Denied a Day in Court:

The Government's Use of *In Absentia* Removal Orders Against Families Seeking Asylum

ASYLUM SEEKER ADVOCACY PROJECT

CLINIC

CATHOLIC LEGAL IMMIGRATION NETWORK, INC.

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EXECUTIVE SUMMARY

Starting in the summer of 2014, the United States began experiencing an unprecedented influx of Central American families who were fleeing violence and seeking humanitarian assistance and safety. Most of these families were from El Salvador, Guatemala, and Honduras. In response, the Obama Administration ordered immigration judges to rapidly adjudicate these cases, often at the cost of due process. Large numbers of families, unable to obtain legal representation and navigate a complex immigration system, were deported by the federal government, often back to the violence they had fled. Essential to the government's efforts was the use of *in absentia* removal orders issued to families upon their missing an immigration court hearing.

In response to the unmet legal needs of this population, the Asylum Seeker Advocacy Project (ASAP) and the Catholic Legal Immigration Network, Inc. (CLINIC) began representing families ordered removed *in absentia*. In every case, ASAP and CLINIC successfully challenged the underlying *in absentia* order and reopened the case. Concurrently, through a Freedom of Information Act (FOIA) request, these organizations obtained previously unreleased immigration court data that reveal key metrics regarding legal representation rates and the use of *in absentia* removals. Client interviews and data from the FOIA together reveal a startling trend—the government ordered the removal of high numbers of unrepresented families through *in absentia* orders despite many of those families having passed a credible fear interview with an asylum officer.

This report highlights the high rate of unrepresented families, discusses the obstacles families face in attending their hearings, explains how the immigration system fails families seeking asylum, and provides policy recommendations for how the Administration and Congress can address these shortcomings.

The findings in this report are based on an analysis of the FOIA results regarding representation and removal of 29,808 families from July 2014 to November 2016, as well as the results of the 46 cases in which ASAP and CLINIC provided representation. These findings include the following:

- 22,270 asylum applicants, or 75 percent of the 29,808 families who entered the United States between July 2014 and November 2016, did not have legal representation.

- In 24,862 cases, or 83 percent of the 29,808 families, an immigration judge ordered a family removed. Of those ordered removed, in 21,041 cases, or 85 percent, the order was issued *in absentia*, i.e. the judge entered the order without the presence of a parent in the court room. Thus,

immigration judges ordered the families removed without their having presented their claims for asylum or other defenses to removal.

- ASAP and CLINIC successfully challenged the *in absentia* orders of 46 of their 46 clients (100 percent), with either an immigration judge or the Board of Immigration Appeals (BIA) agreeing to rescind the *in absentia* order and reopen the case.

- Contrary to the narrative that families purposely abscond from immigration court, ASAP and CLINIC's clients all had legitimate reasons for being unable to attend their hearings, including lack of notice, incorrect government information, serious medical problems, language barriers, and severe trauma or disabilities. Importantly, ASAP and CLINIC's clients represented nationals from El Salvador, Guatemala, and Honduras who had received removal orders from 15 different immigration courts. Most of these families were alerted to their removal orders by prior *pro bono* counsel who represented them while they were in detention, and who then connected them with ASAP and CLINIC's services. The other families sought general information about asylum from ASAP and CLINIC, leading them to realize they had missed a hearing. Once families became aware of their *in absentia* removal orders, they overwhelmingly sought to reopen their cases to seek asylum.

- ASAP and CLINIC's high success rate suggests the federal government is deporting large numbers of families without providing them a fair opportunity to plead their cases in immigration court.

While ASAP and CLINIC's data runs through the end of the Obama Administration, *in absentia* removal orders continue to be issued in immigration courts throughout the country.

In order to limit the deportation of families with strong asylum claims and other avenues for immigration relief, the Department of Homeland Security (DHS), the Department of Justice (DOJ), and Congress should implement a variety of legislative and administrative changes that would remedy many of the problems identified in this report. These much-needed changes include improving communication between agencies, providing clearer guidance to families, and updating existing immigration court and enforcement practices.

BACKGROUND

The Central American Humanitarian Crisis

In the summer of 2014, the United States experienced an unprecedented humanitarian crisis stemming from an increased number of individuals—especially children and families—fleeing violence, murder, and other persecution in mainly three Central American countries.[1] Deteriorating security conditions, pervasive violence, and gang-fueled killings in El Salvador, Guatemala, and Honduras—known as the Northern Triangle—caused families to leave, leading them to seek asylum in neighboring countries.[2] Between 2008 and 2015, the United Nations High Commissioner for Refugees (UNHCR) documented a thirteen-fold increase in requests for asylum from Central American nationals.[3] Central American families traveled through Mexico and arrived at our nation's southern border, many of them voluntarily turning themselves over to border agents[4] with the intent of applying for asylum or other forms of immigration relief,[5] such as withholding of removal[6] or relief under the Convention against Torture.[7]

1 United Nations, United Nations High Commissioner for Refugees, *Women on the Run*, 2015, *available at* http://www.unhcr.org/publications/operations/5630f24c6/women-run.html [hereinafter "Women on the Run"].

2 WOLA: Advocacy for Human Rights in the Americas, *Five Facts about Migration from Central America's Northern Triangle*, Jan. 15, 2016, *available at* https://www.wola.org/analysis/five-facts-about-migration-from-central-americas-northern-triangle/ ("While the United States continues to be a primary destination, the countries neighboring the Northern Triangle, including Mexico, Costa Rica, Belize, and Nicaragua, have seen requests for asylum from citizens of these countries increase by almost 1,200 percent from 2008 to 2014. Between 2008 and August 2015, Costa Rica alone saw a sixteen-fold increase in asylum requests from Northern Triangle countries. Requests for asylum in Mexico, primarily from Northern Triangle countries, have more than doubled since 2013.").

3 Women on the Run, *supra* note 1.

4 John Burnett, *From A Stream To A Flood: Migrant Kids Overwhelm U.S. Border Agents*, NPR, June 20, 2014, *available at* https://www.npr.org/2014/06/20/323657817/from-a-stream-to-a-flood-migrant-kids-overwhelm-u-s-border-agents ("'Adults are different from children,' he explains. 'An adult has to flee, but a child—you just deliver them to the other side of the river and they wait to give themselves up to the Border Patrol. It makes our job easier.'").

5 As used in this report and immigration law, "relief" refers to any form of protection or immigration benefit that an individual can receive to temporarily or permanently prevent their removal from the country. U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, *Covered Forms of Immigration Relief*, 2005, *available at* https://www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-102229/0-0-0-106136/0-0-0-106514/0-0-0-106562.html.

6 INA § 241(b)(3)(B), 8 U.S.C. § 1231(b)(3) (West 2017).

7 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and opened for signature Dec. 10, 1984, G.A. Res. 39/46, 39 U.N. GAOR Supp. No. 51, at 197, U.N. Doc. A/RES/39/708 (1984) (entered into force June 26, 1987; for the United States April 18, 1988).

Expedited Removal

As families arrived in the United States, DHS—through U.S. Customs and Border Protection (CBP)—regularly placed families apprehended at the southern border in detention facilities. The detention facilities selected to house mothers and children are run by for-profit companies: CoreCivic (formerly the Corrections Corporation of America), and the GEO Group.[8] There, the families underwent the "expedited removal" process.[9] Expedited removal allows the federal government to deport people on a fast-track basis outside the immigration court system and without the due process protections afforded to other noncitizens.[10]

Expedited removal contains a legal safety valve, which allows noncitizens who demonstrate a "credible fear of persecution"—the first step in satisfying eligibility for asylum—to present their case to an immigration judge.[11] From July 2014 through September 2016, DHS, through U.S. Citizenship and Immigration Services (USCIS) conducted 51,977 credible fear interviews at all of its family detention facilities.[12] Of these, 45,393, or 88 percent of those interviewed, passed their initial credible fear interviews.[13]

The high percentage of positive credible fear determinations is not surprising. Between 2008 and 2014, Mexico, Panama, Nicaragua, Costa Rica, and Belize combined experienced a 1,185 percent increase in asylum applications from nationals of Northern Triangle countries—El Salvador, Guatemala, and Honduras.[14] UNHCR identified a number of different populations in Honduras[15] and El Salvador[16] specifically targeted by extreme violence and who likely warranted asylum protection, including children, women, individuals resisting gangs, and others. During this time period, homicide rates in the Northern Triangle countries were some of the highest in the world for countries not at war.[17]

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8 Lise Olsen, *Private Prisons Boom in Texas and Across America Under Trump's Immigration Crackdown*, Houston Chronicle, Aug. 19, 2017, *available at* https://www.houstonchronicle.com/news/houston-texas/houston/article/Private-prisons-boom-in-Texas-and-across-America-11944652.php.

9 INA § 235(b)(1), 8 U.S.C. § 1225(b)(1) (West 2017).

10 Jose Magaña-Salgado, *Fair Treatment Denied: The Trump Administration's Troubling Attempt to Expand "Fast-Track" Deportations,* Immigrant Legal Resource Center (ILRC), Jun. 2017, *available at* https://www.ilrc.org/report-expedited-removal-expansion.

11 INA § 235(b)(1)(B)(v), 8 U.S.C. § 1225(b)(1)(B)(v) (West 2017). ("For purposes of this subparagraph, the term 'credible fear of persecution' means that there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum . . . .").

12 U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, USCIS Asylum Division: Family Facilities Credible Fear, May 16, 2016, *available at* https://www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/PED_CredibleFearReasonableFearFamilyFacilitiesFY14_16.pdf.

13 *Id.*

14 United Nations, United Nations High Commissioner for Refugees, *Children on the Run*, 2015, *available at* http://www.unhcr.org/en-us/children-on-the-run.html.

15 Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Honduras, United Nations High Commissioner for Refugees, July 27, 2016, *available at* http://www.refworld.org/docid/579767434.html.

16 Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from El Salvador, United Nations High Commissioner for Refugees, March 2016, *available at* http://www.refworld.org/docid/56e706e94.html.

17 Adriana Beltran, *Children and Families Fleeing Violence in Central America*, WOLA: Advocacy for Human Rights in the Americas, Feb. 21, 2017, *available at* https://www.wola.org/analysis/people-leaving-central-americas-northern-triangle/.

Specifically, in the context of women, El Salvador, Honduras, and Guatemala experienced some of the highest female homicide and domestic violence rates in the world.[18] Furthermore, the high number of credible fear determinations and underlying country conditions demonstrated to the government and the public that many of the families fleeing Central America had meritorious asylum claims.[19]

Immigration Court

After a positive credible fear determination, DHS—through Immigration and Customs Enforcement (ICE) and CBP—usually releases families on alternatives to detention (ATD), often through the use of an ankle monitor, bond, or on their own recognizance. The federal government must release families as a result of the *Flores* settlement agreement, which prohibits the detention of both unaccompanied and accompanied children.[20] The *Flores* settlement resulted from a lawsuit brought on behalf of detained immigrant children that challenged the procedures, conditions, and U.S. detention policies regarding immigrant children.[21] Importantly, under *Flores*, the government implemented policies prioritizing family reunification and the release of children from custody, and established specific procedures and protections for children in detention.[22]

Generally, as a condition of release from detention, families must provide and keep current their physical address and regularly check in with their local ICE Enforcement and Removal Office (ERO). Separately, in order to receive information about upcoming hearings, families must also provide and keep current their physical address with the immigration court, which is part of the Executive Office for Immigration Review (EOIR)—a federal agency located within the DOJ. Families must also update their physical address with the ICE Office of Chief Counsel (OCC) within DHS. Attorneys from ICE OCC represent DHS in immigration court, taking on a role much like that of a prosecutor in a criminal proceeding.

After families are released from detention, immigration judges set the timeline for each case and schedule subsequent hearings, including an initial hearing that is known as a master calendar hearing. Families do not need to present the underlying merits of their case at a master calendar hearing, which

18 *Id.*

19 Indeed, this trend is borne out by comparatively low migration from Nicaragua, a high-poverty, low-crime country. Jill Replogle, *Tens of Thousands of Central American Children are Fleeing their Homes — Except in Nicaragua*, PRI, Aug. 6, 2014, *available at* https://www.pri.org/stories/2014-08-06/tens-thousands-central-american-children-are-fleeing-their-homes-except-nicaragua ("Tens of thousands of unaccompanied children from Central America have recently fled across Mexico to the United States, overwhelming the immigration system. But while there were plenty from countries like El Salvador and Guatemala, few Nicaraguan children joined them.").

20 Human Rights Watch, *The Flores Settlement: A Brief History and Next Steps*, Feb. 19, 2016, *available at* https://www.humanrightsfirst.org/resource/flores-settlement-brief-history-and-next-steps; Stipulated Settlement Agreement, *Flores v. Reno*, No. CV 85-4544-RJK(Px) (C.D. Cal. Jan. 17, 1997).

21 *Id.*

22 *Id.* In a more recent case, *RILR v. Johnson*, 80 F. Supp. 3d 164 (D.D.C. 2015), a federal court ruled that the government could not detain families fleeing violence to function as a "deterrence" against others that would seek to come to the United States. Eleanor Acer, *Federal Court Got It Right: Detaining Mothers and Children to Deter Other Asylum Seekers Is Wrong*, Human Rights First, Feb. 25, 2015, *available at* https://www.humanrightsfirst.org/blog/federal-court-got-it-right-detaining-mothers-and-children-deter-other-asylum-seekers-wrong.

often lasts ten minutes or less. If the family does not have a lawyer at their master calendar hearing, an immigration judge usually affords the family an opportunity to retain one and schedules a second master calendar hearing. Importantly, after the submission of an asylum application at the initial or subsequent master calendar hearing, immigration judges will schedule a merits hearing (also known as an individual hearing) where a family can present their case.

If the individual fails to appear at any immigration court hearing, immigration judges can order the person removed *in absentia*.[23]

In Absentia Removals

During an *in absentia* proceeding, the immigration judge can issue an *in absentia* order of removal if DHS establishes by clear, unequivocal, and convincing evidence that the individual received written notice of the removal charges and hearing date and time, and is a noncitizen with no legal basis to be in the United States.[24] Only when DHS has met this burden may the immigration judge issue an *in absentia* removal order. Although DHS should seek to affirmatively meet this burden, it is imperative for immigration judges to hold DHS to its burden of proof.

As noted above, *in absentia* proceedings can take place during a master calendar hearing or an individual hearing. However, the majority of *in absentia* proceedings take place during master calendar hearings. This means that immigration judges order families removed *in absentia* for missing what are essentially hearings to schedule an individual hearing. While penalizing a person who does not attend an administrative or civil hearing may be appropriate in some contexts, the unique vulnerability of mothers and children fleeing violence makes the issuance of *in absentia* removal orders overly punitive. In FY 2016, immigration judges issued 34,268 *in absentia* removal orders – with a subset of these orders being for families.[25] Since 2014, immigration judges have issued rulings in at least 32,500 cases of the nearly 100,000 cases involving adults with children; 70 percent of the rulings in these cases were *in absentia* orders of removal.[26]

In certain cases, noncitizens may successfully contest or rescind and reopen an *in absentia* removal order, usually by demonstrating that they did not receive sufficient notice of the hearing or by demonstrating that there were extraordinary circumstances that led to them missing the hearing.[27] However, without

23 INA § 240(b)(5), 8 U.S.C. § 1229a(b)(5) (West 2017) ("Any alien who, after written notice . . . has been provided to the alien or the alien's counsel of record, does not attend a proceeding under this section, shall be ordered removed *in absentia* if the Service establishes by clear, unequivocal, and convincing evidence that the written notice was so provided and that the alien is removable . . . .).

24 *Matter of Sanchez-Herbert*, 26 I&N Dec. 43 (BIA 2012).

25 Executive Office for Immigration Review, U.S. Department of Justice, *FY 2016 Statistics Yearbook* P1, Mar. 2017, *available at* https://www.justice.gov/eoir/page/file/fysb16/download.

26 Julia Preston, *Fearful of Court, Asylum Seekers Are Banished in Absentia*, The Marshall Project, Jul. 30, 2017, *available at* https://www.themarshallproject.org/2017/07/30/fearful-of-court-asylum-seekers-are-deported-in-absentia.

27 *Matter of G–D–*, 22 I&N Dec. 1132, 1134 (BIA 1999); INA § 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C) (West 2017); 8 C.F.R. § 1003.2(a) (providing immigration judges with authority for *sua sponte* reopening) (West 2017); 8 C.F.R. § 1003.23(b)(1) (providing immigration judges with authority to reopen any proceedings in which the immigration judge made a decision); 8 C.F.R. § 1003.1(d) (West 2017)

legal representation, noncitizens will not know about or be able to successfully argue these legal standards and it is difficult for those with *in absentia* removal orders to find legal counsel. Indeed, when noncitizens are represented by counsel, they are twelve times as likely to succeed in their underlying case.[28] Yet even with legal counsel presenting comprehensive and legally sound motions to reopen, many immigration judges often exercise their discretion not to reopen cases.[29]

(granting the BIA authority to return any case to an immigration judge "for further action as may be appropriate, without entering a final decision on the merits of the case").

28 Dara Lind, *A New York Courtroom Gave Every Detained Immigrant a Lawyer. The Results Were Staggering*, Vox, Nov. 9, 2017, *available at* https://www.vox.com/policy-and-politics/2017/11/9/16623906/immigration-court-lawyer.

29 In the cases ASAP and CLINIC have represented, immigration judges have sometimes denied motions to reopen because they applied an overly strict standard. In these cases, the BIA has overturned the immigration judge's decision.

GOVERNMENT DATA ON *IN ABSENTIA* REMOVALS

To address the Central American influx in 2014, EOIR issued directives to immigration judges regarding the types of cases they should prioritize for adjudication.[30] Among other categories, EOIR directed immigration judges to prioritize adults with children who are detained (AWC/D) and adults with children released on alternatives to detention (AWC/ATD). AWC/D represents families that were or are detained in family detention centers. AWC/ATD represents families that were apprehended at the border, never detained in family detention centers, and placed on alternatives to detention (e.g. an ankle monitor).[31] The federal government designated these families using these categories on the basis of their initial status, but these classifications of a family unit may not necessarily reflect subsequent developments, such as release from detention on bond or recognizance. The practical effect of this means that not all families classified as AWC/D are currently detained; most families, in fact, are not.

Figure 1: Legal representation for adults with children

	Completed Cases	Represented	Unrepresented	Percent Represented	Percent Unrepresented
AWC/ATD	26,609	6,353	20,256	24%	76%
AWC/D	3,199	1,185	2,014	37%	63%
Total	**29,808**	**7,538**	**22,270**	**25%**	**75%**

Source: ASAP/CLINIC FOIA 2017. Data from July 18, 2014-Nov. 28, 2016.

ASAP and CLINIC filed a FOIA request with EOIR in November 2016 to obtain statistics regarding both AWC/ATD and AWC/D populations (i.e., all women with children detained/apprehended at

30 Memorandum from Brian M. O'Leary, Chief Immigration Judge, Executive Office for Immigration Review on Docketing Practices Relating to Unaccompanied Children Cases and Adults with Children Released on Alternatives to Detention Cases in Light of the New Priorities to All Immigration Judges (March 24, 2015) *available at* https://www.justice.gov/eoir/pages/attachments/2015/03/26/docketing-practices-related-to-uacs-and-awcatd-march2015.pdf.

31 *Id.* at 1.

border), including: (a) completed cases (i.e., cases adjudicated and closed by an immigration judge); (b) removal orders; (c) *in absentia* removal orders; and (d) rates of representation.[32] In February 2017, EOIR provided the requested data for the time period from July 18, 2014 to November 28, 2016, covering 29,808 completed cases.[33] Completed cases represent adjudications where an immigration judge conducted and completed proceedings and subsequently ordered a noncitizen removed, administratively closed the case, or provided some form of immigration relief, such as asylum. Decimal points are rounded when applicable.

Each AWC unit, whether AWC/ATD or AWC/D, represents the adjudication for more than one noncitizen, e.g. the adult and their children. Thus, a single completed AWC/ATD or AWC/D case encompasses multiple noncitizens. The data in figure 1, however, are for entire family units. Thus, any reference to AWC/ATD or AWC/D represents a reference to a single family unit consisting of multiple noncitizens. The data does not reflect how many children are part of each AWC/ATD or AWC/D case but such cases must always have at least one child by definition. References to "families" below, therefore, means family units and each case references two or more noncitizens.

Legal Representation

In figure 1, "Represented" signifies the number of noncitizens who were represented by legal counsel, while "Unrepresented" signifies noncitizens who were not. We obtained the percentages for total number of noncitizens represented ("% Represented") and those not represented ("% Unrepresented") by dividing the number of represented and unrepresented individuals by the total number of completed cases, respectively.

During this period of slightly more than two years, 75 percent of adults with children or families, or 22,270, did not have legal representation during their immigration court proceedings. Approximately 76 percent of the families placed on alternatives to detention (AWC/ATD) were unrepresented, while 63 percent of initially detained (AWC/D) families were unrepresented. The greater incidence of representation for initially detained families may be partially explained because *pro bono* programs have a presence at family detention facilities and these advocates often link families to competent post-release representation.[34] Families placed on ATD, on the other hand, must independently identify and secure their own counsel and, because of lack of information or funds, may be unable to do so.

32 Letter from Michelle N. Mendez, Training and Legal Support Managing Attorney, Catholic Legal Immigration Network, Inc. and Swapna Reddy, Co-Director, Asylum Seeker Advocacy Project to FOIA Service Center, Office of the General Counsel, Executive Office for Immigration Review (Nov. 29, 2016) (on file with author).

33 Letter from Crystal Souza, Supervisory Government Information Specialist, Office of the General Counsel, Executive Office for Immigration Review, to Michelle N. Mendez, Training and Legal Support Managing Attorney, Catholic Legal Immigration Network, Inc. (Feb. 8, 2016) (on file with author). EOIR's data also breaks down AWC/ATD and AWC/D into three categories: (a) detained; (b) released; and (c) never detained. These subcategories provide further data regarding DHS's subsequent actions on these cases, but the subcategories themselves are not relevant to this report's analysis.

34 *One Year of CARA Pro Bono Project, Thousands Helped*, CLINIC, Inc., 2016, *available at* https://cliniclegal.org/resources/articles-clinic/one-year-cara-pro-bono-project-thousands-helped; Dan Lasman, *CARA Family Detention Pro-Bono Project: Testimony by Dan Lasman*, Harvard Immigration & Refugee Clinical Program, Oct. 20, 2016, *available at* https://harvardimmigrationclinic.wordpress.com/2016/10/20/cara-family-detention-pro-bono-project-testimony-by-dan-lasman/.

In Absentia Removal Orders

In figure 2, "Removal Orders" signifies the number of completed cases where an immigration judge entered a removal order. We obtained the percentage of cases that were closed by an immigration judge through the entering of a removal order ("% of Cases," fourth column) by dividing the number

Figure 2: Removal orders for adults with children

	Completed Cases	Removal Orders	Percent of Cases	In Absentia	Percent of Removals	Percent of Cases
AWC/ATD	26,609	22,426	84%	19,107	85%	72%
AWC/D	3,199	2,436	76%	1,934	79%	60%
Total	**29,808**	**24,862**	**83%**	**21,041**	**85%**	**71%**

Source: ASAP/CLINIC FOIA 2017. Data from July 18, 2014-Nov. 28, 2016.

of removal orders by the total number of completed cases. "*In Absentia*" represents the number of *in absentia* removal orders entered by an immigration judge. We obtained the percentage of removal orders that are *in absentia* orders ("% of Removals") by dividing the number of *in absentia* orders by the number of removal orders. We obtained the percentage of completed cases that resulted in *in absentia* orders ("% of Cases," last column) by dividing the number of *in absentia* orders by the total number of completed cases.

During this period of slightly more than two years, immigration judges ordered 83 percent of families removed—a total of 24,862 families. Of these 24,862 families, 21,041 of them—or 85 percent—were ordered removed *in absentia*. *In absentia* removal orders represented 71 percent of all completed cases—meaning those in which a family won asylum or another form of relief or was ordered removed. Thus, immigration judges ordered nearly three-fourths of all families removed who were in immigration proceedings during this time, despite the fact that most of these families never went to court to present their claims for asylum or other forms of immigration relief.

It is important to note that asylum-seeking families have little incentive to skip the master calendar hearing as this is merely a scheduling hearing during which immigration judges will generally not order removal unless they fail to appear. From July 2014 through September 2016, DHS found a positive credible fear determination for 45,393 or 88 percent of the 51,977 credible fear interviews it conducted at all of its family detention facilities.[35] Through these positive credible fear determinations, families had already successfully begun the process to obtain long-term relief in the form of asylum.

35 U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, USCIS Asylum Division: Family Facilities Credible Fear (May 16, 2016), *available at* https://www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/PED_CredibleFearReasonableFearFamilyFacilitiesFY14_16.pdf.

Link Between Legal Representation and *In Absentia* Removal Orders

From July 18, 2014 to Nov. 28, 2016, of those who were classified as AWC/ATD and AWC/D, only 25 percent of families retained legal counsel. During the same period, immigration judges ordered 21,041 or 71 percent of families removed *in absentia*. Coupled with existing quantitative analysis regarding rates of representation in relation to removal, it is highly likely that many of the families ordered removed *in absentia* were not represented.[36] A noncitizen without representation does not have a trained legal professional to assist him or her in filing motions (such as motions for continuance and change of venue), explain the date, time, location, and importance of a client's hearing, or contact EOIR regarding late or missing notices. Furthermore, if a noncitizen needs to change his or her address, it would be extremely unlikely he or she would know to submit: (1) Form EOIR-33 to the immigration court, (2) Form EOIR-33 to ICE OCC, and (3) Form AR-11 to USCIS if any application is pending at USCIS. In addition, a noncitizen would not necessarily know to orally or in writing change his or her address with ICE ERO as well as a private contractor managing an Intensive Supervision Appearance Program (ISAP). In terms of these families, the demonstrated effects of a lack of representation in similar contexts, coupled with the passage of their initial credible fear determination, suggests that the *in absentia* rate is more likely driven by a lack of legal representation than the absence of a valid claim for relief.

Figure 3: Link between legal representation and in absentia removals

	Unrepresented	Percent of cases	In absentia orders	Percent of cases
AWC/ATD	20,256	76%	19,107	72%
AWC/D	2,014	63%	1,934	60%
Total	**22,270**	**75%**	**21,041**	**71%**

Source: ASAP/CLINIC FOIA 2017. Data from July 18, 2014-Nov. 28, 2016.

36 *Representation Makes Fourteen-Fold Difference in Outcome: Immigration Court "Women with Children" Cases*, TRAC: Immigration, Jul. 15, 2015, *available at* http://trac.syr.edu/immigration/reports/396/; *With the Immigration Court's Rocket Docket Many Unrepresented Families Quickly Ordered Deported*, TRAC: Immigration, Oct. 18, 2016, *available at* http://trac.syr.edu/immigration/reports/441/; Ingrid Eagly & Steven Shafer, *Access to Counsel in Immigration Court*, American Immigration Council, Sep. 28, 2016, *available at* https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court ("Immigrants with attorneys fare better at every stage of the court process.").

CASE STUDIES: WHY ARE ASYLUM SEEKERS BEING ORDERED DEPORTED *IN ABSENTIA*?

The EOIR and FOIA data analyzed above demonstrate high numbers of *in absentia* orders. This statistical framework, however, is incomplete, as such data does not provide the underlying, qualitative reasons for these orders. ASAP and CLINIC's representation of families completes this picture and provides a qualitative overview of how families come to receive *in absentia* orders.

ASAP and CLINIC began to contact formerly detained families in the fall of 2015 to remind them of forthcoming hearings. Importantly, these families did not self-select and seek legal assistance, but instead were approached by ASAP and CLINIC. Through this work, ASAP and CLINIC encountered families who experienced the following:

- received no notice for their hearing(s);
- received incorrect hearing dates from the immigration court;
- erroneously believed they could only attend the hearing with a lawyer;
- hesitated to attend due to news regarding immigration raids;
- confused their immigration court hearing with their ICE check-in; or
- faced other obstacles, including medical and transportation issues.

In figure 4, the term "Families" represents the number of family units (mothers and children) represented, while "Clients" represents the total number of individuals represented. For example, a single

family unit may have one or more clients, depending on whether the mother has children, who are also clients. Although family units often include more than a mother and children, DHS treats women and children as a family unit and, consequently, this report defines families in the same manner. "MTR Granted" signifies whether an immigration judge or the BIA approved the motion to reopen, e.g., rescinded the *in absentia* order and allowed a family to re-enter the immigration court process and apply for asylum or other forms of immigration relief. "MTR Denied" represents cases where an immigration judge and the BIA both denied the motion to reopen; these are ongoing cases being challenged through litigation and appeals. Finally, "Client Win %" represents the percentage of successful motions to reopen, obtained by dividing "MTR Granted" by "Clients."

Figure 4: ASAP and CLINIC *in absentia* case dispositions

Families	Clients	MTR Granted	MTR Denied	Client Win Percent
22	46	46	0	100%

Source: ASAP/CLINIC data, updated 2019

ASAP and CLINIC consistently encountered families who had missed their hearings for several reasons, mostly outside of the families' control. Often, these families initially discovered they had an outstanding *in absentia* order because ASAP and CLINIC informed them or because they called the EOIR phone hotline, which allows immigrants to call and check the status of their case. Subsequently, ASAP and CLINIC undertook the representation of these families, the vast majority of whom had been previously unable to retain representation. Since 2015, ASAP and CLINIC represented 22 families, comprised of 46 clients with *in absentia* orders. Of these, ASAP and CLINIC successfully challenged the *in absentia* orders for 46 clients, or 100 percent of cases. Through the representation of these individuals, ASAP and CLINIC identified common reasons for families failing to attend immigration court and receiving *in absentia* orders: (1) deficient notices; (2) government errors and omissions; (3) physical, geographical, and language obstacles; (4) trauma or mental health; and (5) absent or ineffective legal representation.

Missing Notices

In terms of missing notices, families faced situations where notices never arrived or were not received in time. Incorrect addresses contributed to this problem. Families must provide DHS an address where they intend to reside. When they move, the family is also expected to update their address with up to five different entities—the immigration court, USCIS, ICE OCC, ICE ERO, and ISAP—using three different mediums—Form EOIR-33, Form AR-11, and oral or written notice. The government's failure to communicate this requirement clearly and in a timely manner contributed to a significant number of notices that did not reach the intended recipient.

Government Errors and Omissions

Clients received written notices with incorrect hearing dates, erroneous information from EOIR

hotlines, conflicting information between the hotline and written notices, and misleading or incomplete information from ICE during their check-ins.

Physical, Geographical, and Language Obstacles

Clients were expelled from their homes by family members, lacked reliable housing or transportation, faced immigration courts that refused to change a client's venue to an immigration court closer to where they had moved, or had notices incorrectly translated by third parties.

Trauma and Mental Health

Clients faced cognitive disabilities, post-traumatic stress disorder, domestic violence, and severe and unexpected medical illness, which prevented them from attending their hearings.

Absent or Ineffective Legal Representation

Clients could not afford or identify counsel; they retained counsel that provided ineffective representation; or they were defrauded through the unauthorized practice of law by non-attorney "consultants" or "notarios."

Missing Notices

A NOTICE THAT NEVER ARRIVES – SOFIA'S STORY

Sofia, a Honduran citizen, was raped by one of her neighbors in early 2015 and later threatened by another man affiliated with one of the transnational gangs working in Honduras. As part of an escalating campaign of violence and in response to Sofia's Catholic faith, gang members attempted to murder Sofia's mother and son, threatened Sofia's family with violence, and intimidated the family by killing Sofia's dog. Fearing for her life, Sofia made the difficult decision to leave Honduras and seek asylum in the United States in April 2015.

Upon release from detention, Sofia provided ICE the address where the government could send her notices—her cousin's apartment—where she would be staying. Sofia and her family diligently checked the mail for any notices regarding her hearing, but no notice ever arrived. Sofia did, however, eventually receive a letter instructing her to check in with ICE, a meeting where ICE revealed she missed her hearing in August 2015 where the immigration judge had ordered her removed *in absentia*.

In February 2016, ASAP and CLINIC successfully challenged Sofia and her son's *in absentia* orders.

A NOTICE THAT ARRIVED TOO LATE – PAULA'S STORY

Three gang members murdered Paula's husband in early 2015 in Guatemala. Shortly thereafter,

the gang members began to target the rest of the family, including Paula and her 10-year-old son, by making multiple death threats. Believing the threats would soon turn into action, Paula left Guatemala with her two children and sought asylum in the United States in February 2015.

Upon release from detention, Paula provided the address where the government could send her notices. She checked her mail on a regular basis and one day in late July, she opened her mailbox to discover two pieces of mail. The first was a notice for her immigration hearing with a hearing date of July 23, 2015, which had already passed. The second piece of mail was an *in absentia* removal order for her and her son.

In January 2016, ASAP and CLINIC successfully challenged Paula and her two sons' *in absentia* orders.

Laura, a Honduran national, left after her father was murdered by gang members. The little girl next to her is her daughter, whom she fled with to the United States.

THE CASE OF THE MISSING NOTICE – LAURA'S STORY

Laura and her father were members of the Christian Democrat Party in Honduras and sought to improve their local community by running for political office. In 2012, Laura's father was murdered during a local race for mayor because of his political beliefs. Shortly thereafter, Laura began to receive death threats. Wanting to protect herself and her 3-year-old daughter, Laura made the difficult decision to withdraw from civic service and move to a new town in Honduras. The men who had been persecuting Laura followed her and her daughter to their new home and continued their threats. Believing that the men would follow her anywhere in Honduras, Laura fled to the United States and sought asylum in August 2015.

When ICE released Laura and her daughter from detention, Laura provided her uncle's address as the residence where she planned to live. While awaiting her hearing notice, Laura moved, changed her address with ICE, and continued to attend regular check-ins with ICE. In late 2015, Laura received a letter at her uncle's address informing her that a judge had ordered her removed *in absentia* in November 2015. No notice regarding her immigration court hearing ever arrived at her uncle's home.

In May 2016, ASAP and CLINIC successfully challenged Laura and her daughter's *in absentia* order.

Government Errors and Omissions

LACK OF COMMUNICATION BETWEEN IMMIGRATION AGENCIES – ELIZABETH'S STORY

Elizabeth, a Salvadoran citizen, ran a successful business that drew the unwanted attention of MS-13, El Salvador's notorious transnational gang. Gang members extorted Elizabeth, threatened her with violence, and threatened to kidnap and rape her 10-year-old daughter. Elizabeth and her daughter left El Salvador and arrived at the U.S.-Mexico border seeking asylum in October 2016.

ICE released Elizabeth and her daughter and instructed Elizabeth to regularly check in with them. Elizabeth, wanting to pursue her case, regularly reported to ICE and updated her address every time she moved. What ICE failed to tell her, however, was that ICE would not share her new address with the immigration court and that Elizabeth had to contact the immigration court separately to update her address. Consequently, the immigration court sent her notice of hearing to an old address and, in September 2015, ordered Elizabeth removed *in absentia*.

In early 2016, ASAP and CLINIC successfully challenged Elizabeth and her daughter's *in absentia* orders.

A NOTICE WITH THE WRONG DATE – ADRIANA'S STORY

Adriana, a Honduran citizen, became pregnant by a married man who abandoned her shortly thereafter. Furious that she had chosen to carry the pregnancy to term, the child's father began to threaten and harass Adriana, while the wife attempted to poison Adriana's son and continually threatened the boy's life. As the father was Adriana's stepfather's brother, he and his wife were able to easily locate and threaten Adriana. Adriana fled Honduras with her 7-year-old son and arrived in the United States in April 2015.

ICE released Adriana and her son, and Adriana provided the government with her address in Phoenix. On June 10, 2015, Adriana received her first notice indicating that her hearing was in July 2016. Later, Adriana decided to move to Houston for more stable housing and informed ICE of her intentions at a July 2015 check-in. In Phoenix, Adriana updated her address with ICE, but ICE failed to inform Adriana that she also had to update her address with the immigration court and file a motion to change her hearing venue to the Houston Immigration Court.

To escape the bullying her son faced in school, Adriana then decided to move from Houston to Dallas. During a check-in with ICE in Houston to update her address, ICE finally informed Adriana she needed to also update her address with the immigration court. After moving to Dallas, she contacted all of the attorneys on the list of legal aid providers ICE gave her, but was not able to find an attorney to help her update her address with the immigration court.

She eventually scheduled a consultation with an attorney in January 2016, thinking she had enough

time because the notice she had received stated her hearing was to be held in July 2016. Adriana was shocked to discover that the date of her original notice was incorrect. While her notice stated her hearing was in July 2016, her hearing had actually taken place in August 2015. When Adriana did not go to the hearing, the immigration court consequently ordered Adriana removed *in absentia*.

In May 2016, ASAP and CLINIC successfully challenged Adriana and her son's *in absentia* orders.

MISLEADING INFORMATION FROM IMMIGRATION OFFICERS – LUCIA'S STORY

Lucia, a Honduran citizen, suffered a family tragedy—a hitman murdered her brother-in-law . Subsequently, the same hitman began making death threats against her. Fearing for her and her son 's safety, she came to the United States to seek asylum in October 2014.

ICE released Lucia and her son, and Lucia attended regular check-ins with ICE. Lucia eventually moved to a new address and updated ICE, but ICE failed to inform her that she also had to update her address with the immigration court. Lucia never received a notice and the immigration court eventually ordered Lucia removed *in absentia*. Nevertheless, Lucia continued to attend her check-ins with ICE and ICE continued to tell her that there were no issues with her case. Instead, ICE directed Lucia to keep returning for check-ins and Lucia diligently complied.

Throughout these check-ins, Lucia regularly called the immigration court hotline and selected "Option 1," which is supposed to provide information regarding upcoming hearings. The hotline informed her that she did not have an upcoming hearing (because the hearing had already occurred). Neither ICE nor EOIR informed her of "Option 3" on the hotline, which shares information regarding outstanding removal orders. Eventually, Lucia learned of "Option 3," followed up with the hotline, and discovered the immigration court ordered her removed *in absentia*.

In 2016, ASAP and CLINIC successfully challenged Lucia and her son's *in absentia* orders.

IMMIGRATION OFFICERS FAILED TO PROVIDE BASIC INFORMATION – ELENA'S STORY

Elena, a citizen of Honduras, experienced repeated violence and sexual assault by her partner . After raping and beating her on a regular basis, her partner eventually threatened her and her son after he discovered she wanted to leave him. Unable to convince the authorities to assist her, Elena and her 4-year-old son fled to the United States in August 2015 and sought asylum.

ICE released Elena from detention, but did not provide her with instructions of any kind or a point of contact for questions. Though she diligently checked the mail every day, Elena never received her notice from the immigration court. Elena did not call the EOIR hotline for months because she did not know it existed. During her check-ins, ICE did not provide any information regarding

the hotline or how to seek additional information regarding her case. Once Elena was alerted to the EOIR hotline's existence, she became aware of her removal order. The immigration court had ordered Elena removed *in absentia* in October 2015.

In 2016, ASAP and CLINIC successfully challenged Elena and her son's *in absentia* order.

Physical, Geographical, and Language Obstacles

EXPELLED BY SPONSOR – JULIA'S STORY

Julia, a citizen of Honduras, suffered domestic violence and sexual assault at the hands of her partner, the father of her four children. Her partner regularly beat and raped her, often in front of her children. Isolated from friends, family, and police, Julia developed post-traumatic stress disorder. She escaped to the United States with her 5-year-old son in April 2015 to seek asylum.

After receiving her credible fear determination, ICE released Julia and her son. The day before her immigration court hearing, her cousin and sponsor, who had promised to provide housing and transportation to her hearing, unexpectedly evicted Julia and her son from their apartment. Though newly homeless, Julia made several attempts to attend her hearing, requesting transportation from her family, a social worker, and legal counsel. Her inability to obtain transportation, lack of financial resources, lack of familiarity with the city, and severe language barriers contributed to her inability to attend the hearing. Consequently, in June 2015, the immigration court ordered Julia removed *in absentia*.

In February 2017, ASAP and CLINIC successfully challenged Julia and her son's *in absentia* order.

INSURMOUNTABLE BARRIERS TO CHANGE VENUE – CAMILA'S STORY

Camila, an Honduran citizen, was raped and threatened with death. Knowing that the police would not protect her, Camila fled to the United States with her 10-year-old son in 2014 to seek asylum.

After spending approximately three months at the family detention center in Artesia, New Mexico and receiving a positive credible fear determination, ICE released Camila and she moved to California. Due to an unstable living situation, Camila relocated to Virginia. Camila updated her address with the immigration court and retained an attorney to file a motion to change venue so her hearing would be in Virginia. The immigration judge denied her motion on the basis that she had not submitted sufficient proof of her new residence. She worked with her attorney to quickly

file a second motion a month before her scheduled hearing. As the hearing date neared without receiving a decision, she made multiple calls and left numerous messages with the immigration court in California, desperately seeking to know the status of her second motion to move her case to Virginia. Unfortunately, the immigration court did not transfer the case in time and Camila, unable to afford last-minute plane tickets, missed her hearing. The immigration court ordered her removed *in absentia* in October 2015.

In January 2016, ASAP and CLINIC successfully challenged Camila and her son's *in absentia* orders.

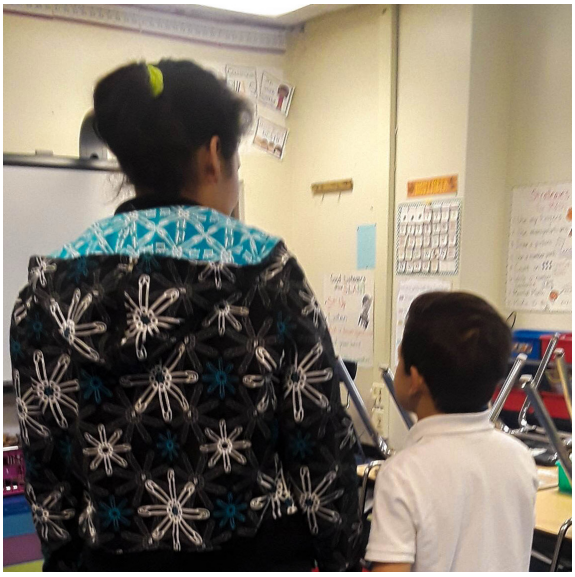
LOST IN TRANSLATION – DANIELA'S STORY

Daniela, a citizen of Honduras, and her 10-year-old son suffered constant physical abuse and threats to their safety by Daniela's former partner. Daniela knew that when it came to domestic violence and abuse, the local police would not take action. Moreover, she feared that even reporting the abuse would further enrage her partner and put her and her son in greater danger. Wanting to protect herself and her son, she came to the United States to seek asylum in May 2015.

ICE released Daniela and her son and directed her to regularly check in with ICE, but failed to inform her that she would also have to attend separate hearings at the immigration court. Daniela received the English-only notice for her immigration court hearing. Daniela, who did not speak any English upon arrival to the United States, asked her 16-year-old neighbor to translate the notice. Daniela's neighbor told her she needed to go meet with immigration, which Daniela assumed meant ICE. The day of her immigration court hearing, Daniela checked in with ICE, showed them the notice, and ICE erroneously assured her that she did not have to attend her immigration court hearing at a different location. Relying on ICE's statements, Daniela missed her hearing and the immigration court ordered her removed *in absentia*. Daniela continued to dutifully check in with ICE, but eventually discovered her *in absentia* order when contacted by a *pro bono* volunteer.

In March 2016, ASAP and CLINIC successfully challenged Daniela and her son's *in absentia* order.

Trauma and Mental Health



Karen, a Honduran national, witnessed the murder of her husband while pregnant with their child, the little boy next to her in this photo. They arrived in the United States in May 2014.

CONFUSION CAUSED BY POST-TRAUMATIC STRESS DISORDER AND DEPRESSION – KAREN'S STORY

While pregnant, Karen's husband was murdered in front of her as they headed home from a doctor's appointment. Her husband had been working as a security guard with a private company mainly assigned to protect banks and trucks with valuable merchandise. Now, as a single mother, Karen had no time to seek mental health support to help her cope with the murder of her husband. After her husband's death, Karen tried to relocate elsewhere within Honduras, but after she and her eldest son were held at gunpoint and threatened with death, Karen decided to leave Honduras in 2014.

Once in the United States, Karen started a new relationship and had a baby girl. She suffered from post-partum depression and began attending a support group, which she still attends. While trying to tend to her post-partum depression, Karen received news that her eldest son had been violently attacked in Honduras. The news worsened her depression and anxiety. She was unable to eat or sleep. During this time, Karen confused the date of her immigration hearing, thinking it was one day after it was actually scheduled. Only when she arrived at the immigration court the day after her hearing did she realize that she had confused the dates. Karen received an *in absentia* removal order and immediately sought help from legal counsel. After meeting with an attorney whose fees she could not afford, she came into contact with ASAP and CLINIC.

In March 2017, ASAP and CLINIC successfully challenged Karen and her son's *in absentia* orders.

AN UNDIAGNOSED LEARNING DISABILITY – ZOE'S STORY

Zoe and her family were victims of gang-related violence in El Salvador. As a result, her husband decided to testify against members of MS-13. After her husband testified against the gang members, they retaliated by shooting him in an attempt to kill him, and threatening the lives of Zoe and her daughters. Zoe and her children fled to the United States to seek asylum in May 2015.

ICE released Zoe and her daughters. Zoe received a notice for her hearing, but as a result of an undiagnosed dyslexia disability, Zoe misread the notice date as October 28, 2015 instead of October 20. Zoe made arrangements to attend the hearing on October 28, which included arranging for

transportation. But shortly after October 20, she learned the immigration court had ordered her removed *in absentia*. Upon receipt of the removal order, Zoe realized she had misread the original notice and immediately contacted an attorney to rectify the situation. The attorney, however, incorrectly told her that nothing could be done about her *in absentia* order.

In 2016, ASAP and CLINIC successfully challenged Zoe and her daughters' *in absentia* orders.

Absent or Ineffective Legal Representation

MALPRACTICE AND OMISSIONS FROM AN ATTORNEY – ALEXA'S STORY

Alexa, a Salvadoran citizen, witnessed the murder of her nephews by gang members and testified in the resulting criminal trials. Threatened by gang members with death in retaliation for her testimony and threatened by a former partner with violence, Alexa and her 3-year-old son fled El Salvador and arrived in the United States in December 2014 to seek asylum.

After receiving a positive credible fear determination and after her master calendar hearing, where she was represented by a private attorney, ICE released Alexa. She regularly checked in with ICE and followed all instructions. Unfortunately, while records show that the immigration court mailed the notice for her second immigration hearing to the attorney who represented her while she was in detention, her attorney never told her about the hearing. She missed her immigration hearing and the immigration court had ordered her removed *in absentia*.

In May 2019, ASAP and CLINIC successfully challenged Alexa and her son's *in absentia* order.

DEFRAUDED BY A NOTARIO – LUNA'S STORY

Luna fled Honduras after both her brothers were murdered by gangs and she began to receive death threats. After receiving a positive credible fear determination, ICE released Luna, who hired a man claiming to be an attorney. This man charged her several thousand dollars. Unfortunately, the man was a fraud, a local preacher who posed as an attorney, but was actually only a notary or "notario." This individual submitted Luna's asylum application to the wrong agency, sending her application to USCIS, instead of the immigration court. Even worse, the man advised her not to attend her hearing. Relying on his advice, Luna missed her hearing and the immigration court ordered her removed *in absentia* in January 2017. When the notario discovered Luna was working with ASAP and CLINIC to reopen her case, he threatened her and wrongly told her that ICE would deport her if she filed any complaint against him. Luna later filed a complaint, which is currently being investigated by a state bar association.

In May 2017, ASAP and CLINIC successfully challenged Luna and her daughter's *in absentia*

orders.

Jennifer, a Salvadoran national, and her deaf son fled El Salvador and survived gang threats and intimidation.

DEPRIVED OF NOTICE BY INCOMPETENT COUNSEL – JENNIFER'S STORY

Jennifer and her son were threatened by gangs in El Salvador. Jennifer was an easy target for gangs, as she was forced to travel long distances to seek medical attention and special education for her deaf son. In February 2014, Jennifer began noticing gang members following her. She received a note from a gang asking for money and threatening to kill her son. Fearing for her son's life, she and her son left for the United States.

After Jennifer and her son were released from detention, a private lawyer agreed to take Jennifer's case for a sizable fee, but failed to properly prepare her case. Additionally, the attorney gave Jennifer the wrong date for her individual hearing. On the day of the individual hearing, Jennifer made it to court only because the attorney's assistant called her right before the hearing began. Jennifer was half an hour late to court as a result of this last-minute call, but the attorney was a full hour-and-a-half late to the hearing. The immigration judge issued Jennifer an *in absentia* removal order. Afterwards, when the attorney agreed to file a motion to reopen, he insisted on leaving out the facts of his own absence and his failure to inform Jennifer of the correct hearing date. The attorney's state bar office of disciplinary counsel investigated and found the attorney had violated the Rules of Professional Conduct.

In June 2017, ASAP and CLINIC successfully challenged Jennifer and her son's *in absentia* orders.

Identifying information has been changed in each case study to protect client privacy.

FINDINGS: THE REAL REASON BEHIND *IN ABSENTIA* ORDERS

The success of ASAP and CLINIC in reopening cases with *in absentia* removal orders belies the Administration's assertions that Central American families apply for asylum only for the purpose of being released from detention and with no intention of pursuing their claims. ASAP and CLINIC's work establishes a more credible, fact-based narrative: families are receiving *in absentia* deportation orders despite their best efforts to seek asylum, participate in the immigration court system, and plead their cases.

In the cases highlighted above, it is noteworthy that neither the asylum seekers nor the government intentionally caused the *in absentia* removal orders being issued. Instead, structural and bureaucratic obstacles, as well as third-party actors who take advantage of vulnerable asylum seekers, caused the families to receive *in absentia* removal orders. These obstacles make it difficult, if not impossible, for many families to attend their immigration hearings and avoid receiving an *in absentia* removal order.

More importantly, once an *in absentia* removal order is in place, it requires significant legal skill to rescind and reopen a removal order and win the right to present a claim before an immigration judge. For those families seeking asylum who cannot find quality legal representation, that means an *in absentia* order could result in their subsequent arrest and removal back to the country from which they fled.

POLICY RECOMMENDATIONS

While advocates, immigration legal counsel, legislators, and government officials may not always agree on who should be granted asylum, ensuring the right to a fair hearing and basic due process should be a priority for all those who believe in the rule of law. By facilitating the inappropriate issuance of *in absentia* removal orders, the government is denying a particularly vulnerable population the opportunity to present their claims. For that reason, the recommendations presented below are an opportunity for members of both political parties to make the necessary changes that would allow the immigration system to work more smoothly and justly.

Each of the recommendations seeks to prevent unnecessary *in absentia* removal orders. The section begins by focusing on changes within the executive branch, through DOJ, DHS, and their respective sub-agencies. Each government agency involved in the immigration system has significant discretion to implement guidance and regulations that would address many of the causes of unintended *in absentia* removal orders. Beyond regulatory fixes, however, the report also recognizes that it is incumbent on Congress to update our nation's immigration laws and conform them to our international and humanitarian obligations.

To the Department of Justice

EOIR can implement a variety of regulatory, policy, and guidance improvements to modernize the asylum process and ensure due process protections related to the use of *in absentia* removals.

Change of Address and Venue Improvements

EOIR should streamline the process for noncitizens to change their address and move to change their venue for immigration hearings. Specifically, EOIR should collaborate with DHS to formulate a single, unified change of address form (also available in Spanish and other languages) that, when submitted physically or electronically to any DHS ICE office or contractor, would automatically trigger an update of a noncitizen's address with *all* relevant immigration agencies. The form would include a box to check in order to request a change of venue. Once the change of venue box is checked, the system would

register the change of venue request with the immigration court and automatically provide DHS notice and an opportunity to respond.

This unified form would provide noncitizens with an easier way to direct the immigration court to change an address or transfer venue to the court geographically closest to the new address. By making changes of address more streamlined, it would reduce the likelihood that notices would go to the wrong address. When families receive prompt and accurate notice, they are more likely to attend their hearings, thus reducing *in absentia* removal orders.

Attaining a streamlined and unified process for attorneys, legal representatives, and individuals appearing *pro se* to submit a change of address should be achievable as Attorney General Sessions strives to collaborate more closely with DHS.

Continued Expansion of Electronic Filing

The existing paper-based system for *pro se* applicants filing on their own behalf and legal counsel to file motions on behalf of asylum seekers in immigration court is cumbersome and time consuming. The system often contributes to bureaucratic delays and decreased interest among qualified legal counsel in representing clients low cost or *pro bono*. There have been strides in electronic filing for attorney or representative appearances within EOIR. Additionally, Attorney General Jeff Sessions has prioritized electronic filing for EOIR,[37] and ICE recently rolled out an e-filing system in some jurisdictions.[38] The continued expansion of electronic filing would provide critically needed flexibility to noncitizens and their counsel.

EOIR should ensure that electronic filing includes:

1. An appearance on behalf of an individual, regardless of whether the individual has a removal order in place;[39]
2. Motions to withdraw and motions to substitute counsel;
3. Motions for continuance;
4. Motions to reopen proceedings;
5. Motions to change venue;
6. Form EOIR-33, Change of Address;
7. Motions to advance the date of a hearing;

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37 *Renewing Our Commitment to the Timely and Efficient Adjudication of Immigration Cases to Serve the National Interest*, Memorandum for the Executive Office for Immigration Review, Dec. 5, 2017, *available at* https://www.justice.gov/opa/press-release/file/1015996/download.

38 ICE OCC allows for the electronic service of documents for individuals who register with ICE eService Registration. U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security, Welcome to ICE eService Registration, *available at* https://eserviceregistration.ice.gov/.

39 Currently, the DOJ/EOIR eRegistry system does not allow the filing of an EOIR-28 for closed cases. Closed cases include those with *in absentia* removal orders.

8. Motions to terminate;
9. Written pleadings;
10. Replies to government motions; and
11. Merits filings.

One potential model would be to follow the Public Access to Court Electronic Records example or to expand the use of PACER to the immigration context. Such a system would allow legal counsel to file electronically while also having a complementary system that allows *pro se* litigants to file in person or by mail.

Electronic filings would provide opportunities for families and their legal counsel to make necessary changes in a more efficient manner and without the risk of U.S. post office errors or delays.[40] This would allow families to more easily continue their cases, especially in the face of medical and other emergencies, and move their venue to a more convenient location. Counsel's ability to act quickly would also make it easier for immigration judges to issue continuances or transfer cases, making it less likely that families would receive *in absentia* removal orders for missing court due to emergencies beyond their control.

Flexible Hearings

Administrative changes can ensure that the immigration court is flexible in responding to unforeseen obstacles that prevent noncitizens from attending their hearings.

EOIR should:

1. Encourage immigration judges to liberally allow telephonic appearances for legal counsel and noncitizens, particularly in light of the time it usually takes to travel to a 10-minute hearing;
2. Allow telephonic testimony in support of a noncitizen's case;
3. In case of illness or other emergency, allow a noncitizen to contact the immigration court to reschedule his or her master calendar hearing (at which point he or she would be informed to bring proof of the illness or emergency to the next master calendar hearing) rather than holding the master calendar hearing that day;
4. Instruct immigration judges to call families (with the help of the court interpreter) from the courtroom if a family has not appeared for the hearing in order to reschedule.

Each of these initiatives will not only make it easier for asylum-seekers, their legal counsel and witnesses to access immigration courts, but it will also reduce backlogs and make immigration courts work more efficiently. Most importantly, allowing greater flexibility and the use of telephonic appearances will reduce the number of *in absentia* removal orders for those who wish to pursue their cases before the immigration judge, but who may have trouble traveling long distances to an

40 Liz Robbins, *Post Office Fails to Deliver on Time, and DACA Applications Get Rejected*, The N.Y. Times, Nov. 10, 2017, *available at* https://www.nytimes.com/2017/11/10/nyregion/post-office-mail-delays-daca-applications.html.

immigration court or finding counsel who can travel such a long distance on several occasions.

Greater Legal Assistance and Orientation

Basic notions of fairness dictate that EOIR should strive to ensure that noncitizens are aware of their rights, responsibilities, and duties within the immigration court system. In that spirit, we recommend EOIR:

1. Provide in-person, Spanish-language (and other language) assistance with general questions at local immigration courts and through the EOIR website; and
2. Contract with qualified nonprofits to provide legal assistance or answer questions for vulnerable asylum-seeking families on site on master calendar hearing docket days to answer basic questions.

When families are aware of their rights and responsibilities, they are more likely to fulfill those obligations, as evidenced by the data showing that families who were put into contact with *pro bono* legal counsel and volunteers in detention facilities were less likely to receive *in absentia* removal orders. Presenting complex procedural requirements in a more accessible manner is key in ensuring families understand the requirements of the immigration system. By providing information to asylum-seeking families, EOIR will ensure fewer *in absentia* removal orders and a smoother overall experience for families in immigration proceedings.

To the Department of Homeland Security

As the agencies charged with apprehending, detaining, and prosecuting noncitizens, CBP and ICE have an opportunity to implement regulations, policies, and guidance to reduce the use of *in absentia* removals.

Proper Discharge from Detention

Too often, incorrect or insufficient information causes the issuance of *in absentia* orders. Consequently, CBP and ICE must properly discharge families at the border and provide correct, Spanish-language (and other language) information regarding how to apply for asylum.

At a minimum, CBP and ICE should provide (through oral, written, and video means):

1. The 800 number for the EOIR immigration court hotline and guidance on using the hotline to obtain information about an individual's case (Nonprofits, such as ASAP and CLINIC, already provide this video guidance in a bilingual, smaller scale form);
2. A clear explanation that ICE and EOIR (including the immigration courts) are two separate agencies with two sets of procedures for address updates, communication, and hearings;
3. Instructions on how to update addresses with ICE, including a blank standardized form;

4. Instructions on how to update addresses with the immigration court, including a blank, standardized form;
5. Materials with the phone number and address for the ICE ERO office with jurisdiction over a noncitizen's home address;
6. Materials with the phone number and address for the immigration court with jurisdiction over a noncitizen's home address;
7. Instructions on requirements and responsibilities of being released on bond, alternatives to detention, or on their own recognizance;
8. An explanation of the one-year filing deadline, in addition to ICE's current practice of providing a blank Form I-589, Application for Asylum and Withholding of Removal; and
9. Legal assistance materials, including annotated and translated Forms I-589 and other guidance from accredited nonprofits.

The above changes would help families better understand their responsibilities, how to contact relevant government agencies, and what to expect regarding receiving notices for and attending immigration hearings. In turn, this would help families better comply with their responsibilities.

Increase Availability of Resources at Check-ins and Local Offices

During regular ICE check-ins, ICE should:

1. Ensure that noncitizens know that ICE check-ins are a separate process from immigration court hearings.
2. Provide noncitizens with information regarding forthcoming immigration court hearings available on the EOIR hotline or assist noncitizens in calling the EOIR hotline to obtain information about their upcoming hearings or status of the case.

These changes would ensure that government agencies operate in a collaborative manner with families, sharing information when possible, and providing guidance if and when families have questions regarding their case. It is important that ICE ensure that asylum applicants understand when and where they need to be for immigration hearings in order to avoid unnecessary *in absentia* removal orders. Preventing erroneous *in absentia* removal orders will ultimately save enforcement resources and allow ICE to focus resources on those who intend to abscond.

Hold Private Contractors Accountable

In the context of alternatives to detention, ICE regularly relies on private contractors to administer programs. Accordingly, ICE should ensure that any contracts with private contractors require them to:

1. Inform noncitizens of the differences between the private contractor, ICE, and the immigration court;
2. Be available to call the EOIR hotline to obtain information about a noncitizen's case; and

3. Provide standardized information regarding how to change addresses and venue with the private contractor, EOIR, and ICE.

Accountability must extend to the private-sector contractors that participate in the immigration enforcement system. These changes would ensure private contractors receive guidance on how to best assist families in immigration proceedings. This assistance would filter those wishing to present their cases to the immigration judge from those who do not.

Allow Arriving Families to Apply for Asylum Affirmatively

Under the current system, families apprehended at the border must apply for asylum defensively, i.e., while in removal proceedings in immigration court. Instead, DHS should allow families arriving at the border to apply for asylum affirmatively through USCIS. Allowing affirmative asylum applications would provide trauma survivors access to a non-adversarial process that is less threatening and would also reduce confusion. More importantly, affirmative filings with USCIS would ensure that families with legitimate claims are not removed erroneously, given that USCIS provides a more administratively flexible system than the immigration courts.

Confusion reduction occurs by having to navigate only 10 USCIS Asylum Offices with expansive geographical jurisdiction, as opposed to 58 immigration courts with vague geographical jurisdictional boundaries. The expansive geographical jurisdiction of the USCIS Asylum Offices decreases the need to transfer a case from one office to another on account of a change of address. Further, applying with a USCIS Asylum Office will eliminate daunting motions requirements and rules, such as the required service upon DHS of any filing with the immigration court. Via USCIS, service of one change of address suffices without needing to serve a copy upon another agency, for example.[41]

Allowing families to apply for asylum affirmatively with USCIS will ensure that families with legitimate claims are not ordered removed erroneously. If a USCIS Asylum Office does not receive a written explanation for a failure to appear within 15 days after the date of the scheduled interview, the case is then referred to the immigration judge. The USCIS Asylum Office has discretion to reschedule the interview if the applicant provides a reasonable explanation for failing to appear or shows that the USCIS Asylum Office did not properly notify the applicant of the interview. This more flexible system allows families to rectify a failure to appear within 15 days without the need for a motion to reopen or the assistance of legal counsel, which are hurdles that currently prevent families from resolving *in absentia* removal orders.

Such a change would also assist with reducing the backlog in immigration courts, currently at 658,728 cases.[42] Finally, even with affirmative filing, USCIS would refer families who lose their asylum cases for removal proceedings, which take place in the immigration court system, thus maintaining a role for the immigration courts under this new process. The recent USCIS implementation of the "last in, first out"

41 U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, Change of Address, *available at* https://egov.uscis.gov/coa/displayCOAInitForm.do;jsessionid=180598CCD22358oB4F86E0427B881A43.

42 *Immigration Court Backlog Tool: Pending Cases and Length of Wait in Immigration Courts*, TRAC Immigration, *available at* http://trac.syr.edu/phptools/immigration/court_backlog/.

system would ensure quick processing of these applications.[43]

To the United States Congress

While the executive branch can undertake various administrative reforms to make the use of *in absentia* orders less arbitrary and inflexible, ultimately it is up to the legislative branch to effectuate permanent structural reforms to our nation's asylum system.

Provide Legal Representation to Vulnerable Mothers and Children

While myriad factors contributed to each of the families in this report being ordered removed *in absentia*, these families successfully reopened those removal orders. They were, however, only able to do so through the help of a network of *pro bono* legal counsel. Unfortunately, *ad hoc* representation for a small portion of asylum-seeking families is insufficient to meet demand and ensure that our nation's immigration court system treats families fairly.

In light of the critical importance of representation, Congress should start by enacting S.2468, the *Fair Day in Court for Kids Act*,[44] which would provide government-funded counsel to unaccompanied children in immigration proceedings, along with other vulnerable populations fleeing persecution, such as those with disabilities, and victims of abuse, torture, or other violence.

Modernize the Statutory Basis for In Absentia Removal

While federal agencies can issue regulations and guidance that may fix small portions of the structural problems with *in absentia* removal orders, they cannot address issues inherent to the text of the statute itself, including lack of discretion for immigration judges and strict time periods within which to file a motion to reopen. The following are a list of recommended statutory changes:

- Restore Discretion to Judges. Congress should amend section 240(b)(5) of the Immigration and Nationality Act to clarify that immigration judges have discretion as to whether to order a noncitizen removed *in absentia* by replacing "shall" with "may."
- Improve Communication Between EOIR and ICE. In the absence of ICE affirmatively presenting exculpatory evidence showing that the noncitizen may not have intended to miss the immigration court hearing, Congress should amend INA § 240(b) by adding a provision requiring immigration judges to direct ICE OCC to provide information on the respondent's check in history with ICE ERO. Regular check-ins with ICE may signal that there is confusion or lack of information surrounding the lack of attendance at the hearing.
- Require Two Missed Hearings Before Entering an In Absentia Removal. Alternatively, Congress should also amend INA § 240(b)(5) to limit *in absentia* removal orders to noncitizens who

43 U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, Affirmative Asylum Interview Scheduling, *available at* https://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-interview-scheduling.

44 Fair Day in Court for Kids Act of 2018, S.2468, 115th Cong. (2018).

have, after receiving appropriate notice, missed a second immigration court hearing. It should include a directive to immigration judges to reschedule the first initial missed hearing instead of automatically ordering a noncitizen removed. This directive could be limited to groups with high rates of trauma, such as unaccompanied minors and adults with children.

- Expand Due Process for Motions to Reopen. Finally, Congress should amend INA § 240(b)(5)(c)(i) to allow adults with children after a positive credible fear determination to file a motion to reopen based on extraordinary circumstances at any time after the date of the order, instead of the current 180-day deadline. Such a change would take into account that this population has a high rate of past trauma and may be continuing to experience trauma, while recognizing the challenges of single parenting, especially in the context of trauma survival.

Condition Appropriations on Funding

Through the annual appropriations process, members of Congress can employ the power of the purse to direct agencies to engage in certain conduct, practice, or policies. Congress should condition the receipt of appropriated funds to DHS and EOIR on the implementation of the regulatory or policy recommendations contained in this report.

Exercise Rigorous Oversight over DHS and EOIR

Members of Congress, particularly those on key committees exercising oversight of DHS and EOIR—such as committees dealing with judiciary, border, and homeland security issues—can send oversight letters encouraging agencies to implement better practices and request data regarding the treatment of families.

Update 2019: On July 12, 2019, Congressman Jimmy Panetta introduced H.R. 3748, the Providing Justice for Asylum Seekers Act, which incorporated several of the recommendations for modernizing the statutory basis for in absentia removal.


NO PARKING
2 AM
TO
6 AM
TUESDAY
2 HR PARKING
8 AM
TO 6 PM
WEEKDAYS

CONCLUSION

The data in this report demonstrate that thousands of Central American families have been ordered removed *in absentia* and without an opportunity to present their – likely legitimate – claims for immigration relief. ASAP and CLINIC's client stories reveal that families are often unable to attend their immigration court hearings and present their cases. This is as a result of government bureaucracy and a complex immigration system that is difficult to navigate without legal counsel, particularly for traumatized families. These families did not desire or intend to abscond. To satisfy our nation's moral and legal obligation to those fleeing persecution, it is incumbent on the government to ensure asylum seekers have an opportunity to present their claims before an immigration judge.

THE TRUMP ADMINISTRATION'S RESPONSE TO CENTRAL AMERICAN ASYLUM SEEKERS

In January 2017, when President Trump took office, his Administration doubled down on the fast-tracking and detention policies of the Obama Administration regarding asylum seekers. The Trump Administration began to expand the use of immigration detention,[45] scale back non-detention case management initiatives, [46] and end initiatives to provide refugee status to Central American children residing in their home country. [47] In February 2018, the Trump Administration, as directed by Attorney General Jeff Sessions, enacted policy changes expanding expedited removal;[48] directing that immigration judges sanction immigration lawyers and representatives who undertake the representation

45 Clark Mindock, *Trump Plans Massive Private Prison Expansion to Jail Undocumented Immigrants*, Independent, Oct. 18, 2017, https://www.independent.co.uk/news/world/americas/us-politics/trump-prison-immigrants-expansion-undocumented-private-plans-ice-a8007876.html ("The Trump administration is planning a massive increase to the capacity of federal immigration jails across the country, which advocates and lawyers say foretells the continued ramping up anti-immigrant actions in the United States.").

46 Tal Kopan, *Trump Admin Ending Program for Mothers, Children Seeking Asylum*, CNN, June 12, 2017, http://www.cnn.com/2017/06/12/politics/trump-admin-ending-women-children-asylum-program/index.html.

47 Termination of the Central American Minors Parole Program, 82 Fed. Reg. 38,926 (Aug. 16, 2017).

48 Memorandum from John F. Kelly, Secretary, U.S. Department of Homeland Security on Implementing the President's Border Security and Immigration Enforcement Improvements Policies 6–7 to Kevin McAleenan, Acting Commissioner, U.S. Customs and Border Protection, et al. (Feb. 20, 2017), *available at* https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-SecurityImmigration-Enforcement-Improvement-Policies.pdf.

of "too many" clients;[49] mandating that immigration judges implement "quotas" in the number of cases they adjudicate;[50] and ordering that asylum officers more narrowly apply the credible fear standard.[51]

Sessions introduced these policies at a press conference in which he described asylum seekers as gang members, criminals, and "wolves in sheep's clothing."[52] That same day, the attorney general characterized attorneys and representatives assisting families as "dirty immigration lawyers."[53] Most recently, the Trump Administration enacted policies that separate parents and children at the border, increase prosecutions of asylum-seeking parents for immigration violations, and place children in the Office of Refugee Resettlement's custody rather than in the custody of relatives.[54]

While the Trump Administration paints noncitizens with *in absentia* removal orders as absconders with no claims for relief, this report shows in many cases it is the complex nature of our nation's immigration court system that leads to asylum seekers with meritorious claims receiving these types of removal orders.

Update 2019: Since this report was initially published, the Trump administration has implemented many harmful policy changes for asylum seekers, including family separation and Remain in Mexico. You can find out more information at asylumadvocacy.org or cliniclegal.org.

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49 Memorandum from MaryBeth Keller, Chief Immigration Judge, Executive Office for Immigration Review, on Operating Policies and Procedures Memorandum 17-01: Continuances 5 to All Immigration Judges, et al. (July 31, 2017), *available at* https://www.justice.gov/eoir/file/oppm17-01/download ("Thus, for a practitioner who takes on more cases than he or she can responsibly and professionally handle, necessitating the need for multiple continuances across multiple cases, it may also be appropriate for an Immigration Judge to consider referral to EOIR disciplinary counsel for further action and possible sanction for a violation of 8 C.F.R. § 1003.102.").

50 Maria Sacchetti, *Immigration Judges Say Proposed Quotas from Justice Dept. Threaten Independence*, Washington Post, Oct. 12, 2017, *available at* https://www.washingtonpost.com/local/immigration/immigration-judges-say-proposed-quotas-from-justice-dept-threaten-independence/2017/10/12/3ed86992-aee1-11e7-be94-fabb0f1e9ffb_story.html ("The Trump administration is taking steps to impose 'numeric performance standards' on federal immigration judges, drawing a sharp rebuke from judges who say production quotas or similar measures will threaten judicial independence, as well as their ability to decide life-or-death deportation cases.").

51 Tal Kopan, *Trump Admin Quietly Made Asylum More Difficult in the US*, CNN, Mar. 8, 2017, *available at* http://www.cnn.com/2017/03/08/politics/trump-immigration-crackdown-asylum/index.html.

52 Office of Public Affairs, U.S. Department of Justice, *Attorney General Sessions Gives Remarks to Federal Law Enforcement in Boston About Transnational Criminal Organizations*, Sept. 21, 2017, *available at* https://www.justice.gov/opa/speech/attorney-general-sessions-gives-remarks-federal-law-enforcement-boston-about ("We are now working with the Department of Homeland Security and HHS to examine the unaccompanied minors issue and the exploitation of that program by gang members who come to this country as wolves in sheep clothing. In fact the gang uses this program as a means by which to recruit new members.").

53 Office of Public Affairs, U.S. Department of Justice, Attorney General Jeff Sessions Delivers Remarks to the Executive Office for Immigration Review, Oct. 12, 2017, *available at* https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-executive-office-immigration-review ("We also have dirty immigration lawyers who are encouraging their otherwise unlawfully present clients to make false claims of asylum providing them with the magic words needed to trigger the credible fear process.").

54 Lomi Kriel, *Trump Moves to End 'Catch and Release', Prosecuting Parents and Removing Children who Cross Border*, Houston Chronicle, Nov. 25, 2017, *available at* http://www.houstonchronicle.com/news/houston-texas/houston/article/Trump-moves-to-end-catch-and-release-12383666.php; Caitlin Dickerson & Ron Nixon, *Trump Administration Considers Separating Families to Combat Illegal Immigration*, N.Y. Times, Dec. 21, 2017, *available at* https://www.nytimes.com/2017/12/21/us/trump-immigrant-families-separate.html; Nick Miroff, *To Curb Illegal Border Crossings, Trump Administration Weighs New Measures Targeting Families*, Washington Post, Dec. 21, 2017, *available at* https://www.washingtonpost.com/world/national-security/to-curb-illegal-border-crossings-trump-administration-weighs-new-measures-targeting-families/2017/12/21/19300dc2-e66c-11e7-9ec2-5188110e7d44d_story.html.

GLOSSARY

DEFINITIONS FOR COMMONLY USED TERMS IN THIS REPORT

Adults with Children

Classification employed by the federal government to describe mothers and children family units arriving at the border. Also known as "families."

Affirmative Asylum

Applying for asylum through U.S. Citizenship and Immigration Services and while not in removal proceedings.

Alternatives to Detention

The use of ankle bracelets or other non-detention mechanisms to monitor families released from detention into the United States.

Asylum

A form of immigration relief granted to individuals fleeing persecution who belong to a specific protected class or category of people and who are being persecuted based on a particular characteristic.

Board of Immigration Appeals

The administrative appeals court located within the Executive Office for Immigration Review that reviews decisions by immigration judges.

Continuance

The rescheduling of an immigration hearing to a later date.

Credible Fear Determination

Threshold inquiry that, when met, indicates an individual may be eligible for asylum.

Defensive Asylum

Applying for asylum through immigration court while in removal proceedings.

Deportation

Historic term of art for the physical and legal removal of an individual from the United States. Also known as "removal."

Executive Office for Immigration Review

Federal agency located within the U.S. Department of Justice that contains the nation's immigration courts and the Board of Immigration Appeals.

Families

Mothers with children fleeing violence, arriving at the border, and seeking relief in the United States. Also known as "adults with children."

Freedom of Information Act

Federal law that directs federal agencies to disclose government data or records.

Immigration Court

Administrative court located within the Executive Office for Immigration Review that conducts removal proceedings.

Immigration Judge

Administrative judge who presides over removal proceedings.

In Absentia Removal Order

Removal order entered in immigration court in the absence of the affected individual.

Notice of Hearing

Written hearing notice issued by the immigration court indicating when and where an individual must attend a hearing.

Quota

Minimum number of cases an immigration judge must adjudicate during a set period.

Refugee

Individual who must satisfy the same standard as an asylum applicant, but who is seeking protection outside of the United States and outside of his or her home country.

Relief

Temporary or permanent immigration status that allows an individual to remain in the United States.

Removal

Legal term of art for the physical and legal removal of an individual from the United States. Also known as "deportation."

Removal Order

Legal order or document that directs the removal of an individual.

U.S. Citizenship and Immigration Services

Federal agency located within the U.S. Department of Homeland Security that processes applications for immigration benefits. U.S. Citizenship and Immigration Services contains the Asylum Office, which processes affirmative asylum requests and conducts credible and reasonable fear interviews.

Department of Homeland Security

Federal immigration agency that contains most immigration agencies, one of which is responsible for enforcement of removal orders as well as the detention and deportation of individuals with removal orders.

Department of Justice

Federal agency that contains the Executive Office for Immigration Review.

Immigration and Customs Enforcement

Federal agency located within the Department of Homeland Security that contains both the Office of Chief Counsel, which represents the government in removal proceedings, as well as Enforcement and Removal Operations, which is responsible for the detention and deportation of individuals with removal orders.

ABOUT THE ORGANIZATIONS

THE ASYLUM SEEKER ADVOCACY PROJECT

The Asylum Seeker Advocacy Project (ASAP) sees a future where the United States welcomes individuals who come to our borders fleeing violence. We work alongside asylum seekers to make this vision a reality. Our model has three components: online community support, emergency legal aid, and nationwide systemic reform. We represent individuals who have arrived at the Mexico-U.S. border to seek asylum, regardless of where they are currently located. Our clients have traveled thousands of miles and braved dangerous terrain to bring their families to safety. We recognize their strength, and provide them with the tools they need to keep their families safe. We are creative, collaborative, and nonpartisan. And we believe all asylum seekers deserve to find safe haven in the United States. For more, visit asylumadvocacy.org.

THE CATHOLIC LEGAL IMMIGRATION NETWORK, INC.

CLINIC advocates for humane and just immigration policy. Its network of nonprofit immigration programs—over 370 affiliates in 49 states and the District of Columbia—is the largest in the nation. Building on the foundation of CLINIC's BIA Pro Bono Project, CLINIC launched the Defending Vulnerable Populations (DVP) Program in response to increasing policy measures and legal interpretations that hurt immigrants. DVP engages in affirmative federal litigation, submits amicus briefs before the BIA and U.S. courts of appeal, and seeks to increase the number of fully accredited representatives and attorneys who are qualified to represent immigrants in immigration court proceedings. To increase access to competent, affordable counsel, DVP conducts court skills trainings for both nonprofit agency staff (accredited representatives and attorneys) and pro bono attorneys and offers a variety of written resources on removal defense strategies. By increasing access to representation, DVP's initiatives focus on protecting the most vulnerable immigrants—those at immediate risk of deportation. In addition, DVP advocates against repressive policy changes and expands public awareness on issues faced by the immigrant community. For more, visit cliniclegal.org.

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Thank you to the attorneys, interns, law students, mental health professionals, and other volunteers who worked on the cases referenced in this report. Without them, many families would not be safe or on a pathway to citizenship in this country. In particular, we would like to thank Mark Barr, Brian Hoffman, Bradley Jenkins, Elora Mukherjee, Kathryn Shepherd, and Ben Winograd, for their invaluable contributions and early and continued support of our work.

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This report was produced by the Asylum Seeker Advocacy Project and the Catholic Legal Immigration Network, Inc.

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