OPLA DETROIT STAKEHOLDER GUIDANCE ON PD

Consideration for Prosecutorial Discretion (PD): All cases are potentially amenable for some form of PD, but dismissal and administrative closure are limited to nonpriority cases. It should be readily apparent whether most cases are priorities based on the facts already in the record. There may be a limited number of cases where the priority and the underlying factual basis for the same are less clear. OPLA attorneys are not required to reveal the priority designation or the underlying facts giving rise to the designation.

PD Request Process: OPLA Detroit attorneys will be reviewing cases for priority designation and potential exercises of PD as they encounter them in the litigation process. It is not necessary for a noncitizen to submit an affirmative request for PD to be considered, although they can. Generally, the timeline for PD review will be driven by EOIR’s docket. If a month prior to the scheduled individual hearing a noncitizen has not heard from an OPLA Detroit attorney about whether it intends to litigate the case, the noncitizen should submit an affirmative request for PD drawing attention to the upcoming hearing date. There may be other times that an affirmative request would be beneficial, such as when there is new information bearing on the priority determination of which OPLA Detroit should be aware or the NTA was issued by United States Citizenship and Immigration Services as described in footnote 22 of the Doyle Memo.

Requests for PD should be served via ICE eService or U.S. mail. If the noncitizen is seeking Chief Counsel review of an OPLA Detroit attorney’s denial of an affirmative request for PD, email the request to ICE-OPLA-DET-PD@ice.dhs.gov (Detroit) or ICE-OPLA-DET-CLE-PD@ice.dhs.gov (Cleveland). If the noncitizen has a general question about the PD process, they may call the office and ask to speak to the duty attorney.

Content of PD Request: If a noncitizen is seeking PD, they must address why they believe they are not a priority for enforcement. If the noncitizen knows that information exists suggesting they may be a priority but are still seeking PD, they must address why that information does not compel a priority designation. It is appropriate to provide new information relevant to priority designation. OPLA Detroit will consider all information in total when determining whether a case is a priority, however, please see the Doyle Memo’s discussion of mitigating factors in sections I.B.2. and 3. for suggested considerations. An OPLA Detroit attorney assigned to review a request for PD may ask for specific information or documentation in response to a PD request and the noncitizen is encouraged to work with the attorney to obtain the information or documentation requested. If the noncitizen is requesting PD other than in the form of dismissal or administrative closure, please make that clear.

Fingerprints: No case will be dismissed if the noncitizen has not submitted to a Federal Bureau of Investigation (FBI) fingerprint check. If a noncitizen completed biometrics in conjunction with an application, OPLA Detroit will likely be able to review the fingerprint results without the noncitizen having to submit to another set of fingerprints. If a noncitizen is unsure whether they have submitted to an FBI fingerprint check, they can call the duty attorney and inquire. If the noncitizen has not been fingerprinted, they should submit to an FBI fingerprint-based background check. They will receive a response from the FBI indicating that they have no prior arrest data, or they will receive their Identity History Summary or “rap sheet.” That response should be submitted to OPLA Detroit via eService or U.S. mail. Fingerprint-based background checks are not required for noncitizens under 14 years of age.


2 References to noncitizen also include that noncitizen’s attorney, accredited representative, or pro bono legal provider.

3 Registration and more information available here: https://eserviceregistration.ice.gov/.

4 313-568-6033 (Detroit) or 216-749-9955 (Cleveland)