

# How Trump Broke the Immigration Courts

Thanks to White House orders, they're more jammed up than ever.

[Tim Alberta](#) July 16, 2019



Mauricio Basaves, who came to the United States from Mexico illegally 20 years ago, built a trucking company and raised a family. He faces an extended fight in the Denver immigration court to avoid deportation. | Ryan David Brown for The Marshall Project

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Questions are still swirling around the immigration raids that President Donald Trump said he launched over the weekend, but one thing is certain: Many immigrants caught in their net will be sent into a court system already

crippled by a vast backlog of cases.

Frustrated with the slow pace of deportations from the courts, the Trump administration has taken aggressive steps to speed decisions and move people out of the country more quickly. But those measures have largely backfired, adding to the immense logjam of people awaiting life-changing decisions.

Officials blame the continued explosion of the court caseload on the increasing number of migrants, mostly from Central America, who are seeking asylum. But an analysis of court data by The Marshall Project shows that under the Trump administration, the immigration court backlog has grown much faster in one year than the inflow of migrants—at a rate almost three times that of new cases coming into the courts.

According to interviews with judges, lawyers and court staff, many of the moves by the administration—designed to accelerate the courts and eliminate policies from President Barack Obama—have slowed them even more, making it harder for judges to move cases efficiently, extending processing times and compounding a nationwide backlog that has grown by 68 percent under President Trump to nearly 877,000 cases.

Weihua Li/Marshall Project; Source: Executive Office for Immigration Review

The administration acknowledged that it hasn't been able to control the spiraling caseloads when it announced a sweeping rule change on Monday that would effectively deny asylum to most migrants from Central America. It would require them to seek asylum first from any country they pass through on their way to the United States and would only offer American protection after those claims fail.

Trump administration officials used their exceptionally broad powers over the courts to impose the most far-reaching changes of any administration,

in an attempt to push immigration judges to decide more cases more quickly and limit access to asylum for the influx of migrants from Central America.

The data reveal that the number of days it takes to complete a court case hit a 10-year high over the first two years of Trump's presidency. In the busiest courts, including New York, Los Angeles and Houston, some judges are scheduling hearings to decide cases in 2023, since their calendars are entirely booked for four years out.

In a surge that peaked in June, record numbers of families have streamed to the border to plead for asylum, triggering a legal process that added tens of thousands of cases to be decided. So far this year, more than 314,000 people traveling in families, mostly from Central America, were caught at the southern border.

Even if the new asylum rule, which is likely to face legal challenges, succeeds in reducing the flow of cases into the courts, it would still take years at the current pace to reduce the backlog to manageable levels.

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With a heavy backlog, the immigration court in Denver has one of the longest wait times for cases to be completed.  
| Carol M. Highsmith/Library of Congress

**Some of the new policies were ordered** by the president, while Justice Department officials, especially former Attorney General Jeff Sessions, made extensive use of their authority to intervene in the immigration courts.

The resulting overload is affecting courts across the country—like the one in Denver, which has one of the longest wait times for cases to be completed, an average of 962 days, [according to data compiled by the Transactional Records Access Clearinghouse at Syracuse University](#).

Mauricio Basaves knows why. Basaves, who is 40, came to the United States from Mexico illegally 20 years ago. He started out clipping hedges. Today, he owns a trucking business in Denver, with four semi-trailers hauling freight for big chains like Walmart and Target, employing eight drivers, all American citizens. He is raising three children, all Americans by birth. His oldest daughter, who is 15, is a science honors student and runs track. She is already being recruited by colleges.

But in his effort to obtain legal papers, Basaves years ago fell prey to a common scam. A lawyer in Nebraska offered to get him a work permit. Basaves didn't understand that the lawyer was applying for asylum, which provides work authorization while the case is being decided. He got the permit, but his asylum claim was doomed from the start, since it was presented long after the legal deadline. It eventually was denied and Basaves, to his shock, was ordered to appear in court for deportation hearings.

Before Trump, immigration prosecutors didn't press for Basaves' deportation. Obama established priorities for prosecutors, steering them to focus on immigrants who had serious criminal histories or presented some other security risk. Basaves, whose record consists of two traffic tickets, was not one of them. Prosecutors closed his case, taking it off the court's active docket, requiring him only to check in once a year.

Under Trump, Basaves has become one more extended deportation case slogging through the Denver court.

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**In his earliest actions as president**, Trump issued executive orders canceling Obama's priorities and sharply restricting prosecutors from exercising discretion to suspend any deportation.

Sessions, as attorney general, went further. Using his power to overrule immigration judges—who are employees of the Justice Department, not an independent judiciary—Sessions issued an opinion eliminating judges' authority to suspend or terminate cases. For years, judges say, they had routinely used that authority to set aside less urgent cases, allowing them to concentrate more efficiently on complex asylum or criminal cases.

An analysis of Justice Department figures shows that the administration's orders have been followed. The use of suspensions has plummeted in the past two years.

Now prosecutors are instructed to pursue every deportation and judges have little choice but to proceed with almost every case. Basaves was hauled back to court, and he is fighting to the end. In two decades living in the United States, he consistently paid his taxes. His teenage son is being treated for a baffling illness. His lawyer, Brett Stokes, says Basaves has a strong case to win a humanitarian visa.

But in Denver, with its long delays, the first hearing date he could get was in March 2020.

"We see the government fighting every case," said Ashley Tabaddor, a judge in Los Angeles who spoke in her capacity as president of the National Association of Immigration Judges union. "Instead of being an efficient use of our resources, it's just a lot of chaos and counterproductive measures that undermine the ability of judges to use their expertise to help a case go through the system."

Immigrants like Basaves are not the only ones affected. The new rules have also made it more difficult and time-consuming for American citizens to obtain green cards for immigrant spouses who are undocumented. Cases of migrant children abandoned by parents have become more convoluted and

labor-intensive for judges.

And Sessions' ruling also applies to about 330,000 cases that had been closed previously. Prosecutors have begun to reopen those cases, judges said, worsening the backlog.

Despite the spiraling case numbers, Justice Department officials insist the new rules have been effective.

"We've largely solved the problems on our side in terms of processing," said James McHenry, director of the Executive Office for Immigration Review, the agency that administers the courts. "Right now, the challenge is driven primarily by our successes," McHenry told a congressional hearing in March. He said the backlog was still growing only because more immigrants are trying to come to the United States.

One area of progress under Trump has been in hiring judges. After Sessions streamlined vetting procedures, the number of judges in 65 courts nationwide has increased to 424 as of April from about 290 in September 2016. With more judges, more cases are being resolved. Between last October and May, the courts completed more cases than they did in each of the last three full years under Obama, said Kathryn Mattingly, a Justice Department spokeswoman.

While the time to finish cases grew substantially under Obama, under the Trump administration it continued to grow by about 40 days, or 5 percent, reaching its decade peak even as administration officials said they were making cases go faster. And the Marshall Project analysis of case data shows that the influx of migrants does not come close to accounting for the expanding backlog.

"This is largely a problem they created for themselves," said Robert

Vinikoor, who served as an immigration judge in Chicago for more than 30 years before retiring in 2017, and still practices immigration law there. "They're keeping every case on the docket and the judges' hands are tied. They're getting nothing accomplished."

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Manuel Bravo García, 19, fled to the United States after he was shot by gunmen in his home village in Colima, Mexico. Because of a policy restricting asylum, he will have a difficult battle in the Denver immigration court to win his case. | Ryan David Brown for The Marshall Project

**Manuel Bravo García was walking through his home village** in Colima, Mexico one day in 2017 when two strangers approached on a motorcycle and beckoned. Sensing danger, he tried to run. They opened fire, one bullet shattering his knee, the other piercing his stomach.

He spent two weeks in the hospital for multiple surgeries, with a policeman by his bed in case the shooters returned. Hobbled on crutches, he flew to Tijuana and limped across the bridge to the United States border station, pleading for asylum. Customs officers cut off his leg cast to make sure he wasn't carrying narcotics.

Sent to a shelter for unaccompanied minors, Manuel, who was 17 at the time, was treated for his wounds and his nightmares. He was reunited with a half-sister, Ana Bravo, a legal resident in Denver who has lived in the United States for 17 years. Three months after he left Mexico, he learned that drug traffickers in Colima had murdered his mother, shooting her in the head. She was added to a family tally that included three cousins slain by drug gunmen. His mother was a drug user, Ana Bravo said, and likely had debts she failed to pay.

At one time, Manuel Bravo would have had a straightforward asylum claim, based on his fear of return to Mexico, which might have been decided

relatively quickly.

But in a major [decision](#) in 2018, Sessions ruled that the asylum statute did not apply to victims of “private criminal activity.” In a clear reference to asylum-seekers from Mexico and Central America, the attorney general specifically cited victims of gang and domestic violence as generally ineligible for protection.

So Manuel, now 19, has to fight a difficult, elaborate legal battle to avoid deportation, his lawyer, Joshua Mitson, said. A hearing is set for March 2021, the earliest date the judge had available.

“Every time I think about Mexico,” Manuel said, “my stomach hurts.”

Judges said Sessions’ asylum decision did not in fact help them speed up their work on asylum claims from migrants in the current surge.

“These suddenly turned into very lengthy, complicated hearings,” said Jeffrey Chase, who served as an immigration judge and legal adviser to the appeals court for more than 20 years, before he retired in 2017. “People are not giving up. And if they lose they are taking an appeal.”

In a further twist, in December 2018 a federal judge [struck down](#) part of Sessions’ decision, ruling that it did not apply to interviews migrants must undergo, often at the border, to initiate an asylum claim. As a result, the vast majority of migrants who are fleeing violence in Central America are still passing the first test for asylum. Their cases continue to flood into the courts, even though it is [less likely](#) they will ultimately win.

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Alexa Espinoza, 15, found herself in deportation proceedings in Denver because of a new policy to issue an immigration arrest warrant for any undocumented immigrant who applies for a legal visa--in this case her father--and is denied. | Ryan David Brown for The Marshall Project



**Another Trump administration policy to increase deportations** is adding cases like Alexa Espinoza's to court dockets.

Alexa was barely a toddler when her parents brought her illegally across the border from Mexico, and she has no memory of the country. Growing up near Denver, she was chosen more than once for a leadership honor awarded in an assembly before her whole school. She is taking pre-med classes in high school.

Now 15, she would have been eligible for a legal work permit under a program known as DACA, which protects young undocumented immigrants known as Dreamers. But Trump canceled the program, and federal court decisions have allowed renewals but no new applicants.

Instead, Alexa has been summoned to court and faces the possibility of deportation.

Under the [new policy](#), issued in June 2018 by the agency in the Department of Homeland Security that administers visas, any undocumented immigrant who applies for a visa and is denied will be issued a warrant to appear in immigration court for deportation. In the past, the visa agency did not routinely initiate such deportations.

Alexa's grandfather, a longtime legal resident of the United States, applied years ago for a green card for her father, Arturo. Alexa and a sister, also a teenager, were included in the application. But in September 2017, when they went for their final interviews, the visa officer stunned Arturo by informing him he had a deportation order from an illegal crossing many years earlier. The officer denied Arturo's green card and issued a warrant for him — and the two girls. Three more cases on the Denver docket.

"It's scary," Alexa said. "Me and my sister, we don't know anything from

over there. I'll be like leaving my school here and my friends, my home, to start something over there I don't want."

Her lawyer, Andrew Bramante, said that before the new policy, the visa officer could have separated the two daughters from their father's case and spared them the years-long court ordeal and real threat of expulsion. "An officer would have just said, 'Get out of here, you can go,'" Bramante said.

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