

ICE New Prosecutorial Discretion Memo Gives Hope to Immigrants in Removal Proceedings

Written by U.S Immigration News

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On June 17, 2011, the Department of Homeland Security released a Memo that might help decongest Immigration Courts. The release of this memo gives hope to many immigrants currently in removal proceedings in the United States. It appears that this memo might be interpreted to streamline and separate high risk immigrants from those who pose no threat to the United States and her citizenry.

In my appearances before the immigration Judges in New York in the month of June, 2011, some of my cases were postponed to 2013 while some Judges had other cases moved to year 2014. This acute congestion can only be remedied by exercising prosecutorial discretion - not to prosecute some low risk cases at this time.

Some immigrants who are qualified under the Dream Act when passed will benefit tremendously from this change in enforcement tactics. Some of these young people are already showing up in Court. If the government suspends their prosecution, they will have the opportunity to remain in the United States for the passage of the Dream Act.

According to the DHS memo "One of ICE's central responsibilities is to enforce the nation's civil immigration laws in coordination with U.S. Customs and Border Protection (CBP) and U.S. Citizenship and Immigration Services (USCIS). ICE, however, has limited resources to remove those illegally in the United States. ICE must prioritize the use of its enforcement personnel, detention space, and removal assets to ensure that the aliens it removes represent, as much as reasonably possible, the agency's enforcement priorities, namely the promotion of national security, border security, public safety, and the integrity of the immigration system. These priorities are outlined in the ICE Civil Immigration Enforcement Priorities memorandum of March 2, 2011, which this memorandum is intended to support. Because the agency is confronted with more administrative violations than its resources can address, the agency must regularly exercise "prosecutorial discretion" if it is to prioritize its efforts. In basic terms, prosecutorial discretion is the authority of an agency charged with enforcing a law to decide to what degree to enforce the law against a particular individual. ICE, like any other law enforcement agency, has prosecutorial discretion and may exercise "it in the ordinary course of enforcement. When ICE favorably exercises prosecutorial discretion, it essentially decides not to assert the **full** scope of

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the enforcement authority available to the agency in a given case. In the civil immigration enforcement context, the term "prosecutorial discretion" applies to a broad range of discretionary enforcement decisions, including but not limited to the following:

- deciding to issue or cancel a notice of detainer;
- deciding to issue, reissue, serve, file, or cancel a Notice to Appear (NTA);
- focusing enforcement resources on particular administrative violations or conduct;
- deciding whom to stop, question, or arrest for an administrative violation;
- deciding whom to detain or to release on bond, supervision, personal recognizance, or other condition;
- seeking expedited removal or other forms of removal by means other than a formal removal proceeding in immigration court;
- settling or dismissing a proceeding;
- granting deferred action, granting parole, or staying a final order of removal;
- agreeing to voluntary departure, the withdrawal of an application for admission, or other action in lieu of obtaining a formal order of removal;
- pursuing an appeal;
- executing a removal order; and
- responding to or joining in a motion to reopen removal proceedings and to consider joining in a motion to grant relief or a benefit."

According to the memo, the DHS will consider these factors when exercising prosecutorial discretion;

- the agency's civil immigration enforcement priorities;
- the person's length of presence in the United States, with particular consideration given to presence while in lawful status;
- the circumstances of the person's arrival in the United States and the manner of his or her entry, particularly if the alien came to the United States as a young child;
- the person's pursuit of education in the United States, with particular consideration given to those who have graduated from a U.S. high school or have successfully pursued or are pursuing a college or advanced degrees at a legitimate institution of higher education in the United States;
- whether the person, or the person's immediate relative, has served in the U.S. military, reserves, or national guard, with particular consideration given to those who served in combat;
- the person's criminal history, including arrests, prior convictions, or outstanding arrest warrants;

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- the person's immigration history, including any prior removal, outstanding order of removal, prior denial of status, or evidence of fraud;
- whether the person poses a national security or public safety concern;
- the person's ties and contributions to the community, including family relationships;
- the person's ties to the home country and condition~ in the country;
- the person's age, with particular consideration given to minors and the elderly;
- whether the person has a U.S. citizen or permanent resident spouse, child, or parent;
- whether the person is the primary caretaker of a person with a mental or physical disability, minor, or seriously ill relative;
- whether the person or the person's spouse is pregnant or nursing;
- whether the person or the person's spouse suffers from severe mental or physical illness;

- whether the person's nationality renders removal unlikely;
- Whether the person is likely to be granted temporary or permanent status or other relief from removal, including as a relative of a U.S. citizen or permanent resident;
- whether the person is likely to be granted temporary or permanent status or other relief from removal, including as an asylum seeker, or a victim of domestic violence, human trafficking, or other crime; and
- whether the person is currently cooperating or has cooperated with federal, state or local law enforcement authorities, such as ICE, the U.S Attorneys or Department of Justice, the Department of Labor, or National Labor Relations Board, among others.

Some immigrants currently in the custody of Immigration and Custom Enforcement (ICE) are being interviewed by ICE agents to determine if they are qualified for the exercise of favorable prosecutorial discretion which could lead to their release.

This article is for your information only; it is not a legal advice. USI News will monitor how this memo is being interpreted and applied and let our readers know in the next edition steps to take to obtain favorable exercise of prosecutorial discretion. If you need any further clarification or If you have any question, please feel free to contact Attorney Famuyide at 718-647-6767 or send email to jfamuyide@aol.com .

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