

Dismissing Immigration Court Appeals: Alleviating the Courts' Caseloads or Undermining Due Process?

By: Sofia Consing

Before President Trump took office for his second term, he [vowed to target](#) and deport immigrants from American communities as well as [eliminate lawful pathways](#) for new migrants to come to the United States. From December 2025 to the present day, Minnesota has become an example of President Trump fulfilling that promise with [Operation Metro Surge](#). With the infiltration of three thousand federal immigration agents, there have been an estimated three thousand arrests from December 2025 to January 2026 alone.¹ As this operation continues and more federal immigration agents are sent to other states, these actions add to the [backlog of cases](#) immigration courts must adjudicate. To help ease this large caseload, the Department of Justice is [proposing a new rule](#): the Board of Immigration Appeals must dismiss immigration appeals, “unless a majority of current Board members vote to consider the appeal on the merits.”²

What is the Board of Immigration Appeals?

The Board of Immigration is essential to the immigration system. The Board of Immigration Appeals (BIA) reassesses the conclusions reached by immigration judges and fixes [“legal and factual errors”](#) to ensure that the law is being applied fairly and gives a noncitizen due

¹ Chris Hippensteel et al., *Demonstrators Flood Minneapolis Streets as Hundreds of Businesses Close to Protest ICE*, N.Y. TIMES (Jan. 23, 2026), <https://www.nytimes.com/2026/01/23/us/minnesota-businesses-protest-ice.html> .

² Appellate Procedures for the Board of Immigration Appeals, 91 Fed. Reg. 5267, 5270 (Feb. 6, 2026) (interim final rule) (to be codified at 8 C.F.R. pts. 1003, 1208, 1240).

process before they are deported. To appeal a case, the noncitizen must fill out a [Notice of Appeal](#), and the BIA must receive the notice within 30 days of the Immigration Judge’s decision. When the BIA [reviews cases](#), they have the ability to “dismiss,” “reverse,” or “remand” a case. “Dismissing” the appeal means that the BIA affirms or “agrees” with the Immigration Judge’s decision. “Reversing” the appeal means that the BIA disagrees with the decision and may provide “relief.” “Remanding” the case tells the Immigration Judge that the case needs to be reviewed again and that more facts need to be learned.

What Are the Reasons Behind This Proposed Rule?

The Department of Justice has argued a few reasons, stating that the Board of Immigration Appeals must dismiss all appeals unless it votes to review them. In the past 10 years, the Board of Immigration Appeals has seen its number of cases greatly increase from an estimated [37,000 to 202,000](#). The Department of Justice asserts that even with more “resources” and a better way to manage its caseload, it would not be able to keep up with case “filings” without significant reforms.³ By not being required to hear every case, this proposal claims that the BIA would then be able to manage its caseload more efficiently.

Are There Any Other Changes Made by This Proposed Rule?

Besides this major proposed change, this new rule would come with other adjustments. First, noncitizens will have only [10 days to file](#) an appeal, down from the 30 days they were originally allowed. This new rule adds to the burden that the noncitizen will need to pay \$1,030 for an initial filing fee for the notice and possibly find an attorney in that short amount of time. Second, the BIA would only have [10 days to decide by vote](#) whether to hear the case. If the BIA

³ Appellate Procedures for the Board of Immigration Appeals, 91 Fed. Reg. at 5270.

does not vote, then the dismissal will be issued within [15 days](#) of the appeal. Third, if the case is not dismissed, the government and the noncitizen must file briefs at the same time within [20 days](#). This is different from the usual practice, where the noncitizen would be able to respond to the government's arguments. Lastly, if an appeal is made, immigration judges would not be required to "[review and approve transcripts of their oral decisions](#)," meaning that there could be many errors.

What Are the Effects If This Proposed Rule Is Implemented?

This proposed rule would have devastating effects. For one, this proposed rule undermines due process. Due process comes from the [Fifth Amendment](#), which states, "No person shall be...deprived of life, liberty or property without due process of law." This language is meant to assure that the government will obey the law and lay out "[fair procedures](#)." Even though this proposed rule still allows noncitizens to appeal their immigration cases, this rule provides procedures that are far from fair. The short turnaround time to appeal their case, the high cost of the fee and attorney, and the high chance that their appeal will not even be heard are all a culmination of procedures that are far from fair. Undermining due process is not worth efficiency. If the government can violate due process for noncitizens, it opens the door to [violating due process](#) for its own citizens.

Besides its questionable legality, this proposed rule would have detrimental effects on the economy and communities. In 2022, undocumented immigrants paid [\\$96.7 billion](#) in taxes. At the rate President Trump is trying to [deport noncitizens](#), and knowing this fact, this decision is steering this country towards [shrinking the U.S. economy and worsening federal deficits](#). This proposed rule would also exacerbate the rate at which families are already [separated](#) due to President Trump's immigration policy. This separation [negatively affects](#) the mental and physical health of

immigrants and citizens alike. Children experiencing traumatic events can [disrupt their physical health](#) and negatively impact their mental health. Additionally, deportees [who return](#) to their country of origin could also face debt, inability to find work, and violence.

Call to Action

As of March 5, 2026, this proposed rule has received 158 comments and has [91 published comments](#). With the comment period ending on April 8, 2026, attorneys and other stakeholders need to make their disapproval known. Hopefully, the agency will see these comments and [withdraw](#) the proposal. Alternatively, if they do not withdraw the proposal, hopefully, its changes will be more humane. Withdrawing the proposal is a small but essential step in keeping due process alive for both noncitizens and citizens.