**PROSECUTORIAL DISCRETION ROUNDTABLE**

**The Guidance to OPLA Attorneys on the Exercise of Prosecutorial Discretion** was issued on April 3 by Principal Legal Advisor Kerry Doyle and implemented on April 25, 2022. The Memo gives guidance on the use of Prosecutorial Discretion in immigration court proceedings.

* The memo left a lot of discretion to local ICE offices to decide exactly how they want to implement it.
  + Local ICE offices decide whether a respondent is considered a priority, and if they are not, then the first approach is to move to terminate proceedings (ending their immigration court case)
* Main approach of the memo is that termination is prosecutors’ main tool, and the approach for attorneys is essentially ask for what you want and we will consider it, with respondent always bearing the burden of proof
  + Let them know you do NOT want to terminate if that is the case
  + SIJS-only kids may be good cases to request administrative closure or accept termination
* If you have asylum pending with both the court and USCIS, termination in the court shouldn’t terminate work permit with USCIS
* The memo sets out three types of priority cases, and if the case is not a priority, OPLA attorneys should move to terminate in an effort to alleviate immigration court congestion

**Three priorities of the memo**

1. Persons who are a threat to national security
2. Persons who are a threat to public safety

* Generally the criminal grounds; clients with any sort of criminal history in the US may not be eligible for PD termination if they can be considered a threat to public safety
* LOCAL OPLA APPROACH: It is essentially up to the local office to decide which crimes are considered threats to public safety, and our local office has been largely silent on this, just saying it’s discretionary and immigration attorneys should ask for what they want and they will make a decision
* IMMIGRATION ATTORNEY APPROACH: Use your own discretion, but there is often room to make a case; start by offering the basics showing your client is not a priority, then they will request supplemental evidence as they need it.
* CASE EXAMPLE: client with a criminal history (criminal charges dismissed) and the local OPLA office requested supplemental evidence such as proof of employment, proof of housing (i.e. client is not homeless), and proof she wasn’t using drugs – they decided PD was appropriate, so just put together your best arguments and make your best case!

1. Persons who are a threat to border security

* Anyone who entered unlawfully after November 1, 2020 are a priority and PD will not be exercised
* LOCAL OPLA APPROACH: said that they will abide by this, but, don’t lose anything by asking!
* IMMIGRATION ATTORNEY APPROACH: Even if your client entered unlawfully after November 1, 2020, still best practice to put together a case for why your client is not a priority

**Administrative closure** occurs where the immigration attorney requests it as an alternative to termination by Prosecutorial Discretion.

* Administrative closure allows clients to keep their work permits, where termination terminates their work permit as well
* LOCAL OPLA APPROACH: Although the Federal office has discouraged it, local OPLA continues to allow admin closure; however, wanting to keep your work permit is not a good enough reason to get admin closure so must have some other reason
  + Administrative closure just kicks the case from the court to USCIS, so it doesn’t necessarily fulfill goal of eliminating court congestion
* IMMIGRATION ATTORNEY APPROACH: Show reasons why administrative closure is preferable, such as eligibility for a T-visa or other alternative form of relief.
  + Reach out to see if OPLA would agree, and they might send a letter of non-opposition to admin closure which can help speed the process along
  + Must show something in addition to needing to keep work permits, so compile all your best arguments and send to OPLA

**General advice to clients** should be specific to your client’s case, the strength of the case, other potential avenues for relief, and your client’s own personal priorities outside their asylum case

* Be open with your client about their chances and make sure they are being open with you
* Explain their options and go with what works best for them and their case
* If you do reach out to OPLA, let us know how it goes! We are going through this learning process with you.