



OOD
PM 25-13
Effective: January 31, 2025

To: All of EOIR
From: Sirce E. Owen, Acting Director
Date: January 31, 2025

OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

PURPOSE:	Reset EOIR policy toward the Office of the Chief Administrative Hearing Officer and reiterate EOIR’s commitment to fair treatment of its components and employees
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. § 1003.0(b)
CANCELLATION:	Policy Memorandum 19-09

I. Introduction

The Office of the Chief Administrative Hearing Officer (OCAHO) is one of the seven constituent components of EOIR. Although it is EOIR’s smallest component by personnel, its work is no less important than the other components, as it helps to ensure compliance with three important provisions of the Immigration and Nationality Act. Over the past four years, however, OCAHO was subjected to a targeted campaign of harassment, ranging from petty to unprofessional to potentially unlawful conduct. There is also credible evidence that it was conducted with an improper animus. Such treatment is inconsistent with EOIR’s core policy values as outlined in Policy Memorandum (PM) 25-02. Accordingly, the instant PM is resetting EOIR policy toward OCAHO consistent with those values.

II. Rescission of Policy Memorandum 19-09

PM 19-09, *OCAHO Case Completion Goals*, was issued on December 21, 2018. It established case processing goals for OCAHO Administrative Law Judges (ALJs) in line with similar performance metrics and goals recently established for Immigration Judges (IJ goals). In October 2021, EOIR withdrew the IJ goals. At that time, the Chief Administrative Hearing Officer (CAHO) requested that EOIR leadership also withdraw PM 19-09 for the same reasons it withdrew the IJ goals. EOIR leadership demurred and did not articulate a clear reason for maintaining the PM. The CAHO renewed the request to withdraw PM 19-09 in April 2022, and EOIR leadership again demurred. The CAHO reiterated the request a third time in October 2022 and, again, received a nonresponsive answer. At that point, OCAHO took the position that the request had been constructively—if not also expressly—denied.

There is no reason to hold OCAHO ALJs to a different standard than Immigration Judges, and no clear reason was ever given for not rescinding PM 19-09. Indeed, the decision not to rescind it appears to have been motivated more by some inappropriate animus than by any valid legal or policy consideration. Accordingly, in the absence of any valid justification for retaining PM 19-09 as long as there are no longer any IJ goals in effect, PM 19-09 is rescinded and cancelled. The rescission of PM 19-09 does not revive any prior OCAHO goals for ALJs. In the future, EOIR may consider re-establishing such goals if either the CAHO recommends doing so or new goals are established for other EOIR adjudicators.

III. OCAHO and EOIR

Although OCAHO is a small component within EOIR, its work is nevertheless important, and it has been at the forefront of significant litigation and important constitutional issues over the past four years. Despite its significance, it has frequently been marginalized within EOIR throughout its history due to a combination of its size and general ignorance about its functions. That institutional marginalization was intensified to an inappropriate degree, however, between February 2021 and January 2025 due to a systematic campaign of harassment by the agency¹ toward OCAHO. That campaign appeared designed to force the CAHO to leave the agency, and in October 2021, EOIR leadership acknowledged and did not dispute that it was attempting to force the CAHO out of the agency.

Some of the acts of that campaign were merely petty. For example, EOIR pointedly excluded OCAHO from the menu chyron at the top of EOIR's redesigned public internet homepage. It also intentionally excluded published OCAHO decisions from the weekly Policy & Case Law Bulletin distributed to EOIR employees. Until recently, it declined to publish OCAHO decisions the same day they were designated for publication unless the designation occurred on specified days of the week, in contrast to other components whose decisions were published regardless of the day of the week. OCAHO was also prohibited, without explanation, from making changes to its own Practice Manual, including anodyne changes such as the requirement for parties to maintain a current address with OCAHO. Without explanation, EOIR also refused to move forward with the finalization of an interim final rule (IFR) related to OCAHO's Chief Administrative Law Judge position that was promulgated in 2020, even though the IFR was short and uncontroversial, it received one or zero² public comments, and a finalization of it had already been drafted. And, as discussed in Part II, *supra*, EOIR refused to rescind PM 19-09 without explanation even after it withdrew similar goals for other adjudicators.

Some acts went beyond petty to unprofessional. For instance, OCAHO was repeatedly—and pointedly—excluded from various agency-wide initiatives, including initial rebranding efforts and the Position Management Council, until after such initiatives were already significantly underway. In contrast to other senior leaders at the agency, the EOIR Director refused to meet with the CAHO

¹ It is unclear to what extent, if any, this campaign was directed by the Office of the Deputy Attorney General which oversees and manages EOIR's operation.

² EOIR's understanding is that the IFR received zero public comments. One of the official federal government websites for rulemakings, Regulations.gov, indicates that one public comment was received but does not display that comment or link to it. Thus, it is unclear if the IFR received any public comments at all.

for the entire duration of his 2½ year tenure. OCAHO and the EOIR Office of Information Technology (OIT) had developed an electronic public filing portal—renamed the OCAHO Public Access Application (PAA)—and completed user acceptance testing by autumn 2022, yet it remains undeployed. Similarly, in November 2022, EOIR’s Chief Information Officer (CIO) indicated that OIT would both deploy the PAA by the end of the second quarter of fiscal year 2023 and initiate work on an OCAHO electronic case management system similar to the EOIR Courts & Appeals System (ECAS) utilized by the Office of the Chief Immigration Judge (OCIJ) and the Board of Immigration Appeals (BIA).³ As of the date of this PM, neither event has occurred, and OIT provided neither an update on the status of these projects nor an explanation for their delay until November 2024. Further, in 2024, in an attempt to reduce spending to address a significant budgetary shortfall and avoid violating the Antideficiency Act⁴—due, in part, to questionable budgetary practices by EOIR management, including unnecessarily increasing the number of higher-paying positions, often without appropriate justifications and at the expense of critical support staff, specially at the immigration courts and BIA—EOIR cut each relevant component’s allocation of Attorney General Honors Program Judicial Law Clerks (JLC) for FY 2026 in half. That cut reduced OCAHO’s allocation to 0.5 positions, which, under basic principles of mathematics, should have been rounded up to one position. However, EOIR deliberately rounded 0.5 down to zero to eliminate OCAHO’s JLC position for FY 2026—and potentially in perpetuity. At the last minute, EOIR substantially rewrote—without input from the CAHO—an interim final rule related to OCAHO adjudications to ensure the CAHO’s administrative review authority remained limited, even though the revisions also eliminated additional measures of due process for parties in certain types of OCAHO cases. EOIR leadership also initially attempted to prohibit an OCAHO ALJ from traveling to preside over a hearing in person where the use of video teleconferencing was impractical due to a significant time zone difference and, after rebuffing arguments from the CAHO, relented only when a friend of the Director intervened.

Other actions raise serious concerns of lawfulness and the specter of discrimination or some type of prohibited personnel practice. For example, in December 2022, when an OCAHO attorney sought to detail to a United States Attorney’s Office (USAO), OCAHO was told that the Office of the Director generally was not approving details outside of EOIR. However, contemporaneously, EOIR allowed attorneys from other components to detail outside of EOIR, including an attorney who was detailed to a USAO approximately three months later. Contrary to the perspective of both OCAHO and the Office of Legal Counsel, EOIR leadership, at the instigation of the Office of Administration and its non-attorney leadership, refused to have the OCAHO Deputy CAHO appointed to her position by the Attorney General, thereby risking a potential constitutional law violation and disrupting OCAHO operations until that issue could be rectified. Moreover, during discussions of this issue, an EOIR senior leader, using a pointed hypothetical, threatened the CAHO with removal or forced departure from the agency. EOIR leadership also directed OCAHO multiple times to change its policies regarding certain types of case adjudications without publicly acknowledging or explaining the changes.

³ OCAHO also drafted a proposed rulemaking to implement its electronic case management system similar to the rulemaking that implemented ECAS. It, too, has remained untouched.

⁴ Pub. L. 97-258, 96 Stat. 877 (1982).

All of these actions go well beyond mere policy disputes, and none of them are consistent with EOIR's core values or with basic principles of ethical and professional government service. Consequently, EOIR must reset its attitude and approach toward OCAHO, particularly in conjunction with PM 25-02, *EOIR's Core Policy Values*. Accordingly, consistent with that PM, EOIR is expressly clarifying that all seven of its constituent components, including OCAHO, should be treated equally unless such treatment is impractical or impossible due to applicable law, the component's size, the existence of component-specific exigencies, or specified and communicated priorities of the EOIR Director or the Department of Justice.⁵

IV. Conclusion

Each of EOIR's seven constituent components serves a valuable purpose, and each one deserves a baseline level of professional respect and treatment. Although there will undoubtedly be policy disagreements, changes in priorities, and circumstances in which components are unable to receive every type of support they seek, EOIR must nevertheless endeavor to treat them as equally as possible subject to the caveats noted elsewhere in this PM. Moreover, the weaponization of the agency to systematically target one particular component over a period of years is simply unacceptable. EOIR is better than that, and its leadership is committed to making it better.

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.

⁵ These exceptions, however, may not apply to certain employee-specific situations. For instance, regardless of higher-level differences between or among components, similarly-situated employees who have engaged in similar types of misconduct should receive similar levels of corrective or disciplinary action. Further guidance on the equal treatment of similarly-situated employees may also be forthcoming. Additionally, nothing in this PM or PM 25-02 should be construed to prohibit or prevent efforts by EOIR to correct, remediate, or ameliorate the effects of prior inappropriate unequal treatment of a component or components. To that end, EOIR is currently engaged in addressing many of the issues outlined in this PM.