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Policing Immigration

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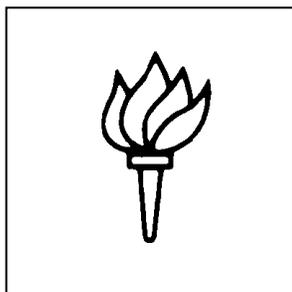
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INTRODUCTION

Today, local police are being integrated into federal immigration enforcement on a scale never seen before in American history. This transformation of immigration law is not the result of the high-profile efforts by Arizona and a few other states to regulate migrants. Instead, it is the product of a largely overlooked federal program known as "Secure Communities." Launched three years ago, the program's goal is simple: to check the immigration status of *every single person* arrested by local police anywhere in the country.

Secure Communities represents the future of immigration enforcement. It dramatically lowers the information cost of identifying immigration violators, accelerates the ongoing convergence of the immigration and criminal bureaucracies in the United States, and reshapes the structure of immigration federalism. Despite its significance, however, little is known about the program.

This Article, part of a larger project providing the first large-scale empirical evaluation of Secure Communities, uses the program's rollout to explore a pervasive feature of criminal and administrative law that rarely lends itself to empirical examination—the role of discretion in policing. The breadth of discretion

wielded by police and prosecutors is probably the single most important feature of modern law enforcement. Controlling that discretion—through judicial intervention, administrative design, and so on—has consequently become the central preoccupation of criminal and administrative law scholarship. For all that attention, however, we often have little sense of how law enforcement officials actually wield the discretion they possess. Anecdotal accounts abound, but systemic empirical evidence is rarely available. This is even truer with respect to immigration enforcement, which represents one of the largest and least studied law enforcement bureaucracies in the United States.

Secure Communities' rollout provides a unique opportunity to study the role of discretion in immigration enforcement. While the program is designed to check the immigration status of anyone arrested by local police anywhere in the country, resource limitations forced the federal government to stagger the program's activation across the country. Rather than activating the program simultaneously nationwide, Immigration and Customs Enforcement (ICE) rolled out the program on a county-by-county basis. As one would expect, senior administrators faced with limited resources made the explicit decision to target high-priority counties for early activation. The pattern of activation therefore provides a revealing look into the enforcement agency's priorities, showing us *where around the country* the government chose to concentrate its limited immigration resources.

Public debate about Secure Communities points to three potential sets of priorities that might have driven the geography of rollout. ICE has said repeatedly that Secure Communities is a tool for preventing crime and removing serious "criminal aliens" from the country. That justification suggests that counties with the most serious crime problems and the largest number of noncitizens engaged in crime would be targeted for early activation. While crime is the putative focus, however, Secure Communities also makes enforcement cheaper by lowering the information cost of identifying immigration violators. Critics of the program have argued that this is the program's real aim—to identify cheaply more people in violation of immigration law whom the agency can then deport. If true, this priority should lead the agency to target the program at areas with high levels of immigration violators, rather than high levels of criminal offenders. Finally, many have suggested that bureaucrats worry as much about the political costs of their choices as they do the

policy consequences. If this were true for those in charge of Se-
cure Communities, we would expect that they would target acti-
vation in local communities that support the program while de-
laying activation in counties where the program might produce
political backlash.

We test these three hypotheses about the use of discretion
using the program's rollout data and extensive data regarding
local crime rates, demography, and partisan politics. The analy-
sis leads to three principal conclusions. First, the data under-
mine the government's claim that Secure Communities is prin-
cipally about making communities more secure from crime.
High-crime areas were, surprisingly, not a priority in the rollout.
It is very difficult to square the lack of any meaningful correla-
tion between early activation and local crime rates with the gov-
ernment's putative desire to target immigration enforcement re-
sources in a manner designed to reduce the incidence of serious
crime by noncitizens.

Second, the data provide little support for the claim that the
agency's use of discretion was driven more by local politics than
federal policy. Many critics of local police involvement in immi-
gration enforcement have argued that incorporating local police
will result in the tail wagging the dog, with local governments
determining immigration priorities. Whatever the force of this
concern in contexts like *Arizona v United States*,[1] where Arizona
wanted to involve itself in immigration enforcement *without fed-
eral authorization*, it does not appear to have much purchase
here. There is little evidence that the pattern of rollout reflected
local attitudes about immigration enforcement rather than fed-
eral priorities. This does not mean that politics were irrelevant:
as we will see, proximity to the border was a powerful predictor
of early activation, and some readers will likely see this prioriti-
zation as a reflection of politics rather than strictly policy. None-
theless, there is little support for our first or third hypotheses.

Third, and perhaps most important, the data reveal that
early activation in the program correlates strongly with whether
a county has a large Hispanic population. This finding can be
seen as support for the hypothesis that the rollout prioritized lo-
cations thought to have high levels of immigration violators,
given both the demographics and politics of unauthorized migra-
tion. It is crucial to note, however, that the pattern of correlation

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[1]   132 S Ct 2492 (2012).

between rollout and a community's Hispanic population persists even when we control for myriad other factors that might also be thought to be proxies for suspected immigration violators, such as a county's proximity to the border or its noncitizen or foreign-born population. Moreover, other demographic proxies for immigration violators, such as the local noncitizen or foreign-born population, predict the rollout sequence much less well than Hispanic population. These findings raise important questions about racial profiling in immigration enforcement. While the data should not be interpreted as evidence that the government intentionally singled out predominantly Hispanic communities for increased immigration enforcement, ICE's discretionary allocation of resources had the effect of concentrating enforcement in these communities.

As the exercise of discretion in immigration enforcement becomes more centralized within the immigration bureaucracy, patterns like the ones we find raise questions identical to those at the heart of debates in criminal justice today. In the arena of criminal justice, risk-based models of crime prevention have led to strategies like the NYPD's stop-and-frisk program—a program that has renewed the focus in criminal law scholarship on questions about which communities bear the brunt of the costs of crime prevention strategies. The pattern of Secure Communities' rollout suggests the need to start a parallel conversation about immigration enforcement. More generally, it highlights the oft-overlooked similarities between the structure of modern criminal and immigration enforcement—similarities that should lead, but have not yet led, to the integration of scholarship on the two subjects.

The Article proceeds in three parts. Part I provides background on Secure Communities and the broader ongoing integration of criminal and immigration enforcement. Part II lays out and tests our hypotheses. Part III explores the implications of our findings.

I. Integrating the Criminal and Immigration Enforcement Systems

Immigration and crime have been intimately linked in American law and politics for over a century. In 1875, the first restrictive immigration law passed by the federal government prohibited

the entry of certain criminals and suspected prostitutes.[2] When Congress began adopting deportation laws in the early twentieth century, "criminal aliens" were again among the first targeted by the government.[3] And over the last twenty-five years the focus on deporting those who commit crimes has expanded dramatically. Today a broad swath of criminal convictions can make a noncitizen deportable—convictions ranging from serious offenses such as murder to minor drug crimes and other misdemeanors.[4]

While the connection between criminal convictions and immigration consequences is nearly as old as federal immigration law itself, over the last few decades a new sort of connection has developed between immigration law and criminal law. This new linkage concerns the *enforcement bureaucracies* of criminal and immigration law, rather than the *primary rules of conduct* that regulate noncitizens.

There is a growing convergence between the enforcement systems for immigration law and criminal law. This convergence is at odds with an old, conventional view about these regulatory domains. According to this old view, criminal law is the province of the states while immigration law is exclusively within the control of the federal government. The old view was really never quite right.[5] Nonetheless, it was prominent in both regulatory practice and academic commentary for many decades. Recently, however, a host of factors—including a rise in unauthorized immigration and new thinking about cooperative federalism—have

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[2]   Page Act of 1875 § 1, ch 141, 18 Stat 477. The statute prohibited certain felons and prostitutes from immigrating to the United States and criminalized the importation of prostitutes and "cooly" labor. Page Act §§ 3–5, 18 Stat at 477–48.

[3]   See, for example, Immigration Act of 1917 § 19, Pub L No 64-301, ch 29, 39 Stat 874, 889–90:

> [Making deportable] any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry.

See also Immigration Act of 1907 § 3, Pub L No 59-96, ch 1134, 34 Stat 898, 899–900 (making deportable women who engaged in prostitution within three years after entering the United States).

[4]   See Adam B. Cox and Eric A. Posner, *The Second-Order Structure of Immigration Law*, 59 Stan L Rev 809, 836–39 (2007).

[5]   For a discussion of the old view and the argument that it was not correct, see Gerald L. Neuman, *The Lost Century of American Immigration Law (1776–1875)*, 93 Colum L Rev 1833, 1839–40 (1993).

led to two prominent developments that challenge this neat division of labor.

The first development is the rise of state and local efforts to combat unlawful migration. Examples include Texas's attempt in the 1970s to deny free public school education to undocumented children,[6] California's bid in the 1990s to deny a variety of government benefits to all out-of-status noncitizens,[7] and the recent efforts by Arizona and a handful of other states to arrest, prosecute, and otherwise single out potentially deportable immigrants for disfavorable treatment.[8] These efforts have been largely unsuccessful. Many efforts were blocked in their entirety: the Supreme Court struck down Texas's statute in *Plyler v Doe*[9] as a violation of the Equal Protection Clause,[10] and lower courts initially blocked California's Proposition 187 before the state abandoned its defense of the law.[11] More recently, the Supreme Court rebuffed Arizona's high-profile effort to get involved in enforcing immigration law. In the summer of 2012, the Court struck down all but one of the central provisions of Arizona's SB 1070,[12] handing a big victory to the federal government and reaffirming a strong view of federal supremacy over immigration policy.[13]

While these state and local initiatives have garnered most of the public and scholarly attention, they are in some ways a sideshow to a second development: the federal government's incorporation of the state criminal enforcement bureaucracy into the federal immigration enforcement system. This incorporation, which has roots that date back many decades, began picking up speed in the 1990s, when Congress passed a statute authorizing the attorney general to deputize state and local law enforcement

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6   See 1975 Tex Sess Law Serv 896, codified at Tex Educ Code Ann § 21.031 (Vernon 1975), invalidated by *Plyler v Doe*, 457 US 202 (1982).

7   See 1994 Cal Legis Serv Prop 187 (West).

8   See, for example, Support Our Law Enforcement and Safe Neighborhoods Act (SB 1070), 2010 Ariz Sess Laws 113, as amended by HB 2162, 2010 Ariz Sess Laws 211.

9   457 US 202 (1982).

10   Id at 230.

11   See *League of United Latin American Citizens v Wilson*, 997 F Supp 1244, 1261 (CD Cal 1997); Patrick J. McDonnell, *Davis Won't Appeal Prop. 187 Ruling, Ending Court Battles*, LA Times A1 (July 29, 1999).

12   2010 Ariz Sess Laws 113.

13   *Arizona*, 132 S Ct at 2510.

officials to enforce immigration law.[14] Under this statutory provision, § 287(g) of the Immigration and Nationality Act (INA), the attorney general has authorized local police in nearly seventy-five jurisdictions around the country to screen prisoners for immigration violations and, in some cases, to assist in street-level immigration enforcement.[15] These cooperative arrangements have been complemented by the Criminal Alien Program (CAP), under which federal immigration agents (rather than local police) interview arrestees in federal, state, and local jails and prisons to identify potentially deportable noncitizens.[16] As of early 2009, all foreign-born prisoners in roughly 14 percent of local jails and prisons were screened by ICE agents.[17]

Secure Communities, a new program launched in the fall of 2008, builds on these preliminary efforts at cooperative federalism. Its basic aim is in some ways quite similar to the earlier programs: like CAP and most 287(g) agreements, the goal is to provide immigration screening for people arrested by local law enforcement. But the scale of the program is dramatically different. While 287(g) agreements were in effect in fewer than seventy-five jurisdictions, and CAP was limited to screening prisoners in a tiny fraction of local jails (and then only if the prisoners had already been identified as foreign-born), Secure Communities is vastly more ambitious: under the program, *every single person* arrested by a local law enforcement official *anywhere in the country* will soon be screened by the federal government for immigration violations. In short, Secure Communities is the largest expansion of local involvement in immigration enforcement in the nation's history.[18]

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[14]   See Illegal Immigration Reform and Immigrant Responsibility Act of 1996 § 133, Pub L No 104-208, 110 Stat 3009, 3009-563 to -564, amending INA § 287(g), codified as amended at 8 USC § 1357(g).

[15]   See Randy Capps, et al, *Delegation and Divergence: A Study of 287(g) State and Local Immigration Enforcement* 9 (Migration Policy Institute Jan 2011), online at http://www.migrationpolicy.org/pubs/287g-divergence.pdf (visited Mar 4, 2013).

[16]   See Maureen A. Sweeney, *Fact or Fiction: The Legal Construction of Immigration Removal for Crimes*, 27 Yale J Reg 47, 73 (2010).

[17]   See ICE, *Secure Communities: Quarterly Report; Fiscal Year 2009 Report to Congress—First Quarter* 3 (Department of Homeland Security (DHS) Feb 17, 2009), online at http://www.ice.gov/doclib/foia/secure_communities/congressionalstatusreportfy091stquarter.pdf (visited Mar 4, 2013).

[18]   The program appears set to supplant some of the earlier, more limited efforts at cooperation. For example, as this Article went to press the Obama administration announced that it would not renew *any* of its existing 287(g) agreements that operate on the task-force model, as opposed to the jail-screening model, instead letting them expire at the end of 2012. See ICE, News Release, *FY 2012: ICE Announces Year-End Removal*

To provide screening in local jails and prisons, Secure Communities relies on a fundamentally different—and much less labor-intensive—approach than 287(g) agreements or CAP. Those programs required individual police officers or ICE agents to interview each prisoner personally in order to collect information and assess the person's status.[19] In contrast, the backbone of Secure Communities is an information-sharing arrangement that permits ICE to use biometric identification to flag suspected immigration violators.

Traditionally, whenever a person is arrested and booked by a state or local law enforcement agency, his fingerprints are taken and forwarded electronically to the FBI. The FBI compares those prints against various national criminal information databases that return a "hit" if the person has a criminal history or outstanding warrants.[20] Under Secure Communities, the federal government forwards to the Department of Homeland Security (DHS) the fingerprints already being routed to the FBI. DHS then compares the person's fingerprints against prints in the Automated Biometric Identification System (known within the agency as IDENT)—a large immigration database compiled by DHS over the last few decades and into which, in theory, the agency inputs the fingerprints of every noncitizen fingerprinted as part of any of the agency's mission-related activities.[21] If the

Numbers, Highlights Focus on Key Priorities and Issues New National Detainer Guidance to Further Focus Resources (DHS Dec 21, 2012), online at http://www.ice.gov/news/releases/1212/121221washingtondc2.htm#statement (visited Mar 4, 2013). See also Ted Hesson, *As One Immigration Enforcement Program Fades Away, Another Rises*, ABC News (Dec 27, 2012), online at http://abcnews.go.com/ABC_Univision/News/immigration-enforcement-program-287g-scaled-back/story?id=18077757 (visited Mar 4, 2013). Explaining this decision, DHS emphasized that "ICE has concluded that other enforcement programs, including Secure Communities, are a more efficient use of resources for focusing on priority cases." ICE, News Release, *ICE Announces Year-End Removal Numbers* (cited in note 18).

[19] For many years CAP therefore required ICE agents to travel to each local jail for interviews. In recent years in-person interviews have been replaced in some instances by remote interviews via telephone or videoconferencing equipment. But this streamlining still requires an available staff of ICE agents to conduct the interviews remotely—a need that led to the creation of the Detention Enforcement and Processing Offenders by Remote Technology (DEPORT) Center in Chicago—and, for videoconferencing, requires the installation of equipment in each local jail. See Sweeney, 27 Yale J Reg at 73 (cited in note 16).

[20] See David J. Venturella, *Secure Communities: Identifying and Removing Criminal Aliens*, The Police Chief 40, 43 (Sept 2010).

[21] As this description should make clear, IDENT is importantly different than the criminal history databases relied on by the FBI. The National Crime Information Center (NCIC)—the FBI's database—includes, in theory, only information about suspected and convicted criminals. See FBI, *National Crime Information Center*, online at http://www.fbi.gov/about-us/cjis/ncic (visited Mar 4, 2013). IDENT is much broader because by design

database returns a hit, indicating that the arrestee's fingerprints are in the database, ICE's Law Enforcement Support Center (LESC) assesses the person's status using all available information in order to determine whether the arrestee is in violation of immigration law, perhaps because he has overstayed his visa or because he has been previously deported and has not been legally readmitted to the country. The ICE district office then decides whether to place a detainer on the person.[22] The detainer requests that the local agency hold the person for forty-eight hours in order to permit ICE to transfer the person to federal custody for the initiation of deportation proceedings.[23]

Secure Communities thus uses information sharing and biometric identity matching to dramatically reduce the labor required to screen arrestees. Nonetheless, while the technology made it conceivable that ICE could screen every arrestee in the country, it did not entirely automate the process of identifying and charging those believed to be in violation of immigration law. Database matches must still be evaluated by ICE agents trained to determine whether a noncitizen flagged by the database can be charged with being removable—a process that requires technicians at ICE's LESC to compile and analyze information from multiple databases, and may even require an

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it includes records for *all* noncitizens fingerprinted by DHS. This includes known and suspected immigration violators, such as those who have been arrested by ICE, placed in removal proceedings, or previously removed to another country. But it also includes lawful immigrants, such as those who have been fingerprinted at a point of entry to the United States or when they applied for immigration benefits while residing in the United States. See US Visitor and Immigrant Status Indicator Technology Program (US-VISIT), *Biometric Standards Requirements for US-VISIT: Version 1.0* 1 (DHS Mar 15, 2010), online at http://www.dhs.gov/xlibrary/assets/usvisit/usvisit_biometric_standards.pdf (visited Mar 4, 2013); *Privacy Impact Assessment for the Automated Biometric Identification System (IDENT)* 2 (DHS July 31, 2006), online at http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_usvisit_ident_final.pdf (visited Mar 4, 2013). Because the database includes lawful immigrants, and even some immigrants who have since naturalized, a match in the database is not itself conclusive evidence that the arrestee is potentially deportable. Moreover, because some unlawful migrants have never had contact with ICE—most importantly, those who snuck into the country and have never been captured—a no-match in the database is not conclusive evidence that the person is a citizen or lawfully present.

[22] See ICE, *Secure Communities: Quarterly Report; First Quarter FY 2009* at 3–4 (cited in note 17); ICE, *1st Quarterly Status Report (April–June 2008) for Secure Communities: A Comprehensive Plan to Identify and Remove Criminal Aliens* 7 (DHS Aug 2008), online at http://www.ice.gov/doclib/foia/secure_communities/congressionalstatusreportfy081stquarter.pdf (visited Mar 4, 2013).

[23] See 8 CFR § 287.7.

interview of the suspect.[24] Even if the suspect is deemed removable, local ICE offices must still determine whether charging the suspect is consistent with the agency's use of prosecutorial discretion. These determinations must be made quickly enough for ICE to take action to apprehend the suspect while he remains in local police custody. For suspects who will be detained during removal proceedings, ICE must locate transportation resources and bed space necessary to take the person into custody.[25] These resource bottlenecks—combined with certain other technological challenges and the sheer scope of the task of communicating with the roughly thirty-one thousand booking locations around the country—all but guaranteed that simultaneous nationwide activation of Secure Communities was not an option.[26]

Instead, ICE rolled out the program, county by county, over the course of the last four years. The first handful of counties was activated on October 27, 2008.[27] Each month new counties

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[24] See ICE, *1st Quarterly Status Report (April–June 2008)* at 7 (cited in note 22). For this reason, Secure Communities' relationship to the CAP program is quite complicated. It can be seen as a successor program to CAP, as a program operating in tandem with CAP, or as a biometric component of CAP itself, and agency documents sometimes describe the relationship between the programs in each of these three ways. See *Is Secure Communities Keeping Our Communities Secure? Hearing before the Subcommittee on Immigration Policy and Enforcement of the House Committee on the Judiciary*, 112th Cong, 1st Sess 8, 11–13 (2011) (statement of Gary Mead, Executive Associate Director for Enforcement and Removal Operations, ICE) ("Secure Communities Oversight Hearing"); ICE, *Secure Communities: A Comprehensive Plan to Identify and Remove Criminal Aliens; Strategic Plan* 2–3 (DHS July 21, 2009), online at http://www.ice.gov/doclib/foia/ secure_communities/securecommunitiesstrategicplan09.pdf (visited Mar 4, 2013); ICE, *1st Quarterly Status Report (April–June 2008)* at 2 (cited in note 22).

[25] See ICE, *Second Congressional Status Report Covering the Fourth Quarter Fiscal Year 2008 for Secure Communities: A Comprehensive Plan to Identify and Remove Criminal Aliens* 20–23 (DHS Nov 7, 2008), online at http://www.ice.gov/doclib/foia/secure _communities/congressionalstatusreportfy084thquarter.pdf (visited Mar 4, 2013); ICE, *1st Quarterly Status Report (April–June 2008)* at 7 (cited in note 22).

[26] See ICE, *Second Congressional Status Report: Fourth Quarter FY 2008* at 9–10 (cited in note 25); ICE, *1st Quarterly Status Report (April–June 2008)* at 7 (cited in note 22). The technological hurdles included the fact that many local jurisdictions did not have live scan fingerprint devices when the rollout commenced in 2008. See ICE, *Second Congressional Status Report: Fourth Quarter FY 2008* at 10–11 (cited in note 25).

[27] See ICE, *Secure Communities: IDENT/IAFIS Interoperability; Monthly Statistics through September 30, 2011* 1 (DHS Oct 14, 2011), online at http://www.ice.gov/ doclib/foia/sc-stats/nationwide_interoperability_stats-fy2011-to-date.pdf (visited Mar 4, 2013); ICE, *Secure Communities: Quarterly Report; First Quarter FY 2009* at 4–5 (cited in note 17). Prior to that date, ICE operated a pilot program in a handful of counties in order to prepare for broader deployment. ICE, *Secure Communities: Quarterly Report; First Quarter FY 2009* at 4 (cited in note 17) (listing Boston, MA; Dallas County, TX; Harris County, TX; Wake County, NC; Henderson County, NC; Buncombe County, NC; and Gaston County, NC as early participants).

have been added, and as of August 2012, 3,074 counties—almost 97 percent of all of the counties in the United States—had been incorporated into Secure Communities.[28] Only 107 counties remained to be activated at the close of August, and ICE stated in May that it planned to activate all remaining stragglers in short order—well ahead of the rollout's initial timetable.[29]

While Secure Communities' activation has been staggered rather than simultaneous, the decision about which counties to activate first has been entirely the federal government's. This is also quite a departure from the earlier efforts at cooperative immigration enforcement, such as the 287(g) program. Under that program, individual states and local governments themselves decided whether they wanted to opt into the program. Unless both the local government and the Department of Justice agreed on the terms of cooperation, no arrangement under § 287(g) was possible.[30] In contrast, under Secure Communities counties are selected for activation by DHS regardless of whether they wish to participate.[31] Moreover, once activated, a local law enforcement agency has no real means of shirking or otherwise declining to participate in the program. As we explained above, the fingerprints that form the basis of the biometric identity check in Secure Communities are the very same fingerprint records that are provided by the local law enforcement agency to the FBI for purposes of criminal background checks. There is no way for a local government to forward these fingerprints for criminal purposes but prevent the FBI from sharing them with DHS. As a result, the only way for a local law enforcement agency to prevent the immigration check from taking place would be to stop fingerprinting altogether suspects who are arrested and booked into custody. It goes without saying that this is not an option for local law enforcement.[32]

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[28]   See ICE, *Activated Jurisdictions* (DHS Aug 22, 2012), online at https://www.ice .gov/doclib/secure-communities/pdf/sc-activated2.pdf (visited Mar 4, 2013).

[29]   See Julia Preston, *Despite Opposition, Immigration Agency to Expand Fingerprint Program*, NY Times A10 (May 12, 2012).

[30]   INA § 287(g), 8 USC § 1357(g).

[31]   See Julia Preston, *Resistance Widens to Obama Initiative on Criminal Immigrants*, NY Times A11 (Aug 13, 2011).

[32]   To be clear, we do not mean to suggest that there is nothing that local governments can do to resist the program. As one of us has written about elsewhere, and as we are exploring in other aspects of this project, local law enforcement agencies could resist participation by changing their arrest or bail practices. See Adam B. Cox and Eric A. Posner, *Delegation in Immigration Law*, 79 U Chi L Rev 1285, 1344–49 (2012).

The mandatory nature of Secure Communities was not initially made public.[33] When it was, swift criticism followed by some public officials and civil rights organizations.[34] Nonetheless, this feature of the program is advantageous from a research perspective. Because state and local governments cannot decline activation as a legal matter or avoid participation as a practical matter, activation provides more complete information about the federal government's priorities.

To provide an initial sense of the deliberate nature of DHS's selection of communities for activation, Figure 1 shows the sequence of county activations each month from October 2008 through July 2012. The left scale reports the number of new activations in each month; the right reports the cumulative number of activated counties. The program spread slowly in its first eighteen months. During that period, twenty or fewer counties were activated in each month. After a sharp spike in activations in June 2010, the program spread more rapidly. During the second eighteen months of the program, nearly one hundred counties were activated in each month. By the summer of 2011, roughly half of counties nationwide had been activated. Beginning in October 2011 and continuing to May 2012, the pace of activations accelerated once again. During this period, more than one hundred counties were activated in each month. By the summer of 2012, the number of monthly activations fell precipitously, with no activations occurring in some months, because very few counties that had not already been activated remained.

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[33] See Office of Inspector General, *Communication Regarding Participation in Secure Communities* 4 (DHS Mar 2012), online at http://www.oig.dhs.gov/assets/Mgmt/ 2012/OIG_12-66_Mar12.pdf (visited Mar 4, 2013) (detailing the failure of DHS to provide clear guidance to the public and state and local governments regarding the mandatory nature of the program).

[34] See, for example, *Insecure Communities: Press Packet; Uncovering the Truth and Understanding the Deceptive Deportation Program* *4–11 (National Day Laborer Organizing Network (NDLON) 2011), online at http://ndlon.org/pdf/scommbrief.pdf (visited Mar 4, 2013); *Uncover the Truth: ICE and Police Collaborations* (Center for Constitutional Rights, NDLON, and Cardozo Law School 2012), online at http://uncoverthetruth.org (visited Mar 4, 2013). Part of what generated confusion about the mandatory nature was that DHS initially adopted a practice of entering into Memoranda of Understanding with state governments (though not with local governments or law enforcement agencies) prior to activation. As soon as some states began to resist signing these agreements, however, the government made clear that the agreements were not required because the program required no actions by state or local officials; all that was required was a rerouting of the fingerprint data stream among the federal agencies. See Preston, *Resistance Widens*, NY Times at A11 (cited in note 31); *Insecure Communities* at *4–11 (cited in note 34).

By July 2012, the end of our study period, 97 percent of counties were active participants in Secure Communities.

FIGURE 1. NUMBER OF COUNTIES ACTIVATED UNDER SECURE
COMMUNITIES: OCTOBER 28, 2008–JULY 31, 2012

—— New Activations (left scale)   • • • • Cumulative Activations (right scale)
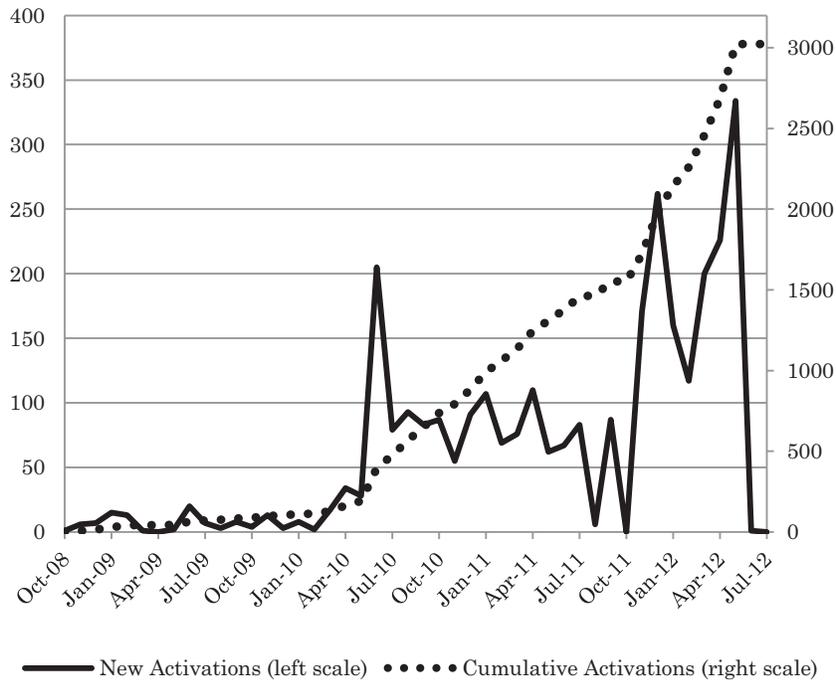
While Figure 1 shows how the pace of activation has accelerated over time, what it cannot show is the dramatic way in which early and late activations differed. Figure 2 highlights these changes by mapping the cumulative activations in each twelve-month period following the beginning of the rollout. As the maps make clear, over time activations became much lumpier, with multiple counties within the same state frequently activated on the same date. During the program's first year the number of monthly activations was quite small. With such small numbers, it was rare for multiple counties within the same state to activate at the same time. Instead, scattered counties around the country were singled out for activation. As the rollout of the program progressed, however, it became increasingly common for several counties within one state to be activated simultaneously. And over time, more and more of these mass activations

had the effect of bringing all the remaining inactive counties within a state into Secure Communities. In other words, early in the program's rollout activations can truly be characterized as county by county, while at the tail end of the rollout some activations were nearly statewide events.

FIGURE 2. PATTERN OF SECURE COMMUNITIES ACTIVATION
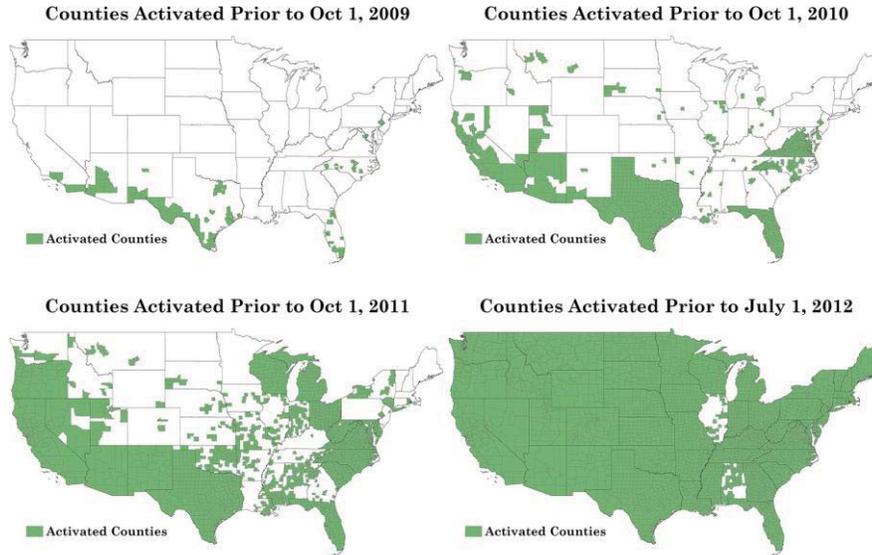
To get a better numerical sense for this pattern of mass activations, Table 1 reports the frequency of simultaneous activation events according to the proportion of counties within a state activated simultaneously and how far into Secure Communities' rollout the activation event occurred. The pattern is unmistakable. Mass activation events have become increasingly frequent as Secure Communities has neared its goal of nationwide coverage. For example, consider instances in which at least half of the counties in a state activated on the same day and, in so doing, brought the entire state into active status. No such events occurred during the first year of the program, but they have become increasingly frequent during later years. During the second year of the program, such mass-activation events occurred in two states and involved forty-six counties, which constituted 8 percent of counties activated during that year. During the third year of the program, such mass-activation events occurred in 5 states, and they included 208 counties, or 23 percent of all coun-

ties activated during that period. In the last 10 months included in this study, such mass activations occurred in 26 states, encompassing 1,328 counties—over 90 percent of counties activated during that period. And as Table 1 shows, the pattern remains unchanged regardless of the threshold chosen to define mass-activation events; raising it to 75 percent of a state's counties or lowering it to 25 percent does not alter the conclusion that early activations show a distinctly different pattern than later activations.

Figures 1 and 2, as well as Table 1, thus reveal a distinct evolution in the pattern of activation. In the first eighteen months or so of the program, the pace of activations was slow, and early activations tended to pick off one or two counties within a state. The government did not seek to activate an entire state before moving on to another state. Instead, it carefully selected just one or two counties in each state for activation. Later on, as the pace of activations sped up, the process of selecting counties for activation clearly changed. The government did not simply accelerate the activation of scattered counties. Instead, the government shifted to mass activations in which all inactive counties remaining in a state were activated on the same date. This manner of activation implied a much quicker rate of adoption; in the last twelve months of our observation period, more counties were activated than during the first thirty months of the program. It also suggests that early activations were more deliberate and targeted.

TABLE 1. FREQUENCY OF MASS ACTIVATIONS BRINGING ENTIRE STATE INTO ACTIVE STATUS

Percent of Counties in the State Activating on Same Date	Months since Launch of Secure Communities in October 2008			
	12 or fewer months (1)	13–24 months (2)	25–36 months (3)	37–46 months (4)
25%				
Number of Counties in Mass Activation	0	92	213	1,438
Counties in Mass Activations as a Percentage of All Counties Activated in this Period	0	16.2%	23.7%	97.6%
Number of States Brought into Complete Activation through These Mass Activations	0	3	7	30
50%				
Number of Counties in Mass Activation	0	46	208	1,328
Counties in Mass Activations as a Percentage of All Counties Activated in this Period	0	8.1%	23.1%	90.3%
Number of States Brought into Complete Activation through These Mass Activations	0	2	5	26
75%				
Number of Counties in Mass Activation	0	3	159	1,051
Counties in Mass Activations as a Percentage of All Counties Activated in this Period	0	0.5%	17.7%	71.4%
Number of States Brought into Complete Activation through These Mass Activations	0	1	4	22
Total Number of Counties Activated Nationwide during This Period	83	569	900	1,471

II. The Policy and Politics of Targeted Enforcement

The pattern of Secure Communities' activation provides unique insight into the way a large, nationwide law enforcement agency wields discretion in order to satisfy its programmatic and political objectives. Constrained by limited resources, where did ICE initially concentrate its enforcement efforts? As a result of those decisions, what types of immigrants were most likely to be targeted by the program?

To develop hypotheses about Secure Communities' rollout strategy, it makes sense to begin with the public justifications for the program. As one might suspect from the name "Secure Communities," agency officials have argued publicly that the program is designed to target enforcement resources at "criminal aliens" and to reduce crime.[35] When the program was unveiled in March 2008, it was described as "a multi-year initiative to more effectively identify, detain and return removable criminal aliens."[36] This goal has been repeated time and again in press releases, in quarterly reports, and by agency officials from the head of Secure Communities up to Janet Napolitano, the Secretary of DHS.

Prioritizing the removal of criminal offenders can be understood in two different ways. First, it may simply reflect the reality of resource constraints. As John Morton, the Director of ICE, has noted repeatedly, the government lacks the resources to remove every noncitizen who is in violation of immigration law.[37] The government must therefore decide which noncitizens in this large pool should be targets for deportation. Perhaps unsurprisingly, noncitizens who have committed serious crimes regularly top the list.

Second, Secure Communities' focus on criminal offenders may reflect the administration's determination that not all

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[35] *Secure Communities Oversight Hearing*, 112th Cong, 1st Sess at 11–12 (cited in note 24) (statement of Gary Mead); DHS, Press Release, *Secretary Napolitano's Remarks on Smart Effective Border Security and Immigration Enforcement* (Oct 5, 2011), online at http://www.dhs.gov/ynews/speeches/20111005-napolitano-remarks-border-strategy-and -immigration-enforcement.shtm (visited Mar 4, 2013).

[36] ICE, News Release, *ICE Unveils Sweeping New Plan to Target Criminal Aliens in Jails Nationwide* (DHS Mar 28, 2008), online at http://www.ice.gov/news/releases/0804/080414washington.htm (visited Mar 4, 2013).

[37] See, for example, John Morton, Director, ICE, Memorandum for all Field Office Directors, Special Agents in Charge, Chief Counsel, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens* 2 (June 17, 2011), online at http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf (visited Mar 4, 2013).

noncitizens who are in violation of immigration law should be deported. Recently the government has made explicit what has long been clear: that there is a distinction between those immigrants who are formally deportable and those whom the government actually wants to expend resources trying to deport.[38] Huge numbers of noncitizens are technically deportable, in part because the grounds of deportability have expanded dramatically over the years. But not all technically deportable noncitizens are considered undesirable by the government.[39] In fact, Director Morton recently formalized this fact. Last June, he promulgated a memorandum on prosecutorial discretion directing line agents to decline to initiate removal proceedings against some noncitizens who are technically deportable and describing in detail the factors that should be weighed in making the charging decision.[40] Around the same time, ICE also initiated a review of over 300 thousand pending deportation proceedings to decide which should be terminated.[41] And most recently, President Barack Obama announced that the administration would not seek to deport hundreds of thousands of unauthorized migrants who came to the United States as children and have led successful lives.[42]

If Secure Communities is designed to target serious criminals in order to make communities more secure, as the government argues, then one would expect the rollout to reflect that fact.

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[38]   See Julia Preston and John H. Cushman Jr, *Obama to Permit Young Migrants to Remain in U.S.*, NY Times A1 (June 16, 2012). For one explanation of why the government might affirmatively prefer for some resident noncitizens to lack legal status, see Cox and Posner, 59 Stan L Rev at 851 (cited in note 4) (explaining that granting noncitizens legal status would decrease flexibility for the government in terms of immigration screening processes).

[39]   In some ways this parallels the argument frequently made about American criminal law—that a large gap exists between legal and moral culpability. See, for example, William J. Stuntz, *The Collapse of American Criminal Justice* 1–8 (Belknap 2011); Josh Bowers, *Legal Guilt, Normative Innocence, and the Equitable Decision Not to Prosecute*, 110 Colum L Rev 1655, 1658–61 (2010).

[40]   Morton, Memorandum, *Exercising Prosecutorial Discretion* at 2–5 (cited in note 37).

[41]   See Christopher Goffard, Paloma Esquivel, and Teresa Watanabe, *U.S. Will Review Cases of Illegal Migrants: Low-Risk Individuals, Including Students, the Elderly, and Crime Victims, Might Be Able to Avoid Deportation*, LA Times A1 (Aug 19, 2011).

[42]   See Preston and Cushman, *Obama to Permit Young Migrants*, NY Times at A1 (cited in note 38); Janet Napolitano, Secretary of Homeland Security, Memorandum for David V. Aguilar, Acting Commissioner, US Customs and Border Protection, Alejandro Mayorkas, Director, US Citizenship and Immigration Services, John Morton, Director, ICE, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children* 1 (June 15, 2012), online at http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf (visited Mar 4, 2013).

Without the ability to activate everywhere simultaneously, the government was forced to choose which communities to activate first. One prediction is that the government would bring the program online first in counties with the biggest crime problems—that is, places with the highest crime rates, or perhaps the highest rates of violent crime. Indeed, the executive director of Secure Communities has stated that the rollout would "initially focus[] on jurisdictions that have the highest estimated volumes of criminal aliens or *criminal activity* while remaining flexible."[43] Of course, as the statement notes, the focus might not be only on counties that have high crime rates if the goal is to reduce crime using a program that incapacitates and deters only noncitizens. Instead, the agency might target communities that have *both* a high crime rate and a large number of noncitizens. Or the agency might employ more elaborate strategies to predict which communities have the highest numbers of noncitizens engaged in criminal activity. The strategic planning documents undergirding Secure Communities purport to do just this: they speak about the development of a "risk-based" rollout strategy that prioritizes activation in part based on a model designed to predict the number of noncitizens who will be arrested by local law enforcement.[44] While details about this model have not been

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[43] Venturella, The Police Chief at 44 (cited in note 20) (emphasis added). This statement suggests a focus on crime rates—though it also suggests that rollout was sufficiently "flexible" to incorporate non-crime-related factors. It also highlights that, in addition to focusing on areas with high levels of "criminal activity," the agency might target areas with the highest rates of crime *by noncitizens*, or with large numbers of "criminal aliens." Id. While in practice the rate of immigrant offending is unknown, the government might pursue this strategy by targeting areas with both (a) high crime rates and (b) a high fraction of noncitizen population. We discuss this possibility below. In future work, we will show that the serial nature of the Secure Communities rollout makes it possible to draw inferences about the rate of immigrant offending.

[44] *Department of Homeland Security Appropriations for 2010, Hearing on Priorities Enforcing Immigration Law before the Subcommittee on Homeland Security of the House Committee on Appropriations*, 111th Cong, 1st Sess 915, 943, 953 (2009) (statement of David Venturella, Executive Director of Secure Communities, ICE) ("Priorities Enforcing Immigration Law Hearing") (indicating that increased deployment of biometric identification technology would result in more data, which would allow ICE to target priority areas with more precision, enabling them to "predict and forecast the locations where we may encounter the greatest numbers of current and future criminal alien populations"); ICE, *Secure Communities: Strategic Plan* at 2–3 (cited in note 24) (indicating that the agency was "initiating risk-based deployment to cover increasing percentages of the estimated criminal alien population"); ICE, *1st Quarterly Status Report (April–June 2008)* at 7–8 (cited in note 22).

made publicly available, crime-rate data appear to be a central component.[45]

Despite its moniker, of course, crime reduction and public safety is not the only plausible goal Secure Communities might be designed to pursue. While this has been the agency's standard justification for the program, many critics of Secure Communities have argued that the government is instead using Secure Communities to target "illegal immigration," or simply to make deportations cheaper.[46] Reducing the cost of immigration enforcement is clearly one advantage of tacking mandatory immigration screening onto every local arrest. If efficiency were the goal, one would predict that the government would initially direct the program's limited resources to areas with large numbers of noncitizens who are in violation of immigration law, regardless of whether they had engaged in criminal activity. Relatedly, the government might target areas with large numbers of unauthorized migrants, or some other subset of all immigration

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[45] See ICE, *Criminal Alien Population Projection Analysis (CAPPA) Projected Arrests and Releases—County Level* (DHS Nov 2010), online at http://www.ice.gov/doclib/foia/reports/cappa-projected-arrests-releases-county-level.xls (visited Mar 4, 2013). According to agency documents, the CAPPA analysis included: FBI violent crime statistics for 2007; 2000 US Census percentages of foreign-born, noncitizen populations; apprehensions and charging documents issued by ICE's own Detention and Removal Operations (DRO); and "CAP Limited Coverage, High-Risk Assessment for Tier 2 facilities," presumably some internal analysis drawn from Tier 2 (second highest-risk) federal, state, and local prisons and jails. ICE, *Secure Communities: Quarterly Report; First Quarter FY 2009* at 30 (cited in note 17). Later congressional reports note refinements to the model. See, for example, ICE, *Secure Communities: Quarterly Report; Fiscal Year 2009 Report to Congress—Third Quarter* 26 (DHS Aug 27, 2009), online at http://www.ice.gov/doclib/foia/secure_communities/congressionalstatusreportfy093rdquarter.pdf (visited Mar 4, 2013); ICE, *Secure Communities: Quarterly Report; Fiscal Year 2009 Report to Congress—Second Quarter* 26 (DHS June 1, 2009), online at http://www.ice.gov/doclib/foia/secure_communities/congressionalstatusreportfy092ndquarter.pdf (visited Mar 4, 2013).

[46] See, for example, Pat Quinn, Governor of Illinois, Letter to Marc Rapp, Acting Assistant Director of Secure Communities, *Secure Communities Program* 1 (May 4, 2011), online at http://epic.org/privacy/secure_communities/sc_ill.pdf (visited Mar 4, 2013) (pointing out that while the agency had implied that only those aliens convicted for serious offenses would be targeted by Secure Communities, "more than 30% of those deported from the United States, under the program, have never been convicted of *any* crime, much less a serious one"); Julia Preston, *States Resisting Program Central to Obama's Immigration Strategy*, NY Times A18 (May 6, 2011); *ACLU Statement on Secure Communities*, ACLU Blog of Rights (ACLU Nov 10, 2010), online at http://www.aclu.org/immigrants-rights/aclu-statement-secure-communities (visited Mar 4, 2013); Dan Frosch, *In Colorado, Debate over Program to Check Immigration History of the Arrested*, NY Times A16 (July 30, 2010) (quoting Cheryl Little, Executive Director for the Florida Immigrant Advocacy Center in Miami: "ICE claims, as it has done for years, that it is targeting dangerous criminals. Yet the program screens the fingerprints of anyone arrested by local police, not just those convicted of crimes").

violators. In fact, ICE itself has repeatedly identified one set of immigration violators as a target of Secure Communities: "[R]epeat violators who game the immigration system, those who fail to appear at immigration hearings, and fugitives who have already been ordered removed by an immigration judge."[47]

It would be difficult, if not impossible, for the government to target directly communities with large numbers of immigrant violators or unauthorized immigrants. There are no reliable local measures of immigrant violators generally, or even of unauthorized population specifically. The national estimates of unauthorized population produced by the Pew Center and other organizations are subject to considerable uncertainty, and that uncertainty multiplies if one attempts to decompose the numbers into smaller units of geography.[48] For this reason, states are the smallest units for which the Pew Center produces estimates of unauthorized population.

Nonetheless, were the government interested in targeting the unauthorized it could rely on other variables that are correlated with the unauthorized population. Proximity to the southern border is one potential correlate, given that a large fraction of unauthorized migrants enter across the southern border and live in border regions.[49] A second is a community's noncitizen or

[47] ICE, *Secure Communities: The Basics* (DHS Aug 31, 2012), online at http://www.ice.gov/secure_communities/#top (visited Mar 4, 2013). See also ICE, *Secure Communities: Quarterly Report; Fiscal Year 2011 Report to Congress—First Quarter* 7 (DHS Mar 1, 2011), online at http://www.ice.gov/doclib/foia/secure_communities/congressionalstatusreportfy111stquarter.pdf (visited Mar 4, 2013); ICE, *Secure Communities: Quarterly Report; Fiscal Year 2010 Report to Congress—First Quarter* 6 (DHS Mar 1, 2010), online at http://www.ice.gov/doclib/foia/secure_communities/congressionalstatusreportfy101stquarter.pdf (visited Mar 4, 2013); ICE, *Secure Communities: Quarterly Report; Second Quarter FY 2009* at 30 (cited in note 45); ICE, *Secure Communities: Quarterly Report; First Quarter FY 2009* at 26 (cited at note 17).

[48] Jeffrey S. Passel and D'Vera Cohn, *Unauthorized Immigrant Population: National and State Trends, 2010* 3 (Pew Hispanic Center Feb 1, 2011), online at http://www.pewhispanic.org/files/reports/133.pdf (visited Mar 4, 2013). See also Michael Hoefer, Nancy Rytina, and Bryan Baker, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2011* 1 (DHS Mar 2012), online at http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2011.pdf (visited Mar 4, 2013).

[49] See Jeffrey S. Passel and D'Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States* 21 (Pew Hispanic Center Apr 14, 2009), online at http://www.pewhispanic.org/files/reports/107.pdf (visited Mar 4, 2013). Secretary Napolitano officially made border areas a priority for activation in March 2009, when she announced the Southwest Border Security Initiative. But her stated reason for this prioritization was to "crack down on Mexican drug cartels . . . to prevent the violence in Mexico from spilling over across the border." DHS, Press Release, *Secretary Napolitano Announces Major Southwest Border Security Initiative* (Mar 24, 2009), online at http://www.dhs.gov/ynews/releases/pr_1237909530921.shtm (visited Mar 4, 2013); *Priorities Enforcing*

foreign-born population—though the latter measure includes naturalized citizens and both proxies includes lawful migrants as well as those who are in violation of immigration law. A third potential proxy is the size of a community's Hispanic population. Nearly half of all immigrants living in the United States today are of Hispanic origin, and more than three-quarters of all unauthorized immigrants are from Central or South America.[50]

Of course, all of these proxies are both over- and underinclusive. For example, while most unauthorized migrants are Hispanic, the vast majority of Hispanic residents in the United States are not unauthorized. Nonetheless, there is some evidence that the government is using imperfect proxies to evaluate progress under the rollout. In DHS's 2011 appropriations report for Congress, for example, the agency emphasized as a key Secure Communities accomplishment from 2009 the deployment of biometric technology to "approximately 31 percent of the estimated nationwide number of the foreign born non citizen population."[51] The goals for 2010 included "covering approximately 96 percent of the estimated nationwide number of the foreign born non citizen population."[52] Notably, the agency's own chosen metric here is not the population of immigration violators, nor is it the population of noncitizens engaged in criminal activity or

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Immigration Law Hearing, 111th Cong, 1st Sess at 931–32 (cited in note 44) (statement of Mary M. Forman, Director of Office of Investigations, ICE); DHS, Press Release, *Secretary Napolitano Announces Secure Communities Deployment to All Southwest Border Counties, Facilitating Identification and Removal of Convicted Criminal Aliens* (Aug 10, 2010), online at http://www.dhs.gov/ynews/releases/pr_1281457837494.shtm (visited Mar 4, 2013); ICE, *Secure Communities: Quarterly Report; Second Quarter FY 2009* at 8–9 (cited in note 45). See also *Secure Communities Oversight Hearing*, 112th Cong, 1st Sess at 13 (cited in note 24) (statement of Gary Mead) ("Since 2008, ICE has expanded . . . Secure Communities from 14 jurisdictions to more than 1,729 today, *including every jurisdiction along the Southwest border*.") (emphasis added).

[50] See Eileen Patten, *Statistical Portrait of the Foreign-Born Population in the United States, 2010*, table 6 (Pew Hispanic Center Feb 21, 2012), online at http://www.pewhispanic.org/2012/02/21/statistical-portrait-of-the-foreign-born-population -in-the-united-states-2010/#6 (visited Mar 4, 2013) (showing that 18,817,105 of 39,916,875 immigrants reported their ethnicity as Hispanic); Passel and Cohn, *Portrait of Unauthorized Immigrants* at 21 (cited in note 49) (noting that 59 percent of unauthorized migrants are from Mexico, 11 percent are from other Central American countries, and 7 percent are from South America).

[51] ICE, *Salaries and Expenses: Fiscal Year 2011; Overview—Congressional Justification* 67–68 (DHS), online at http://www.ice.gov/doclib/foia/secure_communities/fy2011overviewcongressionaljustification.pdf (visited Mar 4, 2013).

[52] Id at 68–69.

convicted of crimes. Instead, the agency touts coverage of areas with large numbers of noncitizens.[53]

We should note, of course, that the twin objectives of immigration and crime control are not mutually exclusive. One could imagine the program pursuing both goals to a certain extent—perhaps a realistic assumption in a world where agency officials regularly single out both violent criminal offenders and repeat immigration offenders as the highest priority enforcement targets. Moreover, as we noted above, even if the government's ultimate focus were purely crime control, such a focus might not lead the government to rely exclusively on crime rates to determine rollout strategy. Nonetheless, these slightly different hypotheses about the government's means and ends all point to the same broad conclusions about what we should expect of the rollout strategy: the crime reduction strategy leads to targeting communities with high crime rates, and the immigration enforcement strategy leads to targeting communities with high levels of some proxy for immigration violators.

In addition to potential programmatic objectives, such as targeting serious criminals or reducing the cost of immigration enforcement, political objectives or pressures may also have shaped the use of discretion in Secure Communities' rollout. Some communities have applauded the idea of checking immigration status as part of the criminal process.[54] A number of states have even required such checks in the absence of any federal agreement or program.[55] In contrast, other communities have objected to Secure Communities. They have argued that the program undermines community policing by making local citizens wary of the police and imposes significant detention costs on local governments asked to hold prisoners in local jails until ICE agents take custody.[56] These complaints have garnered national media attention, with prominent governors such as Deval Patrick and Pat Quinn arguing that Secure Communities should not be implemented in their states.[57]

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[53]   Id at 67–68.

[54]   See generally ICE, *What Others Are Saying . . . about Secure Communities* (DHS June 2011), online at http://www.ice.gov/doclib/secure-communities/pdf/what-others-say.pdf (visited Mar 4, 2013) (collecting sources supportive of Secure Communities from across the country).

[55]   See, for example, SB 1070 § 2, codified at Ariz Rev Stat Ann § 11-1051(B) (2010).

[56]   See, for example, Quinn, Letter, *Secure Communities Program* at 1 (cited in note 46).

[57]   See Deval L. Patrick, *Hillel Moral Voices Lecture* (Apr 30, 2012), online at http://www.mass.gov/governor/pressoffice/speeches/20120430-tufts-moral-voices-immigration.html

If agency officials are sensitive to the possibility of political support or backlash against their program, as the literature on cooperative federalism suggests will often be the case,[58] then we would predict that the program would be activated first in communities that supported increased immigration enforcement, with activation delayed for communities that opposed the enforcement measure. Here too, the hypothesis finds support in the agency's public statements: agency documents state that early activation may be prioritized for those communities that have expressed an interest in partnering with ICE.[59]

As a starting point, therefore, we approach the activation data with three quite different hypotheses about the role discretion may have played in the program's implementation. Two of the hypotheses focus on the possibility that officials pursued implementation in places where the social need was considered greatest from a policy perspective—though the policy need can be understood in at least two different ways, depending on whether the focus is on serious criminals or not. The other hypothesis focuses on the possibility that officials pursued implementation in places where the political benefits were biggest and the risk of backlash, smallest.

III. Testing the Hypotheses

To test these hypotheses, as well as other questions that we will explore in future work, we collected a large set of data related to both immigration and criminal enforcement. For purposes of this Article we assembled the data into a cross section of US counties. For each county, the data include four large sets of information:

> (1) *Secure Communities operational data.* Through a FOIA request, we secured comprehensive statistics for Secure Communities that ICE collected as part of its implementation of the program. When combined with publicly available data, these statistics cover the period from October 2008

(visited Mar 4, 2013); Elise Foley, *Massachusetts Rejects Secure Communities Immigration Enforcement Program*, Huffington Post (June 6, 2011), online at http://www.huffingtonpost .com/2011/06/06/massachusetts-rejects-immgration-enforcement-program_n_871970.html (visited Mar 4, 2013); Quinn, Letter, *Secure Communities Program* at 1 (cited in note 46).

[58] See, for example, Roderick M. Hills Jr, *The Political Economy of Cooperative Federalism: Why State Autonomy Makes Sense and "Dual Sovereignty" Doesn't*, 96 Mich L Rev 813, 816 (1998).

[59] ICE, *1st Quarterly Status Report (April–June 2008)* at 7–8 (cited in note 22).

through July 2012. For this Article, the most relevant data provide the date on which Secure Communities was activated in each county around the country. But the data are far richer than this. They also include a tremendous amount of operational data concerning the program. On a county-by-month basis, the data include a wealth of information about the investigative, charging, and dispositional stages of enforcement, including: number of submissions; number of hits in the IDENT immigration database;[60] number of persons against whom ICE initiated removal proceedings; and number of removals. Moreover, this county-by-month data is further broken down by offense category, making it possible to separate serious offenders, minor offenders, and persons with no criminal convictions.

(2) *Demographic data.* From the USA Counties file,[61] we assembled a variety of county-level demographic data. These data include each county's racial composition, foreign-born population, crime rate, level of wealth and poverty, population density, police force size, and level of support for the Republican presidential candidate in 2004.

(3) *Immigration lawmaking and enforcement data.* Using publicly available data, we collected information on cooperative enforcement agreements entered into by local governments pursuant to § 287(g) of the INA. Using data generously provided by Huyen Pham and Pham Hoang Van, we assembled information on recent state and local legislation relating to immigration enforcement.[62]

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[60] The IDENT database includes persons who have lawfully immigrated to the United States in recent years, as well as persons who have had an enforcement encounter with ICE. Thus, even over the time period it covers, the IDENT database is both over- and underinclusive as a source of information about immigration violators. Many lawful immigrants and citizens are in the database, and unauthorized migrants who have never been deported are unlikely to be in it. See note 21.

[61] See *USA Counties* (Census Bureau), online at http://censtats.census.gov/usa/usa .shtml (visited Mar 4, 2013).

[62] This data was collected by Pham and Pham as part of their project studying the adoption of local immigration laws and the local political climate for migrants. For parts of their research, see generally Huyen Pham and Pham Hoang Van, *The Economic Impact of Local Immigration Regulation: An Empirical Analysis*, 32 Cardozo L Rev 485 (2010); Huyen Pham and Pham Hoang Van, *Measuring the Climate for Immigrants: A State-by-State Analysis*, in Gabriel Jack Chin and Carissa Hessick, eds, *Illegals in the Backyard: State and Local Regulation of Immigration Policy* (NYU forthcoming 2013).

(4) *Criminal enforcement data.* From the Uniform Crime Reports, we assembled data on both offending and arrest rates. These data are reported each month by every law enforcement agency in the country. Both the offense and arrest data are broken down by offense type and provide information on the race of persons arrested (though the demographic information does not include coding on Hispanic origin). We aggregated individual law enforcement agency data up to the county level for the year 2007, the year before Secure Communities was implemented.[63]

A.   The Basic Patterns

To test our hypotheses about Secure Communities, we begin with some summary statistics about the differences between early and later activating counties. The government has said repeatedly that it targeted high-priority areas for early activation. As a result, the counties in which Secure Communities was first activated provide revealing information about the government's highest priorities for the program. Moreover, as we explained earlier, ICE activated only a very small number of scattered counties in the first twelve months of the program—slightly more than 3 percent of all counties. The slow rollout of the program highlights the deliberateness of the choices made in launching the program and permits us to use county-level data about crime and demographics to see whether the rollout patterns are consistent with the various goals the government might have pursued.

In these summary statistics we focus on our first two hypotheses: targeting crime and criminal violators on the one hand, and targeting immigration violators on the other. (We add our third hypothesis—targeting pockets of local political support—in the later sections.) Our prediction above was that the first goal would lead the government to target high-crime communities for early activation, while the second goal would lead the government to target proxies for immigration violators,

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[63]   The FBI releases the Master Arrest and Offense files on a lagged basis, so 2011 data did not become available until early 2013. See FBI, *Uniform Crime Reports: UCR Publication Schedule (Tentative)*, online at http://www.fbi.gov/about-us/cjis/ucr/publication -schedule (visited Mar 4, 2013); FBI, *Preliminary Semiannual Uniform Crime Report, January–June 2012*, online at http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/ preliminary-semiannual-uniform-crime-report-january-june-2012 (visited Mar 4, 2013).

such as border proximity, noncitizen population, or perhaps Hispanic population.

TABLE 2. COMPARING THE CHARACTERISTICS OF
EARLY AND LATER ACTIVATING COUNTIES

Characteristic	Counties Activated within First 12 Months of Program (1)	Counties Activated Later (2)	Difference of (1) − (2)
County Is on Southern Border with Mexico	0.265 (0.078)	0.0023 (0.0014)	0.263** (0.078)
County Is on the Gulf of Mexico	0.133 (0.044)	0.015 (0.080)	0.118** (0.038)
Fraction of Population Noncitizen	0.095 (0.007)	0.025 (0.003)	0.070** (0.007)
Fraction of Population Hispanic	0.379 (0.091)	0.068 (0.016)	0.312** (0.080)
Log Violent Crime Rate	5.832 (0.114)	4.717 (0.207)	1.115** (0.240)
Log Property Crime Rate	7.930 (0.072)	6.917 (0.255)	1.013** (0.265)
N	83	2,994	3,077

**$p < 0.05$

Note: The table reports means, with standard errors in parentheses.

Table 2 tests these simple predictions by comparing crime rates, fractions of the noncitizen and Hispanic population, and border proximity by date of activation. The first row shows that counties activated within the first twelve months of Secure Communities were concentrated along the southern border. Counties along the southern border with Mexico represent only 1 percent of all US counties, but they accounted for nearly 27 percent of the counties activated during the first year of Secure Communities. After the first year, these border counties accounted for only about one-quarter of one percentage point of counties activated. The concentration of activations is unmistakable and highlights the fact that the overwhelming majority of counties along the southern border with Mexico were activated during Secure Communities' first year. Counties adjacent to the Gulf of Mexico were also more likely to activate during the first year of the program.

The third and fourth rows show that locations activated in the first year also had higher proportions of noncitizens and Hispanics in their populations. The magnitudes of these differences were substantial. Noncitizens accounted for 9.5 percent of persons in counties activated during the first year of Secure Communities, compared to only 2.5 percent in counties activated later. In other words, the proportion of the noncitizens in communities activated earliest was more than three times that of communities activated later.

The differences with respect to the proportion of Hispanics in the population were still larger. Hispanics constituted 37.9 percent of the population in early-activating counties and only 6.8 percent in counties activating later. That is, the fraction of Hispanics in counties activated during the first year of Secure Communities was more than five times that of counties activated later. A remarkable feature of this difference is that it cannot be fully explained by the concentration of early activations in border counties. Border counties comprise about 27 percent of early activations, and a higher fraction of their population is Hispanic than the average among other counties. Yet, even if border counties were populated entirely by Hispanics, the average fraction of Hispanic population in early-activating counties would not exceed 27 percent. Instead, the nearly 38 percent share of Hispanics in early-activating counties can only be explained by the fact that the government targeted counties that were *not* on the southern border but that did have proportionately large Hispanic populations. These demographic differences suggest that Secure Communities may have been directed in part at counties where more immigration violators were expected to be found.

The final two rows of Table 2 contemplate the other possible policy objective of Secure Communities: crime control. They compare the rates of violent and property crimes in early- and later-activating counties. Consistent with conventional practice in the academic literature, the crime rates are expressed as natural logarithms of the crime rate scaled up by 100 thousand. Crime rates vary widely across jurisdictions, and this convention places less weight on outlying locations with extremely high or low crime rates.[64] Early-activating counties had higher rates of

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64   For an explanation of the use of natural logarithms of the crime rate rather than the crime rate itself, see Lance Hannon, Peter Knapp, and Robert DeFina, *Racial Similarity*

2013]

both violent and property crime, and the differences are statistically meaningful. The difference suggests that Secure Communities may have been directed in part at counties with more severe crime problems.

As mentioned above, the hypotheses about the goals of Secure Communities are not mutually exclusive, and Table 2 provides some support for both hypotheses about enforcement priorities. But the table also shows that the speed of activation correlates more strongly with certain county characteristics than with others, suggesting that one objective of the program had higher priority. The differences in crime rates were more modest than those in the measures of immigration enforcement. For example, the difference of just over one log point for the violent crime rate appears small. When expressed in levels, the violent crime rate in the first counties to activate is double that of later-activating counties. Still, this difference is much smaller than the 300 percent difference in the proportion who are noncitizens or the 500 percent difference in the proportion who are Hispanic. The upshot is that the different county characteristics of early activators suggest that both general immigration enforcement and crime control priorities shaped Secure Communities' rollout. But the selection of counties appears more consistent with the desire to target immigration violators generally—rather than just those engaged in serious criminal activity—because early activations targeted counties close to the border and counties with a high proportion of noncitizen and Hispanic persons in the population.

B.   Hazard Analysis

Summary statistics offer some clues about the enforcement priorities of Secure Communities, but they do not control for numerous other factors that are potentially relevant. To better assess whether the patterns in Table 2 are robust to other influences, we proceed to multivariate analysis.

In this Section, we present estimates from survival or hazard models, which are particularly well-suited to the analysis of the rollout of Secure Communities. Hazard models have two important advantages for present purposes. First, they allow us to focus directly on *how much time passes* before a county is

in the Relationship between Poverty and Homicide Rates: Comparing Retransformed Co-efficients, 34 Soc Sci Rsrch 893, 898–901 (2005).

activated under Secure Communities. Waiting time provides the best information about the government's prioritization because the length of time until activation measures the temporal sequencing of the program's rollout. Alternative approaches, such as binary measures of whether the program has been activated in a county, are not appropriate because the program will eventually operate nationwide. We measure waiting times as commencing in October 2008, the first month of Secure Communities' rollout, and ending when the individual county activates.

The second advantage of hazard analysis is that it produces robust results even when the event of interest—here, activation—has not yet occurred for some members of the sample. At the time of our study, 3 percent of counties in the United States had not yet activated the program. Even though these counties are (right) censored—in that the event of interest has not yet occurred for them—hazard analysis permits the outcomes for these counties to be related to a set of explanatory variables.[65]

In the analysis that follows, the hazard function for a county is the risk of the event (activation) occurring at time *t*, conditional on having survived (not activated) until that time.[66] The specific hazard models presented here are Cox proportional hazard models, which are widely used because they avoid bias by not making an arbitrary assumption about the baseline hazard.[67] The relationship of an explanatory variable to the hazard (or risk) of the event is more easily interpreted with hazard ratios—that is, the ratio of a risk of a particular event relative to the baseline risk—and for that reason, Table 3 reports hazard ratios. Hazard ratios of greater than 1.00 imply that the variable is associated with an increased hazard or shorter waiting time, and a hazard ratio of less than 1.00 suggests the variable is associated with a lower hazard or longer waiting time.

To test our three hypotheses, the hazard models in Table 3 include explanatory variables tracking county demography, proximity to the border, crime, and potential political support

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[65] See S.W. Lagakos, *General Right Censoring and Its Impact on the Analysis of Survival*, 35 Persp in Biometry 139, 139 (1979).

[66] Slightly more formally, the hazard is specified as $h_i(t, X_i) = h_o(t)\exp(X_i\beta)$, where X_i are county i's observed characteristics and β is a vector of coefficients. The term $\exp(X_i\beta)$ shifts the baseline hazard function, with a positive coefficient indicating that the explanatory variable increases the hazard.

[67] See generally D.R. Cox, *Regression Models and Life Tables*, 34 J Royal Stat Socy Series B (Methodological) 187 (1972).

for Secure Communities.[68] The models also include fixed effects for each state, though these are not reported in the tables in order to conserve space.[69]

[68]   As described above, we follow the convention of expressing crime rates in natural logarithms. For counties with zero values for crime rates, we also followed the convention of replacing the missing values for these log crime rates with zeroes and including an indicator variable taking a value of 1.00 when such substitutions were made. We do not report in the tables below the estimates for these indicator variables.

[69]   The inclusion of fixed effects for states ensures that our results are driven by county-level characteristics rather than state-level characteristics. The inclusion of fixed effects is particularly important in light of a fact we documented earlier—that later activations were more likely to be lumpy, state-wide affairs.

TABLE 3. ESTIMATING THE TIME UNTIL ACTIVATION

County Characteristic	(1)	(2)	(3)	(4)	(5)	(6)
County Is on Southern Border with Mexico	4.187** (1.006)	—	4.859** (1.480)	4.191** (1.037)	4.190** (1.021)	4.103** (0.908)
County Is on the Gulf of Mexico	1.581 (0.575)	—	1.619 (0.623)	1.584 (0.586)	1.582 (0.574)	1.587 (0.581)
Fraction of Population Hispanic	2.166** (0.565)	3.282** (1.124)		2.132** (0.556)	2.152** (0.556)	2.205** (0.582)
Fraction of Population Noncitizen	0.937 (1.205)	0.607 (0.797)	3.848 (4.066)	—	—	1.257 (1.497)
Fraction of Population Foreign-Born	—	—	—	—	0.970 (1.130)	—
Change in Fraction of Population Hispanic 2000–2010	—	—	—	—	—	0.432 (0.758)
Fraction of Population Black	0.570 (0.268)	0.508 (0.250)	0.529 (0.256)	0.570 (0.268)	0.570 (0.268)	0.584 (0.277)
Log Violent Crime Rate	1.025 (0.024)	1.201 (0.023)	1.028 (0.024)	1.025 (0.024)	1.025 (0.024)	1.026 (0.024)
Log Property Crime Rate	1.013 (0.020)	1.021 (0.021)	1.013 (0.020)	1.013 (0.021)	1.013 (0.020)	1.013 (0.020)
Log Population Density	1.231** (0.043)	1.246** (0.043)	1.231** (0.043)	1.231** (0.045)	1.231** (0.041)	1.231** (0.042)
Log Income per Capita	0.945 (0.117)	0.936 (0.130)	0.904 (0.111)	0.943 (0.129)	0.945 (0.118)	0.951 (0.115)
Fraction in Poverty	0.474 (0.348)	0.603 (0.381)	0.521 (0.348)	0.472 (0.359)	0.473 (0.350)	0.458 (0.354)
Fraction of Vote in 2004 for Republican President	0.750 (0.403)	0.746 (0.461)	0.723 (0.401)	0.749 (0.407)	0.749 (0.406)	0.775 (0.378)
Count of Local Anti-Immigrant Legislation	0.997 (0.082)	0.987 (0.084)	0.997 (0.082)	0.997 (0.082)	0.997 (0.082)	0.999 (0.084)
Local 287(g) Agreement	4.164** (1.493)	4.441** (1.681)	4.109** (1.458)	4.159** (1.487)	4.162** (1.498)	4.151** (1.498)

*$p < 0.10$, **$p < 0.05$

Note: The table reports hazard ratios, with standard errors in parentheses. $N = 3{,}077$. Estimates for state fixed effects are not reported in order to conserve space.

1. Immigration enforcement.

The first set of explanatory variables in Table 3 explores the striking pattern in the summary statistics—that county demographics and border proximity, much more than crime rates, appear to be highly correlated with activation. These patterns hinted that the rollout might not have been targeted exclusively at crime reduction. As we will see below, the hazard models in Table 3 confirm some of these patterns but undermine others in surprising and potentially troubling ways.

The strongest correlates of activation remain location on the southern border and the fraction of the population that is Hispanic. The hazard models show that a county's location on the border with Mexico is strongly correlated with a high risk of activation. The estimates imply that counties on the southern border have a hazard rate of activation roughly four times higher than that of other counties.

The fraction of Hispanics in the county population also strongly predicts activation. For example, the estimate in column (1) implies that a 10 percentage-point increase in the share of Hispanics in a county's population corresponds to an 8.0 percent jump in the hazard for Secure Communities activation.[70] This result confirms that the pattern seen in the summary statistics of Table 2 for the Hispanic share of the population does not diminish when we control for other factors that might influence activation. Moreover, to alleviate the concern that this correlation is an artifact of some unobserved characteristic that correlates with minority population more generally, we provide for a sort of placebo test by including in the model a measure of the black population. Because this measure of race lacks the salience in contemporary debates about immigration enforcement that Hispanic ethnicity carries, one would not expect it to correlate with activation. Consistent with this intuition, the estimate for black population is less than 1.00, implying that counties with proportionately more black residents were activated later on average rather than being prioritized for early activation. In addition, each estimate for a county's black population is statistically insignificant, indicating that it, unlike Hispanic ethnicity, does not have a statistically significant correlation with the timing of activation.

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[70]   To see this, note that $\ln(2.166) = 0.7729$, and $\exp(0.7729*0.1) = 1.0804$.

The correlations for border proximity and Hispanic population are also robust. In every specification in Table 3 that includes these variables, the estimates are statistically significant and relatively stable in magnitude. Of course, these variables correlate strongly with each other; counties along the border have proportionately much larger Hispanic populations than the national average. To gauge how sensitive the estimate for each of these variables is to the presence of the other, column (2) reports an equation in which both indicators for the southern border were dropped, and column (3) reports an estimate in which the variable for Hispanic population was dropped. The exclusions add to the magnitude of the remaining variable's estimate but not enormously so: dropping the border variables raises the hazard ratio for the Hispanic share of the population from 2.166 to 3.282, while dropping the Hispanic variable raises the hazard ratio for the southern border from 4.187 to 4.859. Moreover, if we reestimate the equation excluding border counties from the sample entirely, the estimates are relatively unchanged. The estimated hazard ratio for the Hispanic share in particular remains statistically significant and largely unchanged at 2.135 (standard error = 0.665). These estimates show that although these two county characteristics are correlated, each plausibly captures a different influence on the risk of activation.

In the summary statistics above, a county's noncitizen population was also correlated with activation—though more weakly than Hispanic population or border proximity. In the hazard models, however, the relationship between noncitizen population and activation is flipped on its head. The hazard ratio for noncitizens is in some models less than 1.00. This means that, rather than increasing the likelihood of activation, a larger share of noncitizens in a county *modestly reduces* the likelihood of activation. For example, the hazard ratio of 0.937 in column (1) implies that a 10 percentage-point increase in the share of noncitizens in a county's population *lowers* the hazard by about 1 percentage point.[71]

The direction of this estimate is surprising, even counterintuitive. The central function of Secure Communities is to check the status of noncitizens through fingerprints, and on one theory this technology would promise the greatest benefit where there

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[71]   To see this, note that $\ln(0.937) = -0.651$, and $\exp(-0.651*0.1) = 0.994$. This indicates that a county with a share of noncitizens that is 10 percentage points greater than the baseline has a hazard that is 85 percent that of the baseline.

are the most noncitizens. Yet noncitizen population does not predict activation. Moreover, the results for noncitizens contrast sharply with the estimates for Hispanic population. If taken at face value, they indicate that early activation targeted counties with large Hispanic populations but did not target counties with large noncitizen populations.

Of course, a crucial caveat to these estimates is that they reflect the effect of noncitizens' population share *after* controlling for the Hispanic share and other county characteristics. As mentioned above, Hispanic ethnicity and noncitizen status are highly correlated in these data, and thus any correlation between noncitizens and activation may be captured to a large extent by the presence of the Hispanic share variable. The results provide some reason to believe this is the case. When the Hispanic share variable is excluded from the set of explanatory variables in column (3), the estimate for noncitizens' share changes direction, implying that a 10 percentage-point increase in the proportion of noncitizens in the county raises the risk of activation by 14 percent.[72] For this reason, it would be inappropriate to advance a strong claim that Hispanic ethnicity accelerated activation while noncitizen status slowed it.

That said, it is important to note that Hispanics' share of a county's population appears to be a more powerful predictor of activation than noncitizens' share of the population. Just as any correlation between noncitizens and activation may be captured to a large extent by the presence of the Hispanic share variable, the opposite could be said about the noncitizens variable. But while the presence of the Hispanic variable eliminates the correlation between noncitizen population and activation (and in fact suggests an inverse correlation), the opposite is not true: the presence of the noncitizens variable does not impair the correlation between ethnicity and the activation hazard. Column (4) shows that when the measure of noncitizens is excluded from the equation, the estimated hazard ratio for Hispanics' share falls only modestly from 2.166 to 2.132. Thus, Hispanic population does appear to exert a greater influence on the estimate for noncitizens than vice versa.

Perhaps even more important, none of the estimates for noncitizens' share attain statistical significance—not even in column (3) when the Hispanic variable is excluded from the

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[72]   To see this, note that $\ln(3.848) = 1.348$, and $\exp(1.348*0.1) = 1.144$.

equation and the noncitizen estimate connotes a positive relationship with the activation hazard. In contrast, the estimates for Hispanics' population share are positive and statistically significant in every single model. These patterns suggest that the time-until-activation correlates more closely with the proportion of Hispanics in a county than with the proportion of noncitizens.[73]

2. Crime control.

The second set of variables tests our second hypothesis about the objectives of Secure Communities: its relationship to crime control. If crime control was a key objective of the program, we would predict that locations with higher crime rates should have activated sooner.[74] The summary statistics in Table 2 provided some evidence for this hypothesis. But the hazard analysis undermines this support. Once we control for other influences on activation, local crime rates are not consistently correlated with the decision to activate Secure Communities.

As in the summary statistics, Table 3 includes two principal measures of crime rate: the (log) rate of violent crime and the (log) rate of property crime. Given Secure Communities' putative focus on violent crime, we would predict that the violent crime rate, but perhaps not the property crime rate, would be associated with early activation. In fact, however, neither measure of crime predicts early activation. The hazard ratios for both violent and property crime hover around the baseline risk of 1.00, and none of these estimates attains statistical significance.

These estimates imply that, contrary to our prediction, crime rates are not closely related to the activation hazard—a surprising result. In order to explore the apparent irrelevance of crime rates in more depth, Table 4 presents a series of additional models that examine more closely why crime rates have such a weak relationship to the speed of activation.

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[73] Replacing noncitizen population with foreign-born population produces the same results. The model in column (5) replaces the measure of noncitizens with the fraction of foreign-born persons in the population. Perhaps unsurprisingly, the foreign-born and noncitizen variables are highly correlated, and the estimates from using one measure are essentially identical to those from using the other. These results suggest that the activation hazard correlates with the fraction of Hispanics in a county rather than either the fraction noncitizen or the fraction foreign-born.

[74] See text accompanying notes 35–45.

TABLE 4. THE RELATIONSHIP BETWEEN CRIME
AND TIME-UNTIL-ACTIVATION

County Characteristic	(1)	(2)	(3)	(4)	(5)
County Is on Southern Border with Mexico	4.187** (1.006)	4.214** (1.010)	4.126** (0.939)	3.813** (0.949)	5.341** (1.663)
County Is on the Gulf of Mexico	1.581 (0.575)	1.582 (0.574)	1.558 (0.551)	1.511 (0.494)	1.550 (0.541)
Fraction of Population Hispanic	2.166** (0.565)	2.163** (0.569)	2.084** (0.574)	2.148** (0.538)	2.194** (0.553)
Fraction of Population Noncitizen	0.937 (1.205)	0.928 (1.202)	0.869 (1.139)	1.079 (1.520)	2.190 (2.887)
Log Violent Crime Rate	1.025 (0.024)	1.033 (0.025)	—	1.027 (0.024)	1.060** (0.028)
Log Property Crime Rate	1.013 (0.020)	—	0.995 (0.018)	0.997 (0.022)	1.083** (0.025)
Log Murder Rate	—	—	0.979 (0.034)	—	—
Log Rape Rate	—	—	1.025 (0.026)	—	—
Log Aggravated Assault Rate	—	—	0.995 (0.020)	—	—
Log Robbery Rate	—	—	1.082 (0.032)	—	—
Log Police Officers per Capita	—	—	—	1.013 (0.100)	—
Log Population Density	1.231** (0.043)	1.232** (0.043)	1.202** (0.045)	1.257** (0.058)	—
Log Income per Capita	0.945 (0.117)	0.950 (0.118)	0.886 (0.111)	0.925 (0.121)	1.266 (0.189)
Fraction in Poverty	0.474 (0.348)	0.476 (0.351)	0.391 (0.293)	0.489 (0.344)	0.213** (0.173)

*$p < 0.10$, **$p < 0.05$

Note: The table reports hazard ratios, with standard errors in parentheses. $N = 3,077$, except for column (4) where $N = 2,827$. The baseline regression in column (1) is identical to the baseline regression in column (1) of Table 3. Estimates for some variables in the baseline model are not reported in order to conserve space.

Table 4 explores three potential problems with Table 3's estimates about the relevance of crime rates. The first stems from

the close correlation between violent crime and property crime. If violent crime is, as agency officials suggest, the program's highest priority, then the inclusion of both violent and property crime in the model might, because of their close correlation, mask a strong relationship between activation and violent offenses. The equation in column (2) excludes the property crime rate from the set of explanatory variables, and the resulting estimates reject this possibility. The exclusion of property crime from the model has virtually no effect on the estimate for violent crime (or any of the other parameter estimates for that matter).

A second possibility is that our estimates are sensitive to the precise measures of crime employed. The model in column (3) replaces the total violent crime rate with those of its constituent subcategories: murder, rape, aggravated assault, and robbery. For three of these offense categories, the estimated hazard ratios are close to 1.00, implying no relationship to the activation hazard, and are statistically insignificant. The one offense category showing a statistically significant correlation with the activation hazard is robbery. But the magnitude of the estimated relationship is small. It implies that a 10 percent increase in the (log) rate of robbery over the sample average raises the hazard by 1.9 percent above the baseline hazard.

A third concern arises from the potential relationship between crime and other controls in the model. For example, it is possible that border proximity and crime are correlated. If so, then perhaps ICE targeted high-crime areas by targeting the border, such that we should count the correlation between border proximity and early activation as evidence of a crime-control agenda. It is certainly true that agency officials, right up to Secretary Napolitano, said publicly that activation along the southern border would be pursued as part of a strategy to disrupt violence related to international drug cartels.[75] Table 3 already explored this possibility by testing the sensitivity of the model to the presence of the border location variable. Were that variable highly correlated with local crime rates, its presence might mask a link between rollout timing and crime. But the estimates in

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[75] See DHS, Press Release, *Secretary Napolitano Announces Secure Communities Deployment* (cited in note 49). At the level of public justification, this explanation is complicated by the fact that the prioritization of border areas was not announced by Secretary Napolitano until a number of months after Secure Communities' rollout began. The timing of the Secretary's statements undercuts the likelihood that the early rollout was designed to use border location as a proxy for crime.

column (2) of Table 3 suggest this is not the case. Omitting the border proximity variable has a negligible effect on the hazard ratios for the crime variables and does not elevate them to statistical significance.

Introducing other measures potentially correlated with crime similarly has no effect. For example, crime rates and policing tend to move together, as jurisdictions with more severe crime problems react by hiring more officers. But the results in column (4) of Table 4 show that including a measure of officers per capita has no effect on the estimated hazard ratio for violent or property crime. Moreover, while criminologists have long observed that both income levels and population density correlate with crime rates—in part because crime is more common in cities—their presence is not wholly responsible for the effectively zero estimates for the crime rates.[76] As the estimates in Table 4 show, income levels are largely unrelated to the likelihood of activation. Population density does have a consistently positive effect, raising the possibility that the estimated relationship between crime and activation is sensitive to the inclusion of the control for population density, but column (5) shows that excluding the measure of population density has a modest effect on the estimates for the crime rates.[77] When population density is excluded from the model, the estimated hazard ratios for property and violent crime both exceed 1.00 and attain statistical significance. But the size of their implied effects is smaller than those of the demographic and border variables. Raising the (log) rate of property crime by 10 percent above its sample mean implies a 5.7 percent increase in the hazard over its baseline. For violent crime, the comparable figure is 2.8 percent. In short, Table 4 suggests that the basic findings in Table 3 are not sensitive to our choice about how to measure crime rates or to the inclusion or exclusion of other variables that are correlated with crime.

Of course, as Part II's discussion of potential hypotheses makes clear, simply targeting communities with high crime rates is not the only way that immigration agencies might have used Secure Communities to target crime reduction and the removal of criminals. Using crime rates to set rollout strategy is one plausible strategy. But the agency might have preferred in

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[76]   See, for example, Ronald W. Beasley and George Antunes, *The Etiology of Urban Crime: An Ecological Analysis*, 11 Criminology 439, 448 (1974).

[77]   Although not shown in Table 3, removing per capita income and the poverty rate from the model has a similar effect on the estimates for the crime rates.

an ideal world to prioritize rollout in areas that have *both* high crime rates and large numbers of noncitizens. If that was in fact the strategy, then the models in Table 3 risk understating the significance of crime rates for rollout timing. To test this possibility directly, Table 5 adds to the baseline model from Table 3 terms that interact both the Hispanic and noncitizen population with crime rates.

TABLE 5. MIXED ENFORCEMENT STRATEGY
AND TIME-UNTIL-ACTIVATION

County Characteristic	(1)	(2)	(3)	(4)	(5)
Fraction of Population Hispanic	1.854** (0.709)	1.854** (0.709)	2.182** (0.554)	2.111** (0.544)	2.210** (0.605)
Fraction of Population Noncitizen	0.541 (0.715)	0.541 (0.715)	0.188 (0.231)	0.042** (0.060)	0.909 (1.194)
Fraction of Population Black	0.572 (0.272)	0.572 (0.272)	0.537 (0.257)	0.536 (0.258)	0.517 (0.276)
Log Violent Crime Rate	1.009 (0.006)	1.008 (0.022)	1.006 (0.024)	1.000 (0.023)	1.012 (0.024)
Log Violent Crime Rate × Second Quartile of Demographic	1.015* (0.009)	1.009 (0.006)	1.005 (0.007)	1.007 (0.006)	1.003 (0.011)
Log Violent Crime Rate × Third Quartile of Demographic	1.032** (0.015)	1.015* (0.009)	1.013 (0.011)	1.018* (0.010)	1.017 (0.012)
Log Violent Crime Rate × Fourth Quartile of Demographic	1.039 (0.030)	—	1.049** (0.015)	—	1.016 (0.018)
Log Violent Crime Rate × 75th–90th Percentile of Demographic	—	1.032** (0.015)	—	1.054** (0.015)	—
Log Violent Crime Rate × Top Decile of Demographic	—	1.039 (0.030)	—	1.093** (0.038)	—
Demographic Interacted: Fraction of Population . . .	Hispanic	Hispanic	Non-citizen	Non-citizen	Black

*$p < 0.10$, **$p < 0.05$

Note: The table reports hazard ratios, with standard errors in parentheses. $N = 3{,}077$. Except for the interaction terms, the baseline regression in column (1) is identical to the baseline regression in column (1) of Table 3. Estimates for all other variables are not reported in order to conserve space.

The models in Table 5 interact the violent crime rate with a series of indicator variables that identify where in the distribution of a particular demographic measure a county falls. For example, the model in column (1) interacts the violent crime rate with indicators for whether a county falls within one of the top three quartiles of the fraction of population that is Hispanic. Adding these interaction terms allows us to test the hypothesis that ICE prioritized counties that had both very high crime rates and very large noncitizen populations—a sort of skimming-off-the-cream theory of rollout. If ICE pursued such a strategy, the hazard ratios on the interaction terms should grow as we move up the demographic quartiles. In theory, the hazard ratio should be largest for the interaction term that reflects the highest concentration of the relevant demographic—here the interaction terms that reflect the top decile of the relevant characteristic.

The model in column (1) offers weak support for this hypothesis. The hazard ratios on the interaction terms are all slightly greater than 1.00, and they are larger in counties with proportionately larger Hispanic populations. For example, the hazard ratio on the interaction of violent crime with the second quartile of Hispanic population is 1.015, and for the top quartile, it is 1.039. By contrast, the main effect of the violent crime rate has a hazard ratio that is almost exactly 1.00, implying that aside from the interaction terms, varying the rate of violent crime has no impact on the hazard for activation. Taken at face value, the estimates suggest that a higher violent crime rate slightly accelerated the activation time in counties with a relatively large Hispanic population and had almost no impact on the time-until-activation in other counties. Raising the (log) rate of violent crime by 10 percent over the sample mean implies a less than 1 percentage-point increase over the baseline hazard rate for a county with a Hispanic population in the lowest quartile, but it implies a 1.8 percent increase over the baseline hazard rate for a county with a Hispanic population in the highest quartile. The model in column (2) provides a further test by looking at counties with the very highest share of Hispanic population—counties in the top decile. Its pattern is similar to that seen in column (1).

Columns (3) and (4) present estimates of analogous interactions for the fraction of the population that is noncitizen, and here, the patterns are somewhat more pronounced. The effect of a higher crime rate on the activation hazard is larger when

noncitizens comprise a larger fraction of a county's population. Again, the violent crime rate has almost no effect on the activation hazard in counties with few noncitizens. But as the share of noncitizens in a county grows, the impact of the violent crime rate on the speed of activation rises monotonically. The model in column (4) implies that raising the (log) rate of violent crime by 10 percent over the sample mean in a county with a noncitizen population in the top decile raises the activation hazard by 4.3 percent over the baseline hazard rate. Unlike the earlier interactions with the Hispanic population, the interaction terms with the noncitizen population are statistically significant. These results are consistent with the hypothesis that ICE prioritized for activation counties with higher rates of violent crime and proportionately larger noncitizen populations.

The final column of Table 5 presents a type of placebo test. It includes interactions of the violent crime rate with measures of the fraction of a county's residents who are black. As noted above, we would not expect the size of a county's black population to relate to the speed of activation. The estimates in column (5) confirm this prediction. The interactions do not correlate strongly with the timing of activation, and their presence has no effect on the estimates for the other variables. The absence of a correlation for these racial variables should give some confidence that the patterns for ethnicity and citizenship status are not spurious.

The results in Table 5 lend support to the view that ICE assigned higher priority for activation to counties with both proportionately more noncitizens and higher violent crime rates. While crime rates themselves do not appear to predict rollout, crime does matter in those areas that have large noncitizen populations.

That said, it is important to note that controlling for these interactions does not undermine the estimated effect of other influences we identified earlier. Even in the models in Table 5, the fraction of the county population that is Hispanic and the proximity to the southern border remain strongly related to the speed of activation. In fact, they remain the strongest predictors: the implied magnitude of these influences is much larger than the interaction of violent crime and the size of the noncitizen population. Thus, the possibility that ICE prioritized counties with proportionately more noncitizens and higher violent crime rates can explain only a part of the observed pattern of activation.

The most powerful explanations remain the two identified earlier: the county's Hispanic population fraction and its proximity to the border.

3.   The politics of rollout.

The final explanatory variables in Table 3 investigate our third hypothesis about the activation of Secure Communities—that the degree of local political support is a crucial predictor of early activation. The large literature on cooperative federalism suggests that such support may be relevant. The difficulty, of course, is that it is hard to gauge directly which local communities favor increased immigration enforcement of this sort and which oppose it. We therefore test several potential measures.

The first rough measure of local attitudes is the vote share the Republican presidential candidate received in the 2004 election. At least in recent years, support for the Republican Party (and ideological conservatism more generally) is significantly correlated with opposition to immigration and support for increased immigration enforcement.[78] Nonetheless, Table 3 shows that local support for Republicans does not correlate meaningfully with activation. The estimates for Republican vote share are statistically insignificant in every regression. Moreover, if the point estimates were taken at face value, they would imply an effect opposite of the one anticipated, as the hazard ratio is less than 1.00 in every specification.

A potentially more precise measure of local sentiment is a count of the number of anti-immigrant laws enacted locally. Rather than forcing us to rely on partisanship in the presidential election as a proxy, this measure permits us to observe directly the actions taken by local politicians that relate to immigrants and immigration enforcement. The tally of local anti-immigrant legislation was generously provided by Pham and Pham, who collected the information as part of a project to create an index capturing each state's climate for immigrants.[79] The more pre-

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[78]   See Pratheepan Gulasekaram and S. Karthick Ramakrishnan, *The Importance of the Political in Immigration Federalism* *4 (forthcoming 2013), online at http://www .karthick.com/workingpapers_assets/GR-submission-2-23.pdf (visited Mar 4, 2013); *Trends in American Values: 1987–2012; Partisan Polarization Surges in Bush, Obama Years* 11–12, 20 (Pew Research Center June 4, 2012), online at http://www.people-press.org/ files/legacy-pdf/06-04-12%20Values%20Release.pdf (visited Mar 4, 2013).

[79]   Pham and Pham, *Measuring the Climate for Immigrants* (cited in note 62). The paper by Pham and Pham includes counts of both pro- and anti-immigrant legislation at the county level. We excluded the small number of local laws categorized as pro-immigrant.

cise measure of attitudes on immigration provided by local legislation also fails to correlate with activation. The hazard ratios are statistically insignificant in every specification and are very close to 1.00 in all instances. Perhaps surprisingly, the presence of local anti-immigrant legislation does not have a meaningful influence on the timing of a county's activation.

Nor do other potential measures of local sentiment.[80] Recent work by political scientists suggests that communities in which the Hispanic population has grown most rapidly might be those in which a political backlash and calls for stricter immigration enforcement are more likely to occur.[81] The equation in column (6) of Table 3 tests this hypothesis by including a variable for the change in Hispanics' share of the population over the past decade. The estimated hazard ratio for this variable is statistically insignificant and, like the Republican vote share, is less than 1.00, contrary to the backlash hypothesis. Also, the inclusion of the growth measure has little effect on the estimates for the other variables.

In addition, while their paper also includes state-level legislation, that legislation is co-extensive with our state fixed effects and was therefore omitted.

[80]   In addition to political sentiment, we also attempted to test for local financial incentives. Some critics of Secure Communities have argued that local governments with excess jail capacity will have an incentive to participate in order to get paid for housing immigrant detainees identified by the program. See, for example, Chris Kirkham, *Private Prisons Profit from Immigration Crackdown, Federal and Local Law Enforcement Partnerships*, Huffington Post (June 7, 2012), online at http://www.huffingtonpost.com/2012/06/07/private-prisons-immigration-federal-law-enforcement_n_1569219.html (visited Mar 4, 2013); Jessica M. Vaughan and Russ Doubleday, *Subsidizing Sanctuaries: The State Criminal Alien Assistance Program* 1 (Center for Immigration Studies Nov 2010), online at http://www.cis.org/articles/2010/subsidizing-sanctuaries.pdf (visited Mar 4, 2013). While this potential financial payoff for participating is hard to calculate—and many counties have complained that federal reimbursements for detention do not cover their costs—we examined the pattern of activations for the fifty counties with the largest prison systems. Within that set, counties with prisons operating below capacity activated a statistically insignificant twenty-six days earlier than counties with prisons operating at or above capacity. Nineteen counties with capacity exceeding 100 percent activated in an average of 565.2 days while 31 counties with less than 100 percent capacity activated in an average of 539.0 days. Running our basic hazard model using these fifty counties (and leaving out state fixed effects) yields a hazard ratio of 1.00 (standard error = 0.0086) for the percentage of prison capacity, which is also consistent with the presence of excess bed space having no effect on rollout.

[81]   See, for example, Martin Halla, Alexander F. Wagner, and Josef Zweimüller, *Does Immigration into Their Neighborhoods Incline Voters toward the Extreme Right? The Case of the Freedom Party of Austria* *1–3, 27 (University of Zurich Department of Economics Working Paper No 83, July 1, 2012), online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2103623 (visited Mar 4, 2013).

The only potential measure of local support that does correlate with activation is whether a local government has a 287(g) cooperative enforcement agreement with the federal government. The presence of a 287(g) agreement in a county corresponds to an estimated increase in the activation hazard of roughly four times over the baseline hazard. That said, the relationship between 287(g) agreements and activation is far from clear evidence of a connection between activation and local political support. The willingness of local law enforcement to enter into such an agreement may reflect local political support for increased immigration enforcement—support that in turn influenced activation. Alternatively, the connection between 287(g) agreements and activation may simply reflect operational efficiency. Local police participating in the 287(g) program already have an established relationship with federal officials, and the existence of this relationship may facilitate an early activation of Secure Communities.

Regardless of the political variable employed, therefore, the estimates for these variables provide little support for the hypothesis that local political support or opposition was a factor in activation. There are, of course, other minor wrinkles. Some might argue, for example, that the border proximity variable should be interpreted as a political variable, as proximity to the border might correlate with increased local support for immigration enforcement. Certainly there are high-profile instances of border state politicians complaining loudly about the failure of federal immigration enforcement. On balance, however, the basic patterns in the hazard models do not provide much support for the hypothesis that political support was a crucial factor in Secure Communities' rollout.

IV. DISCRETION, PREDICTION, AND THE FUTURE OF IMMIGRATION ENFORCEMENT

Immigration enforcement has long been criticized as ad hoc and arbitrary, with the possibility of punishment for violating the immigration code turning more on happenstance or the caprice of low-level bureaucrats rather than anything else.[82] The principle that "like cases must be treated alike," often taken as central to

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[82]   For a few recent versions of this decades-long critique, see generally Daniel Kanstroom, *Deportation Nation: Outsiders in American History* (Harvard 2007); Peter H. Schuck, *The Transformation of Immigration Law*, 84 Colum L Rev 1 (1984).

the very idea of justice,[83] has seemed to many to be honored only in the breach when it comes to immigration law.

Whatever the historical accuracy of claims about the disorganization of immigration enforcement, it is clear that today there is an ongoing project to systematize and centralize the exercise of discretion within the immigration bureaucracy. Perhaps the most prominent example of this trend is President Obama's announcement that his administration will not seek to deport many young people who came to the United States without authorization as children.[84] But this recent development is far from an election-year outlier. Instead, it is but a piece of a much broader effort to regulate the use of prosecutorial discretion within the agencies that administer immigration policy.[85] Moreover, these efforts have deep roots in a central structural feature of modern immigration law. Modern immigration law effectively renders huge numbers of noncitizens presumptively deportable—a structural feature that delegates tremendous policy-making authority to the executive.[86]

The rollout of Secure Communities is both further evidence of the power of the president over immigration policy and an additional means of centralizing the use of discretion within the executive branch.[87] Before Secure Communities, people arrested by local police were screened for immigration violations in only a small number of communities around the country.[88] Soon such screening will be universal. Local officials will have no power to pick and choose directly which arrestees get screened (though, of course, they do have the power to decide whom to arrest). And for those arrestees who are identified as potentially deportable, the consolidation of the screening function facilitates the more

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[83]   David A. Strauss, *Must Like Cases Be Treated Alike?* *18–19 (Chicago Public Law and Legal Theory Working Paper No 24, May 8, 2002), online at http://www.law.uchicago.edu/files/files/24.strauss.like-cases.pdf (visited Mar 4, 2013); H.L.A. Hart, *The Concept of Law* 155 (Clarendon 1961).

[84]   See Preston and Cushman, *Obama to Permit Young Migrants*, NY Times at A1 (cited in note 38).

[85]   See Morton, Memorandum, *Exercising Prosecutorial Discretion* at 4 (cited in note 37).

[86]   See Adam B. Cox and Cristina M. Rodríguez, *The President and Immigration Law*, 119 Yale L J 458, 463 (2009).

[87]   See DHS, Press Release, *Secretary Napolitano's Remarks* (cited in note 35) (contrasting Secure Communities with earlier ad hoc approaches).

[88]   See text accompanying notes 2–14.

uniform exercise of discretion. If DHS chooses, it can more frequently ensure that like cases are treated alike.[89]

These changes in immigration enforcement parallel important trends in modern criminal law. In both prosecutors' offices and law enforcement agencies, efforts are underway in many places to discipline the vast discretion historically held by the individual prosecutor and the lone cop on the beat. Prominent prosecutors' offices have begun adopting internal controls designed to promote the more uniform administration of justice.[90] Major police forces have increasingly come to rely on data-driven models of crime prevention and officer accountability.[91] DHS, which houses both the prosecuting arm and police force for immigration law, has drawn on both of these developments in structuring Secure Communities.

In all of these contexts, the benefits of centralizing discretion often come with hidden costs. As Bernard Harcourt and others have noted in the criminal context, for example, these more "rational" models of policing can often obscure the ways in which seemingly neutral rules can in practice concentrate the burdens of law enforcement on minority communities.[92] Our findings about Secure Communities suggest that this may be precisely what happened during the program's rollout. Early activation under the program is highly correlated with the size of a county's Hispanic population—a possibility that has been obscured by both the official justifications for Secure Communities

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[89]   We are exploring whether there is evidence that the agency is actually doing just this as part of our larger empirical assessment of Secure Communities. See Adam B. Cox and Thomas J. Miles, *The Future of Immigration Federalism* (on file with authors).

[90]   See Rachel E. Barkow, *Institutional Design and the Policing of Prosecutors: Lessons from Administrative Law*, 61 Stan L Rev 869, 915–21 (2009); Center on the Administration of Criminal Law, *Establishing Conviction Integrity Programs in Prosecutors' Offices: A Report of the Center on the Administration of Criminal Law's Conviction Integrity Project* 4–5 (NYU School of Law 2012), online at http://www.law.nyu.edu/ecm_dlv4/groups/public/@nyu_law_website__centers__center_on_administration_of_criminal_law/documents/documents/ecm_pro_073583.pdf (visited Mar 4, 2013).

[91]   The rise in the role of prediction and systematization in law enforcement has been documented by Bernard Harcourt, who has given it the (slightly pejorative) label "actuarial justice." Bernard E. Harcourt, *Against Prediction: Profiling, Policing, and Punishing in an Actuarial Age* 2–3 (Chicago 2007). The trend has even penetrated deeply into pop culture, with the cult crime show *The Wire* revolving centrally around CompSTAT—a real-world data-analysis tool designed to help police departments allocate resources efficiently and centralize discretion within their organizations.

[92]   Id at 4–6.

and the less-than-transparent "risk-based" model that DHS has said it used to set activation priorities.[93]

The tight correlation under Secure Communities between activation and ethnicity is obviously troubling. Nor can it be dismissed as an artifact of the government's focus on the border or on areas containing large pockets of noncitizens. Instead, as the detailed analysis in Part III demonstrated, the correlation between activation and Hispanic population is extremely persistent: it remains large and statistically significant even when we control for border proximity and myriad other factors on which the government might have relied in deciding where to target its limited enforcement resources.

To be sure, our findings do not necessarily mean that those designing the rollout strategy engaged in racial profiling. In the parlance of equal protection jurisprudence, the data reveal a disparate impact, but cannot identify disparate treatment—the intentional singling out of a racial or ethnic group. Still, one can imagine that some might defend the resulting pattern on the ground that, regardless of the government's motive, singling out predominantly Hispanic communities for increased immigration enforcement is rational because the number of immigration violators in a community is correlated with the size of the Hispanic population. A number of commentators have argued in other contexts that racial profiling is perfectly rational and should be lawful—so long as the government relies on accurate statistical generalizations about the profiled group.[94] And many years ago the Supreme Court suggested that Hispanic ethnicity could in fact be used by law enforcement officers as a factor in determining whether there is reasonable suspicion that a person has violated immigration law.[95]

Figuring out whether targeting Hispanic communities in the rollout is consistent with rational profiling, understood in the above sense, is well beyond the scope of this paper. We should note, however, that the data in our larger empirical

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[93] See note 44 and accompanying text.

[94] See, for example, Heather Mac Donald, *Are Cops Racist?* 9–10, 28–29 (Ivan R. Dee 2003); Frederick Schauer, *Profiles, Probabilities, and Stereotypes* 18–19 (Belknap 2006).

[95] See *United States v Brignoni-Ponce*, 422 US 873, 884–87 (1975) (holding that apparent ethnicity could be *one* factor, but not the sole factor, in a stop). But see *United States v Montero–Camargo*, 208 F3d 1122, 1131–35 (9th Cir 2000) (en banc) (holding that Hispanic ethnicity could no longer be a factor in the reasonable suspicion calculus because of post-*Brignoni-Ponce* changes to the demography of border areas).

study of Secure Communities cast some doubt on such a claim.[96] For while the rollout itself correlates highly with the fraction of a county's population that is Hispanic, the fraction of that county's submissions that yield matches against ICE's biometric database does not.[97] In other words, "hit rates" under the program do not appear to correlate meaningfully with a county's Hispanic population. Yet if the proportion of a county that was Hispanic were truly correlated with the proportion of the county that was in violation of immigration law, then all else equal one would expect hit rates to correlate with ethnicity.

Ultimately, our aim is not to resolve fully the concerns raised by the pattern of Secure Communities' rollout. Instead our principal goal has been descriptive—to provide the first large-scale empirical study of the way in which discretion has been wielded in the most important immigration enforcement initiative adopted in recent history. Our findings have important implications for Secure Communities itself, raising questions about the program's putative focus on crime and revealing a troubling correlation between ethnicity and the program's deployment. More broadly, our findings highlight important similarities between the structure of modern criminal and immigration enforcement, findings that we hope will spur the integration of scholarship on both subjects.

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[96]   As we noted earlier, our dataset includes comprehensive statistics on the productivity of Secure Communities in each community where it was activated—including the number of monthly submissions, hits, arrests by ICE agents, and, ultimately, deportations. See Part III.

[97]   See Cox and Miles, *The Future of Immigration Federalism* (cited in note 89).

APPENDIX

TABLE 1. SUMMARY STATISTICS OF MAIN VARIABLES

Variable	Mean (Standard Deviation)
County Is on Southern Border with Mexico	0.009 (0.097)
County Is on Gulf of Mexico	0.018 (0.133)
Percent Population Hispanic	0.076 (0.127)
Change in Percent Population Hispanic 2000–2010	0.022 (0.024)
Percent Population Noncitizen	0.027 (0.036)
Log Violent Crime Rate	4.747 (1.761)
Log Property Crime Rate	6.994 (1.987)
Log Population Density	3.748 (1.678)
Log Income per Capita	10.290 (0.229)
Poverty Rate	15.099 (6.222)
Percent of Vote in 2004 for Republican President	0.603 (0.126)
Percent Population Black	0.090 (0.143)
Count of Local Anti-Immigrant Legislation	0.040 (0.314)
Local 287(g) Agreement	0.015 (0.121)
Log Police Officers per Capita	2.058 (0.646)

Note: $N = 3,077$, except for police per capita where $N = 2,827$.