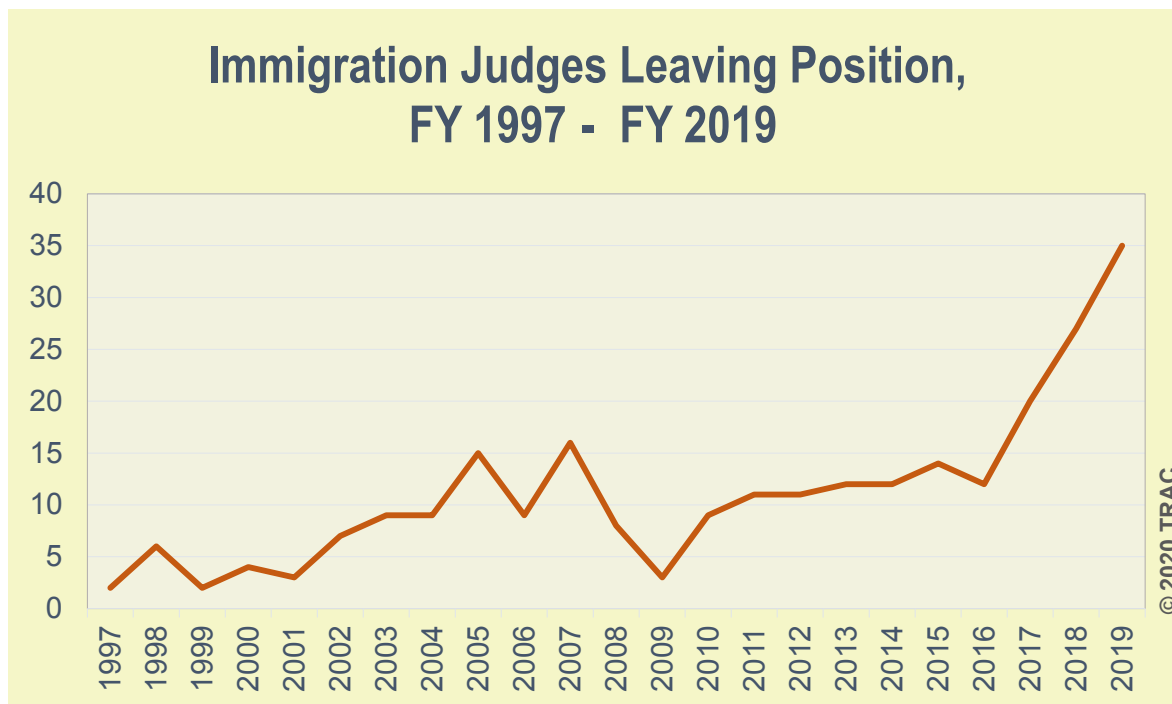


# More Immigration Judges Leaving the Bench

The latest judge-by-judge data from the Immigration Courts indicate that more judges are resigning and retiring. Turnover is the highest since records began in FY 1997 over two decades ago. These results are based on detailed records obtained by the Transactional Records Access Clearinghouse (TRAC) at Syracuse University under the Freedom of Information Act (FOIA) from the Executive Office for Immigration Review (EOIR) which administers the Courts.

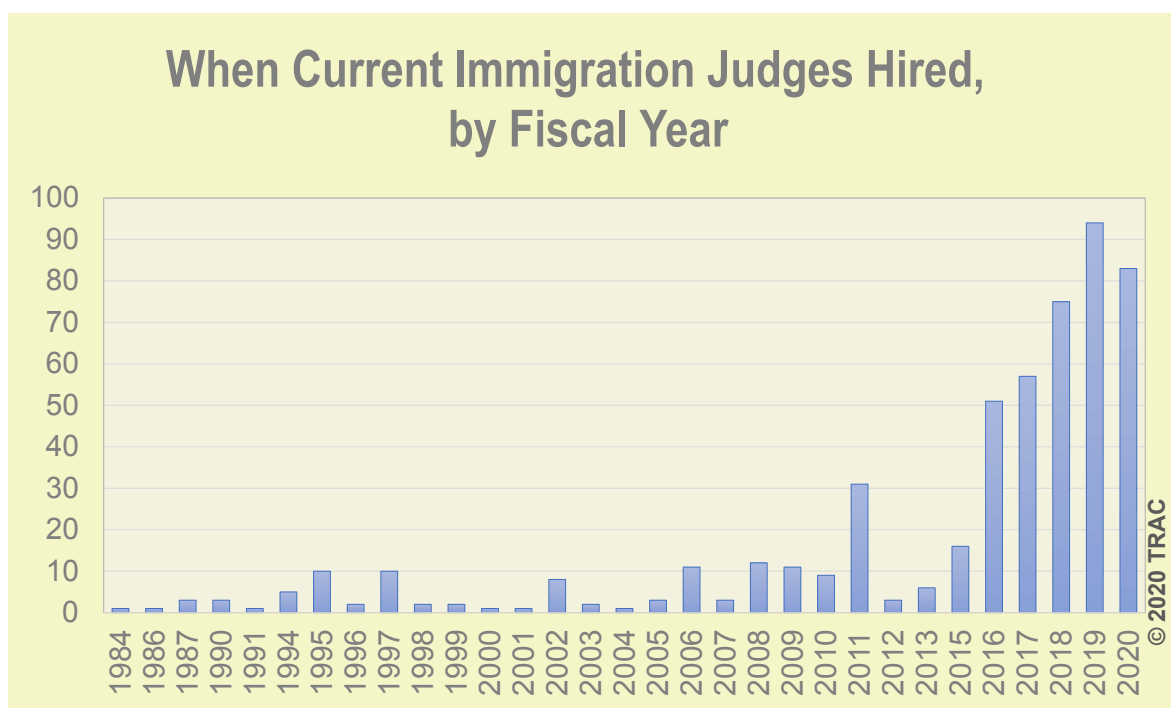
During FY 2019 a record number of 35 judges left the bench. This is up from the previous record set in FY 2017 when 20 judges left the bench, and 27 judges left in FY 2018. See Figure 1.



## Cases Increasingly Decided by Judges With Limited Time on the Bench

There has also been an increase in hiring (see Table 1). The combination of elevated hiring plus a record number of judges leaving the bench means more cases are being heard by judges with quite limited experience as immigration judges.

Currently one of every three (32%) judges have only held their position since FY 2019. Half (48%) of the judges serving today were appointed in the last two and a half years. And nearly two-thirds (64%) were appointed since FY 2017[1]. See Figure 2.



Thus, record judge turnover means the Court is losing its most experienced judges, judges whose services would be of particular value in helping mentor the large number of new immigration judges now joining the Court's ranks. Even with mentoring, new judges appointed without any background in the intricacies of immigration law face a very steep learning curve. And without adequate mentoring, there is a heightened risk that some immigrants' cases could be decided incorrectly.

## **Court Backlog Nearly Three Times Level When Trump Administration**

## Began

When a judge leaves, it means that remaining judges must shoulder a larger part of the workload at a time when the backlog of cases and wait times before hearings are scheduled are growing.

As of the end of June 2020, the Court's active backlog had climbed to 1,218,737—up from 542,411 when President Trump assumed office. In addition, the active backlog doesn't count a new category of "inactive" pending cases created by the Trump Administration. When these are added, there now are a total of more than 1.5 million pending cases—almost three times the level when the Trump Administration began[2].

**Table 1. Immigration Judge Employment Statistics**

Fiscal Year	When Hired/Appointed*		Left Position***
	Total Hired	Currently on Bench**	
<b>Before****</b>	<b>180</b>	<b>26</b>	<b>NA</b>
<b>1997</b>	<b>34</b>	<b>10</b>	<b>2</b>
<b>1998</b>	<b>8</b>	<b>2</b>	<b>6</b>
<b>1999</b>	<b>9</b>	<b>2</b>	<b>2</b>
<b>2000</b>	<b>2</b>	<b>1</b>	<b>4</b>
<b>2001</b>	<b>6</b>	<b>1</b>	<b>3</b>
<b>2002</b>	<b>12</b>	<b>8</b>	<b>7</b>
<b>2003</b>	<b>12</b>	<b>2</b>	<b>9</b>
<b>2004</b>	<b>6</b>	<b>1</b>	<b>9</b>
<b>2005</b>	<b>11</b>	<b>3</b>	<b>15</b>
<b>2006</b>	<b>18</b>	<b>11</b>	<b>9</b>
<b>2007</b>	<b>7</b>	<b>3</b>	<b>16</b>

<b>2008</b>	<b>18</b>	<b>12</b>	<b>8</b>
<b>2009</b>	<b>16</b>	<b>11</b>	<b>3</b>
<b>2010</b>	<b>16</b>	<b>9</b>	<b>9</b>
<b>2011</b>	<b>39</b>	<b>31</b>	<b>11</b>
<b>2012</b>	<b>5</b>	<b>3</b>	<b>11</b>
<b>2013</b>	<b>8</b>	<b>6</b>	<b>12</b>
<b>2014</b>	<b>0</b>	<b>0</b>	<b>12</b>
<b>2015</b>	<b>19</b>	<b>16</b>	<b>14</b>
<b>2016</b>	<b>58</b>	<b>51</b>	<b>12</b>
<b>2017</b>	<b>64</b>	<b>57</b>	<b>20</b>
<b>2018</b>	<b>81</b>	<b>75</b>	<b>27</b>
<b>2019</b>	<b>93</b>	<b>94</b>	<b>35</b>
<b>2020 (3rdQtr)</b>	<b>NA</b>	<b>83</b>	<b>NA</b>

*\* Hiring dates can precede appointment dates so that sometimes they fall in different fiscal years.*

*\*\* Includes those serving in administrative positions. Currently there are 38 judges with administrative responsibilities.*

*\*\*\* Except for those who died, EOIR has withheld the reason why judges left their position (e.g., resignation, retirement, took another position in government, etc.).*

*\*\*\*\* Records for hiring go back through FY 1970; those for leaving position go back to FY 1997. NA means not available. The earliest appointment year for those now on the bench was FY 1984. Note that some information based upon the court employment records TRAC received appeared inconsistent from one another. TRAC also found that records of judges still on the employment roles included judges who other records indicated had resigned—some as far back as in FY 2018. Corrections were made when information permitted.*

## Update on Disappearing Immigration Court Records

Despite TRAC's appeals to the EOIR, Immigration Court records continue to disappear each month. This is unfortunately still the case with EOIR's latest data release for updated court records through the end of June 2020.

As we [previously reported](#), EOIR Director McHenry has denied there have been any data management problems at the agency and has attacked TRAC's motives for reporting on the serious data issues we had uncovered.

TRAC also was asked to refer any future issues to EOIR Chief Management Officer Kate Sheehey. TRAC's co-director had an initial phone conversation with her last month on June 12. TRAC asked Director Sheehey to find out why month after month more records keep permanently disappearing from EOIR's data.

As an example of this problem, we discussed with Sheehey how court records on applications for relief—a number of which judges had already ruled on and had granted relief—went missing from the files. Since we had previously furnished EOIR an illustrative list of over fifteen hundred such applications that went missing, we asked her to look into what had happened to each of them. She promised she would investigate and report back to us what she had learned.

We heard back in an email from Chief Management Officer Sheehey on July 2. Unfortunately, she did not follow through on her promise. Instead, she parroted Director McHenry's line. She told us: "As we have previously explained on multiple occasions, no records have disappeared." She provided no information except to suggest that disappearances are normal "as cases progress through the immigration court system," and could even mean that these records are now "subject to withholding under FOIA." She offered no specifics on the disappearing applications for relief, and it did not

appear that she had actually investigated any of these.

TRAC notes that the EOIR letter accompanying the data release made no mention that any applications for relief were being withheld. In addition, the law is clear that secret withholding is simply not permitted. Indeed, if records are being withheld they can't just disappear; instead redaction markings should appear in the files where information is being withheld.

It is particularly troubling that Chief Management Officer Sheehey would suggest that it might be lawful to withhold records recording where applications for relief previously had been granted or denied. These after all are anonymized records and the public has a real interest in monitoring asylum grant and denial rates.

## Footnotes

*[1] Fourteen of these appointment during FY 2017 occurred before President Trump assumed office. Thus 61 percent of Immigration Judges now on the bench were appointed by the Trump Administration.*

*[2] According to EOIR, there were 316,727 of these "inactive" pending cases as of the end of March 2020 [2020 (Second Quarter)]. See: <https://www.justice.gov/eoir/page/file/1061521/download>.*