



Sessions tests limits of immigration powers with asylum moves



By Tal Kopan, CNN
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Washington (CNN)The US immigration courts are set up to give the attorney general substantial power to almost single-handedly direct how immigration law is interpreted in this country -- and Jeff Sessions is embracing that authority.

Sessions quietly moved this week to adjust the way asylum cases are decided in the immigration courts, an effort that has the potential to test the limits of the attorney general's power to dictate whether immigrants are allowed to enter and stay in the US and, immigration advocates fear, could make it much harder for would-be asylees to make their cases to stay here.

Sessions used a lesser-known authority this week to refer to himself two decisions from the Board of Immigration Appeals, the appellate level of the immigration courts. Both deal with asylum claims -- the right of immigrants who are at the border or in the US to stay based on fear of persecution back home.



Jeff Sessions takes immigration fight to California, announces lawsuit

In one case, Sessions reached into the Board of Immigration Appeals archives and overturned a ruling from 2014 -- a precedent-setting decision that all asylum cases are entitled to a hearing before their claims can be rejected. In the other, Sessions is asking for briefs on an unpublished opinion as to how much the threat of being the victim of a crime can qualify for asylum. The latter has groups puzzled and concerned, as the underlying case remains confidential, per the Justice Department, and thus the potential implications are harder to discern. Experts suspect the interest has to do with whether fear of gang violence -- a major issue in Central America -- can support asylum claims.

A Justice official would say only on the latter case that the department is considering the issue due to a "lack of clarity" in the court system on the subject. On the former, spokesman Devin O'Malley said the Board of Immigration Appeals' 2014 holding "added unnecessary cases to the dockets of immigration judges who are working hard to reduce an already large immigration court backlog."

Tightening asylum

Sessions referring the cases to himself follows other efforts during his tenure to influence the courts, the Justice Department says, in an effort to make them quicker and more efficient. In addition to expanding the number of Board of Immigration Appeals judges and hiring immigration judges at all levels at a rapid clip, the Justice Department has rolled out guidance and policies to try to move cases more quickly through the system, including possible performance measures that have the judges' union concerned they could be evaluated on the number of closed cases.



Legal immigrants to the US wonder: Amid DACA attention, what about us?

"What is he up to? That would be speculation to say, but definitely there have been moves in the name of efficiency that, if not implemented correctly, could jeopardize due process," said Rená Cutlip-Mason, until last year a Justice Department immigration

courts official and now a leader at the Tahirih Justice Center, a nonprofit that supports immigrant women and girls fleeing violence.

"I think it's important that the courts balance efficiencies with due process, and any efforts that are made, I think, need to be made with that in mind," she added.

The Board of Immigration Appeals decisions could allow Sessions to make it much harder to seek asylum in the US.

Asylum is a favorite target of immigration hardliners, who argue that because of the years-long backlog to hear cases, immigrants are coached to make asylum claims for what's billed as a guaranteed free pass to stay in the country illegally.

Advocates, however, say the vast majority of asylum claims are legitimate and that trying to stack the decks against immigrants fleeing dangerous situations is immoral and contrary to international law. Making the process quicker, they argue, makes it harder for asylum seekers -- who are often traumatized, unfamiliar with English and US law, and may not have advanced education -- to secure legal representation to help make their cases. The immigration courts allow immigrants to have counsel but no legal assistance is provided by the government, unlike in criminal courts.

Reshaping the immigration courts

Beyond asylum, Sessions' efforts could have far-reaching implications for the entire immigration system, and illustrate the unique nature of the immigration court system, which gives him near singular authority to interpret immigration laws.

Immigration cases are heard outside of the broader federal court system. The immigration courts operate as the trial- or district-level equivalent and the Board of Immigration Appeals serves as the appellate- or circuit court-level. Both are staffed with judges selected by the attorney general, who do not require any third-party confirmation.



How Trump changed the rules to arrest more non-criminal immigrants

In this system, the attorney general him or herself sits at the Supreme Court's level, with even more authority than the high court to handpick decisions. The attorney general has the authority to refer any Board of Immigration Appeals decision to his or her office for review, and can single-handedly overturn decisions and set interpretations of immigration law that become precedent followed by the immigration courts.

The power is not absolute -- immigrants can appeal their cases to the federal circuit courts, and at times those courts and, eventually, the Supreme Court will overrule immigration courts' or Justice Department decisions. That's especially true when cases deal with constitutional rights, said former Obama administration Justice Department immigration official Leon Fresco. Fresco added that the federal courts' deference to the immigration courts' interpretation of the law has decreased in the past 10 years, though that could change as more of the President's chosen judges are added to the bench.

But Sessions could be on track to test the limits of his power, and the moves might set up further intense litigation on the subject.

"From what I can see, Sessions is really testing how far those powers really go," said Cutlip-Mason. "The fact that the attorney general can have this much power is a very interesting way that the system's been set up."

Retired immigration Judge Paul Wickham Schmidt, who served for years in federal immigration agencies and the immigration courts, said that to say the immigration courts are full due process is "sort of a bait and switch." He says despite the presentation of the courts' decisions externally, the message to immigration judges internally is that they work for the attorney general.

"I think due process is under huge attack in the immigration courts. Every once in a while Sessions says something about due process, but his actions say something quite different."

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