

Statement of Support for Immigration and Customs Enforcement's (ICE) Exercising of Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Department of Homeland Security (DHS) for the Apprehensive, Detention, and Removal of Aliens

Endorsed by NAPABA

April 2012

WHEREAS, U.S. Immigration and Customs Enforcement ("ICE") is the federal agency that is responsible for the enforcement of immigration law of the United States, in coordination with U.S. Customs and Border Protection ("CPB") and U.S. Citizenship and Immigration Services ("USCIS");

WHEREAS, ICE has limited resources to remove those who are present in the United States in violation of their immigration status;

WHEREAS, 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;

WHEREAS, ICE is confronted with more administrative violations than its resources can address, ICE must regularly exercise "prosecutorial discretion" if it is to prioritize its efforts;

WHEREAS, 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;

WHEREAS, ICE, like any other law enforcement agency, has prosecutorial discretion and may exercise it in the ordinary course of enforcement;

WHEREAS, 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;

WHEREAS, prosecutorial discretion in civil immigration enforcement matters is held by the Director of ICE and may be exercised, with appropriate supervisory oversight, by its agents, officers, attorneys, and other authorized personnel;

WHEREAS, ICE has outlined the factors that it may consider to evaluate whether the exercising of prosecutorial discretion is warranted in a given case, including, but are not limited to:

- The agency's civil immigration enforcement priorities;

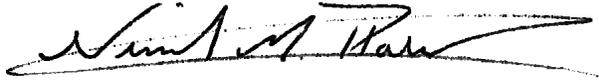
- The person's length of presence in the United States, with particular consideration given to presence while in lawful status;
- The circumstances of the person's arrival in the United States and the manner of his or her entry, particularly if the alien came to the United States as a young child;
- 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 familial 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, parent;
- Whether the person is the primary caretaker of a person with a mental or physical disability, minor, or a 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 an asylum seeker, or as 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 Office or Department of Justice, the Department of Labor, or National Labor Relations Board, among others;

WHEREAS, these factors are reasonable, and the exercising of prosecutorial discretion based on these factors would result in the best use of ICE resources in removing individuals who pose the most danger to society;

THEREFORE BE IT RESOLVED, that NAPABA

1. Calls for full support of the exercising of Prosecutorial Discretion as outlined in the "June 17, 2011" memorandum authored by ICE Director John Morton.
2. Authorizes its President, officers, and staff to communicate the content of this resolution to other diverse bar associations, members of Congress, the press, and to others the NAPABA Board deems suitable to receive the information.

I, the elected president of the National Asian Pacific American Bar Association, hereby certify that this resolution was enacted by NAPABA on April 18, 2012.

A handwritten signature in black ink, appearing to read "Nimesh M. Patel", with a long horizontal flourish extending to the right.

Nimesh M. Patel
President