

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Turgut Tarhan

A088 737 523

Petitioner,

vs.

ERIC H. HOLDER, Attorney General,

Respondent

Case No. 11-71854

Agency No. 088 737 523

**Petitioner's Response to Motion
to Show Cause**

Petitioner, makes this response to the Court's Order to Show Cause dated August 16, 2011 and requests that the Court hear his Petition For Review.

Petitioner does not petition this Court for review of the portion of the BIA's Order dated June 6, 2011 (CAR 3) upholding the Immigration Court's ruling dated May 5, 2009 (CAR 20) with regard to a denial of voluntary departure.

Petitioner seeks review of the Immigration Court's denial of a requested continuance.

This Court has jurisdiction to review a denial of a request for continuance. In doing so the Court will look to see if the Immigration Court abused its discretion. *See Nakamoto v. Ashcroft*, 363 F.3d 874, 883 n. 6 (9th Cir.2004); *see also Baires v. INS*, 856 F.2d 89, 91 (9th Cir.1988).

The record indicates that, in this case, the Immigration Judge gave no explanation for denying Mr. Tarhan's request for a continuance (CAR 20-22), and therefore Mr. Tarhan is not able to address the Immigration Judge's reasoning.

The Court will review questions of law *de novo*. *Baballah v. Ashcroft*, 367 F.3d 1067, 1073 (9th Cir.2004). The Court will review factual findings for substantial evidence. *Abebe v. Gonzales*, 432 F.3d 1037, 1039 (9th Cir.2005).

For the following reasons Petitioner seeks review of the BIA's and the Immigration Court's refusal to grant a continuance of Petitioner's removal

hearing.

Continuances to Wait for the Results of Future “speculative” Immigration Benefits are Common in Immigration Court and are Favored under EOIR Precedent Decisions

It is well settled that an Immigration Judge is *required* to continue proceedings in order to allow additional legal processes to take place that will result in a beneficial outcome to an alien in proceedings. *See Matter of Garcia*, 16 I&N Dec. 653 (BIA 1978); *Matter of Velarde-Pacheco*, 23 I & N Dec. 253 (2002); *Matter of Fatmir Libohova*, A73-591-296 (BIA Jan. 28, 2003); *Matter of Sohail Raza*, A76-231-298 (BIA Oct. 11, 2002); *Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009); *Rajah v. Mukasey*, 544 F.3d 449 (2d Cir. 2008).

In the cases cited above, the potential benefit is “speculative” in that an I-130 or I-140 petition may not be approved. The impending and inevitable comprehensive immigration reform may be equally “speculative” in the opinion of DHS. However the fact is that courts and the EOIR find it reasonable and a matter of fairness and due process to allow an alien an opportunity to apply for potential relief to which he may be entitled.

We attach copies of press reports, as well as a direct quote from President Barack Obama dating back to April 2009, indicating that comprehensive immigration reform is imminent and will benefit Mr. Tarhan. (See Exhibit B)

Specifically, President Obama stated the following on April 17, 2009 at a press conference, which was widely reported in the press at the time:

“What I've also said is that for those immigrants who are already in the United States -- and by the way, we focus a lot on Mexicans who have come into the United States, but the number of immigrants from Central America, from Ireland, from Poland are substantial as well; it's not -- this is not just an issue with respect to Mexico -- for those immigrants who have put down roots, may have come there illegally, I think they need to pay a penalty for having broken the law. **They need to come out of the shadows, and then we have to put them through a process where, if they want to stay in the United States, they have an opportunity over time to earn that opportunity, for a legal status in the United States.**”

(Emphasis added)

April 16, 2009 JOINT PRESS CONFERENCE WITH
PRESIDENT BARACK OBAMA AND PRESIDENT
FELIPE CALDERÓN OF MEXICO, Los Pinos Mexico City,
Mexico – available at:

http://blogs.suntimes.com/sweet/2009/04/obama_calderon_mexico_city_pre.html (accessed on 16 July 2011)

President Obama is the ultimate authority in charge of executing immigration laws and regulations. Clearly, the process that the executive branch of government is currently seeking to employ – the process

described by President Obama in early 2009 – will benefit Mr. Tarhan, when implemented.

Just as clearly, the fact that the Immigration Court did not adequately consider a continuance in order to allow him to pursue this form of relief, has robbed him of the right to pursue the relief, absent this Court ordering the Executive Office of Immigration Review to reconsider the denial.

Although the BIA decision states that the Immigration Court “did explain why he denied the request for a continuance,” (CAR 3) the record indicates that the Immigration Judge gave no explanation at all for his decision to deny the continuance. (CAR 20-22)

It may also be argued that it has been two years since the President – and the head of the Department of Homeland Security – declared that comprehensive immigration reform is a governmental priority.

However, we ask the Court to consider that it is not unusual for the analogous relief of an I-140 or I-130 approval to take two, three, four, or more years to process.

Immigration relief often moves at a glacial and incomprehensible pace – though no fault of the hapless and effected alien.

We ask that the Court take note of two recent developments that indicate progress toward comprehensive immigration reform.

First, ICE Director John Morton issued a memorandum dated June 17, 2011, entitled “Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens.” (See Exhibit A)

The memo sets forth categories that DHS officers, agents, and attorneys are to consider in determining whether or not to cancel deportation/removal proceedings or efforts — regardless of where in the system an alien may be.

Mr. Tarhan is eligible for, and should be granted that discretion, per a balancing of factors listed in Director Morton’s memo.

Specifically, Petitioner has close family members in the US, he has

graduated from a US school, and despite having been convicted of a crime at age 20, he has gone on with his life and, on information and belief, he can and will submit numerous testimonials from those who know him indicating his good moral character.

On information and belief his US Citizen sister has recently submitted an Alien Relative Petition seeking to sponsor Mr. Tarhan for US permanent residence.

Second, federal immigration authorities, including immigration courts, have recently implemented a policy of continuing removal actions against the married same-sex partners of gay US citizens, while awaiting the implementation of comprehensive immigration reform. According to the *Los Angeles Times*:

“On Wednesday [13 July, 2011], a Southern California couple — Doug Gentry and Venezuelan native Alex Benshimol, who married last year in Connecticut — appeared before a San Francisco judge and asked the government to use its discretion to drop deportation proceedings against Benshimol. Judge Marilyn Teeter gave immigration officials 60 days to respond. Teeter postponed the next deportation hearing until September 2013 if the government does not drop the case.”

‘Gay couples in legal limbo with immigration’ by David G. Savage, Washington Bureau, *Los Angeles Times*; 14 July 2011
(attached in Exhibit B)

Clearly, the events described in these recent news stories indicate *both a rapidly-changing immigration law landscape* that is quickly rushing toward a resolution of the comprehensive immigration reform dilemma that has been pending for two years – and – importantly – *a willingness and precedent on the part of the executive branch agencies to continue immigration proceedings* in order to allow foreign nationals like Mr. Tarhan to benefit from these “speculative” reforms.

Personal Background of Petitioner

Petitioner is one of three siblings. When he was three years old his mother was tragically killed in an automobile accident.

Petitioner and his twin brother were essentially raised by their older sister, Revna Tarhan, who is a US Citizen and resides in Seattle.

Because of the circumstances of their growing up, these siblings’ family ties are stronger than the ties that would commonly be expected between siblings.

Petitioner's brother is currently awaiting the results of an application for permanent residence, and expects to obtain permanent residence in the US and to therefore live in the US with his US Citizen wife. If Petitioner is removed from the US, he will be forcibly removed from his family.

Family Unity is a Fundamental Pillar of US Immigration Law

Immigration law has historically emphasized family unity as one of its *primary policy goals*, along with enforcement.

Department of Homeland Security Secretary, Janet Napolitano, initiated a policy review known as the *National Dialogue on the Quadrennial Homeland Security Review* (QHSR). As one of 37 current immigration goals, the QHSR is recommending that Congress and USCIS emphasize the following policy:

“DHS must improve its immigration services and enforcement measures to protect family unity and in particular to stop separating children from parents. This should be explicitly included in agency goals, both as part of the detention and removal objectives and the goal of making good, prompt, decisions.

Why the contribution is important?

Separating families is un-American and deprives immigrants of their most fundamental support networks and resources.

Family unity should be an absolute priority for DHS at all levels.”

<http://www.homelandsecuritydialogue.org/dialogue3> (last accessed Nov. 16, 2009) [Emphasis in original]

Not granting Petitioner a continuance to allow him to seek relief under changing immigration laws amounts to removing Petitioner from his family. Such forced family separation violates a valid, humane, and important public policy, that has been a fundamental pillar of US Immigration law.

The Rule of Lenity Should Be Applied

The rule of lenity, or the principle that when any doubt(s) exist as to the proper interpretation of the law, we construe that ambiguity in favor of the alien, is a longstanding principle. *INS v. Cardoza-Fonseca*, 480 U.S. 421, at 448 (1987); *INS v. Errico*, 385 U.S. 214, 225 (1966); *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10 (1948); *Matter of Tiwari*, 19 I&N Dec. 875, 881 (BIA 1989).

For the reasons set forth above, we respectfully ask that the Court grant Mr. Tarhan’s Petition For Review, and set the case for briefing.

RESPECTFULLY SUBMITTED this 5th day of September 2011.

William Frick

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CERTIFICATE OF SERVICE

I, WILLIAM FRICK, do hereby declare that I caused to be delivered via electronic filing, the **Petitioner's Response to Order to Show Cause** to:

Office of Immigration Litigation
Civil Division
U.S. Department of Justice
P.O. Box 878, Ben Franklin Station
Washington, D.C. 20044

DATED this 6th day of September 2011.



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Exhibit A



**U.S. Immigration
and Customs
Enforcement**

June 17, 2011

MEMORANDUM FOR: All Field Office Directors
All Special Agents in Charge
All Chief Counsel

FROM: John Morton
Director 

SUBJECT: Exercising Prosecutorial Discretion Consistent with the Civil
Immigration Enforcement Priorities of the Agency for the
Apprehension, Detention, and Removal of Aliens

Purpose

This memorandum provides U.S. Immigration and Customs Enforcement (ICE) personnel guidance on the exercise of prosecutorial discretion to ensure that the agency's immigration enforcement resources are focused on the agency's enforcement priorities. The memorandum also serves to make clear which agency employees may exercise prosecutorial discretion and what factors should be considered.

This memorandum builds on several existing memoranda related to prosecutorial discretion with special emphasis on the following:

- Sam Bernsen, Immigration and Naturalization Service (INS) General Counsel, Legal Opinion Regarding Service Exercise of Prosecutorial Discretion (July 15, 1976);
- Bo Cooper, INS General Counsel, INS Exercise of Prosecutorial Discretion (July 11, 2000);
- Doris Meissner, INS Commissioner, Exercising Prosecutorial Discretion (November 17, 2000);
- Bo Cooper, INS General Counsel, Motions to Reopen for Considerations of Adjustment of Status (May 17, 2001);
- William J. Howard, Principal Legal Advisor, Prosecutorial Discretion (October 24, 2005);
- Julie L. Myers, Assistant Secretary, Prosecutorial and Custody Discretion (November 7, 2007);
- John Morton, Director, Civil Immigration Enforcement Priorities for the Apprehension, Detention, and Removal of Aliens (March 2, 2011); and
- John Morton, Director, Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs (June 17, 2011).

Exercising Prosecutorial Discretion Consistent with the Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens

The following memoranda related to prosecutorial discretion are rescinded:

- Johnny N. Williams, Executive Associate Commissioner (EAC) for Field Operations, Supplemental Guidance Regarding Discretionary Referrals for Special Registration (October 31, 2002); and
- Johnny N. Williams, EAC for Field Operations, Supplemental NSEERS Guidance for Call-In Registrants (January 8, 2003).

Background

One of ICE's central responsibilities is to enforce the nation's civil immigration laws in coordination with U.S. Customs and Border Protection (CBP) and U.S. Citizenship and Immigration Services (USCIS). ICE, however, has limited resources to remove those illegally in the United States. ICE must prioritize the use of its enforcement personnel, detention space, and removal assets to ensure that the aliens it removes represent, as much as reasonably possible, the agency's enforcement priorities, namely the promotion of national security, border security, public safety, and the integrity of the immigration system. These priorities are outlined in the ICE Civil Immigration Enforcement Priorities memorandum of March 2, 2011, which this memorandum is intended to support.

Because the agency is confronted with more administrative violations than its resources can address, the agency must regularly exercise "prosecutorial discretion" if it is to prioritize its efforts. In basic terms, 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. ICE, like any other law enforcement agency, has prosecutorial discretion and may exercise it in the ordinary course of enforcement¹. When ICE favorably exercises prosecutorial discretion, it essentially decides not to assert the full scope of the enforcement authority available to the agency in a given case.

In the civil immigration enforcement context, the term "prosecutorial discretion" applies to a broad range of discretionary enforcement decisions, including but not limited to the following:

- deciding to issue or cancel a notice of detainer;
- deciding to issue, reissue, serve, file, or cancel a Notice to Appear (NTA);
- focusing enforcement resources on particular administrative violations or conduct;
- deciding whom to stop, question, or arrest for an administrative violation;
- deciding whom to detain or to release on bond, supervision, personal recognizance, or other condition;
- seeking expedited removal or other forms of removal by means other than a formal removal proceeding in immigration court;

¹ The Meissner memorandum's standard for prosecutorial discretion in a given case turned principally on whether a substantial federal interest was present. Under this memorandum, the standard is principally one of pursuing those cases that meet the agency's priorities for federal immigration enforcement generally.

Exercising Prosecutorial Discretion Consistent with the Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens

- settling or dismissing a proceeding;
- granting deferred action, granting parole, or staying a final order of removal;
- agreeing to voluntary departure, the withdrawal of an application for admission, or other action in lieu of obtaining a formal order of removal;
- pursuing an appeal;
- executing a removal order; and
- responding to or joining in a motion to reopen removal proceedings and to consider joining in a motion to grant relief or a benefit.

Authorized ICE Personnel

Prosecutorial discretion in civil immigration enforcement matters is held by the Director² and may be exercised, with appropriate supervisory oversight, by the following ICE employees according to their specific responsibilities and authorities:

- officers, agents, and their respective supervisors within Enforcement and Removal Operations (ERO) who have authority to institute immigration removal proceedings or to otherwise engage in civil immigration enforcement;
- officers, special agents, and their respective supervisors within Homeland Security Investigations (HSI) who have authority to institute immigration removal proceedings or to otherwise engage in civil immigration enforcement;
- attorneys and their respective supervisors within the Office of the Principal Legal Advisor (OPLA) who have authority to represent ICE in immigration removal proceedings before the Executive Office for Immigration Review (EOIR); and
- the Director, the Deputy Director, and their senior staff.

ICE attorneys may exercise prosecutorial discretion in any immigration removal proceeding before EOIR, on referral of the case from EOIR to the Attorney General, or during the pendency of an appeal to the federal courts, including a proceeding proposed or initiated by CBP or USCIS. If an ICE attorney decides to exercise prosecutorial discretion to dismiss, suspend, or close a particular case or matter, the attorney should notify the relevant ERO, HSI, CBP, or USCIS charging official about the decision. In the event there is a dispute between the charging official and the ICE attorney regarding the attorney's decision to exercise prosecutorial discretion, the ICE Chief Counsel should attempt to resolve the dispute with the local supervisors of the charging official. If local resolution is not possible, the matter should be elevated to the Deputy Director of ICE for resolution.

² Delegation of Authority to the Assistant Secretary, Immigration and Customs Enforcement, Delegation No. 7030.2 (November 13, 2004), delegating among other authorities, the authority to exercise prosecutorial discretion in immigration enforcement matters (as defined in 8 U.S.C. § 1101(a)(17)).

Factors to Consider When Exercising Prosecutorial Discretion

When weighing whether an exercise of prosecutorial discretion may be warranted for a given alien, ICE officers, agents, and attorneys should consider all relevant factors, including, but not limited to—

- the agency's civil immigration enforcement priorities;
- the person's length of presence in the United States, with particular consideration given to presence while in lawful status;
- the circumstances of the person's arrival in the United States and the manner of his or her entry, particularly if the alien came to the United States as a young child;
- the person's pursuit of education in the United States, with particular consideration given to those who have graduated from a U.S. high school or have successfully pursued or are pursuing a college or advanced degrees at a legitimate institution of higher education in the United States;
- whether the person, or the person's immediate relative, has served in the U.S. military, reserves, or national guard, with particular consideration given to those who served in combat;
- the person's criminal history, including arrests, prior convictions, or outstanding arrest warrants;
- the person's immigration history, including any prior removal, outstanding order of removal, prior denial of status, or evidence of fraud;
- whether the person poses a national security or public safety concern;
- the person's ties and contributions to the community, including family relationships;
- the person's ties to the home country and conditions in the country;
- the person's age, with particular consideration given to minors and the elderly;
- whether the person has a U.S. citizen or permanent resident spouse, child, or parent;
- whether the person is the primary caretaker of a person with a mental or physical disability, minor, or seriously ill relative;
- whether the person or the person's spouse is pregnant or nursing;
- whether the person or the person's spouse suffers from severe mental or physical illness;
- whether the person's nationality renders removal unlikely;
- whether the person is likely to be granted temporary or permanent status or other relief from removal, including as a relative of a U.S. citizen or permanent resident;
- whether the person is likely to be granted temporary or permanent status or other relief from removal, including as an asylum seeker, or a victim of domestic violence, human trafficking, or other crime; and
- whether the person is currently cooperating or has cooperated with federal, state or local law enforcement authorities, such as ICE, the U.S. Attorneys or Department of Justice, the Department of Labor, or National Labor Relations Board, among others.

This list is not exhaustive and no one factor is determinative. ICE officers, agents, and attorneys should always consider prosecutorial discretion on a case-by-case basis. The decisions should be based on the totality of the circumstances, with the goal of conforming to ICE's enforcement priorities.

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That said, there are certain classes of individuals that warrant particular care. As was stated in the Meissner memorandum on Exercising Prosecutorial Discretion, there are factors that can help ICE officers, agents, and attorneys identify these cases so that they can be reviewed as early as possible in the process.

The following positive factors should prompt particular care and consideration:

- veterans and members of the U.S. armed forces;
- long-time lawful permanent residents;
- minors and elderly individuals;
- individuals present in the United States since childhood;
- pregnant or nursing women;
- victims of domestic violence, trafficking, or other serious crimes;
- individuals who suffer from a serious mental or physical disability; and
- individuals with serious health conditions.

In exercising prosecutorial discretion in furtherance of ICE's enforcement priorities, the following negative factors should also prompt particular care and consideration by ICE officers, agents, and attorneys:

- individuals who pose a clear risk to national security;
- serious felons, repeat offenders, or individuals with a lengthy criminal record of any kind;
- known gang members or other individuals who pose a clear danger to public safety; and
- individuals with an egregious record of immigration violations, including those with a record of illegal re-entry and those who have engaged in immigration fraud.

Timing

While ICE may exercise prosecutorial discretion at any stage of an enforcement proceeding, it is generally preferable to exercise such discretion as early in the case or proceeding as possible in order to preserve government resources that would otherwise be expended in pursuing the enforcement proceeding. As was more extensively elaborated on in the Howard Memorandum on Prosecutorial Discretion, the universe of opportunities to exercise prosecutorial discretion is large. It may be exercised at any stage of the proceedings. It is also preferable for ICE officers, agents, and attorneys to consider prosecutorial discretion in cases without waiting for an alien or alien's advocate or counsel to request a favorable exercise of discretion. Although affirmative requests from an alien or his or her representative may prompt an evaluation of whether a favorable exercise of discretion is appropriate in a given case, ICE officers, agents, and attorneys should examine each such case independently to determine whether a favorable exercise of discretion may be appropriate.

In cases where, based upon an officer's, agent's, or attorney's initial examination, an exercise of prosecutorial discretion may be warranted but additional information would assist in reaching a final decision, additional information may be requested from the alien or his or her representative. Such requests should be made in conformity with ethics rules governing

Exercising Prosecutorial Discretion Consistent with the Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens

communication with represented individuals³ and should always emphasize that, while ICE may be considering whether to exercise discretion in the case, there is no guarantee that the agency will ultimately exercise discretion favorably. Responsive information from the alien or his or her representative need not take any particular form and can range from a simple letter or e-mail message to a memorandum with supporting attachments.

Disclaimer

As there is no right to the favorable exercise of discretion by the agency, nothing in this memorandum should be construed to prohibit the apprehension, detention, or removal of any alien unlawfully in the United States or to limit the legal authority of ICE or any of its personnel to enforce federal immigration law. Similarly, this memorandum, which may be modified, superseded, or rescinded at any time without notice, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

³ For questions concerning such rules, officers or agents should consult their local Office of Chief Counsel.


AUG 20 2010



U.S. Immigration
and Customs
Enforcement

MEMORANDUM FOR: Peter S. Vincent
Principal Legal Advisor

James Chaparro
Executive Associate Director,
Enforcement and Removal Operations

FROM: John Morton 
Assistant Secretary

SUBJECT: Guidance Regarding the Handling of Removal Proceedings of
Aliens with Pending or Approved Applications or Petitions

Purpose

This memorandum establishes U.S. Immigration and Customs Enforcement (ICE) policy for the handling of removal proceedings before the Executive Office for Immigration Review (EOIR) involving applications or petitions filed by, or on behalf of, aliens in removal proceedings. This policy outlines a framework for ICE to request expedited adjudication of an application or petition for an alien in removal proceedings that is pending before U.S. Citizenship and Immigration Services (USCIS) if the approval of such an application or petition would provide an immediate basis for relief for the alien.¹ This policy will allow ICE and EOIR to address a major inefficiency in present practice and thereby avoid unnecessary delay and expenditure of resources.

Background

Historically, where a *Petition for Alien Relative* (hereinafter Form I-130 or petition) was pending before USCIS, this fact tended to promote delays in removal proceedings. Indeed, in July of 2009, EOIR identified approximately 17,000 removal cases that have been continued pending the outcome of USCIS decisions on petitions. Recognizing that many of these cases may ultimately result in relief for the alien, ICE has been working with USCIS and EOIR to identify more effective procedures to resolve these pending petitions along with other applications to promote increased docket efficiency.

¹ This memo applies only to applications or petitions that USCIS legally has jurisdiction to adjudicate during removal proceedings.

To this end, USCIS will issue guidance to complement this memorandum and will endeavor to complete the adjudication of all applications and petitions referred by ICE within 30 days for detained aliens and 45 days for non-detained aliens. Close coordination and communication between the ICE Offices of Chief Counsel (OCC) and USCIS will ensure that all applications and petitions are adjudicated quickly to realize our shared goal of efficiently resolving cases in removal proceedings.

New ICE Policy

As a matter of prosecutorial discretion and to promote the efficient use of government resources, I hereby issue new ICE policy to govern the handling of removal proceedings involving aliens with applications or petitions pending with USCIS. This policy extends both to the prosecution of removal proceedings by OCCs and to any associated detention decisions by Enforcement and Removal Operations (ERO).

1. Expedited Adjudication

- A. In any case involving a detained alien whose application or petition is pending with USCIS, OCC shall affirmatively request that USCIS expedite the adjudication of the application or petition. ICE should promptly transfer the applicant's A-file to USCIS. USCIS will endeavor to adjudicate all the detained cases referred to it by ICE within 30 days of receiving the A-files. ICE will ensure that, if needed, USCIS has access to the detained individual to conduct an interview.
- B. In any case involving a non-detained alien whose application or petition is pending with USCIS, OCC shall affirmatively request that USCIS expedite the adjudication of the application or petition. ICE should promptly transfer the applicant's A-file to USCIS. USCIS will endeavor to adjudicate all non-detained cases referred to it by ICE within 45 days of receiving the A-files.

2. Dismissal without Prejudice of Certain Cases in Removal Proceedings

Detained Cases

Where there is an underlying application or petition filed with USCIS by or on behalf of a detained alien and ICE determines as a matter of law and in the exercise of discretion that such alien appears eligible for relief from removal, OCC shall promptly consult with the Field Office Director (FOD) and Special Agent in Charge (SAC) to determine if there are any investigations or serious, adverse factors weighing against dismissal of proceedings.² Adverse factors include, but are not limited to, criminal convictions, evidence of fraud or other criminal misconduct, and national security and public safety considerations. If no investigations or serious adverse factors

² ICE offices in the Fifth and Ninth Circuits must be sensitive to the issue of *res judicata* that may arise in dismissing proceedings without prejudice. See, e.g., *Bravo-Pedroza v. Gonzales*, 475 F.3d 1358 (9th Cir. 2007); *Medina v. INS*, 993 F.2d 499, 503 (5th Cir. 1993). To protect the government's interests, motions to dismiss without prejudice in the 5th and 9th Circuits should be made in writing, i.e., not orally. The Office of the Principal Legal Advisor (OPLA) has developed a template for motions to dismiss without prejudice for use in these two circuits.

exist, the OCC should promptly move to dismiss proceedings without prejudice before EOIR, and notify the FOD of the motion. Once the FOD is notified, the FOD must release the alien pursuant to the dismissal of proceedings.

Non-Detained Cases

Where there is an underlying application or petition and ICE determines in the exercise of discretion that a non-detained individual appears eligible for relief from removal, OCC should promptly move to dismiss proceedings without prejudice before EOIR.³

Standard for Dismissal

Only removal cases that meet the following criteria will be considered for dismissal:

- The alien must be the subject of an application or petition filed with USCIS to include a current priority date, if required, for adjustment of status;⁴
- The alien appears eligible for relief as a matter of law and in the exercise of discretion;
- The alien must present a completed *Application to Register Permanent Residence or Adjust Status* (Form I-485), if required; and
- The alien beneficiary must be statutorily eligible for adjustment of status (a waiver must be available for any ground of inadmissibility).

An alien in removal proceedings may appear eligible for relief but for a variety of reasons, ICE may oppose relief on the basis of discretion. In those cases, ICE should continue prosecution of the case before EOIR regardless of whether USCIS has approved the underlying application or petition.

Standard Operating Procedures

In coordination with the local USCIS field office, each OCC must develop a standard operating procedure (SOP) to identify removal cases that involve an application or petition pending before USCIS. This SOP should address the categories of cases discussed above: (1) those identified for expedited adjudication, and (2) those for which dismissal of proceedings may be appropriate. The request to expedite shall be made to by OCC to USCIS. No obligation for such requests shall be placed on the alien's attorney, accredited representative, or the immigration judge. The SOP regarding requests to expedite must establish the following:

- A mechanism whereby the ICE attorney who handles the master calendar hearing in a case determines whether a request to expedite the pending petition or application is appropriate;
- A structure to communicate the ICE request to expedite to USCIS;

³ As more fully stated in footnote 2, ICE offices in the Fifth and Ninth Circuits must be sensitive to the issue of *res judicata* that may arise in dismissing proceedings without prejudice. OPLA has developed a template for motions to dismiss without prejudice for use in these two circuits.

⁴ At the OCC's discretion, other cases not meeting this criterion may be appropriate for dismissal.

- A system to ensure that decisions about the application or petition are received from USCIS, uploaded into GEMS, and received by the ICE attorney scheduled to handle the subsequent hearing; and
- A method by which A-files will be routed as appropriate so as to avoid delays in either the adjudication or the immigration court proceedings.

Any questions regarding this memorandum should be directed to OPLA Field Legal Operations or ERO Field Operations through appropriate channels.⁵

cc: Alejandro Mayorkas
Director, U.S. Citizenship and Immigration Services


⁵ This document provides only internal ICE guidance. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil, or criminal. Likewise, no limitations are placed on otherwise lawful enforcement or litigative prerogatives of DHS or ICE.

JUN 17 2011



**U.S. Immigration
and Customs
Enforcement**

MEMORANDUM FOR: All Field Office Directors
All Special Agents in Charge
All Chief Counsel

FROM: John Morton 
Director

SUBJECT: Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs

Purpose:

This memorandum sets forth agency policy regarding the exercise of prosecutorial discretion in removal cases involving the victims and witnesses of crime, including domestic violence, and individuals involved in non-frivolous efforts related to the protection of their civil rights and liberties. In these cases, ICE officers, special agents, and attorneys should exercise all appropriate prosecutorial discretion to minimize any effect that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice. This memorandum builds on prior guidance on the handling of cases involving T and U visas and the exercise of prosecutorial discretion.¹

Discussion:

Absent special circumstances or aggravating factors, it is against ICE policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime. In practice, the vast majority of state and local law enforcement agencies do not generally arrest victims or witnesses of crime as part of an investigation. However, ICE regularly hears concerns that in some instances a state or local law enforcement officer may arrest and book multiple people at the scene of alleged domestic violence. In these cases, an arrested victim or witness of domestic violence may be booked and fingerprinted and, through the operation of the Secure

¹ For a thorough explanation of prosecutorial discretion, see the following: Memorandum from Peter S. Vincent, Principal Legal Advisor, Guidance Regarding U Nonimmigrant Status (U visa) Applicants in Removal Proceedings or with Final Orders of Deportation or Removal (Sept. 25, 2009); Memorandum from William J. Howard, Principal Legal Advisor, VAWA 2005 Amendments to Immigration and Nationality Act and 8 U.S.C. § 1367 (Feb. 1, 2007); Memorandum from Julie L. Myers, Assistant Secretary of ICE, Prosecutorial and Custody Discretion (Nov. 7, 2007); Memorandum from William J. Howard, Principal Legal Advisor, Prosecutorial Discretion (Oct. 24, 2005); Memorandum from Doris Meissner, Commissioner, Immigration and Naturalization Service, Exercising Prosecutorial Discretion (Nov. 17, 2000).

Communities program or another ICE enforcement program, may come to the attention of ICE. Absent special circumstances, it is similarly against ICE policy to remove individuals in the midst of a legitimate effort to protect their civil rights or civil liberties.

To avoid deterring individuals from reporting crimes and from pursuing actions to protect their civil rights, ICE officers, special agents, and attorneys are reminded to exercise all appropriate discretion on a case-by-case basis when making detention and enforcement decisions in the cases of victims of crime, witnesses to crime, and individuals pursuing legitimate civil rights complaints. Particular attention should be paid to:

- victims of domestic violence, human trafficking, or other serious crimes;
- witnesses involved in pending criminal investigations or prosecutions;
- plaintiffs in non-frivolous lawsuits regarding civil rights or liberties violations; and
- individuals engaging in a protected activity related to civil or other rights (for example, union organizing or complaining to authorities about employment discrimination or housing conditions) who may be in a non-frivolous dispute with an employer, landlord, or contractor.

In deciding whether or not to exercise discretion, ICE officers, agents, and attorneys should consider all serious adverse factors. Those factors include national security concerns or evidence the alien has a serious criminal history, is involved in a serious crime, or poses a threat to public safety. Other adverse factors include evidence the alien is a human rights violator or has engaged in significant immigration fraud. In the absence of these or other serious adverse factors, exercising favorable discretion, such as release from detention and deferral or a stay of removal generally, will be appropriate. Discretion may also take different forms and extend to decisions to place or withdraw a detainer, to issue a Notice to Appear, to detain or release an alien, to grant a stay or deferral of removal, to seek termination of proceedings, or to join a motion to administratively close a case.

In addition to exercising prosecutorial discretion on a case-by-case basis in these scenarios, ICE officers, agents, and attorneys are reminded of the existing provisions of the Trafficking Victims Protection Act (TVPA),² its subsequent reauthorization,³ and the Violence Against Women Act (VAWA).⁴ These provide several protections for the victims of crime and include specific provisions for victims of domestic violence, victims of certain other crimes,⁵ and victims of human trafficking.

Victims of domestic violence who are the child, parent, or current/former spouse of a U.S. citizen or permanent resident may be able to self-petition for permanent residency.⁶ A U nonimmigrant visa provides legal status for the victims of substantial mental or physical abuse as

² Pub. L. No. 106-386, §§101-113, 114 Stat. 1464, 1466 (codified as amended in scattered sections of the U.S.C.).

³ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 1464, 1491 (codified as amended in scattered sections of the U.S.C.).

⁴ Pub. L. No. 106-386, §§1001-1603, 114 Stat. 1464, 1491 (codified as amended in scattered sections of the U.S.C.).

⁵ For a list of the qualifying crimes, see INA §101(a)(15)(U)(iii).

⁶ See INA §101(a)(51).

a result of domestic violence, sexual assault, trafficking, and other certain crimes.⁷ A T nonimmigrant visa provides legal status to victims of severe forms of trafficking who assist law enforcement in the investigation and/or prosecution of human trafficking cases.⁸ ICE has important existing guidance regarding the exercise of discretion in these cases that remains in effect. Please review it and apply as appropriate.⁹

Please also be advised that a flag now exists in the Central Index System (CIS) to identify those victims of domestic violence, trafficking, or other crimes who already have filed for, or have been granted, victim-based immigration relief. These cases are reflected with a Class of Admission Code "384." When officers or agents see this flag, they are encouraged to contact the local ICE Office of Chief Counsel, especially in light of the confidentiality provisions set forth at 8 U.S.C. § 1367.

No Private Right of Action

These guidelines and priorities are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

⁷ See INA §101(a)(15)(U).

⁸ See INA §101(a)(15)(T).

⁹ See Memorandum from John P. Torres, Director, Office of Detention and Removal Operations and Marcy M. Forman, Director, Office of Investigations. Interim Guidance Relating to Officers Procedure Following Enactment of VAWA 2005 (Jan. 22, 2007).

Exhibit B

SATURDAY, NOVEMBER 14, 2009

National

The New York Times

White House Plan on Immigration Includes Legal Status

By JULIA PRESTON

The Obama administration will insist on measures to give legal status to an estimated 12 million illegal immigrants as it pushes early next year for legislation to overhaul the immigration system, Homeland Security Secretary Janet Napolitano said on Friday.

In her first major speech on the overhaul, Ms. Napolitano dispelled any suggestion that the administration — with health care, energy and other major issues crowding its agenda — would postpone the most contentious piece of immigration legislation until after midterm elections next November.

Laying out the administration's bottom line, Ms. Napolitano said officials will argue for a "three-legged stool" that includes tougher enforcement laws against illegal immigrants and employers who hire them and a streamlined system for legal immigration, as well as a "tough and fair pathway to earned legal status."

With unemployment surging over 10 percent and Congress still wrangling over health care, advocates on all sides of the immigration debate had begun to doubt that President Obama would keep his pledge to tackle the divi-

sive illegal immigration issue in the first months of 2010.

Speaking at the Center for American Progress, a liberal policy group in Washington, Ms. Napolitano unveiled a double-barrel argument for a legalization program, saying it would enhance national security and, as the economy climbs out of recession, protect American workers from unfair competition from lower paid, easily exploited illegal immigrants.

"Let me emphasize this: we will never have fully effective law enforcement or national security as long as so many millions remain in the shadows," she said, adding that the recovering economy would be strengthened "as these immigrants become full-paying taxpayers."

Under the administration's plan, illegal immigrants who hope to gain legal status would have to register, pay fines and all taxes they owe, pass a criminal background check and learn English.

Drawing a contrast with 2007, when a bill with legalization provisions offered by President George W. Bush failed in Congress, Ms. Napolitano said the Obama administration had achieved a "fundamental change" in border security and



MANUEL BALCE CENETA/ASSOCIATED PRESS

Janet Napolitano laid out the administration's plans Friday.

enforcement against employers hiring illegal immigrants. She said a sharp reduction in the flow of illegal immigrants into the country created an opportunity to move ahead with a legalization program.

Some Republicans were quick to challenge Ms. Napolitano's claims that border security had significantly improved or that American workers would be helped by bringing illegal immigrants into the system.

"How can they claim that enforcement is done when there are more than 400 open miles of border with Mexico?" asked Repre-

sentative Lamar Smith of Texas, the senior Republican on the House Judiciary Committee. He said the administration should "deport illegal immigrant workers so they don't remain here to compete with citizen and legal immigrant job seekers."

But Senator John Cornyn of Texas, the top Republican on the Judiciary subcommittee on immigration, agreed that it was time to open the immigration debate. "My commitment to immigration reform has not changed," he said in a statement Friday. "I am interested in seeing a proposal sooner rather than later from President Obama."

Senator Charles E. Schumer, Democrat of New York and the chairman of that subcommittee, has been writing an overhaul bill and consulting with Republicans, particularly Senator Lindsey Graham of South Carolina. Mr. Schumer said that the administration's agenda was "ambitious," but that he was "confident we can have a bipartisan immigration bill ready to go under whatever timeline the president thinks is best."

Ms. Napolitano has been leading the administration's efforts to gather ideas and support for the immigration overhaul, meeting in recent weeks with business lead-

ers, religious groups, law enforcement officials and others to gauge their willingness to go forward with a debate in Congress.

Framing the administration's proposals in stark law and order terms, she said immigration legislation should include tougher laws against migrant smugglers and more severe sanctions for employers who hire unauthorized workers.

Ms. Napolitano said that the Border Patrol had grown by 20,000 officers and that more than 600 miles of border fence had been finished, meeting security benchmarks set by Congress in 2007. She was echoing an argument adopted by Mr. Bush after the bill collapsed in 2007, and by Senator John McCain, Republican of Arizona, in his race against Mr. Obama. They said Americans wanted to see effective enforcement before they would agree to legal status for millions of illegal immigrants.

Some immigrant advocates were dismayed by Ms. Napolitano's approach. Benjamin E. Johnson, executive director of the American Immigration Council, praised her package of proposals, but said some enforcement policies she outlined "have proven to do more harm than good."

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Gay couples in legal limbo with immigration

Married same-sex couples find their commitment has no standing in the eyes of immigration agents when one partner isn't a citizen. The Obama administration says their cases are a low priority, but that doesn't always prevent deportation.

July 14, 2011 | By David G. Savage, Washington Bureau

Bradford Wells, a retired computer programmer in San Francisco, has chronic health problems that threaten his life and an immigration problem that threatens to split up his marriage and take away his caregiver.

He was married seven years ago in Massachusetts to Anthony Makk, a citizen of Australia. But in June, Makk's visa expired. The couple applied for a spousal green card, but they expect to be denied because the Defense of Marriage Act forbids federal authorities from recognizing a same-sex marriage.

Wells and Makk are among an estimated 24,000 same-sex couples in the United States in which one partner is not a citizen. Not all of them are married, but those who find their legal commitment has no standing in the eyes of immigration agents.

"If [Makk] becomes illegal, then they can step in, and we don't know what would happen," Wells said. "Some mornings, I can't get out of bed. If he were not here, no one would be here to help."

As the nation remains entrenched in a debate over what to do about an estimated 11 million illegal residents, the Obama administration has released new guidelines to provide flexibility in individual cases without conflicting with other federal laws. Because the marriage act, passed in 1996, remains the law, the administration has stopped short of a blanket policy change on deportation cases involving married same-sex couples.

Instead, John Morton, director of Immigration and Custom Enforcement, sent a memo in June instructing his agents and lawyers to focus their deportation efforts on illegal immigrants who are criminals, gang members or security threats. He also urged them to "exercise discretion" in favor of illegal residents who have a "spouse, child or parent" who is a U.S. citizen or who is "primary caretaker" for someone who is ill, disabled or a child.

The directive did not mention legally married same-sex couples. So couples such as Makk and Wells must navigate a muddled and subjective process, one that gives immigration officers the power to allow illegal same-sex spouses to remain in the country — provided the agent does not cite marriage as the reason — or to proceed with deportations.

Gay rights advocates say the flexibility helps, but means married same-sex couples remain vulnerable to a range of outcomes.

Two weeks ago in New Jersey, Los Angeles attorney Lavi Soloway, who represents a number of married same-sex couples in deportation cases, scored a victory when the government agreed to stop the deportation of Henry Velandia, a Venezuelan man who is legally married to Josh Vandiver, a 30-year-old graduate student at Princeton University. Immigration officials said the deportation was not a priority. "That was a good sign, but it was only one case," Soloway said.

On Wednesday, a Southern California couple — Doug Gentry and Venezuelan native Alex Benshimol, who married last year in Connecticut — appeared before a San Francisco judge and asked the government to use its discretion to drop deportation proceedings against Benshimol. Judge Marilyn Teeter gave immigration officials 60 days to respond. Teeter postponed the next deportation hearing until September 2013 if the government does not drop the case.

Soloway, who is also their attorney, praised the judge's "compassion and understanding" and said he would "continue to advocate for termination of these proceedings and a moratorium on all deportations of spouses of lesbian and gay Americans."

The discretion directive came too late for Richard Dennis and Jair Izquierdo. Last December, Dennis, a New York banker, watched as his partner was put on a plane back to Peru. The two had a civil union in New Jersey and had applied for a green card, but that did not deter the government from deporting Izquierdo after his tourist visa expired.

"We just got a perfunctory 'denied' from them, with no explanation given.... The whole system seems very arbitrary," Dennis said.

The administration has sent a mixed message on the Defense of Marriage Act. In February, President Obama and Atty. Gen. Eric H. Holder Jr. announced that the government would no longer defend the act in court against claims from legally married same-sex couples in New England, who contend they deserve the same federal benefits as heterosexual couples. Since these gay couples were legally married in their states, the federal government could not deny them equal benefits, the administration said.

That case is now before a U.S. appeals court in Boston, with former Bush administration lawyer Paul Clement stepping in to defend the law on behalf of House

Republicans.

Based on the administration's decision, Democrats in Congress asked in April for a suspension of deportations involving legally married same-sex couples until the New England case is resolved. The administration refused, saying it could not grant relief "to the entire category of cases" involving married gay couples. Obama has said that as president, he has a duty to enforce laws on the books, even if he disagrees with them.

Typically, married couples do not face the threat of deportation, even if one spouse is not a U.S. citizen. Immigration law favors family reunification, and a U.S. citizen usually can obtain documents to keep a foreign-born spouse in the U.S. Gay rights advocates interpreted Morton's memo as a signal that, despite the marriage act, the administration does not view deportations of illegal same-sex spouses as a priority.

"This is the head guy saying to them: 'We have limited resources, so go after drug dealers and terrorists. Don't devote your resources to splitting up a law-abiding couple,'" said David Leopold, a Cleveland attorney and past president of the American Immigration Lawyers Assn.

But Morton's memo drew a sharp rebuke from the union that represents immigration agents and from Rep. Lamar Smith (R-Texas), chairman of the House Judiciary Committee. Chris Crane, who represents 7,000 immigration agents, accused Morton of creating a "law enforcement nightmare" for immigration agents. His comments raised the prospect that agents around the country may not follow Washington's guidance.

"It appears if the Obama administration doesn't like some laws, they just ignore them," Smith said.

Steve Ralls, a spokesman for Immigration Equality, a group pushing for an end to deportations of same-sex couples, said "we would like a clarification from the administration. No doubt something is changing, but there is no blanket policy. It is an unofficial evolution."

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Brian Bennett in the Washington bureau contributed to this report.

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June 29, 2011

U.S. Drops Deportation Proceedings Against Immigrant in Same-Sex Marriage

By KIRK SEMPLE

Correction Appended

In a decision that could have far-reaching effects on immigration cases involving same-sex couples, federal officials have canceled the deportation of a Venezuelan man in New Jersey who is married to an American man, the couple's lawyer said Wednesday.

The announcement comes as immigration officials put into effect new, more flexible guidelines governing the deferral and cancellation of deportations, particularly for immigrants with no serious criminal records.

Immigration lawyers and gay rights advocates said the decision represented a significant shift in policy and could open the door to the cancellation of deportations for other immigrants in same-sex marriages.

"This action shows that the government has not only the power but the inclination to do the right thing when it comes to protecting certain vulnerable populations from deportation," said the couple's lawyer, Lavi Soloway.

The case has been closely watched across the country by lawyers and advocates who viewed it as a test of the federal government's position on the Defense of Marriage Act, a federal law that bars the federal government from recognizing same-sex marriages.

In February, Attorney General Eric H. Holder Jr. announced that the administration viewed the act as unconstitutional and would not defend it in the courts. Gay rights advocates asked the administration to postpone all deportations for same-sex married couples until the courts decided whether the marriage act was constitutional, but the administration said it would continue to enforce the law.

The Venezuelan man, Henry Velandia, 27, is a salsa dancer who immigrated in 2002 and was legally married last year in Connecticut to Josh Vandiver, 30, a graduate student at Princeton University. But Mr. Velandia was denied legal residency as Mr. Vandiver's spouse because of the Defense of Marriage Act. Under immigration law, an American citizen can petition for legal residency for a spouse, as long as the spouse is not the same sex.

Last month, an immigration judge in Newark suspended Mr. Velandia's deportation, saying he wanted to allow time for the attorney general and the courts to work out whether, under some circumstances, a gay partner might be eligible for residency.

On June 9, Mr. Soloway received a call from Jane H. Minichiello, the chief counsel at the Newark office of Immigration and Customs Enforcement, an arm of the Homeland Security Department, informing him that the agency had agreed to his request to close the deportation proceedings. According to Mr. Soloway, Ms. Minichiello said pursuing Mr. Velandia's deportation "is not an enforcement priority at this time."

Immigration agency officials confirmed Mr. Soloway's account of the conversation but would not comment further.

The judge granted the motion to close the case on June 13, and Mr. Soloway received an official copy of the order on Wednesday.

The decision to cancel the deportation came as federal immigration officials were thoroughly reviewing their deportation policies.

"I can start breathing now after so many months of fighting," said Mr. Velandia, 27. "I was holding my breath for fear of any moment being sent away."

But he pointed out that while the decision was "a big step forward," it still did not address the underlying issue of whether same-sex marriages should be recognized by the federal government.

"The fight isn't over," Mr. Velandia said.

Correction: July 5, 2011

An earlier version of this article misstated the date when Josh Vandiver and his husband, Henry Velandia, were outside the immigration court in Newark. It was May, not Friday, June 24.

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AGENCIES Apr 10, 2009, 02:48am IST

WASHINGTON: President Barack Obama hopes to launch an effort to overhaul US immigration policy this year, but the economic crisis is likely to push the process beyond 2009, the White House said on Thursday.

"There are a lot of things on his plate and a lot of pressing issues relating to the economy. I don't think he expects that it will be done this year," spokesman Robert Gibbs told reporters.

Gibbs spoke after The New York Times reported that Obama aimed to draft legislation this year allowing illegal immigrants to become legal citizens as part of a major immigration policy revamp.

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The spokesman declined to confirm the report explicitly, but said that "legislation could come at some point" and underlining that "the president is focused on starting this process this year, as he said in the campaign."

Gibbs sidestepped questions on giving undocumented immigrants a path to citizenship, but said "the president believes that there's only one way to solve this problem, and that is through comprehensive immigration reform."

And he emphasized that Obama's campaign pledges had included vows to step up border security, and requirements that undocumented immigrants enter the process behind legal immigrants, and that they learn English and pay a fine.

As a US senator from Illinois, Obama in 2007 voted in favor of immigration reform and made it one of his top campaign issues, winning the key support of 66 percent of some 10 million registered Hispanic voters on election day.

A majority of new US immigrants are Hispanics from neighboring Mexico and also from across Central and South America.

Obama "plans to speak publicly about the issue in May... and over the summer he will convene working groups, including lawmakers from both parties and a range of immigration groups, to begin discussing possible legislation for as early as this fall," the New York Times report said.

The report cited US officials as saying "the Obama administration favors legislation that would bring illegal

immigrants into the legal system by recognizing that they violated the law, and imposing fines and other penalties to fit the offense.

"The legislation would seek to prevent future illegal immigration by strengthening border enforcement and cracking down on employers who hire illegal immigrants, while creating a national system for verifying the legal immigration status of new workers," it added.

Gibbs allowed that any immigration reform faced obstacles growing out of the US economy's paralyzing recession.

"I don't think the president is under any illusion that comprehensive immigration reform is going to be easy," he said.

"It hasn't been in the previous two congresses, and I don't anticipate that it's certainly going to get any easier now," he said.

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Kalyani (Chennai)
10 Apr, 2009 06:29 AM

Obama should spell out clearly that who did graduation(MS/Ph.D/MBA etc.) in US Universities will be given job preference and also in immigration.

17



The Christian Science Monitor - CSMonitor.com

Obama's immigration plan a 'poison pill' for Congress

Lawmakers have proved reluctant to touch the topic because it can burn them in primary season.



Dividing line: A US Border Patrol agent walks along a section of the US-Mexico border fence near Sunland Park, N.M. President Obama's efforts to reform how America treats immigrants who have come to the country illegally could cause problems for members of Congress.

(Tom Pennington/Fort Worth Star-Telegram/MCT)

By Gail Russell Chaddock, Staff writer

posted April 10, 2009 at 8:04 pm EDT

Washington

President Obama's plan to start work on immigration reform – reaffirmed by White House staff this week – launched two sharply different views on how it will impact his domestic agenda.

Supporters applaud Mr. Obama's holistic approach, arguing that all the interrelated issues of the economy, healthcare, and homeland security must be dealt with together. But to others, immigration reform is one of the most divisive issues in American politics – a "poison pill" that could sour the mood in Congress and clip the president's momentum.

By adding it to his "to do" list, Obama is putting lawmakers on both sides of the aisle in a bind, forcing them into votes that can then be wielded against them on the campaign trail.

"Democrats have to worry about offending Latino voters – that would create problems in primaries," says John Pitney, a political scientist at Claremont McKenna College in Claremont, Calif. "Republicans have to deal with the enforcement-only folks, also in primaries."

The last bid for comprehensive reform legislation derailed in the Senate in June 2007. Republicans who were willing to support then-President Bush on immigration aren't as likely to take political risks for a Democratic president.

"If Republicans have learned nothing else, it's that their primary electorates don't look kindly on anything that looks like amnesty," says Mr. Pitney.

The immigration issue poses special problems for each party. Since 2007, elements of the issue have come back as amendments to certain bills working their way through Congress. Members of Congress have called them "poison pills," because they aim to force legislators to record their votes on divisive issues.

In one instance earlier this year, the Senate voted to kill an amendment supported by groups who want tighter controls on immigration. It would have extended for six years a voluntary, Internet-based program that aims to determine if employees are legally entitled to work in the United States.

Though the amendment failed, the last-minute vote changes and intense discussions in the well of the Senate signaled how tough a call it was for Democrats in conservative states – who may have seen the vote coming back to hurt them in opponents' campaign ads. In the end, seven Democrats voted with a united GOP caucus to back the amendment, which lost narrowly, 50-47.

On the House side, a tax bill included a vote on whether to require the Internal Revenue Service to toughen enforcement against illegal immigrants, including denial of the earned income tax credit. The April 15, 2008, vote split the House, 210 to 210. The Senate never took up the bill.

Immigration is so divisive that opponents of other issues – ranging from annual spending bills to healthcare reform – have tried to bring immigration into the discussion as a way to fracture the support for bills.

"We've seen the anti-immigrant forces and even anti-healthcare forces try to move even healthcare into an immigration debate," says Ali Noorani, executive director of the National Immigration Forum, a pro-immigrant advocacy group in Washington.

Groups that favor curbs on immigration counter that this is not simply a tactic; it is the nature of immigration reform.

"Every program will provide yet another opportunity for moderate Democrats, Republicans, and blue dogs [conservative Democrats] to say: You can't spend this money on illegal aliens," says Dan Stein, president of the Federation for American Immigration Reform (FAIR), which favors a harder line on immigrants.

Whether Obama plans to launch a bid for comprehensive immigration reform this year or later, Republicans and opponents are taking the immigration debate to other elements of the president's agenda – setting up early and ongoing tests of the strength of the pro-reform coalition.

"As long as the administration continues to push such an ambitious spending agenda, by definition you raise the eligibility question at every turn," says Mr. Stein of FAIR. "There's an inherent taxpayer dislike of providing taxpayer funds to people who have no right to be in the country."

But supporters of a comprehensive approach say immigration is an essential element of the president's overall agenda. "Fixing our immigration system is an important part of addressing our nation's economic, healthcare, and homeland-security challenges," said Angela Kelley, director of the Immigration Policy Center in Washington.

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Obama plans to address immigration system in 2009

Amnesty opponents seek to mobilize anger over lost jobs

By **JULIA PRESTON**
NEW YORK TIMES

Published: Friday, April 10, 2009 at 4:08 a.m.

While acknowledging that the recession makes the political battle more difficult, President Barack Obama plans to begin addressing America's immigration system this year, including looking for a path for illegal immigrants to become legal, an administration official said Wednesday.

Obama will frame the new effort -- likely to rouse passions on all sides of the divisive issue -- as "policy reform that controls immigration and makes it an orderly system," said the official, Cecilia Munoz, deputy assistant to the president and director of intergovernmental affairs in the White House.

Obama plans to speak publicly about the issue in May, administration officials said, and over the summer he will convene working groups, including lawmakers from both parties and a range of immigration organizations, to begin discussing possible legislation for as early as this fall.

Obama said during the presidential campaign that comprehensive immigration legislation, including a plan to make legal status possible for an estimated 12 million illegal immigrants, would be a priority in his first year in office. But with the economy seriously ailing, advocates on different sides of the debate said that immigration could become a polarizing issue for Obama in a year when he has many other battles to fight.

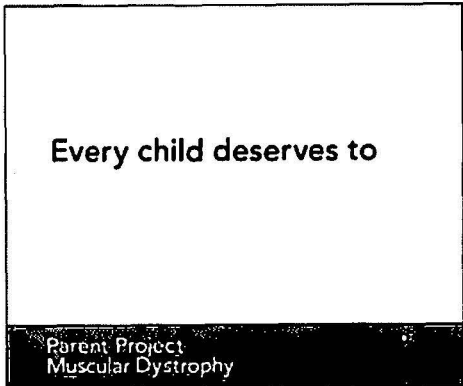
Opponents, mainly Republicans, say they will seek to mobilize popular outrage against any effort to legalize unauthorized immigrant workers while many Americans are out of jobs.

Debate is under way among administration officials about the precise timing and strategy. It is unclear who will take up the Obama initiative in Congress. No serious legislative talks on the issue are expected until after some of Obama's other priorities have been debated, congressional aides said.

Officials said that Obama's plan would not add new workers to the American work force, but that it would recognize millions of illegal immigrants who have already been working in the United States.

Opponents of legalization legislation were incredulous at the idea that Obama would take on immigration when economic pain for Americans is so widespread.

"It just doesn't seem rational that any political leader would say, let's give millions



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of foreign workers permanent access to U.S. jobs when we have millions of Americans looking for jobs," said Roy Beck, executive director of Numbers USA, a group that favors reduced immigration.

Beck predicted that Obama would face "an explosion" if he proceeded this year. "It's going to be, 'You're letting them keep that job, when I could have that job,' " he said.

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