

**U.S. Department of Homeland Security  
U.S. Immigration and Customs Enforcement**

**OPLA SEATTLE**

**PROSECUTORIAL DISCRETION PROCESS**

**APRIL 2022**

## I. INTRODUCTION

On April 3, 2022, Principal Legal Advisor (PLA) Kerry E. Doyle issued [Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion](#) (April 3, 2022) (Doyle Memorandum), directing attorneys from the Office of the Principal Legal Advisor (OPLA) to focus their efforts and prioritize cases that fall within the U.S. Department of Homeland Security's (DHS or Department) current civil immigration enforcement priorities, which were laid out in Secretary of Homeland Security Alejandro N. Mayorkas' September 30, 2021 memorandum titled, [Guidelines for the Enforcement of Civil Immigration Law](#) (Mayorkas Memorandum). Under the Doyle Memorandum, OPLA Seattle attorneys will review cases during the normal course of business to determine whether each case is an enforcement priority and how to exercise their prosecutorial discretion (PD) in nonpriority cases. Consequently, you are not required to submit a PD request for OPLA Seattle to exercise PD in your case.<sup>1</sup> But you may still make such a request via the following process.

## II. PROCEDURES FOR SUBMITTING A PD REQUEST AND RECEIVING A RESPONSE

### A. Steps to Request Prosecutorial Discretion or Redetermination of Priority Designation

1. You (or your legal representative) should review the Mayorkas and Doyle Memoranda to determine whether your case falls under any of the three enforcement priority categories for DHS. A detailed description of each priority category, along with a list of positive/mitigating factors and negative/aggravating factors that are considered by DHS, is available on [OPLA's webpage for PD](#).
2. If you believe your case is clearly not a priority, the next step is to send a request via eService<sup>2</sup>:
  - 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 via eService and ask for a review of that determination. When submitting new information, make sure to include:
  - a. All supporting evidence addressing any positive or negative factors in your case;
  - 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.

---

<sup>1</sup> Noncitizens and their representatives may still submit affirmative requests for PD, along with any supporting documents via eService.

<sup>2</sup> For more information on ICE eService, or to request access, please visit <https://eserviceregistration.ice.gov>. Once registered, to login into ICE eService, please visit <https://eservice.ice.gov>.

<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 \(FBI\) 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.

4. If, after considering your request, OPLA Seattle agrees that your case is not a priority, OPLA Seattle will agree to dismissal and may ask you to prepare and file an unopposed or joint motion to dismiss. If OPLA Seattle determines that your case is a priority, OPLA Seattle will not dismiss your case.
5. To ensure proper routing of your request, and pursuant to eService guidance, documents submitted through ICE eService should be named as follows: A123456789.PD Request and contain the following information in the request.
  - a. A#;
  - b. Next EOIR hearing date, or deadline if pending at the BIA or at the Ninth Circuit Court of Appeals
  - c. Immigration Judge; and
  - d. Type of PD sought (dismissal, administrative closure, continuance, stipulation, bond reduction, etc.) or whether a Priority Designation Reassessment is sought.

#### **B. Response Time**

OPLA Seattle will focus its finite resources on addressing PD requests for cases that are in active removal proceedings before the immigration court with hearings scheduled within the next 30 calendar days or before the BIA with an issued briefing schedule.<sup>4</sup> For such PD requests, the OPLA attorney will endeavor to respond at least fifteen days before the hearing. For all other PD requests, OPLA Seattle will endeavor to respond as soon as practicable.

### **III. SPECIAL PROCEDURES FOR UNREPRESENTED NONCITIZENS**

OPLA Seattle does not require unrepresented (or “pro se”) noncitizens to follow any strict formal requirements when submitting a PD request. Pro se noncitizens may make oral requests for PD in court or submit a [pro se written request](#). Otherwise, OPLA attorneys, in the normal course of business, will carefully review any pro se cases they are assigned. If an OPLA attorney identifies a nonpriority pro se case, the attorney will bring the case to the attention of the Immigration Judge during a master calendar or merits hearing so that the Immigration Judge can encourage the noncitizen to seek counsel. Before moving to dismiss proceedings, the OPLA attorney will agree to one continuance so that the pro se noncitizen may find a lawyer and consider whether to agree to dismissal or to seek some other form of PD.

### **IV. DISCLAIMERS**

#### **A. PD E-mail Limited Data Security Waiver**

Those engaging in e-mail exchange with OPLA’s e-mail 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 e-mail 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

---

<sup>4</sup> Although OPLA Seattle will prioritize PD requests under this timeframe, noncitizens who seek PD, including dismissal of their case, should still affirmatively request PD at the earliest stage possible.

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 e-mail system and (2) during the time that information is being transmitted by your e-mail system to the DHS network, the information contained within the e-mail, 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 e-mail and to send passwords under separate e-mail. By participating in use of the PD e-mail 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.

## **B. General**

As there is no right of noncitizens to the exercise of discretion by OPLA Seattle, nothing in these standard operation procedures (SOPs) for OPLA Seattle should be construed to prohibit the apprehension, detention, or removal of any noncitizen unlawfully in the United States, nor to limit the legal authority of ICE or any of its personnel to enforce federal immigration law. Similarly, these SOPs are a living document, and the SOPs may be modified, superseded, or rescinded at any time without notice, and are not intended to, do 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.

## **V. ADDITIONAL RESOURCES**

1. [Requesting Prosecutorial Discretion in Immigration Court Quick Reference Card](#)
2. [ICE ERO Case Review Site for Individuals in Custody and/or with Final Orders of Removal](#)