

**Date: June 21, 2011**

**TO: Partners and Allies**

**FROM: Ali Noorani, Executive Director  
Brittney Nystrom, Director of Policy and Legal Affairs**

**RE: Summary of June 17, 2011 DHS Enforcement Memos**

In response to widespread and growing opposition to Obama Administration deportation policies and practices, the U.S. Department of Homeland Security (DHS) announced on June 17, 2011 instructions to underscore the agency's enforcement priorities and guide immigration officers' decisions.

This latest set of instructions follows and gives added detail to a directive that set agency enforcement priorities<sup>1</sup>. The National Immigration Forum welcomes the guidance issued by John Morton, Director of DHS's Immigration and Customs Enforcement (ICE), as important steps in a process of reining in the massive enforcement-only approach to addressing America's immigration problems.

The guidance<sup>2</sup> announced by Director Morton and titled "Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension Detention, and Removal of Aliens" has the potential to make a significant impact, clarifying the factors immigration authorities should use to evaluate how to proceed on individual cases. The memorandum instructs a range of immigration agents how to use their authority to review – on a case by case basis – immigration charges, detention, and deportations. This kind of consideration would extend to all immigrants they encounter, including how long an immigrant has been in the United States, whether the immigrant came here as a child and is pursuing an education in the United States.

It also gives instructions to give special consideration to veterans and active duty members of the military and to their immediate relatives.

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<sup>1</sup> John Morton, "Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens," Immigration and Customs Enforcement, March 2, 2011. Available at: <http://www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf>.

<sup>2</sup> John Morton, "Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens," June 17, 2011, Immigration and Customs Enforcement. Available at: <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>.

Director Morton also makes clear that government attorneys who handle immigration cases in immigration courts may decline to bring cases, dismiss deportation proceedings against immigrants who merit favorable discretion, or choose not to pursue an appeal. Importantly, ICE attorneys are directed that their discretionary authority applies in cases initiated by other DHS components, including CBP and USCIS. This direction has the potential to better align prosecutorial endeavors across DHS and to preserve resources now being wasted on low priority pursuits.

In a second memo<sup>3</sup>, Director Morton requires the maximum exercise of discretion in removal cases involving crime victims, witnesses to crimes, and individuals pursuing civil rights and liberties cases. Absent special circumstances, the memo explains it is against ICE policy to initiate removal proceedings against individuals known to be the immediate victim of or witness to a crime.

The memo also reminds ICE officers of their obligations to follow specific laws protecting victims of crime, domestic violence, and human trafficking.

These measures, if applied consistently, will focus resources on public safety and national security risks. Furthermore, these memoranda provide clear criteria by which prosecutors can concentrate their resources and individuals can seek relief. These memoranda are an important step forward in keeping communities safe and families together.

#### Next Steps

The Forum believes DHS now must make sure these policies are implemented and priorities met. To do so, DHS must:

- Properly train employees to understand and apply the appropriate discretionary priorities;
- Implement a management oversight review process that includes periodic review of cases and consequences for failure to properly follow the priorities;
- Provide public reporting on how the agency's detention/deportation portfolio has changed to reflect the stated priorities;
- Provide a process to ensure that immigrants themselves understand the priority enforcement instructions to ensure their case is considered in light of those instructions, and
- In cases where there is no attorney, establish an automatic ICE review to ensure that an immigrant's case is evaluated in light of priorities stated in the memos.

The field of stakeholders should broadly disseminate the memoranda, encouraging service providers and others to engage local ICE leadership in the implementation of these policies. For more information, please contact Brittney Nystrom, Director of Policy and Legal Affairs at [bnystrom@immigrationforum.org](mailto:bnystrom@immigrationforum.org).

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<sup>3</sup> John Morton, "Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs," June 17, 2001, Immigration and Customs Enforcement. Available at: <http://www.ice.gov/doclib/secure-communities/pdf/domestic-violence.pdf>