

**Congressional Briefing on Real Life Consequences and Community Impact of the
Executive Order on Interior Enforcement
February 28, 2017**

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This briefing addresses the January 25th White House Executive Orderⁱ regarding immigration enforcement in the interior of the United States and the February 20th Department of Homeland Security (DHS) memoⁱⁱ operationalizing that Executive Order. The policies put forward in these two documents constitute an assault on immigrants and a threat to the safety and security of all American communities. They are a road map for the mass jailing and deportation of immigrants.

The very premise on which these policies rely is false. The President would have us believe that immigrants threaten the safety of American communities. But immigrants in fact make us a safer and stronger nation.ⁱⁱⁱ

As the Administration unabashedly vows to pursue a “nationalist” agenda and to “deconstruct”^{iv} the rights-respecting norms of government, a grave responsibility falls to our elected officials. We look to our lawmakers to fight for legislation like the Community Trust Act and the PROTECT Act which would repeal these misguided policies, to support state and local actors resisting these efforts, and to hold the executive accountable.

KEY PROVISIONS

This briefing focuses on three particularly dangerous areas of the interior enforcement order:

- **1) Throwing away meaningful enforcement priorities:** Although the memos purport to put forward a new set of categories for prioritized enforcement, the categories are in fact so broad that they put a target on the back of every undocumented person. The list – for example – includes all individuals who have committed acts which constitute a chargeable criminal offense.^v Because unlawful entry is a federal misdemeanor, this category alone includes anyone who crossed the border without inspection, at any time in their past.
- **2) The mass marketing of 287(g) agreements:** 287(g) is the section of the Immigration and Nationality Act that allows localities to enter into agreements with DHS to deputize their local police to enforce federal immigration law. Investigation after investigation^{vi} has found 287(g) agreements to result in rampant racial

profiling and civil rights abuses. DOJ investigations in Maricopa County, AZ and Alamance County, NC found that in both jurisdictions the sheriff's offices, working under 287(g) agreements, engaged in unconstitutional police practices including racial profiling and the unlawful detention and arrests of Latinos.

- **3) Reinstatement of the failed Secure Communities program:** Secure Communities mandates the sharing of biometric information between local law enforcement agencies and Immigration and Customs Enforcement (ICE) – forcing every law enforcement officer to in effect screen for immigration violations. It uses as its primary instrument the “detainer” – a notice issued by ICE to a local law enforcement agency requesting that an individual be held longer than he would otherwise be held for ICE to come and pick him up. The reinstatement of Secure Communities means that detainers will be issued without discretion against anyone who is removable, and will always request the prolonged jailing of an immigrant rather than the mere notification of expected release. The President has threatened to strip federal funding from jurisdictions that limit their compliance with detainers.

REAL LIFE CONSEQUENCES: rampant illegalities and undermining of public safety

These policies will trigger rampant violations of law by local and federal actors.

These policies cannot be operationalized without triggering **endemic racial profiling** by immigration officers and local law enforcement. Local law enforcement officers deputized under 287(g) agreements to carry out immigration enforcement are now doing so without any meaningful enforcement priorities in place. Imagine: local police officers empowered to stop and arrest individuals on nothing more than a reasonable suspicion that the individual has committed the offense of unlawfully entering the United States. It is hard to see how this will be accomplished other than through impermissible reliance on race.^{vii}

The President's threat to strip federal funding from localities that limit compliance with detainers constitutes **an impermissible use of coercion to conscript state and local resources into the enforcement of federal immigration laws**. Such coercion violates the “anti-commandeering” principle found in the tenth amendment of the Constitution.^{viii}

States and localities that do cooperate with detainer requests under Secure Communities are exposing themselves to massive liability for **systemic violations of the fourth amendment**. Through litigation initiated by the National Immigrant Justice Center, the federal court for the Northern District of Illinois recently found that ICE engages in blatant violations of the Immigration and Nationality Act in its issuance of detainers.^{ix} Shortly after this decision, the federal court for the District of Rhode Island found that ICE and the Director of the Rhode Island Department of Corrections were liable for fourth amendment violations after the local jail held a naturalized U.S. citizen under an immigration detainer for 24 hours.^x

The President's Executive Order seems to presupposes that some or all sanctuary jurisdictions are in violation of a provision of federal law found at 8 § U.S.C. 1373. To set the

record straight, 8 U.S.C. § 1373 is a limited provision of law that simply states that state and local government entities and officials may not prohibit or restrict the sharing of information with DHS regarding an individual's immigration or citizenship status.^{xi} That's it. **When it comes to the sanctuary cities debate, the unlawful conduct lies with ICE's illegal detainer practices, not the acts of jurisdictions limiting their cooperation with such practices.**

These policies make all of us less safe.

Sheriff Jerry Clayton of Washtenaw, Michigan and Angelica Avila, a young woman who has endured the harms caused by 287(g) agreements, will speak today to the ways in which **cooperation between the police and federal law enforcement undermines community trust in the police.** When immigrants are afraid to report crimes and communities do not trust the police who bear the sacred responsibility to keep them safe, we all suffer.

Prosecutorial discretion is a basic tenet of law enforcement, and abandoning it makes no sense. Giving poorly trained ICE officers the unbridled authority to stop, detain and deport any undocumented person results in communities living in fear, parents keeping their children home from school, and valuable members of our communities forced back into the shadows. About 2/3 of the undocumented population has resided in the United States for more than a decade.^{xii} Undocumented immigrants are our neighbors, the parents of kids in our schools, and an integral part of our communities.

And finally: Immigration to the United States is not a public safety issue. It is certainly true that there have been tragic crimes committed by non-citizens in the United States. It is a sad truth that people of all races, nationalities and creeds commit crime. But it is also the reality that **immigration makes us safer.** Studies have repeatedly shown that immigrants commit less crime than native born Americans.^{xiii} And while the President is threatening to deprive sanctuary jurisdictions of vital federal funds, a study released just last month found that sanctuary jurisdictions in fact have lower crime rates and stronger economies than similar jurisdictions without sanctuary policies.^{xiv}

TAKE ACTION

We look to the legislature to hold ICE accountable by **asking the critical questions.** Demand accountability from ICE for enforcement operations. Who is being apprehended and why? What standard is in place when an officer determines who to arrest? What training are ICE officers and local law enforcement receiving? Are protections in place to ensure that immigration operations are not happening at sensitive locations like churches, court houses, and schools? Do not let up: whether a DACA recipient is targeted for immigration enforcement as Daniel Ramirez was in Washington state;^{xv} a transgender woman is arrested by ICE while in court trying to get a protective order as Irvin Gonzalez was in El Paso;^{xvi} or ICE targets for arrest homeless men emerging from a church hypothermia shelter as they did in Alexandria, VA.^{xvii}

Combat efforts to force localities into cooperation with federal law enforcement or coerce such cooperation through threats to strip federal funding. These efforts are unconstitutional and undermine community policing.

Support localities exercising their discretion to establish boundaries on their cooperation with federal law enforcement. Establishing such boundaries does *not* violate 8 U.S.C. § 1373, but instead constitutes a responsible measure to avoid liability for the inevitable fourth amendment and civil rights violations such cooperation entails.

Questions: Contact Heidi Altman at haltman@heartlandalliance.org.

ⁱ White House, Executive Order re Enhancing Public Safety in the Interior of the United States (Jan. 25, 2017), <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>. An annotated version of this Executive Order with analysis, commentary and hyperlinks to relevant resources is available on the National Immigrant Justice Website at

<http://immigrantjustice.org/research-items/annotated-border-immigration-enforcement-executive-order>.

ⁱⁱ Memo from Sec. John Kelly re Enforcement of the Immigration Laws to Serve the National Interest (Feb. 20, 2017), https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf. The Department of Homeland Security has also issued a series of Questions and Answers about this memo, available at <https://www.dhs.gov/news/2017/02/21/qa-dhs-implementation-executive-order-enhancing-public-safety-interior-united-states>.

ⁱⁱⁱ Walter Ewing, Ph.D. et. al, *The Criminalization of Immigration in the United States* (July 2015), <https://www.americanimmigrationcouncil.org/research/criminalization-immigration-united-states>; Tom K. Wong, Center for American Progress, *the Effects of Sanctuary Policies on Crime and the Economy* (Jan. 2016), <https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy/>.

^{iv} Aaron Blake, "Stephen Bannon's nationalist call to arms, annotated," *The Washington Post* (Feb. 23, 2017), https://www.washingtonpost.com/news/the-fix/wp/2017/02/23/stephen-bannons-nationalist-call-to-arms-annotated/?utm_term=.c0605f083c29.

^v See Section 5(c) of the White House Executive Order and Section A of the DHS Memo, *supra* n. i.

^{vi} Department of Homeland Security Office of the Inspector General, *The Performance of 287(g) Agreements* (Mar. 2010), https://www.oig.dhs.gov/assets/Mgmt/OIG_10-63_Mar10.pdf; Government Accountability Office, *Immigration Enforcement: Better Controls Needed Over Program Authorizing State and Local Enforcement of Federal Immigration Laws* (Jan. 2009), <http://www.gao.gov/new.items/d09109.pdf>; Letter to Mr. Bill Montgomery, Maricopa County Attorney, re United States Investigation of the Maricopa County Sheriff's Office (Dec. 15, 2011),

https://www.justice.gov/sites/default/files/crt/legacy/2011/12/15/mcso_findletter_12-15-11.pdf; Letter to Clyde B. Albright, Alamance County Attorney, re United Investigation of the Alamance County Sheriff's Office (Sept. 18, 2012), <https://www.justice.gov/iso/opa/resources/171201291812462488198.pdf>.

^{vii} In the context of searches of vehicles near the border, the Supreme Court has found that an individual's ethnicity alone is insufficient to establish "reasonable suspicion" that a vehicle is carrying undocumented immigrants. See American Immigration Council, *Authority of U.S. Customs and Border Protection Agents: an Overview* (2012),

https://www.americanimmigrationcouncil.org/sites/default/files/research/CBP_Overview_022112.pdf.

^{viii} See Erwin Chemerinsky, Annie Lai and Seth Davis, *Washington Post*, "Trump can't force 'sanctuary cities' to enforce his deportation plans," (Dec. 22, 2016), <https://www.washingtonpost.com/opinions/trump-cant-enforce-his-deportation-plans/>

[force-sanctuary-cities-to-enforce-his-deportation-plans/2016/12/22/421174d4-c7a4-11e6-85b5-76616a33048d_story.html?utm_term=.0fbc332c9a31.](https://www.immigrantjustice.org/sites/default/files/content-type/press-release/documents/2016-11/jimenezMoreno-NDIL-ruling.pdf)

^{ix} The Court Order in *Jimenez Moreno v. Napolitano* is available online at <https://www.immigrantjustice.org/sites/default/files/content-type/press-release/documents/2016-11/jimenezMoreno-NDIL-ruling.pdf>.

^x The Court Order in *Morales v. Chadbourne* is available online at <https://www.aclu.org/legal-document/morales-v-chadbourne-memorandum-and-order>.

^{xi} The relevant portion of the statute at 8 U.S.C. § 1373(a) states: “Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”

^{xii} Jeffrey S. Passel and D’Vera Cohn, “Unauthorized immigrant population stable for half a decade,” (Sept. 21, 2106), <http://www.pewresearch.org/fact-tank/2016/09/21/unauthorized-immigrant-population-stable-for-half-a-decade/>.

^{xiii} Walter Ewing, Ph.D. et. al, *The Criminalization of Immigration in the United States* (July 2015), <https://www.americanimmigrationcouncil.org/research/criminalization-immigration-united-states>.

^{xiv} Tom K. Wong, Center for American Progress, *the Effects of Sanctuary Policies on Crime and the Economy* (Jan. 2016), <https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy/>.

^{xv} Dan Levine and Kristina Cooke, Reuters, “Mexican ‘DREAMer’ nabbed in immigrant crackdown (Feb. 15, 2017), <http://www.reuters.com/article/us-usa-trump-immigration-arrest-exclusiv-idUSKBN15T307>.

^{xvi} Katie Mettler, Washington Post, “‘This is really unprecedented’: ICE detains woman seeking domestic abuse protection at Texas courthouse, (Feb. 16, 2017), https://www.washingtonpost.com/news/morning-mix/wp/2017/02/16/this-is-really-unprecedented-ice-detains-woman-seeking-domestic-abuse-protection-at-texas-courthouse/?utm_term=.a49757669e82; Jonathan Blitzer, “The Woman Arrested by ICE in a Couthouse Speaks Out” (Feb. 23, 2017) <http://www.newyorker.com/news/news-desk/the-woman-arrested-by-ice-in-a-courthouse-speaks-out>.

^{xvii} U.S. News & World Report, “ICE Agents Arrest Men Leaving Alexandria Church Shelter (Feb. 16, 2017), <http://www.usnews.com/news/virginia/articles/2017-02-16/ice-agents-arrest-men-leaving-alexandria-church-shelter>.