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What Will Trump Do with Half a Million Backlogged Immigration Cases?

By [Jonathan Blitzer](#)

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Attorney General Jeff Sessions trumpets the Trump Administration's deportation policies, but the enduring lack of immigration judges around the country has taken hold of the court system. Photograph by Chip Somodevilla / Getty

In April, Attorney General Jeff Sessions travelled to Nogales, Arizona, to make an announcement. “This is the Trump era,” he said. “The lawlessness, the abdication of the duty to enforce our immigration laws, and the catch-and-release practices of old are over.” While his tone was harsh, and many of the proposals he outlined were hostile to immigrants, he detailed one idea that even some of his critics support: the hiring of more immigration judges.

U.S. immigration courts are facing a backlog of over half a million cases—and each one, on average, takes almost two years to close. These delays mean that everyone from asylum seekers to green-card holders faces extended stays in detention while awaiting rulings. Speaking about the problem, one immigration judge recently [told](#) the *Times*, “The courts as a whole lose credibility.”

Much of the backlog can be traced back to the Obama Administration, when spending on immigration enforcement went up, while Congress dramatically limited funds for hiring more judges. The number of pending cases [grew](#) from a hundred and sixty-seven thousand, in 2008, to five hundred and sixty thousand, in 2017, according to the [Transactional Records Access Clearinghouse](#). The broader trend, though, goes back farther. Since the creation of the Department of Homeland Security, in 2002, the increase in resources allocated for border security and immigration policing has always significantly outpaced funding for the courts. (Immigration courts are part of the Department of Justice.) As more and more people have been arrested, detained, and ordered deported, the courts have remained understaffed and underfunded. “We’ve always been an afterthought,” Dana Leigh Marks, the president of the National Association of Immigration Judges, told me.

Roughly three hundred judges nationwide are responsible for the entire immigration caseload, and hiring is slow—filling a vacancy typically takes about two years, according to the Government Accountability Office. In Nogales, Sessions said that he would try to streamline the hiring process. But until that happens the Administration has been relocating judges to areas where they're deemed most necessary. "We have already surged twenty-five immigration judges to detention centers along the border," Sessions said, as if talking about military troop levels.

Since March, New York City, for example, has had at least eight of its twenty-nine immigration judges reassigned, at least temporarily, to Texas and Louisiana, [WNYC](#) has reported. But in relocating them the federal government is exacerbating the city's own significant backlog: roughly eighty thousand pending cases and an average delay of six hundred and twenty-five days per case. "Letting political forces impact the courts' docketing strategy disrupts our system," Marks said. "The temporary assignments to the border courts have been extremely problematic. There's no one to backfill those slots." The situation reminded her of a move made by the Obama Administration in 2014, when tens of thousands of unaccompanied children showed up at the U.S. border seeking asylum. The Department of Justice sent immigration judges to the border states to handle the sudden spike in cases, leaving their home states in the lurch. "We cleared the desks," Marks said. "We pushed back cases that were ready to be heard, and we heard cases that weren't ready to be brought to completion. There's only so fast you can go and still allow due process."

The Trump Administration's significant enforcement push is putting another sudden strain on the system. So far this year, federal immigration authorities have made forty per cent more arrests than they did at an equivalent point in 2016, and the Department of Homeland Security has eliminated all the guidelines for how Immigration and Customs Enforcement (*ICE*) is supposed to prioritize the people it targets for arrest. "The largest federal law-enforcement agency in the country, which is seeking more funding and less accountability, is given carte blanche to go after who it wants," Avidah Moussavian, a lawyer at the National Immigration Law Center, said of *ICE* and Customs and Border Protection. "It's creating this ballooning problem of subjecting so many more people to detention, with no interest from the federal government in providing resources to insure that they have fair proceedings."

Immigration proceedings are civil matters rather than criminal ones, so the protections generally afforded to criminal defendants don't apply to individuals with cases before immigration judges. If a defendant wins in a criminal case, the government can't appeal. Nor can authorities hold a person in prison after an exonerating ruling. In immigration court, however, *ICE* can appeal if a judge decides to close a case, and often an individual will remain in detention while that process runs its course. The Supreme Court is currently [weighing](#) a case in which a large class of litigants are seeking mandatory bond hearings every six months for anyone in immigrant detention. As it stands now, individuals are held indefinitely while they wait for a judge to rule on their situation, whether it's an asylum claim or a contested deportation order. (Being detained doesn't mean their cases are weak; according to Justice Department figures, roughly twenty per cent of all deportation cases resolved in 2016—some twenty thousand cases—ended in the immigrants' favor, with the deportation orders being dropped.) In immigration cases, Anthony Enriquez, a lawyer with the Immigrant Defense Project, told me, people "wear the same jumpsuits as criminal defendants. They're put in the same cells. Still, they don't have the same protections."

Earlier this month, in the Bronx, I met Christian Yarleque, a forty-seven-year-old lawful permanent resident who came to the U.S. from Peru three decades ago, when he was fourteen. In 2008, he was arrested for drug possession, a misdemeanor, and he served six months in jail. One morning, seven years after his release, *ICE* agents showed up at his apartment, in the Bronx, with a deportation order. He let the agents inside because they told him they were with the police. “They deceived me,” he said. When they arrested him, he told them that he’d already served his time. “Not with us,” they responded. (An *ICE* spokesperson told me, “*ICE* deportation officers will identify themselves appropriately on each arrest.”) After three and a half months in detention, an immigration judge heard the case and decided to close it, effectively quashing *ICE*’s order of deportation. *ICE* decided to mount an appeal. Because of the court backlog, it took more than a year before another judge ruled on the appeal, and though the judge set bond, it was well beyond what Yarleque could afford to pay. During that time, Yarleque remained in a detention center, in Newark, while his family struggled—he had been the family’s primary breadwinner. Each week, his wife came to visit him, bringing him money for food and phone time, so that he could speak to his kids regularly. On Tuesdays, *ICE* officers came to meet with inmates who were considering accepting a deportation order just to escape detention. “I thought about throwing in the towel at one point,” he said. “I had no idea when I’d be able to get out.”

Yarleque was comparatively fortunate: through a program called the [New York Immigrant Family Unity Project](#), he had a lawyer. Most immigrants in detention across the country don’t. One [study](#), done by an appellate judge, in 2011, found that roughly twenty per cent of immigrant detainees with lawyers won their cases, compared to just three per cent of immigrant detainees without lawyers.

In April, after almost two years in detention, Yarleque won his appeal, and the judge ordered *ICE* to drop the case. He was released, and is now back in the Bronx with his family; soon he’ll begin a new job, as a janitor at a local hospital. He can start work just as soon as D.H.S. returns his green card. When I asked him when that would be, he turned to his lawyer, who had joined us for the conversation. “It’s hard to know,” he said. “There are bureaucratic delays.”



Jonathan Blitzer is a contributing writer to newyorker.com. He has written for the magazine since 2014, and was a finalist for a 2016 Livingston Award.

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