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### Justice Delayed

April 8, 2010 12:56:57 am

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Immigration courts around the U.S. are reeling under a huge backlog. One solution: hire more judges.

Araceli Cruz Rendon, a Mexican citizen who entered the U.S. illegally in the 1990s, believed she could make a good case for avoiding deportation. Her American-born son suffered attention deficit disorder: if she returned with him to Mexico, her lawyers argued in a Los Angeles immigration court, his condition would worsen.

But Cruz never got a chance to fully make her case. By the time it reached Immigration Court Judge Anna Ho, in January 2005, there was such a huge backlog of immigration cases that the merits of her argument took second place to the smooth running of the system. Judge Ho turned down a request by Cruz lawyer for a continuance that would enable her to present more information documenting her argument. The reason: it would add to the system's workload.

"When you delay one case, you delay three other cases," the judge ruled.

Her lawyers filed an appeal with the U.S. Ninth Circuit Court of Appeals. And last December, the court ruled against Judge Ho, ordering her to re-hear the case on the grounds that avoiding delays in the court system could not form the basis of a judgement. "We have repeatedly warned that a 'myopic insistence upon expeditiousness' will not justify the denial of a meritorious request for delay," wrote District Judge Jeremy Fogel.

Cruz was luckier than most. There may be no immigration court under more strain than the one in Los Angeles. A March 2010 report from the [Transactional Records Access Clearinghouse](#) (TRAC) at Syracuse University showed the court as having the most pending cases (about 43,000) of any in the country, and the longest average wait time between the case opening and final decision (713 days).

And the Los Angeles court is just a leading indicator of what's happening nationally.

The TRAC report describes an entire system of overwhelmed immigration courts that are not keeping up with the cases sent to them. According to TRAC, the nation's number of pending immigration cases is at an all-time high of 228,421—23 percent higher than in September 2008 and 82 percent higher than just 10 years ago. The TRAC study's authors found that judges have an average of 70 minutes to spend on each case, the second lowest figure since 1998.

#### Pressure on Judges

The judges argue that the blame is not entirely theirs. Retired immigration judge Bruce Einhorn, who served with Judge Ho in the Los Angeles court, claims that judges are under constant pressure to clear their

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backlogs as expeditiously as possible.

As an example, he points to an e-mail sent about six years ago to all of the court's judges sent by a top manager in the federal agency that supervises the immigration courts. Although Einhorn can't remember the month, he recalls that the memo singled Judge Ho out for completing more cases in the previous 30 days than any other judge in the Los Angeles court. According to Einhorn, it's a clear demonstration of the conflicting messages received by immigration judges. "The appellate courts would tell us to slow down, and the agency would tell us to speed up."

According to the TRAC report, the key reason for the backlog is the federal government's failure to hire judges quickly enough to keep pace with the increasing caseloads, according to the report. The authors noted that there were actually two fewer judges nationally in January 2010 than in April 2009. And the number of vacant judgeships doubled from 2006 to 2010, from 24 to 48.

In a **written response** to the TRAC report, the federal **Executive Office for Immigration Review** (EOIR), which administers the immigration courts, called the TRAC report "unbalanced" and said that it "fails to acknowledge the effort and progress that the Executive Office for Immigration Review has made, and continues to make, to address the immigration caseload." It argued that it was in the process of hiring 47 new immigration judges, which will bring the total to 280 nationally. The agency added that as part of its hiring process, it had reviewed more than 1,750 applications and conducted more than 120 interviews.

(EOIR declined *The Crime Report's* request for an interview for this story, and Kevin Rooney, who was EOIR director from 1999 to 2007, did not return calls for comment.)

TRAC co-director Susan Long noted that EOIR's statement didn't take issue with the report's data and conclusions. "They're just saying, 'we're working hard,'" she told *The Crime Report*.

Indeed, according to EOIR's figures, the number of judges nationally increased from 223 to 232, or about 4 percent, from 2006 to 2009—numbers that vary only slightly from those in TRAC's report. But during that same period, the immigration court caseload increased by 33 percent, according to TRAC.

Since 2003, TRAC added, the number of immigration judges has increased by only nine, from 218 to 227.

### Impact on decision-making

The case backlogs and delays raise questions about the standards of judicial decision-making in immigration courts.

Judges are under pressure to move cases along quickly, even though their ability to do so is often limited by outside factors. Judge Denise Slavin, vice president of the **National Association of Immigration Judges** (NAIJ) says that in her court judges must provide written justifications for cases that remain pending for more than six months. Often these are delayed for reasons beyond a judge's control, such as not having space on the docket for a follow-up hearing within that timeframe.

Both the lack of control and the pressure to keep cases moving through the system affect judges' perceptions of their ability to be fair. In a list of priority immigration court needs released last fall, the association noted that "stress on judges has reached unbearable levels which has contributed greatly to questionable conduct in court and arguably fostered ill-conceived decision making."

And in responses to a survey of the NAIJ's 212 member judges by researchers at the University of California at San Diego, many judges admitted they were concerned about the impact of crowded dockets on their ability to make thoughtful decisions. (The study was published in the fall 2008 *Georgetown Immigration Law Journal*.) "In those cases where I would like more time to consider all the facts and weigh what I have heard, I rarely have much time to do so simply because of the pressure to complete cases," read one response. Another noted, "The conditions under which we work make it more and more challenging to ensure that justice is done."


Questionable decisions caused by caseload demands also show up in appeals court reversals of immigration court decisions. In 2008, for example, the U.S. Third Circuit Court of Appeals threw out a decision by an immigration judge in New Jersey who had denied a Pakistani immigrant a continuation of his case. The judge had based his ruling on his obligation to complete cases "within a reasonable period of time." The appeals court rejected that argument and remanded the case for reconsideration. Overall, immigration-related appeals to the circuit courts grew from 4,450 in 2002 to about 7,500 in 2009.

Occasionally, backlogs may work to the benefit of individual immigrants, since they can stay in the country while a case drags out. "It means you can get an incredible amount of time to keep your clients here hoping for a new law or something else that might save them or just change their circumstances—they might marry a US citizen or whatever it happens to be," says Los Angeles immigration attorney Carl Shusterman.

But those with strong cases are disadvantaged, because when the case stretches out, people forget specific facts, witnesses may move away or die, and documents become unavailable, according to Brittney Nystrom of the **National Immigration Forum**, an immigrant advocacy organization.

### Greater Balance

Backlogs won't likely be reduced without greater balance between the resources earmarked for detaining illegal immigrants and those dedicated to adjudicating their cases in immigration courts. The Department of Homeland Security programs that generate the greatest portion of immigration court caseloads have received significant funding increases since 2003: 3, 800 new border patrol and customs agents were hired in 2007 alone.

An American Bar Association-commissioned [report](#) , released in February, recommends that the government hire about 100 more immigration judges. Doing so would bring immigration caseloads in line with those of judges in other administrative court systems, such as those that adjudicate Social Security and veterans issues. But in the Obama administration's 2011 budget submission, EOIR requested just 21 new immigration judge positions.

If the agency has a basis for that number, it hasn't shared it, says TRAC. "Basically we still don't know how many judges are needed, what is adequate," observes TRAC's Long. "We have consistently asked them [EOIR], 'do you have any studies?' And, nope, they don't."

So in the short term, judges will continue to struggle with packed dockets.

Judge Dana Marks, president of the judges' association, says she doesn't have room on her docket for a single full merits hearing—a three- to four-hour affair in which opposing lawyers fully air their arguments—until November 2011. For an immigrant with a solid case who is awaiting a final ruling, 20 months is a long time to wait.

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