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Q&A: DHS Implementation of the Executive Order on Enhancing Public Safety in the Interior of the United States

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WASHINGTON – On February 20, 2017, Secretary John Kelly signed a memorandum implementing the president’s Executive Order No. 13768 entitled “Enhancing Public Safety in the Interior of the United States,” issued on January 25, 2017. This document is designed to answer some frequently asked questions about how the Department will operationally implement the guidance provided by the president’s order.

Q1: Under what authority is DHS implementing this executive order?

A1: This executive order is being implemented under the Immigration and Nationality Act (INA), 8 U.S.C. 1101 et seq.,

and other immigration laws.

Q2: How is ICE conducting interior enforcement operations based on this executive order?

A2: Effective immediately, ICE will direct its personnel as well as its state and local partners through the 287(g) program to apply the enforcement priorities stated in Executive Order No. 13768.

To that end, within 180 days, ICE will carry out a number of actions to implement the enforcement priorities stated in the executive order. Some of those actions include, but are not limited to, conducting targeted enforcement operations and allocating resources to work in jurisdictions with violent crime tied to gang activities.

Q3: Does this new memoranda substantively change the authority of immigration enforcement officers throughout DHS to exercise traditional law enforcement discretion?

A3: DHS officers and agents maintain discretion to determine which action(s) to take against removable aliens, but they have been provided with additional guidance by the president and secretary.

Q4: How is ICE holding recalcitrant countries

responsible for their failure to cooperate with the removal of their nationals?

A4: The Secretary of Homeland Security and Secretary of State will coordinate to impose appropriate, lawful consequences on foreign governments who refuse to accept the repatriation of their nationals. These consequences range from formal diplomatic communications to visa sanctions.

Q5: What are ICE's priorities under this executive order?

A5: Under this Executive Order, ICE will not exempt classes or categories of removal aliens from potential enforcement. All of those in violation of the immigration laws may be subject to immigration arrest, detention and, if found removable by final order, removal from the United States.

Q6: What is ICE doing to support victims, and the family members of victims, of crimes committed by removable aliens?

A6: ICE is currently identifying resources and realigning existing personnel to support and establish the Victims of Immigration Crime Engagement (VOICE) Office. ICE is in the process of drafting outreach materials for victims and families impacted by immigration crime.

Q7: Does this focus on victims of immigration crime mean that ICE will no longer engage

with NGOs and other stakeholders?

A7: ICE will continue to engage with all stakeholders to include NGOs.

Q8: Is it true that under this executive order, ICE has done away with priorities?

A8: Under this Executive Order, ICE will not exempt classes or categories of removal aliens from potential enforcement. All of those present in violation of the immigration laws may be subject to immigration arrest, detention, and, if found removable by final order, removal from the United States.

Q9: How soon will you hire the additional 10,000 employees mandated in the executive order? Will the hiring be completed all at once or in phases? Will all of the hires be law enforcement personnel?

A9: ICE is working on implementing a hiring plan.

Q10: Will these additional resources be solely focused on immigration enforcement?

A10: Those hired pursuant to the president's direction under the executive order will focus on both civil and criminal

immigration enforcement. Additional personnel will also be hired to carry out support functions of the executive order.

Q11: What is the 287(g) and how will it be used by ICE?

A11: The 287(g) program allows local law enforcement agencies to participate as an active partner in identifying criminal aliens in their custody, and placing ICE detainers on these individuals. Removing criminal aliens from our communities produces a higher level of public safety for everyone. To strengthen the 287(g) program, ICE field leadership has begun examining local operational needs and liaising with potential 287(g) partners. Existing 287(g) applications are also undergoing an expedited review process.

Q12: Are 287(g) officers now going to do ICE's job?

A12: The 287(g) program, one of ICE's top partnership initiatives, enables a state and local law enforcement entity to enter into a partnership with ICE, under a joint memorandum of agreement. The state or local entity receives delegated authority for immigration enforcement within their jurisdictions.

Q13: How will ICE and CBP engage with governors and others for the purpose of preparing to enter into agreements under 287(g)?

A13: As part of ICE's outreach, agency personnel will discuss the 287(g) program and how interested parties can enter into a memorandum of agreement.

Q14: When is the Priority Enforcement Program (PEP) being terminated?

A14: ICE has terminated the Priority Enforcement Program (PEP) and restored Secure Communities, directing its personnel to take enforcement action consistent with the priorities set forth in the executive orders.

Q15: Has the DHS Secretary reviewed all agency regulations, policies and procedures to ensure consistency with this Executive Order? If so, have any regulations, policies and/or procedures been rescinded?

A15: ICE has terminated the Priority Enforcement Program (PEP) and restored Secure Communities, directing its personnel to take enforcement action consistent with the priorities set forth in the executive orders. ICE has also rescinded priority enforcement categories that previously exempted classes or categories of removable aliens from potential enforcement.

Q16: Is the Secretary of Homeland Security working to develop and implement a program that ensures adequate resources are devoted to the

prosecution of criminal immigration offenses in the United States?

A16: ICE is using a three pronged approach to ensuring criminal immigration offenses are prosecuted to the fullest extent possible. First, ICE will coordinate with each U.S. Attorney's Office to revisit local prosecution threshold requirements and advocate for a lower threshold. Second, ICE developed a proposal for a National Lead Development Center to focus on immigration fraud and refer those cases to Document and Benefit Fraud Task Forces. Third, ICE it will coordinate with state and local law enforcement partners to support criminal investigations involving illegal aliens engaged in fraud schemes.

Q17: What are you doing to reduce the reach of violent crime and transnational criminal organizations?

A17: To better target gang members responsible for violent crime and transnational criminal activities, ICE has notified field leadership to immediately assess and, if possible, realign resources to support Operation Community Shield, an international law enforcement initiative that combines Homeland Security Investigations' (HSI) expansive statutory and civil enforcement authorities to combat the growth and proliferation of transnational criminal street gangs, prison gangs and outlaw motorcycle gangs throughout the United States. With assistance from state, local, tribal and foreign law enforcement partners, the initiative helps HSI locate, investigate, prosecute, and where applicable, immediately remove gang members from our neighborhoods and ultimately from the United States.

Q18: What threshold of abuse of a public benefit program will render someone removable?

A18: Those who have knowingly defrauded the government or a public benefit system will be priority enforcement targets.

Q19: Is there any class of removable individuals in the United States that ICE will deprioritize for removal?

A19: Under this executive order, ICE will not exempt classes or categories of removal aliens from potential enforcement. All of those in violation of the immigration laws may be subject to immigration arrest, detention and, if found removable by final order, removal from the United States.

Q20: Does ICE still prioritize criminal enforcement priorities?

A20: Under this executive order, ICE will not exempt classes or categories of removal aliens from potential enforcement. All of those in violation of the immigration laws may be subject to immigration arrest, detention and, if found removable by final order, removal from the United States. The guidance makes clear, however, that ICE should prioritize several categories of removable aliens who have committed crime, beginning with those convicted of a criminal offence.

Q21: What training do immigration officers receive to make them valid

determinations of who could possibly pose a risk to public safety or national security?

A21: ICE officers and agents as well as state and local 287(g) officers are trained to enforce immigration laws both in civil and criminal environments. All of those in violation of immigration law are subject to immigration arrest, detention and, if found removable by final order, removal from the United States.

Q22: Do these memoranda affect recipients of Deferred Action for Childhood Arrivals (DACA)?

A22: No.

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