

FOX News

Report Cites Problems in Immigration System, Calls for Overhaul

By Diana Nguyen

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Problems in the immigration justice system are pervasive and widespread, says a new report that calls for an overhaul of the law and agency policies.

The report released Tuesday and prepared pro bono by the law firm of Arnold & Porter LLP for the American Bar Association Commission on Immigration, identified six areas of the system needing reform -- Department of Homeland Security, immigration courts, Board of Immigration Appeals, Circuit Court Judicial Review, representation, and system restructuring.

Caseloads in immigration courts have been "reaching crisis proportions," said Karen Grisez, chairwoman of the ABA Commission on Immigration.

Immigration courts fall under the jurisdiction of the Executive Office of Immigration Review under the U.S. Department of Justice.

"We recognize that the ABA is driven to improve the administration of justice and appreciate the document's recommendations, each of which would have an impact on how EOIR operates," said Kathryn Mattingly of the Department of Justice. "We look forward to continued government-wide conversations surrounding the adjudication of immigration cases."

There are about 12 million illegal immigrants in the United States, and only 57 immigration courts with 231 immigration judges for deportation hearings, asylum petitions, bond redeterminations for detained immigrants and other issues, according to the report.

DHS has "contributed to an exploding caseload that has overwhelmed the removal adjudication system," according to the report, which recommends DHS attorneys and officers to thoughtfully choose which cases to try.

The choice to prosecute is needed "so the higher-priority cases get priority," said Lawrence Schneider, a senior partner at Arnold & Porter. Going after those eligible for amnesty is a "waste of time and resources."

However, the DHS said they prioritize their enforcement based on an individual's criminal activity.

"We are focused on smart, effective immigration enforcement that focuses first on dangerous criminal aliens who present the greatest risk to the security of our communities," said Matthew Chandler, DHS deputy press secretary.

In fiscal 2009, ICE deported 136,000 criminal aliens, Chandler said.

The report criticizes DHS for deporting legal permanent residents for minor or misdemeanor infractions, initiating deportation measures against immigrants eligible for permanent resident status, and detaining illegal immigrants far from their homes and, sometimes, their legal counsel.

"DHS policies have failed to assure due process for non-citizens," said ABA President Carolyn Lamm.

"There is a serious lack of adequate representation," she said, which "is a hallmark of the judicial system."

DHS recently announced a new reform to "enhance the integrity" of the deportation system.

"The rule clarifies who is authorized to represent applicants and petitioners in cases before DHS," Chandler said.

DHS also updated disciplinary standards and procedures for immigration attorneys.

After 17 years of experience in immigration law, Maryland attorney Patricia Minikon said she has seen the court docket double or triple.

"Judges are doing the best with what they have to work with," Minikon said. "It sometimes seems like with 30 people in the room, you certainly get the impression that things need to get done quickly."

Beyond the shortages of resources like support staff and insufficient time to consider each case, in the United States, more than 50 percent of illegal immigrants and 84 percent of detained immigrants, do not have representation, according to the report.

Immigration trials are not considered criminal proceedings, and so the state is not required to provide free legal counsel.

"You have a lot of clients without attorneys because of where they live," Minikon said.

Many immigrants have low-wage jobs, live far from Baltimore, and are unable to obtain representation near their communities, she said.

The report recommends about 60 reforms, including hiring more judges, extending deadlines and a system make over.

The ABA will decide whether to adopt the reports' findings into their policy next week.