

**MINISTRY**

**JUSTICE AND CORRECTIONAL SERVICES**

**REPUBLIC OF SOUTH AFRICA**

**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**PARLIAMENTARY QUESTION NO: 625**

**DATE OF QUESTION: 03 MARCH 2023**

**DATE OF SUBMISSION: 17 MARCH 2023**

**Mr A C Roos (DA) to ask the Minister of Justice and Correctional Services:**

What number of cases, involving undocumented foreigners and/or foreigners arrested for different crimes, have been scrapped off the court rolls by the Deputy Director of Public Prosecutions since 1 January 2023 as a result of failure by the Department of Home Affairs to submit affidavits confirming the accused’s immigration status?

**NW696E**

**REPLY:**

The Deputy Directors of Public Prosecutions cannot, by law, remove or strike matters from the court roll. Deputy Directors of Public Prosecutions may, however, authorise the withdrawal of cases in certain instances.

The standing operating procedure is that new cases are screened by either a Control Prosecutor, Senior Prosecutor or a dedicated team of prosecutors in larger offices, before enrolment thereof. Cases involving foreign nationals are not enrolled unless the affidavit, from an official delegated by the Department of Home Affairs regarding the status of the accused, is filed in the docket. This is only in respect of cases regarding a contravention of Section 49(1) of the Immigration Act 13 of 2002.

If the accused is charged with other offences, apart from a contravention of the Immigration Act, then the cases are enrolled in respect of those charges, even if the affidavit regarding the immigration status is not yet available.

In most of the cases, the affidavit is filed by the time the docket(s) arrive at court, however, there are a few occasions when this does not happen. Prosecutors will then wait for the outstanding affidavit to be filed in the docket, and then proceed to enroll the matter on the same day.

In rare instances, the immigration matters are not enrolled due to this problem. It is very seldom that cases are enrolled and then withdrawn due to the affidavit not being filed in the case docket.

In terms of the judgments by the Constitutional Court in the matters of *Abore v Minister of Home Affairs and Another* [2021] ZACC 50 and *Ruta v Minister of Home Affairs* [2018] ZACC 52, any illegal immigrant who expresses the intent to apply for asylum in terms of the provisions of Section 21 of the Refugees Act 130 of 1998, may not be detained and should first be afforded an opportunity to apply for asylum. This is in compliance with the international obligations of the Republic of South Africa pertaining to the principle of *non-refoulment*. Such immigrant may however be detained if he or she is charged with other offences, in addition to an alleged contravention of Section 49(1) of the Immigration Act 13 of 2002.

**END**