Prosecutorial Discretion (PD) is the longstanding authority of a law enforcement agency 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 proceedings before the U.S. Department of Justice’s Executive Office for Immigration Review (EOIR), the Office of the Principal Legal Advisor (OPLA) of U.S. Immigration and Customs Enforcement (ICE) has authority to exercise PD in the preparation and litigation of cases. PD is exercised on a case-by-case basis and does not create a right or entitlement for any noncitizen.

Effective April 25, 2022, upon encountering a case during the normal course of business, an OPLA attorney will assess whether the case has been designated as a DHS enforcement priority pursuant to DHS Secretary Mayorkas’ September 30, 2021 memorandum titled *Guidelines for the Enforcement of Civil Immigration Law* and whether OPLA will exercise PD pursuant to Principal Legal Advisor Doyle’s April 3, 2022 memorandum titled *Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion*.

Any case that is designated as a DHS enforcement nonpriority generally will be eligible for PD. OPLA’s preferred form of PD is dismissal of removal proceedings. Upon review of the facts and circumstances of a particular case, an OPLA attorney may agree to other types of PD, such as administrative closure, stipulations to relief, and stipulations to factual issues, legal issues, continuances and bonds, to the extent that such forms of PD are more efficient alternatives.

Any case that is designated as a DHS enforcement priority generally will not be considered for PD. However, if additional information material to the noncitizen’s priority or nonpriority designation arises, the noncitizen may request that OPLA reassess the priority designation.

**Submitting a Request for PD or Reassessment of Priority Designation to OPLA Newark:**

Because OPLA attorneys review cases for priority designations and PD during the normal course of business, you or your legal representative are not required to submit a PD request. If you wish to submit a PD request or a request for reassessment of a priority designation, you may submit it to the appropriate OPLA PD mailbox:

ICE-OPLA-NEW-PD@ice.dhs.gov for Newark cases
ICE-OPLA-NEW-ELZ-PD@ice.dhs.gov for Elizabeth cases

OPLA Newark will also accept requests via ICE eService. Both attorneys and unrepresented noncitizens can register for ICE eService at [https://eserviceregistration.ice.gov](https://eserviceregistration.ice.gov). Paper submissions will not be accepted except from unrepresented noncitizens. OPLA Newark will review all such requests and may ask for additional information. Requests should be submitted at least 60 days prior to a merits hearing.

**Background Checks:** Prior to exercising PD, OPLA Newark will conduct a background check on the noncitizen. If you have never had your biometrics collected by DHS, OPLA will request that you submit an FBI fingerprint-based background check.