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In Deportation Policy Test, 1 in 6 Offered Reprieve

By [JULIA PRESTON](#)

DENVER — A review ordered by the Obama administration of virtually all 7,900 deportation cases before the [immigration](#) court here has identified about 1,300 foreigners — 16 percent — who pose no security risk and will be allowed to remain in the United States, although with no new legal status, immigration officials said Thursday.

It was a fast-paced test run of the first comprehensive docket review in the nation's immigration courts. Department of Homeland Security officials plan to extend it in coming months to all of about 300,000 deportation cases before the courts nationwide.

The court review is part of a broad effort by the administration, as President Obama heads into his re-election campaign, to ease the impact of enforcement on immigrant and Latino communities by stopping some deportations while also reducing huge backlogs swamping the immigration courts. Based on an early projection of results from pilot projects here and in Baltimore, as many as 39,000 immigrants across the country could see their deportation cases closed.

Officials said that number, though only a fraction of nearly 1.2 million deportations in the last three years, would be enough to show that Mr. Obama had heard increasingly bitter complaints from immigrant groups about families separated by removals since he took office.

While the administration's strategy was generally welcomed by immigrant organizations, advocates said they were frustrated that many of those permitted to stay would be left in an indefinite limbo where they could not work or obtain driver's licenses and might struggle to subsist.

"They will be in immigration purgatory," said Hans Meyer, an immigration lawyer in Denver.

On another side, Republicans say Mr. Obama is doing an end run around Congress with the prosecutorial discretion policy. "This is part of a pattern of granting de facto amnesty to the more than 11 million illegal immigrants in the United States by the president's refusal to enforce U.S. immigration laws," said Representative Elton Gallegly, the Republican from California who is chairman of the House Judiciary immigration subcommittee.

Federal officials this month also proposed streamlining the procedures by which illegal immigrants with American family members apply for legal residency.

In a blitz that started Dec. 5, 16 immigration prosecutors in Denver, laboring long days and weekends, read through looming stacks of paper files to meet a mid-January deadline set by the Department of Homeland Security in Washington.

Despite the immense workload, prosecutors said they liked their newfound flexibility in pursuing cases — more like the routine practice of their peers in criminal courts. Each minor case closed clears time on the court's jammed calendar for an immigration judge to expel a convicted sex offender or gang member, prosecutors said.

“It makes us feel good to know that some of these low-priority cases will be placed at the back burner,” said Corina Almeida, who, as chief counsel for Immigration and Customs Enforcement in Denver, is the senior prosecutor here. “These cases free up others to move to the front of the line: the egregious offenders, those who thumb their noses at the system or commit fraud.”

Under a policy unveiled in June by John Morton, the director of Immigration and Customs Enforcement, or ICE, the agency's officers are asked to be more discriminating with its resources, using prosecutorial discretion to hasten deportations of criminals while avoiding illegal immigrants charged only with civil violations who have strong family bonds in the country.

“If the only thing they did is enter illegally, they have established ties, they have U.S. citizen children, they are productive members of society, they have no criminal records, it makes prosecutors feel good when you know you can do something,” Ms. Almeida said. “They don't have to worry about someone knocking on their door.”

But as the pilot project unfolded here, it became clear that ICE prosecutors, while closing deportations, were not offering any new legal status that would allow immigrants to work or drive legally or receive college assistance.

Among the first to benefit under the Denver review was a student from Mexico whose parents had brought him to Colorado when he was 9. The student, Jesús Gerardo Noriega, now 21, was put in deportation proceedings after a traffic officer pulled him over for a burned-out license plate light. A 2006 Colorado law requires state and local police to report any suspected illegal immigrant to ICE.

Mr. Noriega met the standard for prosecutorial discretion in several ways: his parents are legal residents, and his three brothers are American citizens. His application for residency is stalled in the system. He graduated from high school and wants to go to college — to study automotive engineering to design energy-efficient cars, he specified.

Mr. Noriega was arrested 12 days before he would have completed 10 years living in the United States, when he would have become eligible to have his deportation canceled definitively, his lawyer, Mr. Meyer, said.

“My parents didn’t want me sent back, and they wanted to see me again,” Mr. Noriega said, recalling the days when he was detained. “We’ve always been a close family, and having your son put in jail and taken away from you definitely brought sadness and depression to the house.”

He learned just before the holidays that his deportation had been suspended. “I thought it must have been a miracle,” Mr. Noriega said.

But he is worried that without being able to work or drive, he cannot enroll in the courses he needs for the automotive degree.

“It definitely is a step forward,” he said. “But at the same time, I don’t think it’s a solution.”

Administration officials said they were going as far as they could under existing laws and would continue to press Congress for legislation giving legal status to illegal immigrants.

After being chosen for discretion, an immigrant must pass background checks against federal criminal and national security databases. Then ICE prosecutors offer to file a joint motion with the immigrant to close the deportation case. If both sides agree, the approval of an immigration judge is relatively quick.

The deportation then becomes a “sleeping beauty,” one ICE prosecutor said; it is closed and off the docket, but in theory it can be reopened at any time.

Judges and court administrators here were cheered by the prospect of reduced backlogs. With six immigration judges handling on average more than 1,300 cases each, the Denver courts are among the most clogged in the nation, and immigrants wait as long as 18 months for a hearing.

Another case closed in Denver was that of Raúl Cárdenas, who came here illegally from Mexico. He has been married for 11 years to an American citizen, and he and his wife, Judy, are raising three children, all citizens.

After eight years in a job driving heavy tunnel-boring machinery, Mr. Cárdenas was arrested in 2009 when ICE determined that the [Social Security](#) number he had presented belonged to someone else. All serious criminal charges against him were dismissed, but he was placed in deportation proceedings.

“It was an absolute violation of the security and safety of my family,” said Mrs. Cárdenas, a public school kindergarten teacher. With the help of their Unitarian Universalist church, they held rallies, petitioned lawmakers and [sought support on YouTube](#).

Mr. and Mrs. Cárdenas said they were greatly relieved that his deportation was stopped. But they remain frustrated, since he cannot get authorization to work.

“It’s anxiety-filled limbo,” Mrs. Cárdenas said.

In cases where discretion was denied, prosecutors and lawyers said, ICE leaned toward caution, passing over many immigrants who did not have criminal records but also did not show deep ties to the United States.

In many cases, lawyers for illegal immigrants are not accepting prosecutors' offers because the immigrants have good chances of winning legal residency in court. Laura Lichter, the president-elect of the American Immigration Lawyers Association, who practices in Denver, said ICE could have done far more to reduce backlogs by rapidly completing those strong cases.

"It is a major undertaking," she said of the docket review. "But it is also a major lost opportunity."

<http://www.nytimes.com/2012/01/20/us/in-test-of-deportation-policy-1-in-6-offered-reprieve.html>