Prosecutorial Discretion and the ICE Office of the Principal Legal Advisor, Boston (OPLA)

Prosecutorial Discretion (PD) is the longstanding authority of a law enforcement agency charged to decide where to focus its resources and whether or how to enforce the law against an individual. As the exclusive representative of the Department of Homeland Security (DHS) in immigration removal proceedings before the U.S. Department of Justice’s Executive Office for Immigration Review (EOIR), ICE's Office of the Principal Legal Advisor (OPLA) has the authority to exercise PD in the litigation of removal cases. In practice, PD allows OPLA attorneys to decide which cases to focus on and how they want to proceed in individual cases, such as agreeing to remove a case from the immigration court docket through dismissal or administrative closure, or agreeing to stipulations on issues such as relief, bond, or continuances. PD is authority, exercised by immigration officers, on a case-by-case basis, and does not create a right or entitlement for any noncitizen.

In general, any case designated as a nonpriority will be eligible for PD, including dismissal or administrative closure. OPLA’s preferred form of PD, however, will be dismissal of removal proceedings. Any case designated as a priority will generally not be considered for PD, but the noncitizen may seek reconsideration of the priority designation, particularly if there are emergent developments in the case.

Submitting a Request for PD or Reassessment of Priority Designation to OPLA Boston (including the Hartford sub-office):

OPLA attorneys will review cases during the normal course of business to determine whether and how to exercise PD. Consequently, you are not required to submit a PD request for OPLA to exercise PD in your case.

If you would like to submit a request for PD, you (or your legal representative) should first review DHS Secretary N. Alejandro Mayorkas’ September 30, 2021 memorandum titled Guidelines for the Enforcement of Civil Immigration Law and Principal Legal Advisor Kerry E. Doyle’s April 3, 2022 memorandum titled Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion (Doyle Memorandum) to determine whether your case is a priority. Your PD request should be submitted on or after the effective date of the Doyle Memorandum, April 25, 2022, and conform to the instructions provided below.

Please submit all requests for PD or Reassessment of Priority Designation via the appropriate local OPLA PD mailbox at the following addresses:

OPLA Boston: ICE-OPLA-BOS-PD@ice.dhs.gov
OPLA Boston (Hartford): ICE-OPLA-BOS-HAR-PD@ice.dhs.gov
OPLA Boston (including the Hartford sub-office) will also accept PD requests via ICE eService. Both attorneys and pro se noncitizens can register for ICE eService [here](#). Submissions must comply with the ICE eService Terms and Conditions of Use. Paper submissions will not be accepted and will be returned to sender with instructions to serve electronically. OPLA Boston will continue to accept paper filings in all matters from pro se noncitizens. All requests should be submitted **no later than 120 days prior to the merits hearing**. The request and supporting documents should be labeled “LAST NAME, First Name, A000000000, PD Request/Priority Designation Reassessment Request, Next Hearing Date MM/DD/YY, Judge Name.” If you have questions about how to submit a PD request, please contact your local OPLA office.

**Nonpriority Cases**

If you believe that your case is not an enforcement priority because, for example, you entered the United States before November 1, 2020, and you have never been arrested or convicted of a criminal offense, then your PD request should only contain the following information:

1. A statement that you do not believe your case is an immigration enforcement priority; and
2. Confirmation that you have no objection to your case being dismissed.

You do not have to submit additional information in support of your PD request if you do not believe that your case is a priority. However, the OPLA attorney reviewing your case may request additional information from you to assist them in deciding whether it is proper to exercise PD in your case.

If you are unrepresented (or “pro se”), you may wish to complete and submit this document in support of your request for PD. This document is not a requirement to be considered for PD, but OPLA has prepared it for the convenience of unrepresented noncitizens in particular.

**Priority Cases and Cases Where Priority Designations Are Unclear**

If you are uncertain whether your case meets an immigration enforcement priority or if it is clear to you that your case may be a priority because of, for example, your criminal history or date of entry into the United States, then your PD request should also contain information as outlined in the Doyle Memorandum, including:

1. All supporting evidence addressing any positive or negative factors in your case;
2. An explanation of why this information is relevant to whether your case is a priority; and
3. Confirmation that you have no objection to your case being dismissed if your case is found not to be an immigration enforcement priority.

OPLA does not charge a filing or application fee to receive, process, or consider PD requests. An attorney or legal representative may charge you a fee for helping to prepare your request for PD, but no part of that fee is paid to the U.S. Government. The U.S. Department of Justice’s Executive Office for Immigration Review’s [website](#) includes additional information about how to report an attorney or legal representative who you suspect may be engaged in criminal, unethical, or unprofessional conduct. You may also report fraud by non-attorneys to the U.S. Federal Trade Commission or to your state Consumer Protection Office.

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1 For cases with merits hearings scheduled through 8/26/2022, requests should be submitted as soon as possible. Requests to stipulate to bond should be made in advance of the bond hearing.

2 A non-exhaustive list of mitigating and aggravating factors can also be found on ICE’s website at [Prosecutorial Discretion and the ICE Office of the Principal Legal Advisor](#) | [ICE](#).
PD Email Limited Data Security Waiver

Those engaging in email exchange with OPLA’s 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.