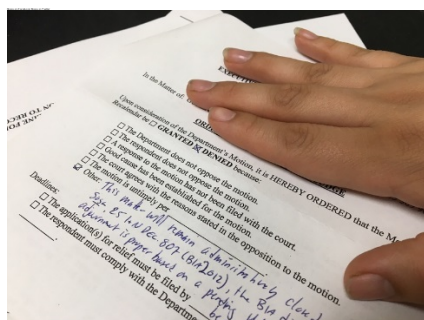


Trump Administration Reviewing Thousands of Deportation Cases Once Put on Pause

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An immigration judge denied a request by Immigration and Customs Enforcement to put this woman's deportation case back on the docket simply because she was waiting a long time for a special U visa.

(Beth Fertig / WNYC)

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Last year, a young mother who came to the U.S. illegally from Mexico as a child thought she'd essentially won her fight against deportation.

Twenty-four year old Jenny isn't eligible for DACA, or Deferred Action for Childhood Arrivals. She was in the midst of immigration court proceedings when she told her attorney that she was a victim of domestic violence, which is why WNYC agreed not to use her real name.

In May, Jenny reported her boyfriend to police for allegedly beating and trying to choke her. That action suddenly changed the course of her immigration case.

Jenny was able to apply for what's called [a U visa](#) that would allow her to stay in the U.S. It's for immigrant victims of crime who cooperate with law enforcement.

The waiting list for a U visa is about three years. But because Jenny met the criteria, and got the Brooklyn District Attorney's office to sign off on her documents, the immigration judge agreed to put her cause on hold. The legal term for this is administrative closure. The government would no longer seek to deport her while she waited for her special visa.

But a month later, Immigration and Customs Enforcement (ICE) asked the same judge to recalendar Jenny's case and put it back on the docket — meaning she'd have to fight against deportation all over again.

The reason? ICE wrote that Jenny's U visa was "speculative" and "not available within a reasonable period of time." The agency said three years was too long to wait — even though they're controlled by another governmental agency, U.S. Citizenship and Immigration Services (both are within the Department of Homeland Security). ICE said she could wait for her U visa while in Mexico.

The agency also noted that Jenny had been convicted of petit larceny when she was 18. Though it's not considered a crime that could lead to an immigrant's removal, it brought her to ICE's attention a few years ago, and her unlawful presence in the U.S. triggered the deportation proceedings.

For Jenny, the about face was extremely upsetting after suffering domestic abuse and moving into a women's shelter. "I seek help and I'm still kind of being, you know, bullied," she said.

Her attorney, Kendal Nystedt of the immigrant rights group [Make the Road New York](#), said ICE seemed to mischaracterize immigration law and said its arguments "were also insulting given the humanity of my client."

The judge apparently agreed. Late last year, in a one page memo, he denied the government's request and let Jenny remain in the U.S. But data obtained by WNYC shows that Jenny wasn't the only immigrant who thought they could stay, only to have the government give their case a second look.

In Fiscal Year 2017, ICE asked to recalendar almost 9400 cases that were administratively closed, or put on pause. That's an increase of almost 74 percent from the year before President Trump took office. In response, it appears immigration judges may be applying more scrutiny to the government's requests. They granted 85 percent of those motions to put the cases back on their dockets in 2017, compared to 96 percent in 2016.

When asked why the government is revisiting more cases, ICE spokeswoman Jennifer Elzea said the agency generally reviews cases that were administratively closed "to see if the basis for prosecutorial discretion is still appropriate."

But it's clear this legal strategy also lets the Trump administration try to deport more immigrants. Former immigration judge Andrew Arthur said there's a good reason. "Under the Obama Administration, administrative closure was treated as a form of amnesty," he explained.

Arthur is a fellow with the [Center for Immigration Studies](#), a think tank that supports more restrictive immigration policies. Without commenting on Jenny's situation he said

some cases that were administratively closed involved immigrants who may never qualify for whatever benefit they thought they were likely to receive. But he said the previous administration didn't act because there were "not deemed a priority for removal."

In other words, the Obama administration had made criminals the top priority for removal, letting too many others remain.



Retired immigration judge Paul Wickham Schmidt
Beth Fertig/WNYC

Another former immigration judge said that Obama era policy made sense, however. Paul Wickham Schmidt granted administrative closures when he worked in the Arlington, Virginia court.

"An example of a type of case that gets closed quite a bit are cases of individuals who have relatives petitioning for them. And there's a big backlog of petitions," Schmidt explained. "So rather than continuing the case time after time, sometimes for years, judges were saying 'look I'm going to take this case off the docket.'"

He said this management strategy was necessary. The immigration courts have a backlog of 670,000 thousand pending cases. "You're not even going to complete 670,000 cases probably within my lifetime. You've got to decide which cases really belong at the front of the line and which cases you're not going to prioritize," he said. "Wasting time in immigration court just doesn't make sense."

Despite concerns about further burdening an immigration court system that's already bursting at the seams, Attorney General Jeff Sessions is considering a much more dramatic step than simply seeking to recalendar the 9400 cases that were reviewed last year. He's [looking into recalendar all cases](#) that were administratively closed - and there are estimates there could be 350,000 of them.

<https://www.wnyc.org/story/trump-administration-reviewing-thousands-deportation-cases-once-put-pause/>