

IMPOSING QUOTAS ON IMMIGRATION JUDGES WILL EXACERBATE THE CASE BACKLOG AT IMMIGRATION COURTS

ISSUE: As of the end of 2017, there are approximately 667,839 pending cases before approximately 350 Immigration Judges (IJs). The average immigration case takes 708 days to wind its way through the courts. The Department of Justice in an attempt to reduce the backlog is currently engaging in a misguided initiative to impose quotas and deadlines on IJs. The imposition of quotas is not the right solution to this problem and will contribute to increasing the backlog. A recent GAO study on the Immigration Court concluded that close to 90% of continuances on the court's docket are attributed to factors outside the control of judges.

DISCUSSION: Interference by the DOJ with court docketing has proven disastrous in the past. With each "prioritization" mandate, thousands of cases have been reshuffled further delaying completion of cases ripe for review. For example from 2014 to 2016, completions in the courts decreased dramatically due to the politicized moving of the cases of recent arrivals to the front of the line, thereby compromising thousands of pending cases which became further aged and stale. A shift in focus of prioritization in 2017 has caused the same problem as IJs were surged to the border, leaving their home dockets unattended. Policy concerns rather than judicial expertise and due process drove that damaging initiative.

Furthermore, IJs need time to independently address the cases before them. Immigration cases are complicated and quotas will only lead to further litigation. Immigrants will assert the IJ's decision denied them due process rights as IJs are forced to rush complicated cases through the system without affording each matter proper review. Production quotas put due process at risk and threaten judicial independence. The cases in our courts involve asylum seekers and longtime lawful residents. The U.S. Constitution guarantees these litigants impartial adjudication of their cases under a complex law where 40% of respondents proceed without legal counsel. Due process cannot be meted out on a schedule, but requires judges to use their expertise on a case-by-case basis to move cases as fairly and efficiently as possible.

SOLUTION: Judges must be allowed to do what they do best – provide fair and impartial rulings in a timeframe dictated by the circumstances and facts of each case before them, without risk to their jobs. Imposing quotas on IJs which will form the basis of their performance evaluations and impact their ability to retain their jobs creates an untenable conflict between IJs and the public they serve. Recognizing that performance evaluations are antithetical to judicial independence, Congress exempted Administrative Law Judges (ALJs) from performance appraisals and ratings by including them in the list of occupations exempt from performance reviews in 5 U.S.C. § 4301(2)(D). This provision lists ALJs as one of eight categories (A through H) of employees who are excluded from the requirement of performance appraisals and ratings.

Include language in the immigration legislation currently moving through the Congress which provides that ACUS conduct a study on:

- Whether performance evaluations, including numeric based evaluations, for individual immigration judges can be implemented without violating judicial independence and due process, and if so, what limits or restrictions would apply to the implementation of such evaluations.
- Until the completion of this study no new performance measures for Immigration Judges can be implemented