



Immigration Enforcement Takeover at the Department of Justice

On January 22, 2025, the U.S. Department of Justice (DOJ) directed all federal prosecutors and federal law enforcement agencies (LEAs) to prioritize immigration enforcement and prosecutions of immigrants.

In general, most of the U.S. deportation system does *not* involve federal prosecutions; deportation is technically a civil process that does not involve a criminal sentence. However, there are several federal criminal offenses¹ that focus specifically on behaviors involved in migrating, including: whether you enter or reenter the country lawfully, whether you properly register and carry immigration paperwork on you; whether you assist people to enter illegally or harbor people who are undocumented. Only some of these offenses have ever been routinely charged in federal courts. This new [memorandum](#) from the Acting Attorney General is unprecedented in that it redirects the full energy of the DOJ to punish immigration-status based offenses.

- The directive requires federal prosecutors to accept and prosecute all charges relating to immigration violations that are referred to them. If they decline to prosecute such charges, they must document and report their reasons to the Executive Office of U.S. Attorneys. The clear implication is that federal prosecutors who do not fully implement the Trump administration's anti-immigrant agenda will be punished and potentially removed from office.
- In addition, the directive orders federal prosecutors to investigate and prosecute state and local actors who may be carrying out sanctuary policies or otherwise not agreeing to assist with immigration enforcement. Once again, prosecutors who decline such cases will be required to document their reasons.

In a further memorandum from U.S. Department of Homeland Security (DHS), included below, the law enforcement components of the DOJ have been granted civil immigration authority.

¹ For example: 8 U.S.C. §§ 1304, 1306, 1324-1328, 1373 and 18 U.S.C. § 922(g)(5).



Below is the text of both directives and a section-by-section explanation.

TEXT OF DOJ DIRECTIVE	ILRC Summary/Analysis
<p>MEMORANDUM FOR ALL DEPARTMENT EMPLOYEES FROM: THE ACTING DEPUTY ATTORNEY GENERAL January 21, 2025 SUBJECT: Interim Policy Changes Regarding Charging, Sentencing, And Immigration Enforcement</p>	<p>Header (unsigned possibly because it was not even clear who was the Acting Attorney General yet)</p>
<p>Following President Trump's second inauguration yesterday, I write regarding interim decisions and policy changes pending confirmation of the Attorney General.² These interim changes are necessary as an initial response to Executive Orders that President Trump issued yesterday, critical to the Justice Department's mission, and part of the response to three of the most serious threats facing the American people. First, Cartels and other Transnational Criminal Organizations, such as Tren de Aragua (TdA) and La Mara Salvatrucha (MS-13), are a scourge on society resulting in an unstable and unsafe border and huge flows of illegal immigration in violation of U.S. law. Second, brutal and intolerable violent crime by members of these organizations and illegal aliens is escalating rapidly across the country. Third, the fentanyl crisis and opioid epidemic are poisoning our communities and have inflicted an unprecedented toll of addiction, suffering, and death.</p> <p>The Justice Department must, and will, work to eradicate these threats. Indeed, it is the responsibility of the Justice Department to defend the</p>	<p>This section provides the Trump administration's context and political messaging to demonize immigrants and set the tone for DOJ to take a leading role in the government's anti-immigrant crusade.³ It was issued the second day of the administration, in tandem with many executive orders.</p> <p>Subsequent DOJ memos have addressed the implementation of Executive Orders, such as the announcement of defunding and targeting sanctuary jurisdictions, more specifically. This directive also derives from the executive orders, but was issued independently to set the tone for all DOJ priorities.</p> <p>Two memos issued February 5, 2025, set out other related policy directives.</p> <ol style="list-style-type: none">1. General Policy Regarding Charging, Plea Negotiations, and Sentencing2. Sanctuary Jurisdiction Directives

³ The DOJ memo discussed in this explainer uses the pejorative, dehumanizing term “alien.” The ILRC recognizes and condemns the derogatory and xenophobic connotations of the word “alien,” and uses the term “immigrant” or “noncitizen” throughout this explainer in keeping with language modernization efforts that began within the immigrant rights movement.



<p>Constitution and, accordingly, to lawfully execute the policies that the American people elected President Trump to implement. The Justice Department's responsibility, proudly shouldered by each of its employees, includes aggressive enforcement of laws enacted by Congress, as well as vigorous defense of the President's actions on behalf of the United States against legal challenges. The Department's personnel must come together in the offices that taxpayers have funded to do this vitally important work.</p>	
<p>I. Core Principle: Pursuing The Most Serious, Readily Provable Offense</p>	<p>Section I updates the applicable memo about federal prosecutions generally and rescinds some Biden administration directives.</p>
<p>Interim changes to the Justice Department's policy regarding charging and sentencing are necessary in order to implement policies articulated in President Trump's January 20, 2025 Executive Orders relating to the elimination of Cartels and other Transnational Criminal Organizations, and securing our borders against illegal immigration and drug trafficking.</p> <p>Therefore, effective today, the Justice Department's interim policy regarding charging and sentencing is set forth in the May 10, 2017 Memorandum entitled, "Department Charging and Sentencing Policy," which applies to all charging decisions at the Department of Justice and the U.S. Attorney's Offices. Any inconsistent previous policy of the Department of Justice relating to charging and sentencing policy is rescinded, effective today.¹</p> <p>Specifically, in the absence of unusual facts, prosecutorial discretion at the Department of Justice and the U.S. Attorney's Offices is bounded by the core principle that prosecutors should charge and pursue the most serious, readily provable offenses. The most serious offenses are those punishable</p>	<p>Generally, the 2017 Trump Administration's Charging and Sentencing Policy directed federal prosecutors to pursue the most serious provable charges, defined by which carry the longest sentences. The new 2025 directive states that this 2017 policy is once again in effect. If prosecutors don't pursue the most serious charges, that decision needs to be approved by the U.S. Attorney or Assistant Attorney General and will be documented in writing.</p> <p>A U.S. Attorney is the chief prosecutor for a particular federal district. There are 94 federal districts in the country, including the District of Columbia and Puerto Rico- many districts line up with a state's boundaries, but many states have more than one federal district. The chief prosecutor in each district is responsible for implementing these policy changes.⁴</p> <p>For context, former Attorney General Jeff Sessions also issued a specific memorandum regarding immigration prosecutions during</p>

⁴ U.S. Attorneys are appointed and confirmed by the Senate, but can be removed by the President. Assistant U.S. Attorneys are non-political appointees – they are career civil servants who work as federal prosecutors at the U.S. Attorneys' Offices. George Bush fired seven of US Attorneys in 2006 which caused a significant controversy at the time. This Inspector General report provides helpful detail on the power and relative independence, or lack thereof, of US Attorneys: <https://bitly.cx/a9Qo>.



<p>by death where applicable, and offenses with the most significant mandatory minimum sentences (including under the Armed Career Criminal Act and 21 U.S.C. § 851) and the most substantial recommendation under the Sentencing Guidelines.</p> <p>Each United States Attorney and Assistant Attorney General is responsible for ensuring that this interim policy is implemented and followed. Any deviations from the interim policy's core principle require significant extenuating circumstances, shall be carefully considered, and must be approved consistent with the process described in the May 10, 2017 Memorandum.</p>	<p>the first Trump administration. Notably this directive was far less extreme in terms of the criminal offenses it emphasized and the substantial discretion it left to prosecutors: “I ask that you increase your efforts in this area making the following immigration offenses higher priorities.”</p>
<p>II. Faithful Execution of the Immigration Laws</p>	<p>Section II lays out the directive to prosecutors to do more prosecutions of noncitizens and lays out specific legal authorities and offices’ responsibilities to do these prosecutions.</p>
<p>Consistent with President Trump's January 20, 2025 Executive Order entitled, "Protecting The American People Against Invasion," the Department of Justice will take all steps necessary to protect the public and secure the American border by removing illegal aliens from the Country and prosecuting illegal aliens for crimes committed within U.S. jurisdiction. These steps shall include, but not be limited to, the following:</p>	<p>The introduction references a January 20, 2025 Trump administration Executive Order, and consistent with that order the directive states the DOJ will “take all steps necessary” to pursue immigration enforcement. Beyond mass arrests and deportations, the DOJ hereby converts most of its own law enforcement resources to focus on prosecutions, as well as arrests and deportations.</p>
<p>Consistent with the core principle of pursuing the most serious, readily provable offense, U.S. Attorney's Offices and the other components shall pursue charges relating to criminal immigration-related violations when such violations are presented by federal, state, or local law enforcement or the Intelligence Community. See, e.g., 8 U.S.C. §§ 1324(c), 1252c (authorizing certain immigration-related arrests by State and local law enforcement officials). This includes, where supported by evidence, prosecutions for violations of 8 U.S.C. § 1304, 1306, 1324-1328, 1373 and</p>	<p>This section directs US Attorneys to pursue immigration-focused prosecutions, whenever referred to them by any of the various law enforcement agencies.</p> <p>The offenses emphasized are primarily various federal misdemeanors for not having or keeping up with proper immigration paperwork. Although simply being present in the U.S. without legal immigration status is not a crime, failure to “register”</p>



18 U.S.C. § 922(g)(5). Each U.S. Attorney's Office shall coordinate as appropriate with the federal courts to inform the courts of this interim policy and develop processes for handling the increased number of prosecutions that will result. Declination decisions relating to immigration-related conduct shall be disclosed as Urgent Reports pursuant to Justice Manual § 1-13.130. On a quarterly basis, the U.S. Attorney's Offices shall report statistics to EOUSA, broken down by law enforcement agency, regarding the number of immigration-related cases referred to the Office, the number of pending immigration-related investigations and prosecutions, the number of immigration-related convictions, and the resulting sentences and removals.

and failure to carry “registration documents” are in fact misdemeanors under federal law. However, they have almost never actually been prosecuted in the past. Entering or reentering the country without inspection are also federal crimes, but these have been aggressively prosecuted, especially at the border.⁵

Generally, if there is a case to prosecute, it starts because law enforcement agencies refer cases to the US Attorney’s office to prosecute in court. Regarding immigration-related cases, U.S Immigration Customs and Enforcement (ICE) and U.S Customs and Border Protection (CBP) can present cases to federal prosecutors, as well as local law enforcement agencies (under some circumstances, as described in 8 USC 1324(c) and 1252c).

This section uses mandatory language and states that US Attorneys “*shall* pursue charges,” which generally means that pursuing charges is required. However, the directive is still guidance, not law. To enforce these prosecutions, the directive requires prosecutors to report to headquarters on any decision to decline charging an individual. This means if ICE/CBP brings a case to a prosecutor but no charges get filed, ICE/CBP might complain to

⁵ More details on the nature of the statutes in question:

8 U.S.C. 1304: misdemeanor for failure to carry alien registration card (8 C.F.R. § 261.4(a) and (b) describe the various immigration documents that satisfy the requirement of a “registration form”)

8 U.S.C. § 1306: misdemeanors for willful failure to apply for registration and be fingerprinted, failure to notify DHS of change of address, or file a registration application containing knowing false statements or procure a registration document through fraud, forges alien registration certificates or cards with unlawful intent

§ 1324: crime of bringing in and harboring people

§ 1325: illegal entry

§ 1326: illegal reentry

§ 1327: aiding or assisting people to enter

§ 1328: importing people for prostitution

§ 1373: anti-sanctuary statute (not a criminal statute)

18 U.S.C. § 922(g): federal firearms crimes specific to immigrants



	<p>DOJ authorities and increase the pressure on prosecutors to pursue every case.</p> <p>The directive states that DOJ will track all decisions where a prosecutor declined to prosecute. This declination decision is deemed an “Urgent Report.” Normally, “Urgent Reports” are for major developments in litigation, law enforcement emergencies, or events likely to attract national media.⁶ This oversight is part of DOJ’s coercion to make various U.S. Attorneys follow the guidance.</p>
<p>The Organized Crime Drug Enforcement Task Force (OCDETF) and the Project Safe Neighborhoods (PSN) program shall establish national initiatives to provide focused resources and attention to immigration-related prosecutions at the federal, state, and local levels. OCDETF and PSN will focus on facilitating access by U.S. Attorney's Offices to existing structures in which the Justice Department participates, such as Joint Task Force Vulcan, which targets MS-13 and will be expanded to target TdA, and Joint Task Force Alpha, which targets human trafficking. The regional OCDET Strike Forces shall prioritize the investigation and prosecution of immigration offenses, including by requiring OCDETF-funded AUSAs to devote significant time and attention to the investigation and prosecution of these crimes. The new OCDET and PSN national initiatives shall also prioritize enhanced statistical tracking of these efforts.</p>	<p>Generally, this section discusses existing agency operations and task forces being re-directed to prioritize immigration prosecutions.</p>
<p>Pending implementation of the Homeland Security Task Forces announced by President Trump on January 20, 2025, the FBI's Joint Terrorism Task Forces are directed to coordinate with DHS, as well as state and local members, to assist in the execution of President Trump's immigration-related initiatives. The FBI, DEA, ATF, USMS, and BOP shall review their files for identifying information and/or biometric data relating to non-</p>	<p>This section directs the federal law enforcement agencies under DOJ (FBI, DEA, ATF, etc.) to coordinate with DHS and review their own cases for any information about undocumented immigrants in the United States. They must pass on this information to DHS to facilitate immigration-related prosecutions and mass deportations.</p>

⁶ See DOJ Justice Manual, 1-13.100, at <https://www.justice.gov/jm/jm-1-13000-urgent-reports#1-13.100>.



<p>citizens located illegally in the United States. All such information and data shall be disclosed to DHS, for the sole purpose of facilitating appropriate removals, enforcement actions, and immigration-related investigations and prosecutions, unless the agency possessing the information and data determines that a particular disclosure would compromise a significant law enforcement investigation and the U.S. Attorney's Office participating in the investigation concurs in writing with the agency's non-disclosure determination. The agencies' reviews and disclosures shall be completed in 60 days. Concurrences by U.S. Attorney's Offices in non-disclosure determinations shall be disclosed as Urgent Reports pursuant to Justice Manual § 1-13.130.</p>	<p>These divisions of the DOJ are required to do a review of their data and disclose all identifying information they have on non-citizens to DHS within 60 days. There is an exception if the disclosure would “compromise a significant law enforcement investigation,” but the US Attorney’s office must agree with the non-disclosure determination and state their agreement in writing and document it as an “Urgent Report.”⁷</p>
<p>The Supremacy Clause and other authorities require state and local actors to comply with the Executive Branch's immigration enforcement initiatives. Federal law prohibits state and local actors from resisting, obstructing, and otherwise failing to comply with lawful immigration-related commands and requests pursuant to, for example, the President's extensive Article II authority with respect to foreign affairs and national security, the Immigration and Nationality Act, and the Alien Enemies Act. The U.S. Attorney's Offices and litigating components of the Department of Justice shall investigate incidents involving any such misconduct for potential prosecution, including for obstructing federal functions in violation of 18 U.S.C. § 371, and violations of other statutes, such as 8 U.S.C. §§ 1324, 1373. Declination decisions with respect to resistance, obstruction, or other non-compliance with lawful immigration-related commands and requests from federal authorities shall be disclosed as Urgent Reports pursuant to Justice Manual § 1-13.130.</p>	<p>This section threatens sanctuary jurisdictions with various legal actions. It makes some sweeping claims that misstate the law, such as the first sentence which erroneously claims that state and local actors have to comply with immigration enforcement initiatives. The U.S. Supreme Court has clearly held that the federal government can’t require states or localities to use their resources to enforce federal programs, such as immigration.⁸</p> <p>This section also directs US federal prosecutors and other DOJ divisions to investigate incidents of resistance to federal immigration enforcement, including but not limited to federal crimes of conspiracy and harboring. This is not limited or specific to local governments or sanctuary policies, but could also potentially apply to organizations or individuals. This section provides motivation for the DOJ to focus prosecutions on immigration advocates and activists for their work.</p>

⁷ Urgent Reports are described in the DOJ Justice Manual, 1-13.100, at <https://www.justice.gov/jm/jm-1-13000-urgent-reports#1-13.100>.

⁸ See, e.g. New York v. United States, 505 US 144 (1992); Murphy v. NCAA, 584 U.S. 453 (2018); Printz v. United States, 521 US 898 (1997).



	<p>If the US Atty declines to prosecute these allegations, they have to document this decision as an “Urgent Reports.”</p>
<p>Finally, laws and actions that threaten to impede Executive Branch immigration initiatives, including by prohibiting disclosures of information to federal authorities engaged in immigration-enforcement activities, threaten public safety and national security. The Civil Division shall work with the newly established Sanctuary Cities Enforcement Working Group, within the Office of the Associate Attorney General, to identify state and local laws, policies, and activities that are inconsistent with Executive Branch immigration initiatives and, where appropriate, to take legal action to challenge such laws.</p>	<p>This section argues that sanctuary policies impede the federal government's work and announces the creation of a special working group, “Sanctuary Cities Enforcement Working Group” focused on finding sanctuary policies and suing over them.</p>
<p>Footnote 1: This interim guidance is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.</p>	
<p>Footnote 2: The previous policies and guidance rescinded include: "General Department Policies Regarding Charging, Pleas, and Sentencing" (December 16, 2022); "Interim Guidance on Prosecutorial Discretion, Charging, and Sentencing" (January 29, 2021); "Department Policy on Charging Mandatory Minimum Sentences and Recidivist Enhancements in Certain Drug Cases" (August 12, 2013); and "Guidance Regarding § 851 Enhancements in Plea Negotiations" (September 24, 2014).</p>	<p>This footnote details the list of rescinded DOJ policies implemented under past administrations.</p>



On January 22, the Acting Secretary of DHS conferred further immigration enforcement authority to DOJ officers:

TEXT OF DOJ MEMORANDUM	ILRC Summary/Analysis
<p>MEMORANDUM FOR THE ACTING ATTORNEY GENERAL FROM: BENJAMINE C. HUFFMAN, ACTING SECRETARY OF HOMELAND SECURITY January 22, 2025 SUBJECT: DOJ Immigration Officer Authorization</p>	
<p>Pursuant to the authority vested in me by Title 8, Chapter 12 of the U.S. Code, including 8 U.S.C. § 1103(a)(4), (6), I hereby authorize the employees of the U.S. Department of Justice listed below to perform the following functions of an immigration officer granted to the Department of Homeland Security by Title 8, Chapter 12, and confer on them the authority to do the same:</p> <ol style="list-style-type: none">(1) Investigating, determining the location of, and apprehending, any alien who is in the United States in violation of Title 8, Chapter 12 or regulations issued thereunder, and(2) Enforcing any requirements of such statutes or regulations. <p>The intent of this order is to grant to the employees listed below the same authority already granted to the Federal Bureau of Investigation, and this order should be read and understood consistent with that objective.</p> <p>The list of employees granted this authority is as follows:</p> <ul style="list-style-type: none">• Any law enforcement official in the U.S. Marshals Service;• Any law enforcement official in the Drug Enforcement Administration;• Any law enforcement official in the Bureau of Alcohol, Tobacco, Firearms and Explosives;• Any law enforcement official in the Federal Bureau of Prisons; and• Any other employee of the Department of Justice who obtains the approval of the Attorney General.	<p>This one-page memorandum grants civil immigration enforcement authority to several of the federal criminal law enforcement divisions of the Department of Justice.</p> <p>This means that federal law enforcement officers that normally focus on federal criminal cases, such as drug enforcement, now have the power to question people about their immigration status, arrest and detain them for civil immigration violations, and carry out deportation orders.</p>