



OOD
PM 21-24

Effective: June 7, 2021

To: All of EOIR
From: Jean King, Acting Director
Date: June 7, 2021

CANCELLATION OF POLICY MEMORANDUM 21-10 AND INFORMATION ON EOIR FEES AND FEE WAIVERS

PURPOSE:	Rescind and cancel Policy Memorandum 21-10
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. § 1003.0(b)
CANCELLATION:	Policy Memorandum 21-10

I. Rescission of PM 21-10

As part of EOIR's ongoing efforts to improve operations and review existing policy memoranda, the following Policy Memorandum (PM) is rescinded:

1. PM 21-10, *Fees*.

PM 21-10 was issued in relation to the publication of the final rule titled "Executive Office for Immigration Review; Fee Review," 85 Fed. Reg. 82,750 (Dec. 18, 2020), which was partially enjoined before taking effect. *See Catholic Legal Immigration Network, Inc. et al., v. Exec. Off. for Immigration Rev., et al.*, No. 20-cv-03812 (D.D.C.) ("CLINIC v. EOIR"). All EOIR fee increases set out in the final rule are currently enjoined except for the fee increase to \$145 for motions to reopen or reconsider before the Immigration Court and to \$675 for filing an EOIR Form-45, Notice of Appeal from a Decision of an Adjudicating Official in a Practitioner Disciplinary Case, with the Board of Immigration Appeals ("BIA"). The revocation of PM 21-10 is consistent with the court order in *CLINIC v. EOIR* and with Executive Orders 14010 and 14012 (Feb. 2, 2021).

II. Payment of Fees

Filers at the BIA are encouraged to pay applicable fees online through the EOIR Payment Portal, located at <https://epay.eoir.justice.gov/index>. Payments for BIA-related fees may also be made by check or money order accompanying a paper filing.

Fees before the immigration court are payable to DHS. *See* 8 C.F.R. § 1103.7(a)(3).

III. Fee Waivers

The availability of fee waivers is established by regulation. *See* 8 C.F.R. § 1103.7(c). No fee waiver may be granted with respect to the fee prescribed for a DHS form or action that is identified as non-waivable in DHS regulations. *Id.* The EOIR fee waiver request, Form-26A, is available at: <https://www.justice.gov/eoir/page/file/1237856/download>.

Although the regulations do not require a written ruling on a fee waiver request, the best practice is for Immigration Judges (IJs) and Appellate Immigration Judges (AIJs) to commit such decisions to writing. IJs and AIJs are also encouraged to rule on fee waiver requests expeditiously to ensure there is no confusion by the parties regarding whether a submitted appeal, application, or motion has been accepted as filed. Each fee waiver request is assessed on its own merits, and EOIR has no policy directing the automatic grant or denial of a fee waiver request. IJs and AIJs retain independent judgment and discretion in assessing fee waiver requests. 8 C.F.R. §§ 1003.1(d)(1)(ii), 1003.10(b).

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.