

Growing backlog costly for taxpayers; Shortage of judges can make immigrants wait years for day in court.

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Body

Immigrants suspected of being in the United States illegally are being held in a detention center in southwest Georgia for months at **taxpayer** expense, and others remain free on bond for **years** here amid a severe **backlog** in the nation's immigration **courts**, The Atlanta Journal-Constitution has learned.

Critics say the **court** delays are unfair both to citizens and, in some cases, to **immigrants**. Some believe the **backlogs** allow illegal **immigrants** to compete with U.S. citizens for jobs and use **taxpayer**-funded services while they are free on bond.

U.S. Rep. Phil Gingrey, a Marietta Republican and critic of the Obama administration's handling of immigration, described the situation as "unconscionable."

"Those who are able to post bond are out there, still taking jobs away from our citizens and permanent legal residents," Gingrey said. "And it is even more unconscionable that people who are poor and downtrodden and don't have the ability to post bond languish in our jails, at **taxpayer** expense, **waiting** for the federal government to do [its] job."

The nationwide **court backlog** is documented in a recent study by Syracuse University's Transactional Records Access Clearinghouse, a research organization that monitors the federal government. The study says the number of pending cases in Georgia reached an all-time high of 7,046 this summer. The vast majority of those were deportation cases. Nationwide, there were 247,922 immigration cases pending as of June 21, another all-time high. Georgia ranks 10th among states based on its pending caseload.

Atlanta's immigration **court** is so flooded with deportation cases that it takes more than a **year** --- 450 **days** --- to resolve one on average. Cases for inmates at the Stewart Detention Center in Lumpkin are pending for 63 **days** on average. Meanwhile, it costs **taxpayers** \$60.50 a **day** on average to house an inmate at the facility, which is located in Stewart County. As of Sept. 17, the center was holding 1,890 inmates. That works out to a daily cost of \$114,345, based on the average expense.

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Federal officials say they are seeking to cut the backlog by hiring more immigration judges and dismissing some cases involving people who have not committed crimes and who appear eligible to remain here legally. John Morton, the head of U.S. Immigration and Customs Enforcement, issued the criteria for dismissing such cases in an Aug. 20 memo.

Critics say ICE is usurping congressional authority and sending the wrong message to people who might be considering coming here illegally. But ICE officials said they are trying avoid wasting taxpayer dollars on cases that are likely to be dismissed.

"This administration is committed to smart, effective immigration reform, prioritizing the arrest and removal of criminal aliens and those who pose a danger to national security," ICE spokesman Brian Hale said.

Stress and criticism

People end up facing deportation in these courts for numerous reasons. Some are caught entering the United States illegally. Others are caught committing petty, or even violent, crimes after they enter the country illegally. And still others come here legally but then do something to change their status, such as overstay a visa. Last fiscal year, about 80 percent of the cases immigration judges decided resulted in "removals," or deportations, according to federal statistics.

During visits to Atlanta's court and interviews with immigrants this month, The Atlanta Journal-Constitution identified some cases that exemplify the delays:

A judge dismissed a deportation case against an Ivory Coast native this month, about 14 years after the government first sought to kick him out of the country for overstaying his visa while he was seeking asylum, according to his attorney. The Columbus man, who declined to identify himself for this article, was ultimately allowed to stay after proving he later married a U.S. citizen and became eligible to remain permanently. He said he was able to support himself before the judge's ruling by selling jewelry and doing freelance computer work.

An Atlanta immigration judge ordered a man this month to leave the country within 30 days. The judge's order came nearly four years after the man pleaded guilty in federal court to illegally crossing the U.S. border from Mexico. The man, who was identified in court as Salvador Torres Navarro, had already been deported at least once before, a federal government attorney said at the hearing. One possible reason for the delay is the government moved his court hearing location from Texas to Atlanta so it would be closer to where he has been living. He was free on bond before the judge's ruling this month.

A man who was illegally brought as an infant into the United States from Mexico is now facing deportation at age 22. A North Cobb High School graduate, Adrian Sotres is not scheduled to appear before an Atlanta immigration judge until September 2011, two years after the government first charged him with being in the country illegally. He has two underage alcohol-related convictions on his record. Those convictions alone would not automatically cause him to be deported, according to experts, but immigration judges do consider convictions among other factors when they decide cases. Sotres said he is working at an inflatable play center for children.

Local immigration attorneys say the case backlog is so bad in Georgia that the state's four judges are now scheduling hearings into the summer of 2012.

Several immigrants interviewed for this article said the legal limbo has made it difficult for them to plan their lives and work legally.

"It is extremely stressful," said Sotres, the 22-year-old who is facing deportation.

On the other hand, supporters of tougher immigration enforcement worry the court delays allow illegal immigrants to commit crimes while they are free on bond.

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"What we have now is a massive catch-and-release program, which means that people don't get a swift hearing and they get released. And in many cases, this is risky to public safety," said Jessica Vaughan of the Center for Immigration Studies, a research group that advocates tighter immigration controls.

Federal immigration officials said they are required to hold violent criminal immigrants in detention centers. They said they keep tabs on others by making them wear electronic monitoring devices or by requiring them to check in with the government periodically.

Behind the backlog

There are many reasons for the court backlogs, according to experts. First, the Obama administration has been expanding enforcement programs involving local jails --- such as 287(g) and Secure Communities --- that are aimed at catching and deporting criminal immigrants. Most metro Atlanta counties are participating in one or both of these programs. As a result, the government is expecting to deport up to 400,000 people nationwide this year, up from 389,834 in fiscal year 2009 and up from 369,221 the year before.

Second, the number of federal immigration judges has not kept up with the caseload, court observers said. The number of matters that came before the nation's immigration courts jumped by 11 percent to 391,829 between fiscal years 2006 and 2009. But the number of judges who have regular caseloads increased by only 5 percent to 229 during that period.

The government is in the midst of hiring 47 more judges, including one who will fill a vacancy for a fifth judge who retired this summer in Georgia, according to the U.S. Justice Department's Executive Office for Immigration Review. A sixth judge will begin hearing cases in the federal detention center in Lumpkin next month, said Elaine Komis, a spokeswoman for EOIR. She issued a prepared statement that says filling vacant judge positions "is the most important priority for EOIR."

Meanwhile, immigrants' cases face many perils while they are pending. For example, U.S.-born spouses or children who could petition the government to keep the immigrants legally in the United States could die during the delay. Other cases involve immigrants seeking asylum from oppressive governments in their native countries. Those governments could fall out of power while the immigrants are seeking asylum, but the enemies could remain. So, in some cases, sending immigrants back to their home countries could put their lives at risk.

"We are doing death penalty cases in a traffic court setting," said Dana Marks, San Francisco-based immigration judge and president of the National Association of Immigration Judges, which advocates hiring more judges. "Would you want a life or death decision in your case decided under those kinds of conditions?"

Keeping courts busy

The delays may work in favor of some immigrants, however. Some may use the time to build their cases to stay in the United States. Some are applying to U.S. Citizenship and Immigration Services to remain in the country permanently. On average, it takes CIS nearly four months to process those applications. Immigration judges will sometimes reschedule deportation hearings to give CIS time to process these applications. Other immigrants might have weaker cases and want time to get their affairs in order before they are deported.

"The reliefs that exist under immigration law right now are very few and far between," said Socheat Chea, a local immigration attorney and past chairman of the Atlanta chapter of the American Immigration Lawyers Association. "We don't mind the backlog because our cases are very difficult."

Immigration judges work for the U.S. Justice Department and preside over cases just as their counterparts in federal district and state courts. They hear evidence, allow attorneys for the immigrants and for ICE to cross-examine witnesses and ultimately decide whether the immigrants should be granted "relief" from being deported. They also hear other matters, including motions and bond requests.

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Atlanta's immigration court is so busy that there is standing room only at times in some of its hearing rooms. The parking lot across from the downtown Spring Street courthouse starts to fill up with immigrants more than an hour before the doors open.

On Sept. 14, an immigration judge quickly dismissed a case against a man who was born in the Ivory Coast. Immigration officials ordered him deported in absentia in 1996, according to his attorney, Charles Kuck. The man had overstayed his visa while seeking asylum in the U.S., Kuck said. He never was granted asylum. After Kuck showed the court some paperwork proving the man was married to a U.S. citizen and eligible to become a permanent resident, an ICE attorney agreed to end the case.

The case had dragged on for so long, in part, because the government mailed the deportation notice to the wrong address in 1996, Kuck said. The man said he moved within New York City a few times before finally coming to Georgia. He said he didn't learn about the judge's deportation order until around 2006 when he applied to the government for permission to live permanently in the United States based on his marriage to a U.S. citizen in 2001. His attorney then filed a motion to reopen his case, saying the man never received the deportation notice. But then it took about a year for the government to approve his wife's marriage petition, Kuck said. He tried to get a hearing in his client's case scheduled for July 2009, but this month was the soonest it could be done, Kuck said. Meanwhile, the man said he couldn't get permission to work in the country legally.

"It's been kind of tough," said the man, who declined to give his name. "I have had to struggle to make ends meet. It's a relief now."

Immigration cases move slowly

Several factors contribute to a backlog of cases in U.S. immigration courts. Here are the statistics for Georgia and selected states.

Pending immigration cases

Court location Pending cases Average number of days pending

Stewart Detention

Center in Lumpkin 981 63

Atlanta 6,065 450

Total for Georgia 7,046 396

Nationwide 247,922 459

Source: Syracuse University's Transactional Records Access Clearinghouse

Top-10 states by pending immigration cases

Cases Number of judges*

1. California 61,364 56

2. New York 40,249 29

3. Texas 23,234 24

4. Florida 17,711 27

5. Illinois 10,969 6

6. Massachusetts 8,433 7

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7. Arizona 8,343 11

8. New Jersey 7,765 8

9. Virginia 7,652 8

10. Georgia 7,046 4

* **Judges** with regular caseloads as of Jan. 12

Source: Syracuse University's Transactional Records Access Clearinghouse

Top-10 nationalities by pending immigration cases in Georgia

Mexico 2,267

Guatemala 995

El Salvador 577

Honduras 252

Colombia 198

Nigeria 161

Jamaica 153

Kenya 142

Ghana 134

India 132

Source: Syracuse University's Transactional Records Access Clearinghouse

Nationwide immigration **court** matters

Received Completed

2006 351,313 366,042

2007 335,898 329,159

2008 351,606 339,440

2009 391,829 352,233

By federal fiscal **year**, which runs from Oct. 1 through Sept. 30

Source: U.S. Justice Department's Executive Office for Immigration Review

Deportations

Nationwide Georgia, North Carolina and South Carolina combined

2010* 353,392 17,266

2009 389,834 19,069

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2008 369,221 18,611

By federal fiscal year, which runs from Oct. 1 through Sept. 30

* As of Aug. 23.

Source: U.S. Immigration and Customs Enforcement

Deportations explained

Immigrants can end up in court facing deportation for numerous reasons. Some are caught entering the country illegally. Local police catch others committing crimes after they enter illegally. And some enter the country legally but do something to change their status, such as overstaying a visa.

The U.S. Department of Homeland Security formally charges them with being in the country illegally and issues them notices to appear in immigration court. Immigrants can represent themselves or get an attorney at their own expense. Some are held in federal detention centers and some are released on bond while their cases are pending.

The courts schedule hearings before judges, who work for the U.S. Justice Department. There may be one or more hearings for each case, depending on what happens during the proceedings.

An attorney working for U.S. Immigration and Customs Enforcement represents the government in each case and seeks to prove the immigrant should be deported.

The judges are responsible for determining if the immigrant should be deported. They hear evidence, let attorneys for the immigrants and ICE cross-examine witnesses, they hear motions and ultimately issue rulings.

In most of these proceedings, immigrants admit they are deportable, but then they apply for one or more forms of relief, such as asylum, a change in their immigration status or permission to voluntarily leave the United States.

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