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Asylum cases clog dockets, outstrip attorneys' ability to help immigrants

By: Louis Krauss December 10, 2019

Tensions were running high at Baltimore's Immigration Court, with more than 30 people packed into Judge Zakia Mahasa's courtroom, many facing the prospect of being deported.

Most of those who stood before Mahasa appeared to be teenagers. Some came with parents or lawyers, but many, like Mandeep Singh, had no one by their side.

"I can't go back; if I do I'll be dead," Singh said on his way out of court, which is held in the George H. Fallon Federal Building in Baltimore.

By "back," he meant home. While most of those in Baltimore's Immigration Court come from Central America, Singh, 18, is from India. He says he crossed from Mexico into California over a steel wall when he was 16.

Singh, who said he is trying to get a green card as a step toward U.S. citizenship, said his home country is too dangerous, explaining that members of rival political factions beat his parents and killed two of his cousins.

"They attacked my parents using bottles, stones and metal rods," said Singh, who added that his family was part of the political group Shiromani Akali Dal. "They attacked me once, so my father said I need to leave."

Asylum denials increase

Such stories are commonplace in Immigration Court, but the likelihood of immigrants' being denied asylum in the United States has increased under President Donald Trump's administration, no matter how wrenching the experiences that led them to flee their homes.

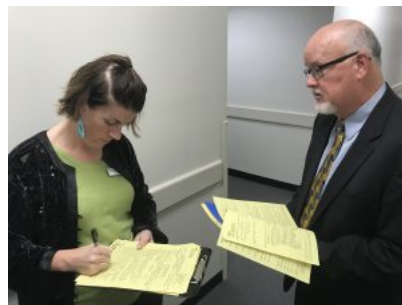
While the government previously targeted immigrants with a criminal history, undocumented immigrants today are being put into removal proceedings even though they have no criminal record in the United States, lawyers say.

As a result, a backlog of immigration cases is clogging the docket in Baltimore and across the country. Immigration attorneys say the sheer number of cases has outstripped their ability to help asylum-seekers.

The U.S. Department of Justice has instructed immigration judges to pick up the pace of their cases. A faster schedule means asylum-seekers often have no time to secure legal help, which practically ensures their deportation, attorneys say.

Since 2017, when Trump took office, the backlog of immigration cases nationwide has shot up, from 629,051 in fiscal year 2017 to 1,023,767 in 2019 – a 63% increase. In Maryland, the number of pending immigration cases has gone up from 26,007 in fiscal 2017 to 38,081 in fiscal 2019 – a 46% increase — according to the Transactional Records Access Clearinghouse's immigration database (trac.syr.edu/immigration).

The nationwide backlog has increased more dramatically since 2013, going from 344,230 pending cases in fiscal year 2013 to 1,023,767 in 2019 – a 197% increase, according to TRAC. In Maryland, the case backlog rose 626% in that period, from 5,245 pending cases in fiscal 2013 to 38,081 in 2019, TRAC reported.



Cate Scenna, manager of the Pro Bono Resource Center's Maryland Immigrant Legal Assistance Project, talks with volunteer attorney William Meyer outside Immigration Court in Baltimore. The project runs courthouse clinics for asylum-seekers who don't have attorneys of their own. (The Daily Record/Louis Krauss)

"Under the current administration, there are no more enforcement priorities that seek to focus on deporting undocumented immigrants who have committed serious crimes or are serious public threats," said immigration attorney Melissa Deal, of Rodriguez-Nanney PA in Annapolis. "Essentially everyone is fair game."

Shifting policies

Most of the asylum-seekers at Baltimore's Immigration Court were stopped at the border and are now in removal proceedings, immigration attorneys at the courthouse said.

If an immigrant is denied asylum, he or she has 30 days to file an appeal.

Deal said immigrants who don't appeal the denial within 30 days are likely to be picked up and deported, especially if they still live at the address they provided to the government.

Many immigration attorneys say judges feel pressured to deny more cases for citizenship.

University of Baltimore School of Law Professor Elizabeth Keyes, who directs the school's Immigrant Rights Clinic, said officers of the U.S. Department of Homeland Security's Immigration and Customs Enforcement (ICE) have cracked down on undocumented immigrants, putting more of them into removal procedures.

"Whereas before a grandma who's been here 15 years with no issues probably wasn't getting put into removal proceedings, now she is," Keyes said. "The number of people being put in proceedings has rocketed, really. ICE has a full enforcement mandate now, so anyone they encounter will be placed in removal proceedings if they are removable."

Comments by Trump's Justice Department have also contributed to the crackdown on asylum-seekers, lawyers say.

In June 2018, in remarks to the Executive Office for Immigration Review Legal Training Program, then-Attorney General Jeff Sessions said immigration judges should complete at least 700 cases a year.

"The number of illegal aliens and the number of baseless claims will fall," Sessions said. "A virtuous cycle will be created, rather than a vicious cycle of expanding illegality."

Former immigration Judge Denise Slavin, who handled unaccompanied child and family asylum cases in Baltimore from 2015 to 2018, said immigration judges' success at rapidly processing cases was factored into their performance reviews.

"To complete 700 cases a year is almost impossible," Slavin said.

"I think the changes they've made to the system are definitely to discourage granting asylum," she continued. "One main thing is to put quotas on judges to do cases faster. The problem is when they do cases faster, and someone doesn't have time to get an attorney, then they just can't get approved."

Ben Messer, an immigration attorney for Yacub Law Offices in Rockville, said that long-time immigration judges who once acted with independence now feel pressured by the Trump administration to deny more cases.

"It's like, 'Get on board with the deportation machine or get out,'" Messer said of the administration's stance.

In addition to the annual case quota declared by Sessions, the bar to meet asylum requirements has been raised since Trump took office, Messer said.

So-called credible fear claims no longer help undocumented immigrants gain asylum as they used to. In his 2018 talk, Sessions said that while credible fear claims have skyrocketed, the "vast majority" of current asylum claims are not valid.

"Asylum was never meant to alleviate all problems – even all serious problems – that people face every day all over the world," Sessions said.

Baltimore Immigration Court

From the data, Baltimore's Immigration Court appears more sympathetic to asylum cases than courts in more conservative areas, such as Atlanta, where judges on average approved just 6% of asylum cases from 2013 to 2018, according to TRAC.

In comparison, Baltimore immigration judges on average granted asylum in 56% of cases from 2013 to 2018.

Immigration judges in Philadelphia on average granted 58% of asylum claims in the same period, while judges in Houston granted 11% and judges in San Diego granted 27% on average.

Slavin, who retired earlier this year, approved 92% of the asylum cases she handled from 2013 to 2018 – which she said was partly because her cases involved unaccompanied children and families.

Slavin also said she was more liberal than some other judges when it came to making asylum decisions.

Baltimore immigration Judge Elizabeth Kessler approved asylum claims less than 30% of the time between 2013 and 2018. UB Law's Keyes attributed this to Kessler's caseload, which was made up of asylum cases involving detainees, immigrants who had been picked up by ICE and put on a faster track to deportation.

In court without a lawyer

Immigrants without legal representation are at a disadvantage in court, immigration attorneys say — and are at a particular disadvantage now that the courts are choked with immigration cases and there aren't enough pro bono lawyers to go around.

In Mahasa's courtroom, a handful of immigrants with lawyers presented their cases. Otherwise, the room was full of immigrants who were there alone.

To help these unrepresented asylum-seekers, the Pro Bono Resource Center's Maryland Immigrant Legal Assistance Project runs courthouse clinics to help immigrants identify legal arguments they could make in their deportation proceedings and to provide information about securing legal representation.

Pro Bono Resource Center volunteer attorney William Meyer met with a 19-year-old from Honduras, who was with her mother, both of whom wished to remain anonymous.

The interview was difficult. Meyers discovered that the woman entered the United States in 2017 after she was raped by an older man whom her family had trusted. Members of a drug cartel had killed some of her relatives and threatened her, she said.

"They killed my cousin," she said. "I knew who the murderer was, and they threatened me, saying my mom would be next."

The young woman's mother said she departed Honduras with another child before her daughter left.

"She cannot go back," the mother said. "I have a 15-year-old child who was injured by (the gang members). They broke his hip."

Meyer records the information and relays it to Cate Scenna, manager of the Maryland Immigrant Legal Assistance Project, to determine if the young woman has a chance of being granted asylum.

After talking with Scenna, Meyer hands the mother and daughter a sheet recommending they contact the Tahirih Justice Center, a nonprofit that provides legal services to girls and women fleeing violence.

Keyes, of the Immigrant Rights Clinic at the University of Baltimore School of Law, oversees nine students who are currently handling 13 immigration cases.

She said that while interest in helping immigrants has increased since Trump's election, the sheer number of immigration cases has outstripped volunteer lawyers' ability to help.

"It's gotten so bad, we've been working with nonprofits to responsibly and ethically help applicants fill out their own applications," Keyes said. "At least they're going to court with something the judge can look at, but they're not

going with a lawyer. Because of the way the cases are now quickly scheduled, it's a poor second best, but we hope it's better than nothing."

Hoping for asylum

After Singh left India, he said, his uncle paid for him to travel to various places – Russia, Ecuador, South Africa and then the jungles of Panama for 14 days by himself.

"The point is, if you stay, you might get deported, but if you move around a lot they won't send you back," Singh said.

Immediately after he crossed into California, Singh said border patrol guards apprehended him and others with whom he was traveling.

"The one guy with a walkie-talkie, he told us to come here, and some cars came," Singh said. "Me and my friend who was also 16 went to one car, and other guys who were over 18 went to another car."

Singh said he was flown to a detention center in Miami, where he was kept for two months with other Indian immigrants before being let go to live with his uncle in Maryland. Singh said if he's allowed to stay in the United States he'd like to join the military.

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