

Immigration Backlog Forces Justice to Shift Staffing

Hundreds of Lawyers Being Reassigned to Deal With More Than 4,000 Appeals in New York City

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The Justice Department is ordering hundreds of its lawyers in Washington and around the country to take on immigration cases as part of an emergency effort to clear a large backlog in the New York federal courts, according to Justice officials.

The U.S. Court of Appeals for the 2nd Circuit in New York City, which covers New York, Connecticut and Vermont, currently has a backlog of more than 4,000 immigration appeals, most of them asylum claims, according to federal officials.

At the Manhattan U.S. attorney's office, the 10 lawyers assigned to handle immigration reviews have as many as 400 cases each on their dockets, officials said. Appellate judges, impatient with the growing backlog, have in recent months begun rapidly scheduling hearings in an effort to speed the cases along.

The escalating problem prompted Deputy Attorney General James B. Comey to issue a directive last month ordering lawyers at Justice Department headquarters in Washington and in U.S. attorney's offices across the country to step in and help clear the backlog. Justice officials said. The assignments have only just begun, but officials said they expect hundreds, and possibly thou-

sands, of Justice attorneys from across the country to be involved in the effort, including many with no experience in immigration law who must undergo special training.

"It's gotten to be the point where we can't do it," said a senior prosecutor for the Southern District of New York in Manhattan. "We don't have the manpower to do that many briefs."

The backlog in New York underscores a broader surge in immigration appeals cases over the past three years, much of it due to more aggressive prosecution of illegal immigrants by the Bush administration. The number of appeals by immigrants who have been ordered deported by the Justice Department has risen by nearly 1,000 percent during that period, according to federal statistics. Most have been ordered to leave for allegedly violating immigration rules or because their request for asylum has been rejected, authorities said.

Government officials and immigration experts said part of the increase is an unintended consequence of a streamlining plan announced by Attorney General John D. Ashcroft in the wake of the Sept. 11, 2001, attacks. The plan was aimed at clearing a backlog of 55,000 cases in immigration courts, which are handled within the Justice Department and overseen by

administrative judges. The effort has so far reduced the number of pending cases to about 33,000, according to statistics compiled by the Justice Department's Executive Office for Immigration Review.

But the changes also have resulted in the dramatic increase in appeals to federal courts, which serve as the final arbiter for immigration cases after they have been reviewed and decided within the administrative system at Justice. According to the immigration review office, federal courts received about 125 appeals per month before the restructuring; since then, the number has surged to as many as 1,200 a month nationwide.

"Any backlog that was bubbling at the administrative level has been transferred elsewhere," said Marshall Fitz, associate director of the American Immigration Lawyers Association in Washington, which has criticized Ashcroft's reforms. "They didn't really get rid of the backlogs. They've displaced them to the federal courts."

Under the reorganization plan announced by Ashcroft in February 2002, administrative judges on the Board of Immigration Appeals (BIA) in the Justice Department were for the first time allowed to decide most cases alone rather than as part of three-judge panels. The new rules also sharply limited the ability

of appellate judges to review the facts of individual cases and reduced by half the number of judges available to hear administrative appeals.

The result has been a dramatic drop in the number of administrative decisions favoring immigrants and a simultaneous increase in the number of appeals to the federal court system, according to a study by the American Bar Association and federal statistics. New petitions have increased from 5 percent of all cases two years ago to about 25 percent currently, the Justice Department said.

The influx has hit the office of Manhattan U.S. Attorney David N. Kelley particularly hard. For more than 40 years, the federal prosecutor in Manhattan has handled immigration appeals from throughout the 2nd Circuit. All other such appeals are handled by a special unit at Justice headquarters in Washington called the Office of Immigration Litigation.

Although the Washington office has also been deluged with cases, the small staff in Kelley's office has been overwhelmed, according to federal officials. With only about 10 attorneys formally assigned to handle the appeals, Kelley already has tapped lawyers throughout the New York office and neighboring U.S. attorney's offices to help with the overflow, officials said.

Comey's directive, which Justice officials in Washington declined to release, expands the effort to U.S. attorney's offices around the country and to the Washington headquarters, including antitrust, criminal, civil and other litigating divisions, officials said.

Justice officials said the squads will have to review more than 2,000 cases that have been scheduled for hearings at the 2nd Circuit over the next four months, plus an estimated 2,000 more that will soon reach that stage. Authorities also said they do not expect the problem to ease: In the 2nd Circuit alone, immigration appeals made up nearly half the entire docket for the year that ended in June, compared with just 9 percent of all cases two years earlier.

"We don't expect this to let up," one Justice official said. "You've got a situation where the system is just overwhelmed."