

Explainer: Dedicated Docket for Immigrant Families Arriving at the Southwest Border

Background

On May 28, 2021, Secretary of Homeland Security Alejandro Mayorkas and Attorney General Merrick B. Garland announced a new [dedicated docket](#) process for families arriving between ports of entry along the Southwest border. The [purpose](#) of the new dedicated docket is “to more expeditiously and fairly make decisions in immigration cases of families who arrive between ports of entry at the Southwest Border.”

The interest in more expeditious immigration court hearings arises from the [1.8 million case](#) backlog, leading to a nationwide average wait time of [934 days](#) (over 2.5 years on average, and in many instances significantly longer). Specifically for asylum cases, Syracuse University’s Transactional Records Access Clearinghouse (TRAC) [reports](#) that there are “about 667,000 asylum seekers [still] waiting for Immigration Court hearings to resolve their cases, with an average wait time of 1,621 days – nearly 4.5 years.” The ultimate goal of the program is to decrease the amount of time it takes for migrant families to receive adjudications on their cases while simultaneously ensuring due process.

Parents or legal guardians with minor children arriving between ports of entry along the Southwest border on or after May 28, 2021, are eligible for this dedicated docket process. Eligible families who have been placed in removal proceedings and who are enrolled in alternatives to detention may be placed on the [dedicated docket](#). Families placed on this docket are also supposed to receive “[information](#) services to help [them] understand the immigration system and [receive] referrals to pro bono legal service providers for possible representation.”

Cases on the dedicated docket are supposed to receive a decision from an immigration judge (IJ) within 300 days of the initial [master calendar hearing](#), although the guidance purports to provide flexibility in this deadline depending on each family’s unique circumstances, including their ability to seek and obtain legal representation.

The dedicated docket process was implemented in [select cities](#) across the U.S. Cities were selected on the basis of whether there were available IJs to hear these cases, as well as the presence of a pre-existing community of legal service providers to assist with these cases: Boston, Denver, Detroit, El Paso, Los Angeles, Miami, Newark, New York City, San Diego, San Francisco, and Seattle.

Programmatic Concerns

Critics have raised [concerns](#) that this dedicated docket resembles a “rocket docket,” focusing on speedy case outcomes over due process. Advocates raised numerous [concerns](#) with the announcement of the dedicated docket process, specifically the [difficulty](#) in accessing counsel in an abbreviated period of time, challenges with documenting and defending a case on such accelerated timelines, and overall concerns about the level of due process those in dedicated docket proceedings are receiving.

Given the devastating [consequences](#) for individuals losing an immigration case, including removal, there is heightened concern that the dedicated docket process undermines protection frameworks by prioritizing speed over other factors. Further, advocates highlighted that a large number of those with dedicated docket cases are children, including very young children. Even as they navigate the immigration system with their parents (many of whom are barely adults themselves), the risk to children is heightened. The VERA Institute of Justice [states](#), “The developmental distinctions between adults and children — children’s relative difficulty in evaluating risks, regulating emotions, and understanding the consequences of decisions — make it even harder for children to navigate legal proceedings.”

Because this dedicated docket process has overlapped with both [Title 42](#) and the [Migrant Protection Protocols \(“MPP”\)](#), the interplay of these policies have resulted in dedicated docket families disproportionately coming from Brazil, Venezuela, and Ecuador — countries not subject to MPP and/or Title 42. This is the case even though nationals from the Northern Triangle countries (Guatemala, El Salvador, and Honduras) have consistently comprised a much larger proportion of asylum seekers and other irregular border crossers. Those families generally have been subject to Title 42 and MPP.

The Dedicated Docket in Practice

The dedicated docket was intended to address some of the structural challenges in the immigration court system, such as lengthy backlogs and long wait times while simultaneously preserving due process. These goals are well intentioned and recognize the significant challenges within the current system. Despite the dedicated docket’s goal of providing families with resources regarding removal proceedings, few respondents have been able to obtain representation. Families with dedicated docket cases have struggled to obtain relief, been ordered removed at high rates (including *in absentia*), and have seen their dedicated docket cases concentrated in only a handful of eligible cities..

Difficulties Obtaining Legal Representation

In the first seven full months of the new dedicated docket, only [15.5%](#) of participating immigrants (11,225 out of 72,289) had secured legal representation, a disappointing result. Providing representation to immigrants in removal proceedings has clear benefits for both the immigrant and the government. Immigrants are [five times](#) more likely to obtain legal relief if they are represented in removal proceedings than if they are unrepresented. Additionally, representation in immigration court makes proceedings run more smoothly and promotes fairness, “[advanc\[ing\]](#) the government’s interest in ensuring due process and efficiency in the legal system, reducing the detention of immigrants, and reducing the immigration court backlog.”

Comparisons to the impact of representation on unaccompanied immigrant children and non-dedicated docket family units is illustrative of the importance of legal representation for those on the dedicated docket. Unaccompanied children who had legal representation while in removal proceedings were “[seven times](#) more likely to receive an outcome that allowed them to remain in the U.S. than those who did not have attorneys.” While children on the dedicated docket are not unaccompanied, they nonetheless stand to benefit substantially when represented. TRAC analyzed case records of family units (from September of 2018 up to May of

2019) and found that over [99%](#) of family units with legal representation showed up to every immigration court hearing. Obtaining counsel can make a huge difference for immigrants caught up in removal proceedings. Given the complicated and often dysfunctional immigration system, legal representation is important for families and unaccompanied children.

A key aim of the new dedicated docket process was to ensure family units in the system had access to pro bono or low-cost legal representation. Specifically, the Department of Justice [stated](#) in a May 28, 2021 policy memo that, “Respondents whose cases are placed on these dockets will be provided with a number of services, including access to information services and possible referral services to facilitate legal representation.” For these reasons, the dedicated docket process focused on launching in cities with established legal service providers. However, even though the Biden administration prioritized legal representation as an important goal, they have largely failed to meet it, as many of the legal providers who situated to take on these types of cases were already at or near capacity, limiting their ability to take on new clients. This has made finding representation even more challenging for families in the dedicated docket.

In general, immigrants on the dedicated docket are trying to access the same services as other immigrants – including those on the regular docket as well as immigrants who are not in removal proceedings. Despite its intent and the focus on key cities, the dedicated docket process did little to expand the overall access of such services. Legal service providers that offer free or low-cost services often have lengthy waitlists and may be restricted by grants and funders as to what types of cases they can accept. For example, some programs only represent unaccompanied children or crime victims, members of the LGBTQ+ community, or other specific groups. And because many of those seeking legal services have limited funds and no work authorization, private immigration attorneys are usually cost prohibitive. The dedicated docket process did little to help service providers address these constraints.

In addition to these resource and availability constraints, the timeframe of the dedicated docket process makes it even harder for service providers to take on these cases. The expedited timeline for dedicated cases poses a challenge for immigrants and attorneys, shortening the window to locate and secure legal services, while making it difficult for attorneys who are retained to properly develop the cases.

Excessive Removal Order Levels

While the vast majority of immigrants do attend their immigration court hearings, with over [83%](#) of immigrants appearing for their proceedings, failure to appear can be caused by many reasons, including federal authorities’ failure to provide sufficient notice of the hearing or logistical and cost difficulties immigrants may face in physically getting to their hearings. Ultimately, the best way to ensure attendance is the provision of legal representation, as demonstrated by the [96%](#) appearance rate of non-detained immigrants (those who have been released from immigration custody) who are represented by counsel.

The expedited nature of the dedicated docket process has resulted in abnormally high *in absentia* denial rates. In the first seven full months of the dedicated docket process, [92.3%](#) (1,557 of 1,687) of the completed cases, those with final decisions, resulted in orders of removal whereas only .8% of completed cases (13 of 1,687) resulted in some sort of granted relief. According to a new UCLA [report](#) focusing on Los Angeles dedicated docket cases, 86.6% of

removal orders were issued *in absentia*, meaning the immigrant did not show up to their scheduled court hearing.

Immigrants on the dedicated docket have a lower appearance rate for a [variety of reasons, but fundamentally it is a product of the expedited nature of the proceedings](#). While immigrants on the regular docket may fail to appear due to inadequate notice, inability to obtain legal representation, travel limitations, and/or administrative errors committed by DHS, a limited timeframe makes it more difficult to overcome these types of obstacles.

While there are clearly benefits to having a streamlined, faster moving docket system, the short time period allotted for the resolution of dedicated docket cases also has a number of problematic impacts. First, as indicated above, it seems to be contributing to the high number of removals *in absentia*. But even beyond that, the accelerated schedule has also posed challenges for DHS, leading to more instances of inadequate notice and missed deadlines. In the first seven months of the program, just under [10%](#) of all cases on the dedicated docket were closed because DHS “[failed to prosecute](#),” meaning that DHS had not yet filed the immigrant’s charging document ([the Notice to Appear](#)) with the appropriate court by the date of the immigrant’s first hearing.

Cases Concentrated in Only a Few Cities

As explained above, the dedicated docket process was rolled out in nearly a dozen specific cities with better access to legal representation. However, despite this wider roll-out, four cities have shouldered the burden in hearing cases: Miami, Boston, New York City, and Newark. The unequal distribution in cases can be attributed to pre-existing family and communal ties in certain cities, but it has created additional challenges for this expedited docket.

Rather than expediting processes, this imbalanced case distribution creates additional challenges for IJs and court staff assigned to these cases. They have faced higher caseloads on the same timeline as IJs with smaller numbers of cases on the regular docket, undermining some of the potential efficiency gains expected under the dedicated docket. This imbalance also has put greater pressure on legal service providers in these communities, who, as noted above, are often already near capacity and have limited ability to take on this volume of cases.

Conclusion

The new dedicated docket process recognizes the need for more expeditious immigration court proceedings, which can resolve cases in a realistic timeframe. It intended to do so in a way that balanced due process and speed, focusing on locations with larger numbers of experienced immigration legal service providers. However, despite its worthy goals and good intentions, it has often fallen short in practice.

Failing to significantly expand access to counsel, providing limited avenues to relief, maintaining high removal rates (including *in absentia*), and experiencing overconcentration in just a handful of the launch cities, the new dedicated docket has largely disappointed.

Although this new docket process has failed to deliver on many of its goals so far, Congress and the Biden administration have many alternatives to expedite and improve the immigration court

system. While there is no silver bullet to fix a dysfunctional immigration system , effective solutions may include [hiring more immigration judges](#), [funding programs](#) that provide free and/or low cost representation to immigrants in removal proceedings, [universal representation for immigrant children](#), [funding USCIS through appropriations](#) , and [immigration court reform](#). These solutions, in addition to needed procedural and administrative reforms, would be helpful in addressing ongoing backlogs and shortcomings in the system.

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