How to Explain the Decline in Asylum Grant Rates in the United States? Elections (and Election Campaigns) Have Consequences

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Abstract

This article examines the sharp decline in asylum grant rates by U.S. immigration judges from 51 percent in February 2024 to 19 percent in August 2025. It evaluates explanations attributing the decline to late Biden administration measures, including the Circumvention of Lawful Pathways rule and the Securing the Border proclamation, and to changes under the second Trump administration, including immigration judge departures and dismissals. The article argues that these factors do not fully explain the timing or scale of the decline because many cases decided during this period originated years earlier. It instead emphasizes two additional explanations: the influence of attorneys general through binding interpretations of asylum law and the possibility that electoral pressures during the 2024 presidential campaign encouraged stricter immigration enforcement. Drawing on asylum court statistics, administrative decisions, polling, government reports, and commentary, the article compares grant-rate changes across presidential administrations and around major policy interventions. It concludes that both governing philosophies and election campaigns can shape asylum adjudication outcomes, while acknowledging that several causal relationships remain inferential rather than definitively established within the United States immigration system.

Keywords: asylum grant rates; U.S. immigration courts; asylum adjudication; immigration policy; electoral pressures

Introduction

In the United States, immigration judges' (IJ) asylum grant rates have been plummeting since the spring of 2024. In the year and a half from February 2024

to August 2025, the grant rate (asylum grants divided by total decisions on the merits – grants and denials) fell from 51% to 19%, the lowest rate since since 1996's 17%.[1] In June, Austin Kocher, Research Assistant Professor at Syracuse University's S.I. Newhouse School of Public Communications, concluded that "[t]he U.S. immigration courts have never seen such a dramatic reversal of asylum case outcomes over such a short period of time – ever."[2]

What can account for this plunge? Well, obviously, Donald Trump took over the presidency in late January 2025. Mr. Kocher wrote despondently that the immigration courts "have become little more than an Asylum Denial Machine designed to feed into the Trump administration's mass deportation program".[3] However, he readily acknowledged that "as the data shows, while Trump may take the blame or the credit ... he did not act alone",[4] explaining:

> The surge in denials ... did not start with the Trump administration. It started with Biden. Let me say that again in case you are tempted to misrepresent reality: do not attribute the surge in asylum denials solely to the Trump administration; Biden is equally to blame (or praise, if you view this as a good thing).[5]

In this article, I will evaluate commentators' proffered explanations for the historic plunge in grant rates and propose alternatives with potentially greater explanatory power. And while my analysis does not apply directly to the asylum processes in other Western nations, it does likely address common factors affecting asylum grant rates in democracies overburdened by aliens abusing the asylum process.

[1] The data on IJ asylum grant rates is derived from data made available by the Transactional Records Access Clearinghouse (TRAC) for fiscal years beginning in 2001. See Transactional Records Access Clearinghouse, "Asylum Decisions," accessed December 8, 2025, https://tracreports.org/phptools/immigration/asylum/; and U.S. Department of Justice, Executive Office for Immigration Review, *Statistical Yearbook: 2000*, O2, table 15, https://www.justice.gov/sites/default/files/eoir/legacy/2001/05/09/SYB2000Final.pdf. TRAC describes itself as "a data gathering, data research, and data distribution organization that was founded in 1989 at Syracuse University," providing "comprehensive information about staffing, spending, and enforcement activities of the federal government" based on the "systematic and informed use of the Freedom of Information Act." See Transactional Records Access Clearinghouse, "About Us," accessed December 8, 2025, https://tracreports.org/about/. TRAC, but not EOIR, provides monthly figures.

[2] Austin Kocher, "The Asylum Denial Machine," June 19, 2025, https://austinkocher.substack.com/p/the-asylum-denial-machine.

[3] Kocher, "Asylum Denial Machine."

[4] Kocher, "Asylum Denial Machine."

[5] Kocher, "Asylum Denial Machine."

First, let me briefly explain IJs' role in the asylum process. In general, U.S. Citizenship and Immigration Services (USCIS) within the Department of Homeland Security (DHS) "shall have initial jurisdiction over ... [a]n asylum application filed by an alien physically present in the United States or seeking admission at a port of-entry".[6] However, "[IJs] shall have exclusive jurisdiction over asylum applications filed by an alien who has been served a ... Notice to Appear [NTA]"[7] for removal proceedings. Under § 240 of the Immigration and Nationality Act (INA), removal proceedings "for deciding the inadmissibility or deportability of an alien" are conducted by IJs.[8] Aliens who have been admitted to the U.S. are subject to removal as deportable aliens, while aliens who are physically present in the U.S. but who have not been admitted are subject to removal as inadmissible aliens (as if they were outside the U.S. seeking to be admitted).

The immigration courts are located within the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), which also houses the Board of Immigration Appeals (BIA). EOIR regulations provide that "[IJs] are attorneys whom the Attorney General [AG] appoints as administrative judges ... to conduct specified classes of proceedings, including hearings under section 240 ... [They] shall act as the [AG]'s delegates in the cases that come before them."[9] Further, "[i]n deciding the individual cases before them ... [IJs] shall exercise their independent judgment and discretion and may take any action consistent with their authorities under the [INA] and regulations that is necessary or appropriate for the disposition or alternative resolution of such cases."[10] IJs "shall be governed by the provisions and limitations prescribed by the [INA], by the decisions of the [BIA], and by the [AG] (through review of a decision of the [BIA], by written order, or by [the AG's] determination and ruling pursuant to [the AG's powers pursuant to] section 103 of the [INA])."[11]

[6] 8 C.F.R. §§ 208.2(a)(1)(i), 1208.2(a)(1)(i), https://www.govinfo.gov/content/pkg/CFR-2025-title8-vol1/pdf/CFR-2025-title8-vol1-sec208-2.pdf and https://www.govinfo.gov/content/pkg/CFR-2025-title8-vol1/pdf/CFR-2025-title8-vol1-sec1208-2.pdf.
[7] 8 C.F.R. §§ 208.2(b), 1208.2(b).
[8] Immigration and Nationality Act § 240(a)(1), (3), 8 U.S.C. § 1229a(a)(1), (3), https://www.govinfo.gov/content/pkg/USCODE-2024-title8/pdf/USCODE-2024-title8-chap12-subchapII-partIV-sec1229a.pdf
[9] 8 C.F.R. § 1003.10(a), https://www.govinfo.gov/content/pkg/CFR-2025-title8-vol1/pdf/CFR-2025-title8-vol1-part1003-subpartB.pdf.
[10] 8 C.F.R. § 1003.10(b).
[11] 8 C.F.R. § 1003.10(d).

Aliens in removal proceedings may apply for applicable relief or protection from removal,[12] most often asylum.[13] If an alien placed in expedited removal proceedings claims a fear of return and an asylum "officer determines ... that [the] alien has a credible fear of persecution ... the alien shall be detained for further consideration of the application for asylum."[14] The application will then be adjudicated by an IJ in a § 240 removal proceeding.[15] Aliens claiming asylum in removal proceedings are making "defensive" applications.

Aliens not in removal proceedings can apply for asylum through "affirmative" applications adjudicated by DHS asylum officers. If an asylum officer declines to grant asylum and the alien "appears to be inadmissible or deportable ... the asylum officer shall refer the application to an [IJ], together with the appropriate charging document, for adjudication in removal proceedings".[16]

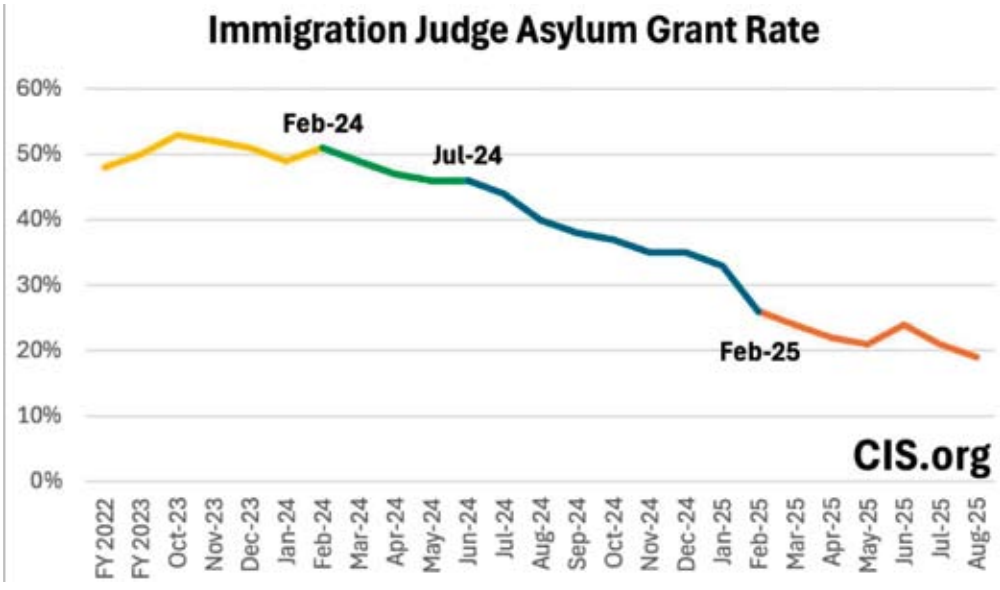
Finally, the decisions of IJs "are subject to review by the [BIA]."[17]

The Plunge

As Professor Kocher noted, the asylum grant rate started falling well before President Trump's second inauguration. It began its plunge in the spring of 2004, during the Biden administration's final year. As seen in the following graph, the overall grant rate was 48% in fiscal year 2022 (Oct. 2021–Sept. 2022) and 50% in fiscal year 2023. It stayed at that level through February 2024's 51%. And then something happened. The grant rate began a sustained and steady decline until it hit 35% in December 2024 and 33% in January 2025 (three quarters of which occurred during the Biden adminstration). The grant rate fell further under the Trump administration, dropping to 19% in August 2025. The data represented in the graph can be found in the Appendix.

[12] Immigration and Nationality Act § 240(c)(4)(A), 8 U.S.C. § 1229a(c)(4)(A).
[13] Immigration and Nationality Act § 208, 8 U.S.C. § 1158, https://www.govinfo.gov/content/pkg/USCODE-2024-title8/pdf/USCODE-2024-title8-chap12-subchapII-partI-sec1158.pdf.
[14] Immigration and Nationality Act § 235(b)(1)(B)(ii), 8 U.S.C. § 1225(b)(1)(B)(ii), https://www.govinfo.gov/content/pkg/USCODE-2024-title8/pdf/USCODE-2024-title8-chap12-subchapII-partIV-sec1225.pdf.
[15] 8 C.F.R. § 1240.17(a), https://www.govinfo.gov/content/pkg/CFR-2025-title8-vol1/pdf/CFR-2025-title8-vol1-sec1240-17.pdf.
[16] 8 C.F.R. § 208.14(c)(1), https://www.govinfo.gov/content/pkg/CFR-2025-title8-vol1/pdf/CFR-2025-title8-vol1-sec208-14.pdf.
[17] 8 C.F.R. § 1003.10(c).

Per Professor Kocher, I consider the declining grant rate to be a positive development – a "good thing". First, it reduces the number of bogus asylum claims being approved. As my colleague Mark Krikorian at the Center for Immigration Studies (CIS) wrote at the beginning of the Biden border crisis, "[a]sylum is driving the current border crisis, with illegal aliens, coached by smugglers and U.S. immigration lawyers, turning themselves in and claiming a fear of return, thus initiating the asylum process",[18] with, as he wrote in Limen, "the goal of ...not so much to **receive** asylum ... but rather merely to **apply** ... and then go about your new life secure in the knowledge your case may not be heard for years, and even if you are rejected, you are unlikely to be removed."[19]



The former Immigration and Naturalization Service (INS) reported that in fiscal year 1974, only 2,716 aliens requested, and only 294 were granted, asylum.[20] Fast forward five decades: According to EOIR, in fiscal year 2024, aliens filed 909,372 asylum applications with the immigration courts and in 2025 filed 872,066.[21]

[18] Mark Krikorian, "Time to Withdraw from the U.N. Refugee Treaty," *National Review*, July 28, 2001, https://www.nationalreview.com/2021/07/time-to-withdraw-from-the-u-n-refugee-treaty/.
[19] Mark Krikorian, "The End of Asylum," *Limen: The Journal of the International Network for Immigration Research* 7-8 (2023): 5, 11, https://migraciokutato.hu/wp-content/uploads/2024/09/Mark-Krikorian_The-End-of-Asylum.pdf (emphasis added).
[20] U.S. Immigration and Naturalization Service, *1974 Annual Report: Immigration and Naturalization Service*, 5, https://purl.stanford.edu/fp003cc2426.
[21] U.S. Department of Justice, Executive Office for Immigration Review, "Adjudication Statistics: Total Asylum Applications," accessed December 8, 2025, https://www.justice.gov/eoir/media/1344871/dl?inline.

In 1974, even with such low numbers, INS concluded that "[m]any [asylum] requests were found to be frivolous and were being used as a stratagem to remain longer in the United States or to avoid deportation."[22] The level of fraud has since ballooned along with the number of claimants.

In 2011, Sam Dolnick reported in the New York Times that "[a] shadowy industry dedicated to asylum fraud thrives in New York", with "[i]mmigrants peddl[ing] personal accounts ripped from international headlines" and "embellished stories go[ing] in and out of fashion along with the news of the day."[23] Three years later, Kirk Semple, Joseph Goldstein, and Jeffrey Singer reported in the Times that Professor Peter Kwong at the City University of New York "said it was an open secret in the Chinese community that most asylum applications were at least partly false, from fabricated narratives of persecution to counterfeit supporting documents and invented witness testimony".[24] The article stated that "[f]alse asylum petitions are among the most common forms of immigration fraud, in part because they are difficult to detect, experts said."[25]

Lowered grant rates also help to rein in an out of control asylum system that threatens American soverignty, as it does that of many Western nations. Mr. Krikorian has written that "[a]sylum … represents a profound surrender of sovereignty, a limitation on the American people's ability to decide which foreigners get to come here from abroad" and that "[a]n unprecedented migration wave … has turned the Refugee Convention … [into] a crowbar used by the post-national Left to pry open the borders of democratic societies contrary to the will of their citizens."[26] He concluded in *Limen* that "[g]iven the effectively unlimited number of people who have the means to use an asylum claim as a stratagem to move to a richer country, the 1951 refugee framework and everything flowing from it needs to be scrapped."[27]

[22] U.S. Immigration and Naturalization Service, *1974 Annual Report*, 5.
[23] Sam Dolnick, "Immigrants May Be Fed False Stories to Bolster Asylum Pleas," *New York Times*, July 11, 2011, https://www.nytimes.com/2011/07/12/nyregion/immigrants-may-be-fed-false-stories-to-bolster-asylum-pleas.html (paywall).
[24] Kirk Semple, Joseph Goldstein, and Jeffrey Singer, "Asylum Fraud in Chinatown: An Industry of Lies," *New York Times*, February 22, 2014, https://www.nytimes.com/2014/02/23/nyregion/asylum-fraud-in-chinatown-industry-of-lies.html (paywall).
[25] Semple, Goldstein, and Singer, "Asylum Fraud in Chinatown."
[26] Krikorian, "Time to Withdraw from the U.N. Refugee Treaty."
[27] Krikorian, "End of Asylum," 16.

What Has Caused the Plunge?

Contributing Factors Proposed by Commentators

Biden Administration Immigration Initiatives

Some commentators lay the blame at the feet of executive actions taken late in the Biden administration. For instance, Professor Kocher wrote that:

> The most important reason that attorneys have cited ... is the Biden administration's Circumvention of Lawful Pathways rule[28] [CLAP] in May 2023 ... and Biden's Securing the Border[Proclamation][29] issued in June 2024. These policies combined to make a lot of recently arrived asylum seekers ineligible for asylum if they did not enter through CBP One[30] at port of entry.[31]

Kocher concluded that "[t]hese policies appear to be the foundation of the rise in denials."[32] Similarly, Jason Dzubow, an immigration attorney specializing in representating asylum claimants, concluded that "many migrants are being denied asylum because they failed to use the [CBP One] app, and I expect this contributes to the higher denial rate in court."[33]

It is a highly contestable assertion that the CLAP and Securing the Border increased the odds of asylum applications being denied. For example, my colleague Elizabeth Jacobs concluded that the CLAP was "so fraught with exceptions and loopholes that the general public should expect few prospective migrants to actually be deterred."[34]

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[28] "Circumvention of Lawful Pathways," 88 Fed. Reg. 31314 (May 16, 2023), https://www.govinfo.gov/content/pkg/FR-2023-05-16/pdf/2023-10146.pdf.
[29] Proclamation No. 10773, 89 Fed. Reg. 48487 (June 7, 2024), https://www.govinfo.gov/content/pkg/FR-2024-06-07/pdf/2024-12647.pdf#page=5.
[30] See "Securing the Border," 89 Fed. Reg. 81156, 81161, 81214-21 (October 7, 2024), https://www.govinfo.gov/content/pkg/FR-2024-10-07/pdf/2024-22602.pdf.
[31] Kocher, "Asylum Denial Machine."
[32] Kocher, "Asylum Denial Machine."
[33] Jason Dzubow, "Immigration Court Data: More Asylum Decisions, More Asylum Denials," *The Asylumist*, May 21, 2025, https://www.asylumist.com/2025/05/21/immigration-court-data-more-asylum-decisions-more-asylum-denials/.
[34] Elizabeth Jacobs, "Proposed New Asylum Regulation Packed Full of Loopholes," Center for Immigration Studies, February 22, 2023, https://cis.org/Jacobs/Proposed-New-Asylum-Regulation-Packed-Full-Loopholes.

But, in any event, the great bulk of the asylum applicants denied asylum toward the end of the Biden administration were not even subject to either the CLAP or Securing the Border.[35] Why? Because IJs usually render asylum decisions years after apprehended aliens are issued NTAs in immigration court. TRAC estimated in December 2022 that "the average backlog wait times from when [a removal] case was filed in the Immigration Court to when the[] asylum hearing will be scheduled and the[] claims heard" to be "currently 1,572 days, or 4.3 years."[36] Data provided by TRAC shows that in fiscal year 2023, aliens claiming asylum in pending removal proceedings were waiting an average of 1,444 days from the filing of an NTA to their next scheduled hearing, and in fiscal year 2024 (through Dec. 2023 – the first quarter of the fiscal year) were waiting an average of 1,424 days.[37] The average wait was essentially four years – and that was just until the next scheduled hearing.

Why is the average wait so long? Data provided by TRAC indicates that in fiscal year 2022, while IJs decided 55,637 asylum cases, a backlog of 756,690 asylum cases remained; in 2023, while IJs decided 75,144 cases, a backlog of 1,009,625 cases remained; and in 2024, while IJs decided 78,383 cases, a backlog of 1,101,819 cases remained.[38] Thus, decided cases represented only seven percent of the ever growing backlog.

But TRAC cautioned that "[t]here is no simple answer to the question of how long asylum seekers have to wait before they can have their claims heard and decided."[39] Why? Because "[u]nder Biden administration initiatives, including the Dedicated Docket ... some newly arriving asylum seekers are being moved

[35] CLAP became effective on May 11, 2023. It was then vacated by the U.S. District Court for the Northern District of California on July 25, 2023, in *East Bay Sanctuary Covenant v. Biden*, 683 F. Supp. 3d 1025 (N.D. Cal. 2023) (the district court staying its order for 14 days), https://clearinghouse.net/doc/139709/. The Ninth Circuit further stayed the order on August 3 (*East Bay Sanctuary Covenant v. Biden*, No. 23-16032, slip op. at 1 (9th Cir. August 3, 2023), https://assets.law360news.com/1707000/1707605/9th.pdf) and vacated the order on April 10, 2025 (*East Bay Santuary Covenant v. Trump*, 134 F.4th 545, 547 (9th Cir. 2025)). The CLAP by its own terms expired as of May 11, 2025. Securing the Border became effective on June 5, 2024, and was later memorialized in somewhat modified form in a final rule published in October 2024. See "Securing the Border," 89 Fed. Reg. 81156, 81161, 81214-21 (October 7, 2024), https://www.govinfo.gov/content/pkg/FR-2024-10-07/pdf/2024-22602.pdf.

[36] Transactional Records Access Clearinghouse, "A Sober Assessment of the Growing U.S. Asylum Backlog," December 22, 2022, https://tracreports.org/reports/705/.

[37] Transactional Records Access Clearinghouse, "Immigration Court Asylum Backlog," accessed December 8, 2025, https://tracreports.org/phptools/immigration/asylumbl/.

[38] Transactional Records Access Clearinghouse, "Immigration Court Asylum Backlog"; Transactional Records Access Clearinghouse, "Asylum Decisions."

[39] Transactional Records Access Clearinghouse, "Sober Assessment of the Growing U.S. Asylum Backlog."

to the head of the line and their hearings expedited."[40] TRAC's 4.3 year estimate apparently did not include aliens on the dedicated docket, since between mentioning that docket and its 4.3 year estimate, TRAC stated that "[f]or most others who are not detained, especially those who entered the backlog queue a while ago, the wait can be very long."[41]

So, what is the average wait time for all asylum decisions by IJs – on the regular docket and on the dedicated docket? TRAC reported that for asylum cases decided by IJs in fiscal year 2022, the average time to completion for dedicated docket cases was 276 days versus 1,594 days for regular cases.[42] Overall, TRAC-provided data indicated that 56% of all decisions involved a period from NTA to closure of over three years, 14% more than a year and a half to less than three years, 26% more than three months to less than 18 months, and 5% up to three months.[43] Assuming these proportions held through the end of the Biden administration, at the very least, 70% of cases decided in November 2024 were not subject to the CLAP or Securing the Border.

Biden Administration Abuse of the Parole Power

Professor Kocher made a very revealing statement:

> I want to mention a further Biden-era explanation that a few trusted colleagues have shared with me in private but not necessarily felt comfortable saying out loud in certain settings. And to be clear, I have wondered – and worried – about this very thing ... Simply put: **the Biden administration's parole policy allowed a lot of weak cases into the immigration court system**.[44]

The U.S. House of Representatives impeached Alejandro Mayorkas, President Biden's Secretary of Homeland Security (SHS), in part because of his abuse of the parole power.[45] The Articles of Impeachment alleged in part that:

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[40] Transactional Records Access Clearinghouse, "Sober Assessment of the Growing U.S. Asylum Backlog."
[41] Transactional Records Access Clearinghouse, "Sober Assessment of the Growing U.S. Asylum Backlog."
[42] Transactional Records Access Clearinghouse, "Quality vs Quantity: How Does Sitting on the Dedicated Docket Impact the Judging Process?," November 16, 2022, https://tracreports.org/reports/702/.
[43] Transactional Records Access Clearinghouse, "Quality vs Quantity."
[44] Kocher, "Asylum Denial Machine" (emphasis added). Kocher also stated, "This is not the same as saying that these cases are fraudulent, nor does it imply that asylum applicants or their attorneys are acting in anything other than good faith. But it does mean that a lot of migrants were promised a bite at an apple that almost certainly was far out of reach." Kocher, "Asylum Denial Machine."
[45] Immigration and Nationality Act § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A).

> Alejandro N. Mayorkas willfully exceeded his parole authority ... that permits parole to be granted "only on a case-by-case basis", temporarily, and "for urgent humanitarian reasons or significant public benefit", in that ... [he] created, re-opened, or expanded a series of categorical parole programs never authorized by Congress for foreign nationals outside of the United States ... which enabled hundreds of thousands of inadmissible aliens to enter the United States in violation of the laws enacted by Congress.[46]

The House Committee on Homeland Security's report on the articles of impeachment concluded that "in FY 2023 alone, DHS granted parole to over 810,000 aliens through unlawful categorical parole programs."[47]

For those who are interested, I have written extensively about Executive Branch abuse of the parole power, culminating with an unprecedented level of abuse by the Biden administration.[48]

None of Biden's categorical parole programs required that beneficiaries first demonstrate that they would be eligible for asylum if they were physically present in the United States. No wonder "the Biden administration's parole policy allowed a lot of weak cases into the immigration court system". So, to the quite limited extent Biden parolees actually applied for asylum and IJs decided their cases by the end of the Biden administration, this factor would have explanatory power.

Trump Administration Firing of Immigration Judges

In November 2025, Ximena Bustillo and Anusha Mathur reported for National Public Radio that "There were 700 immigration judges at the start of the year. Over

[46] H. Res. 863, 118th Cong. (as passed by the House), https://www.congress.gov/118/bills/hres863/BILLS-118hres863rds.pdf. I served as a special counsel on the House Committee on Homeland Security Committee during the impeachment inquiry and during Committee and House consideration of the articles of impeachment.

[47] H.R. Rep. No. 118-372, 55 (2024) (footnote omitted), https://www.congress.gov/118/crpt/hrpt372/CRPT-118hrpt372-pt1.pdf.

[48] See, e.g., George Fishman, "Categorical Parole Programs Are Unlawful: Does the Trump Administration Really Believe They Are Permitted by Statute?," Center for Immigration Studies, May 15, 2025, https://cis.org/Fishman/Categorical-Parole-Programs-Are-Unlawful; George Fishman, "Trump Should Categorically Rescind All Categorical Parole Programs," Center for Immigration Studies, January 24, 2025, https://cis.org/Fishman/Trump-Should-Categorically-Rescind-All-Categorical-Parole-Programs; George Fishman, "Biden's Perversion of Parole Is a Constitutional Crisis in the Making," Center for Immigration Studies, January 6, 2023, https://cis.org/Fishman/Bidens-Perversion-Parole-Constitutional-Crisis-Making; and George Fishman, *The Pernicious Perversion of Parole*, Center for Immigration Studies, February 16, 2022, https://cis.org/sites/default/files/2022-02/fishman-parole_0.pdf.

the past 10 months, EOIR has lost more than 125 judges to firings and voluntary resignations."[49] Mr. Kocher wrote that "Many [IJs] that do not explicitly align with the Trump administration's hostility toward asylum seekers have either ... resigned ... or been summarily fired. In this way, the composition of [IJs] on the bench today differs from what it was just six months ago."[50] He stated his "understanding from reliable sources ... that [IJs] who remain on the bench do not need additional policy to be told how to decide asylum cases; [they] clearly understand their marching orders and understand the consequences of stepping out of line."[51] Kocher did acknowledge that this "don't explain the increase in denial rates during the Biden administration".[52]

However, Jason Dzubow cautioned that "[w]hether judges' desire to please the current Administration (and protect their jobs) is contributing to the higher denial rates, we really do not know".[53] And he acknowledged that "[t]o some extent, it is reasonable for judges to follow the lead of the Administration in office, as long as they continue to follow the law."[54] But Dzubow did "worry that the Administration's well-publicized efforts to fire people perceived as disloyal may push some IJs to deny more cases", adding that "[t]he IJs that I know personally are people of great integrity, and I think they are not particularly susceptible to such intimidation, but when your job and livelihood are on the line, it does create perverse incentives."[55]

Allegations of an incoming administration's replacement of IJs with ones more to its liking are hardly novel. In fact, in July 2022, Senator Charles Grassley (R-Iowa), the ranking Republican on the Senate Judiciary Committee, and Jim Jordan (R-Ohio), the ranking Republican on the House Judiciary Committee, wrote President Biden's AG Merrick Garland "about [his] decision to terminate the employment of multiple [IJs] who were hired during the Trump Administration."[56] They alleged that "According to a recent press report,[57] '[t]he Biden administration has been quietly packing the nation's immigration courts, ousting Trump-hired

[49] Ximena Bustillo and Anusha Mathur, "The DOJ Has Been Firing Judges with Immigrant Defense Backgrounds," NPR, November 6, 2025, https://www.npr.org/2025/11/06/g-s1-96437/trump-immigration-judges-fired.
[50] Kocher, "Asylum Denial Machine."
[51] Kocher, "Asylum Denial Machine."
[52] Kocher, "Asylum Denial Machine."
[53] Dzubow, "Immigration Court Data."
[54]Dzubow, "Immigration Court Data."
[55] Dzubow, "Immigration Court Data."
[56] Charles Grassley and Jim Jordan, letter to Merrick Garland, July 20, 2022, 1, https://www.grassley.senate.gov/imo/media/doc/grassley_jordan_to_justice_deptimmigrationjudges.pdf.
[57] See Stephen Dinan, "Exclusive: 'Unprecedented' Upheaval in Immigration Courts from Biden's Bid to Reshape the Agency," *Washington Times*, June 20, 2022, https://www.washingtontimes.com/news/2022/jun/20/doj-engaged-courtpacking-steroids-immigration-jud/.

judges and installing judges deemed to be friendlier to the immigrants whose cases they hear ...' [S]uch a purge is reprehensible and potentially illegal".[58]

And, in terms of hiring IJs, a well-publicized investigation by DOJ's Offices of Professional Responsibility (OPR) and the Inspector General (OIG) concluded that "the most systematic use of political or ideological affiliations in screening candidates for career positions [during the George W. Bush administration] occurred in the selection of IJs".[59]

It is remarkable how asylum grant rates ebb and flow over succeeding administrations. The average grant rate during fiscal years 1996-2000 (Clinton administration) was 27% (ranging from 17% to 36%); during fiscal years 2002–2008 (Bush administration) was 41% (38%–47%); during fiscal years 2010–2016 (Obama administration) was 53% (44%–67%); during fiscal years 2018–2020 (Trump administration) was 31% (29%–34%); during fiscal years 2022–2024 (Biden administration) was 49% (47%–50%); and from February to August 2025 (Trump administration) was 22%.

Clearly, the priorities of each administration must play some role in the shifting approval rates. But it is certainly ironic that the average asylum grant rate was dramatically higher during the Bush administration than it was during the Clinton administration. In any event, once data becomes available, it will be very illuminating to compare individual IJs asylum grant rates under President Biden and Trump for those who served under both administrations.

Alternative Contributing Factors

I will propose two additional factors that I believe to have great power in explaining the plunge in asylum grant rates.

Trump Attorney General

Could the AG's ability to change the federal government's interpretation (binding on IJs and the BIA) of the asylum statute have played a role in the rapidly declining asylum grant rates during President Trump's first term – and, conversely, in the rapidly increasing grant rates early in the Biden administration? Very likely, yes.

[58] Dinan, "'Unprecedented' Upheaval in Immigration Courts."
[59] U.S. Department of Justice, Office of Professional Responsibility and Office of the Inspector General, *An Investigation of Allegations of Politicized Hiring by Monica Goodling and Other Staff in the Office of the Attorney General* (2008), 137, https://oig.justice.gov/sites/default/files/legacy/special/s0807/final.pdf.

The INA provides that the "determination and ruling by the [AG] with respect to all questions of law [relating to the immigration and naturalization of aliens] shall be controlling" on the federal government.[60] While DOJ regulations state that the BIA is the "appellate body charged with the review" of IJ decisions and "through precedent decisions, [it] shall provide clear and uniform guidance to DHS, the [IJs], and the general public on the proper interpretation and administration of the [INA] and its implementing regulations",[61] the regulations also make clear that "**decision[s] of the [BIA] shall be final except in those cases reviewed by the [AG]** in accordance with"[62] the following: The BIA "shall refer to the [AG] for review of its decision all cases that … [t]he [AG] directs the [BIA] to refer to him", "[t]he Chairman or a majority of the [BIA] believes should be referred to the [AG] for review", or the SHS "refers to the [AG] for review.[63]

As Emma Carroll has explained, while "[t]he [AG] … created the BIA … to render final decisions in immigration adjudications … such decisions have always been subject to the [AG]'s review."[64] Further, Carroll noted that the AG "may review any type of case, with any type of disposition, at any time, and for seemingly any purpose."[65] Of course, the AG's decisions on review may themselves be overturned by a federal court or by a future AG.

On June 11, 2018, President Trump's AG Jeff Sessions overturned a BIA decision on review in *Matter of A-B-,*[66] in the course of which he made important clarifications to the meaning of key provisions of the INA's asylum statute. In a typical reaction from the immigrant advocacy community, the Immigrant Legal Resource Center proclaimed that AG Sessions' decision "highlights the Trump administration's broad and unrelenting attacks on due process for asylum seekers."[67]

[60] Immigration and Nationality Act § 103(a)(1), 8 U.S.C. § 1103(a)(1), https://www.govinfo.gov/content/pkg/USCODE-2024-title8/pdf/USCODE-2024-title8-chap12-subchapI-sec1103.pdf.
[61] 8 C.F.R. § 1003.1(d)(1), https://www.govinfo.gov/content/pkg/CFR-2025-title8-vol1/pdf/CFR-2025-title8-vol1-sec1003-1.pdf.
[62] 8 C.F.R. § 1003.1(d)(7)(i) (emphasis added).
[63] 8 C.F.R. § 1003.1(h).
[64] Emma Carroll, "One Step Forward, Two Steps Back: How Attorney General Review Undermines Our Immigration Adjudication System," *University of Colorado Law Review* 93 (Winter 2022): 189, 199, https://scholar.law.colorado.edu/cgi/viewcontent.cgi?params=/context/lawreview/article/1029/&path_info=07_93UColoLRev189_2022_.pdf (footnotes omitted).
[65] Carroll, "One Step Forward, Two Steps Back," 201.
[66] *Matter of A-B-*, 27 I&N Dec. 316 (Att'y Gen. 2018), https://www.justice.gov/eoir/page/file/1070866/dl?inline=.
[67] Immigrant Legal Resource Center, "Matter of A-B- Considerations," September 27, 2018, https://www.ilrc.org/resources/matter-b-considerations.

In the six-month period leading up to *Matter of A-B-* (Dec. 2017–May 2018), IJs' average asylum grant rate was 36%. In the six-month period following *Matter of A-B-* (July-Dec. 2018), the average asylum grant rate fell to 31% – a drop of five percentage points or 14%. This decline lends itself to the inference that *Matter of A-B-* had an impact on grant rates.

Such an inference would certainly be bolstered had *Matter of A-B-* been rescinded and grant rates subsequently risen. Indeed, this is exactly what happened. On June 16, 2021, President Biden's AG Merrick Garland decreed that "the decisions in *A-B-I* and *A-B-II* should be vacated in their entirety", IJs and the BIA "should no longer follow [them] when adjudicating pending or future cases" and "pending rulemaking, [IJs and the BIA] should follow pre-*A-B-I* precedent."[68] The Catholic Legal Immigration Network proclaimed that these "decisions to vacate some of the most harmful Trump-era [AG] decisions on asylum is a very welcome development for asylum representatives."[69]

In the four-month period leading up to AG Garland's decision (Feb. 2021 – President Biden's first full month in office – to May 2021), the average asylum grant rate was 36%. In the six-month period following Garland's decision (July–Dec. 2021), the average grant rate jumped to 52% – an increase of 16 percentage points or 44%.

The dramatic increase in grant rates in the months following AG Garland's decision lends additional credence to the proposition that an AG's ability to modify the government's interpretation of the INA can result in large impacts on grant rates.

On September 2, 2025, AG Pam Bondi issued *Matter of S-S-F-M-*[70], overruling AG Garland's decision and restoring *Matter of A-B-* and *Matter of A-B-[II]* in all pending or future cases. It will be interesting to see, once data becomes available, whether the average grant rate continues its decline after falling to 19% level in August.

Biden and Harris Presidential Campaign Fears

Could panic by the Biden and subsequently the Katrina Harris campaigns over the upcoming 2024 presidential election have played a role in plummeting asylum grant rates? Very likely, yes.

[68] *Matter of A-B-*, 28 I&N Dec. 307, 309 (Att'y Gen. 2021), https://www.justice.gov/eoir/page/file/1404796/dl?inline=.
[69] Catholic Legal Immigration Network, "Attorney General Garland Vacates Matter of A-B- and Matter of L-E-A-," July 28, 2021, https://www.cliniclegal.org/resources/attorney-general-garland-vacates-matter-b-and-matter-l-e.
[70] *Matter of S-S-F-M-*, 29 I&N Dec. 207 (Att'y Gen. 2025), https://immpolicytracking.org/policies/ag-bondi-issues-matter-of-s-s-f-m/#/tab-policy-documents.

Consider that polling conducted by Gallup in August 2021 indicated that 76% of Democrat respondents, 37% of independents and 9% of Republicans approved of President Biden's handling of immigration.[71] Then:

- Gallup's polling in February 2023 indicated that approval of Biden's handling of immigration had decreased by 14 percentage points among Democrats -- to 62%, six percentage points among independents – to 31%, and three percentage points among Republicans – to 6%.[72]
- Gallup's polling in February 2024 indicated that Democrats' approval had decreased by an additional seven percentage points – to 55%, independents' had decreased by an additional seven percentage points – to 24%, and Republicans' had decreased by an additional three percentage points, to 3%.[73]

Thus, from early to late in the Biden administration, Democrats' support of President Biden's handling of immigration had decreased by 21 percentage points or 28%, independents' had decreased by 13 percentage points or 35%, and Republicans' had decreased by six percentage points or 67%.[74]

Consider that Todd Bensman, my former colleague at CIS who is now serving in the Trump administration, reported in February 2024 that "Just a month ago, thousands of economic migrants a day crossing illegally ... over the Rio Grande into Eagle Pass, Texas, submerged U.S. Border Patrol and Texas State military forces, mesmerized the international media, and – significantly – pounded Joe Biden's re-election poll numbers."[75]

[71] Jeffrey Jones, "Mostly Pre-Afghanistan Turmoil, Biden Job Approval 49%," Gallup, August 20, 2021, https://news.gallup.com/poll/354017/mostly-pre-afghanistan-turmoil-biden-job-approval.aspx (see "complete question responses and trends").

[72] Megan Brenan, "Biden Job Approval at 42%; Below 40% on Four Issues," Gallup, February 28, 2023, https://news.gallup.com/poll/471206/biden-job-approval-below-four-issues.aspx (see "complete question responses and trends").

[73] Megan Brenan, "Biden's Job Approval Edges Down to 38%," Gallup, February 23, 2024, https://news.gallup.com/poll/610988/biden-job-approval-edges-down.aspx (see "complete question responses and trends").

[74] See also George Fishman, "Under Biden, Democrats Shifted on Immigration," Center for Immigration Studies, April 16, 2025, https://cis.org/Report/Under-Biden-Democrats-Shifted-Immigration.

[75] Todd Bensman, "Inside 'Zone 47': Biden's Ruthless Mexico Immigration Crackdown Is Working, but Media Won't Tie Him to It," Center for Immigration Studies, February 13, 2024, https://cis.org/Bensman/Inside-Zone-47-Bidens-Ruthless-Mexico-Immigration-Crackdown-Working-Media-Wont-Tie-Him-It.

Consider that on July 16, 2024, Melanie Mason concluded in Politico that "[a] migrant surge under Biden ... has stirred a visceral public response beyond the border states, including in heavily Democratic cities"[76], that, on the next day, Christine Paz concluded in Vox that "[n]onwhite voters and especially Latino voters are more likely than in the past to want less immigration, and anti-immigrant sentiment is rising across all partisan groups, including among Democrats",[77] and that on election day, Miriam Jordan reported for the New York Times that:

> The surge in migration across the southern border, which reached record levels during the Biden administration, has reverberated across the country and hardened many Americans' views on immigration.
>
> While Republican voters have shown the biggest shift, Democrats and independents have also moved to the right, according to polls conducted in recent months.[78]
>
> Republicans, Democrats and independents interviewed by The Times blamed the Biden administration for failing to acknowledge the chaos at the border and promptly take aggressive steps to address it.[79]

I could see these polling results, and the public's souring attitude towards immigration, causing consternation in the Biden campaign. Could such consternation have precipitated damage control by the Biden administration in the form of ramped up immigration enforcement and lower asylum grant rates?

Well, it certainly did precipitate ramped up immigration enforcement ... in Mexico. Mr. Bensman reported that:

> President Biden, facing devastating poll numbers from the fall months' escalating border catastrophe, somehow maneuvered Mexico President Manuel Lopez-Obrador into doing the dirty work necessary on his side to quickly calm the most camera-visible chaos on the American side.

[76] Melanie Mason, "How Trump and Republicans 'Won the War' on Immigration," *Politico*, July 16, 2024, https://www.politico.com/news/2024/07/16/trump-republicans-immigration-00168838.
[77] Christine Pax, "The Clever Politics of Republicans' Anti-Immigrant Pitch," *Vox*, July 17, 2024, https://www.vox.com/2024-elections/361155/rnc-2024-republican-immigration-border-biden-policy-invasion-legal-gop.
[78] Miriam Jordan, "Voters Were Fed Up Over Immigration. They Voted for Trump," *New York Times*, November 6, 2024, https://www.nytimes.com/2024/11/06/us/trump-immigration-border.html (paywall).
[79] Jordan, "Voters Were Fed Up Over Immigration."

> After Biden and his chief lieutenants returned from mysterious diplomatic missions to Mexico City in late December with a still-secret deal in hand, Mexico's central government mounted one of the most epic domestic anti-illegal-immigration operations in recent memory.[80]

Mr. Bensman concluded that "[s]ome of the operations done at Biden's behest have proven ruthless", explaining:

Conclusion

As President Barack Obama once told House Majority Leader Eric Cantor (R-Va.), "Elections have consequences ... and I won"![81] I would add that "Election campaigns also have consequences." Among those consequences seem to be changes in IJs' asylum grant rates – whether because of an administration's philosophy as to immigration or because of a campaign's electoral panic.

Appendix

Immigration Judge Asylum Grant Rate

Administration	Fiscal Year	Month	Asylum Grants	Asylum Denials	Asylum Grant Rate
Clinton	FY1996		5,131	25,181	17%
Clinton	FY1997		6,586	21,729	23%
Clinton	FY1998		7,309	20,217	27%
Clinton	FY1999		8,351	18,137	32%
Clinton	FY2000		9,170	16,016	36%
Clinton	**FY1996–2000**		**36,547**	**101,280**	**27%**
Clinton-Bush	FY2001		10,007	14,633	41%
Bush	FY2002		10,979	17,969	38%
Bush	FY2003		13,379	21,868	38%
Bush	FY2004		13,025	20,257	39%
Bush	FY2005		11,711	18,537	39%
Bush	FY2006		13,302	15,958	45%
Bush	FY2007		12,856	14,397	47%

[80] Bensman, "Inside 'Zone 47.'"

[81] See Mackenzie Weinger, "Woodward Book Dishes on Debt War," *Politico*, September 5, 2012, https://www.politico.com/story/2012/09/woodward-book-dishes-on-debt-war-080809.

Bush	FY2008		10,885	12,717	46%
Bush	**FY2002–2008**		**86,137**	**121,703**	**41%**
Bush-Obama	FY2009		10,268	10,719	49%
Obama	FY2010		9,875	9,050	52%
Obama	FY2011		11,495	9,959	54%
Obama	FY2012		11,607	5,808	67%
Obama	FY2013		11,055	9,437	54%
Obama	FY2014		9,691	9,716	50%
Obama	FY2015		9,042	9,215	50%
Obama	FY2016		9,723	12,184	44%
Obama	**FY2010--2016**		**72,488**	**65,369**	**53%**
Obama-Trump	FY2017		11,605	18,215	39%
Trump		Dec. 2017	892	1,617	36%
Trump		Jan. 2018	1,143	1,930	37%
Trump		Feb. 2018	1,147	2,157	35%
Trump		Mar. 2018	1,337	2,510	35%
Trump		Apr. 2018	1,498	2,542	37%
Trump		May 2018	1,446	2,751	34%
Trump		June 2018	1,011	2,173	32%
Trump		July 2018	1,074	2,439	31%
Trump		Aug. 2018	1,231	2,704	31%
Trump		Sept. 2018	1,157	2,573	31%
Trump	FY2018		14,248	27,462	34%
Trump		Oct. 2018	1,715	3,863	31%
Trump		Nov. 2018	1,576	3,276	32%
Trump		Dec. 2018	1,175	2,551	32%
Trump	FY2019		20,879	46,755	31%
Trump		**Dec. 2017–May 2018**	**7,463**	**13,507**	**36%**
Trump		**July 2018–Dec. 2018**	**7,928**	**17,406**	**31%**
Trump	FY2020		17,530	42,595	29%
Trump	**FY2018–2020**		**52,657**	**116,812**	**31%**
Biden		Feb. 2021	479	999	32%
Biden		Mar. 2021	869	1,355	39%
Biden		Apr. 2021	815	1,393	37%
Biden		May 2021	726	1,339	35%
Biden		June 2021	674	1,002	40%
Biden		July 2021	1,081	952	53%
Biden		Aug. 2021	1,284	1,207	52%
Biden		Sept. 2021	1,351	1,313	51%
Trump-Biden	FY2021		9,993	15,166	40%
Biden		Oct. 2021	1,432	1,527	48%
Biden		Nov. 2021	1,568	1,347	54%
Biden		Dec. 2021	1,561	1,333	54%
Biden	FY2022		25,865	27,533	48%
Biden		**Feb. 2021–May 2021**	**2,889**	**5,086**	**36%**
Biden		**July 2021–Dec. 2021**	**8,227**	**7,519**	**52%**
Biden	FY2023		36,149	35,989	50%

Biden		Oct. 2023	3,197	2,820	53%
Biden		Nov. 2023	3,096	2,841	52%
Biden		Dec. 2023	2,663	2,582	51%
Biden		Jan. 2024	3,012	3,088	49%
Biden		Feb. 2024	3,140	3,058	51%
Biden		Mar. 2024	3,228	3,297	49%
Biden		Apr. 2024	3,224	3,625	47%
Biden		May 2024	3,275	3,858	46%
Biden		June 2024	2,749	3,240	46%
Biden		July 2024	2,934	3,661	44%
Biden		Aug. 2024	2,624	4,016	40%
Biden		Sept. 2024	2,319	3,865	38%
Biden		Oct. 2024	2,741	4,577	37%
Biden	FY2024		35,461	39,951	47%
Biden	**FY2022–2024**		**97,475**	**103,473**	**49%**
Biden		Oct. 2024	2,741	4,577	37%
Biden		Nov. 2024	2,213	4,168	35%
Biden		Dec. 2024	2,062	3,762	35%
Biden-Trump		Jan. 2025	2,612	5,412	33%
Trump		Feb. 2025	2,520	7,342	26%
Trump		Mar. 2025	2,724	8,751	24%
Trump		Apr. 2025	2,600	9,435	22%
Trump		May 2025	2,556	9,511	21%
Trump		June 2025	2,455	7,890	24%
Trump		July 2025	2,023	7,743	21%
Trump		Aug. 2025	1,777	7,440	19%
Trump	**Feb.–Aug. 2025**	**Feb.–Aug. 2025**	**16,655**	**58,112**	**22%**

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