Performance Metrics for Immigration Judges: A Matter of Judicial Efficiency or an Erosion of Independent Judiciary?

By Kathryn P. Russell

On Oct. 8, 2017, the White House released "Immigration Principles & Policies," a seven-page outline of proposed changes to the U.S. immigration system including changes to border security, interior enforcement, and merit-based immigration. On the topic of interior enforcement, the administration argued that immigration judges and supporting personnel "face an enormous case backlog, which cripples our ability to remove illegal immigrants in a timely manner" and proposed a number of reforms, one in particular prompting considerable debate.

Specifically, the Trump administration, in response to the significant backlog of cases pending before our immigration courts, announced an intention to "establish performance metrics for immigration judges" as a means of promoting judicial efficiency and the speedy resolution of removal cases. While general performance metrics can be seen as facially innocuous, the suggestion sparked an immediate backlash from immigration advocates claiming that the measures would "threaten the integrity of the immigration court system and undermine judicial independence." Alternatively, proponents of implementing numerical quotas stress that this is the first of many steps needed to address a widely criticized and recognized case backlog in our immigration courts and to secure the efficient administration of justice.

Today, there are 632,261 cases pending before the U.S. immigration judges – a number expected to increase dramatically as a result of the Trump administration's expansion of ICE's enforcement authority and the elimination of the DACA program. The U.S. immigration courts are housed within the Executive Office for Immigration Review (EOIR). The EOIR is an office of the U.S. Department of Justice and is responsible for adjudicating immigration cases by "fairly, expeditiously, and uniformly interpreting and administering our immigration laws." Under delegated authority from the attorney general, the principal function of the EOIR is to conduct administrative "removal" proceedings to determine the removability of individuals (respondents) in the United States and adjudicate applications for relief from deportation. However, timely case completion sees many obstacles. Indeed, the U.S. Government Accountability Office released a report showing that the immigration case backlog "more than doubled" from fiscal years 2006 through 2015 "primarily due to declining cases completed by the immigration courts per year."

Unsurprisingly, proponents and opponents of the Trump administration's proposal agree that processing delays and our backlogged immigration courts present significant challenges to the administration of justice and ensuring that removal cases are completed in a timely manner, whether resulting in an individual's grant of permission to stay in the United States or removal to their home country. From the perspective of immigration practitioners defending individuals in removal proceedings, the immigration court backlog can result in cases taking four or five years before final resolution. In the meantime, respondents may see their opportunities for defense from deportation diminish as crucial memories fade, evidence goes stale, witnesses move out of state, or a qualifying relative needed to receive a benefit ages out or passes away. While there is no magic fix, the backlog places court, respondents, and counsel in a complicated limbo.

Alternatively, given the sensitivity of the matters before U.S. immigration judges – asylum applicants fleeing persecution, unaccompanied minors, and parents facing separation from their children – the suggestion of case completion standards has prompted immediate concerns over the judicial independence and integrity of the judiciary if judges are too rushed. In a recent statement, the National Association of Immigration Judges called the move unprecedented and characterized the proposal as a "death knell for judicial independence" in courts where judges preside over matters which are often, quite literally, matters of life or death. Similarly, the American Immigration Lawyers Association cautioned that if numerical quotas or completion goals are imposed, "immigration judges will feel compelled to dispose of cases more rapidly, rather than considering each case's unique facts and applicable law when rendering a decision."

Ultimately, a proposal to implement numeric performance standards to evaluate the performance of immigration judges may be seen as a double-edged sword. Proponents assert that ensuring purely numerical standards – as the administration does not appear to be trying to control how judges resolve cases, just that it is done so more efficiently – works toward the common goal of judicial administration and justice for respondents. However, opponents – including some immigration judges themselves – are concerned that they'll be reduced to output workers expected to fill "production quotas" based on the number of cases they resolve, justice aside. As with so many of the changes to the U.S. immigration system in 2017, whether this can be implemented to fairly serve both the rule of law and fair administration of justice for all remains to be seen.

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