



# Lutheran Immigration and Refugee Service

## Prosecutorial Discretion Decision Points for the Federal Government in Immigration Enforcement



### Responsible entities:

- ICE agents
- CBP officers and agents

### Decision points:

- Issue an immigration detainer
- Assume custody of an individual and subsequent custodial decisions, e.g., bond, recognizance, detention location
- Initiate enforcement actions
  - targets, e.g., “fugitive aliens”, unauthorized workers
  - locations, e.g., workplaces, homes, sensitive sites

### Responsible entities:

- ICE attorneys
- CBP officers and agents
- USCIS officials

### Decision points:

- Issue a Notice to Appear (NTA) to initiate civil removal proceedings
- File NTA with immigration court
- Administratively close or terminate removal proceedings
- Referrals to the U.S. Attorney’s Office for criminal prosecution, e.g. illegal entry or re-entry, attempted entry with false documents, failure to comply with removal

### Responsible entities:

- Immigration Judges
- ICE attorneys
- OIL attorneys

### Decision points:

- Conducting competency Hearings
- Discretionary relief:
  - Cancellation of removal
  - Asylum
  - Bond
- ICE and OIL attorneys may not object to a grant or agree to stipulated findings or joint motions
- Appellate decisions

\*Prosecutorial decisions are not fixed and can change during the course of proceedings

### Responsible entities:

- USCIS officials
- ICE agents and attorneys

After a removal order has issued, discretion still exists.

### Decision points:

- Grant stay of removal
- Grant deferred action
- Decline to execute removal order