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OVERSIGHT HEARING ON U.S. IMMIGRATION AND CUSTOMS  
ENFORCEMENT:  
PRIORITIES AND THE RULE OF LAW

BEFORE THE  
U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON THE JUDICIARY

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Room 2141 Rayburn House Office Building

## Introduction

Chairman Smith, Ranking Member Conyers and Members of the House Judiciary Committee, I am honored to testify before you today on the important issue of immigration enforcement priorities. Having served as Deputy General Counsel, Executive Associate Commissioner and General Counsel, respectively, of the United States Immigration and Naturalization Service (INS) I have a good understanding of the challenges facing United States Immigration and Customs Enforcement (ICE) in managing its resources to promote homeland security and public safety through the enforcement of federal laws governing border control, customs, trade and immigration.

In June 2010, John Morton, the director of ICE, explained that given present funding levels, the maximum capacity of the removal system is about “400,000 aliens per year, less than 4 percent of the illegal alien population in the United States.”<sup>1</sup> Recognizing that resources are finite, the Department of Homeland Security (DHS) and ICE, like their predecessor agencies before them, must prioritize the use of those resources in order to fulfill their mission.

The process of establishing enforcement priorities necessarily involves identifying characteristics that make some cases a higher priority than others. In other words, there are necessarily some trade offs. For example, the decision by INS during the 1990s to focus on the removal of aliens who have been convicted of crimes resulted in a lower priority and fewer resources being applied to worksite enforcement operations. The same is true today. Even at the seemingly high rate of 400,000 removals per year, judgments have to be made on a case-by-case basis to ensure that the goals of homeland security, border protection and public safety are being met.

My testimony will focus on the legal authority for the exercise of prosecutorial discretion in the removal of noncitizens and the reasonableness and legality of the recent DHS guidelines for the exercise of that discretion. While the focus of this hearing is the memoranda issued last summer by ICE and DHS, these guidelines are only the latest in a long tradition of outlining the factors to be considered in exercising prosecutions discretion. The uniform application of such guidelines to law enforcement decisions is, in my view, as important to good government as the authority to arrest, detain, charge and remove non-citizens.

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<sup>1</sup> See Memorandum From John Morton, Assistant Secretary, U.S. Immigration & Customs Enforcement, on Civil Immigration Enforcement (June 30, 2010), *available at* [http://www.ice.gov/doclib/detention-reform/pdf/civil\\_enforcement\\_priorities.pdf](http://www.ice.gov/doclib/detention-reform/pdf/civil_enforcement_priorities.pdf). This memo was reissued in March 2011, to include a disclaimer that it does not create any enforceable rights or benefits. See Memorandum From John Morton, Assistant Secretary, U.S. Immigration & Customs Enforcement, on Civil Immigration Enforcement (March 2, 2011), *available at* <http://www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf>

## **Prosecutorial Authority**

The number of criminal aliens who have been removed has risen sharply in recent years. According to the DHS Office of Immigration Statistics presented in Table 1, the number of criminal aliens removed from the United States has gone from 73,298 in 2001 to 168,532 in 2010. These numbers constitute a 138% increase in the removal of criminal aliens over the past decade. Criminal aliens made up 44% of all removals in 2010, the largest portion of removals since 2002.<sup>2</sup>

Despite the significant allocation of resources Congress has dedicated to immigration enforcement activities, the funding has limits and the agency must make thoughtful decisions about prosecutorial priorities in order to make effective use of available resources. The President has repeatedly announced that the Administration's interior enforcement priority is the prosecution and removal of immigrants who have committed serious crimes. To ensure that this and other prioritization decisions are followed and implemented, it is not uncommon for law enforcement agencies within and outside of the immigration context to provide clear guidance and training to its officers about the exercise of prosecutorial discretion. This type of guidance is not unusual. In fact, numerous memos have been issued by the DHS and its predecessor INS over the years setting forth agency priorities and seeking to provide officers with clear guideposts for carrying out those priorities. The challenge is often in ensuring that such guidance is understood and followed on the frontlines of immigration enforcement.

The authority of law enforcement agencies to exercise discretion in deciding what cases to investigate and prosecute under existing civil and criminal law, including immigration law, is fundamental to the American legal system. Every prosecutor and police officer in the nation makes daily decisions about how to allocate enforcement resources, based on judgments about which cases are the most egregious, which cases have the strongest evidence, which cases should be settled and which should be brought forward to trial. Border Patrol agents, Immigration officers and DHS attorneys must do the same every day.

The Supreme Court has made it clear that “an agency’s decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency’s absolute discretion.”<sup>3</sup> The Court writes:

The reasons for this general unsuitability are many. First, an agency decision not to enforce often involves a complicated balancing of a number of factors which are peculiarly within its expertise. Thus, the agency must not only assess whether a violation has occurred, but whether agency resources are best spent on this violation or another, whether the agency is likely to succeed if it acts, whether the particular enforcement action requested best fits the agency's overall policies, and,

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<sup>2</sup> See testimony of Ruth Ellen Wasem, Specialist in Immigration Policy, Congressional Research Service, October 4, 2011, Committee on Homeland Security, Subcommittee on Border and Maritime Security, data from DHS Office of Immigration Statistics Yearbook, 2010, table 38.

<sup>3</sup> Heckler v. Chaney 470 U.S. 821, 831 (1985).

indeed, whether the agency has enough resources to undertake the action at all. An agency generally cannot act against each technical violation of the statute it is charged with enforcing. The agency is far better equipped than the courts to deal with the many variables involved in the proper ordering of its priorities. . . . Finally, we recognize that an agency's refusal to institute proceedings shares to some extent the characteristics of the decision of a prosecutor in the Executive Branch not to indict -- a decision which has long been regarded as the special province of the Executive Branch, inasmuch as it is the Executive who is charged by the Constitution to "take Care that the Laws be faithfully executed." U.S.Const., Art. II, § 3.

[470 U.S. 831, 832]. It bears noting that the Supreme Court cares so deeply about administrative discretion and expertise in this area that it invoked it in a case involving the FDA's decision to not regulate at all the drugs used to execute a human being.

Since its enactment in 1952, the Immigration and Nationality Act has given the Attorney General and more recently the Secretary of Homeland Security prosecutorial discretion to exercise the power to remove foreign nationals. In 1959, a major textbook of immigration law wrote, "Congress traditionally has entrusted the enforcement of its deportation policies to executive officers and this arrangement has been approved by the courts."<sup>4</sup> Generally, prosecutorial discretion is the authority that an enforcement agency has in deciding whether to enforce or not enforce the law against someone. In the immigration context, prosecutorial discretion exists across a range of decisions that include: prioritizing certain types of investigations; deciding whom to stop, question and arrest; detaining an alien; issuing a notice to appear (NTA); granting deferred action; agreeing to allow the alien to depart voluntarily; and executing a removal order.

Prosecutorial discretion is normally exercised on a case-by-case basis with respect to individuals who have come into contact with law enforcement authorities. The government can also exercise prosecutorial discretion by allowing individuals from explicitly defined groups that it does not consider to be enforcement priorities to ask affirmatively that discretion be applied in their case. Examples include Temporary Protected Status and Deferred Enforced Departure. This exercise of executive authority is not contrary to current law, but rather a matter of the extension and application of current law to contemporary national needs, values and priorities.

### **Guidance for the Exercise of Prosecutorial Discretion**

As early as 1975, legacy INS issued guidance on a specific form of prosecutorial discretion known as deferred action, which cited "appealing humanitarian factors." The initial guidelines used by INS to grant deferred action status, originally known as "nonpriority enforcement status," came to light in the midst of INS attempts to remove

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<sup>4</sup> Charles Gordon and Harry N. Rosenfield, *Immigration Law and Procedure*, Albany, New York: Banks and Company, 1959, p. 406.

former Beatle John Lennon for a British drug conviction.<sup>5</sup> Those granted deferred action may obtain work authorization upon a showing of need, 8 C.F.R. § 274a.12(c)(14), but they receive few other benefits. They have no family reunification rights, and the status is subject to withdrawal at any time. Significantly, a grant of deferred action will not allow a person to adjust their status to that of a lawful permanent resident and also will not cure any prior accrual of unlawful presence for purposes of the three- and ten-year bars on future admission imposed by INA § 212(a)(9)(B).

The executive branch, through the Secretary of Homeland Security, can exercise discretion not to prosecute a case by granting “deferred action” to an otherwise removable non-citizen. The former INS had guidelines in the form of “Operations Instructions” regarding the granting of deferred action. These guidelines provided for deferred action in cases where “adverse action would be unconscionable because of the existence of appealing humanitarian factors.”<sup>6</sup> Currently, deferred action is considered to be “a discretionary action initiated at the discretion of the agency or at the request of the alien, rather than an application process.”<sup>7</sup>

DHS has also described deferred action as an exercise of agency discretion that authorizes an individual to temporarily remain in the U.S. Regulations describe deferred action as “an act of administrative convenience to the government which gives some cases lower priority” (for enforcement action).<sup>8</sup> DHS has stated in recent correspondence with the Hill that factors to be considered in evaluating a request for deferred action include the presence of sympathetic or compelling factors.

Deferred action does not confer any specific status on the individual and can be terminated at any time pursuant to the agency’s discretion. DHS regulations, however, do permit deferred action recipients to be granted employment authorization upon establishing an economic necessity to work.<sup>9</sup>

Deferred action determinations are made on a case-by-case basis, but eligibility for such discretionary relief can be extended to individuals based on their membership in a discrete class. For example, in June 2009, the Secretary of DHS granted deferred action to individuals who fell in to the following class: widows of U.S. citizens who were unable to adjust their status due to a statutory restriction (related to duration of marriage

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<sup>5</sup> See Wildes, *The Nonpriority Program of the Immigration and Naturalization Service Goes Public: The Litigative Use of the Freedom of Information Act*, 14 San Diego L. Rev. 42, 42–49 (1976). Lennon escaped deportation (but based on judicial interpretation of the removal ground with which he was charged) and eventually became a lawful permanent resident. *Lennon v. INS*, 527 F.2d 187 (2d Cir. 1975).

<sup>6</sup> See (Legacy) Immigration and Naturalization Service, Operations Instructions, O.I. § 103.1(a)(1)(ii)(1975).

<sup>7</sup> (See “Response to Recommendation #32, Deferred Action”, August 7, 2007, at [http://www.dhs.gov/xlibrary/assets/cisombudsman\\_rr\\_32\\_o\\_deferred\\_action\\_uscis\\_response\\_08-07-07.pdf](http://www.dhs.gov/xlibrary/assets/cisombudsman_rr_32_o_deferred_action_uscis_response_08-07-07.pdf)).

<sup>8</sup> 8 C.F.R. 274a.12(c)(14).

<sup>9</sup> *Id.*

at time of sponsor's death).<sup>10</sup> Congress subsequently enacted a change in the law to address this particular problem.

Another recent example of the exercise of such executive authority to a class is the grant of deferred action to VAWA (Violence Against Women Act) applicants whose cases were awaiting the promulgation of regulations by DHS. Nearly 12,000 individuals were granted deferred action in 2010 under this exercise of executive authority.

Another specific form of prosecutorial discretion is a stay of removal, which would be issued at a later step in the process, after a removal order. In practical effect, it can provide the same type of relief to noncitizens as deferred action. Though a discretionary stay of removal was traditionally used to give the noncitizen a reasonable amount of time to make arrangements prior to removal, or to forestall removal pending the outcome of a motion to reopen removal proceedings, it can be used more broadly, as rough equivalent to deferred action for persons who already have an order of removal.

In 1986, Congress made deporting aliens who had been convicted of certain crimes an enforcement priority. The Immigration Reform and Control Act of 1986 (IRCA) required the Attorney General "In the case of an alien who is convicted of an offense which makes the alien subject to deportation ... [to] begin any deportation proceeding as expeditiously as possible after the date of the conviction."<sup>11</sup> Between 1988 and 1996, Congress enacted a series of measures, including the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208), expanding the definition of aggravated felons, creating additional criminal grounds for removal and substantially cutting back on relief from removal.<sup>12</sup>

Publicity surrounding a number of highly sympathetic cases that earlier would have generated a grant of relief prompted some 28 members of the House to write a letter to the Attorney General and INS Commissioner Doris Meissner calling attention to the existence of cases where removal was "unfair and resulted in unjustifiable hardship." The signatories included some of the leaders in adopting the restrictive 1996 legislation. They urged the adoption of guidelines for the use of prosecutorial discretion to avoid the hardship inflicted in such cases. 76 Interp. Rel. 1720 (1999).

In November 2000, Meissner issued a memorandum to INS field offices<sup>13</sup> with guidance on prosecutorial discretion, explaining:

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<sup>10</sup>See "Guidance Regarding Surviving Spouse of Deceased U.S. Citizens and their Children", June 15, 2009, at <http://www.uscis.gov/USCIS/Laws/Memoranda/2009/June%202009/surviving-spouses-deferred-action-guidance.pdf>.

<sup>11</sup>P.L. 99-603, §701.

<sup>12</sup> Anti-Drug Abuse Act of 1988 (P.L. 100-690); Immigration Act of 1990, P.L. 101-649 (1990); Immigration and Nationality Technical Correction Act of 1994, P.L. 103-416 (1994); Antiterrorism and Effective Death Penalty Act of 1996, P.L. 104-132 (1996); Illegal Immigrant Reform and Immigrant Responsibility Act of 1996, P.L. 104-208, Div. C (1996).

<sup>13</sup> Doris Meissner, Commissioner of the Immigration and Naturalization Service, *Exercising Prosecutorial Discretion*, memorandum to regional directors, district directors, chief patrol agents, and the regional and district counsels, November 7, 2000.

Service officers are not only authorized by law but expected to exercise discretion in a judicious manner at all stages of the enforcement process—from planning investigations to enforcing final orders. \* \* \* [Furthermore] INS officers may decline to prosecute a legally sufficient immigration case if the Federal immigration enforcement interest that would be served by prosecution is not substantial.

77 Interp. Rel. 1661 (2000). The memo, a first draft of which I authored while INS General Counsel, identified factors to be considered in the exercise of prosecutorial discretion, including immigration history and status, length of stay in the United States, criminal history, humanitarian concerns, likelihood of ultimately removing the alien, likelihood of achieving the enforcement goal by other means, the effect on future admissibility, cooperation with law enforcement officials, community attention, U.S. military service, and available INS resources.

Meissner further stated that prosecutorial discretion should not become “an invitation to violate or ignore the law.” She concluded by citing the “substantial federal interest” principle governing the conduct of U.S. Attorneys when determining whether to pursue criminal charges in a particular instance, and claimed that this principle was pertinent to immigration removal decisions as well. According to the memorandum, immigration enforcement officers “must place particular emphasis on the element of substantiality. How important is the Federal interest in the case, as compared to other cases and priorities?”

In an October 24, 2005 memorandum, then-ICE Principal Legal Advisor William Howard cited several policy factors on needs to exercise prosecutorial discretion. Another issue Howard raised was resources, as he pointed out that the Office of Principal Legal Advisor (OPLA) was “handling about 300,000 cases in the immigration courts, 42,000 appeals before the Board of Immigration Appeals (BIA or Board) and 12,000 motions to re-open each year.” He further stated:

Since 2001, federal immigration court cases have tripled. That year there were 5,435 federal court cases. Four years later, in fiscal year 2004, that number had risen to 14,699 federal court cases. Fiscal year 2005 federal court immigration cases will approximate 15,000.

AILA InfoNet Doc. No. 11100463. (Posted 10/04/11).

Howard offered examples of the types of cases to consider for prosecutorial discretion, such as someone who had a clearly approvable petition to adjust to legal permanent resident status, someone who was an immediate relative of military personnel, or

someone for whom sympathetic humanitarian circumstances “cry for an exercise of prosecutorial discretion.”<sup>14</sup>

In November 2007, then-DHS Assistant Secretary Julie L. Myers issued a memorandum in which she clarified that the replacement of the “catch and release” procedure with the “catch and return” policy for apprehended aliens (i.e., a zero-tolerance policy for all aliens apprehended at the border) did not “diminish the responsibility of ICE agents and officers to use discretion in identifying and responding to meritorious health-related cases and caregiver issues.”

### **Current DHS Guidelines**

On June 17, 2011, John Morton, Director of Immigration and Customs Enforcement, issued two memoranda to agency personnel clarifying the role of prosecutorial discretion in immigration agency enforcement actions. The two memoranda serve to clarify the role of prosecutorial discretion in immigration enforcement actions. Neither document represents in any respect a change to existing law or departure from permissible policy, but instead clarifies responsibilities inherent in the exercise of prosecutorial discretion.

The first memorandum, “Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens,” builds upon prior prosecutorial discretion guidance reaching back to 1976 and outlines the nature of prosecutorial discretion, the personnel empowered to exercise discretion, and both positive and negative factors to consider in deciding whether to proceed with an immigration enforcement action against an individual. The memorandum provides, in pertinent part, as follows:

In the civil immigration enforcement context, the term "prosecutorial discretion" applies to a broad range of discretionary enforcement decisions, including but not limited to the following:

- deciding to issue or cancel a notice of detainer;
- deciding to issue, reissue, serve, file, or cancel a Notice to Appear (NTA);
- focusing enforcement resources on particular administrative violations or conduct;
- deciding whom to stop, question, or arrest for an administrative violation;
- deciding whom to detain or to release on bond, supervision, personal recognizance, or other condition;
- seeking expedited removal or other forms of removal by means other than a formal removal proceeding in immigration court;
- settling or dismissing a proceeding;

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<sup>14</sup> William J. Howard, Principal Legal Advisor, U.S. Immigration and Customs Enforcement, *Prosecutorial Discretion*, memorandum to all Office of the Principal legal Advisor Chief Counsel, October 24, 2005.

- granting deferred action, granting parole, or staying a final order of removal;
- agreeing to voluntary departure, the withdrawal of an application for admission, or other action in lieu of obtaining a formal order of removal;
- pursuing an appeal;
- executing a removal order; and
- responding to or joining in a motion to reopen removal proceedings and to consider joining in a motion to grant relief or a benefit.

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When weighing whether an exercise of prosecutorial discretion may be warranted for a given alien, ICE officers, agents, and attorneys should consider all relevant factors, including, but not limited to—

- the agency’s civil immigration enforcement priorities;
- the person’s length of presence in the United States, with particular consideration given to presence while in lawful status;
- the circumstances of the person’s arrival in the United States and the manner of his or her entry, particularly if the alien came to the United States as a young child;
- the person’s pursuit of education in the United States, with particular consideration given to those who have graduated from a U.S. high school or have successfully pursued or are pursuing a college or advanced degrees at a legitimate institution of higher education in the United States;
- whether the person, or the person’s immediate relative, has served in the U.S. military, reserves, or national guard, with particular consideration given to those who served in combat;
- the person’s criminal history, including arrests, prior convictions, or outstanding arrest warrants;
- the person’s immigration history, including any prior removal, outstanding order of removal, prior denial of status, or evidence of fraud;
- whether the person poses a national security or public safety concern;
- the person’s ties and contributions to the community, including family relationships;
- the person’s ties to the home country and condition~ in the country;
- the person’s age, with particular consideration given to minors and the elderly;
- whether the person has a U.S. citizen or permanent resident spouse, child, or parent;
- whether the person is the primary caretaker of a person with a mental or physical disability, minor, or seriously ill relative;
- whether the person or the person’s spouse is pregnant or nursing;
- whether the person or the person’s spouse suffers from severe mental or physical illness;
- whether the person’s nationality renders removal unlikely;

- whether the person is likely to be granted temporary or permanent status or other relief from removal, including as a relative of a U.S. citizen or permanent resident;
- whether the person is likely to be granted temporary or permanent status or other relief from removal, including as an asylum seeker, or a victim of domestic violence, human trafficking, or other crime; and
- whether the person is currently cooperating or has cooperated with federal, state or local law enforcement authorities, such as ICE, the U.S. Attorneys or Department of Justice, the Department of Labor, or National Labor Relations Board, among others.

This list is not exhaustive and no one factor is determinative. ICE officers, agents, and attorneys should always consider prosecutorial discretion on a case-by-case basis. The decisions should be based on the totality of the circumstances, with the goal of conforming to ICE's enforcement priorities.

That said, there are certain classes of individuals that warrant particular care. As was stated in the Meissner memorandum on Exercising Prosecutorial Discretion, there are factors that can help ICE officers, agents, and attorneys identify these cases so that they can be reviewed as early as possible in the process.

The following positive factors should prompt particular care and consideration:

- veterans and members of the U.S. armed forces;
- long-time lawful permanent residents;
- minors and elderly individuals;
- individuals present in the United States since childhood;
- pregnant or nursing women;
- victims of domestic violence; trafficking, or other serious crimes;
- individuals who suffer from a serious mental or physical disability; and
- individuals with serious health conditions.

In exercising prosecutorial discretion in furtherance of ICE's enforcement priorities, the following negative factors should also prompt particular care and consideration by ICE officers, agents, and attorneys:

- individuals who pose a clear risk to national security;
- serious felons, repeat offenders, or individuals with a lengthy criminal record of any kind;
- known gang members or other individuals who pose a clear danger to public safety; and
- individuals with an egregious record of immigration violations, including those with a record of illegal re-entry and those who have engaged in immigration fraud.

The second memorandum, “Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs,” locates the use of prosecutorial discretion within specific enforcement situations involving witnesses or victims of crimes who may be eligible for immigration benefits. This memo largely serves as a reminder to ICE personnel that it is generally against ICE policy to initiate removal proceedings against such persons, even if they are encountered as a result of programs such as Secure Communities.

As noted, neither memorandum changes any law, nor does either provide any new form of relief to persons here in violation of the immigration laws. The first, more general memo simply emphasizes that the exercise of discretion in determining whether to initiate or terminate an action must be guided by an understanding of existing agency priorities. The memo explains that limited agency resources require ICE personnel to consider whether prosecution of an individual case is consistent with the agency’s priorities of promoting national security, border security, public safety, and the integrity of the immigration system. The memo does not dictate a particular result in any case or category of cases; instead it encourages ICE personnel to consider a wide range of positive and negative factors, to review charging decisions made by other agencies as appropriate, and to act affirmatively in appropriate cases. Thus, the primary effect of the memo, if followed by ICE personnel, will be to empower individual officers and attorneys to act in the best interests of the agency by limiting the prosecution of cases that do not fit within the agency’s stated priorities, allowing the agency to focus more specifically on individuals who do fit within those priorities.

Similarly, the second memo on treatment of victims and witnesses creates no new requirements or obligations for ICE personnel. Instead, the memo serves as a reminder of the special immigration benefits authorized by Congress for victims or witnesses of crime who cooperate with law enforcement and the possible conflict with Congress’s purposes in authorizing those benefits that may occur if removal proceedings are initiated against such individuals.

On August 18, 2011, in a letter to Senator Dick Durbin and 21 other Senators, DHS Secretary Janet Napolitano announced a new process for implementation of the June 17, 2011, prosecutorial discretion memorandum. The letter included a background two-pager that summarized DHS efforts to date at establishing enforcement priorities and described the role of a new interagency working group tasked with reviewing individual cases currently in removal proceedings as well as issuing guidance for the introduction of new cases:

On August 18, 2011, DHS unveiled a new interagency process to ensure that resources are focused on the Administration’s highest enforcement priorities. As part of this process, an interagency team of DHS and Department of Justice (DOJ) officers and attorneys, including representatives from throughout DHS and from the Executive Office for Immigration Review (EOIR) and the Office of Immigration Litigation at DOJ, will identify low-priority removal cases that should be considered for an exercise of discretion. This review will be conducted on a case-by-case basis and will consider cases that are at the various stages of

enforcement proceedings, including charging, hearing, and after a final order of removal. The interagency working group will also issue guidance to prevent low priority cases from entering the system on a case-by-case basis. Resources that are saved as a result of this process will be used to accelerate the removal of high priority cases.

[*See Administration Takes Action to Ease Deportation Policies, 88 Interp. Rel. 1961 (2011)*]. This memorandum, like the Morton memoranda described above, directs a case-by-case rather than a categorical approach to the exercise of prosecutorial discretion. This is far from the unconstitutional abrogation of immigration enforcement responsibility it has been labeled. Indeed, unlike earlier guidelines issued at the INS and ICE levels the Secretary's memorandum directs the engagement of all DHS and DOJ components that are involved in the removal process. The goal is further thoughtful development of guidance for the use of DHS and DOJ resources.

## **Conclusion**

Thank you so much for the opportunity to share with you my thoughts on the important role of prosecutorial discretion in the enforcement of our nation's immigration laws. The resources available for DHS and DOJ to administer the civil enforcement provisions of the Immigration and Nationality Act are finite. Accordingly, the executive branch must establish priorities for the use of those resources. In establishing enforcement priorities certain goals, e.g., removal of those convicted of serious crimes, will represent a higher priority than others, e.g., person is the primary caretaker of a person with a mental or physical disability, minor, or seriously ill relative. The authority for the exercise of prosecutorial discretion in removal proceedings is clear and longstanding. The latest guidelines from ICE and the Secretary of DHS have drawn certain lines in terms of enforcement priorities, lines that are both lawful and reasonable.

This concludes my testimony, I welcome your questions.