



AP

Immigration judges, attorneys worry that Sessions' quotas will cut into justice in clogged court system

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Written by



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A case takes nearly 900 days to make its way through the backlogged immigration courts of Texas. The national average is about 700 days in a system sagging with nearly 700,000 cases.

A new edict from President Donald Trump's administration orders judges of the immigration courts to speed it up.

Now the pushback begins.

Quotas planned for the nation's 334 immigration judges will just make the backlog worse by increasing appeals and questions about due process, says Ashley Tabaddor, Los Angeles-based president of the National Association of Immigration Judges.

Quotas of 700 cases a year, first reported by The Wall Street Journal, were laid out in a performance plan memo by U.S. Attorney General Jeff Sessions. They go into effect October 1.

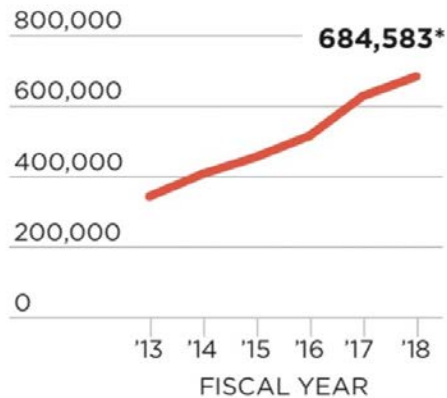
Some have even called the slowdown from the backlog “de facto amnesty.”

“We believe it is absolutely inconsistent to apply quotas and deadlines on judges who are supposed to exercise independent decision-making authority,” Tabaddor said.

“The parties that appear before the courts will be wondering if the judge is issuing the decision because she is trying to meet a deadline or quota or is she really applying her impartial adjudicative powers,” she added.

Going up

The backlog of cases in the U.S. immigration courts:



*Through February

SOURCE: Transactional Records Access Clearinghouse

Staff Graphic

That will build an appeal into the case and swell the backlog, rather than deflate it, Tabaddor predicts.

Some defend the quotas. Art Arthur, a retired immigration judge, said if an immigrant is deportable, “it is de facto amnesty” to let them stay for months or years while awaiting the outcome of their cases “because they get to live here indefinitely.”

Arthur worked as an immigration judge for nearly a decade in Pennsylvania and said that he cleared about 1,000 cases annually.

But Cornell Law School professor Stephen Yale-Loehr called the move an attack on judicial independence that may violate due process rights of non-citizens, too.

“You can imagine if we had a backlog in our criminal courts and the Texas Attorney General said every judge had to settle a certain number of cases per week. There would be a huge uproar,” Yale-Loehr said.

Pushback

Immigration judges are part of a court system that isn't within the independent judiciary branch of government. Much of the immigration code deals with civil offenses in the immigration courts.

A closer parallel would be administrative law judges who work within the executive branch of government, said Margaret Taylor, a professor of administrative and immigration at Wake Forest University School of Law in North Carolina.

The Social Security Administration and its judges who rule on disability cases have had quotas before, Taylor noted.



A Border Patrol agent apprehends immigrants shortly after they crossed the border from Mexico into the United States on Monday, March 26, 2018 in the Rio Grande Valley Sector near McAllen, Texas. An estimated 11 million undocumented immigrants live in the United States, many of them Mexicans or from other Latin American countries. / AFP PHOTO / LOREN ELLIOTT/AFP/Getty Images (LOREN ELLIOTT/AFP/Getty Images)

The pushback against the quotas has renewed calls to fortify the independence of immigration judges.

The National Association of Immigration Judges has long argued that the immigration courts should be taken out of the Department of Justice, a law enforcement agency, and given real independence and more resources.

Proponents of the quotas point to the need to reduce the exploding backlog of cases.

Colorado leads the nation with the longest wait time to get a case resolved, about 1,000 days, according to the Syracuse University-based Transactional Records Access Clearinghouse, or TRAC. Texas comes in third, after Illinois.

In Dallas immigration courts, cases move at a faster clip than Texas as a whole at about 560 days compared to about 900 days for the whole state, according to TRAC. But even the Dallas number has been climbing for several years.

Faster decision-making could cut the backlog, but it also has many worried about fairness.

The pressure for speed means immigrants would have to move quickly to find an attorney. Without an attorney, the likelihood of deportation increases. Nationally, about 58 percent of immigrants are represented by attorneys, according to Syracuse's research center. But in Texas, only about a third of the immigrants have legal representation.

Paul Schmidt, a retired immigration judge who served as chairman of the Board of Immigration Appeals for immigration courts for six years, says he saw decisions rendered quickly and without proper legal analysis, leaving it necessary for many cases to be sent back to the immigration court for what he called "a redo."

"Due process isn't making widgets," Schmidt said. "Compare this to what happens in regular courts. No other court system operates this way. Yet the issues in immigration court are life and death," he said, referring to asylum cases.

Schmidt said there are good judges who take time with cases, which is often needed in asylum pleas from immigrants from countries at war or known for persecution of certain groups.

But he also said there were "some not-very-good judges" with high productivity.

Ramping up the production line, Schmidt said, will waste time.

"You will end up with more do-overs. Some people are going to be railroaded out of the country without fairness and due process," Schmidt said.

Solutions?

More judges and legal clerks need to be hired to deal with the backlog, say many law professors. Particularly troubling is the fact that 40 percent of the nation's 334 judges in 61 cities are now eligible for retirement, says Tabaddor, leader of the judges' association.

"It doesn't make any sense to squeeze them," said Huyen Pham, a professor at Texas A&M University School of Law in Fort Worth. "When you see a lot more enforcement, it means the immigration court will see a lot more people coming through."

Lawyers and law school professors say the faster pace of deportation proceedings by the U.S. Immigration and Customs Enforcement spells more trouble ahead. Immigration courts don't have electronic filing processes for most of the system. Many judges must share the same clerk.

For decades, the nation's immigration courts have served as a lynchpin in a complex system now under intense scrutiny. Immigration has become a signature issue for the Trump administration.

Five years ago, the backlog was about 344,000 cases — about half today's amount. It grew, in part, with a rise in Central Americans coming across the border in the past few years. Most were given the opportunity to argue before an immigration judge about why they should stay in the U.S.

This isn't the first time the judges have faced an administration that wants them to change priorities. President Barack Obama ordered that the cases of Central American unaccompanied children to be moved to the top of docket.

"Our dockets have been used as a political tool regardless of which administration is in power and this constant docket reshuffling, constant reprioritization of cases has only increased the backlog," Tabaddor said.

The quota edict was followed by a memo to federal prosecutors in the criminal courts with jurisdiction over border areas to issue more misdemeanor charges against immigrants entering the country unlawfully. Sessions' memo instructs prosecutors "to the extent practicable" to issue the misdemeanor charges for improper entry. On Wednesday, Sessions is scheduled to be in Las Cruces, New Mexico, to speak on immigration enforcement at a border sheriffs' meeting.

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