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Immigration Courts: Processes, Problems and Prescriptions for Improvement

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Abstract

This thesis examines several aspects of the legal process that noncitizens confront while they navigate their way through the U.S. immigration courts. It begins with the structure of immigration courts including various sectors under the United States Department of Justice, which houses the Executive Office of Immigration Review and other administrative offices. Additionally, the processes performed in immigration courts (i.e. Master Calendar Hearings and Individual Hearings) are discussed. Subsequently, an exploration of the increase in backlogged immigration cases and the increase of the money being allocated to the Immigration and Customs Enforcement and Customs and Border Protection is included. Compared to these Department of Homeland Security enforcement sectors, there is a relative lack of funding for immigration courts. Given this, an assessment of the immigration courts' current problems, including lack of funding as well as the understaffing and retention of qualified immigration judges, is undertaken. Finally, the impact of these problems on immigrants, such as time spent in detention centers and potential solutions for addressing these problems are presented.

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IMMIGRATION COURTS:
PROCESSES, PROBLEMS AND PRESCRIPTIONS FOR IMPROVEMENT

By

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Abstract

This thesis examines several aspects of the legal process that noncitizens confront while they navigate their way through the U.S. immigration courts. It begins with the structure of immigration courts including various sectors under the United States Department of Justice, which houses the Executive Office of Immigration Review and other administrative offices. Additionally, the processes performed in immigration courts (i.e. Master Calendar Hearings and Individual Hearings) are discussed. Subsequently, an exploration of the increase in backlogged immigration cases and the increase of the money being allocated to the Immigration and Customs Enforcement and Customs and Border Protection is included. Compared to these Department of Homeland Security enforcement sectors, there is a relative lack of funding for immigration courts. Given this, an assessment of the immigration courts' current problems, including lack of funding as well as the understaffing and retention of qualified immigration judges, is undertaken. Finally, the impact of these problems on immigrants, such as time spent in detention centers and potential solutions for addressing these problems are presented.

Keywords: immigration courts, immigration judges (IJs), immigration court proceedings, immigration court backlog

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Introduction

Precisely one court date stands in between thirty four year old Maximiano Vazquez-Guevarra and his designation as a legal permanent resident in the United States. Vazquez left the Mexican state of Guanajuato and entered the U.S. illegally in 1998. Ever since 2011, when he grabbed authorities' attention after his second driving-under-the-influence charge, he has been fighting deportation. In 2015, Vazquez won his appeal to remain in the U.S.; however, his case must be presented to an immigration judge one last time. While his case was once on the docket, it has since been pulled (Lofholm, 2015).

Similarly, Ricardo Pérez Luna's hearing in the Los Angeles Immigration Court was cancelled in January 2015. Pérez, a Mexico native, originally had a January 28 hearing date where a judge was to grant him permanent residence. Pérez entered the U.S. in 2002 without papers and has invested more than \$22,000 in legal fees to gain permanent residency. Now, he could possibly have to wait until 2019 to receive his hearing. According to his attorney, Fernando Romo, Pérez's case was an example of damage stemming from the congestion within immigration courts: "It was a mere formality—my client had complied with all the requisites and only needed the judge's approval. Ten minutes, that's all we needed" ("Frustration of undocumented immigrants grows as U.S. courts cancel hearings", 2015).

Seven minutes. That's all the time Mario Iraheta's hearing was given in Arlington, Virginia. On a February 2014 morning, Judge Lawrence Burman's docket overflowed—he needed to make 26 complicated decisions by lunch, one of which was Iraheta's bond hearing. Therefore, Ricky Malik, Iraheta's lawyer, only had seven minutes to present the 36-year-old's

case. Malik stood in front of the judge, but Iraheta did not; he was not physically in Arlington and attended his hearing via video feed from a detention center in Farmville, Virginia. Although he was in Farmville, Iraheta's wife, Maria, and two of his three children watched him on the television screen in the court room (Saslow, 2014).

In 2000, Iraheta illegally entered the United States from El Salvador and a year later, Maria joined her husband. Iraheta began working in construction while Maria "walked two miles each evening to wash dishes at IHOP for \$8 an hour." Over a span of 14 years in the United States, the couple joined a church, paid taxes, and raised three children now ages 19, 15 and 9 (Saslow, 2014).

The Iraheta's journey towards the American Dream came to an immediate halt when Iraheta was detained while driving to his sister's house for a Sunday barbeque. Unfortunately, this was not his first run in with the law; two misdemeanor property damage charges, of less than \$1,000, from 2003 and 2004 were on his record. Now, Judge Burman was charged with the task of determining if Iraheta's crimes were indications of poor character, which is referred to "moral turpitude" by the law. If Burman were to rule that moral turpitude was committed, Iraheta would be denied bail and would also be deported back to El Salvador (Saslow, 2014).

Iraheta fervently pleaded his case to Burman. But unfortunately, it wasn't enough. In seven minutes, Burman denied Iraheta's bond, which was accompanied with one short phrase: "We are out of time" (Saslow, 2014).

Vazquez, Pérez's, and Iraheta's hearings are examples of 445,000 cases that make up the national immigration court jam (Hennessey-Fiske, 2015). With an excessive number of cases on their docket and minimal funding provided to their courtrooms, immigration judges (IJs) are severely overworked, which has led to an increase in stress and decline in the profession's

retention rate. As a result, cases are not being determined in a timely manner and, subsequently, a plethora of undocumented immigrants are being held in detention centers.

The Structure

Currently, there are 57 immigration courts located across the country (Saslow, 2014). These courts are located in various cities within 28 states and territories: Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New York, North Carolina, Northern Mariana Islands, Ohio, Oregon, Pennsylvania, Puerto Rico, Tennessee, Texas, Utah, Virginia, and Washington (The United States Department of Justice, 2016). Texas has the most immigration courts out of the 28 states. As shown in Figure 1, in most Texas cities that house immigration courts, there has been a substantial surge in cases filed between Fiscal Year (FY) 2013 and FY 2014. For example, in FY 2013, the court in Houston received 6,382 cases. That number skyrocketed to 14,363 in FY 2014, which is a 125% increase (“FY 2014 Statistics Yearbook, 2015).

[Figure 1 here]

In order to properly understand how the immigration courts, such as the one in Houston function, it is necessary to examine the structure of immigration courts and their related sectors.

Office of the Director

Immigration courts are housed within the Executive Office for Immigration Review (EOIR), which is a committee that functions within the Department of Justice (Legomsky, 2010, p. 1641). Essentially, the EOIR serves as an umbrella for numerous sectors that fall underneath it. At the top of the EOIR chain is the Director who is responsible for representing “the position and policies of EOIR to the Attorney General, Deputy Attorney General, Members of Congress,

and other governmental bodies, the news media, the bar, and private groups interested in immigration matters” (The United States Department of Justice, 2015). The Deputy Director, who works directly under the Director, “oversees the Board of Immigration Appeals, Office of the Chief Immigration Judge, and Office of the Chief Administrative Hearing Officer” (The United States Department of Justice, 2015). Additionally, the Deputy presides over the “EOIR’s Office of the General Counsel, Office of Equal Employment Opportunity, Office of Legal Access Programs (which includes EOIR’s Legal Orientation and Pro Bono Program), and the Offices of Management Programs, Planning, Analysis and Technology, and the Office of Administration” (The United States Department of Justice, 2015).

[Figure 2 here]

Board of Immigration Appeals

The highest administrative body for interpreting and applying immigration laws is the Board of Immigration Appeals (BIA). BIA is authorized to have up to 15 Board Members, which include a Chairmen and Vice Chairman who share the responsibility for BIA management. Located at EOIR headquarters in Falls Church, Virginia, the BIA does not hear courtroom proceedings but instead rules on appeals based on the “paper review of cases.” However, on rare occasions, the BIA does hear oral arguments of appealed cases at the headquarters. Overall, the BIA has nationwide jurisdiction to reconsider certain rulings made by IJs and “district directors of the Department of Homeland Security (DHS) in a wide variety of proceedings in which the Government of the United States is one party and the other party is an alien, a citizen, or a business firm” (The United States Department of Justice, 2015).

Office of the Chief Immigration Judge

The IJs who preside over each of the 28 courts are considered to be a part of the Office of the Chief Immigration Judge (OCIJ) (Legomsky, 2010, p. 1641). However, the OCIJ “is led by the chief operating judge, who establishes operating policies and oversees policy implementation for the immigration courts” (The United States Department of Justice, 2016). Additionally, the OCIJ “establishes priorities for approximately 250 immigration judges. . .”(The United States Department of Justice, 2016).

According to Legomsky (2010), the attorney general appoints immigration judges and members of the BIA. “All of those adjudicators are “Schedule A” (career) appointees, as distinguished from “Schedule C” (political) appointees” (Legomsky, 2010, p. 1665). Policies stemming from both federal law and the Justice Department prohibit hiring discrimination in relation to partisan beliefs (Legomsky, 2010, p. 1665). Until the spring 2004, this non-discrimination policy was honored, and the EOIR was primarily responsible for handling the hiring of IJs (OIG Special Report, 2008). When an IJ position became available, either via retirement or the creation of a new position, the EOIR “posted a vacancy announcement identifying the location of the vacancy, the minimum requirements for applicants, and a statement that the Department is an Equal Opportunity Employer that does not discriminate on the basis of, among other things, “politics”” (OIG Special Report, 2008). However, as a result of a joint investigation conducted by both the Justice Department’s Office of Professional Responsibility and the Office of the Inspector General, it was determined that between 2004 and 2006 “high officials from the White House and the Department of Justice had bypassed the usual application procedures to appoint immigration judges based on their Republican Party affiliations or their conservative political views” (Legomsky, 2010, p.1666). In 2007, a new IJ

appointment process, which re-instituted the role of the EOIR, was implemented by the attorney general (Legomsky, 2010, p. 1666).

Office of the Chief Administrative Hearing Officer

“The Office of the Chief Administrative Hearing Officer (OCAHO) is headed by a Chief Administrative Hearing Officer who is responsible for the general supervision and management of Administrative Law Judges” (The United States Department of Justice, 2016). These Administrative Law Judges (ALJs) preside over hearings that are mandated by law requirements that were enacted by the Immigration Reform and Control Act of 1986 (IRCA) and the Immigration Act of 1990. These acts, in conjunction with others, modified the Immigration and Nationality Act of 1952 (INA) (The United States Department of Justice, 2016). ALJs hear cases and rule on issues pertaining to provisions found in the INA such as: (1) “knowingly hiring, recruiting, or referring for a fee unauthorized aliens, or the continued employment of unauthorized aliens...[etc.]”; (2) “immigration-related unfair employment practices in violation of section 274B of the INA”; and (3) immigration-related document fraud in violation of 274C of the INA” (The United States Department of Justice, 2016).

Office of the General Counsel

This particular branch of the EOIR is responsible for providing legal advice pertaining to matters that involve the EOIR and its employees in regards to their official duties. The Office of the General Counsel (OGC) “staff coordinates the development of agency regulations, reviews and comments on proposed legislation, and responds to all Freedom of Information and Privacy Act requests” (The United States Department of Justice, 2015). Additionally, the OGC serves as the reference point for Standards of Conduct and other ethical matters in relation to EOIR employees (The United States Department of Justice, 2015).

Office of Administration

The Office of Administration oversees the actions of the Controller (Budget and Financial Management), Human Resources and Contracts and Procurement. As a collective team, the Office of Administration works to “ensure coordination” among the office’s staff while engaging with each EOIR customer (The United States Department of Justice, 2015).

Office of Management Programs

“The Office of Management Programs (OMP) is responsible for several special emphasis and compliance programs, including Security, Legislative and Public Affairs, and Space and Facilities Management” (The United States Department of Justice, 2015). Additionally, in response to the Director of the EOIR, the DOJ, the White House as well as other government entities, the OMP monitors the planning and development of activities related management proposals (The United States Department of Justice, 2015).

Office of Planning, Analysis, & Technology

“The Office of Planning, Analysis, and Technology (OPAT) conducts EOIR's strategic and long-range planning, as well as maintains a focus on the outcome of such planning through monitoring the agency's annual performance plans” (The United States Department of Justice, 2015). OPAT is also charged with the tasks of producing program analysis, statistical reports, and reporting on EOIR’s senior management’s mission centric goals and objectives (The United States Department of Justice, 2015).

The Process

When the fate of immigrants, such as Vazquez, Pérez, and Iraheta, in the United States is at hand, removal proceedings are likely to occur. These proceedings determine whether undocumented citizens should be deported from the United States (Legomsky, 2010, p. 1641).

Removal proceedings are initiated when the Department of Homeland Security (DHS) issues a “Notice to Appear” (NTA) to noncitizens whom they wish to remove from the country (Legomsky, 2010, p. 1641). The NTA includes charges that generally look like the following (as stated in the Immigration Equality Asylum Manual):

- You are not a citizen or national of the United States;
- You are a native of Egypt and a citizen of Egypt;
- You were admitted to the United States at New York, NY on December 13, 2004 as a nonimmigrant B-2 with authorization to remain in the United States for a temporary period not to exceed March 12, 2005;
- You remained in the United States beyond March 12, 2005 without authorization from the Immigration and Naturalization Service;

When these proceedings arise, the DHS is often represented by an assistant chief counsel from Immigration and Customs Enforcement (ICE), which is an agency of DHS (Legomsky, 2010, p. 1641-1642).

Although the DHS initiates hearings by serving the noncitizen with a NTA, the noncitizen has the option to present a defense by applying for asylum, withholding (a higher standard of asylum) and Convention Against Torture (CAT), which is a third form of relief for an individual in fear of persecution (Immigration Equality Asylum Manual, p.1). Additionally, an individual who is an affirmative asylum applicant and has lost before the Asylum Office can reapply for asylum, withholding and CAT (Immigration Equality Asylum Manual, p.1). In both scenarios, the DHS and the noncitizen are opposing parties who present an evidentiary hearing in front of an IJ (Legomsky, 2010, p. 1641). The noncitizen will experience two separate court dates in immigration court: first the Master Calendar hearing and then the Individual Hearing (Immigration Equality Asylum Manual, p.1).

Master Calendar Hearing

When noncitizens attend court on Master Calendar Hearing dates, the IJ handles “administrative issues, including scheduling, filing applications, pleading to the immigration charges, and other issues that arise” (Immigration Equality Asylum Manual, p. 2). Within a span two hours, an IJ can hear between 20-30 cases (Immigration Equality Asylum Manual, p. 2). “Most Judges take cases where the respondents are represented by counsel first, and some Judges hear pro bono cases before cases with private attorneys (Immigration Equality Asylum Manual, p. 2).

Prior to or on the date of the Master Calendar Hearing, the noncitizen’s attorney must submit a completed Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28), which officially states that they will be serving as representation for the noncitizen (Immigration Court Practice Manual, 2008, p. 57). At the beginning of the hearing, the IJ will ask the client if the attorney is in fact his/her attorney. If the noncitizen appears without counsel, the IJ typically asks if they would like a continuance so that they can seek legal counsel (Immigration Equality Asylum Manual, p. 3). “Although the respondent plays a minor role at the Master Calendar hearings, he must be present for all of them (unless the IJ explicitly waives his presence) or he will be ordered removed in absentia” (Immigration Equality Asylum Manual, p. 3).

On the day of the Master Calendar Hearing, the attorney or client will be asked if they received the NTA that was issued from DHS (Immigration Equality Asylum Manual, p. 3). One of the main purposes of the Master Calendar Hearing is for the noncitizen, through counsel if they are represented, to either admit or deny the charges brought forth by the NTA (Immigration Equality Asylum Manual, p. 4). If all of the charges are correct, the attorney will likely admit to

them; however, if any of the information is incorrect the attorney denies them and states the correct fact (Immigration Equality Asylum Manual, p.5). When the attorney admits to charges, they are also conceding removability on behalf of their client (Immigration Equality Asylum Manual, p.5). With that said, in order to apply for asylum, the noncitizen, with their attorney as their advocate, must admit removability under one of the grounds (Immigration Equality Asylum Manual, p.5). The judge then asks if the noncitizen wishes to designate a country for removal. At this time, the noncitizen's attorney will state that their client does not wish to do so since they will be applying for asylum/withholding/CAT, which require that the respondent never asks to return to his/her country under any circumstance (Immigration Equality Asylum Manual, p.5). However, the judge proceeds to identify the noncitizen's home country as the country of removal.

After declining the opportunity to present his or her client's would-be country of removal, "the attorney or the client will...state for the record that the client wishes to apply for asylum [withholding or CAT] (Immigration Equality Asylum Manual, p. 6). If the asylum application has not already been filed, a submission date (generally a 30 to 45 day time period) is set by the judge by which the completed written asylum application must be submitted (Immigration Equality Asylum Manual, p. 6).

Individual Hearing

"Merits hearings in asylum cases are formal, adversarial, evidentiary hearings on the record" (Immigration Equality Asylum Manual, p. 20). During these hearings, trial attorneys, functioning similarly to "prosecutors," work to combat the noncitizen's appeal for asylum (Immigration Equality Asylum Manual, p. 20). These cases usually include the testimony of witnesses who are sworn in and subject to direct and cross-examination (Immigration Equality

Asylum Manual, p. 20). With that said, “merits hearings in Immigration Court are comparable to administrative law proceedings in other federal or state agencies” (Immigration Equality Asylum Manual, p. 20).

On the actual Individual Hearing date, it is not uncommon for most IJs to book more than one hearing for the same time slot because they believe that one of the cases will not actually be ready to present. This fills IJs calendars, making overbooking quite prevalent (Immigration Equality Asylum Manual, p. 19).

Before the hearing begins, the IJ usually engages in a significant amount of conversation that is off-the-record, which includes summarizing the file, identifying exhibits, and addressing pre-exiting issues (Immigration Equality Asylum Manual, p. 21). Once the IJ goes on the record, the noncitizen’s attorney has the opportunity to update or edit any of the information included on the asylum application or other materials (Immigration Equality Asylum Manual, p. 21). At this point, the attorney makes sure that the “names, addresses, dates, A-numbers, etc. are up-to-date and correct” (Immigration Equality Asylum Manual, p. 21). Once the asylum application and accompanying documents are current, the IJ will then proceed to commence the process of approving exhibits for admission (Immigration Equality Asylum Manual, p. 22).

Once these steps are completed, some IJs will permit the presentation of opening statements, which will summarize the noncitizen’s case (Immigration Equality Asylum Manual, p. 23). Then, similarly to most other courts, the noncitizen’s attorney and Trial Attorney will summon witnesses and perform both direct examinations and cross-examinations (Immigration Equality Asylum Manual, p. 24). If there are expert witnesses that are unable to attend the hearing in-person due to their geographic location, most IJs will grant their testimony via telephone (Immigration Equality Asylum Manual, p. 24). After overseeing both direct and cross-

examination, the IJ will then conduct their own intensive examination of witnesses, which can include inappropriate or offensive questions (Immigration Equality Asylum Manual, p. 26).

Before reaching a decision, most IJs will give both sides that opportunity to present their closing arguments (Immigration Equality Asylum Manual, p. 27). On the same day as the hearing, after closing arguments are heard, the IJ usually issues an oral decision (Immigration Equality Asylum Manual, p. 28). “Most often the IJ will read the (long) decision, summarizing the facts, reading boilerplate language about the legal standards for the relief sought, and finally analyzing the facts in light of the law” (Immigration Equality Asylum Manual, p. 28).

Once the IJ reaches their decision, both sides are given the opportunity to reserve or waive their right to appeal (Immigration Equality Asylum Manual, p. 28). If the IJ has decided to grant the noncitizen asylum, there is no reason for their attorney to secure their right to appeal (Immigration Equality Asylum Manual, p. 29). In this instance, if ICE also forfeits their right to appeal, the decision is finalized (Immigration Equality Asylum Manual, p. 29). However, if ICE decides to reserve their right to appeal, it will take approximately 30 days for the noncitizen to find out if the ruling is upheld or not (Immigration Equality Asylum Manual, p. 29). Ultimately, “the IJ will give both attorneys a pre-printed order form which will either order removal, or state the form of relief granted, as well as whether or not appeal rights were reserved” (Immigration Equality Asylum Manual, p. 29).

The Problems

While the structure and process of immigration courts may appear to be practical and reasonable in theory, they have not necessarily succeeded in practice. Hundreds of thousands of cases such as those involving Vazquez, Pérez, and Iraheta unfortunately languish in the system because of two major problems: immigration courts are severely underfunded, and that

contributes to the scarcity of qualified IJs. As a result, IJs are overworked and under a great deal of stress. These two major problems have specifically contributed to the recent “growing case backlog” that has plagued the country in regards to immigration hearings (Miller, Keith & Holmes, 2015, p. 53).

Underfunded Immigration Courts

While the number of cases pending in immigration courts has ballooned in recent years, the money they have to operate has remained fairly stagnant in comparison to the DHS’s immigration enforcement sectors (“Empty Benches”, 2015, p. 1). For example, as displayed in Figure 3, both Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) combined experienced a 105% monetary increase between FY 2003 and FY 2015, which specifically went from \$9.1 billion to approximately \$18.7 billion (“Empty Benches”, 2015, p. 1). On the other hand, immigration court monies increased “more modestly—74 percent from FY 2003 to FY 2015, from \$199 million to \$347.2 million” (“Empty Benches”, 2015, p. 1).

[Figure 3 here]

Overall, the increase in funding within immigration enforcement sectors and the relative lack of money within immigration courts has significantly contributed to the increased backlog of cases. Indeed, the number of immigration court backlogs has spiked by 163% between FY 2003 and April 2015 (“Empty Benches”, 2015, p. 1). “The resulting backlog has led to average hearing delays of over a year and a half...” (“Empty Benches”, 2015, p. 1). Essentially, the number of cases being filed surpasses the actual number of cases that can sufficiently be heard by IJs. “For instance in FY 2014, courts received 23 percent more matters than they completed (306,045 versus 248,078)” (“Empty Benches, 2015, p.3).

Understaffed Immigration Courts

Another major problem that heavily impacts immigration courts is the lack of qualified judges that are prepared to hear and make decisions on immigration cases. IJs determine “a large volume of cases, approximately three times the number of cases decided by a typical federal district judge” (Miller et al, 2015, p.53). According to Miller et. al (2015), in 2009, 250 IJs were responsible for hearing approximately 350,000 cases (an average of about 1,400 cases per judge per year). District court judges, on the other hand, were assigned about 400 cases each in that same year (Miller et al., 2015). In FY 2014, IJs received 306,045 matters to review, which included 225,896 removal cases (73.8% of the total number of matters), 60,446 requests for bond hearings (19.8%), and 19,703 motions (6.4%) (“Empty Benches”, 2015, p. 2).

As these statistics suggest, while the number of immigration cases have increased over the years, the number of IJs available and qualified to hear such cases has decreased. “Attrition, budget cuts, and burn-out have led to a reduction in judges from 270 in April to 233 [in 2015], with only 212 judges serving full time...” (“Empty Benches”, 2015, p. 2). This steady decrease in IJs, as Figure 4 indicates, has led to a tremendous spike in case backlog; since 2006, the number of cases has doubled—skyrocketing to 445,607 cases in April 2015 (“Empty Benches”, 2015, p.3). With this significant increase, as of April 2015, the average removal case remains pending for 604 days, which usually equates to nearly a year and eight months (Empty Benches, 2015, p.3).

[Figure 4 here]

The Impact of the Problems on Noncitizens and their Families

In many cases, because immigration courts are underfunded and understaffed, noncitizen individuals and whole families are significantly impacted both emotionally and sometimes even physically. The biggest impact that the court backlog has on immigrants is the extensive amount of time that they spend in detention centers. “There are more than 180 immigration detention facilities in the United States, usually located far from major cities. Some house several thousand detainees at any one time, mixing aliens who have criminal records with others who don’t” (Myslinska, 2016, p.1). In some cases, members of families are detained together in what are known as family detention facilities, but in others, they are separated and held in different detention centers.

While the topic of immigrants being subjected to detention centers across the United States has long been controversial, the issue gained even more recognition in 2014 during the surge in child and family migration. The influx began in the spring of 2014 when thousands of unaccompanied children crossed the US-Mexico border into the U.S.; additionally, later that year, historically high numbers of Central American migrant families entered the states as well (Chishti and Hipsman, 2015, p.2). The number of people apprehended by the Border Patrol during that year was significantly higher than the previous year:

In fiscal year (FY) 2014, the Border Patrol apprehended more than 69,000 unaccompanied children and 68,000 family units, compared to 38,000 and 15,000, respectively, in FY 2013. Although public and press attention centered on unaccompanied children, the steepest increase was in mothers and young children (Chishti and Hipsman, 2015, p. 2).

When these children and family units first arrived in the U.S., they were neither detained nor immediately deported; instead, they were typically released and issued an NTA, which included

a future court date that would occur one year or more from the notice issue date. However, it was quickly determined that this policy encouraged the continued flow of children and families from both Mexico and Central America (Chishti and Hipsman, 2015, p. 3). Because of the lack of efficiency connected to the policy, “DHS rapidly expanded its family detention capacity from fewer than 100 beds in early 2014 to more than 3,000 as of September 2015” (Chishti and Hipsman, 2015, p.3). Initially, when the expansion of detention center beds occurred, the goal was to temporarily detain and speedily deport families, but many women and children have since applied for asylum and remained in detention facilities for elongated time periods as they wait for their claims to be processed (Chishti and Hipsman, 2015, p.3).

Many children and immigrant proponents “believe that [family detention centers are] morally deplorable and inherently psychologically harmful to young children and their parents” (Chishti and Hipsman, 2015, p.3). Advocates and lawmakers alike are also concerned that the detainees’ physical needs are not being properly met—citing their lack of access to health care and susceptibility to unfair, abusive treatment as problematic (Chishti and Hipsman, 2015, p.3).

While these conditions are prevalent within family detention centers, they can also be found within centers where individuals are held separately from other members of their families. Generally speaking, within detention centers “men and women are housed separately” (Myslinka, 2016, p. 1). Within some detention centers noncitizens, similarly to those in family detention centers, “experience [a] lack of medical care, physical violence, sexual abuse, unsanitary conditions, lack of water or food, segregation used as punishment, or being forced to sign documents” (Myslinka, 2016, p. 2). For example, recently Ángel Rosa, an undocumented Guatemalan man, claimed that he contracted a gangrene infection of his groin while in a U.S. detention center (Feltz, 2016). In January 2016, Rosa was detained by ICE during a raid and held

in the Utah County jail (which has a contract with ICE to detain noncitizens) after his asylum claim was denied (Feltz, 2016). According to a paralegal, Mark Reid, who has helped work on Rosa's case, Rosa was detained in a cell with an overflowing toilet which held fecal matter (Feltz, 2016). Rosa's testicles quickly became infected with gangrene, which ultimately led to his rectum swelling shut and the infection of his intestines (Feltz, 2016). "His family says ICE failed to provide medical treatment until Rosa was rushed to an offsite hospital for emergency surgery. The ordeal nearly led to his castration, and ultimately left him sterile" (Feltz, 2016). Because of their insufficient medical capabilities, Rosa was released from ICE custody to live with his U.S. born daughter where he wore an ankle monitor and regularly attended meetings within an ICE's intensive supervision appearance program (Feltz, 2016). However, he was eventually re-detained and sent back to jail where he is fighting deportation (Feltz, 2016).

Potential Solutions

While there are currently serious problems (i.e. being underfunded and understaffed) with the way immigration courts are functioning, there are a few potential solutions that could address some issues. Because the aforementioned problems are so severe, any solution proposed to fix them must take three key principles into consideration. First, a realistic amount of funding must be allocated to immigration courts to ensure the "quality and quantity of adjudicators and their support staffs—especially law clerks and staff attorneys—as well as adequate physical resources" (Legomsky, 2010, p. 1677). Secondly, to prevent the politicization of IJs individuals who carry out adjudicatory tasks must obtain decisional independence (Legomsky, 2010, p. 1677). Third, the solution must promote greater efficiencies, both fiscally and in terms of closing the time gap between the start of proceedings and their conclusions (Legomsky, 2010, p. 1677).

With that said, there are some solutions that are often proposed to fix these problems. The first potential solution is for Congress to deem immigration courts as Article I specialized courts, which will have their own trial and appellate divisions (Legomsky, 2010, p. 1682).

Specialized courts and their judges can be defined as the following:

...courts that have limited and frequently exclusive jurisdiction in one or more specific fields of the law, for example, commercial courts, administrative courts, labor courts, and drug courts. Specialized courts are defined as tribunals of narrowly focused jurisdiction to which all cases that fall within that jurisdiction are routed. Judges who serve on a specialized court are considered specialists, even experts, in the fields of the law that fall within the court's jurisdiction (Zimmer, 2009, p. 1).

If immigration courts became specialized courts with separate trial and appellate divisions, they would function more efficiently, saving the IJs, lawyers and noncitizens time and the courts themselves money. Essentially, the faster decisions are made, the less time detainees spend in detention centers.

Another potential solution is to leave immigration courts as non-specialized courts within the DOJ, but "simply legislate greater job security for the immigration judges and BIA members" (Legomsky, 2010, p. 1681). For example, the EIOR could transition into an independent tribunal within DOJ, similarly to the U.S. Parole Commission (Legomsky, 2010, p. 1682). Congress could turn IJs and BIA members into ALJs, which would improve both their pay and job security:

The ALJ appointment process is freer of political influence, the ALJs' grade levels and pay scales are set by the Office of Personnel Management (OPM) rather than by political actors, and they cannot be removed from office except for good cause found after an evidentiary hearing before the Merit Systems Protection Board (Legomsky, 2010, p. 1682).

This option would help restore the IJs independent decision making and increase the overall longevity of IJs.

A further solution is to remove the EIOR from the Justice Department completely, making it an independent tribunal (Legomsky, 2010, p. 1683). Similarly to the first potential solution, the EOIR would host its own trial and appellate divisions, except they would be housed outside of the DOJ and all other departments (Legomsky, 2010, p. 1683). Also, like Article I special courts, an independent tribunal would be a part of the executive branch, perform solely adjudicatory functions and be independent from all government departments (Legomsky, 2010, p. 1683).

Conclusion

While we, as Americans, often think about the enforcement aspect of immigration (i.e. ICE or CBP), we often fail to think about the impact that the judicial system has on the matter. Although there are various offices responsible for handling issues that pertain to the topic of immigration, the truth of the matter is that fundamental problems such as understaffing and underfunding are preventing immigration courts from adjudicating immigration cases in a deliberate yet efficient fashion. While IJs are often financially, as well as emotionally, affected by their jobs, noncitizens face direct consequences from their problems as well. When cases are heavily backlogged, immigrants are more likely to spend more time in detention centers that are characterized by less than optimal conditions (i.e. poor medical treatment, overcrowding, lack of translators). However, the problems that currently exist within immigration courts can be fixed with potential solutions such as making immigration courts special courts, legislating more job security for IJs and BIA members, and converting the EOIR into an independent tribunal separate from the DOJ. Regardless of the solution, a change needs to occur so that people like

Maximiano Vazquez-Guevarra, Ricardo Pérez Luna, Mario Iraheta and Ángel Rosa have a chance at a brighter future.

Appendix

Figure 1

Texas Immigration Court Statistics FY 2013 and FY 2014

Courts	Number of Judges in Each Court	Number of Cases Filed (FY 2013)	Cases Adjudicated (FY 2013)	Number of Cases Filed (FY 2014)	Cases Adjudicated (FY 2014)
Dallas	6	5,846	7,716	8,136	8,118
El Paso	2	3,364	2,479	2,862	2,593
El Paso SPC	4	4,681	3,571	4,740	3,929
Harlingen	2	9,366	2,494	10,614	2,614
Houston	6	6,382	2,871	14,363	3,036
Houston SPC	3	12,438	9,542	13,444	10,392
Pearsall	4	7,949	4,783	8,280	5,403
Port Isabell	3	7,190	4,069	9,827	6,456
San Antonio	6	12,562	6,827	12,699	7,140

Figure 1. Sources: The US Department of Justice EOIR FY 2014 Statistics Yearbook and EOIR Immigration Court Listings

Figure 2

Executive Office for Immigration Review

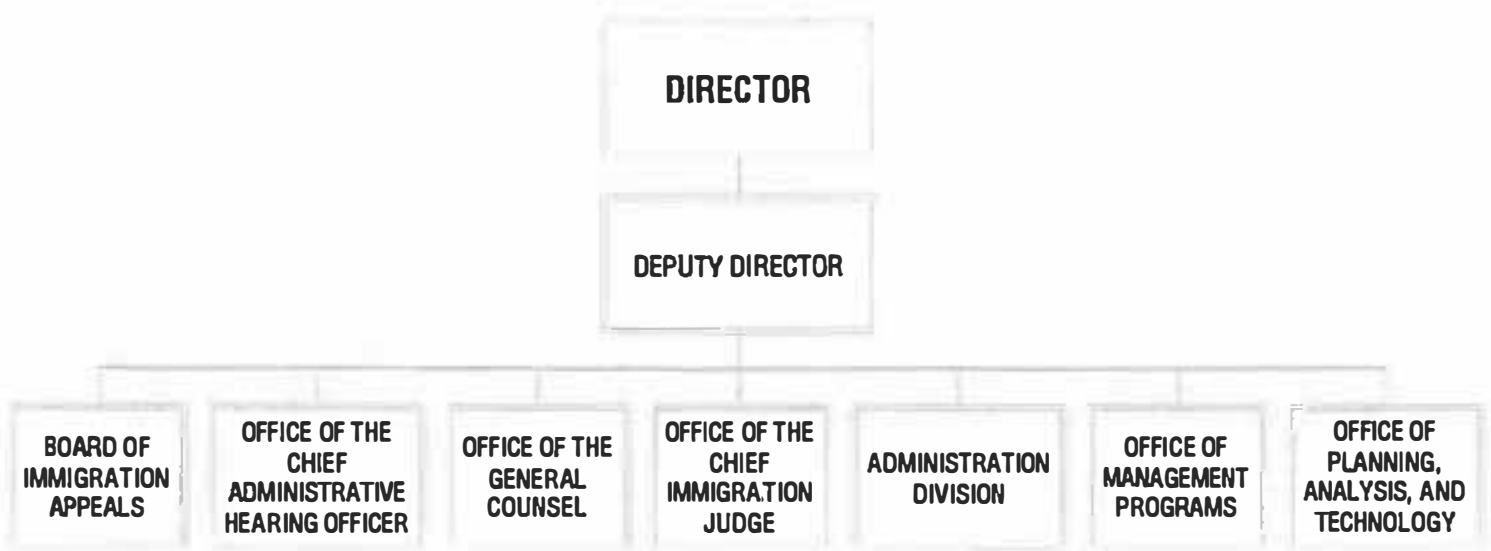


Figure 2. Source: https://www.justice.gov/sites/default/files/eoir/legacy/2013/11/08/EOIR_Organization_Chart.pdf

Figure 3

CBP & ICE Enforcement Funding vs. EOIR Court Funding, Case Backlog

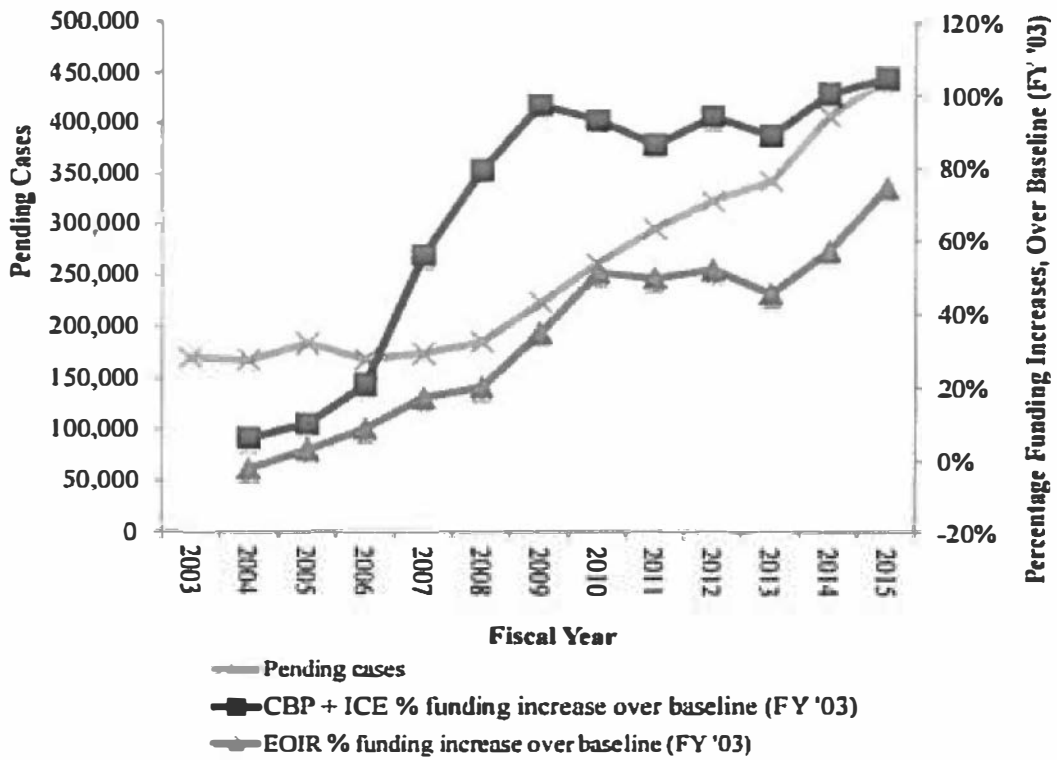


Figure 3. Source: "Empty Benches: Underfunding of Immigration Courts Undermines Justice" *American Immigration Council (2015)*

Figure 4

Rising Immigration Court Backlogs & Rising Case Delays While Judges Remain Flat

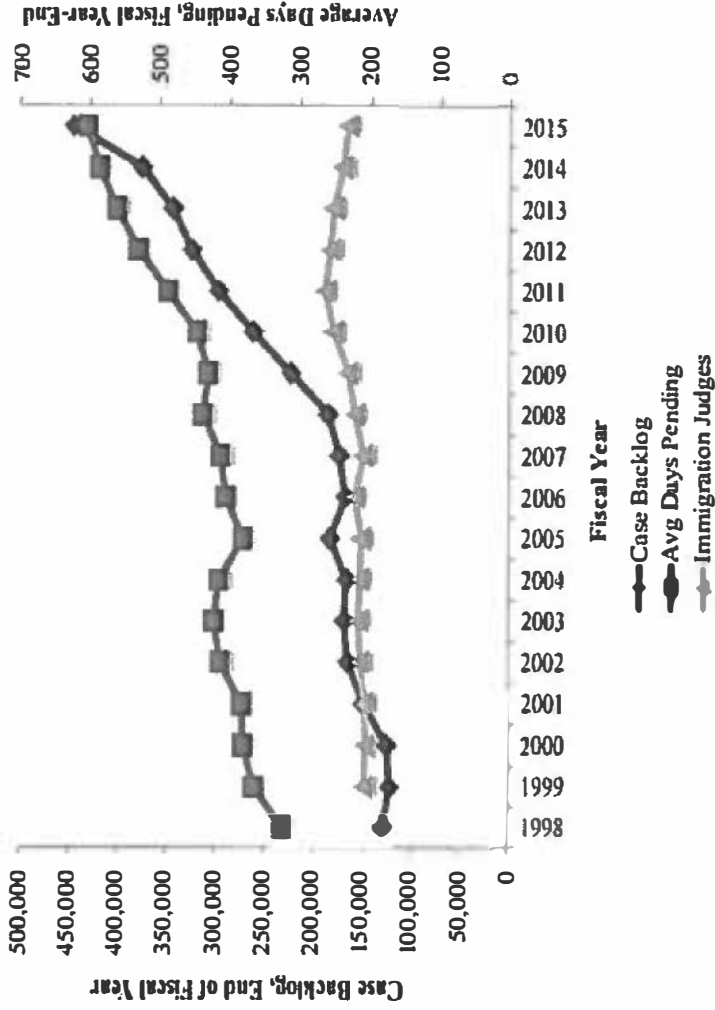


Figure 4. Source: "Empty Benches: Underfunding of Immigration Courts Undermines Justice" American Immigration Council (2015)

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