



## Amid Congressional Deadlock, U.S. Immigration Courts are Overwhelmed

**David Scott FitzGerald**, University of California-San Diego

The politics of short-term immigration “crises” have overtaken possibilities for the comprehensive immigration reforms the United States so badly needs. In the latest development, politicians and media have focused on the arrival of more than 57,000 migrant children on the southern border of the U.S since October 2013 – double the number from the previous year. As attention focuses on this issue, gaps are growing between the comprehensive immigration reform bill passed by a bipartisan Senate majority in 2013 and any legislative measures that could conceivably pass the Republican-held House of Representatives today or in the foreseeable future.

Yet without broader decisions about how to adjust U.S. immigration policies and deploy limited enforcement resources, government steps will continue to lurch from one ad hoc crisis response to another, leaving basic difficulties to fester and get worse. Our choked immigration courts are a case in point.

At the moment, many are claiming that the current surge of unaccompanied minors seeking to enter the United States from Central America is due to President Obama’s 2012 decision to temporarily remove the threat of deportation from undocumented immigrants who entered the country as children years ago, plus the requirements for protection and legal hearings included in the *Trafficking Victims Protection Reauthorization Act* signed into law in 2008 by then President George W. Bush. These claims overlook many relevant aspects of the broader situation in Central America. But they also ignore more fundamental problems in U.S. immigration policy that have created major judicial backlogs in the Executive Office for Immigration Review, U.S. district courts, and U.S. magistrate courts. Today’s unaccompanied minor influx adds additional stress to an immigration adjudication system that is already overwhelmed.

According to the Transactional Records Clearinghouse’s analysis of U.S. government records, as of June 2014, there was a backlog of 375,000 cases in immigration courts, including the cases of more than 41,000 children awaiting court dates. The average wait time for decisions about potential removals by the Executive Office of Immigration Review was 587 days. What explains such long delays? The cause is not the arrival of more unauthorized migrants at U.S. borders. The overall flow of undocumented immigrants has declined in recent years. Instead, delays in U.S. immigration courts are the direct result of more aggressive and punitive approaches to enforcing immigration laws.

Until the mid-2000s, the federal government typically exercised its discretion to focus on major crimes and usually did not prosecute unlawful entry or overstaying visas. When unauthorized foreigners, especially those from Mexico, were apprehended, the government generally allowed them to sign a waiver of their right to an immigration hearing and then leave the country. In recent years, by contrast, federal authorities have started fully prosecuting authorized immigrants – a trend started in the last years of the administration of President

George W. Bush and sharply accelerated under President Obama. The new get-tough approach means that immigration cases are the fastest growing segment of all federal court cases. Their share of the federal docket nearly doubled from 18.6% in 2002 to 34.9% in 2011.

A U.S. Sentencing Commission report in 2012 found that more than 83 percent of these immigration offenses crowding court dockets involved either unlawful reentry into the United States or remaining in the United States without authorization. Under the Obama administration, approximately two million foreigners have been formally deported. Two-thirds of them had committed minor infractions, including traffic violations, or had no criminal record at all.

So what? Why should objective observers care if U.S. prosecutors are bringing larger numbers of immigration violations to court? One reason to care is that such prosecutions and deportations incur significant costs. According to testimony to Congress by Immigration and Customs Enforcement, each deportation costs U.S. taxpayers an average of \$12,500. That is a high cost to pay in cases where undocumented immigrants could just waive court appearances and go home – or in cases where otherwise law-abiding immigrants could just be left to live and work in peace.

And of course the country pays a price when Congress and the media focus on side-issues rather than bigger underlying problems, such as the already growing backlog of legitimate immigration cases in U.S. courts. Among those legitimate cases, now, will be accumulating numbers of young people and children arriving from Central America without parents or adult protectors. They join the ranks of immigrants already awaiting their day in over-crowded U.S. courts.