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NEWS & POLITICS | FEATURE

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Coronavirus leaves immigrants trapped in a byzantine court system

Many are without lawyers and more frightened and confused than ever.

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STRANDED

In a small courtroom on the third floor of a nondescript building in downtown Chicago on February 5, Judge Samuel B. Cole called case 849.

On the video monitor, a young Honduran man with unruly curly hair appeared from the detention center where he was being held. He was hoping to file for asylum, but had no attorney and little clue how to proceed, especially with gathering the evidence necessary to show he'd be persecuted if he returned to Honduras. After a short, confusing conversation with the judge, he gave up and said he wanted to be deported. But clearly worried for his safety, he pleaded with Cole to make sure that no one in Honduras knew he was returning.

Cole sighed and explained that was not in his power. He ordered the man deported, wished him luck as he always does, and moved on to the next case.

A mix of empathy and frustration is often evident in the demeanor and words of Cole, one of hundreds of immigration judges nationwide who every day face an onslaught of desperation and confusion in their courtrooms. Many immigrants going through deportation proceedings don't have lawyers, putting judges like Cole in the position of trying to explain an obtuse system, comfort terrified immigrants, and deliver a just decision, all under intense time pressure.

Add the novel coronavirus pandemic, and the situation becomes untenable. Even as much of the country has shut down and many civil and criminal proceedings are on hold, immigration courts hearing cases for immigrants held in detention are still operating. This makes Cole and many of his colleagues furious. Even after Governor J.B. Pritzker issued a stay-at-home order, hearings proceeded as usual in Cole's courtroom. Judges, lawyers, clerks, security staff, and family members of detainees were all risking exposure to the virus.

"We need to pause the detained hearings right now," said Cole in early April, speaking on behalf of the National Association of Immigration Judges (NAIJ).

Then suddenly on April 15, a tweet from court officials at 10:14 PM said the court would be closed the next day. On its website,

the court was listed as one of a handful closed nationally. The closing was only a temporary move—after a visitor came down with the virus, according to sources—and the court reopened on Tuesday.

Before the Chicago court shuttered, Cole had complained about officials' late-night tweets about closings at immigration courts nationally, calling it a problem for "people showing up from across the country [only] to find out that the courts are closed."

Nationwide all immigration court hearings for those not detained were postponed until May 15. The judges' association has called for all hearings to be closed until courtroom safety is assured and wants updates delivered in a comprehensive and clear way—not through tweets. They also want hearings held over the phone to set bond for detained immigrants nationally. If immigrants are granted and can pay bond, then they will be released from detention while their case proceeds.

But court officials have pushed back at pleas from the judges, prosecutors, and immigration lawyers to cancel all in-person hearings. "Most federal courts have continued to receive filings and to hold critical hearings for detained individuals as they have postponed other hearings," said a statement from the Executive Office for Immigration Review (EOIR), which added it was "committed" to protecting all of those in immigration court from coronavirus.

While the country's immigration court system has long been troubled, the situation has gotten worse under the Trump administration, which has notoriously separated children from parents and kept them in cages, and made it much harder to obtain asylum. On April 20 Trump used the pandemic to justify the unprecedented step of banning all immigration into the U.S. for an indefinite period, saying that domestic jobs need to be protected from foreign workers.

Even before the coronavirus hit, the immigration court system was reeling under unprecedented backlogs, delays, and public outcry from lawyers and NAIJ, which represents over 400 of the judges at the nation's 63 courts. Immigration courts now face over 1.1 million backlogged cases, a number that has skyrocketed under the Trump administration.

And those immigrants are increasingly unable to find lawyers to represent them, a challenge made exponentially harder by the pandemic and the economic tailspin it has triggered. Data shows an immigrant's chances of obtaining asylum or otherwise avoiding deportation are much greater with an attorney.

Nearly three-fourths of immigrants who came to the nation's immigration courts without lawyers between 2001 and 2020 were ordered to be deported, according to figures compiled by the Transactional Access Records Clearinghouse (TRAC) database at Syracuse University. But only 20 percent of those with lawyers were deported. Immigrants in Illinois with lawyers were deported in only 14 percent of the cases over those years.

The government says immigrants have a right to an attorney in immigration court, but it won't pay for one. That applies to all except those with mental or developmental disabilities.

Juveniles, the elderly, non-English speakers, recent arrivals still dealing with the trauma they fled, immigrants in detention with little access to the outside world—they all need to find a lawyer, which can cost hundreds or thousands of dollars, or go it on their own through a byzantine, arbitrary, and opaque system.

"Even if you have a PhD it's hard to navigate if you aren't trained in what to do," said Lauren Aronson, director of the University of Illinois's Immigration Law Clinic. "There's just so many procedural or bureaucratic requirements . . . It's just a minefield."

Many immigrants have lost their jobs in restaurants, hotels, factories, and domestic work because of the pandemic, and those who are undocumented can't file for unemployment or get the stimulus checks being distributed as part of the coronavirus relief bill. So impoverished immigrants find it even more difficult than before—often impossible—to pay a lawyer, and the relatively few lawyers and organizations able to work for free have no way to serve the vast tide of need.

For example, the Immigration Project in downstate Normal, which offers pro bono help to immigrants in 86 counties, has only three lawyers and three other employees qualified to appear in court. Indeed immigrants in rural areas are confronted by "few qualified immigration attorneys, longer travel times to

court and high rates of poverty," according to the TRAC database.

And attorneys complain that representing clients has become more difficult under the Trump administration. The government's attorneys have become less willing to bargain, attorneys say. Bonds for clients are higher and more immigrants don't get offered bond at all; new rules delay cases and cost pro bono attorneys time and money.

"Because it is so overwhelming, we don't [even] have a waiting list," said Mary Meg McCarthy, head of the Chicago-based National Immigrant Justice Center (NIJC). "We can't even find enough immigration attorneys to do the work. Even if you have all the money in the world, there's not enough attorneys."

The virus only made the situation worse for immigrants suddenly out of work. Attorney Muhammed Ibrahim, an Iraqi immigrant himself, has been telling his immigration court clients not to worry and to pay him when they can. "I need the money, but I understand the situation," he said. Ibrahim opened his own office a few months before the outbreak. "Right now we have no income so we are using our credit cards and savings."

"I've gone pro bono," explained immigration attorney Michael Ibrahim (no relation to Muhammed), whose wife is a nurse on the front lines of the pandemic at the University of Chicago hospital. He has suspended billing and told clients they can deal with any costs down the road. But other attorneys said they are not taking new clients who are unable to pay them.

And the increasing numbers of immigrants being held in detention before their hearings makes attorneys' jobs even harder. Many jails are on lockdown, not allowing visitors, so it may be impossible for lawyers to visit their clients. And given restrictions on movement within jails and the fact that some have reduced staff because of illness, it may be harder than ever for detainees to even receive phone calls.

"I've been calling for two or three days to one [detention] center and finally a person answered," said attorney Brian Seyfried. Now along with helping immigrants make their cases, attorneys also

find themselves trying to protect clients from the risk of coronavirus and the changes the federal government is making because of it.

NIJC in late March documented reports from detainees at regional jails who said they had not been told about the virus, that they lacked basic hygiene supplies, and that they were being kept in crowded facilities with no social distancing. In response to the virus, ICE has limited detainee intake, released a small number of potentially vulnerable immigrants, reduced the population at all facilities to improve social distancing, and provided needed health and safety products, according to an ICE official and statements from the agency. But officials and advocates alike say it's not enough.

Pointing to a recent outbreak of coronavirus at a Chicago-area shelter for youth in immigration proceedings, the NIJC has called on the government to nationally speed up the release of immigrant children under its care to their families or sponsors.

At a detention facility near Kenosha, Wisconsin, officials were so concerned about the spread of the virus from newly arriving immigrant detainees that in March they asked ICE to stop sending them immigrants. Kenosha County sheriff David Beth told the *Kenosha News* that ICE had used the detention facility as a "dumping ground," sometimes bringing immigrants directly from Chicago's O'Hare airport. "It's a petri dish of potential germs inside our jail," he told the newspaper.

In response, ICE moved the 170 detainees already in Kenosha to detention centers in Texas and Illinois. That move has deeply unsettled families of the detainees, who say they weren't told about the changes and worry that sending someone to a Texas jail is just a step to deporting them, said Laura Mendoza, who works with immigrants at the Resurrection Project in Chicago. Attorney Omar Abuzir said families of his clients who were shipped to Texas "have this fear that it is a short way to remove someone."

One immigrant recently released from a detention center in Kankakee told of a man shipped there from Kenosha, who appeared to have the virus, but was placed among other detainees, according to a statement released by the NIJC.

"There's no way you can have social distance from everyone," said another immigrant recently released from the McHenry County detention center, quoted in the same NIJC release.

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ANNA JO BECK

Chicago's immigration court handles the cases of immigrants living in Kentucky, Indiana, Illinois, and Wisconsin. People end up there for various reasons: some are undocumented immigrants who were picked up in workplace raids or after random encounters with law enforcement; others are people who had been in the country legally but lost their status, often because of a criminal charge like drunk driving, drug possession, or domestic violence. Under the Trump administration there's been an increase in the number of immigrants with no criminal history put in removal proceedings,

according to TRAC. For example, in Chicago's court last year, only 397 of 20,082 immigrants facing new deportation proceedings had criminal charges.

Once immigrants are in removal proceedings, they have several options, including requesting a stay of removal, which can be done for a limited number of reasons, and applying for asylum on the basis of fearing persecution or torture in their home country. Asylum was created to provide protection from persecution and abuse generally at the hands of the government, based on one's race, religion, national origin, membership in a particular social group, sexual orientation, gender identity, or political opinion. To be granted asylum, an immigrant has to show proof that they are being persecuted or have a well-founded fear of persecution, including physical harm or the possibility of being tortured, abducted, or killed. While there's been a surge of migrants seeking asylum at the southern border in recent years, many of the asylum seekers in the Chicago court are immigrants who've been here legally for years.

Abdoulaye Beye, a 32-year-old from Dakar, Senegal, lost his legal "permanent residency" when it expired after he and his American spouse divorced. Without a green card, he couldn't renew his driver's license, which is why he was in immigration court after facing charges of driving without one. Beye tried—and failed—to make the case for himself to stay in the U.S. because of his four-year-old child. He had no lawyer, and the judge gave him more time to try to find one. But that will be a difficult mission, since Beye lost his job as a welder before the pandemic, and has no legal authorization to work.

Vang Khu's parents were among the Hmong people from Laos who helped the U.S. in the Vietnam war in the 1960s, he told Judge Cole one day in February. Khu was on a video screen from a detention center trying his best, without a lawyer, to convince Cole not to order him deported to Laos, where he says he fears harm or death.

Khu knows very little English and he does not have access to any legal aid. Cole explained that by his next hearing date in four weeks, Khu must fill out an application and provide proof that

he would likely face persecution if deported. Khu appeared confused and desperate.

"The paperwork is not easy, I need help," he told Cole through an interpreter. He added that his two children grew up in the U.S., and wouldn't know how to collect the necessary evidence from Laos. Cole sighed, and as he does with everyone who appears before him, wished the man luck.

In the last few years, Chicago's immigration court saw a drastic rise in asylum-seeking migrants from Central American countries hard-hit by gang violence and poverty: Guatemala, Honduras, and El Salvador. Guatemalans in proceedings before the court rose from 2,040 to 5,301 from 2018 to 2019; Hondurans from 1,941 to 4,893; and Salvadorans from 436 to 905. A large portion of these migrants are women, children, and unaccompanied minors.

The percentage of Guatemalans without lawyers in Chicago's immigration court jumped from 41 percent to 67 percent from 2018 to 2019; Hondurans from 54 percent to 76 percent; and Salvadorans from 27 percent to 64 percent.

For Central Americans, asylum cases can be particularly difficult since it is gangs, rather than the government, that are generally the threat. If it's not the government or a government entity like the police or military posing the threat, then one must prove the government can't or won't protect them.

"So one of the big issues coming down for Central American cases is that a lot of judges operate from the assumption that these gangs, who are not government actors, their motivation for harming these people is on an economic basis," said Megan Davis, a lawyer at the nonprofit Erie Neighborhood House. Economic motivations are not a grounds for asylum. "People have to come up with five or six different options and hope that the judge will agree that one of them fits."

Negotiating such nuances, in English, may be almost impossible without a lawyer. Meanwhile Central Americans may be especially vulnerable to another problem with the system: unscrupulous or ineffective lawyers who prey on immigrants' desperation, taking their money without providing adequate

counsel.

Two years ago the Guatemalan consulate set up a service to help immigrants in court, because of the difficulty Guatemalans have in finding lawyers and also widespread complaints about inadequate attorneys. "I heard thousands of stories of lawyers who took their money" and did little for their clients, said Guatemalan consul general Billy Adolfo José Muñoz Miranda, recalling his contacts with immigrants facing deportation in Los Angeles, where he previously served.

Attorney Cynthia Mazariegos, the child of Guatemalan parents, began volunteering to offer legal help through Centro Romero, a north-side advocacy group, in part because she was upset about the way lawyers were taking advantage of immigrants. "[Immigrants] don't know about the lawyers or how to find a lawyer," she said. "I had a woman who paid \$10,000 for a lawyer, but the lawyer never filed an asylum petition and the judge ordered her deported."

"There are a lot of bad attorneys out there who will leave their clients high and dry," added NIJC attorney Paula Roa. "People say, 'Oh, I paid the attorney \$5,000 or \$6,000 and then he wanted more money and said he wouldn't show [if not paid more].' And it's a week before the merit hearing. What are they going to do?"

The country's immigration courts will suffer the impacts of the coronavirus pandemic long after infection rates have dropped. Hearings for immigrants not held in detention have been stalled, adding to the already insurmountable backlog of more than a million cases nationwide. In Chicago's immigration court it takes, on average, more than three years for a case to be completed, according to TRAC figures, which don't account for the increased backlog due to the pandemic.

And coronavirus is taking a particularly devastating toll on service sector jobs like restaurants, hotels, and domestic work, plus jobs like meatpacking, which employ many undocumented immigrants. That means it will be even harder for immigrants in the system to afford lawyers or even bond payments. Unlike criminal courts, where a defendant pays a percentage of the amount, often 10 percent, detainees must pay 100 percent of


the bond in immigration court.

Judge Cole is worried that the new reality will make his already resource-strapped courtroom an even more stressful place. "It's so important to have attorneys," he said. "It makes our jobs as judges much easier when there is an attorney."

New funding in Chicago and Illinois to provide legal representation for immigrants may make a small difference, and advocates are clamoring for such aid to continue despite the financial challenges the city and state are now facing from the pandemic. The state has estimated the pandemic could mean a loss of \$8 billion in tax revenue, even as it was already facing a budget crisis.

The city of Chicago budgeted just over \$1.5 million this year for agencies that offer legal help to immigrants, and the Illinois legislature agreed to spend \$5 million this year on immigrant legal aid, the first such grant made by the state. Courts in New York, where there are significant legal aid funds for immigrants, have the lowest rate of denying asylum.

"It is imperative that [Chicago and Illinois aid programs] continue," said Eréndira Rendón, who heads the legal program at Chicago's Resurrection Project and is one of the leaders of the new state effort. Rendon is a recipient of DACA, the Obama administration program providing protection from deportation to people who were brought to the U.S. illegally as children; the Trump administration has been trying to overturn the protections.

Troubled by the money problems that suddenly overcame undocumented immigrants because of the spread of the virus, attorney Michael Ibrahim helped start a fund-raising campaign to provide a onetime financial boost for them and their families. In his fund-raising appeal he wrote: "America's time-honored tradition is to answer the call of duty and compassion and help the marginalized and forgotten." 

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