



Consequences & Costs

*Lessons Learned from Davidson County, Tennessee's
Jail Model 287(g) Program*



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The American Civil Liberties Union of Tennessee (ACLU-TN) is the state’s premier guardian of liberty, working in the courts, the Tennessee legislature and communities statewide to preserve and advance the individual rights and freedoms guaranteed by the Bill of Rights to the United States Constitution and the Tennessee Constitution. ACLU-TN is an affiliate of the National ACLU, America’s largest civil liberties organization.

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¹ School listed for identification purposes only.

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INTRODUCTION

The 287(g) program run by the Department of Homeland Security's (DHS) Immigration and Customs Enforcement (ICE) agency deputizes state and local law enforcement agents to enforce federal immigration laws. Under 287(g) agreements, these state and local law enforcement agents act as decisionmakers about whom to detain and write up for deportation proceedings. 287(g) "task force" models use roving police officers as immigration agents, while "jail enforcement" models involve law enforcement officers screening people arrested and booked into jail.

As we release this report, the Department of Homeland Security (DHS) is reviewing its 287(g) agreements with 57 law enforcement agencies in 21 states whose agreements were temporarily extended, most until the end of December 2012.² DHS is also actively reviewing applications for new agreements, including two known jurisdictions in Tennessee: the Knox County Sheriff's Office and the Rutherford County Sheriff's Office. At this critical moment in the history of the 287(g) program, the American Civil Liberties Union of Tennessee (ACLU-TN) joins with faith, labor, immigration advocacy and other civil and human rights organizations across the country to call for termination of the 287(g) program.

ACLU-TN's opposition to 287(g) is based on lessons learned from the 287(g) program's existence in Nashville, Tennessee. During the five years it was in effect, from 2007 to 2012, the Davidson County Sheriff's Office's jail model program deported nearly ten thousand Nashvillians. While Sheriff Daron Hall cites this figure as an indication of his program's success, in reality the program had multiple negative effects on due process, community policing and public safety. On August 20, 2012, the sheriff announced that he would not be renewing the Memorandum of Understanding governing his controversial 287(g) program, citing the implementation of Secure Communities.³

The end of the Davidson County 287(g) program provides the perfect opportunity to assess the effects of the Davidson County 287(g) program in detail. This report draws on research conducted by Professor Katharine Donato of Vanderbilt University's Sociology Department; doctoral student Amada Armenta of UCLA's Sociology Department; and doctoral student Blake Sisk of Vanderbilt University's Sociology Department,⁴ including original quantitative data analysis and an extensive review of probable cause statements completed by arresting officers. In addition, the report includes excerpts from numerous interviews with local immigrants, attorneys and advocates.

Though Sheriff Hall describes his 287(g) program as a success, a closer look reveals:

- While the 287(g) program was developed with the stated goal of responding to "immigration violators who pose a threat to national security or public safety,"⁵ **the vast majority of the time,**

² Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act, <http://www.ice.gov/news/library/factsheets/287g.htm> (last visited December 6, 2012).

³ In addition to the reason publicly cited by the sheriff, at the time of the announcement a lawsuit was pending that challenged the legitimacy of DCSO's 287(g) program, arguing that DCSO does not have authority to enter into an agreement with ICE because the law enforcement functions required were prohibited under the Metro Nashville Charter. The Tennessee Supreme Court ultimately issued a ruling stating that DCSO's 287(g) agreement did not violate the Metro Charter or any state law, but at the time of Hall's announcement the lawsuit was ongoing.

⁴ Schools listed for identification purposes only.

⁵ Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act, *supra*.

deportations through Davidson County's 287(g) program were triggered by minor, often traffic-related offenses. The program ensnared U.S. citizens, lawful permanent residents and non-citizens alike, wasting precious law enforcement resources to deport low-level offenders for non-violent misdemeanors such as driving without a license, trespassing, and fishing without a license.

- **Davidson County's 287(g) program encouraged racial profiling and disparate treatment from stop to detention, based on characteristics such as appearance, ethnicity or language skills.** The jail, or detention, model is often touted as the ideal model for 287(g) agreements, under the hypothesis that the danger of racial profiling is eliminated when the agency with immigration authority is not the same agency responsible for arresting people on the street, as is the case in Davidson County. However, the 287(g) program does not operate in isolation. Evidence from Davidson County illustrates how the program's presence impacted the perceptions and actions of others involved in the criminal justice system, from police on patrol to other public officials, who made statements regarding the influence of language and immigration status on their decisions. As our data further shows, despite the separation of arrest and immigration authority under the jail model, implementation of the 287(g) program in Davidson County corresponds with foreign-born people being arrested at an increasing rate for minor, sometimes pretextual, traffic charges, triggering immigration screening upon their booking.
- Finally, the 287(g) program's focus on deporting immigrants for misdemeanors, as well as the potential for racial profiling engendered by the program, **led to immigrants living in fear and distrust of law enforcement.** By introducing the threat of immigration enforcement into community policing, Davidson County's 287(g) program deterred immigrants, including domestic violence survivors, from reporting crimes they experienced or witnessed, ultimately **undermining public safety as a whole.**

DHS appears to be curtailing 287(g) task force model agreements in favor of jail model agreements. The new 287(g) agreements ICE is considering, including the applications from both Knox and Rutherford counties, would implement the jail model. However, as Davidson County's program illustrates, jail agreements are plagued by the same problems as task forces, with their focus on individuals who are not threats to public safety, their susceptibility to racial profiling, their erosion of trust between law enforcement and immigrant communities, and their resulting denigration of public safety.

While this report focuses solely on the Davidson County Sheriff's Office's 287(g) jail model program, many of the conclusions drawn from this analysis can and should be considered by other communities considering implementation of a 287(g) program. Many of our findings are also applicable to Secure Communities and other ICE enforcement programs. The lessons from Davidson County are clear: regardless of model, now is the time for the 287(g) program as a whole to be terminated.

A MISGUIDED PROGRAM: WIDESPREAD DEPORTATION OF PEOPLE FOR MISDEMEANORS

ICE's stated goal for the 287(g) program is focusing resources on identifying and processing for removal criminal aliens who pose "the greatest risk to public safety."⁶

ICE'S STATED 287(G) PRIORITIES

In an effort to emphasize its priority of identifying the most dangerous persons, in June 2010 ICE created a "risk-based" approach which was designed to ensure that resources are being used appropriately to identify noncitizens who pose the greatest threat to the public.⁷

- Level 1 — Individuals convicted of "aggravated felonies,"⁸ as defined by the Immigration and Nationality Act, or two or more crimes each punishable by more than one year of imprisonment, commonly referred to as "felonies";
- Level 2 — Individuals convicted of any felony or three or more crimes each punishable by less than one year of imprisonment, commonly referred to as "misdemeanors";⁹
- Level 3 — Individuals convicted of crimes punishable by less than one year of imprisonment.

Even prior to the memo described above, ICE articulated priorities for arrest and detention in its 2009 MOA with DCSO. Per the 2009 MOA, ICE identified "the categories of aliens that are a priority for arrest and detention with the highest priority being Level 1 criminal aliens." Level 1 included people convicted of or arrested for major drug offenses and/or violent offenses such as murder, manslaughter, rape, robbery and kidnapping.

⁶ Fact Sheet: Updated Facts on ICE's 287(g) Program, <http://www.ice.gov/news/library/factsheets/287g-reform.htm>, (last visited December 5, 2012).

⁷ Letter from John Morton, Assistant Secretary, U.S. Immigration and Customs Enforcement, to All ICE Employees, (June 30, 2010) available at <http://www.rmlegal.com/documents/ICE-John-Morton-2010-Priority-Memo.pdf>.

⁸ The definition of "aggravated felony" includes serious, violent offenses and less serious, nonviolent offenses. Immigration and Nationality Act §101(a)(43) sets forth a list of crimes that constitute aggravated felonies. The list includes murder, rape, trafficking of guns and drugs, crimes of violence, serious fraud convictions, alien smuggling, and theft offense among other things. Immigration and Nationality Act, Pub. L. 101-649, § 501 (1990).

⁹ Some misdemeanors are relatively minor and do not warrant the same degree of focus as others. ICE agents and officers are directed to exercise particular discretion when dealing with minor traffic offenses, such as driving without a license.

Numerous studies evaluating the nationwide impact of 287(g) programs, conducted by the federal government as well as academic and advocacy groups, have raised concerns about certain jurisdictions, including the DCSO, not adhering to ICE's guidelines.^{10, 11} These reports indicate that the majority of those arrested and deported via 287(g) were apprehended for minor offenses such as driving without a taillight, fishing without a permit or solely immigration violations. Targeting law enforcement resources toward people who are not a threat to public safety diverts resources away from true threats to public safety.

In Davidson County, the vast majority of people processed under Davidson County's 287(g) agreement were arrested for non-violent misdemeanor crimes (fishing without a license, driving without a license, trespass, etc.), many of which never even resulted in a conviction. 2010 data showed that the top five charges immigrants faced as a gateway to deportation under Davidson County's 287(g) program continued to be traffic violations or minor crimes.¹² ICE identified Davidson County's 287(g) program as one of "nine jail enforcement programs [that] had more 'traffic-other' offenses than level 1 and 2 offenses combined," in a July 6, 2010 memo.¹³ Even the Davidson County Sheriff's Office itself reported in 2009 that 85% of those processed through 287(g) were misdemeanor arrests¹⁴ and in 2012, that misdemeanor arrests account for "approximately 79 percent [of all those physically arrested] for the foreign born population."¹⁵

The original data analysis conducted by Professor Donato and her team for this report further illustrates a trend toward increasing arrests of the foreign-born for more minor charges after implementation of 287(g), and a simultaneous decrease in the percentage of arrests for the more serious offenses 287(g) was intended to target. In examining arrests by the most serious ICE offense level at which a person was charged, after implementation of 287(g), arrests for the more minor Level 3 offenses increased 15 percent, while arrests of foreign-born people for the more severe Level 1 offenses *decreased* 21 percent.

¹⁰ A. Elena Lacayo, Nat'l Council of La Raza, *The Impact of Section 287(g) of the Immigration and Nationality Act of the Latino Community* 7 (2010).

¹¹ Randy Capps et al., Migration Policy Institute, *Delegation and Divergence: A Study of 287(g) State and Local Immigration Enforcement* 6 (2011).

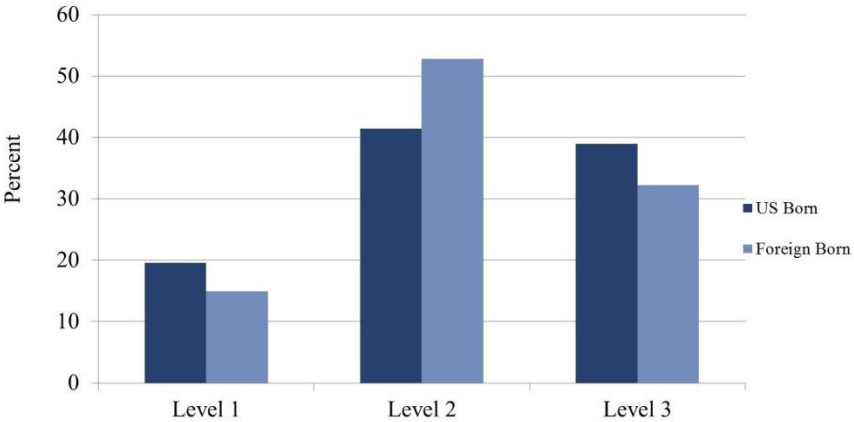
¹² Brian Haas, *Fewer deportations put 287(g) immigration program at risk*. The Tennessean. May 26, 2011.

¹³ Email from Oliver A. Francisco, CAP Special Programs Unit Chief, Department of Homeland Security, to Felicia A. Skinner, Calvin M. McCormick, Michael W. Meade, Philip T. Miller, Katrina S. Kane, Larry Orton, Marion L. Dillis, Kimberly A. Bouliia, Scott L. Sutterfield, Jon M. Gurule, and Albert E. Carter; Field Office Directors and Deputy Field Office Directors in Atlanta, Baltimore, Miami, New Orleans, and Phoenix; U.S. Immigration and Customs Enforcement (July 6, 2010, 16:42) (on file with author).

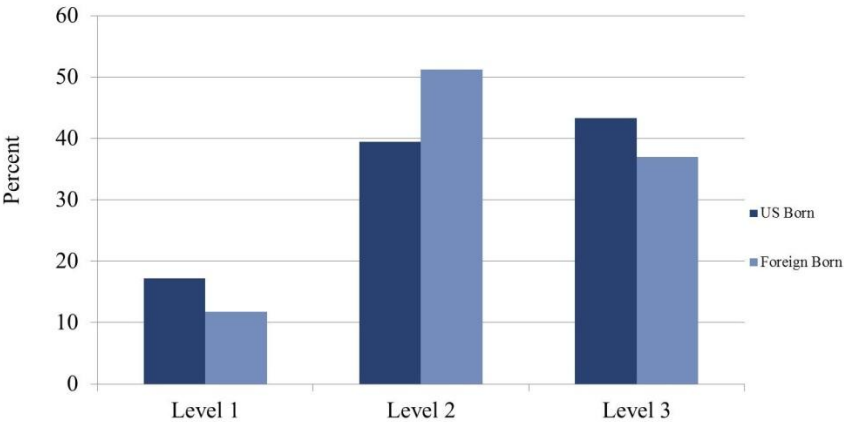
¹⁴ Davidson County Sheriff's Office, *287(g) Two-Year Review* 10 (2009).

¹⁵ Davidson County Sheriff's Office, *287(g) Five-Year Report* 8 (2012).

Percent of Arrests by Highest ICE Offense Level: Pre-287(g), 1/1/05-4/15/07



Percent of Arrests by Highest ICE Offense Level: Post-287(g), 4/16/07-6/10



Indeed, though Davidson County Sheriff Daron Hall originally argued that 287(g) would rid Davidson County of serious criminals who are illegal immigrants, he later publicly stated he believes “it is too late to deport an individual only after a serious crime is committed,”¹⁶ and used this as justification to deport people for misdemeanors. The result is that under 287(g)’s implementation, in Davidson County every person booked into the jail and suspected of being foreign-born was run through the ICE database. Those processed included people who had committed only non-violent misdemeanors, some of which never even resulted in conviction; who worked and paid taxes and were otherwise long-time, upstanding members of the community; and/or who were legal residents of Davidson County.

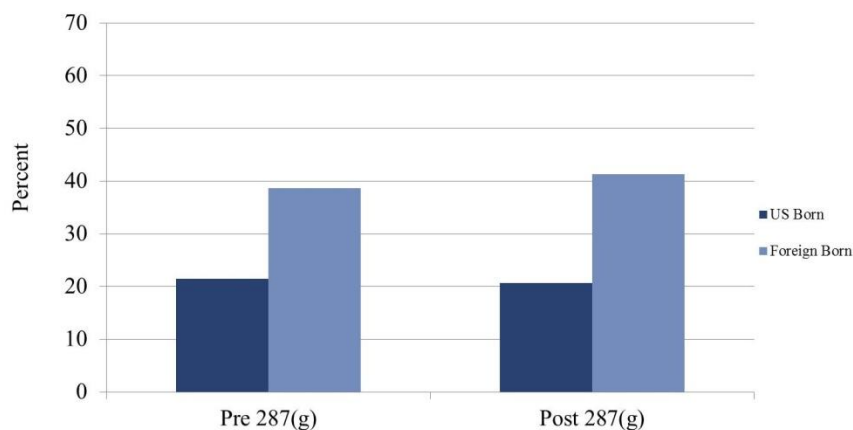
¹⁶ Davidson County Sheriff’s Office. 287(g) Five-Year Report, *supra* note 14 at 4

Driving became a deportable offense in Davidson County.

Driving without a license, a misdemeanor violation of state law, topped the list of charges that became a gateway for deportation under DCSO's 287(g) program.¹⁷ While all immigrants to Tennessee used to be eligible for driver's licenses, between 2004 and 2006, the state of Tennessee restricted licenses to the foreign-born and instead offered them a "Certificate of Driving." Since 2006, Tennessee placed further restrictions on driver's licenses for unauthorized immigrants who, without legal status, cannot comply with the requirements to drive with a license.

By taking away undocumented people's ability to obtain a driver's license, driving has become, by proxy, a deportable offense. Foreign-born people are arrested nearly twice as often as U.S.-born people for non-DUI traffic-related charges (41.3 percent of arrests of the foreign-born are for minor traffic charges, as opposed to 20.7 percent of the arrests of U.S.-born people). While this was true prior to 287(g) as well, the discrepancy in this trend increased after implementation of 287(g), with the percentage of corresponding arrests for U.S.-born people decreasing slightly, but increasing among the foreign-born population by 7 percent.

Percent of Arrests Including Traffic-Related Charge and Excluding DUIs: 1/05-6/10

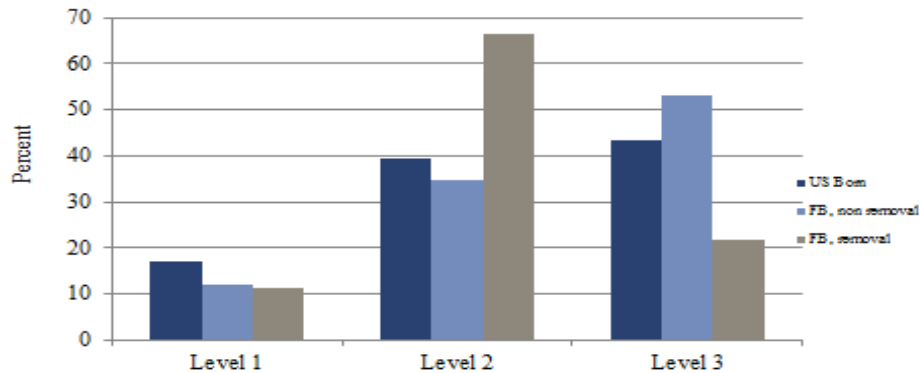


For those people ultimately put into removal proceedings, a staggering 67 percent of their arrests were for Level 2 offenses, which is the level that included traffic violations.¹⁸

¹⁷ Id.

¹⁸ For the purposes of this report, traffic violations are considered Level 2 infractions because data on traffic violations was classified as Level 2 in the dataset that the Vanderbilt researchers compiled at the time that they completed their analysis.

**Percent of Arrests by Level of Severity of
ICE Offense: Post-287(g), 4/16/07-6/10**



Source: DCSO (2010)

According to a study of 287(g) jurisdictions done by the Migration Policy Institute in 2011, Cobb, Mecklenburg, and Davidson counties (located in Georgia, North Carolina and Tennessee, respectively) accounted for roughly “one-third of all detainers (3,927 of 11,878) placed on people with only traffic violations, even though they have much smaller total population sizes than the largest jurisdictions of Los Angeles and Houston” (emphasis added).¹⁹ This resonates with data from a 2008 survey conducted by the National Council of La Raza with the Tennessee Immigrant and Refugee Rights Coalition, in which eighty-five percent of Latino respondents stated that they knew someone who had been deported, and that the majority of those arrests were for minor traffic infractions.²⁰

¹⁹ Capps et al., *supra* note 10 at 6.

²⁰ Lacayo, *supra* note 9 at 8.

Nashville's Voices: Misdemeanor and Dropped Charges Triggering Deportation Proceedings

“...I was sitting... waiting for my boss at the Laundromat and I was there drinking my hot chocolate and a police officer arrived and he started... ‘What are you doing here?’ And I responded, ‘Well I’m sitting here waiting for my boss because I’m going to work.’ And then he told me, ‘No, well stand up.’ I told him ‘No, why? I’m not doing anything.’ He said ‘Stand up!’ And then I stood up because the police officer was bad and he told me, ‘Open your wallet.’ And then I opened my wallet and he said, ‘Do you have any identification?’ And I said no, it had expired, and I left it to my wife so she could take my son to the hospital. He opened my wallet and took out my W-7. When he took it out and told me, ‘This is a social security card you’re using.’ And I told him, ‘No, this number is so that I can pay taxes.’ He said, ‘No, well for me it’s a social security number, you’re using someone else’s name, using a SSN and name of another person and I have to arrest you.’ And I told him, ‘But I’m telling you the truth.’ It was my name and everything. Everything was fine. He told me, ‘I have to arrest you.’ And then he put me in the patrol car and told me I was under arrest.” Finally “Julio’s” boss showed up to help. But the policeman was determined to make the arrest. “[My boss] told them, ‘No, let him go. I know him. Write him a ticket.’ And the police said, ‘No, he’s under arrest and I’m sending him to jail so they can send him to...Mexico.’ He practically said... ‘Well he doesn’t have papers, he doesn’t have a reason to be in this country.’” After being run through the 287(g) program, based on this officer’s decision to see if he “was illegal,” Julio was kept in custody for multiple days and was unable to care for his autistic child. Ultimately, his criminal charge was dismissed. – *A local immigrant*

“Irving Palomo sat handcuffed in the back of a van, moving south with at least six other men, trying to figure out what happened. He was headed to a holding cell in Perry County, Ala., and then Mexico, a country he hadn’t seen since the age of 5. The U.S. government said he was an illegal immigrant, and Palomo didn’t have the documents to refute it. That meant a Nashville traffic stop two weeks before was turning into the outcome his family feared for years—after a 16-hour bus ride from Alabama to the Mexican border, he would be dropped off with no money, no family and no points of reference. ‘How did this happen?’ he thought. ‘How am I going to call my mom when they drop me off?’ The most painful part: Irving Palomo, 21, has been a U.S. citizen since birth.” – *Excerpted from “Deportation order in Nashville snares U.S. citizen” by Janell Ross in The Tennessean, June 5, 2009.*

“In March 2010, a local man [was told by] his roommate [that] the police were looking for him. This man went to the police right away because he had not done anything wrong. When he showed up he learned that the ex-girlfriend had incriminated him, saying that he disobeyed the restraining order and he was taken to jail. **The charge was later dismissed** in court because it was obvious that the girlfriend was trying to get him in trouble and there was really no cause for this man to have a restraining order against him. His case was dropped but now he is in deportation proceedings because he came in contact with 287(g) even though he was found not guilty for the charge that brought him into the Sheriff’s office. He has children who are U.S. citizens who might lose their father.” – *A local immigration advocate*

RACIAL PROFILING

While a 287(g) agreement may be signed between ICE and a single law enforcement agency in a given jurisdiction, the 287(g) program does not operate in isolation but is part of the larger criminal justice system. The process leading to screening through Davidson County's 287(g) program was riddled with opportunity for racial profiling, from a police officer's initial stop to his decision to arrest, from the defendant's appearance before a judicial commissioner to booking. While racial profiling is difficult to prove, evidence indicates that Davidson County's 287(g) program led to at least some disparate treatment throughout the criminal justice system based on perceived or actual racial or ethnic differences such as appearance or accent. There is, of course, no way to tell by looking at a person or listening to him or her whether he or she is in the U.S. without lawful status.

Racial Profiling During a Police Stop

The Metro Nashville Police Department did not have an agreement with ICE. However evidence indicates that the Sheriff's 287(g) agreement motivated some local police officers a) to stop perceived foreign-born people for minor infractions or pretextual stops and b) to arrest rather than issue citations to those individuals because of their racial or ethnic characteristics, thus facilitating their screening through the ICE database once they were in the Sheriff's custody.

Implementation of Davidson County's 287(g) program in April 2007 corresponded with a spike in the percentage of arrests where the defendant was foreign-born to its highest level between 2001 and 2012 (12.2 percent).²¹ Over the following five years, the percentage of arrests of foreign-born individuals decreased.²² Though DCSO cited this as evidence that there was no racial profiling occurring as a result of its 287(g) program, other factors could have also affected this drop, such as declines in immigration associated with the weakened United States economy and the correlated shrinking of the job and construction markets.²³ In any case, the sheriff's assertion merits closer scrutiny, particularly given the increase in foreign-born arrests directly after the program's implementation and the widespread perception in the community that racial profiling is taking place.

According to a report by Davidson County's Criminal Justice Planning Unit, "the arrest rates for Hispanic defendants charged with driving without a license more than doubled after the implementation of 287(g)."²⁴ An examination of arrests that occurred solely for the single charge of "No Driver's License" indicates that some racial profiling did indeed occur due to Davidson

"Were they doing something wrong?"

"They weren't doing anything wrong, they were suspicious looking."

Exchange between a local businessman and a police officer, as to why the officer had pulled over a lawn truck with three Latino males in it

²¹ Davidson County Sheriff's Office, 287(g) Five-Year Report, *supra* note 14 at 4 and 9

²² *Id.*

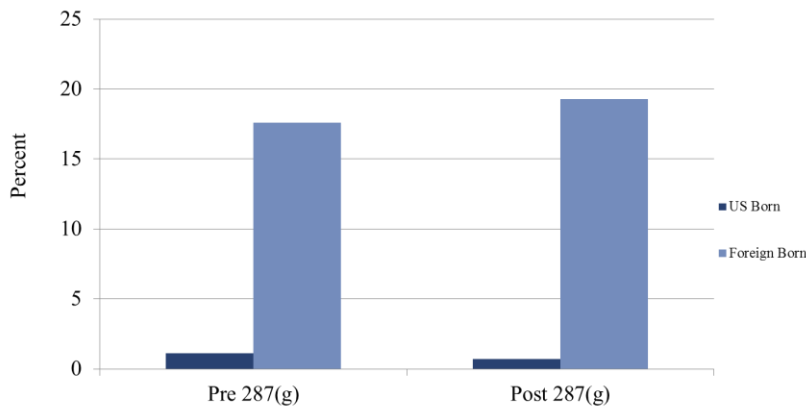
²³ Jeffrey S. Passel and D'Vera Cohn, Pew Hispanic Center, U.S. Foreign-Born Population: How Much Change from 2009 to 2010? 3 (2012); Jeffrey Passel, D'Vera Cohn and Ana Gonzalez-Barrera, Pew Hispanic Center, Net Migration from Mexico Falls to Zero—and Perhaps Less 6 (2012).

²⁴ Lacayo, *supra* note 9 at 8 (citations omitted).

County’s 287(g) program. Professor Donato and her team report, “The most common offense [leading to deportation] is not having a driver’s license, and many arrests occur only for that reason—which results from discretionary decisions on the part of police officers.”²⁵ Examining this particular charge is important not only because it is the most common gateway charge for deportation, but because whether or not someone is driving without a license cannot be determined until after the individual is already pulled over. If no other charge is brought, then the reason for pulling that individual over in the first place is questionable at best, and quite possibly a case of racial profiling.

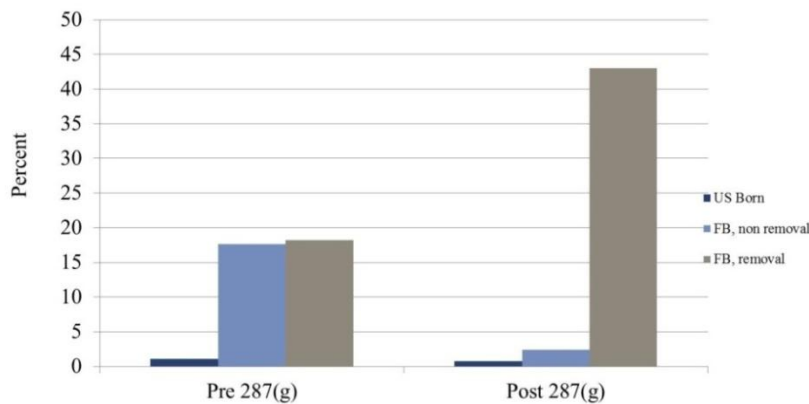
Of arrests for a single charge, the percentage of charges that were for “No Driver’s License” increased 9.4 percent for the foreign-born after implementation of 287(g).

Of Arrests with Only One Charge, Percent of Arrests With “No Driver’s License” Charge: 1/05-6/10



The percentage of single-charge arrests for a “No Driver’s License” charge that ultimately resulted in removal increased from 18 percent of arrests pre-287(g) to 43 percent of arrests post-287(g), an increase of 136 percent.

Of Arrests with Only One Charge, Percent of Arrests With “No Driver’s License” Charge: 1/05-6/10



²⁵ Katharine M. Donato and Amada Armenta, *Immigration in Nashville: 287G Program and Its Effects* (2010).

Not only is the utilization of the 287(g) program to remove people for these types of crimes out of line with ICE's stated priorities of processing serious criminal aliens, this data begs the question of whether the presence of the 287(g) program motivated some police officers, who did not have official immigration authority under Davidson County's jail model program, to make pretextual stops of people perceived to be foreign-born, for the purpose of triggering an immigration screening upon booking.

Professor Donato and her team analyzed 3,578 probable-cause statements written by arresting officers at the time of booking an arrest for cases in which the person was charged for the single offense of driving without a license.²⁶ "This information provides some context regarding the circumstances of individual arrests and offers an opportunity to develop some perspective about how police approach and treat the unauthorized who are ultimately arrested for a non-severe offense."²⁷ Their findings "suggest[ed] several red flags with respect to these arrests,"²⁸ including the potential for racial profiling or ethnic bias.

According to the researchers, "An investigat[iv]e traffic stop is made by a police officer when a person or vehicle matched the description of someone/something they were supposed to be on the lookout for. It can also be a person to whom the car was registered...has a criminal history. Usually, there is something about the car/driver [that] made the officer think the stop would be productive or that it aroused suspicion. Therefore, the police officer makes an 'investigative' car stop. In the probable-cause statements, there are multiple examples that say investigative traffic stop but the statement is unclear as to why the person was pulled over,"²⁹ as in the following examples:

Defendant stopped on an investigative traffic stop at Chesapeake Dr and Moorewood Drive. Defendant had no identification on his person. Records show the defendant has a warrant for his arrest as well as no license in Tennessee.

The suspect was stopped at Nolensville Road and Harding Place. A license check revealed that the suspect had no driver license. The suspect was stopped for investigative purposes.

The suspect was observed leaving her residence at 440 north 2nd street in a white mercury sable 4dr. The suspects name was ran for a license validation it came back as No drivers license. The suspect was observed traveling to several location in east nashville including the Mcdonalds at Trinity and Brick church this all occurred in Davidson County on 1/12/05.

These examples stand out because, while other statements *did* include justification for investigative stops, they did not. The researchers conclude, "Investigative stops in which no justification was given suggest the officer made a stop because the officer felt the car or driver was 'suspicious.' This type of subjectivity is most suggestive of racial profiling."³⁰ Given that a police officer cannot tell from looking at any driver operating an automobile whether he or she in fact possesses a valid Driver's License, it strains reason to envision a scenario not related to abject racial or ethnic profiling that accounts for such

²⁶ Arresting officers' probable-cause statements,

<http://ccc.nashville.gov/portal/page/portal/ccc/caseSearch/caseSearchPublic/caseSearchPublicForms>.

²⁷ Donato et al., *supra* note 24 at 20

²⁸ *Id.*

²⁹ Donato et al., *supra* note 24 at 25.

³⁰ Donato et al., *supra* note 24 at 31-32.

findings. Instead what these statements indicate, and what community members report, is that some members of the Metro Nashville Police Department may have been motivated by the presence of the 287(g) program at the DCSO to target suspected immigrants and persons suspected to be foreign based on race, language and ethnicity.

Ethnic Bias During Arrest

Once a stop has been made, police officers decide whether to issue a citation or to arrest. Tennessee law provides that police officers should issue citations rather than arrest unless certain objectively reasonable exceptions are met, such as the inability to prove identification or a likelihood that the suspect will not appear in court.³¹ The officer must make “all reasonable efforts” to ascertain identity. Identifying documents need not be government-issued. The arresting officer must be able to articulate the reasons that arrest is necessary over citation and arrest cannot be based on perceived membership in a protected class (i.e. an arrest cannot be made instead of a citation simply because a person appears Latino or does not speak English fluently).

There is potential for disparate treatment based on race or ethnicity in police officers’ decisions about whether to issue a citation or arrest. The DCSO Five-Year Report indicates that nearly 70 percent of all foreign-born people charged with a crime were issued a citation rather than being arrested. However, when looking more closely at arrests for the single charge of “No Driver’s License”—a subset of cases where the charge appears to be pretextual—“many officers mention language barriers and immigration status in their statements and thereby suggest, or give the impression of suggesting, that poor English and unauthorized status make the person more eligible for arrest.”³² Consider the following statements (emphasis added):

Subject was stopped for driving a vehicle without a rear bumper. **A sheriff employee helped with the translation of his name.** He had no driver’s license.

I stopped subject for running a stop sign at Wallace Rd. and Turley DR. Pulled subject over on Sherman oaks Drive and Le Bon Dr. Subject said he did not have a drivers license, and that **he spoke only some english.**

Nashville’s Voices: Perceptions of Racial Profiling

“...if you want to do like a test [on whether Latino drivers are targeted by police] you can go to the Walgreen’s here and there’s like one patrol car that’s always there...I call it ‘Fishing Mexicans’ because every time we play soccer on that field I arrive and ask- how many has he stopped? And it stopped like five in an hour. He’s just there waiting and stopping cars he sees pass, for no reason, they’re not speeding, and like that, like that, he stops then and that’s it. The police always do that here, if not that one there’s another one in an unmarked car that parks on the corner. By the Lowe’s and Walgreens...[People are] scared. More than anything it’s [of] being arrested and profiling. Deportation...because they detain people who don’t have licenses and can check them, they can take them and arrest them, because the word is that people from ICE will get you if the police stop you, ICE will get you...there’s more profiling than before.”

--A Davidson County immigrant

³¹ T.C.A. § 40-7-118; *State v. Walker*, 12 S.W.3d 460 (Tenn.2000)

³² Donato et al., *supra* note 24 at 26

The Defendant was stopped for speeding (83 MPH in a 70 MPH zone). When I asked him for his driver's license he advised me that he did not have one, nor did he have any identification of any kind. Because **the Defendant spoke very little English** I had the passenger in the vehicle, who spoke English and Spanish, obtain the Defendant's name, date of birth, and address. When she asked him for his date of birth, they had a lengthy conversation before coming up with 09/07/1986.

The suspect allowed her driver to drive her vehicle without a Drivers License and she knew he did not have a Drivers License. She does not have a Drivers License either and **she stated she was here illegally.**

The following two statements also illustrate how information about the legal status of the defendant and erroneous beliefs that this impacts the likelihood of appearing at a subsequent court date has been used to help justify arrest, despite the fact that research indicates that citizenship status is not a significant predictor of failure to appear for trial.³³ Per Professor Donato's report, the boldface information below (emphasis added) is unnecessary and implies that the arresting officer has no additional cause to arrest.³⁴

The vehicle suspect drove was stopped due to neither brake light operating. Upon contact, suspect presented a Honduras passport and said that he did not have a driver license. **Immigration placed a hold on the suspect before he completed the booking process.**

Police were dispatched to N 7th St and Main St. in reference to a 2 car traffic accident. The defendant produced a Guatemalan passport. A search of the state computer revealed that the defendant did not have a valid driver license. A search of MNPD records could not verify the defendant's identity. **Sgt. Whitley was advised of the situation and authorized a custodial arrest for the likelihood the defendant would not show up to court.** The defendant did not have registration or insurance for the vehicle.

While multiple forms of ID are supposed to be acceptable, some officers indicate that they find non-U.S. government IDs unacceptable and do not document steps taken to verify identity. Professor Donato and her team found "many probable cause statements that describe[d] alternative forms of identification (other than a U.S. government ID) [as] unacceptable to the arresting officer. In many statements, the process of identity and driver status confirmation was unclear, e.g. many officers did not report the verification processes they used and instead simply wrote that the person did not have a valid id."³⁵ The following probable cause statements illustrate how other countries' driver's licenses or IDs are not enough to establish the identity of the defendant and how in some cases no details are offered about verification of identity except that he/she did not have a driver's license (emphasis added).³⁶

On Dec 06, 2009 at approximately 1810 hrs R/O rolled up on a traffic crash located in front of the Rain Forest Café in the Opry Mills Mall area. The accident occurred on the access road (Opry Mills Dr). **The Def did not have a valid ID, only a ID from Mexico.** His ID could not be

³³ Marie VanNostrand, Ph.D. and Gena Keebler, *Luminosity, Pretrial Risk Assessment in the Federal Court*, Sponsored by the Office of the Federal Detention Trustee with support from the Administrative Office of the U.S. Courts (2009).

³⁴ Arresting officers' probable-cause statements, *supra* note 25 at 14; Donato et al., *supra* note 24 at 21

³⁵ Donato et al., *supra* note 24 at 20.

³⁶ Arresting officers' probable cause statements, *supra* note 25 at 14.

verified through mainframe/ ARMS system or prior traffic offenses. His was driving a 1999 Buick century, gold in color (registered to him).

Subject was stopped for covered tag violation. During the traffic stop he advised me that he **only had a Mexican ID/DL**. Subject had no passport or visa with him and had no other valid DL.

Mr. Alvarado was stopped for Blue lights on his hood. **He does not have any drivers license.**

Professor Donato's team reported, "Although many probable-cause statements reveal that police officers had valid reasons for pulling over drivers, sometimes drivers were pulled over for warrants not for them but arrested nonetheless despite having some identification,"³⁷ as in the cases below (emphasis added).

The defendant was stopped for investigative purposes as an active warrant came back to the owner of the vehicle when the tag was run. The defendant who was driving does not have a driver's license. The driver was also slow to stop to emergency equipment. The only form of ID on his person **a Honduras Passport**. Officer took the defendant into custody.

The defendant was stopped for investigative reasons (i.e. the registered owner's name came back to a possible warrant hit). Upon discovering that the defendant wasn't the person with the warrant, it was also discovered that he didn't have a license. The defendant was knowingly operating a motor vehicle on a public roadway without a valid license from anywhere. The defendant only had a **Mexican Id card**.

Finally, officers implied that even a Tennessee ID card was not sufficient to establish identity.

Subject was stopped for no turn on red. He had a TN ID but does not have a driver's license.

Professor Donato's team concluded that "Many unauthorized immigrants have difficulty providing satisfactory evidence of identification, given restrictions on state drivers' licenses. Moreover, the Metro Police Policy Concerning Citations in Lieu of Arrest indicates that police prefer government identification, although other forms of identification can be considered satisfactory [under Tennessee law]. The problem is knowing which non-governmental forms will be acceptable to police. In a meeting with Hispanic business owners on March 22, 2010 South Precinct Commander Michael Alexander said that [the] police department did not limit what officers could use to identify [an] individual's identity for the purpose of a state citation. Nonetheless, many immigrants report finding that their identification documents are inadequate,"³⁸ as the probable cause statements above reinforce. As a result of poor officer training and perhaps ethnic or racial bias, many immigrants are arrested rather than cited for minor traffic infractions, despite Tennessee's protective citation versus arrest statute. In states without such a protective law, this problem could be exacerbated.

³⁷ Donato et al., *supra* note 24 at 24

³⁸ Donato et al., *supra* note 24 at 13.

Potential for Bias with Judicial Commissioners

In Davidson County, judicial commissioners are the people responsible for setting bond and determining probable cause for the alleged crime. They operate as an arm of the judiciary and are appointed and supervised by the Chief Judge of General Sessions Court. They have the power to dismiss charges or to invalidate arrests and issue a citation. Sheriff Hall routinely pointed to the presence of judicial commissioners as one of the safeguards in Davidson County's 287(g) program, as they are supposed to ask about whether other forms of identification were requested and shift the burden back to the officer.

During a project in which ACLU-TN interns observed night court, they found instances in which judicial commissioners did discuss reasons for arrest rather than citation with arresting officers. However, this process was not uniformly applied. In one case of misdemeanor drug possession, a judicial commissioner went so far as to explain the citation versus arrest statute to our observer, including the eight exceptions to it, and to describe why the police had acted inappropriately in a particular case. Then an hour later, in a case where the defendant was arrested for minor traffic violations, the commissioner did not discuss at all with officers whether they should have cited the defendant rather than arrested him. Instead he told our observer about Davidson County's 287(g) program, then stated that there was a huge immigration problem in Nashville and that this person would be deported in a week.³⁹

Racial Profiling Upon Booking

The protocol used by DCSO staff for booking also results, intentionally or not, in racial profiling at the jail. In Davidson County, an individual is supposed to be screened through the 287(g) program when he or she self-reports being foreign-born. However, in an email to the Tennessee Bar Association listserv, Davidson County Sheriff's Office staff essentially indicated that racial profiling in the jail was a common practice, stating:

I can answer your question if [the man in a question posed to the listserv] was arrested in Davidson Co. and held pursuant to the 287(g) program. I agree that he should have received a citation in lieu of arrest under the circumstances you describe, and TN law certainly encourages use of citations...Once the police make an arrest and the commissioner signs a committal, the person **MUST** be booked into jail. **Information is automatically streamed to ICE on anyone who acknowledges being born outside the U.S. (or claims to have been born at Baptist Hosp. but speaks little English)** (emphasis added).

Thus, in Davidson County, evidence suggests that the 287(g) program led to racial profiling throughout the stop, arrest and booking process, despite the fact that the detention model was touted as minimizing the potential for this due to the separation of power between those with the 287(g) agreement and those making the arrest on the street. Jail agreements are plagued by the same problems as task force agreements. Because "[t]he 287(g) jail model does not impose federal oversight on the officers who make the initial arrests," ICE "opens the door to racial profiling and pretextual arrests."⁴⁰

³⁹ Conversation between Rebecca Eshbaugh and Thomas Nelson, Judicial Commissioner, Davidson County General Sessions Court Night Court, in Nashville, Tennessee (July 14, 2010).

⁴⁰ Capps et al., *supra* note 10at 2.

THE COSTS OF DAVIDSON COUNTY'S 287(G) PROGRAM

An Erosion of Public Safety: Distrust of Police and Not Reporting Crimes or Seeking Assistance

Survey and anecdotal data clearly demonstrate that the Latino population in Davidson County distrusts and even fears law enforcement, leading to crimes going unreported and eroding public safety for all Davidson County residents. In 2008, the National Council of La Raza and the Tennessee Immigrant and Refugee Rights Coalition conducted a study to compare the willingness and likelihood of Latinos and African-Americans to contact Davidson County police. They found that while both communities felt deeply uncomfortable about interacting with police, 42 percent of Latinos said that

“42 percent of Latinos surveyed said that they knew of a crime that had not been reported to police.”

they knew of a crime that had not been reported to police, compared to only four percent of African-Americans. Furthermore, 54 percent of Latino

respondents said that they would choose not to call police regarding future crimes, citing fear, immigration issues and racial profiling as reasons. The NCLR study concluded that perceptions of law enforcement in the Latino community are especially strained and undermine the community's relationship with the police. When people fear interactions with the police, crimes go unreported, the entire population feels the impact, and the community becomes less safe.⁴¹

Nashville's Voices: Distrust of Law Enforcement

“I had a girl who came to school a couple of months ago. She was a ninth grader and she was very distraught, crying, so one of the teachers called me and said could you come and get her. She had witnessed a shooting outside of her apartment complex... a drug deal gone bad... She witnessed the shooting and she saw a guy hide some drugs in a tree before the police got there. The police got there and they asked the people who were watching and they interviewed her. One of the guys who was involved saw her talking about it, and then of course they went and found the drugs and the guy knew there was a correlation. And so he had someone go and threaten her family later that night, and they have not told the police because they're scared to. So they moved. So she was completely distraught because she knew she had brought that on her family. She was having a full on anxiety attack about it. She had been afraid to get on the bus and to leave her family. Her family told her she was safer at school, go to school. I went to the police officers at the school and they talked to me and talked to her and wrote it down, but I don't think there was any follow-through. They just sort of documented it. [The family] didn't feel safe. They never actually as a family went to the police and said, 'We were threatened.' And so they moved.” —*A local teacher*

“I got a call about a month ago [in May 2010] at midnight. One of the youth that I work with had had his friend call me, and her little sister was 15 or 16 years old and hadn't been home for a really long time and she had been seen around bars and it was clear was being sexually exploited by older men. They wanted to get law enforcement involved to bring her home because they were really scared about what was happening with these older men, and how was she living, and how was she getting her food paid for and all that

⁴¹ Lacayo *supra* note 9 at 8.

kind of stuff. She hadn't been in school. And the problem was she had some tattoos on her. So the question was, if we call the cops to get our fifteen-year-old daughter home, what's going to happen when they find tattoos on her and is she going to end up getting deported through this process. And so the fact that the family was making this decision about whether or not to get their daughter home by whether she would be better off if she gets deported back to Mexico or would she be better off living on the street here is just a decision that seems so insane to me. So at midnight we're calling around to different cops trying to figure out if there is someone who will pick her up and if she's drunk won't be putting her in some kind of jail tonight. They didn't end up calling the cops and I'm not sure where the girl is right now." —*An immigration advocate*

"A mother shared that her daughter was married to an abusive husband and it was so bad that the family knew that it really wasn't a healthy relationship and it was really concerning. Even in the face of knowing that that was not a safe situation for their daughter, they didn't know what to do because they didn't want to call the police and ask for her protection and they know that in other circumstances they could call for help in that situation but they were really afraid of calling and reporting the abuse that was happening from their daughter's husband... They were afraid that they would be deported." —*An immigration advocate*

"We have a couple of cases of a family who lives on Nolensville Road in an area where they always felt safe. The dad is in the construction business and he has always left all of his tools in the truck for the next morning. When the economy got worse there was more crime in their neighborhood. A couple of times they woke up and their car had been vandalized and they lost all their tools and they never thought of calling the police because they were afraid there would be other consequences for them or somebody in their family." —*An immigration advocate*

In a 2009 study of the impact of local enforcement of immigration laws and the resulting consequences in Southern communities, the Southern Poverty Law Center (SPLC) found that of the Latino respondents in Nashville, 73 percent reported that Davidson County's 287(g) agreement increased their apprehension about cooperating with police.⁴²

DCSO claims that "Davidson County has not experienced a chilling effect as it relates to foreign born residents reporting crime" based on a consistent rate of Hispanic victims in assaults reported to Metro Nashville Police both pre- and post-287(g).⁴³ While DCSO attributes this to increased confidence in police, Hispanics were only reported to be victims in five percent of assaults reported to Metro police in 2011, while they comprise nearly ten percent of the Davidson County population in 2010. Furthermore, this data only includes reports of assaults, and does not indicate whether 287(g) has had a deleterious effect on reporting of all crimes.

Indeed, anecdotal evidence suggests that, by and large immigrants in Nashville distrust law enforcement. They do not distinguish between the police and the Sheriff's Office, including their differing roles in the deportation process. This distrust parlays into not reporting crimes or seeking assistance when needed, as described in the sidebar. The lack of trust in law enforcement created by Davidson County's 287(g) program, and the subsequent underreporting of crime, make Nashville less safe for all residents.

⁴² Southern Poverty Law Center, *Under Siege: Life for Low-Income Latinos in the South* 45 (2009).

⁴³ Davidson County Sheriff's Office, 287(g) Five-Year Report *supra* note 14 at 9

“Worried to Death”: A Community in Fear

Nashville’s 287(g) program created an immigrant community that lives in constant fear of law enforcement, as it was well-known that many people were funneled into 287(g) after stops for traffic violations and other misdemeanors, sometimes pretextually. Through interviews conducted with local business people, attorneys, advocates, teachers, and immigrants themselves, we have heard numerous reports of immigrants being very afraid to drive. Sick children are sometimes left at school due to parents’ or guardians’ fear of driving to pick them up. Teachers and advocates say those teens they work with who can understand the risk of driving in Davidson County report saying goodbye to their parents in the morning and hoping that they and their parents all make it home. The teens are “worried to death until their parents get home at the end of the

Nashville’s Voices: A Community in Fear

“I know a lot of our young people who used to drive have stopped driving in the past few months because they just feel like it’s gotten to a point where they can’t anymore. I was talking to one of our youth leaders last night who graduated with honors, got into a bunch of universities and has been working for the past year because she needed money to be able to go to school because she’s undocumented, and she saved thousands of dollars at this point and could go to school, and she told me that now college is off the table for her simply for the fact of driving. That was the one thing that was keeping her from going to college was the fear of driving and getting deported while she was driving. It was so unbelievable to me that she could overcome all those barriers that were so much huger – having the grades, having the test scores, saving the incredible amounts of money, and yet driving was the thing that was keeping someone from going to college and we have other folks who have gotten into Lipscomb [University], who have gotten scholarships and what they say is, ‘I don’t want to have to make that drive across town.’” --*A local advocate*

“In terms of the school system, we do hear from moms and kids who wonder what’s going to happen to them every day they’re driving there. At the beginning of the school year there was a little girl who was returning to the same school for second grade and having unusual anxiety and really having a hard time separating from her mom every morning. The first few days they expected it- it was normal. But then the school, the counselors and our staff member there had to intervene because it was three weeks into the school year and nothing was changing. The people who intervened realized that part of the girl’s anxiety was that a close friend [of] her family’s mother had been stopped by a police officer and deported and now is no longer there and now this girl lives with an aunt. So part of what this second-grader articulated was that she was afraid to let her mom go because she knew that her friend’s mom had been stopped in the car and she was gone and she didn’t want that to happen to her and her mom.” --*A local immigration advocate*

“We have a steady stream of moms with incredibly sick children who are undocumented... who are terrified of being deported... Last clinic we had a child who appeared to have hydrocephalus. [The child] came in with an oxygen tank and had to be moved up on the list of people to be served because the oxygen tank only last[ed] an hour. Just gut wrenching. The mom was terrified of driving and being deported—the child would die in Mexico. About a year [ago] we had a woman whose child had just recovered from leukemia who actually wants to go home. Dad has sort of disappeared in Alabama and doesn’t pay child support. The child support office hadn’t been helpful to her attempt to collect and she actually wants to go home... her child is four years old, in remission from leukemia and she actually wants to go home but dad won’t sign off on the passport so she can go home to Honduras where her family is. And so she’s in terror of being deported. We have a stream of moms with citizen kids who are terrified of being deported and their kids either being left here because they don’t have the passports to get them home or the kid going home with them and dying for lack of medical care. We’ve had probably five of them in the past year. Those are horrible.” --*A local attorney, who runs a pro bono legal clinic*

day.”⁴⁴ Businesses in heavily Latino areas have reported declines in customers. Nonprofits and churches report organizing events and even selling tickets only to have few if any people show up. While there is not room to include all of these stories here, a few are included in the sidebar.

Humanitarian Concerns

Under 287(g), detainees were not being assessed for humanitarian release until very late in the detention process. Although the detainee’s first contact with ICE was with the cross-designated 287(g) agent at booking, they were not officially transferred into ICE custody until after their state criminal charges were closed out. At that time, the ICE agent assessed their needs under the Humanitarian Guideline standards (or something similar) and released those who qualified with a Notice to Appear (NTA). This process could take days to complete and was especially worrisome for those with medical conditions, pregnancy, nursing mothers, primary caregivers and others. Anecdotal examples illustrate that this concern was a grave one in Davidson County and could be elsewhere as well.

Nashville’s Voices: 287(g) and Humanitarian Concerns

Juana Villegas is an undocumented immigrant who was arrested when she was nine months pregnant because the officer, who suspected she was undocumented, chose to exercise his discretion and arrest her instead of issuing her a citation for a traffic infraction. Ms. Villegas’s three children were in the car with her when she was stopped and the family was detained in their car for approximately forty minutes. Ultimately, because of the 287(g) program, Ms. Villegas was kept in custody for over 72 hours and was forced to deliver her baby while in custody (while chained to the bed during her labor). She was not allowed to contact her husband. After giving birth, she was returned to jail and denied access to a breast pump, leading to a severe case of mastitis. While the Davidson County Sheriff’s Office has taken steps to prevent such a situation from recurring, the Villegas case illustrates the need for earlier assessment for humanitarian release on ICE’s part.

“A man came into our legal clinic who had been robbed. The neighbors had stolen the contents of his and his brother’s truck in plain view. The brothers called the police. The police questioned them about their status. The man’s brother was put in proceedings and nothing was done about the underlying crime that they had called about. The man who came to the clinic brought his niece who was about to be a kindergartner and who was a citizen. Her father had been her primary caregiver... After her father’s deportation the child was handed over to a grandparent in Florida who was unable to care for the child. The child is now in state custody in Florida when she had a father who had been a very capable caregiver for her.” – *A local attorney*

CONCLUSION

In Davidson County and across the country, the 287(g) program has challenged our values of fairness and due process in its encouragement of racial profiling from stop to detention, its implementation upon arrest rather than conviction, and its targeting of people for misdemeanors.

287(g) interferes with state and local police responsibilities by merging federal immigration enforcement and state criminal justice tasks. As the *only* part of federal immigration enforcement that allows state

⁴⁴ Interview with Amelia Post, Middle Tennessee Organizer, Tennessee Immigrant and Refugee Rights Coalition, in Nashville, Tennessee (April 5, 2010).

and local police to act as immigration agents, the 287(g) program confuses the public about local law enforcement's functions and priorities.

In Davidson County, like many jurisdictions across the country, 287(g) did not serve ICE's stated purpose of focusing resources on identifying and processing for removal criminal aliens who pose a threat to public safety or a danger to the community. The vast majority of people who were deported under this program were stopped for non-violent misdemeanors such as driving or fishing without a license. These people included parents, students, workers, primary caregivers and otherwise upstanding community residents, people who did not threaten public safety.

Indeed, the threat to public safety lie more with the 287(g) program's presence in Davidson County, as its fostering of racial profiling and its targeting of people with nonviolent misdemeanors led Nashville's immigrant community to live in fear and distrust of the police, terrified to report crimes or to seek assistance when needed.

287(g)'s corrosive effect on community-police relations has caused prominent law enforcement leaders around the country to discredit it, including the Police Executive Research Forum, the Police Foundation and the Major Cities Chiefs Association (representing the 56 largest police departments in the U.S.).^{45,46,47} William Bratton, then-chief of the Los Angeles Police Department, wrote that his department would not participate in the 287(g) program because “[m]y officers can’t prevent or solve crimes if victims or witnesses are unwilling to talk to us because of the fear of being deported. . . . Criminals are the biggest benef[iciaries] when immigrants fear the police. We can’t solve crimes that aren’t reported because the victims are afraid to come forward to the police.”⁴⁸

The lessons of Davidson County's 287(g) program—encouragement of racial profiling, frequent deportations for misdemeanors, erosion of trust in law enforcement and the consequent undermining of public safety—lead us to call for DHS to end 287(g) in all 21 states and 57 jurisdictions with 287(g) agreements,⁴⁹ and to stop considering new agreements, including those in Knox and Rutherford counties.

⁴⁵ Debra A. Hoffmaster et al., *Police and Immigration: How Chiefs Are Leading their Communities through the Challenges*. (Police Executive Research Forum, 2010), available at <http://www.policeforum.org/library/immigration/PERFImmigrationReportMarch2011.pdf>.

⁴⁶ Mary Malina (ed.), *The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties*. (Apr. 2009), available at <http://www.policefoundation.org/strikingabalance/strikingabalance.html>.

⁴⁷ Chief J. Thomas Manger, *Examining 287(g): The Role of State and Local Law Enforcement in Immigration Law*. (Mar. 2009), 4, available at <http://hsc.house.gov/SiteDocuments/20090304140934-99719.pdf>.

⁴⁸ William J. Bratton, “The LAPD fights crime, not illegal immigration.” *L.A. Times* (Oct. 27, 2009), available at <http://articles.latimes.com/2009/oct/27/opinion/oe-bratton27>.

⁴⁹ Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act, *supra* note 1

METHODOLOGY

The quantitative analysis in this report was conducted by Professor Katharine M. Donato of the Vanderbilt University Sociology Department, doctoral student Amada Armenta of the University of California, Los Angeles and Blake Sisk, doctoral student of the Vanderbilt University Sociology Department.⁵⁰

The arrest data they analyzed came from the Criminal Justice Planning Unit, 2010. To analyze the quantitative arrest data before and after 287(g) implementation, the team employed bivariate analysis that examined the attributes of arrests and arrestees pre- and post-implementation of the 287(g) program.

The probable cause statements analyzed by the Vanderbilt team came from the Criminal Court Clerk's Office. Each arresting officer reads this statement to the night court commissioner and they are available online at the following website:

<http://ccc.nashville.gov/portal/page/portal/ccc/caseSearch/caseSearchPublic/caseSearchPublicForms/>.

Vanderbilt researchers copied and then analyzed 3,578 statements for arrests where the person was charged for the single offense of driving without a license. To analyze the police officer narratives, researchers read the narratives and interview transcripts several times, described them, and then analyzed them by asking whether they differed pre- and post- implementation of the 287(g) program, or differed by nativity of the person arrested.

Interviews included in this report were conducted during 2010 by Amada Armenta and ACLU-TN's Lindsay Kee and Tricia Herzfeld. For the in-depth interview data, researchers read the interview transcripts, described them, and then analyzed them by asking whether they differed pre- and post-implementation of the 287(g) program, or differed by the nativity of the person arrested.

Questions regarding the data used in this report should be directed to Professor Katharine M. Donato of Vanderbilt University at katharine.donato@vanderbilt.edu .

⁵⁰ Schools listed for identification purposes only.

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