



January 27, 2017

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

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General Information:

The Executive Order titled *Enhancing Public Safety in the Interior of the United States* was signed by President Trump on January 25, 2017. The directive provides U.S. executive departments and agencies with new instructions regarding the enforcement of immigration laws of the United States, and in particular, how these agencies should engage with state and local law enforcement agencies. The Executive Order replaces a previous directive released as a memo from the Department of Homeland Security on November 20, 2014 titled *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*.

Among the new directives issued by the Executive Order, some of the most notable include expanded prioritization for the detention and removal of undocumented individuals from the United States to include individuals charged with a criminal offense (as opposed to convicted of an offense), a denial of federal grant money to jurisdictions that are judged by the Secretary of Homeland Security to not be in compliance with federal law (specifically **8 U.S.C. § 1373**), hiring of an additional 10,000 immigration officers, instructions to the Secretary of Homeland Security to enter into cooperation agreements with State Governors and local officials which would enable local law enforcement officials to perform the functions of immigration officers, the reinstatement of the “Secure Communities” immigration program which had been rescinded and replaced by the *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants* memo referenced above, and the creation of an Office for Victims of Crimes Committed by Removable Aliens.

Rationale:

The stated purpose for the Executive Order is to address perceived national security and public safety risks linked to undocumented individuals and/or individuals who have remained in the United States beyond the terms of their visas. The Executive Order also seeks to restrict cities, states and local jurisdictions from hindering federal law enforcement efforts as they relate to immigration. As is noted in the document, the present administration considers past efforts to enforce federal immigration law to have been unsatisfactory, and accordingly, the Executive Order seeks to address the perceived shortcomings of previous immigration policies, especially as they relate to cooperation between federal and state institutions.

Counter Arguments:

Many concerns have been raised regarding the provisions of the Executive Order and sensible arguments have been made against it. Of note, a number of legal experts have questioned the constitutionality of the



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Executive Order since it seems to imply that already-existing federal grants will be conditioned on compliance with Section 1373; an action, they affirm, is not permitted. Federal grants can only be made contingent on compliance to a law if the conditions are unambiguously detailed in the letter of the law. As noted by the Washington Post, there are few, if any, federal grants specifically conditioned on Section 1373. Furthermore, the Supreme Court has upheld in a number of instances, that the federal government may not compel state and local officials to enforce federal law, as this violates the Tenth Amendment (Somin 2017).

Perhaps on a more basic level, a comprehensive definition of what constitutes a “sanctuary city” is not included in the text of the Executive Order. Under Section 9 it is noted that “...a State, or political subdivision of a State, shall comply with 8 U.S.C. 1373.” In essence, Section 1373 states that no State, Federal or local agency can “prohibit or restrict” a government agency or individual from receiving or providing information to the Immigration and Naturalization Services.

A practice that is not covered under this Section, that has nonetheless been a target of the administration, is that of detaining individuals for Immigration and Customs Enforcement (ICE) upon receiving a request to do so. Currently, after an individual is arrested, information on the individual is shared with the Federal Bureau of Investigation and ICE. If the individual is undocumented, ICE makes a request for the individual to be detained so that a warrant can be issued to take the individual into custody. It is left to the discretion of local jurisdictions whether or not they choose to keep the individual detained for ICE agents. Federal courts throughout the country have upheld that compliance with these requests is voluntary (Cameron 2017).

Notwithstanding these judgements, a number of cities and subdivisions, including jurisdictions in Colorado, have recently been labelled as “sanctuary cities” for choosing not to comply with ICE detention requests. Officials, including Denver Mayor Hancock, have reacted to these statements noting that Colorado’s cities are fully in compliance with Section 1373 and as such, could not reasonably be labelled as “sanctuary cities.” The ambiguous nature of the term has caused not just Denver, but a multitude of cities throughout the United States to push back against any charges that they might be labelled as a “sanctuary city.” Cities in some states, such as California and New York have even threatened to initiate lawsuits should the Federal Government move to restrict grants. (Meltzer 2017).

The reinstatement of the “Secure Communities” immigration program has also been controversial. The program was the target of heavy criticisms while it was active throughout the Bush and Obama administrations. Initially, the program had been voluntary in nature, allowing states to opt-in as participants. Later though, the program was made compulsory, at which point a number of State Governors, including Pat Quinn (D, Ill.), Deval Patrick (D, Mass.) and Andrew Cuomo (D, NY), attempted to withdraw due to a number of problems that had become apparent after implementation (Gavett 2011). Most importantly, cities were beginning to note that the policy was deterring minority communities from reporting crimes and incidents to the police due to fears of deportation and was



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inadvertently fostering racial profiling on the part of local law enforcement. Additionally, a number of legal challenges had been initiated in state courts arguing that the program violated Fourth Amendment rights (Caceres 2014).

Finally, it's worth noting that one of the major rationales for issuing the Executive Order is to eradicate crime associated with undocumented individuals. However, it has been widely documented in a number of studies, including a study undertaken by the U.S. Census Bureau, that immigrants are actually *less* likely to commit crimes than individuals born in the United States (Pérez-Peña 2017).

Fiscal Impact:

Currently, the fiscal impact of the policies associated with the Executive Order are largely unclear, since it is not yet known what cities, states or jurisdictions the Secretary of Homeland Security may label as “sanctuary cities,” or even which federal funds might be earmarked for withdrawal from jurisdictions that are labelled as such.

Nonetheless, some initial estimates were provided to Politico by John Sandweg, who served as acting director of ICE in 2013 and 2014. Mr. Sandweg noted that the Executive Order’s call for mandatory detention would raise current spending levels on detention beds from \$2.2 billion for 31,000 beds in 2017, to approximately \$10 billion per year in order to pay for a five-fold increase in the number of beds used. Hiring an additional 10,000 immigration officers would have a corresponding cost of approximately \$3.9 billion per year.

For individual states, the fiscal impact could be negative if they are found to be or to host “sanctuary jurisdictions.” An analysis by Reuters included Denver among the 10 largest cities at risk of losing funding as a result of the Executive Order. In total, Denver receives \$39.1 million in federal funding that would be at risk of being revoked (AOL 2017).



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Works Cited

- AOL. *Miami complies with President Trump's executive order cracking down on 'sanctuary cities'*. January 26, 2017.
<https://www.aol.com/article/news/2017/01/26/miami-complies-with-president-trumps-executive-order-cracking-d/21701318/> (accessed January 27, 2017).
- Caceres, Alejandro. *Caceres: Complying with ICE threatens public safety in Austin*. May 27, 2014.
<http://www.mystatesman.com/news/opinion/caceres-complying-with-ice-threatens-public-safety-austin/TJ74F2DLESS6JMTvrw7bSP/> (accessed January 27, 2017).
- Cameron, Darla. *How sanctuary cities work, and how Trump's executive order might affect them*. January 25, 2017.
<https://www.washingtonpost.com/graphics/national/sanctuary-cities/> (accessed January 27, 2017).
- Gavett, Gretchen. *Why Three Governors Challenged Secure Communities*. October 18, 2011.
<http://www.pbs.org/wgbh/frontline/article/why-three-governors-challenged-secure-communities/> (accessed January 27, 2017).
- Meltzer, Erica. *Mayor Michael Hancock: Denver is "not a sanctuary city"*. January 25, 2017.
<http://www.denverite.com/mayor-michael-hancock-denver-not-sanctuary-city-27986/> (accessed January 27, 2017).
- Pérez-Peña, Richard. *Contrary to Trump's Claims, Immigrants Are Less Likely to Commit Crimes*. January 26, 2017.
https://www.nytimes.com/2017/01/26/us/trump-illegal-immigrants-crime.html?_r=1 (accessed January 27, 2017).
- Somin, Ilya. *Why Trump's executive order on sanctuary cities is unconstitutional*. January 26, 2017.
https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/01/26/constitutional-problems-with-trumps-executive-order-on-sanctuary-cities/?utm_term=.61839f6cbf3d (accessed January 27, 2017).