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**Brief Synopsis of January 2017 Immigration Executive Orders
and DHS Memos on Interior Enforcement and Border Security
as of Mar 22, 2017**

DHS Secretary Kelly published memos on February 20, 2017 implementing the executive orders issued by President Trump in January 2017 regarding immigration enforcement and border security. The memos, along with fact sheets and Q & As posted on DHS' website, <https://www.dhs.gov/executive-orders-protecting-homeland>, provide some additional information as to how the executive orders will be enforced. Below is a brief summary of the most relevant information for criminal defendants based on information from all currently available information.

Interior Enforcement

- **Expanded immigration enforcement priorities:** Prioritizes for removal (deportation) anyone who is *already removable under current immigration laws*, which includes anyone without lawful status no matter how long he/she has been in the US, and
 - has been convicted of any crime (including driving without a license),
 - has been charged with any crime, while that charge is pending,
 - has “committed acts that constitute a chargeable criminal offense,”
 - has a final order of removal but has failed to depart the US as required,
 - “has engaged in fraud or willful misrepresentation in connection with any official matter or application before a governmental agency” (this would presumably include anyone who has used a false Social Security #),
 - has abused any public benefits program, or
 - “[i]n the judgment of an immigration officer, otherwise pose[s] a risk to public safety or national security.”
- 10,000 additional ICE officers will be hired to effectuate the increased removals of noncitizens.
- **Immigration detainers:** The order and memo also call for increased use of immigration detainers and the development of new detainer forms. Note that the SJC is currently reviewing the legality of holding individuals on immigration detainers in *Commonwealth v. Lunn*, SJC-12276, scheduled for argument on April 4, 2017.
- **Raids:** Although there have been numerous reports and much fear of increased and more aggressive enforcement by ICE in the last few weeks, DHS has publically stated that it has not engaged in

immigration raids to date. The Q&As on DHS' website state that within six months, ICE will target operations in jurisdictions with violent gang activity; this suggests that if raids occur, they may begin in these jurisdictions which are otherwise unidentified.

- **Sensitive locations:** One of the Q&As states that ICE will continue to honor its policy not to conduct enforcement operations in “sensitive locations,” which include schools, universities, religious institutions and medical facilities, despite some news reports that enforcement has become more aggressive around these locations. Note that the policy does *not* consider courthouses to be sensitive locations, and that the presence of ICE officers in and around courthouses in Massachusetts appears to have increased significantly in recent weeks.
- **Removals to “recalcitrant” countries:** The order and memo encourage increased diplomatic pressure and “visa sanctions” on countries that refuse to repatriate their citizens who have been ordered removed. We have already heard that Cape Verde, who has refused to issue travel documents for several years as a matter of policy, plans to begin effectuating removals of its citizens. Note that some countries, such as Vietnam, have repatriation agreements that do not allow for the removal of certain individuals; therefore, new agreements would need to be negotiated before removals could begin to those countries. However, individuals from such countries can still be detained during removal proceedings and for limited periods of time after ordered removed.
- **“Deferred Action for Childhood Arrivals” (DACA):** The executive order does not rescind DACA, which was created by executive action under President Obama. Additional guidance and likely policy changes are anticipated regarding DACA recipients but it remains in place for now. Note that criminal convictions can either bar DACA or prevent renewal. Noncitizens should not apply for DACA for the first time or apply to renew DACA status without consulting with immigration attorneys.
- **Expedited proceedings:** The memos list various efforts to accelerate deportations. The executive order and DHS memo on enforcement call for increased use of Institutional Removal Hearings (IRH – take place by video while noncitizens are in criminal custody). In addition, the memos seek to increase use of summary removal proceedings (proceedings where immigration officers, not immigration judges, may order removal). The interior enforcement memo calls for more administrative removals (in which those who are not lawful permanent residents (LPRs – green card holders) and have been convicted of aggravated felonies may be ordered removed without immigration court proceedings). The border security memo, discussed below, also calls for expanded use of expedited removal to include anyone in the US who entered without lawful status and cannot prove that they have been here for at least two years (under the Obama administration, this procedure was limited to those within 100 miles of the border who could not show presence in the US for 14 days).
- **Call for increased state and local law enforcement to enforce immigration laws under 287(g) agreements,** in which state and local officers are deputized to act as ICE agents, allowing them to investigate and initiate removal proceedings.
- Threats to withdraw federal grants, except as necessary for law enforcement, from so-called “sanctuary jurisdictions,” defined in the order as jurisdictions that violate 8 U.S.C. § 1373, which prohibits jurisdictions from preventing *communication* with ICE regarding a person’s *immigration status*. Litigation against this policy has been filed in several jurisdictions around the country, including *Cities of Chelsea and Lawrence v. Trump*, #1:17-cv-10214-GAO (D. Mass. 2017).

- Collection of fines and penalties from those without lawful status and those who “facilitate unlawful presence.” No additional guidance has been provided on this provision.
- Multiple provisions mandate the collection and publication of data regarding noncitizens charged and convicted of crimes.

Border Security: This order and DHS memo call for increased immigration enforcement at the southern border, including;

- Construction of a wall
- 5,000 additional border patrol agents and the use of state and local law enforcement under 287(g) to act as border patrol agents
- Increased immigration detention
- Return of those entering from a contiguous country during the pendency of their removal proceedings
- Consider prosecution of parents living in the US who facilitate their children to come here as “unaccompanied minors”
- Significant expansion of “expedited removal,” as discussed above.

Know Your Rights

The Immigrant Defense Project has a flyer and other handouts in multiple languages that describe your rights as a noncitizen when questioned by ICE, <https://www.immdefense.org/ice-home-and-community-arrests/>, and the Immigrant Legal Resource Center has “red cards” that do the same, <https://www.ilrc.org/red-cards>. These should be widely distributed to noncitizen clients, family and friends to carry with them.

Noncitizen clients in immigration or criminal custody should also be advised if questioned by ICE or other officers working with ICE that:

1. Immigration interviews are voluntary interviews. You do not have to speak to any officer about your immigration or criminal history.
2. You have the right to remain silent. Anything that you say to ICE or correctional officers working for ICE (including simple information like where you were born) can and will be used against you in immigration court or criminal court.
3. You do not have to sign any documents that ICE or other officers may give you. Anything you sign at the request of ICE or correctional officers working with ICE can and will be used against you in immigration court or criminal court.

Know Your Rights forms for clients in custody are available in multiple languages on the IIU website at <https://www.publiccounsel.net/iu/public/>.

Clients with any criminal histories should be advised NOT to travel outside the U.S. or fly domestically right now without first consulting with an immigration attorney.