

# How U.S. Immigration Judges Battle Their Own Prejudice

By [Caitlin Dickerson](#) Oct. 4, 2016



Jose Roberto and his wife, Alejandra, who asked that their last names not be used because of his legal predicament, at home in San Francisco. A federal judge recently ruled in Jose's favor in his immigration case. Jim Wilson/The New York Times

**SAN FRANCISCO** — One of the immigrants appearing before Judge Dana Marks in a crowded court here was a boat worker from the former Soviet Union who stared in silence as a prosecutor asked about his criminal history. Another was a mother who started praying after testifying that she had fled Honduras because her husband beat her. She sought divine rather than judicial intervention.

In all, 336 people from 13 countries and even more ethnic backgrounds appeared in San Francisco's immigration court recently over three days. All of them were facing possible deportation, because they were in the United States illegally or had committed crimes serious enough to jeopardize their legal presence as noncitizens. One challenge facing Judge Marks was deciding whether to deport some of them immediately after they had testified. Another challenge was her own biases.

"You have to go through some hypotheticals in your brain," said Judge Marks, wrestling with the weighty decisions she must make, the little time she has to make them and all the impressions she and her judicial colleagues form from the bench about the immigrants before them.

"Would I treat a young person the same way I'm treating this old person?" she said. "Would I treat a black person the same way I'm treating this white person? This situation of rush, rush, rush as fast as we can go, it's not conducive to doing that."

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Keeping implicit biases out of immigration court decisions is critical and daunting. Claims often rise and fall on testimony alone. Cultural and linguistic misunderstandings are common.

Now, as the country struggles with how these instinctive judgments shape our lives, the Justice Department is trying to minimize the role of bias in law enforcement and the courts. More than 250 federal immigration judges attended a mandatory anti-bias training session in August, and this summer, the Justice Department announced that 28,000 more employees would go through a similar exercise.

Several current and former immigration judges said they thought the sessions were badly needed. But they doubted the training would be enough.

Few other areas of the law involve as much discretion — judges approve and deny cases at vastly different rates. And immigration judges handle more than 700 cases a year, twice as many as Federal District Court judges.

While there are 277 immigration judges today, more than ever before, their combined backlog peaked this summer at more than half a million cases, the most in history. For years, the judges union has lobbied Congress, with limited success, for more law clerks and other support staff to offset their burden.

Experts say [the conditions](#) that immigration judges work under — fast paced, high pressure and culturally charged — make some misjudgments all but inevitable.

“If we have a high cognitive load, you tend to make more mistakes,” said Kelly Tait, who led the judges’ training session.

When the brain has to process large volumes of information quickly, there is a tendency to rely on experiences rather than on unique details in the present. In judging people, for instance, this can mean falling back on generalizations about race, age, country of origin, religion or gender.

Immigration judges have higher burnout rates than hospital workers and prison wardens, according to a [2008 study](#). And since that study was published, many of the same courtroom pressures have held strong.

As a result, judges often must decide the fate of foreign families in the time it takes to consume a fast-food lunch, wondering whether they are making the right decisions on who deserves to stay and who should go.

Judge Marks, who spoke as the president of the National Association of

Immigration Judges because judges are otherwise barred from speaking to the news media, tends to be more lenient than some of her colleagues. But she said decisions were frequently far from clear-cut.

For example, Jose Roberto, who asked that his last name not be used because of his legal predicament, looked every bit like the hard-working patriarch of a Guatemalan-American family that he is, sitting tall on the witness stand, wearing a sharp gray suit jacket.

He said he was a loyal employee, working the same job at a San Francisco hotel for 31 years, dutifully filing his taxes each year. But he had also been convicted in 2005 of assaulting a lover, which sent him to jail for eight months. Since then, he explained to the judge, he had reconciled with his disabled wife, whom he pledged to care for if he was allowed to stay in the United States.

It was not clear whether his downcast eyes were a sign of contrition or evasion. Still, Judge Marks ruled in his favor.

An immigrant's ability to persuade a judge that the testimony given is true is "the most important factor in any case," she said later. "That, of course, can be one of the most difficult things to convince someone of when you can't corroborate with documentation."

Adding to the confusion, deportation hearings are many immigrants' first experience in a formal legal setting.

"I think it's almost overwhelming or insurmountable for many of them," said Eliza Klein, who retired as a federal immigration judge in 2015 after more than 20 years. "The stakes are incredibly high. It's a foreign system."

More than 40 percent of immigrants come to court without a lawyer, but even when lawyers are involved, they say immigrants who are educated, articulate

and white have an easier time gaining the court's sympathy.

"Something that is familiar is going to feel right even if it's not," Ms. Tait, from the judges' training session, said.

Groups that oppose illegal immigration argue that judges spend too much time on weak claims.

"The judges are allowing too many cases to be dragged out for too long, which clogs the system," said Jessica M. Vaughan, director of policy studies at the Center for Immigration Studies, which supports giving Border Patrol and other immigration enforcement officers the power to order deportations to alleviate pressure on the courts. "It's a self-inflicted problem."

In court, where most testimony is filtered through interpreters, even simple questions can lead to delays.

The boat worker appearing before Judge Marks, who said he had never become a citizen of any country after the Soviet collapse interrupted the proceedings at one point because he did not understand a question from several minutes earlier about his arrest.

Down the hall, Judge Rebecca Jamil called Frankly Vasquez-Perez, a 1-year-old boy from Guatemala, for his preliminary deportation hearing.

Frankly's mother, Esmeralda Perez-Roblero, stepped forward with him on her hip. But when Judge Jamil asked her through an interpreter about her immigration status — the mother and child appeared to have crossed the Mexican border together — she stayed silent.

"At home, what language do you speak?" the judge asked.

When she failed to respond again, a lawyer who volunteers to help immigrants

in preliminary hearings shuffled through her documents. "Her family is probably of indigenous ancestry," said the lawyer, Marco Ambron.

Judge Jamil continued the hearing, but it was unclear if Ms. Perez-Roblero knew what was going on.

In August, at the judges' training session, Ms. Tait went over strategies to counteract bias, like focusing on something as innocuous as the color of an immigrant's shirt to prevent cases from bleeding together.

She explained that people who know they are biased against a particular group can try to picture an exemplar of that group whom they hold in high esteem. One of the judges she taught said that when he had felt himself tensing up next to a large African-American man on the witness stand, he pictured President Obama. Another judge said that under similar circumstances, he had thought of Nelson Mandela.

The simplest and most effective way to combat bias, however, is to avoid rushing and take breaks, Ms. Tait said. But with more than 500,000 cases pending, immigration judges say that slowing down is not an option.

Instead, they will have to resign themselves to cutting corners to get through their work, according to Judge Klein, as she had to do during her career.

"Over time, I think you just get used to those pressures," she said. "So then the quality of justice erodes over time as well."

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