



Denial of Justice

The Biden Administration's
Dedicated Docket in the
Boston Immigration Court

JUNE 2023



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ABBREVIATIONS

ACLUM	American Civil Liberties Union of Massachusetts
DHS	Department of Homeland Security
EOIR	Executive Office for Immigration Review
HIRCP	Harvard Immigration and Refugee Clinical Program
ICE	Immigration and Customs Enforcement
LOP	Legal Orientation Program
NTA	Notice to Appear
TRAC	Transactional Research Access Clearinghouse

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Executive Summary

In May 2021, the Biden administration launched fast-tracked immigration proceedings – known as the Dedicated Docket – for families who have recently arrived in the United States.¹ The Docket, which exists in eleven cities across the country, targets asylum-seeking families who have recently arrived via the southern border.² The Biden administration's stated goals for the Docket are to “decide cases expeditiously” within 300 days of the initial master calendar hearing without compromising “due process and fundamental” fairness.³

Since May 2021, the Biden administration has assigned more than 110,000 immigrants⁴ to the Dedicated Docket.⁵ In Boston alone, the administration has assigned over 20,000 immigrants to the Docket, making Boston's Dedicated Docket the largest in the country.⁶

As this report reveals, the proceedings for these thousands of immigrants are neither fair nor expeditious. The Docket as conceived and implemented undermines the ability of immigrant families and individuals to obtain immigration representation. The unpredictability of the timing of hearings for individuals on the Docket renders it exceedingly difficult for attorneys to take on Dedicated Docket cases. Further, individuals rarely have the means to pay for a private attorney, and pro bono organizations, including those that judges refer individuals to, are at capacity. As a result, many families have been forced to file asylum applications or proceed in their cases without a meaningful opportunity to access counsel, in violation of due process norms. Moreover, many pro se individuals (i.e., immigrants without an attorney) have failed to appear at their hearings due to confusion about the Docket, and, as a result, judges have ordered that these individuals be removed *in absentia* from the United States (i.e., when immigrants failed to appear at their hearings). In these ways and others, the Docket undermines core due process rights and fairness norms.

Ultimately, these fast-tracked proceedings are in reality fast tracks back to immigrants' home countries. Families assigned to the Boston Dedicated Docket have less access to counsel and are more likely to be deported.

The Dedicated Docket's shortcomings are not novel – indeed, the Obama and Trump administrations implemented similar fast-track removal programs.⁷ However, despite the fact that the flaws of such programs have been well documented,⁸ the current administration has failed to terminate the Dedicated Docket or implement measures to mitigate fundamental unfairness on the Docket.⁹

This report provides the first-ever in-depth analysis of the Boston Dedicated Docket. Drawing on recent data from the Transactional Research Access Clearinghouse (TRAC), dozens of interviews and meetings with attorneys and legal service providers, and hundreds of court observations, the report offers the following findings and recommendations to the Biden administration, the Department of Homeland Security (DHS), the Executive Office of Immigration Review (EOIR), and the Boston Immigration Court:

FINDINGS

- **The Boston Dedicated Docket is the largest Dedicated Docket in the country.** The Biden administration assigned over 20,000 asylum seekers – almost 40% of whom were children under the age of 21 – to the Boston Dedicated Docket in its first year.
- **Immigrants from certain countries are disproportionately assigned to the Boston Dedicated Docket.** Immigrants from Brazil are disproportionately assigned to the Boston Dedicated Docket, accounting for 74.3% of its cases. By contrast, in non-Dedicated Docket proceedings in Boston, 48.5% of immigrants are from Brazil. The next four most common countries of origin on the Boston Dedicated Docket – Haiti, Ecuador, Guatemala, and Colombia – together make up 15.7% of cases.
- **Cases from the Boston Dedicated Docket have disproportionately negative outcomes.** As of August 2022, 4,809¹⁰ of the 20,344 (23.6%) cases on the Boston Dedicated Docket had reached completion. Of those completed cases:
 - » 1,621 (33.7%) resulted in removal orders. Of these, 1,177 were removal orders issued *in absentia* (i.e., when the immigrants did not appear at their hearings).
 - » 205 (4.2%) resulted in a grant of asylum. The overall asylum grant rate on the Boston Dedicated Docket was approximately 39% (205 of 527), while the grant rate for asylum cases in the Boston Immigration Court during the same period was approximately 56%.
 - » 1,772 (36.8%) were dismissed at a master calendar hearing due to DHS's failure to prosecute, which occurs where DHS fails to file the Notice to Appear (NTA).
 - » Children accounted for at least 87 (42.4%) of the 205 grants of asylum, 653 (40.3%) of the 1,621 total removal orders, and 479 (40.7%) of the 1,177 *in absentia* removal orders.
- **Case timing is unpredictable.** While early data indicate that cases on the Boston Dedicated Docket are generally completed within 300 days, this does not mean that cases are being adjudicated faster. Most cases are still pending, and the vast majority of completed cases have ended with *in absentia* removal orders or dismissals due to DHS's failure to prosecute.
 - » Judges on the Boston Dedicated Docket generally provide unrepresented immigrants additional time to find attorneys, rather than forcing families to proceed on the merits of their case pro se – a practice that commendably protects due process and fairness.
 - » Between November 2022 and March 2023, judges on the Boston Dedicated Docket scheduled individual merits hearings for 2024 and 2025. For those cases, the average length of time between the scheduling hearing and the individual merits hearing was more than 600 days.
- **Access to representation improves outcomes, but many immigrants do not have counsel.** Access to counsel increases an immigrant's likelihood of obtaining immigration relief on the Boston Dedicated Docket. Of the 205 cases that resulted in a grant of relief as of August 2022, all had legal representation at some point during their proceedings. Yet despite the importance of representation, only 10,340 (50.8%) of the 20,344 cases on the Boston Dedicated Docket as of August 2022 were represented at some point during proceedings.¹¹
- **Access to representation remains a challenge.** Many families on the Boston Dedicated Docket do not have the means to afford private representation and are unable to obtain pro bono representation because pro bono organizations are at capacity. Moreover, the Docket's expedited and unpredictable nature makes attorneys hesitant to take on cases.
 - » Private representation can cost up to \$20,000 per case.
 - » As of March 2023, of the nine organizations on the EOIR pro bono list – i.e., the organizations that EOIR refers immigrants to for representation – four were not taking any new cases and the remaining five, some of whom have geographic and age restrictions, were taking only a handful of new cases. Further, as of this date, nine out of ten other organizations that provide pro bono representation to individuals in removal proceedings in the Boston Immigration Court were at capacity and closed for intake, and the other organization was taking only a limited number of cases.

- » Attorneys report that the 300-day goalpost is an insufficient amount of time to effectively prepare an immigration case, and while judges in some cases may grant attorneys more time, the unpredictability of the Docket and its timing restrict the number of attorneys willing to take on such cases.
- » Immigrants in removal proceedings are often unable to determine whether they have been placed on the Boston Dedicated Docket until the day of their first master calendar hearing. In light of this uncertainty, attorneys report that they err toward declining, rather than accepting, cases that may be on the Docket.
- **Most removal orders are issued *in absentia*.** Of the 1,621 removal orders on the Boston Dedicated Docket issued as of August 2022, 1,177 (72.6%) were issued *in absentia*.
 - » Of those ordered removed *in absentia*, 479 (40.7%) were children, some of who, because of their age, have no control over whether they appear at their hearing.
 - » Many immigrants did not receive proper notice of their hearing because the NTA or hearing notice was sent to an incorrect or outdated address, the NTA was incomplete or inaccurate, and/or the court changed the hearing date with little or no notice. Even when immigrants received proper notice of their hearings, they faced confusion about the difference between their Immigration and Customs Enforcement (ICE) check-ins in Burlington, Massachusetts, and their EOIR immigration court hearings in Boston, Massachusetts, and they experienced difficulty navigating the courthouse because of inadequate signage to direct them to the correct courtroom.
 - » Motions to reopen – the only possible relief from an *in absentia* removal order – have strict procedural and substantive requirements, making them inaccessible to many individuals, particularly those without legal representation. Out of the 1,177 individuals removed *in absentia*, only 348 filed motions to reopen as of August 2022.
- **Court proceedings lack fairness.** Judges on the Boston Dedicated Docket tend to give only some, but not all, of the required advisals about families' legal rights. In addition, judges often fail to provide individualized hearings and instead conduct group hearings, which may include twenty or more people, based on shared language.

RECOMMENDATIONS

The Biden administration should terminate the Dedicated Docket because it undermines fundamental fairness and due process for individuals on the Docket. At a minimum, the Biden administration, DHS, and the Boston Immigration Court should take immediate action to establish protections for those on the Docket, including the following steps:

- **Biden administration:** Ensure that judges stop issuing removal orders *in absentia* against children and families at their first missed hearing without first verifying that the government has their correct address and that they are complying with ICE supervision; increase access to counsel by providing government-appointed and -funded immigration counsel, deferring the adjudication of cases for pro se families to allow them time to find counsel, and granting motions for continuances to permit attorneys the opportunity to properly and effectively prepare their clients' cases; increase transparency by making analysis and data regarding the Docket and its operation publicly available.
- **DHS:** Issue a nationwide policy that DHS attorneys should not seek *in absentia* orders of removal at their first missed hearing or where the individual is complying with ICE supervision requirements and/or their address is incorrect.
- **Boston Immigration Court:** Improve fairness in the courtroom by providing individualized and full advisals; designating clearly whether an individual is assigned to the Boston Dedicated Docket; giving individuals the option to conduct their merits hearing in person; ensuring that updated docket sheets are clearly posted each day and in multiple languages; and providing interpretation services in a person's primary language.

Methodology

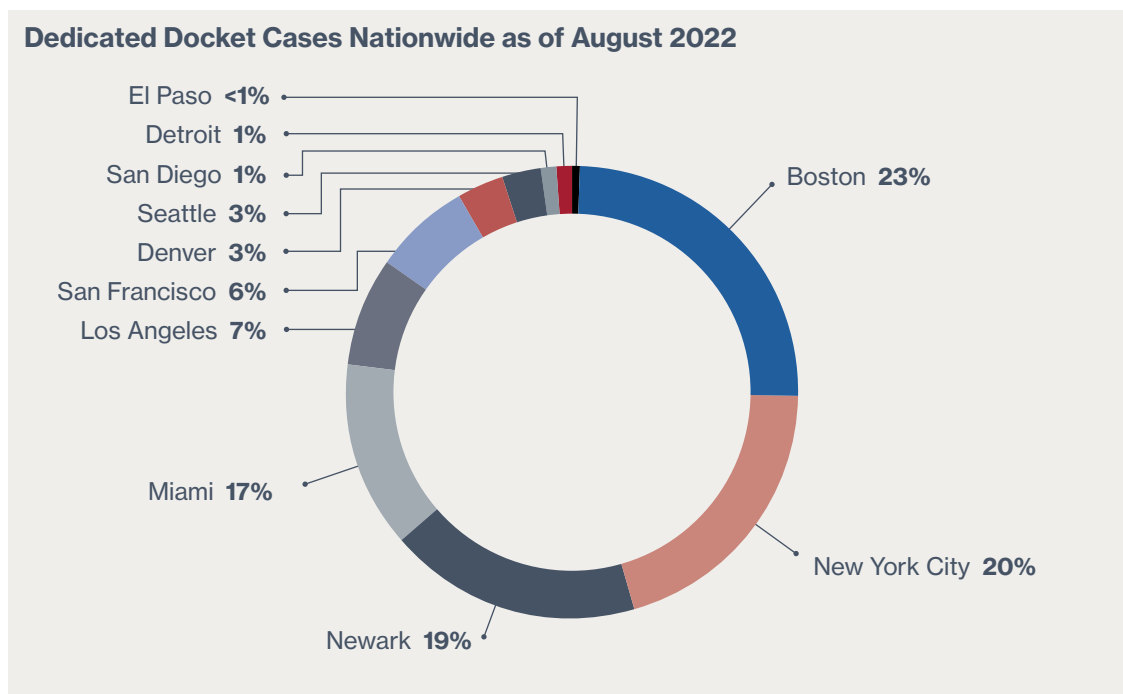
This report is based on an analysis of three primary data sources regarding the Boston Dedicated Docket:

- *Data from TRAC relating to the Boston Dedicated Docket from September 14, 2021, through August 31, 2022.*¹² All references to empirical analysis are from the TRAC dataset unless otherwise noted.
- *Court observations of Boston Dedicated Docket hearings.*¹³ Between September 14, 2021, and March 10, 2023, Harvard Law School students and volunteers with the American Civil Liberties Union of Massachusetts observed a random sampling of more than 700 cases on the Boston Dedicated Docket.¹⁴ Any references to court observations in this report represent the findings from these cases.
- *Interviews, working group discussions, and meetings with legal service providers and attorneys regarding the Boston Dedicated Docket.* Between August 8, 2022, and March 7, 2023, we conducted in-depth interviews with eleven private immigration attorneys and eleven nonprofit organizations who represent or provide legal services to noncitizens in the Boston Immigration Court. In addition, we participated in over twenty working group discussions about the Boston Dedicated Docket, attended by attorneys and legal service providers in Massachusetts; two Massachusetts-wide meetings of the Immigration Coalition, attended by over 60 Massachusetts immigration attorneys and advocates; and two national working group discussions about the Dedicated Docket across all eleven cities in which the Dedicated Docket exists. Any references to the views of advocates or legal service providers in this report represent the perspectives of these attorneys and organizations.

Who Is Affected and How?

Since the Boston Dedicated Docket's inception in September 2021, the Biden administration has placed more than 20,000 individuals on this Docket, making it the largest one in the country, as reflected in Figure 1.¹⁵

Figure 1.



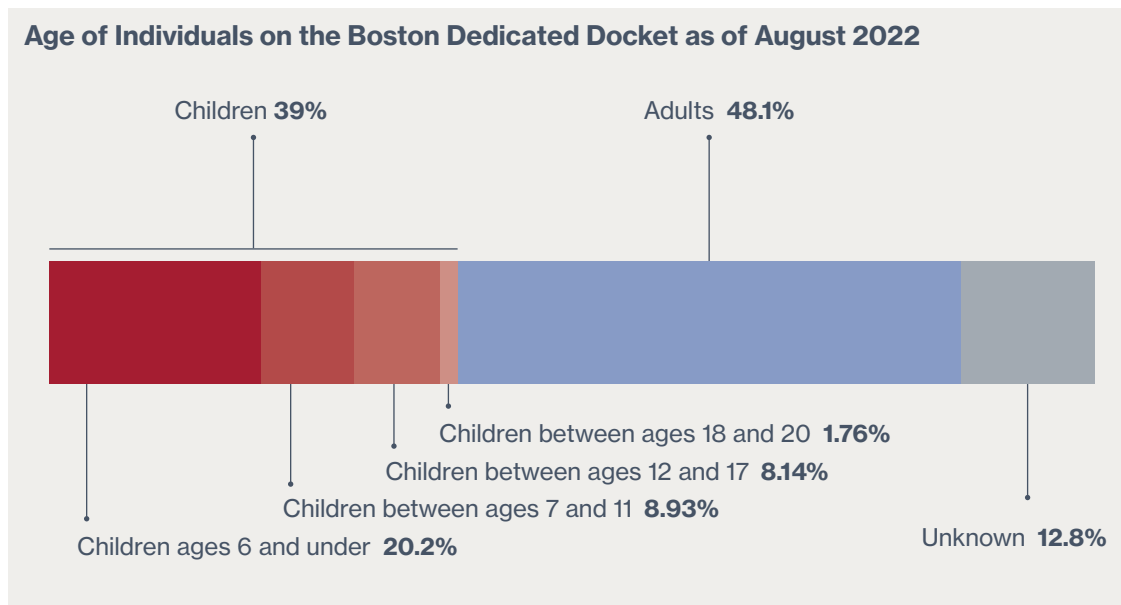
When the Boston Dedicated Docket first commenced, only one immigration judge was assigned to preside over it. Since then, EOIR has staffed five more judges to preside over the more than 20,000 individuals placed on the Boston Dedicated Docket. Some of the judges exclusively handle Dedicated Docket cases, others hear a mixture of cases, and some are only temporarily presiding over the Docket in Boston.¹⁶

WHO IS AFFECTED

As of August 2022, the Biden administration had assigned over 20,000¹⁷ asylum seekers to the Boston Dedicated Docket.¹⁸

Children under 21 years old made up at least 39.1% (7,949) of the Boston Dedicated Docket.¹⁹ As reflected in Figure 2, the majority of those children were under twelve years old.²⁰

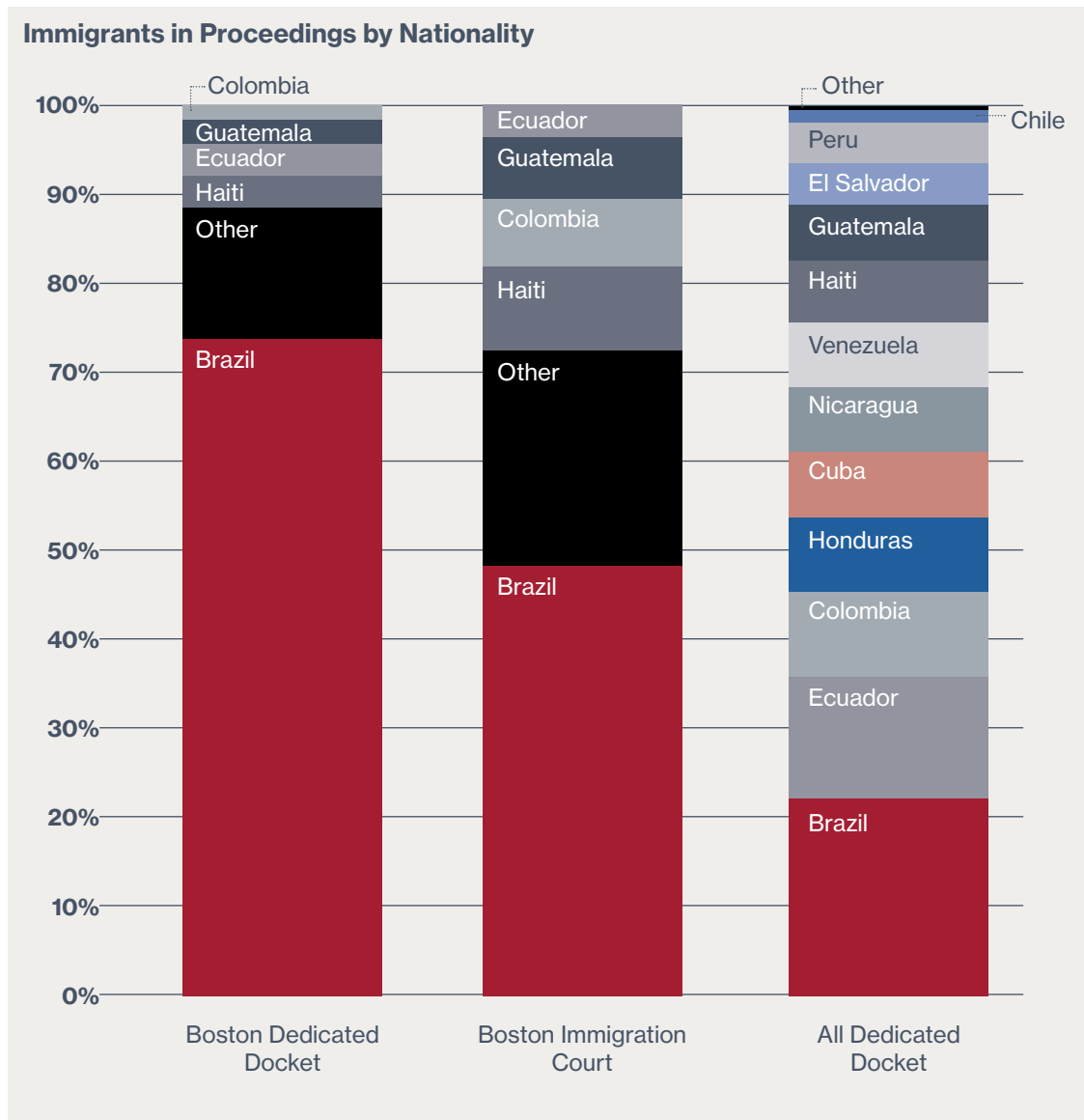
Figure 2.



By country of origin, the majority of immigrants on the Boston Dedicated Docket as of August 2022 were from Brazil. As illustrated in Figure 3, Brazilians made up 74.3% (15,115) of proceedings. The next four most common countries of origin – Haiti, Ecuador, Guatemala, and Colombia – together made up 15.7% of cases.

By contrast, as depicted in Figure 3, in non-Dedicated Docket proceedings in Boston in FY 2022, immigrants from Brazil made up approximately 48.5% of the docket, and Haiti, Ecuador, Guatemala, and Colombia together made up 28.3% of cases.²¹ Across all Dedicated Docket cities, there was similarly a more even distribution of individuals from South and Central American countries: Brazil (21%), Ecuador (13%), Colombia (9%), Honduras (8%), Cuba (7%), Nicaragua (7%), Venezuela (7%), and Haiti (7%).²²

Figure 3.

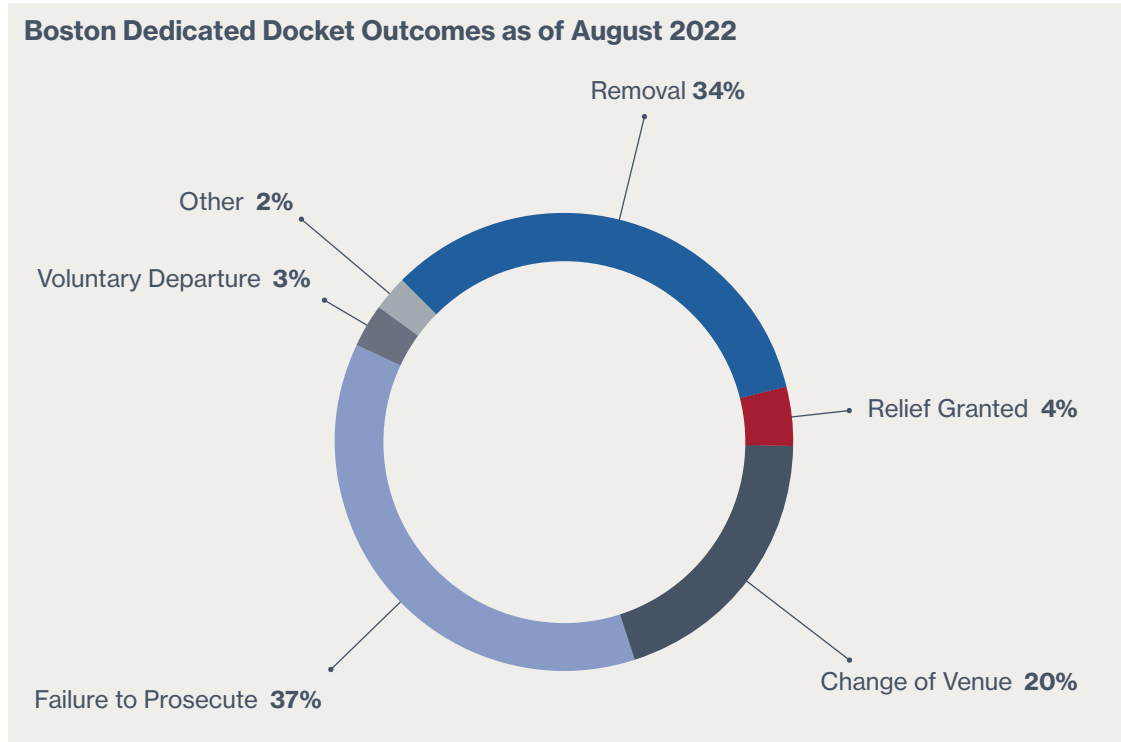


Portuguese was the **primary language** for 74.4% of immigrants on the **Boston Dedicated Docket** as of August 2022. Spanish was the second most common primary language (17.9%), followed by Haitian Creole (5.3%).

OUTCOMES

As of August 2022, 4,809 (23.6%) of the 20,344 cases on the Boston Dedicated Docket had reached completion. As shown in Figure 4, of those completed cases, only 205 (4.2%) successfully resulted in a grant of asylum,²³ while 1,621 (33.7%) resulted in removal orders.²⁴ Of these removal orders, 1,177 (72.6%) were issued *in absentia* – that is, when the individual did not appear for their hearing. If cases that resulted in a change of venue to another immigration court are not considered as completed cases, the percentage of cases that resulted in removal orders is even higher (42%).

Figure 4.



As of August 2022, the grant rate for asylum cases on the Boston Dedicated Docket was approximately 38.9% (205 of 527); in FY 2022, the overall grant rate for asylum cases in the Boston Immigration Court was approximately 56.3%.²⁵ Nationally, in FY 2022, the asylum grant rate for individuals on the Dedicated Docket was 28%, while the asylum grant rate for individuals not subjected to the accelerated docket was 52%.²⁶

Children, who make up approximately 39.1% of the Boston Dedicated Docket, accounted for at least 87 (42.4%) of the grants of relief, 653 (40.3%) of the total removal orders, and 479 (40.7%) of the *in absentia* removal orders.²⁷

Of note, as depicted in Figure 4, a large proportion of the completed cases – 1,772 (36.8%) – were dismissed at a master calendar hearing due to DHS's failure to prosecute, which occurs where DHS fails to file the NTA with the court.²⁸ For asylum seekers whose cases are dismissed due to this failure to prosecute, they are no longer in removal proceedings but also do not have any status; they may try to seek asylum through the asylum office. We were unable to obtain data to determine whether, in cases dismissed due to DHS's failure to prosecute, DHS subsequently filed the NTA with the court to properly commence removal proceedings against the immigrant.²⁹

Such failures to prosecute may reflect DHS's own difficulty in managing cases on the Dedicated Docket, and they occurred with greater frequency earlier on in the Boston Dedicated Docket. From the Boston Dedicated Docket's inception through December 2021, around 55.8% (752 of 1,347) of completed cases were dismissed for failure to prosecute; by comparison, between January and August 2022, around 12.1% (293 of 2,426) of completed cases were dismissed on this basis.

The Objective of Expediency

The Biden administration's stated goal for the Dedicated Docket is to issue a decision in cases within 300 days of the initial master calendar hearing.³⁰ While early data indicate that cases on the Boston Dedicated Docket, on average, met this expedited timeframe, that expediency was achieved largely by removing families *in absentia* when they failed to appear for their hearings or dismissing cases due to DHS's failure to prosecute. More recent court observations reflect that cases on the Docket now move less quickly in order to afford families more time to obtain counsel – a practice that promotes fairness and due process.

TIMING OF PROCEEDINGS

On average, cases that concluded in the first eleven months of the Boston Dedicated Docket met the expedited 300-day goalpost. Of the 4,809 cases completed as of August 2022, 4,265 (88.7%) were concluded within 300 days, taking an average of 156 days, including cases dismissed for DHS failure to prosecute. These completion times are consistent with those nationwide.³¹

These early data, however, may not be representative of the length of proceedings over the long term. To begin, the data reflect the length of proceedings only for the 4,809 cases that started and were completed within the first 350 days of the Boston Dedicated Docket – they do not account for the 15,535 cases that remained pending as of August 2022. Additionally, the average length of proceedings does not necessarily indicate that asylum cases are adjudicated on a faster basis; rather, it could be a sign that they are being terminated or dismissed due to removal orders *in absentia* or failure to prosecute. Indeed, cases resulting in a grant of relief took an average of 305 days to complete from the date the NTA was sent, while cases resulting in removal or dismissal took an average of 193 days.

Moreover, court observations suggest that the length of proceedings for cases currently pending on the Boston Dedicated Docket far exceed the 300-day goal. Of 207 cases observed between November 2022 and March 2023, 61 were set for immigrant merits hearings, all but seven of which were scheduled for 2024 or 2025.

The average length of time between the hearing observed – which was often not the initial master calendar hearing – and the individual hearing was 608 days.³²

Notably, the average length of time between the hearing observed and the individual merits hearing was shorter for pro se asylum seekers (324 days) than for represented asylum seekers (617 days). The length of proceedings is likely driven in part by judges' lack of capacity in light of the 20,000+ cases assigned to the Boston Dedicated Docket since its inception.

CONTINUANCES

Judges on the Boston Dedicated Docket generally provide unrepresented immigrants with more time to find attorneys rather than force them to proceed on the merits of their case pro se. Between November 2022 and March 2023, of the 61 cases observed that were set for individual merits hearings, only four immigrants were unrepresented. While judges in many cases require immigrants to take pleadings and fill out the Form I-589 asylum application without counsel, they often still grant those immigrants another master calendar hearing to find

representation. This general practice of granting more time to find an attorney supports fairness in proceedings and, notably, differs from other Dedicated Docket cities, such as Denver, where advocates report that unrepresented asylum seekers are strictly held to the 300-day timeframe even if they are unrepresented.³³ Judges on the Boston Dedicated Docket should continue providing more time for immigrants to find representation rather than proceed on the merits pro se.

For those immigrants with attorneys, judges on the Boston Dedicated Docket appear to be more amenable to informally granting attorney requests for more time than to granting formal motions to continue. Formal motions to continue were granted only about 40% of the time. By contrast, of the 87 cases observed between November 2022 and March 2023 in which an attorney informally requested more time, judges granted all but one of those informal requests by either scheduling a follow-up master calendar hearing or setting an individual hearing in 2024 or 2025. This practice of providing asylum seekers more time to find counsel and prepare their case is commendable, and judges should continue doing it.

Continuances may, but should not, create barriers to obtaining work authorization. Observers noted in a few cases that a judge gave pro se asylum seekers a choice: either (1) an individual merits hearing in five to seven months, where the time would count toward the 180-day requirement for obtaining an employment authorization document (known as the EAD clock), or (2) an individual hearing in two years, where the time would *not* count toward the EAD clock. Legal service providers have also reported that, in some cases, judges granted immigrants a continuance and stopped the EAD clock without informing the immigrant. This practice, however, is contrary to EOIR's stated policy that judges should not be asking immigrants whether they want expedited trial dates for purposes of the EAD clock.³⁴ Judges should adhere to this EOIR policy, which protects pro se asylum seekers from being forced to choose between obtaining the ability to lawfully work to support their families and potentially pay private counsel, or having more time to potentially locate pro bono counsel and prepare their cases.

The Objective of Fairness: Access to Counsel

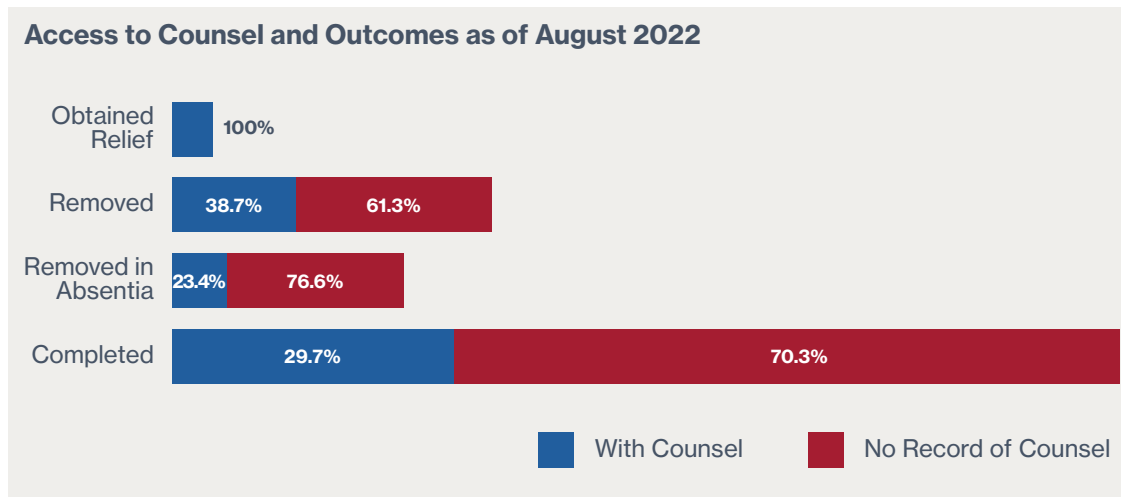
Federal judges have described U.S. immigration law as a “labyrinthine . . . maze of hyper-technical statutes and regulations that engenders . . . confusion,” particularly for immigrants forced to navigate the system *pro se*.³⁵ Access to counsel is thus an important component of ensuring fairness for families on the Boston Dedicated Docket. While immigrants have a statutory right to representation, the government does not appoint counsel unless they are detained and deemed mentally incompetent to represent themselves in their immigration proceedings.³⁶ As a result, families must either find *pro bono* counsel or pay out of pocket for a private attorney. The expedited and unpredictable nature of the Boston Dedicated Docket erects numerous barriers to families’ ability to obtain effective and meaningful representation.

ACCESS TO COUNSEL IMPROVES OUTCOMES, BUT MANY DO NOT HAVE COUNSEL

It is well documented that representation increases an immigrant’s likelihood of obtaining immigration relief.³⁷ The Boston Dedicated Docket has proven no different.

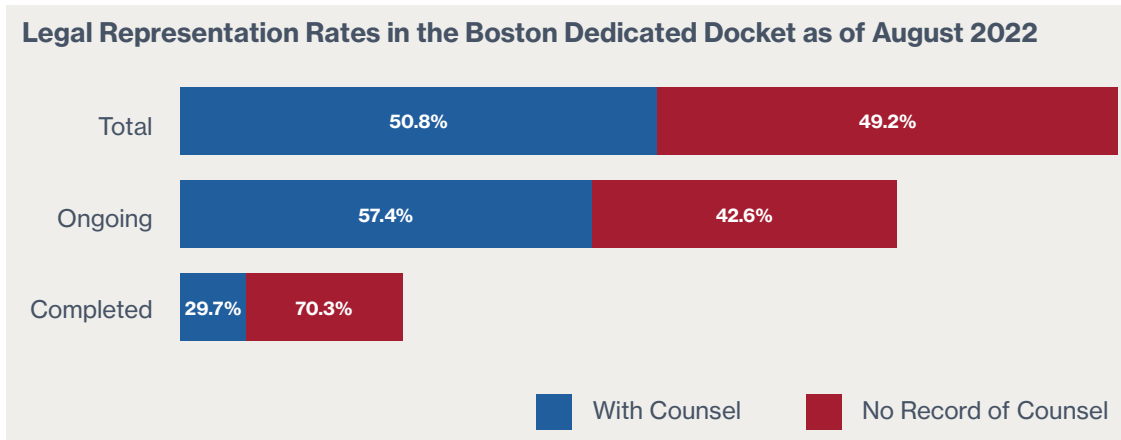
Of the 4,809 completed cases as of August 2022, only 1,426 (29.7%) immigrants were represented at some point in the proceedings. As shown in Figure 5, all of the 205 immigrants who successfully obtained asylum were represented at some point in their proceedings. By contrast, of the 1,621 immigrants ordered removed, 993 (61.3%) were unrepresented. Moreover, of the 1,177 immigrants ordered removed *in absentia*, 901 (76.6%) were unrepresented.

Figure 5.



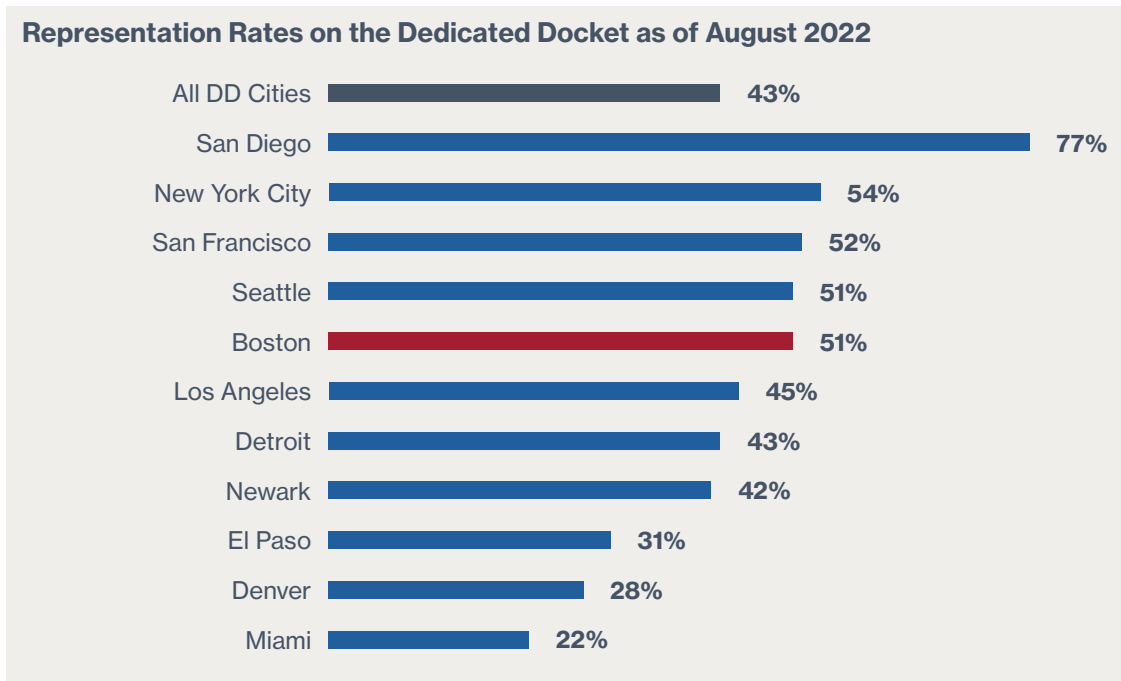
Notwithstanding the importance of representation, many families on the Dedicated Docket cannot access counsel, as shown in Figure 6. Overall, of the 20,344 proceedings on the Boston Dedicated Docket as of August 2022, only about half (10,340) were represented at some point during their proceedings.³⁸ By contrast, 87.4% (20,975 of 23,986) of asylum seekers in the Boston Immigration Court between 2021 and 2022 were represented.³⁹

Figure 6.



Representation rates on the Boston Dedicated Docket are near the median as compared to other Dedicated Docket cities, as shown in Figure 7.⁴⁰

Figure 7.



The disparity between representation rates for asylum seekers on and off the Dedicated Docket are likely attributable, as discussed, to the Docket’s unpredictability, among other characteristics.⁴¹

CHALLENGES FOR FAMILIES IN ACCESSING COUNSEL

Families on the Boston Dedicated Docket face challenges in obtaining either pro bono or private immigration representation. In the hundreds of master calendar hearings observed, almost every pro se immigrant indicated that they had tried but were unsuccessful in obtaining counsel, whether pro bono or private. This pattern is consistent with removal proceedings generally, where it often takes immigrants months or years to obtain representation.⁴²

Immigrants are unable to obtain pro bono counsel because organizations that provide pro bono representation in the Boston Immigration Court are largely at capacity. Legal service organizations cannot accommodate the 20,000+ immigrants who have been placed on the Boston Dedicated Docket in its first year.⁴³

Judges on the Boston Dedicated Docket typically instruct pro se immigrants to call a list of nine pro bono legal service providers (known as the EOIR pro bono list) to obtain counsel.⁴⁴

In our research, however, as of March 2023, the nine listed organizations were taking very few, if any, new cases.

This lack of capacity is due, in part, to staffing shortages, including staff turnover and personal leave, which make the availability of intake highly variable. Four of the nine listed organizations were not taking any new cases; three organizations, which are already restricted in the types of cases they can take (i.e., only children under 21 years old, and only immigrants residing in Maine), indicated that they were accepting only a very limited number of new cases and that the expedited nature of the Boston Dedicated Docket factored into their decision-making; and two organizations were only periodically accepting a very limited number of new cases on a first-come, first-served basis.

Other pro bono legal service providers not on the EOIR pro bono list are similarly at capacity. As of March 2023, in outreach to ten other organizations that generally provide pro bono representation for asylum seekers in removal proceedings, nine reported that they were at capacity and closed for intake. Only one indicated that it was taking a limited number of cases.

Moreover, the vast majority of families on the Boston Dedicated Docket do not have the means to afford private representation, which may cost up to \$20,000 per case. Immigrants are not permitted to work in the United States until, at a minimum, 180 days after they submit their asylum application.⁴⁵ While private attorneys in non-Dedicated Docket cases may set payment plans spanning the many-year duration of asylum cases so that clients may pay legal fees once they obtain employment authorization, this structure does not work when cases on the Dedicated Docket are expected to finish within 300 days.

CHALLENGES FOR ATTORNEYS IN TAKING ON DEDICATED DOCKET CASES

Attorneys, in turn, report that the primary obstacle to taking on cases on the Boston Dedicated Docket is the expedited and unpredictable nature of the Docket. Private, pro bono, and legal services attorneys alike expressed concern regarding the difficulty of properly and effectively preparing an asylum case within the expedited timeline while balancing other cases. To the extent that cases are not meeting the expedited timeline and some attorneys have successfully obtained informal or formal continuances, attorneys remained concerned about the Docket's unpredictability. Two examples highlight the Docket's unpredictability:

In one case, an attorney asked for more time at a hearing on December 15, 2022, and the judge informed the attorney that he would set their client's case for an individual merits hearing that would likely not occur until 2024. After the hearing, however, the individual merits hearing was set for March 31, 2023, leaving the attorney only three months to prepare the case.

In another case, an attorney decided to take on Boston Dedicated Docket cases in reliance on the expedited nature of the cases. That attorney had short-term capacity in their docket because their non-Dedicated Docket asylum hearings had been pushed back to 2024 and 2025, meaning that they could take on expedited cases that would conclude before then. Ultimately, however, their Boston Dedicated Docket cases were also pushed back to 2024 and 2025, thereby creating a concerning capacity problem down the road.

Indeed, for individual merits hearings set between November 2022 and March 2023, the amount of time attorneys had to prepare for individual hearings was widely variable, ranging from 96 to 811 days. Moreover, judges do not always grant attorneys' requests for more time.⁴⁶ Thus, while the expediency of the Boston Dedicated Docket may have decreased since the Docket's inception, its unpredictability has increased. Attorneys accordingly report being wary of taking on cases.

Moreover, there is often no way of confirming whether an asylum seeker is on the Boston Dedicated Docket – rather than in regular, non-accelerated removal proceedings – until the day of their master calendar hearing. In a stakeholder meeting with EOIR on January 12, 2023, EOIR and DHS officials confirmed that the only way to determine whether an immigrant is on the Boston Dedicated Docket is to look for a “BDD” notation on the docket sheets posted at the courthouse on the day of the hearing.⁴⁷ In Boston, an immigrant's judge assignment is not necessarily dispositive of whether they are on the Boston Dedicated Docket. Boston has six judges assigned to hear Boston Dedicated Docket cases, only two of whom exclusively preside over Dedicated Docket cases.⁴⁸ Nor is an immigrant's date of entry dispositive, as not all families who entered the United States after May 28, 2021, are placed on the Dedicated Docket. Numerous attorneys have reported that, in light of this uncertainty and given the unpredictability of the Docket, they err toward declining, rather than accepting, cases that may be on the Docket, out of concern that they would not have sufficient time or resources to prepare the case if it were in fact assigned to the Docket.

LEGAL ORIENTATION PROGRAMS DO NOT PROVIDE LEGAL REPRESENTATION

While the Biden administration provides limited support to asylum seekers on the Dedicated Docket through Legal Orientation Programs (LOPs), these programs were not designed to provide, and cannot substitute for, legal representation. Catholic Charities of Boston is the LOP provider in Boston and runs the Immigration Court Helpdesk. The organization is present in the courthouse three days a week and provides commendable support to families on the Boston Dedicated Docket through “know your rights” sessions and, as capacity permits, assisting families with filling out change-of-address forms and I-589 applications for asylum, which families must then file pro se. The LOP, however, was not designed to provide legal representation: it does not represent immigrants at their hearings or assist in substantively developing their asylum claims. Moreover, the LOP provider and other legal service providers indicated that they do not have the capacity or resources to help many of the thousands of asylum seekers on the Boston Dedicated Docket with their I-589 applications.

Similarly, attorneys who act as “Friends of the Court” are limited in their advocacy efforts for pro se immigrants, as they are prohibited from submitting “any filings in a case, including but not limited to, applications, appeals, pleadings, or motions.”⁴⁹ Thus, despite the fact that access to counsel is crucial for families on the Boston Dedicated Docket, there are various obstacles to obtaining this representation.

RISK OF NOTARIO EXPLOITATION

Service providers report that families on the Boston Dedicated Docket are particularly susceptible to *notario* fraud – that is, individuals who fraudulently claim to be qualified to offer legal advice or services to immigrants but in fact are unable to represent immigrants in immigration court.⁵⁰ Providers shared that *notarios* often charge large fees and claim that they will assist asylum seekers in filling out the Form I-589 asylum application and accompany them to their hearings, but then fail to properly complete or submit the form, review the form with the applicant, or actually appear in court. In other cases, *notarios* have charged families to file an appeal when such an appeal was precluded by clear precedent. Families on the Boston Dedicated Docket are particularly vulnerable to *notario* fraud because they have recently arrived in the United States and face expedited proceedings and corresponding difficulties in obtaining immigration counsel.

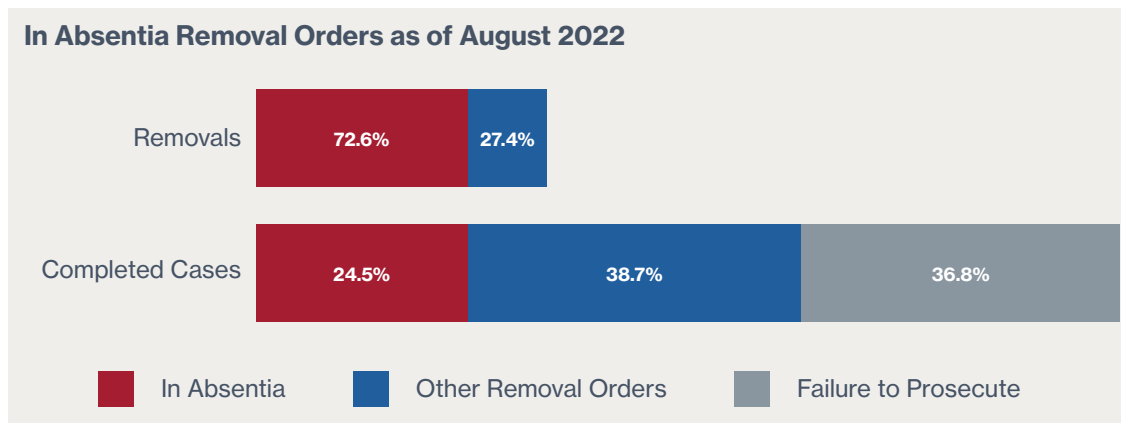
The Objective of Fairness: *In Absentia* Removal Orders

Immigrants generally must attend their hearings and may be ordered removed *in absentia* for failing to appear if DHS establishes by “clear, unequivocal, and convincing evidence” that they were provided notice of the hearing and are removable.⁵¹ Many families on the Boston Dedicated Docket fail to appear for their hearings through no fault of their own. While some judges allow hearings to be reset to provide immigrants another chance to appear, other judges order families and children removed *in absentia*, even when the families did not receive notice of the hearing.

IMMIGRANTS ARE REMOVED IN ABSENTIA WHEN THEY FAIL TO APPEAR AT THEIR HEARINGS

Of the 4,809 cases completed as of August 2022, 1,177 (24.5%) resulted in *in absentia* removal orders because immigrants did not appear for their hearings, as reflected in Figure 8.⁵² Significantly, 479 (40.7%) of those ordered removed *in absentia* were children. This is so even though, in some cases, judges previously waived children’s presence at hearings so they could attend school and, because of their age, children often have no control over whether they appear at their hearing. Advocates report that because of these unique concerns about children, judges in non-Dedicated Docket cases involving families’ failure to appear issue removal orders *in absentia* only against parents and not against children. It appears that judges on the Boston Dedicated Docket, however, are not adopting this approach toward children.

Figure 8.



The percentage of asylum seekers ordered removed *in absentia* generally decreased over time in the first year of the Boston Dedicated Docket, as shown in Figure 9. This downward trend may be attributed, in part, to local advocacy that resulted in DHS agreeing in early 2022 to request continuances rather than *in absentia* orders when immigrants do not appear.

Figure 9.



Notwithstanding any such agreement, however, judges continue to issue removal orders *in absentia*. In court observations between November 2022 and April 2023, at least nineteen immigrants did not appear at their hearings; ten of those immigrants were ordered removed *in absentia*.

Court observations revealed that judges on the Boston Dedicated Docket did not follow a uniform standard for ordering individuals removed *in absentia*. For example, there was no consistency in the number of hearings an individual missed before being ordered removed. Some judges ordered individuals removed if they missed even one hearing; other judges generally did not order individuals removed *in absentia* if it was their first missed hearing but issued removal orders for any subsequently missed hearings; and still other judges reset proceedings even after an individual missed three prior hearings. In some cases, DHS stated that it would move for a removal order *in absentia* if the individual did not appear for the next hearing.

Judges were also inconsistent about ascertaining why an individual was not present in court. In two cases, the judge determined that the individual had sufficient notice and thus should be removed *in absentia*, even though in one of those cases the judge acknowledged that the hearing notice had been returned as undeliverable. By contrast, some judges asked DHS whether an NTA was provided to the individual and whether DHS had heard from the individual, before ordering them removed. Some judges asked DHS to check whether the address was correct and to upload any removability evidence. Significantly, in no cases observed did any judge check whether an individual was complying with their ICE supervision orders before ordering them removed.

REASONS FOR NOT APPEARING: CHALLENGES IN GETTING TO THE COURTROOM

Such *in absentia* removal orders are issued amid the reality that families often fail to appear for their court hearings because they did not receive notice about hearings or are confused about where to go for their hearing.

While notice-related issues are a concern for many immigrants involved in removal proceedings, failure to receive proper notice of hearings is particularly pernicious for those on the Dedicated Docket, where families are less likely to have legal representation.

In one case observed, for example, a family who was not originally on the Boston Dedicated Docket was later placed on this Docket and assigned an earlier hearing date. The family never received notice of the change and, accordingly, did not appear at the new hearing date. They were removed *in absentia*.

Prevalent notice-related issues include the following:

- **NTAs and other notices mailed to an incorrect address or returned as undeliverable.** This circumstance may arise because individuals have moved addresses. In many cases, families who moved diligently notified ICE of their new address but did not realize or understand that the immigration court is part of a separate agency that they also needed to notify using a different form.⁵³ Legal service providers have reported that EOIR has rejected change-of-address forms where DHS has not yet filed the NTA with the court, leaving families with no way to inform the court of their new address. Legal service providers in Boston and other cities have also reported that U.S. Customs and Border Protection has listed their address on an immigrant's NTA even when the organization does not represent or otherwise have any connection to the asylum seeker.⁵⁴ Thus, recently arrived families may not receive important documents or hearing notices sent by immigration court.
- **Incomplete or inaccurate NTAs.** Court observations found that, in some cases, immigrants had never lived at the address listed on the NTA; the NTA listed the wrong lead respondent; or the NTA, in violation of the immigration statute, failed to list the time and place the immigrant must appear for their proceedings.
- **Hearing date changes with little notice.** Fearful that their clients may miss a hearing and be ordered removed *in absentia* because of a hearing change, one attorney instructs their staff to check the EOIR online or phone system every day to see if there have been any scheduling changes. Even so, advocates have reported that the EOIR online and phone systems are not always up to date or accurate, and many immigrants, especially if they are pro se, do not know about or have the means to access these systems.

Even when families receive proper notice of hearings, they may face a variety of other challenges. **First, they may face confusion about the difference between ICE supervision check-ins and EOIR court hearings.** Asylum seekers who are not detained must comply with ICE supervision, which, for many families on the Boston Dedicated Docket, requires that they appear in person at the ICE field office in Burlington, Massachusetts. Legal service providers reported that many families on the Docket – confused about the distinction between these ICE supervision check-ins in Burlington and EOIR court proceedings in Boston – went to Burlington rather than Boston on the date and time of their hearing, and thus missed their hearing. The reverse occurs as well. Courthouse Administrator Fang Xu noted that the Boston Immigration Court encounters multiple cases every day in which asylum seekers appear at the Boston courthouse – instead of the Burlington ICE office – for their ICE check-in.⁵⁵

Second, families who arrive at the courthouse may have difficulty navigating the courthouse because of inadequate signage. At the courthouse, families rely on docket sheets to know to which judge and courtroom they should go to. These docket sheets are supposed to be posted on the third floor of the courthouse and outside of each courtroom. However, advocates and court observers reported that docket sheets often were missing or were days old. The problem with missing docket sheets improved following advocacy in early 2022 but still occurred in at least two instances in February 2023. Even when posted, the docket sheets are printed in an illegibly small font, posted at a height inaccessible for many people, and are available only in English. Failure to make the docket sheets accessible may cause asylum seekers to be late to or miss their hearing entirely. One legal service provider recounted that they came across a woman in the courthouse carrying three small children and struggling to find the location of her hearing. The provider helped the woman determine the correct courtroom, which she and her children entered just before the judge began issuing removal orders *in absentia*.

Finally, courthouse staff often appear to be confused about when the Boston Dedicated Docket is scheduled, making it difficult for families, court observers, and attorneys to know whether a case is on the Docket.

In February and March 2023, court observers called the Boston courthouse approximately fifteen times to inquire about which judges were holding Dedicated Docket master calendar hearings that day. In six of those instances, observers reported that the information they obtained was incorrect – for example, the judge was conducting an individual merits hearing or was not holding any hearings – or diverged from information that other observers were told regarding that day’s Dedicated Docket schedule.

In sum, families often fail to appear at hearings through no fault of their own but are nonetheless ordered removed *in absentia*.

MOTIONS TO REOPEN ARE AN INSUFFICIENT REMEDY

For those individuals who are ordered removed *in absentia*, their only avenue for relief is to file a motion to reopen that asks the immigration judge to rescind the removal order.⁵⁶ Such motions must satisfy strict requirements: they must be filed within 180 days of the removal order, and the immigrant must demonstrate that they did not receive notice of the hearing or that they did not appear at their hearing because of “exceptional circumstances . . . beyond the[ir] control.”⁵⁷ “Exceptional circumstances,” however, has been narrowly defined and is an exceedingly difficult standard to meet.⁵⁸

As a result, it is unlikely that this form of relief is accessible to many families on the Dedicated Docket who have been ordered removed *in absentia*, particularly those without representation.⁵⁹ The individual must know that this form of relief exists and, moreover, have the know-how to file the motion within the 180-day deadline and meet the substantive requirements for such a motion to succeed. Indeed, although 1,177 *in absentia* removal orders were issued as of August 2022, only 348 motions to reopen proceedings had been filed by that time. Those that were filed were generally successful – 330 (94.8%) were granted, 5 (1.4%) were denied, and the rest remained pending or unknown. Ordering families removed *in absentia* is particularly concerning given these barriers to rescinding such *in absentia* removal orders and their potentially permanent and fatal consequences.

The Objective of Fairness: Court Proceedings

ADVISALS AND GROUP HEARINGS

In removal proceedings, immigration judges are required to advise individuals about certain rights afforded to them, including, among others, the right to seek legal representation, the availability of pro bono legal services, and evidentiary rights. Immigration judges are also required to advise and ascertain the potential forms of relief an individual may be eligible for, including asylum.⁶⁰ Court observations found that in nearly all initial master calendar hearings involving unrepresented individuals on the Boston Dedicated Docket, judges read out some, but not all, advisals or else failed to inform immigrants of potential forms of relief.

Moreover, court observers reported that judges frequently conducted group hearings and advisals. Judges conducted such group hearings for all families who spoke the same language, with some group hearings including twenty or more people at a time. Judges also conducted group hearings for families who shared the same attorney. Court observers noted that, while the judge sometimes briefly paused for questions, few individuals, if any, asked questions about their individual cases in such group settings. This lack of individualized hearing, while more expedient, raises questions about whether families, particularly those who do not have counsel, understand their rights or the forms of relief available to them in removal proceedings.

LANGUAGE ACCESS

Court observers and legal service providers have noted some difficulties in accessing interpreters, particularly for indigenous languages and dialects. In a few instances, when the court could not access an interpreter, a member of the Catholic Charities LOP present at the hearing stepped in to interpret Spanish. Of note, although Portuguese speakers from Brazil are the most represented language and demographic on the Boston Dedicated Docket, legal service providers report that the court sometimes provides an interpreter from Portugal, who speaks a different dialect of Portuguese than that spoken in Brazil. The dialect difference confuses many Portuguese-speaking Brazilian families.

ONE-YEAR FILING DEADLINE

Asylum seekers generally must file an application for asylum within one year of arriving in the United States, unless they can demonstrate that extraordinary circumstances impacted their ability to file within that year or that changed circumstances now make them eligible for asylum.⁶¹ Court observations reflect that judges often notify families of the one-year filing deadline and advise them to seek assistance from a lawyer or an English-speaker to help them fill out the application. As discussed, however, families face barriers to obtaining such legal assistance. In addition, legal service providers report that in some cases, judges have required individuals to submit their I-589 asylum applications by their next hearing, even though the hearing is before the one-year filing deadline and they have been unable to find counsel.⁶² The truncated timeframe reduces the likelihood that families will obtain representation.

It is unclear how judges have handled cases in which families missed their one-year filing deadline, particularly cases where the families were unrepresented or did not obtain representation until after the one-year mark had passed. It

is also unclear how judges have adjudicated whether an individual qualifies for an exception to the filing deadline in Dedicated Docket cases.

IN-PERSON VS. WEBEX HEARINGS

Families on the Boston Dedicated Docket have the option to attend their hearings in person or through the court's virtual platform, WebEx. Court observations indicate that represented individuals tend to appear remotely, whereas pro se individuals tend to appear in person. Although attorneys and observers have noted some technological difficulties and internet connection issues that create confusion during hearings, attorneys generally were not opposed to the WebEx option for master calendar hearings. Attorneys report that appearing via WebEx increases accessibility for both themselves and their clients, particularly when hearings are rescheduled unexpectedly and are located far away.

Notably, while attorneys were not opposed to WebEx for master calendar hearings, they expressed concern about using the virtual platform to conduct asylum individual merits hearings, which require that an immigration judge make a credibility determination. As scholars have explained, virtual hearings affect an individual's delivery and understanding of information and, by obscuring important factors such as eye contact, body language, and cross-cultural dynamics, compromise an immigration judge's ability to fairly evaluate an individual's credibility.⁶³

Conclusion and Recommendations

The Boston Dedicated Docket fails to meet its stated twin goals of expediency and fairness for families. Recent cases on the Docket have not been resolved within 300 days, and while it is commendable that judges are granting pro se individuals more time to find immigration counsel, both the Docket's unpredictability and its sheer volume render obtaining counsel a challenging feat. Thus, this additional time does not necessarily translate to greater representation. More than 1,000 immigrants, many of them children, have been ordered removed *in absentia* even though many of them did not receive hearing notices or attempted to attend their hearings but were hindered by confusion surrounding the Docket. The thousands of young children placed on the Dedicated Docket are particularly harmed and will be negatively impacted for the rest of their lives.⁶⁴ Accordingly, this report makes the following recommendations.

RECOMMENDATIONS TO THE BIDEN ADMINISTRATION

Terminate the Dedicated Docket nationwide. In the event the administration does not terminate the Docket, the administration should take the following minimum steps:

- Stop issuing removal orders *in absentia* against children and families without first confirming that EOIR has their correct address and assessing whether they are complying with ICE supervision.
- Provide government-appointed and -funded immigration counsel for individuals on the Dedicated Docket. This may include expanding the National Qualified Representative Program – which provides appointed counsel to noncitizens with mental disabilities who are not competent to represent themselves in removal proceedings – to non-detained individuals on the Dedicated Docket.⁶⁵
- Defer the adjudication of cases for pro se families on the Dedicated Docket to allow them time to find counsel.
- Exercise leniency regarding the application of exceptions to the one-year filing deadline for families who were pro se at the time of the filing deadline.
- Grant motions for continuances in Dedicated Docket cases for a reasonable period of time to permit attorneys the opportunity to properly and effectively prepare their clients' cases.
- Ensure that asylum seekers' EAD clocks are not stopped when asylum seekers on the Dedicated Docket request more time to obtain representation.
- Make publicly available analysis and data regarding the Dedicated Docket and its operation.

RECOMMENDATIONS TO DHS

- Issue a nationwide policy that DHS attorneys should not seek *in absentia* orders of removal where it is the immigrant's first missed hearing, and ensure that such policy is implemented.
- Issue a nationwide policy that DHS attorneys should not seek *in absentia* orders of removal where the individual is complying with ICE supervision requirements and/or their address is incorrect, and ensure that such policy is implemented.

RECOMMENDATIONS TO THE BOSTON IMMIGRATION COURT

- Designate clearly whether an individual is assigned to the Boston Dedicated Docket by indicating as such on, for example, the NTA, the EOIR automated hotline system, and/or the EOIR online system.
- Ensure that updated docket sheets are clearly posted – in a legible font size, at eye level, and in multiple languages – in a central location and outside of each courtroom every day so that families on this Docket can navigate the courthouse.
- Give individuals the option to conduct their individual merits hearing in person.
- Ensure that judges provide individualized advisals in court, including explaining the asylum application process, its one-year filing deadline, and all other advisals set forth at 8 C.F.R. § 1240.10(a).
- Update the EOIR pro bono list regularly so that it accurately reflects organizations that are currently taking on new cases.
- Ensure that interpretation services are provided in the primary language and dialect for all individuals on the Dedicated Docket.

ENDNOTES

- 1 Press Release, U.S. Dep't of Just. & U.S. Dep't of Homeland Sec., DHS and DOJ Announce Dedicated Docket Process for More Efficient Immigration Hearings (May 28, 2021) [hereinafter DHS and DOJ Announce Dedicated Docket], <https://www.justice.gov/eoir/pr/dhs-and-doj-announce-dedicated-docket-process-more-efficient-immigration-hearings>; see also Memorandum from Jean C. King, Acting Director of EOIR, on Dedicated Docket (May 27, 2021) [hereinafter Dedicated Docket Memorandum], <https://www.justice.gov/eoir/book/file/1399361/download>.
- 2 DHS and DOJ Announce Dedicated Docket, *supra* note 1 (“Families may qualify if they are apprehended between ports of entry on or after Friday, May 28, 2021, placed in removal proceedings, and enrolled in Alternatives to Detention (ATD).”); Dedicated Docket Memorandum, *supra* note 1 (“DHS has indicated that it will be placing on the Dedicated Docket families who crossed the Southern border and whom DHS has placed on alternatives to detention.”).
- 3 Dedicated Docket Memorandum, *supra* note 1, at 2; see also DHS and DOJ Announce Dedicated Docket, *supra* note 1.
- 4 Noncitizens on the Dedicated Docket are referred to as “immigrants” in this report, regardless of their status.
- 5 DHS and DOJ Announce Dedicated Docket, *supra* note 1; see also Dedicated Docket Memorandum, *supra* note 1. TRAC reports that the Biden administration had assigned 110,708 cases to the Dedicated Docket as of September 30, 2022; by contrast, the Executive Office for Immigration Review (EOIR) reports that the administration has assigned 82,195 cases as of January 9, 2023. Compare TRAC, *A National Assessment of the Biden Administration's Dedicated Docket Initiative* (Dec. 6, 2022) [hereinafter *A National Assessment*], <https://trac.syr.edu/reports/704/#f2:::text=Table%20a.%20Individuals%20Assigned%20to%20the%20Immigration%20Court%27s%20Dedicated%20Docket%20by%20Nationality%20as%20of%20September%202022,withEOIR,AdjudicationStatistics:DedicatedDocketSummarybyHearingLocation> (Jan. 9, 2023), <https://www.justice.gov/eoir/page/file/1436791/download>. Because EOIR has not made public its data regarding the Dedicated Docket, this report relies on the TRAC data, which were obtained through a standing Freedom of Information Act request to EOIR.
- 6 Boston was added as a Dedicated Docket location in July 2021, after the Biden administration's initial May 2021 announcement. See DHS and DOJ Announce Dedicated Docket, *supra* note 1; see also Dedicated Docket Memorandum, *supra* note 1; EOIR, *Boston Immigration Court: Court Announcements* (July 19, 2021), <https://www.justice.gov/eoir/boston-immigration-court#:~:text=COURT%20ANNOUNCEMENTS,the%20initial%20master%20calendar%20hearing>.
- 7 The White House Office of the Press Secretary, *Letter from the President - Efforts to Address the Humanitarian Situation in the Rio Grande Valley Areas of Our Nation's Southwestern Border* (June 30, 2014), <https://obamawhitehouse.archives.gov/the-press-office/2014/06/30/letter-president-efforts-address-humanitarian-situation-rio-grande-valle>; Memorandum from Brian M. O'Leary, EOIR Chief Immigration Judge (Mar. 24, 2015), <https://www.justice.gov/eoir/pages/attachments/2015/03/26/docketing-practices-related-to-uacs-and-awcatd-march2015.pdf> (instructing that initial master calendar hearings for unaccompanied children and adults with children should be scheduled within 21 days and 28 days, respectively, of Notice to Appeal (NTA) filing); Memorandum from James R. McHenry III, Director of EOIR (Jan. 17, 2018) <https://www.justice.gov/eoir/page/file/1026721/download> (instructing that 85% of non-detained removal cases should be completed within 365 days of the NTA filing).
- 8 See UCLA Law School Immigrants' Rights Policy Clinic, *The Biden Administration's Dedicated Docket: Inside Los Angeles' Accelerated Court Hearings for Families Seeking Asylum* (May 2022); American Immigration Lawyers Association, *AILA Joins Legal Service & Mental Health Providers in Letter to Administration Expressing Grave Concerns over the "Dedicated Docket"* (Oct. 5, 2022), <https://www.aila.org/advo-media/aila-correspondence/2022/letter-to-administration-expressing-grave-concerns>; Sarah Pierce, *As the Trump Administration Seeks to Remove Families, Due-Process Questions over Rocket Dockets Abound*, Migration Policy Institute (July 2019), <https://www.migrationpolicy.org/news/due-process-questions-rocket-dockets-family-migrants>; Kica Matos, *Biden Must End the Era of the Rocket Docket*, CNN (June 18, 2021), <https://www.cnn.com/2021/06/18/opinions/biden-administration-end-rocket-dockets-matos/index.html>; TRAC, *With the Immigration Court's Rocket Docket Many Unrepresented Families Quickly Ordered Deported* (Oct. 18, 2016), <https://trac.syr.edu/immigration/reports/441/>.
- 9 Letter from Alexis Fooshé, Chief Communication and Legislative Affairs Division, EOIR (Jan. 13, 2023) (on file with the Harvard Immigration and Refugee Clinical Program).
- 10 The total number of completed cases, 4,809, includes cases that resulted in change of venue to another immigration court. Note that references in this report to data regarding the Boston Dedicated Docket “as of August 2022” pertain to data obtained from TRAC ending on August 31, 2022.
- 11 Immigrants with a record of representation are not necessarily represented for the entirety of their proceedings.
- 12 TRAC is a data gathering, data research, and data distribution organization at Syracuse University. Coauthors Sabrineh Ardan and Tiffany J. Lieu were appointed and served as TRAC Fellows for this research report.
- 13 Court observations were conducted pursuant to the Innovation Law Lab's immigration court watch efforts and used the organization's standard court watch form. See *Courtwatch*, Innovation Law Lab, <https://innovationlawlab.org/courtwatch/> (last visited Mar. 29, 2023).
- 14 Court observers called on the day of observation to confirm that the hearing session in question was for the Boston Dedicated Docket. Court observations were conducted by Harvard Law School students in the Harvard Immigration and Refugee Advocacy Clinic, the Harvard Crimmigration Clinic, the “Strategic Litigation and Immigration Advocacy” course taught by Professors Sabrineh Ardan and Philip Torrey, and the Harvard Law School Immigration Project, as well as volunteer attorneys and interns with the American Civil Liberties Union of Massachusetts.
- 15 See TRAC, *A National Assessment*, *supra* note 5.
- 16 EOIR and Boston Immigration Court officials provided this information at a Boston Dedicated Docket Stakeholder Meeting with Theresa Holmes-Simmons, Assistant Chief Immigration Judge, and John Martin, EOIR Public Information Officer, on January 23, 2023.
- 17 The numbers of immigrants on the Boston Dedicated Docket differ between TRAC and EOIR. While TRAC data indicate that there were 20,011 immigrants on the Boston Dedicated Docket as of August 2022, EOIR reports that there were 18,384 as of January 2023. See <https://www.justice.gov/eoir/page/file/1436791/download>. Because EOIR has not made public its data regarding the Dedicated Docket, this report relies on the TRAC data, which were obtained through a standing Freedom of Information Act request to EOIR.
- 18 As of August 2022, the Biden administration had assigned 20,011 immigrants to the Boston Dedicated Docket, from which there were 20,344 proceedings. The number of proceedings is distinct from the number of immigrants on the Dedicated Docket because of the way EOIR records case information. Namely, an immigrant has more than one proceeding where they were ordered removed *in absentia* and subsequently filed a motion to reopen or a motion to reconsider, and this motion was granted – the subsequent reopened proceedings constitute a second proceeding. This report's analysis is based on the 20,344 proceedings because it more fully captures judges' decisions on the Boston Dedicated Docket.

- 19 This report defines children as under 21 years old because, for purposes of being a derivative on an asylum application and obtaining special immigrant juvenile status in Massachusetts, a child is eligible for relief until they turn 21. EOIR does not record whether children are unaccompanied minors or part of a family unit; however, because the Dedicated Docket is focused on recently arrived families, this report assumes that children are part of family units.
- 20 As of August 2022, approximately 20.2% (4,119) of cases on the Boston Dedicated Docket involved children aged six and under; 8.93% (1,817) involved children between the ages of seven and eleven; 8.14% (1,655) involved children between the ages of twelve and seventeen; and 1.76% (358) involved children between the ages of eighteen and twenty. In addition, there were 2,604 cases where the individual's age was unknown because the dataset is missing date-of-birth entries, so there may be even more children impacted.
- 21 See TRAC, *New Proceedings Filed in Immigration Court* (Apr. 2023), <https://trac.syr.edu/phptools/immigration/ntanew/>.
- 22 See TRAC, *A National Assessment*, *supra* note 5.
- 23 Note that this statistic does not include grants of withholding of removal and protection under the United Nations Convention Against Torture (CAT). As of August 31, 2022, only five immigrants were granted withholding of removal, and one was granted CAT protection.
- 24 The total number of cases for each outcome is as follows: removal orders (1,621); asylum granted (205); change of venue (948); failure to prosecute (1,772); voluntary departure (153); and other (110).
- 25 See TRAC, *Asylum Decisions* (Feb. 2023), <https://trac.syr.edu/phptools/immigration/asylum/>.
- 26 See TRAC, *A National Assessment*, *supra* note 5. According to EOIR, the asylum grant rate in immigration courts across the country in FY 2022 was 45.9%. See EOIR, *Adjudication Statistics: Asylum Decision Rates* (Jan. 16, 2023), <https://www.justice.gov/eoir/page/file/1248491/download> (reporting 22,424 asylum grants and 26,483 asylum denials in FY 2022).
- 27 As discussed *supra* note 20, the dataset is missing date-of-birth entries for some immigrants on the Boston Dedicated Docket, so there may be more children impacted.
- 28 The NTA is a charging document issued by DHS that informs immigrants of the reasons why they are removable and lists the time and place of their hearing. See 8 U.S.C. § 1229(a)(1)(G). Pursuant to immigration regulations, jurisdiction does not vest with the immigration court – and thus a case cannot proceed in court – until DHS files the NTA with the court. 8 C.F.R. § 1003.14(a). DHS has nonetheless been able to schedule an initial hearing even if it has not filed the NTA with the court by directly accessing the immigration court's interactive scheduling system. See EOIR, *Policy Memorandum: Acceptance of Notice to Appear and Use the Interactive Scheduling System* (Dec. 21, 2018), <https://www.justice.gov/eoir/file/1122771/download>; TRAC, *Over 63,000 DHS Cases Thrown Out of Immigration Court This Year Because No NTA Was Filed* (Oct. 17, 2022) [hereinafter *Over 63,000 DHS Cases Thrown Out*], <https://trac.syr.edu/reports/699/>. As a result, immigrants may appear in court for their DHS-scheduled master calendar hearing only to have the judge dismiss or postpone proceedings because DHS has still not filed the NTA and the court thus does not have jurisdiction over the case.
- 29 See TRAC, *Over 63,000 DHS Cases Thrown Out*, *supra* note 28 (“The public has been left in the dark as to what ultimately happens to these cases and the immigrant involved. The DHS needs to provide a public accounting.”).
- 30 See DHS and DOJ Announce Dedicated Docket, *supra* note 1.
- 31 As of August 2022, about 83% of completed cases nationwide had met the 300-day goal. See TRAC, *A National Assessment*, *supra* note 5. Across all Dedicated Docket locations, the average case closure time was 232 days. *Id.* El Paso had the shortest closure time, at an average of 181 days, and New York City had the longest, at 261 days. *Id.* Note that TRAC's *A National Assessment* report excludes cases dismissed for DHS failure to prosecute in its calculations for the timing of proceedings.
- 32 The median number of days between the scheduling hearing observed and the individual hearing was 688 days.
- 33 See National Dedicated Docket Working Group Meeting (Jan. 17, 2023).
- 34 American Immigration Lawyers Association, *AILA's EOIR Liaison Committee Meets with EOIR* (Feb. 15, 2023), <https://www.aila.org/advo-media/agency-liaison/aila-national-agency-liaison-meetings/eoir-liaison-committee-meets-with-eoir-2-15-23> (reporting that EOIR representatives stated at a February 2023 meeting that “[j]udges should not be asking respondents if they want an expedited hearing,” and requesting that advocates inform EOIR when judges do so, so that EOIR can “correct it”).
- 35 *Drax v. Reno*, 338 F.3d 98, 99–100 (2d Cir. 2003).
- 36 8 U.S.C. § 1362. Under the National Qualified Representative Program, the government appoints legal representation for immigrants who are detained, unrepresented by counsel, and have been found by an immigration judge or the Board of Immigration Appeals to be incompetent to represent themselves in their immigration proceedings because of a serious mental disorder. See Michael Corradini, *National Qualified Representatives Program*, Vera, <https://www.vera.org/projects/national-qualified-representative-program> (last visited Mar. 29, 2023); U.S. Dep't of Just., Exec. Off. Immigr. Rev., *National Qualified Representative Program (NQR)* (Feb. 18, 2020), <https://www.justice.gov/eoir/national-qualified-representative-program-nqrp>.
- 37 See, e.g., Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. Pa. L. Rev. 1, 9, 47–59 (2015) (finding that immigrants with representation were fifteen times more likely to seek relief and five and a half times more likely to obtain relief from removal than unrepresented immigrants).
- 38 Specifically, approximately 50.2% (4,915 of 9,791) of adults were represented and 51% (4,052 of 7,949) of children were represented. In addition, 1,373 of 2,604 (52.7%) whose ages cannot be determined from the data due to reporting omissions were represented.
- 39 See TRAC, *Asylum Filings: Massachusetts* (Nov. 2022), <https://trac.syr.edu/phptools/immigration/asyfile/>. In addition, 48.4% (46,722 of 96,532) of all immigrants currently in removal proceedings in the Boston Immigration Court are represented. See TRAC, *Individuals in Immigration Court by their Address: Pending Cases With and Without Attorneys* (Feb. 2023), <https://trac.syr.edu/phptools/immigration/addressrep/>. According to EOIR, 78% of all asylum seekers with pending cases in all immigration courts were represented, and 45% of individuals currently in removal proceedings were represented. U.S. DOJ & EOIR, *Executive Office for Immigration Review Adjudication Statistics* (Jan. 16, 2023), <https://www.justice.gov/eoir/page/file/1062991/download>.
- 40 See TRAC, *A National Assessment*, *supra* note 5.
- 41 See “Challenges for Attorneys in Taking on Dedicated Docket Cases” subsection on pp. 16–17.
- 42 As TRAC has reported, pro bono efforts have been unable to meet the rise in immigrants placed in removal proceedings. See TRAC, *Despite Efforts to Provide Pro Bono Representation, Growth Is Failing to Meet Exploding Demands* (May 12, 2023), <https://trac.syr.edu/reports/716/>. The Dedicated Docket exacerbates these difficulties because of its accelerated and unpredictable nature.

- 43 Thus, while the Biden administration established the Dedicated Docket in cities it identified as having robust and “established communities of legal services providers,” in reality, legal service providers in Boston *lack* the capacity and resources to represent all immigrants on the Dedicated Docket given its size. DHS and DOJ Announce Dedicated Docket, *supra* note 1; see also Dedicated Docket Memorandum 2, *supra* note 1 (stating that immigrants on the Dedicated Docket would be provided “access to information services and possible referral services to facilitate legal representation. Each city in which EOIR has established the Dedicated Docket has an established pro bono network”).
- 44 See U.S. Dep’t of Just., Exec. Off. Immigr. Rev., Massachusetts: List of Pro Bono Legal Service Providers (Jan. 2023), <https://www.justice.gov/eoir/file/ProBonoMA/download>.
- 45 Under the regulations, asylum seekers may not apply for employment authorization until 150 days after submitting an asylum application, and cannot receive employment authorization until 180 days after. 8 C.F.R. § 208.7(a)(1).
- 46 See “Continuances” subsection on pp. 12–13.
- 47 Legal service providers reported that when the Boston Dedicated Docket first commenced, the government notated “DD” on the NTA to indicate whether an immigrant was assigned to the Dedicated Docket. The government has since stopped doing so, leaving immigrants and attorneys mired in uncertainty.
- 48 Boston Dedicated Docket Stakeholder Meeting with Theresa Holmes-Simmons, Assistant Chief Immigration Judge, and John Martin, EOIR Public Information Officer (Jan. 12, 2023).
- 49 U.S. Dep’t of Just., Exec. Off. Immigr. Rev. Friend of the Court Memorandum 2 (May 5, 2022), <https://www.justice.gov/eoir/page/file/1503696/download>.
- 50 The Office of the Attorney General in Massachusetts and immigrants’ rights organizations have recognized the seriousness of *notario* fraud and have worked to raise awareness around the issue. See Press Release, AG Healey’s Office Raises Awareness About Fraudulent Immigration Law Practices, Massachusetts Office of the Attorney General (Jan. 27, 2022), <https://www.mass.gov/news/ag-healeys-office-raises-awareness-about-fraudulent-immigration-law-practices>; ABA, *Fight Notario Fraud* (last accessed Mar. 31, 2023), https://www.americanbar.org/groups/public_interest/immigration/projects_initiatives/fightnotariofraud/; American Immigration Lawyers Association & ABA, *Protect Your Family’s Dreams*, stopnotariofraud.org (last accessed Mar. 31, 2023), <https://stopnotariofraud.org/>.
- 51 8 U.S.C. § 1229a(b)(5)(A).
- 52 *In absentia* removal orders amounted to 72.6% of the removal orders issued during that period (1,177 of 1,621).
- 53 For those subject to ICE check-in appointments, individuals may notify ICE of their change of address at their check-in or via phone. To notify an immigration court of a change of address, individuals must file the EOIR-33 with EOIR. See <https://www.justice.gov/eoir/form-eoir-33-eoir-immigration-court-listing>.
- 54 Claudia Torrens, *Border Patrol Agents Sending Migrants to False City Addresses, Sowing Confusion*, PBS (Oct. 24, 2022), <https://www.pbs.org/newshour/nation/border-patrol-agents-sending-migrants-to-false-city-addresses-sowing-confusion>; John Lavenburg, *Catholic Charities NY Blames Immigration Officials for Listing Its Address on Migration Docs*, *Crux* (Aug. 10, 2022), <https://cruxnow.com/church-in-the-usa/2022/08/catholic-charities-ny-blames-immigration-officials-for-listing-its-address-on-migration-docs>; Adolfo Flores, *Border Agents Keep Sending Immigrants to Wrong Addresses with Little Regard for How It Could Affect their Court Cases*, *Advocates Say*, *BuzzFeed News* (Sept. 21, 2022), <https://www.buzzfeednews.com/article/adolfoflores/immigrants-border-wrong-addresses-shelter>.
- 55 Boston Dedicated Docket Stakeholder Meeting with Theresa Holmes-Simmons, Assistant Chief Immigration Judge, and John Martin, EOIR Public Information Officer (Jan. 12, 2023).
- 56 8 U.S.C. § 1229a(b)(5); 8 C.F.R. § 1003.23(b)(4)(ii). Motions to reopen in cases that do not involve *in absentia* removal orders must be filed within 90 days of the removal order and must sufficiently present material and previously unavailable evidence regarding the relief requested. See 8 U.S.C. § 1229a(c)(7); 8 C.F.R. § 1003.23(b)(3).
- 57 8 U.S.C. § 1229a(b)(5); 8 C.F.R. § 1003.23(b)(4)(ii).
- 58 “[E]xceptional circumstances” has been defined to include “battery or extreme cruelty” or “serious illness” to the individual or the individual’s child, parent, or spouse, but not “less compelling circumstances.” See 8 U.S.C. § 1229a(e)(1); see also Jennifer Lee Koh, *Removal in the Shadows of Immigration Court*, 90 S. Cal. L. Rev. 181, 219–20 (2017) (explaining that courts have generally interpreted “exceptional circumstances” narrowly and that car mechanical failure alone does not establish an exceptional circumstance).
- 59 See Sabrineh Ardan, *Asymmetries in Immigration Protection*, 85 Brooklyn L. Rev. 319, 331–36 (2020) (explaining that motions to reopen insufficiently protect asylum seekers – particularly in the *in absentia* context because individuals are not afforded an opportunity to be heard by an immigration judge – and it is “very difficult, if not impossible, for unrepresented individuals to file the papers necessary” to succeed in a motion to reopen).
- 60 8 C.F.R. § 1240.10(a) (setting forth seven items that judges must advise individuals of); 8 C.F.R. § 1240.11(c)(1).
- 61 8 U.S.C. §§ 1158(a)(2)(B), (D).
- 62 While it is unclear whether families will be ordered removed or be deemed to have waived their right to seek asylum if they miss the court deadline in Boston, practitioners in at least seven of the eleven Dedicated Docket cities have reported that immigration judges order families removed or threaten to order them removed for missing a court-imposed filing deadline for the I-589 that falls before the one-year filing deadline. See Letter from Advocates to Attorney General Merrick B. Garland, Alejandro N. Majorcas & Betsy Lawrence 6 (Oct. 5, 2022), <https://www.aila.org/advoc-media/aila-correspondence/2022/letter-to-administration-expressing-grave-concerns>.
- 63 See Liz Bradley & Hillary B. Farber, *Virtually Incredible: Rethinking Deference to Demeanor When Assessing Credibility in Asylum Cases Conducted by Video Teleconference*, 36 Geo. Immig. L.J. 515, 517–21, 543–58, 568 (2012) (explaining that making credibility determinations in virtual hearings “exacerbates the already tenuous relationship between demeanor and truthfulness” and recommending that the government prohibit demeanor-based adverse credibility findings in virtual hearings and require a party’s consent for virtual merits hearings); Emily B. Leung, *Technology’s Encroachment on Justice: Videoconferencing in Immigration Court Proceedings*, 14-07 Immig. Briefings (July 2014). Studies have found that immigrants with video hearings are more likely to be deported. See Ingrid V. Eagly, *Remote Adjudication in Immigration*, 109 Nw. U.L. Rev. 933, 966–69 (2015) (explaining that detained individuals who appear at their removal proceedings remotely via video are more likely to be deported than detained individuals who appear in person); Dane Thorley & Joshua Mitts, *Trial by Skype: A Causality-Oriented Replication Exploring the Use of Remote Video Adjudication in Immigration Removal Proceedings*, 59 Int’l Rev. Law. & Econ. 82, 88 (2019).
- 64 Fast, Not Fair: How Expedited Processes Harm Immigrant Children Seeking Protection, Young Ctr. & First Focus on Child. (Feb. 2023), <https://static1.squarespace.com/static/597ab5f3bebaf0a625aaf45/t/63ea3b201172116142616bfb/1676294946153/Expedited+Processes+Issue+Brief+-FINAL.pdf>.
- 65 Expansion of the National Qualified Representative Program to Dedicated Docket Proceedings, HIRCP (Nov. 24, 2021), <http://harvardimmigrationclinic.org/files/2023/04/White-Paper-on-the-Expansion-of-the-National-Qualified-Representative-Program-to-Dedicated-Docket-Proceedings.pdf>.

