



Community FAQ: February 18 ICE Enforcement Memo

What does the February 18 memo do?

The February 18 memo overrides the January 20 memo and is significantly weaker. The new memo creates additional “priorities” for removal; allows ICE officers to arrest and deport people who fall into these “priorities” without prior approval; and undoes the “pause” on removals from the January 20 memo. However, the memo is clear that it is only an interim memo and that the DHS Secretary will publish new rules for ICE officers, likely within 90 days. There is still a window to push for better rules.

What does the February 18 memo apply to?

The new memo applies to **every stage of enforcement**, from deciding whether to arrest someone to deciding whether to deport them.

Who is now a “priority” for removal?

The memo creates three categories of people whom ICE has decided are “priorities” for removal:

- People ICE considers “national security threats”;
- People who entered the United States on or after November 1, 2020;
- People ICE labels a “public safety threat,” which includes:
 - Anyone with an “aggravated felony” conviction;
 - Anyone who has a conviction where being a gang member or doing something for a gang is part of the crime;
 - Anyone who is over 16 and who intentionally participated in a gang.

What’s different in these priorities?

The January 20 memo included the aggravated felony category but restricted it to people who were being released from jail or prison on or after January 21, 2021. Under the February 18 memo, ICE officers can arrest people with aggravated felony convictions in the community at their homes, without getting a go-ahead from a superior officer. The gang-related enforcement priorities are also entirely new.

What's an aggravated felony?

Good question. “Aggravated felony” is an extremely technical legal term that applies to a long list of crimes, some of which are not even felonies, and many of which encompass very minor conduct. Lawyers and judges are often unsure whether a conviction is an aggravated felony, and there are hundreds of cases trying to figure out whether various state crimes count as aggravated felonies.

The February 18 memo lets ICE officers determine whether or not someone has an aggravated felony, even if no judge has ever ruled that they do. Apart from the risk of legal error, this opens the door even more to ICE officers deciding for themselves whom they want to arrest, detain, and deport.

What's wrong with these priorities?

The “national security” priority invites racial profiling and targeting, and has been used especially against Muslim, Arab, and South Asian communities.

The “border security” priority continues the Trump Administration’s racist narrative of a crisis at the southern border and arbitrarily targets people just based on when they got here, even if they might have family, community, or another compelling reason to be here.

The “public safety” priorities continue the Obama Administration’s prior framework of “good immigrant/bad immigrant” that paints people who have had contact with the criminal legal system as threats, instead of people. These priorities ignore the racism baked into the criminal legal system and bring that racism into enforcement decisions. The gang-related priorities especially will rely on racist, inaccurate gang databases and will target BIPOC youth and communities.

What happened to the deportation moratorium?

The January 20 memo paused all deportations [until a Texas court blocked it](#). Instead of a pause on deportations, the February 18 memo says that people who have final orders of removal and who have been in detention for more than 90 days should be removed.

However, the memo also says that the priorities apply to deciding whether or not to deport people. That means that ICE should still have to get approval before deporting anyone who does not fall into a “priority” category, including for people who have final orders of removal and have been detained for 90 days.

Additionally, ICE officers are supposed to get **prior approval** from people higher up in the agency before deporting anyone who is **elderly**, who has **physical or mental illness**, or who has a **pending appeal** of their removal to a federal court (a “petition for review”) or a **pending motion to reopen** their case.

For questions about this FAQ, contact Caitlin Bellis at cbellis@nipnlg.org.