

POLICE ARRESTS IN A TIME OF UNCERTAINTY:
THE IMPACT OF 287(G) ON DRIVER'S LICENSE ARRESTS IN A NEW
IMMIGRANT GATEWAY

By

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Introduction

Since the late 20th century, the U.S. immigrant population has become more geographically diverse. Rather than concentrating in major metropolitan areas such as Los Angeles, Miami, Houston, New York City and Chicago, immigrants now live in less populated areas throughout the United States (Donato et al. 2008, Massey and Capoferro 2008). Although some new destinations welcomed the influx of new residents, others witnessed anti-immigrant responses that often led to the introduction of a variety of local immigration enforcement policies and programs. One is the 287(g) program, which requires that local and state enforcement partner with U.S. Immigration and Customs Enforcement (ICE) to screen immigrants for legal status. As of 2011, 72 state and local jurisdictions were participating in the 287(g) program (Capps et. al. 2011).

Studies of policing and race show that minorities experience disproportionately higher rates of stops for minor infractions. For example, failing to signal a turn may serve as a pretext for stopping, questioning, and/or searching individuals (Harris 1997, Davis 1996). Because of the discretion police employ when carrying out their duties, such contact creates opportunities for officers to make arrest decisions based on race and/or ethnicity (Davis 1996). In the case of unauthorized immigrants living in 287(g) jurisdictions, stops for minor infractions have had significant consequences, including a dramatic rise in deportations each year (Nguyen and Gill 2010).

On the whole, few studies examine the impact of 287(g) programs. One important exception is Armenta (2012). Using data from in-depth interviews of police, sheriff deputies and immigrants, and ethnographic observations of ride-alongs with police and other enforcement officers, Armenta (2012) examines how deputized officers come to

think about their roles in immigration enforcement. Although they employ different frames when describing how they feel about immigration enforcement and the immigrants they encounter as they carry out their jobs, officers have limited to no discretion pursuing deportation during the arrest process. However, they do exercise discretion when they pull over and arrest individuals. This discretion has a powerful impact on both the foreign-born and U.S.-born populations especially in new immigrant gateways, given their rapidly growing immigrant populations. One consequence is the large-scale deportation of immigrants.

The objective of this thesis is to contribute to studies that examine the consequences of the 287(g) program. Using a novel data set created from 5,583 driver's license-related narratives about arrests that occurred between 2005 and 2010 in Nashville, I examine pre/post 287(g) differences in arrests and police reporting about such arrests in Nashville's Davidson County. I analyze police narratives and identify patterns of symbolic language. These data show that characteristics of foreignness such as country of origin, language use and legal status became more salient in the arrest narratives written by police officers in Davidson County after the implementation of 287(g). As I argue below, it is likely that the policy itself coupled with the political climate in which it was embedded bestowed relevance on these hitherto secondary traits. Additionally, I argue that these data suggest an ideology of anti-foreignness has emerged among local law enforcement officers since the implementation of the 287(g) program. Moreover, my analysis of police use of symbolic language in these narratives underscores how legal status is both an individual-level attribute and a macro-level social construction that has

consequences for the lives of authorized and unauthorized immigrants (Donato and Armenta 2011).

I begin with a broad description of immigration policy shifts that occurred during the latter half of the 20th century, especially after September 11, 2001. Although policy-makers passed more restrictive legislation since the late 1980s (Espenshade 1995, Donato et al. 1992, Donato and Armenta 2011, Gunkel and Wahl 2012), the terrorist attacks in 2001 led to stronger restrictions as immigration became linked to national security interests, including the large-scale criminalization of immigrants. Following a discussion of policy shifts and a review of prior studies on immigration enforcement, I describe the data I use and present my findings. Results suggest that policing practices shifted after the implementation of 287(g), with potentially serious implications for the foreign born in Davidson County. Although alternative explanations for these observed changes exist, I argue that 287(g) and the anti-immigrant context that surrounded its implementation have played an important role.

Immigration and Immigration Policy in the 20th Century

Table 1 emphasizes recent federal policies related to immigration enforcement. The prevailing system of immigration law began with passage of the Immigration and Nationality Act (INA) of 1952 and codified prior policies into one system (Kandel 2011). In 1954, public pressure to control the border and prevent illegal crossings culminated in the introduction of Operation Wetback, the first enforcement operation along the U.S.-Mexico border aimed to curb unauthorized entry; it resulted in the deportation of more than a million immigrants (Espenshade 1995). Amended in 1965 to abolish the national-origin quotas, the INA has remained largely intact since the 1960s, though its numerical

limits have been adjusted several times. The 1965 amendments eliminated national origin quotas and diversified the national origins of immigrants. As public pressure to control unauthorized migration intensified throughout the 1970s, additional amendments were passed in 1976 including subjecting the number of legal visas available to Mexican migrants to numerical limitations. With fewer legal visas, unauthorized migration and debates around it continued to grow. One consequence was the passage of the Immigration Reform and Control Act (IRCA) in 1986.

Table 1. Timeline of Federal and Local Immigration Enforcement Policies

Year	Description
1942	1st of a series of Bracero guest worker programs passed to relieve wartime labor shortages and permit legal entry of Mexican agricultural workers
1954	Operation Wetback implemented border security to restrict illegal immigration in summer of 1954. More than one million undocumented Mexican deported
1986	IRCA signed into law, creates sanctions for employers who hire undocumented immigrants, grants amnesty to approximately 3 million undocumented and significantly increases border patrol funding
1996	IIRIRA strengthens border enforcement, expands definition of aggravated felonies for which an immigrant could be deported, creates the process of expedited removal, allows for INS and local enforcement collaboration
2001	Patriot Act is signed, gives U.S. attorney general unilateral authority regarding detainment. DHS and ICE created to replace INS
2002	ICE signs first 287g MOA with FL Department of Law Enforcement. By 2012, DHS maintained 72 active MOAs
2003	ICE and DHS fully operational, interior enforcement resources directed to national security investigations
2006	Secure Fence Act enacted authorizing construction of hundreds of miles of additional fencing along southern border; border security funding doubled to \$10.4 billion. Hazelton, PA becomes 1 st municipality to pass an ordinance against undocumented immigration. By 2011, 370 municipalities proposed or implemented similar policies
2008	ICE submits proposal for Secure Communities to Congress, by October 2008 Houston, TX becomes first site for Secure Communities. By August 2012, 3,000 jurisdictions had implemented Secure Communities.
2010	Arizona enacts SB1070, requires immigrants to carry papers at all times and officers to determine a suspect's immigration status during all investigations, detentions or arrests. Alabama, Georgia, Indiana, South Carolina and Utah also pass similar legislative measures
2011	ICE terminates the Maricopa County Sheriff's Office 287(g) MOA and the DHS decreases 287(g) funding by \$17 million for FY 2013

Sources: Donato et al. 1992, McKanders 2011, dhs.gov, ice.gov

IRCA was the first piece of legislation designed to curb unauthorized migration and it permanently altered the context of U.S. immigration enforcement. The legislation targeted unauthorized immigration through three key provisions: employer sanctions, amnesty, and border enforcement (Bean et al. 1987, Donato, Durand and Massey 1992). IRCA was a watershed for enforcement along the U.S.-Mexico border. Specifically, it increased the budget for the Immigration and Naturalization Service (INS) by 50 percent, to approximately \$400 million, to hire additional border patrol officers after 1986

(Donato, Durand and Massey 1992). More resources for border enforcement continued throughout the Clinton and Bush administrations in the 1990s and 2000s (Cornelius 2001). In 1997, only 10 years after IRCA was first implemented, the INS annual budget had increased from approximately \$750 million in 1987 to just over \$3 billion (Department of Justice 2003). By 2006, the budget for the Border Patrol alone exceeded \$1.3 billion and the number of officers manning the border tripled (Durand and Massey 2006, Massey and Riosmena 2010).

One major policy development is a shift toward the criminalization of immigrants. In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which significantly expanded the list of aggravated felonies that could lead to deportation, thereby greatly increasing the number of deportable permanent residents (Morawetz 2000, Stumpf 2006, Menjivar and Abrego 2012). In the 1980s, the primary crimes that led to deportation included murder, drug trafficking and arms trafficking. IIRIRA lowered the threshold for felony charges and changed the minimum sentence length required for deportation to only one year (Morawetz 2000, Stumpf 2006). This meant that misdemeanor crimes such as shoplifting or battery could result in deportation because they often carry sentences up to, but no longer than, 12 months (Morawetz 2000, Johnson 2001).

In 1996, the year when IIRIRA passed, Congress also passed the Antiterrorism and Effective Death Penalty Act (AEDPA). Although it did not receive the same attention that IIRIRA did in the immigration literature, legal scholars argue that AEDPA and IIRIRA were equally effective at criminalizing immigrants (Stumpf 2006). For example, AEDPA established that a single crime of moral turpitude was a deportable offense.

Because a crime of moral turpitude has never been legislatively defined, courts may use discretion to decide whether a defendant's crime is one of moral turpitude. Two examples include an offense that involves fraud, or one for the lowest level of possession of a controlled substance (Morawetz 2000). Additionally, AEDPA lowered the threshold for the mandatory detention of immigrants such that immigrants who had committed violations, such as controlled substance offenses or other crimes of moral turpitude, were subject to detention without the possibility of bond. Scholars have since argued that this provision in AEDPA violates immigrants' legal rights to due process and unnecessarily detains immigrants who do not pose a flight risk (Johnson 2001, Heeren 2010).

One important component of IIRIRA was the 287(g) provision; it allowed state and local governments to enter into a Memorandum of Agreement (MOA) and authorized state and local police to carry out immigration law (Donato and Armenta 2011, Parrado 2012, Capps et al. 2011). The 287(g) is the only program that allows state and local agents to directly enforce federal immigration law (Capps et al. 2011). The program permits three types of implementation: a jail model, a task force model, and a hybrid model. The jail model grants deputized officers the authority to check the immigration status of arrestees, the task force model authorizes deputized officers to check the immigration status of anyone they encounter while on duty, and the hybrid model combines both jail and task force models (Armenta 2012). Interestingly, no local or state jurisdictions implemented 287(g) until after September 11, 2001. The events on that day triggered the implementation of 287(g) programs after immigration enforcement became increasingly associated with homeland security and terrorism prevention.

21st Century Trends in Immigration and Immigration Policy

The attacks of September 11, 2001 ushered in a new era that linked immigration with terrorism both in immigration policy and public discourse (Rodriguez 2008, Gunkel and Wahl 2012, Kim et al. 2011) and continued the expansion of immigration enforcement into the U.S. interior. Almost immediately after 9/11 President Bush signed the Patriot Act into law, enhancing surveillance of all immigrants and authorizing federal officials to observe, monitor or apprehend immigrants suspected of having ties with terrorist organizations (Rodriguez 2008). In November 2002, Congress passed the Homeland Security Act replacing the Immigration and Naturalization Service (INS) with the Department of Homeland Security (DHS). By March of 2003, DHS was fully operational and it included two new bureaus designed to manage exterior and interior immigration enforcement. The Bureau of Customs and Border Protection (CBP) subsumed previous INS agencies that dealt with inspection duties, including Border Patrol. In addition, the Bureau of Immigration and Customs Enforcement (ICE) was in charge of interior enforcement of immigration law (Martin 2003).

Creation of ICE facilitated the rise of state- and local-level immigration legislation. After the Homeland Security Act passed and established a specific bureau responsible for interior enforcement in 2002, U.S. localities began to consider signing agreements with ICE. In 2002, Florida signed the first agreement motivated by its inability to combat terrorism in the wake of 9/11 (Chishti 2009). As of Fall 2012, 72 jurisdictions were actively participating in 287(g); 65 of these jurisdictions implemented the program after 2006 (Capps et al. 2011).

In 2008, ICE also began a new enforcement program. Called Secure Communities, it mandates collection of FBI fingerprint data by ICE officials in every metropolitan area in the United States. Secure Communities is different from 287g because only federal enforcement agencies make immigration arrests. The program notifies ICE of the immigration status of inmates and ICE then places a detainer on the arrestee. Before the arrestee is released, ICE determines whether or not to take the individual into federal custody. Coleman (2012: 168) refers to Secure Communities as “287(g) lite” by expanding nonfederal immigration authority but not guaranteeing that immigration offenders be transported to federal custody. In 2008, Secure Communities began in 14 jurisdictions; by 2012 it was operating in more than 3,000. The program will be implemented in every jurisdiction by the end of 2013.

In addition to the implementation of federal programs at the local level, states and localities have drafted their own immigration legislation in response to growing anti-immigrant sentiment (Armenta 2012, Donato and Armenta 2011, Hopkins 2010, Kim et al. 2011, McKanders 2007). Hopkins (2010) found that sudden influxes of immigrants in localities combined with anti-immigrant rhetoric at the national level induce local opposition to immigrant groups. Creating an index that measures the salience of immigration using ABC and CBS news networks and articles from *USA Today*, Hopkins (2010) argues that the salience of immigration in national news peaked in 2006 and again in 2007 and created a politicized environment in which immigrants became a financial burden as well as a security threat. At the same time, the national discourse increasingly identified problems with immigration and dictated how individuals should think about it (Kim et al. 2011).

Facing mounting pressure from their constituencies, local legislative bodies have begun to consider restrictionist legislation en masse (McKanders 2007). For example, although Hazleton, PA passed the first locally drafted immigration ordinance in 2006, by the end of that year, 570 localities introduced various legislation concerning immigration and 101 communities considered or passed anti-immigrant ordinances (Hopkins 2010, McKanders 2007). By 2007, 1169 bills had been introduced in all 50 states and 18 states had enacted 57 immigration-related bills (McKanders 2007).

At the state level, restrictionist immigration legislation has been on the rise since the introduction of Arizona's Senate Bill 1070. The bill contained the show-your-papers provision that requires Arizona enforcement officers to stop individuals if they have reason to believe that they are unauthorized immigrants (Seldon, Pace and Nunn-Gilman 2011). The law also created new crimes, such as residing unlawfully in the United States and seeking/engaging in unauthorized employment. The passage of SB 1070 subsequently sparked a slew of copycat legislative measures in Alabama, Georgia, South Carolina, Utah and Indiana (Kirk et al. 2012). Yet, in a landmark U.S. Supreme Court decision in June of 2012, the Court struck down many of the SB 1070 provisions, stating: "As a general rule, it is not a crime for a removable alien to remain present in the United States (Supreme Court 2012, 3)." The Court also struck down the provision criminalizing immigrants who seek unauthorized employment, stating that it was directly in conflict with the precedent established by IRCA (Supreme Court 2012).

Does Local Enforcement Work?

Programs such as 287(g) and Secure Communities raise many questions about the ethical, practical and economic consequences of enforcing immigration policies at the

local level. Recently, immigration and legal scholars have begun to study the implications of local immigration enforcement. Much of the impetus behind introducing public measures is the connection between immigration and crime. Studies have shown, however, that immigration does not lead to higher crime rates at either the local or national level (Martinez and Stowell 2012, Nguyen and Gill 2010). In a study of the racial/ethnic gaps in rates of violent crime, Sampson, Morenoff and Raudenbush (2005) found that recent immigrants were less likely to commit violent crimes than U.S.-born individuals and that immigrant neighborhoods had lower relative odds of violence than U.S.-born neighborhoods. Similarly, examining the effects of immigration on local crime and enforcement patterns, Davies and Fagan (2012) found no evidence that higher immigration rates are associated with higher crime rates in neighborhoods in New York City. In fact, neighborhoods with large immigrant populations actually had *lower* crime rates compared to neighborhoods with primarily U.S.-born residents. Despite these findings, immigrant neighborhoods experienced disproportionately higher rates of enforcement, and enforcement tended to be more aggressive and legally formal than in U.S.-born neighborhoods.

Uneven application of law enforcement in immigrant neighborhoods has an adverse effect on public safety because immigrants ultimately feel alienated and abandoned by the very laws that they follow (Nguyen and Gill 2010, Kirk et al. 2012). Examining local enforcement and cynicism of the law, Kirk et al. (2012) found that immigrant communities are less cynical of the law and more likely to cooperate with local authorities than U.S.-born communities. As a result, Kirk et al. (2012) argued that

legislation like 287(g) and SB 1070 are likely to undermine the public safety that they purportedly protect.

287(g)

Table 2 provides information regarding the implementation of 287(g) in Tennessee. Studies that focus on local immigration policies consider whether the 287(g) program is meeting the stated goals of policy makers. Many take an economic approach, arguing that the removal of the unauthorized immigrant population will ultimately improve the employment conditions of U.S.-born low-skilled laborers (Vaughan 2006, Vaughan and Edwards 2009). To examine the extent to which 287(g) successfully reduces immigrant populations and improves employment conditions, Parrado (2012) uses a difference-in-difference method to examine before-and-after effects of 287(g). He found that 287(g) was neither effective in reducing the local Mexican immigrant population nor in improving the employment conditions of U.S.-born low-skilled workers. The key factor reducing the size of the Mexican immigrant population or changing employment trajectories was the economic context, not immigration enforcement.

Table 2. Emergence of 287(g) in Tennessee since 2007

Year	Description
2007	Davidson County Sheriff's Office begins 287(g) Enforcement
2008	Tennessee Highway Patrol signs 287(g) MOA with ICE
2009	Government Accountability Office conducts review of the 287(g) delegation authority; in July ICE asked all partnering agencies to sign revised MOAs for improved oversight and management
2012	Davidson County Sheriff Daron Hall announces that Davidson County will not renew 287(g) MOA with ICE

In a study of 287(g) in North Carolina, Nguyen and Gill (2010) point out that most jurisdictions adopting 287(g) are unaware of the financial burden it imposes on

taxpayers. For example, in William County, VA, the Board of Commissioners increased property taxes by five percent and cut funding from police and fire services to cover the startup costs of implementing 287(g). These include costs for training officers, transporting and incarcerating arrestees, education campaigns, litigation, and foster care for children of arrestees. Nguyen and Gill (2010) argued that the startup, implementation, and maintenance of 287(g) costs millions of dollars for each jurisdiction, much of which falls to taxpayers.

Some studies have focused on the actual implementation of 287(g) and its success at apprehending and removing criminal offenders. Nguyen and Gill (2010) pooled apprehension data from nine jurisdictions in North Carolina and found that, in contrast to targeting criminal offenders, most persons detained via 287(g) had traffic-related misdemeanors. Similarly, Coleman (2012) examined 287(g) in Wake and Durham counties in North Carolina and found that in Wake County, roughly 80 percent of all 287(g) detainees were for misdemeanors and 47 percent of those in 2009 were for driving-related charges. In contrast, Durham used 287(g) as a supplemental tool for anti-gang enforcement and intentionally averted non-criminal immigration investigations. The differences persisted despite the fact that the two jurisdictions are adjacent to one another, suggesting considerable variation in the implementation of 287(g) programs.

Few studies examine the efficacy of 287(g) as a crime deterrent. In fact, no federal regulations required jurisdictions to document crime rates before and after its implementation until 2009. Although self-reports from jurisdictions with operating 287(g) programs often present a positive picture of crime reduction, some scholars question the veracity of these claims. Nguyen and Gill (2010), for example, argued that

local enforcement programs like 287(g) lead to reduction in crime because fewer unauthorized will report crimes because they fear deportation.

Some immigration and legal scholars contend that 287(g) is designed to instill fear and insecurity by infiltrating sites of immigrant social reproduction (Coleman 2009, 2012, Menjivar and Abrego 2012, Singer 2012). According to Menjivar and Abrego (2012), 287(g) is an example of legal violence against immigrants who, with tenuous status, experience immigration laws that instill fear and uncertainty into everyday life. Effects of legal violence include psychological injuries such as fear, shame and anxiety, and other forms of symbolic and structural violence leading to public humiliation and the indefinite separation of families. Coleman (2012) argues that 287(g) shifts immigration enforcement onto streets where immigrants may be apprehended for a simple misdemeanor on their way to school, work, church or other locations and subsequently deported.

In 2009, the Department of Justice (DOJ) opened an investigation of 287(g) jurisdiction Maricopa County in Arizona and its Sheriff Joseph Arpaio. The DOJ examined reported practices and patterns of “unconstitutional search and seizures,” “national origin discrimination,” and failure to provide adequate language services to persons with limited English proficiency (Rodriguez, Chisti, Capps and John 2010, DHS.gov 2011). The investigation led ICE to terminate the task force portion of the MOA with Maricopa County, but the detention component of the agreement remained intact until 2011.

Growing controversies surrounding 287(g) led the U.S. Government Accountability Office (GAO) to conduct a review of the program in 2009 (GAO 2012).

One primary concern was the lack of documentation and data collection, preventing analyses of the program's stated objectives. Without data on apprehensions, there was no way to consistently ensure that 287(g) arrests focused solely on serious criminal offenders. Of the 29 jurisdictions reviewed, the GAO (2012) found that four were using 287(g) authority to process individuals for minor violations like speeding. In addition, in approximately half of the jurisdictions reviewed, local residents believed the program was being used for racial profiling. To address these and other issues, the GAO recommended that ICE improve the 287(g) program, by adding new requirements for data collection and reporting, and clarifying the exact circumstances for which the program should be used (GAO 2012). As a result, ICE required all partnering agencies to sign revised MOAs to improve oversight, communication and management of 287(g) (ICE 2012). Among the improvements were new guidelines that prioritized criminal offenders, implemented a new system of requirements for data collection, revised the training course for deputized officers, and deployed additional ICE supervisors to each field site.

287(g) in Nashville

Consistent with Hopkins' (2010) politicized places hypothesis, the rapid influx of immigration in Nashville combined with salient public discourse about immigration enforcement at the national level led to heightened tensions around the issue of immigration by the mid-2000s. Between 2000 and 2010, the Latino population in Nashville grew from 4.5 to 9.9 percent of the total population. Mexicans comprised the majority of the Latino population, although there were also sizeable pockets of Central and South Americans (Winders 2012). By the mid-2000s, Nashville had barred

unauthorized immigrants from obtaining a number of services, including TennCare, Tennessee's welfare program Families First, labor and workforce development, and drivers' licenses.

With respect to driver's licenses, until 2005 unauthorized immigrants were permitted to obtain driver's licenses in Tennessee. However, a year earlier, restrictive policies began when the unauthorized were permitted to obtain Certificates for Driving (CFD), which were not valid for identification. Just 12 months later, concern over fraud and abuse led to greater restrictions, barring unauthorized immigrants from legally operating a motor vehicle and noncitizens from obtaining a license (Mattson 2012). Amid this shift toward restrictiveness in driver's licenses, the Davidson County's Sheriff introduced 287(g) after a number of prominent criminal cases involved unauthorized immigrants. The Davidson County Sheriff's Office (DCSO) applied for the MOA and, by May of 2007, 287(g) had begun throughout Nashville (Armenta 2012, Mattson 2012).¹

From the outset, the Davidson County Sheriff, Daron Hall, and the Chief of Police, Ronal Serpas, were adamant about keeping the Metro Nashville Police Department (MNPd) and the DCSO separate when it came to the enforcement of 287(g). ICE deputized twelve officers in the DCSO for participation in 287(g) enforcement in Nashville, and these officers received five weeks of training from ICE officials. In contrast, police officers in the MNPd received no training about 287(g) because they were not officially associated with the program. In an interview with John Lamb of the Hispanic Nashville Notebook, Sheriff Hall stated that "we [the MNPd and the DCSO] are two separate agencies and police officers will not even have access to the room where

¹In 2006, six unauthorized immigrants were arrested for homicide during a three-month period (DCSO 2012). The most prominent case was an unauthorized immigrant who killed a Mt. Juliet couple and had previously been arrested for drunk driving.

the 287(g) information system is located (Lamb 2007).” Furthermore, Chief Serpas stated that, after the implementation of 287(g), there had been no change in how MNPD officers approached policing (Howard and Echeagaray 2009).

In this study, I use data on MNPD officers to examine pre- and post-287(g) changes in enforcement behavior. Although different factors may contribute to changes in policing practices between 2005 and 2010, I argue that 287(g) contributed to an anti-immigrant context in which police officers were operating on a daily basis. This context associates immigrants with noncitizens and illegal entry into the United States, creating an “us vs. them” attitude of anti-foreignness. I argue that, after the implementation of 287(g), this attitude becomes more prevalent in the language that officers use in the narratives to describe their encounters with foreign-born arrestees. This is not to argue that the officers writing the narratives were anti-immigrant, but that the passage of 287(g) gave greater salience to characteristics pertaining to the foreignness of arrestees. In this context, officers included information about an individual’s foreignness in their narratives more frequently after the passage of 287(g).

The Social Construction of Legal Status

Many scholars have described how legal status has become socially constructed (Donato and Armenta 2011, Davies and Fagan 2012). Although many studies dichotomize immigrants into authorized and unauthorized, scholars have begun to emphasize the contextual and flexible nature of legal status. Simply dichotomizing immigrants into authorized and unauthorized reifies the us vs. them discourse, emphasizing the ways in which unauthorized immigrants are inherently different from U.S. citizens (Johnson 1996, Calavita 2005). Moreover, use of words such as illegal and

alien has a distancing effect that allows citizens to justify the fact that immigrants have limited rights. (Johnson 1996).

Since the early 1900s, many words have linked immigrants to racial minorities. In the first half of the 20th century, terms such as illegal and alien were associated with Chinese and Irish immigrants (Johnson 1996). By the latter half of the 20th century, these same terms now largely refer to unauthorized Mexican migrant workers. The media contributes as one force behind the semantics of unauthorized immigration, frequently using terms such as illegal immigration and tidal wave, aliens, and hordes to describe migration flows from the global south (Kim et al. 2011, Martinez and Stowell 2012). To garner the largest audience possible, stories that cover immigration often feature drug cartels, high-profile criminal investigations, and promote the perception of a strong link between economic woes and higher crime rates with immigration (Kim et al. 2011, Martinez and Stowell 2012). In a study of 300 articles and 150 television news transcripts, Kim et al. (2011) found that coverage of unauthorized migration between 1997 and 2006 overwhelmingly related immigration to crime and national security, despite empirical evidence to the contrary. Another example is a 2005 memo drafted by pollster Frank Luntz for Republican members of Congress. The memo outlined the terms and talking points to use in the media when discussing immigration (Luntz 2007), advising Republican politicians to relate border security with homeland security, couching restrictions in terms of security, safety and the prevention of terrorism. Since 2001, this kind of rhetoric has proliferated and saturated television and newspaper articles on immigration.

Since the 1990s, demographic shifts in the composition of the unauthorized population have also occurred. It has become increasingly heterogeneous and now includes women and entire families with children as well as migrants from a diverse set of countries (Donato and Armenta 2011). Nonetheless, the association between unauthorized immigration and being Mexican remains strong (Jimenez 2008). In a study of later-generation Mexican-Americans in Garden City, Kansas and Santa Maria, California, Jimenez (2008) found that second, third, and even fourth generation Mexican-Americans could not escape the immigrant label. It was common for non-Mexicans to use skin color, language, surnames and other characteristics as markers for the nativity *and* legal status of Mexicans, associating attributes with unauthorized immigration.

Thus, alongside the shifting social construction of legal status, an ideology of anti-foreignness has emerged and it undergirds many of the immigration enforcement activities today. Much like the linguistic elements of colorblind racism (Bonilla-Silva 2002), I show that this ideology of anti-foreignness may be detected in the language officers use to describe why they arrest foreign-born suspects. Again, I am not arguing that the officers were anti-foreign and targeting immigrants on purpose. Rather, the sociopolitical context in which they were carrying out their duties contributed to a rise in symbolic language used in arrest narratives that established foreign-born arrestees as the “other.” The ideology of anti-foreignness stems from a politically charged climate that ties immigration directly to police work and the assurance of public safety. Because ideas about what it means to be foreign are part of a normative context that is restrictive against immigrants, they become particularly harmful when incorporated into the process of

determining who to stop and question, which ultimately may lead to the deportation of many noncriminal immigrants.

New Questions

Using data from arrest narratives written by police officers who made arrests between 2005 and 2010 for drivers-license offenses, I examine three key questions related to the implementation of the 287(g) program in Davidson County, Tennessee. First, did patterns of police enforcement change after the implementation of 287(g)? In other words, were there any changes in enforcement behavior, and if so what were these changes? Second, if there are changes, are they similar among foreign-born *and* U.S.-born arrestees? Finally, how and to what extent does the use of symbolic language to describe immigrant arrestees change after the implementation of 287(g)?

Data and Methods

Data

I use two sources of data to conduct the analysis. The first is a secondary data set from the Nashville Criminal Justice Planning Unit (hereafter referred to as the NCJPU data set). The NCJPU data set includes information on 502,716 arrests that occurred in Davidson County between January 2005 and June 2010.² This data set includes information on the type of offense, number of offenses for each arrest, and basic demographic information, including U.S. born or not, corresponding to each arrestee. Each arrest has a corresponding General Sessions (GS) warrant number,³ which I used to link to create a second data set of arrest narratives. For each arrest, police write narratives that report why the officer recommends an arrest; the narratives are then presented to

²For more information, see the recent ACLU-TN (2012) report, 287g: Consequences and Costs.

³ General Sessions refers to the Metropolitan General-Sessions Court of Nashville, which hears civil, misdemeanor, felony, traffic, environmental, and metropolitan ordinance violations (<http://gscourt.nashville.gov/>).

magistrates who approve (or not) the police recommendation for arrest. Because all arrest warrants issued in Davidson County are publicly available through the Criminal Court Clerk, I was able to access the narratives that correspond to each warrant using the GS warrant number. The warrants and narratives are available online at the following website:

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

Sampling

From all arrest narratives linked to GS warrant numbers in the NCJPU data set, my sample includes only those narratives that correspond to the three most common single-offense driver's license arrests. Single-offense arrests refer to those that only list one offense as the reason for arrest. In some cases, for example, individuals can be arrested for not having a driver's license and another offense such as drug possession. My final sample is restricted to single-offense arrests only in the analysis that follows. In addition, I include only the three most common driver's license offense (driving on a suspended license, driving on a revoked license, and driving without a license) because they represent more than 90 percent of the driver's license arrests. Together, these three offenses were the most common driver's license-related offenses for both U.S.-born and foreign-born arrests in Davidson County between 2005 and 2010. Therefore, each arrest narrative in the final data set corresponds with one, single-offense arrest that is either driving without a license, driving on a revoked license, or driving with a suspended license.

I focus on single-offense driver's license arrests because officers can, and often do, write misdemeanor citations in lieu of arresting individuals who violate driver's-license laws. If a suspect provides an officer with reasonable proof of identity and if that officer believes that the suspect will appear in court and not continue to commit the offense, the typical protocol is to issue a citation. If the suspect cannot produce valid ID and/or has a history of failure to appear (FTA) or failure to be booked (FTB), then he/she does not qualify for a citation and must be arrested (Metro Police Department 2005, Metro Government of Nashville 2012).

Of the 502,716 total arrests in the NCJPU data set, there are 135,134 single-offense arrests, which account for 27 percent of total arrests between 2005 and 2010.⁴ I then restricted arrests to those three driver's license offenses discussed above, e.g. driving on a suspended license, revoked license, and driving without a license, which yielded a sample of 11,419 arrests. Of these, 27 percent were foreign-born arrests and the remaining 73 percent were U.S.-born.⁵ Because the number of U.S.-born arrests was close to three times that of the foreign-born arrests, I drew a simple random sample of 4,000 U.S.-born arrests. Therefore, my total sample is 7,125 arrests, of which 3,125 are foreign-born persons and 4,000 are U.S.-born persons.

Using warrant numbers from the restricted NCJPU sample that corresponded with each arrest in my sample, I was able to obtain arrest narratives for 90 percent of the foreign-born arrests and 70 percent of U.S.-born arrests. The remaining ten percent of

⁴Of the 135,134 single-offense arrests, 14,111 are for foreign-born individuals and 121,023 are for U.S.-born individuals.

⁵ Of the 11,419 three drivers-license arrests, 36 percent occurred before April 2007, or before 287(g) began, and 64 percent occurred after 287(g)'s implementation in April 2007. Breakdowns by nativity show that among the U.S. born, 37 percent occurred before, and 63 percent after 287(g). For the foreign born, the corresponding pre/post percentages were 34 and 66 percent, respectively.

foreign-born narratives and 30 percent of U.S.-born narratives were unavailable because they were either classified as state citations or juvenile citations, rendering the narratives inaccessible to the general public. Eliminating state and juvenile citations left a final working sample of 5,529 arrest narratives, of which 2,800 were for foreign-born individuals and 2,729 for U.S.-born individuals.

After going to the Criminal Court Clerk's web site where the narratives were posted, I copied each one-by-one and pasted them to an excel data file to create a data set with each arrest narrative. Each arrest narrative corresponds to one arrest for one offense only. In other words, the final data set is of 5,529 arrest narratives, with each arrest narrative resulting from one arrest for one offense that was either be driving without a license, driving with a suspended license, or driving with a revoked license.

Coding

Most of the analysis in this study examines arrest narratives using Atlas.ti to uncover any systematic differences in texts of arrest narratives of foreign-born and U.S.-born individuals before and after the implementation of 287(g). The narrative analysis aims to detect differences in the language used by arresting officers to describe arrestees that are foreign born and/or unlawfully present in the United States. After several careful, in-depth readings of the narratives (Altheide 1987), I developed two coding strategies to identify patterns that emerged. Table 3 provides examples of each code used in the analysis.⁶

The first set of codes refers to traffic violations that arresting officers listed as their reasons for stopping the arrestees. Note that these are not the reasons for an arrest;

⁶ Each narrative is copied into the text as-is, without edits. If the narrative included any identifying information, it was either changed to protect the individual or, in the case of license plate numbers, erased.

they are the reasons that officers listed for stopping individuals who were eventually arrested for one of the three driver's license offenses. Most narratives only listed one violation, and each narrative was assigned one traffic violation code. For example, I coded the following narrative with the code for speeding traffic violation: "the subject was stopped for speeding, 57 mph in a 45 mph construction zone." Narratives with no reason or two reasons were coded as such.

Table 3. Explanation of Arrest Narrative Coding Scheme

Traffic Violation Codes	Examples
Light Violations	"Subject was stopped for having no taillights on the vehicle he was operating." "Suspect was stopped for having no brake lights." "Suspect was stopped for driving at night without rear lights."
Speeding	"The subject was stopped for speeding, 57 mph in a 45 mph construction zone"
Accident	"The defendant was involved in a traffic accident on Interstate 65 South near exit #48"
Traffic Offenses / Violations	"The defendant was stopped for a traffic violation on Anderson Rd. and Pierce Rd." "The defendant was the driver of a vehicle stopped for traffic offense."
Investigative Stops	"The defendant was observed driving an orange Honda in the area of Nolensville Pike and Ash Grove Drive. A random computer inquiry ran on the defendant's vehicle showed that the vehicle listed to TN tag 565 PWF should be a green Honda. An investigative stop was conducted." "I ran a random computer check on the defendant's vehicle, TN Tag 937 NHH, and it came back as having a possible warrant listed to the registered owner of the vehicle. A investigative stop was conduct at 320 Ocala drive." "The defendant was observed on Dickerson Pk. at Grace St. The defendant was stopped for investigative purposes."
Tag Violations	"The defendant was observed driving on Thompson La with expired tags." "Subject was stopped for tag not visible."
Seat Belt Violations	"Defendant was the driver of a vehicle that was stopped for a seat belt violation." "I stopped the defendant for child restraint law."
Erratic/Careless Driving	"Subject was observed driving erratically on Nolensville Pike." "I observed the suspect drive a motor vehicle in a careless manner and stopped him because of this."
Run Stop Sign	"Subject stopped for running a stop sign."
Run Red Light	"Subject stopped for running a red light."
Music/Muffler/Tint	"I stopped vehicle for having a loud muffler." "The def. automobile had an excessive amount of smoke coming from his muffler and was stopped for this reason." "The defendant was observed playing his car radio extremely loud." "The suspect was stopped and cited for violation of window tint law."
Equipment/Moving/Nonmoving Violations	"The defendant was stopped for a vehicle equipment violation." "Suspect was stopped for a moving violation." "The def. was stopped on non moving traffic violation."
Covered License Plate	"Subject was stopped on traffic (tinted cover over tag)." "Subject stopped for having a covered tinted cover over his plate."
Criminal Activity	"Def. was the driver of a vehicle that was stopped for patronizing prostitution." "The defendant was stopped on the interstate for criminal littering."
Prior Knowledge	"Officer has prior knowledge of the defendant's driver's license status being suspended." "Officer had prior knowledge from a previous encounter with the defendant that his license is revoked."
Two Reasons	"I observed the defendant operate a vehicle with one missing taillight and tags that were listed to a different vehicle." "Defendant's vehicle was stopped for excessive muffler noise and for brake lights required."
no reason	"suspect did not have a DL and was taken to booking."
Other	While conducting an apartment check at 4700 Humber Drive (Holly Hills Apartments), the officer engaged in a casual conversation with the defendant. The officer asked the defendant if he had any type of identification or a driver's license. The defendant stated no. The officer then told the defendant to have a good day, and left. The officer then observed the defendant drive out of the complex in a green Infiniti. The officer then initiated a traffic stop since he knew that the defendant did not have a license. A systems check of the defendant's information verified no driver's license.
Symbolic Language Codes	Examples
Mention Country	"Def was stopped for speeding in a school zone. He did not have a driver's license in the U.S.A. Def admitted that he was an illegal alien, but had been living in America for five years. The only proof of I.D. was a Mexican voter card issued in 2005." "The defendant was seen leaving the Bank of America off of North Gallatin in the Madison area. The defendant was driving a green Honda Civic with an illegal window tint. The defendant was stopped for the violation. Window tint was not in compliance with T.C.A. code. When asked for the defendant's license, he smiled and indicated he didn't have one. The defendant gave officer a Hispanic community ID." "The defendant was involved in an accident at the stated address. When I asked for the defendant's driver's license he stated that he didn't have one in the United States and didn't have any type of identification to prove his identity. So the defendant was placed in custody for the stated charge." "Subject was stopped for speeding. Subject does not speak English. Subject stated in Spanish that he did not have a DL or any identification."
Mention Language	"The defendant was observed driving Southeast on Murfreesboro Pike. The Chevrolet Silverado truck the defendant was driving had one headlight out on the vehicle. Upon initiation of a traffic stop, the defendant conveyed to the arresting Officer he had no driver's license, only a Tennessee state issued ID card. Upon a check of NCIC, it was confirmed the defendant indeed has no registered Drivers license and has been charged four prior times for the same charge within the last 4 years. Due to the language barrier that exists and the reasonable fear the offense would likely continue, the defendant was placed into custody. This event did occur in Davidson County." "Officer Clark observed the defendant driving a 2000, Chevy Blazer inbound on Murfreesboro Pke. near Dover Glen Dr. The defendant was stopped for expired tags on the vehicle. The above tag expired January 2008. During the traffic stop, it was discovered that the defendant had no apparent driver license. Defendant had a family member come to the scene to translate. The defendant stated he didn't have a driver license."
Implicit Mention of Status	"The defendant was stopped for running the flashing red light at McGavock Pike and Riverside Drive. He admitted that he did not have a driver's license. Further, he had no social security number and no other ID of any kind. He had a bank card with a picture that had a different name than the one he had given the arresting officer. He also could not provide an address or a phone number."
Explicit Mention of Status	"Defendant was operating a motor vehicle on a public roadway. Defendant could not produce a license to operate the vehicle. A check by name did not reveal a license. Defendant stated he did not have a license, since he was in the country illegally that he could not get a license. Defendant was charged with D/L required."
Reasonable Likelihood	"Defendant was involved in a motor vehicle accident in which he was the driver in one of the vehicles involved. A license check revealed that defendant's license was suspended. Defendant has failed to appear or book himself in the past and due to reasonable likelihood that the defendant would fail to appear in court and that the offense would continue. The defendant was transported to booking."

The second set of codes identifies the symbolic language that officers used in arrest narratives. Creating these codes required more time and was based on two factors. First, in the early stages of the narrative analysis, it became apparent that a complete narrative required very little information. The most basic narratives, e.g. empty narratives, simply contain a reference to the stop and a statement about the offense that led to the arrest. For example:

“I stopped the defendant for a traffic infraction and she has no driver’s license.”
“Subject was stopped for running a stop sign. Subject is unlicensed.”
“Suspect was stopped for failure to yield. He has no driver’s license.”

In 2005, the MNPD issued a written directive defining the procedures for misdemeanor citations and arrests. The memo outlined the process of writing the arrest narratives, stating that the affidavit should provide sufficient evidence to determine that probable cause existed for the offense that led to the arrest.⁷ The implication here is that any additional information not related to probable cause for the arrest is unnecessary. Yet, officers often include excess information in their arrest descriptions. I therefore began to note the kinds of excess information that some officers included in their descriptions. This led to a second step, in which I created five codes for the excess information based on keywords drawn from prior studies about the social construction of legal status. My codes include mention of a foreign language, of a foreign country, reasonable likelihood, and an explicit or implicit mention of immigration status. These codes are not mutually exclusive, and some narratives contained all of them. For example:

“I stopped Mr. Hernandez for driving the wrong way down a one way. Mr. Hernandez spoke very limited English [MENTION LANGUAGE] but was able to

⁷ In Davidson County, officers writing arrest narratives are required to provide the probable cause for the offense that led to the arrest, not the probable cause for the initial stop.

communicate to me that he was from Mexico [MENTION COUNTRY] and did not have a driver's license. I called Officer B. Martinez to the scene to translate. When he arrived he explained to Mr. Hernandez what was going on and re-verified the fact that Mr. Hernandez was here illegally [EXPLICIT MENTION OF STATUS] from Mexico and did not have any legal identification, including a driver's license. Mr. Hernandez was then placed in custody for driving without a license.”

This narrative clearly mentions language, country and status, and each was coded to understand the nature of excess information in the narratives. Keep in mind that while many narratives are empty, many others are not and my analysis attempts to understand variation in the narratives. Although it is impossible to attribute intention to the officers who write these narratives, this analysis allows for an investigation regarding whether enforcement behavior shifts before and after 287(g). Furthermore, the purpose of this analysis is not to argue that 287(g) alone caused a shift in behavior. Rather, I contend that similar to shifts in politics and rhetoric around issues of immigration and national security, 287(g) is part of a larger context in which we would expect to observe pre- and post-287(g) changes in the arrests of foreign-born and U.S.-born individuals.

In many cases, the codes are clear and easily identifiable via searches for keywords using Atlas.ti. However, some codes are less straightforward. These codes are titled investigative stops, other, and five codes related to symbolic language. To identify these particular codes in the narratives, I culled through the narratives one-by-one in Atlas.ti and manually coded each occurrence.

Typically officers conduct investigative stops when they have reason to believe that criminal activity is occurring or may occur. Investigative stops happen 1) when officers simply state that the stop was investigative with no further explanation; 2) when officers state that he or she scanned a vehicle's tags and found that they belonged on

another vehicle; and 3) when officers scanned vehicle tags and discovered that its owner had a warrant out for his/her arrest. Below are examples of the latter two cases, when officers stop individuals to investigate the matter further.

“A random computer inquiry on the defendants vehicle came back on local and state as being a silver toyota camry. The defendant was driving a green toyota camry. An investigative stop was conducted and it was discovered that the defendant doesn't have a drivers license.”

“Affiant ⁸officer stopped the defendant on a investigative stop. He was driving a vehicle that the registered owner may have had an outstanding warrant. Defendant did not have a valid drivers license at the time of the stop. The defendant does not qualify for a state citation.”

The narratives coded as other reason for the stop are those in which officers gave a specific reason to stop a driver, but the reason was not a traffic violation code. This happened rarely in part because these types of stops ended up being more complicated. One example is included below:

While conducting an apartment check at 4700 Humber Drive (Holly Hills Apartments), the officer engaged in a casual conversation with the defendant. The officer ask the defendant if he had any type of identification or a driver's license. The defendant stated no. The officer then told the defendant to have a good day, and left. The officer then observed the defendant drive out of the complex in a green Infiniti. The officer then initiated a traffic stop since he knew that the defendant did not have a license. A systems check of the defendant's information verified no driver's license.

I code narratives with “mention country” if it mentioned another country or suggested that the individual was not from the United States. This encompasses any mention of persons presenting international identification implying a foreign country, including passports and international drivers licenses. In addition, because sometimes officers reported a Hispanic Community ID, I include this in mention country because it

⁸ Affiant refers to the testifying officer who wrote the narrative and conducted the arrest.

marks Hispanicity and suggests that the individual is foreign born using this ID in lieu of U.S. state-issued identification. Note that Hispanic Community ID was never mentioned in any of the U.S.-born narratives.

I code narratives for mentioning language if the arresting officer mentioned the suspect's language in any capacity. This includes the suspect's ability to communicate in English, if the suspect only spoke in Spanish, if the officer had to contact a translator, or if the suspect had to communicate through a friend who interpreted. In most cases, the mention of language is entirely superfluous information. In a few rare instances (such as the first example below), the officer listed the language barrier as a reason for arrest. Yet, according to the police chief, a language barrier should never be the reason for arrest because officers have twenty-four hour access to a translation line and to bilingual officers.

“The defendant was observed driving Southeast on Murfreesboro Pike. The Chevrolet Silverado truck the defendant was driving had one headlight out on the vehicle. Upon initiation of a traffic stop, the defendant conveyed to the arresting Officer he had no drivers license, only a Tennessee state issued ID card. Upon a check of NCIC, it was confirmed the defendant indeed has no registered Drivers license and has been charged four prior times for the same charge within the last 4 years. Due to the language barrier that exists and the reasonable fear the offense would likely continue, the defendant was placed into custody. This event did occur in Davidson County.”

“Subject was stopped for speeding. Subject does not speak English. Subject stated in Spanish that he did not have a DL or any identification.”

“Officer Clark observed the defendant driving a 2000, Chevy Blazer inbound on Murfreesboro Pke. near Dover Glen Dr. The defendant was stopped for expired tags on the vehicle. The above tag expired January 2008. During the traffic stop, it was discovered that the defendant had no apparent driver license. Defendant had a family member come to the scene to translate. The defendant stated he didn't have a driver license.”

Table 3 also describes the code, implicit mention of status. It refers to any narrative that implies that someone is unauthorized in the United States without making an explicit statement as to whether this was the case. Developed after multiple careful readings of the narratives, this code includes when narratives state a person did *not* have a social security number, had a fake ID or several IDs with different names and dates of birth, or appeared to be withholding information regarding his or her identity. Note that mentioning a foreign country or language ability was not sufficient to warrant this particular code. Although in theory these could be included in a narrative that contained an implicit mention of status, I coded narratives with an implicit mention of status when officers believed that someone was unauthorized, or when he/she included information that would be associated with being unauthorized, such as falsified documents. Below are two examples.

“On 7/16/08 the defendant was driver of a vehicle stopped for traffic, no head lights, at 3844 Dickerson Pke. When requested for his driver's license the defendant stated, "I do not have one because they stopped giving them to us." When asked what he meant, the defendant stated that he does not have a license at all. The defendant had no form of identification on his person and his identity could not be verified”

In the narrative above, the officer includes that the defendant stated: “they stopped giving them to us.” Presumably, this refers to the 2006 Tennessee law that prevented unauthorized immigrants from obtaining a driver’s license.

“Subject was stopped for a traffic violation (no seatbelt). Subject had a wallet in his pocket with no identification. In subjects left front jacket pocket was loose US currency totaling \$2,050.00. Subject was asked where the currency came from he stated he worked at a Mexican Restaurant named Rio Verde in Nolensville Tn. Subject stated he was a cook at the restaurant and had just been paid. The computer showed that subject had possessed a TN drivers permit and the permit was expired in 2006. Identification could not be verified by personal ID or mugshot. The license status showed expired.”

This narrative offers detailed information about the person who was arrested. He worked as a cook at a Mexican restaurant, he had a license that expired in 2006 (the year when the Tennessee driver's license act passed), and had roughly \$2000 on his person. Together, these characteristics suggest that he may have been unauthorized. Yet, he was arrested because he could not establish his identity. Once again, the additional information is superfluous to his arrest.

In contrast, I also code explicit mention of status. This code applied to any narrative that explicitly mentioned that the suspect was in the United States with or without authorization, or any narrative in which the officer explicitly questions the suspect's immigration status. This includes mention of whether the suspect is illegal, information on expired passports or visas, mention of visa documents that reveal authorization or mention ICE or immigration enforcement.

“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.”

“Def was stopped for speeding in a school zone. He did not have a drivers license in the U.S.A. Def admitted that he was an illegal alien, but had been living in America for five years. The only proof of I.D. was a Mexican voter card issued in 2005”

“Defendant was operating a motor vehicle on a public roadway. Defendant could not produce a license to operate the vehicle. A check by name did not reveal a license. Defendant stated he did not have a license, since he was in the country illegally that he could not get a license. Defendant was charged with D/L required.”

“Def was observed leaving the Executive Inn located at 970 Murfreesboro Pke on 3-1-10 around 0130 hrs. A traffic stop was initiated on the van for a display of plate violation and a seat belt violation. Def presented an identification card, but did not have a driver's license. It was discovered that the Def had 8 Hispanics in the rear of his van covered by a blanket, as if he were trying to conceal the people, as well as the three Hispanics in the middle seats who did not have seat

belts on.. ICE was notified of the situation and they advised to “let them pass through.” Def was uncooperative in providing information. No persons in the vehicle had a driver’s license. Def could not get anyone to drive his vehicle, therefore the vehicle was towed.”

Finally, I code mention of the likelihood of appearing in court. Often, officers stated that a person has a reasonable likelihood to not show up in court because of a suspect’s prior history of FTA/ FTB, or because he/she lives out of state. According to the directive described earlier, officers may arrest an individual in lieu of issuing a citation if “reasonable likelihood exists that the person will fail to appear in court (MPD 2005, 3).” Unfortunately, there is no specification as to what evidence constitutes reasonable likelihood. In a statement to the local newspaper in 2009, Chief Serpas stated that those who had skipped court dates previously were eligible for arrest in lieu of a citation (Howard and Echegaray 2009). Several narratives also suggested that officers sometimes based a decision to arrest on a *suspicion* that suspects would flee rather than appear in court if issued a citation. Nonetheless, this code appears in a small share of the foreign-born narratives (see below).

Below I offer an example of a narrative in which the officer *does* provide evidence of reasonable likelihood that the defendant would fail to appear. I subsequently provide two examples of narratives with this code when the officer is basing a decision on intuition that the individual would fail to appear.

Evidence for Failure to Appear: “Defendant was involved in a motor vehicle accident in which he was the driver in one of the vehicles involved. A license check revealed that defendant's license was suspended. Defendant has failed to appear or book himself in the past and due to reasonable likelihood that the defendant would fail to appear in court and that the offense would continue. The defendant was transported to booking.”

Intuition about Failure to Appear: “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.”

Intuition about Failure to Appear: “I observed this subject make an illegal u-turn (through a red light) on Murfreesboro Pike at Foothill Drive. He was issued a citation for the moving violation, but he could not produce a license. He explained (in Spanish) that he does not have a license. A computer check failed to locate a license, but did indicate an NCIC hit on an administrative warrant of removal from the United States. He was not issued a misdemeanor citation for fear that he would not appear in court, or abscond before he could be deported.”

Analytic Strategy

I begin the analysis by describing differences in total offenses of the foreign born and U.S. born. Using the NCJPU data set, I calculate indices of dissimilarity to examine whether and how all offenses of the foreign born and U.S. born differ, and whether the difference changed after 287(g). These analyses offer preliminary insights about differences between the foreign-born and U.S.-born offenses, which in turn helped me to develop my expectations for the analysis of the impact of 287(g) on foreign-born and U.S.-born arrests. Using the narrative data, I examine driver’s license-related arrests and conduct significance tests to investigate whether differences exist before and after implementation of 287(g). Specifically, I investigate pre- and post-287(g) differences in traffic violation and symbolic language codes.

Results

Dissimilarity Indices: Changes in Arrest Patterns over Time

My first task is to examine differences in all offenses before and after the implementation of 287(g) using the NCJPU data set. I calculate the dissimilarity index, or

D , which measures the extent to which the distribution of two or more populations is uneven. The basic formula for the index is:

$$\frac{1}{2} \sum_{i=1}^N \left(\frac{x_i}{X} - \frac{y_i}{Y} \right)$$

where $\frac{x_i}{X}$ represents a ratio of the number of occurrences of a particular arrest classification for the U.S.-born out of the total number of U.S.-born arrests, and $\frac{y_i}{Y}$ represents the same for the foreign-born population. The resulting number denotes the percent change that either group would have to undergo to be evenly dispersed with the other group.

Although D is frequently used to measure geographic segregation of race and ethnic groups, I use it to compare arrest classification distributions for the U.S.-born and foreign-born arrested for only one offense before and after 287(g), and for the foreign-born arrested for one offense before and after 287(g). The distributions include arrest offenses applicable to both the foreign-born and U.S.-born arrestees over time.⁹

These comparisons permit us to preliminarily assess whether there were any changes in the arrest patterns of U.S.-born and foreign-born individuals after the implementation of 287(g). If the value of D for the nativity comparison increases after the implementation of 287(g), this suggests arrest behavior becomes more uneven across groups over time. Likewise, if the value of D is greater than zero when comparing the foreign-born before and after 287(g), this suggests their arrest patterns have changed across periods and these changes may be attributable to 287(g). This analysis is not

⁹There was one arrest category, "Immigration," that applied only to foreign-born arrestees after 287(g). Before calculating the index of dissimilarity, I removed this offense. It represented 12 percent of the total foreign-born distribution of single-offense arrests.

causal but is meant to assess whether changes in arrest behavior did occur after the implementation of 287(g).

The value of D by nativity shows that 28 percent of either nativity group would have to change offenses to be evenly dispersed with the other group. Before 287(g), the value of the index is also 28, meaning 28 percent of people in either group would have to change offenses to be evenly dispersed with the other group. After 287(g)'s implementation, the index increases to 31 suggesting the foreign- and U.S.-born distributions are more different during this period. The last dissimilarity index also suggests considerable differences among immigrants before and after the implementation of 287(g). Approximately 22 percent of immigrants before 287(g) would have to shift offenses to have the distribution of immigrants after 287(g). Therefore, the indices suggest considerable changes in arrest patterns after the implementation of 287(g). In the following sections, I examine these changes in greater detail and consider what kinds of changes were taking place and whether they were consistent for both the foreign born and U.S. born.

Comparing Reasons for the Initial Stop

Tables 4-6 describe pre- and post-287(g) comparisons of the reasons that police officers provide for these stops in their narratives. Each table shows the relative frequency (N) and percent of the total for each reason, followed by a column that indicates results from two-sample proportions tests to examine whether statistically significant differences between the samples exist. I also include a column to indicate the percent change in code frequency before and after 287(g).

Overall Comparison

Table 4 examines the reasons for stops for all those arrested, and for the foreign-born and U.S.-born, before and after 287(g). Keep in mind that these are reasons provided for the stops, not the reasons for arrest. Arrests that resulted from these stops were for either driving without a license, driving with a suspended license or driving with a revoked license. Of the 18 reasons that officers provided for the initial stop, 13 changed significantly after the implementation of 287(g). These included: light violations, speeding, accident, traffic offenses/violations, seat belt violations, erratic/careless driving, run stop sign, run red light, music/muffler/tint, covered license plate, two reasons, no reason given, and other.

Before 287(g), the most common reason for stopping an individual was related to traffic offenses/violations; these comprised 17 percent of all stops during that period. After 287(g), the most common stops were for light violations, which comprised 16 percent of all stops. In addition, light violations, speeding, erratic/careless driving, run stop sign, run red light, music/muffler/tint and other reason also represented significantly greater share of reasons for the initial stop.

In contrast, the comparison by period shows no statistically significant differences by period for investigative stops; these comprised nine percent of all stops in each period. There were, however, significantly more stops for music/muffler/tint and erratic/careless driving after 287(g). Before 287(g), two percent of all stops were due to music/muffler/tint violations, whereas after 287(g) was implemented the share rose to five percent. Similarly, erratic and careless driving comprised five percent of all stops before 287(g), but after that, the share rose significantly to seven percent. Like

investigative stops, police stops for music/muffler/tint and erratic/careless driving may be more about the personal discretion of arresting officers than, for example, a speeding stop that is generally based on data from a speed-detecting device.

Table 4. Relative Frequencies of Reasons for Stops from All Driver's License Arrest Narratives by Period

Violation	Before 287(g)		After 287(g)		% Change	Significance
	%	N	%	N		
Light Violations	12%	263	16%	536	33%	***
Speeding	10%	216	13%	433	31%	***
Accident	12%	253	9%	302	-22%	*
Traffic Offenses / Violations	17%	380	7%	227	-61%	***
Investigative Stops	9%	206	9%	307	-2%	
Tag Violations	9%	205	9%	303	-3%	
Seat Belt Violations	10%	213	7%	235	-28%	***
Erratic/Careless Driving	5%	105	7%	233	45%	**
Run Stop Sign	3%	68	6%	195	88%	***
Run Red Light	3%	67	5%	153	50%	*
Music/Muffler/Tint	2%	42	5%	173	170%	***
Equipment/Moving/Nonmoving Violations	2%	49	2%	59	-21%	
Covered License Plate	1%	11	1%	35	108%	*
Criminal Activity	1%	15	0%	14	-39%	
Prior Knowledge	0%	10	1%	19	24%	
Two Reasons	2%	35	1%	33	-38%	*
no reason	1%	28	1%	25	-42%	*
Other	1%	22	2%	59	76%	*
Total		2188		3341		

Note: Shaded rows indicate those violations that underwent a statistically significant change after the implementation of 287(g), * p < .05; ** p < .01; *** p < .001 (two-tailed tests)
 Source: Davidson County Criminal Court Clerk <http://gscourt.nashville.gov/>

Period Comparisons

Tables 5 and 6 describe changes that occurred within each group before and after 287(g)'s implementation. Table 5 provides the relative frequencies of the reasons for the initial stop among the foreign-born sample before and after 287(g); Table 6 does the same for the U.S. born. Among the foreign born, light violations, erratic/careless driving, running a red light, running a stop sign, accidents, traffic offenses/violations and music/muffler/tints were significantly different before and after 287(g). Among these, light violations, erratic/careless driving, run stop sign, run red light, and music/muffler/tints were more common reasons for police stops after the implementation of 287(g). For example, light violations represented 14 percent of all stops before 287(g) but 17 percent after, erratic/careless driving jumped from six to eight percent before and after, music/muffler/tint violations went from two to five percent, and running a stop sign

and running a red light increased from two to four percent and from four to six percent, respectively.

In contrast, accidents, traffic violations and the code titled “two reasons” were significantly less likely to occur after 287(g). Before 287(g), accidents and traffic violations each represented 17 percent of all stops, but after 287(g) they represented 11 percent and seven percent, respectively. The code “two reasons” declined from two percent of all stops before 287(g) to one percent after. Among the reasons for initial stop that are significantly more frequent after the implementation of 287(g), erratic/careless driving and music/muffler/tint are two that are the most likely to serve as catchall categories for pretextual stops.

Table 5. Relative Frequencies of Reasons for Stops from Foreign Born Driver's License Arrest Narratives by Period

Violation	Before 287(g)		After 287(g)		% Change	Significance
	%	N	%	N		
Light Violations	14%	141	17%	313	122%	*
Speeding	11%	113	13%	240	112%	
Accident	17%	169	11%	201	19%	***
Traffic Offenses / Violations	17%	170	7%	126	-26%	***
Investigative Stops	8%	84	9%	154	83%	
Tag Violations	8%	80	7%	128	60%	
Seat Belt Violations	5%	50	6%	110	120%	
Erratic/Careless Driving	6%	57	8%	147	158%	*
Run Stop Sign	2%	18	4%	73	306%	**
Run Red Light	4%	37	6%	99	168%	*
Music/Muffler/Tint	2%	21	5%	89	324%	***
Equipment/Moving/Nonmoving Violations	2%	23	2%	31	35%	
Covered License Plate	1%	8	2%	27	238%	
Criminal Activity	0%	2	0%	5	150%	
Prior Knowledge	0%	1	0%	3	200%	
Two Reasons	2%	16	1%	9	-44%	**
no reason	1%	8	1%	14	75%	
Other	1%	6	2%	27	350%	*
Total		1004		1796		

Note: Shaded rows indicate those violations that underwent a statistically significant change after the implementation of 287(g), * p < .05; ** p < .01; *** p < .001 (two-tailed tests)
Source: Davidson County Criminal Court Clerk <http://gscourt.nashville.gov/>

Table 6 also shows significant pre- and post-287(g) changes in the relative frequencies of reasons for the initial stop for the U.S. born. For example, among the U.S. born, light violations, speeding, running a stop sign, and music/muffler/tint were more likely to occur after the implementation of 287(g). Light violations shifted from ten percent of all stops before 287(g) to 14 percent afterward, the share of stops for speeding

increased from nine to 12 percent, run stop sign increased from four to eight percent, and music/muffler/tint stops increased from two to five percent.

Table 6. Relative Frequencies of Reasons for Stops from U.S. Born Driver's License Arrest Narratives by Period

Violation	Before 287(g)		After 287(g)		% Change	Significance
	%	N	%	N		
Light Violations	10%	122	14%	223	83%	**
Speeding	9%	103	12%	193	87%	**
Accident	7%	84	7%	101	20%	
Traffic Offenses / Violations	18%	210	7%	101	-52%	***
Investigative Stops	10%	122	10%	153	25%	
Tag Violations	11%	125	11%	175	40%	
Seat Belt Violations	14%	163	8%	125	-23%	***
Erratic/Careless Driving	4%	48	6%	86	79%	
Run Stop Sign	4%	50	8%	122	144%	***
Run Red Light	3%	30	3%	54	80%	
Music/Muffler/Tint	2%	21	5%	84	300%	***
Equipment/Moving/Nonmoving Violations	2%	26	2%	28	8%	
Covered License Plate	0%	3	1%	8	167%	
Criminal Activity	1%	13	1%	9	-31%	
Prior Knowledge	1%	9	1%	16	78%	
Two Reasons	2%	19	2%	24	26%	
no reason	2%	20	1%	11	-45%	*
Other	1%	16	2%	32	100%	
Total		1184		1545		

Note: Shaded rows indicate those violations that underwent a statistically significant change after the implementation of 287(g), * p < .05; ** p < .01; *** p < .001 (two-tailed tests)
Source: Davidson County Criminal Court Clerk <http://gscourt.nashville.gov/>

Symbolic Language

Table 7 describes the symbolic language codes in the foreign-born narratives before and after 287(g). Of the five codes for symbolic language, three (mention of country, mention of language and explicit mention of status) were significantly more likely to occur after the implementation of 287(g). The mention of a country in a narrative underwent a 139 percent change over time, with 99 narratives including a mention of country before the implementation of 287(g) and 237 narratives mentioning a country after the implementation of 287(g). Narratives that mentioned a country underwent a 188 percent change, from 32 to 92 narratives mentioning a country before and after 287(g). The explicit mention of status appeared in 25 narratives before 287(g) compared to 82 afterward, representing a 228 percent change.

Interestingly, implicit mention of status and mention of the reasonable likelihood to not appear in court did not undergo any significant changes. Therefore, my results

indicate that after the implementation of 287(g) and in conjunction with the heightened public fervor against unauthorized immigration in the mid-to-late 2000s (Hopkins 2010), it became more common to mention a person’s country of birth, language use, and/or legal status in immigrant arrest narratives. Therefore, police officers used symbolic language to establish that these foreign-born individuals were noncitizens (whether or not this was indeed the case).

Table 7. Relative Frequencies of Symbolic Language from Foreign Born Arrest Narratives by Period*

Violation	Before 287(g)		After 287(g)		% Change	Significance
	%	N	%	N		
Mention Country	10%	99	13%	237	139%	**
Mention Language	3%	32	5%	92	188%	*
Explicit Mention of Status	2%	25	4.5%	82	228%	**
Implicit Mention of Status	4%	36	4%	75	108%	
Mention of Reasonable Likelihood of Failure to Appear in Court	0.5%	5	1%	22	340%	
Total		1004		1796		

Note: Shaded rows indicate those violations that underwent a statistically significant change after the implementation of 287(g), * p < .05; ** p < .01; *** p < .001 (two-tailed tests)

Source: Davidson County Criminal Court Clerk <http://gscourt.nashville.gov/>

* Narratives can include more than one symbolic language code

Pretextual Stops

The cases presented below offer an in-depth look at some narratives that represent pretextual stops. Some appear to be based on decisions that may be discriminatory against the foreign born, and/or the discretion that officers use when they stop individuals. Although this discretion often promotes the public good, it may still lead to more arrests and penalization of the foreign born. Below I present five arrest narratives; the first three are troublesome examples of pretextual stops and the last two show how officer discretion leads to the penalization of the foreign born.

The following three narratives came to my attention because the reasons for the stops were so similar. I first came across a narrative in which the officer stopped the suspect because the license plate was only attached to the car by one screw. I came across a similar narrative with the exact same reasoning and, due to the unique nature of the stop, flagged each of these. The two narratives corresponded to two different individuals

and two different stops, and I subsequently flagged a third narrative with the same reason. The three narratives came from two different officers. Although it is possible that the three different drivers with three different cars all experienced the same equipment maintenance troubles or used the same car and failed to fix the plate, it may also be that the reason for this arrest was more dubious and led to a pretextual stop to determine whether or not the individuals had a license or valid ID.

“The defendant was stopped for having the license plate on his car attached with only one screw. The defendant was found not to possess any kind of driver's license.”

“The defendant was stopped for only having his license plate held on by one screw. The defendant was found not to possess a valid driver's license. He could produce no form of ID, therefore he did not qualify for a state ciation.”

“On 02/02/08 at around 2140 hours I initiated a traffic stop at 6430 Charlotte Pike going inbound. The stop was for the tag only being secured by a screw in the upper right corner. The plate was tilted and had a plastic cover on it. I approached the driver and asked him for his driver's license or any form of identification. He stated he didn't have any. I was unable to confirm his DL status and when asked he stated he was not supposed to be here (in the country) and that he didn't have a license.”

The pretext in the next narrative was that the officer recognized the vehicle from a previous stop and knew the owner to be unlicensed. As the narrative shows, the individual driving was not the same driver from the previous stop, but he was without a license and subsequently arrested. In theory, this is not wrong and in many cases, this kind of discretion works to insure public safety. However, this may also work against the foreign born given the increase in the number of drivers license arrests after 287(g) was implemented (see footnote 5) and in the use of symbolic language that defines the foreign born as noncitizens (see Table 7).

“On this date around 1130 hours I was turning off of E Trinity Ln onto Lischey Av. when I observed a vehicle in front of me that I had pulled over before at a previous date. When I ran the license plate to make sure this was in fact the same vehicle I then proceeded to pull this vehicle over in the parking lot of a local convenience store. This was an investigatory stop if this is the same person that I had pulled over before that did not have a drivers license. The person, def., was not the driver/owner but a brother in law of the owner. The def. did not have a valid license to drive a motor vehicle and had only a foreign passport. Therefore the def. was booked in due an unsatisfactory proof of ID.”

Below is another example from the narratives coded for music/muffler/tint from the foreign-born sample after 287(g). In this narrative, the officer uses the pretext of the muffler violation to stop the car to investigate the alleged drug transactions. Although the narrative does not provide any further information on the drug transactions, the driver is eventually arrested because he did not have a license.

“I observed the defenant driving a tan Ford Crown Victoria on Elliston St. I had been surveilling this car and saw it involved in two drug transactions. I stopped the vehicle because there was an excessive amount of smoke coming from the exhaust pipe. The defendant handed me a TN ID only card. A records check confirmed the defendant was unlicensed.”

The narrative below describes a driver’s license arrest that resulted from an apartment check. Officers routinely conduct apartment checks when they have extra time to be proactive and connect with the community. Apartment checks are typically conducted in apartment complexes with a history of prior disturbances. It may be that the officer was fishing for a reason to apprehend the suspect and used consensual conversation as a pretext to approach and question the individual, or it could be coincidental that the apartment check led to an arrest at a later point.

While conducting an apartment check at 4700 Humber Drive (Holly Hills Apartments), the officer engaged in a casual conversation with the defendant. The officer ask the defendant if he had any type of identification or a driver’s license. The defendant stated no. The officer then told the defendant to have a good day, and left. The officer then observed the defendant drive out of the complex in a green Infiniti. The officer then initiated a traffic stop since he knew that the

defendant did not have a license. A systems check of the defendant's information verified no driver's license."

Discussion and Conclusion

Although immigration law is designed to regulate the lives of U.S. immigrants, it inevitably affects the lives of everyone, citizens and noncitizens alike, on a daily basis. In a context of politicized anti-immigrant fervor, concern over national security and a faltering economy, local immigration laws can have polarizing, exclusionary effects (McKanders 2010). Since the mid-2000s, as local enforcement officers have found themselves in the middle of a highly political immigration issue, they have faced a maelstrom of public criticism from both sides of the debate about what constitutes fair and appropriate immigration enforcement. This paper contributes to the literature on local immigration policy and 287(g) by examining the extent to which this program affected policing practices in Davidson County.

Overall, the findings suggest that 287(g) may have had an impact on policing practices among both foreign-born and US-born individuals. Among the foreign born arrested for driver license infractions, e.g. driving without a license, driving with a suspended license or driving with a revoked license, the implementation of 287(g) was concurrent with more frequent use of symbolic language in arrest narratives establishing them as noncitizens. The foreign born also experienced an increase in pretextual stops that involve greater officer discretion. This is consistent with prior studies, which show that minorities are disproportionately more likely to experience pretextual stops (Harris 1997, Davis 1996, Fagan and Davies 2000, Thompson 1999).

My analysis of the symbolic language used in the narratives reveals that 287(g) initiated a change in officer descriptions of the foreign born with driver license infractions. After the implementation of 287(g), officers were more likely to use explicit statements that mentioned countries of origin, language ability, and legal status. In narratives that included one of these codes, officers communicated information describing the immigrant as *outside* of what is associated with citizenship and belonging in the American community. A statement of probable cause is the only necessary information for an arrest; these include no valid ID, a history of FTBs or FTAs, or a reasonable likelihood that the offense would continue. That individuals did not speak English or had an ID from Mexico should be superfluous. By including this information, the officers are signaling noncitizenship, which may be interpreted as unauthorized. To some extent, such statements indicate the rise of an ideology of anti-foreignness that may have pervasive effects in law enforcement and public safety. At the very least, these statements suggest that the implementation of local immigration legislation brings characteristics of foreignness to the forefront of policing duties, resulting in an unintended shift in policing behavior. Pretextual stops and the uneven application of law enforcement may result in deep-seated feelings of animosity and distrust toward officers (Kirk et al. 2012, Harris 1999).

Although this study offers insights into the effects of 287(g), it is important to keep in mind its limitations. First, the narrative data are restricted to single-offense arrests for three specific driver's license-related offenses. As such, they represent a subset of all arrests. In addition, because only limited data are available by race or gender, I am unable to examine whether and how the findings reported here for immigrants and U.S. natives

vary by race and gender. In addition, these data did not contain information about what happened to persons after they were arrested. Although affidavits provide some information on whether individuals were found guilty in court, there is no information that is publicly available regarding 287(g) processing or the issuance of ICE detainers and deportations.

Despite its limitations, this study presents important findings in the current political context ready to reform federal immigration policy. Interestingly, when the Supreme Court published its opinion on SB 1070 in June 2012, the Court avoided using terms such as illegal alien and illegal immigrant except when quoting the Arizona bill or other sources. This is a noteworthy change in the referencing of the unauthorized population and may set a precedent as Congress debates immigration policy reform. However, whether significant change occurs in the future, the findings presented here suggest that everyday policing has become inextricably linked to social constructions of legal status.

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