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EOIR Wants To Use Caseload Metrics For Evaluating Judges

By Kevin Penton

Law360, New York (November 1, 2017, 10:29 PM EDT) -- The Executive Office for Immigration Review is considering adding metrics on the duration and quantity of cases resolved by immigration judges to their performance reviews, the agency's acting head told a House Judiciary subcommittee Wednesday.

The metrics, which detractors label as quotas, would be an extension of data that the EOIR already collects but that it currently does not include as part of immigration judges' "work plans," James McHenry told the Immigration and Border Security Subcommittee during a hearing that focused on the agency and its growing backlog of cases, which McHenry said hit 634,000 in October.

"It's something we're looking at in consultation with the union," the acting EOIR director said, referring to the National Association of Immigration Judges, which in recent weeks has issued strong condemnations of the concept. McHenry otherwise demurred on the details of what the EOIR is considering, noting that statutory requirements on how long judges can take on certain proceedings, such as asylum applications, are already part of their evaluations.

Subcommittee ranking member Zoe Lofgren, D-Calif., criticized the concept, arguing that it is not the answer to reducing the caseload.

"I don't think it will do more except increase the number of immigration removals, speedy deportations and also increase appeals in our federal court system," said Lofgren, who encouraged Congress to fully fund the hiring of positions such as immigration judges and clerks.

The union told the Senate Judiciary Committee last month that the EOIR has reopened the judges' collective bargaining agreement in an attempt to add quotas to judges' performance reviews, a move that the NAIJ cannot bar because the judges are considered U.S. Department of Justice employees, rather than court judges.

"Tying numerical case completions to the evaluation of the individual judge's performance evaluation specifically interferes with judicial independence and clearly will put immigration judges in a position where they could feel forced to violate their legal duty to fairly and impartially decide cases in a way that complies with due process in order to keep their

jobs," the union said in a statement prepared for the Senate hearing on the DOJ.

McHenry refused to bite on repeated attempts by Rep. Steve King, R-Iowa, to get him to say that construction of a wall along the nation's southern border would lead to a reduction in the agency's caseload. McHenry told the legislator that while the EOIR is authorized to have as many as 384 immigration judges, the caseload would come down to a "reasonable" number should Congress implement President Donald Trump's call to increase the figure to 700.

The subcommittee's chairman, Raul Labrador, R-Idaho, placed fault for the large caseload on mismanagement present during the Obama administration.

"EOIR has been plagued by management problems that have consistently hampered its ability to operate the courts," Labrador said. "During the past administration, the Department of Justice's Inspector General's Office found that the office engaged in nepotism and other inappropriate practices. These disturbing findings served as a distraction for EOIR, making it impossible to focus on much needed improvements."

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