



# Talking Points on Prosecutorial Discretion

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## **What is prosecutorial discretion?**

Prosecutorial discretion is the authority exercised by every law enforcement agency to set enforcement priorities and decide to what extent to pursue a particular case based on those priorities. Most recently, on November 20, 2014, the Department of Homeland Security (DHS) issued a memorandum on enforcement priorities and prosecutorial discretion, [“Policies for the Apprehension, Detention, and Removal of Undocumented Immigrants”](#) (Priorities Memo). This memo remains in effect despite ongoing litigation against DAPA and expanded DACA.

## **Prosecutorial discretion ensures the smart use of enforcement resources and keeps Americans safe.**

- DHS and every other enforcement agency must choose priorities. Keeping America safe by focusing on those who present real threats to our national security and public safety—not families and long-time residents—is the right focus.
- Mass deportation is not only unrealistic but also an unwise policy choice as it would gravely fracture American society, negatively impact businesses, and hurt the economy. With finite resources “DHS cannot respond to all immigration violations.” Priorities Memo p. 2.
- Leading Republicans and Democrats oppose deporting 11 million undocumented immigrants.

## **Prosecutorial discretion is well-established law enforcement policy.**

- All law enforcement bodies set priorities. Republican and Democratic administrations have issued policies on the use of prosecutorial discretion in immigration enforcement.
- In a 1999 letter, 28 Republican and Democratic members of Congress called for prosecutorial discretion in immigration enforcement: “The principle of prosecutorial discretion is well-established.”

### **Prosecutorial discretion is not amnesty.**

- Prosecutorial discretion requires case-by-case review. It does not provide legal status to anyone beyond the law. Those granted prosecutorial discretion are usually at risk of future enforcement.
- Prosecutorial discretion does not mean enforcement is not happening. To the contrary, enforcement is at unprecedented levels. Annual immigration enforcement spending is \$18.5 billion, exceeding all other federal criminal law enforcement combined, including FBI, DEA, ATF, and the U.S. Marshals.
- Record-setting enforcement. In the first six years of the Obama administration, DHS removed about 2.4 million people--more than any other Administration. Removals are at near all-time highs even as the number of border apprehensions has reached a 40-year low.

### **The DHS Priorities Memo directs personnel to review every case for prosecutorial discretion.**

- The November memo directs all DHS personnel to exercise discretion in every case "as early in the case or proceedings as possible." Priorities Memo p. 2.
- People who do not fall within *any* of the priority categories are not to be removed unless removal would "serve an important federal interest." Priorities Memo p. 5.
- On February 25, 2015, President Obama said the Priorities Memo is in effect and that there will be "consequences" for DHS personnel that fail to implement DHS policy. All DHS personnel should be trained on prosecutorial discretion.

### **Prosecutorial discretion is a vital tool to ensure fairness in law enforcement.**

- Prosecutorial discretion ensures that law enforcement officials can take into account compelling circumstances in an individual's case, such as disability; age; contributions to the community, or economy, military service; length of time living in the U.S.; sexual orientation; and whether the person has relatives who are U.S. citizens or have legal status.
- Prosecutorial discretion is about ensuring justice and prioritizing resources.