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INTERVENTIONS TO THE JAIL-TO-DEPORTATION PIPELINE



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Disclaimers

The author conducted this study as part of the program of professional education at the Frank Batten School of Leadership and Public Policy, University of Virginia. This paper is submitted in partial fulfillment of the course requirements for the Master of Public Policy degree. The judgments and conclusions are solely those of the author, and are not necessarily endorsed by the Batten School, by the University of Virginia, or by any other agency. Furthermore, while the data is affirmed valid in this report, the author's views do not necessarily reflect the views of ACLU People Power Fairfax. The designations in this report do not imply an opinion on whether ACLU People Power Fairfax would pursue an option discussed.

Honor Pledge

On my honor as a student, I have neither given nor received unauthorized aid on this assignment.

Estelle McKinney

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Executive Summary

Too many undocumented immigrants are arrested by Immigration and Customs Enforcement (ICE) for non-serious offenses or with no criminal history at all (TRAC, 2018). Many of these arrests are precipitated by reliance on local law enforcement agencies, creating what is known as the jail-to-deportation pipeline. There are three main phases within the jail-to-deportation pipeline, which include 1) an undocumented immigrant is stopped by a local law enforcement officer for a potential offense, whether serious or minor, 2) local law enforcement agencies (LLEAs) share information and directly or indirectly collaborate with ICE, and 3) the individual is taken into ICE's custody with potential for removal, either after being jailed or on occasion directly with ICE. In Fairfax County, Virginia, an estimated 70% of undocumented immigrants that end up in ICE custody are due to local and state law enforcement collaboration (Burkley Alejandro, 2020).

States and localities have implemented a variety of policies to disentangle ICE and LLEA collaboration. The literature on disrupting the jail-to-deportation pipeline presents two main pinpoints to intervene: Phase I and Phase II, which are stopping arrests for non-serious offenses by LLEAs in the first place and limiting LLEA's collaboration with ICE. This report considers the following alternatives:

1. Prohibit 287(g) Agreements in Virginia
2. Implement a Sobering Center in Fairfax, Virginia
3. Expand Trust Policy and Ban on Pre-Release Notification to Selected Virginian Localities

These policy alternatives are evaluated against three criteria: political feasibility, administrative feasibility, and net benefits.

I recommend **Alternative 2: Implement a Sobering Center in Fairfax, Virginia**. This alternative scores high on political feasibility, medium on administrative feasibility, and high on net benefits.

While the other alternatives also rank highly on net benefits, Alternative 1 scores extremely low on political feasibility, and Alternative 3 scores medium on both political and administrative feasibility. While not selected, I encourage these two alternatives to be kept in mind for future efforts in Virginia.

The main policymakers involved in implementing Alternative 2 will be the Fairfax County Board of Supervisors (BOS) and Fairfax's Community Services Board (CSB), which is a component of Fairfax County funded by the BOS. The BOS and CSB are responsible for allocating funds from their budgets, securing space, and hiring employees for the sobering center. Until then, the ACLU People Power Fairfax should continue advocating, in conjunction with other social justice organizations, that the BOS establish a sobering center in Fairfax County.

List of Acronyms

ACLU - American Civil Liberties Union

BOS - Board of Supervisors

CSB - Community Services Board

DHS - Department of Homeland Security

ERO - Enforcement and Removal Operations

HSI - Homeland Security Investigations

ICE - Immigration and Customs Enforcement

LLEAs - Local Law Enforcement Agencies

Introduction

Immigration to the U.S. has slowed in recent years, due to the coronavirus pandemic and more restrictive immigration policies from Donald Trump's administration (Jordan and Gebeloff, 2022). However, the number of immigrants within the U.S. continues to rise, as many are staying in the U.S., representing 14.1% of the population, which is nearly 45 million people (Sanchez et al., 2022; Jordan and Gebeloff, 2022). Data from the American Community Survey estimate that undocumented immigrants make up roughly 3% of the U.S. population (Kamarck and Stenglein, 2019).

Within the last thirty years, there has been a shift in law enforcement priorities that goes beyond their scope of maintaining peace in communities. Following 9/11, state and local law enforcement agencies (LLEAs) became more engaged in immigration enforcement, as there was an increase in federal interest and capacity through the creation of Immigration and Customs Enforcement (ICE) (Chacón, 2022). This has resulted in a dual punishment that undocumented immigrants experience. The current system is unjust and void of due process, as undocumented immigrants are not allotted the same rights citizens are granted by the Constitution because most immigration proceedings are considered civil, not criminal proceedings (Bryant, 2021). Furthermore, in 1996, Congress expanded the list of violations that determine deportability to include certain misdemeanors and theft offenses (American Immigration Council, 2013). The lack of constitutional protections offered to undocumented immigrants has left a door open for LLEAs to abuse their authority in enforcing immigration law.

The intersection of civil immigration law with criminal law allows for an impervious system where local, state, and federal agencies become indistinguishable. Through this space, ICE and LLEAs run parallel together to identify, track, detain, and separate undocumented immigrants from their communities.



Figure 1: "Amid Slowdown, Immigration Is Driving U.S. Population Growth." The New York Times, 2022

Problem Definition

Immigration and Customs Enforcement's (ICE) continued reliance on local law enforcement agencies (LLEAs) has caused an ill-defined entanglement where duties easily mutate and communities become hyper-policed, which leads to more arrests and a decrease in trust in law enforcement among immigrants and those involved in police reform. As a result, too many immigrants are deported by ICE after having been stopped for non-serious offenses or for simply being undocumented. Between fiscal years 2015 and 2018, nearly 56% of ICE arrests in Virginia were for low-level offenses or no convictions at all (See Fig. 2) (TRAC, 2018). This facilitates what is known as the jail-to-deportation pipeline. Of those who end up in ICE custody in Fairfax, 70% of them were taken to ICE custody through local and state cooperation (Burkley Alejandro, 2020). If left unconstrained, more undocumented immigrants will be separated from their families and communities. This report seeks to identify interventions in which Virginia can make the state more immigrant-friendly to reduce arrests, restore trust in law enforcement, and disentangle ICE and LLEAs. This report investigates advocacy paths for the ACLU People Power Fairfax to advocate for the protection of the undocumented in Virginia.

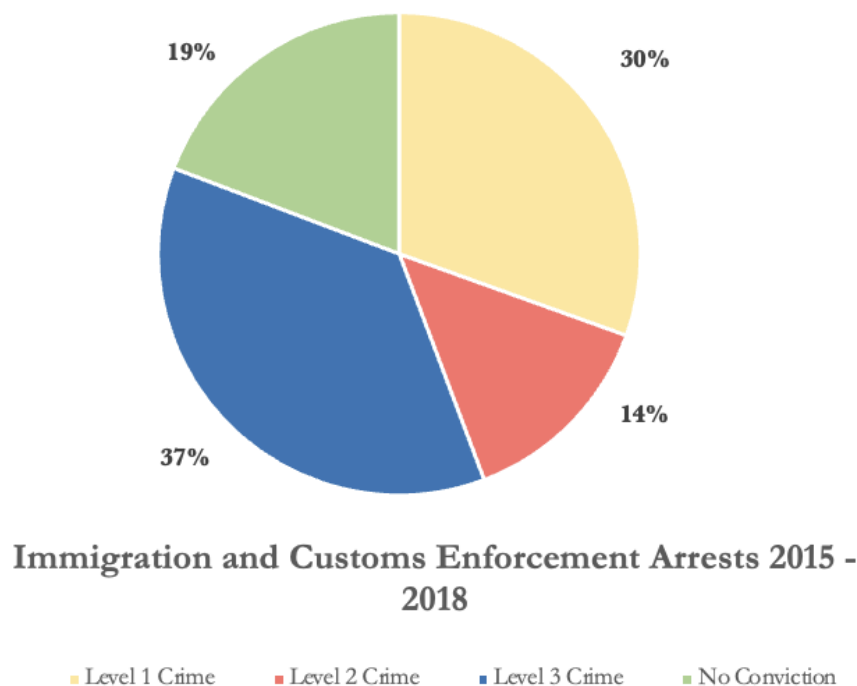


Figure 2: "Immigration and Customs Enforcement Arrests." (TRAC, 2018)¹

¹ ICE uses the National Crime Information Center (NCIC) offense codes to categorize offenses into three seriousness levels. The most serious (Level 1) are considered to be "aggravated felonies." Level 2 offenses include other felonies, whereas level 3 offenses are misdemeanors (TRAC, 2018).

Client Overview

ACLU People Power Fairfax is a grassroots organization in Fairfax County, Virginia advocating for equal justice and the end of voluntary cooperation and information sharing with ICE. Founded in 2017, ACLU People Power is the American Civil Liberties Union (ACLU)'s activist mobilization project that harnesses the influence of community engagement across the country to bring effective, multilevel policy change (Shakir, 2017). The organization was created to resist the Trump administration's violations of individual freedoms, working on such issues as the Muslim ban (Shakir, 2017). The need for immigration reform; however, has remained significant even after the change in Administration. People Power Fairfax has been working to limit ICE's presence and safeguard the rights of the undocumented. It spearheaded the advocacy campaign that led the Fairfax County Board of Supervisors to adopt the Trust Policy, which prohibits county employees from sharing personal identifiable information outside of their agency, as well as prohibiting all forms of voluntary cooperation. As a consequence, in September, Fairfax County police stopped publishing weekly arrest blotter, as it could assist immigration enforcement and violates arrestees' privacy (Jouvenal, 2021). People Power Fairfax continues to seek paths to disrupt ICE's reliance on LLEAs, including by advocacy with the Sheriff and the Commonwealth's Attorney. In addition, because schools can be an unintended source of the disclosure of personal information that ICE can obtain through data mining, it was instrumental in persuading the Fairfax County School Board to adopt a School Trust Policy to align the school system with the County Trust Policy.

Too many undocumented immigrants are deported by ICE after having been stopped by local law enforcement for non-serious offenses.

Background

The following section addresses the scale and scope of the issue, with particular focus on the causes of the problem today and how it impacts the undocumented population in Virginia. Further discussion is devoted to the equity implications this issue has on people of color.

The Undocumented Population

The term ‘undocumented immigrant’ refers to anyone residing in a country without legal authorization to do so (Immigrants Rising, n.d.). In the U.S. context, this includes individuals who entered the U.S. without proper permission from the government and those who no longer have a valid visa to reside within the U.S.

The undocumented population has been declining in recent years. Currently, the undocumented population is estimated around 11 million, which is down from a high of 12.2 million in 2007 (Passel and Cohn, 2018). This is largely due to a reduction in the number of new undocumented immigrants coming to the U.S. (Passel and Cohn, 2018). Visa overstays have significantly exceeded improper entry over the past seven years (Gonzales, 2017). Between 2016 to 2017, individuals who overstayed their visas accounted for 62% of the undocumented population, whereas 38% crossed the border without permission, also known as an unlawful entry (Gonzales, 2017). The empirical data disputes the current political narrative, as many politicians have proclaimed the need for secure borders and more border infrastructure, such as the border wall. Additionally, two-thirds of adult undocumented immigrants have resided in the U.S. for over 10 years (Passel and Cohn, 2018).

Under U.S. Code 1325, anyone who enters the U.S. other than as designated by immigration officers is punishable by up to six months in prison and a fine (Preston, 2019). Unlawful entry is only considered a misdemeanor subject to deportation proceedings; however, unlawful re-entry after having been denied admission or deported is considered a felony (American Immigration Council, 2021). Moreover, undocumented presence in the U.S. is not a violation of criminal law, it is a civil violation of immigration law (ACLU, 2010). Undocumented presence in the U.S. is only criminally penalized if an individual was previously removed and then reentered without permission (ACLU, 2010). Nonetheless, one may still be deported if they have exceeded their visa for more than 180 days according to immigration law (Law Info., 2021). It is important to note that many of the detainees described by ICE’s description as “criminals” have not been accused or convicted of an infraction commonly understood to be a crime (TRAC, 2019). For example, immigration officials may mark an undocumented immigrant as a criminal for minor traffic offenses, non-serious offenses, and minor immigration violations (TRAC, 2019). Secondly, many ICE detainees that are listed as “criminals” may have received convictions in the past and served their sentences; however, immigration law imposes no double jeopardy clause or statutes of limitations (TRAC, 2019; American Immigration Council, 2013). The mismatch between criminal law and the immigration system makes it easy for ICE to undermine the criminal legal system.

In 1893, the Supreme Court mandated that deportation is a “civil” penalty, requiring merely an administrative procedure to return an individual to their own country (American Immigration Council, 2013). Since removal proceedings and deportations are a matter of civil law, immigrants

facing removal are not eligible for the same rights others are under criminal proceedings (American Immigration Council, 2013). For instance, those in immigration court are not granted a public attorney if they cannot afford one and are not read their Miranda rights after being arrested (American Immigration Council, 2013). This is negligent of the even more calamitous consequences that deportation has on individuals and their communities.

The Jail-to-Deportation Pipeline

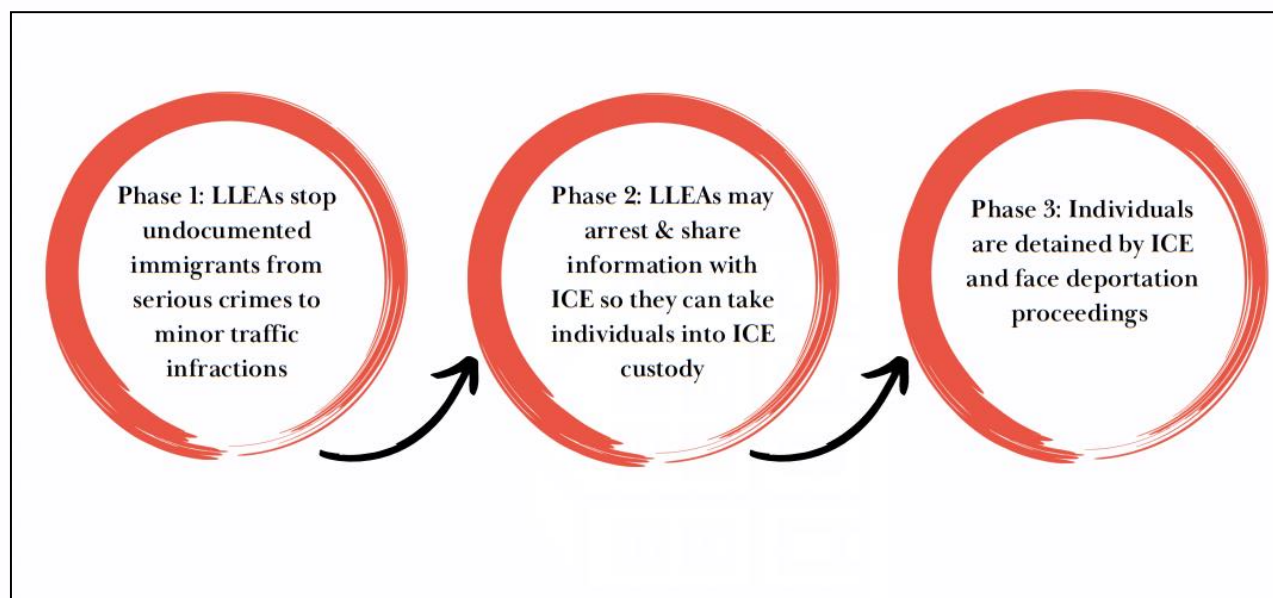
Following the attacks of September 11th, the criminal legal and immigration systems became further intertwined in the name of national security. ICE was created in 2003 in response to the 9/11 terrorist attacks under the newly created Department of Homeland Security (DHS) (USCIS, 2019). Interestingly, deportation proceedings for national security threats have decreased 57% a decade following 9/11, while proceedings related to immigration violations increased nearly 60% (TRAC Data, 2011). Thus, ICE has drastically altered its prioritization of enforcement and has perpetuated the jail-to-deportation pipeline by targeting all undocumented immigrants.

The jail-to-deportation pipeline occurs when encounters between LLEAs and undocumented individuals result in deportation through collaboration between LLEAs and ICE and ICE accessing criminal databases. ICE is made up of three major offices, with Enforcement and Removal Operations (ERO) being the most well-known. ERO is tasked with arresting, detaining, and deporting undocumented immigrants inside the U.S. (Nixon and Qiu, 2018). ERO has about 7,900 full-time employees and had a \$3.8 billion budget in FY 2017 (Nixon and Qui, 2018). Second is the Homeland Security Investigations (HSI), which targets those involved with drug trafficking, human trafficking, identity fraud, and those smuggling military equipment outside the U.S. While HSI has more employees, it operates with a smaller budget of \$2 billion (Nixon and Qui, 2018). Lastly, the Office of the Principal Legal Adviser is the smallest division, employing 1,400 workers that represent the U.S. government in immigration courts (Nixon and Qui, 2018). The Consolidated Appropriations Act of 2022 increased ICE's funding by \$284.7 million, including a \$57 million increase for ERO (Manríquez, 2022). This is troubling to the undocumented population and immigrant advocates. With the increasing entanglement between LLEAs and ICE and ERO's budget increase, the time to act is now to defend the rights of immigrants.

The marriage between the immigration and criminal legal systems is rooted in historically racist policies. The criminal legal system disproportionately targets people of color and has been historically inundated with racial bias. In 2016, Black adults were 5.9 times as likely to be incarcerated than whites, whereas Latinx individuals were estimated to be 3.1 times as likely (Sentencing Project, 2016). Undocumented immigrants who encounter the criminal legal system suffer twice the punishment. Rather than being released to their communities after their sentence, and occasionally even before their proceedings are complete (e.g. if a judge determines they should be released on pretrial bond because they are not a flight risk), individuals are often transferred to ICE custody and may ultimately face removal (National Immigrant Justice Center, 2021). Of those who are in immigration proceedings in Virginia, nearly 62% are ordered for removal or leave through voluntary departure to avoid a final removal order (TRAC, 2022).

The Three Phases of the Jail-to-Deportation Pipeline

The jail-to-deportation pipeline occurs when encounters between LLEAs and undocumented individuals result in deportation through collaboration with ICE or unintended indirect information sharing. First, an individual is stopped by a local law enforcement officer for a minor offense, such as a traffic violation or public intoxication. If the individual is arrested, the officer coordinates with ICE to check the status of the arrestee. Alternatively, ICE can obtain the information from a shared criminal database or indirectly through a multifaceted network of data mining contracts with Amazon, Lexis Nexis, Palantir, and others (Burkley Alejandro, 2022). If the individual is asserted to be undocumented (although ICE arrests some documented immigrants and U.S. citizens in error as seen in *Gonzalez v. ICE*), ICE will transport them to detention facilities, removing them from their communities (National Immigrant Justice Center, 2019). The literature review focuses on efforts to reform phases one and two. Phase I interventions pose unique opportunities to disrupt the pipeline in the first place by keeping individuals out of jail. Phase II interventions are also important, as they will reduce ICE and LLEAs from partnering. Phase III is equally significant but beyond the scope of this project.



Entanglement Between ICE & LLEAs

The Department of Homeland Security has become increasingly dependent on LLEAs to locate undocumented immigrants. ICE relies on LLEAs' resources by characterizing undocumented immigrants as "criminals" regardless of the severity of their conviction and without acknowledgment of significant racial biases in policing. ICE heavily depends on LLEAs through various formal and informal mechanisms.

There are three primary mechanisms of cooperation between federal immigration agencies and LLEAs. First are detainers and formal cooperation programs. Detainers are also known as "ICE holds", which occur when a local law enforcement officer arrests an individual and takes their

fingerprints that go to the FBI before being forwarded to the DHS databases (National Immigrant Justice Center, 2021). If ICE believes the person can be deported, ICE issues a “detainer request”, which asks the LLEA to notify ICE when the individual will be released from the LLEA’s custody so ICE can take them to immigration detention (National Immigrant Justice Center, 2021). Some LLEAs may hold the individual for an additional 48 hours after their scheduled release date to allocate time for ICE to take them into custody; however, some jurisdictions have stated that this is unconstitutional (Burns and Goren, n.d.). Similar to detainers, ICE has substituted formal detainers with “requests for notification”, which are used extensively, especially in jurisdictions that have refused to honor formal detainer requests (National Immigrant Justice Center, 2021). These informal detainers ask that the LLEA notify ICE as soon as possible of the release date; however, LLEAs will not detain people after their release date (National Immigrant Justice Center, 2021). The Fairfax Sheriff, for example, declined to hold detainees beyond their release date, absent a criminal judicial warrant (Burkley Alejandro, 2022).

Additionally, a direct form of cooperation is through the 287(g) program. The program, which takes its name from Section 287(g) of the Immigration and Nationality Act, which provides a formal Memoranda of Agreement that deputizes willing LLEAs to enforce federal immigration law by issuing detainers, interviewing individuals to about inquire status, checking DHS databases, and transfer immigrants to ICE custody directly (National Immigrant Justice Center, 2021). Not limited to the 287(g) program, other formal agreements allow LLEA to enter ICE’s database, transfer undocumented immigrants into ICE custody, and check DHS databases for information (American Immigration Council, 2021). Deputized officers are trained by ICE and provided with technology and infrastructure (American Immigration Council, 2021). There are currently 148 jurisdictions across the country with a 287(g) program, including one in Culpeper, Virginia (Immigrant Legal Resource Center, 2020). A study by the University of North Carolina at Chapel Hill found that in May 2008, 83% of immigrants arrested in Gaston County, NC by officials following the 287(g) program were charged with traffic violations (Weissman, et al., 2009).² The 287(g) program’s original intent was to target undocumented individuals convicted of violent crimes, drug smuggling, and human trafficking; this suggests that the 287(g) encourages anti-immigrant sentiment and perpetuates racial profiling in policing practices.

The second mechanism of cooperation is through the extensive set of private contractors, databases, and surveillance technology. For example, the Homeland Advanced Recognition Technology (HART) is a large database of biometric information on citizens and noncitizens in the U.S. that is distributed to federal, state and local agencies (National Immigrant Justice Center, 2021). Additionally, the National Crime Information Center (NCIC) contains civil immigration records accessible by any criminal legal agencies (National Immigrant Justice Center, 2021). Private contractors develop person-centric data systems that produce discriminatory algorithm-based immigration enforcement, such as Amazon Web Services (AWS) (National Immigrant Project et al., 2018). Amazon’s cloud storage services help facilitate information sharing between local, state, and federal law enforcement authorities (National Immigrant Project et al., 2018). Public-private partnerships among industry lobbyists, tech executives, and federal legislators have pushed governments to transition toward cloud services (National Immigrant Project et al., 2018). Furthermore, Palantir is increasing ICE’s case management software, which allows local, state, and federal databases in the U.S. (Mijente, 2018). This has led to an unprecedented amount of data

² Gaston County is included in the Charlotte-Gastonia North Carolina metropolitan area.

mining from many sources such as utility bills, DMV records, property data, social media, and healthcare information (Mijente, 2018).

Lastly, and even more worrisome, ICE also collaborates with LLEAs in informal and more ambiguous spaces, making cooperation between ICE and LLEAs hard to track, and therefore, stop. LLEAs may call ICE when they suspect a driver does not have a license, ICE may accompany officers to their work, and even act as interpreters for LLEAs (National Immigration Law Center, 2014). LLEAs can report what they believe to be suspicious to HSI through a system called the FALCON Tipline (FALCON-TL) (National Immigrant Justice Center, 2021).

All of these mechanisms blur the lines between civil immigration enforcement and the criminal legal system. Undocumented immigrants should not have to fear those who are meant to protect their communities. The resulted marriage between the two systems has led to racial profiling and an erosion of public safety.

Executive Actions on Immigration

The Biden administration has not been as draconian as the Trump administration was on immigration; however, the current administration has also not been as bold on immigration as activists would like. For instance, Biden carried out 296 executive actions since January 2021, 89 of which were to undo the Trump administration's actions (Chishti and Bolter, 2022). Within his first month, Biden issued a new guideline to ICE officers to only target those who carry a national security risk, who recently entered unauthorized, and who had been convicted of serious crimes (Chishti and Bolter, 2022). In contrast, the Trump administration targeted all undocumented immigrants as a priority for deportation. However, the Biden administration's new ICE policy does not impose penalties for officers who do not oblige the new recommendation, and it leaves the discretion up to ICE officers, many of whom were employees under the Trump administration, leaving the priorities of many ICE officers disconnected from the Biden administration (Rose, 2022). Moreover, the Biden administration has yet to fulfill its commitment to end systemic inequities in the immigration system. Most recently, the Biden administration announced it will end Title 42 in May 2022, which the DHS used to expel migrants at the U.S.-Mexico border under the Trump administration to reduce the spread of COVID-19 (Wamsley, 2022). If individuals were not expelled, many were sent to ICE detention centers, and during Biden's first few months, the number of migrants sent to ICE facilities rose dramatically (American Immigration Council, 2021). Ending Title 42 is a step in the right direction for the Biden administration, and there are many more opportunities for Biden to affirm those seeking protection and prosperity in the U.S.

Impacts on Virginia's Undocumented Population

Virginia has a significant immigrant population, as one in eight Virginia residents is an immigrant (American Immigration Council, 2020). Undocumented immigrants make up about 3% of Virginia's total population, whose share is near the top among U.S. states (see Fig. 3) (Pew Research Center, 2019). Over 140,000 U.S. citizens of Virginia live at least with one undocumented member (American Immigration Council, 2020). Losing a parent due to detention or deportation has drastic consequences on the economic and social fabric of families. For instance, household income dropped 70% within six months of a parent's arrest, detention, or

deportation (American Immigration Council, 2021). Additionally, the threat of deportation negatively impacts the children of immigrants, as they are predicted to have worse health, economic, and educational outcomes following a loved one's removal. For example, following an ICE raid in Tennessee, more than 500 students were absent from school the following day (American Immigration Council, 2021). Additionally, a child's mental and physical health suffers. Health providers have reported seeing more children with anxiety, depression, PTSD, diabetes, and heart disease when suddenly separated from their parents (American Immigration Council, 2021). It is therefore critical to disentangle ICE from LLEAs to safeguard the livelihood of Virginia's families from the threat of deportation.

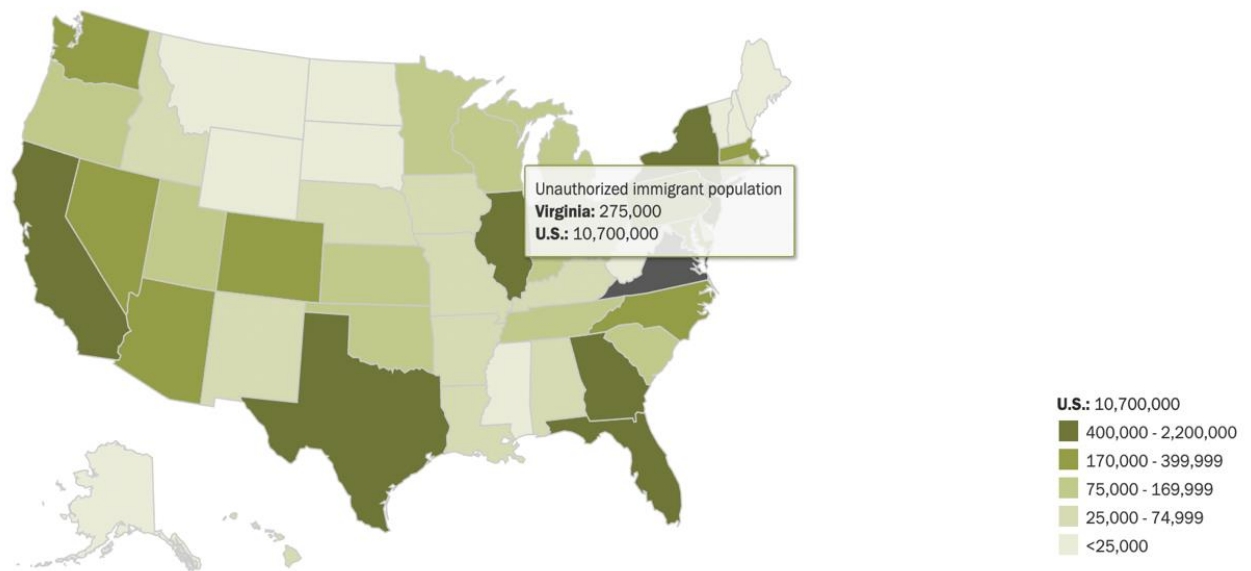


Figure 3: “U.S. Unauthorized Immigrant Population Estimates by State.” (Pew Research Center, 2016).

Moreover, immigrants, including undocumented immigrants, contribute significantly to the U.S. economy. Undocumented immigrants add nearly \$12 billion a year in state and local taxes, which help fund essential services like schools, hospitals, and emergency response services (FWD, 2020). Additionally, immigrants of all statuses are less likely to commit crimes than U.S.-born citizens. Two studies offer robust evidence that undocumented immigrants do not cause higher rates of crime. One study used the Texas Department of Public Safety data to find that U.S.-born citizens were over 2 times more likely to be arrested for violent crimes, 2.5 times more likely to be arrested for drug crimes, and over 4 times more likely to be arrested for larceny (Light et al., 2020). An array of evidence suggests that Black and Latinx immigrants are less likely to commit crimes than those born in the U.S., and increases in immigration are associated with a reduction in local crime (Solomon, et al., 2017). The incorrect notion that undocumented immigrants bring crime into the U.S. has been pushed by politicians at all levels. The empirical evidence shows that undocumented immigrants do not lead to an increase in crime in localities, despite the rhetoric many politicians have espoused. Undocumented immigrants deserve better from national, state, and local officials.

Equity Implications

The continued coordination among ICE and LLEAs raises equity concerns. As detailed earlier, the militarization of police agencies and ICE has roots in racism, and this evolution was further exacerbated by the Trump administration. Existing racial inequities in the criminal legal system have influenced outcomes with law enforcement among immigrant communities across the U.S. The criminal legal system is disproportionately more punitive towards members of the Latinx and Black communities. In 2007, Latinx individuals accounted for 40% of all sentenced federal offenders, disproportionate to their share (13%) of the total population at that time (Pew Research Center, 2009). Black immigrants make up only 7% of the undocumented population, yet 20% of immigrants in deportation proceedings are Black immigrants (National Immigrant Justice Center, 2021). As of 2001, one in every six Latino men and one in every three Black young men could anticipate going to prison, compared to one in seventeen white young men (National Immigrant Justice Center, 2021). Thus, the marriage between the criminal legal system and the immigration system has adverse equity implications along racial lines. The racial disparities in the criminal legal system invade the immigration system with discriminatory policies and prejudiced decision-making by local, state, and federal officials.

This can be further illustrated by contrasting the 20th century's immigration enforcement with today's tactics. From about the 1900s until the 1960s, millions of white immigrants entered the United States unlawfully; however, they suffered no threat of deportation (Kamasaki, 2021). Today, the undocumented population is largely people of color, and racist views of Latinx communities have helped form bureaucratic practices (Kamasaki, 2021). Further displaying the inequities of the immigration system, immigrants from Latin America make up 57% of the immigrant population in the U.S. but represent more than 90% of those who are deported (Kamasaki, 2021).

"The racial disparities in the criminal legal system invade the immigration system with discriminatory policies and prejudiced decision-making by local, state, and federal officials."

Existing Evidence from the Literature

There is a growing body of research and an abundant amount of case studies that have attempted to identify the best mechanisms to address the consequences of collaboration among LLEAs and immigration authorities. This section focuses mostly on case studies for my research, as they provide useful investigations on how effective certain programs were and can help inform policy. The literature suggests there are three broad levels in an individual's experience in which an individual moves from arrest by local police, to detention in ICE facilities, and eventually, to deportation and separation from their families and communities.

Phase 1 Interventions: Reform Local and State LLEAs Practices

While it is critical to address the issue of information-sharing and partnership with ICE, it is correspondingly important to remedy the first stage in an individual's trajectory towards deportation, which involves preventing immigrants from ending up in a criminal justice database or jail in the first place by stopping their first encounter with LLEAs. Two common ways encounters between undocumented individuals and LLEAs occur are through traffic violations and public intoxication arrests. These two are particularly salient to the problem immigrants face in the jail-to-deportation pipeline. For example, in Travis County, Texas, over 10% of people who received ICE detainers were charged with Class C misdemeanors (equivalent to Class 3 in Virginia, which is very low), and nearly 90% of the Class C charges were due to public intoxication and traffic violations (Harmon, 2018). Thus, it is important to compare state and county policies to deter LLEAs from arresting undocumented individuals for minor infractions.

Reduce Biases in Minor Traffic Stops

Traffic violations are considered minor offenses, with the majority of Americans facing no legal consequences other than a fine. Research has shown that Black and Latinx drivers have a higher propensity to be pulled over for trivial traffic violations, such as not signaling, and they often suffer a harsher punishment than whites (Epp et al., 2014). Traffic violations become complicated for undocumented immigrants, as it heightens the risk of deportation.

Research has attempted to identify tools to reduce systematic biases. The police chief of Hamden, Connecticut reformed his department's traffic stop criteria, after they were called out for stopping minority drivers at a disproportionately higher rate than white drivers (Cohen, 2016). Hamden decided to decrease its defective equipment stops, and as a result, the number of Black drivers stopped decreased by 25% (Cohen, 2016). Likewise, the Lansing Police Department announced in 2020 that officers will not initiate traffic stops for defective equipment (cracked windshield, loud exhaust, and cracked tail lights) and only for violations related to public safety (Kaminski, 2020). Virginia legislation went into effect in March 2021 that limited the basis for police stops. Common traffic stops such as defective equipment, dangling objects, and loud exhaust will no longer be the primary basis for being stopped by LLEAs (Justice Forward Virginia, 2021). This policy will shrink the number of unnecessary encounters with LLEAs and undocumented immigrants, and therefore, reduce the likelihood of deportations; however, much more work needs to be done in the criminal legal space to reduce racial bias against Black and Latinx community members.

Promoting Sobering Centers to Divert Individuals from Jail

Laws regarding public intoxication fluctuate across states and even cities. Virginia classifies public intoxication as a Class 4 misdemeanor under the Code of Virginia Section 18.2-388 and is punishable by a fine of \$250 but no official jail time. (LIS Virginia Law). However, a law enforcement officer may transport an individual to jail as a public safety measure, which serves as the most frequently used “drunk tank”. Virginia law does permit the alternative use of a court-approved detoxification center, but the use of this option has been quite limited (Burkley Alejandro, 2022).

Some states do not criminalize public intoxication. For example, Colorado does not have a public intoxication law and even prohibits localities from penalizing public intoxication (TLF Attorneys, 2017). Furthermore, Colorado laws provide resources so officers can assist intoxicated people (TLF Attorneys, 2017). In Fairfax, community members, including some funded by the County, have tried to help those struggling with substance misuse to get help. Fairfax-Falls Church Community Services Board’s Detoxification Outreach Diversion Team is a team of clinicians that respond to police requests for interventions for an individual who is under the influence of drugs or alcohol and would benefit from detox services (Fairfax-Falls Church Community Services Board). Research gaps include how frequently these services are used in Virginia.

Case studies have found growing evidence for the use of sobering centers. California has implemented sobering centers as an alternative to care for those inebriated, specifically, those experiencing homelessness or repeatedly involved with the criminal legal system (CHCF, 2021). Public intoxication is currently a misdemeanor in California; however, a law enforcement officer must bring the individual to a sobering center if they are under the influence of only alcohol and do not pose a risk to the greater community (Portman, n.d.). Studies estimate that a law enforcement officer can drop an intoxicated individual off in a sobering center in fewer than seven minutes, depending on where the sobering center is located (CHCF, 2021). Booking someone into jail for public intoxication varies from 45 minutes to a few hours (Santa Cruz County Sheriff’s Office Recovery Center, 2018). Sobering centers also safeguard the health and wellbeing of an individual, as they reduce the risk of injury during incarceration due to lack of monitoring or underlying medical conditions (CHCF, 2021). One disadvantage of this case study is the potential uncertainty regarding external validity. Sobering centers may not be as scalable around Virginia and as publicly supported as they are in California. Nonetheless, sobering centers are a unique opportunity to counteract the punitively inundated criminal legal system around substance misuse.

Public intoxication is a public health issue and should not be treated as a crime. Encouraging sobering centers will save time for police, protect immigrants from the threat of deportation, and have positive externalities for public health because substance misuse should be remedied with a rehabilitative focus. A sobering center provides the first step to resources for rehabilitation.

Phase 2 Interventions: Implement Non-Cooperation Policies

Phase 2 interventions involve stopping information-sharing between LLEAs and ICE after an individual has had their first encounter with a local law enforcement officer. An increasing number of states, cities, and counties have adopted various forms of non-cooperation policies to remedy ICE's dependence on LLEAs for tracking down undocumented immigrants. The goal is to limit local government agencies' cooperation with federal immigration officials and that the federal government cannot force LLEAs to perform immigration enforcement (American Immigration Council, 2020). Non-cooperative policies may take the form of prohibiting 287(g) agreements, refusing ICE access to local jails without a warrant, refusing to honor detainer requests, and restricting state and local police to arrest individuals for federal immigration violations (American Immigration Council, 2020). Opponents of non-cooperative policies claim that they undermine federal laws and make the public less safe (Hausman, 2020; White House, 2018). A study at Stanford examined the effects of instituting non-cooperative policies vis-à-vis detainer requests by comparing non-cooperative and cooperative counties using a difference-in-difference methodology and found that the non-cooperative policies reduce deportations after local arrests, particularly those who have no or minor convictions and did not increase crime rates (Hausman, 2020). This study is important in understanding the effect of non-cooperative policies on deportation rates after an individual is arrested. In contrast to what adversaries assert, non-cooperative policies make communities safer and build trust between immigrant communities and the police. On average, 35.5 fewer crimes are committed per 10,000 people in localities that have adopted non-cooperative policies compared to those that do not (Wong, 2017). Furthermore, the data suggest that the poverty rate is 2.3% lower in non-cooperative counties compared to counties without sanctuary policies (Wong, 2017). This suggests that noncooperation benefits the economy of all residents.

Fairfax County Board of Supervisors (BOS) formally adopted a non-cooperative policy called the "Trust Policy" in January 2021 (Olivo, 2021). The Trust Policy prohibits all county employees, including the police, from inquiring about, accessing or sharing residents' immigration status and personal information that ICE could use to locate a person (Olivia, 2021). The only exception is if this information is demanded under federal or state law, a court order, or a judicial warrant (Olivo, 2021). Furthermore, the Trust Policy bans any form of cooperation that puts undocumented immigrants at risk. This policy expands on General Order 604, which restricts the Fairfax County Police Department from asking or disclosing a person's immigration status or giving information to ICE and prohibits employees from searching any database to probe a person's status out of curiosity (Olivo, 202; Cheslow, 2021). The sheriff's office was not included under the General Order 604 or the Trust Policy because they are a constitutionally elected official in Virginia, thus the BOS concluded they cannot direct the sheriff's actions due to separation of powers (Burkley Alejandro, 2020; Abbas, 2021). This position has been highly controversial (Burkley Alejandro, 2020). Despite this, ACLU People Power Fairfax has continued to advocate for change directly with the Fairfax County Sheriff Stacey A. Kincaid. She recently discontinued the long-used pre-release notification to ICE when issued an administrative detainer request in March 2022 (Hobson, 2022). An administrative warrant and an ICE detainer request are issued based on alleged civil immigration violations; however, it does not provide proof of a crime (ILRC, 2017). Furthermore, an ICE warrant is not a judicial warrant, meaning it is not reviewed by a judge or a neutral party to determine probable cause (ILRC, 2017). Earlier changes by the Sheriff have been successfully advocated for as well. In 2018, Sheriff Kincaid ended Fairfax's agreement to hold inmates wanted by ICE for up to 48 hours, but at that time the Sheriff continued allowing

notification immediately upon their release (Augenstein, 2018). The Sheriff's Office most recent resolution to end the pre-release notice goes beyond the earlier decision by providing advance notice to ICE of pending releases. More Virginia localities should end this practice.

Terminate the 287(g) Programs

There has been a wide range of criticism for the 287(g) program, which as mentioned, deputizes state and local LLEAs to function as federal immigrant agents (Immigration Policy Center, 2012). Issues with this program include racial profiling, drainage of local resources, and netting a few violent offenders (Immigration Policy Center, 2012; Nguyen and Gill, 2010). An investigation by the Department of Justice found that Maricopa County of Arizona's found that after entering a 287(g) agreement, deputies routinely conducted sweeps in Latinx neighborhoods and that Latinx drivers in Maricopa County were nine times more likely to be stopped than similarly situated non-Latinx drivers (Immigration Policy Center, 2012; U.S Department of Justice, 2011). Furthermore, 287(g) programs put a strain on local resources, as seen in Prince William County, Virginia, which had to raise property taxes and take from other funds to implement the 287(g) program. A Brookings report found that the program cost \$6.4 million, and to cover some of the costs, the county slashed \$3.1 million from its budget that would have gone towards buying video cameras for police cars (Singer et al., 2009, Immigration Policy Center, 2012).

One study analyzed outcomes from the 287(g) program in North Carolina. The research suggested that the activation of the 287(g) does not affect the crime rate in North Carolina and that there is no elasticity between crime rates and 287(g) deportations, thus concluding that the 287(g) did not reduce crime in North Carolina (Forrester and Nowrasteh, 2018). The 287(g) overall leads to increasing isolation of the Latinx population and increased distrust in local law enforcement, thus disincentivizing Latinx crime victims from reporting to police (Weissman et al., 2009; Forrester and Nowrasteh, 2018).

Limitations to research surrounding the 287(g) program include little empirical evidence regarding outcomes for undocumented immigrations and police enforcement after a jurisdiction terminates its 287(g) program. So far, only 28 jurisdictions across the United States have ended the 287(g) program, including Prince William County and Herndon Police Department in Virginia (Immigrant Legal Resource Center, 2020). Nonetheless, immigration advocacy groups, academics, and politicians alike promote ending the 287(g) as the aforementioned evidence indicates the 287(g) impairs other law enforcement resources, reduces immigrants' trust in law enforcement, increases racial profiling, and bears no statistically significant effect on crime rates.

Limit Release of Information from the Department of Motor Vehicles

Allowing undocumented immigrants to obtain a license is a step on the path toward immigrant inclusivity and reducing the risk of deportations, yet information-sharing challenges remain. Allowing undocumented immigrants to attain a license has even increased fear about DMV information being shared with ICE (Flores, 2017). In 2021, Virginia extended driving rights to undocumented individuals (CASA, 2021). Virginia requires ICE agents to have a court order or an arrest warrant signed off by a judge before handing over personal data from DMV for immigration purposes, an action advocated by a coalition of immigration organizations including ACLU People Power Fairfax (Cataudella and Campbell, 2021). California passed AB 1747, which prohibits

personal information on state databases for immigration enforcement (NBC San Diego, 2019). ICE maintains that it does not use license information to focus on deporting individuals (Cataudella and Campbell, 2021). However, immigration advocates are apprehensive as localities cannot be certain that ICE will not use the driver's license data to detain those who have no criminal history (Cataudella and Campbell, 2021). In 2013, Maryland's General Assembly voted to allow undocumented residents to apply for MVA driver's licenses; however, unintended consequences followed (Lam, et al., 2021). ICE agents used the Maryland Image Repository System to run scans on Maryland drivers to detect suspected undocumented immigrants, as Maryland is the only state where ICE agents can directly access face-scanning data (Lam, et al., 2021). In Virginia lawmakers recently lifted a recent ban on state facial recognition technology. In March 2021, the Virginia legislature prohibited the police use of facial recognition technology; however, a new bill was passed that allows police to use facial recognition technology to develop leads, but the technology cannot close the case and any tool police use must have a 98% accuracy rating across all demographics in National Institute for Standards and Technology (NIST) testing (Find Biometrics, 2022). Currently, the policy is still vague, as Virginia State Police were asked to come up with a statewide policy that delineates the use of facial recognition technology that local police departments must follow, yet it is unclear what that would look like (Find Biometrics, 2022).

Discussion of Existing Literature

Addressing the jail-to-deportation pipeline requires law enforcement, state officials, and local policymakers to take agency in their duties to protect the communities they serve. However, the degree the needle moves depends on the political bounds at the state or local level. In Virginia, it may be harder to move the needle further than at the local level, particularly if a county has made more progressive police reform in recent years. Understanding the political landscape will be critical for policymakers moving forward in this space. Furthermore, understanding the capacity to make change will also be critical for advocacy organizations that encourage pro-immigrant policies. Lastly, the cost and burden on local/state resources also play into how successful a policy will perform.

Criteria

While equity is of great concern to ACLU People Power Fairfax, equity has not been included as a criterion for evaluation. Each alternative would receive high remarks on equity due to the nature of the problem targeting more equitable treatment for undocumented immigrants, so there would be a lack of variance to assess each alternative, making it unhelpful in differentiating the policies in later evaluation.

1. Political Feasibility

This criterion will measure the likelihood a given alternative can be adopted by Virginia's General Assembly or a specific locality. The ACLU People Power Fairfax prioritizes recognizing the viability of each alternative within Virginia's political landscape. This criterion will evaluate the ability of ACLU People Power Fairfax to mobilize local bureaucrats and state officials to adopt the selected consideration given the established rules and norms of state and local politics. Some considerations to determine a policy's political feasibility are:

- How many political actors are involved?
- Is it a state or local policy? (Negatively marked if state policy issue given Glenn Youngkin's governorship, assuming it would be harder to pass progressive change in Virginia's immigration system)
- How have the different parties involved historically responded to immigration issues?

Scoring: Political feasibility will be ranked on a ten-point scale of **low (1-4)**, **medium (5-6)**, and **high (7-10)**.

2. Administrative Feasibility

This criterion will consider the ease of a particular policy's implementation. The criterion concerns the administrative capacity of relevant stakeholders, such as county officials, county employees, the Virginia General Assembly, and health professionals. Some considerations to determine a policy's administrative feasibility are:

- Does the policy require finding and hiring new professionals?
- Does the policy build on existing efforts?
- How many actors/agencies are involved in implementing this policy?
- Does the policy require new building space?
- How many months will the policy take to be in effect?

Scoring: Administrative feasibility will be ranked on a ten-point scale of **low (1-4)**, **medium (5-6)**, and **high (7-10)**.

3. Net Benefits

This criterion will measure the total benefits of implementing this policy in comparison to its projected total costs over five years. Analysis of each of the three alternatives will assume a discount rate of 3%, an inflation rate of 4%, and undocumented immigrants comprise roughly 3% of Virginia's total population (275,000); however, it is important to note by the nature of being undocumented, the true estimate is not always clear (American Immigration Council, 2020). The analysis will also assume that 62% of undocumented immigrants in deportation proceedings in immigration court were sentenced with a removal order or left on a voluntary departure (TRAC, 2022). The scope of benefits will extend not only to undocumented immigrants but also to their families, the county governments, county residents, and local law enforcement agencies. Net benefits are calculated using the following equation:

$$\text{Net Benefits} = \text{Total benefits (2023-2028)} - \text{Total Costs (2023-2028)}$$

If +, then Total Benefits > Total Costs

If -, then Total Benefits < Total Costs

Scoring: Cost-benefits will assess how the benefits of an alternative weigh against its costs. This criterion will be ranked on a ten-point scale of **low (1-4)**, **medium (5-6)**, and **high (7-10)**, with high meaning that the benefits outweigh the costs, low demonstrating that the costs outweigh the benefits, and medium meaning they are roughly the same as the status quo.³

³ See Appendix for a detailed evaluation of each alternative's net benefits.

Alternatives

In the following section, I will discuss policy opportunities that the ACLU People Power Fairfax should advocate for to help push Virginia's local and state governments to disrupt collaboration between ICE and LLEAs. Each policy will be evaluated against a set of criteria: *political feasibility, administrative feasibility, and net benefits*.

Evaluating Alternative 1: Terminate 287(g) Programs in Virginia

287(g) programs allow ICE to enter formal agreements with willing LLEAs so they can deputize local agencies to enforce federal immigration law to essentially become a localized version of ICE (American Immigration Council, 2021). Once a 287(g) agreement is entered into, it can be terminated by either the DHS or the law enforcement agency. As of June 2021, only one 287(g) agreement has been terminated by the DHS (American Immigration Council, 2021). There are currently 148 jurisdictions across the country with a 287(g) program, including one in Culpeper, Virginia (Immigrant Legal Resource Center, 2020).

To terminate the agreement, the ACLU People Power Fairfax will partner with the ACLU of Virginia and CASA to undergo a lobbying campaign to the General Assembly in Virginia. While there is only one agreement active in Virginia, terminating the 287(g) program would eliminate any threats that another county may enter in the future. The lobbying campaign is estimated to take about two years and early planning and frequent actions will be important leading up to a potential bill because the General Assembly Session typically lasts 45-60 days (Cynwinski, 2018).

Political Feasibility Low (1)

This alternative ranks low on political feasibility given Republican Glenn Youngkin's governorship in Virginia. In 2019, Illinois governor, J.B. Pritzker signed a law that banned county governments from contracting with ICE's 287(g) program (Nichanian, 2019). Unlike Virginia, there were already no Illinois counties with a 287(g) contract when HB 1637 was passed; however, one county applied for a membership one year before the bill was passed. The law interrupted that application. The ban against these contracts has only happened in Illinois and California. Illinois has historically also been more immigrant-friendly than Virginia (Nichanian, 2019).

In Virginia, Culpeper County is the only county currently with a 287(g) program. Culpeper County Sheriff Scott H. Jenkins has been an advocate for the 287(g) program and has been issued lawsuits by the ACLU repeatedly challenging his cooperation with the federal government's immigration agencies. Given the Republican leadership on the state level, the likelihood of banning 287(g) programs seems low.

Administrative Feasibility High (7)

Banning the 287(g) program in Virginia would be fairly administratively feasible, as it does not require new staff, new facilities, and much training. As far as organizing to rally and protest for abolishing the 287(g) program entirely in Virginia, it will require demonstrations held by the ACLU People Power Fairfax, the ACLU of Virginia, and CASA, which is an immigrant-rights advocacy group. This will require coordination and outreach across Virginia to accumulate volunteers to protest at the Virginia State Capitol in Richmond. In Prince William County, nearly 25 CASA activists protested outside of the Prince William courthouse calling for Sheriff Glen Hill and the jail board to end the 13-year-old 287(g) agreement (Palermo, 2020). However, a protest at the State Capitol will be on a larger scale for a statewide ban. To do this, the ACLU People Power Fairfax should partner with the ACLU of Virginia to establish a list of key legislators to meet with. One key legislator should be Sen. Jennifer Boysko, D-Fairfax, who sponsored Senate Bill 1387 in 2021 which allows undocumented students to be eligible for state financial aid, school-issued aid, and Tuition Assistance Grants for private schools regardless of immigration status (Kolenich, 2021). For this alternative to succeed, ACLU People Power Fairfax, the ACLU of Virginia, and CASA would begin planning early and establishing relations with community leaders to build a coalition before the protest takes place.

Net Benefits High (8)

While Culpeper is the only county in Virginia to have a 287(g) program active, there is a possibility of more counties adopting this policy. To find the best estimate of how many undocumented immigrants would be diverted from jail due to banning the 287(g) program, I found the probability that more counties will take up the program in the future. The average share of counties with a 287(g) was observed in similar states, such as Maryland and North Carolina, which is 12% (See Appendix I). Given that Glenn Youngkin is governor, this percentage is the best estimate, as there may be a push to be tougher on immigration in the coming years, particularly in rural, smaller counties. About 162 undocumented immigrants were taken to ICE custody annually for low-level offenses or no convictions at all in Prince William County (Berti, 2021). Since Virginia has 133 total counties and independent cities that are counted as counties for census purposes, a high estimate of undocumented immigrants diverted from arrest would be 370. Scaled to Culpeper's numbers resulted in an estimate of 18 undocumented immigrants diverted from jail as the lowest estimate. The average of the low and high estimates is 194 (TRAC, 2018).

Eliminating the 287(g) program in Virginia receives a high mark for cost-benefit analysis. The total costs to ban the program include a lobbying campaign in Richmond where ACLU People Power Fairfax and CASA partner with the ACLU of Virginia to lead the movement. The first two years will be spent gaining momentum through lobbying, email campaigns, and social media campaigns. These costs would amount to \$370,000 for the first two years.

The benefits include both fiscal and social benefits for a 287(g) ban. Banning 287(g) programs can restore public trust in the police, resulting in more reporting by the undocumented. For instance, undocumented respondents in a survey were 43% less likely to report being victims of crimes if they knew LLEAs worked with ICE (Lopez, 2018). This leads to a host of intangible and tangible costs. Additionally, banning 287(g) would redirect taxpayer dollars into funding other programs for

the county. The total benefits to potential entering counties and Culpeper are \$8,500,000. Additional benefits include the income saved from not being deported after being in ICE custody, which would amount to \$7,700,000 over three years since benefits start appearing after the third year. Therefore, the benefits greatly exceed the costs, resulting in the highest net benefit of the three alternatives (Appendix I).

$$\text{Net Benefits: } \$8,500,000 + 7,700,000 - 370,000 = \underline{\$15,830,000}$$



Figure 4: “The Status of 287(g) Agreements in Texas”. (Garcia, 2018).

Evaluating Alternative 2: Implement the Use of Court-Approved Sobering Centers

Sobering centers are short-term care facilities that allow nonviolent intoxicated individuals to recover in a safe environment. Sobering centers typically operate 24/7 and provide lengths of stay ranging from four to twenty-four hours. Sobering centers are distinct from detoxification (detox) centers and residential treatment centers in that the latter two support individuals over a longer period, with detox being about 3-10 days and residential treatment about a month (CHCF, 2021). Today, there are an estimated 40 sobering centers across the US. In Virginia, the city of Alexandria offers a detox center, and Chantilly, which is a part of Fairfax, offers a detox center and residential treatment center that provides 24-hour interventions for persons experiencing a substance abuse-related crisis (City of Alexandria, n.d.). The first sobering center would be located in downtown Fairfax in the old Mainstreet Bank, as this is near to key stakeholders, such as the fire department, emergency department, and the police department. It is also within 20 minutes to potential partners, which are the Fairfax Detoxification Center and the New Beginning residential treatment program, both located in Chantilly.

In Fairfax, a sobering center will be particularly significant for those struggling with substance misuse and for the undocumented community. 70% of immigrants offered to ICE were arrested for misdemeanor charges, with less than a third being offered under felony charges (Burkley Alejandro, 2020). Figure 3 depicts the type of misdemeanor charges immigrants receive, with the majority associated with substance misuse or traffic violations. Of all misdemeanors related to traffic or substance misuse, drunk in public represented a third of those charges (See Fig. 5) (Burkley Alejandro, 2020). Sobering centers offer a unique opportunity to intervene in the jail to deportation pipeline by impeding undocumented immigrants from entering the legal system.

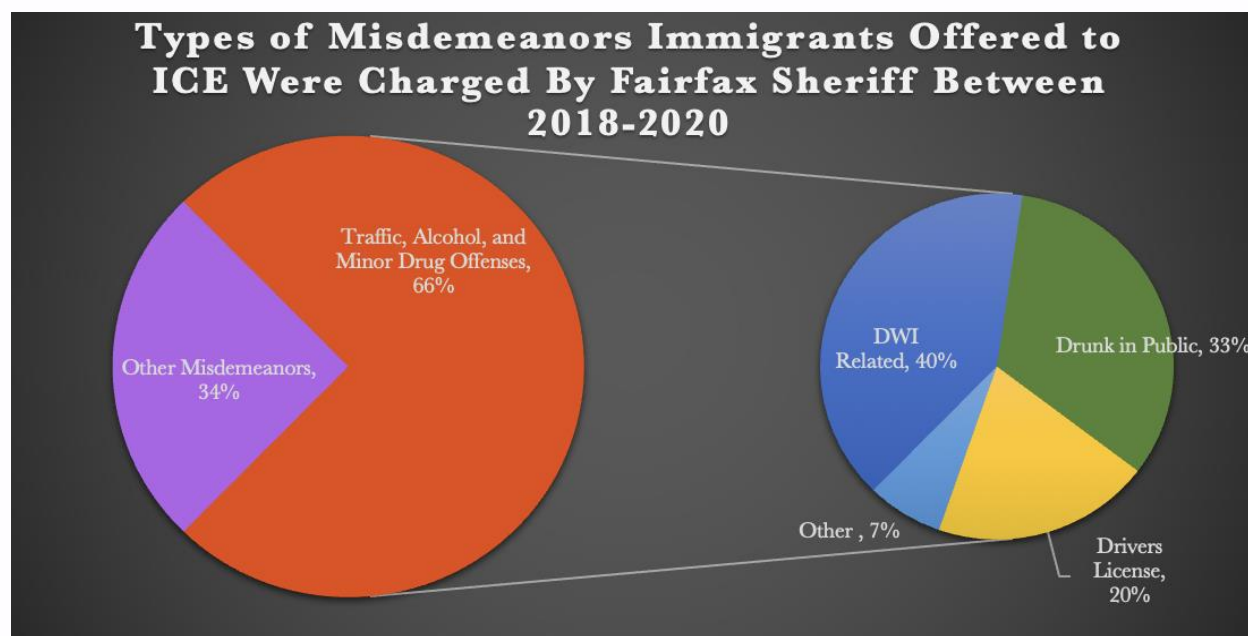


Figure 5: "Adoption of Trust Policy Needed to Protect Fairfax Immigrants and Public Safety." (Burkley Alejandro, 2020).

Political Feasibility High (8)

This option has relatively high political feasibility because instituting sobering centers was initially proposed over 50 years ago as part of the *Uniform Alcoholism and Intoxication Treatment Act* (CHCF, 2021). This legislation exemplified an unprecedented societal change in which alcohol misuse was seen as a public health problem. The law gave states a framework to provide for short-term care centers to care for clients acutely intoxicated. States widely vary in how they handle acutely intoxicated individuals. In Virginia, there are no sobering centers currently in operation; however, there are detoxification and residential treatment centers in Alexandria and Chantilly in Fairfax County. The Fairfax County Board of Supervisors will likely support a sobering center. The county government's Fairfax-Falls Church Community Services Board already has a Detoxification Diversion Outreach team that intervenes to help promote transition into community services that help the sustainable recovery of drugs and/or alcohol and brings them to the Detoxification Center.

Since local law enforcement agencies will be key stakeholders tasked with bringing individuals to a sobering center, this may require changing pre-existing beliefs and pursuing new buy-in from LLEAs. However, in February 2021, Augusta County launched a program that aims to keep out of incarceration through the Law Enforcement Assisted Diversion (LEAD) program, which is a 6-12 month pre-charge diversion program for offenses such as larceny, trespassing, and possession for schedule one or two narcotics for those who are at lower-risk for reoffending (Todd, 2021). This program aims at serving the underlying needs of individuals. Overall, a sobering center in Fairfax County is deemed to be politically auspicious.

Administrative Feasibility Medium (5)

This option has medium administrative feasibility because it does build off similar programs; however, it will require a significant amount of training, relationship building between local law enforcement, and securing an underutilized space. For example, a sobering center in Austin that started in 2018 repurposed an old morgue into a sobering center and it took some time to train staff to effectively help clients (The Sobering Center, 2022). The sobering center will repurpose an underutilized space in the old Mainstreet Bank in downtown Fairfax, funded by the county BOS. Similarly, Travis County was able to provide funds for restoring the old morgue into the Sobering Center in Austin. Fairfax County has allocated \$1.05 million to Diversion First Initiatives, which offers alternatives to those who come into contact with law enforcement for low-level offenses (FY23 Advertised Budget). This is a strategic location, as it is 5 minutes from the Fairfax Medical Center, 2 minutes from the Fire Department, and within 5 minutes from a police department. Additionally, this space is 20 minutes from the Fairfax Detoxification Center and New Beginnings long-term residential program for substance misuse, in case an individual needs to be referred to more intensive care.

Furthermore, police will be key administrators in this process, as they will take intoxicated individuals to these centers. Studies suggest that sobering centers save time for local law enforcement, as the average drop-off time at a center is seven minutes, whereas booking someone in jail is about 1 hour (Santa Cruz Sheriff's Office Recovery Center, 2018).

Net Benefits **High (9)**

The number of undocumented immigrants diverted before they enter the criminal legal database or booked into jail per year due to sobering centers is an estimated 392 by using Fairfax County Police Department arrest data between 2016 and 2019 (ACLU People Power Fairfax, 2020). Between 2016-2019, Fairfax County Police Department arrested an average of 2,800 individuals for public intoxication (ACLU People Power Fairfax, 2020). It is then assumed that 7% of the 2,800 are undocumented, given that 7% of Fairfax's population is estimated to be undocumented and that undocumented individuals are arrested at a disproportionate rate of 2% than others in the community for public intoxication, resulting in the estimate of 392 (Migration Policy Institute, 2019; ACLU People Power Fairfax, 2020).

Implementing a sobering center in Fairfax County has immense benefits for the county's residents and the undocumented population. The total benefits to the Fairfax County community would include prevented emergency department visit bills, police time saved from driving someone to a sobering center instead of booking someone into jail, and saved costs from booking someone into jail.⁴ The benefits for the whole county over five years would be about \$5,000,000. More specifically, sobering centers will have profound impacts on the undocumented population by protecting them from potential deportation, which would save families with undocumented members \$30,700,000 in income. The total cost of implementing a sobering center in Fairfax is an estimated \$6,700,000 over five years. These costs encompass personnel costs, capital investments, and operation costs (Appendix II).

$$\text{Net Benefits: } \$5,000,000 + \$30,700,000 - \$6,700,000 = \underline{\underline{\$29,000,000}}$$



Figure 6: "Exodus Recovery, Inc., David L. Murphy Sobering Center". (Exodus Recovery, 2020).

⁴ It should be noted that the police time saved depends on how far away the law enforcement officer's pick up location is from the sobering center versus how close they are to a local "drunk tank", so this estimate may vary.

Evaluating Alternative 3: Expand Fairfax’s Robust Trust Policy & Ban on Pre-Release Notification Across Select Virginian Localities to Prohibit Voluntary Cooperation

This policy alternative is twofold in that it will expand Fairfax’s Trust Policy and ban the sheriff’s pre-release notification to ICE. The Public Trust and Confidentiality Policy (Trust Policy) aims to build trust by ensuring that immigrant residents can access county benefits and programs without fear they may be compromised to ICE (Burkley Alejandro and Aguilar, 2021). Fairfax County does not find it efficient nor equitable to use Fairfax County resources to facilitate the enforcement of immigration law. The Trust Policy prohibits county employees from seeking or sharing personal identifiable information about one’s immigration status unless mandated by law, a court order, or a judicial warrant (Olivo, 2021). This includes the police department, the health department, and other county employees. Fairfax County Board concluded that the Trust Policy could not apply to the Sheriff since they are an elected constitutional officer. However, Fairfax County Sheriff Stacey Kincaid discontinued the long practice of providing a pre-release notification to ICE of Fairfax jail inmates who ICE suspects are undocumented immigrants (Hobson, 2022). Virginian localities must ensure that both the county police departments, sheriff’s office, and county employees take necessary steps to limit unnecessary cooperation between ICE and LLEAs by combining the Trust Policy with Sheriff Kincaid’s decision to end pre-release notification. The county and independent city selected to expand this policy are Arlington County and Richmond City.⁵

Political Feasibility Medium (6)

It will take approval from the Board of Supervisors, City Councils, and sheriff’s office to ensure a high likelihood of political feasibility. Given the present climate of these two localities’ policymaking bodies and their sheriff’s office, expanding a Trust Policy to these two counties/municipalities is likely to be moderate.

Activists have been pressuring Arlington County to consider limiting communication with federal immigration officials (Teo, 2021). Passing a Trust Policy in Arlington is deemed to be politically auspicious as activists are gaining momentum. Arlington County Chair, Katie Cristol has historically affirmed immigrants’ fears of law enforcement and has reiterated its commitment to being an immigrant-welcoming community (Arlington County, 2016). Arlington County Sheriff, Beth Arthur, has made changes to limit ICE and LLEA cooperation. In 2015, Arthur announced that the Sheriff’s Office will no longer honor ICE detention requests; however, they still notify ICE of the time when someone with an ICE detainer is released from jail (National Immigration Project, n.d.).

Richmond residents have been pushing for more sanctuary policies. Mayor Levar Stoney has affirmed “policies of inclusion” for undocumented immigrants (Kruszewski, 2017). Stoney’s 2017

⁵ These selections are based on populations of over 200,000, have historically voted Democrat, and have made efforts to disentangle ICE and LLEA cooperation. The City of Norfolk was considered; however, Norfolk Sheriff Democrat Joe Baron has jailed 830 immigrants for ICE between 2017 and 2019 (Edwards, 2019). Additionally, Mayor Kenny Alexander expressed support for Baron’s decision to house ICE detainees. Thus, Norfolk was eliminated from consideration because it is estimated to have a low probability of passage by local leaders.

directive criticizes Trump's immigration actions and reiterates the Richmond Police Department policy of not asking residents it encounters their immigration status (AP News, 2017). Richmond City Sheriff, Antionette Irving is a Democrat who has not made a public statement regarding her opinion on detangling ICE and local law enforcement.

Administrative Feasibility Medium (5)

This policy does not require Arlington County or Richmond City to hire new professionals in implementation and it builds on existing efforts that took place in Fairfax County and efforts within Arlington and Richmond. In Arlington, activists and lawyers have been pushing for policy changes that are aligned with the county's self-perceived notion of a welcoming, immigrant-friendly community (Armus, 2021). Arlington County released a draft framework for a Trust Policy in September 2021, with the County Chair hoping to have a countywide revised ICE policy by the end of 2021 (Gathright, 2021). This remains to be seen.

While implementing this policy will not require much effort externally and can build off Fairfax's work, implementation in Fairfax County has been difficult to coordinate across all agencies. It requires changes in operating procedures by current employees on how to not share any personal identifiable information with outside agencies, thus posing an administrative burden on county employees.

The City of Richmond has not made the same amount of progress as Arlington County. Nonetheless, a Trust Policy will ease administrative burdens on county employees. Furthermore, organizations such as ICE out of RVA have worked alongside the Legal Aid Justice Center to work toward training the Richmond Police Department and Richmond Sheriff's Office about policies barring citizenship investigations (Kruszewski, 2017). A trust policy would require training for county employees and the sheriff's office that clearly outline what is not acceptable in their roles on behalf of the county/city. Since there are multiple county and city departments, this may create confusion, so some administrative burden may be placed on the City Council and BOS to create clear definitions and rules for county/city employees to follow. Overall, expanding the Trust Policy and banning the pre-release notification by the sheriff ranks medium on administrative feasibility. While this policy builds off existing efforts and no new hiring or acquisition of space is required, there are many actors involved in ensuring there is privacy for undocumented immigrants, which creates some administrative burden on the Arlington Board of Supervisors and Richmond City Council.

Net Benefits **High (10)**

I assumed that given over four years Sheriff Kincaid of Fairfax gave about 407 yearly average pre-release notifications to ICE between 2017-2019 (Case Status Sheriff ICE Detainer, 2022). Additionally, a Trust Policy will prohibit indirect data sharing or compromising of personal information. There is about a 5,500 increase in new deportation proceedings a year in Fairfax, some of which are attributed to indirect information sharing by county employees. Thus, I estimated a 50% upper bound to get 2,750 and a 15% lower bound to get 825, with an average of 1788. Total diverted from ICE if there is a robust Trust Policy and prohibition to pre-release notification is 2195. I scaled these numbers to Arlington County and Richmond City to get 887 undocumented immigrants diverted from ICE if they both adopted the Trust Policy and stopped pre-release notification. This number is likely an underestimate given the scope of the Trust Policy expanding to all county employees.

This policy alternative scores extremely high on cost-benefits. Expanding a Trust Policy and banning a pre-release notification to ICE has immense benefits both that are quantitative and qualitative. Household income saved from not being deported for undocumented living in Richmond City and Arlington County would be an estimated \$35,000,000 over five years. Qualitatively, implementing this option would increase trust in law enforcement and other county services without fear of their information being sent to ICE. For example, vaccines are available to all regardless of immigration status; however, fear of information sharing or the potential sharing of documentation becomes a barrier to vaccinations (“Budget Considerations Trust Policy”, 2021). The total cost of the Trust Policy campaign and ban of pre-release is predicted to be \$184,000 over five years, which is an estimate based on legal counsels and directors of advocacy groups’ opportunity costs of time. While the advocacy work would be comprised of volunteers and advocates doing pro-bono work, this captures the best estimate of opportunity costs for the projected leading activists (Appendix III).

Net Benefits: \$35,000,000- \$184,000 = 34,816,000



Figure 7: “Fairfax County is First in Virginia to End Voluntary Cooperation with ICE: It Shouldn’t be the Last”. (Burkley Alejandro and Aguilar, 2021).

Outcomes Matrix

	POLITICAL FEASIBILITY	ADMINISTRATIVE FEASIBILITY	COST- BENEFIT ANALYSIS	TOTAL
TERMINATE THE 287(G) PROGRAM	1	7	8 – \$13.5	16
IMPLEMENT SOBERING CENTERS	8	5	9 – \$29	22
Expanding Trust Policy & Sheriff Ban on Pre- Release Notification	6	5	10 – \$34.8	21

\$ in millions

Recommendation

This report recommends that ACLU People Power Fairfax pursue a vigorous campaign to persuade the Fairfax County Board of Supervisors (BOS) to allocate a portion of its Diversion First Initiative funds to support a new sobering center in downtown Fairfax. Sobering centers are an indirect intervention in the incarceration-to-deportation pipeline that scores high on cost-benefit analysis and political feasibility. Sobering centers offer a safe space for immigrant communities, as they have no affiliation with ICE by nature and do not allow ICE officials in unless there is a judicial warrant. Furthermore, sobering centers have the potential to have significant spillover effects for the surrounding community, such as costs saved from emergency departments and time saved for police departments. The benefits extend to all residents, regardless of race or ethnicity, who would otherwise be subjected to custodial arrest for public intoxication and thus, have a

criminal record. One tradeoff to consider is the administrative effort this takes, particularly in the first year of implementation through hiring staff and securing a space for the center. However, this administrative burden will be less salient after the first year. Furthermore, the nonelected alternatives are not as projected to be as politically feasible as the selected alternative. Thus, this alternative allows the ACLU People Power Fairfax to affect change while operating under the current political boundaries. Furthermore, a sobering center will have significant impacts on communities of color. Drunk in public arrests disproportionately affect the Latinx and Black communities. In Fairfax County, Latinx individuals were arrested for public intoxication 2.7 times their share of the population and Black individuals were arrested at a disproportionate rate of 2.5 in 2019 (ACLU People Power Fairfax, 2020). Overall, this sobering center will have a profound effect on the Fairfax community, particularly those who have been historically marginalized, such as immigrants, those who have frequent contact with the criminal legal system, those suffering from mental health issues, and those experiencing homelessness. This is an opportunity to provide support to vulnerable populations in Fairfax County that prevents future arrests, respects the privacy of individuals, and emphasizes sustainable community health.

Implementation

To advance a sobering center in Fairfax, the first step is securing the vote from Fairfax County's Board of Supervisors to approve the establishment of, and allocate funds for the creation of a sobering center. The ACLU People Power Fairfax and CASA should continue their partnership to advise the BOS about the benefits a sobering center has for Fairfax's community, especially for its undocumented population. Within the County government, the Community Services Board (CSB) has already undertaken major efforts to build a community-based approach toward mental health, developmental disabilities, and substance use disorders. The BOS has allocated \$1,050,000 in funds from its FY2023 Budget for a Diversion First Initiative, which aims to reduce the incarceration of those with mental health issues, which often co-occur with substance misuse (Fairfax County Government, 2022). ACLU People Power Fairfax should advocate earmarking at least \$1 million towards implementing a sobering center. Additionally, ACLU People Power Fairfax should reach out to Rodney Lusk, chair of the Fairfax County Board of Supervisors' Safety and Security Committee, who has pushed for behavioral health approaches to mental health and substance misuse crises (Taube, 2021). The CSB and the Safety and Security Committee must work together to improve the effectiveness of local law enforcement and provide the most appropriate, critical resources to address the needs of its constituents.

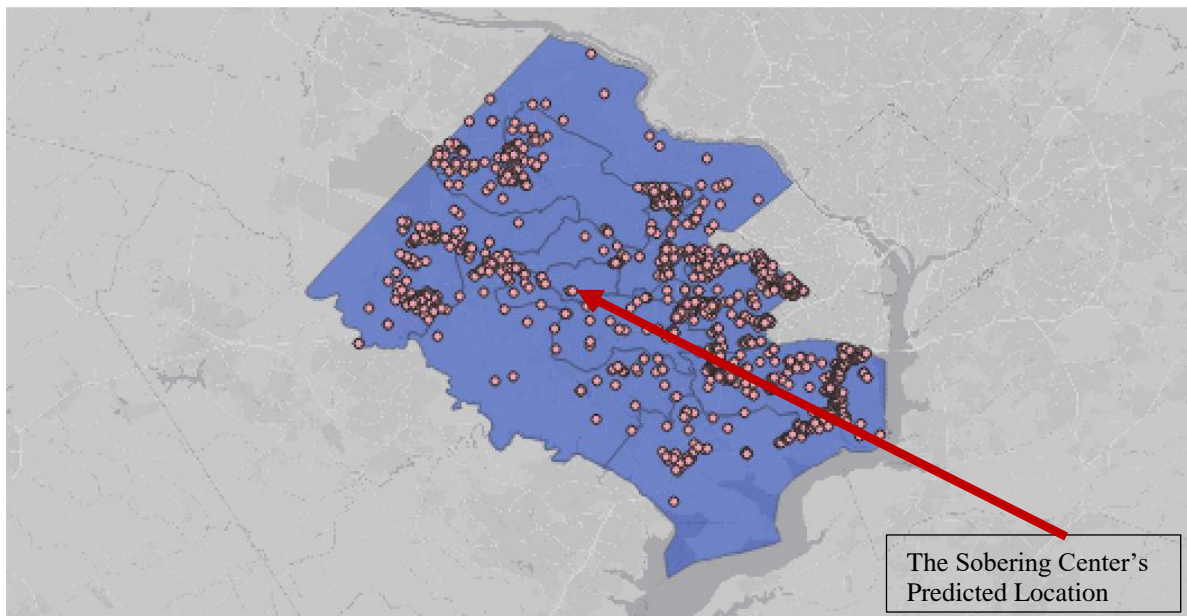
Assuming funds are secured, the next major step is acquiring the necessary employees and building space. The recommended space is repurposing the old Mainstreet Bank in downtown Fairfax. This site is strategic because it is located down the road from the Fire Department, the Inova Emergency Department, and not too far from the Fairfax City Police Department. This is an ideal location for stakeholders involved, such as the police, fire department, and emergency department. Furthermore, the first sobering center will be centrally located within Fairfax County and central to where the highest concentration of drunk in public arrests was in 2021 (Fig. 8).

For hiring staff, the BOS should look at the Health Department for four registered nurses and two paramedics to start the operation. Furthermore, there will be a licensed substance abuse treatment

practitioner (LSATP) who will assess the needs of each individual. Additionally, the BOS should post job openings for an executive director, financial manager, and three rotating unarmed security officers to begin the operation. The old bank has two floors. The bottom level should be where 25 beds will be located for intoxicated individuals to recover, and the second level will be where the administrative offices are located. Since there is an average of 2,800 arrests for public intoxication a year, this allows for about ten individuals to use the beds each night with a cushion for more people on weekend nights. The center will only focus on alcohol use to start out and then if successful, potentially look to expand to care for individuals under other influences

Once the sobering center is ready for operation, a person who meets the legal definition of intoxication will be referred by an LLEA, emergency medical service (EMS), or a hospital, with a predicted 70% coming from LLEA (Sobering Center, 2022). The CSB's Detoxification Diversion Outreach Team will also work with LLEAs to respond to police requests to transport intoxicated individuals to the sobering center. The sobering center will operate 24/7 and be free of charge for individuals who stay. The center is for those with acute intoxication, whereas the sobering center may refer an individual to other centers for more intensive or long-term care, such as the Fairfax Detoxification Center or New Beginnings residential treatment in Chantilly. The sobering center should partner with these two centers to adequately meet the needs of the Fairfax community.

2021 Drunk in Public Arrests by Fairfax County Police Department



Data obtained from the Fairfax County Police Department

Figure 8: "2021 Drunk in Public Arrests in Fairfax County". Self-Made in QGIS.

Potential Challenges

While sobering centers guarantee protection from ICE and offer an alternative to arrest and jail, People Power Fairfax and the BOS will need to create buy-in from LLEAs to utilize these sobering centers instead of using the jail as a drunk tank. To remedy this risk, the ACLU People Power Fairfax should highlight to LLEAs the time saved when dropping an individual with acute intoxication at a sobering center rather than booking them in jail to stay in the drunk tank. Furthermore, the CSB's Detoxification Outreach Team has worked with LLEAs in recent years to help intervene when an individual is intoxicated.

A related challenge is changing the community's mindset and stigma about alcohol use and discrimination towards intoxicated individuals. Community opposition through NIMBYism (not in my backyard) has occurred during the implementation phases of sobering centers (Smith-Bernardin, 2021). Addressing this challenge requires a more systemic change in how substance misuse is viewed nationwide. Stigma presents a barrier to accessing health care and substance use services (Livingston et al., 2012). While this is beyond the scope of this report, at the structural level, training professionals like LLEAs to adequately care for intoxicated individuals has been proven effective (Livingston et al., 2012). Uprooting the historic punitive measures taken against substance misuse and moving towards a more community-based approach will hopefully reduce stigma in the Fairfax community.

Conclusion

There is too much at stake for undocumented immigrants in Virginia to not receive the protection they need from the current discriminatory policies and laws. The analysis focused only on Phase I and Phase II of the overall picture, as there needs to be large immigration reform efforts at all stages in the U.S. Implementing the sobering centers is a unique way to make change under the current political bounds in Virginia. Sobering centers involve support and advocacy from elected officials, activists, street-level bureaucrats, and the community at large to be successful. Sobering centers provide a unique intervention to the jail-to-deportation pipeline. The hope is that the pursuit of a sobering center will affirm that Fairfax is an inclusive community seeking to protect the undocumented from both the criminal legal and immigration systems, which have historically disregarded the civil rights of many.

Appendix I

Table 1: Alternative 1 General Assumptions

Assumptions	Estimates	Sources
Discount Rate	3%	
Inflation	4%	
Virginia Population Growth Rate	.40%	(REAP, n.d.)
Household Income Save When Family Member is Not Deported	\$20,600	(Burns and Goren, n.d.)
% of the Undocumented Who Enter ICE Custody and Receive Removal Orders or Voluntary Depart	62%	(TRAC, 2022)
Virginia's Undocumented Population	275,000	(American Immigration Council, 2020)
Total Decreased Arrests for Undocumented Immigrants (Low Estimate: Culpeper only)	18	(Berti, 2020; TRAC, 2018)
Total Decreased Arrests for Undocumented Immigrants (High Estimate)	370	(Berti, 2020; TRAC, 2018)
Average Between Low and High Estimate	194	

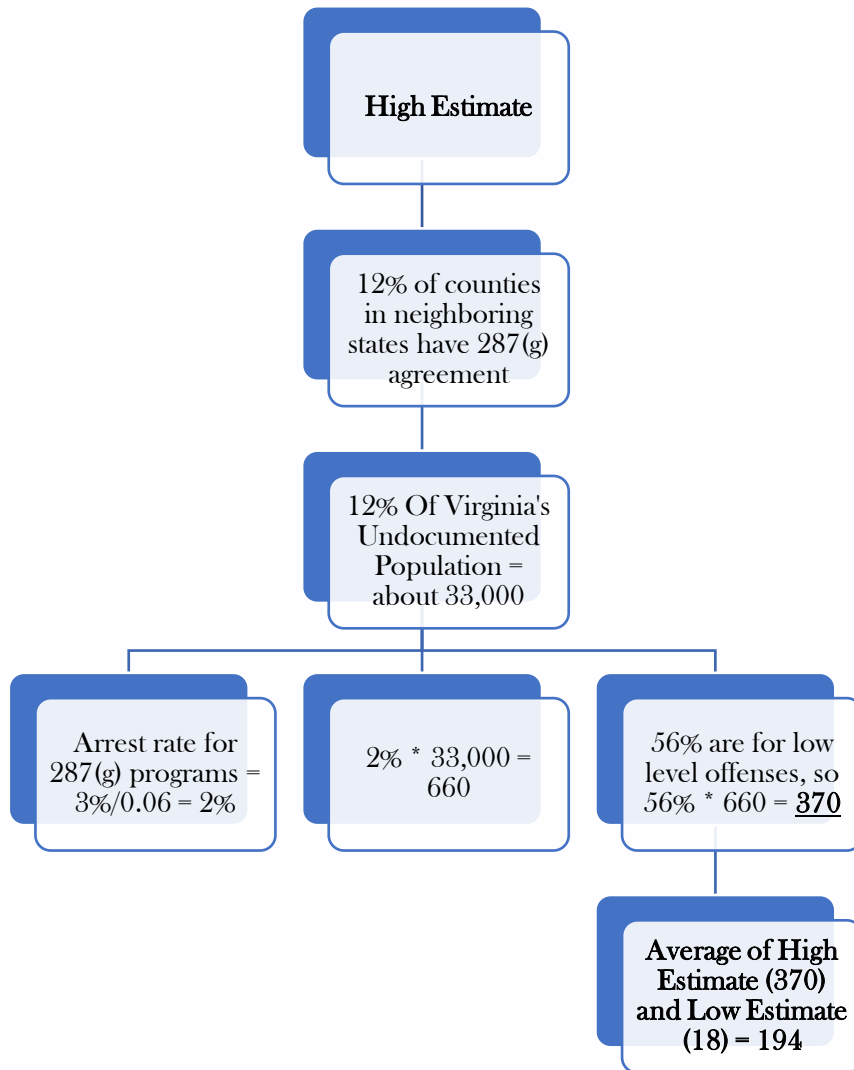
Table 2: Alternative 1 Cost Assumptions

Cost Assumptions	Estimates	Sources
Median Lobbyist Salary in VA	\$116,815	(Salary.com, n.d.)
Mass Email Campaign	\$4,548	(Themeisle, n.d.)
Social Media Awareness Campaign	\$0	
Average Cost of Driving from Fairfax to Richmond (at least 25 cars)	\$685.25	(Travelmath, n.d.)
Banners for Protestors	\$27.75	(Walmart, n.d.)
Water for Protestors – 40 count	\$9.16	(Walmart, n.d.)

Table 3: Alternative 1 Benefit Assumptions

Cost Assumptions	Estimates	Sources/Calculations
Yearly Cost of 287(g) to Prince William County	\$171,000	(Sides, 2020)
Total Benefits to County by Not Entering 287(g) Program	\$2,736,000	.12(133)=16 16 * 171,000
Total Benefits to Undocumented Population Through Household Income Saved From No 287(g) Program	\$2,477,768	194 * .62 120 * 20,600

Table 4: Alternative 1 Probability Estimate for Total Undocumented Immigrants Diverted from ICE if Counties Beyond Culpeper Take-up 287(g) Programs



Appendix II

Table 5: Alternative 2 General Assumptions

Assumptions	Estimates	Sources/Calculations
Discount Rate	3%	
Inflation	4%	
Undocumented Population in Fairfax	7%	(Migration Policy Institute, 2019)
Fairfax County Growth Rate	.40%	(Han et al., 2022)
Total Decreased Arrests for Community/Year	2800	(ACLU People Power Fairfax, 2020)
Arrest Rate for Undocumented Population	7% * 2% (Disproportionate Arrest Rate) = 14%	(ACLU People Power Fairfax, 2020)
Total Decreased Arrests for Undocumented Immigrants/Year	392	2800 * .14

Table 6: Alternative 2 Cost Assumptions

Assumptions	Estimates	Sources
Executive Director	\$142,158	(Salary.com, n.d.)
Registered Nurse x 4	\$290,756	(Glassdoor, n.d.)
Paramedic X 2	\$106,930	(Glassdoor, n.d.)
Financial Manager	\$106,787	(Glassdoor, n.d.)
Unarmed Security Officer x 3	\$103,593	(Glassdoor, n.d.)
Development & Communications Manager	\$82,652	(Glassdoor, n.d.)
Paramedic Supervisor	\$65,068	(Salary.com, n.d.)
Licensed Substance Abuse Treatment Practitioner (LSATP)	\$90,000	(Simplyhired, n.d.)
Building Spaces - Rent/Annual	\$84,485.00	(Loopnet, n.d.)
Website Creation	\$200	(Carney, 2022)
Utilities	\$5,816	(IotaComm, 2020)
Beds x 25	\$3,050	(Walmart, n.d.)
Website Maintenance/year	\$600	(Carney, 2022)
Operating Costs of Van	\$2,596.00	(Mercadante, 2021)

Table 7: Alternative 2 Benefit Assumptions

Assumptions	Estimates	Sources/Calculations
Price per Booking	\$150	(The Sober Center, 2022)
Total Saved in Booking Fees	\$420,000	$150 * 2800$
Number Diverted from Hospital	460	(Sobering Center, 2021)
ED Visits	\$122,360	(Thomas, 2020)
EMS Transport	\$230,000	(Fairfax County EMS Fact Sheet, n.d.)
Police Time Saved	50 minutes $50/60 = .83$ $.83 * 36 = 30$	(CHCF, 2020)
Fairfax Policy Hourly Wage / Time Saved	\$36	(Glassdoor, n.d.)
Total Saved Opportunity Cost of Time	\$84,000	
Share of Undocumented Who End Up Getting Deported/Voluntary Departure in Immigration Proceedings	62%	(TRAC, 2022)
Total Benefits to Undocumented Population Through Household Income Saved From Sobering Center	\$5,006,624	(TRAC, 2022)

Appendix III

Table 8: Alternative 3 General Assumptions

Assumptions	Estimates	Sources/Calculations
Discount Rate	3%	
Inflation	4%	
Arlington County Population	236,842	(World Population Review, n.d.)
City of Richmond Population	226,622	(World Population Review, n.d.)
Arlington County Growth Rate	.3%	(World Population Review, n.d.)
City of Richmond Growth Rate	.7%	(World Population Review, n.d.)
Average Growth Rate	.5%	
Average Estimate of those in Deportation Proceedings Due to Indirect/Direct Cooperation Beyond Sheriff's Notification	1788	(TRAC, 2022)
Yearly Pre-Release Notification to ICE by Sheriff Kincaid	407	"Case Status Sheriff ICE Detainer 2022"
Total Diverted Arrests in Arlington	454	
Total Diverted Arrests in Richmond	434	
Total Diverted From ICE	887	

Table 9: Alternative 3 Cost Assumptions

Assumptions	Estimates	Sources/Calculations
Cost of Time Spent on Campaign for Public Policy Counsel/Year	\$16,125	(Salary.com, n.d.)
Cost of Time Spent on Campaign for 4 Legal Directors /Year	\$44,500	(Salary.com, n.d.)
Hours Spent on Trust Campaign in Fairfax	1000 over 4 years 1000/4 = ~250 per year	(Burkley Alejandro, 2022)
Hours For Richmond + Arlington	125 per year	

Table 10: Alternative 3 Benefit Assumptions

Assumptions	Estimates	Sources/Calculations
Total Benefits to Undocumented Population Through Household Income Saved From Expansion	\$11,300,000	$887 * .62 = 550$ $550 * 20,600$

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