

REVISED ICE ENFORCEMENT PRIORITIES

Furthering the January 20th interim memorandum on ICE priorities, the U.S. Department of Homeland Security, “DHS” issued a second memorandum on February 18th, 2021 titled: **Interim Guidance to Civil Immigration Enforcement and Removal Policies and Priorities**. This memo will remain in effect until new enforcement guidelines are issued by DHS Secretary Mayorkas in or around 90 days from February 18th, or May 19, 2021. While categories 1 and 2 regarding national and border security respectively were also updated, for our purposes **Category 3 covering public safety is the most germane, to which a second enforcement priority was added.**

- 3) **Priority Category 3: Public Safety.** A noncitizen is *presumed* to be a public safety enforcement priority if he or she poses a threat to public safety and:
1. **people incarcerated in federal, state and local prisons and jails released on or after 1/20/21 who have been convicted of an INA 101(a)(43) aggravated felony “and are determined to pose a threat to public safety,” or**
 2. **he or she has been convicted of an offense for which an element was active participation in a criminal street gang, as defined in 18 U.S.C. § 521(a), or is not younger than 16 years of age and intentionally participated in an organized criminal gang or transnational criminal organization to further the illegal activity of the gang or transnational criminal organization.**

The memo indicates that, “In evaluating whether a noncitizen currently ‘pose[s] a threat to public safety’ officers are to consider the extensiveness, seriousness, and recency of the criminal activity. Officers and agents are to also consider mitigating factors, including, but not limited to, personal and family circumstances, health and medical factors, ties to the community, evidence of rehabilitation, and whether the individual has potential immigration relief available.”

The memo calls for field officers to coordinate their operations and obtain preapproval for enforcement and removal actions not meeting the priority criteria enumerated above. The memo goes on to say that agents are not required to obtain preapproval for enforcement actions taken against individuals who are presumed priorities.

The current memo still contains a **“catch-all” provision** stating, “interim priorities do not require or prohibit the arrest, detention, or removal of any noncitizen. Rather, officers and agents are expected to exercise their discretion thoughtfully, consistent with ICE’s ...mission. Enforcement and removal actions that meet the criteria... are presumed to be a justified allocation of ICE’s limited resources. Actions not reflected in the criteria... may be justified, but they are subject to advance review...”

Please remain cautious when advising noncitizen clients regarding ICE arrests upon release from jail and contact the LIRIAC right away regarding your incarcerated noncitizen clients, especially those who you believe are removable¹ or have an ICE notification. We are monitoring how ICE in Long Island is, or is not, implementing these new priorities and can assist in assessing the likelihood that an ICE arrest will be made.



LONG ISLAND
REGIONAL IMMIGRATION ASSISTANCE CENTER

¹ Removability is an umbrella term covering both deportability, which applies to those who are in the U.S. with lawful status, and inadmissibility, which refers to those who are undocumented, applying for status here, or attempting to re-enter the U.S. after international travel. Being either inadmissible and/or deportable could make a noncitizen removable from the U.S.