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Softened Deportation Policy No Amnesty, Lawyers Warn

January 10, 2012 By [Aaron Kase](#)

The Department of Homeland Security is shifting its resources away from low priority illegal immigration cases to concentrate on felons and foreigners posing national security risks, but [immigration lawyers](#) warn undocumented residents that the policy is no license to poke their necks out and announce their presence unnecessarily.

- **Enforcement attorneys granted discretion to decide who to deport**
- **Immigration lawyers warn illegal immigrants to not approach authorities**
- **Record number of deportations last year**

Not an Amnesty

The [new DHS policy](#), administered through Immigration and Customs Enforcement, or ICE, encourages government lawyers to use “prosecutorial discretion” to decide whether an illegal immigrant caught in the United States is worth deporting or not.



What does the new policy mean for foreign nationals living illegally in the United States? Essentially, nothing, lawyers say, unless they are already facing deportation in the ICE system and are lucky enough to be deemed “low-priority” by the government. Both DHS and immigration lawyers stress that this is not an amnesty and not a path to documentation. There are only guidelines, no hard-and-fast rules for who constitutes a low priority case, so

individuals should not count on the policy to keep them in the country.

The American Immigration Lawyers Association [released a statement](#) urging undocumented workers not to approach DHS to request low-priority status, and beware of scams from people falsely claiming they can hook them up with work permits through the new policy. **“You should NOT turn yourself into the immigration authorities because of these announcements,”** the statement pronounces.

A Very Nebulous Area

Attorney Jack Herzig



What the effects of the policy will be for illegal immigrants on an individual basis is unclear.

“It’s a very nebulous area,” says [Jack Herzig](#), an immigration lawyer who works with undocumented immigrants facing deportation in the Philadelphia area. “There’s really no way for an immigrant or attorney to be able to predict what the outcome will be.”

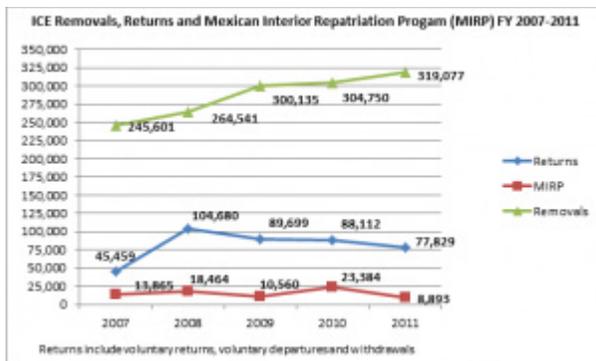
The most important point to note is that the “low-priority” policy does not mean amnesty, nor does it provide a road to green cards or other forms of legal documentation. “This is nothing resembling an amnesty,” Herzig says.

For immigrants already caught up in the ICE system, the announcement might be a ray of hope, but there are certainly no guarantees or roadmap as to how to take advantage of it. “An immigrant doesn’t have the right to apply for and expect prosecutorial discretion,” says Herzig. “It’s an option that the government can exercise. There’s no forum; it’s not like applying for a green card. There’s no application process. A request can be made, formally or informally, but results are totally out of the immigrant’s hands, and entirely in the hands of Department of Homeland Security.”

“In fact,” he says, “prosecutorial discretion has always been an option for DHS in immigration cases, so all that’s changed is the pronouncement saying they intend to use it more frequently.”

Deportations on the Rise

source: <http://www.ice.gov/removal-statistics/>



A record 396,606 illegal immigrants were removed from the country in fiscal year 2011 through ICE programs, although the numbers have been criticized from some quarters for being **deceptively inflated**.

Even given the record number of removals, there are still **300,000 current cases pending** before immigration courts. In an effort to clear out some of the backlog, the government **released a memo** instructing its attorneys to focus more on cases involving:

- 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;
- 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

Cases deemed low priority will not be dismissed; rather they will be administratively closed, meaning they could be opened again at any time, again at the discretion of immigration officials.

The memo lists certain factors that could prompt “particular care and consideration” in an individual’s favor, including for longtime residents, pregnant women and trafficking victims.

No Rights or Entitlements

ICE **explained their decision** to shift their priorities, stating, “DHS must ensure its immigration enforcement resources are focused on the removal of those who constitute our highest priorities, specifically individuals who pose a threat to public safety such as criminal aliens and national security threats, as well as repeat immigration law violators and recent border entrants.” The agency cites outside studies that find the government spends over \$23,000 to formally deport someone.

“The expenditure of resources on cases that fall outside our enforcement priorities hinders our public safety mission by clogging immigration court dockets and diverting resources away from individuals who constitute our highest priorities,” the statement reads.

ICE itself emphasizes that the policy is not an amnesty and there are no benefits such as permanent lawful status for any immigrant who they decline to deport: “Nothing in this process creates a right or an entitlement to any person regardless of their individual circumstances.”

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