



Written by [James Murphy](#) on March 10, 2021

Montana, Arizona Challenge New Biden Rules on Immigration Enforcement

The State of Montana joined the State of Arizona in a [lawsuit](#) challenging the Biden administration's push to dramatically narrow the focus of immigration enforcement to three specific categories of illegal immigrants. Immigration and Customs Enforcement (ICE) would require prior authorization from the Department of Homeland Security (DHS) to remove illegal immigrants who don't fit into those three specific categories from the country.

The lawsuit has been amended from one brought in February in which Arizona Attorney General Mark Brnovich was challenging President Biden's attempt to initiate a 100-day moratorium on all deportations. That initial moratorium was blocked by a Texas judge on January 26, which prompted the Biden administration to issue new guidelines on just who ICE was allowed to use their enforcement powers against.



Photo: DenisTangneyJr / E+ / Getty Images Plus

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In addition to objecting to the Biden administration's priority system of dealing with illegal immigrants, Brnovich cited the fact that the Biden administration completely ignored the so-called Arizona agreement, which called for a 180-day consultation period with border jurisdictions before any executive branch changes to immigration law could take effect. A similar agreement was made with Montana. The Biden administration ended those agreements without any notice to the states.

Much of case hinges on a February 18 [memorandum](#) from acting ICE director Tae Johnson. In that memo, Johnson lays out the priorities on whom ICE may detain and deport:

Priority Category 1: National Security. This includes any illegal immigrant who "has engaged in or is suspected of engaging in terrorism or terrorism related activities"; any illegal immigrant who "has engaged in espionage or espionage-related activities"; or any illegal immigrant whose "apprehension, arrest or custody is otherwise necessary to protect the national security of the United States."

Priority Category 2: Border Security. This includes any illegal immigrant apprehended trying to enter the United States on or after November 1, 2020 or any illegal immigrant not physically in the United States prior to November 1, 2020.

Priority Category 3: Public Safety. This includes any illegal immigrant who has been convicted of an aggravated felony.



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Focusing on those three priorities will actually be a boon to immigration enforcement efforts according to acting ICE director Johnson. “By focusing our limited resources on cases that present threats to national security, border security and public safety, our agency will more ably and effectively execute its law enforcement mission,” Johnson said when announcing the new guidelines. “Like every law enforcement agency at the local, state and federal level, we must prioritize our efforts to achieve the greatest security and safety impact.”

But the Migration Policy Institute estimates that 87 percent of illegal immigrants would not be “priorities” under the new Biden administration guidelines. This would include illegal immigrants with COVID-19, drug dealers with no aggravated felonies on their record, identity thieves, or immigration scofflaws.

Arizona Attorney General Brnovich railed against the new immigration guidelines in a [statement](#): “If they ask about the poorest policy choice I’ve ever seen in government, this would be a strong contender.” Brnovich added: “Blindly releasing thousands of people, including convicted criminals and those who might be spreading COVID-19 into our state, is both unconscionable and a violation of federal law. This must be stopped now to avoid a dangerous humanitarian crisis for the immigrants and the people of Arizona.”

Montana Attorney General Austin Knudsen feared an increase of drugs into his state as a result of Biden’s lax immigration policies. “Meth trafficked into Montana by Mexican drug cartels has wracked our state. The problem will only be made worse if the Biden administration continues to allow criminals to stay in the country,” Knudsen lamented. “Enforcing our immigration laws and helping to keep Americans safe is one of the federal government’s most important functions. The Biden administration is failing its basic responsibility to Americans.”

John Feere, a senior advisor to ICE during the Trump administration, remarked that worksite enforcement operations, which occurred more frequently during the Trump administration, would frequently find crimes such as fraud and identity theft during such sweeps — none of which aren’t priorities under the new Biden guidelines. “Not allowing ICE to carry out its responsibilities as it does now is a de facto dismantling of the agency,” Feere said. “And what is the policy rationale? Who wins from all of this? The smugglers? The traffickers?”

In defense of the new policies, Biden administration officials are quick to point out that there is no specific exemption from arresting and deporting illegal immigrants under the new guidelines. But for approximately 87 percent of cases, ICE officers must get prior approval from higher-ups to investigate such cases.

The suit seeks to have the new rules of immigration enforcement either vacated or postponed as well as a declaration by the court that the Biden administration broke the law when it ended the Arizona and Montana agreements without any advanced notice.



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