



Holding DHS Accountable on Prosecutorial Discretion

November 2011



About the American Immigration Lawyers Association and the American Immigration Council

The American Immigration Lawyers Association (AILA) is the national association of immigration lawyers established to promote justice, advocate for fair and reasonable immigration law and policy, and advance the quality of immigration law practice. AILA has over 11,000 attorney and law professor members who practice and teach immigration law. Founded in 1946, AILA is a nonpartisan, not-for-profit organization that provides continuing legal education, information, professional services, and expertise through its 36 chapters and over 50 national committees.

The American Immigration Council (Immigration Council) is a 501(c)(3) not-for-profit organization that works tirelessly to achieve justice and fairness under the law for immigrants. The Council stands up for sensible and humane immigration policies, educates others about the enduring contributions of America's immigrants, and insists that our immigration laws be enacted and implemented in a way that honors fundamental constitutional and human rights.

Acknowledgements

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GLOSSARY

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| CBP | Customs and Border Protection |
| DHS | Department of Homeland Security |
| DOJ..... | Department of Justice |
| DOMA | Defense of Marriage Act |
| ERO..... | ICE Enforcement and Removal Operations |
| EWI | Entry without inspection |
| ICE..... | Immigration and Customs Enforcement |
| IJ | Immigration Judge |
| HSI..... | ICE Homeland Security Investigations |
| LPR..... | Legal Permanent Resident |
| NTA..... | Notice to Appear |
| OCC..... | ICE Office of Chief Counsel |
| OPLA | ICE Office of the Principal Legal Advisor |
| PD..... | Prosecutorial Discretion |
| USC | U.S. Citizen |

EXECUTIVE SUMMARY AND RECOMMENDATIONS

On June 30, 2011, the American Immigration Lawyers Association (AILA) and the American Immigration Council (Immigration Council) launched a survey of AILA lawyers and other immigration practitioners regarding the Department of Homeland Security's (DHS) exercise of prosecutorial discretion. The survey was designed to gather feedback regarding the implementation of two memoranda on prosecutorial discretion issued by Immigration and Customs Enforcement (ICE) on June 17 and a subsequent announcement by DHS on August 18 of plans to review the approximately 300,000 cases pending before the Executive Office for Immigration Review (EOIR).

As of October 18, 2011, AILA received 252 case submissions, representing all ICE Field Offices and Offices of Chief Counsel (OCC). Based on these responses, the overwhelming conclusion is that most ICE offices have not changed their practices since the issuance of these new directives. While the June memoranda provided considerable clarity on the criteria for exercise of prosecutorial discretion, it has become clear that, to ensure consistent implementation nationwide, DHS and ICE leadership should issue further guidance and instruction immediately to all ICE field offices, putting the full weight of the agency behind implementation.

At this point, the Obama Administration has clearly established its robust record on immigration enforcement. Since President Obama entered office, DHS has deported record-breaking numbers of people: close to 400,000 annually and over 1 million in total. American taxpayers have seen increases every year in spending on border security, immigration detention, and removal operations. Every day, 33,400 people are detained by DHS for civil immigration purposes costing about \$5 million per day.

But the Obama Administration has pledged to do more than record-level enforcement. This administration also claims it is conducting enforcement in a targeted and humane manner. This spring, at a speech in El Paso, TX, President Obama said: "[W]e are focusing our limited resources on violent offenders and people convicted of crimes; not families, not folks who are just looking to scrape together an income." Secretary Napolitano said this October that the Bush administration "allowed as many resources, if not more, to be spent tracking down and deporting the college student as were spent on apprehending criminal aliens and gang members." Such an approach she said "made no sense" and she pledged that the composition of deportations under her watch will "be fundamentally changed."

The prosecutorial discretion memoranda were introduced as an essential component of this targeted enforcement strategy. Four months after the release of the memoranda, the preliminary results are far from promising. While practices have improved

in a few ICE offices, in the majority of offices ICE agents, trial attorneys and supervisors admitted that they had not implemented the memoranda and there had been no changes in policy or practice. Many called for additional guidance or instruction from headquarters while others felt that they were already exercising discretion sufficiently. Several said they have no intention of complying and indicated their jobs are to arrest and deport people. A few ICE attorneys expressed concern about changing current practice for fear that it would negatively impact their careers. These responses are a strong indication of how nascent and fragile the prosecutorial discretion plan is. DHS must take immediate steps to ensure that the field follows the policies articulated in the June memoranda or risk jeopardizing this key component of its immigration agenda.

Equally troublesome, ICE offices are inconsistently interpreting the prosecutorial discretion standards set forth in the June memoranda. Many ICE offices described the criteria in more narrow terms than the memoranda, and some even refused to consider whole categories of cases no matter the equities. Several said discretion would not be granted unless issues are life threatening or the individual is eligible for adjustment of status or other legal relief. Other offices gave the impression that individuals with any criminal history, including even minor offenses or offenses committed long ago, could not be considered. Still others indicated that people subject to expedited removal or who illegally re-entered after previously being deported were not eligible for prosecutorial discretion.

In May, when the President spoke in Texas, he emphasized the protection of public safety and national security. That emphasis should govern the prioritization of cases for action nationwide. When ICE announced its fiscal year 2011 statistics on the removal of "criminal aliens," it made no distinction between people convicted of petty misdemeanors and violent felons, putting a person convicted of loitering on par with a drug kingpin. But those distinctions must be a key part of how prosecutorial discretion is exercised.

Should people picked up for minor offenses like driving without a license or loitering be high priorities for civil immigration enforcement? Should DHS refuse to consider the equities of someone with an in absentia removal order from years ago who now has a family and a job, when the law provides no other remedy? Should a long term lawful permanent resident, loving husband, and dedicated father, who was convicted of burglary in his youth still be an enforcement priority twenty years after the crime, when that crime was not even a ground of removal at the time? Many who fall into these "priority" categories are precisely the family members and wage-earners the President was referring to in El Paso. In fact many of these people fit squarely within the prosecutorial discretion memoranda.

The field needs to fully understand that certain individuals who fall into enforcement priorities are nonetheless eligible for the favorable exercise of prosecutorial discretion. By definition, prosecutorial discretion requires the balancing of favorable and unfavorable factors in each case. Until DHS instructs ICE officers and trial attorneys that they are authorized to balance such factors in every case, the implementation of prosecutorial discretion will continue to founder. Clarifying guidance must also be given to the personnel of Customs and Border Protection (CBP) and U.S. Citizenship and Immigration Services (USCIS). It is clear from the experience of the past four months that, for DHS to target its enforcement efforts, it must take concrete steps to ensure that field agents and trial attorneys implement the priorities set forth in the memoranda.

Recommendation: By early November, DHS and ICE should issue implementing guidance and hands-on training instructing all ICE agents and trial attorneys that they are obligated to exercise discretion pursuant to the guidelines set forth in the June 17 ICE memoranda. Secretary Napolitano should convey to all DHS personnel that this policy has the full backing of her office and that all ICE offices are responsible for its implementation.

Recommendation: By mid-November, DHS should issue similar guidance governing Customs and Border Protection (CBP) and U.S. Citizenship and Immigration Services (USCIS).

Recommendation: DHS should clarify to its rank and file that cases which fall into the enforcement priorities may nonetheless be considered for prosecutorial discretion. If DHS policy categorically excludes certain types of cases from the favorable exercise of prosecutorial discretion, DHS should state that clearly.

Recommendation: The Department of Justice (DOJ), specifically EOIR, should issue guidance to immigration judges explaining their role in cases where prosecutorial discretion has been requested. Specifically, immigration judges should be authorized to grant requests for continuances when prosecutorial discretion is requested.

I. BACKGROUND

On June 17, 2011, ICE issued two memoranda on prosecutorial discretion. The first memo [sets forth comprehensive instructions](#) to ICE agents, officers, and attorneys about exercising discretion at all stages of the immigration enforcement process. The second memo [focuses exclusively on victims, witnesses, and plaintiffs](#) in civil rights actions.

On August 18, 2011, [DHS announced the creation of a high-level inter-agency working group](#) to review all removal cases currently pending before EOIR with the goal of identifying and administratively closing low priority cases. The working group is also charged with issuing further guidance on prosecutorial discretion for individuals with final orders of removal, and issuing guidance on prosecutorial discretion for USCIS and CBP.

In June, AILA and the Immigration Council [created a survey](#) to assess the implementation of the ICE memos and record attorneys' experiences with prosecutorial discretion. In August, the survey was updated to include questions about the new developments announced by DHS. Of the 252 case submissions we received, the number of responses was highest from: **Detroit** (21 responses), **New York** (17 responses), **San Francisco** (18 responses), **Atlanta** (18 responses), **Seattle** (15 responses), **Boston** (16 responses), **Chicago** (15 responses), and **Miami** (15 responses).

The survey results are broken into two sections. The first section summarizes the responses regarding general implementation of the policies at each of the local district offices of ICE, Enforcement and Removal Operations (ERO), or Offices of Chief Counsel (OCC). The second section reports the grant and denial rates of prosecutorial discretion requests at the offices where we have received 15 or more case examples. It tallies the positive and negative equities involved in each case, as well as the discretion being requested.

II. SURVEY RESULTS: IMPLEMENTATION AT LOCAL ICE OFFICES AND IMMIGRATION COURTS

The following accounts regarding local practices were reported to AILA by attorney respondents over the course of the four month period following the release of the June 17 memos. The information provided is based on both formal and informal interactions between attorney respondents and ICE agents, officers, attorneys, supervisors, deputies, and directors. Each account is referenced by the date it was received.

Arlington/Washington, DC (and Farmville, VA, Detention Center)

ICE ERO:

- ICE ERO told attorneys that ICE Headquarters (HQ) has not provided any implementing instructions on the June 17 memos or working group review and has no system, training, or guidance for prioritizing cases. Until instruction is received, it is business as usual. (Sept. 19, 2011).
- ICE officers reportedly stated that the June 17 memos “don’t mean anything.” “If we can arrest you, we will arrest you.” (Aug. 11, 2011, *Farmville, VA*).
- A supervisor told an attorney that the June 17 memos apply in the detention context only where there are insufficient resources to detain an individual. (July 28, 2011).
- Two ICE officers told an attorney that they do not review custody determinations. It is a waste of time to request redetermination because the request will not be taken to a supervisor. (July 28, 2011).
- An attorney was told by a DHS employee that the ICE union had told them to ignore the June 17 memo. (July 7, 2011).

ICE OCC:

- OCC told attorneys that it has received internal guidance on the memos and provided training to its attorneys, but the exercise of prosecutorial discretion (PD) varies among ICE attorneys and its high case volume is a significant barrier to processing PD requests. The more comprehensive the request for discretion (in terms of documents, affidavits, and other materials), the more likely it will be resolved expeditiously. ICE attorneys are receiving two to five requests per day, but have received no requests from pro se respondents. Although there is no categorical rule excluding anyone from consideration for relief, a person convicted of a crime of violence is unlikely to be granted relief. (Oct. 21, 2011).
- ICE told one attorney that because CBP issued the NTA, it had no authority to exercise discretion. CBP told the attorney that it had no authority either. (Aug. 12, 2011).

Immigration Court:

- An immigration judge (IJ) told attorneys he would consider granting a continuance for PD if there is a written

motion asking the ICE attorney to consider administrative closure or termination and asking for time to negotiate. PD developments had not impacted the IJ’s caseload. (Oct. 21, 2011).

Atlanta (including Stewart Detention Center and Charlotte, NC Office of the Principal Legal Advisor (OPLA))

Generally:

- ICE attorneys and officers have both stated informally that they do not intend to comply with the June 17 memos absent specific rules to do so. (3 responses from Sept. 20, 2011).

ICE ERO:

- ICE’s initial response to a PD request was to *accelerate* removal, but after further advocacy, ICE permitted the client to continue on an order of supervision while awaiting approval of a family-based petition. (Oct. 19, 2011).
- An officer reportedly stated that he did not care about “any of this” and that he is in the business of arresting and deporting. (Aug. 21, 2011).
- ICE encouraged an attorney to request deferred action in a particular case. (Aug. 9, 2011).

ICE OCC:

- One attorney reports that while proceedings have been terminated for a few DREAM candidates, nothing else has changed. (Sept. 30, 2011).
- One attorney was told that OCC already reviews cases for discretion and HQ has not provided any guidance specific to the June 17 memos or the August 18 case review announcement. (Sept. 30, 2011, *Charlotte, NC*).
- OCC is operating no differently than before. (Sept. 20, 2011).
- ICE was willing to administratively close (but not terminate) a case in which the client would be eligible for adjustment of status through a family-based petition in a couple of years (Aug. 3, 2011), however, another attorney reports having a similar request denied. (Aug. 3, 2011).

Immigration Court (Charlotte, NC):

- An IJ agreed to a continuance over ICE counsel’s objection to allow the attorney time to request discretion. (Aug. 22, 2011).

Baltimore

ICE ERO:

- ICE officers told an attorney that “a decision was made not to follow the memo.” (Aug. 1, 2011).

ICE OCC/Immigration Court:

- Two attorneys report being granted continuances to allow time to submit a written PD request or to give ICE time to consider such a request. (Oct. 6 and 10, 2011).
- ICE told attorneys that the June 17 memos reflect the authority ICE has always had and do not provide new authority or discretion. No further instructions have been given by HQ. There has been an increase in oral requests for discretion during hearings but written requests are preferred and will be reviewed. (Sept. 30, 2011).
- ICE counsel opposed an oral motion to continue to allow time for the working group to conduct its case review on grounds that ICE is not involved in the case review and it is unknown how long it will take. The IJ agreed and denied the motion. (Sept. 12, 2011).
- One attorney reports that ICE is opposing all continuances based on the working group review. (Aug. 30, 2011).
- ICE attorney advised attorney that OCC has no intention of following the June 17 memos. (July 1, 2011).

Boston

Generally:

- Attorneys were told by ICE that they are waiting on further guidance from HQ regarding the June 17 memos and the August 18 announcement and until then, it is business as usual. (Sept. 30, 2011).

ICE ERO:

- Two Congressional offices reportedly stated that ICE is very reluctant to implement the memos and that their offices have been flooded with PD requests. A stay of removal was granted only after congressional intervention at the HQ level. (Oct. 5, 2011).

ICE OCC:

- Attorney was told by ICE counsel that they are awaiting further guidance on the August 18 announcement (Sept. 23, 2011).
- One ICE attorney stated that if a case involves negative factors, ICE prefers to have it decided by an IJ. (Sept. 8, 2011).

Buffalo

ICE OCC:

- One attorney observes that ICE has always been willing to exercise PD in compelling cases or where immediate relief is available. However, absent a process directed from HQ, ICE will continue to exercise discretion in this same manner and will exclude those without compelling factors or a means to apply for legal status. (Aug. 31, 2011).

Chicago

ICE ERO:

- An attorney has had success with ERO placing a few children and their families on orders of supervision. (Sept. 30, 2011).
- An attorney reports being told by ERO that they have been instructed to review each case individually and that attorneys should request PD where relief is possible. (Sept. 9, 2011).
- A supervisor reportedly stated that PD will continue as before until guidance from HQ is received, noting that no one wants to be the first to extend him or herself. (Sept. 9, 2011).
- One attorney was told that ICE will not exercise discretion to *place* clients into §240 removal proceedings. (Sept. 9, 2011).

ICE OCC:

- An attorney commented that OCC practice has not changed. OCC will not oppose termination if the respondent is immediately eligible to adjust. (Sept. 30, 2011).
- An attorney states that the standard response from OCC is that the June 17 memos do not change their policy because they were already exercising PD. (Aug. 17, 2011).

Dallas

ICE OCC:

- An attorney was told that OCC had determined they were already exercising PD and do not need to change anything. (Oct. 11, 2011).
- One ICE attorney reportedly expressed the opinion that the June 17 memo should not apply where the client has a criminal conviction. (Oct. 10, 2011).
- One ICE attorney reportedly stated that in order to get PD, the respondent must be a DREAM Act candidate. (Aug. 30, 2011).

Denver

Generally:

- Several attorneys commented that the June 17 memos have not been implemented; ICE counsel reportedly stated that there has always been PD. (July 6–12, 2011).

ICE OCC/Immigration Court:

- ICE initially opposed a continuance for PD, but later agreed to administrative closure. (Oct. 11, 2011).
- One attorney was told that OCC is handling PD requests for cases in proceedings on a case-by-case basis, following the factors in the June 17 memos. (Oct. 10, 2011).
- An attorney commented that OCC is objecting to any continuance based on pending PD requests and IJs are not granting continuances. (Oct. 4, 2011).
- One attorney was told that if lawful permanent resident (LPR) status is requested in proceedings, OCC will only consider PD if and when LPR status is denied. (Sept. 19, 2011).
- IJs have reportedly been instructed to deny PD continuances unless DHS joins in the motion. (Sept. 2, 2011).

Detroit

Generally:

- A lengthy PD request was denied the same day it was received by ICE, thereby giving the appearance that ICE had not thoroughly considered it. (Oct. 14, 2011).
- One attorney commented that ICE does not appear to be following the memos; both ICE officers and attorneys have refused PD requests, even in very meritorious cases. (Sept. 20, 2011).
- One attorney reports that ICE employees “have been positive so far.” (July 3, 2011).

ICE ERO:

- An ICE agent told one attorney that PD is not available where an alien had been granted voluntary departure. (Sept. 9, 2011).

ICE OCC:

- The rationale provided to one attorney for not exercising discretion on cases has included a lack of guidance, lack of available relief, resources have already been expended litigating the case, and/or ICE counsel does not have time to review the request. (Sept. 28, 2011).
- One ICE attorney reportedly expressed concern about keeping his/her job and seemed reluctant to exercise discretion absent guidance. (Sept. 28, 2011).
- An attorney was told by one ICE attorney that PD is not available in cases involving a final order of removal. (Sept. 19, 2011).

- ICE counsel told an attorney that OCC is not conducting an individualized review of each case in proceedings because it is waiting on guidance from HQ. However, it will consider PD requests submitted in individual cases. (Sept. 8, 2011).

Immigration Court:

- An IJ in Cleveland is granting one-month continuances to permit the submission of written PD requests but has stated that further continuances will not be granted unless ICE joins in the motion. The IJ also reportedly stated that at some point, he will no longer grant PD continuances because “the memo has been out long enough that attorneys should have had time to pursue it if they wanted to do so.” (Sept. 22, 2011, and Oct. 7, 2011).

El Paso (and Albuquerque, NM)

Generally:

- It is “business as usual” and ICE will continue to issue NTAs until it receives guidance. ICE views the DOJ/DHS review of 300,000 cases as separate from its work. (Aug. 30, 2011, *Albuquerque*).

Honolulu

Generally:

- One attorney commented that there has been no change in policy; PD is denied unless issues are life threatening. (Aug. 23, 2011).

ICE ERO:

- ERO told an attorney that it is “business as usual.” ERO has given no indication that the PD directives mean anything new. (Oct. 14, 2011).

Houston

Generally:

- Attorneys commented that ICE continues to be very strict with PD, especially if any criminal activity (even very minor offenses) is involved. (Aug. 11, 2011).

ICE ERO:

- One attorney observed that ICE agents are refusing to exercise discretion. (July 1, 2011).

ICE OCC:

- An ICE attorney reportedly stated that the Chief Counsel is taking a conservative stance on PD until there is guidance from HQ. (Oct. 18, 2011).
- One attorney reports that in Cuban Adjustment Act (CAA) cases, ICE attorneys are requiring proof that the client has filed for adjustment under the CAA before agreeing to terminate. Even where USCIS has *granted* CAA adjustment, ICE attorneys routinely request the file and seek permission before agreeing to terminate. (Oct. 13, 2011).

- ICE attorneys have been heard to comment that without guidelines implementing the memos, OCC cannot follow them. They have also indicated that Chief Counsel is not permitting them to exercise discretion. (Oct. 10, 2011).
- One attorney reported that the August 18 announcement has not been implemented and ICE continues to say it is “business as usual.” (Oct. 4, 2011).
- An ICE attorney reportedly commented that they must jump through hoops to get approval to exercise PD. (Aug. 12, 2011).
- One attorney noted that ICE appears to be waiting for further PD guidance. (Aug. 11, 2011).

Immigration Court:

- One attorney commented that IJs will not grant continuances for PD review. (Oct. 4, 2011).

**Los Angeles
(and Las Vegas, NV)**

Generally:

- One attorney commented that the June 17 memo has not significantly changed the way PD is exercised. (July 1, 2011).

ICE OCC:

- One attorney was successful in getting administrative closure for a DREAM candidate with a non-current family petition. (Sept. 23, 2011).
- One attorney reports *less* discretion after the memos. Though previous termination requests where a U-visa application had been filed were successful, ICE is now requiring the application to be approved before agreeing to terminate. (Sept. 9, 2011).
- An attorney reported that ICE will generally not oppose termination if the respondent can apply for status through USCIS. (Aug. 10, 2011).

Miami

Generally:

- Several ICE officers and counsel reportedly stated that there is no new guidance and therefore no change in policy, or that the guidance is being discussed by supervisors. (Sept. 28, 2011).
- Two attorneys reported that ICE counsel and ERO have said they are awaiting further instruction. (Sept. 6, and Sept. 22, 2011).
- One attorney reported that ICE is asking for a detailed memo listing all or most of the June 17 factors. (Aug. 15, 2011).

ICE ERO:

- One attorney commented that ERO says it is “business as usual,” but they appear to be more open to releasing individuals without criminal histories. (Oct. 10, 2011).

- An ICE agent reportedly commented, “There is no new memo.” (Sept. 6, 2011).
- Attorneys observed that ICE agents did not appear to be aware of the June 17 memos. (Aug. 27, 2011, and July 12, 2011).
- One attorney has been successful in securing release of crime victims from detention. (July 6, 2011).

ICE OCC:

- One attorney observed that there has been no change. ICE may agree to terminate only if relief is immediately available and there are no adverse factors; ICE is awaiting further instructions on motions to reopen or cases with compelling equities but no relief. (Oct. 10, 2011).
- An ICE attorney reportedly told an IJ in court that to request PD, attorneys must file a written motion with OCC, but noted that they will only consider PD at the beginning of a case, not at any stage of the proceedings. (Sept. 28, 2011).
- Many attorneys have heard comments such as, “This doesn’t change anything.” (July 15, 2011).

**New Orleans
(and Hoover, AL)**

ICE ERO:

- ICE officers seemed reluctant to review a PD request and tried to direct the attorney to other ICE components, emphasizing the lack of HQ guidance. (Oct. 11, 2011).
- An attorney reports several cases where ICE detainees were not acted upon and no Notice To Appear (NTA) was issued for individuals picked up in minor incidents once ICE was informed of the positive equities, including long residence in the U.S., LPR/USC family members, no criminal record. (Oct. 10, 2011).
- An attorney reports having success working with ICE in Hoover, AL, and that ICE has favorably exercised discretion for clients that “meet the criteria.” (July 7, 2011).

ICE OCC:

- An attorney received continuances for two cases for DREAM candidates where there were pending PD requests for administrative closure. (Oct. 10, 2011).
- One ICE attorney reportedly stated that her office had not been given any guidance on the new policy and would not agree to a continuance based on the working group review. (Sept. 21, 2011).
- An ICE attorney reportedly stated that OCC is still awaiting guidance from HQ but will agree to terminate cases involving minors, persons who have been in the U.S. since they were very young, or other hardship cases, but not individuals who entered without inspection (EWI) with no outstanding equities, even if there is no criminal history. (Aug. 25, 2011).

New York

ICE ERO:

- One attorney observed that ICE is giving orders of supervision to “bag and baggage surrenders” if there is no criminal history. (Sept. 30, 2011).

ICE OCC:

- ICE counsel reportedly advised that they will terminate cases with approved I-130 or I-360 petitions. (Oct. 11, 2011).
- An attorney reported that ICE is terminating cases if there is an approved visa petition. (Sept. 30, 2011).
- One ICE attorney reportedly stated that if he exercised PD in one case, he would have to exercise it in every case. (Sept. 7, 2011).
- One attorney commented that ICE is willing to exercise PD if the person is eligible for adjustment, however, requests meet resistance where admissibility questions are raised or where the person needs a waiver. (July 1, 2011).

Newark

ICE ERO:

- One attorney commented that visa waiver overstays are excluded from PD, regardless of the equities. (Aug. 9, 2011).
- A request for deferred action was recommended for a grant, after the attorney was initially told that he could not even submit the request. (July 21, 2011).

ICE OCC:

- One ICE attorney reportedly confirmed that there are no PD procedures yet. (Sept. 19, 2011).
- One attorney observed that the general ICE response to PD has been, “We are anticipating further instruction, but feel free to submit materials as you see fit.” (Sept. 12, 2011).
- An ICE attorney reportedly stated that three senior attorneys will be handling PD requests. (Sept. 12, 2011).
- An ICE attorney stated in court that further PD instructions would be released in 45 days. (Sept. 6, 2011).

Orlando

Generally:

- ICE has not received any directions on implementing the June 17 memos and will operate under the old rules until further instruction is given. (Sept. 28, 2011).

ICE OCC:

- ICE is reportedly “awaiting further guidance from the higher ups” but PD requests should be put in writing. (Aug. 30, 2011).
- One attorney commented that ICE is not heeding the memo and does not consider it binding. (July 29, 2011).

Philadelphia

ICE OCC:

- OCC is actively considering PD requests on a case-by-case basis if requested by the respondent’s attorney. (Oct. 12, 2011).

Phoenix

Generally:

- Though ICE officers and attorneys maintain that the memos reflect what has always been ICE policy in Arizona, several attorneys report positive developments including clients being released from detention and ICE employees contacting attorneys about cases that might be good candidates for discretion. (Aug. 25, and 30, 2011).
- An attorney reports significant improvement in ICE’s use of discretion. (Sept. 30, 2011).

Salt Lake City (and Las Vegas, NV)

ICE ERO:

- In what appears to be a change in practice, ICE withdrew a detainer and indicated that it would consider PD requests on a case-by-case basis. (Oct. 12, 2011).
- ERO appear to welcome requests for PD but seems conflicted as to what it is going to do if it receives them. (Sept. 5, 2011, *Las Vegas*).

ICE OCC:

- OCC indicated that it had been exercising PD all along, so there is no change. (Oct. 21, 2011).
- ICE counsel openly maintains that the June 17 memos do not apply because they do not have implementing procedures from HQ. (Oct. 4, 2011, *Las Vegas*).
- OCC has not received any new PD guidance. (Sept. 5, 2011, *Las Vegas*).
- OCC interpreted the August 18 announcement as *narrowing* the cases in which PD can be exercised and takes the position that no discretion can be exercised in reentry cases involving an expedited removal order. (Sept. 5, 2011, *Las Vegas*).
- OCC seems willing to close cases if relief is available in the next few years. (Aug. 29, 2011).

San Antonio

ICE OCC/Immigration Court:

- An ICE attorney refused to consider a request for termination or deferred action and instead offered voluntary departure. The IJ expressed frustration at not receiving any guidance on what to do with this and similar cases. (Sept. 9, 2011).

San Diego

Generally:

- Attorneys report little change since the June 17 memos. One attorney is finding a universal reluctance to PD in even the most meritorious cases. (Aug. 16, 2011).

ICE OCC:

- An attorney expressed frustration with inconsistent practices among ICE attorneys, even regarding the same case. (Aug. 1, 2011).

San Francisco

Generally:

- One attorney commented that the standard reason for denial of PD is a lack of “extenuating circumstances.” (Sept. 22, 2011).
- USCIS and CBP officials told attorneys that they had received no PD guidance and that it was “business as usual.” (Sept. 21, 2011).
- Attorneys observed no change in practice after June 17 memos. (July 6 and 29, 2011).

ICE ERO:

- One attorney was told that ERO is not considering PD requests (i.e., deferred action) until the end of proceedings but ICE counsel might take a different view. (Sept. 12, 2011).
- After the attorney sent a copy of the June 17 memo to ICE, the agent held off on serving the NTA. (June 30, 2011).

ICE OCC:

- One ICE attorney expressed concern about negative press regarding Defense of Marriage Act (DOMA) and asked that the attorney contact him before going to the media. (Sept. 9, 2011).
- ICE agreed to administrative closure after receiving a letter of support from the mayor, but other PD requests have been denied. (Aug. 18, 2011).

San Juan

Generally:

- One attorney commented that ICE generally lacks knowledge of the June 17 memos and is unwilling to exercise discretion because the District Director generally opposes PD grants. (Sept. 9, 2011).

Seattle

Generally:

- One attorney was told by ICE that they will not grant PD if the person is not eligible for relief, regardless of any positive factors. (Aug. 3, 2011).

ICE ERO:

- ERO told attorneys that the June 17 memos and August 18 announcement simply put the existing policy in writing and neither broadened nor encouraged the positive exercise of discretion. (Sept. 29, 2011).
- ERO reportedly claims discretionary authority only when a detention center is full; if there are beds available, release requests are denied. (Sept. 19, 2011).
- One attorney observed that grants of stay requests appeared to be extremely random. (Aug. 19, 2011).

ICE OCC:

- OCC reportedly told one attorney that the June 17 memo guidance regarding family petitions was to decline prosecutions only if the petition fell within the LIFE Act (i.e., was filed on or before 2001) but that the guidance did not extend to petitions filed later. They are awaiting further guidance from HQ, which is expected in 3 to 4 months, but until then, there was no basis to defer or close such a case. (Sept. 19, 2011).
- One attorney reports that ICE has made unofficial comments that the Administration’s policy is not going to happen in the field; ICE has declined to use discretion to administratively close cases involving children. (Sept. 19, 2011).

Immigration Court:

- One IJ reportedly stated that neither he nor ICE counsel were doing anything about PD due to a lack of implementing guidelines or standards. (Aug. 31, 2011).

St. Paul/Minneapolis

ICE ERO:

- A supervisor reportedly stated that ICE does not have the authority to entertain requests for deferred action unless there is a final removal order. (Sept. 21, 2011).
- ERO informed attorneys that once the interagency working group is created and starts reviewing pending cases, ERO will better understand its role. (Sept. 8, 2011).

ICE OCC:

- A “go-to” person has been designated in OCC to handle PD requests. (Sept. 28, 2011).

III. SURVEY RESULTS: GRANTS AND DENIALS AT ICE OFFICES WITH MOST RESPONSES

The following charts records the type of prosecutorial discretion requested, the outcome of the request¹, and the positive² and negative³ factors for each case. The categories of positive and negative factors are the same as those listed in the June 17 memos. Pending cases are included in the total number of responses but are not listed in the charts.

Detroit

(21 responses – 2 granted, 16 denied, 3 pending)

| # | Office | Requested | Outcome | Positive Factors | Negative Factors |
|---|------------|--|---|--|--|
| 1 | OCC | <ul style="list-style-type: none"> ▪ Termination of proceedings; ▪ Agreeing to join in request for relief | Granted | <ul style="list-style-type: none"> ▪ Long time LPR ▪ USC/LPR family member ▪ Likely to be granted relief | Criminal history |
| 2 | ERO | <ul style="list-style-type: none"> ▪ Deferred Action; ▪ Stay of Removal | Granted (to have time to obtain passport for child) | <ul style="list-style-type: none"> ▪ Present since childhood ▪ No criminal history or only minor offenses ▪ USC/LPR family member | <ul style="list-style-type: none"> ▪ EWI or other illegal/fraudulent entry ▪ Immigration fraud ▪ Little likelihood for relief |
| 3 | OCC | Release from Detention | Denied | <ul style="list-style-type: none"> ▪ Present for a long time ▪ U.S high school/college graduate ▪ No criminal history or only minor offenses ▪ No prior removal ▪ Strong family/community ties in U.S. | <ul style="list-style-type: none"> ▪ Little likelihood for relief ▪ No USC/LPR family member |
| 4 | ERO OCC | <ul style="list-style-type: none"> ▪ Release from detention; ▪ Termination of proceedings; ▪ Deferred Action; ▪ Parole; ▪ Stay of Removal | Denied | <ul style="list-style-type: none"> ▪ Long time LPR ▪ Victim of DV/other serious crime ▪ Immediate relative who served in the U.S. military ▪ USC/LPR family member ▪ Primary caretaker of disabled/ill or minor relative ▪ Pregnant/nursing spouse | Criminal history |
| 5 | HSI | Issuance of NTA | Denied | <ul style="list-style-type: none"> ▪ Present for a long time ▪ USC/LPR family member ▪ No criminal history or only minor offenses ▪ No prior removal ▪ Eligible for relief (cancellation) | None |

¹ The chart lists the outcome of the case at the office indicated.

² "USC/LPR family member" only includes parents, spouses, or children.

³ Regarding "Criminal history," in some cases, there are discrepancies as to how the attorney versus ICE viewed the crime. Some attorneys checked off criminal history for misdemeanors such as shoplifting or DUI stating that they were minor but noting that ICE weighed the factor as decisive in denying requests for discretion. The offense is listed for cases where the attorneys provided the information.

| | | | | | |
|----|-----|--|--------|---|---|
| 14 | OCC | Agreeing in motion to reopen | Denied | <ul style="list-style-type: none"> Present in U.S. for a long time No criminal history or only minor offenses No prior removal/fraud USC/LPR family member | None |
| 15 | OCC | Administrative closure | Denied | <ul style="list-style-type: none"> Minor or elderly No criminal history or only minor offenses No prior removal/fraud Strong ties to U.S. Primary caretaker of disabled/ill or minor relative Likely to be granted relief | Present in the U.S. for a brief period of time |
| 16 | ERO | <ul style="list-style-type: none"> Termination of proceedings; Stay of Removal; Release of detention; Administrative closure; Agreeing in motion to continue for adjudication; Deferred action | Denied | <ul style="list-style-type: none"> Present for a long time No fraud USC/LPR family member Primary caretaker of ill/disabled or minor relative | <ul style="list-style-type: none"> Criminal history (1 DUI, 1 firearm possession) Record of immigration violations EWI or other illegal/fraudulent entry |
| 17 | OCC | Administrative closure | Denied | <ul style="list-style-type: none"> Present for a long time No prior removal/fraud USC/LPR family member Pregnant/nursing spouse Few ties to home country | Criminal history |
| 18 | OCC | Administrative closure | Denied | <ul style="list-style-type: none"> Lawfully present for a long time No criminal history or only minor offenses No prior removal/fraud USC/LPR family member Likely to be granted relief | None |

New York

(17 responses – 7 granted, 8 denied, 2 pending)

| # | Office | Requested | Outcome | Positive Factors | Negative Factors |
|---|--------|---|--|--|------------------|
| 1 | OCC | <ul style="list-style-type: none"> Agreeing to join to continue to allow for adjudication of petition; Agreeing to join in request for relief | Granted (Agreeing to join in request for relief) | <ul style="list-style-type: none"> Suffers from serious disability Present for a long time No criminal history or only minor offenses No prior removal/fraud USC/LPR family member Likely to be granted relief | None |
| 2 | OCC | Termination of proceedings | Granted | <ul style="list-style-type: none"> USC/LPR family member Likely to be granted relief | Criminal history |

| | | | | | |
|---|--------------------|---|---|--|--|
| 3 | ERO OCC | Agreeing in motion to reopen | Granted | <ul style="list-style-type: none"> ▪ Present for a long time ▪ No criminal history or only minor offenses ▪ USC/LPR family member ▪ Strong family/community ties in U.S. ▪ Few ties to home country | Outstanding/prior order of removal |
| 4 | ERO | Deferred Action | Granted | <ul style="list-style-type: none"> ▪ Present since childhood ▪ Present for a long time ▪ No fraud ▪ USC/LPR family member ▪ Few ties to home country ▪ Likely to be granted relief | <ul style="list-style-type: none"> ▪ Outstanding/prior order of removal ▪ Criminal history |
| 5 | OCC | Decision not to pursue/withdraw appeal | Granted | <ul style="list-style-type: none"> ▪ Long time LPR ▪ Elderly ▪ No criminal history or only minor offenses ▪ No prior removal/fraud ▪ Nationality makes removal unlikely ▪ Chronic/debilitating health issues ▪ Strong family/community ties in U.S. | No USC/LPR family member |
| 6 | OCC | Termination of proceedings | Granted | <ul style="list-style-type: none"> ▪ Present since childhood ▪ U.S. High school/college graduate ▪ No criminal history or only minor offenses ▪ No prior removal/fraud ▪ USC/LPR family member ▪ Strong family/community ties in U.S. | Little likelihood of being granted relief |
| 7 | ERO OCC | <ul style="list-style-type: none"> ▪ Decision not to issue an NTA; ▪ Decision not to file NTA; ▪ Release from detention; ▪ Agreeing in motion to reopen | Granted (Release from detention; IJ granted motion to reopen) | <ul style="list-style-type: none"> ▪ Victim of DV/serious crime; ▪ Present for a long time; ▪ No criminal history or only minor offenses ▪ No fraud ▪ USC/LPR family member ▪ Primary caretaker of ill/disabled or minor relative ▪ Likely to be granted relief | Outstanding/prior order of removal |
| 8 | OCC | <ul style="list-style-type: none"> ▪ Termination of proceedings; ▪ Agreeing to join request for relief | Denied | <ul style="list-style-type: none"> ▪ Long time LPR ▪ Present in U.S. for a long time ▪ No criminal history or only minor offenses; ▪ USC/LPR family member (4 adult USC children) ▪ Strong family/community ties in U.S. | <ul style="list-style-type: none"> ▪ Outstanding/prior order of removal (disputed) ▪ Immigration fraud (disputed) ▪ Little likelihood of relief |

| | | | | | |
|----|-----|--|--------|---|---|
| 9 | OCC | Termination of proceedings | Denied | <ul style="list-style-type: none"> ▪ Elderly ▪ Suffers from serious health condition ▪ No criminal history or only minor offenses ▪ No prior removal or fraud ▪ USC/LPR family member ▪ Likely to be granted relief | None (stayed in home country over 1 yr as LPR) |
| 10 | OCC | <ul style="list-style-type: none"> ▪ Decision not to file NTA; ▪ Termination of proceedings; ▪ Agreeing in request for relief | Denied | <ul style="list-style-type: none"> ▪ Long time LPR ▪ Victim of DV/serious crime ▪ U.S. High school/college graduate ▪ No criminal history or only minor offenses ▪ No prior removal or fraud; ▪ USC/LPR family member ▪ Few ties to home country ▪ Primary caretaker of ill/disabled or minor relative ▪ Spouse has severe illness ▪ Likely to granted relief | None (2 pre-IIRIRA misdemeanors) |
| 11 | ERO | Release from detention | Denied | <ul style="list-style-type: none"> ▪ Present for a long time ▪ No criminal history or only minor offenses ▪ USC/LPR family member ▪ Primary caretaker of ill/disabled or minor relative ▪ Few ties to home country ▪ Nationality makes removal unlikely ▪ Cooperating with law enforcement ▪ Likely to be granted relief | Outstanding/prior order of removal |
| 12 | ERO | Stay of removal | Denied | <ul style="list-style-type: none"> ▪ Plaintiff in lawsuit (civil rights violation) ▪ Present for a long time ▪ No criminal history or only minor offenses ▪ No fraud ▪ Cooperating with law enforcement | Outstanding/prior order of removal |
| 13 | OCC | Administrative closure | Denied | <ul style="list-style-type: none"> ▪ Present for a long time ▪ No prior removal/fraud ▪ Primary caretaker of ill/disabled or minor relative ▪ U.S. High school/college graduate ▪ Strong family/community ties in U.S. | Criminal history (1 shoplifting) |
| 14 | OCC | <ul style="list-style-type: none"> ▪ Release from detention; ▪ Agreeing in motion to reopen | Denied | <ul style="list-style-type: none"> ▪ Present for a long time ▪ Suffers from a serious health condition ▪ No criminal history or only minor offenses ▪ USC/LPR family member ▪ Few ties to home country ▪ Likely to be granted relief | Outstanding/prior order of removal |

| | | | | | |
|----|-----|------------------------------------|--------|--|--|
| 15 | OCC | Termination of removal proceedings | Denied | <ul style="list-style-type: none"> No criminal history or only minor offenses No prior removal/fraud USC or LPR family member | Present in the U.S. for a brief period of time |
|----|-----|------------------------------------|--------|--|--|

San Francisco

(17 responses – 5 granted, 10 denied, 1 mixed, 1 pending)

| # | Office | Requested | Outcome | Positive Factors | Negative Factors |
|---|--------|---|--|---|--|
| 1 | OCC | Administrative closure | Granted | <ul style="list-style-type: none"> Minor Present for a long time No criminal history or only minor offenses No prior removal/fraud U.S. High school/college graduate Few ties to home country Strong family/community ties in U.S. | <ul style="list-style-type: none"> EWI or other illegal/fraudulent entry Little likelihood for relief |
| 2 | OCC | <ul style="list-style-type: none"> Administrative closure; Decision not to pursue/withdraw appeal | <p>Granted</p> <p>(ICE offered administrative closure; attorney declined and IJ granted asylum)</p> | <ul style="list-style-type: none"> Suffers from serious disability No criminal history or only minor offenses No prior removal/fraud Likely to be granted relief | <ul style="list-style-type: none"> Present for a brief period of time EWI or other illegal/fraudulent entry Lacks family/community ties |
| 3 | HSI | Decision not to issue NTA | Granted | <ul style="list-style-type: none"> No criminal history or only minor offenses No prior removal/fraud VAWA applicant | None |
| 4 | OCC | <ul style="list-style-type: none"> Administrative closure; Agreeing to continue to allow adjudication of petition | <p>Granted</p> <p>(Administrative closure)</p> | <ul style="list-style-type: none"> Lawfully present for a long time No criminal history or only minor offenses No prior removal/fraud U.S. High school/college graduate USC/LPR family member (LGBT) | None |
| 5 | ERO | Termination of proceedings | Granted | <ul style="list-style-type: none"> No criminal history or only minor offenses Strong family/community ties in U.S. USC/LPR family member Likely to be granted relief | None |
| 6 | ERO | <ul style="list-style-type: none"> Deferred action; Stay of removal | <p>Mixed</p> <p>(Stay of removal granted for 2 out of 5 family members)</p> | <ul style="list-style-type: none"> No criminal history or only minor offense (4 out of 5 family members) Primary caretaker of ill/disabled or minor relative USC/LPR family member Strong family/community ties in U.S. Few ties to home country Present for a long time Suffers from serious health condition | <ul style="list-style-type: none"> Criminal history (felony DUI from 16 years ago) EWI or other illegal/fraudulent entry Outstanding/prior order of removal |

| | | | | | |
|----|-----|---|--------|---|--|
| 7 | OCC | Termination of proceedings | Denied | <ul style="list-style-type: none"> ▪ Elderly ▪ Serious health condition ▪ Present for a long time ▪ No criminal history or only minor offenses ▪ No prior removal/fraud ▪ Strong family/community ties ▪ Few ties to home country ▪ Likely to be granted relief | No USC/LPR family member; |
| 8 | ERO | <ul style="list-style-type: none"> ▪ Deferred Action; ▪ Issuance of NTA | Denied | <ul style="list-style-type: none"> ▪ Present for a long time ▪ No criminal history or only minor offenses ▪ No prior removal/fraud ▪ USC/LPR family member ▪ Strong family/community ties ▪ Primary caretaker for disabled/ill or minor relative ▪ Likely to be granted relief | None |
| 9 | OCC | Reissuance of an NTA at a later date (cancellation) | Denied | <ul style="list-style-type: none"> ▪ Present for a long time ▪ No criminal history or only minor offenses ▪ No prior removal/fraud ▪ USC/LPR family member ▪ Primary caretaker for disabled/ill or minor relative ▪ Few ties to home country | None |
| 10 | OCC | Termination of proceedings | Denied | <ul style="list-style-type: none"> ▪ Present for a long time ▪ No criminal history or only minor offenses ▪ No prior removal/fraud ▪ USC/LPR family member ▪ Spouse with severe illness ▪ Primary caretaker of disabled/ill relative | EWI or other illegal/fraudulent entry |
| 11 | OCC | Termination of proceedings | Denied | <ul style="list-style-type: none"> ▪ Suffers from serious disability ▪ Present for a long time ▪ No criminal history or only minor offenses ▪ No prior removal/fraud ▪ Strong family/communities ties ▪ Few ties to home country | <ul style="list-style-type: none"> ▪ EWI or other illegal/ fraudulent entry ▪ Little likelihood for relief |
| 12 | OCC | Termination of proceedings | Denied | <ul style="list-style-type: none"> ▪ Present for a long time ▪ No criminal history or only minor offenses ▪ No prior removal/fraud ▪ USC/LPR family member ▪ Likely to be granted relief | EWI or other illegal/fraudulent entry (in dispute) |
| 13 | OCC | Decision to place into §240 proceedings | Denied | <ul style="list-style-type: none"> ▪ No criminal history or only minor offenses ▪ No prior removal/fraud ▪ Few ties to home country ▪ Nationality renders removal unlikely ▪ Likely to be granted relief | None |

| | | | | | |
|----|-----|------------------------|--------|--|---|
| 14 | OCC | Administrative closure | Denied | <ul style="list-style-type: none"> ▪ Present since childhood ▪ No criminal history or only minor offenses ▪ No prior removal/fraud ▪ Few ties to home country ▪ USC/LPR family member | <ul style="list-style-type: none"> ▪ EWI or other illegal/fraudulent entry ▪ Little likelihood for relief |
|----|-----|------------------------|--------|--|---|

Seattle

(15 responses – 5 granted, 7 denied, 3 pending)

| # | Office | Requested | Outcome | Positive Factors | Negative Factors |
|---|--------|---|--|---|--|
| 1 | OCC | Termination of proceedings | Granted | <ul style="list-style-type: none"> ▪ Present since childhood ▪ Present for a long time ▪ U.S. high school/college graduate ▪ No criminal history or only minor offenses ▪ No prior removal/fraud ▪ Few ties to home country | None |
| 2 | ERO | Release from detention | Granted | <ul style="list-style-type: none"> ▪ Present for a long time ▪ No criminal history or only minor offenses ▪ No prior removal/fraud ▪ USC/LPR family member ▪ Likely to be granted relief ▪ Few ties to home country | None |
| 3 | OCC | <ul style="list-style-type: none"> ▪ Decision not to pursue/withdraw appeal; ▪ Termination of proceedings; ▪ Decision not to amend charges | <p>Granted (Decision not to pursue/withdraw appeal; IJ granted termination)</p> | <ul style="list-style-type: none"> ▪ Present since childhood ▪ No criminal history or only minor offenses ▪ No prior removal/fraud ▪ U.S. high school/college graduate ▪ Few ties to home country | <ul style="list-style-type: none"> ▪ EWI or other illegal/ fraudulent entry ▪ No USC/LPR family member ▪ Little likelihood for immediate relief |
| 4 | ERO | Release from detention | Granted | <ul style="list-style-type: none"> ▪ No criminal history or only minor offenses ▪ No prior removal/fraud ▪ Primary caretaker of ill/disabled or minor relative | EWI or other illegal/ fraudulent entry |
| 5 | OCC | <ul style="list-style-type: none"> ▪ Termination of proceedings; ▪ Deferred action; ▪ Parole | <p>Granted (Termination of proceedings)</p> | <ul style="list-style-type: none"> ▪ USC/LPR family member ▪ Primary caretaker of ill/disabled or minor relative | None |
| 6 | ERO | <ul style="list-style-type: none"> ▪ Release from detention; ▪ Reissuance of NTA at later date; ▪ Place into §240 proceedings | Denied | <ul style="list-style-type: none"> ▪ Present since childhood ▪ Present for a long time ▪ Suffers from serious disability/ health condition ▪ No criminal history or only minor offenses ▪ USC/LPR family member ▪ Few ties to home country ▪ Likely to be granted relief | <ul style="list-style-type: none"> ▪ Outstanding/prior order of removal ▪ Unresolved criminal charges |

Boston

(15 responses – 7 granted, 7 denied, 1 pending)

| # | Office | Requested | Outcome | Positive Factors | Negative Factors |
|---|--------|---|---|---|---|
| 1 | ERO | Stay of removal | Granted | <ul style="list-style-type: none"> Parent of minor who is cooperating with law enforcement No criminal history or only minor offenses | <ul style="list-style-type: none"> EWI or other illegal/fraudulent entry Outstanding/prior order of removal No USC/LPR family member |
| 2 | OCC | Termination of proceedings | Granted | <ul style="list-style-type: none"> USC/LPR family member No prior removal/fraud Likely to be granted relief | None |
| 3 | OCC | Termination of proceedings | Granted (Administrative closure) | <ul style="list-style-type: none"> Minor Present since childhood No criminal history or only minor offenses No prior removal/fraud Strong family/community ties in U.S. | Little likelihood for relief |
| 4 | OCC | <ul style="list-style-type: none"> Termination of proceedings; Administrative closure; Agreeing to motion to continue for adjudication | Granted (Termination of proceedings) | <ul style="list-style-type: none"> Present since childhood USC/LPR family member Few ties to home country No criminal history or only minor offenses No prior removal/fraud Cooperating with LEA Likely to be granted relief | None |
| 5 | OCC | Termination of proceedings | Granted | <ul style="list-style-type: none"> Lawfully present for a long time No criminal history or only minor offenses No prior removal/fraud USC/LPR family member Primary caretaker of disabled/ill or minor relative | None |
| 6 | OCC | Termination of proceedings | Granted | <ul style="list-style-type: none"> Lawfully present for a long time No criminal history or only minor offenses No prior removal/fraud USC/LPR family member Primary caretaker of disabled/ill or minor relative Likely to be granted relief | None |
| 7 | OCC | Administrative closure | Granted | <ul style="list-style-type: none"> Present for a long time No criminal history or only minor offenses No prior removal/fraud USC/LPR family member | EWI or other illegal/fraudulent entry |
| 8 | OCC | <ul style="list-style-type: none"> Termination of proceedings; Administrative closure | Denied | <ul style="list-style-type: none"> Present since childhood No criminal history or only minor offenses No prior removal/fraud Strong family/community ties in U.S. Few ties to home country | Little likelihood for relief |

Chicago

(15 responses – 5 granted, 6 denied, 4 pending)

| # | Office | Requested | Outcome | Positive Factors | Negative Factors |
|---|--------|---|---|--|--|
| 1 | ERO | Release from detention | Granted | <ul style="list-style-type: none"> No criminal history or only minor offenses Formerly minor (aged out of ORR custody) | <ul style="list-style-type: none"> EWI or other illegal/ fraudulent entry Record of immigration violations Outstanding/prior order of removal Criminal history Lacks family/ community ties |
| 2 | ERO | Termination of proceedings | Granted | <ul style="list-style-type: none"> Victim of DV/crime Present for a long time No criminal history or only minor offenses No prior removal USC/LPR family member Primary caretaker of ill/disabled or minor relative Likely to be granted relief Cooperating with LEA | None |
| 3 | OCC | Decision to place into §240 proceedings | Granted | <ul style="list-style-type: none"> Present for a long time USC/LPR family member Primary caretaker of ill/disabled or minor relative Spouse with severe illness Likely to be granted relief | <ul style="list-style-type: none"> EWI or other illegal/ fraudulent entry Criminal history (20 years ago) |
| 4 | ERO | Deferred action | Granted | <ul style="list-style-type: none"> Present for a long time No criminal history or only minor offenses No fraud Strong family/community ties in U.S. Few ties to home country | Outstanding/prior order of removal |
| 5 | OCC | <ul style="list-style-type: none"> Reissuance of NTA; Termination of proceedings; Administrative closure | Granted (Termination of proceedings) | <ul style="list-style-type: none"> Present for a long time No criminal history or only minor offenses No prior removal/fraud USC/LPR family member Primary caretaker of ill/disabled or minor relative Few ties to home country | <ul style="list-style-type: none"> EWI or other illegal/ fraudulent entry Criminal history (DUI/battery) Little likelihood for relief |
| 6 | OCC | <ul style="list-style-type: none"> Termination of proceedings; Administrative closure; Agreeing in motion to continue for adjudication | Denied | <ul style="list-style-type: none"> Lawfully present for a long time U.S. high school/college graduate No criminal history or only minor offenses No prior removal/fraud USC/LPR family member Strong family/community ties to U.S. Few ties to home country | None |