CLINIC

Navigating EOIR Directives Under Trump 2.0:

Practical Guidance for Advocates and Programs

Contents

Since returning to office, the Trump administration has issued a wave of executive orders, policy actions, memoranda, and guidance documents that significantly impact immigration law and the adjudication of cases. Specifically, the Executive Office for Immigration Review (EOIR), which houses the nation's immigration courts, and the Board of Immigration Appeals (BIA) have issued numerous policy memorandums (memos) under the leadership of EOIR's Acting Director, Sirce Owen. These are all available on EOIR's website.[1]

The purpose of EOIR memos is to guide immigration judges (IJs) and EOIR staff in adjudicating cases and to clarify the interpretation of immigration laws, regulations, and policies. The memos address issues such as case management, eligibility for relief from removal, procedural practices, and the handling of specific claims, all of which ultimately influence court decisions. Notably, many of the recently issued memos incorrectly suggest that the previous administration failed to adhere to laws, engaged in frequent misconduct, or often unfairly favored clients (respondents) in proceedings. These memos are clearly intended to make practice more difficult for advocates in immigration court and immigration courtrooms more hostile to noncitizens.[2] Furthermore, these memos also seem intended to reshape EOIR, which is meant to be a neutral arbiter, into a politically driven tool advancing the Trump administration's clearly anti-immigrant views. However, they do not change the statutes, regulations, or case law and thus are limited in their impact at this point. Amid uncertainty and an influx of information, this resource seeks to highlight the key impacts of the new memos for legal services providers (LSPs) and their clients and offers practical guidance for effective representation in immigration court.

EOIR Policy Memo 25-02: EOIR's Core Policy Values

This memo provides general guidance regarding EOIR's underlying principles for developing policies, adjudicating applications, drafting regulations, and issuing policy guidance. The memo professes that EOIR's core values are integrity, impartiality, and the decisional independence of its adjudicators. The memo also asserts, without evidence, that these values have been undermined in recent years. This memo discusses the EOIR Policy Manual, EOIR Memoranda, case adjudications, and interpretation of EOIR policies. Specific changes based on this memo include:

1. Reverting to the 2021 version of the Practice Manual.

1 If you are an AILA member, you can also reference their page on Tracking Notable Executive Branch Action during the Second Trump Administration.

2 For example, in PM 25-07, EOIR rescinds Biden-era PM 21-27, which clarified the proper terminology for use by EOIR staff and adjudicators. It outlined that rather than use the word "alien," EOIR should utilize "respondent," "applicant," "petitioner," etc. The exception to the change in terminology use was when "quoting a statute, regulation, legal opinion, court order, or settlement agreement." PM 25-07 alleges that PM 21-27 "represented a questionable policy choice on its merits," "attempted to redefine statutory terms" and "risked considerable confusion through imprecision." The result will be a dehumanization of respondents in courtrooms through the use of hostile locution.

2. Rescinding "any operational policy related to case adjudications issued in secret between February 1, 2021, and January 21, 2025." The memo specifically mentions a prohibition on standing orders as being an alleged "secret policy" of EOIR from 2021-2025.

Impact: While this document itself did not create specific changes beyond rescinding former case adjudication policies, it appears to have been the impetus for the numerous actions outlined below.

Practitioner Tips: Practitioners should:

- Monitor changes and updates to EOIR policy to keep clients informed of pertinent changes.
- Monitor the implementation of these broad themes into more concrete policy directives.

Program Management Tips: Program managers should:

- Require staff to register for email updates from EOIR.
- Assist individual practitioners in maintaining their duty of competence by helping to monitor and understand changes.
- Encourage staff to participate in professional associations that help practitioners keep updated about changes.
- Prepare and support staff, especially new Fully Accredited Representatives, for navigating a more adversarial process.

EOIR Policy Memo 25-04: Cancellation of Policy Memorandum 21-16, Case Processing and the Board of Immigration Appeals (3/17/21)

While this memo does not establish any new procedures or requirements related to BIA case management, it does signal troublesome quota-like measures for Board members to quickly dispose of BIA cases.

This memo rescinds the Biden-era PM 21-16, Case Processing and the Board of Immigration Appeals, which was itself a rescission of the previous Trump administration's PM 20-01, Case Processing at the Board of Immigration Appeals. PM 20-01 issued guidance outlining EOIR's expectations regarding the "timely processing of appeals." In so doing, it directed the BIA to establish a new case management system with specific deadlines for processing appeals. The end goal of this is to advance prompt adjudication and seemingly prioritize speed over discernment.

PM 20-01 was enjoined by the United States District Court for the Northern District of California on March 10, 2021. As a result, PM 21-16 was issued and directed the BIA to return to the prior case management system established by regulation in September 2002. PM 25-04 does not reinstate the enjoined PM 20-01 but instead states that additional guidance regarding a Board case management system and leadership may be forthcoming. Troublingly, footnote 9 of PM 25-04, citing to PM 20-01,

emphasizes that "EOIR has no policy restricting or prohibiting the use of summary dismissals of appeals, nor does it have a policy restricting or prohibiting the use of affirmances without opinion."

Impact: Given that more guidance is forthcoming, there are currently no practical changes to the BIA case management system for legal representatives.

Practitioner Tips: Practitioners should monitor and anticipate future changes to BIA leadership and the BIA case management system.

Program Management Tips: Given that this administration is signaling expeditious and potentially cursory appeal review at the Board level, program managers should:

- Ensure retainers contain language that an appeal is not part of the current agreement and would require an additional retainer. It is always best practice for retainers to include this language.
- Consider case selection criteria and capacity for appeals in general.
- Establish partnerships or referral streams for appeal work at the BIA and federal courts of appeals.

EOIR Policy Memo 25-05: Cancellation of Policy Memorandum 21-26, Migrant Protection Protocols and Motions to Reopen (6/24/21)

This memo will limit immigration judges' ability to reopen *in absentia* removal orders where noncitizens experienced difficulties or were unable to attend a hearing due to operational circumstances created by the disastrous Migrant Protection Protocols (MPP). It rescinds and cancels the Biden-era PM 21-26, Migrant Protection Protocols and Motions to Reopen, dated June 24, 2021. PM 21-26 issued guidance regarding adjudicating motions to reopen for cases that had been subject to the MPP. That memo cited the regulations and case law to remind adjudicators that they are authorized to reopen cases in various circumstances and that they may also do so *sua sponte*. It further reminded adjudicators that jointly filed motions to reopen "should generally be honored" and granted.

PM 25-05 relays that MPP resumed on Jan. 21, 2015, pursuant to Section 6 of President Trump's Securing Our Borders executive order. PM 25-05 also describes ways in which it alleges that PM 21-26 was "problematic," incorrectly concluding that it "inappropriately pressured [adjudicators] to rule in cases a certain way"; "suggested that adjudicators were bound by stipulations of law by the parties"; and "may have been *ultra vires*." PM 25-05 states that the MPP views outlined in PM 21-26 "no longer correctly reflect the position of the Executive Branch, including DHS and the Department of Justice" and is, therefore, rescinded.

Impact: EOIR adjudicators may be less generous in granting motions to reopen based on MPP, although nothing in this memo changes the case law, regulations, or statute regarding motions to

reopen. Pending and future motions to reopen in MPP-related cases will be subject to the same guidelines and considerations, including number and time limits, as other motions to reopen.

Program Management Tips: Program managers should:

- Ensure staff keep up with these changes to remain competent, including through encouraging or requiring participation in relevant training opportunities.
- Be aware of this from a case selection criteria standpoint, though, ultimately, this memo should not affect organizations' ability to continue taking on cases involving motions to reopen.
- Prepare resources providing practical advice to clients regarding government enforcement efforts and detailing steps they should take to prevent detention, when possible, and to secure release if detained. These resources could include crucial Know Your Rights (KYR) information as well as tips for family preparedness in the case of detention and/or removal. CLINIC has developed important Know Your Rights resources. CLINIC has also provided sample letters practitioners can share with clients regarding enforcement.
- Share motion to reopen resources with staff they can rely on to develop viable arguments and draft their own motions. CLINIC has a robust Removal Toolkit with numerous sample Motions to Reopen (available to Affiliates only).

EOIR Policy Memo 25-06: Cancellation of Operating Policies and Procedures Memorandum 23-01, Enforcement Actions in or Near OCIJ Space (12/11/23)

This memo allows for ICE enforcement action to take place anywhere within courthouses or adjacent spaces, consistent with DHS Interim Guidance Civil Immigration Enforcement Actions in or near Courthouses. It rescinds and cancels OPPM 23-01: Enforcement Actions in or Near OCIJ Space, which had issued in accordance with an April 27, 2021, DHS memo, Civil Immigration Enforcement Actions in or Near Courthouses. That DHS memo has also been rescinded, thereby removing the basis for OPPM 23-01. OPPM 23-01 prohibited civil immigration enforcement actions by DHS in or near OCIJ-operated EOIR space, such as immigration courthouses.

PM 25-06 lays out several examples taken from OPPM 23-01 to demonstrate the ways that, in the Acting Director's view, the memo was "unpersuasive" and "inconsistent with current Executive Branch policy, pretextual, or unsubstantiated on any systematic basis." PM 25-06 also asserts that EOIR does not have the authority to prohibit DHS from taking lawful enforcement action and so concludes OPPM 23-01 was "likely" *ultra vires*.

Impact: This will likely result in higher client anxieties and, in some cases, clients who fear attending their immigration, criminal, or civil hearings altogether. Clients who are subject to mandatory detention under the immigration laws are the most at risk of ICE enforcement actions at courthouses. Noncitizens should be encouraged to find counsel as early as possible in the immigration process and to file relevant applications for relief as soon as possible. Please see CLINIC's "Know Your Rights" materials, available to the public.

Practitioner Tips: Practitioners should:

- Advise clients, who are both in removal proceedings as well as those who are not, that enforcement action could be taken against them if they are in or near courthouses.
    - CLINIC has prepared a Know-Your-Rights resource on courtroom enforcement actions. CLINIC has also developed other important Know Your Rights resources.
- Encourage clients in removal proceedings but who are unrepresented to find counsel and file relevant applications for relief as early as possible in the immigration process.
- Prepare and submit a Motion to Present Video Testimony when key witnesses are undocumented.

Program Management Tips: Program managers should:

- Consider engaging in community outreach to educate the community on the consequences of failures to appear for scheduled court hearings.
- Implement informed consent policies and standard documents.

EOIR Policy Memo 25-08: Cancellation of Director's Memorandum 22-01, Encouraging and Facilitating Pro Bono Legal Services (11/5/21) and Reinstatement of Policy Memorandum 21-08, Pro Bono Legal Services Legal Services

This memo takes away expanded guidance that required immigration judges to encourage and facilitate *pro bono* legal services. It rescinds and cancels the Biden-era DM 22-01, Encouraging and Facilitating Pro Bono Legal Services, which had replaced PM 21-08, Pro Bono Legal Services (Dec. 10, 2020). The now rescinded DM 22-01, issued under the Biden administration, had vastly expanded guidance on the facilitation of *pro bono* legal services. The memo, among other things, directed adjudicators to "encourage and facilitate" discussion between DHS and respondents' representatives, encouraged immigration judges to play active roles in *pro bono* training programs, laid out detailed guidance for courtroom practices, and encouraged immigration judges to facilitate *pro bono* representation for vulnerable child respondents.

PM 21-08, which has now been reinstated by PM 25-08, does not include much of this guidance. No reason is given by PM 25-08 for rescinding DM-22-01 (which better advanced the purported goals of PM 21-08) other than the assertion that no reason was given in DM 22-01 for cancellation of PM 21-08, despite the acknowledgement that "much of PM 21-08 was retained in DM 22-01."

PM 21-08 purports to encourage *pro bono* representation, including before the immigration courts and the BIA through the maintenance of the agency's list of *pro bono* legal services providers and requiring that immigration judges: (1) ensure that each respondent is advised of the availability of *pro bono* representation and provided the list; (2) call *pro bono* cases first at master calendar hearings; (3) identify *pro bono* representation on the record; and (4) be flexible in allowing *pro bono* representatives to appear telephonically or through video. The memo provides adjudicators with a strict and arguably unnecessary reminder of EOIR's concern that adjudicators maintain their duty to legal, ethical, and professional responsibilities even when presiding over *pro bono* cases.

Impact: We currently foresee no difference in practice for legal representatives due to this memo.

Program Management Tips: Program managers should:

- Review their local immigration court's *pro bono* list periodically to make sure it is up to date and be familiar with the court's procedures for adding an organization to the list and remaining on the list.
- Attempt to maintain relationships developed with immigration judges and EOIR staff through *pro bono* partnerships and initiatives.
    - *Pro bono* representation is beneficial to the court as well as to noncitizens.

EOIR Policy Memo 25-09: Cancellation of Policy Memorandum 21-25, Effect of Department of Homeland Security Enforcement Priorities (6/11/21)

Although this memo is superfluous, it contains language that gives some helpful insight into how this administration intends to guide EOIR adjudicators and DHS staff regarding enforcement priorities and the strict roles of each party in a courtroom. This memo erroneously rescinds the Biden-era PM 21-25, Effect of Department of Homeland Security Enforcement Priorities (currently unavailable), which had already been rescinded by *Director's Memorandum 23-04, Department of Homeland Security Enforcement Priorities and Prosecutorial Discretion Initiatives*.

PM 25-09 details the ways in which the current Trump administration found the Biden administration's Policy Memorandum 21-25 deficient. It erroneously states that it "impermissibly injected EOIR, an adjudicatory body, into the core prosecutorial functions of DHS in violation of basic separation-of-function principles of administrative law." This memo accuses PM 21-25, without cause, of taking away the EOIR adjudicator's impartiality while forcing them to take on both an advocate and prosecutor role.

Impact: This memo has no direct impact on a legal representative's practice as it did not make any substantive changes to current policy.

Program Management Tips: Since this memo is superfluous, it does not create program management implications. But please see the summary of the related Policy Memorandum 25-15, discussed below.

EOIR Policy Memo 25-10: Cancellation of Director's Memorandum 24-01, Children's Cases in Immigration Court (12/21/23) and Reinstatement of Operating Policies and Procedures Memorandum 17-03: Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children (12/20/17)

This memo takes away Biden-era protections provided to children's cases and reminds judges that all legal requirements are applicable to such cases. It rescinds and cancels DM 24-01, Children's Cases in Immigration Court and reinstates OPPM 17-03, Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Children. DM 24-01 reasoned that IJs should bear in mind the special nature of children's cases when adjudicating such cases. Among other things, it proposed child-friendly courtroom procedures and acknowledged the particular vulnerability of children respondents in a court setting while recommending IJs facilitate legal representation for such cases.

The now-revived OPPM 17-03 contends that while children's immigration cases are challenging, legal requirements applicable to all immigration cases should not necessarily be diminished solely because a

respondent is a juvenile. For a full comparison of these memoranda, see this detailed chart developed by the Children's Immigration Law Academy.

PM 25-10 asserts that no reason was given by the prior administration for rescission of OPPM 17-03 and that portions of OPPM 17-03 were incorporated into DM 24-01 with no explanation. PM 25-10 states that due to the lack of clarity for this change, "retaining DM 24-01 would not be appropriate." PM 25-10 also renames former OPPM 17-03 to PM 17-03 for consistency.

Impact: Immigration courts will likely give less consideration to juvenile respondents. For example, less time may be given to juvenile respondents to find legal counsel or to seek relief outside of court.

Practitioner Tips: Practitioners should advise clients who are juvenile respondents that they may face more hostile courtrooms and adjudicators and prepare them accordingly.

Program Management Tips: Program managers should:

- Instruct all staff to pull a report of their open cases and use the list of open clients and cases to identify which clients should be met with and advised as described above;
- Set a deadline for the above processes and check in on progress of this process along the way;
- Consider whether it may be necessary to shift and balance staff caseloads.

EOIR Policy Memo 25-11: Laken Riley Act

The memo provides guidance to IJs and the BIA in applying the Laken Riley Act (LRA) in custody-related determinations. The LRA expands the categories of noncitizens subject to mandatory detention under INA § 236(c) by adding an additional category at INA § 236(c)(1)(E). This category includes any noncitizen who:

1. Is inadmissible under paragraph (6)(A) [entry without inspection], (6)(C) [fraud/misrepresentation], or (7) [documentation requirements] of section 212(a); **and**

2. Is charged with, arrested for, convicted of, [or who] admits having committed, or [who] admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person.

The LRA and PM 25-11 also specify that the crimes of "burglary," "theft," "larceny," "shoplifting," "assault of a law enforcement officer," and "serious bodily injury" are defined by the jurisdiction where the "acts" occurred.

Impact: IJs do not have jurisdiction to review bond decisions where an individual is in removal proceedings and subject to mandatory detention, but they can determine whether a noncitizen is properly included in a mandatory detention category. Therefore, legal representatives should screen

all their cases for clients who may be subject to mandatory detention under the LRA and advise them of this risk. Representatives should prepare these clients for possible detention.

Practitioner Tips: Practitioners should:

- Advise clients who may be targeted for enforcement and subject to detention under the LRA to:
    - Memorize their legal representative's phone number to reach out to counsel if detained.
    - Not provide any information to anyone other than their legal representative about their immigration status, place of birth, how they entered the United States, or their criminal background.
    - Remember they have a right to refuse to sign anything before speaking with their legal representative.
        - For more information about how to advise and prepare your clients for detention, see Know Your Rights: A Guide to Your Rights When Interacting with Law Enforcement | Catholic Legal Immigration Network, Inc. (CLINIC).
- Assist clients in completing planning that accounts for their children and assets in the event they are detained and/or removed.
    - For more information on family preparedness plans, see: Step-by-Step Family Preparedness Plan | Immigrant Legal Resource Center | ILRC.
    - CLINIC's Know Your Rights Guide includes a section on an individual's rights while in immigration detention and is available in 10 different languages here: Know Your Rights: A Guide to Your Rights When Interacting with Law Enforcement | Catholic Legal Immigration Network, Inc. (CLINIC).
- For clients detained pursuant to the LRA, request a *Matter of Joseph* hearing and make arguments that the client is not properly included in the LRA.

For a detailed discussion of the statutory and constitutional arguments against the broad application of the LRA, see the National Immigration Project's practice advisory on the Laken Riley Act.

Program Management Tips: Program managers should:

- Adequately prepare staff for effective and robust screening, as well as for analysis of relevant crimes that could subject clients to mandatory detention during removal proceedings.
- Ensure continued competence of staff on the relevant law by promoting or requiring training focused on this topic.
- Consider developing a procedure through which staff are required to advise clients as to the importance of conferring with a criminal defense attorney.
- Encourage collaboration between staff and clients' criminal defense counsel.

EOIR Policy Memo 25-12: Cancellation of Policy Memorandum 21-24, Regarding Fees (6/7/21) and Reinstatement of Policy Memorandum 21-10, Fees (12/18/20)

This memo attempts to reinstate a previously enjoined Trump-era PM regarding EOIR-related fees. It rescinds PM 21-24, Regarding Fees and reinstates the Trump-era PM 21-10, Fees. PM 21-10 directed that EOIR fees would be reviewed biennially and were payable through the EOIR Payment Portal. It reinstated prior policy that IJ's fee waiver decisions should be made in writing and was issued in conjunction with massive fee increases by the Trump administration in December 2020,[3] which resulted in a lawsuit. In that case, the court ordered a partial injunction, which is still in place.

The Biden-era PM 21-24 rescinded PM 21-10 to remain consistent with the above court ruling. PM 21-24 encouraged BIA fees to be paid online and recommended that IJs and the BIA make written rulings on fee waiver requests. The current PM 25-12 questions the authority upon which issuance of PM 21-24 was based, alleging without providing evidence that the validity of the then-Acting Director and his decisions have been "called into question for other reasons." PM 25-12 acknowledges that the above partial injunction remains in effect but notes that the underlying case is on appeal.

Impact: As the partial injunction is still in effect, this policy memo will not have an effect on EOIR fees in the absence of rulemaking. In the future, EOIR may once again change its fees under this administration if it follows the notice and comment process for rulemaking.

Practitioner Tips: Practitioners should:

- Keep track of the current and correct fees.
- Expect a written decision from the IJ and BIA in relation to fee waiver requests.

Program Management Tips: Program managers should ensure their staff are aware of the possibility of a potential change in fees in the future and monitor those changes in relation to clients who will have to file an application before EOIR.

EOIR Policy Memo 25-14: Cancellation of Director's Memorandum 23-03, The Role of Child Advocates in Immigration Court (7/5/23) and Reinstatement of Policy Memorandum 20-03, Child Advocates in Immigration Proceedings (11/15/19)

This memo imposes restrictions regarding the role of child advocates in children's immigration proceedings. It rescinds DM 23-03, The Role of Child Advocates in Immigration Court, which, among other things, directed IJs to accept certain filings as evidence, specifically best interest determinations

[3] A Notice of Appeal from an IJ decision (Form EOIR-26) increased, for example, from $110 to $975.

by child advocates,[4] and allowed child advocates to testify. By reinstating PM 20-03, the new directive significantly restricts the role of child advocates in immigration proceedings and reaffirms that immigration judges are not required to accept their filings or testimony and that child advocates cannot act as legal representatives. PM 25-14 justifies this change by falsely claiming — without citing any supporting evidence — that the prior administration failed to provide a reason for rescinding PM 20-03 and that PM 23-03 may have exceeded the EOIR director's authority.

Impact: Limiting the involvement of child advocates undermines the consideration of children's best interests and may adversely affect the fairness and outcomes of their cases. Child advocates play a crucial role in providing context and support for unaccompanied minors navigating the complex immigration system, and restricting their input could lead to less informed judicial decisions.

Practitioner Tips: Practitioners should:

- Adapt their strategies to continue advocating effectively for unaccompanied children.
- Despite limitations on child advocate participation, persist in making best interest arguments, citing relevant legal protections under asylum law, special immigrant juvenile (SIJ) status, and international human rights principles.
- Document any exclusions of best interest determinations and child advocate testimony to build a record for an appeal, arguing that these limitations negatively impact due process and fair adjudication.
- Where direct child advocate testimony is restricted, consider incorporating expert declarations, psychological evaluations, and country condition reports to support their cases.
- Consider how the removal of a child advocate impacts workload, including at the case assessment stage when practitioners are considering taking on new clients and/or cases.

Program Management Tips: Program managers should:

- Ensure continued competence of their staff on the relevant law by promoting or requiring training focused on alternative methods for presenting best interest considerations, such as expert testimony and psychological evaluations.
- Discuss the importance of clear client communication to ensure unaccompanied children and their guardians understand these changes.
- Consider whether the removal of a child advocate may create a need to shift and balance staff caseloads.

[4] Section 235(c)(6) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), codified in 8 U.S.C. § 1232, authorizes the Secretary of Health and Human Services (HHS Secretary) to appoint "independent child advocates for child trafficking victims and other vulnerable unaccompanied alien children" (UAC).

EOIR Policy Memo 25-15: Office of Legal Access Programs

This memo moves the Office of Legal Access Programs (OLAP) from the Office of the Director under the Office of Policy. It purports to clarify "multiple questions about the status and function" of OLAP. OLAP is a sub-office of EOIR that manages EOIR's legal orientation programs and facilitates *pro bono* representation in immigration court.

OLAP was moved out of the Office of the Director under the previous Trump administration and placed under the then-newly created Office of Policy. The Biden administration subsequently moved OLAP back to under the Office of the Director. The memo refers to that move as invalid and questions the validity of any action taken by OLAP while it was under the Office of Director.

This memo refers to a 2018 study completed under Trump's first administration and that irresponsibly and erroneously concluded that the legal orientation program (LOP) run under OLAP was "wasteful" as it cost the government more overall and extended both the lifespan of cases and detention of respondents. Based on this and a subsequent 2021 study, which the memo incorrectly asserts confirmed the 2018 study's results, PM 25-15 vaguely concludes that "EOIR, including OLAP, will do better."

It is important to note that the statements in this policy memo are unsupported by the evidence. A complaint filed in federal district court by the organization Amica Center challenged the temporary halt in funding for LOP, with evidence showing LOP's demonstrated effectiveness over multiple studies.

Specifically, the complaint also noted that the 2018 EOIR study referred to in PM 25-15 had been designed to attain deceptive results, as revealed by the Vera Institute's study also conducted in 2018. EOIR's study manipulated case statistics by failing to also account for pending cases and did not take into account factors that might also have an effect on case completion other than the LOP itself. The EOIR study also did not address why it had reached different results than other studies completed before it, which had yielded positive results as to LOP's effect on case management. Significantly, the EOIR study did not conclude that LOP was "wasteful." Other previous and subsequent studies and reports on LOP's impact on adjudication of cases yielded positive results about LOP's effect on case management.[5]

By mispresenting the effectiveness of LOP programs, EOIR's intent to limit access to justice programs for noncitizens in removal proceedings is abundantly clear.

---

[5] Department of Justice, Executive Officer for Immigration Review (DOJ EOIR), *The EOIR Legal Orientation Program Cost Savings Analysis*, (Washington, DC, 2012), https://www.tahirih.org/wp-content/uploads/2018/09/Vera-LOP-Cost-Savings-Analysis_2012_2014-7-pgs_FINAL.pdf.
S. Rep. No. 116-127, at 86 (2019), https://www.congress.gov/congressional-report/116th-congress/senate-report/127.

Client/LSP Impact: As this memo does not lay out any concrete steps that EOIR intends to take with regard to OLAP, it is unclear at this time what impact PM 25-15 may have on legal representatives and clients in practice. Legal representatives should monitor what changes may take place as a result of the memo to LOP and other programs under OLAP.

Program Management Tips: Program managers should be aware that funding for access to justice initiatives is particularly vulnerable at this time. Refer to CLINIC's funding resource document for alternate strategies.

EOIR Policy Memo 25-16: Cancellation of Director's Memorandum 23-04, Department of Homeland Security Enforcement Priorities and Prosecutorial Discretion Initiatives

This memo returns to stricter enforcement priorities for DHS. It rescinds and cancels DM 23-04, Department of Homeland Security Enforcement Priorities and Prosecutorial Discretion Initiatives, which itself rescinded PM 21-25, Effect of Department of Homeland Security Enforcement Priorities, and provided guidance to EOIR adjudicators on DHS enforcement priorities and prosecutorial discretion initiatives. PM 25-16 states incorrectly and without evidence that 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."

Impact: Respondents will be less likely to benefit from exercises of positive prosecutorial discretion. However, while the limitations on prosecutorial discretion are of course concerning, it is important to note that clients in removal proceedings are not without options. During the Biden administration, the Department of Justice (DOJ) issued federal regulations that became effective July 29, 2024, that codified the ability of IJs and Board members to administratively close and terminate removal proceedings when specific circumstances are met. See this CLINIC FAQ, which provides a detailed outline of the regulations, and the removal toolkit for sample motions that can be filed under the new regulations (available only to CLINIC Affiliates). Thus, even in the absence of prosecutorial discretion, options remain for clients to terminate or administratively close proceedings without the consent of DHS.

Practitioner Tips: Practitioners should:

- Expect to be met with resistance by EOIR adjudicators and OPLA when requesting prosecutorial discretion.
- Be familiar with and prepared to cite the pertinent regulations to argue grounds exist for administrative closure or termination even without the consent of DHS.
    - See Frequently Asked Questions New DOJ Regulations on Efficient Case and Docket Management in Immigration Proceedings for a detailed discussion of motions for termination and administrative closure under the 2024 regulations.
    - CLINIC also provides sample Motions to Terminate based on these regulations in its Removal Toolkit (Available to Affiliates only).

Program Management Tips: Program managers should:

- Monitor current law and policy for changes to the regulations.
- Ensure staff understand the pertinent regulations and prepare to argue for administrative closure or termination before EOIR adjudicators when appropriate.
- Instruct staff to assess existing cases that may be ripe for termination or administrative closure under the regulations and determine whether filing motions in their cases is the right and best next step for each specific client.
    - See CLINIC's removal toolkit for sample motions for termination and administrative closure (available to Affiliates only).

EOIR Policy Memo 25-17: Cancellation of Director's Memorandum 22-05 and Reinstatement of Policy Memoranda 19-05, 21-06, and 21-13

This memo reinstates Trump-era requirements regarding expedited processing of asylum applications. It rescinds and cancels DM 22-05, Cancellation of Policy Memoranda 19-05, 21-06, and 21-13. It also reinstates PM 19-05, Guidance Regarding the Adjudication of Asylum Applications Consistent with INA § 208(d)(5)(A)(iii); PM 21-06, Asylum Processing; and PM 21-13, Continuances. PM 25-17 also asserts that no reason was given by the prior administration for rescission of these memoranda and states that it is for this lack of clarity that DM 22-05 is being rescinded.

PM 19-05 introduced a new policy directing immigration judges to adjudicate asylum applications within 180 days "to the maximum extent practicable." The policy now in effect asserts that asylum applications should be adjudicated within 180 days and explains that, if granting a continuance would extend the timeline beyond 180 days, the applicant must demonstrate exceptional circumstances, a higher standard than the "good cause" generally required for continuances. The memo also discussed calculation of the asylum EAD clock, proper adjournments codes, and which party should be found at fault for adjudication delays.

PM 21-06 lays out several stringent asylum-related directives, including the following:

(1) Instructing immigration courts not to accept an affirmative asylum application referred by USCIS unless it contains all necessary supporting documents;
(2) Reasserting that defensive asylum applications need no longer be filed in person during a hearing and emphasizing new rules with respect to filing incomplete applications;
(3) Reiterating that asylum claims must be adjudicated within 180 days;
(4) Instructing immigration judges to stop the asylum clock only when there are exceptional circumstances;
(5) Directing immigration judges to clearly name the exceptional circumstances which warrant continuing an asylum case and that "intentional or repeated negligent use of an incorrect code" can result in "corrective action" for the judge;
(6) Asserting that immigration judges are not required to postpone cases in which respondents, whether or not with good cause, did not provide biometrics or biographical information;

(7) Stating the rules USCIS should follow regarding proper filing of the NTA; and
(8) Stating, among other things, that the asylum clock stops running after an immigration judge adjudicates an application and does not continue running while the case is being appealed by either party at the BIA.

PM 21-13 outlines restrictions on continuances in immigration court and prompts immigration judges to cautiously consider respondents' strong motivation "to abuse continuances" and use them as a dilatory tactic. The memo provides a "non-exhaustive list of relevant legal and policy principles as an aid to adjudicators" for deciding continuance requests.

Client/LSP Impact: Immigration judges are likely to be under pressure to grant fewer continuances to noncitizens in removal proceedings and to complete asylum proceedings as soon as possible. Note that the aspirational goal of completion of an asylum case within 180 days is likely to run into the reality of the court's docket, which often makes such scheduling impossible.

Practitioner Tips: Practitioners should:

- Be prepared that immigration judges will be under pressure to complete cases on an expedited timeline.
- Continue to advocate for fair scheduling, when necessary, despite pushes from judges for rapid adjudication, including through requesting continuances when warranted under the "good cause shown" standard provided in the regulations, as the legal standard for being granted a continuance has not changed under this new administration.
- Remind judges of EOIR PM 25-08 on pro bono representation, which still encourages IJs to facilitate pro bono representation "by all of its adjudicatory components."
- Document challenges caused by limited preparation time.
- Observe court hearings in person or virtually, where permitted. Chapter 4.9 of the Immigration Court Practice Manual provides the circumstances under which immigration court hearings are closed to the public. Each immigration court posts the day's docket information publicly each morning. There is no need to check in with court staff before you enter a courtroom to observe, although the presiding judge may ask you to identify yourself at the start of the hearing. If you are interested in observing a hearing via Webex, you may contact the relevant immigration court at the "General Inquiries" email address listed in the "Contact the Court" section of each immigration court webpage.

Program Management Tips: Program managers should:

- Assess how many asylum cases staff can reasonably accept while maintaining quality representation.
- Implement clear case selection criteria to help ensure a manageable workload.
- Provide ongoing support, including training, mentorship, and mental health resources, to help staff navigate the challenges of expedited adjudication while maintaining high-quality advocacy for asylum seekers.

EOIR Policy Memo 25-18: Cancellation of Director's Memorandum 22-06 and Reinstatement of Policy Memorandum 20-05

This memo generally prohibits "Friend of the Court" appearances and restricts advocacy on behalf of a respondent to a practitioner with an EOIR-28 on file. It rescinds and cancels the Biden-era DM 22-06, Friend of the Court, which cancelled PM 20-05, Legal Advocacy by Non-Representatives in Immigration Court. DM 22-06 encouraged the use of "Friend of the Court" [6] and provided details on how a friend of court could assist in courtrooms. DM 22-06 also allowed friends of the court to inform the immigration judge about any competency concerns they had about respondents.

PM 25-18 reinstates the Trump-era PM 20-05, which announces EOIR's policy that no one apart from the respondent's legal representative with an EOIR-28 Notice of Entry of Appearance can advocate for them in immigration court, including *amici curiae* (friend of the court). A friend of court may still assist in unaccompanied children (UC) cases, but their role is limited by the memo to that of an aid to the court and not an advocate to the UC. The memo lists duties with which an *amicus curiae* can assist the UC that include helping fill out forms, providing transportation to court, explaining court procedures, providing factual information about the respondent to the court (e.g. whether the UC has been reunified with their parents or speaks a particular language), and sitting with the respondent in court. It reasons that these duties can generally be performed by anyone of the respondent's choosing. The memo also directs IJs to consider DHS's position on the respondent's request for *amicus curiae* before deciding whether to grant the request in their discretion.

Impact: This memo may impact pro se litigants who hope to have a non-legal representative accompany them to their court hearing and shutter friend of the court programs at all immigration courts.

Practitioner Tips: Those who have served in the friend of the court role should:

- Be well-informed on the scope of friend of the court duties permitted in UC cases under this memo (and referenced above).
- Be prepared to argue that their proposed assistance is permitted under this scope.

Program Management Tips: Program managers of organizations which provide friend of the court as a service should:

- Monitor changes made in practice by the court to that role in the local practice area to keep staff up to date on what to expect in court from the IJ and DHS.
- Communicate early to funders that this may serve as a potential hurdle to the program accomplishing deliverables timely.
- Explore limited scope representation models where appropriate.

[6] Friend of the court has been commonly utilized in the last several years in immigration removal proceedings involving unaccompanied children.

EOIR Policy Memo 25-19, EOIR's Anti-Fraud Program

This memo purports to re-establish EOIR's Anti-Fraud program, which the memo asserts without evidence was effectively decommissioned in 2021. The memo asserts that the program was re-invigorated in 2017 and that it "was intended to combat 'possible fraud upon EOIR, particularly with respect to matters relating to *fraudulent applications* or documents affecting multiple removal proceedings, applications for relief from removal, appeals, or other proceedings before EOIR.'" The memo commits to re-establishing a robust and effective Anti-Fraud program in which employees will be trained to identify fraud in asylum applications and informed on how to report such fraud to the appropriate authorities.

Impact: Issuance of this memo should not have an effect on legal representatives in practice. However, such a program can be misused to target specific populations of asylum seekers to achieve certain policy goals to which this administration seems committed.

Practitioner Tips: Practitioners should continue to ensure accuracy and consistency in asylum application preparation.

Program Management Tips: Program managers should:

- Caution staff that their work may be under additional scrutiny by EOIR and should maintain best ethics practices to ensure accuracy and consistency in asylum application preparation.
- Ensure malpractice coverage is in place.

EOIR Policy Memo 25-20: Cancellation of Director's Memorandum 23-02, Language Access in Immigration Court

This memo takes away Biden-era protections regarding language access. It rescinds and cancels DM 23-02, Language Access in Immigration Court, which provided EOIR adjudicators with detailed guidelines for ensuring noncitizens in removal proceedings receive sufficient language interpretations services in immigration court. In rescinding DM 23-02, PM 25-20 inaccurately asserts that the former memo presumed "that most Immigration Judges or interpreters are incapable of handling routine language access issues." PM 25-20 also reiterates that immigrations judges have no authorization to engage in out-of-court fact-finding, alleging that such activity was encouraged and validated by DM 23-02, a claim to which there is no basis. PM 25-20 states also that EOIR will continue to adhere to the Department of Justice's Language Access Plan.

Client/LSP Impact: Noncitizens remain entitled to interpretation services provided by the immigration court at no cost to them. Failure to provide adequate interpretation services to respondents is a due process violation.

Practitioner Tips: If a client has unique language needs, it is best to raise this issue as early as possible in the process, including at a master calendar hearing, in written pleadings, or via written

motion. During hearings, practitioners should clearly announce on the record when their client does not understand an interpreter or, when necessary, request a different interpreter also on the record. When an interpreter is not present in the courtroom, practitioners should clearly state on the record if the client does not understand the ongoing proceedings due to the court's failure to provide an interpreter. Even if the practitioner speaks the client's best language and is able to interpret for them, the practitioner should still state on the record that the client has a right to an interpreter and that one is not being provided. The National Immigrant Justice Center provides a sample Motion for Interpreter practitioners may reference in preparing their own.

Program Management Tips: Program managers should:

- Instruct all staff to pull a report of their open cases and use the list of open cases to identify which clients should be advocated for as described above.

EOIR Policy Memo 25-21: Cancellation of Director's Memorandum 22-04, Filing Deadlines in Non-Detained Cases

This memo reverts from the 15-day to the 30-day pre-hearing filing deadline. It rescinds and cancels DM 22-04, Filing Deadlines in Non-Detained Cases, which amended both PM 21-18, Revised Case Flow Processing before the Immigration Courts and the Immigration Court Practice Manual. PM 21-18 provided a new case flow model, which, among other things, set a 30-day filing deadline before the individual calendar hearing in non-detained cases. Notably, PM 21-18 also allowed immigration judges to forgo holding master calendar hearings in many cases. DM 22-04 subsequently re-set that filing deadline from 30 days before the individual hearing to 15 days. PM 25-21 reverses that, reverting the pre-individual hearing deadline to 30, rather than 15, days.

PM 25-21 notes that the prior administration gave no reason for the deadline change and that none is apparent. It also asserts that "many Immigration Judges preferred the thirty-day deadline because it gave them more time to prepare for the individual hearing and was not particularly burdensome for the parties given the significant amount of time for preparation." PM 25-21 failed to address DM 22-04's concern that immigration judges were foregoing master calendar hearings in many cases involving non-detained, represented respondents under PM 21-18.

Impact: While the standard pre-hearing filing deadline will be 30 days, IJs retain the authority to set a different deadline than that outlined in the memo and deadlines previously set remain valid.

Practitioner Tips: Practitioners should note this filing deadline procedural change and integrate it into practice and calendaring systems.

Program Management Tips: Program managers should affirmatively flag this change for staff to ensure all staff are aware of the change. Program managers are also encouraged to update internal procedures and ensure effective tickler systems are in place that make both a practitioner and their

supervisor aware of upcoming deadlines.

EOIR Policy Memo 25-22: Access EOIR Initiative

This memo rescinds any policies expanding the scope of the Access EOIR Initiative that have not already been cancelled by other guidance. The Access EOIR Initiative was announced in September 2021 and provided respondents, their representatives, and the public with more direct access to and information about EOIR cases and systems. This includes online features such as EOIR Courts & Appeals System (ECAS), the automated case information system, FOIA Public Access Link, and the Model Hearing Program (MHP).

Impact: Current impact is minimal, as there are no changes to the ECAS system or automated case information system at this time.

Practitioner Tips: Practitioners should:

- Expect that the agency will become increasingly stringent about how it accepts filings.
- Follow all procedures in the most up-to-date and current Immigration Court Practice Manual closely to avoid rejections of filings.

Program Management Tips: Representation of vulnerable noncitizens in removal proceedings remains as important a task as ever, if not more so under this administration. Practitioners who continue to take on removal cases under this administration are a critical component of the defense against its devastating immigration policies and will act as the backbone to the immigrant legal service provider community for the next few years. However, staff should be reminded that meeting deadlines in removal proceeding cases is critical. Improper filings may result in a missed deadline and have serious impacts, including removal orders. This, in turn, exposes programs to liability and practitioners to discipline.

As such, program managers should ensure that:

- Staff are sufficiently up to date on current, proper filing procedures to avoid consequences for clients' cases due to a missed deadline or filing policy.
- Specific procedures are in place for quality and technical review.
- Office procedures include the requirement that filings to be completed well in advance of the set deadline to allow for resubmission of the filing.

EOIR Policy Memo 25-23: EOIR Inferior Officers

This memo purports to clarify EOIR's position on rules restricting removal of "inferior officers," specifically administrative law judges (ALJs). On Feb. 20, 2025, the Department of Justice (DOJ) issued a statement to Congress relaying that the removal restrictions currently in place for inferior officers are unconstitutional. PM 25-23 acknowledges that the DOJ's decision applies specifically to

ALJs but "all of EOIR's other inferior officers," including IJs and BIA judges, "are covered by similar, multiple layers of for-cause removal restrictions." Therefore, the current administration, through the DOJ, is unilaterally declaring the protections in place for EOIR officers to be unconstitutional and that they will not defend them in court going forward.

Impact: This memo signals the administration's intention to terminate federal employees, such as immigration judges and Board members, from their positions. Because rapid and large-scale deportations of noncitizens have also been a priority of this administration, noncitizens and their representatives can reasonably expect further attempts from the administration to undermine due process protections for noncitizens in removal proceedings.

Practitioner Tips: Practitioners should monitor available data regarding immigration judges and BIA judges and be aware of which judges are still employed by the federal government and what is expected by these judges.

Program Management Tips: Program managers should keep staff updated about which judges are employed and what those judges will expect of their staff.

EOIR Policy Memo 25-24: Adjudicator Personnel Matters

This memo purports to reestablish consistent and lawful practices regarding EOIR adjudicator personnel matters, stating that EOIR, under the prior administration, "engaged in a number of questionable and problematic personnel practices concerning adjudicators."

PM 25-24 claims that EOIR hiring practices have been skewed toward one type of applicant and conducted with discriminatory animus toward another type of applicant.[7] It also alleges that, under prior leadership, EOIR was engaging in the prohibited pre-selection of candidates for adjudicator positions, limiting the size of the applicant pool. PM 25-24 asserts that EOIR will proceed with a fair, meritorious hiring process in which all applicants from as wide an applicant pool as possible are asked the same questions.

Impact: This memo may signal the administration's intent to hire from a particular applicant pool despite the memo's insistence it intends to do otherwise. Although this memo has no direct impact on the practice of law before the immigration court, it may result in hiring practices that favor one type of candidate in furtherance of promoting the administration's anti-immigrant and mass deportation policy goals. Further, the memo appears to be setting the stage for firing immigration judges who the Acting Directors perceive as more favorable to noncitizens — including both those in their two-year probationary periods and those who are past it.

[7] The memo vaguely alleges without evidence that applicants with a prosecutorial background were questioned on bias where those with a defense background were not. The memo specifies that these types of interviews were conducted without regard to merit.

Practitioner Tips: Practitioners should:

- Observe immigration court hearings, particularly those involving new IJs.
    - If in-person observation is not possible, practitioners can request to observe a virtual Webex hearing. Most immigration court hearings are open to the public, with some exceptions. To arrange a visit, affiliates should email EOIR's Office of Policy at PAO.EOIR@usdoj.gov and review the Observing Immigration Court Hearings Fact Sheet.
- Monitor relevant listservs for updates on new immigration judges to gain insight into their adjudication styles, tendencies, and potential challenges practitioners may face.

Program Management Tips: Program managers should encourage staff to observe immigration court hearings and monitor listservs as noted above.

EOIR Policy Memo 25-25: Cancellation of Director's Memorandum 22-07

EOIR Policy Memo 25-25, Cancellation of Director's Memorandum 22-07 (PM 25-25), primarily rescinds and cancels the Biden-era EOIR Director's Memorandum 22-07, Internet-Based Hearings (DM 22-07), and re-establishes Trump-era Policy Memo 21-03, Immigration Court Hearings Conducted by Telephone and Video Teleconferencing (PM 21-03), as the guidance for practitioners on remote hearings before the EOIR. PM 25-25 also criticizes PM 22-07 as "pointless" and "unhelpful," incorrectly alleging that it "directed Immigration Judges to decide motions related to [video conferencing] usage a particular way."

PM 22-07 specifically addressed internet-based hearings through Webex by Cisco (Webex) and, notably, did not contradict PM 21-03. Rather, it provided guidance on how IJs "should," not "must," rule on motions for remote hearings in order to accommodate the moving party's preference "where appropriate and practicable."

PM 25-25 states that internet-based hearings are a subset of hearings held by video conference and that there is no "legal distinction between the two," implying, therefore, that no additional guidance is required. PM 22-07 addressed issues and complications that could potentially arise with internet-based hearings that might not arise with traditional video teleconferencing, such as connectivity issues. It also provided guidance on points of contact "designated at each court to support internet-based hearings, and to assist parties and immigration judges by addressing any issues in real time as they arise."

Impact: This memo will likely have minimal effect on practice before the EOIR.

Practitioner Tips: Practitioners should:

- Continue to request remote hearings where appropriate and practicable for the type of hearing and pursuant to their or their clients' particular needs.
- Inquire with the relevant court and IJ's clerk to determine whether remote appearances for legal representatives and/or clients are permitted by the specific IJ before which they'll be appearing.

- Submit a written motion requesting the IJ permit the legal representative and/or their client to appear remotely. CLINIC's Removal Toolkit also provides sample procedural motions and pleadings, including a sample Motion for Video Appearance.

Program Management Tips: Program managers should coach staff on when and for what types of hearings it would be appropriate to request an appearance by video for legal representatives and clients.

DOJ Memo: Stop-Work Order for Legal Orientation Program, Immigration Court Helpdesk, Family Group Legal Orientation Program, and Counsel for Children Initiative [not publicly available] (*Rescinded*)

This memo ordered specific federally funded legal service providers to immediately stop work on several legal access programs that use federal funds to assist people, families and children at risk of deportation. This includes legal orientation programs (LOPs) that help individuals navigate removal proceedings and provide basic legal knowledge and direct representation to vulnerable individuals caught up in a complex and often hostile legal system.

CLINIC Analysis: This action stemmed from the Protecting the American People Against Invasion Executive Order. In response, the Amica Center for Immigrant Rights and other nonprofits, represented by Gibson Dunn, filed a federal lawsuit against the government on Jan. 31, 2025. On Feb. 2, 2025, the U.S. Justice Department rescinded the stop-work order and restored funding.

Impact: The stop-work order impacted organizations directly funded for Legal Orientation Program, Immigration Court Helpdesk, Family Group Legal Orientation Program, and Counsel for Children Initiative. Affected organizations were notified via email of the stop-work order. Organizations funded under these programs should be aware that future funding issues could arise and may need to be challenged via future litigation.

Program Management Tips: Program managers in the affected organizations should:

- Keep themselves up-to-date and well-informed on the ongoing litigation and be prepared to advise staff on any potential changes or reinstatements.
- Instruct staff to advise clients as to the potential future risk of reinstatement.
- Be aware of the caseload impact from an ethical standpoint of ongoing responsibilities to cases in case funding lapses.
- Advocate to board members and executives against hasty decisions related to service delivery and staffing.
- Be encouraged to reach out to CLINIC if they are impacted by future funding issues.

Program managers should also take steps to assess and diversify funding, develop succession plans, and review contractual commitments. Steps program managers might take to accomplish this include:

- Assessing your current funding support. You should identify all grants that consist of federal funding. This may include funding that does not come directly from federal funding, but its original source is federal funding. For example, many states and funders receive federal funding that they then sub-grant to organizations.

- Beginning and/or continuing searches for non-federal funding, including through fees-for-service models and fundraising events. It is always wise for your revenue stream to include diverse funding sources. Importantly, seek out funding that could serve to replace your organization's federal funding.

- If you do not charge fees for your services, you may want to consider whether your organization wants to start collecting fees. If you do charge fees, you may want to evaluate your fee schedule. For more information on considering a fees-for-service model and/or increasing your service rates, see our resource on funding challenges under the Trump administration.

- Maintain effective and frequent communication with your organization's Board members who engage with the community and other organizations to support immigrants. If you do not have a community connector on your board to help engage in fundraising, consider expanding your board to include a new board member to serve in this role.

- If you anticipate you may need to downsize your staff, it will be important to assess your organization and staff's contractual and ethical responsibilities and consider succession planning. For more information, see our new resource on considerations before deciding to downsize or close a program.

- Whether you talk about funding or not, your staff will likely be nervous about their job security. Most often, staff are in this work because this is where they want to be. Your most devoted staff will respect a leader who is forthcoming and cares. Be as transparent with staff as possible, and they will likely do the same for their leaders. Ensure communications recognize the humanity of your staff. Don't cause unnecessary panic but remain realistic about the situation.