



## U.S. Immigration and Customs Enforcement

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### OFFICE OF THE PRINCIPAL LEGAL ADVISOR (OPLA) LOS ANGELES HOW TO REQUEST PROSECUTORIAL DISCRETION (PD) August 8, 2023

#### What is PD?

PD is the longstanding authority of a law enforcement agency charged 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 immigration removal proceedings before the U.S. Department of Justice's Executive Office for Immigration Review (EOIR), U.S. Immigration and Customs Enforcement (ICE) OPLA has the authority to exercise PD in the litigation of removal cases.

On June 23, 2023, the United States Supreme Court issued an opinion in *United States v. Texas*, 143 S. Ct. 1964 (2023), which allows DHS to reinstitute Secretary Alejandro Mayorkas's memorandum, [Guidelines for the Enforcement of Civil Immigration Law](#) (Sept. 30, 2021) and OPLA to fully reinstitute Kerry Doyle's memorandum, [Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion](#) (Apr. 3, 2022) (Doyle Memorandum). Pursuant to the Supreme Court rules, the opinion of the Supreme Court took effect on July 25, 2023. *See* Sup. Ct. R. 45.3 (2023). This document outlines the steps the private bar will take to request PD or a redetermination of priority designation.

#### Steps to Request Prosecutorial Discretion or Redetermination of Priority Designation<sup>1</sup>

1. DHS determines whether your case is an enforcement priority. There are three priorities for DHS: national security, public safety, and border security. A detailed description of each priority is available on OPLA's website: <https://www.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 OPLA Los Angeles mailbox<sup>2</sup> that is handling your case.
  - a. Stating that you do not believe your case is an immigration enforcement priority;
  - b. Indicating whether biometrics have been previously collected by DHS;<sup>3</sup> and
  - c. 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 to the OPLA Los Angeles mailbox that is handling your case and ask for a review of that determination. When submitting a new information, make sure to include:
  - a. All supporting evidence addressing any positive or negative factors in your case;

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<sup>1</sup> OPLA attorneys will review cases during the normal course of business to determine whether and how to exercise PD. Consequently, you are not required to submit a PD request for OPLA to exercise PD in your case.

<sup>2</sup> The mailboxes are: [OPLA Los Angeles](#); [OPLA Los Angeles \(Adelanto\)](#); [OPLA Los Angeles \(Las Vegas\)](#); [OPLA Los Angeles \(North Los Angeles\)](#); [OPLA Los Angeles \(Santa Ana\)](#); and [OPLA Los Angeles \(Van Nuys\)](#)

<sup>3</sup> If DHS does not have a record of your biometrics or fingerprints, you will be directed to submit a [Federal Bureau of Investigation finger-print based background check](#) before a final PD decision can be made. If DHS has a record of your biometrics or fingerprints, you will not need to submit an FBI fingerprint-based background check.

- b. An explanation of why the new evidence is important to your case; and
  - c. Confirmation that you have no objection to your case being dismissed.
4. If, after considering the new evidence, OPLA Los Angeles agrees that your case is not a priority, then OPLA Los Angeles will ask the immigration court to either dismiss your case or ask you to file an unopposed motion to dismiss. If the new evidence does not change OPLA's determination that your case is a priority, then OPLA Los Angeles will not dismiss the case.
  5. **To ensure proper routing, the subject line of the email must include PD Request or Priority Designation Reassessment Request, immigration judge's initials, next hearing date OR indicate as BIA, with filing due date (if applicable).**

### **Unrepresented Noncitizens**

If you are unrepresented (or "pro se"), you may wish to complete and [submit this document](#) in support of your request for PD. This document is not a requirement to be considered for PD, but OPLA has prepared it for the convenience of unrepresented noncitizens in particular.

### **Joint Motion to Reopen (JMTR)<sup>4</sup>**

JMTRs must be submitted via the ICE eService portal. The subject line must include (in this order): A-number; document type; and immigration judge. Example: A123456789; JMTRreopen or (CARECENJMTRreopen); IJ ABCD. The document must be named (in this order): A-number; document type. Example: A123456789 JMTRreopen.

### **Additional Information and Resources**

#### **PD Email Limited Data Security Waiver**

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.

#### **No Private Right Statement**

This document is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Nor are any limitations hereby placed on otherwise lawful enforcement prerogatives of ICE.

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<sup>4</sup> Because of the severe immigration court backlog, OPLA Los Angeles will focus its finite resources on pursuing priority cases rather than relitigating previously completed cases. *See*, Doyle Memorandum at 15.