

# CRIMMIGRATION COMMUNICATION



## DHS Implements New ICE Enforcement Priorities

On September 30, 2021, DHS issued new guidelines on ICE's detention and removal operations. This memorandum replaces the prior interim guidelines released by DHS in February 2021. The new guidelines went into effect on November 29, 2021.

The new guidance instructs ICE officers to prioritize ICE enforcement-related activities against people who ICE claims fall into any of the following categories:

- **Threat to National Security** – People the agency alleges are involved in terrorism or espionage, or related activities, or who otherwise poses a danger to national security;
- **Threat to Public Safety** – “People who pose a current threat to public safety,” “typically because of serious criminal conduct;”
- **Threat to Border Security** – People apprehended at the border or a port of entry trying to enter unlawfully and people apprehended in the United States who entered unlawfully after Nov. 1, 2020.

The category we will mostly be dealing with is the “**public safety threat.**” Under this category, ICE officers are now directed to use the following undefined “aggravating” and “mitigating” factors:

### Aggravating Factors

- The gravity of the offense and sentence imposed;
- Nature and degree of harm caused by the offense;
- Sophistication of the criminal offense;
- Use or threatened use of a firearm or dangerous weapon;
- A serious prior criminal record.

### Mitigating Factors

- Advanced or tender age;
- Lengthy presence in the United States;
- Mental condition that may have contributed to the conduct, physical or mental condition requiring care or treatment;
- Status as a victim of crime or a witness/victim or party in legal proceedings;
- Impact of the removal on family in the US, such as loss of caregiver or provider;
- Whether they are eligible for humanitarian protection or other immigration relief;
- Military or public service of the noncitizen or their immediate family;
- Time since an offense and evidence of rehabilitation;
- Conviction was vacated or expunged;
- A person's exercise of workplace or tenant rights, or service as a witness in a labor or housing dispute.

Keep in mind that the enforcement memo does not prevent ICE officers from arresting noncitizens who do not fall within the broad categories delineated in the memo. We also do not know how ICE will be conducting their investigations and using the mitigating factors. Although the memo may shift ICE enforcement practices, immigration law has not changed, and clients continue to be deportable because of their immigration status or because of criminal contact. The memo also does not change the application of the Padilla decision to defense counsel and criminal defense counsel continues to have a duty to advise immigrant clients on the immigration consequences that could stem from a criminal case.

Please contact the LIRIAC regarding your noncitizen clients so that we can discuss strategies to minimize ICE detention risk or to assess the risk of ICE detention at the end of a jail sentence.

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