



ISSUE BRIEF:

Interior Immigration Enforcement by the Numbers

UPDATED: MARCH 2014

Opinions on the extent to which the United States enforces immigration laws vary dramatically. Some contend that enforcement is already extremely tough, while others contend that the government fails to enforce immigration law. Rarely are these claims backed by more than one or two statistics.

The numbers reveal a more nuanced picture than either side paints. The Obama Administration has deported immigrants in record numbers and, following on a high-consequence enforcement strategy instituted in the mid-2000s, has significantly increased the chances that an individual apprehended at the border will face consequences—namely, formal deportation. The Administration has also shifted its enforcement emphasis to criminals and has escalated the use of administrative removal proceedings that authorize removals outside of traditional immigration courts. Faced with limited resources, the Administration's shift toward removing criminals and recent border crossers has been coupled with a decline in deportations of other individuals caught in the interior. As fewer deportation proceedings go through immigration courts, immigrants whose deportation is contested in court have become nearly twice as likely to win their case. Meanwhile, as immigration courts' workload continues to increase faster than the number of judges, the backlog of immigration cases continues to grow.

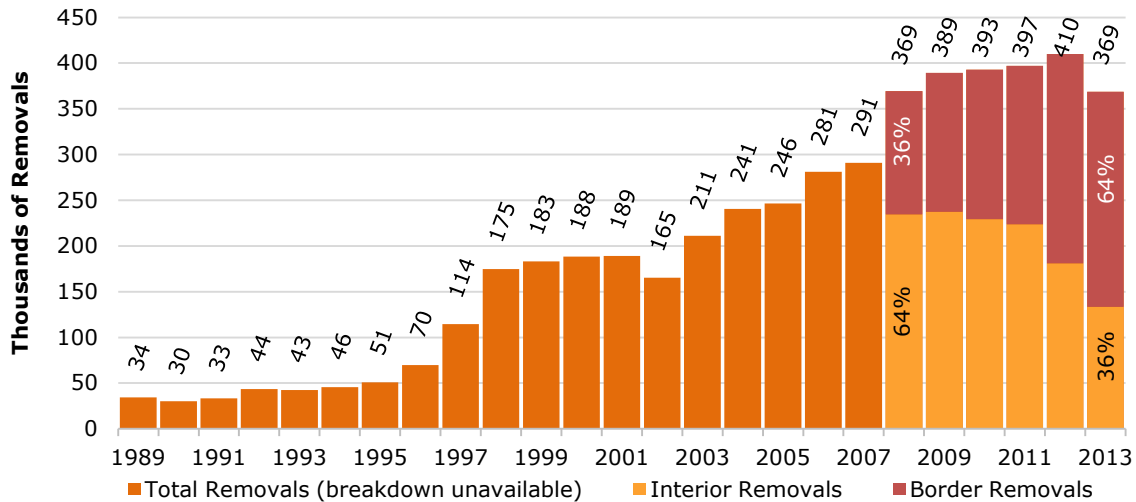
Removals (Deportations)

The common claim that the Obama administration deports unauthorized immigrants in record numbers is true. Figure 1 reports the total number of removals each fiscal year between 1989 and 2013. The Department of Homeland Security (DHS) defines a removal as



“the compulsory and confirmed movement of an inadmissible or deportable alien out of the United States based on an order of removal.” These numbers do not include individuals that were “turned back”—only individuals who went through either an administrative or judicial removal process.

Figure 1. Number of alien removals, FY1989–2013

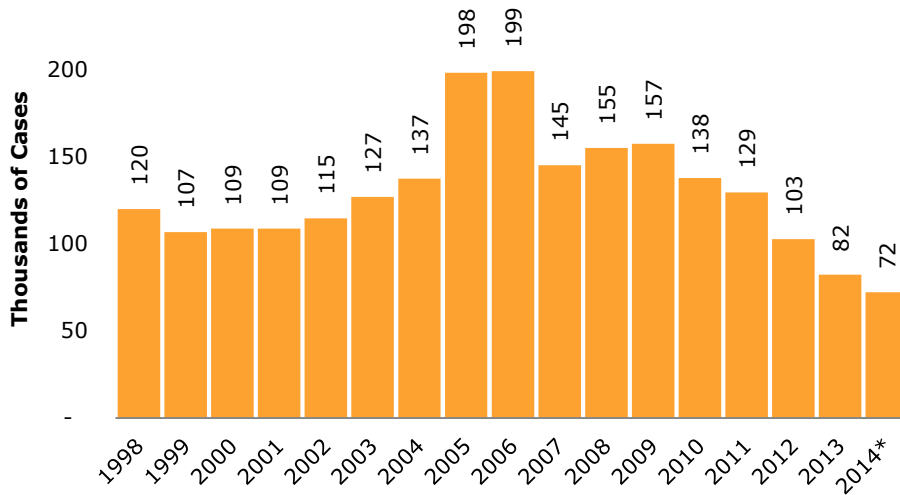


Sources: Office of Immigration Statistics (FY1989-FY2006), ICE (FY2007-FY2013).¹

Since 2009, deportations have shifted their emphasis from the interior to the border. By 2013, 64 percent of deportations were of recent border crossers.² Unfortunately, data that break down deportations in this manner are not available before 2008.

The emphasis on border removals is reflected in other statistics as well. Individuals subject to border removals rarely go through immigration courts, as most are eligible for one or more forms of administrative removal. The number of new removals ordered in immigration court has dropped each year that President Obama has been in office, as has the number of deportation proceedings (Figures 2 and 3). Meanwhile, the percent of removals that are expedited removals or reinstatements of previous removal orders—administrative removals which do not require a traditional court appearance—rose each year between 2009 and 2012 (Figure 4). Three-quarters of 2012 removals were in these categories.

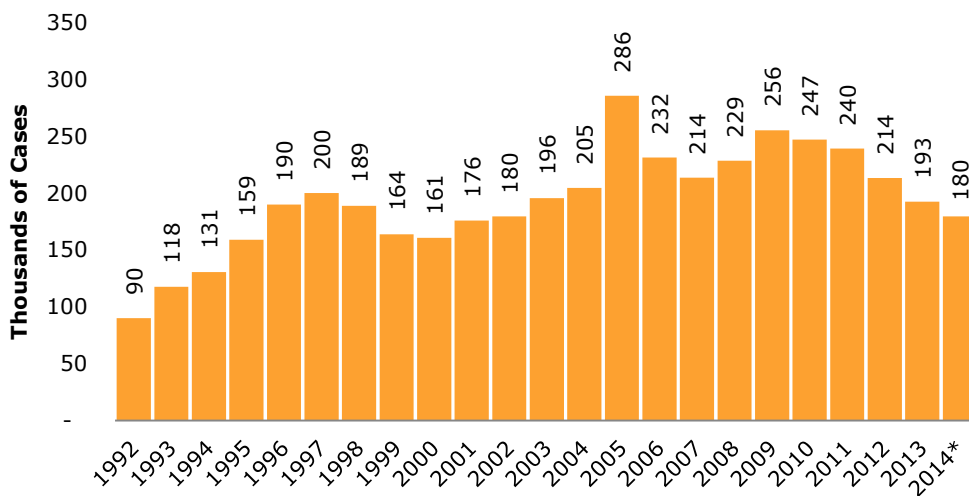
Figure 2. Removals ordered in immigration courts, FY1998–2014



Source: TRAC.

* FY2014 figures are projections.

Figure 3. Number of removal proceedings in immigration courts, FY1992–2014

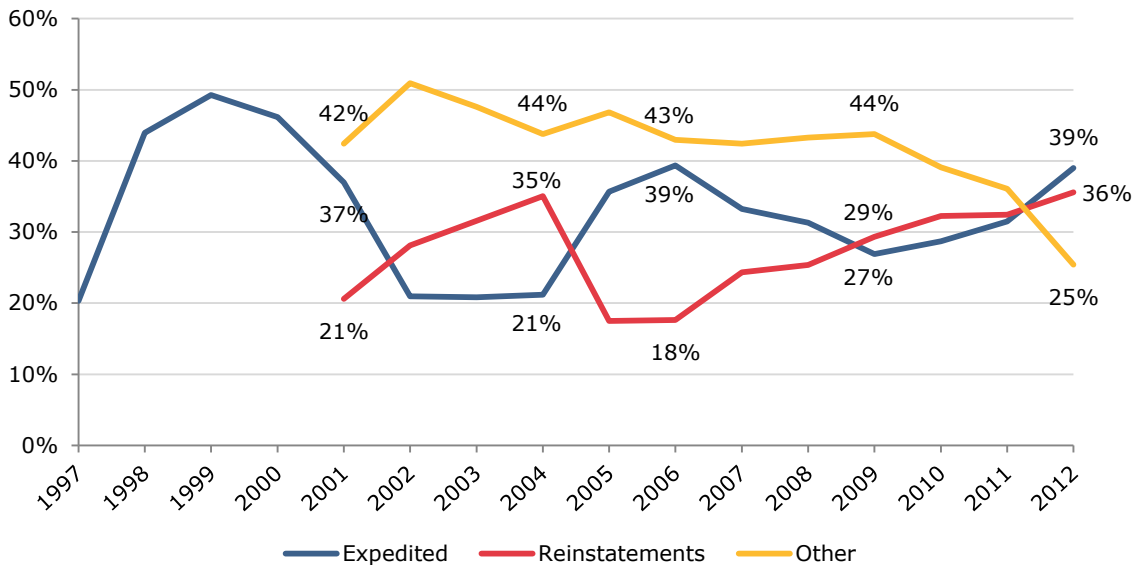


Source: TRAC.

* FY2014 figures are projections.

Note: TRAC counts removal proceedings differently than the U.S. Department of Justice’s “new proceedings received.” TRAC explains the difference [here](#).

Figure 4. Removal trends by type, FY1997–2012

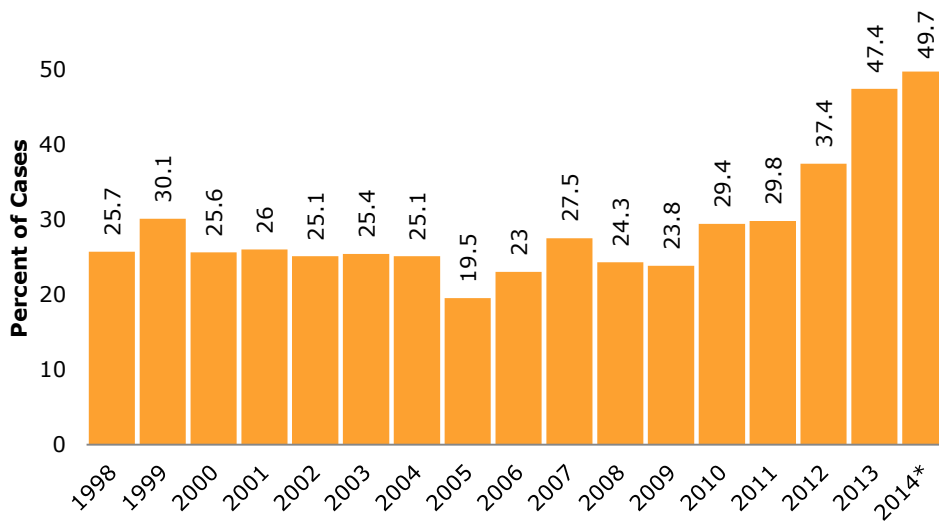


Source: Office of Immigration Statistics.³

Among the deportation cases that do reach immigration court, the share that end in an allowance to stay in the United States has more than doubled since 2009 (Figure 5). This rapid increase likely reflects three factors: (1) the increased use of administrative removals, (2) increased legal representation, and (3) the Obama Administration’s deportation priorities. On the first point, it seems likely that individuals who are administratively removed would generally have more clear-cut grounds for removal, leaving individuals with more complex cases or less serious criminal backgrounds to reach immigration court. Data presented later (Figures 6 and 7) suggest that this is plausible. Additionally, as discussed below, the portion of immigration proceedings with legal representation increased sharply between 2005 and 2012 (see Figure 10).

The Obama Administration’s deportation priorities also likely increased the chance that immigrants win their deportation case. In 2011 and 2012, former ICE director John Morton and former DHS secretary Janet Napolitano issued a series of memos on ICE’s enforcement priorities. The [first](#), in March 2011, defined ICE’s highest enforcement priority as “aliens who pose a danger to national security or a risk to public safety” and its second-highest priority as “recent illegal entrants” and individuals who have “obstruct[ed] immigration controls.” Subsequent memos [directed](#) ICE to exercise “prosecutorial discretion” in line with these priorities and [established](#) the [Deferred Action for Childhood Arrivals](#) (DACA) program, which offers temporary relief from deportation to unauthorized immigrants who were brought to the United States as children. Between October 2011 and December 2013, nearly 29,000 cases were closed through prosecutorial discretion, representing about 6.6 percent of all case closures in immigration court.⁴

Figure 5. Percent of removal cases ending in allowance to stay in the United States, FY1998–2013



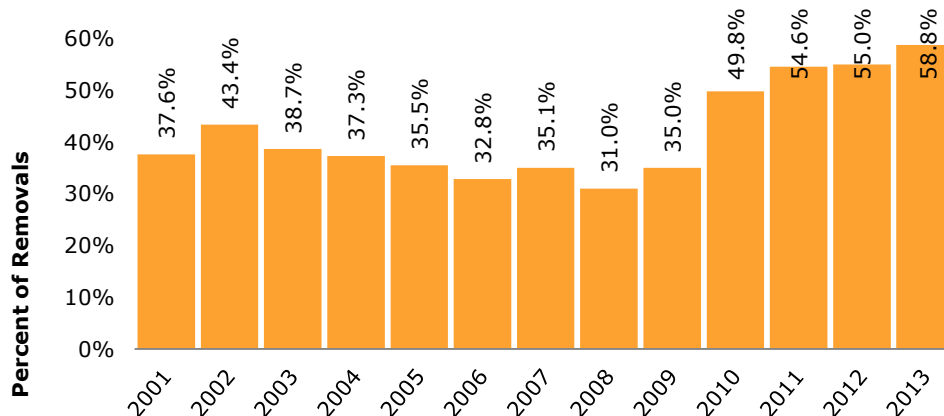
Source: TRAC.

* FY2014 figures include only October through January.

Criminal Removals

The extent to which the government deports immigrants convicted of crimes (other than entering or remaining in the United States without authorization) often rises to prominence in the immigration debate. Since 2008, the share of deported immigrants that ICE classifies as “criminal aliens” has nearly doubled from 31 percent to 59 percent (Figure 6).

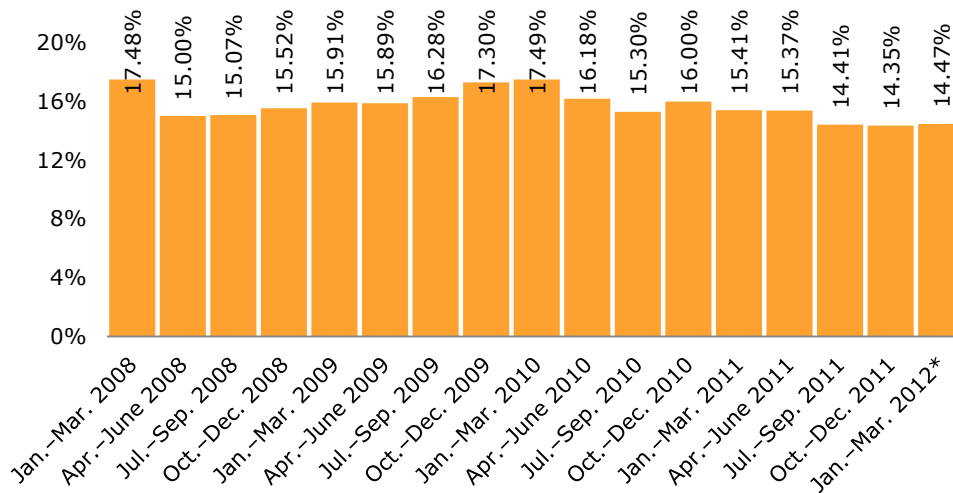
Figure 6. Percent of removals with criminal convictions, FY2001-2013



Source: Calculated from ICE and DHS statistics.⁵

Despite the overall rise in the share of deportees who are criminals, however, the chance that a deportation order sought in immigration court will be based on criminal activity has fallen slightly (Figure 7). This suggests that the rise in criminal deportations has largely been accomplished through an increase in expedited removals and reinstatements of previous removals (see Figure 4). Part of the rise could also be due to recent ICE investments in information technology to improve its access to criminal record information on removable aliens.⁶

Figure 7. Deportation orders sought in immigration court based on alleged criminal activity, January 2008–March 2012



Source: TRAC.
 * Preliminary counts.

A more detailed version of Figure 7 is available [here](#).

In 2013, deportees who were caught in the interior were significantly more likely to be classified as criminals than individuals who were caught at the border (Table 2). Nearly 40 percent of interior removals were of Level 1 offenders, meaning immigrants who were convicted of crimes ICE defines as “aggravated felonies” or had committed two or more “felonies.” Level 2 offenders were convicted of at least one “felony” or two “misdemeanors,” and Level 3 offenders were convicted of one “misdemeanor.”

It is important to note that ICE’s definitions of “felony” and “misdemeanor” do not strictly line up with how these crimes are defined under state and federal law. “Aggravated felony” for immigration removal purposes is [defined in statute](#), and includes many types of specific criminal activity. In general, a “felony” is a crime punishable by more than one year in prison, and a “misdemeanor” is a crime punishable by less than one year.

Table 2. Breakdown of FY2013 removals

TYPE	INTERIOR REMOVALS		BORDER REMOVALS		TOTAL	
	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT
Criminal	110,115	82.5%	104,736	45.4%	214,851	58.9%
Level 1	52,935	39.6%	21,224	9.2%	74,159	20.3%
Level 2	26,203	19.6%	20,049	8.7%	46,252	12.7%
Level 3	30,977	23.2%	63,463	27.5%	94,440	25.9%
Immigration Fugitives	2,742	2.1%	5,122	2.2%	7,864	2.2%
Repeat Violators	10,358	7.8%	60,546	26.2%	70,904	19.5%
Other	10,336	7.7%	60,521	26.2%	70,857	19.4%
Total	133,551		230,925		364,476	

Source: ICE.

In ICE detention centers, the majority of immigrants have a criminal conviction. Table 3 displays the top-ten most serious convictions for those with a criminal conviction, and the [source table](#) displays the most serious conviction for all those who were in ICE detention centers as of October 2011. The detainee population with criminal convictions reflects statutory requirements for mandatory detention, which require ICE to detain individuals who committed a wide range of offenses, including aggravated felonies and offenses related to drugs, human trafficking, money laundering, or terrorist activities.⁷

Table 3. Most serious charge for ICE detainees by frequency, October 2011

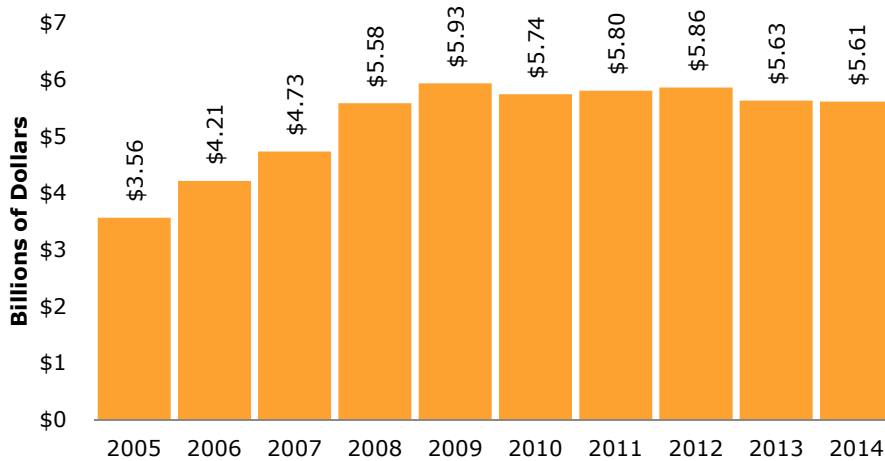
	NUMBER	PERCENT	
Total	32,298		
No Criminal Conviction Recorded	13,185	40.8%	
Criminal Conviction Recorded	19,113	59.2%	
RANK	MOST SERIOUS CHARGE FOR THOSE WITH CRIMINAL CONVICTION(S)	NUMBER	PERCENT
1	Driving Under Influence, Liquor	2,580	13.5%
2	Traffic Offense	1,344	7.0%
3	Marijuana, Possession	1,038	5.4%
4	Cocaine, Possession	979	5.1%
5	Dangerous Drugs	909	4.8%
6	Assault	888	4.6%
7	Larceny	735	3.8%
8	Cocaine, Sell	556	2.9%
9	Illegal Entry	528	2.8%
10	Robbery	488	2.6%

Source: TRAC.

Funding

Money provides another measure of the U.S. government’s commitment to interior enforcement. ICE is the principal DHS office responsible for interior enforcement of U.S. immigration law. Its budget increased rapidly since 2005, but it has dropped slightly since the recession began having major budget impacts in FY2009 (Figure 8). President Obama’s proposed budget for the 2015 fiscal year would reduce the level of ICE funding to \$5.36 billion.

Figure 8. ICE budget, FY2005–2014

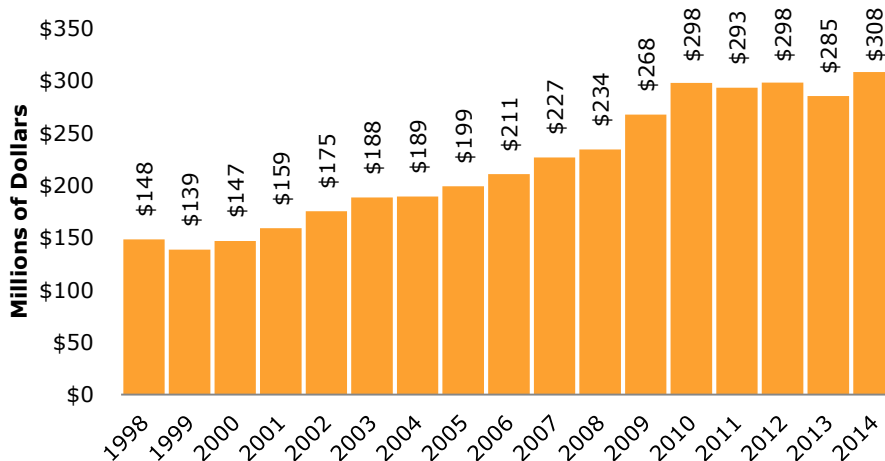


Source: TRAC (2005–2010), DHS (2011–2014).⁸

Note: 2005–2010 figures represent total expenditures. 2011–2014 represent enacted budgets.

The Executive Office for Immigration Review (EOIR) is the U.S. Department of Justice agency that conducts immigration court proceedings, appellate reviews, and administrative hearings. Since 2000, EOIR’s budget has more than doubled from \$147 million to over \$300 million (Figure 9). President Obama’s FY2015 budget proposed to increase funding to \$343 million. Despite these increases, a large and growing backlog exists in immigration courts (see below).

Figure 9. EOIR budget, FY1998–2014

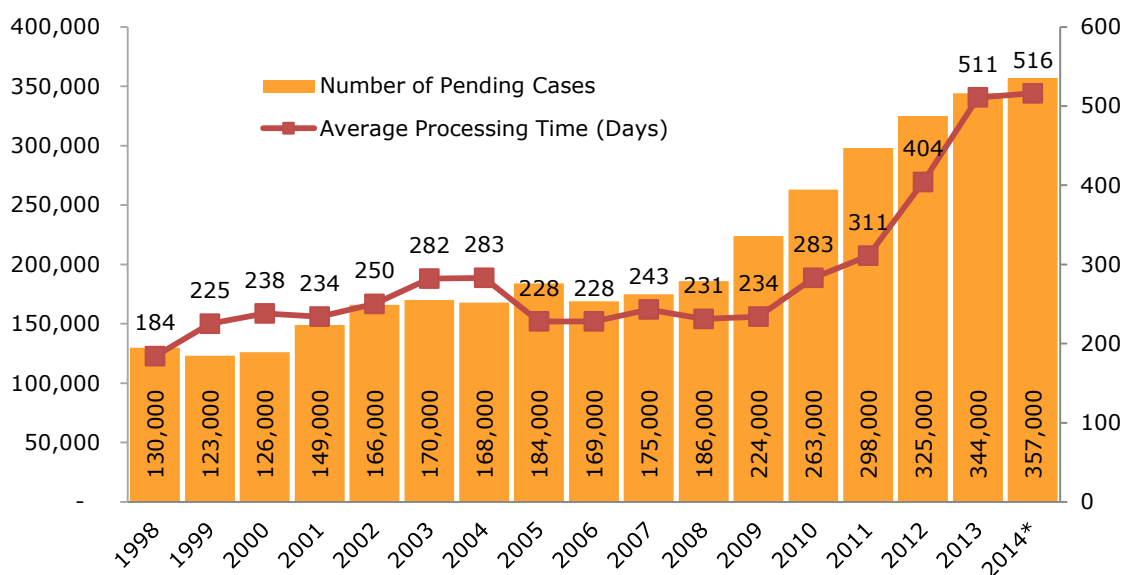


Source: U.S. Department of Justice.⁹

Court Backlog

Immigration courts are currently burdened by a backlog of over 350,000 cases (Figure 10). Between 2000 and 2014, this backlog more than tripled in size, and the average processing time for an immigration case more than doubled. The backlog could be part of ICE's motivation for increasing its use of administrative removals in recent years, therefore bypassing immigration courts at a higher rate. Recent immigration proposals, including the Senate's June 2013 bill and the president's FY2015 budget proposal, mandate the appointment of additional immigration judges. Such proposals seek to help clear the large and growing backlog in immigration courts.

Figure 10. Immigration court backlog, FY1998–2014



Source: TRAC ([Cases](#) | [Processing Time](#)).

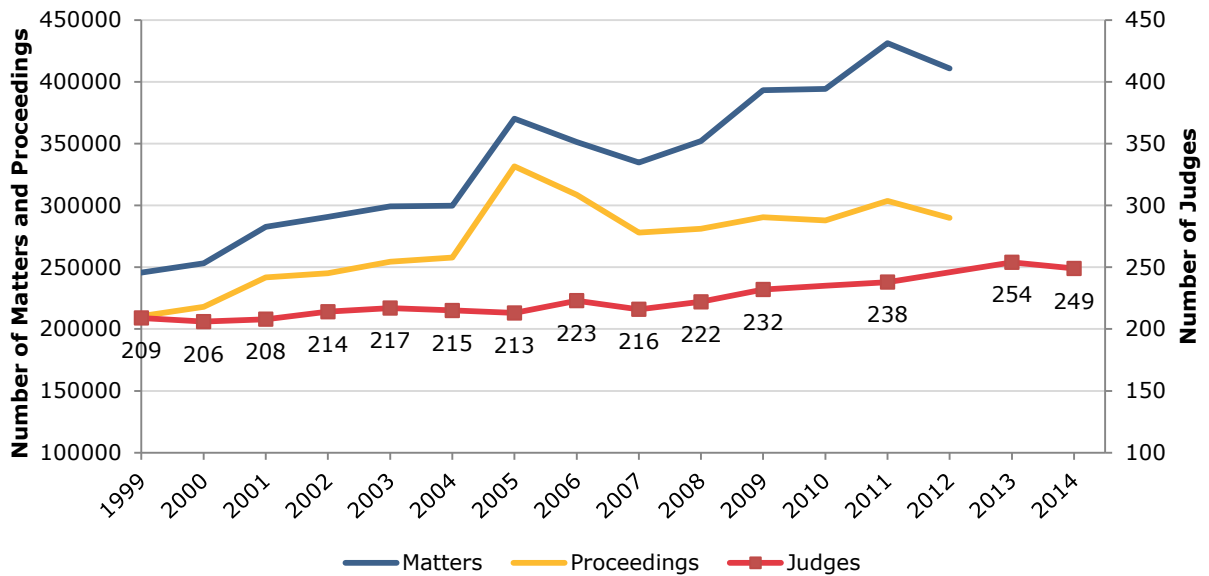
* FY2014 figures are projections.

One explanation for the increased backlog is that the number of judges has not kept pace with the amount of court activity, even as more immigrants obtain legal representation. Between 1999 and 2012, the number of “matters received” in immigration court increased 67 percent, while the number of immigration judges increased just 18 percent.¹⁰ Meanwhile, the share of immigrants with legal representation increased rapidly between 2006 and 2012, from 35 percent to 56 percent.

The rise in legal representation is a likely explanation for the increased amount of court activity. “Matters received” includes three categories: proceedings, bond redeterminations, and motions to reopen or reconsider. In Figure 11 below, the orange line represents proceedings, while the blue line represents all matters received. The growing gap between the two lines shows that bond redeterminations and motions to consider have become increasingly common.¹¹ It seems likely that immigrants with attorneys would file more

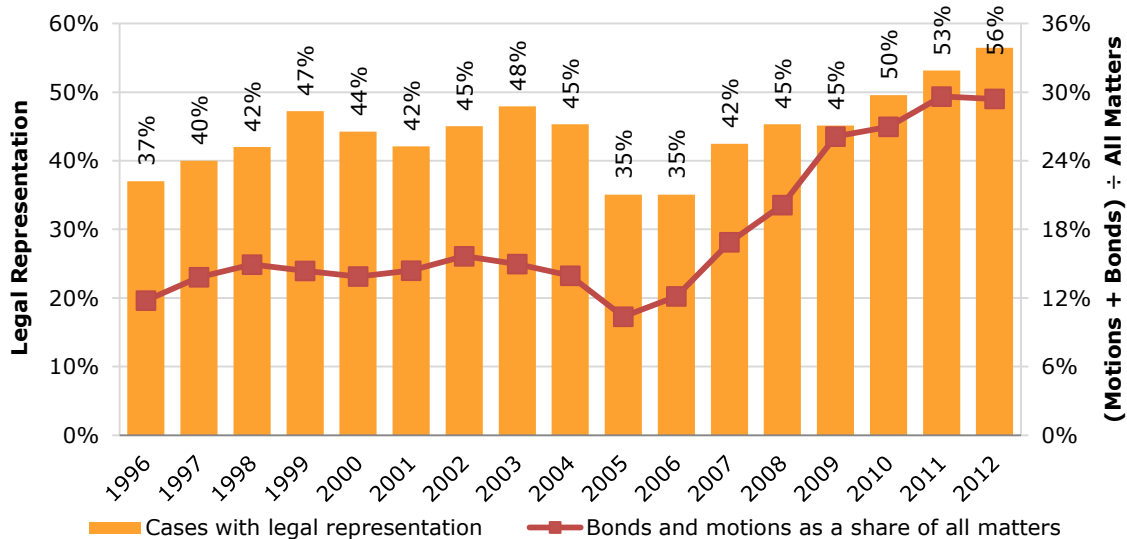
motions and bond redeterminations. Figure 12 illustrates this connection. As a share of all matters in immigration court, bonds and motions increased from 10 percent in 2005 to 29 percent in 2012.

Figure 11. Number of immigration judges versus matters and proceedings received, FY1999–2014



Source: U.S. Department of Justice.¹²

Figure 12. Legal representation in immigration courts, FY1996–2012



Source: U.S. Department of Justice.¹³

Conclusion

Measured by funding, the number of deportations and the caseload in immigration courts, immigration enforcement in the United States has remained at near-record levels under the Obama Administration. Breaking down these top-line figures reveals several significant trends. Since 2008, the administration has deported an increasing number of recent border crossers and a decreasing number of individuals caught in the interior. The large majority of individuals deported on the interior committed a criminal offense. Despite increased funding and an increased use of administrative deportation procedures, the backlog in immigration courts has continued to increase, due at least in part to an inadequate number of judges and an increase in legal representation.

It is clear that the Obama Administration has a strong commitment to a particular strategy of enforcing immigration law. This strategy finds itself under attack from both sides of the aisle, with some alleging that the president is failing to enforce immigration law, in part based on the administrative actions to defer removals or administratively close low priority removal cases. Others suggest that the overall rise in removals and continuing non-criminal removals separate hardworking, deserving immigrants from their families. Neither extreme is wholly accurate, but the common thread behind these complaints is dissatisfaction with how current law and the Administration allocate a limited pot of immigration enforcement resources. As immigration legislation moves forward, a compromise and agreement on the appropriate focus and level of effort on immigration enforcement, given current resources, will be a necessary component of reform.

Endnotes

¹ Office of Immigration Statistics (2011). *Yearbook of Immigration Statistics*. Washington, DC: U.S. Department of Homeland Security. Available at <https://www.dhs.gov/yearbook-immigration-statistics-2011-3>. Immigration and Customs Enforcement (2012). "ICE Total Removals Through February 20th, 2012." Available at <http://www.ice.gov/doclib/about/offices/ero/pdf/ero-removals.pdf>. Immigration and Customs Enforcement (2013). "FY2012 Removal Statistics." No longer available online. Immigration and Customs Enforcement (2014). "FY2013 Removal Statistics." Available at <http://www.ice.gov/doclib/about/offices/ero/pdf/2013-ice-immigration-removals.pdf>

² ICE appeared to change its definition of a "border removal" between FY2012 and FY2013. Its FY2012 report only listed each removal in one category (convicted criminal, immigration fugitive, repeat immigration violators, border removals, and other removable aliens). The FY2013 report allowed categories to overlap. All removals were classified as either border or interior, and the subcategories mirrored the remaining categories from the FY2012 report.

³ Office of Immigration Statistics, "Immigration Enforcement Actions." Compiled data from 2012, 2011, 2008, and 2004 reports. Data discrepancies were resolved by using the most recent report available.

⁴ TRAC, "Once Intended to Reduce Immigration Court Backlog, Prosecutorial Discretion Closures Continue Unabated," January 2014. Available at <http://trac.syr.edu/immigration/reports/339/>

⁵ Calculated using deportation numbers in Figure 1. Criminal alien numbers from: ICE, "FY2012 Removal Statistics," accessed December 19, 2013, no longer available online; ICE, "FY2013 ICE Immigration Removals," available at <http://www.ice.gov/removal-statistics/>, accessed January 6, 2014.

⁶ See U.S. Government IT Dashboard, "ICE Criminal Alien Identification Initiatives", at <https://myit-2014.itdashboard.gov/investment?buscid=836>. Accessed March 6, 2014.

⁷ Immigrant Legal Resource Center, "Immigration Holds and Immigration Detention," January 2013. Available at http://www.ilrc.org/files/documents/n.5-immigration_holds.pdf

⁸ TRAC, "Immigration and Customs Enforcement (ICE) Budget Expenditures," 2010. Available at <http://trac.syr.edu/immigration/reports/224/include/3.html>. DHS, "Budget in Brief," FY 2015 and FY 2013, available at <http://www.dhs.gov/sites/default/files/publications/FY15-BIB.pdf> and <http://www.dhs.gov/xlibrary/assets/mgmt/dhs-budget-in-brief-fy2013.pdf>.

⁹ Compiled from U.S. Department of Justice, "Summary of Budget Authority By Appropriation," FY 2015, FY 2013, FY 2011, FY 2009, FY 2007, FY 2005, FY 2003, FY 2002, and FY 2001. Available at <http://www.justice.gov/about/bpp.htm>.

¹⁰ Calculated from Figure 9 data.

¹¹ Calculated from Figure 10 data.

¹² Matters and Proceedings compiled from: U.S. Department of Justice Executive Office for Immigration Review (EOIR), "Statistical Year Book," FY 2012, FY 2007, and FY 2003, available at <http://www.justice.gov/eoir/statspub/syb2000main.htm>. Number of Judges compiled from: EOIR, "Fact Sheet: Executive Office for Immigration Review Immigration Judge Hiring Initiative," 2010, available at http://www.justice.gov/eoir/press/2010/EOIR_IJHiring_FactSheet.pdf; Department of Justice Office of the Inspector General, "Management of Immigration Cases and Appeals by the Executive Office for Immigration Review," October 2012, available at <http://www.justice.gov/oig/reports/2012/e1301.pdf>; EOIR, "FY 2014 Budget Request at a Glance," available at <http://www.justice.gov/jmd/2014summary/pdf/eoir.pdf>; EOIR, "FY 2015 Budget Request at a Glance," available at <http://www.justice.gov/jmd/2015summary/pdf/eoir.pdf>.

¹³ U.S. Department of Justice Executive Office for Immigration Review (EOIR), "Statistical Year Book," FY 2012, FY 2007, and FY 2003, available at <http://www.justice.gov/eoir/statspub/syb2000main.htm>.