

# Fresno fed court docket shows effect of immigration law changes

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For years, federal law enforcement officials in Fresno went after deported immigrants who had illegally crossed back over the U.S. border.

Again and again, cases of “Deported Alien Found in the United States” popped up on federal court calendars. Between 2010 and 2013, such cases made up close to half of the total U.S. criminal indictments in Fresno. Taken as a whole, the immigration prosecutions averaged more than one a day during that four-year period.

Last year, those indictments plummeted, and accounted for barely a quarter of total indictments. The drop from 2013 to 2014: 59%.

That drop was the biggest reason Fresno indictments in 2014 hit the lowest level in at least five years. Overall, indictments in 2014 were down 36% from 2013.

Benjamin Wagner, U.S. Attorney for California’s eastern federal judicial district, which includes Fresno, says the reasons for the steep decline in immigration prosecution are federal court rulings combined with a change in California law.

As a result, Wagner says, dangerous undocumented immigrants are being released from county jails across the central San Joaquin Valley before federal law enforcement can arrest them.

“It’s something we’re quite concerned about,” he says. “Our focus is not people who are here illegally, but people who are here illegally and have a significant criminal history and pose a public risk.”

Immigration activists offer a different viewpoint. They say the change is welcome and has largely stopped people from being held in jail solely because of their immigration status.

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Benjamin Wagner, U.S. Attorney for the Eastern District of California

Angela Chan, policy director and senior staff attorney with the San Francisco-based Asian Americans Advancing Justice – Asian Law Caucus, says “over and over” immigrants with no serious criminal backgrounds have been prosecuted for being in the country illegally.

“There’s a lot of fear-mongering coming from the U.S. Attorney’s Office,” she says. “They’re spreading false information.”

The drop in immigration cases last year wasn’t the only area where indictments plummeted. It was just the most obvious. High-profile crimes such as drug trafficking, firearms charges and sex crimes against minors also saw significant decreases in indictments.

Wagner attributes some of the decline to the normal ebb and flow of criminal prosecution. A big indictment year may see a drop the following year as the cases work their way through the courts. His office also spent a good chunk of 2014 ramping up after a hiring freeze was lifted early in the year. But, without a doubt, when the single biggest case generator — in this case, immigration violations — drops like a rock, it will show up in the stats. The drop was such that even Fresno’s overworked federal judges felt the difference.

## **New rules for immigration arrests**

The immigration change started coming with Gov. Jerry Brown's signing of a bill in October 2013 that limited the state's cooperation with federal authorities. Known as the Trust Act, the law requires immigrants in the country illegally must be charged with or convicted of a serious offense to be eligible for a 48-hour hold and transfer to U.S. immigration authorities for possible deportation.

Then last year a federal court ruling was handed down in Oregon involving requests by U.S. Immigration and Customs Enforcement officials for local authorities to hold inmates beyond their release time. The judge in that case found that the practice violated the U.S. Constitution's Fourth Amendment.

Civil libertarians and immigration rights groups in turn told counties they would be sued if they continued to hold inmates beyond their release time.

"That has understandably made a lot of county sheriffs nervous," Wagner says.

As immigration-related federal cases plummeted, a debate has been waged between federal law enforcement officials and immigration activists like Chan.

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She says it is unconstitutional to hold a person beyond their release time simply because immigration authorities request it. The holds, she says, are requested by federal ICE agents, are not signed by a judge or based on any probable cause, and hold no legal weight.

"They are illegal," she says. "It puts sheriffs in a difficult situation. They are being sued across the country for violating ICE hold requests. It is unwise to ask sheriffs to do that."

Almost all California counties, Chan says, have adopted policies of not responding to ICE hold requests. Federal officials in the past had told local law enforcement that the immigration holds were not voluntary and that they were mandated to honor them.

Some of the debate has centered on holds being placed on an illegal immigrant for a minor charge. Wagner says his office has no desire to prosecute such people. Such general deportations, he says, are not from his office, but from the Department of Homeland Security. But there are times, Wagner says, when a person held on a minor charge is being deported because of a previous, more serious criminal offense. He says local law enforcement should dig deeper to learn a person's full criminal history before releasing them.

Fresno County Sheriff Margaret Mims says her department is adhering to the new California law and to the federal legal rulings.

"I no longer have the statutory authority to hold them," Mims says.

But if ICE asks, Fresno County Jail officials will notify the federal agency when a person's release date is approaching. One change Mims likes is the morning visit each day from an ICE official to review inmate releases. She'd like to have an ICE agent in-house all the time. A county in Texas has done it, she says, and it has been a success.

One of the challenges, Mims says, is that a jail works different than a prison. Of the inmates, 70% are awaiting trial and could be released quickly if they make bail or are released by a judge.

“ICE must be nimble,” she says.

Wagner says he worries about the possibility that a dangerous criminal, in the country illegally, is released from jail before federal authorities can intervene. When the criminal’s danger to the public is revealed, arrests will happen at a house or in public. Such operations, he says, put law enforcement officials and, possibly, the general public in danger.

There are currently efforts to more quickly identify undocumented immigrants with serious criminal histories who are going to be released from custody, Wanger says. To keep them locked up, however, a federal arrest warrant “that has the teeth that a detainer doesn’t” is needed, he says. Often times, there are challenges to track down the information needed to secure the warrant.

“It’s just not that easy,” Wagner says. “We can’t just snap our fingers and file an arrest warrant.”

## **Child porn changes**

While immigration cases accounted for much of the drop in Fresno federal indictments, there is another area seeing a high-profile decline: sex crimes against minors.

In Fresno, for years this has often been synonymous with child pornography arrests, with the Eastern District of California charging such cases at twice the national average. The backbone of the push has been Project Safe Childhood, a nationwide initiative launched by the Department of Justice in May 2006 to combat the growing epidemic of child sexual exploitation and abuse.

Recently, Wagner asked prosecutors in both Fresno and Sacramento to pursue fewer indictments, but target the more serious cases.

An example would be the arrest last August of Visalia resident Tyrell Richmond, who is charged with sex trafficking after authorities say he tried to force three girls into prostitution in Fresno and Visalia. The case was a joint investigation by the Federal Bureau of Investigation and the Fresno Police Department along with the Visalia Police Department.

As a result of the new approach, indictments for sex crimes against minors went from 33 in 2013 to 20 last year — a 39% drop.

Wagner says he wants the focus on child pornography production more than the guy with a child porn collection who is “living in his mom’s basement.” He also wants prosecution priorities focused more on sexual predators and any one who is in a position of authority who may be breaking child sex crime laws.

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