

# NEW YORK

## What President Trump's Executive Orders Could Actually Do

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January 27, 2017

President Trump spent his first week in office chaotically unveiling executive orders in an effort to prove he's making good on his campaign promises. Judging from the stream of unsettling headlines this week, Trump dealt serious blows to Obamacare, the "catch-and-release" policy, and "sanctuary cities" — all while obsessively poring over photos of the crowd at his inauguration.

Yet upon closer examination, Trump did not instantly undo major elements of the Obama administration with just a few strokes of his pen. *Politico* reported on Thursday that the documents were drafted primarily by Steve Bannon and Stephen Miller, the Breitbart faction of Trump's advisers. Since they consulted with virtually no one, some of the orders are vague, legally questionable, or even impossible to carry out. Here's what Trump's first executive orders might actually do, when you look past the terrific photo ops.

### *Dismantling the Affordable Care Act*

**What Trump ordered:** Hours after his inauguration, Trump signed an executive order declaring that his administration will "take all actions consistent with the law" to "ease the burden of Obamacare." It instructs the heads of all executive departments and agencies to "exercise all authority and discretion available to them to waive, defer, grant exemptions from, or delay" parts of the Affordable Care Act that put financial burdens on individuals, health-care providers, or states.

**Can he do that?** Yes, but it's not clear what "that" is. Only Congress can repeal the Affordable Care Act, but the Trump administration can severely weaken the law by changing how it's carried out. The Incidental Economist blog compiled a long list of administrative changes that could be made to the law immediately, from reducing reinsurance payments to insurers, to removing the requirement that health plans cover all forms of contraceptive.

Trump is reportedly mulling whether to kill the individual mandate, which could send the individual-health-insurance market into the proverbial "death spiral." The secretary of Health and Human Services can grant hardship exemptions from the mandate using any criteria he or

she wants. That means that, without touching the law itself, the Trump administration could effectively kill the individual mandate by granting an exception to everyone.

As FiveThirtyEight notes, Trump HHS secretary pick Tom Price could have done this even before Trump issued his order, “but in case there was any question, the folks at HHS now have their bosses’ itemized list of priorities.” Of course, Price hasn’t even been confirmed yet, so it may be weeks before we know what the Trump administration will actually do to the ACA.

### ***Cut U.S. Aid to Groups That Provide or Promote Abortion Overseas***

**What Trump ordered:** He reinstated and expanded the “Mexico City policy,” also known as the “global gag rule,” which stipulates that foreign nongovernmental organizations that promote or provide abortion cannot receive U.S. federal aid. Previously, the policy only applied to groups that receive U.S. family-planning funding, but Trump’s version applies to organizations that get global health money as well.

**Can he do that?** Yes. Ronald Reagan implemented the policy in 1985, and it’s subsequently been rescinded by every Democratic president and restored by every Republican president. Mark J. Rozell, dean of the Schar School of Policy and Government at George Mason University, argued in *The Hill* that this “showcases the troubles with governing by executive order,” but it’s generally accepted that every president will change the Mexico City policy upon taking office.

The Kaiser Family Foundation explains that Congress could step in, but obviously that’s not going to happen with Republicans in control:

While Congress has the ability to institute the policy through legislation, this has happened only once in the past: a modified version of the policy was briefly applied by Congress during President Clinton’s last year in office as part of a broader arrangement to pay the U.S. debt to the United Nations. (At that time, President Clinton was able to partially waive the policy’s restrictions.) Other attempts to institute the policy through legislation have not been passed, nor have legislative attempts to overturn the policy.

### ***Withdraw from the Trans-Pacific Partnership***

**What Trump ordered:** He signed a brief presidential memorandum declaring that the U.S. is withdrawing from the Trans-Pacific Partnership, and that his administration intends to “deal directly with individual countries on a one-on-one (or bilateral) basis in negotiating future trade deals.”

**Can he do that?** Yes. The TPP was never ratified by Congress, so Trump’s order was mostly symbolic. The 11 other countries say they want to salvage the deal, but it would have to be revamped significantly and would have much less weight without the U.S.

## ***Build a Border Wall***

**What Trump ordered:** As part of two sweeping executive orders on immigration signed Wednesday, Trump said his administration intends to “secure the southern border of the United States through the immediate construction of a physical wall on the southern border.”

**Can he do that?** Not without help from Congress. Republican lawmakers believe the president has the authority to construct the wall under the Secure Fence Act of 2006, which called for the construction of at least 700 miles of “physical barrier” along the southern border. The fence was never completed, and the Homeland Security secretary could interpret “physical barrier” to mean a big, beautiful concrete wall.

But the wall could cost as much as \$20 billion, and Trump can’t come up with that money on his own. He ordered the Department of Homeland Security to look for available funds within its \$41 billion annual budget, but the House and Senate appropriations committees would have to approve an internal reallocation of money, and it still wouldn’t be enough to fund the entire project.

Luckily for Trump, congressional Republicans are willing to put a massive amount of U.S. taxpayer money toward the project. House Speaker Paul Ryan said on Wednesday that Congress intends to fund the wall through a supplemental appropriations bill in the spring.

When pressed on how they’d “make Mexico pay for it,” GOP leaders suggested they’d leave that to Trump. “We intend to address the wall issue ourselves and the president can deal with his relations with other countries on that issue and others,” said Senate Majority Leader Mitch McConnell.

## ***End the “Catch-and-Release” Policy***

**What Trump ordered:** His two executive orders on border security said he is terminating the policy known as “catch and release,” in which people caught crossing the border illegally are freed, pending hearings. In order to hold and process them, Trump called for the construction of new detention facilities, the hiring of 5,000 additional Border Patrol agents, and 10,000 additional U.S. Immigration and Customs Enforcement (ICE) officers.

**Can he do that?** The cost and logistics are daunting. Reuters reports that in the last three months of 2016, 136,670 people were caught crossing the border, and about 48 percent were unaccompanied children or families with children. Existing facilities have about 34,000 beds.

Trump’s order directs his cabinet secretaries to “take all appropriate action and allocate all legally available resources to immediately construct, operate, control, or establish contracts to construct, operate, or control facilities to detain aliens at or near the land border with Mexico.” But he won’t find the money needed for such an enormous undertaking without approval from Congress.

*Politico* did some rough math, and concluded that Trump’s immigration proposals could increase federal spending by \$13 billion a year, not including the wall. The combined budgets for ICE and border protection in 2016 come to \$19.4 billion.

John Sandweg, who was acting director of ICE in 2013 and 2014, estimated that Trump’s plan would require four or five times as many detention beds per day, which would cost \$10 billion annually. Hiring another 10,000 ICE agents could cost \$3.9 billion a year, and adding 5,000 Border Patrol agents could add \$900 million annually.

Immigration courts are already severely backlogged, and it’s illegal to keep children in immigration detention indefinitely. Even if Congress gave Trump the money, the time and effort it would take to establish new detention centers, train new officers, and fend off legal challenges would be enormous. “I just view this as a political document more than anything,” Sandweg said of the executive orders.

### ***End “Sanctuary Cities”***

**What Trump ordered:** Cities and counties that limit their cooperation with federal immigration officials “are not eligible to receive federal grants, except as deemed necessary for law enforcement purposes.” As Vox notes, nothing has been defunded yet:

Instead, it tells the secretary of homeland security and the attorney general to make sure that no jurisdiction getting federal grants is getting in the way of law enforcement, and lets the attorney general pursue enforcement actions against jurisdictions that do. There are at least 39 cities and 364 counties that count themselves as sanctuary jurisdictions, according to the Immigrant Legal Resource Center.

**Can he do that?** It’s unclear, and it would take a massive legal battle to find out. The Trump administration could try to sue the cities for violating federal law, but the federal government can’t force state and local law enforcement to enforce federal law. In 2014, a federal appeals court ruled that local police do not have to hold undocumented immigrants for ICE agents.

The Trump administration could try to coerce sanctuary cities into following the law by withholding certain federal grant money. Some federal money is distributed by Congress, but Republicans may go along with Trump’s effort. Several Republican lawmakers have tried to pass laws that would cut money for sanctuary cities in recent years. Even if Congress doesn’t approve, the Trump administration could withhold the grants administered by federal agencies, potentially cutting off funding for various local programs.

Mayors from several cities — including New York, Chicago, and Los Angeles — have already vowed to stand up to Trump’s crackdown on sanctuary cities, but on Thursday, Miami-Dade County mayor Carlos Gimenez signed an executive order ordering his corrections department to comply with all ICE requests. He said his county can’t afford to lose out on the \$355 million it’s set to receive in federal funding next year.

### ***Advance the Keystone XL and Dakota Access Pipelines***

**What Trump ordered:** He reversed decisions made by the Obama administration by inviting the TransCanada Corporation to “promptly resubmit its application” to build the Keystone XL pipeline, and directing the Army “to review and approve in an expedited manner” the last section of the Dakota Access pipeline. He told reporters he would “renegotiate some of the terms” and

ordered his secretary of commerce to develop a plan to ensure that all of the pipelines are built and repaired using U.S.-made steel.

**Can he do that?** Trump can help advance the pipeline projects, but even he acknowledged that it wasn't a sure thing. "We'll see if we can get that pipeline built," he said. "A lot of jobs." Renegotiating the terms of the deals would be a lengthy and legally questionable process — plus he would have to contend with the environmentalists and Native American rights activists protesting the construction of the Dakota Access pipeline.

Trade-policy experts have criticized the order that the pipelines be constructed from U.S.-made material, as it would violate international trade laws that say a government can't treat foreign and domestic companies differently.

"First of all, this is private investment, so there's no legal authority for the government to require a private company to use domestic materials," Dan Ikenson, director of the Cato Institute's Herbert A. Stiefel Center for Trade Policy Studies, tells CNBC.

"Is it good policy to have the president dictate where U.S. companies buy their inputs? No. I think that's terrible. I think that's dictatorial. I think it's very bad precedence."