

Immigration court system is 'a train wreck,' retired judge says

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"Who we let in says something about our country," says retired Immigration Court judge.



Retired U.S. Immigration Court Judge Paul Wickham Schmidt(Photo: Submitted)

The nation's immigration court system "is on the verge of collapse," longtime immigration Judge Paul Wickham Schmidt recently told immigration advocates in York County.

At the same time, President Trump is expanding efforts that would detain more immigrants, and the Department of Homeland Security is shifting money away from legal assistance for undocumented immigrants toward crime victims of illegal immigrants.

But even before that, the Immigration Court system had become "an express train running full throttle into an earlier train wreck and no attempt has been made to clear the track," Schmidt told the advocates.

His assessment draws from 13 years of experience on the bench. In the late 1990s, he was among those who established the mission and vision of the immigration court. He served as an immigration court judge until 2016.

At a banquet for the Pennsylvania Immigrant Resource Center, a York County-based legal advocacy organization, he said the burgeoning case backlog, a shortage of judges, an insufficient number of defense attorneys and projected cuts to immigration legal advocacy groups has the court on the path to being about as inefficient as it could possibly be.

The first casualty in the bureaucratic mess, Schmidt said in an interview before the banquet, was due process - the right of every person under the U.S. Constitution, regardless of citizenship, to expect and receive fair treatment in court.

"The problem has been allowed to fester and grow by the politicians," Schmidt said. "The BIA (Bureau of Immigration Appeals) has skewed asylum law against asylum seekers.

"Political officials in the last three administrations have hijacked the mission of the immigration courts."

Schmidt laid out the problem facing the immigration court by the numbers:

Currently, there are about 600,000 pending immigration cases.

According to ICE, there are more than 41,000 detainees currently being held in custody.

There are not enough pro bono and low bono (legal representation at reduced costs) attorneys for all immigration court defendants.

Only 14 percent of the detainees held in custody nationwide by ICE have legal representation. Depending on the source, there are 250 to 300 immigration judges nationwide to handle that caseload. The Executive Office of Immigration Review, which oversees the judges and court system, claims 250 active judges. The Government Accountability Office, referred to as the "congressional watchdog," counts more than 300 judges.

The average wait for an ICE detainee case to be completed is 670 days. The average wait in Pennsylvania is 496 days.

The average length of time to appoint an immigration court judge is two years.

And, compounding those problems, according to Schmidt:

The immigration court system has become a prosecution tool of the Department of Homeland Security and the executive branch.

Too much emphasis is given to detention.

For the last 16 years, Republicans and Democrats "have largely stood by and watched the unfolding due process disaster ... without doing anything about it, and in some cases actually making it worse."

Almost 88 percent of immigration judges come from a government immigration prosecution background.

DHS Secretary John Kelly, a Trump appointee, directed ICE to reallocate any and all resources used to advocate on behalf of illegal aliens to the new VOICE Office - Victims of Immigration Crime Engagement.

Schmidt says the court system was not created and was never intended to handle this many cases.

He said cases are scheduled and rescheduled with some detainees being held in custody for years while their cases drag out.

"If a case is hanging around for six, seven, eight years, how can you do justice?" he says.
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One reason for the backlog is that the cases have grown more complex and contentious, he said. Another is the shortage of attorneys willing to take immigration cases. Immigration court is civil court and so, defendants do not have a right to court-appointed counsel. Most are left to fend for themselves.

Schmidt said immigration law is so complicated that even its practitioners have difficulty navigating it.

"Asking people (detainees) to represent themselves on their own time and their own dime doesn't exactly make it user friendly," Schmidt said. "The system doesn't bend over backward to seek representation for them."

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Here in York County, about half the ICE detainees at York County Prison have legal representation. Schmidt said that is thanks to the Pennsylvania Immigration Resource Center, which provides legal counseling for detained immigrants.

"Many of these organizations receive at least some government funding for outreach efforts," he said. "We have already seen how the president has directed the DHS to de-fund outreach efforts and use the money instead for a program to assist victims of crimes committed by undocumented individuals.

"Virtually all forms of funding for outreach efforts to migrants are likely to disappear in the very near future. Those who care about helping others will have to make up the deficit."

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