Discretion in deportation cases makes sense

By GEOFFREY A. HOFFMAN
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There has been a lot of discussion in the news lately about the policy memoranda from U.S. Immigration and Customs Enforcement Director John Morton, which clarify that immigration authorities may exercise prosecutorial discretion in appropriate cases.

The new memoranda provide that crime victims are not to be targeted. Such victims are often afraid to assist police in prosecuting their offenders because the victims themselves are worried about being deported. There are visas that may be available in appropriate cases where such victims assist in the investigation or prosecution and meet other criteria. This is especially important in human-trafficking cases and in other cases where undocumented immigrants may be crime victims or serve as informants.

Furthermore, the memoranda set forth a nonexhaustive list of factors to be considered in the exercise of prosecutorial discretion. Some of these include, for example, length of time in the United States, pursuit of education here in this country, military service, contributions to the community, criminal history or lack thereof, whether the person is the primary caretaker of a sick relative, whether the person's spouse is pregnant or nursing, cooperation with law enforcement and the person's age, among other factors. Importantly, the memoranda also includes a series of negative factors to be considered militating against the exercise of discretion, where the person under consideration is a felon, gang member, national security risk or serious immigration violator. These considerations show an effort by the government at the operational level to make nuanced decisions about persons in removal proceedings.

The memoranda also for the first time recognize persons who have civil rights issues and complaints. Particular attention is to be paid to plaintiffs in nonfrivolous lawsuits regarding civil rights or civil liberties violations, as well as individuals who are engaged in a protected activity, such as union organizing, complaining about employment discrimination or housing conditions. The memoranda also confirm that prosecutorial discretion can be exercised at any stage of proceedings and is designed to ensure that "victims, witnesses, and plaintiffs" are not deterred from calling police and pursuing justice. How and whether the new policy will be implemented by the officials on the ground is an open question, but it is a step in the right direction.

It has been reported that the United States currently has the capacity to deport about 400,000 people per year. The most recent statistics show the current administration deported more than 387,000 persons in 2010, a record number. The 400,000 number has been estimated to be less than 4 percent of the total number of undocumented persons in the United States, according to a previous Morton memorandum. Given such a situation, how could one not be in favor of a targeted approach to deportation? The important point is simply this: Prosecutorial discretion frees up governmental resources to deport real criminals who may pose actual threats to our
security. The inability of the anti-immigrant faction to see this and stubbornly to insist on treating all immigrants alike reveal their bias and unsophistication.

Former President George H.W. Bush implored us to make the United States "a kinder and gentler nation." In his Inaugural Address he pledged in "a moment rich with promise" to use American strength as "a force for good." That moment has come. There must be a recognition that immigrants, even the undocumented ones, have complicated and at times compelling histories. What gets left out of the picture in the blunt-edged reasoning of the anti-immigrant agenda is the fact that not all undocumented people are exactly the same. Not everyone who is caught up in the system of detention and deportation is a threat to our country.

Of course it is far easier to be lazy in our thinking, to paint with a broad brush. It is far easier to take a deport-them-all approach. When we do that no one has to confront any particular person's suffering. No one has to recognize a particular person's story. Such an approach also fits with the message that illegal immigrants are to be blamed for our societal ills, from the economy to the wild fires in Arizona. Those who work with immigrants and are familiar with their issues, including our government officials, understand that to blame a group of people sets a dangerous precedent. It creates an "other" who is blamed and must be at fault, absolving us of any responsibility. It ignores the rich tradition in the United States of fairness and justice, as recognized by President Bush, and on the basis of which this country was founded.

Hoffman is a clinical associate professor and the director of the University of Houston Immigration Clinic.