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# Immigration Judge Hiring and Projected Impact on the Immigration Courts Backlog

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## Immigration Judge Hiring and Projected Impact on the Immigration Courts Backlog

Immigration courts operate within the Department of Justice’s Executive Office for Immigration Review (EOIR). EOIR’s immigration judges (IJs) adjudicate *removal proceedings*, during which they determine whether foreign nationals charged with immigration violations are removable from the United States and/or are eligible for relief or protection from removal (e.g., asylum) for which they have applied. The number of removal cases pending in immigration courts has grown substantially in recent years and has drawn attention to IJ hiring as one possible path to reducing the backlog. EOIR had 649 IJs on staff at the end of FY2023 Q2. In FY2022 (the most recent full year of data), EOIR hired 104 IJs, its largest annual number of hires on record. Although EOIR has increased its IJ corps in recent years, the backlog has continued to grow, increasing by 403% from FY2013 to FY2022, and reaching nearly 2 million cases at the end of the second quarter of FY2023, an all-time high.

This report provides an overview of trends in EOIR’s caseloads, case completions, and IJ hiring and staffing levels. It also provides CRS projections of the impact of different IJ hiring scenarios on the pending-cases backlog over the next 10 fiscal years. Based on the assumptions and averages used in the analysis, it would take 300 or more additional IJs to begin to reduce the backlog. Hiring 300 IJs, however, likely would not fully clear the backlog in the observed 10-year timeframe (i.e., through FY2033). An additional 700 IJs would be needed to fully clear the backlog by FY2032.

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## Removal Proceedings Overview

Immigration court proceedings are adjudicated by the Executive Office for Immigration Review (EOIR), an agency within the U.S. Department of Justice (DOJ), under authority delegated by the Attorney General.<sup>1</sup> The most common immigration court proceedings are removal proceedings under Section 240 of the Immigration and Nationality Act (INA), also known as *formal* removal proceedings.<sup>2</sup> Removal proceedings commence when component agencies within the Department of Homeland Security (DHS), the executive department responsible for enforcing immigration law, charge a foreign national with an immigration violation and file a Notice to Appear (NTA) in immigration court.<sup>3</sup>

DHS agencies may charge foreign nationals at the U.S. border or in the interior of the country with grounds of *inadmissibility*<sup>4</sup> or *deportability*.<sup>5</sup> Three DHS agencies issue NTAs:

- Customs and Border Protection (CBP), which is responsible for border security at ports of entry (Office of Field Operations) and between ports of entry (U.S. Border Patrol);
- Immigration and Customs Enforcement (ICE), which is responsible for interior immigration enforcement; and
- U.S. Citizenship and Immigration Services (USCIS), which adjudicates applications for naturalization and immigration benefits (e.g., petitions and applications for immigrant and nonimmigrant visas).

EOIR's immigration judges (IJs) adjudicate the removal cases that DHS agencies file with immigration courts. IJs are attorneys appointed by the Attorney General as administrative judges.<sup>6</sup> During removal proceedings, an IJ determines whether a foreign national, referred to as a *respondent*, is removable and if the respondent is eligible for protection or relief from removal (e.g., asylum) for which he or she has applied.<sup>7</sup> Either party may appeal an IJ's decision to EOIR's appellate division, the Board of Immigration Appeals (BIA).<sup>8</sup>

The number of removal cases pending in immigration courts (hereinafter, *backlog*) has grown substantially in recent years and has drawn attention to IJ hiring. Although EOIR has steadily increased its IJ corps every year since FY2015, the backlog has continued to grow. It quadrupled from FY2013 to FY2022, and reached nearly 2 million cases at the end of the second quarter of

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<sup>1</sup> For more information, see CRS Report R47077, *U.S. Immigration Courts and the Pending Cases Backlog*.

<sup>2</sup> 8 U.S.C. §1229a. For a list of other types of immigration court hearings, see *ibid.*, Table 1.

<sup>3</sup> For more information, see CRS In Focus IF11536, *Formal Removal Proceedings: An Introduction*; and CRS Infographic IG10022, *Immigration Court Proceedings: Process and Data*.

<sup>4</sup> INA §212; 8 U.S.C. §1182.

<sup>5</sup> INA §237; 8 U.S.C. §1227.

<sup>6</sup> IJs are career employees with no fixed terms. Core requirements for IJ applicants include an LL.B., J.D., or LL.M. degree; an active bar membership; and seven years of post-bar admission legal experience. See DOJ, EOIR, "Make a Difference: Apply for an Immigration Judge Position," at <https://www.justice.gov/eoir/Adjudicators>.

<sup>7</sup> For more information about the asylum process in removal proceedings, see CRS Report R47504, *Asylum Process in Immigration Courts and Selected Trends*.

<sup>8</sup> If the BIA affirms an IJ's order of removal, the respondent may file a petition for judicial review with a federal circuit court of appeals. The BIA's pending caseload has also grown in recent years, more than tripling from the end of FY2018 (30,854 cases) to the end of the first quarter of FY2023 (96,608 cases). See DOJ, EOIR, "Case Appeals Filed, Completed, and Pending," Adjudication Statistics, January 16, 2023.

FY2023, an all-time high.<sup>9</sup> EOIR has stated that the backlog is “the largest single issue facing the immigration courts today.”<sup>10</sup> Contributing factors in recent years include high levels of migration to the U.S.-Mexico border, the number of IJs on staff to adjudicate cases relative to the number of removal cases filed by DHS, and hearing postponements during the COVID-19 pandemic.<sup>11</sup>

Interested parties—lawmakers, the IJ union, immigration attorneys, and other observers—have long suggested reforms to the immigration courts, including those that propose to address its case backlog.<sup>12</sup> For example, DOJ leadership during the Trump Administration and some lawmakers in the 118<sup>th</sup> Congress have supported holding IJs to certain case-completion performance metrics.<sup>13</sup> Other lawmakers, EOIR, and other observers have proposed increasing EOIR’s adjudicatory capacity by expanding courtroom space, staff, and the number of IJs available to adjudicate cases. This report provides an overview of trends in EOIR’s caseloads, case completions, and IJ hiring and staffing levels. It also provides CRS projections of the impact of different IJ hiring scenarios (0 to 1,000 new IJs, in increments of 100) on the pending cases backlog over the next 10 fiscal years.

## Caseload Trends

IJs have jurisdiction over removal cases once a DHS agency files an NTA in immigration court. From FY2006 to FY2018, EOIR’s annual case receipts fluctuated but were relatively consistent (averaging 238,363 a year) until they increased sharply in FY2019 (547,308) (**Figure 1**). Case receipts then declined in FY2020 and FY2021 during the COVID-19 pandemic. In FY2022, case receipts increased to the highest level in the agency’s history (707,504) amid record-high levels of migrant encounters at the Southwest border.<sup>14</sup> In its FY2024 budget request, EOIR stated that the number of cases received in the first quarter of FY2023 (184,724) puts the agency “on track to match or exceed FY2022 filing heights.”<sup>15</sup> More recently, EOIR Director David Neal stated that immigration courts are on track to receive 1 million new cases in FY2023.<sup>16</sup> As of the end of the first half of FY2023, EOIR has received 428,702 cases (**Figure 1**).

Cases pending in immigration courts have increased each year since FY2006 (when they numbered 168,827). The growth in pending cases has been especially pronounced since FY2016. The backlog exceeded 1 million cases for the first time in FY2019 and reached 1.98 million cases at the end of the second quarter (Q2) of FY2023.<sup>17</sup>

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<sup>9</sup> See **Figure 1** for sources.

<sup>10</sup> DOJ, EOIR, *FY2024 Performance Budget, Congressional Budget Submission*, March 2023, p. 21.

<sup>11</sup> For more information, see CRS Report R47077, *U.S. Immigration Courts and the Pending Cases Backlog*.

<sup>12</sup> For further discussion, see *ibid*.

<sup>13</sup> For example, the House Appropriations Subcommittee Markup of the FY2024 Commerce, Justice, Science, and Related Agencies appropriations bill would require EOIR to “implement case performance metrics that are linked to performance evaluations for individual immigration judges.” The measure proposed by House Republicans would reduce EOIR’s FY2024 appropriations from the FY2023 level. EOIR had implemented IJ performance metrics under the Trump Administration, which were subsequently rescinded under the Biden Administration—see the “IJ Quotas and Performance Measures” section in CRS Report R47077, *U.S. Immigration Courts and the Pending Cases Backlog*.

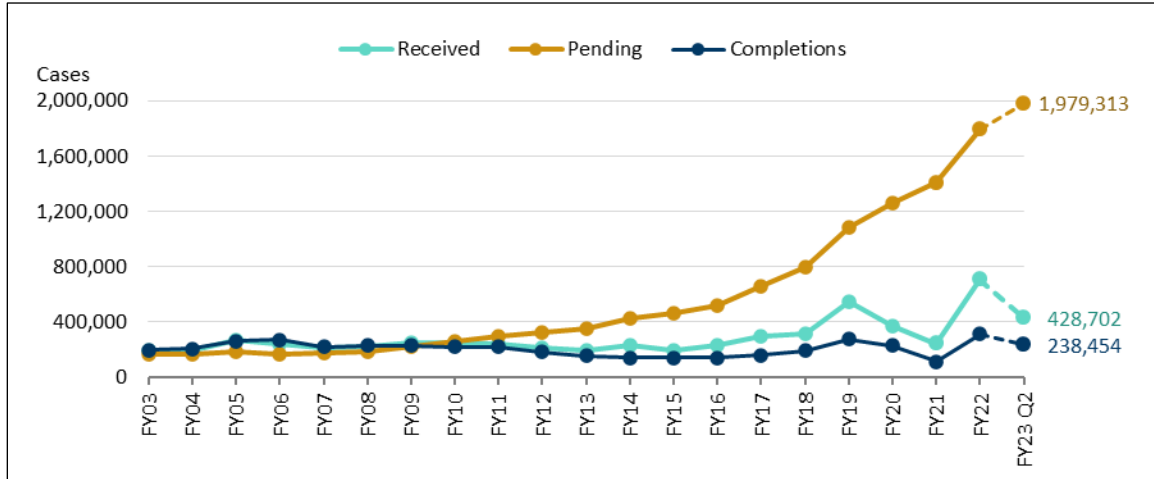
<sup>14</sup> For more information, see CRS Report R47343, *U.S. Border Patrol Apprehensions and Title 42 Expulsions at the Southwest Border: Fact Sheet*.

<sup>15</sup> DOJ, EOIR, *FY2024 Performance Budget, Congressional Budget Submission*, March 2023, p. 3.

<sup>16</sup> Remarks by David Neal, Director, EOIR, “Straining under the Backlog: Fixing a U.S. Immigration Court System in Crisis,” webinar, Migration Policy Institute, July 20, 2024.

<sup>17</sup> DOJ, EOIR, “Pending Cases, New Cases, and Total Completions,” Adjudication Statistics, April 21, 2023

**Figure 1. Initial Cases Received, Pending (Backlog), and Completed, FY2003-FY2023 Q2**



**Source:** Created by CRS, based on the following sources. Cases received and completed: DOJ, EOIR, “New Cases and Total Completions – Historical,” Adjudication Statistics, April 21, 2023; cases pending (FY2006-FY2007): TRAC, “Immigration Court Backlog Tool,” [https://trac.syr.edu/phptools/immigration/court\\_backlog/](https://trac.syr.edu/phptools/immigration/court_backlog/); cases pending (FY2008-FY2023): DOJ, EOIR, “Pending Cases, New Cases, and Total Completions,” Adjudication Statistics, April 21, 2023.

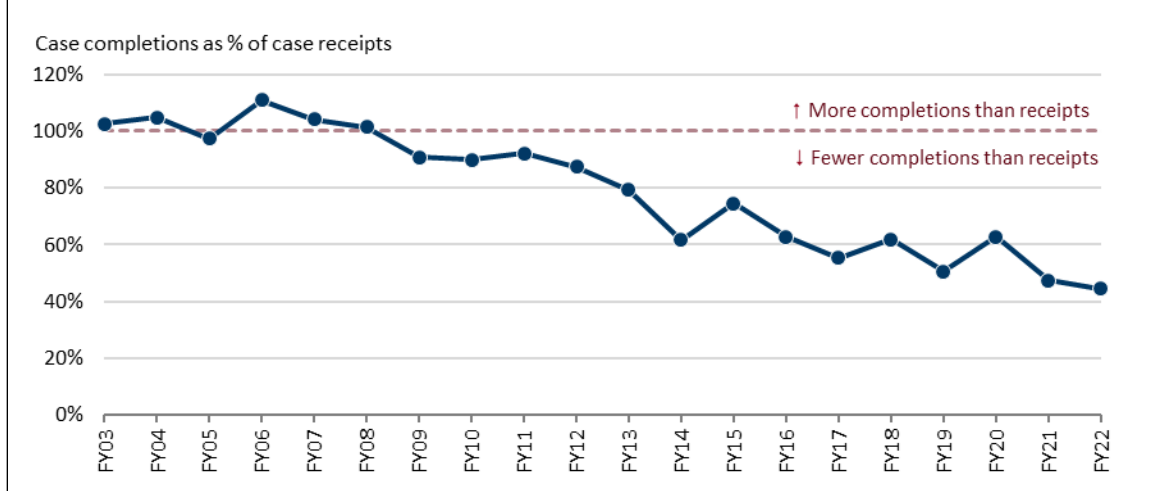
**Notes:** FY2023 represents six months, through Q2 only, and is shown in the figure with dashed lines.

## Rate of Case Completions

The proportion of initial case completions<sup>18</sup> by immigration judges can be measured as a completion rate by dividing those totals among all cases EOIR received in a given year. Since FY2007, EOIR’s rate of case completions has generally declined (**Figure 2**), which suggests that EOIR has been increasingly unable to adjudicate the volume of cases it receives from DHS. Some observers attribute this decline to an increased case volume in recent years in addition to other factors, including COVID-19-related court closures, newly hired judges completing fewer cases as they learn the job, an inadequate volume of support staff relative to the number of IJs, and changes in the circumstances of respondents facing removal (e.g., higher numbers of children, families, and asylum seekers, whose cases may take longer to adjudicate).<sup>19</sup>

<sup>18</sup> Initial case completions represent an IJ’s first dispositive decision (e.g., removal orders, relief grants, voluntary departure, or termination). Parties may appeal that decision to the BIA. They may also file a motion to reconsider or motion to reopen an IJ’s decision.

<sup>19</sup> For a more in-depth analysis and discussion of trends in case completions, including completions per IJ, see CRS Report R47077, *U.S. Immigration Courts and the Pending Cases Backlog*.

**Figure 2. Case Completions as a Percentage of Case Receipts, FY2003-FY2022**

**Source:** Created by CRS, based on DOJ, EOIR, “New Cases and Total Completions – Historical,” Adjudication Statistics, April 21, 2023.

**Notes:** Percentages exceed 100% when the number of case completions is greater than the number of cases received in a given fiscal year. Cases completed in a given fiscal year may have been filed in previous fiscal years.

## IJ Staffing Levels and Hiring Efforts

EOIR and other observers have identified the number of IJs on staff as a critical resource shortage for immigration courts. During a DOJ-wide hiring freeze from FY2011 through FY2014, the number of IJs on staff at EOIR decreased from 273 to 249.<sup>20</sup> Over this period, pending cases increased from approximately 298,000 to 430,000, even though the annual number of cases received did not increase.

More recently, DOJ increased IJ hiring. In FY2022 (the most recent full year of data), EOIR hired 104 IJs, its largest annual number of hires on record. EOIR had 649 IJs on staff at the end of FY2023 Q2 (**Figure 3**).

Despite this level of hiring, the ratio of the number of pending cases to IJs has generally increased. For example, in FY2014 there were 1,728 pending cases for each IJ (430,229 total pending cases divided by 249 IJs). In FY2023 Q2, there were 2,844 pending cases per IJ (1.98 million pending cases divided by 649 IJs). (Note that the actual number of cases on a given IJ’s docket varies.)

EOIR has identified challenges with IJ hiring. The hiring process can be time intensive; EOIR has stated that vetting and hiring IJs has historically taken more than one year.<sup>21</sup> Recently, however, the agency has stated that it has improved its process and reduced its hiring time by

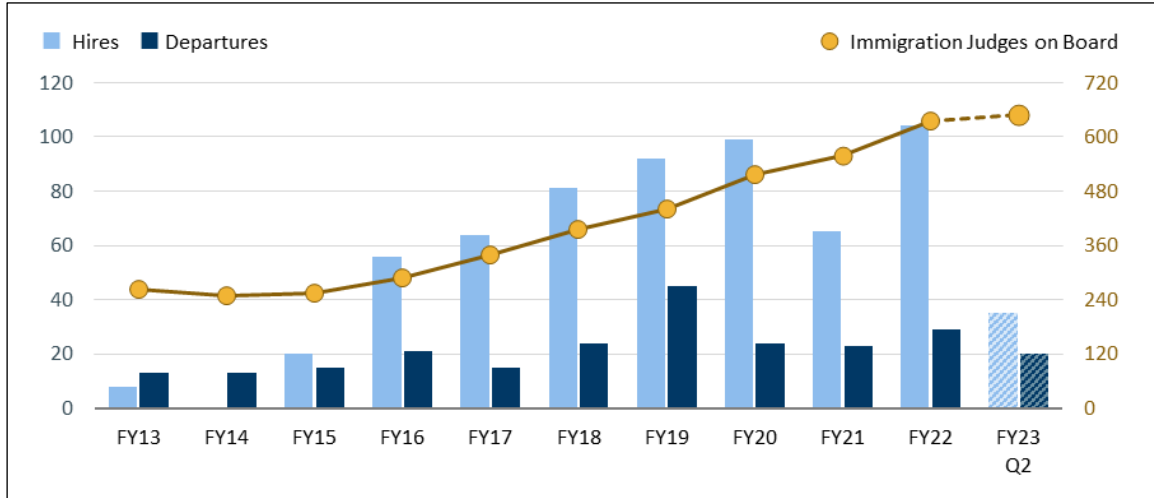
<sup>20</sup> There were small numbers of IJ hires in FY2012 (4) and FY2013 (8, see **Figure 3**). DOJ’s hiring policy at that time allowed some limited hiring with available resources. See Daniel Wilson, “DOJ To Lift Hiring Freeze After Budget Boost, Holder Says,” *Law 360*, February 10, 2014.

<sup>21</sup> DOJ, EOIR, *FY2024 Performance Budget*, Congressional Budget Submission, March 2023, p. 5.

approximately 50%.<sup>22</sup> Nevertheless, new judges require time to learn on the job, which impacts case completion rates.<sup>23</sup>

Attrition also impacts the IJ corps. In recent years, even as EOIR hired more IJs, the attrition rate doubled due to higher numbers of retirements and separations (from 12 IJs annually to an average of 26 since FY2017).<sup>24</sup>

**Figure 3. Immigration Judges Hired, Departed, and On Board, FY2013-FY2023 Q2**



**Source:** Created by CRS, based on DOJ, EOIR, “Immigration Judge (IJ) Hiring,” Adjudication Statistics, April 2023.

**Notes:** Departures have been imputed by CRS (calculated as the sum of the number of IJs on board at the end of the previous fiscal year and hires in the given fiscal year minus the IJs on board at the end of the given fiscal year). FY2023 represents a partial year through Q2 only. EOIR hired no immigration judges in FY2014.

For FY2024, EOIR requested \$367 million in funding for staff to reduce the backlog; specifically, for 150 new IJ teams (includes 750 attorneys and associated support staff), as well as attorney advisors, legal and professional administrative staff, and related space and equipment.<sup>25</sup>

## Projected Impact of Immigration Judge Hiring on Pending Cases Backlog

**Table 1** and **Figure 4** show one potential approach to estimating the annual size of the pending cases backlog under different IJ hiring scenarios for 0-1,000 new IJs in increments of 100 for each fiscal year starting with FY2023 Q2 and continuing through FY2033.

<sup>22</sup> Ibid., p. 19.

<sup>23</sup> U.S. Government Accountability Office (GAO), *Immigration Courts: Actions Needed to Reduce Case Backlog and Address Long-Standing Management and Operational Challenges*, GAO-17-438, p. 24.

<sup>24</sup> Ibid., p. 5. For more information, see CRS Report R47077, *U.S. Immigration Courts and the Pending Cases Backlog*, “IJ Staffing and Productivity.”

<sup>25</sup> DOJ, EOIR, *FY2024 Performance Budget*, Congressional Budget Submission, March 2023, p. 21. This funding would cover personnel costs (i.e., salaries), which account for 52% of the total; court costs (e.g., space buildout for IT teams, security services, furniture, technology costs), accounting for 39% of the total; and adjudicatory costs (e.g., interpretation and transcription), representing 9% of the total.



The projections rely on average annual case receipts and average annual case completions per IJ from five recent full fiscal years: FY2017, FY2018, FY2019, FY2020, and FY2022, using data from EOIR's adjudication statistics. CRS excluded FY2021, an anomalous year on these measures because of the COVID-19 pandemic. That year, average case completions per IJ were much lower than in other recent years.<sup>26</sup>

To project the resulting backlog size under different hiring scenarios, CRS multiplied the number of judges by average cases completed annually per IJ to estimate total annual case completions.<sup>27</sup> CRS then subtracted this estimate from average annual new cases to arrive at the net estimated change in the backlog through FY2033.

Based on the assumptions and averages used in the analysis, hiring 300 or more additional IJs (bringing the total number of IJs to 949) would begin to reduce the backlog—meaning that at this level, the IJ corps would be expected to complete more cases than EOIR receives in a given fiscal year. Hiring 300 IJs, however, likely would not fully clear the backlog in the observed 10-year timeframe (i.e., by FY2033).<sup>28</sup> Under these projections, an additional 700 IJs (1,349 total) would be the minimum number needed to fully clear the backlog by FY2032, holding all other factors constant.

The assumptions used to develop these projections, which are based on the most recent full years of data, may not hold true in future years and are therefore subject to error. For example, as mentioned previously, EOIR has indicated that FY2024 case receipts are on track to reach 1 million, far higher than the five-year average (447,187). If such case receipt trends continue, these projections may underestimate substantially the number of IJs needed to reduce the backlog.<sup>29</sup> Future case receipts may vary significantly as the result of shifts in immigration and enforcement trends (e.g., the number and characteristics of migrant arrivals at the Southwest border and/or the enforcement priorities of a particular administration). Therefore, CRS cannot predict future outcomes with certainty. EOIR has noted that the number of removal cases it receives are largely outside its control<sup>30</sup> and that IJ staffing alone may not be sufficient to address the backlog in the short term.<sup>31</sup>

CRS's estimate of case completions per IJ—the number of annual case completions divided by the number of IJs on staff—may also be imprecise because it can account only for the number of IJs on staff at the end of the fiscal year. In addition, there is variation across cases, including the length of time needed to adjudicate them. These projections also do not account for IJ attrition. Other approaches may yield different results.

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<sup>26</sup> CRS calculated case completions per IJ as the total number of cases received in a fiscal year divided by the number of IJs on staff at the end of that fiscal year. Average case completions per IJ were 482 in FY2017, 494 in FY2018, 627 in FY2019, 449 in FY2020, 207 in FY2021, and 496 in FY2022. For an analysis of trends in case completions per IJ through FY2021, see CRS Report R47077, *U.S. Immigration Courts and the Pending Cases Backlog*, Figure 7.

<sup>27</sup> While CRS has held constant the average number of case receipts per year for the purposes of this analysis, realistically they are likely to vary from year to year.

<sup>28</sup> Under these estimates, with an additional 300 IJs the backlog would be eliminated in FY2078.

<sup>29</sup> For example, using this methodology, if the average number of annual new cases increased to 700,000, it would take 800 new IJs to begin to reduce the backlog, and the backlog would not reach zero under any of the hiring scenarios displayed.

<sup>30</sup> For example, substantial increases in the arrivals of asylum seekers and associated DHS case filing. See DOJ, EOIR, *FY2024 Performance Budget*, Congressional Budget Submission, March 2023, p. 6.

<sup>31</sup> *Ibid.*, p. 3. For example, EOIR has noted that in addition to hiring IJs, the agency requires additional legal staff and improvements in technological capabilities.

**Table 1. Projected Impact of Immigration Judge Hiring on Pending Cases Backlog**

(11 scenarios based on hiring 0 through 1,000 additional IJs, in increments of 100)

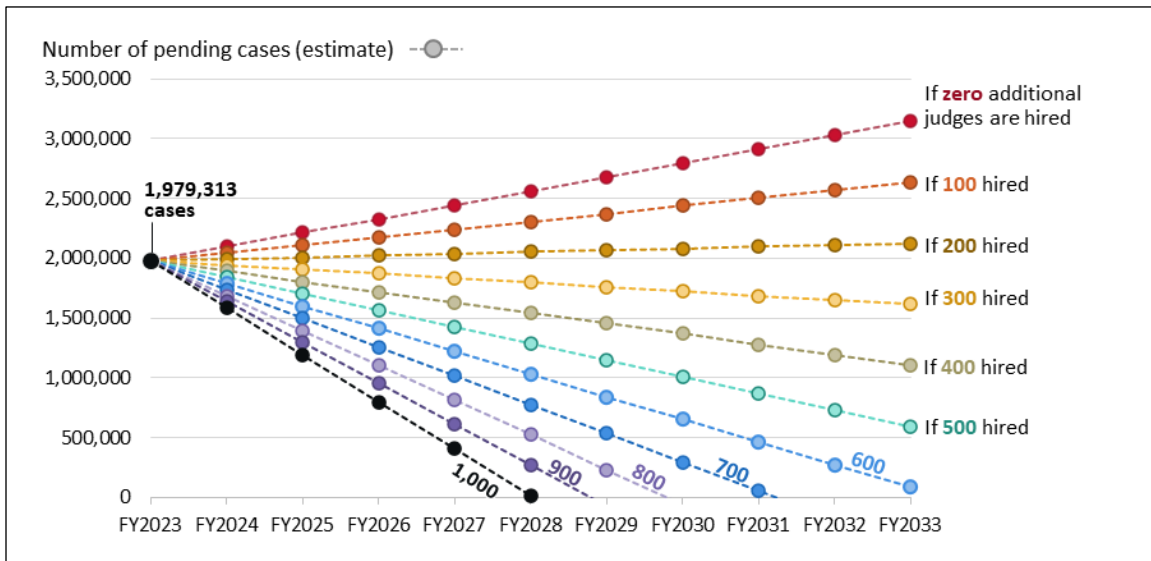
<b>Annual backlog change, based on number of additional judges</b>											
<b>Number of additional judges in scenario</b>	<b>0</b>	<b>100</b>	<b>200</b>	<b>300</b>	<b>400</b>	<b>500</b>	<b>600</b>	<b>700</b>	<b>800</b>	<b>900</b>	<b>1,000</b>
Total number of judges in scenario	649	749	849	949	1,049	1,149	1,249	1,349	1,449	1,549	1,649
<i>Assuming each judge completes an average of 509.6 cases annually</i>											
Estimated number of cases completed annually by total number of judges (total number of judges x 509.5 cases)	330,747	381,710	432,672	483,635	534,597	585,560	636,522	687,485	738,447	789,410	840,373
<i>Assuming the average number of new cases received by EOIR each year is 447,187</i>											
<b>Estimated annual changes to backlog</b> (447,009 cases - estimated number of cases completed)	116,440	65,478	14,515	-36,447	-87,410	-138,373	-189,335	-240,298	-291,260	-342,223	-393,185
<b>Expected total backlog (starting backlog + estimated annual change to backlog)</b>											
<b>Starting backlog (actual size of backlog as of FY2023 Q2)</b>	1,979,313	1,979,313	1,979,313	1,979,313	1,979,313	1,979,313	1,979,313	1,979,313	1,979,313	1,979,313	1,979,313
Projected size of backlog in FY2024	2,095,753	2,044,791	1,993,828	1,942,866	1,891,903	1,840,940	1,789,978	1,739,015	1,688,053	1,637,090	1,586,128
Projected size of backlog in FY2025	2,212,193	2,110,268	2,008,343	1,906,418	1,804,493	1,702,568	1,600,643	1,498,718	1,396,792	1,294,867	1,192,942
Projected size of backlog in FY2026	2,328,634	2,175,746	2,022,858	1,869,971	1,717,083	1,564,195	1,411,308	1,258,420	1,105,532	952,645	799,757
Projected size of backlog in FY2027	2,445,074	2,241,224	2,037,373	1,833,523	1,629,673	1,425,823	1,221,972	1,018,122	814,272	610,422	406,571
Projected size of backlog in FY2028	2,561,514	2,306,701	2,051,888	1,797,076	1,542,263	1,287,450	1,032,637	777,824	523,012	268,199	13,386
Projected size of backlog in FY2029	2,677,954	2,372,179	2,066,404	1,760,628	1,454,853	1,149,077	843,302	537,527	231,751	0	0
Projected size of backlog in FY2030	2,794,394	2,437,656	2,080,919	1,724,181	1,367,443	1,010,705	653,967	297,229	0	0	0
Projected size of backlog in FY2031	2,910,835	2,503,134	2,095,434	1,687,733	1,280,033	872,332	464,632	56,931	0	0	0
Projected size of backlog in FY2032	3,027,275	2,568,612	2,109,949	1,651,286	1,192,623	733,960	275,297	0	0	0	0
Projected size of backlog in FY2033	3,143,715	2,634,089	2,124,464	1,614,838	1,105,213	595,587	85,962	0	0	0	0

**Sources:** Created by CRS, based on DOJ, EOIR, “Pending Cases, New Cases, and Total Completions,” Adjudication Statistics, April 21, 2023, and “Immigration Judge (IJ) Hiring,” Adjudication Statistics, April 2023.

**Notes:** Averages exclude FY2021 due to abnormally low case completions related to the COVID-19 pandemic. IJ estimates are based on the number of IJs on staff in the second quarter of FY2023 (**Figure 3**) and do not account for expected attrition over time. Backlog estimates under different IJ hiring scenarios are based on recent data. Backlog estimates are rounded to the nearest whole number.

**Figure 4. Projected Impact of Immigration Judge Hiring on Pending Cases Backlog, FY2023-FY2033**

(this figure is interactive in the HTML version of the report)



**Source:** Created by CRS, based on DOJ, EOIR, “Pending Cases, New Cases, and Total Completions,” Adjudication Statistics, April 21, 2023, and “Immigration Judge (IJ) Hiring,” Adjudication Statistics, April 2023.

**Notes:** Averages exclude FY2021 due to abnormally low case completions related to the COVID-19 pandemic. IJ estimates are based on the number of IJs on staff in the second quarter of FY2023 (Figure 3) and do not account for expected attrition over time. Backlog estimates under different IJ hiring scenarios are based on recent data. Backlog estimates are rounded to the nearest whole number.

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