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Local Enforcement of Federal Immigration Law: Should North Carolina Communities Implement 287(g) Authority

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Local Enforcement of Federal Immigration Law: Should North Carolina Communities Implement 287(g) Authority?*

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INTRODUCTION

State and local governments across the nation are frustrated with rising numbers of undocumented immigrants¹ in their communities and with the federal government's failure to enact comprehensive immigration reform. This frustration has compelled them to undertake new measures on their own to confront problems they perceive as immigration-related. In North Carolina, for example,

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1. For the purposes of this Recent Development, the phrase "undocumented immigrant" will apply to those who are unlawfully present in the United States and who are subject to deportation by virtue of their unlawful presence in the United States. The references to Hispanics contained within this paper simply reflect the fact that the vast majority of undocumented immigrants are Hispanics. *See generally* JEFFREY S. PASSEL, PEW HISPANIC CENTER, UNAUTHORIZED MIGRANTS: NUMBERS AND CHARACTERISTICS, BACKGROUND BRIEFING PREPARED FOR TASK FORCE ON IMMIGRATION AND AMERICA'S FUTURE (June 14, 2005), <http://pewhispanic.org/files/reports/46.pdf> (describing demographic data and socioeconomic characteristics of undocumented immigrants). Though I do not intend to suggest that *all* undocumented immigrants are Hispanic, Hispanics are certainly the undocumented immigrants who receive the bulk of the attention within the context of the issues discussed in this paper. As such, most of the materials and data cited within this paper focus on Hispanic undocumented immigrants specifically.

several communities have contributed to an emerging national trend by adopting local ordinances that target community interaction with undocumented immigrants. Some ordinances require all public signage to be in English, while others forbid employers from employing, or landlords from leasing to, undocumented immigrants.² At the state level, North Carolina has also responded by recently passing measures that forbid the issuance of driver's licenses to immigrants who cannot prove documented status.³ Advocates for immigration rights and proponents of stricter immigration controls continue to intensely debate the merits and drawbacks of state and local ordinances.

In the midst of the debate over local ordinances, North Carolina counties have begun to participate in yet another trend of local involvement in immigration control: employing an Immigrations and Customs Enforcement ("ICE") initiative for local officers to enter the business of immigration enforcement.⁴ The initiatives are referred to as 287(g) agreements, after the relevant section was adopted into the Immigration and Nationality Act ("INA") by 1996 amendments to the Act.⁵ Section 287(g) permits local governments to enter into agreements with ICE, whereby ICE will deputize local law enforcement agents to conduct federal immigration enforcement.

2. Among these North Carolina communities are the cities of Asheville, Lincolnton, Landis, and Mint Hill, and the counties of Gaston, Forsyth, Davidson, Lincoln, Rowan, and Mecklenburg. See generally Mai Thi Nguyen, *Anti-Immigration Ordinances in NC: Ramifications for Local Governance and Planning*, 32 CAROLINA PLAN. J., Summer 2007, at 36 (describing ordinances in North Carolina that require public signage to be in English, that deny services and benefits to undocumented immigrants, and that impose employer and landlord sanctions).

3. Act of May 23, 2007, ch. 56, 2007 N.C. Sess. Laws 47 (amending N.C. GEN. STAT. § 20-7(f)). At this time, only Hawaii, Maine, Michigan, New Mexico, Oregon, Utah, and Washington continue to issue driver's licenses to undocumented immigrants. See Daniel C. Vock, *Tighter License Rules Hit Illegal Immigrants*, STATELINE.ORG, Aug. 24, 2007, <http://www.stateline.org/live/details/story?contentId=234828>.

4. For a description of the history, mission, and operations of ICE, see generally U.S. Immigration and Customs Enforcement, About Us, <http://www.ice.gov/about/index.htm> (last visited Aug. 28, 2008).

5. See Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, 110 Stat. 3009-546 (1996), which amended § 287 of the INA (codified at 8 U.S.C. § 1357(g) (2000)). The 287(g) agreements are also known as Memoranda of Understanding ("MOU") or Memoranda of Agreement ("MOA"). See Carrie L. Arnold, Note, *Racial Profiling in Immigration Enforcement: State and Local Agreements to Enforce Federal Immigration Law*, 49 ARIZ. L. REV. 113, 115 & n.14 (2007). For the purposes of consistency, I will simply refer to them as "287(g) agreements" throughout this Recent Development.

ICE trains, certifies, and supervises the local officers in their new roles as immigration officers.⁶

One reason that North Carolina counties may be attracted to the implementation of a 287(g) agreement is because these agreements have not yet been subject to a legal challenge, whereas some local ordinances have been found unconstitutional.⁷ Quite simply, a 287(g) agreement does not aim to *regulate* immigration and immigrants as do the local ordinances, as much as *enforce* immigration law, a crucial distinction that avoids the legal concerns pertaining to the local ordinances.⁸ However, like local ordinances, a 287(g) agreement has the potential to alleviate some of the social concerns attributed—rightly or wrongly—to the rise in undocumented immigration, such as the public expense caused by undocumented immigrant consumption of educational, health care, and social services and an increase in the crime rate.⁹ Nevertheless, counties should keep in mind that a 287(g) agreement may cause potentially constitutionally-problematic racial profiling practices, and may also negatively affect community

6. U.S. Immigration and Customs Enforcement, U.S. Dept. of Homeland Sec., Fact Sheets: Section 287(g), Immigration and Nationality Act; Delegation of Immigration Authority (June 22, 2007), <http://www.ice.gov/pi/news/factsheets/070622factsheet287gprogover.htm> [hereinafter ICE Fact Sheet].

7. See *Lozano v. City of Hazleton*, 496 F. Supp. 2d 477 (M.D. Pa. 2007). The City of Hazleton, Pennsylvania, attempted to regulate the presence and employment of undocumented aliens through the Illegal Immigration and Relief Act Ordinance, Hazleton, Pa., 2006-18 (July 13, 2006), as amended by the Tenant Registration Ordinance, Hazleton, Pa., 2006-13 (Aug. 15, 2006) and the Official English Ordinance, Hazleton, Pa., 2006-19 (Sept. 21, 2006). The court found first that federal law preempted the local regulations, which unconstitutionally violated the Supremacy Clause by “disrupt[ing] a well-established federal scheme for regulating the presence and employment of immigrants in the United States.” *Lozano*, 496 F. Supp. 2d at 554. The court further found that the Hazleton ordinances violated procedural due process by penalizing landlords, tenants, employers, and employees because they did not provide notice and an opportunity to be heard, stating that “[t]he United States Constitution provides due process protections to all persons.” *Id.* The court also struck down the regulations for burdening the rights of illegal aliens to contract under 42 U.S.C. § 1981 and found that the City of Hazleton acted *ultra vires* when it created a private cause of action for a dismissed employee and “exceeded its police powers by enacting unconstitutional ordinances.” *Id.*

While many cities and towns considering ordinances similar to Hazleton’s dropped their efforts after the decision for fear of litigation, a number of local ordinances have been upheld since. For example, judges have upheld an Arizona law that imposed penalties on employers who knowingly hire illegal immigrants and a similar ordinance in Valley Park, Missouri. See Julia Preston, *In Reversal, Courts Uphold Local Immigration Laws*, N.Y. TIMES, Feb. 10, 2008, at A22. “[I]n an even more sweeping ruling,” a judge in Oklahoma dismissed a case challenging a law that required state contractors to verify the immigration status of new employees, stating that “immigrants should not be able to bring their claims to court because they were living in the country in violation of the law.” *Id.*

8. See *supra* note 7.

9. See *infra* Section III.

policing,¹⁰ criminal enforcement, and local economies. Regardless of their views on the issue of undocumented immigration, North Carolinians should be concerned about and attentive to these consequences before the use of 287(g) agreements spreads even more widely in the state.

This Recent Development will briefly discuss the history of 287(g) agreements and the gradual implementation—and recent proliferation—of agreements between local governments and ICE on a national level. It will then describe and distinguish the two common types of agreements, focus on 287(g) agreements in North Carolina, and report the present situation in the counties that have adopted them, and then argue that meaningful analysis is needed to understand the benefits and drawbacks of 287(g) agreements. This analysis will consider the local impact that 287(g) is having in the counties in which an agreement has been implemented—consequences that affect not only immigrants but the community at large. Finally, to the extent that 287(g) agreements seem to be a permanent feature of local enforcement of federal immigration law in North Carolina, this Recent Development will suggest a way that counties can best tailor the agreements with ICE to promote the desired enforcement while avoiding the more problematic features of the agreements.

Ultimately, this Recent Development concludes that North Carolina counties should not implement a 287(g) agreement because the negative consequences of 287(g) agreements outweigh their positive effects. In particular, the negative consequences include harm to community policing, a reduction in criminal enforcement of high-priority crimes, and a detrimental impact on local economies caused by mass immigration enforcement and subsequent deportation of undocumented immigrants. If a county nevertheless decides to implement a 287(g) agreement, it should first take steps to minimize the harmful impact through the use of a “conviction” model of enforcement that would trigger the immigration enforcement mechanism only after a detainee has been convicted.

10. Community policing is the concept that there must be a symbiotic relationship between law enforcement authorities and the communities they protect, whereby the community members report crimes and assist in the prosecution of crimes by testifying in court, while the law enforcement authorities police neighborhoods and enforce the laws. See *infra* Section IV.B.

I. SECTION 287(G) AND THE STRUCTURE AND ENFORCEMENT OF FEDERAL IMMIGRATION LAW AT THE STATE AND LOCAL LEVEL

In the INA,¹¹ the United States Congress structured the nation's immigration laws. Congress legislated both criminal and civil enforcement measures. Examples of criminal violations of the INA are felonies and misdemeanors such as "the bringing in and harboring of certain undocumented aliens," "the illegal entry of aliens," "the reentry of aliens previously excluded or deported," "disobeying a removal order," and "engaging in a pattern or practice of hiring undocumented workers."¹² By contrast, "illegal presence in the U.S. is a *civil*, not criminal, violation of the INA, and subsequent deportation and associated administrative processes are civil proceedings."¹³ The distinction between criminal and civil enforcement is critical because states have historically participated in the enforcement of the criminal provisions of the INA through the investigation and prosecution of violations and sharing findings with federal immigration authorities.¹⁴ State enforcement of INA criminal provisions is "consistent with the state's police power to make arrests for criminal acts and the expectation that states are expected to cooperate in the enforcement of federal criminal laws,"¹⁵ whether or not they are criminal *immigration* laws. On the other hand, states traditionally have *not* played a role in enforcement of the civil provisions—such as apprehending and removing deportable aliens—that are construed to be within the exclusive purview of federal immigration enforcement agencies.¹⁶ The distinction between state enforcement of criminal versus civil provisions creates a "bifurcated role for states and localities."¹⁷

Even though states historically have not played a role in the enforcement of civil immigration provisions, Congress has blurred the

11. Pub. L. No. 82-414, 66 Stat. 163 (1952).

12. BLAS NUÑEZ-NETO ET AL., CONG. RESEARCH SERV., ENFORCING IMMIGRATION LAW: THE ROLE OF STATE AND LOCAL LAW ENFORCEMENT 4-5 & n.10 (2007) [hereinafter CRS REPORT].

13. *Id.* at 4 & n.9.

14. *Id.* at 1.

15. *Id.* at 6.

16. *Id.* at 6-7 ("The civil provisions of the INA have been assumed to constitute a pervasive and preemptive regulatory scheme—leaving no room for a direct state or local role.").

17. *Id.* at 7 ("For example, state and local law enforcement officers cannot arrest someone solely for illegal presence for the purpose of deporting them because it is a civil violation, but they can arrest someone for the criminal offense of entering the country illegally.").

line between local enforcement of civil and criminal immigration violations by providing an explicit delegation of authority for states to exercise civil immigration law authority in section 287(g) of the INA. Section 287(g) permits the voluntary collaboration between ICE and state and local law enforcement agencies, including police and sheriff departments and correctional facilities, in immigration enforcement. Specifically, the section authorizes local officers or employees “to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers),”¹⁸ which are civil immigration powers that historically belonged exclusively to the federal government.¹⁹ Though agreements under section 287(g) have been authorized since the 1996 amendments to the INA,²⁰ local governments have only recently begun entering into agreements with ICE.²¹

By entering into a 287(g) agreement with ICE, local law enforcement officers are deputized by ICE to undertake immigration enforcement responsibilities in addition to their regular responsibilities.²² The agreements delineate the scope and responsibilities of the local departments in enforcing immigration law.²³ Officers who are chosen to participate are required to attend a training session in immigration law enforcement.²⁴ Officers who complete the training course may then perform immigration law enforcement functions, such as “investigat[ing] immigration violations, . . . collect[ing] evidence and assembl[ing] an immigration case for prosecution or removal, . . . tak[ing] custody of aliens on behalf of the federal government, and other general powers

18. Immigration and Nationality Act § 287(g)(1), 8 U.S.C. § 1357(g) (2000).

19. See *supra* note 16 and accompanying text.

20. See *supra* note 5.

21. See *infra* note 27 for one reason for the recent use of 287(g) agreements (describing the new urgency to enter agreements caused by the terrorist attacks of September 11, 2001). I also briefly described another reason in the Introduction: the frustration that state and local governments are having with the federal government's failure to take action on undocumented immigration.

22. CRS REPORT, *supra* note 12, at 17.

23. “The written agreement must articulate the specific powers and duties that may be, or are required to be, performed by the state officer, the duration of the authority, and the position of the agent of the AG who is required to supervise and direct the individual.” CRS REPORT, *supra* note 12, at 14; see also Immigration and Nationality Act § 287(g)(5) (describing the requirements of the agreement).

24. See generally ICE Fact Sheet, *supra* note 6 (briefly describing the training program officers must complete before being deputized under 287(g)).

involv[ing] the routine enforcement of immigration laws.”²⁵ In their immigration enforcement authority, local officers participating under a 287(g) agreement have the same power as immigration officers “to interrogate any alien or to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States.”²⁶

Though initially unused for the several years following authorization in 1996, there was “new urgency” to enter into 287(g) agreements following the September 11, 2001 terrorist attacks, and the Attorney General encouraged 287(g) agreements to assist the country in its counter-terrorism efforts.²⁷ Starting with the State of Florida, the first jurisdiction to enter into an agreement with ICE in August 2002, other state and local governments have followed suit, tailoring the agreements to suit their local needs.²⁸ The movement is rapidly gaining momentum: only one agreement was entered into in both 2002 and 2003; two and four agreements in 2005 and 2006, respectively; twenty-six agreements in 2007; and twenty agreements in 2008 as of July 2, 2008. The separate totals for 2007 and 2008 are more than double the amount of agreements entered into from 2002 to 2006 combined.²⁹ Though the grand total is currently fifty-five agreements, other agreements are in the planning stages, with strong

25. *The 287(g) Program: Ensuring the Integrity of America's Border Security System through Federal-State Partnerships: Hearing Before the Subcomm. on Management, Integration, and Oversight of the H. Comm. on Homeland Security*, 109th Cong. 50–57 (2005) [hereinafter *Hearings*] (statement of Professor Kris W. Kobach); see also CRS REPORT, *supra* note 12, at 14 (“An officer or employee of the State or subdivision, who is determined by the Attorney General to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subdivision and to the extent consistent with State and local law.”).

26. See 8 U.S.C. § 1357(a)(1) (2000).

27. CRS REPORT, *supra* note 12, at 17.

28. *Id.* at 14 (“Section 1357(g) allows for significant flexibility. It permits state and local entities to tailor an agreement with the AG to meet local needs, contemplates the authorization of multiple officers, and does not require the designated officers to stop performing their local duties.”). This flexibility is important, as this Recent Development will later argue that any county considering a 287(g) program should take advantage of the flexibility to optimize the desired immigration enforcement while avoiding the worrisome consequences of 287(g) agreements. See *infra* note 159 and accompanying text.

29. Eight of these agreements are with North Carolina law enforcement agencies: Alamance County Sheriff's Office, Cabarrus County Sheriff's Office, Cumberland County Sheriff's Office, Durham Police Department, Gaston County Sheriff's Office, Henderson County Sheriff's Office, Mecklenburg County Sheriff's Office, and Wake County Sheriff's Office. See U.S. Immigration and Customs Enforcement, Partners (April 28, 2008), http://www.ice.gov/partners/287g/Section287_g.htm [hereinafter *Partners*].

signals that the trend will continue to increase in popularity.³⁰ Hundreds of jurisdictions have inquired about creating agreements.³¹

Two models of section 287(g) agreements have developed thus far: the “officer model” and the “jail model.”³² The flexibility in section 287(g) permits the different operational variations.³³ Some agreements, e.g., those adopted by the states of Florida and Alabama, constitute the officer model, whereby field duty law enforcement officers incorporate their immigration enforcement as part of the performance of their normal field duties.³⁴ Under the Florida agreement, law enforcement officers have the authority to interrogate aliens to determine probable cause for an immigration arrest, to arrest aliens for civil and criminal immigration violations (with no need for a warrant), and to transport and detain aliens in ICE-approved detention facilities.³⁵

By contrast, under the jail model, which is currently the predominant model among local agencies, immigration enforcement authority is limited to correctional officers in the jails. The role of these officers in immigration enforcement begins after an undocumented immigrant is arrested and brought to the jails for a criminal violation unrelated to immigration status. A conviction is unnecessary to trigger this inquiry; instead, when the immigrant is processed at the detention facility following arrest, the officers within the jail conduct the investigation into immigration status if there is a suspicion that the immigrant is undocumented. The Arizona Department of Corrections (“ADOC”) followed this model when structuring its September 2005 agreement.³⁶ Under the ADOC jail model, correctional officers may undertake the immigration enforcement described above.³⁷

The jail model is preferable to the officer model, at least insofar as it is better able to avoid racial profiling concerns. Critics of the officer model contend that empowering officers to inquire into the

30. *Id.* (listing the agreements entered into between ICE and different jurisdictions); see also Kristin Collins, *Sheriffs Help Feds Deport Illegal Aliens*, NEWS & OBSERVER (Raleigh, N.C.), Apr. 22, 2007, at 1A (“An ICE spokesman said that a dozen agencies are now enrolled and 40 more have expressed interest.”).

31. Peter Whoriskey, *States, Counties Begin to Enforce Immigration Law*, WASH. POST, Sept. 27, 2006, at A1.

32. See generally Arnold, *supra* note 5 (describing the two types of agreements).

33. See *supra* note 28 and accompanying text.

34. See Arnold, *supra* note 5, at 124–27.

35. CRS REPORT, *supra* note 12, at 18 n.73.

36. See *id.* at 21.

37. See *id.* at 22 (citing Arizona’s correctional officer model).

immigration status of individuals they encounter during the course of their regular field duties can lead to abuses. Data—to be discussed below³⁸—supports the contention that racial profiling abuses have occurred when field officers enforce immigration laws. The jail model, by contrast, isolates the arrest function from the immigration enforcement function, arguably reducing the tendency for field officers to selectively target suspected undocumented immigrants. Still, the jail model is unable to completely avoid the potential for racial profiling and cannot avoid other consequences such as the negative impact on community policing and on local economies.³⁹

II. THE USE OF 287(G) AGREEMENTS IN NORTH CAROLINA AND STATE ENCOURAGEMENT

Some North Carolina counties have adopted 287(g) agreements, and the counties have thus far preferred the jail model. Mecklenburg County was the first North Carolina county to adopt a 287(g) agreement in 2006, followed by Alamance, Gaston, and Cabarrus counties in 2007.⁴⁰ The Durham Police Department has entered into such an agreement,⁴¹ and Wake County is one of several other counties that has recently entered into an agreement.⁴² The North Carolina counties have all adopted the jail model, and the structure of

38. See *infra* notes 87–98 and accompanying text (discussing racial profiling statistics).

39. See *infra* Sections IV.B. and IV.C.

40. Mecklenburg County entered into its agreement on February 27, 2006, Alamance County on January 10, 2007, Gaston County on February 22, 2007, and Cabarrus County on August 2, 2007. See Partners, *supra* note 29.

41. See *id.*

42. See ICE Fact Sheet, *supra* note 6; see also Barbara Barrett, *Patchwork of Rules Affects Immigrants*, NEWS & OBSERVER (Raleigh, N.C.), Sept. 9, 2007, at 1A (“[S]everal county sheriff’s departments are among the dozens nationally that are signing up to work with federal immigration enforcement agents.”); Michael Biesecker, *Wake Jail to Look for Illegal Aliens*, NEWS & OBSERVER (Raleigh, N.C.), November 6, 2007, at 1A (describing that, on November 5, 2007, Wake County Commissioners unanimously voted to authorize the Sheriff’s Office to enter into a 287(g) agreement, and Wake Sheriff Donnie Harrison hoped that the program would be in place within six months); Press Release, U.S. Immigration and Customs Enforcement, ICE and North Carolina Sheriffs Working Together to Form Statewide Partnership (Oct. 15, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/071015carolinabeach.htm> (last visited Aug. 28, 2008) (“‘North Carolina sheriff’s offices have demonstrated an unprecedented interest in partnering with ICE,’ noted Julie L. Myers, Department of Homeland Security Assistant Secretary for ICE . . . ICE received more 287(g) requests from agencies in North Carolina than any other state.”).

the counties' arrest and detention systems are conducive to that model. Police departments in North Carolina are responsible for arresting individuals while sheriffs' departments are responsible for detaining arrestees in their facilities. Thus, the police officer field arrest is always distinct from the immigration enforcement function conducted by the sheriff or jail administrator upon detention, capitalizing on the separation of functions already present in the North Carolina law enforcement system.

In addition to having arrest and detention systems that are conducive to the jail model, legislation proposed in the North Carolina General Assembly would further encourage North Carolina counties to enter agreements pursuant to 287(g). First, House Bill 1950 (2007 Session) appropriates \$750,000 and \$1,000,000 for fiscal years 2007–2008 and 2008–2009, respectively, as grants to the North Carolina Sheriffs' Association ("NCSA").⁴³ The grants would be used by NCSA to assist and to advise North Carolina sheriffs about 287(g) agreements, including assisting the sheriffs in negotiating an agreement, and enabling sheriffs to send personnel to the 287(g) training by reimbursing travel costs and salaries of officers while they attend the 287(g) training.⁴⁴ Second, House Resolution 2692, adopted July 24, 2006, urges six additional (unspecified) North Carolina counties to enter into 287(g) agreements, allowing "local officers to identify persons not legally present in the United States and who have previously been deported or who are persons wanted on outstanding felony charges in North Carolina or another state."⁴⁵ All of the positions urged for in the resolution have been filled (Alamance, Gaston, Cabarrus, Wake, Henderson, and Cumberland).⁴⁶

House Bill 55 (2007–2008 Session) would go a step further, establishing a jail model type system statewide.⁴⁷ The bill would mandate that when a person charged with a felony or an impaired driving offense is confined in a jail facility, the jail administrator is to make a "reasonable effort" to determine that person's nationality.⁴⁸ If lawful status cannot be verified by documents that the prisoner possesses, a query shall be made to the Department of Homeland

43. H.R. 1950, 2007 Gen. Assemb., Reg. Sess. (N.C. 2007).

44. H.R. 2692, 2005 Gen. Assemb., Reg. Sess. (N.C. 2005). The resolution does not specify which model—jail or officer—the counties should adopt. *Id.*

45. *Id.*

46. See *supra* note 40 (listing the dates when the counties entered into their agreements).

47. H.R. 55, 2007 Gen. Assemb., Reg. Sess. (N.C. 2007).

48. *Id.*

Security (“DHS”).⁴⁹ If the DHS query determines that the prisoner was not lawfully admitted to the United States, the jail administrator is to notify DHS.⁵⁰

As evident from increased inquiries by North Carolina counties and from recent North Carolina legislation, 287(g) agreements are rapidly gaining momentum in North Carolina. Before their use continues to spread across the state, a thorough and informed discussion of their merits and deficiencies is needed. Sound public policy regarding hot-button issues such as undocumented immigration tends to be obscured and influenced by impassioned rhetoric from all sides. At this juncture, it is imperative that North Carolinians, regardless of their views on undocumented immigration, understand the legitimate concerns motivating implementation of 287(g) agreements and what the likely positive and negative impact will be on the communities that choose to adopt an agreement. Only with an appropriate appreciation of all the implications should North Carolina counties consider whether it is in the best interests of the community to implement an agreement. The experience of the counties that have implemented 287(g) agreements informs this analysis.

III. THE EFFECTS OF IMMIGRATION IN NORTH CAROLINA AND BENEFITS OF 287(G) AGREEMENTS

Before discussing the consequences of 287(g) agreements as experienced in North Carolina counties that have adopted them, it is important first to understand the extent of immigration in North Carolina. The foreign-born population in North Carolina is estimated to be about 430,000 as of the 2000 Census.⁵¹ The estimated increase in the foreign-born population between 1990 and 2000 was 273.7%.⁵² By contrast, there was only a seventeen percent increase in the North Carolina native-born population over the same period.⁵³ The numbers represent that North Carolina over the period of 1990–2000 had the ninth-largest growth (in raw numbers) in foreign-born

49. *Id.*

50. *Id.*

51. Federation for American Immigration Reform, Extended Immigration Data for North Carolina, http://www.fairus.org/site/PageServer?pagename=research_research8875 (last visited Aug. 28, 2008).

52. *Id.*

53. *Id.*

population and the *fastest-growing* foreign-born population in the nation.⁵⁴ In other words, “[n]ot since the days of British rule has such a large portion of North Carolina’s population originated overseas.”⁵⁵

Native-born North Carolinians are concerned with the effects of such high levels of immigration.⁵⁶ Many also support cracking down on the major source—undocumented immigration—to combat the effects of immigration on local communities. NC Listen, a North Carolina immigration reform organization, states that “[t]oday’s out-of-control immigration affects homeland security, the unemployment rate, our education system, health care, government budgets . . . the environment, crime and countless other areas of American life.”⁵⁷ Regarding strains on the education system alone, NC Listen notes that limited English proficient (“LEP”) students in North Carolina approximate 100,000 in number.⁵⁸ Using a John Locke Foundation calculation that the average yearly cost of K-12 education in North Carolina is over \$8,300 per student, NC Listen estimates the cost to the state of educating LEP students at over \$800 million per year, over \$500 million of which is estimated to be the cost of educating LEP students who are dependents of undocumented immigrants.⁵⁹ The Federation for American Immigration Reform also attributes immigration in North Carolina to a decline in environmental health and quality of life across the state, in terms of water resources, open spaces, school overcrowding, traffic, sprawl, air pollution, waste, poverty, and crowded housing.⁶⁰

A recent resolution that was to be voted on in Columbus County, North Carolina expressed the situation even more starkly.⁶¹ The resolution noted that undocumented immigration costs the State nearly \$250 million yearly for education, health care, and social

54. *Id.*

55. Richard Stradling, *International Flavor Intensifies*, NEWS & OBSERVER (Raleigh, N.C.), Sept. 3, 2003, at 4B.

56. See Barrett, *supra* note 42.

57. NC Listen, *Why Should North Carolinians Be Concerned About Immigration?*, <http://www.nclisten.com/statement.html> (last visited Aug. 28, 2008).

58. *Id.*

59. *Id.* It is worth noting that some dependents of undocumented immigrants may actually be U.S. citizens by virtue of having been born here. For a conflicting calculation of costs, see *infra* note 61 and accompanying text.

60. Federation for American Immigration Reform, *Immigration Impact: North Carolina*, http://www.fairus.org/site/PageServer?pagename=research_researchf633 (last visited Aug. 28, 2008).

61. Columbus County, N.C., Resolution to Adopt Policies and Provide Staff Direction Relating to Illegal Residents in Columbus County (Nov. 5, 2007), *available at* <http://www.columbusco.org/minutes/2000s/2007-11-05.pdf>, at 289–91 [hereinafter Columbus County Resolution].

services.⁶² Second, the resolution expressed that communities are struggling to cope with the population explosion caused by illegal immigration.⁶³ Further, the resolution attributed a “parade of horrors” to the influx of undocumented immigrants to the state: overcrowding in school classrooms, public parks, and recreation facilities, depletion of affordable housing that was already in short supply for low income citizens, “havoc and death” on the highways, rise in the crime rate due to lack of comprehension of the English language and inability to read and to follow establishes laws, decline in public health because immigrants lack social and personal health care standards, and the unavailability of jobs and negative impacts on the state budget.⁶⁴

The use of 287(g) agreements is principally targeted at the criminal consequences of illegal immigration. Section 287(g) agreements increase law enforcement capabilities by providing local 287(g) officers with “access to national databases to identify criminal aliens and increased familiarity with patterns of alien and drug smuggling.”⁶⁵ In North Carolina, Mecklenburg County Sheriff Jim Pendergraph stated, in support of the 287(g) agreement that commenced in his county in May 2007, “We’re protecting people from illegal immigrants driving drunk and killing our families and selling drugs to our children.”⁶⁶ Pendergraph further noted that his officers have so far found about 1,300 undocumented immigrants “with criminal records or orders to leave the country, and more than one hundred who had been deported before.”⁶⁷ If the county lacked access to the immigration database that the 287(g) agreement has provided, “most of those people would have slipped through the system.”⁶⁸ A particularly noteworthy arrest in Mecklenburg County involved a methamphetamine trafficker who had been removed from

62. *Id.* Contrast these figures with those mentioned *supra* note 58 and accompanying text.

63. Columbus County Resolution, *supra* note 61, at 290.

64. *Id.* It is hard to tell whether undocumented immigrants are being “scapegoated” and blamed for all manner of ills that North Carolina communities are experiencing. However, as will be discussed below, *infra* notes 139–56, there is data to suggest that the figures espoused here by NC Listen and by the Columbus County Resolution are erroneous, and that the undocumented immigrant population is not a burden to the state, certainly not to the degree claimed here.

65. See Arnold, *supra* note 5, at 141.

66. See Collins, *supra* note 30.

67. *Id.*

68. *Id.*

the United States twenty-two prior times.⁶⁹ ICE also boasts of Mecklenburg County's success, noting that county deputies examined over 1,600 arrestees and placed 853 of them in deportation proceedings in the first nine months of the program.⁷⁰

More generally, ICE notes that "287(g) partnerships continue to generate hundreds of investigative leads, arrests and convictions for a variety of federal and state charges."⁷¹ As of March 10, 2008, local officers deputized by ICE through a 287(g) agreement identified more than 45,000 individuals for possible immigration violations.⁷² ICE reports that the 287(g) collaborations allow local and state officers to have "necessary resources and latitude to pursue investigations relating to violent crimes, human smuggling, gang/organized crime activity, sexual-related offenses, narcotics smuggling and money laundering."⁷³

It is hard to quarrel with the position that criminals that are in the country without authorization—particularly violent criminals, sexual predators, and drug traffickers—should be removed. As one commentator noted:

You need not be a racist to agree that our country should immediately deport any illegal immigrant who is arrested for a violent crime. Letting illegals who commit crimes stay here, preying on the innocent, helps no one, least of all the millions of immigrants whose only goals are to work hard, stay out of trouble, and feed their families.⁷⁴

Alamance County Sheriff Terry Johnson nicely summarized the appeal of the 287(g) agreement in his county: "It brings in money, because the federal government pays about \$66 a night for every immigration detainee who stays in the jail. And it rids the county of illegal immigrants, who . . . sponge public resources and are more prone to commit crimes than legal residents."⁷⁵ The Hispanic population in Alamance County is one of the fastest-growing⁷⁶ in a

69. See J. Paige Straley, *North Carolina Sheriff Uses 287(G) Powers, Acts Against Illegal Immigration!*, VDARE.COM, August 20, 2006, http://www.vdare.com/misc/060920_straley.htm (summarizing an August 26, 2006 "town hall" meeting with Sheriff Pendergraph and Congresswoman Sue Myrick).

70. See ICE Fact Sheet, *supra* note 6.

71. *Id.*

72. See Partners, *supra* note 29.

73. ICE Fact Sheet, *supra* note 6.

74. 'Sanctuary' Cities: No Questions Asked, THE WEEK MAGAZINE, Sept. 7, 2007, at 21.

75. See Collins, *supra* note 30.

76. *Id.*

state that has the fastest-growing Hispanic population in the nation.⁷⁷ From 1990 to 2005, Alamance County's Hispanic community increased from 736 to nearly 14,000, a *nineteen-fold* increase.⁷⁸ Predictably, the increase corresponded to tension with the native-born population in Alamance County, a traditional, rural community first settled by Europeans in the mid-1700s.⁷⁹

Johnson's anti-illegal immigration posture resonates with his constituents, as he was elected in 2006 to his second term as sheriff by a wide margin.⁸⁰ He lobbied for a new, \$12 million, 240-bed jail so the county's facility could become a hub for immigration detainees, and bring revenue to the county from fees the federal government would remit for the housing of immigrant detainees.⁸¹ The jail opened in April 2007, and with its opening "and the leasing of added space to the federal government," the reimbursement was expected to go up to about \$90–\$100 daily per prisoner.⁸² As of July 2007, estimates have placed the federal government reimbursement at \$61 per day per inmate housed at the jail, and "ICE detainees have already brought in more than \$183,000—about \$30,561 in May and \$152,622 in June."⁸³

To summarize, supporters of 287(g) agreements praise them for their direct benefits—targeting criminal undocumented immigrants that threaten community safety and removing them from the country and bringing a stream of revenue through reimbursements for detaining immigrants in the jails—and incidental benefits such as reducing the burden on educational, healthcare, and social services systems through deportation and the discouraging effect on undocumented immigrants from coming to or staying in a community.⁸⁴

77. See *supra* notes 51–53 and accompanying text.

78. Roselee Papandrea, 'We Would Still Have Crime,' *TIMES-NEWS* (Burlington, NC), Aug. 30, 2007, <http://special.thetimesnews.com/immigration2007/083007-1.html>.

79. A Brief History of Alamance County, <http://www.alamance-nc.com/Alamance-NC/The+Community/County+History.htm> (last visited Aug. 28, 2008).

80. See Collins, *supra* note 30.

81. *Id.*

82. Lorraine Ahearn, *Bigger Jail and Deportation Hub Worry Latinos*, *NEWS & RECORD* (Greensboro, N.C.), Mar. 18, 2007, at B1.

83. Hannah Winkler, *Detainees Help Keep Jail Full*, *TIMES-NEWS* (Burlington, N.C.), July 22, 2007, at A1, available at http://www.thetimesnews.com/news/ice_4201___article.html/jail_detainees.html.

84. See Barrett, *supra* note 42 ("The intent is to discourage them and make them go home."). To be sure, xenophobia and racism/ethnic bias also factor into support for the 287(g) agreements, though rarely are those sentiments expressed publicly. Alamance Sheriff Johnson, in a moment of complete candor, once volunteered his conviction that: "Their values are a lot different—their morals—than what we have here. In Mexico,

IV. DRAWBACKS OF 287(G) AGREEMENTS

A. Racial Profiling

With an understanding of some of the benefits, a proper appreciation of the drawbacks is necessary to assess the overall impact of 287(g) agreements. Critics are chiefly concerned that state and local police enforcement of immigration laws may lead to possible civil rights violations.⁸⁵ Specifically, the potential for racial profiling—“the practice of targeting individuals for police or security detention based on their race or ethnicity in the belief that certain minority groups are more likely to engage in unlawful behavior”⁸⁶—is worrisome. Within the context of immigration law enforcement, racial profiling is the practice of targeting individuals on the basis that they are more likely to “be present in the United States illegally.”⁸⁷

Research has established that racial profiling indeed takes place when state and local law officers undertake immigration enforcement. The evidence has emerged even before 287(g)’s express authorization for local immigration enforcement, as state and local law enforcement

there’s nothing wrong with having sex with a 12-, 13-year-old girl They do a lot of drinking down in Mexico.” Collins, *supra* note 30. Though the comment might be shocking to some, it is unlikely that Johnson—a twice-elected Sheriff—is alone in this conviction.

85. The Fifth Amendment to the United States Constitution establishes that “no person shall . . . be deprived of life, liberty, or property, without due process of law.” U.S. CONST. amend. V. The Fourteenth Amendment prohibits states from denying “the equal protection of the laws” to “any person within [their] jurisdiction.” U.S. CONST. amend. XIV, § 1. Section 1983 provides a private right of action and a claim for monetary relief against state or local officials who deprive persons of their federal constitutional rights. See 42 U.S.C. § 1983 (2000). Undocumented immigrants, typically members of minority groups, may cause complications for officers trying to enforce immigration law because of “the difficulty in identifying illegal aliens while at the same time avoiding the appearance of discrimination based on ethnicity or alienage.” CRS REPORT, *supra* note 12, at 25–26. The consequence is a “high risk for civil rights violations . . . if state and local police do not obtain the requisite knowledge, training, and experience in dealing with the enforcement of immigration laws. *Id.* at 26. The CRS report also notes that the courts have been attentive to “[t]he prevalence of alleged civil rights violations and racial profiling among federal, state, and local law enforcement agencies.” *Id.* (citing *Department of Homeland Security Transition: Bureau of Immigration and Customs Enforcement: Hearing Before the Subcomm. on Immigration, Border Security, and Claims of the House Comm. on the Judiciary*, 108th Cong. 66–69 (2003) (statement of the Mexican American Legal Defense and Education Fund)).

86. CRS REPORT, *supra* note 12, at 26 & n.97 (citing statements of the Mexican American Legal Defense and Education Fund before Congress to the extent of racial profiling practices among federal and state officers).

87. *Id.*

officers have been permitted to inquire about an immigrant's status when conducting their normal duties as an incidental role to the officers' general crime control authority.⁸⁸ Even absent a 287(g) agreement, when state or local officers detain an immigrant suspect for a local violation, the officer may inquire into the suspect's immigration status through a query to the Law Enforcement Support Center ("LESC").⁸⁹ The ICE representative fielding the query may then place a detainer on the suspect to keep him or her in custody until the immigrant's status can be determined.⁹⁰ Indirect state and local immigration enforcement by means of an immigration detainer has been controversial. Allegations have surfaced regarding abuses such as "state detentions premised on immigrant status alone and custodial arrests for traffic violations or similar offenses as pretexts for verifying an individual's status with immigration authorities."⁹¹ In fact, "[p]ast allegations of abuse at times have led to states and localities entering into consent decrees that strictly limit their role in the enforcement of immigration law."⁹²

Though the use of 287(g) in North Carolina counties is too recent to permit systematic studies of racial profiling implications, the experience of other counties with 287(g) agreements is instructive. For example, in Davidson County, Tennessee—considered in many ways to parallel Mecklenburg County, North Carolina⁹³—crime data before and after the implementation of the 287(g) program in April 2006 signal that racial profiling is taking place there.⁹⁴ Davidson County has a similar structure to North Carolina counties in that the police department is responsible for field enforcement of the law and the sheriff's department is responsible for jailing arrested suspects.⁹⁵

88. See *id.* at 3. 287(g) agreements extend an officer's incidental role in immigration enforcement by providing an explicit delegation of immigration enforcement authority, accompanied by the requisite training and oversight mandated by 287(g). See *supra* notes 23–26 and accompanying text.

89. CRS REPORT, *supra* note 12, at 3–4. The LESC is a twenty four hours a day, seven days a week support center that assists local, state, and federal enforcement agencies that are investigating or arresting foreign-born individuals involved in criminal activity with immigration and identity information by information gathered from eight DHS databases. See U.S. Immigrations and Customs Enforcement, Law Enforcement Support Center, <http://www.ice.gov/partners/lesc/> (last visited Aug. 28, 2008).

90. However, Sheriff Pendergraph describes LESC query practice as "worthless and a waste of time." See Straley, *supra* note 69.

91. CRS REPORT, *supra* note 12, at 3–4.

92. *Id.*

93. Telephone Interview with Stephen Fotopolous, Policy Director, Tennessee Immigrant and Refugee Rights Coalition (Sept. 13, 2007).

94. *Id.*

95. *Id.*; see also Section II.

Racial profiling is harder to detect in a program like Davidson County's because it has adopted the jail model as North Carolina counties have done.⁹⁶ Thus, an officer who selectively targets a suspect on suspicion that he or she is undocumented—for example, a Hispanic-looking suspect—has no authority to inquire into immigration status and would likely not inquire about documented status at the time of the arrest. However, if more Hispanics are arrested—precisely to trigger the authority in the jail administrator to make a status inquiry—a stronger case can be made that racial profiling is occurring.

Davidson County data shows that arrest rates for driving without a license for Hispanic defendants more than doubled after the implementation of the 287(g) program, from 23.3% to 49.4%.⁹⁷ By contrast, the arrests for driving without a license for non-Hispanic defendants decreased from 76.7% to 50.6% over the same period.⁹⁸ Driving without a license is an offense that typically merits a citation (rather than an arrest).⁹⁹ In Tennessee, as in North Carolina and other states, undocumented immigrants are no longer permitted to obtain driver's licenses.¹⁰⁰ Thus, driving without a license has become the crime *du jour* for undocumented immigrants. With a likelihood that a Hispanic-looking driver on the road is undocumented as compared to non-Hispanic-looking drivers, an officer can have a strong suspicion that the driver does not possess a license. Since driving without a license is a crime that *can* trigger an arrest instead of the issuance of a citation—though it is typically punishable by citation—officers can pull over Hispanic-looking drivers with a fair measure of certainty that the officer can arrest the driver and trigger the accompanying status check in the jails. Even if the driver ends up possessing a license, there is little to no cost for the officer to stop the driver at the outset anyway, simply on the suspicion that the driver does not possess a license.

Again, while the jail model in place in North Carolina counties, including Davidson County, better avoids racial profiling concerns, selective arrests by field officers to trigger status inquiries at the jail

96. See Telephone Interview with Stephen Fotopolous, *supra* note 93.

97. TENN. IMMIGRANT AND REFUGEE RIGHTS COAL., ARRESTS FOR NO DRIVERS LICENSE BY ETHNICITY AND RACE: A COMPARISON OF MAY–JULY 2006 TO MAY–JULY 2007 1 (July 31, 2007) (on file with the North Carolina Law Review).

98. *Id.*

99. See TENN. CODE ANN. § 55-10-207(a)(1) (2004 & Supp. 2007); see also Telephone Interview with Stephen Fotoplous, *supra* note 93.

100. See *supra* note 3 and accompanying text (citing recent North Carolina law).

may nonetheless establish a pattern of racial profiling. Despite an absence of data in North Carolina counties, there are reasons to believe that racial profiling practices are occurring. In Mecklenburg County, critics of 287(g) agreements contend that the agreement there “is contributing to a discriminatory climate in which Hispanic drivers feel as if they are being ‘hunted’ by the police.”¹⁰¹ Hispanics are concerned that police officers are more likely to arrest them for minor traffic violations knowing that the arrest will trigger the 287(g) authority of officers in the jails to check immigration status and possibly lead to deportation.¹⁰² North Carolina counties considering 287(g) agreements should be attentive to the potential for racial profiling, not just because of the accompanying legal liability that may result from a racial profiling pattern,¹⁰³ but also because racial profiling practices—as played out in arrests for violations of traffic crimes¹⁰⁴—can distract from enforcement of other serious criminal offenses.¹⁰⁵

B. Community Policing and Crime

Beyond racial profiling, a second overriding concern is the effect of 287(g) agreements and practices on community policing. Community policing emphasizes “strengthening relationships between police and the people they are charged with protecting.”¹⁰⁶ The premise is that trust and cooperation between the police and the community is necessary for the protection of the community. Whereas community members depend on police to provide protective services, the police depend on community members to report crimes and to serve as witnesses in the prosecution of criminals. The City of Chicago provides an example of a harmonious community policing

101. Whoriskey, *supra* note 31.

102. *Id.*

103. For an example of how a pattern of racial profiling can lead to legal liability for law enforcement agencies, see Am. Civ. Liberties Union, NAACP Ask Court to Approve “DWB” Class Action Lawsuit Against Maryland State Police, Mar. 8, 2000, <http://www.aclu.org/racialjustice/racialprofiling/15924prs20000308.html> (describing a class action lawsuit against the Maryland State Police), and Am. Civ. Liberties Union, Landmark Settlement Reached With Maryland State Police In “Driving While Black” Case, Apr. 2, 2008, <http://www.aclu.org/racialjustice/racialprofiling/34753prs20080402.html> (describing the settlement of the suit).

104. See *supra* notes 96–99 and accompanying text.

105. See *infra* notes 125–29 and accompanying text.

106. David Hench, *Building Trust vs. Checking for Visas: Making Police Enforce Immigration Laws Could Actually Detract from Crime Fighting, Some Officials Say*, PORTLAND PRESS HERALD, Mar. 29, 2004, at 1B.

relationship between law enforcement and immigrant communities in the absence of a 287(g) agreement. To promote community policing, the city forbids its employees, including law enforcement officers, from inquiring into immigration status.¹⁰⁷ One officer praised the policy for enabling him to form a strong bond with his community.¹⁰⁸ The officer was comfortable playing soccer with children in the community and the residents felt comfortable sharing information about local gang members and drug dealers.¹⁰⁹

Critics of 287(g) agreements argue that state and local enforcement of immigration law “would undermine the relationship between local law enforcement agencies and the communities they serve.”¹¹⁰ The community trust has often been difficult to build, in particular among immigrant communities.¹¹¹ It is not only 287(g) critics that worry about the community policing implications, but law enforcement authorities are also concerned about undermining the relationship established with the immigrant community and realize that such policies would have a chilling effect on the reporting of crime.¹¹² An inevitable consequence, the theory goes, would be an increase of crime against the immigrant community.¹¹³

[f]or example, potential witnesses and victims of crime may be reluctant to come forward to report crimes in fear of actions that might be taken against them by immigration officials. [The critics] assert that the trust between immigrants and local authorities is tenuous and that such a policy [of local immigration enforcement] could exacerbate the negative relationship.¹¹⁴

To illustrate the extent to which the law enforcement community is split on the issue of local enforcement of immigration law generally,

107. See Arnold, *supra* note 5, at 122 & n.66 for a brief discussion of Chicago’s and other jurisdictions’ “non-cooperation policies.” Critics of non-cooperation policies argue that the policies encourage illegal immigration, while the supporters argue that the policies “are called for by resource and legal constraints, the need to avoid the disruption of critical municipal services, or basic human rights considerations.” CRS REPORT, *supra* note 12, at 23.

108. See Arnold, *supra* note 5, at 122.

109. *Id.*

110. See CRS REPORT, *supra* note 12, at 26–27 & n.99.

111. See CRAIG E. FERRELL, JR. ET AL, MAJOR CITIES CHIEFS ASSOCIATION, M.C.C. IMMIGRATION COMMITTEE RECOMMENDATIONS FOR ENFORCEMENT OF IMMIGRATION LAWS BY LOCAL POLICE AGENCIES 5–6 (2006), http://www.majorcitieschiefs.org/pdfpublic/mcc_position_statement_revised_cef.pdf.

112. Tiffany Walters Kleinert, Comment, *Local and State Enforcement of Immigration Law: An Equal Protection Analysis*, 55 DEPAUL L. REV. 1103, 1114 (2006).

113. *Id.* at 1114–15.

114. CRS REPORT, *supra* note 12, at 27 & n.100.

including the use of 287(g) agreements, members of the International Association of Chiefs of Police ("IACP") disagree as to its value, the consequence of which is that IACP has never expressed a preference one way or the other.¹¹⁵

Government officials contend that the fear of undermining community policing is overstated. Alamance County Lieutenant Robert Wilborn asserts that the 287(g) enforcement would only be triggered after an immigrant has committed two crimes: illegal entry into the country and whatever offense precipitated the arrest.¹¹⁶ Alamance County Sheriff Johnson also assures that there are no intentions of targeting illegal immigrants generally, but that the program would merely allow the county to check the status of those arrested for other crimes.¹¹⁷ The logical implication is that undocumented immigrants that are otherwise law-abiding residents have nothing to worry about. But the message seems to be lost in translation.

Even those who oppose the use of 287(g) agreements support removing undocumented immigrants that commit crimes. However, the fear that the process of deportation can be triggered for relatively minor infractions such as failure to appear in court for a speeding violation or having an expired driver's license makes undocumented immigrants distrustful of the entire law enforcement establishment.¹¹⁸

115. INT'L ASS'N OF CHIEFS OF POLICE, POLICE CHIEFS GUIDE TO IMMIGRATION ISSUES 3 (July 2007), <http://www.theiacp.org/documents/pdfs/publications/policechiefs/guidetoimmigration.pdf>.

The IACP is well aware of the controversy surrounding the question of whether state, tribal and local law enforcement should be involved in the enforcement of federal immigration law. This document is not intended to rule on this fundamental philosophical question. It is the IACP's belief that the question of state, tribal or local law enforcement's participation in immigration enforcement is an inherently local decision that must be made by a police chief, working with his or her elected officials, community leaders and citizens.

Id.; see also Arnold, *supra* note 5, at 123 & nn. 72-74 (citing U.S. Representative Michael D. Rogers (R-AL) Holds Hearing on Border Security Partnerships Before the Subcomm. on Management, Integration, and Oversight of the H. Comm. on Homeland Security, 109th Cong. (2005) (statement of Chief Jimmy Fawcett, Sixth Vice President, International Association of Chiefs of Police)); Whoriskey, *supra* note 31.

116. Ahearn, *supra* note 82 ("Before they hit our radar, they would have to have committed two crimes: One is being in the country illegally, two is whatever offense they've been picked up for. We're not going out targeting illegal aliens. We're only targeting criminal aliens.").

117. Collins, *supra* note 30 ("We do not choose the race, financial status or color of those individuals who violate the law," Johnson said.").

118. Ahearn, *supra* note 82 ("They came here for the opportunity to work. Now, they don't know who to trust. They're afraid of the system.").

So despite law enforcement assurances of a continuing relationship of trust and cooperation with the undocumented immigrant community, the actual—if not intended—effect of 287(g) agreements is to alienate undocumented immigrants and to undermine vital community policing. The Congressional Research Service (“CRS”) report notes that critics are concerned that “allowing state and local law enforcement to enforce such laws would undermine public safety and could force many undocumented aliens to go underground, thus making it more difficult to solicit their cooperation in criminal investigations, which could also include terrorist-related investigations.”¹¹⁹

Nolo Martinez, formerly the state’s director of Hispanic affairs and currently with the Center for New North Carolinians, agrees, stating that “the program will create fear . . . and discourage Hispanics from calling the police.”¹²⁰ Troubling reports have emerged recently regarding how fearful undocumented immigrants have been in cooperating with local authorities. At the scene of an accident, one of the drivers—an undocumented immigrant who was not responsible for the accident—ran away from the scene for fear that he would be arrested and have his status checked anyway.¹²¹ Another incident involved two undocumented immigrant males who were shot in a drive-by shooting. They called the police, yet they themselves were arrested and currently await deportation.¹²² A more troubling situation involved a home invasion and gang-rape in which the family of the victim, the daughter, refused to cooperate in the investigation.¹²³

The consequences of unreported or unprosecuted criminal activity extend beyond the immigrant victims; the community as a whole suffers. “What if a U.S.-born citizen is the victim of a crime? . . . If an undocumented person is a witness, how willing will they be

119. See CRS REPORT, *supra* note 12, at 27 & n.102.

120. See Collins, *supra* note 30.

121. Ahearn, *supra* note 81. At this point, it is worth reiterating that an arrest need not lead to a conviction before the deportation machinery is triggered. So, even if the driver were arrested and ultimately not found at fault or convicted for any offense, he could nonetheless face deportation because an immigration status check upon his detention at the jail would reveal undocumented status. “[Wake County Sheriff Donnie] Harrison has promised that only immigrants arrested and booked into the county jail would be subject to immigration scrutiny. But, . . . just because you’ve been arrested doesn’t mean you’re guilty. Either way, it’s the same ticket back to Mexico or Central America.” Ruth Sheehan, *Jail ID Program Stirs Fear*, NEWS & OBSERVER (Raleigh, N.C.), Nov. 9, 2007, at 1B.

122. Sheehan, *supra* note 121.

123. Ahearn, *supra* note 82.

to come forward?"¹²⁴ Consider the unfortunate gang-rape scenario mentioned above: the perpetrators remain on the streets and continue to pose a threat to others, citizen and undocumented families alike.¹²⁵

Critics also fear that 287(g) agreements will reallocate finite police resources towards the enforcement and prosecution of low-priority crimes, such as driving without a license and other minor traffic violations.¹²⁶ Meanwhile, the resources needed for the enforcement of more serious crimes—violent crimes, gang activity, drug trafficking—will decrease correspondingly. The CRS report reflects this concern.¹²⁷

[Critics] contend that such action could result in the reduction of local law enforcement resources available for other purposes and constitute a cost shift [of federal immigration law enforcement] onto state and local law enforcement agencies. According to some, local jurisdictions are already witnessing a depletion of traditional funding to fight crime These critics also contend that there could be a de-emphasis on certain types of criminal investigations in an effort to focus on enforcing immigration law, which would divert law enforcement authorities from their primary duties.¹²⁸

124. See Barrett, *supra* note 42.

125. Charlotte Mayor Pat McCrory supports law enforcement officers checking the immigration status of the crime victims and the witnesses themselves, but Police Chief Darrel Stephens has resisted. Editorial, *Mayoral Meddling: Back Off, Mr. Mayor. Chief, Stick to Your Guns*, CHARLOTTE OBSERVER, May 26, 2006, at 12A. A related consequence of 287(g) agreements that further undermines criminal enforcement is within the domestic violence realm. Domestic violence perpetrated against undocumented immigrant women is a well-reported phenomenon. The consensus is that undocumented domestic violence victims suffer a cycle of violence that is exacerbated by their undocumented status. An abuser commonly exploits the woman's immigration status to exert further control by threatening the woman with deportation or by threatening not to file the required paperwork for the woman to obtain lawful status. See generally Gail Pendleton, *Local Police Enforcement of Immigration Laws and Its Effects on Victims of Domestic Violence*, AM. BAR ASS'N COMM'N ON DOMESTIC VIOLENCE, <http://www.nationalimmigrationproject.org/DVPage/DVSA%20CLEAR%20article.doc> (last visited Aug. 28, 2008) (discussing drawbacks to the 287(g) agreements while focusing briefly on consequences within the realm of domestic violence perpetrated against undocumented immigrant women).

126. A criminal defense attorney in Alamance County notes that one of his clients was a nineteen-year-old without a criminal record who did not stop for a police siren. See Collins, *supra* note 30. Another client was arrested for driving without a license and running a stop sign. *Id.*

127. CRS REPORT, *supra* note 12, at 27.

128. *Id.*

Nolo Martinez also predicts that, as counties try to earn profits from detaining undocumented immigrant inmates,¹²⁹ they will fill their jails with Hispanics who have committed misdemeanors and traffic violations.¹³⁰ If the prediction is accurate, jail space that could be used to detain drug traffickers, sexual predators, and violent criminals will instead be used to house undocumented immigrants who have merely committed minor traffic infractions. A community considering a 287(g) program should recognize this reality and prioritize its law enforcement interests accordingly, recognizing that, in the context of criminal law enforcement, 287(g) agreements are likely to be counterproductive.

As exemplified by the foregoing discussion, the issue of 287(g) community policing and crime implications is multifaceted. One more point merits serious attention. Studies of undocumented immigration incarceration rates have shown that undocumented immigrants do not commit crimes at a disproportionately higher rate than the native-born population. For example, between 2002 and 2006, Hispanics comprised ten percent of Alamance County's population and accounted for twelve percent of the county's criminal caseload.¹³¹ A report by the Immigration Policy Center confirms that incarceration rates among immigrants are the lowest for every ethnic group without exception and even suggests that the presence of immigrants in a community can help to reduce crime rates.¹³²

129. See *supra* notes 80–82 (discussing federal reimbursements to counties detaining undocumented immigrants).

130. See Collins, *supra* note 30; *supra* notes 80–82 and accompanying text (discussing the revenue stream that detaining undocumented immigrants provides).

131. See Collins, *supra* note 30. The twelve percent figure may itself be inflated and misrepresentative of the actual extent of crime committed by Hispanics in Alamance County if there was already a tendency to over-prosecute Hispanics suspects.

132. RUBEN RUMBAUT & WALTER EWING, IMMIGRATION POLICY CTR., THE MYTH OF IMMIGRANT CRIMINALITY AND THE PARADOX OF ASSIMILATION: INCARCERATION RATES AMONG NATIVE AND FOREIGN-BORN MEN 1 (2007).

[F]or every ethnic group without exception, incarceration rates among young men are lowest for immigrants, even those who are the least educated . . . [T]hese patterns have been observed consistently over the last three decennial censuses, a period that spans the current era of mass immigration . . . The problem of crime in the United States is not “caused” or even aggravated by immigrants, regardless of their legal status. But the misperception that the opposite is true persists among policymakers, the media, and the general public, thereby undermining the development of reasoned public responses to both crime and immigration.

Id. at 1. “[I]mmigration is arguably one of the reasons that crime rates have dropped in the United States over the past decade and a half. Indeed, a further implication of this evidence is that if immigrants suddenly disappeared and the country became immigrant-free (and illegal-immigrant free), crime rates would likely *increase*.” *Id.* at 14; see

C. Expenses and Economic Impact

The expense associated with 287(g) agreements is the final topic of discussion within the context of evaluating the advantages and disadvantages of 287(g) agreements. As previously mentioned, 287(g) agreements can bring in revenue to a county.¹³³ Nevertheless, the statutory language of 287(g) clearly states that the local government is responsible for all expenses incurred.¹³⁴ Some of the costs include “costs of transportation to the training location and providing temporary replacements for law enforcement personnel who are participating in the training.”¹³⁵ Mecklenburg County estimated that training and equipment for the 287(g) program would cost about \$650,000.¹³⁶ The county planned to recoup this expense through federal government reimbursements for detaining undocumented immigrants in the local prison facilities,¹³⁷ though it is not entirely clear whether the reimbursements from the federal government will balance out the expenses. The Mecklenburg County Sheriff has stated that—despite the revenue—the detention of undocumented immigrants for immigration law violations is burdening his county because ICE cannot process immigrant detainees quickly enough.¹³⁸ Some counties with 287(g) agreements

Jacqueline Hagan & Scott Phillips, *Border Blunders: The Unanticipated Human and Economic Costs of the U.S. Approach to Immigration Control, 1986–2007*, 7 CRIMINOLOGY & PUB. POL’Y. 83, 85–86 (2008). “Collectively, criminological research suggests that enforcement activities and public perception are based, at least in part, on faulty and misguided assumptions about the behavior of immigrants. Most immigrants are, in the words of sociologist Robert Merton, ‘conformists’ who seek to achieve the American Dream through hard work and self-sacrifice.” *Id.* at 91. “[P]eople living in immigrant neighborhoods are less prone to violence than similarly situated people living in non-immigrant neighborhoods.” *Id.*

133. See *supra* notes 80–82, 109 and accompanying text.

134. 8 U.S.C. § 1357(g)(1) (2000).

135. *Hearings*, *supra* note 25.

136. Michelle Crouch, *Local Action on Immigrants: Mecklenburg County Deputies to Screen People Charged with Crimes for Illegal Status*, CHARLOTTE OBSERVER, Feb. 7, 2006, at 1A. Similar numbers are estimated in Wake County’s upcoming implementation of a 287(g) agreement: “An estimated \$629,316 in the first year, . . . [a]bout \$539,341 annually in future years. The department can apply for federal reimbursements of \$55 per day for each undocumented immigrant held in the county jail awaiting transport to a federal facility to await deportation.” Biesecker, *supra* note 42.

137. Crouch, *supra* note 136.

138. Straley, *supra* note 69.

So many illegal immigrant criminals have been identified through my 287(g) program, it is causing me a jail space problem. One of the agreements with ICE in the beginning was for their removal of the identified offenders as soon as possible.

are also starting to observe that ICE has not been submitting the reimbursements as expected.¹³⁹

Another important economic consideration is that immigrants—even undocumented ones—contribute to local economies and can actually help to revitalize them. Through a taxpayer identification number,¹⁴⁰ many undocumented immigrants pay taxes and contribute to the social security system, even though they cannot be beneficiaries of many public benefits programs.¹⁴¹ Undocumented immigrants also have purchasing power and can stimulate a local economy.¹⁴² For example, a recent study has comprehensively detailed the economic

I don't think even they foresaw the numbers we would be dealing with. The Removal and Detention Division of ICE is overwhelmed by the numbers we are generating for removal in Mecklenburg County alone.

Id. The jail space problem relates to the crime control consequences mentioned above. If the county can obtain revenue for housing detained immigration law violators—revenue that they do not obtain for housing garden-variety criminals that have committed crimes more serious than immigration or traffic violations—there may be an incentive to incarcerate immigrants over the garden-variety criminals. Even if the economics do not factor into the equation, fewer jail spaces from the already high presence of immigrants in the Mecklenburg jails could nonetheless result in serious—non-immigrant—offenders remaining on the streets.

139. See Jennifer M. Hansen, Comment, *Sanctuary's Demise: The Unintended Effects of State and Local Enforcement of Immigration Law*, 10 SCHOLAR 289, 322–23 (2008).

Congress appropriated \$5 million for the 287(g) program in fiscal [year] 2006 and \$5.4 million in fiscal [year] 2007, not including a supplemental appropriation in late fiscal [year] 2006 of \$10.1 million, available through the end of fiscal [year] 2007. Since these numbers did not cover the bulk of 287(g) expenses, states and localities that have entered into these MOAs are already feeling the pressure of these extra costs in their budget. The federal government has also overlooked the salaries for each officer needed to replace another who has gone to training or who has completed the program and is working with an ICE task force, as many do.

Id. at 324 (internal citations and quotations omitted).

140. See Internal Revenue Service, Individual Taxpayer Identification Number (ITIN), <http://www.irs.gov/individuals/article/0,,id=96287,00.html> (last visited Aug. 28, 2008).

141. See LEIGHTON KU ET AL., CTR. ON BUDGET AND POLICY PRIORITIES, NONCITIZENS' USE OF PUBLIC BENEFITS HAS DECLINED SINCE 1996: RECENT REPORT PAINTS MISLEADING PICTURE OF IMPACT OF ELIGIBILITY RESTRICTIONS ON IMMIGRANT FAMILIES 1 (2003), <http://www.cbpp.org/4-14-03wel.pdf> ("The 1996 welfare law made many legal noncitizens ineligible for certain public benefit programs, including Medicaid, Food Stamps, Temporary Assistance for Needy Families (TANF) and Supplemental Security Income (SSI).").

142. Latin American born workers earned an estimated \$450 billion in annual gross income in 2004 and spent ninety percent of the money within the United States. INTER-AM. DEV. BANK, SENDING MONEY HOME: REMITTANCES TO LATIN AMERICA FROM THE US 1 (2004), <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=547214>.

contributions of Hispanics—the majority of undocumented immigrants—to the North Carolina economy.¹⁴³

Far from being a burden to the state,¹⁴⁴ North Carolina's Hispanic population, through purchases and taxes, contributed over \$9 billion to the state's economy in 2004.¹⁴⁵ Assuming immigration and spending patterns continue, the yearly economic impact of Hispanic spending could total \$18 billion by 2009.¹⁴⁶ The annual contribution of Hispanics to North Carolina taxes is about \$756 million, while the state spends about \$817 million annually to provide education, health care, and correctional services to its Hispanic population.¹⁴⁷ The cost per Hispanic resident was calculated to be \$102 though the study did not mention the figures for the native-born population.¹⁴⁸ However, the study cautions that despite the \$61 million deficit that the state bears in providing services to the Hispanic population:

[T]he net cost to the state budget must be seen in the broader context of the aggregate benefits Hispanics bring to the state's economy. Above and beyond their direct and indirect impacts on North Carolina business revenues, Hispanic workers contribute immensely to the state's economic output and cost competitiveness in a number of key industries. Without Hispanic labor, for example, the state's construction industry

143. JOHN D. KASARDA & JAMES H. JOHNSON, JR., FRANK HAWKINS KENAN INST. OF PRIVATE ENTER., *THE ECONOMIC IMPACT OF THE HISPANIC POPULATION ON THE STATE OF NORTH CAROLINA* (2006).

144. See *supra* notes 55–64 and accompanying text. Ironically, deportation of an undocumented immigrant actually increases the chances of dependency on state support. This is because “deportation severs the migrant from his or her work and, thus, from income-generating activities,” and “the separation poses huge economic costs to the family members in the U.S. household, who ironically may become more dependent on the U.S. government and taxpayers for assistance in the absence of the breadwinner.” Hagan & Phillips, *supra* note 132, at 90.

145. KASARDA & JOHNSON, JR., *supra* note 143, at ix.

North Carolina Hispanics had an estimated total after-tax income of \$8.3 billion in 2004. With about 20 percent of that total sent home to Latin America, saved, or used for interest payments, the remaining spending had a total impact of \$9.2 billion on the state—much of which is concentrated in the major metropolitan areas along the Interstate 40/Interstate 85 corridor, but which also supports businesses in every part of the state.

Id.

146. *Id.*

147. *Id.*

148. *Id.*

output would likely be considerably lower and the state's total private-sector wage bill as much as \$1.9 billion higher.¹⁴⁹

The study further notes that the full potential of Hispanic buying power is not realized, because many communities—in particular those in rural areas—lack the “retail and service facilities to meet the consumer needs of Hispanics.”¹⁵⁰ North Carolina businesses can profit “if they can find ways to . . . tap this growing market.”¹⁵¹ The authors find further opportunities for economic growth through promoting Hispanic entrepreneurship¹⁵² but warn that barriers such as “complex English-language only legal and reporting documents [and] lack of credit histories” impede Hispanics from establishing businesses.¹⁵³ The study notes that the growth of exports from North Carolina to regions in Latin America have grown dramatically in recent years, creating nearly 70,000 jobs and contributing \$231 million to state and local taxes.¹⁵⁴ Given North Carolina's rapidly-increasing Hispanic population, there is also potential for Latin American-headquartered businesses to invest in North Carolina to serve the Hispanic population and, as a consequence, to boost the state's economy.¹⁵⁵ The authors conclude, stating: “Taking advantage of these business opportunities could boost North Carolina's employment growth and overall economic prosperity considerably for decades to come.”¹⁵⁶

As discussed above, proponents of 287(g) agreements argue that a jurisdiction adopting a program stands to gain financially.¹⁵⁷ However, sound economic data belies this argument, demonstrating that undocumented immigrants make positive contributions to local economies that would be diminished if 287(g) campaigns to identify and to deport undocumented immigrants spread.¹⁵⁸ To the extent that the economic impact of the undocumented population is used to support the implementation of 287(g) agreements, North Carolina counties considering an agreement should not be tempted by speculative guarantees that money will flow to their treasuries from the housing of detainees at the expense (literally) of the substantial

149. *Id.* at ix-x.

150. *Id.* at x.

151. *Id.*

152. *Id.* (“The potential for further Hispanic business development is immense.”)

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. *See supra* notes 80–82 and accompanying text.

158. *See supra* notes 141–57.

contributions that Hispanics make, and can continue increasingly to make, to state and local economies.

To the extent that a North Carolina county considers and decides to implement a 287(g) program, the county should employ the flexibility of the statutory language to structure a program that optimizes the enforcement potential while minimizing the problematic consequences.¹⁵⁹ The best way to accomplish this goal would be to permit enforcement of immigration law at the local level, but only after an undocumented immigrant that is arrested is also *convicted*. This “conviction” model would authorize only post-conviction immigration enforcement and strikes a balance between accomplishing the desired need for enforcement and minimizing the most problematic features of 287(g) agreements.

Los Angeles County has been the only jurisdiction thus far to adopt this variant of 287(g) agreement.¹⁶⁰ Under the Los Angeles County agreement, two investigators at the county jail interview prisoners who identify themselves as foreign-born upon the prisoners’ release from custody after serving a sentence.¹⁶¹ The Los Angeles County Sheriff initially urged the use of an agreement that would permit questioning foreign-born detainees upon their arrival at the jail, meaning that detainees who were either acquitted of a criminal charge or were released by the court without a jail sentence would be investigated.¹⁶² The Sheriff was motivated by the wish “to increase reimbursement to the county from the federal government under the State Criminal Alien Assistance Program (“SCAAP”),”¹⁶³ though he later conceded that increased reimbursement through participation in a 287(g) agreement would be speculative.¹⁶⁴

The Los Angeles County Board of Supervisors instead approved a limited agreement that rejected the Sheriff’s proposal to allow for interviewing detainees upon their first arrival at the jail, “specifically direct[ing] that interviews under the MOU take place only *after* detainees have been convicted of a criminal offense.”¹⁶⁵ The board was also concerned by the fact that—“[s]ince only individuals with misdemeanor convictions serve time at the county jail”—the

159. See *supra* note 28 (describing the flexibility permitted by 287(g)).

160. Linton Joaquin, *L.A. County to Enter Limited MOU with ICE to Permit Immigration Enforcement at County Jail*, IMMIGRANTS’ RIGHTS UPDATE (Feb. 10, 2005), available at <http://www.nilc.org/immilawpolicy/arrestdet/ad085.htm>.

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.* (emphasis added).

agreement would target individuals convicted of only minor offenses, and thus the board conditioned their approval on receiving a list of the criminal offenses applicable under the agreement, as well as a specific evaluation of “the different kinds of convictions for which the program is used.”¹⁶⁶ The board also specified that no county funds were to be used to cover the expenses incurred under the agreement; rather, only funds remitted by the federal government—either through SCAAP or some other mechanism—would be used to sustain the program’s operations, and the extension of the six-month pilot agreement depended on the county obtaining additional federal funding.¹⁶⁷

From an economic perspective, the Los Angeles County agreement is the most prudent method of structuring a 287(g) agreement. The agreement is conditioned upon receipt of funds from the federal government to reimburse the cost of detaining and processing undocumented immigrants, and it only authorizes local enforcement of immigration law to the extent that the federal government funds. This structure avoids the local jurisdiction incurring expenses for what is essentially a federal responsibility. As mentioned earlier, the promise of federal government reimbursements for detaining undocumented immigrants has been used to support the implementation of 287(g) agreements,¹⁶⁸ but also mentioned was the fact that local agencies cannot rely on these reimbursements. Under a conviction model such as the one in place in Los Angeles County, a North Carolina jurisdiction would not need to rely on speculative and irregular reimbursements from the federal government for the detention of immigrant suspects.

A conviction model agreement would minimize the expenses incurred by immigration enforcement under a 287(g) agreement: the county would save money by needing fewer local officers to be trained to perform immigration functions and fewer immigrants would be processed within the jail facilities, lessening the burden on county jail facilities and the strain on ICE to proceed with the deportation mechanism for people that are not convicted. Furthermore, fewer undocumented immigrants would be deported, alleviating the burden on the state created by the absence of an

166. *Id.*

167. *Id.*; see also CRS REPORT, *supra* note 12, at 20 (“The MOA also specifies that the LASD has sole discretion to terminate the MOA should the State Criminal Alien Assistance Program funding fall below an acceptable level or is terminated in its entirety.”).

168. See *supra* 75, 81–83 and accompanying text.

undocumented parent or primary earner. Finally, the purchasing power and labor contributions of undocumented immigrants would continue to enhance local and state economies.

A conviction model of immigration enforcement would also mitigate the impact of a racial profiling practice. Even though local officers may still selectively target suspects based on a suspicion of undocumented status, racial profiling for the purpose of detention and deportation would have less of an effect because the mechanism of the criminal justice system would come into play. In other words, an undocumented immigrant that is detained may take advantage of his rights to legal representation and the guarantee of "innocent until proven guilty"¹⁶⁹ before immigration enforcement is triggered. As mentioned earlier, under the system in place in most jurisdictions where mere arrest and detention at a jail facility triggers the enforcement function, an undocumented immigrant may be deported even if he or she is ultimately acquitted of the charge that led to the arrest in the first place.

Under a conviction model, a pattern or practice of selectively targeting a Hispanic-looking person for arrest based on racial or ethnic animus may still emerge. But even if it does, the criminal defense system can serve as a buffer to prevent the deportation of individuals who are not found to be a threat to the community after an acquittal or dismissal of charges. A jurisdiction could go a step further to specify convictions for which types of crimes would trigger the immigration enforcement mechanism.¹⁷⁰

Within the realm of community policing and crime, a conviction model would not reallocate resources to lower-priority crimes, and the resources for immigration enforcement will only be used on immigrants that are convicted of a crime. A post-conviction system

169. *Coffin v. United States*, 156 U.S. 432, 453 (1895) ("The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law.").

170. From the subjective perspective of the officer on the street, a conviction system could also lessen the tendency to selectively target an immigrant who appears to be undocumented. For example, it would be easy for an officer to pull over a Hispanic-looking driver and arrest him for driving without a license, at which time his immigration status would be checked and he would begin to undergo processing for deportation. It would be easy for officers in a community to do this *en masse*, leading to the removal of many undocumented immigrants. However, if a conviction system were utilized, the incentive to racially profile Hispanics would be lessened, because arresting an undocumented immigrant for the purpose of having him deported would not be as expeditious, and would not necessarily guarantee the outcome that the immigrant would be deported at all.

would also make undocumented immigrants more willing to assist in the investigation and prosecution of crimes because they would know that the only time they could possibly be deported would be after both an arrest *and a conviction* for a crime. Currently, a mere arrest—with a threshold of only probable cause as opposed to guilt beyond a reasonable doubt—can trigger the immigration enforcement, so many undocumented immigrants are fearful and distrustful of the police and avoid the authorities altogether.¹⁷¹ A conviction model could allay those fears to some extent because victims or witnesses would know that even if they were accidentally or mistakenly arrested, the fact that a conviction could not stand—and that processing for deportation would not occur—could diminish the concern. Of course, there is always the potential that a conviction model would not accomplish the purpose of promoting community policing better than an officer or jail model agreement, which is one reason that this paper urges North Carolina counties to reject 287(g) agreements. But to the extent that a jurisdiction wishes to enter into a 287(g) agreement, a conviction-model agreement is far preferable.

CONCLUSION

To summarize, a conviction model is preferable to a jail or officer model agreement by being more economically prudent, by better avoiding a climate of community policing concerns, by containing the effects of a racial profiling practice, and by permitting undocumented immigrants to stay and to contribute to the economy. The conviction model as adopted by Los Angeles County strikes an appropriate balance: undocumented immigrants who genuinely pose a threat to the community will be removed from the country, undocumented immigrants who are otherwise law-abiding will be able to stay, to earn a living, and to have a harmonious relationship with police authorities, and local communities will benefit from better community policing, the labor and economic contributions of the immigrant population, and the use of federal funding to undertake the local immigration enforcement.

The preceding discussion has illuminated that, despite useful and desirable consequences of local immigration enforcement under a 287(g) agreement, there are many problematic consequences that a county should consider before entering an agreement with ICE. This paper, in agreement with critics of 287(g) agreements, contends that

171. See *supra* notes 119–22 and accompanying text.

the problematic consequences outweigh the beneficial consequences such that a jurisdiction should reject a 287(g) agreement.¹⁷² Though the decision is—and should be—ultimately left to the jurisdiction's sound judgment through its elected representation, this Recent Development articulates and urges North Carolina counties to consider the various consequences that follow from a 287(g) agreement. To the extent that a North Carolina county considers and decides to implement a 287(g) agreement, the county should employ the flexibility within the statutory language of 287(g) to adopt a conviction model agreement that closely mirrors that of the Los Angeles County agreement with a structure that optimizes the enforcement potential while minimizing the problematic consequences.

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172. See Arnold, *supra* note 5, at 141 (discussing Virginia's rejection of a state-wide 287(g) program for racial profiling and community policing concerns).