

Prosecutorial Discretion

In June 2011, ICE issued an updated policy on prosecutorial discretion and in November, it issued additional guidelines on how it would be implementing the policy. ICE said it would put on-hold low priority cases pending before the overburdened immigration court so that it could focus on individuals posing a risk to national security and public safety, and other priorities.

Prosecutorial discretion is about prioritizing resources and ensuring fair and just outcomes.

- Prosecutorial discretion is the authority exercised by every law enforcement agency to decide whether and to what degree to proceed against an individual.
- Prosecutorial discretion ensures that law enforcement officials can take into account compelling circumstances in an individual's case, such as contributions to the community, economy, or country (such as military service), length of time someone has lived in the U.S., and whether the individual has relatives who are U.S. citizens or lawful permanent residents.
- Discretion strengthens enforcement: It allows DHS and DOJ to stop wasting taxpayer resources trying to deport hard-working parents, veterans, and children brought to the U.S. by no fault of their own. Who would focus government resources on deporting students instead of persons who threaten public safety?

Prosecutorial discretion is not new.

- INS and DHS, under both Republican and Democratic administrations, have issued policies on and required the use of prosecutorial discretion.
- In a 1999 letter, 28 Republican and Democratic members of Congress (including Judiciary Chair Lamar Smith) called on DHS to issue a prosecutorial discretion policy in immigration enforcement.

What to Tell Your Congress Member:

- ICE's implementation of the prosecutorial discretion initiative announced in November has fallen short.
- This month, ICE Director Morton testified that only 1500 of the 150,000 cases (1%) reviewed so far had been administratively closed, i.e., put on hold. This is a very low number.
- From a survey AILA conducted, we know that ICE has been offering prosecutorial discretion to people who have very strong cases for lawful status in the U.S. In other words, they have been offering discretion to the *wrong* people. We also know of cases of long-time residents of the U.S., with deep ties to the U.S., who have been *denied* prosecutorial discretion.
- Although the Administration said they would offer work permits to those granted prosecutorial discretion under the new initiative this has not been the case—leaving many without the ability to support themselves and their families while their cases are on-hold.