

**FACT SHEET CONCERNING RESUMED ICE
ENFORCEMENT OF IMMIGRATION LAWS**

Introduction. The Executive Orders of President Trump merely direct the government to resume the enforcement of its immigration laws. U.S. enforcement of immigration laws has, for many years, focused only upon specific groups of persons, namely, those who (1) pose a danger to the community, *i.e.* those who have committed criminal offenses, and (2) those who are a security threat. As for those not in those two categories, the Trump administration will leave those persons alone – except for those who have been here for shorter than 2 years (see below). At the same time, if by chance you fall into ICE’s hands this does not preclude ICE from placing you into removal proceedings before an Immigration Judge.

This fact sheet will focus on (1) those who may, in accordance with law, be removed immediately without delay, and (2) those who are entitled to be placed in Immigration Court removal proceedings. Because of the increased likelihood that a non-citizen may be placed into Immigration proceedings, it is advisable to ensure that you have pursued any possible options for obtaining status at this time by consulting with an experienced Immigration lawyer.

A. TARGETED PERSONS WHO MAY BE REMOVED IMMEDIATELY WITHOUT A HEARING.

1. ***Those who have been here less than 2 years.*** If you have been here less than 2 years, you ***may*** be subject to immediate removal even if you have a court hearing or have a filing with USCIS. (It remains to be seen whether the ICE will revoke the hearing notices and commence expedited removal against such persons.) It is lawful for ICE to arrest and put you on a plane within a matter of days.

If you fall into this category: then you may be entitled to a hearing if you can explain that you will be tortured or killed by someone specific in your home country. ICE is not permitted to return people to their home countries if they will be tortured or killed. Otherwise, ICE will be able to put you on the next flight out of the country.

2. ***Those with prior orders of removal.*** If you have a prior order of removal, you can be removed immediately without a hearing. This includes someone who failed to show up to immigration court. You may check to see the status of your Immigration Court case at <https://acis.eoir.justice.gov/en/> (you will need your A number).

If you fall into this category: you must seek counsel immediately to see if you may “re-open” your case. If you are arrested by ICE, they may (and this is not 100% certain), not remove you if you can explain that you will be tortured or killed by someone specific in your home country. ICE is not permitted to return people to their home countries if they will be tortured or killed.

3. ***Those who have committed an “aggravated felony.”*** ICE may remove a person without a hearing immediately.

If you fall into this category, you ought to consult with an Immigration Attorney to determine whether your offense is actually an “aggravated felony” under the Immigration and Nationality Act. If so, that attorney may be able to file a Post-Conviction petition to vacate your conviction if appropriate.

B. PERSONS WHO ARE ENTITLED TO A HEARING BEFORE AN IMMIGRATION JUDGE.

1. Introduction & Summary.

- (a) Persons who Already have Immigration Court (here longer than 2 years):

Note that if you are already before the Immigration Court and you have been here longer than 2 years, your situation has not changed and the executive orders do not affect you whatsoever.

- (b) Persons who have been present over 2 years without status and do not have Immigration Court, but have a pending application with USCIS, such as Adjustment of Status, U Visa, VAWA Application, etc.:

In this instance, you remain subject to being placed into removal proceedings although you are not a target of enforcement (so long as you do not have criminal convictions or here less than 2 years, as explained above). You would have the opportunity to proceed

with the application in most instances (see below).

2. *Specific Persons Covered.*

(a) Present over 2 years, but you have criminal convictions and you are not presently in Immigration Court proceedings.

You will likely be placed into proceedings before the Immigration Court. Criminal convictions include both misdemeanors and felonies, such as driving under the influence of alcohol, drug possession, drug delivery, theft, domestic battery, etc. They do not include driving offenses such as speeding, driving without a license, disobeying a red light, etc. (Although if arrested even for a minor offense outside a “sanctuary city” local law enforcement could notify ICE who, in turn, may detain you).

If you are in this category, you ought to meet with a qualified Immigration attorney as soon as possible. You must determine if there is a way for you to gain legal permanent residency status and whether your conviction makes you ineligible for status. If you have no way to get status, then you must exercise caution when traveling outside of big cities. You could be placed before an Immigration Judge at which time you will need to demonstrate you have the right to remain in the U.S. legally.

(b) Present over 2 years, you do not have criminal convictions, and you are not presently in Immigration Court proceedings.

In this instance, ICE can also place you into proceedings before the Immigration Court. At the same time, you are not an enforcement priority and, thus, it is not expected that ICE would perform searches or sweeps to find you – you will only be arrested if ICE found you at “the wrong place at the wrong time.”

If you are within this category, you ought to retain immigration counsel to determine if there is a way for you to gain legal permanent residency status.

Note, further, that if you are an overstay and have a pending application with USCIS, and you are placed before an Immigration Judge you will be entitled, generally, to be able to wait for that application to be adjudicated.

Note on Detention: ICE is not targeting those without criminal convictions nor those who have been here for 2 years or longer. Note, however, that if you neither have a serious criminal conviction nor here less than 2 years and you get caught up in an enforcement “sweep” or otherwise stopped by ICE you are entitled to be released eventually – in some instances it could be a day or two while ICE checks its records or you will be required to have a bond hearing before an Immigration Judge which could take up to 2 - 3 weeks. It will be helpful for you to carry at least some form of identification in addition to (a) your LPR card (if you have one), or (b) a notice of your future court hearing, or (c) notice of a filing with USCIS to assist with processing and increase your chances of being released expeditiously.