



U.S. Immigration and Customs Enforcement

Memorandum For: OPLA Chicago Stakeholders

From: OPLA Chicago (Chicago and Kansas City locations)

Subject: OPLA Chicago Implementation of the May 27, 2021 Interim Guidance Memorandum of Principal Legal Advisor John D. Trasviña

Updated: June 30, 2021

On May 27, 2021, Principal Legal Advisor John D. Trasviña issued Interim Guidance Regarding Civil Enforcement and Removal Policies and Priorities (“Trasviña Memo”). This Interim Guidance extended prior enforcement memorandums stemming from President Biden’s January 20, 2021 Executive Order 13993, Revision of Civil Enforcement Policies and Priorities, to provide a specific “prosecutorial discretion” framework to OPLA attorneys.

As noted in the Trasviña Memo, prosecutorial discretion is a longstanding underpinning of our legal system. The appropriate exercise of discretion can preserve resources, achieve fair outcomes in individual cases, and advance our mission of enforcing immigration laws justly. To be sure, OPLA attorneys have long exercised prosecutorial discretion, for example, by agreeing to continue cases, by not perfecting all possible appeals, by terminating cases, or by jointly reopening cases, where appropriate. OPLA Chicago endeavors to continue the fair exercise of prosecutorial discretion through implementation of the Trasviña Memo. To that end, the following memorandum provides guidance on how to request prosecutorial discretion in Chicago and Kansas City.¹

Requests for the Exercise of Prosecutorial Discretion

OPLA Chicago will consider all requests for the exercise of prosecutorial discretion on a case-by-case basis, considering the totality of the circumstances. To assist both represented and unrepresented respondents, OPLA Chicago has created a cover sheet that provides guidance, consistent with this memo, for requesting PD within the OPLA Chicago AOR.² (See Appendix A.) Including this cover sheet with all PD requests will allow OPLA Chicago to properly route requests and to respond in a timely manner.

¹ This local guidance is intended to be a living document. OPLA Chicago will issue additional information or modifications as appropriate.

² The OPLA Chicago AOR includes cases within the jurisdiction of the immigration Courts in Chicago and Kansas City. These instructions and coversheet do not apply to any other OPLA office.

- **When submitting a request for the exercise of prosecutorial discretion under the Trasviña Memo, noncitizens (or their representatives) must submit a written request identifying:**
 1. Name and A-Number (family units should all be included in one single request if the request is dissimilar across all family members);
 2. Detention Status;
 3. If in proceedings, next court date and Immigration Judge (and/or whether there is a need for expedited review of the request);
 4. The specific type of discretion being sought (see below examples);
 5. An explanation of why the favorable exercise of discretion is appropriate;
 6. Relevant Supporting Documents (preferably not to exceed 50 pages);³
 7. An explicit comprehensive statement of any criminal history (or lack thereof) anywhere in the world;⁴
 - a. OPLA Chicago will check available records to confirm the presence or absence of a criminal history. If the noncitizen does not have fingerprints in the system because s/he does not have a criminal history in the United States, then represented noncitizens must provide an official letter from the State Police or Local Police Department confirming that records have been checked and there is no criminal history of record; and
 8. An attorney appearance form if not already the attorney of record.

- **When submitting requests for the favorable exercise of prosecutorial discretion, noncitizens and their representatives should consider the following:⁵**
 1. Type of Discretion Considered:
 - *Continuances:* If an individual case does not fall within a presumed priority, then OPLA Chicago can also take the position that “good cause” exists for a reasonable continuance of removal proceedings to request a comprehensive discretionary review.
 - *Dismissal:* Pursuant to the Trasviña Memo, OPLA Chicago envisions the majority of prosecutorial discretion being exercised through the dismissal of pending removal proceedings without prejudice.
 - *Administrative Closure (Chicago Only):* OPLA Chicago acknowledges that following *Meza-Morales v. Barr*, 973 F.3d 656 (7th Cir. 2020), Immigration Judges in Chicago retain the authority to administratively close cases, where appropriate. However, *Meza-Morales* effectively returned the Seventh Circuit to the framework set forth in *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012), and *Matter of W-Y-U-*, 27 I&N Dec. 17 (BIA 2017), which laid out the factors that Immigration Judges are to consider in determining administrative closure of a case. *Zelaya Diaz v. Rosen*, 986 F.3d 687, 692 (7th Cir. 2021). None of these factors contemplate indefinite administrative closure. Accordingly, while OPLA Chicago will consider all requests individually, whether proceedings will be administratively closed will depend on whether the IJ finds that the request is consistent with applicable law.
 - *Stipulations:* Pursuant to the Trasviña Memo, noncitizens may request that DHS

³ To assist with meeting the page limit, if your supporting documents include medical records, please provide a thorough summary from the relevant physician/provider rather than providing pages of medical records that are often difficult for attorneys to interpret. Likewise, tax information should be provided through IRS tax summaries rather than tax documents. OPLA Chicago will reach out if additional information is needed.

⁴ Err on the side of full disclosure, no matter the circumstances. This includes fully disclosing all negative (including arrests, detentions, expungements) and positive factors. A statement like “no criminal record to my knowledge” is insufficient. If the assertions made in your submission do not match the record (i.e. omission of your client’s arrests), this could contribute to an unfavorable decision.

⁵ This list is not exhaustive of the types of discretionary action OPLA Chicago may consider. However, these types of discretion are explicitly addressed in this document since OPLA Chicago anticipates these will be the more common types of discretion requested and considered.

stipulate to certain facts or legal issues to narrow disputed issues in a case and promote fair and efficient proceedings. Such stipulations should specify exactly what the noncitizen is requesting the office stipulate to, and can include, but are not limited to, bond amount stipulations or stipulations that certain elements of a form of relief (i.e., ten years continuance physical presence for non-LPR cancellation of removal, etc.) have been met. The parties should ensure that the Immigration Judge makes an explicit finding that the stipulation is supported by the evidence pursuant to *Matter of A-C-C-C-*, 28 I&N Dec. 84 (A.G. 2020).

- *Requests To Not File Legally Sufficient Notice to Appear with Immigration Court:* Requests to not file NTAs will be reviewed on a case-by-case basis. In certain instances, depending on the facts and circumstances of the case, where the case is not an enforcement priority, OPLA Chicago may favorably exercise PD by not filing the NTA.
2. Mitigating Factors: In line with the Trasviña Memo, OPLA Chicago will consider the following non-exhaustive mitigating factors when considering discretionary requests: (1) length of residence in the United States; (2) circumstances of arrival in the United States and manner of entry; (3) immigration history; (4) work history in the United States; (5) educational history in the United States; (6) status as a victim, witness, or plaintiff in criminal or civil proceedings; (7) potential for immigration relief; (8) community ties/contributions; and (9) compelling humanitarian factors.
 3. Aggravating Factors: OPLA Chicago will consider the following as non-exhaustive aggravating factors weighing against the exercise of discretion: (1) criminal history; (2) participation in persecution or other human rights violations; (3) extensiveness and seriousness of prior immigration violations; (4) fraud or material misrepresentations. While all requests for the exercise of discretion will be carefully reviewed, the favorable exercise of discretion will not likely be exercised in cases that are presumed priorities under the Trasviña Memo.

Submission of Requests:

- *Represented Noncitizens*
 - When possible, requests under the Trasviña Memo should be submitted no later than two months prior to the merits hearing to allow for adjudication time.
 - Requests for the favorable exercise of discretion pursuant to the Trasviña Memo must be submitted via electronic service through OPLA Chicago's eService Portal at <https://eserviceregistration.ice.gov/>.
 - The subject line of the transmission e-mail must include the noncitizen's A-Number, next EOIR hearing date, the Immigration Judge, and the type of discretion sought.
 - **Requests for prosecutorial discretion should not be mailed to our office nor electronically submitted to OPLA Chicago's PD or team e-mail boxes and will not be considered if received at those locations unless prior approval is received from OPLA Chicago.**
- *Unrepresented/Pro Se Noncitizens*
 - While OPLA Chicago would prefer to receive the same information from unrepresented noncitizens and represented noncitizens when requesting the exercise of prosecutorial discretion pursuant to the Trasviña Memo, OPLA Chicago acknowledges that assembling such a packet may not be feasible for those without the assistance of counsel. As such, OPLA Chicago will be flexible with submissions by unrepresented noncitizens and not require a specific format of the request. OPLA

Chicago may still require follow-up information before deciding whether any type of discretion is appropriate.

- *Pro se* noncitizens may register for electronic service at <https://eserviceregistration.ice.gov/> by selecting “Pro Se Individuals.”
- In lieu of electronic submissions to the above-referenced eService Portal, *pro se* requests may also be submitted by mail to:
 - Chicago: 525 W. Van Buren Street, Suite 701, Chicago Illinois 60607
 - Kansas City: 2345 Grand Blvd., Ste. 500, Kansas City, Missouri 64108
- OPLA Chicago appreciates and welcomes assistance from advocates to make the review process more efficient.

Adjudication of Requests

- OPLA Chicago will aim to review all requests for prosecutorial discretion within 30 days of proper service of the request, prioritizing requests by detention status, next hearing date, and type of PD requested/basis. The speed of review may depend on the volume of requests received.
- If more than 30 days have elapsed, please contact our office team duty boxes for an update.
- For Chicago location requests, noncitizens’ representatives may use OPLA Chicago’s team e-mail boxes for follow-up inquiries on requests already properly submitted. For Kansas City location requests, noncitizens’ representatives may use Kansas City’s duty box for such follow up requests.⁶
- All OPLA Chicago PD decision will be closely monitored by the OPLA Chicago management team to ensure consistency in the implementation of the Trasviña Memo.

⁶ E-mail addresses are as follows:

For Chicago: Team A: OPLA-CHI-TeamA@ice.dhs.gov (Covering Judges McKenna, Rosche, Saltzman, and Klein); Team B: OPLA-CHI-TeamB@ice.dhs.gov (Covering Judges Defoe, Peyton, Luskin, and Crites); Team C: OPLA-CHI-TeamC@ice.dhs.gov (Covering Judges Salovaara, Naseem, Curran and DCIJ McNulty); Team D: OPLA-CHI-TeamD@ice.dhs.gov (Covering Judges Klosowsky and Cole (detained docket)).
For Kansas City: OPLA-KAN-DUTY@ice.dhs.gov

OPLA CHICAGO PROSECUTORIAL DISCRETION COVER SHEET

Respondent(s) registration number (List all A numbers for FAMU Cases): A

Respondent(s) Last Name, First Name (List all names for FAMU Cases):

Next Court Date or Date Order Issued by Immigration Judge (if applicable):

Immigration Judge (if applicable): Detained? YES NO

Date Final Order Issued by BIA (if applicable):

Has the respondent ever been arrested? YES NO

If yes, the following documents must be included with you request:

- a. Criminal History Chart, listing offenses (including all traffic offenses), relevant statute, arrest date, conviction date, and sentence imposed, and actual time served; and
- b. Certified judgments of conviction and charging document (i.e. indictment, information, complaint, etc.) for all offenses listed in the Criminal History Chart.

If no, provide letter from law enforcement certifying lack of criminal history. Err on the side of full disclosure, disclosing all arrests, detentions, and expungements. A statement like “no criminal record to my knowledge” is insufficient. If the assertions made do not match the record (i.e., omission of arrests), this could contribute to an unfavorable decision

Prosecutorial Discretion Seeking:

- Continuance*
 Dismissal
 Administrative Closure (Chicago Only)
 Stipulations
 Requests To Not File Legally Sufficient Notice to Appear
 Other _____

Requests will preferably be limited to 50 pages¹ and include this cover sheet along with the following:

- One-Page Cover letter Summarizing Request.* This should identify the noncitizen’s (1) detention status, (2) next court date and Immigration Judge (if in proceedings) and/or whether there is a need for expedited review; (3) the specific type of discretion being sought (i.e., dismissal, continuance, administrative closure, stipulation (specify what stipulation you are requesting), etc.), as well as any type of PD that is not acceptable to the noncitizen; and (4) an explanation of why the favorable exercise of discretion is appropriate (the explanation should address criminal history, including negative responses).
- Table of Contents* listing relevant supporting documents.
- Signed G-28, Notice of Entry Appearance*, and if there was prior counsel representing your client before the Immigration Court or at the Board, a motion to substitute counsel and either an EOIR-28 or an EOIR-27.
- Criminal History Chart* listing offenses (including all traffic offenses), relevant statute, arrest date, conviction date, and sentence imposed, and actual time served. Certified judgments of conviction and charging document (i.e. indictment, information, complaint, etc.), as well as available police reports, must be included.
- Supporting Documentary Evidence* of aggravating and mitigating factors as set forth in [Trasviña Memo](#) at pp. 5-6 and 9-10.

Submit this cover sheet and request packet via the OPLA eService Portal: <https://eserviceregistration.ice.gov/>. (ICE eService is available for unrepresented noncitizens. To register go to <https://eserviceregistration.ice.gov/> and choose “Pro Se Individuals”.)

Pro Se PD requests may also be sent by mail to either:

- (1) *Chicago*: 525 W. Van Buren Street, Ste. 701, Chicago IL 60607; or
- (2) *Kansas City*: 2345 Grand Blvd., Ste. 500, Kansas City, MO 64108.

¹ To assist with meeting the page limit, if your supporting documents include medical records, please provide a thorough summary from the relevant physician/provider rather than providing pages of medical records that are often difficult for attorneys to interpret. Likewise, tax information should be provided through IRS tax summaries rather than tax documents. OPLA Chicago will reach out if additional information is needed.