OOD
PM 25-09
Effective: January 29, 2025

To: All of EOIR
From: Sirce E. Owen, Acting Director
Date: January 29, 2025

SIRCE OWEN Digitally signed by SIRCE OWEN Date: 2025.01.29 16:33:37 -05'00'

CANCELLATION OF POLICY MEMORANDUM 21-25

PURPOSE:	Rescind and Cancel Policy Memorandum 21-25
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. § 1003.0(b)
CANCELLATION:	Policy Memorandum 21-25

On June 11, 2021, EOIR issued Policy Memorandum (PM) 21-25 purporting to reset EOIR policies in light of an Executive Order (EO) issued approximately five months earlier and various memoranda issued by the Department of Homeland Security (DHS). That EO has now been revoked, and DHS has canceled the memoranda which were the foundation of PM 21-25.

PM 21-25 also impermissibly injected EOIR, an adjudicatory body, into the core prosecutorial functions of DHS in violation of basic separation-of-function principles of administrative law. DHS, not EOIR, exercises prosecutorial functions in immigration proceedings in immigration courts and before the Board of Immigration Appeals (the Board); thus, it is the only agency for whom it is appropriate to determine whether a particular case warrants an exercise of prosecutorial discretion. Moreover, DHS, as a party in every case before the immigration courts and the Board, is competent to inform the EOIR adjudicator whether it intends to exercise such discretion in a particular case. If it chooses not to inform EOIR of such a decision, then EOIR has no basis to question that choice; otherwise, it appears that EOIR is attempting to force DHS to take a specific prosecutorial position, which is far beyond the appropriate function of an ostensibly impartial adjudicator.

PM 21-25 turned this arrangement—and the traditional understanding of the separation of prosecutorial and adjudicatory functions—on its head. Under PM 21-25, EOIR did not accept DHS's silence regarding prosecutorial discretion and affirmatively sought—either through direct questioning of DHS by an immigration judge or by the solicitation of unnecessary supplemental briefs by the Board—to encourage DHS to exercise its discretion. In doing so, EOIR abandoned its traditional role as an impartial adjudicator and assumed the role of both an advocate and the

prosecutor by, in essence, pressuring DHS to adopt a particular position.[1] Many adjudicators felt that PM 21-25 compromised their decisional independence, demolished the line between EOIR and DHS's distinct functions, and turned EOIR into an outcome-determinative adjunct of DHS, rather than a truly impartial adjudicatory body. In short, PM 21-25 severely eroded EOIR's integrity, impartiality, and decisional independence; thus, it was inappropriate when it was issued, and it remains so today.

In light of the revocation of the various documents on which it was based, in addition to its other flaws, there is no basis to retain PM 21-25. Accordingly, it is rescinded and canceled.

This PM is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Nothing herein should be construed as mandating a particular outcome in any specific case. Nothing in this PM limits an adjudicator's independent judgment and discretion in adjudicating cases or an adjudicator's authority under applicable law.

Please contact your supervisor if you have any questions.

[1] The position reflected by PM 21-25 was also contrary to longstanding Board precedent. *See*, *e.g.*, *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 505 (BIA 1980) ("The decision to institute deportation proceedings involves the exercise of prosecutorial discretion and is one which neither the immigration judge nor this Board review…. Once deportation proceedings are commenced, the immigration judge must order deportation if the evidence supports the charge." (internal citations omitted)).