

HOUSTON CHRONICLE

Feds moving to dismiss some deportation cases

Critics assail the plan as a bid to create a kind of backdoor 'amnesty'

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The Department of Homeland Security is systematically reviewing thousands of pending immigration cases and moving to dismiss those filed against suspected illegal immigrants who have no serious criminal records, according to several sources familiar with the efforts.

Culling the immigration court system dockets of noncriminals started in earnest in Houston about a month ago and has stunned local immigration attorneys, who have reported coming to court anticipating clients' deportations only to learn that the government was dismissing their cases.

Richard Rocha, an Immigration and Customs Enforcement spokesman, said Tuesday that the review is part of the agency's broader, nationwide strategy to prioritize the deportations of illegal immigrants who pose a threat to national security and public safety. Rocha declined to provide further details.

Critics assailed the plan as another sign that the Obama administration is trying to create a kind of backdoor "amnesty" program.

Raed Gonzalez, an immigration attorney who was briefed on the effort by Homeland Security's deputy chief counsel in Houston, said DHS confirmed that it's reviewing cases nationwide, though not yet to the pace of the local office. He said the others are expected to follow suit soon.

Gonzalez, the liaison between the Executive Office for Immigration Review, which administers the immigration court system, and the American Immigration Lawyers Association, said DHS now has five attorneys assigned full time to reviewing all active cases in Houston's immigration court.

Gonzalez said DHS attorneys are conducting the reviews on a case-by-case basis. However, he said they are following general guidelines that allow for the dismissal of cases for defendants who have been in the country for two or more years and have no felony convictions.

In some instances, defendants can have one misdemeanor conviction, but it cannot involve a DWI, family violence or sexual crime, Gonzalez said.

Massive backlog of cases

Opponents of illegal immigration were critical of the dismissals.

"They've made clear that they have no interest in enforcing immigration laws against people who are not convicted criminals," said Mark Krikorian, executive director of the Center for Immigration Studies, which advocates for strict controls.

"This situation is just another side effect of President Obama's failure to deliver on his campaign promise to make immigration reform a priority in his first year," said U.S. Sen. John Cornyn, R-Texas. "Until he does, state and local authorities are left with no choice but to pick up the slack for prosecuting and detaining criminal aliens."

Gonzalez called the dismissals a necessary step in unclogging a massive backlog in the immigration court system. In June, there were more than 248,000 cases pending in immigration courts across the country, including about 23,000 in Texas, according to data compiled by researchers at Syracuse University.

'Absolutely fantastic'

Gonzalez said he went into immigration court downtown on Monday and was given a court date in October 2011 for one client. But, he said, the government's attorney requested the dismissal of that case and those of two more of his clients, and the cases were dispatched by the judge.

The court "was terminating all of the cases that came up," Gonzalez said. "It was absolutely fantastic."

"We're all calling each other saying, 'Can you believe this?'" said John Nechman, another Houston immigration attorney, who had two cases dismissed.

Attorney Elizabeth Mendoza Macias, who has practiced in Houston for 17 years, said she had cases for several clients dismissed during the past month and eventually called DHS to find out what was going on. She said she was told by a DHS trial attorney that 2,500 cases were under review in Houston.

"I had five (dismissed) in one week, and two more that I just received," Mendoza said. "And I am expecting many more, many more, in the next month."

Her clients, all previously charged with being in the country illegally, included:

An El Salvadoran man married to a U.S. citizen who has two U.S.-born children. The client had a pending asylum case in the court system, but the case was not particularly strong. Now that his case is terminated, he will be eligible to obtain permanent residency through his wife, Mendoza said.

A woman from Cameroon, who was in removal proceedings after being caught by the U.S. Border Patrol, had her case terminated by the government. She meets the criteria of a trafficking victim, Mendoza said, and can now apply for a visa.

Memo outlines priorities

Immigrants who have had their cases terminated are frequently left in limbo, immigration attorneys said, and are not granted any form of legal status.

"It's very, very key to understand that these aliens are not being granted anything in court. They are still here illegally. They don't have work permits. They don't have Social Security numbers," Mendoza said. "ICE is just saying, 'At this particular moment, we are not going to proceed with trying to remove you from the United States.'"

In a June 30 memo, ICE Assistant Secretary John Morton outlined the agency's priorities, saying it had the capacity to remove about 400,000 illegal immigrants annually — about 4 percent of the estimated illegal immigrant population in the country. The memo outlines priorities for the detention and removal system, putting criminals and threats to national security at the top of the list.

Up to 17,000 cases

On Tuesday, ICE officials provided a copy of a new policy memo from Morton dated Aug. 20 that instructs government attorneys to review the court cases of people with pending applications to adjust status based on their relation to a U.S. citizen. Morton estimates in the memo that the effort could affect up to 17,000 cases.

Tre Rebsock, the ICE union representative in Houston, said even if the efforts involve only a fraction of the pending immigration cases, "that's going to make our officers feel even more powerless to enforce the laws."