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April 3, 2026

Acting Assistant Director Jamee E. Comans
Office of Policy
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2500
Falls Church, VA 22041

Re: Appellate Procedures for the Board of Immigration Appeals, EOIR Docket No. EOIR-26-AB37, RIN 1125-AB37

Dear Acting Assistant Director Comans,

The Center for Immigration Studies (CIS) respectfully submits the following public comment to the U.S. Department of Justice (DOJ) in response to the Executive Office for Immigration Review (EOIR)'s interim final rule (IFR), *Appellate Procedures for the Board of Immigration Appeals*, EOIR Docket No. EOIR-26-AB37, as published in the Federal Register on February 6, 2026.

CIS is a national, nonprofit, public-interest organization comprised of concerned citizens who share a common belief that our nation's immigration laws must be enforced, and that policies must be reformed to better serve the national interest. CIS examines trends and effects, educates the public on the impacts of sustained high-volume immigration, and advocates for sensible solutions that enhance America's environmental, societal, and economic interests today and into the future.

I. Background

Under authority delegated by the U.S. Attorney General, EOIR operates the U.S. immigration court system by conducting immigration court proceedings, appellate reviews, and administrative hearings for the purpose of adjudicating immigration cases. EOIR, which includes the Board of Immigration Appeals (BIA), an administrative tribunal that, *inter alia*, hears appeals of immigration judge decisions, was created in 1983¹ to be independent of the former Immigration and Naturalization Service (INA) (duties of which are now performed by various agencies within

¹ See U.S. Dep't of Justice, Exec. Off. for Immigr. Rev., *About the Office* (updated Apr. 25, 2023) ("The Executive Office for Immigration Review (EOIR) was created on January 9, 1983, through an internal Department of Justice (DOJ) reorganization which combined the Board of Immigration Appeals (BIA or Board) with the Immigration Judge function previously performed by the former Immigration and Naturalization Service (INS) (now part of the Department of Homeland Security).").



CENTER FOR IMMIGRATION STUDIES

the Department of Homeland Security (DHS),² the agency charged with the enforcement of the federal immigration laws. EOIR's primary mission is to "adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administration the Nation's immigration laws."³ Among its goals, the agency has identified increasing "productivity and timeliness of case processing by setting appropriate standards, streamlining procedures, and implementing staff-generated recommendations,"⁴ as essential to supporting its primary mission.

The agency, however, has experienced historic backlogs resulting from two border crises and the COVID-19 pandemic. The latter border surge, spanning from early 2021 to the end of 2024, was so severe that nearly every month set historic records for the number of illegal entries, got-aways, and releases of inadmissible aliens into the United States through the Southwest Land Border Region.⁵

The Biden administration's border crises harshly impacted processing times and backlogs across the immigration system,⁶ but most notably within the immigration courts. According to EOIR data from FY 2025, the immigration courts' overall backlog increased from 1,504,246 pending cases by the end of FY 2020 to 3,884,956 pending cases by the end of FY 2024.⁷ This is a 1,988% increase since 2008, at which time EOIR reported a backlog of over 186,000 cases, and more than triple 2019's backlog of over 1,088,000 cases.⁸

EOIR's extreme backlogs are not only eroding the credibility of the immigration system, but the backlogs, themselves, also encourage additional illegal immigration to the United States by ensuring that even those aliens who are ultimately placed in removal proceedings will nevertheless be provided the opportunity to live in the United States for numerous years – in many cases in excess of nearly all nonimmigrant visa categories' periods of authorized stay. Moreover, aliens who are paroled out of detention or who file asylum applications become

² See U.S. Citizenship & Immigr. Servs., *Overview of INS History* (2012) ("The Homeland Security Act of 2002 disbanded INS on March 1, 2003. Its constituent parts contributed to 3 new federal agencies serving under the newly formed Department of Homeland Security (DHS): 1. Customs and Border Protection (CBP), 2. Immigration and Customs Enforcement (ICE), and 3. U.S. Citizenship and Immigration Services (USCIS).").

³ U.S. Dep't of Justice, Exec. Off. for Immigr. Rev., *About the Office* (updated Apr. 25, 2023) ("The Executive Office for Immigration Review (EOIR) was created on January 9, 1983, through an internal Department of Justice (DOJ) reorganization which combined the Board of Immigration Appeals (BIA or Board) with the Immigration Judge function previously performed by the former Immigration and Naturalization Service (INS) (now part of the Department of Homeland Security).").

⁴ *Id.*

⁵ See U.S. Customs & Border Prot., *Southwest Land Border Encounters* (Feb. 18, 2026); see also H.R. Comm. on Homeland Sec., *Border Crisis Startling Stats* (Sept. 2024).

⁶ See U.S. Citizenship & Immigr. Servs., Off. of the Ombudsman, *Annual Report 2023* (Jun. 2023).

⁷ U.S. Dep't of Justice, Exec. Off. for Immigr. Rev., *Adjudication Statistics, Pending Cases, New Cases, and Total Completions* (Jul. 2025).

⁸ *Id.*



CENTER FOR IMMIGRATION STUDIES

eligible to receive employment authorization documents (EADs) and work in the United States legally, either immediately or within six months, respectively.⁹

As civil rights champion and chairwoman of President Clinton administration's Commission on Immigration Reform, Barbara Jordan, explained in testimony before Congress:

*Deportation is crucial. Credibility in immigration policy can be summed up in one sentence: Those who should get in, get in; those who should be kept out, are kept out; and those who should not be here will be required to leave. The top priorities for detention and removal, of course, are criminal aliens. But for the system to be credible, people actually have to be deported at the end of the process.*¹⁰

The removal of an alien subject to removal proceedings from the United States, however, is not possible without DHS first obtaining a final order of removal from an immigration judge.¹¹

In December 2020, DOJ issued a final rule, referred to as the *Appellate Procedures Final Rule*, to establish limits on the authority of immigration judges and the BIA to ensure more efficient processing of the immigration courts' dockets.¹² The *Appellate Procedures Final Rule* made numerous changes, but most importantly, it:

- Limited EOIR adjudicators' authority to administratively close cases to only cases in which adjudicators have received express grants of such authority by statute or regulation or in cases of judicially approved settlement agreements;
- Limited the BIA's authority to remand matters to immigration judges;
- Expedited briefing schedules and limit the number of extensions parties could receive; and
- Addressed incomplete identity, law enforcement, or security investigations by standardizing the authority of adjudicators to deem an application abandoned if an applicant failed to comply with pertinent requirements regarding such investigations.¹³

DOJ explained that it proposed this rule in 2020 to ensure that immigration court cases were adjudicated in a consistent and timely manner – and it further emphasized that the drastic increase in the agency's backlog also resulted in a corresponding increase in the number of appeals of immigration judge decisions, noting that EOIR that in fiscal year 2018, the number of

⁹ See INA § 208(d)(2); 8 C.F.R. § 274a.12(c)(11).

¹⁰ Jordan, Barbara, Testimony Before House of Representatives, Committee on the Judiciary, Subcommittee on Immigration and Claims (Feb. 24, 1995).

¹¹ See INA § 241.

¹² See 85 Fed. Reg. 52491 (Aug. 26, 2020).

¹³ *Id.*



CENTER FOR IMMIGRATION STUDIES

such appeals increased 70 percent over the previous high in the preceding five fiscal years.¹⁴ Accordingly, the *Appellate Procedures Final Rule* was promulgated to reduce unwarranted delays in the appeals process and to promote efficient use of BIA and EOIR resources while assuring that cases were completed in a timely manner consistent with due process.¹⁵

The *Appellate Procedures Final Rule* was enjoined on March 10, 2021, by the U.S. District Court for the Northern District of California in *Centro Legal de la Raza v. Exec. Off. for Immigr. Rev.*, 524 F. Supp. 3d 919 (2021). The Biden administration declined to appeal that decision, and instead on September 8, 2023, published a new rule, titled *Efficient Case and Docket Management in Immigration Proceedings*, which repealed the provisions created by the *Appellate Procedures Final Rule*. Particularly, EOIR's 2023 rule broadened immigration judges' authority to administratively close, terminate, or dismiss cases; restored longer briefing schedules and calendar flexibility; and expanded the BIA's authority to remand cases, among other changes.¹⁶

Notably, the 2023 rule did nothing to improve EOIR case completion rate or otherwise reduce EOIR's backlog. As a result, the immigration court backlog continued to grow beyond sustainable levels. For the third quarter of fiscal year (FY) 2025, EOIR reported 3,797,662 pending cases, nearing its all-time high of 3,884,956 pending cases reported in FY 2024. In comparison, EOIR reported just 658,871 pending cases in FY 2015, which at that time was still crisis level.¹⁷ The BIA specifically reported 219,945 appeals pending in its docket in FY 2026, which is its own historic high. For comparison, the BIA reported just 34,226 pending appeals in FY 2016.¹⁸

¹⁴ *Id.* at 52492.

¹⁵ See 85 *Fed. Reg.* 52491, 52493 (Aug. 26, 2020).

¹⁶ 89 *Fed. Reg.* 46742 (May 29, 2024).

¹⁷ U.S. Dep't of Justice, Exec. Off. for Immigr. Rev., *Adjudication Statistics, Pending Cases, New Cases, and Total Completions* (Jul. 2025).

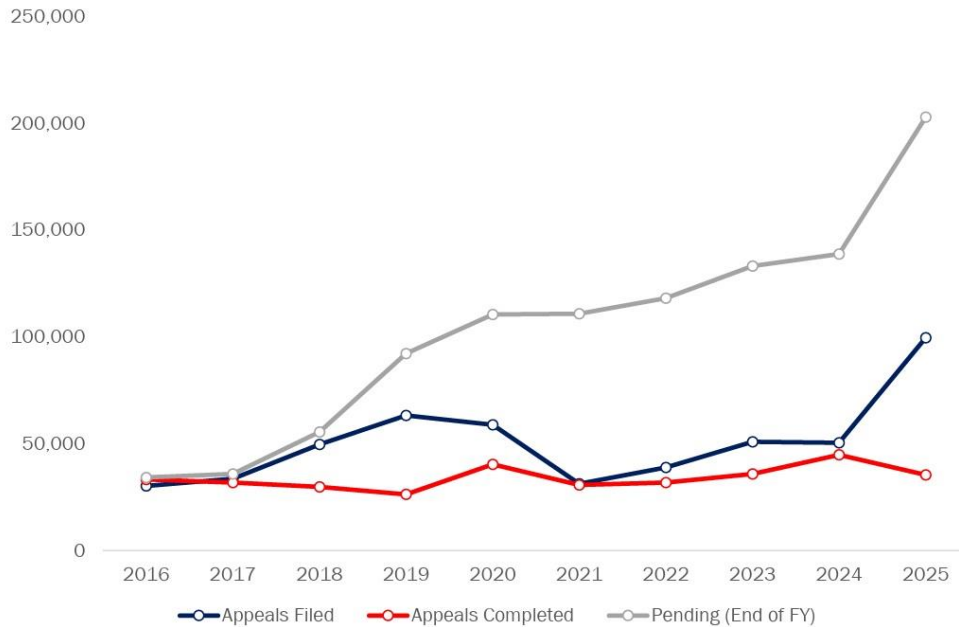
¹⁸ U.S. Dep't of Justice, Exec. Off. for Immigr. Rev., *Adjudication Statistics, All Appeals Filed, Completed, and Pending* (Jan. 2026).



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EXECUTIVE OFFICE FOR IMMIGRATION REVIEW ADJUDICATION STATISTICS

All Appeals Filed, Completed, and Pending



Source: EOIR, (Jan. 26, 2026).

The average number of days cases are pending in the immigration court system has also grown significantly over the past 15 years. Transactional Records Access Clearinghouse (TRAC Immigration) reports show that, in FY 2026, the average number days a case is unresolved (since the date of an alien is issued a Notice to Appear (NTA)) is 827 days. Processing times peaked during this period to 934 days in FY 2021.¹⁹ While overall processing times decreased between FY 2021 and FY 2024 (to an average of 571 in 2024), that decrease is likely attributable to the Biden administration’s expanded policy of terminating existing removal cases that did not meet its narrow enforcement priorities – not because of procedural changes within the immigration court system.²⁰

¹⁹ TRAC Immigration, *Immigration Court Backlog* (Dec. 2025).

²⁰ See Memorandum from Doyle, Kerry, Principal Legal Advisor, U.S. Immigr. & Customs Enf’t, to All OPLA Attorneys, U.S. Immigr. & Customs Enf’t, Re: Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion (Apr. 3, 2022); see also Arthur, Andrew, Center for Immigration Studies, *BIA: Immigration Judge Improperly Terminated Pending Immigration Case, Why do judges even have such authority, and is Trump II considering taking it away?* (Nov. 12, 2025).



II. DOJ Must Implement More Efficient Appellate Procedures to Address its Historic Backlog and Maintain the Integrity of the Immigration System.

CIS strongly supports this IFR’s targeted procedural reforms to increase the BIA’s efficiency and reduce its historic backlog by streamlining the appellate body’s procedures and limiting appeals of immigration judge decisions. The current framework invites delay and encourages the routine filing of low-merit appeals, thereby diverting limited adjudicatory resources from cases that warrant meaningful review. To address these structural inefficiencies, CIS agrees that EOIR should adopt simultaneous briefing schedules to eliminate unnecessary sequencing delays; limit appeals to cases that the BIA affirmatively agrees to review en banc, thereby focusing institutional attention on matters of legal significance or clear error; and reduce the filing deadline for non-asylum appeals from 30 days to 10 days to promote prompt resolution and deter dilatory filings.

Collectively, these measures would align appellate procedures with principles of administrative efficiency, enhance the BIA’s capacity to issue timely and precedential decisions, and ensure that the immigration system functions as a credible and effective mechanism for enforcing the nation’s immigration laws. CIS believes these reforms will preserve fairness and restore confidence in the immigration system.

A. Simultaneous Briefing Schedules

CIS supports EOIR’s proposal to permanently adopt simultaneous briefing schedules during the appellate process. Given the historic backlogs the BIA is facing, CIS believes that the costs of extending simultaneous briefing requirements to all cases, rather than to only detained cases, is pointedly outweighed by EOIR’s need to efficiently adjudicate appeals in a timely manner and the need to deter additional illegal immigration to the United States. Expanding simultaneous briefing schedules to all cases will give the BIA another tool to address its historic backlog without undermining due process.

DOJ has acknowledged that simultaneous briefing schedules have “worked well for appeals involving aliens who are in custody” and confirmed that such requirements satisfy due process. Accordingly, as DOJ previously explained, there is no legal or operational reason to treat the two populations differently.²¹ Rather, in addition to making the appellate process more efficient, imposing the same briefing timeframes to in both detained and non-detained cases makes the appellate process more equitable and fairer.

CIS also emphasizes that safeguards already exist in regulation that allow the BIA to extend briefing when additional briefing is appropriate. For example, the BIA, under this IFR, maintains

²¹ 85 Fed. Reg. 52491, 52499 (Aug. 26, 2020).



the authority to request or accept additional briefing to resolve an appeal.²² Recognizing this existing authority, together with the BIA's core function of providing timely and clear legal guidance to adjudicators across the immigration system, further supports EOIR's proposal to require simultaneous briefing.

There are also significant incentives for aliens without meritorious claims (or their representatives) to delay the appellate process for as long as possible.²³ Removal from the United States imposes numerous consequences on aliens who have remained in the United States illegally for long periods of time, including but not limited to the imposition of the three- and ten- year bars.²⁴ Because the filing of an appeal generally stays the finality of an immigration judge's removal order, it allows the alien to remain in the United States for the duration of the BIA's adjudication, which can span months or years given existing backlogs.

During this period, aliens may continue to live and work in the country, and in some cases pursue collateral forms of relief or benefit from shifting policy priorities. For representatives, prolonged proceedings can also generate additional fees or defer the ultimate resolution of a weak case. Taken together, these dynamics create a misalignment between the efficient administration of the immigration system and the incentives faced by certain appellants, encouraging the filing and maintenance of appeals not to secure legal relief, but to maximize delay. Considering these strong incentives for abuse, CIS agrees with EOIR's imperative to implement reforms that allow appeals to proceed without undue delays.

B. Limiting BIA Review to Only Appeals that the BIA Agrees to Review En Banc

CIS strongly supports giving the BIA more control over its appellate docket by summarily dismissing all appeals unless a majority of the BIA members vote en banc to accept an appeal. Consistent with existing understandings regarding when a removal order becomes final and when a petition for review must be filed, if an appeal is summarily dismissed under the provisions created by the IFR, the immigration judge's decision will become the final agency decision for

²² See 8 C.F.R. § 1003.3(c) ("In its discretion, the Board may request supplemental briefing from the parties after the expiration of the briefing deadline."); EOIR Policy Manual, pt. III, ch. 4.6(i) (last visited Jan. 30, 2026) (discussing *amicus curiae* briefs); see also EOIR, *Agency Invitations to File Amicus Briefs* (Sept. 10, 2025) (explaining that EOIR "occasionally invites members of the public to file *amicus curiae* briefs addressing issues of significance" and allowing members of the public to subscribe to receive such invitations).

²³ Cf. *I.N.S. v. Doherty*, 502 U.S. 314, 323 (1992) ("Motions for reopening immigration proceedings are disfavored . . . [because] every delay works to the advantage of the alien who wishes merely to remain in the United States.").

²⁴ See INA § 212(a)(9)(B)(i) ("Any alien (other than an alien lawfully admitted for permanent residence) who- (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244a(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.").



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purposes of federal court review.²⁵ CIS agrees that this change in procedure will allow the BIA to focus its limited resources on adjudicating first, the over 200,000 appeals that are currently pending and then, cases that present novel or complex legal issues in the most timely manner reasonable, given the Board’s historic backlog.

Previously, unless subject to the existing, enumerated reasons for dismissal, the BIA reviewed all appeals on the merits. CIS does not believe, however, that this policy is required by law or serves the interests of a functioning immigration system.

There is no statutory requirement for all cases decided by an immigration judge to be given an appeal on the merits. The BIA has longstanding authority to dismiss an appeal without analyzing the merits of the case.²⁶ This reform also has historical precedence and is consistent with the Board’s regulatory procedures in place at the time Congress enacting INA § 101(a)(47)(B), defining “order of deportation.”²⁷

CIS, rather, agrees that EOIR should expand the BIA’s use of summary dismissal for non-novel appeals to allow the Board to focus its limited resources on cases that warrant precedential decisions. Limiting appeals will support the BIA’s core institutional role of developing clear, authoritative interpretations of immigration law by filtering out non-novel appeals or appeals of fact-bound or already-settled legal issues. It will also improve doctrinal clarity and uniformity. When the BIA is not burdened by high volumes of low-value appeals, it can devote more time to complex cases that warrant full opinions and produce clear or “bright-line” rules, reducing intra-system variation and the likelihood of inconsistent outcomes across jurisdictions as geopolitical and legal landscapes evolve.

As DOJ explained in this IFR, EOIR data shows that most appeals to the BIA are not meritorious. Between October 1, 2023, and September 15, 2025, for example, the BIA sustained only 123 out of 55,065 case appeals on the merits.²⁸ Thus, “regardless of which party appeals, the BIA generally agrees with the outcome of the decision.”²⁹

²⁵ The Attorney General, however, may still exercise discretion to review cases under 8 C.F.R. § 1003.1(h).

²⁶ See 8 C.F.R. § 1003.1(d)(2); accord *Dia v. Ashcroft*, 353 F. 3d 228 at 237 (“[The INA] says absolutely nothing about procedures to be employed by the BIA, or the right to, or manner of, review generally; it only speaks to review by the BIA and its ‘affirming’ the ‘order’ of deportation Based on the fact that § 1101(a)(47)(B) contains the only mention of the BIA in the INA, it seems clear that Congress has left all procedural aspects of the BIA, especially how it hears cases, entirely to the Attorney General’s discretion.”).

²⁷ See 8 C.F.R. § 3.1(d)(1-a), 103.3(a)(1)(v) (1996); U.S. Dep’t of Justice, Exec. Off. for Immigr. Rev.; Rules of Procedures, 57 Fed. Reg. 11568, 11570, 11573 (Apr. 6, 1992).

²⁸ See 91 Fed. Reg. 5267, fn. 8 (Feb. 6, 2026);p This figure excludes interlocutory appeals, bond appeals, and appeals of motion to reopen decisions.

²⁹ *Id.* at fn 8.



Moreover, as discussed above, removable aliens have strong structural incentives to file appeals of immigration judge decisions, even when the likelihood of reversal is low. Filing an appeal automatically stays the finality of the underlying removal order in many cases and prolongs the adjudicatory process, thereby allowing the alien to remain in the United States for a substantially longer period while the appeal is pending.³⁰

Because removal proceedings are governed by the INA and implementing regulations that provide multiple layers of administrative review, an appeal can delay enforcement of the removal order for months or years, particularly given the BIA's significant caseload. In addition, the cost of filing an administrative appeal is relatively modest compared to the substantial benefit of delaying removal, and aliens may also obtain additional time to pursue collateral relief, submit motions to reopen or reconsider, or await potential policy or legal changes that could affect their eligibility for immigration benefits. These incentives make the filing of appeals a rational strategy for many removable aliens regardless of the underlying merits of their claims.

C. Reducing the Filing Deadline for a Non-Asylum Appeal from 30 Days to 10 Days

CIS supports the EOIR's decision to reduce the filing deadline for a non-asylum appeal from 30 days to 10 days. Such action would promote more efficient and timely administration of the immigration system.

This reform will support EOIR's efforts to timely provide final decisions in immigration cases without overburdening aliens or their representatives. Because the parties have already litigated the relevant issues before the immigration judge, a lengthy post-decision filing period is generally unnecessary to determine whether an appeal will be pursued. A shorter filing deadline would reduce delays in the finality of removal orders, discourage strategic appeals filed primarily to prolong proceedings, and allow the Board to begin adjudicating meritorious appeals more quickly. Accelerating the initiation of the appellate process would also help reduce case backlogs and promote more predictable and timely enforcement of immigration laws while preserving appellate review for cases in which genuine legal or factual errors are alleged.

Moreover, CIS agrees with EOIR's conclusion that reducing the filing deadline for non-asylum appeals from 30 days to 10 days is consistent with federal law. The INA does not prescribe a specific time limit for filing an administrative appeal from a removal decision to the BIA. The current filing period is established by regulation, not statute.³¹ Because this reform falls well

³⁰ See *I.N.S. v. Doherty*, 502 U.S. 314, 323 (1992) ("Motions for reopening immigration proceedings are disfavored . . . [because] every delay works to the advantage of the alien who wishes merely to remain in the United States.")

³¹ See 8 C.F.R. § 1003.3.3(a)(2).



within DOJ's authority to structure its own adjudicative procedures, DOJ retains the discretion to amend the deadline through rulemaking.³²

III. EOIR Should Amend Its Regulations to Prohibit Immigration Judges from Exercising Administrative Closure Beyond Statutory Limits.

CIS strongly recommends that, in addition to the reforms included in this IFR, EOIR amend 8 C.F.R. §§ 1003.1(d)(1)(ii), 1003.1(l), 1003.10(b), and 1003.18(c)-(d) to restrict immigration judges' and the BIA's authorities to administratively close cases. Current rules have authorized administrative closure in cases that are not consistent with federal law or good governance principals.

Immigration judges and the BIA have a duty to render final decisions in immigration cases in a timely manner.³³ The INA sets out mandatory, not permissive, criteria for adjudicators to apply in determining which aliens are eligible to enter and remain in the United States and which aliens must exit or be removed from the United States.³⁴ Congress has, under INA § 240, mandated a specific process for conducting removal proceedings that, as it has stated, "shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States."³⁵

While the INA permits EOIR adjudicators to take certain actions, such as to reopen or reconsider a case in removal proceedings under conditions laid out in INA § 240(c)(6) and INA § 240(c)(7), respectively, it has not authorized administrative closure as a method to "temporarily" or permanently remove cases from a court's calendar on the basis of a "totality of the circumstances" analysis of the parties' interests, as is currently authorized under 8 C.F.R. § 1003.1(l)(3).

Moreover, as DOJ previously explained, longstanding precedent has likewise clarified that immigration judges are required to both complete a case and to complete it through only one of three options: an order of termination; an order of removal; or an order of relief or protection consistent with the INA.³⁶ Administrative closure, however, does not result in the issuance of a

³² See INA § 103(a).

³³ 8 C.F.R. § 1003.1(d)(1) ("The Board shall resolve the questions before it in a manner that is timely, impartial, and consistent with the Act and regulations."); 8 C.F.R. § 1003.10(b) ("In all cases, immigration judges shall seek to resolve the questions before them in a timely and impartial manner consistent with the Act and regulations."); see also *Matter of Quintero*, 18 I&N Dec. 348, 350 (BIA 1982) ("Once deportation proceedings have been initiated by the District Director, the immigration judge may not review the wisdom of the District Director's action, but must execute his duty to determine whether the deportation charge is sustained by the requisite evidence in an expeditious manner."), *aff'd sub nom. Quintero-Martinez v. INS*, 745 F.2d 67 (9th Cir. 1984).

³⁴ See INA § 212; INA § 237.

³⁵ INA § 240(a)(3).

³⁶ See *Matter of Chamizo*, 13 I&N Dec. 435, 437 (BIA 1969).



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final order or any other final disposition of a case. Rather, administrative closure delays disposition of a case until an unknown and unpredictable date.

While DOJ has reiterated that administrative closure is meant to be a temporary pause in removal proceedings, EOIR data shows that administrative closure is anything but temporary. Instead, administrative closure has been used as a tool to enable immigration judges and the BIA to allow removable aliens to remain in the United States without any lawful immigration status.

EOIR data reveals that, “At Immigration Court, the average length of time a case has been administratively closed is 6,126 days (approximately 17 years) and the median length of time is 4,305 days (over 11½ years),” confirming that administrative closure has not been primarily used by EOIR adjudicators to allow aliens time to seek a benefit from DHS – or the completion of another temporary purpose that may justify delaying their proceedings.³⁷

In other words, the expansion of EOIR adjudicators’ administrative closure authority has allowed those adjudicators to improperly seize equitable powers that are not authorized by the INA or any other relevant statute. That is improper because, as the Ninth Circuit has noted,

*Immigration Judges, or special inquiry officers, are creatures of statute, receiving some of their powers and duties directly from Congress ... and some of them by subdelegation from the Attorney General.... Rather, these decisions plainly hold that the immigration judge is without discretionary authority to terminate deportation proceedings so long as enforcement officials of the INA choose to initiate proceedings against a deportable alien and prosecute those proceedings to a conclusion. **The immigration judge is not empowered to review the wisdom of the INA in instituting the proceedings. His powers are sharply limited, usually to the determination of whether grounds for deportation charges are sustained by the required evidence or whether there has been abuse by the INA in its exercise of particular discretionary powers.** [Emphasis added.]³⁸*

Consequently, EOIR’s abuse of administrative closure in the past decade is contrary to law.

The administrative closure authority has been significantly abused since the BIA departed from longstanding precedent governing the use of that authority in its 2012 decision in *Matter of Avetisyan*.³⁹ Thereafter, the administrative closure rate for asylum cases skyrocketed, from 4.55 percent in 2011, to 14.25 percent in 2012, to 25.31 percent in 2013, 25.42 percent in 2014, 35.61 percent in 2015, and 39.4 percent in 2016.⁴⁰

³⁷ U.S. Dep’t of Justice, Exec. Off. for Immigr. Rev., *Amnesty Cases* (Nov. 18, 2025).

³⁸ *Lopez-Telles v. INS*, 564 F.2d 1302, 1303-04 (9th Cir. 1977).

³⁹ See *Matter of Avetisyan*, 25 I&N Dec. 688 (Dec. 2012).

⁴⁰ U.S. Dep’t of Justice, Exec. Off. for Immigr. Rev., *Adjudication Statistics, Asylum Decision Rates* (Jul. 2023).



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The most recent EOIR data reveals that there are more than 361,600 inactive pending cases (including non-asylum cases) subject to administrative closure in FY 2025.⁴¹ For comparison, EOIR reported 165,122 administratively closed cases in FY 2012, 135,093 administratively closed cases in FY 2002, and 101,224 in FY 1996.⁴²

⁴¹ U.S. Dep't of Justice, Exec. Off. for Immigr. Rev., *Adjudication Statistics, Administratively Closed Cases* (Jul. 2025).

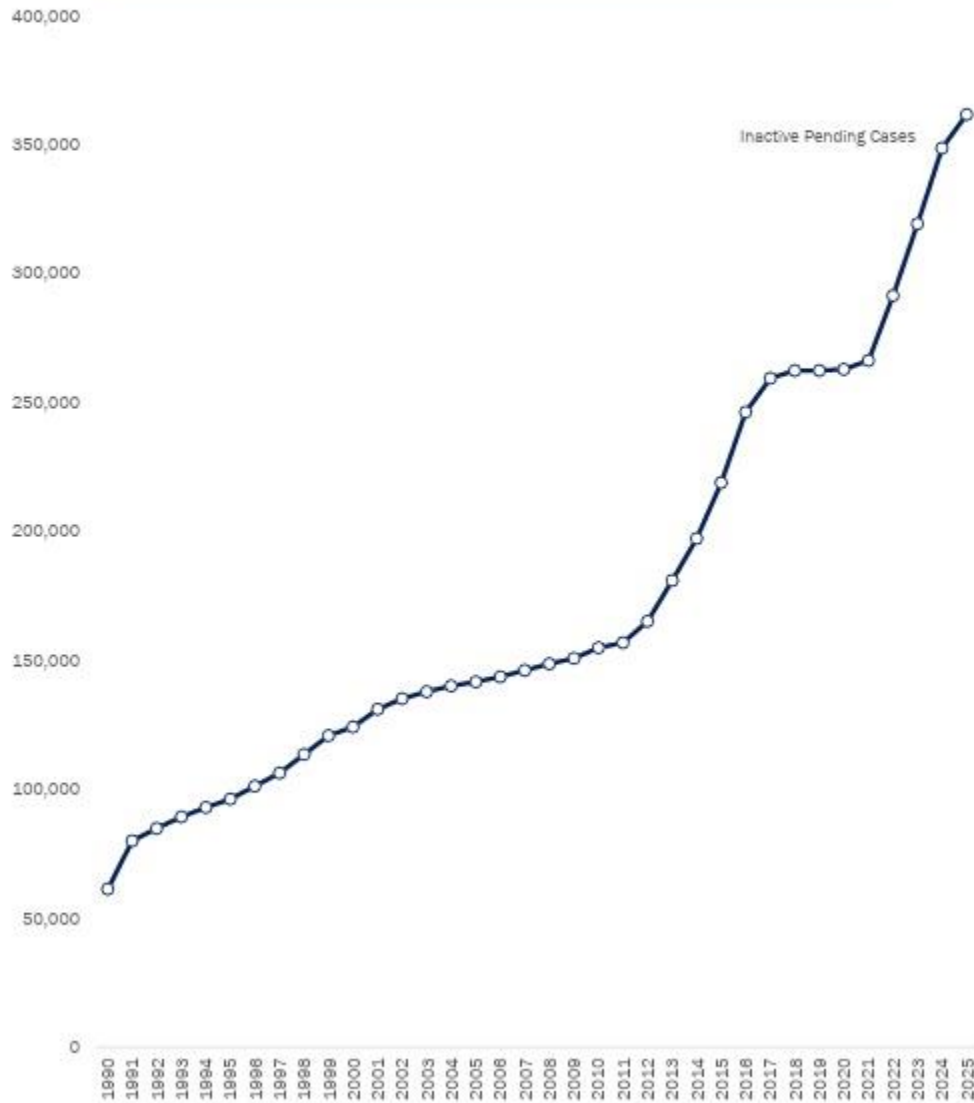
⁴² *Id.*



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EXECUTIVE OFFICE FOR IMMIGRATION REVIEW ADJUDICATION STATISTICS

Administratively Closed Cases



Source: EOIR (Jul. 2025).

As the BIA explained in *Matter of Amico*, “When a case is administratively closed, the [alien] is allowed ... to avoid an order regarding his deportability, and the consequences an order of deportation could bring.”⁴³ In other words, the practice allows aliens with no lawful immigration status who are removable from the United States to remain here indefinitely, both leaving them

⁴³ *Matter of Amico*, 19 I&N Dec. 652, 654 (BIA 1988).



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in “legal limbo” and signaling to prospective migrants around the world that the U.S. government is not serious about enforcing its own immigration laws.

CIS also strongly warns DOJ against permitting administrative closure in UAC proceedings where the UAC indicates an intent to apply for asylum and USCIS has initial jurisdiction over the asylum application. UACs are not subject to the one-year filing deadline for asylum applications⁴⁴ and are especially vulnerable to exploitation and abuse.⁴⁵

Recent reports have also demonstrated that the U.S. Department of Health and Human Services’ Office of Refugee Resettlement (ORR) is currently unable or unwilling to take necessary measures to keep track of the location and ensure the welfare of UACs after it transfers custody to sponsors, many of whom received inadequate background checks, if any at all.⁴⁶

Consequently, reports have confirmed that the U.S. government’s failure to safeguard UACs after their arrival in the United States has exposed countless children to horrifying health conditions, criminal threats, unlawful labor, and sex trafficking.⁴⁷ Many UACs who are placed in removal proceedings fail to file asylum applications and age out of UAC protections.

Maintaining UACs in removal proceedings on the immigration courts’ docket will serve as a safeguard, allowing both immigration judges and ICE prosecutors to keep track of UACs while they are applying for and awaiting a decision from USCIS on their asylum applications. As an alternative to administrative closure or termination of cases involving UACs, CIS strongly urges

⁴⁴ INA § 208(a)(2)(B).

⁴⁵ See Dreier, Hannah, New York Times, *As Migrant Children Were Put to Work, U.S. Ignored Warnings* (Apr. 17, 2023); Florida Supreme Court; Case No. SC22-796, *Third Presentment of the Twenty-First Statewide Grand Jury Regarding Unaccompanied Alien Children (UAC)* (Mar. 29, 2023) (finding that “ORR is facilitating the forced migration, sale, and abuse of foreign children, and some of our fellow Florida residents are (in some cases unwittingly) funding and incentivizing it for primarily economic reasons....This process exposes children to horrifying health conditions, constant criminal threat, labor, and sex trafficking, robbery, rape, and other experiences not done justice by mere words.”); see generally Arthur, Andrew, Center for Immigration Studies, *Biden Has a Major Problem with Migrant Kids* (Aug. 2023).

⁴⁶ Kight, Stef, Axios, *Exclusive: Government Can’t Reach One-In-Three Released Migrant Kids* (Sep. 1, 2021); U.S. Committee on Oversight and Accountability, U.S. House of Representatives, *Hearing Wrap Up: ORR Director Fails to Answer Questions About 85,000 Lost Unaccompanied Alien Children, Flawed Vetting of Sponsors, and More* (Apr. 18, 2023); Office of Inspector General, U.S. Department of Health and Human Services, *The Office of Refugee Resettlement Needs To Improve Its Oversight Related to the Placement and Transfer of Unaccompanied Children* (May 2023); Office of Inspector General, U.S. Department of Health and Human Services, *The Office of Refugee Resettlement Needs To Improve Its Practices for Background Checks During Influxes* (May 2023).

⁴⁷ See Dreier, Hannah, New York Times, *As Migrant Children Were Put to Work, U.S. Ignored Warnings* (Apr. 17, 2023); Florida Supreme Court; Case No. SC22-796, *Third Presentment of the Twenty-First Statewide Grand Jury Regarding Unaccompanied Alien Children (UAC)* (Mar. 29, 2023) (finding that “ORR is facilitating the force migration, sale, and abuse of foreign children, and some of our fellow Florida residents are (in some cases unwittingly) funding and incentivizing it for primarily economic reasons....This process exposes children to horrifying health conditions, constant criminal threat, labor, and sex trafficking, robbery, rape, and other experiences not done justice by mere words.”); Arthur, Andrew, Center for Immigration Studies, *Biden Has a Major Problem with Migrant Kids* (Aug. 2023).



CENTER FOR IMMIGRATION STUDIES

DOJ to amend its regulatory proposal to *require* EOIR adjudicators to issuance continuances while UACs are filing asylum applications with USCIS instead of administratively closing their cases.

Additionally, as DOJ explained at length in its *Appellate Procedures Final Rule*, longstanding precedent and administrative law separation-of-function principles dictate that neither immigration judges nor the BIA should take on prosecutorial discretion functions by determining which cases should be adjudicated and which should not.⁴⁸ An immigration judge “may neither terminate nor indefinitely adjourn the proceedings in order to delay an alien’s deportation ... [and] [o]nce deportation proceedings have been initiated ... the immigration judge may not review the [discretion] of the ... action, but must execute his duty to determine whether the deportation charge is sustained by the requisite evidence in an expeditious manner.”⁴⁹ That same principle applies to the BIA, as well. Any alternative would allow EOIR adjudicators to create a parallel immigration system that is unmoored from the INA and not governed by any standards set by Congress.

Regulations should only permit EOIR adjudicators to administratively close cases when such closure allows a separate agency to adjudicate an immigration benefit or other form of relief that the alien is eligible to apply for and, if granted, would render the alien not deportable or inadmissible under the immigration laws. Such authority, unlike the exercise of administrative closure in other scenarios (i.e., administrative closure that is issued because an immigration judge determines removal is not consistent with the interests of the U.S. government) is consistent with the INA because Congress expressly allows aliens in removal proceedings to

⁴⁸ See *Matter of B-N-K-*, 29 I&N Dec. 96, 99 (BIA 2025) (“The Board and Immigration Judges have no role in DHS’ exercise of prosecutorial discretion, including its decision to institute proceedings against an alien and to prosecute those proceedings to a conclusion.”).

⁴⁹ *Matter of Quintero*, 18 I&N Dec. at 350 ; see also *Matter of Roussis*, 18 I&N Dec. 256, 258 (BIA 1982) (“It has long been held that when enforcement officials of the [Immigration and Naturalization Service (“INS”), now DHS] choose to initiate proceedings against an alien and to prosecute those proceedings to a conclusion, the immigration judge is obligated to order deportation if the evidence supports a finding of deportability on the ground charged.”); cf. *Lopez-Telles*, 564 F.2d at 1304 (9th Cir. 1977) (“Rather, these decisions plainly hold that the immigration judge is without discretionary authority to terminate deportation proceedings so long as enforcement officials of the INA choose to initiate proceedings against a deportable alien and prosecute those proceedings to a conclusion. The immigration judge is not empowered to review the wisdom of the INA in instituting the proceedings. His powers are sharply limited, usually to the determination of whether grounds for deportation charges are sustained by the required evidence or whether there has been abuse by the INA in its exercise of particular discretionary powers. This division between the functions of the immigration judge and those of INS enforcement officials is quite plausible and has been undeviatingly adhered to by the INS.”); *Matter of Silva-Rodriguez*, 20 I&N Dec. 448, 449–50 (BIA 1992) (undue delay by an immigration judge may frustrate or circumvent statutory purpose of prompt immigration proceedings); *Matter of Yazdani*, 17 I&N Dec. 626, 630 (BIA 1991) (“However, so long as the enforcement officials of the [INS] choose to initiate proceedings against an alien and to prosecute those proceedings to a conclusion, the immigration judge and the Board must order deportation if the evidence supports a finding of deportability on the ground charged.”).



apply for such benefits and because administrative closure, in such instances, would enable the alien to obtain a final disposition on their case.

IV. EOIR Should Amend its Regulations to Impose Firmer Deadlines for Background Check-Related Requirements.

CIS strongly recommends that the Department amend 8 C.F.R. § 1003.1(d)(6) to deem an alien's failure to comply with background check requirements at the BIA as an automatic abandonment of their underlying relief applications absent a showing of good cause.

As explained above, implementing additional measures to promote efficiency in the adjudication process is of utmost importance given the historic backlog EOIR is facing. Retaining a "good cause" exception for failures to comply with background check deadlines is sufficient to ensure that individuals who face unusual or unpredictable hardships can proceed with their cases, while also providing strong incentives for aliens in proceedings to comply with these requirements in a timely manner. CIS believes this is a stronger policy that is less likely to be abused than granting EOIR adjudicators' discretionary authority to continue to hold cases for aliens who may otherwise have meritorious claims, as is currently authorized by 8 C.F.R. § 1003.1(d)(6)(iii).

V. DOJ Should Add an Appropriate Categorical Exclusion to its National Environmental Policy Act (NEPA) Procedures to Strengthen Its Position that the Proposed Rule Does Not Require Environmental Analysis (EA).

CIS recommends that DOJ add an appropriate categorical exclusion to its NEPA procedures to strengthen the Department's position that the IFR does not require an EA. This categorical exclusion could apply to rules that do not increase immigration to the United States.

NEPA was signed into law on January 1, 1970, and requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions. Title I of NEPA contains a Declaration of National Environmental Policy. This policy requires the federal government to use all practicable means to create and maintain conditions under which man and nature can exist in productive harmony. Section 102 in Title I of the Act requires federal agencies to incorporate environmental considerations in their planning and decision-making through a systematic interdisciplinary approach.

Specifically, all federal agencies are required to prepare detailed statements assessing the environmental impact of and alternatives to major federal actions significantly affecting the environment.⁵⁰ These statements are commonly referred to as Environmental Impact Statements (EIS) and EAs. The EA is conducted to determine whether an EIS is needed, if the agency

⁵⁰ 42 U.S.C. § 4332(C).



CENTER FOR IMMIGRATION STUDIES

determines that the proposed action will not have a significant impact on the environment, it may issue a Finding of No Significant Impact (FONSI).⁵¹

However, agencies do not have to conduct an EA or EIS for types of actions that they have found, through prior experience, are of a category that can be expected not to cause significant impacts. In such cases, agencies may cite a “categorical exclusion” instead.⁵²

To invoke such a categorical exclusion, agencies adopt NEPA procedures which direct them how to implement NEPA, using the guidance of the Council for Environmental Quality, and these procedures include categorical exclusions.⁵³ The invocation of a categorical exclusion prior to adopting an action, such as a new regulation, is the agency’s NEPA compliance. Currently, in accordance with President Trump’s Executive Order 14154, *Unleashing American Energy*, federal agencies are adopting new NEPA procedures, which will include new categorical exclusions.⁵⁴

CIS, based on its above analysis of the proposed rule, does not believe that it would have a significant effect on the environment requiring the agency to conduct an EIS before adopting it because the proposed rule would not increase immigration to the United States. Immigration policies that increase population clearly have a significant impact that must be analyzed under NEPA. In fact, NEPA itself was explicitly concerned with population growth, the first concern mentioned in NEPA’s “Congressional declaration of national environmental policy”:

The Congress, recognizing the profound impact of man’s activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.⁵⁵

Because this rule does not increase immigration, if DOJ did an EA of the proposed rule, it would properly be able to issue a FONSI. Instead, this IFR is silent on DOJ’s NEPA obligations.

⁵¹ See 40 C.F.R. §§ 1501.5, 1501.6.

⁵² 40 C.F.R. §§ 1501.4(a)(2), 1508.1(d).

⁵³ See 40 C.F.R. §§ 1507.3, 1508.1(d).

⁵⁴ See Memorandum for Heads of Federal Departments and Agencies, *Implementation of the National Environmental Policy Act*, from Katherine Scarlett, Feb. 19, 2025.

⁵⁵ 42 U.S. § 4331 (a).



CENTER FOR IMMIGRATION STUDIES

DOJ could properly establish a categorical exclusion for proposed rules that do not increase immigration. DOJ does not currently have such a categorical exclusion, nor does it currently have any categorical exclusions that relate to immigration specifically. The adoption of such a reasonable categorical exclusion would be an appropriate “procedural cross-check” in the regulation of immigration policy in keeping with current environmental law.⁵⁶ The Center recommends that DOJ adopt such a categorical exclusion to strengthen the rule’s legal foundation.

VI. Conclusion.

In sum, DOJ and EOIR must take decisive, legally grounded steps to restore efficiency, finality, and credibility to the immigration adjudication system. The reforms outlined above work in concert to address systemic delays and resource misallocations that have contributed to the current backlog. Implementing simultaneous briefing schedules, limiting appeals to cases accepted for en banc review by the BIA, and reducing the filing deadline for non-asylum appeals from 30 days to 10 days will streamline appellate adjudication and ensure that the BIA can focus its limited resources on matters warranting meaningful review. At the adjudicatory level, amending regulations to prohibit immigration judges from exercising administrative closure beyond statutory limits will reinforce the proper bounds of delegated authority and promote timely case resolution, while imposing firmer deadlines for background check-related requirements will reduce unnecessary continuances and procedural inefficiencies. Finally, adopting an appropriate categorical exclusion under NEPA will clarify DOJ’s position that the proposed rule does not trigger environmental review, thereby minimizing litigation risk and further delay. Collectively, these reforms represent a coherent and necessary response to longstanding structural challenges and will better equip EOIR to fulfill its core mission of delivering fair, timely, and consistent adjudications.

⁵⁶ See *Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. 168 (2025).