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Q&A: DHS Implementation of the Executive Order on Border Security and Immigration Enforcement

Release Date: February 21, 2017

UPDATED: March 1, 2017 2:00 p.m. EST

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WASHINGTON – On February 20, 2017, Secretary John Kelly signed a memorandum implementing the president’s Executive Order entitled “Border Security and Immigration Enforcement Improvements,” 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. What is CBP currently doing as part of the construction of the wall?

A1. U.S. Customs and Border Protection is taking immediate action in response to the president's executive order. The Border Patrol is conducting 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. Locations near El Paso, Texas, Tucson, Arizona, and El Centro, California, have also been identified where we will replace areas where the fence or old brittle landing-mat fencing are no longer effective.

CBP is leveraging years of U.S. Border Patrol's institutional operational knowledge and the U.S. Army Corps of Engineers' border infrastructure construction subject matter expertise to "construct a physical wall or similarly contiguous and impassable physical barrier" in the vicinity of the U.S. border with Mexico.

CBP is directly soliciting (<https://www.fbo.gov/index?s=opportunity&mode=form&id=b8e1b2a6876519ca0aedd748e1e491cf&tab=core&cvview=0>) industry input for conceptual wall design(s) with the intent to construct multiple prototype(s). The primary purpose of this effort is to develop design standards for a border wall that may be constructed along the southwest border with Mexico in support of USBP operational requirements. Any and all prototypes will be designed to deter illegal entry into the United States. Wall design and construction award timelines for prototype construction will be expedited to meet immediate U.S. Border Patrol operational needs.

Q2: Why is CBP seeking to construct prototypes?

A2: Prototyping is an industry-tested approach to define the best solution when considering a new product or methodology. Through the construction of prototypes, CBP will partner with industry to identify the best means and methods to construct border wall before making a more substantial investment in construction. The prototypes will inform the final design standard which will likely continue to evolve to meet USBP's requirements.

Any and all prototypes will be designed to deter illegal entry into the United States.

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

Q3. What does the operational assessment include?

A3. 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's strategy to obtain and maintain operational control of the southern border.

The executive order directs DHS to produce a comprehensive study of the security of the southern border within 180 days.

Q4. Do you have the funds to construct the wall?

A4. CBP has identified funding to begin immediate construction and is working with the Administration in these efforts.

Q5: Does the Alternatives to Detention program fall under the umbrella of “catch and

release” policies being abolished?

A5: 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.

Q6: What are ICE’s priorities under this executive order?

A6: 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.

Q7: Will ICE deport people for driving without a license, since it’s often an immigration-related issue?

A7: 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.

Q8: What is the new goal for ICE’s detention capacity?

A8: 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

AILA Doc. No. 17022171. (Posted 3/8/17)

aliens subject to expedited removal and aliens removable on any criminal ground, national security or related ground or for fraud or material misrepresentation.

Q9: What is ICE planning in terms of obtaining additional detention centers or bed space? Have any contracts or RFPs yet been drafted? How long will it take to obtain additional bed space? How much will it cost per bed/day? Where will they be located?

A9: Following the issue of this order, ICE has already increased its detention capacity by approximately 1,100 beds.

To support the further need for increased detention capacity, particularly along the Southwest Border, ICE is currently defining contracting requirements. A list of potential detention locations is under review, which would supply additional beds.

Q10: Will ICE still be hiring the 10,000 officers called for in the executive orders?

A10: ICE is currently developing a hiring plan.

Q11: What is the 287(g) program 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 and will collaborate with CBP in these efforts. 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 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.

Q13: When will 287(g) task force agreements be available to local jurisdictions? Will these new task force agreements be modeled after the previously canceled task force model?

A13: 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.

Q14: How will ICE accommodate an immigration judge in each of its facilities? How about asylum officers?

A14: ICE is working with the Department of Justice Executive Office for Immigration Review and U.S. Citizenship and Immigration Services to review current procedures and resources in order to identify efficiencies and best practices to improve the system. Most dedicated detention facilities already house immigration courts and have enough space to accommodate asylum officers. ICE is also seeking to increase the use of technology, mainly through the use of video teleconferencing, in locations with insufficient space or staffing.

Q15: What are you doing to reduce the reach of violent crime and transnational criminal organizations?

A15: 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.

Q16: Could USCIS customers be affected by the policies on the detention of aliens seeking

admission pending a final determination of their inadmissibility and deportability, including eligibility for immigration relief?

A16: The policies are consistent with INA provisions that mandate the detention of certain aliens seeking admission and allow for the exercise of discretionary parole authority only on a case-by-case basis, and only for urgent humanitarian reasons or significant public benefit.

Q17: The Secretary's memorandum outlines certain situations where CBP and ICE may release an alien detained under section 235(b) of the INA, who was apprehended or encountered after illegally entering or attempting to illegally enter the United States. One of the situations is where the alien obtains an administratively final order granting relief or protection

from removal or DHS determines that the individual is a U.S. citizen or an alien who is a lawful permanent resident, refugee, or asylee; or holds another valid immigration status such as Temporary Protected Status or a valid non-immigrant visa.

A17: The guidance is effective upon the establishment of a plan to surge immigration judges and asylum officers to process recent border entrants, and the establishment of appropriate processing and detention facilities.

Q18: How does the expansion of expedited removal account for those who may be eligible for immigration benefits?

A18: The Secretary's intentions regarding expedited removal are under development and will be set forth and effective upon publication of a notice in the Federal Register.

Q19: How soon will DHS make changes to more closely align its use of the expedited removal

authority with Congressional intent?

A19: DHS is working to issue appropriate parameters in which expedited removal in these kinds of cases will be used.

Q20: Is it true that DHS is going to make the threshold for meeting credible fear in asylum cases more difficult to meet?

A20: 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.

Q21: How will the enhancements to asylum referrals and credible fear determinations under INA section 235(b)(1) affect the work of USCIS?

A21: The Secretary's memorandum outlines several points:

- The director of USCIS shall ensure that asylum officers 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.
- The director shall also increase the operational capacity of Fraud Detection and National Security (FDNS) and continue to strengthen its integration to support the Field Operations Directorate (FOD), Refugee Asylum and International Operations (RAIO), and Service Center Operations (SCOPS), consulting with Operational Policy and Strategy (OP&S) as appropriate.
- The USCIS director, CBP commissioner, and ICE director shall review their agencies' fraud detection, deterrence, and prevention measures and report to the Secretary within 90 days regarding fraud vulnerabilities in the asylum and benefits adjudication processes, and propose measures to enhance fraud detection, deterrence, and prevention.
- The asylum officer, as part of making a credible fear finding, shall determine the credibility of statements made by the individual in support of his or her claim. This determination should include, but is not limited to, consideration of the statistical likelihood that the claim would be granted by the Department of Justice's Executive Office for Immigration Review (EOIR).

- 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 for withholding or deferral of removal under the Convention Against Torture, based on established legal authority.

Q22: How does the memorandum address the processing and treatment of unaccompanied alien minors at the border?

A22: 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 U.S.C. § 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.

Q23: Is it true that in cases of UACs who travel to the U.S. to reunite with a parent, if a parent is identified by ORR as an

appropriate guardian, that parent could also be prosecuted for possibly having their child smuggled into the U.S.?

A23: Correct. The parents and family members of these children, who are often illegally present in the United States, often pay smugglers several thousand dollars to bring their children into this country. Tragically, many of these children fall victim to robbery, extortion, kidnapping, sexual assault, and other crimes of violence by the smugglers and other criminal elements along the dangerous journey through Mexico to the United States. Regardless of the desires for family reunification, or conditions in other countries, the smuggling or trafficking of alien children is intolerable. Accordingly, DHS shall ensure the proper enforcement of our immigration laws against those who—directly or indirectly—facilitate the smuggling or trafficking of alien children into the United States. This includes placing parents or guardian who are removable aliens into removal proceedings, or referring such individuals for criminal prosecution, as appropriate.

Q24: How might the allocation of additional resources and personnel to the southern border for detention of aliens and adjudication of claims affect USCIS personnel?

A24: The screening of credible fear claims by USCIS and adjudication of asylum claims by EOIR at detention facilities located at or near the point of apprehension will facilitate an

expedited resolution of those claims and result in lower detention and transportation costs. Accordingly, to the greatest extent practicable, the director of USCIS is directed to increase the number of asylum officers and FDNS officers assigned to detention facilities located at or near the border with Mexico to properly and efficiently adjudicate credible fear and reasonable fear claims and to counter asylum-related fraud.

Q25: How does the Secretary's memorandum address the use of parole authority, as set forth in INA section 212(d)(5)?

A25: The memo notes that the statutory language appears to strongly counsel in favor of using the parole authority sparingly and only in individual cases where, after careful consideration of the circumstances, parole is needed because of demonstrated urgent humanitarian reasons or significant public benefit. It states the practice of granting parole to certain aliens in pre-designated categories in order to create immigration programs not established by Congress has contributed to a border security crisis, undermined the integrity of the immigration laws and the parole process, and created an incentive for additional illegal immigration.

Therefore, the USCIS director, CBP commissioner, and ICE director are directed to ensure that appropriate written policy guidance and training is provided to employees exercising parole authority, including advance parole. These employees should be familiar with the proper exercise of parole under section 212(d)(5) of the INA and exercise such parole authority only on a case-by-case basis, consistent with the law and written policy guidance. Notwithstanding other implementation guidance, and pending further review by the Secretary and additional guidance from the Director of ICE, the ICE policy directive establishing standards and procedures for the parole of certain arriving aliens found to

have a credible fear of persecution or torture shall remain in full force and effect.

Q26: The implementation guidance references rescinding all previous immigration enforcement memos. Does this include the ICE and CBP memorandum on sensitive locations?

A26: No, the sensitive locations guidance remains in effect for both ICE and CBP.

Q27: Is DHS going to be immediately sending Mexican nationals and individuals of other nationalities who traveled through Mexico to the U.S. back to Mexico while they await the outcome of their removal proceedings?

A27: DHS will continue to work with the Mexican government and the Department of State to determine how to best implement this guidance. However, consistent with the law and U.S. international treaty obligations, CBP and ICE personnel shall, to the extent appropriate and reasonably practicable, return aliens described in section 235(b)(2)(A) of the INA, who are placed in removal

AILA Doc. No. 17022171. (Posted 3/8/17)

proceedings under section 240 of the INA—and who, consistent with the guidance of an ICE Field Office Director, CBP Chief Patrol Agent, or CBP Director of Field Operations, pose no risk of recidivism—to the territory of the foreign contiguous country from which they arrived pending such removal proceedings. We will work with the countries involved to ensure proper coordination on the safe and humane return of their nationals.

Q28: Do these memoranda affect recipients of Deferred Action for Childhood Arrivals (DACA)?

A28: No.

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Last Published Date: March 2, 2017