



Homeland  
Security

## Teleconference Recap: A Conversation with the U.S. Immigration and Customs Enforcement (ICE) Public Advocate

On March 28, 2012, the Office of the Citizenship and Immigration Services Ombudsman (Ombudsman's Office) hosted a public teleconference and interviewed the Department of Homeland Security's ICE Public Advocate, Mr. Andrew Lorenzen-Strait. ICE created the Public Advocate's Office to assist individuals and representatives who have concerns about ICE operations and policies in the field. Mr. Strait has served as an advisor on policies related to juvenile detention and detention policy with ICE since 2008.

In 2011, ICE issued guidance that outlined immigration enforcement priorities for the agency in a memorandum, Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens. Mr. Strait explained that every year approximately 400,000 individuals are removed from the United States. However, as a law enforcement agency, ICE has limited resources and cannot address all administrative violations. These guidelines help ICE prioritize where to commit their limited resources, focusing on high priority enforcement decisions. ICE's Prosecutorial Discretion memo provided examples of situations which may result in a high or low priority in ICE enforcement. Further guidance issued by ICE explained next steps in the implementation of the Prosecutorial Discretion Memo and the priorities identified by the Department.

Mr. Strait gave an overview of prosecutorial discretion. He explained that prosecutorial discretion is not new, but rather is a basic tenet in any field of law enforcement. Prosecutorial discretion is the authority of an agency charged with enforcing a law to decide to what degree to enforce the law against a particular individual. A favorable exercise of prosecutorial discretion means that ICE chooses not to enforce the full scope of its authority in a particular situation. The U.S. Department of Justice (DOJ) and ICE are currently reviewing 300,000 cases to see if they may be eligible for prosecutorial discretion.

In the field, prosecutorial discretion is carried out in numerous ways, including when ICE decides not to lodge a detainer for an individual who is in ICE custody, or when ICE decides not to issue a Notice to Appear. ICE can also agree to a stay of removal or a deferred action request.

Trainings on Prosecutorial Discretion and enforcement priorities occur in the field for ICE Officers across the country. In detention and removal operations, officers focus on those who pose a risk to public safety. Officers screen for vulnerable populations including victims of domestic violence or other crimes, and they also take into consideration individual circumstances, like responsibility to care for an elderly family member or a child.

Mr. Strait also shared information about other recent ICE resources and initiatives that will aid the public:

- ICE has implemented an Online Detainee Locator System to inform family and attorneys of detainees' locations.
- ICE is working with the DOJ Legal Orientation and Pro Bono Program to develop know your rights literature for detainees describing how to request prosecutorial discretion.
- The ICE Public Advocate is adopting best practices from the Ombudsman's Office, such as a web based individual case form that will be available in the fall of 2012. ICE is also developing a case management system so that individual cases can be handled in large numbers in the future.

### How do you file a case problem about a detainee who may be eligible for prosecutorial discretion?

Mr. Strait explained that individuals should contact their local ICE Enforcement and Removal field office or Office of the Principal Legal Advisor for procedures on how to file requests for prosecutorial discretion. The ICE Public Advocate wants to

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hear about your experiences and concerns with what is happening on the ground. Mr. Strait said questions or concerns can be directed to your Field Liaison or emailed to [EROPublicAdvocate@ice.dhs.gov](mailto:EROPublicAdvocate@ice.dhs.gov). Field Liaisons are trained to respond to vulnerable populations with issues such as health, family responsibility, etc. Please note that the ICE public Advocate does require a privacy waiver or G-28 to speak with a third party.

### **How is ICE handling issues concerning families in detention and parental rights?**

Mr. Strait explained that the Administration is aware of these issues. Secretary Napolitano and ICE Director John Morton have initiated a working group to develop procedures to address some of these concerns. ICE prioritizes family unity, wherever possible, works to identify primary care givers in their custody. For individuals with a criminal background, detention may be mandated by law. However, ICE implements a policy to keep the detainees near family and sometimes provides video teleconferencing. ICE also considers an individual's preference for the care of U.S. citizen children prior to deportation. ICE will also assist with efforts to obtain travel documents for children of parents who get repatriated.

ICE also partners with non-governmental organizations and individuals who face removal by drafting tool kits providing *pro se* applicants with information related to both the dependency court and immigration court systems. For example, ICE offers a prosecutor's toolkit that shares information on the assistance of a foreign national with an ongoing investigation or to serve as a witness.

### **Does ICE provide literature for individuals who represent themselves (*pro se*)?**

Mr. Strait shared that individuals in removal proceedings are not provided an attorney or public defender like in the criminal justice system. 90% of detained individuals represent themselves. However, the Executive Office for Immigration Review (EOIR) offers the DOJ Legal Orientation and Pro Bono Program (LOP). Through the LOP, representatives from nonprofit organizations provide comprehensive explanations about immigration court procedures along with other basic legal information to large groups of detained individuals. ICE also works with NGOs to allow them access to detention facilities to conduct Know Your Rights presentations. ICE also currently partnered with EOIR to draft education materials on prosecutorial discretion for *pro se* applicants.

### **How does the public advocate work with lesbian, gay, bisexual and transsexual (LGBT) detainee issues?**

Mr. Strait explained that LGBT detainees are considered vulnerable populations, and ICE strives to provide a risk free environment for these detainees. ICE is partnering with non-governmental organizations to create a new training curriculum for detention staff on LGBT issues.

### **Are you working with community based organizations?**

Mr. Strait stated that ICE is working with several community-based organizations and has two advisory committees to assist ICE in its detention reform efforts. ICE conducts frequent public engagements events both in Washington and around the country.

If you or your organization are interested in meeting with the ICE Public Advocate or learning more about the ICE Public Advocate, please email [EROPublicAdvocate@ice.dhs.gov](mailto:EROPublicAdvocate@ice.dhs.gov).

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