



ISSUE BRIEF:

Interior Immigration Enforcement by the Numbers

JULY 2015: CHARTS AND ANALYSIS UPDATED (*Originally published 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.

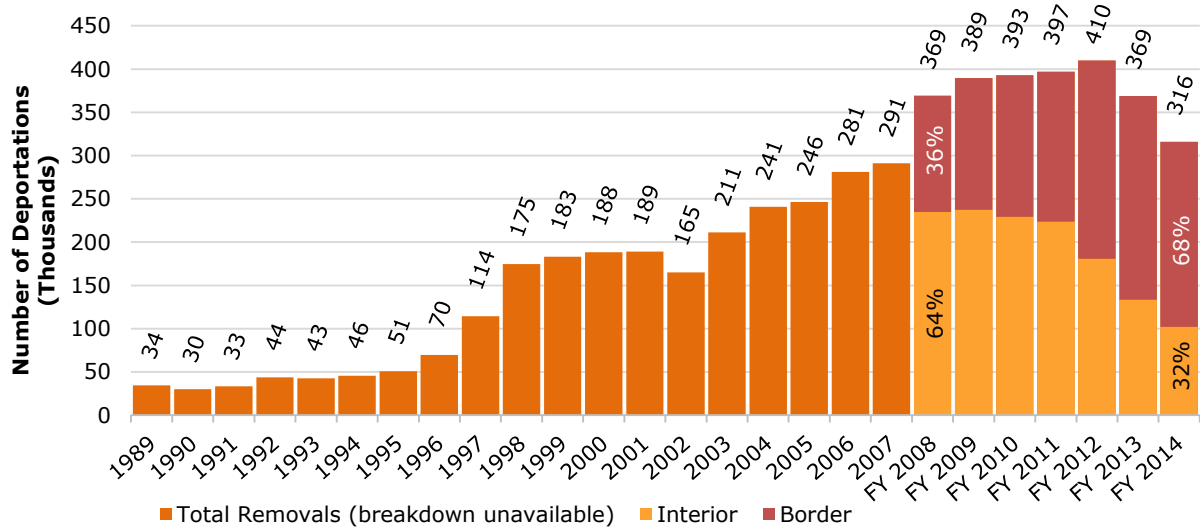
Removals (Deportations)

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 2014. 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, FY1989–2014

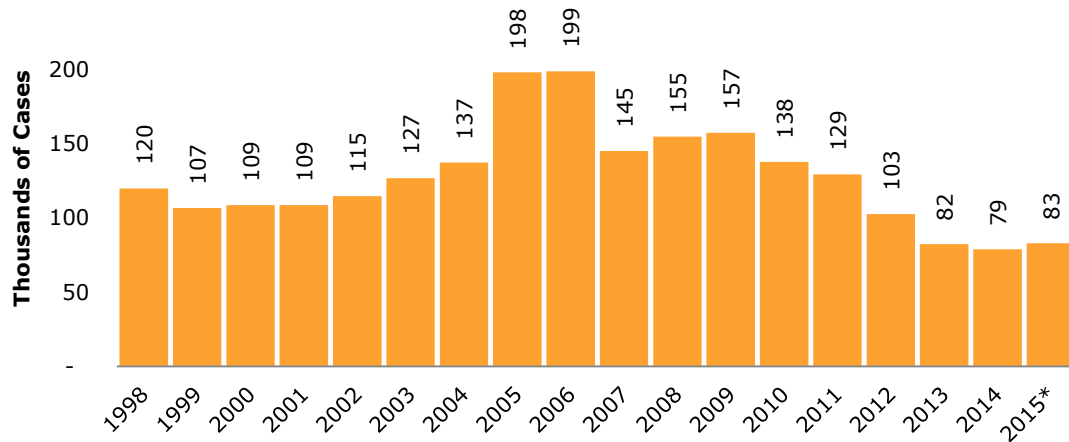


Sources: Office of Immigration Statistics (FY1989-FY2006), ICE (FY2007-FY2014).¹

Since 2009, deportations have shifted their emphasis from the interior to the border. By 2014, 68 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 except 2015 for which experts project a slight increase (Figure 2). The number of new deportation proceedings had been also decreasing steadily until 2014, when there was a sharp rise (Figures 3).³ However, the 2015 estimates suggest a return to the decreasing trend. Meanwhile, the percent of removals that are expedited removals or reinstatements of previous removal orders—administrative removals which do not require a traditional immigration court appearance—rose each year between 2009 and 2013 (Figure 4). Over 80% of 2013 removals were in these categories.

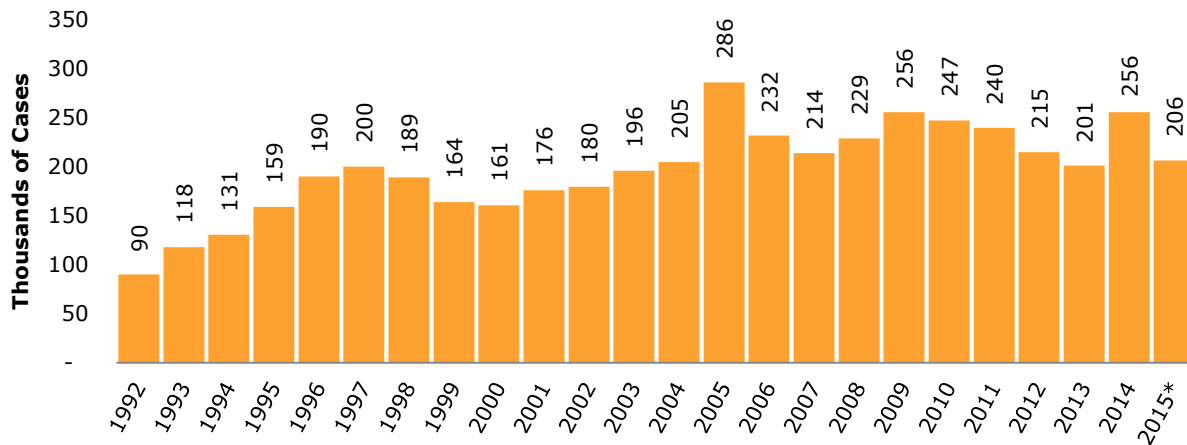
Figure 2. Removals ordered in immigration courts, FY1998–2015



Source: TRAC.

* FY2015 figures are TRAC projections.

Figure 3. Number of new removal proceedings in immigration courts, FY1992–2015

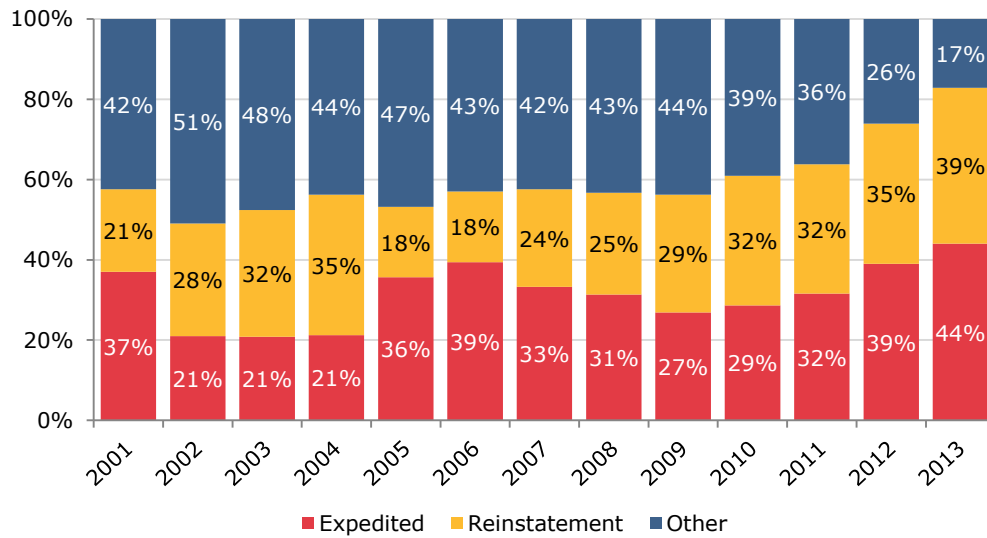


Source: TRAC.

* FY2015 figures are TRAC 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, FY1997–2013



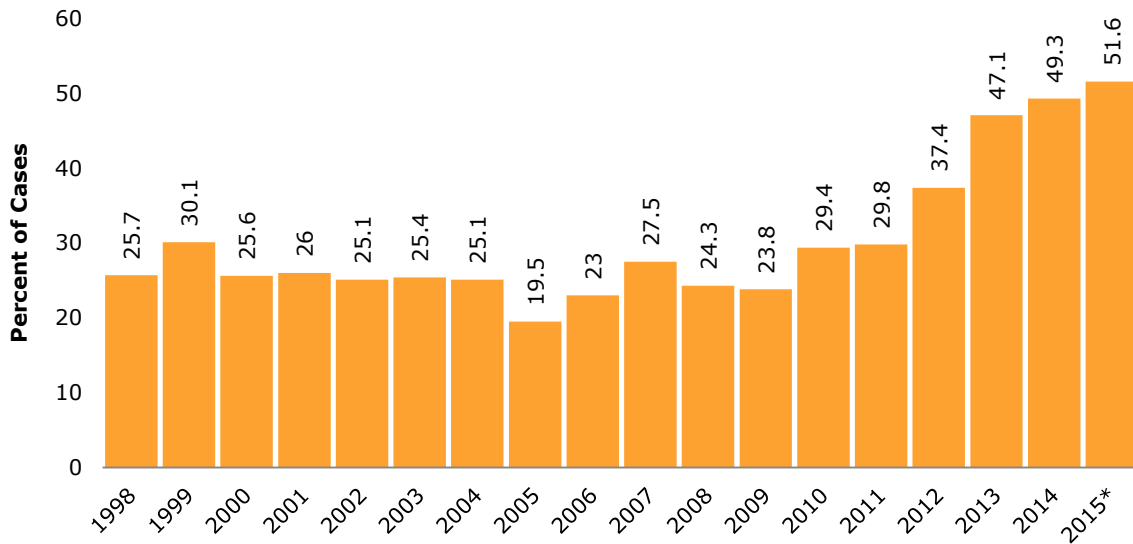
Source: Office of Immigration Statistics.⁴

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 (Figure 6) suggest that this is plausible. Additionally, as discussed below, the portion of immigration proceedings with legal representation increased sharply between 2005 and 2015 (see Figure 12), and statistics show that when represented, unaccompanied children are more likely to receive permission to stay.⁵

The Obama Administration’s deportation priorities also likely increased the chance that immigrants are able to avoid deportation. 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.⁶ In November 2014, the Obama Administration announced expansion of certain parameters of DACA and

[issued guidance](#) for case-by-case use of deferred action for those adults who are the parents of U.S. citizens or lawful permanent residents.⁷

Figure 5. Percent of removal cases ending in allowance to stay in the United States, FY1998–2015



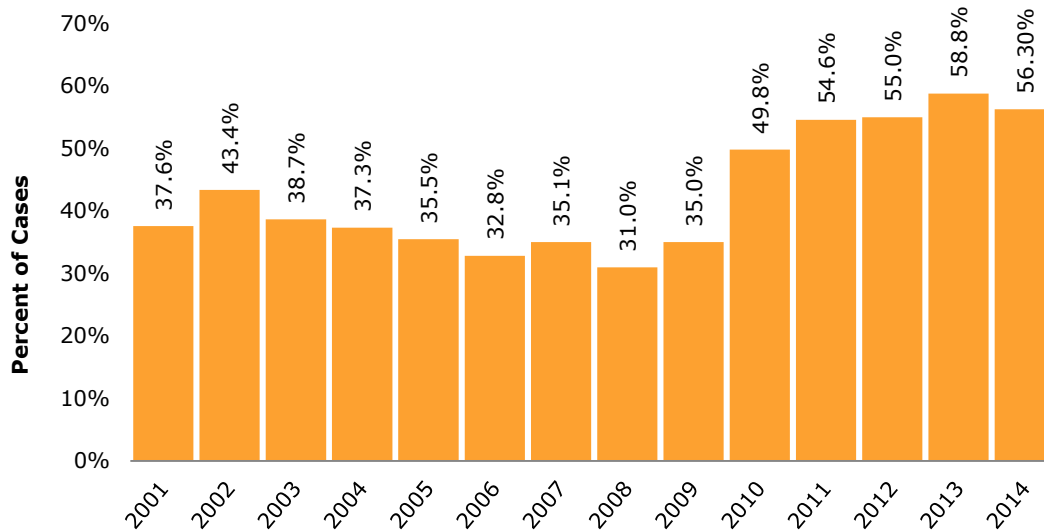
Source: TRAC.

* FY2015 figures are TRAC projections

Criminal Removals

The extent to which the government deports immigrants convicted of crimes (other than crimes under the immigration law for illegal entry or reentry) often rises to prominence in the immigration debate. Since 2008, the share of deported immigrants that ICE classifies as “criminal aliens” has surged from 31 percent to 56 percent (Figure 6).

Figure 6. Percent of removals with criminal convictions, FY2001-2014



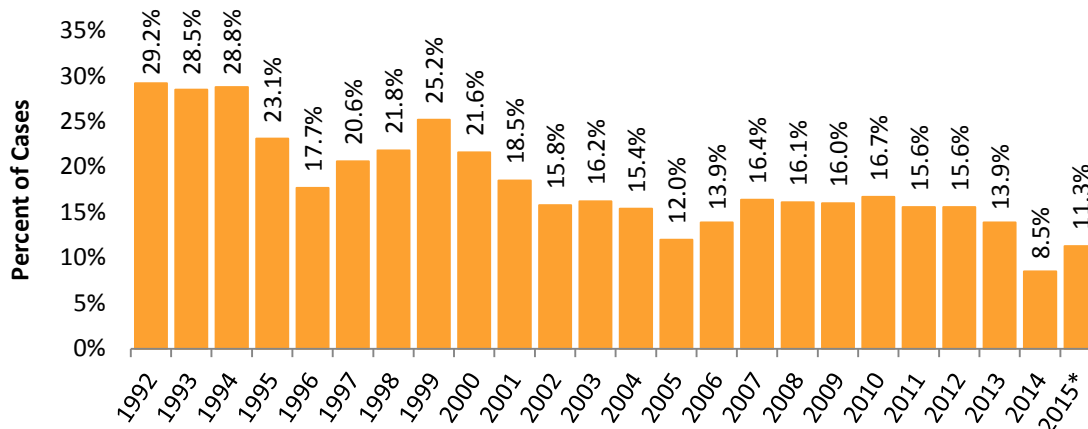
Source: Calculated from ICE and DHS statistics.⁸

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 considerably in 2014 (Figure 7). This suggests that the rise in criminal deportations has largely been accomplished through an increase in expedited removals, administrative removals (for aggravated felonies⁷) 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, including the Secure Communities program.⁹

Some of the decline in the number of criminal removals in the last year has been attributed in part by ICE to the decline in cooperation with ICE detainer requests for arrested immigrants by city and county jails.¹⁰ The Secure Communities program was ended as part of the November 2014 executive actions, and is being replaced by the Priority Enforcement Program (PEP).¹¹ Under PEP, ICE will seek the transfer from state and local law enforcement entities of a removable immigrant only when the immigrant has a criminal conviction for an offense listed under ICE priorities, has been part of gang activity or poses a national security threat.¹² ICE will either request notification prior to release of an identified immigrant or, when there is probable cause for removal, will issue a request for continued detention until transfer to ICE custody.

Figure 7. Immigration court filings based on alleged criminal

activity, FY1992-2015



Source: TRAC.

* FY2015 figures are TRAC projections

In 2014, deportees who were caught in the interior were twice as likely to be classified as criminals than individuals who were caught at the border (Table 1). Over 50 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 1. Breakdown of FY2014 removals

TYPE	INTERIOR REMOVALS		BORDER REMOVALS		TOTAL	
	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT
Criminal	86,923	85.03%	91,037	42.60%	177,960	56.33%
Level 1	43,897	50.50%	19,262	21.16%	63,159	35.49%
Level 2	22,191	25.53%	20,599	22.63%	42,790	24.04%
Level 3	20,835	23.97%	51,176	56.21%	72,011	40.46%
Immigration Fugitives	1,629	1.59%	1,832	0.86%	3,461	1.10%
Repeat Violators	7,206	7.05%	55,110	25.79%	62,316	19.72%
Other	6,466	6.33%	65,740	30.76%	72,206	22.85%
Total	102,224		213,719		315,943	

[Source](#): ICE.

In ICE detention centers, the majority of immigrants have a criminal conviction. Table 2 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 January 2013. 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.¹³ These numbers may have shifted since then due to the increase in the number of Central American families detained after the 2014 summer surge of children and family apprehensions.¹⁴

Table 2. Most serious charge for ICE detainees by frequency, January 2013

		Number	Percent
Total		347,691	
No Criminal Conviction Recorded		165,769	47.68%
Criminal Conviction Recorded		181,922	52.32%

Rank	Most serious charge for those with criminal conviction(s)	Number	Percent
1	Driving Under Influence, Liquor	33,342	9.60%
2	Traffic Offense	20,997	6.00%
3	Marijuana, Possession	6,940	2.00%
4	Illegal Entry	6,746	1.90%
5	Dangerous Drugs	6,724	1.90%
6	Cocaine, Possession	6,644	1.90%
7	Assault	6,234	1.80%
8	Larceny	4,891	1.40%
9	Cocaine, Sell	4,314	1.20%
10	Robbery	3,480	1.00%

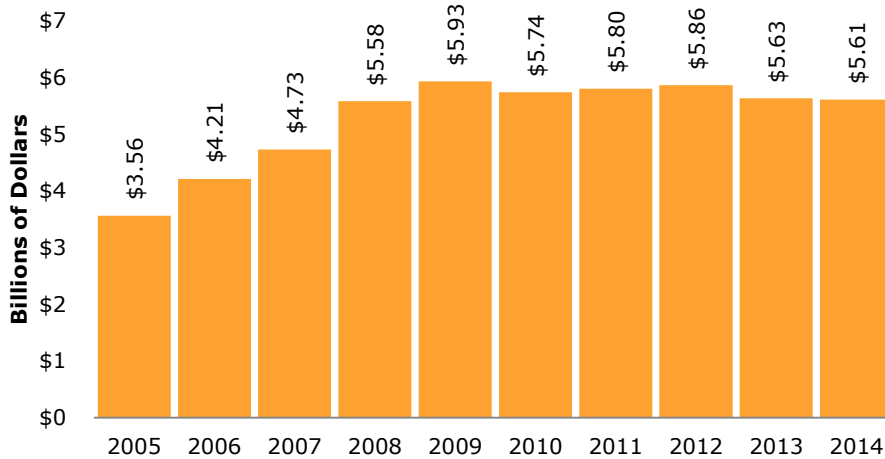
[Source](#): TRAC.

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 2016 fiscal year would increase the level of [ICE funding](#) to \$6.28 billion. The Senate and House Appropriations Committee have recently advanced their

FY2016 homeland security appropriations bills, maintaining ICE funding at about \$5.8 billion.¹⁵

Figure 8. ICE budget, FY2005–2014

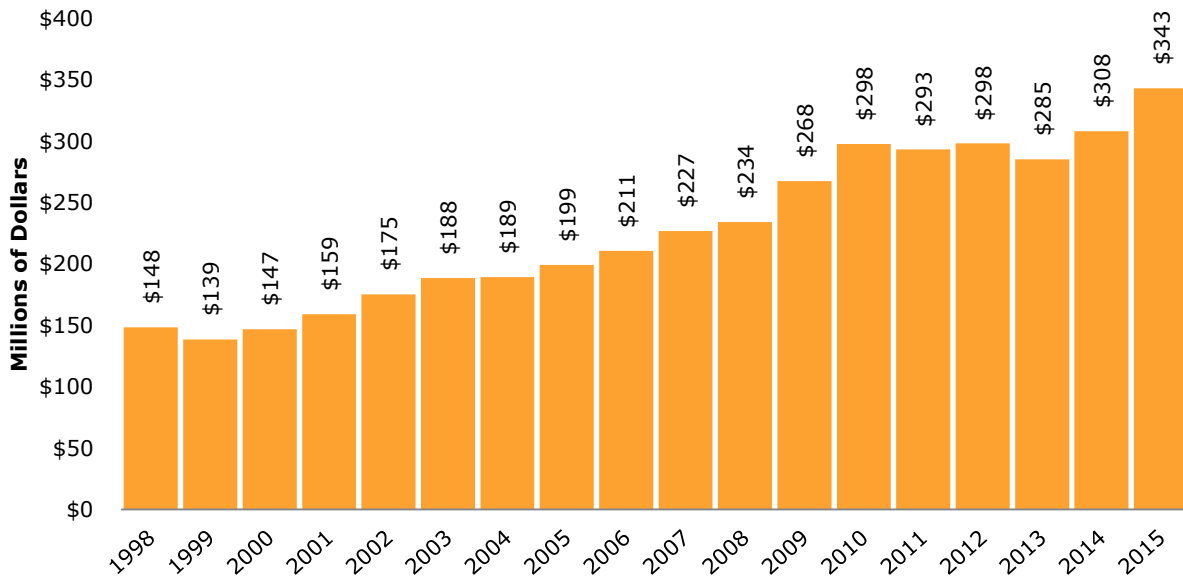


Source: TRAC (2005–2010), DHS (2011–2014).¹⁶

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 \$340 million (Figure 9). President Obama’s [FY2016 budget](#) proposed to increase funding to \$480 million, and the addition of 55 immigration judge teams. Despite these increases, a large and growing backlog exists in immigration courts (see below).

Figure 9. EOIR budget, FY1998-2015

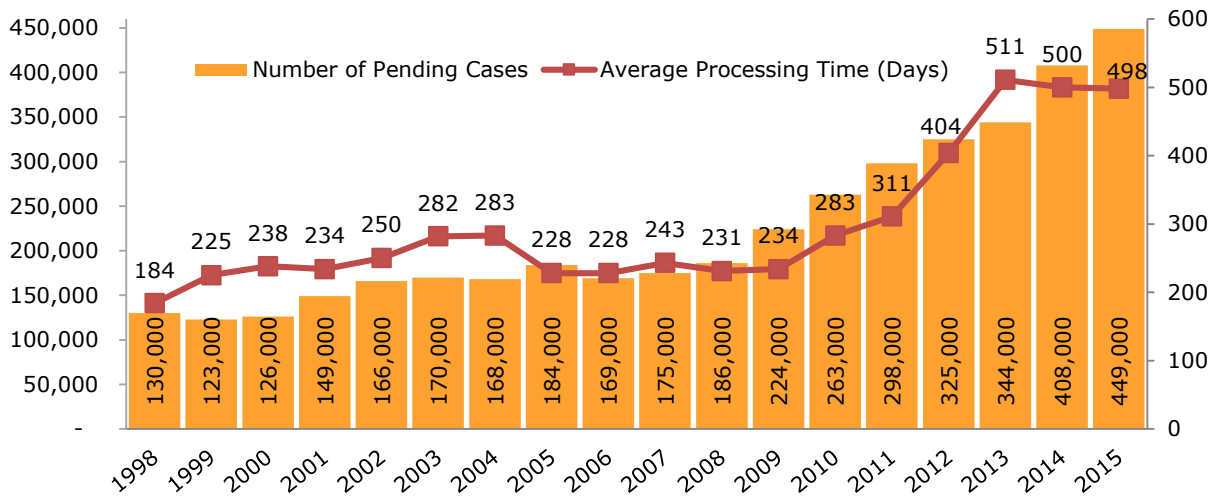


Source: U.S. Department of Justice.¹⁷

Court Backlog

Immigration courts are currently burdened by a backlog of over 449,000 cases (Figure 10). Between 2000 and 2015, this backlog nearly quadrupled in size, and the average processing time for an immigration case more than doubled. In the FY2016 budget proposal, the President proposes creation of 55 additional immigration judge teams to support primarily the increased cases due to the arrival of Central American children and families in the last few years

Figure 10. Immigration court backlog, FY1998–2014



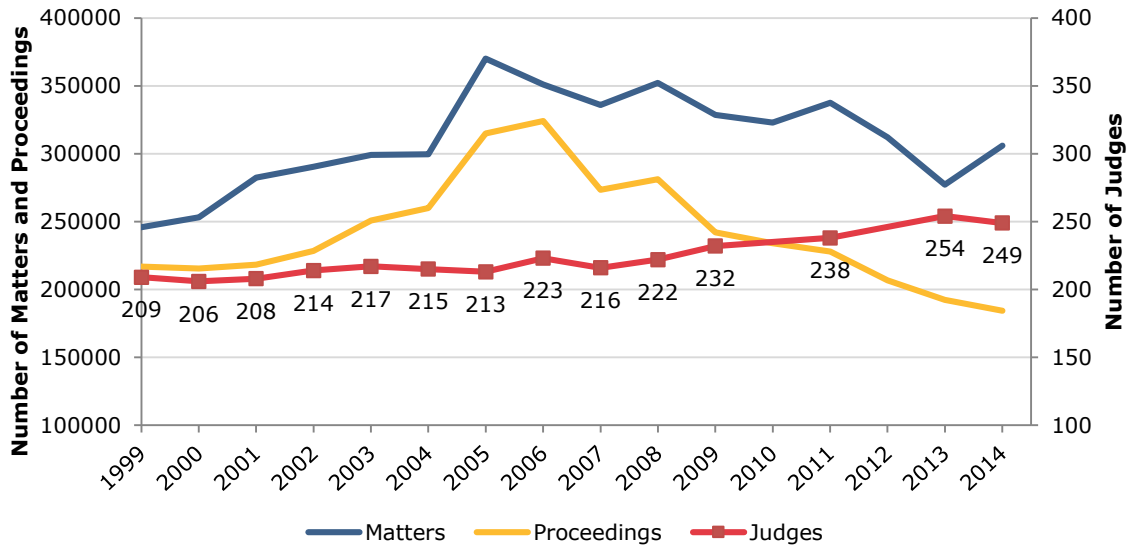
Source: TRAC ([Cases](#) | [Processing Time](#)).

One explanation for the increased backlog since 2008 is that the number of judges has not kept pace with the amount of court activity. The backlog of pending cases in immigration courts has grown 160 percent since 2006, but the number of immigration judges has grown by just 15 percent. Meanwhile, the share of immigrants with legal representation increased rapidly between 2006 and 2014, from 35 percent to 55 percent.¹⁸

The rise in legal representation is one possible 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.¹⁹ 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 7 percent in 2006 to 40 percent in 2014.

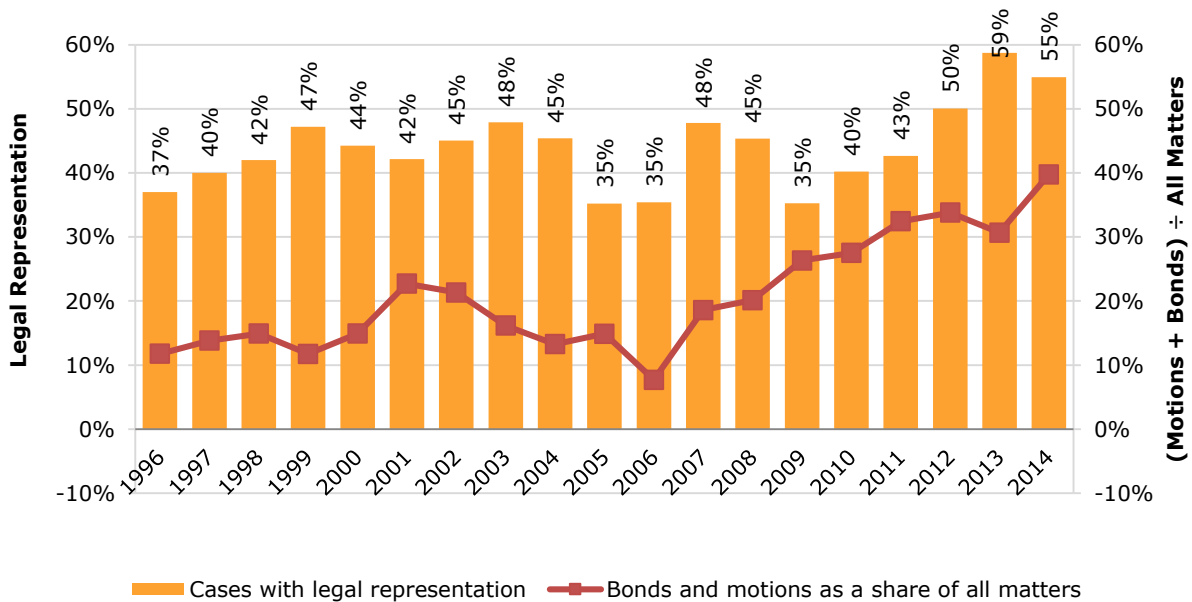
Figure 11. Number of immigration judges versus matters and

proceedings received, FY1999–2014



Source: U.S. Department of Justice.²⁰

Figure 12. Legal representation in immigration courts, FY1996–2014



Source: U.S. Department of Justice.²¹

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 reform debate 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 These two statistics generally reflect the number of new cases from the arrival of large numbers of Central American migrants in 2014 most of whom were placed into deportation proceedings. For additional information on the courts see <http://bipartisanpolicy.org/blog/funding-immigration-courts-should-not-be-controversial/>

⁴ 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.

⁵ Laura Meckler and Ana Campoy, "Children Fare Better in U.S. Immigration Courts if They Have an Attorney," July 2014. Available at <http://www.wsj.com/articles/children-fare-better-in-u-s-immigrant-courts-if-they-have-an-attorney-1405531581?cb=logged0.6285822745412588>

⁶ TRAC, "Once Intended to Reduce Immigration Court Backlog, Prosecutorial Discretion Closures Continue Unabated," January 2014. Available at <http://trac.syr.edu/immigration/reports/339/>

⁷ While the application process for the Administration's new and expanded deferred action programs were stopped by a pending case in a Texas court, specific discretion in individual cases before immigration courts are still allowed. Read more: <http://bipartisanpolicy.org/blog/immigration-executive-action-court-case-primer-texas-v-united-states/>

⁸ 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.

⁹ See U.S. Government IT Dashboard, "ICE Criminal Alien Identification Initiatives", at <https://myit-2014.itdashboard.gov/investment?buscid=836>. Accessed March 6, 2014.

¹⁰ DHS. Written testimony of ICE Director Sarah Saldaña for a House Committee on the Judiciary hearing titled "Oversight of the U.S. Immigration and Customs Enforcement," 2015. Available at: <http://www.dhs.gov/news/2015/04/14/written-testimony-ice-director-sarah-salda%C3%B1a-house-committee-judiciary-hearing>

¹¹ DHS, Secure Communities Memorandum, 2014. Available at: http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf

¹² Priority Enforcement Program (PEP), <http://www.ice.gov/pep>

¹³ Immigrant Legal Resource Center, "Immigration Holds and Immigration Detention," January 2013. Available at http://www.ilrc.org/files/documents/n.5-immigration_holds.pdf

¹⁴ CBP, Family Unit Apprehensions, available at http://www.cbp.gov/sites/default/files/documents/BP%20Southwest%20Border%20Family%20Units%20and%20UAC%20Apps%20FY13%20-%20FY14_0.pdf

¹⁵ U.S. Senate Committee on Appropriations, FY 2016 Homeland Security, <http://www.appropriations.senate.gov/sites/default/files/hearings/FY16%20Homeland%20Security%20Bill.pdf>; U.S. House Committee on Appropriations, FY 2016 Homeland Security, <http://appropriations.house.gov/uploadedfiles/bills-114hr-sc-ap-fy2016-hsecurity-subcommitteedraft.pdf>

¹⁶ 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>.

¹⁷ 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>.

¹⁸ Matt Graham, "Funding Immigration Courts Should Not be Controversial," 2015, available at: <http://bipartisanpolicy.org/blog/funding-immigration-courts-should-not-be-controversial/>

¹⁹ Calculated from Figure 10 data.

²⁰ 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>; EIOR, "FY 2014 Budget Request at a Glance," available at <http://www.justice.gov/jmd/2014summary/pdf/eoir.pdf>; EIOR, "FY 2015 Budget Request at a Glance," available at <http://www.justice.gov/jmd/2015summary/pdf/eoir.pdf>.

²¹ 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>.