



## NATIONAL ASSOCIATION OF IMMIGRATION JUDGES

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May 2, 2018

Hon. Jefferson B. Sessions  
Attorney General of the United States  
Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Re: Misunderstandings about Immigration Judge “Quotas” in Testimony  
Before House Appropriations Committee

Dear Mr. Attorney General:

I write to you as President of the National Association of Immigration Judges (NAIJ), on behalf of Immigration Judges in the Department of Justice. We thank you for deciding not to pause the Legal Orientation Program in detained Immigration Courts. The vast majority of Judges have found this program to be of invaluable assistance in processing cases in a fair and efficient manner. However, we are concerned based on your testimony before the House Appropriations Committee last week, in that you seem to be misinformed about the current plan to impose performance quotas on Immigration Judges, and hope that you may also reconsider this position once you have all the facts.

First, your response to Ranking Member Serrano that a meeting was held with the Immigration Judges and we agreed to “performance metrics” is not correct. The NAIJ has not agreed to the imposition of performance metrics (quotas) on Immigration Judges. We have steadfastly stated our opposition to those measures to the Director and the public. *See, e.g., By the Numbers: Why Quotas on Immigration Judges will Adversely Impact the Backlog*, <https://www.naij-usa.org/publications/calls-to-stop-imposition-of-quotas>. It is correct that we have and continue to negotiate with the Executive Office for Immigration Review (EOIR)


management on the impact and implementation of the Director's proposal to impose quotas and deadlines on individual Judges. We have done so because under applicable labor laws, we are limited to bargaining on the impact and implementation of performance standards, not the actual setting or wisdom of the standards. *Nat'l Weather Serv. Emps. Org. and U.S. Department of Commerce National Oceanic Administration Marine Aviation Operations Aircraft Operations Center Tampa, Florida, et al*, 63 F.L.R.A. 450, 453 (2009) ("the Authority has routinely held that the establishment of performance standards and elements constitutes and exercise of management's rights . . . [under the] Statute.") While we don't have the authority to negotiate about the imposition of quotas and deadlines in performance reviews, it does not mean we agree with them.

We have been and remain vehemently opposed to quotas for three reasons: (1) they are in conflict with the judicial cannon that judges may not have a financial stake in cases over which they preside; (2) they may lead to violations of due process; and (3) they are counter-productive, and likely will create an even greater case backlog in the long run. These concerns were explained in my April 18, 2018 testimony before the Senate Judiciary Committee, Border Security and Immigration Subcommittee, a copy of which is enclosed.

Second, in your testimony you stated that Immigration Judges could not be fired because of a failure to meet a quota imposed by EOIR. However, the way the current system would work, an Immigration Judge can be fired for failure to meet the quota of, for example, completing 700 cases in a year. This is because the numbers that will be imposed on Immigration Judges by EOIR are true performance quotas, not just aspirational goals by the court. The performance reviews used by EOIR for Judges do not follow the judicial model used in courts, which is not tied to discipline. If an Immigration Judge cannot perform satisfactorily he or she is subjected to a "performance improvement plan," and if that plan does not succeed the Judge's employment can be terminated. In addition, it is important to note that if EOIR imposes quotas and deadlines as a part of an individual Immigration Judge's performance review, the Immigration Court will be the only court in the United States implementing such a policy.. It is true that many courts have court-wide "case completion goals" or "benchmarks," but there is a critical distinction between court-wide "case completion goals" or "benchmarks" versus *individual* production quotas and time-based deadlines for judges. The Immigration Court system has had "case completion goals" of some sort for over two decades. These are tools used as resource allocation metrics to help assess resource needs and distribute them nationally so that case backlogs are within acceptable limits and relatively uniform across the country. But individual production quotas and time-based deadlines for Judges are novel and inappropriate.

On behalf of NAIJ, I thank you for your consideration. I welcome the opportunity to answer any questions that you may have or speak with you further on this topic.

Respectfully submitted,

  
A. Ashley Tabaddor, President  
National Association of Immigration Judges

cc: The Honorable John Culberson  
Chairman,  
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