This American Life
Transcript

636: I Thought It Would Be Easier

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Prologue: Prologue

Ira Glass

Seriously, America? Is this one so hard? This seems like an easy layup-- a 4-inch putt, a slow pitch across the plate, a thing that's so easy that even somebody like me who doesn't care about sports finds himself making sports metaphors. I'm talking about the DREAMers, the DACA kids who were brought to the US as small children. The majority of Americans have wanted to give them a path to citizenship since 2010.

Republican Senator Lindsey Graham quoted a Fox News poll on the floor of the Senate this week that shows 79% of the public supports that, including 63% of Trump voters. Leaders of both parties in the House and Senate say they want it. The president says he wants it. In other words, it's super popular. Politicians support it. And yet, we've been trying 2001-- 2001! And we still don't have a permanent fix to this.

There's this thing that President Trump said about his job on his 98th day in office. He said, "I thought it would be easier," which, OK, he was roundly mocked for that. But weeks like this one, I think that too. Like really, with so many things, I really thought our democracy could do these things. Like, why is it not easier?

Well, from WBEZ Chicago, it's *This American Life*. I'm Ira Glass. Today on our program, in this week of government dysfunction, we have two stories of lawmakers not able to accomplish tasks that seem, from the outside, very

straightforward. Act One of our show is about Republicans. Act Two is about Democrats. Specifically with the Democrats, what are they doing? A year into the Trump presidency, what exactly is their plan? Why does it seem to be, you know, nothing? Stay with us.

Act One: Send in the Gowns

Ira Glass

Act One, Send in the Gowns.
President Trump hasn't got a chance yet to build his wall. One of the first things he did in office was to issue an executive order of what to do when people are caught crossing the US border. Even under President Obama, most of those people got kicked out right away through a process called expedited removal. But there were lots of people who got locked up, processed, and released after a few weeks into the United States while they waited for their day in court, which could take years. And then, often, they didn't even show up in court. It was kind of a mess. Border agents called it catch and release. You probably heard that phrase.

The Trump administration wanted to get rid of catch and release. And so rather than do that, they decided they were going to take this group of people, detain them, and then get them in front of a judge fast, and then quickly deport anybody who should not be here. That, of course, required judges, more than they had at the border at the time. So they started flying immigration judges from around the country from their regular courtrooms to courts near the border. They would be there for two weeks at a time. And so this is an example of politicians seeing something they wanted to fix. They came up with a straightforward plan to do it. And we wanted to know, how's that working?

Well, to answer that, we collaborated with The Marshall Project and their reporter, Julia Preston, who's visited immigration courts for over a decade in her old job as the immigration correspondent for *The New York Times*. She's broken many stories of this subject. She went with one of our producers, Jonathan Menjivar, to one of these courts. This one was inside a detention center in Laredo, Texas. Here are Jonathan and Julia.

Jonathan Menjivar

The first thing that happened when we got to this immigration court in Laredo was that we couldn't even get inside. Immigration courts are supposed to be open to the public, but this court, it's inside the detention center, which is run by a private prison company. So to get in, you have to get past an employee who's sitting behind a thick glass window.

It was October when we visited, and the window was covered in Charlie Brown Halloween stickers-- Lucy in a wizard costume, Snoopy napping on a jack-o'-lantern. We'd made arrangements in advance with ICE, the Federal immigration enforcement agency, to let them know we were coming. But it didn't help.

Julia Preston

Eventually, we are cleared to enter. You're not allowed to record in court, so you're not going to hear any audio, but I'll just tell you. When we get into the courtroom, I realize I've met the judge before. His name is Barry Pettinato, and I met him when I was reporting a story last summer back in his home courtroom in Charlotte, North Carolina.

In Charlotte, Judge Pettinato was fully in command, and he was running a fast-paced, no-nonsense courtroom. He has a record as a tough judge. It's not easy to win an asylum claim with Judge Pettinato. In Laredo, he told us he was in the second week of a two-week stint. He kind of jokingly asked me if I was following him around.

Pettinato's courtroom in Laredo was hastily arranged last March to accommodate a judge. It's a cramped space with no windows, with the judge and the immigrants up very close to each other. But there is one of those raised wooden podiums for the judge, so it looks enough like a court.

Judge Pettinato takes the bench and, right away, it's clear that things aren't going as smoothly as they did in his home court in Charlotte. Pettinato has this big stack of blue files, and initially, it's not clear which case he's supposed to hear. An immigrant is called who has the identity number 991, but the government doesn't seem to have the file for that person. In fact, it seems that person may already have

been deported. But they do have a file for immigrant 919. Maybe they're supposed to hear that case instead?

"Was that just bad data input?" Judge Pettinato asks. It isn't even 9 o'clock in the morning and he already seems exasperated.

Jonathan Menjivar

We soon find out he's not the only one. During a break between cases, the government attorney-- he's the immigration court equivalent of the prosecutor, and someone who generally wouldn't talk to the press-- he walks up to us and seems eager to share his frustration. He tells us the whole Laredo court is, quote, "just a bad setup." He explains how it works, or rather, how it doesn't really work.

The judges come and go every two weeks. The clerks also come and go every two weeks. But the clerks don't necessarily come with the judges, so the judges may be working with clerks from some other part of the country they've never met before. There are two attorneys for the government. They come and go every four weeks. The Spanish language interpreters, who have to be in the court much of the time, are also coming and going.

Everyone is coming and going. And there's no overlap between one rotation of judges or prosecutors and the next rotation. The government attorney tells us the result is just plain chaotic.

Julia Preston

A few minutes later, Judge Pettinato spends some time trying to get one lawyer on the phone, but it keeps disconnecting. Next up, there's an Albanian who agrees to participate in his hearing in Spanish, even though he doesn't really speak Spanish. "Me hablo mucho Italiano. Entiendo un poquito Español," he tells the interpreter. I speak a lot of Italian. I understand a little Spanish.
The more time we sat in the courtroom, the more I realized we were noticing things I had never seen in years of observing immigration courts. There was no posted hearing schedule. Case files often went missing.

Judge Pettinato was trying to move things along, but instead of efficiency, there were time-consuming mishaps and delays. And as a result, immigrants who were

detained and anxious and who expected to have an orderly process and a fair hearing weren't really getting that. Nor were they getting the speedy treatment the Trump administration intended, or anything close.

Jonathan Menjivar

A lot of the fumbling happens because of a simple dumb reason. All of the files are still kept on paper. All immigration courts around the country work this way, but it's an especially big problem in Laredo.

During one hearing, there's a lawyer, this guy who's driven up three hours from Weslaco, Texas. He's there to ask for a bond so his client can be released. But here's the hiccup. The files for this court in Laredo, they're not actually in Laredo, at least initially. They're filed in another immigration court 150 miles away in San Antonio. And every case file, it has to be physically sent here. And sometimes they don't make it, like with this lawyer.

"You may have submitted it, but we don't have it," Judge Pettinato says to the lawyer. "I filed it in San Antonio," the lawyer says. "Well, that could explain it." Judge Pettinato's eyes roll as he says this. It's a strange thing to see in a courtroom, a judge openly mocking the flaws of the court he's running. Even stranger are the knowing nods in the room. Everyone here-- the lawyer, the clerk, the government prosecutor, even the interpreter-- they know this hearing can't go forward because of the haphazard way this courtroom has been set up.

Judge Pettinato sets the bond hearing for a week out-- a time, remember, when some other judge will have replaced him. The guard then escorts the woman from Honduras that this whole hearing was about out of the courtroom. She's stuck in detention for another week, having no idea what will happen with her case.

Julia Preston

When you start asking around in Laredo for someone who really knows what's going on in this court, there's one lawyer whose name keeps popping up-- Paola Tostado. She's a real Texas highway rider lawyer from Brownsville, three hours to the south. She makes the drive to Laredo sometimes three times a week, keeping an eye out for a Texas breed of antelope called a nilgai. It's the size of a horse, and it can appear on the highway at 5:00 in the morning when she's driving to court.

While most lawyers were wearing muted black in that dingy detention center, Paola announced her presence with a scarlet dress and 4-inch spike heels. And in a court filled with all these rotating judges, Paola, this young lawyer who graduated from law school in 2015, she seemed to have become a resident expert. We saw Judge Pettinato defer to her judgment a couple of times when she was in court. She's very persistent and confident.

Paola told us she had this case that was emblematic of the messed up situations lawyers and immigrants find themselves in when a court isn't running properly. The case involved a guy from El Salvador who wanted to appeal after he didn't pass his first asylum interview. Paola drove up to San Antonio to speak with the court clerk and see her client's file.

Paola Tostado

And the court clerk informed me that the case was closed, that the judge had closed the proceedings.

Julia Preston

Meaning his case was over. Done.

Paola Tostado

And I said, well, that's impossible because my client is still in detention. And she's like, well, if you can give me some sort of proof that he is still in detention, which is ridiculous.

Julia Preston

Ridiculous because the proof that he was in detention was that he was still in detention. But the clerk had no record of that. The problem was that, if the case was formally closed, to get any order from the court to have the man released, Paola would need to get the case reopened. She tried ICE, the court in Laredo, the clerk's office in San Antonio, but nobody could figure out why a judge-- a judge who was no longer there-- had closed the case.

Everyone was baffled, but everyone was also passing the buck. The man sat in detention in Laredo month after month. For any court, this is about as bad as it gets. The government was detaining this man, but legally, the court had no basis to hold him. And still there was no way to get him out because the case was closed. Finally, the immigrant solved the problem himself. ICE brought him a deportation order and he signed it.

Julia Preston

He just gave up.

Paola Tostado

He just gave up. Exactly. He said, no, they just brought me the documents. I signed them. I want out of here. I want to go. I can't do this anymore.

Hotline Recording

Welcome to the automated case information hotline.

Jonathan Menjivar

This wasn't an isolated incident. On the day we were there, Paola had another case just like it, a client who was in detention. She worried that he would despair and self-deport, as well. Paola called the hotline you can dial in to check the status of any case. She pressed a few buttons, and we got an update on her current client.

Hotline Recording

The immigration judge closed proceedings on your case at Laredo SPC 4702 East Saunders, Laredo, Texas, 78041 on August 23, 2017.

Jonathan Menjivar

The hotline says his case was closed on August 23, 2017. That was months ago, but he was still in detention, still in need of a hearing to get his case moving-- a

hearing he can't get because his case is closed. The system does not contain any information regarding a future hearing date on your case.
Paola's client, he's in total limbo.

Paola Tostado

He just sounds defeated. He just says, I just don't want to be sitting here waiting for nothing. If I'm waiting for something, if you tell me I have a court in two months, then I'll wait for that court in two months. But there's no court for me. So the question of the day here is, if we would be in another court, would this still be happening? Or is it just because we're here in Laredo and we're in an immigration court, which is-- it's not organized? Or who is there to blame here if there's someone to blame?

Jonathan Menjivar

Did you just put air quotes around "immigration court?"

Paola Tostado

[LAUGHS] Yes. It's crazy. You wouldn't think this would be happening.

Jonathan Menjivar

Your question of would this be happening in another court, what do you think?

Paola Tostado

I highly doubt this would be happening in another court.

Jonathan Menjivar

A day after we recorded this interview, this second client of Paola's was suddenly released, and he didn't even have to post bond. ICE gave no explanation why they let him go.

Julia Preston

Back at the courtroom, at one point, Judge Pettinato looks at the stack of blue files in front of him and whispers to his clerk, "the problem is, I can't do all of these." In fact, the immigration court system is drowning in cases. There's a huge backlog-- at last count, 650,000 cases waiting to be resolved. That number doubled in the last five years under President Obama. 650,000 cases works out to be about 2,000 for every judge, so immigrants often wait several years to have their cases heard. The Trump administration's plan to rush judges to the border was supposed to help with the backlog. If they could quickly turn away illegal border crossers, they could keep new cases from building up in the system. But sending a judge down to a border court for two weeks means that all the cases that were ready to go on their home docket have to be postponed and rescheduled. On Judge Pettinato's Charlotte docket, for example, because of how behind they are there, the cases he had scheduled for the two weeks he was in Laredo had to be reset to late 2018, about a year away. In practice, the backlog in Charlotte just got bigger.

Jonathan Menjivar

The thing is, not all the courts with these temporary judges look like Laredo. Some of the border courts have the opposite problem. They have more judges than they need, so judges have ended up sitting around in empty courtrooms with nothing to do. We talked to a judge named Lawrence Burman, who normally sits in a court in Arlington, Virginia. His first border detail was to a court in Jena, Louisiana.

Lawrence Burman

The problem was that we had four judges there, and there was really only enough work for two judges. So I had a lot of free time, which is pretty useless in Jena, Louisiana. I couldn't really do anything except review the other files for Jena. And once I reviewed all of them, read the newspaper OR read my email.

Jonathan Menjivar

Out of 10 court days in Jena, there were two days where Judge Burman had no cases at all. Meanwhile, back home, he could have been moving forward with as many as 50 cases a day. Instead, dozens of those cases were rescheduled to the

next date he had available on his calendar, which, because of the enormous backlog in Arlington, is three years away, in 2020.

A sitting federal judge isn't allowed to do an interview. That's why you're not hearing from Judge Pettinato. But Judge Burman is also a high-ranking official with the National Association of Immigration Judges-- it's kind of like their union-- so he can talk to reporters in that capacity.

And before we move on, Judge Burman wanted to make it clear. What he's saying here, these are his views and things he's heard from other judges across the country. They are not the views of the Justice Department or the court system.

Julia Preston

Judge Burman never went to Laredo, but he's talked to other judges who've been there, and he confirmed all the problems we saw. He said Laredo was especially notable because there was never a crisis there in the first place. Prior to President Trump's order, all their cases were being heard by judges in San Antonio via a video system. The system wasn't great, but it was working. All the emergency shuffling did was replace judges in San Antonio hearing cases by video with a live judge in Laredo, which, for a while, left some of the judges in San Antonio with empty dockets.

Lawrence Burman

So basically, a judge who was already on the border-- San Antonio's not exactly on the border, but it's not too far-- had nothing to do. Another judge was pulled away from his docket and sent down there, presumably just so that they could say that they rushed more judges to the border.

Julia Preston

The "they" in this case is the Justice Department, which is run by Attorney General Jeff Sessions. They are actually the ones who oversee the courts. A peculiarity of the American immigration court system is that it's part of the executive branch, which is why the President can rapidly change the priorities of the court like this.

Lawrence Burman

The Department of Justice doesn't really understand what we do and probably don't care very much in the final analysis. It just wants to present to the attorney general the fact that they're doing everything that they can. So I assume that they just sent as many judges to the border as they had courtrooms to put them in without much regard to how many cases there actually were there. It's almost as if the Department of Justice and [INAUDIBLE] management are trying to see how they can make the system less and less efficient.

Julia Preston

In the name of efficiency?

Lawrence Burman

Well, I don't know what they think they're doing, but what they're doing is not efficient. Just my opinion and opinion of practically every judge that I know.

Jonathan Menjivar

Like we said, President Trump's plan for these courts was to process people and deport them quickly. And during our week in Laredo, we did see some bad hombres come through the court-- immigrants who'd gotten involved in drug trafficking. There was one Mexican who worked with a human smuggling ring, harboring other undocumented immigrants for $100 a pop.

But in general, these emergency border courts were designed to handle a crisis at the border that isn't happening. In 2017, Customs and Border Protection recorded the lowest level of illegal migration in 45 years. President Trump made it clear that he was going to be tough on immigrants. And after he won the election, the numbers declined sharply.

Many immigrants who are coming now are people who we can't deport quickly-- asylum seekers who have a right to have their case heard before an immigration judge. We spent a little time at the border in Laredo. And within just an hour, we saw eight people who had presented themselves to authorities requesting asylum. The numbers that are really way up over the last year are not at the border. They're

the rest of immigrants inside the country, in towns and cities that are losing judges for weeks at a time to these border courts.

Julia Preston

The Trump administration has said they're pleased with the results of this surge of immigration judges, that it's been a success. The director of the Justice Department agency that oversees the immigration courts said, and I quote, "mobilized immigration judges had completed approximately 2,700 more cases than expected if they had not been detailed." Essentially, he argued that judges who were sent to the border, about 100 of them in all, they completed 2,700 more cases than they would have if they'd stayed in their home courts. But that doesn't take into account that sending judges to the border meant that at least 22,000 cases around the country had to be rescheduled in the first three months alone-- perhaps for a year, as in Judge Pettinato's Charlotte cases, or perhaps three years, like in Judge Burman's courtroom.

We reached out to the Justice Department for comment. They didn't respond to our request for an interview, but they did answer some questions over email. An official stressed that the backlog in immigration court is getting better. To be clear, they haven't actually reduced the backlog. It's still increasing. But they point out that it's increasing at a slower rate. It was growing at over 3% per month when President Trump took office, and it's less than 0.5% now. But it's unclear if this change was because the Justice Department sent judges to the border or because of other efforts they've made to reduce the backlog, like hiring dozens of immigration judges.

There was one other fact they wouldn't explain. Unceremoniously, at the end of last year, the Justice Department decided to stop sending judges to Laredo. They went back to the old video system. We asked them why that decision was made and got no response.

Our last morning in Laredo, we saw a case that told us a lot about many of the immigrants who were being deported by this court. It was a hearing for an undocumented Mexican man named Fernando. He wasn't a recent border crosser. He had no criminal record, so he wasn't a priority for deportation, even for the Trump administration, which says it's focusing on getting rid of criminals.

We met his girlfriend, Irma, in the waiting room. She said together they were raising four children, all American citizens born here. Fernando had been picked up by local police after getting into a loud argument outside a Laredo bar. He wasn't charged or convicted of anything, but the cops turned him over to ICE. But when Fernando started laying out all the details of his story-- this was just a few minutes into his case-- Judge Pettinato interrupted him. "Sir, I've got a whole bunch of cases going on today. I get the gist." The judge was ready to issue his decision. Fernando would have to leave the country.

He and his girlfriend looked stunned. Fernando choked up. He kept putting his head in his hands and staring at the wall. It was pretty clear he and Irma hadn't expected a decision. They thought this was just going to be a procedural hearing and they'd have time to get a lawyer. In fact, in a regular immigration court, that's exactly what would have happened. I've seen it many times. But now Fernando wouldn't get a chance to fully tell his story to a judge.

These border courts are designed for speed. That's their whole point. And this is what that looks like. Judge Pettinato took a moment to explain to Fernando that, even though it was commendable that he wanted to stay in the US to help his family, legally, there was no way he could allow it. That same afternoon, Fernando was put on the bridge to Nuevo Laredo, Mexico.

Ira Glass

Julia Preston and our producer, Jonathan Menjivar. That story was produced in collaboration with The Marshall Project, where Julia's a contributing writer. The Marshall Project does in-depth reporting on the criminal justice system. You can read the print version of Julia's story at themarshallproject.org.

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