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## Immigration Enforcement

[Immigration Enforcement](#)

### Frequently Asked Questions Relating to Executive Action on Immigration

#### General

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##### What changes has the Secretary's memorandum made to the ICE enforcement priorities?

Since 2010, ICE's top immigration enforcement priority has been those individuals who pose a danger to national security or a risk to public safety. The DHS priorities continue to focus on national security and public safety, but provide additional clarity and more effective Department-wide guidance to all DHS personnel about which cases meet these standards. The Secretary's memorandum titled "[Policies for the Apprehension, Detention and Removal of Undocumented Immigrants](#)" also provides guidance regarding which recent entrants and fugitives should be the focus of limited DHS enforcement resources, and directs that these resources be dedicated in accordance with the priority specified.

##### What should I do if I am detained and believe that I am not an enforcement priority or that I should otherwise be eligible for an exercise of prosecutorial discretion?

Individuals detained in ICE custody who believe they are not an enforcement priority or otherwise merit an exercise of prosecutorial discretion should follow detainee-staff communication procedures for their facility to contact their Deportation Officer. These procedures are outlined in the orientation handbook provided to detainees when booked into ICE custody. They may also call the ICE ERO Detention Reporting and Information Line (DRIL), toll-free, at 1 (888) 351-4024 to make a request for prosecutorial discretion. The DRIL is operational Monday-Friday 8am-8pm Eastern Time, and English and Spanish operators are available. The Detention Pro Bono Access Code is 9116#.

##### What should I do if I am in removal proceedings before the Executive Office for Immigration Review (EOIR) (i.e., immigration court) and I believe that I am not an enforcement priority or that I should otherwise be eligible for an exercise of prosecutorial discretion?

The Office of the Principal Legal Advisor (OPLA) has issued guidance to its attorneys regarding pending proceedings involving individuals who may fall outside of the revised DHS enforcement priorities. OPLA attorneys are to review their cases at the earliest opportunity for the potential exercise of prosecutorial discretion in light of the enforcement priorities.

Individuals in removal proceedings are encouraged to submit requests for prosecutorial discretion in advance of immigration court hearings to the prosecutorial discretion email box of the ICE Office of Chief Counsel that is handling their case before the EOIR. A list of the OPLA field office mailboxes is available [here](#). Individuals should provide their full name, alien registration number (A-number), status of the case, and the reasons they believe they merit an exercise of prosecutorial discretion.

A copy of the April 6, 2015 Guidance Regarding Cases Pending Before EOIR Impacted by Secretary Johnson's November 20, 2014 Memorandum, entitled "[Policies for the Apprehension, Detention and Removal of Undocumented Immigrants](#)", is available.

##### What should I do if I am otherwise subject to an ICE enforcement action, and I believe that I am not an enforcement priority or that I should be eligible for an exercise of prosecutorial discretion?

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Requests for prosecutorial discretion and related inquiries should generally be made to the ICE ERO [Field Office](#) responsible for handling the case, as the decision whether to exercise prosecutorial discretion is most appropriately made at the field office level. If a case inquiry has not been resolved after contacting the appropriate ICE Field Office, case-specific inquiries related to prosecutorial discretion may be directed to: [eroprosecutorialdiscretioninquiries@ice.dhs.gov](mailto:eroprosecutorialdiscretioninquiries@ice.dhs.gov).

Upon the receipt of such an inquiry, ICE will coordinate with appropriate internal resources to determine the appropriate case resolution and communicate the resolution to the requestor. In order to process inquiries, ICE requires a valid Form G-28 for attorneys; for non-attorney legal representatives a privacy release signed by the individual named in the case is required. A sample privacy waiver form is available [here](#).

## Civil Enforcement Priorities and Prosecutorial Discretion

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### **How will ICE handle the cases of aliens in the United States who were removed and illegally reentered the country before January 1, 2014, but whose prior removal orders were reinstated on or after January 1, 2014?**

During the transition period between the prior and new enforcement priorities, individuals who fall within this relatively narrow category will be evaluated on a case-by-case basis to determine whether their removal would serve an important federal interest.

### **Will individuals who were granted voluntary departure by an immigration judge or the Board of Immigration Appeals before January 1, 2014, and whose voluntary departure period expired on or after that date without them having departed (thereby converting their voluntary departure into a removal order) be regarded as falling within Priority 3 of the November 20, 2014 memorandum?**

During the transition period between the prior and new enforcement priorities, individuals who fall within this relatively narrow category will be evaluated on a case-by-case basis to determine whether their removal would serve an important federal interest.

### **Will individuals ordered removed by an immigration judge before January 1, 2014, but whose timely appeals were denied on or after that date be regarded as falling within Priority 3 of the November 20, 2014 memorandum?**

During the transition period between the prior and new enforcement priorities, individuals who fall within this relatively narrow category will be evaluated on a case-by-case basis to determine whether their removal would serve an important federal interest.

### **Will ICE take into consideration the amount of resources expended to prosecute and adjudicate an individual's immigration case in determining whether removal serves "an important federal interest" as outlined in Section B of the November 20, 2014 memorandum?**

The normal expenditure of federal resources to prosecute and otherwise adjudicate an individual's immigration case, alone, will not determine whether removal of that individual serves an important federal interest. Instead, the Chief Counsel and ERO Field Office Director should consider, on a case-by-case basis, the conduct of the individual and its impact on the integrity of the immigration system in the exercise of their discretion.

### **Will DHS consider expunged convictions or juvenile adjudications as offenses or convictions for purposes of priority determinations under the November 20, 2014 memorandum?**

Expunged convictions will be assessed on a case-by-case basis to determine whether, under the particular circumstances, including consideration of public safety, the expunged conviction should make an alien a priority for removal. For purposes of the November 20, 2014 memorandum, an adjudication of juvenile delinquency is not treated as a conviction and will not, on its own, serve to render an alien an enforcement priority. If a juvenile, however, is tried and convicted as an adult, such conviction will be treated as a "conviction" for purposes of priorities determinations.

**The November 20, 2014 memorandum makes "an offense ... of driving under the influence" a "significant misdemeanor" and consequently part of Priority 2(b). What does "an offense ... of driving under the influence" mean in this context?**

When determining whether a conviction for driving under the influence (DUI) is a significant misdemeanor, the elements of the applicable state law must be considered. A conviction (requiring proof beyond a reasonable doubt) for DUI is a significant misdemeanor if the state statute of conviction: (1) constitutes a misdemeanor as defined by federal law (the minimum penalty includes imprisonment for more than 5 days but not more than 1 year); (2) requires the operation of a motor vehicle; and (3) requires, as an element of the offense, either a finding of impairment or a blood alcohol content of .08 or higher.

While individuals convicted of significant misdemeanors generally fall within Priority 2 of Secretary Johnson's November 20, 2014 enforcement priorities, the Secretary's guidance makes clear that, on a case-by-case basis, certain designated senior-level officials can determine that such an individual is not an enforcement priority when there are factors indicating that he or she is not a threat to national security, border security, or public safety. As with all criminal convictions, these factors could include the length of time since conviction, age at the time the offense was committed, sentence and/or fine imposed, whether the conviction has been expunged, and evidence of rehabilitation.

In the specific context of DUI offenses, such factors may also include the level of intoxication; whether the individual was operating a commercial vehicle; any additional convictions for alcohol or drug-related DUI offenses; circumstances surrounding the arrest, including presence of children in the vehicle, or harm to persons or property; mitigating factors for the offense at issue, such as the conviction being for a lesser-included DUI offense under state law, and other relevant factors demonstrating that the person is or is not a threat to public safety.

**Under DHS's enforcement priorities, how will ICE approach identity theft-related offenses where immigration status is not an explicit element of the offense but may be related to the offense or arrest? In particular, will felony and misdemeanor convictions for such offenses make aliens appropriate targets for enforcement action under Priority 1(d) (covering aliens with felony convictions except for "state and local offense[s] for which an essential element was the alien's immigration status"), Priority 2(a) (covering aliens convicted of 3 or more misdemeanors "other than ... state or local offenses for which an essential element was the alien's immigration status"), or Priority 2(b) (covering aliens convicted of "significant misdemeanors," which includes, among other things, any offense for which the sentence of time in custody is 90 days or more)?**

DHS may presumptively regard such cases as falling within Priority 1(d), Priority 2(a), or Priority 2(b), as applicable, but an immigration officer should be sensitive to the overall circumstances of the arrest and conviction in such cases. Circumstances that may be relevant in such cases include whether DHS was the agency that presented the case for prosecution, whether there is a victim in the case, the nature of any loss or harm experienced by the victim as a result of the crime, the sentence imposed as a result of the conviction (including whether the conviction was subsequently reclassified as a misdemeanor), whether there is any indication that the conviction has been collaterally challenged based on allegations of civil rights violations, and the nature and extent of the individual's criminal history.

**Domestic violence was specifically noted as a "significant misdemeanor" under Priority 2(b) of the November 20, 2014 memorandum. Does the memorandum's definition of domestic violence mirror the INA definition under section 237(a)(2)(E)(i), and does it include crimes of domestic violence regardless of how they are defined by state law?**

Perpetrators of domestic violence, depending on state law, are prosecuted either under generally applicable criminal statutes prohibiting assault and battery or under statutes specifically addressing domestic violence. Many states do not have specific domestic violence laws, but INA section 237(a)(2)(E)(i) applies if there was a domestic relationship between the perpetrator and victim. The memorandum's definition of domestic violence applies to convictions that are crimes of violence (as defined in section 16 of title 18) for acts of domestic violence regardless of how the state law categorizes them. Likewise, INA section 237(a)(2)(E)(i) applies to crimes of violence (as defined in section 16 of title 18) against spouses or domestic partners, both current and former, regardless of how the state law categorizes the offense.

**How will "significantly abused the visa or visa waiver programs" be interpreted by ICE Field Office Directors for purposes of Priority 2(d) of the November 20, 2014 memorandum?**

DHS will consider the totality of the circumstances in determining whether an alien has significantly abused the visa or visa waiver programs for purposes of Priority 2(d). While "significant abuse" is not defined in the immigration laws or the Secretary's memorandum, it should be interpreted to include intentional violations of the immigration laws that distinguish the alien as a priority because of the noteworthy or substantial nature of the violations or their frequency. By itself, overstay of a visa or the period of admission under the visa waiver program does not constitute significant abuse. The length of time an individual has overstayed his or her period of admission as a nonimmigrant should not generally be a factor in the determination. Prior or subsequent immigration violations or an adverse credibility finding are not determinative but are relevant factors to be considered. The commission of fraud when seeking an immigration benefit, at the time of entry, or during the visa application process, is a significant matter that should be considered under the totality of the circumstances.

**What does "otherwise pose a danger to national security" mean for purposes of Priority 1(a)?**

In evaluating the range of aliens who pose a danger to national security, ICE is guided by the statutory language found in the INA as described by sections 212(a)(3) and 237(a)(4). These sections of the INA, generally captioned under Security and Related Grounds, encompass: (1) aliens who have engaged in espionage, sabotage, the illegal export of goods, technology, or sensitive information; (2) aliens who have engaged in terrorist activities, including material support of terrorist organizations, solicitation of goods, funds or membership for terrorist acts or terrorist groups and the commission of terrorist activities as defined under the INA; and (3) human rights violators as described in the response below.

**The November 20, 2014 memorandum does not expressly include "human rights violators" within DHS's enforcement priorities. Will aliens who have been involved in human rights abuses be treated as priorities? If so, under what priority category do they fall?**

The "otherwise poses a danger to national security" language in Priority 1(a) should be interpreted to include those who have participated in serious violations of human rights. This is consistent with the longstanding approach of the U.S. government that equates human rights violations with national security threats. ICE should be guided by the statutory language found in INA sections 208(b)(2)(A)(i), 212(a)(2)(G), 212(a)(3)(E), and 212(a)(3)(G). These individuals would include aliens described as having engaged in, committed, ordered, incited, assisted, or otherwise participated in severe violations of religious freedom, Nazi persecution, genocide, torture, extrajudicial killings, or use or recruitment of child soldiers, and aliens described as having ordered, incited, assisted, or otherwise participated in persecution.

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**No Private Right of Action**

These responses to frequently asked questions are for informational purposes only and reflect guidance provided to ICE officers and agents, which may be modified, superseded, or rescinded at any time. They are not intended to and do not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States; its departments, agencies, or other entities; its officers or employees, or any other person. Likewise, no limitations are placed by these responses to frequently asked questions on the otherwise lawful enforcement or litigative prerogatives of the Department of Homeland Security.