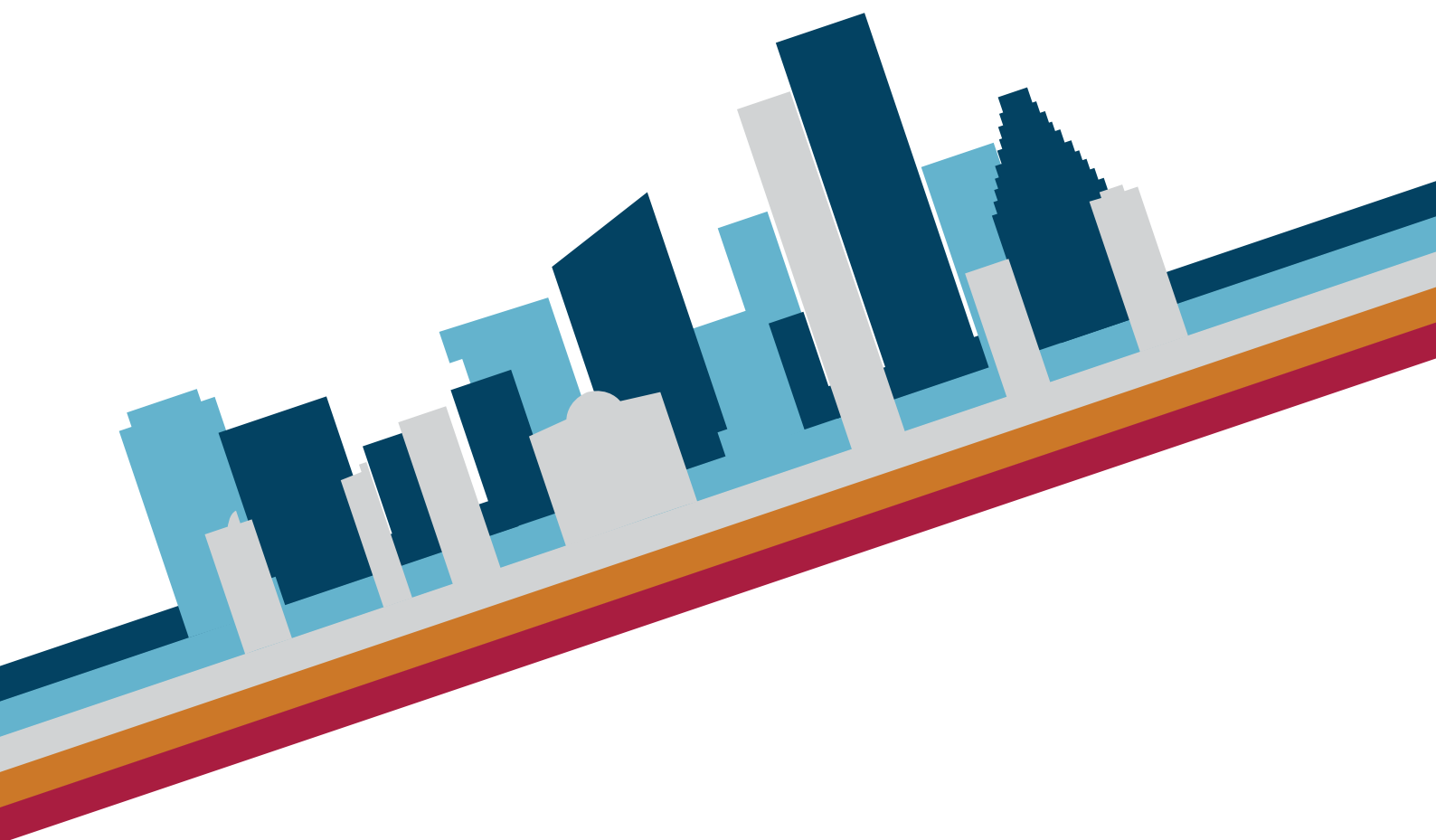
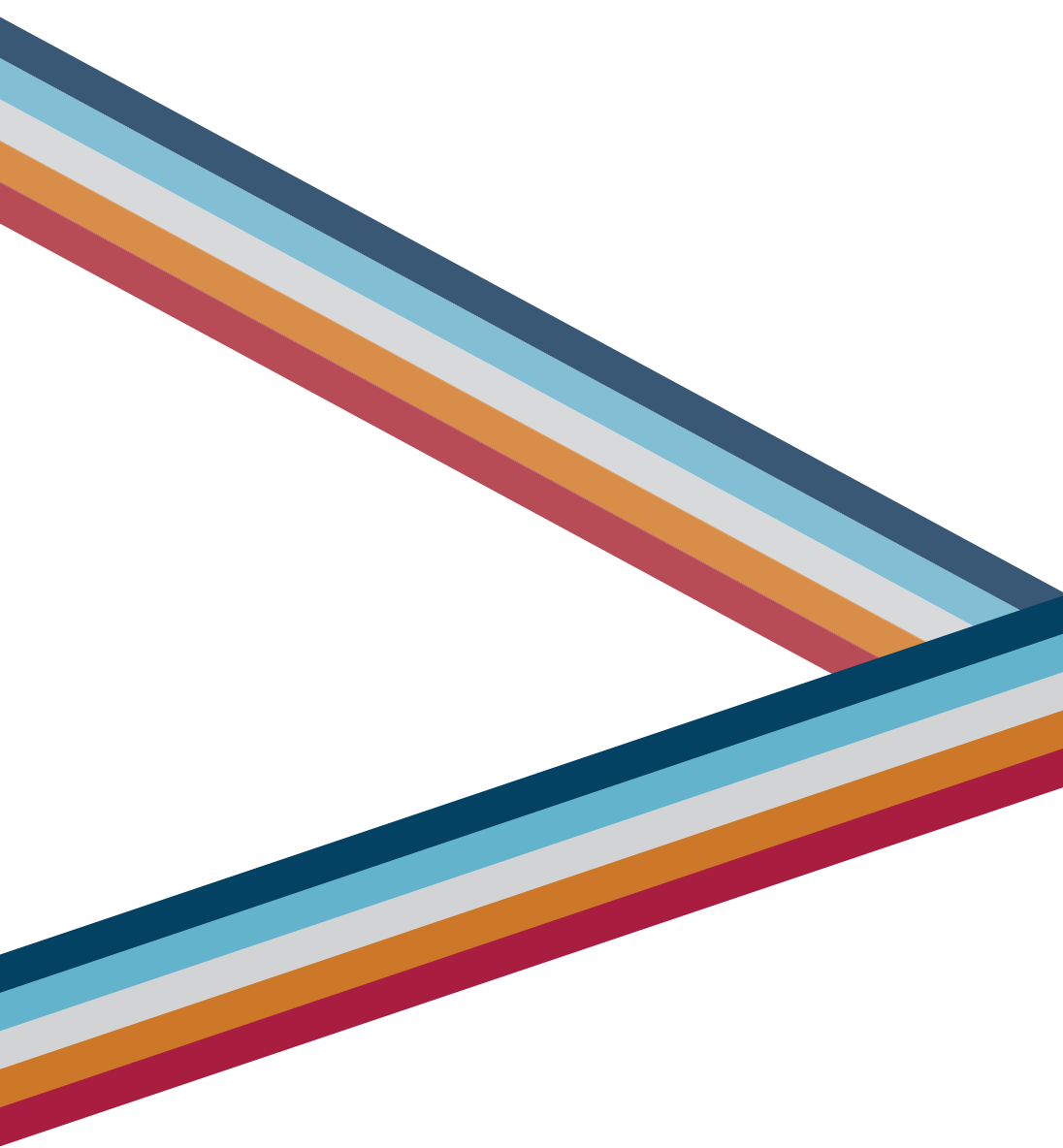


## JUSTICE FOR ALL?

# UNFAIR OUTCOMES FOR NON-CITIZENS IN *HARRIS COUNTY* CRIMINAL COURTS





## **ACKNOWLEDGMENTS**

Authored by Anita Gupta, Lena Graber, Nikki Marquez, and Molly Tiece.

Thank you to Jay Jenkins from the Texas Criminal Justice Coalition for providing us the Harris County District Clerk data that was used for this report. We would also like to thank Professor Michael Light and Jason Robey of the University of Wisconsin-Madison for their generous help analyzing the data and helping us to draw conclusions and identify correlations.

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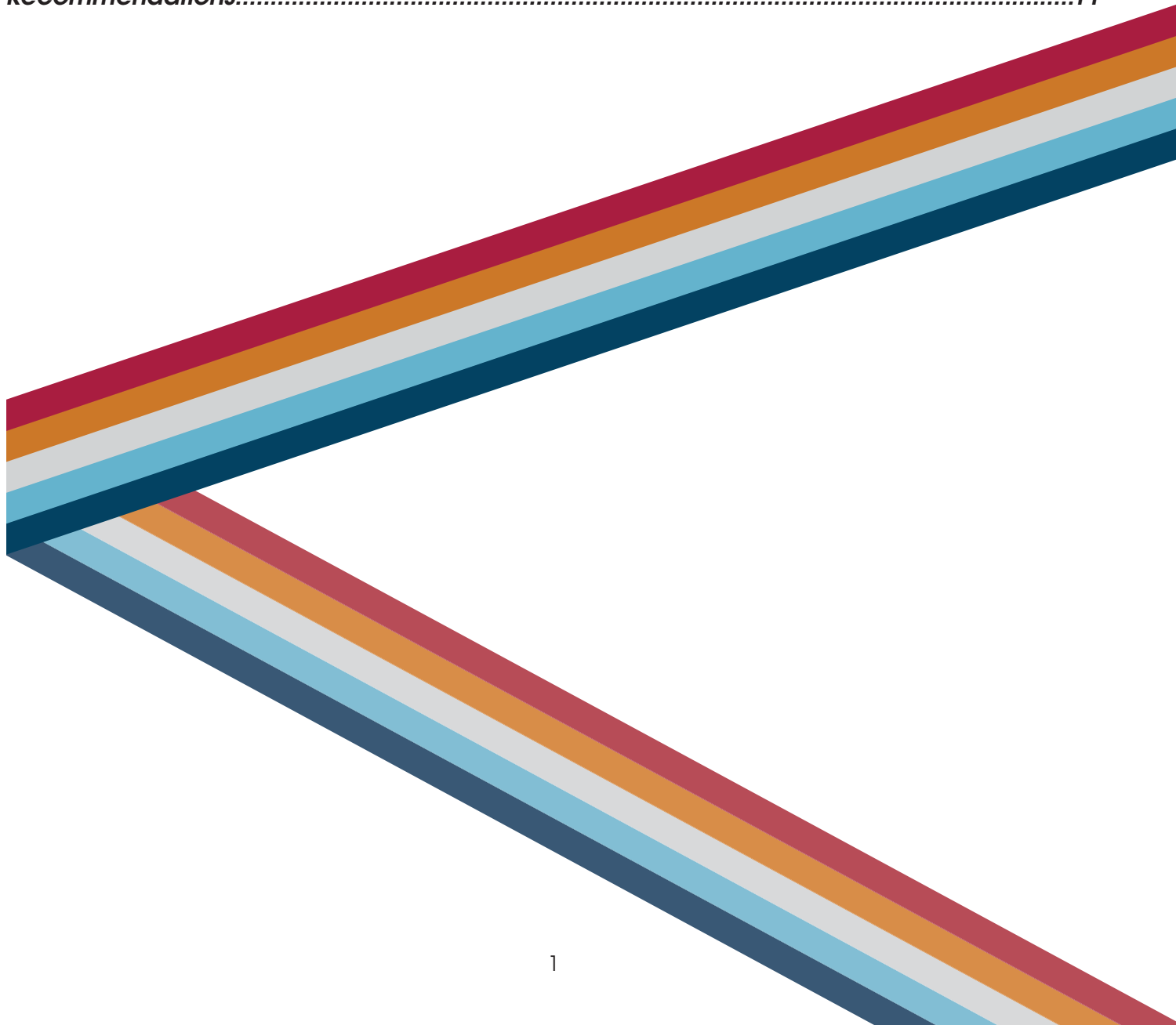
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# INTRODUCTION AND BACKGROUND

Harris County is one of the largest and most diverse counties in the United States. It is home to 1.2 million immigrants who comprise more than 25 percent of the county's population.<sup>1</sup> Approximately 466,000, or almost 39 percent, of those individuals are undocumented.<sup>2</sup>

Harris County also has the highest number of Immigration & Customs Enforcement (ICE) arrests in the nation.<sup>3</sup> From 2014-2018, approximately 89 percent of those arrests were the result of contact with the criminal legal system.<sup>4</sup> Because of the massive size of Harris County's jail system and its deep entanglement with ICE, Harris County is an epicenter of immigration enforcement, putting thousands of immigrant families at risk of permanent separation. This deportation pipeline is exacerbated by the Harris County criminal courts, which are plagued with disparities based on citizenship status.

Convictions for certain criminal offenses, even minor offenses, can have devastating and permanent consequences for non-citizens. Many offenses, including common misdemeanors such as marijuana possession and shoplifting, can lead to deportation or erect a bar to legal status. Contact with the criminal legal system can determine whether a long time lawful permanent resident can retain their legal status and stay in the United States;

## ***Convictions for certain criminal offenses, even minor offenses, can have devastating and permanent consequences for non-citizens.***

whether an undocumented immigrant married to a U.S. citizen can ever legalize; or whether an asylee escaping persecution from their home country will be forcibly returned to harm. Yet despite the disproportionate impact and possibility of irreparable harm, the Harris County criminal legal system treats non-citizens more harshly than U.S. citizens.

Our report looks at that difference in treatment and includes an analysis of Harris County District Clerk data from January 1, 2017 to June 30, 2019. This report highlights disparities among U.S. citizens and non-citizens in arrests, charges, bail, case disposition, and sentencing. The distinction between U.S. citizens and non-citizens is based on how individuals were identified within the Harris County criminal legal system, without any independent verification of citizenship status. The term "non-citizens" refers to individuals who are not U.S. citizens, and may be undocumented or hold lawful immigration status. The term "U.S. citizens" encompasses both native-born and naturalized citizens. It is estimated that approximately 951,000 of Harris County residents, comprising 20 percent of the county's pop-

1 See United States Census Bureau, "Quick Facts Harris County, Texas," available at <https://www.census.gov/quickfacts/harriscountytexas> (last accessed July 7, 2021).

2 See Migration Policy Institute, "Profile of the Unauthorized Population: Harris County, TX," available at <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/county/48201> (last accessed July 7, 2021).

3 See TRAC, "Immigration and Customs Enforcement Arrests" (2018), available at <https://trac.syr.edu/phptools/immigration/arrest/>; TRAC, "Counties Where ICE Arrests Concentrate," (October 24, 2018), available at <https://trac.syr.edu/immigration/reports/533/>

4 See TRAC, "Tracking Over 2 Million ICE Arrests: A First Look" (September 25, 2018), available at <https://trac.syr.edu/immigration/reports/529/>; TRAC, "Immigration and Customs Enforcement Arrests" (2018), available at <https://trac.syr.edu/phptools/immigration/arrest/>.

ulation, are currently non-citizens.<sup>5</sup>

Through this report, we seek to raise awareness about how non-citizens are unjustly treated before Harris County criminal courts and to unify advocates, directly impacted communities, and policymakers in necessary and immediate action to address these inequities.

## SUMMARY OF FINDINGS

Our data analysis revealed that significant disparities exist in the Harris County criminal court system, and this report focuses on disparities based on citizenship status.

Several key findings include:

- **Arrests:** Although non-citizens comprise approximately 20 percent of the Harris County population, they accounted for only 10 percent of arrests.
- **Charges & Disposition:** Although U.S. citizens and non-citizens are most frequently charged for similar offenses, a higher proportion of citizens get their cases dismissed.
- **Bail:** Non-citizens are 20 percent less likely to receive personal recognizance (“PR”) bonds than citizens. On average, non-citizens must pay significantly higher bail amounts to be released on equivalent charges as citizens, and this disparity is greater for felony charges.
- **Sentencing:** Non-citizens are 50 percent more likely to be sentenced to jail or prison time than citizens. Non-citizens are also, on average, sentenced to 18 percent longer periods of incarceration for the same offense.

## METHODOLOGY

We analyzed arrest and prosecution data from the Harris County District Clerk’s office from January 1, 2017 to June 30, 2019, looking at nearly 160,000 cases, to identify disparities in charging, bail, disposition, and sentencing outcomes among U.S. citizens compared to non-citizens. We then excluded data entries in which citizenship was unknown, which accounted for a substantial portion of the dataset. We also excluded observations that involved post-conviction information, which were almost exclusively probation revocations.

For our comparative analysis of different outcomes, we primarily used log linear regression models, using the most serious charge associated with each arrest in cases with multiple

<sup>5</sup> See Houston Immigration Legal Services Collaborative, “Communities Torn Apart: The Impact of Detention and Deportation in Houston,” available at <https://www.houstonimmigration.org/communitiestornapart/> (last accessed July 7, 2021); Migration Policy Institute, “Profile of the Unauthorized Population: Harris County, TX,” available at <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/county/48201> (last accessed July 7, 2021); U.S. Census Bureau, “Quick Facts Harris County, Texas,” available at <https://www.census.gov/quickfacts/harriscountytexas> (last accessed July 7, 2021).

charges. Looking at the bail data, we took into account race, sex, age, charge seriousness, charge type, charge count, attorney type, year, and courtroom. For sentencing data, we took into account the factors listed above in addition to the method of disposition (e.g. dismissal, plea deal, trial) and bail amount. Holding these variables constant, we were able to identify disparities based on citizenship status throughout the criminal legal process. While the dataset lacked information regarding a defendant's prior interactions with law enforcement, the omission of this variable may actually be suppressing the effect of non-citizen status on bail amounts.<sup>6</sup>

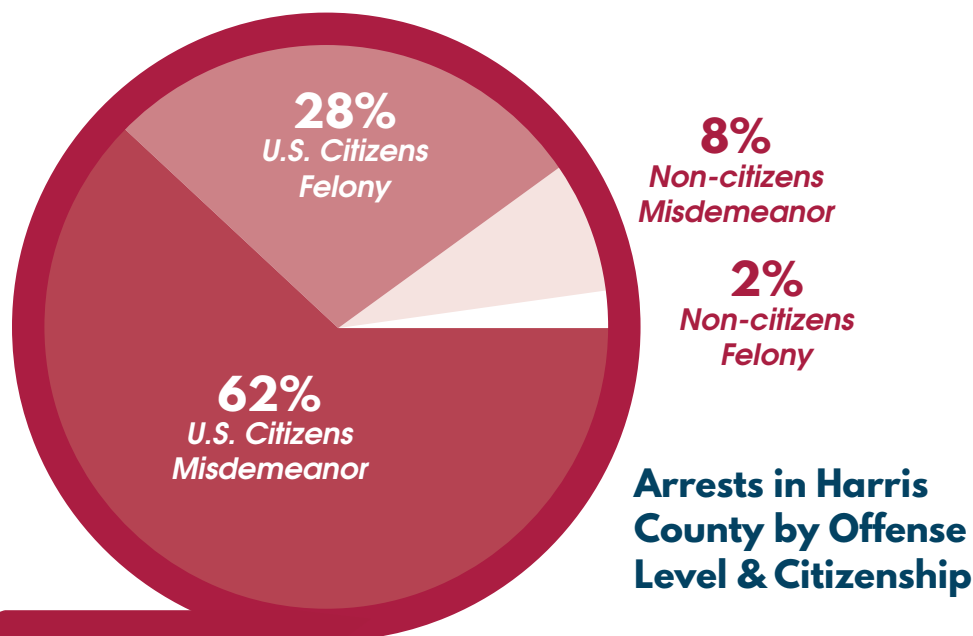
## FINDINGS: CITIZENSHIP DISPARITIES

### ARRESTS

Out of the nearly 160,000 cases we analyzed, the vast majority of individuals arrested for both misdemeanors and felonies were U.S. citizens. Although non-citizens comprise approximately 20 percent of the Harris County population, they account for only 10 percent of the population arrested.<sup>7</sup> The chart and graphic below look at this breakdown in more detail.

Harris County, Texas

	U.S. Citizens	Non-Citizens	Total Arrests
Number of Arrests	145,377	15,718	161,095



<sup>6</sup> Current research on immigrant communities generally finds significantly lower crime rates compared to native-born U.S. citizens. See Michael T. Light, Jingying He, Jason P. Robey, "Comparing crime rates between undocumented immigrants, legal immigrants, and native-born US citizens in Texas," (December 22, 2020), available at <https://www.pnas.org/content/pnas/117/51/32340.full.pdf>.

<sup>7</sup> 80% of arrests were U.S. citizens, and 10% of arrests were recorded as citizenship unknown.

Regardless of the outcome of a criminal case, having an arrest record can cause serious long-term consequences, impacting a person's ability to find or maintain employment, housing, financing, and education.<sup>8</sup>

**TAKEAWAY: While approximately 20 percent of Harris County residents are non-citizens, they account for only 10 percents of arrests.**

## CHARGES

While U.S. citizens make up the vast majority of arrests, the most common charges for U.S. citizens and non-citizens were comparable. The most frequently charged offenses were driving while intoxicated (DWI) and assault of a family member. The two tables below list the five most common offenses charged for U.S. citizens and non-citizens.

**Top 5 Offenses for U.S. Citizens**

Offenses	Total # of Charges	% of Total Charges
Driving While Intoxicated	12,975	8.03%
Assault of a Family Member	10,956	6.78%
Possession of a Controlled Substance, Penalty Group 1, <1 gram	8,766	5.43%
Trespass on a Building or Property	7,295	4.52%
Theft ≥ \$100 < \$750	7,035	4.35%

**Top 5 Offenses for Non-Citizens**

Offenses	Total # of Charges	% of Total Charges
Driving While Intoxicated	2,627	16.71%
Assault of a Family Member	1,580	10.05%
Possession of a Controlled Substance, Penalty Group 1, <1 gram	1,513	9.62%
Trespass on a Building or Property	777	4.94%
Theft ≥ \$100 < \$750	517	3.29%

Harris County, Texas

**TAKEAWAY: Citizens and non-citizens are most frequently charged for comparable offenses.**

<sup>8</sup> Prison Policy Initiative, "Arrest, Release, Repeat: How police and jails are misused to respond to social problems," Aug. 2019, available at <https://www.prisonpolicy.org/reports/repeatarrests.html>.

## BAIL

In Harris County, citizenship status significantly affects bail determinations, specifically the likelihood of receiving a personal recognizance bond, and the bail price, if any. Inability to be released on bail or personal recognizance before trial has an enormous effect on outcomes, both in terms of the criminal case<sup>9</sup> and the defendant's life, as pretrial detention prevents the defendant from working, taking care of their children, paying their bills, and generally managing their affairs, all while the person's charges remain pending.<sup>10</sup> In fact, a federal court in Texas found that "pretrial detention of misdemeanor defendants, for even a few days, increases the chance of conviction and of nonappearance or new criminal activity during release. Cumulative disadvantages mount for already impoverished misdemeanor defendants who cannot show up to work, maintain their housing arrangements, or help their families because they are detained."<sup>11</sup> The long-term effects of pretrial detention can destabilize families and communities as a whole.

### ***The long-term effects of pretrial detention can destabilize families and communities as a whole.***

#### *Personal Recognizance*<sup>12</sup>

For all charges, being a non-citizen decreases a defendant's likelihood of being granted a personal recognizance (PR) bond by 20 percent, after accounting for race, sex, age, charge seriousness, charge type, charge count, attorney type, year, and courtroom.

In a country where more than 500,000 people are currently held in pretrial detention, many because they cannot afford bail, discriminatory patterns in release on recognizance have dire implications and lead to longer lengths of pretrial detention.<sup>13</sup> In fact, prior to the implementation of the O'Donnell bail reform settlement,<sup>14</sup> about "40 percent of all Harris County misdemeanor arrestees every year (were) detained until case disposition" due to their inability to pay bail.<sup>15</sup> Pretrial release also has dramatic effects on the person's ability

9 "Those detained seven days following a bail-setting hearing are 25 percent more likely to be convicted, 43 percent more likely to be sentenced to jail, and, on average, have sentences twice as long as those released before trial." O'Donnell v. Harris County, Tex., No. 4:16-cv-01414, at \*7 (S.D. Tex. Nov. 21, 2019).

10 In the O'Donnell v. Harris County class action lawsuit regarding unconstitutional bail practices in Harris County, the court found that requiring payment for pretrial release from jail "exacerbates and perpetuates poverty because of course only people who cannot afford the bail assessed or to post a bond- people who are already poor- are detained in custody pretrial. As a consequence, they often lose their jobs, may lose their housing, be forced to abandon their education, and likely are unable to make their child support payments." Id. at \*9.

11 Id.

12 A personal recognizance, or "PR" bond, is when a defendant is released from criminal custody based on a promise to appear in court as required. The person is not required to post a monetary bail, but there may be other conditions attached to the PR bond, such as enrollment in a class, periodic reporting to an officer, and/or restricted travel.

13 Prison Policy Initiative, "Mass Incarceration: The Whole Pie 2020," (March 24, 2020), available at <https://www.prison-policy.org/reports/pie2020.html>.

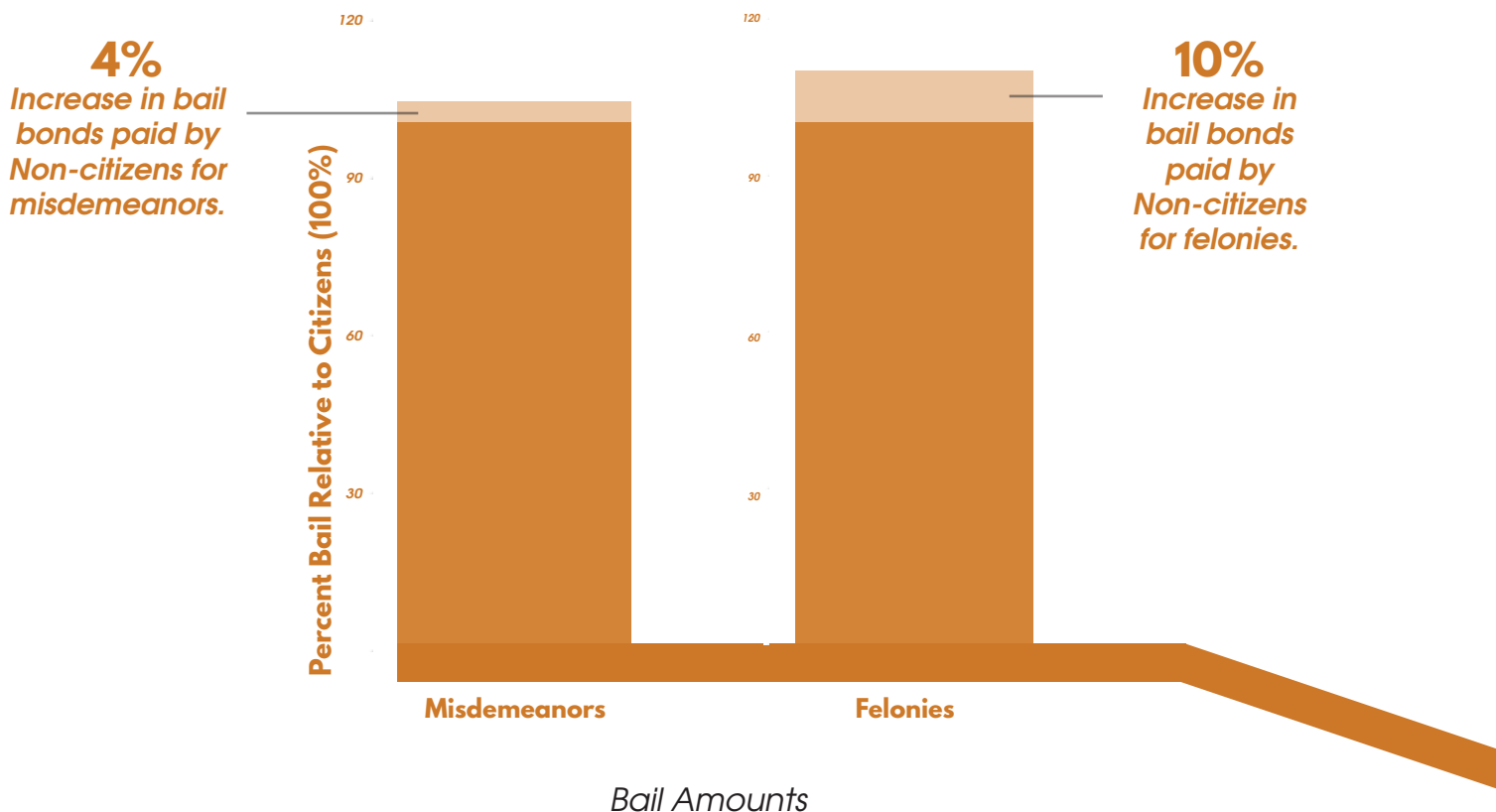
14 More information on the O'Donnell class action lawsuit and consent decree can be found on the Harris County Justice Administration Department's website, available here: <https://jad.harriscountytexas.gov/ODonnell-Consent-Decree>. Note that our data is from January 1, 2017 to June 30, 2019, and Harris County dramatically changed its bail practices, allowing for automatic pretrial release for many misdemeanor charges, in January 2019.

15 See *O'Donnell v. Harris County, Tex.* at \*3.



to defend their case, and it impacts sentencing, diversion, and other case outcomes.<sup>16</sup> Our analysis shows that this burden falls disproportionately on non-citizen defendants.

### Non-citizens Pay Higher Bail



For people who are not released on recognizance but who are given a bail amount, non-citizens often face higher bail amounts than citizens charged with equivalent offenses. The extent of this disparity varies depending on the charge. Non-citizens receive on average 4 percent higher bail for misdemeanor charges, but 10 percent higher bail for felony charges.

**TAKEAWAY: Non-citizens are less likely to receive a personal recognizance bond, and pay higher bail amounts than citizens.**

### DISPOSITION

In Harris County, citizenship status is also correlated with disparities in case outcomes. In looking at the proportion of cases that result in dismissal versus a plea, trial, or an unknown disposition, we find that a substantially larger proportion of citizens have their cases dismissed compared to non-citizens. More than 9 percent of citizens' cases are dismissed, while only 6 percent of non-citizen cases are dismissed. Prosecutors may dismiss a charge for several different reasons, including lack of evidence, a procedural error, illegal underlying arrest or seizure, or witness unavailability or lack of cooperation.

<sup>16</sup> Vera Institute of Justice, "Justice Denied: The Harmful and Lasting Effects of Pretrial Detention," (April 2019), available at <https://www.vera.org/downloads/publications/Justice-Denied-Evidence-Brief.pdf>.

Additionally, dismissals often occur as a result of a plea deal, such as participation in a pretrial diversion program where the defendant agrees to complete certain classes and/or community service in exchange for dismissal of the charge, or if a defendant with multiple charges agrees to plead guilty to one charge in exchange for dismissal of another. This can be an important tool in avoiding the devastating immigration consequences that may flow from a criminal case. The fact that non-citizens are less likely to have their cases dismissed illustrates a significant disparity in outcomes of criminal charges.

## **TAKEAWAY: Non-citizens are less likely to have their cases dismissed than citizens.**

### **SENTENCING**

Citizenship status significantly affects sentencing, including likelihood of incarceration, sentence type, and sentence length in Harris County. In looking at criminal sentences, we often focus on jail and prison sentences because these have the most dramatic impact on a person's life and liberty. However, criminal sentences also include fines and fees, restitution, community service, and ongoing monitoring by the department of Community Supervision (known as "community supervision" or "probation"). Those penalties apply to citizens and non-citizens alike. But non-citizens pay another price--after facing longer and harsher sentences in Harris County than their citizen counterparts, they face the jail-to-deportation pipeline where they may be detained, deported, and permanently exiled from their family and community.

#### *Likelihood of Incarceration*

Citizenship status significantly affects a person's chance of receiving jail or prison time as part of their sentence. Non-citizens are approximately 50 percent more likely to receive incarceration as part of their sentence than citizens, after accounting for race, sex, age, charge seriousness, charge type, charge count, attorney type, year, courtroom, method of disposition (dismissal, plea deal, trial), and bail amount. This is an enormous disparity with devastating consequences. Even a very short period of incarceration will often have ramifications for a person's employment, housing, child care, debt, and family and community, as well as lasting impacts on economic mobility.<sup>17</sup> Forty-three percent of children in the Harris County area have an immigrant parent,<sup>18</sup> and the long term impacts on these children of having a parent incarcerated are profound.<sup>19</sup> This means that immigrants and their families face all the impacts of incarceration at a significantly higher rate than their citizen counterparts -- and then are swept into a second system of immigration detention and deportation.

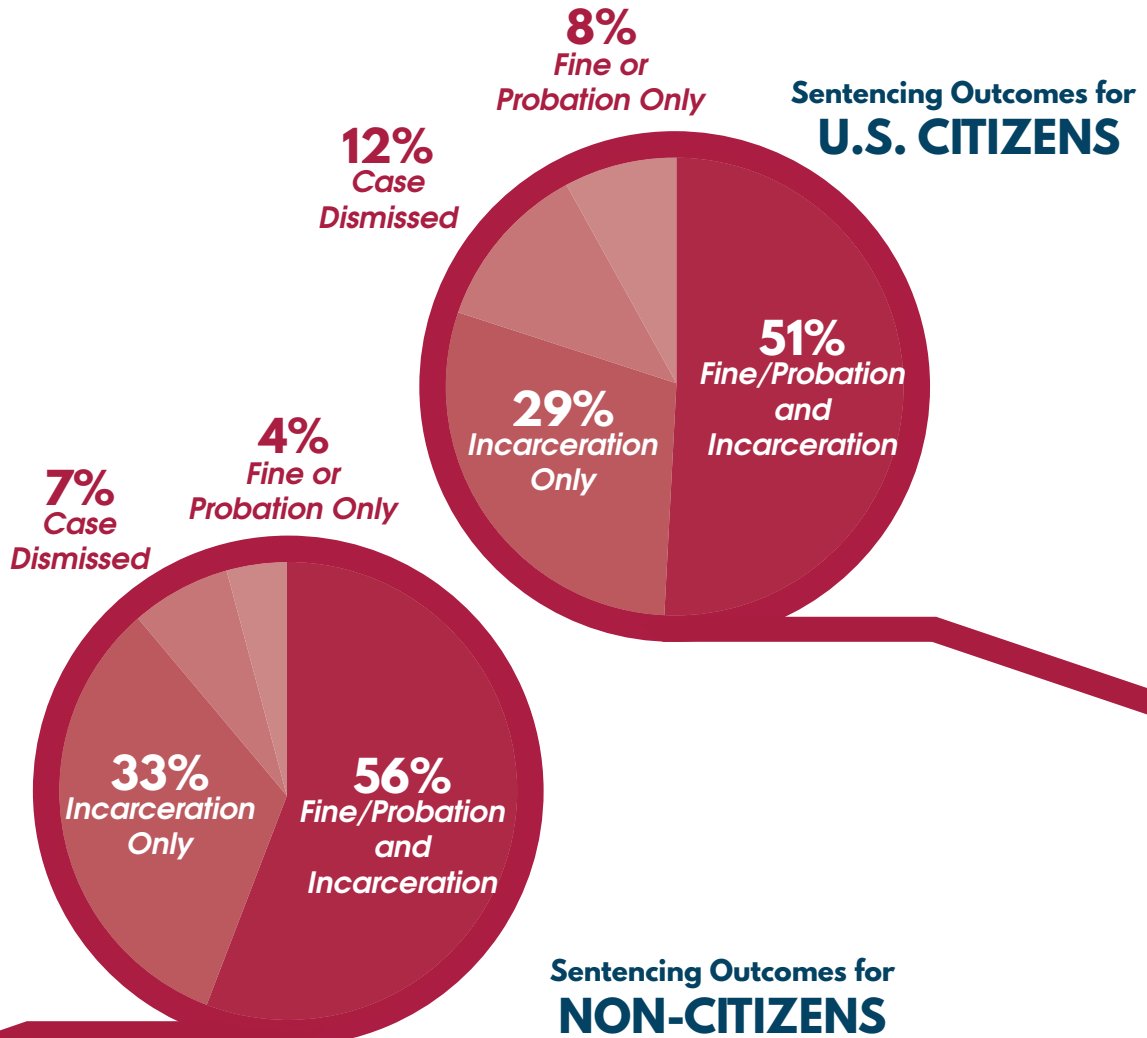
17 PEW Charitable Trusts, "Collateral Costs: Incarceration's Effect on Economic Mobility," (2010), available at [https://www.pewtrusts.org/-/media/legacy/uploadedfiles/pcs\\_assets/2010/collateralcosts1.pdf.pdf](https://www.pewtrusts.org/-/media/legacy/uploadedfiles/pcs_assets/2010/collateralcosts1.pdf.pdf).

18 Urban Institute, "Visualizing Trends for Children of Immigrants," (updated January 27, 2021), <http://apps.urban.org/features/children-of-immigrants/>.

19 See Brennan Center, "Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality," (2020), available at <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal>.

## Sentence Type

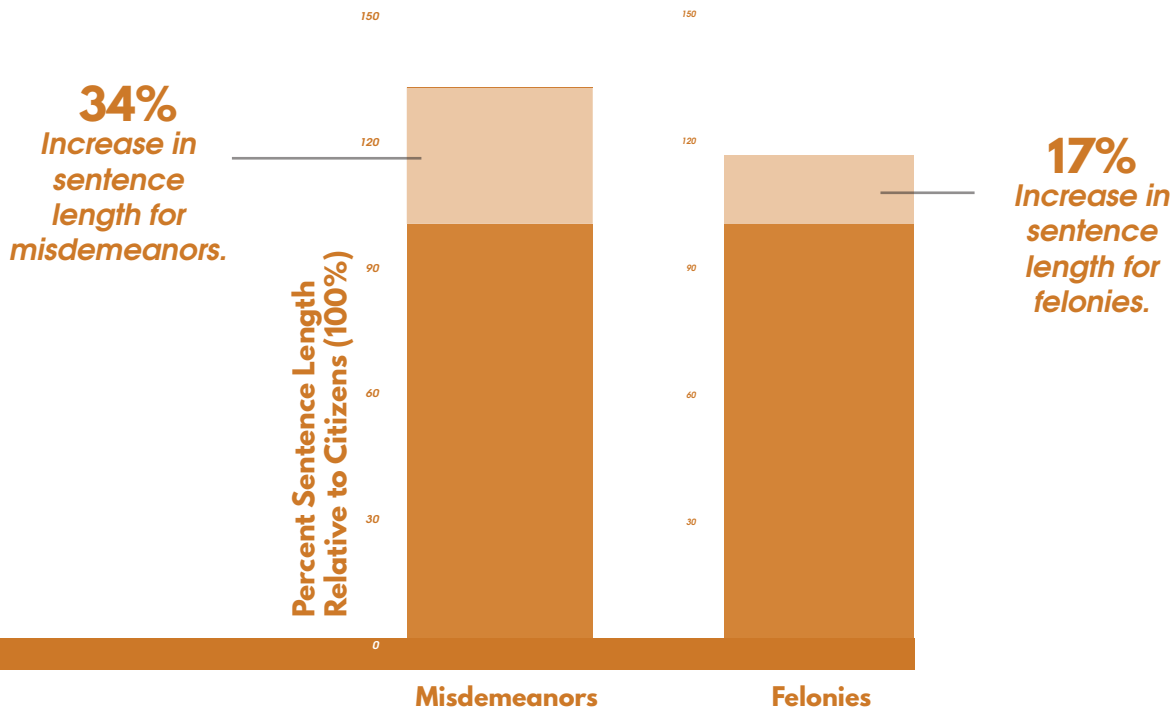
In Harris County, non-citizens more frequently receive harsher penalties than citizens. In the pie charts below, we see that a larger proportion of non-citizens receive probation in addition to incarceration, compared to citizens. We also see that a smaller proportion of non-citizens receive only fines or probation (without incarceration), compared to citizens.



## Sentence Length

For defendants who received jail or prison time, citizenship status also significantly affects sentence length. Overall, non-citizenship increases a defendant's overall sentence length by approximately 18 percent. Non-citizens charged with misdemeanors receive sentences that are on average 34 percent longer than citizens. For felonies, non-citizens on average receive a 17 percent longer sentence.

For some types of offenses, certain sentence lengths can trigger deportability and/or erect a bar to obtaining immigration benefits or immigration bond. Therefore, longer sentence lengths for non-citizens is particularly significant as it can lead to lifelong consequences that extend beyond the criminal case.



***TAKEAWAY: Non-citizens are more likely to be incarcerated, often have more onerous or restrictive sentences, and receive longer jail sentences than citizens.***

## CONCLUSION & TAKEAWAYS

These findings demonstrate that non-citizens are treated more harshly before Harris County criminal courts at every stage of a case--from bail through sentencing--resulting in more punitive outcomes. **They (1) are less likely to receive a personal bond, (2) receive higher on average bail amounts, (3) are more likely to be sentenced to jail or prison time, and (4) receive longer jail sentences.** These disproportionate outcomes are amplified when taking into account the devastating immigration consequences that flow from a criminal case. High bail amounts or denials often result in long periods of pretrial incarceration, which is exacerbated by the possibility of being transferred to immigration custody and facing immigration detention. Convictions and longer sentences can cause a non-citizen defendant to lose their immigration status, ability to obtain immigration status or benefits in the future, and may trigger mandatory immigration detention and deportation. The harsh disproportionate outcomes that non-citizens face in Harris County criminal courts can have lifelong impacts on the individual, their families, and their community. Harris County must act now to eliminate these disparities and ensure equitable, less punitive outcomes for all defendants, regardless of citizenship status.

# RECOMMENDATIONS

Based on the findings of this report, we call on local and state officials to take the following immediate steps:

- **Expand Diversion Programs.** Harris County must implement and expand pre-arrest, pre-charge, and pre-plea diversion programs, especially for offenses in which the root drivers are poverty and behavioral health issues such as substance use and mental illness. Such programs should strive to reduce and even eliminate contact with the criminal legal system and instead divert individuals to community-centered social services and treatment programs that address their needs. Diversion programs should not include any admission or plea of guilt or stipulation of facts, which can trigger a conviction for immigration purposes. Prosecutors should never use immigration status or the existence of immigration holds as a negative factor in determining the appropriateness of a diversion program. For more on the immigration implications of diversion programs, see [Diversion & Immigration Law](#).
- **Decline to Prosecute.** Prosecutors should decline to prosecute common low-level offenses, such as possession of a controlled substance less than 1 gram, which is one of the five most frequently charged offenses among both citizens and non-citizens. A conviction for such an offense will trigger deportation and mandatory immigration detention for non-citizens.
- **Implement Cite & Release.** The city and county must implement a mandatory cite and release policy for all citation-eligible offenses, thereby eliminating unnecessary arrests for offenses which are citation-eligible under state law, including Class C misdemeanors and some Class A and B misdemeanors. For more on cite and release policies, see [Cite and Release in Texas](#).
- **Mitigate Immigration Consequences.** Prosecutors must consider and strive to mitigate negative immigration consequences during every stage of a case, especially during plea bargaining, to ensure immigration-safe dispositions. For more on specific policy recommendations for prosecutors, see [Model Prosecutor Policies & Practices on Immigration Issues](#).
- **End Discriminatory Considerations in Bail & Sentencing.** Immigration or citizenship status should never be a negative factor in bail and sentencing considerations. Judges should take care not to discriminate against perceived non-citizens during bail and sentencing, and prosecutors should not use immigration status or the existence of immigration holds as a negative factor in making bail and sentencing recommendations.
- **Stop Collecting Citizenship Information.** All city and county agencies and departments, including judges, police, sheriffs, and prosecutors, must stop asking about citizenship status. It further enables criminal system stakeholders to discriminate against non-citizens and unnecessarily feeds information to federal immigration enforcement authorities. Judges should never ask defendants about immigration or citizenship status during any stage of a case, including during magistration and prior to accepting a plea deal. For more on what Texas sheriffs can do to detangle themselves from federal immigration enforcement, see [Texas Sheriffs and the Arrest-to-Deportation Pipeline](#).

These recommendations are just a few of the many necessary changes that Harris County must make immediately to end the criminalization and unjust treatment of non-citizens, as well as Black people and communities of color, in the criminal legal system. For more local policy recommendations and resources on how to advocate for reform, check out [ILRC's website](#) and our comprehensive policy guide, [Moving Texas Forward: Local Policies Towards Inclusive Justice](#).

