

7 Takeaways From The New DHS Immigration Memos

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Law360, New York (February 22, 2017, 11:02 PM EST) -- New Homeland Security memos released Tuesday essentially make any unauthorized immigrant a target for deportation, according to experts, who say the guidelines could lead to parents being prosecuted for trying to bring their children to the U.S.

The [U.S. Department of Homeland Security memos](#), implementing [two executive orders](#) signed by President Donald Trump on Jan. 25, have received swift backlash from immigrant-rights advocates who argue the memos amount to a road map for large-scale deportations, potentially without full due process protections.

But on Tuesday, White House press secretary Sean Spicer disputed that a goal of the guidance was “mass deportation,” insisting that the message from Homeland Security is that people who are a threat to public safety or have committed crimes will “be the first to go.”

With so much packed into these memos, here are seven important takeaways.

Widely Expanded Deportation Priorities

The DHS guidance dramatically expands the pool of immigrants who are targets for deportation, widening the net beyond those who have been convicted of a crime. Now, deportation priorities include removable immigrants who have been charged with a violation, who have done something that counts as a crime, or who merely pose a public safety risk in the eyes of an immigration officer.

The new priorities are so broad that potentially any unauthorized immigrant could be a target for removal, according to immigration experts.

“The order and memo both make clear that anyone who is removable is subject to arrest, detention and removal,” said Marshall Fitz, the managing director of immigration at the Emerson Collective, who added that while there is a list of priorities, “they are defined so broadly as to encompass the vast majority of undocumented immigrants.”

Strict Detention Guidelines

One of the DHS memos lays out a strict set of circumstances for when U.S. [Immigration and Customs Enforcement](#) can release immigrants from detention, and a follow-up Q&A from the agency notes that everyone who has run afoul of immigration law can be subject to detention.

“It certainly would mean that more people are getting [into detention] in first place,” said Mary Holper, director of the immigration clinic at Boston College Law School. “Which means: That’s people who don’t have representation, [or] who can’t easily find representation to get out on bond.”

And in order to detain more people, DHS will need to vastly increase its detention space. The agency says that a list of possible detention locations is currently “under review.”

Deporting Non-Mexicans to Mexico

Notably, one of the DHS memos instructs ICE officers to return immigrants to the contiguous country from which they entered, which in many cases, will mean Mexico. The memo also calls for the creation of a “video teleconference system” to allow for video deportation hearings for immigrants returned to the nearby country.

On Tuesday, ProPublica reported that DHS officials had confirmed they were “working on a plan to send migrants who had entered the United States from Mexico back to Mexico, even if they were not citizens of that country.”

However, whether Mexico will go along with this plan remains to be seen. Roberto Campa, who leads a wing of Mexico’s Interior Ministry, called the proposal to deport non-Mexicans to the country “hostile” and “unacceptable,” according to a Reuters report.

Prosecuting Parents of Smuggled Kids

One of the DHS memos calls for ensuring the “proper enforcement” of immigration laws against anyone who facilitates the smuggling of an immigrant child into the U.S., including referring people for criminal prosecution. This could include parents, who are known to pay smugglers to bring their children into the country.

Importantly, when unaccompanied minors apply for special immigrant juvenile status, an officer always asks them who paid for their trip with the “coyote,” or smuggler, according to Holper.

“It essentially always is the parents,” she said. “And now those kids are basically exposing their parents, who [are] in the United States, to either immigration enforcement based on smuggling or criminal prosecution.”

Wider Use of Expedited Removals

Currently, certain unauthorized immigrants who have been in the country for up to two weeks are subject to expedited removal, which lets the government deport people without hearings. But

DHS head John Kelly noted in one of the memos that he has the power to apply the expedited removal provisions to immigrants who haven't shown they've been in the U.S. for a two-year period.

Kelly said the department will publish a new notice about immigrants covered by the expedited deportation process, likely setting the stage for the increased use of expedited removal.

Expanding expedited removal could allow the Trump administration to avoid having to go to immigration court in some cases, according to Holly Cooper, co-director of the immigration law clinic at the University of California, Davis School of Law. This could allow them to dodge the massive backlog of immigration cases.

“The quickest way to get a removal order is to place someone in expedited removal, where there's almost very little, limited judicial oversight over the process,” Cooper said.

More Immigration Agents

The memos also instruct the head of [U.S. Customs and Border Protection](#) to start taking steps to hire 5,000 extra border agents, and they call for ICE to hire 10,000 additional officers.

But Congress would have to shell out for all these border agents and immigration officers, and that's in addition to new detention space and allocations for the border wall, which is expected to cost at least \$12 billion. According to one calculation from Politico, 10,000 extra ICE agents and 5,000 more border agents could cost \$4.8 billion.

Deputizing Local Law Enforcement

The guidance calls for expanding a program that allows state or local law enforcement to be deputized as immigration officers, and reinstates the controversial Secure Communities Program. Secure Communities allowed fingerprints of arrested individuals to be checked against DHS databases, according to the [National Immigration Law Center](#).

However, the program was phased out in 2014, with DHS noting at the time that several courts had rejected the power of local law enforcement agencies to hold immigrants under detainers issued through Secure Communities, possibly foreshadowing future litigation over the program.

--Editing by Mark Lebetkin.

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