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Immigration

Immigration judges say proposed quotas from Justice Dept. threaten independence



Attorney General Jeff Sessions speaks about "the crisis facing our asylum system" at the Executive Office for Immigration Review in Falls Church, Va., Thursday, Oct. 12, 2017. (Sait Serkan Gurbuz/AP)

By Maria Sacchetti

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The Trump administration is taking steps to impose “numeric performance standards” on federal immigration judges, drawing a sharp rebuke from judges who say production quotas or similar measures will threaten judicial independence, as well as their ability to decide life-or-death deportation cases.

The White House says it aims to reduce an “enormous” backlog of 600,000 cases, triple the number in 2009, that cripples its ability to deport immigrants as President Trump mandated in January.

The National Association of Immigration Judges called the move unprecedented and says it will be the “death knell for judicial independence” in courts where immigrants such as political dissidents, women fleeing violence and children plead their cases to stay in the United States.

“That is a huge, huge, huge encroachment on judicial independence,” said Dana Leigh Marks, spokeswoman and former president of the association and a judge for more than 30 years. “It’s trying to turn immigration judges into assembly-line workers.”

The White House tucked its proposal — a six-word statement saying it wants to “establish performance metrics for immigration judges” — into a broader package of immigration reforms it rolled out Sunday night.

But other documents obtained by The Washington Post show that the Justice Department “intends to implement numeric performance standards to evaluate Judge performance.”

The Justice Department, which runs the courts through the Executive Office for Immigration Review, declined to comment or otherwise provide details about the numeric standards.

The Justice Department has expressed concern about the backlog and discouraged judges from letting cases drag on too long, though it has insisted that they decide the cases fairly and follow due process. On Thursday, Attorney General Jeff Sessions expressed concern that false asylum cases are clogging up the courts.

The judges’ union says its current contract language prevents the government from rating them based on the number of cases they complete or the time it takes to decide them.

But now, they say, the department is trying to rescind that language, and advocates say it could violate a federal regulation that requires judges to “exercise their independent judgment and discretion” when deciding cases.

Advocates and immigration lawyers say imposing numerical expectations on judges unfairly faults them for the massive backlog. Successive administrations have expanded immigration enforcement without giving the courts enough money or judges to decide cases in a timely way, they say. An average case for a non-detained immigrant can drag on for more than two years, though some last much longer.

“Immigration judges should have one goal and that goal should be the fair adjudication of cases,” said Heidi Altman, director of policy at the National Immigrant Justice Center, a nonprofit that provides legal services and advocacy to immigrants nationwide. “That’s the only metric that should count.”

Immigration lawyers say the proposed standards risk adding to disadvantages immigrants already face in immigration courts. Most defendants do not speak English as their first language if at all, are not entitled to lawyers at the government’s expense, and thousands end up trying to defend themselves.

Often immigrants are jailed and given hearings in remote locations, such as rural Georgia or Upstate New York, which makes it difficult to gather records and witnesses needed to bring a case.

“People’s lives are at risk in immigration court cases, and to force judges to complete cases under a rapid time frame is going to undermine the ability of those judges to make careful, well thought-out decisions,” said Gregory Chen, director of government relations for the American Immigration Lawyers Association, which has 15,000 members.

Traditional federal judges are not subject to quotas.

The rare public dispute between the immigration judges and the Justice Department comes as the Trump administration is demanding a

commitment to increased enforcement and other immigration restrictions in exchange for legal status for 690,000 young undocumented immigrants who, until recently, were protected from deportation under an Obama-era program. Sessions announced the end of the program last month, and the young immigrants will start to lose their work permits and other protections in March.

In January, Trump issued a slate of executive orders that sought to crack down on immigration. He revoked President Barack Obama's limits on enforcement and effectively exposed all 11 million undocumented immigrants in the United States to arrest.

On Sunday, Trump also called for more immigration-enforcement lawyers and more detention beds, which would further increase the caseloads of the courts.

He is also planning to seek congressional funding for an additional 370 immigration judges, which would more than double the current number.

Immigration arrests are up more than 40 percent since Trump took office, and deportation orders are also rising. From Feb. 1 to August 31, judges have issued 88,383 rulings, and in the majority of cases — 69,160 — immigrants were deported or ordered to voluntarily leave the country, a 36 percent increase over the corresponding period in 2016.

The immigration courts have clamored for greater independence from the Justice Department for years and also have sought greater control over their budget. They have long complained about a lack of funding, burnout rates that rival that of prison wardens, and caseloads exceeding 2,000 each. Some judges are scheduling cases into 2022.

On Sunday, Sessions — who appoints the immigration judges and is the court's highest authority — called the White House's broad immigration proposals "reasonable."

"If followed, it will produce an immigration system with integrity and one in which we can take pride," he said.

Maria Sacchetti is the Post immigration reporter. She previously reported for The Boston Globe.

https://www.washingtonpost.com/local/immigration/immigration-judges-say-proposed-quotas-from-justice-dept-threaten-independence/2017/10/12/3ed86992-ae1-11e7-be94-fabb0f1e9ffb_story.html?utm_term=.ccfb1bd5d7f

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