

Editorial: Immigration courts collapse under caseloads

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**Some hearings are being postponed until 2020 or beyond.
Will Trump make it worse?**



illustration(Photo: Mark Marturello/The Register)

It doesn't matter what side of the immigration debate you're on: The system used to deport people who are in America illegally is not just broken, but thoroughly shattered — and the situation appears likely to get much worse in the weeks ahead.

The nation's immigration courts are not simply backlogged with cases, they are swamped. There simply aren't enough hours in the day to clear the docket and handle each case in anything remotely resembling a timely fashion.

According to the U.S. Department of Justice, the Omaha immigration court that handles Iowa cases is scheduling hearings as far out as 2020 — more than three years from now — simply because there are so many cases to process. There are only two immigration judges in Omaha, but 6,476 cases are pending there now.

As bad as the Omaha bottleneck is, there are other jurisdictions in much worse shape. In Denver's immigration court, where delays appear to be the longest, many cases take five years or more to process.

The crushing caseload, which includes deportation cases as well as requests for asylum, poses an enormous challenge for President-elect Donald Trump. This would be true even if he hadn't promised to deport up to 3 million immigrants as quickly as possible while simultaneously imposing a federal hiring freeze.

If Trump is to have any hope of ratcheting up the deportations, he'll first have to clear the existing backlog. That will necessitate not only a Department of Justice exemption from the

proposed hiring freeze, but also a massive infusion of additional resources. And even then, the wheels of justice will turn only so fast without violating the due process rights of the accused.

Perhaps it's fair to cut the president-elect some slack and say that his promise to begin deportations within an hour of taking the oath of office was campaign hyperbole no one took seriously. Even so, some form of immediate action will be required. Trump can't simply step up enforcement at the border — that's another promise he has made — because that would put even more people in line at the courthouse, creating an even bigger logjam.

President Barack Obama, called by some the “deporter-in-chief,” made that mistake and it led us to where we are now. On average, it now takes more than 1,000 days for an immigration case to be heard. According to the Transactional Records Access Clearinghouse at Syracuse University, [the number of pending, backlogged immigration-court cases in the United States now stands at a staggering 520,000](#). In recent years, some judges have had [as many as 10,000 cases](#) pending before them at any given time.

On average, each of the nation's 300-odd immigration judges dispose of 750 cases per year — or roughly three cases per working day. This means the judges aren't exactly dawdling; they are processing cases as quickly as anyone could reasonably expect.

That brings us to the headache-inducing “solution” that some hapless adviser will have to carry into the Oval Office and propose to Trump shortly after he takes office: Given the courts' current resources and workload, [at least 220 additional immigration judges will have to be hired](#) just to eliminate the backlog by the end of 2017.

That is not likely to happen.

Congress and the incoming president both appear to be in full cost-cutting mode, and are not expected to approve a 67 percent increase in the number of immigration judges. Unless that changes, the backlog will continue to grow. That's the nature of backlogs, after all: Without effective countermeasures, they tend to snowball. Delays will cause the number of pending cases to increase, which will in turn beget even more delays.

Both Obama and Trump have been reluctant to acknowledge it, but to truly “get tough” on immigration and enforce the law, we don't need more walls, more fences or more border patrol agents — at least not at the moment. What we need are more Department of Justice personnel to process the half-million immigration cases already clogging the courts. The bottleneck is on the back end of the system, not on the front end.

Because the immigration courts — unlike the federal courts where civil and criminal cases are heard — are run by the DOJ, the new attorney general will play a critical role in how this problem is addressed.

Unfortunately, Trump has selected Sen. Jeff Sessions, an Alabama Republican, for the job. Sessions is a “sealed border” advocate focused on fences and walls. He also is a longtime

proponent of enlisting local police in rounding up illegal immigrants — and as attorney general he'll have the power to steer federal funds away from communities that refuse to cooperate.

As a senator, Sessions has argued that "sanctuary cities" that offer protection to illegal immigrants should be denied federal funding, and [reportedly said](#) they should even be prosecuted. If he is confirmed as attorney general, he'll soon have the chance to do both.

There are 23 counties in Iowa designated as sanctuaries and 19 of them voted for Trump last month. Many of the president-elect's supporters, including some of our Iowa congressional delegation, backed Trump specifically because of his stance on immigration.

They said they wanted to “shake things up.”

They said they wanted to “upset the apple cart.”

Mission accomplished.

What are immigration courts?

There are 58 immigration courts nationwide, with more than 300 immigration judges now hearing cases.

Unlike the federal civil and criminal courts, which are part of the judiciary, the immigration courts are run by the U.S. Department of Justice.

From 2003 to 2015, the backlog of immigration cases increased 163 percent. More than half a million cases are now pending before the courts. Some cases are now being scheduled for hearings in 2020 and beyond.

About 20,000 people are being detained while facing deportation. Typically, these are people who are either deemed a flight risk or who have been accused of certain crimes.

The president of the National Association of Immigration Judges says it will be necessary to double or even triple the size of the immigration courts to handle the caseload.

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