



June 2018

# BORDER SECURITY AND IMMIGRATION

## Initial Executive Order Actions and Resource Implications

## Why GAO Did This Study

In January and March 2017, the President issued a series of executive orders related to border security and immigration. The orders direct federal agencies to take a broad range of actions with potential resource implications. For example, Executive Order 13767 instructs DHS to construct a wall or other physical barriers along the U.S. southern border and to hire an additional 5,000 U.S. Border Patrol agents. Executive Order 13768 instructs federal agencies, including DHS and DOJ, to ensure that U.S. immigration law is enforced against all removable individuals and directs ICE to hire an additional 10,000 immigration officers. Executive Order 13780 directs agencies to develop a uniform baseline for screening and vetting standards and procedures; and established nationality-based entry restrictions with respect to visa travelers for a 90-day period, and refugees for 120 days.

GAO was asked to review agencies' implementation of the executive orders and related spending. This report addresses (1) actions DHS, DOJ, and State have taken, or plan to take, to implement provisions of the executive orders; and (2) resources to implement provisions of the executive orders, particularly funds DHS, DOJ, and State have obligated, expended, or shifted. GAO reviewed agency planning, tracking, and guidance documents related to the orders, as well as budget requests, appropriations acts, and internal budget information. GAO also interviewed agency officials regarding actions and budgetary costs associated with implementing the orders.

View [GAO-18-470](#). For more information, contact Rebecca Gambler at (202) 512-8777 or [gambler@gao.gov](mailto:gambler@gao.gov).

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## What GAO Found

The Departments of Homeland Security (DHS), Justice (DOJ), and State issued internal and public reports such as studies and progress updates, developed or revised policies, and took initial planning and programmatic actions to implement Executive Orders 13767, 13768, and 13780. For example:

- DHS's U.S. Customs and Border Protection (CBP) started the acquisition process for a Border Wall System Program and issued task orders to design and construct barrier prototypes. In November 2017, CBP awarded a contract worth up to \$297 million to help with hiring 5,000 U.S. Border Patrol agents, 2,000 CBP officers, and 500 Air and Marine Operations agents.
- DOJ issued memoranda providing guidance for federal prosecutors on prioritizing certain immigration-related criminal offenses. Additionally, from March through October 2017, DOJ detailed approximately 40 immigration judge positions to detention centers and to the southern border to conduct removal and other related proceedings, according to DOJ officials.
- State participated in an interagency working group to develop uniform standards related to the adjudication of visa applications, interviews, and system security checks. State also implemented visa and refugee entry restrictions in accordance with the Supreme Court's June 26, 2017, ruling.

Agency officials anticipate that implementing the executive orders will be a multi-year endeavor comprising additional reporting, planning, and other actions.

DHS, DOJ, and State used existing fiscal year 2017 resources to support initial executive order actions that fit within their established mission areas. GAO found that it was not always possible to disaggregate which fiscal year 2017 funds were used for implementation of the orders versus other agency activities. All three agencies indicated that they used existing personnel to implement the orders and, in some cases, these efforts took substantial time. For example, according to ICE data, personnel spent about 14,000 regular hours (the equivalent of 1,750 8-hour days) and 2,400 overtime hours planning for the ICE hiring surge from January 2017 through January 2018.

In March 2017, the President submitted a budget amendment along with a request for \$3 billion in supplemental appropriations for DHS to implement the orders. In May 2017, DHS received an appropriation of just over \$1.1 billion, some of which DHS used to fund actions to implement the orders. For example, CBP received \$65 million for hiring and, according to CBP officials, used these funds to plan and prepare for the surge in U.S. Border Patrol agents. As of January 2018, CBP had obligated \$18.8 million of the \$65 million.

Agencies plan to continue to use their base budgets and request additional funds as needed to carry out their missions and implement the orders. For example, for fiscal year 2018, CBP requested approximately \$1.6 billion and received (in March 2018) approximately \$1.3 billion to build new and replace existing sections of physical barriers along the southern border. For fiscal year 2019, ICE requested \$571 million to hire 2,000 immigration officers and DOJ requested approximately \$40 million to hire new immigration judges and supporting staff.

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## Abbreviations

ADP	Average Daily Population
AUSA	Assistant United States Attorneys
BSFIT	Border Security Fencing, Infrastructure, and Technology
Border Patrol	U.S. Border Patrol
CA	Bureau of Consular Affairs
CAP	Criminal Alien Program
CAPSET	Criminal Alien Program Surge Enforcement Team
CBP	U.S. Customs and Border Protection
DHS	Department of Homeland Security
DOJ	Department of Justice
EOIR	Executive Office for Immigration Review
EOTF	Executive Order Task Force
EOUSA	Executive Office for United States Attorneys
FDNS	Fraud Detection and National Security
FLETC	Federal Law Enforcement Training Centers
ICE	U.S. Immigration and Customs Enforcement
OHC	Office of Human Capital
PEP	Priority Enforcement Program
PRM	Bureau of Population, Migration, and Refugees
State	Department of State
USCIS	U.S. Citizenship and Immigration Services
USMS	U.S. Marshals Service
USRAP	U.S. Refugee Admissions Program
VOICE	Victims of Immigration Crime Engagement

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June 12, 2018

Congressional Requesters

In 2017, the President issued a series of executive orders related to border security and immigration. The orders direct federal agencies to take a broad range of actions with potential resource implications. Specifically, Executive Order 13767, *Border Security and Immigration Enforcement Improvements*, instructs the Department of Homeland Security (DHS) to immediately plan, design, and construct a wall or other physical barriers along the U.S. southern border and to hire an additional 5,000 U.S. Border Patrol (Border Patrol) agents, among other border security initiatives.<sup>1</sup> Executive Order 13768, *Enhancing Public Safety in the Interior of the United States*, instructs federal agencies, including DHS and the Department of Justice (DOJ), to ensure that U.S. immigration law is enforced against all removable individuals; establishes the administration's enforcement priorities; and directs U.S. Immigration and Customs Enforcement (ICE) to hire an additional 10,000 immigration officers, among other things.<sup>2</sup> Finally, Executive Order 13780, *Protecting the Nation from Foreign Terrorist Entry into the United States*, among other things, states that it is U.S. policy to improve the screening and vetting protocols and procedures associated with the visa-issuance process and U.S. Refugee Admissions Program; imposed visa entry restrictions on foreign nationals from certain listed countries for a 90-day period; and suspended all refugee admissions for 120 days.<sup>3</sup>

In light of the number of policy and programmatic requirements in the executive orders, you asked us to review federal agency actions and budgetary costs associated with implementation. This report examines (1) actions DHS, DOJ, and the Department of State (State) have taken, or

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<sup>1</sup>Exec. Order No. 13767, §§ 4, 8, 82 Fed. Reg. 8793, 8794-95 (Jan. 30, 2017) (issued Jan. 25). The order defines the southern border as the contiguous land border between the United States and Mexico, including all points of entry. The order also defines "wall" to include a contiguous, physical wall, as well as other similar physical barriers.

<sup>2</sup>Exec. Order No. 13768, §§ 4, 5, 7, 82 Fed. Reg. 8799, 8800 (Jan. 30, 2017) (issued Jan. 25).

<sup>3</sup>Exec. Order No. 13780, §§ 1, 2, 6, 82 Fed. Reg. 13,209, 13,212-213, 13,215-216 (Mar. 9, 2017) (issued Mar. 6). Throughout this report, we generally use the term "foreign national" in reference to an "alien," defined under U.S. immigration law as any person who is not a citizen or national of the United States. See 8 U.S.C. § 1101(a)(3).

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plan to take, to implement provisions of the executive orders; and (2) resources to implement provisions of the executive orders, particularly funds DHS, DOJ, and State have obligated, expended, or shifted.

For the purposes of this review, we focused our audit work on DHS, DOJ, and State because they are responsible for implementing the majority of the provisions in the three executive orders.<sup>4</sup> To address the first objective, we identified actions planned, completed, or underway at DHS, DOJ, and State as of March 2018 by reviewing and cataloguing specific provisions included in the executive orders and by reviewing available agency-wide planning and tracking documents, such as a DHS inventory of tasks related to the executive orders and their implementation status. We also obtained and reviewed executive order-related memoranda issued by agency leadership to identify actions they directed within their respective departments. We conducted semi-structured interviews with officials at key components, program offices, and bureaus at the three agencies, and utilized a data collection instrument in which we asked agencies to identify actions either planned, completed, or underway to implement the executive orders. We corroborated actions identified with documentation, such as recruiting and hiring plans and statements of work. Additionally, we reviewed strategic and operational policies, guidance, and memoranda that agencies developed or revised in response to executive order provisions.

To address the second objective, we worked to identify any funds DHS, DOJ, and State obligated, expended, or shifted within or between appropriation accounts to implement tangible, measurable, and quantifiable executive order provisions. Specifically, we reviewed the executive orders and placed each provision into one of three categories: (1) *analyses and reports*, (2) *policies*, and (3) *programs*. We defined the *analyses and reports* category as executive order provisions that direct agencies to review and analyze data, policies, processes, and operational mission areas and produce reports. We defined the *policies* category as executive order provisions that establish new or modify existing policies, guidance, or processes related to border security or immigration. We defined the *programs* category as tangible, measurable, and quantifiable executive order provisions that implement policies. We confirmed our

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<sup>4</sup>Additional agencies tasked with fewer, supporting responsibilities in the executive orders include the Department of Interior, Office of the Director of National Intelligence, and Office of Personnel Management. Given their general supporting roles, these agencies are excluded from the scope of our review.

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categorization with each agency, particularly for the *programs* category, since the extent to which a provision is tangible, measurable, and quantifiable was not always clearly discernable. To confirm the *programs* category for DHS, we conducted a crosswalk between our internal categorization, actions in the DHS inventory of tasks, and provisions that the DHS Office of Budget identified as requiring resources. To confirm the *programs* category for DOJ and State, we corroborated our categorization by asking officials from each agency if actions taken or planned to implement the provisions required resources. In some cases, we moved policy provisions to the *program* category if agency efforts underway to implement the policy were programmatic in nature.

For each agency, we collected available budgetary information—specifically, any funds requested, appropriated, obligated, and expended—from January 2017 through March 2018 for the implementation of executive order provisions that we categorized as *programs*. We reviewed publicly available budget requests, congressional budget justifications, appropriations acts, and budgetary data from agencies’ internal data systems.<sup>5</sup> While we were able to identify certain funds requested, provided, or designated for executive order implementation from these documents, it was not always possible to extract funds specifically meant for implementing the executive orders from budget requests, appropriations, or expenditures for more general purposes. To specifically identify funds used for executive order implementation, we reviewed agency documentation, interviewed agency budget and program officials, and submitted written questions as necessary. In instances where there was no explicit distinction between funds for executive order implementation and funds for regular operations, we identified, and made note of, the larger account used for executive order implementation. In addition, where agencies identified that they used personnel resources to implement the executive orders, we collected related data as available. We analyzed agency documentation on the policies, procedures, and processes for maintaining internal data and interviewed agency officials about their data collection practices to assess the reliability of these data. We determined that the data were sufficiently reliable for the purposes of our reporting objectives.

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<sup>5</sup>There is no central intra- or interagency repository for budget information related to the executive orders. Therefore, we collected and aggregated budgetary data from systems used by individual agency components and offices.



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To further address our second objective, we identified official reprogramming or transfer requests and approvals specifically for implementation of executive order provisions that we categorized as *programs*.<sup>6</sup> We also interviewed DHS, DOJ, and State budget officials to identify any funds that were re-classified, reallocated, or otherwise shifted for different programs, activities, or purposes at lower thresholds not subject to time and condition limitations for official reprogramming or transfer requests.<sup>7</sup> Additionally, we collected and reviewed documentation related to funds moved from existing programs to implement the executive orders from January 2017 through March 2018. We corroborated this information by interviewing agency budget and program officials to determine resource prioritization and what funds, if any, agencies reprogrammed or transferred—or planned to reprogram or transfer—from other existing programs to implement the executive orders.

We conducted this performance audit from October 2017 to June 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that

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<sup>6</sup>Reprogramming is shifting funds within an appropriation or fund account for purposes other than those contemplated at the time of appropriation; it is the shifting of funds from one object class to another within an appropriation or from one program activity to another. Transfer is the shifting of all or part of the budget authority in one appropriation or fund account to another. Agencies may transfer budget authority only as specifically authorized by law. In certain instances, there are also statutory requirements related to reprogrammings. See, e.g., DHS Appropriations Act, 2017, Pub. L. No. 115-31, div. F, tit. V, § 503, 131 Stat. 135, 424; DHS Appropriations Act, 2018, Pub. L. No. 115-141, div. F, tit. V, § 503 (setting notification thresholds and procedures for the reprogramming of fiscal year 2017 and 2018 funds).

<sup>7</sup>Section 503 of the DHS Appropriations Act, 2017 prohibits, among other things, reprogramming of fiscal year 2017 funds to augment funding for existing efforts by the lesser of more than \$5 million or 10 percent, unless the Senate and House Appropriations Committees are notified at least 15 days in advance of any such reprogramming. As to transfers, up to 5 percent of any appropriation made available for fiscal year 2017 may be transferred between such appropriations if the Senate and House Appropriations Committees are notified at least 30 days in advance, provided further that no appropriation is to be increased by more than 10 percent. The aforementioned restrictions on reprogrammings and transfers also apply to the use of prior year deobligated balances. Pub. L. No. 115-31, div. F, tit. V, § 503, 131 Stat. 135, 424-425; see also Pub. L. No. 115-141, div. F, tit. V, § 503. There are certain exceptions to these general limitations. See e.g. Pub. L. No. 115-31, div. F, tit. II, § 209, 131 Stat. at 412; Pub. L. No. 115-141, div. F, tit. II, § 209 (generally allowing unrestricted reprogramming and transfer within and into ICE's Operations and Support account to detain removable foreign nationals).

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the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

### Executive Order Summaries

The President issued two executive orders addressing border security and immigration enforcement on January 25, 2017.<sup>8</sup> These orders direct executive branch agencies to implement a series of reporting, policy, and programmatic provisions to carry out the administration's border security and immigration policies and priorities.<sup>9</sup>

- **Executive Order 13767** lays out key policies of the executive branch with regard to securing the southern border, preventing further unlawful entry into the United States, and repatriating removable foreign nationals.<sup>10</sup> To support these purposes, the order directs DHS to, among other actions, produce a comprehensive study of the security of the southern border; issue new policy guidance regarding the appropriate and consistent use of detention of foreign nationals for violations of immigration law; plan, design, and construct a wall or other physical barriers along the southern border; and hire and on-board, as soon as practicable, 5,000 additional Border Patrol agents.<sup>11</sup>

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<sup>8</sup>Exec. Order Nos. 13767, 13768, 82 Fed. Reg. 8793 & 8799 (Jan. 30, 2017). An executive order is a signed and written directive from the President of the United States that manages operations of the federal government, and is published in the *Federal Register*. While executive orders are not legislation passed by Congress, they are directives authorized by the President, and therefore have the force of law and are binding within the Executive Branch, except to the extent there is any inconsistency with existing statute.

<sup>9</sup>The administration has taken other border security and immigration enforcement actions related to these executive orders. For example, on April 4, 2018, the President issued a memorandum directing the Department of Defense to support DHS in securing the southern border by requesting the use of National Guard personnel to assist in fulfilling the mission of border security. Further, on April 6, 2018, the President issued a memorandum related to Sections 5, 6, and 11 of Executive Order 13767 and Sections 6 and 12 of Executive Order 13768, which directed federal agencies to take various actions, including submitting a report to the President on, among other things, efforts to establish detention facilities at the southern border, assign asylum officers to such facilities, ensure detention of foreign nationals apprehended for immigration violations, and prevent exploitation of parole and asylum provisions.

<sup>10</sup>Exec. Order No. 13767, § 1, 82 Fed. Reg. at 8793.

<sup>11</sup>See id. §§ 4, 6, 8, 82 Fed. Reg. at 8794-8795.

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Executive Order 13767 also directs DOJ to assign immigration judges to immigration detention facilities in order to conduct removal and other related proceedings.<sup>12</sup>

- **Executive Order 13768** focuses on immigration enforcement within the United States. Among other things, the order lays out the administration's immigration enforcement priorities for removable foreign nationals;<sup>13</sup> directs ICE to hire 10,000 additional immigration officers; states that, as permitted by law, it is the policy of the executive branch to empower state and local law enforcement officials to perform the functions of immigration officers; calls for weekly public reports on criminal actions committed by foreign nationals and any jurisdictions that do not honor ICE detainers with respect to such individuals;<sup>14</sup> and terminates the Priority Enforcement Program while reinstituting Secure Communities.<sup>15</sup> The order also directs DHS and DOJ to ensure that jurisdictions that willfully prohibit or otherwise restrict communication with DHS regarding immigration status information are not eligible to receive federal grants, except as determined necessary for law enforcement purposes.<sup>16</sup>

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<sup>12</sup>Id. at § 5(c), 82 Fed. Reg. at 8794.

<sup>13</sup>Under U.S. immigration law, a foreign national is removable if: (1) not admitted to the United States and found inadmissible under section 212 of the Immigration and Nationality Act (INA); or (2) admitted to the United States and deemed deportable under INA § 237. See 8 U.S.C. §§ 1182, 1227, 1229a(c), (e)(2). Those determined to be removable and not eligible for any requested relief or protection are to be removed pursuant to an administratively final order of removal. 8 C.F.R. § 1241.1.

<sup>14</sup>A detainer is a notice of ICE's intent to assume custody of a foreign national who is suspected or determined to be removable by ICE, along with a request that the law enforcement agency maintain custody of the foreign national for up to 48 hours and notify ICE before such removable individual is released.

<sup>15</sup>Exec. Order No. 13768, §§ 5, 7, 8, 9, 82 Fed. Reg. at 8800-8801. Under the Priority Enforcement Program, ICE issued a request for detainer (with probable cause of removability), information, or transfer, for a priority removable individual, such as one posing a threat to national security or public safety, including a foreign national convicted of a felony, among others, under DHS's former tiered civil enforcement categories. Under Secure Communities, ICE may issue detainers for removable individuals charged, but not yet convicted, of criminal offenses, in addition to individuals subject to a final order of removal whether or not they have a criminal history.

<sup>16</sup>See id. § 9(a), 82 Fed. Reg. at 8801. Executive Order 13768 refers to jurisdictions that willfully refuse to comply with 8 U.S.C. § 1373, and prohibit sending immigration status information to, or receiving such data from, DHS, as "sanctuary jurisdictions."

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On March 6, 2017, the President issued Executive Order 13780.<sup>17</sup> This order directed agencies to take various actions to improve the screening and vetting protocols and procedures associated with the visa-issuance process and the U.S. Refugee Admissions Program. Specifically, the order directed agencies to conduct a worldwide review to identify any additional information needed from each foreign country to adjudicate visas and other immigration benefits to ensure that individuals applying for such benefits are not a security or public-safety threat.<sup>18</sup> The order also instituted visa entry restrictions for nationals from certain listed countries for a 90-day period; directed agencies to develop a uniform baseline for screening and vetting standards and procedures; and suspended the U.S. Refugee Admissions Program for 120 days in order to review refugee application and adjudication procedures.<sup>19</sup> The order further directed DHS to expedite the completion and implementation of a biometric entry-exit tracking system for travelers to the United States.<sup>20</sup> Implementation of Executive Order 13780 entry restrictions for visa travelers and refugees commenced on June 29, 2017, subject to a June

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<sup>17</sup>Executive Order 13780 (82 Fed. Reg. 13,209 (March 9, 2017)) revoked and replaced a prior order, Exec. Order No. 13769, 82 Fed. Reg. 8977 (Feb. 1, 2017) (issued Jan. 27), implementation of which had been largely blocked nationwide shortly after issuance, due to a federal court injunction. See *Washington v. Trump*, 2017 U.S. Dist. LEXIS 16012 (W.D. Wash. 2017), *aff'd*, 847 F.3d 1151 (9th Cir. 2017). On September 24, 2017, pursuant to section 2(e) of Executive Order 13780, the President issued Presidential Proclamation 9645, Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats, which expanded the scope and duration of nationality-based visa entry restrictions from six to eight countries (removing Sudan, and adding Chad, North Korea and Venezuela), and from a 90-day to an indefinite period for the revised list of countries. After challenges to Executive Order 13780 entry restrictions, as curtailed by the Supreme Court's ruling of June 26, 2017, were rendered moot, litigation continued with respect to Presidential Proclamation 9645. Beginning on December 8, 2017, the Proclamation's visa entry restrictions have been fully implemented pursuant to the Supreme Court's December 4, 2017, orders staying the lower courts' injunctions, while the Supreme Court reviews Hawaii and Maryland federal district court rulings generally upheld by the Ninth and Fourth Circuits, respectively.

<sup>18</sup>Exec. Order No. 13780, § 2, 82 Fed. Reg. at 13,212.

<sup>19</sup>See *id.* §§ 2, 5, 6, 82 Fed. Reg. at 13,212-213, 13,215-216. Specifically, visa entry restrictions applied to foreign nationals from six countries of particular concern—Iran, Libya, Somalia, Sudan, Syria, and Yemen—for a 90-day period. Executive Order 13769, which was revoked and replaced by Executive Order 13780, had temporarily suspended entry of Iraqi nationals as well; however, Executive Order 13780 did not include Iraq in the list of countries whose nationals were subject to visa entry restrictions, citing it as presenting a special case.

<sup>20</sup>*Id.* at § 8, 82 Fed. Reg. at 13,216.

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26 ruling of the U.S. Supreme Court prohibiting enforcement of such restrictions against foreign nationals with a credible claim of a bona fide relationship to a person or entity in the United States.<sup>21</sup>

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## Federal Budget Process and Status Since Executive Order Issuance

The federal budget process provides the means for the President and Congress to make informed decisions between competing national needs and policies, allocate resources among federal agencies, and ensure laws are executed according to established priorities. The President generally submits the budget request for the upcoming fiscal year to Congress no later than the first Monday of February (e.g. the fiscal year 2019 budget request was submitted in February 2018). To ensure there is not a lapse in appropriations for one or more federal departments or agencies, regular appropriations bills must be enacted to fund the government before the expiration of the prior appropriations, which would typically be in effect through September 30 in a regular appropriations cycle. If these regular full-year appropriations bills are not enacted by the deadline, Congress must pass a continuing appropriation (or resolution) to temporarily fund government operations into the next fiscal year. For fiscal year 2017, multiple continuing appropriations were enacted to extend funding until the Consolidated Appropriations Act, 2017, was enacted in May 2017.

At the time the President issued the executive orders in January and March of 2017, agencies were operating under a continuing appropriation which did not incorporate any funding explicitly for the administration's immigration and border security priorities, such as hiring 5,000 additional Border Patrol agents. The administration sought additional funds to implement the executive orders through an out-of-cycle March 2017 budget amendment and supplemental appropriations request for the remainder of fiscal year 2017.<sup>22</sup> In May 2017, Congress provided funding for selected priorities through the Consolidated Appropriations Act, 2017.<sup>23</sup> The administration submitted additional funding requests related to the executive orders through the President's fiscal year 2018 and 2019

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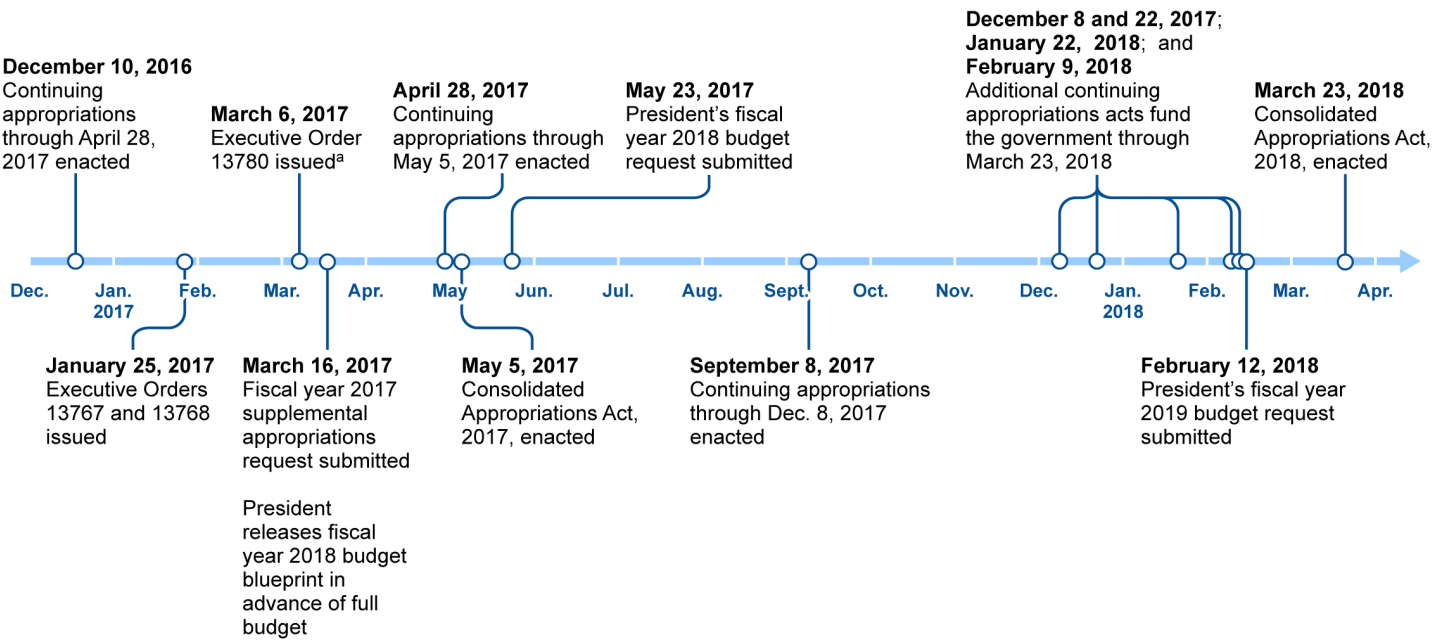
<sup>21</sup>See *Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080 (2017) (per curiam).

<sup>22</sup>This March 2017 request for additional appropriations was made as part of an amendment to the President's fiscal year 2017 budget submitted under the prior administration.

<sup>23</sup>See Pub. L. No. 115-31, 131 Stat. 135, and accompanying Explanatory Statement, 163 Cong. Rec. H3327 (daily ed. May 3, 2017).

budget requests. A number of continuing appropriations acts were enacted from September 2017 through February 2018, providing fiscal year 2018 funding at fiscal year 2017 levels through March 23, 2018. The Consolidated Appropriations Act, 2018, was signed into law on March 23, 2018, providing funding for government operations for the remainder of fiscal year 2018.<sup>24</sup> Figure 1 below provides a timeline of executive order issuance and key milestones in the budget process from December 2016 through March 2018.

**Figure 1: Timeline of Executive Order Issuance and Federal Budget Milestones, Fiscal Year 2017 through March 2018**



Source: GAO summary of executive order and federal budget information. | GAO-18-470

<sup>a</sup>Executive Order 13780 revoked and replaced a prior order, Executive Order 13769, implementation of which had been largely enjoined nationwide shortly after issuance due to a federal court injunction.

## Agency Roles and Responsibilities

DHS, DOJ, and State each play key roles in enforcing U.S. immigration law and securing U.S. borders. Key components and bureaus at the three agencies, and their general roles and responsibilities with regard to border security and immigration enforcement, are described in table 1.

<sup>24</sup>Pub. L. No. 115-141, 132 Stat. 348.

**Table 1: Selected Department of Homeland Security (DHS), Department of Justice (DOJ), and Department of State (State) Components and Bureaus and Their Roles in Border Security and Immigration Enforcement**

<b>DHS Components</b>	<b>Role in border security and immigration enforcement</b>
U.S. Customs and Border Protection (CBP)	Within CBP, the U.S. Border Patrol serves as the office with primary responsibility for securing the border between land ports of entry; Air and Marine Operations interdicts and disrupts threats to the United States in the air and maritime environments at and beyond the border and within the nation's interior; and the Office of Field Operations coordinates CBP enforcement activities at land, air, and sea ports of entry, to include conducting immigration and customs inspections.
U.S. Immigration and Customs Enforcement (ICE)	ICE is responsible for immigration enforcement and investigations within the United States, and also plays a role in preventing terrorism and combatting transnational criminal threats. This includes identifying, apprehending, detaining, litigating charges of removability against, and removing foreign nationals in the United States in violation of U.S. immigration laws; as well as investigating, disrupting, and dismantling terrorist, transnational, and other criminal organizations.
U.S. Citizenship and Immigration Services (USCIS)	USCIS oversees lawful immigration to the United States through adjudicating immigration applications and petitions, verifying immigration status for public benefits, and granting employment authorization, among other duties.
Federal Law Enforcement Training Centers	Federal Law Enforcement Training Centers provides career-long training to law enforcement professionals, including CBP and ICE officers.
<b>DOJ Components</b>	
Executive Office for Immigration Review	Executive Office for Immigration Review conducts immigration court proceedings, appellate reviews, and administrative hearings to administer and interpret U.S. immigration laws.
U.S. Attorneys Offices	U.S. Attorneys serve as the nation's principal federal prosecutors enforcing federal laws in their respective districts throughout the country. They prosecute federal criminal cases in their districts, including those involving criminal immigration offenses.
U.S. Marshals Service (USMS)	USMS provides federal judicial security, apprehends fugitives, and secures and transports pre-trial detainees and federal prisoners from arrest to incarceration, including individuals suspected or determined to be in violation of U.S. immigration laws.
Federal Bureau of Prisons	Federal Bureau of Prisons is responsible for the custody and care of federal inmates, including inmates suspected or determined to be in violation of U.S. immigration laws.
<b>State Bureaus</b>	
Bureau of Consular Affairs	Bureau of Consular Affairs provides consular services to, among other things, protect U.S. citizens and their interests abroad, ensure U.S. border security, and facilitate the entry of legitimate travelers. Bureau staff at embassies and consulates overseas adjudicate visa applications and manage the application process in coordination with several departments and agencies.
Bureau of Population, Refugees, and Migration	Bureau of Population, Refugees, and Migration manages the process by which refugees seek to be resettled in the United States, including working with USCIS, which makes refugee admission determinations, and coordinating travel and arrivals of refugees.

Source: GAO summary of DHS, DOJ, and State information. | GAO-18-470

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## DHS, DOJ, and State Took Initial Planning and Programming Actions to Implement Provisions of the Executive Orders

DHS, DOJ, and State issued reports, developed or revised policies, and took initial planning and programmatic actions in response to the executive orders. Each agency took a distinct approach to implementing the orders based on its organizational structure and the scope of its responsibilities. Each executive order established near-term reporting requirements for agencies, including updates on the status of their efforts, studies to inform planning and implementation, and reports for the public. According to officials, agencies focused part of their initial implementation efforts on meeting these reporting requirements.<sup>25</sup> In addition, agencies developed and revised policies, initiated planning efforts, and made initial program changes (such as expanding or expediting programs) to reflect the administration's priorities.

**DHS:** DHS established an Executive Order Task Force (EOTF), which was responsible for coordinating and tracking initial component actions to implement the executive orders. The EOTF assembled an operational planning team with representatives from key DHS components, such as U.S. Customs and Border Protection (CBP) and ICE. The EOTF and the planning team inventoried tasks in the orders, assigned component responsibilities for tasks, and monitored the status of the tasks through an online tracking mechanism and weekly coordination meetings. Additionally, the EOTF coordinated and moved reports required by the orders through DHS. For example, Section 4 of Executive Order 13767 directed DHS to produce a comprehensive study of the security of the southern border. DHS completed and submitted this report to the White House on November 22, 2017, according to EOTF officials. DHS also publicly issued three Declined Detainer Outcome Reports pursuant to Section 9 of Executive Order 13768.<sup>26</sup> Additionally, EOTF officials stated that, in 2017, DHS produced and submitted to the White House 90-day and 180-day reports on the progress of implementing Executive Orders 13767 and 13768.

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<sup>25</sup>Examples of executive order reports are included in the sections below. For a full list of reports agencies completed in response to the orders, see appendix II.

<sup>26</sup>In declining a detainer, a law enforcement agency will release a potentially removable individual upon conclusion of their term of imprisonment, instead of continuing to hold them in custody pursuant to a detainer request. The Declined Detainer Outcome Report is a weekly report that shows jurisdictions with the highest volume of declined detainees and includes a list of examples of crimes associated with those released individuals. ICE issued three reports in January and February 2017. According to ICE officials, ICE subsequently suspended issuance of this report to analyze and refine its reporting methodologies.



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The Secretary of Homeland Security issued two memoranda establishing policy and providing guidance related to Executive Orders 13767 and 13768 in February 2017. One memorandum implemented Executive Order 13767 by outlining new policies designed to stem illegal entry into the United States and to facilitate the detection, apprehension, detention, and removal of foreign nationals seeking to unlawfully enter or remain in the United States.<sup>27</sup> For example, the memorandum directed U.S. Citizenship and Immigration Services (USCIS), CBP, and ICE to ensure that appropriate guidance and training is provided to agency officials to ensure proper exercise of parole in accordance with existing statute.<sup>28</sup> The other memorandum implemented Executive Order 13768 and provided additional guidance with respect to the enforcement of immigration laws.<sup>29</sup> For example, it terminated the Priority Enforcement Program, under which ICE prioritized the apprehension, detention, and removal of foreign nationals who posed threats to national security, public safety, or border security, including convicted felons; and restored the Secure Communities Program, pursuant to which ICE may also target for removal those charged, but not yet convicted, of criminal offenses, among others. Additionally, the memorandum reiterated DHS's general enforcement priorities. ICE, CBP, and USCIS may allocate resources to prioritize enforcement activities as they deem appropriate, such as by prioritizing enforcement against convicted felons or gang members.

DHS components subsequently issued additional guidance further directing efforts to implement the executive orders and apply the guidance from the memoranda. For example, ICE issued guidance to its legal program to review all cases previously administratively closed based

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<sup>27</sup>Department of Homeland Security, *Implementing the President's Border Security and Immigration Enforcement Improvement Policies*, (February 2017).

<sup>28</sup>Parole, granted on a discretionary and case-by-case basis by the Secretary of Homeland Security for urgent humanitarian reasons or significant public benefit, permits a foreign national to enter the United States temporarily, without constituting an admission. 8 U.S.C. § 1182(d)(5).

<sup>29</sup>Department of Homeland Security, *Enforcement of the Immigration Laws to Serve the National Interest*, (February 2017).

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on prosecutorial discretion.<sup>30</sup> ICE's new guidance requested its attorneys to determine whether the basis for closure remains appropriate under DHS's new enforcement priorities. USCIS also reviewed its guidance for credible and reasonable fear determinations—the initial step for certain removable individuals to demonstrate they are eligible to be considered for particular forms of relief or protection from removal in immigration court.<sup>31</sup> As a result, USCIS made select modifications pursuant to Executive Order 13767, including adding language related to evaluating an applicant's credibility based on prior statements made to other DHS officials, such as CBP and ICE officers.

DHS also initiated a number of planning and programmatic actions to implement the executive orders. In some cases DHS components expanded or enhanced existing regular, ongoing agency activities and programs in response to the orders. For example, in response to Executive Order 13768, ICE officials reported that they expanded the use of the existing Criminal Alien Program.<sup>32</sup> In other instances, DHS components altered their activities consistent with the administration's immigration priorities. For instance, in response to Executive Order

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<sup>30</sup>During removal proceedings, DHS's exercise of prosecutorial discretion has generally referred to requesting that an immigration judge administratively close a case because the respondent does not meet enforcement priorities. On May 17, 2018, the Attorney General determined that, except as specifically provided in regulation or a judicial settlement, immigration judges and the Board of Immigration Appeals lack general authority to administratively close removal proceedings. For cases which were administratively closed without requisite authority, if DHS or the respondent seeks reopening, the case shall be recalendared. See *Matter of CASTRO-TUM*, 27 I. & N. Dec. 271 (AG 2018).

<sup>31</sup>Arriving and other designated foreign nationals subject to expedited removal and deemed inadmissible as a result of seeking entry (or any other immigration benefit) by fraud or willful misrepresentation, falsely claiming U.S. citizenship, or lacking valid immigration documents and who express a fear of persecution or torture, or an intention to apply for asylum, are to be referred by DHS to a USCIS asylum officer for a credible fear interview. See 8 U.S.C. §§ 1182(a)(6)(C), (a)(7), 1225(b) (inspection of applicants for admission, including process for determining, and definition of, "credible fear of persecution"); 8 C.F.R. §§ 1208.30, 208.30. If a foreign national who is subject to administrative removal for conviction of an aggravated felony at any time after admission, or a reinstated order of removal for having illegally reentered the country expresses a fear of persecution or torture if removed, DHS refers that individual to a USCIS asylum officer to determine whether this individual has a reasonable fear of persecution or torture. 8 U.S.C. §§ 1228(b), 1231(a)(5); 8 C.F.R. §§ 208.31, 1208.31, 238.1, 1238.1, 241.8, 1241.8.

<sup>32</sup>The Criminal Alien Program provides ICE-wide direction and support in the biometric and biographic identification, arrest, and removal of priority aliens who are incarcerated within federal, state, and local prisons and jails, focusing on those that pose a risk to public safety.

13768, the Secretary of Homeland Security directed ICE to terminate outreach or advocacy services to potentially removable foreign nationals, and reallocate all resources currently used for such purposes to a new office to assist victims of crimes allegedly perpetrated by removable foreign nationals (the Victims of Immigration Crime Engagement, or VOICE, office, established in April 2017). Additional examples of planning and programmatic actions that DHS took, or officials reported taking, in response to the executive orders are described in table 2.

**Table 2: Examples of Department of Homeland Security (DHS) Planning and Programmatic Actions to Implement Executive Orders 13767, 13768, and 13780**

Executive Order Provision	Actions
Physical Security of the Southern Border (Executive Order 13767 Sec. 4)	<ul style="list-style-type: none"> <li>U.S. Customs and Border Protection (CBP) started the acquisition process for a Border Wall System Program, which includes the construction of new and replacement physical barriers along the southern border. CBP awarded eight task orders with a total value of over \$3 million for the construction and development of barrier prototypes in fall 2017.<sup>a</sup> CBP selected segments of the border in San Diego, California and the Rio Grande Valley in Texas as the first locations for barrier installations.</li> <li>In order to further obtain operational control of the southern border, U.S. Immigration and Customs Enforcement (ICE) officials stated that they increased personnel and prioritized specific investigations in El Salvador, Guatemala, and Honduras. ICE officials also reported that they expanded Border Enforcement Security Task Forces targeting individuals and organizations that undermine border security. In fiscal year 2017, ICE established 13 new task forces, according to ICE officials.</li> </ul>
Hire Additional Border Patrol Agents and Immigration Officers (Executive Order 13767 Sec. 8 and Executive Order 13768 Sec. 7)	<ul style="list-style-type: none"> <li>DHS requested and the Office of Personnel Management approved hiring authority changes to assist DHS with implementing the executive orders. These changes include granting CBP and ICE direct hire authority and a special salary rate for polygraphers, among others.</li> <li>CBP awarded a contract not to exceed \$297 million to a contractor to help with hiring 5,000 U.S. Border Patrol agents, 2,000 CBP officers, and 500 Air and Marine Operations agents.</li> <li>ICE Office of Human Capital officials reported that they took planning steps to ensure policies and procedures are in place to begin hiring additional personnel if funds are appropriated. The office also issued a contract solicitation for help with hiring 10,000 law enforcement agents, including 8,500 deportation officers, 1,500 criminal investigators, and approximately 6,500 additional support personnel positions.<sup>b</sup></li> </ul>
Federal-State Agreements—Immigration and Nationality Act § 287(g) <sup>c</sup> (Executive Order 13767 Sec. 10 and Executive Order 13768 Sec. 8)	<ul style="list-style-type: none"> <li>ICE officials reported expediting review of pending 287(g) requests and approved 46 additional state and local jurisdictions for ICE’s 287(g) program from February 2017 through March 2018. ICE and CBP officials also stated that they conducted additional outreach with state and local officials and identified potential law enforcement partners with whom to enter into possible future 287(g) agreements.</li> <li>According to ICE officials, ICE is leveraging a Basic Ordering Agreement, a procurement tool to expedite acquisition of a substantial, but presently unknown, quantity of supplies or services. See 48 C.F.R. § 16.703. A Basic Ordering Agreement is not a contract, but rather, is a written instrument of understanding, negotiated between ICE and state and local jurisdictions, to house detainees upon ICE’s issuance and their acceptance of an Immigration Detainer and either a Warrant for Arrest of Alien or Warrant of Removal. For any orders placed under the agreement, ICE will reimburse the service provider \$50 for up to 48 hours of detention.</li> </ul>

Executive Order Provision	Actions
Office for Victims of Crimes Committed by Removable Aliens (Executive Order 13768 Sec. 13)	ICE established the Victims of Immigration Crime Engagement (VOICE) Office in April 2017 to aid victims affected by crimes committed by individuals suspected or determined to be removable under U.S. immigration law. ICE established a support call center, including a toll free number to assist victims, and developed an online presence for the office.  Additionally, DHS tested and launched an automated service that helps victims track the immigration custody status of perpetrators of crime called the DHS Victim Information and Notification Exchange.
Expedited Completion of the Biometric Entry-Exit Tracking System <sup>d</sup> (Executive Order 13780 Sec. 8)	According to CBP Office of Field Operations officials, the office is working on the same implementation plan for the Biometric Entry Exit Program that existed prior to the executive order. However, officials told us they are focusing on increasing the number of public private partnerships with airlines as a means to expedite implementation of the program. This effort is partly in response to the order, and partly in response to the program's fee-based funding structure, which generated fewer fees than anticipated in fiscal year 2017. <sup>e</sup>

Source: GAO analysis of DHS information. | GAO-18-470

<sup>a</sup>The Consolidated Appropriations Act, 2018, limited the use of funds provided for primary pedestrian fencing to previously deployed fencing designs. Pub. L. No. 115-141, div. F, tit. II, § 230(b); 164 Cong. Rec. at H2557. Primary fencing is the first layer of fencing encountered when moving north from the southern border and may include both pedestrian and vehicle fencing. The secondary fence, located behind the primary fence, consists solely of pedestrian fencing.

<sup>b</sup>In May 2018, the contract solicitation was cancelled; however, the government anticipates re-soliciting the requirement in fiscal year 2019.

<sup>c</sup>Section 287(g) of the Immigration and Nationality Act, as amended, authorizes the federal government to deputize state and local law enforcement officers to carry out immigration enforcement activities pursuant to agreements with state and local law enforcement agencies including, among other things, certification that officers have received adequate training regarding enforcement of U.S. immigration law. See 8 U.S.C. § 1357(g).

<sup>d</sup>Since 1996, a series of federal statutes has required that the federal government develop and implement an entry and exit data system to match records, including biographic and biometric identifiers, of foreign nationals entering and leaving the country and to identify overstays. The Intelligence Reform and Terrorism Prevention Act of 2004 also required a plan to accelerate full implementation of an automated biometric entry and exit system. The Consolidated Appropriations Act, 2016, provided an appropriation of up to \$1 billion dollars for DHS to develop and implement a biometric exit system beginning in fiscal year 2017. See GAO, *Border Security: DHS Has Made Progress in Planning for a Biometric Air Exit System and Reporting Overstays, but Challenges Remain*, [GAO-17-170](#) (Washington, D.C.: Feb. 27, 2017).

<sup>e</sup>See GAO, *U.S. Ports of Entry: CBP Public-Private Partnership Programs Have Benefits, but CBP Could Strengthen Evaluation Efforts*, [GAO-18-268](#) (Washington, D.C.: March 15, 2018).

**DOJ:** Within DOJ, the Office of the Deputy Attorney General coordinated and oversaw DOJ's initial implementation of key provisions in the executive orders, according to DOJ officials.<sup>33</sup> Specifically, DOJ officials said that the Office of the Deputy Attorney General coordinated and collected information for executive order reporting requirements and

<sup>33</sup>While DOJ does not have any specific responsibilities under Executive Order 13780, officials told us that DOJ served in a consultation role and provided DOJ's perspectives on implementation.

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participated in an interagency working group related to Executive Order 13780, and interagency meetings related to Executive Order 13767. However, DOJ components were responsible for implementing the provisions and ensuring that they met executive order requirements. In addition, DOJ assisted in the creation and issuance of various reports. For example, officials told us that DOJ provided data to State for a report on foreign assistance to the Mexican government, as required by Section 9 of Executive Order 13767. DOJ also jointly issued three reports with DHS in response to Executive Order 13768 Section 16, which included information regarding the immigration status of foreign-born individuals incarcerated under the supervision of the Federal Bureau of Prisons and in pre-trial detention in U.S. Marshals Service (USMS) custody.<sup>34</sup>

The Attorney General issued two memoranda providing policy and guidance related to Executive Orders 13767 and 13768 in April and May of 2017.<sup>35</sup> The April 2017 memorandum contains guidance for federal prosecutors on prioritizing certain immigration-related criminal offenses. For example, the memorandum requires that federal prosecutors consider prosecution of foreign nationals who illegally re-enter the United States after prior removal, and prioritize defendants with criminal histories.<sup>36</sup> The May 2017 memorandum addresses Executive Order 13768's provision directing DOJ and DHS to ensure that jurisdictions willfully prohibiting immigration status-related communication with the federal government (referred to as "sanctuary jurisdictions") are not eligible for federal grants. It requires jurisdictions to certify their compliance with 8 U.S.C §1373, under which a federal, state, or local government entity or official may not

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<sup>34</sup>Exec. Order No. 13768, § 16, 82 Fed. Reg. at 8802. Department of Justice, *Pursuant to Executive Order on Public Safety, Department of Justice Releases Data on Incarcerated Aliens* (May 2017); Department of Justice, *Pursuant to Executive Order on Public Safety, Department of Justice Releases Data on Incarcerated Aliens* (August 2017); and Department of Justice and Department of Homeland Security, *Alien Incarceration Report, Fiscal Year 2017, Quarter 4* (December 2017). According to DOJ officials, DOJ provides a daily list of all prisoners to DHS that includes the nationality or citizenship of the prisoner, as self-reported.

<sup>35</sup>Department of Justice, *Memorandum for All Federal Prosecutors: Renewed Commitment to Criminal Immigration Enforcement* (April 2017); and Department of Justice, *Memorandum for All Department Grant-Making Components: Implementation of Executive Order 13768, "Enhancing Public Safety in the Interior of the United States"* (May 2017).

<sup>36</sup>8 U.S.C. § 1326 (Reentry of removed aliens).

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prohibit, or in any way restrict the exchange of citizenship or immigration status information with DHS.<sup>37</sup>

Additionally, DOJ took a number of initial planning and programmatic steps to implement the executive orders. DOJ officials stated that some provisions outlined in the executive orders represent regular, ongoing agency activities and did not require any major changes to be implemented. For example, DOJ detailed Assistant United States Attorneys (AUSAs) and immigration judges to southern border districts and detention centers to assist in prosecutions and to conduct removal proceedings in response to the executive orders. However, while they expanded their efforts, DOJ officials said that detailing immigration judges and AUSAs to the border districts is a regular practice, and not a new function created by the executive orders. Examples of actions that DOJ took, or officials reported taking, in response to the executive orders are described in table 3.

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<sup>37</sup> 8 U.S.C. §1373. This section references the former Immigration and Naturalization Service. However, the Homeland Security Act of 2002 (Pub. L. No. 107–296, 116 Stat. 2135) distributed the functions of the Immigration and Naturalization Service across three components within the newly created DHS.

**Table 3: Examples of Department of Justice (DOJ) Planning and Programmatic Actions to Implement Executive Orders 13767 and 13768**

Executive Order Provision	Actions
Prosecution Priorities for Immigration-Related Offenses (Executive Orders 13767 Sec. 13 and 13768 Sec. 11)	<ul style="list-style-type: none"> <li>The Executive Office for United States Attorneys detailed 12 Assistant United States Attorneys (AUSAs) to the southern border between June 2017 and January 2018 to aid in prosecutions of foreign nationals entering or reentering the United States illegally, human smugglers, or those committing other immigration-related crimes.</li> <li>Additionally, all 94 judicial districts in the United States designated one AUSA each to be the district border security coordinator, according to DOJ officials. Border security coordinators are to oversee investigations and prosecutions and ensure that they align with guidance in the Attorney General's April 2017 memorandum.</li> </ul>
Detention Centers for Immigration Offenders (Executive Order 13767 Sec. 5)	The Executive Office for Immigration Review detailed approximately 40 immigration judge positions to detention centers and the southern border from March through October 2017 to conduct removal and other related proceedings, according to DOJ officials.
Sanctuary Jurisdictions—Sharing Immigration Status Information (Executive Order 13768 Sec. 9)	The Attorney General issued a May 22, 2017, memorandum clarifying the applicability of Section 9 of the executive order which directs DOJ and the Department of Homeland Security to ensure jurisdictions willfully prohibiting immigration status-related communication with the federal government (referred to as sanctuary jurisdictions) are not eligible for federal grants, and requiring jurisdictions applying for certain DOJ grants to certify their compliance with federal law, including 8 U.S.C. § 1373. On November 20, 2017, enforcement of Executive Order 13768, section 9(a), was permanently enjoined by federal court order. According to DOJ officials, no subsequent action has been taken to implement section 9(a). <sup>a</sup>

Source: GAO analysis of DOJ information. | GAO-18-470

<sup>a</sup>Executive Order 13768 Section 9(a) was permanently enjoined nationwide by the U.S. District Court for the Northern District of California, thereby prohibiting DOJ from taking actions to deny jurisdictions eligibility for federal grants pursuant to such section. See *City of Santa Clara v. Trump*, 275 F. Supp. 3d 1196 (N.D. Cal. Nov. 20 2017) (the court granted the plaintiffs' motion for summary judgement regarding section 9(a) of Executive Order 13768, finding that it was unconstitutional on its face as a violation of the separation of powers doctrine and plaintiffs' 10th and 5th amendment rights). Prior to issuance of Executive Order 13768, the DOJ Inspector General conducted a compliance review of certain jurisdictions relative to 8 U.S.C. § 1373, and issued a report in May 2016 finding that 10 jurisdictions raised compliance concerns (*Department of Justice Referral of Allegations of Potential Violations of 8 U.S.C. §1373 by Grant Recipients*). In response, DOJ placed a special condition on certain fiscal year 2016 grant awards, requiring recipients to submit an assessment of their compliance with section 1373. In November 2017, as part of the section 1373 compliance effort predating Executive Order 13768, DOJ sent letters to 29 jurisdictions expressing concern that they may not be in compliance with 8 U.S.C. §1373, and requesting responses regarding compliance. In January 2018, DOJ sent follow up demand letters to 23 jurisdictions seeking documents to determine whether they are unlawfully restricting information sharing by their law enforcement officers with federal immigration authorities, and stating that failure to respond will result in records being subpoenaed. See *City of Chicago v. Sessions*, 264 F. Supp. 3d 933 (N.D. Ill. 2017), *aff'd*, 2018 U.S. App. LEXIS 9862 (7th Cir. 2018) (While the U.S. District Court for the Northern District of Illinois granted a nationwide preliminary injunction against the Attorney General's imposition of two immigration-related "notice" and "access" conditions on the Byrne Justice Assistance Grants Program awards for fiscal year 2017, the court determined that the Attorney General has statutory authority to require the city to certify compliance with 8 U.S.C. § 1373 as a grant condition, and therefore denied Chicago's motion for a preliminary injunction in that regard).

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**State:** State's Bureaus of Population, Refugees, and Migration and Consular Affairs led efforts to implement key provisions in Executive Order 13780.<sup>38</sup> Several legal challenges and resulting federal court injunctions affected State's implementation of Executive Order 13780 and at times curtailed specific provisions.<sup>39</sup> Initial State actions included conducting reviews and contributing to reports required by the order. For instance, while State generally suspended refugee travel for 120 days, the department, in conjunction with DHS and the Office of the Director of National Intelligence, conducted a review to determine what, if any, additional procedures should be implemented in the U.S. Refugee Admissions Program. According to State officials, the agencies provided a joint memorandum to the President in October 2017 that contained recommendations regarding resumption of the program, specific changes to refugee processing, and further reviews and steps that the interagency group should take. Additionally, State worked with DHS and the Office of the Director of National Intelligence to conduct a worldwide review. This review identified any additional information that the United States may need from each foreign country to adjudicate visas and other immigration benefit applications and ensure that individuals seeking to enter the United States do not pose a threat to public safety or national security. In July 2017, upon completion of this review, DHS, in consultation with State and other interagency partners, issued a report to the President cataloguing information needed from each country and listing countries not providing adequate information.

State also issued a number of policies and guidance in response to the executive orders; however, guidance on how to implement certain provisions often changed due to legal challenges. For example, the Bureau of Population, Refugees, and Migration issued 23 iterations of refugee travel restrictions guidance to overseas refugee processing centers in response to federal litigation and budgetary uncertainties. Similarly, the Secretary of State issued a number of cables to visa-issuing foreign posts on implementing travel restrictions for nationals of selected

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<sup>38</sup>Other than participating in the development of several reports, State generally did not have any responsibilities in Executive Order 13767 or 13768.

<sup>39</sup>See, e.g., *Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080 (2017) (per curiam) (The Court explained that the administration may enforce entry restrictions for visa travelers and refugees except with respect to an individual credibly claiming a bona fide relationship with a person or entity in the United States). DHS and DOJ were also involved in implementing Executive Order 13780 provisions and their actions were also affected by federal court rulings.



countries following court orders limiting the implementation of such restrictions.

Executive Order 13780 contained several time-sensitive provisions directed to the Secretary of State. State focused on first addressing these provisions while working towards longer-term priorities outlined in the order. For instance, Executive Order 13780 Sections 2 and 6 established visa and refugee entry restrictions, which contained near-term timelines. State implemented these provisions, consistent with judicial decisions.<sup>40</sup> Examples of planning and programmatic actions that State took, or officials reported taking, to implement Executive Order 13780 are described in table 4.

**Table 4: Examples of Department of State (State) Planning and Programmatic Actions to Implement Executive Order 13780**

Executive Order Provision	Actions
Enhanced Screening and Vetting (Executive Order 13780 Sec. 5)	State participated in an interagency working group to develop uniform standards related to the adjudication of visa applications, interviews, and system security checks, such as biometric or biographic checks. The working group also identified data elements against which applicants are to be screened and vetted.
Consular Fellows (Executive Order 13780 Sec. 9)	State expanded its Consular Fellows Program by extending non-career appointments and hiring 134 new Consular Fellows from February 2017 through February 2018, according to officials. State officials stated that the department plans to hire up to approximately 120 more Consular Fellows in the remainder of fiscal year 2018.
Refugee Program Realignment (Executive Order 13780 Sec. 6)	State suspended travel for refugees for 120 days. <sup>a</sup> During this time, State worked with interagency partners to review the U.S. Refugee Admissions Program application and adjudication process to identify any additional procedures or areas for improvement.

Source: GAO analysis of information provided by State. | GAO-18-470

<sup>a</sup>In a June 26, 2017 ruling, the U.S. Supreme Court prohibited enforcement of entry restrictions against foreign nationals credibly claiming a bona fide relationship with a person or entity in the United States. See *Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080 (2017) (per curiam).

For more information on specific planning or programmatic actions DHS, DOJ, and State have taken to implement the executive orders, see appendix I.

<sup>40</sup>For instance, State was not able to implement a 90-day restriction on entry for nationals of certain countries, or a 120-day suspension of refugee admissions, outlined in the Executive Order until the Supreme Court generally lifted the federal injunction in June 2017. 137 S. Ct. 2080.

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The examples we provided for DHS, DOJ, and State represent initial actions and do not constitute an exhaustive list of actions that agencies have taken, or may take in the future, to fully implement the executive orders. Agency officials anticipate that implementation of the executive orders will be a multi-year endeavor comprising present and future reporting, planning, and other actions. For example, DOJ officials noted that many of the actions that they took to implement the orders will be ongoing and responsive to additional DHS actions. Specifically, DOJ bases the number of immigration judges and AUSAs detailed to the southern border districts on court caseloads driven by ICE. If ICE hires additional officers and attorneys and arrests and files charges of removability against more foreign nationals, then DOJ may need to staff additional judges and AUSAs to meet caseload needs.

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## DHS, DOJ, and State Used Existing Fiscal Year 2017 Resources to Support Initial Executive Order Actions; DHS also Received and Expended Supplemental Funds

**Existing Fiscal Year 2017 Resources:** Many of the initial actions agencies and components took in response to the executive orders fit within their existing fiscal year 2017 budget framework and aligned with their established missions. At the time the executive orders were issued in January and March of 2017, federal agencies were operating under existing continuing appropriations pending enactment of fiscal year 2017 appropriations; therefore the new administration's border security and immigration priorities and policies had not yet been incorporated into the budget process. As a result, it is not always possible to disaggregate which fiscal year 2017 funds were used for implementation of the executive orders versus other agency activities. For example, while the orders call for a surge in hiring at CBP and ICE, these agencies regularly hire additional personnel to offset attrition or to meet budget hiring targets as part of their normal operations.

We asked agencies to identify budgetary resources they used specifically to address the executive orders. In some cases agencies were able to quantify their expenditures; however in other cases they could not. For example, according to DOJ officials, the Executive Office for Immigration Review, which conducts immigration court proceedings, spent close to \$2.4 million in existing funds to surge approximately 40 immigration judge positions to detention centers and the southwest border from March through October 2017 in response to Executive Order 13768. DHS's USCIS reported expending approximately \$4.2 million detailing asylum officers to immigration detention facilities along the southern border from

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February 2017 through February 2018.<sup>41</sup> Additionally, as a result of the 120-day suspension of refugee admissions, State cancelled airline tickets for previously approved refugee applicants, which resulted in a cost of nearly \$2.4 million in cancellation and unused ticket fees.<sup>42</sup> State officials noted that, aside from the ticket costs, other budgetary costs associated with implementing the order are difficult to disaggregate from other processing activities. For example, any budgetary costs associated with refugees who were admitted on a case-by-case basis were absorbed into overseas processing budgets. In some cases, agencies also identified cost savings or avoidances. For example, State reported a total cost avoidance of over \$160 million in fiscal year 2017, partially as a result of admitting fewer refugees than originally planned under the prior administration.<sup>43</sup>

While the costs above were part of agencies' normal operations, we identified one case where Congress approved a DHS request to reprogram \$20 million from existing programs to fund the planning and design of new physical barriers along the border, including prototype design and construction.<sup>44</sup> Specifically, CBP reprogrammed \$15 million from funds originally requested for Mobile Video Surveillance System deployments and \$5 million from a border fence replacement project in Naco, Arizona.<sup>45</sup> Additionally, we identified another case where DHS shifted funds and notified Congress, but determined Congressional approval for reprogramming was not required. Specifically, in response to Executive Order 13768, the Secretary of Homeland Security directed ICE

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<sup>41</sup>According to both DOJ and USCIS officials, some immigration judges and asylum officers may have been detailed to the border regardless of the executive orders as part of the agencies' regular operations.

<sup>42</sup>State officials told us that ticket cancellation fees totaled approximately \$282,000 and the unused ticket costs were approximately \$2.1 million.

<sup>43</sup>State officials said that these cost avoidances were a result of reduced costs for overseas processing operations, among other things. State obligated fewer funds than they budgeted for because they admitted fewer refugees.

<sup>44</sup>As discussed above, reprogramming is shifting funds within an appropriation or fund account for purposes other than those contemplated at the time of appropriation; it is the shifting of funds from one object class to another within an appropriation or from one program activity to another. Transfer is the shifting of all or part of the budget authority in one appropriation or fund account to another. Agencies may transfer budget authority only as specifically authorized by law.

<sup>45</sup>Mobile Video Surveillance Systems include a telescoping mast or lift system that elevates a camera containing day and night capabilities with target illuminators and range finders.

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to reallocate any and all resources used to advocate on behalf of potentially removable foreign nationals (except as necessary to comply with a judicial order) to the new VOICE office. As part of this effort, ICE's Office of the Principal Legal Advisor determined that the creation of the VOICE office fell within ICE's authority to carry out routine or small reallocations of personnel or functions. According to officials at DHS, DOJ, and State, there were no additional requests to reprogram or transfer funds to implement the executive orders. DHS budget officials stated that any future requests from DHS components to reprogram or transfer funds would typically be considered at the midway point in the budget cycle.

All three agencies indicated that they used existing personnel to implement the executive orders and, in some cases, a substantial amount of time was spent preparing reports, planning to implement provisions, and responding to changes or new developments in the executive orders. For example, USCIS officials noted that the agency devoted a significant number of manpower hours to aligning USCIS priorities to the executive orders.<sup>46</sup> ICE's Office of Human Capital established a dedicated executive order hiring team to plan for the hiring surge directed by Executive Order 13768. Additionally, officials at State told us that personnel were diverted from normal operations in order to implement executive order policy actions and that there were overtime costs associated with some provisions. In most cases, agencies did not specifically track or quantify the amount of time spent on these efforts; however, ICE's Office of Human Capital tracked the amount of time spent on planning for the potential surge in ICE hiring in its human resource data system. According to ICE information, ICE personnel charged approximately 14,000 regular hours (the equivalent of 1,750 8-hour days) and 2,400 overtime hours to this effort from January 2017 through January 2018.<sup>47</sup>

**Fiscal Year 2017 Request for Supplemental Appropriations:** In March 2017, the President submitted a budget amendment along with a request for \$3 billion in supplemental appropriations for DHS to implement the executive orders and address border protection activities. In May 2017, an additional appropriation of approximately \$1.1 billion was provided in

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<sup>46</sup>USCIS officials further noted that some USCIS initiatives aligned to the executive orders were already in progress or already of interest to USCIS and were bolstered by the order.

<sup>47</sup>According to ICE Office of Human Capital officials, the agency is unable to provide the dollar amount or personnel costs associated with these hours.

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response to this request, some of which DHS used to fund actions to implement the orders.<sup>48</sup> For example, CBP received \$65.4 million for hiring and, according to CBP officials, used these funds to plan and prepare for the surge in Border Patrol agents directed by Executive Order 13767. As of January 2018, CBP had obligated \$18.8 million and expended \$14.1 million of the \$65.4 million it received. Additionally, ICE received \$147.9 million for custody operations. At the end of fiscal year 2017, ICE had obligated and expended nearly all—over 99.9 percent—of the funds it received.

### **Fiscal Years 2018 and 2019 Budget Requests and Fiscal Year 2018**

**Appropriations:** Agency officials anticipate additional costs to further implement the executive orders and expect that certain provisions will require a multi-year effort. According to DHS officials, the agency expects to incorporate executive order implementation into its annual strategic and budgetary planning processes. DHS officials also noted that additional future planning and funds will be needed to fully implement actions in the orders. Agencies plan to continue to use their base budgets as well as request additional funds as needed to carry out their mission. Examples of DHS and DOJ fiscal year 2018 budget requests and appropriations to implement executive order provisions are listed below.

- CBP requested \$1.6 billion and in the Consolidated Appropriations Act, 2018, received approximately \$1.3 billion to build new and replace existing sections of physical barriers along the southern border.<sup>49</sup> CBP also projected out-year funding for construction along certain segments of the border through 2024.
- ICE requested \$185.9 million for approximately 1,000 new immigration officers and 606 support staff. ICE's fiscal year 2018 appropriation included \$15.6 million to support the hiring of 65

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<sup>48</sup>Pub. L. No. 115-31, div. F, tit. VI, 131 Stat. 135, 433-35. In particular, the Consolidated Appropriations Act, 2017 included approximately \$1.1 billion in additional DHS appropriations for security, enforcement, and investigations activities. Specifically, the law appropriates additional amounts of approximately \$772 million for CBP and \$237 million for ICE, as well as \$58 million for U.S. Secret Service operations and support and \$73 million for Presidential security.

<sup>49</sup>Pub. L. No. 115-141, div. F, tit. II, § 230, 132 Stat. 348; 164 Cong. Rec. H2045, H2550, H2557 (daily ed. March 22, 2018). The Consolidated Appropriations Act, 2018 also provided \$38 million for border barrier planning and design, but limited the use of funds provided for construction of new and replacement primary barriers to previously deployed fencing designs.

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additional investigative agents, as well as 70 attorneys and support staff.<sup>50</sup>

- DOJ requested approximately \$7.2 million to hire additional attorneys in support of the orders. According to DOJ officials, DOJ received sufficient funds in the fiscal year 2018 budget to meet the hiring goal for attorneys.

DHS and DOJ also requested funds for fiscal year 2019 to implement executive order provisions, examples of which are listed below.

- ICE requested \$571 million to hire 2,000 immigration officers (including 1,700 deportation officers and 300 criminal investigators) and 1,312 support staff (including attorneys).
- DOJ requested \$1.1 million for 17 paralegal support positions to support the additional attorneys requested in the fiscal year 2018 request.<sup>51</sup> DOJ also requested approximately \$40 million to hire new immigration judges and their supporting staff, citing an over 25 percent increase in new cases brought forward by DHS over the course of fiscal year 2017.

DHS and DOJ components that were not directly tasked with responsibilities in the executive orders have also begun to plan for potential effects as agencies implement the orders. For example, as CBP and ICE work to meet the hiring surge in the orders, USMS anticipates a likely increase in the number of individuals who are charged with criminal immigration offenses and detained pending trial, resulting in a corresponding increase in its workload. USMS developed a multi-year impact statement which projected possible effects on USMS prisoner operations, judicial security, and investigative operations. According to DOJ officials, these efforts may inform USMS's budget requests and future year planning. For example, for fiscal year 2018 USMS requested approximately \$9 million to hire 40 USMS deputies to support the executive orders.<sup>52</sup> For fiscal year 2019, USMS projected that the administration's policies to increase immigration enforcement and

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<sup>50</sup>164 Cong. Rec. at H2550.

<sup>51</sup>DOJ officials stated that Congress provided sufficient funding in the 2018 budget to meet DOJ's fiscal year 2019 request for paralegal positions.

<sup>52</sup>According to DOJ officials, USMS received sufficient funds in the fiscal year 2018 budget to meet this hiring goal. In addition, these officials noted that for fiscal year 2018 USMS received a \$50 million increase in Federal Prisoner Detention funding for anticipated immigration-related increases.

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immigration-related prosecutions could result in an increase of nearly 19,000 prisoners between fiscal year 2017 and fiscal year 2019 and a corresponding budget increase of approximately \$105 million for immigration expenses. In addition, officials at the Federal Law Enforcement Training Centers stated that they coordinated with Border Patrol and ICE to assess future training needs and project future resource requirements based on the hiring assumptions in the executive orders. For example, the Federal Law Enforcement Training Centers requested an increase of \$29 million in fiscal year 2018 and \$25.7 million in fiscal year 2019 for tuition and training requirements to implement the executive orders, among other funding requested.<sup>53</sup>

Appendix I includes additional information on funds DHS, DOJ, and State have obligated, expended, or shifted, to implement provisions of the executive orders.

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## Agency Comments

We provided a draft of this report to DHS, DOJ, and State for review and comment. DHS provided written comments, which are reproduced in appendix III; DOJ and State did not provide written comments. In its written comments, DHS discussed resources and legislative authorities the department believes it needs to carry out executive order requirements. All three agencies provided technical comments, which we incorporated as appropriate.

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As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate congressional committees, the Secretary of Homeland Security, the Attorney General, and the Secretary of State. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

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<sup>53</sup>According to DHS officials, the Consolidated Appropriations Act, 2018, did not include the \$29 million the Federal Law Enforcement Training Centers requested for fiscal year 2018.

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If you or your staff have any questions about this report, please contact me at (202) 512-8777 or [gablerr@gao.gov](mailto:gablerr@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made significant contributions to this report are listed in appendix IV.

A handwritten signature in black ink that reads "Rebecca Gambler". The script is cursive and fluid, with the first name and last name clearly distinguishable.

Rebecca Gambler  
Director, Homeland Security and Justice



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### *List of Requesters*

The Honorable Dianne Feinstein  
Ranking Member  
Committee on the Judiciary  
United States Senate

The Honorable Richard J. Durbin  
Ranking Member  
Subcommittee on Border Security and Immigration  
Committee on the Judiciary  
United States Senate

The Honorable Gary Peters  
Ranking Member  
Subcommittee on Federal Spending Oversight and Emergency  
Management  
Committee on Homeland Security and Governmental Affairs  
United States Senate

The Honorable Tammy Baldwin  
The Honorable Richard Blumenthal  
The Honorable Cory A. Booker  
The Honorable Maria Cantwell  
The Honorable Tammy Duckworth  
The Honorable Kirsten Gillibrand  
The Honorable Edward Markey  
The Honorable Jeffrey A. Merkley  
The Honorable Christopher S. Murphy  
The Honorable Brian Schatz  
The Honorable Chris Van Hollen  
The Honorable Elizabeth Warren  
The Honorable Ron Wyden  
United States Senate

# Appendix I: Key Actions and Budgetary Costs Related to Implementing Executive Order 13767, 13768, and 13780 Provisions

Purpose

This appendix contains summaries of initial actions that the Department of Homeland Security (DHS), Department of Justice (DOJ), and Department of State (State) took to implement selected programmatic provisions of the President’s executive orders on border security and immigration. These orders include Executive Order 13767, *Border Security and Immigration Enforcement Improvements*; Executive Order 13768, *Enhancing Public Safety in the Interior of the United States*; and Executive Order 13780, *Protecting the Nation from Foreign Terrorist Entry into the United States*.<sup>54</sup> These summaries also contain overviews of budget information related to implementing the executive orders, including obligations, expenditures, and budget requests where available, among other things. Table 5 lists the summaries and the executive order provisions on which they focus.

Table 5: List of Summaries and Related Executive Order Provisions

Summary title	Executive Order(s)	Provision(s)
Southern Border Barriers	13767	Section 4
Detention	13767	Section 5 and Section 6
Parole and Asylum	13767	Section 11
Hiring	13767 and 13768	Section 8 and Section 7
Federal-State Agreements	13767 and 13768	Section 10 and Section 8
Prosecution	13767 and 13768	Section 13 and Section 11
Enforcement Priorities	13768	Section 5 and Section 10
Sanctuary Jurisdictions (Sharing Immigration Status Information)	13768	Section 9
Visa Entry Restrictions and Enhanced Screening and Vetting	13780	Section 2 and Section 5
Refugee Admissions Program Realignment	13780	Section 6
Visa Interview Waiver Program	13780	Section 9

Source: GAO analysis of information from Executive Orders 13767, 13768, and 13780. | GAO-18-470

<sup>54</sup>Border Security and Immigration Enforcement Improvements, Exec. Order No. 13767, 82 Fed. Reg. 8793 (Jan. 30, 2017) (issued Jan. 25); Enhancing Public Safety in the Interior of the United States, Exec. Order No. 13768, 82 Fed. Reg. 8799 (Jan. 30, 2017) (issued Jan. 25); and Protecting the Nation From Foreign Terrorist Entry Into the United States, Exec. Order No. 13780, 82 Fed. Reg. 13,209 (Mar. 9, 2017) (issued Mar. 6).

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## Methodology for Selecting Executive Order Provisions

We reviewed the executive orders and placed each provision directed at DHS, DOJ, and State into one of three categories: (1) *analyses and reports*, (2) *policies*, and (3) *programs*. We defined the *analyses and reports* category as executive order provisions that direct agencies to review and analyze data, policies, processes, and operational mission areas and produce reports. We defined the *policies* category as executive order provisions that establish new or modify existing policies, guidance, or processes related to border security or immigration. We defined the *programs* category as tangible, measurable, and quantifiable executive order provisions that implement policies. We confirmed our categorization with each agency, particularly for the *programs* category, since it was sometimes ambiguous whether provisions would lead to actions that were tangible, measurable, and quantifiable. Specifically, we reviewed agency documentation, such as a DHS inventory of tasks related to the executive orders, and interviewed agency officials. In some cases, we moved policy provisions to the *programs* category if agency efforts to implement the policy were underway.

We prepared summaries for each executive order provision(s) we categorized as a *program*. For each *program*, we identified actions planned, completed, or underway at DHS, DOJ, and State as of March 2018 through reviewing documentation, interviewing agency officials, and submitting data collection instruments. For each *program* we also collected available budgetary costs—specifically, any funds requested, appropriated, obligated, and expended for executive order implementation from January 2017 through March 2018. We reviewed publicly available budget requests, congressional budget justifications, public laws, and budgetary data from agencies' internal data systems.<sup>55</sup> While we were able to identify certain funds directly attributed to the executive order provisions from these documents, it was not always possible to extract funds specifically meant for implementing the executive order provisions from more general budget increase requests, appropriations, or expenditures. To specifically identify funds used for the executive order provisions, we reviewed agency documentation, interviewed agency budget and program officials, and submitted written questions as necessary. In instances where we were unable to differentiate executive order provision funds from regular operating funds,

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<sup>55</sup>There is no central intra- or interagency repository for budget information related to the executive orders. Therefore, we collected and aggregated budgetary data from systems used by individual agency components and offices.

we identified the larger account used for executive order funds and noted this distinction. We analyzed agency documentation on the policies, procedures, and processes for maintaining budgetary data and interviewed agency officials about their data collection practices to assess the reliability of these data. We determined that the data were sufficiently reliable for our purposes.

# Southern Border Barriers

**Executive Order:** 13767

**Provision:** Section 4

**Provision Summary:**

Section 4 directs the Department of Homeland Security (DHS) to plan, design, and construct a wall or other physical barriers along the southern border, identify and allocate all sources of federal funds for such efforts, and project and develop long-term funding requirements.

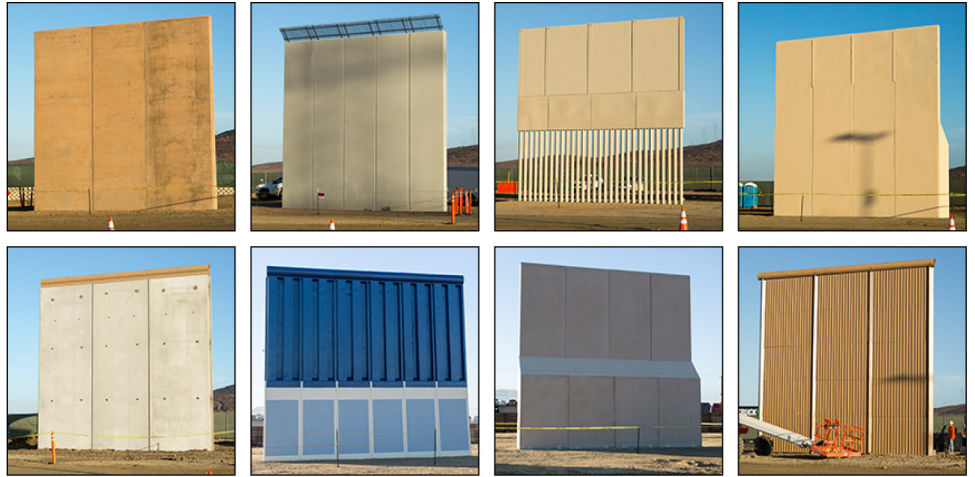
**Key Agency(ies) Responsible:**

DHS: U.S. Customs and Border Protection (CBP), U.S. Border Patrol (Border Patrol)

**Program Context:**

Statutes enacted from 1996 through 2007 authorize DHS, subject to certain criteria, to take necessary actions to construct physical barriers and roads to deter illegal crossings in border areas experiencing high levels of illegal entry. As we previously reported in 2017, from fiscal years 2005 through 2015, CBP increased the total miles of primary border fencing on the southwest border from 119 miles to 654 miles.<sup>56</sup>

**Department of Homeland Security Barrier Prototypes**



Source: U.S. Customs and Border Protection. | GAO-18-470

**Action Overview**

CBP has taken initial steps to plan, design, and construct new and replacement physical barriers on the southern border.

- For instance, CBP began the acquisition process for a Border Wall System Program, including developing plans to construct barrier segments and awarding eight task orders with a total value of over \$3 million to design and construct barrier prototypes (four made from concrete and four made from non-concrete materials).
- CBP selected San Diego, California as the first segment and plans to replace an existing 14 miles of primary and secondary barriers.<sup>57</sup> DHS plans to use fiscal year 2017 funding for the replacement of the primary barrier which it plans to rebuild to existing—as opposed to prototype—design standards.
- In January 2018, DHS leadership also approved cost, schedule, and performance goals for a second segment in the Rio Grande Valley in Texas, which will extend an existing barrier with 60 miles of new fencing.

<sup>56</sup>The 654 miles of primary border fencing includes 354 miles of primary pedestrian fencing and 300 miles of primary vehicle fencing. GAO, *Southwest Border Security: Additional Actions Needed to Better Assess Fencing's Contributions to Operations and Provide Guidance for Identifying Capability Gaps*, [GAO-17-331](#) (Washington, D.C.: Feb. 16, 2017).

<sup>57</sup>Primary fencing is the first layer of fencing encountered when moving north from the southern border and may include both pedestrian and vehicle fencing; the secondary fence, located behind the primary fence, consists solely of pedestrian fencing.

- The Consolidated Appropriations Act, 2018, stated that fiscal year 2018 funds for primary pedestrian fencing are only available for “operationally effective designs deployed as of [May 5, 2017],” such as steel bollard fencing currently deployed in areas of the border.<sup>58</sup> As of April 2018, CBP and DHS were evaluating what, if any, impact this direction will have on the department’s plans, according to DHS officials.
- Additionally, DHS waived specific legal restrictions, such as environmental restrictions, in order to begin construction of barriers in the El Centro and San Diego Border Patrol sectors in California; and the Santa Teresa, New Mexico segment of the El Paso Border Patrol Sector.<sup>59</sup> DHS also completed a categorical exclusion for replacement of a segment of existing barriers in El Paso, Texas.<sup>60</sup>

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## Budget Overview

To fund the barrier prototypes, Congress approved a DHS request to reprogram \$20 million in fiscal year 2017. Specifically:

- CBP reprogrammed \$15 million from funds originally requested for Mobile Video Surveillance System deployments.<sup>61</sup> The funds were originally part of the fiscal year 2015/2017 Border Security Fencing, Infrastructure, and Technology (BSFIT) Development and Deployment funding and were available due to a contract bid protest and delays associated with the Mobile Video Surveillance System Program.
- CBP also reprogrammed \$5 million from funds originally intended for a fence replacement project in Naco, Arizona. The funds were part of fiscal year 2016 BSFIT Operations and Maintenance funding and were available as a result of unanticipated contract savings. The Naco Fence Replacement project will be completed within its original scope, according to CBP documentation.

DHS also received an appropriation in fiscal year 2017 to replace existing fencing and to install new gates; and an appropriation in fiscal year 2018 for border barrier planning and design, and to replace existing fencing and build new barriers. As previously discussed, the Consolidated Appropriations Act, 2018, limited the use of funds provided for construction of new and replacement primary pedestrian fencing to previously deployed fencing designs.<sup>62</sup> DHS has requested, but has not received, fiscal year 2019 funds for building new barriers. For more information regarding funding for future barrier construction projects along the southern border, see table 6.

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<sup>58</sup>See Pub. L. No. 115-141, div. F, tit. II, § 230; 164 Cong. Rec. H2045, H2550, H2557 (daily ed. March 22, 2018). With respect to secondary fencing, the Consolidated Appropriations Act, 2018, specifically required that funding for such fencing in the San Diego sector only be used on designs providing cross-barrier visual situational awareness.

<sup>59</sup>See Determinations Pursuant to Sections 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended, 82 Fed. Reg. 42,829 (Sept. 12, 2017) (El Centro Sector Waiver Determination), 82 Fed. Reg. 35,984 (Aug. 2, 2017) (San Diego Sector Waiver Determination), 83 Fed. Reg. 3012 (Jan. 22, 2018) (El Paso Sector Waiver Determination). Border Patrol divides responsibility for border security operations geographically among the nine sectors along the U.S. and Mexican border, each with its own headquarters. Each sector is further divided into varying numbers of stations.

<sup>60</sup>Under 40 C.F.R. § 1508.4, the term “categorical exclusion” refers to a category of actions which do not significantly affect the human environment as found under relevant federal agency procedures, and for which there need not be an environmental assessment or impact statement. At DHS, certain categorical exclusions require preparation of a record of environmental consideration.

<sup>61</sup>Mobile Video Surveillance Systems include a telescoping mast or lift system that elevates a camera containing day and night capabilities with target illuminators and range finders.

<sup>62</sup>Pub. L. No. 115-141, div. F, tit. II, § 230(b); 164 Cong. Rec. at H2557.

**Table 6: Requested and Appropriated Funding for Border Barrier Construction, Fiscal Years (FY) 2017 through 2019**

Project and location	Border miles	Amount
<b>FY 2017 Supplemental Appropriations (requested)</b>		
Planning, design, and construction of the first installment of the border wall	Unspecified	\$999 million
Access roads, gates, and other tactical infrastructure projects	Unspecified	\$179 million
<b>Total</b>		<b>\$1.2 billion</b>
<b>FY 2017 Supplemental Appropriations (funded)</b>		
Replacement of primary pedestrian fencing in high priority areas	20 miles	\$146 million
Replacement of primary vehicle fencing with primary pedestrian fencing in high priority areas	20 miles	\$146 million
Gates <sup>a</sup>	35 units	\$49.2 million
<b>Total</b>		<b>\$341.2 million</b>
<b>FY 2018 Congressional Budget Justification (requested)</b>		
Levee wall in Rio Grande Valley sector (Texas)	28 miles	\$498 million
Border wall system <sup>b</sup> in Rio Grande Valley sector	32 miles	\$784 million
Border wall system <sup>b</sup> in San Diego sector (California)	14 miles	\$251 million
<b>Total</b>		<b>\$1.5 billion</b>
<b>FY 2018 Appropriation (funded)</b>		
Primary pedestrian levee fencing in Rio Grande Valley sector	25 miles	\$445 million
Primary pedestrian fencing in Rio Grande Valley sector	Unspecified	\$196 million
Secondary fencing replacement in San Diego sector	14 miles	\$251 million
Primary pedestrian fencing replacement along the southwest border	Unspecified	\$445 million
<b>Total</b>		<b>\$1.3 billion</b>
<b>FY 2019 Congressional Budget Justification (requested)<sup>c</sup></b>		
Border wall system <sup>b</sup> in Rio Grande Valley sector	65 miles	\$1.6 billion
<b>Total</b>		<b>\$1.6 billion</b>

Source: GAO analysis of Department of Homeland Security (DHS) budget documentation. | GAO-18-470

Note: Additional funds related to physical border security are not included in this table. For example, the Consolidated Appropriation Act, 2017 included \$78.8 million in funding for the acquisition and deployment of border security technology and \$77.4 million for new border road construction. Additionally, the Consolidated Appropriations Act, 2018, included \$38 million for border barrier planning and design, \$196 million for the acquisition and deployment of border security technology and \$49.7 million for new border road construction.

<sup>a</sup>The explanatory statement (163 Cong. Rec. H3327, H3823 (daily ed. May 3, 2017)) accompanying the Consolidated Appropriation Act, 2017 (Pub. L. No. 115-31, 131 Stat. 135), indicates that \$49.2 million is for 35 gates for existing barriers, without prescribing the locations for installation.

<sup>b</sup>CBP uses the term “wall system” to describe these planned combinations of tactical infrastructure, including primary and secondary barriers separated by an enforcement zone, access roads, lighting and surveillance technology, and interfaces for current or future technologies to support detection capabilities.

<sup>c</sup>According to DHS officials, the fiscal year 2019 request may be modified based on what DHS was appropriated in the Consolidated Appropriations Act, 2018.

According to CBP documentation, the total cost to construct the Border Wall System Program over approximately 10 years is \$18 billion. DHS headquarters conducted an independent cost estimate for the San Diego and Rio Grande Valley segments of the program, which CBP adopted as the program’s life cycle cost estimate. Acquisition and operations and maintenance costs for the Rio Grande Valley segment were separately described in other DHS documents and are shown in table 7 below.

**Table 7: Fiscal Years (FY) 2018 through 2022 Rio Grande Valley, Texas Border Wall System Cost Estimate**

	<b>FY2018</b>	<b>FY2019</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>	<b>Total</b>
Acquisition	\$1.35 billion	0	0	0	0	<b>\$1.35 billion</b>
Operations & Maintenance	0	\$3.27 million	\$9.02 million	\$12.19 million	\$10.93 million	<b>\$35.41 million</b>

Source: U.S. Customs and Border Protection. | GAO-18-470



# Detention

**Executive Order:** 13767

**Provision:** Sections 5 and 6

**Provision Summary:**

Sections 5 and 6 pertain to detention facilities and detention of foreign nationals for violations of immigration law, pending the outcome of their proceedings or to facilitate removal. The order directs the Department of Homeland Security (DHS) to take immediate actions to construct, operate, or control facilities to detain foreign nationals at or near the southern border, and assign asylum officers to immigration detention facilities, among other things. Additionally, the order directs the Department of Justice (DOJ) to immediately assign immigration judges to immigration detention facilities.

**Key Agency(ies) Responsible:**

DHS: U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), U.S. Citizenship and Immigration Services (USCIS)

DOJ: Executive Office for Immigration Review (EOIR)

**Program Context:**

ICE, through its Enforcement and Removal Operations directorate, manages the nation's immigration detention system, which houses foreign nationals detained while their immigration cases are pending or after being ordered removed from the country. DOJ's EOIR is responsible for conducting immigration court proceedings, appellate reviews, and administrative hearings, pursuant to U.S. immigration law and regulation.

## Immigration Detention Facility



Source: U.S. Immigration and Customs Enforcement. | GAO-18-470

## Action Overview

- ICE and U.S. Border Patrol officials stated they consider custody determinations on a case by case basis. Additionally, officials from CBP's Office of Field Operations stated they inspect all applicants for admission in accordance with the Immigration and Nationality Act, as prescribed by the executive order and a February 2017 memorandum the Secretary of Homeland Security issued.<sup>63</sup>
- ICE initially intended to increase bed capacity at detention facilities in order to accommodate potential surges in apprehensions that could result from implementation of the executive order. According to ICE officials, ICE identified 1,100 additional beds available at detention facilities already in use. However, officials also stated that, as of February 2018, ICE has not needed to use these additional beds due to a decrease in the number of apprehensions.

<sup>63</sup>See 8 U.S.C. § 1225 (regarding inspection of applicants for admission). The Immigration and Nationality Act, as amended, provides DHS with broad discretion (subject to certain legal standards) to detain or release aliens on bond, conditional parole, or terms of supervision, depending on the circumstances and statutory basis for detention. The law requires DHS to detain particular categories of aliens, such as those deemed inadmissible for certain criminal convictions or terrorist activity. See 8 U.S.C. §§ 1225, 1226, 1226a, 1231. See also Department of Homeland Security, *Implementing the President's Border Security and Immigration Enforcement Improvement Policies*, (February 2017).

- Additionally, ICE officials indicated no acquisition actions were needed because contracts and agreements are in place at existing detention facilities and additional beds are available for excess capacity. CBP and ICE are continuously monitoring bed space requirements based on migration volume. According to ICE officials, as of February 2018, ICE had no additional actions planned to increase bed capacity.
- DHS's Office of Strategy, Policy and Plans convened a cross-component meeting to discuss detention standards, which govern the conditions of detainee confinement, according to DHS officials. ICE officials reported that ICE is currently re-writing its national detention standards (the standards applicable at most county jails housing immigration detainees). According to officials, the new standards are intended to make it easier for local jurisdictions to comply with standards without completely re-writing their existing policies to conform to ICE's requirements.
- USCIS officials told us they began working with ICE to identify where additional asylum officers were needed based on workload needs and space availability as soon as the executive order was issued in January 2017. From February 2017 through February 2018, USCIS deployed between 30 and 64 asylum officers during any given week along the southern border and continues to do so in response to caseload needs. USCIS continues to monitor and periodically adjust asylum officer staffing requirements, according to USCIS officials.

## DOJ

DOJ officials stated that DOJ components coordinated with ICE to identify removal caseloads along the southern border that were large enough to warrant additional immigration judges. According to DOJ officials, from March 2017 through October 2017, EOIR detailed approximately 40 immigration judge positions, both in person and by video teleconference, to 19 DHS detention facilities, including many along the southern border, in response to the executive order. DOJ officials further explained that as caseloads fluctuated, some of the details ended, some in-person details were converted to video teleconference, and some details were converted to permanent immigration judge positions. EOIR often details immigration judges for operational reasons; however officials noted that the scale of this detail mobilization was larger because of the executive order.

## Budget Overview

### DHS

- **Fiscal Year 2017:** Because Executive Orders 13767 and 13768 were issued during fiscal year 2017, DHS submitted a budget amendment and requested supplemental appropriations to address the needs of the department in support of executive order implementation. The request proposed funding to increase daily immigration detention capacity to 45,700 detention beds by the end of fiscal year 2017. The request stated that the detention capacity was necessary to implement the administration's immigration enforcement policies for removing foreign nationals illegally entering or residing in the United States.
  - **ICE:** On May 5, 2017, ICE received a supplemental appropriation of \$236.9 million for enforcement and removal operations, including \$147.9 million for custody operations, \$57.4 million for alternatives to detention, and \$31.6 million for transportation and removal operations.<sup>64</sup> According to ICE documentation, almost all of the funds from that additional appropriation were obligated and expended at the conclusion of fiscal year 2017, as shown in table 8.

**Table 8: U.S. Immigration and Customs Enforcement (ICE) Fiscal Year 2017 Supplemental Appropriation Obligations and Expenditures**

ICE activity	Obligated and expended
Custody Operations	\$147,869,962
Alternatives to Detention	\$57,392,000
Transportation Removal Program	\$31,629,395
<b>Total</b>	<b>\$236,891,357</b>

Source: ICE Budget Office. | GAO-18-470

<sup>64</sup>ICE received an appropriation of approximately \$2.6 billion, nearly \$379 million over the request, for its Custody Operations, as well as the additional \$236.9 million. Pub. L. No. 115-31, div. F, titles. II, VI, 131 Stat. at 406-07, 435; 163 Cong. Rec. at H3811, H3823.

- **USCIS:** USCIS documentation estimated that it expended at least \$4.2 million detailing asylum officers to immigration detention facilities along the southern border from February 2017 through February 2018.<sup>65</sup>
- **Fiscal Year 2018:** The President's budget requested an additional \$1.5 billion above the 2017 annualized continuing appropriations level, for expanded detention, transportation, and removal of foreign nationals who enter, or remain in, the United States, in violation of U.S. immigration law.<sup>66</sup> As part of the \$1.5 billion requested, the ICE congressional budget justification requested \$1.2 billion in additional funds to support an average daily population (ADP) of detainees of 51,379—a 49 percent increase over fiscal year 2016 ADP (34,376).<sup>67</sup> The request stated that Executive Order 13768 and subsequent department guidance were expected to drive increases in the ADP due to the increase in ICE law enforcement officers and an expected increase in the average length of stay at detention facilities. ICE also requested funds for transportation and alternatives to detention. In fiscal year 2018, ICE was appropriated \$4.1 billion to support enforcement and removal operations. According to DHS officials, the Consolidated Appropriations Act, 2018, provides funds for an ADP of 40,520 total beds, 10,859 lower than requested.
- **Fiscal Year 2019:** The President's budget requested \$2.5 billion for detention and removal capacity. As part of the \$2.5 billion requested, ICE's congressional budget justification states \$2.3 billion will support an ADP of 47,000.<sup>68</sup> According to the ICE congressional budget justification, the number of beds will sustain the fiscal year 2017 ADP level (38,106) and provide additional detention capacity stemming from the continued implementation of Executive Order 13768. ICE also requested funds for transportation and alternatives to detention.
- **Prior GAO Work:** Our prior work on immigration detention examined ICE's formulation of its budget request and cost estimate for detention resources. In April 2018, we found errors and inconsistencies in ICE's calculations for its congressional budget justifications and bed rate model. Specifically, we found that ICE made errors in its budget justifications, underestimated the actual bed rate, and its methods for estimating detention costs did not meet the characteristics of a reliable cost estimate. We also found ICE did not document its methodology for its projected ADP. We recommended that ICE assess and update its adult bed rate and ADP methodology and take steps to ensure that its budget estimating process fully addresses cost estimating best practices.<sup>69</sup> DHS concurred with our recommendations and plans to take actions in response to them.

## DOJ

- **Fiscal Year 2017:** DOJ documentation showed it expended approximately \$2.4 million detailing immigration judge positions to immigration detention facilities from March 2017 through October 2017, either through video teleconferencing, or in-person, to adjudicate removal proceedings. EOIR officials explained the funds used were unobligated balances carried over from a prior fiscal year.
- **Fiscal Year 2018:** For fiscal year 2018, DOJ requested an increase of \$75 million to hire 75 additional immigration judge teams to enhance public safety and law enforcement.<sup>70</sup> According to DOJ officials, the agency received sufficient funds in the fiscal year 2018 budget to meet this hiring goal.
- **Fiscal Year 2019:** The fiscal year 2019 President's budget also requests an increase of \$40 million for 75 new immigration judge teams at EOIR and nearly \$40 million for 338 new prosecuting attorneys at ICE to ensure

<sup>65</sup>USCIS officials noted that they combined information from two different systems to provide this cost estimate. They also cited limitations with their travel system that may have resulted in certain trips or costs not being captured in the estimate provided. In particular, the USCIS travel system does not require the traveler to identify the specific facility the traveler is operating out of, nor does its method of reporting provide an accurate accounting of each stop in a multi-destination trip, according to USCIS officials. Additionally, some of the asylum officer details were ongoing as of the date the data were pulled; therefore USCIS used the amount authorized for travel in lieu of the final amount actually expended, as those data were not available.

<sup>66</sup>The fiscal year 2018 and fiscal year 2019 President's budgets present the requests differently for detention and removal. The fiscal year 2018 President's Budget does not present the total requested funds; instead, it solely identifies the additional funds requested.

<sup>67</sup>To project its detention costs, ICE primarily relies on two variables—the average dollar amount to house one adult detainee for one day (bed rate) and the ADP of detainees.

<sup>68</sup>According to DHS officials, the fiscal year 2019 request may be modified to include additional funding for enforcement and removal operations. For example, according to DHS budget documentation, DHS plans to increase its request to \$2.8 billion for 52,000 detention beds.

<sup>69</sup>GAO, *Immigration Detention: Opportunities Exist to Improve Cost Estimates*, [GAO-18-343](#) (Washington, D.C.: April 18, 2018).

<sup>70</sup>The President's fiscal year 2018 budget states that the proposed funding for immigration judge hiring would bring the total number of funded immigration judge teams to 449.

immigration cases are heard expeditiously. According to the President's budget, these investments are critical to the prompt resolution of newly-brought immigration charges and to reduce the 650,000 backlog of cases currently pending in the immigration courts. EOIR's fiscal year 2019 congressional budget justification includes a program increase totaling almost \$65 million to provide funding for immigration judges and support staff, as well as information technology efforts. This increase supports initiatives that implement Presidential and Attorney General priority areas, among other things.



# Parole and Asylum

**Executive Order:** 13767

**Provision:** Section 11

**Provision Summary:**

Section 11 directs the Department of Homeland Security (DHS) to ensure that parole is exercised on a case-by-case basis in accordance with existing statutory criteria, and that asylum referrals and credible and reasonable fear determinations are conducted in a manner consistent with relevant statute and regulation.

**Key Agency(ies) Responsible:**

DHS: U.S. Citizenship and Immigration Services (USCIS)

**Program Context:**

USCIS has discretion to authorize parole for urgent humanitarian reasons or significant public benefit, which it uses to allow an individual, who may be inadmissible or otherwise ineligible for admission to come to the United States for a temporary period. USCIS asylum officers adjudicate asylum applications filed with USCIS, and conduct credible and reasonable fear screenings to determine if certain removable foreign nationals may be eligible to seek particular forms of relief or protection in immigration court.

**Action Overview**

- According to DHS officials, DHS reviewed all existing category parole programs and made recommendations to modify or discontinue the programs based on the directives in Executive Order 13767 and additional guidance from the Secretary of Homeland Security.<sup>71</sup> USCIS officially terminated the Central American Minors Parole Program in August 2017.<sup>72</sup> Additionally, DHS is seeking to rescind the International Entrepreneur Parole program.<sup>73</sup> According to USCIS officials, as of January 2018 DHS leadership was reviewing recommendations for the remaining programs for decision.
- The initial step for certain removable individuals to demonstrate they are eligible to be considered for particular forms of relief or protection from removal in immigration court, is a credible or reasonable fear interview with a USCIS asylum officer.<sup>74</sup> USCIS reviewed its credible and reasonable fear determination guidance and made select modifications pursuant to the executive order. For example, USCIS added language related to evaluating an applicant's credibility based on prior statements made to other DHS officials to establish a credible fear of persecution or torture. USCIS also issued modified guidance and provided additional training to its officers outlining the changes, according to USCIS officials.
- The Secretary directed USCIS to increase the operational capacity of the Fraud Detection and National Security (FDNS) Directorate and other operations to detect and prevent fraud in asylum and benefit adjudication processes. USCIS officials reported that from February 2017 to February 2018, between zero and five FDNS officers were deployed to southern border sites on any given week in response to the executive order.
- A February 2017 DHS memorandum entitled *Implementing the President's Border Security and Immigration Enforcement Improvement Policies*, directed the heads of USCIS, U.S. Customs and Border

<sup>71</sup>USCIS operates several humanitarian, or category, parole programs, through which the agency has special policies for considering parole requests from certain groups. For example, USCIS has special policies for considering parole requests from Haitian nationals with family members that are U.S. citizens or lawful permanent residents, in order to promote family unity and reduce separation time from their relatives in Haiti.

<sup>72</sup>See Termination of the Central American Minors Parole Program, 82 Fed. Reg. 38,926 (Aug. 16, 2017). The Central American Minors Parole Program was established in 2014 to provide special consideration of parole for certain minors in El Salvador, Guatemala, and Honduras, while still in their home country who were determined to be ineligible for refugee status.

<sup>73</sup>See International Entrepreneur Rule: Delay of Effective Date, 82 Fed. Reg. 31,887 (July 11, 2017) (final rule temporarily delaying effective date of International Entrepreneur Rule, 82 Fed. Reg. 5238, while DHS works to rescind the rule pursuant to Executive Order 13767). This delay rule was vacated by the U.S. District Court for the District of Columbia in *Nat'l Venture Capital Ass'n v. Duke*, No. 17-1912, 2017 U.S. Dist. LEXIS 197738 (D.D.C. 2017). Therefore, DHS will accept applications under the International Entrepreneur Rule while moving forward with a notice of proposed rulemaking to rescind it. See Removal of International Entrepreneur Parole Program, 83 Fed. Reg. 24,415 (May 29, 2018). Under the International Entrepreneur Parole program, DHS may use its discretionary parole authority to grant a temporary period of authorized stay, on a case-by-case basis, to foreign start-up entrepreneurs who demonstrate a significant public benefit to the United States.

<sup>74</sup>See 8 U.S.C. §§ 1225(b) (inspection of applicants for admission, including process for determining, and definition of, "credible fear of persecution"), 1228(b) (administrative removal for a foreign national convicted of an aggravated felony at any time after admission), 1231(a)(5) (reinstatement of removal order for illegal reentry); 8 C.F.R. §§ 208.30 (credible fear determinations), 1208.30, 208.31 (reasonable fear determinations), 1208.31, 238.1, 1238.1, 241.8, 1241.8.

Protection, and U.S. Immigration and Customs Enforcement to develop uniform written guidance and training regarding proper processing of unaccompanied alien children.<sup>75</sup> In response, USCIS officials told us DHS and USCIS are assessing the unaccompanied alien children process, guidance, and training and finalizing a modified policy proposal, as of January 2018.

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## Budget Overview

- In fiscal year 2018, USCIS requested and received a total of \$43.4 million in fee spending authority for 143 positions and other expenses associated with changes in operational requirements attributable to the executive orders on border security and immigration enforcement. According to USCIS officials, the staffing resources are for the USCIS FDNS Directorate.<sup>76</sup> USCIS also requested and received \$42 million in fee spending authority for refugee and asylum travel expenses, including travel for applicant interviews. This includes travel costs to the southwest border for asylum officers to interview detainees in support of the executive order, among other things.<sup>77</sup>
- In fiscal year 2019, USCIS requested a total increase of \$287.5 million for all programs, projects, and activities to support changes in operational requirements driven by changes to benefit request receipt volumes and complexity of work, including implementing the executive orders.
- Additional Funds Saved and Expended:
  - According to USCIS officials, USCIS saved approximately \$274,000 from not renewing contracts to administer the Central American Minors Parole Program.
  - According to USCIS documentation, USCIS expended approximately \$70,300 to deploy FDNS officers along the southern border from March 2017 to February 2018.

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<sup>75</sup>Department of Homeland Security, *Implementing the President's Border Security and Immigration Enforcement Improvement Policies*, (February 2017).

<sup>76</sup>USCIS officials noted that a portion of these resources will also be designated for refugee and asylum caseloads, as well other related USCIS workloads.

<sup>77</sup>These funds also cover costs associated with overseas refugee processing. For more information related to the refugee process see Refugee Admissions Program Realignment summary.

# Hiring

**Executive Order:** 13767 and 13768

**Provision:** Section 8 and Section 7

## Provision Summary:

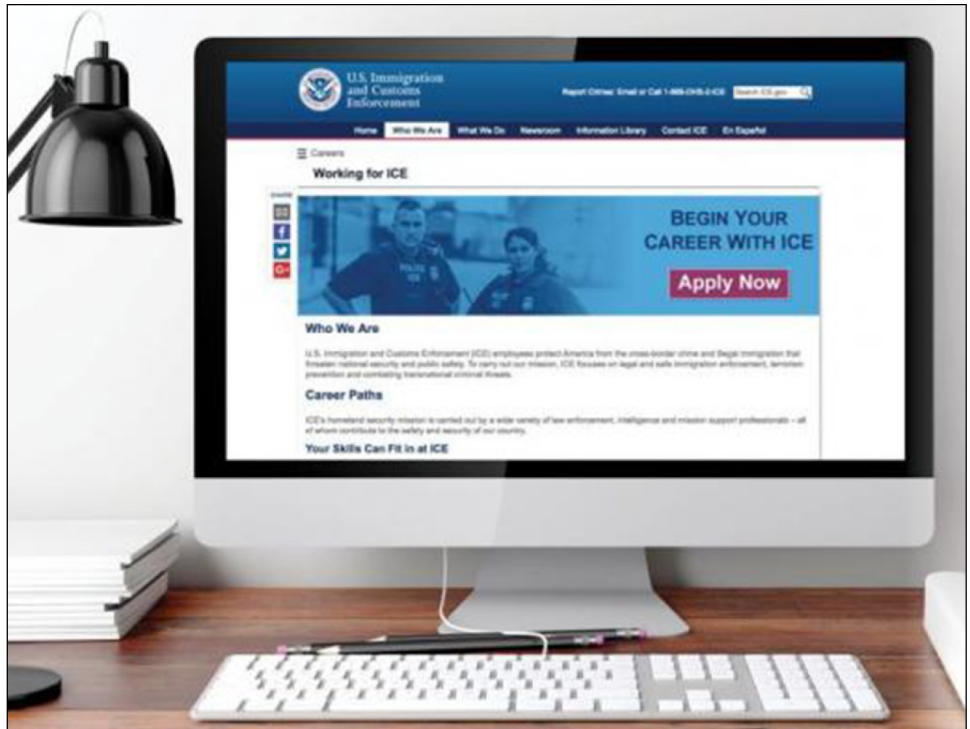
Section 8 of Executive Order 13767 directs U.S. Customs and Border Protection (CBP) to hire 5,000 additional U.S. Border Patrol (Border Patrol) agents. Section 7 of Executive Order 13768 directs U.S. Immigration and Customs Enforcement (ICE) to hire 10,000 additional immigration officers.

## Key Agency(ies) Responsible:

Department of Homeland Security (DHS): CBP and ICE

## Program Context:

CBP and ICE hiring demands are driven by various factors, such as national security objectives, executive-level policies, legislative mandates, and component-specific operational requirements. Border Patrol agents are to respond to, and interdict, cross-border threats and ICE officers are responsible for apprehending individuals within the United States who may be removable for various reasons, including entering the country illegally or being convicted of certain crimes.



Source: U.S. Immigration and Customs Enforcement. | GAO-18-470

## Action Overview

DHS has taken a number of actions to implement the executive order hiring provisions. Specifically, DHS requested and the Office of Personnel Management approved a number of changes to assist DHS and its components with the executive order hiring directives. These changes include granting CBP and ICE direct hire authority and a special salary rate for polygraphers, among others.<sup>78</sup> DHS's Office of the Chief Human Capital Officer and DHS components' human capital offices also began additional hiring planning, such as refining component-level hiring plans, coordinating on potential joint hiring events, and targeting specific recruitment efforts, such as military veterans. CBP and ICE have also taken the following additional actions:

- **CBP:** In November 2017, CBP awarded a contract not to exceed \$297 million to Accenture Federal Service LLC to help with law enforcement hiring for all CBP components. The contract is structured so the contractor receives a set dollar amount for each law enforcement officer hired—80 percent for each final offer letter and 20 percent for each law enforcement officer who enters on duty.<sup>79</sup> The contractor is to assist CBP

<sup>78</sup>Direct-Hire Authority enables an agency to hire, after public notice is given, any qualified applicant without regard to 5 U.S.C. §§ 3309-3318, 5 C.F.R. pt. 211, or 5 C.F.R. pt. 337, subpt. A. A direct-hire authority expedites hiring by eliminating competitive rating and ranking, veterans' preference, and other procedures.

<sup>79</sup>The amount awarded per hire varies based on contract year and type of hire. For example, in the first 2 years, Accenture is to receive a total of approximately \$40,000 for each Border Patrol agent hired.

in hiring 7,500 qualified agents and officers, including 5,000 Border Patrol agents, 2,000 CBP officers, and 500 Air and Marine Interdiction agents over 5 years.<sup>80</sup> CBP expects Accenture to be fully operational and effectively provide surge hiring capacity by June 2018, according to CBP officials.

- **ICE:** According to ICE Office of Human Capital (OHC) officials, OHC is ensuring policies and procedures are in place so that ICE is ready to begin hiring additional immigration officers and support staff if funds are appropriated. In January 2018, ICE OHC also issued a contract solicitation for recruitment, market research, data analytics, marketing, hiring, and onboarding activities. ICE OHC sought to procure comprehensive hiring and recruitment services to assist ICE OHC in meeting the demands required to achieve the executive order's hiring goals and develop efficiencies to current OHC processes. ICE aimed to have a similar pricing structure as CBP's Accenture contract, according to the solicitation. Specifically, according to the solicitation, the yet to be selected contractor would receive a set dollar amount for each frontline officer hired—80 percent for each preliminary offer letter and 20 percent for each frontline officer who enters on duty.<sup>81</sup> The contractor would assist ICE in hiring 10,000 law enforcement agents, including 8,500 deportation officers and 1,500 criminal investigators. It would also assist in the hiring of approximately 6,500 support personnel positions. In May 2018, the contract solicitation was cancelled; however, the government anticipates re-soliciting the requirement in fiscal year 2019. According to the contract cancellation notice and an ICE OHC official, DHS cancelled the contract due to delays associated with the fiscal year 2018 budget and hiring timelines, as well as the limited number of additional ICE positions funded in the fiscal year 2018 budget. In the interim, ICE is partnering with the Office of Personnel Management to meet the executive order's hiring goals and develop efficiencies to current OHC processes, according to ICE officials.

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## Budget Overview

- Because Executive Orders 13767 and 13768 were issued during fiscal year 2017, DHS submitted a budget amendment and requested supplemental appropriations to help address the needs of the department in support of executive order implementation. The request included funding for DHS agencies to begin building the administrative capacity necessary to recruit, hire, train and equip the additional 5,000 Border Patrol agents and 10,000 ICE officers. The Federal Law Enforcement Training Centers (FLETC), which provides training to law enforcement professionals who protect the homeland, including any new ICE and CBP personnel hired as result of the executive orders, also requested funds to support these efforts.
- On May 5, 2017, CBP received an additional appropriation of \$65.4 million to improve hiring processes for Border Patrol agents, CBP officers, and Air and Marine Operations personnel, and for officer relocation enhancements.<sup>82</sup> Of the \$65.4 million appropriated in fiscal year 2017, CBP obligated \$18.8 million and expended \$14.1 million as of January 2018. While ICE also received additional funding for custody operations, alternatives to detention, and transportation and removal, it did not receive supplemental funds in fiscal year 2017 specifically for hiring. DHS also requested funds for CBP, ICE, and FLETC hiring and training in fiscal year 2018 and fiscal year 2019. For additional details, see table 9.

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<sup>80</sup>As a result of the directive to hire 5,000 additional Border Patrol agents, Border Patrol is aiming to have 26,370 agents, 5,000 above the fiscal year 2016 statutorily-established level, by the end of fiscal year 2021. In recent years however, CBP has not been able to attain statutorily-established minimum staffing levels for its Border Patrol agent positions target. Border Patrol finished fiscal year 2017 with 19,437 Border Patrol agents, or nearly 7,000 agents below the new target.

<sup>81</sup>As of May 2018, this contract had not been awarded; therefore the amount awarded per hire has not been stipulated.

<sup>82</sup>Pub. L. No. 115-31, div. F, tit. VI, 131 Stat. at 433.



**Table 9: Department of Homeland Security (DHS) Funds Requested and Appropriated for Executive Order Hiring, Fiscal Years (FY) 2017 through 2019**

<b>U.S. Customs and Border Protection (CBP)</b>	
FY17 Supplemental Appropriations (requested)	\$65 million to build hiring capacity to recruit and onboard 5,000 U.S. Border Patrol (Border Patrol) agents
FY17 Supplemental Appropriations (funded)	\$65.4 million to improve hiring processes for CBP and for relocation enhancements
FY18 requested	\$100 million for 500 additional Border Patrol agents
FY18 Appropriations (funded)	\$10 million above the request for CBP recruitment and retention and \$10 million above the request for Border Patrol agent relocation incentives <sup>a</sup>
FY19 requested	\$164 million for 750 additional Border Patrol agents
<b>U.S. Immigration and Customs Enforcement (ICE)</b>	
FY17 Supplemental Appropriations (requested)	\$76 million to build hiring capacity to recruit and onboard 10,000 ICE agents and officers
FY17 Supplemental Appropriations (funded)	No funds specifically for executive order hiring
FY18 requested	\$185.9 million for 1,000 additional ICE law enforcement officers and agents and 606 support staff
FY18 Appropriations (funded)	\$15.7 million for 65 agents and 70 attorneys and support staff
FY19 requested	\$571 million for 2,000 additional ICE law enforcement officers and agents
<b>Federal Law Enforcement Training Centers (FLETC)</b>	
FY17 Supplemental Appropriations (requested)	\$25 million for the hiring and training of instructors to support law enforcement officer hiring and training within CBP and ICE
FY17 Supplemental Appropriations (funded)	No funds specifically for executive order hiring
FY18 requested	\$29 million for training 1,000 additional ICE officers and 500 additional Border Patrol agents in response to the executive orders
FY18 Appropriations (funded)	No funds specifically for executive order hiring
FY19 requested	\$25.7 million above the FY18 request for training new Border Patrol agents and ICE immigration enforcement officers

Source: Public Law 115-31, Public Law 115-141, and DHS budget documentation. | GAO-18-470

<sup>a</sup>Additionally, in fiscal year 2018, approximately \$204 million was redirected within CBP from salaries and expenses to enhance CBP-wide recruitment and retention activities as well as other operational requirements. See Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, 132 Stat. 348, and accompanying Explanatory Statement, 164 Cong. Rec. H2045, H2547 (daily ed. March 22, 2018). According to DHS officials, approximately \$8.2 million was also provided above the request for 351 new CBP officers (the executive orders did not include provisions related to hiring CBP officers).

- According to FLETC officials, the total average cost to provide basic law enforcement training varies by agencies and position, as shown in table 10. FLETC officials noted their partners also provide additional training unique to their missions, which is not included in the costs below.

**Table 10: Average Cost Estimates to Provide Basic Law Enforcement Training at Federal Law Enforcement Training Centers (FLETC)**

Component	Position	Average Cost Per Agent Incurred by Component	Average Cost Per Agent Total
U.S. Immigration and Customs Enforcement (ICE)	ICE Enforcement and Removal Deportation Officer	\$26,000 incurred by ICE	\$38,000
		\$12,000 incurred by FLETC	
ICE	ICE Homeland Security Investigations Criminal Investigator	\$35,800 incurred by ICE	\$57,300
		\$21,500 incurred by FLETC	
U.S. Customs and Border Protection (CBP)	U.S. Border Patrol agent	\$11,000 incurred by CBP	\$29,000
		\$18,000 incurred by FLETC	

Source: FLETC. | GAO-18-470

Note: According to Department of Homeland Security officials, the costs in this table do not represent the total costs to train CBP and ICE personnel.



- CBP officials further noted that they introduced new language into Operation Stonegarden grant guidance that allows the use of grant funding to support CBP-identified, 287(g) law enforcement operational activities.<sup>84</sup> According to CBP and ICE officials, efforts to develop a 287(g) enforcement model that can be used for this purpose are pending.
- According to ICE officials, the agency is considering developing a program under which designated local law enforcement officers would be trained and authorized to serve and execute administrative warrants for individuals who are in violation of U.S. immigration laws at the time they are released from state criminal custody. ICE officials indicated that program participants would have limited authority under 287(g). For example, they would not interview individuals regarding nationality and removability, lodge detainees, or process individuals for removal. ICE has not yet finalized the program and it may evolve as ICE further develops the program, according to ICE officials.
- ICE is also leveraging an existing Basic Ordering Agreement, a procurement tool to expedite acquisition of a substantial, but presently unknown, quantity of supplies or services, according to ICE officials.<sup>85</sup> A Basic Ordering Agreement is not a contract, but rather, is a written instrument of understanding, negotiated between ICE and state and local jurisdictions, to house detainees upon ICE's issuance and their acceptance of an Immigration Detainer and either a Warrant for Arrest of Alien or Warrant of Removal. For any order placed under the agreement, ICE will reimburse the provider, such as a state or local jurisdiction, for up to 48 hours of detention, under applicable regulations. The rate will be fixed at \$50.00 for up to 48 hours of detention. No payment will be made for any detention beyond 48 hours.
- The Secretary of Homeland Security vested authority in CBP to accept state services to carry out certain immigration enforcement functions pursuant to Title 8, United States Code Section 1357(g). According to CBP officials, CBP also joined a 287(g) Program Advisory Board, which reviews and assesses ICE field office recommendations about pending 287(g) applications.

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## Budget Overview

- Participation in the 287(g) program is expected to expand further in fiscal years 2018 and 2019, according to ICE. Additionally, ICE anticipates further increase in the number of 287(g) memorandums of agreement in fiscal years 2018 and 2019.
  - In fiscal year 2018, ICE requested \$24.3 million for ICE 287(g) program funding. According to the explanatory statement accompanying the Consolidated Appropriations Act, 2018, the 287(g) program was fully funded at the requested level.<sup>86</sup>
  - In fiscal year 2019, ICE requested \$75.5 million for ICE 287(g) program funding.<sup>87</sup>

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<sup>84</sup>The Operation Stonegarden program supports enhanced cooperation and coordination among local, tribal, territorial, state, CBP, U.S. Border Patrol and other federal law enforcement agencies. It also funds investments in joint efforts to secure U.S. borders along routes of ingress from international borders to include travel corridors in states bordering Mexico and Canada, as well as states and territories with international water borders.

<sup>85</sup>See 48 C.F.R. § 16.703.

<sup>86</sup>164 Cong. Rec. at H2552.

<sup>87</sup>For fiscal years 2018 and 2019, the requested funds include all ICE funding for 287(g) program including funding across various programs, projects, and activities.

# Prosecution

## Action Overview

### DOJ

- The Attorney General released a memorandum with guidance for prioritizing certain immigration-related criminal offenses on April 11, 2017.<sup>88</sup> For example, the memorandum requires that federal prosecutors consider prosecution of foreign nationals who illegally re-enter the United States after prior removal, and prioritize defendants with criminal histories. The memorandum states that further guidance and support of executing the increased priority on criminal immigration enforcement is forthcoming.
- By the end of April 2017, all 94 judicial districts designated one AUSA each to be the district border security coordinator, according to Office of the Deputy Attorney General officials. The border security coordinators are to oversee investigations and prosecutions and ensure that they are in line with the guidance in the Attorney General's April 2017 memorandum.
- Office of the Deputy Attorney General officials told us that the southern border districts developed guidelines for prioritizing misdemeanor cases involving individuals illegally entering the United States for the first time. However, according to these officials, southern border districts developed these guidelines based on an initial high volume of apprehensions, and when apprehensions decreased the guidelines were no longer necessary and never published.
- Beginning in late June 2017, EOUSA detailed three AUSAs to both the Western District of Texas and Arizona, and two AUSAs each to the Southern District of California, the District of New Mexico, and the Southern District of Texas, for a total of 12 details according to DOJ officials. The first round of details lasted for 6 months, and EOUSA extended the details of one AUSA at each southern border district for an additional 6 months. DOJ officials told us that EOUSA will continue to evaluate the need for additional details along the southern border based on the needs of the districts, as determined by the number of DHS apprehensions. According to DOJ officials, implementation of these provisions is ongoing and will depend largely upon DHS executive order actions—for instance, as DHS hires more enforcement personnel, criminal immigration cases may increase which could spur a need for more AUSAs.

### DHS

- The Secretary of Homeland Security released a memorandum with guidance on the enforcement of immigration laws in the United States on February 20, 2017.<sup>89</sup> In response to this memorandum, ICE's Office of the Principal Legal Advisor sent guidance to its attorneys directing them to prioritize legal services supporting the timely removal of foreign

**Executive Order:** 13767 and 13768

**Provision:** Sections 13 and 11

### Provision Summary:

Section 13 of Executive Order 13767 directs the Department of Justice (DOJ) to establish prosecution guidelines and allocate appropriate resources to ensure that federal prosecutors prioritize offenses with a nexus to the southern border.

Section 11 of Executive Order 13768 directs DOJ and the Department of Homeland Security (DHS) to develop and implement a program to ensure that adequate resources are devoted to prosecuting criminal immigration offenses, and to develop cooperative strategies to reduce the reach of transnational criminal organizations and violent crime.

### Key Agency(ies) Responsible:

DOJ: Executive Office for United States Attorneys (EOUSA)

DHS: Immigration and Customs Enforcement (ICE)

### Program Context:

EOUSA provides executive and administrative support for United States Attorneys and Assistant United States Attorneys (AUSAs). AUSAs conduct trial work, as prosecutors, in which the United States is a party, including prosecution of criminal immigration offenses.

ICE litigates charges of removability against foreign nationals and conducts criminal investigations, including investigations of immigration fraud.

<sup>88</sup>Department of Justice, *Memorandum for All Federal Prosecutors: Renewed Commitment to Criminal Immigration Enforcement* (April 2017).

<sup>89</sup>Department of Homeland Security, *Enforcement of the Immigration Laws to Serve the National Interest* (February 2017).

nationals in accordance with Executive Order 13768. The guidance directed ICE to review all cases previously administratively closed based on prosecutorial discretion to determine whether the basis for closure remains appropriate under DHS’s enforcement priorities.<sup>90</sup> The guidance also directed ICE to coordinate with the Executive Office for Immigration Review to ensure that foreign nationals charged as removable and who meet the enforcement priorities remain on active immigration court dockets and that their cases are completed as expeditiously as possible.

- In response to the executive orders, ICE Homeland Security Investigations officials stated that the agency began to focus more of its resources on the investigation and criminal prosecution of immigration fraud. ICE Homeland Security Investigations added five new Document and Benefit Fraud Task Forces throughout the nation and directed field offices to increase staffing of task forces. Additionally, ICE is in the process of combining five Benefit Fraud Units into an immigration fraud center—the National Lead Development Center—that will serve as a new centralized entity that will refer cases to the task forces for enforcement action.

## Budget Overview

### DOJ

A summary of DOJ budget increase requests, appropriations, and expenditures related to prosecution priorities in the executive orders that we identified can be found in table 11.

**Table 11: Department of Justice Executive Office for United States Attorneys (EOUSA) Budget and Cost information Related to Executive Order Prosecution Priorities**

Fiscal years 2017 and 2018 expenditures	Fiscal year 2018 budget request	Fiscal year 2018 appropriation	Fiscal year 2019 budget request
EOUSA expended approximately \$358,550 out of regular operating funds, according to Department of Justice officials, for 12 AUSA details from June 2017 through December 2017. <sup>a</sup>	EOUSA requested \$7.2 million for fiscal year 2018 to hire 70 new attorneys partially attributed to the President’s executive orders on border security and immigration.	According to DOJ officials, the agency received sufficient funding to hire 70 new attorneys. In addition, officials noted that DOJ also received sufficient funding to hire paralegal positions included in the agency’s fiscal year 2019 request.	EOUSA requested \$1.1 million for fiscal year 2019 for 17 paralegal support positions to support the additional 70 immigration enforcement prosecutors from the fiscal year 2018 request.

Source: GAO summary of Department of Justice and federal budget information | GAO-18-470

<sup>a</sup>Fiscal year 2018 data are as of February 2018, and as a result do not represent full fiscal year 2018 expenditures for detailing attorneys to the southern border.

### DHS

The fiscal year 2018 President’s budget request included \$19.3 million for 195 attorney positions in ICE’s Office of the Principal Legal Advisor.<sup>91</sup> According to ICE officials, while the Consolidated Appropriations Act, 2018, included funds for 70 positions for the Homeland Security Investigations Law Division, it did not include funds for additional attorney positions for immigration litigation within the Office of the Principal Legal Advisor.<sup>92</sup>

The fiscal year 2019 President’s budget request included \$39.7 million for additional attorney resources in ICE’s Office of the Principal Legal Advisor.<sup>93</sup>

<sup>90</sup>During removal proceedings, DHS’s exercise of prosecutorial discretion has generally referred to requesting that an immigration judge administratively close a case because the respondent does not meet enforcement priorities. On May 17, 2018, the Attorney General determined that, except as specifically provided in regulation or a judicial settlement, immigration judges and the Board of Immigration Appeals lack general authority to administratively close removal proceedings. For cases which were administratively closed without requisite authority, if DHS or the respondent seeks reopening, the case shall be recalendared. See *Matter of CASTRO-TUM*, 27 I. & N. Dec. 271 (AG 2018).

<sup>91</sup>This request for 195 attorney positions is included in ICE’s overall fiscal year 2018 request for additional executive order related personnel (see Hiring summary).

<sup>92</sup>164 Cong. Rec. at H2550 (nearly \$5 million for attorneys and associated staff to support Homeland Security Investigations Law Division).

<sup>93</sup>This request for additional attorney resources is included in ICE’s overall fiscal year 2019 request for additional executive order related personnel (see Hiring summary).



# Enforcement Priorities

**Executive Order:** 13768

**Provision:** Sections 5 and 10

**Provision Summary:**

Sections 5 and 10 direct the Department of Homeland Security (DHS) to take action related to immigration enforcement. Specifically, Section 5 directs DHS to prioritize the removal of certain categories of removable foreign nationals. Section 10 directs DHS to terminate the Priority Enforcement Program (PEP) and reinstitute Secure Communities, among other things.

**Key Agency(ies) Responsible:**

DHS: U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP)

**Program Context:**

Under PEP (from 2015 to 2017), ICE issued a request for detainer (with probable cause of removability) or information or transfer, for a priority removable individual, such as one posing a threat to national security or public safety, including a foreign national convicted of a felony, among others, under DHS's former tiered civil enforcement categories. Under Secure Communities, ICE may issue detainers for removable individuals charged, but not yet convicted, of criminal offenses, in addition to individuals subject to a final order of removal whether or not they have a criminal history.



Source: U.S. Immigration and Customs Enforcement. | GAO-18-470

## Action Overview

- Pursuant to Executive Order 13768, the Secretary of Homeland Security terminated PEP and reinstituted the Secure Communities program. As such, DHS is no longer required to utilize a tiered approach to civil immigration enforcement with direction to dedicate resources to those deemed of highest priority. Instead, under Section 5 of the executive order, various categories of removable individuals are general priorities for removal, and DHS personnel may initiate enforcement actions against all removable persons they encounter. Further, the DHS memorandum implementing this executive order allows ICE, CBP, and USCIS to allocate resources to prioritize enforcement activities within these categories, such as by prioritizing enforcement against convicted felons or gang members.
- As part of this effort, ICE reported it reviewed policies, regulations, and forms relevant to enforcement priorities. ICE subsequently rescinded prior enforcement priority guidance and issued new guidance directing application of the new approach to immigration enforcement prioritization. Additionally, ICE eliminated existing forms and created a new form to place detainers on foreign nationals who have been arrested on local criminal charges and for whom ICE possesses probable cause to believe that they are removable from the United States, so that ICE can take custody of such individuals upon release.

- According to ICE officials, more than 43,300 convicted criminal aliens have been identified and removed through Secure Communities from January 25, 2017 through the end of fiscal year 2017.
- Pursuant to Executive Order 13768 and in accordance with the Secretary of Homeland Security's memorandum entitled, *Enforcement of the Immigration Laws to Serve the National Interest*,<sup>94</sup> ICE's Enforcement and Removal Operations (ERO) expanded the use of the Criminal Alien Program (CAP) by increasing the use of Criminal Alien Program Surge Enforcement Team (CAPSET) operations, traditional CAP Surge operations, and the Institutional Hearing Program.<sup>95</sup> Specifically, ICE took the following actions:
  - ICE ERO conducted four CAPSET operations in Louisiana, Georgia, and California in fiscal year 2017, resulting in a total of 386 encounters, 275 detainees, and 261 charging documents issued, according to ICE documentation.<sup>96</sup>
  - ICE ERO field offices conducted CAP Surge operations, which concluded in March 2017. According to ICE documentation, the operations collectively resulted in 2,061 encounters, 668 arrests, 1,307 detainees issued, and 614 charging documents issued.
  - ICE, along with the Department of Justice's Executive Office for Immigration Review and the Federal Bureau of Prisons, expanded the number of Institutional Hearing Program sites by nine, from 12 to 21. As of January 22, 2018, five of the nine Institutional Hearing Program expansion sites were operational.
- ICE officials reported that ICE also detailed over 30 percent more officers (79 officers) to support Community Shield efforts, an international law enforcement initiative to combat the growth and proliferation of transnational criminal street gangs, prison gangs, and outlaw motorcycle gangs throughout the United States.

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## Budget Overview

- According to ICE officials, CAP used existing resources in fiscal year 2017 to support the efforts required by Executive Order 13768.
- ICE also requested funds in fiscal years 2018 and 2019 for CAP. Specifically, ICE stated in its fiscal year 2018 and 2019 congressional budget justifications that CAP performs its duties in accordance with immigration enforcement priorities defined by Executive Order 13768.
  - In fiscal year 2018, ICE requested \$412.1 million for CAP. The Consolidated Appropriations Act, 2018, funded \$319.4 million for CAP, \$92.6 million less than requested.<sup>97</sup>
  - In fiscal year 2019, ICE requested \$619.1 million for CAP.
- Additionally, according to the ICE fiscal year 2018 and fiscal year 2019 congressional budget justifications, the reinstitution of Secure Communities and expansion of federal-state agreements under 287(g) is expected to result in significant increases to apprehensions and removals within the United States. Subsequently ICE stated it requires additional detention and deportation officers and agents to handle this increased workload, which was incorporated as part of its request for funds to hire new law enforcement officers for the 10,000 directed in Executive Order 13768 (see Hiring summary). CAP also employs the 287(g) program in combination with Secure Communities (see Federal-State Agreements and Detention summaries).

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<sup>94</sup>Department of Homeland Security, *Enforcement of the Immigration Laws to Serve the National Interest*, (February 2017).

<sup>95</sup>CAP provides ICE-wide direction and support in the biometric and biographic identification, arrest, and removal of priority aliens who are incarcerated within federal, state, and local prisons and jails, as well as at-large criminal aliens that have circumvented identification. The Institutional Hearing Program provides for the adjudication of immigration cases involving respondents who are incarcerated in federal, state, and local institutions for criminal offenses. Traditional CAP Surge operations focus deployment of CAP resources on conducting operations involving incarcerated aliens or criminal aliens that have circumvented identification. CAP Surge Enforcement Teams allow ERO field offices to concentrate resources in state, local, or federal detention facilities in order to identify and process large numbers of criminal aliens prior to their release from custody in an efficient manner.

<sup>96</sup>ICE encounters include, among other circumstances, individuals who are arrested and taken into ICE custody pursuant to the agency's civil immigration authorities. ICE may serve a charging document, known as a Notice to Appear, ordering an individuals' appearance before an immigration judge to respond to removal charges.

<sup>97</sup>See 164 Cong. Rec. at H2550.

# Sanctuary Jurisdictions (Sharing Immigration Status Information)

**Executive Order:** 13768

**Provision:** Section 9

## **Provision Summary:**

Section 9 directs the Department of Justice (DOJ) and the Department of Homeland Security (DHS) to ensure that jurisdictions in willful noncompliance with 8 U.S.C. § 1373 (section 1373) are ineligible to receive federal grants. The section also directs DOJ to take appropriate enforcement action against any entity that violates section 1373, or which has in effect a policy, statute, or practice that prevents or hinders the enforcement of federal law.

## **Key Agency(ies) Responsible:**

DOJ: Office of Justice Programs

DHS: U.S. Immigration and Customs Enforcement (ICE)

## **Program Context:**

The Attorney General determined that Section 9 will be applied solely to DOJ or DHS federal grants for jurisdictions willfully refusing to comply with section 1373. Under section 1373, a federal, state, or local government entity or official may not prohibit, or in any way restrict the exchange of information regarding citizenship or immigration status with DHS.

## **Action Overview**

### **DOJ**

- The Attorney General issued a May 22, 2017, memorandum clarifying the applicability of Section 9 of the executive order, which directs DOJ and DHS to ensure jurisdictions willfully prohibiting immigration status-related communication with the federal government (referred to as sanctuary jurisdictions) are not eligible for federal grants, and requiring jurisdictions applying for certain DOJ grants to certify their compliance with federal law, including section 1373. On November 20, 2017, enforcement of Executive Order 13768, section 9(a), was permanently enjoined by federal court order.<sup>98</sup> According to DOJ officials, no subsequent action has been taken to implement section 9(a).
- Prior to issuance of Executive Order 13768, the DOJ Inspector General conducted a compliance review of certain jurisdictions relative to 8 U.S.C. § 1373, and issued a report in May 2016 finding that 10 jurisdictions raised compliance concerns.<sup>99</sup> In response, DOJ placed a special condition on certain fiscal year 2016 grant awards, requiring recipients to submit an assessment of their compliance with section 1373. In November 2017, as part of the section 1373 compliance effort predating Executive Order 13768, DOJ sent letters to 29 jurisdictions expressing concern that they may not be in compliance with section 1373, and requesting responses regarding compliance.<sup>100</sup> In January 2018, DOJ sent 23 follow-up demand letters to jurisdictions seeking further documents to determine whether they are unlawfully restricting information sharing by their law enforcement officers with federal immigration authorities, and stating that failure to respond will result in records being subpoenaed.

<sup>98</sup>As of April 2018, Section 9(a) remained permanently enjoined nationwide by the U.S. District Court for the Northern District of California, thereby prohibiting DOJ from taking actions to deny jurisdictions eligibility for federal grants pursuant to such section. See *Cty. Of Santa Clara v. Trump*, 275 F. Supp. 3d 1196 (N.D. Cal. Nov. 20, 2017) (the court granted the plaintiffs' motion for summary judgement regarding section 9(a) of Executive Order 13768, finding that it was unconstitutional on its face as a violation of the separation of powers doctrine and plaintiffs' tenth and 5th amendment rights).

<sup>99</sup>The May 2016 report also provided recommendations, such as providing clear guidance as to whether jurisdictions are expected to comply with section 1373, and requiring grant applicants to provide certifications specifying the jurisdiction's compliance with section 1373 (*Department of Justice Referral of Allegations of Potential Violations of 8 U.S.C. §1373 by Grant Recipients*).

<sup>100</sup>See *City of Chicago v. Sessions*, 264 F. Supp. 3d 933 (N.D. Ill. 2017), *aff'd*, 2018 U.S. App. LEXIS 9862 (7th Cir. 2018) (While the U.S. District Court for the Northern District of Illinois granted a nationwide preliminary injunction against the Attorney General's imposition of two immigration-related "notice" and "access" conditions on the Byrne Justice Assistance Grants Program awards for fiscal year 2017, the court determined that the Attorney General has statutory authority to require the city to certify compliance with 8 U.S.C. § 1373 as a grant condition, and therefore denied Chicago's motion for a preliminary injunction in that regard).



## DHS

- ICE developed weekly Declined Detainer Outcome Reports detailing jurisdictions with the highest volume of declined detainers and a list of sample crimes suspected or determined to have been committed by released individuals.<sup>101</sup> According to ICE officials, ICE identified data processing errors and incorrect detainer information and is working to correct these issues. ICE officials noted that they temporarily suspended the reports, and have not yet determined a specific time frame for future publications.
- DHS reviewed all DHS grant programs to determine which programs could be conditioned to require compliance with section 1373 and plans to provide this information to the Office of Management and Budget, according to DHS officials.

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## Budget Overview

- DOJ has not obligated, expended, or requested any additional funds to implement Executive Order 13768, section 9(a).
- The fiscal year 2019 President's budget proposed to amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to condition DHS and DOJ grants and cooperative agreements on state and local governments' cooperation with immigration enforcement.

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<sup>101</sup>A detainer is a request from ICE to a government enforcement agency to provide ICE with a notice before a removable alien is released from criminal custody, and that the alien is held for a longer period of time in custody. In declining a detainer, a law enforcement agency will release a potentially removable individual upon conclusion of their term of imprisonment, instead of continuing to hold them in custody pursuant to a detainer request.

**Executive Order:** 13780

**Provision:** Sections 2 and 5

**Provision Summary:**

Section 2 directed multiple agencies, including the Department of State (State) and Department of Homeland Security (DHS), to conduct a worldwide review to identify any additional information needed from each foreign country to adjudicate immigration benefit applications and ensure that individuals applying for a visa or other immigration benefit are not a security or public safety threat. It also directed the agencies to send a report of the findings of the worldwide review to the President. This section further established visa entry restrictions applicable to foreign nationals from Iran, Libya, Somalia, Sudan, Syria, and Yemen for a 90-day period. It also stated that agencies, including State and DHS, could continue to submit additional countries for inclusion in visa entry restrictions.

Section 5 required agencies, including State, DHS, and the Department of Justice (DOJ), to develop a uniform baseline for screening and vetting to identify individuals seeking to enter the United States on a fraudulent basis or who support terrorism or otherwise pose a danger to national security or public safety.

**Key Agency(ies) Responsible:**

State: Bureau of Consular Affairs (CA), DHS, and DOJ

**Program Context:**

CA provides consular services in reviewing and adjudicating visa applications for those seeking to enter the United States. DHS adjudicates visa petitions, and DHS and DOJ also play roles in screening and vetting applicants. DHS and DOJ, along with State, are responsible for implementing the enhanced screening and vetting protocols established under the executive order.

# Visa Entry Restrictions and Enhanced Screening and Vetting

## Action Overview

### Section 2

- An interagency working group comprised of State, DHS, the Office of the Director of National Intelligence, and National Security Council staff was formed to conduct the worldwide review to identify additional information needed from foreign countries regarding their nationals applying for U.S. immigration benefits, according to State officials. The DHS-led working group developed a set of criteria for inter-governmental information sharing for immigrant and nonimmigrant visa applications, which included three main categories: (1) identity management information, (2) national security and public-safety information, and (3) national security and public safety risk factors. The working group identified current standards and best practices for information collection and sharing under various categories of visas to create a core list of information needed from foreign governments to aid in immigration vetting in the visa adjudication process.
- State engaged with foreign governments on their information sharing practices based on the criteria identified above. In July 2017, State directed its posts to inform their respective host governments of the new information-sharing criteria and request that host governments provide the required information or develop a plan to do so. CA directed posts to engage more intensively with countries whose information-sharing and identity-management practices were preliminarily deemed “inadequate” or “at risk” and submit an assessment of mitigating factors or specific interests that should be considered in the deliberations regarding any travel restrictions. According to officials, State and its posts will continue to engage with foreign countries to address information-sharing and identify management deficiencies.
- The visa entry restrictions for nationals of listed countries lasted from June 29, 2017 through September 24, 2017. During the implementation period, if an applicant was found ineligible for a visa on other grounds unrelated to the executive order, such as prior criminal activity or immigration violations, the applicant would be refused the visa on those grounds, according to State officials. If the applicant was found to be otherwise eligible for the visa and did not qualify for an exemption or a waiver under the executive order, he or she would be refused on the basis of the executive order. CA sent several cables to posts with guidance on implementing the 90-day travel restriction, including operational guidance and updated guidance following court decisions. CA also offered trainings to consular posts on implementation of the order.

A series of legal challenges ultimately led to the June 26, 2017 Supreme Court decision prohibiting enforcement of entry restrictions against foreign nationals who could credibly claim a bona fide relationship with a person or entity in the United States.<sup>102</sup>

- On September 24, 2017, pursuant to section 2(e) of Executive Order 13780, the President issued Presidential Proclamation 9645, which established conditional restrictions on U.S. entry for certain categories of nationals from Chad, Iran, Libya, North Korea, Syria, Venezuela, Yemen and Somalia, for an indefinite period.<sup>103</sup>

## Section 5

- According to State officials, State, DHS, DOJ, and other agencies formed a working group and developed a uniform baseline for screening and vetting standards and procedures to ensure ineligible individuals are not permitted to enter the United States, and are implementing the new requirements. The working group conducted a review of the visa screening and vetting process and established uniform standards for (1) applications, (2) interviews, and (3) system security checks, including biographic and biometric checks. According to State officials, for applications, the group identified data elements against which applicants are to be screened and vetted. For interviews, the working group established a requirement for all applicants to undergo a baseline uniform national security and public safety interview. The working group modeled its interview baseline on elements of the refugee screening interview.
- As of June 2017, State collected most of the data elements online for immigrant and nonimmigrant visas, according to State officials.
- The President issued a memorandum on February 6, 2018, directing DHS, in coordination with State, DOJ, and the Office of the Director of National Intelligence to establish a national vetting center to coordinate agency vetting efforts to identify individuals who pose a threat to national security, border security, homeland security, and public safety. The National Vetting Center will be housed in DHS, and will leverage the capabilities of the U.S. intelligence community to identify, and prevent entry of, individuals that may pose a threat to national security. On February 14, 2018, the Secretary of Homeland Security appointed a director for the National Vetting Center. The Secretary also delegated authorities of the National Vetting Center to the Commissioner of U.S. Customs and Border Protection.

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## Budget Overview

- State officials said that personnel worked overtime to implement Section 2 and the following Presidential Proclamation, but did not identify monetary costs or budget increases associated with implementation. DHS also dedicated several full-time staff positions to developing and implementing enhanced screening and vetting protocols, and DHS employees worked overtime to implement these provisions, according to officials.

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<sup>102</sup>See *Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080 (2017) (per curiam).

<sup>103</sup>82 Fed. Reg. 45,161 (Sept. 27, 2017). Proclamation 9645 expanded the scope and duration of nationality-based visa entry restrictions from six to eight countries (removing Sudan, and adding Chad, North Korea, and Venezuela), and from a 90-day to an indefinite period for the revised list of countries; and contained periodic reporting requirements related to visa screening and vetting, among other things. Beginning on December 8, 2017, the Proclamation's visa entry restrictions have been fully implemented pursuant to the Supreme Court's December 4, 2017, orders staying the lower courts' injunctions (*Trump v. Int'l Refugee Assistance Project*, 138 S. Ct. 542, 2017 U.S. LEXIS 7358 (2017); *Trump v. Hawaii*, 138 S. Ct. 542, 2017 U.S. LEXIS 7357 (2017)), while the Supreme Court reviews Hawaii and Maryland federal district court rulings generally upheld by the Ninth (*Hawaii v. Trump*, 878 F.3d 662 (9th Cir. 2017) (per curiam)), and Fourth Circuits (*Int'l Refugee Assistance Project v. Trump*, 883 F.3d 233 (4th Cir. 2018)), respectively. See *Trump v. Hawaii*, 138 S. Ct. 923(2018) (The Supreme Court granted the government's certiorari petition and will therefore consider, and issue an opinion on the merits of, the Ninth Circuit's decision). On April 10, 2018, the President issued a proclamation announcing that because Chad has improved its identity-management and information sharing practices sufficiently to meet U.S. baseline security standards, nationals of Chad will again be able to receive visas for travel to the United States. Maintaining Enhanced Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats, Proclamation No. 9723, 83 Fed. Reg. 15,937 (April 13, 2018) (issued April 10).

# Refugee Admissions Program Realignment

**Executive Order:** 13780

**Provision:** Section 6

## Provision Summary:

Section 6 directed the Department of State (State) to suspend travel of refugees seeking to enter the United States, and the Department of Homeland Security (DHS) to suspend adjudications on refugee applications, for 120 days. Section 6 further ordered that during the 120-day period, State, together with DHS, and the Office of the Director of National Intelligence review the refugee application and adjudication process to identify and implement additional procedures to ensure that refugees seeking entry into the United States under the United States Refugee Admissions Program (USRAP) do not pose a threat to U.S. security and welfare. This section also capped annual refugee admission at 50,000 in fiscal year 2017.

## Key Agency(ies) Responsible:

State: Bureau of Population, Refugees, and Migration (PRM)

DHS: U.S. Citizenship and Immigration Services (USCIS)

## Program Context:

The USRAP resettles refugees to the United States in accordance with a refugee admission ceiling set by the President each year. PRM is responsible for coordinating and managing the USRAP. USCIS is responsible for adjudicating refugee applications.

## Action Overview

### State

State generally suspended travel of refugees into the United States from June 29, 2017 through October 24, 2017.<sup>104</sup>

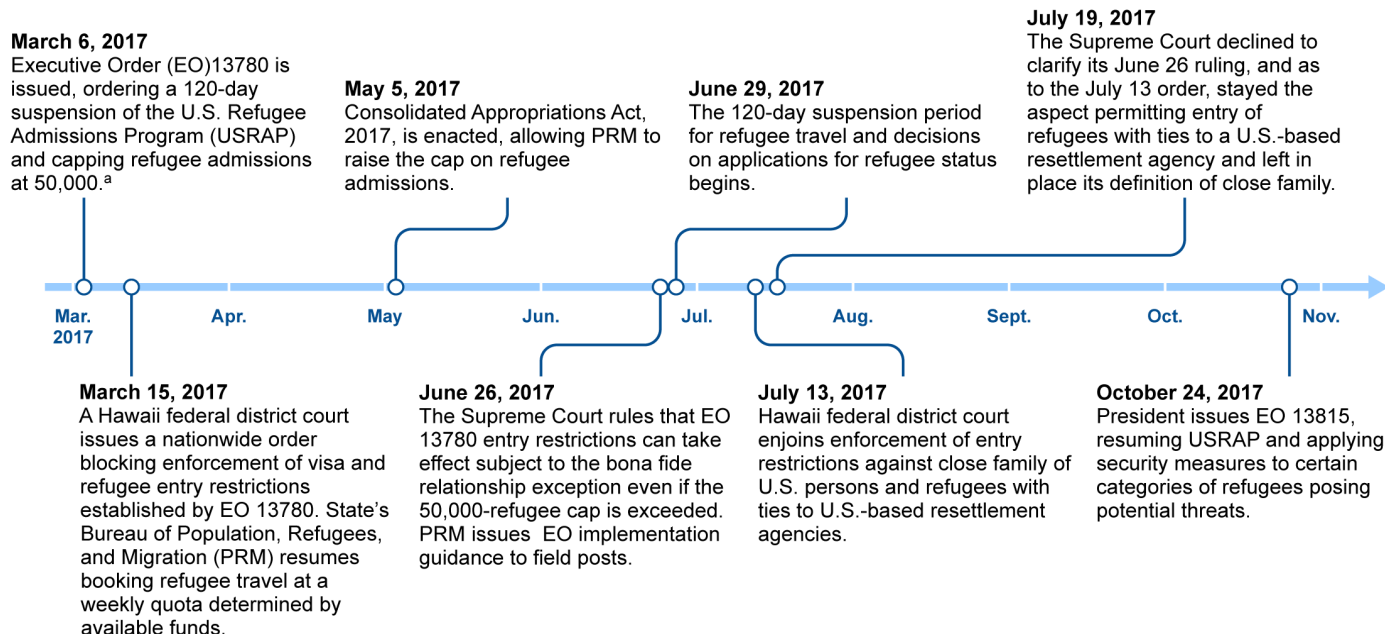
- State coordinated with DHS, the Office of the Director of National Intelligence, and other security vetting agencies on the 120-day review of the USRAP application and adjudication process to determine what additional procedures should be used to ensure that individuals seeking admission as refugees do not pose a threat to the security and welfare of the United States, according to State officials. Upon completion of the review, the agencies submitted a joint memorandum to the President.
- The United States admitted 53,716 refugees in fiscal year 2017, according to State officials. Throughout fiscal year 2017, State issued guidance that steered the refugee admissions program to different refugee arrival goals during different periods of time due to court decisions and budget considerations. Prior to the issuance of Executive Order 13769, which, after largely being blocked nationwide by a federal court injunction was revoked and replaced by Executive Order 13780, PRM operated at the rate of 110,000 refugees per year. After the issuance of Executive Orders 13769 and 13780, PRM officials noted that at times, State made no bookings for refugee arrivals, and also made bookings based on 50,000 arrivals, as well as 110,000 arrivals.

A series of legal challenges and resulting court injunctions culminated in the June 26, 2017, Supreme Court order limiting State's implementation of this section to prospective refugees without bona fide ties to the United States.<sup>105</sup> Together with budget uncertainties, State could not enact the refugee travel suspension or 50,000-person admissions cap based on the timeline set in the executive order. Figure 3 below shows key milestones related to this section of the order.

<sup>104</sup>In a June 26, 2017 ruling, the U.S. Supreme Court prohibited enforcement of travel restrictions against foreign nationals credibly claiming a bona fide relationship with a person or entity in the United States. See *Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080 (2017) (per curiam).

<sup>105</sup>"Bona fide ties" refers to the bona fide relationship to a person or entity in the United States that must have existed for a foreign national to be exempt from Executive Order 13780 travel restrictions under the Supreme Court's June 2017 decision.

**Figure 3: Key Milestones in Department of State Efforts to Implement the 120-Day Suspension of Refugee Admissions and 50,000 Refugee Cap in 2017**



Source: GAO analysis of information from PRM. | GAO-18-470

<sup>a</sup>Executive Order 13780 revoked and replaced a prior order, Executive Order 13769, implementation of which had been largely enjoined nationwide shortly after issuance due to a federal court injunction. See *Washington v. Trump*, 2017 U.S. Dist. LEXIS 16012 (W.D. Wash. 2017), *aff'd*, 847 F.3d 1151 (9<sup>th</sup> Cir. 2017).

## DHS

- According to USCIS officials, USCIS is implementing new requirements and vetting procedures for refugees. For example, these officials stated that USCIS is accessing more detailed biographical information earlier in the vetting process. Additionally, these officials noted that USCIS's Fraud Detection and National Security unit is conducting additional reviews of applicants, including social media and other information against various databases. USCIS officials further noted that USCIS's International Operations office sent guidance to the field that established the logistical requirements of the new procedures. As of April 2018, USCIS was finalizing further guidance and training officers for the enhanced review and vetting procedures, according to USCIS officials.
- State officials said that State and DHS executed four categories of exemptions during the 120-day USRAP suspension: a Congolese woman with a life-threatening illness and her family; 29 unaccompanied refugee minors; 17 Yezidis and other religious minorities in northern Iraq who had been victims of ISIS; and 53 individuals on Nauru and Manus Islands.

## Budget Overview

State characterized most costs in personnel resources terms. State officials told us that internally, PRM shifted priorities to implement Executive Order 13780 and to stay up-to-date on the evolving legal status of Section 6 in light of federal court orders. PRM identified some costs and savings, or cost avoidances, associated with implementing this provision, as described in table 12.

**Table 12: Budgetary Costs and Cost-Avoidance Associated with the Refugee Suspension and Admission Cap**

Costs	Cost-avoidance
The Department of State's Bureau of Population, Refugees, and Migration (PRM) reported unused airline tickets and cancellation fees totaled \$2.4 million. Cancellation fees were approximately \$282,000 and the ticket costs were approximately \$2.1 million. <sup>a</sup>	PRM reported a budget savings of over \$160 million in fiscal year 2017. PRM attributed these savings to refugee arrival numbers being lower than originally planned. Savings included reduced costs for overseas processing operations, among other things.

Source: GAO analysis of information provided by PRM | GAO-18-470

<sup>a</sup>PRM incurred these costs as a result of the initial U.S. Refugee Admissions Program suspension in January 2017 pursuant to Executive Order 13769, which was largely blocked nationwide by federal court injunction shortly after issuance, and which Executive Order 13780 subsequently revoked and replaced. See *Washington v. Trump*, 2017 U.S. Dist. LEXIS 16012 (W.D. Wash. 2017), *aff'd*, 847 F.3d 1151 (9<sup>th</sup> Cir. 2017).



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# Visa Interview Waiver Program

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**Executive Order:** 13780

**Provision:** Section 9

**Provision Summary:**

Section 9 directs the Department of State (State) to suspend the Visa Interview Waiver Program, subject to certain exceptions. To support this, the provision also directs State to expand the Consular Fellows program so that visa wait times are not unduly affected. The provision also directs State to make language training available to Consular Fellows outside of their core linguistic abilities.

**Key Agency(ies) Responsible:**

State: Bureau of Consular Affairs (CA)

**Program Context:**

Consular Fellows serve in U.S. embassies and consulates overseas and primarily adjudicate visa applications for foreign nationals. The Visa Interview Waiver Program formerly waived in-person interviews for certain categories of visa applicants.

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## Action Overview

- Following the issuance of Executive Order 13780, CA suspended the Visa Interview Waiver Program. CA instructed consular officers worldwide to require in-person interviews for all applicants between the ages of 14 and 79 except for those falling within specific statutory exceptions, including those whose interviews were formerly waived under the Visa Interview Waiver Program, according to CA officials. CA officials added that consular officers may still waive interviews for applicants for certain diplomatic or diplomatic-type visas, or who previously held a visa in the same category that expired less than 12 months prior to the new application.
- State exercised existing authorities to extend current Consular Fellow appointments by 12 months. In October 2017, State approved extending offers for follow-on 60-month Limited Non-Career Appointments to Consular Fellows who complete a successful initial 60-month appointment. State officials noted the first officer to accept a follow-on appointment was sworn in during April 2018. CA and State's Bureau of Human Resources updated the CA Limited Non-Career Appointments handbook to include an implementation plan for extending such appointments, and according to officials, providing language training outside of the applicant's area of core linguistic ability.
- In early 2017, State streamlined the application process for Consular Fellows and realigned resources to expedite their security clearance process, according to CA officials. From February 2017 through February 2018, State hired 134 new Consular Fellows, according to CA officials. Additionally, State officials said that they expect to hire 120 more Consular Fellows for the remainder of fiscal year 2018.
- In August 2017, the Foreign Service Institute created a 12-week Spanish Language program for Consular Fellows who received certain scores on the Spanish language exam, according to CA officials. Eleven Consular Fellows completed the program in January 2018 and 20 more are expected to complete the program in July 2018, according to CA officials. As of January 2018, five Consular fellows were being trained in a language outside their core linguistic ability, according to CA officials.
- While these actions were taken to support implementation of the executive order, CA officials also told us that hiring Consular Fellows has been a State priority for some time. CA officials said that the bureau has hired an increasing number of Consular Fellows to meet worldwide visa demand since 2012, and that providing consular services is one of State's highest priorities, as well as a national security imperative.

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## Budget Overview

- According to CA officials, because the Consular Fellows program is entirely funded by non-appropriated consular fees, subject to fluctuating demand for passports and visas, the expansion of the program did not have appropriations impacts. However, officials did provide per unit costs associated with aspects of expanding the Consular Fellows program. For example, Consular Fellows salaries range from approximately \$48,000 to approximately \$98,000 and Foreign Service Institute language courses last from 24 to 36 weeks, at a cost of \$1,700 per week, per student.

# Appendix II: Executive Order Reports

Executive orders 13767 (*Border Security and Immigration Enforcement Improvements*), 13768 (*Enhancing Public Safety in the Interior of the United States*), and 13780 (*Protecting the Nation from Foreign Terrorist Entry into the United States*) include reporting requirements for the Department of Homeland Security (DHS), the Department of State (State), and the Department of Justice (DOJ).<sup>106</sup> Table 13 lists completed reports as of April 2018, according to DHS, State, and DOJ officials.

**Table 13: Reports Agencies Cited As Completed As of April 2018 in Response to Executive Orders 13767, 13768, and 13780**

Executive Order	Executive Order section, report, and date signed or published according to agency officials	Responsible agencies
<b>Executive Order 13767:</b> Border Security and Immigration Enforcement Improvements	<b>Section 4:</b> <ul style="list-style-type: none"> <li>Comprehensive study of the security of the southern border to the President, signed Nov. 22, 2017</li> </ul>	Department of Homeland Security (DHS)
	<b>Section 9:</b> <ul style="list-style-type: none"> <li>60-day report on aid and assistance to the Mexican government, signed Mar. 27, 2017</li> </ul>	Department of State (State), in consultation with other agencies
	<b>Section 15:</b> <ul style="list-style-type: none"> <li>90-day progress report to the President, signed Sept. 28, 2017</li> </ul>	DHS
<b>Executive Order 13768:</b> Enhancing Public Safety in the Interior of the United States	<b>Section 9:</b> <ul style="list-style-type: none"> <li>Weekly Declined Detainer Outcome Reports, published Feb. 3, 2017; Feb. 10, 2017; and Feb. 17, 2017<sup>a</sup></li> </ul>	DHS U.S. Immigration and Customs Enforcement
	<b>Section 15:</b> <ul style="list-style-type: none"> <li>90-day progress report to the President, signed July 17, 2017</li> <li>180-day progress report to the President, signed Nov. 16, 2017</li> </ul>	DHS
	<b>Section 16:</b> <ul style="list-style-type: none"> <li>Quarterly reports on immigration status of all aliens incarcerated under the Federal Bureau of Prisons and U.S. Marshals Service, published on the DOJ website May 2, 2017; Aug. 1, 2017; Dec. 21, 2017; and ongoing</li> </ul>	Department of Justice (DOJ), in consultation with DHS

<sup>106</sup>Exec. Order No. 13767, 82 Fed. Reg. 8793 (Jan. 30, 2017) (issued Jan. 25); Exec. Order No. 13768, 82 Fed. Reg. 8799 (Jan. 30, 2017) (issued Jan. 25); and Exec. Order No. 13780, 82 Fed. Reg. 13,209 (Mar. 9, 2017) (issued Mar. 6).

Executive Order	Executive Order section, report, and date signed or published according to agency officials	Responsible agencies
<b>Executive Order 13780:</b> Protecting the Nation from Foreign Terrorist Entry Into the United States	<b>Section 2:</b> <ul style="list-style-type: none"> <li>20-day worldwide country assessment of information sharing to the president, signed July 10, 2017</li> <li>50-day country information sharing and travel restrictions to the president, signed Sept. 15, 2017</li> </ul>	DHS, in consultation with State and the Office of the Director of National Intelligence (ODNI)
	<b>Section 5:</b> <ul style="list-style-type: none"> <li>60-day progress report to the President, signed May 22, 2017</li> <li>100-day progress report to the President, signed July 14, 2017</li> <li>200-day progress report to the President, signed Dec. 4, 2017</li> </ul>	DHS, in consultation with State, DOJ, and ODNI
	<b>Section 6:</b> <ul style="list-style-type: none"> <li>United States Refugee Admissions Program review to the President, signed Oct. 23, 2017</li> </ul>	State, in consultation with DHS and ODNI
	<b>Section 11:</b> <ul style="list-style-type: none"> <li>Transparency report on offenses and activity, terrorism and public-safety related, by foreign nationals, jointly published by DHS and DOJ on Jan. 16, 2018</li> </ul>	DHS and DOJ

Source: GAO review of information provided by DHS, DOJ, and State. | GAO-18-470

<sup>a</sup>U.S. Immigration and Customs Enforcement suspended publication of the Declined Detainer Outcome Reports to address data errors, according to agency officials.



# Appendix III: Comments from the Department of Homeland Security

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

May 23, 2018

Rebecca Gambler  
Director, Homeland Security and Justice  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Re: Management Response to Draft Report GAO-18-470, "BORDER SECURITY  
IMMIGRATION: "Initial Executive Order Actions and Resource Implications"

Dear Ms. Gambler:

Thank you for the opportunity to review and comment on the subject draft report. The U.S. Department of Homeland Security (DHS) appreciates the U.S. Government Accountability Office's (GAO) work in conducting its review and issuing this report.

The Department appreciates GAO's recognition of the actions DHS has taken, on-going, and planned to implement the President's Executive Orders (EO) relating to border security and immigration enforcement. DHS leadership and Components have endeavored to undertake a methodical, informed approach to ensuring all core DHS missions and EO requirements are resourced to the fullest extent possible. That effort began with guidance from former Secretary John Kelly on carrying out the President's EOs, resulted in a Budget Amendment to the Fiscal Year (FY) 2018 President's Budget, and continues today with the Department's requests for FY 2019 funding and legislative authorities now pending before Congress.

When it comes to critical needs, there is probably no issue more important for DHS right now than border security and immigration enforcement. The FY 2019 President's Budget makes crucial investments needed to secure our borders against threats of illegal entry. The Budget supports the recruitment, hiring, and training of 750 additional U.S. Border Patrol Agents; 2,000 additional U.S. Immigration and Customs Enforcement (ICE) law enforcement officers; and more than 1,500 support staff needed to more robustly execute the Department's border security and immigration enforcement missions. It also funds construction and renovations at the Federal Law Enforcement Training Centers to meet increased training requirements at DHS.

Investments in our layered defense at the border would include approximately 65 miles of new border wall construction in the highest-traffic zones along the Southwest Border, as well as priority tactical infrastructure, border security technology improvements, and aircraft acquisition. The Department also reiterates the importance of addressing the unfunded border wall requests from the FY 2018 Budget in addition to the investments outlined in the FY 2019 Budget. These investments ensure DHS law enforcement personnel are supported with effective surveillance technology and equipment to improve their ability to detect and interdict illegal activity.

The FY 2019 President's Budget also includes funding for 52,000 detention beds, including 2,500 beds reserved for family units, to ensure that apprehended aliens who are subject to removal from the United States – such as illegal border crossers, criminal aliens, and national security threats – are detained in safe and secure detention facilities pending their removal. For apprehended aliens who are not considered a threat to our communities, but who may pose a diminished flight risk, the President's Budget would fund ICE's Alternatives to Detention program to provide intensive supervision for up to 82,000 average daily participants through a combination of home visits, office visits, alert response, and electronic monitoring. Proposed funding for removal operations will facilitate the complex coordination required to return illegal immigrants safely and expeditiously to their home countries and pay for transportation costs.

In addition, the Budget proposes essential funding to implement the President's EO to intensify vetting of U.S.-bound travelers and individuals in our immigration system. Since the beginning of last year, DHS has undertaken historic efforts to improve every phase of the vetting process so that we can be more confident in knowing who is coming into our country – and more capable of identifying nefarious actors. This includes making applications more rigorous, deepening background checks, tightening travel and arrival screening, and enforcing foreign government information-sharing requirements. The FY 2019 Budget will facilitate the stand-up of the recently announced National Vetting Center (NVC), which will become a central U.S. Government hub for fusing intelligence, law enforcement, and homeland security data to enhance the vetting process. A detailed implementation plan is currently under development to identify NVC capacity and operational needs, which will inform future budget requests.

To achieve mission success and protect the Homeland, DHS also must have legislative authorities. Congress should pass legislation to eliminate legal loopholes that undermine border security and place our communities at risk. This includes terminating the *Flores* Settlement Agreement, amending the *Trafficking Victims Protection Reauthorizing Act*, clarifying the statutory definitions of "unaccompanied alien children" and "special immigrant juvenile," passing legislation that clearly defines an "aggravated felony," and allowing DHS to promptly remove violent criminal aliens from our nation. These

solutions will provide the essential tools that the men and women of DHS need to secure our borders and defend our communities.

Enactment of the FY 2018 Consolidated Appropriations Act (P.L. 115-141) has given our frontline Components important resources to carry out EO requirements, and DHS is appreciative of the support from Congress. It cannot be overemphasized, however, that additional resources and legislative authorities are required to build on the progress made thus far.

Again, thank you for the opportunity to review and comment on this draft report. Technical comments were provided under separate cover. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Sincerely,



JIM H. CRUMPACKER, CIA, CFE  
Director  
Departmental GAO-OIG Liaison Office

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# Appendix IV: GAO Contact and Staff Acknowledgments

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## GAO Contact

Rebecca Gambler, (202) 512-8777 or [gambler@gaio.gov](mailto:gambler@gaio.gov)

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## Staff Acknowledgments

In addition to the contact named above, Taylor Matheson (Assistant Director), Sarah Turpin (Analyst-in-Charge), Isabel Band, and Kelsey Hawley made key contributions to this report, along with David Alexander, Eric Hauswirth, Sasan J. “Jon” Najmi, Kevin Reeves, and Adam Vogt.

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