .035 (.024) | .125 (.019)*** |
| Meth | .246 (.087)** | .246 (.087)** | .148 (.091) | .149 (.091) | .099 (.017)** | -.046 (.023)* | .099 (.017)** |
| Other Drug | -.034 (.066) | -.034 (.066) | .155 (.087) | .155 (.087) | .123 (.023)*** | -.010(.025) | .122 (.023)*** |
| Black | .241 (.020)*** | .242 (.020)*** | -.212 (.035)*** | -.213 (.035)*** | .043 (.008)*** | .084 (.010)*** | .043 (.008)*** |
| Latinx | -.263 (.026)*** | -.263 (.026)*** | -.260 (.032)*** | -.260 (.032)*** | .042 (.009)*** | .075 (.010)*** | .042 (.009)*** |
| Other Race | -.190 (.034)*** | -.190 (.034)*** | -.112 (.056)* | -.113 (.056)* | .045 (.015)** | .063 (.021)** | .045 (.015)** |
| Male | .502 (.025)*** | .502 (.025)*** | -.531 (.062)*** | -.531 (.062)*** | .174 (.021)*** | .209 (.026)*** | .174 (.021)*** |
| Non-U.S. Citizen | -.965 (.027)*** | -.965 (.027)*** | .007 (.039) | .007 (.039) | .008 (.007) | .020 (.010)* | .008 (.007) |
| Age | .100 (.005)** | .100 (.005)** | -.065 (.010)*** | -.065 (.010)*** | .017 (.002)*** | .010 (.003)*** | .017 (.002)*** |
| Age-Squared | -.001 (.000)*** | -.001 (.000)*** | .001 (.000)*** | .001 (.000)*** | -.000 (.000)*** | -.000 (.000)*** | -.000 (.000)*** |
| Trial | -.067 (.018)*** | -.067 (.018)*** | -.072 (.087) | -.070 (.087) | .059 (.014)*** | .199 (.020)*** | .058 (.014)*** |
| Pretrial Detention | .827 (.024)*** | .827 (.024)*** | -.832 (.036)*** | -.833 (.036)*** | .379 (.038)*** | .422 (.040)*** | .379 (.038)*** |
| Career Offender | 3.063 (.045)*** | 3.063 (.045)*** | | | | | |
| Logged Guideline Presumptive Sentence | | | .599 (.045)*** | .599 (.045)*** | -.106 (.013)*** | | -.106 (.013)*** |
| Binding Mandatory Minimum | | | -2.974 (.269)*** | -2.974 (.269)*** | .226 (.023)*** | | .226 (.023)*** |
| Binding Mandatory Minimum*Logged Guideline Presumptive Sentence | | | .455 (.057)*** | .455 (.057)*** | | | |
| Prosecutor-Endorsed Departure | | | | | -.484 (.026)*** | | -.484 (.026)*** |
| Level-2 Predictors of Random Intercept | | | | | | | |
| Republican-Appointed Judge % | -.021 (.020) | -.021 (.020) | -.003 (.082) | -.001 (.083) | .015 (.013) | .027 (.017) | .015 (.013) |
| Annual Criminal Caseload per Judge | -.015 (.023) | -.015 (.022) | -.090 (.069) | -.094 (.071) | .033 (.016)* | .046 (.023)* | .034 (.016)* |

(Continues)

TABLE 3 (Continued)

| | Criminal History Category | | Judicial Departure | | Proportion of Guideline Minimum (Logged) | |
|---|---------------------------|-----------------|--------------------|------------------|--|-----------------|
| District Socioeconomic Disadvantage | -.037 (.021) | -.037 (.021) | -.266 (.071)*** | -.270 (.071)*** | -.001 (.016) | -.001 (.016) |
| District Percent Black | -.078 (.028)** | -.078 (.028)** | .253 (.079)** | .253 (.079)** | -.036 (.025) | -.036 (.025) |
| Violent Crime Rate per 100,000 Residents | .020 (.015) | .020 (.015) | -.007 (.055) | -.007 (.054) | .008 (.008) | .009 (.008) |
| Midwest | .219 (.058)*** | .219 (.058)*** | -.315 (.214) | -.296 (.213) | .160 (.056)** | .158 (.056)** |
| West | .113 (.061) | .113 (.061) | -.381 (.204) | -.376 (.205) | .122 (.066) | .114 (.066) |
| South | .124 (.055)* | .123 (.055)* | -.897 (.198)*** | -.878 (.198)*** | .253 (.054)*** | .251 (.054)*** |
| Drug Trafficking Caseload: % Non-White | -.003 (.015) | -.001 (.015) | -.112 (.042)** | -.108 (.043)* | -.021 (.007)** | -.022 (.006)*** |
| Drug Trafficking Caseload: % Binding Mandatory Minimum | .005 (.010) | .005 (.010) | .139 (.038)*** | .137 (.038)*** | -.028 (.009)** | -.028 (.009)** |
| Drug Trafficking Caseload: % Judicial Departure Recipients | -.014 (.012) | -.014 (.012) | | | | |
| Drug Trafficking Caseload: Average | -.001 (.011) | -.001 (.011) | | | | |
| Proportion of GL Min Imposed | | | -.357 (.065)*** | -.374 (.066)*** | .062 (.011)*** | .064 (.011)*** |
| Drug Trafficking Caseload: Average Sentence Length | | | | | | |
| Intercept | | | | | | |
| District-Level Intercept Variance (σ^2_{u0}) | -.774 (.101)*** | -.776 (.101)*** | -1.223 (.291)*** | -1.254 (.292)*** | -.783 (.103)*** | -.778 (.103)*** |
| District-Level Sessions 2017 Slope Variance (σ^2_{u1}) | .022 (.003)*** | .022 (.003)*** | .337 (.056)*** | .337 (.057)*** | .017 (.004)*** | .017 (.004)*** |
| | .017 (.003)*** | .014 (.003)*** | .191 (.040)*** | .182 (.039)*** | .009 (.003)** | .007 (.002)* |
| AIC | 1,064,118 | 1,064,107 | 182,904 | 182,873 | 610,198 | 610,153 |
| BIC | 1,064,535 | 1,064,546 | 183,304 | 183,294 | 610,624 | 610,633 |
| N | 327,943 | 327,943 | 211,655 | 211,655 | 312,686 | 312,686 |

Notes: Intraclass correlation measures for dichotomous outcome models are calculated by assuming an individual level variance of $\pi^2/3$ (see, e.g., Johnson, 2018).

*** $p < .001$;

** $p < .01$;

* $p < .05$.

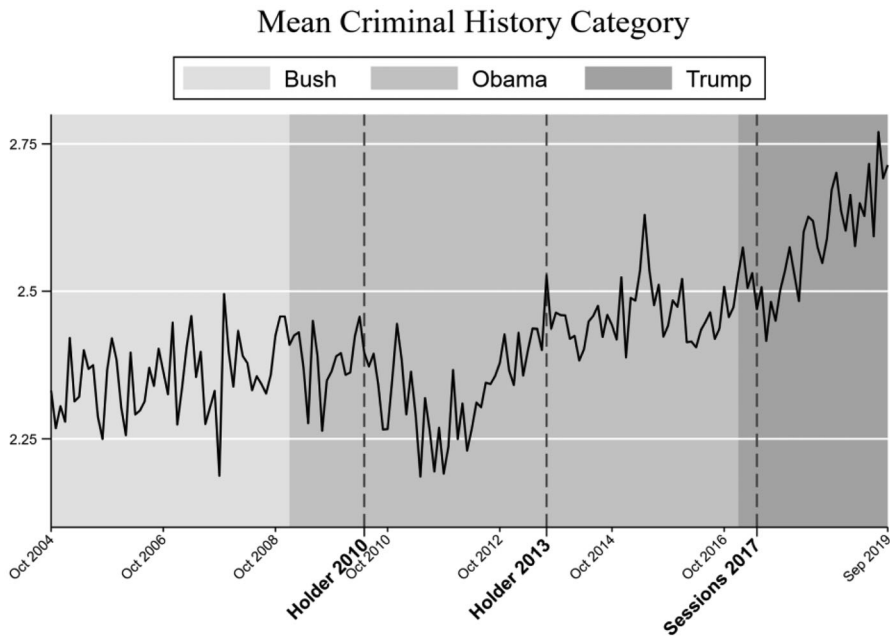


FIGURE 4 Mean criminal history category ($N = 327,943$)

Figure 5 displays trends in judicial downward departure rates over our sample period. Judicial departure rates shot up in January 2005 after the U.S. Supreme Court's decision in *U.S. v. Booker* (2005), which rendered the federal sentencing guidelines advisory rather than mandatory. Judicial departure rates then moderately declined after the *Booker* decision until December 2007 when the U.S. Supreme Court in *Kimbrough v. U.S.* (2007) explicitly authorized judges to depart from the guidelines on the basis of policy disagreements. From that point on, judicial departure rates steadily increased. Because judicial departure rates are necessarily tied to prosecutor-endorsed departures insofar as the receipt of a prosecutor-endorsed departure removes one from the judicial departure sample (see subsection 2.1.1 above), judicial departure rates appear to spike along with prosecutor-endorsed departures between March and October 2014 (see figure 3 above). Judicial departures as a proportion of the total drug trafficking caseload, however, did not change substantially in this period.

Model 9 suggests that judicial downward departures exhibited greater variability than anticipated over our memo period. In additional analyses, however, changes in the odds of receiving a judicial downward departure did not reach statistical significance when the outlier months between October 2004–December 2004 (prior to *Booker*) and March 2014–October 2014 (prior to the 2014 drug guideline amendment) were excluded (results upon request). The results in model 10 indicate that, following the Sessions memo, the odds of receiving a judicial downward departure remained high primarily in districts in which a Trump-appointed U.S. Attorney had been installed and in districts with longer average sentence lengths. The appointment of a Trump U.S. Attorney was associated with a 17 percent increase in the odds of receiving a judicial downward departure ($b = .157$; $OR = 1.17$; $p < .01$). Additionally, a 1 standard deviation increase in district-level average sentence lengths was associated with a 19 percent increase in the odds of receiving a judicial downward departure in the post-Sessions 2017 memo period ($b = .170$; $OR = 1.19$; $p < .001$). This

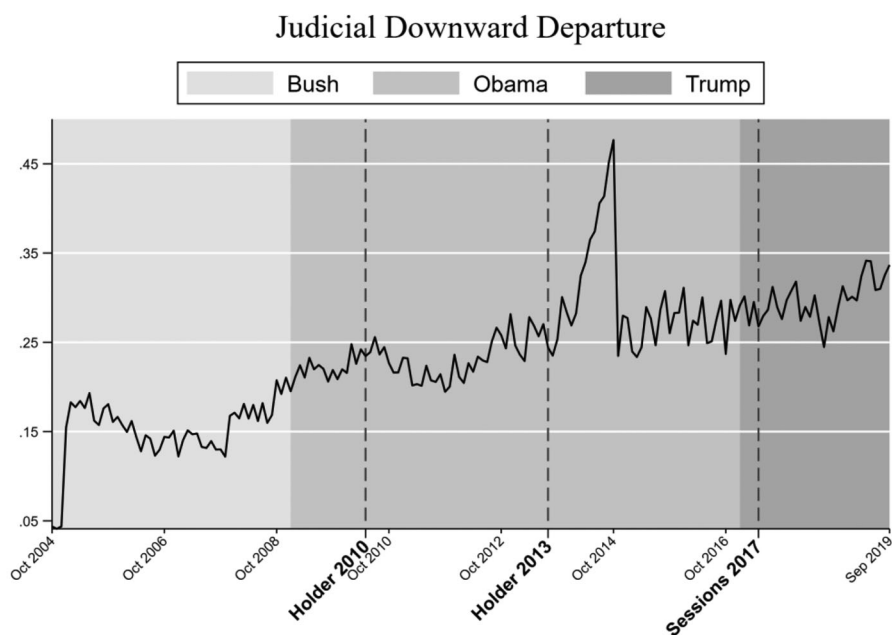


FIGURE 5 Judicial downward departure ($N = 211,655$)

provides some evidence that federal judges may have used downward departures to counteract changes in prosecutorial behavior that pushed sentences upward in the Sessions memo period.

Figure 6 displays trends in the average proportion of the guideline minimum sentence imposed. Outside of a decrease coinciding with the spike in prosecutor-endorsed departures in the months preceding the 2014 Guideline Amendments, the average proportion of the guideline minimum sentence imposed changed little across policy periods. The results in model 11 reinforce this observation as none of the DOJ policy memos were associated with significant average effects on the proportion of the guideline minimum imposed, as hypothesized. The results in model 12 suggest that the Holder 2013 memo was associated with significant decreases in the proportion of the guideline minimum imposed but only when prior case decisions are not taken into account. When these decisions are left out of the model (model 12), the Holder 2013 memo is associated with a 10 percent decrease in the proportion of the guideline minimum imposed ($b = -.100$; $p < .001$).

The results in model 13 demonstrate that the Sessions memo effect was region specific. Districts in the West saw significant decreases in the proportion of the guideline minimum imposed following the Sessions memo, whereas districts in the other regions across the United States saw significant increases. Districts with higher average sentence lengths also saw significant decreases in the proportion of the guideline minimum imposed following the Sessions memo, whereas districts with lower average sentence lengths saw significant increases in the proportion of the guideline minimum imposed ($b = -.034$; $p < .01$). Districts in which a Trump-appointed U.S. Attorney had been installed exhibited a further 3.7 percent decrease in the proportion of the guidelines minimum imposed ($b = -.037$; $p < .001$). Thus, as was the case with judicial downward departures, it appears that judges may have utilized their discretion to counter the upward pressure of prosecutorial decision-making on final sentences in the post-Sessions memo period.

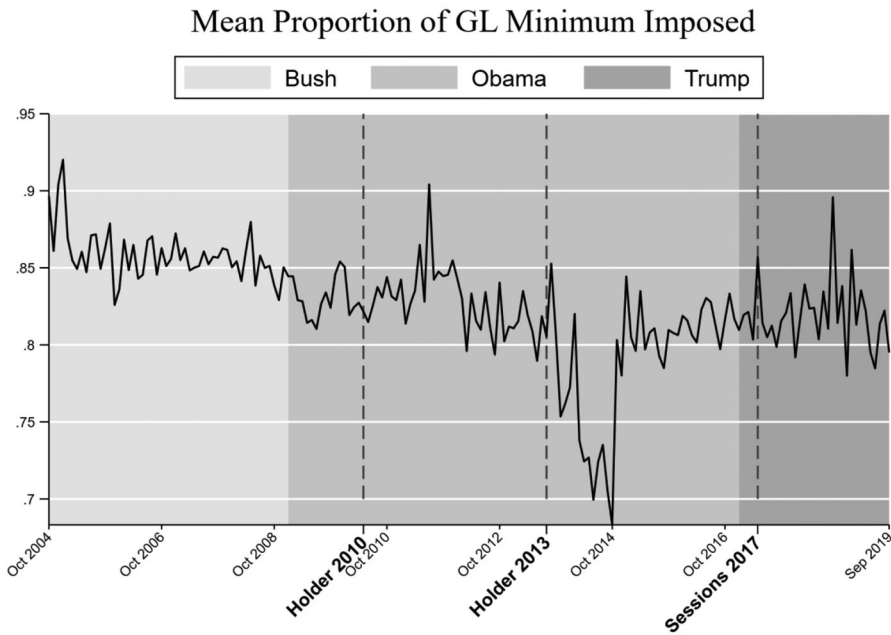


FIGURE 6 Mean proportion of guidelines minimum imposed ($N = 312,686$)

3.4 | Blended discretion outcomes

Table 4 includes model results for outcomes reflecting blended prosecutorial and judicial discretion: incarceration (models 14–15) and sentence length (models 16–18).

As reflected in figure 7, the proportion of those convicted of drug trafficking who were sentenced to incarceration began a steady decline in the late stages of the Bush administration that continued through the Holder 2010 and 2013 memo periods before rising steeply following the Sessions memo. The results of model 14 indicate that, as expected, the odds of receiving a sentence of incarceration rose significantly following the Sessions memo. Specifically, the odds of receiving a sentence of incarceration following the Sessions memo were 82 percent higher relative to the Holder 2013 memo period ($b = .599$; $OR = 1.82$; $p < .001$). These increases in the odds of incarceration post-Sessions memo, however, were primarily confined to districts in the regional South, as reflected in model 15. The odds of receiving incarceration for defendants sentenced after the installation of a Trump-appointed U.S. Attorney were also 52 percent higher than the odds for similarly situated defendants sentenced prior to the installation of a Trump-appointed U.S. Attorney ($b = .418$; $OR = 1.52$; $p < .001$). Furthermore, defendants in districts with greater non-White proportions were also more likely to be sentenced to incarceration; a 1 standard deviation increase in the district-level, non-White defendant proportion was associated with a 15 percent increase in the odds of being sentenced to a term of incarceration ($b = .142$; $OR = 1.15$; $p < .05$).

Figure 8 shows temporal trends in monthly mean sentence length across our sample period. Declines in mean sentence length began in 2006 and continued through the Holder 2010 and Holder 2013 memo periods before rising sharply following the Sessions memo. The results in model 16 after controlling for changes in caseload characteristics demonstrate that the Holder 2013 memo was associated with a slight decrease in final sentence lengths ($b = -.028$; $p < .05$). Final sentence lengths rose again following the Sessions memo, and as a result, sentence lengths in this

TABLE 4 Multilevel model results: Blended discretion outcomes

| | Incarcerated | | Sentence Length (Logged) | | |
|--|--------------------------------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|
| | Model 14 Coef./ <i>(SE)</i> | Model 15 Coef./ <i>(SE)</i> | Model 16 Coef./ <i>(SE)</i> | Model 17 Coef./ <i>(SE)</i> | Model 18 Coef./ <i>(SE)</i> |
| Unconditional Model | | | | | |
| District-Level Variation in Intercept (σ^2_{u0}) | .478 (.066)*** | | | .119 (.023)*** | |
| Intraclass Correlation | 12.7% | | 9.3% | | |
| Policy Memo Effects | | | | | |
| Holder 2010 | .145 (.045)** | .161 (.045)*** | .015 (.011) | .035 (.021) | .014 (.011) |
| Holder 2013 | .033 (.088) | .108 (.085) | -.028 (.013)* | -.072 (.019)*** | -.032 (.013)* |
| Sessions 2017 | .599 (.129)*** | .053 (.223) | -.000 (.022) | .012 (.030) | .002 (.022) |
| Significant Level-2 Predictors of Sessions 2017 Memo Effect | | | | | |
| Trump-Appointed U.S. Attorney | | .418 (.124)*** | | .027 (.023) | -.015 (.013) |
| Midwest | | .416 (.256) | | | |
| West | | .308 (.248) | | | |
| South | | .698 (.195)*** | | | |
| Drug Trafficking Caseload: % Non-White | | .142 (.072)* | | | |
| Other Time Period Controls | | | | | |
| Obama Administration | -.122 (.074) | -.133 (.074) | -.039 (.010)*** | -.055 (.014)*** | -.039 (.010)*** |
| Trump Administration | -.218 (.105)* | -.174 (.105) | -.026 (.014) | -.024 (.023) | -.028 (.015) |
| Time | -.147 (.039)*** | -.127 (.037)*** | -.006 (.004) | -.001 (.008) | -.007 (.004) |
| Time-Squared | .006 (.003)* | .004 (.002) | .000 (.000) | -.001 (.000) | .000 (.000) |
| Level-1 Predictors | | | | | |
| Powder Cocaine | -.080 (.068) | -.079 (.069) | .166 (.026)*** | .694 (.069)*** | .166 (.026)*** |
| Crack Cocaine | -.043 (.085) | -.043 (.085) | .142 (.023)*** | .945 (.064)*** | .142 (.023)*** |
| FSA*Crack Cocaine | -.143 (.085) | -.143 (.085) | .006 (.013) | -.203 (.023)*** | .006 (.013) |
| Heroin | -.010 (.064) | -.005 (.064) | .190 (.026)*** | .660 (.070)*** | .189 (.026)*** |

(Continues)

TABLE 4 (Continued)

| | Incarcerated | | Sentence Length (Logged) | |
|--|------------------|------------------|--------------------------|-----------------|
| Meth | .078 (.088) | .079 (.088) | .202 (.025)*** | 1.026 (.069)*** |
| Other Drug | -.324 (.073)*** | -.322 (.073)*** | .153 (.026)*** | .483 (.054)*** |
| Black | .330 (.056)*** | .330 (.056)*** | .070 (.009)*** | .180 (.019)*** |
| Latinx | .240 (.040)*** | .241 (.040)*** | .040 (.010)*** | .153 (.020)*** |
| Other Race | .247 (.096)** | .246 (.096)* | .038 (.017)* | .052 (.035) |
| Male | .723 (.042)*** | .723 (.042)*** | .222 (.021)*** | .490 (.028)*** |
| Non-U.S. Citizen | .857 (.194)*** | .858 (.194)*** | -.036 (.009)*** | -.224 (.029)*** |
| Age | .042 (.010)*** | .042 (.010)*** | .020 (.002)*** | .064 (.003)*** |
| Age-Squared | -.001 (.000)*** | -.001 (.000)*** | -.000 (.000)*** | -.001 (.000)*** |
| Trial | .678 (.153)*** | .682 (.154)*** | .081 (.013)*** | .879 (.024)*** |
| Pretrial Detention | 2.048 (.058)*** | 2.045 (.058)*** | .431 (.041)*** | .754 (.050)*** |
| Logged Guideline Presumptive Sentence | 1.337 (.061)*** | 1.336 (.061)*** | .724 (.018)*** | .724 (.018)*** |
| Binding Mandatory Minimum | | | .447 (.021)*** | .447 (.021)*** |
| Prosecutor-Endorsed Departure | -1.591 (.077)*** | -1.592 (.077)*** | -.361 (.020)*** | -.361 (.020)*** |
| Level-2 Predictors of Random Intercept | | | | |
| Republican-Appointed Judge % | .046 (.052) | .043 (.051) | .004 (.010) | -.019 (.018) |
| Annual Criminal Caseload per Judge | .121 (.054)* | .114 (.058) | -.003 (.011) | -.038 (.027) |
| District Socioeconomic Disadvantage | .033 (.072) | .037 (.073) | .000 (.015) | -.013 (.021) |
| District Percent Black | -.190 (.096)* | -.198 (.096)* | -.043 (.025) | -.052 (.032) |
| Violent Crime Rate per 100,000 Residents | -.078 (.054) | -.079 (.054) | .001 (.009) | -.005 (.019) |
| Midwest | .411 (.228) | .402 (.229) | .192 (.053)*** | .310 (.059)*** |
| West | .359 (.265) | .356 (.267) | .102 (.057) | .125 (.065) |
| South | .741 (.230)** | .728 (.231)** | .280 (.051)*** | .405 (.064)*** |
| Drug Trafficking Caseload: % Non-White | -.022 (.028) | -.021 (.028) | -.013 (.004)** | -.009 (.006) |
| Drug Trafficking Caseload: % Binding Mandatory Minimum | .156 (.048)** | .161 (.048)*** | .008 (.008) | .114 (.011)*** |
| Drug Trafficking Caseload: % Judicial Departure Recipients | -.068 (.045) | -.072 (.044) | | .008 (.008) |

(Continues)

TABLE 4 (Continued)

| | Incarcerated | | Sentence Length (Logged) | |
|---|------------------|------------------|--------------------------|----------------|
| Drug Trafficking Caseload: Average Sentence Length | -.009 (.060) | -.011 (.059) | | |
| Drug Trafficking Caseload: Average Proportion of GL Min Imposed | .080 (.034)* | .079 (.034)* | .056 (.007)*** | .015 (.010) |
| Intercept | | | | |
| District-Level Intercept Variance (σ^2_{u0}) | -3.148 (.295)*** | -3.173 (.298)*** | -.349 (.116)** | .708 (.106)*** |
| District-Level Sessions 2017 Slope Variance (σ^2_{u1}) | .290 (.051)*** | .290 (.050)*** | .014 (.003)*** | .027 (.005)*** |
| AIC | .422 (.066)*** | .335 (.061)*** | .004 (.002)** | .013 (.003)*** |
| BIC | 68,968 | 68,937 | 651,602 | 837,489 |
| N | 69,396 | 69,418 | 652,028 | 837,894 |
| | 327,943 | 327,943 | 312,686 | 312,686 |

Notes: Intraclass correlation measures for dichotomous outcome models are calculated by assuming an individual level variance of $\pi^2/3$ (see, e.g., Johnson, 2018).

*** $p < .001$;

** $p < .01$;

* $p < .05$.

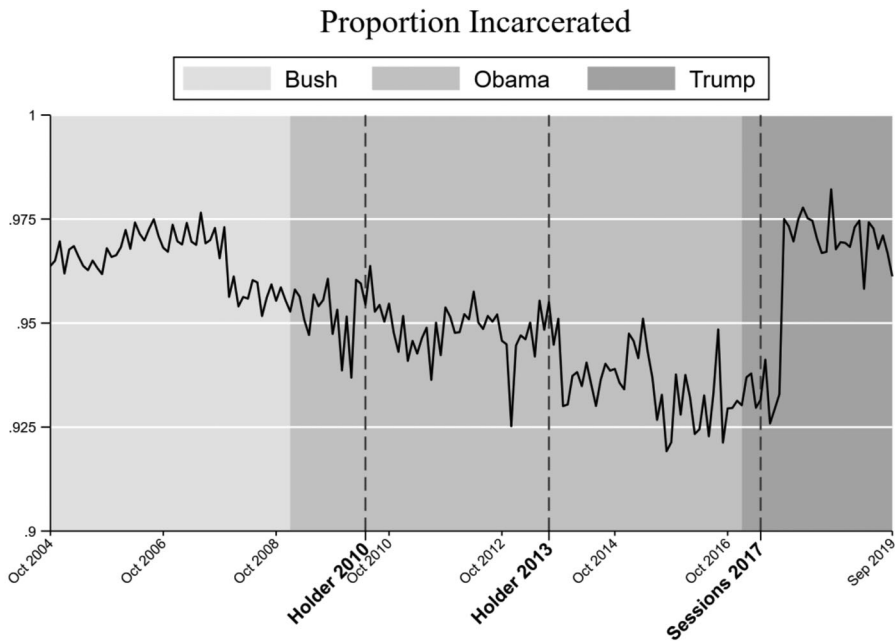


FIGURE 7 Proportion incarcerated ($N = 327,943$)

period did not significantly differ from sentence lengths in the pre-Holder 2013 memo periods. The results in model 17, which exclude prior case decision controls, demonstrate that much of the Holder 2013 memo effect on sentence lengths is captured by these early-stage decisions regarding the presumptive guidelines sentence, binding mandatory minimum status, and prosecutor-endorsed departures. When these controls are not included (model 17), the Holder 2013 memo is associated with a 7.2 percent decrease in sentence lengths ($b = -.072$; $p < .001$), whereas the memo is associated with only a 2.8 percent decrease in sentence lengths once changes in these early-stage decisions are taken into account (model 16). Although the Sessions memo was not associated with a significant average effect on sentence lengths across all districts, districts exhibited significant variation in their responses to the Sessions memo ($\sigma^2_{u1} = .004$; $p < .05$). As model 18 demonstrates, however, this variation is not accounted for by any of our level-2 contextual and organizational factors.

4 | DISCUSSION

Overall, our results generally provide support for our hypotheses regarding changes in our outcomes of interest as a result of DOJ policy directives. We found significant variation in how prosecutorial tools such as binding mandatory minimums and prosecutor-endorsed departures are used across DOJ memo periods (H1), in contrast to measures that we expected to remain consistent across policy periods, such as criminal history, judicial downward departures, and the average proportion of the guideline minimum imposed (H2). Consistent with previous work showing that early prosecutorial decisions shape sentences, we found the chances of incarceration being imposed were impacted by the policy periods as well (H3). Changes to actual sentence length, however, were substantively smaller. Taken together, these findings indicate that internal policy

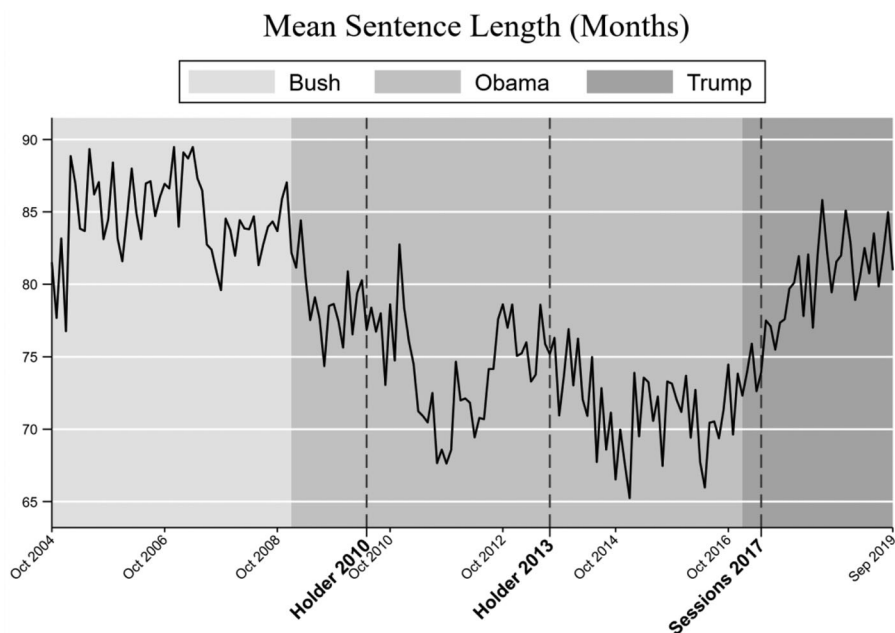


FIGURE 8 Mean sentence length (months) ($N = 312,686$)

directives can have direct impacts on prosecutorial behavior as well as downstream effects on sentence outcomes (Johnson & Larroulet, 2019).

Significantly, we also found that midlevel organizational actors—in this case, appointed U.S. Attorneys at the district level—played a key role in translating formal DOJ policy into frontline practice in federal courts (H4). The installation of a Trump-appointed U.S. Attorney drove many of the observed punitive changes in outcomes following the Sessions memo, including increases in the use of binding mandatory minimums and the odds of receiving incarceration. The importance of midlevel managers in the policy implementation process has been underscored in research across a wide variety of criminal justice entities, including police (Willis et al., 2007), parole agencies (Rudes, 2012), incarceration workgroups (Verma, 2015), and reentry professionals (Rengifo et al., 2017). As Rudes (2012, p. 23) described, “middle managers are central policy mediators responsible for providing critical organizational information about policy change(s) from their superiors to street-level subordinates.”

Our findings indicate that, in the federal system, these actors are indeed critical for understanding how broad-level policy change impacts local prosecutorial practices. If nothing else, by being more ideologically responsive to the administration that appointed them, they are likely willing to enforce the directives in the geographically dispersed federal districts, even in the face of resistance by career prosecutors in their offices (Whitford, 2002). Specifically, it seems likely that Trump-appointed U.S. Attorneys were sufficiently ideologically aligned with the directives included in the Sessions 2017 memo to be able to reshape existing local practices in regard to drug case prosecutions.

Second, our results illustrate important features of workgroup dynamics and “court communities” in the federal system (Eisenstein et al., 1988). Thus, we not only found effects over time but also variations in policy adaptation across place (Lynch & Omori, 2014). Because DOJ policy directives have no direct bearing on judicial behavior, we hypothesized that judicially determined

outcomes would not change significantly across DOJ policy periods (H2). Although this was generally true with regard to average period effects across all districts, our model results revealed district-specific effects that suggest that judicial discretion may have been utilized to counteract the punitive turn among prosecutors following the Sessions 2017 memo. For example, the odds of receiving a judicial downward departure were higher in districts where a Trump-appointed U.S. Attorney had been installed, which our other results indicate was generally associated with more punitive prosecutorial practices. On the reverse side, changes in prosecutor-driven outcomes in the Sessions 2017 memo period appeared calibrated to combat the downward pressure that these changes in judicial behavior were exerting on final sentence lengths. Significant increases in offense levels were only experienced in districts with higher rates of judicial downward departures. Similarly, districts with higher rates of judicial departures also experienced significant decreases in prosecutor-endorsed downward departures following the Sessions memo.

In that regard, the inherent tensions that come with the relational nature of power-sharing in the courtroom workgroup are likely exacerbated when one member challenges the developed norms and expectations for case adjudication (see generally Ulmer, 2019). In our study, it appeared that when U.S. Attorney's offices were more zealous in applying the Sessions policies, judges acted as a check on the upward pressure on sentences, where they had the power to do so. Our results resonate with other recent research suggesting that federal court communities are characterized more by contestation than consensus, with the increased sentencing power of judges sometimes being deployed to counteract the front-end decision-making of prosecutors (Fischman & Schanzenbach, 2012; Lynch & Omori, 2018).

Our study also extends findings of previous studies indicating that prosecutors increased their use of binding mandatory minimums in response to the *Booker* line of cases in order to undercut expanded judicial discretion over sentencing (Fischman & Schanzenbach, 2012; Lynch, 2019; Lynch & Omori, 2014; Starr & Rehavi, 2013; Yang, 2015) by illustrating that judicial sentencing behavior is also responsive to changes in prosecutorial policies and practices. Moreover, this dynamic plays out at the local district court level, with judicial responses calibrated to the practices of federal prosecutors in their specific districts. This results in more stability in final sentence lengths over time than would be predicted by the significant changes in the respective early-stage decision-making by prosecutors, especially in the use of mandatory-minimum statutes.

More broadly, our findings make clear that formal policy does not operate in a vacuum, nor is policy change implemented in a uniform manner. First, the dynamic nature of social institutions like criminal courts, with the inherent tensions between differently situated stakeholders that constitute the workgroup, ensures that even internal policy changes directed at only one party will nonetheless be responded to and shaped by others in that workgroup (Eisenstein & Jacob, 1977). In this case, judges appeared to actively counter the punitive turn represented by the Sessions memo, ultimately tempering its effect on sentence outcomes. Defense attorneys undoubtedly played an important role in facilitating that response through their own sentencing advocacy and other legal strategies, just as they did in response to the *Booker* line of cases (Lynch, 2019). Moreover, even though the Sessions policy changes were clearly a return to a "tough-on-crime" ethos, their effect was likely stunted by the fact that this stance is out of touch with the current trend away from punitiveness in criminal justice, one that many federal judges have embraced (Lynch, 2016). To that end, the group-based culture that shapes the day-to-day business in trial courts remains a critically important dynamic for understanding how policy is enacted at the front lines of criminal justice (Ulmer, 2019).

Two additional contextual factors were associated with significant variation in responses to the Sessions memo across districts: the percentage of the drug trafficking caseload involving

non-White defendants and geographical region. Because federal drug prosecutions are especially discretionary, given that the bulk of trafficking cases can be, and are, handled in state courts (Lynch, 2016; Ouziel, 2017), changes in drug caseload features are a clear indicator of prosecutorial decision-making (Lynch & Omori, 2018). Our findings provide suggestive evidence as to how internal policy changes shaped case selection processes across districts and regions. First, following the Sessions memo, average offense levels and criminal history scores declined in districts with larger proportions of non-White defendants, suggesting that the memo may have spurred prosecutors to target less serious defendants in these jurisdictions. Second, the odds of receiving a sentence of incarceration in the Sessions memo period were also significantly higher in districts with larger proportions of non-White defendants, indicating that defendants in such jurisdictions were facing more punitive outcomes, even as indicators of defendant culpability declined.

These findings make sense in light of the Trump administration's racialized and punitive criminal justice policy rhetoric linking drug trafficking to violent "thugs and gangs" (Sessions, 2017b) that explicitly sought to revitalize the racially targeted punitive tools of the 1990s' war on drugs (Cobb, 2018; Lynch, 2019). That is, the ideological rhetoric appears to have been translated into more aggressive use of federal drug prosecutions in places where non-Whites are especially likely to be prosecuted for drug crimes. These findings should be further examined in research that more directly assesses the racially unequal impact of DOJ policies and practices in case selection. As prior research suggests, prosecutorial response to exogenous policy change such as the mandates of the *Booker* decision has disadvantaged defendants of color in charging decisions (Fischman & Schanzenbach, 2012; Starr & Rehavi, 2013). Our findings here suggest that this may also be the case in response to internal policy as well.

For several of our outcomes of interest, we also found significant regional variation in response to the Sessions policy memo. Districts in the regional South did not experience the same increases in binding mandatory minimums following the Session memo that were evident in other geographical regions; however, they did experience larger increases in the odds of receiving a term of incarceration. Additionally, districts located in the West displayed decreases in the proportion of the guideline minimum imposed following the Sessions memo, which were not evident in other regions. Although our analysis was not designed to explore regional variation in depth, these findings are intriguing and should be further explored in future research. The findings regarding mandatory minimums in the South may indicate a return to pursuing less serious, street-level drug cases, ineligible for mandatory minimums, in that region. The finding that sentences decreased in the West as a proportion of the guideline minimum is likely a result of increased overall enforcement at the border in the Trump era (Lynch, 2019). These districts consistently have the greatest caseload pressure in the nation, and any increase to those caseloads should be expected to push sentences downward (Lynch, 2016). Additionally, because prior research has identified substantial and persistent differences in the use of sentencing mechanisms in different geographical regions (Johnson et al., 2008; Lynch, 2016; Ulmer, 2005), these findings suggest that such regional differences may also play a role in how policy changes are received and implemented by local prosecutors and judges.

Although this study was able to make important empirical inroads in more directly capturing on-the-ground legal practices by modeling different discretionary outcomes, there are limitations to our approach. As previously noted, some key measures are not available in the USSC data, such as the "851" mandatory enhancements, which could capture other decisions that might be responsive to internal policy directives. The administrative data we utilized also do not allow us to account for individual prosecutors' or judges' decisions, so our inferences about their internal decision-making processes and actions are necessarily limited. To that end, it is important for

scholars to utilize multiple methodological approaches and data sources to fully understand how policy is enacted by members of the courtroom workgroup (Ulmer, 2019). In particular, our finding about the strong influence of an appointed U.S. Attorney in changing district-level practices would benefit from further study, including through qualitative research that captures how charging, plea bargaining, and sentencing advocacy practices get transformed when new leadership is installed.

Our findings also suggest several other lines of inquiry for future research. First, even though the findings indicate that the U.S. Attorney appointment process may enhance the fidelity of internal policy implementation and mitigate resistance at the local level, future research should also explore the role of U.S. Attorneys in shaping local responses to externally imposed policy changes, whether legislatively derived or court-imposed—changes in which ideological alignment is often more difficult to discern. One key piece of recent legislation that has some impact on drug sentences is the First Step Act, enacted in December 2018, which (among other changes) decreased the punitive enhancements triggered by prior drug convictions and increased eligibility to be spared from a mandatory minimum as a result of a lack of prior record. A recent analysis by the U.S. Sentencing Commission indicates these provisions have had an impact on sentences overall, but changes at the district level were not examined (U.S. Sentencing Commission, 2020).

Going forward, the Biden administration has signaled its support for legislation that would fully “repeal mandatory minimums at the federal level” (The Biden Plan, n.d.). On the one hand, previous research suggests that federal prosecutors are likely to employ additional tools at their disposal to subvert externally imposed policies that limit their discretionary power to ensure harsh punishment, and mandatory minimum penalties are a primary mechanism whereby prosecutors can ensure harsh punishment in the federal system (Fischman & Schanzenbach, 2012; Lynch, 2019; Lynch & Omori, 2014; Starr & Rehavi, 2013). On the other hand, our results indicate that federal prosecutors were responsive to *internal* DOJ policies like the Holder 2013 memo that encourage less aggressive use of these punitive “legal hammers” (Lynch 2016, p. 109). How then might federal prosecutors respond to an externally imposed policy limiting prosecutorial power that is nonetheless supported by the presiding administration, and what role will local U.S. attorneys appointed by the administration play in shaping these responses on the ground level? These questions have important implications for our understanding of local policy translation processes and are deserving of future inquiry.

5 | CONCLUSION

Recent developments call into question whether the existing workgroup dynamics in the federal system that we have documented here—with prosecutors generally pushing for more punitive outcomes, and judges and defense attorneys acting as a counter to this punitiveness—are likely to persist in the future. Although there was bipartisan Congressional support for the First Step Act, suggesting that the late twentieth-century punitive policies may continue to wane in appeal, the federal criminal system has also undergone significant change, particularly in the judiciary where lifetime appointments prevail. The Trump administration was extremely active in appointing new judges to existing vacancies, and as a result, nearly a quarter of active federal judges were appointed during his presidency (Gramlich, 2020). Given the conservative political leanings of many of these judges (Ruiz et al., 2020), it is fair to question whether these judges might in fact *oppose* a move toward less punitive practices among federal prosecutors.

Even if the Biden administration is successful in scaling back punitive policies and installs U.S. Attorneys who are in ideological alignment with such reforms, prosecutorial power is not limitless in determining case outcomes. Under advisory guidelines, judges have considerable power to sentence above the guidelines, as long as it is within the generous statutory limits that characterize federal criminal law (Lynch, 2016). In the face of this possibility, federal prosecutors may opt to exercise their most powerful tool—the discretionary decision to file charges, or not. Thus, should the dynamics shift to where the current roles are reversed, prosecutors could come to rely on their discretion *not* to charge in those drug cases where they seek to eliminate the chance that those potential defendants receive long sentences. In any case, as our results suggest, we should expect that any potential future conflicts among federal prosecutors and judges are likely to play out differently across different court contexts, depending on the conditions and make-up of each local district.

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