The US deportation system is verging on lawlessness

The Trump administration has adopted measures making a bad situation worse: seeking to deport in large numbers, but without resources for fair hearings

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The deportation system verges on lawlessness. The rule of law requires that functioning tribunals arbitrate disputes fairly, efficiently and accurately. The immigration court system, which decides who will be deported and who may remain in the US, fails this test.

Take a recent case handled by the immigration clinic at the University of Texas School of Law. Our client was a radio journalist from Honduras, where speaking out against government misdeeds is very likely to get you killed.

Our client survived several assassination attempts before fleeing to the US and presenting himself at the border to seek asylum under US law. He was detained and eventually released to attend immigration court hearings.

It took four more years before he finally received a ruling this May that granted him asylum, during which time he was separated from his wife and children who continued to face danger in Honduras.

The state of crisis of the immigration adjudication system must be addressed. A common refrain dominates immigration discussions: "They broke the law and should be deported." The message holds power, because it suggests that allowing immigrants cast as lawbreakers to remain in the country weakens the rule of law.

But there are multiple problems with this sweeping justification for deportations that treats immigrants as offenders. Many immigrants have not broken any criminal laws, and most cannot simply "get right" with immigration laws that are astonishingly complex and irrational.

Most importantly, it is the government that verges on breaking the law.

The government has taken an aggressive stance on immigration enforcement, detaining and seeking to deport in large numbers. Yet it has failed to provide adequate resources for adjudication of the resulting cases by the immigration courts, even though these courts must decide complicated issues, including legitimate claims to legal status.

The 2018 proposed budget reflects this pattern, with the immigration courts receiving only a fraction of the $1.5bn promised to Immigration and Customs Enforcement for increased detention and deportations. This imbalance has led to a bottleneck of more than 600,000 pending cases before the immigration courts, and a state of chaos that negatively impacts all involved.

Courts are unable to docket cases promptly, and there is wild unpredictability in the scheduling of hearings. Because information about a case only becomes available after docketing, individuals in immigration court proceedings cannot easily learn when or where hearings will be held. There is no right to government-appointed counsel in immigration cases, so most migrants are unrepresented and struggle to navigate the proceedings alone.

Given the backlog, many hearings are scheduled out for four to five years. At the same time, detained individuals may have a final hearing within just a few months, and shifting priorities have resulted in accelerated adjudication of other cases. Last-minute changes are common because of the courts' challenges in finding enough interpreters, as well as malfunctions in the video equipment used in hearings for detained individuals.

Rather than recognize and address the incredible pressure placed on immigration courts by the exploding docket, the [Trump administration](#) has adopted measures that make a bad situation worse.

In fact, immigration court adjudications have actually dropped almost 10% since Donald Trump assumed office.

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The administration started by shuffling the courts, sending judges from around the country to courts in border areas or assigning them to video hearings in remote detention centers. Judges have fallen behind on their own dockets to take on matters already under way in courts with unfamiliar procedures and binding law. Parties have difficulty learning who will preside over their hearings and have been forced repeatedly to begin anew in presenting cases to rotating judges. For video cases, detained persons face extreme difficulties offering evidence and testimony to judges thousands of miles away.

Recently, the administration revealed specific plans to expand the use of "[expedited removal](#)" and bypass the immigration courts altogether, allowing frontline enforcement officials to deport. Impeding access to a full adjudication will certainly not promote more fair and accurate results, and the plan does nothing to address the existing backlog in the immigration courts. Nor does the proposal slow docket growth, because individuals in expedited removal can seek court

intervention to present asylum claims and will likely do so if otherwise faced with immediate deportation.

There are, however, steps that would improve immigration adjudication. Detention should be dramatically scaled back, allowing for more meaningful participation in court proceedings and thus better decisions, while freeing up dollars for other improvements. The use of expedited removal should be reduced rather than expanded, while some cases should be diverted from the courts to the specialized asylum office or similar non-adversarial proceedings, which are more appropriate for handling many claims to status.

Critically, funding should be provided for immigration courts and enforcement at a parallel rate. Enforcement expenditures could be decreased by subjecting fewer immigrants to enforcement actions in the first place, through the creation of additional pathways to legal status that align immigration law with the needs of US employers and the realities of migration patterns. Increased spending on the immigration courts would allow for the hiring and training of additional judges and staff, who should be well qualified and represent diverse backgrounds to ensure unbiased adjudication. This new personnel could deploy to areas where they are most needed to address case backlogs.

A country of laws should not allow Kafkaesque immigration court proceedings to decide life and death cases. The immigration adjudication system should operate as a means of sorting out cases under the law, granting the right to remain where merited, rather than simply part of a deportation machine.

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