

JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Thursday, May 17, 2018

Attorney General Jeff Sessions' Opinion in the Matter of Castro-Tum

Attorney General Jeff Sessions today signed his order and opinion in the *Matter of Castro-Tum*. Please attribute the following statement to Justice Department spokesman Devin O'Malley:

“Starting in 2012, immigration judges began increasingly to rely on administrative closures, which suspended cases indefinitely rather than actually rendering a final decision. Congress never granted such broad authority to immigration judges, nor had the Attorney General delegated it. This process—where immigration court cases were put ‘out of sight, out of mind’—effectively resulted in illegal aliens remaining indefinitely in the United States without any formal legal status. Today’s opinion by Attorney General Sessions promotes the rule of law in the immigration system and eliminates the unfettered use of administrative closures.”

Background:

- On June 17, 2011, Immigration and Customs Enforcement (ICE) issued a memo that provided “guidance on the exercise of prosecutorial discretion to ensure that the agency’s immigration enforcement resources are focused on the agency’s enforcement priorities.”
- Two years later, the Executive Office for Immigration Review (EOIR) issued a memo promoting the use of administrative closures and continuances.
- The ICE memo informed their attorneys that they “may exercise prosecutorial discretion in any immigration removal proceeding before EOIR...”
- From October 1, 2011 through September 30, 2017, 215,285 cases were administratively closed. This represents 76% of the total cases that were administratively closed in the 31-year period between FY80 and FY11.
- On January 4, 2018, Attorney General Jeff Sessions directed the Board of Immigration Appeals (BIA) to refer its decision in the Matter of Castro-Tum to him for review, an authority provided to the Office of the Attorney General by 8 C.F.R. § 1003.1(h)(1)(i).
- The following chart represents the number of cases that have been administratively closed, but have yet to be recalendared. This total is not counted in the total pending caseload, which sits at approximately 690,000.

Key Excerpts:

- “Immigration judges and the Board have come to rely upon administrative closure without thoroughly explaining their authority to do so. Unlike the power to grant continuances, which the regulations expressly confer, immigration judges and the Board lack a general authority to grant administrative closure. No Attorney General has delegated such broad authority, and legal or policy arguments do not justify it. I therefore hold that immigration judges and the Board lack this authority except where a previous regulation or settlement agreement has expressly conferred it.” (Section III; page 9)
- “This certified case demonstrates how administrative closure particularly undermines the INA’s mandate to swiftly adjudicate immigration cases when the respondent fails to appear.” (page 2)
- “The current practice of administrative closure lacks a valid legal foundation, and I do not believe it would be appropriate to delegate such authority.” (Section III.B; page 17)

- “In the other administratively closed cases, immigration judges and the Board ordered administrative closure without the authority to do so. I am cognizant of the need to return these cases to the active docket so that these matters can proceed expeditiously. Requiring recalendaring of all of these cases immediately, however, would likely overwhelm the immigration courts and undercut the efficient administration of immigration law.” (Section IV; page 17)
- “Consequently, I now order that all cases that are currently administratively closed may remain closed unless DHS or the respondent requests recalendaring.” (Section IV; page 17)

Additional EOIR Background:

- If you are reporting on the backlog, you can use the following statement from DOJ spokesman Devin O’Malley: “Many of the policies in recent years have contributed to a three-fold increase of the immigration courts’ pending caseload. This massive increase necessitated the Justice Department’s ‘Strategic Caseload Reduction Plan,’ a series of common-sense reforms that aim to reduce the so-called ‘backlog’ by realigning the agency towards completing cases, increasing both productivity and capacity, and changing policies that lead to inefficiencies and waste.”
- For your background on the Strategic Caseload Reduction Plan:
- A streamlined hiring plan for immigration judges that reduces the hiring time from 762 days to 6-8 months. Under Attorney General Sessions’s leadership, we have already reached a reduction to 10 months, and we are confident we will hit the 6-8 month goal this year.
- Requested—and received—funding that decreases the ratio of judges to clerks from 2:1 to 1:1, which will increase efficiency and productivity.
- EOIR is actively working with GSA to identify new space and to expedite build-outs of existing space.
- EOIR is planning to pilot Video Conferencing (VTC) immigration adjudication centers (IACs), where IJs will adjudicate cases from around the country.
- EOIR is working to replace an antiquated paper filing system to an electronic filing system, and a pilot program for that will soon be established.
-

NOTE: The Attorney General's opinion in the Matter of Castro-Tum is attached [here](#).

Component(s):

Office of the Attorney General

Updated May 24, 2018