OOD
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To: All of EOIR
From: Sirce E. Owen, Acting Director
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EOIR STAKEHOLDER ENGAGEMENT

PURPOSE:	Establish clear guidance for productive stakeholder engagement
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. § 1003.0(b)
CANCELLATION:	None

I. Introduction

EOIR values productive and helpful stakeholder[1] engagement.[2] Stakeholders may flag issues, suggest policy initiatives, and provide useful perspective on different facets of EOIR's performance. Historically, until approximately 2010,[3] EOIR typically had constructive relationships with stakeholders. However, since that time, stakeholder engagement has generally become less meaningful. Although there have been some exceptions—*e.g.* stakeholder concerns about bond hearings not being scheduled in a timely manner at the then-Arlington Immigration Court led directly to the issuance of Policy Memorandum (PM) 20-07, *Case Management and Docketing Practices*—recent stakeholder engagement has not been particularly productive. Accordingly, after evaluating some of the problems with stakeholder engagement in the past 15

[1] For purposes of this PM, "stakeholder" refers to most individuals or entities with an interest in EOIR proceedings. It includes, but is not limited to, the parties to EOIR proceedings, the American public, other components of the Department of Justice (DOJ), other federal agencies, states and localities, international organizations, the media (including social media), and other branches of Government. Federal law and DOJ policies may govern other aspects of engagement with certain stakeholders, and nothing in this PM should be construed to conflict with any applicable law or DOJ policy.

[2] To be clear, EOIR accepts all stakeholder comments and feedback, regardless of its value. However, not all stakeholder engagement is productive or helpful. Stakeholder feedback that is profane, obscene, defamatory, threatening, or consists solely of *ad hominem* attacks is particularly unhelpful. Further, EOIR takes threats against its employees seriously, and DOJ will prosecute all true threats to the fullest extent of the law.

[3] Beginning around 2010, EOIR—in concert with the Department of Homeland Security—was mobilized for the first time in its existence to effectuate specific policy outcomes in immigration cases regardless of the impartial application of the law, particularly outcomes that would encourage the development of a *de facto* amnesty program for illegal aliens. Those efforts began a cycle of erosion, restoration, erosion, and restoration of EOIR's integrity and impartiality, which also decreased the utility of stakeholder engagement.

years, this PM resets expectations and sets clear guidelines for both EOIR employees[4] and stakeholders themselves to ensure that stakeholder engagement provides the most value to both sides.

II. Considerations for Stakeholder Engagement

A. Considerations for EOIR Employees

When EOIR employees engage with stakeholders—*e.g*. through meetings, public listening sessions, or correspondence—they should do so with an eye toward making the engagement as constructive as possible. To that end, employees should be aware of three issues that have repeatedly undermined that goal in past engagements.

The first issue is terminology. To avoid talking past one another, it is critically important that EOIR and stakeholders both utilize accepted definitions of relevant terms in any engagements. For example, the well-established definition of "due process" is notice and a meaningful or fair opportunity to be heard. *See Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970). However, many stakeholders use the term "due process" in a different, outcome-determinative sense—*e.g*. an alien who is not granted relief or protection necessarily did not receive due process. Further, many stakeholders discuss "due process" on a continuum related to outcomes, such that they advocate for more "due process" because they believe it will lead to more favorable outcomes for aliens. Yet, due process is not measured by outcome, and viewing due process through a results-oriented lens is incorrect. *See*, *e.g*., *Walters v. Nat'l Ass'n of Radiation Survivors*, 473 U.S. 305, 321 (1985) (noting that "we must keep in mind. . .the fact that the very nature of the due process inquiry indicates that the fundamental fairness of a particular procedure does not turn on the result obtained in any individual case"). EOIR should be cognizant of differences in terminology or definitions like this in any stakeholder engagements and should ensure that all parties are relying on the same, established definitions to ensure those engagements are productive.[5]

The second issue is controlling for bias or valence.[6] Most stakeholders in the field of immigration are not disinterested entities, and EOIR should be aware of particular stakeholder interests in considering stakeholder input and, as appropriate, control for that interest. EOIR has its own interests—principally in impartiality and efficiency—and it should be mindful of stakeholder

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[4] Although EOIR has both employee and officer positions, for purposes of this PM, the term "employee" is used in its general, non-legal sense to mean any individual employed by EOIR who is not a contractor. In general, unless otherwise indicated by context or express language, any reference to an "employee" in an EOIR PM also refers to this general, non-legal definition.

[5] Similarly, many stakeholders reject the label "open borders" to describe policies they nevertheless recommend that would create precisely that situation. For instance, a stakeholder discussing asylum policies that cannot identify a plausible asylum claim that should be denied is effectively arguing for an "open borders" policy. EOIR should ensure that stakeholder proposals are accurately described and categorized to facilitate better communications and improved stakeholder engagement.

[6] Bias or valence may take many forms—*e.g.* personal, financial, policy, or partisan. Regarding the latter two, EOIR should be careful to distinguish between them, as many stakeholders—even those that are purportedly "nonpartisan"—blur the lines between policy and politics in their input to EOIR. Moreover, EOIR must be careful not to discriminate in favor of or against stakeholder suggestions solely because of their partisan valence. Although EOIR acknowledges that this represents a change in the agency's policy from the period between 2021 and 2025, EOIR has a commitment now to considering all stakeholder input.

suggestions that are not aligned with those interests. For example, many attorney stakeholders provide suggestions that would benefit their clients in immigration proceedings which, in turn, would likely provide a financial benefit to the attorneys themselves, though the suggestions may also compromise EOIR's interests in both impartiality and efficiency. Overall, EOIR should be cautious with stakeholder input whose interests are antithetical to the agency's.

To be clear, stakeholders' personal or organizational interests do not mean that their input is necessarily either valid or invalid. Rather, those interests should simply be accounted for when evaluating any recommendations they provide. Few, if any, stakeholders with interest in EOIR are truly altruistic or objective, and they generally place their interests ahead of EOIR's. Consequently, EOIR should not blindly accept suggestions or recommendations from stakeholders without accounting for—and controlling for, as appropriate—the particular biases of those stakeholders and balancing those interests against EOIR's own. Better understanding and appreciation of the competing or clashing interests at work during stakeholder engagements is crucial to ensuring those engagements are productive.

The third issue is consistency. Many (though not all) stakeholders have taken inconsistent positions on issues with EOIR over the past 15 years, which both frustrates the agency and undermines the credibility of the stakeholder. For example, in recent years, stakeholders have taken inconsistent positions on a multitude of subjects—*e.g.* the use of video teleconferencing in EOIR proceedings, the referral of EOIR cases to the Attorney General for review, termination and dismissal of proceedings by Immigration Judges, the need to hire more Immigration Judges, personnel actions against senior EOIR leadership and Immigration Judges, adjudication delays and wait times for decisions, and adjudicator impartiality. EOIR employees who engage with stakeholders should be aware of these inconsistencies and be mindful of the reasons underlying them. Inconsistent positions may reflect a hollowness or insincerity of a stakeholder's perspective, which may undermine or limit the ability to constructively engage with EOIR. Thus, a better appreciation of the consistency or inconsistency of stakeholders' positions will make engagement with each individual stakeholder more effective.

B. Considerations for Stakeholders

In addition to clearer understanding by EOIR employees of some of the pitfalls that have hampered stakeholder engagement in the past, there are also certain actions that stakeholders themselves can take to make such engagements more valuable for the agency. Based on EOIR's experience over the past 15 years, the following observations are offered to assist stakeholders when engaging with the agency, particularly when making recommendations or seeking action from the agency.[7]

First, suggestions rooted in facts—rather than opinions, wishes, speculation, or tendentious narrative—are certainly more likely to be persuasive than those that are not. For example, stakeholders frequently promote a myth that most asylum applicants or most unaccompanied alien children in EOIR proceedings lack representation. That is simply not true; thus, stakeholder suggestions flowing from that myth are counter-factual and unlikely to be helpful.

[7] All examples contained in this PM are taken from actual stakeholder suggestions or comments since 2017.

Second, suggestions that are lawful and ethical are, of course, more likely to be helpful than those that are not. For example, suggestions to EOIR to direct all Immigration Judges to stop issuing removal orders *in absentia* when an alien fails to appear for a scheduled hearing are both beyond the authority of any individual at EOIR to effectuate and flatly contrary to law. Consequently, such a suggestion is not conducive to productive engagement. Similarly, suggestions that Immigration Judges should violate their ethical requirements to remain impartial and not give special treatment to private organizations are simply unhelpful.

Third, suggestions that are consistent with or advance the policies of the Executive Branch are more likely to have value than those that are inconsistent with or contrary to Executive Branch policies. For example, suggestions that EOIR should take actions to affirmatively thwart efforts by the Department of Homeland Security to carry out its statutory authorities clearly run counter to Executive Branch policies—and may be unlawful (by obstructing or impeding the administration of the law) or unethical (by violating the impartiality requirement for federal employees) as well.

Finally, suggestions that are congruent with or advance EOIR's interests in efficiency and impartiality are generally more helpful than those that do not. As such, suggestions such as one that EOIR should direct Immigration Judges to automatically grant continuances in all cases regardless of the reason or expand other procedures to delay proceedings further—even if such suggestions were otherwise lawful—are fundamentally at odds with EOIR's interests. Consequently, such suggestions are less likely to result in engagement that benefits both EOIR and the stakeholder.

Stakeholders are encouraged to bear in mind these observations when engaging with EOIR. Although EOIR accepts all stakeholder feedback and commentary regardless of value, stakeholders who offer suggestions or recommendations that are (1) based on facts, (2) lawful and ethical, (3) consistent with Executive Branch policies, and (4) advance EOIR's interests are more likely to have the most constructive engagements for both sides.

III. Conclusion

EOIR strongly values constructive stakeholder engagement. It particularly encourages stakeholder suggestions to make its procedures more efficient, consistent with the law. In the past, stakeholders have been helpful in pointing out Immigration Court or Board of Immigration Appeals procedures that are inefficient and identifying Immigration Courts that are not adjudicating cases in an efficient manner. Localized stakeholder engagement, in particular, had been previously helpful in ensuring that all Immigration Courts nationwide are effectively pursuing EOIR's mission. Too often in recent years, however, stakeholder engagement has been unproductive, due to a lack of awareness by EOIR employees of relevant considerations, unhelpful or otherwise problematic suggestions or recommendations from stakeholders, and the inherently divisive nature of immigration discourse. Through this PM, EOIR anticipates improving future stakeholder engagement to ensure it remains beneficial to both sides.[8]

[8] EOIR also anticipates more public stakeholder engagement as it continues to restore the integrity of its proceedings.

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.

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