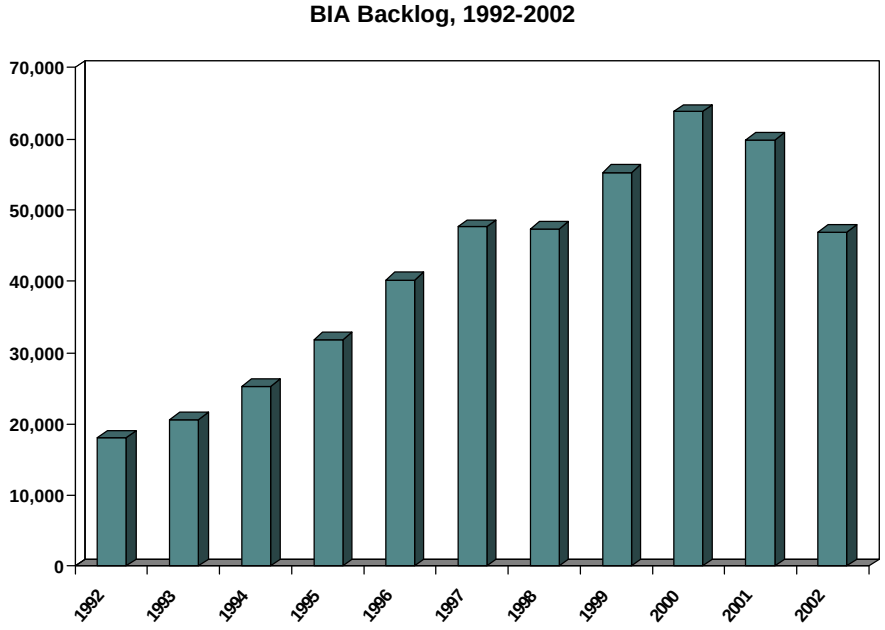
SUMMARY OF FINDINGS AND CONCLUSIONS

The Board of Immigration Appeals ("BIA") is sometimes called the supreme court of immigration. It reviews, then approves or rejects, decisions by immigration service officers and Immigration Judges, including decisions as to whether aliens seeking political asylum should be allowed to stay in the United States or should be expelled to the countries from which they fled.

During the 1990s, expulsion orders increased dramatically, and the number of appeals made to the BIA increased as well. The number of appeals filed with the BIA exceeded the number of appeals decided by the BIA. A backlog of thousands of appeals developed and grew.

"Streamlining Rules" were adopted in 1999 in an effort to reduce the backlog. The "Streamlining Rules" worked, and the backlog began to decline.



During December 2001, independent auditors retained by the Department of Justice reported that the "Streamlining Rules" had been an "unqualified success." Those rules, the auditors concluded, were both "viable and can be sustained."

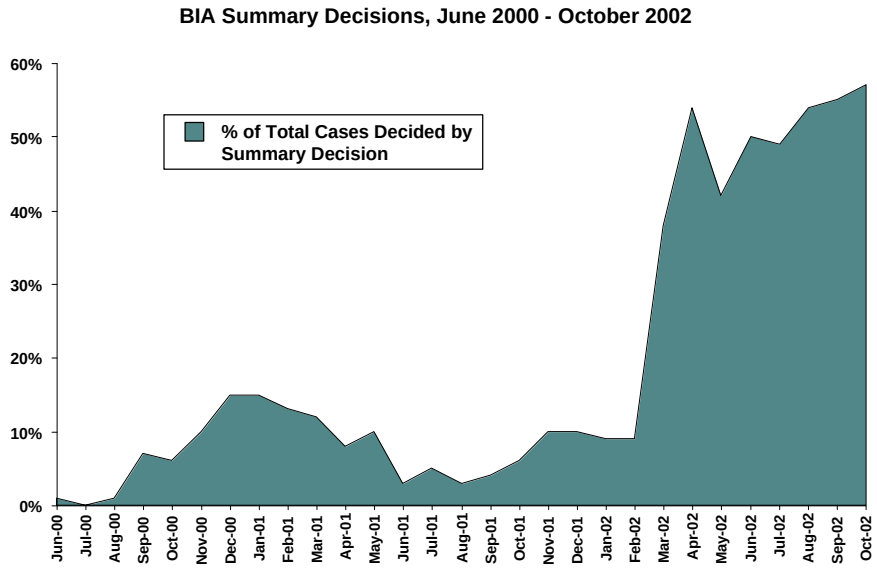
Nonetheless, two months later, in February 2002, the Department of Justice proposed different, extreme measures entitled "Procedural Reforms to Improve Case Management." A copy of the "Procedural Reforms," which were implemented during early 2002 and officially effective on September 25, 2002, is attached to this Study as Appendix 1.*

The Department of Justice expects the "Procedural Reforms" to reduce the BIA's backlog by: (1) nearly eliminating three-judge appeal panels; (2) encouraging routine "affirmances without opinion" of Immigration Judge orders; (3) forbidding de novo review on appeal of factual findings; and (4) eliminating half of the BIA member positions.

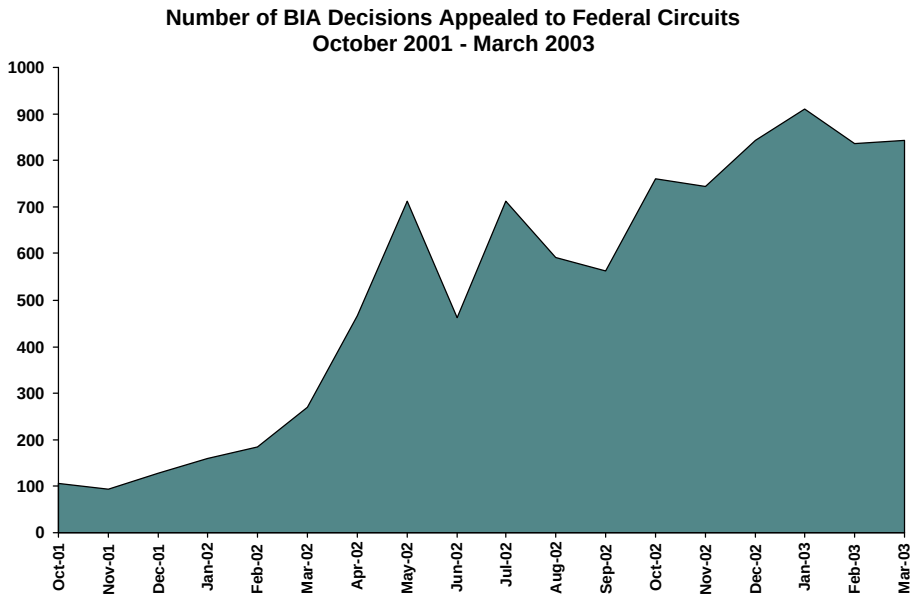
However, many legislators and federal judges are expressing concern about the "Procedural Reforms." The "Procedural Reforms," particularly the "affirmances without opinion," require that the quality and transparency of BIA decisions be sacrificed in order to achieve a higher quantity of BIA decisions.

The number of BIA decisions per month has increased since the "Procedural Reforms" were announced in the spring of 2002. The increase, however, is essentially all accounted for by a steep increase in the number of appeals denied (usually favoring the government). The number of appeals granted (usually favoring the alien) has remained almost flat. Proportionally, since the spring of 2002, the BIA has been granting approximately one out of ten appeals; before the spring of 2002, the BIA was granting approximately one out of four.

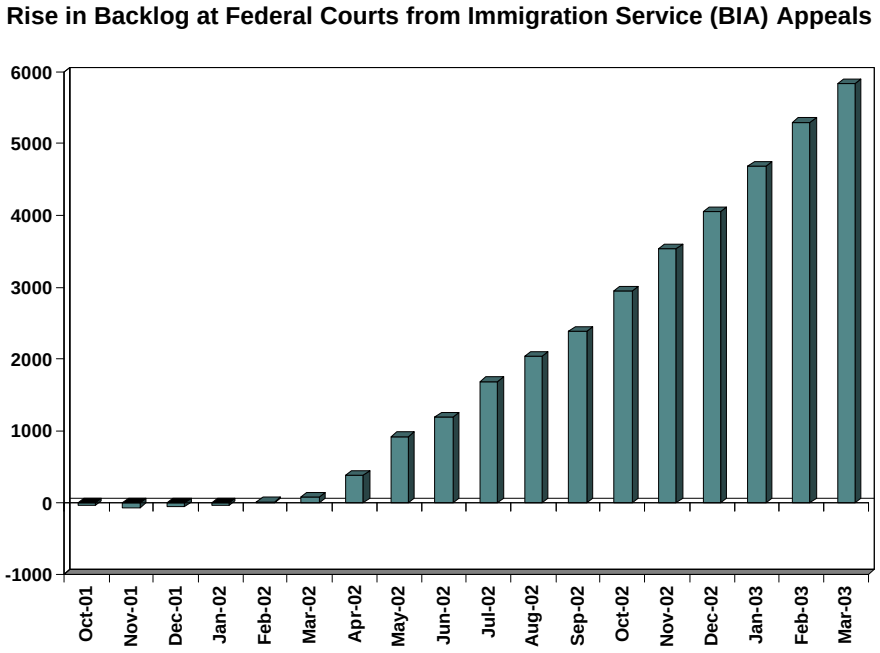
Under the "Procedural Reforms," aliens are losing more appeals. The losses, more often than not, are not explained by the BIA. Since the spring of 2002, BIA "affirmances without opinion" have risen from 10% to over 50% of all BIA decisions.



This increased number and proportion of unexplained BIA decisions has precipitated a surge of appeals from the BIA to the federal circuit courts. The monthly average number of appeals has more than quadrupled since the "Procedural Reforms" were implemented.



As a result, a backlog of immigration appeals has ballooned in the federal circuit courts. It appears that the "Procedural Reforms" are not resolving, but only shifting, a backlog from the BIA to the federal courts.



The federal circuit courts have the obligation on appeal to ensure that the aliens received due process. Because the BIA is now offering no explanation for most of its decisions, the federal courts are digging back to the original Immigration Judge opinions to find some basis for the administrative agency's decision.

In many instances, the federal courts are finding Immigration Judge opinions that are "sheer speculation," or "based upon a fundamental misunderstanding of the law," or "arbitrary and capricious," or "clear error." In those instances, the federal courts have to reverse and remand back to the BIA, whereupon, in most instances, the BIA has to remand back to the original Immigration Judge for further findings or explanations. This wasteful and slow "back to square one" sequence has already been identified by the federal courts as one inevitable result of opaque BIA affirmances. Already, one federal circuit court has explicitly complained that it had to do "what the BIA should have done."

The BIA is supposed to perform important functions: setting precedents; providing fair and reasoned review of the sometimes life-or-death decisions made by the agency; and catching mistakes before innocent people get hurt. Those important BIA functions are undercut by the "Procedural Reforms."

* More complete discussion of the "Procedural Reforms," the constitutional and legal issues they raise, the practical effects they are having, and supporting data are all contained in the full Study attached to this summary.