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Post Editorial Slams Total Due Process Meltdown In U.S. Immigration Courts! Why We Need An Independent Article I Immigration Court — Now!

https://www.washingtonpost.com/opinions/americas-immigration-courts-are-a-diorama-of-dysfunction/2017/01/09/38c59cf6-ceda-11e6-b8a2-8c2a61b0436f_story.html?utm_term=.2597096ea1d8

“The nation’s 58 immigration courts, administered not by the judiciary but by the Justice Department, are places of Dickensian impenetrability, operating under comically antiquated conditions. Case files are scarcely digitized. Clerks are outmatched by mountains of paper files. Translators struggle to convey evidence and legal concepts across linguistic and cultural barriers.

Disgracefully, wild disparities in outcomes and legal standards characterize the various courts, meaning that asylum seekers who appear before immigration judges in Atlanta face almost impossibly long odds and are generally ordered deported, while those in New York are usually granted relief and allowed to remain in the country.

In these courts, the idea of justice itself is so degraded, and the burnout rate so high, that some immigration lawyers have simply thrown in the towel. One of them, movingly profiled by The Post’s Chico Harlan, got sick of the charade and finally quit. “I genuinely believed these people could die if they’re sent back” to their home countries, said Elizabeth Matherne, who once represented asylum seekers. “And you’re talking to somebody” — the judge — “who is not listening.”

Why We Need An Independent Article I Immigration Court — Now! By Paul Wickham Schmidt

Not a pretty picture of Due Process in America, especially for a Court System whose noble, but forgotten, “Vision” is supposed to be **“though teamwork and innovation be the world’s best administrative tribunals, guaranteeing fairness and due process for all.”**

Undoubtedly, this downward spiral into judicial dysfunction started with the politically-motivated manipulation of the Immigration Courts and the selection system for Immigration Judges and Board of Immigration Appeals Members during the Bush Administration.

But, the Obama Administration had eight years to clean up this mess. Not only has it failed to act, but in some ways has made it even worse. Even in the disastrous Bush years, the backlog of pending cases never approached today’s level of more than 530,000, and it’s growing every day.

The Justice Department has no plausible plan for dealing with this morass, which directly affects the lives and futures of millions of “real people.” Nor is there even a rudimentary plan in place to

implement an e-filing system — a staple of virtually every other Federal Court System. Under the Department of Justice, the Executive Office for Immigration Review (“EOIR”), which is charged with administering the Immigration Courts, began “studying” the process for e-filing more than 15 years ago — so far, without achieving any visible success.

Yes, Congress has failed to pass practical, badly needed reforms of the immigration system, unnecessarily compounding the Immigration Courts’ burdens. And, yes, the Congressional approach to appropriating needed resources for the Immigration Courts has been inconsistent and all too often has lagged far beyond funding for immigration enforcement.

But, for the most part, the Immigration Courts are the responsibility of the Executive Branch and the Justice Department. The structure, supervision, and operation of the Immigration Courts is almost entirely a matter of Justice Department regulations. Judicial selections do not have to go through the cumbersome Senate confirmation process.

The Justice Department has shown neither enthusiasm nor the ability to promptly fill existing judicial vacancies through a transparent merit selection system, nor has sufficient attention been paid to locating the necessary courtroom space or planning for painfully obvious expansion needs. Even if all the existing judicial vacancies were filled, as of today there is no place to put the extra Immigration Judges. Effective judicial administration, never a point of expertise for the Justice Department, has completely disintegrated over the past decade and one-half under Administrations of both parties and a succession of Attorneys General who simply failed in their duty to run a fair, efficient, highly professional Immigration Court system.

We have not yet seen the Trump Administration’s and Attorney General Sessions’s plans for how to restore justice to the Immigration Court system. But, the preliminary rhetoric isn’t encouraging — lots of tough talk about immigration enforcement, but neither acknowledgement of nor emphasis on the accompanying equally important need for achieving and protecting due process in the Immigration Courts.

After more than three decades in the Justice Department, the Immigration Courts have not developed in a way that fulfills their essential role in insuring fairness and guaranteeing due process in the removal hearing process. Waiting for the Justice Department to appropriately reform the system is like “Waiting for Godot.” It’s more than time for bipartisan action in Congress to remove the Immigration Courts from the Department of Justice and create an independent, well-functioning Article I Immigration Court. Only then, will the Immigration Courts be able to achieve their “noble vision” of **“through teamwork and innovation be the world’s best tribunals guaranteeing fairness and due process for all.”**

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