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Press Play with Madeleine

Immigration Courts Face Unprecedented Backlog

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Federal immigration courts around the country are backlogged with nearly half a million cases. That's the biggest number judges have ever seen. California has the highest number of pending cases. The situation undermines the court's entire mission. People with weak cases can end up staying in the U.S. for years, waiting for their day in court. And people with strong cases remain stuck in the shadows.

Guests:

Dana Leigh Marks, National Association of Immigration Judges

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Madeleine Brand: More undocumented workers than ever are now stuck in legal limbo. Federal immigration courts around the country are backlogged with nearly half a million cases. That is the biggest number judges have ever seen. California has the highest number of pending cases, and that situation really undermines the court's entire mission. The weak cases can end up staying here in the United States for years, waiting for their day in Court. The people with strong cases, well, they just remain stuck in the shadows. Dana Leigh Marks is an Immigration Judge in San Francisco, and President of the National Association of Immigration Judges. Welcome to the program.

DLM: Thank you, Madeleine. Thank you for having me.

MB: Well, what has caused the big backup?

DLM: The first thing I always have to say is that I am speaking today in my capacity as the President of the National Association of Immigration Judges, so my comments don't reflect the Department of Justice. But, our Association feels like we have been the legal "Cinderellas," the ignored stepchildren of the Department, for many, many years and that adequate funding has not been provided by the Department or by Congress in order to give us the number of Judges that

are needed to handle a burgeoning caseload. The situation has simply gotten worse, and worse, and worse over time.

MB: What has caused this recent increase? A nearly 30 percent increase from last year.

DLM: The thirty percent increase is over a two year period. It's the beginning of the fiscal year of 2014, which would have been October of 2013. That still is a staggering amount. In part, that has been a surge of unaccompanied children and families coming to the border from the northern triangle of Central America—Honduras, El Salvador, and Guatemala—as well as from Mexico. But it's also just been the fact that, overall, the backlog has been growing because we have had insufficient numbers of Immigration Judges to handle cases and the immigration law has simply gotten more and more and more complex. So cases are taking longer.

MB: So, I thought, though, when those kids were coming across the border from Central America, I thought that the courts were fast tracking those cases, those cases were going to front of the line?

DLM: That is correct. Those cases are going to the front of the line. That leaves more difficult cases, or cases that have been pending longer, pushed back to the end of the line that, for many courts, is in November of 2019. And we're fearing that it might go out even beyond that in many places.

MB: So, on average, how long does someone wait before they have their case decided?

DLM: It really varies tremendously across the country, because individual courts are staffed at different rates. But, one figure I have seen is that the average is about 604 days to process your basic immigration case at the court.

MB: So, a long time. Plus, there are appeals and all that, right?

DLM: That's correct.

MB: So, I wonder if you could just paint a picture of what it's like in your courtroom. How many cases do you see and how long does it take you to dispense with each one?

DLM: Right. Well, we actually describe our caseload as being death penalty cases heard in traffic court-like setting. The reason that we say they are death penalty cases is that, if somebody is applying for asylum in the United States, they are telling the judge that they are afraid of serious harm, even death, if they are sent back to their country. But, in contrast, we have a very high volume of cases. Judges normally hear an average of about 100 cases a week. Now, some of those are an arraignment type docket, where you're just kind of figuring out what needs to be done. Those cases can take anywhere from 5 to 10 minutes, maybe 15 depending on just what issues are being presented, and whether or not someone is being represented by an attorney. And then a percentage of the cases that a judge hears every week will involve individual merits hearings where it varies from court to court. Some courts will schedule two or three of those cases in a morning or afternoon session, other courts will schedule only one, and based, again, on

the complexity of the issues. That is when somebody presents their evidence. So, it's really hard to talk about what an average is.

MB: Well, so, what it is like for you, though? When you see people in an unending stream in front of you? How can you even know very much about their particular case?

DLM: Well, what a lot people don't realize is that, immigration proceedings, although they are conducted in a lot of ways like criminal court proceedings, because they are civil in nature, people don't have a guaranteed right to counsel. And because they are administrative proceedings, the judge's job is much more difficult. It is our job to make sure that, if somebody has a benefit that they can qualify for under the immigration laws, that we ferret out that information to make sure that we get the proper information to determine whether or not they are qualified. So, it is very difficult to do in rapid fire manner. But, obviously the judges are trying to do as much as they can, balancing the need to go as quickly as possible so that more people aren't stuck waiting years for their hearings to be held. And you have to balance that with the time it takes to get the information that is needed and to have the testimony, both of the individuals themselves and sometimes the witnesses that they bring, in order to make sure that we are making the correct decision in their case.

MB: How confident are you, though, that you make the right decision when you finally decide?

DLM: Well, that's part what adds to the judicial stress of this job. I think the best way to get a handle on the how Immigration Judges feel is to realize that if you just take the number of pending cases and divide them by the number of sitting judges in field offices, take out our management, that is 445,000 cases across the country divided by about 210 sitting field Immigration Judges who are working full-time in their courts. That leaves us with more than 2,100 pending cases per judge. Now, what does that mean? When you compare that to the average caseload of a federal district court judge, which is normally about 440 pending cases, the average caseload of standard social security judge is about 500 cases per judge, a veterans appeal court judge, which is another kind of administrative proceeding, they have about 700 cases per judge on average. So, you can see that our numbers just are exponentially larger and, in turn, we are completing those cases with a lot less staff support than most of these judges. Immigration Judges, on average, have about 50 percent of judicial law clerk's time. That's a skilled lawyer to help you look at the issues presented in those cases. So, it is very stressful job and, in fact, a stress study of Immigration Judges done back in 2007, so it was during better times than we face now, showed that Immigration Judges are as stressed as prison wardens and busy hospital doctors. I think most people would be very surprised, Madeleine, to believe that a judge's job is perceived as that stressful.

MB: I have to end it there, unfortunately. My condolences that you are dealing with such a stressful job. Dana Marks, Immigration Judge in San Francisco.