



What Is Prosecutorial Discretion?

Prosecutorial discretion (PD) is the government's power to decide how to apply the law to someone. In immigration situations, this can happen at various points in a person's case and in different ways. For instance, the Department of Homeland Security (DHS) might opt not to take an immigration case to court. Attorneys from Immigration and Customs Enforcement (ICE) might stop or delay a court case, agree with the immigrant's lawyer on certain facts, suggest that the immigrant's request for relief should be accepted, or choose not to appeal a court decision. They can even reopen a closed immigration case if they want to. ICE also has the power to decide who to arrest, keep in custody, or release while a final decision is made on a case.

How does the government make decisions about prosecutorial discretion?

Every case is looked at separately. The government has written rules to help the Department of Homeland Security (DHS) decide when to use PD. According to these rules, there are two types of cases: non-priority and priority. Non-priority cases aren't high on the government's list for enforcing the law and might qualify for PD. Priority cases include people who are seen as risks to national security, public safety, or border security (like those who entered the United States without permission after November 1, 2020). These cases probably won't qualify for PD.

What factors are considered when evaluating PD?

The government considers many factors in making its determination, including:

- Age, especially if an individual is young or older
- Length of time in the United States
- Whether you are a victim of a crime or a witness, cooperation with law enforcement
- Eligibility for immigration relief
- Military service
- Whether you are a lawful permanent resident
- Whether you are pregnant, postpartum, or nursing
- Have U.S. citizen children or spouse
- Serious medical conditions
- Other compelling humanitarian factors

What should I do if I believe I might be eligible for prosecutorial discretion?

If you believe you are eligible for PD, you should speak to an immigration attorney to evaluate all potential options. An attorney will likely ask you to collect documents and information to support the PD request. These documents might include the following:

- Birth certificates of all children, especially U.S. citizen children
- Affidavits from friends, relatives, co-workers, and other members of the community that discuss your good moral character
- Letters of support from religious leaders
- Letters of support from current and/or previous employers
- Evidence of volunteer work or other service to the community
- Evidence of education received in the United States

More information about prosecutorial discretion is available on the ICE website at <https://www.ice.gov/about-ice/opla/prosecutorial-discretion>.

This flyer is intended for general information purposes only and does not constitute legal advice. You should not act or rely on any information in this flyer without seeking the advice of a competent, licensed immigration attorney.

For more information on how PD might impact your case, please contact your immigration attorney or find an immigration attorney at <https://www.ailalawyer.org/>.