



**The Trump Administration's Executive  
Orders on Immigration: What to expect  
and how to prepare for changes in  
federal enforcement policies**

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**Presented By  
Peter Schey  
Executive Director  
Center for Human Rights and Constitutional Law**

## **I. Immigration Related Executive Orders**

### **A. Protecting the Nation from Foreign Terrorist Entry into the United States – January 27, 2017**

- **Suspends all entry to the U.S. for those from Iran, Iraq, Libya, Somalia, Sudan, Syria, Yemen, and potentially other countries for 90 days.** During these 90 days, the secretary of the Department of Homeland Security (DHS) is to determine what information is needed to adjudicate visas and other immigration benefits, identify countries not currently providing such information, and give countries time to provide such information before individuals from those countries are permanently banned from entry. Nationals of these countries already must obtain a visa from the U.S., for which they are extensively vetted through multiple government databases designed to spot individuals who potentially could do us harm. This 90-day ban may impact dual-nationals and individuals currently permitted be in the country and who are currently on travel. Many businesses, students, and scholars could be affected by this ban. In 2015, there were over 60,000 non-immigrant visitors from these countries. The secretaries of Homeland Security and State should use their authority to issue Special Immigrant Visas for Iraqi interpreters and translators who served alongside U.S. armed forces and are subject to the 90-day or permanent ban.
- **Implements uniform screening standards aimed at detecting potential fraud and national security threats.** It is unclear how this program will increase public safety and will not duplicate current government efforts. Currently, all persons seeking to enter the United States are screened against multiple government databases that are designed to track potential security threats and that record previous attempts of anyone who has tried to enter fraudulently or who has been rejected for a visa. The government has an agency, the Fraud Detection and National Security Directorate — part of U.S. Citizenship and Immigration Services — that is designed to “determine whether individuals or organizations filing for immigration benefits pose a threat to national security, public safety, or the integrity of the nation’s legal immigration system.”
- **Halts the U.S. refugee program for 120 days, with an indefinite suspension of admission of refugees from Syria, to examine what additional screening should be implemented.** In conjunction with other provisions, this provision acts to ban individuals from certain Muslim countries that could be expanded to additional countries. Nothing about being a refugee justifies a complete suspension of the refugee program. Delaying critical protections to refugees for 120 days can be life-threatening. Refugees are already subject to the highest level of security checks of any category of traveler to the United States. International organizations such as the United Nations refugee agency conduct an initial screening. The federal government conducts extensive screening of each refugee, involving the State Department, intelligence agencies and the Department of Homeland Security. Refugees are interviewed by specially trained interviewers, and fingerprints are checked against government databases. Overall, nearly [48 percent](#) of refugees who arrived to the U.S. in 2015 were female and about 40 percent were children under age of 17. Syrian refugees already receive enhanced screening from the Department of Homeland Security. While the United States [resettled](#) about 12,500 Syrian refugees in 2016,

another 5 million Syrians are estimated to be in need of humanitarian assistance. In prior years, we have resettled far fewer Syrian refugees: almost 1,700 in 2015 and only about 100 in 2014. At a minimum, the exception allowing for certain refugees to be admitted on a case-by-case basis should be expanded to include Afghan and Iraqi refugees who worked with the U.S. government or the U.S. armed forces in Afghanistan and Iraq.

- **Cuts the refugee program in half to 50,000 and reprioritizes who is protected.** The United States currently resettles a tiny fraction of those who have fled their country. In 2016, we admitted about 85,000 refugees out of 65 million people currently displaced worldwide. Between 2006 and 2016, the U.S. resettled more than 700,000 refugees across the nation. Once acclimated to their new lives in the United States, refugees make positive contributions to the U.S. economy. Businesses across America recognize the value of the refugee workforce, which contributes across a wide range of sectors in the U.S. economy, including hospitality and the food service industry, teaching, and the fields of engineering, nursing and medicine. By prioritizing the claims of those facing religious persecution once the refugee program is restarted, we send a message that we place less value on people who are persecuted on the basis of race, membership in a particular social group or political opinion. Since its founding the United States has welcomed persons fleeing religious intolerance and we have also been a beacon of hope for those fighting for democracy and human rights. For many Americans, it is their religious belief and liberty to aid and resettle any refugee fleeing violence, regardless of that refugee's religious belief. Also, many believe that it is just as important to help resettle those being persecuted for political opinion such as Chinese human rights activists or those who oppose communism.
- **The Secretaries of State and Homeland Security and the Attorney General will consider rescinding exemptions granted to some accused of terrorism-related grounds of inadmissibility.** Under expanded grounds of inadmissibility enacted more than a decade ago, thousands of refugees and their family members had their cases held up unjustly because of overly broad definitions of terrorist-related activity. The INA allows the Secretaries of State and Homeland Security to create an exemption where warranted. Because the INA provisions do not contain an exception for "freedom fighters," rebel groups fighting against an authoritarian regime would be considered to be engaging in a terrorist activity. Rescinding this exemption could punish those who are not actually terrorists.
- **Directs the Homeland Security secretary to "expedite the completion and implementation" of a biometric entry-exit System.** The government already collects biometric data on individuals entering the U.S. In addition, Customs and Border Protection is already on track to start implementing a biometric exit program at the highest-volume airports in 2018. A biometric exit program in all air, sea and land ports of entry must not slow down traveler mobility or commerce and should be compatible with the existing infrastructure at all ports of entry to ensure that the costs of a biometric exit system are not prohibitive. The executive order also directs the DHS secretary to submit to the president periodic reports on the progress of completing and implementing a biometric entry-exit system.
- **Suspends the Visa Interview Waiver Program and expands the Consular Fellows Program.** The Visa Interview Waiver Program exempts certain repeat travelers from having to go through repeated interviews with a consular officer to obtain a nonimmigrant visa to enter the

U.S. The Consular Fellows Program is being expanded to mitigate the additional workload that will result from requiring all applicants for nonimmigrant visas to be interviewed each time they travel to the U.S.

- **Requires a review of nonimmigrant visa reciprocity.** The Secretary of State is directed to review all nonimmigrant visa reciprocity agreements to ensure they are truly reciprocal, so that for each visa classification (for each country), fees and length of validity of the visa are comparable to what the U.S. offers. If they are not, the Secretary of State is directed to adjust the visa terms to match a foreign country's visa terms for U.S. nationals.
- **Requires the collection of certain data.** The Secretary of Homeland Security is required to collect data and publish reports every 180 days on numbers of foreign-born individuals charged with terrorism and radicalized after entry to the U.S., and number and types of gender-based violence against women by foreign-born individuals. It is unclear how this information will be collected.

<http://immigrationforum.org/blog/president-trumps-executive-order-restricting-refugee-resettlement-and-visa-processing-summary/>

### **1. Resulting Litigation**

There have been at least five orders from five different district courts issuing various forms of temporary relief against the Executive Order.

- ***Darweesh v. Trump (E.D.N.Y.) [The “Brooklyn” Case]***

Judge Ann Donnelly of the Eastern District of New York issued an order staying the removal of anyone in the class. While the government initially expressed doubt as to the order's scope, it later conceded that the order applies **nationwide** (although there is some controversy about the propriety of such nationwide orders). The order will remain in effect at least through February 21, when the government's reply brief is due, and almost certainly longer pending a hearing. Critically for present purposes, though, the order is focused only on **removal**—and says nothing at all about travel to the United States, admission into the United States, or detention at the border of anyone encompassed by the Executive Order.

- ***Tootkaboni v. Trump (D. Mass.) [The “Boston” Case]***

In an order co-authored by District Judge Allison Burroughs and Magistrate Judge Judith Gail Dein, the U.S. District Court for the District of Massachusetts granted what appears to be a **nationwide** stay of removal (referring to all those who are “similarly situated” to the petitioners) that was superficially similar to the order in the Brooklyn case, but that went several important steps further. Thus, the Massachusetts order provides that the government:

- 1 “[S]hall limit **secondary screening** to comply with the regulations and statutes in effect prior to the Executive Order, including 8 U.S.C. § 1101(a)(13)(C)”; and
- 2 “[S]hall not, by any manner or means, **detain** or **remove** [those covered by the Executive Order] who, absent the Executive Order, would be legally authorized to enter the United States.”

The order was in effect for seven days—through Saturday, February 4. The Federal judge in this case ultimately denied the ACLU’s request to extend the TRO. The “decision, which focused narrowly on whether to extend the restraining order and not the merits of the case, was made moot by the federal judge in Seattle to invalidate.”<sup>1</sup>

- ***Aziz v. Trump (E.D. Va.) [The “Virginia” Case]***

On January 28, Judge Leonie Brinkema issued a Temporary Restraining Order requiring that **attorneys be allowed access** to all lawful permanent residents detained at Dulles (but **not nationwide**), and barring the government from **deporting** such individuals, for seven days from the issuance of the order—*i.e.*, through February 4. Unlike the Brooklyn and Boston orders, Judge Brinkema’s ruling was limited to **lawful, permanent residents**—who, according to DHS Secretary John Kelly, will not in fact be covered by the Executive Order going forward.

- ***Doe v. Trump (W.D. Wash.) [The “Seattle” Case]***

The district court granted the emergency stay, setting a hearing for 10am on Friday, February 3 (and therefore applying the stay at least until that date). The *Doe* stay is the narrowest of the five orders, as it bans the removal only **of the two unnamed petitioners** pending further order of the court.

The 9th Circuit denied the government’s emergency motion for a stay. It found that the States do have standing, based on the States’ alleged harms to their proprietary interests. The Court also indicated it is within its power to review the constitutionality of executive orders, even if said orders were issued to protect national security in times of war. The Court further stated that the government did not demonstrate a strong showing that it is likely to succeed on the merits or that it will be irreparably injured absent a stay. The Court then reviewed the merits of the case based on the limited evidence currently on the record. The Court notably cited the 5th Circuit case *Texas v. United States*, (the case regarding the DAPA Executive Order), to indicate that the government “may yet pursue and vindicate its interests in the full course of this litigation. *See, e.g., Texas v. United States*, 787 F.3d 733, 767-68 (5th Cir. 2015) (“[I]t is the resolution of the case on the merits, not whether the injunction is stayed pending appeal, that will affect those principles.”

- ***Vayeghan v. Trump (C.D. Cal.) [The “Los Angeles” Case]***

The ACLU of Southern California and the Law Offices of Stacy Tolchin brought this habeas action on behalf of a man with a **valid immigrant visa** who had been denied entry under the Executive Order. After the petition was filed, the petitioner was put on a plane to Dubai and removed from the United States. On January 29, Judge Dolly Gee **ordered the government to permit him to return** to the United States and to admit him pursuant to his approved visa—and to “communicate the terms of this Court’s order immediately to

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<sup>1</sup> Phillip Martin, “Why a Boston judge decided to let Trump’s immigration order move forward,” February 6, 2017, <https://www.pri.org/stories/2017-02-06/why-boston-judge-decided-let-trumps-immigration-order-move-forward>.

officers in Dubai, and to authorities in the airport in Dubai holding Petitioner on Respondents' orders." The order sets a hearing on the petition for February 10 at 9:30 a.m. (PST).

The most significant features, of course, are the putatively nationwide temporary bans on the removal of anyone subject to the orders in the Brooklyn and Boston cases (assuming, as noted above, that the Boston order is indeed nationwide in its scope; there's some room for argument there), and on the *detention* of anyone subject to the order in the Boston case. The Virginia case is limited to legal permanent residents (LPRs), and may now be moot unless other non-LPR plaintiffs are added; the Seattle case was focused on two specific detainees; and the Los Angeles case, although it imposed the most aggressive relief, was focused on a single detainee. It seems likely that, by the time of the hearings in these cases, the Virginia, Seattle, and Los Angeles cases may well be moot due to the individual circumstances of the petitioners in those cases, leaving the Brooklyn and Boston cases as the key decisions from the weekend.

As for what the orders *do*, some of that depends on whether they truly apply nationwide. If so, then it is unlawful under the order in the Boston case for any individual who was legally entitled to enter the United States prior to the issuance of the Executive Order to be detained between now and next Saturday. That's not just those with green cards and other folks with lawful immigration status; that's *everyone* potentially impacted by the Order. So if the government (through Noel Francisco, who, as Acting Solicitor General is theoretically in charge of decisions to appeal) is looking for the order that is the most impactful, it seems obvious that it's Boston.

But let's also be clear about what the orders *don't* do: They don't *resolve* the myriad legal challenges to the Executive Order—including claims that the Order is inconsistent with statutory rules for processing visa applications, refugees, and other arriving non-citizens; that it violates the Due Process Clause; that it violates equal protection; and that it violates the Establishment Clause. Although all five orders are predicated on the conclusion that the plaintiffs have a likelihood of success on the merits of their challenges to the Executive Order, the potential for irreparable harm absent judicial intervention in this case weighed so heavily and uniformly in favor of judicial intervention that we ought not to confuse such interim relief with merits-based invalidation of the Executive Order. Nor do these orders have any impact on folks affected by the Executive Order who haven't been stuck at airports—either because they're already here in the United States (and now can't leave), or because they're somewhere overseas (and now can't get here).

<https://www.justsecurity.org/36960/stock-weekends-district-court-orders-immigration-eo/>

## **B. Border Security and Immigration Enforcement Improvements – January 25, 2017**

- **Builds a wall or other physical barrier along the United States-Mexico border.** The United States has already constructed 651 miles of fencing out of nearly 652 miles that the Border Patrol feels are operationally necessary to build. Constructing a border wall in addition to the current fencing is a costly endeavor that will fall on taxpayers. A border wall of 1,000 miles along the U.S.-Mexico border would cost about **\$25 billion to \$31.2 billion**, or about \$25 million to \$31 million per mile. This price tag does not take into account the cost of maintaining the wall,



which could amount to **billions of dollars**. The U.S. Department of Homeland Security (DHS) has only enough funds to begin building parts of the wall, so Congress will need to appropriate additional taxpayer money to complete the project.

- **Detains all unauthorized border crossers and builds more detention facilities.** Congress currently mandates that Immigration and Customs Enforcement (ICE) maintain approximately 34,000 detention beds at a cost of more than \$2.5 billion annually. ICE detention levels are at or above capacity — the beds are full. Detaining additional border crossers for extended periods of time will require a significant investment in new facilities or new contracts with private detention facilities, costing taxpayers billions of dollars. Moreover, ICE has dramatically expanded family detention of women and children, many fleeing extreme violence and persecution. Family detention is wasteful, with our nation spending billions of taxpayer dollars to detain women and children who are not a security threat to our nation. Increased family detention is contrary to our nation’s core values and traditions.<sup>2</sup>
- **Reviews implementation of parole and asylum.** Parole and asylum are important provisions that protect some of the most vulnerable people. Already, all asylum seekers must undergo rigorous security checks designed to counter fraud. Additionally, the asylum system discourages fraud by requiring that asylum applications and testimony be provided truthfully, under penalty of perjury. Applicants who provide false information can be prosecuted and permanently barred from receiving any future immigration benefits. The penalties for frivolous or fraudulent asylum applications also extend to attorneys and interpreters.<sup>3</sup> In addition, U.S. Citizenship and Immigration Services (USCIS) already has been issuing parole on a case-by-case basis, based on evidence proving that the individual is eligible for such parole.
- **Hires 5,000 additional U.S. Customs and Border Protection (CBP) agents.** Already, CBP is unable to fill the number of Border Patrol agent positions authorized by Congress to patrol the border, so increasing CBP personnel by 5,000 officers and agents will have little to no impact on increasing our nation’s security. Continuing to add CBP personnel is costly and increases the amount of time and resources required for training and equipping new recruits. Furthermore, the number of CBP personnel has doubled since fiscal year (FY) 2000, but apprehensions per agent

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<sup>2</sup> Harvard and Refugee Clinical Program, “The Impact of President Trump’s Executive Orders on Asylum Seekers,” at 3. “By significantly enlarging the range of individuals subject to detention—to embrace almost everyone present without authorization—the new orders expand an already deeply flawed system and will result in the removal of many more individuals with valid asylum claims. Concerns about access to counsel also will be exacerbated as a result of the recent reprioritization of dockets by the Executive Office for Immigration Review (EOIR), the office responsible for adjudicating immigration cases, to focus on expediting detained cases.”

<sup>3</sup> *Id.* at 6. “The Border Enforcement Order also targets “credible fear” determinations and “reasonable fear” determinations for refugees seeking protection. 40 The order requires DHS to ensure that these processes are not “exploited” to allow individuals to remain in the United States who are otherwise removable.41 The implied heightening of the credible fear standard could make it even harder for asylum seekers with meritorious cases to present their claims for protection.”

have decreased from 182 in FY 2000 to 17 in FY 2015. Having more agents does not help us apprehend more immigrants in the border.

- **Allows “all federal officers and employees of the United States, as well as state and local officers as authorized by the Secretary [of DHS],” to access federal land for border security and to enforce immigration laws.** The Border Patrol, the Department of the Interior and the Department of Agriculture already have a memorandum of understanding that allows Border Patrol agents to pursue or apprehend suspected cross-border violators on any federal lands. Border Patrol agents are also allowed to use motorized pursuit at any time when, in their professional judgment, there is a specific emergency involving human life, health or safety of persons within the area, or posing a threat to national security. The executive order expands this understanding by allowing all federal officers and employees, as well as designated state and local officers, to access all 640 million acres of federal land in the U.S. to apprehend undocumented immigrants.
- **Enters into 287(g) agreements with state and local officials to authorize state and local law enforcement officials to perform the duties of immigration officers.** The executive order calls for extensive federal-state agreements to “empower” state and local law enforcement agencies to carry out immigration enforcement through expansion of the 287(g) program and other mechanisms. This policy will sow distrust between local law enforcement and immigrant communities and discourage immigrant victims and witnesses from reporting crimes. It also encourages state and local law enforcement to devote scarce resources to immigration enforcement over other priorities and represents a departure from the federal government’s traditional role as the primary enforcer of immigration laws.<sup>4</sup>
- **Prioritizes criminal prosecutions of all border crossers with a nexus to the Southern border.** Unlawful entry through the Southern border can be charged as a criminal offense through “[Operation Streamline](#).” Increasing criminal prosecutions of all Southern border crossers, including first-time border crossers, is enormously expensive. This new priority diverts scarce resources from core law enforcement priorities and community safety and strains U.S. courts and prisons, particularly in the Southwest. Federal judges, prosecutors and defenders report that the explosion in immigration prosecutions siphons resources from other criminal prosecutions such as the trafficking of guns, drugs and money. It also raises concerns about whether due process is being provided during these mass, fast-tracked criminal procedures.
- **Expands use of expedited removals.** Most migrants have an opportunity to present their case to an immigration judge before being removed from the U.S. However, certain categories of migrants are subject to expedited review in which an immigration officer makes a determination that a person is not admissible to the U.S. and decides the person should be

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<sup>4</sup> *Id.* at 11. “Governmental investigations have revealed that these agreements result in racial profiling and other civil rights abuses.<sup>73</sup> These agreements also have a chilling effect in immigrant communities whereby victims of crimes, such as domestic violence, are reluctant to seek assistance because they are afraid of getting caught up in the immigration enforcement system.”



removed without presenting their case to an immigration judge. The executive order could expand the use of expedited removal to all undocumented immigrants who are not able to prove that they have lived in the S. continuously for at least two years. Expanding expedited removals will result in less due process and more instances of unfair treatment of migrants. It also increases the likelihood that those with a valid claim to remain will be removed.

- **Additional components of this executive order include the following:** Publicly detail all aid being given to Mexico; conduct a comprehensive study of security of the Southern border; publish monthly data on migrants apprehended at or near the border; and report to the President on the progress of implementing these orders.

<http://immigrationforum.org/blog/president-trumps-executive-order-on-border-security-summary/>

### **C. Enhancing Public Safety in the Interior of the United States – January 25, 2017**

- **Increases interior enforcement.** The executive action calls for “employ[ing] all lawful means to enforce the immigration laws,” possibly including an increase in worksite raids and other enforcement activities, and encourages state and local law enforcement agencies to enforce immigration laws. It authorizes state and local law enforcement to carry out federal immigration responsibilities and encourages the federal partnerships under the 287(g) program and elsewhere. By conflating the role of federal and local law enforcement, community trust is undermined and immigrant victims and witnesses are less likely to report crimes. Also, it would place additional burdens on already stretched law enforcement.
- **Defunds “Sanctuary Cities.”** The executive order implies that numerous local law enforcement agencies are violating 8 U.S.C. 1373, which forbids states or localities from barring or restricting the sharing of information regarding the citizenship or information status of individuals. Many jurisdictions maintain community trust policies that bar the collection of such information, but do not restrict information sharing and do not violate section 1373. The executive order presumes these jurisdictions are “sanctuary cities” in violation of 1373 and would strip federal grant funding from them (except for funding “deemed necessary for law enforcement purposes”).
- **Reinstates the Secure Communities program.** The executive order ends the prior administration’s Priority Enforcement Program (PEP) and reinstates the controversial Secure Communities program. The order attempts to compel jurisdictions to honor federal immigration detainers by reinstating Secure Communities and creating “Declined Detainer Outcome Reports.” Numerous federal courts have found federal immigration detainers to have significant legal and constitutional impairments. As a whole, these policies would undermine community policing policies and expose localities to civil liability.
- **Directs federal agencies to redouble efforts to enforce immigration.** The executive order notes that the federal government has “failed” in its “sovereign responsibility” to remove undocumented individuals, stating that “we cannot faithfully execute the immigration laws of the United States if we exempt classes or categories of removable aliens from potential

enforcement.” Accordingly, it directs federal agencies to employ “all lawful means” to carry out federal immigration laws against “all removable aliens,” as opposed to prioritizing certain categories of removable individuals. Because the federal government currently lacks the ability to deport the entire undocumented population (of more than 11 million), the result of this order would be to deport significantly more low-priority parents and workers, effectively deprioritizing criminals and threats to public safety.

- **Overhauls enforcement priorities.** The previous administration recognized people with criminal convictions for serious offenses as the highest enforcement priorities. This order dramatically expands enforcement priorities to encompass not only those with convictions for “any criminal offense” (both serious and minor), but also individuals charged with any offenses, individuals who “committed” uncharged acts that “constitute a chargeable offense,” and those who engage in any fraud or misrepresentation in any official matter.<sup>5</sup> This expansion will result in more deportations of individuals with low-level offenses and undermine community trust. Individuals with the most minor infractions, such as jaywalking or driving without a license, may be subject to deportation even if they are not charged.
- **Hires additional Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) officers.** ICE currently has about 20,000 employees with an annual budget of about \$6 billion, and only about 5,800 of those employees are ERO officers. Congress would need to appropriate billions of additional taxpayer dollars to hire, train and equip 10,000 ERO officers. Increasing the size of a government agency by such a sizable number, without proper vetting or training, could lead to unconstitutional operations and more deportations of people with valid claims to remain in the U.S.
- **Creates an Office for Victims of Crimes Committed by Removable Aliens.** The order directs an office to be created within ICE to provide services to victims of crime and their family members and to provide quarterly reports studying the effects of victimization by criminal aliens present in the U.S. It is unclear how this office will differ from the Department of Justice’s [Office for Victims of Crime](#) and not duplicate government services.
- **Requires new regulations and guidance to collect fines and penalties from undocumented immigrants and those who facilitate their presence.** Currently, undocumented immigrants may be subject to civil fines. For instance, immigrants who are apprehended while entering or attempting to enter the United States without documentation are subject to a [fine](#) of at least \$50 and not more than \$250 for each entry, or twice those amounts if he or she previously has been subject to a civil penalty under this provision. In addition, employers who knowingly hire an undocumented worker may be [fined](#) from almost \$600 to more than \$21,000 for each

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<sup>5</sup> *Id.* at 11. “Section 5 of the Interior Enforcement Order directs the Attorney General to prioritize removal of a broad range of noncitizens, including those who have been convicted or charged of any criminal offense, those who have committed acts that constitute a chargeable criminal offense, and those who immigration officers decide pose a risk to public safety or national security. The provisions relating to criminal offenses apparently encompass even minor offenses such as traffic violations, and immigration-related offenses such as undocumented entry.”

undocumented worker hired. These regulations could potentially expand the fines to include those deemed to be sheltering or harboring undocumented immigrants.

- **Encourages sanctions against recalcitrant countries that deny or unreasonably delay accepting a deportable national of that country.** When the secretary of the Department of Homeland Security notifies the Secretary of State that a foreign country will not repatriate an individual, the Immigration and Nationality Act requires that the Secretary of State order consular officers in that country to discontinue granting immigrant visas or nonimmigrant visas, or both, to its residents. Increased use of sanctions has its place, but blanket discontinuance of visas could result in reciprocal discontinuance of visas to the U.S., which would be detrimental to conducting business and to the economy. Currently, ICE has identified 23 recalcitrant countries, including China and India, and monitors more than 60 countries that have shown “strained cooperation” with U.S. repatriation efforts.
- **Excludes those who are not U.S. citizens or lawful permanent residents from protections of the Privacy Act, making their personally identifiable information subject to availability.**
- **Increases transparency by providing data and quarterly reports on status of incarcerated migrants and report to the president on the progress of implementing the executive order.**

<http://immigrationforum.org/blog/president-trumps-executive-order-on-interior-enforcement-summary/>

### **Other Concerns**

“The executive orders will likely have particularly harmful effects on individuals with gender based claims. Women and girls seeking protection in the United States because of rape, torture, domestic abuse, and other forms of gender-based violence will be subjected to prolonged detention while they wait for their claims to be adjudicated. Survivors may fall into the categories of individuals subject to detention for criminal activity due to their abuse or exploitation: many stay on expired visas because an abusive spouse failed to file papers, or enter on invalid visas prepared by a trafficker. Access to adequate medical care and mental health services in detention is particularly important for these applicants.

The changes to provisions regarding deportation priorities are also detrimental to victims of abuse, who may fear calling for help if they believe their abuser will press charges against them that would result in deportation. Applicants for U nonimmigrant status (victims of crime) and Violence Against Women Act (VAWA) protection will also be subjected to unnecessary interviews that could impact their ability to apply for relief. For more information on this topic, Tahirih Justice Center has prepared an analysis<sup>6</sup> of the potential impact of the three executive orders on survivors of domestic and sexual violence.”<sup>7</sup>

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<sup>6</sup> <http://www.tahirih.org/wp-content/uploads/2017/02/Summary-of-January-25-and-27-Executive-Orders-FINAL.pdf>

<sup>7</sup> *Id.* at 12.

## **II. Raids and Targeted Enforcement**

“Immigration and Customs Enforcement arrested 680 people in raids across the U.S. last week, approximately three-fourths of whom had prior criminal convictions, according to Homeland Security Secretary John Kelly.

The convictions were for offenses ‘including, but not limited to, homicide, aggravated sexual abuse, sexual assault of a minor, lewd and lascivious acts with a child, indecent liberties with a minor, drug trafficking, battery, assault, DUI and weapons charges.’” -

<http://www.npr.org/sections/thetwo-way/2017/02/13/515032423/75-percent-of-immigration-raid-arrests-were-for-criminal-convictions-dhs-says>

“In Los Angeles, ICE said Friday that it had arrested about 160 people from a dozen countries during a five-day, five-county operation aimed at undocumented criminals, immigration fugitives and people who re-entered the United States illegally after deportation.

About 150 of the suspects have criminal histories, including felony convictions for serious or violent offenses, according to an ICE statement. There were 10 people with no criminal history but five had orders of removal or had been previously deported.

The ICE statement said the arrests were part of what it called a regular ‘enforcement surge.’ It denied reports about ICE checkpoints and random sweeps, calling them ‘false, dangerous, and irresponsible.’

‘These reports create panic and put communities and law enforcement personnel in unnecessary danger,’ the statement said.

Los Angeles Mayor Eric Garcetti issued a statement Friday night asking ICE for ‘greater transparency about ongoing operations’ within the city.” -

<http://www.cnn.com/2017/02/10/us/mexico-government-warning/>

There are reports of a memo that was issued to ICE clarifying the Trump administration’s removal priorities, however, no such memo has been released to congress or the public.

Congressional members have “said they've gotten different reports from different agents and districts on whether they have guidelines for following Trump's executive orders, which give immigration officers wide discretion on who to arrest.”<sup>8</sup> This has especially increased concern, as there appears not to be a uniform guideline for effectively administering the removal operations. This has left advocates and community members deeply worried about what to expect.<sup>9</sup>

## **III. What to Expect**

The reoccurring theme regarding the Trump administration and Immigration is that we simply do not know exactly what to expect. Mr. Trump continues to utilize executive orders to

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<sup>8</sup> Suzanne Gamboa, “Hispanic Caucus: ICE Confirmed It Went ‘Broader’ on Immigration Arrests.” Feb. 14, 2017, <http://www.nbcnews.com/news/latino/hispanic-caucus-ice-confirmed-it-went-broader-immigration-arrests-n720926>.

<sup>9</sup> Dara Lind, “The first immigration raids of the Trump era, explained.” Feb. 14, 2017, <http://www.vox.com/policy-and-politics/2017/2/14/14596640/immigration-ice-raids>.

determine his immigration policy. We can only make educated guesses or produce possible scenarios based on what we have seen and heard both from Mr. Trump's current policies, and in his rhetoric throughout his campaign.

### **A. Worst Case Scenario**

The worst-case scenario, it seems, may involve mass deportations and round ups at community institutions we regard as safe places, such as schools, churches, or community centers. The Trump administration could direct its agencies to detain individuals for longer periods of time, have Immigration Judges hold secure hearings closed to the public, detain individuals without bond, or apprehend and interrogate individuals. These are scenarios we have seen in the past and could be utilized again.

#### *a. Mass deportations and round ups*

While President Obama removed over two million individuals during his tenure<sup>10</sup>, the most under any one president, there was generally not a trend towards coordinated sweeps and round-ups and mass deportations. We have already witnessed one substantial raid in the first month of Mr. Trump's presidency, and this could become an ongoing and repeated effort under the Trump administration. Widespread raids could become more and more commonplace and take place at locations previously thought to be safe spaces, such as schools or churches. Such a tactic would continue to strike fear in communities across the country. It would likely also lead large protests and a strong reaction from Mr. Trump's opposition.

#### *b. Government follows Post 9/11 Blueprint*

We can also look to the government's response to Immigration quandaries in recent history as an example of what may occur during a Trump presidency. Looking back to the government's war on terrorism in the late 80's and again after 9/11, there exist trends regarding arresting, detaining, and deporting immigrants. In 1987, the government issued a contingency plan for rounding up thousands of alien residents, which included rescinding the right to bond and excluding the public from deportation hearings.<sup>11</sup>

In 2001, following 9/11, then Attorney General Ashcroft directed INS to detain individuals longer and Immigration Judges to hold private, secure hearings.<sup>12</sup> The government systematically introduced procedures to infringe upon or take away the rights of immigrants across the country. The Trump administration could implement these directives again for thousands of immigrants, making it difficult for them to get a fair and transparent hearing and access to counsel or other representation.

#### *c. DACA Recipients targeted because information is on record*

DACA recipients may also serve as an easy target for the Trump administration to begin the large-scale removal process Mr. Trump promised throughout his campaign. While not

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<sup>10</sup> Department of Homeland Security, "Table 39: Aliens Removed or Returned: Fiscal Years 1982 to 2014," <https://www.dhs.gov/immigration-statistics/yearbook/2014/table39> last visited Dec. 12, 2016.

<sup>11</sup> Wofford, Ben. *Politico Magazine*, "The Forgotten Government Plan to Round Up Muslims," August 19, 2016, <http://www.politico.com/magazine/story/2016/08/secret-plans-detention-internment-camps-1980s-deportation-arab-muslim-immigrants-214177>.

<sup>12</sup> Chronology of Events Since September 11, 2001 Related to Immigration and National Security\* May 1, 2003

criminals, DACA recipients are vulnerable because the government does have access to their personal information, from addresses, to phone numbers, to e-mail addresses. Should Mr. Trump choose an easy, vulnerable target to speedily begin the deportation process, this group of people could be it. In the recent raids, we have already seen one DACA recipient detained by ICE when they came to detain his father. This individual has since filed a habeas petition demanding his immediate release from detention.<sup>13</sup> This particular arrest, the first of its kind, has many advocates and individuals in the immigrant community on high alert.<sup>14</sup>

## **B. Possible Scenario**

Undocumented individuals with criminal convictions have been targeted for deportation first. Although many individuals who do not fall into this category have fallen victim as collateral during these “routine” raids, the Trump administration does generally seem to be making good on its campaign promise to remove undocumented immigrants with a criminal background. On the other hand, the DACA program was not overturned on day one, as many may have expected. It is possible that DACA recipients may receive letters from the government asking them to attend interviews, which may ultimately lead to a signed voluntary departure or hearings that could last years.

### *a. Undocumented individuals with criminal convictions targeted first*

This is the group of individuals that Mr. Trump railed against throughout his campaign, has proven to be his top priority in terms of removal. Unfortunately, in targeting these individuals, many others have also been caught in the crossfire. It is worth noting that President Obama also made this group of individuals a priority in his own administration.<sup>15</sup> Those with criminal convictions are the most palatable group to target first, which is likely why Mr. Trump has prioritized this group.

### *b. DACA recipients receive letters and attend interviews*

DACA recipients and others with pending visas, on the other hand, may receive letters asking them to attend an interview. It is possible that the Trump administration may set up temporary offices throughout the U.S. to handle these interviews. It is possible that at this point officers will attempt to pressure individuals into signing voluntary departures or provide individuals with the option to have a hearing before an Immigration Judge.

CHRCL would urge individuals to attend these interviews with counsel, if possible. If not, we would advise not to disclose any information at the interview and not to sign any document. Rather, exercise one’s right to a hearing. This hearing could last months if not years, buying the individual some time and giving him or her the opportunity to fight the case and try to establish a legitimate immigration remedy.

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<sup>13</sup> Esther Yu His Lee, “The Trump administration has detained a DREAMer, protected from deportation, for the last 5 days,” Feb. 15, 2017, available at <https://thinkprogress.org/daniel-ramirez-medina-daca-83bd1e968760#.ml4z5j>

<sup>14</sup> Vice News, “Open Season,” Feb. 15, 2017, available at <https://news.vice.com/story/trump-has-declared-open-season-on-daca-immigrants-activist-says>. “There’s no indication that the Trump administration intends to go after other DACA recipients; for now it appears that Ramirez was in the wrong place at the wrong time. But the fact that ICE agents ignored his DACA status has put other young immigrants on alert.”

<sup>15</sup> *Supra* at fn 9.



### C. Best Case Scenario

In the best-case scenario, Mr. Trump preserves DACA or formalizes it into federal regulation. Mr. Trump has expressed interest in finding some sort of program or solution for DACA recipients. In December 2016, he voiced some interest in making allowances for the DACA-qualifying subset of the immigrant population. When asked about Dreamers, President-Elect Trump said “We’re going to work something out.”<sup>16</sup> While statements like this signal a slightly different plan than Mr. Trump discussed during his election campaign<sup>17</sup>, his overarching policy appears to be one of deportation with special emphasis on criminals.<sup>18</sup> An even better scenario would be to formally sign DACA into law. Here, Mr. Trump has the opportunity to one up President Obama for a group of individuals that already has bipartisan support in Congress.<sup>19</sup> It is conceivable that he might encourage congress to support such a bill in an effort to appease progressives, while vehemently targeting other groups of undocumented individuals.

## IV. Take Action

Even if legislation does not come to pass, it is imperative that individuals know their options and understand their rights.

### A. Know your options; Consult with attorney about other possible remedies

Educators, religious leaders, and community members should encourage individuals to consult with an attorney or legal representative about other possible remedies available to them. If such a remedy exists, then it should be pursued immediately.

Attorneys should be looking for possible remedies, such as U Visa applicants (for those who are victims of crimes and who have cooperated with the police) or previous petitions filed either on behalf a parent or the individual. FOIA requests can be done on behalf of individuals to determine if any such previously filed petition does exist or if any type of removal order exists under that person’s name.

### B. Know your rights

*a. If arrested, contact attorney or family member immediately*

If an undocumented individual is arrested, he or she should contact his or her legal representative or a family member immediately. The individual should try to gain as much

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<sup>16</sup> Michael Scherer, “2016 Person Of The Year Donald Trump,” *Time Magazine*, <http://time.com/time-person-of-the-year-2016-donald-trump/>.

<sup>17</sup> CNN reported: “At rallies in the last weeks of his presidential campaign, Donald Trump told his supporters ‘my plan ends illegal immigration and suspends immigration from terror problem regions’ and that; we will stop illegal immigration, deport all criminal aliens... and it will happen within the first week of my presidency.” <http://www.cnn.com/2016/11/17/politics/kris-kobach-donald-trump-immigration-muslim-registry-ban/>.

<sup>18</sup> “What Donald Trump’s Vow to Deport Up to 3 Million Immigrants Would Mean”: <http://www.nytimes.com/2016/11/15/us/politics/donald-trump-deport-immigrants.html>.

<sup>19</sup> Seung Min Kim, *Politico*, Senators unveil bipartisan bill to protect dreamers, updated December 9, 2016, <http://www.politico.com/story/2016/12/senators-republican-democrats-dreamers-immigrants-232431>.

information as to his or her whereabouts as possible and provide the legal representative with an alien number. Any information will help counsel determine what steps are next and what options are available. If a family member knows the arrestee's immigration and criminal history, this may also help the legal representative in formulating the best available remedy.

*b. Do not let officers into your home*

Do not provide officers with any additional information or let them into your home without the proper warrant.

*c. Do not sign anything, specifically a voluntary departure*

Encourage individuals not to sign anything, especially a voluntary departure, even if they feel pressured or coerced into doing so.

*d. Ask to go in front of an Immigration Judge and exercise right to a hearing*

Instead, people should ask for a hearing to go before an Immigration Judge. This process may take months or years and will allow an attorney to help individuals fight their case. There may be other remedies available or that may become available as the case progresses.

## **VI. Information and Statements from John Kelly, Secretary of Homeland Security**

Religion: Irish Catholic

Before becoming Secretary of DHS John Kelly was a retired general with over 45 years of experience in the U.S. Military.

John Kelly was supposedly favored as a pick for DHS Secretary by Trump's administration for his experience with Central and South America during his 4 year stint as head of the United States Southern Command ("USSOUTHCOM"), which is responsible for providing contingency planning, operations, and security cooperation for Central and South America, the Caribbean (except US commonwealths, territories, and possessions), their territorial waters, and for the force protection of US military resources at these locations. USSOUTHCOM is also responsible for ensuring the defense of the Panama Canal and the canal area.

### **Statements**

Statement By Secretary John Kelly On The Entry Of Lawful Permanent Residents Into The United States

**Release Date:** January 29, 2017

For Immediate Release

Office of the Press Secretary

Contact: 202-282-8010

WASHINGTON – In applying the provisions of the president's executive order, **I hereby deem the entry of lawful permanent residents to be in the national interest.**

Accordingly, absent the receipt of significant derogatory information indicating a serious threat to public safety and welfare, lawful permanent resident status will be a dispositive factor in our case-by-case determinations.

### **Statement by Secretary Kelly on Recent ICE Enforcement Actions**

Release Date: February 13, 2017

For Immediate Release

Office of the Press Secretary

Contact: 202-282-8010

Available at: <https://www.dhs.gov/news/2017/02/13/statement-secretary-kelly-recent-ice-enforcement-actions>

“WASHINGTON – Last week, U.S. Immigration and Customs Enforcement (ICE) launched a series of targeted enforcement operations across the country. These operations targeted public safety threats, such as convicted criminal aliens and gang members, as well as individuals who have violated our nation’s immigration laws, including those who illegally re-entered the country after being removed and immigration fugitives ordered removed by federal immigration judges.

ICE officers in the Los Angeles, Chicago, Atlanta, San Antonio and New York City areas of responsibility arrested more than 680 individuals who pose a threat to public safety, border security or the integrity of our nation’s immigration system. Of those arrested, approximately 75 percent were criminal aliens, convicted of crimes including, but not limited to, homicide, aggravated sexual abuse, sexual assault of a minor, lewd and lascivious acts with a child, indecent liberties with a minor, drug trafficking, battery, assault, DUI and weapons charges.”

**Facts (Pulled from the [ACLU website](#))**

- As the General in charge of the Guantanamo Bay Detention facility, Kelly publicly criticized efforts to close Guantanamo ([Source](#)) and was accused by Obama Administration officials of working to undermine the President’s efforts to close the facility. ([Source](#))
- Opposed and publicly criticized the integration of women into military ground combat units, arguing it would lead to lower standards. ([Source](#))
- Defended the use of “enhanced interrogation techniques”, such as waterboarding and rectal feeding. Kelly went on to dismiss the criticisms of human rights groups as “foolishness”. ([Source](#))
- Testified in support of an officer caught urinating on Taliban corpses. ([Source](#))
- Supports the imprisonment of terror suspects without trial. ([Source](#))
- Criticized by Amnesty International for his “unsafe and inhumane” treatment ([Source](#)) of Guantanamo detainees on hunger strike to protest their imprisonment. ([Source](#))
- Supports the war on drugs and opposes legalization or decriminalization of any drugs, including marijuana. ([Source](#))
- A proponent of border security, Kelly believes that “no wall will work by itself” and has warned about the “existential threat” that unchecked migration poses for the nation. ([Source](#))

## **Appendix**

1. Copy of Executive Order issued January 27, 2017, “Protecting the Nation from Foreign Terrorist Entry into the United States.”
2. Copy of Executive Order issued January 25, 2017, “Border Security and Immigration Enforcement Improvements.”
3. Copy of Executive Order issued January 25, 2017, “Enhancing Public Safety in the Interior of the United States.”