

Commentary:

## Trump's immigration plan ignores funding, 5-year waitlist opinion

By Denise Gilman - Special to the American-Statesman



Evan Vucci President Donald Trump unveils a plan at the White House on Wednesday that would place new limits on legal immigration.

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A common refrain dominates immigration discussions: "They broke the law and should be deported." The message holds power because it suggests that allowing immigrants cast as lawbreakers to remain in the country weakens the rule of law.

There are multiple problems with this sweeping justification for deportations that treats immigrants as offenders. Many immigrants have not broken any criminal laws — and most cannot simply "get right" with immigration laws that are astonishingly complex and irrational.

More fundamentally, the deportation system itself verges on lawlessness. The rule of law requires that functioning tribunals arbitrate disputes fairly, efficiently and accurately. The immigration court system, which decides who will be deported and who may remain in the United States, fails this test.

The government has taken an aggressive stance on immigration enforcement, detaining and seeking to deport in large numbers. Yet, it has failed to provide adequate resources for adjudication of the resulting cases by the immigration courts, even though these courts must decide complicated issues, including legitimate claims to legal status. The proposed budget for 2018 reflects this pattern, with the immigration courts receiving only a small fraction of

the \$1.5 billion promised to Immigration and Customs Enforcement for increased detention and deportations.

This imbalance has led to a bottleneck of more than 600,000 pending cases before the immigration courts and a state of chaos that negatively impacts all involved.

Courts are unable to docket cases promptly, and there is wild unpredictability in the scheduling of hearings. Because information about a case only becomes available after docketing, individuals in immigration court proceedings cannot easily learn when or where hearings will be held. There is no right to government-appointed counsel in immigration cases, so most migrants are unrepresented and struggle to navigate the proceedings alone. Given the backlog, many hearings are scheduled out for four to five years. At the same time, detained individuals may have a final hearing within just a few months, and shifting priorities have resulted in accelerated adjudication of other cases. Last-minute changes are common because of the courts' challenges in finding enough interpreters and malfunctions in the video equipment used in hearings for detained individuals.

Rather than recognize and address the incredible pressure placed on immigration courts by the exploding docket, the Trump administration has adopted measures that make a bad situation worse.

The administration started by shuffling the courts, sending judges from around the country to courts in border areas or assigning them to video hearings in remote detention centers. Judges have fallen behind on their own dockets to take on matters already underway in courts with unfamiliar procedures and binding law. Parties have difficulty learning who will preside over their hearings and have been forced repeatedly to begin anew in presenting cases to rotating judges. For video cases, detained persons face extreme difficulties offering evidence and testimony to judges thousands of miles away.

Recently, the administration revealed specific plans to expand the use of "expedited removal" and bypass the immigration courts altogether, allowing frontline enforcement officials to deport. Impeding access to a full adjudication will certainly not promote more fair and accurate results — and the plan does nothing to address the existing backlog in the immigration courts. Nor does the proposal slow docket growth, because individuals in expedited removal can seek court intervention to present asylum claims and will probably do so if otherwise faced with immediate deportation.

There are, however, steps that would improve immigration adjudication. Funding should be provided for immigration courts and enforcement at a parallel rate. Detention should be dramatically scaled back, allowing for more meaningful participation in court proceedings and thus better decisions, while freeing up dollars for other improvements. The use of

expedited removal should be reduced rather than expanded, while some cases should be diverted from the courts to the specialized asylum office or other nonadversarial proceedings, which are more appropriate for many cases.

Immigration adjudication is in a state of crisis that must be addressed. The system should operate as a means of sorting out cases under the law, granting the right to remain where merited, rather than simply being part of a deportation machine.

Gilman is a clinical professor of law and director of the Immigration Clinic at the University of Texas.

<http://www.mystatesman.com/news/opinion/commentary-trump-immigration-plan-ignores-funding-year-waitlist/cJz5gmdrvZyIJa6EBYGuDJ/>