

Executive Order “Border Security and Immigration Enforcement Improvements”

Summary of the Executive Order

Major components:

- Directs the Secretary of Homeland Security to immediately design and **construct a “physical wall”** on the southern border of the United States, which is defined as a “contiguous, physical wall or other similarly secure, contiguous, and impassable physical barrier.”
- Directs the Secretary of Homeland Security to issue guidance **ending the “catch and release” policy**, whereby those apprehended in the United States and presumed to be here without prior authorization are released as they await a hearing before an immigration judge, and calls for implementation of a more stringent detention and removal policy.
- Directs the Secretary of Homeland Security along with the Commissioner of U.S. Customs and Border Protection (CBP) to hire and assign **5,000 additional Border Patrol agents**.
- Calls for the **empowerment of state and local law enforcement** agencies to perform the functions of immigration officers and directs the Secretary of Homeland Security to facilitate this process.
- Directs the Secretary of Homeland Security to **construct or obtain additional detention facilities** “at or near the land border with Mexico” and to **increase the use** of such facilities.
- Directs the Secretary of Homeland Security to take action to ensure that migrants who do not pose a risk of subsequent illegal entry be **returned to their territory of origin pending formal removal proceedings**.

Implementation of the Executive Order

Authority of the United States Executive Branch to effectuate the executive order:

- Executive orders (EO) have the authority of U.S. federal law and are directives to entities within the executive branch, including federal agencies, such as the Department of Homeland Security.
- Executive authority to issue EOs is granted and limited by the U.S. Constitution and federal legislation enacted by Congress; an EO may not overturn Congressional legislation but may reverse a prior Executive action.
- Executive authority is also limited by binding international treaties ratified by the United States as the U.S. Constitution grants treaties the same authority as federal law. This includes the International Covenant on Civil and Political Rights and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, both of which the United States has ratified. Additionally, Executive Order 13107 on the Implementation of Human Rights Treaties makes it the policy of the United States to fully implement treaties to which it is a party.
- Authority to effectuate this specific EO is grounded in and must comply with the Immigration and Nationality Act, the Secure Fence Act of 2006, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

Implementation thus far:

- CBP is conducting an assessment to identify sources of funding and to determine where to build the initial portions of the **wall**. CBP has issued a preliminary request for proposals to **construct the wall**, with formal bids to be requested around March 6 and contracts to be awarded in mid-April 2017.

Executive Order “Border Security and Immigration Enforcement Improvements”

- U.S. Immigration and Customs Enforcement has **increased its detention capacity by about 1,100 beds**, and potential locations for additional detention centers are being identified.
- The implementation of this EO may result in the removal of migrants without due process or judicial recourse; more frequent detention of migrants (including families with young children) without individualized determination and when not justified by exceptional circumstances; the separation of families without regard for their ties to the United States or the best interests of the child; an increased likelihood that undocumented individuals will be the victims of crime and violence, and denied equal access to justice due to a fear of seeking assistance from local police; and the denial of a meaningful opportunity to make an asylum claim, resulting in violations of U.S. *non-refoulement* obligations.