OPLA Atlanta Priority Review/PD Request Guide

OPLA Atlanta is providing this guide for noncitizens and representatives seeking dispositive action for their clients as an act of prosecutorial discretion (PD) pursuant to the April 3, 2022 memorandum titled, Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion (Doyle Memo), issued by the Principal Legal Advisor, Kerry Doyle. This guide specifically assists respondents and practitioners seeking dismissal of their cases pending before the Immigration Courts. Following the steps in this guide will help expedite the processing of your request for action under PD.

Proactive Action by OPLA Atlanta

OPLA Atlanta will proactively move to dismiss most cases which are deemed a nonpriority for enforcement under the DHS enforcement priorities and the Doyle Memo. OPLA Atlanta attorneys will evaluate cases as they come up in the normal course of operations and move to dismiss nonpriority cases as they are encountered.

In nonpriority cases where the noncitizen has a legal or regulatory right to have an application reviewed by the Immigration Judge, OPLA Attorneys will reach out to gain the concurrence of the noncitizen, or counsel, prior to moving to dismiss. In all other cases, OPLA attorneys will unilaterally move to dismiss nonpriority cases.

Administrative Closure

Dismissal is the preferred outcome of an exercise of prosecutorial discretion. As such, OPLA attorneys will not offer administrative closure absent specific facts which militate toward that outcome, or where administrative closure is otherwise in the agency’s best interest. Requests for administrative closure should address why the specific facts of the noncitizen’s case militate toward administrative closure instead of dismissal. Generally, a desire to administratively close a case merely to keep work authorization will be insufficient for OPLA to agree to administrative closure.

Fingerprint Checks

Prior to exercising dispositive action under PD, OPLA must have fingerprint-based background checks. In many instances, DHS may already have the noncitizen’s fingerprints on file, in which case OPLA will automatically check their background without action from the noncitizen.

In cases where DHS does not have the noncitizen’s fingerprints on file, OPLA attorneys will reach out to the noncitizen or counsel and request that they provide an Identity History Summary Check from the FBI (https://www.fbi.gov/services/cjis/identity-history-summary-checks), which requires the noncitizen to submit their fingerprints to the FBI. When the results of that background check are complete, the noncitizen or counsel should forward a copy of the results to the requesting OPLA attorney who will then take appropriate action on the case.

When to Submit a PD/Priority Review Request

Noncitizens who are nonpriorities do not need to file anything with OPLA Atlanta. Nonpriority cases will be reviewed in the normal course of proceedings and OPLA Atlanta will proactively take steps to
dismiss them. However, if the need arises for a probable nonpriority case to be examined out of the normal course of business, noncitizens or their representatives may submit a PD request at any time.

Noncitizens who are enforcement priorities are ineligible for dismissal as an act of PD. Consequently, if a noncitizen is classified as a priority for enforcement, or if there are facts which may militate toward a priority, they may wish to submit additional, mitigating evidence as contemplated in the Mayorkas Memo and the Doyle Memo for OPLA to consider in reevaluating their priority designation.

**What to Include in a PD/Priority Review Request**

PD requests should focus on mitigating factors which militate in favor of finding that the noncitizen is not a priority for enforcement. Applicants should reference the mitigating factors in the Mayorkas Memo and the Doyle Memo for guidance. PD requests must contain evidence to support factual representations (e.g. birth certificates for children, medical records, evidence of rehabilitation, etc.). Where there are aggravating factors in the noncitizen’s background, such as a criminal record, it is helpful if the request gives some context to the negative factors. PD requests which only contain representations without attached evidence will not be considered.

In addition, if the applicant is unsure whether the respondent’s fingerprints are in the DHS database, it is best practice to include the Identity History Summary Check from the FBI ([https://www.fbi.gov/services/cjis/identity-history-summary-checks](https://www.fbi.gov/services/cjis/identity-history-summary-checks)) with the request.

PD requests must contain contact information for the requestor and either an E-28 or G-28 for the attorney of record. An email address allows for quickest communication.

**Where to Submit a PD Request**

Practitioners are HIGHLY encouraged to utilize eService to submit PD requests. PD submissions should be CLEARLY marked as a request for PD. Alternatively, submissions may be sent via email as follows. **DO NOT SUBMIT DUPLICATE PD REQUESTS** (e.g. once by eService and once by email). Hardcopy requests will only be considered for pro se applicants.

Atlanta 180:   ICE-OPLA-ATL-PD@ice.dhs.gov
Atlanta Summit:  ICE-OPLA-ATL-SFB-PD@ice.dhs.gov
Charlotte:   ICE-OPLA-ATL-CLT-PD@ice.dhs.gov
Stewart:   ICE-OPLA-ATL-SDC-PD@ice.dhs.gov

[1](https://eserviceregistration.ice.gov/)

[2] PD Email Limited Data Security Waiver. Those engaging in email exchange with OPLA’s prosecutorial discretion (PD) email addresses acknowledge and agree to a limited waiver of data security that shall only attach to the electronic service and transmittal of documents that may contain sensitive personally identifiable information (SPII). Senders to the email addresses should be aware, however, that ICE cannot ensure that information transmitted outside of the DHS network will remain secure during transmission. This waiver applies to both your receipt of information transmitted by ICE and the transmission of information from you to ICE. Please also be advised that (1) from the time information leaves the DHS network until receipt by your email system and (2) during the time that information is being transmitted by your email system to the DHS network, the information contained within the email, including but not limited to SPII, is not necessarily secure against interception. You are strongly encouraged to encrypt any documents containing SPII prior to sending it to OPLA via email and to send passwords under separate email. By participating in use of the PD email addresses, you expressly agree to assume the risk that SPII may be intercepted during transmission to or from the DHS network and, as a result, be obtained by or disclosed to third-parties.
Notification and Requests for Review

The decision to exercise prosecutorial discretion lies solely with DHS. The primary purpose of PD is to conserve the Department’s limited resources. There is no right, nor entitlement to any individual for an exercise of PD.

Applicants who submit a PD request will be notified of the decision on the request by the reviewing OPLA attorney. Applicants will only be told if OPLA plans to exercise PD or not. Respondents and their counsel will not be provided with an in-depth explanation of OPLA’s internal deliberations.

After notification of an unfavorable decision, noncitizens, or their counsel, may request review of a priority designation by the Chief Counsel. They may do so by emailing the Chief Counsel at: ryan.h.matsuno@ice.dhs.gov. The Chief Counsel will review the evidence and inform the noncitizen or counsel of their decision.