OOD
PM 25-04
Effective: January 27, 2025

To: All of EOIR
From: Sirce E. Owen, Acting Director
Date: January 27, 2025

SIRCE OWEN

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CANCELLATION OF POLICY MEMORANDUM 21-16

PURPOSE:	Rescind and cancel Policy Memorandum 21-16
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. § 1003.0(b)
CANCELLATION:	Policy Memorandum 21-16

This Policy Memorandum (PM) rescinds and cancels PM 21-16, which had rescinded and cancelled PM 20-01, *Case Processing at the Board of Immigration Appeals*.

PM 20-01 was issued October 1, 2019.[1] The genesis of PM 20-01 lay in a series of significant management problems at the Board of Immigration Appeals (Board) that came to light in early 2019. For example, sometime in early 2019, Board leadership unilaterally—and without informing EOIR leadership—decided to pause transcribing most non-detained case appeals indefinitely. Thus, many non-detained case appeals simply "sat" at the Board with no action taken for lengthy periods of time, violating 8 C.F.R. § 1003.1(d)(1) (requiring the Board to resolve cases in a timely manner), jeopardizing due process for the parties involved, and risking litigation against the agency. When EOIR leadership learned of this action and confronted Board leadership, the response was that the Board had not budgeted sufficient funds for transcription; however, the Board also did not notify EOIR leadership of this shortfall nor ask for additional funding.[2] Accordingly, PM 20-01 directed the Board Chairman[3] to immediately notify the Director and the Assistant Director for the Office of Administration of any future funding shortfalls. *See* PM 20-01 at 3 n.6.

Further, despite interlocutory appeals being disfavored by the Board and generally not requiring transcription, Board leadership also insisted, contrary to both experience and common sense, that

[1] PM 20-01 was originally issued as PM 19-15 because it was drafted in fiscal year 2019. However, EOIR numbers PM based on the fiscal year in which they are issued, not drafted. Accordingly, because PM 20-01 was issued on the first day of fiscal year 2020, its number was subsequently changed from 19-15 to 20-01.

[2] It was unclear at the time whether the Board genuinely had insufficient funds or whether it had sufficient funds but had mismanaged them. In either case, what was clear was that the Board leadership did not alert EOIR leadership that there was a problem.

[3] The Board Chairman is also known as the Chief Appellate Immigration Judge. Individual Board Members are also known as Appellate Immigration Judges.

no interlocutory appeal—not even a routine interlocutory appeal of a change of venue decision—could possibly be decided in less than 90 days and that such appeals not infrequently took at least 180 days or more to decide. As a result, PM 20-01 established a clear policy "to adjudicate interlocutory appeals promptly and efficiently," including internal metrics for the review of such appeals. PM 20-01 at 5.

Finally, despite a clear command in 8 C.F.R. § 1003.1(e)(8)(v) to track the productivity of individual Board Members and to prepare an annual report assessing the timeliness of the disposition of cases by each Board Member, Board leadership failed to provide any such reports—including an annual report for 2017—until finally confronted with its contumacy in March 2019. PM 20-01 ensured that such willful failures to adhere to binding regulations would not be repeated. *See* PM 20-01 at 5.[4]

In short, the Board's case management system had become dysfunctional by spring 2019, and although the regulations provide that the Board Chairman is responsible for the success of the Board's case management system, 8 C.F.R. § 1003.1(e)(8), the Board Chairman was attempting to evade that responsibility. Thus, PM 20-01 was formulated to address gross mismanagement and poor leadership at the Board, though it was not issued until after the Chairman had departed the agency, *see* PM 20-01 at 2 n.3 (noting the new leadership at the Board).[5]

Over fourteen months after PM 20-01 was issued, the Department of Justice finalized a rulemaking on December 16, 2020, changing a number of procedures involving the Board. *See* Appellate Procedures and Decisional Finality in Immigration Proceedings, 85 Fed. Reg. 81588 (Dec. 16, 2020). That final rule was subsequently enjoined on March 10, 2021. *See Centro Legal de la Raza, et al., v. EOIR, et al*., No. 3:21-cv-00463-SI (N.D. Cal.).[6] On March 17, 2021, EOIR rescinded PM 20-01, disingenuously claiming that such rescission was proper because PM 20-01 "was issued in relation to the publication of the final rule" which had been enjoined. PM 21-16. That statement was a flagrant misrepresentation as PM 20-01 was issued *over fourteen months before* the final rule was published and, as discussed, *supra*, addressed mismanagement of the Board. Such pretextual dissembling undermines EOIR's integrity and insults both EOIR employees and its stakeholders.[7]

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[4] Unfortunately, after PM 20-01 was rescinded, Board leadership returned to its posture of willfully disregarding the requirements of 8 C.F.R. § 1003.1(e)(8)(v) and, again, stopped preparing the reports as required by law. Effective with the instant PM, however, Board leadership is directed to begin complying with the law again and provide the reports to the Director as specified in the regulations.

[5] Whether the disclosure of this gross mismanagement was connected to any subsequent retaliatory prohibited personnel practices after 2020 is beyond the scope of this PM. *See* 5 U.S.C. § 2302(b)(8).

[6] The final rule was subsequently rescinded in its entirety in May 2024. *See* Efficient Case and Docket Management in Immigration Proceedings, 89 Fed. Reg. 46742 (May 29, 2024).

[7] Whether PM 21-16 violated principles of administrative law is also beyond the scope of this PM. However, EOIR could not, in good faith, recommend defending PM 21-16 if it were challenged in litigation. Additionally, PM 21-16 was issued by an Acting Director who was on detail to that position between February and October 2021. In 2022, both EOIR's Office of Administration and the Office of Personnel Management raised questions about the validity of that detail due to an underlying flaw in the detailee's position description. For obvious reasons, EOIR leadership did not follow up on those concerns, nor is there any evidence that the subsequent, permanent Director ratified the actions of the Acting Director. (Even if there were such a ratification, its legal validity would also be unclear.) Although EOIR need not definitively resolve at this time whether actions taken by the Acting Director during her detail were valid,

Accordingly, PM 21-16 is rescinded and cancelled.[8] The rescission of PM 21-16 does not revive PM 20-01, and it remains rescinded and canceled.[9]

Finally, additional guidance regarding Board management and leadership may be forthcoming. With a few brief exceptions, the Board has suffered from poor leadership and poor management since at least the mid-1990s. EOIR is committed to ending that problem permanently and restoring the integrity and efficiency of the Board as one of the preeminent administrative appellate bodies in the whole of the federal government.

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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such questions may make it difficult for the agency to defend any actions taken by the Acting Director if they are challenged.

[8] PM 21-16 was also based on two Executive Orders which have subsequently been rescinded. Accordingly, there is even further reason to rescind and cancel it.

[9] EOIR does reiterate one point from PM 20-01, however. To be clear, EOIR has no policy restricting or prohibiting the use of summary dismissals of appeals, nor does it have a policy restricting or prohibiting the use of affirmances without opinion. Any appeals amenable to those procedures should be adjudicated consistent with the regulatory requirements for them, 8 C.F.R. §§ 1003.1(d)(2) and (e)(4).