

# IN CONTINUING THE GOVERNMENT SHUTDOWN, TRUMP IS BREAKING SEVERAL PROMISES ON IMMIGRATION

The administration is failing to meet guarantees on the immigration court backlog and deportations.

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It appears Trump is jeopardizing his administration's deportation machine in the name of a wall that critics say will do little to keep undocumented immigrants out of the country. (Photo: Chris Kleponis-Pool/Getty Images)

With the government shutdown continuing into its third week, there's been a good deal of focus on the effects that the chaos in Washington, D.C., is having on national parks and the economy. Yet the effects also extend into the immigration courts, where a growing backlog has already crippled an overburdened system.

As far as Donald Trump is concerned, that fact could lead to unease among his base: The shutdown will effectively slow the mass deportations that he has made a focal point of his presidency.

About 75 percent of about 400 immigration judges nationwide have been furloughed without pay since late last month, says Ashley Tabaddor, president of the National Association of Immigration Judges.

"For every day we are closed, there are thousands of individuals whose cases will not be heard," Tabaddor says. Those cases are booked years in advance. A fourth of judges are currently required by the government to hear the cases for detained immigration court defendants. Deportations in those cases continue, but the vast majority of defendants are not in detention, and their cases will be postponed indefinitely.

That means that Trump's apparent efforts to push an unprecedented number of deportations through the courts are poised to come to a grinding halt. "The non-detained docket has stopped so those who are in removal proceedings but not detained are not having their hearings," says Jean Reisz, a University of Southern California law professor and supervising attorney at the university's immigration clinic.

It appears Trump is jeopardizing his administration's deportation machine in the name of a wall that critics say will do little to keep undocumented immigrants out of the country. Recent findings by the Center for Migration Studies research group shows that a vast majority of recent undocumented arrivals do not travel to the United States over the southern border, but rather are visa overstays. "Ironically, the administration's shutdown in pursuit of a wall has prevented it from deporting unlawful immigrants," Reisz says.

The results may outlast a shutdown with no foreseeable end in sight. When judges miss cases, the result isn't so simple as a rain check or other such clerical rejiggering, Tabaddor says. "They are not automatically rescheduled," she says. "When judges go back, [they] don't hear cases that we missed, [they] hear what was scheduled years ago." The missed cases will have to be rescheduled, likely years after judges on cases for non-detained plaintiffs go back to work. Those judges are contending with a backlog of well over 800,000 cases.

Just after Trump took office in 2017, his administration told the press it would slash the immigration court backlog in half by the end of the president's first term in office. What has followed that promise have been a parade of measures that court analysts say have actually funded that backlog, working against pledges to slash it and promises to Trump's base to ramp up deportations. The number of immigration court cases has grown exponentially since Trump took office. The number of immigration court cases at the end of November was nearly 50 percent larger than at the end of January of 2017, when Trump took office, according to data compiled by the Syracuse University non-profit data research center, Transactional Records Access Clearinghouse.

Among the policy measures that analysts say have exacerbated the backlog is the administration's imposition of quotas on immigration court judges, demanding that they close 700 cases a year in order to receive a favorable review, but opponents have observed that, when proceedings are rushed, it drives up the likelihood of appeal, essentially funneling more cases back into the system. Last year, former Attorney General Jeff Sessions also ended the use of administrative closures, a practice in which judges can choose not to rule on a case and instead allow eligible plaintiffs to petition the appropriate authorities for lawful immigration status.

Administrative closures once allowed judges to prioritize their caseload and facilitate proceedings. The Trump administration has hamstrung the judges' ability to hear important cases first, analysts say. "All immigrants are being detained and this is putting more strain on detention facilities and immigration courts without any consideration of resources or whether any real danger is posed," Reisz says.

Other Trump administration policies have also served to slow proceedings by simply funneling unprecedented numbers of immigrants into the court system. "In addition, the termination of DACA [Deferred Action for Childhood Arrivals] and certain TPS [Temporary Protected Statuses]—although there are some judicial stays currently in place—creates a new population of people who are going to be placed into removal proceedings and added to the backlog," Reisz says.

It remains unclear whether the administration is committed to fulfilling its promises both on the backlog and immigration more broadly.

"We can't speak to whether the chaos emanating from the White House is intentional or not, but what we can say confidently is that the Trump administration has made no moves to improve the asylum-seeking process in any way," says Jonathan Ryan, the executive director of RAICES immigrant rights group.

Instead, the Trump administration appears to be guided by other principles. "The White House's plan seems to be to make immigration as painful as possible to deter anyone from making the trek to our country. All these policies are meant to make hell for those already escaping it. None make any inroads into treating immigrants with respect or reforming our immigration system," Ryan adds.

Meanwhile, American immigration judges and court staff are struggling too. Many judges and other court staff have inquired to Tabaddor about what they must do to apply for unemployment. Particularly for support staff, she says the unpaid furlough is financially catastrophic.

Tabaddor reiterated calls to remove the immigration courts from the Department of Justice, creating an independent agency that is not beholden to individual administrations' policy considerations.

"As long as the Justice Department remains the agency the court is accountable to, we're going to see this continued dysfunctionality and the backlog grow," she says.

**BY MASSOUD HAYOUN**

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