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OPINION

America's real immigration crisis: Detention centers are filled by quota and courts are flooded

BY Robert Morgenthau
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Quotas for depriving people of their liberty
(Kate Brumback/ASSOCIATED PRESS)

When I was Manhattan district attorney, I saw what happens when enforcement efforts overrun court capacity. During the high-crime 1970s and '80s, there was such a backlog of arrests that many arrestees were not even brought before a judge for 72 hours.

They were held, virtually incommunicado, for days, as the Police Department scoured the city for jail cells where they might be housed. Eventually, a federal district court judge declared that any prisoner who could not be arraigned within 24 hours had to be freed immediately.

Today, the time has come to bring a similar rule of reason to our immigration courts.

Year after year, political pressures have led to increased arrests, detentions and removal proceedings in immigration courts. But the capacity of those courts has not come anywhere near to keeping pace.

The result is a backlog that staggers the imagination. Today, when immigrants ask when they need to return to court, many are told "in 2023."

According to the most recent data from a think tank at Syracuse University, there are currently pending before our immigration courts over half a million removal cases. That averages about 2,000 cases per judge.

The Obama administration has scrambled to fund more immigration judgeships, but nothing can keep up with that avalanche. The typical case in immigration court has now been pending for an unfathomable 671 days — nearly two years — without a disposition.

How did this gridlock happen? There are lots of reasons. One of the worst is the detention bed quota.

Since 2007, a law enacted in Congress has required U.S. Immigration and Customs Enforcement to hold a minimum of at least 34,000 individuals in detention on a daily basis. In other words, Congress now dictates how many people should be in jail, before the courts can even decide whether they should be in jail at all.

Americans bristle at “quotas,” and rightly so. But no quota is as offensive to liberty as one requiring detention of an arbitrary number of people before they get their day in court.

Another pressure on our immigration courts is a surge of removal cases commenced in response to immigration from violent nations in Central America.

In recent years, hundreds of thousands of immigrants fled to our country from failed states like El Salvador, Guatemala and Honduras — a country that was termed the “murder capital of the world.”

The Department of Homeland Security’s response was a dramatic increase in removal actions, designed to impress Central Americans with the futility of fleeing to safety in the United States.

But people fleeing the most desperate conditions are virtually impossible to deter, and for an obvious reason: They have nothing to lose.

The administration recognized this, and requested funds to try to alleviate some of the most extreme conditions in the home countries of these immigrants. But Congress refused to make the appropriation.

Meanwhile, Congress and the administration have failed to increase court capacity.

Over the last five years, the budget for immigration courts grew by 74% — but the budget for immigration enforcement agencies grew by over 400%.

The result is gridlock that makes those old criminal court dockets look like models of efficiency.

What is to be done? Regardless of how one feels about immigration reform generally, everyone can agree that we need to restore sanity to immigration court.

First, immigration judges should be real judges. Right now, they are employees of the Justice Department, and not genuinely independent.

Congress must also ensure that immigrants get proper legal representation when their basic rights are at stake.

A study published this month disclosed that in 70% of cases involving adults with children, there was no legal representation for the family.

In addition to providing lawyers, Congress must expand immigration court capacity.

But above all, an important lesson needs to be learned.

President Obama hoped to make comprehensive and reasoned immigration reform a legacy of his administration. He thought that to do so, he first had to prove his bona fides by initiating a robust removal program. That, he accomplished.

Unfortunately, the hard-liners in Congress who oppose immigration reform cared not a whit about demonstrations of good faith.

Let our next President be unafraid to take bold actions to bring reason to our immigration courts, lest those courtrooms remain a testament to the hypocrisies of a system that chases grandiose goals, while undermining our nation's most cherished values.

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<http://www.nydailynews.com/opinion/robert-morgenthau-america-real-immigration-crisis-article-1.2844861>