



September 30th Mayorkas Memo - Quick FAQ

What is the Mayorkas Memo?

Earlier today, DHS Secretary Mayorkas issued a memo entitled “[Guidelines for the Enforcement of Civil Immigration Law](#).” This Memo replaces the two earlier prosecutorial discretion memos from January 20 and from February 18, but it will not go into effect until November 29, 2021.

The Mayorkas Memo retains three categories of people who are “priorities for enforcement”: people whom DHS believes pose a threat to national security, public safety, or border security. However, the memo makes clear that **there are no categorical bars to receiving prosecutorial discretion**, and that **DHS must consider the factors in each person’s case individually**. The Memo provides a list of positive factors that would weigh in favor of receiving prosecutorial discretion, even if DHS determines that a person otherwise potentially falls into one of the priority categories. Additionally, the Memo lays out various circumstances where DHS should generally grant prosecutorial discretion.

What are the Priority Categories?

1. National Security

The Memo targets people whom DHS believes are engaged in or suspected of spying or terrorism or related activities or who otherwise “pos[e] a danger to national security.”

2. Public Safety

The Memo targets people whom DHS believes are a “current threat to public safety, typically because of serious criminal conduct.”

However, there are **no absolute bars** to receiving prosecutorial discretion based on contact with the criminal legal system.

DHS will consider these factors in determining whether someone is a “current threat to public safety”:

- Negative factors:
 - 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

- Positive factors:
 - 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);
 - Mental or physical health condition that requires care or treatment;
 - 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;
 - 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

3. Border Security

The Memo also targets people whom CBP or ICE arrests as they are **attempting to enter** the United States anywhere but a port of entry, as well as people who entered the United States without permission **after November 1, 2020**.

However, the Memo notes that others not described above could still be targeted for enforcement under the border security category.

The Memo also notes there could be positive or negative factors in each case and people who would fall into this category may still receive prosecutorial discretion.

What are other positive factors that DHS must consider?

The Memo requires DHS to exercise its discretion in a way that protects people’s rights. The Memo prohibits DHS from arresting, detaining, and deporting people **based on their activism or political statements or opinions**. It also prohibits DHS from discriminating against and targeting people for deportation based on their race, religion, gender, sexuality, gender identity, national origin, or political opinion.

The Memo also requires DHS to consider as a positive factor weighing in favor of prosecutorial discretion whether people are defending their **labor or housing rights or serving as a witness in a labor or housing dispute**.

How will DHS implement the Mayorkas Memo?

The Memo also lays out the components of the agency's current plan for implementation of the Memo. Though it does not contain much detail, the Memo requires:

- Training of DHS agents in the use of the Memo;
- A 90-day review process to see how various DHS offices are using the memo and to try to make them consistent;
- Data collection of "every enforcement action" DHS takes under the Memo;
- A Case Review Process so that people who have had prosecutorial discretion requests denied can ask more senior DHS officials to review their requests.

What components of DHS are governed by the Mayorkas Memo?

The Mayorkas Memo applies department-wide and therefore to all sub-agencies within DHS, including ICE, CBP, USCIS, and OPLA (the office of ICE attorneys who represent DHS in deportation cases).