



Shutdown Causes 43K Canceled Immigration Court Hearings

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Law360 (January 15, 2019, 6:31 PM EST) -- Nearly 43,000 immigration court hearings have been canceled since the federal government shut down in late December, according to new data from Syracuse University, wreaking havoc on the already overstuffed immigration courts and opening up individuals with valid immigration claims to yearslong delays.

According to a Monday report by Syracuse's Transactional Records Access Clearinghouse, 42,726 immigration court hearings for nondetained individuals were canceled from the beginning of the partial government shutdown in late December through Friday, aggravating the immigration courts' existing case backlog, which [climbed up to 809,041](#) late last year.

While the federal courts have some independent funding, the immigration courts are housed under the [U.S. Department of Justice's Executive Office for Immigration Review](#). When federal appropriations for the DOJ lapsed Dec. 22 amid congressional deadlock over border security funding, the immigration courts ceased to function, with immigration judges working — without pay — only to hear the cases of individuals who are currently detained.

Ashley Tabaddor, president of the National Association of Immigration Judges, told Law360 on Tuesday that this shutdown highlights the problems of housing a court system within a federal agency.

"We should be separate and apart from the policy discussion. The court should not be used as an extension of law enforcement policies," Tabaddor said. "Yet another example of what happens when you continue to have the court function in the Justice Department."

In its report, TRAC predicted that 20,000 immigration court hearings would be canceled each additional week that the shutdown continues, affecting up to 100,000 individuals by the end of January. California is home to the highest number of canceled immigration court

hearings at 9,424, with New York trailing in second with 5,141 canceled immigration court proceedings.

Moreover, with funding indefinitely lapsed, the federal government also lacks the resources to notify immigrants that their hearings have been canceled, leaving some to find out only from notices posted at the courthouse when they arrive for their hearing, according to Tabaddor.

Tabaddor said that TRAC's data "seems consistent" with feedback that the association has received from immigration judges during the shutdown, putting the cancellations at several thousand per day. She estimated that these cancellations will likely result in delays ranging between two and three years, or more, for individuals whose hearings are canceled because many immigration court dockets are booked for years.

"It is absolutely likely that most of these cases will have to go to the back of the line," Tabaddor said.

She added that she is basing her prediction on previous shutdown experiences because the EOIR "hasn't provided us with any plans." A representative for the EOIR did not immediately respond to a request for comment on the agency's plans to reschedule the canceled hearings.

The shutdown cancellations could accelerate a trend in growth for immigration courts' case backlog, which, according to data published by TRAC prior to the shutdown, had grown by nearly 50 percent since President Donald Trump took office.

Last year, former U.S. Attorney General Jeff Sessions called on the EOIR to [work more efficiently](#) to tackle the mounting backlog of cases, prompting the agency to hire more immigration judges. According to the agency, 128 immigration judges were sworn in from January 2017 through September 2018, bringing the total number of immigration judges to 395.

The Justice Department has also moved to enforce case quotas on immigration judges to evaluate their performances, [prompting an outcry](#) from legal scholars who say the quota system undermines judicial independence and threatens due process. And in moves that immigration attorneys say will further exasperate the backlog, Sessions also scaled back

immigration judges' discretionary authority by [ending "administrative closures"](#) and limiting [when they can pause](#) deportation proceedings.

The potential lengthy delays caused by the shutdown could negatively impact individuals with strong asylum cases, Tabaddor said, as memories fade and witnesses become unavailable to testify. Individuals petitioning for a cancellation of removal could find the basis of their claims disappear during a yearslong wait, as dependent U.S. citizen children could age out or other qualifying relatives could pass away.

"They can lose what would otherwise be a very highly meritorious claim just by virtue of being denied the opportunity to present their case as scheduled," Tabaddor said.

The only ones who "win" as a result of the shutdown delays are those who do not have valid claims to immigration benefits and should have had their cases expeditiously denied, she explained, but will now have permission to wait in the U.S. for additional years.

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