

EFFECTS OF COURT ORDER BLOCKING DEPORTATION MORATORIUM

100-Day Moratorium on Deportations and Enforcement Priorities

On January 20, 2021, the DHS Acting Secretary issued a memo that:

(A) Ordered the agency (including ICE & CBP) to review all enforcement policies and consider what they should change;

(B) Ordered ICE to prioritize certain groups of people for removal proceedings, arrest, detention, and deportation. These categories go into effect on February 1 and may change after ICE issues more guidance. The categories include:

- People the government suspects of terrorism or espionage or considers to be a danger to national security;
- People who entered the US on or after November 1, 2020;
- People who were released from criminal custody in jail or prison on January 20, 2021 or later, *and* who have an “aggravated felony” conviction (a type of conviction according to immigration law that may include misdemeanor and nonviolent offenses), *and* who the government believes pose a threat to public safety; and

(C) Paused most deportations, except:

- People who entered the US on or after November 1, 2020;
- People the government suspects of terrorism or espionage or considers to be a danger to national security;
- People who, after talking to a lawyer, voluntarily sign a form saying they agree to be deported; and
- People the ICE Director determines must be deported by law.

Temporary Restraining Order (TRO) Temporarily Stopping the Moratorium on Deportations

On January 22, 2021, Texas sued the US government to stop the January 20 Memo from taking effect. On January 26, a judge in Texas issued a TRO against the moratorium.

A TRO is a temporary block on a government action so that the judge can consider the case before the government action happens. In this case, the judge said that the Biden Administration cannot pause deportations while the judge is considering Texas’s case.

Although the reasoning behind the TRO is wrong and deeply unjust, it unfortunately means that the moratorium on deportations is temporarily paused.

Here are the key things to know about what the TRO does and does not do:

- The TRO **does not block the change in ICE's priorities**. ICE is still ordered to focus its enforcement on the more limited groups of people from the memo, starting February 1. People who do not fall into one of those groups may request prosecutorial discretion, which means that ICE may agree not to deport or take other actions against them.
- The TRO **applies to the moratorium on deportations**. ICE may now deport people who have a final order of removal. A final order of removal is when an immigration judge has ordered a person removed and that person either decided not to appeal to the Board of Immigration Appeals, or lost their appeal.
- The TRO **does not require the government to deport people**. It just stops the government from automatically pausing all deportations. People who have final orders of removal can still apply for stays of removal (a request that ICE not deport someone even when they have a final order) or other forms of prosecutorial discretion. ICE should still consider the new enforcement priorities when deciding whether or not to grant stays and prosecutorial discretion. And other federal courts can still issue their own stays of removal in other cases (for example if a person has a petition for review at a Circuit Court).
- The TRO **does not stop people who are detained from asking for release**. For example, people who are especially at risk of severe illness or death from COVID may still ask for release from detention under *Fraihat*, and detained people may still ask for release under bond or orders of supervision.

The TRO is in effect for 14 days. The judge has ordered another round of briefing in the case, which means there is likely to be another hearing and a new decision sometime in the next week or two. We will continue to issue advisories as the situation develops.

Please note this information is intended as a resource for community members and does not constitute legal advice. If you have questions about this fact sheet, please contact Joseph Meyers at jmeyers@nipnlq.org or La Resistencia at resistencia@solidarity@gmail.com or at 800-357-3196.