

## Myth vs. Fact: Immigrant Families' Appearance Rates in Immigration Court

In the past year, thousands of Central American families have crossed the Southern border seeking protection; many of these families have been held in immigration detention facilities. In the wake of the increase at the border, many questions have come up regarding immigrant families and court appearance rates.

In recent months, the Executive Office for Immigration Review (EOIR), the agency within the U.S. Department of Justice that adjudicates immigration removal cases, released data showing that the vast majority of families do in fact show up for court dates. This data, however, has been misconstrued—some have even claimed that 85 percent of mothers are not appearing for their hearings.

In fact, the data actually shows that **the majority of families do appear**. Appearance rates can be brought even higher by addressing deficiencies in the provision of information and through provision of counsel. **Ninety-eight percent of families who are represented by counsel show up for their hearings.** In individual cases determined to need additional support, alternative measures, which are much more cost effective and humane than detention, achieve very high compliance rates.

**There are many other misconceptions around appearance rates, including:**

### MYTH

The overwhelming majority—about 85 percent—of immigrant families have not shown up to their immigration court hearings this year.

### FACT

The majority of immigrant families—at least 60 percent or higher—appear for their immigration court hearings. For immigrant families who have legal counsel, 98 percent are in compliance with their obligations to appear for court hearings.

EOIR's preliminary statistics indicate that at least 60 percent of families that have been apprehended at the border since the summer of 2014 have attended their hearings.<sup>1</sup> The number may actually be higher as some cases from a prior period were inadvertently included in the data pool. Unfortunately, some commentators have reported that 84 or 85 percent of families fail to appear. This is clearly not accurate. These commentators arrived at their conclusion by dividing the number of removal orders issued *in absentia* by the total number of case completions up to a certain date, rather than comparing that number to the total number of individuals who have been scheduled for an immigration court hearing. The majority of the cases initiated last summer are still pending, and the data actually shows that the majority of those individuals—at least 60 percent—are complying with their obligations to appear in court. Based on conclusions from the research, that appearance rate could improve by addressing the deficiencies in information provided to mothers upon release from custody, and through the provision of counsel, as explained below.

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<sup>1</sup> EOIR's statistics show that of the new charging documents it received for respondents classified as AWC/ATD (adults with children on alternatives to detention) between July 18, 2014 and May 26, 2015, 25,732 had a master calendar hearing scheduled. As of May 26, 2015, EOIR recorded 12,441 initial

**MYTH**

Detention is the only way to ensure appearance for immigration removal hearings.

**FACT**

Community-based alternatives to detention are less costly and have shown highly effective results in securing immigrants' appearance at hearings.

For individuals who need additional support to assure their appearance, research shows that immigrants who have been placed in alternative-to-detention programs appear for their court hearings at very high rates. The Lutheran Immigration and Refugee Service (LIRS) and the U.S. Conference of Catholic Bishops' Migration and Refugee Services (MRS) have piloted community-based models, showing promising initial results with program compliance rates of 96 to 97 percent. The Intensive Supervision Appearance Program (ISAP), run by a private contractor, achieved over a 99 percent appearance rate for individuals enrolled in the full-service component of the program between fiscal years 2011 and 2013. The Vera Institute of Justice piloted a program funded by the former Immigration Naturalization Service, providing services to over 500 noncitizens, and found that 93 percent of asylum seekers who received intensive supervision services fully complied with all of their hearings. Alternatives are also much less expensive than detention, which costs \$1,029 per day for a family of three. Past studies show that even intensive community-based programs come at only 20 percent of the cost of detention.

**MYTH**

Immigrants who fail to appear wish to disappear into the country.

**FACT**

Immigrants may fail to appear for immigration court hearings for a number of reasons, often related to systemic failures to provide adequate information on appearance obligations, lack of legal advice or representation, inadequate support throughout the process, or multi-year court delays due to inadequate staffing and funding for the immigration courts.

Research points to a variety of factors that may impede an immigrant's likelihood of appearing for immigration court hearings. Whether or not an individual has faith in a fair legal process is correlated with compliance rates. In particular, proper notice, \ legal information, and the provision of legal counsel can positively impact an individual's compliance with immigration court proceedings. Human Rights First and other groups have documented systemic failures in providing individuals with adequate, accessible information (in the immigrant's best language) related to appearance and supervision requirements, as well as clerical errors that can have serious consequences. For example, in its research at the southern border last year, Human Rights First found that asylum seekers are sometimes given hearing notices for a court located in a different state—apparently a mistake by the authority issuing the notice—with no explanation of the process for correcting such errors. Others have documented recent instances in which mothers were not provided information about their appearance obligations. Multi-year delays in court dates due to the chronic underfunding of the immigration courts could also lead to inadvertent failures to appear.

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case completions and of these initial case completions, 10,436 were removal orders issued *in absentia*. Accordingly, one may infer that 40% of adults with children fail to appear for their immigration hearings (10,436 / 25,732 = 40.5%). However, in communications related to the data, EOIR representatives clarified that the initial case completions may include cases that were initiated before July 18, 2014 and are therefore not included in the denominator. If we estimate an error of 10 percent such that the number of removal orders issued *in absentia* for the same time period of cases lodged between July 18, 2014 and May 26, 2015 is actually 9,389, then the percentage of adults with children who were issued removal orders *in absentia* would decline to 36 percent (9,389 / 25,732 = 36.4%)

Human Rights First recommends that steps be taken to provide detailed information and explanation concerning appearance requirements, immigration procedures, and the location of immigration offices to individuals who are being released from immigration custody.

The availability of legal counsel also significantly affects immigrants' likelihood of complying with their court proceedings. According to Syracuse University's Transactional Records Access Clearinghouse (TRAC), as of June 2015, only 42 percent of mothers and children whose cases initiated in fiscal year 2014 succeeded in finding an attorney. **As of June 2015, over 98 percent of represented mothers whose cases initiated in fiscal year 2014 were in compliance with their immigration court hearing obligations.**<sup>2</sup>

Community-based support can positively influence appearance rates as well. The programs piloted by LIRS and MRS, which have shown high compliance rates of 96 to 97 percent, adopted holistic, social service approaches to accompany 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.

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.

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<sup>2</sup> The TRAC website was last visited on July 28, 2015. Of the 11,426 cases initiated in fiscal year 2014 that had representation (42 percent of the total 26,812 cases initiated in fiscal year 2014), only 198 had been issued an *in absentia* order. After subtracting the 688 cases that were coded as still in detention, the data shows that over 98 percent of adults with children were in compliance as of June 2015:  $(11,426-688)-198 / (11,426-688) = 98.2$  percent.