

Understanding Trump's Executive Order Affecting Deportations & "Sanctuary" Cities

Last revised FEBRUARY 10, 2017

The executive order (EO) that President Trump signed on January 25 could, depending on how it is interpreted and implemented, dramatically change how immigration laws are enforced in the interior of the United States. The EO is titled "Enhancing Public Safety in the Interior of the United States."¹ In general, immigration enforcement activity that takes place in the interior of the U.S., away from the border regions, is known as "interior enforcement."

The executive order calls for major changes to interior enforcement

Among other things, the EO

1. calls for tripling the number of officers available for immigration enforcement,
2. drastically expands who the government considers a priority for deportation,
3. makes it easier to deport immigrants without due process, and
4. threatens to take away critical federal funding from jurisdictions that have sought to build trust with their immigrant residents.

The EO jeopardizes due process and other constitutional protections that all people have regardless of their immigration status. The EO also encourages the use of racial profiling by U.S. Immigration and Customs Enforcement (ICE) and local law enforcement officials. In other words, this EO has serious negative implications for the well-being and safety of all communities, immigrant and nonimmigrant alike.

Orders that the number of ICE officers be tripled

The EO directs the secretary of the Department of Homeland Security (DHS) to hire 10,000 new ICE officers, to the degree that the law and appropriation of funds by Congress makes this possible. Hiring 10,000 new officers would triple ICE's current force of about 5,000 officers.

It is not uncommon for ICE agents to violate people's civil rights, lie to them or otherwise try to deceive them, and engage in other misconduct when doing immigration enforcement work. A tripling of the number of ICE officers would translate into more ICE officers on the streets, in jails, and in other places. It would intensify the climate of fear that already has

¹ The full text of the order is available at www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united.

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descended on many immigrant communities, and the number of abuses committed by ICE officers would increase in number and severity.

Drastically expands ICE “enforcement priorities”

Because the federal government does not have the resources to deport every person in the U.S. who is undocumented or deportable, it focuses its efforts on those whom it considers to be “priorities” for enforcement.

During the Obama administration, DHS issued a formal revision of its enforcement priorities on Nov. 20, 2014, in response to widespread criticism over a dramatic increase in the number of deportations. While still broad, the priorities were intended to focus on (1) people with certain criminal convictions (aggravated felony, felony, significant misdemeanor, or three or more misdemeanors) and (2) people who had entered or reentered the U.S. without permission after Jan. 1, 2014. Although not always followed, the priorities created narrowed, realistic parameters for ICE’s enforcement actions.

Under the new EO, however, the priority categories are vastly expanded. They are now so numerous and broad that, in effect, the EO eliminates any notion of actual prioritization. The new priorities include any removable noncitizen:

- Who has a final removal order and who has not left the U.S.
- Who has been “charged with any criminal offense, where such charge has not been resolved.” This includes people with pending charges, even if the person has been released and may eventually not face any charges if they are later dismissed. It’s not clear how ICE will determine which charges are “resolved.”
- Who has “committed acts that constitute a chargeable criminal offense.” This could include anyone who has ever done something that could be considered a crime. For example, a removable noncitizen who drank an alcoholic beverage once when they were underage, no matter how long ago it was, could now be considered an enforcement priority under this provision of the EO. It is not clear if or when ICE will issue clarifying guidance on this provision.
- Who is suspected of having committed fraud or willful misrepresentation in their immigration case.
- Who “abused” a public benefits program. The EO does not define “abused” nor specify what an “abuse” might include. It also does not specify which programs are included under this priority nor how broadly “public benefits” will be interpreted.
- Who, “[i]n the judgment of an immigration officer, ... pose[s] a risk to public safety or national security.” This is another overbroad, extremely vaguely-delimited category. Law enforcement officers regularly judge individuals to be threats to public safety based solely on their appearance or their presence in a particular neighborhood. For example, being listed, as a result of racial or other profiling, in a database containing information about gang members or suspected gang members has, in the past, been enough to deem a person to be a threat to public safety.

Depending on how and by whom these priorities are implemented, virtually any removable noncitizen can be considered a priority for deportation under the EO issued on

January 25. Any adult who was ordered deported as a minor and is unaware of that deportation order is now a priority. And any undocumented person facing criminal charges who has been released from jail while awaiting their court hearing is now a priority.

A result of these changes is that more immigration and local law enforcement officers will feel empowered to racially profile people they suspect are immigrants in order to target them for immigration enforcement under these new “priorities.” People stopped and arrested by law enforcement on a pretext—e.g., they look “foreign” or “suspicious” (because of the color of their skin) and one of their car’s taillights is out, so the officer stops them to fish for evidence that they’ve done something illegal—will now be much more likely to face deportation. Once a person is arrested and charged with an offense, under the Jan. 25 EO they become an immigration enforcement priority merely for being charged, and they likely will be turned over to ICE.

More local 287(g) agreements will result in more racial profiling by law enforcement

Through the 287(g) program, local jurisdictions enter into agreements with DHS that allow certain local law enforcement officers to enforce federal immigration laws. Currently, ICE has 287(g) agreements with 32 law enforcement agencies in 16 states,² significantly less than in previous years due to widespread documentation of the program’s abusive effects. Under the Jan. 25 EO, however, the program would be subject to broad and unchecked expansion.

A 2013 University of Illinois report surveying Latinos from various countries living in the U.S. found that 70 percent of undocumented Latino immigrants and 28 percent of Latino U.S. citizens were less likely to contact law enforcement if they were victims of a crime, for fear that police would inquire about their immigration status or the immigration status of people they know.³ In part because of this chilling effect on local law enforcement’s ability to do its work effectively, and because the 287(g) program has drawn [sharp criticism](#) and diverts law enforcement resources from where they’re most effective,⁴ local jurisdictions have, until now, tended to move away from involvement in 287(g) agreements. Previously, the program was embraced by outliers such as Joe Arpaio, the former sheriff of Maricopa County, Ariz., and others whose participation in the program resulted in [routine racial profiling](#) and discrimination against Latinos.⁵

² *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, www.ice.gov/factsheets/287g#signedMOA.

³ Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* (Dept. of Urban Planning and Policy, Univ. of Illinois at Chicago, May 2013), www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF.

⁴ Letter to Hon. Janet Napolitano, Secretary, U.S. Dept. of Homeland Security, from Lucille Roybal-Allard and other members of Congress, Dec. 12, 2012, https://aclum.org/sites/all/files/legal/287g/letter_napolitano.pdf.

⁵ See, e.g., “Justice Department Releases Investigative Findings on the Alamance County, N.C., Sheriff’s Office: Findings Show Pattern or Practice of Discriminatory Policing Against Latinos,” U.S. Justice Dept. press release, Sept. 18, 2012, www.justice.gov/opa/pr/2012/September/12-crt-1125.html.

Attacks and stigmatizes local policies that build trust between law enforcement and immigrant communities and that uphold residents' constitutional rights

The EO threatens to punish localities, i.e., “sanctuary” cities and towns, that place limits on how much they will assist with federal immigration enforcement actions. The language of the EO is vague and gives the secretary of Homeland Security and the U.S. attorney general broad authority to define what is a “sanctuary” jurisdiction. The intended effect seems to be to coerce localities into reversing their policies by threatening them with loss of federal funding and other penalties.

While it remains to be seen how this provision of the EO will be implemented, it raises serious constitutional questions and has already resulted in legal challenges. It appears to seek to coerce localities into complying with federal ICE “detainers”—requests by ICE that certain people be held in law enforcement custody so that ICE can take them into immigration detention—that numerous federal courts have said have resulted in violations of the Fourth Amendment. This provision of the EO is an attempt to intimidate hundreds of localities around the country that adopted “sanctuary” policies in order to enhance *all* community members’ safety, and to pressure localities to be complicit in the federal government’s violation of the Constitution and federal law.

The EO also aims to stigmatize “sanctuary” jurisdictions by mandating the weekly publication of a list of criminal activities committed by noncitizens who were released by localities that declined to hold them for ICE enforcement purposes. This attempt to publicly shame individuals and localities whose policies uphold the Constitution and due process will perpetuate and encourage harmful and xenophobic stereotypes about noncitizens.

Revives “Secure Communities”

The EO orders that [Secure Communities](#) be revived.⁶ The Secure Communities program was an ICE program that allowed fingerprints of individuals arrested by state and local law enforcement to be sent to DHS in order to identify people with an immigration history. Although the program purportedly targeted “criminal aliens” who had been convicted of serious offenses, Secure Communities applied to immigrants regardless of guilt or innocence, how or why they were arrested, and whether their arrests were based on racial or ethnic profiling or were just a pretext for checking immigration status.

Former DHS Secretary Jeh Johnson said that Secure Communities’ “very name has become a symbol for general hostility toward the enforcement of our immigration laws.”⁷ And numerous federal courts have held that state and local authorities’ compliance with ICE “detainers”—requests by ICE that certain people be held in law enforcement custody so that ICE can take them into immigration detention—have resulted in violations of the Fourth Amendment. Nevertheless, the EO will likely result in many more detainers being issued, since it envisions a detainer being issued for any removable noncitizen who is arrested,

⁶ For more information about this program, see DHS’s “*Secure Communities*”: *No Rules of the Road* (NILC, Mar. 2011), www.nilc.org/issues/immigration-enforcement/scomm-no-rules-of-road-2011-03-0/.

⁷ Memo from Jeh Johnson, Secretary, U.S. Dept. of Homeland Security, to Thomas S. Winkowski, et al., Subject: Secure Communities, Nov. 20, 2014, www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf.

regardless of how or why they were arrested and even if they are found not to be chargeable for any offense. The EO's resurrection of Secure Communities will revive the [egregious problems](#) the program created before the Obama administration terminated it,⁸ and it likely will result in an increased ICE presence in local jails as well.

⁸ *DHS Proposes Fantasy Remedies to Cure Fundamental Flaws in the Secure Communities Program* (NILC, July 2011), www.nilc.org/issues/immigration-enforcement/dhs-6-17-11-memos-qa-2011-07/.