

REQUESTING PROSECUTORIAL DISCRETION IN IMMIGRATION COURT

WHAT IS PD?

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. In immigration court, the Department of Homeland Security (DHS) is represented by attorneys from the Office of the Principal Legal Advisor (OPLA). OPLA attorneys will independently evaluate cases to determine whether to exercise PD. You (or your legal representative) may also submit requests for PD to OPLA.

STEPS TO REQUEST PD

1

DHS determines whether your case is an enforcement priority. There are three priorities for DHS: national security, public safety, and border security. A summary of each priority is provided below, and a detailed description of each priority is available on OPLA's website: ice.gov/about-ice/opla/prosecutorial-discretion.

2

If you believe your case is clearly not a priority, the next step is to send an email to the DHS OPLA Field Location that is handling your case:

- ✓ Stating that you do not believe your case is an immigration enforcement priority; and
- ✓ Confirming that you have no objection to your case being dismissed.

3

If you think your case might be a priority, then you may submit new information and ask for a review of that determination. When submitting new information, make sure to include:

- ✓ An explanation of why the new evidence is important to your case.
- ✓ Confirmation that you have no objection to your case being dismissed.

4

If, after considering the new evidence, OPLA agrees that your case is not a priority, then OPLA will ask the immigration court to dismiss your case.

If the new evidence does not change OPLA's determination that your case is a priority, then OPLA will not ask the immigration court to dismiss your case. You may still be eligible for other types of PD.

IS MY CASE A PRIORITY?

There are three types of priority cases:

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

In considering whether you pose a current threat to public safety or whether you otherwise pose a threat to the border security of the United States, OPLA will consider all relevant factors, including but not limited to:

EXAMPLES OF POSITIVE OR MITIGATING FACTORS

- Your current age, particularly if a minor or elderly.
- Your age at the time you committed any criminal offenses.
- The length of time you have been in the United States.
- Whether a mental condition contributed to your prior criminal conduct.
- Whether you are receiving medical treatment in the United States and the nature of such treatment.
- Whether you are the victim of crime or a witness, victim, or party in legal proceedings.
- The impact of removal on your family in the United States, such as loss of a provider or caregiver.
- Whether you are eligible for humanitarian protection or other immigration relief.
- Your or your relatives' service in the military or other public service.
- The length of time since your last offense and evidence of rehabilitation.
- Whether your conviction was vacated or expunged, or the underlying criminal activity decriminalized.
- Whether you are pregnant, postpartum, or nursing.
- Whether you are a lawful permanent resident, and for how long.
- Whether circumstances of your arrest indicate improper discrimination or retaliation by law enforcement.
- Whether you are cooperating with federal, state, local, or tribal law enforcement.

EXAMPLES OF NEGATIVE OR AGGRAVATING FACTORS

- The gravity of the offense and the length and nature of the sentence.
- The nature and degree of harm caused to the victim or community.
- The sophistication of the criminal offense.
- Whether the offense involved a weapon.
- Your prior criminal record.
- Whether the victim was vulnerable, such as a child or elderly person.
- Whether criminal conduct was of a sexual nature.
- Whether the offense was committed in furtherance of a criminal street gang.
- Whether the criminal conduct resulted in harm to public health, including pandemic response efforts.

FREQUENTLY ASKED QUESTIONS

1. DHS told me that my case is a priority. Can I request a review of that determination?

If DHS has told you that your case is a priority or if you think your case might be a priority, then you may submit new evidence to OPLA attorneys and ask for a review of that determination. When submitting new evidence, make sure to include:

- ✓ An explanation of why the new evidence is important to your case.
- ✓ Confirmation that you have no objection to your case being dismissed.

If, after considering the new evidence, OPLA agrees that your case is not a priority, then OPLA will ask the immigration court to dismiss your case.

2. Can I request PD if my case is a priority?

If your case is a priority, then OPLA will not agree to exercise PD by dismissing or administratively closing your case. You may always provide new evidence to show that your case is not a priority, but you should make this request as early in your case as possible. You may also request other actions from OPLA, such as agreeing to stipulate to a bond amount or to some or all of your request for relief.

3. Is there a full list of OPLA email addresses where I can send my request?

Yes, the full list of OPLA email addresses is available at ice.gov/about-ice/opla/prosecutorial-discretion or by scanning the QR Code.



4. Where can I find additional information about the priorities?

Additional information about DHS priorities is available at ice.gov/about-ice/opla/prosecutorial-discretion or by scanning the QR Code.



5. How can I check on the status of my immigration case?

You can check on the status of your case through the immigration court website at <https://acis.eoir.justice.gov/>, calling the Executive Office for Immigration Reviews' Automated Case Information System at 1 (800)-898-7180 and following the prompts, or by scanning the QR Code.



6. Do I need a lawyer to request PD?

You are welcome to hire and work with a lawyer to request PD, but OPLA does not require that you have an attorney. The immigration court publishes a list of free and low-cost attorneys on their website at justice.gov/eoir/list-pro-bono-legal-service-providers.

7. Is there any fee for requesting PD?

OPLA does not charge a fee to receive, process, or consider PD requests. A lawyer may charge you a fee for helping to prepare your request for PD, but no part of that fee is paid to the U.S. Government.



U.S. Immigration
and Customs
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