

Fix an immigration backlog and protect judges [Editorial]

April 6, 2018 Updated: April 9, 2018 10:15am



Photo: Ted S. Warren, STF / Associated Press

In this Feb. 17, 2017 file photo, protesters chant "Free Daniel" during a demonstration, outside the federal courthouse in Seattle, where a hearing was held for Daniel Ramirez Medina, a Seattle-area man who was arrested by immigration agents. A federal judge in Seattle has opened the door for thousands of immigrants to apply for asylum, finding that the Department of Homeland Security has routinely failed to notify them of a deadline for filing their applications.

Every now and then a local news outlet will report about some small town sheriff or big city police chief landing in hot water for establishing ticket quotas — requiring that officers make a certain number of stops per hour.

Just one problem: Ticket quotas are illegal in Texas.

Law and justice flow from due process, not from administrative mandates. Apparently the Trump administration disagrees.

The Justice Department has announced plans to base performance evaluations of immigration judges in part on whether those judges meet arbitrary quotas for closing cases — 700 cases completed per judge per year starting in October.

EDITORIAL: We're a "nation of immigrants" — whether the Trump administration likes it or not

This dictate does not address the root causes of the backlog of nearly 700,000 cases clogging immigration courts and runs counter to well-established best practices for measuring judicial performance. Congress needs to step in.

The Trump administration's goal here is clear.

"Make no mistake, the outcome this administration truly desires from mandating quotas on an understaffed adjudicatory agency with a needlessly overstuffed docket is to transform it into a deportation machine," Jeremy McKinney, a North Carolina immigration attorney and secretary of the American Immigration Lawyers Association, said in a media conference call Wednesday.

The backlog of immigration cases is a serious issue and has been building for more than a decade. The system lacks enough judges and support staff. Congress has pumped in billions of dollars for additional immigration enforcement, but it has not provided the funding necessary for courts to handle the influx of cases. The immigration court system relies on an antiquated paper-filing system, rather than electronic systems common in other courts.

EDITORIAL: A "Rational Middle" exists for immigration reform

Nationwide, more than 668,000 immigration cases were pending as of December 2017, an 11 percent increase over May 2017, according to the Transactional Records Access Clearinghouse at Syracuse University, which tracks immigration and other federal court cases. More than 39,000 of those with pending cases were Harris County residents, a number second only to Los Angeles.

The Trump administration has added to the backlog by essentially ending priorities that targeted the most dangerous cases. Now, anyone in the country illegally — whether a parent, child or neighbor — is a target for Immigration and Customs Enforcement.

Immigration judges decide whether an immigrant has a legitimate claim to live in the United States or should be deported. These are life-altering decisions that require an independent judge and a deliberative procedure that values due process. Tying a judge's pay or continued employment to arbitrary case-closure quotas puts all that at risk.

"In fact, the very concept is in conflict with independent decision-making authority of judges because it (ties) the judge's personal livelihood to the mere completion of cases faster through the system rather than making decisions that are based on the facts and the law of the case as they took the oath to do," California Immigration Judge Ashley Tabaddor, president of the National Association of Immigration Judges, said on Wednesday's media conference call.

EDITORIAL: Congress can fix immigration courts with proper funding

Trump administration, seeking to speed deportations, to impose quotas on immigration judges
Justice Department imposes quotas on immigration judges

Tabaddor said the quotas will create an appealable issue in all immigration cases. Additional appeals would further clog the immigration court system, defeating the supposed purpose of the Justice Department edict.

Instead of setting quotas to create assembly-line justice, the Trump administration should be following recommendations for reform issued last year by the Government Accountability Office. Those recommendations included improved planning to increase and improve the workforce; creating a clearer path to an electronic records system; and establishing and documenting better case completion goals. The GAO never mentioned quotas for judges.

Congress and the Trump administration took an important step by approving funding for 75 additional immigration judges, bringing the total number to about 400. That's a good first step, and we have long called for hiring more immigration judges.

However, the GAO report said the hiring process for judges is too cumbersome and recommended smart reforms.

The most important reform — which GAO stopped short of making — is to change the fundamental nature of immigration judges, who are currently employees of the Justice Department, an executive branch agency. They should be employees of the judicial branch, like judges who hear bankruptcy and tax cases.

The Trump quota system for immigration judges is an attack on judicial independence, a cornerstone of any legal system. The only way to protect that judicial independence is for the legislative branch — Congress — to stand up to the executive branch and move immigration judges to the judicial branch.



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