



OOD
PM 25-05
Effective: January 27, 2025

To: All of EOIR
From: Sirce E. Owen, Acting Director
Date: January 27, 2025

CANCELLATION OF POLICY MEMORANDUM 21-26

PURPOSE:	Rescind and cancel Policy Memorandum 21-26
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. § 1003.0(b)
CANCELLATION:	Policy Memorandum 21-26

On June 24, 2021, EOIR issued Policy Memorandum (PM) 21-26, *Migrant Protection Protocols and Motions to Reopen*, addressing EOIR-related aspects of the Migrant Protection Protocols (MPP) administered by the Department of Homeland Security (DHS).

The status of MPP has fluctuated considerably since PM 21-26 was issued due to litigation and alleged “facts on the ground.” See Press Release [DHS Reinstates Migrant Protection Protocols | Homeland Security](#).¹ However, on January 20, 2025, President Donald Trump issued an Executive Order (EO), *Securing Our Borders*, directed at securing the borders of the United States. See Executive Order [Securing Our Borders – The White House](#).² Section 6 of that EO directed DHS to resume MPP, and on January 21, 2025, it did so. Consequently, the views about MPP contained in PM 21-26 no longer correctly reflect the position of the Executive Branch, including DHS and the Department of Justice.

Moreover, many EOIR adjudicators felt that PM 21-26 was problematic because it inappropriately pressured them to rule in cases a certain way—not because of the law, but solely in order to achieve a particular policy outcome.³ Cf. 8 C.F.R. §§ 1003.1(d)(2), 1003.10(b). Many also noted that PM 21-26 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

¹ <https://www.dhs.gov/news/2025/01/21/dhs-reinstates-migrant-protection-protocols>

² <https://www.whitehouse.gov/presidential-actions/2025/01/securing-our-borders/>

³ In other contexts, EOIR has received credible reports that some adjudicators were pressured, targeted, and tacitly threatened by EOIR management and the Office of the Deputy Attorney General because they did not automatically grant all joint motions to reopen, regardless of the facts or law. Such a practice is abhorrent, contrary to law, and erodes EOIR’s integrity and the decisional independence of its adjudicators. As of January 21, 2025, that practice has ceased, and all adjudicators are reminded that they are not required in every case to grant—or deny—a joint motion to reopen regardless of the facts or law.

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.”). In short, parts of PM 21-26 may have been *ultra vires*, and other aspects of it, as applied, may have violated the regulatory decisional independence of adjudicators, *see* 8 C.F.R. §§ 1003.1(d)(2), 1003.10(b).⁴

Nevertheless, regardless of any other flaws, PM 21-26, at the least, no longer accurately represents the policy of the Executive Branch, including DHS and DOJ. Accordingly, PM 21-26 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.

⁴ For these reasons, EOIR could not, in good faith, recommend defending PM 21-26 if it were challenged in litigation.