



PROSECUTORIAL DISCRETION In A Nutshell

A Quick Guide to PD in Removal

SEPT 2022

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DISCRETION
In A Nutshell



Road Map

- Brief overview
- Current state of PD
- Guide to requesting PD



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But First: What is PD?

- DHS exercising its authority to decide how to enforce immigration laws
- A focusing of finite resources
- Limited humanitarian relief



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Statutory Authority for PD



The Supreme Court said:

"A principal feature of the removal system is the broad discretion exercised by immigration officials. Federal officials, as an initial matter, must decide whether it makes sense to pursue removal at all."

"Discretion [...] embraces immediate human concerns."

See, Arizona v. United States, 641 F.3d 339 (2012)

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Memos

Pekoske - January 20, 2021 and Johnson - February 18, 2021

- Established interim enforcement guidance for ICE
- Clarified definition of "public safety"
- Limited collateral arrests

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Memos

Mayorkas - September 30, 2021

- Established enforcement priorities for DHS
 - National Security
 - Public Safety
 - Border Security
- Addressed civil rights and civil liberties

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