

# Human Rights First

## Discrimination, Detention, and Deportation: Immigration & Refugees

<https://www.humanrightsfirst.org/resource/fact-check-asylum-seekers-regularly-attend-immigration-court-hearings>

### Policy Issue Resources

#### Work With Asylum Seekers

If you are seeking asylum, we can help

#### Areas of Focus

#### Current Initiatives

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](#).

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.

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.

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.

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.

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.

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.

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:

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.

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:

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