

ONE HUNDRED EIGHTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

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April 3, 2024

Acting Director Mary Cheng  
Executive Office for Immigration Review  
5104 Leesburg Pike, 26th Floor  
Falls Church, VA 22041

Dear Acting Director Cheng:

The Committee on the Judiciary continues to conduct oversight of the Biden Administration's enforcement of federal immigration law. We write to request material about how the Department of Justice's Executive Office for Immigration Review (EOIR) dismisses cases when the Department of Homeland Security (DHS) fails to file a Notice to Appear (NTA) with an immigration court.

According to a recent report, since the beginning of the Biden Administration, immigration judges have dismissed roughly 200,000 cases after DHS failed to file an alien's NTA with an immigration court.<sup>1</sup> For aliens in the United States, including those encountered at the border, generally the filing of an NTA begins the process to potentially remove the alien from the country.<sup>2</sup> Because an alien's removal proceedings do not begin until DHS "files [the NTA] with the immigration court after it is served on [the alien]," DHS's failure to file NTAs has resulted in hundreds of thousands of case dismissals under the Biden Administration for DHS's "failure to prosecute."<sup>3</sup> In comparison, there were only 15,546 dismissals for failure to

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<sup>1</sup> See *200,000 Immigration Court Cases Dismissed Because DHS Failed to File Paperwork*, TRAC IMMIGR. (Mar. 20, 2024), <https://trac.syr.edu/reports/739/>.

<sup>2</sup> See 8 U.S.C. §§ 1225(b)(1)(B)(ii), (b)(2)(A); see also 8 C.F.R. § 1239.1(a) ("Every removal proceeding conducted under [8 U.S.C. § 1229a] to determine the deportability or inadmissibility of an alien is commenced by the filing of a notice to appear with the immigration court.").

<sup>3</sup> See *Immigr. Court Practice Manual*, ch. 4.2, <https://www.justice.gov/eoir/reference-materials/ic/chapter-4/2> (last accessed Mar. 21, 2024). According to the *Immigration Court Practice Manual*, "[o]n occasion, an initial hearing is scheduled before the Department of Homeland Security (DHS) has been able to file a Notice to Appear with the immigration court. For example, DHS may serve a Notice to Appear, which contains a hearing date, on a respondent, but not file the Notice to Appear with the court until sometime later. Where DHS has not filed the Notice to Appear with the court by the time of the first hearing, this is known as a 'failure to prosecute.' If there is a failure to prosecute, the respondent and counsel may be excused until DHS files the Notice to Appear with the court, at which time a hearing is scheduled." *Id.*

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prosecute from fiscal year 2017 through fiscal year 2020.<sup>4</sup> Meanwhile, the Biden Administration's DHS has subsequently filed an NTA in only a quarter of cases that were dismissed.<sup>5</sup> As the report notes, DHS's inaction "block[s] off [immigration courts'] valuable limited time by scheduling hearings for cases that do not legally exist" and leaves aliens in "legal limbo."<sup>6</sup>


The Committee is concerned with DHS's inaction, which only exacerbates EOIR's already backlogged immigration courts and creates additional chaos in the Biden Administration's immigration crisis. Accordingly, to assist the Committee with its continued oversight of federal immigration policy and procedures, we ask that you provide the following documents and information from January 20, 2021, to the present:

1. The number of cases EOIR dismissed for DHS's failure to prosecute;
2. The number of cases described in question 1 for which DHS eventually filed an NTA; and
3. All EOIR's Cognos failure to prosecute reports.

Please provide the material requested as soon as possible but no later than 5:00 p.m. on April 17, 2024. Pursuant to the Rules of the House of Representatives, the Committee on the Judiciary is authorized to conduct oversight of federal immigration policy and procedures.<sup>7</sup> If you have any questions, please contact Committee staff at (202) 225-6906. Thank you for your prompt attention to this matter.

Sincerely,

  
Jim Jordan  
Chairman

  
Tom McClintock  
Chairman  
Subcommittee on Immigration  
Integrity, Security, and Enforcement

cc: The Honorable Jerrold L. Nadler, Ranking Member

The Honorable Pramila Jayapal, Ranking Member, Subcommittee on Immigration  
Integrity, Security, and Enforcement

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<sup>4</sup> See *200,000 Immigration Court Cases Dismissed Because DHS Failed to File Paperwork*, *supra* note 1.

<sup>5</sup> See *id.*

<sup>6</sup> *Id.*

<sup>7</sup> Rules of the U.S. House of Representatives, R. X (2023).