

**The Department of Homeland Security's Response to
Ranking Members Charles E. Grassley and James Lankford's July 14, 2022, Letter**

1. When do you plan to rescind the Doyle Memorandum, given that the primary stated authority for that memorandum – the Mayorkas Memorandum – has been vacated?

On June 10, 2022, the U.S. District Court for the Southern District of Texas issued a Final Judgment vacating the September 30, 2021 memorandum, *Guidelines for the Enforcement of Civil Immigration Law* (Mayorkas Memorandum), and remanded the matter to the Department of Homeland Security for further consideration. *Texas v. United States*, No. 6:21-00016 (S.D. Tex. June 10, 2022). The District Court initially entered a seven-day administrative stay of the judgment but later extended the stay to June 24, 2022.

The Government appealed the District Court's decision to the U.S. Court of Appeals for the Fifth Circuit and sought a stay of the judgment during the pendency of the appeal. The Fifth Circuit denied the stay request on July 6, 2022. The Government appealed to the U.S. Supreme Court to stay the vacatur pending its appeal. The U.S. Supreme Court declined to do so on July 21, 2022, but decided to hear the case on the merits this December. Consequently, the Mayorkas Memorandum was vacated effective 12:00 a.m. CDT on Saturday, June 25, 2022.

Therefore, U.S. Immigration and Customs Enforcement's Office of the Principal Legal Advisor (OPLA) attorneys no longer consider the civil immigration enforcement priorities outlined in Section II of the Mayorkas Memorandum or under the Doyle Memorandum in their case analyses when making prosecutorial discretion (PD) decisions, or for any other purpose. OPLA attorneys may continue to use their professional judgment, in appropriate consultation with their supervisor(s), to exercise PD on a case-by-case basis and at all stages of removal proceedings.

2. Page 1 of the Doyle Memorandum cites as authority an April 3, 2022, Memorandum from Jonathan E. Meyer, DHS General Counsel, entitled *Exercising Prosecutorial Discretion in the Enforcement of Civil Immigration Law*. However, DHS has not released this memorandum. Please provide a copy of this memorandum.

The memorandum from the DHS Office of the General Counsel (OGC) is a privileged legal memorandum that includes deliberative discussion of legal strategy within the parameters of the attorney-client relationship. Consistent with privileged communications and deliberations, DHS is unable to provide a copy of the DHS OGC memorandum.

3. Since the implementation of the Doyle Memorandum, how many requests for all forms of Prosecutorial Discretion (PD) have been made nationwide in immigration court proceedings? How many have been granted?

The data below is based on information in OPLA's case management system PLANet (Principal Legal Advisor's Network), an internal system used by OPLA attorneys nationally to capture work performed during and in preparation for litigation before the Department of Justice's Executive Office for Immigration Review (EOIR). It is not intended for use as a statistical tool. Information stored in PLANet is generally entered manually for litigation purposes and may be subject to human error. In addition, PLANet information is not verified against EOIR databases, which are the official record of proceedings for cases pending before the immigration courts and the Board of Immigration Appeals.

While the portions of the Doyle Memorandum that relied on the Secretary's civil enforcement priorities were in effect from April 25, 2022, to June 24, 2022, OPLA has a record of 26,751 requests for PD having been initiated by respondents in removal proceedings, but only in the form of dismissal or administrative closure. Of these, 24,946 were submitted in cases deemed to be non-priorities, 1,538 were submitted in cases to be priorities, and 267 were submitted in cases that were pending review by OPLA.

Of those 26,751 cases, OPLA has a record that EOIR granted a motion to dismiss or administratively close proceedings in approximately 13,760 cases. OPLA is not able to provide the number of requests for all forms of PD made by respondents nationwide in removal proceedings, because that information is not tracked in PLANet.

a. How many requests for PD have been made in cases of aliens deemed to be priorities for enforcement under your September 30, 2021, memorandum? How many have been granted?

Based on information from PLANet, as qualified in the response to Question 3, OPLA has a record of 1,538 requests for PD initiated by respondents in cases deemed priorities, but only in the form of dismissal or administrative closure. OPLA has no record of exercising PD in any of those cases.

b. How many requests for PD have been made in cases of aliens deemed to be non-priorities for enforcement under your September 30, 2021, memorandum? How many have been granted?

Based on information from PLANet, as qualified in the response to Question 3, OPLA has a record of 24,946 requests for PD initiated by respondents in cases deemed to be non-priorities, but only in the form of dismissal or administrative closure. Of those cases, OPLA has a record that EOIR granted a motion to dismiss or administratively close proceedings in 13,760 cases.

4. Since 12:01AM on June 25, 2022, how many requests for all forms of PD have been made nationwide in immigration court proceedings pursuant to the Doyle Memorandum? How many have been granted?

As discussed in response to Question 1, the Mayorkas Memorandum was vacated by order of the U.S. District Court for the Southern District of Texas, dated June 10, 2022, and effective as of June 25, 2022. Consequently, since June 25, 2022, OPLA attorneys have stopped considering the civil immigration enforcement priorities outlined in Section II of the Mayorkas Memorandum or under the Doyle Memorandum in their case analyses when making PD decisions, or for any other purpose. As of June 25, 2022, OPLA also ceased following its procedures for tracking PD action in PLAnet pursuant to the Mayorkas and Doyle Memoranda. Accordingly, OPLA does not have a record of the number of requests by respondents for all forms of PD made pursuant to the Doyle Memorandum since June 25, 2022.

a. How many requests for PD have been made in cases of aliens deemed to be priorities for enforcement under your September 30, 2021, memorandum? How many have been granted?

As noted in response to Questions 1 and 4, the Mayorkas Memorandum was vacated by order of the U.S. District Court for the Southern District of Texas, dated June 10, 2022, and effective as of June 25, 2022. Consequently, since June 25, 2022, OPLA attorneys have stopped considering the civil immigration enforcement priorities outlined in Section II of the Mayorkas Memorandum or under the Doyle Memorandum in their case analyses when making PD decisions, or for any other purpose.

As of June 25, 2022, OPLA also ceased following its procedures for tracking PD action in PLAnet pursuant to the Mayorkas and Doyle Memoranda. Accordingly, OPLA does not have a record of the number of requests by respondents deemed to be priorities for all forms of PD made pursuant to the Doyle Memorandum since June 25, 2022.

b. How many requests for PD have been made in cases of aliens deemed to be non-priorities for enforcement under your September 30, 2021, memorandum? How many have been granted?

As noted in response to Questions 1 and 4, the Mayorkas Memorandum was vacated by order of the U.S. District Court for the Southern District of Texas, dated June 10, 2022, and effective as of June 25, 2022. Consequently, since June 25, 2022, OPLA attorneys stopped considering the civil immigration enforcement priorities outlined in Section II of the Mayorkas Memorandum or under the Doyle Memorandum in their case analyses when making PD decisions, or for any other purpose.

As of June 25, 2022, OPLA also ceased following its procedures for tracking PD action in PLAnet pursuant to the Mayorkas and Doyle Memoranda. Accordingly, OPLA does not have a record of the number of requests by respondents deemed to be non-priorities for all forms of PD made pursuant to the Doyle Memorandum since June 25, 2022.

- 5. Has DHS developed any memoranda, legal opinion, or other guidance regarding the use of the Doyle Memorandum in light of Judge Tipton's vacatur of the Mayorkas Memorandum? If so, please provide a copy of the memoranda, opinion, or other guidance.**

On June 24, 2022, Principal Legal Advisor Kerry Doyle issued broadcast guidance to OPLA personnel, *OPLA's Use of Prosecutorial Discretion Following Judicial Vacatur of Secretary Mayorkas' Guidelines for the Enforcement of Civil Immigration Law*. A copy of the broadcast message is enclosed.