

## TRUMP EXECUTIVE ORDER AND DHS GUIDANCE ON INTERIOR ENFORCEMENT: A BRIEF REVIEW

By Sarah Pierce and Randy Capps

Issue	Executive Order 13768: Enhancing Public Safety in the Interior of the United States (Signed January 25, 2017)	Earlier and Current Policy/Practice and Context
<b>SECTION 1. PURPOSE OF THE EXECUTIVE ORDER</b>		
<p><b>Interior enforcement of immigration laws in furthering national security and public safety</b></p>	<p>Interior enforcement of U.S. immigration law is “critically important to the national security and public safety of the United States.” The executive order asserts that many noncitizens who illegally enter the United States or overstay or otherwise violate the terms of their visas present a “significant threat” to national security and public safety, particularly those engaging in criminal conduct in the United States.<sup>1</sup></p> <p>The executive order further charges that jurisdictions that limit their cooperation with federal immigration enforcement (so-called sanctuary cities) “willfully violate” federal law and have caused “immeasurable harm to the American people.”</p> <p>Citing the refusal by some countries to accept return of their nationals ordered removed from the United States, the executive order says “tens of thousands of removable noncitizens have been released into communities across the country.”</p> <p>It concludes: “We cannot faithfully execute the immigration laws of the United States if we exempt classes or categories of removable aliens from potential enforcement.”</p>	<p>MPI has estimated that as of 2012, 820,000 unauthorized immigrants had committed crimes—ranging from felonies to minor misdemeanors (including immigration-related crimes)—that could warrant their deportation.<sup>2</sup></p> <p>As discussed below, since 1997 no jurisdiction has been found to be in violation of federal law that prohibits them from restricting government entities or officials from sending or receiving information from the Department of Homeland Security (DHS) on the immigration status of any individual.</p> <p>U.S. Immigration and Customs Enforcement (ICE) has reported that 123,098 noncitizens with outstanding orders of removal are nationals of the 23 countries that ICE deems to be “recalcitrant.”<sup>3</sup> Recalcitrant countries are those that systematically refuse or delay return of their nationals. China, Somalia, and India are among the countries listed.<sup>4</sup></p> <p>Law enforcement agencies at all levels customarily set priorities in allocating their enforcement resources and efforts. Such priorities often differ by community, depending on localized public safety concerns and circumstances.</p>

1 White House, “Executive Order 13768 of January 25, 2017, Enhancing Public Safety in the Interior of the United States,” *Code of Federal Regulations*, title 3 (2017): 8799-8803, [www.gpo.gov/fdsys/pkg/FR-2017-01-30/pdf/2017-02102.pdf](http://www.gpo.gov/fdsys/pkg/FR-2017-01-30/pdf/2017-02102.pdf); John Kelly, Secretary of Homeland Security, “Memorandum: Enforcement of the Immigration Laws to Serve the National Interest” (Department of Homeland Security memorandum, February 20, 2017), [www.dhs.gov/sites/default/files/publications/17\\_0220\\_S1\\_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf](http://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf).

2 Marc R. Rosenblum, *Understanding the Potential Impact of Executive Action on Immigration Enforcement* (Washington, DC: Migration Policy Institute, 2015), 11, [www.migrationpolicy.org/research/understanding-potential-impact-executive-action-immigration-enforcement](http://www.migrationpolicy.org/research/understanding-potential-impact-executive-action-immigration-enforcement). The 820,000 unauthorized immigrants with criminal records represented 8.2 percent of the estimated 10 million unauthorized immigrant adults ages 18 and older in 2013.

3 Sen. Jeff Sessions, “242,772 Aliens with Final Removal Orders from Recalcitrant and Non-cooperative Countries Remain in the United States” (news release, October 19, 2016).

4 Testimony of Michele Thoren Bond, Assistant Secretary for Consular Affairs, Department of State, *Repatriation of Convicted Criminal Aliens*, before the U.S. Committee on Oversight and Government Reform, 114th Cong. 2nd sess., July 14, 2016, <https://oversight.house.gov/wp-content/uploads/2016/07/Bond-DOS-Statement-Recalcitrant-Countries-7-14.pdf>.

## SECTION 4. ENFORCEMENT OF IMMIGRATION LAWS IN THE U.S. INTERIOR

<b>Enforcement against all removable noncitizens</b>	Federal agencies are directed to employ “all lawful means” to execute U.S. immigration laws against “all removable aliens.”	Prior administrations have generally used their discretionary authority to focus U.S. immigration enforcement against certain priority groups within unauthorized populations (for example those with criminal records). As a result, others in the unauthorized population are de facto shielded from enforcement. This exercise of prosecutorial discretion recognizes the government’s inability to remove all 11 million unauthorized immigrants. In contrast with past practice, this section of the executive order and the DHS guidance for implementing it state that DHS will no longer “exempt classes or categories of removable aliens from potential enforcement” unless “specifically noted.” At present, recipients of the Deferred Action for Childhood Arrivals (DACA) program have been designated in the guidance as exempt.
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## SECTION 5. ENFORCEMENT PRIORITIES

<b>Establishing removal priorities for noncitizens</b>	<p>5(a-f) DHS will prioritize for removal foreign nationals who:</p> <ul style="list-style-type: none"> <li>▪ Qualify for one of the criminal grounds of inadmissibility or removal under the <i>Immigration and Nationality Act</i> (INA) (INA 212(a)(2), 237(a)(2)).</li> <li>▪ Qualify for one of the security grounds of inadmissibility or removal under the INA (INA 212(a)(3), 237(a)(4)).</li> <li>▪ Committed fraud in the process of applying for an immigration benefit or falsely claimed to be a U.S. citizen (INA 212(a)(6)(C)).</li> <li>▪ Are unauthorized or inadmissible arriving noncitizens (INA 235).</li> </ul> <p>DHS will also prioritize for removal foreign nationals who are otherwise removable and:</p> <ul style="list-style-type: none"> <li>▪ Have been convicted of any criminal offense.</li> <li>▪ Have been charged with any criminal offense, where such charge has not been resolved.</li> <li>▪ Have committed acts that constitute a chargeable criminal offense.</li> <li>▪ Have engaged in fraud or willful misrepresentation in connection with any official matter or application before a government agency.</li> <li>▪ Have abused any program related to receipt of public benefits.</li> <li>▪ Are subject to a final order of removal, but have not complied with their legal obligation to depart the United States.</li> <li>▪ In the judgment of an immigration officer, otherwise pose a risk to public safety or national security.</li> </ul>	<p>These priorities replace guidelines issued in November 2014 by then-Secretary of Homeland Security Jeh Johnson, which prioritized the removal of noncitizens in the following categories:<sup>5</sup></p> <ul style="list-style-type: none"> <li>▪ <i>Priority 1:</i> National security threats, noncitizens apprehended immediately at the border, gang members, and noncitizens convicted of felonies or aggravated felonies as defined in immigration law. MPI estimated 300,000 unauthorized immigrants in 2012 had a felony conviction.<sup>6</sup></li> <li>▪ <i>Priority 2:</i> Noncitizens convicted of three or more misdemeanors or one serious misdemeanor, those who entered or re-entered the United States unlawfully after January 1, 2014, and those who have significantly abused visa or visa waiver programs. MPI estimated the number with serious misdemeanor convictions at 390,000 and the number with unlawful entry or re-entry after January 1, 2014, at 640,000.<sup>7</sup></li> <li>▪ <i>Priority 3:</i> Noncitizens subject to a final order of removal issued on or after January 1, 2014. MPI estimated this population to be 60,000 in 2012.<sup>8</sup></li> </ul> <p>In total, MPI estimated that 1,390,000 unauthorized immigrants met one of these three priorities.<sup>9</sup> As a result, about 87 percent of the unauthorized population was not an enforcement priority under the 2014 guidelines.</p> <p>Over the course of the Obama administration, DHS increasingly adhered to these priorities. By fiscal year (FY) 2016, more than 99 percent of all removals and returns fell within the three priorities, and 94 percent were within Priority 1.<sup>10</sup></p> <p>The Trump administration has stated its intent to focus first on removals of those with criminal convictions. The priorities outlined in this section of the executive order are very broad, however, and could ultimately include the entire unauthorized population unless specifically exempted, as outlined above.</p>
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5 Jeh Charles Johnson, Homeland Security Secretary, “Memorandum: Policies for the Apprehension, Detention and Removal of Undocumented Immigrants” (Department of Homeland Security memorandum, November 20, 2014), [www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_prosecutorial\\_discretion.pdf](http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf).

6 Rosenblum, *Understanding the Potential Impact of Executive Action on Immigration Enforcement*, Table 1.

7 Ibid.

8 Ibid.

9 Rosenblum, *Understanding the Potential Impact of Executive Action on Immigration Enforcement*.

10 Department of Homeland Security (DHS), “DHS Releases End of Year Fiscal Year 2016 Statistics” (news release, December 30, 2016), [www.dhs.gov/news/2016/12/30/dhs-releases-end-year-fiscal-year-2016-statistics](http://www.dhs.gov/news/2016/12/30/dhs-releases-end-year-fiscal-year-2016-statistics).

## SECTION 6. CIVIL FINES AND PENALTIES

<b>Levying and collecting fines from unauthorized immigrants</b>	DHS will issue guidance and regulations to ensure the collection of all fines and penalties that unauthorized immigrants, and those who facilitate their presence, are required to pay.	<p>The INA permits DHS to collect a variety of fines, only some of which have been imposed. They include:</p> <ul style="list-style-type: none"> <li>▪ A \$50 to \$250 fine per attempted illegal entry for foreign nationals who are apprehended while attempting to enter the United States without authorization (INA 275(b)(1)).</li> <li>▪ Fines of \$500 a day for people who willfully fail to comply with final removal orders (INA 274D).</li> <li>▪ Fines of \$1,000 to \$5,000 for foreign nationals who fail to depart after having received an order granting voluntary departure in lieu of removal (INA 240B(d)).</li> <li>▪ A \$3,000 fine for anyone who brings into the United States a foreign national who is inadmissible due to health-related grounds (INA 272(a)).</li> <li>▪ A fine of \$3,000 for any person or transportation company who brings a foreign national to the United States who lacks a valid passport and visa (INA 273(b)).</li> </ul> <p>Such measures have been used infrequently, if at all, largely because the cost and effort required to impose them are prohibitive.</p>
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## SECTION 7. ADDITIONAL ENFORCEMENT AND REMOVAL OFFICERS

<b>Hiring more ICE enforcement and removal officers</b>	DHS will hire an additional 10,000 ICE officers, as well as additional operational and mission support and legal staff, subject to the availability of appropriations.	There were 5,800 deportation officers and immigration enforcement agents within ICE Enforcement and Removal Operations at last report. <sup>11</sup> No estimate has been made public of how much it would cost to add 10,000 ICE officers. However, the ICE FY 2017 budget requests \$6.6 million for an increase of 100 full-time enforcement officer positions for the agency's Criminal Alien Program. <sup>12</sup> Based on this amount, an additional 10,000 ICE officers would cost \$600-700 million annually.
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## SECTION 8. FEDERAL-STATE AGREEMENTS

<b>Expanding local ability to assist in enforcing immigration laws</b>	8(a) DHS will engage with state and local governments to enter into agreements under section 287(g) of the INA.	INA 287(g) allows the federal government to enter into agreements with state or local governments, under which certain state or local officers or government employees are authorized and trained to assist with the investigation, apprehension, or detention of unauthorized immigrants. According to the DHS memorandum, 32 law enforcement agencies in 16 states currently participate in the 287(g) program.
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<sup>11</sup> DHS, *Budget-in-Brief: Fiscal Year 2016* (Washington, DC: DHS, 2015), 47, [www.dhs.gov/sites/default/files/publications/FY\\_2016\\_DHS\\_Budget\\_in\\_Brief.pdf](http://www.dhs.gov/sites/default/files/publications/FY_2016_DHS_Budget_in_Brief.pdf).

<sup>12</sup> DHS, *Congressional Budget Justification FY 2017 – Volume II* (Washington, DC: DHS, 2016), 39, [www.dhs.gov/sites/default/files/publications/FY%202017%20Congressional%20Budget%20Justification%20-%20Volume%202\\_1.pdf](http://www.dhs.gov/sites/default/files/publications/FY%202017%20Congressional%20Budget%20Justification%20-%20Volume%202_1.pdf).

<p><b>Expanding 287(g) models</b></p>	<p>8(b-c) DHS will take appropriate action to authorize state and local law enforcement officials to perform the functions of immigration enforcement officers in relation to the investigation, apprehension, or detention of noncitizens under DHS direction and supervision. Use of state and local officials will be used to supplement, rather than replace, existing ICE activities. DHS may structure each 287(g) agreement in a manner that “provides the most effective model for enforcing federal immigration laws” for the participating jurisdiction.</p>	<p>The 287(g) program includes three models: (1) the jail model, in which officials screen for immigration status when booking individuals on criminal (i.e. nonimmigration) charges; (2) the task force model, in which state and local officials screen for status in the field; and (3) the hybrid model, in which jurisdictions maintain both jail and task force authority.<sup>13</sup> In all three models, participating officers can issue detainers that require holding the potentially removable noncitizen before they are transferred into ICE custody.</p> <p>All of the 287(g) agreements in force as of January 2017 were jail models. In these models, individuals can only be asked their immigration status after they have been booked into jail. In other words, police officers under the current agreements do not have the authority to ascertain immigration status during routine policing operations.</p> <p>The task force model allowed 287(g) officers to inquire about immigration status during policing operations outside jails. This model generated considerable public criticism, including accusations of racial profiling in locations such as Maricopa County (Phoenix), Arizona, where a task force agreement was used by the sheriff’s office to conduct major enforcement operations in immigrant neighborhoods. As a result, the Obama administration terminated all task force agreements in 2012.<sup>14</sup></p> <p>The executive order states that DHS may enter into agreements for task force and hybrid models, as well as jail models, in future 287(g) agreements.</p>
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13 For more on the 287(g) program and the different models, see Randy Capps, Marc R. Rosenblum, Muzaffar Chishti, and Cristina Rodriguez, *Delegation and Divergence: 287(g) State and Local Immigration Enforcement* (Washington, DC: Migration Policy Institute, 2011), [www.migrationpolicy.org/research/delegation-and-divergence-287g-state-and-local-immigration-enforcement](http://www.migrationpolicy.org/research/delegation-and-divergence-287g-state-and-local-immigration-enforcement).

14 U.S. Immigration and Customs Enforcement (ICE), “FY 2012: ICE announces year-end removal numbers, highlights focus on key priorities and issues new national detainer guidance to further focus resources” (news release, December 20, 2012), [www.ice.gov/news/releases/fy-2012-ice-announces-year-end-removal-numbers-highlights-focus-key-priorities-and#statement](http://www.ice.gov/news/releases/fy-2012-ice-announces-year-end-removal-numbers-highlights-focus-key-priorities-and#statement).

## SECTION 9. SANCTUARY JURISDICTIONS

<p><b>Limiting funding to sanctuary jurisdictions</b></p>	<p>9(a) Jurisdictions “that prohibit or restrict government entities or officials from sharing information regarding the immigration status of individuals with DHS (in violation of 8 USC 1373) are not eligible to receive federal grants, except as deemed necessary for law enforcement purposes by DHS or the Attorney General.”</p> <p>DHS is granted authority to designate a jurisdiction as a sanctuary jurisdiction.</p> <p>The Attorney General shall take appropriate action against any jurisdiction that has a statute, policy, or practice that prevents or hinders federal law enforcement.</p> <p>9(c) The Director of the Office of Management and Budget (OMB) will provide information on all federal grants received by any sanctuary jurisdiction.</p>	<p>There is no standard definition of a “sanctuary” jurisdiction. Some cities, counties, and states have limited their cooperation with federal immigration authorities in a number of ways, including: (a) transferring to ICE only those noncitizens who have committed a narrow range of serious crimes; (b) agreeing to notify ICE but not to hold potentially removable noncitizens beyond short periods required for transfer to ICE; or (c) not cooperating with ICE at all. Very few cities have joined San Francisco and Chicago in exercising the third option of not cooperating with immigration authorities at all.</p> <p>Since statutory changes in 1996, states and local jurisdictions have been prohibited from restricting government entities or officials from sending or receiving information from DHS on the immigration status of any individual (8 U.S.C § 1373). No jurisdiction has been found to be in violation of this provision since 1997, when a judge struck down a New York City executive order that barred city employees from turning in unauthorized immigrants.<sup>15</sup></p> <p>The executive order leaves it to DHS to define what constitutes a sanctuary jurisdiction, and does not clarify whether this determination will include jurisdictions that entirely or partially limit cooperation with ICE.</p> <p>Historically, there has been considerable litigation over the federal government’s ability to limit funding to states in order to enforce federal laws. Such litigation is likely to arise again with this order.</p> <p>In past cases, the Supreme Court held that conditions the federal government places upon funding must be related to the federal interest in the particular funding source.<sup>16</sup> Since the order does not limit the types of federal grants that would be restricted, this could become an issue for litigation. The Supreme Court has also found that conditions placed on federal funding cannot withhold enough funds to coerce the state to comply with federal mandates and that such pressure cannot constitute compulsion.<sup>17</sup> Whether this prohibition becomes a problem for the executive order will likely depend on which and how many federal grants are restricted and their amounts.</p>
<p><b>Disseminating to the public lists of crimes committed by noncitizens released in sanctuary cities and counties</b></p>	<p>9(b) DHS is ordered to issue a list weekly of criminal actions committed by noncitizens, as well as report on any jurisdiction that ignored or otherwise failed to honor detainers for such noncitizens.</p>	<p>Using the databases described below, DHS may be able to flag the arrests of unauthorized immigrants, if each arrest includes the submission of fingerprints. Nonetheless, this mandate requires establishing a new system within DHS that reports weekly on the actions of both noncitizens and state and local law enforcement.</p>

<sup>15</sup> David Firestone, “Mayoral Order on Immigrants Is Struck Down,” *The New York Times*, July 19, 1997, [www.nytimes.com/1997/07/19/nyregion/mayoral-order-on-immigrants-is-struck-down.html](http://www.nytimes.com/1997/07/19/nyregion/mayoral-order-on-immigrants-is-struck-down.html).

<sup>16</sup> *South Dakota v. Dole*, 483 U.S. 203 (1987).

<sup>17</sup> *Ibid*; *National Federation of Independent Business v. Sebelius*, 132 S. Ct. 603 (2012).

**SECTION 10. REVIEW OF PRIOR IMMIGRATION ACTIONS AND POLICIES**

<p><b>Ending the Priority Enforcement Program and Reinstating Secure Communities</b></p>	<p>10(a-c) DHS will terminate the Priority Enforcement Program (PEP) and reinstate Secure Communities.</p>	<p>The Secure Communities database uses fingerprint matches to identify anyone booked into a state prison or local jail who also has an immigration status or violation that makes them deportable. Once a person is flagged in the database, ICE decides whether to issue a detainer, a form that requests the person be detained for up to 48 hours additionally on the immigration violation, so that ICE officers can pick that person up and take him or her into custody.</p> <p>ICE introduced Secure Communities at the end of the Bush administration as a pilot program and gradually extended it across the country as states and counties opted in. By 2013, midway through the Obama administration, it became a national program, and all jurisdictions were required to honor all detainers. Secure Communities often led to detainers being issued for noncitizens taken into ICE custody who had committed minor crimes, such as traffic violations. The large numbers taken into custody for minor violations alongside the mandatory, national character of the program made it increasingly controversial.</p> <p>In November 2014, the Obama administration introduced PEP to replace Secure Communities. PEP allowed local jurisdictions to negotiate the terms of their cooperation with ICE, with the goal of bringing jurisdictions opposed to Secure Communities back into the program, while also narrowing its scope. For instance, jurisdictions could opt to notify ICE when a person was leaving custody, instead of holding them for 48 hours. Or the jurisdiction could notify ICE about only certain offenders who had committed more serious crimes.</p> <p>Prior to establishing PEP, there were 377 jurisdictions that had refused to honor some or all ICE detainers.<sup>18</sup> As of January 11, 2016, nearly three-quarters of those jurisdictions (277) had agreed to honor requests for notification or requests for detention.<sup>19</sup></p> <p>The Trump executive order reverts to the original Secure Communities framework, which allows ICE to issue detainers for any noncitizen flagged for a criminal arrest or an immigration violation (i.e., not limited to more serious criminal convictions outlined in the 2014 enforcement priorities and not just in cases where the local jurisdiction had set its own, narrower priorities). As a result, ICE is likely to return to issuing detainers in all cases. Some jurisdictions may object to honoring detainers in all cases, and if they do not, they may be subject to penalties as “sanctuaries” under Section 9 of the order—raising the possibility of legal challenges by these jurisdictions.</p>
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<sup>18</sup> DHS, *Congressional Budget Justification FY 2017 – Volume II*, 40.

<sup>19</sup> *Ibid.*

## SECTION 11. JUSTICE DEPARTMENT PROSECUTION OF IMMIGRATION VIOLATORS

<b>Expanding prosecution of criminal immigration-related offenses</b>	The Attorney General and DHS will develop and implement a program that ensures adequate resources are devoted to prosecuting criminal immigration offenses, and to developing “cooperative strategies to reduce violent crime and the influence of transnational criminal organizations.”	<p>There are a variety of immigration-related federal criminal offenses, including illegal entry (8 U.S.C. § 1325), illegal re-entry (8 U.S.C. § 1326), bringing in or harboring certain unauthorized immigrants (8 U.S.C. § 1324), and fraud and misuse of visas (18 U.S.C. § 1546).</p> <p>Immigration-related crimes already make up a very large part of the federal criminal caseload, accounting for 52 percent of all federal prosecutions in FY 2016.<sup>20</sup> Of 133,041 federal prosecutions, 69,636 were immigration-related, while the remainder was for all other federal crimes.</p> <p>This section may mean that the administration will place more resources into Operation Streamline, a program to criminally prosecute individuals who illegally enter the United States at particular locations along the Southwest border. The Border Patrol refers these cases to the Justice Department for prosecution. In FY 2013, 46,693 immigrants were referred for Streamline prosecution.<sup>21</sup></p>
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## SECTION 12. RECALCITRANT COUNTRIES

<b>Limiting visas to recalcitrant countries</b>	DHS and the State Department will cooperate in refusing to grant visas to nationals of recalcitrant countries. The Secretary of State is directed to ensure that diplomatic efforts and negotiations with foreign states be contingent on the acceptance of their nationals subject to removal from the United States.	<p>The Secretary of State is authorized to stop granting immigrant or nonimmigrant visas to nationals of countries deemed recalcitrant by DHS (INA 243(d)). This power has only been used twice. First, in 2001 certain visas were discontinued for Guyana. Within two months, Guyana began complying with U.S. demands and the sanction was lifted. Some visas were also discontinued in October 2016 for The Gambia.</p> <p>Countries are recalcitrant for a variety of reasons—ranging from intentional policy to lack of government capacity. Suspending visa issuance to these countries could lead to diplomatic difficulties and invite broader retaliation affecting trade, tourism, and law enforcement cooperation. Such difficulties could be acute if large countries such as China were deemed recalcitrant and some categories of visas were discontinued for their nationals.</p>
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## SECTION 13. OFFICE FOR VICTIMS OF CRIMES COMMITTED BY REMOVABLE ALIENS

<b>Victims of Immigration Crime Engagement (VOICE) Office</b>	<p>ICE will establish an office to provide professional services to victims of crimes committed by removable noncitizens and their relatives. The office will provide quarterly reports on the effects of crimes committed by noncitizens.</p> <p>The office will be called the Victims of Immigration Crime Engagement (VOICE) Office.<sup>22</sup></p>	<p>ICE has a Victim Notification Program, which provides information to eligible victims and witnesses.<sup>23</sup> They are advised if and when a criminal noncitizen is released from custody or removed.</p> <p>The DHS guidance memorandum directs reallocation of resources currently used to “advocate on behalf of illegal aliens ... to the new VOICE Office.” It further calls for termination of “outreach or advocacy services to illegal aliens.”</p>
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20 Transactional Records Access Clearinghouse (TRAC), “Immigration Now 52 Percent of All Federal Criminal Prosecutions” (news release, November 28, 2016), [www.trac.syr.edu/tracreports/crim/446/](http://www.trac.syr.edu/tracreports/crim/446/).

21 DHS Office of the Inspector General, Streamline: Measuring Its Effect on Illegal Border Crossing (Washington, DC: DHS, Office of the Inspector General, 2015), 6, [www.oig.dhs.gov/assets/Mgmt/2015/OIG\\_15-95\\_May15.pdf](http://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-95_May15.pdf).

22 Kelly, “Memorandum: Enforcement of the Immigration Laws to Serve the National Interest.”

23 ICE, “Victim Notification Program,” accessed February 21, 2017, [www.ice.gov/victim-notification](http://www.ice.gov/victim-notification).

SECTION 14. PRIVACY ACT		
<p><b>Privacy Act protections</b></p>	<p>Federal agencies will not extend protections of the <i>Privacy Act</i> regarding personally identifiable information to individuals who are not citizens, including lawful permanent residents (LPRs, also known as green-card holders).</p> <p>According to the guidance memorandum released by DHS on February 20, 2017, this will include rescinding the DHS <i>Privacy Policy Guidance</i> memorandum, dated January 7, 2009, and the issuance of new guidance.</p>	<p>The <i>Privacy Act</i> was enacted in 1974 and established a code of fair practices for federal government collection, use, and dissemination of information that can identify individuals. It includes prohibitions to disclosure of a record about an individual, unless there is written consent from the individual or the situation falls under one of a group of limited exemptions.</p> <p><i>Privacy Act</i> protections apply to U.S. citizens and LPRs. Agencies have also extended some privacy protections to nonimmigrants and unauthorized immigrants. For example, under the 2009 <i>Privacy Policy Guidance</i> memo, DHS applied the <i>Privacy Act</i> to all information in databases that contained data on U.S. citizens and LPRs as well as other foreign national data, such as US-VISIT.<sup>24</sup> The executive order directs agencies to exclude nonimmigrants and unauthorized immigrants from <i>Privacy Act</i> protections, allowing agencies to collect, maintain, and disseminate personal information about these populations without restriction.</p> <p>The implications of exempting nonimmigrants and unauthorized immigrants from <i>Privacy Act</i> protections are unclear. At the least, it appears that agencies will no longer be obligated to protect certain personally identifiable records when, for example, disclosing information under the <i>Freedom of Information Act</i>. Immigrant-rights advocates have expressed concern about far greater effects, however, saying they fear that lifting <i>Privacy Act</i> protection could result in any information given by an unauthorized immigrant to the government being turned over to immigration enforcement agents.</p>
SECTION 16. TRANSPARENCY		
<p><b>Regularly reporting data on criminal aliens</b></p>	<p>16(a-c) DHS and the Attorney General will report quarterly on:</p> <ul style="list-style-type: none"> <li>▪ The immigration status of all noncitizens incarcerated by the Federal Bureau of Prisons.</li> <li>▪ The immigration status of all noncitizens incarcerated as pretrial detainees under the supervision of the U.S. Marshal Service.</li> <li>▪ The immigration status of all convicted noncitizens incarcerated in state prisons and local detention centers throughout the United States.</li> </ul>	<p>The Federal Bureau of Prisons currently reports monthly statistical data on inmate populations, including their citizenship, but not their immigration status.<sup>25</sup> Generating the quarterly reports required by the executive order would mean expanding this system or setting up a parallel system that reports not only on the immigration status of federal inmates, but also that of individuals who have not yet been convicted in federal courts and those incarcerated in state prisons. This would require extensive new data collection and reporting efforts.</p>

24 Hugo Teufel III, DHS Chief Privacy Officer, “Memorandum: DHS Privacy Policy Regarding Collection, Use, Retention, and Dissemination of Information on Non-U.S. Persons” (DHS memorandum, January 7, 2009), [www.dhs.gov/xlibrary/assets/privacy/privacy\\_policyguide\\_2007-1.pdf](http://www.dhs.gov/xlibrary/assets/privacy/privacy_policyguide_2007-1.pdf).

25 Federal Bureau of Prisons, “Statistics: Inmate Citizenship,” updated December 24, 2016, [www.bop.gov/about/statistics/statistics\\_inmate\\_citizenship.jsp](http://www.bop.gov/about/statistics/statistics_inmate_citizenship.jsp).

Editor’s note: This brief was updated to correct the cost estimate for adding ICE officers.

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