Information Sheet for Unrepresented Noncitizens Requesting Prosecutorial Discretion from OPLA Phoenix

All noncitizens may request that the Department of Homeland Security (DHS) exercise prosecutorial discretion (PD) in their case before the Executive Office for Immigration Review (EOIR). PD arises at different stages of the removal process, takes different forms, and applies to a variety of determinations, including, for instance, dismissal, administrative closure, stipulating to relief, stipulating to a bond, or joining in a noncitizen’s motion to reopen before the immigration court or Board of Immigration Appeals.

The Office of the Principal Legal Advisor (OPLA) Phoenix, which represents DHS before EOIR’s four immigration courts in Arizona (Phoenix, Eloy, Florence, and Tucson), is independently, and on a case-by-case basis, evaluating cases to determine whether to exercise PD in the form of dismissal of proceedings; however, noncitizens may proactively request that OPLA evaluate their cases for PD, including PD other than dismissal of proceedings.

OPLA will determine whether to exercise PD by first determining if a case is a civil immigration enforcement priority. DHS currently has three civil immigration enforcement priorities:

- **National Security** – cases where a noncitizen poses a threat to the national security of the United States (U.S.).
- **Public Safety** – cases where the noncitizen currently poses a threat to public safety.
- **Border Security** – cases where the noncitizen entered the U.S. after November 1, 2020, or the noncitizen otherwise poses a threat to U.S. border security.

When considering whether a noncitizen is a current threat to public safety or a threat to U.S. border security, OPLA will consider all relevant positive and negative factors, which include, but are not limited to:

### Positive Factors

- The noncitizen’s age (e.g., minor or elderly).
- The noncitizen's length of time in the U.S.
- Whether a mental condition contributed to the noncitizen's prior criminal conduct.
- Whether the noncitizen is receiving medical treatment in the U.S. and what type.
- The noncitizen’s status as a victim, witness, or party in a legal proceeding.
- Impact of removal on the noncitizen’s family in the U.S.
- The noncitizen’s eligibility for humanitarian protection or immigration relief.
- The noncitizen or their relative’s service in the military or other public service.
- The time since the noncitizen's last offense and evidence of rehabilitation.
- Whether the noncitizen's conviction was vacated or expunged, or whether the criminal conduct is now legal.
- Whether the noncitizen is pregnant, postpartum, or nursing.
- The noncitizen’s lawful permanent residence status.
- Whether the circumstances of a noncitizen’s arrest indicate a discriminatory motive or retaliation for asserting their legal rights.
- The noncitizen is a cooperating witness, confidential informant, or is providing assistance to law enforcement.

### Negative Factors

- The gravity of the offense or conviction.
- The length and nature of the sentence imposed.
- The nature and degree of harm caused to the victim/community.
- The sophistication of the criminal offense.
- Use or threatened use of a firearm/dangerous weapon.
- A serious prior criminal record.
- Criminal activity that is violent or sexual in nature.
- The crime victim is a child or vulnerable person.
- Criminal conduct related to a criminal street gang.
- The noncitizen's criminal conduct resulted in harm to public health or pandemic response efforts.
- Knowing involvement in the smuggling of noncitizens.
- Engaging in serious immigration benefit fraud.
Any noncitizen not falling in one of the three priority categories will be deemed a non-enforcement priority, and generally OPLA will move to dismiss the cases unless the noncitizen has a right to be in removal proceedings or another form of PD is more appropriate.

If you believe your case is not a priority, you can contact OPLA using our contact information below and state that you believe your case is not a priority and that you would like OPLA to dismiss your case or exercise some other form of PD. Please submit the following information to OPLA in your request:

- Your name and Alien Number.
- Your next hearing date and the Immigration Judge hearing your case.
- Clearly identify what action you would like DHS attorneys to take (dismissal, stipulation, reopening, etc.) and why you believe this action is deserved.
- A discussion of positive factors in your case, supported by documentary evidence (e.g., birth certificates, employment records, current medical records (including diagnosis, treatment, and prognosis, etc.).
- A discussion of negative factors, including criminal history, fraud, prior immigration violations, etc.
- A comprehensive list of any criminal history with arrest and conviction documentation. If criminal records are not available, an explanation why and what efforts you made to obtain the records.

OPLA will notify you if DHS does not have a record of your biometrics or fingerprints, and you may then be directed to submit a Federal Bureau of Investigations (FBI) fingerprint-based background check before a final PD decision can be made.

Contacting OPLA Phoenix

The preferred method to submit a PD request to OPLA Phoenix is by email. However, if you are unable to submit your request via email, you can mail it to our office in the city in which your immigration case is located. The information for OPLA Phoenix’s four offices is below:

- **Phoenix** - Email: ICE-OPLA-PHO-PD@ice.dhs.gov; Phone: 602-744-2412; Mail: Office of the Principal Legal Advisor, Phoenix, Attn: Duty Attorney/PD Request, 2035 N. Central Avenue, Phoenix, Arizona 85004.
- **Eloy** - Email: ICE-OPLA-PHO-EDC-PD@ice.dhs.gov; Phone: 520-464-3032; Mail: Immigration and Customs Enforcement, Office of the Principal Legal Advisor, Attn: Duty Attorney/PD Request, 1705 E. Hanna Road, Eloy, Arizona 85131.
- **Florence** - Email: ICE-OPLA-PHO-FLO-PD@ice.dhs.gov; Phone: 520-868-3127; Mail: Immigration and Customs Enforcement, Office of the Principal Legal Advisor, Attn: Duty Attorney/PD Request, 3250 N. Pinal Parkway Ave, Florence, Arizona 85132.
- **Tucson** - Email: ICE-OPLA-PHO-TUC-PD@ice.dhs.gov; Phone: 520-295-4167; Mail: Office of the Principal Legal Advisor, Phoenix, Attn: Duty Attorney/PD Request, 6431 S. Country Club Rd, Tucson, Arizona 8570.

Additional information on PD is available at [www.ice.gov/about-ice/opla/prosecutorial-discretion](http://www.ice.gov/about-ice/opla/prosecutorial-discretion).

1 **Disclaimer:** 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.