



Commentary: I'm an Immigration Judge. Case Completion Quotas Are a Really Bad Idea.



Arriving international travelers cross a police line separating pro- and anti-demonstrators of a ruling by a federal judge in Seattle that grants a nationwide temporary restraining order against the presidential order to ban travel to the United States from seven Muslim-majority countries, at Tom Bradley International Terminal at Los Angeles International Airport on February 4, 2017 in Los Angeles, California.

David McNew—Getty Images

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Immigration judges are the trial-level judges who make the life-changing decisions of whether or not non-citizens are allowed to remain in the United States. They are facing a virtual mountain of cases: almost 700,000 for about 335 judges in the United States. The work is hard. The law is complicated. The stories people share in court are frequently traumatic and emotions are high because the stakes are so dire.

Because these are considered civil cases, people are not provided attorneys and must pay for one, find a volunteer, or represent themselves.

In a move that the Department of Justice claims is intended to reduce this crushing backlog, the DOJ is moving forward with a plan to require judges to meet production quotas and case completion deadlines to be rated as satisfactory in order to keep their jobs. This misguided approach will have the opposite effect.

One cannot measure due process by numbers. The primary job of an immigration judge is to decide each case on its own merits in a fair and impartial way. That is the essence of due process and the oath of office we take. Time metrics simply have no place in that equation. Quality measurements are reasonable, and immigration judge performance should be evaluated, but by judicial standards, which are transparent to the public and expressly prohibit quantitative measures of performance. The imposition of quotas and deadlines forces a judge to choose between providing due process and pushing cases to closure without considering all the necessary evidence.

If quotas and deadlines are applied, judicial time and energy will be diverted to documenting our performance, rather than deciding cases. We become bean-counting employees instead of fair and impartial judges. Our job security will be based on whether or not we meet these unrealistic quotas and our decisions will be subjected to suspicion as to whether any actions we take, such as denying a continuance or excluding a witness, are legally sound or motivated to meet a quota. Under judicial canons of ethic, no judge should hear a case in which he or she has a financial interest. By tying the very livelihood of a judge to how quickly a case is pushed through the system, you have violated the fundamental rule of ensuring an impartial decision maker is presiding over the case.

These measures will undermine the public's faith in the fairness of our courts, leading to a huge increase in legal challenges that will flood the federal courts. Instead of helping, these doubts will create crippling delays in our already overburdened courts. If history has taught us any lessons, it is that similar attempts to streamline have ultimately resulted in an increase in the backlog of cases.

The unacceptable backlogs at our courts are due to decades of inadequate funding for the courts and politically motivated interference with docket management. The shifting political priorities of various administrations have turned our courts into dog and pony shows for each administration, focusing the court's scant resources on the cases 'du jour,'—e.g., children or recent border crossers—instead of cases that were ripe for adjudication.

The solution to the delays that plague our courts is not to scapegoat judges. The solution is two-part: more resources and structural reform. We need even more judges and staff than Congress has provided. Additionally, the immigration courts must be taken out of the Department of Justice, as the mission of an independent and neutral court is incompatible with the role of a law enforcement agency. This latest, misguided decision to impose quotas and performance metrics makes that conclusion clear and highlights the urgent need for structural reform. The measure of a good judge is his or her fairness, not the number of cases he or she can do in a day.

Dana Leigh Marks is president emeritus of the National Association of Immigration Judges and has been a full-time immigration judge in San Francisco since 1987. The views expressed here do not necessarily represent the official position of the United States Department of Justice, the Attorney General, or the Executive Office for Immigration Review. The views represent the author's personal opinions, which were formed after extensive consultation with the membership of NAIJ.

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