

DO REMANDS FROM THE BOARD OF IMMIGRATION
APPEALS CHANGE IMMIGRATION JUDGES' BEHAVIOR?
ADDENDUM TO *THE FAILURE OF IMMIGRATION
APPEALS*

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This brief online addendum adds a set of results to those in *The Failure of Immigration Appeals*, which concluded that the Board of Immigration Appeals failed to promote uniformity across immigration judges because it reviews a biased selection of cases: noncitizens without lawyers rarely appeal when they lose.

One might expect the Board of Immigration Appeals (“the Board”) to influence immigration judges’ behavior in two ways. First, the Board changes the law by issuing precedential decisions and therefore changes the rules that immigration judges apply. I do not study that effect here. Second, the Board reviews thousands of individual decisions, issuing unpublished opinions in the vast majority of cases. Those individual decisions might push unusually harsh and unusually lenient judges toward the center, reducing the dramatic disparities across immigration judges that make seeking asylum akin to a sinister game of “refugee roulette.”²

I use data from the Executive Office for Immigration Review to test for the presence of this second effect: a temporary change in immigration judges’ grant rates after receiving remands from the Board. I find that the effect does exist, but that it is quite small: reversals of deportation orders only cause immigration judges to increase their grant rates by about one percentage point. In sum, the consistency-enhancing effect of immigration judges’ efforts to avoid remands soon after receiving them is small, if it exists at all.

Background on Immigration Proceedings and Appeals

Removal proceedings begin when Immigration and Customs Enforcement issues a Notice to Appear—a short document listing the

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² Jaya Ramji-Nogales et al., *Refugee Roulette: Disparities in Asylum Adjudication*, 60 STAN. L. REV. 295 (2007);

reasons that a respondent (immigrant) is in the country illegally. The most common of these reasons (known as immigration charges) are unauthorized border crossings, visa overstays, and criminal convictions. The Notice to Appear also includes a scheduled court date. That date is for a so-called master calendar hearing, a group hearing at which the immigration judge has a short colloquy with each respondent or his/her lawyer, reading an explanation of rights and setting the schedule for the case. If the respondent does not have a lawyer, the Immigration Judge explains the right to counsel and offers a continuance to a later master calendar hearing. This process repeats itself either until the respondent has found a lawyer or until the Immigration Judge determines that the respondent has had sufficient opportunity to search for one.³ At that point, respondents have the opportunity both to contest the immigration charges against them and, if they are in the country illegally, to apply for relief from removal, such as asylum or family-related relief.

Immigration court proceedings occur along two separate tracks for detained and nondetained respondents; some respondents are also detained at the beginning of their proceedings but later released on bond. Here, I consider only respondents who were never detained, both because their cases are more similar to disability hearings and for methodological reasons.⁴

When an immigration judge enters a removal order, the immigrant may appeal; similarly, when an immigration judge grants relief, the government may appeal. If the government loses on appeal, the decision is final; if the immigrant loses, he or she may petition for review of the decision to a federal Court of Appeals.⁵

In this short addendum, I examine the effect of remands from the Board of Immigration Appeals to immigration judges. One might expect immigration judges to become more lenient after an order of deportation is reversed and remanded and harsher when a grant of relief is reversed and remanded. Why? I expect this effect for two reasons. First, immigration judges may learn from the remand that their decision was mistaken or outside the normal bounds of discretion. And second, in the period immediately after a remand, immigration judges may temporarily overestimate the likelihood

³ EXEC. OFFICE FOR IMMIGRATION REVIEW, U.S. DEP'T OF JUSTICE, IMMIGRATION COURT PRACTICE MANUAL § 4.15(g) (2016), http://www.justice.gov/sites/default/files/pages/attachments/2016/02/04/practice_manual_-_02-08-2016_update.pdf.

⁴ Detained cases may be less likely to be randomly assigned, and the respondents who remain detained are not a random subset of those initially detained: respondents with strong immigration cases are more likely to be granted bond and released.

⁵ 8 U.S.C. § 1252(a)(5).

that their decisions will be remanded, much as drivers often slow down for a few miles after passing the scene of a crash.⁶

Since the analysis of remands in immigration court is an extension of the analysis in previous work, I do not offer a full description of the database here.⁷ I use all cases with final completion dates between January 1, 1996 and April 30, 2015. Table 9 below shows sample restrictions. As in disability hearings, I use panel regressions to test the hypothesis that the number of remands per month affects immigration judge behavior; I do not exclude immigration court time periods in which cases appear not to have been randomly assigned to judges. These regressions include both month and immigration judge fixed effects, meaning that they exploit variation from month to month within an immigration judge's docket. I estimate a model of the form:

$$Y_{ijt} = \beta_0 + \beta_1 X_{ijt} + \beta_2 J_{jt} + \beta_3 R_{jt} + \beta_4 D_{jt} + \Gamma_{jt} + \epsilon_{ijt}$$

where Y_{ijt} is a binary outcome⁸ for immigration case i before immigration judge j in time period t , where J is the number of remands after appeals by immigrants for judge j in time period t , R is the number of remands after appeals by the government for judge j in time period t , D is the total number of cases completed by judge j in time period t , X is an indicator for whether a noncitizen is Mexican, and Γ represents fixed effects for judges and time periods. Tables 22 and 23 show the results from Tables 14 and 15 above, but include control variables for the number of cases in each time period and for whether an individual was Mexican.

I find that immigration judges react to remands by seeking to avoid them—but only a little. In the period after immigration judges hear a case that has returned to them on remand after the noncitizen has won an appeal, immigration judges become slightly less likely—about one and a half percentage points less likely—to issue deportation orders in other cases. And the same effect exists in the opposite direction: when immigration judges hear a case on remand in which the Board reversed a grant of relief, they are more likely to issue deportation orders in other unrelated cases. This second effect is not statistically significant, but that reflects the fact that the

⁶ This is known as the availability heuristic. See Amos Tversky & Daniel Kahneman, *Availability: A Heuristic for Judging Frequency and Probability*, 5 COGNITIVE PSYCH. 207, 230 (1973).

⁷ For a description of the database, see Hausman, *supra* note **Error! Bookmark not defined.**, at 13-14.

⁸ This variable is 0 if a case ends with deportation and 1 if it does not. I code cases as not leading to deportation if they did not end with a removal order or a voluntary departure decision, and I exclude nonfinal decisions (change of venue and transfer).

government appeals much less often than immigrants, and its appeals make up fewer than five percent of all appeals.

Tables 1 and 2 show these estimates; Tables 3 and 4 duplicate these estimates but include control variables. For both noncitizen and government appeals, the effect of remands is larger during shorter periods around decisions after those remands.

TABLE 1: EFFECT OF NONCITIZEN-INITIATED REMANDS ON IMMIGRATION JUDGE GENEROSITY

Dependent Variable is 1 if Noncitizen Need Not Leave Country

	(1)	(2)	(3)	(4)
	One Week	Two Weeks	One Month	Two Months
Number of Remands	0.014*** (0.0032)	0.011*** (0.0028)	0.0089*** (0.0024)	0.0083*** (0.0022)
<i>N</i>	1095067	1095067	1095067	1095067

Standard errors in parentheses

Models include time period and Immigration Judge fixed effects

Standard Errors Clustered on Immigration Judge

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

TABLE 2: EFFECT OF ICE-INITIATED REMANDS ON IMMIGRATION JUDGE GENEROSITY

Dependent Variable is 1 if Noncitizen Need Not Leave Country

	(1)	(2)	(3)	(4)
	One Week	Two Weeks	One Month	Two Months
Number of Remands	-0.012 (0.0095)	-0.0076 (0.0073)	-0.0052 (0.0062)	-0.0043 (0.0034)
<i>N</i>	1095067	1095067	1095067	1095067

Standard errors in parentheses

Models include time period and Immigration Judge fixed effects

Standard Errors Clustered on Immigration Judge

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

I also offer two more sets of results as robustness checks. These checks reduce my confidence in the results, but I continue to think that weight of the evidence indicates a small effect. In the first of these specifications (Tables 5-6), I run the same regression as above, but I make J an indicator variable for whether an IJ held a hearing on remand in the last week, the last

two weeks, the last month, or the last two months before each decision. For these regressions, time period t corresponds to months. These results show a pattern for noncitizen-initiated appeals similar to the pattern in the main text, but the effect does not diminish consistently with time, which slightly diminishes my confidence in the effect.

In the second of those specifications, I make J an indicator variable for whether the Board *issued* a remand for a case from that immigration judge in last week, the last two weeks, the last month, or the last two months before each hearing. Again, time period t corresponds to months. Here, the results (Tables 7-8) for noncitizen-initiated appeals match the results of the main models, but I find no effect of remands in ICE-initiated appeals. These results decrease my confidence in the result for ICE-initiated appeals. The result for noncitizen-initiated appeals appears relatively robust, but the effect remains small.

In sum, immigration judges may be pushed slightly toward the center soon after receiving a remand, but the effect is slight if it exists at all.

TABLE 3: EFFECT OF NONCITIZEN-INITIATED REMANDS ON IMMIGRATION JUDGE GENEROSITY, WITH CONTROLS

Dependent Variable is 1 if Noncitizen Need Not Leave Country

	(1) One Week	(2) Two Weeks	(3) One Month	(4) Two Months
Number of Remands After Noncitizen Appeals	0.014*** (0.0032)	0.011*** (0.0028)	0.0086*** (0.0024)	0.0080*** (0.0021)
Number of Cases	-0.00023*** (0.000060)	-0.00014** (0.000043)	-0.000066** (0.000025)	-0.000066** (0.000020)
Mexican	-0.095*** (0.016)	-0.094*** (0.016)	-0.094*** (0.016)	-0.095*** (0.016)
N	1095067	1095067	1095067	1095067

Standard errors in parentheses

Models include time period and Immigration Judge fixed effects

Standard Errors Clustered on Immigration Judge

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

TABLE 4: EFFECT OF ICE-INITIATED REMANDS ON IMMIGRATION JUDGE
GENEROSITY, WITH CONTROLS

Dependent Variable is 1 if Noncitizen Need Not Leave Country

	(1) One Week	(2) Two Weeks	(3) One Month	(4) Two Months
Number of Remands After ICE Appeals	-0.013 (0.0096)	-0.0079 (0.0073)	-0.0054 (0.0062)	-0.0044 (0.0033)
Number of Cases	-0.00023*** (0.000060)	-0.00014** (0.000042)	-0.000066** (0.000025)	-0.000066** (0.000020)
Mexican	-0.095*** (0.016)	-0.094*** (0.016)	-0.094*** (0.016)	-0.095*** (0.016)
<i>N</i>	1095067	1095067	1095067	1095067

Standard errors in parentheses

Models include time period and Immigration Judge fixed effects

Standard Errors Clustered on Immigration Judge

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

TABLE 5: EFFECT OF NONCITIZEN-INITIATED REMANDS ON
IMMIGRATION JUDGE GENEROSITY, BY RECENCY OF HEARING

Dependent Variable is 1 if Noncitizen Need Not Leave Country

	(1) One Week	(2) Two Weeks	(3) One Month	(4) Two Months
At Least One Remand Hearing in Time Period	0.019*** (0.0045)	0.016*** (0.0042)	0.021*** (0.0043)	0.021*** (0.0051)
Number of Cases In That Month	-0.000066** (0.000025)	-0.000066** (0.000025)	-0.000068** (0.000025)	-0.000069** (0.000025)
Mexican	-0.094*** (0.016)	-0.094*** (0.016)	-0.094*** (0.016)	-0.094*** (0.016)
<i>N</i>	1095067	1095067	1095067	1095067

Standard errors in parentheses

Models include time period and Immigration Judge fixed effects

Standard Errors Clustered on Immigration Judge

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

TABLE 6: EFFECT OF ICE-INITIATED REMANDS ON IMMIGRATION JUDGE
GENEROSITY, BY RECENCY OF HEARING

Dependent Variable is 1 if Noncitizen Need Not Leave Country

	(1) One Week	(2) Two Weeks	(3) One Month	(4) Two Months
At Least One Remand Hearing in Time Period	-0.0072 (0.018)	-0.0039 (0.015)	0.00020 (0.013)	0.0054 (0.011)
Number of Cases In That Month	-0.000066** (0.000025)	-0.000066** (0.000025)	-0.000066** (0.000025)	-0.000066** (0.000025)
Mexican	-0.094*** (0.016)	-0.094*** (0.016)	-0.094*** (0.016)	-0.094*** (0.016)
<i>N</i>	1095067	1095067	1095067	1095067

Standard errors in parentheses

Models include time period and Immigration Judge fixed effects

Standard Errors Clustered on Immigration Judge

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

TABLE 7: EFFECT OF NONCITIZEN-INITIATED REMANDS ON
IMMIGRATION JUDGE GENEROSITY, BY RECENCY OF REMAND ITSELF

Dependent Variable is 1 if Noncitizen Need Not Leave Country

	(1) One Week	(2) Two Weeks	(3) One Month	(4) Two Months
At Least One Remand Decision in Time Period	0.014** (0.0046)	0.013*** (0.0039)	0.012** (0.0039)	0.010* (0.0041)
Number of Cases In That Month	-0.000066** (0.000025)	-0.000067** (0.000025)	-0.000067** (0.000025)	-0.000067** (0.000025)
Mexican	-0.094*** (0.016)	-0.095*** (0.016)	-0.095*** (0.016)	-0.095*** (0.016)
<i>N</i>	1095067	1095067	1095067	1095067

Standard errors in parentheses

Models include time period and Immigration Judge fixed effects

Standard Errors Clustered on Immigration Judge

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

TABLE 8: EFFECT OF ICE-INITIATED REMANDS ON IMMIGRATION JUDGE
GENEROSITY, BY RECENCY OF REMAND ITSELF

Dependent Variable is 1 if Noncitizen Need Not Leave Country

	(1) One Week	(2) Two Weeks	(3) One Month	(4) Two Months
At Least One Remand Decision in Time Period	0.0042 (0.0082)	0.0021 (0.0073)	0.0065 (0.0064)	0.0040 (0.0056)
Number of Cases In That Month	-0.000066** (0.000025)	-0.000066** (0.000025)	-0.000066** (0.000025)	-0.000066** (0.000025)
Mexican	-0.094*** (0.016)	-0.094*** (0.016)	-0.094*** (0.016)	-0.094*** (0.016)
<i>N</i>	1095067	1095067	1095067	1095067

Standard errors in parentheses

Models include time period and Immigration Judge fixed effects

Standard Errors Clustered on Immigration Judge

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

TABLE 9: IMMIGRATION COURT DATA SAMPLE RESTRICTIONS

All proceedings	6,752,304
Only removal proceedings	4,992,701
Only cases decided in 1996 or after	4,276,711
Remove cases that move from one IJ to another	2,964,399
Remove detained cases	1,306,767
Remove cases under IJs with fewer than five total remands	1,183,737
Unique cases (e.g. not counting multiple proceedings associated with a single case) ⁹	1,105,161

⁹ Note: the regressions include fewer observations because I also exclude cases that themselves involved one of the remands whose effect I measure.