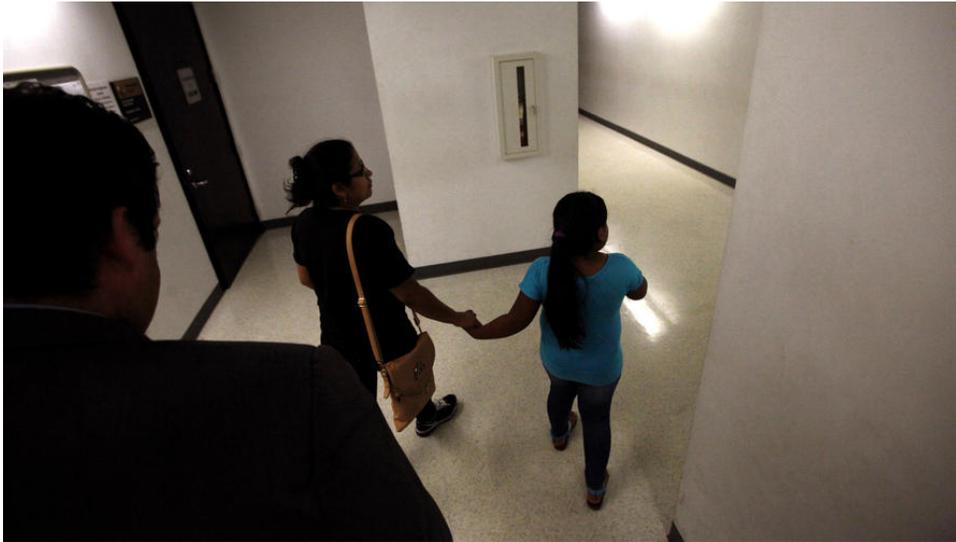


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As immigration backlog surges, some overwhelmed judges retire



Immigration court

Genaro Molina / Los Angeles Times

Dayana Varela, 9, her mother, Silvia Padilla, and their attorney Alex Olguen leave an immigration court hearing held in Los Angeles last year on an application for political asylum. There's a growing backlog of cases in immigration courts nationwide.

By Molly Hennessy-Fiske

Immigration

Immigration Judge Eliza Klein had more than 20 years' experience hearing cases in Boston, Miami and most recently Chicago when a surge of Central American immigrants arrived last summer.

In addition to the backlog of cases she already faced, Klein started seeing more Central American youths seeking asylum from violence.

"I just really didn't like telling these young kids they had to go back to this situation. It really was very stressful for me and distressing," she said. "I started out my career representing people with asylum claims, and a lot of those were Central American. I didn't want to sign my name on something and send someone back somewhere where they could potentially lose their life."

Klein, 62, was also a mother with a daughter finishing college.

“I had teenagers from Honduras crying to me, ‘Why am I in jail? I didn’t do anything wrong.’ I had to explain to people why, but I couldn’t justify it. I couldn’t say that to these kids,” Klein said in an interview with the Los Angeles Times last week.

So in January, she retired.

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There are 247 immigration judges in 58 courts nationwide, and 130 of them -- more than half -- are eligible to retire this fiscal year, which ends Sept. 30.

The U.S. attorney general appoints immigration judges. Officials have already started “an aggressive hiring process,” said Kathryn Mattingly, an immigration court spokeswoman. So far, they have hired 18 new judges, five of whom will start before the end of the fiscal year, and are in the process of hiring 67 more, Mattingly said. Last fiscal year, about a hundred judges were eligible to retire, but only 13 did, she said.

Working conditions for judges grow progressively worse each year, Klein said, and that could lead to more retirements.

While other kinds of judges usually handle 500 cases a year, immigration judges typically handle more than 1,400, and some juggle more than 3,000, according to the Immigration Policy Center. (Klein said she knows some who are handling 3,000 cases.)

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Immigration judges face a massive backlog of more than 450,000 cases, a backlog that has more than doubled during the last decade, according to the Transactional Records Access Clearinghouse at Syracuse University. During that time, the number of judges increased about 20%, and the average wait time increased 65%, according to TRAC. The longest average wait this year is in Denver: 877 days.

“The clerks can’t keep up with this workload and it’s just unreasonable,” Klein said. “The agency has expanded the number of judicial law clerks so the judges are able to do research for cases and have law clerks draft decisions for them. But we’ve had hiring freezes for years.”

Adding to the strain, newly arrived immigrant children and families have been fast-tracked in “rocket docket,” delaying other cases until 2019.

“Why immigration judges get burned out is they have a high volume of cases, some on their dockets for years, and then those cases get pushed out because somebody in Washington says these other cases matter more,” Klein said. “When I started, the longest you would put a case out for was six months.... If you have to put a case out more than a year, you lose the ability to retain that sense of what the case is all about.”

The fast-tracked cases often get delayed too, she said, as immigrant children and families try to navigate a legal system where, unlike criminal court, they are not entitled to public defenders.

“We have a judge in Chicago who is handling thousands of these cases. Frequently they don’t show up at their hearings but we don’t know why – maybe the person who is supposedly their guardian doesn’t know. So those cases can’t move forward,” she said.

It's frustrating to watch the delays benefit those without legitimate reason to stay legally, Klein said, while “people who are eligible, they get stuck in limbo.”

The cases are also emotionally taxing, she said.



Immigrant lawyers handling a border surge: 'This is really an emergency room situation' In a ranch house up a red dirt cattle road, Brian Hoffman explained to the 13 attorneys before him the challenge at hand. (Molly Hennessy-Fiske)

“You hear these devastating stories of people who maybe have been tortured or fled severe conditions: political-related violence, gang violence. You have to listen intently and see, is this person telling the truth? It’s very draining. A lot of judges have sort of post-traumatic stress.”

Immigration judges suffer traumatic stress and burnout rates higher than prison wardens and doctors, according to a 2007 survey of the National Assn. of Immigration Judges by psychiatrists at UC San Francisco.

Judges said they had little time to think, let alone research complex cases.

One immigration judge said in the survey, “I am OUTRAGED by the fact that Department of Homeland Security asylum officers receive more time to keep current on country conditions and changes in the law than we do.... The law has gotten exponentially more complex while the time pressures and resources (like law clerks) inversely diminished.”

Judges reported that they faced chronic shortages of staff, office space and technology.

“I have been in government service for decades, including combat duty, and I have never detested a working environment more than I do in this capacity,” one judge told the researchers.

The courts have tried short-term solutions: adding temporary judges, temporarily assigning judges from one part of the country to higher-volume areas, such as the Texas border, and having them hear cases via video.

But Klein said video hearings can be even more frustrating, limiting judges' ability to interact with and gauge the veracity of immigrants and witnesses.

Judge Dana Leigh Marks, president of the judges association, called overwork and understaffing at the courts "chronic." Marks, who is based in San Francisco, knows numerous judges like Klein who have retired or are considering it at the peak of their careers because of worsening working conditions.

The courts need to hire at least 100 additional judges "immediately," she told The Times. Although the Justice Department has started to address the problem, "we're a long way from where we need to be."

Last week, she attended a national immigration judges' training conference in Crystal City, Va., the first in five years because of funding issues.

"Morale is improved," she said. But "we are still treading water in a rip current. The longer we do that, the more fatigued and stressed people get."

Klein knows some of those applying to become judges and considers them well-qualified. She hopes they can improve the system.

"It will always be a very difficult job, but also very rewarding," she said.

Klein has returned to private practice, representing immigrants. Next month, she is scheduled to travel to the immigrant family detention center in Dilley, Texas, to volunteer with CARA Pro Bono Legal Project representing migrant mothers and children.

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