



OOD
PM 25-42
Effective: August 22, 2025

To: All of EOIR
From: Sirce E. Owen, Acting Director
Date: August 22, 2025

ADJUDICATOR INDEPENDENCE AND IMPARTIALITY

PURPOSE:	Establishes updated guidance regarding the independence and impartiality of EOIR adjudicators
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. § 1003.0(b)
CANCELLATION:	Policy Memorandum 21-15, Adjudicator Independence and Impartiality

On January 19, 2021, EOIR issued Policy Memorandum (PM) 21-15, *Adjudicator Independence and Impartiality*, which was intended to reaffirm basic principles of integrity for EOIR proceedings. However, the subsequent leadership at EOIR between 2021 and 2025 took actions and established precedents that constructively amended PM 21-15 in several ways; however, for reasons that are unclear, that leadership did not formally cancel PM 21-15. As a result, there remains confusion over which parts of PM 21-15, if any, remain in effect. To dispel that uncertainty, this PM reiterates the ideas of PM 21-15 that remain valid. In doing so, it restates much of the language of PM 21-15 while also clarifying points that may still be confusing or have been amended by subsequent EOIR practices or policies. Accordingly, this PM supersedes and replaces PM 21-15.

In order to carry out the mission of the Department of Justice to, *inter alia*, “enforce the law and defend the interests of the United States according to the law” and EOIR’s mission “to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation’s immigration laws,” EOIR utilizes multiple adjudicators.¹ They are required to adjudicate cases independently and impartially without favor to either party or without deciding them on any basis other than the record before them and the applicable law. Relatedly, and notwithstanding an oft-repeated myth to the contrary, all adjudicators at EOIR are independent in their decision-making in the cases before them. In other words, they exercise “independent judgment and discretion” when adjudicating cases. *See, e.g.*, 8 C.F.R. §§ 1003.0(c), 1003.1(d)(1)(ii), 1003.10(b);

¹ Some EOIR adjudicators are also members of the Senior Executive Service (SES), though most are not. SES positions may be filled by career or noncareer appointments, though federal law limits the number of noncareer appointments at the Department of Justice to no more than “10 percent of the total number of [SES] positions in all agencies.” 5 U.S.C. § 3134(b). EOIR currently has no noncareer SES appointments and has traditionally filled all of its SES positions through career appointments. All EOIR non-SES adjudicators are career officers chosen through an open, competitive, merit-based hiring process that is independent of partisan influence, media pressure, societal clamor, or any other inappropriate consideration.

accord United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 267 (1954) (“And if the word ‘discretion’ means anything in a statutory or administrative grant of power, it means that the recipient must exercise his authority according to his own understanding and conscience.”). Therefore, no EOIR employee or officer can direct any adjudicator to rule in a particular way on a matter before him or her in the first instance.

However, nothing in this PM should be construed as limiting the authority of an appropriate appellate entity from instructing an adjudicator regarding issues in a case upon remanding that case following an appeal. Adjudicator independence is not a license to ignore a clear directive from a proper appellate authority, even if the adjudicator disagrees with the decision. Similarly, nothing in this PM limits the authority of the Attorney General regarding matters of immigration law. As the head of the Department of Justice, the Attorney General sets policy for EOIR and exercises significant authority over its functions. *See, e.g.*, 8 U.S.C. § 1103(g). Moreover, a “determination and ruling by the Attorney General with respect to all questions of law *shall* be controlling.” 8 U.S.C. § 1103(a)(1) (emphasis added).

In carrying out adjudicatory duties, media stories, public clamor, partisan inquiries, pressure from outside groups, or pressure from other employees or officers are all inappropriate factors for adjudicators to consider when making decisions. *See, e.g.*, Ethics and Professionalism Guide for Immigration Judges (Ethics Guide), sec. VIII. Acting in a Neutral and Detached Manner (Jan. 26, 2011) (“An Immigration Judge should not be swayed by partisan interests or public clamor.”). EOIR adjudicators exercise independent decision making in accordance with the law, and to support and reinforce that independence, it remains EOIR policy that adjudicator decisions should continue to be based solely on the record before the adjudicator and the applicable law.

Adjudicator independence does not mean that an adjudicator is free to ignore applicable law, however. The authority of all EOIR adjudicators is circumscribed by law, principally the Immigration and Nationality Act (INA), its attendant regulations in 8 C.F.R. chapter V, Department of Justice regulations in 28 C.F.R. part 0, subpart U and part 68, binding precedent from the Board of Immigration Appeals, the Attorney General, federal circuit courts, and the Supreme Court, and any relevant federal court orders. Nevertheless, the requirement that an adjudicator apply binding precedent, even precedent with which the adjudicator personally disagrees, does not mean that an adjudicator is not independent.²

Although EOIR provides adjudicators with timely updates of relevant decisions and potentially applicable orders, adjudicators will also frequently discuss legal issues with their colleagues or

² Although an adjudicator has no authority to ignore applicable law, EOIR recognizes that law, especially law embodied in court decisions, is inherently interpretive. Thus, whether—or how—a precedent or other order applies to a particular case may involve some degree of interpretation by the adjudicator. In some cases, a precedent or order is clear. In other cases, however, there remains significant interpretative ambiguity regarding the contours of a precedent or order, and the parties to a case may offer competing interpretations of the same decision or order. Moreover, among judges themselves, there is frequently disagreement over how to interpret another court’s decision—*e.g.* what is the precise holding, what parts of a decision are the holding and what are dicta, what is the scope of the holding, or whether the decision is distinguishable based on its facts or the relevant law. Consequently, adjudicators should also be cautious to not conflate the result of a case with the reasoning for that result or about drawing categorical conclusions based only on the result of a case, especially in cases where not all arguments may have been raised or considered by the deciding court.

law clerks, and adjudicators may seek legal advice within EOIR on some matters—*e.g.* questions of ethics arising from an adjudication, *see* Ethics Guide, sec. III. Ethics Guidance (“Immigration Judges are encouraged to seek ethics opinions to ensure that their conduct comports with applicable rules and regulations.”)—it ultimately remains up to each individual adjudicator alone to determine how to interpret the law and apply relevant legal authority to an individual case. Adjudicator independence protects the integrity of the proceedings, but it also places responsibility on the individual adjudicator to maintain fidelity to the law, especially because adjudicator decisions may bind EOIR and the Department of Justice to particular legal positions. *See, e.g.*, Ethics Guide, sec. IV. Professional Competence (“An Immigration Judge should be faithful to the law and maintain professional competence in it.”).

Due to their decision-making independence and the policymaking nature of their positions, adjudicators must assiduously remain neutral when deciding each case. *See, e.g.*, 5 C.F.R. § 2635.101(b)(8); Ethics Guide, sec. V. Impartiality (“An Immigration Judge shall act impartially and shall not give preferential treatment to any organization or individual when adjudicating the merits of a particular case.”). It is not the role of an adjudicator to provide preferential treatment to one party over another or to provide a procedural advantage to one party at the expense of another. *See generally* PM 25-02, EOIR’s *Core Policy Values*; PM 25-33, *Neutrality and Impartiality in Immigration Court Proceedings*. For example, if a party does not provide a certified English translation of a foreign-language document, *e.g.* 8 C.F.R. § 1003.33, it is not the adjudicator’s role to have the document translated for the opposing party.

Although individual cases may present particularly sympathetic or unsympathetic allegations, adjudicators must be mindful that they are unbiased arbitrators of the law and not advocates for either party in the cases before them. Suggestions that adjudicators should favor one party over the other from the media, advocacy organizations, partisan interests, or other employees or offices are inappropriate and do not override an adjudicator’s ethical obligations to be impartial. Ethics Guide, sec. VIII. Acting in a Neutral and Detached Manner (“An Immigration Judge should not be swayed by partisan interests or public clamor.”).

Further, although EOIR adjudicators exercise discretion where authorized by law, as administrative adjudicators required to act impartially and remain faithful to the law, they do not possess intrinsic, free-floating equitable authority; rather, “in considering and determining cases before [them], can only exercise such discretion and authority conferred. . .by law.” *Matter of Hernandez-Puente*, 20 I&N Dec. 335, 339 (BIA 1991). In other words, an EOIR adjudicator cannot simply decide a case based on what he or she believes is “equitable”; rather, cases must be decided on the facts, evidence, and law, regardless of where an adjudicator’s personal sympathies may lie.

Principles of independence and impartiality may also bear upon the appropriateness of corrective action or discipline for an adjudicator. For example, an adjudicator who abandons neutrality in order to favor one party over the other may be subject to corrective action or discipline, especially if the adjudicator does so in defiance of applicable law. Impartiality itself—almost by definition—does not result in a particular outcome, and adherence to applicable law does not make an adjudicator partial. Thus, in a vacuum, it is inappropriate to evaluate an adjudicator’s impartiality

or performance simply by reference to the outcomes of cases.³ However, there are limits, and adjudicator independence and impartiality does not mean that an adjudicator can consistently decide cases based on personal beliefs or personal policy preferences at odds with applicable law and interpretations of the Attorney General.

Adjudicatory outliers or statistically improbable outcome metrics, particularly relative to EOIR's overall adjudicator corps and after controlling for sample size and relevant docket characteristics, may be indicative of a systematic bias or failure to adhere to applicable law that warrants close examination and potential action.⁴ Furthermore, and as noted, *supra*, nothing in this PM, or applicable law, limits the Attorney General's supervisory authority over EOIR adjudicators, all of whom are inferior officers subject to both appointment and removal by the Attorney General exercising executive authority enshrined in Article II of the Constitution on behalf of the President. *See, e.g., Collins v. Yellen*, 594 U.S. 220, 256 (2021) ("The President must be able to remove not just officers who disobey his commands but also those he finds negligent and inefficient, those who exercise their discretion in a way that is not intelligent or wise, those who have different views of policy. . . and those in whom he has simply lost confidence." (cleaned up)).

EOIR took great strides between 2017 and 2021 in improving the integrity of its proceedings and in restoring its reputation as a fully-functioning, administrative adjudicatory agency whose adjudicators are professional, competent, and neutral. Unfortunately, those efforts were largely eroded between 2021 and 2025, and EOIR is now forced to take numerous remedial efforts to restore the integrity of the agency and ensure that all adjudicators are considering cases impartially and with fidelity to the law. Nevertheless, within the larger Constitutional structure and subject to the oversight and direction of the Attorney General, EOIR remains committed to ensuring the decisional independence and impartiality of its adjudicatory corps and to restore its standing as the preeminent administrative adjudicatory agency within 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.

Please contact your supervisor if you have any questions.

³ Similarly, absent additional context and without controlling for the interests of the party alleging bias, results-oriented or merits-oriented claims of bias *in individual cases*—*i.e.* alleging an adjudicator is "biased" simply because the adjudicator issued a ruling against the party making the claim of bias in a particular case—are also not appropriate bases for disciplinary decisions.

⁴ A failure to adhere to applicable law may be intentional or it may be rooted in ignorance or preconception. However, to the extent it is causing an adjudicator to inappropriately decide cases, that failure warrants closer scrutiny.