

VICE

Backlogged US Courts Are Stranding Asylum Seekers in Detention

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An immigrant detention facility in California. Photo by DAVID MCNEW/AFP/Getty Images

There's a massive pile of deportation cases, and a severe shortage of judges. That leaves some vulnerable people stuck behind bars.

Magaly fled El Salvador in 2016 to escape her abusive family and sexual harassment from a local gang. Desperate, she procured a false visa to get into the US, but her documents didn't pass muster. She was arrested as soon as she arrived; instead of the freedom she sought in the US, she found herself in another kind of confinement. She spent almost a year in a California immigrant detention center while her deportation case made its way through America's tangled immigration courts.

Because Magaly escaped domestic violence back home, she had a strong case for asylum in the US, says Alejandra Rosero, her immigration attorney, who works for Dolores Street Community Services in San Francisco. But because of Magaly's fake visa, detention center officials refused to release her—and that was just the beginning.

An immigration judge refused to grant her a bond at first. When she was given bond, it was set at \$15,000, which she couldn't afford. And a key hearing to determine her custody status, which by law was supposed to take place after six months of detention,

was delayed an extra four months. She was eventually granted asylum and released earlier this year—but not before spending long, and pointless, months in custody.

Magaly is far from alone. A June report from the US Government Accountability Office, which conducts research on behalf of Congress, revealed that the average time it takes the US immigration court to complete a deportation case has increased dramatically—from 42 days in 2006 to 336 days in 2015.

That's largely because ICE has stepped up enforcement over the past decade while the number of immigration judges has remained relatively static. The 326 judges currently on the immigration bench faced a staggering docket of more than 500,000 unresolved cases at the beginning of the 2017 fiscal year, according to the report.

"The congestion of the immigration court calendar is just astonishing," says Brian Hoffman, an immigration attorney with the Southern Poverty Law Center and former lawyer with a private firm in Ohio. "When I was in Ohio, I'd have hearings scheduled as far out as 2020."

To understand how US immigration courts got so log-jammed, it helps to go back to their beginning. They were originally organized under the Immigration and Naturalization Service, but became part of the US Department of Justice in 1983. There are 58 immigration courts across the country, including some that are located within detention centers or correctional facilities. These courts aren't part of the regular US judicial system, but are instead technically part of the executive branch—it's a bit like if a criminal court were run by a police department.

For years, these courts have had a backlog, according to the GAO report. In 2006, that backlog meant 212,000 pending cases. By early 2015, it had more than doubled to 437,000 pending cases. ICE arrests increased during that period, particularly between 2008 and 2012, when they peaked at nearly 410,000.

Unlike defendants in criminal court, immigrants in detention aren't guaranteed an attorney. Many spend months in custody trying to find a lawyer to take their case; others, including children, represent themselves, even though they may not speak fluent English, let alone understand America's complicated immigration laws. They also don't have the right to a speedy trial. They do have a constitutional right to due process, but that right is sorely tested by the current setup.

The US Supreme Court has ruled that immigrants held in detention are required to receive bond hearings if they're detained for sixth months or longer, but this has complicated the legal balancing act judges must perform. Those factors, coupled with a shortage of judges and court staff, led the courts to complete fewer cases each year. The

backlog has gotten longer, and more immigrants are in detention as a result, the GAO says.

The GAO adds one major reason immigration cases drag out is that judges will "continue" a hearing until a later date to allow detainees more time to obtain relevant documents, secure an attorney, or perform other tasks important to their case. While continuances can help immigrants mount an effective case, they also have a downside.

"Often, you need a continuance to get a piece of information that you could conceivably get the next day, but the next hearing is several weeks out," Hoffman says.

Under Barack Obama, ICE arrested so many immigrants that the president was dubbed "deporter-in-chief," but those arrests were often more carefully targeted than the latest wave of arrests under Donald Trump, says Josh Breisblatt, a policy analyst with the American Immigration Council. Just after taking office in January, Trump issued orders calling for more Border Patrol agents, more detention facilities, and a renewed focus on deporting undocumented immigrants, even those who haven't been accused of a crime.

Breisblatt says that those orders could make the situation worse.

"Making everybody a priority for [deportation] is a concern, and it could exacerbate the long backlogs," Breisblatt says. "As it is, only 37 percent of immigrants are able to get an attorney, and it's way worse for folks in detention. That, coupled with the Trump administration wanting more people in detention—those create access-to-counsel issues we're concerned about."

One of the GAO's top recommendations for fixing the immigration court backlog is to hire more immigration judges. At the time of the study, the courts had fewer than 300 judges, and an astonishing 39 percent of them were eligible to retire. Trump's proposed 2018 budget includes funding to hire 75 more immigration judges. That's a good idea in theory, but the GAO also found that the courts take a mind-boggling two years to fill vacant judgeships.

Moreover, an additional 75 judges wouldn't be nearly enough, says Dana Marks, president of the National Association of Immigration Judges, the judges' union. The immigration courts are currently authorized to hire up to 384 judges, but to address the backlog and create a manageable caseload, they need more like 600 judges.

"There's clearly a long way to go," Marks says.

The GAO also looked at various options for completely reorganizing the immigration court, such as getting it out from under the DOJ and making it an independent court under Article I of the Constitution, similar to the federal bankruptcy and tax courts.

However, it stopped short of recommending that possibility, or studying how much it would cost to do so.

Marks, an immigration judge for more than 30 years, has been pushing for that independence for decades. It would give immigration courts and judges more authority—and ultimately streamline how cases proceed and resolve.

"We really have been let down and not assisted in the fundamental tasks that are needed to run the courts," Marks says. "That's one reason our organization has lost faith in the DOJ. They've had this court now since it was created, and they haven't been able to figure out how to run it effectively and efficiently."

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