

A background image of a pair of scales of justice, rendered in a dark, stylized, almost silhouette-like manner against a light, textured background. The scales are centered and occupy most of the frame. The pans are slightly tilted, and the central pillar is prominent.

**THE SYSTEM
WORKS AS
DESIGNED**

**Immigration Law, Courts,
and Consequences**

**OHIO IMMIGRANT
ALLIANCE**

Executive Summary

The System Works As Designed

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March 2024

Ohio Immigrant Alliance

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Executive Summary

This report is based on the experiences of immigrants, lawyers, and immigration court observers, as well as external research. “The System Works as Designed” reveals how U.S. immigration laws, and the courts themselves, were planted on a foundation of white supremacy, power imbalance, and coercive control. For those reasons, they fail to protect human dignity and lives on a daily basis.

While the operations of the immigration courts have frequently been ignored, their outcomes could not be more consequential to immigrants and their loved ones. This report lifts the curtain.

Racism in Immigration Law and Policies

It is clear from the congressional record, and laws themselves, that the Chinese Exclusion Act, Undesirable Aliens Act, Immigration and Nationality Acts of 1924 and 1952, and other laws played on racial and ethnic stereotypes to limit mobility and long-term settlement of non-white immigrants.

The Immigration and Nationality Act of 1965 attempted to address some imbalances, but the Illegal Immigration Reform and Immigrant Responsibility Act basically broke the already contradictory set of laws, making them a landmine for immigrants attempting to seek safety or build new lives here. The REAL ID Act and other post-9/11 laws and policies tightened the vise.

Policy choices made by presidents from every modern administration have attempted to coerce, repress, and reject migration, a basic human survival act, instead of building safe paths people can use.

Death Penalty Consequences, Traffic Court Rules

The U.S. immigration courts were designed to offer the illusion of justice, while failing the people they purport to protect. Dysfunctional elements include:

A quasi-judicial structure that answers to the U.S. Attorney General in the Executive Branch and is not an independent judiciary; is blatantly influenced by ideology; and promotes quantity over quality decision making.

Power imbalances, such as the fact that the government is represented by attorneys 100% of the time, while immigrants often argue their cases without a legal guide. Detained immigrants are forced to “attend” their hearings via grainy video feed, while judges and counsel are together in courtrooms miles away. Yet immigration judges frequently deny requests for expert witnesses to appear remotely, citing challenges with communication and credibility. The deck is stacked.

Also, by detaining someone in jail for the duration of their civil immigration case, the government makes it harder for them to get a lawyer to help. The government is also using the psychological, financial, and physical toll of detention to try to break someone's spirits and get them to give up.

Subjective “credibility determinations,” rife for bias and abuse. A case can be denied based on a judge's *feeling* about the immigrant's testimony, not facts. This is the barn door through which all manner of ignorance, bias, and ideology storm in.

Legal landmines make it harder for people who qualify for asylum to receive it, such as the one-year filing deadline; illogical definition of material support to terrorism; and the Biden asylum ban.

Differing standards of accuracy. Immigrants may be furnished interpreters who speak the wrong dialect. Judges and DHS attorneys may make inaccurate statements about an individual's evidence or the political conditions of their country. The hearing transcripts can be riddled with gaps instead of key facts. Yet life-altering decisions are made based on this record, and an immigrant has little to no opportunity to object, correct, or explain.

Consider the experience of M.D. a Black Mauritanian man seeking asylum in the U.S. after the late 1980s/early 1990s genocide. An immigration judge questioned his credibility because M.D. did not provide “evidence” that he is Black and Fulani, a persecuted group in Mauritania. M.D. addressed the court, speaking in Fulani, and said, “I am the evidence. I speak Fulani and I am Black.”

The English transcript of M.D.'s hearing is riddled with “(unintelligible)” in place of the names of relatives and locations where important events, such as the murder of his father, took place. There was an interpreter in the room who could have spelled the words out to make the record more accurate and credible. Instead, the record shows big holes in place of material facts, while M.D. was accused of not providing “proof” that he is Black, deemed not credible, denied asylum.

In another case, a Black man seeking asylum was found “not credible” because his interpreter first used the word “canoe” when describing his method of escape, and later said “little boat.” But in his language and, one can argue, in common English, they are the same thing.

Situations like these, memorialized in the case record, are carried into the appeals process where rehearings typically do not take place, compounding the injustices of these mistakes.

The image is a black and white optical illusion. It depicts a face, but the features are distorted and pixelated. The eyes are particularly prominent, appearing as large, dark, irregular shapes. The overall effect is one of digital corruption or a glitch in a digital image. The background is a light, textured surface.

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