

The New York Times

ICE Lawyers Directed to Clear Low-Priority Immigration Cases

The effort could significantly reduce a backlog of asylum and deportation cases as the Biden administration anticipates a huge surge of migrants crossing the border.

By Eileen Sullivan

April 4, 2022

WASHINGTON — The Biden administration is seeking to clear potentially hundreds of thousands of deportation and asylum cases pending before immigration courts, an unprecedented move that could significantly reduce the current backlog of [1.7 million cases](#).

In a memo dated Sunday, Immigration and Customs Enforcement directed its lawyers to review cases and try to clear those considered low priority under [enforcement guidelines](#) that the administration established last year. The American Immigration Lawyers Association estimates that there are at least 700,000 such cases — about 40 percent of the court backlog.

The agency would not provide an estimate of how many cases would be cleared under the directive or how long it would take. Previous administrations have moved cases off the court docket but not on such a broad scale. During the eight years of the Obama administration, more than 166,000 immigration cases were administratively closed, [according to court data](#).

The court backlog has ballooned to the largest ever, causing yearslong delays for immigrants seeking asylum and other forms of relief. One reason is that the coronavirus pandemic has delayed proceedings. A significant number of cases were added during the Trump administration, especially after a surge in undocumented migrants crossing the border in 2019. That administration also reopened tens of thousands of cases that had been removed from the court docket.

The effort to reduce the backlog comes as the Biden administration prepares for what could be the largest increase yet of undocumented migrants crossing the border. The surge is expected to coincide with the [end of a pandemic-era public health order](#) that has given border officials the authority to quickly expel undocumented migrants.

It is the latest in a series of efforts by the Biden administration to streamline immigration enforcement in the absence of action from Congress.

An ICE official, authorized by the agency to speak publicly without being identified, said lawyers would review each case before the court to see if it met the administration's priorities for

enforcement: cases that involve a public safety or national security threat, as well as those involving people who recently crossed the border without documentation.

Currently, there are more than 300,000 “administratively closed cases,” [according to Justice Department data](#). Even though inactive cases can be put back onto the court calendar at any time by any administration, they typically remain closed for many years.

During the Trump administration, more than 34,000 cases were put back on the immigration court docket. Jeff Sessions, the attorney general at the time, [issued a decision](#) that limited the authority of immigration judges to move cases off the court calendar — a practice, he wrote, that “encumbers the fair and efficient administration of immigration cases.”

The Biden administration disagrees.

“Our immigration enforcement efforts are focused on those who pose a threat to public safety, the security of our borders and our national security,” Alejandro N. Mayorkas, the homeland security secretary, said in a statement on Monday. “The memo issued today further empowers our enforcement attorneys to focus on these priorities, and it will help clear a longstanding case backlog that has clogged the immigration court system and stood in the way of swiftly removing the greatest threats.”

Closing, dismissing and streamlining low-priority cases, the ICE official said, is a fair and efficient way to address what has been an insurmountable backlog.

ICE officials would not say how long each case review was expected to take. The effort comes after a similar but smaller one that began in February to dismiss certain family immigration cases and direct people to apply through U.S. Citizenship and Immigration Services, a process that takes less time.

Greg Chen, a senior director of government relations at the American Immigration Lawyers Association, applauded the plan as a proactive step but said that “case-by-case analysis is far more laborious than if they did a database sweep” to determine which ones could be removed from the docket.

The directive will go into effect this month. In late May, when the pandemic-driven public health rule that limited immigration is lifted, officials expect a significant increase in border crossings, including many migrants seeking asylum who will be summoned to immigration court.

A new, separate [Biden administration asylum policy](#), which will direct people who cross the border without documentation to have their claims evaluated by asylum officers instead of immigration judges, will not be fully operational for months.

Undocumented migrants are expected to apply for asylum before immigration judges within a year of arriving. Typically, asylum-seekers who are not detained are issued a summons with a court date and wait an average of more than five years before appearing in court.

But the crowds of people fleeing to escape poverty, violence and humanitarian disasters have been so large that [border officials have taken shortcuts](#) when processing some into the United States, releasing them without a court date and instructing them to finish the paperwork later. That means more cases are headed to the immigration court system.

The move to clear cases from the docket could draw criticism from conservatives, who might view it as going easy on undocumented immigrants.

“Any initiative that involved a large number of case closures would certainly be considered a form of amnesty, because it would involve not prosecuting immigrants for certain immigration violations,” said David J. Bier, a research fellow on immigration issues at the Cato Institute, a libertarian think tank.