



**U.S. Customs and
Border Protection**

MEMORANDUM FOR: Directors, Field Operations
Office of Field Operations

FROM: (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)
Executive Director
Admissibility and Passenger Programs

SUBJECT: Prosecutorial Discretion in Immigration Administrative
Proceedings

As part of implementing Executive Order 13768, Enhancing Public Safety in the Interior of the United States, and Former Secretary Kelly's February 20, 2017 memorandum, Enforcement of the Immigration laws to Serve the National Interest, the DHS Office of General Counsel (OGC) has established a process for certain instances in which the immigration court litigators of Immigration and Customs Enforcement (ICE) Office of the Principle Legal Advisor (OPLA) wish to exercise prosecutorial discretion. Based on the General Counsel's instructions, and consistent with the President and Secretary's instructions, the expectation is that legally sufficient removal charges ordinarily will be litigated by ICE OPLA to conclusion. Form I-862, Notice To Appear (NTA) will be filed and cases will not normally be administratively closed.

Where ICE OPLA believes that not filing an NTA, or that administratively closing or dismissing a case, is warranted as an exercise of prosecutorial discretion, OGC has instituted a process of coordinating with the NTA-issuing component prior to any such action. In order to facilitate these requests with respect to CBP-issued NTAs, and to assist in those instances where there may be legal questions, CBP's Office of Chief Counsel has set up email inboxes for intake from our ICE OPLA colleagues of such requests in each of our six Associate Chief Counsel regions – New York, Miami, Chicago, Houston, Tucson, and Los Angeles. ICE OPLA attorneys will send any requests for review to the email inbox for the region where the NTA was issued. Thus, if the NTA was issued in South Texas, it will go to CBP OCC's Houston office. If the NTA was issued in Buffalo, CBP OCC's Chicago office should get a prosecutorial discretion email. The email from ICE OPLA is expected to include the paperwork related to the case and the reason that the ICE attorney believes the exercise of prosecutorial discretion is appropriate.

The CBP Associate Chief Counsel office will then forward the request to the appropriate OFO Field Office management in the area that issued the charging document, for reconsideration of the prosecutorial action. After Field Counsel receives a response from Field Office management, Field Counsel will convey back to the ICE attorney any CBP objection to the exercise of discretion in that instance. There will be three business days for that process to be completed.

Where CBP timely objects to the exercise of discretion, the general rule will be that the ICE attorney will continue with removal proceedings. However, there may be instances where additional/elevated discussion is appropriate.

The volume of cases is not expected to be large, with an estimated 65 such cases nationwide since February 2017. CBP OCC Field Associate and Assistant Chief Counsels will be establishing appropriate coordination procedures with Directors of Field Operations to ensure this new process will deploy smoothly and that OFO's views will be communicated to ICE OPLA in an efficient and effective manner.

Please ensure that this memorandum is disseminated to relevant personnel within your area of responsibility. Should you have any questions or require additional information, please contact (b) (6), (b) (7)(C) (A) Director, Enforcement Programs Division, at (b) (6), (b) (7)(C) or email (b) (7)(E)