

Immigration Shift Hasn't Trickled Down to Border Patrol

By Julian Aguilar
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When Immigration and Customs Enforcement announced in June it was urging prosecutors to use discretion when placing illegal immigrants in deportation proceedings, skeptics urged caution. We've heard this before, they claimed.

People like Roxann Lara give them one more reason to say they were right.

Lara, originally from Delicias, Chihuahua, is five months pregnant and the mother of two U.S. citizen children. She is in the country illegally because she overstayed a visa. Her attorney says she's the "poster child" for leniency under the June directive.

Instead, Lara was detained and processed by immigration authorities in Anthony, N.M., last week after she admitted to having expired documents when local police and U.S. Border Patrol agents came to the door looking for her sister.

It means the "left hand isn't aware of what the right hand is doing," said Carlos Spector, Lara's El Paso-based attorney. "I think it's important to note that this [directive] has not reached the lowest levels of ICE ... because [Border Patrol agents] are still picking up pregnant women."

In the June directive, ICE Director John Morton told prosecutors to evaluate several factors when determining which illegal immigrants to place in deportation proceedings, part of a plan to concentrate ICE's finite resources on removing the most dangerous criminal aliens. These factors included immigrants' health, their children's immigration status, how long they had been in the country, and whether or not they were "low profile" — the government's term for nonviolent, nonessential deportees. That memo was followed last month by an announcement that the Department of Homeland Security, which oversees ICE and Customs and Border Protection, would review the cases of the 300,000 people currently in deportation proceedings to determine if any should be released and subsequently allowed to apply for work authorization.

Lara was released from detention, but not until she was hospitalized after becoming panic stricken and physically ill during her stay. She says an agent threatened to deport her to Ciudad Juárez, where drug cartel violence is widespread.

"He said, 'We have to go get your kids.' I said, 'No, do what you want with me but leave my kids alone,'" a sobbing Lara told the Tribune by telephone from El Paso. "I told him I was sick and he said it didn't matter to him."

Spector said that despite Lara's release, she has been issued a notice to appear before a judge. He said he intends to ask the judge to dismiss the case based on the Morton memo.

"The new policy says they shouldn't pick up pregnant women or sick people," Spector said. "What we want to see and ask is, what does the Border Patrol think of the Morton memo?"

When asked if the Border Patrol has amended its policies since the Morton memo was issued, a spokesman for the U.S. Border Patrol El Paso sector told the Tribune that agents are required to detain anyone who is unauthorized to be in the country. They can't give out warnings the way police officers can, he said; the immigration courts ultimately make the decisions.

In Lara's case, Agent Ramiro Cordero said, the Border Patrol "did exactly what we were supposed to do. If the courts grant that person some type of legal document, then the system works." Cordero added that the Morton memo was directed at federal prosecutors, who are overseen by ICE. The U.S. Border Patrol, he said, is under the purview of Customs and Border Protection.

"Until there is policy and guidance from DHS, we still do what we have to do," he said.

"Not a revolutionary concept"

By the government's own admission, internal policy changes can be slow-going. The agency's plan for reviewing deportation cases is still being crafted, so no individual cases have been closed, according to a Department of Homeland Security spokesman who asked not to be identified.

Immigration policy experts say they're not surprised that there hasn't been an immediate and sweeping change in policy. The Morton memo doesn't reinvent the system, they say.

"Prosecutorial discretion is not new. It's not a revolutionary concept," said Muzaffar Chishti, an attorney and director of the Migration Policy Institute at the New York University School of Law. "In an immigration context there have been guidelines about discretion for a very long time."

A prosecutorial discretion memo issued in November 2000 by then-Immigration and Naturalization Services Commissioner Doris Meissner, now a senior fellow at the Migration Policy Institute, said the agency had finite resources, and prosecuting all immigration cases was "not possible." It instructed prosecutors to consider immigrants' criminal history, immigration history, cooperation with authorities, military service and humanitarian concerns, like conditions in immigrants' home country and their health.

But when the Morton memo was issued in June, it still caused an uproar among Republican hardliners like U.S. Rep. Lamar Smith, R-San Antonio, who called it "backdoor amnesty" and introduced a still-pending bill to dilute the administration's immigration enforcement powers.

What's different about the agency's current policy, Chishti said, is that the government has stated it will review pending cases, not just use new standards for future ones. But he said it's unclear how these policies will be implemented at the local level.

"The most critical part of this policy is going to be how they monitor it in the field," Chishti said. "How are you going to notify people ... and what is the accountability if an officer chooses not to exercise the discretion on the basis of the guidelines?"

Lara's case indicates that, at least in certain Border Patrol sectors, the jury is still out.