

U.S. immigration courts should be reformed to meet due-process standards: Pat E. Morgenstern-Clarren (Opinion)

By Guest Columnist, cleveland.com Posted Jul 21, 2019

People wait inside the Executive Office for Immigration Review U.S. immigration court in Miami, Florida, on June 12, 2019, as seen from outside the court. In a guest column today, retired U.S. Bankruptcy Judge Pat E. Morgenstern-Clarren calls for fundamental reform of the U.S. immigration court system. (AP Photo/Brynn Anderson)

SHAKER HEIGHTS, Ohio -- Although justice by the clock sounds like a game show, it's taking place every day in [U.S. immigration courts](#) where judges rule on claims for asylum and other relief. It begins with a man of indeterminate age standing in the well facing civil charges, usually without a lawyer and lacking a good grasp of English or our legal system. He has spent his time in detention worrying about whoever he left behind. He's not even aware of one problem he should be worried about more than anything: He's about to experience justice by the clock.

Last fall, the U.S. attorney general, who controls the immigration courts and the judges he appoints to those courts, decided the cases weren't being processed fast enough. To speed them up, he imposed a yearly quota on the judges for closing cases, together with other benchmarks. A judge who fails to meet the new standards can expect to receive an unsatisfactory performance rating, which can lead to being fired.

As a retired federal judge turned volunteer lawyer, I observed court sessions held under the quota system at Stewart Detention Center in Lumpkin,

Georgia. In one, 11 detainees were called forward in groups of three or four. The judge asked several yes-or-no questions at a brisk pace which a court employee then translated into Spanish. Each detainee answered quickly with a few words, looking anxious and confused, and in about 25 minutes, the hearing was over, with a few men given continued hearing dates weeks or months down the road, but most being ordered deported. All that in less than three minutes per person. Despite criticism over the months the policy has been in effect, the current attorney general shows no sign of changing it. That should worry you.



Pat E. Morgenstern-Clarren served as a US bankruptcy judge in the Northern District of Ohio in Cleveland from 1995 until retirement in 2017.

If the judge had taken more time, if the interpreter had been more nuanced, if the detainees had had a chance to calm down and focus on the questions, would the results have been different? No one knows, but that's beside the point. These people are being detained on American soil, in American institutions, where they are held accountable under American law. The process for judging them should be the same as the process that we expect for ourselves as American citizens.

After all, if you lose your job and the lender forecloses on your house; if your adult child is accused of drug possession; or if you as a small business owner are sued by a former employee, do you want a court hearing with a short, arbitrary time limit, or do you want one tailored to your case?

Of course, what you want and expect is due process of law, often described in shorthand as notice and an opportunity to be heard. An opportunity to be heard requires appearing before a judge who is willing to listen to the relevant evidence and ask the follow-up questions, regardless of how long it takes. And if that's what you expect for yourself from American courts, then that's what others have a right to expect, as well. Due process for "us" and less due process for "them" is a shaky distinction that cannot be maintained indefinitely.

There is a long-term solution to the current lack of due process, as well as a short-term one. Long term, the key is to free the judges from the U.S. attorney general's administrative hammerlock by transforming the immigration court into an actual part of the federal judiciary under Article 1 of the Constitution, [much as the bankruptcy court is structured](#).

In the meantime, the quota should be immediately rescinded. Speed is a great way to evaluate race horses, but it's no way to evaluate justice. The attorney general should have enough confidence in his appointees to step back and let each one earn the right to wear a black robe and be called "judge" without listening to the ticking of a clock.

Pat E. Morgenstern-Clarren served as a U.S. bankruptcy judge for the Northern District of Ohio in Cleveland from 1995 until her retirement in 2017, including two terms as chief judge and one on the Bankruptcy Appellate Panel of the 6th U.S. Circuit Court of Appeals.

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