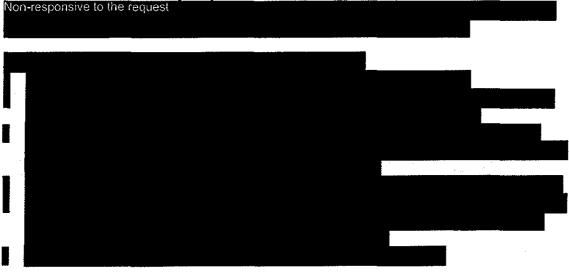# EXERCISE OF DISCRETION VS. PROSECUTORIAL DISCRETION

CBP's policy is to use discretion where appropriate and in keeping with the CBP strategy of risk management; that is, focusing our resources on those cases that pose the greatest risk. Each traveler is evaluated on a case by case basis and the decision is based on the totality of the circumstances. Differences are outlined below:

Exercise of Discretion – an affirmative act of approval – benefit decisions
1. Waiver (fee/ no fee)
2. Parole (fee/ no fee)
3. Deferred Inspection

1. Waivers of Documentary Requirements:
Non-responsive to the request

2. Paroles:
Non-responsive to the request

Non-responsive to the request
- Non-responsive to the request

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Non-responsive to the request

The following are examples to parole a VWP applicant:
Non-responsive to the request

3. Deferred Inspection
A deferred inspection may be used:
- When an immediate decision concerning admissibility cannot be made at a port of entry.
- When it appears likely that the issues surrounding admissibility can be resolved favorably at the onward port of entry.
- Deferred inspections may be necessary to:
  - Review an existing file.
  - Review other documentary evidence essential to clarifying admissibility.

The following situations are examples for deferred inspection
- Non-responsive to the request

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Prosecutorial Discretion Options – applies to enforcement decisions
1. **Withdrawal of Application for Admission**
2. **Voluntary Return**
3. **NTA release**

1. Withdrawal of Application for Admission
Under §235(a)(4) INA, the Attorney General may, in his or her discretion, permit an alien to withdraw his or her application for admission in lieu of removal proceedings under §240 of the Act, or expedited removal under §235(b)(1) of the Act. (b)(5) (b)(7)(E)

Non-responsive to the request

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2. Voluntary Return
Voluntary return is used when CBP Officers encounter outbound illegal aliens.

Examples include:
- Encountered outbound after overstay of admission period.
- EWI outbound, no criminal record, traveling with minor children

3. NTA Release

(b)(5) (b)(7)(E)

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