

In this Boston court, chains are a familiar sound

By Maria Sacchetti Globe Staff, August 28, 2016, 9:18 p.m.



Associated Press/File

"They have no protection," said Santiago Najera's lawyer Manuel Macias last week as the judge deliberated over the case. "Whatever the government does to them is pretty much fair game."

Get Metro Headlines in your inboxThe 10 top local news stories from metro Boston and around New England delivered daily.

Immigration and Customs Enforcement, the Homeland Security agency that

detains, prosecutes, and deports immigrants, decides whether restraints will be used, though immigration judges have sometimes urged officials to shackle detainees for safety reasons. Boston, for instance, does not have bailiffs in the courtroom to protect judges.

"ICE is committed to preserving the dignity and welfare of all those in our custody and is also obligated to ensure the safety of the public and employees visiting or working in federal buildings that house court proceedings," said ICE spokeswoman Sarah Rodriguez.

Advocates for immigrants say shackling detainees interferes with their ability to defend themselves in a court where they are facing banishment from the United States. Shackled immigrants cannot take notes, sit comfortably, or even adjust their eyeglasses. Some are victims of violence or torture, and many fear death if they are forced to return home.

"I absolutely do not think it's OK to have people testify in shackles," said Jenny Zhao, a lawyer with the Asian Law Caucus who worked on a class-action lawsuit that in 2014 curtailed the use of shackles in San Francisco's immigration court. "This is a person's chance to go in front of a judge and plead for their ability to stay with their families in the United States."

When the San Francisco lawsuit was settled, the lawyers hoped the new policy would spread to other courts. But lawyers say one unintended consequence in San Francisco is that many immigrants are now forced to have their hearings via videoconference, which some Boston lawyers say would be worse than shackles because it might blunt the impact of the immigrants' emotional stories in court.

In May, a [Salvadoran man wore shackles](#) for several hours in Boston as he testified about the rape of his 12-year-old daughter. He prevailed in his plea to remain in the United States and the judge let him greet his children for the first

time in months, but the chains stayed on.

Shackling immigrants has rankled some federal judges such as US District Judge Mark L. Wolf, who [in 2009 demanded that a court officer](#) remove restraints from an immigration detainee making a rare appearance in federal court.

"I had Gary Sampson, who murdered three people, [mobsters] Frank Salemmi and Stevie Flemmi, and none of them had to be handcuffed," Wolf said at the time.

In 2014, US District Judge Michael A. Ponsor ruled that the blanket shackling of immigrants was an ["affront to due process"](#) in a case in Hartford.

ICE disputes that the shackling is a blanket policy, saying the decision to use restraints varies across the United States.

And judges say they do not have the same powers or protection as regular federal judges. Immigration judges are not part of the judicial branch of government; they work for the Department of Justice. And for years they have toiled under staggering case loads, often deciding the deportation cases of serious criminals.

At the courts, security varies widely. Some courts are inside jails, but Boston's immigration court is tucked into the John F. Kennedy Federal Building. Only over the past year have armed security guards patrolled the halls in Boston. Since May, some courts nationwide have had security officers inside the courtroom; officials said Boston is expected to have them by the end of this fiscal year.

"There are judges that in the past have received threats. It's a job where people's emotions get pretty inflamed," said Dana Leigh Marks, president of

the National Association of Immigration Judges and an immigration judge in San Francisco. "It's not a straightforward issue."

State and federal criminal courts also frequently use shackles on criminal defendants, but officials said those are almost always removed during trial to avoid prejudicing a jury.

But in Boston's immigration court, where there is no jury, the clanging of chains has long been a familiar sound. Almost every day, armed sheriff's deputies pick up immigrants from local jails, where they are held for civil immigration violations, shackle them, and escort them to immigration court.

On Aug. 22, Santiago Najera and three other shackled detainees shuffled into Judge Day's courtroom around 1 p.m. and left four hours later.

"I feel punished," Santiago Najera, a 26-year-old cook from Guatemala, said in Spanish, holding up his shackles during a brief aside with his lawyer. "I'm not this type of person."

Except for a driving offense, he had a clean record until March, when Lynn police arrested him for allegedly hitting a man with a baseball bat. Santiago Najera said in court that it was a snow scraper and that the man had attacked him first. The criminal case is unresolved, but because he is here illegally, the judge ordered him deported.

His case lasted so long that the judge could not hear the cases of two immigrants who had also spent the afternoon in shackles. The judge's next available hearing dates were weeks away.

One detainee accepted a November hearing, but a woman from Mexico, whose Facebook page features pictures of her in a high school uniform, gave up her asylum claim. She asked to be deported instead.

Maria Sacchetti can be reached at maria.sacchetti@globe.com. Follow her on Twitter [@mariasacchetti](https://twitter.com/mariasacchetti).