

New York City Office of the Principal Legal Advisor (OPLA)
Instruction Sheet For Prosecutorial Discretion Requests

On April 4, 2022, Principal Legal Advisor Kerry E. Doyle issued a memorandum to the OPLA workforce titled *Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion* (Doyle Memorandum), which will take effect on April 25, 2022.¹ Though it is not necessary to submit a PD request to OPLA New York City (NYC) for consideration, this instruction sheet provides instructions to immigration attorneys and representatives who wish to submit such requests.

Method of Submission: PD requests should be submitted via eService², using the following naming convention: “**PD_Request_[A number]**.” Requests may also be submitted via regular mail or through our pro se PD mailbox³; however, eService is strongly encouraged, and requests made through eService will be prioritized for processing. Attorneys and representatives should refrain from sending multiple copies of the request through different means of service. PD requests should be submitted as early as possible during the pendency of removal proceedings. Whenever practicable, requests for PD should be submitted at least 60 days prior to any scheduled hearing.

Contents of PD Request⁴: A request for PD must be in the form of a written submission that contains, at minimum, the following:

1. The type of PD sought (e.g., continuance, stipulation for relief/narrowing of issues, bond reduction, etc.);
2. An explanation as to why PD may be warranted; and
3. A table of contents with supporting documentation to aid in evaluating the request. The documentation necessary for OPLA’s consideration of the request will vary depending on the form of PD being sought and the facts and circumstances of each case.

Adjudication of PD Request:⁵ OPLA attorneys will review requests for the exercise of PD and make determinations consistent with DHS’s and ICE’s enforcement priorities. Generally, OPLA NYC will prioritize for review PD requests involving cases presently on the active court docket. PD requests that are not filed via eService or are incomplete will delay the adjudication process. Failure to furnish the requested information may result in OPLA NYC declining to exercise its

¹ The Doyle Memorandum is available online at https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement_guidanceApr2022.pdf.

² To register for eService, please go to <https://eserviceregistration.ice.gov/>.

³ A list of PD mailboxes can be found at: <https://www.ice.gov/about-ice/opla/prosecutorial-discretion>.

⁴ For unrepresented noncitizens, OPLA NYC will not require any prescribed format for PD requests. OPLA NYC welcomes assistance from the private immigration bar and pro bono groups to unrepresented noncitizens in the submission of PD requests.

⁵ OPLA exercises PD on a case-by-case basis considering the totality of the circumstances. In determining whether to exercise PD, OPLA may consider numerous factors, as outlined on OPLA’s website: <https://www.ice.gov/about-ice/opla/prosecutorial-discretion>. These factors are not intended to be dispositive or exhaustive, as PD is inherently case-specific.

discretion. The more forthcoming a noncitizen is in submitting information related to his or her request for PD (including information detailing both the aggravating and mitigating factors), the more readily OPLA attorneys will be able to assess the totality of the circumstances and make informed discretionary judgments. Once a PD decision is made, OPLA NYC will promptly convey its position to the requester. OPLA attorneys must have an opportunity to complete necessary background checks prior to exercising PD. Where a noncitizen has not submitted biometrics, the noncitizen will be required to submit an FBI fingerprint-based background check to OPLA NYC for review. For more information on FBI background checks, visit <https://www.fbi.gov/services/cjis/identity-history-summary-checks>.

Follow up on Status of PD Request: For follow up on the status of a PD request, please email the appropriate PD mailbox and ask for the name of the assigned OPLA attorney (see fn. 5) and contact that attorney directly.

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.