OOD
PM 26-01
Effective: January 2, 2026

To: All of EOIR
From: Daren Margolin, Director
Date: January 2, 2026

DAREN MARGOLIN Digitally signed by DAREN MARGOLIN Date: 2026.01.02 15:11:56 -05'00'

ANNUAL ASYLUM FEE

PURPOSE:	To rescind and cancel Policy Memorandum 25-36 (Amended)
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. § 1003.0(b)
CANCELLATION:	Policy Memorandum 25-36 (Amended)

On July 4, 2025, President Donald J. Trump signed into law a Congressional budget reconciliation bill (H.R. 1), commonly referred to as the One Big Beautiful Bill Act ("OBBBA").[1] Pub. L. 119-21, 139 Stat. 72. As relevant to EOIR, OBBBA introduced or increased numerous immigration-related fees. *See id*., Title X, Subtitle A, Part I ("Immigration Fees"). On July 9, 2025, to ensure swift agency compliance with the statute, EOIR issued a Policy Memorandum (PM) explaining and implementing the new OBBBA fees. *See* EOIR PM 25-35, *Statutory Fees Under the One Big Beautiful Bill Act* (July 9, 2025). Then, on July 17, 2025, EOIR issued a subsequent PM that superseded and replaced PM 25-35, provided additional guidance on the collection of fees, and delineated the total applicable EOIR fee amounts with the addition of the OBBBA fees. *See* EOIR PM 25-36, *Statutory Fees Under the One Big Beautiful Bill Act* (July 17, 2025) (Amended). Notably, because PM 25-36 merely summarized the relevant statutory text of the OBBBA, it had no independent legal effect beyond the statute or EOIR's pre-existing, longstanding regulations regarding fees, *see, e.g*., 8 C.F.R. § 1103.7. Moreover, it could not bind adjudicators to decide any particular case with any particular outcome, as the EOIR Director is prohibited by law from directing any adjudicator to rule a particular way. *See* 8 C.F.R. § 1003.0(c).

On October 30, 2025, the United States District Court for the District of Maryland ordered a temporary stay of EOIR's PM 25-36 and the Department of Homeland Security's (DHS's) United States Citizenship and Immigration Services (USCIS) Federal Register Notice, *USCIS Immigration Fees Required by HR-1 Reconciliation Bill*, 90 Fed. Reg. 34511 (July 22, 2025), as part of the civil lawsuit in *Asylum Seeker Advocacy Project v. USCIS, et al.*, No. CV SAG-25-03299, 2025 WL 3029552 (D. Md. Oct. 30, 2025) (*ASAP*), regarding an annual asylum fee (AAF) imposed by OBBBA.

[1] The official name of the measure is: "An Act To provide for reconciliation pursuant to title II of H. Con. Res. 14."

Although the order stayed PM 25-36, it did not stay, restrain, or otherwise enjoin the provisions of OBBBA imposing fees or any EOIR regulations imposing fees. Further, PM 25-36, as noted, carried no independent legal effect. Consequently—and regardless of the status of PM 25-36—any fees imposed by statute or regulation remained in force and potentially subject to payment if they were otherwise due.

Among its changes to EOIR's fee structure, OBBBA imposed an AAF "for each calendar year that an alien's application for asylum remains pending." OBBBA § 100009(a). The plain language of OBBBA makes very clear that the AAF applied in fiscal year (FY) 2025. *See* OBBBA § 100009(b)(1) (establishing the specific amount for the fee "[f]or fiscal year 2025"). This reading was further confirmed in the *ASAP* case. *See ASAP*, 2025 WL 3029552, at *5 ("Accordingly, this Court concludes that this provision [*i.e*. OBBBA § 100009(b)(1)] constitutes a clear statement of Congress's intent to collect AAFs for FY 2025 and therefore to apply the statute to applications filed before enactment.").

Consistent with the plain language of the text—and confirmed by the District Court in *ASAP*—EOIR interpreted the OBBBA to apply the AAF to asylum applications pending for at least one calendar year in FY 2025, *i.e*. as of a date between the date of enactment of OBBBA, July 4, 2025,[2] and the last day of FY 2025, September 30, 2025. Although the District Court agreed this was the correct reading of the statute, it nevertheless sought to stay EOIR from implementing that interpretation because USCIS had previously agreed to waive the fee for such applications. *Contra* OBBBA § 100009(d) ("Fees required to be paid under this section *shall not* be waived or reduced.") (emphasis added).[3] *See ASAP*, 2025 WL 3029552, at *6 (noting that "USCIS's policy [only] applies the fee to applications pending for at least one year as of September 30, 2025").

The District Court order in *ASAP* effectively left EOIR with a "Hobson's choice": knowingly violate a federal statute, OBBBA § 100009(d), or acquiesce to USCIS's position in order to attempt to resolve the litigation. Because the greater harm stems from the uncertainty over the AAF created by the *ASAP* litigation, EOIR has elected to acquiesce to USCIS's position and will waive the AAF for any asylum application that was pending for one year or more between July 5, 2025, and September 30, 2025, and was administratively final, *cf*. 8 U.S.C. § 1101(a)(47)(B); 8 C.F.R. § 1241.1, as of September 30, 2025.[4] An effort to collect the AAF will be made only for asylum applications pending for one year or more as of October 1, 2025.

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[2] As many people worldwide and almost everyone in the United States, including aliens, are aware, July 4 is an annual federal holiday. *See* 5 U.S.C. § 6103(a). Thus, neither EOIR nor USCIS is open on that date, meaning that it is extraordinarily unlikely that any asylum application was pending for precisely one calendar year as of July 4, 2025, simply because it is similarly unlikely that any asylum applications were filed on July 4, 2024, because EOIR and USCIS were closed for the holiday. Thus, although OBBBA was effective upon enactment and was enacted on July 4, 2025, it is inconceivable that anyone—unless they are deliberately being obtuse or tendentious—would be confused as to the practical operative date of its provisions. Nevertheless, EOIR now makes clear that July 5, 2025, was the operative date for when the AAF became due for any application to which it applied. Thus, for example, an application filed on July 5, 2024, would not have been subject to the AAF as of July 4, 2025, because it had not been pending for one calendar year. However, because EOIR was closed on July 4, 2025, that application would not have been adjudicated, would have remained pending, and, thus, would have become subject to the AAF on July 5, 2025.

[3] The District Court did not explain why, if it agreed with EOIR's statutory interpretation, it was EOIR's PM 25-36 that was problematic rather than USCIS's guidance.

[4] As discussed in more detail, *infra*, because these cases are already administratively final, EOIR management is not directing adjudicators how to rule in those cases in violation of applicable regulations.

To be sure, the District Court in *ASAP* did not appreciate or acknowledge the significant differences between USCIS and EOIR or the fact that those differences may necessarily lead to different policy positions regarding collection of the AAF for FY 2025, thereby rendering those differences *not* arbitrary and capricious.[5] For example, USCIS is a principally fee-funded agency and has utilized fees from its myriad other applications to subsidize processing of asylum applications for years. *See* INA § 286(m), 8 U.S.C. § 1356(m) (authorizing "adjudication and naturalization service[]" fees to be set to offset the cost of processing asylum applications). Moreover, in 2024, USCIS specifically added an "Asylum Program Fee" to further subsidize those costs. *See* 8 C.F.R. § 106.2(c)(13). USCIS also adjudicates comparatively few asylum applications to administrative finality—fewer than 22,000 for all of FY 2024. *See* USCIS Data Library, All USCIS Application and Petition Form Types (Fiscal Year 2024, Quarter 4) (Dec. 18, 2024), available at https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data?topic_id%5B%5D=33597&ddt_mon=&ddt_yr=&query=&items_per_page=10 (last visited December 31, 2025) (indicating that in FY 2024, USCIS granted 16,932 asylum applications and denied 4600 asylum applications). Thus, USCIS's flexibility to waive the comparatively minimal AAF for roughly three months has no real impact on its finances or operations. In contrast, EOIR is principally funded by an annual appropriation and has not utilized fees from other applications to subsidize the processing of asylum applications. It adjudicates significantly more asylum applications than USCIS. *See, e.g.*, EOIR Workload and Adjudication Statistics, Total Asylum Applications, https://www.justice.gov/eoir/media/1344871/dl?inline (Nov. 18, 2025) (indicating that in FY 2025, EOIR received over 40,000 asylum applications referred from USCIS, in addition to over 830,000 directly filed with EOIR). Moreover, in contrast to USCIS, *see* 8 C.F.R. § 208.14(c) (allowing USCIS to refer an asylum application to EOIR in many common circumstances), *all* of EOIR's asylum applications ultimately have to be adjudicated to some form of administrative finality as EOIR cannot simply refer the application to another agency. Thus, waiving the AAF for administratively final asylum applications between July 5, 2025, and September 30, 2025, has a significantly greater impact on its finances and operations than it does for USCIS.

Perhaps most significantly, EOIR Immigration Judges[6] possess decisional independence established by regulation. *See* 8 C.F.R. § 1003.10(b) ("In deciding the individual cases before them, and subject to the applicable governing standards set forth in paragraph (d) of this section [*i.e*. Immigration Judges are governed by applicable statutes, regulations, and precedential decisions issued by the BIA or Attorney General], [I]mmigration [J]udges shall exercise their independent judgment and discretion and may take any action consistent with their authorities under the [Immigration and Nationality] Act and regulations that is necessary or appropriate for the disposition . . . of such cases."). Further, no officer at EOIR—including the Director, 8 C.F.R. § 1003.0(c), or the Chief Immigration Judge, 8 C.F.R. § 1003.9(c)—can direct an Immigration Judge as to how to adjudicate a case, including what deadlines to set in particular cases or how to interpret statutory authority. Moreover, EOIR is required to follow its own regulations under longstanding Supreme Court case law. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S.

[5] For reasons that are unclear, even though the distinctions between EOIR and USCIS are well-known, those differences—and their significance—were not appropriately brought to the attention of the District Court while litigating the case. The propriety of that failure is beyond the scope of this PM.

[6] The AAF applies to applications pending at EOIR as a whole; thus, it necessarily applies to the Board of Immigration Appeals (BIA). Accordingly, references to an "Immigration Judge" in this PM should also be read to include an "Appellate Immigration Judge" at the BIA.

260, 266-68 (1954) (holding that a failure by an immigration adjudicator to exercise the adjudicator's own discretion contrary to applicable regulations violates due process); *see also Nader v. Blair*, 549 F.3d 953, 962 (4th Cir. 2008) (describing "the *Accardi* doctrine, [as one] which provides that when an agency fails to follow its own procedures or regulations, that agency's actions are generally invalid").[7] Thus, EOIR cannot simply direct its Immigration Judges to take a certain action when adjudicating cases.[8] In contrast, USCIS does not have a similar prohibition on directing actions in adjudications by its leadership. For all of these reasons, it is both unsurprising and consistent with the different legal functions of each agency for EOIR and USCIS to have adopted different views of the meaning of OBBBA as applied to FY 2025.

However, notwithstanding the foregoing—and to reiterate for clarity—EOIR is acquiescing to USCIS's position and will waive the AAF for any asylum application that was pending for one year or more between July 5, 2025, and September 30, 2025, and was administratively final as of September 30, 2025.[9]

Four additional points warrant comment. First, there is a distinction between when the AAF becomes due and when EOIR expects it to have been paid (*i.e.* when it is actually collectible or when it is subject to enforcement). The AAF is due according to the terms of the statute, *i.e.* when an asylum application has been pending for one calendar year. *See* OBBBA § 100009(a). Further, there is no prohibition on paying the fee when it is due even if EOIR has not provided an order for payment; in fact, over 30,000 aliens have already done so, indicating that there really is not as much confusion over payment as the plaintiffs in *ASAP* claim.[10] However, EOIR will not expect payment of an AAF that is due or otherwise seek enforcement of the AAF until an Immigration Judge has issued an order setting a deadline for payment and that deadline has passed. The Immigration Judge's order, as a matter of best practice, should also contain information about how to pay and the consequences of a failure to pay. To that end, Immigration Judges are encouraged to use the template order available in ECAS.

Second, for the reasons already discussed, *supra*, EOIR cannot mandate an Immigration Judge to set a particular filing deadline for the AAF in every case. *Cf.* 8 C.F.R. § 1003.31(h) (assigning authority to set filing deadlines to Immigration Judges). Further, unlike USCIS asylum officers, who typically have set schedules of a certain number of asylum applications to adjudicate per day, EOIR Immigration Judges manage dockets encompassing a wider variety of issues, including bond cases, questions about United States citizenship, and all types of applications for relief from

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[7] The Supreme Court has authorized a relaxation of the *Accardi* doctrine regarding an agency's failure to follow certain "procedural rules adopted for the orderly transaction of business before it." *See Am. Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 532, 539 (1970). However, the limitation on the authority of the EOIR Director to simply direct an Immigration Judge how to rule in a particular case seems to go beyond a simple procedural rule.

[8] To be clear, a federal court certainly has the authority to invalidate, enjoin, or otherwise override 8 C.F.R. § 1003.0(c) or 8 C.F.R. § 1003.10(b). Should a federal court issue an order doing so, either directly or indirectly, EOIR will implement that order accordingly.

[9] This includes asylum applications adjudicated in September 2025, but that did not become administratively final until October 2025 due to the expiration of the 30-day deadline to appeal to the BIA without an appeal being filed. *Cf.* 8 U.S.C. § 1101(a)(47)(B)(ii).

[10] The ability to pay the AAF through EOIR's online Payment Portal first became live on October 23, 2025. Between that date and November 9, 2025, 35,502 aliens paid the AAF. Any alien who has already paid the AAF will not need to pay it again until it becomes due again—*i.e.* the asylum application remains pending for another calendar year—*and* an Immigration Judge has ordered the alien to pay.

removal. As such, Immigration Judges are in the best position to determine on a case-by-case basis what an appropriate deadline is, as cases will frequently *not* be similarly situated, making a one-size-fits-all deadline inappropriate. Because each asylum case is adjudicated on a case-by-case basis, a definitive taxonomy of all circumstances of every asylum applicant before EOIR is impossible. At the least, however, the following examples reflect differently-situated asylum applicants for whom it is most appropriate for the Immigration Judge to set an AAF deadline on a case-by-case basis: aliens in DHS detention; aliens in state custody serving long-term criminal sentences; aliens who have already paid the AAF while their application was pending with USCIS or paid it previously to EOIR and are, thus, familiar with the process; aliens represented by counsel; aliens who are proceeding *pro se*; aliens proceeding as a family unit but with different application filing dates and, thus, different AAF due dates; or, aliens whose cases reflect some combination of the previous categories. In short, even if applicable regulations and the *Accardi* doctrine allowed EOIR to dictate to Immigration Judges how to rule in particular cases, it would be unwise as a matter of policy to impose by fiat a "one-size-fits-all" deadline on approximately 2.4 million asylum applications whose applicants are differently-situated and who the Immigration Judges know better than EOIR management.

Third, as with all other situations in which an asylum application—or any other relief application—is denied, any alien whose application is denied based on a failure to pay the AAF may challenge that denial through a motion to reopen or reconsider, an appeal to the Board of Immigration Appeals or, if necessary, a petition for review in federal court, *see* 8 U.S.C. § 1252.[11] As the denial of an asylum application is frequently accompanied by an order of removal, adjudicators are also reminded that the "*exclusive*" means of review of an order of removal and the accompanying, underlying denial of an asylum application is through a petition for review with the appropriate Circuit Court of Appeals. 8 U.S.C. § 1252(a)(5) (emphasis added). Adjudicators are also reminded that "[a]lthough immigration proceedings are required by statute to be determined on the record after a hearing. . .[the Supreme Court] previously ha[s] decided that they are not governed by the APA [Administrative Procedure Act]." *Ardestani v. INS*, 502 U.S. 129, 133 (1991); *accord Marcello v. Bonds*, 349 U.S. 302 (1955). Thus, it would be inappropriate to challenge an Immigration Judge's adjudication decision, including on the applicability of an AAF or the deadline to pay it, through a claim under the APA.

Fourth, although Immigration Judges were initially encouraged—as part of a "belt-and-suspenders" approach—to provide oral notice *in addition to* a written order regarding the AAF, the District Court in *ASAP* felt that doing so would potentially cause confusion. *ASAP*, 2025 WL

[11] Relatedly, although EOIR could not dictate (for the reasons discussed, *supra*) to Immigration Judges how to address an asylum application where the AAF had not been paid even though payment was not available through the EOIR online Payment Portal and no order had been issued by the Immigration Judge requiring payment, the overwhelming majority of Immigration Judges clearly understood the suggestion by PM 25-36 that denying an asylum application under those circumstances was problematic. Indeed, only approximately 10 out of roughly 69,000 asylum applications adjudicated in the fourth quarter of FY 2025 were denied due to a failure to pay the AAF. (It appears that all of those cases were subsequently remedied through normal channels at EOIR, *i.e*. reopening by the Immigration Judge or an appeal to the BIA.) Although reasonable minds may certainly differ, EOIR's view is that an event occurring less than 0.015% of the time is not persuasive evidence of confusion by Immigration Judges regarding PM 25-36. Moreover, the existence of well-established procedural remedies in cases where an alien believes his or her asylum application was incorrectly denied further underscores the problematic nature of the *ASAP* litigation and its curious reluctance to engage with relevant law and important facts.

3029552, at *7. Thus, Immigration Judges are specifically *not* encouraged to provide an oral order or notice in addition to the written order for payment of the AAF.

Finally, due to the stay in *ASAP*, PM 25-36 has not been in effect since October 30, 2025. As discussed, *supra*, PM 25-36 had no independent legal effect beyond the OBBBA, and the relevant provisions of OBBBA have not been enjoined. Thus, the stay of PM 25-36 had no practical impact on EOIR, and EOIR adjudicators have remained obligated to adhere to the relevant provisions of the OBBBA since its enactment.[12] Nevertheless, to avoid any further purported "confusion"—regardless of whether that "confusion" was actually valid or realistic—PM 25-36 is hereby rescinded and cancelled.

Upon issuance of this PM, EOIR's Office of Policy will update all relevant sections of EOIR's website to conform to this PM.

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.

[12] For similar reasons, even if the instant PM is enjoined or stayed, EOIR adjudicators will remain obligated to apply the relevant provisions of the OBBBA, including the AAF, unless those provisions are themselves enjoined or invalidated. Indeed, EOIR adjudicators should have been adhering to the AAF provisions of the OBBBA since online payment became available in October 2025.