Executive orders & DHS implementation memos

Executive Orders
- Border Security and Immigration Enforcement Improvements (1/25/17) (Border EO)
- Enhancing Public Safety in the Interior of the United States (1/25/17) (Interior EO)
- Protecting the Nation from Foreign Terrorist Entry into the United States (1/27/17) (enjoined!), replaced on 3/6/17 (enjoined again!)

Implementation Memos
- Implementing the President’s Border Security and Immigration Enforcement Improvement Policies (2/20/17)
- Enforcement of the Immigration Laws to Serve the National Interest (2/20/17)
Do the EOs change who is legally subject to deportation?

- No, existing immigration laws dictate who is “removable.” Current law allows the federal government to deport people who lack lawful immigration status (i.e. undocumented people) as well as those with status (e.g. green card holders, refugees, visa holders) who have certain criminal convictions.

- The president cannot redefine who is legally “removable” without an act of Congress.
Do the EOs change which of my clients ICE will seek to detain and deport?

- Yes, for people who are “removable” under existing law, the policies announced can and do expand whom immigration authorities will target for deportation.

- Some clients who would not have been ICE enforcement priorities under Obama may now be high priorities for removal, even pre-conviction.
  - e.g., undocumented client charged with misdemeanor larceny
New Priorities for removal

Any *removable* person who

- has been convicted of, *charged with*, or committed acts constituting any criminal offense
- is believed to pose a threat to public safety or national security;
- has a final order of removal; or
- has engaged in fraud/misrepresentation in applications to government, or who have “abused” public benefits.
Border EO

Calls for:

- Building the wall
- ↓ parole for arriving asylum seekers
- “catch and release”
- ↑ border facilities with AOs and IJs
- ↑ CBP officers
- ↑ 287(g) agreements
- ↑ prosecution of offenses relating to southern border
- ↑ expedited removal
### More 287(g)?

<table>
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<th>County</th>
<th>Model</th>
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<tr>
<td>Cabarrus County Sheriff’s Dept</td>
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<td>Henderson County Sheriff’s Dept</td>
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??? | ???
If this is what things looked like before...

Chart 3. 8 USC 1326 Reentry Prosecution Cases Filed, Fiscal Years 1986-2015 (TRACFED/Transactional Records Access Clearinghouse at Syracuse University)
This is what we should we expect now.
We’re gonna see more of these....

IJ orders in prison

Stipulated Removal Order

DHS Agent

Reinstatement Order

Expedited Removal Order
A brave new world
Current enforcement trends

- More home raids and street raids (over 80 immigrants arrested in Feb. in Charlotte)
- Checkpoints?
- Courthouse arrests – including DV victim (lots of judges fighting back)
- ICE reviewing criminal justice and court databases to locate deportable immigrants, and
ICE in court houses - what can attorneys do?

- If you witness ICE arresting your client, consider invoking your client’s rights and telling ICE not to question your client.
- Many courts have a policy against arresting inside the courtroom. E.g., Seattle – access to justice issue
- Difficult to expand to outside the courtroom in public spaces
- Model policies?
Pending legislation in NC

• Withholds certain tax revenues from local gov’ts that violate sanctuary city polices passed in 2015 (bars prohibition on info sharing between local law enforcement and ICE)
  • Any citizen can file complaint of local non-compliance

• Increases penalties for false ID crimes

• Creates rebuttable presumption of no condition of release for undocumented immigrants charged with certain crimes including certain driving offenses
Detainers

- Executive orders will change how ICE issues detainers
- Many federal courts have found that holding a person on an ICE detainer for any period of time (even less than 48 hours) once they are not subject to state detention, violates the 4th Amendment
- Challenge detainers? Entry point into deportation machine
What can attorneys do? Padilla advisals

**Step 1 – Investigate Facts**
- Determine client’s immigration status
- Get criminal record

**Step 2 – Analyze key consequences**
1. Is there a conviction?
2. Does the offense fall into a ground of removal?

**Step 3 – Advise client and determine priorities; defend against the immigration consequences**
Resources?

• Immigration Consequences Manual (updates will be completed soon)

• Contact Sejal Zota at
  sejal@nationalimmigrationproject.org

• Contact other consulting immigration attorneys
What can attorneys do?


- Immigration public defenders? New York, Baltimore