

**THE AUTOMATION OF DEPORTATION?  
EVALUATING THE CHALLENGES OF ARTIFICIAL  
INTELLIGENCE IN IMMIGRATION LAW**

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I. INTRODUCTION

On February 14, 2025, the Department of Justice fired multiple immigration judges, straining an already backlogged immigration system.<sup>1</sup> By early March, thirty immigration judges and senior staff members had been terminated by the new Trump Administration, cementing the likelihood that the pace of hearing cases by immigration courts would slow down.<sup>2</sup> Heightened enforcement efforts at the United States' southwestern border resulted in more than 1.8 million new cases

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1. Julia Ainsley et al., *Justice Department Fires Multiple Immigration Judges amid Case Backlog*, NBC NEWS (Feb. 15, 2025, at 19:56 ET), <https://www.nbcnews.com/politics/justice-department/justice-department-fires-multiple-immigration-judges-case-backlog-rcna192365> [<https://perma.cc/8PKT-LKZY>].

2. Russell Contreras, *Nearly 100 Immigration Court Staff Retiring, Resigning amid Swelling Backlog*, AXIOS (Mar. 7, 2025), <https://www.axios.com/2025/03/07/immigration-court-staff-retire-resign-backlog> [<https://perma.cc/878P-VG7B>].

being filed, swelling the total backlog of immigration cases to 3.6 million by the end of 2024.<sup>3</sup>

A few weeks later, equally troubling news arrived. In the wake of the arrest of pro-Palestinian activist and Columbia University alumnus Mahmoud Khalil, U.S. State Department sources confirmed that they would be using artificial intelligence (AI)-assisted reviews of “tens of thousands of student visa holders’ social media accounts” in an effort to cancel the visas of foreign nationals who appeared to support Hamas or other designated terror groups.<sup>4</sup> This “Catch and Revoke” effort, as it has been dubbed, includes the use of AI tools to review these social media accounts for any evidence of “terrorist sympathies” expressed after Hamas’ October 7, 2023 attack on Israel.<sup>5</sup>

These twin developments underscore the growing importance of AI on the immigration landscape. According to the International Monetary Fund, nearly 40% of global employment will be impacted by AI.<sup>6</sup> The immigration field is no exception. A growing number of countries, including the United States, are using AI tools to validate the authenticity of documents, analyze applications and other paperwork, and automate a variety of time-consuming tasks.<sup>7</sup> Yet as much as this technology promises great benefits, AI’s use—or, more accurately, misuse—poses significant risks as well.

This article explores these risks. The Department of Homeland Security (DHS), primarily through its sub-agencies like U.S. Citizenship and Immigration Services (USCIS) and Immigration and Customs Enforcement (ICE), has been using AI to assist in making automated decisions on immigration relief and benefits applications.<sup>8</sup> It has also employed AI-powered technology in making risk assessment decisions on

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3. HOLLY STRAUT-EPPSTEINER, CONG. RSCH. SERV., IN12492, FY2024 EOIR IMMIGRATION COURT DATA: CASELOADS AND THE PENDING CASES BACKLOG (2025).

4. Marc Caputo, *Scoop: State Dept. to Use AI to Revoke Visas of Foreign Students who Appear “Pro-Hamas”*, AXIOS (Mar. 6, 2025), <https://www.axios.com/2025/03/06/state-department-ai-revoke-foreign-student-visas-hamas> [https://perma.cc/YHT9-WJLB].

5. *Id.*

6. Kristalina Georgieva, *AI Will Transform the Global Economy. Let’s Make Sure It Benefits Humanity*, IMFBLOG (Jan. 14, 2024), <https://www.imf.org/en/Blogs/Articles/2024/01/14/ai-will-transform-the-global-economy-lets-make-sure-it-benefits-humanity> [https://perma.cc/VE7G-TH2U].

7. Benjamin Anyamele, *How AI and Automation Are Changing Visa Sponsorship Requirements*, VOCAL MEDIA: EDUC., <https://vocal.media/education/how-ai-and-automation-are-changing-visa-sponsorship-requirements> [https://perma.cc/M38G-459B] (last visited Mar. 23, 2026).

8. Steven Hubbard, *Invisible Gatekeepers: DHS’ Growing Use of AI in Immigration Decisions*, AM. IMMIGR. COUNCIL (May 9, 2025), <https://www.americanimmigrationcouncil.org/blog/invisible-gatekeepers-dhs-growing-use-of-ai-in-immigration-decisions/> [https://perma.cc/589R-LP86].

whether to release an individual from detention or to determine the terms of the electronic surveillance of an immigrant released from detention.<sup>9</sup> However, as this article discusses, the AI tools used may be subject to algorithmic bias, which occurs “when systematic errors in machine learning algorithms produce unfair or discriminatory outcomes[,]” which often “reflects or reinforces existing socioeconomic, racial and gender biases.”<sup>10</sup> Such biases may arise from how the algorithm’s developers collect and code the data on which the algorithm is trained and from which it “learns” how the algorithm is designed, or from how algorithm results are interpreted, evaluated, and applied.<sup>11</sup> Any of these biases may result in unfair outcomes. In the immigration context, algorithmic bias can affect everyone from asylum seekers to DACA recipients.<sup>12</sup>

This article begins with a look at the institutional use of AI tools, including the risks of bias they present. Next, this article will examine the risks associated with individual use of generative AI tools. While such tools have been lauded for their efficiencies in research and drafting by attorneys,<sup>13</sup> immigration attorneys’ misplaced reliance and lack of proper vetting of such technology can expose their clients to problems ranging from erroneous legal advice<sup>14</sup> to faulty AI-generated translations that impact everything from asylum claims and visa applications to deportation proceedings.<sup>15</sup> The article will analyze real-world examples of such AI errors, including immigration counsel citing nonexistent cases

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9. See William Antonelli, *How AI Is Aiding Trump’s Immigration Crackdown*, CONTEXT (Apr. 18, 2025) <https://www.context.news/ai/how-ai-is-aiding-trumps-immigration-crackdown> [<https://perma.cc/8SGF-N5VH>].

10. Alexandra Jonker & Julie Rogers, *What Is Algorithmic Bias?*, IBM (Sep. 20, 2024), <https://www.ibm.com/think/topics/algorithmic-bias> [<https://perma.cc/4CNC-HR5U>].

11. *Id.*

12. DACA, or Deferred Action for Childhood Arrivals, is a deferred action policy implemented by the Obama administration in June 2012, which is “aimed at protecting qualifying young undocumented immigrants who came to the U.S. as children, temporarily shielding them from deportation.” Laurence Benenson, *Fact Sheet: Deferred Action for Childhood Arrivals (DACA)*, NAT’L IMMIGR. F. (May 21, 2024), <https://immigrationforum.org/article/fact-sheet-on-deferred-action-for-childhood-arrivals-daca/> [<https://perma.cc/ZT2Q-7BR4>].

13. See Marjorie Richter, *How AI Is Transforming the Legal Profession*, THOMSON REUTERS (Aug. 18, 2025), <https://legal.thomsonreuters.com/blog/how-ai-is-transforming-the-legal-profession/> [<https://perma.cc/Y2TP-HUQF>].

14. See Andy J. Semotiuk, *How AI Is Impacting Immigration Cases and What to Expect*, FORBES (Mar. 23, 2024, at 16:02 ET), <https://www.forbes.com/sites/andyjsemotiuk/2024/03/23/how-ai-is-impacting-immigration-cases-and-what-to-expect/> [<https://perma.cc/K3SE-DXLC>].

15. See *infra* Section IV.

fabricated by AI, as well as cases involving misinterpretations by AI-driven translation apps that jeopardized immigration proceedings.

The very real risks that AI presents to vulnerable immigrant populations stem from both institutional and individual use of this technology. While observers in the immigration arena have been quick to embrace the use of AI for its revolutionary efficiencies, few have bothered to analyze the perils that accompany the promise.<sup>16</sup> This article aims to add to both scholarly and practitioner conversations by doing so.

## II. INSTITUTIONAL USE OF AI IN IMMIGRATION

The use of AI by the immigration systems of foreign countries is nothing new. France, for example, is exploring using the technology for document fraud detection on its ANEF (Digital Administration for Foreigners in France) portal, as well for analyzing residence permit applications.<sup>17</sup> Similarly, Portugal uses AI tools to validate the authenticity of documents submitted with online citizenship applications.<sup>18</sup> Brazil is also turning to AI to speed up the analysis and processing of residency permit applications.<sup>19</sup>

However, while sovereign nations certainly have the right to enforce their respective immigration laws, the practice of using AI to do so comes with certain risks. This includes the risk of bias and discrimination that can accompany the use of predictive analysis and automated decision-making. The Canadian government started using AI in decision-making in its immigration system in 2014.<sup>20</sup> As some scholars have pointed out, however, these automated decisions have reinforced existing biases, resulting in incorrectly categorizing people from marginalized groups as being “higher risk” or eligible for further vetting.<sup>21</sup> Scholars in other countries have pointed out that while AI tools that automate decision-making can provide enhanced efficiencies for nations with significant asylum application backlogs, these benefits must be weighed against the

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16. See, e.g., *AI in Immigration Law: Transforming Legal Services*, IMAGILITY (Nov. 30, 2023), <https://imagility.co/blog/ai-in-immigration-law-transforming-legal-services/> [https://perma.cc/EA9P-BFJT].

17. Sarah M. Blackmore, *Artificial Intelligence and Immigration Implications*, FRAGOMEN (July 5, 2024), <https://www.fragomen.com/insights/artificial-intelligence-and-immigration-implications.html> [https://perma.cc/NQ64-6Z4P].

18. *Id.*

19. *Id.*

20. PETRA MOLNAR & LEX GILL, BOTS AT THE GATE 1, 14 (2018), <https://citizenlab.ca/wp-content/uploads/2018/09/IHRP-Automated-Systems-Report-Web-V2.pdf> [https://perma.cc/3NLP-W8DK].

21. Mayowa Oluwasanmi, *Algorithms and the Border: The Human Rights Implications of Automated Decision Systems in Canadian Immigration*, 22 FEDERALISM-E 86, 93 (2021).

harms of biases.<sup>22</sup> Consequently, they caution against its use in countries that lack strong AI accountability mechanisms.<sup>23</sup>

The United States already lags behind the European Union (EU), which adopted its Artificial Intelligence Act in June 2024,<sup>24</sup> and its General Data Protection Regulation (GDPR) in 2018.<sup>25</sup> The EU's AI Act considers AI systems that are used for “[m]igration, asylum and border control management” to be “high risk”—namely, ones “that negatively affect safety or fundamental rights,” and which require registration in an EU database.<sup>26</sup> Various commentators, including practitioner Inma Sumaita, have suggested that the United States should look to European rights frameworks in order to develop better protections for immigrants and ensure that technological advancements in immigration enforcement practices do not harm individual rights.<sup>27</sup>

What about the United States' use of AI in immigration decision-making and enforcement? In 2024, Congress appropriated \$3 billion across federal agencies to purchase and use AI tools.<sup>28</sup> Many of the significant players in the AI space, including OpenAI, Anthropic, Meta, Microsoft, Google, and Amazon won contracts with the DHS to build and host AI technologies.<sup>29</sup> Already, USCIS is using AI to assist in making decisions on immigration relief and benefits applications. To take one example, it developed “Predicted to Naturalize,” an AI tool that issues recommendations for naturalization application decisions.<sup>30</sup> The USCIS also developed the “Asylum Text Analytics” tool, which automatically

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22. See Hanna Maria Malik et al., *Social Harms in an Algorithmic Context*, 5 JUST., POWER & RESISTANCE 193, 198, 200 (2022).

23. See, e.g., *id.* at 200–01 (citing Finland as an example of a country with robust algorithmic accountability).

24. See *EU AI Act: First Regulation on Artificial Intelligence*, EUR. PARLIAMENT: TOPICS (Feb. 19, 2025), at 17:46 (ET), <https://www.europarl.europa.eu/topics/en/article/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence#eu-ai-act-compliance-timeline-6> [https://perma.cc/4Z9B-V9EP].

25. See *The General Data Protection Regulation*, EUR. COUNCIL (June 13, 2024), <https://www.consilium.europa.eu/en/policies/data-protection-regulation/> [https://perma.cc/HWP9-9KNX].

26. *EU AI Act: First Regulation on Artificial Intelligence*, *supra* note 24.

27. See Inma Sumaita, *Losing Dignity: Eroding Privacy Rights of Immigrants in Technology-Based Immigration Enforcement*, 6 U. CIN. INTELL. PROP. & COMPUT. L.J. 1, 27 (2022).

28. Edward Graham, *Biden's \$1.67 Trillion Budget Boosts Tech, AI*, NEXTGOV/FCW (Mar. 11, 2024), <https://www.nextgov.com/policy/2024/03/bidens-167-trillion-budget-boosts-tech-ai/394841/> [https://perma.cc/ZFW2-6KWJ].

29. Cecilia Kang, *The Department of Homeland Security Is Embracing A.I.*, N.Y. TIMES (Mar. 18, 2024), <https://www.nytimes.com/2024/03/18/business/homeland-security-artificial-intelligence.html> [https://perma.cc/N8YA-XKRJ].

30. JULIE MAO ET AL., AUTOMATING DEPORTATION 22 (2024).

analyzes millions of asylum and withholding applications to determine those it deems fraudulent.<sup>31</sup> Another AI tool still in the development stage will assist the USCIS in identifying and denying immigration benefits to individuals categorized as national security threats, public safety threats, or perpetrators of fraud.<sup>32</sup>

According to the DHS AI Inventory, the “Asylum Text Analytics” tool “employs machine learning and data graphing techniques to identify plagiarism-based fraud in applications for asylum status and for the withholding of removal by scanning the digitized narrative sections of the associated forms and looking for common language patterns.”<sup>33</sup> According to the USCIS’ Chief Technology Officer, this technology flags “when applicants’ stories don’t align.”<sup>34</sup> This statement illustrates that the AI tool reviews not just an individual applicant’s narrative, but those of other applicants as well. Such a system that seeks to ferret out fraud can be particularly prone to discrimination against those whose English language proficiency is limited.

The USCIS is not the only agency developing and using AI powered tools. ICE uses the “Hurricane Score” and “Risk Classification Assessment” (RCA).<sup>35</sup> These tools make decisions on whether to release a person from detention, or to amend the terms of any electronic surveillance under ICE’s Intensive Supervision Appearance Program (ISAP), an electronic monitoring program for immigrants who have been released from detention.<sup>36</sup>

Institutional uses of AI tools are as flawed as the human beings who developed the tools. One study of Germany’s digital tool for determining the plausibility of information submitted by asylum seekers concluded that out of the 6,000 times the program was used, it likely generated approximately 900 false results—an alarming percentage.<sup>37</sup> In 2018, the United Kingdom deported more than 7,000 foreign students when they

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31. *Id.* at 23.

32. *Id.* at 6.

33. *Artificial Intelligence Use Case Inventory*, U.S. DEP’T OF HOMELAND SEC. (Dec. 16, 2024), [https://www.dhs.gov/archive/data/AI\\_inventory](https://www.dhs.gov/archive/data/AI_inventory) [<https://perma.cc/B49G-PTQL>].

34. Dave Nyczepir, *USCIS Automating Pre-Processing of Immigration Cases*, FEDSCOOP (Apr. 15, 2021), <https://fedscoop.com/uscis-automating-immigration-pre-processing/> [<https://perma.cc/EXD8-FNET>].

35. MAO ET AL., *supra* note 30, at 6.

36. *Id.*

37. *Submissions to the Report of the United Nations Special Rapporteur on Extreme Poverty and Human Rights*, ALGORITHM WATCH (June 11, 2019), <https://algorithmwatch.org/en/submission-to-the-report-of-the-united-nations-special-rapporteur-on-extreme-poverty-and-human-rights/> [<https://perma.cc/SD4N-ZHG9>].

were accused of cheating on an English language exam.<sup>38</sup> Only later was it revealed that the automated decision-making tool was error-prone.<sup>39</sup> Faced with similar issues with its AI tools, Canada halted the use of algorithms for asylum decisions.<sup>40</sup> Such examples demonstrate the principle of “garbage in, garbage out.”

U.S. immigration authorities have drawn considerable criticism for the perceived lack of transparency and propensity for bias in their use of AI tools. In September 2024, the Electronic Frontier Foundation and 140 other groups sent a letter to then-DHS Secretary Alejandro Mayorkas calling for an end to AI use in the U.S. immigration system.<sup>41</sup> However, as the following sections of this article reveal, even greater dangers to the rights of immigrants and asylum seekers may reside in immigration lawyers’ individual use of generative AI.

### III. THE RISKS OF USING GENERATIVE AI IN IMMIGRATION CASES – HALLUCINATIONS

Any discussion of the risks involved in the use of generative AI by lawyers—regardless of the area of practice—inevitably begins with concerns about “hallucinations”—fabricated case citations created by the generative AI tool.<sup>42</sup> In May 2023, The *New York Times* broke the story of two New York plaintiff’s attorneys who had used ChatGPT as a poor substitute for actual lawyerly work.<sup>43</sup> They brought a personal injury suit on behalf of Roberto Mata against Avianca Airlines in state court; the

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38. Chris Baynes, *Government ‘Deported 7,000 Foreign Students After Falsely Accusing Them of Cheating in English Language Tests’*, INDEPENDENT (June 14, 2019, at 14:06 BST), <https://www.independent.co.uk/news/uk/politics/home-office-mistakenly-deported-thousands-foreign-students-cheating-language-tests-theresa-may-windrush-a8331906.html> [https://perma.cc/8TCU-TP2X].

39. *Id.*

40. See JESSICA BITHER & ASTRID ZIEBARTH, *AUTOMATED DECISION-MAKING IN MIGRATION POLICY: A NAVIGATION GUIDE* 16 (2021), [https://www.bosch-stiftung.de/sites/default/files/publications/pdf/2021-11/Automating%20Decision-Making%20in%20Migration%20Policy\\_Bither%20and%20Ziebarth.pdf](https://www.bosch-stiftung.de/sites/default/files/publications/pdf/2021-11/Automating%20Decision-Making%20in%20Migration%20Policy_Bither%20and%20Ziebarth.pdf) [https://perma.cc/NQ5X-PZJL].

41. Hannah Zhao & Matthew Guariglia, *EFF & 140 Other Organizations Call for an End to AI Use in Immigration Decisions*, ELEC. FRONTIER FOUND. (Sep. 5, 2024), <https://www.eff.org/deeplinks/2024/09/eff-140-other-organizations-call-end-ai-use-immigration-decisions> [https://perma.cc/6ZPB-4VMK].

42. See Sara Merken, *Trouble with AI ‘Hallucinations’ Spreads to Big Law Firms*, REUTERS (May 23, 2025, at 17:01 ET), <https://www.reuters.com/legal/government/trouble-with-ai-hallucinations-spreads-big-law-firms-2025-05-23/> [https://perma.cc/86RE-V5JM].

43. Benjamin Weiser, *Here’s What Happens When Your Lawyer Uses ChatGPT*, N.Y. TIMES (May 27, 2023), <https://www.nytimes.com/2023/05/27/nyregion/avianca-airline-lawsuit-chatgpt.html> [https://perma.cc/ULU3-S48N].

airline promptly removed the case to federal court and filed a motion to dismiss.<sup>44</sup> Plaintiff's counsel responded with an opposition brief, which cited six nonexistent case citations generated by ChatGPT—a resource that Mata's lawyers mistakenly thought was a free legal research database.<sup>45</sup> Counsel for Avianca replied, stating that it could not find the cases cited, while others appeared to not support the proposition for which they were cited.<sup>46</sup>

The court ordered plaintiff's counsel to provide the mystery cases.<sup>47</sup> When they could not, the court held a hearing on sanctions.<sup>48</sup> U.S. District Court Judge Kevin Castel took issue with not only the submission of fake cases, but also with counsel's attempts to cover up their bad faith.<sup>49</sup> As the court pointed out, "Respondents advocated for the fake cases and legal arguments . . . after being informed by their adversary's submission that their citations were non-existent and could not be found."<sup>50</sup> Observing that "existing rules impose a gatekeeping role on attorneys to ensure the accuracy of their filings," Judge Castel held that the two plaintiff's attorneys "abandoned their responsibilities when they submitted non-existent judicial opinions with fake quotes and citations created by the artificial intelligence tool ChatGPT, then continued to stand by the fake opinions after judicial orders called their existence into question."<sup>51</sup> Ultimately, the court sanctioned each lawyer \$5,000, directed them to complete continuing legal education on technology competence and artificial intelligence that the lawyers earlier volunteered to do as a mitigating measure, directed them to send a copy of the judge's order to their client, and ordered them to write letters of apology to each of the judges falsely identified by ChatGPT as having authored fabricated cases.<sup>52</sup>

*Mata v. Avianca, Inc.*, however, was just the tip of the iceberg, and cases of attorneys using generative AI and citing fabricated cases have continued to pop up all over the country.<sup>53</sup> In such cases, attorneys have

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44. See *Mata v. Avianca, Inc.*, 678 F. Supp. 3d 443, 449 (S.D.N.Y. 2023).

45. *Id.* at 450–51.

46. *Id.*

47. *Id.* at 451.

48. *Id.* at 451–52.

49. See *id.* at 449.

50. *Id.* at 464.

51. *Id.* at 448.

52. *Id.* at 466.

53. See, e.g., *People v. Crabill*, No. 23PDJ067, 2023 WL 8111898 (Colo. O.P.D.J. Nov. 22, 2023); *In re Samuel*, 206 N.Y.S.3d 888 (N.Y. Sur. Ct. 2024); *Park v. Kim*, 91 F.4th 610 (2d Cir. 2024); *United States v. Cohen*, 724 F. Supp. 3d 251 (S.D.N.Y. 2024); *Smith v. Farwell*, No. 2282CV01197 (Mass. Super. Ct. Feb. 12, 2024); *In re Neusom*, No. 2:24-mc-2-JES, 2024 WL 1013974 (M.D. Fla. Mar. 8, 2024).

been sanctioned and/or subjected to professional discipline.<sup>54</sup> In all of these cases, the problem has not been a lapse in technology, but rather the failure of attorneys to adhere to their ethics obligations. As the Grievance Committee for the Middle District of Florida commented in one case, although “artificial intelligence is becoming a new tool for legal research, it can never take the place of an attorney’s responsibility to conduct reasonable diligence and provide accurate legal authority to the Court that supports a valid legal argument.”<sup>55</sup>

*Mata v. Avianca, Inc.* also led to a wave of trial courts around the country issuing either standing orders or amending their local rules to require that attorneys and self-represented litigants disclose any use of generative AI and certify that filings with the court that incorporated AI-generated output had been reviewed by a human being for accuracy.<sup>56</sup> The first of these—within weeks of Judge Castel’s show cause order in *Mata v. Avianca, Inc.*—was issued by U.S. District Court Judge Matthew J. Kacsmatyk of the Northern District of Texas (Dallas Division), who updated his individual practice rules to include a “Mandatory Certification Regarding Generative Artificial Intelligence.”<sup>57</sup> This rule requires both attorneys and pro se litigants to file a certificate “attesting either that no portion of any filing will be drafted by generative artificial intelligence (such as ChatGPT, Harvey.AI, or Google Bard) or that any language drafted by generative artificial intelligence will be checked for accuracy, using print reporters or traditional legal databases, by a human being.”<sup>58</sup> Judge Kacsmatyk’s rule goes on to explain why it is necessary—because “[t]hese platforms in their current states are prone to hallucinations and bias.”<sup>59</sup> As to the bias aspect, the rule points out that while attorneys are subject to an oath to faithfully uphold the law and set aside personal prejudices, “generative artificial intelligence is the product of programming devised by humans who did not have to swear

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54. See Ke Liu (Kevin), *Pro Se Appellant Sanctioned for Citations to Fictitious AI-Generated Cases*, A.B.A.: BUS. L. TODAY (Feb. 29, 2024), [https://www.americanbar.org/groups/business\\_law/resources/business-law-today/2024-february/february-2024-brief-internet-law-cybersecurity/](https://www.americanbar.org/groups/business_law/resources/business-law-today/2024-february/february-2024-brief-internet-law-cybersecurity/) [<https://perma.cc/45X2-ADEZ>].

55. Report & Recommendation of the Grievance Committee at 10, *In re Neusom*, No. 23-cv-00503.

56. See *infra* notes 63–69 and accompanying text.

57. Judge Matthew J. Kacsmatyk, U.S. DIST. CT. N.D. OF TEX., <https://www.txnd.uscourts.gov/judge/judge-matthew-kacsmatyk> [<https://perma.cc/YSU9-AF7C>] (last visited Mar. 23, 2026); see LOCAL CRIMINAL RULES § 47.2 (2024), <https://www.txnd.uscourts.gov/sites/default/files/documents/CRIMRULES.pdf> [<https://perma.cc/X6WX-Z9YX>].

58. Judge Matthew J. Kacsmatyk, *supra* note 57.

59. *Id.*

such an oath.”<sup>60</sup> Judge Kacsmaryk’s order also spells out consequences for failure to comply:

Any party believing a platform has the requisite accuracy and reliability for legal briefing may move for leave and explain why. Accordingly, the Court will strike any filing from a party who fails to file a certificate on the docket attesting that they have read the Court’s judge-specific requirements and understand that they will be held responsible under Rule 11 for the contents of any filing that they sign and submit to the Court, regardless of whether generative artificial intelligence drafted any portion of that filing.<sup>61</sup>

In the wake of Judge Kacsmaryk’s order, more than sixty judges across the country have adopted some form of order or rule regarding the use of generative AI in their courts by attorneys and self-represented litigants.<sup>62</sup> The majority of these are federal trial judges, although there are some state courts represented as well.<sup>63</sup> These orders reflect varied approaches to generative AI use.<sup>64</sup> Some courts simply ban the use of generative AI outright, while others occupy various spots along a spectrum of compliance.<sup>65</sup> Some require disclosure regardless of AI use, while others do not.<sup>66</sup> Courts also require different levels of certification, focusing on different concerns.<sup>67</sup> While most have honed in on the accuracy of AI-generated content, other courts have emphasized concerns like confidentiality.<sup>68</sup> The result is a patchwork quilt of requirements for attorneys and litigants to navigate.

Although some attorneys and scholars have criticized such orders as solutions in search of a problem—since Rule 11 of the Federal Rules of Civil Procedure already makes an attorney subject to sanctions for filing pleadings that are factually or legally inaccurate<sup>69</sup>—the problem of hallucinations in court filings is a serious one. Judge Castel summarized these concerns:

Many harms flow from the submission of fake opinions. The opposing party wastes time and money in exposing the deception. The Court’s time is taken from other important endeavors. The client may be deprived of

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60. *Id.*

61. *Id.*

62. For a comprehensive listing, see *Standing Orders, Local Rules, and Decisions on the Use of AI*, ROPES & GRAY LLP, <https://www.ropesgray.com/en/sites/artificial-intelligence-court-order-tracker> [<https://perma.cc/GC7F-CRL5>] (last visited Mar. 23, 2026).

63. *See id.*

64. *See id.*

65. *See id.*

66. *See id.*

67. *See id.*

68. *See id.*

69. *See* FED. R. CIV. P. 11.

arguments based on authentic judicial precedents. There is potential harm to the reputation of judges and courts whose names are falsely invoked as authors of the bogus opinions and to the reputation of a party attributed with fictional conduct. It promotes cynicism about the legal profession and the American judicial system. And a future litigant may be tempted to defy a judicial ruling by disingenuously claiming doubt about its authenticity.<sup>70</sup>

Hallucination cases have occurred not just at the trial court level, but in appellate courts as well.<sup>71</sup> Moreover, it is not just solo practitioners and small firms that have mistakenly relied on false citation generated by an AI tool.<sup>72</sup> Recently, one of the largest firms in the country, Morgan & Morgan, submitted motions in limine in a product liability suit in which eight of the nine cases cited were hallucinations.<sup>73</sup> And while some observers have attributed a propensity for hallucinations to generative AI tools that were never designed for use by lawyers (such as ChatGPT), the inescapable fact is that even tools created by legal technology vendors like Lexis and Westlaw are not immune from hallucinations.<sup>74</sup> In fact, one Stanford study found that both Westlaw's AI-Assisted Research tool and Lexis' Lexis+AI produced hallucinated cases in their output, with Westlaw's product hallucinating 33% of the time and Lexis+AI hallucinating 17% of the time.<sup>75</sup>

Unfortunately, immigration lawyers have been just as unable to resist the siren song of generative AI as lawyers in any other specialty area.<sup>76</sup> While generative AI tools can streamline the preparation of legal filings, immigration lawyers must, like all lawyers, exercise caution and take care to thoroughly check the output of generative AI. Submitting pleadings and briefs with inaccurate or misleading information can not

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70. *Mata v. Avianca, Inc.*, 678 F. Supp. 3d 443, 448–49 (S.D.N.Y. 2023).

71. *See, e.g., Ex parte Lee*, 673 S.W.3d 755 (Tex. Ct. App. 2023); *Kruse v. Karlen*, 692 S.W.3d 43 (Mo. Ct. App. 2024).

72. *See Order to Show Cause, Wadsworth v. Walmart Inc.*, No. 2:23-CV-118-KHR, 2025 WL 515094 (D. Wyo. Feb. 6, 2025).

73. *See id.*

74. Isha Marathe, *Updated Stanford Report Finds High Hallucination Rates on Westlaw AI*, LAW.COM (June 4, 2024, at 18:18 ET), <https://www.law.com/legaltechnews/2024/06/04/updated-stanford-report-finds-high-hallucination-rates-on-westlaw-ai/?slreturn=20250316161118> [https://perma.cc/FV23-WUVL].

75. *See id.*

76. *See, e.g., Josh Taylor, Australian Lawyer Caught Using ChatGPT Filed Court Documents Referencing 'Non-Existent' Cases*, GUARDIAN (Jan. 31, 2025, at 22:23 ET), <https://www.theguardian.com/australia-news/2025/feb/01/australian-lawyer-caught-using-chatgpt-filed-court-documents-referencing-non-existent-cases> [https://perma.cc/CKH9-QC3Y].

only constitute legal malpractice, it can potentially result in a loss of rights for immigration clients.

Although there have not yet been any reported cases of American immigration lawyers citing hallucinated cases, it has already happened in Australia.<sup>77</sup> In October 2024, an unnamed Australian immigration lawyer used ChatGPT to “write court filings in an immigration case and the artificial intelligence platform generated case citations that did not exist.”<sup>78</sup> According to Justice Rania Skaros, who presided over an appeal of an administrative tribunal ruling, the lawyer in question filed an amended application and an outline of submissions, both of which “contained citations to cases and alleged quotes from the tribunal’s decision which were nonexistent.”<sup>79</sup> In an affidavit submitted to the court, the immigration lawyer admitted he used ChatGPT as a shortcut due to “time constraints and health issues.”<sup>80</sup>

Because the output generated by ChatGPT yielded a “summary of cases” that “read well,” the attorney simply incorporated the authorities the tool provided “without checking the details.”<sup>81</sup> His opposing counsel, the attorney representing the immigration minister, decried the practitioner’s lack of care and stated it was in the public interest to refer such misconduct to the Office of the New South Wales Legal Services Commissioner (OLSC).<sup>82</sup> Justice Skaros made the referral to the OLSC, noting that the immigration lawyer’s “failure to check the accuracy of what had been filed with the court” had wasted valuable court resources, causing a considerable amount of time to be spent “checking the citations and attempting to find the purported authorities.”<sup>83</sup>

This immigration lawyer’s misuse of ChatGPT highlights one of the most serious concerns with this new technological frontier. Historically, one of the advantages for which generative AI has been touted is its potential to expand access to justice.<sup>84</sup> And, indeed, immigration law has been specifically identified as one area in which the need for expanded assistance and streamlined tools for providing it is particularly acute.<sup>85</sup> However, the Australian practitioner’s use illustrates how practice areas

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77. *See id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *See, e.g.,* Colleen V. Chien & Miriam Kim, *Generative AI and Legal Aid: Results from a Field Study and 100 Use Cases to Bridge the Access to Justice Gap*, 57 *LOY. L.A. L. REV.* 903, 907 (2024).

85. *See id.* at 967–68.

that serve the most vulnerable clientele—such as immigration—can be shortchanged when it comes to attorney effort and judgement. Will we see paying clients receive a greater degree of lawyerly attention to detail while pro bono matters are relegated to lightly checked AI? Lawyers, including immigration specialists, must be mindful of their ethical obligations when using generative AI tools and remember that these tools are much like the proverbial “sorcerer’s apprentice.”<sup>86</sup> There are no shortcuts, and no substitute for a human attorney’s careful review of generative AI output.<sup>87</sup>

#### IV. LOST IN TRANSLATION? MORE RISKS OF USING GENERATIVE AI IN IMMIGRATION CASES

Without a doubt, the seemingly endless number of languages spoken by the global population makes translation one of the most critical tasks for anyone in the business of communicating. Businesses and individuals worldwide have embraced AI as a tool for making translation better, faster, and more efficient. According to a study conducted by one leading provider of AI-enhanced language tools, 25% of executives are planning to use AI for specialized tasks like translation in 2025.<sup>88</sup> The company also surveyed its own users and found that 87% of its legal industry users (including law firms as well as in-house legal teams) reported that they were able to work faster, performing tasks such as legal document translation in a more streamlined fashion.<sup>89</sup>

Certainly, immigration law stands out as arguably the most significant area of practice where accurate and efficient translation is absolutely critical. Errors and inaccuracies in translation can mean the difference between failure and success of an asylum application, for example. In the United States, the Executive Office for Immigration Review (EOIR) has recognized this, and has provided guidance to

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86. See John G. Browning, *Reining in the Sorcerer’s Apprentice: Ethical Considerations in Lawyers’ Use of Generative AI*, ST. MARY’S J. LEGAL MALPRACTICE & ETHICS (forthcoming 2026).

87. It is worth noting that New Jersey now requires attorneys licensed in the state to complete mandatory technology-related education as part of their annual CLE requirement, following a May 2024 recommendation by the J.Y. Bar’s AI Task Force.

88. Matt High, *DeepL: How AI Transforms the Way Businesses Communicate*, AI MAG. (Feb. 12, 2025), <https://aimagazine.com/ai-applications/deepl-how-ai-transforms-the-way-businesses-communicate> [<https://perma.cc/DH6R-8XUK>].

89. DeepL, *87% of Legal Industry Users Say DeepL’s Language AI Platform Helps Them Work Faster, Finds New Research*, PR NEWSWIRE (Dec. 5, 2024, at 06:00 ET), <https://www.prnewswire.com/news-releases/87-of-legal-industry-users-say-deepls-language-ai-platform-helps-them-work-faster-finds-new-research-302323569.html> [<https://perma.cc/33SK-JS4B>].

immigration judges on language access issues in their immigration court proceedings.<sup>90</sup> In a June 2023 department memo, EOIR Director David L. Neal reminded immigration judges that every noncitizen who appears before an immigration court is entitled to a full and fair opportunity to present their case and that to satisfy this guarantee, “noncitizens with limited proficiency in English must be provided with in-court interpretation into their preferred language.”<sup>91</sup> The memo further recognized that in many cases, this would also include “reasonable access to out-of-court translation services.”<sup>92</sup> Director Neal admonished that immigration judges “must ensure that interpretation into an appropriate language is provided whenever needed.”<sup>93</sup> He went on to note that immigration judges should also consider the availability of translation services to the noncitizen at the detention facility where he or she is detained.<sup>94</sup>

Interestingly, however, Director Neal also chose to caution against AI translation tools, stating that “[i]nternet-based translation services such as Google Translate are not sufficiently accurate for translating official documents or statements submitted under penalty of perjury.”<sup>95</sup> For this reason, he added “Immigration judges should therefore not advise noncitizens to use such services for immigration court filings.”<sup>96</sup>

In fact, immigration lawyers have encountered numerous failings of AI-powered translation tools, including everything from mixed-up pronouns, incorrect time frames, and names that have been translated as months of the year. Ariel Koren, the founder of Respond Crisis Translation—described as “a global collective that has translated more than 13,000 asylum applications”—says she has seen “countless examples” of such translation errors.<sup>97</sup> In one instance, the translation app being used kept breaking down during a time-sensitive situation, resulting in the attorneys missing a key fact in the female client’s narrative of domestic abuse.<sup>98</sup> Koren, a former employee of Google

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90. *See generally* Memorandum from David L. Neal, Director of the Exec. Off. for Immigr. Rev., Language Access in Immigration Court, U.S. Dep’t of Just. (June 6, 2023), <https://www.justice.gov/eoir/book/file/1586686/dl> [<https://perma.cc/QNP2-EGQR>].

91. *Id.* at 1.

92. *Id.*

93. *Id.* at 2.

94. *Id.* at 3–4.

95. *Id.* at 4 n.4.

96. *Id.*

97. *AI’s ‘Insane’ Translation Mistakes Endanger US Asylum Cases*, *ECON. TIMES* (Sep. 18, 2023, at 23:36 IST), <https://economictimes.indiatimes.com/tech/technology/ais-insane-translation-mistakes-endanger-us-asylum-cases/articleshow/103765923.cms?from=mdr> [<https://perma.cc/JW6Q-RNAQ>].

98. *Id.*

Translate, stated that one of her group's translators estimated 40% of the asylum cases he worked on for Afghan refugees had encountered problems with AI translation.<sup>99</sup>

Researchers who have examined AI's shortcomings in translation tools state that while the technology has advanced significantly recently, it is still not reliable enough for something where the stakes are as high as asylum cases. According to a May 2023 paper by Gabriel Nicholas and Aliya Bhatia, research fellows with the Center for Democracy & Technology, the problems largely stem from the fact that large language models (LLMs) are trained on data sets that are principally in English, resulting in less nuanced or just frankly incorrect translations.<sup>100</sup> They point out that there are simply fewer examples of high quality text in other languages, including those used predominantly in the Global South.<sup>101</sup> The solution, according to Nicholas and Bhatia, rests with increased use of "multilingual language models"—LLMs trained on text from multiple languages at the same time.<sup>102</sup> However, Nicholas and Bhatia also identify several key problems with multilingual language models. These include their reliance on text that may include errors as well as terms that native speakers of a given language do not use, failure to account for the context of local language speakers and the difficulty in identifying and fixing problems with multilingual language models.<sup>103</sup>

But while researchers like Nicholas and Bhatia blame most of AI's translation failings on "[t]he hegemony of English data,"<sup>104</sup> the fact remains that—like generative AI's "hallucinations" illustrate—another source of the blame rests with human error. Human translators need to review machine translations for mistakes. In the case of one asylum seeker from Brazil identified only by the pseudonym "Carlos," the errors were particularly glaring.<sup>105</sup> Carlos, who fled gang activity in Brazil after his son was murdered in front of him, was detained for six months in an ICE detention center in Calexico, California.<sup>106</sup> Carlos spoke Portuguese,

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99. *Id.*

100. Gabriel Nicholas & Aliya Bhatia, *Lost in Translation: Large Language Models in Non-English Content Analysis*, CTR. FOR DEMOCRACY & TECH. 15–17 (May 2023), <https://cdt.org/wp-content/uploads/2023/05/non-en-content-analysis-primer-051223-1203.pdf> [<https://perma.cc/LU57-W7JS>].

101. *Id.* at 16.

102. *Id.* at 19–20.

103. *Id.* at 25–26.

104. *Id.* at 9.

105. See generally Johana Bhuiyan, *Lost in AI Translation: Growing Reliance on Language Apps Jeopardizes Some Asylum Applications*, GUARDIAN (Sep. 7, 2023, at 06:00 ET), <https://www.theguardian.com/us-news/2023/sep/07/asylum-seekers-ai-translation-apps> [<https://perma.cc/8M3Z-2ZYV>].

106. *Id.*

but was also illiterate.<sup>107</sup> Well-intentioned staff at the center who only spoke Spanish and English attempted to interpret what Carlos was saying with the aid of an AI-driven translation tool, but it failed to understand his regional dialect.<sup>108</sup>

Consequently, Carlos's asylum application contained multiple inaccuracies, including misidentification of his home city and state.<sup>109</sup> The city, Belo Horizonte was literally translated to "beautiful horizon" instead of as a proper name.<sup>110</sup> The translation was also poor; in the section of the application in which Carlos was asked to describe what he had suffered, the AI tool interpreted it to read "YES THE GANGUE DO BURACAO TO SHOOT DEAD MY SON, IN THE POLICE I WAS SLAPPED."<sup>111</sup> Among all the barriers that he would face in making his asylum application, Carlos said he never imagined that the language barrier "would be the worst thing."<sup>112</sup>

Carlos's experience is hardly unique. According to a translator who works with Afghan asylum seekers, language translation technology has contributed to errors that jeopardize or lead to the rejection of asylum applications.<sup>113</sup> This included a translation from a speaker of Dari—a Persian dialect spoken in Afghanistan<sup>114</sup>—that the machine translation did in which the singular "I" was misinterpreted as the plural "we," creating inconsistency between the asylum-seeker's initial interview and what appeared in the formal asylum application.<sup>115</sup> As a result, the immigration judge rejected the application.<sup>116</sup> Another problem with machine translation of under-resourced languages like Dari or Pashto is the frequency of mistranslations of military rank.<sup>117</sup> For Afghan refugees who worked closely with American and allied military members in Afghanistan and who state a credible claim of persecution as a result,

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107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. Ali Rogin & Andrew Corkery, *How Language Translation Technology Is Jeopardizing Afghan Asylum-Seekers*, PBS NEWS (May 7, 2023, at 17:35 ET), <https://www.pbs.org/newshour/show/how-language-translation-technology-is-jeopardizing-afghan-asylum-seekers> [<https://perma.cc/7XTG-F6K5>].

114. *Dari*, ETHNOLOGUE, <https://www.ethnologue.com/language/prs/> [<https://perma.cc/L4V5-NQQG>] (last visited Mar. 23, 2026).

115. Rogin & Corkery, *supra* note 113.

116. *Id.*

117. *Id.*

such translation errors that might seem trivial can in fact be inconsistencies that jeopardize an asylum application.<sup>118</sup>

What is the U.S. government doing to keep critical information from being lost in translation? Efforts are being made, but are not well coordinated. Immigration personnel at ICE are using Google Translate, while Customs and Border Protection (CBP) has developed its own app, CBP Translate.<sup>119</sup> However, CBP's app translates a limited selection of languages—English, Spanish, and Haitian Creole (a language that is also prone to machine mistranslation).<sup>120</sup> Elsewhere, the DHS has contracted with machine translation firms like Lionbridge and Transperfect Translations International, Inc.<sup>121</sup>

There are fallibilities even in machine translation for a well-resourced language like Spanish. In one case of a woman seeking asylum who was fleeing domestic violence, the person used a colloquial term to describe her father—"mi jefe."<sup>122</sup> However, the machine translator translated it literally to "my boss," and her asylum application was denied.<sup>123</sup> As Ariel Koren notes, such translation errors in asylum applications are especially troubling because "the government will frequently weaponize small language technicalities to justify deporting someone."<sup>124</sup>

Koren also warns that AI-driven machine translation tools have limitations, and "should never be used to replace [human] translators and interpreters and they should not be used in high-stakes situations."<sup>125</sup> Part of the reason for this is the current unreliability of such tools for languages that are less comprehensively documented or resourced.<sup>126</sup> While a language like Swahili may be spoken by more than eighty million people across the African continent, digital sources for the language are harder to find.<sup>127</sup> Another weakness of AI translation tools is the fact that they have difficulty expressing cultural nuances that cannot always be communicated in English.<sup>128</sup> Language is more than simply a series of words and their literal meanings. It is a way to express the cultural identity of the speaker; lacking cultural context, AI-driven

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118. *Id.*

119. Bhuiyan, *supra* note 105.

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

machine translation tools will not be able to interpret the nuances of many non-English languages.

For immigration lawyers and their clients, the consequences can be devastating. In a different context pertaining to Fourth Amendment protections, use of Google Translate has been held to be an ineffective means of obtaining consent to a search.<sup>129</sup> In the immigration context, there is mounting evidence of instances in which an asylum seeker's application has been questioned after machine translations were provided on the application form.<sup>130</sup> The concerns for immigration lawyers are also not limited to asylum work. In two Canadian immigration cases, the use of AI-driven translation tools by couples has been interpreted as an indication that the applicants' relationship may not be genuine.<sup>131</sup> In one case, use of machine translation was determined to imply a prohibitive language barrier and therefore was seen as a sign of a sham marriage.<sup>132</sup> In the second case, use of the AI translation tool was deemed to be a lack of effort in learning English on the part of the applicant, which in turn called into question the genuineness of the marital relationship.<sup>133</sup>

Finally, immigration lawyers need to be aware of the ethical dimensions of using AI-driven machine translation. Under Model Rule of Professional Conduct 1.1 (Comment 8), attorneys have a duty of technological competence and must be cognizant of both the benefits and risks associated with using relevant technologies.<sup>134</sup> So, the question arises, is a lawyer who *does not* use AI-driven translation tools where they might benefit the client providing competent representation? Put another way, is a lawyer who does so without regard for the technology's limitations (and who therefore may be jeopardizing the client's chances of success) acting in an ethical manner? Questions about an attorney's ethical duties in obtaining translation services for their clients have

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129. *United States v. Cruz-Zamora*, 318 F. Supp. 3d 1264, 1272 (D. Kan. 2018).

130. Jeanette L. Schroeder, *The Vulnerability of Asylum Adjudications to Subconscious Cultural Biases: Demanding American Narrative Norms*, 97 B.U. L. REV. 315, 320 n.33 (2017).

131. *See generally*, *Hani v. Canada* (Minister of Citizenship and Immigration), 2017 CarswellNat 5166 (Can. I.A.D.) (WL); *McDonald v. Canada* (Minister of Citizenship and Immigration), 2018 CarswellNat 6057 (Can. I.A.D.) (WL).

132. *Hani v. Canada* (Minister of Citizenship and Immigration), 2017 CarswellNat 5166, para. 2 (Can. I.A.D.) (WL).

133. *McDonald v. Canada* (Minister of Citizenship and Immigration), 2018 CarswellNat 6057, para. 2, 4 (Can. I.A.D.) (WL).

134. MODEL RULES OF PRO. CONDUCT r. 1.1 cmt. 8 (A.B.A. 2025).

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predated these new technologies and will persist in the wake of AI's adoption.<sup>135</sup>

#### V. CONCLUSION

Governmental agencies and individual immigration lawyers alike have been lured by the siren song of AI. Faced with the challenge of navigating the administrative maze of the immigration system and dealing with the crush of standardized applications, support letters, and document translation, all actors seek the time—and labor-saving efficiencies—provided by AI. However, there are significant risks that accompany AI use—from the algorithmic bias of AI tools employed by immigration authorities to the hallucinations and botched translations of generative AI platforms.

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135. See generally Stella S. Giordano, *It's All Greek to Me: Are Attorneys Who Engage in or Procure Legal Translation for Their Clients at Risk of Committing an Ethical Violation?*, 31 QUINNIPIAC L. REV. 447 (2013).