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U.S. Customs and Border Protection

Commissioner

July 28, 2023

MEMORANDUM FOR: Jason D. Owens
Chief
U.S. Border Patrol

Diane J. Sabatino
Acting Executive Assistant Commissioner
Office of Field Operations

FROM: Troy A. Miller
Senior Official Performing the Duties of the Commissioner

SUBJECT: Reimplementation of the September 2021 Guidelines for the
Enforcement of Civil Immigration Law

Effective immediately, the Department of Homeland Security (DHS) has reimplemented the September 30, 2021, *Guidelines for the Enforcement of Civil Immigration Law*. The September 2021 memorandum primarily provides guidance to U.S. Immigration and Customs Enforcement (ICE) personnel regarding the use of discretion to prioritize enforcement actions. It also directs agency leaders to whom the guidance is operationally relevant to implement accordingly, including U.S. Customs and Border Protection (CBP).

CBP personnel apply discretion every day with professionalism and expertise. CBP's current encounter management practices align with the principles set forth in the September 2021 memorandum. CBP personnel will continue to take appropriate enforcement actions against individuals who are a threat to our national security, public safety, or border security in accordance with our core missions. The September 2021 memorandum provides clarifying direction regarding the discretion that may be exercised by CBP agents and officers when they encounter an individual who is determined to not pose a threat to border security, national security, or public safety. While these guidelines outline circumstances when discretion may be warranted, the guidelines do not establish categorical situations that require a certain outcome.

Foundational Principle: The Exercise of Prosecutorial Discretion

It is well established that federal government officials have broad discretion to decide who should be subject to arrest, detainers, removal proceedings, and the execution of removal orders. Prosecutorial discretion allows federal government officials to consider all the information known to the officer or agent when encountering an individual. Aggravating and mitigating factors should always be weighed together when deciding whether to prioritize apprehension and removal. Prioritizing limited enforcement resources on those who pose a threat to national security, public safety, or border security supports CBP's commitment to enforcing U.S. immigration laws and keeping America safe.

Civil Immigration Enforcement Priorities

The September 2021 memorandum establishes civil immigration enforcement priorities to achieve DHS's goals most effectively with its limited resources. The guidance prioritizes enforcement actions for noncitizens who are a threat to our national security, public safety, or border security.

Threat to National Security

A noncitizen who engaged in or is suspected of terrorism or espionage, or terrorism-related or espionage-related activities, or who otherwise poses a danger to national security, is a priority for enforcement. When CBP encounters a noncitizen who poses a threat to national security, CBP will coordinate with federal partners to determine the appropriate enforcement action and immigration processing pathway for the noncitizen.

Threat to Public Safety

A noncitizen who poses a current threat to public safety, typically because of serious criminal conduct, is a priority for an enforcement action. Whether a noncitizen poses a current threat to public safety requires an individualized review of the information known related to the noncitizen and the totality of the facts and circumstances. Aggravating factors might include, but are not limited to, the gravity of a prior offense of conviction and the sentence imposed, the nature and degree of harm caused by the criminal offense, or a serious prior criminal record. Mitigating factors might include, but are not limited to, advanced or tender age; lengthy presence in the United States; impact of removal on family in the United States, such as loss of provider or caregiver; or time since an offense and evidence of rehabilitation. Additional consideration can be found in the September 2021 memorandum. CBP may place such individuals into immigration proceedings and refer them to ICE for detention, as appropriate.

Threat to Border Security

A noncitizen who poses a threat to border security is a priority for apprehension and removal. A noncitizen is a threat to border security if:

- (a) they are apprehended at the border or port of entry while attempting to unlawfully enter the United States; or

(b) they are apprehended in the United States after unlawfully entering after November 1, 2020.

Noncitizens who fall under the above definition may still warrant prosecutorial discretion based on compelling facts or extenuating circumstances that favor declining enforcement action. The September 2021 memorandum directs DHS personnel to evaluate the totality of the facts and circumstances and exercise their judgement accordingly.

Additionally, in certain circumstances, CBP may, through the course of its normal operations, come into contact with noncitizens who are in the United States without authorization and who do not appear to constitute enforcement priorities under the September 2021 guidelines. In the event that such an encounter occurs, CBP personnel should exercise discretion on an individualized basis in deciding whether to take an enforcement action to maximize the impact of our limited resources in line with the prioritization criteria laid out in the September 2021 memorandum and to ensure consistent enforcement across DHS.

Outline of Expectation of Training Within 60 Days

Within sixty (60) days of issuance of this memorandum, the Office of Field Operations and U.S. Border Patrol, in coordination with the Office of Training and Development, will develop training materials and plans for their employees whose jobs involve the exercise of prosecutorial discretion and the enforcement of U.S. immigration laws. The training should outline the DHS Guidelines for the Enforcement of Civil Immigration Law and provide scenarios when prosecutorial discretion might be appropriate. Training across the agency should be completed no later than November 1, 2023.

Attachment: DHS Guidelines for the Enforcement of Civil Immigration Law (September 30, 2021)

CC: Executive Assistant Commissioners
Assistant Commissioner, Office of Training and Development
Chief Counsel
Executive Director, Policy Directorate