

Q&A: What Do These New Immigration Rules Mean?

Tuesday, Secretary of Homeland Security John Kelly issued two “implementation memos” to Department of Homeland Security personnel.

These memos provide further direction to implement President Donald Trump’s recent executive orders on border security and enforcement of the immigration laws. As part of the department’s commitment to greater transparency for the public, it issued the following Q&A about how these new policies and practices will serve the national interest and provide greater security for Americans:

Q: What is Customs and Border Patrol [sic; Protection] currently doing as part of the construction of the wall?

A: CBP is taking immediate action in response to the president’s executive order. We have identified locations near El Paso, Texas; Tucson, Arizona; and El Centro, California, where we will build a wall in areas where the fence or old brittle landing-mat fencing are no longer effective.

The Border Patrol is also in the midst of an operational assessment, which will identify priority areas where CBP can build a wall or similar physical barrier on the border where it currently does not exist.

Q: What does this assessment include?

A: CBP is considering the following factors:

- The current state of southern border security
- All geophysical and topographical aspects of the southern border

- The availability of federal and state resources necessary to achieve operational control of the southern border

This analysis will inform DHS' strategy to obtain and maintain operational control of the southern border.

Q: How long will this assessment take?

A: The executive order directs DHS to produce a comprehensive study of the security of the southern border within 180 days. However, the Border Patrol's operational assessment should be completed well before the deadline.

Q: Where will the initial construction be located?

A: As noted above, initial construction of new infrastructure will focus on locations near El Paso, Texas; El Centro, Calif.; and in Southern Arizona.

Q: Will the new wall be uniform in design, scope and function?

A: The Border Patrol is in the midst of an assessment of the southern border to identify operational requirements to inform wall design decisions.

Q: Do you have the funds to construct the wall?

A: CBP has identified funding to begin immediate construction and is working with the administration in these efforts.

Q: Does the Alternatives to Detention program fall under the umbrella of "catch and release" policies being abolished?

A: No. The use of Alternatives to Detention, including the use of ankle monitors, will continue on a case-by-case basis at the discretion of the officers on the ground.

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

A: Under the executive order, ICE will not exempt classes or categories of removable aliens from potential enforcement. All of those in violation of immigration law may be subject to immigration arrest, detention and, if found removable by final order, removal from the United States. ICE and CBP priorities are realigned consistent with those set forth in section 5 of Executive Order 13768.

Q: What is the new goal for ICE's detention capacity?

A: Although detention space may be limited at times, ICE is committed to arresting and processing all removable aliens. ICE agents and officers will make individualized custody determinations in every case, prioritizing detention resources on aliens subject to expedited removal and aliens removable on any criminal ground, national security or related ground or for fraud or material misrepresentation.

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

A: 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 and will collaborate with CBP in these efforts. Existing 287(g) applications are also undergoing an expedited review process.

The 287(g) program, one of ICE's top partnership initiatives, enables state and local law enforcement agencies 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.

ICE and CBP will be is developing a strategy to further expand the 287(g) Program, to include types of 287(g) programs, locations, and recruitment strategies. To strengthen the 287(g) Program, ICE field leadership has begun examining local operational needs and liaising with potential 287(g) partners and will collaborate with CBP in these efforts. Existing 287(g) applications are also undergoing an expedited review process. To support the training needed for existing and new 287(g) partners, ICE is updating the 287(g) training curriculum.

Q: Is it true that DHS is going to make the threshold for meeting credible fear in asylum cases more difficult to meet?

A: The goal of DHS is to ensure the asylum process is not abused. Generally speaking, to establish a credible fear of persecution, an alien must demonstrate that there is a "significant possibility" that the alien could establish eligibility for asylum, taking into account the credibility of the statements made by the alien in support of the claim and such other facts as are known to the officer.

Asylum officers are being directed to conduct credible fear interviews in a manner that allows the interviewing officer to elicit all relevant information from the alien as is necessary to make a legally sufficient determination. In determining whether the alien has demonstrated a significant possibility that the alien could establish eligibility for asylum or torture protection, the asylum officer shall consider the statements of the alien and determine the credibility of the alien's statements made in support of his or her claim and shall consider other facts known to the officer, consistent with the statute.

The asylum officer shall make a positive credible fear finding only after the officer has considered all relevant evidence and determined, based on credible evidence, that

the alien has a significant possibility of establishing eligibility for asylum or torture protection.

Q: How does the memorandum address the processing and treatment of unaccompanied alien minors at the border?

A: The Secretary's memorandum instructs the USCIS director, CBP commissioner and ICE director to develop uniform written guidance and training for all employees and contractors of those agencies regarding the proper processing of unaccompanied alien children, the timely and fair adjudication of their claims for relief from removal and, if appropriate, their safe repatriation at the conclusion of removal proceedings. In developing such guidance and training, they shall establish standardized review procedures to confirm that alien children who are initially determined to be "unaccompanied alien child[ren]," as defined in 6 . § 279(g)(2), continue to fall within the statutory definition when being considered for the legal protections afforded to such children as they go through the removal process.

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

A: No.

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