

DOJ Escalates Probe of Immigration Judges

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LOS ANGELES - Maria Perez's four-year legal battle to stay in the U.S. has cost her money, time and now her faith that the nation's immigration courts can help.

During a hearing earlier this year before Los Angeles Immigration Judge Anna Ho, the petite 28-year-old Mexican immigrant was stunned when Ho suggested a solution to her case.

"The judge basically told me, 'You have 120 days to remarry [a U.S. citizen] or turn yourself in,'" Perez said recently as she sat outside Ho's courtroom awaiting another hearing.

The judge's comments were difficult for Perez because she is the widow of a U.S. citizen. Her husband died two years after the couple wed but before immigration officials processed her application to legalize her status.

It was not the first time Ho's remarks raised eyebrows or questions about the competency of some immigration judges. Neils Frenzen, who teaches immigration law at USC Gould School of Law called her comments "odd and bizarre."

"It seems incredibly insensitive to direct those comments to someone who's lost their U.S.-citizen husband," Frenzen said, adding last year Ho prevented a Salvadoran immigrant he represented from providing testimony of her asylum application.

Now, Ho and five other judges are under investigation by the U.S. Department of Justice as part of a new policy that requires an investigation of any immigration judge criticized in a federal circuit court decision.

The push is part of a new focus on immigration judges that coincides with Attorney General Alberto Gonzales' promise to rid the courts of abusive or intemperate judges.

As the investigation moves ahead, some legal observers ask when the attorney general's plan to fix the courts will be felt.

Immigration judges have been in the spotlight since January, when Gonzales took the unusual step of publicly announcing a review of the nation's immigration courts and the 227 judges who preside over them.

About the same time, the Justice Department quietly unveiled a plan to investigate judges singled out by the federal courts.

"We were told that every time that the federal circuit courts mention a judge in a negative fashion the Justice Department's Office of Professional Responsibility investigates that judge," said Denise Slavin, president of the National Association of Immigration Judges.

In October, the Executive Office for Immigration Review, which oversees the courts and judges, informed some lawyers of the plan.

"We met with them, and they indicated they will look at federal circuit court decisions," said Crystal Williams, of the American Immigration Lawyers Association in Washington, D.C. "They are trying to puzzle out a way for people to complain without being afraid."

Justice Department officials did not comment on the policy but said any time a circuit court raises management concerns, appropriate action is taken.

But a report this February to the U.S. Government Accountability Office found that, from 2000 to 2005, the Office of Professional Responsibility opened 26 investigations involving immigration judges.

The new policy is being hailed as a sea change at an agency where complaints seemed to disappear.

"It's huge," said Bo Cooper, former legal counsel to the Immigration and Naturalization Service. "It's a step in the right direction, but it's not a complete solution. Federal judges make mistakes, too, and there isn't a professional-responsibility issue just because a federal judge criticizes an immigration judge."

The crackdown is expected to be felt quickly and deeply in the immigration courts.

"A lot of people would be surprised if there isn't serious action taken against some judges," said one Department of Justice official who asked not to be named.

Donald V. Ferlise, a Philadelphia immigration judge was removed from hearing cases this summer, the first sitting judge removed since Gonzales announced the investigation.

Five other judges are under investigation, including Ho in Los Angeles, Jeff Chase in New York, Bruce Solow in Miami, Nancy McCormack in Miami and Annie Garcy in New Jersey, according to sources familiar with the investigation.

Immigration judges are prohibited from speaking to reporters by the Justice Department. The Daily Journal was unable to reach Chase, Solow or Garcy for a comment. Ho's and McCormack's clerks referred calls to the Justice Department.

Chase was rebuked by the 2nd U.S. Circuit Court of Appeals in June. The court found Chase's remarks "create an appearance that he cannot impartially adjudicate this case." The case was remanded to a different judge in New York.

The 9th Circuit repeatedly has criticized Ho's decisions, including one that resulted in the deportation of a U.S. citizen to Mexico because Ho dismissed records presented, including the man's birth certificate.

This month, a federal circuit court overturned yet another Ho decision.

Though Ho was not mentioned by name, her "actions violated [the immigrant's] due process right to a fair hearing," the 9th Circuit concluded.

The case involved a Mexican man who was fighting a deportation order. The federal judges questioned Ho's actions after she threatened the immigrant with perjury and refused to allow testimony supporting his claim.

An 11th Circuit opinion in March questioned Solow's handling of a Chinese immigrant's asylum claim because the man was a Falun Gong practitioner. The court found Solow's decision was flawed because he relied on his own knowledge of Falun Gong instead of evidence.

Moreover, the court made note of Solow's terse comments during the hearing when he chided the asylum seeker. The court said Solow "commented on [the immigrant's] sniffing twice during the hearing. The second time, he appeared almost hostile about it: 'Still sniffing, huh? ... Here, I'll give you a tissue. Yeah. Go ahead, have a nice tissue on the Court. Go ahead.'"

While most lawyers welcomed the new attention paid to judges, some, like Stephen Yale-Loehr, who teaches at Cornell Law School, said it doesn't go far enough in fixing a broken system.

"It's a step in the right direction, but it doesn't address the underlying issues of the quality of immigration courts," Yale-Loehr said. "You may get rid of a few really bad judges, but the whole immigration system is flawed. This is like re-arranging the deck chairs on the Titanic. You can throw a few chairs overboard, but the ship is still sinking." Yale-Loehr and others said the Justice Department has long ignored the immigration courts, failing to deal with the mounting caseload or adequately funding the courts. "Until there is an independent immigration court system, there will be pressure on judges to get out the numbers and get the case over with, and that leads to shoddy decisions," said Marc Van Der Hout, a San Francisco immigration attorney. He and others blame much of the turmoil on former Attorney General John Ashcroft, who launched a plan in 2002 to clear out the huge backlog of cases stuck in immigration courts. Ashcroft's plan called for fewer judges and led to a streamlined appeals process at the Board of Immigration Appeals, which reviews immigration decisions. He reduced the board from 23 to 11 judges, allowed most appeals to be heard by one board member and pushed the board to issue one-line decisions.

The result was an end to the backlog in immigration courts and a new bottleneck in federal circuit courts. The 9th Circuit saw the number of immigration appeals on its docket increase fivefold, from 965 in 2001 to 6,200 in 2006, according to federal figures. For their part, immigration judges complained they were awash in work, hearing 350,000 cases last year. Most of the judges render oral decisions, few have law clerks, and none has a court reporter or a digital tape recorder in the courtroom. The crushing caseloads have led to tensions between the federal circuit courts and immigration courts now awash in cases. Gonzales' plan called for more resources, along with performance reviews and tests for judges. But three months later, little has changed for both the judges and the record number of immigrants filing into immigration courts around the nation. "It will be a long time before the circuit courts are happy with things," said a Department of Justice official who asked not to be identified. "It could take three years for the full impact of the plan to be felt," the official said.

So far, only a handful of the recommendations have been put in place. In October, five supervisory immigration judges were named in cities with the biggest caseloads: Los Angeles, San Francisco, San Diego, New York and Miami. These on-site supervisors are supposed to work as a kind of early-warning system detecting problem judges before the federal courts do. Five more judges are expected to be appointed to the Board of Immigration Appeals as early as December. And more judges may be added soon if Congress approves additional funding. Some new equipment and additional clerks may be added next year.

But key reforms remain a distant reality. Performance evaluation and tests for new judges may not be put in place until at least 2008. Slavin and others are concerned that evaluations could compromise their judicial independence or be used to push out judges considered too liberal or conservative. "This doesn't fix anything," Slavin said. "Some of the judges who have had the worst problems could pass a test. And how do you evaluate a judge? No other judge is subject to this become it raises questions of judicial independence." Van Der Hout

agreed, adding that, "until immigration judges and the Board of Immigration Appeals are independent from the justice department, there is a problem." "The judges are always looking over their shoulder and have to be concerned about how the attorney general views them," he said. Moreover, Slavin said the review does not deal with case-completion goals set for immigration judges. "We don't have a quota," she said. "But there is pressure put on the courts ... Every couple of months we get a list of cases and are told these are too old and must be completed by a certain date." For immigration lawyers who routinely appear in court, a three-year delay in fixing the courts is bad news for immigrants. "I understand it takes time to fix something that is broken," said Van Der Hout. "But the fact that it will take several years is extremely unfortunate, because as a result of the problems, people are suffering. Immigrants are getting deported, families are being separated and kids are being left alone."