



POLITICS 05/17/2018 10:42 pm ET

Jeff Sessions Uses Exceptional Power Over Immigration Courts To Limit Judges' Authority

The attorney general ordered judges to stop administratively closing cases, whether they think it's best or not.



By Elise Foley



JOSHUA ROBERTS/REUTERS

Attorney General Jeff Sessions said in December that under President Donald Trump, the Department of Justice is "completing, not closing, immigration cases."

Attorney General [Jeff Sessions](#) used his office's vast power over immigration courts on Thursday to curb immigration judges' authority to administratively close cases. The order could dramatically increase the already record-high backlog that immigration courts are experiencing and encourage judges to issue swift removal orders for immigrants, even if they have a case to stay in the United States.

Sessions forced the policy change by using the attorney general's exceptional authority to overrule decisions of immigration judges' authority restricted to that type of court. The case Sessions [announced on Thursday](#) is one of three he referred to himself, and the first to be decided. All three cases could have far-reaching consequences for the immigration system, raising fears among immigrant rights advocates that Sessions [will use the approach](#) to further the Trump administration's efforts to maximize deportations.

Thursday's case concerns an immigrant, referred to as Castro-Tum, who entered the U.S. as an unaccompanied minor and whose case was closed by a judge after he failed to appear at multiple court hearings.

Using the case to make a broad opinion not just on this decision, but those of immigration judges overall, Sessions argued that immigration judges were overstepping their authority by granting administrative closure, which doesn't give an individual relief from deportation but pauses their case. Judges often use these closures when an immigrant has another application for relief pending; for example, if someone is in removal proceedings but waiting to be approved for a visa from U.S. Citizenship and Immigration Services, or if someone is appealing a criminal conviction that, if overturned, could affect their immigration case.

Now, judges will be limited in their ability to close cases as those other processes move forward — and sometimes drag on. This could lead them to order removals for immigrants who are still waiting for visa approval or other relief, attorneys warned.

"It's the epitome of bad docketing practice to take a whole group of cases, thousands of cases, that could be resolved by another agency and have them just sit and linger in court," said Jeremy McKinney, national secretary for the American Immigration Lawyers Association. "Or worse than that, to deport people who are trying to go through the immigration system the right way."

Sessions has given plenty of indications he disapproves of these types of case closures, and especially the frequency with which they were used under former President Barack Obama. From October 2011 through September 2017, judges closed more than 215,000 cases, which was about three-quarters of the number closed in a 31-year span before 2011, according to the Department of Justice.

The attorney general [proclaimed in December](#) that under Trump, DOJ was "completing, not closing, immigration cases," and earlier this year, the agency [began to set quotas](#) for how many cases judges must clear each year.

Sessions has also called for restrictions that would allow more removals of immigrants who came to the U.S. as unaccompanied minors, as Castro-Tum did.



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· Trina Realmuto, American Immigration Council

Based on the attorney general's statements, the American Immigration Council and other groups have [filed a brief](#) arguing Sessions was unfit to be a neutral arbiter of the case.

"We know he is part of Trump's political agenda to rush cases through the system," Trina Realmuto, directing attorney of the Boston office of the American Immigration Council, said on Thursday. "But as the attorney general, as the head of the Department of Justice, as the person who is certifying immigration cases to himself, he needs to be neutral, impartial and he needs to adjudicate without a political agenda."

Sessions did not heed their call to recuse himself, and his eventual opinion was exactly what immigrant rights advocates feared: a decision that limits the discretion of judges to determine how to operate their own dockets, potentially at the expense of immigrants.

Now, judges will only be able to administratively close cases if there is a specific regulation or settlement that authorizes them to do so. To avoid overwhelming the courts, Sessions ordered that cases would not be put back on the calendar until the Department of Homeland Security or the immigrant respondent in each case request to do so.

Sessions wrote that judges can issue continuances postponing court proceedings rather than closing cases if they're waiting on other pending matters. But he is weighing a separate case that could limit judges' ability to issue such continuances.

Sessions' moves to limit judges' abilities to pause cases could lead to a spike in removal orders for people with legitimate claims for relief, said McKinney from the American Immigration Lawyers Association. Not that attorneys wouldn't fight it. McKinney said lawyers would almost certainly appeal if a client waiting on a visa approval was ordered removed, or seek relief that the judge has authority to grant, such as asylum.

But Sessions may be moving to make that tougher, too. Asylum is the topic of the third case he [referred to himself](#) for a potential far-reaching decision.



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