

Immigrants jailed just to hit a number

A cruel Homeland Security quota

By [Robert M. Morgenthau](#) / NEW YORK DAILY NEWS

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Nobody likes quotas. When there's even a whiff of a parking-ticket quota, the public is outraged. When France imposed a quota on imported American movies, it provoked international controversy.

But there is one quota — and a pernicious one — that no one denies. While the Congress is to be congratulated for passing an appropriations bill with bipartisan support, there are troublesome riders attached to it. One is the rider establishing a quota of a minimum of 34,000 immigrants in detention on a daily basis while they resolve their immigration status.

The detention quota is unprecedented and unique to the immigration context. As Florida Rep. Ted Deutch, a Democrat, explained to Bloomberg News in June 2013: “No other law enforcement agencies have a quota for the number of people that they must keep in jail.”

But hard-liners in Congress fight tirelessly to keep it in place. Last year, when the prisoner population dipped to 30,773, U.S. House Homeland Security Committee Chairman Michael McCaul wrote a pointed public letter to Immigration and Customs Enforcement (ICE) Director John Morton, informing him that he was “in clear violation of the statute” and its 34,000 prisoner requirement.

Notice that's not the number of immigrants Congress wants to deport; it's the number Congress insists on incarcerating while they await their fate.

The quota can be found in a few lines of the 1,582-page government funding bill. The section requires ICE to continue to maintain that set number of people in immigration lock-ups — what the bill euphemistically calls “beds.”

If that sounds like a lot of detainees, it is. As recently as 2005, when we had about the same number of undocumented immigrants in the United States as today, the average number of immigrants in detention was far lower — below 20,000.

In 2007, Congress for the first time passed a law with the 34,000 number; it has remained in place ever since. Last year, then-Homeland Security Secretary Janet Napolitano objected, telling Congress, “we ought to be detaining according to our priorities, according to public-safety threats, level of offense, and the like, not an arbitrary bed number.” Her plea fell on deaf ears.

Such a rigid number cannot help but have a corrupting influence on the entire process. Imagine trying to get a fair trial in criminal court if your state legislature mandated that judges had to fill a certain number of prison cells each day. It would be impossible.

How can lawyers representing the federal Immigration and Customs Enforcement do their job dispassionately — seeking incarceration only of those who truly represent a danger to society or a risk of flight — if they know their funding is dependent upon hitting a number?

Next time ICE lawyers seek to incarcerate an immigrant, the immigrant's lawyer should ask the ICE lawyer whether their request is on the merits — or to fill a quota.

The problem is, even taking my advice won't help most of those in the docks of our immigration courts: Fully 60% of the men and women detained by immigration judges in New York are not represented by counsel. Forced to defend themselves, their cases drag on endlessly. According to the most recent data from a think tank at Syracuse University, the average immigration case in immigration court has now been pending for 570 days without resolution.

For a free immigrant, long delays can work to their advantage. But for a detained immigrant, they can be brutal. While some immigration facilities are humane, a recent lawsuit by the ACLU alleges that many detainees face “deplorable conditions of confinement even worse than those faced by convicted prisoners.”

It is a serious problem, and a shameful injustice, but one with straightforward solution. Congress should repeal the quota. And until then, ICE lawyers and immigration judges should ignore it. Justice demands no less.

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