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ASSEMBLY LINE INJUSTICE: HOW THE IMPLEMENTATION OF IMMIGRATION CASE COMPLETION QUOTAS WILL EVISCERATE DUE PROCESS

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The Executive Office for Immigration Review, under the direction of the Department of Justice, announced last year that it had reopened the Collective Bargaining Agreement with the National Association of Immigration Judges (NAIJ) to include case completion quotas in the performance evaluations of Immigration Judges. On March 30, 2018, James McHenry, the Director of the EOIR, formally announced these metrics, which require IJs to complete at least 700 cases per year, have a remand rate of less than fifteen percent, and meet half of the additional benchmarks listed in the evaluation plan, which can be found here. As pointed out by the Association of the Bar of the City of New York, "this quota translates into each judge hearing testimony and rendering decisions almost three cases per day, five days per week, 52 weeks per year." According to several retired IJs and Former Board of Immigration Appeals (BIA) Members, such quotas raise serious due process concerns and will result in a system that is less focused on justice and appearing "more like an assembly line."

There are a number of issues with the EOIR case completion quotas. First, these quotas may force IJs to breach their ethical obligations. Specifically, the new completion quotas are tied to the financial incentives of IJs, where the performance evaluations affect IJs' job security and eligibility for raises. IJs are not given life appointments and can be easily removed from the bench by the Attorney General if he finds them to not be meeting these performance thresholds. Thus, IJs may be encouraged to render hasty decisions in order to satisfy these case completion quotas and receive a good review (and thus a

raise) instead of making decisions based on what is proper for the cases in front of them. Having such a financial incentive in the completion of a case arguably forces an IJ to violate 5 C.F.R. §§ 2635.401 to 2635.403, which prohibits IJs from participating in proceedings where he or she has a financial interest. Additionally, IJs must be impartial in their decision-making under 5 C.F.R. § 2635.101(b)(8). It is hard for an IJ to remain impartial when pressured with impossible case completion standards especially when a case is meritorious but an IJ may not grant a continuance for legitimate reasons.

The case completion quotas also violate 8 C.F.R. § 1003.10(b), which provides: "In deciding the individual cases before them, and subject to the applicable governing standards, immigration judges shall exercise their independent judgement and discretion and may take any action consistent with their authorities under the Act and regulations that is appropriate and necessary for the disposition of such cases." For example, an attorney may have been only recently retained by an asylum-seeker, and may request a continuance in order to gather and assemble evidence that is vital for the asylum-seeker's claim. Under ordinary circumstances, an IJ would likely grant such a continuance as it would be considered proper under INA § 240(b)(4)(B) which affords a "reasonable opportunity…to present evidence" on one's behalf. However, under the quota system, an IJ may feel pressure to deny the motion for continuance and may ultimately deny the asylum claim because the asylum-seeker was not afforded sufficient time to present their case. Such an outcome clearly violates 8 C.F.R. § 1003.10(b) and INA § 240(b)(4)(B) where the IJ is stripped of their independent decision-making authority where they feel pressured to quickly close out a case despite compelling reasons to grant a continuance, and where the asylum-seeker is not afforded a reasonable opportunity to be heard.

Another example is an individual placed in removal proceedings who is the intending beneficiary of a pending I-130 with USCIS. Typically, USCIS takes several months to adjudicate an I-130, and thus, attorneys for respondents file motions for continuance with the IJ until the USCIS has rendered a decision which will determine the respondent's eligibility for relief from removal. Under the new case quota system, IJs will be less inclined to grant such continuances. This hypothetical similarly implicates 8 C.F.R. § 1003.10(b) and INA § 240(b)(4)(B), as described above. Moreover, the IJ's denial of the continuance here would violate *Matter of Hashmi*, 24 I&N Dec. 785, 793-94 (BIA 2009) where the Board held that compliance with a IJ's case completion goals "is not a

proper factor in deciding a continuance request" where there is an meritorious pending I-130. We've previously blogged about AG Sessions' stripping of judicial independence through his self-referral of *Matter of L-A-B-R-* et al, 27 I&N Dec. 245 (AG 2018), which can be found here.

The case completion quotas will also lead to an unprecedented number of BIA and federal court appeals. This would needlessly increase the BIA's backlog and indeed affect the dockets of the federal court systems, resulting in the tremendous waste of taxpayer's dollars where a proper decision could have been rendered at the IJ level. In addition, the number of remanded cases may exceed fifteen percent, and thus, the IJ would again fail to meet the performance metrics in their performance evaluation.

There is no denying that the Immigration Courts face tremendous pressure to address the ballooning backlog of cases. As of this writing, there are 692,298 pending cases in Immigration Courts across the country, with only approximately 330 judges to hear them. Advocates during the Obama-era consistently advocated for the appointment of more IJs to address the backlog. However, in the Trump-era, advocate are now skeptical of such a move where it is clear that this Administration seeks to deport as many people as possible. Indeed, the Department of Justice, headed by Jeff Sessions, has celebrated deportations under the Trump Administration. Such an emphasis on deportation, as opposed to fair adjudication of claims, undermines the independence and impartiality of IJs. The implementation of the DOJ/EOIR case completion quotas will undoubtedly lead to a rise in unfair hearings and erroneous deportations, which is exactly what this Administration wants. The appointment of Trump-supporting IJs will only exacerbate the problem.

For many years, the NAIJ has advocated for the creation of an Article I Immigration Court that is independent of the political whims of the Department of Justice. Under the current Administration, and in light of the newly imposed DOJ/EOIR performance quota metrics, these calls have never been more relevant. The Immigration Court system should not be used as a political tool of the executive branch to effectuate anti-immigrant policies. Rather, it should be an independent system that is committed to the fair adjudication and implementation of our immigration laws. The case completion quotas will undoubtedly undermine the integrity of our immigration system and should be vigorously challenged by IJs and practitioners.

The author acknowledges that 5 CFR § 2635.402 directly implicates 18 U.S.C. 208(a), a criminal statute. This author suggests that the EOIR case completion quotas may jeopardize an IJ's ethical obligations where their financial interests are directly and predictably impacted by blind adherence to such arbitrary quotas. Criminal liability for these actions, however, goes beyond the scope of this article.