

Immigration and the Courts
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U.S. DISTRICT COURTS

- Increase in the percentage of criminal defendant dispositions in U.S. district courts for immigration offenses as a percentage of all defendants. The specific offense most often at issue was improper reentry.

Border courts have been most affected by the Bush administration's "Operation Streamline."

		All Δs	Immigration Offense Δs
ALL DISTRICTS	2002	78,835	12,191 15%
	2008	92,355	22,685 25%
FIVE BORDER DISTRICTS			
<u>2002</u>	Southern Texas	5,070	2,153 42%
	Western Texas	5,470	1,393 25%
	New Mexico	2,289	1,142 44%
	Arizona	4,103	1,793 44%
	Southern California	3,940	1,457 37%
<u>2007</u>	Southern Texas	5,799	3,699 64%
	Western Texas	6,211	2,265 36%
	New Mexico	2,697	1,695 63%
	Arizona	5,202	2,380 46%
	Southern California	4,218	2,227 53%

Source: Admin. Office U.S. Courts, JUDICIAL BUSINESS OF THE UNITED STATES COURTS, 2002, 2007, and 2008 Tables D-4 and D-9, *Year End Report of the Chief Justice*, Appendix <http://www.supremecourtus.gov/publicinfo/year-end/2008year-endreport.pdf>

- Transactional Records Access Clearinghouse estimates that, nationally, federal prosecutions of immigration offenses constituted over 50% of all 2008 prosecutions when all misdemeanor as well as felony prosecutions are included. (*Bush Administration's Immigration Prosecutions Soar, Total of All Federal Filings Reach New High* <http://trac.syr.edu/tracreports/crim/201/>)
- Immigrants are also prosecuted in district courts for non-immigration violations as a result of either immigration enforcement actions (e.g., social security fraud) or generic prosecutions (e.g., drug offenses).

STATE COURTS

Although alien admission, removal, and status adjustment are exclusive federal responsibilities, state courts deal with immigrant populations in the course of normal judicial business, as well as a result of federal, state, and local law enforcement efforts to enforce laws targeting immigrants in the country illegally. Convictions for many state offenses are grounds for removal. An introduction is Martin et al, ADDRESSING IMMIGRATION IN THE STATE COURTS (Center for Public Policy Studies, January 2009, www.sji.gov/PDF/Addressing_Immigration_in_the_State_Courts.pdf)

DEPARTMENT OF JUSTICE IMMIGRATION REMOVAL ADJUDICATION

Two Department of Justice entities adjudicate claims by aliens who contest Homeland Security Department efforts to bar them entry to, or remove them from, the United States* :

* Unless otherwise noted, data in this section come from the Executive Office of Immigration Review, 2007 STATISTICAL YEARBOOK at the specific pages indicated (e.g., B1).

- Immigration Courts
 - About 220 judges serving in over 50 courts around the country.
 - Appointed by the attorney general to “act as the Attorney General’s delegates in cases that come before them” (8 CRF §1003.10(a)); not subject to the Administrative Procedure Act
 - Matters terminated in 2007: 272,879 (B7); matters per judge (national average) 1,240 (versus 483 for U.S. District Judges).
 - Matters in which alien prevailed: 19.5% (D2)
 - Matters in which alien sought to block removal claiming fear of persecution or torture (asylum and other claims): 66,946 (25% of all matters); alien prevailed 24% of the time (K2,4,M1)
 - Matters in which aliens were represented by counsel: 42.5% (G-1) (Persons in removal proceedings may have counsel but “at no expense to the government” (8 USC §1362))
- Board of Immigration Appeals (BIA)
 - Up to 15 members to hear appeals from decisions of immigration judges (and a small number of appeals from Homeland Security District Directors). Either the alien or the government may appeal an immigration judge’s decision. The attorney general may reverse BIA decisions. Aliens may appeal BIA decisions to the U.S. courts of appeals.
 - Aliens’ appeals from immigration judge decisions in 2007: 10% (21,847 of 222,618) (Y1)
 - Appeals in which aliens were represented by counsel: 75% (23,151 of 30,750) (W1)
- Recent efforts to revamp immigration courts and the Board of Immigration Appeals:
 - BIA: In 2002, in response to increases in the BIA caseload, the attorney general reduced the membership of the BIA from 23 to 11 and directed increased use of streamlined procedures (single member review).
 - Immigration courts: In 2006, in response to complaints from courts of appeals judges and others about the performance of immigration judges, the attorney general announced a series of changes, including more immigration judges, performance reviews, and increased orientation and continuing education. The degree to which these changes have been implemented has been a source of dispute.

US COURTS OF APPEALS

- Appeals from district court decisions in immigration offense cases constituted 3.4% of the 58,410 appellate filings in 2007.
- Appeals from the Justice Department’s Board of Immigration Appeals were a much larger percentage of the filings, especially total filings in the Second and Ninth Circuits.

	<u>2002 Appeals</u>			<u>2007 Appeals</u>			<u>2007 over 2002</u>	
	All	BIA		All	BIA		All	BIA
National	57,555	4,449	7%	58,410	9,123	16%	2%	105%
CA-2	4,870	533	11%	6,334	2,177	34%	30%	308%
CA-9	11,421	2,670	23%	12,549	4,280	60%	10%	60%

- In 2008, BIA appeals had increased by 131% over 2002 and constituted 17% of all appeals.
 Source: JUDICIAL BUSINESS OF THE UNITED STATES COURTS, 2002, 2007, Tables B-3 and B-7, and 2008 Year End Report of the Chief Justice, Appendix