

# The American Prospect

## Jeff Sessions Is Just Getting Started on Deporting More Immigrants

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He's speeding up their hearings, and if that leads to expelling exemplary immigrants on whose paperwork the government is sitting—well, that's tough.



AP Photo/Carolyn Kaster

Attorney General Jeff Sessions speaks during a news conference at the Justice Department

**T**his could be Jeff Sessions's year.

Not that he wasn't busy in 2017, a year marked by his rescinding Deferred Action for Childhood Arrivals (DACA), attacking sanctuary cities, reinstating debtors' prisons, and cracking down on recreational marijuana. Indeed, over these last few months Sessions appears to have been working with the single-minded focus of a man who reportedly came within inches of losing his job in July after falling into President Trump's bad graces for recusing himself from the Mueller probe.

But 2018 will provide him his best chance yet at Trumpian redemption.

Sessions has long railed against the United States' "broken" asylum system and the massive backlog of immigration court cases, which has forced immigrants to suffer unprecedented wait times and has put a significant strain on court resources. But the attorney general's appetite for reform has now grown beyond pushing for more judges and a bigger budget, both largely bipartisan solutions. The past few months have seen Sessions begin to attempt to assert his influence over the work of immigration courts (which, unlike other federal courts, are part of the Executive Branch) and on diminishing the legal protections commonly used by hundreds of thousands of immigrants—developments that have alarmed immigration judges, attorneys, and immigrant advocacy groups alike.

Earlier this month, Sessions announced that he would be reviewing a decades-old practice used by immigration judges and the Justice Department's Board of Immigration Appeals to shelve cases without making a final ruling. Described by judges as a procedural tool for prioritizing cases and organizing their case dockets, the practice—"administrative closure"—also provides immigrants a temporary reprieve from deportation while their cases remain in removal proceedings. Critics argue that administrative closure, which became far more frequent in the later years of the Obama administration, creates a quasi-legal status for immigrants who might otherwise be deported.

There are currently around 350,000 administratively closed cases, according to according to the American Bar Association's *ABA Journal*.

Should Sessions decide to eliminate administrative closures—a decision many observers describe as imminent—those cases could be thrown into flux. The move would be in line with previous statements from various figures in the Trump administration and executive orders signed by the president himself—namely, that no immigrant is safe from deportation; no population is off the table.

Beyond creating chaos for hundreds of thousands of immigrants, the premature recalendaring of cases could also lead to erroneous deportations. For instance, in the case of unaccompanied minors applying for Special Immigrant Juvenile Status, a humanitarian protection granted by Citizenship and Immigration Services, an untimely return to court could be the difference between remaining or being

ordered to leave the country. Even if a minor has already been approved by a state judge to apply for a green card, there is currently a **two-year visa backlog** for special visa applicants from Ecuador, Guatemala, and Honduras and more than a one-year backlog for those from Mexico. Administrative closures allow these children to avoid deportation while they wait in line for a visa to become available.

But if judges can no longer close a case, they will either have to grant a string of continuances, a time-consuming act that requires all parties (the judge, defendant, and government attorney) to show up to court repeatedly, or simply issue an order of removal—even if the immigrant has a winning application sitting on a desk in Citizenship and Immigration Services. Under the Trump administration, Immigrations and Customs Enforcement has been actively filing to recalendar cases of non-criminals that had been administratively closed for months, **including those of children whose applications had already been approved**. Now Sessions, who as a senator zealously opposed immigration reforms that would benefit undocumented immigrants, could recalendar them all.

Unshelving hundreds of thousands of cases would also further bog down an already towering backlog of approximately 650,000 immigration court cases, according to Syracuse University's Transactional Records Access Clearinghouse—a policy result that at first seems antithetical to Sessions's rhetoric about cutting the backlog and raising efficiency. That is unless, as some suggest, the backlog and efficiency were never really his primary concerns to begin with.

“When [Sessions] says he wants to decrease the court backlog and hire more immigration judges, what he really means is he wants more deportation orders, whatever the cost,” says Heidi Altman, director of policy at the National Immigrant Justice Center.

Removing a judge's ability to close a case would be the second in a one-two punch aimed at knocking down avenues of relief for cases that remain in the system for long periods of time.

Sessions's decision to review administrative closure surprised few who had been following his rhetoric over the past few weeks. In a **December memo** detailing plans to slash the backlog, the attorney general said that he anticipated “clarifying certain legal matters in the near future that will remove recurring impediments to

judicial economy and the timely administration of justice.” The Justice Department had already largely done away with allowing prosecutors to join in motions to administratively close a case that didn’t fall within its enforcement priorities. Removing a judge’s ability to close a case would be the second in a one-two punch aimed at knocking down avenues of relief for cases that remain in the system for long periods of time.

And it’s unlikely that Sessions will stop there. As attorney general, he is free to review legal precedents for lower immigration courts. In changing precedential rulings, he could do away with a multitude of other legal lifelines essential to immigrants and their attorneys.

In October, Sessions called on Congress to tighten the rules on asylum admittance, claiming that the system was filled with “rampant fraud and abuse” and was “being gamed” by immigrants and their attorneys. Given that Congress has been slow to form a political consensus on even the most basic immigration issues, Sessions may feel inclined to go at it on his own.

A logical starting point for Sessions could be narrowing the eligibility standards for obtaining asylum. To qualify for asylum, immigrants must prove that they will be persecuted in their country because of their religion, nationality, ethnicity, political beliefs, or social group. That last category, social group, is the most nebulous of the bunch and therefore the most subject to new interpretation. The accepted definition of “social group” has expanded under previous administrations to include homosexuals persecuted by their governments, female victims of domestic assault and sexual abuse who are unable to leave their marriages, and even those who can prove their family ties are a central reason for persecution. Sessions could change the precedent so as to tighten standards or possibly even revoke the status of some populations as protected social groups.

Another possibility is that Sessions will try to stop immigrants in the middle of adjusting their legal status from re-entering the country entirely. With a few exceptions, any undocumented immigrant fortunate enough to have a pathway to legal residence through a spouse or family member must first leave the country before being awarded a visa. However, according to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, immigrants who entered the

U.S. illegally or overstayed their visa and remained for more than a year are barred from re-entering for 10 years. In 2012, the Board of Immigration Appeals ruled that these unlawful presence bars do not apply to an immigrant who leaves the U.S. with permission from the government to depart and return (called advance parole). Advance parole, unlike other waivers, guarantees that immigrants will be able to re-enter the country when they seek to—rather than wait a decade.

Sessions could overturn that decision, forcing many undocumented immigrants who don't qualify for other waivers to choose between being stranded for years in their countries of origin or remaining illegally in the U.S. Such a decision would have drastic implications for those Dreamers who have already lost their protected status and the large number who will begin to lose their status in March unless Congress acts. The same would go for hundreds of thousands of recipients of Temporary Protected Status, whose status has been rescinded and will look to change their legal status before they become subject to deportation in a few years.

Like Trump's travel ban and rescinding of DACA, Sessions's ability to move down these paths will likely depend on how much leeway the federal courts are willing to grant him. Historically, the courts have shown considerable deference to the attorney general and the Justice Department's Board of Immigration Appeals when it comes to interpreting immigration laws; they've also been issuing decisions on particular social groups for decades. That means that, while it may prove difficult for Sessions to unilaterally change well-established interpretations of the law, such as that LGBT people are a protected social group, there are plenty of cases he could pursue without significant legal challenge.

“Administrative closure makes a good starting point for Sessions, because the courts likely won't be able stop it,” says Paul Schmidt, a former immigration judge and former head of the Board of Immigration Appeals. “Administrative closure was a tool created by the Justice Department and therefore it can be dismantled by the Justice Department.”

“After all, the bad thing about the immigration courts is that they belong to the attorney general,” Schmidt adds.

Unlike other federal judges, immigration judges are technically considered Justice Department employees. This unique status as a judicial wing of the executive

branch has left them open to threats of politicization. In October, it was revealed that the White House was planning on adding metrics on the duration and quantity of cases adjudicated by immigration judges to their performance reviews, effectively creating decision quotas. A spokeswoman for the National Association of Immigration Judges described the proposal as a worrying encroachment on judicial independence. “Immigration judge morale is at an all time low,” says Dana Marks, former president of the association and a judge for more than 30 years. Other federal judges are not subject to any such performance evaluations.

It’s no coincidence that a review of administrative closure was announced just a few months after it was discovered that the Justice Department was considering imposing quotas on judges. Streamlining deportations has proven an elusive goal, even for Sessions: Deportations in 2017 were down from the previous year, according to DHS numbers. Meanwhile, arrests surged—up 42 percent from the same period in 2016. Flooding already overwhelmed immigration courts with even more cases would certainly cause chaos in the short-term, but wouldn’t necessarily lead to deportations by itself. If an end to administrative closures is paired with decision quotas on immigration judges, however, a surge in deportations seems inevitable.

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