



## Summary of Executive Order “Enhancing Public Safety in the Interior of the United States”

On January 25, 2017, President Trump signed an executive order, “[Enhancing Public Safety in the Interior of the United States](#),” which announced a massive expansion of interior immigration enforcement. The order defines enforcement priorities so broadly as to place all unauthorized individuals at risk of deportation, including families, long-time residents, and “Dreamers” (those who were brought to this country as children). The order also encourages states and localities to enforce federal immigration laws. This is a change from the Obama administration’s efforts to scale back such initiatives and adopt policies intended to discourage abusive or discriminatory practices by local law enforcement. Finally, the order revives the constitutionally suspect [Secure Communities program](#) (which was terminated in 2014), orders the Department of Homeland Security (DHS) to consider stripping federal funding from so-called “sanctuary cities,” and encourages additional criminal prosecutions for illegal entry into the United States. Overall, the Trump administration’s approach will have devastating consequences for immigrant communities and will undermine, rather than improve, public safety.

### **Prioritize All Undocumented Immigrants for Removal**

The executive order prioritizes for deportation those noncitizens who:

- have been convicted of any criminal offense;
- have been charged with any criminal offense, where the charge has not been resolved;
- have committed acts that constitute a chargeable criminal offense;
- have engaged in fraud or willful misrepresentation in connection with any official matter or application before a government agency;
- have abused any program related to the receipt of public benefits;
- are subject to a final order of removal but have not departed; or
- in the judgment of an immigration officer, otherwise pose a risk to public safety or national security.

The order also includes broad language identifying individuals who are subject to certain immigration law provisions related to crimes, terrorism, and fraud or misrepresentation.

The Obama administration acknowledged that with limited enforcement resources the government had to

focus immigration enforcement on serious criminals and individuals who posed threats to national security or public safety. However, these new “priorities” are not ranked in order of importance, with criminal convictions listed first and national security risks listed last. Instead, the executive order makes every unauthorized immigrant a priority.

Unauthorized immigrants with no criminal history can fall under the third bullet because entering without inspection is a chargeable criminal offense (illegal entry or re-entry). Also, since the executive order separately states that unauthorized immigrants are a risk to public safety and national security, the final bullet becomes a catch-all category.

### **Increase the Use of State and Local Police to Enforce Immigration Law**

The order directs the Secretary of Homeland Security to increase the number of “287g” agreements. Under the 287(g) program (named for the section of the Immigration and Nationality Act that authorizes it), DHS may deputize select state and local law-enforcement officers to perform the functions of federal immigration agents. Deputized officers may interview individuals to determine their immigration status; check their documents against DHS databases; issue “detainers” (which instruct a state or local law enforcement agency to hold a suspected removable individual for up to 48 hours after the scheduled time of release so that ICE can assume custody); and issue a Notice to Appear (NTA), the official charging document that begins the removal process.

Issues with the 287(g) program are well-documented. A March 2010 report by the DHS Office of Inspector General concluded, among other findings, that ICE and its local law-enforcement partners had not complied with the terms of their 287(g) agreements; that the evaluation parameters for deputized officers contradicted the stated objectives of the program; and that the program was poorly supervised by ICE and in need of additional oversight. Under the Obama administration, the program was significantly reduced, and its use was limited to engaging with noncitizens in jails, as opposed to anywhere in public.

The 287(g) expansion proposed by the executive order would require additional funding from Congress to pay for the program training.

### **Hire additional ICE agents**

The order directs ICE to hire 10,000 additional Enforcement and Removal Operations (ERO) officers. As of Fiscal Year 2016, there are approximately 8,000 ERO officers, so the executive order would more than double the amount of staff. Even if funding is appropriated for ERO expansion, it will take significant time to hire, train, supervise, and secure vehicles and workspace for the additional officers.

## Punish “Sanctuary” Jurisdictions

The order directs the Department of Justice (DOJ) and DHS to ensure that jurisdictions limiting their cooperation with DHS are not eligible to receive federal grants, except as deemed necessary for law-enforcement purposes. In April, the Attorney General sent a letter to nine jurisdictions demanding they show compliance with federal law or risk losing funding.

Over the past several decades, many states, counties, and cities have adopted a variety of policies intended to serve and protect all of their residents, regardless of immigration status. One subset of these policies concerns a state’s or locality’s role in cooperating with federal authorities to enforce immigration law. These laws, policies, or resolutions are sometimes referred to as “sanctuary” policies, although no legal or standard definition of that term exists.

Nothing in federal law requires localities to enforce federal immigration laws. Federal law does prohibit state and local governments from enacting laws or policies that limit communication with DHS about “information regarding the immigration or citizenship status” of individuals. But federal law **does not**:

- prohibit laws or policies that limit communications regarding criminal case information, custody status, or release dates of individuals in custody;
- mandate that jurisdictions comply with immigration detainers;
- prohibit policies or laws that restrict compliance with detainers;
- require state or local law enforcement to collect information on immigration or citizenship status; or
- prevent jurisdictions from limiting the collection of such information.

The executive order authorizes DHS to designate “sanctuary jurisdictions,” without providing any definition of the term, but does not immediately strip funding from “sanctuary cities.” Nor does it clarify which federal funding sources could be denied since it exempts funding cuts for law-enforcement purposes.

## Increase Immigration Prosecutions

The order directs DOJ and DHS to adequately fund criminal prosecutions of foreign nationals crossing the border without inspection. Border prosecutions, however, are nothing new and have increased dramatically in the past decade. In courts across the southwest border, the federal government has systematically prosecuted unlawful border crossers for illegal entry and illegal re-entry in group hearings that violate fundamental due process. Asylum seekers have been wrongfully prosecuted under this initiative. These prosecutions, often referred to as “Operation Streamline,” are intended to deter border crossings, but instead have clogged the federal courts and wasted limited government resources with little evidence that the program is achieving its goals. Immigration-related prosecutions currently represent more than half of the total federal court docket—more than all other federal prosecutions for drugs, firearms, and fraud combined.

## **Revive Secure Communities**

The order reinstates the controversial Secure Communities Program and terminates the Priority Enforcement Program (PEP) which DHS created in its place. In 2014, DHS terminated Secure Communities after it became mired in controversy and litigation due to constitutional concerns regarding detainers and racial profiling triggered by the program. Both Secure Communities and PEP require local jails to share the fingerprints of individuals taken into custody with DHS so that ICE can decide whether or not to issue a detainer. PEP focused enforcement actions on individuals with serious criminal convictions and requested that local jails notify ICE when the individuals were to be released. Secure Communities casts a wider net and asks local jails to hold immigrants in custody. Although the information sharing process has remained a requirement under both programs, many localities have limited their role in immigration enforcement, including whether and when to comply with detainer requests, to better protect their communities and ensure that law-enforcement officials comply with the Constitution.

## **Pressure Countries to Accept their Nationals**

The order directs the Secretary of State to ensure that diplomatic negotiations with other countries include a requirement that foreign states accept the return of their nationals. This provision aims to address difficulties DHS has faced deporting some individuals, particularly those with certain criminal histories, when the foreign state delays the issuance of identity and travel documents. These issues have long been under negotiation, but the order's requirement that, in the course of any other negotiations, a foreign state must agree to accept returning nationals could greatly complicate and impede a wide range of bi- and multi-lateral agreements.

## **Creation of the Office for Victims of Immigrant Crimes**

The executive order calls for the creation of an office to provide services to the victims of crimes committed by removable immigrants. Launched on April 26, 2017, the Victims of Immigration Crime Engagement (VOICE) Office has both a hotline and local ICE contacts which crime victims can reach out to in order to inquire about victim services and receive notifications on the custodial status of immigrant offenders. VOICE will also deliver on the executive order's directive to report quarterly on “the effects of the victimization by criminal aliens present in the United States.” While victims of crime are definitely in need of therapeutic and other services, and crime is an issue that must be taken seriously, the emphasis of VOICE is heavily placed on the perpetrators being immigrants, serving to scapegoat and demonize immigrants. The data clearly shows however, that immigrants, including unauthorized immigrants, are less likely than native born Americans to commit crimes. Such an office may contribute to a climate of discrimination, suspicion, and hatred against all immigrants, and can embolden anti-immigrant groups.

In addition to VOICE, the order also calls for DHS and DOJ to publish quarterly reports on the immigration status of all incarcerated noncitizens and weekly reports on the criminal actions committed by noncitizens in “sanctuary” jurisdictions. Making this information public is another tactic the administration employs to paint immigrants as criminals, despite the fact that they are disproportionately less likely to commit crimes than the native born.

## **Changes to DHS’s Privacy Policies**

The executive order calls for agencies to revoke the Privacy Act protections of any noncitizens who are not lawful permanent residents (LPRs). The Privacy Act of 1974 (5 U.S.C. § 552a), which limits the government’s ability to publicly disclose personally identifiable information, only covers U.S. citizens and LPRs. Since 2007, DHS policy had extended Privacy Act protections to all individuals, regardless of immigration status. DHS’s new privacy policy guidance was issued on April 27, 2017 and made clear that Privacy Act provisions would no longer extend to persons other than U.S. citizens and LPRs. However, decisions regarding the use and protection of information held by DHS must still conform to Fair Information Practice Principles, such as being transparent about the purpose of information collection and using the information accordingly.