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Prosecutorial Discretion

Creating a strong request, even after referral



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Training Road Map

I. Foundations: Which memos?

I. Updates from the field:

A. OPLA Stakeholder Meetings

B. In the Trenches

II. Best practices



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Foundations



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What is PD?

Prosecuting agency's discretion on how to enforce the law against an individual:

- Agreeing/joining/not opposing continuances
- Joining/not opposing Motion to Reopen
- Stipulating to bond/relief
- Join to dismiss cases under 8 C.F.R. § 1239.2(c)
- Join/not oppose motion to Admin Closure
- Not filing NTA in the first place
- Not pursue/waive appeal



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Which Memos? Mayorkas

Removability alone should not be basis for removal:

- Threat to National Security
- Threat to Public Safety
- Threat to Border Security



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Which Memos? Doyle

There could be “mitigating or extenuating facts and circumstances that militate in favor of declining enforcement action”

- Length of time in US
- Client or family service in the US Military
- Circumstances/manner of entry in US
- Status as survivor of crime/trafficking
- Status of witness to a crime
- Status as plaintiff in civil proceedings



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Which Memos? Doyle

- Eligibility for relief
- Compelling humanitarian factors:
 - Impact of removal on Family in U.S.
 - Serious medical condition of client or family member in U.S. for which receiving medical treatment in US
 - Age of client
 - Pregnancy, post-partum, nursing
 - Status of child
 - Status of primary caregiver of seriously ill relative in U.S.



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Which Memos? Doyle

Criminal considerations:

- Circumstances of arrest
- Recency of criminal activity
- Sophistication of crime
- Vulnerability of victim
- Type of crime
- Involvement of firearm or other weapon
- Cooperation with law enforcement
- Extenuating circumstances
- Length of sentence
- Indicia of rehabilitation



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Updates from the Field

- A. OPLA Stakeholder Meetings
- B. In the Trenches



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Best Practices



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Additional Resources

- [Mayorkas Memo](#)
- [Doyle Memo](#)
- [Neal Memo](#)
- [King Memo](#)

- [ICE Home Page on PD](#)
- [ICE 2-Pager on Requesting PD](#)
- [National Immigration Project of the National Lawyers Guild's Practice Alert: Advocating for Clients in Removal Proceedings Using the OPLA Prosecutorial Discretion Memo](#)
- [ABA Practice Advisory Seeking PD](#)

- [Submitting Requests for PD San Antonio](#)
- [Submitting Requests for PD Houston](#)
- [Submitting Requests for PD El Paso](#)
- [Submitting Requests for PD Dallas](#)