



# Interior Enforcement Executive Order and DHS Memo FAQs

## What does this Executive Order and DHS memo do?

The Jan. 25 Executive Order and Feb. 20 memo from the Department of Homeland Security change the current enforcement priorities and direct Immigration and Customs Enforcement (ICE) to dramatically increase the detention and deportation of undocumented immigrants living in the United States or seeking entry. They request funding that would double the number of ICE officials, reinstate cooperative enforcement agreements with state and local governments, and threaten to defund and otherwise penalize sanctuary jurisdictions.

## What are the new enforcement priorities?

Under the new enforcement priorities, almost all undocumented people are considered a priority for removal. The list enumerated by the order and memo basically includes everyone who entered the United States illegally or overstayed or violated their nonimmigrant visa. These include people who have been convicted of any criminal offense, have been charged with any criminal offense, or have even

committed acts that constitute a chargeable criminal offense. For example, entering the United States illegally is a misdemeanor under federal law, and anyone arrested for minor traffic offenses would also be targeted. The order also prioritizes the removal of people who have lied or misrepresented information on government forms, have “abused” any program related to receipt of public benefits, have a prior removal order, or otherwise pose a risk to public safety or national security in the opinion of an immigration officer. This last category is so broad that it could include almost anyone. The preamble to the order specifically states that many of those who entered illegally, or overstayed or otherwise violated the terms of their visas present a significant threat to national security and public safety and therefore would be a priority for enforcement.

## Does the president have the authority to set detention and enforcement priorities?

Yes. In general, Congress has the power to create immigration laws and the Executive branch (including the president and agencies such as the Department of Homeland Security) has the power and responsibility to enforce them. Part of enforcing

immigration law means that the president has power to set enforcement priorities and exercise discretion.<sup>1</sup> In theory, this discretion allows limited resources to be spent in the most effective and efficient manner.

## How many people are affected by the president's enforcement priorities?

The Executive Order affects millions of immigrants and their U.S. citizen family members. There are at least 11 million undocumented immigrants living in the U.S.<sup>2</sup> Approximately 5.7 million U.S. citizen children have undocumented parents.<sup>3</sup> The fear alone generated from this Executive Order will harm American children. The American Academy for Pediatrics released a statement in response to the order stating, "When children are scared, it can impact their health and development. Indeed, fear and stress, particularly prolonged exposure to serious stress—known as toxic stress—can harm the developing brain and negatively impact short- and long-term health."<sup>4</sup> Overall, 6.6 million U.S. citizens could be affected by the order.<sup>5</sup>

## When do the new enforcement priorities go into effect?

The new enforcement priorities went into effect the day the order was signed, on January 25, 2017. The DHS memo of Feb. 20 clarified and expanded on the order. People who are affected by the EO should learn their rights and plan for an emergency situation immediately. Know Your Rights guides and planning

materials can be found at: [cliniclegal.org/resources/know-your-rights](http://cliniclegal.org/resources/know-your-rights).

## What are 287(g) agreements and does the president have authority to implement them?

The order and memo encourage expanded use of INA § 287(g) agreements as a "force multiplier." Section 287(g) agreements are voluntary partnerships between state or local law enforcement agencies and federal immigration officers. In these partnerships, state or local police are granted authority to arrest or detain people who are suspected of violating immigration laws and/or screen the people they arrest for immigration violations using federal databases. If requested, state or local police will detain people so that immigration officers can pick them up from police custody.

The federal government does not have the authority to force states or localities to sign 287(g) agreements; they must be voluntary. The 10<sup>th</sup> Amendment prohibits the federal government from forcing states or localities to do the federal government's job.<sup>6</sup> When states or localities voluntarily enter into 287(g) agreements, they use precious local dollars doing federal work they are not required to do.

Section 287(g) agreements also create distrust between local law enforcement and communities. Undocumented people or family members of undocumented people who have witnessed or are victims of crimes may be afraid to interact with the

1 "Understanding Prosecutorial Discretion in Immigration Law," (May 26, 2011), available at [www.americanimmigrationcouncil.org/research/understanding-prosecutorial-discretion-immigration-law#3](http://www.americanimmigrationcouncil.org/research/understanding-prosecutorial-discretion-immigration-law#3)

2 Jens Manuel Krogstad, Jeffrey S. Passel, D'Vera Cohn, "5 facts about illegal immigration in the U.S.," (Nov. 3, 2016), available at [www.pewresearch.org/fact-tank/2016/11/03/5-facts-about-illegal-immigration-in-the-u-s](http://www.pewresearch.org/fact-tank/2016/11/03/5-facts-about-illegal-immigration-in-the-u-s)

3 Robert Warner and Donald Kerwin, "Mass Deportations Would Impoverish U.S. Families and Create Immense Social Costs," JOURNAL ON MIGRATION AND HUMAN SECURITY, (2017), available at [cmsny.org/publications/mass-deportations-impoverish-us-families-create-immense-costs](http://cmsny.org/publications/mass-deportations-impoverish-us-families-create-immense-costs)

4 David Oliver, "Pediatricians Want to Protect Immigrant Kids From Trump's Executive Order," (Jan. 26, 2017), available at [health.usnews.com/wellness/health-buzz/articles/2017-01-26/pediatricians-want-to-protect-immigrant-kids-from-trumps-executive-orders](http://health.usnews.com/wellness/health-buzz/articles/2017-01-26/pediatricians-want-to-protect-immigrant-kids-from-trumps-executive-orders)

5 Robert Warner and Donald Kerwin, "Mass Deportations Would Impoverish U.S. Families and Create Immense Social Costs," JOURNAL ON MIGRATION AND HUMAN SECURITY, (2017), available at [cmsny.org/publications/mass-deportations-impoverish-us-families-create-immense-costs](http://cmsny.org/publications/mass-deportations-impoverish-us-families-create-immense-costs)

6 *South Dakota v. Dole*, 483 U.S. 203 (1987)

police, making communities less safe.

## What is a sanctuary jurisdiction?

There is no exact definition of a “sanctuary jurisdiction” and the Executive Order does not define it. In general, a sanctuary jurisdiction is understood to be a state or city where local officials will not collect information or inquire about a person’s immigration status. Examples include major cities in California, Connecticut, Rhode Island, Vermont, as well as Washington D.C., New York City and Chicago. Sanctuary jurisdictions do not enter into 287(g) agreements with the federal government and do not arrest or detain individuals solely based on suspected immigration violations. If immigration officers request that local police hold an individual in custody based on a suspected immigration violation (“detainers”), that request is not generally honored. Detainers are simply requests, not court orders. These jurisdictions take the position that enforcing immigration law is the job of the federal government, not local officials.

Jurisdictions that have elected not to participate in federal enforcement of immigration laws have experienced tremendous benefits for the community as a whole. Studies show that there is less crime, a higher median household income, less poverty and lower unemployment rates than in jurisdictions without a sanctuary policy in place.<sup>7</sup>

## What is 8 U.S.C. § 1373 and does the president have authority to cut off federal funding from sanctuary jurisdictions that do not comply with that law?

The Executive Order argues that sanctuary jurisdictions are in violation of 8 U.S.C. § 1373. This

law says that state and local government agencies and officials may not deny information requests from the federal immigration agency or its officials regarding a person’s immigration status. However, the law does not require that state or local government agencies collect immigration information for the federal government, nor does it require them to take specific actions upon obtaining such information. The statute only prohibits them from taking action to prohibit or restrict the maintenance or exchange of such information.

Whether the federal government can cut off federal funding to sanctuary jurisdictions is not settled. Immediately following the signing of the Executive Order, the city of San Francisco filed a lawsuit arguing that the order violates the 10<sup>th</sup> Amendment because it coerces states and localities into helping the federal government enforce federal law.<sup>8</sup>

## How many immigration enforcement and removal officers are there now? When can we expect to see 10,000 more?

ICE’s fiscal year 2016 budget shows there are currently 5,800 immigration enforcement and removal officers.<sup>9</sup> The order and memo ask Congress to provide funding for an additional 10,000. Assuming Congress appropriated the funds, ICE’s hiring and vetting processes would mean that the hiring would not take place quickly. Current requirements include thorough background checks, as well as age, physical fitness, language, and other criteria.<sup>10</sup> It is unclear if ICE will keep its current hiring standards in place or apply lower standards to meet the hiring goal.

<sup>7</sup> Tom K. Wong, “The Effects of Sanctuary Policies on Crime and the Economy,” (Jan. 26, 2017), *available at* [www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy](http://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy)

<sup>8</sup> City and County of San Francisco v. Donald Trump, Compl. for Declaratory and Injunctive Relief, (Jan. 31, 2017), *available at* [www.sfcityattorney.org/wp-content/uploads/2017/01/Complaint.pdf](http://www.sfcityattorney.org/wp-content/uploads/2017/01/Complaint.pdf)

<sup>9</sup> Budget-in-Brief Fiscal Year 2016 for U.S. Department of Homeland Security, *available at* [www.dhs.gov/sites/default/files/publications/FY\\_2016\\_DHS\\_Budget\\_in\\_Brief.pdf](http://www.dhs.gov/sites/default/files/publications/FY_2016_DHS_Budget_in_Brief.pdf)

<sup>10</sup> ICE Agent Career Guide, *available at* [www.criminaljusticedegreeschools.com/criminal-justice-careers/ice-agent](http://www.criminaljusticedegreeschools.com/criminal-justice-careers/ice-agent)

## **What kinds of civil fines and penalties can be collected from undocumented immigrants and those who facilitate the presence of undocumented immigrants in the United States?**

Civil fines and penalties referenced in the order likely include fines from undocumented people caught entering or attempting to enter the U.S. without authorization (ranging from \$50 to \$250 for first offenses),<sup>11</sup> fines for knowingly hiring an undocumented person (ranging from \$539 to \$21,563)<sup>12</sup> and fines for failing to comply with Form I-9 employment verification requirements (ranging from \$216 to \$2,156).<sup>13</sup> The order and memo require the directors of ICE, CBP, and USCIS to issue guidance on the collection of civil fines within a year. It is unclear how “facilitate” will be defined and what types of fines and penalties could be applied.

## **What does it mean that the president has reinstated the “Secure Communities Program” and terminated the “Priority Enforcement Program?” When does the new policy come into effect?**

The Obama administration terminated the Secure Communities Program in 2014 and replaced it with the Priority Enforcement Program (PEP) after widespread concern that Secure Communities had led to racial profiling, constitutional violations and harmed efforts to engage in community policing. The order and memo instruct the secretary to take immediate action to terminate PEP and reinstate the Secure Communities Program. Under the Secure Communities Program, local law enforcement agencies are required to share information with DHS about the immigration status of those in custody by entering the fingerprints of all those arrested into immigration databases. DHS then issues a detainer for any person identified as removable who DHS may wish to take into custody. The detainer requires that the local law enforcement agency inform DHS before it releases that person so that DHS has the opportunity to take the non-citizen into federal custody.

*This document will evolve as the administration releases more information.  
Last updated: 3/2/2017*

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<sup>11</sup> 8 U.S.C. § 1325

<sup>12</sup> USCIS Penalties, available at [www.uscis.gov/i-9-central/penalties](http://www.uscis.gov/i-9-central/penalties)

<sup>13</sup> *Id.*