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Fix for immigration court backlog? Judges protest Judges see solution as a new problem

By Joseph Tanfani

WASHINGTON — The nation's 58 immigration courts long have been the problem child of the judicial system — understaffed, technologically backward and clogged with an ever-growing backlog of cases, more than 680,000 at last count.

But a plan by Atty. Gen. Jeff Sessions, a longtime immigration hawk, aimed at breaking the logjam and increasing deportations of immigrants in the country illegally has drawn surprising resistance from immigration judges across the country.

Many say Sessions' attempts to limit the discretion of the nation's 334 immigration judges, and set annual case quotas to speed up their rulings, will backfire and make delays even worse — as happened when previous administrations tried to reform the system.

“It's going to be a disaster and it's going to slow down the adjudications,” warned Lawrence O. Burman, secretary of the National Assn. of Immigration Judges, a voluntary group that represents judges in collective bargaining.

Cases already move at a glacial pace. The immigration court in Los Angeles has a backlog of more than 66,000 cases, second only to New York, and the average wait time for a hearing is about two years, according to the Transactional Access Records Clearinghouse, or TRAC, a research organization at Syracuse University.

“Clearly this is not justice,” said A. Ashley Tabaddor, an immigration judge who sits in Los Angeles and is the association president.

Tabaddor said the Los Angeles court has eight empty judge positions, which causes more delays as judges are shuffled around to fill in. “Judges are just drowning in a sea of cases,” she said. Nationwide, the average wait is two years, according to TRAC. But some jurisdictions are much slower.

The immigration court in Arlington, Va., where Burman is a judge, has a four-year backlog, meaning hearings for new cases are being scheduled in 2022.

Burman says the reality is far worse — the docket says he has 1,000 cases scheduled to begin on the same day in 2020.

President Trump complained bitterly about immigration courts during an April 6 event in West Virginia, saying inaccurately that immigrants “are supposed to come back in two or three years for a court case, but no one comes back.” A large majority of people show up for court hearings, statistics show.

Immigration judges conduct administrative proceedings to determine if immigrants charged with violating immigration law should be deported or allowed to remain in the country. The Homeland Security Department is responsible for guarding the border and enforcing immigration law, but the courts are under a separate office in the Justice Department.

Unlike criminal courts, defendants in immigration court who don’t hire lawyers are not provided with public defenders. That includes the nearly 90,000 minors who crossed the border without their parents, mostly in recent surges from violence-torn parts of Central America, and are facing deportation proceedings.

For the Trump administration, the courts’ slow pace is a serious obstacle to attempts to increase deportations. But fixing the courts won’t be easy.

Everyone agrees more judges are needed. But putting them on the bench is itself a lengthy process. A 2015 report by the Government Accountability Office said it took more than two years, on average, to hire an immigration judge because of the need for security clearances and multiple reviews.

After a concerted effort to streamline the process, hiring now takes about 10 months, according to Devin O’Malley, a Justice Department spokesman. He said the system now has 334 judges, up from 247 in 2015, but more than 100 positions are still vacant.

Sessions has called for ending use of so-called administrative closures, which allows immigration judges to close removals cases without making a final ruling, thus letting some of the immigrants avoid deportation.

In a speech in December, he criticized the Obama administration for allowing judges to close 200,000 cases in five years. “We are completing, not closing, immigration cases,” Sessions said. But judges argue that removing their ability to clear the books of stalled cases will only increase the backlog, not fix the problem.

Another problem: Poorly funded immigration courts still use paper files, slowing access to information, while other federal courts use digital filing systems.

The Executive Office for Immigration Review, the Justice Department office that oversees the courts, started studying the problem in 2001. It has issued numerous reports and studies over the last 17 years, but accomplished little in the way of computerized record keeping.

Immigration courts also help adjudicate asylum claims. Under the law, immigrants may apply for asylum if they have suffered persecution, or have a credible fear of persecution, for such criteria

as race, religion and political opinion. About 80% of applicants are allowed to stay while their asylum claims are reviewed.

Sessions has said that many asylum seekers are abusing the system by filing unsubstantiated claims so they can stay pending a hearing. The Trump administration wants Congress to change the law that requires children and families to be released from detention while they wait for their hearing date.

“Our hands are tied,” said a senior administration official, who briefed reporters on condition he not be identified. “Until changes are made, people are still going to exploit it.”

Howard Homs, an immigration attorney in Los Angeles, said some unscrupulous consultants tell migrants to file unjustified asylum claims so they can get a work permit and spend two or three years in the U.S. until their case is heard. Meanwhile, people with legitimate claims often wait years until they are able to be reunited with their families.

“Just making the judges go faster is not going to solve anything,” Homs said. The solution, he said, is to feed fewer cases into the system.

But Sessions has begun changing the system. Last month, he decided that immigration judges could dismiss asylum claims without a hearing, and announced he would examine whether being a crime victim should be grounds for making a legitimate claim for asylum.

Immigration advocates fear Sessions ultimately will seek to prevent victims of gang violence or domestic abuse from winning asylum claims.

Sessions’ latest plan, scheduled to begin on Oct. 1, will set performance goals for immigration judges, starting with completing 700 cases each year and resolving the vast majority quickly. O’Malley, the department spokesman, said the annual quota is near historic averages and works out to about three cases a day. Administrators understand that “certain cases take a little bit longer,” he said.

The judges don’t see it that way. Burman and other leaders of the immigration judges association, in an unusual public protest, say Sessions’ plan will force judges to rush cases and further compromise the courts’ already battered reputation for fairness.

The plan, Tabaddor said, will “undermine the very integrity of the court.”

Sessions is not the first U.S. attorney general to try to push deportation cases through the system faster.

John Ashcroft, who served under President George W. Bush, unveiled a streamlined approach in 2002, firing what he called softhearted judges from the 21-member Board of Immigration Appeals, the highest administrative body for interpreting and applying immigration laws.

The result was an increase of cases sent back by federal courts, which reviewed the decisions, and more delays.

Under the Obama administration, immigration judges were ordered to prioritize old cases to try to clear the backlog.

But after thousands of unaccompanied minors from Central America surged to the southwest border in 2014, they were told to focus on those cases instead. As the dockets were reshuffled, the backlog kept growing.

Last fall, Sessions ordered 100 immigration judges from around the country to travel to courts on the border to move cases quickly. The Justice Department pronounced it a success, saying they finished 2,700 cases.

Some of the judges were less enthusiastic.

“We had nothing to do half the time,” said Burman, who spent eight weeks in border courts. “I’m not saying it’s a bad idea, but they sent more people than they needed to,” while his caseload in Virginia languished for those two months.

Immigration advocates say the answer is more resources: more judges, more clerks and legal representation for immigrants. They also say the courts should be independent, not under the Justice Department.

“Everybody wants to hear there’s some magical solution to make all this fine. It’s not going to happen,” said Paul Schmidt, a former immigration judge and former chairman of the Board of Immigration Appeals.

“If you’ve got a system that is producing defective cars, making the system run faster is just going to result in more defective cars,” he said.

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