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PM 25-23
Effective: February 21, 2025

To: All of EOIR
From: Sirce E. Owen, Acting Director
Date: February 21, 2025

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EOIR INFERIOR OFFICERS

PURPOSE:	Clarify EOIR’s position regarding removal restrictions on its inferior officer positions
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. § 1003.0(b)
CANCELLATION:	None

On February 20, 2025, the Department of Justice (Department), pursuant to 28 U.S.C. § 530D, notified Congress of its conclusion that the multiple layers of removal restrictions for Administrative Law Judges (ALJs) are unconstitutional and of its decision to no longer defend those restrictions in litigation. *See* [Office of Public Affairs | Statement from Justice Department Chief of Staff Chad Mizelle | United States Department of Justice](#).¹

Although the Department’s determination, strictly speaking, applies only to removal restrictions for ALJs—and, thus, would apply to EOIR’s ALJs within the Office of the Chief Administrative Hearing Officer—all of EOIR’s other inferior officers² are covered by similar, multiple layers of for-cause removal restrictions. *See, e.g.*, 5 U.S.C. §§ 1202(d) and 7513(a), 7543(a). Consequently, in the context of any future personnel actions involving those positions and after additional review, EOIR may decline to recognize those restrictions if they are determined to be unconstitutional.

Finally, outside of the context of a personnel action, any determination about the removal restrictions of a particular inferior officer would not necessarily impact the validity of any proceeding over which the officer presided. *See, e.g., Collins v. Yellen*, 594 U.S. 220, 256-260

¹ <https://www.justice.gov/opa/pr/statement-justice-department-chief-staff-chad-mizelle>

² For purposes of the Constitution, officers are individuals who both occupy a continuing and permanent position established by law and “exercise[] significant authority pursuant to the laws of the United States.” *Lucia v. SEC*, 585 U.S. 237, 245 (2018). The Constitution further distinguishes between inferior and principal officers. U.S. CONST. art. II, § 2, cl. 2. Inferior officers are those directed by a principal officer, *i.e.*, “directed and supervised at some level by others who were appointed by Presidential nomination with the advice and consent of the Senate.” *United States v. Arthrex, Inc.*, 594 U.S. 1, 13 (2021) (quoting *Edmond v. United States*, 520 U.S. 651, 663 (1997)). At EOIR, the Director, Deputy Director, all Immigration Judges, all Appellate Immigration Judges, all ALJs, the Chief Administrative Hearing Officer, the General Counsel, and the Assistant Director for Policy are all inferior officer positions. Other positions may also fall within that category after a review of the position’s authorities.

(2021) (holding that actions taken by properly-appointed constitutional officers are not void absent a showing of harm, even if those officers are subject to unconstitutional removal restrictions); *see also* Letter from Joshua Salzman, U.S. Dept. of Justice, Civil Division, *Axalta Coating Sys. LLC v. FAA*, No. 23-2376 (3d Cir. Feb. 11, 2025) (“Accordingly, . . . the government does not intend to press its merits defense of [a removal restriction in title 5, chapter 75]. . . . [b]ut the government continues to argue that petitioner must demonstrate compensable harm from an allegedly unconstitutional removal restriction”). Accordingly, even if an inferior officer’s removal restrictions are determined to be invalid, EOIR will generally continue to recommend defending that officer’s official actions absent a showing of harm connected to the restrictions themselves.

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.