Fact Sheet: Immigration Courts

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What is the immigration court system?
The immigration court system is the entity in which immigration judges conduct removal proceedings and adjudicate asylum claims for immigrants, among other responsibilities.It is operated by the Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), under the power of the Attorney General. EOIR is comprised of 58 courts throughout the U.S. and the Board of Immigration Appeals (BIA), an appellate body. The immigration courts are civil courts. Article III federal courts which have jurisdiction over cases concerning criminal offenses, including instances when federal prosecutors seek criminal charges for immigration offenses, such as illegal entry or reentry, are not considered part of the immigration court system.

What rights do immigrants have in the immigration court system?
Immigrants, even those who are undocumented, possess basic rights under the U.S. Constitution. Specifically, the 14th Amendment guarantees due process and equal protection to all "persons" in the United States, not just citizens. In immigration court, this means immigrants have a right for their cases to be presented and heard. Because the immigration court system is civil rather than criminal, immigrants have the right to retain counsel, but are not provided a lawyer free of charge if they can't afford one. In 2016, the American Immigration Council found that only 37 percent of immigrants secured legal representation in their deportation proceedings.
Due process is often compromised in exchange in the service of speed. While many immigrants are able to get in front of an immigration judge to plead their cases, a growing number are deported under expedited removal procedures.

How many immigration judges are there and how many cases do they have?
Currently, there are approximately 350 immigration judges who "advise noncitizens of their legal rights, hear testimony, make credibility findings and rulings on the admissibility of evidence, entertain legal arguments, adjudicate waivers and applications for relief, make factual findings and legal rulings, and issue final orders of removal." EOIR immigration judges lack the judicial independence and life tenure that federal judges have. Immigration judges are hired and can be fired like other federal employees.
There are currently 733,365 pending immigration cases which means that the average immigration judge would have a backlog of over 2,000 cases.

What is the current case backlog and what is being done to address it?
The current case backlog is at all-time high of 733,365, although this is not due to immigration judges failing to process cases in a timely manner. Because Congress has failed to adequately fund the immigration court system as it has dramatically ramped up immigration enforcement, the case backlog continues to grow. The average wait time for a case to be heard is 721 days, about two years; with wait times in San Antonio, Chicago, Imperial, CA, Denver, and Arlington, VA averaging over 1,400 days (almost four years) as of June 2018.
To address the backlog, various solutions to provide more resources and flexibility to the immigration courts have been proposed, including increasing funding for EOIR, hiring more immigration judges, and increasing the use of prosecutorial discretion to close or dismiss lower-priority cases.

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There have also been proposals to reduce the immigration court case backlog by limiting access to the immigration courts, including increasing reliance on expedited procedures, limiting asylum claims based on domestic violence and gang violence, and setting quotas for resolving cases within a certain amount of time providing an incentive for immigration judges to spend less time on individual cases or face negative performance reviews.

What is a Notice to Appear (NTA)?

A Notice to Appear (NTA) is the charging document issued by the Department of Homeland Security (DHS) to initiate removal proceedings. The NTA is filed with EOIR who then takes charge of the proceedings and issues a decision on whether the individual may be deported. The three possible reasons for receiving an NTA are being an "arriving alien" who has been stopped at a port of entry prior to admittance, an immigrant already in the U.S. who has not yet been admitted or paroled, or an admitted immigrant who has now been deemed deportable for the reason listed on the NTA.

While U.S. Citizenship and Immigration Services (USCIS) has always had authority to issue NTAs, it has traditionally utilized this authority sparingly, usually only where the applicant had a criminal conviction. However, USCIS recently released updated policy guidance under which immigrants will receive an NTA and be placed into removal proceedings if they apply for any modification of status for a visa, green card, or naturalization and are denied. They may also receive an NTA if they are charged with a crime or if they have any association with activity that the Department of Homeland Security (DHS) considers to be criminal, regardless of whether they have been arrested or charged for such activity.

Can immigration court decisions be appealed?

Yes, through the BIA whose decisions are subject to review by the Attorney General and, in some circumstances, by federal courts. Individuals receiving an adverse finding can appeal to BIA. BIA decides appeals through paper reviews rather than in courtroom proceedings, although in extremely rare circumstances, BIA will hear oral arguments at their headquarters. BIA decisions are binding unless they are modified or overruled by the Attorney General or federal courts. BIA reviews findings of fact and credibility determinations under a "clearly erroneous" standard, but review all other issues, including questions of law, discretion and judgment, *de novo*.

If the individual loses their appeal before the BIA, for some matters, such as a final order of removal, the individual may file a petition for review in the federal Court of Appeals in their respective circuit where the original case was filed. These petitions must be filed within 30 days of the BIA decision, but unlike BIA appeals, there is no automatic stay for federal appeals – the individual is at risk of deportation and their counsel must seek a stay of removal for the duration of the appeal process.

Although the Attorney General has the power to refer cases to his or herself to overturn BIA rulings, this is not a common occurrence. Since the beginning of 2018, Attorney General Jeff Sessions has used this power three times. Most notably, he used a self-referral to rule on a case which determined that victims of domestic abuse and gang violence to be ineligible for asylum, as this did not constitute belonging to a "particular social group." The other cases the Attorney General has ruled on resulted in judges not having to give asylum seekers a full hearing and disallowing judges to use administrative closure to remove cases from their dockets.

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