

FY 2022 Seeing Rapid Increase in Immigration Court Completions

Published Sep 16, 2022

Immigration Court case completions have been rapidly increasing. During the first eleven months of FY 2022, Immigration Judges have closed over 375,000 cases – a historical record. If the pace continues, closures should top more than 400,000 by the end of the fiscal year. This is nearly three times as many case closures as last year. It is also roughly 50 percent higher than the previous high in FY 2019 during the Trump administration. See Figure 1 and Table 1.

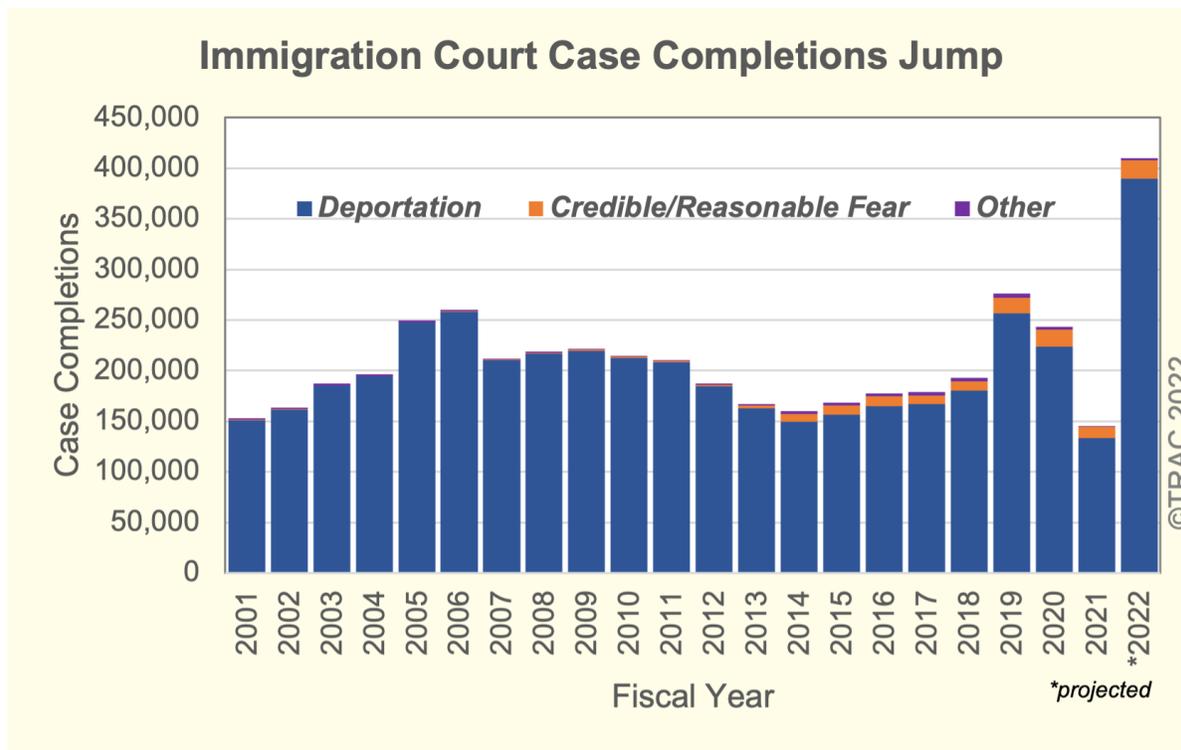


Figure 1. Immigration Court Case Completions from FY 2001 - FY 2022 (August)

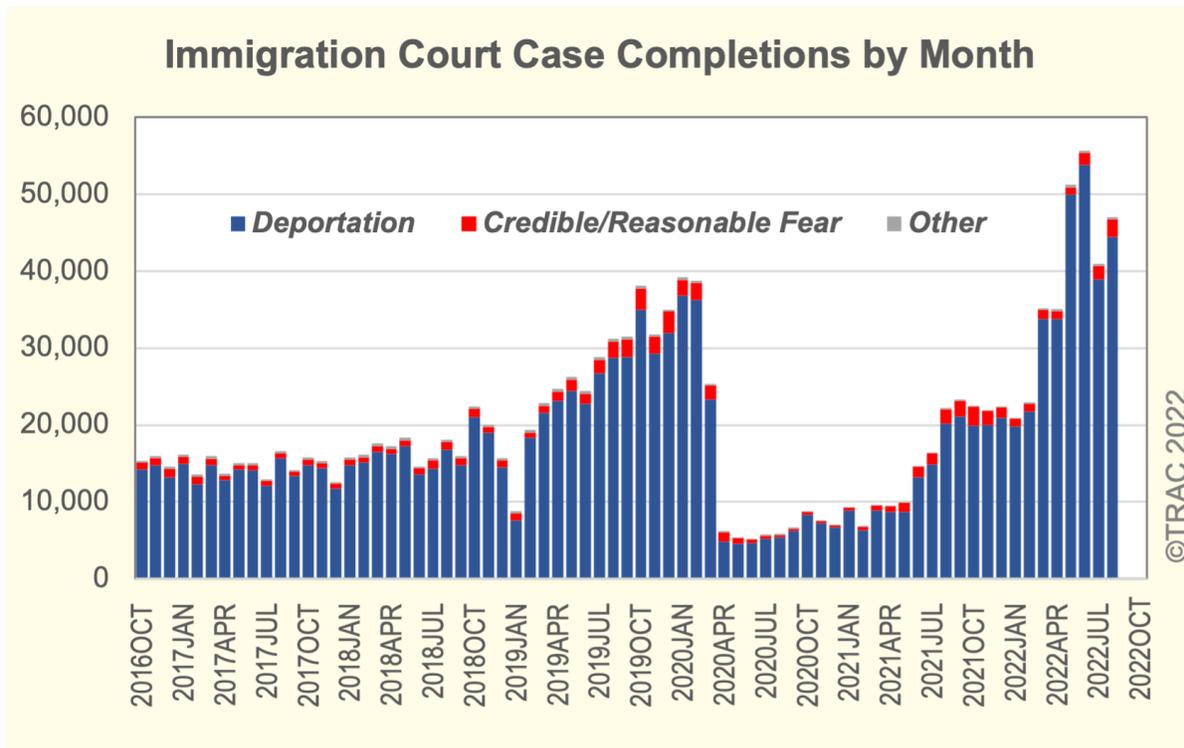


Figure 2. Immigration Court Case Completions from October 2016 - August 2022

Table 1. Immigration Court Case Completions by Class and Case Type, FY 2017 - FY 2022 (through August)

Class	Case Type	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022*	Annual Change: 2022vs2017**
Deport	Removal	165,334	179,206	255,471	222,516	131,448	355,039	134%
Deport	Deportation	1,263	1,009	1,005	796	1,472	2,004	73%
Deport	Exclusion	90	91	70	64	144	122	48%
Credible/Reasonable Fear	Credible Fear	6,542	6,670	12,190	14,609	9,386	14,256	138%
Credible/Reasonable Fear	Reasonable Fear	2,447	2,773	3,286	2,801	1,834	2,190	-2%
Other	Asylum Only	323	395	431	338	165	437	48%
Other	Withholding of Removal	2,925	2,951	3,592	2,053	803	1,708	-36%
Other	Miscellaneous	48	37	52	49	54	86	95%
Total Case Completions		178,972	193,132	276,097	243,226	145,306	375,842	129%

* FY 2022 figures shown reflect removal case completions only from Oct 2021-August 2022 (11 months).

** Comparison of FY 2017 case closures with annualized FY 2022 counts; to estimate FY 2022 annual total the existing 11 month closures were multiplied by a factor of 12/11).

The pace of closures has also been accelerating month-by-month since October of 2021.

During the past four months, monthly closures blew past 40,000 and topped 50,000 during May

and June. If average closures during these past four months of 48,721 continue, this would represent an annualized rate approaching 600,000. See Figure 2.

Part of the explanation for this increased case dispositions is the increase in the number of Immigration Judges. At the end of FY 2019, there were reported to be 442 Immigration Judges. While the pace of judge hiring slowed somewhat during the pandemic, the Court started this fiscal year with 559 IJs – 26 percent more than before. But the increase in the number of judges alone does not begin to explain the rapid acceleration in case closures.

Delving Deeper: Dismissals Because No NTA Filed

While Immigration Judges handle a variety of different case types, removal cases account for the majority of case types. Removal cases are initiated when the Department of Homeland Security (DHS) issues a Notice to Appear (NTA). An NTA alleges that the agency has reason to deport an individual and asks for an Immigration Judge to issue a removal order. Fully 355,000 out of the 375,000 closures so far this year were removal cases (see earlier Table 1) rather than other types of cases that go before Immigration Judges.

A worrying component in this increase in Court dispositions has been the jump in the number of cases being immediately dismissed because DHS failed to file the required paperwork with the Court.^[1] These have effectively artificially inflated the number of “real” case closures, because such cases never really address the underlying arguments for or against the government’s charge of deportability.

As TRAC reported previously, “[o]ne out of every six new cases DHS initiates are now being dismissed because CBP officers are not filing the actual ‘Notice to Appear’ (NTA) with the Court.” These have clearly contributed to the rise in the number of case completions. However, as we can see in Figure 3 tracking outcomes, even without this artificial boost, closures remain much higher than in any prior fiscal year. Examining month-by-month outcome trends shown in Figure 4, we can also see that the acceleration in case closures during the past four months wasn’t due to these “No NTA” closures which have continued at the same rate. Clearly much more is going on that is contributing to the rapid rise in Court case completions.

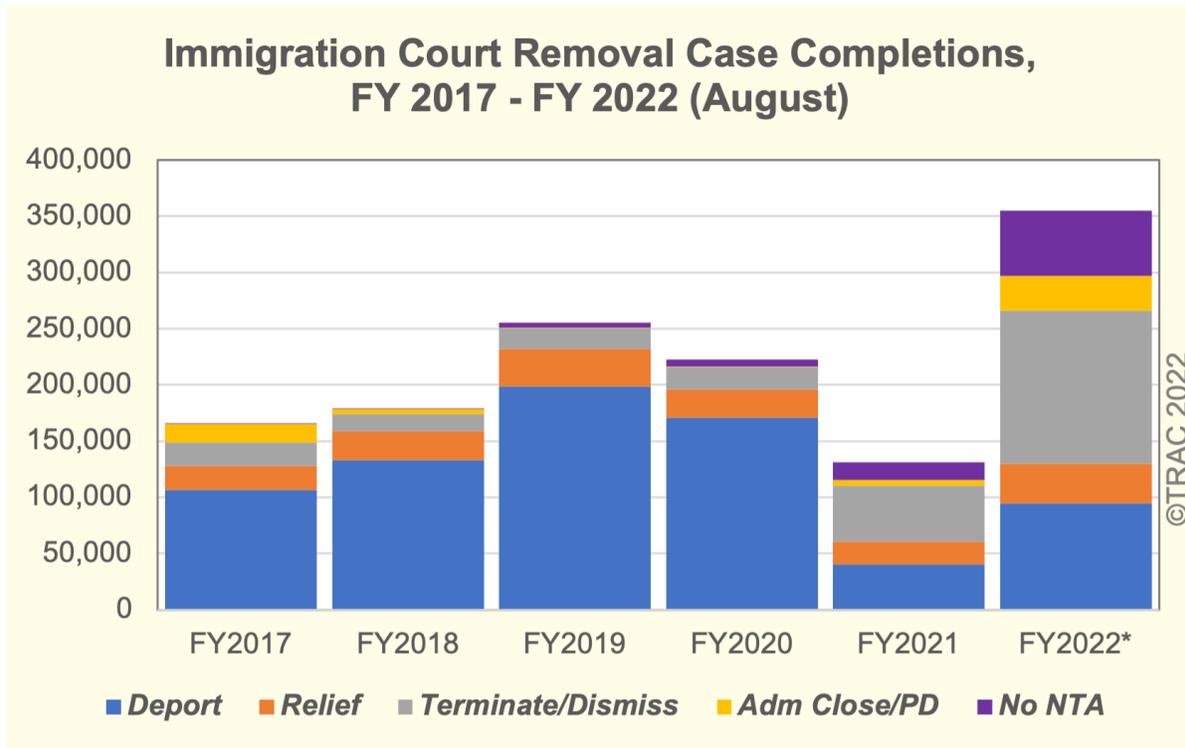


Figure 3. Immigration Court Removal Case Completions by Outcome, FY 2017 - FY 2022 (through August)

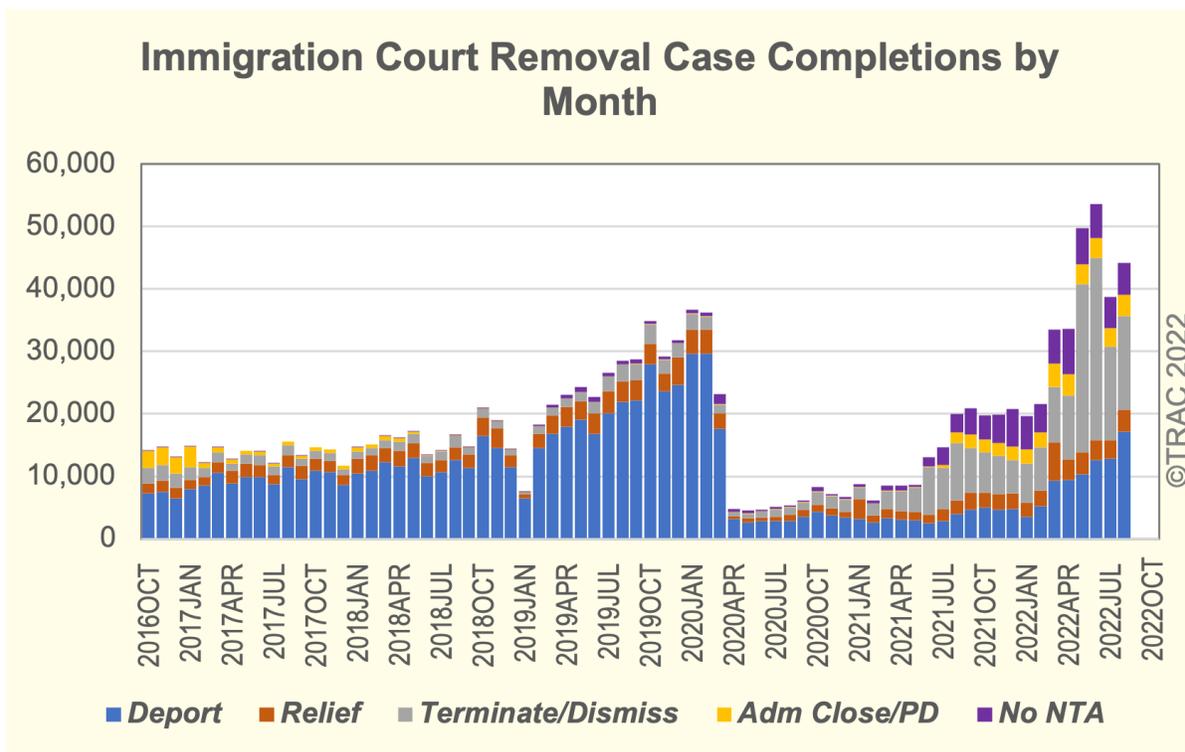


Figure 4. Immigration Court Removal Case Completions by Outcome, October 2016 - August 2022

Table 2. Immigration Court Removal Case Completions by Outcome and Specifics of Immigration Judge Ruling, FY 2017 - FY 2022 (through August)

Outcome	Specific Type	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022*	Annual Change: 2022vs2017**
Deport	Removal Order	92,809	110,992	171,686	155,086	35,692	89,676	5%
Deport	Voluntary Departure	13,784	22,197	26,820	15,948	4,984	5,172	-59%
Relief	Relief Granted	20,851	24,797	32,708	25,160	19,271	33,640	76%
Relief	Other Decision	589	567	571	16	5	1	discontinued code
Relief	CAT Withholding Granted	0	5	4	67	294	414	new code
Relief	INA Withholding Granted	0	0	1	31	194	465	new code
Relief	CAT Deferral Granted	0	0	1	42	184	220	new code
Relief	Temporary Protected Status	45	25	0	0	0	0	discontinued code
Terminate	No Grounds for Removal (Terminated)	20,563	15,662	18,599	18,814	36,510	35,088	86%
Terminate	IJ Dismissed	1	0	3	12	13,323	101,145	new code
Terminate	Case withdrawn	0	0	6	200	48	72	new code
Adm Close/PD	Administrative Closure	10,207	4,292	301	1,071	4,495	27,052	189%
Adm Close/PD	Prosecutorial Discretion	6,272	44	4	3	456	2,267	-61%
Adm Close/PD	In Court Pros Discretion	0	0	0	0	178	1,569	new code
Adm Close/PD	Admin Closure-Other	117	108	70	61	1	0	discontinued code
No NTA	Failure to Prosecute	85	505	4,687	5,992	15,776	58,139	74517%
Total Removal Case Completions***		165,334	179,206	255,471	222,516	131,448	355,039	134%

* FY 2022 figures shown reflect removal case completions only from Oct 2021-August 2022 (11 months).

** Comparison of FY 2017 case closures with annualized FY 2022 counts; to estimate FY 2022 annual total the existing 11 month closures were multiplied by a factor of 12/11).

***Total is for only removal Immigration Court cases; a small number of these closures during the six year period (202) could not be classified because of incomplete/incorrect information or the case was closed because the jurisdiction was transferred to the BIA.

Changing Composition of Case Outcomes

Contributing to the observed jump in Immigration Court dispositions, has been cases which have been terminated, or dismissed by the Immigration Judge for other reasons. This can be seen in the very visible increase in the “gray” segments of each bar shown in Figures 3-4. We examine each of these two outcomes in turn, along with others, to better understand what is primarily driving the increase in Court dispositions.

Terminations. Deportation cases may be terminated if the underlying charges against the immigrant are not upheld or are defective. The number of cases closed by termination grew 86 percent between FY 2017 and FY 2022. See Table 2. Many of these cases were quite old, indeed some stretching back to the earliest still pending cases with NTAs dated during the decade from April 1996 through April 2005. These appear to represent cases where the circumstances have changed so that the basis for a removal are no longer present if they even once existed. This can occur for a variety of reasons, including the U.S. Customs and Immigration Services (USCIS) granting the immigrants’ applications legalizing their presence in the United States. Because of USCIS’s backlog, there can be long delays before that agency acts on an immigrant’s filings. Terminating these cases helps to clear out the Court’s backlog.

Dismissal by IJ. The third category were cases coded as “Dismissed by IJ.” This outcome reflects a new decision code added on April 15, 2021, to the Immigration Court’s database to record the basis for closing a case. These dismissals jumped in June 2021 following the issuance of a new EOIR directive ^[2] recording cases dismissals (without prejudice) based on prosecutorial discretion. Unlike closures based on prosecutorial discretion (PD), which were used in the past, these were not administrative closures which could easily be put back on the Court’s calendar. Instead, these were official case closures (“decisions”) that would require a motion to reopen a case or the issuance of a new NTA. In the wake of this new decision code, the use of administrative PD closures has declined (see Table 2).

While the above reasons help account for the explosive growth in Immigration Court dispositions, other decision outcomes show varying rates of growth as well. Others show actual declines. These are tracked in Table 2. Notable also in Table 2 are the large number of new disposition tracking codes that have been added, while some others have been discontinued.

Removal and Voluntary Departure. Removal orders have increased modestly. Compared to FY 2017, FY 2022 is projected to show a 5 percent increase in removal orders. In contrast, voluntary departure orders have declined by 59 percent. Voluntary departure orders requiring an immigrant to leave the country, but do not legally bar the individual from reentry.

Removal orders generally impose a legal bar to reentry of 10 years. And there is a lifetime legal bar for reentry to the United States for individuals found to be aggravated felons. Clearly if an individual is found to be removable, voluntary departure is more advantageous to the noncitizen. Thus, the decline in voluntary departure orders is notable.

Grants of Relief. As TRAC has previously reported, grants of asylum have increased since President Biden assumed office. In addition to asylum, there are many other types of relief. See TRAC's 2020 report providing a rundown on different types of available relief with actual counts on how often they are used. Compared to FY 2017, the number of grants of all forms of relief had increased by 76 percent. Because of new decision codes that weren't separately tracked in FY 2017 for two special forms of relief called "withholding of removal" and relief under the "Convention Against Torture (CAT)", the actual increase was somewhat higher. [insert Table 2 about here]

Conclusion

Given the monthly increase in the Immigration Court backlog, which is approaching two million total cases, it is notable that as pandemic restrictions have gradually relaxed, Immigration Judges across the country have significantly increased case completions especially in recent months. The bulk of these completions, like in previous years, are for deportation cases, but the types of outcomes show some significant differences. Judges have issued more removal (i.e. deportation) orders in FY 2022 than in the previous year. But the biggest growth in closures can be seen in three key areas: the much higher numbers of cases that are terminated, the higher number of cases in which the government never filed an NTA to begin with, and the return of the use of administrative closure or prosecutorial discretion to close a case that is not a priority for deportation. These findings can be explored in more detail in TRAC's online Immigration Court [tools](#).

Footnotes

^[1]^ TRAC has requested information from the Executive Office for Immigration Review to allow tracking of whether DHS then restarts the removal case by filing a new NTA, or otherwise succeeds in restarting the case. TRAC believes that the public requires this further information be made public so that everyone can better monitor this troubling situation.

^[2]^ On June 11, 2021 EOIR Acting Director Jean King issued a policy memorandum ([PM-21-25](#)). It stated its purpose was to "Provide EOIR policies regarding the effect of Department of Homeland Security enforcement priorities and initiatives." This PM provided: "Immigration judges should be prepared to inquire, on the record, of the parties appearing before them at scheduled hearings as to whether the case remains a removal priority for ICE and whether ICE intends to exercise some form of prosecutorial discretion, ... The judge should ask the respondent or his or her representative for the respondent's position on these matters, and take that position into account, before taking any action. In addition, immigration judges are encouraged to use all docketing tools available to them to ensure the fair and timely resolution of cases before them." On June 10, 2022, the U.S. District Court for the Southern District of Texas in *Texas v. U.S.*, No. 6:21-00016 vacated nationwide DHS Secretary Alejandro N. Mayorkas' September 30, 2021 memorandum that set-forth DHS' civil immigration enforcement priorities. While the District Court's order became effective on June 25, 2022, ICE then issued [clarifying instructions](#) indicating that ICE attorneys representing the government in Immigration

Court “have the inherent authority to exercise PD on a cases-by-case basis in the handling and litigation of removal cases.”

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