

## Immigration Court Appearances Rates

As Congress and the Trump Administration debate immigration policy reforms, one critical—and often misrepresented—piece of information is the extent to which individuals in immigration removal proceedings comply with their court appearance obligations.

Based on available data, it is clear that immigrants appear for their immigration court hearings at high rates, particularly when they have legal representation or case management support, and accurate information related to the court process.

However, some members of the administration and Congress, as well as media outlets, have asserted that immigrants are likely to skip their immigration court proceedings and that they must be held in detention facilities to assure their appearance for immigration appointments.

This inaccurate claim reflects a highly erroneous analysis of government data that is being used to justify further unnecessary levels of immigration detention. It also further exacerbates impediments to asylum and other immigration processes.

The use of immigration detention has far-reaching negative consequences on health and the ability to establish asylum or other eligibility. Many are held in remote locations where they cannot access legal counsel or communicate with relatives. Family

members suffer the collateral effects associated with losing a primary breadwinner, parent, or guardian.

### Families and Children with Legal Counsel Are in Compliance Nearly 100 Percent of the Time

According to Syracuse University's Transactional Records Access Clearinghouse (TRAC), as of December 2017, 97 percent of represented mothers whose cases initiated in fiscal year (FY) 2014 were in compliance with their immigration court hearing obligations three years later.

Similarly, 98 percent of children in immigration proceedings whose cases initiated in 2014 and who had obtained counsel were in full compliance with their court appearance obligations as of December 2017.<sup>1</sup>

TRAC data also showed, however, that 44% of mothers were not able to obtain legal counsel. Additionally, among the 57,678 cases of children that were filed before the immigration courts in 2014, 36 percent had not obtained legal representation by December 2017.<sup>2</sup>

Human Rights First and other groups have noted numerous reasons that immigrants and asylum seekers often lack legal representation.

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<sup>1</sup> There were 18,674 “women with children” cases filed in 2014 that had representation, of 33,129 total cases. Of those that had legal representation, 541 had received a removal order *in absentia* as of December 2017. Of the 14,455 cases that did *not* have legal representation, 11,305 had received a removal order *in absentia*. See, TRAC Immigration, Priority Immigration Court Cases: Women with Children, <http://trac.syr.edu/phptools/immigration/mwc/>, last accessed Feb. 1, 2018.

<sup>2</sup> There were 37,653 “juvenile” cases (defined as under 18 at the time the case begins who are appearing alone) filed in 2014 that had representation, of 57,278 total cases. Of those that had legal representation, 852 had received a removal order *in absentia* as of December 2017. Of the 19,625 cases that did *not* have legal representation, 12,698 had received a removal order *in absentia*. See, TRAC Immigration, Juveniles—Immigration Court Deportation Proceedings, <http://trac.syr.edu/phptools/immigration/juvenile/>, last accessed Feb. 1, 2018.

- ✓ Many cannot afford legal counsel
- ✓ There is only very limited government funding for legal representation.
- ✓ Pro bono legal representation is scarce and over stretched.
- ✓ Asylum and immigration laws are exceedingly complex, and without legal representation eligible individuals often cannot satisfy the stringent legal and evidentiary requirements.

Statistics have shown that legal representation is the most important factor in determining whether an individual will succeed in their case.

The Trump Administration and proponents of legislation that seeks to block funding for legal representation are trying to thwart access to counsel, which in turn will lead to lower appearance rates.

### Adults Released from ICE Detention Comply More Often than Government Reports Indicate

TRAC data indicates that *in absentia* rates—or rates of individuals ordered to be deported because they were not present in the courtroom—for adults who were released from Immigration and Customs Enforcement (ICE) custody due to an immigration judge’s release decision have declined significantly in recent years.

- ✓ TRAC analysis found that *in absentia* rates for individuals who have been released from ICE custody pursuant to an immigration court bond hearing have declined by 33 percent over the past several years, from a high of 47 percent in 2002 down to 14 percent in 2015.
- ✓ This means that 86 percent of individuals released from ICE detention in 2015 pursuant to

a bond hearing complied with their appearance obligations.

- ✓ The overall appearance rate for individuals released from ICE custody in FY 2015 was 77 percent. This includes both individuals released pursuant to an immigration court hearing, as well as those released pursuant to an ICE custody determination.

However, due to nuances in government reporting, some *in absentia* rates are misleading.

- ✓ The Executive Office for Immigration Review (EOIR)’s own analysis points to a lower appearance rate for individuals released from custody. In FY 2015, the agency reported a 42 percent *in absentia* rate (or 58 percent appearance rate), based on 11,346 *in absentia* orders out of 27,329 immigration judge decisions.
- ✓ According to TRAC analysis, however, there are two factors that impact this analysis, making the government’s reported appearance rate lower.
  - One, EOIR calculates this rate based upon the initial proceeding, not the last proceeding. This leaves out cases in which an individual may have received inadequate information about the hearing and later had their case reopened which, according to TRAC, has a significant impact on the calculation.
  - Second, EOIR does not include all concluded cases in its calculation, leaving out what it calls “other completions” (such as administrative closings), which generally make up about a quarter of cases before the immigration court.<sup>1</sup>

<sup>1</sup> Syracuse University’s Transactional Records Access Clearinghouse, “What Happens When Individuals Are Released on Bond in Immigration Court Proceedings?” Sept. 14, 2016.

## Providing Information about the Process Lowers *in Absentia* Rates

Research points to a variety of factors that may either improve or impede a person's likelihood of appearing for immigration court hearings.

Human Rights First and other groups have documented gaps by immigration agencies in providing asylum seekers and immigrants with adequate, accessible information—in the immigrant's best language—related to appearance and supervision requirements, as well as errors that can have serious consequences.

In a 2014 visit to the southern border, Human Rights First found that asylum seekers were sometimes given removal hearing notices for an immigration court located in a different state from where the individual will be living, with no explanation of the process for correcting such errors.

Other groups documented instances in which mothers traveling with their children were not provided information about their appearance obligations.

Many asylum seekers did not understand the multiple appearance obligations. For instance, some believed that reporting for Immigration and Customs Enforcement (ICE) was the same as reporting to immigration court.

Multi-year delays in court dates due to the chronic underfunding of the immigration courts could also lead to inadvertent failures to appear.

### In one case, now represented by Human Rights First:

- ✓ Upon being released from immigration detention in November 2016, "Abigail" provided ICE with her address in Texas. ICE then scheduled her appointment to appear at an ICE office in Texas, which she complied with.
- ✓ Two weeks later, Abigail again reported to ICE, this time informing ICE of her plans to move to

Maryland and providing her new Maryland address. Rather than assisting her to transfer her case to Maryland, the officer gave her another appointment with the same Texas ICE office the following June.

- ✓ Having told ICE about her move, Abigail believed that her address would be updated in the appropriate government systems. Furthermore, since ICE had not yet filed her Notice to Appear with the immigration court, there was no mechanism for her to separately update her address with the immigration court.
- ✓ She regularly checked the EOIR hotline for any scheduled hearings and regularly spoke with a family member who still lived at her prior Texas address to ask whether she had received any correspondence from the immigration court.
- ✓ When Abigail drove over 20 hours to Texas for her June ICE appointment, she was informed that she had been ordered deported *in absentia* in April. Government records showed that a hearing notice in her case was mailed to the Texas address only three days prior to a scheduled master calendar hearing.
- ✓ After obtaining pro bono counsel, Abigail filed a motion to reopen her immigration case based on lack of notice. She is now awaiting her final merits hearing on her asylum claim.

On the other hand, providing accurate information about the process—as well as legal counsel and social services—can positively impact an individual's compliance with immigration court proceedings.

Community-based case management programs piloted by Lutheran Immigrant and Refugee Services and U.S. Conference of Catholic Bishops' Migration and Refugee Services have shown high compliance rates of 96 to 97 percent. These programs adopted effective social service approaches to support individuals through the completion of their immigration proceedings. Both programs provided case management, legal, and housing services, and

helped individuals build critical community connections.

Now that Legal Orientation Programs (LOP) exist in 40 detention facilities out of 201, more individuals who have been detained have received information related to the court process and their appearance obligations. If the programs were expanded to the other 161 detention facilities, and to Customs and Border Patrol (CBP) facilities, individuals would have access to comprehensible information about their various appearance obligations.

Another program that was shown to improve court appearance rates was ICE's Family Case Management Program. The program provided case worker support to families that helped bring compliance rates with court appearances and ICE appointments to 99 percent. Under the Trump Administration, however, ICE discontinued the program despite its success in supporting high appearance rates.

Global research supports these conclusions. The United Nations High Commissioner for Refugees (UNHCR) found several factors across multiple countries that influence compliance with asylum procedures, including:

- ☑ ensuring that asylum seekers understand their rights and obligations, the conditions of their release, and the consequences of failing to appear;
- ☑ providing legal advice or counsel;
- ☑ providing adequate material support and accommodation throughout the immigration process; and
- ☑ strengthening community ties.

Having faith in the legal process, a belief in the importance of rule of law, and a desire to avoid irregular status or detention were also factors that supported compliance.

## Recommendations

Rather than increasing costly immigration detention, the U.S. Department of Homeland Security (DHS), U.S. Department of Justice, and Congress should assure implementation of cost-effective policies that minimize or end unnecessary detention while promoting the integrity of the system by improving appearance rates.

### Specifically, DHS, ICE, and DOJ should:

- ☑ **Expand the Legal Orientation Program (LOP) to cover all ICE detention facilities** (currently LOP is only available at 40 of 201). DHS and ICE should also develop an LOP at the border so that individuals who are in short-term custody will have the information necessary to understand the process and their appearance obligations.
- ☑ **Support access to, and funding for, legal representation in asylum and removal proceedings.**
- ☑ **Ensure Customs and Border Protection (CBP) and ICE staff, in addition to immigration judges, carefully explain appearance obligations and details in a language the asylum seeker or immigrant fully understands.** Explanations should include: immigration court appearance requirements or any conditions on release from immigration detention (such as reporting to an ICE office); the differences between various appointments; the locations of the relevant offices and the procedures to follow if the applicant should have to move addresses again.
- ☑ **Increase immigration court staffing to reduce wait times and safeguard courts from measures that undermine due process.**
- ☑ **Provide all individuals detained by ICE detention prompt access to individualized**

custody redetermination hearings before an immigration judge.

- Refer asylum seekers or immigrants who need appearance support to community-based case management programs

- End the detention of families and reduce unduly high and costly immigration detention levels overall.