



Local Immigration Enforcement and Arrests of the Hispanic Population

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Executive Summary

Section 287(g) of the Immigration and Nationality Act (INA), which was added to the INA by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), allows the federal government to enter into voluntary partnerships with state and local law enforcement agencies to enforce immigration law. Upon entering these agreements, law enforcement officers are trained by Immigration and Customs Enforcement (ICE) and receive delegated authority to enquire about an individual's immigration status and, if found to be removable, to detain the individual while ICE makes a determination of whether to initiate deportation proceedings. In some instances, this inquiry about immigration status takes place as part of the intake process when a criminal defendant is arrested and placed into a criminal jail. In other instances, task force officers are trained to inquire in the field about immigration status and enforce immigration law against people who have not committed any criminal offense. The key difference between the two models is that task force agents can arrest for immigration violations undocumented individuals who have not committed any criminal offense, whereas in the jail model individuals must be arrested on some other criminal charge before immigration status can be determined.

The 287(g) program has raised several concerns regarding its implementation and results. First, the program could lead to racial and ethnic profiling. In particular, given that the majority of undocumented immigrants hail from Latin American countries, it is highly plausible that Hispanics, regardless of immigrant status, might be disproportionately affected by this program. That is, in a jurisdiction that participates in the jail model, an officer might arrest a Hispanic individual for a very minor offence in order to process them through the jail and determine their immigration status, when perhaps without the program they may have only issued a citation. Another concern with the program is that it may lead to tensions between state and local law enforcement and the local community. If the program creates an atmosphere of suspicion and distrust by community members toward state

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and local law enforcement agents, even law abiding individuals may choose to avoid interaction with law enforcement agents. This can make victims and witnesses hesitant to come forward, for fear that their undocumented status will be uncovered. Such a situation inhibits law enforcement's ability to do its job and can, ironically, make communities less safe.

This study explores the effects of implementation of the 287(g) program in Frederick County, Maryland on the arrests of Hispanics. Using data from individual arrest records from the Frederick County Sheriff's Office, which has a 287(g) agreement with ICE, and the Frederick Police Department, which does not, I analyze the changes in arrests between the two agencies before and after the 287(g) program was implemented in 2008. I find that overall, the arrests of Hispanics fell, suggesting that the Hispanic community avoided interaction with law enforcement when the program began. However, I also find that the program led to a significantly higher number of arrests of Hispanics by the Sheriff's Office than would have occurred in its absence, indicating that attention was focused toward the Hispanic community as a result of the program. These results suggest that, if the program is to continue, additional safeguards are needed to prevent abuses and civil rights violations.

I. Introduction

Enforcement of US immigration law falls primarily under the purview of the federal government. However, in recent years a number of laws and programs have aimed at expanding state and local participation in immigration enforcement. In some instances, state governments have attempted to circumvent the federal government by passing legislation authorizing police to enforce immigration law (e.g., Arizona SB 1070 and Alabama HB 56). In other cases, the federal government and local agencies enter into cooperative agreements. Currently, ICE operates 13 ICE Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS) that provide "local law enforcement agencies an opportunity to team with ICE to combat specific challenges in their communities" (ICE 2008). While the purposes of the individual programs vary, three of the programs — the Criminal Alien Program, Secure Communities, and the 287(g) program — are aimed at enlisting local agencies as "force multipliers" in identifying and apprehending deportable aliens.

One of the oldest and perhaps most widely known program is the Criminal Alien Program, which is designed to identify deportable aliens who are incarcerated in federal, state, and local prisons, and have them deported prior to completion of their sentences, so that they are not released back into the local community (ICE 2008). Secure Communities builds upon the Criminal Alien Program by cross-referencing biometric data against a Federal Bureau of Investigation (FBI) database when arrestees are booked into local jails. Under this program, deportable aliens need not be convicted of the crime for which they are arrested in order for deportation proceedings to begin. If they are arrested for any offence, and are in the database as having a prior criminal record, then ICE is notified and can choose

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to initiate deportation proceeding. Under both of these programs, however, determining the individual's immigration status remains the responsibility of the federal government.

A lesser-known program aimed at allowing local agencies to cooperate with federal authorities in enforcing immigration law is the 287(g) program. Established by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), the 287(g) program allows state and local law enforcement agencies to voluntarily enter into a joint Memorandum of Understanding (MOU) with ICE to receive delegated authority for immigration enforcement within their jurisdictions. Upon entering the program, law enforcement officers are trained and given authority to interview potential immigrants in order to ascertain an individual's immigration status and refer them for deportation. In some instances, local law enforcement is empowered to make arrests for immigration violations, whereas under the Criminal Alien Program and Secure Communities programs, the individuals would have to be arrested for some other crime before any inquiry into their immigration status would take place.

While these three programs are aimed at identifying and removing individuals who may pose a threat to public safety, delegating authority to enforce immigration laws to local law enforcement fundamentally changes the relationship between law enforcement and the communities they police, which may lead to multiple adverse effects. A primary concern with such a program is the potential to lead to racial profiling. That is, law enforcement agents wishing to identify and remove undocumented immigrants may specifically target individuals who “look like immigrants.” Given that a 2012 US Department of Homeland Security (DHS) report estimated that 75 percent of the 11.4 million undocumented immigrants in the United States hail from five Latin American countries (Mexico, El Salvador, Guatemala, Honduras, and Ecuador) (Baker and Rytina 2012), it is not unreasonable to believe that implementation of a program to identify and remove undocumented immigrants would lead to an increase in arrests within the Hispanic community. Additionally, if Hispanics feel targeted — regardless of their immigration status — they may avoid interaction with law enforcement. When victims and witnesses are fearful of reporting crimes, communities become less safe.

Under mounting concerns of abuse and questions over the effectiveness of these programs, the Obama administration took actions to curtail them. Secure Communities was discontinued in 2014, and replaced by the Priority Enforcement Program. The Priority Enforcement Program limited the offenses for which ICE would pursue deportations, thus limiting the scope of the 287(g) program in the process. However, an executive order signed on January 25, 2017 has effectively reversed the Obama administration's actions by ending the Priority Enforcement Program, reinstating Secure Communities, and expanding the 287(g) program.² Given these changes to immigration policy, it is critical to understand how individuals living in communities where these programs are implemented are affected.

This study explores the impact of interior immigration enforcement on local communities by examining the effects on the arrests of Hispanics in Frederick County, Maryland that resulted from the implementation of the 287(g) program in 2008. The results indicate that

² Enhancing Public Safety in the Interior of the United States, Exec. Order No. 13768, 82 Fed. Reg. 8799 (Jan. 25, 2017).

following the implementation of the 287(g) program, arrests of Hispanics county-wide decreased, suggesting that members of the Hispanic community took steps to avoid contact with law enforcement. However, changes in arrest rates were smaller in jurisdictions policed by partner agencies participating in the program than in jurisdictions policed by agencies not participating, suggesting enforcement efforts were redirected toward the Hispanic community as a result of the program.

II. The 287(g) Program

A. General Structure and History

SECTION 287(G) AGREEMENTS

INA § 287(g) allows the federal government to enter into voluntary partnerships with state and local law enforcement agencies to enforce immigration law. Participating agencies negotiate a joint MOU with ICE outlining the terms of the agreement. Upon completion of training, officers of the partner agency receive delegated authority to enforce immigration law. Trained officers are then authorized to inquire into an individual's immigration status. If an individual is deemed to be in the country illegally, then the agency can issue a detainer allowing them to hold the individual for up to 48 hours before transferring them into ICE custody (Capps et al. 2011, 13-14).

The program can be implemented in three models. The first is the Jail Enforcement Model. Under this model, 287(g) officers inquire into an arrestee's immigration status as part of the intake process. The key feature of the Jail Enforcement Model is that individuals must be arrested for some other crime or civil offense in order to start the process. The second model is the Task Force Model. In the Task Force Model, officers are trained to inquire about immigration status in the field, and can issue arrest warrants for immigration violations even when the individual is not suspected of any criminal offense. The third model is the Hybrid Model, which combines both the Jail Enforcement Model and the Task Force Model (Capps et al. 2011, 14-15; Armenta 2012).

Although legislation authorized the 287(g) program in 1996, the first partnership was not established until 2002, when Florida entered into an agreement with ICE under the auspices of fighting terrorism in the wake of 9/11. Since then the number of partnerships has grown substantially. Currently, there are 37 agreements in place (ICE 2017), but this number has fluctuated over time. One of the key reasons for the fluctuation is that some participating agencies have had their agreements revoked (Duda 2012), while others have decided not to renew their agreements. A series of changes under the Obama administration contributed to agencies choosing not to renew.

In 2009, DHS announced a new standardized agreement that would provide for more federal oversight and focus enforcement priorities toward "dangerous" criminals (Capps et al. 2011). In 2011, ICE Director John Morton issued two memos urging ICE attorneys to exercise prosecutorial discretion in immigration matters, allowing the agency to exercise

their discretion in deciding whether or not enforce immigration laws against certain individuals. In particular, the memos directed the agency to focus resources on individuals who posed a serious threat to public safety or national security, and made it ICE policy not to deport victims and witnesses of crimes, except under special circumstances (Wadhia 2011). These changes, however, were somewhat ambiguous and allowed for wide discretion in enforcement priorities.

In 2014, enforcement priorities were codified in a memo by DHS Secretary Jeh Johnson that rescinded the Morton memos and established the DHS-wide Priority Enforcement Program. In outlining the enforcement priorities, the Secretary set the highest priority (Priority 1) to cases involving aliens who were apprehended at the border, were engaged in or suspected of terrorism or espionage, active in street gangs, or convicted of serious felonies. The memo indicated that removal of these aliens “must be prioritized” unless there were “compelling or exceptional factors” indicating that these should not be priorities. Language for Priority 2 violators, those with multiple or significant misdemeanors, and Priority 3, other immigration violations, was decidedly less strong. According to the memo, these immigrants “should be removed” unless in “the judgement” of certain DHS officials, “there are factors indicating the alien is not a threat to national security, border security, or public safety” (Johnson 2014). Taken together, these actions substantially limited the number of immigrants whose removal would be prioritized, thus limiting the effect of local agencies’ participation in the 287(g) program.

SECURE COMMUNITIES

In 2008, DHS began the rollout of Secure Communities. Under the Secure Communities program, biometric information of anyone arrested in participating jurisdictions would be forwarded to ICE to determine immigration status. If an arrestee were determined not to be a US citizen, ICE would evaluate the case and make a determination regarding whether to deport based on legal status and criminal history. The implementation of Secure Communities in a jurisdiction made many of the functions of the 287(g) program redundant. With Secure Communities expected to be implemented nationwide by 2013, in 2012 ICE announced that it would not renew any 287(g) agreements with state or local agencies. However, under mounting legal pressure, Secure Communities was discontinued in 2014. After Secure Communities was discontinued, ICE continued to renew previous 287(g) agreements and enter into new agreements with state and local agencies. The executive order signed January 25, 2017, however, reinstated Secure Communities and called for a further expansion of the 287(g) program. Thus, it is expected that more jurisdictions will participate in the 287(g) program in the future.

B. Frederick County, Maryland

Frederick County Sheriff’s Office (FCSO) implemented the 287(g) program on August 1, 2008.³ According to the county government website, FCSO “is 1 of only 6 Sheriff’s

³ The Frederick County government website indicates that the jail enforcement program began in April 2008. However, in a personal communication with the Frederick County Sheriff’s Office, the author was told both programs began on August 1, 2008. Results of the empirical exercise below are robust to using April 2008 as the start date. Results are available upon request.

Offices nationwide” to participate in the Hybrid Model of the 287(g) program, under which 16 correctional officers from the jail and 10 law enforcement deputies who work in the field are trained to identify and begin deportation proceedings against undocumented immigrants (Frederick County Government 2016). The use of the Hybrid Model expands the reach of the 287(g) program beyond that of the Task Force Model. Although FCSO is the only law enforcement agency operating in Frederick County with an MOU with ICE, since FCSO operates the county jail, anyone arrested by any agency in Frederick County that is processed into the jail is subject to immigration screening as part of the jail intake process. In fact, at a public meeting of the 287(g) steering committee in June, 2015, FCSO reported that of the 1,348 detainees issued by FCSO between 2008 and 2015, only 328 were issued to individuals arrested by FCSO. The remaining detainees were issued to individuals arrested by the Frederick Police Department (780), the Maryland State Police (170), and other local agencies (70) (Jenkins 2015).

In addition to being one of the few sheriff’s offices to participate in the Hybrid Model, what also makes FCSO’s participation in the 287(g) program stand out is that Frederick County does not have a particularly large immigrant population. In the 2010 census, only 8.9 percent of the county’s population was reported as foreign-born. This is well below the national average of 12.7 percent, and even further below other counties which have participated in the program, such as Maricopa County, Arizona (15.9 percent) and Harris County, Texas (25 percent) (US Census 2016). Yet despite the low immigrant population, and the fact that undocumented immigrants arrested (as determined by the number of detainees issued) represent less than two percent of total arrests, Frederick County was, until 2016,⁴ the only jurisdiction in Maryland to participate in the program, and renewed its MOU in 2016.

III: Interior Immigration Enforcement and the Chill Effect

Interior immigration enforcement programs are often promoted as being designed to improve public safety. In fact, Executive Order No. 13768, which ended the Priority Enforcement Program, reinstated Secure Communities, and called for expansion of the 287(g) program, is titled, “Enhancing Public Safety in the Interior of the United States.” While it is understandable that removing individuals with serious criminal records would improve public safety, there is no evidence that programs like Secure Communities and 287(g), which are aimed at general immigration enforcement, improve public safety. Furthermore, there is mounting evidence that these programs may, in fact, make communities less safe.

The underlying assumption in the public safety argument is that immigrants are prone to crime, so removing immigrants will reduce crime. This premise, however, has been shown to be false. Numerous studies have shown that immigrants are less likely than natives to engage in criminal behavior (e.g., Hagan and Palloni 1999) and less likely to be incarcerated (e.g., Butcher and Piehl 1998; Landgrave and Nowrasteh 2017). Furthermore, there is resounding evidence that neighborhoods and cities with more immigrants have lower crime rates (Kubrin [2014] cites 15 studies that confirm this point).

If immigrants are, on average, less likely to be criminals than natives, it stands to reason that

⁴ Harford County, Maryland entered into an agreement with ICE in October 2016.

interior enforcement would have little impact on reducing crime. Indeed, several studies examining the Secure Communities program found that there was no discernable effect on public safety (Treyger, Chalflin, and Loeffler 2014; Cox and Miles 2013).

Perhaps even more problematic is the fact that mounting evidence suggests that local immigration enforcement may make communities less safe. As local police increase immigration enforcement efforts, members of the community may begin to distrust and avoid law enforcement altogether. If victims and witnesses are afraid to report crimes to law enforcement, this will lead to a net reduction in public safety. Previous studies have documented evidence of this “chill effect,” with some Hispanics, regardless of legal status, reporting that they stop driving to prevent being stopped for a traffic violation, and some who go so far as to avoid leaving the house (Nguyen and Gill 2016; ACLU 2009). Additionally, Theodore and Habans (2016) found that substantial portions of the Latino community, both immigrant and non-immigrant, were reluctant to voluntarily report crimes to police when jurisdictions participated in immigration enforcement programs, such as Secure Communities and the 287(g) program. They find that non-immigrant reluctance to contact police is more likely when individuals have undocumented associates. However, there is also evidence that ICE has arrested US citizens under Secure Communities (Martinez and Iwama 2014).

Furthermore, in communities with multiple law enforcement agencies, participation by one agency may also lead to growing mistrust of all local agencies. In some cases, this may be because individuals might not be able to differentiate between the agencies that can and cannot enforce immigration laws (Nguyen and Gill 2010). In other cases, like the 287(g) program in Frederick County, all arrestees may be subject to immigration screening as part of the jail intake process, regardless of the arresting agency.

IV. Model and Data

The data used in this analysis were compiled from individual arrest records for all arrests made by the Frederick Police Department (FPD) and the Frederick County Sheriff’s Office for the period between January 1, 2006 and December 31, 2013. The data were obtained through a series of Public Information Act requests. Data were also gathered from several surrounding jurisdictions; however, all of these reporting agencies either did not record Hispanic ethnicity for the entire period of interest or had too few arrests to be useful. Thus, the data used in this study allow only for a partial control of the treatment. Figures 1 and 2 illustrate the monthly arrests by ethnicity for each agency. The red vertical line indicates when the 287(g) program was implemented. From these figures it can be seen that whites represent the largest share of arrests for both agencies, followed by blacks, then Hispanics.⁵ However, the share of black and Hispanic arrests, relative to white arrests is much smaller for FCSO than FPD. Table 1 provides summary statistics of the arrest data. The average number of monthly arrests across all races and ethnicities is similar between the two agencies, but the FCSO arrests more whites, on average, than the FPD, and the FPD arrests

⁵ Arrest records for both jurisdictions record race as either white, black, or Asian, and ethnicity as Hispanic or non-Hispanic. For the purposes of this study, white and black refer to non-Hispanic populations, whereas Hispanic includes both white and black Hispanics.

more black and Hispanic people than FCSO. This difference largely reflects the differences in demographics between the city and county populations, i.e., the city is more diverse than the rest of the county. According to the 2010 census, the city of Frederick's population is 63.9 percent white, 18.6 percent black, and 14.4 percent Hispanic. Frederick County (excluding the city) is 88.4 percent white, 4.8 percent black, and 4.6 percent Hispanic (see Table 2).

Figure 1. Monthly Arrests by Race/Ethnicity, Frederick County Sheriff's Office

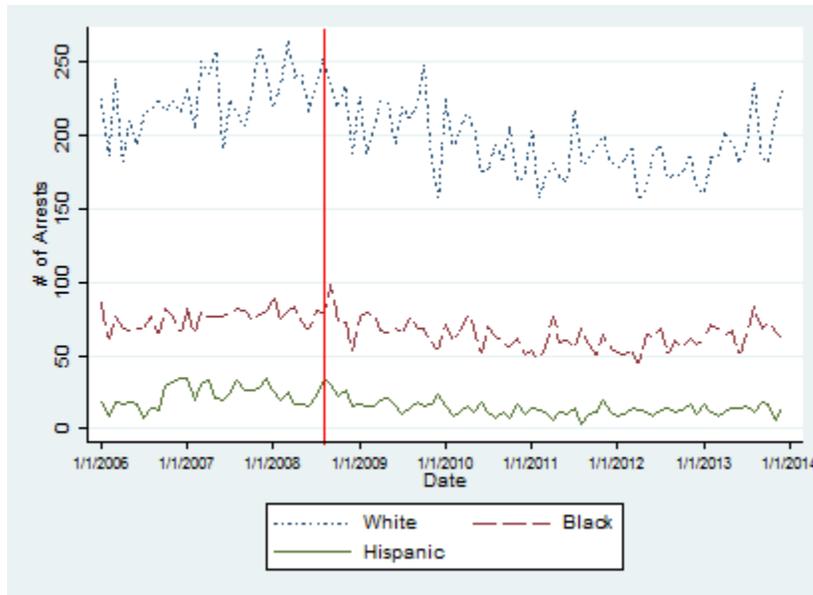


Figure 2. Monthly Arrests by Race/Ethnicity, Frederick Police Department

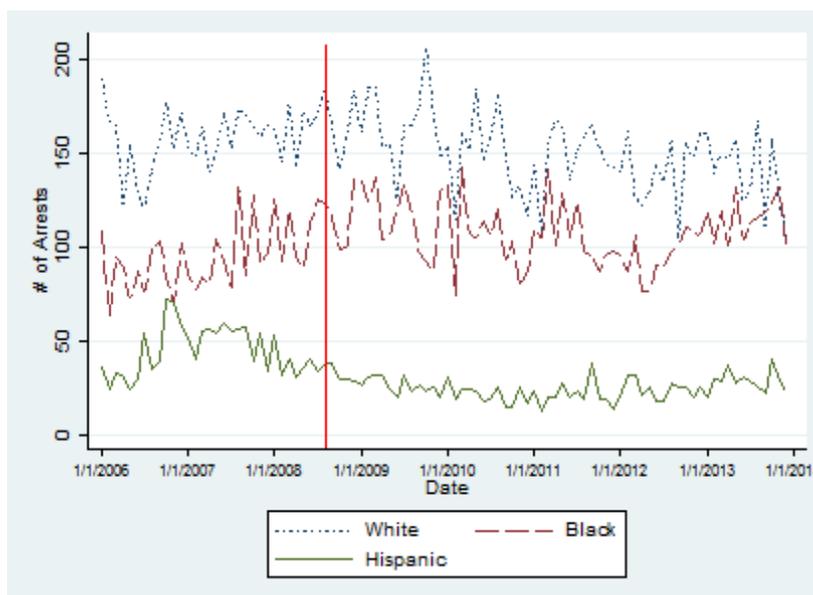


Table 1. Average Monthly Arrests

	FCSO		FPD	
	Pre-287g	Post-287g	Pre-287g	Post-287g
Total	323.97	274.09	300.42	286.92
White	223.94	193.96	157.42	149.66
Black	75.42	63.87	94.87	108.09
Hispanic	22.55	14.12	45.13	25.57

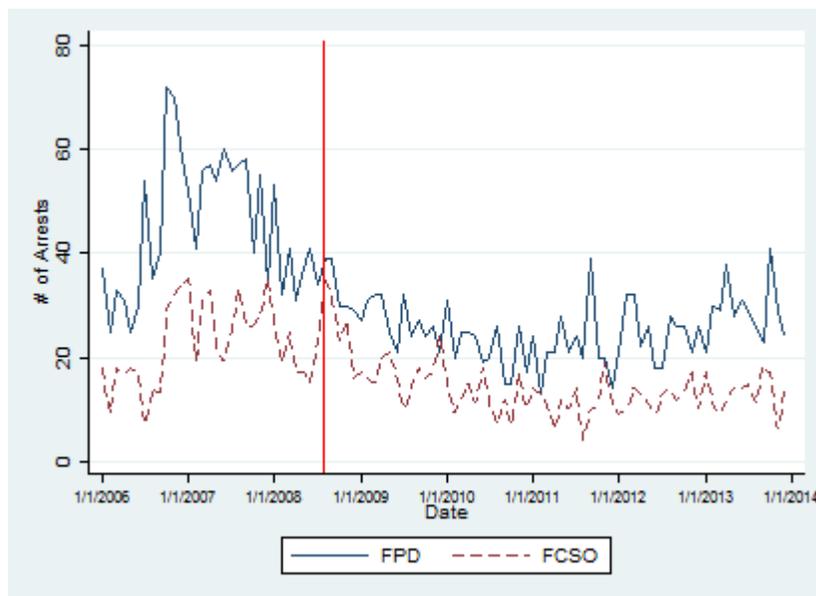
Table 2. Frederick County Demographics

	Frederick County	Frederick (City)	County (excluding city)
Population	233,385	65,293	168,146
Foreign-born (%)	8.9	15.2	6.5
Foreign-born, noncitizen (%)	4.8	8.9	3.3
White (%)	81.5	63.9	88.4
Black (%)	8.6	18.6	4.8
Hispanic (%)	7.3	14.4	4.6

Data: US Census Bureau 2010 Decennial Census. See US Census Bureau (2015).

For both agencies, average monthly arrests fell in the period following the implementation of the 287(g) program by the FCSO, both in total and across demographic groups, with the exception that black arrests by the FPD increased. Figure 3 shows only Hispanic arrests across the two jurisdictions. In addition to showing that FPD arrests more Hispanics than FCSO, on average, Figure 3 also highlights that the arrests between the two jurisdictions follow similar trends, both before and after implementation of the 287(g) program.

Figure 3. Hispanic Arrests by Agency



The primary empirical question is whether implementation of the 287(g) program led to differences in arrest patterns among the various racial-ethnic groups in Frederick County, both overall and between arresting agencies. This question is addressed through the use of a difference-in-difference estimator. Difference-in-difference estimators are commonly used in public finance and other economic literature to identify effects of policy changes (St. Clair and Cook 2015). The general concept of a difference-in-difference model is to examine differences in an outcome variable, in this case the number of arrests, between a treatment and control group before and after a policy is implemented. After controlling for individual and time fixed effects, the remaining difference is ascribed to the policy change (Angrist and Pischke 2009). The model for this study takes the following form:

$$arrests_{it} = \alpha + \beta_1 FCSO + \beta_2 287(g) + \beta_3 (FCSO) * (287(g)) + \Gamma X + \epsilon$$

The dependent variable, $arrests_{it}$, is the number of arrests of people from racial/ethnic group i in month t . The model is estimated separately for each racial/ethnic group. The independent variables include: 1) an agency fixed effect, $FCSO$, equal to one if the arresting agency was the Frederick County Sheriff's Office, 2) a time fixed effect, $287g$, equal to one if the month occurred after the program was implemented, and 3) an interaction between these two variables. The vector X represents a series of control variables which include a time trend variable and the city and county unemployment rates, and ϵ is a random error term. The coefficient estimate for β_1 represents the average difference in arrests between the two agencies across the entire period of study. The coefficient estimate for β_2 is a change in arrests common to both jurisdictions following the implementation of the 287(g) program. Finally, the coefficient estimate of β_3 is the change in arrests specific to the Frederick County Sheriff's Office following the implementation of the 287(g) program.

Given the nature of the 287(g) program in Frederick County and the nature of the data, the model above allows for testing of two separate effects of the 287(g) program. Since FCSO operates a hybrid model 287(g) program, the effects can be separated between the jail and task force functions of the program. Since all arrestees are processed in the Frederick County Jail, the jail enforcement function of the hybrid model affects both jurisdictions. Hence, the estimated results of β_2 can be interpreted as the effect of the jail enforcement function. However, since the task force function of the program applies only to FCSO, this would not be expected to have an effect on the arrest behavior of the FPD. Thus, the estimates of β_3 , which are specific to FCSO, can be interpreted as the effect of the task force function of the program.

The first hypothesis is that implementation of the 287(g) program creates a distrust between the Hispanic community and the police. If this is true, then we would expect to see a decrease in arrests by both agencies after the program goes into effect. Thus, we expect the coefficient estimate for the post-287(g) indicator variable, β_2 , to be negative. The second hypothesis is that the program leads to racial profiling by the participating agency. If this is true, then we expect the coefficient estimate on the interaction term, β_3 , to be positive.

V. Results

A. Main Results

Table 3 presents baseline estimates of the effects of the 287(g) program on arrests of Hispanics across several lengths of time following the implementation of the program.⁶ For all specifications, the data begin in January 2006. Columns 1, 2, and 3 present results for arrests with the data ending one, two, and three years after the program went into effect, respectively. Column 4 presents results for the entire data set. In general, all four sets of results follow the same pattern. The negative coefficient for FCSO indicates that, on average, the Frederick County Sheriff's Department arrests fewer Hispanics per month than the Frederick Police Department. This result is as expected, given the demographic differences between the city and the county. The negative coefficient for post-287(g) indicates a decrease in arrests across both agencies following the implementation of the 287(g) program. There are two factors that could be driving this result. First, the arrests of Hispanics could have fallen because Hispanics as a share of the population has fallen. While there is some evidence that the Hispanic, noncitizen population fell immediately following the implementation of the 287(g) program (Capps et al. 2011), by 2013 the Hispanic population, both native and foreign-born, had increased in both absolute and relative terms (US Census Bureau 2016). Thus, if this were the driving factor, we would expect this effect to decline as the Hispanic population rose. However, this effect is persistent across all of the estimates, and grows as the length of time following the 287(g) program's implementation increases. Thus, these results are more consistent with the hypothesis of a "chill effect," in which the Hispanic population is more hesitant to interact with law enforcement, resulting from the jail enforcement portion of the 287(g) program in Frederick County. The positive and significant coefficient for the interaction term between the policy variable and FCSO, however, indicates that the fall in arrests was not uniform across jurisdictions. That is, the rate at which arrests declined by FCSO was significantly slower than that of FPD following the implementation of the program.

While it is tempting to ascribe this result strictly to the task force portion of the 287(g) program, there are, however, two ways to interpret this result. The first is that the FCSO more aggressively targeted the Hispanic community. The second is that the FPD, knowing that arrestees would be subject to the program upon intake into the county jail system, exercised more discretion in arrests and reduced the number of arrests they would have otherwise made.

⁶ To control for potential bias resulting from serial correlation (Bertrand, Duflo, and Mullianathan 2004), reported standard errors are obtained using a vector error correction model.

Table 3. Difference-in-Difference Estimates, Dependent Variable: Monthly Arrests of Hispanics

	(1)	(2)	(3)	(4)
	One year	Two year	Three year	Full sample
Post-287g	-14.546*** (2.771)	-17.921*** (2.602)	-20.018*** (2.551)	-19.560*** (2.457)
FCSO	-22.581*** (2.750)	-22.581*** (2.736)	-22.581*** (2.727)	-22.581*** (2.714)
(Post-287g)*(FCSO)	12.581** (3.728)	13.164*** (3.232)	13.025*** (3.096)	11.134*** (2.903)
Constant	45.129*** (2.364)	45.129*** (2.351)	45.129*** (2.343)	45.129*** (2.333)
<i>N</i>	86	110	134	192
<i>F</i>	27.889	36.861	47.401	81.341
<i>P</i> (<i>f</i> > <i>F</i>)	0.000	0.000	0.000	0.000
<i>R</i> ²	0.554	0.592	0.618	0.643

Robust standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Two additional pieces of evidence can help shed light on which of these two interpretations best fits our results. First, we can compare the number of detainees issued for arrestees by the two agencies. As noted above, FCSO reported that between 2008 and 2015, 780 detainees were issued for individuals arrested by the FPD, whereas 328 were issued for individuals arrested by the FCSO. Given the relative arrest numbers between the two agencies, both total numbers and for demographic splits, if the FPD was reducing its rate of arrest, we would expect to see a much smaller number of detainees being issued for FPD arrestees. For further evidence, we can compare the outcomes for Hispanics to other demographic groups. Tables 4 and 5 present results of estimating the difference-in-difference model on arrests for whites and blacks, respectively. In Table 4 the coefficient for the post-287(g) period is not significant, indicating no uniform impact on whites across jurisdictions following the implementation of the program. However, in three of the four specifications, the coefficient for the interaction term is negative and significant. This result implies FCSO arrested fewer whites following the implementation of the program, but FPD did not. In Table 5 the coefficient for the post-287(g) period is positive and significant, indicating that more blacks were arrested, on average, while the program was in place. However, the sign and magnitude of the coefficient for the interaction term shows that this increase was due to increases in arrests by FPD and, in fact, arrests of blacks by FCSO fell during the 287(g) period. Taken together, this suggests a shift in attention by the FCSO away from the white and black community toward the Hispanic community following the implementation of the 287(g) program, which is most likely attributable to the implementation of the task force program.

Thus, the overall results suggest that while the implementation of the 287(g) program in the jail system led to a “chill effect” across the county among the Hispanic community, the task force program resulted in the FCSO arresting 11 to 13 more Hispanics per month than would be expected without the program. As noted above, the majority of undocumented immigrants hail from five Latin American countries. And, in fact, 88 percent of detainees issued in Frederick County were issued to immigrants from Mexico, El Salvador, Honduras, and Guatemala (Jenkins 2015). It is reasonable to expect that in the course of identifying and arresting undocumented immigrants, the task force would lead to some increase in Hispanic arrests. However, the effect identified above is disproportional to the number of detainees issued to individuals arrested by the FCSO. Between 2008 and 2015, detainees were issued for FCSO arrestees at an average of 3.9 per month. This represents roughly one-third of the increase in Hispanic arrests identified above.

Table 4. Difference-in-Difference Estimates, Dependent Variable: Monthly Arrests of Whites

	(1)	(2)	(3)	(4)
	One year	Two year	Three year	Full sample
Post-287g	5.747 (6.142)	4.581 (5.111)	-1.392 (4.737)	-7.758 (3.965)
FCSO	66.516*** (4.821)	66.516*** (4.796)	66.516*** (4.780)	66.516*** (4.757)
(Post-287g)*(FCSO)	-12.933 (9.237)	-19.849* (8.013)	-22.572** (7.375)	-22.224*** (6.174)
Constant	157.419*** (2.963)	157.419*** (2.947)	157.419*** (2.937)	157.419*** (2.924)
<i>N</i>	86	110	134	192
<i>F</i>	79.369	81.756	86.306	112.947
<i>P</i> (<i>f</i> > <i>F</i>)	0.000	0.000	0.000	0.000
<i>R</i> ²	0.742	0.684	0.641	0.633

Robust standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 5. Difference-in-Difference Estimates, Dependent Variable: Monthly Arrests of Blacks

	(1)	(2)	(3)	(4)
	One year	Two year	Three year	Full sample
Post-287g	24.296*** (5.220)	19.087*** (4.852)	17.018*** (4.380)	13.221*** (3.815)
FCSO	-19.452*** (3.484)	-19.452*** (3.466)	-19.452*** (3.454)	-19.452*** (3.438)
(Post-287g)*(FCSO)	-26.715*** (6.213)	-25.048*** (5.429)	-26.687*** (4.895)	-24.779*** (4.205)
Constant	94.871*** (3.236)	94.871*** (3.219)	94.871*** (3.208)	94.871*** (3.194)
<i>N</i>	86	110	134	192
F	43.365	48.686	69.583	122.982
P(f > F)	0.000	0.000	0.000	0.000
R ²	0.584	0.597	0.630	0.663

Robust standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Since crime rates can fluctuate both seasonally and with other economic conditions (Andresen 2015), Table 6 estimates the model on the full sample for all racial/ethnic groups, and introduces controls for the unemployment rate and a time trend. In Column 1, the coefficient for the post-287(g) period is negative and significant, but smaller than that of the baseline model. However, the interaction term is approximately the same size as in the baseline model and highly significant. Thus, after controlling for other factors, we find a somewhat smaller “chill effect” associated with the jail enforcement program, while the effects of the task force program are robust to the inclusion of controls. In Column 2, we find that the results for black arrests are robust to inclusion of controls, with the number of arrests by FPD increasing in the period following implementation of the 287(g) program, but falling for FCSO. Finally, in Column 3, after controls are included, the coefficient for the post-287(g) period is now significant, indicating an increase in arrests of whites. However, the negative and significant coefficient for the interaction term indicates a shift in attention away from whites by the FCSO.

Table 6. Difference-in-Difference Estimates, Dependent Variable: Monthly Arrests

	(1)	(2)	(3)
	Hispanic	Black	White
Post-287g	-7.438* (3.160)	18.984** (6.945)	21.265* (8.558)
FCSO	-21.899*** (2.492)	-19.679*** (3.327)	67.688*** (4.520)
(Post-287g)*(FCSO)	11.604*** (2.637)	-24.936*** (4.004)	-21.416*** (5.625)
Unemployment Rate	-2.933*** (0.751)	0.979 (2.002)	-5.047 (2.651)
T	0.789*** (0.223)	1.916*** (0.430)	2.105** (0.659)
t ²	-0.021*** (0.005)	-0.054*** (0.010)	-0.054** (0.017)
t ³	0.0001*** (0.00003)	0.0003*** (0.0001)	0.0003** (0.0001)
Constant	47.355*** (4.022)	76.273*** (8.676)	154.658*** (12.434)
N	192	192	192
F	75.391	81.411	66.414
P(f > F)	0.000	0.000	0.000
R ²	0.729	0.726	0.719

Robust standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$ ***B. Robustness Checks***

This section explores the robustness of the results by introducing a series of falsification tests. The falsification tests are designed to rule out the possibility that the results presented above are the result of the implementation of the 287(g) program and not some other underlying causal factor. Three separate falsification tests are conducted below.

First, the data are examined to determine if there is a difference in arrest trends prior to the implementation of the program. The absence of a preexisting trend indicates the number of arrests for the two jurisdictions followed parallel paths prior to the implementation of the 287(g) program. It is assumed that without the introduction of the program that the arrest patterns would have remained parallel. Thus, the observed difference above is attributable to the implementation of the 287(g) program.

The second falsification test is the nonequivalent dependent variable test. That is, the dependent variable is replaced with another variable that is related to the number of arrests, but should not be affected by the policy change. For this exercise, the dependent variable of Hispanic arrests is replaced with the unemployment rates in Frederick County and the city of Frederick. Since crime and unemployment are correlated, if we find the difference-in-difference coefficient to be significant, this would indicate that some other factor is affecting both the unemployment and arrest rates. If not, this provides further evidence of the validity of the results above.

The final falsification test is to choose a different “random” policy date to test for a placebo effect. This tests whether the results above may be a result of some other policy that could have gone into effect after the 287(g) program was implemented. In this test the policy date is chosen to be February 2012.⁷

1. PREEXISTING TREND

A key assumption in performing a difference-in-difference analysis is that the two jurisdictions followed parallel trends prior to the policy change. This section uses two methods to test that assumption. For both tests, the data are restricted to include only the time period prior to the policy change, January 2006 to July 2008. The first test follows the method used by Finkelstein (2002) and introduces discrete policy change variable to separate the data into “before” and “after” periods, and repeats the difference-in-difference technique above. The test is repeated for three different policy dates at each quarter of the data. Since choice of a policy date can be somewhat arbitrary in a test of this type, an additional test introduces a continuous time trend variable to examine the overall trend in the data. In all cases, if the assumption of parallel trends holds, it is expected that the coefficient estimates for the interaction term between FCSO, and the policy dates and trend variable will be insignificant. Results of these tests are presented in Table 7. For all four specifications, the interaction term coefficient estimates are insignificant. Thus, while there were changes in arrests in the period prior to the implementation of the 287(g) program, as evidenced by the significant coefficients of the policy variable in Columns 1 and 3, these changes were common to both FCSO and FPD.

⁷ In this case, the “policy” that took effect was that the author was applying for a job in Frederick County.

Table 7. Preexisting Trend Tests

	(1)	(2)	(3)	(4)
	Q1	Q2	Q3	Continuous trend
Post-policy	15.337*** (4.037)	0.783 (4.722)	-8.655* (3.951)	
FCSO	-19.000*** (3.499)	-23.250*** (4.474)	-23.875*** (3.343)	-24.439*** (5.922)
(Post-policy)*(FCSO)	-4.826 (4.541)	1.383 (5.475)	5.732 (4.599)	
Trend				0.124 (0.259)
(Trend)*(FCSO)				0.116 (0.295)
Constant	33.750*** (3.159)	44.750*** (3.816)	47.083*** (2.848)	43.148*** (5.267)
<i>N</i>	62	62	62	62
F	48.637	25.031	30.020	25.097
P(<i>f</i> > F)	0.000	0.000	0.000	0.000
R ²	0.671	0.536	0.563	0.545

Robust standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$ **II. NONEQUIVALENT DEPENDENT VARIABLE**

The next falsification test explores the possibility of some other coincident factor influencing the crime rate. Returning to the full data set, the dependent variable is replaced with a variable that is related to the number of arrests, but should be unaffected by the policy change. For this exercise, the chosen dependent variable is the unemployment rate. As shown in the results above, the unemployment rate is significantly related to the number of arrests of Hispanics, but not a significant predictor of the number of white or black arrests. It is possible that some other factor, which happened around the same time as the policy change, is affecting both variables. For example, the timing of the implementation of the 287(g) program coincides with the beginning of the Great Recession. Thus, it is possible that other macroeconomic factors may influence both the unemployment rate and the observed number of arrests. If this is the case, it is expected that the difference-in-difference estimator would be significantly related to the unemployment rate. However, if the difference-in-difference estimator is not significantly related to the unemployment

rate, this provides further evidence that the results presented above are due to the policy change, and not some other external shock. Results of this test are presented in Column 1 of Table 8. While the coefficient estimates indicate that the unemployment rate was higher following the policy change, and the unemployment rate was higher in the county than the city, the interaction term is insignificant, indicating that the unemployment rates in the two areas followed the same trend in the post-policy period.

Table 8: Falsification Tests

Dependent Variable	(1) Unemployment Rate	(2) Hispanic Arrests
Post-policy	1.984*** (0.283)	3.330 (2.466)
County	0.232** (0.087)	
(Post-policy)*(County)	0.160 (0.137)	
FCSO		-14.313*** (1.334)
(Post-policy)*(FCSO)		0.988 (1.916)
Unemployment Rate		-2.835*** (0.713)
t	-0.066*** (0.011)	0.774*** (0.197)
t ²	0.003*** (0.000)	-0.021*** (0.004)
t ³	-0.000*** (0.000)	0.000*** (0.000)
Constant	3.339*** (0.108)	43.439*** (3.217)
N	192	192
F	523.420	51.613
P(f > F)	0.000	0.000
R ²	0.898	0.687

Robust standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

III. UNRELATED FUTURE EVENT

The final falsification test examines whether the observed difference-in-differences may be due to some other event that occurred in the post-policy period. Similar to the test for preexisting trends, this test involves creating an alternative policy variable and performing a difference-in-difference estimation to determine if there is a placebo effect. For this test, the alternative policy date of February 2012 is chosen. Results of this test are presented in Column 2 of Table 8. As expected, the coefficient for FCSO is negative and significant, indicating that FCSO arrests fewer Hispanics than FPD, on average. However, the coefficients for the post-policy variable and the interaction term are both insignificant. That is, this test fails to find a placebo effect in the post-policy period, further supporting the claim that the results found above are due to the implementation of the 287(g) program.

VI. Concluding Remarks

This study examines the effects of the implementation of the 287(g) program in Frederick County, Maryland. The nature of the implementation allows for the testing of two distinct effects. The first is whether the implementation in the jail system led to a “chilling effect,” in which Hispanics, regardless of immigrant status, began to distrust and avoid law enforcement. The second is whether implementation of the field program led to an increase in arrests by the FCSO. The results presented above find evidence of both effects. Following the implementation of the 287(g) program, arrests of Hispanics fell substantially across both jurisdictions. This drop in arrests was specific only to the Hispanic community, with no change occurring among whites and an increase in arrests of blacks, which suggests that there was a “chill effect” occurring in the Hispanic community. However, the decrease in arrests fell much more slowly for the FCSO than for the FPD. This fact combined with the finding that arrests of whites and blacks by the FCSO fell significantly following the implementation of the 287(g) program suggests a shift in resources by the FCSO directed toward the Hispanic community. This shift in resources led to an increase in arrests which was disproportional to the number of detainers issued against undocumented immigrants. Thus, rather than acting as a surgical tool to identify and deport undocumented immigrants, the 287(g) program led to a biased increase in the arrests of Hispanics, regardless of immigrant status.

The results of this study suggest that many of the concerns associated with the 287(g) program indeed have merit. The increased arrests of Hispanics are consistent with worries that local immigration enforcement will lead to profiling among the Hispanic population. In addition to being a potential violation of civil liberties, this also creates tension between the community and law enforcement. Creating and fostering distrust between law enforcement and the community that they are responsible for serving and protecting results in an unwillingness of the community to cooperate with law enforcement. This “chill effect” can actually undermine public safety by allowing criminals to flourish when victims and/or witnesses are fearful of interacting with police (Kirk et al. 2012). Thus, it is possible that the 287(g) program is making communities less safe, rather than safer.

While it had appeared that the 287(g) program was in decline in previous years, Executive Order No. 13768 has called for an expansion of the program. Furthermore, the executive order also discontinued the Priority Enforcement Program, which substantially limited the

circumstances for which undocumented immigrants would be deported. By focusing on immigrants who pose serious threats to national security or committed a limited number of serious offences, the Priority Enforcement Program reduced the likelihood of immigrants being arrested for minor traffic offenses or other petty crimes for the sole purpose of processing them through the 287(g) program. Removing these safeguards increases the likelihood of racial profiling and harassment by law enforcement. In turn, this increased enforcement will undoubtedly lead to growing mistrust between the Hispanic community and law enforcement, ultimately leading to a reduction in public safety.

There are a number of safeguards that can be implemented in order to mitigate the adverse effects of the Priority Enforcement Program. First, community outreach can help rebuild trust between police and citizens. Ensuring that victims and witnesses will not be interrogated over their immigration status can help improve the likelihood that they will come forward to report crimes. Further, federal and civil oversight can help ensure that law enforcement is not targeting specific groups. Monitoring the rate at which different demographic groups are being arrested for minor crimes is one possible method of identifying evidence of racial profiling and harassment. While this study focuses on a single jurisdiction participating in the 287(g) program, it is highly likely that the results presented above would be similar in other participating jurisdictions. Thus, if the program is to be expanded, it will be necessary to study its implementation in other jurisdictions to determine which practices by participating law enforcement agencies can help reduce the potential for abuse and civil rights violations.

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