

Illegal immigration deportation policy comes under fire

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For more than two years, federal immigration officials sought to deport Angelica Terrazas from the United States.

Terrazas, now 26, an undocumented immigrant from Mexico, was a student at Arizona State University in May 2009 when she and some friends were stopped for speeding during a camping trip to Payson. The police officer suspected that Terrazas, a passenger, was in the country illegally. She had no state ID and refused to say where she was born.

The officer called Immigration and Customs Enforcement officials, who sent agents to pick up Terrazas after she spent the night at a detention facility in Holbrook.

The ICE agents drove her back to Phoenix, where Terrazas said they grilled her until she finally broke down and admitted she was born in Mexico and didn't have any papers.

By ICE standards, Terrazas was considered a low-priority case. She didn't have a criminal record and was pursuing a college degree. But agents put her in deportation proceedings anyway, as was routine, even in low-level cases. Because of her good record, however, agents released her on her own recognizance instead of holding her in a detention facility and gave her a notice to appear later in immigration court, Terrazas said.

The severe backlog of cases in the Phoenix immigration court meant that her deportation case dragged on for more than 27 months, with federal immigration prosecutors pressing for her removal all the while.

Then, in October, prosecutors abruptly did an about-face, offering to dismiss Terrazas' deportation case.

"That would never happen before," said her lawyer, Judy Flanagan, who has handled scores of immigration cases in Phoenix.

Terrazas was among the first illegal immigrants with deportation cases pending in the Phoenix immigration court to benefit from a controversial deportation policy implemented nationwide last year by President Barack Obama's administration.

The policy essentially takes some low-priority cases and removes them from the backlogs by administratively closing them, although sometimes cases, such as Terrazas', are dismissed.

Either action was almost unheard of in the past.

The goal is to clear space in crowded immigration courts in Phoenix and across the country in order to speed up deportation cases involving criminals, say White House and Department of Homeland Security officials.

The policy has outraged Republicans in Congress as well as Arizona Gov. Jan Brewer. They have characterized the policy as “backdoor amnesty” and blasted the president for allowing illegal immigrants to remain in the country, where some may compete for jobs at a time when millions of Americans are out of work.

But DHS officials say the government currently has the resources and staffing to deport about 400,000 people a year, which is about the number deported last year. They liken the system to a bus with 400,000 seats, with each seat costing about \$12,500, the amount on average it costs to arrest, detain and deport a single illegal immigrant.

Because the government identifies far more than 400,000 illegal immigrants each year, the new policy helps ensure that the bus is filled with the greatest number of criminals and other high-priority illegal immigrants targeted for removal, they said.

As a result, thousands of illegal immigrants facing deportation may have their cases closed, although they could be reopened if the person is rearrested. That would let them remain in the U.S. indefinitely, although still without legal status. Some who have their cases closed could receive permission to work, but only if they can show they are eligible to apply for legal status, for example, because they have lived in the U.S. for more than 10 years and can show they have U.S.-citizen children who will suffer greatly if their illegal-immigrant parent is deported.

None of those who have their cases closed or dismissed would qualify to receive any kind of government benefits, such as health care.

The policy marks a remarkable turnaround from when immigration prosecutors aggressively pursued virtually every deportation case, regardless of whether the immigrant was a student or someone with a lengthy criminal record, according to Department of Homeland Security officials and immigrant advocates and critics alike.

Some analysts have suggested, however, that the policy is also timed to the presidential election and is aimed at winning support from Latino voters upset over the record numbers of immigrants, mostly from Mexico and Latin America, deported under the Obama administration.

Prosecutorial discretion

In December, immigration prosecutors began systematically reviewing each of the nearly 300,000 deportation cases pending in the nation’s 58 immigration courts. About 10,000 cases are in Arizona, the majority of them in Phoenix, ICE officials in Phoenix and Washington, D.C., said.

Prosecutors are focusing on deportation cases involving illegal immigrants who have not been detained, such as Terrazas, because they don’t have serious criminal records and therefore are more likely to fit the criteria for having their cases closed through what is known as prosecutorial discretion, the officials said.

They said that while some cases have been permanently dismissed, such as the case involving Terrazas, prosecutors prefer to administratively close cases because those cases can be quickly reopened if the illegal immigrant later commits a crime.

The illegal immigrant must successfully pass a criminal background check before their case can be closed, ICE officials said.

In general, those who have the best chance of having their cases closed are illegal immigrants who are students, have lived in the United States for a long time, have no criminal record, have U.S.-citizen children or came to this country when they were children, ICE officials said.

ICE officials said prosecutors have finished reviewing recent cases that hadn't yet received court hearings and could be administratively closed before being added to the deportation pipeline. Under the new policy, someone like Terrazas might not be placed in deportation proceedings in the first place.

It will take until mid-June for prosecutors to finish reviewing cases of illegal immigrants whose cases already have been scheduled for final court hearings, they said.

Prosecutors also will review the cases of immigrants facing deportation who have been detained because of criminal records. Some detained immigrants, a group that could include both illegal and legal immigrants, may also be eligible for prosecutorial discretion if they fit certain criteria, such as having served in the military, ICE officials said.

Patricia Vroom, ICE's chief counsel in Arizona, said the new policy marks a monumental change from the past, when ICE prosecutors aggressively pursued all deportation cases from start to finish. Under the new policy, prosecutors will look at both incoming cases and pending cases in deciding whether to exercise discretion, a system she likened to the way prosecutors in the criminal-justice system triage cases.

"I would agree it is a significant paradigm shift. No question about it," Vroom said. "We are moving from a model where we were reactive to cases brought to us ... to a model that has us playing a proactive role in making assessments of whether a case is worthy of pursuing based upon the priorities of the organization."

Unprecedented policy

ICE officials declined to provide any statistics locally or nationally on how many cases have been reviewed so far or how many prosecutors have offered to close.

But some local immigration lawyers say they are already seeing the effects of the policy. Prosecutors have permanently dismissed some cases and offered to administratively close others, they say. Prosecutors also have declined to file appeals in some cases where immigrants have won. They also have agreed to reopen some cases where immigrants have lost but have shown they may be eligible to receive legal status because they have lived in the country for a long time and have U.S.-citizen children.

Those kinds of actions were unheard of in the past, said Gerald Burns, a Chandler immigration lawyer and president of the Arizona chapter of the American Immigration Lawyers Association, an advocacy group.

So far, however, he has heard of only a handful of cases that have been closed. One of those involved one of his clients, a woman in the country illegally who was turned over to ICE after a traffic stop.

“It appears they are just trickling in,” he said. “But we expect to see it grow” as the reviews continue.

Flanagan, the Phoenix immigration lawyer, said six of her clients, including Terrazas, have had their cases dismissed or administratively closed because of the new policy.

Flanagan said ICE also has offered to close another one of her cases involving an illegal immigrant from Guatemala who was turned over to immigration-enforcement officials after a traffic stop.

‘Backdoor amnesty’ alleged

U.S. Rep. Lamar Smith, R-Texas, who chairs the House Judiciary Committee, called the policy a “backdoor amnesty” that will hurt American workers because it will allow some illegal immigrants to remain in the country, some of whom could receive work permits.

“How can the Obama administration justify granting work authorization to illegal immigrants when so many American citizens don’t have jobs?” Smith said in an e-mail. “Citizens and legal immigrants should not be forced to compete with illegal workers for scarce jobs.”

Flanagan, however, disagreed that the policy amounts to amnesty.

“That’s a pretty warped interpretation of what amnesty means. Amnesty gives people permanent residence here. These folks aren’t getting anything,” Flanagan said. “Essentially it’s a reordering of the administration’s priorities. It is a solid acknowledgment that the government can’t remove 12 million, or whatever the estimate is, of the number of undocumented persons that are in this country. It’s unrealistic and it doesn’t make sense in terms of their resources.”

Some illegal immigrants who are longtime residents and have U.S.-citizen children are granted work permits by U.S. Citizenship and Immigration Services while their deportation cases are pending if they can show they are eligible to apply for legal status, for example, as a result of having lived in the U.S. for more than 10 years and having U.S.-citizen children, said Marie Sebrechts, a spokeswoman for the agency.

But illegal immigrants who have their cases closed through prosecutorial discretion do not automatically receive work permits, she said.

“You have to be eligible for it,” Sebrechts said. “There is nothing tied to prosecutorial discretion that grants any kinds of status that would allow you to get” work authorization.

Still in limbo

Terrazas, who graduated from ASU with a degree in computer-information systems, said having her case dismissed was bittersweet.

She no longer has the deportation case hanging over her head. But she remains in the country without legal status and could still be deported. She does not qualify for a work permit. She also has no way to apply for legal status because she does not have any close relatives who are U.S. citizens.

“It was a big relief because I was no longer afraid of having to go back to Mexico again,” said Terrazas, a Phoenix resident. “But now I am back to point zero again.”

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