

## EXPLAINER

# DEPARTMENT OF HOMELAND SECURITY (DHS) DEPORTATION PRIORITIES MEMO

On September 30, the Department of Homeland Security (DHS) issued a memo on the Biden administration's "deportation priorities" – listing categories of people who will be targeted for arrest, detention, and deportation. This Memo will go into effect on November 29, 2021 and will replace the prior memos issued by the Biden administration on its deportation priorities.

Despite calls from advocates to shift to an approach that prioritizes protection over enforcement, the Biden administration has doubled down on its criminalizing, enforcement-first approach. Like the previous memos, this one relies on racist narratives that certain immigrants pose "threats" to the United States to justify and fuel the detention and deportation machines.

The Memo gives vast discretion to individual ICE officers who have the power to determine who to arrest, detain, and deport. Like the Obama and Trump administrations, Biden's DHS has placed its full trust in an out-of-control, rogue agency that has the sole mission of hurting our communities. We know that the realities for our communities will not change as long as the administration continues to endorse a police state to terrorize immigrants.

This explainer provides a brief overview of the priorities, lessons learned so far, and some considerations for advocacy on behalf of immigrants who have had contact with the criminal legal system.

## OVERVIEW OF DHS'S PRIORITIES

The Memo singles out three categories of people who are "priorities" for detention and deportation: people whom DHS believes pose a threat to national security, public safety, or border security.

### NATIONAL SECURITY

The Memo targets people whom DHS believes are engaged in or suspected of spying or terrorism or related activities or who otherwise "pos[e] a danger to national security."

### PUBLIC SAFETY

The Memo targets people whom DHS believes are a "current threat to public safety, typically because of serious criminal conduct."

### BORDER SECURITY

The Memo also targets people whom CBP or ICE arrests as they are attempting to enter the country without permission, as well as any people who entered the United States without permission after November 1, 2020.

The Memo also states that ICE will not consider a person's exercise of their First Amendment rights when deciding to pursue enforcement.

For a more detailed overview of the priorities, check out [NIPNLG's Quick FAQ](#) on the priority categories.

## LESSONS LEARNED FROM THE INTERIM DEPORTATION PRIORITIES

These permanent priorities will replace the earlier “interim” deportation priorities memos issued by DHS on January 20 and ICE on February 21. The new priorities largely replicate the old framework – relying on the same categories for enforcement – so we expect many of the things we have learned based on the prior memos will likely remain. Here are some lessons learned since January:



Detention has [increased significantly](#) under Biden. This is partly due to DHS’s decision to detain people who have arrived recently, as they are considered “priorities” for enforcement.

- While detention numbers skyrocket, COVID-19 continues to spread [dramatically in detention centers](#) because DHS is transferring people to detention centers from all over the country.



ICE arrests and deportations have [decreased](#) - but it is important to note that they were trending downwards before Biden came into office.



The application of the earlier priorities memos was inconsistent.

- For example, ICE Field Offices in different locations applied the priorities differently. Some ICE Field Offices created a catch-all “Other/Priority 4” category to justify enforcement against those who do not fall within the priority categories, especially those they believed posed a “public safety threat.”



When ICE denied release requests for people in detention based on the interim priorities, most people did not receive a real explanation of why their request was denied.

- ICE’s “[Case Review process](#)” (to review denials of requests for discretion such as release from detention) often rubber stamped the decision of the local Field Offices.
- The new Memo references a Case Review process, but it remains to be seen if any changes will be made.



ICE did not review files of people in ICE detention for whether they would qualify for discretion under the earlier memos unless they submitted a request. Submitting a request was especially difficult for the many detained people who do not have attorneys.

## CONSIDERATIONS WHEN ADVOCATING FOR PEOPLE WITH CONTACT WITH THE CRIMINAL SYSTEM BASED ON THE ENFORCEMENT PRIORITIES

The earlier memos issued by DHS and ICE contained categorical exclusions under the “public safety” priority category for people who had certain criminal convictions (like “aggravated felonies”) or gang-related accusations. The new Memo has shifted the focus from excluding people based on specific crimes to listing certain factors that DHS officers need to consider when deciding whether or not to arrest, detain, and deport someone. Here are the factors listed in the Memo:

FACTORS THAT CAN WORK AGAINST YOUR CASE	FACTORS THAT CAN WORK IN FAVOR OF YOUR CASE
<ul style="list-style-type: none"> <li>• Seriousness of the crime;</li> <li>• Degree of harm the conduct caused;</li> <li>• “Sophistication” of the crime (i.e., the amount of planning, intent, and resources that went into committing the crime, as well as the number of people involved);</li> <li>• Use or threat to use a gun or other weapon;</li> <li>• Person’s prior record of serious convictions.</li> </ul>	<ul style="list-style-type: none"> <li>• Age (if a person is young or elderly);</li> <li>• Long presence in the United States;</li> <li>• Mental condition that contributed to the person committing the conduct (like PTSD, cognitive disabilities, or other mental illness);</li> <li>• Mental or physical health condition that requires care or treatment;</li> <li>• Being a victim, witness, or being a part of other legal proceedings;</li> <li>• Impact of the person’s deportation on family members in the United States;</li> <li>• Eligibility for immigration relief;</li> <li>• Military or public service of the person or their immediate family members (parents, spouse, or children);</li> <li>• Time since the offense and evidence of rehabilitation (such as completion of classes, attendance at AA or NA, etc.);</li> <li>• Conviction was expunged or invalidated</li> </ul>

Although the move away from exclusions for specific crimes is a positive one in theory, we have seen ICE use increased discretion to arrest, detain and deport more people under the guise of “public safety.” Under the Obama administration, ICE’s “discretion” resulted in hundreds of thousands of our community members being deported.

However, removing exclusions for specific crimes allows for more advocacy in individual cases against ICE enforcement by focusing on positive factors around the person’s life, family, community ties, medical needs, available immigration relief, and rehabilitation. Case campaigns and advocacy in individual cases will be important to put pressure on the administration to protect our community members.

**We at IJN are committed to holding this administration accountable for the abuses of power we expect will take place under the Biden administration’s new deportation priorities.**