

Judges urged to close cases, clear dockets

By James Pinkerton

New guidelines given to the nation's immigration judges "strongly encouraged" them to reduce clogged dockets by closing cases — without consent from prosecutors if necessary — a move experts say could have a significant effect on immigration courts.

A March 7 memorandum from Chief Immigration Judge Brian O'Leary, head of the Executive Office for Immigration Review, which oversees immigration courts, notes that judges can close immigration cases on their own without approval from government attorneys. It also advised the judges to limit continuances.

"Judges are strongly encouraged to utilize administrative closure in appropriate cases," O'Leary wrote. "Administrative closure under the standards (of a recent court ruling) provides judges with a powerful tool to help them manage their dockets, by helping to focus resources on those matters that are ripe for resolution."

O'Leary added: "Given the large caseloads in our courts, judges should consider making full use of that authority."

Immigration courts had 325,476 cases pending around the country at the end of February, nearly 43,000 of them in Texas.

Cases up 160 percent

In the state, Houston leads with 13,711 pending cases, followed by San Antonio with 10,388 and El Paso with 6,716, according to the Executive Office of Immigration Review.

Cases pending in Houston's courts have swelled by more than 160 percent over the past three years. Wait times averaged 453 days as of November for local cases, up from 298 in 2009, according to the Transactional Records Access Clearinghouse, a data gathering and research organization at Syracuse University.

The O'Leary memo was Tuesday evening's topic on "Coming to America," hosted by veteran Houston immigration attorney Gordon Quan on KPFT-FM (90.1).

"It has a lot of potential to significantly reduce the backlog by not having the same cases come up repeatedly for continuances," Quan said.

'Who runs the show'

The memo stressed that immigration judges follow the established policy of giving an illegal immigrant two court continuances to find a legal representative. It also instructs judges to carefully consider Department of Homeland Security requests for more than two continuances for time to do background investigations and security checks.

Quan also said the O’Leary memo “just establishes who runs the show in the courts.” He said it was a rebuttal to an earlier memo from government prosecutors stating that only they could decide if a case would remain on the docket.

The gist of the chief judge’s memo, according to Quan: “You’re the judge. If you want to close a case, you have the prerogative to do so and you don’t have to get approval from the prosecutor.”

Immigration and Customs Enforcement officials would not comment on the memo.

Robert Deasy, spokesman for the American Immigration Lawyers Association, said the memo is a reminder to judges of the Obama administration’s emphasis on removing illegal immigrants with criminal records or who are security risks.

Prioritizing docket

“It’s a welcome reminder from the chief immigration judge to the courts in general to utilize administrative closure to manage dockets so cases are moved consistent with the administration’s overall enforcement priorities, which is (to) get rid of the bad people,” Deasy said. “The case doesn’t go away. It’s just put aside so the court can address the cases that are ready to go.”

Deasy gave an example of an illegal immigrant, married to a U.S. citizen, who was in deportation proceedings but had also applied for a green card. A judge could administratively close the case, removing it from the court calendar and other legal requirements of an active case, and re-open it when the decision on the green card had been finalized.

“Overall, I think it’s beneficial,” Deasy said. “It improves the efficiency of the immigration court’s hearing process by allowing the courts to hear cases that most need to be dealt with.”

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Backlog

325,476: Cases pending in courts at end of February — 43,000 of them in Texas.

13,711: Cases pending in Houston, most in the state.

160 percent: Increase in cases pending in Houston over last three years.

453 days: Average wait time for local cases, up from 298 in 2009.

Sources: Executive Office of Immigration Review, Syracuse University