



ADVOCACY RESOURCE

PROTECTIVE FEDERAL IMMIGRATION ENFORCEMENT POLICIES

Florida’s aggressive anti-immigrant laws imperil and harm thousands of noncitizen state residents, including the state’s estimated nearly 800,000 undocumented residents. However, noncitizens in Florida may be able to benefit from federal immigration policies. These federal policies guide immigration officers in deciding how and against whom to enforce immigration laws. Noncitizens may therefore use one or more of these policies to argue that they should not be subject to arrest or deportation by ICE, notwithstanding Florida’s state laws.

Prosecutorial Discretion

- On September 30, 2021, Secretary Mayorkas issued an “enforcement priorities” memo that outlined both positive and negative factors that ICE officers should consider when deciding whether to arrest someone or initiate removal proceedings. While the policy was enjoined for about a year following a lawsuit brought by Texas, Louisiana, and other states, the Supreme Court recently ruled that the plaintiff states lack standing – i.e., cannot bring the lawsuit – and, therefore, the memo is now back in effect.

The memo lays out the following positive and negative factors:

Negative Factors	Positive Factors
<ul style="list-style-type: none"> • Seriousness of the crime; • Degree of harm the conduct caused; • “Sophistication” of the crime (i.e., the amount of planning, intent, and resources that went into committing the crime, as well as the number of people involved); • Use or threat to use a gun or other weapon; • Person’s prior record of serious convictions 	<ul style="list-style-type: none"> • Age (if a person is young or elderly); • Long presence in the United States; • Mental condition that contributed to the person committing the conduct (like PTSD, cognitive disabilities, or other mental illness); • Being a victim, witness, or being a part of other legal proceedings; • Impact of the person’s deportation on family members in the United States;

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Negative Factors	Positive Factors
	<ul style="list-style-type: none"> • Eligibility for immigration relief; • Military or public service of the person or their immediate family members (parents, spouse, or children); • Time since the offense and evidence of rehabilitation (such as completion of classes, attendance at AA or NA, etc.); • Conviction was expunged or invalidated

Using a Victim-Centered Approach with Noncitizen Crime Victims

- On August 10, 2021, ICE issued a policy directive that guides ICE officers on how to treat people whom they encounter who have been victims of crime, including the circumstances under which they should or should consider granting prosecutorial discretion.
- The directive states that, absent exceptional circumstances, ICE should usually not arrest, detain, or attempt to deport a person with a Special Immigrant Juvenile Status (SIJS) petition (for unaccompanied minors), U Visa (for victims of crime), T Visa (for trafficking victims), or relief under the Violence Against Women Act (VAWA) (for abused spouses and former spouses of U.S. citizens and residents) application pending, or a person who has received any of those forms of immigration relief.
 - Exceptional circumstances are limited to if a) the person “poses national security concerns;” or if b) the person “poses an articulable risk of death, violence, or physical harm to any person.”
- The directive also states that, absent the same “exceptional circumstances,” ICE will not take any immigration enforcement action against someone who is a victim or a witness while a criminal investigation or prosecution is pending, and may grant deferred action to victims or witnesses.
- ICE officers are also required to proactively assess whether a person is a victim and alert other ICE components to the person’s victim status, including the ICE lawyers who prosecute immigration cases (Office of the Principal Legal Advisor, or OPLA). Even if a person doesn’t have a pending U, T, SIJS, or VAWA application, ICE must consider their victim status as a factor in exercising prosecutorial discretion, including for release from detention; ICE should also tell person about the availability of victim-based immigration relief referring them to the appropriate law enforcement agency.

Directive: Identification and Monitoring of Pregnant, Postpartum, or Nursing Individuals

- On July 9, 2021, ICE updated this directive discussing special detention considerations regarding pregnant, postpartum, and nursing individuals. The directive states that “[g]enerally, ICE should not detain, arrest, or take into custody . . . individuals known to be pregnant, postpartum, or nursing unless release is prohibited by law or exceptional circumstances exist.” However, the directive does not prohibit placing parents and children for “temporary stays in family staging centers.” People who are pregnant, postpartum, or nursing are also “not required to wear a radio frequency or global positioning system [GPS] monitor.”

- Exceptional circumstances are defined in the same way as under the Crime Victims Memo: a) the person “poses national security concerns;” or if b) the person “poses an articulable risk of death, violence, or physical harm to any person.”
- Postpartum is defined as the one-year period following giving birth.
- Nursing is defined as breastfeeding, regardless of the age of the child.

Protected Areas Memo

- On October 27, 2021, DHS Secretary Mayorkas issued a memo listing “protected areas” where ICE and CBP will usually not stop, question, arrest, or detain people. Protected areas include:
 - Schools
 - Medical or mental healthcare facilities
 - Places of worship or religious studies
 - Places where children gather
 - Social services establishments
 - Places where disaster or emergency response/relief is provided
 - Places where funerals, graveside ceremonies, rosaries, weddings, or other religious or civil ceremonies or observances occur
 - Places where there are ongoing parades, demonstrations, or rallies
- Although ICE and CBP are directed to recognize “sensitive locations,” there are certain exceptions that allow ICE and CBP to undertake an enforcement action, which are as follows:
 - The enforcement action involves a national security threat.
 - There is an imminent risk of death, violence, or physical harm to a person.
 - The enforcement action involves the hot pursuit of an individual who poses a public safety threat.
 - The enforcement action involves the hot pursuit of a personally observed border crosser.
 - There is an imminent risk that evidence material to a criminal case will be destroyed.
 - A safe alternative location does not exist.

Labor Dispute Deferred Action

- On May 31, 2023, DHS created a deferred action process for workers in an active labor dispute that is being investigated by a labor law enforcement agency and the labor law enforcement agency provides the worker with a letter of interest supporting the request for deferred action. Read more [here](#).

Consideration of U.S. Military Service

- On May 23, 2022, ICE issued a policy directive stating that, when making enforcement decisions, including whether or not to release someone from detention, officers should consider a noncitizen’s military service

or the military service of a noncitizen's immediate family member as a significant positive factor in favor of exercising prosecutorial discretion. If a person is eligible to naturalize based on their military service, or is currently serving on active duty, ICE should generally not take enforcement actions against them, absent "significant aggravating circumstances," and the decision to take enforcement action must be made by the highest ranking official within the field office.

- Immediate family member means a person's spouse, parent, or child, with a generous interpretation of family relationships that includes stepparents/children, adoptive parents/children, and legal relationships equivalent to marriage.
- The decision to take enforcement action against a person with a history of military service or against a person with an immediate family member currently serving on active duty in the military must be made by the highest ranking official within the field office.

While none of these federal policies offers complete protection from arrest by ICE or deportation, it is important that advocates and Florida's noncitizen residents know that these federal policies exist and may offer protection against immigration enforcement, especially in the face of Florida's new anti-immigrant laws.