**Immigration law frequently changes. This sample document is not legal advice or a substitute for independent research, analysis, and investigation into local practices. This document may be jurisdiction-specific or reflect outdated practices or law. CLINIC does not vouch for the accuracy or substance of this document, and it is intended rather for illustration.**

DATE

VIA EMAIL:

Submit over email (consult this [website](https://www.ice.gov/about-ice/opla/prosecutorial-discretion) for email addresses for OPLA) or via ICE [EService](eservice.ice.gov).

**Re: Request for Exercise of Prosecutorial Discretion for JFM, A Number**

I am the attorney of record for Mr. M, a mentally disabled Salvadoran man with a history of traumatic brain injury. Mr. M currently scheduled for a master calendar hearing before the Hyattsville immigration court on October 4, 2022. I write to request that your office join a **motion to dismiss proceedings** on behalf of Mr. M.

**Facts and Procedural Background**

Mr. M entered the U.S. in June 2014. He was apprehended upon entry to the US and detained by DHS.  He was issued an expedited removal order but ultimately released to the care of his sister in Washington, DC because of his health condition.  He was placed on an order of supervision in 2014.  In 2014, through prior counsel, he expressed a fear of return to El Salvador and requested a credible fear interview. However, the Arlington asylum office was unable to conduct the credible fear interview due to Mr. M’s limited mental capacity. The asylum office chose to vacate the expedited removal order and refer the matter to section 240 removal proceedings.

Mr. M, through current undersigned counsel, filed for asylum on August 13, 2020. However, the application was not complete as he was unable to articulate or recall some of the requested biographic information in the I-589. Mr. M’s verbal abilities are extremely limited, which makes communication and case preparation difficult.

As a result of Mr. M’s limited mental capacity and inability to understand the nature of his removal proceedings, we respectfully request that your office join with our office in requesting dismissal of proceedings before the Immigration Judge.  We enclose the following documents for your consideration:

**PDF of supporting evidence, including**:

* Medical Affidavit of BO, M.D., Ph.D., specialist in neurology with sub-specialization expertise in neuro-oncology, i.e., brain tumor neurology. Dr. O conducted an evaluation of Mr. M on March 22, 2022. Dr. O’s evaluation described a history of seizures that Mr. M has suffered. He also notes that he conducted a Mini Mental Status Exam (MMSE) on Mr. M in order to estimate Mr. M’s cognitive faculties. In a total possible score of 30, **Mr. M scored an 8, which would raise significant alarms for cognitive impairment.**

As Dr. O describes in his evaluation:

**it’s clear that at 60-years of age that he is far more cognitively impaired than would be expected**. Sources of this could be related to his chronic kidney injury, to his seizure history (whether previous history of uncontrolled seizures led to permanent brain damage or whether there was an inciting event that caused both seizures and cognitive impairment), or any other history that cannot be divulged by the patient or any living relative. And although I cannot make a full medical determination given limited documentation and history, t**he reports regarding multiple hospitalizations and outpatient evaluations in the States with limited apparent improvement in his cognition suggests that this is a chronic, i.e., permanent, presentation rather than a reversible one.**

Dr. O continued:

I will indicate that given his cognition as he presented to me on our evaluation, I would be very concerned about his understanding of the asylum process, the consequences of a deportation, and would be concerned about his ongoing health and safety in an environment where people do not have the resources to care for him or provide him with regular attention at home or in medical settings, and fear this would be detrimental to his ongoing health and longevity.

* Selected medical records for Mr. M from 2014, confirming his history of seizure disorder and traumatic brain injury.
* Copy of referral notice from the Arlington asylum office to the Arlington immigration court, describing Mr. M as “incompetent to testify.”

We respectfully request that you consider the individual circumstances of Mr. M’s case and favorably exercise prosecutorial discretion. Mr. M has no criminal history and no arrests or convictions. He has a serious cognitive impairment that renders him unable to understand the nature of his proceedings. He would have no support in El Salvador and relies on his niece, A M, for his daily care and support.

For these reasons, I respectfully request that your office join a **motion to dismiss proceedings** on behalf of Mr. M. Thank you for your consideration of this request. Please feel free to contact me with any questions.

Sincerely,

Attorney/Rep Name