

Breaking the Cycle of Dysfunction at the U.S. Immigration Courts

NOVEMBER 2025

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Executive Summary

With 3.8 million deportation cases pending, the U.S. immigration courts are in crisis, and both administrative and legislative reforms are urgently needed to transform the system. The Executive Office for Immigration Review (EOIR), the Justice Department agency that houses the immigration courts and their appellate body, the Board of Immigration Appeals (BIA), has tried to modernize and speed up case completions. Yet in recent years, the filing of millions of new removal (deportation) cases and asylum applications from recent border arrivals have layered new pressure upon long-standing challenges and overwhelmed the courts. Consequently, it takes an average of four years for noncitizens to receive an asylum hearing, and a final decision can take much longer with appeals. These delays undermine the goals of the U.S. asylum and immigration enforcement systems: to determine who is eligible to stay in the United States, and to order those who are ineligible to depart or be removed in a timely manner.

To understand how the courts have reached this point, this policy brief provides an overview of former President Joe Biden's policies at the immigration courts as well as the initial actions of President Donald Trump's second administration. Since retaking office, Trump has announced a number of new policies restricting access to asylum and rescinding other

protections from deportation, while speeding the adjudication of removal cases. But his mass deportation campaign has also led to the filing of many new removal cases as immigration officers seek to arrest thousands of noncitizens per day.

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During the Biden administration, as well as the first Trump administration, attempts at reforming the immigration courts relied principally on executive actions—policies that are vulnerable to being blocked by litigation or reversed by subsequent administrations. For many years, Congress also has not increased funding at a level commensurate with record high caseloads. The *One Big Beautiful Bill Act*, which became law in July 2025, provided additional funds for EOIR to hire immigration judges, but it capped their ranks at 800, far below the 1,300 judges some analysts estimate would be needed to work through the backlog over the course of a decade. Since January 2025, at least 139 immigration judges have been fired, transferred, or taken early retirement, which could delay cases further. The

Trump administration has announced plans to detail as many as 600 military lawyers to serve six-month terms as temporary immigration judges, but concerns have been raised about the legality of the plan.

To transform the nation's asylum and immigration court systems, Congress and the executive branch must work together to significantly increase funding for adjudications, commensurate with the historic spending on immigration enforcement included in the *One Big Beautiful Bill Act*. Furthermore, to allow immigration judges to focus on high-priority cases, asylum officers at U.S. Citizenship and Immigration Services (USCIS), who currently handle asylum cases filed within the country, should also decide asylum cases filed at the border, as was authorized in a 2022 regulation known as the asylum officer rule. To address the backlog while also quickly adjudicating new cases, the Department of Homeland Security (DHS) and the immigration courts should work together to triage removal cases and prioritize the adjudication of those involving national security and public safety threats—a much smaller slice of the overall caseload.

Important steps can also be taken to improve individual case processing. DHS and the Justice Department should improve their use of technology—increasing the availability of case information online and sending court communications to noncitizens electronically (in addition to on paper)—in order to maximize court appearances and the efficiency of court processes overall. Finally, research has shown, and immigration judges agree, that legal advice and representation make removal proceedings more efficient and more fair. Therefore, EOIR should seek to leverage its historically strong working relationships with the private bar, nonprofit legal service providers, and other community stakeholders to increase the availability of legal advice and/or representation. Congress, states, localities, and philanthropies should also allocate funds to boost representation as a means of improving system efficiency.

1 Introduction

The immigration courts have faced high caseloads for decades, but in the last five years, the growing backlog has escalated into a crisis that affects the U.S. immigration system writ large. The number of removal (deportation) cases pending at the immigration courts has more than doubled since fiscal year (FY) 2021, when the count stood at 1,671,000, rising to 3,783,000 cases pending as of July 2025, the most recent available data.¹ The backlog has undermined key functions of the U.S. immigration system—immigration enforcement and humanitarian protection—since delays mean that those in need of protection do not receive it, and those who are ineligible are not ordered removed in a timely manner. Both administrative and legislative reforms are urgently needed to reverse this trend and ensure that the courts can perform their critical functions.

The backlog has undermined key functions of the U.S. immigration system—immigration enforcement and humanitarian protection.

Unlike federal courts, which are independent, the immigration courts and their appellate body, the Board of Immigration Appeals (BIA), are housed within the Executive Office for Immigration Review (EOIR), which is overseen by the Department of Justice. As of June 2025, there were 685 immigration judges across 75 immigration courts and 17 appellate judges serving at the BIA.² The removal cases the judges handle are considered administrative proceedings, not criminal ones; as such, noncitizens have the right to an attorney, but the government is not required to provide representation for those who cannot afford it.

This policy brief takes stock of developments in recent years that, layered upon long-standing challenges, have brought the immigration courts to a crisis point. It begins with an overview of factors that led to the rapid growth of the immigration courts' backlog during former President Joe Biden's term, including record high border arrivals and asylum claims, and Biden administration efforts to increase case completions, with a focus on the use of prosecutorial discretion for closing low-priority cases. It then examines policies advanced thus far in President Donald Trump's second administration that affect the immigration courts, including the arrest of noncitizens at the courts and the denial of asylum applications without hearings. Finally, the brief highlights administrative and legislative actions needed to modernize EOIR, make proceedings fairer and more efficient, and reset the system so that judges can focus on high-priority cases—those affecting national security and public safety.

2 Record Border Arrivals Overwhelm the Courts under Biden

Major quality and quantity issues have plagued the immigration courts for decades,³ but especially after the COVID-19 pandemic, record high arrivals of asylum seekers and other migrants at the U.S.-Mexico border ballooned the backlog of pending removal cases. In FY 2022, for example, the Department of

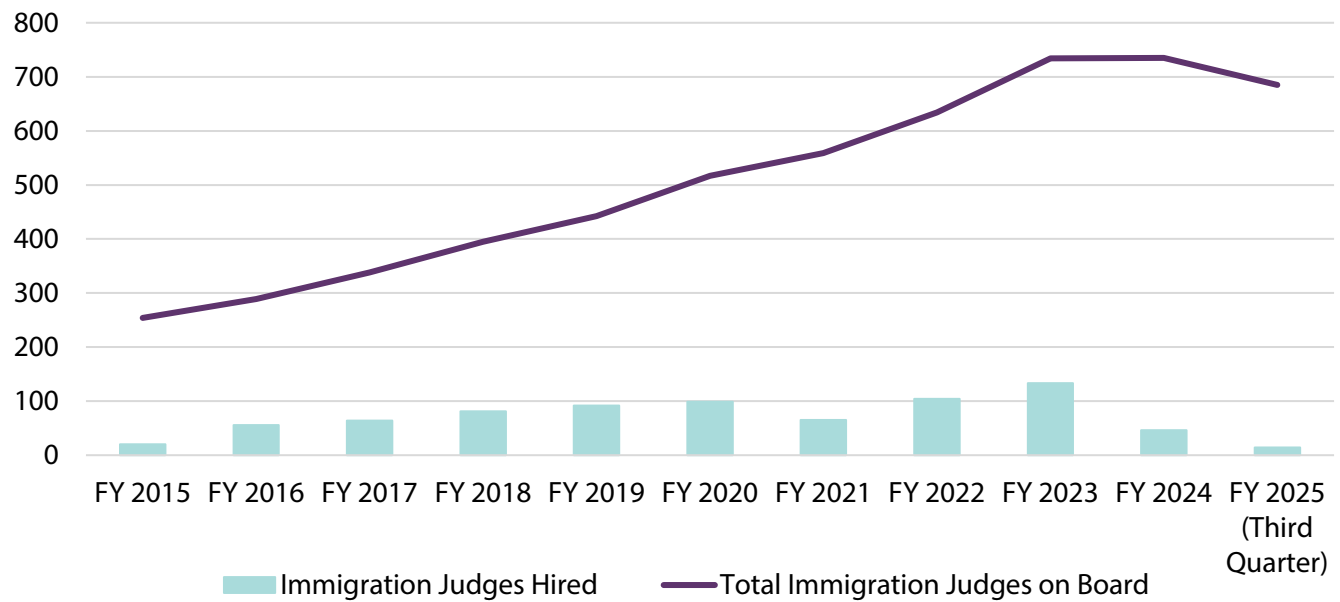
Homeland Security (DHS) encountered a record 1.5 million unique individuals at the southwest border, and 246,000 attempted to cross multiple times.⁴ With border processing facilities overwhelmed, many were released into the United States with notices to appear (NTAs) at an immigration court for removal proceedings, often with initial hearings scheduled years later. In FY 2024, the courts received a record 1.8 million new deportation cases.⁵

In response, Biden appointed enough immigration judges to reach the maximum number allowed by Congress, 735, and increased case completions to record levels by closing low-priority cases and issuing removal orders to noncitizens who missed court hearings (*in absentia* removal orders).⁶ In FY 2024, immigration judges completed the most cases ever in one year: 704,000.⁷ But DHS continued to file more cases than immigration judges could keep up with, causing the backlog to more than double from FY 2021 to FY 2024.

The Biden administration sought more funding for the immigration courts from Congress. But while EOIR received slight increases, lawmakers continued the long-standing practice of funding the immigration enforcement agencies, Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE), at much higher rates than the immigration courts. For the past 20 years, EOIR's budget has averaged about 2 percent of the total combined budget for CBP and ICE (see Figure 2). And in FY 2024, EOIR's budget was cut by \$16 million.

FIGURE 1

Number of Immigration Judges Hired Each Fiscal Year (FY) and Total Immigration Judges on Board at the Executive Office for Immigration Review (EOIR), FY 2015–25*

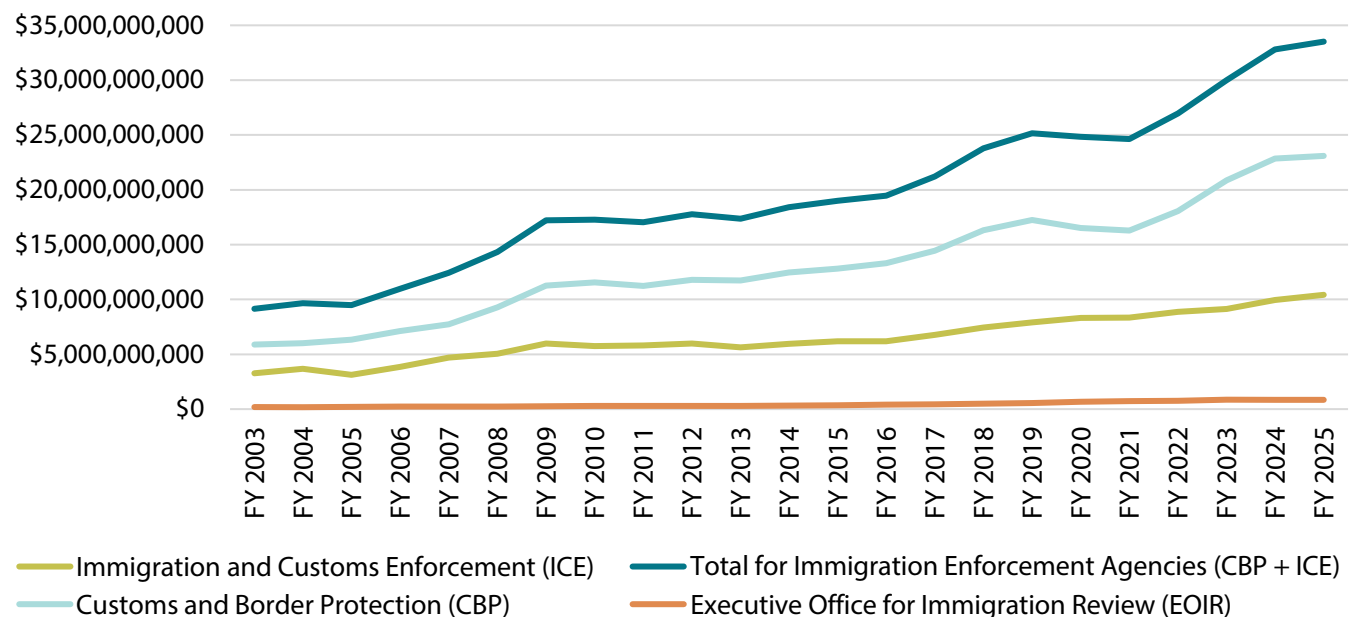


* For FY 2015 through FY 2024, this figure shows data through the end of the fiscal year. For FY 2025, it shows counts as of the end of the fiscal year's third quarter, the latest period for which data were available.

Source: EOIR, "Executive Office for Immigration Review Adjudication Statistics: Immigration Judge (IJ) Hiring" (fact sheet, July 2025).

FIGURE 2

Budgets Allocated for Immigration Enforcement Agencies Compared to EOIR, Fiscal Years 2003–25



Note: The EOIR budget was \$188 million in FY 2003, peaked at \$860 million in FY 2023, and has been \$844 million each fiscal year since then. Sources: Donald Kerwin and Evin Millet, "The US Immigration Courts, Dumping Ground for the Nation's Systemic Immigration Failures: The Causes, Composition, and Politically Difficult Solutions to the Court Backlog," *Journal on Migration and Human Security* 11, no. 2 (2023): 195; U.S. Department of Homeland Security (DHS), *U.S. Immigration and Customs Enforcement Budget Overview: Fiscal Year 2026 Congressional Justification* (Washington, DC: DHS, 2025); DHS, *U.S. Customs and Border Protection Budget Overview: Fiscal Year 2026 Congressional Justification* (Washington, DC: DHS, 2025); U.S. Department of Justice (DOJ), *Fiscal Year 2026 Budget and Performance Summary* (Washington, DC: DOJ, 2025).

A. *More Asylum Applications Than Ever Before*

The filing of record high numbers of asylum applications posed particularly acute challenges for immigration officials during the Biden administration. Historically, asylum officers at U.S. Citizenship and Immigration Services (USCIS) have heard asylum claims from noncitizens already in the United States on visas or other lawful statuses (referred to as affirmative asylum claims), while immigration judges have heard the cases of those arriving at a U.S. border without authorization and those placed in removal proceedings after being apprehended inside the country (defensive asylum applications). Both systems have been overwhelmed. During the Biden administration, the average wait time for a noncitizen to have an asylum hearing in immigration court grew to four years.⁸

Asylum claims are more complex than other immigration cases, both procedurally and substantively, and therefore take more resources to adjudicate. In addition, the individualized assessments involved in asylum cases and rapidly changing regulations and case precedents mean that asylum cases take much longer to decide than other cases.⁹ On average, removal cases take about two years to complete when they do not involve an asylum claim, while asylum cases can take four years or longer.¹⁰ If cases are appealed, the timeline stretches even further.

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In FY 2024, a record 906,000 asylum applications were filed at the immigration courts, almost 400,000 more than in FY 2023, the year with the next highest

total (510,000 asylum applications).¹¹ For context, from FY 2017 to FY 2020, an average of 182,000 asylum applications were filed per year.¹²

B. *Backlog Mitigation: Asylum Restrictions and Prosecutorial Discretion*

To try to slow border arrivals, the Biden administration sought to restrict access to asylum for recent crossers through a series of rule changes, among other measures such as increased cooperation with Mexico on immigration enforcement.¹³ But high arrival numbers combined with a lack of processing capacity at the border itself meant that many migrants were released into the United States with an NTA for immigration court, where they could file asylum applications.¹⁴ Others were paroled into the United States with instructions to check in at an ICE office to receive an NTA, often with court dates scheduled for years later.¹⁵ Immigrant advocate groups and Republican-led states challenged most of the Biden administration's major immigration policies in federal courts, leading to many of them being blocked or delayed and limiting their potential impact.¹⁶

Another prominent aspect of the Biden administration's strategy for managing the high volume of incoming cases entailed promoting the use of prosecutorial discretion—that is, encouraging federal agencies to focus their limited resources on prosecuting high-priority cases for removal. In September 2021, Secretary of Homeland Security Alejandro Mayorkas instructed ICE attorneys at the Office of the Principal Legal Advisor (OPLA) to focus on removing noncitizens who posed threats to national security or public safety and those who were recent border crossers.¹⁷ Other cases were deprioritized, and OPLA attorneys requested immigration judges dismiss them from immigration court. Especially when noncitizens did not have legal counsel, this

sometimes resulted in those who were eligible for protection not having the opportunity to be heard. When their asylum cases were closed, many also lost their work authorization. In other cases, noncitizens' attorneys sought prosecutorial discretion because clients' applications for asylum or other relief were deemed weak.¹⁸

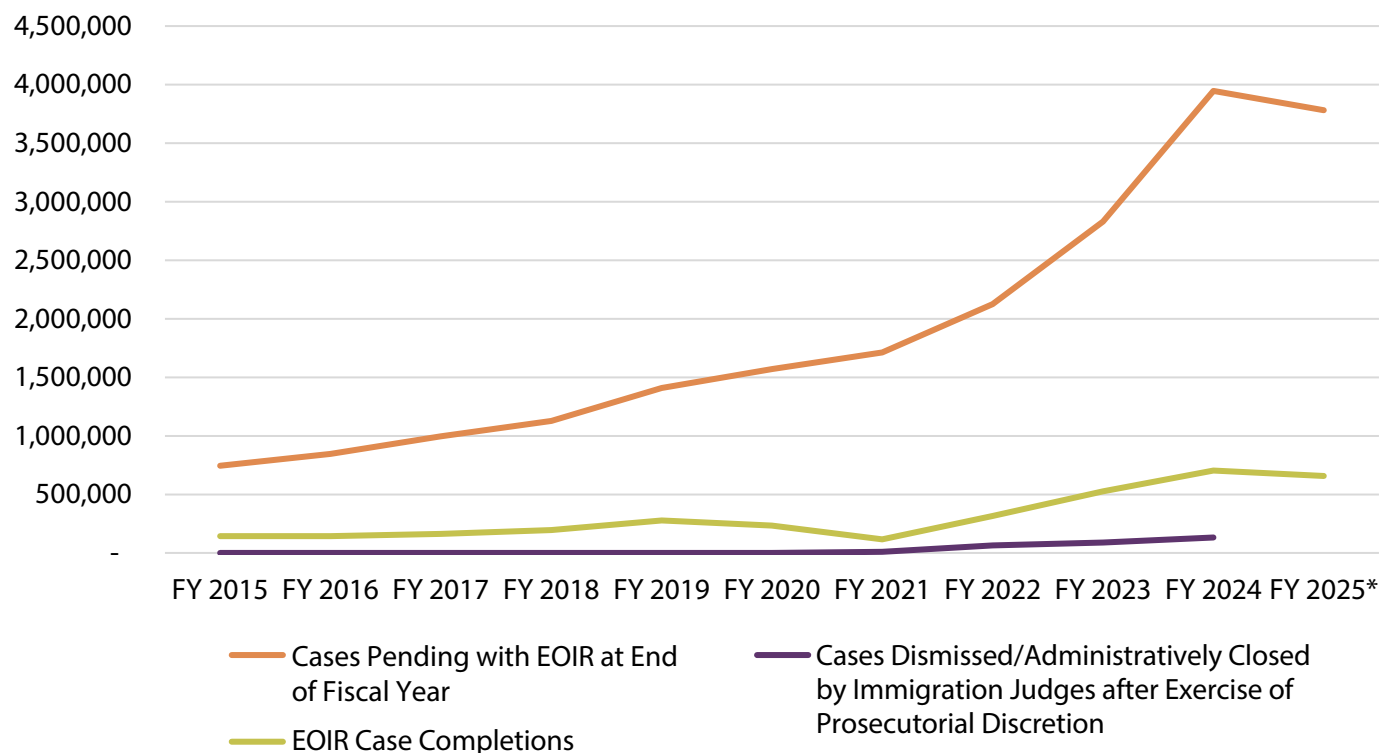
The Biden administration also authorized immigration judges to close or pause cases on their own initiative. Reports indicate that judges regularly used this authority to manage their dockets, prioritizing certain cases and deprioritizing others.¹⁹ These docket management tools had long been used in select cases, though the first Trump administration restrict-

ed their use. Whether a noncitizen's case was closed because OPLA agreed to exercise prosecutorial discretion or because an immigration judge used their docket management authority, noncitizens were left in a state of limbo—they had received neither protection nor a removal order, so they could not be removed from the country, but they also did not have permission to be in the United States or work lawfully.

Moreover, while large numbers of cases were closed, the backlog continued to grow as more new cases were filed than OPLA attorneys and immigration judges could keep up with. From FY 2021 to FY 2024, OPLA attorneys reviewed 962,000 requests for

FIGURE 3

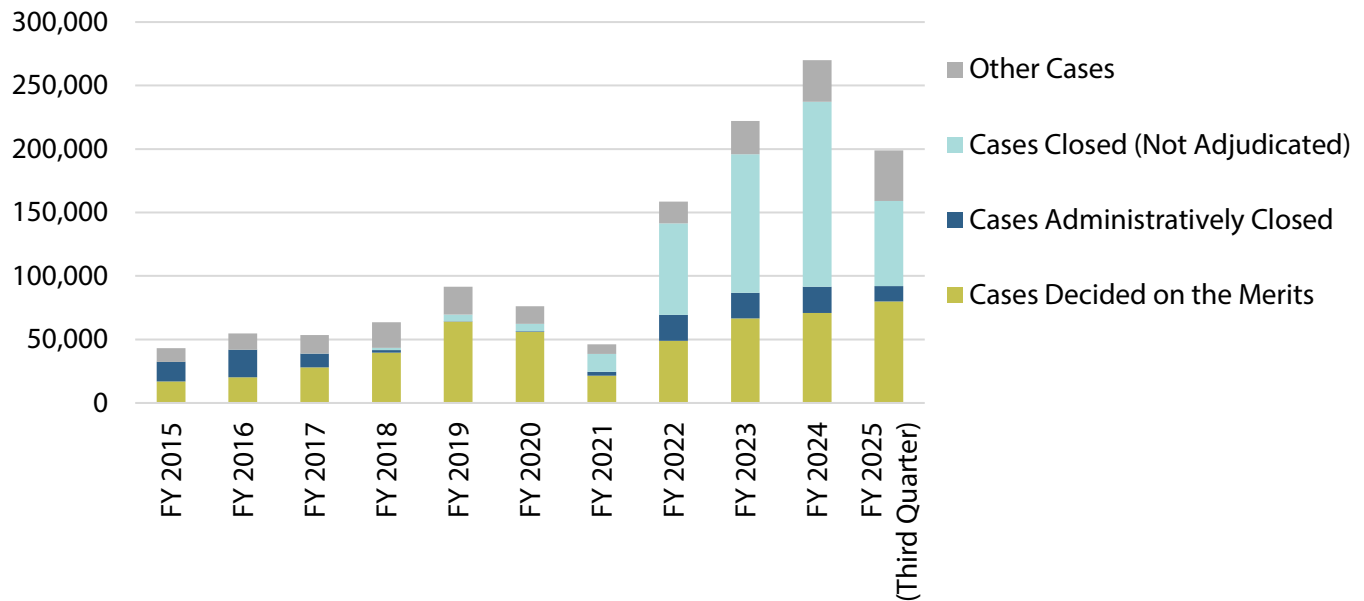
Pending Cases at EOIR and Cases Closed or Paused due to Prosecutorial Discretion, FY 2015–25*



* For FY 2015 through FY 2024, this figure shows the number of pending cases, cases completed, and cases dismissed or administratively closed due to prosecutorial discretion at the end of the fiscal year. For FY 2025, it shows the pending and completed case counts as of the end of July 2025, the latest period for which data were available. Data on cases dismissed or administratively closed due to prosecutorial discretion are not available for FY 2025.

Sources: EOIR, "Executive Office for Immigration Review Adjudication Statistics: Pending Cases, New Cases, and Total Completions" (fact sheet, July 31, 2025); EOIR, "EOIR Adjudication Statistics: Pending Cases, New Cases and Total Completions - Last 12 Months" (fact sheet, August 4, 2025); U.S. Immigration and Customs Enforcement (ICE), *Fiscal Year 2024: ICE Annual Report* (Washington, DC: ICE, 2024); ICE, *Fiscal Year 2023: ICE Annual Report* (Washington, DC: ICE, 2023); ICE, *ICE Annual Report: Fiscal Year 2022* (Washington, DC: ICE, 2022); ICE, *ICE Annual Report: Fiscal Year 2021* (Washington, DC: ICE, 2022).

FIGURE 4

Asylum Cases Completed at EOIR, by Type of Completion, FY 2015–25*

* For FY 2015 through FY 2024, this figure shows data through the end of the fiscal year. For FY 2025, it shows cases completed as of the end of the fiscal year's third quarter, the latest period for which data were available.

Notes: This figure shows initial case completions only, not appeals. The "cases decided on the merits" category in this figure combines EOIR data on grants and denials. "Cases administratively closed" are those paused and taken off judges' dockets; this category does not include cases later placed back on the docket, which occurs when an immigration judge grants a party's motion to re-calendar them. The category "cases closed (not adjudicated)" are those dismissed and taken off judges' dockets permanently. The "other cases" category includes cases that were abandoned, withdrawn, or coded in the EOIR data as "other." It should be noted that when EOIR created the "not adjudicated" category, it deemed its internal "other" category unnecessary; thus, cases shown in this figure as "other" in FY 2020 and later are largely abandoned or withdrawn cases.

Source: EOIR, "Executive Office for Immigration Review Adjudication Statistics: Asylum Decisions" (fact sheet, July 31, 2025).

prosecutorial discretion, according to ICE data,²⁰ and agreed to exercise it in 371,000 cases. As a result of those approvals, immigration judges had closed or paused 295,000 cases as of the end of FY 2024.²¹ In other words, one in three requests for prosecutorial discretion resulted in a removal case being closed or paused at the immigration courts from FY 2021 to FY 2024.

EOIR data indicate that the use of prosecutorial discretion and docket management tools has especially affected asylum claims, given their prevalence among pending removal cases. This resulted in most asylum claims not being decided on the merits (that is, decided based on the facts of the case). Out of the 697,000 asylum cases completed at the immigration courts from FY 2021 to FY 2024, 58 percent (405,000

cases) were either closed after not being adjudicated or they were administratively closed (i.e., paused and taken off judges' dockets).²² Less than half were decided on the merits.

An Unintended Consequence of Prosecutorial Discretion: A Cycle of Dysfunction

Although prosecutorial discretion and docket management policies were meant to help the immigration courts manage high case volumes, they had unintended consequences and resulted in a cycle of dysfunction. When noncitizens' removal cases were closed, they could file asylum applications at USCIS, even if they had previously done so and not been granted asylum the first time.²³

For many noncitizens whose cases were closed by the courts, there was a strong incentive to (re)file an asylum application with USCIS. Asylum applicants are able to apply for work authorization once their case has been pending for 150 days, offering a way to regain work permits lost when their court cases were closed. In addition, having a pending asylum application on file can offer protection against deportation (typically, asylum applications are adjudicated before the issuance of a removal order). However, USCIS had a policy of sending many of these cases back to the immigration courts because in some cases, USCIS had already declined to grant asylum the first time a noncitizen applied.

The resulting cycle of dysfunction saw cases eliminated from the EOIR backlog, temporarily added to the USCIS backlog, and then often sent back to the courts again. Data on the number of these cases received by USCIS and the number sent back to the immigration courts are not available; USCIS received record high numbers of asylum applications from FY 2021 to FY 2024, but it is unclear exactly how many were due to the knock-on effects of prosecutorial discretion.²⁴

While the Biden administration's efforts to address the immigration courts' backlog resulted in the closure of hundreds of thousands of cases, the high number of new cases and asylum applications filed meant that immigration judges continued to be overwhelmed, and the backlog continued to grow. By September 2024, the backlog had reached its highest level ever: 4,204,000 cases.²⁵

3 Trump 2.0: Avoiding the Courts and Speeding up Deportations

Since retaking office, Trump's strategy has been to avoid the immigration courts where possible, and

to expedite the cases that remain. His administration has used the *Alien Enemies Act of 1798* and an administrative process called expedited removal to speed the deportation of certain noncitizens without court hearings.²⁶ However, the Supreme Court has affirmed that noncitizens have a right to due process under the *Alien Enemies Act*, and most of the noncitizens Trump seeks to deport are eligible for a hearing in immigration court.²⁷ Furthermore, many may be eligible for some form of relief from deportation such as asylum, and a record number of claims remain pending adjudication. As of June 2025, 63 percent of cases at the immigration courts included an asylum application (2.4 million cases).²⁸

As DHS increases arrests of noncitizens in the interior of the United States to support Trump's mass deportations campaign, more deportation cases will be added to the backlog and judges will likely struggle to keep up, especially as many judges have been fired or taken buyouts.²⁹ In July, Congress allocated funding for the hiring of about 100 more immigration judges, and the administration announced plans to detail hundreds of military lawyers to serve as temporary immigration judges. However, past studies have indicated that it would take a much more substantial increase in funding and immigration judge hiring to eliminate the backlog over the next decade, absent significant other changes.³⁰

A. *The Alien Enemies Act, Expedited Removal, and Arrests at the Courts*

Among the second Trump administration's approaches to reducing the courts' backlog has been the expansion of expedited removal, a fast administrative process for removing noncitizens who have been in the country for less than two years that does not include a hearing before an immigration judge.³¹ In immigration court, OPLA attorneys were directed to halt the use of prosecutorial discretion

and to instead ask judges to dismiss pending deportation cases so that noncitizens may be immediately placed in expedited removal. Reportedly, immigration judges were instructed to quickly grant these requests.³²

Upon dismissal, or even in cases that judges have not agreed to close, ICE has then arrested noncitizens outside of immigration courtrooms. Reports indicate that this has occurred at courts across the United States,³³ though comprehensive data on the total number of arrests are not available. Several lawsuits have been filed in federal courts challenging the expansion of expedited removal and arrests at immigration courts.³⁴ Federal judges have temporarily blocked the expansion of expedited removal but allowed arrests at courts to go ahead.³⁵

Trump's invocation in March of the *Alien Enemies Act of 1798*, a wartime authority for deporting foreign nationals deemed enemies, also aimed to facilitate swifter deportations—in this case, the removal of about 140 Venezuelans without immigration court hearings. Litigation has halted its use.³⁶

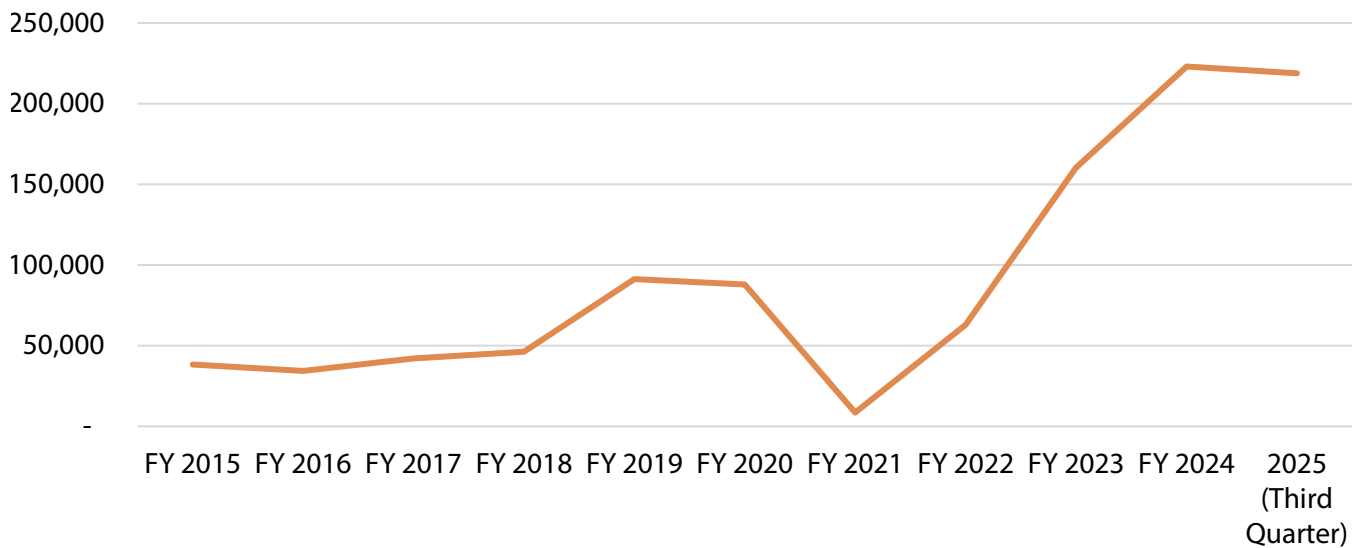
In addition to arresting noncitizens at immigration court hearings and using the *Alien Enemies Act*, the Trump administration has announced a range of policies intended to speed the adjudication of cases that remain pending at EOIR. In 50 policy memoranda issued since January 20, 2025, EOIR leadership has limited the ability of judges to use the docket management tools described in the prior section, and judges have been re-calendar cases that had long been deprioritized and paused. The adminis-

tration has also encouraged noncitizens to leave the United States on their own, with flyers encouraging noncitizens to “self-deport” distributed at the immigration courts and sent to noncitizens and their attorneys. Immigrant advocates have raised concerns that the flyers are misleading because they do not advise that many noncitizens could face a bar on re-entry into the United States if they leave, among other immigration consequences.³⁷

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Arrests at the immigration courts and these other measures have deterred many noncitizens from attending hearings in person or at all, and many have sought to appear at hearings virtually, a practice that the Biden administration expanded during and after the COVID-19 pandemic.³⁸ If noncitizens miss a court hearing, they may be issued a removal order *in absentia*. The immigration courts were already issuing large numbers of these orders in FY 2023 and FY 2024, and the level remained high into FY 2025 (see Figure 5). Often, upon retaining legal counsel, noncitizens file to reopen their cases, stating that they did not receive notice of their hearings because EOIR had the wrong address or DHS filed documents late, for example. When this occurs, the immigration courts need to adjudicate additional motions and sometimes reopen cases that were closed.

FIGURE 5

In Absentia* Removal Orders Issued, FY 2015–25

* For FY 2015 through FY 2024, this figure shows data through the end of the fiscal year. For FY 2025, it shows the count as of the end of the fiscal year's third quarter, the latest period for which data were available.

Source: EOIR, "Executive Office for Immigration Review Adjudication Statistics: *In Absentia* Removal Orders" (fact sheet, July 31, 2025).

B. Firing Immigration Judges and Halting Legal Advice Services

Other measures appear likely to exacerbate delays at the immigration courts. Notably, at least 139 immigration judges and court personnel were reportedly fired, transferred, or took buyouts between the start of the Trump administration and early October 2025, which the judges union has predicted will result in tens of thousands of cases going undecided.³⁹

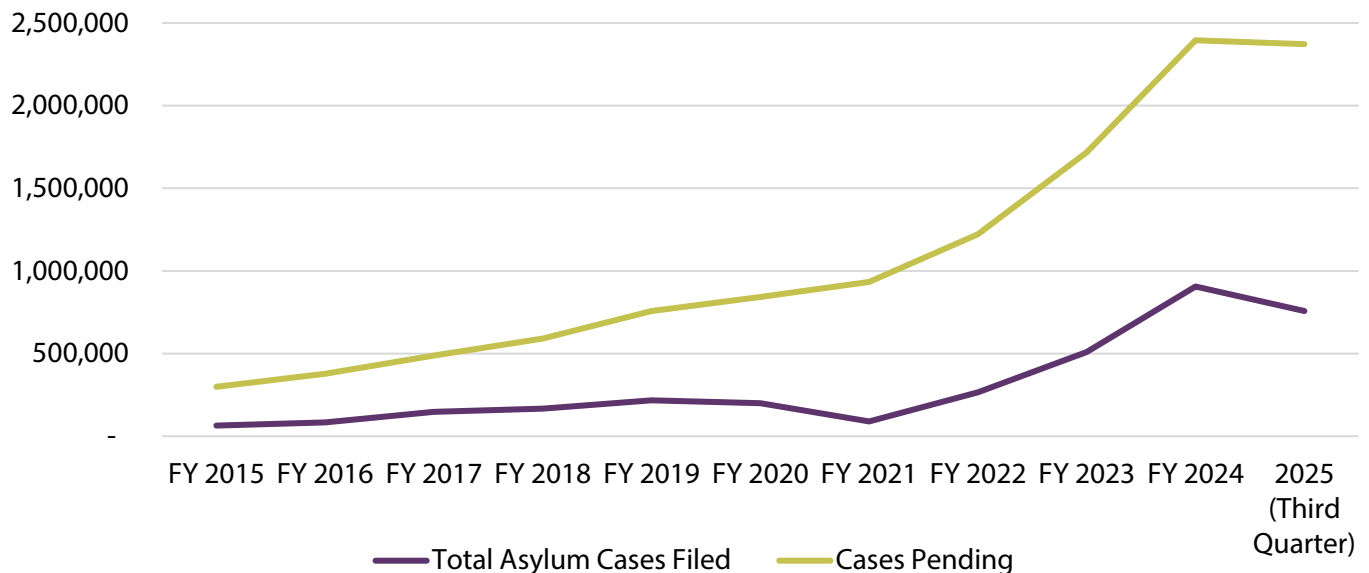
In September 2025, the administration announced plans to detail as many as 600 military lawyers, known as judge advocates general (JAGs), to serve six-month terms as temporary immigration judges, and in October, training began for the first cohort of 50 Army Reserve attorneys.⁴⁰ Democratic senators and representatives have raised concerns about whether the move may violate the *Posse Comitatus Act*, which bars the military from conducting civilian law enforcement duties.⁴¹ Immigrant advocates have

also indicated that they may challenge the plan in court.⁴²

The administration has also reduced access to legal services. Since January 2025, EOIR has issued stop-work orders and terminated contracts for legal service providers who previously administered Immigration Court Helpdesks and Legal Orientation Programs, which advised noncitizens attending court hearings. Other programs providing legal advice for unaccompanied children have been halted.⁴³ This comes despite research repeatedly showing that access to legal representation improves the efficiency and fairness of deportation proceedings.⁴⁴ The affected programs assisted noncitizens with navigating complex issues of law in removal proceedings, and immigration judges have affirmed that when noncitizens are represented, judges can conduct adjudications "more efficiently and quickly."⁴⁵

Even before the issuance of stop-work orders and contract terminations, there were not enough legal service providers, private attorneys, and pro bono

FIGURE 6

Total Asylum Cases Filed at EOIR and Asylum Cases Pending, FY 2015–25*

* For FY 2015 through FY 2024, this figure shows the number of pending cases at the end of the fiscal year. For FY 2025, it shows the case count as of the end of the fiscal year's third quarter, the latest period for which data were available.

Note: Data on total asylum applications filed per fiscal year include cases referred to EOIR from U.S. Citizenship and Immigration Services (USCIS).

Source: EOIR, "Executive Office for Immigration Review Adjudication Statistics: Total Asylum Applications" (fact sheet, July 31, 2025).

counsel to represent all noncitizens facing deportation, and most noncitizens in removal proceedings lacked representation. As of October 2024, the most recent available data, noncitizens were unrepresented in 2.4 million cases (68 percent of cases).⁴⁶

C. *Record Number of Asylum Cases Poses Ongoing Challenges*

The Trump administration has gone further than the Biden administration did in restricting access to asylum for new arrivals, though a federal district court judge has already ruled one such measure unlawful (appeals are ongoing as of this writing).⁴⁷ Meanwhile, the backlog of pending asylum applications, 2.4 million as of June 2025, will continue to pose a major challenge for the immigration court system.⁴⁸

Policies Contributing to the Case Backlog and Cycle of Dysfunction

On his first day in office, Trump declared an "invasion" was taking place at the southwest border and barred access to asylum for noncitizens arriving there without authorization to enter the country.⁴⁹ Immigrant advocates sued, and in July 2025, a federal district judge ruled the proclamation unlawful, finding that the president cannot set aside U.S. asylum law.⁵⁰ The Trump administration has appealed that decision, and the bar on access to asylum at the southwest border remains in place as of this writing.

Due to the invasion declaration, a buildup of military forces at the border, and a range of other measures meant to deter arrivals, border encounter numbers have dropped precipitously since Trump took office. Relatedly, few of the migrants who are encountered at the border have been released into the country

for removal proceedings; most are being held in border detention facilities and quickly processed for removal.

But stepped-up arrests within the country and other policies have meant that many new removal cases have been added to the backlog nonetheless.⁵¹ By July 2025, the Trump administration had terminated Temporary Protected Status (TPS) designations for certain nationalities, humanitarian parole, and discretionary protections from deportation, affecting more than 1.5 million noncitizens.⁵² In anticipation of these moves, immigrant advocates encouraged many of these noncitizens to apply for asylum as a defense against deportation, and court challenges have been filed to block the terminations of these statuses. Data on how many individuals from the affected groups have applied for asylum are unavailable. However, as of June 2025, the immigration courts were on track to receive 1 million asylum applications in FY 2025, the highest number in U.S. history.⁵³

Another stream of new cases could further add to the EOIR backlog: USCIS has resumed a practice from the first Trump administration of issuing more NTAs for noncitizens who apply for immigration benefits such as lawful permanent residence (i.e., a green card) but are deemed ineligible. USCIS is also prioritizing fraud investigations, and the agency had already issued nearly 27,000 NTAs as of June 2025. According to the agency, this is a “2,811 percent increase in fraud-related NTAs per month from the Biden-Harris administration era. This includes the issuance of approximately 500 asylum-related NTAs per week and 100 NTAs in TPS cases per week.”⁵⁴

Reports have also emerged from across the country of ICE arresting many noncitizens who have appeared at USCIS for an asylum merits interview, the step in an affirmative asylum case that results in a final decision.⁵⁵ The arrested individuals are being placed in expedited removal, referred for asylum

screening interviews (an initial step that typically precedes merits interviews), and those who pass are issued an NTA for immigration court. Thus, cases that were on the verge of decisions are being rescreened and then referred to the immigration courts, where noncitizens will once again have the opportunity to file an asylum application that must be adjudicated anew, adding to the EOIR backlog.

Immigration Judges Denying Asylum Applications Without a Hearing

At the immigration courts, judges have been instructed to respond to the growing backlog of asylum applications by denying some without a hearing. In April 2025, EOIR issued a policy memorandum instructing immigration judges to “pretermi-” or deny, asylum applications deemed “legally insufficient” without a hearing.⁵⁶ The memorandum does not specifically define “legally insufficient,”⁵⁷ but for years, nonprofit legal service providers, clinics, and private attorneys filed what were referred to as “skeletal” applications for asylum. These applications were filed without additional evidence, which would be added later, once a merits hearing was scheduled. This practice is due to the requirement that asylum applications be filed within one year of arrival in the United States, the lack of attorney assistance available for preparing many cases, and the fact that lengthy scheduling delays have meant relevant conditions in an asylum seeker’s home country could change in the many years a case was pending, among other reasons.⁵⁸

Given how widespread the practice of filing skeletal asylum applications has been, the new policy of pretermi-” applications could potentially affect large numbers of pending asylum applications. Asylum denials have already spiked, reaching 80 percent of the asylum cases judges completed in April 2025, the highest monthly rate since at least 2000, according to data from the Transactional Records Access Clearinghouse.⁵⁹ In response, some noncitizens’

attorneys have filed appeals of these denials, which could add to the backlog of pending cases at the BIA, which stood at a record high 186,000 as of June 2025.⁶⁰

The policies and practices introduced since the start of the second Trump administration can be seen as countervailing forces—some actions could reduce the backlog, while others may increase it.

Taken together, the policies and practices introduced since the start of the second Trump administration can be seen as countervailing forces—some actions could reduce the backlog, while others may increase it. Barring access to asylum, denying pending asylum cases without a hearing, and arresting noncitizens to place them in expedited removal will likely lead to the issuance of more removal orders, but litigation challenging these policies could dull their effect. By contrast, ending TPS designations and humanitarian parole for more than 1.5 million migrants⁶¹ and increasing arrests in the country's interior could lead to more noncitizens being put in removal proceedings at the immigration courts, and they have already led to record high asylum filings. Thus, it remains to be seen whether these measures will result in significant numbers of case closures and removals, and in the meantime, the courts will continue to strain to meet the administration's aims.

4 Recent Attempts at Legislative Reform

While immigration policy changes have largely been driven by executive actions in recent years, lawmakers have continued to propose reforms to the U.S. immigration court and asylum systems, recognizing

the need to address structural issues contributing to the rapidly growing backlogs. However, legislative efforts to update these systems have remained stalled as lawmakers have prioritized securing the border and funding immigration enforcement over reforming key administrative bodies, notably EOIR and USCIS. Nevertheless, in recent years, both Trump and Biden have called on Congress to modernize the U.S. immigration system by expediting the review of asylum claims so that legitimate cases may be quickly granted.⁶²

The major bipartisan immigration proposals that have emerged over the past few years have focused on speeding up asylum cases, narrowing eligibility, and critically, placing asylum officers in charge of deciding most new asylum applications. The latter element, which draws on a 2018 Migration Policy Institute proposal,⁶³ would leverage the specialized knowledge of asylum officers, simplify and speed up asylum claim processing, and ease the burden on the immigration courts. Both the *Border Act of 2024* (also known as the Senate bipartisan border bill) and the *Dignidad Act of 2025* (also known as the Dignity Act) proposed a similar approach, having asylum officers decide new asylum claims within a matter of weeks, rather than the years it can take at the immigration courts.⁶⁴

Under the Dignity Act, only complex or uncertain cases would be sent to immigration judges, while under the Senate bipartisan border bill, a newly established appellate body would review denied asylum claims within USCIS, instead of referring them to EOIR. (Another proposal that was not bipartisan but received significant attention was the *Secure the Border Act of 2023*, which focused on narrowing the criteria for asylum eligibility but not reorganizing the process itself.⁶⁵)

Notably, the Senate bipartisan border bill and the Dignity Act would not only have USCIS handle most or all asylum cases, they would mandate the hiring

of new asylum officers to hear them: 300 in the Dignity Act and 4,300 in the Senate bipartisan border bill. Both bills also highlight the value of legal advice and representation, with the Dignity Act requiring that all newly arrived migrants have the opportunity to receive a legal orientation before an asylum screening.

It is important to note that many stakeholders have long called for the immigration courts to become fully independent Article 1 courts, which federal district courts are, for example. Proponents argue that placing the immigration courts under the direction of the executive branch, which is simultaneously charged with prosecuting and removing unauthorized immigrants from the country, presents an irresolvable conflict of interest and undermines the fairness of removal proceedings.⁶⁶ While various bills have proposed establishing the immigration courts as an Article 1 court system, these proposals have not garnered the necessary bipartisan support. Therefore, the recommendations presented in the next section focus on existing areas of consensus, as well as lessons from past bipartisan reforms.

Finally, the size of the backlog itself could change if Congress were to act on legislative proposals to grant legal status to certain unauthorized immigrants—a prospect unlikely in today’s political climate but that has long been the subject of debate. There is some precedent for this, as when Congress passed the *Nicaraguan Adjustment and Central American Relief Act* in 1997, allowing more than 400,000 unauthorized immigrants who had lived in the United States for more than a decade to apply for an existing, statutorily authorized process (albeit with modified standards) that led to lawful permanent resident status.⁶⁷ More recent proposals have focused on certain populations whose legalization would benefit the U.S. economy and strengthen communities, such as agricultural workers and unauthorized immigrants brought to the country as

children (often called Dreamers).⁶⁸ While such bills have failed to advance, such legislation would have a significant impact on the case backlog.

5 Recommendations for Transformation

Functional asylum processes and immigration courts are key to the success of the U.S. immigration and enforcement systems. The backlogs and cycle of dysfunction this policy brief describes represent dangerous weak links that pose national security risks, compromise due process, incentivize filing weak or fraudulent claims, and forestall asylum and other humanitarian protections for eligible noncitizens, while permitting those who are ineligible to remain in the country for years instead of being deported.

Successive administrations have implemented a range of administrative policies and strategies to better manage burgeoning caseloads, especially in recent years. However, without deeper legislative support from Congress, such measures have proven insufficient in overcoming the cycle of dysfunction and preventing it from deepening further—in fact, in some cases, the measures have exacerbated the problems. With Congress having approved historically high levels of funding for immigration enforcement, the time is right to make transformation of the asylum and court systems part of this new spending.

The *One Big Beautiful Bill Act* that Congress passed in July 2025 provides \$170 billion of new funding over four years—more than \$40 billion annually—for border security and for interior enforcement and removals.⁶⁹ This scale is generally seen only in military spending; it is unprecedented for civilian law enforcement. Most of the funding will go to CBP and ICE. As a result, both agencies—whose combined budgets totaled \$33.5 billion in FY 2025—will grow dramatically in personnel, technology, infrastructure,

and equipment.⁷⁰ Unfortunately, appropriations for the courts and asylum functions were meager. The legislation even capped the ranks of immigration judges at 800.⁷¹ While this is higher than the 685 judges on board as of June 2025, many more have since been fired or retired, and 800 judges is far below the 1,300 that some analysts estimate would be needed to work through the backlog over the course of a decade.⁷²

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The legislation also did not acknowledge or address the long-standing, broad, and systemic shortcomings of the asylum and court systems. They include: spiraling workloads of predominantly asylum cases; years-long delays in delivering decisions; insufficient legal representation; and an unwieldy, paper-based system in deep need of modernization and upgraded technology to enable automated capabilities widely used elsewhere in daily life today.

The ultimate mark of effective immigration enforcement, and a key element of regaining public confidence in the government's ability to manage immigration, will be executing EOIR's mission: "to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the nation's immigration laws."⁷³ To that end, meaningful investments in transforming the asylum and court systems that are commensurate with the massive buildup of CBP and ICE's operational wherewithal should be made through a combination of legislative and executive branch actions, as follows.

A. *Reprogram Resources to Better Meet System Needs*

Congress gives agencies flexibility to make adjustments in spending the monies it appropriates. Through processes known as reprogramming and transfers of funds, agencies have discretion in allocating appropriations within as well as across agencies, as long as they comply with guidelines for thresholds of spending reallocations and congressional notification requirements.⁷⁴ The administration should reprogram sufficient resources from its new spending infusions to provide the critical mass needed to jump-start the needed transformation of the asylum and court systems.

Past proposals for adequately funding the courts have varied. EOIR's budget for FY 2025 was \$844 million, or 2.5 percent of the combined budgets for CBP and ICE.⁷⁵ One expert study recommended that EOIR funding be benchmarked at 6 percent of the enforcement agencies' budgets.⁷⁶ Another called for \$12 billion to hire 1,500 judge teams.⁷⁷ The administration's plan to detail 600 military lawyers to serve as temporary judges demonstrates another calculation of the level of need for court resources. Such funding should, however, be spent on training and hiring permanent judges and support staff. Resource infusions are also needed at USCIS to increase the number of asylum officers, alongside efforts to draw on past actions that have enabled backlog reduction and would allow ICE attorneys and immigration judges to focus on high-priority cases.

The administration—working with primarily the Departments of Justice and Homeland Security—should develop appropriate benchmarks for funding asylum and court system responsibilities commensurate with CBP and ICE growth. Where funds can be reallocated administratively and where reprogramming and fund transfers would be needed, the

administration should exercise its authority to take such actions, notifying Congress as required.

B. Direct Asylum Officers to Adjudicate All Incoming Asylum Cases

A 2022 regulation authorized USCIS asylum officers to decide new asylum claims made at the border, in addition to those filed by noncitizens already in the United States (instead of immigration judges deciding border asylum cases).⁷⁸ Known as the asylum officer rule, the process was intended to speed adjudications and allow immigration judges to focus on priority cases.⁷⁹ Given their extensive training and specialization in asylum law, asylum officers are well equipped to handle these filings. However, the rule was not fully implemented. That is partially because some states challenged the asylum officer rule in litigation that is still pending. But the primary reason it was not fully implemented was resource limitations.⁸⁰

Fully implementing the asylum officer rule would allow immigration judges to focus on priority removal cases and those involving other types of claims that only immigration judges may decide, such as cancellation of removal, a form of protection from deportation. Cases that asylum officers do not grant would still be referred to immigration judges, but their responsibility would be to review and affirm or overturn the asylum officer's ruling, not to hear cases anew, absent a clear showing of new evidence.

As part of the reallocation of resources outlined above, the administration should determine what number of new asylum officers would be needed to adjudicate applications in the six-month timeframe required by U.S. law.⁸¹ In addition to adequately funding the asylum officer corps to hear border

asylum cases, and thus reduce immigration judge caseloads, Congress should codify the asylum officer rule, fortifying it against potential court challenges.

C. Prioritize Cases that Pose National Security or Public Safety Threats

Even with substantially increased resources, it will take time for the courts to work through their 3.8 million pending cases. Therefore, the Departments of Homeland Security and Justice should prioritize the adjudication of cases that implicate threats to U.S. national security or public safety, and deprioritize certain other cases, such as those of unaccompanied immigrant children. This principle should apply both to new and backlogged cases for filing and prosecution.

ICE attorneys and immigration judges should utilize available docket management tools to focus on these cases and deprioritize others. Once ICE attorneys and immigration judges are keeping up with the pace of new cases coming into the courts and the backlog is being reduced, they could then turn to lower-priority cases. Policy changes could also support this prioritization, such as halting arrests at immigration courts, which are deterring attendance, resulting in increased issuances of *in absentia* removal orders, and leading to appeals that then detract from the courts' ability to focus on high-priority cases.

These caseload management issues and potential prioritization strategies have been examined in depth in prior Migration Policy Institute research,⁸² documenting how improvements could strengthen both the immigration court and asylum systems.

D. *Modernize Courts' Operations and Use of Technology*

In addition to adequate staffing, perhaps the most important investment the administration and Congress could make to support the work of immigration courts would be to embark on a multi-year set of resource infusions to move away from a paper-based system, increase electronic filing, and automate myriad other judicial and communications processes. EOIR has made progress in integrating technology into removal proceedings, especially since the COVID-19 pandemic, but significant needs remain unmet.

For example, current court-provided technology tools are mainly accessible to attorneys, but most noncitizens facing removal proceedings lack representation. Therefore, the courts mainly communicate information to noncitizens about their proceedings via mailed notices, as opposed to email or text messages. Court regulations mandate that notices be mailed, and paper notices remain critical in case of electronic delivery issues or a lack of access to computers or reliable internet service.⁸³ However, upon encountering noncitizens and prior to initiating removal proceedings, DHS could ask them to provide their contact information and consent to receiving text messages and/or email updates about their case, including reminders about when hearings are scheduled.

EOIR should also make more case information available online for *pro se* (unrepresented) noncitizens, building in proper precautions to protect personal and sensitive information. This is especially important in asylum cases. The USCIS online application portal, myUSCIS, provides a model to improve upon.⁸⁴

Increasing the availability of case information online and sending copies of court communications elec-

tronically would substantially increase efficiency for the courts by reducing the need for noncitizens and their attorneys to request case files and increasing appearances at immigration hearings. This would reduce the number of *in absentia* removal orders that are issued and then subsequently reopened.

Advances in technology are a critical, long-term undertaking, especially in a public policy arena as dynamic as immigration. What is needed is bold re-engineering, with robust initiatives and the resources to execute them.

E. *Provide Access to Legal Advice and Representation*

Research has repeatedly shown that legal representation both helps ensure that noncitizens' rights are upheld and increases the efficiency of removal proceedings.⁸⁵ Moreover, U.S. immigration law and the Constitution provide that noncitizens have a right to due process and access to certain protections from removal.

With more than 2.4 million cases lacking representation as of October 2024, there are not enough lawyers to provide representation to noncitizens facing deportation proceedings.⁸⁶ However, legal clinics and "attorney for the day" initiatives serve important advice and assistance functions for both the courts and noncitizens. EOIR should facilitate access to legal advice and representation at each of its 75 courts, building on historically strong working relationships with the private bar, nonprofit legal service providers, and other community stakeholders such as law school clinics and faith-based organizations. Improved technology and electronic court communications would also help facilitate access to legal advice and representation, allowing for the provision of assistance remotely in rural areas, for example.

Congress, states, municipalities, and philanthropies should also recognize in their funding allocations

that legal services for noncitizens represent a solid investment in the asylum and immigration court systems' ability to function efficiently and fairly, thus advancing both protection and enforcement priorities.

6 Conclusion

Many of the most pressing issues highlighted in this policy brief have been the focus, in different ways and to different extents, of executive branch actions and proposed legislation in recent years. Most recently, they have been referenced in the Senate bipartisan border bill, the Dignity Act, and to a limited degree in the *One Big Beautiful Bill Act of 2025*. At the same time, none has successfully crossed the finish line to adequately meet the country's need for functional asylum and immigration court systems.

The intense focus the administration is placing on immigration enforcement, combined with historic levels of funding to expand the nation's immigration enforcement machinery, is reshaping some—but not all—parts of a deeply interconnected system. The infusion of funding presents an opportunity for

the executive and legislative branches to each finally address and break through the cycle of dysfunction that for years has plagued the immigration courts, and by extension the broader immigration enforcement system. If not ambitiously addressed, these persistent problems will severely undermine the effectiveness and credibility of the levels of spending that Congress has provided.

The recommendations made in this brief reflect current political realities—notably, the absence of bipartisan consensus on immigration matters in Congress that would be needed to pass legislation that extends beyond funding measures. However, even with the actions recommended here, the pace of work and number of cases pending at EOIR—3.8 million as of July 2025—will present a daunting challenge for immigration judges and the court system. Bolder action by lawmakers could bring much-needed reforms to key government bodies such as EOIR and USCIS, whose functions are central to the integrity of the immigration system writ large, and help address long-standing migration pressures that have contributed to the backlog of immigration court cases.

The intense focus the administration is placing on immigration enforcement, combined with historic levels of funding to expand the nation's immigration enforcement machinery, is reshaping some—but not all—parts of a deeply interconnected system.

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Acknowledgments

The authors thank their former Migration Policy Institute (MPI) colleague Alejandro Urbina-Bernal for his research assistance with this brief. They are also grateful to Lauren Shaw, MPI Editor and Publications Manager, for her editorial review. Finally, the authors appreciate the many stakeholders who shared key insights based on their experiences administering and practicing at the immigration courts.

This policy brief is part of the Rethinking U.S. Immigration Policy initiative, which has been generously supported by Arnold Ventures, the Ford Foundation, the Carnegie Corporation of New York, and Unbound Philanthropy.

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Design: Sara Staedicke, MPI
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Suggested citation: Bush-Joseph, Kathleen, Doris Meissner, and Muzaffar Chishti. 2025. *Breaking the Cycle of Dysfunction at the U.S. Immigration Courts*. Washington, DC: Migration Policy Institute.



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