

Immigration reform: Mission possible

BY ROBERT MORGENTHAU

NEW YORK DAILY NEWS Wednesday, July 26, 2017, 5:00 AM



Meeting a quota (JEREMY REDMON/ASSOCIATED PRESS)

With Congress as bitterly divided along partisan lines as at any time in memory, some believe we have reached a total legislative meltdown in Washington.

Not me. I am convinced a bipartisan congressional majority exists to address one of our nation's most pressing issues: immigration reform.

It's a matter of simple arithmetic. Moderates in both parties have been calling for reform for a generation. So did the previous two Presidents. But neither President George W. Bush nor President Barack Obama was able to deliver.

A new report by the Government Accountability Office begins with the most striking fact about immigration enforcement of the past decade: the growth of backlogs in immigration courts. From fiscal year 2006 through fiscal year 2015, the GAO reported, the case backlog more than doubled. But even that statistic doesn't begin to convey the magnitude of the problem. By the end of the Obama administration, there were more than 533,000 removal cases pending in immigration courts. Look more closely, and you'd find more absurdity: More than 75,000 of those backlogged cases involved unaccompanied children.

Buckling under these caseloads, the situation in immigration court long ago became hopeless. A lawyer in California told of the time he received an adjourned date, and had to ask, "What year, Judge?"

In New York, a lawyer panicked when she thought she was a day late for her client's case. Then she looked again — she was 364 days too early.

The shame is that most of those cases clogging the immigration dockets don't belong there. Today, the easiest way to predict the outcome of cases pending in immigration court is not to examine the evidence, but to simply see who has a lawyer.

The New York Immigrant Representation Study revealed that immigrants who are detained without attorneys have only a 3% chance of a successful outcome in their case. What's the figure for those who have lawyers and are not detained? Nearly three-quarters win their case.

So is the solution simply to give immigrants lawyers, and to avoid unnecessary detention? The answer is "yes, and no."

Assigning counsel for immigrants who cannot afford them is an excellent idea. Immigrant Justice Corps, a legal fellowship program of which I am a board member, has helped add talented new lawyers to the field. And New York City has made some progress toward increasing access to counsel in the city's immigration courts.

As for reducing detention of immigrants awaiting hearings? That's also an excellent idea, but implementing it is not so simple.

Many of those detained immigrants are kept in private detention facilities — and the corporations that run the for-profit facilities have lobbyists.

Incredibly, the lobbyists managed to get a quota in the law that funds U.S. Immigration and Customs Enforcement: a mandatory number of detention beds that ICE must maintain. It is now set at 34,000 beds, a windfall for the private jail corporations.

And those companies receive another benefit. While you can get into legal trouble for hiring an undocumented immigrant as a baby-sitter, the private jailers put their incarcerated immigrants to work maintaining their facilities.

And what do they pay this incarcerated workforce? Congress inserted a loophole in the labor laws that sets the wages private jailers pay at 13 cents an hour.

This is the mess the Trump administration inherited when it came to office.

Without legislative action, the situation will only get worse — in fact, it already has.

In just the past six months, the backlog in immigration courts has grown by more than 10%. Today, the average case on the docket has been pending for 672 days — more than a year and 10 months.

Solutions exist — common-sense proposals that I believe will command the support of a bipartisan consensus.

First, Congress needs to pass legislation that will focus enforcement efforts exclusively on those who pose a threat: violent criminals, serious drug dealers and gang members, swindlers and terrorists.

Too many agents simply continue to pluck low-hanging fruit — for example, by trolling courthouses to arrest immigrants appearing for their Housing Court cases.

Second, Congress needs to end the detention bed quota, set fair wages for detained laborers and eventually phase out for-profit jails altogether.

Third, Congress should follow New York's lead, and provide lawyers for immigrants facing removal.

A bipartisan consensus in Congress recognizes that current policies do little beyond making court backlogs worse. More importantly, members of Congress from both parties understand the importance of immigration to the continued vitality of their local economies.

And everyone with a conscience knows that the time for action is now.

Morgenthau, former Manhattan district attorney, is of counsel at Wachtell, Lipton, Rosen & Katz.

© 2016 New York Daily News