



# **QUIET AMNESTY: HOW THE BIDEN-HARRIS ADMINISTRATION USES THE NATION’S IMMIGRATION COURTS TO ADVANCE AN OPEN-BORDERS AGENDA**

Interim Staff Report of the  
  
Committee on the Judiciary  
and  
Subcommittee on Immigration Integrity, Security, and Enforcement  
  
U.S. House of Representatives



October 24, 2024

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## EXECUTIVE SUMMARY

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For almost four years, Americans have watched as President Joe Biden and border czar Vice President Kamala Harris have abandoned the southwest border and welcomed nearly 8 million illegal aliens into the United States.<sup>1</sup> The Biden-Harris Administration's open-borders policies not only have undermined national security and endangered communities across the U.S., but they also have decimated the nation's immigration courts. Since President Biden and Vice President Harris took office, the immigration court case backlog has skyrocketed, with more than 3.7 million new cases since the beginning of fiscal year 2021.<sup>2</sup> In just the first three quarters of fiscal year 2024, there were more than 1.5 million new cases filed with the nation's immigration courts.<sup>3</sup> The majority of those cases are based on claims that ultimately will prove unsuccessful. Of the asylum cases that were adjudicated in fiscal year 2023, only 14 percent resulted in an asylum grant, with the remaining cases denied, abandoned, dismissed, terminated, withdrawn, or administratively closed.<sup>4</sup>

The Biden-Harris Administration has used the immigration court backlog as an excuse to allow even more aliens to remain in the country. Instead of actually adjudicating illegal aliens' cases based on the merits of aliens' claims for relief—such as whether an alien has a valid and successful asylum claim—immigration judges under the Biden-Harris Administration have been tasked with rubberstamping case dismissals, case closures, and case terminations, all of which allow illegal aliens to remain in the United States without immigration consequences. This sort of quiet amnesty has become a staple of the Biden-Harris Administration's immigration courts.

Since 2023, the Committee on the Judiciary and its Subcommittee on Immigration Integrity, Security, and Enforcement have conducted oversight of the Biden-Harris border crisis, including its effect on the nation's immigration courts. This oversight has revealed how the Biden-Harris Administration has used administrative maneuvering in immigration court proceedings to allow nearly 1 million illegal aliens to remain in the U.S. indefinitely. For example:

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<sup>1</sup> Info. provided to the H. Comm. on the Judiciary by U.S. Dep't of Homeland Sec., Table 1: Detention Histories of CBP Encounters, January 20, 2021 – March 31, 2024 (Aug. 16, 2024); U.S. Customs and Border Prot., *Custody and Transfer Statistics FY 2024*, U.S. DEP'T OF HOMELAND SEC. (last accessed Sept. 16, 2024); Camilo Montoya-Galvez, *Biden administration has admitted more than 1 million migrants into U.S. under parole policy Congress is considering restricting*, CBS NEWS (Jan. 22, 2024); *Latest UC Data, Total Monthly Discharges to Individual Sponsors Only*, U.S. DEP'T OF HEALTH AND HUMAN SERVS. (last accessed Mar. 22, 2024); Off. of Refugee Resettlement, *Unaccompanied Children Released to Sponsors by State*, U.S. DEP'T OF HEALTH AND HUMAN SERVS. (last accessed Sept. 16, 2024); U.S. Customs and Border Prot., *CBP Releases August 2024 Monthly Update*, U.S. DEP'T OF HOMELAND SEC. (Sept. 16, 2024); Immigr. and Customs Enf't, *Daily SWB Placemat*, U.S. DEP'T OF HOMELAND SEC. (May–Sept. 2024) (on file with Comm.); Off. of Homeland Sec. Statistics, *Immigr. Enf't and Legal Processes Monthly Tables – Apr. 2024*, U.S. DEP'T OF HOMELAND SEC. (last accessed Aug. 19, 2024); Casey Harper, *Border crisis creates national security threat for U.S., observers say*, WASH. EXAMINER (Aug. 7, 2023); Bill Melugin (@BillMelugin\_), X (June 20, 2024, 10:22 AM).

<sup>2</sup> Exec. Off. for Immigr. Rev., *Adjudication Statistics: New Cases and Total Completions*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/eoir/media/1344796/dl?inline> (last accessed Oct. 11, 2024).

<sup>3</sup> *Id.*

<sup>4</sup> Exec. Off. for Immigr. Rev., *Adjudication Statistics: Asylum Decisions*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/eoir/media/1344851/dl?inline> (last accessed Oct. 11, 2024).

- Under the Biden-Harris Administration, more than 700,000 illegal aliens have had their cases dismissed, terminated, or administratively closed, allowing those aliens to stay in the country indefinitely without facing immigration consequences.<sup>5</sup>
- For asylum decisions, the Executive Office for Immigration Review (EOIR), which houses the nation’s immigration courts, reported 109,089 cases as “not adjudicated” in fiscal year 2023, meaning that those cases were deemed “completed” but were largely terminated or dismissed and not adjudicated on the merits of the underlying claim.<sup>6</sup>
- Through the first nine months of fiscal year 2024, the number of non-adjudicated asylum cases already eclipsed the 2023 record, with 109,568 asylum cases not adjudicated.<sup>7</sup> By comparison, only 12,960 total asylum cases were reported as “not adjudicated” from fiscal year 2017 through fiscal year 2020 *combined*.<sup>8</sup>
- The Department of Homeland Security (DHS) failed to file the necessary documentation to begin immigration court removal proceedings in roughly 200,000 additional cases, meaning that the overwhelming majority of those aliens can also remain in the U.S. indefinitely.<sup>9</sup>
- An immigration court official admitted to the Committee and Subcommittee that decisions by the Biden-Harris DHS, such as DHS attorneys not appearing at scheduled hearings and DHS failing to file proper paperwork with the courts, waste the immigration courts’ time and resources and decrease efficiency.<sup>10</sup>

This interim staff report highlights how the Biden-Harris Administration has used the nation’s immigration courts to advance an open-borders agenda. Through administrative maneuvering at both the Justice Department and DHS, the Biden-Harris Administration has already ensured that nearly 1 million illegal aliens can remain in the United States without the possibility of deportation—and that trend shows no sign of stopping. The Committee and the Subcommittee will continue this aggressive oversight of the Biden-Harris Administration’s open-borders policies to inform legislative reforms to end open-borders policies and restore law and order to the immigration system.

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<sup>5</sup> See *infra* notes 40-43.

<sup>6</sup> See *infra* note 52.

<sup>7</sup> See *infra* notes 53-54.

<sup>8</sup> See *infra* notes 53-54.

<sup>9</sup> Transcribed Interview of Acting Dir. Mary Cheng, Exec. Off. for Immigr. Rev., at 55-56 (June 20, 2024) (on file with Comm.). According to data from the Transactional Records Access Clearinghouse, DHS eventually reissued a Notice to Appear in only a quarter of those cases, meaning that roughly 150,000 cases continue to lack a charging document. See *200,000 Immigr. Court Cases Dismissed Because DHS Failed to File Paperwork*, TRAC IMMIGR. (Mar. 20, 2024), <https://trac.syr.edu/reports/739/>.

<sup>10</sup> Transcribed Interview of Chief Immigr. Judge Sheila McNulty, Off. of the Chief Immigr. Judge, Exec. Off. for Immigr. Rev., at 93-94 (May 16, 2024) (on file with Comm.).

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## THE BIDEN-HARRIS ADMINISTRATION'S WEAPONIZATION OF IMMIGRATION COURTS

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Since President Joe Biden and border czar Vice President Kamala Harris took office on January 20, 2021, their Administration has released into the country nearly 5.7 million illegal aliens,<sup>11</sup> not including the at least 1.9 million known illegal alien “gotaways” who evaded apprehension entirely.<sup>12</sup> Because of the unprecedented border crisis and the influx of illegal aliens applying for asylum, the immigration court case backlog ballooned from 1.2 million cases near the end of the Trump Administration to nearly 3.5 million cases by the end of the third quarter of fiscal year 2024, a 175 percent increase.<sup>13</sup> That backlog shows no sign of decreasing, as the growing number of filings in immigration courts outpaces the rate of case closures. In just the first nine months of fiscal year 2024, the Executive Office for Immigration Review (EOIR), the Justice Department component that houses the nation’s immigration courts, received roughly 1 million more cases than it completed.<sup>14</sup>

### *Immigration Court Overview*

Immigration cases are initially heard before “approximately 700 immigration judges located [in] 71 immigration courts and three adjudications centers” across the United States.<sup>15</sup> Immigration judges are appointed by—and report to—the Attorney General.<sup>16</sup> As administrative judges, immigration judges “are career employees with no fixed terms”<sup>17</sup> who decide immigration cases through the Attorney General’s delegated authority.<sup>18</sup> DHS acts as the prosecutor in immigration court, with Immigration and Customs Enforcement (ICE) attorneys serving “as the exclusive representative of DHS in immigration removal proceedings before [EOIR], litigating all removal cases.”<sup>19</sup> DHS initiates immigration court removal proceedings for an alien by filing the charging document, called a Notice to Appear, with an immigration court.<sup>20</sup>

During removal proceedings, an alien may present evidence to the immigration judge and argue why the alien should be allowed to remain in the U.S., either because the alien is eligible for asylum or on some other ground for relief.<sup>21</sup> If an alien disagrees with an immigration

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<sup>11</sup> See *supra* note 1.

<sup>12</sup> Casey Harper, *Border crisis creates national security threat for U.S., observers say*, WASH. EXAMINER (Aug. 7, 2023); Bill Melugin (@BillMelugin\_), X (June 20, 2024, 10:22 AM).

<sup>13</sup> Exec. Off. for Immigr. Rev., *Pending Cases, New Cases, and Total Completions*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/eoir/media/1344791/dl?inline> (last accessed Oct. 11, 2024).

<sup>14</sup> Exec. Off. for Immigr. Rev., *New Cases and Total Completions*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/eoir/media/1344796/dl?inline> (last accessed Oct. 11, 2024).

<sup>15</sup> Exec. Off. for Immigr. Rev., *Off. of the Chief Immigr. Judge*, DEP’T OF JUSTICE, <https://www.justice.gov/eoir/office-of-the-chief-immigration-judge> (last accessed Oct. 11, 2024).

<sup>16</sup> See HOLLY STRAUT-EPPSTEINER, CONG. RESEARCH SERV., R47637, IMMIGR. JUDGE HIRING AND PROJECTED IMPACT ON THE IMMIGR. COURTS BACKLOG 1 (JULY 28, 2023).

<sup>17</sup> *Id.* at 1 n.6.

<sup>18</sup> *Id.* at 1.

<sup>19</sup> U.S. Immigr. and Customs Enf’t, *Off. of the Principal Legal Advisor*, <https://www.ice.gov/about-ice/opla> (last accessed Oct. 11, 2024).

<sup>20</sup> See *Immigration Court*, ICE PORTAL, <https://portal.ice.gov/immigration-guide/court> (last accessed Oct. 11, 2024); 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>21</sup> See *Immigration Court*, ICE PORTAL, <https://portal.ice.gov/immigration-guide/court> (last accessed Oct. 11, 2024).

judge’s decision, the alien may file an appeal with the Board of Immigration Appeals (BIA), “the highest administrative body for interpreting and applying immigration laws.”<sup>22</sup> Published BIA decisions “are binding on all DHS officers and [i]mmigration [j]udges unless modified or overruled by the Attorney General or a federal court.”<sup>23</sup> Because immigration courts are administrative courts, the Executive Branch wields broad authority over the courts’ functioning. For example, the Attorney General can overrule BIA decisions, establish new immigration law precedent, and adopt new policies that immigration judges must follow.<sup>24</sup>

### ***The Biden-Harris Administration Lays the Groundwork for Quiet Amnesty***

To mask the astronomical increase in new cases created by the border crisis, the Biden-Harris Administration has empowered ICE attorneys to pursue or agree to—and immigration judges to grant—mass dismissals, terminations, and closures of immigration cases.<sup>25</sup> Although ICE attorneys are tasked with representing the U.S. government in immigration court, the Biden-Harris Administration’s DHS has made it more difficult for immigration judges to adjudicate the merits of aliens’ asylum applications. On April 3, 2022, Kerry Doyle, the DHS official who at the time oversaw the ICE attorneys who are supposed to represent the U.S. government’s interests in immigration court, issued a memorandum (“Doyle Memo”) to ICE attorneys directing them to promote closure and dismissal of cases, particularly given the immigration court backlog.<sup>26</sup> The Doyle Memo outlined how ICE attorneys “are expected to exercise discretion”—that is, move to dismiss immigration cases—“at all stages of the enforcement process.”<sup>27</sup> In other words, ICE attorneys are expected to ensure that certain aliens’ cases never move forward in immigration court so the Biden-Harris Administration may achieve its open-borders agenda.

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<sup>22</sup> Exec. Off. for Immigr. Rev., *Board of Immigr. Appeals*, DEP’T OF JUSTICE, <https://www.justice.gov/eoir/board-of-immigration-appeals> (last accessed Oct. 11, 2024).

<sup>23</sup> *Id.*

<sup>24</sup> See, e.g., Andrew R. Arthur, *AG Certification Explained*, CENTER FOR IMMIGR. STUDIES (Nov. 5, 2019), <https://cis.org/Arthur/AG-Certification-Explained>.

<sup>25</sup> A case dismissal is requested by ICE when the agency “makes a determination that they’re not going to proceed forward on the [N]otice to [A]ppear in that particular case.” See Transcribed Interview of Acting Dir. Mary Cheng, Exec. Off. for Immigr. Rev., at 42 (June 20, 2024) (on file with Comm.). A case dismissal does not result in an order of removal. See Transcribed Interview of Chief Immigr. Judge Sheila McNulty, Off. of the Chief Immigr. Judge, Exec. Off. for Immigr. Rev., at 82 (May 16, 2024) (on file with Comm.). An administrative closure pauses an alien’s removal proceedings by removing the case from an immigration judge’s calendar. See Guidance Memo from David L. Neal, Dir., Exec. Off. for Immigr. Rev., to EOIR Adjudicators, “Administrative Closure,” DM 22-03, at 1 (Nov. 22, 2021), <https://www.justice.gov/eoir/book/file/1450351/dl>. Finally, a case termination ends an alien’s removal proceedings. See Transcribed Interview of Acting Director Mary Cheng, Exec. Off. for Immigr. Rev., at 43 (June 20, 2024) (on file with Comm.).

<sup>26</sup> Memorandum from Kerry E. Doyle, Principal Legal Advisor, U.S. Immigr. and Customs Enf’t, to All OPLA Attorneys, “Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigr. Laws and the Exercise of Prosecutorial Discretion,” at 9 (Apr. 3, 2022), [https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement\\_guidanceApr2022.pdf](https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement_guidanceApr2022.pdf) [hereinafter Doyle Memo].

<sup>27</sup> *Id.*





Through the Doyle Memo, the Biden-Harris Administration gave ICE attorneys a playbook for ensuring countless cases disappear from the immigration court docket or, as the Doyle Memo framed it, “efficiently remov[ing] nonpriority cases from the docket altogether.”<sup>28</sup> For cases that are not a priority—meaning cases that ICE attorneys determine do not qualify as a threat to national security, public safety, or border security—the Doyle Memo specified that ICE attorneys should not file a Notice to Appear in the cases.<sup>29</sup> If DHS does not file a Notice to Appear in a case, DHS does not initiate immigration court removal against those particular aliens.<sup>30</sup> In nonpriority cases in which immigration court proceedings have already begun, the Doyle Memo instructed ICE attorneys to seek to dismiss proceedings or “consider alternative forms of prosecutorial discretion, including administrative closure, stipulations to issues or relief, continuances, not pursuing an appeal, joining motions to reopen, and stipulations in bond hearings.”<sup>31</sup> In both cases, ICE attorneys’ actions ensure that an alien will not be removed from the United States.

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<sup>28</sup> *Id.* at 10.

<sup>29</sup> *Id.*

<sup>30</sup> See Immigr. Court Practice Manual, ch. 4.2, <https://www.justice.gov/eoir/reference-materials/ic/chapter-4/2> (last accessed Oct. 11, 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.*

<sup>31</sup> Doyle Memo, *supra* note 26, at 10.

As DHS worked to make it more difficult for immigration judges to adjudicate cases and issue removal orders for illegal aliens, the Justice Department also made it easier for immigration judges to allow aliens to remain in the United States. In July 2021, mere months into the Biden-Harris Administration, Attorney General Merrick Garland issued a decision to pave the way for the widespread closure of cases.<sup>32</sup> In a case overruling a Trump-era decision that restricted the use of

administrative closure, Attorney General Garland “restore[d] administrative closure,” which he described as “allowing adjudicators to focus on higher-priority cases.”<sup>33</sup> Four months later, the then-Director of EOIR

announced that “administrative closure will assist EOIR adjudicators in managing their dockets given EOIR’s caseload.”<sup>34</sup> According to the former EOIR Director, “where DHS requests that a case be administratively closed because a[n] [alien] is not an immigration enforcement priority, and the [alien] does not object, the request should generally be granted [by an immigration judge] and the case administratively closed.”<sup>35</sup>



Throughout the past four years, the Biden-Harris Administration’s open-borders agenda has been repeatedly aided by the very Justice Department component created to adjudicate immigration cases. In 2023, EOIR’s then-Director again tipped the scales in favor of aliens in the United States—this time by encouraging immigration judges to dismiss cases in addition to administratively closing cases.<sup>36</sup> After underscoring EOIR’s “large case load and finite resources,” the EOIR Director emphasized, “[w]here there is no dispute between the parties, efficiency and fairness will be served by such a dismissal.”<sup>37</sup> In a potential warning to immigration judges who decided to adjudicate an alien’s claim instead of dismissing the case, the EOIR Director stressed that “[w]here the parties have reached agreement on how a case or issue should be resolved, and no dispute thus exists with respect to the case or issue, an EOIR adjudicator’s default should be to respect the agreement and to rule in accord with it.”<sup>38</sup> Finally,

<sup>32</sup> See *Matter of Cruz-Valdez*, 28 I. & N. Dec. 326 (A.G. 2021).

<sup>33</sup> *Id.* at 326, 329.

<sup>34</sup> Guidance Memo from David L. Neal, Dir., Exec. Off. for Immigr. Rev., to EOIR Adjudicators, “Administrative Closure,” DM 22-03, at 2 (Nov. 22, 2021), <https://www.justice.gov/eoir/book/file/1450351/dl>.

<sup>35</sup> *Id.* at 3.

<sup>36</sup> Guidance Memo from David L. Neal, Dir., Exec. Off. for Immigr. Rev., to EOIR Adjudicators, “Dep’t of Homeland Sec. Enf’t Priorities and Prosecutorial Discretion Initiatives,” DM 23-04 (Sept. 28, 2023), [https://www.justice.gov/d9/2023-10/dm-23-04\\_0.pdf](https://www.justice.gov/d9/2023-10/dm-23-04_0.pdf).

<sup>37</sup> *Id.* at 4.

<sup>38</sup> *Id.* at 3 n.4.



in Justice Department rulemaking, the Biden-Harris Administration further entrenched the ability of immigration judges to dispose of cases without ever adjudicating them and ordering aliens removed from the country.<sup>39</sup>

### ***Results of the Biden-Harris Administration's Open-Borders Agenda***

The Biden-Harris Administration's all-hands-on-deck approach to prioritize illegal aliens over American citizens and lawful residents has undoubtedly worked to advance Democrats' open-borders agenda. Since the beginning of the Biden-Harris Administration, immigration judges have dismissed, terminated, or administratively closed more than 700,000 cases,<sup>40</sup> including:

- 71,465 cases that were administratively closed (through July 31, 2023);<sup>41</sup>
- 459,356 cases that were dismissed (through June 30, 2024);<sup>42</sup> and
- 172,645 cases that were terminated (through June 30, 2024).<sup>43</sup>

The pace of case dismissals, terminations, and closures increased every year under the Biden-Harris Administration. From January 20, 2021, through the end of fiscal year 2021, immigration judges administratively closed 5,214 cases.<sup>44</sup> That number grew to 35,775 cases in fiscal year 2022 and 30,476 through just the first 10 months of fiscal year 2023.<sup>45</sup> For asylum cases, immigration judges administratively closed 58,463 cases from fiscal year 2021 through the third quarter of fiscal year 2024, compared to only 13,590 asylum cases administratively closed

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<sup>39</sup> See Efficient Case and Docket Management in Immigr. Proceedings, 89 Fed. Reg. 46742 (May 29, 2024) (amending 8 CFR §§ 1001, 1003, 1239, and 1240).

<sup>40</sup> Data related to case dismissals, terminations, and administrative closures include decisions by immigration judges in immigration court and appellate immigration judges at the Board of Immigration Appeals. See generally Guidance Memo from David L. Neal, Dir., Exec. Off. for Immigr. Rev., to EOIR Adjudicators, "Dep't of Homeland Sec. Enf't Priorities and Prosecutorial Discretion Initiatives," DM 23-04 (Sept. 28, 2023), [https://www.justice.gov/d9/2023-10/dm-23-04\\_0.pdf](https://www.justice.gov/d9/2023-10/dm-23-04_0.pdf) (discussing prosecutorial discretion related to immigration judges and appellate immigration judges); Guidance Memo from David L. Neal, Dir., Exec. Off. for Immigr. Rev., to EOIR Adjudicators, "Administrative Closure," DM 22-03, at 1 (Nov. 22, 2021), <https://www.justice.gov/eoir/book/file/1450351/dl> (discussing immigration judges' and appellate immigration judges' use of administrative closure).

<sup>41</sup> Letter from Carlos Uriarte, Ass't Att'y Gen., to Jim Jordan, Chairman, H. Comm. on the Judiciary (Nov. 2, 2023) (on file with Comm.). An additional 15,294 cases were administratively closed through the first nine months of fiscal year 2024, though that number is only for asylum cases and does not account for all cases in immigration court. See Exec. Off. for Immigr. Rev., *Adjudication Statistics: Asylum Decisions*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/eoir/media/1344851/dl?inline> (last accessed Oct. 11, 2024).

<sup>42</sup> Letter from Carlos Uriarte, Ass't Att'y Gen., to Jim Jordan, Chairman, H. Comm. on the Judiciary (Nov. 2, 2023) (on file with Comm.); Exec. Off. for Immigr. Rev., *FY 2023 Decision Outcomes*, U.S. DEP'T OF JUSTICE, [https://www.justice.gov/d9/pages/attachments/2018/10/26/6\\_fy\\_2023\\_decision\\_outcomes.pdf](https://www.justice.gov/d9/pages/attachments/2018/10/26/6_fy_2023_decision_outcomes.pdf) (last accessed Oct. 11, 2024); Exec. Off. for Immigr. Rev., *FY 2024 Decision Outcomes*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/eoir/media/1344811/dl?inline> (last accessed Oct. 11, 2024).

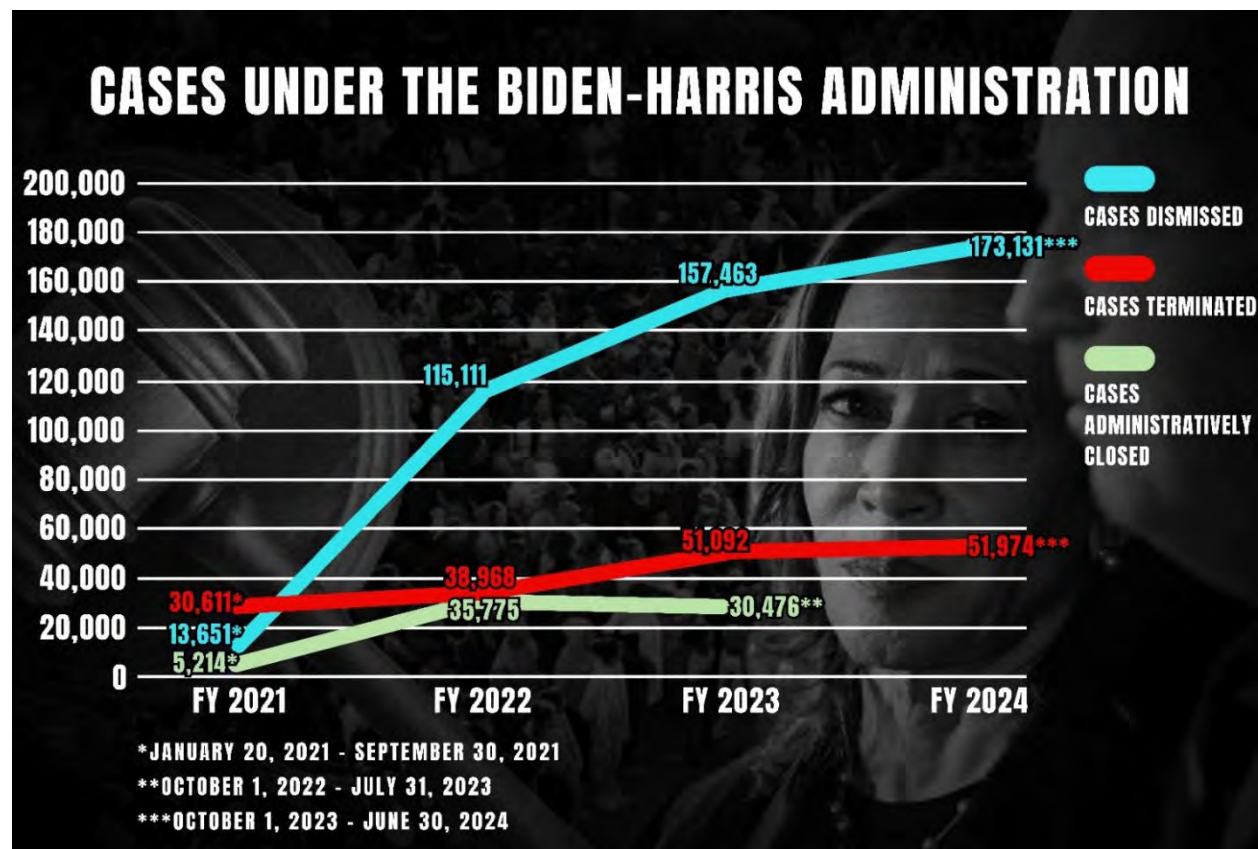
<sup>43</sup> *Id.*

<sup>44</sup> Letter from Carlos Uriarte, Ass't Att'y Gen., to Jim Jordan, Chairman, H. Comm. on the Judiciary (Nov. 2, 2023) (on file with Comm.).

<sup>45</sup> *Id.*

under the Trump Administration, including merely 132 in fiscal year 2019 and 481 in fiscal year 2020.<sup>46</sup>

Case dismissals also skyrocketed, with 13,651 dismissals from January 20, 2021, through the end of fiscal year 2021, compared to 115,111 dismissals in fiscal year 2022 and 157,463 dismissals in fiscal year 2023.<sup>47</sup> In merely the first nine months of fiscal year 2024, EOIR already had dismissed 173,131 cases.<sup>48</sup> Immigration judges terminated a total of 172,645 cases from the beginning of the Biden-Harris Administration through June 30, 2024, with 30,611 cases terminated in fiscal year 2021; 38,968 in fiscal year 2022; 51,092 in fiscal year 2023; and 51,974 in the first nine months of fiscal year 2024.<sup>49</sup>



<sup>46</sup> Exec. Off. for Immigr. Rev., *Adjudication Statistics: Asylum Decisions*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/eoir/media/1344851/dl?inline> (last accessed Oct. 11, 2024).

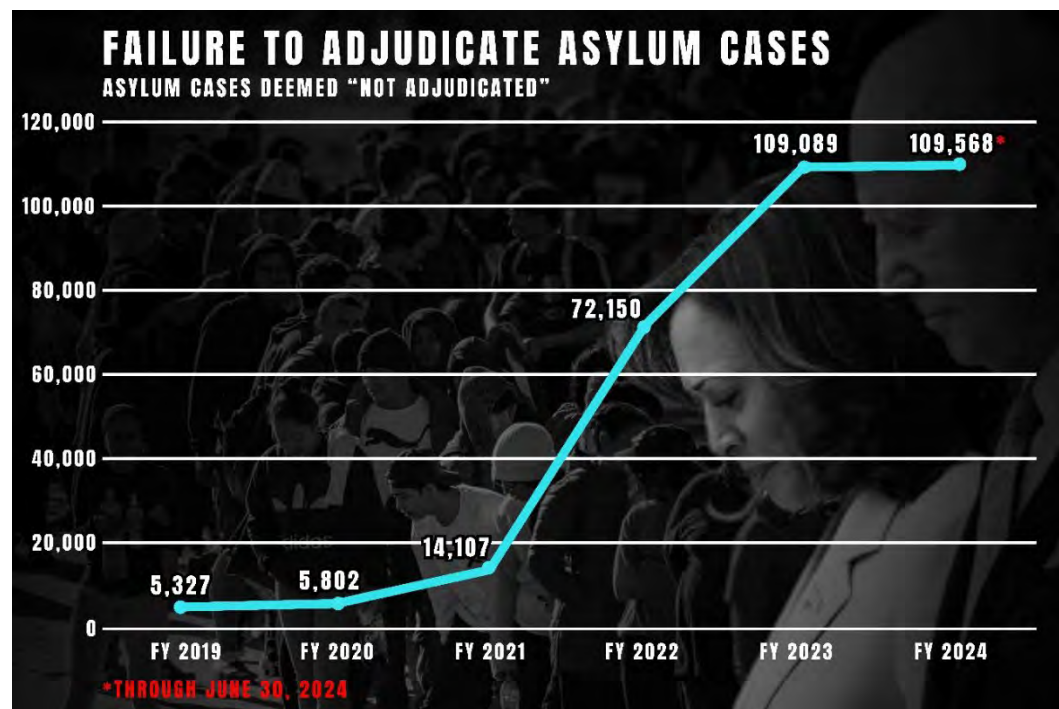
<sup>47</sup> Letter from Carlos Uriarte, Ass't Att'y Gen., to Jim Jordan, Chairman, H. Comm. on the Judiciary (Nov. 2, 2023) (on file with Comm.).

<sup>48</sup> Exec. Off. for Immigr. Rev., *FY 2024 Decision Outcomes*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/eoir/media/1344811/dl?inline> (last accessed Oct. 11, 2024).

<sup>49</sup> Letter from Carlos Uriarte, Ass't Att'y Gen., to Jim Jordan, Chairman, H. Comm. on the Judiciary (Nov. 2, 2023) (on file with Comm.); Exec. Off. for Immigr. Rev., *FY 2024 Decision Outcomes*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/eoir/media/1344811/dl?inline> (last accessed Oct. 11, 2024).

Without adjudicating cases and ordering aliens removed from the United States, immigration judges’ mass granting of dismissals, terminations, and closures ensures that aliens can remain in the U.S. indefinitely. Even worse, the majority of the aliens in those cases likely never would have been able to establish any legal basis to remain in the country. Of the asylum cases that were completed in fiscal year 2023, for example, only 14 percent resulted in an asylum grant.<sup>50</sup> By comparison, during the Trump Administration, in fiscal year 2019, immigration judges granted 20.6 percent of asylum cases and denied 49.5 percent of cases, with aliens abandoning their asylum claims in 9.8 percent of cases and withdrawing their applications in 11 percent of cases.<sup>51</sup>

Instead of adjudicating these cases, denying invalid asylum claims, and ordering aliens removed from the United States, the Biden-Harris Administration has directed its immigration



judges to simply not adjudicate them. In fact, for asylum decisions, EOIR reported 109,089 cases as “not adjudicated” in fiscal year 2023, meaning that those cases were deemed “completed” but were

largely terminated or dismissed and not adjudicated on the merits of the underlying claim.<sup>52</sup> Through the first nine months of fiscal year 2024, the number of non-adjudicated cases already eclipsed the 2023 record, with 109,568 asylum cases not adjudicated.<sup>53</sup> By comparison, only 12,960 total asylum cases were reported as “not adjudicated” from fiscal year 2017 through fiscal year 2020 *combined*.<sup>54</sup>

<sup>50</sup> Exec. Off. for Immigr. Rev., *Adjudication Statistics: Asylum Decisions*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/eoir/media/1344851/dl?inline> (last accessed Oct. 11, 2024).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* Some cases that were not adjudicated between fiscal years 2017 and 2019 were likely coded as “other,” an application completion code that EOIR deactivated in May 2019. *See id.* at n.2; *see also* Letter from Carlos Felipe Uriarte, Ass’t Att’y Gen., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Dec. 12, 2023) (on file with Comm.). Even if all the decisions coded as “other” from fiscal year 2017 through fiscal year 2019 were cases that EOIR did not adjudicate, however, the number of non-adjudicated asylum cases during the Trump Administration

In addition to ensuring that immigration judges do not adjudicate aliens' cases, the Biden-Harris Administration has worked to undo immigration judges' previous decisions by encouraging ICE attorneys to join motions to reopen cases. The Doyle Memo outlined how ICE attorneys may join aliens' motions to reopen their cases so that ICE can then agree to dismiss the case altogether.<sup>55</sup> Aliens and ICE attorneys took note. In just the first nine months of fiscal year 2024, 31,191 motions to reopen were filed with the immigration courts, compared to an average of 17,920 motions to reopen during the Trump Administration—a 74 percent increase.<sup>56</sup>

At the same time that Biden-Harris immigration judges rubberstamped case closures instead of adjudicating aliens' claims, DHS ensured that hundreds of thousands of aliens never stepped foot in an immigration court in the first place. DHS failed to prosecute at least 200,000 cases and only eventually issued a Notice to Appear, the charging document that begins an alien's removal proceedings when filed with an immigration court, in a fraction of those cases.<sup>57</sup> When those cases are combined with the cases that have been dismissed, terminated, or administratively closed, the Biden-Harris Administration has ensured that nearly 1 million aliens can remain in the U.S. indefinitely, without a removal order and without immigration consequences.

Although the Biden-Harris Administration's policy choices virtually guaranteed that hundreds of thousands of cases would be taken off the immigration courts' docket, senior immigration court officials maintained to the Committee and Subcommittee that immigration judges retain their independent authority. Incredibly, Chief Immigration Judge Sheila McNulty, who oversees the immigration courts, denied that immigration judges are incentivized to dismiss cases so they can receive a more favorable performance evaluation.<sup>58</sup> Effective docket management, which includes case completions, is part of immigration judges' performance evaluations.<sup>59</sup> Although dismissing a case takes a fraction of an immigration judge's time compared to adjudicating an asylum application, a case dismissal is still considered a case completion.<sup>60</sup> Nonetheless, McNulty rejected the notion that immigration judges would seek to dismiss more cases to create the illusion of docket management. In a transcribed interview with the Committee and Subcommittee, she testified:

We don't have a quota anymore on the number of cases completed. There is no quota on the number of motions a judge completes. What we do is review, assess, [and] adjudicate the cases that come before us. So incentive to do justice is what I would ask all of our judges

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would still have been only 28,504 cases, a fraction of the cases deemed "not adjudicated" in just the first nine months of fiscal year 2024 alone. See Exec. Off. for Immigr. Rev., *Adjudication Statistics: Asylum Decisions*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/eoir/media/1344851/dl?inline> (last accessed Oct. 11, 2024).

<sup>55</sup> See Doyle Memo, *supra* note 26, at 14-15.

<sup>56</sup> See Exec. Off. for Immigr. Rev., *Adjudication Statistics: Motions*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/eoir/media/1344926/dl?inline> (last accessed Oct. 11, 2024).

<sup>57</sup> Transcribed Interview of Acting Dir. Mary Cheng, Exec. Off. for Immigr. Rev., at 55-56 (June 20, 2024) (on file with Comm.); *200,000 Immigration Court Cases Dismissed Because DHS Failed to File Paperwork*, TRAC IMMIGR., <https://trac.syr.edu/reports/739/> (Mar. 20, 2024).

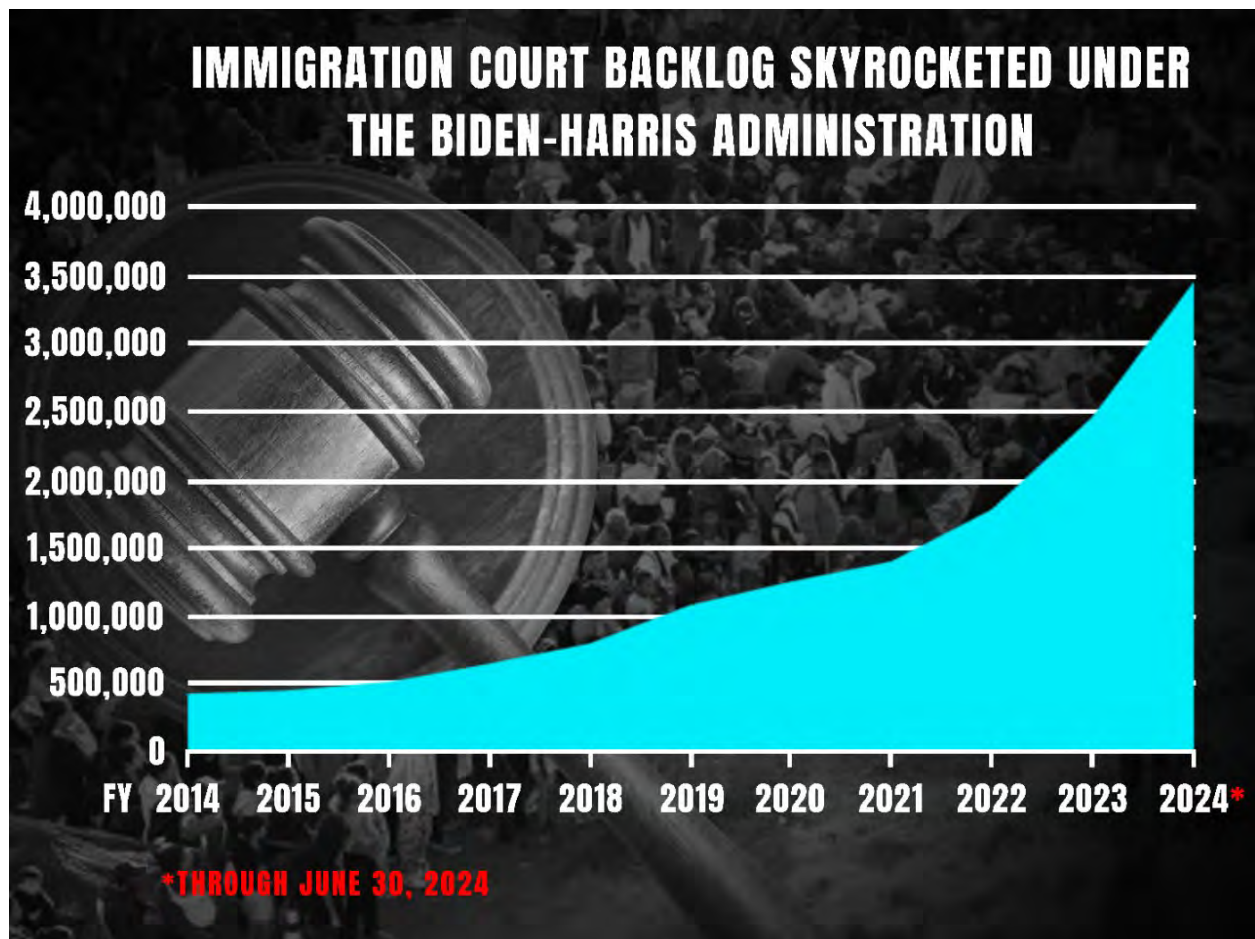
<sup>58</sup> Transcribed Interview of Chief Immigr. Judge Sheila McNulty, Off. of the Chief Immigr. Judge, Exec. Off. for Immigr. Rev., at 64 (May 16, 2024) (on file with Comm.).

<sup>59</sup> *Id.* at 27, 50, 64.

<sup>60</sup> *Id.* at 64.

do and nothing less and that means taking any consideration everything that is before them. So whether or not they assume the case or they close a case, it is what is before them that matters.<sup>61</sup>

McNulty defended immigration judges dismissing cases, stating that “[e]fficiency and fairness are served when a case that has no controversy before the Court, there’s no point to having a – having hearing time.”<sup>62</sup> Nonetheless, she admitted that she did not know “how anyone benefits from” case dismissals, conceding that she would need “to have a little bit more information to figure that one out.”<sup>63</sup> Likewise, EOIR’s Acting Director Mary Cheng admitted in a transcribed interview that she did not know whether there was a benefit to case dismissals, either to an alien in proceedings or to the immigration courts.<sup>64</sup>



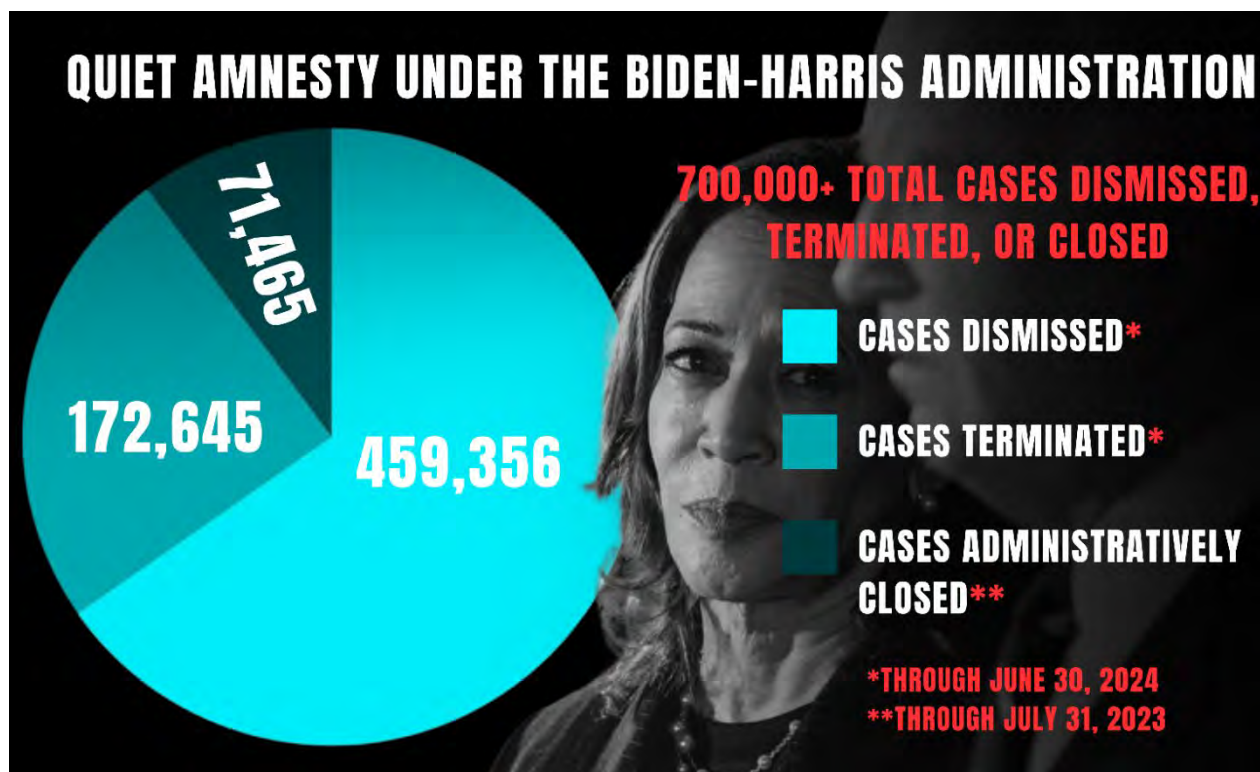
<sup>61</sup> *Id.* at 64.

<sup>62</sup> *Id.* at 68-69.

<sup>63</sup> *Id.* at 81-82.

<sup>64</sup> Transcribed Interview of Acting Dir. Mary Cheng, Exec. Off. for Immigr. Rev., at 42 (June 20, 2024) (on file with Comm.)





## DHS ACTIONS TO UNDERMINE THE NATION’S IMMIGRATION COURTS

Both Chief Immigration Judge McNulty and EOIR Acting Director Cheng blamed actions by the Biden-Harris DHS for negatively affecting the immigration courts. As just one example, Cheng acknowledged that when DHS does not file a Notice to Appear with the immigration court, the failure causes a hearing slot to be filled with a case that the immigration judge cannot adjudicate because the judge lacks jurisdiction over the case.<sup>65</sup> Meanwhile, an alien oftentimes appears at court to discover the hearing must be rescheduled because of DHS’s failure to file the charging document with the immigration court. According to McNulty, those circumstances “create[] quite a few problems along the way because, obviously, the [alien] has arrived, sometimes they travel several hours to get to their hearing only to be told they will not go forward on that day because the charging document has not been filed by DHS.”<sup>66</sup> McNulty said that DHS’s failures to prosecute “absolutely” cost EOIR money, time, and efficiency.<sup>67</sup>

In some cases, ICE attorneys fail to appear at scheduled immigration court hearings, leaving the U.S. government unrepresented before the immigration judge. Cheng revealed that in certain cities, such as in Boston and Atlanta, ICE attorneys inform the immigration judge that the attorney will not appear in court for a specific case and “advis[es] an immigration judge to

<sup>65</sup> *Id.* at 57.

<sup>66</sup> Transcribed Interview of Chief Immigr. Judge Sheila McNulty, Off. of the Chief Immigr. Judge, Exec. Off. for Immigr. Rev., at 93 (May 16, 2024) (on file with Comm.).

<sup>67</sup> *Id.* at 94.



develop a full and complete record.”<sup>68</sup> Cheng acknowledged that there is no substitute for DHS’s role in immigration court when DHS fails to appear. She explained:

Q: So [the notice of nonappearance] advis[es] the immigration judge to develop a full record that the DHS attorney would develop if the DHS attorney were there. Is that correct?

A: They say that, yes. They said they would like the immigration judge to develop a full record. Something like that. Yeah.

Q: So abdicating their role essentially to the immigration judge?

A: Well, they can’t because the immigration judge can’t be the prosecutor.

Q: So then there is no one present there to prosecute the case then?

A: Well, there’s nobody physically there, but I think that their notice of nonappearance is their position in the case. And then generally those cases they don’t – in some instances they were reserving appeal, but they generally don’t reserve appeal is what I recall.<sup>69</sup>

McNulty admitted that ICE attorneys failing to appear in court “can be a problem” for EOIR by placing “more pressure on the judge to go ahead with the case, and that’s – that’s a lot of work for the judge to do, in addition to everything else that they’re doing.”<sup>70</sup> Despite this problem, Cheng said EOIR does not have guidance for immigration judges to use when ICE attorneys fail to appear in court.<sup>71</sup>

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#### **THE BIDEN-HARRIS ADMINISTRATION’S ATTEMPTED SILENCING OF IMMIGRATION JUDGES**

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At the same time as the Biden-Harris Administration weaponized immigration judges to advance an open-borders agenda, immigration court leadership worked to silence critics. According to press reports, in February 2024, EOIR’s Chief Immigration Judge Sheila McNulty ordered certain current immigration judges “to get supervisor approval to speak publicly to anyone outside the Justice Department,” in an effort to silence critics of the “heavily backlogged

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<sup>68</sup> Transcribed Interview of Acting Dir. Mary Cheng, Exec. Off. for Immigr. Rev., at 60-63 (June 20, 2024) (on file with Comm.).

<sup>69</sup> *Id.* at 61.

<sup>70</sup> Transcribed Interview of Chief Immigr. Judge Sheila McNulty, Off. of the Chief Immigr. Judge, Exec. Off. for Immigr. Rev., at 88-89 (May 16, 2024) (on file with Comm.).

<sup>71</sup> Transcribed Interview of Acting Dir. Mary Cheng, Exec. Off. for Immigr. Rev., at 66 (June 20, 2024) (on file with Comm.).

immigration courts.”<sup>72</sup> As the Committee and Subcommittee noted in a March 2024 letter to EOIR, the “reported gag order on immigration judges appears to violate a provision in the annual federal appropriations law that guarantees the right of all federal employees to speak freely with Congress without interference from his or her employer.”<sup>73</sup> On April 3, 2024, the U.S. Office of Special Counsel (OSC) confirmed that EOIR had sought to gag certain immigration judges, finding that EOIR “issued immigration judges a policy on speaking engagements that did not include the anti-gag order language and emailed two judges a message referencing the speaking engagements policy that was perceived as a gag order.”<sup>74</sup> According to OSC, EOIR “agreed to revise the policy to include the required language, send an email with the revised policy that clarified that the policy does not restrict employees’ rights to make protected disclosures or engage in protected activity, and have OSC conduct training.”<sup>75</sup>

In a transcribed interview with the Committee and Subcommittee, McNulty acknowledged sending an email to two immigration judges after seeing a representative for the National Association of Immigration Judges speak on local television about the immigration courts.<sup>76</sup> McNulty claimed she sent the email to remind the judges about EOIR’s speaking engagement policy, which she determined they had violated.<sup>77</sup> Despite the admonishment by OSC, in her testimony, McNulty was unapologetic about attempting to gag immigration judges. Instead of admitting that her initial communication was an error, McNulty referred to the email as “a reminder of [EOIR] policy, that is all.”<sup>78</sup> On May 16, 2024, the Department provided the Committee with McNulty’s subsequent email that clarified the speaking policy for immigration judges.<sup>79</sup> In the subsequent email from March 29, McNulty revealed that EOIR updated its “2021 Speaking Engagement policy to make [whistleblower] protections explicit, consistent with” statutory requirements.<sup>80</sup>

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## CONCLUSION

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For nearly four years, the Biden-Harris Administration has systematically remade America’s immigration courts in the image of open-borders extremism. Instead of encouraging

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<sup>72</sup> Elliot Spagat, *Immigr. judges union, a frequent critic, is told to get approval before speaking publicly*, ASSOCIATED PRESS (Mar. 4, 2024, 9:03 PM), <https://apnews.com/article/immigration-courts-judges-union-backlog-751f55a0ae60af5c04d6c0ca420d36ae>.

<sup>73</sup> Letter from Jim Jordan et al., Chairman, H. Comm. on the Judiciary, to EOIR Dir. David Neal (Mar. 18, 2024); see Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, div. E, title VII, § 713, 136 Stat. 4459, 4707 (2022).

<sup>74</sup> Press Release, U.S. Off. of Special Counsel, OSC Strongly Enforces the Prohibition Against Employee Gag Orders That Chill Whistleblowing (Apr. 3, 2024), <https://osc.gov/News/Pages/24-11-Prohibition-Gag-Orders-Whistleblowing.aspx>.

<sup>75</sup> *Id.*

<sup>76</sup> Transcribed Interview of Chief Immigr. Judge Sheila McNulty, Off. of the Chief Immigr. Judge, Exec. Off. for Immigr. Rev., at 53-54 (May 16, 2024) (on file with Comm.).

<sup>77</sup> *Id.* at 53.

<sup>78</sup> *Id.* at 56.

<sup>79</sup> See Letter from Carlos Uriarte, Assistant Att’y Gen., U.S. Dep’t of Justice, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (May 16, 2024).

<sup>80</sup> Email from Chief Immigr. Judge Sheila McNulty, Off. of the Chief Immigr. Judge, Exec. Off. for Immigr. Rev., to All of Off. of the Chief Immigr. Judge Staff (Mar. 29, 2024) (provided to Comm. staff May 16, 2024) (on file with Comm.).

immigration judges to adjudicate cases and order aliens removed from the United States, the Biden-Harris Administration has used the border crisis as a pretext to remove myriad cases from immigration judges' dockets. In weaponizing both immigration judges within the Justice Department and ICE attorneys within DHS, the Biden-Harris Administration has guaranteed that upward of 1 million aliens—the overwhelming majority of whom likely would otherwise not have a legal basis to remain in the United States—can stay in the country indefinitely. This quiet amnesty not only undermines U.S. immigration law but also incentivizes additional illegal aliens to arrive at America's borders, knowing they will be released into the country and never deported.

In the face of an unprecedented border crisis, the Biden-Harris Administration and Senate Democrats have chosen to ignore H.R. 2, the House-passed Secure the Border Act of 2023. It is beyond time for President Biden and Vice President Harris to end the border crisis and stop their backdoor amnesty. To secure the border and protect Americans, the Senate must pass, and President Biden must sign into law, H.R. 2. In the meantime, the Committee and Subcommittee will continue to conduct oversight of the Biden-Harris Administration's decimation of the nation's immigration courts and destruction of the rule of law.

