OFFICE OF THE PRINCIPAL LEGAL ADVISOR
MIAMI, FLORIDA
EXTERNAL GUIDANCE ON PROSECUTORIAL DISCRETION
April 2022

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This document is intended to provide external direction to stakeholders regarding the implementation of the Doyle PD Memo. It is not intended to, does not, and may not be relied upon to create or confer any right or benefit, substantive or procedural, enforceable at law or equity by any individual or other party, including in removal proceedings or other litigation involving DHS, ICE, or the United States, or in any other form or manner whatsoever. Likewise, this guidance does not and is not intended to place any limitations on OPLA Miami’s otherwise lawful enforcement of the immigration laws or DHS and ICE litigation prerogatives.

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.
This document provides external guidance on Prosecutorial Discretion (PD) with the Miami Office of the Principal Legal Advisor (OPLA Miami) in accordance with Principal Legal Advisor (PLA) Kerry Doyle’s *Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion* (Doyle PD Memo).1

Section I: Introduction:

OPLA Miami attorneys are authorized to exercise prosecutorial discretion (PD), generally in the form of dismissal of proceedings in nonpriority cases,2 without seeking concurrence from the noncitizen, except for cases in which the noncitizen has an established right to be placed into removal proceedings. See, e.g., 8 C.F.R. §§ 208.14(c)(1); 216.4(d)(2); 216.5(f).

If the noncitizen has an established right to be placed into removal proceedings, OPLA Miami attorneys will generally litigate the case to completion where the noncitizen declines a PD offer. Alternatively, the noncitizen may affirmatively request PD or consent to dismissal in writing or on the record.

Section II: Submitting a PD Request to OPLA Miami

A. Affirmative Requests:

1. OPLA Miami encourages PD requests be submitted as early as possible prior to the scheduled hearing date. This will allow OPLA Miami sufficient time to conduct a thorough and thoughtful review. OPLA Miami attorneys will respond to PD requests as soon as practicable.

2. Nonpriority Cases:
   A nonpriority noncitizen, through counsel, if represented, may seek PD by submitting a written request to OPLA Miami through eService.

3. Priority Cases
   Cases determined to be an enforcement priority, absent sufficient mitigating, or other relevant factors, are not amenable to PD and will be litigated to completion.

4. Requests for PD must specifically delineate the following:
   i. What type of PD is being sought (e.g., dismissal, stipulations, reopening, etc.).
   ii. Date of next scheduled hearing and immigration judge assigned, if any.
   iii. Detailed information documenting the noncitizen’s complete criminal history, if any.
   iv. If previously determined to be a priority, supporting evidence,3 that will allow

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2 In appropriate cases, PD may also include administrative closure, stipulations, continuances, and motions to reopen; however, OPLA’s strong preference is to efficiently remove nonpriority cases from the docket altogether.” Id. at 10.

3 This includes all relevant aggravating and mitigating factors set forth in the Mayorkas Memorandum, the Meyer Memorandum, and the Doyle PD Memo, and any other relevant factors needed to determine whether the totality of the
OPLA Miami to reassess the priority designation and determine whether PD is warranted.

5. PD requests shall not be approved in any case absent a completed Federal Bureau of Investigation fingerprint-based background check or current fingerprint results (no older than 15 months) contained in a DHS database.4

B. Where to Request PD or Inquire About a Pending Request:

Where to Request:
Represented noncitizens must submit a PD request via ICE eService. To request access to ICE eService, please visit https://eserviceregistration.ice.gov/. Once registered, please login into ICE eService and follow the prompts to send a PD request to OPLA Miami (Krome, BTC, P.R. & U.S.V.I. or 333). If you are having trouble registering for or using eService, please send an email to ICEeService@ice.dhs.gov for further assistance.

Pro se noncitizens may submit PD requests electronically to the ICE eService, to the PD email Boxes (see Disclaimer below), in writing by U.S. mail, or orally in court or to an OPLA Miami attorney.

Where to Inquire:
If you have any questions about a pending PD request, please first send your inquiry to the Duty Attorney at the following mailboxes for a response:

- Miami (333): Miami.DutyAtty@ice.dhs.gov
- P.R. & U.S.V.I.: DutyAttorney.SAJ@ice.dhs.gov

C. Continuances:
OPLA Miami attorneys will generally not oppose any reasonable or good faith request for a continuance when the noncitizen requests the continuance so that OPLA Miami may determine whether the noncitizen’s case is amenable to the exercise of PD. Noncitizens who are enforcement priorities may also qualify for a continuance under the "good cause shown" standard. See 8 C.F.R. § 1003.29; Matter of L-A-B-R, 27 I&N Dec. 405 (A.G. 2018)(interpreting 8 C.F.R. § 1003.29).

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4 If there are no fingerprints in a DHS database, OPLA Miami attorneys will instruct the noncitizen or counsel to obtain a Federal Bureau of Investigation fingerprint-based background check. Information on how to obtain one can be found here.