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COMMENTARY Opinion

# Immigration courts need independence to work fairly and efficiently

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Detainees sleep in a holding cell at a U.S. Customs and Border Protection processing facility in Brownsville, Texas, in 2014.  
Photo Credit: AP File / Eric Gay

The rising backlog of cases at our nation's immigration courts is drawing an unprecedented focus from politicians and private citizens, and Americans should weigh in on how we shape the future of these critical tribunals.

Immigration courts are the trial-level tribunals where decisions are made about who is deported from the United States. The impact of those rulings can be harsher than most criminal sentences. Yet, because they occur in civil proceedings, many people must appear before our courts without the aid of attorneys.

In effect, some of our decisions can be death sentences when noncitizens are returned to countries where they are later killed. Many noncitizens fear banishment or permanent exile from the only community they have known, and that is devastating. Deportees leave behind mourning relatives and friends who are U.S. citizens. As our population has become more diverse, more Americans have relatives, co-workers or friends who were not born in this country.

The laws that govern immigration court proceedings are considered some of the most complex in America, challenging for both experienced lawyers and judges. Yet, daily, people who do not speak English and have little formal education are expected to navigate that system on their own.

These courts often are the only face of American justice that those who appear before us experience. That provides us the chance to demonstrate the superiority of our system of justice and the benefits of due process, and to put into practice America's commitment to the rule of law. Fair and impartial justice rendered by neutral judges is a part of America's tradition, which should not be compromised.

But here's the reality.

Immigration courts nationwide have a backlog of more than 598,900 cases. In some of our nation's busiest courts, such cases remain pending more than 500 days. Just more than 300 immigration judges nationwide grapple with this backlog, which increased by 100,000 in the last year alone.

Even more troubling, as the caseload rises, the rate of completing cases has been dropping. And while there are several reasons for this, our courts have been left in the lurch by ineffective management that has failed to provide adequate support staff and strategic planning.

In the past five years, immigration judges have decided more than 1,329,950 cases, but we can do even better. The key is assuring judicial independence and protection from political influences. Removing the immigration courts from the Department of Justice, where the courts are run by politically appointed law enforcement managers subject to the pressures of politics, and placing them in an independent court structure, would insulate them from those pressures and allow them to concentrate on completing cases in a fair way.

When cases are conducted fairly, there is less likelihood of appeal or political attack. More skilled court management, provided by experienced court administrators, rather than a law enforcement agency with priorities other than fairness and efficiency, would greatly enhance our ability to complete the tasks. For example, cases would not be docketed to make political statements or serve as a show of force by our government. Rather, they would be on the calendar based on due process needs. Judges need to be allowed to apply their expertise to make their dockets run smoothly and fairly.

Restructuring immigration courts would be a win-win, a solution that would ease the pressures on an overwhelmed system and facilitate timely and fair decisions. Structural reform would go a long way toward assuring we are able to answer the challenges that surely will continue.

*Dana Leigh Marks is an immigration judge in San Francisco and president of the National Association of Immigration Judges. The views expressed here are solely those of the author in consultation with the NAIJ.*

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