



REPORT BY THE IMMIGRATION AND NATIONALITY LAW COMMITTEE

QUOTAS IN IMMIGRATION COURTS WOULD BE NEITHER EFFICIENT NOR JUST

The Trump Administration has recently signaled its willingness to use case completion quotas in its performance evaluation of immigration judges.¹ The New York City Bar Association (City Bar) firmly opposes this potential shift which could erode due process in immigration court. The American Bar Association President, Hilarie Bass, has likewise issued a statement warning that such quotas threaten “to subvert justice.”² Not only would such quotas be a threat to judicial independence in an area of law where stakes are akin to capital punishment, quotas would likely further exacerbate the backlog they are meant to remedy.

The implication that this backlog of more than 640,000 cases – more than 85,000 in New York alone – is somehow the result of judicial inefficiency is belied by the reality of an immigration judge’s work.³ Immigration judges contend with caseloads that sometimes exceed 2,000 respondents each. In New York, attorneys and immigrants regularly cram into courtrooms and overflow into hallways as judges work diligently to cope with an ever-increasing workload. Judges should not be required to further shave time off of each case, rather judges need more resources, such as dedicated law clerks.

Statements from U.S. Department of Justice officials have suggested that courtrooms are sitting empty as if judges are shirking their duties.⁴ However, many of these courtrooms have been vacant because the administration paid to fly judges to the border for temporary details

¹ Maria Sacchetti, *Immigration judges say proposed quotas from Justice Dept. threaten independence*, The Washington Post, Oct. 12, 2017, https://www.washingtonpost.com/local/immigration/immigration-judges-say-proposed-quotas-from-justice-dept-threaten-independence/2017/10/12/3ed86992-ae11-11e7-be94-fabb0f1e9ffb_story.html?utm_term=.3d2d4f665dd1; President Donald J. Trump’s Letter to House and Senate Leaders & Immigration Principles and Policies, Oct. 8, 2017, <https://www.whitehouse.gov/the-press-office/2017/10/08/president-donald-j-trumps-letter-house-and-senate-leaders-immigration> (outlining need for “performance metrics”)(all sites last visited Dec. 6, 2017).

² Statement of ABA President Hilarie Bass Re: Mandatory case completion quotas for immigration judges, American Bar Association, Oct. 16, 2017, https://www.americanbar.org/news/abanews/aba-news-archives/2017/10/statement_of_abapre1.html.

³ Transactional Records Access Clearinghouse (TRAC) of Syracuse University, Immigration Court Backlog Tool, http://trac.syr.edu/phptools/immigration/court_backlog/ (accessed Nov. 15, 2017, 9:37 PM).

⁴ Maria Sacchetti, *DOJ details plan to slash immigration court backlog*, The Washington Post, Nov. 3, 2017, https://www.washingtonpost.com/local/immigration/doj-details-plan-to-slash-immigration-court-backlog/2017/11/03/03fcef34-c0a0-11e7-959c-fe2b598d8c00_story.html?utm_term=.e39d4b2010e6.

where they had far less work to do than they would have at home.⁵ Others sat empty because of problems filling judicial vacancies that predate the current administration.⁶

Furthermore, there is no reliable metric that could determine which judges are the most “efficient.” Immigration cases vary dramatically in complexity. On rare occasions, a case may be resolved in a single, short hearing. However, more complicated cases may require substantial evidence and legal arguments to determine whether an immigrant even belongs in court proceedings prior to reaching the merits of any applications.⁷ For example, if the Department of Homeland Security wants to remove someone from the United States for a misdemeanor committed thirty years ago, the attorneys may have to spend substantial time waiting for records keepers to produce decades-old court transcripts to be sure exactly what happened so long ago.

The complexity of immigration law often requires judges to proceed with caution and continuances. It is a field rife with unsettled law, and parties are slowed down by language barriers; overseas witnesses and evidence; applications pending before other government agencies; a mix of local, state, federal, and foreign law; respondents struggling with symptoms of trauma; and a shortage of affordable legal counsel. Rushing cases would mean depriving parties of due process.

To make matters worse, quotas would be unlikely to save any time. Cases sloppily rushed through courts would result in a dramatic increase in motions to reopen and appeals, drawing cases out longer than if they had simply been diligently resolved in the first instance. In addition, it is an unfortunate reality that fearing the prospect of being summarily deported without a full opportunity to present their cases, many immigrants might simply not show up to court at all. This backlog has been growing for years as a symptom of an immigration system that all sides agree is broken. Forcing cases through this broken system faster will only compound existing problems and endanger the lives of people with genuine claims.

Rather than impose arbitrary quotas on judges, which would further hamper their ability to exercise control and independent judgment in their courtrooms, we suggest that Congress establish immigration court as a truly independent adjudicative Article I court. As long as the court remains within the executive branch, it will never be truly independent of political pressures exerted by the executive. We further urge the federal government to invest resources in providing counsel to vulnerable immigrants to clarify and narrow legal issues in each case.

Quotas misconstrue the role of the judiciary. The mission of the Executive Office for Immigration Review “is to adjudicate immigration cases by fairly, expeditiously, and uniformly

⁵ Meredith Hoffman, *Trump Sent Judges to the Border. Many Had Nothing to Do*, Politico, Sept. 27, 2017, <https://www.politico.com/magazine/story/2017/09/27/trump-deportations-immigration-backlog-215649>.

⁶ U.S. Gen. Accounting Office, GAO-17-438, *Actions Needed to Reduce Case Backlog and Address Long-Standing Management and Operational Challenges* 27, June 1, 2017, <http://www.gao.gov/products/GAO-17-438>.

⁷ Not only must judges make threshold determinations about whether non-citizens may be removable, in many instances, U.S. citizens are wrongly placed in removal proceedings. See Lise Olsen, *Hundreds of American citizens end up in deportation proceedings each year, immigration data shows*, Houston Chronicle, July 30, 2017, <http://www.houstonchronicle.com/news/houston-texas/houston/article/Hundreds-of-citizens-end-up-in-deportation-11719324.php>.

interpreting and administering the Nation's immigration laws.”⁸ These principles call for not merely speed but also accuracy. For these reasons, the City Bar strongly urges the administration to avoid the use of numerical quotas in courts. To do so threatens due process to the people in removal proceedings and judicial independence.

Immigration and Nationality Law Committee
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December 2017

⁸ U.S. Dep’t of Justice, Executive Office for Immigration Review, EOIR Mission, <https://www.justice.gov/eoir>.