

Hot Topics: Prosecutorial Discretion is Back!

Reference Materials

- Memo: Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities – From David Pekoske, Acting Secretary, U.S. Department of Homeland Security, January 20, 2021
- Memo: Interim Guidance: Civil Immigration Enforcement and Removal Priorities – From Tae D. Johnson, Acting Director, U.S. Immigration and Customs Enforcement, February 18, 2021
- Memo: Interim Guidance to OPLA Attorneys Regarding Civil Immigration Enforcement and Removal Policies and Priorities – From John D. Trasviña, Principal Legal Advisor, U.S. Immigration and Customs Enforcement, May 27, 2021
- ICE Directive 11005.3: Using a Victim-Centered Approach with Noncitizen Crime Victims
- Memo: Guidelines for the Enforcement of Civil Immigration Law – From Alejandra N. Mayorkas, Secretary, U.S. Department of Homeland Security, September 30, 2021
- Dallas OPLA PD Request Checklist
- Guide to Requesting Prosecutorial Discretion – U.S. Department of Homeland Security, Immigration and Customs Enforcement, Office of the Principal Legal Advisor – El Paso
- Guide to Request Prosecutorial Discretion – U.S. Department of Homeland Security, Office of the Principal Legal Advisor – Houston, July 7, 2021
- Guide to Request Prosecutorial Discretion from OPLA San Antonio
- Prosecutorial Discretion and the ICE Office of the Principal Legal Advisor (OPLA) – Nationwide
- Template: OPLA Dallas Joint Motion to Dismiss
- Template: Dallas Motion to Continue
- News Release: ICE Announces case review Process, U.S. Department of Immigration and Customs Enforcement, March 5, 2021



Homeland
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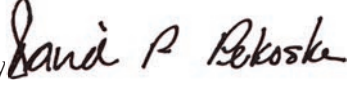
January 20, 2021

MEMORANDUM FOR: Troy Miller
Senior Official Performing the Duties of the Commissioner
U.S. Customs and Border Protection

Tae Johnson
Acting Director
U.S. Immigration and Customs Enforcement

Tracey Renaud
Senior Official Performing the Duties of the Director
U.S. Citizenship and Immigration Services

CC: Karen Olick
Chief of Staff

FROM: David Pekoske 
Acting Secretary

SUBJECT: **Review of and Interim Revision to Civil Immigration
Enforcement and Removal Policies and Priorities**

This memorandum directs Department of Homeland Security components to conduct a review of policies and practices concerning immigration enforcement. It also sets interim policies during the course of that review, including a 100-day pause on certain removals to enable focusing the Department's resources where they are most needed. The United States faces significant operational challenges at the southwest border as it is confronting the most serious global public health crisis in a century. In light of those unique circumstances, the Department must surge resources to the border in order to ensure safe, legal and orderly processing, to rebuild fair and effective asylum procedures that respect human rights and due process, to adopt appropriate public health guidelines and protocols, and to prioritize responding to threats to national security, public safety, and border security.


This memorandum should be considered Department-wide guidance, applicable to the activities of U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS).



**U.S. Immigration
and Customs
Enforcement**

February 18, 2021

MEMORANDUM FOR: All ICE Employees

FROM: Tae D. Johnson 
Acting Director

SUBJECT: Interim Guidance: Civil Immigration Enforcement and
Removal Priorities

Purpose

This memorandum establishes interim guidance in support of the interim civil immigration enforcement and removal priorities that Acting Secretary Pekoske issued on January 20, 2021. Acting Secretary Pekoske issued the interim priorities in his memorandum titled, *Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities* (Interim Memo).

This interim guidance is effective immediately. It applies to all U.S. Immigration and Customs Enforcement (ICE) Directorates and Program Offices, and it covers enforcement actions, custody decisions, the execution of final orders of removal, financial expenditures, and strategic planning.

This interim guidance will remain in effect until Secretary Mayorkas issues new enforcement guidelines. The Secretary has informed me that he will issue new guidelines only after consultation with the leadership and workforce of ICE, U.S. Customs and Border Protection, and other Department of Homeland Security (Department) agencies and offices. He anticipates issuing these guidelines in less than 90 days.

I have requested approval of certain revisions to the Interim Memo until the Secretary issues new enforcement guidelines. My requested revisions have been approved, and they are incorporated into this guidance. To the extent this guidance conflicts with the Interim Memo, this guidance controls. As you will read below, the revisions include, but are not limited to: (1) authorization to apprehend presumed priority noncitizens¹ in at-large enforcement actions without advance approval; (2) the inclusion of current qualifying members of criminal gangs and transnational criminal organizations as presumed enforcement priorities; (3) authorization to apprehend

¹ For purposes of this memorandum, "noncitizen" means any person as defined in section 101(a)(3) of the Immigration and Nationality Act (INA).

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