Appleseed Foundation

Immigration Courts Under Attack

Appleseed is alarmed by the attacks by the Trump Administration on the legitimacy and fair functioning of the U.S. immigration court system, an administrative judicial system created by Congress and housed within the Department of Justice. Over the next several months, Appleseed will issue three brief bulletins identifying how the Administration is:

(i) Limiting non-citizens' access to the immigration courts, most egregiously by arresting non-citizens outside of courtrooms;

(ii) Diminishing judicial independence, including by firing dozens of immigration judges without cause, and

(iii) Circumventing the immigration courts altogether.

These attacks are a clear example of the Trump Administration attempting to usurp power from Congress by diminishing the role and power of the immigration courts. These reports will be a precursor to a more detailed study of how the immigration courts are being diverted from their mission of providing fair, accurate and impartial justice to the non-citizens who appear before them.

About Appleseed

Appleseed is a network of public interest justice centers in the U.S. and Mexico. These bulletins are issued by the Appleseed Foundation, a nonprofit organization that serves as the network office for Appleseed. Many Appleseed centers have long been researchers and advocates regarding various aspects of immigration — including fair administrative processes, safety for immigrant kids separated from their parents, fairness in immigrants' financial transactions, safety in workplace conditions, and more. Appleseed believes that lawyers have a special responsibility to ensure that the law is fair to all and that governmental institutions provide fair process to all.

Appleseed is examining this Administration's wholesale attack on the immigration court system. The immigration courts and the Board, flawed though we have found them in some ways, have always striven to provide fair, accurate and impartial access to justice for non-citizens whom the government seeks to remove from the United States. We are concerned that these foundational principles are crumbling as policies and practices are implemented (1) to frustrate non-citizens' access to the courts, (2) to compromise judges' independent judgment, and (3) to circumvent the immigration court system entirely, all in an effort to deport as many non-citizens as possible as quickly as possible. All of this occurs without

regard to the irreparable harm this inflicts on their basic rights under the laws passed by Congress and the U.S. Constitution, most notably the right to due process guaranteed to all persons—citizens and non-citizens alike—under the Fourteenth Amendment.

Over the next months, Appleseed will examine each of these three ways that the Administration is compromising the ability of the immigration courts to serve as a fair, accurate and impartial forum for non-citizens. As explained briefly below, the immigration court system is the due process Congress has provided to non-citizens who the executive branch is seeking to remove from the United States. Because immigration law is so complex—it has been described by one court as "second only to the Internal Revenue Code in complexity"[1]—court hearings are necessary to determine whether, in fact, the law supports the deportation of the non-citizen.

Brief Orientation on Immigration Court Proceedings

Immigration court occupies a unique and often misunderstood place within the U.S. legal system. For many individuals seeking asylum, appearing before an immigration judge is not a sign of wrongdoing, but rather the only lawful pathway available to pursue protection after their case has moved beyond the asylum office. For example, an application for a cancellation of removal for certain non-permanent residents—relief generally sought by long-term, hardworking immigrants with no criminal records and U.S. citizen family members—can only be sought before immigration judges in removal proceedings. While public debate frequently invokes the notion that immigrants should "do it the right way," it is important to recognize that, for many, the immigration court process is precisely that: the right way as established by Congress. These proceedings are designed to ensure that non-citizens receive the protections and due process guaranteed by the Constitution and Congress.

While most litigation in immigration court features two opposing parties—the government, represented by the Department of Homeland Security, and the non-citizen, represented only if they can pay for counsel or find a *pro bono* or legal aid attorney—the system is not intended to be an equal forum for two parties, but rather is meant to ensure that non-citizens are given the protection they deserve under the law. *See Quintero v. Garland*, 998 F.3d 612 (4th Cir. 2021) (listing duties of immigration judge to help asylum seekers articulate their claims).

There are a number of different types of immigration court proceedings, but the majority of proceedings, and those that implicate the removal of non-citizens, are known as "removal proceedings." Removal proceedings are initiated when the Department of Homeland Security ("DHS") serves a non-citizen with a charging document known as a Notice to Appear ("NTA").[2]

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[1] *Castro-O'Ryan v. U.S. Dep't of Immigr. & Naturalization ("INS")*, 847 F.2d 1307, 1312 (9th Cir. 1988).

[2] Fact Sheet: Immigration Court Process in the United States, *U.S. Department of Justice*, (Apr. 28, 2005), available at http://www.justice.gov/eoir/press/05/ImmigrationCourtProcess2005.pdf.

A non-citizen in removal proceedings is called a “respondent.” The NTA orders the respondent to appear before an immigration judge and advises the respondent about the nature of the proceedings, along with the alleged immigration violations.

Removal proceedings typically involve an initial “master calendar” hearing and, subsequently, an “individual” or “merits” hearing if the non-citizen challenges her removability. During the individual hearing, the merits of the case and any possible benefit available under the Immigration and Nationality Act are discussed before the immigration judge by the respondent and/or her legal counsel, and the DHS attorney who is prosecuting the case. Once a case is completed, either (or both) the respondent or DHS may appeal the decision to the Board, whose decisions are thereafter appealable to the federal appeals court by the non-citizen.

Bulletin One: Limiting Non-Citizens' Access to the Courts

The immigration courts can function equitably and with legitimacy only if non-citizens feel that they have a fair shake to present their claims to a neutral fact-finder (the immigration judge). The Trump Administration has taken a number of steps to erode access to a fair system of justice, including (a) turning immigration courts into centers for ICE apprehension; (b) limiting access to counsel; (c) encouraging judges to dismiss non-citizens' claims without hearings; (d) distributing misleading and threatening information to non-citizens; and (e) increasing fees for applications and appeals, without available fee waivers for the indigent.

Immigration Courts Are Now Centers for ICE Apprehension

Perhaps the most chilling action taken to discourage non-citizens from accessing immigration courts is the Administration's abandonment of the longstanding practice of limiting the circumstances in which ICE apprehends individuals in or near immigration courts. The reason for this policy was obvious, as stated in the 2021 ICE memo revoked earlier this year: "Executing civil immigration enforcement actions in or near a courthouse may chill individuals' access to courthouses and, as a result, impair the fair administration of justice."[3] DHS now considers immigration courts a prime venue for apprehension: ICE goes to court "because they already know where a target will be," according to DHS assistant secretary for public affairs Tricia McLaughlin.[4]The abandonment of the policy has been wholesale: rather than exercising discretion to execute arrests in court, ICE has turned immigration courts into prime venues for easy apprehensions.[5] With the collusion of ICE trial attorneys, ICE agents are alerted to the presence of non-citizens potentially subject to detention. In a typical scenario, ICE trial attorneys move to dismiss removal proceedings and text the ICE agents waiting just outside when a hearing has concluded. Since motions to dismiss have historically

[3] Civil Immigration Enforcement Actions in or near Courthouses [Memorandum], *U.S. Department of Homeland Security* (Apr. 27, 2021), available at https://www.cbp.gov/sites/default/files/assets/documents/2021-Apr/Enforcement-Actions-in-Courthouses-04-26-21.pdf

[4] "Homeland security officials defend immigration court arrests after being sued," *Associated Press* (Jul. 18, 2025), available at https://www.wlrn.org/immigration/2025-07-18/homeland-security-officials-defend-immigration-court-arrests-after-being-sued

[5] In addition to impacting respondents, it creates risks for the accompanying family members and witnesses, potentially discouraging their participation in a hearing.

favored respondents, this constitutes a confusing development. Respondents are now left without the protections previously provided by a pending removal proceeding or an assertion by ICE that they were not a prosecution priority—both of which previously allowed them to remain free from detention. Disturbingly, ICE agents are reportedly arresting non-citizens even when the immigration judge has denied the ICE motion to dismiss. The arrest is a direct circumvention of the judge's jurisdiction over the case, as most immigration judges hear only non-detained or detained cases; thus, detention almost always requires a change of judges, if not venues, when a respondent is transferred to another geographic location.

EOIR is complicit in this transition of its courts into apprehension centers. Immigration judges who have complained about ICE presence have been disciplined, including at least one firing.

Accordingly, a non-citizen who has a court date faces an impossible choice: skip the hearing and be ordered removed in absentia, or appear without family support and potential witnesses since all are likely to be arrested and detained, perhaps thousands of miles away from their family, community, lawyer and available pro bono resources.

Lawyers for Non-Citizens Are Being Defunded and Discouraged

Access to justice in immigration court is very much dependent on having a lawyer—based on recent data, a respondent with a lawyer is approximately 30 times more likely to secure relief than an unrepresented respondent.[6] This explains why the Trump Administration has sought to eliminate or discourage representation by (a) defunding legal aid programs, (b) limiting continuances to secure counsel, (c) threatening immigration lawyers with sanctions, and (d) moving detained non-citizens to remote areas with limited legal options.

The first frontal assault on legal representation came within weeks of the inauguration with the announcement of the termination of three programs that provided legal assistance—Legal Orientation Program (LOP) for detained adults, the Immigration Court Helpdesk (ICH), the Family Group Legal Orientation Program (FGLOP)—and one representation program for children—the Counsel for Children Initiative (CCI).[7] Three months later, national funding was

[6] From October 2024 through August 2025, in 856,315 outcomes of immigration deportation cases in the United States, 277,131 of respondents were represented by counsel and 602,738 were without counsel. Those with counsel were granted relief in 37,313 of outcomes (13.5%) while only 2,426 (0.4%) without counsel were granted relief. See https://tracreports.org/phptools/immigration/closure/

[7] "Think Immigration: Vital Lifeline for Adults, Families, and Children in Removal Proceedings Forced to Halt", *American Immigration Lawyers Association* (Jan. 28, 2025), available at https://www.aila.org/think-immigration-vital-lifeline-for-adults-families-and-children-in-removal-proceedings-forced-to-halt

cut for the National Qualified Representative Program (NQRP), which provides legal representation to detained non-citizens who have been found mentally incompetent by an Immigration Judge or the BIA and are therefore unable to represent themselves in proceedings.[8]

The largest and longest-running of these programs has been LOP, which has delivered critical legal information in more than 30 languages to detained non-citizens. In dozens of detention centers, LOP has helped tens of thousands of detainees evaluate their claims for relief, assisted with forms and filings, and provided referrals to counsel.[9] Terminating LOP and the other legal assistance programs not only leads to higher rates of unjust deportations due to increased confusion about court appearances, procedural errors and fewer referrals to counsel but also directly contributes to longer court proceedings and increased backlogs due to missed court appearances and more time spent by Immigration Judges explaining basic procedures to unrepresented respondents. Although statistics do not yet exist, it is reasonable to conclude that more appeals and motions to reopen will occur when mistakes or injustices are later discovered.

EOIR has also signaled its intent to limit access to counsel by reinstating Policy Memo 21-13, originally introduced at the end of the first Trump Administration, which discourages Immigration Judges from granting continuances for non-citizens to obtain legal representation, under the guise of protecting proceedings from respondents who have a "strong incentive" to abuse continuances for "dilatory tactics."[10] Policy Memo 21-13 replaced Operating Policies and Procedures Memo 17-01, which established a general policy to grant at least one continuance to allow respondents to obtain legal counsel. The new memo instead encourages Immigration Judges to proceed in the absence of counsel, instructing that the law only provides non-citizens 10 days to obtain counsel and that proceedings may be initiated against the non-citizen regardless of whether legal representation has been obtained.[11] The new policy further explains that in the case of asylum proceedings, a continuance based on "good cause" (the general regulatory standard)[12] does not automatically satisfy the higher statutory requirement of "exceptional circumstances" if such continuance would extend an asylum adjudication beyond its statutory deadline of 180 days.[13] If a continuance would result in missing the 180 day deadline for an asylum, the Immigration Judge may only grant the

[8] "Acacia Center for Justice Statement Following Preliminary Injunction Issued in Challenge of Termination of National Qualified Representative Program", *Acacia Center for Justice* (Jul. 22, 2025), available at https://acaciajustice.org/acacia-statement-preliminary-injunction-issued-in-challenge-of-termination-of-nqrp/

[9] Status Report: Legal Orientation Program, *Acacia Center for Justice* (accessed Jul. 11, 2025) available at https://acaciajustice.org/lop-status-report/

[10] Operating Policies and Procedures Memorandum 17-01: Continuances, *U.S. Department of Justice* (July 31, 2017), available at https://www.justice.gov/eoir/file/oppm17-01/dl

[11] INA § 239(b)(1). This paltry amount of time is frequently inadequate for respondents to locate counsel, for counsel to prepare, and for respondents to gather sufficient financial resources to retain private counsel when *pro bono* options are unavailable.

[12] 8 C.F.R. § 1003.29

[13] INA § 208(d)(5)(A)(iii). Supra footnote 10.

continuance if the respondent satisfies both the "good cause" and "exceptional circumstances" standards, therefore making it less likely for a continuance to be granted.

The White House took aim at immigration lawyers in a March 2025 memorandum to the Attorney General urging the Department of Justice to seek sanctions against lawyers, law firms and supervising lawyers in immigration cases.[14] This order was backed up by the fact-free assertion that "the immigration bar, and powerful Big Law *pro bono* practices, frequently coach clients to conceal their past or lie about their circumstances when asserting their asylum claims, all in an attempt to circumvent immigration policies enacted to protect our national security and deceive the immigration authorities and courts into granting them undeserved relief." There is, of course, no citation or evidence to support such a broad disparagement. The message is clear: this Administration will come after lawyers who defend the rights of non-citizens.

Non-Citizens Are Denied a Chance to Present Their Cases at Full Hearings

Even non-citizens who avoid detention and can secure a lawyer are no longer guaranteed a full hearing to explain their right to remain in the United States. In a break with years of practice and precedent, the BIA has authorized "pretermission" of cases at the preliminary master calendar stage. In *Matter of H-A-A-V-*, 29 I&N Dec. 233 (BIA 2025), the Board approved a new policy of dismissing asylum and other claims even without hearing testimony from the respondent. The BIA noted that there were no factual issues in dispute, thereby negating the regulatory requirement for a hearing.[15] This precedential decision came in the wake of EOIR's direction to immigration judges in April 2025 "that adjudicators may pretermit legally deficient asylum applications without a hearing."[16] *Matter of H-A-A-V-* is but one of a slew of recent BIA and Attorney General decisions that afford immigration judges more reasons to pretermit claims at master calendar hearings for failing to state a *prima facie* claim.[17]

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[14] Presidential Memorandum on Preventing Abuses of the Legal System and the Federal Court (Mar. 22, 2025), available at https://www.whitehouse.gov/presidential-actions/2025/03/preventing-abuses-of-the-legal-system-and-the-federal-court/

[15] "The regulations implementing these statutory provisions in the context of asylum and withholding of removal applications provide that Immigration Judge will decide such applications for relief 'after an evidentiary hearing to resolve factual issues in dispute,' 8 C.F.R. §1240.11(c)(3)…." *Matter of H-A-A-V-*, 29 I&N Dec. 234.

[16] Pretermission of Legally Insufficient Applications for Asylum [Policy Memorandum 25-28], *Department of Justice* (Apr. 11, 2025), available at https://www.justice.gov/eoir/media/1396411/dl?inline

[17] See *Matter of K-E-S-G-*, 29 I&N Dec. 145 (BIA 2025) and the Attorney General's reinstatement of *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018) in *Matter of S-S-F-M-*, 29 I&N Dec. 207 (A.G. 2025) and reinstatement of *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019) in *Matter of R-E-R-M- & J-D-R-M-*, 29 I&N Dec. 202 (A.G. 2025).

Denying a respondent their day in court to articulate their position is particularly prone to error as 97% of respondents do not speak English and therefore are unlikely to be able to fully present their cases in written form.[18] Additionally, a determination of a respondent's credibility is essential to arriving at the facts needed to support a claim for relief, particularly when documentary evidence from foreign countries is scarce and difficult to obtain (virtually impossible for *pro se* detained respondents).

Not only does pretermission deprive the non-citizen of a right to testify and present evidence, this new policy also comes without any standards to guide non-citizens and their counsel seeking to avoid pretermission. Decades of practice has required non-citizens to submit their evidence prior to the individual, or merits, hearing, not before a preliminary hearing.[19] There are no fixed standards for the evidence required to survive a motion to pretermit in immigration court. In *Matter of H-A-A-V-*, the Board references similar federal court summary procedures, but neglects to mention that motions to dismiss and summary judgment have decades of guidance, entirely lacking in the immigration court context. The analogy also fails, as in federal court the party seeking dismissal has the burden of proof, while the BIA placed the burden of proving the claim at this preliminary stage on the non-citizen. There is little doubt that the pressure from EOIR and the Board to pretermit will result in the denial of a fair opportunity for non-citizens to present their claims for asylum and other protection from serious persecution.

There have also been quite a few BIA reversals of grants of deferral of removal the Convention against Torture, several of which were initially unpublished but were later designated for publication by the Attorney General.

[18] From October 2024 through August 2025, 97% of respondents were recorded as speaking a language other than English, see https://tracreports.org/phptools/immigration/closure/

[19] This practice also gave non-citizens the opportunity to obtain counsel in time for the individual hearing. If the case is pretermitted at the preliminary hearing, a *pro se* respondent never has the chance to explain why her case is distinguishable from the recent precedents, or how those precedents might conflict with applicable circuit law.