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Immigration courts in prisons raise issues of due process, public access

MAX SIEGELBAUM | Sunday, July 31, 2016, 11:00 p.m.



Max Siegelbaum | Tribune-Review

A sign points to the entrance of York Immigration Court. The court building is attached to the eastern side of the York County Prison in York, Pa.

YORK, Pa. — Raymond Lahoud stood before a judge in a federal immigration court here, arguing why he needed his client's son inside the courtroom.

Marco Davilla, an Ecuadorian immigrant, had been accused by his ex-wife of assaulting his 12-year-old son. The son had told Lahoud it wasn't true, so the energetic, fast-talking immigration attorney from Easton needed the boy to tell the judge the same thing in order to get Davilla bonded out of prison.

The problem for Lahoud and Davilla was that York Immigration Court is located within the walls of York County Prison, which houses immigrant detainees awaiting legal decisions along with regular inmates convicted or awaiting trial for various crimes. The prison's security protocol doesn't allow anyone under the age of 16 inside.

Unconvinced by Davilla's explanation alone, the judge denied him bond. Though the charge was eventually dropped when his ex-wife never appeared in court, Davilla spent another 6 months in jail before he was finally released.

"In what other court system in the world does the warden of the prison decide who can be a witness or not?" said Craig Shagin, a Harrisburg immigration attorney who also has had witnesses denied entry to York Immigration Court. "It's unclear to me even after 20 years of doing this who's really calling the shots. Is it the judge, or the prison?"

There are 58 immigration courts across the United States, including 19 located inside or on the grounds of prisons and detention centers under contract with the federal government through the Department of Homeland Security's Immigration and Customs Enforcement (ICE) division.

Immigration judges solely handle matters like determining whether an undocumented person has committed a deportable offense and whether that individual is a danger to society or a flight risk.

Because immigration courts inside prisons and detention centers are subject to the security protocols of those facilities, some lawyers and immigration judges say that can deny due process for detainees as well as obstruct public access.

Potential witnesses and family can be prohibited from entering to testify because they are underage, as in Davilla's case, or they may be intimidated by the prison facilities from doing so, the critics contend.

AMERICA'S PRISON IMMIGRATION COURTS

The 19 federal immigration courts located inside prisons or detention centers are located on this map. Nine of those prisons operated by private companies are in blue. York Immigration Court (identified on the map by a yellow marker) is Pennsylvania's only court located inside of a prison. Click on the markers to learn more about each site.



Source: U.S. Department of Justice Executive Office of Immigration Review

Sarah Rodriguez, an ICE spokesperson, said that while the agency "is responsible for maintaining the security of their detention facilities and screens visitors appropriately, decisions regarding who may enter the courtroom are not made by ICE."

ICE says undocumented immigrants being considered for deportation "are afforded all appropriate due process under the law, including exhaustion of all avenues of appeal."

PUBLIC VS. PRIVATE

Nine of the 19 prison courtrooms are located inside facilities that are privately operated by Florida-based Geo Group, Inc. or Tennessee-based Corrections Corporation of America.

In 2015, courts inside prisons handled about 87,000 cases or 30 percent of all immigration nationwide. Pearsall Immigration Court, which is attached to the South Texas Detention Facility in Pearsall, Texas, about 100 miles from the Mexico border, processed the most cases among immigration prison courts at more than 10,000.

Public access to immigration courts can vary from one prison facility to another, a Tribune-Review analysis found - a fact acknowledged in interviews with immigration officials.

Nathan A. Berkeley, a spokesman for the U.S. Department of Justice's Executive Office of Immigration Review, which runs the federal immigration courts, said "in every case, when confronted with evidence or witness availability issues, immigration judges take the actions necessary to provide due process to all (immigrants)."

Judges say that's not the case. Contractors who run prisons with immigration courts "control who goes in and out. The court has really no control over it," said Denise Slavin, executive vice president of the National Association of Immigration Judges and a judge at the Baltimore Immigration Court.

"We should be controlling access to our own courtrooms — period," Slavin said of immigration judges, regardless of whether they are in public or privately operated prisons.

INSIDE THE WALLS

York County Prison sits in an area of the City of York marked by strip malls and suburban sprawl. The prison is a two-story greystone of about 405,000 square feet which houses close to 3,000 inmates. York Immigration Court is a modern-looking addition of grey and blue stone located on the eastern side of the prison.

Near the entrance of the facility at a large open window, five detainees stand side by side. One of them is getting her hair braided while another threads her fingers through the metal covering in front of them and presses her nose against the window. Outside, the only things in front of her are a small 19th century cemetery and a local post office. Shouting rings out from a distant open window inside the prison as detainees play a volleyball game in a secured yard.

To get to Courtroom 2 in York, attorneys and family members pass through a metal detector and wait for a guard to open a motorized door. The slamming of prison doors punctuates the silence of the courtroom.

Berkeley said the Justice Department "aims to place its immigration courts in locations where the number of [immigrant detainees] is greatest." Lawyers and immigration advocates say courts in prisons are just a cost-cutting decision by the Justice Department.

"When you're detained in the York County Prison, they just walk you down from the dorm to the court room. If you're in any of the other prisons, two ICE officers have to escort you to a van and drive you to the courthouse. It's time, money and resources," said Mary Weaver, executive director of Pennsylvania Immigration Resource Center, a non-profit legal group.

One July day at York, the detainees were brought in one by one to sit in front of Judge Kuyomars Golparvar. They wear faded orange short-sleeve uniforms with white T-shirts underneath. A flat screen television with a camera mounted on top points at the judge.

Golparvar takes about ten minutes for each case, occasionally pausing to explain immigration law to the detainees, many of whom don't have lawyers. About half of the detainees appear by video from a room inside Pike County Prison in Hawley, Pa. Only two lawyers attended the proceedings in person; the judge calls the rest from a speakerphone. None of the detainees have visitors in the courtroom.

JUDGING THE JUDGES

Immigration lawyers, professors and advocates say immigration courts inside prisons are in line with the secretive nature of the federal immigration system. For example, unlike federal criminal, civil and bankruptcy court records that can be publicly obtained online, there's no public database of immigration court filings.

"It removes any kind of public oversight or accountability," said Jacqueline Stevens, founding director of the Deportation Research Clinic at Northwestern University's Buffett Institute, which is dedicated to researching immigration law enforcement.

The Justice Department had added 34 new immigration judges since February in an effort to deal with a massive backlog of cases. Although the move has slowed the rate of growth, the number of cases awaiting resolution has climbed to a new all-time high of 496,704 as of June 30, according to court data obtained by the Transactional Records Access Clearinghouse (TRAC) at Syracuse University.

The backlog represents an average of 1,819 cases for each of the 273 judges, TRAC reports.

In response to a lawsuit filed on behalf of the American Immigration Lawyers Association by Public Citizen, a non-profit law group, the Justice Department has released more than 16,000 pages of documents on about 800 complaints against immigration judges.

However, the Justice Department censored the names of each judge, where their courts are located and the pronouns used to refer to them to hide their identities. Instead, they refer to each judge with an acronym.

In one complaint, an asylum seeker stated he sought protection in the United States because of persecution due to his sexuality in his native country. The judge, identified only as "FRW," wrote that he "studied the demeanor of this individual very carefully throughout his testimony in Court today, and this gentleman does not appear to be overtly gay. He bears no effeminate traits or any other trait that would mark him as a homosexual."

Public Citizen filed an appeal to get the full names of the judges in the complaints, which is currently pending.

Julia Murray, a Public Citizen attorney, said the group found that "a very small number of immigration judges were responsible for a huge number of the complaints."

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