

# Notice & Comment

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## Fair Process in Name Only

by [Jill Family](#) — Monday, Nov. 6, 2017

[This post is co-authored by Jill Family and [Lenni Benson](#), Professor of Law, New York Law School]

Our legal system should not provide fair process in name only. On paper, our immigration system provides procedural protections in an administrative hearing where the outcome defines lives. For those facing the full weight of government power in immigration court, the whole process can be so riddled with problems, however, that it increasingly is only a façade of justice.

We are deeply concerned about our immigration courts. Already struggling to maintain standards in cases and under the thumb of the Attorney General, immigration judges now face the prospect of being evaluated based on [numerical quotas](#). Immigration judges are not independent (they are just employees of the Department of Justice) and do not even have the protected terms of office of an Administrative Law Judge.

Efforts to remove foreign nationals have increased exponentially, but resources for immigration court [have not kept pace](#). While enforcement officers receive more funding to place more individuals in immigration court proceedings, the immigration courts are expected to handle larger caseloads without an adequate increase in resources.

Beyond the lack of resources, the lack of decisional independence has been problematic for years. The Department of Justice Inspector General found that the second Bush administration used [unlawful political hiring practices](#) in filling immigration judge positions. Additionally, the Board of Immigration Appeals was reduced in size in an [apparent attempt](#) to remove adjudicators with decisional track records that then Attorney General John Ashcroft did not like.

And now the Trump Administration is planning to evaluate the job performance of its immigration judge employees based on “[numeric performance standards](#).” This means that an immigration judge’s salary or retention would depend on meeting these centralized goals. This is a [terrible idea](#). The problem is not that immigration judges are not working hard enough. The problem is that there are too many removal cases in immigration court

and not enough immigration judges to hear those cases. A quota system would diminish even further the role of immigration judges and would further deteriorate the reputation of the immigration courts.

Should immigration judges prioritize due process or a need to please the boss and clear the docket? Shouldn't immigration judges at least have the independence to manage their own dockets? Immigration adjudication takes time because immigration law is intensely complex, often involves claims that someone will face death or other persecution if sent away, and involves respondents who do not speak English. For those in detention [less than 15% have an attorney](#) because our system does not provide a free defender and because the government puts most detention facilities [far away](#) from where defense attorneys live.

Both of us have [written volumes](#) on how to improve the courts and the efficiency of the courts. Counting cases and not counting quality and accuracy is a false start. We urge the Administration to rethink these case completion quotas and to reflect and to recognize that treasuring the rule of law includes providing meaningfully fair procedures.

## About Jill Family

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