⚖️COURTSIDE ANALYSIS: A “QUICKIE LOOK” INSIDE THE NUMBERS OF “DEDICATED DOCKET” — Sometimes The Numbers Don’t Tell You Much, Particularly When They Come From EOIR

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TRAC IMMIGRATION just released the first statistical profile of the “Dedicated Asylum Docket” created by AG Garland and his subordinates without any coherent public explanation or plan in mind. Here they are:

<https://trac.syr.edu/immigration/reports/657/>

Stats wonks can check them out, and do their own analyses. As usual, given the haphazard nature and often questionable reliability of Government immigration statistics, it’s impossible to draw definitive conclusions.

But, here are a few things that jump out for me.

**No criteria.** How do you set up a program that deals with life or death decision-making without having transparent criteria about who gets placed on it and why? Easy, you work for Merrick Garland’s DOJ.

**CBP in charge of dockets.** Since there are no known criteria, and EOIR seems to have gone belly-up as usual, CBP, a law enforcement branch of DHS, gets to decide who is on this “Dedicated Docket.” CBP, of course, has a questionable record of competence and many issues including allegations of racism in its ranks swirling around it. It also has no known expertise or competence in establishing court dockets. Plus, letting a law enforcement agency with interests often adverse to asylum applicants, whose parent agency is a party to all Immigration Court proceedings, control dockets raises obvious ethical and conflict of interest issues.

**Individuals, families, or cases?** In its usual confusing manner, EOIR presents its stats in terms of individuals assigned to a docket. But, most (not necessarily all) “family units” are heard as a single “case.” According to TRAC, 4886 “individuals” on the Dedicated Docket (“DD”) represents 1,700 “family units.” That’s approximately “three individuals per family unit.” So, to get the approximate number of actual cases on a particular judge’s DD, we have to divide by three. Therefore, the number 600 assigned to a particular judge on the DD would actually represent 200 cases that require individual merits hearings. Got that? Confusing? Of course!

**Who is Judge Francisco R. Pietro, and why?** The short answer is that Judge Pietro is a 2019 appointee of GOP “Acting” AG Matt Whitaker, assigned to the NYC Docket and is too recent to have any “asylum grant/deny” statistics in the TRAC System. Remarkably, not to mention inexplicably, Judge Pietro has been assigned approximately 22% of the current Dedicated Docket (“DD”), or 1086 of the 4886 individuals covered by the report. (The rest of the DD is divided, very unequally, among 31 other IJs).

Dividing by 3, per above, the 1086 individuals assigned to Judge P represent about 395 “actual cases.”

Now, EOIR currently demands that it’s “Assembly Line Worker/Judges” complete 700 widgets (aka, cases) per year. It also expects judges assigned to the DD to strive to complete cases in 300 days, that is 10 months.

So, completing 395 asylum cases in 10 months would only leave Judge P another 2 months to complete the other 305 cases necessary for him to make his “quota.” Something has to give here, particularly if Judge P, like the rest of us, wants to take vacations and Federal Holidays off, prepare his cases, and occasionally gets sick. Who knows, he might even need some updated asylum training, although practical aspects like that don’t appear to be part of the equation at today’s “numbers driven” EOIR.

And, let’s not forget that Judge P is a recent appointment. Recent appointees are likely to be less efficient and less inclined to grant asylum than experienced judges, according to some studies.

Therefore, to meet his quotas, keep his bureaucratic “handlers” at DOJ happy, and hang onto his job, Judge P might be left with two choices:

1. Cut corners big time (a traditional EOIR “built to fail” approach) which means denying lots of due process; or
2. Reassign part of his docket to other judges, which leads to “Aimless Docket Shuffling” and building backlog.

Theoretically, Judge P could also choose to hear asylum cases with the care required to provide due process and quality decisions, without worrying about targets and quotas. This would be a more plausible option if he were actually an independent judicial official rather than the employee of a political agency.

Also, don’t kid yourself about the “operational consequences” of assigning Judge P and others to a DD! Even assuming that he had zero cases on his docket before being assigned to the DD (highly unlikely), his unavailability for the “general docket” will place extra burdens on his judicial colleagues that will almost certainly promote more Aimless Docket Reshuffling and more backlog. This, of course, will be true for most of the other 31 judges assigned to the DD, to differing degrees, depending on their DD caseload (which ranges from 1 to 712 “individuals” for the “other 31”). “Rearranging the deck chairs on the Titanic” like this actually prevents the crew from getting more passengers off in time to save lives.

**Where are the lawyers coming from?** The good news is that among the “top 10 DD Judges,” (comprising 79% of the DD), four are in NYC (2d Cir.), two in Newark (3d Cir.), one in San Diego (9th Cir.), one in SF (9th Cir.), one in LA (9th Cir.), and one in Boston (1st Cir.). There are active immigration bars, including pro bono bars, in all these locations. More over, none of these Circuits is notorious for systemically mistreating asylum seekers, and one, the 9th Cir., actually has some favorable case law, although probably less so since Trump’s far-right appointees have “rebalanced” that Circuit to the right.

Yet, it’s not clear from this statistical profile, nor has EOIR revealed, what, if any, agreements might be in place with local pro bono groups in these areas to achieve universal representation within a 300 day case-completion target, without disrupting the “regular” dockets. Nor is it shown how many of those 4886 individuals now on the DD already have lawyers. These are big unanswered questions.

**Why Ecuador?** Individuals from Ecuador make up over 40% of the DD, even though they comprise less than 10% of the “regular” (if there is such a thing) Immigration Court docket. Go figure!

**How were these particular IJs and locations selected for the DD?** No clue, which is disconcerting.

**Other interesting information.**

Here’s a chart that I constructed giving profiles of the “Top 10 DD Judges:”

**JUDGE #IND LOCATION CIR AP AAG AD AGR**

Pietro 1,086 NY 2 R Whitaker 2019 N/A

Ling 712 NY 2 R Sessions 2018 52.3

Aina ` 389 LA 9 D Lynch 2016 19.7

Pope 346 NEW 3 R Barr 2019 22

Auh 334 NY 2 R Whitaker 2019 37

Sturia 262 BOS 1 D Lynch 2016 35.8

Halperin 257 SF 9 R Barr 2020 N/A

Shirole 177 NEW 3 R Barr 2019 N/A

Sagerman 148 NY 2 R Gonzalez 2006 50.6

Pressman 108 SD 9 R Whitker 2020 29.2

For the period covered by this TRAC report 2015-20, the average asylum grant rate nationwide was 33.3, reduced by the anti-asylum policies and procedures of the Trump Administration over previous norms which were closer to 50% or even higher in some years.

#IND = Individuals (not cases) assigned to that judge

CIR = Circuit

AP = Appointing Party

AAG = Appointing Attorney General

AD = Appointment Date

AGR = Asylum Grant Rate (From TRAC)

Overall, the majority (7) are recent GOP appointees from 2018-20. Of the seven with established asylum grant rates, two have grant rates significantly above the national average (Ling, Sagerman), two have grant rates significantly below the national average (Aina, Pope), and three (Auh, Sturia, Pressman) are relatively proximate to the national grant rate for the TRAC period (33.3). None sit within Circuits known for particular harshness to asylum seekers. None, to my limited knowledge, as far as stats are available, are members of the notorious “Asylum Deniers Club.”

So, we’ll see how it all plays out. Perhaps, over time, advocates will grow to “love and cherish” these DDs. More likely, they will eventually develop the same inconsistencies, inefficiencies, and maddening quirks that have accompanied almost all prior DOJ/EOIR “artificial gimmicks” intended to “speed up the treadmill” without meaningful advance input from experts of the private bar.

But, to me, it looks like the “same old” mismanaged, misguided, failing and flailing EOIR.

Should we expect better from the Biden Administration? You betcha! Will we get it? Probably not, without lots of litigation and hell-raising!

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