



Practice Alert: Affirmative Prosecutorial Discretion Requests May Still Be Made

AILA Doc. No. 22062752 | Dated July 13, 2022

July 13, 2022

OPLA will be updating its [page on ICE's website](#) to reflect that it is no longer applying or relying on the Mayorkas memo in any matter, including when making decisions on whether to exercise prosecutorial discretion in a case. In the interim, AILA's ICE Liaison Committee has received confirmation that ICE OPLA Field Locations may continue to accept affirmative requests for prosecutorial discretion. In reviewing such request, OPLA attorneys retain their inherent authority to exercise prosecutorial discretion on a case-by-case basis and where appropriate.

The AILA ICE Liaison Committee will continue to monitor the litigation developments and will promptly communicate any future public guidance or updates to the AILA membership. Members can submit on-the-ground reports to the committee via its [Report a Trend form](#).

June 27, 2022

District Court Stay Expires and Mayorkas Enforcement Priorities May Not Be Relied Upon

On June 10, 2022, the U.S. District Court for the Southern District of Texas [issued an order](#) vacating Secretary Mayorkas's September 30, 2021, memorandum [Guidelines for the Enforcement of Civil Immigration Law \(the Mayorkas memo\)](#). The decision was administratively stayed through June 24, 2022, to allow the Fifth Circuit the chance to rule on a motion for a stay pending appeal. The Fifth Circuit did not rule on the government's motion for a stay on June 24 and the vacatur thus took effect. As of the drafting of this alert, the government's motion for a stay remains pending. For now, ICE has confirmed that it will not apply or rely on the Mayorkas memo in any manner. The same information is currently posted on [ICE's website](#).

The AILA EOIR/ICE Joint Liaison Committee reminds members that ICE's prosecutorial discretion authority was not created by the Mayorkas memo or the [Doyle memo](#) and that ICE retains that authority in the wake of the vacatur of the Mayorkas memo. The AILA EOIR/ICE Joint Liaison Committee recommends that members affirmatively request prosecutorial discretion in appropriate cases, highlighting the facts and circumstances and explaining why prosecutorial discretion is appropriate. However, the AILA EOIR/ICE Joint Liaison Committee recommends that such requests refrain from citing or relying on the Mayorkas memo or the Doyle memo in any way as long as the vacatur is in effect.

The AILA EOIR/ICE Liaison Committee has requested further information from ICE on how it will handle prosecutorial discretion requests and will promptly communicate any updates to the

membership. Members can submit on-the-ground reports to the committee via the committee's [Report a Trend form](#).

Cite as AILA Doc. No. 22062752.

American Immigration Lawyers Association 1331 G Street NW, Suite 300 Washington, DC 20005

Copyright © 1993-2022 American Immigration Lawyers Association.

[AILA.org](#) should not be relied upon as the exclusive source for your legal research. Nothing on [AILA.org](#) constitutes legal advice, and information on AILA.org is not a substitute for independent legal advice based on a thorough review and analysis of the facts of each individual case, and independent research based on statutory and regulatory authorities, case law, policy guidance, and for procedural issues, federal government websites.