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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**UNITED STATES OF AMERICA,** )  
 )  
 **Plaintiff,** )  
 )  
 **v.** )  
 )  
 **ABRAHAM BROWN, et al.** )  
 )  
 **Defendants.** )

**No. 12-CR-632  
Chief Judge Rubén Castillo**

**EXHIBITS TO DEFENDANTS' MOTION TO DISMISS  
FOR RACIALLY SELECTIVE LAW ENFORCEMENT**

- Exhibit A: Report of Jeffrey Fagan, Ph.D.
- Exhibit B: County-Level Racial Composition Data
- Exhibit C: Chart Summarizing ATF Departures from Criteria and Defendants' Interpretations of ATF Criteria
- Exhibit D: Transcript Excerpts from Recorded Conversations
  - D-1: Transcript Excerpt from *United States v. Williams*, 12-CR-887
  - D-2: Transcript Excerpts from *United States v. Brown*, 12-CR-632
  - D-3: Transcript Excerpt from *United States v. Paxton*, 13-CR-103

**Exhibit A:**

**Report of Jeffrey Fagan, Ph.D.**

**IN THE  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

UNITED STATES OF AMERICA,            )  
  )  
          Plaintiff,                            )  
  )  
v.    )  
  )  
ALFRED WASHINGTON,                    )  
  )  
          Defendant.                         )

No. 12-CR-632  
Chief Judge Rubén Castillo

-----  
UNITED STATES OF AMERICA,            )  
  )  
          Plaintiff,                            )  
  )  
v.    )  
  )  
JOHN T. HUMMONS,                        )  
  )  
          Defendant.                         )

No. 12-CR-887  
Chief Judge Rubén Castillo

**REPORT OF JEFFREY FAGAN, Ph.D.**

***I. OVERVIEW***

**A. Qualifications**

I am the Isidor and Seville Sulzbacher Professor of Law at Columbia Law School and Professor of Epidemiology at the Mailman School of Public Health at Columbia University. I also am a Senior Research Scholar at Yale Law School. I have been retained to serve as an expert witness for defendants’ selective prosecution/enforcement claim in this case. A summary of my credentials and curriculum vitae is presented in Appendix G.

**B. Issues Addressed**

In this Report, I provide empirical evidence to address two principal claims by defendants in these cases.

- Defendants claim that the Bureau of Alcohol, Tobacco, Firearms and Explosives (hereafter, law enforcement or ATF) targeted Black and Hispanic people for recruitment into fictitious “Stash House stings,” in violation of the equal protection principles of the Fifth Amendment.
- Defendants also claim that, in targeting Black and Hispanic people for recruitment into fictitious “Stash House stings,” the ATF recruited persons based on criteria and characteristics that were not specified as selection criteria articulated in the ATF Manual for this program.

### C. Summary of Findings

- From 2006-2013, the probability of selection of a cohort of Stash House Program defendants with their observed racial and ethnic composition from among a large pool of similarly situated potential eligibles is less than 0.1% for the 94 defendants in these cases.
- ATF engaged in nearly exclusive recruitment of non-White persons over a three-year period from 2011-2013. From 2011-2013, the selection of only one White defendant among the 57 Stash House defendants recruited in that period suggests that Black and Hispanic persons were targeted for selection by the ATF. The probability of selecting a cohort of 56 non-White defendants out of 57 from among potential eligibles is less than 0.1%. These extremely low probabilities provide evidence of race-based selection of Stash House defendants.
- Large numbers of Stash House defendants were recruited into the Stash House Program without having met the explicit criteria of violent crime set forth in ATF policy and guidelines.<sup>1</sup> Many defendants also appear to fail to meet expanded offense criteria articulated by the ATF and prosecutors during the course of this litigation.
- Using three distinct statistical tests for disparate racial treatment, there is strong, consistent and statistically significant evidence that non-White suspects were more likely than White suspects to be targeted for recruitment into the Stash House Program, compared to a large population of similarly situated and matched potentially eligible persons with one or more prior convictions for any of the ATF target offenses. Non-White persons were more likely to be recruited into the

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<sup>1</sup> The ATF has stated the violent crime criteria as: “Violent crime is defined as offenses that involve force or threat of force and includes murder, forcible rape, robbery, aggravated assault, and arson.” ATF Manual at A-31 (reprinting ATF O 3250.1B.b), *see infra* notes 7, 8.

Stash House Program after controlling for criminal histories relevant to the Stash House Program policies.

- The results of these tests show a pattern of selective enforcement in the recruitment of Stash House defendants. The results show that after controlling for the ATF criteria as well as several indicia of criminal propensity, race remains a statistically significant predictor of selection as a Stash House defendant. These analyses show that the ATF is discriminating on the basis of race in selecting Stash House defendants. In other words, Black status is a significant predictor of selection as a Stash House defendant after controlling for both formal and informal but articulated ATF criteria.

## ***II. DATA AND MEASURES***

This preliminary section describes the empirical foundations of the statistical analyses presented in this Report. This section describes the data sources and analytic methods that were used to compile evidence to address the claims in this case. There are two components to this section:

- A. A description of the data sources that are used to characterize the defendants and potential eligibles in the Stash House cases.
- B. A description of the measures that are used to assess the characteristics of the population that, after applying the ATF criteria, were potentially eligible for selection as Stash House defendants.

### **A. Data Sources – Defendants and Potential Eligibles**

The sources of data used in the analyses are shown in Appendix A. These are described in the following sections.

#### ***1. Defendants***

There were 24 cases with a total of 94 defendants charged between 2006 and 2013. Criminal history records were obtained and coded for each of the defendants across the cases analyzed for this Report. The criminal histories were in the form of “rap sheets” showing each arrest and conviction, with detailed information about the charges and dispositions in each case. Both the statute and generic description of each offense were listed for each offense. Since cases or arrest events often included multiple charges, all

charges were coded for analysis.<sup>2</sup> The type of sentence was coded, as was whether the defendant was sentenced to jail or prison.<sup>3</sup> Both the arrest charge(s) and final conviction charge(s), for those found or pleading guilty, were coded. Dispositions were reported, as were sentences for those convicted.<sup>4</sup>

Access also was granted to the Complaints filed in each case (which were used to determine the dates of the beginning and end of each Stash House investigation), Investigative Memoranda, and ATF “takedown memos” describing the details of each group of defendants who participated in a specific event.<sup>5</sup> These records together provide narrative descriptions of the criminal histories, recruitment, and other relevant information about the defendants in each case. These records also include the details of the recruitment of those recruited to carry out the fake Stash House robberies.

Race/ethnicity, gender, and year of birth also were coded from the rap sheets. Age at the beginning of each year 2006-2013 was computed from the year of birth. Arresting law enforcement agency was coded. Since most arrests took place in Chicago, the agency variable was limited to a binary measure of whether the arrest was made by the Chicago Police Department or another law enforcement agency. Specific location data (address), either for the location of the arrest or for the residence of the defendant at the time of arrest, was coded where available. However, the data were not available in most rap sheets. The extensive missing data on location made geographic analyses impossible at this point.

## ***2. Eligible Population***

To create a population of similarly situated persons (a comparison group), complete criminal history records of all persons with at least one prior conviction for certain offenses between 2000 and 2015 were obtained via subpoena from the Illinois State

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<sup>2</sup> Details are provided in Appendix D. The categorization by crime type followed the crime aggregation and reporting systems developed by the Federal Bureau of Investigation (FBI) in its Uniform Crime Reporting System (UCR). For a listing by the FBI of the full range of offense definitions see <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/offense-definitions>.

<sup>3</sup> The custodial data provided by ISP had extensive missing records and incomplete information on custodial stays, precluding any analysis utilizing custodial stay length.

<sup>4</sup> Sentences were coded in order of severity, with a prison sentence superseding a concurrent jail sentence (e.g., a sentence to 6 months with time served in jail and a one year prison sentence is recorded as one prison sentence).

<sup>5</sup> See ATF Manual at A-35 – A-37 (reprinting ATF O 3250.1B.g) describing the purpose and content of these memos and the importance they play in the stash house investigation process. See *infra* notes 7, 8.

Police (ISP).<sup>6</sup> The parameters for the requested convictions were derived initially from the target offenses listed in the ATF Home Invasions Operations Manual.<sup>7</sup> According to the ATF Manual, these target offenses were “offenses that involve force or threat of force and includes (sic) murder, forcible rape, robbery, aggravated assault, and arson.”<sup>8</sup> The sample parameters for the requested data were derived initially from the target offenses listed in the ATF Manual for the Stash House Case Program.<sup>9</sup> Appendix C shows the definitions of eligibility as stated in the ATF Manual.

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<sup>6</sup> Details of the records produced are listed in Appendix B.

<sup>7</sup> It is my understanding from review of discovery that the ATF states its formal selection criteria in a series of regulations, manuals, and training materials. The government produced four sets of ATF documents in discovery: (1) an ATF Home Invasions Operations Manual dated 2013 (hereinafter “ATF Manual”); (2) a policy entitled ATF O 3250.1B dated November 17, 2011; (3) an “ATF Course” dated 2009; and (4) an undated policy entitled ATF O 3250.1A from sometime before 2011. This Report relies on the 2013 ATF Manual, which reprints ATF O 3250.1B (the November 17, 2011 policy, which is currently in operation until November 17, 2016), and on the “target identification” criteria set out therein. *See* ATF Manual at A-31 – A-32 and Bates # ATF-Docs(12CR632; 12CR887/00045). The “target identification” portion of the ATF Manual is shown in Appendix C.

The government produced these materials to lawyers for defendants in discovery as follows (Government’s in camera submission of December 16, 2013): (1) The 2013 Home Invasions Operations Manual (1st ed. 2013), Bates # ATF-Docs(12CR632; 12CR887/00011–54), includes an appendix that reproduces (2) the 2011 policy, ATF O 3250.1B (Nov. 17, 2011), Bates # ATF-Docs(12CR632; 12CR887/00045–52); (3) the 2009 ATF Course is Richard Zayas, *ATF Course: Advanced Undercover Investigations; Lesson: Home Investigations* (Feb. 27, 2009), Bates # ATF-Docs(12CR632; 12CR887/00069–82), and (4) the undated policy is ATF O 3250.1A, Bates # ATF-Docs(12CR632; 12CR887/00064–67), and was reproduced in the appendix to Lawyers for defendants shared these documents with me under the confidentiality stipulations in effect in this case.

<sup>8</sup> ATF Manual at A-31. This Report relies on the 2011 targeting criteria, even though some of the cases analyzed arose before the date of the policy. All of the ATF Manuals reflect a focus on violent offenders, a focus elaborated most clearly in the 2011 policy. For example, the ATF used very similar targeting criteria in its earlier 2009 “ATF Course” materials. Specifically, the materials focused on “violent offender[s]” with “past convictions for violent crimes.” Zayas, *ATF Course* at 5. *See also* ATF O 3250.1A (“‘Home Invasion’ investigations are defined as those investigations that focus upon members of the criminal element who break into or forcibly enter residences or other facilities generally for the purpose of committing armed robbery or burglary.”); ATF Manual at 2 (discussing Stash House Program’s origins in the 1990s as “viable means of continuing to arrest violent armed home invasion robbery crews” in South Florida), Bates # ATF-Docs(12CR632; 12CR887/00018).

<sup>9</sup> ATF Manual at A-31.



After this selective enforcement litigation began, the Government also publicly asserted that narcotics and firearms offenses are relevant to target identification.<sup>10</sup> These two categories of offenses are not mentioned by name in the ATF Manual that guides supervisors and undercover agents in the selection and recruitment of individuals for the Stash House Program. They also are not offenses that “involve force or threat of force.” This appears on its face to be a post-hoc expansion of the authorized guidelines for the Stash House Program.<sup>11</sup>

To account for the Government’s expanded criteria, the pool of potential eligibles was expanded beyond persons with one or more convictions for the target offenses listed in the ATF Manual, to include individuals with one or more state convictions for narcotics and firearms offenses.<sup>12</sup> Expanding the eligible population to include these additional individuals ensures the most “similar” comparison group, according to the government’s claims.

Records were requested for the entire Metropolitan Statistical Area of Chicago, but the Court ordered records produced only for the counties where the Stash House cases arose: Cook, Lake, Will, DuPage, Kane, Kendall, LaSalle and Winnebago Counties. This analysis does not consider any potential eligibles after 2013 because no Stash House cases were brought after 2013.

Once the potential eligibles for the Stash House Program were identified using these criteria, their complete criminal history was created through a search of the ISP databases. In addition to the arrest information, other information included data on prosecution outcomes, case outcomes and sentences, and correctional or custodial confinement.<sup>13</sup> Each of these components of criminal history were generated as separate files, and records of individuals were constructed by concatenating information for each person using the State Identification number (SID). The subpoenaed records included thousands of specific arrest charges based on chapters and subsections of the Illinois

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<sup>10</sup> See, e.g., Oral Argument, *United States v. Davis*, 14-1124, Dkt. 40 at 11:49 (7th Cir. May 21, 2014) (“The comparison group should be individuals who have sustained prior state or federal convictions for offenses involving robbery, narcotics, or firearms . . .”), available at [http://media.ca7.uscourts.gov/sound/2014/nr.14-1124.14-1124\\_05\\_21\\_2014.mp3](http://media.ca7.uscourts.gov/sound/2014/nr.14-1124.14-1124_05_21_2014.mp3); Government Motion for Reconsideration Regarding Discovery Order, *United States v. Williams*, 12-CR-887, Dkt. 74 (N.D. Ill. Aug. 21, 2013) (“Defendants have failed to identify any individuals remotely similar to themselves – people with criminal histories including narcotics and weapons offenses who sought to commit potentially violent robberies – who were not further investigated or prosecuted because of their race.”).

<sup>11</sup> ATF Manual at A-31 – A-32.

<sup>12</sup> The offenses and variables are further explained *infra* in Table 1 at 26 and notes 43, 44 and the accompanying text.

<sup>13</sup> However, extensive missing records and incomplete information precluded use of the custodial data to determine lengths and locations of correctional confinement.

criminal statutes. Appendix E provides examples of the coding of a subset of frequently cited specific statutes – among the thousands in the ISP dataset – into the crime categories shown in Appendix D.

### 3. Coding Race: Hispanic Surname Analysis

Both sources of criminal history information provided for this litigation have limited or no information on the Hispanic ethnicity either of the defendants or the potentially eligible population. The ISP data identified less than .1% of the 292,442 potential eligibles as Hispanic. For the defendants, criminal history records (“rap sheets”) contained no information on Hispanic ethnicity. For that group, information on race was supplemented and verified using individual-level inquiries by defense counsel in consultation with defendants (“Hispanic Verified”).

I also used a second method to determine Hispanic ethnicity in these two populations. I applied a commonly-utilized method that assigns Hispanic ethnicity based on self-reported ethnicity data from the 2000 United States Census.<sup>14</sup> This method has been applied and accepted by the Court in a recent case in the U.S. District Court for the District of Arizona.<sup>15</sup> The method was applied in that case to determine the size and proportion of the Hispanic population in class action litigation alleging racial discrimination under the Equal Protection Clause of the Fourteenth Amendment. Details of the procedure are discussed in Appendix F and are summarized here.

The Census Bureau has created a list of all surnames occurring 100 or more times in the 2000 Census data and the corresponding likelihood of an American with that name being Hispanic.<sup>16</sup> Using this list, I treat defendants and potential eligibles as Hispanic if the probability of a person being Hispanic based on their last name exceeds certain thresholds. “Hispanic (60%)” means that, based on their last name, a person is more than

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<sup>14</sup> Ralph B. Taylor, Initial Expert Report (Dec. 2, 2010), *Melendres v. Arpaio*, 07-CV-2513, Dkt. No. 424-2, Ex. B (D. Ariz. Apr. 29, 2011); Ralph B. Taylor, Rebuttal Expert Report (Feb. 4, 2011), *id.*, Dkt. 424-3, Ex. C (D. Ariz. Apr. 29, 2011).

<sup>15</sup> “Dr. Taylor relied on independent U.S. Census data correlating the likelihood that a person with any given name self-identified as Hispanic. He did a differential analysis that focused particularly on names whose owners identified as Hispanic more than 90% of the time, more than 80% of the time, and more than 70% of the time. He also included names whose owners self-identified as Hispanic at a 60% threshold as ‘a type of robustness analysis.’” Findings of Fact and Conclusions of Law, *Melendres*, 07-CV-2513, Dkt. 579 at 79 (May 24, 2013). “Dr. Taylor’s statistics in this respect were, apparently, more sophisticated than those provided in the 1980 census list of Spanish surnames.” *Id.* at 79 n.69.

<sup>16</sup> The current analysis used the 2000 Census Hispanic surname list B. *See* United States Census Bureau, “Frequently Occurring Surnames from the Census 2000, File B: Surnames Occurring 100 or more times,” *available at* [http://www.census.gov/topics/population/genealogy/data/2000\\_surnames.html](http://www.census.gov/topics/population/genealogy/data/2000_surnames.html).

60% likely to be Hispanic. For each person, I calculate if they are Hispanic at the 60%, 70%, 80%, and 90% cutoffs.

For the potential eligible comparison group, I use the 60% Hispanic cutoff throughout the analysis, with a robustness check using the 90% Hispanic cutoff. I use this conservative measure in order to provide a consistent basis for statistical tests to determine disparate treatment. As shown in Table 4, *infra* at 21, the summary statistics for the Hispanic population at the 60%-80% thresholds are nearly identical, reducing potential error or bias that might be a function of the surname classification method and any differences between the thresholds.

For defendants, both the Hispanic 60% and the Hispanic Verified measures of Hispanic ethnicity are used in the analyses. I use the conservative Hispanic 60% measure to provide a consistent basis for statistical tests to determine disparate treatment. Table 4, *infra* at 21, shows that the summary statistics for the Hispanic population at the 60%-80% thresholds are identical, reducing potential error or bias that might be a function of the surname classification method and any differences between the thresholds. Appendix F presents a full discussion of the methods for the Hispanic Surname Analysis.

## B. Measures

From the respective data sources, records of each arrest, conviction, sentence and custodial placement were aggregated to create a criminal history for each defendant and for each person in the pool of potential eligibles. The following variables were included in the aggregated criminal history data file:

### Variables Created from Rap Sheets and Criminal Histories

Race - Black	Number of Arrests
Race - non-Hispanic White	Number of Convictions
Ethnicity - Hispanic (60%)	Number of Arrests – UCR Violent†
Ethnicity - Hispanic (70%)	Number of Arrests – UCR Expanded
Ethnicity - Hispanic (80%)	Number of Convictions – UCR Violent†
Ethnicity - Hispanic (90%)	Number of Convictions – UCR Expanded
Gender - Female	Number of Arrests and Convictions – Weapons Offenses
Age	Number of Arrests and Convictions – Drug Possession
Age at First Arrest	Number of Arrests and Convictions – Drug Sale
Number of Prison Sentences	Number of Arrests and Convictions – Marijuana Possession
Number of Jail Sentences	Number of Arrests and Convictions – Marijuana Sale
Percent of Arrests in Chicago	

**Notes:** †Based on ATF Manual.

The data are arrayed in the database for each individual as of January 1st of each year 2006-2013. This permits controls for criminal activity over time taking into account the specific temporal period when Stash House Program arrests took place and more precise specification of selection effects for those periods.

### ***III. THE STASH HOUSE DEFENDANTS***

#### **A. Stash House Defendant Population**

The population for analysis is a set of 94 defendants spanning 24 cases.<sup>17</sup> According to the ATF, the investigation should “target persons who show a propensity of doing harm to the public through violent behavior/armed robberies and whose activities have been documented either through criminal history, criminal reputation, or self-incrimination.”<sup>18</sup> The ATF Manual setting standards for Stash House cases goes on to state “minimum criteria [that] must be followed.”<sup>19</sup>

In addition to setting forth the criteria for recruitment, the ATF Manual states that “[t]he undercover agent must meet with at least two members of the robbery crew.”<sup>20</sup> The ATF Manual also states that successful prosecutions “place a greater emphasis on the undercover conversations as opposed to ... the physical evidence obtained at the time of arrest.”<sup>21</sup> And, “[i]t is therefore mandatory that an undercover agent ... be used throughout the investigation, up to and including the arrest of the *subjects*.”<sup>22</sup> Throughout the section of the ATF Manual describing the procedures, there is repeated emphasis on directions given by the undercover ATF agent to the “violate(s).”<sup>23</sup> The ATF Manual goes on to describe the undercover agent’s role in supervising the “robbery crew”: “The undercover agent must meet at least two members of the robbery crew.”<sup>24</sup> For example, in referring to meetings between the undercover ATF agent and the “violate(s),” the Manual states:

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<sup>17</sup> At the outset of research for these proceedings, 25 cases were identified, each including multiple defendants. However, one case, *U.S. v. Vidal*, was dropped from the analysis after attorneys for defendants notified me that this was not an ATF case.

<sup>18</sup> ATF Manual at A-31.

<sup>19</sup> *Id.* at A-31 – A-32.

<sup>20</sup> *Id.* at A-32.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* (emphasis added).

<sup>23</sup> *Id.* at A-33, § 3250.1B.e(2).

<sup>24</sup> *Id.* at A-32.

“This also allows the undercover agent an opportunity to speak with all members of the organization in the event that all subjects were not present at prior meetings.”<sup>25</sup>

Accordingly, the analyses in this Report examine the full set of defendants in each case together in each statistical test. Based on statements in the ATF Manual setting forth procedures that undercover agents will follow, these procedures place undercover agents in full control and active management of the activities of the entire “robbery crew,” including the initial target(s) of the investigation and the other members of the “crew.” The analyses of the full complement of defendants directly address the claims in this litigation, more so than an analysis focusing solely on the initial targets. According to the stated procedures, the undercover agents approve of the full membership of each “crew,” meet on several occasions with the full “crew,” are responsible to their supervisors at ATF for the training of all the conspirators, and prepare the full “crew” to take the substantial steps necessary for a successful prosecution.

## **B. Who are the Stash House Defendants?**

### ***1. Identifying Defendants***

To identify the 94 defendants, I relied on three sources: (1) the “takedown memoranda,” (2) criminal complaints, and (3) the initial reports of investigation (ROIs) for each case. I consider the ATF takedown memo to be the controlling document of the investigation because it provides the aggregated record of the facts of the investigation up to the arrest. In some instances, further investigations after the completion of the takedown memo but before the Stash House arrest took place revealed additional facts.<sup>26</sup> In the four cases where the takedown memo has not been produced to me, I rely on the complaint and the initial ROIs read in tandem.<sup>27</sup>

### ***2. Defendants by Race***

Table 2 (on the following pages) lists the Stash House cases. The table also shows the race of each defendant, with Hispanic defendants identified using the Hispanic Surname

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<sup>25</sup> *Id.* at A-34.

<sup>26</sup> For example, in *Williams*, 12-CR-887, the last meeting/contact listed in the takedown memorandum was on November 8, 2012 (Takedown Memo at 3, 5–6). The takedown memo also states that it anticipates future meetings on November 12 and 13 (Takedown Memo at 6). It was during a post-takedown memorandum meeting on November 12 that the ATF met Mr. Hummons (Complaint at 12–13). The defendants were arrested on November 14, 2012 (Complaint at 18).

<sup>27</sup> *United States v. Davis*, *United States v. Hall*, *United States v. Tanner*, and *United States v. Harris*.

Analysis method described earlier.<sup>28</sup> Hispanic ethnicity is assigned using the 60% threshold.<sup>29</sup> See Appendix F.

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<sup>28</sup> See *supra* Subsection II.A.3 of this Report. As discussed in that section and in Appendix F, this method undercounts Hispanics when compared to self-identification of ethnicity and information from attorneys. However, to maintain methodological consistency in classifications between the defendant and potential eligible groups, the analyses proceed using the computed ethnicity.

<sup>29</sup> Three of the defendants in *United States v. Elias*, Adrian and Salvador Elias and Angel Olsen, have been classified as White using the Spanish surname methodology at the 60% cutoff. In reality all three are Hispanic. This conclusion is based on discovery and communications with defense counsel in consultation with the defendants. Specifically, Adrian and Salvador Elias self-identify as Hispanic and the ATF takedown memorandum in this case identifies them as Hispanic. Olson self-identifies as Hispanic, see *United States v. Elias*, 13 CR 0476, Dkt. 162 at ¶ 1 (N.D. Ill. Oct. 18, 2013), and, based on communications with defense counsel, Olson has one Hispanic parent and one Black parent. In addition, the U.S. Attorney's Office previously categorized Olson as Black in an earlier filing in which Hispanic categorizations were omitted. *Williams*, 12 CR 887, Dkt. 74-1 at 2 (Aug. 21, 2013).

**Table 2. List of Defendants**

<b>Year of Investigation</b>	<b>Case Name</b>	<b>Defendant Name (Initial Targets Highlighted)</b>	<b>Race / Ethnicity<sup>[1][2]</sup></b>	
2006	United States v. Corson, et al.	Alvarez, Oscar	Hispanic (60%)	
		Corson, Aaron	White	
		Corson, Marcus	White	
	United States v. Harris, et al.	Blicht, Christopher	Black	
		Carwell, Michael	Black	
		Harris, Michael	Black	
		Washington, Devarl	Black	
		Billingsley, Lavoyce	Black	
	United States v. Lewis, et al.	Lewis, Scott	Black	
		Williams, Vernon	Black	
		United States v. Tankey, et al.	King, James	Black
		Lewis, Demarlon	Black	
	2007	United States v. George, et al.	Tankey, Joaquin	Black
			George, Robert	White
Spagnola, Michael			White	
United States v. Sidney, et al.		Lawrence, Charles	Black	
	Scott, Jerome	Black		
United States v. Tanner, et al.	Sidney, Ben	Black		
	Calvert, Fred	Black		
	Calvert, Keith	Black		
United States v. Walker, et al.	Tanner, Rodney	Black		
	Logan, Rashad	Black		
	Walker, Hurreon	Black		
2008	United States v. Farella, et al.	Blais, Michael	White	
		Catanzaro, Donald	White	
		Farella, Frank	White	
	United States v. Hall, et al.	Gordon, Karinder	Black	
		Hall, Shamonte	Black	
		Ray, Rodney	Black	
	United States v. Mahan, et al.	Barber, Mario	Black	
		Mahan, Tony	Black	
McKenzie, James		Black		
Stewart, Steven		Black		
2009	United States v. Mayfield, et al.	Kindle, Montreece	Black	
		Mayfield, Leslie	Black	
		Ward, Nathan	Black	
		White, Dwayne	Black	
2011	United States v. Alexander, et al.	Alexander, William	Black	
		Midderhoff, Hugh	Black	
		Saunders, Devin	Black	
	United States v. Flowers, et al.	Adams, Anthony	Black	
		Conley, Tracy	Black	
		Flowers, David	Black	
		Flowers, Myreon	Black	
		Jones, Dwayne	Black	
2012	United States v. Brown, et al.	Space, Rudy	Black	
		Trapp, Anwar	Black	
		Brown, Abraham	Black	
		Davis, Christopher	Black	
		Jones, Dwaine	Black	
		Taylor, Kenneth	Black	
		Washington, Alfred	Black	

<b>Year of Investigation Initiation</b>	<b>Case Name</b>	<b>Defendant Name (Initial Targets Highlighted)</b>	<b>Race / Ethnicity<sup>[1][2]</sup></b>
.	United States v. Cousins, et al.	Cousins, David	Black
.	.	Cousins, Michael	Black
.	.	Lloyd, Dunwon	Black
.	United States v. Davila, et al.	Davila, Jason	Hispanic (60%)
.	.	Davila, Justin	Hispanic (60%)
.	.	Hadley, Neiko	Black
.	United States v. Davis, et al.	Barbee, Corey	Black
.	.	Byrd, Jayvon	Black
.	.	Davis, Paul	Black
.	.	Jeffries, Dante	Black
.	.	Morris, Julius	Black
.	.	Smith, Vernon	Black
.	.	Withers, Alfred	Black
.	United States v. DeJesus, et al.	Borrero, Luis	Hispanic (60%)
.	.	Corona, Jesus	Hispanic (60%)
.	.	DeJesus, Benjamin	Hispanic (60%)
.	.	Malave, Ceferino	Hispanic (60%)
.	United States v. Paxton, et al.	Berry, Adonis	Black
.	.	Paxton, Cornelius	Black
.	.	Paxton, Randy	Black
.	.	Walker, Randy	Black
.	.	Webster, Matthew	Black
.	United States v. Payne, et al.	Bruce, Deandre	Black
.	.	Jackson, Brandon	Black
.	.	Jackson, Brian	Black
.	.	Payne, William	Black
.	United States v. Williams, et al.	Hummons, John	Black
.	.	Lee, Howard	Black
.	.	Williams, Antonio	Black
2013	United States v. Elias, et al.	Benitez, Demetrio	Hispanic (60%)
.	.	Elias, Adrian	White (Verified Hispanic)
.	.	Elias, Salvador	White (Verified Hispanic)
.	.	Ledesma, Miguel	Hispanic (60%)
.	.	Olson, Angel	White (Verified Hispanic)
.	.	Reding, Paul	White
.	.	Sistrunk, Cornelius	Black
.	.	Stevens, Deeric	Black
.	.	Washington, Mishon	Black
.	United States v. Jackson, et al.	Jackson, Thomas	Black
.	.	Swain, Nolan	Black
.	.	Williams, Calvin	Black
.	.	Wrotten, Demetrius	Black

**Notes:**

[1] Race and ethnicity is based on rap sheets and the Hispanic surname analysis. Neiko Hadley, whose rap sheet lists him as both Black and White, has been categorized as Black based on confirmation by defense counsel in consultation with Mr. Hadley.

[2] The defendants in United States v. Elias are classified as White using the Hispanic surname methodology at the 60% cutoff, but are categorized as Verified Hispanic based on confirmation by defense counsel in consultation with the defendants.



The table below summarizes the race and ethnicity (Hispanic 60%) for the full defendant sample from Table 2.

<b>Race</b>	<b>All Defendants</b>
Black	74 (78.7%)
Hispanic (60%)	9 (9.6%)
White	11 (11.7%)
Total	94 (100%)

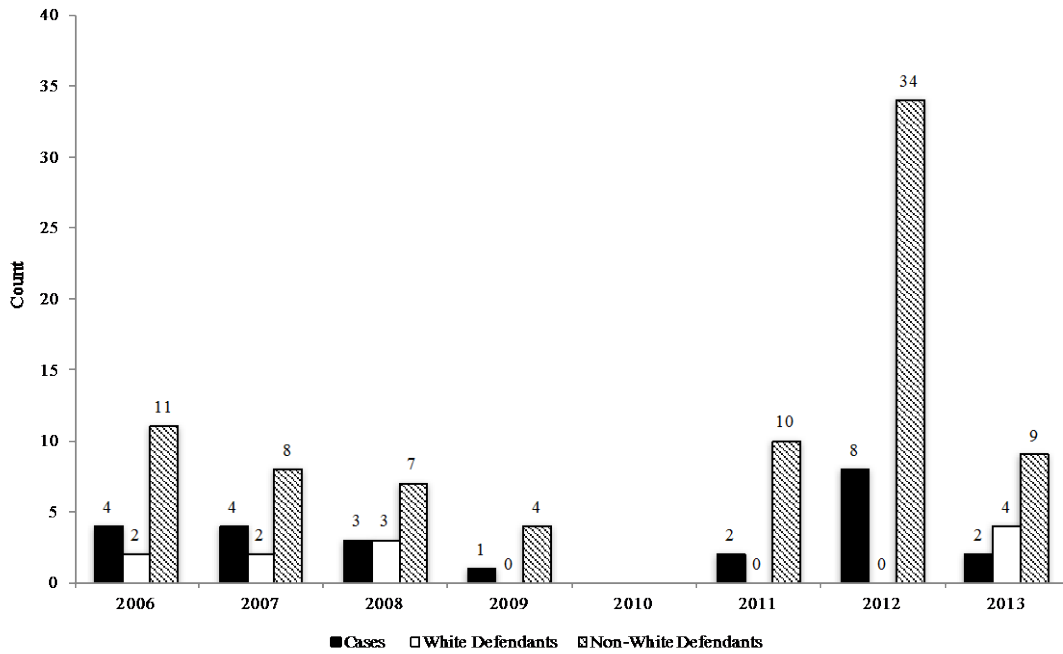
The tables below and Figure 1.1 show that case origination took place in two distinct intervals.<sup>30</sup> The tables below collapse the years into the two periods. From 2006-2009, 12 cases were originated with 37 defendants. There were no cases originated in 2010, and another 12 cases were originated from 2011-2013, with 57 defendants. The pattern of recruitment by race changed noticeably from the first to the second period. Figure 1.1 and the first table below shows the number of cases originated by year, and the number of White and non-White (Black and Hispanic) defendants during each year. In the table below and in Figure 1.1, race and ethnicity are shown using the Hispanic 60% criterion.

<b>Defendant Race</b>	<b>2006-2009</b>	<b>2011-2013</b>
Black	29 (78.4%)	45 (78.9%)
Hispanic (60%)	1 (2.7%)	8 (14.0%)
White	7 (18.9%)	4 (7.0%)
Total	37 (100%)	57 (100%)

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<sup>30</sup> Note that three of the defendants listed as White in Figure 1.1 and in the tables on this page under the Hispanic 60% threshold have been verified by defense counsel in consultation with defendants to be Hispanic. *See supra* note 29.

**Figure 1.1. Cases and Defendants by Year of Investigation Initiation  
(Estimated Hispanic - 60%)**



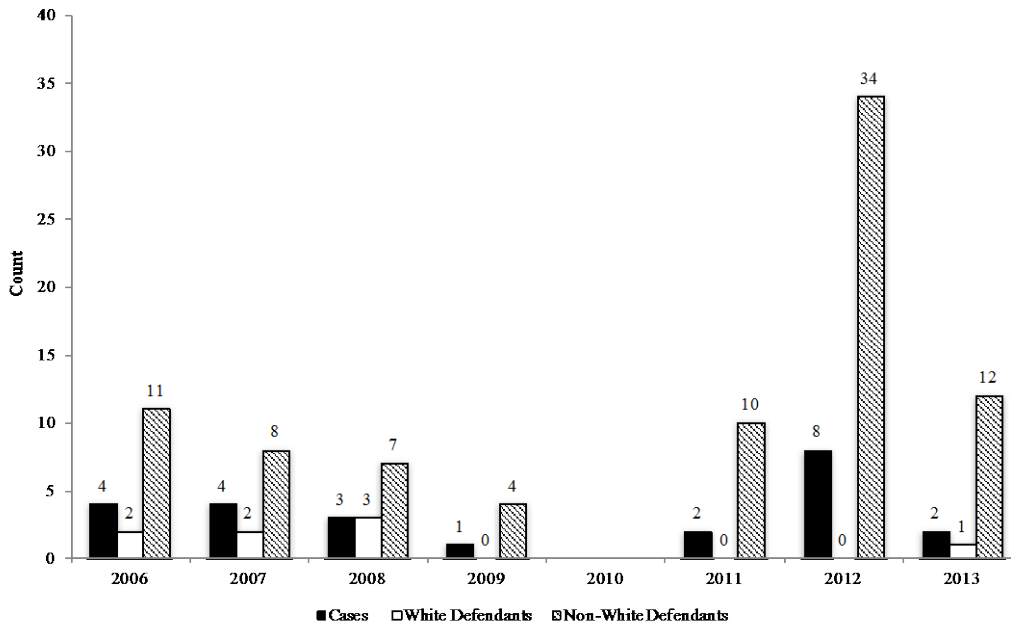
In the first interval, 30 of 37 defendants, or 81.1%, were either Black or Hispanic. The trend data show that over time, minority representation in the racial and ethnic composition of the defendant pool became more concentrated. Starting in 2011, 53 of 57 defendants, or 93.0%, were either Black or Hispanic. Among the 57 defendants in the latter period, 45 (78.9%) were Black, and 8 (14.0%) were Hispanic.

The next summary table and Figure 1.2 show the same trend, but this time with race and ethnicity data that were verified by defense counsel and self-reported by defendants. In the 12 cases originating between 2006 and 2009, 30 of 37 defendants (81.8%) were Black or Hispanic. From 2011-2013, 56 of 57 defendants (98.2%) were Black or Hispanic.

Together, the summary table and Figure 1.2 show that, using the verified race and ethnicity data, recruitment into the Stash House Program from 2011-2013 was nearly exclusively minority defendants. As shown in the next section, it is extremely unlikely that this selection took place by chance alone.

Defendant Race	2006-2009	2011-2013
Black	29 (78.4%)	45 (78.9%)
Hispanic (Verified)	1 (2.7%)	11 (19.3%)
White	7 (18.9%)	1 (1.8%)
Total	37 (100%)	57 (100%)

**Figure 1.2. Cases and Defendants by Year of Investigation Initiation (Verified Hispanic)**



### 3. Unadjusted Probabilities of Defendant Selection by Race

Given the race and ethnicity distributions in the defendant and potential eligible populations, I next simply estimated the probability of drawing a sample with its racial distribution of 79% Black and 13% Hispanic from the very large pool of 292,442 potential eligibles. In that pool, 55% are Black and 17% are Hispanic (60%) (See Table 4 *infra* at 21). To do this, I estimated a binomial distribution, which takes the form:

$$P(x) = \frac{N!}{x!(N-x)!} \pi^x (1-\pi)^{N-x}$$

where  $P(x)$  is the probability of  $x$  successes out of  $N$  trials,  $N$  is the number of trials, and  $\pi$  is the probability of success on a given trial. From this, the probability of drawing a sample of defendants with the observed racial and ethnic distribution can be estimated. Tables 3.1 and 3.2 show the results. Separate estimates were developed for Black defendants only, and also for non-White defendants combined (Black and Hispanic 60%). Separate estimates were developed for the post-2010 period, when the number of White defendants was sharply reduced.

**Table 3.1. Binomial Probability of Defendant Selection (Estimated Hispanic - 60%)**

<i>Panel I: All Years</i>			
<b>Test</b>	<b>Defendants % Black</b>	<b>Total Eligible % Black</b>	<b>Probability</b>
Probability of Selecting 74 Black Defendants from 94 Defendants	78.7%	55.4%	0.0%
<b>Test</b>	<b>Defendants % Non- White</b>	<b>Total Eligible % Non-White</b>	<b>Probability</b>
<i>Using 60% Hispanic Surname Probability Cutoff</i>			
Probability of Selecting 83 Non-White Defendants from 94 Defendants	88.3%	72.2%	0.0%
<i>Panel II: Post-2010</i>			
<b>Test</b>	<b>Defendants % Black</b>	<b>Total Eligible % Black</b>	<b>Probability</b>
Probability of Selecting 45 Black Defendants from 57 Defendants	78.9%	55.4%	0.0%
<b>Test</b>	<b>Defendants % Non- White</b>	<b>Total Eligible % Non-White</b>	<b>Probability</b>
<i>Using 60% Hispanic Surname Probability Cutoff</i>			
Probability of Selecting 53 Non-White Defendants from 57 Defendants	93.0%	72.2%	0.0%

**Notes:**[1] "Probability" is the percent chance that *n* number of Black/non-White defendants or more are selected.

[2] A defendant is classified as non-White if he is Black or Hispanic.

The upper portion of Table 3.1 shows that the probability of selecting a sample of 74 Black defendants in a pool of 94 from the population of potential eligibles is less than 0.1%, which is rounded to 0%. This is a very low probability estimate. In the post-2010 period, the probability is similarly low: 0% for Black defendants, and 0% for non-White defendants.

**Table 3.2. Binomial Probability of Defendant Selection (Verified Hispanic)**

<i>Panel I: All Years</i>			
	<b>Defendants % Non- White</b>	<b>Total Eligible % Non-White</b>	<b>Probability</b>
<i>Using 60% Hispanic Surname Probability Cutoff and Verified Hispanic</i>			
Probability of Selecting 86 Non-White Defendants from 94 Defendants	91.5%	72.2%	0.0%

<i>Panel II: Post-2010</i>			
	<b>Defendants % Non- White</b>	<b>Total Eligible % Non-White</b>	<b>Probability</b>
<i>Using 60% Hispanic Surname Probability Cutoff and Verified Hispanic</i>			
Probability of Selecting 56 Non-White Defendants from 57 Defendants	98.2%	72.2%	0.0%

**Notes:**

[1] "Probability" is the percent chance that  $n$  number of Black/non-White defendants or more are selected.

[2] A defendant is classified as non-White if he is Black or Hispanic.

Table 3.2 shows the same results using the verified Hispanic ethnicity classification. Recall that three defendants were classified as White using the Hispanic Surname Analysis method, but their actual ethnicity is Hispanic as verified by defense counsel in consultation with the defendant. The results here are similar to Table 3.1: the probabilities of randomly selecting a defendant pool that matches the actual defendant pool are 0%, and 0% for defendants after 2010.

The results suggest that it is extremely unlikely that a Stash House defendant pool would be selected with the racial and ethnic composition that we observe, given the racial and ethnic composition of the pool of potential eligibles. In the three tests that follow in Sections IV and V, the estimates are adjusted for the simultaneous effects of the ATF criteria, the expanded set of ATF criteria, and other criminal propensity indicators on the probability of selection as a defendant.

#### ***4. Defendant Prior Records***

In addition to examining the racial distribution, I arrayed the Stash House defendants using the measures of criminal activity that describe the "criminal propensity" indicia listed in the ATF Manual.<sup>31</sup> The defendants are a heterogeneous group, including some

<sup>31</sup> ATF Manual at A-31 – A-32; *see supra* Section II.A.2 of this Report.

who have very limited criminal histories while others have extensive histories. Specifically, with respect to the conviction criteria:

- 19 of the 94 defendants had no prior convictions for any offense prior to the Stash House case.
- 65 of the 94 defendants had no prior convictions for any of the ATF UCR Part I Violent Offenses.<sup>32</sup>
- 78 of the 94 defendants had no prior convictions for any of the ATF Expanded Violent Offenses.
- 22 defendants had only one prior conviction for the ATF UCR Part I Violent Offenses
- 15 defendants had only one prior conviction for the ATF Expanded Violent Offenses.
- 39 defendants had no prior convictions for drug or weapons offenses.

The patterns of prior arrests show much the same. Specifically:

- 37 of the 94 defendants had no prior arrests for any of the ATF UCR Part I Violent Offenses.
- 29 of the 94 defendants had no prior arrests for the ATF Expanded Violent Offenses.
- 13 of 94 defendants had no prior arrests for drug or weapons offenses.

For the post-2010 recruitment period:

- 35 of 57 defendants had no prior convictions for the ATF UCR Part I Violent Offenses or the ATF Violent Expanded Offenses.

These patterns suggest that a substantial number of the Stash House defendants did not meet the ATF offense criteria as stated in the ATF Manual.<sup>33</sup> Nor did many of these defendants meet the expanded criteria, including a broader list of violent crimes. The widening of the offense criteria for recruitment resulted in the prosecution of dozens of persons who fail to meet either the stated or expanded ATF criteria in targeting the most violent offenders in the community. In turn, many of those who were recruited were lured into criminal conspiracies that exposed them to lengthy terms of confinement under federal criminal law without having satisfied the government's own objectives with respect to the most serious offenders in the community.

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<sup>32</sup> See *infra* notes 42–44 and accompanying text for definitions of which offenses are included in ATF UCR Part I Violent Offenses and ATF Expanded Violent Offenses.

<sup>33</sup> ATF Manual at A-31 – A-32.

### C. Comparing Stash House Defendants and Potential Eligibles

Before proceeding to the results of the three tests for disparate treatment, a preliminary step is to examine the composition of the Stash House defendant and potential eligible populations. Table 4 provides summary statistics to compare the Stash House defendants to the population of 292,442 potential eligibles. *See infra* at 21. The potential eligibles were identified according to the criteria listed in Appendix B. Table 3 compares the 94 defendants to the potential eligibles on parameters of demographics and several dimensions of criminal history. The table shows that the two populations are well-matched along several dimensions, but poorly matched along several others. Specifically:

- 55% of the potential eligibles are Black, compared to 79% of the defendants.
- 17% of the potential eligibles are Hispanic,<sup>34</sup> compared to 10% of the defendants.
- Stash House defendants are younger (28.6 years) compared to potential eligibles (33.4 years).
- Stash House defendants were younger at first arrest: 18.5 years of age, compared to 21.6 years of age for potential eligibles.
- Potential eligibles had fewer prior convictions (2.3 compared to 2.8) but about the same number of prior arrests, compared to the Stash House defendants. The two groups had equivalent numbers of prior jail sentences.
- Of the total number of prior arrests for each group, about half were made by the Chicago Police Department.
- Defendants had more UCR Part I violent arrests (0.96 per person) compared to potential eligibles (0.69). Defendants also had more UCR Part I violent convictions (0.38 per person) compared to potential eligibles (0.21).
- Similar differences were observed for arrests and convictions for weapons offenses, and drug sale and possession charges.

It is important to note that in Table 4, for each of the criminal history and conviction parameters, the standard deviations (i.e., the variances) are quite large. This means that there is a large spread in these parameters, and there are large “tails” to the distributions. For example, the standard deviation for prior arrest for UCR Part I violent crimes is almost the same for potential eligibles as it is for the defendants, even though the average for the Stash House defendants is higher. In these instances, the mean (average) value can be misleading, as there may well be comparably large populations at the extreme values of those distributions. The disparate treatment tests control for those tails and distributions, and provide a more definitive test of differences in the populations.

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<sup>34</sup> This statistic uses the Hispanic 60% cutoff. The range of Hispanic population is 12% to 17%.

Table 4. ISP Data and Rap Sheet Data Summary Statistics (Defendant N = 94)

Variable	ISP Data (Excluding All Defendant Data)				Rap Sheet Data (All Charged Defendants)					
	Obs	Mean	Std. Dev.	Min	Max	Obs	Mean	Std. Dev.	Min	Max
<i>General Demographics</i>										
Female	292,442	0.15		0	1	94	0.00		0	0
Black	292,442	0.55		0	1	94	0.79		0	1
Hispanic (60%)	292,442	0.17		0	1	94	0.10		0	1
Hispanic (70%)	292,442	0.17		0	1	94	0.10		0	1
Hispanic (80%)	292,442	0.16		0	1	94	0.10		0	1
Hispanic (90%)	292,442	0.12		0	1	94	0.04		0	1
Hispanic (60%) Plus Verified Hispanic	292,442	0.17		0	1	94	0.13		0	1
Age	292,329	33.36	11.86	10.00	80.00	94	28.58	8.20	13.50	46.50
<i>Criminal History</i>										
Age at First Arrest	291,953	21.59	7.63	10.03	79.98	94	18.47	3.58	11.09	36.92
Number of Arrests	292,442	10.55	11.28	0.00	294.75	94	11.14	8.80	0.00	49.00
Number of Convictions	292,442	2.34	2.65	0.00	63.50	94	2.79	3.09	0.00	20.00
Number of Prison Sentences	292,442	0.48	1.16	0.00	31.00	94	1.21	1.78	0.00	9.00
Number of Jail Sentences	292,442	0.99	1.55	0.00	50.00	94	0.98	1.42	0.00	8.00
Percent of Arrests by CPD	292,442	0.50	0.43	0.00	1.00	94	0.56	0.43	0.00	1.00
<i>Arrest History</i>										
Arrests for ATF Manual Violent (UCR Part 1)	292,442	0.69	1.21	0.00	25.38	94	0.96	1.24	0.00	6.00
Arrests for ATF Manual Violent (Expanded)	292,442	1.53	2.34	0.00	65.00	94	1.31	1.59	0.00	8.50
Arrests for Weapons	292,442	0.38	0.82	0.00	26.50	94	0.87	1.11	0.00	4.00
Arrests for Drug Sale	292,442	0.35	0.78	0.00	11.25	94	0.46	0.76	0.00	3.00
Arrests for Drug Possession	292,442	1.55	2.42	0.00	57.00	94	2.12	2.58	0.00	12.43
Arrests for Marijuana Sale	292,442	0.10	0.37	0.00	9.00	94	0.15	0.57	0.00	4.75
Arrests for Marijuana Possession	292,442	0.91	1.68	0.00	49.75	94	0.97	1.36	0.00	6.50
<i>Conviction History</i>										
Convictions for ATF Manual Violent (UCR Part 1)	292,442	0.21	0.52	0.00	10.00	94	0.38	0.75	0.00	4.00
Convictions for ATF Manual Violent (Expanded)	292,442	0.26	0.55	0.00	9.00	94	0.16	0.38	0.00	2.00
Convictions for Weapons	292,442	0.14	0.39	0.00	7.00	94	0.35	0.65	0.00	3.00
Convictions for Drug Sale	292,442	0.31	0.74	0.00	10.00	94	0.44	0.77	0.00	4.00
Convictions for Drug Possession	292,442	0.40	0.78	0.00	16.63	94	0.51	0.92	0.00	5.00
Convictions for Marijuana Sale	292,442	0.05	0.22	0.00	5.00	94	0.03	0.19	0.00	1.50
Convictions for Marijuana Possession	292,442	0.10	0.34	0.00	9.50	94	0.11	0.35	0.00	2.00

**Note:** Data is at the person level. For the ISP data, the data represents an 8-year average of 2006-2013. For the rap sheet data, the data represents an average of all years up to and including the year in which the defendant was involved in a stash house bust.



#### ***IV. METHODS FOR TESTING FOR DISPARATE TREATMENT***

A series of three empirical tests provides the basis for assessing the selective enforcement claims underlying these cases.<sup>35</sup> Using multiple arrays of selection criteria and three different analytic models, I test to determine whether race predicts selection into the Stash House defendant pool, controlling for the selection criteria as stated in the ATF Manual and other documents. Each successive test is increasingly rigorous in isolating the role of race – net of other factors such as criminal history – in the selection of Stash House defendants. The tests begin with simple regressions and move on to analyses that approximate clinical trials to test the role of race in the selection of Stash House defendants.

##### **A. Test 1**

The first test is a disparate treatment test. The general test for evidence of disparate treatment is a regression equation that takes the form:

$$\text{Outcome} = \alpha + \beta_1 * \text{Minority} + \sum_i \beta_i * (\text{Plausible Non-Race Influences}) + \varepsilon,$$

where *Outcome* is the event or status of interest, *Minority* is an indicator for the racial composition or status of the unit observed, *Plausible Non-Race Influences* are a set of variables representing non-race factors that also might influence the outcome, and an error term  $\varepsilon$  that captures the variation in the outcome that cannot be explained by either *Minority* status or the *Plausible Non-Race Influences*. These models may include non-race influences that are correlated with race, so as to better identify the unique effects of race that are present once the influence of proxies for race are removed.<sup>36</sup>

Consider the following example, from *Griggs v. Duke Power Co.*, a seminal employment discrimination case.<sup>37</sup> In a disparate treatment claim, one could test whether the use of a high school diploma requirement biases the hiring process since African American job applicants may be less likely to have obtained a high school diploma. Had this race-correlated control been introduced, it would likely have reduced the racial disparity in the hiring rates – for the simple reason that minority applicants at that time were less likely to have obtained a high school diploma. Should a statistical test control for whether or not

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<sup>35</sup> See, e.g., Sonja B. Starr, “Explaining Race Gaps in Policing: Normative and Empirical Challenges,” U of Michigan Law & Economics Research Paper No.15-003 (Jan. 19, 2015), available at <http://ssrn.com/abstract=2550032>.

<sup>36</sup> For a general discussion of the specification of regression models to test for disparate treatment, see generally D. James Greiner, “Causal Inference in Civil Rights Litigation,” 122 *Harvard L. Rev.* 533 (2008). For a general discussion of how regressions sort out the influences of predictors of an outcome, see Thomas J. Campbell, “Regression Analysis in Title VII Cases: Minimum Standards, Comparable Worth, and Other Issues Where Law and Statistics Meet,” 36 *Stanford L. Rev.* 1299 (1984).

<sup>37</sup> *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

an applicant had a high school diploma? As Ian Ayres points out,<sup>38</sup> in a disparate treatment case, the answer is yes. Under a disparate treatment theory, the critical question is whether an applicant's race was the cause of being denied employment. If applicants were rejected because the employer chose not to hire diploma-less applicants, the applicants' race would not be a "motivating factor" in the employer's decision (unless there was evidence to establish that the employer adopted the diploma requirement with the intention of excluding minority applicants from the work force). The goal in specifying these models is to identify the effects of race on outcomes after simultaneously considering factors that may be relevant as well. Failure to do so raises the risk of "omitted variable bias", which could lead to erroneous conclusions about the effects of variables that do appear in a regression test.<sup>39</sup>

The test is performed using a logistic regression procedure.<sup>40</sup> Logistic regression is well-suited for analysis of dichotomous outcomes, such as selection into a specific category or program. The results show the log odds of being selected into the category of interest, adjusted for the effects of other variables entered into the regression. The model takes the form of

$$\pi_i = Pr(Y_i=1|X_i=x_i) = \frac{\exp(\beta_0 + \beta_1 x_i)}{1 + \exp(\beta_0 + \beta_1 x_i)}$$

where Y is the outcome of interest (0 or 1),  $\pi$  is the probability that an individual  $i$  will be in the category of interest,  $\beta_0$  is the intercept, and  $\beta x$  represents the concurrent effects of a set of explanatory variables or predictors of that outcome. In this case, we are interested in selection as a Stash House defendant, and race is one of the predictors included in the vector  $x$ .

In this and subsequent analyses, all defendants were pooled for the analyses. In each instance, the outcome of interest is selection as a defendant. Separate models are

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<sup>38</sup> Ian Ayres and Jonathan Borowsky, *A Study of Racially Disparate Outcomes in the Los Angeles Police Department* at 5, 15 (October 2008), available at <https://www.aclusocal.org/wp-content/uploads/2015/09/11837125-LAPD-Racial-Profiling-Report-ACLU.pdf>.

<sup>39</sup> See, e.g., Ian Ayres, "Testing for Discrimination and the Problem of 'Included Variable Bias'," Yale Law School Working Paper (2010), available at <http://islandia.law.yale.edu/ayres/ayresincludedvariablebias.pdf>; Ian Ayres, "Three Tests for Measuring Unjustified Disparate Impacts in Organ Transplantation: The Problem of 'Included Variable' Bias," 48 *Perspectives in Biology and Medicine* 68 (2005).

<sup>40</sup> See generally David W. Hosmer Jr, and Stanley Lemeshow, *Applied Logistic Regression* (2004). See also Scott Menard, *Applied Logistic Regression Analysis* (2002) (discussing the assumptions of a logistic regression model and its difference from ordinary multiple (least squares) regression models).

estimated with cumulative sets of predictors that adds blocks of variables to the prior model.

Table 1 shows the design of the separate models. Each model iterates additional information and allows us to see if there are particular types or thresholds of information, such as demographic factors or criminal history, that explain whether and why the selection of Stash House defendants is based on race or ethnicity.

Model 1 includes only a variable for Black. This model simply tests whether defendants are more likely to be Black than the potential eligibles. Model 2 tests whether defendants are more likely to be Black or Hispanic than the potential eligibles. Model 3 re-estimates Model 2, adding gender and age variables. In criminological research, *age at first arrest* is a robust predictor of the length and seriousness of criminal careers.<sup>41</sup> Since all the defendants are males, there is no estimate (odds) reported for females.

Model 4 includes the variables specified in the eligibility criteria in the ATF Home Invasions Operations Manual, including both robbery and armed robbery.<sup>42</sup> Because the ATF Manual's eligibility criteria closely parallel the offenses set out in the list of violent crimes in Part I of the FBI's Uniform Crime Report (UCR), these variables are labeled "ATF Manual UCR Part I Violent Arrests" and "ATF Manual UCR Part I Violent Convictions."<sup>43</sup> This model also includes a variable with an expanded list of additional violent felony crimes. (ATF Manual – Expanded). This expanded list is included because the definition of "violent crime" proffered by ATF is broader than the enumerated offenses; it includes *all* offenses that "involve force or threat of force."<sup>44</sup> Model 5

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<sup>41</sup> Alex R. Piquero, David P. Farrington, and Alfred Blumstein. "The Criminal Career Paradigm," 30 *Crime and Justice* 359–506 (2003). See also Alex Piquero, Raymond Paternoster, Paul Mazerolle, Robert Brame, and Charles W. Dean, "Onset age and offense specialization," 36 *Journal of Research in Crime and Delinquency* 275-299 (1999).

<sup>42</sup> ATF Manual at A-31 – A-32.

<sup>43</sup> The first four of the ATF's enumerated offenses make up the entire category of what the FBI terms "violent index crimes": "[V]iolent crime is composed of four offenses: murder and nonnegligent manslaughter, rape, robbery, and aggravated assault." See FBI Uniform Crime Report, Crime in the United States (2014), available at <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/offenses-known-to-law-enforcement/violent-crime>. The FBI likewise defines violent crimes "as those offenses that involve force or threat of force." *Id.*

<sup>44</sup> ATF Manual at A-31. Based on the statutes cited in the arrest and conviction records in the ISP database of criminal histories of potential eligibles, the following violent crimes are included in the "ATF Expanded" category: domestic battery, battery/bodily harm, battery, assault, unlawful restraint, armed violence, intimidation, aggravated unlawful restraint, involuntary manslaughter/reckless homicide, vehicular invasion, disarming a peace officer, kidnaping, aggravated kidnaping, aggravated fleeing/bodily injury, kidnaping/armed with firearm, aggravated intimidation, concealing homicidal death, interference/assault official, involuntary/reckless homicide/unborn child, mob action.

includes three additional parameters of criminal career. The number of prison and jail sentences is included as a measure of the person's criminal propensity and crime seriousness spanning his or her criminal career.

Model 6 adds several variables that were identified as inclusive of the selection criteria, based on statements made in court and in the media that expanded the scope of offenses in the ATF Manual. These variables are arrayed in Subsection II.A.2 and accompanying notes above.

In each regression model, fixed effects are included for year in the interval from 2006-2013, grouping the cases by the year when they began. Fixed effects allow for statistical control of any unique or unobservable conditions that may have influenced the selection and recruitment of defendants in each year. All models are estimated with robust standard errors that are clustered for each individual.<sup>45</sup>

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<sup>45</sup> See, e.g., Guido Imbens and Joshua Angrist, "Identification and Estimation of Local Average Treatment Effects," 62 *Econometrica* 467-475 (1994).

**Table 1. Variables and Measures Used in Each Estimation Model (Cumulative)**

Model	Model Parameters	Variables
1	Black defendants only	Black
2	Black and Hispanic defendants	Hispanic (60%)
3	Demographic variables	Age at First Arrest (logged) Age at Jan 1 <sup>st</sup> (logged) Female
4	ATF Manual and ATF Manual (Expanded)	N of ATF Manual UCR Part I Violent Arrests (logged) N of ATF Manual UCR Part I Violent Convictions (logged) N of ATF Manual (Expanded) Violent Arrests (logged) N of ATF Manual (Expanded) Violent Convictions (logged)
5	Other Criminal History Variables	N of Prison Sentences (logged) N of Jail Sentences (logged) % of Arrests by Chicago Police Department
6	US Attorney Statements (Post-Hoc)	N of Arrests for Weapons Offenses (logged) N of Convictions for Weapons Offenses (logged) N of Arrests for Drug Sale (logged) N of Convictions for Drug Sale (logged) N of Arrests for Drug Possession (logged) N of Convictions for Drug Possession (logged) N of Arrests for Marijuana Sale (logged) N of Convictions for Marijuana Sale (logged) N of Arrests for Marijuana Possession (logged) N of Convictions for Marijuana Possession (logged)

**Note:** Logged measures use the natural log of the value. This transformation is done to limit the influence of extreme values in the regression estimates. When the value is zero, the natural log is not computed. To avoid missing data for those values, a value of zero is recoded to 0.01 before the log transformation is computed.

## B. Test 2

The second test analyzes race as a “treatment” variable predicting selection of individuals of specific races – Black compared to White, or non-White compared to White – as a Stash House defendant or target. In this test, the model assumes that persons are assigned to a treatment – in this case, race – in a manner that in theory is independent of the outcome – in this case, selection as a defendant. The model then estimates the effects of the treatment *race* on the outcome *Stash House Program selection*. The study population

in this test is the pooled sample of defendants and potential eligibles, with each group marked by their group membership (the outcome variable).

The procedure again uses the logistic regression equation. The distinction in this analysis is that the procedure first estimates one logistic regression model to predict treatment status – in this case, race – and then uses another logistic regression model to predict the outcomes given the results of the first model. The second model incorporates the covariates, or other predictors, including those that may be correlated with the treatment variable. This is known as Augmented Inverse Probability Weighting.<sup>46</sup> The model produces consistent estimates of the predictors because the treatment (race) is assumed to be independent of the potential outcomes after conditioning on the other predictors (the covariates). If a predictor is statistically significant, it is presumed to be not independent of the outcome, but instead a predictor of that outcome. This procedure is called a *double robust* model because of the use of the separate regression models to estimate the effects of the treatment on the outcome.<sup>47</sup>

As before, the models include fixed effects for year. The models are estimated in a sequence from Table 1, with the first model combining the predictors from models 1-3, and then separate estimates for models 4-6. The models are estimated with two specifications for race and ethnicity. One set of models compares Black and White persons (excluding Hispanic persons), and a second compares non-White persons (Black and Hispanic combined) with White persons.

### C. Test 3

The third test uses propensity score matching (PSM) to simulate an experiment to determine the effect of race on the outcome of interest: selection as a defendant into the Stash House Program. Ideally, an experiment would be conducted that adopts the logic of fair housing audits. In those audits, prospective renters with identical rental and income histories but who are from different racial or ethnic groups are sent to housing agents (sellers or rental agents) to determine whether there are differences by race in

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<sup>46</sup> Adam N. Glynn and Kevin M. Quinn, “An introduction to the augmented inverse propensity weighted estimator,” *18 Political Analysis* 36-56 (2010); Andrea Rotnitzky, “Inverse probability weighted methods,” in *Longitudinal Data Analysis* (Garrett Fitzmaurice et al., eds.), 453-476 (2009).

<sup>47</sup> See Heejung Bang and James M. Robins, “Doubly robust estimation in missing data and causal inference models,” *61 Biometrics* 962-973 (2005). See also Michele Jonsson, Funk Daniel Westreich, Chris Wiesen, Til Stürmer, M. Alan Brookhart, and Marie Davidian, “Doubly robust estimation of causal effects,” *173 American Journal of Epidemiology* 761-767 (2011); James R. Carpenter, Michael G. Kenward, and Stijn Vansteelandt, “A comparison of multiple imputation and doubly robust estimation for analyses with missing data,” *169 Journal of the Royal Statistical Society: Series A (Statistics in Society)* 571-584 (2006).

several dimensions of renter or seller responses.<sup>48</sup> Any disparity in these measures of housing assistance are attributable to the race or ethnicity of the seller or agent, since all other variables are equally distributed among the auditors.

For obvious reasons, such an experiment is not possible in the context of selection of defendants for the Stash House Program. When experiments on a *treatment* are not possible, propensity score matching (PSM) is a statistical technique that attempts to estimate the effect of a treatment by accounting for the covariates that predict receiving the treatment. The goal of the analysis is to reduce the confounding effects of factors that may predict *receiving the treatment* with the effects of the treatment itself.<sup>49</sup>

For each person in the “treatment” group – Black or non-White people – one or more persons is selected from the “control” group – White people – that are matched to the first group on all characteristics except race. This simulates random assignment to a treatment group – *race* – by matching persons on numerous predictors of treatment assignment. Similarity between subjects is based on estimated treatment probabilities, known as propensity scores.

The average treatment effect (ATE) is computed by taking the average of the difference in probability of selection between the observed and potential outcomes (Stash House defendant v. potential eligible) for each subject. The precision of the match for subjects is adjustable, so that the effects can be calibrated along a precision scale (a *caliper*). A smaller caliper or precision implies a more rigorous estimate of the treatment effects. The difference in estimates for different levels of precision provides a range of effects, with the “true” effect somewhere in that range.

As in Test 2, separate models are estimated for Blacks versus Whites (with Hispanics excluded) and Blacks and Hispanics (non-White) versus Whites. The same four sets of models are estimated for each race/ethnicity comparison. The models are in turn estimated at two calipers: .100 and .025. Smaller calipers are more precise but risk

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<sup>48</sup> For example, the number of housing units made available to the two prospective renters or buyers, the terms and conditions of the rental or sale, information or assistance in obtaining financing, the racial and ethnic composition of neighborhoods where prospective renters or buyers are looking for homes. See Margery Austin Turner, “Discrimination in urban housing markets: Lessons from fair housing audits,” 3 *Housing Policy Debate* 183-215 (1992).

<sup>49</sup> See generally Paul R. Rosenbaum and Donald B. Rubin, “The central role of the propensity score in observational studies for causal effects,” 70 *Biometrika* 41-55 (1983). See also Alberto Abadie and Guido W. Imbens, “Matching on the estimated propensity score,” 84 *Econometrica* 781-807 (2016); Daniel Ho, Kosuke Imai, Gary King, and Elizabeth Stuart, “Matching as nonparametric preprocessing for reducing model dependence in parametric causal inference,” 15 *Political Analysis* 199-236 (2007); Andrew Gelman and Jennifer Hill, *Data Analysis Using Regression and Hierarchical Models* 208-12 (2007); Peter C. Austin, “Optimal caliper widths for propensity-score matching when estimating differences in means and differences in proportions in observational studies,” 10 *Pharmaceutical Statistics* 150-161 (2011).

finding no suitable matches among the untreated. Because of the large sample size in this analysis, there were no unmatched cases in these analyses. In each estimation, a control variable is included as a fixed effect for year in the interval from 2006-2013 when the cases began.

## ***V. RESULTS***

Three tests for disparate treatment were conducted. Each shows statistical evidence of discrimination against Black persons in the selection of defendants for Stash House prosecutions.

### **A. Test 1**

The first test shows results of a series of regressions that examine whether race explains selection of suspects for the Stash House Program. Six models were estimated, as described in Part IV of this Report. The results are shown in Tables 5.1 and 5.2. The results show that after controlling for criminal propensity, race remains statistically significant, meaning that the ATF is selecting defendants on the basis of race. In other words, Black status is a significant predictor of selection as a Stash House defendant after controlling for both formal and informal but articulated ATF criteria and other criminal propensity scores.

Table 5.1 shows the results of the logistic regressions for the defendants. Model 1 estimates the effects of Black race alone on selection as Stash House defendants compared to the pool of potential eligibles. Race is significant: Blacks are significantly more likely than Whites or Hispanics to be selected as a Stash House defendant. Model 2 estimates the same probability, this time with separate predictions for Black and Hispanic (60%) defendants. Again, Blacks are significantly more likely to be selected as a Stash House defendant compared to Whites, but Hispanics are not significantly more likely to be selected as a defendant. Model 3 adds demographic characteristics of the defendant. The results for the race and ethnicity variables remain the same, although the size of the coefficient for Black defendants is somewhat smaller (1.217 compared to 1.020).

Model 4 adds a block of predictors that measure the effects of the ATF Criteria (as stated in the ATF Manual). Black status is again significant, and again, the size of the coefficient is reduced to 0.903. Again, Hispanic status is not a significant predictor. Model 5 adds additional criminal history variables. Important in this block of variables are the predictors for prison sentences and jail sentences, proxies for the seriousness of a criminal career and also for criminal propensity. Again, Black status is significant, but Hispanic status is not. Blacks again are more likely to be selected for the Stash House



Table 5.1. Logistic Regression Results (Defendant N = 94)

	Baseline	Add Hispanic Variable	Add Demographic Variables	Add ATF Manual Variables	Add Other Criminal History Variables	Add Post-Hoc Variables
	1	2	3	4	5	6
Black	1.093*** (0.252)	1.217*** (0.323)	1.020*** (0.327)	0.903*** (0.338)	0.956*** (0.349)	0.852** (0.357)
Hispanic (60%)		0.298 (0.449)	0.157 (0.450)	0.080 (0.452)	0.179 (0.463)	0.068 (0.470)
Female			-	-	-	-
Log of Age at First Arrest			-1.523*** (0.557)	-0.886* (0.538)	-0.253 (0.640)	0.227 (0.669)
Log of Age			0.048 (0.300)	-0.309 (0.323)	-1.318*** (0.469)	-1.622*** (0.479)
Log of Arrests for ATF Manual Violent (UCI)				0.081 (0.054)	0.074 (0.054)	0.051 (0.053)
Log of Convictions for ATF Manual Violent				0.032 (0.044)	0.038 (0.046)	0.025 (0.046)
Log of Arrests for ATF Manual Violent (Exp)				0.056 (0.059)	0.001 (0.059)	0.017 (0.063)
Log of Convictions for ATF Manual Violent				-0.075 (0.061)	-0.089 (0.061)	-0.078 (0.062)
Log of Number of Prison Sentences					0.257*** (0.055)	0.247*** (0.056)
Log of Number of Jail Sentences					0.000 (0.050)	-0.007 (0.052)
Percent of Arrests by CPD					-0.216 (0.283)	-0.301 (0.307)
Log of Arrests for Weapons						0.136** (0.055)
Log of Convictions for Weapons						0.036 (0.060)
Log of Arrests for Drug Sale						-0.013 (0.063)
Log of Convictions for Drug Sale						-0.015 (0.068)
Log of Arrests for Drug Possession						0.058 (0.059)
Log of Convictions for Drug Possession						-0.045 (0.056)
Log of Arrests for Marijuana Sale						0.090 (0.064)
Log of Convictions for Marijuana Sale						-0.291* (0.156)
Log of Arrests for Marijuana Possession						0.036 (0.049)
Log of Convictions for Marijuana Possession						-0.028 (0.078)
Constant	-10.763*** (0.344)	-10.886*** (0.405)	-6.236*** (1.325)	-6.682*** (1.355)	-4.723*** (1.630)	-5.592*** (1.893)
Observations	2,047,752	2,047,752	1,742,793	1,742,793	1,742,793	1,742,793
Pseudo R-squared	0.0274	0.0276	0.0332	0.0373	0.0509	0.0610
Year FE	YES	YES	YES	YES	YES	YES
SE Clustered at SID Level	YES	YES	YES	YES	YES	YES

**Significance:** \*\*\* =  $p < .01$ ; \*\* =  $p < .05$ ; \* =  $p < .1$

**Notes:**

[1] Robust standard errors are in parentheses.

[2] For cells populated with a "-", observations with this characteristic have been dropped as a result of the estimation methodology.

Program, after controlling for several criminal history variables. In Models 1-5, Black status is significant at the  $p < .01$  level.<sup>50</sup>

Model 6 adds several predictors that were identified through statements made in court, in other memoranda and documents, and other public utterances. Again, Black status is a significant predictor of selection into the Stash House Program, although significance here is slightly lower:  $p < .05$ . Hispanic status is not. In Models 5 and 6, the number of prior prison sentences also is significant. It is important to remember in this test that the population of Hispanic defendants was based on the results of the Hispanic Surname analysis, using a 60% probability threshold. As discussed before, Hispanic ethnicity was verified for the defendants. Table 5.2 shows the results of those analyses, showing only the regression coefficients and standard errors for the race and ethnicity predictors for potential eligibles for both Hispanic (60%) and Verified Hispanic.

**Table 5.2. Summary and Comparison of Logistic Regression Results with Estimated Hispanic (60%) and Verified Hispanic**

	Null	Add Hispanic Variable	Add Demographic Variables	Add ATF Manual Variables	Add Other Criminal History Variables	Add Post-Hoc Variables
	1	2	3	4	5	6
<b>Table 5.1 (Defendant N = 94)</b>						
Black	1.093*** (0.252)	1.217*** (0.323)	1.020*** (0.327)	0.903*** (0.338)	0.956*** (0.349)	0.852** (0.357)
Hispanic (60%)		0.298 (0.449)	0.157 (0.450)	0.080 (0.452)	0.179 (0.463)	0.068 (0.470)
<b>Table 5.1 with Verified Hispanic (Defendant N = 94)</b>						
Black	1.093*** (0.252)	1.535*** (0.372)	1.339*** (0.380)	1.226*** (0.391)	1.300*** (0.400)	1.204*** (0.408)
Hispanic (60%) Plus Verified Hispanic		0.904** (0.456)	0.765* (0.453)	0.690 (0.458)	0.802* (0.469)	0.700 (0.478)

**Significance:** \*\*\* =  $p < .01$ ; \*\* =  $p < .05$ ; \* =  $p < .1$

**Notes:**

[1] Robust standard errors are in parentheses.

[2] All models are run with the same covariates, year FE, and SE clustering as Tables 5.1

The results in Table 5.2 show some changes when the verified Hispanic population is included. Overall, there now is a substantial shift in the size and statistical significance

<sup>50</sup> The significance level means that this is not a chance occurrence, and that it would recur if a similar test were conducted in more than 99% of the tests under the same sampling and measurement conditions. In technical terms, it means that the probability of rejecting the null hypothesis – in this case, that there is *no* race or ethnicity effect in selecting defendants for fictitious Stash House stings – is 99%. For the seminal discussion on statistical significance and its meaning, see Ronald A. Fisher, *Ronald A. Statistical Methods for Research Workers* 43 (1925).

of the Hispanic coefficients. First, the substitution of the Hispanic-Verified group results in statistically significant effects ( $p < .1$ ) in all but two of the models. In two of the four models, the predictor for Hispanic defendants is significant. The effects of Hispanic ethnicity are significant when the formal ATF and Expanded ATF criteria are included. However, Hispanic ethnicity is not significant when predictors beyond the ATF Manual – a set of post-hoc considerations of eligibility – are included.

## B. Test 2

The second test shows results of a series of regressions that examine whether race explains selection of suspects for the Stash House Program using a doubly robust estimation method. Here, race is regarded as a “treatment”, and the models estimate the effects of the treatment on selection into the Stash House Program. The model applied Augmented Inverse Probability Weighting (AIPW) to estimate first a predictor of race (the treatment) adjusted for the covariates, and then the effects of the adjusted treatment variable on the outcome (selection into the Stash House Program).<sup>51</sup> As before, regressions were estimated for the total defendant population. Here, instead of six models, four models are estimated. The first model combines Model 1-3 from the previous analyses, and Models 2-4 here correspond to models 4-6 in the previous section. For each model, the coefficient for treatment as Black v. White is estimated,<sup>52</sup> and then for non-White (Black and Hispanic 60% combined) v. White is estimated. Because of the size of the pool of potential eligibles, these models were estimated based on a 25% sample of that group and the full population of defendants. The estimates are shown as “average treatment effects,” or ATE.<sup>53</sup> Table 6 shows the results.

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<sup>51</sup> See Bang and Robins, “Doubly Robust Estimation,” *supra* note 47. See also Greg Ridgeway and John MacDonald, “Methods for assessing racially biased policing,” in *Race, Ethnicity, and Policing: New and Essential Readings* 180-204 (Steven Rice and Michael White, eds., 2010).

<sup>52</sup> Hispanics are eliminated from both the defendant and potential eligible populations for this analysis.

<sup>53</sup> Alberto Abadie, David Drukker, Jane Leber Herr, and Guido W. Imbens, “Implementing matching estimators for average treatment effects in Stata,” 4 *Stata Journal* 290-311 (2003). See also Alberto Abadie and Guido W. Imbens, “Large sample properties of matching estimators for average treatment effects,” 74 *Econometrica* 235-267 (2006); Keisuke Hirano, Guido W. Imbens, and Geert Ridder, “Efficient estimation of average treatment effects using the estimated propensity score,” 71 *Econometrica* 1161-1189 (2003).

**Table 6. Augmented Inverse Probability Weighting (AIPW) Analysis (Defendant N = 85 (Black v. White), 94 (Non-White v. White))**

	<b>Black v. White</b> <b>ATE of Black</b>	<b>Non-White v. White</b> <b>ATE of Non-White</b>
Demographic Variables Only	0.000146*** (0.000035)	0.000113*** (0.000031)
Add ATF Manual Variables	<b>0.000127***</b> <b>(0.000039)</b>	<b>0.000095***</b> <b>(0.000035)</b>
Add Other Criminal History Variables	0.000118** (0.000053)	0.000101** (0.000044)
Add Post-Hoc Variables	<b>0.000131***</b> <b>(0.000045)</b>	<b>0.000112***</b> <b>(0.000039)</b>

**Significance:** \*\*\* =  $p < .01$ ; \*\* =  $p < .05$ ; \* =  $p < .1$

**Notes:**

[1] Robust standard errors are in parentheses.

[2] Models are run using a 25% sample of non-defendants.

[3] N = 484,692 for Black v. White models, N = 582,697 for Non-White v. White models. Hispanics (Estimated Hispanic - 60%) are dropped from the Black v. White models (N = 98,005 dropped).

Table 6 shows consistent evidence across 8 models of racial and ethnic discrimination in the selection of Stash House defendants from a large pool of potential eligibles. Each model increasingly augments the set of covariates for estimating and adjusting the “treatment”, and then models the adjusted treatment variable to determine the treatment effect. All models were significant at either the  $p < .01$  or  $p < .05$  levels.

### C. Test 3

The analyses in Test 3 employ a matching procedure. As in the procedure for Test 2, a propensity score is developed (propensity for “treatment”). In this case, the procedure estimates a propensity score for either Black status or non-White status (Black and Hispanic 60% combined). Subjects from the Stash House population are matched on their propensity scores with samples from the potential eligibles. One match per Stash House defendant was computed. The matches were matched on the propensity scores at one of two thresholds: either .100 or .025. This is known as the caliper for estimating the match between populations.

As discussed earlier, this procedure allows for the approximation of an experiment. Experiments are common in criminal procedure, criminology and public policy.<sup>54</sup> In a

<sup>54</sup> Christoph Engel, “Experimental Criminal Law. A Survey of Contributions from Law, Economics and Criminology,” MPI Collective Goods Preprint, No. 2016/7 (Apr. 26, 2016), available at <http://ssrn.com/abstract=2769771>.

true experiment, subjects are randomly assigned to treatment and control groups.<sup>55</sup> Under those conditions, researchers can observe the effects of a treatment with confidence that the differences are due to the treatment effect and not to any differences in the characteristics between the subjects in each group. Obviously, random assignment to race is not possible. There may be differences in the characteristics of the persons in each group that are correlated both with their selection to the group and with their outcomes.

Accordingly, methods are required to adjust for any differences between the “treatment” and “control” groups. In this design, adjustments are made based on the covariates that might be correlated with the “treatment assignment.” The “propensity score” is a measure that takes into account all background characteristics (i.e., covariates) other than race that might be correlated with race. In this test, subjects in each group – Stash House defendants and potential eligibles – are matched on their propensity score. This procedure approximates an experiment, and is widely used in research on law and policy.<sup>56</sup>

Each successive model expands on the previous model, as before. For example, the model adding ATF variables (manual and expanded) also includes the predictors from the model above it (demographics). The models are cumulative, in other words with respect to the predictors. A total of 8 models were estimated for the defendants at each of the two calipers. Then, these eight models were estimated twice, once for a Black-White defendant comparison, and again for a White – non-White comparison. Because of the size of the pool of potential eligibles, these models were estimated based on a 25% sample of that group and the full population of defendants. The tables show, as in the previous tests, the average treatment effect across the very large sample. Table 7 shows the results.

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<sup>55</sup> See generally William R. Shadish, Thomas D. Cook, and Donald Thomas Campbell, *Experimental and Quasi-Experimental Designs for Generalized Causal Inference* (2002).

<sup>56</sup> Abadie, et. al, “Implementing matching estimators for average treatment effects in Stata,” *supra* note 53. See also Abadie and Imbens, “Large sample properties of matching estimators for average treatment effects,” *supra* note 53.

**Table 7. Propensity Score Matching Analysis (Defendant N = 85 (Black v. White), 94 (Non-White v. White))**

	Caliper	Black v. White ATE of Black	Non-White v. White ATE of Non-White
Demographic Variables Only	0.100	0.000145*** (0.000045)	0.000067 (0.000052)
Demographic Variables Only	0.025	0.000145*** (0.000045)	0.000067 (0.000052)
Add ATF Manual Variables	0.100	0.000121** (0.000050)	0.000073* (0.000042)
Add ATF Manual Variables	0.025	0.000105** (0.000047)	0.000073* (0.000041)
Add Other Criminal History Variables	0.100	0.000146*** (0.000036)	0.000123*** (0.000044)
Add Other Criminal History Variables	0.025	0.000146*** (0.000036)	0.000110** (0.000044)
Add Post-Hoc Variables	0.100	0.000115** (0.000047)	0.000089* (0.000046)
Add Post-Hoc Variables	0.025	0.000115** (0.000047)	0.000089* (0.000046)

**Significance:**\*\*\* =  $p < .01$ ; \*\* =  $p < .05$ ; \* =  $p < .1$

**Notes:**

[1] Robust standard errors are in parentheses.

[2] Models are run using a 25% sample of non-defendants.

[3] N = 485,190 for Black v. White models, N = 583,252 for Non-White v. White models. Hispanics (Estimated Hispanic - 60%) are dropped from the Black v. White models (N = 98,005 dropped).

Each of the models in Table 7 comparing Black and White persons is significant, suggesting race differences in the selection of Stash House defendants. Blacks are more likely than similarly situated Whites to be selected as a Stash House defendant using the pool of potential eligibles as a benchmark, after controlling for increasingly rich sets of covariates. Six of the eight models comparing White with non-White defendants also are significant, again suggesting race differences in the selection of defendants for Stash House cases compared to a large pool of potential eligibles. Notably, the White – non-White models in Table 7 become significant, and the coefficient grows larger, as more covariates are added to the model. The increasing role of race as additional legally relevant and programmatically relevant confounding variables are added reveals a pattern of discrimination in the selection of defendants.

## VI. CONCLUSION

The results of several empirical analyses converge to show a pattern of discrimination by defendant race and ethnicity in the targeting of Black and Hispanic persons for fictitious Stash House stings. The tests use a variety of analytic methods to examine the patterns of racial and ethnic differences, and each shows evidence of discrimination.

From 2006-2013, the probability of selection of a cohort of Stash House Program defendants with their observed racial and ethnic composition from among a large pool of similarly situated potential eligibles is less than .1% for the 94 defendants in these cases. This is a simple test that asks whether the composition of this pool is uncommonly low. The evidence is stronger looking at the period from 2011- 2013. During that time, only one White defendant was targeted for a fictitious Stash House sting, out of 57 defendants. The probability of selecting a cohort of 56 non-White defendants out of 57 from among potential eligibles is also less than .1%. These extremely low probabilities provide evidence of race-based selection of Stash House defendants.

Large numbers of Stash House defendants were recruited into the Stash House Program without having met the explicit criteria of violent crime set forth in ATF policy and guidelines.<sup>57</sup> Many defendants also appear to fail to meet expanded offense criteria articulated by the ATF and prosecutors during the course of these investigations.

Using three distinct statistical tests for disparate racial treatment, there is strong, consistent and statistically significant evidence that non-White suspects were more likely than White suspects to be targeted for recruitment into the Stash House Program, compared to a large population of similarly situated and matched potentially eligible persons with one or more prior convictions for any of the ATF target offenses. Non-White persons were more likely to be recruited into the Stash House Program after controlling for criminal histories relevant to the Stash House Program policies.

The results of these three tests, as well as the unadjusted tests of simple selection probabilities, show a pattern of selective enforcement in the recruitment of Stash House defendants. The results show that after controlling for several indicia of criminal propensity, race remains a statistically significant predictor of selection as a Stash House defendant. These analyses show that the ATF is discriminating on the basis of race in selecting Stash House defendants. In other words, race is a significant predictor of selection as a Stash House defendant after controlling for both formal and informal but articulated ATF criteria.

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<sup>57</sup> See ATF Manual at A-35 – A-37 (reprinting ATF O 3250.1B.g).

**DECLARATION**

I have been compensated for this work at the rate of \$350 per hour. My compensation is not dependent on my opinions or the outcome in this matter.

A handwritten signature in black ink, appearing to read "Jeffrey Fagan". The signature is fluid and cursive, with the first name "Jeffrey" written in a larger, more prominent script than the last name "Fagan".

Jeffrey Fagan, Ph.D.  
May 11, 2016



## **APPENDICES**

- A. Data Sources
- B. Criminal History Records Ordered
- C. ATF Manual 2013, “Appendix: ATF O 3250.1B, Undercover Operations”, Subsection entitled “Target Identification”
- D. Categories of Arrest Charges
- E. Coding of Specific Statutes into Crime Categories
- F. Hispanic Surname Analysis
- G. Credentials and Curriculum Vitae

## **Appendix A. Data Sources**

### *A: Illinois State Police Records*

1. Arrest Data ("arr\_1026.csv")
2. Court Data ("crt\_1026.csv")
3. Sentences Data ("sent\_1026.csv")

### *B: Rap Sheets*

1. Rap Sheets (94)

### *C: Federal Government Documentation*

1. Takedown Memoranda (20)
2. Reports of Investigation (4)

### *D: Case Documentation*

1. Case Complaints (24)

### *E: Attorney Documentation*

1. Defendant List with Verified Race and Ethnicity

### *F: United States Census Bureau*

1. Surname List ("Demographic Aspects of Surnames from Census 2000," available at [http://www.census.gov/topics/population/genealogy/data/2000\\_surnames.html](http://www.census.gov/topics/population/genealogy/data/2000_surnames.html))

**Note:** All tables, figures, and analyses rely on the above list of sources.

## **Appendix B. Criminal History Records and Data - Specifications**

Criminal history records were ordered produced from the Illinois State Police (ISP) for each person convicted of (A) any of the offenses listed below, (B) committed in one of the counties below, and in each year from 2000 to 2015 (inclusive). In addition, the ISP was ordered to produce (C) each individual's race/ethnicity and certain identifying information, (D) geographic information on location of arrest and last known residential address, and (E) transactional criminal history record information.

### **A. Offenses by Statute:**

- All index crimes
- All drug offenses reported to UCR
- All violations of 720 ILCS 570-401 through 414 (the Controlled Substances Act)
- All violations of 720 ILCS 550 (the Cannabis Control Act)
- All violations of 720 ILCS 646, 647, 648, 649 (the Methamphetamine Offenses Act)
- All violations of 720 ILCS 635 (the Hypodermic Syringes and Needles Act)
- All violations of 720 ILCS 600 (the Drug Paraphernalia Act)
- All violations of 720 ILCS 5/24 (Deadly Weapons)
- All violations of 720 ILCS 5/31A-1.1 & 5/31A-1.2 (Possession of or bringing firearm, firearm ammunition or explosive into penal institution)
- All crimes of violence, including but not limited to violations of the following statutes:
  - Forcible felony, 720 ILCS 5/2-8
  - Solicitation of murder, 720 ILCS 5/8-1
  - Solicitation of murder for hire, 720 ILCS 5/8-1.2
  - Conspiracy, 720 ILCS 5/8-2
  - All offenses under 720 ILCS 5/9 (Homicide)
  - Kidnapping, 720 ILCS 5/10-1
  - Aggravated kidnapping, 720 ILCS 5/10-2
  - Unlawful restraint, 720 ILCS 5/10-3
  - Aggravated unlawful restraint, 720 ILCS 5/10-3.1
  - Forcible detention, 720 ILCS 5/10-4
  - Child abduction, 720 ILCS 5/10-5
  - Aiding or abetting child abduction, 720 ILCS 5/10-7
  - Trafficking in persons, involuntary servitude, and related offenses, 720 ILCS 5/10-9
  - All offenses under 720 ILCS 5/11 (Sex Offenses)
  - All offenses under 720 ILCS 5/12 (Bodily Harm)
  - All offenses under 720 ILCS 5/18 (Robbery)
  - All offenses under 720 ILCS 5/19 (Burglary)
  - All offenses under 720 ILCS 5/20 (Arson)
  - All offenses under 720 ILCS 5/25 (Mob Action)
  - All offenses under 720 ILCS 5/33A, 33B, 33C, 33D, 33F, 33G

B. The counties in which a Stash House case took place from 2006-2013:

- Cook
- Lake
- Will
- DuPage
- Kane
- Kendall
- LaSalle
- Winnebago

C. Defendant identifying information:

- IR number
- State ID Number (“SID”)
- Last name
- Year of birth

D. Geographic information:

- Home address
- Location of arrest
- ORI of arresting agency

E. Transactional Criminal History Records Information including four kinds of criminal history data:

- Arrest information
- Charge information
- Disposition and sentencing information (i.e., conviction information)
- Custody information (including custodial time served)

**Appendix C. ATF Manual 2013, “Appendix: ATF O 3250.1B, Undercover Operations”, Subsection entitled “Target Identification”**

*b. Target Identification. Investigations should only be pursued that target persons who show a propensity of doing harm to the public through violent behavior/armed robberies and whose activities have been documented either through criminal history, criminal reputation, or self-incrimination. Violent crime is defined as offenses that involve force or threat of force and includes murder, forcible rape, robbery, aggravated assault, and arson. The below minimum criteria must be followed in making these considerations:*

- (1) At least two targeted offenders must be identified as violent offenders.*
- (2) At least one target must have a past violent crime arrest or conviction.*
- (3) Targets must be currently involved in criminal activity.,*
- (4) The undercover agent must meet with at least two members of the robbery crew.*
- (5) Targets must conspire to commit the armed robbery.*

### Appendix D. Categories of Arrest Charges

Thousands of distinct statutes appear in the ISP and rap sheet data. A two-step process was used to construct charge categories that translate rap sheet and ISP charges into the ATF charge categories. (1) Each of the specific statutory charges in the ISP dataset and on the rap sheets were assigned to one of 26 categories. I manually assigned a category to 99.5% of the statutes in the ISP dataset of potential eligibles. The remaining 0.5% are categorized as “Other.” I manually assigned an offense category to 100% of the statutes in the rap sheet dataset. (2) I classify the relevant charges to the “ATF Manual Violent (UCR Part I)” category, or to the set of violent offenses that expand on the ATF violent offense charges (“ATF Violent Expanded”). Additional charge categories include weapons offenses and drug offenses. The table below shows the categories and indices, as well as the prevalence of the categories in the ISP arrest dataset.

Indices	Category	ISP Arrest %
ATF Violent (UCR Part I)	Aggravated Assault/Battery	2.8%
	Armed Robbery/Home Invasion	0.9%
	Robbery	0.9%
	Murder	0.3%
	Forcible Sexual Assault/Rape	0.1%
	Arson	0.1%
ATF Violent (Expanded)	Assault	10.3%
	Mob Action/Riot	0.5%
Drug Possession	Drug Possession	10.6%
Drug Sale	Drug Sale	2.6%
Marijuana Possession	Marijuana Possession	6.4%
Marijuana Sale	Marijuana Sale	0.8%
Weapons and Related	Weapons and Related	3.4%
Property		14.3%
Vehicle and Traffic Laws		12.4%
Local Ordinance		7.1%
Trespass		6.1%
Warrantable Offenses		5.5%
QOL/Disorder		5.0%
Other		3.3%
DUI		2.4%
DV and Crimes against Children		1.2%
Prostitution and Related		1.1%
Fraud and Related		0.9%
Sex Crimes and Related		0.8%
Bribery and Official Misconduct		0.0%

### Appendix E. Coding of Specific Statutes into Crime Categories

The subpoenaed records and defendant rap sheets listed over 3,000 specific statutes. The table below lists approximately 50 commonly occurring statutes and their classification into the categories shown in Appendix B.

Statute	Arrest Charge Description	Count	Manual Classification
	ORDINANCE	402977	Local Ordinance
720 ILCS 570.0/402-C	POSSESSION CONTROLLED SUBSTANCE	328052	Drug Possession
725 ILCS 5.0/110-3	ISSUANCE OF WARRANT	244115	Warrantable Offenses
720 ILCS 5.0/16A-3-A	RETAIL THEFT	171248	Property
625 ILCS 5.0/6-303-A	DRIVING ON SUSP/REVOKD LICENSE	170910	Vehicle and Traffic Laws
720 ILCS 550.0/4-B	POSSESS CANNABIS	130559	MJ Possession
720 ILCS 570.0/402	POSSESSION CONTROLLED SUB	126433	Drug Possession
720 ILCS 5.0/12-3.2-A-1	DOMESTIC BATTERY	121139	Violent
625 ILCS 5.0/3-707	INSURANCE--OPERATE UNINSURED	116118	Vehicle and Traffic Laws
720 ILCS 550.0/4-A	POSSESS CANNABIS	114242	MJ Possession
720 ILCS 5.0/12-3-A-1	BATTERY/BODILY HARM	90920	Violent
720 ILCS 5.0/26-1-A-1	DISORDERLY CONDUCT	88128	QOL/Disorder
720 ILCS 5.0/21-2	CRIMINAL TRESPASS VEHICLE	85094	Trespass
720 ILCS 5.0/16-1-A-1	THEFT	84753	Property
720 ILCS 5.0/21-3-A-2	CRIMINAL TRESPASS TO LAND	84178	Trespass
720 ILCS 5.0/21-1-1-A	KNOWINGLY DAMAGE PROPERTY	75573	Property
720 ILCS 5.0/12-3.2	DOMESTIC BATTERY	71193	Violent
720 ILCS 5.0/12-3-A	BATTERY	70314	Violent
625 ILCS 5.0/11-501-A-2	DUI/ALCOHOL	67295	DUI
720 ILCS 5.0/12-3	BATTERY	63132	Violent
720 ILCS 600.0/3.5-A	POSSESS DRUG PARAPHERNALIA	62435	Drug Possession
720 ILCS 5.0/19-1-A	BURGLARY	59903	Property
720 ILCS 5.0/21-5	CRIMINL TRESPASS TO STATE LAND	59493	Trespass
720 ILCS 5.0/31-1	RESIST PEACE OFFICER	58973	QOL/Disorder
720 ILCS 5.0/12-1-A	ASSAULT	55728	Violent
720 ILCS 5.0/31-1-A	RESIST PEACE OFFICER	52973	QOL/Disorder
720 ILCS 550.0/4-C	POSSESS CANNABIS	52357	MJ Possession
720 ILCS 5.0/19-1	BURGLARY	49920	Property
720 ILCS 5.0/12-3.2-A-2	DOMESTIC BATTERY	47624	Violent
720 ILCS 5.0/12-3-A-2	BATTERY	47189	Violent
720 ILCS 5.0/16-1	THEFT	44814	Property
720 ILCS 5.0/12-2-A-1	AGGRAVATED ASSAULT	43542	Aggravated Assault/Battery
720 ILCS 550.0/4	POSSESSION OF CANNABIS	40811	MJ Possession
720 ILCS 570.0/401-D	MFG/DEL CONTROLLED SUBSTANCES	33218	Drug Sale
625 ILCS 5.0/6-101	NO DRIVERS LICENSE/PERMIT	33207	Vehicle and Traffic Laws
720 ILCS 5.0/11-14-A	PROSTITUTION	32308	Prostitution and Related
625 ILCS 5.0/11-501-A-1	DUI/ALCOHOL	32054	DUI
625 ILCS 5.0/6-303	DRIV LIC REVOKED OR SUSPENDED	31204	Vehicle and Traffic Laws
625 ILCS 5.0/4-103-A-1	IVC FELONIES	30229	Property
720 ILCS 5.0/21-3-A-1	CRIMINAL TRESPASS BUILDING	28666	Trespass
720 ILCS 5.0/24-1.1-A	UNLAW POSSESS WEAPON BY FELON	28390	Weapons and Related
625 ILCS 5.0/12-603.1	NOT WEARING SEAT BELT	27939	Vehicle and Traffic Laws
720 ILCS 5.0/21-1	CRIMINAL DAMAGE TO PROPERTY	26816	Property
720 ILCS 5.0/16-1-A	THEFT	26499	Property
720 ILCS 5.0/16-3-A	THEFT LABOR/SERVICES	26487	Property
720 ILCS 5.0/21-3-A	CRIMINAL TRESPASS TO LAND	26209	Trespass
720 ILCS 550.0/4-D	POSSESS CANNABIS	24938	MJ Possession
720 ILCS 570.0/401-C-2	MAN/DEL CONTROL SUBSTANCES	23988	Drug Sale
720 ILCS 5.0/19-3-A	RESIDENTIAL BURGLARY	23184	Property
720 ILCS 5.0/12-5-A	RECKLESS CONDUCT	22628	Other

## Appendix F. Hispanic Surname Analysis

Both sources of criminal history information provided for this litigation have limited data on the Hispanic ethnicity either of the defendants or the potentially eligible population. For the defendants, criminal history records (“rap sheets”) have no information on Hispanic ethnicity. For the potentially eligible population, the ISP data identified less than .1% of the 292,442 potentially eligibles as Hispanic (“H” in the ISP database).

### Classification Method

To address the missing Hispanic ethnicity data, I applied a commonly-utilized methodology that assigns Hispanic ethnicity based on an inventory of surname data matched to self-reported ethnicity from the 2000 United States Census. This methodology has been accepted and cited by a federal district court in recent litigation on traffic stop data alleging discrimination against Hispanics.<sup>1</sup>

The method uses a list of all surnames occurring 100 or more times created by the U.S. Census Bureau from the 2000 Census data.<sup>2</sup> For each surname, the Census Bureau has calculated the proportion of people with each surname self-reporting as Hispanic.<sup>3</sup> For example, the surname “Garcia” has a Hispanic probability of 91%, while the surname “Smith” has a Hispanic probability of only 2%.

### Classification of Potential Eligibles

Using this list, I determined the Hispanic probability associated with the surname for each of the defendants and each person in the ISP dataset of potential eligibles for *Stash House* stings.<sup>4</sup> If a person’s surname Hispanic probability is over 60%, I classify that person as “Hispanic (60%).” If the probability is over 70%, 80%, or 90%, I do the same at these higher cutoffs.

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<sup>1</sup> Ralph B. Taylor, Initial Expert Report (Dec. 2, 2010), *Melendres v. Arpaio*, 07-CV-2513, Dkt. No. 424-2, Ex. B (D. Ariz. Apr. 29, 2011); Ralph B. Taylor, Rebuttal Expert Report (Feb. 4, 2011), *id.*, Dkt. 424-3, Ex. C (D. Ariz. Apr. 29, 2011).

<sup>2</sup> This list covers all Americans with surnames occurring 100 times or more, about 2.4 million people. “File B: Surnames Occurring 100 Times or More,” United States Census Bureau, available at [http://www.census.gov/topics/population/genealogy/data/2000\\_surnames.html](http://www.census.gov/topics/population/genealogy/data/2000_surnames.html), accessed on March 31, 2016.

<sup>3</sup> “Frequently Occurring Surnames from the Census 2000,” United States Census Bureau, available at [http://www.census.gov/topics/population/genealogy/data/2000\\_surnames.html](http://www.census.gov/topics/population/genealogy/data/2000_surnames.html), accessed on March 31, 2016.

<sup>4</sup> Because the ISP data often lists multiple last names for the same SID, I use the median Hispanic surname probability across arrests for my analysis. This is not an issue when using the rap sheets, which contain only one last name.



As with any estimation method, this method has an error rate. In this case, the Census list methodology slightly underestimates the number of Hispanic persons.<sup>5</sup> Empirically, an undercount of approximately 10% has been shown in U.S. Census research comparing the performance of the Passel-Word (PW) 1990s Spanish surname list – against self-reports of ethnicity in the 1990 Census Spanish Origin Research file.<sup>6</sup>

### **Classification of Defendants**

In order to ensure that the ethnicity of defendants and non-defendants are estimated using a consistent method, I performed the surname analysis for both populations. I use the 60% Hispanic cutoff for both defendants and potential eligibles throughout the analysis, with a robustness check using the 90% Hispanic cutoff. I use this conservative measure—which identifies only 9 of 12 Hispanic defendants as such—in order to provide a consistent basis for statistical tests to determine disparate treatment.

Table 4 *supra* shows that the summary statistics for Hispanic ethnicity at the 60%, 70%, and 80% thresholds are nearly identical for the potential eligibles across the thresholds: .17, .17, and .16, respectively. Comparing the results of this method for defendants and potential eligibles, the summary statistics in Table 4 are identical for the defendants at the 60%, 70%, and 80% thresholds: .10. This reduces the chance of error or bias that might be a function of the surname classification method and any differences between the thresholds. I perform a robustness check in the analyses at 90% for Table 5.1, as these values do substantially differ. The coefficients on Black and Hispanic do not substantially differ.

### **Reconciling Verified and Classified Estimates for Defendants**

However, defense counsel for the defendants has independently determined the race and Hispanic ethnicity of the 94 defendants (“verified race”).<sup>7</sup> Twelve of the 94 defendants self-identify as Hispanic. However, the surname methodology correctly identifies only 9 of the 12 Hispanic defendants at probabilities of 60%, 70%, and 80%, and identifies only 4 of them at the

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<sup>5</sup> Colby Perkins, *Evaluating the Passel-Word Spanish surname list: 1990 decennial census post enumeration survey results*, US Department of Commerce, Economics and Statistics Administration, Bureau of the Census (1993). Using the 2000 Census Bureau data, I calculate that at the 60% cutoff for the US population as a whole, the total number of Hispanics is underestimated by about 4.4%.

<sup>6</sup> *Id.*

<sup>7</sup> Three of the defendants in *United States v. Elias*, Adrian and Salvador Elias and Angel Olsen, have been classified as white using the Spanish surname methodology at the 60% cutoff. In reality all three are Hispanic. This conclusion is based on discovery and communications with defense counsel in consultation with the defendants. Specifically, Adrian and Salvador Elias self-identify as Hispanic and the ATF takedown memo in this case identifies them as Hispanic. Olson self-identifies as Hispanic (see 13 CR 0476, Doc. #162, ¶1 and #171), and, based on communications with defense counsel, Olson has one Hispanic parent and one black parent. In addition, the U.S. Attorney’s Office previously categorized him as black in an earlier filing in which Hispanic categorizations were omitted. *Williams*, 12 CR 887, Dkt. 74-1 at 2 (Aug. 21, 2013).

90%. I also show analytic results using the *Hispanic-Verified* classification that applies these corrections.

We can estimate error rates using this method for the defendants, as true ethnicity is known. At the 60% cutoff, the Hispanic surname analysis correctly identifies 9 of the 12 Hispanic defendants. It does not identify anyone else as Hispanic. Therefore, the analysis using estimated Hispanic ethnicity (60%) for defendants has a false negative rate of 3/12 (25%) and a false positive rate of 0/9 (0%).<sup>8</sup> To contextualize these error rates, I calculated the error rates for the US population a whole, using surname and Hispanic ethnicity data from the 2000 United States Census. Using these data, I calculate the rate of false negatives to be about 14.5% at the 60% cutoff (percent of Hispanic people who are not classified as such), and the rate of false positives to be about 10.5% (percent of people classified as Hispanic who are not Hispanic). The false negative rate is higher for defendants (25% v. 14.5%) and the false positive rate is lower (0% v. 10.5%). Again, false negative implies that there are people who are classified as non-Hispanic who actually are Hispanic. False positive implies that there are people who are classified as Hispanic who are not Hispanic.

Accordingly, the estimates of racial and ethnic discrimination computed in this report are in fact conservative estimates. The false negative rate, or under-reporting rate, is greater than the false positive (or over-reporting rate) for the defendant Hispanic ethnicity data. To assess the implications of the underestimates for this report, I also perform a robustness check using the verified race and ethnicity of the defendants, as compared to the 60% cutoff for the potential eligibles, in Table 6.

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<sup>8</sup> These are referred to as the “surname omission rate” (false negative rate) and the “surname commission rate” (false positive rate). R. Colby Perkins, “Evaluating the Passel-Word Spanish Surname List: 1990 Decennial Census Post Enumeration Survey Results,” Population Division Working Paper No. 4, August 1993, available at <http://www.census.gov/population/www/documentation/twps0004.html>, accessed April 6, 2016.

## Appendix G. Credentials and Curriculum Vitae of Jeffrey Fagan

### Summary

I am the Isidor and Seville Sulzbacher Professor of Law at Columbia Law School, and Professor of Epidemiology at the Mailman School of Public Health at Columbia University. I was the Director of the Center for Community and Law at Columbia Law School from 2003 – 2009, and again from September 2011 - 2015. I was a Visiting Professor of Law at Yale Law School from July 2009 – June 2010 and again from January – June 2013. From 1996-2006, I was the Founding Director of the Center for Violence Research and Prevention at the Mailman School of Public Health. From 1996-2006, I was a founding member of the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice.

Prior to my appointment at Columbia University, I was Professor of Criminal Justice at Rutgers - The State University of New Jersey (1989-96), and Associate Professor, John Jay College of Criminal Justice in the City University of New York. I have co-authored three books and published numerous articles on law and social policy in professional peer-reviewed journals, law reviews, and other scholarly publications. I have received honors and awards from academic and professional associations. I served on the Committee of Law and Justice of the National Research Council from 2000-2006, and was appointed to two scientific committees of the National Academy of Science (Intimate Partner Violence, Fairness and Effectiveness of Policing). I have served on committees of the American Society of Criminology, and the National Science Foundation, and also to committees of several prestigious government agencies and private foundations. I am a Fellow of the American Society of Criminology. I have a Ph.D. in Engineering from the University at Buffalo of the State University of New York.

I have previously served as expert witness in litigation alleging Fourth and Fourteenth Amendment civil rights violations resulting from racially selective police enforcement in the conduct of investigative stops by police in New York City.<sup>9</sup> In 2008-9, I consulted with the Governor's Commission on Law Enforcement Standards and Practices for the State of New Jersey in its response to civil rights litigation alleging Fourth and Fourteenth Amendment violations by the New Jersey State Police. From 2012-5, I advised the Boston Police Department in its review of its practice of investigative stops.

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<sup>9</sup> *Floyd v City of New York*, 959 F. Supp. 2d 540 (2013); *Ligon, et al., v. City of New York, et al.*, 12-CV-2274 (AT); and *Davis et al., vs. City of New York, et al.*, 10-CV-00699 (AT).

## Curriculum Vitae

Jeffrey A. Fagan

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212-854-2624 (v)

212-854-7946 (f)

### PROFESSIONAL EXPERIENCE:

- 2011 – present: Isidor and Seville Sulzbacher Professor of Law, Columbia Law School
- 2013 (Spring): Florence Rogatz Visiting Professor of Law, Yale Law School
- 2001-2011: Professor, Columbia Law School
- 2010-11: Fellow, Straus Institute for the Advanced Study of Law and Justice, New York University School of Law
- 2010-present: Senior Research Scholar, Yale Law School
- 2009-10: Florence Rogatz Visiting Professor of Law, Yale Law School
- 2004-2015: Director, Center for Crime, Community and Law, Columbia Law School
- 2001-2006: Director, Doctor of Juridical Science in Law (JSD) Program, Columbia Law School
- 2008 – present: Faculty Fellow, Columbia Population Research Center
- 1999-present: Faculty Fellow, Institute for Social and Economic Research and Policy, Columbia University
- 1998-2001: Visiting Professor, Columbia Law School
- 1996-present: Professor, Department of Epidemiology, Mailman School of Public Health, Columbia University
- 1995-2002: Founding Director, Center for Violence Research and Prevention, Mailman School of Public Health, Columbia University
- 1989-1996: Associate Professor to Professor, School of Criminal Justice, Rutgers-The State University of New Jersey
- 1988-1989: Associate Professor, Department of Law and Police Science, John Jay College of Criminal Justice, City University of New York; Associate Professor, Doctoral Program in Criminal Justice, City University of New York Graduate Center; Associate Director for Research, Criminal Justice Center, John Jay College of Criminal Justice, City University of New York
- 1986-1988: Senior Research Fellow, New York City Criminal Justice Agency.
- 1977-1986: Director, Center for Law and Social Policy, URSA Institute, San Francisco.
- 1975-1976: Research Director, Northern California Service League, San Francisco, California.
- 1974-1975: Associate Research Analyst, Office of Criminal Justice Planning, Oakland, California.
- 1970-1974: Director, College of Urban Studies, State University of New York at Buffalo.
- 1969-1971: Teaching Assistant and Research Associate, Department of Psychology, State University of New York at Buffalo

### EDUCATION:

- PhD, 1975, Policy Science, Department of Civil Engineering, State University of New York at Buffalo. Dissertation: "A Predictive Model of Success in Criminal Justice Employment Programs."
- MS, 1971, Human Factors Engineering, Department of Industrial Engineering, State University of New York at Buffalo.
- BE, 1968, Industrial Engineering, New York University.

**AWARDS AND HONORS:**

Power of One Racial Justice Award, Center for Race, Crime and Justice, John Jay College, May 2016

Lillie and Nathan Ackerman Lecture in Equality and Justice, Baruch College, November 2013

Fellow, American Society of Criminology, elected April 2002

Fellow, Davenport College, Yale University

Darrow K. Soll Memorial Criminal Law and Justice Lecture, *Indignities of Order Maintenance*, Rogers College of Law, University of Arizona, March 2013.

Lecturer, Hoffinger Colloquium, *Profiling and Consent: The Trouble with Police Consent Decrees*, New York University School of Law, April 2011

National Associate, National Research Council and Institute of Medicine, 2011 – present

Member, Committee on Law & Justice, National Research Council, 2002-2008

Senior Justice Fellow, Open Society Institute, 2005-6

Health Policy Scholar, Robert Wood Johnson Foundation, 2002-2004

Book Award, “Best Book on Adolescence and Social Policy” for *Changing Borders of Juvenile Justice* (with F. Zimring), Society for Research on Adolescence, 2002

Public Interest Achievement Award, Public Interest Law Foundation of Columbia University, Spring 2001

Bruce Smith Senior Award, Academy for Criminal Justice Sciences, March 2000.

Lecturer, Fortunoff Colloquium, *Social Contagion of Violence*. New York University School of Law, April 1999

Fellow, Earl Warren Legal Institute, School of Law, University of California-Berkeley, 1999-present

University Faculty Merit Award, Rutgers University, 1990-94

Lecturer in Colloquium on Race, Ethnicity and Poverty Workshop, Center for the Study of Urban Inequality, University of Chicago, June 1992

University Research Council Grantee, Rutgers University, 1989-90

Lecturer, Fortunoff Colloquium, *Preventive Detention and the Validity of Judicial Predictions of Dangerousness*. New York University School of Law, October, 1988

Delegate, Criminal Justice and Criminology Delegation to the People's Republic of China, Eisenhower Foundation, 1985

NDEA Title IV Fellowship, Department of Industrial Engineering, State University of New York at Buffalo, June 1968-June 1971

**PUBLICATIONS:****Books:**

Tyler, T., A. Braga, J. Fagan, et al. (eds.), *Legitimacy, Criminal Justice, and the State in Comparative Perspective*. New York: Russell Sage Foundation Press (2008).

J. Fagan and F.E. Zimring (eds). *The Changing Borders of Juvenile Justice: Waiver of Adolescents to the Criminal Court*. Chicago: University of Chicago Press (2000). (Received Society for Research on Adolescence Award for “Best Book on Adolescence and Social Policy,” 2002).

D. Baskin, I. Sommers, and J. Fagan, *Workin’ Hard for the Money: The Social and Economic Lives of Women Drug Dealers*. Huntington NY: Nova Science Press (2000).

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- Fagan, J. "Terry's Original Sin, University of Chicago Legal Forum (2016, forthcoming)
- Fagan, Jeffrey, and Amanda B. Geller, "Following the Script: Narratives of Suspicion in Terry Stops in Street Policing, 82 *University of Chicago Law Review* 51 (2015)
- Tyler, Tom R., and Jeffrey Fagan, "American Policing in the 21<sup>st</sup> Century: Legitimacy is a Key Concern." 40 *Fordham Urban Law Journal* 119 (2015) and [online](#)
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### **9. Psychiatric Epidemiology**

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### Works in Progress:

MacDonald, J., J. Fagan, and A.B. Geller, “The Effects of Local Crime Surges on Crime and Arrests in New York City”, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2614058](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2614058)  
Legewie, J., and J.Fagan, “Group Threat, Police Officer Diversity and the Deadly Use of Force by Police,” under review at *American Sociological Review*, April 2016  
Fagan, J., G. Conyers, and I. Ayres, “No Runs, Few Hits and Many Errors: A Story in Five Parts about Racial Bias in Stop and Frisk Policing in New York.” Presented at Conference on Empirical Legal Studies, San Francisco, Nov. 2014  
Fagan, J., “Indignities of Order Maintenance”.  
Fagan, J., “The Miller Muddle: Mythologizing Proportionality in Punishment for Adolescents.”  
Fagan, J., and Geller, A.B. “Profiling and Consent: Stops, Searches and Seizures after *Soto*,” <http://ssrn.com/abstract=1641326>  
Fagan, J., Ellias, J., Kairys, D., and Levin, E.B. “Measuring A Fair Cross-Section of Jury Composition: A Case Study of the Southern District of New York,” To be submitted to a law review.  
Fagan, J., Geller, A.B., and Zimring, F.E. “Race, Political Economy, and the Supply of Capital Cases.” To be submitted to the *Journal of Criminal Law and Criminology*.

### Book Reviews:

**Exploring the Underground Economy: Studies of Illegal And Unreported Activity**, edited by S.Pozo (W.E. Upjohn Institute for Employment Research, 1996). *Contemporary Sociology* 27:69-70, 1998.  
**Women, Girls, Gangs and Crime**, C.S. Taylor (Michigan State University Press, 1993). *Contemporary Sociology*, 24: 99-100, 1994.  
**When Battered Women Kill**, A. Browne (Free Press, 1987). *Journal of Criminal Justice*, 16:74-8, 1988.  
**Pathways from Heroin Addiction**, P. Biernacki (Temple University Press, 1986). *Criminology*, 25: 213-21, 1987.  
**Child Sexual Abuse**, D. Finkelhor (Free Press, 1984). *Journal of Criminal Law and Criminology*, 77: 477-81, 1986.

### PAPERS PRESENTED (SELECTED):

“Terry’s Original Sin,” Presented at the Faculty of Law, University of New South Wales, March 7, 2016.  
“The Effects of Local Crime Surges on Crime and Arrests in New York City” (J. MacDonald, J. Fagan, and A.B. Geller). Presented at the Tenth Conference on Empirical Legal Studies, Washington University, St. Louis MO, October 2015  
“Policing and the Neighborhood Ecology of Legitimacy: Individual and Contextual Effects” (J. Fagan, T.R. Tyler, A.B. Geller). Presented at the International Conference on Police-Citizen Relations, CNRS-Science Po and Max Planck Institute, Paris France, April 2015.  
“Ferguson, New York.” Presented at the Symposium on Criminalization and Criminal Justice, University of Miami Law Review, Miami FL, February 2015

- “No Runs, Few Hits and Many Errors: Street Stops, Bias and Proactive Policing” (with G. Conyers and I. Ayres), Presented at the Ninth Conference on Empirical Legal Studies, University of California at Berkeley, November 2014
- “Aggressive Policing and the Health of Young Urban Men” (A. Geller, J. Fagan and T. Tyler), Presented at the Annual Meeting of the Population Association of America, New Orleans, LA, March 2010
- “Race and Selective Enforcement in Public Housing,” (J. Fagan, G. Davies and A. Carlis), Presented at the Seventh Annual Conference on Empirical Legal Studies, Northwestern Law School, November 2011; Annual Meeting of the Association for Public Policy and Management, Washington DC, November 2009; Annual Meeting of the American Society of Criminology, Philadelphia PA, November 2009; Law and Economics Workshop, University of Virginia, March 2010;
- “Social Context and Proportionality in Capital Punishment in Georgia” (with R. Paternoster), Presented at the Annual Meeting of the American Society of Criminology, San Francisco, November 2010
- “Profiling and Consent: Stops and Searches in New Jersey after *Soto*” (with A. Geller), Presented at the Sixth Annual Conference on Empirical Legal Studies, New Haven CT, November 2010
- “Doubling Down on Pot: Marijuana, Race and the New Disorder in New York City Street Policing” (with A. Geller), Presented at the Fifth Conference on Empirical Legal Studies, Los Angeles CA, November 2009
- “Crime, Conflict and the Racialization of Criminal Law,” Presented at the Annual Meeting of the European Society of Criminology, Ljubljana, Slovenia, September 2009
- “Street Stops and Broken Windows Revisited: The Demography and Logic of Proactive Policing in a Safe and Changing City,” (with A. Geller, G. Davies and V. West). Presented at the Annual Meeting of the Association for Public Policy and Management, Los Angeles, November 2008. Also presented at the Annual Meeting of the American Society of Criminology, St. Louis, November 2008.
- “Desistance and Legitimacy: Effect Heterogeneity in a Field Experiment on High Risk Groups,” (with A. Papachristos, D. Wallace, and T. Meares), presented at the Annual Meeting of the American Society of Criminology, St. Louis, November, 2008.
- “Legitimacy, Compliance and Cooperation: Procedural Justice and Citizen Ties to the Law” (with T. Tyler). Presented at the Second Conference on Empirical Legal Studies, Cornell Law School, October 2008.
- “Measuring A Fair Cross-Section of Jury Composition: A Case Study of the Southern District of New York,” (with A. Gelman, D.E. Epstein, and J. Ellias). Presented at the Annual Meeting of the Midwest Political Science Association, Chicago, April 4, 2008
- “Race, Legality and Quality of Life Enforcement in New York City, 2006,” John Jay College of Criminal Justice, New York, February 28, 2008
- “Be Careful What You Wish For: The Comparative Impacts of Juvenile and Criminal Court Sanctions on Adolescent Felony Offenders,” Presented at Annual Conference on Empirical Legal Studies, New York, November 19, 2007
- “The Common Thread: Crime, Law and Urban Violence in Paris and the U.S.,” Presented at the Conference on “Poverty, Inequality, and Race: Forty Years after the Kerner Commission Report and Twenty Years after the Scarman Commission Report,” University of Paris IX (Sorbonne), July 2007
- “Race, Political Economy, and the Supply of Capital-Eligible Cases,” Presented at the Annual Meeting of the American Society of Criminology, Atlanta GA, November 2007.
- “The Political Economy of the Crime Decline in New York City,” Presented at the Annual Meeting of the American Society of Criminology, Atlanta GA, November 2007. Also presented at the Annual Meeting of the American Association for the Advancement of Science, San Francisco, February 2007 (with G. Davies). Also presented at the Symposium on the Crime Decline, University of Pennsylvania, Department of Criminology, March 31, 2006.



- “Crime and Neighborhood Change.” Presented at the National Research Council, Committee on Law and Justice, Washington DC, April 2007.
- “Immigration and Crime,” Presented at the Annual Meeting of the American Society of Criminology, Los Angeles, November 2006 (w. Garth Davies).
- “Rational Choice and Developmental Contributions to Legal Socialization,” Presented at the Conference on Empirical Studies in Law, Austin, Texas, October 2006; also presented at the Annual Meeting of the American Society of Criminology, Toronto, November 2005 (with A. Piquero) [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=914189](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=914189).
- “The Diffusion of Homicides from Illegal Gun Markets: A Test of Social Contagion Theories of Violence,” Presented at the Annual Meeting of the American Society of Criminology, Toronto, Ontario, November 14, 2005 (with G. Davies).
- “Attention Felons: Evaluating Project Safe Neighborhoods in Chicago” (November 2005). U Chicago Law & Economics, Olin Working Paper No. 269 <http://ssrn.com/abstract=860685>, presented at the Annual Meeting of the American Society of Criminology, Toronto, November 2005 (with A. Papachristos and T.L. Meares)
- “Legitimacy And Cooperation: Why Do People Help The Police Fight Crime In Their Communities?” Presented at the Annual Meeting of the American Society of Criminology, Toronto, November 2005 (with T. Tyler), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=887737](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=887737)
- “Science, Ideology and the Death Penalty: The Illusion of Deterrence.” The Walter Reckless Lecture, delivered at the Moritz School of Law and the Criminal Justice Research Center, The Ohio State University, Columbus, OH, April 2005.
- “Crime Currents and the Co-Production of Security in New York City.” Presented at the *Colloquium on the Urban Age*, London School of Economics, February 2005.
- “The Effects of Drug Enforcement on the Rise and Fall of Violence in New York City, 1985-2000,” Presented at the *Workshop on Behavioral and Economic Research* National Institute on Drug Abuse, Bethesda MD, October 2004 (with G. Davies).
- “Police, Order Maintenance and Legitimacy,” Presented at the Conference on *Dilemmas of Contemporary Criminal Justice: Policing in Central and Eastern Europe*, University of Maribor, Ljubljana, Slovenia, September 2004 (with Tom R. Tyler)
- “The Bustle of Horses on a Ship: Drug Control in Public Housing,” Presented at Workshop on Crime in Public Housing, National Consortium on Violence Research, John F. Kennedy School of Government, Harvard University, April 2004.
- “Neighborhood Patterns of Violence among Latinos,” Presented at Workshop on *Beyond Racial Dichotomies of Violence: Immigrants, Race and Ethnicity*, UCLA Center for Population Studies, Los Angeles, November 2003 (with G. Davies).
- “Neighborhood Effects on Violence Against Women: A Panel Study,” Presented at the Annual Meeting of the American Society of Criminology, Denver, November 2003 (with G. Davies).
- “Reciprocal Effects of Crime and Incarceration in New York City Neighborhoods,” Presented at the Russell Sage Foundation, New York, December 2002 (with V. West and J. Holland).
- “The Effects of Drug Enforcement on the Rise and Fall of Homicides in New York City, 1985-1996,” Presented at the Annual Meeting of the American Society of Criminology, Chicago, November 2002 (with G. Davies).
- “Age-Specific Sanctions for Juvenile Offenders: Crime Control and the Exclusion of Adolescent from the Juvenile Court,” Presented at the Symposium for the 10<sup>th</sup> Anniversary of the Netherlands Institute for the Study of Crime and Law Enforcement, Leiden, The Netherlands, September 2002.
- “New Measures for Assessing Perceptions of Legitimacy and Deterrence among Juvenile Offenders,” Presented at the Annual Meeting of the American Society of Criminology, Chicago, November 2002 (with A. Piquero).
- “Community, Courts, and Legitimacy,” Fordham University Law School Symposium on Problem-Solving Courts, New York, February 2002 (with V. Malkin).
- “Specific Deterrent Effects of Jurisdictional Transfer of Adolescent Felony Offenders,” American Society of Criminology, Atlanta, November 2001 (with A. Kupchik).

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- “Assessing the Theoretical and Empirical Status of ‘Broken Windows’ Policing,” Faculty of Law, University of Cambridge, Cambridge UK, October 2001.
- “Social Contagion of Youth Violence,” Grand Rounds Lecture, Johns Hopkins University School of Medicine, Baltimore MD, March 2001.
- “Street Stops and Broken Windows: Terry, Race and Disorder in New York City,” Presented at the Annual Meeting of the American Society of Criminology, San Francisco, CA, November 2000.
- “Social and Legal Consequences of Judicial Waiver of Adolescents: Human Rights Implications,” Presented at the Annual Meeting of the American Association for the Advancement of Science, Washington DC, February 2000.
- “Crime in Poor Places: Examining the Neighborhood Context of New York City’s Public Housing Projects,” Presented at the Research Institute on Neighborhood Effects on Low-Income Families, Joint Center for Poverty Research, The University of Chicago, September 1999 (with Tamara Dumanovsky and J. Philip Thompson).
- “Social Contagion of Violence,” Presented at the Fortunoff Colloquium, New York University School of Law, April 1999. Previous versions presented at the Winter Roundtable, Teachers College, Columbia University, February 1998, and the International Roundtable on Urban Security, Foundation Jean Jares, Paris, April 1998.
- “This is Gonna’ Hurt Me More than It’ll Hurt You: Consequences of the Criminalization of Youth Crime.” Presented at the Workshop on the Juvenile Justice System, National Research Council Panel on Juvenile Crime, Washington DC, January 1999.
- “Use, Misuse and Nonuse of Social Science in Law: Case Studies from Criminal Law.” Presented at the Annual Meeting of the American Association of Law Schools, New Orleans, January 1999.
- “Consequences of Waiver: Recidivism and Adolescent Development.” Presented at the Symposium on The Juvenile Justice Counter-Reformation: Children and Adolescents as Adult Criminals, Quinnipiac College School of Law, Hamden CT, September 17-18, 1998.
- “Drugs and Youth Violence: The Tripartite Framework Revisited.” Presented at the Annual Meeting of the American Society of Criminology, San Diego, November 1997.
- “The Criminalization of Delinquency and the Politics of Juvenile Justice.” Presented at the Annual Meeting of the National Conference of State Legislatures, Philadelphia PA, August 1997.
- “Crack in Context: Myths And Realities From America’s Latest Drug Epidemic.” Presented at the NIJ/NIDA Conference on *The Crack Decade: Research Perspectives and Lessons Learned*. Baltimore MD: June 1997.
- “Alcohol and Violent Events.” Presented at the Annual Meeting of the American Society of Criminology, Chicago, November 1996 (with D.L. Wilkinson).
- “Crime and Public Housing: Conceptual and Research Issues.” Presented at the Joint Conference on Research in Public Housing, National Institute of Justice and Department of Housing and Urban Development, Washington DC, July 1997.
- “The Functions of Adolescent Violence.” Presented at the Bi-National Forum on Youth Violence, The French American Foundation, United Nations, New York, October 1996.
- “Mirror Images of Violence: The Historical Socialization of Willie Bosket.” Author-Meets-Critic Panel on *All God’s Children*, by Fox Butterfield. Presented at the Annual Meeting of the American Society of Criminology, Boston, November 1995.
- “Crime and Work.” Presented at the Annual Meeting of the American Society of Criminology, Boston, November 1995.
- “Drugs and Violence: Lessons from Three Epidemics.” Presented at a joint session of the Annual Meetings of the American Sociological Association and the Society for the Study of Social Problems, Washington DC, August 1995.
- “Social and Legal Control of Spouse Assault: Ironies in the Effectiveness of Punishment for Wife Beating.” Presented at the Conference on Research and Evaluation, National Institute of Justice, Washington DC, July 1995.
- “Cocaine and Federal Sentencing Policy.” Testimony before the Subcommittee on Crime,

- Committee on the Judiciary, U.S. House of Representatives, Washington DC, June 29, 1995.
- “Gangs, Youth, Drugs, and Violence.” Presented to the Drugs-Violence Task Force of the U.S. Sentencing Commission, Washington DC, May 1995.
- “Community Risk Factors in Workplace Violence.” Presented at the Symposium on Violence in the Workplace, New York Academy of Medicine, New York, March 1995.
- “Situational Contexts of Gun Use among Young Males.” Presented at the Annual Meeting of the American Association for the Advancement of Science, Atlanta, February 1995, and at the Annual Meeting of the American Society of Criminology, Miami, November 1994.
- “The Social Control of Violence among Intimates: Neighborhood Influences on the Deterrent Effects of Arrest for Spouse Assault” (with J. Garner & C. Maxwell). Presented at the Annual Meeting of the American Society of Criminology, Miami, November 1994.
- “Crime, Drugs and Neighborhood Change: the Effects of Deindustrialization on Social Control in Inner Cities.” Presented at the Annual Meeting of the American Association for the Advancement of Science, San Francisco, February 1994.
- “The Social Context of Deterrence.” Plenary paper presented at the Annual Meeting of the American Society of Criminology, Phoenix, October 1993.
- “Doubling Up: Careers in Legal and Illegal Work.” Presented at the Annual Meeting of the American Society of Criminology, Phoenix, October 1993.
- “Promises and Lies: The False Criminology of “Islands in the Street.” Presented at the Annual Meeting of the American Sociological Association, Miami, August 1993.
- “Deindustrialization and the Emergence of Youth Gangs in American Cities.” Colloquium at the Institute of Politics, University of Pittsburgh, April 1993.
- “Women and Drugs Revisited: Female Participation in the Crack Economy.” Colloquium at the Research Institute on the Addictions, State of New York, March 1993.
- “Neighborhood Effects on Gangs and Ganging: Ethnicity, Political Economy and Urban Change.” Presented at the Annual Meeting of the American Society of Criminology, New Orleans, November 1992.
- “Enterprise and Ethnicity: Cultural and Economic Influence on Social Networks of Chinese Youth Gangs” (with K. Chin). Presented at the Annual Meeting of the American Society of Criminology, New Orleans, November 1992.
- “The Specific Deterrent Effects of Criminal Sanctions for Drug and Non-Drug Offenders.” Presented at the Annual Meeting of the Law & Society Association, Philadelphia, May 1992.
- “The Changing Contexts of Drug-Violence Relationships for Adolescents and Adults.” Presented at the Annual Meeting of the American Academy for the Advancement of Science, Washington DC, February 1991.
- “Youth Gangs as Social Networks.” Presented at the Annual Meeting of the American Society of Criminology, Baltimore MD, November 1990.
- “Context and Contingency in Drug-Related Violence.” Presented at the Annual Meeting of the American Psychological Association, Boston MA, August 1990.
- “The Dragon Breathes Fire: Chinese Organized Crime in New York City” (R. Kelly, K. Chin, and J. Fagan). Presented to the Political Sociology Faculty of the University of Florence, Firenze, Italy, May 1990.
- “The Political Economy of Drug Use and Drug Dealing among Urban Gangs (J. Fagan and A. Hamid). Presented at the Annual Meeting of the American Society of Criminology, Reno NV, November 1989.
- “The Comparative Impacts of Juvenile and Criminal Court Sanctions for Adolescent Felony Offenders” (J. Fagan and M. Schiff). Presented at the Annual Meeting of the American Society of Criminology, Reno NV, November 1989.
- “Symbolic and Substantive Effects of Waiver Legislation in New Jersey” (M. Schiff and J. Fagan). Presented at the Annual Meeting of the Law and Society Association, Vail CO, June, 1988.
- “The Predictive Validity of Judicial Determinations of Dangerousness: Preventive Detention of Juvenile Offenders in the Schall v. Martin Case” (J. Fagan and M. Guggenheim). Presented at the Annual Meeting of the American Society of Criminology, Montreal, Quebec,

- November, 1987; and, at the Fortunoff Colloquium Series, New York University School of Law, November, 1988.
- “The Comparative Effects of Legal and Social Sanctions in the Recurrence of Wife Abuse” (J. Fagan and S. Wexler). Presented at the Third National Conference on Family Violence Research, University of New Hampshire, Durham, NH, July, 1987
- “The Stability of Delinquency Correlates in Eight High Crime Neighborhoods” (J. Deslonde and J. Fagan). Presented at the 1986 Annual Conference of Blacks in Criminal Justice, Washington DC, March 1986
- “Complex Behaviors and Simple Measures: Understanding Violence in Families” (J. Fagan and S. Wexler). Presented at the Annual Meeting of the American Society of Criminology, San Diego, November, 1985
- “Social Ecology of Violent Delinquency” (J. Fagan, P. Kelly and M. Jang). Presented at Annual Meeting of the Academy of Criminal Justice Sciences, Chicago, IL, March, 1984.
- “Delinquent Careers of Chronically Violent Juvenile Offenders” (E. Hartstone, J. Fagan and M. Jang). Presented at Pacific Sociological Association, San Jose, CA, April 1983.
- “*Parens Patriae* and Juvenile Parole.” Presented at the National Conference on Criminal Justice Evaluation, Washington, DC, November 1978.
- “Indigenous Justice: The San Francisco Community Board Program” (J. Fagan). Presented at the Annual Meeting of the American Society of Criminology, November 1977, Atlanta, Georgia.
- “An Assessment of the Impact of Treatment and Other Factors on Successful Completion of a Pretrial Intervention Program” (J. Fagan). Presented at the National Conference on Criminal Justice Evaluation, February 1977.

**EXPERT TESTIMONY:**

- U.S. v. Antonio Williams and John Hummons*, 12-CR-887, Chief Judge Ruben Castillo, U.S. District Court, Northern Division of Illinois (2013)
- In re: Ferguson Police Department*, Special Litigation Section, Civil Rights Division, U.S. Department of Justice, DJ 207-42-6
- Floyd, et al. v. City of New York, et al.*, U.S. District Court, Southern District of New York, 08 Civ. 1034 (SAS) (2008)
- Davis et al. v. City of New York*, U.S. District Court, Southern District of New York, 10 Civ. 0699 (SAS) (2010)
- Ligon et al. v. City of New York*, U.S. District Court, Southern District of New York, 12 Civ. 2274 (SAS) (2012)
- State v. Raheem Moore*, Circuit Court # 08CF05160, State of Wisconsin, Criminal Division, Milwaukee County
- Connecticut v Arnold Bell*, Docket # CR02-0005839, District Court of Connecticut, New Haven
- Jessica Gonzales v. United States*, Petition No. 1490-05, Inter Am. C.H.R., Report No. 52/07, OEA/Ser.L./V/II.128, doc. 19 (2007)
- U.S. v. Joseph Brown and Jose Lavandier*, U.S. District Court for the District of Vermont, Docket No. 2:06-CR-82-2
- United States v. Khalid Barnes*, U.S. District Court, Southern District of New York, 04 Cr. 186 (SCR)
- Loggins v. State*, 771 So. 2d 1070 (Ala. Crim. App. 1999)
- Truman-Smith v. Bryco Firearms et al.* (02-30239 (JBW)), and *Johnson v. Bryco Firearms et al.* (03-2582 (JBW)), Eastern District of New York
- U.S. v. Alan Quinones*, S3 00 Cr. 761 (JSR), Southern District of New York
- National Association for the Advancement of Colored People (NAACP) and National Spinal Cord Injury Association (NSCIA) v. American Arms Corporation, Accu-sport Corporation, et. al.*, Eastern District of New York, 99 CV 3999 (JBW), 99 CV7037 (JBW)
- U.S. v. Durrell Caldwell*, J-2045-00; J-2250-00, Family Division, Juvenile Branch, Superior Court of the District of Columbia

*Nixon v. Commonwealth of Pennsylvania, Department of Public Welfare*, 839 A.2d 277 (Pa. 2003)  
*National Congress of Puerto Rican Rights v. City of New York*, 99 Civ. 1695 (SAS) (HBP)  
*State of Wisconsin v. Rodolfo Flores*, 99-CF-2866, Circuit Branch 28 (Hon. Thomas R. Cooper)  
*State of Wisconsin v. Rolando Zavala*, 97-CF-547, Circuit Branch 3 (Hon. Bruce E. Shroeder)  
*Hamilton v. Accu-Tek et al.*, 935 F. Supp. 1307 (E.D.N.Y. 1996)  
*U.S. v. Yohann Renwick Nelson*, 920 F.Supp. 825 (M.D. Tenn., 1996)

#### **OTHER PRESENTATIONS:**

“Guns, Social Contagion, and Youth Violence.” Presented at the Annual Conference of the Cuyahoga County Mental Health Institute, Case Western Reserve University, Cleveland, May 1998.

“The Future of the Criminal Law on Domestic Violence.” Presented to the Governor’s Criminal Justice Conference, Albany, New York, October 1996.

“Women, Law and Violence: Legal and Social Control of Domestic Violence.” Presented at the 29th Semi-Annual Research Conference of the Institute for Law and Psychiatry, School of Law, University of Virginia, Charlottesville VA, November 1995.

“Punishment versus Treatment of Juvenile Offenders: Therapeutic Integrity and the Politics of Punishment,” Delaware Council on Criminal Justice, Wilmington DE, October 1995.

Keynote Speaker, “The Criminalization of Domestic Violence: Promises and Limitations,” National Conference on Criminal Justice Evaluation, National Institute of Justice, Washington DC, July 1995.

“Limits and Promises of New Jersey’s Prevention of Domestic Abuse Act,” Institute of Continuing Legal Education, Bar Association of the State of New Jersey, New Brunswick, July 1993.

“Technical Review on Alcohol and Violence,” National Institute on Alcoholism and Alcohol Abuse, Rockville MD: May 1992.

Plenary Speaker, “Race and Class Conflicts in Juvenile Justice,” Annual Meeting of the Juvenile Justice Advisory Groups, Washington DC, April 1991

Plenary Speaker, “Punishing Spouse Assault: Implications, Limitations and Ironies of Recent Experiments on Arrest Policies,” Annual Meeting of the Society for the Study of Social Problems, Washington DC, August 1990.

“Drug Use, Drug Selling and Violence in the Inner City,” Joint Center for Political Studies, Washington DC: November 1989.

“Technical Review on Drugs and Violence,” National Institute on Drug Abuse, Rockville MD: September, 1989.

Carnegie Council on Adolescent Development, “Workshop on Adolescent Violence.” Washington DC: May 1989.

“National Symposium on Families in Courts.” National Judicial College, National Center for State Courts, and the American Bar Association (joint conveners). Reno NV, May 1989.

Plenary Panelist, “Delinquency Research in the 1990’s.” Annual Meeting of the Western Society of Criminology, Anaheim CA, February 1989.

Keynote Speaker, Philadelphia Coalition for Children and Youth, Juvenile Justice Conference, June, 1988

Ohio Governor’s Task Force on Juvenile Violence, Statewide Conference on Gangs, May, 1988

OJJDP State Advisory Groups, Regional Workshops, 1982, 1987

Michigan Commission on Juvenile Justice, Symposium on Contemporary Programs in Rehabilitation of Serious Juvenile Offenders, 1986

Interagency Panel on Research and Development on Children and Adolescents, National Institute of Education, 1985, 1987

Symposium on Addressing the Mental Health Needs of the Juvenile Justice Population, National Institute of Mental Health, 1985

OJJDP/ADAMHA Joint Task Force on Serious Juvenile Offenders with Drug and Alcohol

Abuse and Mental Health Problems, National Institute on Drug Abuse, 1984  
 National Conference on Family Violence as a Crime Problem, National Institute of Justice, 1984  
 Governor's Task Force on Juvenile Sex Offenders, California Youth Authority, Sacramento, CA, 1984  
 Los Angeles County Medical Association, Los Angeles, California: Family Violence and Public Policy, 1983  
 Minority Research Workshop, National Institute of Law Enforcement and Criminal Justice, LEAA, Department of Justice, 1979

#### TECHNICAL REPORTS (SELECTED):

- Project Safe Neighborhoods in Chicago: Three Year Evaluation and Analysis of Neighborhood Level Crime Indicators, Final Technical Report* (J. Fagan, A. Papachristos, T.L. Meares), Grant # 2004-GP-CX-0578, Bureau of Justice Assistance, U.S. Department of Justice (2006).
- Social and Ecological Risks of Domestic and Non-Domestic Violence against Women in New York City* (J. Fagan, J. Medina-Ariza, and S.A. Wilt). Final Report, Grant 1999-WT-VW-0005, National Institute of Justice, U.S. Department of Justice (2003).
- The Comparative Impacts of Juvenile and Criminal Court Sanctions on Recidivism among Adolescent Felony Offenders* (J. Fagan, A. Kupchik, and A. Liberman). Final Report, Grant 97-JN-FX-01, Office of Juvenile Justice and Delinquency Prevention (2003).
- Drug Control in Public Housing: The Impact of New York City's Drug Elimination Program on Drugs and Crime* (J. Fagan, J. Holland, T. Dumanovsky, and G. Davies). Final Report, Grant No. 034898, Substance Abuse Policy Research Program, Robert Wood Johnson Foundation (2003).
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**EDITORIAL:**

Senior Editor, *Criminology and Public Policy*, 2001 - 2008  
 Advisory Board, *Family and Child Law Abstracts*, Legal Scholarship Network, 1999-present  
 Editorial Advisory Board, *Journal of Criminal Law and Criminology*, 1996-2010  
 Editorial Board, *Criminology*, 1997-2001  
 Editorial Board, *Journal of Quantitative Criminology*, 2001-2008  
 Editorial Board, *Crime and Justice: A Review of Research*, 1998-present  
 Editorial Board, *Journal of Research in Crime and Delinquency*, 1997-present  
 Editor, *Journal of Research in Crime and Delinquency*, 1990 - 1995  
 Editor, *Contemporary Drug Problems*, Special Issues on Crack (Winter 1989, Spring 1990)  
 Co-Editor, *Oxford Readers in Crime and Justice* (w. Michael Tonry), Oxford University Press, 1994-95

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Research Advisory Board, The Innocence Project (2009 – present)  
 Committee on Law and Justice, National Academy of Sciences (2000-2006) (Vice Chair, 2004-6)  
 Member, Committee to Review Research on Police Policy and Practices, National Research Council, National Research Council (2001-2003)  
 Working Group on Law, Legitimacy and the Production of Justice, Russell Sage Foundation (2000-present)  
 Working Group on Incarceration, Russell Sage Foundation (2000-2006)  
 Academic Advisory Council, National Campaign Against Youth Violence (The White House)

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 Fellow, Aspen Roundtable on Race and Community Revitalization (1999 - 2001)  
 Fellow, Earl Warren Legal Institute, University of California School of Law (1998 - present)  
 Research Network on Adolescent Development and Juvenile Justice, MacArthur Foundation  
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 National Consortium on Violence Research, Carnegie Mellon University (NSF) (1996-present)  
 Committee on the Assessment of Family Violence Interventions, National Research Council,  
 National Academy of Sciences (1994-1998)  
 Advisory Board, Evaluation of the Comprehensive Gang Intervention Program, University of  
 Chicago (1997-present)  
 Committee on Opportunities in Drug Abuse Research, Institute of Medicine, National Academy  
 of Sciences (Special Consultant) (1995 - 1996).  
 Initial Review Group, Violence and Traumatic Stress Research Branch, National Institute of  
 Mental Health, National Institute of Health (1994-1998)  
 Chair, Working Group on the Ecology of Crime in Inner Cities, Committee for Research on the  
 Urban Underclass, Social Science Research Council (1989-1994)  
 Advisory Board, Evaluation of the Jobs Corps, U.S. Department of Labor (1993-present)  
 Advisory Board, National Service Action Corps, Robert F. Kennedy Memorial (1993-1997)  
 Advisory Board, Evaluation of Family Violence Prevention and Services Act, The Urban  
 Institute (1993-1994)  
 Scientific Core Group, Program on Human Development and Criminal Behavior, MacArthur  
 Foundation (1991-1992)  
 Injury Control Panel on Violence Prevention, Centers for Disease Control and Prevention, U.S.  
 Department of Health and Human Services (1990-1991)  
 Princeton Working Group on Alternatives to Drug Prohibition, Woodrow Wilson School of  
 Public and International Affairs, Princeton University (1990-1994)  
 Racial Disparities in Juvenile Justice, Pennsylvania Juvenile Court Judges Commission (1991-  
 92)  
 Racial Disparities in Juvenile Justice, Missouri Department of Law and Public Safety (1990-91)  
 Conditions of Confinement of Juveniles, National Institute for Juvenile Justice and Delinquency  
 Prevention (1990-1992)  
 Research Program on "Linking Lifetimes -- Intergenerational Mentoring for Youths at Risk  
 and Young Offenders," Temple University (1989-91)  
 Research Program on Juvenile Court Sanctions for Family Violence, National Council of  
 Juvenile and Family Court Judges, Bureau of Justice Assistance, U.S. Department of Justice  
 (1987-1988)  
 School Crime Research and Development Program, Office of Juvenile Justice and Delinquency  
 Prevention, National Institute for Juvenile Justice and Delinquency Prevention (1986-1988)  
 Research and Development Project on Sexually Exploited Children, Tufts University, New  
 England Medical Center Hospital, Boston, MA (1980-83)  
 Administration of Justice Program, National Urban League, New York, NY (1982-1987)

**PROFESSIONAL ASSOCIATIONS:**

Society for Empirical Legal Studies  
 American Society of Criminology  
 American Sociological Association  
 Law and Society Association  
 American Association for the Advancement of Science  
 American Public Health Association

**RESEARCH GRANTS:**



- Principal Investigator, *Citizens, Police and the Legitimacy of Law in New York*, Grant # 20033258, Open Society Foundations, October 2011-September 2013
- Principal Investigator, *Proactive Policing and Mental Health: Individual and Community Effects*, Grant # 69669, Public Health Law Research Program, Robert Wood Johnson Foundation, 2011-13
- Co-Investigator, *Street Stops and Police Legitimacy*, Grant 2010-IJ-CX-0025 from the National Institute of Justice, U.S. Department of Justice, subcontract from New York University, 2011 – 2012
- Principal Investigator, “Evaluation of Project Safe Neighborhoods in Chicago,” May 2004 – September 2010, Grant # 2004-GP-CX-0578, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice.
- Principal Investigator, “Capital Sentencing of Adolescent Murder Defendants,” March – December 2004, Grant #20012433 from the Open Society Institute. Additional support from the Wallace Global Fund.
- Principal Investigator, “Legitimacy, Accountability, and Social Order: Majority and Minority Community Perspectives on the Law and Legal Authorities,” September 2002 - August 2003, Russell Sage Foundation.
- Principal Investigator, “Social Contagion of Violence,” Investigator Awards in Health Policy Program, Robert Wood Johnson Foundation, September 2002 – June 2004
- Principal Investigator, “Getting to Death: Fairness and Efficiency in the Processing and Conclusion of Death Penalty Cases after Furman,” Grant #2000-IJ-CX-0035, September 2000 - August 2001, National Institute of Justice, U.S. Department of Justice.
- Co-Principal Investigator, “Columbia Center for the Study and Prevention of Youth Violence,” Grant R49-CCR218598, October 1, 2000 - September 30, 2005, Centers for Disease Control, U.S. Department of Health and Human Services.
- Principal Investigator, “Neighborhood Effects on Legal Socialization of Adolescents,” John D. and Catherine T. MacArthur Foundation, October 1, 2000 - September, 30, 2002.
- Principal Investigator, “Violence Prevention through Legal Socialization,” 1 R01-HD-40084-01, October 1, 2000 - September 30, 2003, National Institute of Child and Human Development, U.S. Department of Health and Human Services.
- Principal Investigator, “The Effects Of Incarceration On Crime And Work In New York City: Individual And Neighborhood Impacts,” Russell Sage Foundation, Grant 85-00-11, September 2000 - August 2002.
- Principal Investigator, “Community Courts And Community Ecology: A Study of The Red Hook Community Justice Center,” Grant 2000-MU-AX-0006, June 1, 2000 - December 31, 2002, National Institute of Justice, U.S. Department of Justice.
- Principal Investigator, “Age, Crime and Sanction: The Effect of Juvenile Versus Adult Court Jurisdiction on Age-specific Crime Rates of Adolescent Offenders,” Grant JR-VX-0002, June 1999 - August 2000, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice.
- Principal Investigator, “Social and Ecological Risks of Domestic and Non-domestic Violence Against Women in New York City,” Grant WT-VX-0005, April 1999 - December 2000, National Institute of Justice, U.S. Department of Justice.
- Principal Investigator, “Drug Control in Public Housing: An Evaluation of the Drug Elimination Program of the New York City Public Housing Authority,” September 1998 - August 2001, Robert Wood Johnson Foundation.
- Principal Investigator, “The Criminalization of Delinquency: Comparative Impacts of Juvenile and Criminal Court Sanctions on Adolescent Felony Offenders,” March 1997 - September 2000, Office of Juvenile Justice and Delinquency Prevention, Annie E. Casey Foundation, Open Society Institute.
- Co-Principal Investigator, “Post-Traumatic Stress Among Police,” October 1997 - April 2000, National Institute of Mental Health, 1 R01 MH56350-01, National Institute of Health (subcontract from University of California at San Francisco).

- Principal Investigator, "The Rise and Fall of Drug-Related Homicides in New York City: 1985-95," July 1997 - June 2000, Robert Wood Johnson Foundation.
- Principal Investigator, "Lethal and Non-Lethal Violence: Individual, Social and Neighborhood Risk Factors," October 1996 - September 1999, Centers for Disease Control and Prevention, National Institute of Health, R49/CCR212753-01; National Institute of Justice, 97-IJ-CX-0013.
- Principal Investigator, "The Situational Context of Gun Use by Young Males," October 1995 - January 1998, National Science Foundation, SBR-9515327; National Institute of Justice, 96-IJ-CX-0021; Centers for Disease Control and Prevention (NIH) R49/CCR211614.
- Principal Investigator, "The Situational Context of Gun Use by Young Males in Inner Cities," February 1995 - August 1996, The Harry Frank Guggenheim Foundation.
- Principal Investigator, "Reducing Injuries to Women from Spouse Assault," September 1994 - February 1996, Centers for Disease Control and Prevention, National Institute of Health, R49/CCR210534-01.
- Co-Principal Investigator, "Crime Commission Rates of Incarcerated Prisoners: Estimates from the Second Generation of Inmate Surveys," June 1994 - February 1995, National Institute of Justice, 94-IJ-CX-0017.
- Principal Investigator, "Impacts of Arrest on the Social Control of Violence Among Intimates," October 1993 - June 1994, National Institute of Justice, 93-IJ-CX-0021.
- Principal Investigator, "The Role of Legal and Social Controls in Controlling Violence among Intimates," July 1993 - December 1994, The Harry Frank Guggenheim Foundation.
- Co-Principal Investigator, "Measuring the Use of Force by Police," September 1993 - August 1994, National Institute of Justice, 92-IJ-CX-K028.
- Co-Principal Investigator, "Female Participation in Drug Selling," September 1992 - August 1994, National Science Foundation, SES-92-07761. Also supported by the Rockefeller Foundation.
- Principal Investigator, "Civil and Criminal Sanctions for Domestic Violence," June 1992 - September 1994 Administrative Office of the Courts, State of New Jersey.
- Co-Principal Investigator, "Careers in Crack, Drug Use and Distribution, and Non-Drug Crime," February 1991 - January 1993, National Institute on Drug Abuse, National Institute of Health, 1R01-DA-06615-01.
- Principal Investigator, "Patterns of Organized Crime Activities among Asian Businesses in the New York Metropolitan Area," October 1989 - March 1991, National Institute of Justice, 89-IJ-CX-0021.
- Principal Investigator, "Desistance from Family Violence," July 1990 - January 1992, The Harry Frank Guggenheim Foundation.
- Principal Investigator, "Pipeline Study for a Field Experiment on Drug Testing in Community Corrections," June-December, 1990, National Institute of Justice, 90-IJ-R-026
- Principal Investigator, "Changing Patterns of Drug Abuse and Criminality among Crack Users," December 1987 - September 1989, National Institute of Justice, 87-IJ-CX-0064-S1.
- Principal Investigator, "The Comparative Impacts of Criminal and Juvenile Sanctions for Adolescent Felony Offenders," October 1987 - September 1989, National Institute of Justice, 87-IJ-CX-4044.
- Principal Investigator, "Drug Abuse and Delinquency among Dropouts and Gang Members: A Secondary Analysis," October 1987 - December 1988, National Institute for Juvenile Justice and Delinquency Prevention, 87-JN-CX-0012.
- Principal Investigator, "Drug and Alcohol Use, Violent Delinquency, and Social Bonding," October 1985 - December 1986, National Institute of Justice, 85-IJ-CX-0056.
- Principal Investigator, "Violent Juvenile Offender Research and Development Program," November 1980 - June 1987, National Institute for Juvenile Justice and Delinquency Prevention, 80-JN-AX-0012, 85-MU-CX-0001.
- Principal Investigator, Preventive Detention and the Prediction of Dangerousness Among Juveniles: Pretrial Crime and Criminal Careers in the *Schall v. Martin* Cohort, New York City Criminal Justice Agency.

Principal Investigator, "AIDS Community Education Effectiveness Study," January 1986 - June 1987, California Department of Health, Grant D0056-86.

Principal Investigator, "Longitudinal Evaluation of Intensive Probation Supervision for Violent Offenders," October 1982 - June 1985, National Institute of Justice, 82-IJ-CX-K008.

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**PEER REVIEW:**

**Scholarly Journals**

Law and Society Review	Social Problems
Journal of Contemporary Ethnography	American Journal of Sociology
American Sociological Review	Journal of Drug Issues
Crime and Justice: An Annual Review of Research	Journal of Quantitative Criminology
Sociological Methods and Research	Journal of Criminal Justice
Justice Quarterly	Alcohol Health and Research World
Violence and Victims	Criminal Justice Ethics
Social Science Quarterly	Contemporary Drug Problems

**University Presses**

Rutgers University Press	Cambridge University Press
State University of New York Press	Oxford University Press
Temple University Press	Princeton University Press
University of Chicago Press	

**Other Presses**

MacMillan Publishing	Greenwood Publications
St. Martins Press	Sage Publications

**Research Grant Reviews**

National Institute on Mental Health, Violence and Traumatic Stress Branch  
Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, USPHS  
Law and Social Science Program, National Science Foundation  
Sociology Program, National Science Foundation  
National Institute on Drug Abuse, Prevention Branch  
National Institute on Drug Abuse, Epidemiology Branch  
National Institute of Justice  
Office of Juvenile Justice and Delinquency Prevention  
The Carnegie Corporation of New York  
The W.T. Grant Foundation

**COURSES TAUGHT:**

Seminar on Incarceration  
Seminar on Policing  
Criminal Law  
Capital Punishment  
Empirical Analysis of Law  
Juvenile Justice  
Seminar on Crime and Justice in New York

Pro-Seminar on Race, Crime and Law  
Pro-Seminar on Community Justice and Problem-Solving Courts  
Seminar on Regulation in the Criminal Law  
Law and Social Science  
Seminar on Criminology  
Foundations of Scholarship  
Seminar on Violent Behavior  
Seminar on Drugs, Law and Policy  
Seminar on Communities and Crime  
Research Methods in Criminal Justice and Criminology  
Advanced Research Methods  
Qualitative Research Methods  
Criminal Justice Policy Analysis  
Administration of Juvenile Corrections  
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Seminar on Deterrence and Crime Control Theory

**CONSULTATIONS:**

Robina Institute, University of Minnesota School of Law, 2012  
Boston Police Department, 2012-present  
New Jersey Commission on Law Enforcement Standards and Practices, 2006-7  
London School of Economics, Urban Age Colloquium, 2005  
Inter-American Development Bank, Urban Security and Community Development, 2002-3  
Trans.Cité (Paris, France), Security in Public Transportation, 2002  
Institute for Scientific Analysis, Domestic Violence and Pregnancy Project, 1995-96  
Department of Psychology, University of Wisconsin (Professor Terrie Moffitt), 1995-1999  
National Funding Collaborative for Violence Prevention (Consortium of foundations), 1995  
National Council on Crime and Delinquency, 1989-94  
Victim Services Agency, City of New York, 1994-2000  
National Conference of State Legislatures, 1994-2001  
U.S. Department of Labor, 1994  
City of Pittsburgh, Office of the Mayor, 1994  
Center for the Study and Prevention of Violence, Colorado University, 1993 - 2000  
Washington (State) Department of Health and Rehabilitative Services, 1993  
National Council of Juvenile and Family Court Judges, 1993  
Center for Research on Crime and Delinquency, Ohio State University, 1992, 1993  
New York City Criminal Justice Agency, 1992, 1993  
Violence Prevention Network, Carnegie Corporation, 1992-3  
Research Triangle Institute, 1993  
National Institute of Corrections, 1992, 1993  
Colorado Division of Criminal Justice, 1991  
Juvenile Delinquency Commission, State of New Jersey, 1991  
University of South Florida, Dept. of Criminology, 1991-92  
Florida Mental Health Institute, 1991  
Rand Corporation, 1991-92  
Juvenile Corrections Leadership Forum, 1990  
Texas Youth Commission, 1990  
California State Advisory Group on Juvenile Justice, 1989  
New York State Division of Criminal Justice Services, Family Court Study, 1989  
Juvenile Law Center, Philadelphia, 1988  
American Correctional Association, 1988  
Institute for Court Management, National Center for State Courts, 1987-present  
Correctional Association of New York, 1987  
Eisenhower Foundation, Washington DC, 1987-1990

New York City Department of Juvenile Justice, 1987-1990  
Juvenile Justice and Delinquency Prevention Council, Colorado Division of Criminal Justice,  
1983-87  
Office of Criminal Justice Services, State of Ohio, 1983  
Utah Youth Corrections Division, Salt Lake City, Utah, 1982  
Office of Criminal Justice, State of Michigan, 1982,1986  
National Center for the Prevention and Control of Rape, NIMH, 1980

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**Columbia University**

University Senate, Mailman School of Public Health, 2003-2007  
Director, JSD Program, Columbia Law School, 2001-2010

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Chair, Sutherland Award Committee, American Society of Criminology, 2006-7  
Chair, National Policy Committee, American Society of Criminology, 2002-2003  
Delegate from the American Society of Criminology to the American Association for the  
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Executive Counselor, American Society of Criminology, 1994-97  
Chair, Nominations Committee, American Society of Criminology, 1995-96.  
Counsel, Crime, Law and Deviance Section, American Sociological Association, 1993-94  
Nominations Committee, American Society of Criminology, 1993-94  
Site Selection Committee, American Society of Criminology, 1992  
Program Committee, American Society of Criminology, 1988, 1990, 2000  
Awards Committee, Western Society of Criminology, 1988

**Public**

Domestic Violence Working Group, New Jersey Administrative Office of the Courts, 1991-  
1998  
Prevention Task Force, New Jersey Governor's Commission on Drug and Alcohol Abuse, 1990  
State Judicial Conference, State of New Jersey, Administrative Office of the Courts, 1990  
Task Force on Youth Gangs, State of New York, Division for Youth, 1989-90

**Exhibit B:**

**County-Level Racial Composition Data**

Estimated Racial Composition of Eight Counties Associated with the Stash House Cases

Counties:	Est. Total Adult Pop.	Est. Black	% Black	Est. White	% White	Est. Hispanic	% Hispanic
Cook	3959803	937010	24	2309598	58	816482	21
DuPage	689453	28035	4	563900	82	76871	11
Kane	363266	18723	5	280600	77	94183	26
Kendall	76453	3764	5	66355	87	10149	13
Lake	508379	33033	6	405546	80	85139	17
LaSalle	87264	1511	2	82650	95	5435	6
Will	479103	50393	11	377010	79	63058	13
Winnebago	220423	23580	11	184071	84	18672	8
<b>TOTAL</b>	<b>6384143</b>	<b>1096047</b>	<b>17%</b>	<b>4269728</b>	<b>67%</b>	<b>1169986</b>	<b>18%</b>

## Sources:

- U.S. Census Bureau, 2006-2010 American Community Survey (ACS)
- U.S. Census Bureau, 2009-2013 ACS
- Tables: B01001, B01001A, B01001B, B01001I (<https://factfinder.census.gov>)

## Notes:

- 2006-2013 average created by averaging the 2006-2010 ACS 5-year estimates and the 2009-2013 ACS 5-year estimates
- Black defined as "Black or African American Alone"
- White defined as "White Alone"
- Hispanic defined as "Hispanic or Latino"
- Adult population defined as individuals 18 years of age and older, including non-citizens

## **Exhibit C:**

### **Chart Summarizing ATF Departures from Criteria and Defendants' Interpretations of ATF Criteria**







21	United States v. DeJesus	12-CR-511	Benjamin DeJesus	Hispanic	No	Yes	No	Yes	No	Yes	Yes	Yes	Yes	4
			Jesus Corona	Hispanic										
			Ceferino Malave	Hispanic										
			Luis Borrero	Hispanic										
<b>Cases Involving Mostly White Defendants</b>														
22	United States v. Farella	09-CR-087	Frank Farella	White	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	1
			Donald Catanzaro	White										
			Michael Blais	White										
23	United States v. George	07-CR-441	Robert George	White	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	0
			Michael Spagnola	White										
			Aaron Corson	White										
24	United States v. Corson	06-CR-930	Marcus Corson	White	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	1
			Oscar Alvarez	Hispanic										

## Defendants' Interpretations of ATF Criteria

### 1. Substantive Criteria

- Requirement to target established robbery groups

This criterion assesses whether the ATF had a verified reason to believe that the defendants in a given case were a viable robbery crew, not whether the defendants *actually* were a viable robbery crew. In order to give the government the benefit of the doubt, the defense looks to the government's practice in its White cases to define this criterion. In those cases, the government explains that its targeting decision was based on: "[I]nformation [that] is a result of interviews, police reports, and confidential informant debriefings." *See, e.g.*, Farella Takedown Memo at 2, Supp. Appx E-9. In addition, as noted in the Motion, the defense counted even marginal cases, such as *Paxton*, in favor of the government. *Compare id.* with *Paxton Takedown Memo*, Supp. Appx E-19.

- Requirement that two suspects be violent offenders

Defense counsel construe the "violent offender" requirement broadly to determine whether the ATF had any verified reason to believe that defendants were violent offenders, giving every benefit of the doubt to the government. The defense counts a named defendant as a "violent offender" for the purpose of this criterion if the defendant: (1) had a prior conviction that possibly could be deemed violent (including a misdemeanor), whether or not the ATF was aware of it, (2) self-reported a previous armed robbery or other violent crime, and the ATF reported undertaking some investigation/confirmation of that claim, (3) was suspected or reported as the perpetrator in other specific, verifiable violent crimes, and the ATF had a reason to believe that suspicion or report was accurate, or (4) had a reputation as a gang leader. This criterion is limited to defendants whom the ATF met prior to the day of arrest, even if the ATF did not identify those individuals until after arrest. Those cases listed as departures are cases in which there were fewer than two targets who showed up on the day of arrest for whom any of those factors were true.

The defense interprets this criterion extremely generously to the government. If the defense had interpreted this criterion more fairly, there would be even more deviations for people of color. The *Williams* case is illustrative of how defendants' interpretation understates the true number of departures. First, it appears that the government sometimes does not consider misdemeanor convictions to be evidence of a "violent offender" under its criterion. In the *Williams* case, for example, the government discussed Antonio Williams's felony convictions only. *Williams Takedown Memo*, Supp. Appx E-18. The defense nonetheless counts Mr. Williams as a violent offender for the purpose of this argument, due to a misdemeanor conviction. As another example, the defense counts John Hummons as a violent offender for this criterion because of his criminal history. However, the ATF could not have taken Mr. Hummons's criminal history into account when deciding to move forward with the Operation because the ATF did not identify him until after the day of arrest. *Complaint at 13 n.5, United States v. Williams*, 12-CR-887, Dkt. 1 (N.D. Ill. Nov. 15, 2012). Had the defense limited their interpretation of this criterion, the *Williams* case also would be a deviation.

- Requirement that all suspects be currently criminally active

The defense interprets “currently” generously to the government, to encompass any criminal activity that occurred two years before the date the targets were arrested. In determining whether the ATF met this criterion, the defense examined each Takedown Memo and Complaint for evidence that a target participated in criminal activity with the CI other than the fictitious stash house scheme, or that the ATF had any other verified information about current criminal activity. The defense also examined the defendants’ rap sheets to determine whether targets’ convictions within two years of arrest satisfy this requirement.

- Requirement that one target have a past violent conviction

ATF Order 3250.1B.b(2) states: “At least one target must have a past violent crime arrest or conviction.” The defense interprets this criterion to include convictions, not arrests, for at least two reasons: First, Agent Zayas appears to be training agents that only convictions count for this criterion, and not arrests. *Zayas Training* at 5. The ATF’s Takedown Memos confirm this practice in that they do not consistently list targets’ arrests. *See, e.g., Corson Takedown Memo*, Supp. Appx E-2 (arrests omitted); *Davila Takedown Memo*, Supp. Appx E-15 (arrests omitted); *Payne Takedown Memo*, Supp. Appx E-16 (arrests omitted). Second, the government has publicly argued that convictions are the key criterion. *See, e.g., Oral Argument, Davis*, 14-1124, DE 40 at 11:49 (7th Cir. 2014) (“The comparison group should be individuals who have sustained prior state or federal *convictions* for offenses involving robbery, narcotics, or firearms.”) (emphasis added).

The defense also evaluates this criterion generously to the government by asking whether one of the targets whom the government was aware of before the day of the arrest, and who showed up on the day of arrest, had a violent conviction. If this criterion were interpreted more narrowly to apply at an earlier point in the operation, then of course it would be harder for the government to meet.

- Requirement that the group have access to weapons

The defense interprets this requirement to be violated if targets had serious difficulty finding firearms as documented in a Takedown Memo or the Complaint, or if defendants ultimately could find only one firearm for the whole group by the day of arrest.

## **2. Procedural Criteria**

- Requirement to document all known suspects in a Takedown Memorandum

The defense interprets this criterion to mean that the Takedown Memo does not need to identify all the people *ultimately arrested*. Instead, it needs to identify only the people known to the ATF at the time of the mandatory Takedown Memo.

- Requirement to identify all suspects before the arrest day

This criterion focuses on whether ATF has complied with its requirement that agents attempt to identify all targets before arrest. The defense construes all marginal cases in favor of the government: Where the defense lacked sufficient information to determine the exact point at which a named defendant was identified, the defense assumed the individual was identified before arrest. For example, in *United States v. Sidney*, the takedown memorandum identified only Mr. Sidney himself. Sidney Takedown Memo, Supp. Appx E-7. The Complaint states that the other two defendants were “later identified,” but does not state whether that identification happened before or after arrest. Sidney Complaint at 5, 8. The defense gives the government the benefit of the doubt and counts *Sidney* and similar cases as “no deviation.” Again, this interpretation of the requirement means that the defense has likely underestimated the true number of departures.

- Requirement to meet with at least two members of the alleged robbery team before the arrest day

The defense interpreted this criterion to refer to two members who ultimately were arrested.

- Requirement to meet in person with the targets three times before the arrest

In evaluating this requirement, defendants identify departures where the ATF agent only met with the targets once or twice in person before the arrest date but did not request a waiver in the Takedown Memo. (A telephone conversation cannot be used to meet this requirement. ATF O 3250.1B.12.f.1.). ATF materials allow agents to request a waiver of the three meeting requirement in certain situations. ATF O 3250.1B.12.f(2), (3). However, the ATF Takedown Memoranda in *Davila* and *DeJesus* demonstrate that an agent must actually request such a waiver (rather than have it granted implicitly) and that a meeting on the day of arrest cannot count as one of the three (or two) required meetings. *Davila* Takedown Memo, Supp. Appx E-15; *DeJesus* Takedown Memo, Supp. Appx E-13.

In *Davila*, the ATF agent met with the targets on both July 27, 2012, and August 27, 2012, but requested to be excused from the three-meeting requirement even though he knew he would see the defendants again on the day of the arrest. *Davila* Takedown Memo, Supp. Appx E-15. The agent thus plainly understood the three-meeting policy to require three meetings *before* the day of the arrest. The ATF agent in *DeJesus* made the same exemption request, also after meeting with the target and other defendants twice and knowing he would see them on the arrest date. *DeJesus* Takedown Memo, Supp. Appx E-13.

**Exhibit D:**

**Transcript Excerpts from Recorded Conversations**

**Exhibit D-1:**

**Transcript Excerpt from  
United States v. Williams, 12-CR-887**



**Excerpt from Discovery in U.S. v. Williams, 12-CR-887**

**Transcription of recording from December 8, 2012; beginning 1:20  
(prepared by Susan Igras of the Federal Defender Program)**

UC: What's good, homie? (Greetings)

Brown: This is my nigga-this is family right here. They gone go with me.

UC: Oh yea? Nice. nice.

Brown: You know them niggas?

UC: You good with the Mex?

A. Williams & Brown: Hell yea. Yea.

UC: That's what I'm talkin' about. That's what I'm talking about. Yea man, I've been working for these dudes awhile now, you know.

Brown: Doing construction and shit? (A. Williams laughs) No but like, "working" working for them?

UC: No no no, like work work like.....

Brown: What they Mexican or something?

UC: Yea they Mexicans just like me. You know so what I was tellin my boy Tweet here yesterday was that, you know they're always like between 8-10 kilos of cocaine up in this spot.

Brown: But do anybody be in there?

UC: Yea two dudes. Strapped. I mean they gotta be in there takin care of their shit, you know.

CI: So you gone have to catch them comin' in? Cause you just try and go in and them motherfuckers spring-

A. Williams: No he's going to go in (CI-Ohh okay.) and we're right behind.

UC I mean however you guys with it—that's why I'm coming to you. You know, I roll with my cuz, but this shit can't come back on me. You know if they see m-if they see some other Mexicans doin' it, they're gonna know they that they're with me. (Background A. Williams and CI verbally acknowledging) You know what I'm saying?

Recording continues. Transcript stops at 3 minutes and 2 seconds.

**Exhibit D-2:**

**Transcript Excerpts from  
United States v. Brown, 12-CR-632**

TRANSCRIPT

Exhibit #: E-002

Date: 7/23/12

Participants:

S/A Gomez: ATF Special Agent Dave Gomez

CI: ATF Confidential Informant

Jones: Dwaine Jones

Unintelligible: (UI)

1 [[12:31:50]]

2 CI: You gotta jump out and get in the back seat.

3 Jones: What's happenin' wit' ya?

4 CI: No, man. Come and sit in the front, man.

5 Jones: Oh (UI)

6 CI: (UI)

7 S/A Gomez: Can you close that door?

8 CI: Fuck, yeah. Yeah. This my man I was tellin' you

9 about right here, that got the bu-, the business

10 (UI)

11 S/A Gomez: Wha's up, man?

12 Jones: (UI)

13 S/A Gomez: Call me

14 Jones: Yeah.

Exhibit #: E-002  
Date: 7/23/12

1 S/A Gomez: Blanco.

2 Jones: A'ight.

3 CI: Yeah.

4 [[12:32:31]]

5 \*\*\*\*\*

6

7 \*\*\*\*\*

8 [[12:33:29]]

9 CI: Sh. Alright. So, my man-you know what I'm  
10 sayin'?-wanta holler at you about, ya know, what,  
11 what, what needs to be done.

12 Jones: Mm. (UI) Go on, talk.

13 S/A Gomez: (Clears throat) Listen. Here, here's what I do  
14 bro'-I mean, he's, he's cosignin' for you, and  
15 he's, ya know, he's cosignin' both ways. You feel

16 Jones: Right.

17 S/A Gomez: me?

18 CI: (Clears throat)

19 S/A Gomez: What I do is I move some, some of my shit, some shit  
20 for some o' my people from back home. Okay?

21 Jones: Mmm-hmm.

Exhibit #: E-002  
Date: 7/23/12

1 S/A Gomez: Alls I do is I move it from point A to point B, and  
2 then I get paid later.  
3 S/A Gomez: Okay? But let's just say-alls I'm 'a say is the  
4 money ain't right  
5 Jones: It ain't right?  
6 S/A Gomez: right now. You feel me?  
7 S/A Gomez: They're fuckin' me over. And what I like about you  
8 is that nobody can put me and you together. You  
9 feel me?  
10 S/A Gomez: See, but, but the way these mother-fuckers are  
11 slick is, is that what they do is, like, say, this  
12 shit's-it, it only happens once a month.  
13 Jones: Right.  
14 S/A Gomez: You feel me? And what happens is, like, say it's  
15 gonna happen tomorrow-my guy calls me. He says,  
16 "Hey, Blanco. Be ready to go tomorrow." Okay?  
17 So, I clear my whole fuckin' day, and I don't do  
18 shit. I wait by my phone 'til I get that phone  
19 call. Okay? The next day when I get that phone  
20 call, they're only gonna give me about twenty  
21 minutes to get there. You feel me? 'Cause I aint  
22 there in twenty minutes, they're gonna fuckin'

Exhibit #: E-002  
Date: 7/23/12

1 (UI), they're gonna wonder where the fuck I'm at,  
2 and they're gonna get spooked and they're gonna  
3 pull up their shit,

4 Jones: Yeah.

5 S/A Gomez: and get the fuck out o' there. You feel me? Now,  
6 I've never been to the same house twice. That's  
7 how they're slick. Okay? I get there. My guy,  
8 Carlos, is always there with two other guys.

9 CI: (UI)

10 S/A Gomez: Me and Carlos, I mean, we're tight but-ya know what  
11 I'm sayin'?-the money aint right.

12 Jones: Right.

13 S/A Gomez: Okay? (Clears throat) I get into the place, and  
14 I just stay right there, right by the front door.  
15 That's it. But what I c-, what I see when I'm in  
16 there is twenty o' them things. Okay? So, it's  
17 not (UI)-what I'm tryin' to tell you right now is  
18 that this aint no little nickel and dime shit. I'm  
19 talkin' twenty kilos of cocaine. Okay? What I  
20 need to make it look like is that I had not'in' to  
21 do with it-

22 Jones: Right.

Exhibit #: E-002  
Date: 7/23/12

1 S/A Gomez: you feel me?-so that they can't put me to it. Okay?  
2 So, I ran this past him. He says, "Hey. You know  
3 what?" That's how we're here today talkin'.  
4 Jones: Mm-hm.  
5 S/A Gomez: You feel me? But my main thing is, my whole fuckin'  
6 main thing is that I gotta make it look like I had  
7 not'in' to do with (UI)  
8 Jones: Right. It can't get back to you, no  
9 S/A Gomez: Yeah.  
10 Jones: way.  
11 S/A Gomez: Okay? Now (Clears throat) the other thing is, um,  
12 and, and we're talkin', this aint no little nickel  
13 and dime shit. 'Kay? So, I'm lookin' for a  
14 professional crew and I need to make sure (UI).  
15 Know what I'm sayin'? 'Cause there's a lot o' shit  
16 on my end. I mean, you, have you even done this  
17 shit before? Never have?  
18 Jones: Nope.  
19 S/A Gomez: Okay. Well, then, fuck. I mean, this sounds like  
20 it's-n-, no offense to you, bro', but, ya know, this  
21 is, this, (UI) this is way too much for you to  
22 handle.



Exhibit #: E-002  
Date: 7/23/12

1 Jones: No. I could do it. I mean, the, the, the niggers,  
2 the niggers that I hang with, they done did this  
3 shit before,  
4 S/A Gomez: Oh. They,  
5 Jones: you know?  
6 S/A Gomez: they-no shit?  
7 Jones: Yeah.  
8 S/A Gomez: Okay.  
9 Jones: They done did this shit before, but I aint never  
10 did this shit. (UI)  
11 S/A Gomez: So, you'd be able to-will you be able to hook me  
12 into some guys that-ya know what I'm sayin'? I  
13 mean, 'cause this like a job interview, bro'.  
14 Jones: Yeah.  
15 S/A Gomez: Ya know what I'm sayin'? And  
16 Jones: (Laughs)  
17 S/A Gomez: the thing about it is, is that-ya know what I'm  
18 sayin'?-I need you just as much as you need me.  
19 Jones: Mm-hm.  
20 S/A Gomez: You know, you know what I'm sayin'? I need  
21 somebody to take up the whole house. And let me  
22 ask you this: were you lookin' to be, were you

Exhibit #: E-002  
Date: 7/23/12

1 lookin' to be in, in it, or were you just gonna put  
2 us in touch with some guys? Because what I like,  
3 what I like is that nobody could put me and you  
4 together.

5 Jones: (UI)

6 S/A Gomez: So, who you come with nobody's gonna be able to put,  
7 put me and them together.

8 Jones: Together. Right.

9 S/A Gomez: You feel what I'm sayin'? And listen. I've been  
10 down around the block before. You feel me? So, if  
11 you can put me in touch with a crew-right?-then,  
12 I'll take care o' you on my chop. I'm sayin'? You  
13 aint gotta worry about them takin' care o' you.

14 Jones: Right.

15 S/A Gomez: You feel me?

16 Jones: Well, that, that'll work, too. Yeah.

17 S/A Gomez: But I need to-you know what I'm sayin'?-like, I  
18 need, ya know, I need these other guys-I need to  
19 talk to these other guys, because these guy-the  
20 other guys inside the house, they're always fuckin'  
21 strapped. Okay? They're Mexicans like me, and I  
22 can't have-ya know what I'm sayin'? I need these

Exhibit #: E-002  
Date: 7/23/12

1                   guys-see, 'cause I aint about-I don't wanta take no  
2                   round.  
3 Jones:           Right.  
4 S/A Gomez:       You feel what I'm sayin'? So, ya know what I'm  
5                   sayin'? I mean, if you think you guys are in-ya  
6                   know, if you got a crew that  
7 Jones:           Yeah. (UI)  
8 S/A Gomez:       that you wanta bring.  
9 CI:              A serious crew.  
10 Jones:          Yeah.  
11 S/A Gomez:       And, ya know, I'm saying this is, this-you, you  
12                   know-I'm telling you right now, I'm keepin' it one  
13                   hundred.  
14 Jones:          Yeah.  
15 S/A Gomez:       This aint no n-, little nickel and dime shit.  
16                   Okay? So, you want me to cut you in on your chops,  
17                   that's fine. I aint got no prob'm with that. Ya  
18                   know what I'm sayin'? 'Cause then you're gonna be  
19                   my guy, and-ya know what I'm sayin'?-I need to  
20                   fuckin'-we need to fuckin' come together and sit  
21                   down and talk about how the fuck they're gonna do  
22                   it.

TRANSCRIPT

Exhibit #: E-004

Date/Time: 7/24/12

Participants:

S/A Gomez: ATF Special Agent Dave Gomez

CI: ATF Confidential Informant

Jones: Dwaine Jones

Brown: Abraham Brown

Taylor: Kenneth Taylor

Unintelligible: (UI)

1 [[12:41:03]]

2 Jones: What's happenin',

3 S/A Gomez: Hey, what's

4 Jones: bro?

5 S/A Gomez: goin' on, dawg?

6 Jones: Chillin'.

7 S/A Gomez: These your guys here?

8 Jones: Yeah.

9 S/A Gomez: Where at?

10 Jones: There's two of 'em right there.

11 S/A Gomez: Two of 'em right here?

12 Jones: Yeah.

13 S/A Gomez: How many you think you gonna have total?

Exhibit #: E-004  
Date: 7/24/12

1 S/A Gomez: and pull up all their shit. Okay? I'm usually the  
2 first-I'm-uh, I gotta be, like, one o' the first  
3 ones there to pick up. See, they're slick enough,  
4 'cause they're never gonna let-a-, all's I am is  
5 a mule. You feel me?  
6 Taylor: Right.  
7 Brown: (UI) mule (UI)  
8 S/A Gomez: Okay? Take it from Point A to Point B. I get my  
9 directions where I gotta take it.  
10 Taylor: Right.  
11 S/A Gomez: You feel me? Now, they're slick enough that they  
12 never have me and another one o' their fuckin' mules  
13 bumpin' heads, okay? But when I get in there, what  
14 I see is-uh, and this aint no little sh-, nickle  
15 and dime shit. And I'm talkin' about-what I see  
16 them fuckin' around with is about 20 kilos of  
17 cocaine.  
18 Taylor: Yeah.  
19 S/A Gomez: You feel me? They're fuck-two guys are usually  
20 fuckin' around with repackagin',  
21 Taylor: Yeah.

Exhibit #: E-004  
Date: 7/24/12

1 S/A Gomez: okay? My guy lets me in. I stay right by the door.  
2 I don't go nowhere, okay? My guy Carlos, he goes  
3 to another room and gets my shit. Now, I'm usually  
4 carryin' about seven to eight o' them things,  
5 Taylor: A'ight.  
6 S/A Gomez: okay? So, that's separate from the 20 that I  
7 already see. Now, I was tellin' my mans here I  
8 gotta make it-my, my whole thing is that I gotta  
9 make it look like I had not'in' to do with it.  
10 Brown: Mm-hm.  
11 Taylor: Right.  
12 S/A Gomez: You feel me?  
13 Taylor: Right.  
14 S/A Gomez: That's a lot o' shit  
15 Taylor: Right.  
16 S/A Gomez: on my end. So, I told him "listen, I need a  
17 professional crew." You feel me? I mean, have  
18 you guys even done this shit before?  
19 Brown: Uh, yeah, (UI)  
20 Taylor: That's what I do.  
21 Brown: (UI) to the joint for armed robbery, that was my  
22 first case.

Exhibit #: E-004  
Date: 7/24/12

1 S/A Gomez: What do you think, bro? Yeah.

2 Brown: Now, look, check this out, okay? If it's,  
3 like-right now the street value for a key is high  
4 as hell.

5 S/A Gomez: Mm-hm.

6 Brown: Like, we, we, we could, we could get, we could get  
7 thirty some thousand for them keys without even-ya  
8 know what I'm sayin'? We already got somebody to  
9 buy 'em and e'rything-ya know what I'm sayin'?-

10 S/A Gomez: You do?

11 Brown: that'll buy, like, ten

12 Taylor: Right.

13 Brown: fifteen of 'em, and we aint gotta go to the streets  
14 with 'em and make ourself hot.

15 [[12:50:14]]

16 \*\*\*\*\*

17

18 \*\*\*\*\*

19 [[12:51:43]]

20 S/A Gomez: Well, let's do this, man, just so that I can feel  
21 comfortable, because the other guys in the house  
22 are Mexican, like me.

TRANSCRIPT

Exhibit #: E-009

Date: 8/1/2012

Participants:

S/A Gomez: Special Agent David Gomez,  
Bureau of Alcohol, Tobacco,  
Firearms and Explosives (ATF)  
CI: ATF Confidential Informant  
Brown: Abraham Brown  
Jones: Dwaine Jones  
Taylor: Kenneth Taylor  
Washington: Alfred Washington

Unintelligible: (UI)

1 [[11:16:33]]

2 S/A Gomez: Pull that

3 CI: (UI)

4 S/A Gomez: (UI)

5 CI: Ya'll hop in so you can talk to my man. Nasty,  
6 what's the fuck up, man?

7 Jones: What's happenin'?

8 S/A Gomez: What's goin' on, man?

9 CI: What color that baby's gonna be?

10 Jones: Man, I'm tellin' you.

11 Brown: (UI)

12 Jones: Either white or black.



Exhibit #: E-009  
Date: 8-1-12

1 Brown: I gave,  
2 S/A Gomez: rundown, right?  
3 Brown: I gave him a little bit o' insight, like, far as,  
4 like, how you, uh, say, I mean, it's, like, three  
5 people in the crib. But, see, the whole thing is,  
6 like-okay, you say you want us to go in there while  
7 you in there, right?  
8 S/A Gomez: Well, look, man, I'm s-I-the on-my only main  
9 concern is that I want to make it look like I had  
10 not'in' to do with it. Ya know what I'm sayin' on  
11 that? This aint what I do.  
12 Washington Right.  
13 Taylor: Right.  
14 S/A Gomez: You know what I'm sayin'?  
15 Jones: Mm-hm.  
16 S/A Gomez: I aint-  
17 Brown: This is what I-this, this, this, this, this is why  
18 I say it's best for us to go in there while you in  
19 there, 'cause you could, like, fake see what's,  
20 what the look like, lookout is, look like  
21 S/A Gomez: (Clears throat)  
22 Brown: -know what I'm sayin'?-in that mo'-fucker.

Exhibit #: E-009  
Date: 8-1-12

1 S/A Gomez: Yeah.  
2 Brown: and shit, too, but (UI)  
3 S/A Gomez: You, and ya know, a-, and you know what I was tellin'  
4 Taylor: (UI)  
5 S/A Gomez: him is what I like I about you is nobody could put  
6 me and you together.  
7 (Washington nods in the affirmative.)  
8 S/A Gomez: You feel me?  
9 Washington: (UI)  
10 (Washington nods in the affirmative.)  
11 S/A Gomez: And I wanted-ya know what I'm sayin'?-I just needed  
12 a fuckin' professional fuckin' crew. Ya know what  
13 I'm sayin'? And, and, like I said, I'm just  
14 meetin' you on a first time. And I'm 'a tell, I'm  
15 'a, I'm 'a-I'm just gonna keep it one hundred. Ya  
16 know what I'm sayin'? If this is way too much for  
17 you to handle-ya know what I'm sayin'?-I mean, this  
18 m-, this meeting never happened.  
19 Washington: Right.  
20 S/A Gomez: You feel me? But  
21 Washington: I'm good.  
22 S/A Gomez: I just, I just

**Exhibit D-3:**

**Transcript Excerpt  
from United States v. Paxton, 13-CR-103**

**Excerpt from Discovery in U.S. v. Paxton, 13-CR-103**

**Transcription of video recorded on Dec. 5, 2012; beginning 13:41:30 and ending 13:47:10  
(prepared by Susan Igras of the Federal Defender Program)**

UC: This one ain't, ya know, no hittin some pies over the head, ya know? This is—

Paxton: Right

UC: Has he told what's going on? Has he said anything?

Paxton: Yea he kinda wired me up.

UC: Yea um, yea I hooked up with these brothers when putting some pockets in their cars, puttin' some boxes in, ya know—with the electronics and shit (Paxton: Yea) so I started driving for 'em, ya know taking a little bit here a little bit there (CI: Yea) Ya know they'd give me a fuckin buck every trip but lately they've been fuckin with my money, man. It's like every time I go "it's on the books, it's on the books," ya know well I don't know when I'm getting paid on the fuckin books, know what I'm sayin?

Paxton: And if something goes wrong that ain't on the books.

UC: Yea no shit I'm takin all the fuckin risk.

Paxton: And you know then right there if something go wrong, you on the books.

UC: You know it's gotten, ya know, fuck these motherfuckers, ya know? Um, but like I said this is, these guys are fuckin connected, man. This ain't—I can't have anybody ya know that knows me. (P: Yea...) I got brothers that'll fuckin go to war for me. But man, (Paxton: Yea...) they're gonna know it's me if I got guys looking like me coming in, they're gonna—it's automatically gonna come back on me and they know where I fuckin lay my head, they know where I work and shit, so that-that's why. Me and T been talkin about it trying to come up with somebody that—

Paxton: First of all, like doing the drop off, I mean who is waiting?

U: Well here's how it goes man—I pick up. I get the call, these fuckers, I pick up—they must have a connect with a realator or something because I'll pick up at a house that's never the same fuckin house. It's always a different fuckin house but I know it's had "For Sale" signs on it so that's what I'm sayin, there's no furniture in the fuckin houses so they're in-and-out (P: Right) know what I'm sayin. They'll give me a call and say "you're working tomorrow." I fuckin show up, boom, I'll take my three and I'm on the road. They'll punch it in to my GPS and I'm on the road, you know. (Paxton: Yea.) The problem they're switching all the houses, I don't know til the day of where I gotta pick up. I mean I know the area (Paxton: Yea) it's always the same area, old part of Chicago over there by Midway airport, it's there, it's that Berwyn area where you get all those Mexican dudes hanging out.

Paxton: I was just gonna say, they Mexican?

UC: Yea. Of course.

Paxton: Yea Yea yea. Over there in that area.

UC: Um, but I'm not the only—yea exactly. But I'm not the only one picking up. I mean there's guys coming after me. So when I go in the house, I'll grab my three, you know they'll bag up my three, but I seen the least, at least fifteen bricks sittin in there. Um. But like I said these motherfuckers ain't makin moves like that not ready for a war, man. These fuckers, um they're strapped up. That's the only problem, so I don't even know if we can do this shit. I don't know if it's, you know, it's not going to be an easy run in there, run out. (Paxton: Mmm.) That's the only thing. So I mean I don't even know if it can get done. I just can't have anything with me. You know what I'm saying. They cannot know . . .

Paxton: Nobody—nobody want nothing to come back to them. (UC: No. No.) Know what I'm sayin.

UC: No and that's the thing; these people are too close to me that's the fuckin problem (P: Yea.) It's not like they don't know—they know my family and shit.

Paxton: I know what you mean. Yea I know what you mean. Yea. Ya'll rendezvous together and shit.

UC: It's like. I don't know if this is your deal if it's...if you've been through this shit. But these motherfuckers, I mean it's not like they're sitting there, you know, I go in the house—

Paxton: Who do—do they leave any security outside?

UC: No I've never seen anybody outside. There's always like two guys inside-

Paxton: And they always switching, right?

UC: It's always—I get a call you're working tomorrow, man you're working tomorrow. And so I just know to be that area, that fucking (P: Right.) I always go hang out—there's a Portillo's right over there by Harlem, I go over there-

Paxton: Okay but when they say you working, when they say you working, what do you have to do? Are you the pick-up and drop-off somewhere?

UC: Yea I drive—it used to be—and that's another thing, man. I used to drive Indianapolis to Milwaukee so you know it's a few hours. Last time it's Minneapolis. I'm fucking driving six hours with this shit and they're telling me it's on the books.

Paxton: Yea. Okay and when you go to Minneapolis and all that, who's, who's the weaker link?

UC: It's just I meet somebody it's either at a gas station, just something boom and I'm here. But they know how much time I got-

Paxton: Just a street deal when you get out?

UC: Yea but it's like I mean I can't run with the three bricks you know I can't do that. They're going to know so it's...it's got to look like I'm not involved . . .

Paxton: I got you. I see what you're saying.

UC: I mean I've never been through something this big, you know what I'm saying. It's fucking...

Paxton: But you're safe. Okay not just say we suspecting—it's-it's a suspecting it's supposed to be fifteen or you never seen no less than fifteen.

UC: I mean no less. I'm telling—I get there, I take my three-

Paxton: When it's time to work, it's time to work.

UC: It's time and they're only in there, I guarantee they're in there cause I only got- Cause that's why I gotta be in that area, when they say you're going to get called tomorrow, you're going to work tomorrow. So I'm in that area, they call me, you got twenty minutes to get to this fucking house. Here's the address. You got twenty minutes to get here. And that's because they keep moving this shit. Cause if I'm not there, they know something's up and they're getting the fuck out. I've never seen any bread in there, it's always, you know they're obviously going to keep that somewhere else.

Paxton: No scale?

UC: No, I just see, you know, they got the duffle bags sitting there...

Paxton: The duffle bags with the things in them.

UC: There's usually two dude—I see two dudes maybe one time. I seen one more, but it's always just usually two guys. You know. I go up, they open the door, they fucking close the door behind me, dude grabs my shit right off the table, gives it to me and I'm out. (Paxton: Okay.) I mean it's normally thirty seconds and I'm out.