

THE NEW YORK TIMES

February 9, 2010

Lawyers Back Creating New Immigration Courts

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Responding to pleas from [immigration](#) judges and lawyers who say the nation's immigration courts are faltering under a crushing caseload, the [American Bar Association](#) called Monday for Congress to scrap the current system and create a new, independent court for immigration cases.

In a vote at its semiannual meeting in Orlando, Fla., the lawyers' organization endorsed a recommendation for a separate immigration court system that would be similar to federal courts that decide tax cases.

Behind the seemingly arcane proposal was a portrait of the nation's immigration courts besieged with new cases arising from an intensified federal crackdown on illegal immigration, and challenged by critics who doubt the courts' impartiality. The lawyers described the courts' condition in a report of more than 1,500 pages released last week.

The immigration courts are not courts at all in the way Americans generally think of them. They are part of the Department of Justice, not the federal judiciary, and the judges, although they wear robes and sit in formal courtrooms, are employees of the attorney general.

While Congress has debated since 2006 an overhaul of the immigration system that would include measures to give legal status to millions of illegal immigrants, proposals for fixing the courts have been largely ignored.

But the courts have become "an overwhelmed system choked by an exploding caseload," said Lawrence Schneider, an immigration lawyer at Arnold & Porter in Washington and a main author of the bar association report. The report was ordered 18 months ago by the association's immigration commission, a nonpartisan panel of lawyers who monitor immigration laws and recommend changes.

In 2008, the report found, Homeland Security agents detained 378,582 immigrants and deported more than 358,000. Last year, the report found, with enforcement continuing at a similar pace, 231 immigration judges heard more than 300,000 cases, an average of more than 1,200 for each judge, or about three times the load of federal district judges.

Judges are “overworked, frustrated, and feel like they are on a treadmill,” Mr. Schneider said.

Immigration cases have become more complex, especially asylum cases, where immigrants are asking to remain in the United States because they claim to fear life-threatening violence if they return home. With the pace of their work accelerating, immigration judges often feel asylum hearings are “like holding death penalty cases in traffic court,” said Dana L. Marks, an immigration judge in San Francisco and the president of the National Association of Immigration Judges.

Despite their relatively fast performance, immigration judges’ backlogs are growing, the report found, leaving more immigrants stranded in costly detention while they await hearings. As a result of the pressure for speedy decisions, the number of decisions that were appealed to the federal circuit courts has swelled, from 9 percent of decisions in 2002 to 26 percent in 2008, the report found.

In appeals courts in New York and California, states with large numbers of immigrants, cases from the immigration courts made up more than one-third of the dockets over the past five years, the report found. The increase in cases also brought more complaints from lawyers and advocates that judges working for the Justice Department were inclined to favor the government.

“There have been increasing concerns about the propriety of housing a neutral court in the law enforcement arm of the government,” Judge Marks said.

In the proposal adopted Monday, the bar association argued that immigration courts should be removed from the Department of Justice and set up as independent courts, still within the executive branch, under terms in Article I of the Constitution. The highest judges would be appointed by the president and approved by the Senate. The courts’ decisions would still be appealed to the federal appeals courts.

Judges and lawyers said the independent courts would have greater credibility and more power to seek funds from Congress, leading to more resources for judges, shorter terms of detention for immigrants and fewer appeals to federal circuit courts, which are highly costly.

In 2006, Attorney General [Alberto R. Gonzales](#), acknowledging the demands on the immigration courts, announced a plan to add 40 new judges. But as of late last year, only 9 had been named. Last week, Attorney General [Eric H. Holder Jr.](#) sought to financing to add 21 more judges.

[The American Immigration Lawyers’ Association](#), the immigration bar, said on Monday that it would review the [American Bar Association](#)’s proposal. Laura L. Lichter, a vice president of the association, said the courts needed more resources immediately, while creating a new court might take a long time.