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A year after deportation policy eases, many fear knock on door

By [John Lantigua](#)

Palm Beach Post Staff Writer

Roberto, an undocumented immigrant from Honduras now living in West Palm Beach, has been in the U.S. 23 years, has two U.S. born children, no criminal record, and, according to his attorney, has paid U.S. taxes every year.

Meanwhile, Jose of Lake Worth, who came from Guatemala illegally 17 years ago, is also father to two U.S. born children, owner of landscaping company, has paid taxes for the last nine years at least but in 2010 ran into legal troubles. He was convicted of DUI and driving with a suspended license.

Both men recently applied to have their immigration cases temporarily shelved, under a new Obama administration policy allowing “prosecutorial discretion.”

Immigration authorities began reviewing cases late last year with the idea of temporarily closing the cases of immigrants who have long histories in the U.S., have relatives who are citizens and are not considered dangerous, thereby reducing the enormous backlog in immigration courts and allowing immigration agents to concentrate on hunting down criminal aliens. It was considered a win-win situation for courts and immigrants.

But critics of U.S. Immigration and Customs Enforcement (ICE) say the process has gone very slowly, with a small percentage of immigrants qualifying for what is called “administrative closure” of their cases. Those critics say despite announcing the policy last year, the Obama administration continues to be tough on undocumented immigrants, a position that could hurt him with Latino voters in November.

The cases of the two Palm Beach County men help illustrate the issue.

Roberto, 45, was granted “administrative closure” of his case and permission to stay in the U.S. at least temporarily. As long as he avoids legal trouble, he does not have to worry about deportation. His siblings, who are legally in the country, have applied for his legal permanent residence and he hopes, some years down the line, he will get it and not have to return to Honduras.

Jose, 33, was denied prosecutorial discretion. He, like Roberto, wanted “administrative closure,” which means his case would be put on the shelf. But now he must continue to fight in immigration courts to stay in the country and could eventually face deportation.

The attorney for both men, Rita Altman of West Palm Beach, says the recent legal problems didn't help Jose, despite his long tenure in the country.

"I'm sure that contributed to it," she says. "Having an absolutely clean record helps you get prosecutorial discretion."

A year ago this month John Morton, director of U.S. Immigration and Customs Enforcement (ICE), issued the second of two "prosecutorial discretion" memos that gave immigration advocates hope that many illegal immigrants could stop worrying about the knock on the door from ICE agents.

According to ICE, as of May 29, 288,361 cases had been reviewed. Of those, 4,363 cases have been administratively closed or dismissed. Administrative closure is temporary but means those individuals do not have to worry about ICE agents any time soon. Dismissal means the case is closed for good.

Another 16,325 have been identified as eligible for prosecutorial discretion, if they pass background checks. That will bring the total to about 7 percent of all the cases reviewed.

The critics say the policy has not done what it set out to do, at least not yet. Immigrants with relatively clean records are still worried.

"And if the idea of the policy was to clean up the backlog in immigration cases, numbers like that certainly aren't going to do it," says Susana Barciela of Miami-based Americans for Immigrant Justice, which handles cases throughout South Florida.

But an ICE official speaking on background said immigration officials had to move cautiously and that thorough background checks are necessary.

"This is huge undertaking," the official said. "We have reviewed more than 300,000 cases and this is going to take time. We have to be sure a person qualifying for prosecutorial discretion does not present a threat. We have to be diligent and check off all the boxes."

Immigration authorities also issued a statement saying the new policy already "has resulted in a dramatic reduction in the number of low priority individuals placed into deportation proceedings."

ICE also revealed that of the persons eligible for prosecutorial discretion, 3,998 had turned it down and decided to continue to press in the courts for permanent legal residence. A permanent resident gets a work permit and can apply for a drivers license, while a person with administrative closure does not.

"So a lot of people are saying, 'no thanks, because even if I get prosecutorial discretion I can't make a living,'" says Barciela.

ICE issued a list of the 4,363 cases that had already qualified for administrative closure or dismissal nationwide. The majority — 3,302 — were people who met the basic requirements of long-term presence in the U.S., immediate family member who is a U.S. citizen and a clean record.

But others included undocumented immigrants currently serving in or honorably discharged from the U.S. military; persons brought to the U.S. before age 16, who have been in the U.S. more than five years, completed high school and either are pursuing or have completed higher education in the U.S; individuals over age 65 who have been in the U.S. over 10 years; victims of domestic abuse, human trafficking or other serious crimes in the U.S.; and individuals who suffer from a serious mental or physical condition.

Frank Sharry, executive director of pro-immigrant America's Voice, was one of those saying what had been done so far wasn't enough and that it might cost Obama at the polls. He said that in polling of Latino voters, Obama has a lead of about 40 points over GOP presumptive candidate Mitt Romney. But he also said Latinos were suffering "an enthusiasm gap" due to lack of immigration reform and that some might not go to the polls.

"A president who will fight for them — that's what Latinos want," Sharry said.

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