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## Shutdown stalls immigration courts already facing a 'tremendous backlog' of cases

The government shutdown over funding a southern border wall has largely disabled the system that processes immigration cases. Most cases in immigration courts, which are already overburdened, have been delayed indefinitely. Judge Dana Leigh Marks, former president of the National Association of Immigration Judges, describes to Amna Nawaz the shutdown's "devastating impact."

### **Judy Woodruff:**

As this partial shutdown grinds on tonight, we get two more looks at its ripple effects.

By all accounts, the nation's immigration courts are overburdened, approximately 800,000 cases being handled by around 400 immigration judges.

Now, because of the shutdown, most of those cases are on hold.

Amna Nawaz takes it from there.

### **Amna Nawaz:**

In every case before them, immigration judges are the arbiter, deciding if immigrants who appear in their court have legal permission to stay in the U.S., or if they may have to be deported.

For a closer look at what the shutdown means for the immigration court system, I'm joined by Judge Dana Leigh Marks. She's a spokeswoman and president emeritus of the National Association of Immigration Judges.

Judge Marks, thanks for joining me.

Let's begin with the shutdown. Who's working, who's not, and what's been the effect of cases that are already in the pipeline?

### **Dana Leigh Marks:**

It's been a devastating impact to have our immigration courts shut down, Amna.

You're well aware of the tremendous backlog. And the only judges who are working are those who are hearing cases of individuals who are held in custody by the immigration officials. All of the non-detained cases in courts, which are the vast majority of our dockets, are on hold for the indefinite future.

**Amna Nawaz:**

And so we know some of these cases can already take years to unfold. What does it mean for the future of those cases?

**Dana Leigh Marks:**

It's very difficult to make that assessment.

I know, for me in San Francisco, for example, I have a pending caseload of over 4,000 cases. So many of the cases that are being canceled for the shutdown have been on my docket already for two or three or four years, and now I have no time in the foreseeable future to reset them.

It could be another three or four years before those people can expect hearings on their cases.

**Amna Nawaz:**

So we heard about that backlog. That is now at a record high. And if you take a look at those numbers, those have been going up rapidly over the last 10 years.

I guess the basic question is, how did we get here?

**Dana Leigh Marks:**

Well, it has been a long time in coming through both Democratic and Republican administrations.

While there has been a big focus on immigration enforcement, there has not been sufficient focus to the immigration court system. We're housed in the Department of Justice, and, frankly, the Department of Justice has not advocated either as forcefully or skillfully for us.

As the Department of Homeland Security's enforcement resources has grown, what's happened for the courts is that we have fallen behind and not received

proportional increases that we would need to stay current with the cases that come into our system.

**Amna Nawaz:**

Judge Marks, I haven't to ask you about a issue that came under focus because of the shutdown argument and because of the focus on our southern border.

A number of the cases, asylum cases in particular, that originate from our southern border come from three countries, Guatemala, El Salvador, and Honduras. The government has said, the vast majority of those aren't with merit, that, ultimately, these are not granted asylum.

And so I guess my question is, if they can find a way to limit the number of cases coming to your court, wouldn't that help to alleviate the backlog?

**Dana Leigh Marks:**

It's not quite that simple, Amna.

It is a very complicated assessment to determine whether or not someone is qualified for asylum. I describe it as being like a 1,000-piece puzzle, and you have to have every piece visible.

So in order to determine whether or not someone is eligible, Congress has decided that these people are entitled to a hearing before an immigration judge, so that the proper legal analysis can be applied to their case.

That's what our law provides and, frankly, that's what international treatise that we are signatories of require of us. So it would require a change in the governing law, not just a change in policy, in order to try to make a big impact on those kinds of cases.

**Amna Nawaz:**

Judge Marks, there is an argument made by the administration that our legal process has built into it loopholes, that people coming who apply for asylum end up staying for years because of the pace and the backlog, and that makes it harder when their cases are ultimately denied to get them out of the country.

What do you say to that?

**Dana Leigh Marks:**

Our organization firmly believes that everyone is entitled to their day in court, and that it should occur in a reasonably prompt amount of time.

But the reason that there are delays in our system is simply because we have been underfunded and ignored for so long. The system does work, when it receives the proper funding. And it's not a loophole. It is the appropriate due process that is what American justice provides to any individual who has their life and liberty at stake before our courts.

**Amna Nawaz:**

Judge Dana Leigh Marks, thank you very much for your time.

**Dana Leigh Marks:**

Thank you so much, Amna.

<https://www.pbs.org/newshour/show/shutdown-stalls-immigration-courts-already-facing-a-tremendous-backlog-of-cases>