



Immigration Judge Shortage Spawns Record Backlog

By **Matthew Bultman**

Law360, New York (May 22, 2015, 8:00 PM ET) -- Understaffed and underfunded, federal immigration courts are not equipped to handle the influx of new cases they receive each year, pushing an already large backlog into an all-time high of over 445,000 cases, according to a report Thursday.

As of April, the Immigration Policy Center counted a backlog of 445,607 cases, almost 183,000 more than the courts faced five years ago. The average removal case has been pending for more than 600 days, the report said.

Titled "Empty Benches: Underfunding of Immigration Courts Undermines Justice," the report blamed the problem on several factors but highlighted a shortage of immigration judges as one that required immediate attention.

"Backlogs and delays benefit neither immigrants nor the government — keeping those with valid claims in limbo and often in detention, delaying removal of those without valid claims, and calling into question the integrity of the immigration justice system," the IPC said.

Immigration courts for years have battled a chronic backlog of cases that has clogged the court, due in part to increased enforcement along the U.S. border with Mexico. But the problem was exacerbated last summer when a wave of children and families, mostly from Central America, poured into the U.S.

During the surge, the [U.S. Department of Justice](#) ordered the courts to prioritize the cases of unaccompanied children and families, sending them into the so-called "rocket docket."

According to the IPC, which has been critical of the expedited process, the dockets have done little to help ease the logjam.

Less than 16 percent of the current backlog consists of unaccompanied children's cases. Meanwhile, other hearings continue to be pushed back, including many with humanitarian claims and people who cannot work while their cases are pending.

The overload is also having an impact on the nation's 233 immigration judges, who handled an average of 1,400 matters in fiscal year 2014. The IPC cited some judges who reported having just seven minutes to decide an immigrant's case.

“Overburdened judges are more likely to make wrong decisions when making ‘split-second decisions regarding complex legal issues,’” the report said, noting the number of judges has declined from 270 in 2010.

One part of the problem, the IPC said, is that funding for immigration courts has not kept pace with sizable spending increases for enforcement agencies.

Since 2003, funding for [U.S. Customs and Border Protection](#) and U.S. [Immigration and Customs Enforcement](#) has more than doubled, rising from \$9.1 billion to \$18.7 billion in 2015. During that same time, funding for the immigration courts increased more modestly, up 74 percent from 2003's \$199 million to \$347.2 million this year.

Lauren Alder Reid, counsel for legislative and public affairs in the DOJ's [Executive Office for Immigration Review](#), said they are in the process of hiring 85 immigration judges, with 17 coming on board at the end of the month. But to manage the incoming and pending caseload, the office needs a sustained commitment from Congress to support additional EOIR resources, she said.

“As EOIR’s caseload continues to rise, the agency needs the ability to be flexible in its hiring processes, permitting us to ramp up staffing when needed, and consistently accounting for natural attrition of the immigration judge corps and other support staff,” she said.

Still, in its report, the IPC concluded that by itself, funding would not be enough to cure the problems that plague the immigration court system. The report said numerous other reforms were necessary, including a meaningful right to counsel.

But more money and more judges would be a significant step forward, according to the IPC.

“Additional immigration judges would help ensure that all noncitizens have a meaningful and timely day in court, and would help restore the integrity of the system,” the report said.

--Editing by Edrienne Su.

© 2015, Portfolio Media, Inc

<http://www.law360.com/articles/659303/immigration-judge-shortage-spawns-record-backlog>