AMERICAN IMMIGRATION LAWYERS ASSOCIATION

Policy Brief: The Trump Administration's Assault on Immigration Courts
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Introduction

Since January 20, 2025, the Trump Administration has made sweeping changes to the Executive Office of Immigration Review (EOIR) that threaten the integrity, operational efficiency, and fairness of the immigration courts which decide hundreds of thousands of cases each year. Rapid firings and reassignments of judges and key personnel plus dramatic policy reversals implemented through memos from the Acting Director Sirce Owen constitute a direct assault on the court system. The administration's effective dismantling of the courts and removal of its institutional knowledge will reduce efficiency and weaken the rule of law. The new policies will transform judges and the entire court system into arms of the enforcement system rather than neutral, balanced instruments of justice. With a case backlog exceeding 3.6 million that results in lengthy delays of hearings for more than five years, asylum seekers and anyone seeking swift justice cannot expect a fair day in court under this regime. At a time when America urgently needs an orderly, efficient, and fair immigration system, the administration has gone in the opposite direction.

This brief addresses the following areas: 1) firings and removal of court personnel; 2) policy changes that undermine due process; 3) immigration enforcement at immigration courts; and 4) the impact of expanded expedited removal on immigration courts.

1. Mass terminations undermine the courts' operational integrity and capacity.

Within the first week in office, the administration fired then Acting Director of EOIR, Mary Cheng, and three other key leadership positions and reassigned at least three other management positions in Washington, D.C., and regional offices. By February 27, about 28 trial and appellate immigration judges had been terminated, 13 of whom had recently completed training and were ready to hold hearings. In addition, a total of 85 EOIR employees (including 18 immigration judges) have accepted offers for deferred resignations or early retirement.

The issuance of two memos by newly appointed Acting Director Owen signals that the administration plans to fire more judges in the future. On February 28, Owen issued the *Adjudicator Personnel Matters* memo which alleges the previous administration engaged in improper hiring practices and was motivated by "ideological or partisan interests." The memo

states that the past hirings will be "addressed" implying Owen could take direct action against individual judges. Another memo, Owen issued on February 21, 2025, further alleges that the previous administration's rules protecting judges from removal were unconstitutional and would not be defended by this administration. By weakening these protections from removal, the memo makes it easier for the current leadership to terminate immigration judges who are employees of the Department of Justice and do not have the job protections afforded to Article III judges.

The rapid elimination of large numbers of bench officers and administrative and support staff, without the agency engaging in any specific performance reviews, will severely impact the courts' capacity to handle cases at a time when its case backlog is at an all-time high. Currently, immigration judges have among the highest caseloads frequently exceeding 4,500 cases, and many immigration judges are so overloaded they are scheduling merits hearings more than 10 years out. At the end of fiscal year 2024, there were 735 immigration judges on the bench. In January of 2020, there were 466 immigration judges.

2. New policies will make immigration courts less fair.

New policies instituted by 23 memoranda issued since inauguration will make immigration courts harder to navigate for noncitizens and will lead to unjust outcomes. On February 3, 2025, EOIR published a memo that directs immigration judges to complete asylum cases within 180 days to the "maximum extent practicable." Putting pressure on immigration judges to fully decide asylum cases in 6 months will only lead to incorrect decisions and unjust denials. A 2023 AILA report on the asylum process outlined the operational and due process challenges that make case completion for judges on such a short time period impossible for the courts to manage as a practical matter. This policy is a harbinger that the administration plans to eliminate critical judicial procedures that ensure due process. Without a fair process, the courts will jeopardize the lives and safety of asylum seekers who could still face torture, persecution and violence if deported. Similar tactics were used under the first administration, where a case quota was instituted which placed immigration judges at risk of losing their job if they did not close 700 cases per year.

The guidance also directs immigration judges to limit continuances that jeopardize the case completion deadline unless the respondent can show their request satisfies not only "good cause" but also a new requirement of "exceptional circumstances." This additional language sets a higher standard for obtaining a continuance and runs contrary to longstanding court practice requiring "good cause." Typical reasons that have been considered good cause in immigration court are needing time to secure legal counsel and needing time to allow USCIS to adjudicate an application that would provide protection from deportation. Increasing the standard would arbitrarily deny people access to counsel and other forms of affirmative relief in favor of swift deportations. In addition to putting pressure on immigration judges, the earlier Trump administration policies exacerbated backlogs rather than yielding greater efficiency.

The new policies will also deeply undercut fairness for children coming before immigration courts. EOIR has rescinded a Biden-era memo on the role of child advocates in removal proceedings. The memo states that ORR cannot appoint child advocates in all cases and should limit how and when they are appointed. Child advocates are third parties who make recommendations regarding what is in the best interests of the child – while they are not trained attorneys, they are often the only advocate available to a child and play a vital role in facilitating fair proceedings.

Another memo by Acting Director Owen, *Cancellation of Policy Memorandum 21-26*, signals to immigration judges that they should grant fewer motions to reopen, particularly in cases where the person is subject the "Alien Protection Protocol" (APP) formerly the Migrant Protection Protocol or Remain in Mexico. The new memo rescinded a 2021 memo that provided guidance on the legal standards for deciding motions to reopen filed by people in MPP. The Owen memo contends that these Biden policies impermissibly pressured immigration judges to grant such motions, but it does not explain how the earlier guidance on legal and procedural standards impermissibly pressured judges to grant motions to reopen. It is well-documented that MPP severely limited access to counsel for asylum seekers (only 7.5 percent of MPP enrollees had attorneys). The increased dangers MPP enrollees faced included 80% of enrollees reporting some type of violence. In the 2021 memo terminating MPP, then DHS Secretary Alejandro Mayorkas stated, "[t]he focus on speed was not always matched with sufficient efforts to ensure that conditions in Mexico enabled migrants to attend their immigration proceedings." Many people missed their court hearings and were unfairly ordered removed in absentia. People who are ordered in absentia frequently have only one recourse to obtain a fair hearing and that is to file a motion to reopen.

3. **New policies will make immigration courts an arm of the enforcement system.**

On January 28, 2025, EOIR issued a memo that rescinded the previous policy of not allowing immigration enforcement in immigration courts and nearby spaces. As ICE enforcement is increasing nationwide, immigration courts will no longer guarantee a safe space for people who appear for court hearings. Respondents and their families appearing at court will be at heightened risk. In the memo, EOIR claims that arresting respondents at court hearings will not lead to increased absenteeism, but practitioners report that their clients and families have been fearful to attend. Moreover, people appearing for hearings frequently need the assistance of noncitizen witnesses or someone to support them through the process, particularly if they have experienced trauma. AILA has received recent reports of immigration enforcement officers waiting at immigration court and taking people into custody at the conclusion of their proceedings. This policy will make it more difficult for people with legitimate claims for asylum or other relief to make their case and have a fair chance in court. Allowing immigration enforcement at courts will result in disruption and fear during proceedings and will not create fairer, more efficient immigration proceedings.

4. **The Trump Administration is preparing to bypass immigration courts.**

The Trump administration recently announced the nationwide expansion of expedited removal (ER). Expedited removal authorizes the summary removal of people from the United States without a hearing before an immigration judge and enables the government to deport people in a matter of days if not hours (far faster than the court process). Deportations under ER occur so rapidly that people are commonly denied a fair day in court and a meaningful chance to seek legal relief. The new policy not only expands ER geographically but also will apply it to people who have been in the United States for longer than two years, which contradicts the statute's clear language and intent to target "recent arrivals."

With respect to the immigration courts, in January DHS announced its intent to review all cases in court to determine if they are amenable to expedited removal. DHS would need to file motions to dismiss each case; immigration judges would need to approve the motion; and ICE could then apply ER. The impact of this policy could be far-reaching and will fall particularly hard on people who do not have legal counsel and are at a severe disadvantage in navigating the complex removal process.

Even more troubling is the likelihood that the new administration will circumvent the entire judicial process by applying the fast-track ER process to far more people who currently have cases pending before the courts. Compounding this policy change is the loss of court leadership and judges which will make the immigration court system less and less able to hear the cases of people seeking legal relief. If the new administration effectively pushes courts out of the picture, the President will have even more power to effectuate his mass deportation plan and do it in a grossly unjust manner that violates due process.

Conclusion and Recommendations

To prevent the further erosion of the immigration courts, AILA urges:

1. Congress should conduct robust oversight of the Department of Justice and EOIR. Congress should examine the mass terminations of EOIR staff without justification and the systemic denial of due process to people facing removal that will unfold if corrective action is not taken immediately.
2. Congressional appropriators should withhold additional funds from EOIR until an explanation is provided for the removal of staff and the radical policy changes now in place.

More Resources:

- Practice Alert: New EOIR Policy Memoranda
- Expedited Removal: Key Updates, Who Is Impacted, and How to Fight Back