



# AILA Policy Brief: Imposing Numeric Quotas on Judges Threatens the Independence and Integrity of Courts

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The Trump Administration seeks to impose new performance measures on immigration judges that will threaten the integrity of the immigration court system and undermine judicial independence. In an effort to accelerate deportations, the Department of Justice (DOJ) plans to use numeric case completion quotas to evaluate each immigration judge's performance. This unprecedented effort to compel judges to finish cases under stricter deadlines infringes on the Constitution's guarantee of due process. AILA urges DOJ to reconsider its proposal to use numeric completion goals for judge performance evaluations.

## How DOJ Will Impose Numerical Quotas on Immigration Judges

Historically, immigration judges were exempt from performance evaluations altogether because of concerns that supervisors' evaluations would improperly influence judges' decisions and potentially affect the outcome of cases. In 2009, after assurances were made to preserve judicial independence, the Executive Office for Immigration Review (EOIR), a branch of DOJ, established a system to evaluate the performance of individual immigration judges. But a central component of the new system was a provision that prevented DOJ from evaluating immigration judges based on numerical case completion quotas.<sup>2</sup>

In 2017, at the direction of the new administration, EOIR reopened the Collective Bargaining Agreement with the National Association of Immigration Judges (NAIJ). EOIR intends to eliminate the provision preventing the use of numeric quotas and to add quotas to the judge's performance evaluations. If this fundamental safeguard is eliminated from the agreement, immigration judges may face potential termination for failing to meet case completion deadlines. Moreover, a judge's supervisor could make an adverse retention decision against a judge if the supervisor does not approve of a judge's good faith legal judgment in a case. In order to ensure a high level of professionalism and to protect judges from political and outside influences, numerical case completion goals should not be tied to the evaluation of the individual judge's performance.

- **Mandatory quotas erode the independence of immigration judges.**

By regulation, immigration judges are appointed by the Attorney General and are employees of DOJ. They do not enjoy many of the protections of Article III federal judges, such as life-tenure. In fact, immigration judges have no fixed term of office and can be fired by the Attorney General or be relocated to another court.<sup>3</sup>

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<sup>2</sup> See National Association of Immigration Judges, *Threat to Due Process and Judicial Independence Caused by Performance Quotas on Immigration Judges* (October 2017), available at [https://www.naij-usa.org/images/uploads/publications/NAIJ\\_Quotas\\_in\\_IJ\\_Performance\\_Evaluation\\_10-1-17.pdf](https://www.naij-usa.org/images/uploads/publications/NAIJ_Quotas_in_IJ_Performance_Evaluation_10-1-17.pdf).

<sup>3</sup> See American Bar Association, *Executive Summary of Reforming the Immigration System: Proposal to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases* (February 2010), available at [https://www.americanbar.org/content/dam/aba/publications/commission\\_on\\_immigration/coi\\_executive\\_summary\\_authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/coi_executive_summary_authcheckdam.pdf).

Importantly, the independence of immigration judges is protected in law. Federal regulation 8 C.F.R. §1003.10(b) states that judges “exercise independent judgment and discretion” in their case decisions.<sup>4</sup> While in the past, courts have established aspirational case completion goals to help manage overall caseload in particular court locations, numeric quotas have never been explicitly tied to judges’ individual performance evaluations.<sup>5</sup> The inclusion of numerical case completion quotas in performance evaluations would severely jeopardize an immigration judge’s ability to remain independent and impartial.

- **Mandatory quotas will lower the quality of adjudications and compromise due process.**

If numeric case 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. Judges will feel more pressure to deny requests for continuances. An unrepresented person appearing before the court may more need time to find an attorney. An asylum seeker may need more time to gather evidence that is hard to obtain from her country of origin. Continuances are often necessary if DHS and the individual are discussing a settlement agreement. Furthermore, federal law, INA §240(b)(4)(B), requires that a respondent be given a “reasonable opportunity” to examine and present evidence.<sup>6</sup> Given that most respondents do not speak English as their primary language, a strict time frame for completion of cases would interfere with a judge’s ability to assure that this right to examine and present evidence is respected.

Due process can only be accomplished if the judge has sufficient time to develop and review each case, conduct a thorough hearing, deliberate on the case, and issue a well-reasoned decision that is consistent with the facts and relevant law. Federal courts have already expressed concerns that attempts to increase emphasis on the quantity of administrative law judge decisions could negatively affect the quality of those decisions. The Seventh Circuit Court of Appeals specifically stated that it could imagine a case in which a change in immigration judges’ working conditions could have an “effect on decisional independence so great as to create a serious issue of due process.”<sup>7</sup>

- **Mandatory quotas will not fix the overloaded immigration court system.**

Imposing case completion quotas on judges will not make the immigration court system more efficient. For over a decade, the immigration courts have been severely under-funded when compared to the skyrocketing budget increases that Congress has provided to immigration enforcement. The combined budgets of Immigration and Customs Enforcement and Customs and Border Protection exceed \$20 billion.<sup>8</sup> By comparison the EOIR budget is about \$420 million.<sup>9</sup> Unable to keep pace with the growing

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<sup>4</sup> See 8 C.F.R. §1003.10(b) (“In deciding the individual cases before them, and subject to the applicable governing standards, immigration judges shall exercise their independent judgment and discretion and may take any action consistent with their authorities under the Act and regulations that is appropriate and necessary for the disposition of such cases.”).

<sup>5</sup> See Government Accountability Office (GAO), *Immigration Courts: Actions Needed to Reduce Case Backlog and Address Long-Standing Management and Operational Challenges* (June 2017), page 62, Figure 10, available at <http://www.gao.gov/assets/690/685022.pdf>. AILA members reported these case completion goals were already affecting judges’ decisions, even when they were not tied to their evaluations. See *AILA/EOIR Liaison Q&As (10/28/09)*, pages 8-9. Minutes on file with AILA.

<sup>6</sup> INA §240(b)(4)(B) (“the alien shall have a reasonable opportunity to examine the evidence against the alien, to present evidence on the alien's own behalf, and to cross-examine witnesses presented by the Government....”).

<sup>7</sup> See *Ass'n of Admin. Law Judges v. Colvin*, 777 F.3d 402 (7th Circuit, 2015).

<sup>8</sup> *DHS Budget in Brief, Fiscal Year 2017*, available at <https://www.dhs.gov/sites/default/files/publications/FY2017BIB.pdf>.

<sup>9</sup> *EOIR FY2017 Budget Request At A Glance*, available at <https://www.justice.gov/jmd/file/821961/download>.

number of cases being put into removal proceedings, the immigration courts have failed to stem the steadily rising number of cases in its backlog. As of August 2017, more than 632,261, cases were in the queue, an increase of almost 30 percent compared to one year ago.<sup>10</sup> The direct consequence of this backlog is that people are waiting far longer for decisions in their cases. The average estimated time before someone will receive a decision in his or her cases is 681 days--almost two years. In large states like California or Texas, average wait times are closer to three years.

Immigration judges already have extremely high caseloads that typically exceed the workloads of other federal administrative law judges. Imposing numeric deadlines on judges will not improve their performance. Instead quotas will compromise the quality of their decisions, and result in grave errors like the wrongful deportation of an asylum seeker back to dangerous, life-threatening circumstances.

The immigration court system is failing to ensure that every individual appearing before the court receives a fair hearing and full review of their case consistent with the rule of law and fundamental due process. DOJ and EOIR have not proposed any viable plan to address these structural problems. Instead of improving the system, the current plan to impose numeric quotas on immigration judges is precisely the kind of policy that undermines due process and the integrity of the courts.

Despite the severe under-funding of the immigration court system, at this time AILA does not support increases in funding for EOIR. AILA will only support funding that is tied to a credible plan that advances reforms to EOIR's structural problems, supports the independence of the court system, builds due process and fairness norms into the adjudication process, and adheres to transparent decision-making.

- **Mandatory quotas will facilitate more deportations, not fair decisions.**

Imposing numeric quotas on immigration judges will also contribute to the Trump Administration's broader agenda to streamline removal procedures and deport massive numbers of people at the expense of due process. DHS plans to expand other procedures that undermine due process, as well, such as the nationwide use of expedited removal, which enables DHS to bypass immigration court proceedings altogether and which is now used in more than 80 percent of all removals. By compelling judges to decide cases even faster, the Administration will achieve more rapid deportation rates.

Moreover, enforcement has begun aggressively targeting people who have lived and worked for years in the United States, including people with families and jobs.<sup>11</sup> During the first 100 days of the new Administration, ICE increased its number of immigration arrests of undocumented immigrants by 38 percent. During that same time period, ICE increased its arrests of individuals with no criminal convictions by 157 percent.<sup>12</sup> The Trump Administration has also initiated a major expansion of the immigration enforcement apparatus by calling for dramatic increases in spending for the border wall, more enforcement agents, and more detention beds.<sup>13</sup>

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<sup>10</sup> See TRAC Immigration, *Immigration Court Backlog Tool*; available at [http://trac.syr.edu/phptools/immigration/court\\_backlog/](http://trac.syr.edu/phptools/immigration/court_backlog/). See also TRAC, *Immigration Court Backlog Nears 600,000* (June 16, 2017), available at <http://trac.syr.edu/whatsnew/email.170616.html>.

<sup>11</sup> AILA and American Immigration Council, *Summary and Questions/Analysis of Executive Order: 'Enhancing Public Safety in the Interior of the United States'*, [http://www.aila.org/infonet/summary-brief-analysis-of-trump-executive-orders?utm\\_source=aila.org&utm\\_medium=InfoNet%20Search](http://www.aila.org/infonet/summary-brief-analysis-of-trump-executive-orders?utm_source=aila.org&utm_medium=InfoNet%20Search)

<sup>12</sup> *ICE Arrests of Suspected Undocumented Immigrants Up Nearly 40% Compared to Last Year*, Time Magazine, May 17, 2017, available at <http://time.com/4782643/ice-arrests-2017-donald-trump-immigration/>.

<sup>13</sup> *The Trump Administration FY2018 Budget: Funding for a Massive Deportation Machine*, June 19, 2017, AILA Doc. No. 17060906.

Taken together these policies demonstrate a clear design to speed up the deportations of more people with little regard for due process or principles of fairness and humanitarianism that have long been the foundation of America's immigration policy. Immigration courts should be an instrument of justice, not a tool to further an enforcement agenda. EOIR should not proceed with this plan to impose numeric quotas on judges.