Justice report's findings clash with Sessions' actions

By Tal Kopan, CNN

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Why immigration is so hard to solve 04:16

Washington (CNN) — Attorney General Jeff Sessions has made overhauling the chronically backlogged immigration courts a top priority -- but some of his moves seem to run counter to recommendations in a Justice Department-commissioned report made public on Monday.

While some of the recommendations, such as increasing staffing, have been part of his efforts, other steps -- such as requiring judges to process a target amount of cases -- run contrary to the study's suggestions.

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immigration courts division. A redacted version was made public Monday as the result of a Freedom of Information Act request by the American Immigration Lawyers Association and American Immigration Council.

The report looks at the chronic inability of the immigration courts to keep up with the number of cases before them. Cases related to immigration status are handled in a court system separate from the typical criminal and civil courts in the US -- a system that is run entirely by the Justice Department and in which the attorney general effectively functions as a one-man Supreme Court.

Because cases can take years to finish, undocumented immigrants can end up living and building lives in the US as they await a final decision on whether they are legally allowed to stay in the US -- something the Trump administration has cited as a driver of illegal immigration.

The Booz Allen Hamilton analysis identifies a number of issues that contribute to the backlog, including staffing shortages, technological difficulties and external factors like an increasing number of cases.

Sessions has worked to hire more immigration judges and has ordered other upgrades like the use of an electronic filing system, as the report recommends.

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But the American Immigration Lawyers Association expressed concern about a number of other recommendations that seemed ignored or on which opposite action was taken.

Responding to the report, a Justice Department official who requested not to be named said that the efforts of the department are "common-sense."

"After years of mismanagement and neglect, the Justice Department has implemented a number of common-sense reforms in the immigration court system, a number of them address these issues and we believe that focusing our efforts on these reforms has been an effective place to start," the official said.

The report's recommendations include a performance review system for judges, who are hired and managed by the Justice Department, that "emphasizes process over outcomes and places high priority on judicial integrity and independence," including in dialogue with the union that represents immigration judges. The Justice Department recently rolled out a performance metrics system, though, that requires judges to complete a certain number of cases per year and sets time goals for other procedural steps along the way, which immigration judges have strongly opposed as jeopardizing the ability of judges to make fair, independent decisions.

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In a call with reporters, AILA representatives and a retired immigration judge argued that while the report doesn't explicitly reject a quota system, it's clear that putting one in place is contrary to the recommendation. They say that judges who are fearful of their job security and opportunity for advancement may be pressured to speed up hearing cases at the expense of due process for the immigrants, which could skew the outcome of the case.

A Justice Department official said the agency rejects the notion of a "false dichotomy" that improving efficiency sacrifices due process and said the agency has also put in place court-based metrics that lend itself to the recommendation of the report.

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immigrants and increasing their access to attorneys, so they can better navigate the system. The Justice Department recently put on hold a legal advice program for immigrants in the courts, saying it needed to be reviewed, though audits in the past had consistently shown it was productive and had saved the government money long-term. Officials say they may reinstitute the program if the audit shows it is effective.

The report also recommends limited use of video hearings, saying judges are stymied by technical difficulties and also are less able to read the subtle cues and nonverbal communications of witnesses and people involved in the hearings. Sessions' immigration courts plan includes expanding the use of video hearings.
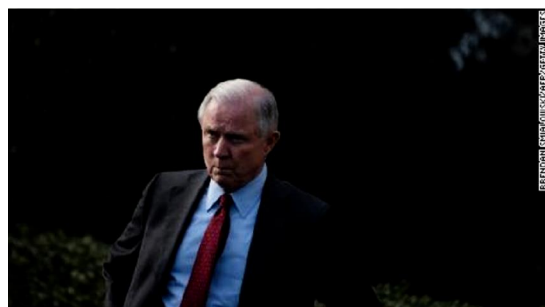
In another example, one of Sessions' first moves in taking office was to send a number of judges to the border on a temporary assignment to handle cases there. The report says temporary assignments should be avoided, as they create more delays when judges have to catch up on their workloads back home.

The report also recommends administratively closing cases if they are being adjudicated in some other venue, like a visa petition or another court case. The Trump administration has sought to curtail the administrative closing of cases.

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