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Presiding Under Pressure

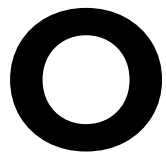
Meet the new judges working in New York City's immigration court under the Trump administration's higher caseload demands and stricter asylum rules.

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(Composite image by WNYC, courtroom sketches by Jane Rosenberg)

By **Beth Fertig**

May 21, 2019



On a weekday morning inside 26 Federal Plaza, you'll see hundreds of people waiting in lines outside the small immigration courtrooms housed on the 12th and 14th floors. These hallways and courtrooms have no windows, making the place feel even more claustrophobic as guards remind everyone to stand against the walls to avoid blocking traffic.

In this bureaucratic setting, you'll meet people from Central America, China, India and Eastern Europe all trying to stay in the U.S. Parents clutch the tiny hands of toddlers who want to run and play. Inside the court rooms, mothers hold crying babies on their laps and parents with large families cluster their children around them once they're seated before a judge.

It's a pressure cooker. Not only because each immigrant's fate eventually will be decided here, but because judges complain their jobs have never been busier or more politicized. There's a backlog of almost 900,000 cases, [according to TRAC](#). The Justice Department, which oversees the immigration court system, established a quota for judges to complete 700 cases per year, an especially high hurdle in New York City, according to a [WNYC](#)

[analysis](#), because it's the nation's busiest immigration court. Meanwhile, the judges have new constraints in their ability to grant asylum because former Attorney General Jeff Sessions decided certain cases [are not eligible](#). Judges are now [granting asylum less often](#) — [even in New York](#), where immigrants historically had an easier time winning. Many judges and lawyers believe these actions show how the immigration court is becoming a vehicle for President Trump's immigration agenda.

In a city where about 40 percent of residents were born abroad, New Yorkers have passionate views on immigration. Yet, few get to see where immigrants learn an often life-or-death decision. Trials are closed to the public, and sitting judges are not allowed to speak to the media. WNYC spent months in the main immigration court at Federal Plaza observing hearings to see how judges are handling new pressures, and how they interact with immigrants and lawyers (most of whom wanted to remain anonymous because they don't want to hurt their cases). We focused on new judges who have taken the bench since Trump became president.

Here is what we learned.

Judges Who Worked for ICE or the Justice Department



Judges Lena Golovnin, Maria Lurye, Lisa Ling and Jem Sponzo.

(Jane Rosenberg for WNYC)

Eighteen judges in New York City started since Trump took office — [almost half](#) of all immigration judges here. Those new hires are under probation their first two years, putting them under extra pressure to meet priorities set by the Justice Department. Eight judges were lawyers at [Immigration and Customs Enforcement](#) and another had a similar role at the Justice Department. Their old jobs were to make the government's case for deporting immigrants. Now, they're supposed to be neutral adjudicators.

Lena Golovnin worked for ICE before starting as a judge in August 2018. From the bench, she speaks briskly and is very polite when handling 50-100 procedural hearings in a morning, typical for New York judges. Judges also schedule trial dates during these hearings but the backlog is so long, some won't happen until 2023.

During a visit to her courtroom in December, Golovnin was stern with an attorney whose 16-year-old client didn't provide school records to excuse himself from court that day. Minors don't have to come to court if they're enrolled in school, but proof is needed. "I'm not happy," Golovnin said, noting the boy could have asked his school to fax the records to court.

The boy's lawyer asked for an extra day to provide the records, but the government trial attorney objected. Golovnin then ordered the boy removed in absentia. This did not mean he'd be immediately deported because his lawyer could apply to reopen the case. But several attorneys and former judges said this was harsh, and that a more seasoned judge would have given the lawyer and client an extra day.

Some immigration lawyers worry too many judges come from ICE, but they acknowledge that experience doesn't automatically bias them against immigrants. One lawyer called Golovnin a "delightful person" who should be a good judge. The Justice Department had a history long before Trump of hiring ICE attorneys as judges because of their immigration trial experience.

"I would much rather have a trial attorney as a judge," said Stan Weber, a former ICE attorney who is now an immigration lawyer in Brooklyn. "I know that personally," he said, adding that of the former ICE trial attorneys on the bench, "many of them I helped train."

It's difficult to measure which judges are more favorable to immigrants, but one factor is how often they grant asylum. This data is collected by TRAC and updated once a year. Not all new judges had completed enough cases to measure, but others did.

Judge Jem Sponzo came from the Justice Department's [Office of Immigration Litigation](#). She was appointed at the end of the Obama administration and took the bench in 2017. TRAC calculated she grants asylum about 69 percent of the time — a little lower than average for New York City's court, which was more than 80 percent before Trump took office. Another judge, Paula Donnolo, had a grant rate of 80 percent. She left suddenly in March before her two-year probation period ended. Neither the Justice Department, Donnolo nor her union would comment.



Judges Donald Thompson, Michael McFarland, Cynthia Gordon and James McCarthy all used to work for ICE.

(Jane Rosenberg for WNYC)

Judge James McCarthy started in July 2017 and his asylum grant rate is 36 percent. McCarthy can seem gruff and no nonsense but he has a hearty laugh. In December, one attorney had a complicated case involving two teenage brothers in foster care, neither of whom came to court. When McCarthy gave the boys another court date, the government's lawyer objected to granting them extra time without a prior discussion. The judge ignored this objection, adding "it's in the best interest of the children" for them to get another day in court.

He also pushed back at a government lawyer's line of questioning during an African man's deportation trial. The wife testified that her husband had become more mature since committing minor crimes in his youth plus a felony conviction for robbery. The

government lawyer asked her, “Have you ever heard the expression ‘talk is cheap?’” Judge McCarthy reproached her with, “that’s not a question.”

According to TRAC, Judge Donald Thompson granted asylum to 75 percent of immigrants in the last year. Not surprisingly, immigration lawyers call him “a wonderful judge.” One attorney in Thompson’s courtroom was representing a Nigerian woman seeking asylum, because she claimed to be a victim of female genital mutilation. She was given a trial date in May 2021. When the attorney expressed a desire to go sooner, Thompson found a date in September.

Taramatee Nohire came to Judge Lisa Ling’s court one day in December. She’s seeking asylum because she claims she’ll be persecuted in her native Trinidad for being a Kali worshipper. “I was a bit nervous,” she said, about going to immigration court. She was still collecting documents that are hard to obtain. “That also made me have anxiety,” she added. Her attorney, Pertinderjit Hora, was glad when Ling scheduled the trial for November, giving her more time to prepare the case. She expected the newly-minted judge to be scheduling cases even sooner.

In trials, judges have to listen to hours of testimony by immigrants and their witnesses — often with the help of a translator. During one asylum trial, Judge Cynthia Gordon asked many detailed questions of a Central American woman who claimed she was a victim of domestic abuse. The woman’s attorney said the judge’s questions made it feel like there were two trial attorneys in the room.

Another judge who formerly worked for ICE, Susan Beschta, started as a punk rocker before becoming a lawyer. She was hired last fall and [died this month](#).

Judges Who Used to Represent Immigrants



Judges Howard Hom, Maria Navarro and Charles Conroy.

(Jane Rosenberg for WNYC)

Although the Department of Justice selects many ICE attorneys as judges, it also chooses lawyers who have represented immigrants, as well as those who have worked in various government agencies.

Judge Charles Conroy worked for the Legal Aid Society and was an immigration lawyer in private practice. He wrote a play called “Removal” that was performed at the [Manhattan Repertory Theatre](#) in 2015. It was described as a legal drama on its website.

“Two immigrants find themselves caught up in America's deportation system — a Haitian escaping the torture he suffered back home at the hands of his government and a mentally ill Cambodian brought to the U.S.”

as a young child decades ago. Their attorney, Jennifer Coral, fights to keep them both in the U.S., but their common struggle opens old wounds and exposes a deep political and cultural rift in America.”

Immigration lawyers expected Conroy would often rule in their favor. However, since taking the bench in 2017, TRAC calculated that he denied asylum about half the time.

In court, Conroy seemed focused on moving cases as expeditiously as possible. He spoke quickly and rarely looked up from his desk. He reminded each lawyer which documents they needed to take before they leave. One lawyer said, “He will not bend at all accepting documents that are late.”

But another immigration lawyer called him, “a nearly perfect judge. Impartial, smart, efficient and knows the law.”

Many lawyers said they have a good shot with Judge Maria Navarro, who also worked for the Legal Aid Society. She has an asylum grant rate of 85.5 percent.

Another new judge, Howard Hom, worked as an immigration attorney. But he was also an administrative law judge for California and a trial attorney with the former Immigration and Naturalization Service.

Judges With No Immigration Trial Experience



Judges Samuel Factor, Oshea Spencer and Brian Palmer.

(Jane Rosenberg for WNYC)

Last November, the Justice Department issued a memo requiring judges to [expedite family cases](#) and complete their trials within a year or less. Most appear to be families from Central America who crossed the border in the past year. Their cases are often assigned to new judges who have more room on their calendars. Some of these judges had no prior immigration experience.

Judge Oshea Denise Spencer was an attorney with the Public Utility Commission of Texas before becoming an immigration judge last October. She was assigned many of the family unit cases the Justice Department wants completed quickly. In mid-December, she told one attorney representing a Honduran mother and son that she wanted to move their asylum trial from May to March. The attorney objected because she's juggling so many cases at her busy nonprofit. "It would be a violation of due process," she said. Spencer let

the attorney keep her original date.

Judge Samuel Factor was an administrative law judge with New York State Office of Temporary and Disability Assistance before becoming an immigration judge in October, 2018. By December, he was so busy he was scheduling trials in August 2020. “Give me 15 minutes we’ll be in 2021,” he joked to an attorney. He then apologized to another attorney for needing to schedule a trial in 2021. But in a family case involving a woman and child from Guatemala, he scheduled the trial much sooner, in October.

Judge Brian Palmer was previously an attorney, judge and commanding officer in the U.S. Marine Corps before taking the bench last October. Some immigration lawyers wonder why he’d want the job.

"On the Brink of Collapse?"

This year, the American Bar Association declared the U.S. immigration courts “on the brink of collapse.” It cited the quota system, and [new rules](#) from former Attorney General Sessions that took away judges’ ability to control their dockets. Meanwhile, the backlog grows as more migrants arrive at the border and some cases get delayed.

According to data obtained by WNYC, 14,450 hearings were adjourned in fiscal year 2018 because the judges couldn’t finish them — an increase from 9,181 from the previous year. More than 1,700 of those adjournments were in New York City. And there aren’t enough translators. More than 5,300 hearings were adjourned in fiscal year 2018 because no interpreter was scheduled, an increase from 3,787 the previous year.

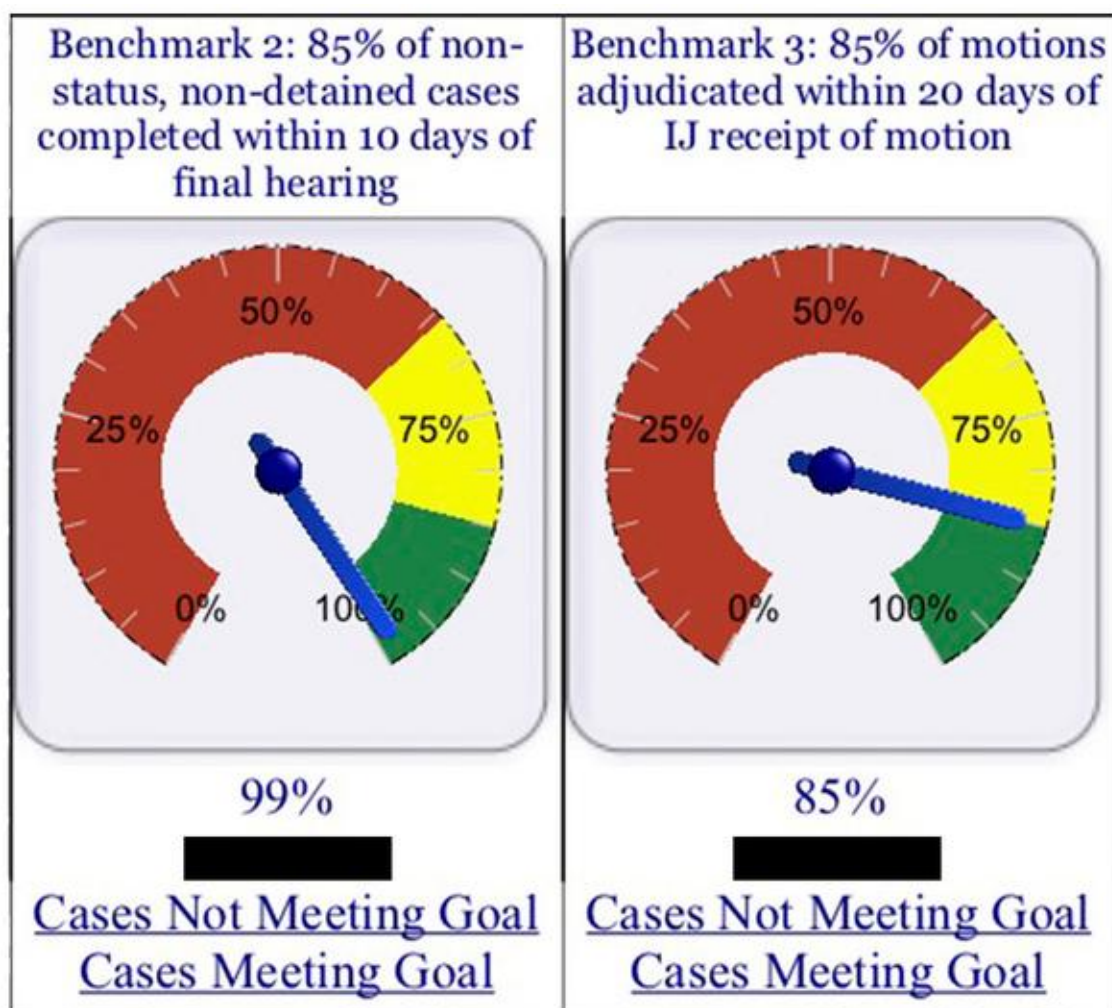
The Executive Office for Immigration Review, a division of the Justice Department which runs the nation’s immigration courts, said those numbers aren’t even half of 1 percent of all 1.3 million hearings that year.

Nonetheless, these problems do affect the flow of a courtroom. In December, Judge Howard Hom was scheduling cases involving Punjabi speakers later than others because he couldn’t get a translator until September. Another judge, Maria Lurye, decided to group her 47 cases on a morning in March to make them move more efficiently. She started by calling all attorneys whose clients were seeking asylum.

“Are all of your clients here today?” Lurye asked. “Yes,” eight lawyers replied in unison. She

then gave them different trial dates in April 2022, without taking individual pleadings. After that, she formed a group for other cases that were similar. The judge was able to see about 17 cases in 90 minutes, slightly faster than without the groupings.

Ashley Tabaddor, president of the National Association of Immigration Judges, described her members as being under a huge strain. “We are absolutely seeing some of the lowest morale and anxiety that’s completely unprecedented,” she said. The union leader also said the quotas have only made things worse because they risk sacrificing due process for expediency. Judges now see dashboards on their computers showing in red, yellow and green, indicating if they’re on target for their case completion goals.



Two examples of the dashboards the Justice Department uses to monitor an immigration judge's case completion rate.

(Courtesy of National Association of Immigration Judges)

In a congressional subcommittee hearing, Executive Office for Immigration Review Director James McHenry defended the quotas. He said immigration judges completed more cases in Fiscal Year 2018 than in any year since 2011. He called this a “direct refutation” of critics who claim judges lack the integrity and competence “to resolve cases in both a timely and impartial manner.”

But because of the ways in which President Trump’s Justice Department is shaping the immigration court, one New York City immigration lawyer, Jake LaRaus, said it is “at best a kangaroo court.”

Former New York immigration judge Jeffrey Chase said, “All moves made by this administration must be viewed as pieces in a puzzle designed to erode the independence of immigration judges in order to allow the administration to better control case outcomes to conform with its political goals.”

This month, the judges union and a coalition of former judges each wrote stern letters to the Justice Department for releasing “[wildly inaccurate and misleading information](#)” in a [fact sheet](#) it released to the media about the courts.

A New Path for Immigration Court



An empty judge's chair in New York City's immigration court.

(Jane Rosenberg for WNYC)

The judges' union wants to take the immigration court out of the Executive Branch and make it independent, like tax and bankruptcy courts. These are called [Article I](#) courts. Congress would have to approve this change.

The Federal Bar Association has [drafted model legislation](#) for an Article I court. Judges would have fixed terms, and they'd be able to hold lawyers in contempt. Though this won't solve the backlog problem, many academics and immigration lawyers support the plan because it would free the immigration court from the Justice Department's bureaucracy and politics.

The Trump administration opposes the proposal. The Executive Office for Immigration Review said no organization has studied the cost or fully explored the ramifications. It

says it's solving the court's backlog with quotas and by hiring 200 new judges, through new positions and filling vacancies. But nationally, there are just 435 judges.

An independent Article I court won't be an easy sell in Congress, either. Elizabeth Stevens, who helped draft the Federal Bar Association's proposal for the immigration court and previously worked in the Justice Department, said the only hope is for supporters to focus on courtroom efficiency.

"If it becomes politicized it becomes another issue of comprehensive immigration reform," she warned.

There's another immigration court in downtown Manhattan, in a federal building on Varick Street. It was previously just for immigrants held in detention, but with Federal Plaza running out of room, the government opened new courtrooms at the Varick location in March.

Two new judges, Conroy and Ling, moved to Varick Street. There are also four brand new judges who started this spring. Two of them previously worked for ICE. One was an assistant district attorney in Suffolk County and the other was a domestic relations magistrate in Trumbull, Ohio.

Varick Street has been in the news because of a lawsuit. Hearings there are [held by video for detainees](#). Now, the trial attorneys at regular hearings appear by video. Immigration lawyers have [complained about this process](#).

The Executive Office for Immigration Review is planning to open more courtrooms in New York this year. It would like to hire 100 more judges nationally in the next fiscal year. The judges union believes it needs hundreds more than that to manage the backlog.