



IMMIGRATION

Biden administration quietly erasing immigration court caseload: 'De facto amnesty'

by [Anna Giaritelli, Homeland Security Reporter](#) | 
June 24, 2022 06:00 AM



Federal prosecutors are quietly dismissing stacks of cases against [illegal immigrants](#) under a [Biden administration](#) mandate that could be on pace to effectively pardon 1 million people by 2024, according to leaked information reviewed by the *Washington Examiner*.

Attorneys for U.S. Immigration and Customs Enforcement have begun to throw out tens of thousands of the 2 million backlogged cases in immigration court following a political appointee's order not to go after illegal border crossers from before the November [2020 election](#).

“This is a de facto amnesty,” said an ICE federal prosecutor who spoke with the *Washington Examiner* on the condition of anonymity.

The *Washington Examiner* obtained leaked video recordings of virtual meetings that Kerry Doyle, ICE's principal legal adviser, held with the more than 1,200 ICE prosecutors who bring cases against illegal immigrants nationwide, in which she explained in detail who should not be targeted for deportation. Illegal immigrants identified as national security and public safety threats, or those w
the border illegally after Nov. 1, 2020, would be the onl
pursue. All others would be dropped.



"As the memo explains — I think pretty clearly — we've put our thumb sort of heavily in favor of dismissal and durable solutions," Doyle told her workforce in a private town hall meeting on April 14. "Even if you've spent a lot of time on the case, if it's a nonpriority, you should be moving to offer [prosecutorial discretion] in that case."

BORDER PATROL CHIEFS UNDER THREE PRESIDENTS WARN BIDEN ON 'WHIPPING' DISCIPLINE

Doyle's mandate to close out cases took effect on April 25. An indicator of how quickly ICE has moved is the number of cases wiped out in those two months. Between 60,000 and 80,000 cases have been closed, according to the ICE attorney. The total case closures since the start of fiscal year 2022 last October is more than 97,000, according to data from the Transactional Records Access Clearinghouse, a research organization at Syracuse University in New York. Case closures eight months into 2022 are already up fourfold from all of 2021, another sign of how quickly ICE prosecutors are moving to clear the books.

If the agency's 1,200 prosecutors keep the current pace of 60,000-80,000 case closures every two months, ICE could hit 360,000 to 480,000 closed cases by next April and 1 million by early summer 2024, months before the presidential election.

Transactional Access Records Clearinghouse
[/https://trac.syr.edu/phptools/immigration/court_backlog/court_proctime_outcome.php/](https://trac.syr.edu/phptools/immigration/court_backlog/court_proctime_outcome.php)

Doyle cited the change in policy as a means of addressing the court backlog, which has exploded from 522,000 in 2016, according to Migration Policy Institute [data](#).

And while the change stops short of the left-wing goal of abolishing ICE, the Biden administration policy has severely undercut the immigration law enforcement agency, ICE insiders told the *Washington Examiner*.

"Congress hasn't passed it, but [Homeland Security Secretary Alejandro] Mayorkas's chief lawyer at ICE is telling all prosecutors to dismiss cases. Once it's dismissed, they're not required to check in with you anymore," said the ICE federal prosecutor who spoke with the *Washington Examiner* on the condition of anonymity.

Since President Joe Biden took office, the number of noncitizens encountered attempting to enter the country illegally has soared, surpassing 2.75 million encounters as of last month. In that time, U.S. border officials took custody of and released into the United States 1,049,532 people, according to Justice Department court documents filed over the past year. Those released by the Border Patrol are told to show up to court about their immigration violations, an indicator of how many of the 2 million backlogged cases are from the Biden administration and how many others are being dismissed.

Information reviewed by the *Washington Examiner* shows a limited number of cases won't be dismissed under the new policy. Fewer than 50 cases fall under the national security priority and no more than 25,000 would be deemed a public safety threat. Illegal immigrants with criminal records would not be automatically considered a threat. A person who had been previously deported and for illegally crossing the border again would also not be



"I don't see how you could argue that being a public safety concern — just the illegal reentry," Doyle said in the April 14 virtual town hall with employees, adding that there could be an argument that they fall under national security or border crossing priorities, but each case is unique.

"We aren't telling you, 'OK, if there's ... only two DUIs, it's not a priority and there's three DUIs, it is a priority,'" Doyle said. "It will depend ... on that particular case. Was the DUI, the two DUIs in the last two months? Or were the DUIs 20 years ago and the person ... shows that they're now ... being rehabilitated. They're now in recovery. And things are different. I mean, those are two very, very different scenarios."

In one example, Doyle said in cases in which a person has requested asylum and received a work permit while they await that asylum decision, an attorney should "as a general rule" still move to dismiss the case despite it costing the individual his or her ability to work legally in the country. She provided no alternative for the person to find work.

American Immigration Lawyers Association President Allen Orr commended the policy move as a way to address court backlogs, adding that the use of “prosecutorial discretion” was “nothing new or original.”

But the ICE attorney said the new policy leaves little room for prosecutors to use their own judgment.

“This mandatory requirement was imposed under the guise of ‘prosecutorial discretion’ and allegedly for the purpose of freeing up busy immigration prosecutors to focus on the most important cases. But this is a canard. There is no actual discretion,” the ICE attorney said. "Do as Doyle commands or else.”

Andrew R. Arthur, former immigration judge and resident fellow of law and policy at the right-leaning Center for Immigration Studies in Washington, pointed out that Doyle's mandate is illogical and that the administration is forcing attorneys' hands.

“The whole idea behind ‘prosecutorial discretion’ is that the prosecutor exercises it or not. ‘Mandatory prosecutorial discretion’ is an oxymoron,” Arthur wrote in a recent blog [post](#).

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Tens of thousands of noncitizens who have been cleared from the immigration court dockets over the past eight weeks may now apply to become permanent legal residents, the prerequisite to becoming a citizen. An illegal border crosser is barred from applying for legal permanent residency as long as his or her case is pending in court. With no case pending, they may apply through a DHS agency, U.S. Citizenship and Immigration Services, to have their prior illegal presence waived.

For example, someone who overstayed a visa and married a U.S. citizen would be able to ask USCIS to waive the previous unlawful status, enabling him or her to apply for legal permanent residency. Others will not be eligible unless they have a suitable citizen sponsor, typically a close family member.

Once approved, they may apply for adjustment of status to citizenship after five years.

"All those removable aliens will be able to live and work in the United States indefinitely — which, in this context, means for until they themselves decide to leave. That is the definition of amnesty," Arthur wrote.



Legal permanent residents no longer have to extend their temporary work permits — they have permanent approval to work in the country. Once citizens, they are afforded the same ability to apply for any federal, state, or local benefits and assistance.

The Department of Homeland Security and ICE did not respond to requests for comment.

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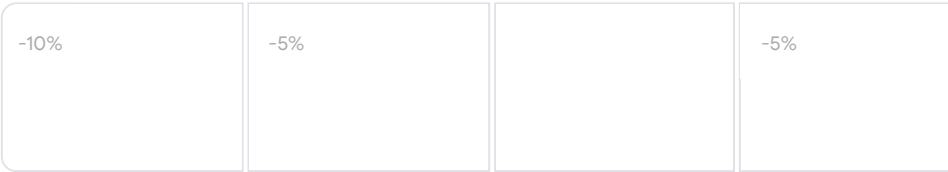
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