

# How the Trump Administration’s Quota Policy Transformed Immigration Judging

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*The Trump administration implemented a controversial performance quota policy for immigration judges in October 2018. The policy’s political motivations were clear: to pressure immigration judges to order more immigration removals and deportations as quickly as possible. Previous attempts by U.S. presidents to control immigration judges were ineffective, but this quota policy was different because it credibly threatened judges’ job security and promotion opportunities if they failed to follow the policy. Our analysis of hundreds of thousands of judicial decisions before and after the policy’s implementation demonstrates that the quota policy successfully led immigration judges to issue more immigration removal orders (both in absentia and merits orders). The post-policy change in behavior was strongest among those judges who were less inclined, pre-policy, to issue immigration removal decisions. These findings have important implications for immigration judge independence, due process protections for noncitizens, and presidential efforts to control the federal bureaucracy.*


During the Trump administration, immigration law and policy received extraordinary levels of political attention, ranging from the promised border wall, to the “Muslim Ban,” to attempting to end Obama’s Deferred Action for Childhood Arrivals (DACA) program, to family separation border crossing policies. Trump’s executive branch used conventional presidential mechanisms like executive orders and directives to implement its immigration policies (Kocher 2019; Wadhia 2019; Wallace and Zepeda-Millán 2020). However, in addition to these traditional tactics, Trump also sought to use immigration courts to further his restrictive immigration agenda (Kim 2018; Koh 2017; Pierce 2019). Prior administrations had dipped toes into using immigration courts to accomplish their immigration goals—from W. Bush’s efforts to politicize the selection of immigration judges (Kim 2018; Moynihan and Roberts


2010) to Obama’s heightened emphasis on removals that helped earn him the “deporter in chief” nickname (Martínez, Slack, and Martínez-Schuldt 2018). Yet, the Trump administration sought to seize control of the immigration courts in an unprecedented and highly controversial way: through the 2018 issuance of a policy placing performance quotas on immigration judges’ decisions.

U.S. immigration judges adjudicate removal proceedings against hundreds of thousands of immigrants each year (Law 2010). Housed in the U.S. Department of Justice (DOJ), immigration judges are the “linchpin” of the U.S. immigration system (Miller, Keith, and Holmes 2014, 1). In their roles, they “make consequential decisions that fundamentally affect” those that encounter the system (Ryo 2016, 117). Immigration judges have both the power to “dispense mercy” (Kanstroom 2007, 230) and serve as an obstacle to those seeking refuge. Like many other agency judges, immigration judges are placed in a complicated decision-making position, “straddling the line between being a judge and being a bureaucrat” (Stobb, Miller, and Kennedy 2023, 3). Judges are typically guided by independent judgment, discretion, and personal preferences, but immigration judges’ place in the bureaucracy provides an opening for the executive branch to influence their behavior. Given the exceptional political salience of immigration policy today, modern presidents’ reasons for wanting to control the outputs of immigration judges are obvious. However, due to weak presidential tools of selection, removal, monitoring, and control over immigration judges—as is the case with many other lower-level bureaucrats (Brehm and Gates 1997; Mummolo 2018)—presidential administrations

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struggle to force politically responsive decision-making behavior by immigration judges.

A facially neutral opening for the Trump administration to attempt to actively constrain immigration judge behavior would emerge shortly into Trump's term in office. For years, U.S. immigration courts faced a large and growing backlog of hundreds of thousands of cases (Asad 2019; Koh 2017). In light of this backlog crisis, termed "the largest challenge" to immigration courts (Osuna 2015), the U.S. Government Accountability Office (GAO) called for the use of performance and case completion goals for immigration judges (United States Government Accountability Office 2017). The Trump administration moved quickly to comply, introducing in October 2018 a quota policy mandating high rates of case completions and low appellate reversals per judge-year for immigration judges to maintain satisfactory employment evaluations. Unlike prior efforts from previous presidential administrations and from the Trump administration itself, the 2018 quota policy was specific in both what was required of immigration judges and the penalties attached for failing to comply. The Trump administration's choice to utilize immigration judge quotas was viewed by many as a drastic intervention designed to generate political responsiveness from immigration judges in ways that had similarly proven successful for other difficult-to-control street-level bureaucrats (Brehm and Gates 1997; Lipsky 1980; Mummolo 2018). Critics claimed the new policy was an attack on immigration judges' independence (Sacchetti 2017) and an aggressive effort to impose Trump's immigration policy goals of fast and frequent removals of non-citizens (Kim 2018).

But would the controversial Trump quota policy actually have the intended effect on immigration judge behavior? To examine whether the policy caused immigration judges to behave in the manner sought by the Trump administration, we utilize federal administrative data tracking hundreds of thousands of immigration decisions closely centered before and after the 2018 implementation of the performance quotas. Following the pre-processing of our data with matching to ensure covariate balance, our results demonstrate that Trump's efforts were successful in altering immigration judge behavior and resulted in more (and more efficient) outcomes of interest to the Republican administration. After the quota's introduction, judges issued significantly higher rates of *in absentia* removal orders and removal orders on the merits. Thus, while presidents are generally ill-equipped to generate decision-making compliance from immigration judges, 2018's quota policy serves as a powerful exception. We conclude by discussing several broader matters related to our study including how the policy has resulted in thousands of additional noncitizen removals, how the policy's effects serve as fodder for those decrying the lack of independence among immigration judges, and how the COVID-19 pandemic and 2020 election of President Biden upended the effects of the policy. We also detail how the effectiveness of the quota policy on immigration judging may serve as a blueprint for future

administrations seeking to gain further control over the decisions of immigration judges, along with the thousands of other agency judges adjudicating cases related to entitlements, benefits, and other important matters in the federal bureaucracy.

## JUDICIAL BEHAVIOR ON IMMIGRATION COURTS: INDEPENDENT OR POLITICALLY RESPONSIVE?

Within modern U.S. immigration courts, immigration judges are tasked with adjudicating hundreds of thousands of noncitizens' removal cases each year. In these cases, immigration judges make decisions on charged noncitizens' removability, their applications for relief from removal like asylum claims, their requests for adjustment of immigration status, and similar immigration matters (Chand and Schreckhise 2020; Law 2010). The stakes of immigration judges' work are incredibly high: "off the charts—the highest possible" (Martin 1983, 190). Every individual case decided by an immigration judge holds the potential to irrevocably alter the "lives of a noncitizen and their loved ones," while the combined effect of immigration judges' decisions "reshapes the composition of U.S. society" (Jain 2019, 264). The U.S. immigration judge position is arguably more important and salient today than ever before. There has been a stunning rise in the number of immigration judge-ordered deportations in the last two decades—a number equal to those ordered during the full century before (Asad 2019). With unprecedented national political attention on immigration law and policy and a lack of movement on comprehensive immigration reform, presidents and attorneys general have looked for openings to exert pressure on immigration judges to issue more decisions that fall in line with their immigration agenda—in other words, to generate politically responsive immigration judge behavior.

Immigration judges' unique roles as "bureaucrats in robes" (Jain 2019) and "judges-as-bureaucrats" (Miller, Keith, and Holmes 2014, 54) add a layer of complexity to understanding their decision-making behavior and whether political efforts to influence their decisions might succeed. As "judges," immigration judges are expected to make decisions based on the law and facts in the cases before them (Chand 2019; Chand and Schreckhise 2020). Federal law indicates that immigration judges' decision-making should be guided by "independent judgment and discretion" (8 CFR §1003.10(b)). Similarly, immigration judges are directed to "play the traditional role of passive arbiter" or neutral decision maker in the cases before them (Goldschmidt et al. 1998, 3). In the course of their discretionary decisions, immigration judges' backgrounds and values are likely to guide how they interpret the case facts and law and affect what decisions they reach in a case.

However, immigration judges are also "bureaucrats," where "efficient and uniform implementation of public policy" are prioritized over due process and

individualized justice (Lens 2012, 289). Immigration judges are employed by the DOJ, and that places them within a broader administrative agency framework below the U.S. Attorney General and the president. In their positions, immigration judges work alongside the government's immigration prosecuting attorneys, with the presidential administration serving as the boss of both (Alexander 2006). This creates a tension with the ideal of judicial independence: "Article III [federal] judges are free from most, although admittedly not all, pressure that can be exerted by the political branches. Yet, administrative judges—serving within the executive branch—enjoy no such autonomy" (Chand 2019, 397). This potentially opens up immigration judges to politically motivated attempts to manage and control their behavior in ways that do not happen with many judges who are not simultaneously judges and bureaucrats (Seabrook, Wilk, and Lamb 2013; Wolfe 2002).

Like other judges faced with judging in a complex environment, immigration judges are not unconstrained; rather, they must be strategic when assessing when and how to be mindful of their competing interests—*independence versus potential political constraints*—when making decisions. We have long known, for example, that judges and justices in the United States "prefer Court opinions and legal rules that reflect their policy preferences" (Maltzman, Spriggs, and Wahlbeck 2000, 17) and that their career backgrounds and identity affect their legal worldview and decision-making (e.g., Bowie and Songer 2009; Bowie, Songer, and Szmer 2014; Boyd, Epstein, and Martin 2010; Epstein, Landes, and Posner 2013; Glynn and Sen 2015; Harris and Sen 2019; Hinkle 2015; Law 2005; Mak and Sidman 2020; Nelson, Hazelton, and Hinkle 2022; Williams and Law 2012; Zorn and Bowie 2010). Immigration judges, like other U.S. judges, will be motivated to accomplish their goals—*ideological or other*—while on the bench. However, immigration judges are also likely to be mindful of the context in which they operate, realizing that "their ability to achieve their goals depends on a consideration of the preferences of the other actors, the choices they expect others to make, and the institutional context in which they act" (Epstein and Knight 1998, 10). Strategic immigration judges will "seek to maximize the impact of their decisions by working within political constraints, strategically anticipating reactions to their decisions by others in the policy process" (Schreckhise, Chand, and Lovrich 2018, 126–7)—even if this means compromising on their preferences to "consider a wider array of concerns than merely those presented in the cases in front of them" (Chand and Schreckhise 2020, 179).

While the *potential* for political factors to affect immigration judging is real—especially, because immigration judges' independence is more precarious than federal judges or even other agency adjudicators like administrative law judges (Chand 2019; Taratoot and Howard 2011)—there has historically been little operational reason for immigration judges to feel politically constrained. The "perception of the political environment" determines a great deal about the ways

in which bureaucrats are checked (Jowell 1975, 197), and for immigration judges, the unique bureaucratic environment that they serve in helps to explain why political control over immigration judges has been traditionally weak. In effective principal–agent relationships, principals (like presidents) use tools such as monitoring, careful selection, and the threat of sanctions to help ensure agents (like immigration judges) produce desirable outcomes (Brehm and Gates 1994; Moe 1984; Randazzo and Waterman 2014; Randazzo, Waterman, and Fine 2006). Absent these control mechanisms, agents are free to behave in idiosyncratic, self-serving ways (Brehm and Gates 1997; Lewis 2008; Moe 1984).

Non-appointed, lower-level (a.k.a. "street-level") bureaucrats of this nature are frequently held up as examples of difficult to monitor and control agents who are often unresponsive to and even, at times, hostile toward their principals (Brehm and Gates 1997; Krause and O'Connell 2019; Lipsky 1980; Miller and Whitford 2016; Mummolo 2018). The reasons for this are plentiful. Lower-level, career bureaucrats "do not have the same perspective as their political superiors" (Lewis 2008, 31) and lack the presidential loyalty and willingness to "comply with administrative policy objectives" that high-level bureaucratic appointees hold (Krause and O'Connell 2019, 530). Principals of lower-level bureaucrats also often do not hold credible threats of punishment for ill-behaving agents (Brehm and Gates 1997; Mummolo 2018).

As is the case with supervisors of other lower-level bureaucrats, the president and his administration at a baseline lack powerful tools of control over immigration judge outputs. Under ordinary circumstances, presidents are unlikely to closely monitor immigration judges since doing so in a high caseload setting like immigration courts is expensive and inefficient (Kiewiet and McCubbins 1991). Principal selection and removal powers are also depoliticized for immigration judges. The U.S. Attorney General delegates vast selection responsibility to the DOJ's Executive Office for Immigration Review (EOIR). The EOIR follows a standardized bureaucratic advertisement, application, interview, and background check process that reduces politicization and increases competence (Hausman et al. 2022; Krause and O'Connell 2019; Lewis 2008; U.S. Department of Justice 2022b). Also limiting selection power is that immigration judgeships are classified as "Schedule A career positions, not political appointments" in the federal bureaucracy (U.S. Department of Justice 2008, 115). Unlike appointed bureaucratic positions, immigration judges serve across political administrations and vacancies only arise sporadically. While the threat of firing will increase the likelihood of agents behaving in their principals' interests (Kiewiet and McCubbins 1991), politically motivated firings of immigration judges—as civil servants—have been difficult to achieve (Barnett et al. 2018; U.S. Department of Justice 2008). This combination of impractical monitoring, weak selection and removal powers, and encouraged judicial independence means that presidents are not likely able to count

on immigration judges as reliable, responsive political agents in their day-to-day judicial behavior. Most prior empirical studies have confirmed this, finding that immigration judges do not consistently adhere to their appointing presidential administration's policy goals in their decisions (Chand, Schreckhise, and Bowers 2017; Hausman et al. 2022; Kim and Semet 2020; Miller, Keith, and Holmes 2014; Ramji-Nogales, Schoenholtz, and Schrag 2007; Ryo 2016; United States Government Accountability Office 2008; 2016).

With little incentive to be politically responsive in their behavior, strategic-minded immigration judges are free to use their judicial discretion to make decisions based on their own preferences, traits, and experiences—and that's exactly what the prior immigration judging literature has found. Liberal leaning immigration judges are more likely to rule in favor of the noncitizen than conservative judges (Keith, Holmes, and Miller 2013; Miller, Keith, and Holmes 2014; Stobb, Miller, and Kennedy 2023). The same is true for female immigration judges (Beougher 2016; Chand, Schreckhise, and Bowers 2017; Keith, Holmes, and Miller 2013; Ramji-Nogales, Schoenholtz, and Schrag 2007; United States Government Accountability Office 2008; 2016) and immigration judges with prior experience working for nongovernmental organizations focused on indigent legal aid (Kim and Semet 2020; Ramji-Nogales, Schoenholtz, and Schrag 2007). And while not studied in prior empirical immigration court research, we would expect a similar effect to be present for many Latinx judges (Achury et al. 2023; Hofer and Casellas 2020). By contrast, other immigration judges are more likely to issue removals or deny asylum compared to their colleagues, including immigration judges with prior career experience working in immigration enforcement (e.g., for the Department of Homeland Security [DHS] or Immigration and Naturalization Service [INS]), employed as a prosecutor, or serving in the military (Miller, Keith, and Holmes 2014; Ramji-Nogales, Schoenholtz, and Schrag 2007). In short, the identity of the immigration judge hearing the case, including his or her characteristics and background, can often be the most important factor affecting whether the noncitizen receives a positive outcome (Alexander 2006).

## THE TRUMP QUOTAS AS A POLITICAL INTERVENTION

Although immigration judges, in practice, have not been effectively constrained by presidential politics, such a political constraint may be possible under the right conditions. In other contexts, evidence confirms that principals who intervene with high-profile reforms have been able to overcome their otherwise inadequate mechanisms for monitoring and constraining agents. For example, while police officers are a classic example of difficult-to-control street-level bureaucrats (Brehm and Gates 1997), Mummolo (2018) finds that a high-profile NYPD reform was able to generate

responsiveness among officers. When the NYPD mandated in 2013 that officers engaging in controversial stop and frisk actions must “provide thorough, narrative descriptions to superiors justifying the reasons for stops of criminal suspects” (2), officers began to worry about supervisor scrutiny of their work. As a result, officers altered their behavior, significantly reducing questionable stops. Might a high-stakes presidential intervention—where political oversight is specific and discipline for failure to comply is daunting—result in more political responsiveness among strategic immigration judges along the lines observed by Mummolo (2018) in the policing context? President Trump would put this to the test in 2018.

In June 2017, the U.S. Government Accountability Office (GAO), an independent legislative-branch agency tasked with monitoring the federal government's performance, issued a report on the case backlog in immigration courts (United States Government Accountability Office 2017). Immigration cases pending per year had skyrocketed in the prior decade, rising from under two hundred thousand per year in 2008 to well over four hundred thousand per year in 2015 (and continuing to rise thereafter) (U.S. Department of Justice 2021). The GAO's report concluded with recommendations for executive branch action to help address the backlog including instituting immigration judge performance measures with case completion goals (United States Government Accountability Office 2017).

The Trump administration was quick to seize on the GAO's invitation to intervene in the immigration courts' backlog crisis. In an aggressive policy that went into effect in October 2018, Trump's Attorney General Jeff Sessions introduced the “EOIR Performance Plan” which focused on performance goals for immigration judges. The plan required that individual immigration judges complete a minimum of seven hundred cases per fiscal year and that no more than 15% of their cases could be overturned on appeal (Sessions 2018). According to the performance plan, an immigration judge who does not meet these performance quotas will be rated as someone who “needs improvement” or is “unsatisfactory” in their civil service evaluations.<sup>1</sup>

In public comments and memos, Trump administration officials defended the introduction of the quotas as needed to address the backlog crisis and provide more expeditious operation of our immigration courts (McHenry 2018; Sessions 2017). However, by most metrics, the Trump administration's “EOIR Performance Plan” was more than just an effort to carry out the nonpartisan GAO's call to reduce case backlog. It was a politically motivated intervention aimed at achieving immigration outcomes favorable to the Trump administration. Among the quota policy's critics' arguments were:

<sup>1</sup> Additional details about the performance plan and the administration's defense of its necessity are provided in the Supplementary Material.

- “[B]acklog is being used as a political tool to advance the current law enforcement policies” (Long 2018).
- The policy would serve as a “death knell for judicial independence” for immigration judges (Sacchetti 2017).
- “Sessions is treating them [immigration judges] like immigration officers, not judges” (Benner 2018).

The political intentions of the administration's immigration judge-directed policy were made all the more credible by Trump's success in destabilizing the position of careerists throughout the federal bureaucracy (e.g., Doherty, Lewis, and Limbocker 2019; Lewis 2019; Moynihan and Roberts 2021) and his administration's open flaunting of “its desire to impose political loyalty over administrative expertise” (Chand 2019, 395).

The executive branch's direct efforts to generate political responsiveness among immigration judges through the quota policy stand in stark contrast to past efforts. As we describe above, the president typically holds only weak influence options over immigration judges, resulting in little incentive for compliance among these agents. Prior DOJ efforts to push for increases in immigration judge productivity lacked the “teeth” necessary to elicit mass immigration judge responsiveness. For example, in prior years, the DOJ had initiatives focused on nudging immigration judge case processing speed via sending emails to all immigration judges that praised judges for their efficient case processing and listed individual immigration judges by name and case completion rate (Jain 2019). The DOJ had also previously issued case completion goals for immigration judges but, contrary to the Trump policy of 2018, these were framed as aspirational rather than mandatory, and there were no disciplinary actions attached for immigration judge failure to meet them (Slavin and Marks 2015).

With its 2018 policy, it seemed like the Trump administration had taken a page straight out of Lipsky's guidebook for exerting control over street-level bureaucrats. Lipsky (1980) had long before argued that clear goals and well-developed performance measures for agents can increase “managers' ability to exercise control over policy” (40). Unlike any immigration judge-focused policy of the past, with the quota policy's detailed performance metrics, noncompliant judges face the new and potent threat of poor marks on their civil service evaluations, which could be used to trigger at-will firings and/or block career advancement goals. The threat of political constraint on immigration judge behavior that had sat largely fallow for so long was now active. As the *New York Times'* Editorial Board observed: “...Mr. Trump came along and reminded everyone just how much power the head of the executive branch has when it comes to immigration [courts and judges]” (Editorial Board 2021). Strategy-minded immigration judges would have to adjust to this new world of active political constraint. In particular, for those immigration judges not already behaving in ways that were pleasing to the Trump administration or who

felt targeted by the new policy,<sup>2</sup> continuing to follow their sincere preferences in their judging behavior could risk their jobs.

## LOOKING FOR IMMIGRATION JUDGE RESPONSIVENESS IN DECISIONS

It seemed clear, particularly in light of the Trump administration's many other aggressive tactics and rhetoric in the immigration law and policy arena, that the administration's quotas were aimed at producing a high quantity of efficient removals (Troval, Ortiz, and Prendergast 2018). From his campaign through his presidency, Trump had “placed the deportation of ‘illegals’ at the center of his policy agenda, staking much of his political future on the ability to remove these individuals from the country” (Kim 2018, 3). The quotas were likely to aid the issuance of these desired removal orders. A focus on speedy case resolution “obstructs the noncitizen's ability to present his or her case or obtain counsel” and “compromises the [immigration judge's] ability to engage in an accurate assessment of the facts at issue,” meaning that immigration judges may deny noncitizens relief “notwithstanding their legal eligibility” (Kim 2018, 48). Surveyed federal agency judges have similarly argued that political pressure to speed case decisions can “impede decision making” and “thwart due process” (Chand 2019, 405) in a way that prioritizes bureaucratic consistency while sacrificing individualized justice. Given the Trump quota policy's focus, we expect responsive, strategy-minded immigration judges to prioritize greater efficiency and higher removal rates in their decision-making. We look to two areas of immigration court outcomes for producing this potential responsiveness in the post-quota era: *in absentia* removal orders and pro-government removal orders on the merits.

For *in absentia* removal orders, current immigration law states that an immigrant who does not attend a scheduled hearing in the immigration court “shall be ordered deported *in absentia*” (Immigration Act of 1990, §242B(c)(1)). This legal provision means, in effect, that if at any time, an immigrant fails to appear at a hearing before the immigration court as scheduled, she may be ordered, at the discretion of the immigration judge presiding over the case, removed from the United States because of her absence without the opportunity or extended time in future hearings to defend her case on the merits (Eagly and Shafer 2020; Gomez 1993). Due to the innate efficiency of *in absentia* removal orders relative to allowing cases to proceed on the merits, the quota policy and the administration's messaging surrounding it

<sup>2</sup> Given Trump's negative rhetoric toward the Latinx community as a candidate and while in office (Michelson and Monforti 2018), Latinx immigration judges may have perceived a spotlight on their behavior stemming from the Trump administration's quota policy. Such a perception may have driven many Latinx judges—even those with already high removal rates—to further prioritize ruling in removal-oriented ways.

implicitly encourage immigration judges to increase their issuance of *in absentia* removal orders. For example, Attorney General Sessions urged immigration judges that “We have to be very productive. Volume is critical.” and “The timely and efficient conclusion of cases serves the national interest. Unwarranted delays and delayed decision making do not” (Benner 2018; Sessions 2017). In addition to their efficiency, *in absentia* removal orders are more likely than other outcomes to be protected from being overturned on appeal since direct appeals of the orders are not permitted and a very narrow set of criteria must be met for immigration judges to rescind the orders (Boyd et al. 2023; Eagly and Shafer 2020; Koh 2017). Given the combination of their efficiency benefits and their greater protection from reversal on appeal, we expect that immigration judges will increase their rate of *in absentia* removal orders (especially those whose previous behavior was at odds with the Trump administration’s preferences).

Beyond *in absentia* removal orders, the implementation of the quota policy may also have driven those immigration judges who were more likely to find in favor of noncitizens pre-policy to strategically alter their merits decision-making in a pro-government, anti-immigrant direction. Immigration judges seeking to be responsive to the president saw, just as other onlookers did, that the Trump administration’s quota policy focused on “maximizing the number of deportations” (Kim 2018, 49). Sessions had explicitly emphasized to immigration judges, for example, the need for them to help “to enshrine what the law contemplates and what the people desire—an end to unlawfulness in our immigration system” (Sessions 2017). As a former immigration judge put it, “Evaluating somebody’s performance on the number of cases they close is obviously going to have some effect on the substance of the decisions ... You know the boss wants removal orders, not grants” (Topan 2018). A pragmatic explanation also helps us to understand an increase in compliance in merits-level decision-making: during the Trump administration, removal orders would be perceived as being more likely to survive appellate review before the Attorney General and Board of Immigration Appeals—where Trump administration-selected judges held a supermajority of positions (Misra 2020a; 2020b)—than would granted applications. Staying under the new policy’s 15% reversal threshold may thus require immigration judges who were previously empathetic in their judging behavior toward noncitizens to shift in anticipation of appellate review.

As we document above, prior research indicates that in the pre-quota era, immigration judges held vast discretion and were free to be guided by sincere personal preferences or other individual idiosyncrasies (like gender, ethnicity, and career experience) in their decision-making. Under these circumstances, some immigration judges’ baseline attitudes toward immigration, along with their prior experiences, made them more or less likely to rule (on average) in pro-removal ways that mirrored the Trump administration’s policy goals. We expect that judges whose pre-quota decision-

making already aligned with the Trump administration’s goals (such as Republican judges) will exhibit a smaller “response” to the quota policy. Immigration judges whose sincere preferences diverge from those of the Trump administration (such as Democrats, women, and Latinx judges) will have to strategically alter their behavior following the introduction of the 2018 quota policy, in order to avoid potential career sanctions.

## DATA AND METHODS

Our empirical analysis of the effects of Trump’s policy requires data tracking individual immigration judge decision-making in immigration court hearings both before and after the implementation of the October 2018 policy. The EOIR has made these data available to the public through FOIA (U.S. Department of Justice 2022a), and they record fine-grained information on every immigration court case, including the immigration judge’s name, along with details on the non-citizen participant, outcomes, and other case information. Our study focuses on removal proceedings for which an immigration judge held a hearing (for our *in absentia* analysis) or made a substantive decision (for our merits analysis) between January 1, 2012 to March 1, 2020.<sup>3</sup> To credibly identify the causal effect of the quota policy and ensure that any observed change in immigration court decision-making trends is not driven by a change in the composition of immigration judges over time, we restrict our sample to the 335 judges who were actively hearing cases both the year before and after the policy change.

We have two outcomes of interest: *In Absentia Removal Order*, which measures whether the immigrant is ordered removed *in absentia*, and *Merits Removal Order*, which captures whether the immigrant lost her case on the merits and the government won. For *In Absentia Removal Order*, our unit of analysis is the immigration court hearing, which accounts for the potential that an *in absentia* removal order can be issued at any scheduled case hearing where the non-citizen does not appear. For *Merits Removal Order*, our unit of analysis is the immigration court case. Each dependent variable is dichotomous, coded as 1 if the noncitizen is ordered removed and 0 otherwise. Our treatment variable, *Post Policy*, is also dichotomous, measured as 1 if the immigration judge’s decision occurs after the October 1, 2018 implementation of the quota policy, and 0 if it occurs before.

Our modeling also includes judge and case-level factors deemed relevant to immigration decision-making by prior research. As our above-discussion highlights, since the degree of responsiveness required of immigration judges may depend on their baseline attitudes toward immigration, it is also important for us to include the political identities of the judges in our data. We measure the political partisanship of the

<sup>3</sup> Details on how we clean the data are provided in the Supplementary Material.

immigration judges in our dataset (*Judge Party*) based on their party registration and/or primary ballot information found in statewide voter registration databases. This judge partisanship measurement technique, which has been used in prior smaller-scale studies of bureaucratic judges (Seabrook, Wilk, and Lamb 2013; Taratoot 2014; Taratoot and Howard 2011), is specific to the judge rather than being dependent on the appointing president or attorney general. Following the lead of scholars using commercial data sources on voters and public officials (e.g., Chyn and Haggag 2019; Einstein, Ornstein, and Palmer 2022; Enamorado, Fifield, and Imai 2019; Fraga 2015; Hersh and Ghitza 2018; Velez and Newman 2019; Yoder 2020), we use voter registration information developed and made available commercially through L2, Inc. Within our coded data, 30% of judges are Republicans, 51% are Democrats, 10% are independent or non-partisan, and 9% could not be located. The Supplementary Material provides additional information on our partisanship measurement technique and its desirability over alternative options.

We also include variables related to key immigration judge background and demographic characteristics that, as described above, have been found in prior literature to affect discretionary immigration judicial behavior. Three of our judge background variables involve prior work experience for the U.S. government and are likely predictive of pro-government immigration judging behavior. *DHS, INS, or EOIR Experience* captures whether the immigration judge had previous experience working for an immigration enforcement agency, such as INS, DHS, or the EOIR. *Prosecutor/Government Experience* measures instances where the immigration judge previously worked for the government or served as a state or federal prosecutor. *Military Service* codes immigration judges with some prior service in the U.S. military. *Legal Aid Experience*, which captures prior experience working for organizations providing legal aid to the indigent population including legal aid societies and public defense work, *Latinx Judge*, and *Judge Gender* are likely to be related to a judge's baseline propensity to be more pro-noncitizen in their behavior.<sup>4</sup>

We also measure a large number of case-specific characteristics that are likely to influence judicial decisions, including the nationality of the noncitizen, language spoken, and whether the noncitizen has legal representation, is applying for asylum, or is in custody at the time of the hearing. Further details on variable measurement and coding are provided in the Supplementary Material.

To estimate the effect of the quota policy on immigration judge behavior, we employ an interrupted time

series approach (e.g., Mummolo 2018), comparing the rate at which immigration judges remove noncitizens before and after the policy on October 1, 2018. In order to ensure that any increases in removal decisions are not driven by a change in the composition of immigration judges over time or the type of cases heard, we preprocess the data using exact matching (Ho et al. 2011). For every judicial decision in the post-policy period, we identify the set of decisions in the pre-policy period heard by the same judge, in the same location, and with the same set of observable case-level characteristics. This creates a matched dataset in which every observed covariate likely to influence judicial decision-making is perfectly balanced between treatment (post-policy) and control (pre-policy) groups. Further details on our matching procedure are provided in the Supplementary Material.

For each of our outcomes of interest, we model the probability that an immigration judge will order an immigrant removed ( $p$ ) with the following logistic regression:

$$\text{logit}(p) = \alpha + \beta_1 x + \beta_2 J + \beta_3 (x \times J) + \gamma Z + \varepsilon,$$

where  $x$  is a vector of treatment indicators,  $J$  is a matrix of judge-level characteristics, and  $Z$  is a matrix of case-level covariates. Standard errors  $\varepsilon$  are clustered by match strata (i.e., the group of observations heard by the same judge, in the same city, with the same set of observed case-level characteristics). Interactions between the treatment vector and each judge-level characteristic ( $x \times J$ ) allow us to estimate conditional average treatment effects. A principal advantage of the matched dataset is that our estimate of the average treatment effect on the treated (ATT) is not sensitive to the precise functional form of our regression model (Boyd, Epstein, and Martin 2010; Ho et al. 2007; Smith 1997). Full regression tables with alternative specifications are included in the Supplementary Material.

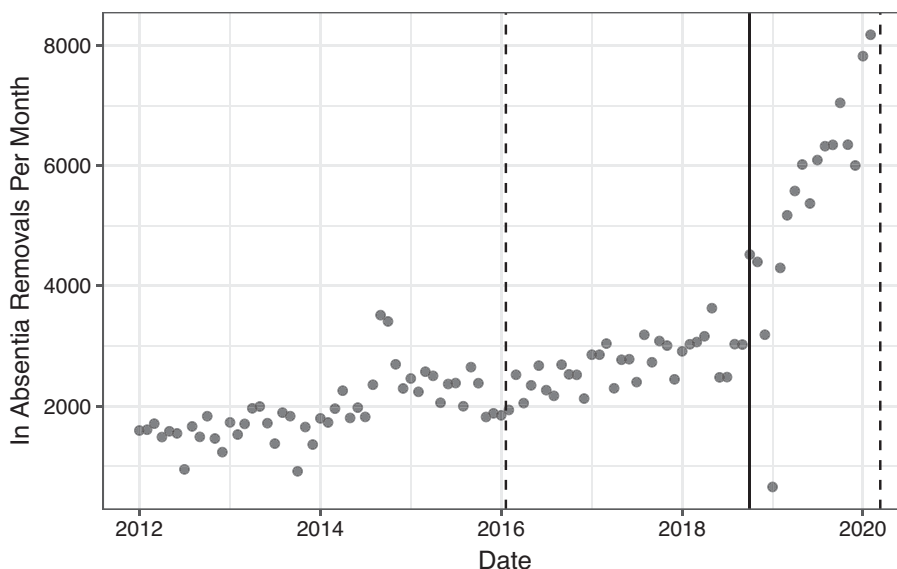
## RESULTS

### *In Absentia* Removal Decisions

Figure 1 illustrates our empirical approach, plotting the monthly rates of *in absentia* rulings over time for noncitizens. As the figure reveals, there is a striking increase in the rate of these rulings by immigration judges following the imposition of the quota (denoted in the figure with the solid vertical line). In the year before, the quota was put into place, immigration judges ordered roughly three thousand *in absentia* removals per month. When the quota went into effect, this *in absentia* rate rose above four thousand per month. By the time the COVID-19 pandemic shut down immigration courts in March 2020, the rate was well over eight thousand per month. Overall, in the year before the quota was implemented, immigration judges entered *in absentia* removal orders in 13.4% of hearings. In the year afterward, that rate rose to 18.3%

<sup>4</sup> Additional judge-level measures include *Prior Judicial Experience*, *Private Practice Experience*, *Length of Tenure (Immigration Court)*, and *Previous Caseload*. While these experiences don't have a strong theoretical connection to immigration judging behavior, prior work has found many of them to be associated with the likelihood of ruling in favor of immigrant relief (e.g., Ramji-Nogales, Schoenholtz, and Schrag 2007).

**FIGURE 1. Monthly Rates of *In Absentia* Removal Orders Before and After the Policy Change for Noncitizens**

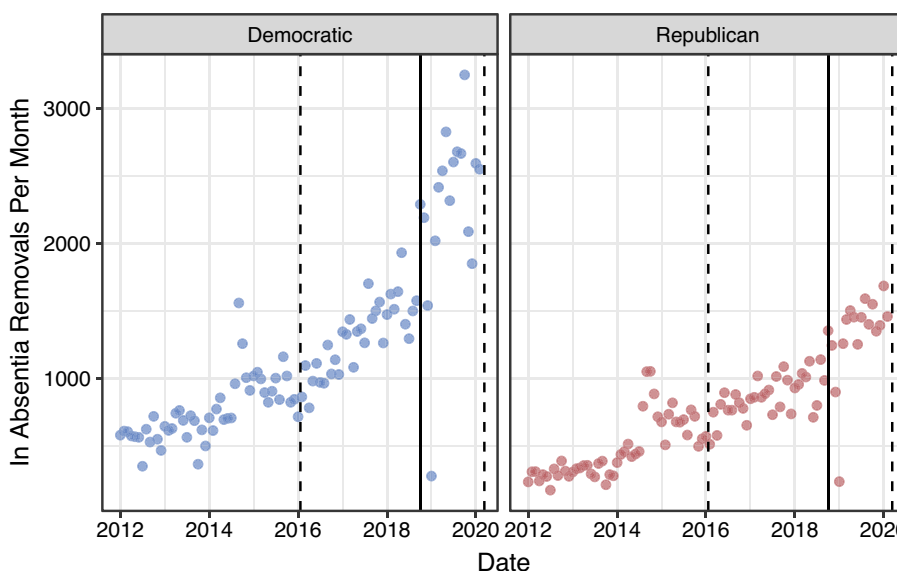


Note: The solid line marks the quota policy implementation. Dashed lines mark the beginning of the Trump administration and the COVID-19 pandemic, respectively. Each point represents a month of *in absentia* removal orders.

—a 4.9-percentage-point increase. These descriptive results are consistent with our expectations since *in absentia* removal orders are doubly effective at responding to the Trump administration’s quota policy: they are removal orders, and they offer an efficient mechanism by which to process a case termination while making an appellate court remand difficult.

Recall that we anticipate that some immigration judges (such as Democrats) will be more compelled to shift their behavior to comply with the quota policy than others (like Republicans). Figure 2 displays the number of monthly *in absentia* removals broken down by immigration judge party affiliation. The descriptive data present a clear picture on this. Though both groups

**FIGURE 2. Monthly Rates of *In Absentia* Removal Orders Before and After the Policy Change for Noncitizens for Democratic and Republican Immigration Judges**



Note: The solid line marks the quota policy implementation. Dashed lines mark the beginning of the Trump administration and the COVID-19 pandemic, respectively. Each point represents a month of *in absentia* removal orders.



are ordering an increasing number of *in absentia* removals throughout this time period, there is a sharply discontinuous uptick for Democratic judges when the quota policy is enacted. The Republican judges' response appears much smaller.

According to our regression estimates (reported in full in Table A.3 in the Supplementary Material), the average immigration judge was roughly 1 percentage point more likely to issue *in absentia* removal orders during the post-policy period. This roughly corresponds to an additional five thousand noncitizens ordered removed *in absentia* during the year following the quota. This estimated effect is larger for some groups of judges than others. Figure 3 plots the conditional average treatment effects of the quota policy across our independent variables of interest. Consistent with our expectations, the estimated treatment effects are generally larger for those judges who needed to shift their behavior post-policy in order to comply with Trump's newly constraining preferences. Namely, we see statistically significant increases in the propensity of issuing *in absentia* removal orders from a number of expected groups after the quota: Democratic judges (+1.6 percentage points), judges without experience working for the government on immigration matters (INS or DHS) (+1.4 percentage points), female judges (+1.4 percentage points), and judges with legal aid experience (+1.1 percentage points). Even more substantial is the effect for Latinx judges—an increase of 7 percentage points in the likelihood of an *in absentia* removal post-policy. While sizable, we urge caution in interpreting this particular conditional effect, as it is

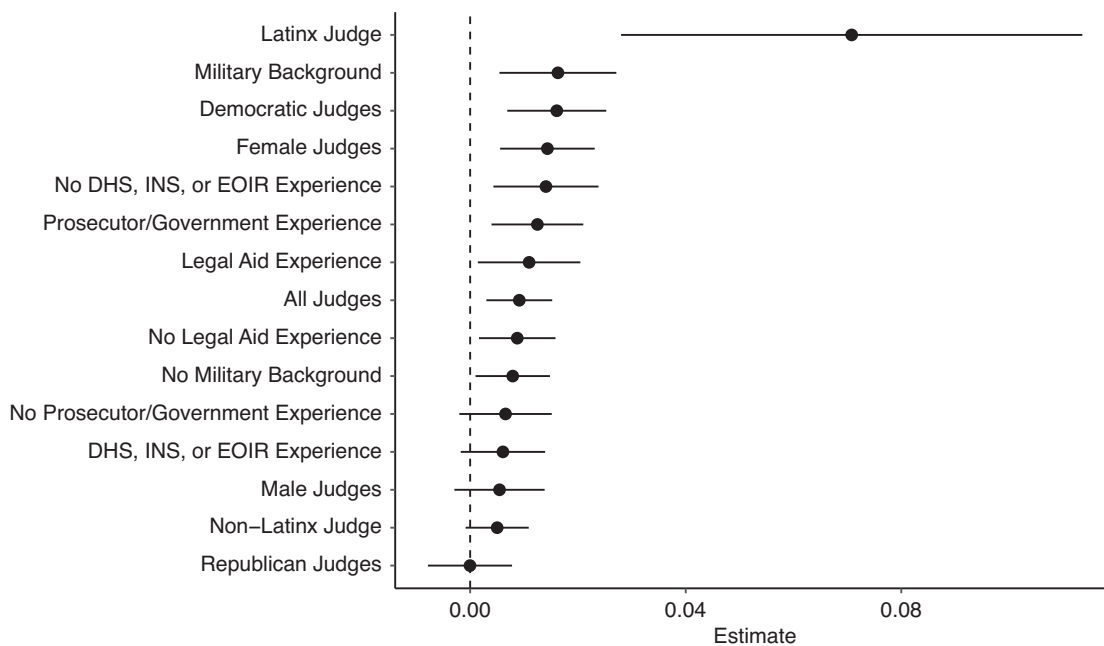
based on a small number of Latinx judges in our matched data.

We also see in Figure 3 that, as expected, many of the judges who have little-to-no need to shift following the policy are indeed statistically unaffected by it when it comes to *in absentia* removal order rates. This includes, for example, Republican judges, male judges, non-Latinx judges, and judges with prior experience working for the INS or DHS. Contrary to our expectations, immigration judges with prior experience working as prosecutors or for the government or those with military service are more likely to issue *in absentia* removal orders post-policy.

### Removal Orders on the Merits

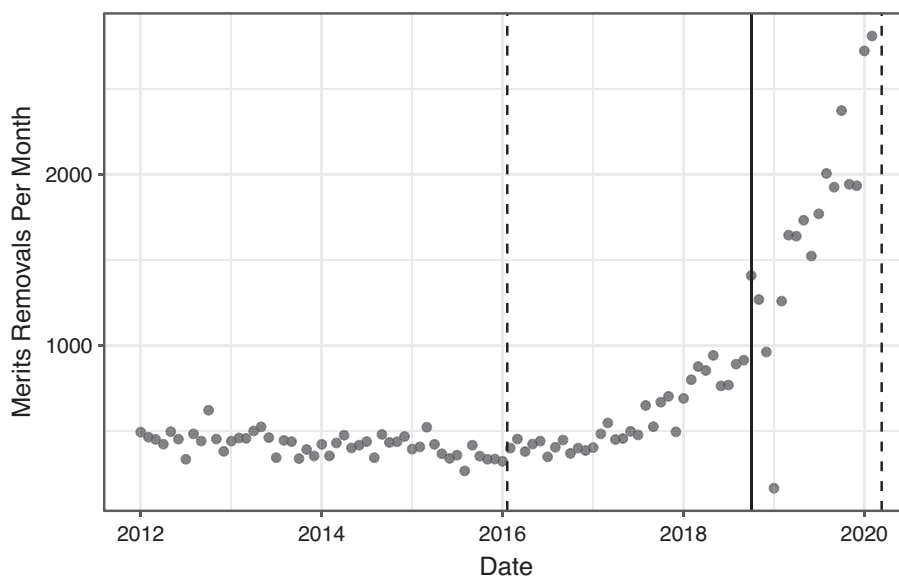
Turning to our second dependent variable—*Merits Removal Order*—we once again begin with a descriptive examination of the data. Figure 4 illustrates the monthly rates of merits removal orders over time for noncitizens. As the figure reveals, there is a notable overall increase in the rate of merits removal orders by immigration judges after the quota's introduction. Prior to the quota, immigration judges ordered fewer than one thousand non-detained immigrants removed on the merits of their cases each month. Within a year after the quota implementation, this merits removal rate rose to nearly two thousand noncitizens per month. To put this increase into perspective, in the year before the quota, immigration judges ordered merits removals in 30.7% of these cases. In the year afterward, that rate rose to 38.8%—an 8.1-percentage-point increase.

**FIGURE 3. Estimated Conditional Average Treatment Effects and 95% Confidence Intervals, *In Absentia* Rulings**



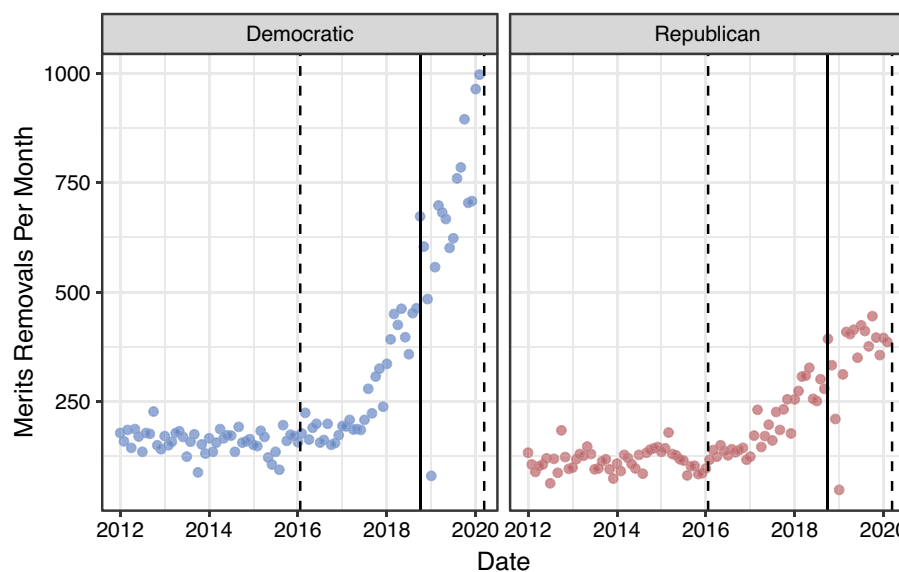
Note: Estimations based on regression results reported in Table A.3 in the Supplementary Material.

**FIGURE 4. Monthly Rates of Merits Removal Orders Before and After the Policy Change for Noncitizens**



Note: The solid line marks the quota policy implementation. Dashed lines mark the beginning of the Trump administration and the COVID-19 pandemic, respectively. Each point represents a month of merits removal orders.

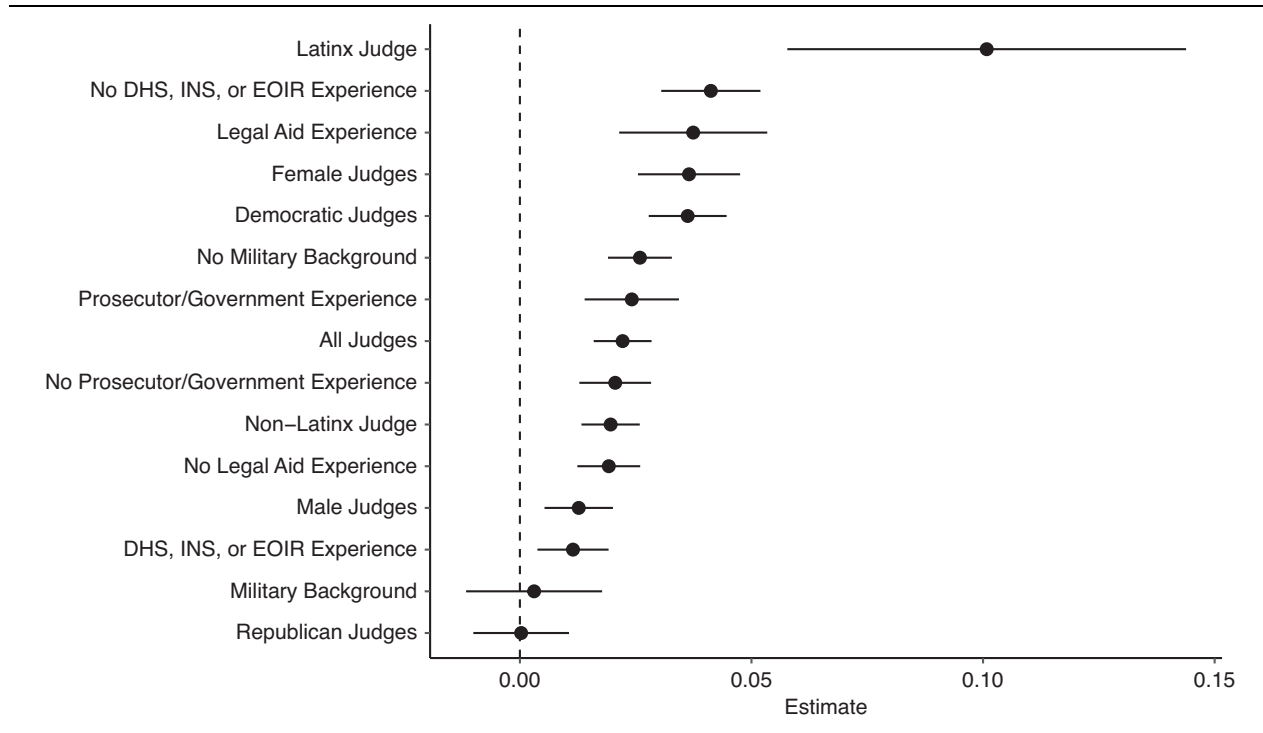
**FIGURE 5. Monthly Rates of Merits Removal Orders Before and After the Policy Change for Noncitizens for Democratic and Republican Immigration Judges**



Note: The solid line marks the quota policy implementation. Dashed lines mark the beginning of the Trump administration and the COVID-19 pandemic, respectively. Each point represents a month of merits removal orders.

Turning to Figure 5, as with *in absentia* removals, the rate of merits removals increases more sharply for Democratic judges post-policy than Republican judges. While there is a subtle increase in merits removals for Republican judges starting in October 2018, the Democratic judges' upward shift is rapid and sharp.

We once again estimate a logistic regression model interacting *Post Policy* with our judge-level variables of interest, with full regression results reported in Table A.4 in the Supplementary Material. The regression results align with our expected effects on *Merits Removal Order*, indicating that the likelihood of such a

**FIGURE 6. Estimated Conditional Average Treatment Effects and 95% Confidence Intervals, Merits Rulings**

Note: Estimations based on regression results reported in Table A.4 in the Supplementary Material.

removal order rises following the introduction of the quota policy. The average estimated treatment effect of the quota for all cases in the sample is a 2.2-percentage-point increase in the rate of removal, corresponding to an additional nearly seven thousand immigrants ordered removed in the year following the quota. In addition to accomplishing its stated efficiency objectives through an increase in *in absentia* removal orders, the quota policy appears to have achieved the Trump administration's overall pro-removal policy objective as well.

As with *in absentia* rulings, the estimated treatment effect is larger for some groups of judges and cases than others. To see this, Figure 6 plots the conditional average treatment effects of the quota policy across our independent variables of interest. Once again, the estimated treatment effects confirm our expectations: immigration judges whose previous behavior was most likely at odds with the Trump administration's preferences were most likely to shift their decision-making post-policy. We see sizable, statistically significant increases in the likelihood of issuing merits removal orders from hypothesized groups post-quota, such as: Latinx judges (+10 percentage points), Democratic judges (+3.6 percentage points), judges without experience working for the government on immigration matters (INS or DHS) (+4.1 percentage points), female judges (+3.7 percentage points), judges with legal aid experience

(+3.7 percentage points), and judges lacking military experience (+2.6 percentage points). We also see that many of the judges with little reason to alter their behavior post-policy were largely unchanged in their merits removal behavior: Republican judges and judges with military experience merits' decision-making was statistically indistinguishable pre- and post-policy, whereas male judges and judges with INS or DHS experience saw an increase in their removal rates that was much less dramatic than their female and non-immigration experienced colleagues. Contrary to our expectations, there were no significant differences in estimated treatment effects between judges with and without experience as a former prosecutor (around +2.0 percentage points).

In the Supplementary Material, we present a series of supplementary analyses to test the robustness of our results. First, we demonstrate that our estimated effects are insensitive to choice of bandwidth (i.e., estimating the treatment effect using data a year before and after the policy). Even using windows as short as 2 months before and after treatment, we observe a large and statistically significant increase in removal orders. Second, we conduct a series of placebo tests to observe whether our estimator yields spurious results when applied to periods of time outside the policy implementation. Reassuringly, the true treatment date consistently yields the largest estimated treatment effects.

## DISCUSSION

Immigration has long been a hot-button issue in the United States and one that politicians, including presidents, have sought to use for political maneuvering and gain. Presidents have been successful in issuing executive orders imposing either tough-on-immigration or permissive immigration policies (Cox and Rodríguez 2020; Ngai 2014; Wadhia 2019; Wallace and Zepeda-Millán 2020; Wong 2017). Presidents have not, however, been well-positioned to control the outputs emanating from U.S. immigration courts. Recently that has changed, with the Trump administration's October 2018 performance quota policy sending a powerful message that the executive branch was closely monitoring immigration judge decisions and that ill-performing judges could face employment sanctions. As our results indicate, the controversial quota policy had its desired political effect on immigration judge behavior, with *in absentia* removal orders and merits-based removal orders increasing—particularly among typically more pro-noncitizen immigration judges like Democrats, women, Latinxs, and those lacking prior employment experience with the DHS or INS—following the Trump administration's unprecedented intervention.

The implications of the Trump administration's effectiveness in achieving its policy goals with the immigration judging quota are vast. Immigration judges preferring an individualized justice, due process-forward model of adjudication—where empathy toward immigrants' cases was more plausible—were placed in a bind unlike any they had faced before. As our results indicate, while judicial behavior in the real world is heterogeneous, many of these immigration judges responded to the policy with higher rates of removal orders, even if they were not pleased to be doing so. Doing otherwise would be a risky choice for judges given the clear, credible, and devastating sanctions attached to Trump's policy. Rather than engaging in active noncompliance, pro-immigrant judges may have instead looked for opportunities to adjust their judicial behavior in ways that would be visible in EOIR statistics central to the policy while also retaining their core judging values in other ways. When it comes to something like increasing *in absentia* removal orders, for example, this may have resulted in these immigration judges taking advantage of (perhaps quite unfortunately) the easiest cases on their docket to increase such orders: those where the immigrant lacks legal representation.<sup>5</sup> Alternatively, immigration judges particularly unhappy with the new policy and unwilling to alter their behavior in response to it may have retired in anticipation of the implementation of it. Indeed, some anecdotal evidence suggestions this happened with at least a handful of immigration judges (Alvarez 2019).

<sup>5</sup> Our results provide evidence that this may have happened. Non-citizens without legal representation see a +2.0-percentage-point increase in the likelihood of receiving an *in absentia* removal order following the policy's implementation.

Since our research design includes only those judges making decisions both pre- and post-treatment, we can't directly speak to this potential behavior, but future work may well benefit from diving into immigration judge retirement timing decisions.

The policy consequences also extend to the many noncitizens in the U.S. immigration court system, where the stakes of immigration proceedings are exceptionally high—at times even life or death. As we find, the policy resulted in noncitizens having, on average, higher odds of being ordered removed from the United States. Indeed, the policy led to thousands of additional immigrants facing removal orders either *in absentia* or on the merits of their cases than had been the case during the pre-policy period, even during the early years of the Trump presidency. While noncitizens have always confronted an uphill battle as they encounter the messy and complex legal “labyrinth” (as it was termed by the U.S. Supreme Court in *Castro-O’Ryan v. INS*) that is the U.S. immigration system, Trump's policy meant that they must now also overcome systematic political obstacles as well.

Many critics, from immigration judges to members of the media, took note of Trump's perceived politicization of immigration judging. Findings like ours that confirm those perceptions are only likely to fuel these critics' calls for more focus on judicial independence from political pressure for immigration courts. Echoing prior pleas from some immigration judges themselves (Torbaty 2018), the *New York Times*' Editorial Board went so far as to suggest moving immigration courts out of the executive branch:

Congress needs to take immigration courts out of the Justice Department and make them independent, similar to other administrative courts that handle bankruptcy, income-tax and veterans' cases. Immigration judges would then be freed from political influence and be able to run their dockets as they see fit, which could help reduce the backlog and improve the courts' standing in the public eye (Editorial Board 2021).

While such a reorganization could help provide immigration judges insulation from some political pressure, given Congress's hesitancy to act on many other immigration policy matters and the broader longstanding debate in the federal bureaucracy pitting political responsiveness against independence (e.g., Krause, Lewis, and Douglas 2006), it seems unlikely to happen in the near future.

What happens next with presidential efforts to guide or even constrain immigration judge behavior will be important to watch. With the Trump administration's quota policy efforts proving successful in eliciting responsiveness, future administrations may now have a guidebook on how to use immigration courts as a complementary path, along with executive orders, statutory reform, and rhetoric, to achieve immigration policy goals. For now, it is too soon to know how aggressive future presidents will be in this arena. With President Biden's 2020 election, it seemed inevitable that many of the Trump administration's immigration

policies would be reversed—including those specific to immigration judges and the pressures they faced to order removals early and often. This is exactly what has happened with, for example, a 2021 memo rolling back the immigration judge performance quotas (Alvarez 2021). The Biden administration has also signaled that its strategy to fight the still-large backlog in immigration courts will be by prioritizing certain prosecutions and recommending additional discretionary case dismissals (Chishti and Gelatt 2022). While we can't yet fully see the empirical implications of the Biden administration's different tactics (an assessment that has been further complicated by COVID-19), based on the lessons learned from our empirical findings, Biden's more hands-off approach to guiding immigration courts seems unlikely to produce compliance from immigration judges in the ways that the Trump administration was able to do.

While our findings speak directly to how presidents can seize greater levels of control over immigration judging, they are also likely to be informative for the federal bureaucracy more generally. With federal bureaucratic deregulation and decentralization making rulemaking more difficult (Whitford 2002), adjudications have become an increasingly attractive policy-making alternative. For these agencies, adjudication "is not simply about deciding individual cases; it is a means to effectuate the statutes enacted by Congress in accordance with the priorities of the executive branch" (Taylor 2007, 480–1). Agency adjudications well beyond immigration courts are often "politically contentious" (Chand 2019, 398), with high stakes issues like entitlements, discrimination, labor relations, dispute resolution, and benefit determinations on their agency court dockets (Taratoot and Howard 2011). Trump's success in gaining strategic political responsiveness from immigration judges—with a specific policy that includes political oversight and substantial disciplinary implications for failure to comply—may well serve as a blueprint for future presidents seeking to exercise additional political control over agency outputs across the federal bureaucracy.

## SUPPLEMENTARY MATERIAL

To view supplementary material for this article, please visit <https://doi.org/10.1017/S0003055423001028>.

## DATA AVAILABILITY STATEMENT

Research documentation and data that support the findings of this study are openly available at the American Political Science Review Dataverse: <https://doi.org/10.7910/DVN/GXXUHV>.

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## CONFLICT OF INTEREST

The authors declare no ethical issues or conflicts of interest in this research.

## ETHICAL STANDARDS

The authors affirm this research did not involve human subjects.

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