PRACTICE RESOURCES

Practice Alert: EOIR Issues Nationwide Guidance on *Maldonado Bautista*

1/16/26 | AILA Doc. No. 26011404.

Updated January 16, 2026

On January 13, 2026, Chief Immigration Judge Teresa L. Riley issued nationwide guidance instructing all immigration judges that: "*Maldonado Bautista* is not a nationwide injunction and does not purport to vacate, stay or enjoin *Yajure Hurtado*." Immigration judges are instructed to follow the BIA's decision in *Matter of Yajure Hurtado* as binding precedent. The guidance from EOIR states that a "declaratory judgment" is not binding and does not have the authority to compel specific action.[i]

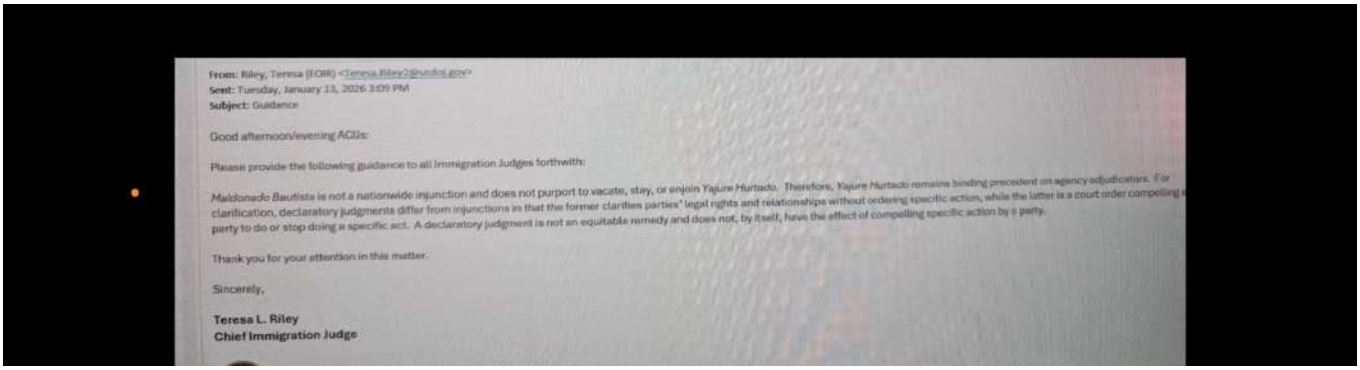
AILA members are reporting widespread denial of bond hearings based on this new guidance. Members pursuing released from federal court should keep in mind:

1. You must allege and prove your client's class membership. The relief does not apply beyond the class even if the Court in *Maldonado Bautista* concluded that the underlying legal position is fundamentally wrong. The notice to appear, itself should provide evidence of class membership and it should be argued that as such the factual allegation that the individual is not an arriving alien is undisputed especially where the NTA shows that the person is inadmissible under INA 212 (a)(6)(A)(i).
2. Members should file a copy of the December 18, 2025 clarifying order as an exhibit in the bond record of proceedings to ensure it is part of the record as well as copies of this advisal. It may not be enough to rely on citations. Many Immigration Judge's will not have previously read the decision.
3. Make sure you review the 2025 published BIA decisions on bond and provide sufficient evidence to establish your client is not a danger to the community or a flight risk as part of your motion for bond redetermination. Evidence of relief eligibility, housing, and family and community support are particularly persuasive.

AILA will continue to monitor the situation and provide updates moving forward. If you have specific case examples of courts denying eligibility based on this email, please submit your case examples here.

Class members include "[a]ll noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination." For more information, see class counsel's practice advisory here.

To contact class counsel, reach out to Bautista_EWI_Class@aclu.org.



[i] Relevant members should still be screening for ***Guerrero-Orellana*** class membership because they remain class members even if moved to states outside of New England. When filing a motion for bond, attorneys should specifically write/state that the Respondent is a class member of *Guerrero-Orellana* and therefore entitled to a bond hearing. Additionally, a class member who is denied a bond hearing should file a habeas petition and ask for immediate release and fees.

Accessible to Public.

Immigration judges told to ignore rulings on bond hearings, documents show

Reuters Via Reuters Connect // January 20, 2026 // **2 Minute Read**

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The top U.S. immigration judge has told her colleagues that they are not bound by a federal court ruling that declared the Trump administration cannot place thousands of people in mandatory detention without an opportunity to be released on bond.

That directive came in an email Chief Immigration Judge Teresa Riley sent her colleagues on Jan. 13 that the American Civil Liberties Union of Massachusetts attached to a filing on Jan. 16 in Boston federal court in a lawsuit challenging the administration's policy of denying bond hearings.

The ACLU said the email was evidence that "the government has deliberately and systematically instructed every Immigration Judge in the country not to comply with final declaratory judgments."

The civil rights group said the statement directs judges to disregard court rulings by U.S. District Court Judge Sunshine Sykes in California and U.S. District Court Judge Patti B. Saris in Boston in separate class action lawsuits brought on behalf of people who were already living in the United States when they were detained. Both judges held that denying people bond hearings was unlawful.

"We have asked for a status conference to update the court on this troubling development — which significantly impacts the rights of our class members — and anticipate seeking additional relief to protect the class," Dan McFadden, managing attorney at the ACLU of Massachusetts, said in a statement.

At the ACLU's request, Saris scheduled a Jan. 20 hearing.

The U.S. Justice Department, which oversees the immigration courts, did not respond to a request for comment.

Immigration judges are not part of the federal judiciary but are instead employees of the Justice Department.

Under federal immigration law, "applicants for admission" to the United States are subject to mandatory detention while their cases proceed in immigration courts.

Bucking a longstanding interpretation of the law, the Trump administration in July said non-citizens already residing in the United States, and not only those who arrive at a port of entry at the border, qualify as applicants for admission.

The Board of Immigration Appeals, which is part of the Justice Department, issued a decision in September that adopted the administration's interpretation.

But Sykes, whose case is a nationwide class action, said in a December ruling that the administration's interpretation was contrary to law and that, as a result, the board's ruling was "no longer controlling."

Yet Riley in the Jan. 13 email told her colleagues that because Sykes did not issue an injunction, the board's decision "remains binding precedent on agency adjudicators."

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Editor's Picks

Lawyers with the ACLU said that prior to that email, the immigration court in Massachusetts had begun holding bond hearings again, consistent with Saris's decision.

But the lawyers said they received multiple reports on Jan. 15 that an immigration judge was denying detainee requests for bond hearings.

(Reporting by Nate Raymond in Boston; editing by Aurora Ellis)

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Trump Administration Continues Firing Immigration Judges – IFPTE responds

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Candace Rhett September 27, 2025

Following last weekend's firing of over a dozen Immigration Judges (IJs), IFPTE, which represents IJs nationwide and members of the National Association of Immigration Judges (NAIJ/IFPTE Judicial Council 2), stated that, "the removal of experienced judges is hypocritical, undermines the law, wastes taxpayer dollars, and further delays justice for citizens and immigrants alike."

The latest firings bring the number of IJs that have been removed from federal service since President Trump took office to 128. Read IFPTE's full statement, and see President Biggs discussing the firings on ABC and NBC (President Biggs begins at the 3:50 mark).

President Biggs discussing the firing of immigration judges on ABC

Former judge highlights legal failures in U.S. worker detentions

donga.com/en/article/all/20250920/5859412/1

September 19, 2025

“I was in court on the afternoon of Sept. 4 when an email alert appeared on my monitor with the subject line ‘Termination Notice.’ At that moment, I thought, ‘It has finally come.’”

David Kim (Kim Kwang-soo), a former judge at the U.S. New York Federal Immigration Court who was abruptly terminated by the second Trump administration, said this in an interview with The Dong-A Ilbo on Sept. 18. Kim, who immigrated to the United States after completing his first year of high school in 1983, is a recognized immigration law attorney and became the first Korean American appointed as a U.S. federal immigration judge in 2022. News that he was recently dismissed through what amounted to a “three-line email” has reignited debate in the U.S. legal community over the Trump administration’s efforts to influence the judiciary and its hardline immigration policies.

“After the start of Trump’s second term, dozens of immigration judges were already dismissed. They all received emails stating, ‘Under the authority of the President pursuant to Article II of the U.S. Constitution, as of today, you are no longer an immigration judge,’” Kim said. “I do not know the exact reason for my termination, but most of those dismissed, including myself, were judges with high asylum approval rates.”

According to TRAC, a nonprofit data analysis organization at Syracuse University, Kim’s asylum approval rate was 96.9%, far higher than the average dismissal rate of 34.8% for other New York federal immigration judges. Kim explained, “The reason my approval rate was high is that I could not tolerate attorneys who did not put their best effort into representing clients, so I would instruct them to improve before proceeding with the trial.” He emphasized, “Deportation hearings decide not just one individual’s life but the lives of their entire family, so one has to be extremely careful.”

As an immigration law expert, Kim also offered guidance on the recent arrests and detentions of Korean workers at the Hyundai-LG Energy Solution joint battery plant in Georgia (HL-GA). He said, “Even a quick look at media reports shows clear

procedural issues, such as ICE agents threatening and detaining workers. The U.S. is a country with established procedural law, so if ICE failed to follow legally required steps in implementing immigration law, it is unlawful."

With growing calls among detainees recently returned to Korea for legal action, he advised, "Since more than 300 people were affected, pursuing a class-action lawsuit might be the most effective way to seek legal remedies." He also suggested utilizing the Alien Tort Claims Act (ATCA), which allows foreigners to file claims for mental or physical harm caused by the U.S. He added, "The Korean government should exercise its capacity in this matter, and I am willing to assist wherever I can."

Kim, who immigrated to the U.S. with his father, a pastor, recalled studying with the memory of friends who told him, "Go to America and succeed, but never forget us." "Thinking about the many days I worked hard to learn English, I understand the immigrant's mindset better than anyone," he said. "Immigration law is challenging, but those who take it seriously earn deep respect."

Following his termination, Kim has received offers from several prestigious immigration law firms and is expected to return to practice as an immigration attorney.

Woo-Sun Lim imsun@donga.com

Ousted immigration judge describes deepening court backlog

pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog

Geoff Bennett November 12, 2025

Dozens of immigration judges have been fired by the Trump administration with no explanation. From coast to coast, nearly four dozen judges have lost their positions as the courts face a record backlog. Many had worked in immigrant defense, prompting questions about whether the firings are part of the administration's hardline approach. Geoff Bennett discussed more with former judge Emmett Soper.

Read the Full Transcript

Notice: Transcripts are machine and human generated and lightly edited for accuracy. They may contain errors.

Dozens of immigration judges across the country have been fired by the Trump administration in recent months with no explanation for their dismissals.

From coast to coast, nearly four dozen judges have lost their positions as the immigration court system faces a record backlog of more than three million cases. Many of those dismissed had previously worked in immigrant defense, prompting questions about whether the firings are part of the administration's broader hard-line approach to immigration.

We're joined now by one of those former judges, Emmett Soper. He served as a judge in Virginia.

Thank you for being with us.

Emmett Soper, Former Immigration Judge:

Thank you for having me.

So let's start there. You were a longtime employee at the Justice Department, a career staffer, almost 20 years. Do you believe your termination was connected in any way to your prior work defending immigrants?

Emmett Soper:

I don't know exactly why I was terminated. I was terminated without any warning. The letter I received telling me that I was terminated did not give any reasons for my termination.

So I'm a little bit in the dark as to why I was terminated. I had been a Department of Justice employee for a long time, and I had also been an immigration judge for a long time. They fired me without any warning nor any explanation.

What does the wave of firings mean for the backlog of cases and for those immigrants who are waiting for their day in court?

Emmett Soper:

Well, the wave of unlawful firings of immigration judges is already exacerbating the backlog at the immigration courts.

As judge after judge after judge gets fired unlawfully, their cases -- and each judge typically handles hundreds or thousands of cases -- have to be redistributed to the judges who remain on the courts. As each judge gets fired, those cases are redistributed, the backlog gets longer, people have to wait longer for their hearings, and after their hearings, they have to wait longer for their decisions.

The Trump administration, in the meantime, is approving military judges to work as temporary immigration judges. What does that shift signal to you?

Emmett Soper:

It's hard to know because the military judges, to my understanding, are just getting started.

We will have to see how it plays out. I have to assume that the military judges who come into the immigration courts are going to be people of integrity who try their best to do the job of being an immigration judge. But it's a very difficult job. Immigration law is very difficult to pick up.

It's complicated. You don't learn it overnight. When I started as an immigration judge, I was told it would take roughly two to three years to become really fully comfortable in being a judge in immigration court. And that proved accurate.

This is not something that these military judges, regardless of how hard they try, are going to be able to pick up overnight.

Do you believe the administration sees veteran judges like yourself as an obstacle to their mass deportation effort?

Emmett Soper:

They may. What I can say is that I always tried very hard to treat everybody fairly and to resolve cases as I thought was appropriate under the law.

I tried my best to block out all of the noise and all of the really political interference that has been going on really since the start of this administration. I think, as a veteran judge, you're probably in a better position to do that than, for example, a judge who has just started.

So it's a little bit hard to know what this administration thinks of veteran judges. And I was one. But they may see us as less controllable than some other judges, and this might be an issue for them. Overall, though, it's really hard to say, because we really don't know for the most part why we were fired because we weren't told.

What's fundamentally different about what's happening now compared to previous administrations?

Emmett Soper:

I think that previous administrations, the immigration courts have always had their flaws. Nobody would argue that it's a perfect system.

But the leadership of the immigration courts in previous administrations, I think, were people of integrity who saw the immigration courts as neutral arbiters, as neutral decision-makers, and tried their best to insulate the immigration courts from politics and the policies of whichever administration was in charge.

I think that that is out the window now. I think the current administration of the immigration courts does not fundamentally see the immigration courts as neutral decision-makers. I think that they see the immigration courts as a tool for this administration to advance its policy objectives.

You have said that, as shocking as your firing was, you felt a bit of relief because of what you had witnessed toward the end of your tenure with ICE arrests happening right outside your courtroom.

What did you see and what was it like?

Emmett Soper:

Well, it was unprecedented and it was disturbing, frankly.

ICE earlier this year at the court where ICE served, which is in the Washington, D.C., area, began on a regular basis arresting people who were showing up for their preliminary hearings in their case. These are people who typically did not have criminal records. These are people who were not doing anything wrong. They were trying to follow the law by showing up for their immigration court hearings, like they had been told they had to do.

In many of these cases, ICE was waiting for the hearing to be over. Then, when they left the courtroom, they were immediately arrested. And this wasn't just people showing up on their own. In some cases, these were people who came as part of a family. In some cases, following the hearing, ICE would arrest, let's say, the father and the family in front of the mother and the family and their children, who had all come to court together.

So, in other words, ICE, in the lobbies of the immigration courts, in some cases, were splitting up families. Regardless of how you feel about the law, and regardless of how you feel about immigration policy, I think that it is just impossible to defend that sort of policy on a moral or an ethical basis.

This was happening on a regular basis during the last few weeks that I was at the immigration court, and I found it extremely disturbing.

Emmett Soper, thank you again for your time this evening. We appreciate it.

Emmett Soper:

Thank you very much.

San Francisco immigration judges speak out after firings – NBC Bay Area

nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850

Hilda Gutierrez, Michael Bott, Son Vo November 25, 2025

San Francisco immigration judges Shuting Chen and Jeremiah Johnson weren't expecting to be fired when they showed up to work last Friday. But they weren't exactly surprised when it happened, either, given the fate of many of their colleagues this year.

Even so, the termination emails hit like a punch to the gut, they said.

"When I saw the email, I had a very emotional reaction," said Chen, who was appointed under the Biden administration in 2022. "I started to cry in my courtroom in front of the parties, which I tried always not to do, despite the traumatic nature of our jobs."

Johnson, who's served as an immigration judge since 2017, said the emails provided no explanation for the firings.

"We are all public servants," Johnson said. "We spent years of our lives serving the United States government in this role. And no explanation? No 'thank you?'"

Chen and Johnson are among the latest casualties of the Trump administration's ongoing purge of immigration judges across the country. San Francisco immigration judges Patrick Savage, Amber George, and Louis Gordon were also let go, according to multiple sources with direct knowledge of the firings.

The shockwaves of the firings were already being felt at San Francisco's immigration court Monday.

"I'm saddened because the system lost great judges," said immigration attorney Wahida Noorzad.

San Francisco Nov 21, 2025

Trump admin fires 5 more SF immigration judges, posts ads looking to hire 'deportation judges'

Investigative Unit Oct 20, 2025

Former judges give inside look at immigration court upheaval

Immigration Sep 19, 2025

2 Concord immigration judges fired as Trump administration continues purge

Noorzad had expected to attend the final hearing in her client's asylum case before learning Judge Patrick Savage had been fired. The hearing was cancelled and pushed back another three years, she said.

"They wait five years to get a court hearing and then get thrown another three years," Noorzad said. "These people are desperate to get their asylum."

Chen said the remaining nine judges in San Francisco – already overwhelmed with thousands of cases each year – will now be hit with an avalanche of new cases they're picking up from judges who have been terminated.

"I am deeply sorry that I cannot be there to hear their cases," Chen said. "I think about a lot of the cases that I had to leave behind, which now, of course, creates more work for my colleagues."

Across the country, the Department of Justice has terminated more than 90 immigration judges this year without cause, according to the National Association of Immigration Judges. San Francisco's immigration court has been hit particularly hard, losing 12 of its 21 judges this year to firings,

Judges and attorneys have been searching for a common thread that might explain who's being fired, such as judges with high rates of granting asylum, or judges with previous experience representing immigrants.

But more and more, judges and attorneys tell NBC Bay Area they believe the administration is simply attempting to dismantle and completely reshape immigration courts.

"This is an all-out attack on the immigration court," Chen said. "We began the year with 21 judges, and now we have nine, I think, in San Francisco."

Beyond the firings, a wave of policy memos and new directives from the Department of Justice, which employs immigration judges through its Executive Office for Immigration Review (EOIR), have also left an imprint on the court, according to many judges and immigration attorneys who have spoken to NBC Bay Area in recent months.

“I saw them as soft pressure,” Johnson said. “It was giving judges the hint that they should be hearing cases a certain way, deciding cases a certain way. Move faster. Less due process, essentially.”

The Department of Justice has said the new policies are aimed at enforcing the country’s existing immigration laws, which it accused the Biden administration of abandoning.

The agency declined to comment on the firings but has said it evaluates judges on factors such as conduct, impartiality, adherence to the law, productivity, and professionalism.

As the Trump administration fires judges by the dozens, it’s also recruiting new ones to serve at the same time, launching a recent hiring campaign that’s already stirring up controversy by referring to immigration judges as “deportation judges.”

“Help write the next chapter of America,” the DOJ job posting states. “Apply today to become a deportation judge.”

The Department of Homeland Security is also promoting the hiring effort on social media.

“Bring the hammer down on criminal illegal aliens,” the agency wrote. “Defend your communities, your culture, your very way of life.”

The language has caused an outcry among attorneys, judges, and immigrant rights advocates.

“It’s meddling and interfering with real judges, our roles, our jobs, everything that we do,” Johnson said.

Chen said she never viewed herself as a “deportation judge” and hopes new judges won’t, either.

“I remain optimistic that people who are being brought on will not see themselves either as deportation judges, but as immigration judges, or just judges,” Chen said. “People who are trying to understand the law, who are grappling with it and thinking about it, and trying to do the right thing.”

In response to the criticism over the job postings, a Department of Justice spokesperson emailed a statement saying:

"After four years of the Biden Administration forcing Immigration Courts to implement a de facto amnesty for hundreds of thousands of aliens, this Department of Justice is restoring integrity to our immigration system and encourages talented legal professionals to join in our mission to protect national security and public safety."

The administration has also authorized military attorneys to begin serving as temporary immigration judges, some of whom have already begun, according to an October EOIR press release.

This article tagged under:

Investigative UnitSan FranciscoImmigration

Judges See An Immigration Court Gutted From Inside

law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside

The Executive Office for Immigration Review, the subagency under the purview of the U.S. Department of Justice overseeing the immigration courts, gave Pappas eight days to dissolve his law firm and report to Falls Church, Virginia, for training. After being sworn in on a Friday, he only had the weekend to pack his things, move from North Carolina to Boston, Massachusetts, at his own expense, and show up to work the following Monday. He came back to visit his wife every two weeks.

Pappas wasn't alone in taking a leap into uncertainty. Many colleagues relocated from across the country and abroad, signing mortgages and moving children to new cities. Despite the disruptions, the judges felt they'd made the right choice and found the work as public servants rewarding.

But those personal sacrifices and drive meant little when, in the days since President Donald Trump returned to the White House, Pappas and scores of other judges were fired from the bench without cause and without warning.

"We were treated worse than dogs," Pappas said.

At least 141 judges have left the immigration bench since Jan. 20, including 82 who have been fired outright. Some were forced to take early retirement, others simply resigned.

Eight former immigration judges who spoke to Law360 say the administration's rough treatment of the immigration courts poses an unprecedented threat to judicial independence and is eroding immigrants' due process rights.

While arrests and expedited removals have grabbed headlines, quieter internal steps like the firing of hundreds of immigration judges and curbs on the discretion of those who remain have drawn far less scrutiny.

But the judges view these as sides of the same coin: a hollowing out of protections for noncitizens and adjudicators alike, aimed at shrinking immigration courts into a bare administrative process with little recourse. The endgame, some of them say, is to eviscerate the immigration court or eliminate it altogether.

"Nothing is happening in a vacuum," said A. Ashley Tabaddor, a former immigration judge in Los Angeles who served as chief counsel of U.S. Citizenship and Immigration Services in the Biden administration. "They are doing everything to essentially bypass the law and maximize the enforcement arm."

Matt Biggs, the president of the International Federation of Professional & Technical Engineers, the broader union the National Association of Immigration Judges falls under, called the number of judges who have been fired was probably an undercount and said it doesn't include judges who resigned for jobs in private practice or just retired. Some of them, like Pappas, were terminated at the end of a two-year probationary period, while others had been on the bench for decades.

Judges who were fired said that they were never told the reason they were let go. The judges who spoke to Law360 encompass the full political spectrum, ranging from liberal to conservative.

Overall, the judges said the administration seems to have targeted people whose background could be perceived as pro-immigrant. That includes judges who previously worked representing immigrants or doing pro bono immigration work, or judges who worked as counsel in the Biden administration. Tenured judges say they were fired for granting asylum at rates that the administration deemed too high to reconcile with Trump's mass deportation plans.

Pappas, a dual Greek-American citizen born and raised in New York's outer boroughs, once ran for local office as a Republican during the 1990s. Pappas had an asylum denial rate of 76% — higher than the 58% national average and the 50% average for Boston, where he presided. But that rate didn't seem to matter in light of the work done on behalf of noncitizens by his former firm.

A letter dated July 11 and signed by then-acting EOIR Director Sirce E. Owen informed Pappas that the attorney general had decided not to extend his term and asked him to return all government-issued property by the end of the same day. The letter followed the same template used to fire the other judges.

The letter George Pappas received on July 11 informing him that he had just been fired from the immigration court. The letter followed the same template of those sent to other immigration judges who were terminated.

"All of the judges fired were fired without cause. It's unclear what the reasoning was," Biggs said.

Some judges have filed complaints with the Equal Employment Opportunity Commission to fight their termination, arguing that congressional statutes protect civil servants. Some said they are willing to escalate their claims to the Merit System Protection Board, a quasi-judicial agency tasked with protecting the federal workforce against partisan political personnel actions.

The agency has challenges of its own: In February, Trump fired MSPB Commissioner Cathy Harris. A federal court held that her termination was illegal, but the U.S. Supreme Court**let the firing stand**.

Pappas, who is in his later 60s, has recently reestablished his law firm and is in the midst of rebuilding his client base. He said he's willing to file a lawsuit in federal court to seek reinstatement, back pay and damages.

Last week, the EOIR announced that it had **hired 36 new immigration judges**, including 25 temporary ones, to replenish its ranks.

The Department of Justice did not respond to requests for comment.

Decimating the Ranks

Pappas said that even before Trump reassumed office in January, being an immigration judge meant operating day-in, day-out in a "degrading, hostile, unprofessional judicial environment" where jurists were under extreme pressure from their leadership to handle a massive and ever-growing backlog of cases.

A judge works hours preparing for asylum cases that have been languishing for years, always struggling to find time to delve into paper files and to become familiar with the facts and the issues presented by the people requesting relief. At some point, Pappas was expected to hold three asylum hearings per day. Each one of them could decide the destiny of a noncitizen and family members. Despite that heavy burden, immigration judges and their staffers stuck together, helping one another to get the job done.

The Administration Tweaked a Legal Definition to Deport More

Under both Republican and Democratic administrations, unauthorized immigrants who arrive at the U.S. border seeking to enter the country have been placed in detention without a right to be released on bond. They are known under the law as "applicants for admission."

In contrast, the U.S. government has for years granted noncitizens without documentation already present in the U.S. a right to a bond, even when they have crossed the border illegally. Mandatory detention was reserved only for the small percentage of noncitizens who engage in criminal activity.

Since July, however, the Trump administration has extended mandatory detention to all noncitizens lacking lawful status, a major escalation of its broader crackdown on immigration. Federal courts across the country have overruled the policy in at least 126 individual cases, according to the Northwest Immigrant Rights Project. But those cases involve habeas corpus petitions filed by attorneys — something many immigrants lack.
"We really believed that we were doing something positive. We believed in due process. We wanted to give dignity and respect to the hearings," he said.

After Trump's second inauguration, most judges expected a return to many of the policies of his first administration: quotas and limits on their discretion in deciding which cases to remove from the docket to, for instance, allow a noncitizen to pursue other immigration benefits like a green card or a work visa.

What they did not expect was mass-scale firings.

Within hours from the president's swearing in, the entire EOIR leadership, including its acting director, chief immigration judge and general counsel, was sacked. Since then, immigration judges have been fired in waves, most recently earlier this month, when more than a dozen were let go.

"It's an atmosphere of paranoia and fear, which is exactly what they want," said David C. Koelsch, who resigned in September after seven years presiding in Baltimore Immigration Court and has since kept in touch with his colleagues.

"Many judges are wondering if their PIV cards — their identification cards — are even going to work when they show up to work that day," he said.

Carmen Maria Rey Caldas has been on the immigration bench since 2022, first in Stewart, Georgia, hearing cases involving detained immigrants, then in Batavia, New York, and in Manhattan. On Aug. 21, around 4 p.m., she received a termination email. Her supervisor wasn't copied on it.

"I was on the bench. I was in the middle of work," she said. She told the parties in the case before her that she had just been fired, and that she would work through the afternoon to write up a decision.

Caldas, who declined to label herself conservative or liberal, felt her days as a judge were numbered because of her 20-year background working for a nonprofit advocating for refugees and victims of human trafficking and domestic violence. She just didn't know when the email would come. But she said that for many of her fellow judges, the uncertainty is unnerving.

"The chaos is the point," she said.

"Due Process Is Dead": Exerting Control Over Judges

The EOIR has issued at least 50 memorandums announcing the undoing of policies put in place by the Biden administration and dictating the president's immigration agenda. Some of those memos had harsh words for immigration judges.

In a memo issued on April 11, Owen, then acting director, said that it was "clear" from the massive backlog of asylum cases pending nationwide that judges were not fulfilling their duty to manage their dockets efficiently. The memo encouraged judges to dismiss asylum applications that "do not have viable legal paths" and issue deportation orders without holding hearings in those cases.

In a later memo on June 27, Owen insinuated that some judges were biased in favor of noncitizens and that they were acting unethically. Owen threatened "corrective or disciplinary action" for judges exhibiting bias against either party in an immigration proceeding, though judges said it was clear that the memo was meant to punish perceived bias against prosecutors.

The June 27 policy memorandum talks about immigration judges "demonstrating bias or hostility toward one party in Immigration Court proceedings." Former judges who talked to Law360 said they read the memo as chiding them for what the U.S. government perceived as pro-immigrant bias.

Overall, the memos came down so often that judges had to ask their support staff to produce digests at the end of each week.

In the spring, attorneys with the U.S. Department of Homeland Security began the practice of filing memos asking immigration judges to dismiss cases against noncitizens with the specific intent of stripping them of implicit, if temporary, protections against deportation, and facilitating their immediate arrest.

Pappas said the chief judge he was serving under directed him to grant the DHS motions outright, even though doing so would violate the established practice of giving noncitizens 10 days to consider whether to oppose them.

"You mean, like 'rubber stamp' grant them?" Pappas said he asked his supervisor, who replied that unless the memos were defective in some way, they should be granted.

That practice was followed by a **campaign of courthouse arrests**. Images and videos of noncitizens handcuffed and detained by U.S. Immigration and Customs Enforcement in courthouse hallways while attending required hearings have continued to dominate the national attention.

Taken together, judges have said, these policies have turned immigration courts across the U.S. into fast tracks to removal.

"We were told to facilitate deportation," Pappas said. "Due process is dead in immigration courts."

Koelsch, the former Baltimore immigration judge, said the constant firing of judges sends a message to those who remain that they have to "toe the line" — meaning limiting the number of cases in which they grant asylum and strictly enforce procedural requirements — because their job is at risk.

"It's a classic totalitarian playbook strategy," he said. "You keep the bureaucracy guessing about what they're supposed to do, and you just issue vague, sort of ominous warnings, and you fire people routinely, so that people get nervous."

Koelsch said that during his tenure, which began under the first Trump administration, he never allowed pressure from superiors to influence his decisions on the bench. But the control the EOIR exerts on judges, particularly those who were hired recently, is having an adverse effect on the noncitizens who come before them.

"People are feeling very constrained and it's having spillover effects in their decisions," he said.

Judges say the fear of being fired leads to self-censorship, which translates into fewer grants of asylum or challenges to DHS attorneys. The uncertainty and the hostile work environment they navigate every day affects their decision-making and discretion. Where once they would have opposed a motion made by government attorneys, or looked at the claims of a noncitizen more carefully, they

now feel constrained and incentivized to hear cases quicker and to deny relief more often. In the longer run, they say, rulings become more mechanical, and the whole process loses what makes it humane: discretion.

That discretion is crucial to a fair process because each case involving a noncitizen is unique and requires a deep understanding of their circumstances, the judges said

Emmett D. Soper, a former judge in immigration court in Arlington, Virginia, said asylum cases are complex, particularly when a noncitizen is represented by an attorney and can produce a large amount of evidence, including affidavits, medical and police records, and reports from sources like the U.S. State Department, Human Rights Watch and Amnesty International. The analysis is complex, time-consuming and requires being done "with a really high degree of care," he said.

"You listen to the testimony and you make a determination: Is a person credible? Does it seem like they're telling the truth, or on the other hand, does it seem like there are holes in the story?" Soper said. "If they're not credible, that's a problem you typically would think very seriously about denying the application."

But by hastening or pressuring judges, that aspect of due process evaporates, judges say.

"Any reasonable person would always think twice before they make a ruling on any case," said Tabaddor, who is also a past president of the National Association of Immigration Judges.

"The linchpin of any court system is that the decision-maker has to be an independent, impartial decision-maker," she said. "You cannot go into that court knowing that your judge is afraid of losing his or her job if they rule against the government."

Elizabeth Young, another former judge who presided in immigration court in San Francisco, said the administration is using fear to push judges to make certain decisions. Judges who are still serving tell her they feel the pressure.

"I've talked to many of them, and they're like, 'When I go into court, I am concerned about applying the law, but I'm also concerned that I should deny more, because if I don't, then I'll get fired'," she said.

Koelsch said that the adjudication of asylum cases strikes at the core of America's legal and moral identity, and that due process rests on the true independence of the immigration judges.

"The laws are what the laws are, and they provide for a system of protecting people who will be harmed if they go back to their home countries. That's not a liberal attitude to me. That's part of what our country is all about, that, you know, we provide people an opportunity," he said. "My job as a judge is to enforce those laws and apply those laws as best as I can to each person's unique situation."

Koelsch said it is up to Congress to shape the asylum system by enacting legislation.

Dana Leigh Marks, who retired in 2021 after serving for decades as a judge in immigration court in San Francisco, said the judges are unfairly put in a position when they need to confront a backlog that began to spin out of control during the Obama administration and has worsened because of congressional inaction.

"It's a snowball effect that's been ongoing for a really long period of time, but it basically comes from a lack of 'cojones' by Congress to take on immigration," she said. "Sorry, but that's really what it is."

Immigration Courts Are Pulled Into Partisan Warfare

Each of the judges Law360 spoke to landed on the immigration bench following a different path, but they share a common identity as public servants in a profession marked by crushing caseloads and daily, high-stakes decisions.

Young, who said she saw civil service as a "calling," worked as an attorney adviser at the EOIR in the early 2000s, then left for academia and private practice before returning to the bench.

"I could have made a lot more money in the private sector, but chose to stay with the government because of that sort of underlying desire to serve," she said.

In June, Young was reassigned from her deputy chief immigration judge position into a "sanctuary cities enforcement working group" where she was effectively sidelined and given no work, she said. She quickly resigned.

Tabaddor said judges are being fired not for performance but for their past roles or perceived sympathies.

"You don't have the background that we think we want to have, you're perceived to have worked in the past as an advocate. Therefore, we don't want you as a judge," she said, summing up what she thinks is the administration's rationale.

Soper entered the immigration courts straight out of law school in 2005 as a judicial law clerk, then moved to the EOIR headquarters in 2006, cycling through roles at the agency and the U.S. Department of Justice.

He was appointed an immigration judge at the end of the Obama administration and began hearing cases in early 2017, serving on the bench until March 2021. He returned to the court in 2024 after serving as counsel to the EOIR director under the Biden administration. On July 17, 2025, he was fired by the Trump administration.

Soper said it's "hard to know" why he was dismissed because he was given no reasons. But it was possible that current EOIR leadership viewed his asylum denial rate — around 30% — as too low.

DHS Bureaucrat Watchlist, a partisan website funded by the right-wing group Heritage Foundation, listed Soper as one of the judges on its "target list."

"Judge Soper has consistently granted asylum in over 67 percent of his cases, effectively allowing a significant number of migrants into the country. This level of leniency is problematic and flouts the purpose of [a] legitimate asylum system," the entry on the website said.

Soper said the watch list is evidence that the immigration courts are being politicized and that the administration is treating judges' asylum rulings as a political loyalty test.

"It's a real politicization of what's supposed to be a nonpolitical adjudication system," said Soper, who now practices immigration law at Benach Pitney Reilly, a private firm in the Washington, D.C., area.

Koelsch described himself as a "fairly conservative" on immigration issues. He taught immigration law in Detroit and supervised students representing asylum applicants before working as an asylum office supervisor in Arlington, Virginia. He ultimately became a judge in 2018, which he said was the pinnacle of his legal career.

"It was my highest form of service to the American people," he said. "I'm a very patriotic guy."

But political ideology matters less to the administration than willingness to fulfill Trump's agenda, said Sarah Cade, a judge at the immigration court in Boston who resigned in May and now works at an immigration law firm.

"Even for the most conservative of judges, this is not a good work environment," she said.

Cade, who describes herself as a "middle-of-the-road" judge who began working for the government under the George W. Bush administration and had a 50% average asylum denial rate, said she expected to serve her entire career as an immigration judge.

But starting in January, as the Trump EOIR's memos began to come down, Cade grew concerned about the ethical ramifications of what the administration was asking her and her colleagues to do.

The new directives prevented judges from pausing cases while respondents pursued other relief, a process known as administrative closure. Meanwhile, DHS attorneys began aggressively seeking dismissals to allow courthouse arrests, and mandatory detention was extended to long-term residents who previously could request bond.

Cade was told that if a noncitizen detainee, under the pressure of ICE officers, without an interpreter and the help of a lawyer, signed a stipulated deportation order, judges must issue the order immediately, without confirming that the person understood or signed voluntarily

Cade said she saw in the directives, many of which were conveyed verbally by supervisors and not through official memorandums, a clear sign that a profound cultural shift was occurring.

"I felt I might have to compromise my ethics and might be put in a place where I felt like I was going to be asked to violate due process. So I left and I went to private practice."

Cade is now an attorney at Bremer Law LLC, a firm based in Providence, Rhode Island. She said she respected the judges who remained, but emphasized that the system had become nearly untenable for anyone committed to due process and judicial integrity.

Pappas said the gutting of the immigration courts should be viewed in the context of a broader "assault" of independent institutions — universities, media, civil society and the administrative state — and urged the public to "connect the dots."

The effect, he said, is to transform society into one in which a ruling class decides who can enter the country, and ultimately, who gets to be considered American.

"It creates a hierarchy of 'real' Americans at the top and everybody else. So if you're part of that real American core, you need to be protected, and we need to limit people that threaten your culture and your history and your heritage, and those that are in the American core are the ones that are entitled to lead and rule this country," he said. "This is a complete fascist blueprint."

--Editing by Robert Rudinger.

If you work in the immigration courts or have been affected by these developments you can contact the reporter via email at Marco.Poggio@Law360.com or via Signal username rabo.14

‘Climate of fear': Immigration judges say functioning of their court system is in jeopardy due to Trump’s firings

govexec.com/management/2025/11/climate-fear-immigration-judges-say-functioning-their-court-system-jeopardy-due-trumps-firings/409544

Eric Katz November 14, 2025

The mass firings of the executive branch judges who run the nation’s immigration courts is leading to longer wait times for asylum seekers and other non-citizens, some of those who have been terminated said on Thursday, who described their dismissals as politically motivated.

The Justice Department, which runs the court system that adjudicates cases for millions of immigrants each year, has taken an aggressive approach to shed more than 100 judges since President Trump took office. That marks a significant reversal from the significant growth in judges in recent years to a high of around 700, before the Trump administration began making cuts through firings and incentivized separations.

Justice has fired the judges without cause, three impacted employees said, and despite their receiving the highest possible performance ratings. The firings have impacted the work of the remaining judges, those fired said, even as they remain committed to impartiality.

“There's a climate of fear,” said Anam Petit, an immigration judge in Virginia who was fired in September. “Judges feel like, if they step a toe out of line right now… or they're one [asylum] grant away from being fired because of the arbitrary nature of the firings.”

The court system maintains a backlog of 3.4 million cases and immigrants are, in some instances, receiving appearance dates in 2027. To address that crushing total, the fired employees said, Justice requires far more judges, not fewer. They noted the One Big Beautiful Bill Act that Trump signed into law this year authorized the hiring of 10,000 Immigration and Customs Enforcement officers to ramp up arrests of undocumented individuals, but only increased the cap of immigration judges to 800. An increase in arrests would lead to a corresponding surge in cases before the Executive Office of Immigration Review, the Justice agency that houses the courts, and the relatively small increase in judges would likely not be sufficient to keep pace.

“That balance is off to me,” said Ted Doolittle, who was fired from the immigration court in Hartford in September when he was one of just two judges there. “If you really wanted to get the backlog down in a reasonable time, say two or three years, you should be talking about between two and 3,000 judges.”

They noted after their firings, their cases had to transfer to other judges. That created a significant amount of work for court staff and reset hearing dates for immigrants to accommodate their new judge's schedule. Important motions on cases sat dormant for extended periods of time as newly assigned judges tended to their existing caseloads.

“This is not a fair way to run a court system,” said Emmett Soper, a Virginia-based immigration judge who was fired in July. “It's not fair to the people who are at the court. It's not fair to the judges who inherit these cases, and most importantly, it's not fair to the people who have cases pending in front of the immigration courts, who depend on the immigration courts being a functioning system.”

Kathryn Mattingly, an EOIR spokesperson, said reducing the case backlog is “one of the highest priorities for the agency.” While she declined to comment on personnel matters, Mattingly said EOIR has taken several steps to allow judges to decide cases more quickly including rescinding 20 policies that were "unfounded in law" or bogged down the system.

“EOIR is committed to making further advancements to its operational efficiency, thereby helping to ensure timely justice for both parties involved and the public it serves,” she said.

Unlike Petit and Doolittle, who were fired just before the conclusion of their probationary periods, Soper had worked as a judge in EOIR for nine years. Probationary workers are generally easier to dismiss without the usual hurdles. Soper said he received no explanation, however, other than the president was exercising his duties under Article II of the Constitution.

Petit said she was not shocked by her firing, as those with a background in private immigration practice, like her, had a “target on your back.”

“I called my husband afterwards and I cried," Petit said of the day she was dismissed. "I was devastated to lose a job that I really believed in and made a lot of professional and personal sacrifices to do.”

Immigration judges have long sounded the alarm over their placement in the executive branch with political oversight, suggesting they should instead operate as an independent court under either Article I or Article III of the Constitution. Their concerns have been exacerbated by the dozens of firings—stoking fears the administration is replacing anyone standing in the way of its goals for mass deportations—as well as the new authority EOIR granted itself to appoint tap any attorney as a temporary immigration judge. Those roles were previously reserved for those with experience in the field of immigration, but the administration has leaned on its new authority to bring in hundreds of military lawyers to serve as judges in six-month stints.

The fired judges noted the job requires significant training and it took them upwards of two years before they felt comfortable in the roles. They also pointed out that most cases before EOIR—about three-in-four—do not offer immigrants any relief from removal, meaning an empowered court system serves the interests of the administration's stated goals.

Their jobs were also made more difficult, they said, after ICE ramped up arrests of individuals inside of immigration court buildings. Individuals giving testimony were forced to listen to cries of others being detained in hallways and immigrants before a judge often interrupted proceedings to ask if they would be similarly arrested.

In one case, Petit said, she was prepared to issue a final order on an individual just moments before ICE arrested them. That meant that person had to restart the process in the detained docket, bogging down the system further. Soper said the arrests of individuals in his court building was “one of the most disturbing things I’ve ever witnessed.”

“All they were doing was showing up to court like they had been told they had to do,” Soper said.

Former Immigration Judges Speak Out Against Trump's Assault on the Courts – Mother Jones

motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice

Isabela Dias 9 de octubre de 2025

On a Friday afternoon in early September, Anam Rahman Petit sat in the Annandale immigration court in Virginia, ready to announce an oral decision on a complex family asylum case. Then, she got an email. It was a notice from the director of the Executive Office for Immigration Review (EOIR)—the Department of Justice's agency that oversees the immigration courts—terminating her appointment as an immigration judge and instructing Petit to hand in all of her government property by the end of the day.

Nowhere in the email did it mention the reason she was being fired just short of completing two years on the bench and finishing her probationary period. Petit briefly stepped outside the courtroom and texted the bad news to her husband. Without waiting for a response, she put her phone in her robe's pocket and walked back in to deliver the ruling. As she did, Petit remembers her voice cracking and hands shaking.

MOTHER JONES TOP STORIES

> The Trump administration is "shrinking the courts because they don't think they're going to need them."

"It was one of the hardest things I've ever had to do," she said. "My mind was trying to run to different directions, and I just had to bring myself back to that case so I could get it done." Later, Petit folded her robe and packed up her office as other immigration judges tried to console her. "It was a very emotional departure from the courthouse," she recalled.

As the Trump administration works to fundamentally reshape the immigration system, US immigration courts have come to play an outsized role in the crackdown. Across the country, courthouses—previously considered off limits for immigration enforcement—have turned into sites of arrests by masked US Immigration and Customs Enforcement agents, and the very judges charged with resolving asylum and removal cases and, often, issuing deportation orders, are under assault.

Related

"The Entire System Will Collapse": Inside the Purge of US Immigration Courts

The attack has been so sweeping that it has immigrant rights advocates, legal observers, and some former immigration judges wondering if the administration's objective is to render the already overwhelmed courts so impaired that they can no longer serve their purpose.

Andrea R. Flores, who served as an immigration policy adviser during the Obama and Biden presidencies, described the firings of immigration judges as "confusing" for a White House that is trying to remove as many people as possible. Instead of empowering the courts to process more cases, the administration appears to be eviscerating the system to potentially undermine legal proceedings altogether.

"I think what alarms me about that is their hope that they're going to massively expand the usage of expedited removal and deny people their right to see a judge," she said of the administration's push to fast-track deportations. "[They're] shrinking the courts because they don't think they're going to need them."

Petit had seen the writing on the wall months earlier. Back in February, her former supervisor, assistant chief immigration judge Rebecca Walters, who had been appointed during the Biden administration, was among several judges dismissed as part of an early purge of the courts. Then July came, and another 17 or so judges were reportedly terminated without cause, even as the nationwide backlog continued to grow to almost 3.8 million pending immigration cases.

In letters to EOIR's director, Sirce E. Owen, Democratic Sen. Elizabeth Warren and others decried the firings as "indefensible" and voiced concern that decisions not to convert half of a class of judges—particularly those without an immigration enforcement background—to permanent positions "may have been made for politically motivated reasons."

An attorney with private practice experience in the area of removal defense, Petit said she had completed around 800 cases, a hundred or so more than the 700 a year expected of immigration judges, before her abrupt termination. Petit's supervisor later told her that her performance review noted she was a high-performing judge. But that didn't protect her. "You think you're going to be okay

as long as you do a good job and just keep your head down, do your cases, and apply the law," she said. "And then you start seeing more and more people get fired for no reason."

The dismissal of judges like Petit is just one of the ways the Trump White House is upending the immigration courts to serve its mass deportation agenda. In late August, the administration issued a rule easing the qualification requirements for temporary immigration judges, allowing the Department of Justice to hire attorneys without adjudicatory or immigration law experience. It has also turned to recruiting hundreds of military lawyers to fill vacant seats for six-month assignments, a move that legal experts have warned could be unlawful and will likely undermine due process.

> "I know some judges who had packed up their offices in anticipation of being fired."

"I see more deportations of illegal immigrants in the near future," Corey Lewandowski, an adviser to Homeland Security Secretary Kristi Noem, posted about the announcement that the Pentagon had authorized 600 military lawyers to act as temporary immigration judges. (Among the assistant chief immigration judges terminated in February were two former military attorneys, commonly referred to as JAGs after Judge Advocate General's Corps.)

"That's concerning because you're going to have people who have not been trained making decisions with no immigration background," said Alison Peck, director of the immigration law clinic at West Virginia University College of Law and author of *The Accidental History of the US Immigration Courts: War, Fear, and the Roots of Dysfunction*. "That judge isn't going to know what hit them…It's the steepest learning curve I've ever encountered in the legal profession."

Peck has long argued the problem with immigration courts run much deeper than President Donald Trump's moves. Because the immigration courts are nested within the Department of Justice and the executive branch, they are effectively an instrument of presidential policy and not true independent courts. "This is how the system is designed," she said. The Trump administration is "pushing the edges" to disrupt the immigration courts. But "there are serious due process concerns with the system as a whole, and now we're seeing how it can be manipulated by an administration that has a different policy agenda."

As of late September, Petit estimated that as many as 16 judges from her 2023 class of 39 sworn-in appointees have been fired. They are among the more than 130 adjudicators who have been either terminated, transferred, or departed the force voluntarily since Trump returned to office. According to data from the National Association of Immigration Judges reported by CNN, September saw the highest number of dismissals, with 24 judges being let go.

"I know some judges who had packed up their offices in anticipation of being fired," she said.

David K. S. Kim was in the middle of a hearing on September 4 when he received the termination email. He had to stop midway through and inform the parties that the case would be reassigned to a different judge. Originally from South Korea, Kim had been in the job for almost three years and had the highest asylum grant rate among judges at New York's 26 Federal Plaza immigration court—96 percent, according to TRAC.

"I think I was preparing mentally, subconsciously…," he said. "I wasn't really shocked, although it was very disappointing."

As a judge in the New York City court that has been dubbed the "nation's capital of immigration courthouse arrests," Kim saw firsthand the effects of the Trump administration's policies, starting with giving ICE the green light to conduct arrests in or near courthouses. "It created chaos," Kim said, explaining that judges had their hands tied if someone was arrested outside the courtroom.

"That was very difficult and definitely affected the morale of the court staff and some of the Homeland Security attorneys," Kim said. He noted that some DHS lawyers asked judges to sit with their backs facing the wall instead of the courtroom entrance door, in case some altercation took place. "It was a complete change in environment in the way the hearings were held."

Carmen Maria Rey Caldas, who also served as a judge in New York, said she noticed an increase in the number of immigrants missing their court hearings. "There were weeks when I would have 10 people show up for a master calendar of 60," she said. Rey Caldas recalled instances of immigrants appearing outside the courthouse but not going in, instead asking if they could have their hearings remotely because of fear of being arrested by ICE.

Prior to joining the bench, Rey Caldas, who was born in Spain, had a long career practicing immigration law that included stints at nonprofits helping survivors of gender-based violence and, more recently, a role as the director of a program that represents refugees, including Afghan allies who had to be evacuated after the US withdrawal from the country. In 2022, when Rey Caldas was appointed to the immigration courts, House Republicans led by Rep. Elise Stefanik publicly opposed it, citing concerns over her advocacy work and alleging she had "contempt" for immigration enforcement and "disregard" for ICE.

Rey Caldas said she had never received anything other than exceptional feedback while on the bench. Yet, on August 21, she was terminated without explanation. She has since challenged her firing with the Merit Systems Protection Board, an independent agency that hears appeals on federal personnel cases. "You're eliminating all potential defense within the agency," Rey Caldas said of the firings of experienced judges and those with diverse backgrounds.

She described an atmosphere where immigration judges are under "constant threat" of getting fired if they don't follow certain rules from leadership. As one example, she mentioned an email telling judges to eliminate the use of pronouns in their email signatures. For people dealing with "life and death cases," Rey Caldas said, it was demoralizing. "It's creating an environment where you're constantly watching what you do and questioning your decisions."

Mother Jones reached out to EOIR for comment, but received an automatic email reply from the agency's spokesperson stating she had been furloughed and was out of the office.

Both Petit and Kim said immigration judges started bracing for policy guidance issued by EOIR's director Owen on Fridays. One April policy memo, for instance, encouraged judges to "immediately resolve cases…that do not have viable legal paths for relief or protection from removal" and to drop asylum cases without holding a hearing if the application is "legally deficient." Some judges, Kim said, took the guidance to mean they were being told to prioritize efficiency over due process and default to removal orders.

In another memo from June 27, Owen chastised immigration judges for "demonstrating bias or hostility toward" DHS and advised "judges who prefer to be policy advocates" to consider a different career path. "It leads to this climate of fear and intimidation," Petit said.

"A lot of the actions being taken by this administration have materially changed the way that the courts function," she added. "One thing that remains are really exceptional immigration judges who are doing their very best to apply the law fairly and apply due process. They're really just holding it down right now."

HERE'S WHERE YOU COME IN

868: The Hand That Rocks The Gavel

thisamericanlife.org/868/transcript

22 de septiembre de 2025

Prologue: Prologue

Ira Glass

From WBEZ Chicago, it's *This American Life*. I'm Ira Glass. This summer, three people from our show, Zoe and Nadia and Angela, spent weeks at immigration court in New York City, witnessing this extraordinary thing that you might have read about or heard about happening in the hallways there. And there was one group at the center of that thing that nobody ever got to hear from. They would not talk to reporters, until now, when they've been talking to us.

We had them on today's show. We're going to get to them in a few minutes. But first, Zoe Chace now joins me in the studio. Zoe, let's first describe what you witnessed at the courthouse.

Zoe Chace

OK, so we visited the courtrooms at 26 Federal Plaza downtown, and it's basically just a bunch of very old looking courtrooms. Normally, immigrants are coming in and out, going for their hearings in this place. It looks like it hasn't been redone since the '90s.

And now, you take the elevator. You get to the 12th floor. The doors open, and it's just crowded, like three or four different kinds of law enforcement-- ICE, DHS, FBI. I saw the diplomatic security service.

Ira Glass

Whatever that is.

Zoe Chace

Don't know. Plus reporters, a lot of photographers, activists, lawyers. Everyone's kind of huddled around one courtroom door, like a celebrity is going to come out of it. And the feeling of it, it's tense, and then it's boring. And then when somebody steps out of the courtroom, ICE surrounds them and handcuffs them and starts hustling them down the hall, and it gets very rushed, like an ER. Everyone's chasing them.

Lawyer

[SPEAKING SPANISH]

Zoe Chace

Volunteer lawyers are racing down the hallway after this guy, asking for a phone number for a family member they can call for him.

Lawyer

[SPEAKING SPANISH]

Zoe Chace

3, 4, 7, 3, 4, 7. Say more! I can contact your family! The guy says, I don't remember. He's pushed into the elevator.

Man

[SPEAKING SPANISH]

Lawyer

OK. Bueno suerte, senor. Vaya con dios.

Zoe Chace

What just happened?

Lawyer

ICE picked him up. They've been waiting there all day. They know who they're coming to get. There was an ICE officer in the courtroom the entire time, texting and coordinating.

Ira Glass

And just to be clear, these are people showing up at court. The government told them to. They're following the rules as part of this legal process, and then they are suddenly getting arrested in the hallway and thrown into detention.

Zoe Chace

Yeah. And we're doing so many of them here, it can feel almost routine. Between the detentions, the agents and the press and the lawyers are just standing around chitchatting about the podcasts they listen to or *Lord of the Rings*. And then

something happens that almost reminds everyone of what we're doing here, no matter how many times we see it. It's one person's life turning completely upside down.

Like this one guy, his name was Luis, from Venezuela. He was around 50 years old. He'd actually entered the country legally at a port of entry. He broke no law. He was detained in the hallway, pulled into the elevator. His sister was with him, trying to follow him in. The doors closed in her face. She started jumping up and down.

Luis' Sister

[SCREAMING AND CRYING] (SCREAMING) Why? Why? My little brother, my little brother's a good boy. Leave me alone!

Zoe Chace

Everyone just stood there, the agents hunched over. They seem miserable. Some look down at their shoes. The sister, Anyela, eventually tracked him down in New Jersey. He's still in detention there now.

Ira Glass

And were the judges in on this? They're having these cases, and then people are leaving the courtrooms and being taken away in the hallway.

Zoe Chace

We didn't know. But by the end of the summer, it didn't seem to matter what happened in the courtroom, what ruling the judges made. The agents were picking up whoever they wanted. And so we were like, what's going on with these judges? We really wanted to talk to them, but none of them would talk to us.

Ira Glass

Well, at first.

Zoe Chace

At first, but that changed because what was happening in the hallways was just part of this dismantling of the immigration court. There was all sorts of stuff happening on the inside, really in the guts of the place, that we could not see, that we didn't even know was there. And then, suddenly, the judges started talking.

Ira Glass

Talking and saying some stuff that is totally eye-opening, and that is going to be our show today. Today we're going to hear from people who we normally never hear from, immigration judges-- the people who are supposed to make the decisions about who stays and who goes in our country. And they are saying now that is becoming very hard to do in a fair way because of the way their jobs have changed in the last few months. Some of them are being told straight up what their decision should be.

Today they take us behind the curtain at the court. The robes come off. The judges get real. They talk about stuff that I have never heard was happening at all. To hear for yourself, stay with us.

Act One: Act One

Ira Glass

It's *This American Life*. So like I was saying before the break, for months, no judge would talk to us. Then, this summer, they started talking because of what they're seeing behind the scenes at immigration court. Nadia Reiman talked to them. Here she is.

Nadia Reiman

It takes a very specific person to be an immigration judge, the kind that likes minutia, likes listening to hours of translations from Quiché to Spanish to English, just to get someone to confirm their mailing address. And obviously, you have to believe in rules. One main rule they have-- don't talk to the press.

I ended up talking to 15 judges from all over the country. Desperate times, I guess. George Pappas was one of them. He works at a court in Chelmsford, Massachusetts, close to Boston-- a pretty new judge. He's been on the bench about two years.

An average day for him until recently was usually one of two kinds of hearings-- either a lot of quick, repetitive, boring hearings just to schedule the next hearing or a full asylum case.

George Pappas

There were some cases that I could not grant, so I'll go through those, OK?

Nadia Reiman

Sure.

George Pappas

Let me go through those first.

Nadia Reiman

In those asylum hearings, a person would have to make the case that they cannot live anywhere in their home country because they're being persecuted due to their race, religion, nationality, political opinion, or the ever so squishy membership in a particular social group.

George Pappas

I've seen a lot of cases out of Brazil where the immigrant is saying, I'm being persecuted, and I fear for my life because the loan shark that I borrowed money from is after me. I haven't paid back the loan, and he's looking to kill me. I cannot tell you how many times I've seen that claim walk into my courtroom, and I'm just shaking my head. Why is this here?

Nadia Reiman

Rough going, but being chased by a loan shark doesn't make you a member of a particular social group, so you can't get asylum. Pretty clear cut. Jorge denied those cases.

Kyra Lilien, a judge from another court on the other side of the country-- Concord, in the Bay Area-- she also approaches her cases with a healthy level of skepticism, a discerning ear, because, you know, that's what she's supposed to do, and some people lie.

Kyra Lilien

That is something that always happens is that you do hear certain stories repeatedly and certain key details that are repeated, like hundreds of times over. And so you're just immediately thinking, how can that possibly be the case?

Nadia Reiman

They make you go side eyed a little. You're like, is that true? Yeah.

Kyra Lilien

Yeah. I never felt angry about it. In my mind, there are two big reasons why you could hear the same claim from someone over and over again. One is because it's been manufactured, and it's been farmed out to a whole bunch of people, and they're all giving the same fake story. The other is because there's a pattern and practice of human rights violations in that country. And that's why everybody is giving the same story, because everybody's undergoing the same harm and persecution. So that's the challenge.

Nadia Reiman

So that's the job-- hearings. And the people appearing in these hearings in Kyra's court, day after day, broke down like this-- people who wanted to stay in the US, their lawyers, if they had one, interpreters, and Department of Homeland Security lawyers. And no matter what horror story from what corner of the world she hears from the bench, she keeps things calm and orderly, which is why I was so shocking when I showed up at her courthouse this summer, and she could hear the chaos right outside her courtroom.

Kyra Lilien

I knew people were passing out. I knew we had to call an ambulance for someone whose husband was detained. ICE officers were hiding in the stairwell. I could see protesters outside of my window, standing in front of the ICE transport vans and trying to block them. I could see the scuffle. I could hear the drums and the honking. And I would go into court thinking everything could explode, and I have to hold it.

Nadia Reiman

All the judges I talked to said they were on edge about ICE now being inside the building, just outside their doors in the hall. This was a huge change. And at the same time, things inside their courtrooms began to change, too. Jennifer Durkin is a judge at a courthouse on Varick Street in Manhattan.

Right around the time I showed up in New York, a DHS lawyer, a lawyer from the Department of Homeland Security, showed up for court. They are the side that represents the government, usually arguing to deport someone.

Two things were unusual that day-- first, DHS lawyers usually appear via video for this kind of routine hearing. This guy came in person. And second, he filed a motion to dismiss the case. In fact, he said to her--

Kyra Lilien

I'm going to be making a number of motions to dismiss. I was like, what's happening?

Nadia Reiman

So that immediately sounded weird to you?

Kyra Lilien

Yeah, yeah.

Nadia Reiman

Why?

Kyra Lilien

Because typically, I mean, motions to dismiss would mean that they're no longer pursuing a prosecution of the person.

Nadia Reiman

OK.

Kyra Lilien

Almost never happens. And ICE was outside. There's a series of strange motions being made. They're coming in person. It was clear that something was up.

Nadia Reiman

What was up was-- instead of arguing why a person should be deported, the government was like, we don't want to do that anymore. Instead, we want to dismiss the case, which, if you're the immigrant sitting there, can sound good. Like, great, I'm free!

But the problem is you didn't win your asylum case. Your case was dismissed. And the fact that you had a pending asylum case was the only reason you could stay in the country. Suddenly, with no pending case, you have no grounds to be here. And you're standing just a few feet away from ICE who are ready to detain you.

And the judges understood that better than the people in front of him. They were like, how can we just close this case? For what legal reason? It looked like a way to just trap people and detain them. The judges didn't know how to respond.

So some of them called their supervisors, who are also judges, known as ACIJs, Assistant Chief Immigration Judges. Jennifer Peyton-- she goes by Jenna-- is an ACIJ in Chicago supervising 22 judges, has been a judge for nearly a decade. She was about to board a flight when her phone rang.

Jennifer Peyton

One of my judges called my cell phone. And he's like, ah! They're moving to dismiss in court. I said adjudicate the case in front of you. Adjudicate the motion as you would any other motion. That's it. Like, any other motion, Judge, adjudicate this like any other motion you've received.

Nadia Reiman

In other words, keep being a judge. Follow the rules and make your judgment. It seemed simple to her. Even if the government is asking for something weird, do your job like normal. In this situation, the practice is-- when one side moves to dismiss, you don't have to say yes right away. You can give the other side 10 days to think about it.

But then, about a week after that, immigration judges got an email from the Executive Office of Immigration Review, EOIR-- their bosses who work for the Trump administration. It was about the motions to dismiss. And it said, "You don't need to give immigrants 10 days to respond. You may grant them motions that DHS is asking for on the spot." Most of the judges I talked to read this as instructing them to grant all the motions to dismiss, to side with Homeland Security. Even though the email used the word "may," judges heard it as "shall."

Jennifer Peyton

And that was what was concerning, that we were being told how to adjudicate motions to dismiss.

Nadia Reiman

But just to say, I mean, those are your bosses. Doesn't it make sense that your bosses would be like, this is what we need you to do?

Jennifer Peyton

So as a supervisor, I never told my judges how to decide a case. And that is the hallmark of being an independent judge. You are resolving issues and controversy using your training and your expertise and your knowledge of the immigration

laws. And I'm not going to tell you how to decide a case. And this was telling me how to decide a case. And that was what was very troubling.

Nadia Reiman

George went to his supervisor, another judge, immediately when this all went down.

George Pappas

And I said, Judge, we're hearing that attorneys for the department are now coming into court, and they're asking to dismiss cases. Respondents are being arrested and put into expedited removal. Is there anything you want to tell us in terms of how you want to approach this new environment? And his response was, grant them. Grant them. I looked at him. This was a Teams video.

And I looked at him, and I said, you said grant them? He goes, yeah. You mean rubber stamp grant them? When I said rubber stamp, he hedged a little bit. He goes, well, if they're defective. So unless they're defective, you want us to grant them? Yes. The message was clear-- don't cause any trouble. Grant them.

Nadia Reiman

Some judges did just grant the motions, but George wanted to consider each request and rule according to each specific case. He didn't want to rubber stamp anything. So he looked up case law about how to deny these dismissals legally. And then he decided to share this info and stick it to his boss.

George Pappas

And I made sure that that law was posted on Teams where he could see that. But it was my way of saying, no, this is the way we're going to do it. Because I would put it out there and say, folks, just so you know, here's the law on motions to dismiss. If you need to deny, here are the case laws you need to be aware of. These are the standards of review you need to keep in mind. In order to protect due process, you got to do X, Y, and Z.

Nadia Reiman

Is that what you said in the message?

George Pappas

Yeah, pretty much. Yeah, pretty much.

Nadia Reiman

Why did you do that?

George Pappas

Because I resisted. It was my legal way, internally, to challenge a directive which was wrong.

Nadia Reiman

How did you feel? Were you scared to do that? Did it feel like a little strange?

George Pappas

You don't know me. No, I'm not scared. I'm not scared. I'm not scared. I was angry. I was angry that we were being manipulated.

Nadia Reiman

Jennifer Durkin from New York didn't see it the way George did.

Jennifer Durkin

So I hadn't read it that way, but I do think others did. I was literally like, which memo?

Nadia Reiman

Oh, really?

Jennifer Durkin

I chose to assume that, of course, I would be left with my judicial independence. And that was legal decision making. And so to me, that-- I guess I had hoped and assumed that would be left untouched.

Nadia Reiman

And for a minute there, that was exactly what happened. She would rule on something based on what she thought was right, which was mostly denying motions to dismiss from the government, and ICE respected that. They didn't pick up people from those cases-- let them walk out. But then, all of a sudden, ICE changed their approach.

Jennifer Durkin

A couple of weeks later, it didn't matter if you denied them. The people were still being detained.

Nadia Reiman

When did you notice? How did you notice that it was happening?

Jennifer Durkin

I want to say maybe somebody had been outside who knew I had denied a certain motion, whether it was a staff member or a security guard, and then saw them get detained, and came back in and told me-- they were like, didn't you deny that motion? And I said, yes. And they said, they took him. And so at that point, I might have looked at OPLA and I said, is everyone just being detained?

Nadia Reiman

OPLA, by the way, is what judges call the government attorney-- Office of the Principal Legal Advisor.

Jennifer Durkin

And they said, yes, to their knowledge.

Nadia Reiman

What'd you say to that?

Jennifer Durkin

There wasn't much I could say.

Nadia Reiman

To be clear, ICE had the legal authority to detain any immigrant whose case was pending. They just rarely used it. But now that it was happening so regularly, that brought up an existential question-- what is the point of the judge? Whether they granted the motions to dismiss, whether they denied them, it didn't seem to affect what happened to the people in their courtrooms either way.

Jennifer Durkin

I knew that my ruling mattered, and the way I handled the case legally matters. But in terms of the practical outcome, ICE was going to do what they were going to do regardless of my ruling.

Nadia Reiman

Right, so that's got to be a strange feeling because it's like you're saying it matters, but it matters almost like in a very intellectual way, but not in a practical way?

Jennifer Durkin

Yes. And it matters for purposes of appeal. It matters in terms of how that person might be able to seek redress in the future. But it doesn't matter in terms of me being able to influence, one way or the other, whether someone's taken into custody. And it was always very clear that I didn't have any influence over that.

Nadia Reiman

Isn't that maddening, though? Because it's not like you can influence whether or not somebody gets taken into custody, but you're literally saying this person is still in proceedings or under the protection of the court, and they're getting picked up anyway.

Jennifer Durkin

It really just felt like the walls were disintegrating around us. It felt like everything was falling apart.

Nadia Reiman

We have a big, complicated immigration system designed to answer a pretty simple question-- who can stay and who can't? And up until now, most immigration judges felt and acted like they were part of the judicial branch of government, an independent branch that just interprets and applies the laws. But they're not, not technically.

They're actually part of the executive branch within the Department of Justice. They work for the president. But till now, no administration has ever given them very direct orders about how to decide their cases. They weren't used to it, and

they didn't like it. But the orders kept coming in the form of policy memos from their bosses at the Department of Justice-- a lot of policy memos, actually, that would start to transform immigration court from the inside.

Some targeted a problem that the Trump administration was blaming on Biden, the giant backlog of immigration cases on the books. Under President Biden, so many people entered the United States that the number of asylum cases exploded, which added to an existing backlog. The total is now more than 3.5 million pending immigration cases, with a comparatively tiny pool of judges to adjudicate them, under 700.

Immigration judges who worked under the first Trump administration figured they would be given quotas to deal with this. That's what happened last time. Close this many cases in this amount of time, move through that backlog as fast as humanly possible. But that didn't happen, not at first, anyway.

Instead, they got all the memos, like this one, that began this way-- "EOIR adjudicators have a duty to efficiently manage their dockets. It is clear from the almost four million pending cases on EOIR's docket that has not been happening." Sick burn. This memo was like, we're going to suggest that you change the way you do asylum cases in the first place. It told the judges to look at the initial asylum application, usually the first step in this long process, often filled out by hand by people without a lawyer. And if that had anything incomplete or incorrect, throw out the whole case. Don't even hear it. It was called "praetor mission of legally insufficient applications for asylum. Here's Kyra.

Kyra Lilien

Especially with someone who's not represented by counsel, I want to hear from them. I want to meet them. I want to hear what they have to say before I adjudicate their case. I want to hear their testimony. I want to see what evidence they file.

Nadia Reiman

This felt to Kyra like a major violation. It was telling her, don't think, don't assess. Just push this button. It felt anti-judge. Worse, it seemed to be cutting off the chance for people seeking asylum to have their cases heard, denying them the chance to present their evidence in a full hearing, denying them the due process that, as a judge, Kyra felt she should be protecting-- the due process, by the way, that is enshrined in the Fifth Amendment to the Constitution.

There was something else about the new policy memos that really annoyed the judges. The memos were very accusatory-- at the judges and the courts themselves. The overall tone was basically, you've been doing everything all wrong. Things are out of control. Now, we're going to put you on a tight leash. They felt personal.

Kyra Lilien

They seemed like rants, ranting against the way immigration judges were handling cases and strongly pushing us into a certain direction.

Jennifer Peyton

I heard someone refer to these PMs as the Festivus memos, as they were the airing of grievances, like from *Seinfeld*.

Nadia Reiman

Yeah.

Jennifer Peyton

I think the tone was really significant because it didn't sound like any of them were written by someone who knew what the job was that we were doing, or understood the concerns that we would be weighing in the courtroom. It really just seems like a chip on the shoulder. It's detached from reality and completely unprofessional.

Nadia Reiman

The memos are explicitly furious with everything related to the Biden administration, saying basically that the Biden administration stacked both judge hiring and immigration court policy in favor of immigrants. And so many memos rescind Biden era policies to fix that.

They accused the judges, especially the newer ones, of being too into the immigrants, of being foot draggers and taking too long with this imperfect process that we have for ensuring immigrants get a chance to plead their case. There's one memo that was such an obvious dig at the judges, it was hard to miss.

Jennifer Peyton

Oh, this is a good one. Oh, god, I saw this, and I'm like, oh, you have got to be kidding me.

Nadia Reiman

Yeah?

Jennifer Peyton

All right, title-- "Neutrality and Impartiality in Immigration Court Proceedings."

Nadia Reiman

Can I ask you to read not the middle graph, but the one that starts, "although many immigration judges"?

Jennifer Peyton

Oh, yeah. Oh my god. "Although many immigration judges scrupulously maintain impartiality towards both parties in immigration proceedings, there are some immigration judges who appear to believe, based on their own personal policy preferences, that exhibiting bias is justifiable in certain situations, as long as that bias is in favor of an alien and against the Department of Homeland Security."

Nadia Reiman

In other words, you judges think bias towards immigrants is OK, and you keep ruling in their favor instead of fully considering the arguments from the Department of Homeland Security. It also said, quote, "Judges who would prefer to be policy advocates favoring either aliens or DHS should consider transitioning to alternate career paths."

Nadia Reiman

There's a lot in there.

Jennifer Peyton

A lot.

Nadia Reiman

What parts jumped out at you when you read that?

Jennifer Peyton

Oh, the alternate career path, that was a big one. Like, if you don't want to be here, just get out.

Kyra Lilien

Well, I just think it's really strange for the headquarters office to say that immigration judges across the country, hundreds of us, are all ruling in favor of one side and not the other. That is pressure to rule more in favor of the side that they claim is being disadvantaged.

It's essentially, I mean, in the best light, a reminder to be a truly fair adjudicator. In the best light, you could take it as a reminder to be a fair adjudicator and respect due process for both parties. But really, what it was was a suggestion that we should be ruling in favor of DHS, and that if we're being unfair to DHS.

Nadia Reiman

I kept wondering if this impartiality memo actually did change something in the way judges acted? Did it seep into the courtroom in some way?

Kyra Lilien

I came at this job with constant focus and an intentionality to ensure that I was considering DHS's perspective, and that I was listening, and that I was addressing their points. That's my only doubt is if I might have given DHS too much leeway

Nadia Reiman

So it did get in your head in a way then?

Kyra Lilien

It got in my head. I don't think it ever affected the ultimate adjudication. But I do think that there are points where I let a really aggressive DHS attorney continue too long with a hurtful line of questioning because I didn't want to cut them off.

Nadia Reiman

Really?

Kyra Lilien

Yeah, because of trying to compensate.

Nadia Reiman

I asked EOIR about the memos, if they were trying to get judges to decide cases in DHS's favor. They said that the, quote, "numerous policy memoranda were supposed to make the judges impartial again" and undue, quote, "over 20 policies

that were unfounded in law or discourage the timely completion of cases." That's it. We also asked for interviews with the director of EOIR and officials at the DOJ about all the changes the judges told us about to get the administration's side of it. They turned us down.

Everywhere these judges turned, they seemed to be getting the message that the job as they knew it, that didn't exist anymore. ICE was grabbing people no matter what they said. They were getting these memos where they were both pressured and disrespected. And to be honest, they'd been living in an environment where a lot of them felt under threat since the beginning of the Trump administration.

Within hours of Trump taking the oath of office, the acting attorney general abruptly fired a bunch of the immigration bosses at the DOJ-- four of the top people. This had never happened before. There was no reason given other than pursuant to Article 2, basically, the president can decide everything that happens at DOJ. It was a loud, blaring signal to the immigration section that everything would be different this time.

Jenna is senior staff. She knew the four bosses who got fired, and it really freaked her out. Also she'd been put on this DHS watch list, this website funded by the Heritage Foundation. It calls out, quote, "America's most subversive immigration bureaucrats."

Jenna's picture was there, under Targets. So she felt like she was being watched. She wouldn't wear headphones when she walked the dog after that, asked the police to come and check in on her home. She started looking at all kinds of normal things with extra trepidation, like her Teams group chat, which was your typical office group chat where a bunch of work friends talk about the job, complain about the boss, get a little snarky.

Jennifer Peyton

I was like, I need to get out of this chat, man. I just feel like-- my spidey sense was tingling. And so I sent a post.

Nadia Reiman

Why? What was going on in the chat?

Jennifer Peyton

I don't know. It just felt like, the swiftness with the firings of Sheila and the other three, I was like, I just need to really keep my head down.

Nadia Reiman

So she sees herself out of the group chat and finds that really soon, she gets FOMO, so she comes up with a workaround.

Jennifer Peyton

I start using Signal because I'm super cool. And I open my Signal, and I start to populate it with some of my ACIJs, my buddies. The assistant chief immigration judge chat I named something like Ass Crack Instant Jokes. I don't know. It was a moment I opened it.

Nadia Reiman

Just for each initial message?

Jennifer Peyton

Right, ACIJ, man. Everything needs an initial, so this is what it was-- Assistant Chief Immigration Judge Ass Crack Instant Jokes.

Nadia Reiman

This becomes a good Band-Aid. The immigration judges in Ass Crack Instant Jokes do the same thing they do in Teams-- send each other memes, gossip about work, until February 14.

Jennifer Peyton

The Signal chat starts to pop, and one of my ACIJ buddies goes, I just got fired. And someone else says, I just got fired, too. And someone else-- me, too. And all of a sudden it was like, six.

Nadia Reiman

Actually, it was 20-- 13 judges-in-training and seven ACIJs, people at Jenna's level. Everyone left standing started doing the math, looking at people's records in the courtroom, being like, were they more likely to grant asylum than not? Is that why they got fired?

Jennifer Durkin in New York heard about the firings, and she was like, oh crap, the people getting fired are former immigration lawyers. Sounds a lot like me. It was overwhelming for the people who were left. Here's George.

George Pappas

It was an assault. It was like an old medieval castle that was under siege. They were slowly cutting off our food supply. Now, they're cutting off our air supply. Other judges began to say, I'm resigning.

Nadia Reiman

And before you think that all these judges who were feeling this way must be big asylum granters, not really. George, for example, denied like, 3/4 of his cases, but still he didn't feel safe. George packed up his office after the February firings, took everything off his walls so he'd be ready just in case. Three of the judges I talked to did this. The pressure caught up to each of them somehow.

Jennifer Durkin

I haven't been sleeping that well, and I guess I've had a lot of headaches recently and some pain in my jaw. They did X-rays, and they said, well, you have literally ground down your teeth. So mine are flat.

Nadia Reiman

Oh, my god.

Jennifer Durkin

Yeah.

Nadia Reiman

This is all because of the stress of this happening?

Jennifer Durkin

I think it's certainly been exacerbated by it, yeah.

Nadia Reiman

I don't know how to emphasize how hard these demands were on these judges. They felt completely squeezed between a duty to give the immigrants in their court a fair hearing and all that the DOJ was asking them to do. One judge told me they were feeling suicidal. Everyone talked about crying, crying at work, crying outside of work. I've never heard of so many judges crying.

Ira Glass

Nadia Reiman. Coming up, an immigration judge walks into a drag club. Actually, the judge doesn't walk into a drag club. He does not talk to the owner. That is the problem. That's in a minute from *Chicago Public Radio* when our program continues.

Act Two: Act Two

Ira Glass

It's *This American Life*. I'm Ira Glass. Today's program-- *The Hand That Rocks the Gavel*. Nadia Reiman's story about immigration judges and the things that they are witnessing inside immigration court these days continues.

Nadia Reiman

Its Fourth of July weekend. Jenna, the boss judge, decides to go out with her family to a summer home they have on a river. It's nice, and it's rural. She leaves her government phone charging and isn't looking at it-- really wants to unplug. But at the end of the day, she gets tempted.

Jennifer Peyton

Let me just do a quick little scroll and just make sure there's nothing I need to really worry about. So I turn on my phone, and I do a scroll, and I see an email. The subject is, Notice of Termination dash Peyton. It's from Director Owen. And the email says, please see the attached.

Nadia Reiman

Wait, what was it? What was the attachment?

Jennifer Peyton

Oh, hang on. I can read it to you. It's all of three sentences. I probably have it memorized because it was so short.

Nadia Reiman

Wow.

Jennifer Peyton

Hang on, let me go back and find it. "Dear Judge Peyton, this notice serves to inform you that, pursuant to Article II of the Constitution, the attorney general has decided to remove you from your position as an accepted Service Assistant Chief Immigration Judge with the United States Department of Justice Executive Office for Immigration Review. Your removal is effective today. You are required to return all government property by the end of the day. Sincerely, Sircy Owen, acting director, EOIR."

Nadia Reiman

Jenna had been on the bench for almost nine years. EOIR didn't say why they fired her.

A week after Jenna got fired, George in Massachusetts was approaching the end of his two year probationary period. That's the time before judges are made permanent, which is usually not even a question. Basically, everyone gets made permanent. The first batch of judges who got fired back in February, though-- it happened right at the end of their two-year probationary period. So George knew what was coming.

George Pappas

Yeah, it was frightening-- July 11 at about 3:30.

Nadia Reiman

Really? You predicted, like, down to around 3:30?

George Pappas

Yeah, yeah, they're to the T. I wish it was a lottery because I could retire now.

Nadia Reiman

Jennifer Durkin from New York got fired that exact same way-- short letter, end of the day, also was at the end of her two-year probationary period. And Kyra was also at the end of her two years. And out of all the firing stories I heard, hers was the nuttiest.

Kyra Lilien

I was on the record in the middle of a hearing, and I got the email. When I saw the email that I've been dreading for five or six months when I saw it come in through my Outlook account, I just said, I'm very sorry. We're going to have to go off the record for a moment. And we went off the record. I looked at it. I made sure I was reading it correctly.

It was only three lines long, and it said I needed to turn in my laptop and badge immediately and leave. And I told the parties that I had just been fired--

Nadia Reiman

Oh, my god.

Kyra Lilien

--and I'm not going to be able to conclude the hearing. And both the attorneys, both for DHS and respondent's counsel said, what? Are you joking? And I said, I'm not joking.

Nadia Reiman

That's wild. So there's an immigrant and their lawyer sitting there looking at you?

Kyra Lilien

Yeah. Yeah, and for better or for worse, that lawyer then blasted out something on a listserv that I started in the following days. People started sending me screenshots of this email he'd sent out. And it was, y'all, this is wild. IJ Lilien was fired on the bench, and this is what happened. And so that was also a little-- it just was so public in that way.

I was physically trembling. And always in court, disturbing and upsetting things happen. Disturbing and upsetting facts come to light. And it is the job of the judge to maintain the dignity and decorum of the court and to show respect for the parties. And that's just where I went.

And I told them what had happened. And I said, I need to get back on the record. And we did. And I said, my apologies to the parties. I'm not going to be able to hear this case today. The court will reach out to you with a new hearing date. And to respondent's counsel, can you please explain to the respondent that we're not

able to have a hearing today, and I do apologize for that. And then we disconnected. My visceral feeling when I got that message was relief because I had been living on a knife's edge for months.

Nadia Reiman

Almost all of the 15 judges I talked to no longer work at the DOJ. A few retired when they were given the option, but most were just fired. None of them have real answers about why, beyond those short letters. Some have sued.

We asked EOIR about all these firings. They declined to comment. Under Biden, a small number of judges were also let go, and that was seen as political and scandalous then to many Republicans. It's fair to say, though, that the kind of mass reshaping that's happening now is on a different level.

Since the Trump administration began, more than 60 judges have been let go, and around 40 resigned, which means, that out of the roughly 700 judges we had pre-Trump, about 100 are gone. Recently, the administration has been talking about bringing in 600 military lawyers to serve as temporary judges to speed through the backlog. Sitting judges we've talked to say they're worried that these new judges won't get enough training, so they'll just rubber stamp anything the administration wants.

If all this sounds like the Trump administration is trying to reduce the power of the immigration court and bring it to heel, well, some people think that's way overdue. We talked to Scott Mechowski, former deputy head of ICE New York. He was the removal officer for 27 years.

His job was to find immigrants who were here illegally and deport them. And the way he sees it, the main thing that got in his way-- immigration courts. My colleague Zoe Chace talked to Scott.

Scott Mechowski

OK, first off, man, it could have been three, four, five years before somebody has a fucking hearing. And then they go to court, and a judge will be like, well, do you have an attorney? No. OK, we're going to adjourn for nine months until you find an attorney, right?

They get an attorney, then they go, you know what? I want to withdraw this counsel. OK, I'll give you another nine months. There's cases that have been fucking re-calendared for years, for years, right? And the American people don't

understand that.

Zoe Chace

Yeah, they're like, come back February 3, 2029 or something like that.

Scott Mechowski

Yes, Zoe, that's exactly the issue. Now, when you're being detained, there is none of that shit. No one's going to leave you in custody for a year and a half, two years before your next hearing date. You know I mean? Now, you could fiddle fuck around and keep going, I appeal. I do this, I want to do that and stay in custody, which they do.

Zoe Chace

Wait, so can I just say what I feel like? What you're saying is making me think is it's easier just to do the whole process, as much as the process as you can, in a detention setting--

Scott Mechowski

Yep.

Zoe Chace

--because then you have control over the whole thing, and the person will actually be removed at the end.

Scott Mechowski

Zoe, bingo, bingo.

Zoe Chace

So that's why we're seeing what we're seeing?

Scott Mechowski

That's exactly why. Look, the only mechanism-- and I'll tell you again-- to ensure removal is detention. I know it sucks to hear that, right?

Nadia Reiman

Say you're in court and you lose your case, Scott says. You're deportable. But they don't just throw you on a plane. You walk out of the courtroom. The government sends you a letter.

Dear so-and-so, you've been ordered deported on this date. Please show up at my office in 30 days with one bag weighing no more than 44 pounds for your removal. As you can imagine, most people don't show up. But if they were in detention, Scott says, easy-- ICE can just deport them.

So he says, anyone with an immigration case, let's just get them into detention and do the whole thing from there. The way former New York City immigration Judge Jennifer Durkin sees this, this is exactly what the memos and policy changes are adding up to.

Jennifer Durkin

Detention is the point. I mean, they'll say it's to efficiently and orderly, I guess, decide the cases. But I think detention and the constraints that places on people is the point.

Nadia Reiman

Because then people will be getting out.

Jennifer Durkin

Take orders, yeah.

Nadia Reiman

They'll self-deport because being in detention is terrible, even in the best of circumstances. Or if they don't, the government will do the job for them.

I spent a lot of time while I was reporting this story trying to put together the puzzle pieces and see what this all adds up to. What does the Trump administration want the immigration courts to be? In the end, I don't think it's that complicated.

Trump made a promise of mass deportations, so he's finding a way for the courts to not get in the way. His people are good at this sort of thing-- pulling any lever available to them, showing every institution exactly where their power ends. And if judges are the obstacle, like wrenches in the gears of the mass deportation machine, that's no problem. There are a few ways to put pressure on a judge to co-sign on deportations.

You can change procedure, the rules of the court. That's what the memos did. You can intimidate-- the firings, the threat of more firings coming up every few weeks. And there's one more cleaner, more direct and effective way if you run the DOJ--

change the case law, set new legal precedents, precedents that judges now have to follow, which is exactly what Trump's DOJ has been doing.

Since March, decisions have been coming fast and furious out of the Board of Immigration Appeals, setting new legal precedents for how things will work now. For example, the Trump administration has narrowed the kinds of cases that are eligible for asylum and made it much harder to prove them. Also maybe the biggest change-- any undocumented person, even if they have a legal case in process, even if they've been in the US for a decade, they can now be detained indefinitely.

Before, you could post bond and get out while you fight your case. Now, no more bond. Just detention, nothing but detention, potentially for millions of people. And in a big-picture way, there's no one left at the top to disagree with all these big changes. Because a month into the new administration, the DOJ removed nearly half the judges on the Board of Immigration Appeals-- everyone who'd been appointed under Biden, pretty much. So all this new case law now matches the Trump policy objectives almost completely. And the judges, of course, have to adhere to it.

So say this all works out the way the Trump administration seems to be hoping, and we start detaining more people and having them do their entire legal process from detention. What does that actually look like? What's the result when you put all these cases inside that used to be outside?

I want to tell you about one person who had to do this, had to navigate this new world of detain now, figure it out from there. It's a case from where we started-- New York. And the reason I want to take you through his story is because it illustrates the positive side of what the Trump administration is doing. His case speeds to a quick resolution, and it also illustrates the downside, which I'll get to.

I'm going to call this person David. He's an asylum seeker. David's from Ecuador. I talked with him on the phone. When I asked him about his life in New York, which was only five months, listen to the feeling. You can hear him smiling.

David

[SPEAKING SPANISH]

Nadia Reiman

David loved New York, like many gay men before him. He was happy here. Back in Ecuador, he actually ran this drag club.

David

[SPEAKING SPANISH]

Nadia Reiman

It's Time to Get it On-- that's the name of the place.

David

[SPEAKING SPANISH]

Nadia Reiman

Because he says, when you do drag, you get on your heels. You get on your wig and whatever else you want to get on. David told me that, in Ecuador, it's not an automatic death sentence to be gay like it is in some places. There's gay marriage, for example.

But for him, it got really bad there because he had dated a politician who was closeted. After they broke up, he came after David. David thinks he sent cops to harass him, smashed up his car. So David moved to the capital, Quito, to get away from this guy. And he says the politician and his people followed him-- beat him up so badly he woke up at the police station hours later, not knowing how he got there.

This was the moment that David thought, I'm not safe anywhere in Ecuador. He decided to leave. And he did everything our government told him to do in order to come here the right way. He entered the United States without breaking any laws.

He crossed at a border checkpoint, which is legal. He used the official government app to schedule his crossing, which is how we told immigrants to do it at that time. It meant he waited for months till it was his turn. And once he was here, he had permission to work. And now he was going through the required process to stay. It was all above board.

David has a sister who lives in New York. He's 33, number six out of nine siblings. He decided to go stay with her, live his New York dream. And he got a job he liked, doing marketing for a supermarket chain. And he met someone.

David

[SPEAKING SPANISH]

[LAUGHTER]

Nadia Reiman

David says, the first thing he remembers is he asked me if I could speak English, and I was like, nope. The man that would become his boyfriend didn't let that stop him. He sat on the sidewalk with David and Google Translate, and they talked for hours.

David was like, he's cute. They started dating. And then David gets his first immigration court date. It's a routine scheduling hearing at the courthouse downtown on June 4. He wants to be prepared. So ahead of time, he goes to a law clinic, gets help with his asylum application, makes two copies-- one for himself, one for the judge. But he was watching the news and started to see that ICE was picking up people in the courthouse. I was afraid to go, David says, but my boyfriend insisted. He was like, you want to do things the right way.

David

[SPEAKING SPANISH]

Nadia Reiman

So David wakes up the morning of his hearing, puts on his suit to go to work. He was hoping, if it all went well, it would just be a quick thing, and he'd go to work right after. And he heads downtown.

He says there were bad signs along the way. Like at breakfast, they wouldn't serve him and his friends. It took forever. And then he dropped all these napkins. They blew everywhere in the wind. It was like a dark omen.

When he finally got to court, he sat in the waiting room, went in front of the judge when it was his turn, offered the two copies of his asylum application, and the judge didn't take them. He heard the DHS attorney ask for his case to be

dismissed. He heard the judge agree to the dismissal. Because he'd been watching the news, he knew what that meant. As soon as he walked out of the courtroom, ICE officers cuffed him and walked him to the elevator.

David

[SPEAKING SPANISH]

Nadia Reiman

I went into shock, he says. All I did was walk. I didn't know what was going to happen, what was happening. I didn't feel hot or cold or sadness or happiness, just nothing. They cuffed my waist, my feet, my hands, and they took me down to the parking lot.

David

[SPEAKING SPANISH]

Nadia Reiman

I tried every time I could to tell my boyfriend what was going on, David says. And the last message that I sent him, that he still can't forget, is when I texted him, they're taking me.

David got held on the 10th floor at 26 Federal Plaza in New York for three days. There's a holding cell there that's supposed to be temporary, but this summer has become the de facto detention center. And all reports out of there say that it is rank. David says it was so packed in there you could only sleep standing up.

David then got sent to a detention center in Newark, New Jersey. He would be there for about 10 days. While he was there, he kept asking ICE to let him do a credible fear interview, which is one of the first steps in the asylum process. He was like, I had my application. I'm afraid to return to Ecuador.

He says the ICE officers would just stare at him and not say anything back, or they would tell him to do it in writing, which he did. There was no response. He never got an interview-- just to say he's supposed to get one as soon as he asks. ICE is supposed to facilitate it, but that doesn't mean they always do.

And this, judges and immigration lawyers told me, is one of the biggest problems with having people pursue their cases from inside detention. ICE sometimes ignores the legal process, and the detainees don't have much access to a lawyer to

force them to follow it. We asked ICE about all of David's claims, including how they ignored his request to get a credible fear interview. They didn't respond.

One day in June, ICE put David on a flight. He didn't know where he was going, and no one told him. He was brought to a detention center in Louisiana. Lots of people with cases from New York get sent down south to Louisiana and Texas, where judges are extremely strict; the case law is harsher against detainees, and there are more detention centers.

David

[SPEAKING SPANISH]

Nadia Reiman

There are so many people there, David says, so many. Tons of bunk beds in one giant room, and it was super dirty. It was unbearably hot, he says. Everyone hung out in their underwear because it was so hot.

David

[SPEAKING SPANISH]

Nadia Reiman

I was ready to put up with New Jersey, put up with that as long as I needed to, David says. But Louisiana, I didn't want to be in Louisiana one more second.

David

[SPEAKING SPANISH]

Nadia Reiman

He says he was ready to self-deport, but he didn't even think he'd have the right to do that. Two days later, ICE put him on another flight. Again, he didn't know where he was going. He found out when he landed. He was back in Ecuador.

As soon as he got to Ecuador, David went into hiding. He barely leaves his house, does all of his work from his phone or computer. He's scared his ex-boyfriend, the politician, will know where he is, which is why we can't tell you where in Ecuador he is, or his real name, because David is scared for his life now that our government returned him to the one country where he felt he was in the most danger.

David's lawyer told me David's asylum case, pretty solid. He was fleeing a government that was actively trying to harm him, and he has documentation showing what happened. He's exactly the type of case, she thinks, the law is designed to protect. And at the very least, it's a case that deserves a hearing in front of a judge to figure out what's right.

He never got to do that, though, because our government decided to sweep up all kinds of people-- some with weak cases, some with strong cases-- put them all in detention and leave them to figure out the legal process from there. So David's case went down the way the administration seems to want. It was decided quickly, and he was deported right away. The whole thing took about three weeks, but it only went so fast because we skipped the part where he got due process. This is what our new immigration system is starting to look like right now. This is what it's becoming.

Ira Glass

Nadia Reiman is one of the producers of our show. David, by the way, is now part of a lawsuit against the federal government about these courthouse detentions and due process. Just today, as we're finishing the show that you're listening to right now, we heard that five more judges got fired.

Credits

Ira Glass

Well, our program was reported and produced today by Nadia Reiman and Zoe Chace, with help from Angela Gervasi, who was edited by Laura Starecheski. The people who put together today's show include Michael Comite, Suzanne Garber, Cassie Howley, Seth Lind, Tobin low, Katherine Rae Mando, Steve Nelson, Ryan Rumery, Alyssa Shipp, Christopher Swetala, and Diane Wu. Our managing editor is Sarah Abdurrahman. Our senior editor is David Kestenbaum. Our executive editor is Emanuele Berry. Special thanks today to Kevin Gregg from Kurtzban Kurtzban Tetzeli and Pratt, Lindsey Gauzza, Cheryl David, Allison Cutler, Benjamin Remy, Jeremy deVine, Dana Leigh Marks, Elizabeth Young, Matt O'Brien, Brian Lonergan, RJ Hauman, Britney Dickerson, Jacob Martinez, Kristin Kepplinger, Lauren Kostes, and Heather Betz from the New York Legal Assistance Group, Aaron Reichlin-Melnick, Joseph Gunther, Caitlin Patler, Mary Georgevich and the National Immigrant Justice Center. Also thanks to all the other former immigration judges who talked to us about the court.

A reminder that if you sign up to be a Life Partner with our program, you get ad-free listening. You get bonus episodes, and you get an archive of over 250 greatest hits episodes right in your podcast feed. So anytime you need something to listen to, there's something good right there.

And of course, by becoming a Life Partner, you're helping us keep making this show, doing projects like this one where we're calling judges for months and months. To sign up, go to thisamericanlife.org/lifepartners. *This American Life* is delivered to public radio stations by PRX, the Public Radio Exchange.

Thanks, as always, to our program's co-founder, Mr. Torey Malatia. There was a farmer had a dog And Torey knows his name-o.

Torey Malatia

Bingo. Bingo.

Ira Glass

I'm Ira Glass, Back, next week with more stories of *This American Life*.

While Federal Firings Focus on Immigration Processing, Funding for Immigration Enforcement Expands

americanimmigrationcouncil.org/blog/federal-firings-immigration-processing-enforcement-expands

March 6, 2025

The American Immigration Council is a non-profit, non-partisan organization. Sign up to receive our latest analysis as soon as it's published.

In recent weeks, significant personnel reductions throughout the federal government made in the name of eliminating "waste" have caused concerns about the government's ability to continue providing timely services. Agencies that provide immigration-related services have not been spared from these cuts, including those within the Department of Homeland Security (DHS), the Department of State (DOS), and the Department of Justice (DOJ). These layoffs, part of the Trump administration's broader federal workforce reduction initiative spearheaded by Elon Musk, are poised to negatively impact processing within the legal immigration system.

However, the enforcement arms of DHS, such as U.S. Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP), have been reportedly spared from these cuts. As a result, while agencies that handle immigration benefits face staffing shortages and mounting backlogs, immigration enforcement is set to receive unprecedented funding and support from other federal law enforcement agencies, exacerbating the challenges for noncitizens seeking to travel to the U.S. or obtain any immigration benefit.

USCIS Layoffs

On February 14, 2025, DHS terminated nearly 50 U.S. Citizenship and Immigration Services (USCIS) employees, identifying them as "non-mission critical personnel in probationary status." USCIS adjudicates immigration-related benefits requests and, last fiscal year, it received a record 10.9 million applications. It has faced processing backlogs in the past several years but made substantial progress in addressing them during the Biden administration.

Despite this progress, the agency continues to face substantial pressures to its workload. While USCIS is a fee-funded agency—relying on fees for about 96% of its budget—it continues to face a growing humanitarian caseload that isn't fully funded. In 2023, for the first time, pending asylum claims surpassed one million cases and the number of Temporary Protected Status (TPS) requests have also

increased. The recent firings, as well as others which may come under the Trump administration's continued call for reductions in force, will likely impede USCIS' ability to make progress on its processing backlogs, and may even lead to backsliding.

In fiscal year 2023, DHS' Office of Inspector General found that USCIS has struggled to obtain sufficient staffing and additional federal funding to address this increased workload. In January 2024, the agency increased its fees to address processing delays, including by adding an asylum program fee to employment-based applications.

Given USCIS' reliance on fees for its services, and its recently increased fee structure, the firings don't neatly fall into the Trump administration's dubious argument that reducing the federal workforce will decrease "wasteful spending." Instead, with fewer personnel, USCIS will likely struggle to manage its caseload efficiently, resulting in longer wait times for applicants.

Department of State Reductions and Visa Processing

DOS has also experienced significant staff reductions, particularly within U.S. consulates and embassies worldwide. These changes were made in response to President Trump's executive order, "One Voice for America's Foreign Relations." The layoffs are anticipated to have substantial consequences for visa processing. In October 2024, the last month DOS issued its visa backlog report, over 360,000 visa applicants were awaiting an interview. Staff shortages are likely to cause increased delays in scheduling both immigrant and nonimmigrant visa interviews.

In a move that is expected to exacerbate these issues, the U.S. Department of State announced new restrictions to the visa interview waiver program on February 18, 2025. It reversed a previous Biden administration policy by narrowing eligibility to diplomats, certain NATO personnel, and those renewing visas expired for less than 12 months—down from the previous 48-month window.

Visa interview waivers were initially expanded during the COVID-19 pandemic to reduce backlogs and processing times. However, due to the policy's positive effects in decreasing visa wait times, they were permanently expanded in December 2023. The intent was to conserve staff resources by waiving interviews for applicants who had fulfilled biometrics screening and were already vetted. However, the new restrictions are expected to further increase the workload for consular staff.

Firings Place Further Strain on Immigration Courts

In mid-February, the DOJ fired at least 15 immigration judges and 13 managers, including assistant chief judges who handle management tasks. This has left the remaining 700 or so immigration judges with average caseloads of about 5,600 cases each. While the Executive Office for Immigration Review (EOIR), which oversees the immigration court system, more than doubled the number of immigration judges between fiscal year 2017 and 2024, the pending caseload for the courts has grown by nearly 300%.

In addition, the Trump administration reduced the number of appellate immigration judges at the Board of Immigration Appeals (BIA), which decides appeals of immigration judge decisions. The number of BIA members were decreased from 28 to 15; nine of the fired members had been appointed by the Biden administration. Pending cases at the BIA have also skyrocketed since fiscal year 2017, growing from 12,685 to 112,952 in fiscal year 2024. Fewer immigration and appellate immigration judges will only lead to extended processing times for immigration cases and further strain the already overburdened immigration court system.

Reductions Haven't Focused on Immigration Enforcement

Trump campaigned on implementing a mass deportation operation, which has met substantial resource constraints. However, despite arguing that reducing federal "waste" means firing federal workers, the Trump administration's recent staff cuts haven't touched ICE and CBP. Instead, the administration is looking to dramatically increase funding for immigration enforcement. Currently, the Republican majority in Congress is aiming to provide about $175 billion to ICE and CBP through the reconciliation process. For comparison, this represents nearly six times the fiscal year 2024 budget of those agencies combined.

In addition, Congress is currently working to continue to fund the federal government past March 14, which is when the current funding agreement expires. That agreement has largely maintained the same levels of funding for the past year and a half. While it seems like Congress may pass a similar agreement to fund the federal government for the rest of the current fiscal year, which ends on September 30, 2025, the White House has asked for an additional $485 million for ICE to fund additional detention beds and transportation and removal costs. This would likely benefit private prison corporations as nearly 90% of people in ICE custody are held in privately-operated facilities.

While key federal agencies responsible for immigration benefits processing—USCIS, DOS, and EOIR—are facing reductions in personnel, the Trump administration continues to pursue dramatic increases in immigration enforcement funding. With fewer personnel to handle an already overwhelming volume of applications and cases, noncitizens traveling to the U.S. or trying to legalize their status will experience prolonged wait times for immigration benefits, visa appointments, and court hearings.

Ultimately, these policies will lead to increased hardship, delays, and uncertainty for people seeking to navigate the U.S. immigration system, while simultaneously ballooning the federal government's enforcement infrastructure.

- Trump Administration
- USCIS

Join us in urging your U.S. Representative and Senators to oppose any further expansion of immigration detention and to hold facilities accountable by exercising their authority to conduct in-person oversight visits to ICE detention centers, including holding facilities and other places used to detain immigrants.

70,000+

Number of people in civil immigration detention

Executive Office for Immigration Review

justice.gov/eoir/volume-29

31 de enero de 2025

Volume 29

JIN, 29 I&N Dec. 441 (BIA 2026) ID 4163 (PDF)

Based on the petitioner's extensive allegations and evidence of marriage fraud regarding the approved visa petition, the record is returned to United States Citizenship and Immigration Services to further consider the visa petition and take action as warranted in this matter.

YADAV, 29 I&N Dec. 438 (BIA 2026) ID 4162 (PDF)

A respondent's valid marriage to a United States citizen entered into after a removal order does not constitute an exceptional situation warranting sua sponte reopening of removal proceedings.

G-M-I-, 29 I&N Dec. 431 (BIA 2026) ID 4161 (PDF)

The relevance and the reliability of an expert witness' opinions are significantly undercut when those opinions are informed by anecdotal or inaccurate facts or data.

E-A-S-O-, 29 I&N Dec. 422 (BIA 2026) ID 4160 (PDF)

The *Matter of N-A-M-*, 24 I&N Dec. 336 (BIA 2007), framework is the proper rubric for determining whether a crime is particularly serious and there is no presumption that a single misdemeanor conviction is not for a particularly serious crime. *Matter of Juarez*, 19 I&N Dec. 664 (BIA 1988), overruled.

LAURENT CASTRO, 29 I&N Dec. 419 (BIA 2026) ID 4159 (PDF)

Where the respondent did not appear at a hearing, was properly served with notice of the missed hearing, and the Department of Homeland Security provided evidence of the respondent's removability, the Immigration Judge erred in

continuing removal proceedings rather than entering an in absentia removal order.

S-M-H-, 29 I&N Dec. 412 (BIA 2026) ID 4158 (PDF)

The written warnings on the respondent's initial asylum application provided the respondent with statutorily compliant notice of the consequences of filing a frivolous application, irrespective of the absence of oral warnings by an Immigration Judge. *Matter of X-M-C-*, 25 I&N Dec. 322 (BIA 2010), clarified.

M-C-C-, 29 I&N Dec. 401 (BIA 2026) ID 4157 (PDF)

(1) The respondent willfully misrepresented a material fact by omitting reference to his military service during the Bosnian War on his refugee application because the omission cut off a line of inquiry that predictably would have disclosed facts relevant to his eligibility for refugee status.

(2) The respondent did not warrant a discretionary grant of a fraud waiver under section 237(a)(1)(H) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(1)(H) (2024), based on his repeated and long-term misrepresentations regarding his military service during the Bosnian War and his lack of remorse.

D-G-B-L-, 29 I&N Dec. 392 (BIA 2026) ID 4156 (PDF)

The serious nonpolitical crime bar to asylum and withholding of removal does not include a duress exception.

LAPARRA-DELEON, 29 I&N Dec. 389 (BIA 2026) ID 4155 (PDF)

Matter of Laparra, 28 I&N Dec. 425 (BIA 2022), which held that service of a statutorily compliant notice of hearing is sufficient written notice to support the entry of an in absentia order of removal even if the respondent was served with a noncompliant notice to appear, is reinstated in the Court of Appeals for the First Circuit and is good law in any circuit without contrary precedent.

E-M-F-S-, 29 I&N Dec. 379 (BIA 2026) ID 4154 (PDF)

Death threats alone rarely rise to the level of persecution and only do so if they are objectively credible and issued by a person or persons with the immediate ability to carry them out.

GHANBARI, 29 I&N Dec. 376 (BIA 2025) ID 4153 (PDF)

The Immigration Judge erred in determining that the respondent did not provide material support to a terrorist organization and was not subject to mandatory detention under section 236(c)(1)(D) of the Immigration and Nationality Act, 8 U.S.C.A. § 1226(c)(1)(D) (West 2025).

Tepec-Garcia, 29 I&N Dec. 371 (BIA 2025) ID 4152 (PDF)

Where neither the respondent nor the Department of Homeland Security ("DHS") appears at the hearing and DHS does not present evidence of removability in

advance of the hearing, the Immigration Judge does not err in terminating proceedings without prejudice.

L-T-A-, 29 I&N Dec. 362 (BIA 2025) ID 4151 (PDF)

Evidence that a respondent had a legal right to enter, live, work, and own property indefinitely in the country of proposed resettlement demonstrates that the respondent was offered "some other type of permanent resettlement" for purposes of the firm resettlement bar.

RODRIGUEZ PENA, 29 I&N Dec. 358 (BIA 2025) ID 4150 (PDF)

The Immigration Judge erred in concluding that the respondent is not a danger to the community where the respondent threatened to kill someone, reacted negatively to law enforcement intervention, and used an alias to evade arrest.

PALMA-OLVERA, 29 I&N Dec. 355 (BIA 2025) ID 4149 (PDF)

The Immigration Judge erred in determining that the respondent, who had two convictions for driving while intoxicated, had overcome the presumption that he lacked good moral character based on his care for his son and his history of employment.

LEMA MIZHIRUMBAY, 29 I&N Dec. 351 (BIA 2025) ID 4148 (PDF)

The respondent's repeated violations of workplace safety regulations, resulting in the death of two employees, are significant adverse factors and weigh against a favorable exercise of discretion for purposes of cancellation of removal.

N-P-A-, 29 I&N Dec. 347 (BIA 2025) ID 4147 (PDF)

The respondent did not establish a well-founded fear of persecution based on a pretextual summons for his political activity and country conditions evidence that political activists are detained and severely harmed where a similar summons did not result in harm to the respondent's son and the respondent lived for years in

Moldova without harm.

L-A-G-B-, 29 I&N Dec. 343 (BIA 2025) ID 4146 (PDF)

The Immigration Judge's predictive factual findings based on a series of suppositions regarding the harm the respondent would likely suffer in Panama are clearly erroneous and do not support a grant of protection under the Convention Against Torture.

KIM, 29 I&N Dec. 339 (BIA 2025) ID 4145 (PDF)

The Immigration Judge erred in determining that the respondent, who engaged in systemic criminal fraud for decades, warranted a favorable exercise of discretion for purposes of cancellation of removal based on his recent expressed remorse and rehabilitative efforts while in prison.

DUBON MIRANDA, 29 I&N Dec. 335 (BIA 2025) ID 4144 (PDF)

Given the respondent's inappropriate and concerning behavior with his stepdaughter, his criminal convictions for driving under the influence and disturbing the peace, and the lack of information explaining the disturbing the peace convictions, the respondent has not satisfied his burden of demonstrating that he is not a danger to the community.

J-C-A-G-, 29 I&N Dec. 331 (BIA 2025) ID 4143 (PDF)

The applicant, who cooperated with United States law enforcement against the cartel, did not demonstrate a clear probability of torture where his fear is based on unsubstantiated statements from a coconspirator and generalized evidence of cartel violence.

Jimenez-Ayala, 29 I&N Dec. 325 (BIA 2025) ID 4142 (PDF)

The respondent's criminal history of drug use and her exposure of her children to drugs outweigh the favorable factors in this case, including her claimed remorse and intention to avoid drug use in the future, and warrant a discretionary denial of

cancellation of removal.

W-F-, 29 I&N Dec. 319 (BIA 2025) ID 4141 (PDF)

The Immigration Judge erred in granting the respondent deferral of removal under the Convention Against Torture where the record contained anecdotal reports of bribery in Haitian prisons and generalized violence by gangs against travelers or outsiders.

B-S-H-, 29 I&N Dec. 313 (BIA 2025) ID 4140 (PDF)

Under the plain language of section 240(c)(7)(C)(iv)(III) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(7)(C)(iv)(III) (2018), the extraordinary circumstances or extreme hardship waiver for motions to reopen only applies to temporal limitations for filing a motion to reopen to apply for relief under the Violence Against Women Act and not to the numerical limitation on such motions.

K-S-H-, 29 I&N Dec. 307 (BIA 2025) ID 4139 (PDF)

A single attempt to report an incident of harm by private actors to local police, without further harm from the police themselves or evidence of their widespread collusion with the alleged persecutors, does not establish that the government, as a whole, is unable or unwilling to protect a respondent from persecution.

CAHUEC TZALAM, 29 I&N Dec. 300 (BIA 2025) ID 4138 (PDF)

Given the respondent's failure to submit evidence of his prima facie eligibility for special immigrant juvenile classification and the extended delay in the availability of a visa, the Immigration Judge erred in granting administrative closure.

C-I-G-M- & L-V-S-G-, 29 I&N Dec. 291 (BIA 2025) ID 4137 (PDF)

(1) If the Department of Homeland Security claims that an asylum cooperative agreement bars a respondent from applying for asylum in the United States, the Immigration Judge should determine whether the safe third country bar applies prior to and separate from considering a respondent's eligibility for asylum.

(2) A respondent subject to the terms of an asylum cooperative agreement has the burden to establish by a preponderance of the evidence that he or she will more likely than not be persecuted on account of a protected ground or tortured in the relevant third country to avoid application of the safe third country bar and for the respondent to be eligible to seek asylum and other protection claims in the United States.

J-A-N-M-, 29 I&N Dec. 287 (BIA 2025) ID 4136 (PDF)

Discretionary termination of an applicant's withholding-only proceedings is prohibited by 8 C.F.R. § 1208.2(c)(3)(i) (2025).

NEGUSIE, 29 I&N Dec. 285 (A.G. 2025) ID 4135 (PDF)

The stay of the Board's March 16, 2021, order in this matter is vacated, and *Matter of Negusie*, 28 I. & N. Dec. 120 (A.G. 2020), which held that the bar to asylum eligibility for aliens who have engaged or assisted in the persecution of another does not contain a duress exception, is now the operative opinion.

J-H-M-H-, 29 I&N Dec. 278 (BIA 2025) ID 4134 (PDF)

In making findings of fact and conclusions of law, Immigration Judges exercise independent judgment and are not required to accept party stipulations.

L-A-L-T-, 29 I&N Dec. 269 (BIA 2025) ID 4133 (PDF)

(1) Perceived or imputed membership in a proposed particular social group will only satisfy the particular social group requirements if the underlying group of which the respondent is perceived to be a member is, standing alone, sufficiently cognizable.

(2) The respondent's proposed particular social group, defined as "perceived Salvadoran gang members," is not cognizable within the meaning of the Immigration and Nationality Act. *Matter of E-A-G-*, 24 I&N Dec. 591 (BIA 2008), reaffirmed.

COTRUFO, 29 I&N Dec. 264 (BIA 2025) ID 4132 (PDF)

The respondent's recent convictions involving unlawful sexual conduct with a minor, combined with the probation officer's report submitted for the purpose of sentencing, show that the respondent is a danger to the community.

FRIAS ULLOA, 29 I&N Dec. 259 (BIA 2025) ID 4131 (PDF)

Section 2C:35-5(b)(4) of the New Jersey Statutes Annotated is divisible by controlled substance, and applying the modified categorical approach, the respondent's record of conviction identifies the relevant substance as fentanyl, a federally controlled substance. *Matter of Laguerre*, 28 I&N Dec. 437 (BIA 2022), followed.

J-A-, 29 I&N Dec. 253 (BIA 2025) ID 4130 (PDF)

Evidence that the Uzbek Government is pursuing charges of terrorist activity against the respondent, that he will be detained upon removal, and that there are isolated incidents of torture does not establish that he will more likely than not be tortured where there is insufficient evidence that he will be prosecuted for illegitimate reasons.

McDONALD, 29 I&N Dec. 249 (BIA 2025) ID 4129 (PDF)

The respondent's convictions for endangering the welfare of a child, combined with the respondent's conduct as described in the charging document and the victim's statement, demonstrate that the respondent does not warrant a favorable exercise of discretion.

LANDERS, 29 I&N Dec. 240 (BIA 2025) ID 4128 (PDF)

Circumstantial evidence of similarities in allegedly pro se filings and suspended counsel's involvement in the mailing of documents to the Immigration Courts and

DHS can constitute clear and convincing evidence that counsel practiced law in violation of a disciplinary order of suspension.

H-A-A-V-, 29 I&N Dec. 233 (BIA 2025) ID 4127 (PDF)

If the factual allegations underlying a claim for asylum, withholding of removal, or protection under the Convention Against Torture, viewed in the light most favorable to the respondent, do not establish prima facie eligibility for relief or protection, an Immigration Judge may pretermit the applications without a full evidentiary hearing on the merits of the claim.

GARCIA-FLORES, 29 I&N Dec. 230 (BIA 2025) ID 4126 (PDF)

In assessing whether the respondent warranted a favorable exercise of discretion, the Immigration Judge exceeded his authority to consider the circumstances of the respondent's conviction by making an adverse credibility finding regarding the respondent's two child victims and in effect finding the respondent factually innocent of the crime.

YAJURE HURTADO, 29 I&N Dec. 216 (BIA 2025) ID 4125 (PDF)

Based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.

DOBROTVORSKII, 29 I&N Dec. 211 (BIA 2025) ID 4124 (PDF)

(1) In bond proceedings, the existence of a valid, reliable, and credible sponsor is relevant to the determination of flight risk.

(2) Immigration Judges may take into consideration all relevant and probative evidence, regardless of which party filed it, to determine if the evidence establishes custody factors.

S-S-F-M-, 29 I&N Dec. 207 (A.G. 2025)

ID 4123 (PDF)

Matter of A-B-, 28 I&N Dec. 307 (A.G. 2021) is overruled, and immigration judges and the Board shall adhere to *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018), and *Matter of A-B-*, 28 I&N Dec. 199 (A.G. 2021), in all pending or future cases. By extension, *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014), and any decision issued in reliance thereupon is also overruled.

S-S-F-M-, 29 I&N Dec. 206 (A.G. 2025)

ID 4122 (PDF)

The Attorney General referred the decision of the Board of Immigration Appeals to herself for review of its decision.

R-E-R-M- & J-D-R-M-, 29 I&N Dec. 202 (A.G. 2025)

ID 4121 (PDF)

Matter of L-E-A-, 28 I&N Dec. 304 (A.G. 2021), is overruled, and immigration judges and the Board should adhere to the holding of *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019), in all pending and future claims.

R-E-R-M- & J-D-R-M-, 29 I&N Dec. 201 (A.G. 2025)

ID 4120 (PDF)

The Attorney General referred the decision of the Board of Immigration Appeals to

herself for review of its decision.

J-A-F-S-, 29 I&N Dec. 195 (BIA 2025) ID 4119 (PDF)

An Immigration Judge generally should not continue an individual hearing based on a respondent's speculative assertion that he or she may be eligible for a new form of relief from removal not previously raised.

O-Y-A-E-, 29 I&N Dec. 190 (BIA 2025) ID 4118 (PDF)

Evidence of human rights abuses in Venezuela and past threats to the respondent do not establish an individualized risk of torture where the last threat occurred years before the respondent left the country and the respondent was otherwise unharmed following the threats.

BURI MORA, 29 I&N Dec. 186 (BIA 2025) ID 4117 (PDF)

The respondent has not established the requisite exceptional and extremely unusual hardship to the qualifying relatives based on economic detriment and family separation, particularly where the qualifying relatives will remain in the United States and treatment for their mental health conditions and developmental delays will not be affected by the respondent's removal.

G-C-I-, 29 I&N Dec. 176 (BIA 2025) ID 4116 (PDF)

(1) A respondent's nonresponsive and evasive testimony, including when related to the issue of corroboration, supports an adverse credibility determination.

(2) A lack of corroboration may be an independent basis to find that a respondent has not met his burden of proof to establish a claim for asylum or withholding of removal.

SALAS PENA, 29 I&N Dec. 173 (BIA 2025) ID 4115 (PDF)

The respondent's recent arrest for trafficking in a large quantity of cocaine demonstrates that he is a danger to the community and does not warrant release on bond.

GARCIA MARTINEZ, 29 I&N Dec. 169 (BIA 2025) ID 4114 (PDF)

(1) A non-detained alien who is represented by private counsel is presumed to have the ability to pay any requisite filing fee before the Immigration Judge and the Board.

(2) A fee waiver request from a non-detained adult alien that contains zeros in all income blocks is presumptively invalid.

AKHMEDOV, 29 I&N Dec. 166 (BIA 2025) ID 4113 (PDF)

Significant discrepancies regarding whether the respondent lives in New York or Michigan and his past failure to file timely change of address notices with the Immigration Court, when considered in the totality of the circumstances, demonstrate that the respondent is a flight risk and does not warrant release on bond.

FELIX-FIGUEROA, 29 I&N Dec. 157 (BIA 2025) ID 4112 (PDF)

(1) An Immigration Judge must apply the realistic probability test whenever a party asserts that a State's statutory definition of a controlled substance is broader than the Federal definition of a controlled substance based on a textual mismatch regarding the isomers of a particular controlled substance.

(2) Once DHS establishes the existence of a State drug conviction by clear and convincing evidence, a respondent who argues that a State conviction is categorically overbroad based on differing substance or isomer definitions has the burden of demonstrating a realistic probability that the State prosecutes substances falling outside the Federal definition of a controlled substance.

K-E-S-G-, 29 I&N Dec. 145 (BIA 2025) ID 4111 (PDF)

A particular social group defined by the alien's sex or sex and nationality, standing alone, is overbroad and insufficiently particular to be cognizable.

C-M-M-, 29 I&N Dec. 141 (BIA 2025) ID 4110 (PDF)

The applicant's extensive and lengthy history of immigration law violations, including multiple removals and illegal reentries, demonstrates that she poses a significant flight risk, such that no monetary bond would be sufficient to ensure her appearance at future immigration hearings and, if necessary, her surrender for removal from this country.

S-S-, 29 I&N Dec. 136 (BIA 2025) ID 4109 (PDF)

The Immigration Judge erred in concluding that the respondent would more likely than not be tortured in detention in Haiti where the Immigration Judge did not find that his detention would be long term and where the record did not establish that the harsh conditions in Haitian detention were specifically intended to torture.

GONZALEZ JIMENEZ, 29 I&N Dec. 129 (BIA 2025) ID 4108 (PDF)

(1) Use of false or stolen Social Security numbers and providing false information on tax returns are negative considerations that weigh against a favorable exercise of discretion.

(2) When a respondent seeks to excuse conduct by claiming to have relied on professional advice, the respondent should submit evidence of the specific advice given and explain why it was reasonable to rely on such advice.

E-Z-, 29 I&N Dec. 123 (BIA 2025) ID 4107 (PDF)

The Immigration Judge's predictive findings regarding the harm the respondent will suffer in Russia based on his travel to the United States and his support for Ukraine were speculative, and thus the Immigration Judge erred in granting the respondent's application for protection under the regulations implementing the Convention Against Torture.

A-A-F-V-, 29 I&N Dec. 118 (BIA 2025) ID 4106 (PDF)

The applicant, a bisexual criminal deportee with visible gang tattoos, has not established an individualized risk of torture in detention in El Salvador.

C-I-R-H- & H-S-V-R-, 29 I&N Dec. 114 (BIA 2025) ID 4105 (PDF)

While explicit statements from the persecutors regarding the protected ground are not required to establish nexus, there must be some showing of a connection between the persecutors' actions and the protected ground beyond speculation such that the alleged harm is not solely stemming from statistical likelihoods or unfortunate coincidence.

MAYORGA IPINA, 29 I&N Dec. 110 (BIA 2025) ID 4104 (PDF)

The respondent's conviction for indecent exposure in violation of section 18.2-387 of the Virginia Code is for a crime involving moral turpitude because the requirement of an "obscene display or exposure" necessarily involves a lewd intent. *Matter of Cortes Medina*, 26 I&N Dec. 79 (BIA 2013), reaffirmed.

ROQUE-IZADA, 29 I&N Dec. 106 (BIA 2025) ID 4103 (PDF)

Termination of removal proceedings is not warranted to permit a respondent to seek adjustment of status under the Cuban Refugee Adjustment Act of November 2, 1966, Pub. L. No. 89-732, 80 Stat. 1161, as amended, before United States

Citizenship and Immigration Services ("USCIS") based on speculation that USCIS will grant the respondent parole under section 212(d)(5)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(d)(5)(A) (2018).

E-Y-F-G-, 29 I&N Dec. 103 (BIA 2025) ID 4102 (PDF)

A grant of withholding of removal that is pending on appeal does not justify release on bond where the factors regarding flight risk weigh strongly against release on bond.

B-N-K-, 29 I&N Dec. 96 (BIA 2025) ID 4101 (PDF)

(1) Because Immigration Judges and the Board have a duty to promptly and fairly bring removal proceedings to a close, whether there are persuasive reasons for a case to proceed and be resolved on the merits is the primary consideration in determining whether administrative closure is appropriate under the totality of the circumstances. *Matter of W-Y-U-*, 27 I&N Dec. 17 (BIA 2017), reaffirmed.

(2) A pending application for Temporary Protected Status generally will not warrant a grant of administrative closure.

LOPEZ-TICAS, 29 I&N Dec. 90 (BIA 2025) ID 4100 (PDF)

The lack of time and place information on the notice to appear does not render untrue or incorrect a respondent's admission to the factual allegations or invalidate the charges of removability in the notice to appear and therefore is not a proper basis for granting a respondent's motion to withdraw pleadings.

D-E-B-, 29 I&N Dec. 83 (BIA 2025) ID 4099 (PDF)

A supplemental filing to a motion to reopen that raises claims that are fundamentally different from those raised in the original motion is treated as a separate motion.

N-N-B-, 29 I&N Dec. 79 (BIA 2025) ID 4098 (PDF)

The Immigration Judge applied the wrong legal standard for protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No.

100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994), determining the respondent "could be" subject to torture instead of that he would "more likely than not" be tortured.

BELTRAND-RODRIGUEZ, 29 I&N Dec. 76 (BIA 2025) ID 4097 (PDF)

The respondent's release on bond would pose a danger to the community based on his dangerous behavior that subjected a person who was particularly vulnerable because of her age and her familial relationship to the respondent to unlawful sexual conduct.

BAIN, 29 I&N Dec. 72 (BIA 2025) ID 4096 (PDF)

Considering the recency and repeated nature of the respondent's criminal history and the lack of a showing of rehabilitation, we conclude, upon consideration of the totality of the record and a balancing of the factors present in this case, that he has not established that he warrants cancellation of removal as a matter of discretion.

Q. LI, 29 I&N Dec. 66 (BIA 2025) ID 4095 (PDF)

(1) An applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1225(b) (2018), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a) (2018).

(2) An alien detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), who is released from detention pursuant to a grant of parole under section 212(d)(5)(A) of the INA, 8 U.S.C. § 1182(d)(5)(A) (2018), and whose grant of parole is subsequently terminated, is returned to custody under section 235(b) pending the completion of removal proceedings.

M-S-I-, 29 I&N Dec. 61 (BIA 2025) ID 4094 (PDF)

The acquiescence standard for protection under the regulations implementing the Convention Against Torture differs from the unable-or-unwilling standard for asylum and withholding of removal; the potential for private actor violence

coupled with a speculation that police cannot or will not help is insufficient to prove acquiescence.

F-B-G-M- & J-E-M-G-, 29 I&N Dec. 52 (BIA 2025) ID 4093 (PDF)

(1) Electronic notification of a briefing schedule sent to the email address of record is sufficient notice in a case eligible for electronic filing, regardless of whether an alien's attorney or accredited representative opens the email or accesses the document via the Executive Office for Immigration Review's Courts and Appeals ("ECAS") Case Portal.

(2) A rebuttable presumption of delivery applies when a party has been sent electronic notification of a briefing schedule through the procedures provided for in the ECAS regulations, but this presumption is weaker than the presumption that applies to documents sent by certified mail because electronic service through ECAS does not involve the use of a signed receipt or other affirmative evidence of delivery.

CHOC-TUT, 29 I&N Dec. 48 (BIA 2025) ID 4092 (PDF)

While an Immigration Judge may consider a State court's decision as to dangerousness and the amount of bail that was set in criminal proceedings, an Immigration Judge does not owe a State court custody order deference in immigration bond proceedings.

A-A-R-, 29 I&N Dec. 38 (BIA 2025)(amended) ID 4091 (PDF)

Based on the facts and evidence in this case, the applicant, a former MS-13 gang member, has not met his burden to show he will more likely than not be tortured in El Salvador based on the government's state of exception policy.

O-A-R-G-,29 I&N Dec. 30 (BIA 2025) ID 4090 (PDF)

(1) Where a particular social group is defined by "former" status, Immigration Judges must ensure the persecutor's conduct was based on a desire to overcome or animus toward the respondent's membership in a group defined specifically by that former status, not retribution for conduct the respondent engaged in while a current member of the group.

(2) Acquiescence in the context of protection under the Convention Against Torture requires a greater degree of governmental complicity than is required to establish a government is unable or unwilling to protect a respondent in the asylum context.

ISKANDARANI, 29 I&N Dec. 26 (BIA 2025) ID 4089 (PDF)

When an Immigration Judge issues an oral decision, the 30-day appeal filing period is calculated from the date the decision is rendered and is unaffected by the subsequent mailing of a memorandum summarizing the oral decision.

DOR, 29 I&N Dec. 20 (BIA 2025) ID 4088 (PDF)

The time of conviction is the relevant point for determining whether a respondent's State conviction is for a controlled substance offense under section 237(a)(2)(B)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(B)(i) (2018), not the time the respondent's removability is adjudicated in immigration proceedings.

C-A-R-R-, 29 I&N Dec. 13 (BIA 2025) ID 4087 (PDF)

(1) An Immigration Judge is not required to consider an Application for Asylum and for Withholding of Removal (Form I-589) on the merits if it is incomplete, and incomplete applications may be considered waived or abandoned, particularly where an opportunity to cure has been offered.

(2) Because declarations are not a constituent part of an asylum application, a Form I-589 is not incomplete, and an Immigration Judge may not deem it abandoned, solely because the respondent did not submit a declaration. *Matter of Interiano-Rosa*, 25 I&N Dec. 264 (BIA 2010), reaffirmed.

DE JESUS PLATON, 29 I&N Dec. 7 (BIA 2025) ID 4086 (PDF)

The evidence of post-conviction relief under section 1473.7 of the California Penal Code that the respondent submitted in support of his motion to remand does not demonstrate that his conviction was vacated for a procedural or substantive defect in the underlying criminal proceedings and not for reasons of rehabilitation or immigration hardship.

BAEZA-GALINDO, 29 I&N Dec. 1 (BIA 2025) ID 4085 (PDF)

(1) Proximity in time is necessary but not sufficient to conclude that two crimes arise from a single scheme of criminal misconduct under section 237(a)(2)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A)(ii) (2018). *Matter of Adetiba*, 20 I&N Dec. 506, 509 (BIA 1992), clarified.

(2) Two crimes involving moral turpitude, premised on separate turpitudinous acts with different objectives, neither of which was committed in the course of accomplishing the other, constitute separate schemes of criminal misconduct.
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ARCINIEGAS-PATINO, 28 I&N Dec. 883 (BIA 2025) ID 4084 (PDF)

Where parties were properly served with electronic notice of the briefing schedule, a representative's failure to diligently monitor the inbox, including the spam folder, of the email address of record does not excuse a party's failure to comply with briefing deadlines.

DOMINGUEZ REYES, 28 I&N Dec. 878 (BIA 2024) ID 4083 (PDF)

For purposes of assessing whether an offense constitutes a money laundering aggravated felony under section 101(a)(43)(D) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(D) (2018), the circumstance-specific approach applies to the requirement that the "amount of the funds exceeded $10,000."

LARIOS-GUTIERREZ DE PABLO and **PABLO-LARIOS**, 28 I&N Dec. 868 (BIA 2024) ID 4082 (PDF)

The Board's holding in *Matter of Fernandes*, 28 I&N Dec. 605, 610–11 (BIA 2022), that an objection to a noncompliant notice to appear will generally be considered timely if raised prior to the close of pleadings is not a change in law, and thus *Matter of Fernandes* applies retroactively.

Matter of KHAN, 28 I&N Dec. 850 (BIA 2024) ID 4081 (PDF)

(1) When the government must prove the elements of a sentencing enhancement beyond a reasonable doubt, those additional elements are combined with the elements of the underlying criminal statute and all the elements are then considered together as one compound crime.

(2) The respondent's compound conviction under section 191.5(b) of the California Penal Code enhanced by section 20001(c) of the California Vehicle Code is categorically for a crime involving moral turpitude.

Matter of THAKKER, 28 I&N Dec. 843 (BIA 2024) ID 4080 (PDF)

(1) The assumption in *Matter of Jurado* that a retail theft offense involves an intent to permanently deprive a victim of their property is inconsistent with the categorical approach as currently articulated by the Supreme Court. *Matter of Jurado*, 24 I&N Dec. 29 (BIA 2006), *aff'd sub. nom. Jurado-Delgado v. Att'y Gen. of U.S.*, 498 F. App'x 107 (3d Cir. 2009), overruled in part.

(2) The respondent's convictions for retail theft under section 3929(a)(1) of title 18 of the Pennsylvania Consolidated Statutes, all of which predate the Board's decision in *Matter of Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016), are categorically not for crimes involving moral turpitude because the statute does not require an intent to permanently deprive the victim of property.

R-T-P-, 28 I&N Dec. 828 (BIA 2024) ID 4079 (PDF)

(1) A proper remedy for a violation of the claim-processing rule at section 239(a)(1)(G)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1229(a)(1)(G)(i) (2018), should (1) result in a notice to appear as a single document; (2) be consistent with the rules governing the procedures used for remedy; (3) help to promote the underlying purpose of claim-processing rules generally and the rule that the notice to appear include the time and place of the hearing in particular; and (4) not prejudice the respondent.

(2) Written amendments made by an Immigration Judge, upon the motion of the Department of Homeland Security, to the time and place of the hearing on the notice to appear may satisfy the requirements for a proper remedy to a noncompliant notice to appear.

D. RODRIGUEZ, 28 I&N Dec. 815 (BIA 2024) ID 4078 (PDF)

(1) A conviction for an attempt to commit a crime may constitute a crime of child abuse, child neglect, or child abandonment under section 237(a)(2)(E)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(E)(i) (2018).

(2) The respondent's conviction for attempted injury to a child under sections 15.01(a) and 22.04(a)(1) of the Texas Penal Code renders him removable under section 237(a)(2)(E)(i) of the INA, 8 U.S.C. § 1227(a)(2)(E)(i), for having committed a crime of child abuse.

H-C-R-C-, 28 I&N Dec. 809 (BIA 2024) ID 4077 (PDF)

(1) Applicants bear the burden of establishing their own credibility, and no statute or legal precedent compels an Immigration Judge to conclude that an applicant's testimony is credible.

(2) Rape is sufficiently severe to constitute torture and can never be a lawful sanction under the Convention Against Torture.

M-N-I-, 28 I&N Dec. 803 (BIA 2024) ID 4076 (PDF)

Since choice of law is dependent on venue in Immigration Court proceedings, the controlling circuit law is not affected by a change in the administrative control court and will only change upon the granting of a motion to change venue. *Matter of Garcia*, 28 I&N Dec. 693 (BIA 2023), followed.

FURTADO, 28 I&N Dec. 794 (BIA 2024) ID 4075 (PDF)

(1) A petitioner seeking approval of a Form I-130 for an adopted child from a country that is a party to the Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption, *opened for signature* May 29, 1993, S. Treaty Doc. No. 105-51, 1870 U.N.T.S. 167 (entered into force May 1, 1995; for the United States Apr. 1, 2008), should provide, regardless of the beneficiary's length of United States residence: (1) a written statement from the Central Authority of the child's country of origin stating that it is aware of the child's presence in the United States and of the adoption, and that it has determined that the child is not habitually resident in the country of origin; and (2) an adoption order or amended adoption order incorporating the language of the statement from the Central Authority.

(2) An adopted child will not be considered habitually resident in the United States unless the petitioner shows that the Central Authority of the child's country of origin did not respond to the request for a habitual residence statement, that

the Central Authority responded that it would not write a habitual residence statement, or that the United States Department of State has confirmed that the Central Authority does not issue habitual residence statements.

F-C-S-, 28 I&N Dec. 788 (BIA 2024)(as amended) ID 4074 (PDF)

The regulation at 8 C.F.R. § 1240.17 (2024) applies only to those respondents first placed in expedited removal proceedings whose applications for relief and protection were adjudicated by United States Citizenship and Immigration Services and who were then placed in removal proceedings under section 240 of the Immigration and Nationality Act, 8 U.S.C. § 1229a (2018).

AZRAG, 28 I&N Dec. 784 (BIA 2024) ID 4073 (PDF)

Where a State court order granting a respondent's motion to vacate a conviction does not indicate the reason for the vacatur, and there is no other basis in the record to independently establish the reason, the respondent has not satisfied his burden to show that the court vacated his conviction because of a substantive or procedural defect in his criminal proceedings.

BERNARDO, 28 I&N Dec. 781 (BIA 2024) ID 4072 (PDF)

When a petition to remove the conditions on residence is withdrawn before United States Citizenship and Immigration Services prior to adjudication, the Immigration Judge ordinarily cannot review the merits of that petition in removal proceedings. *Matter of Mendes*, 20 I&N Dec. 833 (BIA 1994), followed.

Aguilar Hernandez, 28 I&N Dec. 774 (BIA 2024) ID 4071 (PDF)

The Department of Homeland Security cannot remedy a notice to appear that lacks the date and time of the initial hearing before the Immigration Judge by filing a Form I-261 because this remedy is contrary to the plain text of 8 C.F.R. § 1003.30 and inconsistent with the Supreme Court's decision in *Niz-Chavez v. Garland*, 593 U.S. 155 (2021).

PANIN, 28 I&N Dec. 771 (BIA 2024) ID 4070 (PDF)

A respondent's release from Federal pretrial criminal custody does not preclude an Immigration Judge from denying a respondent's request for release from

immigration detention under section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a) (2018).

H. N. Ferreira, 28 I&N Dec. 765 (BIA 2023) ID 4069 (PDF)

Given the significance of a respondent's interest in securing review of a denial of a petition to remove the conditions on permanent residence, an Immigration Judge should ordinarily review the denial of a Form I-751 upon the request of the respondent.

M-R-M-S-, 28 I&N Dec. 757 (BIA 2023) ID 4068 (PDF)

If a persecutor is targeting members of a certain family as a means of achieving some other ultimate goal unrelated to the protected ground, family membership is incidental or subordinate to that other ultimate goal and therefore not one central reason for the harm. Matter of L-E-A-, 27 I&N Dec. 40 (BIA 2017), reaffirmed.

BRATHWAITE, 28 I&N Dec. 751 (BIA 2023) ID 4067 (PDF)

Because an appeal accepted under section 460.30 of the New York Criminal Procedure Law is classified as a direct appeal, a respondent with a pending appeal under this section does not have a final conviction for immigration purposes. *Brathwaite v. Garland*, 3 F.4th 542 (2d Cir. 2021), followed.

Cabrera-Fernandez, 28 I&N Dec. 747 (BIA 2023) ID 4066 (PDF)

(1) Release on conditional parole under section 236(a)(2)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a)(2)(B) (2018), is legally distinct from release on humanitarian parole under section 212(d)(5)(A) of the INA, 8 U.S.C. § 1182(d)(5)(A) (2018). Matter of Castillo-Padilla, 25 I&N Dec. 257, 258–63 (BIA 2010), followed.

(2) Applicants for admission who are released on conditional parole rather than humanitarian parole have not been "inspected and admitted or paroled," and accordingly are not eligible for adjustment of status under the Cuban Refugee Adjustment Act of November 2, 1966, Pub. L. No. 89-732, 80 Stat. 1161, as amended

C-G-T-, 28 I&N Dec. 740 (BIA 2023) ID 4065 (PDF)

(1) Determining whether the government is or was unable or unwilling to protect the respondent from harm is a fact-specific inquiry based on consideration of all evidence.

(2) A respondent's failure to report harm is not necessarily fatal to a claim of persecution if the respondent can demonstrate that reporting private abuse to government authorities would have been futile or dangerous.

(3) When considering future harm, adjudicators should not expect a respondent to hide his or her sexual orientation if removed to his or her native country.

J-G-R-, 28 I&N Dec. 733 (BIA 2023) ID 4064 (PDF)

(1) Torturous conduct committed by a public official who is "acting in an official capacity," meaning acting under color of law, is covered by the regulations implementing the Convention Against Torture, but such conduct by an official who is not acting in an official capacity is not covered. Matter of O-F-A-S-, 28 I&N Dec. 35 (A.G. 2020), followed.

(2) The key consideration in determining if an official's torturous conduct was undertaken "in an official capacity" for purposes of CAT eligibility is whether the official was able to engage in the conduct because of his or her government position, or whether the official could have done so without connection to the government.

POUGATCHEV, 28 I&N Dec. 719 (BIA 2023) ID 4063 (PDF)

(1) A conviction for burglary of a building under section 140.25(1)(d) of the New York Penal Law is not categorically an aggravated felony burglary offense under section 101(a)(43)(G) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(G) (2018), because the statute is overbroad and indivisible with respect to the definition of "building" under New York law.

(2) A conviction for displaying what appears to be a pistol, revolver, rifle, shotgun, machine gun, or other firearm while committing burglary under section 140.25(1)(d) of the New York Penal Law necessarily involves the use, attempted use, or threatened use of physical force against the person or property of another and therefore constitutes an aggravated felony crime of violence under section 101(a)(43)(F) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(F).

MORALES-MORALES, 28 I&N Dec 714 (BIA 2023) ID 4062 (PDF)

(1) The Board of Immigration Appeals has authority to accept what are otherwise untimely appeals, and consider them timely, in certain situations because 8 C.F.R. § 1003.38(b) (2022) is a claim-processing rule and not a jurisdictional provision. *Matter of Liadov*, 23 I&N Dec. 990 (BIA 2006), overruled.

(2) The Board will accept a late-filed appeal where a party can establish that equitable tolling applies, which requires the party to show both diligence in the filing of the notice of appeal and that an extraordinary circumstance prevented timely filing

CANCINOS-MANCIO, 28 I&N Dec. 708 (BIA 2023) ID 4061 (PDF)

Under the modified categorical approach, an Immigration Judge may consider the transcript of a plea colloquy in determining the factual basis of a plea.

GARCIA, 28 I&N Dec. 693 (BIA 2023) ID 4060 (PDF)

For choice of law purposes, the controlling circuit law in Immigration Court proceedings is the law governing the geographic location of the Immigration Court where venue lies, namely where jurisdiction vests and proceedings commence upon the filing of a charging document, and will only change if an Immigration Judge subsequently grants a change of venue to another Immigration Court. Matter of R-C-R-, 28 I&N Dec. 74 (BIA 2020), clarified.

DUARTE-GONZALEZ, 28 I&N Dec. 688 (BIA 2023) ID 4059 (PDF)

Noncitizens who are inadmissible for a specified period of time pursuant to section 212(a)(9)(B)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(i), due to their previous unlawful presence and departure are not required to

reside outside the United States during this period in order to subsequently overcome this ground of inadmissibility.

J-L-L-, 28 I&N Dec. 684 (BIA 2023) ID 4058 (PDF)

Pereira v. Sessions, 138 S. Ct. 2105 (2018), and *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021), are inapplicable to proceedings initiated by a Notice to Applicant for Admission Detained for Hearing Before Immigration Judge ("Form I-122") and other charging documents issued prior to the effective date of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of Pub. L. No. 104-208, 110 Stat. 3009-546. *Matter of Arambula-Bravo*, 28 I&N Dec. 388 (BIA 2021), followed.

CHEN, 28 I&N Dec. 676 (BIA 2023) ID 4057 (PDF)

(1) The "stop-time" rule under section 240A(d)(1) of the Immigration and Nationality Act, 8 U.S.C. 1229b(d)(1), is not triggered by the entry of a final removal order, but rather only by service of a statutorily compliant notice to appear or the commission of specified criminal offenses, in accordance with the plain language statutory analysis provided in *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021).

(2) Breaks in physical presence under section 240A(d)(2) of the Immigration and Nationality Act, 8 U.S.C. 1229b(d)(2), continue to be interpreted as distinct from termination of physical presence under the stop-time rule. *Matter of Mendoza-Sandino*, 22 I&N Dec. 1236 (BIA 2000), *followed*.

(3) A respondent claiming a fundamental change in law as the basis for seeking sua sponte reopening must also establish prima facie eligibility for the relief sought. *Matter of G-D-*, 22 I&N Dec. 1132 (BIA 1999), *followed*.

MARISCAL-HERNANDEZ, 28 I&N Dec. 666 (BIA 2022) ID 4056 (PDF)

(1) Where an Immigration Judge finds that a traffic stop was nothing more than a routine law enforcement action, a respondent has not established a prima face case of a Fourth Amendment violation—much less an egregious violation—and is not entitled to a hearing on a suppression motion. Matter of Barcenas, 19 I&N Dec. 609 (BIA 1988), followed.

(2) Unsupported assertions and speculation have no evidentiary value and are insufficient to establish a prima facie case that an investigatory stop was an egregious violation of the Fourth Amendment, and thus they do not warrant a suppression hearing.

TRIANA, 28 I&N Dec. 659 (BIA 2022) ID 4055 (PDF)

When determining whether a respondent is grandfathered for purposes of adjustment of status under section 245(i) of the Immigration and Nationality Act, 8 U.S.C. § 1255(i) (2018), a decision of the United States Citizenship and Immigration Services ("USCIS") to approve a visa petition filed on or before April 30, 2001, does not foreclose an Immigration Judge from determining in removal proceedings whether that petition was "approvable when filed" within the meaning of 8 C.F.R. § 1245.10(a)(1)(i) (2021).

K. GUPTA, 28 I&N Dec. 653 (BIA 2022) ID 4054 (PDF)

(1) Disbarment may be appropriate where an attorney knowingly disregards a prior order of suspension from the Board of Immigration Appeals and claims on notices of entry of appearance that he is not subject to any order restricting his right to practice law when he is, in fact, suspended from practice before the Board, the Immigration Courts, and the Department of Homeland Security.

(2) While the Board will adopt the sanction proposed by the Disciplinary Counsels in this case, the Board may deviate from a proposed sanction if the particular facts and circumstances warrant a different result.

CORONADO ACEVEDO, 28 I&N Dec. 648 (A.G. 2022) ID 4053 (PDF)

(1) *Matter of S-O-G- & F-D-B-*, 27 I&N Dec. 462 (A.G. 2018), is overruled.

(2) Pending the outcome of the rulemaking process, immigration judges and the Board of Immigration of Appeals may consider and, where appropriate, grant termination or dismissal of removal proceedings in certain types of limited circumstances, such as where a noncitizen has obtained lawful permanent residence after being placed in removal proceedings, where the pendency of removal proceedings causes adverse immigration consequences for a respondent

who must travel abroad to obtain a visa, or where termination is necessary for the respondent to be eligible to seek immigration relief before United States Citizenship and Immigration Services.

BADOR, 28 I&N Dec. 638 (BIA 2022) ID 4052 (PDF)

(1) A fraud waiver under section 237(a)(1)(H) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1227(a)(1)(H) (2018), does not waive a respondent's removability under section 237(a)(1)(D)(i) of the INA, 8 U.S.C. § 1227(a)(1)(D)(i), where conditional permanent residence was terminated for failure to file a joint petition, a reason separate and independent from fraud. *Matter of Gawaran*, 20 I&N Dec. 938 (BIA 1995), *aff'd Gawaran v. INS*, 91 F.3d 1332 (9th Cir. 1996), reaffirmed.

(2) A section 237(a)(1)(H) fraud waiver cannot be used in place of, or in conjunction with, a "good faith" waiver under section 216(c)(4)(B) of the INA, 8 U.S.C. § 1186a(c)(4)(B) (2018), to waive the requirement to file a joint petition to remove conditions on residence under section 216 of the INA, 8 U.S.C. § 1186a.

V-A-K-, 28 I&N Dec. 630 (BIA 2022) ID 4051 (PDF)

A conviction for second degree burglary of a dwelling under section 140.25(2) of the New York Penal Law is categorically a conviction for generic burglary under section 101(a)(43)(G) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101(a)(43)(G) (2018), because the statute requires burglary of a structure or vehicle that has been adapted or is customarily used for overnight accommodation. *United States v. Stitt*, 139 S. Ct. 399 (2018), *followed*.

FERNANDES,28 I&N Dec. 605 (BIA 2022) ID 4050 (PDF)

(1) The time and place requirement in section 239(a)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229(a)(1) (2018), is a claim-processing rule, not a jurisdictional requirement.

(2) An objection to a noncompliant notice to appear will generally be considered timely if it is raised prior to the closing of pleadings before the Immigration Judge.

(3) A respondent who has made a timely objection to a noncompliant notice to appear is not generally required to show he or she was prejudiced by missing time or place information.

(4) An Immigration Judge may allow the Department Homeland Security to remedy a noncompliant notice to appear without ordering the termination of removal proceedings.

ORTEGA-QUEZADA, 28 I&N Dec. 598 (BIA 2022) ID 4049 (PDF)

The respondent's conviction for unlawfully selling or otherwise disposing of a firearm or ammunition in violation of 18 U.S.C. § 922(d) (2018) does not render him removable as charged under section 237(a)(2)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(C) (2018), because § 922(d) is categorically overbroad and indivisible relative to the definition of a firearms offense.

E-F-N-, 28 I&N Dec. 591 (BIA 2022) ID 4048 (PDF)

An Immigration Judge may rely on impeachment evidence as part of a credibility determination where the evidence is probative and its admission is not fundamentally unfair, and the witness is given an opportunity to respond to that evidence during the proceedings.

NCHIFOR, 28 I&N Dec. 585 (BIA 2022) ID 4047 (PDF)

A respondent who raises an objection to missing time or place information in a notice to appear for the first time in a motion to reopen has forfeited that objection.

D-L-S-, 28 I&N Dec. 568 (BIA 2022) ID 4046 (PDF)

A respondent who is subject to a deferred adjudication that satisfies the elements of sections 101(a)(48)(A)(i) and (ii) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101(a)(48)(A)(i) and (ii) (2018), has been "convicted by a final judgment" within the meaning of the particularly serious crime bar under section 241(b)(3)(B)(ii) of the INA, 8 U.S.C. § 1231(b)(3)(B)(ii) (2018).

B-Z-R-, 28 I&N Dec. 563 (A.G. 2022) ID 4045 (PDF)

(1) *Matter of G-G-S-*, 26 I&N Dec. 339 (BIA 2014), is overruled.

(2) Immigration adjudicators may consider a respondent's mental health in determining whether an individual, "having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States." 8 U.S.C. § 1158(b)(2)(A)(ii); *see id* § 1231(b)(3)(B)(ii).

GERMAN SANTOS, 28 I&N Dec. 552 (BIA 2022) ID 4044 (PDF)

(1) Any fact that establishes or increases the permissible range of punishment for a criminal offense is an "element" for purposes of the categorical approach, even if the term "element" is defined differently under State law. *Matter of Laguerre*, 28 I&N Dec. 437 (BIA 2022), followed.

(2) Title 35, section 780-113(a)(30) of the Pennsylvania Consolidated Statutes, which punishes possession with intent to deliver a controlled substance, is divisible with respect to the identity of the controlled substance possessed, and the respondent's conviction under this statute is one for a controlled substance violation under section 237(a)(2)(B)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(B)(i) (2018), under the modified categorical approach.

DANG, 28 I&N Dec. 541 (BIA 2022) ID 4043 (PDF)

(1) The Supreme Court's construction of "physical force" in *Johnson v. United States*, 559 U.S. 133 (2010), and *Stokeling v. United States*, 139 S. Ct. 544 (2019), controls our interpretation of 18 U.S.C. § 16(a) (2018), which is incorporated by reference into section 237(a)(2)(E)(i) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1227(a)(2)(E)(i) (2018); the Court's construction of "physical force" in *United States v. Castleman*, 572 U.S. 157 (2014), is inapplicable in this context.

(2) Because misdemeanor domestic abuse battery with child endangerment under section 14:35.3(I) of the Louisiana Statutes extends to mere offensive touching, it is overbroad with respect to § 16(a) and therefore is not categorically a crime of domestic violence under section 237(a)(2)(E)(i) of the INA, 8 U.S.C. § 1227(a)(2)(E)(i).

DINGUS, 28 I&N Dec. 529 (BIA 2022) ID 4042 (PDF)

(1) If a State court's nunc pro tunc order modifies or amends the subject matter of a conviction based on a procedural or substantive defect in the underlying criminal proceedings, the original conviction is invalid for immigration purposes and we will give full effect to the modified conviction; however, if the modification or amendment is entered for reasons unrelated to the merits of the underlying proceedings, the modification will not be given any effect and the original conviction remains valid. *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), *rev'd on other grounds*, *Pickering v. Gonzales*, 465 F.3d 263 (6th Cir. 2006), followed.

(2) Section 18.2-248 of the Virginia Code, which criminalizes the distribution of a controlled substance, is divisible with respect to the identity of the specific "controlled substance" involved in a violation of that statute.

S. WONG, 28 I&N Dec. 518 (BIA 2022) ID 4041 (PDF)

A finding of guilt in a proceeding that affords defendants all of the constitutional rights of criminal procedure that are applicable without limitation and that are incorporated against the States under the Fourteenth Amendment is a "conviction" for immigration purposes under section 101(a)(48)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(48)(A) (2018). *Matter of Eslamizar*, 23 I&N Dec. 684 (BIA 2004), clarified.

C. MORGAN, 28 I&N Dec. 508 (BIA 2022) ID 4040 (PDF)

Larceny in the third degree under section 53a-124(a) of the Connecticut General Statutes is not a theft offense aggravated felony under section 101(a)(43)(G) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(G) (2018), because it incorporates by reference a definition of "larceny" under section 53a-119 of the

Connecticut General Statutes that is overbroad and indivisible with respect to the generic definition of a theft offense. *Almeida v. Holder*, 588 F.3d 778 (2d Cir. 2009), and *Abimbola v. Ashcroft*, 378 F.3d 173 (2d Cir. 2004), not followed.

M-M-A-, 28 I&N Dec. 494 (BIA 2022) ID 4039 (PDF)

When the Department of Homeland Security raises the mandatory bar for filing a frivolous asylum application under section 208(d)(6) of the Immigration and Nationality Act, 8 U.S.C. § 1158(d)(6) (2018), an Immigration Judge must make sufficient findings of fact and conclusions of law on whether the requirements for a frivolousness determination under *Matter of Y-L-*, 24 I&N Dec. 151 (BIA 2007), have been met.

T-C-A-, 28 I&N Dec. 472 (BIA 2022) ID 4038 (PDF)

An applicant for adjustment of status under section 209(b) of the Immigration and Nationality Act, 8 U.S.C. § 1159(b) (2018), must possess asylee status at the time of adjustment, and thus an applicant whose asylee status has been terminated cannot adjust to lawful permanent resident status under this provision.

F-R-A-, 28 I&N Dec. 460 (BIA 2022) ID 4037 (PDF)

The amount of forfeiture ordered in a criminal proceeding may be considered in determining whether a crime of fraud or deceit resulted in a loss to a victim or victims exceeding $10,000 pursuant to section 101(a)(43)(M)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(M)(i) (2018), if the amount set forth in the order is sufficiently tethered and traceable to the conduct of conviction.

KOAT, 28 I&N Dec. 450 (BIA 2022) ID 4036 (PDF)

Section 714.1 of the Iowa Code is divisible with respect to whether a violation of the statute involved theft by taking without consent or theft by fraud or deceit, permitting an Immigration Judge to review the conviction record under a modified

categorical approach to determine whether the violation involved aggravated felony theft as defined in section 101(a)(43)(G) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(G) (2018).

LAGUERRE, 28 I&N Dec. 437 (BIA 2022) ID 4035 (PDF)

Because the identity of the "controlled dangerous substance" possessed is an element of the crime of possession of a controlled dangerous substance under section 2C:35-10(a)(1) of the New Jersey Statutes Annotated, the statute is divisible with respect to the specific substance possessed, and the record of conviction can be examined under the modified categorical approach to determine whether that substance is a controlled substance under Federal law.

LAPARRA, 28 I&N Dec. 425 (BIA 2022) ID 4034 (PDF)

A respondent receives sufficient written notice to support the entry of an in absentia order of removal, even if he or she was served with a noncompliant notice to appear that did not specify the time or place of the hearing, where the respondent was properly served with a statutorily compliant notice of hearing

specifying this information. Niz-Chavez v. Garland, 141 S. Ct. 1474 (2021), distinguished. Matter of Pena-Mejia, 27 I&N Dec. 546 (BIA 2019), and Matter of Miranda-Cordiero, 27 I&N Dec. 551 (BIA 2019), reaffirmed.

B-Z-R-, 28 I&N Dec. 424 (A.G. 2021) ID 4033 (PDF)

The Attorney General referred the decision of the Board of Immigration Appeals to himself for review of issues relating to whether mental health may be considered when determining whether an individual was convicted of a "particularly serious crime" within the meaning of 8 U.S.C. §§ 1158(b)(2)(A)(ii) and 1231(b)(3)(B)(ii).

A. VALENZUELA, 28 I&N Dec. 418 (BIA 2021) ID 4032 (PDF)

The respondent's conviction for carjacking under section 215(a) of the California Penal Code is categorically a conviction for an aggravated felony crime of violence under section 101(a)(43)(F) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(F) (2018).

M-F-O-, 28 I&N Dec. 408 (BIA 2021) ID 4031 (PDF)

A notice to appear that does not specify the time or place of a respondent's initial removal hearing does not end the accrual of physical presence for purposes of voluntary departure at the conclusion of removal proceedings under section 240B(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229c(b) (2018), even if the respondent is later served with a notice of hearing specifying this information. *Posos-Sanchez v. Garland*, 3 F.4th 1176 (9th Cir. 2021), followed. *Matter of Viera-Garcia and Ordonez-Viera*, 28 I&N Dec. 223 (BIA 2021), overruled in part.

KAGUMBAS, 28 I&N Dec. 400 (BIA 2021) ID 4030 (PDF)

An Immigration Judge has the authority to inquire into the bona fides of a marriage when considering an application for adjustment of status under section 245(a) of the Immigration and Nationality Act, 8 U.S.C. § 1255(a) (2018).

NEGUSIE, 28 I&N Dec. 399 (A.G. 2021) ID 4029 (PDF)

Pursuant to 8 C.F.R. § 1003.1(h)(1)(i), I direct the Board of Immigration Appeals ("Board") to refer this case to me for review of its decision. The Board's decision in this matter is automatically stayed pending my review. See Matter of Haddam,

A.G. Order No. 2380-2001 (Jan. 19, 2001).

ARAMBULA-BRAVO, 28 I&N Dec. 388 (BIA 2021) ID 4028 (PDF)

(1) A Notice to Appear that does not specify the time and place of a respondent's initial removal hearing does not deprive the Immigration Judge of jurisdiction over the respondent's removal proceedings. *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), and *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021), distinguished; *Matter of Bermudez-Cota*, 27 I&N Dec. 441 (BIA 2018), and *Matter of Rosales Vargas and Rosales Rosales*, 27 I&N Dec. 745 (BIA 2020), followed.

(2) A Notice to Appear that lacks the time and place of a respondent's initial removal hearing constitutes a "charging document" as defined in 8 C.F.R. § 1003.13 (2021), and is sufficient to terminate a noncitizen's grant of parole under 8 C.F.R. § 212.5(e)(2)(i) (2021).

N-V-G-, 28 I&N Dec. 380 (BIA 2021) ID 4027 (PDF)

A person who enters the United States as a refugee and later adjusts in the United States to lawful permanent resident status is not precluded from establishing eligibility for a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h) (2018), based on a conviction for an aggravated felony, because he or she has not "previously been admitted to the United States as an alien lawfully admitted for permanent residence" under that provision.

HERNANDEZ-ROMERO, 28 I&N Dec. 374 (BIA 2021) ID 4026 (PDF)

Section 240A(c)(6) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(c)(6) (2018), bars an applicant, who has previously been granted special rule cancellation of removal under the Nicaraguan Adjustment and Central American

Relief Act, Pub. L. No. 105-100, tit. II, 111 Stat. 2160, 2193, 2198 (1997), *amended by* Pub. L. No. 105-139, 111 Stat. 2644 (1997), from applying for cancellation of removal under section 240A(a) or (b)(1) of the Act.

AGUILAR-BARAJAS, 28 I&N Dec. 354 (BIA 2021) ID 4025 (PDF)

(1) The offense of aggravated statutory rape under section 39-13-506(c) of the Tennessee Code Annotated is categorically a "crime of child abuse" within the meaning of section 237(a)(2)(E)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(E)(i) (2018).

(2) The Supreme Court's holding that a statutory rape offense does not qualify as "sexual abuse of a minor" based solely on the age of the participants, unless it involves a victim under 16, does not affect our definition of a "crime of child abuse" in *Matter of Velazquez-Herrera*, 24 I&N Dec. 503 (BIA 2008), nor does it control whether the respondent's statutory rape offense falls within this definition. *Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562 (2017), *distinguished*.

A-C-A-A-, 28 I&N Dec. 351 (A.G. 2021) ID 4024 (PDF)

(1) *Matter of A-C-A-A-*, 28 I&N Dec. 84 (A.G. 2020) ("*A-C-A-A- I*"), is vacated in its entirety. Immigration judges and the Board should no longer follow *A-C-A-A- I* in pending or future cases and should conduct proceedings consistent with this opinion and the opinions in *Matter of L-E-A-*, 28 I&N Dec. 304 (A.G. 2021) ("*L-E-A- III*"), and *Matter of A-B-*, 28 I&N Dec. 307 (A.G. 2021) ("*A-B- III*").

(2) The Board's longstanding review practices that *A-C-A-A- I* apparently prohibited, including its case-by-case discretion to rely on immigration court stipulations, are restored.

O-R-E-, 28 I&N Dec. 330 (BIA 2021) ID 4023 (PDF)

(1) Immigration Judges and the Board lack the authority to recognize the equitable defense of laches in removal proceedings.

(2) The respondent's willful misrepresentations regarding his name, location of his residence, timing of his departure from Rwanda, and membership in political organizations on his Registration for Classification as Refugee (Form I-590) and supporting documents were "material" within the meaning of section 212(a)(6)(C)

(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(6)(C)(i) (2018), and he is therefore removable under section 237(a)(1)(A) of the Act, 8 U.S.C. § 1227(a)(1)(A) (2018).

(3) The evidence indicatesthat the respondent ordered, incited, assisted, or otherwise participated in the Rwandan genocide, and he did not produce sufficient countervailing evidence to demonstrate that he is not subject to the genocide bar at section 212(a)(3)(E)(ii) of the Act.

CRUZ-VALDEZ, 28 I&N Dec. 326 (A.G. 2021) ID 4022 (PDF)

(1) *Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018), is overruled in its entirety.

(2) While rulemaking proceeds and except when a court of appeals has held otherwise, immigration judges and the Board should apply the standard for administrative closure set out in *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012), and *Matter of W-Y-U-*, 27 I&N Dec. 17 (BIA 2017).

S-L-H- & L-B-L-, 28 I&N Dec. 318 (BIA 2021) ID 4021 (PDF)

(1) Immigration Judges may exercise their discretion to rescind an in absentia removal order and grant reopening where an alien has established through corroborating evidence that his or her late arrival at a removal hearing was due to "exceptional circumstances" under section 240(e)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(e)(1) (2018), and, in doing so, should consider factors such as the extent of the alien's tardiness, whether the reasons for the alien's tardiness are appropriately exceptional, and any other relevant factors in the totality of the circumstances.

(2) Corroborating evidence may include, but is not limited to, affidavits, traffic and weather reports, medical records, verification of the alien's arrival time at the courtroom, and other documentation verifying the cause of the late arrival; however, general statements—without corroborative evidence documenting the

cause of the tardiness—are insufficient to establish exceptional circumstances that would warrant reopening removal proceedings. *Matter of S-A-*, 21 I&N Dec. 1050 (BIA 1997), *reaffirmed and clarified*.

MORADEL, 28 I&N Dec. 310 (BIA 2021) ID 4020 (PDF)

(1) An applicant for adjustment of status with Special Immigrant Juvenile status may, in conjunction with a waiver under section 245(h)(2)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1255(h)(2)(B) (2018), seek to waive his or her inadmissibility under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II) (2018), based on a single offense of simple possession of 30 grams or less of marijuana.

(2) The "simple possession" exception at section 245(h)(2)(B) calls for a circumstance-specific inquiry into the nature of the conduct surrounding an applicant's simple possession offense.

A-B-, 28 I&N Dec. 307 (A.G. 2021) ID 4019 (PDF)

(1) *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018) ("*A-B- I*"), and *Matter of A-B-*, 28 I&N Dec. 199 (A.G. 2021) ("*A-B- II*"), are vacated in their entirety.

(2) Immigration judges and the Board should no longer follow *A-B- I* or *A-B- II* when adjudicating pending or future cases. Instead, pending forthcoming rulemaking, immigration judges and the Board should follow pre-*A-B- I* precedent, including *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014).

L-E-A-, 28 I&N Dec. 304 (A.G. 2021) ID 4018 (PDF)

(1) *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019) ("*L-E-A- II*"), is vacated in its entirety so as to return the immigration system to the preexisting state of affairs pending completion of the ongoing rulemaking process and the issuance of a final rule addressing the definition of "particular social group."

(2) Immigration judges and the Board should no longer follow *L-E-A- II* when adjudicating pending and future cases.

D-G-C-, 28 I&N Dec. 297 (BIA 2021) ID 4017 (PDF)

The mere continuation of an activity in the United States that is substantially similar to the activity from which an initial claim of past persecution is alleged and that does not significantly increase the risk of future harm is insufficient to establish "changed circumstances" to excuse an untimely asylum application within the meaning of section 208(a)(2)(D) of the Immigration and Nationality Act, 8 U.S.C. § 1158(a)(2)(D) (2018).

MENSAH, 28 I&N Dec. 288 (BIA 2021) ID 4016 (PDF)

An Immigration Judge may rely on fraud or a willful misrepresentation of a material fact made by an alien during an interview before the United States Citizenship and Immigration Services to remove the conditional basis of an alien's permanent resident status in assessing whether the alien has demonstrated, for purposes of adjustment of status in removal proceedings, that she is not inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(6)(C)(i) (2018).

A-S-M-, 28 I&N Dec. 282 (BIA 2021) ID 4015 (PDF)

Where the Department of Homeland Security states that an applicant may be removed to a country pursuant to section 241(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(2) (2018), the applicant may seek withholding of removal from that country in withholding-only proceedings, even if that country is different from the country of removal that was originally designated in the reinstated removal order on which the withholding-only proceedings are based.

VUCETIC, 28 I&N Dec. 276 (BIA 2021) ID 4014 (PDF)

The offense of aggravated unlicensed operation of a motor vehicle in the first degree in violation of section 511(3)(a)(i) of the New York Vehicle and Traffic Law, which prohibits a person from driving under the influence of alcohol or drugs

while knowing or having reason to know that his or her license is suspended, is categorically a crime involving moral turpitude. *Matter of Lopez-Meza*, 22 I&N Dec. 1188 (BIA 1999), followed.

AL SABSABI, 28 I&N Dec. 269 (BIA 2021) ID 4013 (PDF)

(1) The "offense clause" of the Federal conspiracy statute, 18 U.S.C. § 371 (2012), is divisible and the underlying substantive crime is an element of the offense.

(2) Because the substantive offense underlying the respondent's Federal conspiracy conviction—namely, selling counterfeit currency in violation of 18 U.S.C. § 473 (2012)—is a crime involving moral turpitude, his conviction for conspiring to commit this offense is likewise one for a crime involving moral turpitude.

AGUILAR-MENDEZ, 28 I&N Dec. 262 (BIA 2021) ID 4012 (PDF)

The respondent's conviction for assault by means of force likely to produce great bodily injury in violation of section 245(a)(4) of the California Penal Code is categorically one for a crime involving moral turpitude. *Matter of Wu*, 27 I&N Dec. 8 (BIA 2017), followed.

NEMIS, 28 I&N Dec. 250 (BIA 2021) ID 4011 (PDF)

(1) Applying the categorical approach, the conspiracy statute, 18 U.S.C. § 371 (2012), is overbroad relative to the generic definition of a crime involving moral turpitude, and divisible between the offense clause, which may or may not involve moral turpitude, and the defraud clause of the statute, which is categorically a crime involving moral turpitude.

(2) To determine whether a conspiracy conviction under the offense clause of 18 U.S.C. § 371 constitutes a crime involving moral turpitude, the underlying statute of conviction should be examined under the categorical, and if applicable, modified categorical approach.

(3) The respondent's conviction under 18 U.S.C. § 1546(a) (2012), punishing fraud and misuse of visas, permits, and other documents, is overbroad and divisible such that the modified categorical approach is applicable and it was proper to consider the conviction records. *Matter of Serna*, 20 I&N Dec. 579 (BIA 1992), clarified.

(4) The respondent's conviction for conspiracy to commit visa fraud in violation of 18 U.S.C. §§ 371 and 1546(a) is a conviction for a crime involving moral turpitude under the modified categorical approach.

L-L-P-, 28 I&N Dec. 241 (BIA 2021) ID 4010 (PDF)

An applicant for special rule cancellation of removal under section 240A(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(2) (2018), based on spousal abuse must demonstrate both that the abuser was his or her lawful spouse and possessed either United States citizenship or lawful permanent resident status at the time of the abuse.

H-L-S-A-, 28 I&N Dec. 228 (BIA 2021) ID 4009(PDF)

Individuals who cooperate with law enforcement may constitute a valid particular social group under the Immigration and Nationality Act if their cooperation is public in nature, particularly where testimony was given in public court proceedings, and the evidence in the record reflects that the society in question recognizes and provides protection for such cooperation.

VIERA-GARCIA and ORDONEZ-VIERA, 28 I&N Dec. 223 (BIA 2021) ID 4008 (PDF)

Where a notice to appear fails to specify the time or place of a respondent's initial removal hearing, the subsequent service of a notice of hearing specifying this information perfects the notice to appear and ends the accrual of physical

presence for purposes of voluntary departure at the conclusion of removal proceedings pursuant to section 240B(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229c(b) (2018).

DIKHTYAR, 28 I&N Dec. 214 (BIA 2021) ID 4007 (PDF)

Section 58-37-8(2)(a)(i) of the Utah Code, which criminalizes possession or use of a controlled substance, is divisible with respect to the identity of the specific "controlled substance" involved in a violation of that statute.

A-B-, 28 I&N Dec. 199 (A.G. 2021) ID 4006 (PDF)

(1) *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018), did not alter the existing standard for determining whether a government is "unwilling or unable" to prevent persecution by non-governmental actors. The "complete helplessness" language used in Matter of A-B- is consistent with the longstanding "unable or unwilling" standard, as the two are interchangeable formulations.

(2) The concept of "persecution" under the Immigration and Nationality Act, 8 U.S.C. §§ 1101(a)(42)(A), 1158(b)(1)(a), (b)(i), is premised on a breach of a home country's duty to protect its citizens. In cases where an asylum applicant is the victim of violence or threats by non-governmental actors, and the applicant's home government has made efforts to prevent such violence or threats, failures in particular cases or high levels of crime do not establish a breach of the government's duty to protect its citizenry.

(3) The two-pronged test articulated by the Board of Immigration Appeals in *Matter of L-E-A-*, 27 I&N Dec. 40, 43–44 (BIA 2017), is the proper approach for determining whether a protected ground is "at least one central reason" for an asylum applicant's persecution, 8 U.S.C. § 1158(b)(1)(B)(i). Under this test, the protected ground: (1) must be a but-for cause of the wrongdoer's act; and (2) must play more than a minor role—in other words, it cannot be incidental or tangential to another reason for the act.

O-M-O-, 28 I&N Dec. 191 (BIA 2021) ID 4005 (PDF)

An Immigration Judge may find a document to be fraudulent without forensic analysis or other expert testimony where the document contains obvious defects or readily identifiable hallmarks of fraud and the party submitting the document is

given an opportunity to explain the defects.

RIVERA-MENDOZA, 28 I&N Dec. 184 (BIA 2020) ID 4004 (PDF)

The risk of harm to a child required to obtain a conviction for child neglect in the second degree under section 163.545(1) of the Oregon Revised Statutes is sufficiently high that the offense is categorically a "crime of child abuse, child neglect, or child abandonment" under section 237(a)(2)(E)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(E)(i) (2018).

M-A-M-Z-, 28 I&N Dec. 173 (BIA 2020) ID 4003 (PDF)

(1) Expert testimony is evidence, but only an Immigration Judge makes factual findings.

(2) When the Immigration Judge makes a factual finding that is not consistent with an expert's opinion, it is important, as the Immigration Judge did here, to explain the reasons behind the factual findings.

MELGAR, 28 I&N Dec. 169 (BIA 2020) ID 4002 (PDF)

(1) Counsel's acceptance of responsibility for error does not discharge the disciplinary authority complaint obligation under *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), particularly where the ineffective assistance allegation is rendered by the same attorney against himself.

(2) A respondent seeking reopening on the basis of a claim of ineffective assistance of counsel must show a reasonable probability that, but for counsel's error, he would have prevailed on his claim.

PADILLA RODRIGUEZ,28 I&N Dec. 164 (BIA 2020) ID 4001 (PDF)

(1) Where the temporary protected status ("TPS") of an alien who was previously present in the United States without being admitted or paroled is terminated, the alien remains inadmissible under section 212(a)(6)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(6)(A)(i) (2018), and removal proceedings should not be terminated.

(2) An alien whose TPS continues to be valid is considered to be "admitted" for purposes of establishing eligibility for adjustment of status only within the jurisdictions of the United States Courts of Appeals for the Sixth, Eighth, and Ninth Circuits.

H-Y-Z-, 28 I&N Dec. 156 (BIA 2020) ID 4000 (PDF)

Absent a showing of prejudice on account of ineffective assistance of counsel, or a showing that clearly undermines the validity and finality of the finding, it is inappropriate for the Board to favorably exercise our discretion to reopen a case and vacate an Immigration Judge's frivolousness finding.

NEGUSIE, 28 I&N Dec. 120 (A.G. 2020) ID 3999 (PDF)

(1) The bar to eligibility for asylum and withholding of removal based on the persecution of others does not include an exception for coercion or duress.

(2) The Department of Homeland Security does not have an evidentiary burden to show that an applicant is ineligible for asylum and withholding of removal based on the persecution of others. If evidence in the record indicates the persecutor bar may apply, the applicant bears the burden of proving by a preponderance of the evidence that it does not.

PAK, 28 I&N Dec. 113 (BIA 2020) ID 3998 (PDF)

Where there is substantial and probative evidence that a beneficiary's prior marriage was fraudulent and entered into for the purpose of evading the immigration laws, a subsequent visa petition filed on the beneficiary's behalf is

properly denied pursuant to section 204(c) of the Immigration and Nationality Act, 8 U.S.C. § 1154(c) (2018), even if the first visa petition was denied because of insufficient evidence of a bona fide marital relationship.

VOSS, 28 I&N Dec. 107 (BIA 2020) ID 3997 (PDF)

If a criminal conviction was charged as a ground of removability or was known to the Immigration Judge at the time cancellation of removal was granted under section 240A(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(a) (2018), that conviction cannot serve as the sole factual predicate for a charge of removability in subsequent removal proceedings.

J-G-T-, 28 I&N Dec. 97 (BIA 2020) ID 3996 (PDF)

(1) In assessing whether to admit the testimony of a witness as an expert, an Immigration Judge should consider whether it is sufficiently relevant and reliable for the expert to offer an informed opinion, and if it is admitted, the Immigration Judge should then consider how much weight the testimony should receive.

(2) In considering how much weight to give an expert's testimony, the Immigration Judge should assess how probative and persuasive the testimony is regarding key issues in dispute for which the testimony is being offered.

A-C-A-A-, 28 I&N Dec. 84 (A.G. 2020) ID 3995(PDF)

(1) In conducting its review of an alien's asylum claim, the Board of Immigration Appeals ("Board") must examine de novo whether the facts found by the immigration judge satisfy all of the statutory elements of asylum as a matter of law. *See Matter of R-A-F-*, 27 I&N Dec. 778 (A.G. 2020).

(2) When reviewing a grant of asylum, the Board should not accept the parties' stipulations to, or failures to address, any of the particular elements of asylum—including, where necessary, the elements of a particular social group. Instead, unless it affirms without opinion under 8 C.F.R. § 1003.1(e)(4)(i), the Board should meaningfully review each element of an asylum claim before affirming such a grant, or before independently ordering a grant of asylum. *See Matter of L-E-A-*, 27 I&N Dec. 581, 589 (A.G. 2019).

(3) Even if an applicant is a member of a cognizable particular social group and has suffered persecution, an asylum claim should be denied if the harm inflicted or threatened by the persecutor is not "on account of" the alien's membership in that group. That requirement is especially important to scrutinize where the asserted particular social group encompasses many millions of persons in a particular society. (4) An alien's membership in a particular social group cannot be "incidental, tangential, or subordinate to the persecutor's motivation . . . [for] why the persecutor[] sought to inflict harm." *Matter of A-B-*, 27 I&N Dec. 316, 338 (A.G. 2018) (citations omitted). Accordingly, persecution that results from personal animus or retribution generally does not support eligibility for asylum.

R-C-R-, 28 I&N Dec. 74 (BIA 2020) ID 3994 (PDF)

(1) After an Immigration Judge has set a firm deadline for filing an application for relief, the respondent's opportunity to file the application may be deemed waived, prior to a scheduled hearing, if the deadline passes without submission of the application and no good cause for noncompliance has been shown.

(2) The respondent failed to meet his burden of establishing that he was deprived of a full and fair hearing where he has not shown that conducting the hearing by video conference interfered with his communication with the Immigration Judge or otherwise prejudiced him as a result of technical problems with the video equipment.

NIVELO CARDENAS, 28 I&N Dec. 68 (BIA 2020) ID 3993 (PDF)

(1) Where an alien who has been personally served with a notice to appear advising him of the requirement to notify the Immigration Court of his correct address fails to do so and is ordered removed in absentia for failure to appear for the scheduled hearing, reopening of the proceedings to rescind his order of removal based on a lack of proper notice is not warranted under section 240(b)(5)(C)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(5)(C)(ii) (2018).

(2) The respondent's failure to update his address for over 18 years indicates a lack of due diligence and may properly be found to undermine the veracity of his claim that he has taken actions to maintain his rights in the underlying removal proceedings.

REYES, 28 I&N Dec. 52 (A.G. 2020) ID 3992 (PDF)

(1) If all of the means of committing a crime, based on the elements of the statute of conviction, amount to one or more of the offenses listed in section 101(a)(43) of the Immigration and Nationality Act, 8 U.S.C. §1101(a)(43), then an alien who has been convicted of that crime has necessarily been convicted of an aggravated felony for purposes of the INA.

(2) The respondent's conviction for grand larceny in the second degree under New York Penal Law § 155.40(1) qualifies as a conviction for an aggravated felony for purposes of the INA. DHS charged that the respondent had been convicted of either aggravated-felony theft or aggravated-felony fraud, as defined in section 101(a)(43)(G) and (M)(i) of the INA, 8 U.S.C. § 1101(a)(43)(G) and (M)(i). Larceny by acquiring lost property constitutes aggravated-felony theft, and the parties do not dispute that the other means of violating the New York statute correspond to either aggravated-felony theft or aggravated-felony fraud.

P-B-B-, 28 I&N Dec. 43 (BIA 2020) ID 3991(PDF)

Section 13-3407 of the Arizona Revised Statutes, which criminalizes possession of a dangerous drug, is divisible with regard to the specific "dangerous drug" involved in a violation of that statute.

O-F-A-S-, 28 I&N Dec. 35 (A.G. 2020) ID 3990 (PDF)

(1) Under Department of Justice regulations implementing the Convention Against Torture, an act constitutes "torture" only if it is inflicted or approved by a public official or other person "acting in an official capacity." 8 C.F.R. § 1208.18(a)(1). This official capacity requirement limits the scope of the Convention to actions performed "under color of law." *Matter of Y-L-*, 23 I&N Dec. 270 (A.G. 2002). Nothing in *Matter of Y-L-*, or any other Board precedent, should be construed to endorse a distinct, "rogue official" standard.

(2) The "under color of law" standard draws no categorical distinction between the acts of low- and high-level officials. A public official, regardless of rank, acts "under color of law" when he "exercise[s] power 'possessed by virtue of . . . law and made possible only because [he was] clothed with the authority of . . . law.'" *West v. Atkins*, 487 U.S. 42, 47 (1988) (quoting *United States v. Classic*, 313 U.S. 299, 326 (1941)).

M-D-C-V-, 28 I&N Dec. 18 (BIA 2020) ID 3989 (PDF)

Under section 235(b)(2)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(C) (2018), an alien who is arriving on land from a contiguous foreign territory may be returned by the Department of Homeland Security to that country pursuant to the Migrant Protection Protocols, regardless of whether the alien arrives at or between a designated port of entry.

BAY AREA LEGAL SERVICES, INC., 28 I&N Dec. 16 (DIR 2020) ID 3988 (PDF)

An *amicus curiae* is not a party in recognition and accreditation proceedings and has no authority to seek further action following the conclusion of an administrative review under 8 C.F.R. § 1292.18.

R. I. ORTEGA, 28 I&N Dec. 9 (BIA 2020) ID 3987 (PDF)

(1) An alien who has conspired to enter into a marriage for the purpose of evading the immigration laws by seeking to secure a K-1 fiancé(e) nonimmigrant visa is subject to the bar under section 204(c)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1154(c)(2) (2018).

(2) For purposes of section 204(c)(2) of the Act, a conspiracy requires an agreement to enter into a marriage for the purpose of evading the immigration laws and an overt act in furtherance of that agreement.

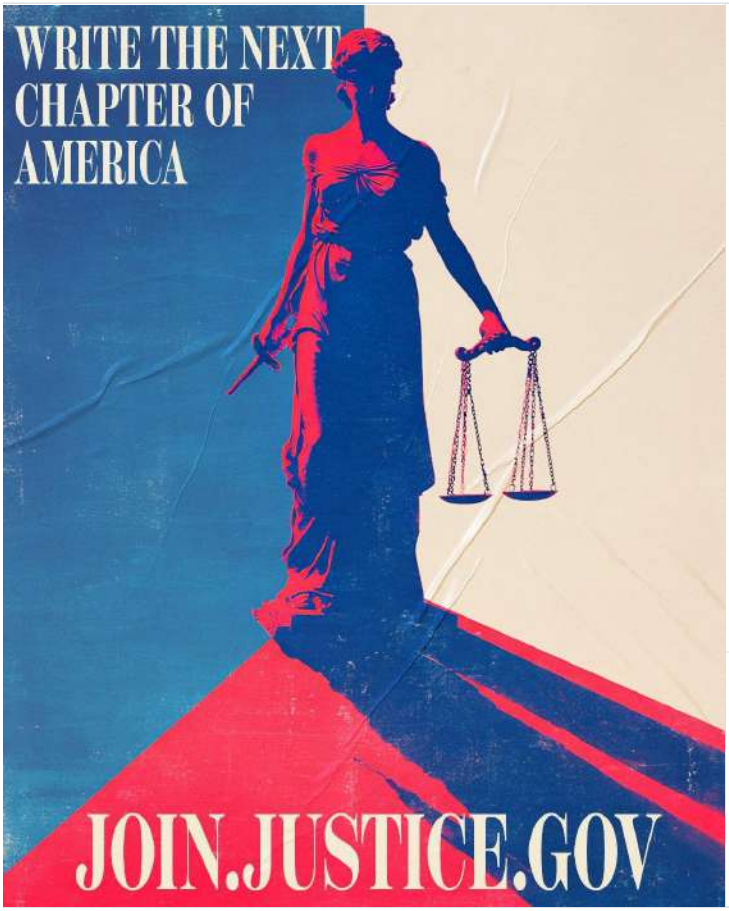
A-M-R-C-, 28 I&N Dec. 7 (A.G. 2020) ID 3986 (PDF)

The Attorney General referred the decision of the Board of Immigration Appeals to himself for review of issues relating to the effect of timing of referral; whether the Board applied the correct legal standard and properly exercised its discretion

in deciding issues related to the serious nonpolitical crime bar and the persecutor bar; and whether the Board applied the correct standard for determining whether a respondent's *in absentia* trial suffered from due process problems.

F-S-N-, 28 I&N Dec. 1 (BIA 2020) ID 3985 (PDF)

To prevail on a motion to reopen alleging changed country conditions where the persecution claim was previously denied based on an adverse credibility finding in the underlying proceedings, the respondent must either overcome the prior determination or show that the new claim is independent of the evidence that was found to be not credible.
Updated June 13, 2025



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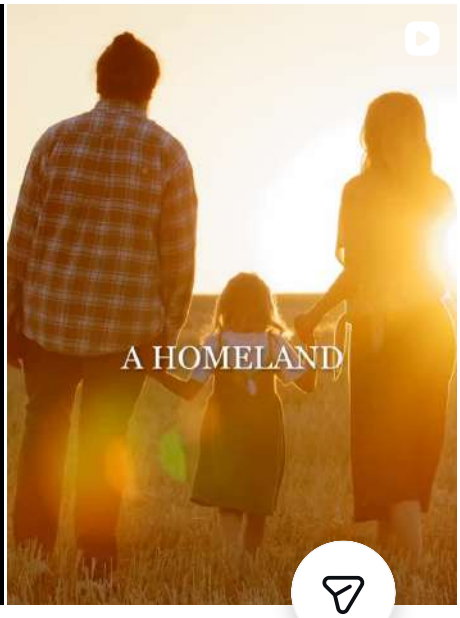

Using Military Lawyers as Immigration Judges is Ill-Advised and Potentially Illegal

BC **brennancenter.org**/our-work/analysis-opinion/using-military-lawyers-immigration-judges-ill-advised-and-potentially

11762 7 de febrero de 2026

The Trump administration's reported authorization of 600 military lawyers to act as temporary immigration judges would deprive immigrants of a fair hearing and further erode the line between the military and civilian government.

This is true regardless of the professionalism of the military lawyers. Immigration judges are specially trained administrative judges in the Department of Justice who oversee deportation hearings. In late August, the DOJ issued a rule allowing "any attorney" to be selected as a temporary immigration judge, eliminating the previous requirement that temporary judges have years of adjudicatory, litigation, or immigration experience. Multiple news reports on the Trump administration's authorization of the use of military lawyers followed in early September.

The administration claims that the military lawyers, often called JAGs for judge advocate generals, are needed to alleviate a backlog of cases — but other changes to the makeup of the immigration judge corps undermine that claim. Since the beginning of the year, the DOJ has fired more than 80 immigration judges, all career government employees. Replacing experienced specialists suggests that the DOJ is less interested in impartial adjudication than in trying to build a bench of judges who will support the president's agenda.

Immigration judges must know immigration law, which the Supreme Court has called "complex" and a "legal specialty of its own." The DOJ's practice is to give immigration judges six weeks of training, one year of mentorship by an experienced judge, and two years of quarterly reviews by supervisors, co-workers, and litigants. While the department has said temporary immigration judges will receive the same training, that's impossible if they are only serving six months. Reporting has suggested their training will be truncated to two weeks.

In addition, ethical rules are fundamental to the rule of law, but the legal and ethical obligations of military lawyers and immigration judges are in tension. By regulation and guidelines, immigration judges are obligated to be impartial. Military lawyers would be bound by those same rules while serving as immigration judges, but even when sent to the DOJ, JAGs remain bound to follow the Uniform Code of Military Justice which requires JAGs to obey a lawful order. Failing to do

so risks career consequences or even court martial. That obligation raises questions about whether JAGs would be placed in a position where it would be impossible to be truly impartial.

Moreover, under military ethics rules, JAGs can't act in a way that is prejudicial to the administration of justice, nor can they represent clients with a conflict of interest. If a military attorney's usual job is to represent the military as a prosecutor or adviser, simultaneously working for a temporary period as a judge — who does not represent the government — potentially puts the officer in a precarious ethical bind.

A JAG's legal and ethical obligations to follow orders make it challenging to provide a truly fair hearing to the immigrants in their courtroom, a conundrum with constitutional implications.

The Fifth Amendment guarantees due process regardless of immigration status, a right the Supreme Court unanimously reaffirmed this year. The Court has also made clear that "a fair trial in a fair tribunal is a basic requirement of due process."

A fair trial in a fair tribunal cannot mean a hearing before a government employee who is generally obligated to follow orders, may have little to no knowledge of immigration law or procedures, and was handpicked by the secretary of defense at the request of the attorney general. Wrong decisions in immigration court can have devastating consequences for individuals and their families, including deporting someone to a country where they will be persecuted or separating family members.

In addition, assigning JAGs to work as immigration judges will pull them away from the important work they are trained and assigned to do, risking military readiness. Although Defense Secretary Pete Hegseth fired senior JAGs because he viewed them as "roadblocks" to the president's agenda, military lawyers provide critical legal guardrails and guidance.

The novel plan to assign JAGs as immigration judges also raises questions about whether it violates the Posse Comitatus Act, which bars federal armed forces from participating in law enforcement except when expressly authorized by Congress. In the past, military lawyers have been detailed to assist the Justice Department in representing the government. This would be the first time, however, that military lawyers are assigned to serve as impartial adjudicators making decisions about civilians.

Given the unprecedented approach and minimal public information about the legal authority for the appointments, there are other open questions about the legality. For example, it is unclear whether any statute expressly authorizes the assignments, whether the JAGs on assignment would be under military command and control or whether they would report to the attorney general, what the scope of their duties would be, and which agency will fund the details.

Questions also remain as to whether other legal limitations such as the Economy Act — which limits agency spending to the functions appropriated by Congress — would require the DOJ to reimburse the Department of Defense for any assignments. If so, that could be a significant limiting factor. The July funding bill capped the DOJ's spending at 800 immigration judges. There are 685 immigration judges on the rolls today, leaving space for a maximum of 115 JAGs to be appointed.

In addition to questions about its legality, this plan is simply a bad idea. It undermines public trust in the immigration courts and the military, and it furthers Trump's pattern of misusing the military. The president has used military aircraft for deportations flights, deployed National Guard and Marines to assist with immigration enforcement, and set up military zones at the border.

Using military lawyers in civil immigration proceedings further blurs the line between appropriate military functions and civilian government, all while also undermining due process, the fair administration of justice, and military readiness.

- Government Power
  - Government Targeting of Minority Communities
  - Executive Power

- Image

Analysis

Reforms to Curb DHS, ICE, CBP Overreach

How Congress can protect Americans' rights and provide a measure of accountability.

Rachel Levinson-Waldman , Margy O'Herron , Hannah James

- Image

Analysis

Trump's Push to Redefine Who Counts as American

Threats of denaturalization are the latest attack on immigrants — but they won't stand up in court.

Michael Waldman

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Pete Hegseth approves 600 military lawyers to be temporary immigration judges

apnews.com/article/pentagon-immigration-judges-trump-pete-hegseth-b07950833591270b926ad86ede8b961f

By KONSTANTIN TOROPIN

2 de septiembre de 2025

Leer en español

WASHINGTON (AP) — Defense Secretary Pete Hegseth has approved sending up to 600 military lawyers to the Justice Department to serve as temporary immigration judges, according to a memo reviewed by The Associated Press.

The military will begin sending groups of 150 attorneys — both military and civilians — to the Justice Department "as soon as practicable," and the military services should have the first round of people identified by next week, according to the Aug. 27 memo.

The effort comes as the Trump administration more regularly turns to the military as it cracks down on illegal immigration through ramped-up arrests and deportations. Its growing role in the push includes troops patrolling the U.S.-Mexico border, National Guard members being sent into U.S. cities to support immigration enforcement efforts, housing people awaiting deportation on military bases and using military aircraft to carry out deportations.

The administration's focus on illegal immigration has added strain to the immigration courts, which were already dealing with a massive backlog of roughly 3.5 million cases that has ballooned in recent years. An organization for immigration lawyers called the new directive a "destructive" move meant to undermine the courts.

Numerous immigration judges have been fired

At the same time, more than 100 immigration judges have been fired or left voluntarily after taking deferred resignations offered by the Trump administration, their union says. In the most recent round of terminations, the International Federation of Professional and Technical Engineers said in July that at least 17 immigration judges had been fired "without cause" in courts across the country.

That has left about 600 immigration judges, union figures show, meaning the Pentagon move would double their ranks.

The Justice Department, which oversees the immigration courts, requested the assistance from the Defense Department, according to the memo sent by the Pentagon's executive secretary to his DOJ counterpart. The military lawyers' duties as immigration judges will initially last no more than 179 days but can be renewed, it said.

A DOJ spokesperson referred questions about the plan to the Defense Department, where officials directed questions to the White House.

A White House official said Tuesday that the administration is looking at a variety of options to help resolve the significant backlog of immigration cases, including hiring additional immigration judges. The official, who was not authorized to comment publicly and spoke on condition of anonymity, said the matter should be "a priority that everyone — including those waiting for adjudication — can rally around."

The head of the American Immigration Lawyers Association decried bringing in temporary judges who lack expertise in immigration law, saying "it makes as much as sense as having a cardiologist do a hip replacement."

"Expecting fair decisions from judges unfamiliar with the law is absurd. This reckless move guts due process and further undermines the integrity of our immigration court system," said Ben Johnson, the organization's executive director.

Pentagon says the step may require mobilizing reserve officers

The memo stressed that the additional attorneys are contingent on availability and that mobilizing reserve officers may be necessary. Plus, the document said DOJ would be responsible for ensuring that anyone sent from the Pentagon does not violate the federal prohibition on using the military as domestic law enforcement, known as the Posse Comitatus Act.

The administration faced a setback on its efforts to use troops in unique ways to combat illegal immigration and crime, with a court ruling Tuesday that it "willfully" violated federal law by sending National Guard troops to Los Angeles in early June.

It is not immediately clear what impact shifting that number of military attorneys would have on the armed forces' justice system. The attorneys, called judge advocates, have a range of duties much like civilian lawyers, from carrying out prosecutions, acting as a defense attorney or offering legal advice.

Pentagon officials did immediately offer details on where any of the 600 attorneys will be drawn from and whether they will come from active duty or the reserves.

The training that goes into being an immigration judge

Until she was abruptly fired in July, former supervising judge Jennifer Peyton administered the intensive training that all judges in Chicago undergo before working in some of the busiest immigration courts in the country. After the weekslong training, new judges are paired with an experienced mentor and have a two-year probationary period.

Peyton doubted that military attorneys would be able to master the complexities of immigration law without that rigorous process. She also said it wasn't clear how they would handle the hundreds, or sometimes thousands, of cases on just a Chicago immigration judge's docket each year.

"Six months is barely enough time to start to figure out the firehose of information and training," she said.

Peyton also was concerned that Trump's move didn't supply more administrative workers, including translators, whom judges rely on to make decisions. The stakes, she said, were life or death for people who would come before the new judges.

"None of it makes sense unless you were intentionally trying to weaken the immigration courts," Peyton said.

—

Associated Press writers Safiyah Riddle in Montgomery, Alabama, and Will Weissert, Rebecca Santana and Eric Tucker in Washington contributed to this report.

US army lawyer fired as immigration judge after defying Trump deportation agenda

theguardian.com/us-news/2025/dec/19/army-lawyer-fired-immigration-trump-deportation

Associated Press

19 de diciembre de 2025

Christopher Day was fired barely a month into the job after granting asylum to migrants at a high rate

A US army reserve lawyer detailed as a federal immigration judge has been fired barely a month into the job after granting asylum at a high rate out of step with the Trump administration's mass deportation goals, the Associated Press has learned.

Christopher Day began hearing cases in late October as a temporary judge at the immigration court in Annandale, Virginia. He was fired around 2 December, the National Association of Immigration Judges confirmed.

It is unclear why Day was fired. He did not comment when contacted by the AP, and a justice department spokesperson declined to discuss personnel matters.

But federal data from November shows he ruled on asylum cases in ways at odds with the Trump administration's stated goals.

Of the 11 cases he concluded in November, he granted asylum or some other type of relief allowing the migrant to remain in the United States a total of six times, according to federal data analyzed by Mobile Pathways, a San Francisco-based non-profit.

Such favorable outcomes for migrants have become increasingly rare as the Trump administration seeks to slash a huge backlog of 3.8m asylum cases by radically overhauling the nation's 75 immigration courts.

As part of that drive, the Trump administration has fired almost 100 judges viewed as too liberal and over the summer eased rules allowing any attorney, regardless of their legal background, to apply to become what recent recruitment ads refer to as a "Deportation Judge".

In response, Pete Hegseth, the US defense secretary, in September approved sending up to 600 military lawyers to hear asylum cases. The goal, migrant advocacy groups say, is to redefine a judge's traditional duties as a fair,

independent arbiter of asylum claims into something akin to a rubber stamp in a robe for the White House's mass deportation goals.

The American Immigration Lawyers Association has decried the influx of military officers lacking expertise in immigration law, likening them to cardiologists attempting to do a hip replacement. But Pentagon and White House officials have defended the move.

So far, only 30 members of the military have been detailed to the immigration courts and for the most part appear to have lived up to the administration's expectations. Nine out of every 10 migrants whose asylum cases were heard by such judges in November were either ordered removed from the US or requested to leave the country voluntarily, according to federal data. Overall, the military judges ordered removal 78% of the time compared with 63% for all other judges.

But those like Day, whose rulings countered that trend, are especially vulnerable if it is determined they violated their military duties, said Dana Leigh Marks, a retired immigration judge.

"It is hard to imagine someone being fired so quickly, after five weeks on the bench, unless it was for ideological reasons," said Marks, the former head of the National Association of Immigration Judges. "It's especially unfair to military judges because they don't have the same civil service protections and could face severe consequences for failing in their assignment."

The Uniform Code of Military Justice, which governs service members, forbids senior military leaders from interfering or retaliating against military attorneys for their actions in a military tribunal. Army regulations also require judge advocate general attorneys to proceed with candor and honesty much like expectations of all licensed lawyers.

But whether those standards apply to military lawyers working outside the normal confines of a military tribunal is untested.

Brenner Fissell, a Villanova University law professor, said that there were a number of personnel actions that can be taken – letters of counseling or reprimand – that, even if found to be baseless later, would affect one's potential for promotion and affect their discharge. Appealing such decisions, he said, was a byzantine process that can take years and require hiring a costly lawyer.

A graduate of American University law school, Day has held multiple jobs in the federal government over the past two decades while simultaneously serving as a lieutenant colonel in the US army reserve's judge advocate general's corps.

Unlike federal judges, who have lifetime tenure, immigration judges are employees of the justice department, which runs immigration courts, and can be fired by the attorney general with fewer restraints.

Former Immigration Judges Speak Out Against Trump's Assault on the Courts – Mother Jones

motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice

Isabela Dias 9 de octubre de 2025

On a Friday afternoon in early September, Anam Rahman Petit sat in the Annandale immigration court in Virginia, ready to announce an oral decision on a complex family asylum case. Then, she got an email. It was a notice from the director of the Executive Office for Immigration Review (EOIR)—the Department of Justice's agency that oversees the immigration courts—terminating her appointment as an immigration judge and instructing Petit to hand in all of her government property by the end of the day.

Nowhere in the email did it mention the reason she was being fired just short of completing two years on the bench and finishing her probationary period. Petit briefly stepped outside the courtroom and texted the bad news to her husband. Without waiting for a response, she put her phone in her robe's pocket and walked back in to deliver the ruling. As she did, Petit remembers her voice cracking and hands shaking.

MOTHER JONES TOP STORIES

> The Trump administration is "shrinking the courts because they don't think they're going to need them."

"It was one of the hardest things I've ever had to do," she said. "My mind was trying to run to different directions, and I just had to bring myself back to that case so I could get it done." Later, Petit folded her robe and packed up her office as other immigration judges tried to console her. "It was a very emotional departure from the courthouse," she recalled.

As the Trump administration works to fundamentally reshape the immigration system, US immigration courts have come to play an outsized role in the crackdown. Across the country, courthouses—previously considered off limits for immigration enforcement—have turned into sites of arrests by masked US Immigration and Customs Enforcement agents, and the very judges charged with resolving asylum and removal cases and, often, issuing deportation orders, are under assault.

Related

“The Entire System Will Collapse”: Inside the Purge of US Immigration Courts

The attack has been so sweeping that it has immigrant rights advocates, legal observers, and some former immigration judges wondering if the administration’s objective is to render the already overwhelmed courts so impaired that they can no longer serve their purpose.

Andrea R. Flores, who served as an immigration policy adviser during the Obama and Biden presidencies, described the firings of immigration judges as “confusing” for a White House that is trying to remove as many people as possible. Instead of empowering the courts to process more cases, the administration appears to be eviscerating the system to potentially undermine legal proceedings altogether.

“I think what alarms me about that is their hope that they’re going to massively expand the usage of expedited removal and deny people their right to see a judge,” she said of the administration’s push to fast-track deportations. “[They’re] shrinking the courts because they don’t think they’re going to need them.”

Petit had seen the writing on the wall months earlier. Back in February, her former supervisor, assistant chief immigration judge Rebecca Walters, who had been appointed during the Biden administration, was among several judges dismissed as part of an early purge of the courts. Then July came, and another 17 or so judges were reportedly terminated without cause, even as the nationwide backlog continued to grow to almost 3.8 million pending immigration cases.

In letters to EOIR's director, Sirce E. Owen, Democratic Sen. Elizabeth Warren and others decried the firings as "indefensible" and voiced concern that decisions not to convert half of a class of judges—particularly those without an immigration enforcement background—to permanent positions "may have been made for politically motivated reasons."

An attorney with private practice experience in the area of removal defense, Petit said she had completed around 800 cases, a hundred or so more than the 700 a year expected of immigration judges, before her abrupt termination. Petit's supervisor later told her that her performance review noted she was a high-performing judge. But that didn't protect her. "You think you're going to be okay as long as you do a good job and just keep your head down, do your cases, and apply the law," she said. "And then you start seeing more and more people get fired for no reason."

The dismissal of judges like Petit is just one of the ways the Trump White House is upending the immigration courts to serve its mass deportation agenda. In late August, the administration issued a rule easing the qualification requirements for temporary immigration judges, allowing the Department of Justice to hire attorneys without adjudicatory or immigration law experience. It has also turned to recruiting hundreds of military lawyers to fill vacant seats for six-month assignments, a move that legal experts have warned could be unlawful and will likely undermine due process.

> "I know some judges who had packed up their offices in anticipation of being fired."

"I see more deportations of illegal immigrants in the near future," Corey Lewandowski, an adviser to Homeland Security Secretary Kristi Noem, posted about the announcement that the Pentagon had authorized 600 military lawyers to act as temporary immigration judges. (Among the assistant chief immigration judges terminated in February were two former military attorneys, commonly referred to as JAGs after Judge Advocate General's Corps.)

"That's concerning because you're going to have people who have not been trained making decisions with no immigration background," said Alison Peck, director of the immigration law clinic at West Virginia University College of Law and author of *The Accidental History of the US Immigration Courts: War, Fear, and the Roots of Dysfunction*. "That judge isn't going to know what hit them…It's the steepest learning curve I've ever encountered in the legal profession."

Peck has long argued the problem with immigration courts run much deeper than President Donald Trump's moves. Because the immigration courts are nested within the Department of Justice and the executive branch, they are effectively an instrument of presidential policy and not true independent courts. "This is how the system is designed," she said. The Trump administration is "pushing the edges" to disrupt the immigration courts. But "there are serious due process concerns with the system as a whole, and now we're seeing how it can be manipulated by an administration that has a different policy agenda."

As of late September, Petit estimated that as many as 16 judges from her 2023 class of 39 sworn-in appointees have been fired. They are among the more than 130 adjudicators who have been either terminated, transferred, or departed the force voluntarily since Trump returned to office. According to data from the National Association of Immigration Judges reported by CNN, September saw the highest number of dismissals, with 24 judges being let go.

“I know some judges who had packed up their offices in anticipation of being fired,” she said.

David K. S. Kim was in the middle of a hearing on September 4 when he received the termination email. He had to stop midway through and inform the parties that the case would be reassigned to a different judge. Originally from South Korea, Kim had been in the job for almost three years and had the highest asylum grant rate among judges at New York’s 26 Federal Plaza immigration court—96 percent, according to TRAC.

“I think I was preparing mentally, subconsciously…,” he said. “I wasn’t really shocked, although it was very disappointing.”

As a judge in the New York City court that has been dubbed the “nation’s capital of immigration courthouse arrests,” Kim saw firsthand the effects of the Trump administration’s policies, starting with giving ICE the green light to conduct arrests in or near courthouses. “It created chaos,” Kim said, explaining that judges had their hands tied if someone was arrested outside the courtroom.

“That was very difficult and definitely affected the morale of the court staff and some of the Homeland Security attorneys,” Kim said. He noted that some DHS lawyers asked judges to sit with their backs facing the wall instead of the courtroom entrance door, in case some altercation took place. “It was a complete change in environment in the way the hearings were held.”

Carmen Maria Rey Caldas, who also served as a judge in New York, said she noticed an increase in the number of immigrants missing their court hearings. “There were weeks when I would have 10 people show up for a master calendar of 60,” she said. Rey Caldas recalled instances of immigrants appearing outside the courthouse but not going in, instead asking if they could have their hearings remotely because of fear of being arrested by ICE.

Prior to joining the bench, Rey Caldas, who was born in Spain, had a long career practicing immigration law that included stints at nonprofits helping survivors of gender-based violence and, more recently, a role as the director of a program that represents refugees, including Afghan allies who had to be evacuated after the US withdrawal from the country. In 2022, when Rey Caldas was appointed to the immigration courts, House Republicans led by Rep. Elise Stefanik publicly opposed it, citing concerns over her advocacy work and alleging she had “contempt” for immigration enforcement and “disregard” for ICE.

Rey Caldas said she had never received anything other than exceptional feedback while on the bench. Yet, on August 21, she was terminated without explanation. She has since challenged her firing with the Merit Systems Protection Board, an independent agency that hears appeals on

federal personnel cases. “You’re eliminating all potential defense within the agency,” Rey Caldas said of the firings of experienced judges and those with diverse backgrounds.

She described an atmosphere where immigration judges are under “constant threat” of getting fired if they don’t follow certain rules from leadership. As one example, she mentioned an email telling judges to eliminate the use of pronouns in their email signatures. For people dealing with “life and death cases,” Rey Caldas said, it was demoralizing. “It’s creating an environment where you’re constantly watching what you do and questioning your decisions.”

Mother Jones reached out to EOIR for comment, but received an automatic email reply from the agency’s spokesperson stating she had been furloughed and was out of the office.

Both Petit and Kim said immigration judges started bracing for policy guidance issued by EOIR’s director Owen on Fridays. One April policy memo, for instance, encouraged judges to “immediately resolve cases…that do not have viable legal paths for relief or protection from removal” and to drop asylum cases without holding a hearing if the application is “legally deficient.” Some judges, Kim said, took the guidance to mean they were being told to prioritize efficiency over due process and default to removal orders.

In another memo from June 27, Owen chastised immigration judges for “demonstrating bias or hostility toward” DHS and advised “judges who prefer to be policy advocates” to consider a different career path. “It leads to this climate of fear and intimidation,” Petit said.

“A lot of the actions being taken by this administration have materially changed the way that the courts function,” she added. “One thing that remains are really exceptional immigration judges who are doing their very best to apply the law fairly and apply due process. They’re really just holding it down right now.”

CLINIC

Navigating EOIR Directives Under Trump 2.0:

Practical Guidance for Advocates and Programs

Contents

Since returning to office, the Trump administration has issued a wave of executive orders, policy actions, memoranda, and guidance documents that significantly impact immigration law and the adjudication of cases. Specifically, the Executive Office for Immigration Review (EOIR), which houses the nation's immigration courts, and the Board of Immigration Appeals (BIA) have issued numerous policy memorandums (memos) under the leadership of EOIR's Acting Director, Sirce Owen. These are all available on EOIR's website.[1]

The purpose of EOIR memos is to guide immigration judges (IJs) and EOIR staff in adjudicating cases and to clarify the interpretation of immigration laws, regulations, and policies. The memos address issues such as case management, eligibility for relief from removal, procedural practices, and the handling of specific claims, all of which ultimately influence court decisions. Notably, many of the recently issued memos incorrectly suggest that the previous administration failed to adhere to laws, engaged in frequent misconduct, or often unfairly favored clients (respondents) in proceedings. These memos are clearly intended to make practice more difficult for advocates in immigration court and immigration courtrooms more hostile to noncitizens.[2] Furthermore, these memos also seem intended to reshape EOIR, which is meant to be a neutral arbiter, into a politically driven tool advancing the Trump administration's clearly anti-immigrant views. However, they do not change the statutes, regulations, or case law and thus are limited in their impact at this point. Amid uncertainty and an influx of information, this resource seeks to highlight the key impacts of the new memos for legal services providers (LSPs) and their clients and offers practical guidance for effective representation in immigration court.

EOIR Policy Memo 25-02: EOIR's Core Policy Values

This memo provides general guidance regarding EOIR's underlying principles for developing policies, adjudicating applications, drafting regulations, and issuing policy guidance. The memo professes that EOIR's core values are integrity, impartiality, and the decisional independence of its adjudicators. The memo also asserts, without evidence, that these values have been undermined in recent years. This memo discusses the EOIR Policy Manual, EOIR Memoranda, case adjudications, and interpretation of EOIR policies. Specific changes based on this memo include:

1. Reverting to the 2021 version of the Practice Manual.

1 If you are an AILA member, you can also reference their page on Tracking Notable Executive Branch Action during the Second Trump Administration.

2 For example, in PM 25-07, EOIR rescinds Biden-era PM 21-27, which clarified the proper terminology for use by EOIR staff and adjudicators. It outlined that rather than use the word "alien," EOIR should utilize "respondent," "applicant," "petitioner," etc. The exception to the change in terminology use was when "quoting a statute, regulation, legal opinion, court order, or settlement agreement." PM 25-07 alleges that PM 21-27 "represented a questionable policy choice on its merits," "attempted to redefine statutory terms" and "risked considerable confusion through imprecision." The result will be a dehumanization of respondents in courtrooms through the use of hostile locution.

2. Rescinding "any operational policy related to case adjudications issued in secret between February 1, 2021, and January 21, 2025." The memo specifically mentions a prohibition on standing orders as being an alleged "secret policy" of EOIR from 2021-2025.

Impact: While this document itself did not create specific changes beyond rescinding former case adjudication policies, it appears to have been the impetus for the numerous actions outlined below.

Practitioner Tips: Practitioners should:

- Monitor changes and updates to EOIR policy to keep clients informed of pertinent changes.
- Monitor the implementation of these broad themes into more concrete policy directives.

Program Management Tips: Program managers should:

- Require staff to register for email updates from EOIR.
- Assist individual practitioners in maintaining their duty of competence by helping to monitor and understand changes.
- Encourage staff to participate in professional associations that help practitioners keep updated about changes.
- Prepare and support staff, especially new Fully Accredited Representatives, for navigating a more adversarial process.

EOIR Policy Memo 25-04: Cancellation of Policy Memorandum 21-16, Case Processing and the Board of Immigration Appeals (3/17/21)

While this memo does not establish any new procedures or requirements related to BIA case management, it does signal troublesome quota-like measures for Board members to quickly dispose of BIA cases.

This memo rescinds the Biden-era PM 21-16, Case Processing and the Board of Immigration Appeals, which was itself a rescission of the previous Trump administration's PM 20-01, Case Processing at the Board of Immigration Appeals. PM 20-01 issued guidance outlining EOIR's expectations regarding the "timely processing of appeals." In so doing, it directed the BIA to establish a new case management system with specific deadlines for processing appeals. The end goal of this is to advance prompt adjudication and seemingly prioritize speed over discernment.

PM 20-01 was enjoined by the United States District Court for the Northern District of California on March 10, 2021. As a result, PM 21-16 was issued and directed the BIA to return to the prior case management system established by regulation in September 2002. PM 25-04 does not reinstate the enjoined PM 20-01 but instead states that additional guidance regarding a Board case management system and leadership may be forthcoming. Troublingly, footnote 9 of PM 25-04, citing to PM 20-01,

emphasizes that "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."

Impact: Given that more guidance is forthcoming, there are currently no practical changes to the BIA case management system for legal representatives.

Practitioner Tips: Practitioners should monitor and anticipate future changes to BIA leadership and the BIA case management system.

Program Management Tips: Given that this administration is signaling expeditious and potentially cursory appeal review at the Board level, program managers should:

- Ensure retainers contain language that an appeal is not part of the current agreement and would require an additional retainer. It is always best practice for retainers to include this language.
- Consider case selection criteria and capacity for appeals in general.
- Establish partnerships or referral streams for appeal work at the BIA and federal courts of appeals.

EOIR Policy Memo 25-05: Cancellation of Policy Memorandum 21-26, Migrant Protection Protocols and Motions to Reopen (6/24/21)

This memo will limit immigration judges' ability to reopen *in absentia* removal orders where noncitizens experienced difficulties or were unable to attend a hearing due to operational circumstances created by the disastrous Migrant Protection Protocols (MPP). It rescinds and cancels the Biden-era PM 21-26, Migrant Protection Protocols and Motions to Reopen, dated June 24, 2021. PM 21-26 issued guidance regarding adjudicating motions to reopen for cases that had been subject to the MPP. That memo cited the regulations and case law to remind adjudicators that they are authorized to reopen cases in various circumstances and that they may also do so *sua sponte*. It further reminded adjudicators that jointly filed motions to reopen "should generally be honored" and granted.

PM 25-05 relays that MPP resumed on Jan. 21, 2015, pursuant to Section 6 of President Trump's Securing Our Borders executive order. PM 25-05 also describes ways in which it alleges that PM 21-26 was "problematic," incorrectly concluding that it "inappropriately pressured [adjudicators] to rule in cases a certain way"; "suggested that adjudicators were bound by stipulations of law by the parties"; and "may have been *ultra vires*." PM 25-05 states that the MPP views outlined in PM 21-26 "no longer correctly reflect the position of the Executive Branch, including DHS and the Department of Justice" and is, therefore, rescinded.

Impact: EOIR adjudicators may be less generous in granting motions to reopen based on MPP, although nothing in this memo changes the case law, regulations, or statute regarding motions to

reopen. Pending and future motions to reopen in MPP-related cases will be subject to the same guidelines and considerations, including number and time limits, as other motions to reopen.

Program Management Tips: Program managers should:

- Ensure staff keep up with these changes to remain competent, including through encouraging or requiring participation in relevant training opportunities.
- Be aware of this from a case selection criteria standpoint, though, ultimately, this memo should not affect organizations' ability to continue taking on cases involving motions to reopen.
- Prepare resources providing practical advice to clients regarding government enforcement efforts and detailing steps they should take to prevent detention, when possible, and to secure release if detained. These resources could include crucial Know Your Rights (KYR) information as well as tips for family preparedness in the case of detention and/or removal. CLINIC has developed important Know Your Rights resources. CLINIC has also provided sample letters practitioners can share with clients regarding enforcement.
- Share motion to reopen resources with staff they can rely on to develop viable arguments and draft their own motions. CLINIC has a robust Removal Toolkit with numerous sample Motions to Reopen (available to Affiliates only).

EOIR Policy Memo 25-06: Cancellation of Operating Policies and Procedures Memorandum 23-01, Enforcement Actions in or Near OCIJ Space (12/11/23)

This memo allows for ICE enforcement action to take place anywhere within courthouses or adjacent spaces, consistent with DHS Interim Guidance Civil Immigration Enforcement Actions in or near Courthouses. It rescinds and cancels OPPM 23-01: Enforcement Actions in or Near OCIJ Space, which had issued in accordance with an April 27, 2021, DHS memo, Civil Immigration Enforcement Actions in or Near Courthouses. That DHS memo has also been rescinded, thereby removing the basis for OPPM 23-01. OPPM 23-01 prohibited civil immigration enforcement actions by DHS in or near OCIJ-operated EOIR space, such as immigration courthouses.

PM 25-06 lays out several examples taken from OPPM 23-01 to demonstrate the ways that, in the Acting Director's view, the memo was "unpersuasive" and "inconsistent with current Executive Branch policy, pretextual, or unsubstantiated on any systematic basis." PM 25-06 also asserts that EOIR does not have the authority to prohibit DHS from taking lawful enforcement action and so concludes OPPM 23-01 was "likely" *ultra vires*.

Impact: This will likely result in higher client anxieties and, in some cases, clients who fear attending their immigration, criminal, or civil hearings altogether. Clients who are subject to mandatory detention under the immigration laws are the most at risk of ICE enforcement actions at courthouses. Noncitizens should be encouraged to find counsel as early as possible in the immigration process and to file relevant applications for relief as soon as possible. Please see CLINIC's "Know Your Rights" materials, available to the public.

Practitioner Tips: Practitioners should:

- Advise clients, who are both in removal proceedings as well as those who are not, that enforcement action could be taken against them if they are in or near courthouses.
    - CLINIC has prepared a Know-Your-Rights resource on courtroom enforcement actions. CLINIC has also developed other important Know Your Rights resources.
- Encourage clients in removal proceedings but who are unrepresented to find counsel and file relevant applications for relief as early as possible in the immigration process.
- Prepare and submit a Motion to Present Video Testimony when key witnesses are undocumented.

Program Management Tips: Program managers should:

- Consider engaging in community outreach to educate the community on the consequences of failures to appear for scheduled court hearings.
- Implement informed consent policies and standard documents.

EOIR Policy Memo 25-08: Cancellation of Director's Memorandum 22-01, Encouraging and Facilitating Pro Bono Legal Services (11/5/21) and Reinstatement of Policy Memorandum 21-08, Pro Bono Legal Services Legal Services

This memo takes away expanded guidance that required immigration judges to encourage and facilitate *pro bono* legal services. It rescinds and cancels the Biden-era DM 22-01, Encouraging and Facilitating Pro Bono Legal Services, which had replaced PM 21-08, Pro Bono Legal Services (Dec. 10, 2020). The now rescinded DM 22-01, issued under the Biden administration, had vastly expanded guidance on the facilitation of *pro bono* legal services. The memo, among other things, directed adjudicators to "encourage and facilitate" discussion between DHS and respondents' representatives, encouraged immigration judges to play active roles in *pro bono* training programs, laid out detailed guidance for courtroom practices, and encouraged immigration judges to facilitate *pro bono* representation for vulnerable child respondents.

PM 21-08, which has now been reinstated by PM 25-08, does not include much of this guidance. No reason is given by PM 25-08 for rescinding DM-22-01 (which better advanced the purported goals of PM 21-08) other than the assertion that no reason was given in DM 22-01 for cancellation of PM 21-08, despite the acknowledgement that "much of PM 21-08 was retained in DM 22-01."

PM 21-08 purports to encourage *pro bono* representation, including before the immigration courts and the BIA through the maintenance of the agency's list of *pro bono* legal services providers and requiring that immigration judges: (1) ensure that each respondent is advised of the availability of *pro bono* representation and provided the list; (2) call *pro bono* cases first at master calendar hearings; (3) identify *pro bono* representation on the record; and (4) be flexible in allowing *pro bono* representatives to appear telephonically or through video. The memo provides adjudicators with a strict and arguably unnecessary reminder of EOIR's concern that adjudicators maintain their duty to legal, ethical, and professional responsibilities even when presiding over *pro bono* cases.

Impact: We currently foresee no difference in practice for legal representatives due to this memo.

Program Management Tips: Program managers should:

- Review their local immigration court's *pro bono* list periodically to make sure it is up to date and be familiar with the court's procedures for adding an organization to the list and remaining on the list.
- Attempt to maintain relationships developed with immigration judges and EOIR staff through *pro bono* partnerships and initiatives.
    - *Pro bono* representation is beneficial to the court as well as to noncitizens.

EOIR Policy Memo 25-09: Cancellation of Policy Memorandum 21-25, Effect of Department of Homeland Security Enforcement Priorities (6/11/21)

Although this memo is superfluous, it contains language that gives some helpful insight into how this administration intends to guide EOIR adjudicators and DHS staff regarding enforcement priorities and the strict roles of each party in a courtroom. This memo erroneously rescinds the Biden-era PM 21-25, Effect of Department of Homeland Security Enforcement Priorities (currently unavailable), which had already been rescinded by *Director's Memorandum 23-04, Department of Homeland Security Enforcement Priorities and Prosecutorial Discretion Initiatives*.

PM 25-09 details the ways in which the current Trump administration found the Biden administration's Policy Memorandum 21-25 deficient. It erroneously states that it "impermissibly injected EOIR, an adjudicatory body, into the core prosecutorial functions of DHS in violation of basic separation-of-function principles of administrative law." This memo accuses PM 21-25, without cause, of taking away the EOIR adjudicator's impartiality while forcing them to take on both an advocate and prosecutor role.

Impact: This memo has no direct impact on a legal representative's practice as it did not make any substantive changes to current policy.

Program Management Tips: Since this memo is superfluous, it does not create program management implications. But please see the summary of the related Policy Memorandum 25-15, discussed below.

EOIR Policy Memo 25-10: Cancellation of Director's Memorandum 24-01, Children's Cases in Immigration Court (12/21/23) and Reinstatement of Operating Policies and Procedures Memorandum 17-03: Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children (12/20/17)

This memo takes away Biden-era protections provided to children's cases and reminds judges that all legal requirements are applicable to such cases. It rescinds and cancels DM 24-01, Children's Cases in Immigration Court and reinstates OPPM 17-03, Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Children. DM 24-01 reasoned that IJs should bear in mind the special nature of children's cases when adjudicating such cases. Among other things, it proposed child-friendly courtroom procedures and acknowledged the particular vulnerability of children respondents in a court setting while recommending IJs facilitate legal representation for such cases.

The now-revived OPPM 17-03 contends that while children's immigration cases are challenging, legal requirements applicable to all immigration cases should not necessarily be diminished solely because a

respondent is a juvenile. For a full comparison of these memoranda, see this detailed chart developed by the Children's Immigration Law Academy.

PM 25-10 asserts that no reason was given by the prior administration for rescission of OPPM 17-03 and that portions of OPPM 17-03 were incorporated into DM 24-01 with no explanation. PM 25-10 states that due to the lack of clarity for this change, "retaining DM 24-01 would not be appropriate." PM 25-10 also renames former OPPM 17-03 to PM 17-03 for consistency.

Impact: Immigration courts will likely give less consideration to juvenile respondents. For example, less time may be given to juvenile respondents to find legal counsel or to seek relief outside of court.

Practitioner Tips: Practitioners should advise clients who are juvenile respondents that they may face more hostile courtrooms and adjudicators and prepare them accordingly.

Program Management Tips: Program managers should:

- Instruct all staff to pull a report of their open cases and use the list of open clients and cases to identify which clients should be met with and advised as described above;
- Set a deadline for the above processes and check in on progress of this process along the way;
- Consider whether it may be necessary to shift and balance staff caseloads.

EOIR Policy Memo 25-11: Laken Riley Act

The memo provides guidance to IJs and the BIA in applying the Laken Riley Act (LRA) in custody-related determinations. The LRA expands the categories of noncitizens subject to mandatory detention under INA § 236(c) by adding an additional category at INA § 236(c)(1)(E). This category includes any noncitizen who:

1. Is inadmissible under paragraph (6)(A) [entry without inspection], (6)(C) [fraud/misrepresentation], or (7) [documentation requirements] of section 212(a); **and**

2. Is charged with, arrested for, convicted of, [or who] admits having committed, or [who] admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person.

The LRA and PM 25-11 also specify that the crimes of "burglary," "theft," "larceny," "shoplifting," "assault of a law enforcement officer," and "serious bodily injury" are defined by the jurisdiction where the "acts" occurred.

Impact: IJs do not have jurisdiction to review bond decisions where an individual is in removal proceedings and subject to mandatory detention, but they can determine whether a noncitizen is properly included in a mandatory detention category. Therefore, legal representatives should screen

all their cases for clients who may be subject to mandatory detention under the LRA and advise them of this risk. Representatives should prepare these clients for possible detention.

Practitioner Tips: Practitioners should:

- Advise clients who may be targeted for enforcement and subject to detention under the LRA to:
    - Memorize their legal representative's phone number to reach out to counsel if detained.
    - Not provide any information to anyone other than their legal representative about their immigration status, place of birth, how they entered the United States, or their criminal background.
    - Remember they have a right to refuse to sign anything before speaking with their legal representative.
        - For more information about how to advise and prepare your clients for detention, see Know Your Rights: A Guide to Your Rights When Interacting with Law Enforcement | Catholic Legal Immigration Network, Inc. (CLINIC).
- Assist clients in completing planning that accounts for their children and assets in the event they are detained and/or removed.
    - For more information on family preparedness plans, see: Step-by-Step Family Preparedness Plan | Immigrant Legal Resource Center | ILRC.
    - CLINIC's Know Your Rights Guide includes a section on an individual's rights while in immigration detention and is available in 10 different languages here: Know Your Rights: A Guide to Your Rights When Interacting with Law Enforcement | Catholic Legal Immigration Network, Inc. (CLINIC).
- For clients detained pursuant to the LRA, request a *Matter of Joseph* hearing and make arguments that the client is not properly included in the LRA.

For a detailed discussion of the statutory and constitutional arguments against the broad application of the LRA, see the National Immigration Project's practice advisory on the Laken Riley Act.

Program Management Tips: Program managers should:

- Adequately prepare staff for effective and robust screening, as well as for analysis of relevant crimes that could subject clients to mandatory detention during removal proceedings.
- Ensure continued competence of staff on the relevant law by promoting or requiring training focused on this topic.
- Consider developing a procedure through which staff are required to advise clients as to the importance of conferring with a criminal defense attorney.
- Encourage collaboration between staff and clients' criminal defense counsel.

EOIR Policy Memo 25-12: Cancellation of Policy Memorandum 21-24, Regarding Fees (6/7/21) and Reinstatement of Policy Memorandum 21-10, Fees (12/18/20)

This memo attempts to reinstate a previously enjoined Trump-era PM regarding EOIR-related fees. It rescinds PM 21-24, Regarding Fees and reinstates the Trump-era PM 21-10, Fees. PM 21-10 directed that EOIR fees would be reviewed biennially and were payable through the EOIR Payment Portal. It reinstated prior policy that IJ's fee waiver decisions should be made in writing and was issued in conjunction with massive fee increases by the Trump administration in December 2020,[3] which resulted in a lawsuit. In that case, the court ordered a partial injunction, which is still in place.

The Biden-era PM 21-24 rescinded PM 21-10 to remain consistent with the above court ruling. PM 21-24 encouraged BIA fees to be paid online and recommended that IJs and the BIA make written rulings on fee waiver requests. The current PM 25-12 questions the authority upon which issuance of PM 21-24 was based, alleging without providing evidence that the validity of the then-Acting Director and his decisions have been "called into question for other reasons." PM 25-12 acknowledges that the above partial injunction remains in effect but notes that the underlying case is on appeal.

Impact: As the partial injunction is still in effect, this policy memo will not have an effect on EOIR fees in the absence of rulemaking. In the future, EOIR may once again change its fees under this administration if it follows the notice and comment process for rulemaking.

Practitioner Tips: Practitioners should:

- Keep track of the current and correct fees.
- Expect a written decision from the IJ and BIA in relation to fee waiver requests.

Program Management Tips: Program managers should ensure their staff are aware of the possibility of a potential change in fees in the future and monitor those changes in relation to clients who will have to file an application before EOIR.

EOIR Policy Memo 25-14: Cancellation of Director's Memorandum 23-03, The Role of Child Advocates in Immigration Court (7/5/23) and Reinstatement of Policy Memorandum 20-03, Child Advocates in Immigration Proceedings (11/15/19)

This memo imposes restrictions regarding the role of child advocates in children's immigration proceedings. It rescinds DM 23-03, The Role of Child Advocates in Immigration Court, which, among other things, directed IJs to accept certain filings as evidence, specifically best interest determinations

[3] A Notice of Appeal from an IJ decision (Form EOIR-26) increased, for example, from $110 to $975.

by child advocates,[4] and allowed child advocates to testify. By reinstating PM 20-03, the new directive significantly restricts the role of child advocates in immigration proceedings and reaffirms that immigration judges are not required to accept their filings or testimony and that child advocates cannot act as legal representatives. PM 25-14 justifies this change by falsely claiming — without citing any supporting evidence — that the prior administration failed to provide a reason for rescinding PM 20-03 and that PM 23-03 may have exceeded the EOIR director's authority.

Impact: Limiting the involvement of child advocates undermines the consideration of children's best interests and may adversely affect the fairness and outcomes of their cases. Child advocates play a crucial role in providing context and support for unaccompanied minors navigating the complex immigration system, and restricting their input could lead to less informed judicial decisions.

Practitioner Tips: Practitioners should:

- Adapt their strategies to continue advocating effectively for unaccompanied children.
- Despite limitations on child advocate participation, persist in making best interest arguments, citing relevant legal protections under asylum law, special immigrant juvenile (SIJ) status, and international human rights principles.
- Document any exclusions of best interest determinations and child advocate testimony to build a record for an appeal, arguing that these limitations negatively impact due process and fair adjudication.
- Where direct child advocate testimony is restricted, consider incorporating expert declarations, psychological evaluations, and country condition reports to support their cases.
- Consider how the removal of a child advocate impacts workload, including at the case assessment stage when practitioners are considering taking on new clients and/or cases.

Program Management Tips: Program managers should:

- Ensure continued competence of their staff on the relevant law by promoting or requiring training focused on alternative methods for presenting best interest considerations, such as expert testimony and psychological evaluations.
- Discuss the importance of clear client communication to ensure unaccompanied children and their guardians understand these changes.
- Consider whether the removal of a child advocate may create a need to shift and balance staff caseloads.

[4] Section 235(c)(6) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), codified in 8 U.S.C. § 1232, authorizes the Secretary of Health and Human Services (HHS Secretary) to appoint "independent child advocates for child trafficking victims and other vulnerable unaccompanied alien children" (UAC).

EOIR Policy Memo 25-15: Office of Legal Access Programs

This memo moves the Office of Legal Access Programs (OLAP) from the Office of the Director under the Office of Policy. It purports to clarify "multiple questions about the status and function" of OLAP. OLAP is a sub-office of EOIR that manages EOIR's legal orientation programs and facilitates *pro bono* representation in immigration court.

OLAP was moved out of the Office of the Director under the previous Trump administration and placed under the then-newly created Office of Policy. The Biden administration subsequently moved OLAP back to under the Office of the Director. The memo refers to that move as invalid and questions the validity of any action taken by OLAP while it was under the Office of Director.

This memo refers to a 2018 study completed under Trump's first administration and that irresponsibly and erroneously concluded that the legal orientation program (LOP) run under OLAP was "wasteful" as it cost the government more overall and extended both the lifespan of cases and detention of respondents. Based on this and a subsequent 2021 study, which the memo incorrectly asserts confirmed the 2018 study's results, PM 25-15 vaguely concludes that "EOIR, including OLAP, will do better."

It is important to note that the statements in this policy memo are unsupported by the evidence. A complaint filed in federal district court by the organization Amica Center challenged the temporary halt in funding for LOP, with evidence showing LOP's demonstrated effectiveness over multiple studies.

Specifically, the complaint also noted that the 2018 EOIR study referred to in PM 25-15 had been designed to attain deceptive results, as revealed by the Vera Institute's study also conducted in 2018. EOIR's study manipulated case statistics by failing to also account for pending cases and did not take into account factors that might also have an effect on case completion other than the LOP itself. The EOIR study also did not address why it had reached different results than other studies completed before it, which had yielded positive results as to LOP's effect on case management. Significantly, the EOIR study did not conclude that LOP was "wasteful." Other previous and subsequent studies and reports on LOP's impact on adjudication of cases yielded positive results about LOP's effect on case management.[5]

By mispresenting the effectiveness of LOP programs, EOIR's intent to limit access to justice programs for noncitizens in removal proceedings is abundantly clear.

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[5] Department of Justice, Executive Officer for Immigration Review (DOJ EOIR), *The EOIR Legal Orientation Program Cost Savings Analysis*, (Washington, DC, 2012), https://www.tahirih.org/wp-content/uploads/2018/09/Vera-LOP-Cost-Savings-Analysis_2012_2014-7-pgs_FINAL.pdf. S. Rep. No. 116-127, at 86 (2019), https://www.congress.gov/congressional-report/116th-congress/senate-report/127.

Client/LSP Impact: As this memo does not lay out any concrete steps that EOIR intends to take with regard to OLAP, it is unclear at this time what impact PM 25-15 may have on legal representatives and clients in practice. Legal representatives should monitor what changes may take place as a result of the memo to LOP and other programs under OLAP.

Program Management Tips: Program managers should be aware that funding for access to justice initiatives is particularly vulnerable at this time. Refer to CLINIC's funding resource document for alternate strategies.

EOIR Policy Memo 25-16: Cancellation of Director's Memorandum 23-04, Department of Homeland Security Enforcement Priorities and Prosecutorial Discretion Initiatives

This memo returns to stricter enforcement priorities for DHS. It rescinds and cancels DM 23-04, Department of Homeland Security Enforcement Priorities and Prosecutorial Discretion Initiatives, which itself rescinded PM 21-25, Effect of Department of Homeland Security Enforcement Priorities, and provided guidance to EOIR adjudicators on DHS enforcement priorities and prosecutorial discretion initiatives. PM 25-16 states incorrectly and without evidence that DM 23-04 "compromised the decisional independence of EOIR adjudicators, improperly crossed the line separating EOIR and DHS's distinct functions and turned EOIR into a results-oriented subcomponent of DHS, rather than a truly impartial adjudicatory body."

Impact: Respondents will be less likely to benefit from exercises of positive prosecutorial discretion. However, while the limitations on prosecutorial discretion are of course concerning, it is important to note that clients in removal proceedings are not without options. During the Biden administration, the Department of Justice (DOJ) issued federal regulations that became effective July 29, 2024, that codified the ability of IJs and Board members to administratively close and terminate removal proceedings when specific circumstances are met. See this CLINIC FAQ, which provides a detailed outline of the regulations, and the removal toolkit for sample motions that can be filed under the new regulations (available only to CLINIC Affiliates). Thus, even in the absence of prosecutorial discretion, options remain for clients to terminate or administratively close proceedings without the consent of DHS.

Practitioner Tips: Practitioners should:

- Expect to be met with resistance by EOIR adjudicators and OPLA when requesting prosecutorial discretion.
- Be familiar with and prepared to cite the pertinent regulations to argue grounds exist for administrative closure or termination even without the consent of DHS.
    - See Frequently Asked Questions New DOJ Regulations on Efficient Case and Docket Management in Immigration Proceedings for a detailed discussion of motions for termination and administrative closure under the 2024 regulations.
    - CLINIC also provides sample Motions to Terminate based on these regulations in its Removal Toolkit (Available to Affiliates only).

Program Management Tips: Program managers should:

- Monitor current law and policy for changes to the regulations.
- Ensure staff understand the pertinent regulations and prepare to argue for administrative closure or termination before EOIR adjudicators when appropriate.
- Instruct staff to assess existing cases that may be ripe for termination or administrative closure under the regulations and determine whether filing motions in their cases is the right and best next step for each specific client.
    - See CLINIC's removal toolkit for sample motions for termination and administrative closure (available to Affiliates only).

EOIR Policy Memo 25-17: Cancellation of Director's Memorandum 22-05 and Reinstatement of Policy Memoranda 19-05, 21-06, and 21-13

This memo reinstates Trump-era requirements regarding expedited processing of asylum applications. It rescinds and cancels DM 22-05, Cancellation of Policy Memoranda 19-05, 21-06, and 21-13. It also reinstates PM 19-05, Guidance Regarding the Adjudication of Asylum Applications Consistent with INA § 208(d)(5)(A)(iii); PM 21-06, Asylum Processing; and PM 21-13, Continuances. PM 25-17 also asserts that no reason was given by the prior administration for rescission of these memoranda and states that it is for this lack of clarity that DM 22-05 is being rescinded.

PM 19-05 introduced a new policy directing immigration judges to adjudicate asylum applications within 180 days "to the maximum extent practicable." The policy now in effect asserts that asylum applications should be adjudicated within 180 days and explains that, if granting a continuance would extend the timeline beyond 180 days, the applicant must demonstrate exceptional circumstances, a higher standard than the "good cause" generally required for continuances. The memo also discussed calculation of the asylum EAD clock, proper adjournments codes, and which party should be found at fault for adjudication delays.

PM 21-06 lays out several stringent asylum-related directives, including the following:

(1) Instructing immigration courts not to accept an affirmative asylum application referred by USCIS unless it contains all necessary supporting documents;
(2) Reasserting that defensive asylum applications need no longer be filed in person during a hearing and emphasizing new rules with respect to filing incomplete applications;
(3) Reiterating that asylum claims must be adjudicated within 180 days;
(4) Instructing immigration judges to stop the asylum clock only when there are exceptional circumstances;
(5) Directing immigration judges to clearly name the exceptional circumstances which warrant continuing an asylum case and that "intentional or repeated negligent use of an incorrect code" can result in "corrective action" for the judge;
(6) Asserting that immigration judges are not required to postpone cases in which respondents, whether or not with good cause, did not provide biometrics or biographical information;

(7) Stating the rules USCIS should follow regarding proper filing of the NTA; and
(8) Stating, among other things, that the asylum clock stops running after an immigration judge adjudicates an application and does not continue running while the case is being appealed by either party at the BIA.

PM 21-13 outlines restrictions on continuances in immigration court and prompts immigration judges to cautiously consider respondents' strong motivation "to abuse continuances" and use them as a dilatory tactic. The memo provides a "non-exhaustive list of relevant legal and policy principles as an aid to adjudicators" for deciding continuance requests.

Client/LSP Impact: Immigration judges are likely to be under pressure to grant fewer continuances to noncitizens in removal proceedings and to complete asylum proceedings as soon as possible. Note that the aspirational goal of completion of an asylum case within 180 days is likely to run into the reality of the court's docket, which often makes such scheduling impossible.

Practitioner Tips: Practitioners should:

- Be prepared that immigration judges will be under pressure to complete cases on an expedited timeline.
- Continue to advocate for fair scheduling, when necessary, despite pushes from judges for rapid adjudication, including through requesting continuances when warranted under the "good cause shown" standard provided in the regulations, as the legal standard for being granted a continuance has not changed under this new administration.
- Remind judges of EOIR PM 25-08 on pro bono representation, which still encourages IJs to facilitate pro bono representation "by all of its adjudicatory components."
- Document challenges caused by limited preparation time.
- Observe court hearings in person or virtually, where permitted. Chapter 4.9 of the Immigration Court Practice Manual provides the circumstances under which immigration court hearings are closed to the public. Each immigration court posts the day's docket information publicly each morning. There is no need to check in with court staff before you enter a courtroom to observe, although the presiding judge may ask you to identify yourself at the start of the hearing. If you are interested in observing a hearing via Webex, you may contact the relevant immigration court at the "General Inquiries" email address listed in the "Contact the Court" section of each immigration court webpage.

Program Management Tips: Program managers should:

- Assess how many asylum cases staff can reasonably accept while maintaining quality representation.
- Implement clear case selection criteria to help ensure a manageable workload.
- Provide ongoing support, including training, mentorship, and mental health resources, to help staff navigate the challenges of expedited adjudication while maintaining high-quality advocacy for asylum seekers.

EOIR Policy Memo 25-18: Cancellation of Director's Memorandum 22-06 and Reinstatement of Policy Memorandum 20-05

This memo generally prohibits "Friend of the Court" appearances and restricts advocacy on behalf of a respondent to a practitioner with an EOIR-28 on file. It rescinds and cancels the Biden-era DM 22-06, Friend of the Court, which cancelled PM 20-05, Legal Advocacy by Non-Representatives in Immigration Court. DM 22-06 encouraged the use of "Friend of the Court" [6] and provided details on how a friend of court could assist in courtrooms. DM 22-06 also allowed friends of the court to inform the immigration judge about any competency concerns they had about respondents.

PM 25-18 reinstates the Trump-era PM 20-05, which announces EOIR's policy that no one apart from the respondent's legal representative with an EOIR-28 Notice of Entry of Appearance can advocate for them in immigration court, including *amici curiae* (friend of the court). A friend of court may still assist in unaccompanied children (UC) cases, but their role is limited by the memo to that of an aid to the court and not an advocate to the UC. The memo lists duties with which an *amicus curiae* can assist the UC that include helping fill out forms, providing transportation to court, explaining court procedures, providing factual information about the respondent to the court (e.g. whether the UC has been reunified with their parents or speaks a particular language), and sitting with the respondent in court. It reasons that these duties can generally be performed by anyone of the respondent's choosing. The memo also directs IJs to consider DHS's position on the respondent's request for *amicus curiae* before deciding whether to grant the request in their discretion.

Impact: This memo may impact pro se litigants who hope to have a non-legal representative accompany them to their court hearing and shutter friend of the court programs at all immigration courts.

Practitioner Tips: Those who have served in the friend of the court role should:

- Be well-informed on the scope of friend of the court duties permitted in UC cases under this memo (and referenced above).
- Be prepared to argue that their proposed assistance is permitted under this scope.

Program Management Tips: Program managers of organizations which provide friend of the court as a service should:

- Monitor changes made in practice by the court to that role in the local practice area to keep staff up to date on what to expect in court from the IJ and DHS.
- Communicate early to funders that this may serve as a potential hurdle to the program accomplishing deliverables timely.
- Explore limited scope representation models where appropriate.

[6] Friend of the court has been commonly utilized in the last several years in immigration removal proceedings involving unaccompanied children.

EOIR Policy Memo 25-19, EOIR's Anti-Fraud Program

This memo purports to re-establish EOIR's Anti-Fraud program, which the memo asserts without evidence was effectively decommissioned in 2021. The memo asserts that the program was re-invigorated in 2017 and that it "was intended to combat 'possible fraud upon EOIR, particularly with respect to matters relating to *fraudulent applications* or documents affecting multiple removal proceedings, applications for relief from removal, appeals, or other proceedings before EOIR.'" The memo commits to re-establishing a robust and effective Anti-Fraud program in which employees will be trained to identify fraud in asylum applications and informed on how to report such fraud to the appropriate authorities.

Impact: Issuance of this memo should not have an effect on legal representatives in practice. However, such a program can be misused to target specific populations of asylum seekers to achieve certain policy goals to which this administration seems committed.

Practitioner Tips: Practitioners should continue to ensure accuracy and consistency in asylum application preparation.

Program Management Tips: Program managers should:

- Caution staff that their work may be under additional scrutiny by EOIR and should maintain best ethics practices to ensure accuracy and consistency in asylum application preparation.
- Ensure malpractice coverage is in place.

EOIR Policy Memo 25-20: Cancellation of Director's Memorandum 23-02, Language Access in Immigration Court

This memo takes away Biden-era protections regarding language access. It rescinds and cancels DM 23-02, Language Access in Immigration Court, which provided EOIR adjudicators with detailed guidelines for ensuring noncitizens in removal proceedings receive sufficient language interpretations services in immigration court. In rescinding DM 23-02, PM 25-20 inaccurately asserts that the former memo presumed "that most Immigration Judges or interpreters are incapable of handling routine language access issues." PM 25-20 also reiterates that immigrations judges have no authorization to engage in out-of-court fact-finding, alleging that such activity was encouraged and validated by DM 23-02, a claim to which there is no basis. PM 25-20 states also that EOIR will continue to adhere to the Department of Justice's Language Access Plan.

Client/LSP Impact: Noncitizens remain entitled to interpretation services provided by the immigration court at no cost to them. Failure to provide adequate interpretation services to respondents is a due process violation.

Practitioner Tips: If a client has unique language needs, it is best to raise this issue as early as possible in the process, including at a master calendar hearing, in written pleadings, or via written

motion. During hearings, practitioners should clearly announce on the record when their client does not understand an interpreter or, when necessary, request a different interpreter also on the record. When an interpreter is not present in the courtroom, practitioners should clearly state on the record if the client does not understand the ongoing proceedings due to the court's failure to provide an interpreter. Even if the practitioner speaks the client's best language and is able to interpret for them, the practitioner should still state on the record that the client has a right to an interpreter and that one is not being provided. The National Immigrant Justice Center provides a sample Motion for Interpreter practitioners may reference in preparing their own.

Program Management Tips: Program managers should:

- Instruct all staff to pull a report of their open cases and use the list of open cases to identify which clients should be advocated for as described above.

EOIR Policy Memo 25-21: Cancellation of Director's Memorandum 22-04, Filing Deadlines in Non-Detained Cases

This memo reverts from the 15-day to the 30-day pre-hearing filing deadline. It rescinds and cancels DM 22-04, Filing Deadlines in Non-Detained Cases, which amended both PM 21-18, Revised Case Flow Processing before the Immigration Courts and the Immigration Court Practice Manual. PM 21-18 provided a new case flow model, which, among other things, set a 30-day filing deadline before the individual calendar hearing in non-detained cases. Notably, PM 21-18 also allowed immigration judges to forgo holding master calendar hearings in many cases. DM 22-04 subsequently re-set that filing deadline from 30 days before the individual hearing to 15 days. PM 25-21 reverses that, reverting the pre-individual hearing deadline to 30, rather than 15, days.

PM 25-21 notes that the prior administration gave no reason for the deadline change and that none is apparent. It also asserts that "many Immigration Judges preferred the thirty-day deadline because it gave them more time to prepare for the individual hearing and was not particularly burdensome for the parties given the significant amount of time for preparation." PM 25-21 failed to address DM 22-04's concern that immigration judges were foregoing master calendar hearings in many cases involving non-detained, represented respondents under PM 21-18.

Impact: While the standard pre-hearing filing deadline will be 30 days, IJs retain the authority to set a different deadline than that outlined in the memo and deadlines previously set remain valid.

Practitioner Tips: Practitioners should note this filing deadline procedural change and integrate it into practice and calendaring systems.

Program Management Tips: Program managers should affirmatively flag this change for staff to ensure all staff are aware of the change. Program managers are also encouraged to update internal procedures and ensure effective tickler systems are in place that make both a practitioner and their

supervisor aware of upcoming deadlines.

EOIR Policy Memo 25-22: Access EOIR Initiative

This memo rescinds any policies expanding the scope of the Access EOIR Initiative that have not already been cancelled by other guidance. The Access EOIR Initiative was announced in September 2021 and provided respondents, their representatives, and the public with more direct access to and information about EOIR cases and systems. This includes online features such as EOIR Courts & Appeals System (ECAS), the automated case information system, FOIA Public Access Link, and the Model Hearing Program (MHP).

Impact: Current impact is minimal, as there are no changes to the ECAS system or automated case information system at this time.

Practitioner Tips: Practitioners should:

- Expect that the agency will become increasingly stringent about how it accepts filings.
- Follow all procedures in the most up-to-date and current Immigration Court Practice Manual closely to avoid rejections of filings.

Program Management Tips: Representation of vulnerable noncitizens in removal proceedings remains as important a task as ever, if not more so under this administration. Practitioners who continue to take on removal cases under this administration are a critical component of the defense against its devastating immigration policies and will act as the backbone to the immigrant legal service provider community for the next few years. However, staff should be reminded that meeting deadlines in removal proceeding cases is critical. Improper filings may result in a missed deadline and have serious impacts, including removal orders. This, in turn, exposes programs to liability and practitioners to discipline.

As such, program managers should ensure that:

- Staff are sufficiently up to date on current, proper filing procedures to avoid consequences for clients' cases due to a missed deadline or filing policy.
- Specific procedures are in place for quality and technical review.
- Office procedures include the requirement that filings to be completed well in advance of the set deadline to allow for resubmission of the filing.

EOIR Policy Memo 25-23: EOIR Inferior Officers

This memo purports to clarify EOIR's position on rules restricting removal of "inferior officers," specifically administrative law judges (ALJs). On Feb. 20, 2025, the Department of Justice (DOJ) issued a statement to Congress relaying that the removal restrictions currently in place for inferior officers are unconstitutional. PM 25-23 acknowledges that the DOJ's decision applies specifically to

ALJs but "all of EOIR's other inferior officers," including IJs and BIA judges, "are covered by similar, multiple layers of for-cause removal restrictions." Therefore, the current administration, through the DOJ, is unilaterally declaring the protections in place for EOIR officers to be unconstitutional and that they will not defend them in court going forward.

Impact: This memo signals the administration's intention to terminate federal employees, such as immigration judges and Board members, from their positions. Because rapid and large-scale deportations of noncitizens have also been a priority of this administration, noncitizens and their representatives can reasonably expect further attempts from the administration to undermine due process protections for noncitizens in removal proceedings.

Practitioner Tips: Practitioners should monitor available data regarding immigration judges and BIA judges and be aware of which judges are still employed by the federal government and what is expected by these judges.

Program Management Tips: Program managers should keep staff updated about which judges are employed and what those judges will expect of their staff.

EOIR Policy Memo 25-24: Adjudicator Personnel Matters

This memo purports to reestablish consistent and lawful practices regarding EOIR adjudicator personnel matters, stating that EOIR, under the prior administration, "engaged in a number of questionable and problematic personnel practices concerning adjudicators."

PM 25-24 claims that EOIR hiring practices have been skewed toward one type of applicant and conducted with discriminatory animus toward another type of applicant.[7] It also alleges that, under prior leadership, EOIR was engaging in the prohibited pre-selection of candidates for adjudicator positions, limiting the size of the applicant pool. PM 25-24 asserts that EOIR will proceed with a fair, meritorious hiring process in which all applicants from as wide an applicant pool as possible are asked the same questions.

Impact: This memo may signal the administration's intent to hire from a particular applicant pool despite the memo's insistence it intends to do otherwise. Although this memo has no direct impact on the practice of law before the immigration court, it may result in hiring practices that favor one type of candidate in furtherance of promoting the administration's anti-immigrant and mass deportation policy goals. Further, the memo appears to be setting the stage for firing immigration judges who the Acting Directors perceive as more favorable to noncitizens — including both those in their two-year probationary periods and those who are past it.

[7] The memo vaguely alleges without evidence that applicants with a prosecutorial background were questioned on bias where those with a defense background were not. The memo specifies that these types of interviews were conducted without regard to merit.

Practitioner Tips: Practitioners should:

- Observe immigration court hearings, particularly those involving new IJs.
    - If in-person observation is not possible, practitioners can request to observe a virtual Webex hearing. Most immigration court hearings are open to the public, with some exceptions. To arrange a visit, affiliates should email EOIR's Office of Policy at PAO.EOIR@usdoj.gov and review the Observing Immigration Court Hearings Fact Sheet.
- Monitor relevant listservs for updates on new immigration judges to gain insight into their adjudication styles, tendencies, and potential challenges practitioners may face.

Program Management Tips: Program managers should encourage staff to observe immigration court hearings and monitor listservs as noted above.

EOIR Policy Memo 25-25: Cancellation of Director's Memorandum 22-07

EOIR Policy Memo 25-25, Cancellation of Director's Memorandum 22-07 (PM 25-25), primarily rescinds and cancels the Biden-era EOIR Director's Memorandum 22-07, Internet-Based Hearings (DM 22-07), and re-establishes Trump-era Policy Memo 21-03, Immigration Court Hearings Conducted by Telephone and Video Teleconferencing (PM 21-03), as the guidance for practitioners on remote hearings before the EOIR. PM 25-25 also criticizes PM 22-07 as "pointless" and "unhelpful," incorrectly alleging that it "directed Immigration Judges to decide motions related to [video conferencing] usage a particular way."

PM 22-07 specifically addressed internet-based hearings through Webex by Cisco (Webex) and, notably, did not contradict PM 21-03. Rather, it provided guidance on how IJs "should," not "must," rule on motions for remote hearings in order to accommodate the moving party's preference "where appropriate and practicable."

PM 25-25 states that internet-based hearings are a subset of hearings held by video conference and that there is no "legal distinction between the two," implying, therefore, that no additional guidance is required. PM 22-07 addressed issues and complications that could potentially arise with internet-based hearings that might not arise with traditional video teleconferencing, such as connectivity issues. It also provided guidance on points of contact "designated at each court to support internet-based hearings, and to assist parties and immigration judges by addressing any issues in real time as they arise."

Impact: This memo will likely have minimal effect on practice before the EOIR.

Practitioner Tips: Practitioners should:

- Continue to request remote hearings where appropriate and practicable for the type of hearing and pursuant to their or their clients' particular needs.
- Inquire with the relevant court and IJ's clerk to determine whether remote appearances for legal representatives and/or clients are permitted by the specific IJ before which they'll be appearing.

- Submit a written motion requesting the IJ permit the legal representative and/or their client to appear remotely. CLINIC's Removal Toolkit also provides sample procedural motions and pleadings, including a sample Motion for Video Appearance.

Program Management Tips: Program managers should coach staff on when and for what types of hearings it would be appropriate to request an appearance by video for legal representatives and clients.

DOJ Memo: Stop-Work Order for Legal Orientation Program, Immigration Court Helpdesk, Family Group Legal Orientation Program, and Counsel for Children Initiative [not publicly available] (*Rescinded*)

This memo ordered specific federally funded legal service providers to immediately stop work on several legal access programs that use federal funds to assist people, families and children at risk of deportation. This includes legal orientation programs (LOPs) that help individuals navigate removal proceedings and provide basic legal knowledge and direct representation to vulnerable individuals caught up in a complex and often hostile legal system.

CLINIC Analysis: This action stemmed from the Protecting the American People Against Invasion Executive Order. In response, the Amica Center for Immigrant Rights and other nonprofits, represented by Gibson Dunn, filed a federal lawsuit against the government on Jan. 31, 2025. On Feb. 2, 2025, the U.S. Justice Department rescinded the stop-work order and restored funding.

Impact: The stop-work order impacted organizations directly funded for Legal Orientation Program, Immigration Court Helpdesk, Family Group Legal Orientation Program, and Counsel for Children Initiative. Affected organizations were notified via email of the stop-work order. Organizations funded under these programs should be aware that future funding issues could arise and may need to be challenged via future litigation.

Program Management Tips: Program managers in the affected organizations should:

- Keep themselves up-to-date and well-informed on the ongoing litigation and be prepared to advise staff on any potential changes or reinstatements.
- Instruct staff to advise clients as to the potential future risk of reinstatement.
- Be aware of the caseload impact from an ethical standpoint of ongoing responsibilities to cases in case funding lapses.
- Advocate to board members and executives against hasty decisions related to service delivery and staffing.
- Be encouraged to reach out to CLINIC if they are impacted by future funding issues.

Program managers should also take steps to assess and diversify funding, develop succession plans, and review contractual commitments. Steps program managers might take to accomplish this include:

- Assessing your current funding support. You should identify all grants that consist of federal funding. This may include funding that does not come directly from federal funding, but its original source is federal funding. For example, many states and funders receive federal funding that they then sub-grant to organizations.

- Beginning and/or continuing searches for non-federal funding, including through fees-for-service models and fundraising events. It is always wise for your revenue stream to include diverse funding sources. Importantly, seek out funding that could serve to replace your organization's federal funding.

- If you do not charge fees for your services, you may want to consider whether your organization wants to start collecting fees. If you do charge fees, you may want to evaluate your fee schedule. For more information on considering a fees-for-service model and/or increasing your service rates, see our resource on funding challenges under the Trump administration.

- Maintain effective and frequent communication with your organization's Board members who engage with the community and other organizations to support immigrants. If you do not have a community connector on your board to help engage in fundraising, consider expanding your board to include a new board member to serve in this role.

- If you anticipate you may need to downsize your staff, it will be important to assess your organization and staff's contractual and ethical responsibilities and consider succession planning. For more information, see our new resource on considerations before deciding to downsize or close a program.

- Whether you talk about funding or not, your staff will likely be nervous about their job security. Most often, staff are in this work because this is where they want to be. Your most devoted staff will respect a leader who is forthcoming and cares. Be as transparent with staff as possible, and they will likely do the same for their leaders. Ensure communications recognize the humanity of your staff. Don't cause unnecessary panic but remain realistic about the situation.

OOD
PM 25-33
Effective: June 27, 2025

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

SIRCE OWEN Digitally signed by SIRCE OWEN Date: 2025.06.27 10:09:48 -04'00'

NEUTRALITY AND IMPARTIALITY IN IMMIGRATION COURT PROCEEDINGS

PURPOSE:	Remind Immigration Judges of their ethical and professional responsibility obligations to treat both parties in a neutral, unbiased, and impartial manner.
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. § 1003.0(b)
CANCELLATION:	None

In light of multiple recent situations indicating that Immigration Judges are demonstrating bias or hostility toward one party in Immigration Court proceedings, this Policy Memorandum (PM) reminds Immigration Judges of their ethical and professional responsibility obligations to treat *both* parties in a neutral, unbiased, and impartial manner.

Both federal ethics regulations and EOIR's Ethics and Professionalism Guide for Immigration Judges (Guide) require Immigration Judges to be impartial and remain free from bias in adjudicating cases. *See*, *e.g.*, 5 C.F.R. §§ 2635.101(b)(8), (14) (requiring Immigration Judges to "act impartially and not give preferential treatment to any private organization or individual" and to "endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards" applicable to individuals employed by the United States Government); Guide, Secs. V (requiring Immigration Judges to "act impartially and . . . not give preferential treatment to any organization or individual when adjudicating the merits of a particular case"), VI (requiring Immigration Judges to "endeavor to avoid any actions that, in the judgment of a reasonable person with knowledge of the relevant facts, would create the appearance that he or she is violating the law or applicable ethical standards"), VIII (prohibiting Immigration Judges from being "swayed by partisan interests or public clamor"), and X (prohibiting Immigration Judges from "in the performance of official duties, by words or conduct, manifest[ing] improper bias or prejudice").

Although many Immigration Judges scrupulously maintain impartiality toward both parties in immigration proceedings, there are some Immigration Judges who appear to believe—based on their own personal policy preferences[1]—that exhibiting bias is justifiable in certain situations, as

[1] An Immigration Judge should adjudicate all cases in accordance with the applicable law based on the evidence and facts presented. An Immigration Judge's personal beliefs or outcome preferences are not appropriate bases on which to decide cases, nor is personal disapproval of one party's actions or the policies of the Government. Thus, an

long as that bias is in favor of an alien and against the Department of Homeland Security (DHS). However, nothing in the applicable ethics regulations or the Guide provides an exception for bias directed against DHS. Bias against DHS is just as corrosive to the integrity of EOIR as bias against aliens. Both parties in immigration court are entitled to a neutral, impartial adjudicator, and EOIR will not tolerate improper animus directed at either party.

Ethically, Immigration Judges cannot be both impartial adjudicators and advocates for one side or the other, and Judges who would prefer to be policy advocates favoring either aliens or DHS should consider transitioning to alternate career paths. Although many Immigration Judges carry out their important responsibilities in a professional and ethical manner, those who do not by demonstrating bias and hostility toward either party may be subject to corrective or disciplinary action.

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.

Immigration Judge who—pursuant to the Judge's own personal policy preferences or disagreements with the Government—would grant a motion filed by one party because the Judge perceives that doing so would benefit the alien, but conversely would deny an identical motion filed by the same party with the same legal basis because the Judge perceives that doing so would instead benefit the Government with whose policies the Judge disagrees, is not adjudicating cases in an appropriate manner. Such unexplained and unacknowledged deviations from past practice not only violate basic principles of administrative law, but may also be evidence of bias, particularly in situations where an Immigration Judge substitutes his or her personal policy preference for a particular outcome in lieu of an evenhanded application of the law.

OOD
PM 25-28
Effective: April 11, 2025

To: All of EOIR
From: Sirce E. Owen, Acting Director
Date: April 11, 2025

SIRCE OWEN
Digitally signed by SIRCE OWEN
Date: 2025.04.11 14:42:06 -04'00'

PRETERMISSION OF LEGALLY INSUFFICIENT APPLICATIONS FOR ASYLUM

PURPOSE:	Provide guidance on the legal standards related to the pretermission of a legally insufficient application for asylum
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. § 1003.0(b)
CANCELLATION:	None

EOIR adjudicators have a duty to efficiently manage their dockets. *See, e.g.,* 8 C.F.R. 1003.10(b). It is clear from the almost 4 million pending cases on EOIR's docket, that has not been happening. Accordingly, this Policy Memorandum (PM) makes clear that adjudicators are not prohibited from taking—and, in fact, should take—all appropriate action to immediately resolve cases on their dockets that do not have viable legal paths for relief or protection from removal.

Aliens in removal proceedings have the burden of demonstrating eligibility for any type of relief or protection from removal. 8 U.S.C. 1229a(C)(4); 8 C.F.R. § 1240.8(d). If an alien fails to set forth prima facie eligibility for relief, such application generally can be pretermitted. Although it is well-settled that aliens must demonstrate prima facie eligibility for relief for certain applications, in certain contexts there appears to be a misapprehension by adjudicators regarding whether those same principles apply to applications for asylum. Consequently, this PM provides guidance to adjudicators who encounter legally insufficient asylum applications.

The Board of Immigration Appeals addressed pretermission of legally insufficient asylum applications more than three decades ago in *Matter of Fefe*, 20 I&N Dec. 116 (BIA 1989). However, the regulations at issue in *Matter of Fefe* are no longer in effect, and the continuing applicability of that decision is, thus, an open question. Moreover, the only other BIA decision to address the matter was subsequently vacated by the Attorney General and no longer has any precedential effect. *See Matter of E-F-H-L-*, 26 I&N Dec. 319, 322 (BIA 2014), *vacated on other grounds*, 27 I&N Dec. 226 (A.G. 2018). As a result, adjudicators lack clearly-applicable guidance as to pretermission of legally deficient asylum applications.

EOIR's interpretation of applicable law is that adjudicators may pretermit legally deficient asylum applications without a hearing. Current regulations require a hearing on an asylum application only

"to resolve factual issues in dispute." 8 CFR § 1240.11(c)(3). However, no existing regulation requires a hearing when there are no factual issues in dispute, including when the facts underlying the legal claim for asylum are undisputed, but the claim itself is legally deficient. In fact, current regulations expressly note that no further hearing is necessary once an immigration judge determines that an asylum application is subject to certain grounds for mandatory denial. *Id.*

Caselaw bolsters this conclusion. Adjudicators routinely pretermit asylum applications for a host of legal deficiencies. *E.g.*, *Valencia v. Garland*, 2023 WL 8449194, *1 (9th Cir. 2023) (untimely filing); *Zhu v. Gonzales*, 218 F. App'x 21, 23 (2d Cir. 2007) (lack of a legal nexus to a protected ground); *Matter of J-G-P-*, 27 I&N Dec. 642, 643 (BIA 2019) (disqualifying criminal conviction). Moreover, other immigration applications are subject to pretermission without a hearing when they are not legally sufficient. *See Matter of Moreno-Escobosa*, 25 I&N Dec. 114 (BIA 2009) (pretermission of application for a waiver of inadmissibility under former section 212(c) of the Immigration and Nationality Act (INA)). Asylum applications should receive similar treatment.

Additionally, the pretermission of legally deficient asylum applications is consistent with other existing law, including an immigration judge's ability to take any action consistent with his or her authorities under the law that is appropriate and necessary for the disposition of cases, 8 CFR § 1003.10(b), to generally take any appropriate action consistent with applicable law and regulations, 8 CFR § 1240.1(a)(1)(iv), and to regulate the course of a hearing, 8 CFR § 1240.1(c).

To be sure, regulations note that "[d]uring the removal hearing, the alien shall be examined under oath on his or her application." 8 CFR § 1240.11(c)(3)(iii). But the regulations also clarify that adjudicators need not take this evidence unless there are "factual issues in dispute." *Id.* § 1240.11(c)(3). Moreover, it would be highly inefficient and make little sense for adjudicators to inquire into every fact asserted in an asylum application if the fact makes no difference to the legal outcome. This is not the system contemplated in the regulations.

Similarly, the INA does not compel adjudicators to hear irrelevant evidence. Section 240(b)(1) of the INA authorizes immigration judges to "interrogate, examine, and cross-examine the alien and any witnesses" but does not establish a mandatory requirement for them to do so in every case on every application or issue.

In short, adjudicators may properly consider pretermission of a legally deficient asylum application, though the ultimate decision on pretermission remains with the presiding adjudicator.

This PM is an interpretive rule or general statement of policy and 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.

OOD
PM 25-27
Effective: March 21, 2025

To: All of EOIR
From: Sirce E. Owen, Acting Director
Date: March 21, 2025

SIRCE OWEN Digitally signed by SIRCE OWEN Date: 2025.03.21 11:47:08 -04'00'

CANCELLATION OF DIRECTOR'S MEMORANDUM 23-01 AND REINSTATEMENT OF POLICY MEMORANDUM 19-13

PURPOSE:	Rescind and Cancel Director's Memorandum 23-01 and Reinstate Policy Memorandum 19-13
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. § 1003.0(b)
CANCELLATION:	Director's Memorandum 23-01

On October 4, 2022, the EOIR Director issued Director's Memorandum (DM) 23-01, rescinding Policy Memorandum (PM) 19-13, *Use of Status Dockets*. No reason was given for the recission, and none is readily apparent; in fact, parts of PM 19-13 are contained in DM 23-01 without acknowledgement or explanation. Moreover, DM 23-01 encouraged—if not tacitly directed—the placement of cases on the status docket in which a continuance was not legally required, which both overrode the decisional independence of Immigration Judges and directly contradicted one of DM 23-01's stated rationales, promoting efficiency. It also conspicuously failed to acknowledge longstanding caselaw that would have contradicted part of one of its categories directing placement on the status docket of cases continued to await visa availability. *See*, *e.g.*, *Matter of Quintero*, 18 I&N Dec. 348, 350 (BIA 1982) ("In any case, the fact that the respondent has an approved visa petition does not entitle him to delay the completion of deportation proceedings pending availability of a visa number."), *aff'd sub nom. Quintero-Martinez v. INS*, 745 F.2d 67 (9th Cir. 1984) (unpublished); *see also Chacku v. U.S. Att'y Gen.*, 555 F.3d 1281, 1286 (11th Cir. 2008) (finding that no good cause was shown for a continuance where the alien's priority date was years in advance of current visa availability). DM 23-01 further failed to acknowledge that there is no entitlement or right to either a continuance or placement on the status docket. Finally, it undermined EOIR's ability to resolve cases in a timely manner, *see* 8 C.F.R. § 1003.10(b), made the Immigration Judge rather than the parties responsible for case progression, likely created mandamus liability pursuant to 28 U.S.C. § 1361, and established, in essence, a quasi-amnesty program by not scheduling future hearings for the cases placed on the status docket and placing the onus on the immigration court to seek updates from the parties, rather than requiring the party seeking the continuance and placement on the status docket to affirmatively appear in court, or present evidence to support a further continuance in the case.

In short, DM 23-01 represented a poor policy choice and no longer accurately represents the policy of the Executive Branch. Accordingly, DM 23-01 is rescinded and cancelled, and PM 19-13 is reinstated. Any references in PM 19-13 that have been subsequently superseded should be read to refer to current sources now in effect.

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.

OOD
PM 25-29
Effective: April 18, 2025

To: All of EOIR
From: Sirce E. Owen, Acting Director
Date: April 18, 2025

SIRCE OWEN Digitally signed by SIRCE OWEN Date: 2025.04.18 14:12:38 -04'00'

CANCELLATION OF DIRECTOR'S MEMORANDUM 22-03

PURPOSE:	Rescind and Cancel Director's Memorandum 22-03
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. § 1003.0(b)
CANCELLATION:	Director's Memorandum 22-03

I. Introduction

On November 22, 2021, the EOIR Director issued Director's Memorandum (DM) 22-03, *Administrative Closure*, purporting to provide guidance regarding the use of administrative closure by EOIR adjudicators. A subsequent rulemaking superseded that DM, *see* Efficient Case and Docket Management in Immigration Proceedings, 89 FR 46742 (May 29, 2024) (ECDM Rule), and rendered it unnecessary. Furthermore, many of the assertions in that DM were either factually or legally dubious, and EOIR cannot defend it as a policy. Consequently, it warrants rescission and cancellation.

II. History of EOIR's Use of Administrative Closure

No statute authorizes administrative closure by EOIR adjudicators, and prior to the ECDM Rule, no regulation clearly authorized it either. EOIR's use of administrative closure in immigration proceedings dates back to at least the 1970s, as EOIR still has unresolved cases that were administratively closed during that decade. The use of administrative closure became more widespread in the 1980s following the issuance of an Operating Policies and Procedures Memorandum ("OPPM") in 1984 setting forth options available to Immigration Judges in cases where aliens failed to appear for their hearings, including the option to administratively close cases. OPPM 84-2: *Cases in Which Respondents/Applicants Fail to Appear for Hearing* (Mar. 7, 1984) (rescinded). Notably, that OPPM did not identify any basis for its authority, and there was no delegation by the Attorney General of such authority.

Subsequently, the use of administrative closure generally tended to correspond with either legislative changes providing new statutory forms of relief for aliens or with federal court settlement agreements requiring its use. For example, in 1986, shortly after the passage of the Immigration Reform and Control Act of 1986, creating an amnesty program for certain illegal

aliens who had entered the United States prior to January 1, 1982, Immigration Judges increasingly used administrative closure to pause removal proceedings while aliens pursued this newly available amnesty. PL 99-603, 100 Stat. 3359 (November 6, 1986).

Likewise, in the 1990s and early 2000s, the Department entered into binding settlement agreements that required Immigration Judges and the Board of Immigration Appeals ("Board") to administratively close cases and issued regulations providing that parties could request administrative closure in a variety of specified situations.[1]

As the use of administrative closure became more common, the Board began to address questions related to its use. For example, in 1988, the Board determined that an Immigration Judge improperly exercised administrative closure authority rather than hold deportation proceedings *in absentia*. *Matter of Amico*, 19 I&N Dec. 652, 654 (BIA 1988). Likewise, in 1990, the Board published *Matter of Lopez-Barrios* and *Matter of Munoz-Santos*, both of which held that an Immigration Judge could not administratively close a case if either party to the proceedings opposed closure. *Matter of Lopez-Barrios*, 20 I&N Dec. 203 (BIA 1990); *Matter of Munoz-Santos*, 20 I&N Dec. 205 (BIA 1990).

These decisions were consistent with prior Board caselaw—and general principles of administrative separation-of-functions—holding that decisions on whether to prosecute immigration proceedings were the sole province of the then-Immigration and Naturalization Service ("INS") (now the Department of Homeland Security ("DHS")). *See, e.g.*, *Matter of Quintero*, 18 I&N Dec. 348, 350 (BIA 1982), *aff'd sub nom. Quintero-Martinez v. INS*, 745 F.2d

[1] *See, e.g.*, *Barahona-Gomez v. Ashcroft*, 243 F. Supp. 2d 1029, 1035 (N.D. Cal. 2002) ("[I]f the [Respondent] fails to appear for the scheduled hearing . . . the case shall be administratively closed, following which, should the Respondent come forward, the hearing shall be recalendared[.]"); *Am. Baptist Churches v. Thornburgh,* 760 F. Supp. 796, 805-806 (N.D. Cal. 1991) ("*ABC*") (ordering that proceedings before EOIR be administratively closed, generally, for class members); Adjustment of Status for Certain Nationals of Nicaragua and Cuba, 63 FR 27823, 27830 (May 21, 1998) (implementing administrative closure procedures for aliens who appeared eligible to adjust status under the Nicaraguan Adjustment and Central American Relief Act of 1997 ("NACARA")), 8 C.F.R. § 245.13(d)(3) (1999); Adjustment of Status for Certain Nationals of Haiti, 64 FR 25756, 25771 (May 12, 1999) (requiring Immigration Judges and the Board to exercise administrative closure in cases where aliens appeared to be eligible to file an application for adjustment of status under the Haitian Refugee Immigration Fairness Act of 1998 ("HRIFA") and met various other requirements), 8 C.F.R. § 245.15(p)(4) (2000); Executive Office for Immigration Review; Adjustment of Status for Certain Nationals of Nicaragua, Cuba, and Haiti, 66 FR 29449, 29452 (May 31, 2001) (providing that an alien for whose case an Immigration Judge or the Board has granted a motion to reopen under particular statutes may move to have proceedings administratively closed to seek adjustment of status), 8 C.F.R. § 245.13(m)(1)(ii) (2002); V Nonimmigrant Classification; Spouses and Children of Lawful Permanent Residents, 66 FR 46697, 46704 (Sept. 7, 2001) ("If the alien appears eligible for V nonimmigrant status, the immigration judge or the Board, whichever has jurisdiction, shall administratively close the proceeding or continue the motion indefinitely."), 8 C.F.R. § 214.15(l) (2002); New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status, 67 FR 4784, 4797 (Jan. 31, 2002) (stating that T-visa applicants may request administrative closure) (codifying language later moved to 8 C.F.R. § 1214.2(a)); Adjustment of Status for Certain Aliens from Vietnam, Cambodia, and Laos in the United States, 67 FR 78667, 78673 (Dec. 26, 2002) (authorizing certain nationals of Vietnam, Cambodia, and Laos to move for administrative closure pending their applications for adjustment of status, but preventing the Immigration Judge or the Board from "defer[ring] or dismiss[ing] the proceeding" without the former INS's consent) (codifying language later moved to 8 C.F.R. § 1245.21(c)). As discussed, *infra*, some of these regulations may be *ultra vires* or otherwise unlawful for other reasons, but a further discussion of these specific regulations is beyond the scope of this PM.

67 (9th Cir. 1984) (noting that an Immigration Judge "may neither terminate nor indefinitely adjourn the proceedings in order to delay an alien's deportation . . . [and] [o]nce deportation proceedings have been initiated by [DHS], the immigration judge may not review the wisdom of [DHS's] action, but must execute his duty to determine whether the deportation charge is sustained by the requisite evidence in an expeditious manner"); *see also Matter of Roussis*, 18 I&N Dec. 256, 258 (BIA 1982) ("It has long been held that when enforcement officials of the [DHS] choose to initiate proceedings against an alien and to prosecute those proceedings to a conclusion, the immigration judge is obligated to order deportation if the evidence supports a finding of deportability on the ground charged."); *cf. Lopez-Telles v. INS*, 564 F.2d 1302, 1304 (9th Cir. 1977) ("Rather, these decisions plainly hold that the immigration judge is without discretionary authority to terminate deportation proceedings so long as enforcement officials of the [DHS] choose to initiate proceedings against a deportable alien and prosecute those proceedings to a conclusion. The immigration judge is not empowered to review the wisdom of the [DHS] in instituting the proceedings. His powers are sharply limited, usually to the determination of whether grounds for deportation charges are sustained by the requisite evidence or whether there has been abuse by the [DHS] in its exercise of particular discretionary powers. This division between the functions of the immigration judge and those of [DHS] enforcement officials is quite plausible and has been undeviatingly adhered to by the [DHS]."); *Matter of Silva-Rodriguez*, 20 I&N Dec. 448, 449-50 (BIA 1992) (undue delay by an Immigration judge may frustrate or circumvent statutory purpose of prompt immigration proceedings); *Matter of Yazdani*, 17 I&N Dec. 626, 630 (BIA 1991) ("However, so long as the enforcement officials of the [DHS] choose to initiate proceedings against an alien and to prosecute those proceedings to a conclusion, the immigration judge and the Board must order deportation if the evidence supports a finding of deportability on the ground charged."). Otherwise, an Immigration Judge could, through the unilateral use of administrative closure, overrule DHS's decision on prosecuting a particular case and indefinitely adjourn the case to effectively prohibit or avoid the alien's removal.

The prohibition on administrative closure over the opposition of a party generally remained the status quo for several years. However, in 2012, the Board published *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012), which caused significant upheaval in the law and accelerated the utilization of administrative closure. In that decision, the Board held, for the first time ever, that Immigration Judges and the Board could unilaterally administratively close proceedings over a party's objection. *Id*. at 694. This broad interpretation was a significant—and partially unexplained—departure from the prior uses of administrative closure described above. Further—and also for the first time ever—the Board linked Immigration Judges' and Appellate Immigration Judges' authority to administratively close proceedings to general regulatory authority provisions under 8 C.F.R. §§ 1003.10(b) and 1003.1(d)(1)(ii) to take any appropriate and necessary action. *Id.* at 691.

Notably, the Board in *Matter of Avetisyan* did not expressly overrule—or even acknowledge—its prior line of cases prohibiting Immigration Judges and Appellate Immigration Judges from second-guessing DHS's decisions to prosecute a case in removal proceedings. Rather, it simply asserted a *non sequitur*—that its decision would not preclude DHS from pursuing removal proceedings, despite the fact that unilateral administrative closure over DHS's objection does preclude DHS

from pursuing the removal proceedings while the administrative closure order is in effect, *compare Matter of Avetisyan*, 25 I&N Dec. at 694 ("Although administrative closure impacts the course removal proceedings may take, it does not preclude the DHS from . . . pursuing those proceedings . . . ."), *with Matter of Amico*, 19 I&N Dec. at 654 ("When a case is administratively closed, the respondent is allowed . . . to avoid an order regarding his deportability, and the consequences an order of deportation could bring.") *and Matter of Quintero*, 18 I&N Dec. at 350 (noting that an Immigration Judge "may neither terminate nor indefinitely adjourn the proceedings in order to delay an alien's deportation . . . [and] [o]nce deportation proceedings have been initiated by [DHS], the immigration judge may not review the wisdom of [DHS's] action, but must execute his duty to determine whether the deportation charge is sustained by the requisite evidence in an expeditious manner")—without justification, explanation, or even an acknowledgment of its prior caselaw to the contrary.[2]

Furthermore, *Matter of Avetisyan* did not address that the regulatory provisions only assign the authority to defer adjudication of cases to the Director, the Chief Appellate Immigration Judge, and the Chief Immigration Judge—but not to Immigration Judges or Appellate Immigration Judges themselves. *See* 8 C.F.R. §§ 1003.0(b)(1)(ii), 1003.1(a)(2)(i)(C), 1003.9(b)(3). Further, the Board did not acknowledge that, if 8 C.F.R. §§ 1003.1(d)(1)(ii) and 1003.10(b) provided freestanding authority for administrative closures, then other regulatory provisions that do expressly provide for such closures would be superfluous. *See*, *e.g.*, 8 C.F.R. § 1245.13(d)(3)(i) (stating that immigration judges or the Board "shall, upon request of the alien and with the concurrence of [DHS], administratively close the proceedings"). Finally, the Board did not address the reference in 8 C.F.R. §§ 1003.1(d)(1)(ii) and 1003.10(b) to the "disposition" of cases, which ordinarily connotes a final or dispositive decision, which an order of administrative closure is certainly not. *Compare* Black's Law Dictionary (11th ed. 2019) (defining "disposition" as "[a] *final* settlement or determination" (emphasis added)), *with Matter of Avetisyan*, 25 I&N Dec. at 695 (describing the "fact that administrative closure does not result in a final order" as "undisputed") *and Matter of Amico*, 19 I&N Dec. at 654 n.1 ("The administrative closing of a case does not result in a final order.").

The result from *Matter of Avetisyan* was a dramatic increase in the use of administrative closure, which was encouraged by the Department of Justice and EOIR leadership in an apparent effort to effectuate a policy goal of avoiding or deferring orders of removal against as many aliens as possible. Between Fiscal Year (FY) 1991 and the close of FY 2011, the FY preceding the *Matter of Avetisyan* decision, EOIR averaged 3,697 cases of administrative closure per FY. However, in

[2] The Board's change in position in *Matter of Avetisyan* was neither well-reasoned nor observant regarding prior Board precedent with which it conflicted. Indeed, *Matter of Avetisyan* failed to fully explain its change in position from prior Board precedents prohibiting Immigration Judges from preventing DHS from prosecuting its cases itself, nor did it even acknowledge there was a change. This unexplained and unacknowledged departure from prior precedent violates fundamental principles of administrative law. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) ("To be sure, the requirement that an agency provide reasoned explanation for its action would ordinarily demand that it display awareness that it *is* changing position. An agency may not, for example, depart from a prior policy *sub silentio* or simply disregard rules that are still on the books."). Thus, although *Matter of Avetisyan* remains precedential and binding, EOIR cannot—and will not—defend it in good faith if challenged in litigation because it provided neither a reasoned explanation nor awareness of its marked change in position from past precedent regarding DHS's prosecutorial discretion.

the five FYs following FY 2012, EOIR averaged 21,158 administratively closed cases per FY. This pattern repeated after *Matter of Avetisyan* was revived in 2021.[3] Between FY 2022 and FY 2024, EOIR averaged 33,209 cases of administrative closure per FY. Of the approximately 379,000 cases that are still administratively closed at the immigration court level (since FY 1974), as of the beginning of April 2025, over 222,000 were administratively closed in just nine FYs: FY 2013 to FY 2017 and FY 2022 to FY 2025.

III. Inaccurate Characterizations of Administrative Closure

EOIR's increased utilization of administrative closure as a policy-driven tool since 2011 also corresponded with repeated—yet demonstrably untrue—assertions about its usage. These knowing mischaracterizations of administrative closure, particularly by those with access to accurate information, warrant significant rectification.

For example, administrative closure has often been described as a temporary measure. *See*, *e.g.*, *Matter of Gutierrez-Lopez*, 21 I&N Dec. 479, 480 (BIA 1996) ("Administrative closure of a case is used to temporarily remove a case from an Immigration Judge's calendar or from the Board's docket."), *overruled by Matter of Avetisyan*, 25 I&N Dec. at 697. Although that may have been arguably true in the 1980s or 1990s, it is no longer considered a temporary measure. On the contrary, the average length of time that a case is administratively closed at the immigration court level is approximately 15 years, and approximately 29 years at the Board level. These averages do not reflect "temporary" action by any reasonable definition of the term. Rather, administrative closure is more properly characterized as an indeterminate or unbounded measure, which typically stops an adjudication indefinitely.

Second, administrative closure is often erroneously alleged to aid docket management and has been described as an "administrative convenience," *Matter of Amico*, 19 I&N Dec. at 654 n.1. Yet, periods of increased usage of administrative closure have also corresponded to periods of significant increases to EOIR's backlog. For instance, between January 2013 and January 2017, the number of administratively closed cases increased from nearly 172,000 to over 268,000; over that same time period, EOIR's backlog increased from just under 550,000 cases to nearly 859,000. Similarly, between January 2021 and January 2025, the number of administratively closed cases increased from nearly 278,000 to almost 392,000; over that same time period, EOIR's backlog increased from approximately 1.68 million cases to over 4.1 million cases. Indeed, EOIR's experience shows that increased usage of administrative closure leads to greater lost-docket time as parties debate whether it is appropriate in a particular case, leading to even more continuances while that issue is resolved, and, if administrative closure is not ordered, a lengthy delay occurs in adjudicating the merits of a case that otherwise would have been decided much earlier. Moreover, as a matter of logic, because administrative closure does not dispose of a case, it cannot help manage the overall docket; rather, it simply delays a case indefinitely without a disposition so that it remains in a liminal state. Administrative closure merely "kicks the can down the road," increasing the overall backlog while leaving ripple effects—*e.g.* multiple continuances and lost

[3] *Matter of Avetisyan* was overruled in 2018 by the Attorney General. *Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018). *Matter of Castro-Tum* was, in turn, overruled by a different Attorney General in 2021, and *Matter of Avetisyan* was effectively reinstated. *Matter of Cruz-Valdez*, 28 I&N Dec. 326 (A.G. 2021).

adjudication time—in its wake, which further exacerbate the backlog. In short, there is no reliable evidence that administrative closure aids docket management; rather, the opposite has shown to be true.

Similarly, as noted above, although administrative closure has been frequently characterized as a docket management tool, in reality, it has transformed into a mechanism to effectuate immigration policy goals rather a procedure to genuinely aid the efficient disposition of cases. As early as 1988, EOIR recognized that "[w]hen a case is administratively closed, the respondent is allowed. . .to avoid an order regarding his deportability, and the consequences an order of deportation could bring." *Matter of Amico*, 19 I&N Dec. at 654. To that end, since 2011, administrative closure has been used principally as a policy tool—particularly by Administrations opposed to robust immigration enforcement and adherence to the plain language of statutes—in order to direct the "resolution" of cases to achieve a particular policy outcome, namely the avoidance or indefinite delay of the issuance of an order of removal against as many aliens as possible. In addition to overriding the decisional independence of adjudicators, this policy of outcome-driven use of administrative closure by EOIR has also established a *de facto* amnesty program unauthorized by Congress. Indeed, in EOIR's experience, many illegal aliens seek administrative closure when they have no other viable form of relief or protection from removal available; otherwise, they would pursue a meritorious application that would provide them with full lawful status in a timely manner. Yet, before seeking administrative closure, they often file an application for relief anyway and rely on that application to obtain employment authorization. Then, once the removal case is administratively closed, because the relief application may remain pending indefinitely, the alien will also continue receiving employment authorization indefinitely with no fear of being removed. As a result, administrative closure often functions as a *de facto* amnesty program with benefits—*i.e.*, providing illegal aliens both indefinite employment authorization and indefinite protection from removal—which wholly belies its characterization as merely a docket management tool.

IV. Additional Legal Questions Surrounding the Use of Administrative Closure

In addition to overriding DHS's prosecutorial discretion, violating basic administrative separation-of-functions principles, and the failure in *Matter of Avetisyan* to explain or acknowledge its departure from prior Board precedent, EOIR's use of administrative closure, including as codified by the ECDM Rule, presents several other problematic legal questions.

First, EOIR's widespread use of administrative closure, to the extent that cases may be closed for decades, creates a serious tension with—if not also a direct violation of—EOIR's regulations requiring cases to be adjudicated in a timely manner. *See*, *e.g.*, 8 C.F.R. § 1003.10(b) ("[i]n all cases, immigration judges shall seek to resolve the questions before them in a timely and impartial manner"). Further, the lack of timely adjudication of approximately 400,000 cases places EOIR at great risk of an onslaught of mandamus petitions. *See* 28 U.S.C. § 1361. Put simply—and also as a matter of good governance—"[a]n adjudicatory default on that scale strikes directly at the rule of law," *Hernandez-Serrano v. Barr*, 981 F.3d 459, 461 (6th Cir. 2020), and EOIR's "adjudicatory default" due to administrative closure over a long period of time potentially jeopardizes the agency's ability to defend itself from legal challenges.

More troublingly, EOIR's use of administrative closure, including the ECDM Rule, appears to implicate the major questions doctrine. As discussed, *supra*, the use of administrative closure has effectively become an amnesty program, allowing otherwise illegal aliens to remain in the United States indefinitely—and typically with the benefit of work authorization—without the threat of removal. However, there is absolutely no statutory authorization for such a program, as there is no such authorization for administrative closure in the first instance. Moreover, as also noted elsewhere, even the regulatory and adjudicatory bases for it are on questionable administrative law footing. EOIR's assertion of heretofore unknown regulatory authority for the widespread use of administrative closure is of recent vintage and conspicuously fails to assert any statutory basis. Rather, it is a transformative expansion of its authority in order to create a *de facto* amnesty program for hundreds of thousands of aliens. The absence of any statutory basis for such a program—even beyond the dubious regulatory or adjudicatory basis for it—raises serious separation-of-powers or nondelegation issues for EOIR and squarely implicates the major questions doctrine.

Although "the major questions 'label' may be relatively recent, it refers to an identifiable body of law that has developed over a series of significant cases spanning decades." *Biden v. Nebraska*, 600 U.S. 477, 504-05 (2023) (cleaned up). As commonly understood, the major questions doctrine requires Congress to have spoken clearly to the assignment of certain authorities to administrative agencies, especially those purporting to address questions "of vast economic and political significance." *Alabama Ass'n of Realtors v. Dept. of Health and Hum. Servs*., 594 U.S. 758, 764 (2021) (cleaned up). Put more clearly,

> [t]he major questions doctrine serves a similar function [as the nondelegation doctrine] by guarding against unintentional, oblique, or otherwise unlikely delegations of the legislative power. Sometimes, Congress passes broadly worded statutes seeking to resolve important policy questions in a field while leaving an agency to work out the details of implementation. Later, the agency may seek to exploit some gap, ambiguity, or doubtful expression in Congress's statutes to assume responsibilities far beyond its initial assignment. The major questions doctrine guards against this possibility by recognizing that Congress does not usually "hide elephants in mouseholes." In this way, the doctrine is a vital check on expansive and aggressive assertions of executive authority.

NFIB v. OSHA, 595 U.S. 109, 125 (2022) (Gorsuch, J., concurring) (cleaned up). The doctrine applies "when an agency claims the power to resolve a matter of great political significance or end an earnest and profound debate across the country." *West Virginia v. EPA*, 597 U.S. 697, 743 (2022) (Gorsuch, J., concurring) (cleaned up).

There is no question that immigration, particularly a *de facto* amnesty, is a matter of "great political significance" and subject to "an earnest and profound debate" across the United States. It is equally clear that EOIR has seized for itself an authority to indefinitely suspend cases without a disposition, administrative closure, that has no statutory basis at all. That combination—*i.e.* using an authority to effectuate amnesty to hundreds of thousands of otherwise removable aliens without any statutory basis—squarely implicates the major questions doctrine, as Congress has not clearly

provided EOIR authority to implement such an amnesty, yet EOIR has nevertheless done so. As such, EOIR is placed in an uncomfortable position of adhering to a rulemaking that may be potentially unconstitutional.

Whether EOIR's use of administrative closure as a *de facto* amnesty program definitively violates the major questions doctrine is beyond the scope of this Policy Memorandum (PM).[4] Nevertheless, that question further underscores the myriad of problems EOIR's use of administrative closure, codified in the ECDM Rule, has engendered. At best, the ECDM Rule appears arbitrary and capricious because it wholly failed to consider several problematic aspects of administrative closure[5] and was wholly contrary to the evidence that administrative closure is neither temporary nor is an effective docket management tool. *See*, *e.g.*, *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) ("Normally, an agency rule would be arbitrary and capricious if the agency. . .entirely failed to consider an important aspect of the problem [or], offered an explanation for its decision that runs counter to the evidence before the agency. . ."). At worst, it may be *ultra vires* or unconstitutional in violation of the major questions doctrine because it arrogated to EOIR an authority to grant amnesty to hundreds of thousands of illegal aliens without any statutory basis whatsoever. As such, EOIR could not—and will not—defend the ECDM Rule in good faith against legal challenge. Nevertheless, until it is rescinded, superseded, enjoined, vacated, or otherwise determined to be unlawful, the changes made by that rulemaking remain binding on EOIR adjudicators. Accordingly, this PM cannot—and does not purport to—alter that rulemaking's legal effect, and adjudicators should continue to adhere to it unless they have a legal basis for not doing so.

V. Conclusion

EOIR's use of administrative closure, particularly between 2011 and 2017 and between 2021 and 2025, was an unmitigated disaster from a policy standpoint and strongly appears to have also been unlawful. Further, not only did it constitute "[a]n adjudicatory default. . .[that] strikes directly at the rule of law," *Hernandez-Serrano*, 981 F.3d at 461, but in EOIR's experience, it contributed to significant increases in EOIR's adjudicatory backlog. To the extent DM 22-03 contributed to that "adjudicatory default" it merits cancellation and rescission even if it had not otherwise been effectively superseded by the ECDM Rule, and EOIR's "adjudicatory default" due to administrative closure over a long period of time potentially jeopardizes the agency's ability to defend itself from legal challenges. Accordingly, DM 22-03 is cancelled and rescinded.

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,

[4] Apart from potentially implicating the major questions doctrine, EOIR's use of administrative closure—except as required by a judicial settlement agreement—may also be *ultra vires*. As an administrative agency, EOIR can exercise only authority granted to it by statute, and no statute authorizes administrative closure at all. *See*, *e.g.*, *Int'l Union of Elec., Radio and Mach. Workers v. NLRB*, 502 F.2d 349, 352 n.* (D.C. Cir. 1974) ("An administrative agency possesses no such inherent equitable power, however, for it is a creature of the statute that brought it into existence; it has no powers except those specifically conferred upon it by statute."). Again, this PM does not definitively resolve whether administrative closure, including the ECDM Rule, is an *ultra vires* exercise of authority.

[5] For example, it failed to consider the federalism impacts of an amnesty program on states with high numbers of aliens whose cases have been administratively closed.

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.