

FACT CHECK: Asylum Seekers Regularly Attend Immigration Court Hearings

Recent [data](#) shows that asylum seekers [continue](#) to appear for immigration court proceedings at high rates. In fiscal year 2018, [Department of Justice](#) (DOJ) figures show that 89 percent of all asylum applicants attended their final court hearing to receive a decision on their application. When families and unaccompanied children have access to legal representation, the [rate](#) of compliance with immigration court obligations is nearly 98 percent.

Despite statistics showing that asylum seekers appear in immigration court at high rates, President Trump Administration has repeatedly falsely [claimed](#) that only [3 percent](#) of asylum seekers and [2 percent](#) of immigrants attend immigration court. Secretary of Homeland Security Kirstjen Nielsen [stated](#) that asylum seekers “more than not” fail to appear in immigration court.

The Trump Administration erroneously claims asylum seekers skip court hearings in an attempt to further their deceptive [narrative](#) of the asylum system as a “loophole” exploited by individuals with meritless claims to enter the United States and “disappear into the economy.” Indeed, the administration’s so-called [Migration Protection Protocols](#) plan, also known as ‘Remain in Mexico,’ is premised upon the idea that asylum seekers do not show up to court. These false claims ignore the political repression and violence that [forces](#) people to flee their countries amidst the world’s worst [refugee crisis](#).

Analyses of government statistics confirm:

92 percent of individuals who filed asylum claims attended their court hearings between fiscal years 2013 and 2017

According to [DOJ](#) statistics, between 2013 and 2017, 92 percent of asylum seekers appeared in court to receive a final decision on their claims. In FY 2018, 89.4 percent of those who applied for asylum complied with their court hearing obligations. Out of [66,592](#) final asylum decisions, [7,072](#) denials were the result of the asylum seeker failing to appear in court.

Asylum seekers released from detention to pursue their claims attend immigration court hearings nearly 100 percent of the time

Government figures made available through the Syracuse University’s Transactional Records Access Clearinghouse (TRAC) [asylum decision tracking tool](#) show near 100 percent appearance rates for asylum seekers released from immigration detention. Out of 10,427 decisions in fiscal year 2018 for released asylum seekers, only 160 received removal orders because they missed a court hearing—resulting in a 98.5 percent court hearing compliance rate.

98 percent of mothers with children who were represented by legal counsel complied with court hearing obligations

As of May 2018, when [data](#) analyzed by TRAC was most recently updated, mothers who had passed a credible fear interview and were represented by counsel attended their immigration court hearings over 97.5 percent of the time for cases initiated between 2014 and April 2017. TRAC's data shows that 36 percent of families went unrepresented in immigration court. While overall apprehensions along the southern border are the [lowest](#) in decades, families continue to make up a significant [proportion](#) of those crossing the border and seeking admission at ports of entry to request asylum.

In a 15-year study, 92 percent of asylum-seeking families who were released from immigration detention attended all immigration court hearings

A 2018 study [published](#) by the American Immigration Council found that, between 2001 and 2016, 92 percent of asylum-seeking families who were released from immigration detention had complied with all immigration court hearing obligations at the conclusion of those proceedings. Further, 96 percent of families with still pending asylum cases who were released from immigration detention attended their hearings.

98.8 percent of children with legal counsel showed up for their court hearings in 2018

TRAC data shows that 98.1 percent of unaccompanied minors who were represented by legal counsel and whose cases began between 2014 and 2017 [complied](#) with their court hearing obligations. Of the total number of unaccompanied children who filed cases during this time, however, 40 percent were not represented by counsel.

The rate of missed hearings for individuals who passed a credible fear interview has dropped by nearly 25 percent since 2012

Data released by DOJ show that the percentage of individuals who passed a credible fear interview but failed to appear for court has declined significantly in recent years. The rate fell by 24 percent from a high of 41.6 percent in fiscal year 2012 ([2,887](#) removal orders out of [6,935](#) cases completed) to 31.8 percent in 2018 ([10,859](#) orders out of [34,158](#) case decisions). This means that in 2018, nearly 70 percent of individuals who were placed into immigration court proceedings after passing a credible fear interview appeared in court as required.

In absentia rates often reflect overlooked needs of asylum seekers

Immigration judges may issue a removal order [in absentia](#) when an individual in immigration proceedings misses a hearing, if the government provides clear and convincing evidence that the individual received written notice of the hearing. However, [Human Rights First](#) and [CLINIC](#) have documented reasons why some asylum seekers miss their court hearings, including that:

- Immigration agencies fail to provide adequate, language-appropriate information related to appearance and supervision requirements, as well as the legal consequences of the failure to attend hearings;
- The government provides incorrect information regarding the time, date, or location of the hearing;
- Multi-year delays in filing notices to appear with the immigration court and in the scheduling of hearings can lead to inadvertent failures to appear;

- ✓ Medical issues such as trauma or cognitive disabilities prevent individuals from attending;
- ✓ Asylum seekers confuse immigration court hearings with ICE check-ins because ICE does not inform asylum seekers that check-ins are separate and distinct from court obligations nor does it inform asylum seekers about court obligations at check-ins;
- ✓ Asylum seekers believe they must have an attorney present to appear in court because ICE does not inform them of court procedures; and
- ✓ Asylum seekers are given immigration court hearings in different states without explanation of the process for correcting such errors.

While an individual may appeal an *in absentia* removal order if he or she can demonstrate that the government failed to providing notice of the hearing or supplied incorrect information, many asylum seekers are not aware of this right or of the process for filing an appeal, particularly where unrepresented.

The presumption that asylum seekers who do not attend court hearings lack legitimate claims for protection is erroneous. That conclusion obscures the range of factors that lead some asylum seekers to miss their immigration court proceedings or even fail to file an asylum application. Indeed, a federal district [court](#) has held that the failure of the Department of Homeland Security to notify asylum seekers who have passed a credible fear screening of the obligation to file an asylum application within the one-year deadline violates the immigration laws and due process rights under the Constitution.

Recommendations

In January 2019, the Trump Administration [asked](#) for \$800 million to support 8,000 new immigration detention beds for a total of 52,000. The administration also began implementing a policy of returning asylum seekers entering through the southern border back to Mexico while their cases are adjudicated—raising a host of due process and safety [concerns](#) for refugees in need of protection. Instead of expanding costly and cruel immigration detention or sending asylum seekers back to danger and denying them access to legal protections, the administration should ensure that asylum seekers are provided legal representation, appearance support programs when needed to secure attendance, and information about their appearance obligations—communicated effectively and in a language they understand.

Rather than expand the use of costly and inhumane immigration detention, the administration should:

- ✓ Support access to, and funding for, legal representation in asylum and removal proceedings.
- ✓ Ensure Customs and Border Protection and Immigration and Customs Enforcement staff carefully explain appearance obligations and details in a language the asylum seeker or immigrant fully understands, and that [Legal Orientation Programs](#), which currently operate in only [20 percent](#) of detention centers, are provided to all in CBP custody.
- ✓ Refer asylum seekers or immigrants who need appearance support to community-based case management programs. Specifically, the administration should restart the [Family Case Management Program](#)—a program that provided support to families released from detention—resulted in 99 percent attendance for ICE check-ins and appointments, as well as 100 percent attendance at court hearings.
- ✓ End the detention of families and reduce unduly high and costly immigration detention levels overall. Alternatives to detention can save more than [\\$1.44](#) billion for taxpayers: where one family detention bed costs \$298 per day, alternatives typically [cost](#) between \$.70 and \$17 a day.