

PRACTICE ADVISORY

Trump Administration Executive Order Outlining New Enforcement Priorities¹

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On January 25, 2017, the Trump administration issued an Executive Order entitled, “Enhancing Public Safety in the Interior of the United States.” The Executive Order (Order) provides for new enforcement priorities for removal:

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)[**criminal-related inadmissibility grounds**], (a)(3)[**security-related inadmissibility grounds**], and (a)(6)(C)[**misrepresentation inadmissibility grounds**], 235 [**expedited removal of inadmissible arriving noncitizens**], and 237(a)(2)[**criminal deportability grounds**] and (4) [**security-related deportability grounds**] of the INA (8 U.S.C. 1182(a)(2), (a)(3), and (a)(6)(C), 1225, and 1227(a)(2) and (4)), as well as removable aliens who:

- a) Have been convicted of any criminal offense;
- b) Have been charged with any criminal offense, where such charge has not been resolved;
- c) Have committed acts that constitute a chargeable criminal offense;
- 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;
- 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.

¹ The National Immigration Project/NLG will author or co-author alerts about other aspects of the January 25, 2017 Executive Orders or subsequent Executive Orders relating to immigration issues.

What does this section mean?

The Trump Administration appears to be indicating that it will prioritize for removal 1) anyone who comes within the specified removal grounds OR 2) anyone otherwise removable AND who comes within the criteria in Sect. 5, (a)-(g) (has a conviction, has been charged with an offense, or has committed an offense, etc.). The Order does not specifically rescind any prior Department of Homeland Security (DHS) memoranda, but Section 10 of the Order terminates the Priority Enforcement Program (PEP). PEP was the program under Obama through which the DHS sought to obtain custody of those noncitizens deemed a priority for removal as described in Secretary Johnson's November 20, 2014 memo.

Does this mean that DHS can try to remove someone who has lawful status, no prior convictions, and no immigration violations, but is currently charged with a crime?

No. The Order does not appear to be suggesting that as the language specifies that those who fall within Sec. 5, (a)-(g) must already be *removable*. More importantly, the Executive Branch cannot change statutory law on its own, and immigration law still requires a conviction to trigger many of the crime-based removal grounds.

How will the new priorities change practices on the ground?

In contrast to the priorities in place under Obama, Trump is prioritizing for removal a much broader group of noncitizens. This may play out in many ways. First, the broad language "committed acts that constitute a chargeable criminal offense" may be viewed as covering minor offenses such as speeding or driving without a license. It may be that the Order will lead to greater profiling and pretextual arrests of undocumented immigrants (e.g., for speeding), particularly in non-sanctuary cities, so that undocumented noncitizens become more of a priority for removal (whereas the same noncitizen would not have been priority under Obama). Or it may be that *anyone* who is undocumented (and entered without inspection) will be deemed a priority because he or she could be considered to have committed the offense of illegal entry under 8 U.S.C § 1325. In other words, it may be that anyone who is deportable or inadmissible may now be placed in removal proceedings (whereas the Obama administration may have chosen to ignore that same noncitizen).

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