How State and Local Governments Affect Federal Immigration Enforcement

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The immigration policies of President Donald Trump's administration depart from those of the previous Obama administration. Nevertheless, policymakers and advocates must recognize the limits of federal priorities, because state and local lawmakers have both interest in and influence over who is identified for deportation. In order to craft effective immigration reforms, federal policymakers must account for the role that states and localities play in carrying out stated federal priorities.

New Federal Immigration Enforcement Goals under the Trump Administration

Approximately 11 million unauthorized immigrants currently reside in the United States – and the total number of legal immigrants, smugglers, employers, and others who could be subject to immigration enforcement action is impossibly large. Because it is impossible to take action against everyone, federal administrations set immigration enforcement priorities. The Obama administration prioritized the deportation of those they labeled "the worst of the worst" who pose a danger to national security or a risk to public safety. In practice, these targets were defined as migrants who had recently entered the U.S. illegally or knowingly violated the terms of a visa, plus those already subject to a final order of removal who had failed to depart.

Despite concerns that large numbers of noncriminal aliens were being apprehended and deported, Obama administration immigration enforcement resources were, in fact, focused on these priorities, at least by the end of Obama's second presidential term. Since 2017, by contrast, the Trump Administration has taken a different approach to immigration enforcement, seeking to target *all* immigrants.

Days after his inauguration, President Trump replaced the previous priorities in an executive order that prioritizes for removal any noncitizens convicted or charged with *any* criminal offense – or committed acts that constitute a chargeable criminal offense. Also prioritized for removal under President Trump are any immigrants who have engaged in fraud or willful misrepresentation in connection with any official matter or application before a government agency; any who have abused any program related to the receipt of public benefits; and any who are subject to a final order of removal but have not complied with their legal obligation to depart the United States. A final category targets for removal any immigrants who, in the judgment of an immigration officer, otherwise pose a risk to public safety or national security.

In practice, the Trump administration's removal priorities target unauthorized immigrants with *no* criminal history, because entering without inspection is a chargeable criminal offense. Further, the final bullet is a catch-all category, in that, Trump's executive order states that many immigrants without immigration status and those who overstayed their visas are a risk to public safety and national security. Finally, the list President Trump issued was not ranked from highest to lowest priority, meaning all groups are equally at risk whenever they encounter federal agents.

Outsourcing to State and Local Police

Recent administrations have outsourced the identification of immigrants for enforcement actions to local law enforcement agencies and jails. This is done through programs that combine efforts by Immigration and Customs Enforcement – called ICE for short – with state criminal justice systems. In the 287(g) program, for instance, ICE deputizes certain state and local law enforcement to enforce immigration law. Secure Communities is a data sharing program that sends information about local arrestees to ICE. Through these programs, law enforcement agencies share information about persons who are arrested, charged with, or convicted of, non-immigration related offenses. In these programs, local and state actors identify noncitizens

for the federal government, which can lead to deportation.

In practice, because local law enforcement agencies are at the front lines of immigration enforcement, they can influence who is targeted – regardless of federal priorities. Police officers can make arrests based on race or ethnicity, or arrest those they suspect are in violation of immigration laws to log them in the immigration enforcement system. Although these partnerships were created to target dangerous criminals who pose threats to U.S. communities, in reality these programs have increased arrests for low-level offenses – like traffic violations.

The Impact of State Laws and Policies – and Room for Resistance

Federal immigration priorities play an important role in expanding who may be considered "criminal aliens," and state laws can further broaden the range of crimes for which immigrants will be drawn into the criminal justice system. State laws can even criminalize the day-to-day behavior of certain migrants. For example, states can make unauthorized immigrants ineligible for driver's licenses and therefore vulnerable to charges of driving without a license.

But not all states and localities are eager for immigration crackdowns. Some have welcomed federal partnerships and tightened their laws, but others have pushed back, stymying the federal government's ability to enforce its priorities. This pushback can happen in liberal states and cities, but also in conservative places where immigrants are settled members of workforces and communities. The last decade has seen a variety of laws and de facto practices that limit cooperation with federal immigration enforcement and create conditions in which fewer noncitizens are arrested and identified for deportation. Many localities have chosen not to detain immigrants for ICE if they have not been convicted of serious offenses. Several localities have declined to prosecute minor drug possession cases so that legal immigrants would not face the serious immigration-related consequences of the charge.

Policymakers and advocates must recognize the importance of states' and localities' ability to impact immigration enforcement. It is crucial that they understand the interests and priorities that encourage – or discourage – state and local authorities from channeling immigrants into the federal immigration enforcement system. With such varied interests in mind, advocates and policymakers may be better able to pressure local governments to refuse or renege these partnerships.

Read more in Michele Waslin, "The Impact of Immigration Enforcement Outsourcing on ICE Priorities," *Outside Justice and the Criminalizing Impact of Policy and Practice* **(Springer, 2013).**