

Immigration judges getting new performance metrics



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The U.S. Department of Justice is planning to ramp up performance evaluations of immigration judges, measuring their speed, fairness and uniformity in deciding cases, according to a memo issued by Attorney General Jeff Sessions.

The union for immigration judges is still negotiating details regarding the performance metrics with the department, according to Dana Leigh Marks, spokeswoman for the National Association of Immigration Judges. While Sessions believes such metrics will help eliminate a backlog of cases that has grown to nearly 650,000, the union of judges is worried that they could affect due process.

“Together, we have made significant progress since the beginning of the Trump administration, but we want to build on this success to enshrine what the law contemplates and what the people desire — an end to unlawfulness in our immigration system,” Sessions said in the Dec. 5 memo.

The case backlog is not new. Immigration judges and attorneys alike have talked about the need for more judges for years, and the Trump administration has worked to increase their ranks. The department hired 50 new judges since President Donald Trump’s inauguration, according to the memo, and plans to hire at least 60 more in the next six months.

“For years, the immigration court system has failed to address systemic issues that add unnecessary time to a respondent’s case and put undue stress on the pending caseload,” said Devin O’Malley of the Department of Justice. “Every adjudicatory system has goals, benchmarks, or metrics to ensure that cases are handled in an efficient, timely manner that do not compromise due process. The Executive Office for Immigration Review already has numerous case completion goals imposed by statute or Congressional recommendation, and is developing additional benchmarks for immigration courts to assist in properly managing cases, increase productivity, and reduce the pending caseload.”

While immigration judges welcome additional peers on the bench, the union is concerned that proposed performance metrics will affect the independence necessary for judges to be impartial.

“We kind of feel like we’ve jumped from the frying pan into the fire,” said Marks, who is the union’s president emeritus and an immigration judge in San Francisco.

In former contracts with the union, the department agreed not to use numeric quotas to measure judge performance and instead used qualitative metrics. The department reopened negotiations on that part of its contract with the union this past summer, Marks said.

“The NAIJ believes that the application of any kind of numeric or time based quota is antithetical to our duties as a fair and impartial judge,” Marks said. “This last memorandum is very distressing to many judges. It seems to try to place the blame on the judges as if we’re not being efficient, as if we’re not working diligently, and that’s simply not true.”

In fiscal 2016, the eight judges responsible for hearing cases in the three San Diego-area courts completed an average of 380 cases each, according to an annual report released by the Executive Office for Immigration Review, the government agency in the DOJ that employs immigration judges. That doesn’t include cases that were later reopened or bond hearings, which also take up judges’ time in the courtroom.

That same year, the three San Diego-area courts received 6,185 new cases, or about 773 cases per then-sitting judge.

The three courts had 8,665 cases pending at the end of October 2017, the most recent data available from the Executive Office for Immigration Review.

The number of judges at those courts has grown to 13 this year.

Data for fiscal 2017 has not yet been released, and the Executive Office for Immigration Review said it was not able to provide the average number of cases completed by a judge.

A variety of circumstances can dictate how long an individual case takes, Marks said, including processing time in other federal agencies or in related state court cases.

“You could say aspirationally that you would like all cases to be completed on the day they are scheduled for final hearing, but what happens if the individual is hospitalized on that day? Or what if the attorney is in a car accident on the way to court? These are not uncommon situations that occur when you’re handling as many cases as we do,” Marks said. “What happens if a week before an asylum case is scheduled there’s a coup in the home country? It makes sense that an attorney needs to prepare more documentation to explain how that event is going to affect the individual’s case.”

The amount of time it takes to go through all of the evidence can also vary drastically, even in cases with seemingly similar circumstances.

One aspect of each case is verifying the person’s identity. While some are able to do this through documentation, others from countries such as Somalia, where governments have been unable to

issue identifying documentation for years, have to bring in eyewitnesses to testify about who they are.

Attorneys sometimes bring in experts to testify about political or social conditions in the person's home country. Some cases require evidence from family, friends and community members about the person's contributions and moral character.

The judge's union has pushed to separate from the Department of Justice and be an independent court. As employees of the department, Marks said, judges are not insulated from political pressures of changing administrations.

She compared their situation with judges in tax court, which was initially part of the Internal Revenue Service and later split off as an independent entity in government.

Sessions added in the memo that he anticipated "clarifying certain legal matters in the near future that will remove recurring impediments to judicial economy and the timely administration of justice."

Shortly before Christmas, two more memos went out to immigration judges, one that seems to take a tougher approach to how children's cases should be handled in the courtroom.

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