

Background on the Trump Administration Executive Orders on Immigration

The following document provides background information on President Trump's Executive Orders, as well as subsequent directives regarding immigration enforcement and their impact to date on the Irish immigrant community residing in the United States.

On January 25, 2017, President Trump signed two executive orders:

- **Enhancing Public Safety in the Interior of the United States**-addressing interior enforcement
- **Border Security and Immigration Enforcement Improvements**- addressing border security & enforcement.

On February 17, 2017, Department of Homeland Security (DHS) Secretary, John Kelly, issued two memorandums outlining implementation plans for the January 25th Executive Orders. These memorandums are directed toward Customs Enforcement (ICE), Customs and Border Patrol (CBP) and Citizenship and Immigration Services (USCIS).

In general, an executive order directs departments and agencies under the Executive branch to take specific actions or to change current practices under the authority of existing statutes or the U.S. Constitution. In the case of the enforcement and execution of immigration laws within the U.S., the President directs the Department of Homeland Security (DHS) which includes Immigration and Customs Enforcement (ICE), Customs and Border Patrol (CBP) and Citizenship and Immigration Services (USCIS). Respectively, these three agencies handle interior enforcement, border security and processing of immigration benefits.

The President may direct these agencies on how to carry out and interpret existing laws based on current resources and funding restraints. Some provisions may be immediately implemented in the field under existing regulations. Other provisions require a formal change in existing regulations through a notice and comment period before full implementation or increased funding from Congress. Still other changes would require an amendment to the US Immigration and Nationality Act which requires Congressional approval.

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

Enhancing Public Safety in the Interior of the United States announces a massive expansion in interior enforcement. Firstly and most importantly, the order defines enforcement priorities very broadly and places almost all undocumented individuals at risk of removal, including mixed families and long-term unauthorized residents. The order also forces states and localities to enforce federal immigration laws, considers stripping funding from so-called sanctuary cities, revives the controversial Secure Communities program ended in 2012 and encourages criminal prosecutions of illegal entries.

Potential Impact on Irish Immigrants:

This order could have significant implications for Irish people who are noncitizens of the US, particularly our undocumented and those with green cards or valid temporary visas who are deportable as a result of criminal issues. According to the order, essentially anyone without legal status may be considered a priority for removal and is no longer exempt from prosecution or enforcement based on other equities and factors, such as length of time in the U.S., family members who are citizens or residents, minor crimes, etc. This means that any undocumented individual coming to the attention of ICE within the US is subject to enforcement and the removal process.

Notes:

- Those arrested by ICE who have overstayed on the 90 day visa waiver program are detained and removed without a hearing before an immigration judge. The removal process for visa waiver overstays has not changed; those who enter on and overstay the 90 day visa waiver program remain subject to a similar process having waived their rights to a hearing through the ESTA registration process
- Those who have overstayed their visa waiver, have filed an application for permanent residence based on a **fraudulent marriage** and have had that application denied due to fraud may be at risk of deportation without a hearing as they have waived that right as a visa waiver participant.
- Until more funding and resources become available, initially ICE enforcement will most likely be limited to those who have a criminal history or any involvement with the criminal justice system. The reality is that others may also be detained.

Key Provisions of the Order

Expanded Enforcement Priorities: The order announces new interior enforcement priorities that have the effect of making **every** undocumented immigrant in the United States a priority for removal. The priorities are not ranked and are presented as equally important. The new guidance essentially replaces the previous 2014 Johnson enforcement priorities memorandum and are effective immediately. The Kelly Memorandum immediately rescinds all previous conflicting enforcement guidance but specifically states that previous memoranda related to deferred action for childhood arrivals (DACA) are NOT rescinded.

Note: The 2014 Johnson memorandum focused enforcement on four priority levels of noncitizens with more serious criminal convictions, recent orders of removal or who were considered a danger to national security or public safety.

The order does not and cannot change the grounds of deportation or removal. This means that people who have legal status can only be deported if they are removable under our current immigration laws; this primarily includes those who have serious criminal convictions, commit fraud or misrepresentation to obtain benefits or are risks to national security.

The order identifies as an enforcement priority any individual who falls within existing grounds of removal under law OR anyone who is otherwise deportable (e.g. undocumented) and is or has been:

- Convicted of ANY criminal offense
- Charged with ANY criminal offense where the charge is “not resolved” (pending or open cases)
- Committed “acts” that constitute a “chargeable criminal offense,” which may include unlawful entry into the U.S., using fake papers to work and minor offenses such as driving without a license, traffic tickets, etc.
- Subject at any time to a final order of removal and have not departed
- Suspected of fraud or willful misrepresentation in their immigration cases
- An “abuser” of any government benefit program
- A threat to public safety and security in the “judgment” of an “immigration officer,” which may include visa violators, suspected gang members

Individuals that are most exposed to these new priorities are those who are undocumented or otherwise subject to deportation and are:

- In detention or jail
- Have prior convictions or outstanding warrants
- Have contact with the criminal justice system or are on probation, parole or in court
- Have a final order of removal, including those with stays of deportation or expiring orders of supervision where prosecutorial discretion may be reevaluated
- Former recipients of DACA with convictions, prior orders of removal or suspected gang affiliations
- Applicants denied immigration benefits before USCIS

Note: Currently, applicants who are denied immigration benefits by USCIS are not automatically placed in removal proceedings, but rather USCIS makes a case by case basis determination as whether or not deportation proceedings will commence. The intent of the memo is to take away USCIS discretion and automatically place anybody who is denied an immigration benefit in removal proceedings. As of February 23, this has NOT been implemented. If deportation proceedings are commenced, it is possible that Immigration and Customs Enforcement (ICE) may focus on these individuals for a home raid at their address last known to local, state or federal authorities. This practice was not seen during the Obama Presidency.**Note:** Based on the current raids in February 2017, ICE does not seem to make any distinction

between those with criminal records and those without. It appears that those who were the intended focus of the raids were those listed above (with criminal activity or prior deport orders). However, during the raids, they encountered others not on the list above and also placed them in removal proceedings.

Noncitizens who are in lawful immigration status and have not been convicted of a removable criminal offense are not affected by the new enforcement priorities. This includes lawful permanent residents/green card holders, DACA holders or anyone in a valid temporary visa status. Examples of removable criminal offenses include:

- Convictions for:
 - Most controlled substance offenses
 - Firearm offenses
 - Domestic violence offenses
- Crimes involving moral turpitude:
 - Intent to steal or defraud
 - Intent to cause bodily harm, where serious bodily harm or death is caused by reckless behavior
 - Most sex offenses
- Crimes involving aggravated felonies which are the most serious crimes classified under immigration law and include most felony offenses and serious misdemeanor offenses.

Note: A 'basic' DUI and a Drunk in Public charge are not removable offences.

Increase ICE Resources: The order seeks to hire an additional 10,000 ICE officers to conduct enforcement and removal operations and looks to expand the 287(g) program, which allows for the deputizing state and local law enforcement to enforce federal immigration laws. There will likely be more workplace raids, ICE presence at courts and jails and ICE fugitive operations with an increase in resources.

Note: These initiatives will require significant funds from Congress and time to hire and train new officers.

Compliance by Sanctuary Jurisdictions: The order seeks to ensure that jurisdictions that limit their cooperation with the Department of Homeland Security (DHS) are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes. It authorizes DHS to arbitrarily designate jurisdictions as "sanctuary jurisdictions," without clearly defining "sanctuary jurisdictions." This order does not immediately strip any funding or make clear which funding sources may be denied.

Note: Any effort to compel localities to engage in immigration enforcement will face strong legal challenges, including claims that mandatory compliance violates the Tenth Amendment of the U.S. Constitution.

Increase Immigration Prosecutions: The order directs adequate funding to increase criminal prosecutions of those crossing the border without inspection and who reenter after deportation. DHS is also directed within one year to issue guidance and promulgate regulations to collect penalties from unlawfully present noncitizens and those who facilitate their presence. These could include civil fines under current laws for entry without inspection, document fraud, employer sanctions, failure to depart after an order of deportation and property forfeiture.

Revive Secure Communities: The order re-institutes the controversial Secure Communities Program (SCOMM) and terminates the Priority Enforcement Program (PEP). Secure Communities requires local law enforcement to share individual information and fingerprints with DHS of those in its custody and authorized DHS to issue detainers to local jails and correctional facilities for the purpose of holding an individual beyond the scheduled release date and until ICE can take custody.

Under the new enforcement priorities, ICE is likely to issue detainers for any individuals in criminal custody identified as removable or undocumented. It will be up to the local jurisdiction whether to honor the detainer and continue and transfer custody to ICE. Several localities, including many Sanctuary Cities, have expressly limited their roles with respect to immigration enforcement, including detainer requests, to better protect their communities and ensure their law enforcement officials comply with the Constitution.

Executive Order: Border Security and Immigration Enforcement Improvements

Border Security and immigration Enforcement Improvements includes plans to construct a wall at the southern border, hire additional Border Patrol agents, increase and expand detention capacity, expand cooperation with local law enforcement and restricting due process and humanitarian protections.

Potential Impact on Irish Immigrants:

The long term potential impact of this order on Irish noncitizens would potentially be:

- An increased capacity to detain those who are deportable
- Local law enforcement cooperation to better detect Irish undocumented and identify those coming in contact with the criminal justice system.

The focus is clearly on the Southern border but these two provisions would also extend to the full interior. This should have a minimum impact on Irish noncitizens as most of the Irish overstays are those who have entered on the Visa Waiver Program (VWP) or a nonimmigrant visa.

- Those who overstayed the VWP are already subject to expedited removal no matter how long they have been in the United States.
- Those who overstayed or violated their nonimmigrant visa status are not subject to expedited removal.

This EO will only significantly impact those Irish nationals who have entered the U.S. without inspection through the Canadian or Mexican borders and have been here for less than two years. We believe that number to be very small.

The removal process for visa waiver overstays has not changed; those who enter on and overstay the 90 day visa waiver program remain subject to a similar process having waived their rights to a hearing through the ESTA registration process.

Key Provisions of the Order

Funding the Construction of a Border Wall: The order looks to fund the immediate construction of "a contiguous, physical wall or other similarly secure, contiguous, and impassable physical barrier" on the southern border. It also seeks to hire an additional 5,000 Border patrol agents as soon as is practicable.

Note: Congress will have to appropriate significant additional funding in order to build a wall and hire more agents.

Mass Detention Expansion: The order plans for a massive expansion in detention, particularly on the border, by immediately constructing detention facilities at or near the border. It looks to assign asylum officers and immigration judges at these facilities to conduct interviews and removal proceedings.

The Administration contemplates a policy to detain individuals apprehended on suspicion of violating federal or state law, including federal immigration law, pending further proceedings regarding those violations. It calls for the detention of all individuals illegally crossing the Southern border, ending "catch and release" and ensuring that immigrants in removal proceedings are detained to the maximum extent of the law.

Note: Additional funding would be needed from Congress to increase detention capacity as well as hiring and training asylum officers and immigration judges.

Expansion of the Expedited Removal Process: Seeks to expand "expedited removal" process to the maximum extent permitted by law. The expedited removal process allows immigration enforcement officers to quickly deport individuals, in as little as 24 hours, without ever seeing an immigration judge with no guarantee of legal counsel and little chance to obtain representation from detention.

Previous policies restricted the expedited removal process to within 100 miles of any U.S. border and to unlawful entrants who have entered within the last 14 days. The order would expand application of this procedure throughout the United States, to individuals who unlawfully entered the United States and cannot prove to DHS that they have been continuously present for the previous two years. However, it only applies to noncitizens who lack valid entry documentation, who committed fraud or misrepresentation to enter the United States or who falsely claim U.S. citizenship.

Note: This provision would only apply to Irish nationals who came across the Canadian or Mexican borders without inspection.

Expanding 287(g) Programs: The order looks to reestablish and expand partnerships between federal, state, and local law enforcement to enforce federal immigration priorities, as well as state monitoring and detention programs that are "consistent with federal law and do not undermine federal immigration priorities."

Note: This program had been significantly reduced under the previous Administration and will require significant funding from Congress to implement.

Restrictions on Parole Benefits and Asylum Protections: The order looks to ensure that parole and asylum provisions are not exploited to allow individuals to remain in the U.S. who are otherwise removable. Parole authority has traditionally been used on a case-by-case basis to permit an individual to enter, remain in the U.S. or be released from detention for urgent humanitarian reasons or significant public benefit. At this point in time, it appears that the application is intended only for asylum seekers or other individuals who have already been ordered removed, but there is intention that it could apply to other categories. As of February 21, there is no restriction on advanced parole.

Criminal Prosecutions of Unlawful Entries: The order prioritizes prosecutions of any offense connected to the southern border, such as unlawful entry offenses. These immigration-related prosecutions already take up nearly half of the overall federal court docket.

Many of these provisions will take time and money to execute. The Department of Homeland Security is required to implement by establishing further guidance and regulations to the respective agencies in the field.