

THIS WEEK

Turf Talk

By [David Alire Garcia](#)

Published: July 18, 2007

Should Santa Fe police work with federal immigration agents? Depends on who you ask.

Under a blazing summer sun just a few weeks ago, Santa Fe Mayor David Coss stood before a crowd of immigrants and supporters and spoke of the ongoing struggle the city faces.

The event was the anniversary breakfast of Los Amigos del Parque, a group that offers support and snacks to immigrant day laborers—most of whom presumably are undocumented.

The site was the downtown parking lot adjacent to De Vargas Park, where those immigrants gather each morning looking for work—and where federal immigration agents were recently spotted ominously taking pictures.

“I take pride in Santa Fe being tolerant and a welcoming community,” Coss told the assembled crowd. “And I recognize that that tolerance and welcoming spirit are being stressed right now by the immigration issue.”



Over the past year, those stresses have included raids, arrests and deportations. These events have helped fuel a simmering debate over how city law enforcement officers interact with federal immigration agents from the US Immigration and Customs Enforcement (ICE), a division of the Department of Homeland Security.

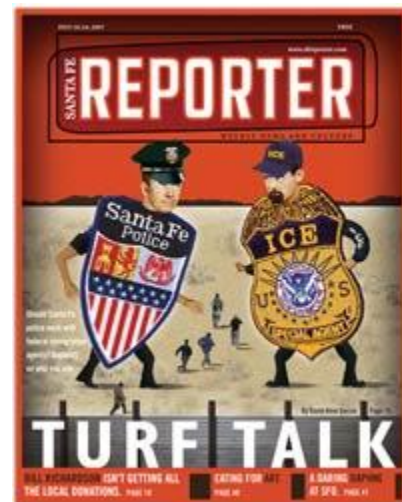
Right now, a city committee is working to craft more specific guidelines for police when dealing with undocumented immigrants, guidelines “that everyone can live with,” as Capt. Gary Johnson, the police liaison to the committee, puts it. He expects a final version of the updated guidelines to be unveiled as early as this week.

While some cities have developed active relationships with ICE—or *la migra*, as the agency is commonly known in Spanish—Santa Fe has taken a decidedly different track.

Since Coss became mayor less than a year and a half ago, Santa Fe has charted a course that strongly backs the city’s growing immigrant community and places strict limitations on local law enforcement’s interactions with federal agents.

The top brass of the police and Santa Fe’s well-organized immigrant advocates alike strongly back such limitations, and Coss was a vocal critic of ICE raids last February.

“I don’t think they made any difference except to inflame hard feelings and stir emotions,” he says, labeling the



program's methods as "a typical right-wing tactic."

Statements such as these endear Coss to immigrant advocates like Mária Cristina López, co-founder of the Santa Fe-based immigrant rights group Somos Un Pueblo Unido. She lauds the mayor as "an amazing ally."

Coss' stance also has won him critics. Former City Manager Asenath Kepler believes her termination stemmed from her disagreement with Coss over the city's immigration policies and believes such policies hamper public safety.

Such debates are likely to continue intensifying as national immigration policy remains at a politicized standstill.

Indeed, with the demise of comprehensive immigration reform in Congress late last month, Coss says city leaders are bracing for more raids courtesy of *la migra*. "Yes, we are," he says matter-of-factly. "We're expecting more."

Santa Fe is likely to see more ICE raids in large part because of the growing number of immigrants moving here without the proper paperwork. According to the Pew Hispanic Center, there are approximately 40,000 undocumented immigrants in New Mexico. The Urban Institute sets the figure as high as 75,000.

It's those kinds of numbers that spur ICE's Operation Return to Sender program. In a May 1 letter obtained by SFR, ICE Acting Director Judy Rogers defines the program as "an organized and methodical approach to the identification, location and arrest of fugitive aliens." The goal is to eliminate the backlog of so-called ICE fugitives defined as "an alien who has failed to depart the United States" pursuant to an order to do so or who has failed to report for an immigration hearing after having been sent a notice to do so. (The letter was written in response to one sent by Coss).

Nationwide, ICE estimates that there are roughly 632,000 ICE fugitives. According to Yale Law School Professor Michael Wishnie, who studies ICE programs, approximately two-thirds of these fugitives weren't even present in the courtroom when the deportation order was issued. Wishnie says some of those no-shows are intentional, but not all of them.

Since May 2006, ICE says it has arrested nearly 19,000 "criminal aliens," nearly 7,000 of them, however, were "non-fugitives," meaning their only crime was entering the US illegally—an infraction considered a civil, not a criminal, offense.

Some immigration advocates say ICE's enforcement is problematic because the country's immigration laws are unworkable.

Somos Un Pueblo Unido (<http://somosunpueblounido.org>) was founded in 1995 and claims to be the state's only community-based, immigrant-led organization that actively prepares immigrant leaders. "We believe that every person should have the freedom to move in order to pursue a better life," according to the Somos mission statement posted on the group's Web site in both English and Spanish.

"A large part of the problem results from the fact that our immigration laws—who can enter the country legally—are so restrictive," Jim Harrington, a retired Santa Fe lawyer who advises Somos on constitutional issues, says. "If [ICE] were to truly enforce these laws, it would cause a huge economic disaster. So they don't, and this game has been going on for 40 years."

Jim Vincent, the plainspoken, cigarette-chomping ex-Immigration and Naturalization Service prosecutor turned Santa Fe-based immigration attorney, says that without revamping the existing laws, ICE will mostly be forced to target the immense backlog of undocumented immigrants whose sole offense is that they crossed the border illegally. ICE, he says, has received generous funding in recent years to catch those who pose the most serious threat, not non-criminal fugitives, which to date make up the bulk of ICE's actual arrests.

"The reason [ICE] enlarged themselves is to get the criminals and the terrorists," Vincent, who retired a year ago as an immigration prosecutor in Dallas, says. "The guy who misses a hearing, yes, he's a fugitive from justice. They use that

word. But he just missed a hearing. He's not a terrorist."

Terror, however, is exactly how immigrant advocates such as Somos' Mária



About the hate mail he receives, Santa Fe Mayor David Coss says he simply shrugs it off. "Most of the stuff I get is not even from here." Photo credit: Julia Goldberg

Cristina López describe ICE's approach. Specifically: The five days of ICE raids that shook Santa Fe's immigrant community from Feb. 26 through March 2.

During those five days of raids, ICE agents fanned out across Santa Fe with a list of names and addresses of immigrants with outstanding deportation orders, showing up at homes, apartments and trailer parks. At the time, the chief of police called the lack of notice to local police "unacceptable."

Citing unspecified privacy concerns, Rogers says ICE won't disclose the names of those arrested in the raids. But she does offer a breakdown. ICE agents targeted 20 fugitives but made a total of 29 arrests. Only two of the immigrants arrested actually had criminal records. Overall, three were released, nine remained in ICE custody as of late April and 17 were immediately deported.



According to Officer Mark Barnett, president of the Santa Fe Police Officers Association, fellow officers observe a twist on a "don't ask, don't tell" policy. "Don't ask if they're illegal immigrants," he explains, "and if they are we don't do anything about it."



Santa Fe immigration lawyer Jim Vincent thinks the only sensible solution to today's problems is comprehensive immigration reform. "It absolutely has to be done, our laws have to be changed," he says.

In a separate incident in late March, ICE agents asked state police to assist with the investigation of an anonymous tip that a father had engaged in sexual conduct with his 11-year-old daughter. After ICE agents and state police interviewed both parents, they followed the father to Chaparral Elementary School. After state police interviewed the girl and concluded that the tip was baseless, the ICE agents confronted the father about his immigration status. Determining that he was not in the US legally, the agents arrested him on school grounds as other parents watched. He was deported to Mexico 12 hours later.

While this incident has been reported and highly publicized, ICE has never explained why the discredited tip nevertheless prompted the father's arrest on school grounds—an apparent violation of ICE's own policy, which reserves such action only if "the alien poses an immediate threat to national security or the community."

Asked for an explanation, ICE spokeswoman Nina Pruneda tells SFR, "We

would never do anything against our policy...we go after individuals who are gang members, predators, people soliciting sex over cyberspace."

State police officials have since apologized to the principal of the school for their involvement in the operation.

Vincent doesn't mince words when describing that Chaparral incident. "Using little kids to get their parents," he says. "That sounds like Nazism to me." He says that's the kind of tactic that reinforces his decision to switch teams. "I just got tired of breaking apart families and destroying businesses," he says.

Most recently, on June 12, ICE agents in a white van marked Department of Homeland Security were observed photographing day laborers at De Vargas Park. Vincent speculates that agents were trying to match photos with existing file photos of known ICE fugitives.

Last summer, on Aug. 23, three plainclothes agents, allegedly brandishing badges and guns, were seen in De Vargas Park in an unmarked vehicle asking day laborers for their immigration papers and refusing to identify themselves. In local news reports, ICE initially denied their agents were there, only to reverse themselves in January.

Since 2004, US Immigration and Customs Enforcement reports that the agency's agents have removed more than 400,000 "aliens," 210,000 of whom had criminal records. Since the agency's creation, ICE states that it has arrested more than 44,000 "illegal aliens," including 33,343 fugitives and 10,777 non-fugitives.



ICE, the largest investigative arm of the Department of Homeland Security, will spend nearly \$2 billion on detention and removal operations this year alone. Courtesy US Immigration and Customs Enforcement

Although there has been at least one instance of local police working with ICE (an undercover drug smuggling investigation last September in which 15 individuals, including four undocumented immigrants, were arrested), Coss describes ICE's efforts as "very ineffective" at removing criminal elements from the city. He also chides ICE for failing to "cooperate or coordinate or communicate" with the city's police department.

As for how city police communicate with ICE, that remains to be seen.

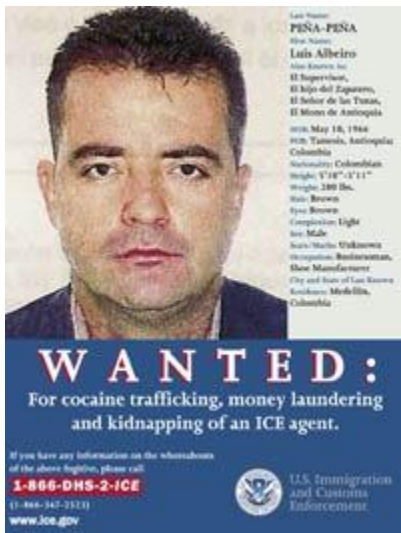
Coss and others have been pushing for an updated policy on how city police report to ICE for the last six months. The city's Immigration Committee has been meeting with representatives from law enforcement as well as immigrant advocates to craft a written procedure for the police.

One of the goals for rewriting the policy is to make it consistent with the city's 1999 resolution regarding immigrants. The resolution—passed unanimously by city councilors and supported by state and local law enforcement as well as the Municipal League—states that city money won't be used to identify or apprehend noncitizens living in Santa Fe "on the sole basis of immigration status." (In 2005, Gov. Bill Richardson issued an executive order embodying the same principle for state police).

As currently configured, the updated policy would require that the shift commander give approval to notify ICE that the police have an undocumented immigrant in custody. According to the most recent draft of the policy, the shift commander also would be asked to reread the 1999 resolution before making the decision. The current policy states that the shift supervisor, one link lower on the chain of command, may notify ICE without consulting the resolution.

In a letter dated May 1, ICE Acting Director Judy Rogers writes that ICE policy prior to an immigration enforcement operation calls for contacting local law enforcement "for liaison and support and as a courtesy," even contacting police before and after going to each address. But as the Santa Fe raids commenced on Feb. 26, Santa Fe police were adamant that they hadn't received any such courtesy.

"We want some guidance for the shift commander in his or her decision



Luis Albeiro Peña-Peña, aka. "El Supervisor" and "El Hijo del Zapatero," is considered

ICE's most wanted fugitive. His last known residence is Medellin, Colombia.

making process," committee member Erik Mason, a retired Army officer, says. "We don't want the police department to be using ICE willy-nilly."

López says the overriding purpose of the committee is to clarify a "separation of duties." She acknowledges that "police have to cooperate with ICE when there is a felony involved," such as drug trafficking or human smuggling. "But I think we should be very clear: That's criminal and that's who police deal with, criminals," she says, "not undocumented workers."

Harrington explains that police don't have authority as a matter of state law to enforce civil immigration law. He adds, "The gray area is when it comes to cooperating with ICE, either reporting people to ICE or helping ICE with enforcement actions going on in town."

According to Capt. Johnson, the driving force behind the push for an updated policy is to emphasize that "everyone within our jurisdiction is treated fairly regardless of their immigration status." In the eyes of the local police, he says immigration status only comes up in rare cases. One case he readily cites: the city's most recent homicide, the June 21 murder of a Mexican immigrant.

"Naturally," Johnson says, "we're going to have to ask immigration related questions pertaining to that investigation." But he says doing so "in no way" means police are trying to enforce civil immigration law.

That's not the case in cities all around the country.

While Santa Fe so far has rejected closer ties with ICE, many other communities have embraced some kind of partnership. Currently, there are 20 state and local law enforcement agencies that have participated in ICE trainings that effectively deputize local police as de facto immigration agents. Participating agencies stretch from California to Florida to New Jersey. Another 50 agencies either have requested training or have just begun receiving it. In all, ICE says it has trained some 350 officers nationwide to question and detain people suspected of breaking federal immigration laws. ICE trainings focus on immigration law, racial profiling and document fraud.

On June 28, ICE and Drug Enforcement Administration agents discovered a tunnel that stretched nearly 100 yards underground from a home in Nogales, Ariz., to another in Nogales, Sonora. The tunnel measured 3-by-3-feet and was equipped with lighting. Investigators believe the tunnel had yet to be used.

Colorado State Patrol is one such agency that has partnered with ICE. Troopers have been trained to perform some immigration enforcement duties on their own, allowing them to have more of a direct role in jailing and deporting suspected illegal immigrants. In Phoenix, 10 ICE agents are assigned full time to the city's police department to assist detectives on criminal cases and Phoenix police also have access to the databases ICE maintains.

In these programs—formally called 287(g) programs—gang and drug enforcement is lumped together with "fugitive apprehension." In perhaps the broadest example of local law enforcement grappling with immigration enforcement, the Alabama State Police actually asks all drivers stopped for traffic violations if he or she is a US citizen. The policy is defended as a way to avoid racial profiling.

In Maricopa County, Ariz., jailers interrogate foreign-born inmates and deputies on patrol routinely question suspects and witnesses about their immigration status. The sheriff's office there boasts that more than 72 deputies are cross-trained by ICE.

"Some states, like our neighbors in Arizona, have decided to make life as miserable as possible for immigrants," Harrington says.

But not everyone thinks such crosstraining is a bad idea. Former City Manager Kepler describes Maricopa County's approach as one that "empowers and supports their police department in doing this work." That's not the case in Santa Fe, she says.



Somos Un Pueblo Unido Executive Director Marcela Diaz says it's illegal for ICE to engage in racial profiling: "ICE shouldn't be determining that someone is undocumented because they speak Spanish or look Mexican," she says.

Somos Executive Director Marcela Diaz, on the other hand, has a very different explanation for the rise of local law enforcement partnering with ICE.

"States that are very right leaning and maybe xenophobic are getting local law enforcement to enforce federal immigration law," she says. She adds that this happens despite the "strong opposition from local law enforcement." Diaz cites another state to drive home the point. "Virginia recently passed a state law to give authority to local law enforcement to enforce federal immigration law," she says. "But police there has said they don't plan on using the authority."

Capt. Johnson seeks no such authority. In his view, local police shouldn't enforce immigration law, in large part because it would make it impossible to gain the trust of the immigrant community.

"We want them to know that if you call us for help you're not going to get deported," Johnson adds.

Santa Fe County Sheriff Greg Solano says his deputies essentially follow the same basic rule. "We have a policy of not calling or reporting people strictly for immigration status," he says. Nonetheless, he's the first to admit that immigrants don't always step forward with tips, as a witness or to file a report. "When undocumented immigrants are victims of crime," he says, "they usually don't report." In his experience, "a very high percentage" of undocumented immigrant victims of rape or burglary, for example, don't want to take that chance for fear they might be deported.

Kepler says she's also heard from police that "immigrants never come to them to talk about crime."

"It sort of begs the question," Kepler adds. "Why is this the main argument used to defend this policy?"

Kepler believes the policy reflects the outsized influence of immigrant rights group Somos Un Pueblo Unido.

Somos, she argues, has more influence on police policy than most realize and that the "strained relationship" between herself and Somos was the actual reason the mayor gave her when he asked for her to resign. "Behind closed doors, of course," she says. (Coss disputes Kepler's claim).

According to John Walsh of the Albuquerque Police Department, APD officers "routinely take calls from all who request assistance and we investigate a wide variety of crimes, but do not routinely ask for immigration status during our contacts." Walsh adds that if a "suspect/offender" is determined to be an undocumented immigrant "that information may be turned over" to ICE.



"There's a big difference between being compassionate and letting these criminal

problems grow and spread,” former Santa Fe City Manager Asenath Kepler says.

Further, she believes the city’s immigration policies have hurt public safety. “I think the police feel hamstrung,” she says

Mark Barnett, president of the Santa Fe Police Officers Association, doesn’t use the word “hamstrung,” but he does say he’d be open to more training from ICE.

“I’d say the biggest problem we have with undocumented persons is just verifying who they are,” he says. Barnett goes on to explain that a driver’s license check is often impossible to perform since many undocumented immigrants still don’t have state driver’s licenses (A 2003 state law allows immigrants to obtain a driver’s license regardless of immigration status). As a consequence, many immigrants are blank slates in the eyes of the cop on patrol. “We can’t even find if they’re involved in a crime we’re investigating,” he adds.

He calls the lack of information “the only real hindrance” of the current policy. “Mexicans or other foreign nationals aren’t committing all the crime,” but, he says, “for those who are, we have a much better chance of closing those crimes out if we know who these people are.” As a result, Barnett is open to more training. “I’ve never even been to a simple training on what an illegal document looks like, or what a fake social security card looks like,” the 12-year veteran of the SFPD says.

With the exception of Somos, the support for some kind of stronger local partnership with ICE is widespread. Freshman City Councilor Ronald Trujillo thinks the city should help ICE agents: “I would hope that the City of Santa Fe would lend our resources, just as we would lend our resources to the state police.” About trainings ICE might offer to city law enforcement, he says, “I personally don’t see a reason to turn it down.”

Councilor Patti Bushee, the only remaining member of the Council who supported the original 1999 resolution, is clearly open to more collaboration with ICE. “I’m not opposed to anything,” she says flatly. “If there’s criminal activity, I want them coordinated.”

City Councilor Carmichael Dominguez, who represents District 3, describes immigration as a sensitive topic for the people of his district, and echoes the familiar—if receding—ethnic clash that plays out in Santa Fe. “I feel that a lot of deep-rooted Hispanics with generations of families in this city are very confused about the issue,” he says. “When I was young back in the 1970s and 1980s, the word was that the Anglos are coming in and buying our land. But now it’s the immigrants are coming in and taking our jobs.” Dominguez says both he and the immigrants feel “caught in the middle.”

When it comes to the policy of dealing with undocumented immigrations, he says, “I think from a human rights perspective, you ought to be sensitive to people’s human rights. But having said that, there’s also a purpose behind what ICE is doing.”

In many ways, what ICE is doing is executing the thorny reality of the nation’s immigration policy.

“I think that you’re asking law enforcement to do a very difficult thing if you want them to find 12 million people that don’t have the proper documentation,” Coss says. “We will all lose our civil rights if that becomes the goal of ICE.”

Further, simply enforcing the law because it’s the law may not be the best course of action.

“Immigration is a divisive, hard issue,” Wishnie, of Yale Law School, says. “It touches many strong nerves. So I understand that many people think we should enforce the laws we have, but the mere fact that we have these laws doesn’t mean we have the right laws.”

The professor harkens back to the decades prior to the civil rights movement. Back then, the law of the land was routinely lambasted by both activist and progressive reformers.

“I think 50 years from now we will look back at today’s immigration laws the way we look back at Jim Crow segregation laws,” Wishnie says.

In what ICE believes to be one of the largest seizures of pre-Columbian artifacts smuggled from Peru to the United States, 412 artifacts were returned to the Peruvian government on June 13. The artifacts include gold jewelry, pottery, a burial shroud and a clay statue estimated to be 1,800 years old. They were found in several Miami-area locations.

If so, Santa Fe will have been ahead of the curve. **SFR**

© Copyright 2000–2007 by the Santa Fe Reporter