Memorandum For: Local immigration bars and other nongovernmental organizations and Community-based organizations assisting immigrant communities or representing noncitizens before EOIR in Chicago and Kansas City.

From: OPLA Chicago (Chicago and Kansas City Offices)

Subject: OPLA Chicago Standard Operating Procedure Regarding Implementation of the April 3, 2022 Guidance Memorandum of Principal Legal Advisor Kerry E. Doyle

Updated: April 22, 2022

On April 3, 2022, Principal Legal Kerry E. Doyle issued Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion (“Doyle Memo”). This Guidance, which rescinded the prior May 27, 2021 Memorandum of Former Principal Legal Advisor John D. Trasviña, is consistent with DHS Secretary Alejandro N. Mayorkas’s September 30, 2021 memorandum titled Guidelines for the Enforcement of Civil Immigration Laws. This local SOP provides implementation guidance of the Doyle Memo and supersedes and replaces OPLA Chicago’s June 2021 SOP regarding implementation of the Trasviña Memo.¹

OPLA Chicago’s Prosecutorial Discretion Reviews

OPLA Chicago will review all cases during the course of normal business to determine whether, in the totality of the circumstances and based on known information, a noncitizen is an enforcement priority and whether favorable discretion should be exercised in the case.² If a noncitizen is an enforcement priority then OPLA Chicago will not exercise prosecutorial discretion to dismiss or administratively close proceedings and will litigate the case to completion.³ As noted in the Doyle Memo, there may be other limited types of prosecutorial discretion that may be appropriate in enforcement priority cases, but the determination is very case specific and will likely only relate to whether there are stipulations that can be made on mandatory protective relief.

- **Dismissal of Proceedings (Preferred):** OPLA Chicago’s strong preference is to efficiently remove nonpriority cases from the docket through dismissal of proceedings to best focus enforcement resources on priority cases. Accordingly, subject to the exceptions below, where OPLA Chicago identifies a nonpriority case that it intends to dismiss, it will unilaterally move to dismiss proceedings before the Immigration Court, either in writing or orally on the court record. If a respondent’s attorney wishes to

¹ This local guidance is intended to be a living document. OPLA Chicago will issue additional information or modifications as appropriate.
² OPLA Chicago will review cases consistent with the three enforcement priorities as clarified in the Doyle Memo; namely: (1) Threats to National Security (Priority A); (2) Threats to Public Safety (Priority B); and (3) Threats to Border Security (Priority C).
³ As noted in the Doyle Memo, there may be other limited types of prosecutorial discretion that may be appropriate in enforcement priority cases, but the determination is very case specific and will likely only relate to whether there are stipulations that can be made on mandatory protective relief.
⁴ This local memo does not exhaustively list the forms of discretion discussed under the Doyle Memo, but discusses those contemplated to be the most common. OPLA Chicago will consider all forms of discretion contained in the Doyle Memo in appropriate cases.
oppose dismissal, it should do so before the Immigration Court. OPLA Chicago will not unilaterally file motions to dismiss nonpriority cases in the following scenarios:

- **Unrepresented Nonpriority Noncitizens:** For unrepresented noncitizens who are not enforcement priorities, as early in the process as practicable, OPLA Chicago will advise the Immigration Judge that: (i) the case is amendable to discretionary action (ii) OPLA believes dismissal of proceedings is appropriate; and (iii) OPLA will agree to a continuance to allow the noncitizen to seek counsel and determine whether to agree to dismissal. Should the noncitizen remain unrepresented and the noncitizen remains a nonpriority, then OPLA Chicago will move the Court for dismissal unless, on a case-by-case basis OPLA Chicago determines that a different type of discretion is more appropriate.

- **Cases Where the NTA Was Issued Pursuant to Mandatory Statute:** The biggest categories of cases that OPLA Chicago anticipates falling within this group are asylum referrals and denied petitions to lift conditions on lawful permanent residency (i.e., “751 review cases”). In this category of cases, OPLA Chicago will not unilaterally move for dismissal regardless of nonpriority status. Although such cases may not fall within the priority framework, absent an affirmative, timely request by such a noncitizen for the favorable exercise of prosecutorial discretion to dismiss removal proceedings or consent to dismissal provided in writing or on the record in removal proceedings, OPLA Chicago will generally litigate these cases to completion.

  Noncitizens’ representatives should be particularly mindful of this exception and are encouraged to submit affirmative requests for the favorable exercise of discretion on these cases, if discretion is desired, compliant with the below procedures.

- **Administrative Closure:** OPLA Chicago may agree to administratively close nonpriority cases where the noncitizen does not oppose and there are specific facts that militate in favor of this action. Requests for administrative closure will be reviewed on case-by-case bases.

- **Stipulations:** A request for stipulations should be made to the OPLA attorney handling the next hearing. Contact the Team e-mail duty boxes if you do not know which OPLA attorney is handling the case. OPLA Chicago will not stipulate to release a noncitizen on a bond if the noncitizen is subject to mandatory custody.

### Submitting Affirmative Requests for The Favorable Exercise of Discretion By Represented Noncitizens

- Because OPLA Chicago attorneys will review cases in the normal course of business, affirmative requests are not required. However, affirmative requests for the favorable exercise of discretion are encouraged in the following scenarios:
  - **Mandatory NTAs:** Cases in which the NTA was issued by DHS pursuant to a statutory requirement, such as asylum referrals or USCIS denied applications that may receive Immigration Judge review.
  - **Nonpriority Cases Scheduled for Hearing Within 14-Days, Where OPLA Chicago Has Not Already Filed a Motion to Dismiss:** OPLA Chicago will endeavor to complete prosecutorial discretion reviews as early as possible in the litigation process. If practitioners are interested in PD in a nonpriority case with an upcoming hearing, and you have not heard from OPLA Chicago, then you may submit an affirmative request 14 days prior to the next hearing.
  - **Priority Cases:** In cases where you believe your client will be considered a priority for ICE, you may submit additional evidence of mitigating factors between 30 and 90 days prior to a scheduled hearing.
• Late-filed affirmative requests are highly discouraged absent a material change in circumstances.

• Requests for the favorable exercise of discretion from OPLA Chicago should be submitted in writing utilizing either the OPLA Chicago Cover Sheet attached at Appendix A (preferred method) or a cover letter including the following information:
  o General Case Information:
    - Name and A-Number (family units should all be included in one single request if the request is similar across all family members);
    - Detention Status;
    - If in proceedings, next court date and Immigration Judge
  o Enforcement Priority Information:
    - In Nonpriority Cases:
      - Indicate non-priority status and confirmation that you do not object to dismissal of proceedings. If you object to dismissal, indicate the specific form of prosecutorial discretion you are requesting. These cases do not require supplemental supporting evidence, unless specifically requested by OPLA Chicago.
    - In Priority Cases or Cases Where Priority Designations Are Unclear:
      - Complete the Cover Sheet (or cover letter) in the same manner as above and provide: (1) Relevant evidence addressing any positive or negative factors in the case; and (2) An explanation of why the information is relevant.5
      - It is imperative that requests for discretion on these cases address positive (i.e., mitigating) and negative (i.e., aggravating) factors. OPLA Chicago may construe a failure to disclose information as a further aggravating factor in the case, if it is determined that the noncitizen knew or should have known about the information when submitting the request.6
  o Background Checks:
    - Background checks are required before OPLA Chicago will favorably exercise prosecutorial discretion on all cases where the noncitizen is above the age to be fingerprinted.
    - As part of the discretionary review process, OPLA Chicago will conduct a criminal history check in each case. If the noncitizen has never submitted fingerprints at an Application Support Center, then s/he will be required to submit a Federal Bureau of Investigations (“FBI”) fingerprint-based background check before a final decision can be made. More information can be found at https://www.fbi.gov/services/cjis/identity-history-summary-checks.
  o Notice of Appearance forms must be provided for all attorneys not already of record.

**Affirmative Requests for The Favorable Exercise of Discretion By Pro Se Noncitizens**

• Unrepresented noncitizens may affirmatively request the favorable exercise of prosecutorial discretion from OPLA Chicago, though OPLA Chicago will review each case in the normal course of business. To aid in the review, unrepresented noncitizens may utilize the document attached at Appendix B to support the request.

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5 OPLA Chicago prefers that supporting document not exceed 50 pages.
6 If submitting medical or educational records as mitigating evidence to support a request for the exercise of discretion, then OPLA Chicago encourages you to submit official summaries of these records. OPLA Chicago attorneys are not medical or educational professionals. It is more effective to submit summaries from medical or educational professionals that, in plain language, explain the facts of the case.
While OPLA Chicago would prefer to receive the same information from unrepresented noncitizens and represented noncitizens when requesting the exercise of prosecutorial discretion pursuant to the Doyle Memo, OPLA Chicago acknowledges that assembling such a packet may not be feasible for those without the assistance of counsel. As such, OPLA Chicago will be flexible with submissions by unrepresented noncitizens and not require a specific format of the request. OPLA Chicago may still require follow-up information before deciding about whether any type of discretion is appropriate.

Where to Submit Requests

Represented Noncitizens:

For represented noncitizens, requests for the favorable exercise of discretion pursuant to the Doyle Memo must be submitted via electronic service through OPLA Chicago’s eService Portal at [https://eserviceregistration.ice.gov/](https://eserviceregistration.ice.gov/).

The subject line of the transmission e-mail must include the noncitizen’s A-Number, next EOIR hearing date, the Immigration Judge, and the type of discretion sought.

Requests for prosecutorial discretion should not be mailed to our office nor electronically submitted to OPLA Chicago’s PD or team e-mail boxes. They will not be considered if received at those locations unless prior approval is received from OPLA Chicago.

Pro se/Unrepresented Noncitizens:

- Pro se noncitizens may register for electronic service at [https://eserviceregistration.ice.gov/](https://eserviceregistration.ice.gov/) by selecting “Pro Se Individuals.”

- In lieu of electronic submissions to the above-referenced eService Portal, pro se requests may also be submitted by mail to:
  - Chicago: 525 W. Van Buren Street, Suite 701, Chicago Illinois 60607
  - Kansas City: 2345 Grand Blvd., Ste. 500, Kansas City, Missouri 64108

- OPLA Chicago appreciates and welcomes assistance from advocates to make the review process more efficient.

Adjudication of Requests

- OPLA Chicago will aim to review all requests for prosecutorial discretion within 30 days of proper service of the request. If more than 30 days have elapsed, you may contact our office’s team duty boxes for an update.\(^7\) This time frame does not apply for request for joint motions to reopen. OPLA Chicago’s limited resources will be focused on handling PD requests for cases in active removal proceedings.

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\(^7\) E-mail addresses are as follows:

For Chicago: Team A: **OPLA-CHI-TeamA@ice.dhs.gov** (Covering Judges McKenna, Rosche, Saltzman, and Klein); Team B: **OPLA-CHI-TeamB@ice.dhs.gov** (Covering Judges Defoe, Peyton, Luskin, and Crites); Team C: **OPLA-CHI-TeamC@ice.dhs.gov** (Covering Judges Salovaara, Naseem, Curran and DCIJ McNulty); Team D: **OPLA-CHI-TeamD@ice.dhs.gov** (Covering Judges Klosowsky and Cole (detained docket)).

For Kansas City: **OPLA-KAN-DUTY@ice.dhs.gov**
Appendix A

OPLA CHICAGO PROSECUTORIAL DISCRETION COVER SHEET

Respondent(s) registration number (List all A numbers for FAMU Cases): A

Respondent(s) Last Name, First Name (List all names for FAMU Cases):

Next Court Date or Date Order Issued by Immigration Judge (if applicable):

Immigration Judge (if applicable): Detained? □ YES □ NO

Is the respondent an enforcement priority? □ YES □ NO □ UNCERTAIN

If yes, or if the priority designation is uncertain, the following documents must be included with you request:

a. Relevant evidence addressing any positive or negative factors in the case as set forth in DHS Secretary Alejandro N. Mayorkas’s September 30, 2021 memorandum at pp. 3-4 and Principal Legal Advisor Kerry Doyle’s Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion (Doyle Memorandum) at pp. 4-7, and

b. An explanation of why this information is relevant in determining the priority designation.

If no, or if the case is determined not to be a priority, do you confirm or agree that the case should be dismissed? □ YES □ NO

If you do not agree the case should be dismissed, what form of prosecutorial discretion is being sought:

☐ Continuance
☐ Administrative Closure
☐ Stipulations
☐ Requests To Not File Legally Sufficient Notice to Appear
☐ Other ____________________________

Requests will preferably be limited to 50 pages¹ and include this cover sheet along with the following (if applicable):

☐ Background Checks are required before prosecutorial discretion will be favorably exercised. If the noncitizen has never submitted fingerprints at an Application Support Center, then s/he will be required to submit a Federal Bureau of Investigations (“FBI”) fingerprint-based background check before a final decision is made. More information can be found at https://www.fbi.gov/services/cjis/identity-history-summary-checks.

☐ Signed G-28, Notice of Entry Appearance, and if there was prior counsel representing your client before the Immigration Court or at the Board, a motion to substitute counsel and either an EOIR-28 or an EOIR-27.

☐ One-Page Cover letter Summarizing Request (if not utilizing OPLA Chicago’s PD Cover Sheet) as set forth on pp.3-4, in OPLA Chicago’s April XX, 2022 SOP providing implementation guidance of the Doyle Memo.

☐ Table of Contents listing relevant supporting documents.

☐ Criminal History Chart listing offenses (including all traffic offenses), relevant statute, arrest date, conviction date, and sentence imposed, and actual time served. Certified judgments of conviction and charging document (i.e. indictment, information, complaint, etc.), as well as available police reports, must be included.

Submit this cover sheet and request packet via the OPLA eService Portal: https://eserviceregistration.ice.gov/.

(ICE eService is available for unrepresented noncitizens. To register go to https://eserviceregistration.ice.gov/ and choose “Pro Se Individuals”.)

Pro Se PD requests may also be sent by mail to either:
(1) Chicago: 525 W. Van Buren Street, Ste. 701, Chicago IL 60607; or
(2) Kansas City: 2345 Grand Blvd., Ste. 500, Kansas City, MO 64108.

¹ To assist with meeting the page limit, if your supporting documents include medical records, please provide a thorough summary from the relevant physician/provider rather than providing pages of medical records that are often difficult for attorneys to interpret. Likewise, tax information should be provided through IRS tax summaries rather than tax documents. OPLA Chicago will reach out if additional information is needed.
Respondent’s Statement in Support of Request for Dismissal of Removal Proceedings

I, ____________________________, am submitting this statement for the purpose of requesting that the U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Office of the Principal Legal Advisor (OPLA), review my case for prosecutorial discretion and seek to dismiss my removal proceedings. In support of this request, I state the following:

________ (initial) I am at least 18 years of age.

________ (initial) I have received a copy of the Notice to Appear dated _____________, (Month/Day/Year) which contains my full, true, and correct name.

________ (initial) I understand that I have the right to be represented in removal proceedings by an attorney or authorized representative. I understand that I have the right to choose my own attorney or representative. I also understand that the government will not pay for an attorney or representative.

________ (initial) I understand that if my removal proceedings are dismissed, I will be giving up the following legal rights and privileges:

   a) the right to have a hearing before an immigration judge who would review my case and inform me if I may be eligible to apply for any relief from removal;
   b) the right to present evidence and object to evidence presented by the government, the right to question any witnesses presented by the government, and to present witnesses on my own behalf;
   c) the right to appeal the immigration judge’s decision.

________ (initial) I understand that OPLA is not required to agree to dismiss my removal proceedings. The purpose of this statement is to request a review of my case from OPLA.

________ (initial) I agree that this statement will be made part of the record of proceedings for the immigration judge to review.

Respectfully submitted this __________ day of __________, __________.

________________________________
(Respondent’s Signature)