

ISSUED: Sep. 30, 2021

THE
MAYORKAS MEMO
EXPLAINED

EFFECTIVE: Nov. 29th 2021



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WHO DOES IT APPLY TO?

This memo applies to ICE, CBP, USCIS, OPLA (attorneys representing ICE), and all other agencies under DHS.

The memo discusses “**prosecutorial discretion**”-- the authority of Dept. of Homeland Security (DHS) agencies to decide whether or not to detain and/or remove someone

It issues no rules limiting immigration enforcement or mandating a "fair" use of prosecutorial discretion.



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WHAT DOES THAT
REALLY MEAN?

If ICE or CBP wants to detain or deport someone they can. If they want to release them, they can.

This exercise of “discretion” is another way of saying that immigration enforcement officials can do whatever they want, a pattern that we see with law enforcement generally and at great cost to our communities



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PRIORITY CATEGORIES

The memo has three broad categories of individuals who are considered priorities for immigration enforcement, starting November 29, 2021:

- Those who pose a “danger to national security”
- Those who pose a “current threat to public safety”
- Those who pose a threat to “border security” by attempting to enter the US outside a port of entry or who entered without authorization after November 1, 2020.



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PUBLIC SAFETY FACTORS

These are **some of the factors they will take into account when making a decision on whether to deport someone.**

Negative factors:

- the gravity of the crime and the sentence;
- the nature and degree of harm caused;
- the sophistication of the crime;
- use or threat to use a firearm or dangerous weapon;
- Serious prior criminal record



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Positive factors:

- advanced or tender age;
- lengthy presence in the United States;
- mental condition that may have contributed to the person committing the conduct or one that requires care or treatment;
- mental or physical health condition that requires care or treatment;



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Positive factors:

- status as a victim, witness, or party in legal proceedings;
- impact of removal on family in the United States;
- whether eligible for humanitarian protection or other immigration relief;
- military or other public service of the person or their immediate family;
- time since offense and evidence of rehabilitation;
- conviction was vacated or expunged



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WORKPLACE AND TENANT RIGHTS

The memo says that the exercise of workplace or tenant rights or being a witness in a labor or housing dispute should be considered when deciding whether to grant prosecutorial discretion.



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CASE REVIEW PROCESS

DHS says it will create a process to review enforcement action but provides no details and emphasizes that all discretion remains with DHS.



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