

This sample is based on a request for prosecutorial discretion filed by a National Immigration Project of the National Lawyers Guild member with the support of NIPNLG staff. Note that advocates could also tailor this as a request to change the priority designation based on new evidence, the filing of the I-730. This sample is not legal advice or a substitute for independent legal advice supplied by a legal representative familiar with a client's case. Nor is it a substitute for independent research, analysis, and investigation into local practices in a given jurisdiction.

DATE

Attn: Assistant Chief Counsel
Office of the Chief Counsel
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
Address
City, State, Zip Code
Email Address

Request for Exercise of Prosecutorial Discretion
Border Security Priority
Name, A# XXX-XXX-XXX

Dear Assistant Chief Counsel:

NAME respectfully requests prosecutorial discretion. NAME has a Master Calendar/Individual Hearing before Immigration Judge NAME on DATE at TIME.

Pursuant to the April 3, 2022 *Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion* Memorandum from the Principal Legal Advisor Kerry Doyle, [hereinafter, "Doyle Memo"], NAME requests that ICE OPLA join a motion to dismiss without prejudice or, in the alternative, to administratively close these proceedings.¹ NAME merits dismissal because she is not a national security or public safety enforcement priority and, although the date and manner of entry to the United States renders her a border security priority, NAME presents persuasive evidence of mitigating factors that clearly overcome this enforcement priority ground. Ultimately, dismissal will preserve limited government resources, achieve a just and fair outcome in her case, reduce government redundancies, and "advance DHS's mission of administering and enforcing the immigration laws of the United States in an efficient and sensible way that promotes public confidence."²

¹ See Memorandum from Kerry E. Doyle, Principal Legal Advisor, ICE, Office of the Principal Legal Advisor (OPLA), to All OPLA Att'ys, *Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion* (April 3, 2022), https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement_guidanceApr2022.pdf ("Doyle Memorandum"); Memorandum from Alejandro N. Mayorkas, Secretary, DHS, *Guidelines for the Enforcement of Civil Immigration Law* (Sept. 30, 2021), <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>.

² Doyle Memo at 9.

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A. Facts

NAME fled her home country of NAME OF THE COUNTRY because the COUNTRY government assaulted and threatened her for years. Since YEAR, the COUNTRY government retaliated against NAME for her husband's political organizing, forcing her to live in hiding and in constant fear for her life. The COUNTRY government also targeted her husband, but they turned their attention to her once her husband fled COUNTRY in YEAR. NAME entered the United States through the U.S.-Mexico border on DATE August 2021 and was subsequently placed in removal proceedings on DATE.

Meanwhile, on DATE, NAME's husband, NAME ("Mr. NAME")³ was granted asylum on the basis of the political persecution he endured in COUNTRY.⁴ As Mr. NAME's spouse, NAME became eligible to follow to join her husband and receive the same lawful status as an asylee pursuant to INA § 208 (b)(3) and 8 CFR § 208.21. on DATE, her spouse submitted an I-730 Refugee/Asylee Relative Petition on her behalf, and the petition is currently pending.⁵ Indeed, USCIS is making progress on the I-730 as she has recently received an appointment for biometric collection on DATE.⁶

B. Argument

The Doyle Memo adopts the three civil immigration enforcement priorities listed in the Mayorkas Memo 1) national security, 2) public safety, and 3) border security. As to the third priority, relevant to NAME, the Mayorkas Memo states that a noncitizen poses a threat to border security if the noncitizen was apprehended at the border or port of entry while trying to unlawfully enter the United States after November 1, 2020.⁷ However, a noncitizen is able to overcome this classification through "readily available, persuasive evidence of mitigating factors."⁸ The Doyle Memo lists mitigating factors and circumstances that would justify declining enforcement action.⁹ While the mitigating factors laid out in the Doyle Memo are in the section on the Public Safety priority, they apply equally here. ("[T]he non-exhaustive mitigating factors enumerated in the preceding subsection, among others, may be relevant in determining whether a noncitizen poses an actual threat to border security.")¹⁰

³ Exhibit A, Marriage Certificate with English translation.

⁴ Exhibit B, Spouse's Asylum Approval Letter dated DATE.

⁵ Exhibit C, USCIS Online Status and Copy of Form I-797C Notice of Action, Receipt Notice for I-730, Refugee/Asylee Relative Petition (SXXXX) dated DATE.

⁶ Exhibit D, Copy of Form I-797C Notice of Action, Notice of Biometrics Appointment for I-730 Refugee/Asylee Relative Petition (SXXXX) dated DATE.

⁷ Doyle Memo at 3.

⁸ Doyle Memo at 8.

⁹ Doyle Memo at 4-5.

¹⁰ Doyle Memo at 6.

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The Department should exercise discretion and join a motion to dismiss or administratively close these proceedings. Although the Doyle Memo classifies NAME as falling under the border security priority due to her post-November 1, 2020 entry into the United States, she presents persuasive evidence of mitigating factors that clearly establish that OPLA should exercise favorable discretion in this case.¹¹ The Doyle Memo presents a list of non-exhaustive mitigating factors and NAME presents the following mitigating factors.

First, NAME is a **“victim of crime”**.¹² NAME fled COUNTRY after suffering physical violence, including rape. Though DHS apprehended NAME at the border while attempting to enter the United States without a valid entry document, she does not pose an actual threat to border security. Instead, NAME sought to enter in this manner because she was fleeing political persecution to seek protection and refuge in the United States and to reunite with her husband who had already fled COUNTRY and been granted asylum in the United States.¹³ As a result of Title 42, if NAME had presented herself at a port of entry, she would almost certainly have been expelled, putting her at ongoing risk of harm in Mexico or her home country.

Second, NAME's **removal would have an “impact . . . on family in the United States, such as loss of provider or caregiver.”**¹⁴ As shown through the attached evidence, NAME's husband is an asylee who continues to suffer mentally from the physical trauma that he endured at the hands of the COUNTRY government. Through his successful asylum application, Mr. X proved that he was a victim of physical harm that amounted to persecution. Mr. X relies on NAME for emotional and daily support. As her husband heals from the mental trauma, which includes post-traumatic stress disorder and debilitating guilt at not being able to protect his family in COUNTRY, of the persecution he endured there, NAME accompanies him to counseling appointments and ensures that they implement his counselor's advice within their home and relationship. Whenever NAME sees that her spouse needs more mental health support, she encourages him to reach out to his counselor.

Third, NAME is **“eligible for humanitarian protection or other immigration relief”**.¹⁵ Through her husband's asylum grant, NAME is eligible to follow-to-join her husband and be granted the same lawful status as an asylee. NAME has had an I-730 Refugee/Asylee Relative Petition pending since DATE, and if and when approved, she will be granted asylum status.¹⁶ And then after one year of being an asylee, NAME will be able to file an Application for

¹¹ Doyle Memorandum at 3, 5-7.

¹² Doyle Memo at 4.

¹³ The Doyle Memo also notes that those who use fraudulent documents as a means of fleeing persecution alone would not be considered to have committed serious immigration benefit fraud. *See* Doyle Memorandum at 6.

¹⁴ *Id.* at 4-5.

¹⁵ *Id.* at 5.

¹⁶ *See* INA § 208 (b)(3); 8 CFR § 208.21.

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Adjustment of Status to become a lawful permanent resident.¹⁷ There is no requirement for a beneficiary of an I-730 petition already in the United States to have lawful status or even to have entered lawfully.¹⁸ Additionally, inadmissibility grounds in INA § 212(a) do not apply at the time of granting follow-to-join asylee status because asylum is not considered an admission.¹⁹ Therefore, despite NAME's recent means of entry, she is eligible for humanitarian protection.

Fourth, exercising discretion in this matter will further **family unity**. While family unity is not explicitly mentioned in the Doyle Memo mitigating factors, the Memo also makes clear that the list is non-exhaustive. NAME's husband cannot return to COUNTRY. If he returns to COUNTRY, his life and safety will be in peril. NAME also cannot return to COUNTRY for the same reasons. They have no connections to another country where they can relocate together. However, by allowing NAME to benefit from the pending I-730 rather than proceed with her own removal proceedings, ICE OPLA can ensure that this family will remain united.

Other than the date and manner of entry, which renders her a border security priority, NAME does not present any negative factors. Thus, NAME merits prosecutorial discretion.

C. Conclusion

The Doyle Memo states that "OPLA's strong preference is to efficiently removal non-priority cases from the docket altogether to best focus enforcement resources on Departmental priority cases." Having proven through "readily available, persuasive evidence of mitigating factors,"²⁰ that she is not an enforcement priority, NAME respectfully request that ICE OPLA exercise favorable prosecutorial discretion by joining a motion to dismiss without prejudice or, in the alternative, to administratively close these proceedings.

Thank you very much for your consideration. Please contact me at (XXX) XXX-XXXX or by email at EMAIL ADDRESS should you wish to discuss this request or require further information.

¹⁷ See USCIS Policy Manual, Volume 7, Part M, Chapter 3.

¹⁸ See USCIS, Form I-730 Refugee/Asylee Relative Petition Instructions, Last Reviewed/Updated: December 8, 2021 (stating that a petitioner may apply for a beneficiary "whether living inside or outside of the United States.").

¹⁹ See USCIS Policy Manual, Volume 7, Part M, Chapter 3; *Matter of V-X*, 26 I&N Dec. 147 (BIA 2013) (grant of asylum is not an admission).

²⁰ Doyle Memorandum at 8.

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