OOD
PM 25-07
Effective: January 29, 2025

To: All of EOIR
From: Sirce E. Owen, Acting Director
Date: January 29, 2025

SIRCE OWEN Digitally signed by SIRCE OWEN Date: 2025.01.29 16:31:13 -05'00'

CANCELLATION OF POLICY MEMORANDUM 21-27

PURPOSE:	Rescind and Cancel Policy Memorandum 21-27
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. § 1003.0(b)
CANCELLATION:	Policy Memorandum 21-27

On July 23, 2021, EOIR issued Policy Memorandum (PM) 21-27 purporting to mandate the use of certain terminology by the agency, subject to one noted exception.[1] That PM was based on two Executive Orders (EOs), which have now been revoked.

In addition to the loss of its foundation due to the revocation of the EOs, PM 21-27 represented a questionable policy choice on its merits—and one that is no longer congruent with current Executive branch policy.

For example, PM 21-27 was largely an anomaly within the Department of Justice (DOJ) as no EO mandated the changes it made, and few other DOJ components made similar changes. To the contrary, template materials used by the Criminal Division and United States Attorney Offices continued to use the word "alien" in indictments and complaints. In fact, several sections of the Justice Manual (JM), the principal policy manual for all of DOJ, continued to use the term "alien" throughout the time the EOs were in effect, and the JM also maintained at least one section throughout that time headed by terminology that EOIR sought to prohibit. *See, e.g.*, Just. Manual § 9-21.410 ("Illegal Aliens"). Beyond DOJ, pattern jury instructions across most federal courts also retained the use of terminology that PM 21-27 sought to ban. *See*, *e.g.*, Ch. 7 ("Alien Offenses"), Manual of Model Criminal Jury Instructions, United States Courts for the Ninth Circuit.[2]

PM 21-27 also attempted to redefine statutory terms, something that an administrative agency simply cannot do. For example, PM 21-27 equated the term "alien" with, *inter alia*, the term "noncitizen"; yet the terms are not legally synonymous because a national is a noncitizen but not an alien. *See* 8 U.S.C. §§ 1101(a)(3), (22)(B). Similarly, the term "unaccompanied alien child" has

[1] PM 21-27 was issued on July 23, 2021, but was not effective until July 26, 2021.
[2] https://www.ce9.uscourts.gov/jury-instructions/node/781.

a specific statutory definition, *see* 6 U.S.C. § 279(g)(2), that is not fully captured by the various alleged synonyms given in PM 21-27.

Further, the lone exception in PM 21-27 to mandatory language policing—"when quoting a statute, regulation, legal opinion, court order, or settlement agreement"—frequently swallowed the rule and revealed the overall hollowness of the policy. Indeed, PM 21-27 did not explain why it would be inappropriate to use a term defined by statute but would be appropriate to use the same term when quoting the statute itself. Moreover, by allowing the quotation of statutory language, PM 21-27 undercut its own message by acknowledging that the statutory language was, in fact, appropriate.

Finally, however well-intentioned PM 21-27 may have been, it risked considerable confusion through imprecision. As a component of DOJ, the use of legally accurate terminology is of paramount importance, and PM 21-27 placed roadblocks to that usage to no discernible, helpful end. To that point, two eminent federal circuit court of appeals judges, both of whom are immigrants and one of whom was in deportation proceedings earlier in his life, have each eloquently explained why policies like PM 21-27 are fundamentally misguided:

> Defenders of "noncitizen" sometimes claim that this word is interchangeable with alien because everyone is a citizen of somewhere, sans the unusual case of the individual who has somehow been rendered stateless. This contention is not an accurate excuse. For one, monarchies exist. A Spanish born person is a "subject" of the Kingdom of Spain, albeit he may have democratic rights. One born in Saudi Arabia is similarly a "subject" of the House of Saud. Even more, a person born in American Samoa or Swains Island is a U.S. national, but not a citizen; he or she cannot vote in federal elections nor hold federal office.
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> These distinctions matter. Words matter. Our federal immigration statutes concern themselves with aliens. This word "alien" is not a pejorative nor an insult. I certainly did not consider it an insult to be referred to as an alien in my deportation proceedings. Nor is the use of the term "alien" wholly untethered from its judicial context that it permits being construed in the manner the principal opinion suggests. Alien is a statutory word defining a specific class of individuals. And when used in its statutory context, it admits of its statutory definition, not those definitions with negative connotations that can be plucked at will from the dictionary.
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> I must note that the judiciary's embrace of "noncitizen" also comes at a real cost to litigants, who are now forced to make a lose-lose choice. On the one hand, a litigant could decide to use the statutory term "alien" in his briefing before the court, which risks offending devotees to "noncitizen." On the other hand, a litigant could decide to use the non-statutory term "noncitizen" in his briefing before the court, at the risk of showing a disdain for statutory definitions. Sadly, this quandary is laid bare by the principal opinion's express association of the statutory term "alien" with the label "offensive." By intimating that "alien" in its statutory context has this meaning, the majority has substantiated the concern that a contingent of judges will

> respond negatively to the term, even though its neutral, statutory definition governs this case. This situation is entirely unnecessary, and I hope my colleagues throughout the judiciary can be persuaded to dispense with such rhetoric altogether.

Avilez v. Garland, 69 F.4th 525, 543-44 (9th Cir. 2023) (Bea, J., concurring) (internal citations and footnote omitted).

> The word "alien" is ubiquitous in statutes, regulations, judicial decisions, and scholarly commentary on federal immigration law. But despite this established usage, some members of the judiciary have recently begun to signal their opposition to using that term, on the ground that it is "offensive." *Avilez v. Garland*, 48 F.4th 915, 917 n.1 (9th Cir. 2022). Respectfully, I do not share in that sentiment.
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> United States citizenship is one of the greatest privileges this world has ever known. My own path to that privilege began with my admission into this country as an alien. The United States government assigned me an alien registration number. That number appears on my application for status as a lawful permanent resident alien. It also appears on numerous other forms, including the INS notification granting my application for permanent resident alien status—and ultimately, my certificate of citizenship.
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> These documents are among my most treasured possessions. That is for one simple reason: It is my exquisitely good fortune that I was admitted into this country as an alien—and later naturalized as a citizen. I cannot imagine how enormously different (and considerably worse, I am sure) my life would have been had I not been granted resident alien status in America.
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> There's no need to be offended by the word "alien." It's a centuries-old legal term found in countless judicial decisions. *See*, *e.g.*, *Martin v. Hunter's Lessee*, 14 U.S. 304, 370, 1 Wheat. 304, 4 L.Ed. 97 (1816); *Gibbons v. Ogden*, 22 U.S. 1, 221, 9 Wheat. 1, 6 L.Ed. 23 (1824). It's used in numerous acts of Congress—including the ones that allowed me to become an American. To this day, both 8 U.S.C. and 8 C.F.R. address the subject of "Aliens and Nationality."
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> Some members of the judiciary are nevertheless concerned that "[t]he word alien can suggest 'strange,' 'different,' 'repugnant,' 'hostile,' and 'opposed.'"*Avilez*, 48 F.4th at 917 n.1.
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> That may be true in certain contexts. The word also refers to extraterrestrials in other contexts.
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> But we always read words in their proper context. And in the context of immigration law, we use "alien," not to disparage one's character—or to denote one's planetary origin—but to describe one's legal status.
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> I agree with my colleague (and fellow former alien) Judge Bea: "Our federal immigration statutes concern themselves with aliens. This word is not a pejorative

> nor an insult.... [W]hen used in its statutory context, it admits of its statutory definition, not those definitions with negative connotations that can be plucked at will from the dictionary." *Id*. at 933 (Bea, J., concurring). *Cf*. Bryan A. Garner, Garner's Dictionary of Legal Usage 912 (Oxford 3rd ed. 2011) ("Illegal alien is not an opprobrious epithet: it describes one present in a country in violation of the immigration laws (hence 'illegal')."); *Texas v. United States*, 787 F.3d 733, 745 n.15 (5th Cir. 2015) (same).
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> So I see no need to bowdlerize statutes or judicial decisions that use the word "alien" by substituting terms like "non-citizen."

Khan v. Garland, 69 F.4th 265, 271-72 (5th Cir. 2023) (Ho, J., concurring) (footnote omitted).

EOIR is not an Orwellian language police.[3] It also does not possess authority to rewrite statutes when it disagrees with them. PM 21-27 inappropriately attempted to arrogate both types of authority to EOIR. Like Judge Ho, EOIR sees no reason to continue trying to bowdlerize relevant statutes, particularly in light of current Executive Branch policies. Accordingly, for all of the reasons above, PM 21-27 is rescinded.[4]

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.

[3] 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 based on PM 21-27. Such a practice is inappropriate and undermines EOIR's integrity and the decisional independence of its adjudicators. As of January 21, 2025, that practice has ceased. Moreover, as a matter of discretion, for any employee who was subject to corrective or disciplinary action based on a violation of PM 21-27, EOIR will not consider such action as prior misconduct relevant for any future corrective or disciplinary action.

[4] EOIR regulations were amended in 2024 to add the terms "noncitizen" and "unaccompanied child" to EOIR's regulatory definitions. *See* 8 C.F.R. §§ 1001.1(gg), (hh). Those definitions reference related statutory definitions which, as discussed, *supra*, simply undercut the ostensible purpose for using the terms in the first instance. Moreover, regulatorily defining the terms that way turns them into legal *non sequiturs—i.e*. defining "noncitizen" to mean "alien" even though the term alien excludes a national whereas the term noncitizen would not. Those regulations—and the larger rulemaking to which they were attached—are problematic for multiple reasons, and whether EOIR could, in good faith, recommend defending that rulemaking if challenged is beyond the scope of this PM. Nevertheless, as long as those regulations remain valid, EOIR employees are authorized—but not required—to use such terms if they wish, provided their usage does not cause confusion or result in legal errors.