

## Md. immigration attorneys: Quotas on judges will impede due process

By: Anamika Roy Daily Record Legal Affairs Writer April 5, 2018



'It is disheartening to think that a judge won't be able to give a case thoughtful consideration when they have arbitrary production quotas to reach,' Towson immigration lawyer Nicole M. Whitaker says of the Trump administration's recent announcement of a quota system for judges. (Maximilian Franz/The Daily Record)

Nicole M. Whitaker knows the federal immigration courts are backlogged and overburdened; she already has cases scheduled in 2021. But she and other Maryland immigration lawyers say the Trump administration's recent announcement of production quotas for immigration judges does not solve the problem.

"(T)he solution is to hire more judges to share the burden, not to overwork the immigration judges who are already drowning in work," said Whitaker, a Towson solo practitioner.

A quota system could hit particularly hard the state's immigration court in Baltimore. Prince George's County has more than 11,000 immigrants with pending cases, the most of any jurisdiction in the state and eight-most nationwide, according to the Transactional Records Access Clearinghouse, a data research organization based at Syracuse University. Montgomery County is close behind with almost 8,800, according to TRAC. Overall, the state has 31,000 pending cases.

Under the plan announced by the Justice Department's Executive Office for Immigration Review announced, judges must complete 700 cases a year to earn a satisfactory grade. The standards, which take effect Oct. 1, include six other measures indicating how much time judges should spend on different types of cases and court motions.

Attorney General Jeff Sessions, who oversees immigration courts, has been looking for a way to make courts keep up with the increase in deportations under President Donal Trump which has pushed the backlog to more than 650,000 cases nationwide. But Maryland attorney Jonathan Greene sees the implementation of quotas as more malicious than efficient.

"You're going to have to change the name of the agency to the 'Department of Injustice,'" said Greene, of The Greene Law Firm in Columbia. "The attorney general's announcement completely undermines due process. We're not even talking about violating the spirit of decency that exists throughout American democracy. This is about violating fundamental constitutional principles."

The quota system will put pressure on immigration judges that does not exist in other areas of law, Greene added.

"Immigration judges are required to give a meaningful opportunity to persons to present their cases," he said. "If judges are put on a quota, in order to receive satisfactory review and remain in their jobs, they will have to sacrifice the due process rights of the persons appearing before them."

## Varying cases

If a judge works 40 hours per week and does not take any time off, Whitaker calculated, that judge would have to spend less than three hours per case to meet the 700-cases-a-year quota.

"Individual merits hearings alone often take about 2-to-3 hours and that doesn't include the time the judge will spend on preliminary master calendar hearings, ruling on motions, reading legal briefs and drafting their opinions," she said.

A judge who completes more than 560 cases a year but fewer than 700 "needs improvement." Deciding fewer than 560 cases a year is deemed unsatisfactory. Judges complete an average of 678 cases a year, according to the Justice Department.

Immigration cases can be very complex and cover a range of legal issues that can vary based on geographic area. Judges in immigration court in Houston, for example, might have a lot of cases involving people who were stopped at the Mexico border, while a judge in Baltimore may get more individuals applying for asylum, said Edward Neufville III, an immigration attorney in Silver Spring.

"The processing time for cases a judge in Houston can handle will be different" from the judge in Baltimore, said Neufville, who is also the chairman of the immigration law section of the Maryland State Bar Association.

"The biggest concern for me is that it will adversely impact the very clients that the system is supposed to protect," Neufville said.

Many clients seek asylum because they experienced serious trauma, and it takes time for them to give their testimony on the stand. Attorneys spend an average of 30-to-40 hours preparing an asylum case, Whitaker said.

"Some judges already try to rush testimony along. I can only imagine how common that practice will become if judges are forced to prioritize numbers over sound legal decision-making," she said. "It is disheartening to think that a judge won't be able to give a case thoughtful consideration when they have arbitrary production quotas to reach."

## 'Unintended consequence'

One of the new benchmarks requires judges to rule the same day on every plea by asylum seekers unless the Homeland Security Department is responsible for them failing to show. If cases get pushed through immigration courts, an individual who did not get relief in court and believes the judge made a decision to meet a quota can file an appeal, said Greene, calling it an "unintended consequence" of the new policy.

"It's going to clog to the federal courts with appeals based on violation of due process," he said.

The National Immigration Judges Association, whose recent collective bargaining agreement allows for performance metrics, strongly opposes the numerical targets and will explore options under federal labor law, said Dana Leigh Marks, a union spokeswoman.

"We believe the imposition of numerical performance metrics is completely, utterly contrary to judicial independence," said Marks, who is also an immigration judge in San Francisco. "We believe assessing quality is fine, not quantity."

Greene said he's talking to clients about the quotas and what it might mean for their cases.

"I have to advise every client in immigration court of the deep concern about whether they will receive constitutional due process in court," he said.

*The Associated Press contributed to this story.*

