

## PRACTICE ADVISORY

### PROSECUTORIAL DISCRETION IN BALTIMORE DISTRICT

By: AILA DC Chapter <sup>1</sup>

#### I. Introduction

The purpose of this Practice Advisory is to provide practitioners with information and practice tips to assist them in obtaining a favorable exercise of prosecutorial discretion for their clients with a focus on seeking administrative closure during the pilot program being implemented by Immigration and Customs Enforcement (ICE) Baltimore. The advisory provides a brief overview of relevant agency memoranda relating to the exercise of prosecutorial discretion. It provides details of the review process being carried out by ICE Baltimore until January 13, 2012 and instructions for practitioners to follow in seeking administrative closure. The advisory discusses Baltimore Immigration Court practice during the review process, including motions to advance hearings and asylum filing deadlines. It also discusses the issuances of Notices to Appear (NTA) by United States Citizenship and Immigration Services (USCIS) and other matters. Finally, the advisory addresses employment authorization issues and concludes with a discussion relating to pro se respondents.

Practitioners should note that the current pilot review process by ICE Baltimore is confined to a determination of whether a case should be administratively closed. During the review, if the ICE Office of Chief Counsel encounters cases where a noncitizen is no longer subject to removal, for example, where an I-730 Petition has been approved, or where a benefit is available before USCIS, it may seek termination. The review process discussed below, including submission of materials to a designated email box, should NOT be used when seeking requests for other forms of prosecutorial discretion at this time. Instead, all other requests for prosecutorial discretion should be made in writing

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<sup>1</sup> The implementation of Prosecutorial Discretion is being monitored by AILA DC Chapter's Executive Committee and by agency liaison. E-mail contacts are as follows:

Brenda Oliver, Chapter Chair, [boliver@fragomen.com](mailto:boliver@fragomen.com)  
Peter F. Asaad, Chapter Chair-Elect, [pasaad@immigrationsolutions.com](mailto:pasaad@immigrationsolutions.com)  
Anna Gallagher, ICE BAL Liaison Co-Chair, [agallagher@maggio-kattar.com](mailto:agallagher@maggio-kattar.com)  
Sandra Grossman, ICE BAL Liaison Co-Chair, [Sandra@grossmanlawllc.com](mailto:Sandra@grossmanlawllc.com)  
Edward Neufville, EOIR BAL Liaison Co-Chair, [edward.neufville@gmail.com](mailto:edward.neufville@gmail.com)  
Alison Brown, EOIR BAL Liaison Co-Chair, [abrown@alisonjbrown.com](mailto:abrown@alisonjbrown.com)  
Mark Shmueli, Pro Bono Liaison Chair, [mark@markshmueli.com](mailto:mark@markshmueli.com)  
Dree Collopy, Pro Bono Liaison Vice-Chair, [dcollopy@maggio-kattar.com](mailto:dcollopy@maggio-kattar.com)  
Ana Zigel, USCIS Liaison Chair, [ana@zigel.net](mailto:ana@zigel.net)

and submitted along with hard copies of supporting documentation to the ICE Office of Chief Counsel until the ICE OCC designates an email box for submission of such requests consistent with the instructions in the November 17, 2011 OPLA memorandum.

## **II. Overview of Administration and Agency Position/Memoranda on Prosecutorial Discretion**

Prosecutorial discretion is the ability of an agency or an officer with enforcement authority to decide whether to enforce a law in a particular case. Immigration agencies and officers have a long history of exercising prosecutorial discretion to resolve cases with positive equities or in response to policy or practical resource issues.<sup>2</sup> Over the past several years, the Department of Homeland Security (DHS) has issued a number of important memoranda explaining its authority, discussing its enforcement priorities, describing the range of actions in which it can exercise prosecutorial discretion, and listing criteria relevant to a decision on whether to exercise prosecutorial discretion. The following is a list and brief description of the memoranda with which practitioners should be familiar and use in drafting their requests for discretion:

- ***ICE Memorandum - Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens (June 30, 2010)***: This memorandum, issued by ICE Director John Morton, outlines the civil immigration enforcement priorities of the agency. The following are the agency's enforcement priorities in descending order: 1) noncitizens who pose a danger to national security or a risk to public safety; 2) recent illegal entrants; and, 3) noncitizens who are fugitives or otherwise obstruct immigration controls. Practitioners are urged to carefully review the list of noncitizens under each category to determine if the criteria apply to their clients. If the criteria do apply, practitioners should carefully review the factors discussed in subsequent memoranda listed below to argue in support of an exercise of prosecutorial discretion where possible. The civil enforcement memorandum is available at [http://www.ice.gov/doclib/detention-reform/pdf/civil\\_enforcement\\_priorities.pdf](http://www.ice.gov/doclib/detention-reform/pdf/civil_enforcement_priorities.pdf).
- ***ICE Memorandum - Guidance Regarding the Handling of Removal Proceedings of Aliens with Pending or Approved Applications or Petitions (Aug. 20, 2010)***: This memorandum sets ICE policy for handling removal cases before the Executive Office for Immigration Review (EOIR) involving applications or petitions filed by, or on behalf of, noncitizens in removal proceedings. It outlines a framework for ICE to request expedited adjudication of an application or petition for a noncitizen in removal proceedings if the approval of such application or petition would provide an immediate basis for relief for the noncitizen. The memo is available at

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<sup>2</sup> Shoba Sivaprasad Wadhia, *The Role of Prosecutorial Discretion in Immigration Law* (September 21, 2009), Penn State Legal Studies Research Paper No. 25-2010, available at SSRN: <http://ssrn.com/abstract=1476341>.

<http://www.ice.gov/doclib/detention-reform/pdf/aliens-pending-applications.pdf>.

- **ICE Memorandum – Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens (Jun 17, 2011):** This memorandum builds on several past memoranda relating to prosecutorial discretion issued by the Department of Homeland Security and its predecessor, the Immigration and Naturalization Service. It explains that prosecutorial discretion applies to a broad range of discretionary enforcement decisions, and lists particular areas of possible intervention. It encourages the exercise of prosecutorial discretion earlier rather than later in order to preserve government resources. It lists the ICE personnel authorized to exercise prosecutorial discretion which include certain personnel within Enforcement and Removal Operations (ERO), certain personnel within Homeland Security Investigations (HSI), certain personnel within the Office of the Principal Legal Advisor (OPLA), and the Director, Deputy Director, and their senior staff. Most importantly, the memorandum lists factors to consider when exercising prosecutorial discretion. Practitioners should carefully review this memo and the factors when preparing a request for prosecutorial discretion. The memorandum is available at <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>.
- **ICE Memorandum – Prosecutorial Discretion: Certain Victims, Witnesses and Plaintiffs (June 17, 2011):** This memorandum explains the agency's policy relating to the exercise of prosecutorial discretion in removal cases involving victims and witnesses of crimes, including domestic violence, and persons involved in non-frivolous efforts related to the protection of their civil rights and liberties. In such cases, ICE officers are urged to exercise appropriate discretion in regard to the effect that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to cooperate with the police and pursue justice. Practitioners should carefully review this memorandum to determine if it provides protection for their clients. It is available at <http://www.ice.gov/doclib/secure-communities/pdf/domestic-violence.pdf>.
- **USCIS Memorandum – Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removal Aliens (Nov. 7, 2011):** This memorandum establishes new USCIS guidelines for referring cases and issuing NTAs consistent with the Department of Homeland Security's stated enforcement priorities to enhance national security, public safety and the integrity of the immigration system. USCIS is required to issue NTAs in a number of circumstances as required by statute or regulation. In addition, NTAs may be issued where there is a finding of fraud. USCIS will refer persons with criminal convictions to ICE for action or issuance of an NTA. A noncitizen may request issuance of an NTA under certain circumstances. The memorandum is available at:

[http://www.uscis.gov/USCIS/Laws/Memoranda/Static Files Memoranda/NTA %20PM%20\(Assessed%20as%20final%2011-7-11\).pdf](http://www.uscis.gov/USCIS/Laws/Memoranda/Static%20Files%20Memoranda/NTA%20PM%20(Assessed%20as%20final%2011-7-11).pdf)

- **ICE Memorandum, Office of the Principal Legal Advisor – Case-by-Case Review of Incoming and Certain Pending Cases (Nov. 17, 2011):** This memorandum describes the Office of the Principal Legal Advisor’s (OPLA) review of incoming and pending cases, consistent with the agency’s stated enforcement priorities. As indicated, OPLA has begun to review three categories of cases: 1) cases in which the NTA’s have not been filed with EOIR; 2) all cases on the master docket; and 3) all non-detained cases with merits hearings scheduled on or before June 17, 2012. The initial review will last until January 13, 2012 at which time OPLA will assess date and implementation outcomes related to the review and make adjustments as necessary to continue the review. All ICE offices across the country have begun the review process. ICE Denver and ICE Baltimore have been selected as pilot sites and have initiated an intensive review of non-detained cases on their dockets within the parameters established by the memorandum. The OPLA memorandum emphasizes that it does not replace or supersede the June 17, 2011 memorandum, which remains the cornerstone for assessing whether prosecutorial discretion should be exercised in certain cases. It notes that attorneys should consider the full range of factors listed in the June 17, 2011 memorandum at all stages of the immigration enforcement process. The memo indicates that each ICE Office of Chief Counsel (OCC) will draft and implement standard operating procedures (SOP) to establish a process for the review of cases as described. Where ICE OCC indicates a willingness to administratively close a case and the respondent agrees, a standard joint motion, a copy of which is attached to this practice advisory, will be filed with the Immigration Court for its decision. The case-by-case review memorandum is available at [http://www.ice.gov/doclib/foia/dro\\_policy\\_memos/case-by-case-review-incoming-certain-pending-cases-memorandum.pdf](http://www.ice.gov/doclib/foia/dro_policy_memos/case-by-case-review-incoming-certain-pending-cases-memorandum.pdf).
- **ICE Memorandum – Guidance to ICE Attorneys Reviewing the CBP, USCIS, and ICE Cases Before the Executive Office for Immigration Review (undated):** This companion guidance was released shortly after OPLA issued its memo describing the case-by-case review discussed above. Note that the guidance indicates that the broader case review covers all Customs and Border Patrol (CBP), USCIS, and ICE removal cases, whether the cases are before immigration judges or the Board of Immigration Appeals (BIA). Thus, practitioners should consider filing requests for prosecutorial discretion in appropriate cases which are pending before both the Immigration Courts as well as the Board of Immigration Appeals. The memo is available at [http://www.ice.gov/doclib/foia/dro\\_policy\\_memos/guidance-to-ice-attorneys-reviewing-cbp-uscis-ice-cases-before-eoir.pdf](http://www.ice.gov/doclib/foia/dro_policy_memos/guidance-to-ice-attorneys-reviewing-cbp-uscis-ice-cases-before-eoir.pdf).
- **ICE Memorandum – Next Steps in the Implementation of the Prosecutorial Discretion Memorandum and the August 18th Announcement on Immigration Enforcement Priorities (undated):** This memorandum describes the steps being taken by the relevant agencies to implement the August 18, 2011

announcement by the Administration to better focus immigration enforcement on the removal of criminal noncitizens, the promotion of public safety and border security, and the integrity of the immigration system. It describes the following ICE initiatives: 1) prosecutorial discretion training; 2) review of incoming cases; and 3) review of cases pending in the immigration courts. The memo is available at <http://www.ice.gov/doclib/about/offices/ero/pdf/pros-discretion-next-steps.pdf>.

### **III. ICE Office of Chief Counsel Baltimore Pilot Program**

On December 5, 2011, ICE OCC in Baltimore launched a pilot program to review the almost 5,000 non-detained cases currently on its docket to determine which ones should be administratively closed as per instructions from the ICE Office of the Principal Legal Advisor. The pilot program is scheduled to last until January 13, 2012, at which time the office will review the data collected and the results and share them with ICE Headquarters. Given the quick pace of review, ICE Baltimore encourages the private bar to file requests for administrative closure and related case information to the dedicated email address listed below, as quickly as possible. Similarly, if practitioners wish to “pretermite” consideration for administrative closure, they are also encouraged to state this in writing and submit it to the email address.

ICE has shared the following additional information with AILA in order to facilitate the process for ICE, AILA members, their clients, and pro se respondents in determining whether to seek administrative closure during the pilot process:

- ***Scope of review:*** The scope of the review is confined to non-detained cases currently pending before the Immigration Court. It does not include pending requests for joint motions to reopen or cases that have been appealed to the Board of Immigration Appeals. All pending cases will be reviewed to determine if they should be administratively closed and, thus, there is no need to ask that ICE review your clients’ cases for this particular form of prosecutorial discretion.
- ***Review teams:*** There will be a number of review teams comprised of ICE attorneys assigned to cases. Although there is no fixed procedure for the order of review, where possible, cases may be reviewed chronologically according to Master Calendar Hearing (MCH) or Individual Hearing (IH) dates.
- ***Decision process:*** The team will review the file and any relevant databases. Based on this review, the team will make a preliminary recommendation relating to administrative closure and present it to a supervisory review panel, which consists of the Chief Counsel and her two deputies. This review panel will make the final determination on whether to administratively close the matter.
- ***Submission of documents in support of prosecutorial discretion:*** Attorneys, representatives, and pro se respondents should submit materials in support of prosecutorial discretion by email to the following designated email address: [OPLA-PD-BAL-OCC@ice.dhs.gov](mailto:OPLA-PD-BAL-OCC@ice.dhs.gov). Once attorneys make a submission, they will receive an

automatic reply which will serve as a receipt of the filing. Filings should include the respondent's name, A number, and next hearing date in the subject line of the email submission. Do not send hard copies of these materials to ICE. The materials submitted should be relevant to the criteria listed in the prosecutorial memoranda issued by ICE on June 17, 2011 and November 17, 2011.

- **Contact with attorneys and individuals:** ICE OCC may contact attorneys and representatives before the review process is concluded (this will not happen in every case). If the ICE OCC makes an initial determination to administratively close the case, it will then contact the respondent's attorney to see if the respondent agrees. If so, a Joint Motion will be signed by the parties and filed with the Immigration Court, which will then administratively close the case. ICE Headquarters has created a sample Joint Motion Seeking Administrative Closure, a copy of which is attached to this advisory.
- **Pro Se respondents:** Where ICE recommends administrative closure in pro se matters, it will send him/her a letter along with a draft unilateral motion for administrative closure in English. This will give the respondent an opportunity to review and reflect on how to proceed. The unilateral motion will include language indicating that a failure to respond prior to the next scheduled hearing in the respondent's case will not result in a reversal of the recommendation. The respondent can make a decision at his or her next scheduled hearing before the Immigration Judge.

As of the writing of this advisory, ICE OCC has identified many cases for recommended administrative closure. However, it has not yet filed any Joint Motions for Administrative Closure with the Immigration Court because database searches are taking some time to finalize.

#### **IV. Immigration Court Baltimore: Scheduling and Other Issues Arising During the Review**

As part of the pilot project, the Baltimore Immigration Court is rescheduling **all non-detained hearings** calendared between the dates of December 5, 2011 and January 13, 2012. Reset hearings currently are receiving new dates in 2014. However, these dates are not final and will in all likelihood be rescheduled once the final review of case is completed. EOIR has advised that as hearing times are opened as a result of administrative closure, cases will be rescheduled and advanced. Practitioners should make sure to stay in touch with their clients and prepare cases sooner rather than later under the assumption that earlier hearing dates will be scheduled.

The current pilot program does not include detained cases. However, practitioners can and should request prosecutorial discretion, where appropriate, on behalf of their detained clients. Counsel should review the relevant criteria discussed in the memoranda to argue for various forms of prosecutorial discretion, including ICE non-opposition to bond, stipulation to relief, administrative closure, or termination of proceedings.

***Filing of Motions to Advance With the Immigration Court:*** Counsel and respondents whose cases have been rescheduled have the option of filing a request to advance the hearing date from the date provided. This motion must be in writing and must comply with the provisions contained in Chapter 5.10 (b) of the Immigration Court Practice Manual. In an emergency situation, counsel may want to file a motion to advance and clearly state the reasons in support thereof. Counsel, for example, should clearly indicate if the case involves the one year asylum deadline. Such motions will be adjudicated on a case-by-case basis. While the possibility of advancement is critically important to some clients, timing is less critical for others. Practitioners are urged to reserve motions to advance for urgent cases that require immediate consideration by the Immigration Court. Remember to advise your clients that the current rescheduled hearing dates will likely be changed and their cases will be decided sooner than currently indicated.

***Asylum Applications and One-Year Filing Deadlines:*** Defensive asylum applications must be filed in open court at a Master Calendar Hearing. Practitioners who wish to request an earlier hearing date in order to file time-sensitive asylum applications should file a motion to advance. Such motions will be adjudicated on a case-by-case basis. Remember that an asylum application is not deemed filed, and the asylum clock cannot be started, until the asylum application is filed and accepted by an Immigration Judge at a hearing. Also remember that attaching the application to the motion to advance will be insufficient to meet the one-year deadline. To date, the Immigration Court in Baltimore has not guaranteed that it will ensure prompt advancement of hearing dates to meet the one-year deadline, nor has EOIR indicated that failure to file within the deadline due to the rescheduling of the December-January cases will automatically be excused. Practitioners are encouraged to file motions immediately to maximize the possibility of timely advancement, and also, to follow up with the Immigration Court in order to ensure that the asylum application is filed within the one-year deadline.

***Asylum Clock Issues:*** The Immigration Court's asylum clock in cases rescheduled in response to the pilot program will be appropriately coded to show a court-related reason for the adjournment, unless the clock already was permanently stopped. For court-related adjournments, the asylum clock will start to run on the date the hearing would have taken place if the case had not been rescheduled. When a hearing is advanced, the status of the clock will remain the same until the new hearing date. Following the new hearing date, the clock will run or stop, depending on the reason for the adjournment. For example, if the clock had been stopped and the Judge grants the applicant's motion to advance, the clock will remain stopped until the new hearing date. At that time, it will restart if the new hearing is adjourned for a DHS or EOIR-related delay. All issues regarding the asylum clock in a particular case should be made in writing and addressed to the Baltimore Immigration Court Administrator, Brenda Cook. The Baltimore Immigration Court's address is Fallon Federal Building, 31 Hopkins Plaza, Room 440, Baltimore, Maryland, 21201.

Practitioners are urged to file motions to advance as soon as possible and to be available and fully prepared if the case is rescheduled to an earlier date. If counsel advances a hearing date to file an asylum application, the application must be fully completed and must meet the requirements of the Court. If the filing is rejected, it is unlikely that the

Immigration Court will grant a second advanced date. This is true for any form of relief filed with the Court.

**Practice tip:** Please keep in mind, the OCC and the Immigration Court are dealing with a large number of cases and inquiries at this time, many which can be answered by this advisory and other materials posted by AILA relating to the review. Be prudent with your inquiries. Remember that this initiative is new and principally in the hands of the OCC. Thus, the Court has not yet finalized all of its procedures and positions. AILA liaisons remain in continuous contact with the Immigration Court and Assistant Chief Immigration Judge (ACIJ) on these issues, including how quickly reset cases will be rescheduled when slots open up, the Court's communication with *pro se* respondents, and what impact the review has on future requests for the exercise of discretion.

#### **V. USCIS Baltimore – Issuance of NTAs**

AILA Liaisons have met with USCIS Baltimore to discuss any changes as a result of the pilot program review and the future ongoing review of pending removal cases in light of instructions from ICE Headquarters to its staff. BAL USCIS has been conferring with ICE Baltimore on the issuances of NTAs and will continue to do so. As per the USCIS Memorandum discussed above, NTAs will be issued in the following cases: denied I-751 petitions and asylum, cases where fraud is found, and matters where a lawful permanent resident is found to have been ineligible initially for an immigrant visa.

For other cases, USCIS can issue an NTA in cases of suspected fraud only if there is a statement of findings (SOF) confirming the fraud, or if the NTA is required by statute or regulation. USCIS is permitted to issue NTAs outside the scope of the memorandum only with concurrence from the USCIS Regional or Center Director. In naturalization cases, however, an NTA can be issued in cases of suspected fraud, without a SOF based on the NTA Review Panel recommendation.

**Requesting Issuance of NTAs:** An applicant whose application or petition has been denied and who wishes to be placed in removal proceedings may request that an NTA be issued. The request should be submitted to USCIS District Director Gregory L. Collett. However, USCIS Field Office Director, William Donohue, will likely be the person handling these requests. If USCIS issues an NTA, it will provide a court date, but ICE will file the NTA with the court. Thus, ICE will have an opportunity to decline initiation of proceedings.

**Findings of Fraud:** All findings of fraud will be reviewed by the Fraud Detection and National Security (FDNS) unit before an NTA is issued. In such cases, a Statement of Findings confirming the fraud will be included in the record. Where no fraud is found by the FDNS, USCIS will adjudicate the application or petition. If denied, no NTA will be issued.

#### **VI. EMPLOYMENT AUTHORIZATION ISSUES**

There have been many questions regarding whether persons granted administrative closure as part of the review process will receive employment authorization. As per the position of DHS, administrative closure does not provide any independent basis to seek employment authorization.

***EADs for Underlying Applications:*** An individual is, however, eligible for employment authorization where he or she has filed an application authorizing work during its pendency, for example, applications for adjustment of status, cancellation of removal, or asylum. Thus, it is crucial that individuals submit relevant applications for relief before the case is administratively closed if they intend to seek relief at some point, but still elect to accept administrative closure.

***Deferred Action and EADs:*** The regulations do provide for the issuance of employment authorization for a broad range of reasons, including where persons have been granted deferred action. There is nothing which bars an individual whose case has been administratively closed from requesting deferred action from the ICE Office of Chief Counsel. Where an individual needs employment authorization for compelling reasons, counsel should prepare and file a request for deferred action with ICE OCC.

***USCIS and Deferred Action Requests:*** Individuals who are not in removal proceedings can request deferred action from USCIS. According to USCIS Director Gregory Collett, deferred action will not automatically be considered based solely on ICE's decision not to issue an NTA where an application or petition has been denied by USCIS. In such cases, counsel should prepare a request for deferred action and include supporting documentation (affidavits, evidence of family members' legal status, etc.) and file it with USCIS. Make sure to highlight the compelling factors in the case, which warrant a grant of deferred action. A noncitizen does NOT have to have a final order of removal in order to request deferred action.<sup>3</sup>

## **VII. PRO SE RESPONDENTS**

The AILA DC Chapter shares the concerns of AILA National regarding the obstacles which pro se respondents face in the case-by-case review process, specifically, and in seeking prosecutorial discretion, generally. Many pro se respondents may not have an adequate understanding of prosecutorial discretion. They may not understand how to request administrative closure and what documentation must be submitted in support thereof. Moreover, should an offer of administrative closure be extended by ICE, they will need to speak with counsel to understand how it affects their case, their options for moving forward, and their lives before deciding whether to accept.

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<sup>3</sup> For more information on preparing requests for deferred action, see Private Bills and Deferred Action Toolkit available at [http://law.psu.edu/file/PBDA\\_Toolkit.pdf](http://law.psu.edu/file/PBDA_Toolkit.pdf).

Efforts are being made to reach out to the pro se community and to provide them with the necessary information to assist their decision-making process. The AILA DC Chapter's pro bono and community-based organization (CBO) committees will sponsor a brown bag lunch and training for practitioners who agree to volunteer to assist the pro se community. The local EOIR Pro Bono Liaison, Immigration Judge John Gossart, has advised that the court is committed to ensuring that pro se respondents who are offered administrative closure understand its significance. However, the court has indicated that any potential involvement on their part in ensuring that happens will have to wait until the initial review is completed and proceedings are resumed after January 13, 2012. There remain many questions regarding the form of the offer, any limits, and the time within which a respondent must respond to an administrative closure offer.

### **VIII. CONCLUSION**

Practitioners should carefully review all relevant memoranda relating to prosecutorial discretion when preparing a request for such on behalf of their clients. The presence of negative factors does not necessarily mean that a request will be unsuccessful. However, it is important to explain the negative factors and highlight the positive ones when drafting the request. The current pilot program provides an opportunity for many noncitizens who may not be eligible for relief under the Immigration and Nationality Act. Although administrative closure provides neither status nor employment authorization, it does act to prevent deportation for a period of time, a much needed temporary remedy for many noncitizens in the United States.

It is important to emphasize that requests for prosecutorial discretion, including administrative closure, can be made after the review is final. As noted in the November 17, 2011 OPLA memorandum, the lessons learned and the results of the review will be used by ICE to improve the ongoing review process in ICE districts across the country. AILA will continue to monitor the review and the implementation of prosecutorial discretion. Make sure to check the AILA website for updates and advisories as this important process moves forward.

*December 22, 2011*

Name #1  
Chief Counsel  
Name #2  
Deputy Chief Counsel  
Name #3  
Assistant Chief Counsel/Senior Attorney  
U.S. Immigration and Customs Enforcement  
U.S. Department of Homeland Security  
1234 Center Street  
Anytown, ST 99999  
(000) 000-0000

Counsel for Respondent(s)  
Law Firm (If Applicable)  
Address 1  
Address 2

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT – LOCATION

_____ )	DETAINED / NON-DETAINED
In the Matter of: )	
John Smith )	File No(s): A000 000 000
Jane Smith )	A111 111 111
In Removal Proceedings )	
_____ )	

**JOINT MOTION TO ADMINISTRATIVELY CLOSE PROCEEDINGS**

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT – LOCATION

In the Matter of:	)	DETAINED / NON-DETAINED
	)	
John Smith	)	File No(s): A000 000 000
Jane Smith	)	A111 111 111
	)	
In Removal Proceedings	)	Master Calendar: Month 00, 20--
	)	Immigration Judge: Last Name

**JOINT MOTION TO ADMINISTRATIVELY CLOSE PROCEEDINGS**

The U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement (Department), and the respondent(s), by and through their respective undersigned counsel, jointly move the Immigration Judge to administratively close the instant proceedings in the above-captioned matter(s).

As the Board of Immigration Appeals has explained, administrative closure is “merely an administrative convenience” that “allows the removal of cases from the immigration judge’s calendar,” but “does not result in a final order.” *Matter of Lopez-Barrios*, 20 I&N Dec. 203, 204 (BIA 1990). Moreover, both parties—i.e., the Department and respondent—must consent to administrative closure. *See id.* At any time when either party wishes to place a matter back on the docket for active consideration, that party may file a motion to recalendar. *See, e.g., Matter of Wang*, 23 I&N Dec. 924, 925 (BIA 2006); *Matter of Cervantes-Torres*, 21 I&N Dec. 351, 352 (BIA 1996).

In the instant matter, the parties have concluded that it is in their best interest that proceedings be administratively closed. Should either party wish to withdraw their consent to administrative closure, that party will file a motion to recalendar with this Court. Moreover,

notwithstanding any administrative closure of these proceedings, the respondent(s) acknowledge(s) his/her/their obligation to timely notify the Department and Immigration Court of each change of address and new address, consistent with section 265 of the Immigration and Nationality Act and 8 C.F.R. § 1003.15(d)(2).

Based upon the foregoing, the parties request that the Immigration Judge grant this joint motion to administratively close proceedings. Attached, for the Immigration Judge's convenience, is a proposed order relating to this motion.

Respectfully submitted,

On behalf of  
U.S. Immigration and Customs Enforcement,  
U.S. Department of Homeland Security

On behalf of the respondent(s),

\_\_\_\_\_  
Name #3  
Assistant Chief Counsel/Senior Attorney  
1234 Center Street  
Anytown, ST 99999

\_\_\_\_\_  
Counsel for Respondent(s)  
Law Firm (If Applicable)  
Address 1  
Address 2

Date: \_\_\_\_\_

Date: \_\_\_\_\_

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT – LOCATION

_____ )	DETAINED / NON-DETAINED
In the Matter of: )	
John Smith )	File No(s): A000 000 000
Jane Smith )	A111 111 111
)	
In Removal Proceedings )	Master Calendar: Month 00, 20--
_____ )	Immigration Judge: Last Name

**ORDER OF THE IMMIGRATION JUDGE**

Upon consideration of the Joint Motion to Administratively Close Proceedings, the Court states the following:

1. The parties have agreed to administrative closure of the instant proceedings.
2. Other: \_\_\_\_\_.

THEREFORE, it is HEREBY ORDERED that the motion be:

**GRANTED.** These proceedings are hereby administratively closed upon the joint consent and motion of the parties. Proceedings may be recalendared at any time upon either party's motion, and this order does not constitute a final judgment rendered on the merits of these proceedings.

**DENIED.** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Immigration Judge Date: \_\_\_\_\_

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