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Too many cases, too few judges

Immigration Court's docket has exploded recently, leaving jurists scrambling and causing cases to languish.

July 21, 2008 | Anna Gorman | Times Staff Writer

The number of foreigners landing in Los Angeles Immigration Court has surged in recent years, while the number of judges has remained about the same, causing crushing caseloads and lengthy delays.

Expanded immigration enforcement, including the ongoing search for illegal immigrants in county jails, is causing much of the rise, according to judges, attorneys and experts.

"I don't think it's possible for a court to implode from weight, but we may see," said former L.A. Immigration Judge Gilbert T. Gembacz, who retired last month after more than a decade on the bench.

Los Angeles immigration judges heard 27,200 cases last fiscal year, up from about 17,800 in 2000. In the last fiscal year alone, the number of immigration cases rose nearly 40%.

Today, 23 judges are assigned to Immigration Court, just two more than in 2000.

Immigration courts nationwide mirror the trend. Last fiscal year, judges heard 334,600 cases, up from 254,500 in 2000. During the same period, the number of judges increased to 220 from 207.

"Because of the high volume of the immigration docket, there is a great concern that respondents appearing before us do not believe they are given adequate opportunity to present their cases," said San Francisco Immigration Judge Dana Leigh Marks, head of the National Assn. of Immigration Judges, the judges' union.

Cases are also becoming more difficult as laws change and new regulations are written, making it harder for judges to complete cases quickly.

"You are asking us to do death penalty cases in a traffic court setting with traffic court resources," Marks said.

Immigration and Customs Enforcement spokeswoman Virginia Kice said the courts are critical to the government's crackdown on illegal immigration.

"We can go out there and make arrests," she said, "but the efficiency of the legal process is going to have a tremendous impact on the outcome."

44 cases, 1 judge

On a recent day in Los Angeles Immigration Court, one judge had 44 cases on the docket. Every seat was filled, and a crowd waited in the hall. The judge heard the cases quickly, getting updates, asking questions and setting new court dates -- sometimes six months in the future.

A few floors down, immigration attorney P. Joseph Sandoval said he arrived 15 minutes early for his appearance, but the court was already packed and seven other attorneys had checked in before him.

"It's frustrating for both the clients as well as the attorneys, because the number of cases keeps increasing but the number of judges doesn't," he said.

As a result, Sandoval said, cases can drag on for years. He cited a Russian client who first appeared in Los Angeles Immigration Court in 2002 and whose case still has not been resolved. Now, he said, a recent appellate court decision may derail her chances of becoming a legal resident.

Beverly Hills attorney Ed Pilot said he has a Nigerian asylum case that has been going on since 1999. The case was about to finish in early 2007 when the assigned judge retired. Pilot said his client has not had a hearing since and is not scheduled to appear in court until December.

"It's sort of like an athlete who has put on his game face and is in game mode, all for naught," he said.

When another judge, Gembacz, retired, he was handling a workload of more than 1,600 active cases. Despite time pressures, Gembacz said, he let people tell their stories -- even if it took longer than necessary.

"They have waited two, three, four years," he said. "It's only fair to give them the time."

But some judges are unable to spend that much time on individual cases, leading appellate courts to send them back for more thorough review.

"There are no doubt many conscientious, dedicated and thorough immigration courts across the country," one federal appellate judge wrote in a 2006 asylum case. "Unfortunately, their hard work is overshadowed by the significantly increasing rate at which adjudication lacking in reason, logic and effort from other immigration courts is reaching the federal circuits."

To manage the growing caseload, the Executive Office for Immigration Review, which oversees immigration courts nationwide, uses videoconferencing, sets timelines for judges to complete cases and tries to hire judges where needed. The budget for the agency has increased from \$147 million in 2000 to \$227 million last year, but more is always needed, said spokeswoman Susan Eastwood.

"We are a federal agency, and Congress controls our money," she said. "We ask for money, but we don't always get what we want."

Nevertheless, Eastwood said she was confident that the judges would be able to handle any further increased caseload.

Immigration courts need to be properly funded because people have a right to their day in court in a timely manner, said Doris Meissner, a senior fellow at the Migration Policy Institute, a Washington-based think tank. In addition, she said, "Having them function effectively is important . . . to get the return on the enforcement dollar."

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Too few attorneys too

In Los Angeles, about 45 government attorneys rotate through Immigration Court, depending on other enforcement needs, said Kevin Riley, deputy chief counsel of the local Immigration and Customs Enforcement office. Riley said the attorneys also have to deal with the challenges of heavy and complex caseloads.

To ease the numbers, the federal government processes some cases without going to court. For example, if someone has previously been ordered deported and then returns to the United States, agents simply reinstate the order and deport the illegal immigrant again.