

Executive Order: Enhancing Public Safety in the Interior of the United States

Annotated by the National Immigrant Justice Center

January 25, 2017

EXECUTIVE ORDER

ENHANCING PUBLIC SAFETY IN THE INTERIOR OF THE UNITED STATES

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq.), and in order to ensure the public safety of the American people in communities across the United States as well as to ensure that our Nation's immigration laws are faithfully executed, I hereby declare the policy of the executive branch to be, and order, as follows:

The basic premise of this Order is wrong. Our communities are safest when all members receive due process, do not feel compelled to live outside the mainstream, and can trust in police. Our immigration laws, like all the laws of the nation, should be executed in a manner that honors our core American values. Consider the story of Nely¹ a recipient of Deferred Action for Childhood Arrivals who was a victim of armed robbery when an assailant entered the store where she worked in Indiana. Because she trusted police would give her aid and not try to deport her or her undocumented parents, she called 911, reported the crime, and provided police with all the information she could to support the investigation. What message are Nely and her family to take from this Order?

¹ All client names have been changed. Contact NIJC for further information about these matters.

Section 1. Purpose. Interior enforcement of our Nation's immigration laws is critically important to the national security and public safety of the United States. Many aliens who illegally enter the United States and those who overstay or otherwise violate the terms of their visas present a significant threat to national security and public safety. This is particularly so for aliens who engage in criminal conduct in the United States.

Rhetoric that conflates migration with criminality is rooted in fear, not reality. Immigrants commit less crime than native-born Americans. To be precise about this: "A variety of different studies using different methodologies have found that immigrants are less likely than the native-born to engage in either violent or nonviolent 'antisocial' behaviors ... and that immigrant youth who were students in U.S. middle and high schools in the mid-1990s and are now young adults have among the lowest delinquency rates of all young people." This quote is from ["The Criminalization of Immigration in the United States,"](#) published in 2015.

Sanctuary jurisdictions across the United States willfully violate Federal law in an attempt to shield aliens from removal from the United States. These jurisdictions have caused immeasurable harm to the American people and to the very fabric of our Republic.

The President has it backward. In fact, sanctuary jurisdictions are well within their legal rights and exercising sound policy judgment by limiting cooperation with federal immigration detainers that are issued without judicial warrants and systemically violate the Constitution and federal law. For background, see NIJC and the American Immigration Lawyers Association's [Policy Brief entitled, "Immigration and Customs Enforcement's Detainer Program Operates Unlawfully Despite Nominal Changes."](#) Moreover, the "fabric of our republic" is bound together by immigrant threads. The fabric unravels without immigrant contributions. What do Rupert Murdoch, Charlize Theron, retired Gen. John Shalikashvili, and Madeleine Albright have in common? [All came to the United States as immigrants.](#)

Sanctuary jurisdictions are about safety, protection, and community. What they most certainly do not do is "cause harm to the American people." In fact, a [study released by the Center for American Progress](#) just after the issuance of this Order found that Sanctuary jurisdictions (defined as counties that do not cooperate with federal immigration enforcement by holding individuals in jail longer than they would otherwise be released) have lower crime rates than similar jurisdictions without sanctuary policies.

Tens of thousands of removable aliens have been released into communities across the country, solely because their home countries refuse to accept their repatriation. Many of these aliens are criminals who have served time in our Federal, State, and local jails. The presence of such individuals in the United States, and the practices of foreign nations that refuse the repatriation of their nationals, are contrary to the national interest.

Although Federal immigration law provides a framework for Federal-State partnerships in enforcing our immigration laws to ensure the removal of aliens who have no right to be in the United States, the Federal Government has failed to discharge this basic sovereign responsibility. We cannot faithfully execute the immigration laws of the United States if we exempt classes or categories of removable aliens from potential enforcement. The purpose of this order is to direct executive departments and agencies (agencies) to employ all lawful means to enforce the immigration laws of the United States.

This is simply disconnected from reality. The federal government under President Obama's tenure in fact engaged in historic numbers of aggressive immigration enforcement operations. In 2016 alone, our government held 352,882 immigrants in detention and deported 240,255. President Obama deported more individuals from the United States than any previous president. For support on this, look no further than [ICE's own enforcement statistics](#). And if you're still skeptical, [even snopes.com agrees](#).

Sec. 2. Policy. It is the policy of the executive branch to:

- (a) Ensure the faithful execution of the immigration laws of the United States, including the INA, against all removable aliens, consistent with Article II, Section 3 of the United States Constitution and section 3331 of title 5, United States Code;
- (b) Make use of all available systems and resources to ensure the efficient and faithful execution of the immigration laws of the United States;
- (c) Ensure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law;
- (d) Ensure that aliens ordered removed from the United States are promptly removed;
and
- (e) Support victims, and the families of victims, of crimes committed by removable aliens.

See the [Office for Victims of Crime, a component of the Office of Justice Programs, U.S. Department of Justice.](#)

Sec. 3. Definitions. The terms of this order, where applicable, shall have the meaning provided by section 1101 of title 8, United States Code.

Sec. 4. Enforcement of the Immigration Laws in the Interior of the United States. In furtherance of the policy described in section 2 of this order, I hereby direct agencies to employ all lawful means to ensure the faithful execution of the immigration laws of the United States against all removable aliens.

Sec. 5. Enforcement Priorities. In executing faithfully the immigration laws of the United States, the Secretary of Homeland Security (Secretary) shall prioritize for removal those aliens described by the Congress in sections 212(a)(2), (a)(3), and (a)(6)(C), 235, and 237(a)(2) and (4) of the INA (8 U.S.C. 1182(a)(2), (a)(3), and (a)(6)(C), 1225, and 1227(a)(2) and (4)) ...

These statutory citations refer to the grounds of inadmissibility and deportability related to criminal convictions and terrorism-related activities and the grounds of inadmissibility related to the procurement of immigration benefits via fraud. These priorities were more or less the priorities of the Obama Administration. It is troubling that these grounds also include EVERY applicant for admission to the United States. To put that in plain language: the President of the United States has just declared that all arriving asylum seekers are priorities for enforcement.

...as well as removable aliens who:

(a) Have been convicted of any criminal offense;

ANY criminal offense? Speeding? Underage drinking? Driving with an expired license? We don't see a statute of limitations here either, so this provision sweeps in offenses that occurred years or decades ago. According to the [Pew Research Center](#), about two-thirds of the undocumented population has resided in the United States for more than a decade. The consequences of deportation are stark – often permanently separating children from their parents and tearing communities apart. [In most cases, the punishment of deportation is vastly disproportionate to the offense itself.](#)

(b) Have been charged with any criminal offense, where such charge has not been resolved;

Again, any charge, no matter how minor. People will be targeted for removal immediately rather than giving the presumed-innocent person an opportunity to prove their innocence. When we abandon the principle of a presumption of innocence our whole justice system is undermined.

(c) Have committed acts that constitute a chargeable criminal offense;

Again, any criminal offense – which seems to include any unlawful entry. And note the lack of details regarding who makes the determination that such acts have been committed and what the standard is for such a determination. Did you ever drink a beer during college? Did you ever drive 80mph in a 65mph zone? Deport.

(d) Have engaged in fraud or willful misrepresentation in connection with any official matter or application before a governmental agency;

(e) Have abused any program related to receipt of public benefits;

Terms like “abuse” are the kind of ambiguous blather that leaves all parties confused and renders the system unworkable. Noncitizens are generally ineligible for public benefits, except in a few states that allow limited classes of noncitizens to obtain them.

(f) Are subject to a final order of removal, but who have not complied with their legal obligation to depart the United States; or

(g) In the judgment of an immigration officer, otherwise pose a risk to public safety or national security.

This permits a low-level bureaucrat to act as judge, jury, and executioner. And the President has just declared that unauthorized immigration is a threat to public safety and national security. So basically, everyone.

Recap: These enforcement priorities put a target on the back of every single person arriving at our borders – including bona fide asylum seekers – and every undocumented person in the interior.

Sec. 6. Civil Fines and Penalties. As soon as practicable, and by no later than one year after the date of this order, the Secretary shall issue guidance and promulgate regulations, where required by law, to ensure the assessment and collection of all fines and penalties that the Secretary is authorized under the law to assess and collect from aliens unlawfully present in the United States and from those who facilitate their presence in the United States.

Targeting people who are compelled to help their immigrant neighbors according to their deeply held religious beliefs may violate the Religious Freedom Restoration Act (RFRA). To see this argument spelled out, see the [U.S. Catholic Conference of Bishops et al amicus brief to the Supreme Court](#) in Arizona v. United States.

Sec. 7. Additional Enforcement and Removal Officers. The Secretary, through the Director of U.S. Immigration and Customs Enforcement, shall, to the extent permitted by law and subject to the availability of appropriations, take all appropriate action to hire 10,000 additional immigration officers, who shall complete relevant training and be authorized to perform the law enforcement functions described in section 287 of the INA (8 U.S.C. 1357).

The President's Executive Orders are at odds with themselves. Earlier this week, the President issued a federal hiring freeze which is almost certain to mean that the Department of Justice cannot hire new Immigration Judges to process the cases that will arise out of the apprehensions made by these "additional enforcement and removal officers." See [the Guardian's reporting on this contradiction](#). Our immigration courts are already in crisis, backlogged by more than 500,000 cases. Julia Preston of the New York Times describes our immigration courts as "[a justice system in collapse](#)." But apparently things are about to get a lot worse.

Sec. 8. Federal-State Agreements. It is the policy of the executive branch to empower State and local law enforcement agencies across the country to perform the functions of an immigration officer in the interior of the United States to the maximum extent permitted by law.

This is misguided. Immigration law is complex and determining the immigration status of any individual can be a difficult task, opening the door to massive liability for local law enforcement agencies acting as federal immigration agents. See, [Federal Judge Enters Judgment for \\$20,000 to U.S. Citizen who Spent a Week in Immigration Detention](#). What's

more, assuming the role of a federal immigration enforcement officer poisons the relationship of local law enforcement with immigrant communities, making community policing even more difficult if not impossible.

(a) In furtherance of this policy, the Secretary shall immediately take appropriate action to engage with the Governors of the States, as well as local officials, for the purpose of preparing to enter into agreements under section 287(g) of the INA (8 U.S.C. 1357(g)).

287(g) is the section of the Immigration and Nationality Act that permits local law enforcement agencies to enter into agreements to deputize their police officers to enforce federal immigration laws. It turns local jails into immigration detention centers. The program and its problems are described well by the American Immigration Council [online here](#). Simply put, this program undermines the safety of the communities it claims to protect. 287(g) agreements, in operation, inevitably breed mistrust between communities and the police who strive to protect them. Investigations by the [DHS Office of the Inspector General](#) and [Government Accountability Office](#) have revealed the many ways in which 287(g) agreements result in racial profiling and other civil rights abuses. This is a program that should have been terminated years ago, not expanded.

(b) To the extent permitted by law and with the consent of State or local officials, as appropriate, the Secretary shall take appropriate action, through agreements under section 287(g) of the INA, or otherwise, to authorize State and local law enforcement officials, as the Secretary determines are qualified and appropriate, to perform the functions of immigration officers in relation to the investigation, apprehension, or detention of aliens in the United States under the direction and the supervision of the Secretary. Such authorization shall be in addition to, rather than in place of, Federal performance of these duties.

See above. Oh and we forgot to mention: Section 287(g) makes it harder for police to do their job. The Major Cities Chiefs Police Association has formally [adopted the position that](#) state and local police involvement in enforcing immigration law undermines immigrant community trust and cooperation with police and significantly diverts resources from their core mission to create safe communities.

(c) To the extent permitted by law, the Secretary may structure each agreement under section 287(g) of the INA in a manner that provides the most effective model for enforcing Federal immigration laws for that jurisdiction.

Sec. 9. Sanctuary Jurisdictions. It is the policy of the executive branch to ensure, to the fullest extent of the law, that a State, or a political subdivision of a State, shall comply with 8 U.S.C. 1373.

(a) In furtherance of this policy, the Attorney General and the Secretary, in their discretion and to the extent consistent with law, shall ensure that jurisdictions that willfully refuse to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary. The Secretary has the authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction. The Attorney General shall take appropriate enforcement action against any entity that violates 8 U.S.C. 1373, or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law.

8 U.S.C. 1373 is a much more limited law than the President seems to think it is. This provision – on its face – only prohibits state and local governments and agencies from enacting laws or policies that limit the sharing of information with DHS about “the immigration or citizenship status” of any person. Seriously it’s true – [read the statute](#). Also, the Department of Justice has publicly affirmed the legality of local policies that limit participation with federal immigration detainers. You can [listen to the former Principal Deputy Assistant Attorney General attesting as much to Congress at time stamp 1:28:18](#).

Having said all this, we still would likely to politely remind the President that forcing localities to cooperate with federal immigration enforcement is unlawful under the Tenth Amendment of the United States. Forcing localities to cooperate by coercion, through the stripping of federal funds let’s say, is no less unlawful. Three law professors recently explained this well in an [op-ed in the Washington Post](#).

Some people might say:

“Every violation of state sovereignty by federal officials is not merely a transgression of one unit of government against another; it is an assault on the liberties of individual Americans... [Federal] grants turn state and local elected officials into agents of the federal government [and] transforms recipients into appendages of the Washington bureaucracy. We call upon Congress to help a Republican president to reduce and ultimately eliminate this system of conditioned grants so that state and local taxpayers can decide for themselves what is best for their own communities.”

But that was just the [2016 Republican Platform at pp. 15 – 16](#).

(b) To better inform the public regarding the public safety threats associated with sanctuary jurisdictions, the Secretary shall utilize the Declined Detainer Outcome Report or its equivalent and, on a weekly basis, make public a comprehensive list of criminal actions committed by aliens and any jurisdiction that ignored or otherwise failed to honor any detainers with respect to such aliens.

More fear mongering. See above.

(c) The Director of the Office of Management and Budget is directed to obtain and provide relevant and responsive information on all Federal grant money that currently is received by any sanctuary jurisdiction.

Sec. 10. Review of Previous Immigration Actions and Policies. (a) The Secretary shall immediately take all appropriate action to terminate the Priority Enforcement Program (PEP) described in the memorandum issued by the Secretary on November 20, 2014, and to reinstitute the immigration program known as "Secure Communities" referenced in that memorandum.

In case you forgot how widely reviled the Secure Communities program was, check out just [this one example of many](#) opinion pieces railing against the program in USA Today in 2011. When then-DHS Secretary Johnson announced the repeal of Secure Communities in [2014 he noted the serious legal problems](#) that plagued Secure Communities, a program whose "very name has become a symbol for general hostility toward enforcement of our immigration laws." The President and DHS Secretary Kelly are on notice that NIJC and our partners will be vigilant in holding them accountable to the many illegalities that are sure to follow this pronouncement. Even Secure Communities' replacement program, the Priorities Enforcement Program, has operated via a detainer program that is systemically in violation of the Fourth Amendment, due process protections, and the Immigration and Nationality Act. For a description of the constitutional problems plaguing these programs, see the [AILA/NIJC Policy Brief entitled "Immigration and Customs Enforcement's Detainer Program Operates Unlawfully Despite Nominal Changes."](#)

Oh and check out [this decision issued the day before this Order from a federal judge in Rhode Island](#) finding ICE and the local Department of Corrections Director to have violated the Fourth Amendment in holding a naturalized U.S. citizen in jail for 24 hours under an immigration detainer issued without any probable cause finding.

(b) The Secretary shall review agency regulations, policies, and procedures for consistency with this order and, if required, publish for notice and comment proposed regulations rescinding or revising any regulations inconsistent with this order and shall consider whether to withdraw or modify any inconsistent policies and procedures, as appropriate and consistent with the law.

(c) To protect our communities and better facilitate the identification, detention, and removal of criminal aliens within constitutional and statutory parameters, the Secretary shall consolidate and revise any applicable forms to more effectively communicate with recipient law enforcement agencies.

Sec. 11. Department of Justice Prosecutions of Immigration Violators. The Attorney General and the Secretary shall work together to develop and implement a program that ensures that adequate resources are devoted to the prosecution of criminal immigration offenses in the United States, and to develop cooperative strategies to reduce violent crime and the reach of transnational criminal organizations into the United States.

It's hard to over-state the overly aggressive prosecution of immigration offenses already occurring every day in the United States. Prosecutions for illegal entry, illegal reentry and other immigration offenses made up 52% of all federal prosecutions in 2016, totaling 69,636 prosecutions.

Sec. 12. Recalcitrant Countries. The Secretary of Homeland Security and the Secretary of State shall cooperate to effectively implement the sanctions provided by section 243(d) of the INA (8 U.S.C. 1253(d)), as appropriate. The Secretary of State shall, to the maximum extent permitted by law, ensure that diplomatic efforts and negotiations with foreign states include as a condition precedent the acceptance by those foreign states of their nationals who are subject to removal from the United States.

Sec. 13. Office for Victims of Crimes Committed by Removable Aliens. The Secretary shall direct the Director of U.S. Immigration and Customs Enforcement to take all appropriate and lawful action to establish within U.S. Immigration and Customs Enforcement an office to provide proactive, timely, adequate, and professional services to victims of crimes committed by removable aliens and the family members of such victims. This office shall provide quarterly reports studying the effects of the victimization by criminal aliens present in the United States.

More fear-mongering.

Sec. 14. Privacy Act. Agencies shall, to the extent consistent with applicable law, ensure that their privacy policies exclude persons who are not United States citizens or lawful permanent residents from the protections of the Privacy Act regarding personally identifiable information.

This provision invites vigilantism by threatening to expose the private information of noncitizens. It also puts individuals who are escaping persecution or are victims of crime at risk of being identified and further harmed by their persecutors. When we allow the erosion of rights for the most vulnerable among us, our entire population suffers.

Sec. 15. Reporting. Except as otherwise provided in this order, the Secretary and the Attorney General shall each submit to the President a report on the progress of the directives contained in this order within 90 days of the date of this order and again within 180 days of the date of this order.

Sec. 16. Transparency. To promote the transparency and situational awareness of criminal aliens in the United States, the Secretary and the Attorney General are hereby directed to collect relevant data and provide quarterly reports on the following:

- (a) the immigration status of all aliens incarcerated under the supervision of the Federal Bureau of Prisons;
- (b) the immigration status of all aliens incarcerated as Federal pretrial detainees under the supervision of the United States Marshals Service; and
- (c) the immigration status of all convicted aliens incarcerated in State prisons and local detention centers throughout the United States.

Sec. 17. Personnel Actions. The Office of Personnel Management shall take appropriate and lawful action to facilitate hiring personnel to implement this order.

Sec. 18. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE,
January 25, 2017.

Questions about this document? Contact Heidi Altman, Director of Policy for NIJC, at haltman@heartlandalliance.org.