



PRESIDENT TRUMP'S EXECUTIVE ORDERS ON IMMIGRATION

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President Trump has issued various executive orders which threaten immigrant communities in different ways. Among those, one focuses on individuals within the United States, another on individuals apprehended at the border, and a third one banning refugees and others from countries deemed dangerous by the President.

There are three other **draft** orders, which have not yet been signed. Based on the drafts we have seen: one would end the DACA program and change priorities for removal, a second would change the way the receipt of certain government benefits affects immigrants and their sponsors, and a third would affect foreign workers.

NOTE: Some of the provisions in the various signed and draft orders may be beyond the power of the President or may be in violation of the Constitution. As a result, these may later be curtailed by the federal courts.

I. WHAT HAS ALREADY HAPPENED

Interior Enforcement Order (signed on January 25, 2017) and U.S. Department of Homeland Security (DHS) **Implementing Memorandum** (dated February 20, 2017)

Among other things, this order directs the federal government to:

- Increase deportation enforcement efforts to include people who:
 - have criminal convictions,
 - have been charged with crimes even though the criminal court proceedings have not been completed,
 - committed criminal acts that have not even been charged,
 - engaged in fraud with any government agency,
 - received welfare benefits unlawfully,
 - have a final order of removal but never left, and
 - otherwise pose a threat to public safety or national security.
- Hire an additional 10,000 deportation officers.
- Punish states and localities who refuse to allow local law enforcement to cooperate with federal immigration authorities by withholding federal funds.
- Help victims of crime by undocumented immigrants.
- Collect unpaid fines from undocumented immigrants.

In response to the Executive Order, DHS issued a memorandum articulated the following policies:

- Earlier enforcement priority memoranda (presumably including the U.S. Citizenship and Immigration Services (USCIS) memorandum regarding issuance of Notices to Appear) are all rescinded, except that the earlier DACA and DAPA memoranda are not rescinded at this time.
- The Secure Communities program for immigration detainees is reinstated, and the Priority Enforcement Program is rescinded.
- The Criminal Alien Program is to be expanded, to fast-track removal of incarcerated individuals; this includes immigration hearings within jails in “any willing jurisdiction.”
- Expand the use 287(g) agreements, which allows DHS to delegate federal immigration law enforcement functions to local law enforcement.
- Victims of Immigration Crime Engagement (VOICE) Office is to be established, to assist individuals who have allegedly been the victims of crimes by noncitizens. Any resources to advocate for vulnerable noncitizens are now reallocated to VOICE.
- DHS agencies are to assess and collect all possible fines and penalties against individuals who are unlawfully present, including those who assisted them.
- Privacy Act protections are withdrawn, for those who are neither U.S. citizens nor lawful permanent residents. Freedom of Information Act requests may now be very risky for all other individuals.

Border Security and Deportation Order (signed on January 25, 2017) and DHS **Implementing Memorandum** (dated February 20, 2017)

Among other things, the order directs the federal government to:

- Build a wall along our southern border.
- Secure the southern border, so that no one can enter without permission.
- Create new detention facilities near the southern border.
- End the “catch-and-release” policy for people who enter without permission, so that people will be detained during their deportation cases.
- Hire 5,000 additional Border Patrol officers.
- Increase scrutiny of asylum applications so that more asylum applications may be denied.
- Punish states and localities who refuse to allow local law enforcement to cooperate with federal immigration authorities.

In response to the Executive Order, DHS issued a memorandum articulated the following policies:

- Vastly increase the detention of individuals facing removal, both near the border and within the U.S.
- Expand expedited removals of individuals who are **anywhere** within the U.S. (rather than just within 100 miles of the borders and coasts) and who have been present for less

than two years.

- Identify and quantify all sources of direct and indirect aid and assistance to Mexico, including intelligence activities.
- Expand the use 287(g) agreements, which allows DHS to delegate federal immigration law enforcement functions to local law enforcement.
- Study security of the southern border, including planning and building a wall.
- Return noncitizens arriving from Mexico or Canada to those countries, pending removal proceedings.
- Restrict the standards for applying for asylum.
- Restrict the use of parole.
- Restrict the definition of Unaccompanied Children (UAC) to exclude children who have one or both parents in the U.S. and/or who have turned 18 years old.
- Prosecute parents or guardians of UAC's for smuggling or trafficking.

Order Excluding Muslims and Others (signed on March 6, 2017, to be effective March 16, 2017; expected to be subject to litigation; rescinds the January 27, 2017 Order Excluding Muslims and Others)

Among other things, this order directs the federal government to:

- For 90 days, ban entry for all nationals of Iran, Libya, Somalia, Sudan, Syria, and Yemen who are outside the U.S. on the effective date of the order (March 16, 2017), who did not have a valid visa at 5:00 p.m. Eastern Standard Time on January 27, 2017, and who do not have a valid visa on the effective date of the order (hereinafter “Muslim ban”).
 - Iraq is no longer on the banned list.
- The Muslim ban does not apply to permanent residents, those who are admitted or paroled into the U.S. on or after the effective date of the order, including pursuant to advance parole; dual nationals traveling on the non-designated country's passport; certain diplomatic visa holders; asylees, refugees, those granted withholding of removal or protection under the Convention Against Torture.
- Waivers are available on a case-by-case basis, pursuant to various criteria.
- Iraqi nationals will be subject to thorough review.
- Stop all refugee admissions for at least 120 days.
 - Does not apply to refugees formally scheduled for transit before the effective date of the order.
 - Exceptions to refugee ban may be made on a case-by-case basis.
- Reduce refugee admissions for FY2017 to 50,000, from President Obama's goal of 110,000.
- Expedite completion of a biometric entry-exit system.
- Suspend the Visa Interview Waiver Program, and require all visa applicants to attend an interview unless not required by statute.
 - This does not affect the Visa Waiver Program, which waives the requirement of obtaining a visitor visa.
- Consider ending all waivers of terrorism-related inadmissibility grounds, regardless of

how immaterial or insubstantial the individual's support of a purported "terrorist organization" may have been.

Order on Transnational Criminal Organizations and Trafficking (signed on February 9, 2017)

Among other things, this order directs the federal government to:

- strengthen enforcement efforts against "transnational criminal organizations," including criminal gangs, cartels, racketeering organizations, and other groups engaged in illicit activities that present a threat to public safety and national security and that are related to, for example:
 - **the illegal smuggling and trafficking of humans**, drugs or other substances, wildlife, and weapons;
 - corruption, cybercrime, fraud, financial crimes, and intellectual-property theft;
 - the illegal concealment or transfer of proceeds derived from such illicit activities.
- Maximize information sharing between all federal agencies, in order to identify, interdict, and dismantle "transnational criminal organizations" and subsidiary organizations;
- Create a Threat Mitigation Work Group which will, among other things:
 - work to improve Federal agencies' data collection and sharing relevant to Federal efforts against "transnational criminal organizations;" and
 - review Federal laws, including immigration laws, to determine the most effective ways to stop these "organizations"
 - Parents who help their children enter the U.S. are expected to be targets.

II. WHAT MAY HAPPEN SOON

DRAFT DACA, DAPA, and Enforcement Priorities Order (not yet signed, as of March 6, 2017)

So far, President Trump has indicated that young people who registered for Deferred Action for Childhood Arrivals (DACA) will not be an enforcement priority, meaning he is not seeking to deport people who have DACA. **The draft we have seen has not yet been signed.** The draft Executive Order, could end DACA. Among other things, the order would direct the federal government to:

- Rescind the June 15, 2012 memorandum establishing the DACA program.
- Allow any Employment Authorization Documents (work permits) issued under DACA to remain valid until the date of expiration of each work permit.
 - However, current DACA work permits may not be extended.
- Discontinue the grant of Advance Parole (travel permission) to DACA registrants.
- Rescind the November 20, 2014 memorandum creating the Deferred Action for Parents of Americans and Permanent Residents (DAPA) program.
- Withdraw certain enforcement priorities memoranda.
- Allow DACA to still be granted on a case-by-case basis.

DRAFT Order Affecting Recipients of Government Benefits (not yet signed, as of March 6, 2017)

We have seen only a **draft** of this Executive Order, which has not yet been signed. It would most immediately affect immigrants with sponsors. The current federal welfare law allows the government to charge affidavit of support sponsors for the cost of certain benefits received by the sponsored immigrant, but for the most part, this law has not historically been enforced in New York State. The Executive Order would direct the federal government to start enforcing the law by seeking to collect the cost of certain benefits from sponsors.

The Executive Order would also direct the issuance of new rules after a period of notice and comment. This means that the new rules would not go into effect immediately, and we would have time to prepare a response and advice for our clients to follow. These new rules would be about who is considered a "public charge" - under what circumstances someone who receives government benefits is at risk of removal or being denied admission to the U.S. The new rules would also redefine the list of which federally-funded benefits could put someone at risk of removal or being denied admission.

DRAFT Order Concerning Foreign Workers (not yet signed, as of March 6, 2017)

Among other things, the **draft** of this Executive Order, which has not yet been signed, directs the federal government to:

- Revise parole policies, and probably eliminate the ability to adjust one's status to permanent resident after entry on parole, including after travel on advance parole.
- Make various changes to different foreign worker visa categories, including but not limited to:
 - Limiting the ability to adjust one's status.
 - Changing to a merit-based system.
 - Protecting U.S. workers from being disadvantaged by foreign workers.
 - Making the H2A agricultural worker program more efficient.
- Expand the use of E-Verify.
- Investigate any injury caused to any U.S. worker by any foreign worker.
- Report on the number of work permits issued to foreign-born persons, and on the number of foreign-born persons authorized to work in the U.S.

III. OTHER

Temporary Protected Status (TPS)

- President Trump has not said whether he will or will not continue designating countries that have Temporary Protected Status (TPS).
- Termination of TPS designations would require 60-days' notice.

- The following countries currently have TPS: El Salvador, Guinea, Haiti, Honduras, Liberia, Nepal, Nicaragua, Sierra Leone, Somalia, South Sudan, Syria, Yemen

Non-Citizens with Criminal Convictions

- You should contact a reputable attorney or legal services provider for advice if you have a criminal conviction(s).
- If you are in criminal proceedings now or in the future, you should inform your attorney that you are a non-citizen and concerned about the immigration consequences of a criminal conviction or charge.

You Have Rights

- Right to Remain Silent: do not speak to immigration agents or to the police, and do not sign anything, without first talking to an attorney.
 - Do nothing more than give your name and address.
 - Do **not** give your country of birth or country of citizenship/nationality.
 - Do **not** lie or give incorrect information.
 - Say only “I won’t answer any more questions until I have an attorney.” Then stay silent!
- Do not open your door and do not let the police come in unless they have a criminal arrest or search warrant.
- City agencies are not supposed to ask about your immigration status, unless it’s necessary to see if you qualify for certain benefits.
- Police are not supposed to ask about your immigration status, unless it is relevant to their investigation.
- Call your consulate if you are arrested.
- Do not carry your home-country passport or consular card as identification, if you have other photo identification.

Plan Ahead

- Make an emergency plan in case of detention and deportation:
 - Appoint someone to take care of your children.
 - Leave copies of your identity documents (passport, birth certificate, etc.) with someone you trust.

If you have any questions or need assistance, please call our Immigration Hotline at 844-955-3425 on Fridays from 9:30am-12:30pm.