

Next Steps in the Implementation of the Prosecutorial Discretion Memorandum and the August 18th Announcement on Immigration Enforcement Priorities

On August 18, 2011, the Administration announced an effort to better focus the immigration enforcement system on the removal of criminal aliens, the promotion of public safety and border security, and the integrity of the immigration system. This effort began with the establishment of a working group, comprised of officials from the Department of Homeland Security (DHS), including Immigration and Customs Enforcement (ICE), U.S. Citizenship and Immigration Services (USCIS), and Customs and Border Protection (CBP), as well as representatives from the Department of Justice (DOJ), tasked with identifying best practices to accelerate the apprehension and removal of high priority aliens by, in part, limiting the initiation or pursuit of low priority cases. As a result of this process, ICE is implementing the following initiatives:

- ***Prosecutorial Discretion Training:*** On November 17, ICE launched a comprehensive training program on the appropriate use of the June 17, 2011 Prosecutorial Discretion Memorandum. This program consists of scenario-based training that emphasizes how the Prosecutorial Discretion Memorandum should be utilized in order to focus immigration enforcement resources on ICE priorities.

This program builds on training that has already occurred since the June 17, 2011 memorandum was issued. On September 29 and October 24, Secretary Napolitano met with supervisory ICE officers and attorneys to discuss the agency's enforcement priorities and the importance of these initiatives. ICE Director Morton, along with other members of ICE's senior leadership team, have traveled around the country to discuss the importance of consistent application of prosecutorial discretion. Over the last month, Director Morton and his senior leadership have traveled to Los Angeles, Chicago, San Francisco, San Diego, Miami, New York, and Newark to personally instruct enforcement officers and attorneys on the appropriate use of this policy. Over the next several weeks, Director Morton and other members of the ICE senior leadership will travel to New Orleans and other jurisdictions to conduct additional training. By January 13, all ICE enforcement officers and attorneys nationwide will have completed scenario based prosecutorial discretion training.

- ***Review of Incoming Cases:*** Beginning immediately, ICE attorneys nationwide will review all incoming cases in immigration court. This review, based on the Prosecutorial Discretion Memorandum and guided by a set of more focused criteria, will help reduce inefficiencies that delay the removal of criminal aliens and other priority cases by preventing new low priority cases from clogging the immigration court dockets. This process is designed to identify the cases most clearly eligible and ineligible for a favorable exercise of discretion and will focus on cases appearing on the master calendar and those cases that have not yet been filed in immigration court. The initial test run of this review of incoming cases will last until January 13.

- ***Review of Cases Pending in Immigration Court:*** Beginning December 4, DHS and DOJ will launch pilot programs in two jurisdictions to test run the process for reviewing all cases pending in immigration court. Over the course of the six week pilot, an intra-agency team of attorneys from ICE, USCIS, and CBP will review the cases on the non-detained dockets in the Denver and Baltimore immigration courts based on the Prosecutorial Discretion Memorandum and guided by a set of more focused criteria. During this time, DOJ's Executive Office for Immigration Review (EOIR) has agreed to shift judges from the non-detained docket in those jurisdictions to hear detained cases, in order to enhance the processing of such detained cases.

Both the review of incoming and pending cases will initially take place over the course of approximately two months, lasting until January 13. The purpose of the initial timing and scope limitations is to allow DHS to test run various methods for affirmatively reviewing cases at the different stages of the immigration enforcement cycle, and to gather data and other information related to the implementation of these methods.

At the end of the period, DHS will promptly review that data and other implementation outcomes and, where appropriate, consult with DOJ to determine, on an expedited basis, the best methods to implement these processes on an ongoing basis nationwide. During the entire period of these initiatives, ICE attorneys, officers, and agents will be applying, on a case-by-case basis, the full range of factors set forth in the June 17, 2011 Prosecutorial Discretion memorandum in the course of their regular duties.