Administrative Volatility and Immigration Enforcement: The Structural Sources of Instability in a Static Statute

Ronit Luthra, Ronald Odhiambo Omuthe*
ronitluthra@icloud.com

ABSTRACT

Throughout decades of political change, the United States has governed immigration through a largely unchanged statute, and utilized executive orders and memoranda as a way to reshape enforcement. Although the Immigration and Nationality Act sets the grounds for admission and removal, it leaves the system's daily operation to each new administration. This creates enforcement volatility, being defined as sudden and repeated shifts in policy and outcomes without any change in law.

While existing research explains why enforcement is easy to reverse, it seldom traces how those reversals affect fairness in adjudication, a gap this paper addresses. Firstly, this explanatory sequential mixed methods study tracks four indicators from immigration courts, those being pending caseload and asylum grant rates, along with the pace of completions and variation across judges. Additionally, it utilizes a confidential key informant interview with an experienced immigration attorney, explaining how movement reaches individual cases.

Every indicator moved while the statute remained unchanged, as asylum grant rates fell from 52.6% to 19.2% within two years. The interview identified four ways this movement affects cases. Through research, it is evident that this instability is built into the system's legal and institutional design. The Act delegates broad authority to the Executive with limited judicial review, while immigration courts remain within the Department of Justice. This helps us understand that fairness depends on whether individuals can predict the rules governing their cases. Because of this, the paper proposes four reforms making policy harder to reverse while preserving executive discretion.

INTRODUCTION

Throughout decades of political change, Presidents have sought to reshape immigration enforcement, and utilized executive instruments as a way to change the law without changing its text. Since the substantial amendments of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and the REAL ID Act of 2005, the statute's grounds of removal and its basic allocation of enforcement authority have stood relatively still [1]. Even the Laken Riley Act of 2025, which expanded mandatory detention, left the

grounds of removal and the statutory standard for asylum intact [2]. Enforcement volatility, being defined as recurrent and abrupt shifts in policy and outcomes that arrive through executive instruments while the statute itself stays unchanged, has appeared under administrations of both parties, illustrating that the gap between a static statute and a moving Executive has been deeply rooted in immigration governance regardless of who governs. For example, a noncitizen whose removal case was pending in 2017 confronted the broad enforcement regime of Executive Order 13768, and the same case still pending in 2021 confronted the narrower priorities issued under Executive Order 13993. By 2025, it may well have confronted a third, as Executive Order 14159 revoked those priorities. These shifts arrived through executive instruments, whether it be presidential orders and agency memoranda, or Attorney General precedent decisions and guidance that, although formally nonbinding, is operationally decisive. Adding to this, the immigration court backlog expanded to levels without precedent before contracting in fiscal year 2025 [3], [4], while asylum grant rates fell from above 50% to under 20% between September 2023 and August 2025 under an unchanged statutory standard [5], [6]. By illustrating that outcomes moved this sharply without any change in statute, it is being supported that the stance of the administration at the moment of decision does real work alongside statutory eligibility and factual merit, an inference tested by the Results section.

Studying this issue is important because it shows how a static statute can still produce a moving system, but also shows the uncertainty that respondents must face. This helps us understand how fairness can erode inside a system whose governing law never changes. This paper will therefore examine why enforcement policy shifts so sharply across presidential administrations when the governing statute does not change, and what that volatility does to the fairness of adjudication, a question that the existing scholarship has raised without answering in an integrated way. Two subsidiary questions follow, first what legal and institutional features make enforcement policy easy to reverse, and then through what mechanisms that reversibility travels from a signed memorandum to an individual case. In answering them, this paper contributes an integrated account that links the legal design making reversal easy to its measured effects on adjudication.

Stability, being defined as continuity in the standards that shape enforcement and adjudication over time, still allows results to differ from case to case. Fairness, being defined as predictability and the consistent treatment of similarly situated individuals, requires a defense of its own. Lon Fuller (1969), a legal philosopher who taught at Harvard Law School, explains that congruence between declared rules and official action, and constancy of law through time, are among the internal conditions of legality, illustrating that a total failure of either produces something that cannot properly be called a legal system at all [7]. Joseph Raz (1977), a legal philosopher associated with Oxford and Columbia published in the Law Quarterly Review, furthers this by adding that the rule of law is valuable because it enables people to plan, illustrating that its violation frustrates reliance regardless of whether the substantive rules are just [8]. Collectively, these findings show fairness to be situated in a broader context relating to the predictability of governance versus the generosity of outcomes - as a restrictionist administration and an expansionist one can each run a fair system, so long as the ground rules hold steady beneath cases already in motion - reinforcing its relation to this debate.

The structure behind enforcement volatility begins with an Act that confers broad authority over enforcement implementation while providing almost no mechanism that requires continuity across administrations, an authority that judicial doctrine has largely shielded from sustained review. Adding to this, the immigration courts remain housed within the Department of Justice under politically appointed leadership. By allowing enforcement policy to be reorganized rapidly and with limited procedural friction, it is displayed how stability, where it exists, depends upon political continuity, with no structural commitment in place to secure it. Through research, it is evident that while enforcement policy appears to move with each administration, its stability is ultimately contingent upon legal structure, and can be undermined through broad statutory delegation and dependent adjudication, especially where judicial review remains limited.

LITERATURE REVIEW

Immigration law has long been understood as a statutory domain in which Congress supplies the basic architecture, while the Executive supplies much of how that law operates through charging choices and docket management, illustrating the growing importance of administrative reversals that follow leadership transitions.

A. Enforcement Discretion and its Protection From Review

First and foremost, the doctrine governing enforcement discretion offers the Executive the potential to change course with little interference from courts. In Heckler v. Chaney, the Supreme Court held that an agency's decision not to enforce is presumptively unreviewable, reasoning that enforcement choices involve a balancing of priorities and resources that courts are poorly positioned to second guess [9]. By illustrating that individual enforcement choices sit at the far edge of what courts will examine, it is being supported that an administration can redirect enforcement without judicial approval - the direct requirement behind rapid reversal. Adding to this, in Reno v. American-Arab Anti-Discrimination Committee, the Court framed the decision to begin removal as a central exercise of prosecutorial discretion, and interpreted 8 U.S.C. § 1252(g) to bar review of decisions to commence proceedings and adjudicate cases [10], [11], a bar that also covers decisions to execute removal orders. By illustrating that discretion is embedded in the statutory scheme itself, it is displayed how enforcement can vary across administrations without any statutory revision. Connected to this, in Arizona v. United States, the Court emphasized that removal reflects a nationally coordinated system requiring priority setting, and invalidated most of Arizona's effort to build a parallel enforcement regime on that basis [12], establishing the Executive as the system's practical manager. In United States v. Texas, the Court held that the plaintiff states lacked standing to challenge federal removal priorities [13], illustrating that enforcement guidance is difficult to even bring before a court. Although Congress granted states standing in 2025 to challenge certain detention and parole decisions [2], that path runs in a single direction, adding friction to reversals that relax enforcement while leaving expansions of enforcement, and the broader body of priority guidance, as shielded as before. Collectively, these holdings support nothing more than the Executive

being able to reverse enforcement policy with limited judicial friction, functioning together as a lasting foundation for enforcement volatility.

B. The Friction That Does Exist, and Why It Falls Short

Opposingly, some researchers argue that reversal does face friction, because administrative law requires agencies to explain themselves. For example, in Department of Homeland Security v. Regents of the University of California, the Court set aside the rescission of the Deferred Action for Childhood Arrivals program because the agency failed to consider alternatives to full rescission and the reliance interests at stake [14]. Similarly, in Biden v. Texas, the Court permitted an administration to unwind its predecessor's border program, holding that the governing statute did not compel the program's continuation, while treating the memorandum effecting the change as final agency action subject to the Administrative Procedure Act [15]. Although this could be viewed as a success of administrative law from a minuscule point of view, it ultimately implies that this discipline is of a limited kind, as such review checks how a reversal is explained while the reversal itself still goes forward. It is outlined that, although an agency must explain itself, an administration that explains itself adequately may still unwind its predecessor's regime in full, because if a reversal only needs a better explanation, then review does not represent a real limit on reversal. The review is also occasional and slow, arriving years after the challenged guidance has already shaped pending cases, as Regents came three years after the DACA rescission [14], and it rarely reaches the memoranda and internal directives through which day to day adjustment occurs. Ultimately, the argument of administrative law disciplining reversal only reinforces the idea that procedural review governs the manner of change and leaves its frequency to each administration, a distinction that remains underdeveloped in the literature.

C. Presidential Administration and Enforcement as Policymaking

Furthering this, doctrinal discretion becomes policy formation in the hands of Presidents. Adam Cox & Cristina Rodríguez (2009, 2015), law professors at New York University and Yale whose work appears in the Yale Law Journal, argue that the modern President is the principal architect of immigration policy [16], [17]. This shows that Presidents can utilize enforcement tools such as deferred action and priority guidance to generate durable policy effects even when Congress cannot legislate, exemplifying how the statutory structure itself makes enforcement tools central to what immigration law means in practice. Hiroshi Motomura (2014), a professor of law at the University of California Los Angeles, mentions that the gap between the statute's formal breadth and its practical enforcement leaves millions of people living under a regime defined mainly by executive tolerance [18]. Shoba Sivaprasad Wadhia (2015), a professor of law at Pennsylvania State University, outlines the long use of prosecutorial discretion to shield sympathetic populations from removal [19], while her later study of the Trump era documents how the same tools were later used to withdraw that protection [20]. Jill Family (2012), a professor of law at Widener University, utilizes immigration law to examine how agencies govern through guidance documents, being defined as non legislative rules exempt from notice and comment procedures, adding that such instruments let agencies move quickly while the line separating them from binding rules remains

difficult to draw [21]. Collectively, these arguments support a constant back and forth in enforcement policy, by adding to presidential control the centrality of informality, as many priority shifts occur through guidance alone. Although persuasive, this body of work is primarily conceptual, explaining why presidential control matters without consistently measuring enforcement volatility or tracing it through institutional channels.

D. Adjudication Inside the Department of Justice

A second body of scholarship concerns where immigration adjudication is placed. Stephen Legomsky (2010), a professor of law at Washington University in St. Louis and a former chief counsel of United States Citizenship and Immigration Services, explains that the immigration courts, being housed within the Department of Justice and supervised by political appointees, lack the structural independence that neutral adjudication ordinarily requires [22]. Because of this, he proposes wholesale restructuring. Further supporting this, the American Bar Association's Commission on Immigration (2019) reached the same conclusion after a comprehensive system review, recommending an independent Article I immigration court [23]. Catherine Kim & Amy Semet (2020), legal scholars at Brooklyn Law School and the University at Buffalo published in the Georgetown Law Journal, analyzed more than 830,000 removal proceedings decided between 2001 and 2019. They found that the administration in power at the time of decision significantly predicted removal in certain circumstances, while the administration that appointed the judge did not carry the same weight, which they conclude suggests presidential influence "undermining the assumption of administrative adjudicators' independence" [24]. With the findings connecting political transitions to how cases are decided, even under a constant legal standard, it is evident that dependent adjudication turns into enforcement volatility in a measurable way. The Government Accountability Office (GAO), an independent and nonpartisan agency that works for Congress, mentions that the Executive Office for Immigration Review (EOIR) faces "a significant and growing backlog of cases pending before the immigration courts," alongside workforce and data management problems [4], [25]. By stretching cases across election cycles, delay increases the likelihood that a single case will be decided under several policy regimes, displaying how backlog becomes a channel through which enforcement volatility produces real uncertainty in people's lives. In summary, the institutional literature does document crisis conditions, but it still stops before connecting them to the devices that allow leadership transitions to alter adjudication so rapidly.

E. Attorney General Review and Doctrinal Whiplash

Connected to this, the link between dependent adjudication and legal change is clearest in the certification mechanism, through which the Attorney General can take up immigration cases for personal review and issue nationwide precedent. Ultimately proving this in full, a real world historical case study shows this to be true. Administrative closure, having been a real docket tool for the temporary suspension of a case on an immigration judge's docket, serves as an example of this theoretical research. In Matter of Castro-Tum, Attorney General Sessions sharply restricted immigration judges' authority to administratively close cases, removing a tool that had allowed coordination with collateral relief processes [26]. Three years

later, in Matter of Cruz-Valdez, Attorney General Garland overruled Castro-Tum and restored the prior understanding, relying in part on adverse appellate decisions [27]. The cycle then continued through other instruments, as the Department codified administrative closure by regulation in 2024 [28], a tool that Castro-Tum itself traced to at least the early 1980s [26], before Board of Immigration Appeals precedent in 2025 narrowed its practical availability [29]. This real world scenario demonstrates a doctrinal whiplash in which the stability of interpretation is tied to political turnover. It worked as a docket tool for decades. It then disappeared under one Attorney General and returned under a later one. Its history shows how immigration law can change in a system wide manner without congressional action, additionally furthering Legomsky's concern about political supervision of adjudicators [22] as an illustration of dependent adjudication in practice. Collectively, the theoretical evidence combined with an undeniable real world example supports nothing more than precedent being able to change with each Attorney General, though even scholarship diagnosing this whiplash rarely connects reversals to indicators such as time to decision or the distribution of outcomes across courts.

F. Empirical Evidence of Outcome Volatility

Moving from doctrine to data, empirical research supplies direct evidence that outcomes swing. Ramji-Nogales et al. (2007), a group of professors at Temple and Georgetown published in the Stanford Law Review, illustrate in their well known study Refugee Roulette that asylum grant rates differed so widely across immigration courts, and across judges within the same court, that the authors likened the system to a game of chance [30]. The Transactional Records Access Clearinghouse (TRAC), a nonpartisan data research organization long housed at Syracuse University, extends this picture over time through case level reporting, documenting sharp changes in grant rates over short windows without statutory amendment [5], [6]. Where Refugee Roulette shows outcomes varying across courts and judges, TRAC reveals them varying across time - both document volatility, simply in different forms. Similarly, the Migration Policy Institute (2018) diagnosed an asylum system in crisis well before the most recent surge, tying mounting backlogs to the interaction between processing choices at the border and adjudication capacity, a diagnosis used here only as historical framing [31]. Together, these findings establish the magnitude of enforcement volatility that any stability focused account must explain, although they do not demonstrate causation by themselves or integrate evidence from practice on how attorneys and clients experience those swings.

G. Background Allocation Rules and the Pressure on Discretionary Pathways

Finally, a distinct strand of policy analysis addresses long term allocation rules, including the statutory ceiling that caps any single country at 7% of preference visas and generates chronic queues regardless of any single administration's priorities. The Congressional Research Service (2020) documents the scale of the resulting backlog, most visible in the employment based categories, and models how the ceiling shapes it [32]. Although indirect, this presents a significant issue, as persistent queues in lawful pathways can push applicants toward the discretionary and humanitarian alternatives most exposed to reversal, even though per country caps are usually discussed as an equity problem.

H. The Gap

Read together, the literature establishes four propositions with unusual consistency, as prosecutorial discretion is foundational and largely shielded from review, and Presidents govern immigration through enforcement instruments. Adjudication, in turn, lacks structural independence, while outcomes fluctuate at magnitudes visible in public data. Although the literature agrees on these propositions, it has not supplied an integrated account of how these design choices combine to produce enforcement volatility as a predictable feature of the system, and of how that volatility moves through adjudication to reach similarly situated individuals. While doctrinal and institutional work explains why reversal is legally easy yet seldom measures its downstream effects, empirical work measures those effects yet seldom traces them to the channels that produce them. Two nearby literatures, the constitutional debate over plenary power and the federalism scholarship on state and local participation, are set aside on purpose, as the volatility examined here originates at the federal center. This paper therefore works across these gaps by pairing doctrinal analysis with longitudinal indicators, which original mechanism evidence then explains.

METHODOLOGY

This paper utilizes an explanatory sequential mixed methods design, which John Creswell & Vicki Plano Clark (2018), methodologists writing on research design, describe as a structure in which quantitative analysis is conducted first, and qualitative evidence is then used to account for the quantitative patterns [33]. It will first document enforcement volatility through public data, and then explain that volatility through mechanism evidence from practice. By pairing the two, it is displayed how public indicators show where outcomes move while practice explains what moves them, providing a more honed perspective.

A. The Quantitative Phase

To begin, the quantitative phase assembles four longitudinal indicators likely to respond to administrative change. With all four being drawn from adjudication before EOIR, none captures enforcement activity at the Department of Homeland Security or affirmative adjudication at United States Citizenship and Immigration Services. The first indicator concerns capacity and delay, utilizing pending caseload figures as reported by GAO and as tracked in TRAC's backlog data [3], [4], [25]. The two sources compile pending caseload differently, as GAO reports figures derived from EOIR's own reporting, while TRAC compiles case by case records obtained under the Freedom of Information Act, and because their totals do not always agree, the two series are reported separately.

The remaining three indicators concern the outcomes of adjudication, all derived from TRAC's case level reporting [5], [6]. Two of them follow asylum decisions over time, those being grant rates and monthly completions, while the third measures the dispersion of grant rates across judges. These measures are utilized as descriptive indicators of volatility and are never treated as self proving evidence of causation, as their function is to identify sudden breaks linked to administrations, along with dispersion across judges, which together frame the explanatory task for the qualitative phase. Each indicator is read against

three possible drivers, those being administrative stance (an administration's enforcement priorities), case composition (the volume and mix of incoming cases), and docket management protocols (the rules for scheduling and completing cases).

B. The Qualitative Phase

The qualitative phase, in turn, consists of a key informant interview with an immigration attorney, referenced throughout as [Redacted], who has practiced for more than two decades in a large northeastern metropolitan area. He represents asylum seekers and family based petitioners. His practice also includes applicants for lawful permanent residence. The interview is designed as mechanism evidence, being defined as evidence of how a cause travels to an outcome. Its themes are therefore reported as mechanistic perspectives from practice rather than generalizations. It tests whether the causal pathways emphasized in the literature, and suggested by the quantitative patterns, are observed in practice by an actor positioned to watch policy change move through the system at the case level. The interview was conducted over an online video call in November 2025.

The interview itself utilized a semi structured instrument targeting the concrete operational channels through which leadership transitions are experienced. It covered enforcement prioritization and prosecutorial discretion practice, alongside asylum adjudication behavior and docket management, with the timing effects of administrative delay forming a further topic. The transcript was then coded thematically for recurring mechanism claims capable of explaining volatility in the quantitative indicators, from which four themes emerged and are carried forward into the Results. Although other channels were raised, such as the transfer of cases between courts, they are not analyzed, as the interview did not provide enough evidence on them to support a claim.

C. Ethics and Confidentiality

The informant was told that the interview was part of a research study and that he could withdraw if he wished, and he participated voluntarily, giving informed consent both to the interview and to the use of quoted material. No compensation was offered, and the interview was documented through a written transcript, with no audio or video recording. In addition, the interview was conducted under a nondisclosure agreement, and the informant is anonymized throughout, being described only by his professional role and areas of practice, along with his region and approximate length of practice, a generality intended to convey his vantage point without allowing identification. Furthering this, with the informant being bound by professional duties of client confidentiality, the interview concerned patterns observed across his practice, so no individual case facts or client identifying details are reported. Direct quotations were shared with the informant before inclusion and, in places, lightly edited for length and grammar under his review, without changing the substance of any statement, while careful paraphrase is utilized where his exact words were not essential. The transcript is stored in a cloud account accessible only to the author and the research mentor, and it will be kept for one year before it is destroyed. Lastly, the protections above were adopted to meet the standards ordinarily applied to key informant research,

consistent with the principles of respect for persons and beneficence that govern research with human participants [34], along with the American Psychological Association's Ethics Code [35].

RESULTS

A. Quantitative Findings

1. Pending caseload

Over the period examined, the pending caseload grew substantially. GAO found that EOIR's pending caseload stood at roughly 1.8 million cases at the start of fiscal year 2023, more than triple the figure at the start of fiscal year 2017 [4]. Separately, TRAC's backlog tracking records a peak near 3.7 million cases at the close of fiscal year 2024 [3]. Although they differ in scale, both series share a direction, illustrating sustained and historically unprecedented growth from fiscal year 2017 through fiscal year 2024.

Fiscal year 2025 then reversed that direction, as the TRAC tracked backlog fell to roughly 3.4 million by August 2025, the first sustained decline in more than a decade [3]. Two conditions appear alongside that decline, as new case filings fell sharply [3] while monthly completions accelerated, most visibly in asylum cases. At the same time, at least 70 sitting immigration judges received termination notices from an administration that hired no new judges during the fiscal year [6]. The decline did not bring a comparable reduction in delay, as TRAC data still placed the average wait for a pending case above 600 days during 2025 [3].

2. Asylum grant rates

Asylum grant rates declined across the same period. TRAC data show the grant rate peaking at 52.6% in September 2023 and falling to 38.2% by August 2024. It reached 35.8% that October, before dropping to 19.2% by August 2025 [5], [6], a decline of roughly 63% from the peak. Three measurement cautions attach to these figures. First, the two TRAC reports measure different windows, so the 63% figure calculated from the peak should not be confused with the smaller declines their headlines describe [5], [6]. Second, TRAC calculates grant rates only over decisions on the merits, so cases resolved on other grounds fall outside them [5]. Finally, TRAC's own reporting found "a steady decline in grant rates without any apparent shift or break" when administrations changed [6].

3. Completion pace

Unlike the grant rate, the pace of adjudication did shift abruptly at the transition. Monthly asylum completions roughly doubled in the spring of 2025, peaking above 12,000 in April and May against the 6,000 to 7,000 that had prevailed under the prior administration, before settling at 9,269 in August 2025, still well above that earlier range [6].

4. Dispersion across adjudicators

Outcome variation was also recorded across adjudicators, not only across time. TRAC's judge level reporting, which covers each judge's asylum decisions over the six years through August 2025, records that within the San Francisco immigration court alone, individual judges' grant rates ranged from 4.8% to 97.1% [6], a measure that captures dispersion among adjudicators inside a single court. Its range shows an undeniable scenario where one court, applying one body of law, produced nearly every possible outcome, consistent with the disparities documented in Refugee Roulette nearly two decades earlier [30].

B. Qualitative Findings: Informant-Observed Patterns

The first informant-observed pattern concerns the speed and informality of policy change. The informant spoke to the idea that "policies can change overnight," describing governance conducted through memoranda and supervisory directives that require neither notice and comment procedures nor a transition period. He explained that such changes force attorneys to advise clients under conditions where expectations can be invalidated without warning, adding that the government's stance in removal proceedings can harden or soften without any formal change in law.

A second pattern concerns variation in outcome by assignment. The informant mentioned that "two clients with nearly identical facts can receive opposite outcomes depending on where their case lands," attributing this variation to differences in local implementation and docket pressure. He added that adjudicator practice varies as well, even though every case is governed by the same standard.

Building on this, the third pattern concerns the practical effect of docket pressure on discretion. The informant outlined that when dockets expand, adjudicators have less time per case, so discretion narrows in practice even as it remains broad on paper. He described the observable consequences as fewer continuances and thinner hearings, noting that the pressure to resolve cases quickly falls hardest on respondents who need time to build their cases, whether it be by gathering evidence and obtaining counsel, or by pursuing collateral relief.

The fourth and final pattern concerns client perception of the system's legitimacy. In the informant's words, "for many clients, the law feels secondary to politics," a perception he connected to the combination of frequent policy change and long waits, under which a respondent's hearing arrives whenever it arrives and is governed by whichever standard is then in force. He summed up the stakes by stating that "the system does not need to be generous to be just, but it does need to be stable."

DISCUSSION

A. Statutory Delegation and Easily Reversed Instruments

First and foremost, broad statutory delegation offers the Executive the potential to reverse enforcement policy without any statutory change. The Act is dense with grounds of admission and removal, and with

forms of relief [1], yet it does not decide how the system will be run day to day. It leaves the distribution of charging decisions and scarce detention capacity to the Executive, which also decides how enforcement attention is ordered across time and place. By illustrating that the statute leaves these choices open, it is being supported that each administration can redirect enforcement on its own terms - the direct requirement behind enforcement volatility. Adding to this, the doctrine reviewed in the Literature Review section supplies the enabling conditions, as enforcement volatility only requires that the main levers of change be hard to contest, a condition the four cases reviewed there clearly satisfy [9]–[13]. While a statutory compromise binds until Congress repeals it, a guidance based regime binds only until someone signs a new memorandum, as the scholarship on presidential administration illustrates [16], [17] - enforcement volatility becomes a function of electoral turnover. As the first informant-observed pattern portrays, the informant's report that policies change overnight is consistent with a system in which the binding instrument is a memorandum. Collectively, the theoretical evidence combined with this perspective from practice supports nothing more than enforcement policy being reversible with limited friction and without statutory change.

Opposingly, some argue that this delegation is a practical necessity, because enforcement operates across millions of individuals with finite resources and Congress cannot specify every enforcement decision in advance. Although this could be viewed as a complete justification, it ultimately implies only that discretion must exist, leaving open whether it must also be disciplined. It is outlined that, although prioritization is unavoidable, a system can still insist on stabilizing commitments such as durable procedural baselines or meaningful review of certain changes, because if discretion is never disciplined, then it does not represent a framework that people can rely upon. Ultimately, the argument of delegation being necessary only reinforces the idea that the modern immigration system does relatively little of this disciplining work, which explains why enforcement can be reorganized sharply across administrations without statutory revision.

B. Dependent Adjudication

Beyond delegation, dependent adjudication does carry these reversals into individual cases over time, posing a flaw in a system that promises equal treatment. Immigration judges sit within the Department of Justice under supervisory structures that differ sharply from Article III courts [22]. Inside that structure, the Attorney General retains authority to set binding nationwide precedent through certification, while Department leadership shapes the docket management tools that govern the pace and structure of proceedings. Illustrating the effect on litigants is the real world example of administrative closure. Castro-Tum, having been issued by a politically appointed official without any change in statute, forced cases awaiting collateral relief back onto crowded dockets [4], [26], removing the pause respondents had relied on while that relief was pending. While commentators frame this dependence mainly as a legitimacy problem, and it is one [22], [23], Kim & Semet (2020) illustrate that it is also a stability problem - the same immigration judges decided cases measurably differently under different sitting administrations [24]. Connected to this, when the forum itself responds to political stance, the system applies different procedural conditions across time in addition to different priorities, since continuance

practice and hearing pace shape outcomes by shaping the opportunity to present claims, as do pauses for collateral relief. Altogether, these arguments support the instability of dependent adjudication over time, by adding to delegated discretion a forum whose ground rules can be redefined by supervisory decision, leaving practitioners, as the informant observed, to treat the procedural terrain as unstable.

C. Interpreting the Indicators and their Limits

Furthering this, although no statutory amendment explains the backlog reversal, the conditions recorded alongside it do not all point toward administrative stance. With terminations reducing capacity, completions should have slowed, and although 18 judges hired in the final months of the prior administration aided the ramp up [6], the acceleration is most likely explained by changes in docket management protocols rather than in stance toward the merits of claims.

In contrast, some could argue that the backlog reversal reflects conditions at the border, because new filings fell sharply as fewer cases arrived [3], a shift in case composition that the Limitations section also acknowledges. Although this could be viewed as undermining the argument from a minuscule point of view, it ultimately implies a narrower reading, as the system's most basic output measure still changed direction within months of a transition through instruments that required no statutory revision. The part of that change not explained by case composition still traces to executive choices, whether it be about filing and staffing, or about docket management protocols [3], [6]. As such, the argument of border conditions driving the reversal only reinforces a narrower version of the idea that executive choices shape enforcement volatility.

A second objection is that the grant rate findings weaken the argument, as the decline proceeded steadily across the change of administrations, so the figures will not support an account in which outcomes jump at a change in party [6]. Through this example, it is illustrated that the argument faces a genuine constraint, as a steady decline could reflect shifts in case composition as much as administrative stance, and aggregate grant rates cannot separate the two. In fact, TRAC (2024) links an earlier sharp drop in fiscal year 2022 to docket initiatives that accelerated asylum proceedings under the prior administration [5], offering a perspective that both parties adjust outcomes through executive instruments, so why would a single change in party explain outcomes that executive instruments were already moving? Ultimately, research rebutting this argument outlines that the figures still establish magnitude, supporting the idea that although no single transition explains the decline, if the statute did not change, then something else did.

Where the grant rate declines steadily, completion pace moves in a sudden jump, making it the strongest single administrative signature in the dataset. By illustrating that monthly completions doubled within months of a transition, it is displayed how the pace of decisions, being the variable that docket management protocols control, responds to managerial direction more than to case composition, locating the clearest evidence of executive influence in how quickly cases are pushed through rather than in administrative stance. This finding also aligns with the third informant-observed pattern, as an accelerated pace offers a plausible mechanism through which, in the informant's experience, docket pressure narrows

practical discretion. TRAC's observation that asylum seekers have historically been "much less successful when the time required to make their case is arbitrarily shortened" suggests how pace can, over time, reach outcomes as well [5].

Finally, the dispersion finding speaks to a different dimension of the same problem. A range from 4.8% to 97.1% among judges inside one court illustrates that the practical chance of success attaches to the adjudicator who receives the case, so much so, that opposite outcomes for nearly identical cases are not out of the picture, as the informant observed in practice. Combined, the temporal and adjudicator level findings suggest that legal eligibility now works as a threshold requirement, while success also depends on the regime in force at the moment of decision and on the adjudicator assigned, illustrating that enforcement volatility has become a recurring feature of immigration governance.

D. Consequences for Fairness and the Rule of Law

Taken together, these findings leave fairness contingent. Because immigration adjudication necessarily includes discretion, and humanitarian relief will always involve judgment, a stable legal system allows outcomes to differ across cases. The rule of law demand established in the Introduction is more basic, requiring that people be able to predict the procedural conditions under which their cases will be decided. It also requires that similarly situated individuals not be separated by timing and assignment as administrative stance shifts, a demand of congruence and constancy that even a restrictionist system can satisfy [7], [8]. By allowing policy to be made through instruments that can be replaced quickly, and allowing the resulting shifts in management and precedent to reshape procedure from within an executive department, the structure undermines those conditions in combination, as judicial correction arrives only at the margins. The availability of a docket tool such as administrative closure can itself depend on the moment a case is heard. As the fourth informant-observed pattern portrays, such conditions can lead clients to believe the law is secondary to politics, a rational inference from what the first three patterns describe. As Motomura (2014) explains, for a large population the question that matters most has long been executive tolerance [18], and as Wadhia (2015, 2019) even added, that tolerance can be withdrawn quickly through the same tools that once extended it [19], [20].

At the same time, enforcement volatility carries distributional consequences that fall in one direction. A well resourced respondent can adapt, whether it be by retaining counsel quickly, or by pursuing several relief pathways at once against the chance that one survives a reversal, whereas a respondent with limited resources is more likely to experience delay as compounding hardship and rapid change as a direct threat. Refugee Roulette found that the quality of legal representation strongly shaped asylum outcomes [30]. With the cost of volatility falling on those least able to bear it, this presents a paramount issue, as the system turns unpredictability into unequal treatment.

E. Implications for Reform

When seeking to pursue the best possible solutions, research and planning should focus on combatting the flaws of enforcement volatility while also continuously integrating the significant benefits that discretion

offers, as each reform below answers a mechanism identified in the Results by raising the cost of reversal while preserving lawful discretion.

Firstly, Congress should codify limited procedural baselines that currently rest on instruments a later administration can withdraw, whether it be guidance and precedent, or regulation. The first informant-observed pattern suggests that enforcement volatility can enter most destructively through docket tools and informal implementation devices that can be revoked without transitional safeguards, and the administrative closure episode shows that even codification by regulation only moves the tool to a different reversible instrument [26]–[29]. For example, a statute might codify access to administrative closure in defined circumstances and clarify the standards for continuances tied to collateral relief. It could also impose minimum transparency requirements on large scale prosecutorial discretion guidance. Although none of this would eliminate discretion, it would change the legal default, so that an administration may still redirect enforcement resources without as easily unsettling the ground rules that determine whether respondents can meaningfully present claims.

Secondly, structural reform of immigration adjudication should be evaluated as a stability measure in addition to a legitimacy measure. Converting EOIR into an independent Article I tribunal is usually defended in terms of professionalism and perceived fairness [22], [23], and the findings here illustrate that independence also functions as a stabilizer. So long as adjudication sits inside the Department of Justice, a change in leadership can quickly reshape docket management and precedent through certification [26], [27], and the completion pace finding shows how immediately that reshaping registers in the pace of decisions. Opposingly, some argue that the cost is too high, as transition would be disruptive and independence carries accountability tradeoffs of its own. Although this could be viewed as a reason to wait, these are one time and manageable costs, weighed against a recurring structural harm.

Thirdly, the system needs a more disciplined approach to variation across adjudicators and courts, as the dispersion finding identifies assignment as a major determinant of outcome, a pattern the informant also observed in practice [6], [30]. A stability focused response requires greater consistency in how procedural standards are applied and how enforcement criteria are publicly explained, while leaving room for discretionary judgment. The Departments of Justice and Homeland Security can advance this by publishing transparent performance metrics and tying training to those published criteria. They can also release court and judge level data often enough to detect deviations.

Lastly, Congress should address the background allocation rules that magnify enforcement volatility by channeling applicants into discretionary pathways. Per country limits and related queue structures generate chronic delay for whole categories of applicants, which can push them toward the pathways most exposed to reversal [32]. Although reforming those rules would not directly solve enforcement volatility, even modest statutory adjustments that reduce extreme backlogs shrink the class of cases pending long enough to experience several policy regimes.

Effectively, reformations to immigration enforcement and adjudication would be a viable choice moving forward, as long as the implications and limitations mentioned are taken into account. In summary, the findings do support a narrower claim that a legal system can choose where discretion operates and how much friction governs its reversal, as none of them suggest that discretion can be eliminated.

F. Limitations

Although this design combines several forms of evidence, four limitations must be acknowledged. First, a single key informant supplies the mechanism evidence, so the interview can illustrate how volatility is transmitted in practice, yet it cannot establish how widely any particular experience applies across the bar. Secondly, the informant's practice extends to affirmative matters adjudicated by United States Citizenship and Immigration Services, whereas every quantitative indicator is drawn from immigration court proceedings, illustrating that parts of his vantage point sit outside the measured data. Thirdly, the indicators are descriptive, as they identify sudden breaks that coincide with administrative transitions, yet cannot, standing alone, separate the effect of administrative stance from confounders, being defined as other factors able to produce the same pattern, such as shifts in case composition at the border or changes in docket management protocols, which the Interpreting the Indicators and their Limits section treats directly. Finally, the most recent data remain provisional, as interruptions in federal data releases in late 2025 mean that the latest available case level records run only through August 2025. Even so, the design limits these weaknesses by letting doctrine identify the levers and the indicators show the movement, while the informant connects the two, so that no single strand carries the argument alone.

CONCLUSION

As immigration cases continue to stretch across administrations, whether it be through a backlog of millions of pending cases, or through the reversal of a single docket tool, whether it be under a restrictionist administration, or whether it be under an expansionist one, enforcement volatility is something of national relevance. Research has clearly outlined that enforcement policy can in fact shift sharply while the governing statute stands still, as enforcement volatility is a foreseeable consequence of legal and institutional design. As the real world example of administrative closure illustrates the reversals that dependent adjudication allows, and being furthered through Legomsky (2010) and Kim & Semet (2020), who collectively portrayed how political supervision reaches the decisions of immigration judges, it is visible that fairness has become contingent on timing and assignment, as the review that does exist disciplines only the manner of reversal. As the indicators moved at magnitudes that no statutory amendment explains, and as TRAC (2025) even added that asylum completions doubled within months of a transition, it is clearly outlined that executive docket management protocols can reach adjudication quickly. The steady grant rate decline, along with a backlog reversal entangled with shifts in case composition, means that neither finding can be attributed to administrative stance alone. Connected to this, the informant observed a system in which policies change overnight and clients with nearly identical facts receive opposite outcomes depending on assignment, offering a mechanistic perspective from practice. In that same system, he observed docket pressure narrowing discretion in practice while it

remains broad on paper. An overall view of the perspectives presented illustrates that immigration enforcement occupies an essential position of structural pressure between its ability for flexible prioritization and its vulnerability to unpredictable reversal caused through statutory delegation and dependent adjudication, especially where judicial review remains limited. It should be prioritized to ensure that immigration governance is about both the practical realities of enforcement and the deeper questions of fairness that adjudication raises, as a system can change its priorities without unsettling the ground rules under which pending cases are heard. Although the reforms proposed above leave open the question of who should be admitted or removed, they do promise that the rules governing a case will still be in place when that case is finally called. After all, with a mountain of pending cases relying on these ground rules, and with a single case able to span three administrations, the advancement requires the utmost inclusion of the perspectives presented in this paper and all other correlating aspects.

ABOUT THE AUTHOR

Ronit Luthra is a junior at Downingtown High School East in Downingtown, Pennsylvania. His research explores how laws and political structures shape the lives of everyday Americans and the businesses they build and work for. His current work focuses on immigration law and politics, particularly how shifts in policy and enforcement affect immigrants' access to stable work, housing, and long-term planning. He hopes to expand this research to other areas of law and governance, examining how institutional design influences economic opportunity and public trust. He welcomes collaboration with students and researchers who share these interests, so please feel free to reach out using the contact information listed at the beginning of this paper.

ACKNOWLEDGMENTS

I would like to thank Dr. Ronald Odhiambo Omuthe, a PhD graduate of the University of Cambridge, for his mentorship throughout this project. Drawing on his experience publishing in venues such as the Global School Forum, he guided the design of the methodology and the development of the interview questions and helped organize and structure the paper. His careful review of every section ensured the quality of the work throughout. I would also like to thank the immigration attorney who served as the key informant for generously sharing his time.

REFERENCES

[1] Immigration and Nationality Act, 8 U.S.C. §§ 1101–1537.

[2] Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

[3] Transactional Records Access Clearinghouse (TRAC), Immigration Court Backlog Tool, https://tracreports.org (last visited Jan. 12, 2026).

[4] U.S. Gov't Accountability Off., GAO-23-105431, Immigration Courts: Actions Needed to Address Workforce, Performance, and Data Management Challenges (Apr. 26, 2023).

[5] TRAC, Asylum Grant Rates Decline by a Third (Nov. 19, 2024), https://tracreports.org/reports/751/ (last visited Jan. 12, 2026).

[6] TRAC, Immigration Court Asylum Grant Rates Cut in Half (Nov. 18, 2025), https://tracreports.org/reports/766/ (last visited Jan. 12, 2026).

[7] Lon L. Fuller, The Morality of Law (rev. ed. 1969).

[8] Joseph Raz, The Rule of Law and Its Virtue, 93 Law Q. Rev. 195 (1977).

[9] Heckler v. Chaney, 470 U.S. 821 (1985).

[10] Reno v. American-Arab Anti-Discrimination Committee, 525 U.S. 471 (1999).

[11] 8 U.S.C. § 1252(g).

[12] Arizona v. United States, 567 U.S. 387 (2012).

[13] United States v. Texas, 599 U.S. 670 (2023).

[14] Department of Homeland Security v. Regents of the University of California, 591 U.S. 1 (2020).

[15] Biden v. Texas, 597 U.S. 785 (2022).

[16] Adam B. Cox & Cristina M. Rodríguez, The President and Immigration Law, 119 Yale L.J. 458 (2009).

[17] Adam B. Cox & Cristina M. Rodríguez, The President and Immigration Law Redux, 125 Yale L.J. 104 (2015).

[18] Hiroshi Motomura, Immigration Outside the Law (2014).

[19] Shoba Sivaprasad Wadhia, Beyond Deportation: The Role of Prosecutorial Discretion in Immigration Cases (2015).

[20] Shoba Sivaprasad Wadhia, Banned: Immigration Enforcement in the Time of Trump (2019).

[21] Jill E. Family, Administrative Law Through the Lens of Immigration Law, 64 Admin. L. Rev. 565 (2012).

[22] Stephen H. Legomsky, Restructuring Immigration Adjudication, 59 Duke L.J. 1635 (2010).

[23] American Bar Association Commission on Immigration, 2019 Update Report: Reforming the Immigration System (2019).

[24] Catherine Y. Kim & Amy Semet, An Empirical Study of Political Control over Immigration Adjudication, 108 Geo. L.J. 579 (2020).

[25] U.S. Gov't Accountability Off., GAO-17-438, Immigration Courts: Actions Needed to Reduce Case Backlog and Address Long-Standing Management and Operational Challenges (June 1, 2017).

[26] Matter of Castro-Tum, 27 I. & N. Dec. 271 (A.G. 2018).

[27] Matter of Cruz-Valdez, 28 I. & N. Dec. 326 (A.G. 2021).

[28] Efficient Case and Docket Management in Immigration Proceedings, 89 Fed. Reg. 46,742 (May 29, 2024).

[29] Matter of B-N-K-, 29 I. & N. Dec. 96 (B.I.A. 2025).

[30] Jaya Ramji-Nogales, Andrew I. Schoenholtz & Philip G. Schrag, Refugee Roulette: Disparities in Asylum Adjudication, 60 Stan. L. Rev. 295 (2007).

[31] Migration Policy Institute, The U.S. Asylum System in Crisis: Charting a Way Forward (2018).

[32] Congressional Research Service, R46291, The Employment-Based Immigration Backlog (2020).

[33] John W. Creswell & Vicki L. Plano Clark, Designing and Conducting Mixed Methods Research (3d ed. 2018).

[34] Nat'l Comm'n for the Prot. of Human Subjects of Biomedical & Behavioral Research, The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research (1979).

[35] American Psychological Association, Ethical Principles of Psychologists and Code of Conduct (2002, amended effective June 1, 2010, and January 1, 2017).