

Immigration Court Appearance Rates

As **government** leaders and lawmakers debate immigration policy reforms, one essential—and often misrepresented—piece of information is the extent to which individuals in immigration removal proceedings comply with their court appearance obligations if they are not detained.

Some media outlets have reported that immigrants are more likely than not to abscond from (or skip) their immigration court proceedings. This is simply not true and reflects an erroneous analysis of the available government data. The lack of comprehensive, publicly available data on the immigration system poses a challenge in understanding appearance rates of immigrants. However, based on the data that is available, it is clear that immigrants appear for their immigration court hearings at high rates, particularly when certain factors are present, such as having legal representation and information related to the court process.

Families and Children with Legal Counsel Are in Compliance 98 Percent of the Time

According to Syracuse University's Transactional Records Access Clearinghouse (TRAC), as of October 2016, 98 percent of represented mothers whose cases initiated in fiscal year 2014 were in compliance with their immigration court hearing obligations two years later. In total, slightly more than half—53 percent—of mothers had obtained legal counsel.

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 October 2016. Among the 56,478 cases of children that were filed before the immigration courts in 2014, 64 percent had obtained legal representation by October 2016.

Individuals Released from Detention Pursuant to a Bond Hearing Are in Compliance 86 Percent of the Time

Data recently analyzed by TRAC indicates that *in absentia* rates for individuals who have been released from custody pursuant to an immigration judge's custody decision have declined by 33 percent over the past several years, from a high of 47 percent in 2002 down to 14 percent in 2015. More specifically, only 1,850 of the 11,391 cases completed in immigration court where the individual was initially detained and had been released after court custody review did not show up to court and therefore received an *in absentia* order. The other 86 percent of completed cases were in compliance up through the completion of their cases.

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. For example, in a 2014 visit to the southern border, Human Rights First found that asylum seekers are 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. Others have 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.

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, adopted effective social service approaches to support individuals through the completion of their immigration proceedings. Both programs (while not identical) provided case management, legal, and housing services, and helped individuals build critical community connections.

Moreover, appearance rates of immigrants who have been released from detention are generally higher than appearance rates overall. With the expansion of Legal Orientation Programs (LOP) in detention, individuals who have been detained have likely received information related to the court process and their appearance obligations. Some immigration judges also provide information related to the process during custody hearings. Overall, the better a person understands the process and his or her obligations, the more likely that person is to appear.

Global research supports these conclusions. U.N. Refugee Agency (UNHCR) research across multiple countries found several factors 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. A 2013 study funded by UNHCR found that asylum seekers are particularly predisposed to comply with immigration proceedings due to "the refugee predicament" and the fact that fear of persecution provides a "strong inducement to comply." 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) and ICE

should implement cost-effective policies that minimize or end unnecessary detention while promoting the integrity of the system by improving appearance rates. Specifically, DHS and ICE should:

- Refer asylum seekers or immigrants who are determined, based on their particular individual circumstances, to need appearance support to community-based case management programs, and end the detention of families and reduce unduly high and costly immigration detention levels overall.
- Expand the LOP to cover all ICE detention facilities and 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 the expansion of government-funded programs that provide appointed counsel to immigrants in removal proceedings, both in detention and post-release, which have been shown to likely save government money.
- Provide all individuals detained by ICE detention prompt access to individualized custody redetermination hearings before an immigration judge.
- 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. Staff and judges should also explain basic court procedures and requirements, outline the key differences between ICE and Executive Office for Immigration Review (EOIR) to reiterate the importance of notifying and complying with both agencies, and could liaise with ICE trial attorneys and the immigration courts so that court proceedings are initiated promptly and in the correct location. ■