

The DHS Has Signed Unusual Agreements With States That Could Hamper Biden's Future Immigration Policies

"This is just another last-ditch effort to try and ingrain a reckless hyper enforcement system," one legal expert said.

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Gregory Bull / AP

The Department of Homeland Security has signed agreements with multiple jurisdictions, including the state of Arizona, that appear to be an unusual effort to hamstring the incoming Biden administration's goals to pause deportations, prioritize immigration arrests to only those with serious criminal backgrounds, and increase avenues to asylum.

The agreements would require the DHS to provide notice of immigration policy changes and allow the jurisdictions six months to review and submit comments before the agency moves forward with any of the proposed changes, according to documents obtained by BuzzFeed News.

Just how the agreements will actually play out after Joe Biden takes office remains to be seen. Still, Sarah Pierce, a policy analyst at the Migration Policy Institute, told BuzzFeed News it's clear that the Trump administration is "willing to do anything they possibly can to give their restrictive immigration policies staying power."

"In its final days, the Trump administration is staying true to its strategy of trying anything and everything to implement its restrictive immigration agenda and give it staying power after their time in office," she added.

Ken Cuccinelli, the acting second in command at DHS, signed the so-called Sanctuary for Americans First Enactment Agreement (SAFE) with Arizona, Louisiana, Indiana, and the Rockingham County Sheriff's Office in North Carolina, this month, according to documents obtained by BuzzFeed News. The copies are also signed by representatives of the various jurisdictions.

"DHS recognizes that Agency, like other state agencies and municipalities, is directly and concretely affected by changes to DHS rules and policies that have the effect of easing, relaxing, or limiting immigration enforcement," the agreement with Arizona begins. "Such changes can negatively impact Agency's law enforcement needs and budgets, as well as its other important health, safety, and pecuniary interests of the State of Arizona."

The agreement establishes a "binding and enforceable commitment between DHS and Agency" that the local jurisdiction will cooperate with DHS on border security and immigration enforcement in exchange for "DHS's commitment to consult Agency and consider its views before taking any action, adopting or modifying a policy or procedure, or making any decision that could" reduce or relax immigration enforcement, decrease the number of ICE agents performing enforcement within the jurisdiction's area, pause deportations, decrease immigration arrests, or increase or expand immigration benefits, among other policies.

The agreement continues by laying out that DHS will "prioritize the protection of the United States" by enforcing immigration laws in a way that prioritizes detention and results in arrests of "removable aliens."

DHS is required to provide the local jurisdictions with 180 days of written notice of "the proposed action and an opportunity to consult and comment on the proposed action, before taking any such action" listed above.

If either of the parties does not "comply" with the obligations, they will be entitled to "injunctive relief," according to the agreement. Either party can "request in writing" to terminate the agreement, but must provide 180 days of notice.

Lt. Kevin Suthard, a spokesperson for the Rockingham County Sheriff's Office, said that the sheriff signed the agreement late last year.

"It's not political, it's about public safety. Doing all that we can to keep the residents of Rockingham County that we serve safe," he said in an email. "That is always our number one priority."

Officials from Arizona, Indiana, and Louisiana did not respond to a request for comment. A Department of Homeland Security spokesperson declined to comment.

Pratheepan Gulasekaram, an immigration law professor at the Santa Clara University School of Law, said the agreement appears to be an attempt by the Trump administration to create a mechanism for the states to potentially sue in federal court over any policies that are changed or introduced by the incoming administration.

"This is just another last-ditch effort to try and ingrain a reckless hyper enforcement system, but completely unmoored from legal, constitutional ways of implementing policy," he said.

Naureen Shah, senior advocacy and policy counsel for the American Civil Liberties Union, called the agreements "a transparent attempt by Trump officials to tie the Biden-Harris administration's hands and preserve Trump's grotesque immigration enforcement policy."

The Biden administration has the authority, mandate, and responsibility to break from the Trump administration's legacy, and nothing about these reported agreements changes that reality," Shah added.

The Trump administration has released a slew of last-minute regulations as an attempt to finalize immigration policies in its final days, including efforts to restrict asylum.

Earlier this week, Chad Wolf resigned as acting DHS secretary, citing some of the issues the agency has had in enforcing the last-minute policy rush.

"Unfortunately, this action is warranted by recent events, including the ongoing and meritless court rulings regarding the validity of my authority as Acting Secretary," Wolf said, apparently referencing the fact that many of the policies issued during his tenure had been challenged in court as advocates argued he had not been legally appointed to his role.