



OOD  
PM 25-06  
Effective: January 28, 2025

To: All of EOIR  
From: Sirce E. Owen, Acting Director  
Date: January 28, 2025

## CANCELLATION OF OPERATING POLICIES AND PROCEDURES MEMORANDUM 23-01

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PURPOSE:	Rescind and Cancel Operating Policies and Procedures Memorandum 23-01
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. § 1003.0(b)
CANCELLATION:	Operating Policies and Procedures Memorandum 23-01

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On December 11, 2023, the Office of the Chief Immigration Judge (OCIJ) issued Operating Policies and Procedures Memorandum (OPPM) 23-01, rescinding prior OPPM 96-6 and purporting to prohibit some—but not all—civil immigration enforcement actions by the Department of Homeland Security (DHS) in or near EOIR space operated by OCIJ. The crux of OPPM 23-01 rested on a DHS document, Joint Memorandum by Tae Johnson, Acting Director, ICE, and Troy Miller, Acting Commissioner, CBP, *Civil Immigration Enforcement Actions in or near Courthouses* (April 27, 2021) (DHS Memorandum), which self-imposed a moratorium on DHS civil immigration enforcement actions in or near immigration courts. However, that DHS Memorandum has been rescinded and superseded by new interim guidance, which does not impose a blanket restriction on civil immigration enforcement actions by DHS in or near EOIR public space. See Policy 11072.3, Interim Guidance: Civil Immigration Enforcement Actions in or near Courthouses, [Interim Guidance: Civil Immigration Enforcement Actions in or near Courthouses](#) (Interim Guidance).<sup>1</sup> As such, there is no longer a basis to maintain OPPM 23-01.

Moreover, the other bases given for OPPM 23-01 were unpersuasive, inconsistent with current Executive Branch policy, pretextual, or unsubstantiated on any systematic basis. For example, OPPM 23-01 suggested that permitting DHS enforcement actions in or near OCIJ space would have some sort of vague, unspecified “chilling effect” on aliens appearing for hearings or would otherwise “disincentivize” them from appearing. OPPM 23-01 provided no data to support these assertions, nor did it explain why, contrary to logic, aliens with valid claims to legal immigration

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<sup>1</sup> [https://www.ice.gov/doclib/foia/policy/11072.3\\_CivilImmEnfActionsCourthouses\\_01.21.2025.pdf](https://www.ice.gov/doclib/foia/policy/11072.3_CivilImmEnfActionsCourthouses_01.21.2025.pdf). Nothing in DHS’s Interim Guidance or this Policy Memorandum authorizes DHS to conduct civil immigration enforcement actions in private EOIR space which is not customarily open to the public, such as offices of immigration judges.

status would be disincentivized from attending their hearings, even though they had no reason to fear any enforcement action by DHS. Indeed, between April 27, 2021, when the DHS Memorandum took effect, and January 27, 2025, over 530,000 aliens failed to attend their scheduled hearings, suggesting that some other factor unrelated to DHS's enforcement posture was causing aliens to willfully fail to attend hearings. OPPM 23-01 also suggested that DHS enforcement actions could create unspecified "safety risks"; yet, it nevertheless authorized such actions in five other instances, without explaining why those circumstances did not also create safety risks or without acknowledging that at least four of those exceptions—*e.g.* "a threat to national security," an "imminent risk of death, violence, or physical harm to any person," "hot pursuit," and "instances in which a safe alternative location for the enforcement action does not exist"—appeared to hold *greater* safety risks than a routine enforcement action that was otherwise prohibited. In short, this rationale was incoherent at best, and at worst, it was wholly disingenuous. Further, OPPM 23-01 also suggested that it was intended to "reinforce the separate and distinct roles of DHS and [EOIR] in the eyes of the public"; however, OPPM 23-01's concern for this distinction was, again, selective at best and disingenuous at worst. For instance, pursuant to Director's Memorandum 22-03, *Administrative Closure*, EOIR has been required to interfere with DHS's exercise of prosecutorial discretion for over three years, largely erasing the line between EOIR's adjudicatory function and DHS's prosecutorial function. EOIR also solicited DHS to help identify cases which EOIR believed were candidates for an exercise of DHS's prosecutorial discretion, far exceeding the line between the two agencies' distinct roles. In other words, EOIR leadership at the time OPPM 23-01 was issued only seemed interested in ensuring a separation between EOIR and DHS in certain situations with a particular valence. That inconsistency not only undermined the internal coherence of OPPM 23-01, but also seriously subverted EOIR's integrity and impartiality.

Finally, EOIR lacks the authority to prohibit DHS from conducting any action it is otherwise lawfully authorized to take, and to that point, OPPM 23-01 was likely *ultra vires*. The suggestion that EOIR can prohibit DHS from taking a lawful enforcement action, particularly making a criminal arrest<sup>2</sup> or taking action under Title 8, is an anathema to the administrative separation of functions between the two agencies and their fidelity to the law.

In sum, there is no basis to retain OPPM 23-01, especially in light of DHS's Interim Guidance<sup>3</sup> and current Executive Branch policies. Accordingly, OPPM 23-01 is rescinded and canceled. The rescission of OPPM 23-01 does not reinstate OPPM 96-6.

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,

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<sup>2</sup> Although the DHS Memorandum was limited to civil immigration enforcement actions and OPPM 23-01 provided civil enforcement actions as an example of actions it purported to prohibit, the actual definition of "enforcement action" upon which OPPM 23-01 was based was not limited solely to civil enforcement actions. OPPM 23-01 did not provide any authority for EOIR's ability to prohibit DHS from making criminal arrests.

<sup>3</sup> EOIR expects DHS to adhere to the provisions of its Interim Guidance and to minimize disruption to immigration court proceedings when practicable. Any concerns about a DHS enforcement action in EOIR space utilized by OCIJ should be relayed through the OCIJ chain of command to the Office of the Director after the action has concluded.

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.