



OOD
PM 25-16
Effective: February 3, 2025

To: All of EOIR
From: Sirce E. Owen, Acting Director
Date: February 3, 2025

CANCELLATION OF DIRECTOR'S MEMORANDUM 23-04

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| PURPOSE: | Rescind and Cancel Director's Memorandum 23-04 |
| OWNER: | Office of the Director |
| AUTHORITY: | 8 C.F.R. § 1003.0(b) |
| CANCELLATION: | Director's Memorandum 23-04 |

On September 28, 2023, the EOIR Director issued Director's Memorandum (DM) 23-04 purporting to provide guidance to EOIR adjudicators regarding policies issued by the Department of Homeland Security (DHS). It also purported to rescind and cancel Policy Memorandum (PM) 21-25, though, confusingly, PM 21-25 remained on EOIR's website until it was canceled and removed by PM 25-09. The Executive Order (EO) and DHS memoranda that were the bases for DM 23-04 have now been revoked and rescinded.

Aside from the ethically-questionable oddity of a supposedly-neutral adjudicatory system offering guidance about another agency's prosecution practices with the clear intent to pressure adjudicators into deciding cases in accord with policy preferences rather than the law, DM 23-04 suffers from the same flaws as PM 21-25. DM 23-04 impermissibly, and inexplicably, injected EOIR, an adjudicatory body, into the core prosecutorial functions of DHS in violation of basic separation-of-function principles of administrative law. *See generally* PM 25-09, *Cancellation of Policy Memorandum 21-25* (Jan. 29, 2025).

Further, DM 23-04 directed EOIR adjudicators to take certain dispositive actions to decide a case, such as strongly pressuring immigration judges to grant motions to dismiss regardless of the facts or law, even though such acts are beyond the power of an EOIR Director to order. Indeed, like other policies recently rescinded, many EOIR adjudicators felt that DM 23-04 was coercive and overrode adjudicatory independence because it inappropriately pressured adjudicators to rule in cases a certain way—not because of the law, but solely in order to achieve a particular policy outcome. Cf. 8 C.F.R. §§ 1003.1(d)(2), 1003.10(b); PM 25-05, *Cancellation of Policy Memorandum 21-26* (Jan. 27, 2025). Many also noted that DM 23-04 incorrectly suggested that adjudicators were bound by stipulations of law by the parties, which is contrary to longstanding Board of Immigration Appeals and Supreme Court precedent and, as such, is beyond the authority of a PM to change. *See, e.g., Matter of A-*, 4 I&N Dec. 378, 384 (BIA 1951); *accord Swift & Co.*

v. Hocking Valley Ry. Co., 243 U.S. 281, 289 (1917) (“If the stipulation is to be treated as an agreement concerning the legal effect of admitted facts, it is obviously inoperative; since the court cannot be controlled by agreement of counsel on a subsidiary question of law.”); PM 25-05. In short, parts of DM 23-04 were likely *ultra vires*, and other aspects of it, as applied, appeared to violate the regulatory decisional independence of adjudicators, see 8 C.F.R. §§ 1003.1(d)(2), 1003.10(b).

In sum, DM 23-04 compromised the decisional independence of EOIR adjudicators, improperly crossed the line separating EOIR and DHS’s distinct functions, and turned EOIR into a results-oriented subcomponent of DHS, rather than a truly impartial adjudicatory body. In short, DM 23-04 was antithetical to the idea of an impartial tribunal and significantly compromised EOIR’s integrity, impartiality, and decisional independence. It was a blight on EOIR’s reputation at the time it was issued and remains so today.

In light of the revocation of the various documents on which it was based, in addition to its numerous other flaws, there is no basis to retain DM 23-04. 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.