



Opinion

Time to fix our immigration courts

By John Gossart Jr. - 02/26/14 08:30 AM EST 20

It remains to be seen whether the United States Congress can muster the responsibility and will to do what is right and achieve comprehensive immigration reform this year. Republican leadership in the House of Representatives continues to hold immigration reform hostage, most recently justifying inaction by blaming President Obama's alleged track record on failing to enforce our immigration laws. Perhaps those in Congress should come and sit inside the many immigration courtrooms throughout the country for a fact check on this unfounded assertion.

In my thirty-one years as a United States immigration judge, I have never had as many people come through my courtroom as I have over the last six years. During this time, there has been a dramatic increase in the number of non-citizens that the United States detains and deports, and the detained number of individuals appearing in immigration courts today is unprecedented. The administration has indisputably increased immigration enforcement in communities across the country, partnering with local law enforcement to pursue an aggressive deportation program that has resulted in nearly 2 million deportations in the last six years.

As these men and women came through my courtroom, I was extremely limited in my ability to consider each case and make a determination as to whether they should remain in the United States or should be deported. Coming to the best decision for each individual in a very limited amount of time can hardly be seen as justice. And for non-citizens who have been living in this country for years or even a lifetime, the system can even be crueler.

Consider the case of Lundy Khoy, who came to the United States at the age of one with her parents, fleeing genocide in Cambodia. Upon arrival to the United States, they were granted refugee status and then legal permanent residence. Lundy grew up as many American children do, going to school, playing sports and preparing for college. While a college student, Lundy was arrested for possession of several pills of ecstasy and, at her lawyer's advice, pled guilty and spent three months in jail, released early for good behavior. She moved back in with her parents, resumed her studies and worked hard to make up for the time lost. At the end of her probation period she met with her probation officers to proudly show off her grades only to be met by immigration officials who, to her surprise, sent her to a county jail where she was held for nine months.

Her single 12-year-old drug conviction constituted an aggravated felony offense under today's immigration laws and put her in line for mandatory detention and deportation. In such cases, judges are

not allowed to consider a person's individual circumstances. Our hands are tied and we are forced to order automatic deportation. We aren't allowed to consider the fact that Lundy has no family in Cambodia, is a successful college student, works at a university as a guidance counselor and volunteers in her community. As judges, we are not allowed to consider her rehabilitation or grant her a second chance.

Congress stripped immigration judges of much of their discretionary authority under the 1996 Illegal Immigration Reform and Immigrant Responsibility Act. Under this law, we are no longer allowed to grant most forms of relief for those with an aggravated felony conviction on their record, no matter how minor or old the offense. The term aggravated felony may sound like a big deal, but in fact the category is a term of art that includes a long list of minor and non-violent offenses that are not felonies under the law.

Today's immigration laws are enforced so consistently that our immigration courts face crushing caseloads and chronically insufficient resources. The current backlog of 360,000+ cases means an average wait of 573 days before a case is resolved, and the majority of people coming into immigration courts do so without lawyers, despite the high stakes and incomprehensible nature of our immigration law.

There's no question about it—the United States needs immigration reform and needs it now. Reform must enhance the courts' resources and allow immigration judges to consider the individual circumstances unique to each case, and it must include fairness and opportunity for those who seek to become a part of the American dream. Our leaders, to be true leaders, cannot continue to delay, putting partisan politics above the needs of our country. The rigorous enforcement of current immigration law has resulted in thousands of families being separated and has perpetuated a system that keeps millions of people living in the shadows with no legal recourse to remain in the United States with their families. Now is the time to strike a legislative balance so that those deserving can become part of our heritage to make our country stronger.

Gossart is a retired judge from the U.S. Immigration Court in Baltimore and an adjunct professor at the University of Baltimore School of Law.

<http://thehill.com/blogs/congress-blog/judicial/199224-time-to-fix-our-immigration-courts>