

ICE in Fresno jail: One month in, community divided on immigration enforcement

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More than a month after Fresno County Sheriff Margaret Mims announced a new partnership with U.S. Immigration and Customs Enforcement, 66 immigrants have been deemed priorities for deportation.

The program started June 22 and allows two ICE agents to work from inside Fresno County Jail. They determine whether inmates are in the country legally and examine their criminal history before deciding whether they should be deported. The program has angered immigrant-rights activists, while Mims calls it a progressive approach to immigration enforcement.

It comes in response to the Department of Homeland Security's new [Priority Enforcement Program](#), or PEP, which focuses on deporting convicted criminals and others who pose a danger to public safety. Immigration experts say Fresno's program could become a pilot for nationwide implementation of the new DHS priorities.

Policy experts say the program's success depends on a major cultural change at ICE. Agency officials in Fresno say that shift already has taken place.

Following enforcement priorities

Assistant field director Jose Correa, based in Fresno, said the new priorities are working.

"I hate to sound like a politician, but it is protecting the public, and sometimes you have to protect them from themselves," he said. "With the numbers I'm seeing, I feel comfortable, morally, removing these people from our society. I feel just like any other citizen would. We're a nation of immigrants but we also have to do the right thing while we're here."

There are [three levels under PEP](#). Priority 1, for example, can be immigrants suspected of terrorism, convicted of an aggravated felony or apprehended at the border. Priority 2 includes those convicted of three or more misdemeanors, one significant misdemeanor such as sexual abuse, or having been previously deported. Priority 3 includes those ordered removed on or after Jan. 1, 2014.

Last month, a [Migration Policy Institute report](#) showed 87% of unauthorized immigrants likely won't be targeted for deportation if ICE follows the new guidelines strictly.

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Luis Ojeda, California Immigrant Youth Justice Alliance coordinator

Under the partnership with Fresno County, ICE agents follow the guidelines more strictly than is required. Correa said he asked agents at the jail to focus on priorities one and two, which he said are black and white, while priority three "gets kind of gray."

"I want to keep Sheriff Mims on board and I want to make sure I'm doing the right thing," he said.

Of the 66 immigrants the Sheriff's Office turned over to ICE, 39 have been deported and the rest are in deportation proceedings. Six fall under priority 1, while 60 are priority 2.

Charges for those deported so far include gang involvement, burglary, felon in possession of a firearm, domestic violence and driving under the influence. Sixteen of those deported previously were deported and re-entered the country illegally.

Luis Ojeda, coordinator of California Immigrant Youth Justice Alliance, believes deportation is detrimental to the community. Ojeda, who is based in Fresno, said targeting people for offenses such as DUI or gang involvement leads to racial profiling and criminalization of people of color.

“People do make mistakes, but they can come back from those mistakes,” he said. “We as a community should do whatever we can to help them rather than simply removing them.”

Needed culture shift

ICE concentrates on immigrants who have either completed their sentence or have a significant criminal history, Correa said. They typically wait until criminal proceedings are finished before taking immigrants into ICE custody.

“We can indeed remove aliens that have been charged but not convicted,” he said. “However, it depends on a lot of factors, primarily their criminal history.”

If an agent asks to remove someone not under priorities 1 or 2, or who hasn’t been convicted yet, Correa said he would let the field office director in San Francisco make that determination.

Before PEP, ICE agents had the discretion to deport immigrants who didn’t threaten public safety for being in the country illegally. Correa said that type of enforcement makes agents “lose their sense of discretion.”

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Jose Correa, ICE assistant field director

[Juliet Stumpf](#), a law professor at Lewis and Clark College in Portland, Oregon, said PEP requires ICE agents to get permission from higher-level officials if they want to deport someone outside the priorities list. Stumpf specializes in the intersection between criminal and immigration law.

“That, I think, is the critical component that will render the Priority Enforcement Program either workable or allow it to fail,” she said. “The backbone is that kind of hierarchy of the agency.”

But Stumpf said ICE’s longtime culture gives agents strong incentive to deport anyone suspected of violating immigration law.

“If the agency’s priority up until now has been to increase the number of deportations, then the mindset of the agency all the way down to the rank and file has to change,” she said. “It’s a tall order.”

The fall of Secure Communities

Before PEP was a program called [Secure Communities](#), which allowed ICE to request that local law enforcement agencies hold inmates wanted for deportation past their release dates. Though ICE said the detainer requests were discretionary, many localities treated them as orders.

In January 2014 California enacted the [Trust Act](#), limiting the state’s cooperation with Secure Communities. The law says local authorities were not fully reimbursed for the holds and they harmed community policing efforts. It says the holds did not require probable cause or the support of a warrant, and detainees were erroneously [placed on U.S. citizens](#) and immigrants who were not deportable.

[Last April in Oregon](#) a federal district judge ruled that Clackamas County, just outside of Portland, violated one

woman's Fourth Amendment rights by holding her for immigration authorities without probable cause after she was eligible for release. The Fourth Amendment protects against unreasonable search and seizure and requires warrants to be supported by probable cause.

Spurred by the ruling, law enforcement agencies around the country joined California in ceasing cooperation with ICE detainer requests.

Correa said several other counties have expressed interest in replicating Fresno's program but worry about liability. Mims said she only knows of one other county with the same type of ICE collaboration — Harris County, Texas, where Houston is located. Correa said ICE often stationed agents in jails before the Trust Act.

"They're all looking at the legality of it all and what kind of implications that'll have for them as far as being sued," he said. "That Oregon case really did set the tone (nationally). Here in California it was the Trust Act that started it all."

Correa thinks the Fresno program will gain national interest because it requires no extra cost to taxpayers and doesn't keep inmates past their release dates. But unlike the rapid fallout from the Oregon case, he thinks the Fresno program will be slow to catch on. And because the total cost now falls on ICE, its potential for replication is limited.

Local activists have [staged multiple protests](#) against the new collaboration, saying it ruins the already waning trust between immigrants and local law enforcement. Mims said the program shouldn't affect her relationship with immigrants because those who don't commit crimes won't be targeted.

"Even in Secure Communities there was a set guideline as far as who they were going after and they didn't follow that," said Ojeda, who has led the protests. "This is a government agency we simply don't trust and whose sole purpose is to remove people from the community."

Fresno program's potential

ICE agents now perform background checks on foreign-born inmates every day between 6 a.m. and midnight, with plans to expand to 24/7. They have access to inmate records and interview rooms in the jail.

Before the program's implementation, ICE filed requests for jail staff to notify the federal agency whenever an immigrant of interest was scheduled to be released. Agents would then decide whether to pick that person up for transport to an immigration detention facility.

Correa said local agents already have adjusted to the new enforcement priorities.

"Just like the public, ICE agents are the same way," he said. "When something new comes up, there's always resentment at first, but it becomes a normal operation, a normal way to doing things. They slowly accept it. I meet with them every month to discuss the same thing. I have not received one complaint about not being able to enforce other than those priorities."

66

The number of immigrants Fresno County Jail has turned over to ICE custody since the new partnership started June 22

Stumpf said the Fresno program doesn't appear to have the same Fourth Amendment implications that Secure Communities did. But she said it depends on how the program is implemented, particularly when it comes to deporting inmates who don't fall under the deportation priorities or who have not been convicted of their charges.

"It may be that PEP ends up increasing the race-based arrests even though that's not what PEP is intended to do," she said. "The other issue is it may violate the spirit or letter of the Trust Act if the Trust Act is intended to increase the trust that immigrant communities have in state and local law enforcement."

Correa disagreed, saying Fresno is an ideal place to test such a program because of the demographics and local ICE culture. He said Fresno is a sensitive place for immigration enforcement because of the large immigrant population, so ICE agents are careful not to lose sight of the human aspect.

“Our agents, being in this environment they have to show restraint,” he said. “A lot of times it’s very hard for someone with a law enforcement mentality — that Type A personality — to let someone slide.”

Ojeda said it shouldn’t come down to “good immigrants” and “bad immigrants.”

“You’re not shopping for immigrants,” he said. “These are people who are going through systematic oppression in their home countries, dealing with forced migration [due to U.S. foreign policy](#).”

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