Immigration Court Backlog Hangs Over Trump's Reform Push

A sizable court backlog could drag on Trump's immigration crackdown for years to come.

By Andrew Soergel, Economy Reporter | Aug. 22, 2017, at 4:28 p.m.

A court backlog is likely to complicate the immigration enforcement push overseen by President Donald Trump and Attorney General Jeff Sessions. Evan Vucci/AP

President Donald Trump has repeatedly boasted of Immigration and Customs Enforcement action on his watch, at times suggesting his presence in the White House has helped push border arrests in 2017 to their lowest level in years.

But while Trump has made efforts to curb both legal and illegal immigration during his first few months in office, his reforms – which he is expected to discuss Tuesday night when he speaks at a rally in Phoenix – are likely to be delayed in part by what one analyst describes as a "massive" immigration court backlog.

Andrew Arthur, a resident fellow at the Center for Immigration Studies and a former immigration judge in York, Pennsylvania, outlined the American legal system's already swamped immigration docket during an event at the National Press Club on Tuesday morning, joined by fellow immigration hawk and Heritage Foundation senior fellow Hans von Spakovsky and National Association of Immigration Judges Secretary-Treasurer Larry Burman.

Citing ICE data, Arthur suggested more than 953,000 individuals live in the U.S. and have been given final orders of removal but have yet to be removed from the country. Syracuse University's Transactional Records Access Clearinghouse, meanwhile, indicated

that more than 610,000 pending cases were currently awaiting action by U.S. immigration courts through June.

That database also indicated the average individual involved in a currently pending deportation case has been waiting in line for 672 days – nearly two years – without resolution.
In the short run, I expect that backlog to increase as the Trump administration seeks the removal of aliens who had little to fear from ICE under the previous administration," Arthur said.

In a paper published earlier this year that looked specifically at the immigration court backlog and its root causes, Arthur noted that the national case backlog more than doubled between fiscal years 2006 and 2015. Back in 2006, he noted the median pending wait time was just 198 days. In 2015, it was 404 days.

Citing a separate report submitted to the Government Accountability Office, Arthur noted that the number of new case receipts recorded by the government actually fell between fiscal years 2009 and 2015 by roughly 20 percent – all while America's pool of immigration judges increased.

What this means is that the government was processing fewer immigration cases per year despite theoretically having more manpower to push things along.

"Unfortunately, these backlogs have real-world consequences for the government and for the aliens that were affected," Arthur said Tuesday. "These delays mean the government may have to wait years before they can actually get a removal order for an alien who is ... deportable and who has no relief. So, basically, that person gets to stay in the United States during the period of the backlog."

Arthur himself is an immigration hawk, and the Center for Immigration Studies carries the moniker: "low-immigration, pro-immigrant." He noted that the current backlog complicates the lives of legal residents who would like to, for example, help asylum-seeking family members work through the U.S. immigration system. But much of Tuesday's dialogue was dedicated to what he described as inconsistent immigration law and enforcement.

Notably, he blamed part of the backlog problem on "activist federal court judges" and the administration of former President Barack Obama for not "actually enforcing the immigration laws against people."

"I think part of the problem we saw in the last administration is that – and I don't ever want to accuse another attorney of not vigorously litigating, but there were cases that probably could have been argued a little harder," he said."

Per the Migration Policy Institute, removal orders under Obama eclipsed those of former Presidents Bill Clinton and George W. Bush. Obama in the past has been described as the "deporter-in-chief" by some immigration-rights supporters but has

been criticized by more hard-line groups for appearing to go easy on immigrants without documentation.

Arthur and von Spakovsky indicated Tuesday they are decidedly members of the latter group, speaking positively of the work Trump and Attorney General Jeff Sessions have done over the last couple months.

The administration, more broadly, has already been criticized for its active crackdown on immigrants. Tania Unzueta, a legal and policy director for racial justice outfit Mijente, wrote in a recent op-ed that Sessions "is making the Department of Justice into a weapon in ICE's holster" by mandating the appointment of border security coordinators across the country to oversee criminal immigration enforcement for each U.S. attorney's office.

Still, Trump and Sessions have both seemed to acknowledge the country's backlog problem. Trump in his fiscal 2018 budget proposal called for the creation of 75 additional "immigration judge teams." And Sessions earlier this year announced 50 more immigration judges will be appointed to the bench this year, with another 75 to come next year.

Those extra judges stand to help address the nation's backlog, but there's some concern among immigration advocates that Sessions and Trump will provide less-than-amiable directives to those who stand to be deported.

Trump has also taken heat after rumors surfaced that he may announce the pardoning of ex-Sheriff Joe Arpaio at his rally in Phoenix. Arpaio, an immigration hard-liner who was defeated in a re-election bid last year in Arizona's Maricopa County, was found guilty of criminal contempt for profiling Latinos after being ordered to cease such activities.

"The whole point of having an administration who makes it very public that they're going to enforce immigration laws, which the prior administration made clear they were not going to do, that has a deterrent effect," von Spakovsky said, suggesting Trump has deterred immigrants from crossing the U.S. border and that the current backlog in immigration courts "increased significantly during the Obama administration."

Berman, an immigration judge whose terms of employment provided for a more objective stance on the backlog issue, indicated he and his colleagues have had "just as much trouble with Republican administrations as Democratic administrations." He described his current backlog as "infinite" and said his docket is completely booked through 2020. He said he was instructed not to schedule anything beyond 2020, so new cases are simply "piling up in the ether somewhere."

"It's been my experience that the people at the top really don't understand what we do, and, consequently, the decisions they make are not helpful," he said. "It comes from political decisions animating the process. People don't really understand what they're managing, just attempting to placate the guy on the top. And that's basically what's been happening."

Berman outlined a handful of complications within the immigration court system itself weighing on productivity. He said he's periodically sent to the border for "politically oriented" assignments that "could probably be [done] by televideo."

He described an annual review process that can punish judges for moving too quickly and inappropriately rushing a removal decision – noting that "no judge was ever punished for a continuance" that essentially kicked the can down the road and added to the national backlog.

And he acknowledged it would "be nice if our management were more experienced than they are."

"We don't really care what the law is. We just want it to be enforceable, we want it to make sense and we want it to be uniform," he said.

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