PD REQUEST GUIDE

OPLA Baltimore\(^1\) considers appropriate forms of prosecutorial discretion (PD) incident to case preparation. However, practitioners\(^2\) may wish to affirmatively request, or convey consent to, particular exercises of PD.

PD requests from practitioners are accepted only by electronic means: ICE eService\(^3\) or email.\(^4\) Do not submit duplicate PD requests, e.g. one by eService and another copy by email. The subject of the email should include the surname and alien registration number.

The following items will assist OPLA Baltimore to expeditiously evaluate a request for a specific form of PD:

- Clearly identify the discretionary action sought (dismissal, administrative closure, etc.).
  - Formal consent of the noncitizen is required for dismissal of most USCIS-initiated cases.
  - Administrative closure is appropriate only if unopposed.\(^5\)
  - Avoid requesting an action that is outside of OPLA’s authorities (e.g. deferred action, issue or cancel a charging document, change reporting requirements).
- Note the next hearing date and assigned EOIR immigration judge (if any).
  - If the case is not pending with EOIR nor subject to an EOIR order, PD is not available from OPLA.
- Apply controlling memoranda,\(^6\) but do not append them or excerpt them at length. If the case is not a priority under the memoranda, the inapplicability need not be addressed exhaustively.
- Demonstrate prima facie eligibility for relief, including any waivers, or amenability for the requested form of PD.
- Detail the noncitizen’s immigration history, such as date and manner of entry and administrative (CBP, USCIS, EOIR) history. Include the receipt number and status of any relevant application or petition.
- A discussion of positive equities, e.g. length of residence in the United States, family and community ties, work history, and any compelling humanitarian factors. These equities should be supported by documentary evidence, e.g. birth certificates, employment records, medical records,\(^7\) etc.
- A complete recitation of negative equities including criminal history (including any arrest, nolle prosequi, expungement, etc.), fraud, prior immigration violations, and/or failure to pay taxes.
- Unless DHS has complete biometrics available, you must submit an FBI background check.
- Submit all documents contemporaneously. Piecemeal submissions are discouraged.
- Provide all criminal records.\(^8\) If convicted, submit a complete record of conviction including the charging document and police report. If pending, include the charging document and any police reports.

Other notes:

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\(^1\) This Guide is applicable to all cases litigated by OPLA Baltimore, to include its Hyattsville sub-office.

\(^2\) As noncitizens may retain an attorney, recognized organization, accredited representative, or other qualified representative for proceedings, all such representatives—attorneys and non-attorneys alike—are called practitioners for the purpose of this Guide. This Guide is not intended for unrepresented (pro se) noncitizens, who are encouraged to include as much information as possible.

\(^3\) Via eservice.ice.gov. If using eService, all information must be submitted by attachment. Information placed in the eService “message” field will not be read. Submissions lacking an attachment will be rejected without further review.

\(^4\) ICE-OPLA-BAL-PD@ice.dhs.gov or ICE-OPLA-BAL-HYA-PD@ice.dhs.gov. The maximum allowable message size is 10MB. The DHS system does not automatically notify a sender if an email is too large for acceptance. DHS servers do not permit contact with remote servers; attach the request and supporting documents to the email. Documents in .pdf format are strongly preferred. Larger attachments should be zipped or compressed and/or sent in separate messages, e.g. “SMITH PD request 1 of 3.”


\(^7\) Medical evidence should be current and include a diagnosis, treatment, and prognosis.

\(^8\) If such records cannot be obtained, e.g. due to age of the offense, the PD submission should explain this and the efforts made to obtain the records.
• Submit the request well in advance of the next hearing date. OPLA Baltimore endeavors to respond within a month of receipt of a complete PD request for dismissal or administrative closure of currently-pending cases. If a complete PD submission was received more than a month ago and the next hearing is within the next week, practitioners may contact OPLA Baltimore at the appropriate PD email box for a status update.

• Do not inquire if OPLA Baltimore intends to unilaterally offer PD in a particular case. If a specific exercise of PD is desired, submit a fulsome request. Once a decision has been made, the practitioner will be advised.

• Order of review is prioritized by various factors, including custody status, next hearing date, complexity of the matter, etc. Accordingly, a request to recalendar or reopen closed or completed proceedings may not be addressed until completion of requests for currently-pending cases.

• OPLA Baltimore considers PD incident to case preparation, but certain exercises require background checks. A prompt response is appreciated for a DHS-issued request for the noncitizen to provide an FBI background check.

• In lieu of a joint motion, OPLA Baltimore may consent to the practitioner making an unopposed motion, seek practitioner concurrence to its motion, or move unilaterally. Any such motion should be brief and include other precedent requests as may be necessary, such as recalendar, severance from the lead, etc. OPLA Baltimore’s concurrence, if offered, will be timebound, so the motion should be filed expeditiously. Opposition to any unilateral filing should be directed to EOIR.

• OPLA Baltimore is unable to provide confirmation of receipt for email submissions. ICE eService provides a receipt in addition to notice of acceptance or rejection of the document(s).

• If the decision in response to a PD request appears to be in violation of controlling memoranda, the practitioner may contact OPLA Baltimore Chief Counsel Melody A. Brukiewa at melody.a.brukiewa@ice.dhs.gov. AILA Washington/Baltimore chapter members are requested to route such concerns to AILA’s ICE Liaison Committee at balice-eroliaison@ailadc.org.

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.

NOTE: As there is no right to the exercise of discretion by the agency, nothing in this memorandum should be construed to prohibit the apprehension, detention, or removal of any alien unlawfully in the United States or to limit the legal authority of ICE or any of its personnel to enforce federal immigration law. Similarly, this guidance, which may be modified, superseded, or rescinded at any time without notice, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

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