



Information Sheet: Requesting Prosecutorial Discretion from OPLA Denver

All attorneys representing noncitizens may request that the Department of Homeland Security (Department) exercise prosecutorial discretion (PD) in their case before the Executive Office for Immigration Review. Prosecutorial discretion arises at different stages of the removal process, takes different forms, and applies to a variety of determinations, including, for instance, agreeing to continuances, stipulating to bond, joining in noncitizen motions to the immigration court, and agreeing to dismiss cases pursuant to 8 C.F.R. § 1239.2(c).

The Office of the Principal Legal Advisor (OPLA) exercises PD on a case-by-case basis considering the totality of the circumstances. OPLA attorneys may exercise PD in proceedings before EOIR, subject to direction from their Chief Counsel and applicable guidance from DHS. In exercising such discretion, OPLA attorneys adhere to the enduring principles that apply to all of their activities: upholding the rule of law; discharging duties ethically in accordance with the law and professional standards of conduct; following the guidelines and strategic directives of senior leadership; and exercising considered judgment and doing justice in individual cases.

Written requests for PD are encouraged. All requests must be submitted to OPLA Denver at ICE-OPLA-DEN-PD@ice.dhs.gov or at ICE-OPLA-DEN-SLC-PD@ice.dhs.gov. OPLA Denver will not review or consider paper filings requesting PD submitted by counsel. We ask that your attached submission to your transmittal email indicates in the file name that the document is a request for PD.

As prosecutorial discretion is exercised on a case-by-case basis, there is no standard template to submit to OPLA Denver. Each request must contain:

- Your client's name and Alien Number
- Your client's next hearing date and Immigration Judge
- The type of prosecutorial discretion sought (dismissal of the case, administrative closure, joint motion to reopen, etc.)
- The reason(s) why prosecutorial discretion may be warranted
- Supporting documentation to aid in evaluating the case, including a comprehensive list of any criminal history with arrest and conviction documentation. If your client does not have a criminal history, a statement of good character signed under penalty of perjury or clearance from your client's local police department must be included in your submission.

Requests must indicate the type of prosecutorial discretion sought and address each of the factors outlined in Principal Legal Advisor John Trasviña's May 27, 2021, [Interim Guidance to OPLA Attorneys Regarding Civil Immigration Enforcement and Removal Policies and Priorities](#), as appropriate. It is not necessary to recite the language of our interim guidance in your request. Rather, a focus on the nature of the request and the facts surrounding your client are appreciated. Please be advised that OPLA Denver will conduct a criminal background check on all requests for dismissal and administrative closure. If your client does not have fingerprints on file with the Department, OPLA Denver will require that you submit a statement of good

character signed under penalty of perjury or a clearance from your client's local police department. It is in your client's best interest to submit a request that fully explains all criminal arrests and convictions that is supported by related documentation. Upon review, an OPLA Denver Attorney may request additional information from you to complete our decision-making process. Please bear in mind that OPLA Denver cannot agree to an exercise of prosecutorial discretion that is not supported by law. For example, if your client is barred from asylum OPLA Denver cannot stipulate to asylum relief before the Immigration Judge. Similarly, we cannot decline to appeal an Immigration Judge's order granting asylum relief where the noncitizen is barred.

All decisions to dismiss, administratively close, stipulate to relief, or appeal the decision of an Immigration Judge will be reviewed by a Deputy Chief Counsel and agreed to or declined by the Chief Counsel. All other requests for prosecutorial discretion such as stipulations, joining or not opposing motions, agreeing to a truncated hearing, etc., will be addressed and decided by the Assistant Chief Counsel litigating your case. We ask that you raise any issues regarding OPLA Denver's prosecutorial discretion decisions first with the Deputy Chief Counsel overseeing the litigation of your case.

OPLA Denver's goal is to respond to requests for prosecutorial discretion within ten business days of receipt. This goal will be managed in the context of available resources, the timing of your upcoming hearing, the volume of incoming requests, and the need to engage in conversations and/or request additional information. We ask that if you will be requesting dismissal, administrative closure, or a stipulation for relief that you do so at least 30 days prior to your hearing.

While OPLA Denver is not conducting a wholesale review of all cases pending before EOIR in Aurora, Denver, Salt Lake City, or Boise, in some instances an OPLA Denver Attorney will proactively offer to dismiss or administratively close your client's case prior to a merits hearing. Removing cases from the existing Immigration Court docket while securing just outcomes is an effective tool to manage OPLA's limited resources. Should you decline to accept OPLA Denver's offer, you should expect that your case will be fully litigated before the Immigration Court and, if applicable, the Board of Immigration Appeals.

Please be advised that OPLA Denver cannot exercise discretion on behalf of Enforcement and Removal Operations (ERO). All requests for release from custody, stays, and deferred action should be directed to the Field Office Director at Denver.Outreach@ice.dhs.gov or SaltLakeCity.Outreach@ice.dhs.gov. Similarly, the decision to file a Notice to Appear rests with ICE's operational components and not OPLA Denver. Once an order has been issued by EOIR, all requests for prosecutorial discretion should be directed to ERO.

These guidelines 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.