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# Trump's Immigration Crackdown Is Overwhelming a Strained System

The number of pending cases looks poised to grow as the administration begins arresting undocumented immigrants who weren't previously targeted.

BY **PRISCILLA ALVAREZ**    **APR 21, 2017**

Immigration courts in the United States are overwhelmed with cases.

By last September, the end of the 2016 fiscal year, there were more than 500,000 of them pending, according to a March [report](#) by the Executive Office for Immigration Review, a branch of the U.S. Department of Justice. That number will almost certainly grow under President Trump, whose repeated pledges to curb illegal immigration have translated to policies that would put far more people in the immigration court system.

In February, the Department of Homeland Security [issued new rules](#) that broadened the criteria for who is considered a priority for deportation, compared with those set in the Obama administration's last years. Since then, Immigration and Customs Enforcement, DHS's enforcement arm, has carried out these directives on the ground, with their arrestees subject to quick deportation or ushered into the courts for processing. In late March, for example, ICE [agents arrested](#) 82 individuals during a five-day operation in Virginia and Washington, D.C. Of those individuals, 68 had previous criminal convictions, according to the agency.

The court system would have likely stayed bloated with backlog without the recent rule changes. But by the Trump administration giving ICE greater latitude in which individuals it can target, the courts look poised for even further strain.

What was already a substantial backlog in immigration courts ballooned under former President Barack Obama, after a [wave of migrants](#), including thousands of children traveling alone, journeyed to the southern U.S. border in 2014. That year, Obama, whose first term saw record deportations, pledged to focus enforcement efforts on individuals that posed a threat to security. "Felons, not families. Criminals, not children. Gang members, not a mom who's working hard to provide for her kids. We'll prioritize, just like law enforcement does every day," he [said](#). According to [ICE's latest figures](#), the agency conducted more than 240,000 removals from the country in fiscal year 2016. Ninety-two percent of those who were arrested by ICE and deported were convicted criminals.

As first described in a presidential executive order, DHS [significantly altered](#) that priority system after Trump took office, such that ICE could target groups of undocumented immigrants it hadn't prioritized before, including individuals charged with a crime, but not convicted, and individuals who have "committed acts that constitute a chargeable criminal offense." In general, the Trump administration seems to define criminal "loosely, and includes anyone who has crossed the border illegally," as *The New York Times* [has written](#).

*The Washington Post* [recently reported](#) that arrests of undocumented immigrants with no criminal records had more than doubled—to 5,441—from January to mid-March compared with the same period last year. Overall, "arrests rose 32.6 percent in the first weeks of the Trump administration," the *Post* wrote, "with newly empowered federal agents intensifying their pursuit of not just undocumented immigrants with criminal records, but also thousands of illegal immigrants who have been otherwise law-abiding."

In addition to a case-volume problem, the courts have also been strained by personnel challenges. While some individuals arrested by ICE face immediate removal from the United States, others have to await a hearing before an immigration judge. ICE makes the initial determination whether a person will be detained, released on bond, or released after promising to later appear at a removal proceeding. Immigration courts fall under the Justice Department's purview, and department officials can dictate which cases should be heard first. Under the Trump administration, for example, those cases [include](#) detained individuals and unaccompanied children without a sponsor.

Responding to the 2014 migrant wave, the Obama administration temporarily redirected immigration judges to the southern border to preside over removal proceedings and bond hearings, and review whether any individuals' claims of fear of persecution were credible. Immigration cases being heard in other parts of the United States had to be put on hold, said Jeremy McKinney, an attorney and board member of the American Immigration Lawyers Association. "The surge was the first time we saw a deployment of immigration judges to the border, resulting in non-detained dockets in the United States getting much worse," McKinney said, referring to cases that do not require detention. "That situation already put a strain on the interior immigration courts."

The Justice Department, which hires judges for immigration courts, was also tied up by the budget sequester from 2011 to 2014, so there weren't enough judges to try cases, he added. Over time, the backlog grew [from around 327,000 cases at the end of the 2012 fiscal year](#) to half a million in 2016.

Judge Paul Schmidt, who was appointed in 2003 by Attorney General John Ashcroft, had around 10,000 immigration cases pending when he left his job last year. "When I retired, I was sending cases to 2022," he told me. Schmidt, who primarily served in the Arlington Immigration Court in northern Virginia, was assigned to those not considered a priority—say, people who had traffic violations. The current national backlog, Schmidt said, largely consists of cases like the ones he handled.

The Trump administration has taken steps that could quicken the courts' work. For one, ICE officers can now deport someone immediately, without a hearing, if they fit certain criteria and have lived in the United States for up to two years. Under the last administration, that timeline was up to two weeks, and the individual needed to be within 100 miles of the border.

Attorney General Jeff Sessions also announced, in a speech on the Arizona-Mexico border, that the Department of Justice will add 125 immigration judges to the bench over the next two years: 50 this year and 75 in 2018. He urged federal prosecutors to prioritize the enforcement of immigration laws. "This is a new era. This is the Trump era," Sessions [said](#). "The lawlessness, the abdication of the duty to enforce our immigration laws, and the catch-and-release practices of old are over."

"You have to give Sessions credit for this," Schmidt said. "He took note of the 18-to-24-month cycle for filling judges and said he was going to streamline that." The math still doesn't exactly work out, however. "A fully trained judge, which new judges won't be, can do about 750 cases a year. So 125 new judges could do fewer than 100,000 cases a year once they're up and trained," he said. Factor in the fact that it takes up to two years to become "fully productive," he said, and altogether, it could take five to six years for the 125 new judges to cut down the backlog.

All the while, new cases will continue to come in as the administration enforces its new, broader policies on deportation. Newly detained individuals will be prioritized over other cases, which will be pushed further down the road. "I think it has a particular impact on asylum-seekers, because the sense of being in limbo really seems to prolong their trauma and their sense of statelessness that they have," said Dree Collopy, an immigration lawyer in Washington, D.C. And hearing delays can affect asylum-seekers' credibility, as well as evidence to support their cases: "Over time, especially when trauma is involved, memories begin to fade." If a person can't testify until years after entering the United States, "that can obviously cause problems."

When Collopy first started practicing immigration law in 2007, cases generally would take about a year or two to complete. That's no longer the case: "Now, it's taking four or five years on average," she told me. With the Trump administration rounding up undocumented immigrants quicker than courts can process cases, that delay isn't likely to shorten.

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