



Biden Administration's Updated Immigration Enforcement Priorities

***Note:** this resource serves as an update to the LEITF's previous [publication](#) comparing the Obama, Trump, and Biden administration immigration enforcement priorities.*

On September 30, 2021, DHS released [Guidelines for the Enforcement of Civil Immigration Law](#), new immigration enforcement priorities that [emphasize](#) the use of prosecutorial discretion to seek targeted enforcement. The new priorities, which are slated to take effect on November 29, 2021, will supplant the January 2021 and February 2021 interim priorities and supplemental guidance.

Like the previous Biden administration interim priorities and guidance, the new priorities focus civil immigration enforcement on threats to national security, public safety, and border security. The guidelines make clear that unlawful presence, in and of itself, is not a proper basis for apprehension and removal, stating that the “fact that an individual is a removable noncitizen . . . should not alone be the basis of an enforcement action against them.”

In a departure from previous enforcement frameworks, the new guidelines allow DHS personnel flexibility in determining whether someone is a threat to public safety. Rather than relying on rigid categories of offenses or prior convictions, trained DHS personnel are advised to apply aggravating and mitigating factors in making individualized determinations as to whether someone is an appropriate priority for enforcement.

This new approach represents a noteworthy attempt to advance public safety while doing justice, mindful that “the majority of undocumented noncitizens who could be subject to removal have been contributing members of our communities for years.” While continuing to focus enforcement on threats, the guidance provides a new, flexible framework that encourages favorable uses of prosecutorial discretion where there are strong mitigating factors – such as stale convictions or strong community ties. Having DHS exercise its discretion in this manner, focusing on the most serious threats and applying prosecutorial discretion to decline enforcement in situations with strong mitigating factors, DHS is attempting to carry out its mission “effectively and justly.” And while moving away from the use of rigid categories of offenses adds a degree of ambiguity to the process, the detailed, non-exhaustive list of aggravating and mitigating factors along with extensive training and evaluation, are intended to provide additional structure and certainty.