



Snapshot of DHS Memoranda and Fact Sheets Interpreting [Executive Order: Border Security and Immigration Enforcement Improvements](#) and [Executive Order: Enhancing Public Safety in the Interior of the United States](#)

Last updated February 24, 2017

On February 21, the [Department of Homeland Security \(DHS\) Secretary](#) posted implementation Memoranda (dated February 20, 2017) together with fact sheets, and a questions and answers (Q&A) pertaining to two underlying Executive Orders titled signed by President Donald Trump (January 25, 2017): [Executive Order: Border Security and Immigration Enforcement Improvements](#) and [Executive Order: Enhancing Public Safety in the Interior of the United States](#).

Expansion of Enforcement Priorities (“Mass Deportations”)

DHS states that “All of those in violation of the immigration laws may be subject to immigration arrest, detention and, if found removable by final order, removal from the United States.” It is of concern that no undocumented immigrant is safe from enforcement although DHS seeks to prioritize noncitizens who are removable for criminal changes. Those described by Congress in Sections 212(a)(2), (a)(3), and (a)(6)(C), 235(b) and (c), and 237(a)(2) and (4) of the Immigration and Nationality Act (INA) are listed by DHS as enforcement priorities. Additionally, regardless of the basis of removability, DHS directs Department personnel to prioritize “removable aliens” who:

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

Curtailment of Prosecutorial Discretion

[Prosecutorial discretion](#) refers to the government’s choice about whether and to what degree to enforce the immigrations laws against a person or group of persons. The reasons for prosecutorial discretion are both economic and humanitarian and have been part of the immigration system for many years. The DHS memoranda and fact sheets rescind the existing guidelines for prosecutorial discretion (including the [2014 Johnson Priorities Memo](#)).

Deputizing State and Local Officials to Enforce Federal Immigration Laws

The DHS documents restore “Secure Communities” and seek expansion of INA 287(g). Secure Communities permits longer incarceration of suspected criminal immigrants before being turned over to ICE. Section 287(g) enables state and local law enforcement entities to enter into a partnership with ICE for the purpose of enforcing immigration laws. The [policy concerns](#) of these programs are far-ranging as victims and witnesses are less likely to come forward to cooperate with local governments if they fear deportation. Also, immigration law enforcement is a federal responsibility and local governments are more likely to face liability if forced to engage in civil immigration enforcement.

More Immigration Agents

The DHS documents call for the hiring of 10,000 additional Immigration and Customs Enforcement agents and an additional 5,000 Border Patrol agents.

Expansion of Speed Deportation Programs (“No Process” Removals)

According to the documents, DHS should “to the maximum extent permitted” to initiate removal proceedings against those individuals incarcerated in federal, state and local jurisdictions through the “Institutional Hearing and Removal Program” under INA 238(a) and the administrative removal program under INA 238(b) which pertains to non-LPRS (those without green cards) who have committed certain crimes. These documents also direct DHS to expand the use of “expedited removal” under INA 235(b) which is a program that allows for removal of certain noncitizens who are apprehended and inadmissible for reasons of misrepresentation or lack of valid entry documents. The current program applies to such individual who arrive at a port of entry or who are apprehended within 14 days of their arrival within 100 miles of the border. However, DHS plans to expand this to such individuals who cannot show they have been present in the U.S. for two years or more. The concerns with these “[speed deportation](#)” programs is that they allow for the removal of noncitizens with limited due process and in the case of administrative and expedited removal without any appearance or right of review before an immigration judge.

Retention of Existing DHS Memoranda

The DHS documents indicate that [Deferred Action for Childhood Arrivals \(DACA\) Program](#), [Sensitive Locations Memorandum](#) and [Guidance on Parole for Asylum Seekers](#) will remain in place. DACA is a program announced in 2012 aimed to protect from removal certain individuals who entered the United States at a young age and are contributing to the United States in meaningful ways. The Sensitive Locations Memo identifies the policy of DHS to avoid enforcement actions in “sensitive locations” such as places of worship, schools and hospitals. The existing guidance on parole for asylum seekers directs DHS to consider parole for certain arriving asylum seekers who have passed their “credible fear” interviews.

No Private Right of Action

These Memoranda are subject to modification or rescission or may be superseded at any time without due notice. It creates no right or benefit to anyone. Nor does it create any substantial, procedural or enforceable at law by any party in any administrative, civil or criminal matter.

This document was prepared by Penn State Law’s Center for Immigrants’ Rights for American-Arab Anti-Discrimination Committee. It should not be a substitute for legal advice nor should it be construed to mean that the instructions within these documents are lawful or feasible.