



**Putting El Paso's Courts 'On Trial'**  
*Are they Overburdened?*

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*An assessment of the infrastructure needs of El Paso's federal and state courts, the report compares the annual weighted caseloads of El Paso judges at a federal and state level. The report aims to determine if the El Paso judicial system is overburdened.*

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The judicial system carries out justice at a state and national level. From civil disputes to felonies, the judicial system rules according to the Constitution and state and federal laws. With such a vital responsibility, it is necessary to make sure the system is functioning correctly. Unfortunately, there have been claims about the judicial system being overwhelmed. Too many cases along with few judges lead to an overburdened judicial system. These large caseloads prove to be problematic in the court process.

Community Scholars has decided to take a closer look to determine whether El Paso's courts are overburdened. In order to do this, the local judicial system will be compared on both the federal and state level. At the federal level, the Western District of Texas, which includes El Paso, will be compared to districts inside Texas, districts within the fifth circuit and districts that, like El Paso, share a border with Mexico. At the state level, the County and City of El Paso will be compared with other counties and cities in the state. The state level comparison will include: Municipal, Justice, County and District Courts.

All data collected for this report was gathered from various government agency databases, personal interviews, news sources, current literature regarding urban planning and municipal service distribution and information from the City of El Paso's website and its respective departments. The next section will present definitions for the numerous legal terms to be used throughout this report.

## **Legal Terms and Procedures**

To effectively understand the legal process, basic background knowledge is necessary. This section will define the common phrases and the basic procedures of a legal case mentioned throughout the report.

Adjudication The making of an official court ruling.<sup>1</sup>

Caseload A caseload is the number cases a judge hears over a given period of time.<sup>2</sup>

Civil Court Case A civil court case is a legal dispute between two parties that doesn't involve a criminal act. A plaintiff typically starts the case by filing a complaint in a court of law against a defendant who has committed an offense against him/her. Relief for the plaintiff usually comes in the form of money that compensates for the damage done. It can also be a court order forcing the defendant to cease the action that causes the injury.<sup>3</sup>

Criminal Court Case A criminal court case pertains to a trial where the defendant has committed a crime against society. A jury must decide if the defendant is guilty or not guilty based on the evidence presented. Punishments for a defendant are typically jail time or a fine.<sup>4</sup>

Defendant The defendant of a lawsuit is the party the plaintiff's complaint is filed against.<sup>5</sup>

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<sup>1</sup> (U.S. Legal 2010)

<sup>2</sup> (U.S. Courts No Date)

<sup>3</sup> (U.S. Courts No Date)

<sup>4</sup> (U.S. Courts No date)

<sup>5</sup> (U.S. Courts No Date)

Docket A docket is a complete list of the cases a judge will be hearing. They are listed in chronological order and have brief summaries pertaining to the case.<sup>6</sup>

Felony A felony is a serious type of crime, with punishments that exceed a year in jail.<sup>7</sup> Felonies include but are not limited to:

- Drug abuse
- Murder
- Non-negligent manslaughter
- Forcible rape
- Aggravated assault
- Robbery
- Motor vehicle theft<sup>8</sup>

Litigant A litigant is a person that is involved in a lawsuit, typically a plaintiff or defendant.<sup>9</sup>

Misdemeanor A misdemeanor is a lesser crime punishable by less than a year of jail time.<sup>10</sup> In Texas, there are types of misdemeanors which can classify as Class A, B and C.<sup>11</sup>

Plaintiff The plaintiff is the party that files a complaint in court.<sup>12</sup> Their complaint is what initiates a lawsuit.<sup>13</sup>

Original Jurisdiction Original Jurisdiction is defined as having the power and authority to hear a case with all the facts and evidence presented.<sup>14</sup>

## **Caseloads**

A judge's caseload influences how a case will ultimately be conducted. If there are too many cases on a judge's docket, it can reduce the amount of time a case will be given.<sup>15</sup> The length of time a case is given can interfere with the amount of time lawyers have to talk to their client. Communication between an attorney and their client is crucial to the court process. With the help of their attorneys, clients seek guidance on what legal actions to take and what requirements they need to fulfill to appropriately comply with the law.<sup>16</sup> If the attorney has an insufficient amount of time to extract evidence and strategize with their client, then they will not be able to represent their client to the best of their ability. Since judge rules solely on what is presented by the attorney, inadequate representation will affect the defendant's final verdict.

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<sup>6</sup> (U.S. Legal 2010)

<sup>7</sup> (U.S. Courts No Date)

<sup>8</sup> (Felony Guide 2009)

<sup>9</sup> (U.S. Courts No Date)

<sup>10</sup> (U.S. Courts No Date)

<sup>11</sup> (The Law Office of E.G. Morris 2008)

<sup>12</sup> (U.S. Courts No Date)

<sup>13</sup> (U.S. Courts No Date)

<sup>14</sup> (U.S. Legal 2010)

<sup>15</sup> (Transactional Records Access Clearinghouse 2010)

<sup>16</sup> (American Bar Association No Date)

Community Scholars will be using weighted caseloads instead of raw caseloads to make its comparisons. Weighted caseloads have taken into consideration the complexity of a case, unlike caseloads drawn from pure numbers. The more complex a case, the more time the case typically requires. Comparing judges with raw caseload figures would not give judges full credit for their work.<sup>17</sup>

## Judicial Federalism

Judicial federalism describes the separation of power between the federal court system and the state courts. The Constitution gives the right to the individual states to interpret and enforce their own laws. Due to this, each state is an independent power rather than just a regional representation of the federal court system.<sup>18</sup> Therefore, states have their own court system. State courts are able to conduct their own trials without involving the federal court. The jurisdiction of the federal court system is very different than the jurisdiction of the state court system. Each of these courts hears cases that are exclusive to their jurisdiction. The following section will clarify the jurisdiction of these two court systems. Although both entities of the government handle their own specific matters, both of them share similar jurisdiction over matters such as taxation, environmental protection and civil rights.<sup>19</sup>

### Federal Court System

The federal court system was established by the Constitution and handles all court cases that fall under federal jurisdiction.<sup>20</sup> This includes both civil and criminal cases, as well as bankruptcy cases.<sup>21</sup> Federal jurisdiction also covers legislative constitutionality, admiralty, bankruptcy, federal laws and regulations, international affairs, patent laws and disputes between states.<sup>22</sup>

Districts and District Courts The federal courts system is divided into 94 districts to cover the span of 50 states. There are also districts in the U.S. territories of Guam, Puerto Rico, the Virgin Islands and the North Mariana Islands.<sup>23</sup> District courts have original jurisdiction over the cases they hear. The districts are laid out so that a state has at least one district court, but the number of districts varies from state to state. Each court has between two to 28 judges.<sup>24</sup> Judges typically hear an average of 400 newly filed cases a year.<sup>25</sup>

Specialized Courts There are specialized courts that have national jurisdiction for specific types of cases. The U.S. Court of International Trade addresses issues with international trade and customs, in the same way the U.S. Court of Federal Claims only handles cases concerning disputes over federal contracts, money damage against the United States and other related

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<sup>17</sup> (Cordone 2010)

<sup>18</sup> (U.S. Legal 2010)

<sup>19</sup> (U.S. Legal 2010)

<sup>20</sup> (Federal Judicial Center No Date)

<sup>21</sup> (U.S. Courts No Date)

<sup>22</sup> (U.S. Courts No Date)

<sup>23</sup> (U.S. Courts No Date)

<sup>24</sup> (U.S. Courts 2010)

<sup>25</sup> (U.S. Courts No Date)

claims. In the event a case has already been tried in either a district court or a specialized court, one side can file an appeal to the circuit's court of appeals.<sup>26</sup>

Circuits The 94 districts are divided into thirteen circuits. Twelve circuits are regional, including the circuit in the District of Columbia, and the thirteenth is the Federal Circuit.<sup>27</sup> The circuits were originally designed to ease the process of selecting Supreme Court Justices and circuit judges. In the past, some districts and occasionally whole states were excluded from circuits. This was the case when it was inconvenient for the Justices to travel off trade routes. During this time, Congress made frequent changes to the circuit boundaries to accommodate new states and the Justice's travel schedules. It wasn't until 1889 that all states were included in a regional circuit. Circuits today consist of adjoining states and the boundaries are only modified to include new states.<sup>28</sup> El Paso falls within the fifth circuit, which consists of Texas, Mississippi and Louisiana.<sup>29</sup>

Court of Appeals There is one court of appeals for each circuit. The Federal Circuit's court of appeals is located in Washington D.C.<sup>30</sup> The courts of appeals are strictly appellate courts and have no original jurisdiction.<sup>31</sup> The two types of appellate courts include 12 regional U.S. courts of appeals and one U.S. Court of Appeals for the Federal Circuit. Appeals from the district courts go to that circuit's court of appeals, while appeals from more specialized courts including the Court of International Trade, the Court of Federal Trade and the Court of Veterans Appeals go to the Federal Court of Appeals.<sup>32</sup> A panel of three judges hears the appeals and decides which cases will be sent to the Supreme Court.<sup>33</sup>

Supreme Court The Supreme Court is the highest court of law in the federal court system. They hear cases that concern federal law or questions about the Constitution. However, these cases can start off as civil or criminal cases in district courts.<sup>34</sup> If an appeal goes through the court of appeals, the case gets sent to the Supreme Court.<sup>35</sup> The Supreme Court chooses the cases it will hear at their own discretion.<sup>36</sup> Due to this, there is no guarantee an appealed case will be heard by the Supreme Court.

Duties of Federal Judges District judges are life-tenured judges nominated by the president of the United States and confirmed by the U.S. Senate.<sup>37</sup> A federal magistrate judge is appointed by a district judge for a fixed term of eight years and serves in a United States district court. Magistrate judges are assigned duties by the district judges of the district they serve and have jurisdiction over most federal proceedings, except for criminal felony trials.<sup>38</sup> Federal judges

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<sup>26</sup> (U.S. Courts 2010)

<sup>27</sup> (Federal Judicial Center 2006)

<sup>28</sup> (Federal Judicial Center No Date)

<sup>29</sup> (U.S. Courts No Date)

<sup>30</sup> (Federal Judicial Center 2006)

<sup>31</sup> (Georgia Institute of Technology 2003)

<sup>32</sup> (Federal Judicial Center 2006)

<sup>33</sup> (Federal Judicial Center No Date)

<sup>34</sup> (U.S. Courts No Date)

<sup>35</sup> (Federal Judicial Center 2006)

<sup>36</sup> (Administrative Office of the U.S. Courts, No date)

<sup>37</sup> (U.S. Courts No Date)

<sup>38</sup> (Federal Judicial Center No Date)

who have not retired and who maintain a full caseload are sometimes referred to as "active judges" to distinguish them from senior judges. Senior judges are retired judges who may continue to hear cases. Senior judges typically maintain a reduced caseload.<sup>39</sup>

## **Department of Justice**

The U.S. Department of Justice (DOJ) is the main agency for federal law enforcement, and has control over all lawsuits both criminal and civil that the United States has an interest in. The Attorney General is the federal government's chief law enforcement officer and the head of the DOJ<sup>40</sup>

There are various agencies to address the different areas the DOJ handles. The Executive Office for Immigration Review (EOIR) is one these agencies.<sup>41</sup> They are responsible for adjudication of immigration cases by conducting immigrant court proceedings, administrative hearings and appellate reviews.<sup>42</sup> However, EOIR does not have the authority to enforce immigration and naturalization laws, nor is it responsible for the adjudication of visa petitions. Those responsibilities reside with the Department of Homeland Security.<sup>43</sup> The EOIR oversees 53 immigration courts in the United States. Over 200 immigration judges work individually in the courts. They decide if the aliens on trial should be deported from the country or granted relief from removal.<sup>44</sup> Currently, there are four immigration judges in El Paso and one court administrator.<sup>45</sup>

## **State Court System**

The State Court System of Texas is a very elaborate system that has many divisions. Each of the divisions has special jurisdictions and only hears certain types of cases. The jurisdictions range from local to statewide. The higher the court is the more severe the crime or lawsuit it hears. Through this analysis each level of the system will be discussed along with the jurisdictions it possesses and possible cases each level may receive.

The Texas Constitution established the state court system and also gave legislature the power to create more courts as they deem necessary. The structure of the state court system became more complex as the population in Texas grew. Today's judicial system is a result of over a century of influential political changes. One of the most significant changes is that lower courts have original jurisdiction and higher courts act as appellate courts. The Court of Criminal Appeals handles all of the appeals on criminal cases and the Texas Supreme Court hears only appeals on civil cases. Before a case reaches any of these two courts, it must be reviewed by the appellate state courts.

Municipal Courts The lowest level of the state court system is the municipal courts. These courts have limited jurisdiction and run at a local level. They take cases including criminal

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<sup>39</sup> (U.S. Courts No Date)

<sup>40</sup> (U.S. Department of Justice 2010)

<sup>41</sup> (U.S. Department of Justice 2010)

<sup>42</sup> (U.S. Department of Justice 2010)

<sup>43</sup> (U.S. Department of Justice 2008)

<sup>44</sup> (U.S. Department of Justice 2005)

<sup>45</sup> (U.S. Department of Justice 2010)

misdemeanors punishable by fine only and have original jurisdiction over criminal cases that have been committed at the municipal level. These courts are present in 915 cities across Texas and have a total of 1,490 judges.<sup>46</sup>

Justice Courts The justice courts of Texas have a lot in common with the municipal courts since both have limited jurisdiction and work at a local level. Texas has 822 justice courthouses and a total of 822 judges; meaning that there is one judge assigned to each courthouse. These courthouses have jurisdiction over civil action cases of no more than \$10,000, small claims and criminal misdemeanors punishable by fine only.<sup>47</sup>

County Courts County courts are unique in the state court system since they are divided into three different types of courts, each holding the same amount of power. The three divisions are the Constitutional County Courts with 254 courts, Statutory County Courts with 231 courts and Statutory Probate County Courts with 18 courts. The Constitutional County Courts have original jurisdiction on civil actions between \$200 and \$10,000 dollars, probate, original jurisdiction over misdemeanors with fines of \$500 or more or jail sentence. This level also handles all juvenile matters.<sup>48</sup>

The Statutory County Courts, otherwise known as the County Courts at Law, have jurisdiction that varies slightly from the constitutional county courts. It hears cases that include all civil, criminal, original appellate actions prescribed by law for the Constitutional County Courts, and all civil cases that go up to \$100,000. Some may also have a higher maximum limit of money. These 231 courts are not divided the same way as the constitutional courts, rather they are placed in 85 counties across Texas.<sup>49</sup>

The last of the county level courthouses are the Statutory Probate Courts. They are located in 10 counties. They have original jurisdiction over all of the counties probate matters, guardianship cases and mental health commitments.<sup>50</sup>

Court of Appeals The courts of appeals operate in such a way that all of the civil and criminal cases they hear must have been appealed by either the district courts or the county courts. There are 14 courts of appeals in the state of Texas and each of them has jurisdiction over a geographical region.<sup>51</sup>

Texas Supreme Court The Supreme Court of Texas has the highest jurisdiction in the state.<sup>52</sup> The Supreme Court has one Supreme Court Justice and eight justices.<sup>53</sup> The Texas Supreme Court only hears civil cases, and the Court of Criminal Appeals hears all of the criminal cases that are appealed by the lower courts.<sup>54</sup>

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<sup>46</sup> (Texas Courts 2010)

<sup>47</sup> (Texas Courts 2010)

<sup>48</sup> (Texas Courts 2010)

<sup>49</sup> (Texas Courts 2010)

<sup>50</sup> (Texas Courts 2010)

<sup>51</sup> (Texas Courts 2010)

<sup>52</sup> (Texas Courts 2010)

<sup>53</sup> (Supreme Court of Texas 2010)

<sup>54</sup> (Texas Courts 2010)

Court of Criminal Appeals The Court of Criminal Appeals has statewide jurisdiction and is the final appellate court in the criminal cases.<sup>55</sup> The jurisdiction of the Court of Criminal Appeals can be both mandatory and discretionary depending on the situation of the case. The Court of Criminal Appeals must listen to all the cases that pertain to the death penalty, aside from that it has the liberty to choose what cases it wants to hear from the Courts of Appeals.<sup>56</sup>

## **El Paso Federal Courts**

The number of pending cases in the federal immigration detention system has reached unsurpassed numbers. These numbers are driven in part by surging backlogs in Texas, especially in San Antonio and El Paso. The United States government's failures to appoint new judges, the growth in illegal immigration and drug trafficking are all responsible for the record number of pending cases.<sup>57</sup> The court dockets of border states are overloaded and courtroom space has become more limited.<sup>58</sup>

### **Current Situation**

The number of pending cases in El Paso has fluctuated since 1998. The number of pending cases in El Paso has risen to an unsurpassed number from 1998 to 2010.<sup>59</sup> Senior U.S. District Judge David Briones was appointed by President Clinton (D) in 1994.<sup>60</sup> Before more U.S. district judges were appointed to El Paso, Judge Briones used to receive about 1,900 criminal cases in one year.<sup>61</sup> The national average of weighted filings is 400.<sup>62</sup> Judge Briones' docket was clearly overloaded. In 2002, U.S. District Judge Philip Martinez was appointed and U.S. District Judges Frank Montalvo and Kathleen Cardone were appointed in 2003. All three judges were appointed by President Bush (R).<sup>63</sup> The addition of three more U.S. district judges eased the burden of Judge Briones.

According to Judge Cardone, the federal courthouse in El Paso receives about 4,000 cases annually. Now that there are four U.S. district judges in El Paso, the annual caseload can be split up into approximately 1,000 cases per judge.<sup>64</sup> Although this is still more than twice the national average, it is easier for the El Paso U.S. district judges to separate the workload.

There were 10,165 cases filed in the Western District of Texas in 2009. Of the total amount, 3,797 were filed in El Paso, making El Paso the city with the highest number of cases in the Western District of Texas. Since 2000, El Paso has always had the most cases in regards to

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<sup>55</sup> (Texas Courts 2010)

<sup>56</sup> (Web Locator No Date)

<sup>57</sup> (Aguilar 2010)

<sup>58</sup> (El Paso Times Staff 2010)

<sup>59</sup> (Transactional Records Access Clearinghouse 2010)

<sup>60</sup> (U.S. Courts n.d.)

<sup>61</sup> (Cordone 2010)

<sup>62</sup> (U.S. Courts No Date)

<sup>63</sup> (U.S. Courts n.d.)

<sup>64</sup> (Cordone 2010)

criminal cases as compared to other cities within the Western District of Texas. Of El Paso's caseload, 3,342 were criminal cases and 455 were civil cases.<sup>65</sup>

El Paso alone has over 3,200 pending immigration cases. El Paso's pending cases have increased 28 percent since the end of November 2009. Texas' total number of pending immigration cases ranked fourth nationally, behind California, New York and Florida. The average detention time for a person awaiting trial, whether a legal or illegal resident, also rose to an average of 443 days.<sup>66</sup> Criminal immigration cases jumped by 27 percent, and the vast majority of charges were illegal reentry by an alien into the United States.<sup>67</sup>

An interview with U.S. District Judge Kathleen Cardone, she stated that she felt that although El Paso judges hear more cases than the national average, El Paso's federal court is very efficient due to the cooperation between all participants in the federal process. She went on to add that backlog was not as big an issue in this community as it is in other areas across the nation. Attorneys for both the prosecution and defense often cooperate with their clients and each other to ensure justice is met in an expedient fashion.<sup>68</sup>

### **Magistrate Judges**

During an interview with U.S. Magistrate Judge Richard P. Mesa, he stated that magistrate judges are considered the first door to the federal court system. Magistrate judges do bond hearings for criminal cases and hear misdemeanors. However, they cannot hear felonies or injunctions.<sup>69</sup> After contacting magistrate judges, courtroom deputies, and clerks of court, Community Scholars was to statistics provided by U.S. Courts Online. The statistics provided did not measure weighted caseloads, rather raw numbers of misdemeanors, petty offenses and miscellaneous, criminal and civil matters. Many anomalies were found in the data; therefore statistics for magistrate judges were not included in this report.

### **District Comparisons**

To get a better understanding of where El Paso stands in regards to its judicial situation, it will be compared to districts within Texas, outside Texas, and outside the fifth circuit. The following tables display the population of each district, the number of district and magistrate judges and the average annual caseload for the judges in that district. They are sorted according to district judges and geographical area.

Within State, Border and Non-Border El Paso is located in the Western District of Texas, which has the second highest number of federal convictions as of March 2010. According to a Transactional Records Access Clearinghouse (TRAC) report, nine out of the ten judges that received the highest number of new criminal cases were located in the Southern and Western Districts of Texas.<sup>70</sup> The table below shows how the judges are distributed across the Western District of Texas and how their average caseloads vary by city. Take into consideration that the

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<sup>65</sup> (Smith 2010)

<sup>66</sup> (Aguilar 2010)

<sup>67</sup> (McLean 2009)

<sup>68</sup> (Cordone 2010)

<sup>69</sup> (Mesa 2010)

<sup>70</sup> (Transactional Records Access Clearinghouse 2010)

caseloads in the table below are not weighted. The following numbers were obtained by adding up the criminal and civil cases for each city and then dividing that total by the number of U.S. district judges in that city.

**Table 1: U.S. District Judges per City in Western District of Texas**

City	Population	U.S. District Judges	U.S. District Senior Judges	Caseload/Judge	Caseload/Sr. Judge
Austin	709,893	2	2	691	89
Del Rio	36,491	1	0	1579	0
El Paso	609,415	3	1	952	942
San Antonio	1,296,682	3	0	593	0

Source: U.S. Census Bureau; United States District Court for the Western District of Texas

The cities within the Western District of Texas have a variation of annual caseloads per judge. Although El Paso has a smaller population than San Antonio and Austin, the judges in El Paso have a significantly higher caseload. One exception is Del Rio. Del Rio has an average annual caseload that is over three times as high as the national average, which is 400 cases a year. This is because Del Rio has only one U.S. district judge. The table shows an average of criminal and civil cases combined. El Paso’s caseload is predominantly made up of immigration cases, which are considered criminal cases. Civil cases are varied and consist of employment litigation, prisoner cases, medical malpractice, business litigation and diversity litigation.<sup>71</sup> It is important to note that senior U.S. district judges are technically retired and are supposed to receive fewer cases than U.S. district judges. However, Senior U.S. District Judge Briones receives almost the same number of cases as the rest of his fellow U.S. district judges in El Paso. The caseloads for cities that are all within the Western District of Texas are shown here, but the following table shows how caseloads differ when comparing all the districts in Texas.

**Table 2: Caseload Comparisons of U.S. District Judges in 2009**

Texas District	Population	Judges	Weighted Caseload/Judge
Eastern	3,350,613	8	594
Northern	6,411,892	12	447
Southern	8,003,482	19	598
Western	5,741,796	13	691

Source: U.S. Census Bureau, U.S. Courts

As the table above shows, the relation between the numbers of federal judges and population per district is specific to the districts of Texas. The higher the population, the more judges there are in each district. It is important to note that this table does not include senior U.S. district judges. The Southern District of Texas has the largest population and has a total of 20 U.S. district judges. In contrast, the Eastern District of Texas has the smallest population and has only eight U.S. district judges. The Western District of Texas lies in between in regards to population and contains 11 district judges. Although the Western District of Texas does not have the largest population, it has the highest weighted caseload of all the districts in Texas. The following sections will analyze districts within the fifth circuit and border states. This analysis will

<sup>71</sup> (Cordone 2010)

demonstrate if districts outside of Texas or even outside the fifth circuit have a similar caseload to El Paso, and if El Paso’s judges are truly overburdened.

Within Circuit, Out of State Districts Louisiana and Mississippi reside in the Fifth Circuit with Texas. However, unlike Texas, they don’t share a border with Mexico.<sup>72</sup> This could contribute the reduced number of immigration cases the federal courts in those states receive. Most of the cases that Louisiana and Mississippi receive are civil cases.<sup>73</sup> The graph below shows the distribution of U.S. district judges in perspective to a district’s population as well as their annual weighted caseload.

**Table 3: Number of U.S. District Judges per District**

District	Population	Judges	Weighted Caseload/Judge
<b>Louisiana</b>			
Eastern	1,601,239	12	651
Middle	786,947	3	393
Western	2,103,890	7	337
<b>Mississippi</b>			
Northern	1,108,671	3	380
Southern	1,826,118	6	495

Sources: U.S. Census Bureau; U.S. District Court

The Eastern District of Louisiana has the most district judges out of the districts shown above, but also has the highest annual weighted caseload with 651. As compared to the Western District of Texas, the population is significantly higher. However, the Western District of Texas’s caseload is also higher. Although there is a small difference of 40 cases as compared to the Eastern District of Louisiana, those extra 40 cases do affect how hearings are conducted and the individual caseload per judge. The Western District of Louisiana has the lowest annual weighted caseload of 337. Their average falls over 60 weighted cases below the national average. Most of the districts shown in the table above fall beneath the national average, except for the Southern District of Mississippi and the Eastern District of Louisiana. However, it should be noted that two previously mentioned districts have prominent cities such as New Orleans and Jackson.

Out of Circuit Border Districts The top convictions in the district courts are mostly immigration related; they make up 54 percent of all federal criminal cases.<sup>74</sup> Districts that share a border or are in close proximity to the U.S./Mexico border have a higher weighted caseload per judge as compared to other districts. Such a close proximity may increase the number of immigration cases. It also shows the number of judges responsible for handling not only those cases, but non-immigration related cases as well. The Central District of California, while not directly on the U.S./Mexico border, has been included to show how immigration cases can move inwards. It should be noted that in the districts mentioned below, with the exception of the Central District of California, have Operation Streamline in effect.<sup>75</sup>

<sup>72</sup> (U.S. Courts No Date)

<sup>73</sup> (U.S. Courts 2010)

<sup>74</sup> (Transactional Records Access Clearinghouse 2010)

<sup>75</sup> (Lydgate 2010)

**Table 4: Number of U.S. District Judges per District**

District	Population	Judges	Weighted Caseload/Judge
Arizona	6,595,778	13	609
New Mexico	2,009,671	7	581
<b>California</b>			
Central	18,402,546	28	622
Southern	3,352,661	13	539

Sources: CA Department of Finance; U.S. Census Bureau; U.S. District Court

None of the districts listed above fall below the national average. In fact, they all exceed it. Even though the Central District of California has the most U.S. district judges, their average weighted caseload is still below that of the Western District of Texas. The Southern District of California has the lowest weighted caseload but is still significantly over the national average.

In an interview with Josiah Heyman, Ph.D., head of the Sociology and Anthropology Department at the University of Texas at El Paso, he explained how the actual process of the federal system has a large impact on high federal caseloads. Detainees are physically moved around to different detention facilities, which can be time consuming. Although the system does require plenty of physical room to hold people, it is mostly the lack of judges and the due process that is creating the large amount of caseloads.<sup>76</sup> Dr. Heyman also spoke about Operation Streamline's contribution to high caseloads.

### **Operation Streamline**

Operation Streamline was implemented by the Department of Homeland Security (DHS) in 2005 with the primary purpose of setting up the border for illegal entry into the Federal Criminal System. Various segments of the border, called zero tolerance or no pass zones, are specifically set up so that anybody caught trespassing there illegally will be charged with a federal misdemeanor.<sup>77</sup> Although the DHS believes that Operation Streamline is deterring immigrants from coming into the United States illegally, a report published by the Berkley Law School proves otherwise. The report explained that the decline in immigration from Mexico into the United States was due to the economy and unemployment rate.<sup>78</sup>

The majority of the people detained under Operation Streamline are charged with low offenses, such as misdemeanors for improper entry. Resources of the federal system are being used up for the immigration prosecutions, while attention is being taken away from more serious crimes such as drug smuggling and human trafficking. Operation Streamline also impacts other types of cases. U.S. district judges' criminal caseloads are higher than they should be, so their civil dockets are reduced by transferring them to U.S. magistrate judges.<sup>79</sup>

All unauthorized immigrants coming into the United States are prosecuted under Operation Streamline with criminal charges, even if the illegal entry is a first time offense. Since Operation Streamline is implemented in El Paso, it brings a lot of the immigration cases to the

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<sup>76</sup> (Heyman 2010)

<sup>77</sup> (Heyman 2010)

<sup>78</sup> (Lydgate 2010)

<sup>79</sup> (Lydgate 2010)

federal judges here. Even if illegal aliens are caught somewhere other than El Paso, they are very likely to be brought here to the El Paso Immigration Court for detainee hearings. Although having a federal facility in the city means that jobs are created, it also brings multiple cases to overburden El Paso judges. Federal Courts are expensive because they require a prosecutor, a private or public defender, a judge, U.S. Marshalls and physical room.<sup>80</sup> These expenses make Operation Streamline a burden on taxpayers since there must be funding to pay for all agents and agencies that run the program.<sup>81</sup> To compensate for the influx of immigration cases, many proposals have been made. Some of these proposals include using faster methods in court and reforming the immigration system.

### **Alternate Dispute Resolution**

As court dockets have increased nationwide, more civil cases have begun to be handled through alternative dispute resolution (ADR). The ADR is an effective ways of resolving a case while avoiding the time consuming and costly process of going to court. ADR includes mediation and arbitration between both parties and assistance from “impartial neutrals” that offer expertise in a particular area. Mediation is the process of two parties coming to a settlement they both agree on with a neutral third party mediating between them. However, the third party never explicitly prescribes what that agreement should be.<sup>82</sup> Arbitration is an informal legal proceeding held before a neutral court official, called an arbitrator, to which both sides present their evidence. Afterwards, the arbitrator makes a decision based on the evidence presented.<sup>83</sup>

On the criminal side of the law, a court-alternative called plea bargaining occurs when a defendant comes to an agreement with the prosecutor. Typically, the agreement consists of the defendant waiving their rights that protect them from self-incrimination and guarantee a fair trial. In return, the prosecutor agrees to reduce the prison sentence. These may be used in conjunction with prosecutors’ attempts to strengthen a case against another individual.<sup>84</sup>

## **El Paso State Courts**

Community Scholars will be analyzing several of the caseloads of judges in the state of Texas. This analysis will also include the most typical cases judges hear and the number of cases that each judge hears. A comparison of average caseloads per judge throughout all levels of the state court system will be provided to determine the current situation of El Paso. Then, once an average of caseloads per judge can be determined, the data will be compared to the cases judges hear in El Paso to determine whether the judges are actually overburdened. This analysis will give insight to see if the judicial systems in cities chosen might be facing overwhelming caseloads. All of the following tables include associate judges. The eight cities chosen for this comparison are:

- Austin
- Dallas

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<sup>80</sup> (Heyman 2010)

<sup>81</sup> (Lydgate 2010)

<sup>82</sup> (American Arbitration Association No Date)

<sup>83</sup> (North Carolina Court System No Date)

<sup>84</sup> (Lynch 2003)

- Del Rio
- El Paso
- Houston
- Laredo
- McAllen
- San Antonio

These cities belong to Travis, Dallas, Val Verde, El Paso, Harris, Webb, Hidalgo and Bexar counties respectively. The seven cities were chosen based on the fact that they are located within the state of Texas. Some of these cities and counties share a border with Mexico, just like El Paso, and some have populations similar to that of El Paso.

### **Municipal Cases**

Municipal courts hear cases on the two basic types of classification: Traffic and Non-Traffic. There are two sub divisions for the category Traffic; Non-Parking and Parking. Non-Parking offences deal with all crimes that do not involve the improper standing of a vehicle. Listed below are examples of cases that fall under Non-Parking.<sup>85</sup>

- Exceeding the Speed Limit
- Failure to Stop at a Traffic Control Device
- Expired Driver’s License<sup>86</sup>

Cases that are heard under Non-Traffic fall under two categories. The two categories under Non-Traffic misdemeanors are state law crimes and violation of city ordinances. Violations are found in the Texas Penal Code and other state laws.<sup>87</sup> Examples of state law crimes are:

- Public Intoxication
- Disorderly Conduct
- Simple Assault<sup>88</sup>

Now that the specific cases to the municipal level have been addressed, the following tables will demonstrate statistics of El Paso County versus the seven other selected cities in Texas. It is important to mention that at the municipal level is the only part of this analysis in which cities are being examined instead of counties. Furthermore, only the selected municipality’s statistics will be analyzed in this section, which may include omission of other municipalities within a greater area. For example, only judges that preside in the City of San Antonio will be analyzed, whereas judges with jurisdiction in Alamo Heights, a Bexar County suburb, will not be included.

The following table will display the amount of cases that are both filed and disposed of in the comparison municipalities.

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<sup>85</sup> (Texas Courts 2009)

<sup>86</sup> (Texas Courts 2010)

<sup>87</sup> (Texas Courts 2009)

<sup>88</sup> (Texas Courts 2010)

**Table 5: Municipal Cases Filed/Disposed**

City	Cases Filed				Cases Disposed			
	Traffic		Non Traffic		Traffic		Non Traffic	
	Non Parking	Parking	State Law	City Ord.	Non Parking	Parking	State Law	City Ord.
Austin	261,723	137,172	17,645	12,665	211,870	136,510	16,610	9,757
Dallas	282,970	139	59,715	46,251	250,924	139	34,854	26,392
Del Rio	2,925	44	2,217	536	2,600	42	1,324	410
El Paso	268,682	72,854	3,675	16,250	270,332	95,085	3,976	17,518
Houston	910,788	217,604	211,200	71,305	827,626	304,032	155,871	57,290
Laredo	66,191	362	1,774	4,241	54,649	231	1,751	2,752
McAllen	35,034	312	6,003	1,243	36,379	396	8,399	1,511
San Antonio	261,050	78,494	19,613	21,535	209,837	63,064	16,218	14,255

Source: Texas Courts Online: Municipal Courts Summary of Reported Activity

These courts divide the cases filed into two main categories; traffic and non-traffic. These two categories are then divided into four sub-categories which are parking, non-parking (under traffic), and state law and city ordinance (non-traffic). Dallas has 282,970 reported cases of non-parking and 59,715 cases of state law. Houston has substantially more non-parking violations totaling 910,788. In El Paso, the highest number of cases reported is also non-parking violations with 268,682 cases. The following table will display the number of judges each municipality has, as well as the average caseload per judge; the latter statistic is calculated by dividing the total cases filed in an area by the number of judges and is a way to analyze judicial burden.

**Table 6: City Judges & Average Caseload**

City	Judges	Average Caseload/Judge
Austin	25	15,329
Dallas	25	15,563
Del Rio	1	5,722
El Paso	14	25,819
Houston	64	22,045
Laredo	3	24,189
McAllen	4	10,648
San Antonio	15	25,379

Source: Texas Courts Online; the Texas Office of Court Administration Directory

The table shows that El Paso has the highest judicial burden of all the comparison cities. While Houston had both higher number of cases filed and judges at the city's disposal, the municipality still had an average burden lower than that of El Paso. Both other border cities, Del Rio and McAllen, had substantially lower caseloads per judge than the Sun City. It is important to keep in mind that these values are averages and may not be exact; the actual value may vary with each individual judge.

## Justice Cases

Justice courts run at a local level and have jurisdictions that do not differentiate much from the municipal courts.<sup>89</sup> Now that the municipal courts have been analyzed the report will turn its attention towards the justice judges. Similar to the municipal level there are only specific cases that the justice courts hear. Three of the most common misdemeanors that are heard in the Justice Courts include:

- Speeding
- Stop sign
- Red light<sup>90</sup>

On average, the justice courts have the least number of judges, yet they still handle a substantial amount of cases in the judicial system of Texas. The following table will show the number of cases that the Justice Courts heard for the 2009 fiscal year.

**Table 7: County Justice Cases Filed/Disposed**

County	Cases Files					Cases Disposed				
	Traffic	Non Traffic	Small Claims	Forcible Entry	Other Suits	Traffic	Non Traffic	Small Claims	Forcible Entry	Other Suits
Bexar	96,946	45,557	1,864	13,306	12,345	84,523	41,105	2,116	11,915	13,440
Dallas	310,548	23,571	6,683	35,380	19,431	243,588	18,467	5,791	34,919	16,619
El Paso	47,492	28,748	1,110	2,510	4,004	41,427	21,112	632	1,617	2,819
Harris	355,061	87,422	8,716	55,936	31,230	371,641	95,598	7,355	53,773	31,094
Hidalgo	54,724	15,150	1,355	2,117	4,715	43,004	10,463	517	966	2,096
Travis	70,815	21,231	2,107	7,710	7,884	62,316	19,860	2,538	8,665	7,538
Val Verde	4,111	1,883	207	77	752	3,321	746	21	14	50
Webb	25,024	1,846	1,022	740	2,086	18,909	581	777	623	962

Source: Texas Courts Online: Justice Courts Summary of Reported Activity

Harris County, home to the City of Houston, had the highest cases filed at 538,365. Dallas County, the second largest county in the state, followed at 395,613 cases. El Paso County had 83,864 cases filed, ranking in the middle of all the comparison counties. Val Verde County had the lowest amount of cases filed of all the comparison counties with 7,030 cases. In order to explore judicial burden, the following table will show the number of justice judges that are present in each county as well as the average caseload per judge. As with municipal judges, the average is calculated by taking the total cases and dividing it by the judges each county has. This estimate helps to understand the average burden any given area is experiencing.

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<sup>89</sup> (Texas Courts 2010)

<sup>90</sup> (Texas Courts 2010)

**Table 8: County Justice Judges & Average Caseload**

<b>County</b>	<b>Judges</b>	<b>Average Caseload/Judge</b>
Bexar	6	28,336
Dallas	5	79,123
El Paso	6	13,977
Harris	11	48,942
Hidalgo	2	39,031
Travis	5	21,949
Val Verde	4	1,758
Webb	5	6,144

Source: Texas Courts Online; Texas Office of Court Administration Directory

El Paso had the third-lowest burden per judge of all the counties being compared, with an estimated 13,977 cases per judge. Dallas County has the highest judicial burden per judge with a little over 79,000 cases being assigned to each judge. Fellow border county Val Verde had the lowest average caseload per judge with a value of 1,758. As the number of judges increase in a given area, the numbers of cases usually do as well.

### **County Level**

The following section displays analysis for county courts in an attempt to analyze the level of burden currently being experienced. Community Scholars identified six factors of judicial burden in order to determine if the judges are overwhelmed. These six factors are:

- Number of judges
- Backlogs
- Assigned cases
- Efficiency
- Yearly added cases
- Clearance rates

In order to develop a basis for comparison for El Paso county court judges, the amount of judges the county level has will be examined. Cases per judge will be found on average in order to better compare El Paso County to the other counties. Since this is in fact an average per judge, some judges may have heard a slightly different number of cases than depicted in the table. The number of judges for the county level is important in many ways. The number of judges can directly affect clearance rates, backlogs, assigned cases and judicial burden. This is done in a domino effect. For example high caseloads and low judges lead to low clearance rates. Low clearance rates lead to increase of backlog. Increase of backlog means more assigned cases the next year. More cases mean more judicial burden and then the pattern continues until judges are able to increase clearance rates.

Community Scholars will analyze two types of caseloads, assigned cases and yearly added cases per judges. Both types of cases will be compared against disposed cases. Yearly added cases refers to the number of cases added for a specific year and assigned cases take into account the cases pending from the previous year. This is the key difference between the two types of caseloads. It is important to make this observation to see how the increasing backlog

affects judges. To get the amount of assigned cases for a judge, pending cases is combined with cases added in the year. Then, the total was divided by the amount of judges a county has. This process was done on average just as other comparisons were done.

An efficiency rate was found by taking the number of disposed cases and dividing that by the number of assigned cases a judge had. Efficiency and clearance rates are two different things. The difference is that efficiency looks at the whole docket while clearance only refers to added cases. It is important to keep in mind efficiency goes with assigned cases and clearance rates go with cases a judge was given in a year.

Clearance rates are how effectively judges are clearing cases that are added to their docket in a specific year. To get a clearance rate, the amount of disposed cases is divided by the amount of cases added to the docket. This is important to understand since a judge can match or surpass cases added to a docket when disposing them. The clearance rate for judges directly affects backlog cases at the end of each year. In the event this happens, the backlog at the beginning of the year will not change. This means the judges were able to effectively complete their cases added that year but the amount of cases at the backlog remained the same. The pending cases at the beginning and end of the fiscal year were analyzed to quantify the increase or decrease in backlogs. The table below demonstrates the number of county judges at law that are in the selected county.

**Table 9: County Courts at Law Judges & Weighted Caseload**

County	Judges	Weighted Caseload/Judge
Bexar	19	2,980
Dallas	22	3,856
El Paso	14	1,101
Harris	28	3,639
Hidalgo	7	2,632
Travis	11	4,404
Val Verde	2	689
Webb	3	1,768

Source: Texas Courts Online; the Texas Office of Court Administration Directory

When the table was studied, Community Scholars found that the county with the least amount of judges was Val Verde County with only two judges. El Paso County is in the bottom half with 14 judges and Harris County has the highest number of judges with 28. Judicial burden is the key player for number of judges a county has. Many factors fall under judicial burden such as population in relation to caseloads. Population matters because a highly populated county may have a high number of cases filed. To analyze a judge’s burden, one must look at caseloads for a judge. The following table will compare assigned cases of county judges. Assigned cases for each county judge will be analyzed in this section.

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**Table 10: Caseload Efficiency of County Courts at Law**

County	Assigned	Disposed	Efficiency
Bexar	6,910	2,941	43%
Dallas	7,411	3,546	48%
El Paso	3,112	1,403	45%
Harris	5,287	3,537	67%
Hidalgo	6,952	2,719	39%
Travis	16,326	4,283	26%
Val Verde	1,833	767	42%
Webb	5,600	1,821	33%

Source: Texas Courts Online; County - Level Courts: Case Activity by County September 1, 2008 to August 31, 2009

In analyzing the chart, none of the counties were close to balancing their assigned cases to the amount of cases they disposed. In fact, only Harris County was able to dispose half of the cases it was assigned while all other counties did not. The county with the lowest amount cleared was Travis County. They were barely able to clear one-fourth of their assigned caseload. All counties in Texas are overburdened with their assigned caseloads because clearly they cannot handle such large amount of cases. However, to more specifically see if a judge is overwhelmed, one must look at the amount of cases added to the docket in a certain year. Since assigned cases takes into account backlog, the high amount of assigned cases could be due to a continued trend of increasing backlog. Community Scholars will analyze the cases added to the docket in the text below. Clearance rates are what judge's work for during their year and help one to understand if backlog increased or decreased, noted by the "+" and "-" symbols, respectively.

**Table 11: Caseload Clearance of County Courts at Law**

County	Yearly Added	Disposed	Clearance Rates	Backlog
Bexar	2,980	2,941	99%	+
Dallas	3,856	3,546	92%	+
El Paso	1,101	1,403	127%	-
Harris	3,639	3,537	97%	-
Hidalgo	2,632	2,719	103%	-
Travis	4,404	4,283	97%	+
Val Verde	689	767	111%	-
Webb	1,768	1,821	103%	-

Source: Texas Courts Online; County Level Courts: Case Activity by County

Unlike the data in Table X, a closer look into cases per judge shows a different aspect of the county level judge's burden. All counties had high clearance rates; half of which passed 100 percent. El Paso County had the highest clearance rate of 127 percent. The lowest was Dallas County which had 92 percent. High clearance rates are important because they reduce backlog for the next year. For backlog to reduce, clearance rates must pass 100 percent.

High clearance rates are important because if judges can produce clearance rates higher than 100 percent, it will provide a steady decrease in judge's backlog workload. This will, if continued, eventually make a judge's backlog equal zero. The significance of this is that reducing the backlog to zero will help the workload of judges by giving the judge's less burden each year. This will also help the people being tried by allowing judges to spend more time on an

individual case. For example, if a judge has many cases he/she needs to hear, he/she may easily dismiss a serious offense in order to begin to clear his/her docket.

### District Courts

Now that the situation for the county level has been analyzed, Community Scholars will now analyze the district level. The same six factors that were looked at in the county level will be looked at for the district level. These six factors are:

- Number of judges
- Backlogs
- Assigned cases
- Efficiency
- Yearly added cases
- Clearance rates

The number of judges each county has for the district court level is shown below. The table includes number of associate judges within each county.

**Table 12: District Court Judges & Weighted Caseload**

County	Judges	Weighted Caseload/Judge
Bexar	30	2,235
Dallas	48	1,666
El Paso	22	1,422
Harris	70	2,359
Hidalgo	13	1,701
Travis	25	1,588
Val Verde	2	632
Webb	4	1,341

Source: Texas Courts Online; Texas Office of Court Administration Directory

In the table above, one can see that Val Verde County has the least amount of judges, four. El Paso County has the middle number of judges containing 22 and Harris County has the highest number of judges with 70. This pattern is the same with the table above in the county courts where El Paso County is in the middle of the judge population. It is important to take note of this because this position makes for an easier comparison between counties with more judges and counties with fewer judges when comparing with El Paso County. As seen on the county level courts, areas with higher populations have an increased number of cases filed in the area.

The following table displays caseloads for each district judge. The same methodology used to find cases per county judge will be used to find caseloads for each district judge. The table that follows will demonstrate assigned cases versus disposed cases. The efficiency of the judges will also be included in the table.

**Table 13: Caseload Clearance of District Courts**

County	Assigned	Disposed	Efficiency
Bexar	3,960	2,102	53%
Dallas	3,334	1,886	57%
El Paso	3,792	1,347	36%
Harris	4,183	2,262	54%
Hidalgo	5,010	1,448	29%
Travis	3,885	1,575	41%
Val Verde	1,506	588	39%
Webb	2,653	1,270	48%

Source: District Courts: Case Activity by County September 1, 2008 to August 31, 2009

In all counties shown in the table, judges were not able to match the number of assigned cases with the number of cases they were able to dispose. In fact, most judges did not complete half of their assigned cases. El Paso County is no exception. El Paso County judges were only able to dispose a third of their cases. It is important to note that although El Paso County district judges had the fourth lowest number of cases per judge; it was only 400 cases lower than Bexar and Harris County. These numbers show that while burden is higher in this area, population is not. As this chart shows, backlog is a great burden to judges all over Texas. The table below shows El Paso's cases per judge compared to the other counties. Also, the clearance rates will be analyzed to analyze if backlog increased or decreased, noted by the "+" and "-" symbols, respectively.

**Table 14: Caseload Clearance of District Courts**

County	Yearly Added	Disposed	Clearance Rates	Backlog
Bexar	2,235	2,102	94%	+
Dallas	1,666	1,886	113%	-
El Paso	1,422	1,347	95%	+
Harris	2,359	2,262	96%	+
Hidalgo	1,701	1,448	85%	+
Travis	1,588	1,575	99%	+
Val Verde	632	588	93%	+
Webb	1,341	1,270	95%	+

Source: District Courts: Case Activity by County September 1, 2008 to August 31, 2009

As the table above displays, only Dallas County has a clearance rate above 100 percent. This means that Dallas will be the sole county to decrease backlog for the coming year, while all other district courts will add to their backlog in the coming year. With the exception of border county, Hidalgo, all courts had rates at least in the 90 percentile, meaning that while backlog additions will occur, the amount may be relatively small. For example, El Paso courts will have an approximate 100 additional cases for the next year, and Val Verde will add 44. The issue develops further because if judges are unable to handle a large amount of assigned cases each year, backlog will only add to the matter and make matters worse.

### Judicial Reapportionment

The reapportionment process allows Texas courts to reduce judicial burden and promote the efficient administration of government. The Legislature achieves this by revising the judicial

districts of the state.<sup>91</sup> It could do so during any legislative session.<sup>92</sup> Legislature must analyze judicial burden for the state courts every 10 years based on the Federal Census.<sup>93</sup> This is done in order to account for the fluctuation of the population throughout the decade. If new district courts are deemed necessary, the state pays part of the judge's salary, but local property taxpayers fund the rest.<sup>94</sup> If, after the Census, the Legislature fails to take action, the responsibility then falls under the Judicial Districts Board (JDB). If the JDB fails to review the situation, the reapportionment process then falls under the power of the Legislative Redistricting Board.<sup>95</sup>

This process is different if municipalities and counties want new municipal, justice or county courts at law. The main difference is that counties and municipalities have to assess judicial burden, finance the construction of the courts and pay the salaries of the judges and the staff.<sup>96</sup> To build new county courts at law, the County Commissioner's Court must first decide if new courts are needed. If it is decided that courts are needed, it must acquire permission from legislature to create a new court. If the County Commissioner's Court receives this permission, it is required to do everything needed to run the court. Running the court means staffing the court and getting the equipment needed. It must also pay the salaries and benefits for the employees. This is completely funded through local property taxes.<sup>97</sup>

## Discussion

The following section offers the conclusions and recommendations Community Scholars has reached and offers to the judicial and legislative community.

### Conclusions

It has become apparent that the federal courts are heavily overloaded. There are too many cases for both U.S. magistrate and U.S. district judges for them to successfully clear their annual dockets and not have any cases backlogged for the next fiscal year. A judge hears an average of 450 weighted cases. Not only does the Western District of Texas exceed this average; it also has the highest annual weighted caseload out of all the districts researched. Within the Western District of Texas itself, El Paso's U.S. district judges have a much higher caseload than the judges in the other cities. One exception is Del Rio, which has only one U.S. district judge to hear all of the cases in that city.

The pattern of exceeding the national average is not exclusive to the fifth circuit or to Texas. All of the U.S. district judges in districts that border or are in close proximity to Mexico have weighted caseloads much higher than 450. The only exception is the Northern District of Texas, which falls three cases below average. Districts that are not close to the Mexico border have a tendency to have weighted caseloads that fall beneath the average. The Eastern District of

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<sup>91</sup> (Texas Legislative Council 2010)

<sup>92</sup> (Pickett 2010)

<sup>93</sup> (Texas Legislative Council 2010)

<sup>94</sup> (Escobar 2010)

<sup>95</sup> (Texas Legislative Council 2010)

<sup>96</sup> (Pickett 2010)

<sup>97</sup> (Escobar 2010)

Louisiana and the Southern District of Mississippi are the two districts that are exempt from the findings.

High caseloads impede a judge from focusing on the more austere crimes such as drug and human trafficking. Judges have to focus on immigration cases, which make up a majority of the criminal cases in the southern United States border. Non border districts hear mostly civil cases that are composed of many different complaints. High caseloads can also affect due process, which can violate Constitutional rights.

Magistrate judges and district judges are not distributed by population. Some districts however do have some sort of correlation. Increasing the number of magistrate judges will not help the caseload of district judges since the magistrate judges handle misdemeanors in criminal cases and the district judges handle the felonies. As discussed previously, U.S. district judges are appointed by the president of the United States. Lack of judicial nominations by the president is contributing to the slow process of appointing judges. These judicial vacancies play a part in the high caseloads of judges. However, electing judges is not necessarily more efficient than appointing them. There is no way to speed up the appointment process to get more judges in court. The President has other obligations that outrank district court rooms.

Operation Streamline is a problem of overburdened courts in the Southern courts of the United States. All the immigration cases that are pouring in are bottlenecking the system. There are too many people being detained and it is not taken into consideration how they will all be processed through the judicial system. Many magistrate judges conduct en masse hearings. The number of people pleading guilty at once ranges from two to over 80 people, depending on the judge and how he or she conducts their court. This overwhelms the federal court system which in turn can affect and overburden the state court system.

Through the research conducted, it was decided that El Paso's state courts are not overburdened. Out of the four levels analyzed, El Paso was always one of the lowest ranked when it came to caseloads per judge, with the exception of the municipal level. At the municipal level the number of judges was relatively low compared to the other cities that have a larger or similar population to that of El Paso. Due to this, the average caseload of an El Paso judge at the municipal level is much higher than any other judge in the cities being examined. Throughout the collected data we found Harris County continuously had the highest amount of cases and the most judges. Typically after Harris County, Bexar and Dallas County would follow with the highest average caseloads per judge on all levels.

In the justice court level, the average caseloads of El Paso judges are the third lowest of the counties being examined. At the county level, El Paso has the second lowest average which is an abnormality since both Hidalgo County's and Val Verde County's caseloads always exceeded El Paso's. However, on the Justice level, Val Verde County had a lower caseload average than El Paso. In the District level El Paso is also the third lowest with average caseloads. As compared to other counties, El Paso does not have nearly as high a judicial burden.

Backlog is the reason a county and district judge has high assigned caseloads. High assigned caseloads overwhelm judges by adding a large number of cases to a judge's docket. Judges are being overwhelmed because their clearance rates are creating a domino effect. If the

judge does not clear his large caseload, then his clearance rate will be low. If his clearance rate is low, then the amount of backlog the judge will have for next year will increase. Since the judge was not able to handle his caseload that year, if more judges are not added, the pattern will continue. Over time, this trend will have increased the amount of assigned cases a judge hears because he could not dispose of cases effectively

Community Scholars found that El Paso County courts not only had a decrease in cases in the 2008-2009 year, it also had the second lowest number of cases per judge as compared to the other counties. The only exception was Val Verde County; however El Paso County has a higher population than Val Verde. This data shows that El Paso County judges are not overwhelmed at the County Court level compared to other judges.

## **Recommendations**

There is no possible way of increasing the rate at which judges are appointed, so the rate at which judges clear their dockets must be increased. For civil cases especially, Alternative Dispute Resolutions (ADRs) are possible, effective and cut down hearing time. ADRs include court mediation and court arbitration. However, if a compromise can't be reached, then the case has to go through a trial by jury. Both mediation and arbitration are faster, more cost effective ways of settling a legal feud.

Plea bargaining can be utilized with criminal cases. Plea bargaining is when the defendant pleads guilty in hopes of receiving a lesser sentence and upholds a deal with a U.S. attorney. This prevents having to go through the time consuming process of a trial and the costs that come with it.

Reforming immigration laws can also significantly help the judicial situation. Limiting Operation Streamline can prevent money from being used to prosecute undocumented immigrants with federal misdemeanors. Money can instead be used for trying the undocumented immigrants with serious felonies. The resources could also be utilized for hiring more court officials such as court interpreters, U.S marshals and other necessary personnel.

In an interview with the U.S. District Judge Kathleen Cardone, it was suggested that increasing the levels of cooperation in a courtroom, courthouse or federal court property in general will make the trial process more efficient. This may not fill judicial vacancies, but it will help with backlog and hopefully make a significant dent in pending cases.

Adding more judges to handle the caseloads would reduce the amount of average cases a judge hears. With an increase of judges, cases will be able to get disposed more efficiently and alleviate the burden that the system is facing. Adding judges will both clear cases and reduce the backlog of the level that they are hired to work under. If more judges are added, the amount of cases distributed among the judges will become less and clearance rates will go up. With the higher clearance rates, backlog will drop. Depending on how many judges are added will directly affect the speed of the decline of backlog. Even if a new judge clears a smaller amount of cases than others, the new judges will still take some cases away from existing judges.

There should be a public database so that people can look at caseloads of judges without a fee. Records of the caseloads of judges should be available so that people will be informed of

the judicial situation. More informed citizens will be more likely to participate in their community and assist in coming up with solutions.

## Works Cited

- Aguilar, Julian. "Backlog Surges on Detained Immigrants." *Texas Tribune*, May 28, 2010.
- American Arbitration Association. "Alternative Dispute Resolutions Basics FAQs." *American Arbitration Association Website*. No Date. <http://www.adr.org/si.asp?id=4575> (accessed June 2010).
- American Bar Association. *Answers to Questions About the Attorney-Client Privilege*. No Date. <http://www.abanet.org/media/issues/acprivilegeqa.html> (accessed June 2010).
- Cordone, Kathleen, interview by Dallas Walker and Siria Cruz. *U.S. District Judge* (June 22, 2010).
- El Paso Times Staff. "Immigrant Cases: Courtroom Dockets Overloaded." *El Paso Times*, May 25, 2010.
- Escobar, Veronica, interview by Juan Calvo. *El Paso County Commissioner* (July 12, 2010).
- Federal Judicial Center. "Federal Courts & What They Do." *Federal Judicial Center Website*. 2006. [http://www.fjc.gov/public/pdf.nsf/lookup/FCtsWh06.pdf/\\$file/FCtsWh06.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/FCtsWh06.pdf/$file/FCtsWh06.pdf) (accessed June 2010).
- . *History of Federal Judiciary: Magistrate Judges*. No Date. [http://www.fjc.gov/history/home.nsf/page/judges\\_magistrate.html](http://www.fjc.gov/history/home.nsf/page/judges_magistrate.html) (accessed June 2010).
- . "History of the Federal Judiciary." *Federal Judicial Center Website*. No Date. [http://www.fjc.gov/history/home.nsf/page/admin\\_02.html](http://www.fjc.gov/history/home.nsf/page/admin_02.html) (accessed June 2010).
- . "The U.S. Legal System: A Short Description." *Federal Judicial Center Website*. No Date. [http://www.fjc.gov/public/pdf.nsf/lookup/U.S.\\_Legal\\_System\\_English07.pdf/\\$file/U.S.\\_Legal\\_System\\_English07.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/U.S._Legal_System_English07.pdf/$file/U.S._Legal_System_English07.pdf) (accessed June 2010).
- Felony Guide. *Most Common Felony Crimes*. 2009. <http://felonyguide.com/List-of-felony-crimes.php> (accessed June 2010).
- Georgia Institute of Technology. *Federal Court Concepts*. 2003. <http://www.catea.gatech.edu/grade/legal/structure.html> (accessed June 2010).
- Heyman, Josiah, interview by Siria Cruz. *Chair, UTEP Department of Sociology and Anthropology* (June 10, 2010).
- Lydgate, Joanna. "Assembly-Line Justice: A Review of Operation Streamline." 2010.

Lynch, Tomithy. "The Case Against Plea Bargaining." *The Cato Institute*. 2003. <http://www.cato.org/pubs/regulation/regv26n3/v26n3-7.pdf> (accessed June 2010).

McLean, Pamela. *Federal Court Fillings Up overall Last Year, but Down in Some Areas*. March 18, 2009. <http://www.law.com/jsp/law/LawArticleFriendly.jsp?id=1202429165354> (accessed June 2010).

Mesa, Richard, interview by Dallas Walter and Siria Cruz. *U.S. Magistrate Judge* (June 17, 2010).

North Carolina Court System. *Court Ordered Arbitration*. No Date. <http://www.nccourts.org/Citizens/Cprograms/Arbitration/Default.asp> (accessed June 2010).

Pickett, Joe, interview by Juan Calvo and Zamora Jorge. *Texas State Representative* (June 21, 2010).

Smith, Walter S. *Western District of Texas 2009 Calendar Year Statistics*. Mary Jane Moczygemba, 2010.

Supreme Court of Texas. "Supreme Court of Texas." *Supreme Court of Texas Website*. 2010. [www.supreme.courts.state.tx.us](http://www.supreme.courts.state.tx.us) (accessed June 2010).

Texas Courts. "Court Structure of Texas." *Texas Courts Online*. 2010. <http://www.courts.state.tx.us/> (accessed June 2010).

—. "Justice of the Peace Courts Explanation of Case Categories." *Texas Courts Online*. 2010. <http://www.courts.state.tx.us/pubs/ar2006/justice/1-justice-court-case-types.pdf> (accessed June 2010).

—. "Municipal Courts Explanation Of Case Categories." *Texas Courts Online*. 2010. <http://www.courts.state.tx.us/pubs/ar2008/mn/1-mn-court-case-types.pdf> (accessed June 2010).

—. "Municipal Courts Summary of Reported Activity from September 1, 2008 to August 31, 2009." *Texas Courts Online*. 2009. <http://www.courts.state.tx.us/pubs/AR2009/mn/3-mn-summary-by-city-fy09.pdf> (accessed June 2010).

Texas Legislative Council. *Judicial District Requirements*. 2010. [http://www.tlc.state.tx.us/redist/requirements\\_judicial.html](http://www.tlc.state.tx.us/redist/requirements_judicial.html) (accessed June 2010).

The Law Office of E.G. Morris. *Misdemeanor Offense Levels in the State of Texas*. 2008. <http://www.austintexascriminaldefense.com/misdemeanors.html> (accessed June 2010).

Transactional Records Access Clearinghouse. *Backlog in Immigration Cases Continues to Climb*. TRAC, 2010.

—. "Convictions for March 2010." *TRAC Website*. 2010. <http://trac.syr.edu/tracreports/bulletins/overall/monthlymar10/gui/> (accessed June 2010).

—. *Immigration Caseload Tool*. 2010.  
[http://trac.syr.edu/phptools/immigration/court\\_backlog/](http://trac.syr.edu/phptools/immigration/court_backlog/) (accessed June 2010).

U.S. Courts. *2009 Annual Report of the Director: Judicial Business of the United States Courts*. Washington D.C.: U.S Government Printing Office, 2010.

—. *Civil Cases*. No Date.  
<http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/HowCourtsWork/CivilCases.aspx> (accessed July 2010).

—. *Court Locator*. No Date. [http://www.uscourts.gov/court\\_locator.aspx](http://www.uscourts.gov/court_locator.aspx) (accessed June 2010).

—. *Criminal Cases*. No date.  
<http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/HowCourtsWork/CriminalCases.aspx> (accessed July 2010).

—. *District Courts*. No Date.  
<http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/DistrictCourts.aspx> (accessed June 2010).

—. *Federal Courts' Structure*. No Date.  
<http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/FederalCourtsStructure.aspx> (accessed June 2010).

—. *Frequently Asked Questions: Federal Judges*. No Date.  
<http://www.uscourts.gov/Common/FAQS.aspx> (accessed June 2010).

—. *Glossary*. No Date. <http://www.uscourts.gov/Common/Glossary.aspx> (accessed July 2010).

—. *Judges' Contact and Biography Information*.  
<http://www.txwd.uscourts.gov/general/judges/biographyview.asp?bID=3> (accessed June 2010).

—. *Jurisdiction of the Federal Court*. No Date.  
<http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/Jurisdiction.aspx> (accessed June 2010).

—. *Supreme Court of the United States*. No Date.  
<http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/SupremeCourt.aspx> (accessed June 2010).

—. *Understanding Federal and State Courts*. 2010.  
<http://www.uscourts.gov/EducationalResources/FederalCourtBasics/CourtStructure/UnderstandingFederalAndStateCourts.aspx> (accessed June 2010).

U.S. Department of Justice. *About DOJ*. 2010.  
<http://www.justice.gov/02organizations/about.html> (accessed June 2010).

—. *Department of Justice Agencies*. 2010. <http://www.justice.gov/agencies/index-org.html> (accessed June 2010).

—. *Executive Office for Immigration Review*. 2010. <http://www.justice.gov/eoir/responsibilities.htm> (accessed June 2010).

—. "Executive Office for Immigration Review." *U.S. Department of Justice Website*. 2010. <http://www.justice.gov/eoir/sibpages/ICadr.htm> (accessed June 2010).

—. "Immigration Court Practice Manual." *U.S. Department of Justice Website*. 2008. <http://www.justice.gov/eoir/vll/OCIJPracManual/Chap%201.pdf> (accessed June 2010).

—. "Immigration Judges Take Oath in El Paso." *U.S. Department of Justice Website*. September 16, 2005. <http://www.justice.gov/eoir/press/05/HoughRoepkeElPaso.htm> (accessed June 2010).

U.S. Legal. *Adjudication Legal Definition*. 2010. <http://definitions.uslegal.com/a/adjudication/> (accessed July 26, 2010).

—. *Docket Law & Legal definition*. 2010. <http://definitions.uslegal.com/d/docket/> (accessed June 2010).

—. *Federalism Law & Legal Definition*. 2010. <http://definitions.uslegal.com/f/federalism/> (accessed June 2010).

—. *Original Jurisdiction Law & Legal Definition*. 2010. <http://definitions.uslegal.com/o/original-jurisdiction/> (accessed June 2010).

Web Locator. "Texas Court System." *Web Locator Website*. No Date. <http://www.weblocator.com/attorney/tx/aw/c02.html> (accessed June 2010).