

# Immigrant Justice Network

## FAQ for Community Groups

### Immigration Enforcement Executive Actions - Interior Enforcement

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#### 1. Brief Introduction and Summary of Actions

On January 25th, Trump issued two Executive Orders ([here](#) and [here](#)) related to interior immigration enforcement policies. Taken together, these new policies are extremely harsh, and install a new deportation and detention enforcement scheme.

#### Who is this FAQ for?

This advisory is intended to provide community groups with a preliminary summary and analysis regarding these changes in interior immigration enforcement, which we will revise as we learn more about enforcement practices under the New Administration.

These orders:

- Eliminate the Obama prosecutorial discretion memos and replaces it with new and much harsher enforcement priorities guidance
- Terminate the Priority Enforcement Program, and brought back Secure Communities
- Order the hiring of 10,000 ICE agents and 5,000 CBP agents
- States that localities that “wilfully refuse to comply” with certain federal laws are “not eligible” to receive federal grants and could face federal lawsuits. The DHS Secretary can designate “sanctuary jurisdictions.”
- Orders a process for sanctioning countries that supposedly fail to assist in a person’s removal from the United States after they have a final order of deportation
- Require that DHS issue regulations on the collection of fines and penalties from unauthorized people and those that “facilitate their presence”
- Set up interagency tables for prosecutions of criminal immigration offenses and encourages the expansion and use of federal collaboration programs, like 287(g)

#### 2. How do these actions change or add to existing enforcement priorities or/and practices?

Trump’s “Enforcement Priorities” guidance contained in “*Enhancing Public Safety in the Interior of the United States*” is new and replaces the 2014 DHS Johnson enforcement priorities memorandum. These

new priorities are effective immediately and will likely sweep more people into the deportation and detention system. See Section 5 of Executive Order “*Enhancing Public Safety in the Interior of the United States*” (herein “*Interior Enforcement Memo*”).

The memos do not and cannot change the grounds of deportation. This means that people who have status will only be deported if they are removable under our current immigration laws.

The Interior Enforcement Memo identifies as an enforcement priority an individual who fits a ground of removal (e.g. unlawfully present) and is or has been:

- Convicted of any criminal offense
- Charged with any criminal offense where the charge is “not resolved”
- Committed “acts” that constitute a “chargeable criminal offense”
- Covered by any deportation ground related to crimes, criminal behavior (e.g. prostitution, drug sales), allegations of terrorism or national security
- Subject to “expedited removal” (e.g. a fast track deportation process that applies to people found within 100 miles from the border who cannot prove they have been here for 14 days)
- Subject to a final order of removal, and are still here. It does not matter when you got the order of removal.
- Suspected of fraud or wilful misrepresentation in their immigration cases
- An “abuser” of any government benefit program
- A threat to public safety and security in the “judgment” of an “immigration officer.”

*Note: several sections of the new enforcement priorities guidance lack definitional clarity. As in past rollouts of priorities memoranda, lack of clarity will be resolved through casework, advocacy, and organizing at the Field Office level, and will be subject to regional variation.*

*We note a number of them below:*

- The new guidelines state that a person is a deportation priority if they have “committed acts that constitute a chargeable offense.” It is hard to know how an ICE officer will implement this on the ground.
- “Abuse” of a government program is not defined.
- The new guidelines make a priority someone who has state criminal charges that are “not resolved.” The term “not resolved” is not defined. We assume that it means a charge that remains pending or open, as opposed to a charge which is dismissed. However, we will not know ICE’s interpretation of this category until it occurs in practice.
- We do not know how these orders will work with the immigration courts, but they do not change immigration law. The orders direct immigration judges to staff more detention jails. See “*Border Security and Immigration Enforcement Improvements*”, Sec. 5.
- We do not yet know how ICE will treat traffic ticket violations under these guidelines. (Local advocacy may play a role here).

Note on oversight: The executive orders do not provide direction on how DHS intends to provide oversight for violations of the new priority enforcement guidance. In the past, communities could seek “

DHS headquarter review” of prosecutorial discretion requests, particularly those in violation of the priorities memorandum, from DHS or ICE Headquarters. It is unclear if and how DHS will oversee the implementation of these new priorities categories, or whether these are suggested categories of individuals for targeting but officers have discretion to arrest others outside of these priority categories. The only “transparency” referenced in the Executive Orders related to data collection through federal and state criminal databases to maintain “situation awareness on criminal aliens.” *See Interior Enforcement Memo*, at Section 16.

### **3. How will Trump implement his new deportation and detention goals?**

Immigration enforcement under Trump’s executive orders will likely build on the existing enforcement regime under the Obama administration and revive more dormant programs created under the Bush Administration.

We have highlighted a number of the major enforcement tactics that the Trump Administration will likely take below:

- 287(g) and promoting close collaboration between local law enforcement and immigration agents: Section 8 of the *Interior Enforcement Memo* states the intention of the Trump Administration to aggressively expand 287(g) agreements, agreements that allow police department officers to act as immigration agents. *See also* Executive Order “*Border Security and Immigration Enforcement Improvements*”, at Section 10. These agreements will likely roll out in the places where there are few immigration support groups.
- Expand immigration detention facilities: DHS will try to keep people detained during their deportation proceedings to make it harder for them to fight their deportations. The expansion of detention bed space will be crucial to doing so. There was already a major growth in immigration detention facilities under President Obama. The executive order directs DHS to significantly expand on that. *See* Executive Order “*Border Security and Immigration Enforcement Improvements*,” Sections 5 and 6.
- More ICE presence in local criminal legal systems, and a more resourced version of Secured Communities: we expect that there will be increased ICE presence at jails and use of detainees particularly given the Trump administration's intention to add 10,000 more ICE agents. *See Interior Enforcement Memo*, at Section 7. We also expect continuing expansion of ICE involvement in local criminal legal system such as through collaboration with probation or presence in courts. *See also* note on Secure Communities vs. PEP-COMM in Point 5 of this Advisory.
- More ICE Fugitive Operation teams: It is almost certain that we will see DHS build more fugitive operations teams who target people with final orders of deportation and criminal records in home and street raids and vehicular checks. These raids will move more quickly because of the use of technology and surveillance.

- More Workplace raids: We expect more workplace raids and investigations by ICE HSI and criminal prosecutions for harboring and identity fraud.
- More Reentry Prosecutions and Immigration-Related Prosecutions: Section 11 of the *Interior Enforcement Memo* directs the Department of Justice and DHS to increase resources towards prosecuting individuals who are “immigration violators.”

#### 4. Who in our communities is now most at risk?

People most at risk are people in detention or jail, people who had contact with the criminal justice system and people with a final order of removal. At particular risk are people who now have stays of deportation or orders of supervision that will expire. Those people may be re-arrested and detained at the time they appear for their supervision check-in or renew a request for prosecutorial discretion.

According to [draft executive order](#), at risk for the next few months are nationals from countries of “particular concern,” namely Somalia, Iraq, Iran, Libya, Somalia, Sudan and Yemen. These individuals will face more scrutiny as international students or individuals applying for immigration benefits, e.g. green card. (Issuance of this Executive Order has not been announced as of 1/26/2017.)

Below are some examples of people who are at risk:

- A person who has a stay of removal or some other grant of prosecutorial discretion. A check-in with an ICE office to renew requests for prosecutorial discretion or appearances for supervision check-ins may result in detention and removal. ICE may also target a person for a home raid at their last known address.
- A person granted DACA who has any conviction or a removal order.
- A suspected gang member on a police or gang database
- Someone who may have used papers to work that are not their

#### 5. More Questions than Answers: what enforcement practices or programs remain unclear under the Executive Orders?

In the following section, we have flagged a number of areas of interest that the Executive Order references but does not provide clarity on. We will be tracking these areas of interest and will provide updates as we learn about further developments:

*The threats on federal funding for “sanctuary jurisdictions” are not specific:*

The Executive Order threatened sanctuary jurisdictions with loss of federal funding and lawsuits. But the order is vague, poorly worded and does not force the local jurisdictions to do anything specific now or in the future. Once the Administration begins taking steps to implement the executive order, likely through actions from the Department of Justice, we can provide further updates. Additionally, we are tracking the possibility of litigation challenging the unconstitutionality of Trump’s actions.

*Secure Communities is back, but we don't what is left from PEP-COMM:*

The Executive Order authorized DHS to take all necessary steps to terminate PEP and restart Secure Communities. What will happen to the old PEP-COMM tools, like 'notification' forms and the new detainer forms is unknown. We assume that ICE will resume using detainers, even though an increasing number of courts are finding detainers unconstitutional.

*We don't know how Trump will pay for 15,000 new agents:*

The Trump Administration may decide to shift funds for the 15,000 ICE and CBP agents through the existing budget or ask for new money through the new President's budget, expected to come out in February or March 2017. If money is sought through the new budget, it would need to be approved through U.S. Congress.

*What fines will Trump collect from non-citizens and those that help them?*

Section 6 of the Executive Order, "Enhancing Public Safety in the Interior of the United States," directs DHS to issue guidance and regulations on collection of civil fines and penalties on undocumented individuals. We do not know what he is referencing. One example of immigration enforcement that does involve penalties is civil forfeiture of property from people caught in workplace raids or fines related to federal prosecutions. Trump ordered that guidance come out by January 25, 2018.

**6. What are some existing resources that could be helpful to my work right now?**

- a. IDP Know Your Rights: <http://www.immdefense.org/ice-home-and-community-arrests/>
- b. IDP Defending Against ICE Raids Toolkit: <http://www.immdefense.org/raids-toolkit/>
- c. NIPNLG Know Your Rights - travel safety planning, Know Your Rights at demonstrations  
<https://www.nationalimmigrationproject.org/tools.html>
- d. NIPNLG Practice Alert for Lawyers on Trump's January 25, 2016 EOs:  
[http://www.nationalimmigrationproject.org/PDFs/practitioners/practice\\_advisories/gen/2017\\_26Jan-trump-enforce.pdf](http://www.nationalimmigrationproject.org/PDFs/practitioners/practice_advisories/gen/2017_26Jan-trump-enforce.pdf)
- e. ILRC Know Your Rights (English/Spanish/Chinese): <https://www.ilrc.org/know-your-rights-and-what-immigrant-families-should-do-now>