



SNAPSHOT OF THE CRISIS FACING OUR IMMIGRATION COURTS TODAY

SALIENT FACTS AND URGENT NEEDS

June 13, 2014

RECALCITRANT CASE BACKLOGS

As of April 1, 2014, the Immigration Court backlog stood at 366,758.ⁱ This is a more than 117% increase since 2006.ⁱⁱ

LENGTHY DELAYS

The average number of days a case was pending on the Immigration Court docket until decision was 578 days as of April 1, 2014.ⁱⁱⁱ

SURGING JUVENILE CASELOAD ON THE HORIZON

An unprecedented influx of unaccompanied minors at our nation's southwest border has been labeled a humanitarian crisis, prompting the President to establish an interagency unified coordination group and the Senate to nearly double the available funding for care and resettlement of child migrants.^{iv} It is inevitable that this influx has and will continue to result in dramatic increases in the dockets of the Immigration Courts.

FAILURE TO MEET PREDICTABLE STAFFING NEEDS IN A TIMELY FASHION

Following a comprehensive review of the Immigration Courts by Attorney General Gonzales in 2006, it was found that a judge corps of 230 Immigration Judges was inadequate for the caseload at that time of approximately 168,853 pending cases.^v Despite this finding, the pledge to augment the judge corps, and the increase in caseloads since then, there are only 230 active field Immigration Judges at present.^{vi} To make matters much worse, half of all Immigration Judges are eligible to retire by the end of 2014.^{vii}

FAILURE TO PROVIDE ESSENTIAL TOOLS FOR ADJUDICATIONS

Despite express congressional authorization of contempt power for Immigration Judges in 1996, the Department of Justice still has not promulgated implementing regulations. Without authority to impose civil monetary sanctions for attorney misconduct, Immigration Judges lack an important tool in controlling court proceedings over which they preside.

DEEPENING DISCONNECT IN FUNDING BETWEEN DHS AND THE IMMIGRATION COURTS

In the past decade, budgets for components in the Department of Homeland Security (Customs and Border Patrol and Immigration and Customs Enforcement) rose approximately 300% compared to 70% for the Executive Office of Immigration Review.^{viii}

CHRONIC SCARCITY OF RESOURCES CRIPPLES DAILY OPERATIONS OF THE COURT

A catastrophic hardware failure on April 12, 2014 took the docketing system off-line for five weeks, impacting the public hotline, digital audio recording and access to the electronic docketing database.^{ix} We fear occurrences like this are just the tip of the iceberg as our chronically resource-starved system continues to face the unprecedented challenges of aging technology, surging caseloads and potential retirements.^x

JUDGES PUSHED TO THE BRINK

More than five years ago, Immigration Judges reported stress and burnout at higher levels than prison wardens or doctors at busy hospitals.^{xi} After continuing to struggle in an environment of decreased resources and skyrocketing caseloads for so long, morale is at an all-time low and stress at an all-time high. An unprecedented number of retirements is looming.

SOLUTION

While additional resources are clearly needed, it would be foolhardy indeed to direct appropriated funds to a dysfunctional system without addressing the clear need for reform. Since the 1981 Select Commission on Immigration, the idea of creating an Article I court, similar to the U.S. Tax Court, has been advanced.^{xii} In the intervening years, a strong consensus has formed supporting this structural change.^{xiii} For years experts debated the wisdom of far-reaching restructuring of the Immigration Court system. Now “[m]ost immigration judges and attorneys agree the long term solution to the problem is to restructure the immigration court system....”^{xiv}

The time has come to stop putting off structural reform of the Immigration Courts. It is apparent that until far-reaching changes are made, the problems which have plagued our tribunals for decades will persist. For years NAIJ has advocated establishment of an Article I court. We now urge that the logical first step be taken: a Government Accountability Office study. This would provide concrete answers to a myriad of questions regarding the most effective road to a truly independent Immigration Court. The need for this study, and suggested questions to be addressed, are discussed in the NAIJ’s March 2014 issue paper, **GAO STUDY NEEDED**. Please act now on this urgent priority for the Immigration Courts and stop the cycle of overlooking this important component of the immigration enforcement system.

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ⁱ Transactional Records Access Clearinghouse (TRAC), Syracuse University, Immigration Court Backlog Tool, http://trac.syr.edu/phptools/immigration/court_backlog/.

ⁱⁱ Casey Stegall, *Long Lines, Suspended Lives: Immigration Court System in Need of Reform*, FOX NEWS LATINO, Jan. 20, 2014, <http://latino.foxnews.com/latino/news/2014/01/30/long-lines-suspended-lives-immigration-court-system-in-desperate-need-its-own/>.

ⁱⁱⁱ TRAC, *supra* note i.

^{iv} See *Presidential Memorandum For the Heads of Executive Departments and Agencies*, June 2, 2014, <http://www.whitehouse.gov/the-press-office/2014/06/02/presidential-memorandum-response-influx-unaccompanied-alien-children-acr> and David Rogers, *Senate Democrats Double Funding for Child Migrants*, POLITICO, June 10, 2014, <http://www.politico.com/story/2014/06/child-migrants-immigration-senate-democrats-107665.html>

^v See Press Release, Dep't of Justice, Attorney General Alberto R. Gonzales Outlines Reforms for Immigration Courts and Board of Immigration Appeals (Aug. 9, 2006), available at http://www.justice.gov/opa/pr/2006/August/06_ag_520.html, and TRAC, *Improving the Immigration Courts: Efforts to Hire More Judges Fall Short*, <http://trac.syr.edu/immigration/reports/189/>.

^{vi} Approximately 15 Immigration Judges are now serving in exclusively or primarily managerial positions with little or no pending caseload. See EOIR Immigration Court Listings, <http://www.justice.gov/eoir/sibpages/ICadr.htm>. Moreover, it is extremely difficult to precisely calculate the number of IJs at any given point due to the rapid rate of retirements. See Homeland Security Newswire, U.S. Govt. the Largest Employer of Undocumented Immigrants, May 30, 2014, <http://www.homelandsecuritynewswire.com/dr20140530-u-s-govt-the-largest-employer-of-undocumented-immigrants>

^{vii} *Id.*

^{viii} See, Marc R. Rosenblum and Doris Meissner, *The Deportation Dilemma, Reconciling Tough and Humane Enforcement*, MIGRATION POLICY INSTITUTE, April, 2014, <http://www.migrationpolicy.org/research/deportation-dilemma-reconciling-tough-humane-enforcement>

^{ix} Elizabeth Summers, *Weeks-Long Computer Crash Sends U.S. Immigration Courts Back to Pencils and Paper*, PBS NEWSHOUR, May 23, 2014, <http://www.pbs.org/newshour/updates/weeks-long-computer-crash-sends-u-s-immigration-courts-back-pencils-paper/>.

^x Laura Wides-Munoz, *Nearly Half Of Immigration Judges Eligible For Retirement Next Year*, Huffington Post, Dec. 22, 2013, available at http://www.huffingtonpost.com/2013/12/22/immigration-judges_n_4489446.html?utm_hp_ref=fb&src=sp&comm_ref&comm_crv.

^{xi} Stuart L. Lustig et al., *Inside the Judges' Chambers: Narrative Responses from the National Association of Immigration Judges Stress and Burnout Survey*, 23 GEO. IMMIGR. L.J. 57 (2009).

^{xii} COMM'N ON IMMIGRATION & REFUGEE POLICY, U.S. IMMIGRATION POLICY AND THE NATIONAL INTEREST: FINAL REPORT AND RECOMMENDATIONS OF THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY WITH SUPPLEMENTAL VIEWS BY THE COMMISSIONERS (1981).

^{xiii} Prestigious legal organizations such as the American Bar Association, Federal Bar Association, and American Judicature Society wholeheartedly endorse this reform. While not as certain as to the exact form of change desired, reorganization has also been endorsed by the American Immigration Lawyers Association, and increased independence by the National Association of Women Judges.

^{xiv} *Supra*, note ii.