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DOJ Ignoring Immigration Due Process Suggestions, Orgs Say

By Kevin Penton

Law360 (April 23, 2018, 3:32 PM EDT) -- The Trump administration is not complying with recommendations from an Obama-era internal report on how the U.S. Department of Justice could better handle immigration proceedings while adhering to due process, two advocacy organizations asserted Monday.

Through actions such as setting performance quotas for immigration judges, the current administration is going against recommendations in the April 2017 report that called for performance reviews to be based on adherence with due process rather than on outcomes, according to officials with the American Immigration Lawyers Association and the American Immigration Council.

"These findings ... raise very real concerns about the motivations of the attorney general," Benjamin Johnson, AILA's executive director, said of U.S. Attorney General Jeff Sessions.

Earlier this month, the two organizations obtained a copy of the April 2017 report, which was prepared by consulting firm Booz Allen Hamilton Inc. and based on a yearlong study. The report determined that the nation's immigration courts have a growing backlog of cases due to various ineffective processes, understaffing and long-standing workforce culture issues.

The report recommended that the DOJ's Executive Office of Immigration Review revamp its organizational staffing structure, develop a forecasting model for addressing staffing needs between the office's different locations, and implement detailed processing changes that should help improve the completion of cases without impacting due process.

But in contradiction to those recommendations, the DOJ has among other things **called for immigration case quotas** and **terminated the Legal Orientation Program**, which connects immigrants with legal services organizations that may provide the individuals with basic information about the immigration legal process, Rep. Zoe Lofgren, D-Calif., said during a call Monday that focused on the report.

"We need to make sure that the Trump administration, in their rush to punish immigrants, doesn't also punish the Constitution and due process," said Lofgren, the ranking member on the House Judiciary's Subcommittee on Immigration and Border Security.

DOJ officials could not be reached for comment Monday.

Officials with the Executive Office of Immigration Review said in late March that immigration judges must complete 700 cases annually and remand less than 15 percent of their cases to satisfactorily meet job expectations.

In addition, the agency provided six benchmarks related to case completion and adjudication of motions, three of which would have to be met — in addition to the other requirements — to achieve a satisfactory performance rating. For example, an immigration judge must not allow more than three days to elapse between a merits hearing and case completion in at least 85 percent of removal cases involving individuals who do not have status and are detained.

The Legal Orientation Program has served more than 50,000 individuals annually in 38 detention centers nationwide. The DOJ will terminate funding for the program by April 30, pending a cost-benefit analysis, according to the Vera Institute of Justice and the American Bar Association.

--Additional reporting by Nicole Narea. Editing by Edrienne Su.

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