

Evidence Shows That Most Immigrants Appear for Immigration Court Hearings

October 2020
Fact sheet

Nina Siulc and Noelle Smart

The use of civil immigration detention has expanded exponentially over the past few decades, with a record high of more than half a million people detained in fiscal year 2019.¹ The widespread use of civil detention—at a cost to taxpayers of billions of dollars annually—is often justified by the government as being necessary to ensure that immigrants continue to appear for their court hearings. Yet there is irrefutable evidence that over the past two decades the majority of immigrants—including adults, families, and children—have shown up for immigration court hearings. In fact, those who attend court outside detention on what are known as “non-detained” dockets almost always continue to appear for their hearings when they are able to secure legal representation, calling into question the logic of confining people in costly and inhumane prison-like conditions when representation is clearly a viable alternative to ensure continued court appearances. This fact sheet reviews evidence from the Vera Institute of Justice’s (Vera’s) programs and related studies as well as government data analyzed by independent researchers to help unpack what is known about appearances in immigration court and, alternately, orders of removal *in absentia*, which are issued when a person does not appear in court.

Non-detained immigrants with representation almost always continue to appear in court

Data from Vera’s programs and other studies shows that most immigrants released from custody continue to appear in court when represented by counsel.

- During the first three years of Vera’s Safety and Fairness for Everyone (SAFE) Initiative, which provides free representation through a universal access model in 21 jurisdictions across the country,² 98 percent of clients released from custody have continued to appear for their scheduled court hearings.³
- Similarly, Vera’s evaluation of the New York Immigrant Family Unity Project (NYIFUP) found that at the time of the study fewer than 2 percent of clients released on bond had received orders of removal *in absentia* for failing to appear in court.⁴
- These high appearance rates are supported by findings in an in-depth study of orders of removal *in absentia* published in March 2020 by Eagly and Shafer, who observed that, “those who obtained lawyers also almost always came to court: 96 percent attended all court hearings in pending and completed non-detained cases since 2008.”⁵

- An earlier study by Eagly and Shafer also found high appearance rates among immigrants released on bond nationwide from 2007 to 2012: among immigrants with completed cases, only 7 percent of those with representation received orders of removal *in absentia*.⁶
- The Migrant Protection Protocols (MPP) or “remain in Mexico” program has made it nearly impossible for many asylum seekers to attend court. Yet even among this program rife with due process challenges,⁷ 95 percent of immigrants with representation have continued to appear for all their hearings.⁸

In short, representation continues to be associated with high rates of appearance in immigration court.

Children with representation also almost always appear in court

- The American Immigration Council observed through an analysis of Executive Office for Immigration Review (EOIR) data that from “2005 to 2016, 95.4 percent of children represented by lawyers appeared for their court proceedings.”⁹
- Vera’s 2016 evaluation of the justice AmeriCorps program (jAC)—a government-funded pilot program offering representation to unaccompanied children released from federal custody—found that among children represented by jAC whose cases had completed, only 7 percent received orders of removal *in absentia*.¹⁰

Regardless of representation status, asylum seekers almost always continue to appear in court

- A recent Transactional Records Access Clearinghouse (TRAC) analysis found that 98.7 percent of non-detained asylum seekers showed up for every court hearing in fiscal year 2019. ¹¹
- Vera’s evaluation of the Appearance Assistance Program (AAP) found that 93 percent of asylum seekers released to Vera’s supervised release program in the New York City region in the late 1990s appeared for all their court hearings.¹²

Almost all released family units appear in court

TRAC has found that from 2001 to 2016, “with rare exception virtually every family attended their court hearings when they had representation. Appearance rates at the initial hearing were 99.9 percent.”¹³ Among all cases initiated in family detention during this time, 86 percent of families appeared for all their court hearings. This rate was even higher for families who applied for asylum, with 96 percent attending all their court hearings.¹⁴

Participants in orientation programs are less likely to receive orders of removal *in absentia* than those who do not receive orientations

Evidence from two studies shows that even absent representation, legal orientations that include comprehensive explanations about immigration court procedures and basic legal information are associated with fewer orders of removal *in absentia*. This is consistent with a wide range of studies showing access to legal information in other legal systems increases compliance with court processes.

- Vera’s 2018 Legal Orientation Program (LOP) case time analysis (released to the public through FOIA), found that following release from custody, LOP participants had a lower chance of receiving orders of removal *in absentia* than their non-LOP counterparts.¹⁵
- Vera’s 2008 evaluation of LOP observed that following release from custody, LOP participants with completed cases had 7 percent fewer orders of removal *in absentia* than non-LOP participants.¹⁶

When court records are analyzed using appropriate scientific methods, it is clear that most immigrants attend all their court hearings, regardless of representation status or the type of claim they pursue

Eagly and Shafer’s 2020 study—an independent analysis of court data released to the public—found that nationwide, “88% of *all* immigrants in immigration court with completed or pending removal cases over the past eleven years attended all of their court hearings.”

- These same high appearance rates held when the study isolated only those people who went to court outside of detention. Eagly and Shafer note that, since 2008, 83 percent of all respondents on non-detained dockets have appeared for their hearings.¹⁷ While representation and certain relief options like asylum have consistently been associated with high rates of immigration court appearance over the past few decades, this data makes clear that most people outside of detention continue to appear in court.
- Similarly, 20 years earlier, Vera’s AAP found that 91 percent of all participants released from detention to the supervision of the AAP continued to appear for all their court hearings.¹⁸

Many people receive orders of removal *in absentia* because of flaws in the overburdened and politicized immigration hearing system

Although government reports often suggest that immigrants receive orders of removal *in absentia* because they have chosen to abandon court procedures, there is evidence that many people receive these orders as a result of flaws in the process.

- In a recent *amici curiae* brief to the U.S. Supreme Court, 32 former immigration judges expressed concern that immigrants do not receive adequate notice of their immigration hearings or are prevented from attending because of an inability to access the court, potentially resulting in wholly unjustified *in absentia* orders.¹⁹
- As evidence that many orders *in absentia* are the product of something other than immigrants' desire to avoid court, Eagly and Shafer's 2020 study found that "[s]ince 2008, 15% of immigrants who have been ordered deported *in absentia* have successfully reopened their cases and had their *in absentia* orders rescinded."
- TRAC found that many families are marked absent for hearings that never occurred, suggesting that immigration court records may be labeling people as receiving orders *in absentia* when their presence was not required in court in the first place. This potentially disturbing practice uncovered in TRAC's analysis suggests that, in addition to flaws in the court process, there are also flaws in its data that should raise red flags about cases coded as receiving orders of deportation *in absentia*.²⁰

Finally, reported rates of *in absentia* orders can vary widely depending on the analytical methods used

Immigration court *in absentia* rates can vary greatly depending on whether they are calculated as a portion of completed cases or all cases (both completed and pending). This is exacerbated by the high volume of pending cases that remain on the dockets for extended periods of time (often referred to as the "backlog").²¹ Because *in absentia* orders tend to be concentrated earlier in a case, excluding pending cases of people who continue to appear in court—especially the high volume in the immigration court system—can cause misleading results, presenting instead a snapshot of a moment in time that on any given day will over-represent *in absentia* outcomes until all cases in a cohort have completed. Short of using more advanced statistical methods such as survival analysis,²² the most accurate simple approach is to measure over time the portion of people who have continued to appear for their scheduled hearings, including those people with pending cases.

For more information

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Endnotes

- ¹ U.S. Immigration and Customs Enforcement (ICE), *U.S. Immigration and Customs Enforcement Fiscal Year 2019 Enforcement and Removal Operations Report* (Washington, DC: ICE, 2019), <https://perma.cc/WP8X-59NY>.
- ² The SAFE Initiative is a unique collaboration of government leaders, legal service providers, and community partners all working in partnership with Vera to implement publicly funded, universal representation programs. Through SAFE, Vera also leads and supports local and state advocacy and campaign efforts for deportation defense.
- ³ Vera Institute of Justice, *Due Process for All: Evidence from Year 2 of the SAFE Network* (New York: Vera Institute of Justice, 2019), <https://perma.cc/C7N2-U83M>; and Vera Institute of Justice, *Rising to the Moment: Advancing the National Movement for Universal Representation over Three Years of the SAFE Initiative* (New York: Vera Institute of Justice, forthcoming 2020).
- ⁴ Jennifer Stave, Peter Markowitz, Karen Berberich et al., *Evaluation of the New York Immigrant Family Unity Project: Assessing the Impact of Legal Representation on Family and Community Unity* (New York: Vera Institute of Justice, 2020), <https://perma.cc/FD49-VES2>.
- ⁵ Ingrid Eagly and Steven Shafer, “Measuring *In Absentia* Removal in Immigration Court,” *University of Pennsylvania Law Review* 168, no. 4 (2020), 817-876, <https://perma.cc/P9K5-266P>.
- ⁶ Ingrid V. Eagly and Steven Shafer, “A National Study of Access to Counsel in Immigration Court,” *University of Pennsylvania Law Review* 164, no. 1 (2015), 1-91, <https://perma.cc/82F5-WE2D>.
- ⁷ Judy Perry Martinez, “Fighting for Due Process in Immigration Courts,” *Human Rights Magazine* 25, no. 2 (2020), <https://perma.cc/2NXW-H6LD>; and Favio Ramirez Caminatti, “Examining the Legality of the Migrant Protection Protocols (MPP),” *Mitchell Hamline Law Review* (March 18, 2020), <https://perma.cc/8KSP-4PS4>.
- ⁸ TRAC Immigration, “Details on MPP (Remain in Mexico) Deportation Proceedings,” accessed October 24, 2020, <https://trac.syr.edu/phptools/immigration/mpp/>.
- ⁹ American Immigration Council, “Children in Immigration Court: Over 95 Percent Represented by an Attorney Appear in Court,” <https://perma.cc/BWJ3-2GPL>.
- ¹⁰ American Bar Association Commission on Immigration, “Justice AmeriCorps Legal Services for Unaccompanied Children Program,” 2018, <https://perma.cc/9V35-G7AZ>.
- ¹¹ TRAC Immigration, “Record Number of Asylum Cases in FY 2019,” <https://perma.cc/7A4Z-9CC3>.
- ¹² Vera Institute of Justice, *Community Supervision Proves Detention is Unnecessary to Ensure Appearance at Immigration Hearings* (New York: Vera Institute of Justice, 2020), <https://perma.cc/X86L-9QKT>.
- ¹³ TRAC Immigration, “Most Released Families Attend Immigration Court Hearings,” <https://perma.cc/9QYN-XG33>.
- ¹⁴ Ingrid Eagly, Steven Shafer, and Jana Whalley, “Detaining Families: A Study of Asylum Adjudication in Family Detention,” *California Law Review* 106, no. 3 (2018), 785-868, <https://perma.cc/34PV-T7L7>.
- ¹⁵ Letter from Nina Siulc, Vera Institute of Justice, to Steven Lang, EOIR, re: LOP Case Time Analysis for Performance Indicators, September 14, 2018, <https://perma.cc/SH8S-KB8J>.
- ¹⁶ Nina Siulc, Zhifen Cheng, Arnold Son, and Olga Byrne, *Legal Orientation Program Evaluation and Performance Outcome Measurement Report, Phase II* (New York: Vera Institute of Justice, 2008), <https://perma.cc/W9YT-53CG>.
- ¹⁷ Eagly and Shafer, “Measuring *In Absentia* Removal,” 2020.
- ¹⁸ Participation in Vera’s supervised release program also nearly doubled the rate of compliance with final orders. Vera Institute of Justice, *Community Supervision Proves Detention is Unnecessary*, 2020.
- ¹⁹ *Niz-Chavez v. Barr*, Amici Curiae Brief of Thirty-Three Former Immigration Judges and Members of the Board of Immigration Appeals, No. 19-863 (S. Ct., August 13, 2020), <https://perma.cc/VJ8Z-PLFC>.
- ²⁰ TRAC Immigration, “Most Released Families.”
- ²¹ More than 1.2 million pending cases remain on immigration court dockets as of October 2020, a record high. TRAC Immigration, “Immigration Court Backlog Tool,” https://trac.syr.edu/phptools/immigration/court_backlog/.
- ²² Survival analysis is a statistical method used when the outcome of interest is the duration of time until an observed event (e.g., until a case concludes with an *in absentia* order or another type of case completion). It can be used to calculate rates of *in absentia* orders while accounting for cases that are still pending at the time of analysis and controlling for numerous factors that may affect the likelihood of receiving an *in absentia* order or other case outcome.