OOD
PM 25-34
Effective: July 3, 2025

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

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CONFLICTING PRECEDENTS OF THE BOARD OF IMMIGRATION APPEALS

PURPOSE:	Provide guidance regarding situations where there are conflicting precedents of the Board of Immigration Appeals
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. § 1003.0(b)
CANCELLATION:	None

I. Introduction

Most circuit courts follow a "prior-panel-precedent" rule in which a precedential decision of one panel binds all future panels unless overruled by the Supreme Court or the circuit court sitting *en banc*.[1] *See*, *e.g.*, *Scott v. United States*, 890 F.3d 1239, 1257 (11th Cir. 2018) ("The prior-panel-precedent rule requires subsequent panels of the court to follow the precedent of the first panel to address the relevant issue, unless and until the first panel's holding is overruled by the Court sitting en banc or by the Supreme Court. . .Even when a later panel is convinced the earlier panel is wrong, the later panel must faithfully follow the first panel's ruling." (cleaned up)).

As a corollary to this rule, whenever an intra-circuit conflict occurs, most circuits adhere to the rule that the earlier of the decisions in conflict is the one that controls. *See*, *e.g., Morrison v. Amway Corp*., 323 F.3d 920, 929 (11th Cir. 2003) ("When faced with an intra-circuit split we must apply the 'earliest case' rule, meaning when circuit authority is in conflict, a panel should look to the line of authority containing the earliest case, because a decision of a prior panel cannot be overturned by a later panel." (cleaned up)); *see also McMellon v. U. S.*, 387 F.3d 329, 333 (4th Cir. 2004) (collecting cases among circuits and noting the Eighth Circuit as the only outlier).

The Board of Immigration Appeals (Board) does not have a prior-panel-precedent rule per se, but applicable regulations have established a functional equivalent. Although, strictly speaking, one Board panel can overrule a prior Board panel decision without the new decision being an en banc decision, a subsequent panel can only publish its decision overruling the prior panel decision following a "majority vote of the permanent Board members," which is effectively an en banc vote. *See* 8 C.F.R. § 1003.1(g)(3). Thus, the subsequent, overruling decision, in effect, reflects the

[1] The precise contours of this rule vary somewhat from circuit to circuit, and each circuit maintains some exceptions to the rule. Further, a subsequent panel is not bound by dicta in a prior panel precedent.

en banc views of the Board even if the decision itself was not issued en banc. Importantly, the Board cannot silently or without express acknowledgment overrule a prior precedent even if the decision is an en banc decision. *See FCC v. Fox Television Stations, Inc*., 556 U.S. 502, 515 (2009) ("To be sure, the requirement that an agency provide reasoned explanation for its action would ordinarily demand that it display awareness that it *is* changing position. An agency may not, for example, depart from a prior policy *sub silentio* or simply disregard rules that are still on the books." (emphasis in original)).

Notwithstanding these principles, the Board has never formally adopted a "prior-panel-precedent" rule, nor has it explained in any published decision how it would resolve a conflict between prior Board precedents or which prior Board precedent it would follow if confronted with conflicting precedents. As a result, when conflicting Board precedents exist, Immigration Judges are uncertain as to which line of precedent they are obligated to follow.

Although only the Board itself, or the Attorney General, can answer this question within the Department of Justice, this Policy Memorandum (PM) highlights two salient areas where Board precedent points in two conflicting directions. Although this PM does not—and cannot—direct adjudicators to apply any particular precedent to any particular case, it does attempt to provide guidance as to how Immigration Judges may approach common scenarios involving conflicting Board precedent, at least until the issue is resolved more definitively.

II. Administrative Closure

PM 25-29, Cancellation of Director's Memorandum 22-03, previously highlighted one of the most salient instances of conflicting Board precedent in the context of administrative closure. Indeed, the Board's decision in *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012), squarely conflicts with multiple, earlier Board precedents regarding whether an Immigration Judge may overrule the decision of the Department of Homeland Security to prosecute a case. *See* PM 25-29 at 3-4. Moreover, *Matter of Avetisyan* neither acknowledged the prior conflicting precedent, nor that it was, effectively, overruling that precedent *sub silentio*, contrary to basic administrative law principles. Although *Matter of Avetisyan* was largely superseded by a rulemaking in 2024, *see* Efficient Case and Docket Management in Immigration Proceedings, 89 FR 46742 (May 29, 2024) (ECDM Rule), it still remains a valid precedent, albeit one in direct conflict with prior precedents. Accordingly, to the extent Immigration Judges are confronted with an issue of administrative closure not expressly covered by the ECDM Rule,[2] they must determine whether *Matter of Avetisyan* governs or whether the earlier line of cases control.

III. Protection Claims Based on Allegations of Domestic Violence

In 1975, the Board held that an alien claiming a fear of harm from her husband and alleging that the authorities in Haiti would not protect her because of her husband's position in the government had not established a cognizable basis for protection under then-section 243(h) of the Immigration

[2] Whether the ECDM Rule itself, which also failed to consider or even acknowledge its deviation from prior Board precedent or that it was effectively overruling certain Board precedents, was arbitrary and capricious, *ultra vires*, or an unconstitutional establishment of an amnesty program without any Congressional authorization is beyond the scope of this PM, though there are very strong arguments that it was all three.

and Nationality Act (INA).[3] *See Matter of Pierre*, 15 I&N Dec 461, 462-63 (BIA 1975) ("In each of these cases, in which there are dicta approving the concept that non-governmental persecution could come within the ambit of section 243(h), the alien alleged that persecution would result because of membership in a class enumerated in section 243(h). Here, the claim is significantly different. The respondent does not allege that her husband seeks to persecute her on account of her race, religion, or political beliefs. The motivation behind his alleged actions appears to be strictly personal. Thus, even if the respondent had shown that the government of Haiti was unable or unwilling to restrain her husband, she could not qualify for temporary withholding of deportation. Not every unlawful act of individual harrassment [sic] will amount to persecution within the meaning of section 243(h)."). The headnote in *Matter of Pierre*, though not binding and not formally part of the decision, succinctly summarizes its holding: "Respondent's application is denied since she has not established that she would be persecuted on account of race, religion, political opinion or membership in a particular social group; rather, the motivation behind her husband's alleged actions appears to be strictly personal." *Id*. at 461.

Matter of Pierre has not been overruled by the Board and remains good law. *See*, *e.g*., *Acero-Angamarca v. Bondi*, 2025 WL 900028, *2 (2d Cir. March 25, 2025) (relying on *Matter of Pierre* to conclude that "[t]he [Board] reasonably found that [the alien's former romantic partner's] motivation to abuse [the alien] stemmed from private and personal disputes resulting from their relationship, his alcohol abuse, and his desire to keep her in the relationship, not because of her membership in either proposed social group or because of the group's identifying characteristics—that she was an Ecuadorian woman or that she was an Ecuadorian woman unable to leave a relationship"). Similarly, the Board has repeatedly held that "purely personal matters" are not cognizable bases for asylum. *See*, *e.g*., *Matter of Y-G-*, 20 I&N Dec. 794, 799 (1994) ("Aliens fearing retribution over purely personal matters will not be granted asylum on that basis. . .Such persons may have well-founded fears of harm, but such harm would not be on account of race, religion, nationality, membership in a particular social group, or political opinion."). Indeed, it is a relatively well-established proposition that "[a]sylum is not available to an alien who fears retribution solely over personal matters." *Zoroab v. Mukasey*, 524 F.3d 777, 781 (6th Cir. 2008) (also noting that "[c]ourts have routinely rejected asylum applications grounded in personal disputes because without a firm footing in one of the five protected bases, asylum law offers no succor" (cleaned up)).

In 2014, however, the Board held in *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014)[4] that aliens whose claims were rooted in personal matters such as domestic violence could establish a claim for protection under the INA. However, *Matter of A-R-C-G-* did not address—or even acknowledge—its conflict with prior Board precedent regarding personal-motivation protection claims, including cases deciding claims rooted in a fear of domestic violence such as *Matter of Pierre*. As a result, like *Matter of Avetisyan*, *Matter of A-R-C-G-* effectively sought to overrule prior Board precedent *sub silentio* contrary to fundamental principles of administrative law.

[3] Then-INA § 243(h) was the precursor to the current INA § 241(b)(3).

[4] Like *Matter of Avetisyan*, *Matter of A-R-C-G-* had a serpentine procedural history between 2018 and 2021 as each was overruled by Attorney General Sessions and then reinstated by Attorney General Garland. The various twists in each's procedural history are beyond the scope of this PM, but adjudicators are encouraged to familiarize themselves with the histories of each decision—as well as the history of the Board's vacated decision in *Matter of R-A-*, 22 I&N Dec. 906 (BIA 1999)—in order to fully familiarize themselves with the issues presented in this PM.

Because the Board has not reconciled these two conflicting lines of precedent and each line remains a valid precedent, Immigration Judges confronted with protection claims rooted in personal matters such as domestic violence must determine whether *Matter of A-R-C-G-* or the earlier line of cases appropriately governs.[5]

IV. Considerations and Conclusion

Until the Board or the Attorney General resolves any conflicts in Board precedent, including the two summarized above, or adopts a clear rule regarding which precedent should control when there is a conflict, Immigration Judges will have to apply their best judgment and traditional legal tools or methods of analysis in order to adjudicate cases before them where Board precedent is in conflict. To that end, Immigration Judges may consider relevant factual distinctions, any applicable legal developments that may have affected either line of precedent, how circuit courts have treated similar situations of conflicting precedents, and any other relevant factor. Regardless of which line of precedent an Immigration Judge chooses, however, he or she should clearly articulate in the decision why one line of precedent was chosen over the other in order to both ensure fidelity to applicable law and facilitate subsequent review by the Board.

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] The Attorney General's decision in *Matter of A-B-*, 28 I&N Dec. 307 (A.G. 2021) (*A-B- III*) does not resolve this conflict because it directs Immigration Judges and the Board to follow relevant precedent prior to the date of the first decision in the line of *Matter of A-B-* precedents, which occurred in 2018. Because both lines of precedent discussed in section III of this PM were issued prior to that date—and *Matter of Pierre* was issued over 40 years earlier—*A-B- III* effectively directs adjudicators to apply both lines of conflicting precedent.