

Witness to Immigration Court

Stakeholder Report from the Immigration Court Observation Project

This 7-month report covers observations from 9.1.2020 through 3.31.2021

ABOUT THE IMMIGRATION COURT OBSERVATION PROJECT

The Immigration Court Observation Project draws on the international human rights practice of trial monitoring to identify and bring visibility to systemic human rights violations arising in the context of civil immigration enforcement. The project brings observers from the public into the Fort Snelling Immigration Court in Minnesota to observe and document immigration hearings of people who are currently detained.

The Immigration Court Observation Project is a collaboration between The Advocates for Human Rights, the James H. Binger Center for New Americans at the University of Minnesota Law School, and Robins Kaplan LLP in Minnesota. It began in April 2017 to harness the surge of energy in support of immigrants following the first Muslim Ban and to date has engaged more than 700 individual volunteers at more than 3400 observation shifts, contributed more than 5500 hours.

Volunteer observers attend bond and master calendar (preliminary) removal hearings at the Fort Snelling Immigration Court. Observers monitor hearings for people who are being held in ICE detention or who are scheduled for immigration hearings while still serving sentences in state or federal prison. Using volunteers with a variety of life experiences and professional backgrounds, the project focuses on perceptions of fairness, due process, and standards of justice rather than statutory arguments or procedures.

The project seeks to:

- Bring transparency and accountability to immigration court
- Observe and document the impact of executive orders and policy changes
- Compare Minnesota to national trends
- Collaborate with court observation projects nationally
- Refer specific cases for representation, litigation, or competency assessments
- Understand and report on the public's perceptions of justice and due process in Immigration court
- Promote human rights standards for immigration court
- Advocate for just immigration policy on the local, state, and federal level

Since the inception of this project in 2017 observers have been scheduled to observe all master calendar and bond hearings at the Fort Snelling Immigration Court. The only exception was the first two months of the pandemic, mid-March through mid-May 2020, when volunteer shifts were dramatically scaled back due to public health concerns.

Court observers complete a two-page observation form for each observed hearing. Observers record demographic information such as gender, country of origin, and primary language; and objective information such as the presiding judge, counsel for the Department of Homeland Security (DHS), whether the person was represented, type of relief (defenses to deportation) being sought, bond requests and decisions, and criminal history. Observers also report subjective impressions about the person's ability to understand and participate in the hearings, the treatment of the detained person, and the fairness of the process and outcome of the hearing. All collected observations are entered by volunteers into a database. Approximately every six months, the data are analyzed, and a stakeholder report is written. This report covers observed hearings at the Fort Snelling Immigration Court, in Minnesota, between September 1, 2020, and March 31, 2021.

FINDINGS

This reporting period falls entirely within the COVID-19 pandemic. Throughout this period, non-detained hearings were suspended. All detained people appeared remotely from the jails or prisons in which they were held, typically by video, sometimes by phone. The last two months of this reporting period were under President Biden’s new administration.

GENERAL CASE NUMBERS

Observers submitted a total of 1121 observations for a total of 719 unique hearings during the reporting period. Many hearings had two or, occasionally, three observers present. This report analyzes the 496 unique removal hearings and 223 unique bond hearings from September 1, 2020, to March 31, 2021.

Observers documented cases involved 255 individual respondents during this reporting period, many of whom appeared for multiple hearings. Dockets continued to be shorter than before the pandemic. This likely reflects two major shifts in ICE policy resulting from the COVID-19 pandemic: decreased interior enforcement (such as workplace raids or fugitive apprehension operations which are designed to sweep up undocumented people) and increased release of people by ICE to reduce the number of people in detention. Both the Trump administration’s border closure policies (in operation throughout most of the reporting period) and the Biden administration’s new ICE enforcement priorities (which began to be implemented during the final two months of the reporting period) may also have played some role in limiting the numbers of people detained pending removal hearings.

Thirty-eight individuals volunteered as court observers during this 7-month reporting period. Seventeen of these volunteered with the project for the first time.

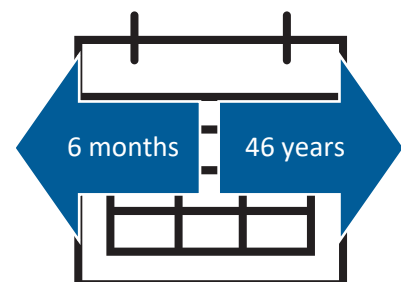
GENDER OF RESPONDENTS

People appearing on the Fort Snelling Immigration Court’s detained docket overwhelmingly identify as male. Only 15 (5.9%) of the 255 people identified as female. There were no reported cases of transgender or non-binary respondents. This gender balance has remained remarkably consistent throughout the 4 years of the Immigration Court Observation Project.

	6M ending 6.2019	6M ending 2.2020	6M ending 8.2020	7M ending 3.2021
Male	91.0%	92.7%	93.2%	94.1%
Female	6.0%	5.9%	6.8%	5.9%
Transgender/non-binary	0.0%	0.2%	0.0%	0.0%
NA	3.0%	1.2%	0.0%	0.0%

LENGTH OF TIME IN UNITED STATES

In this reporting period, observers were able to document the length of time people reported having lived in the United States for 58.4% of individual respondents. Length of U.S. residence was not mentioned in the balance of cases. Of those, the **average length of time in the US was 12.9 years**, the median was 12 years. The range was **6 months to 46 years**.



COUNTRY OF ORIGIN

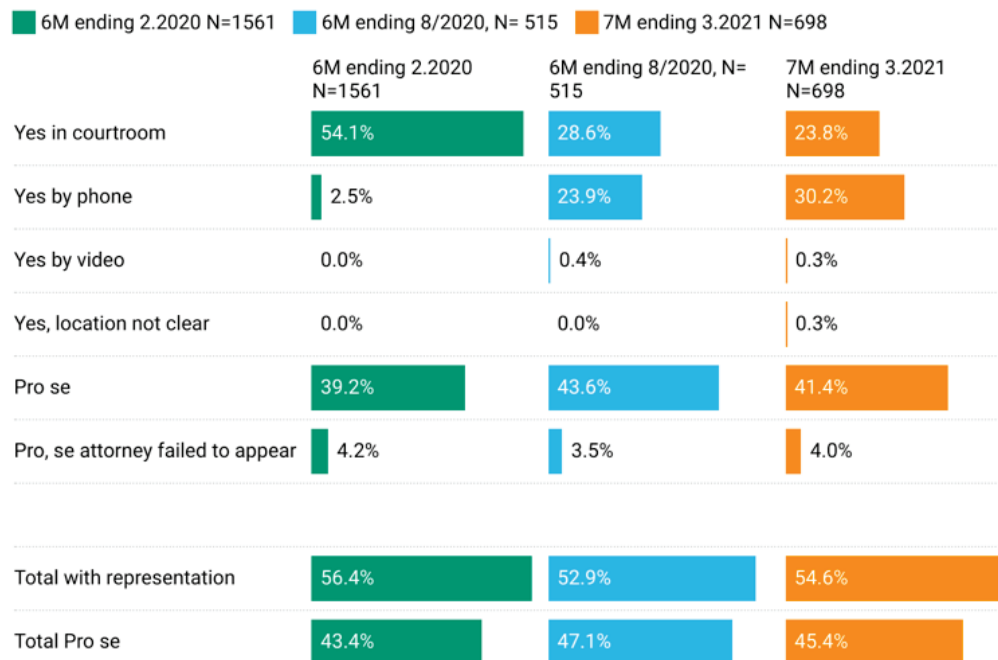
Since the inception of this project in 2017, Mexico has been the most prevalent country of origin for respondents appearing on the detained docket of the Fort Snelling

Immigration Court, consistently followed by Guatemala and Honduras. El Salvador, Somalia, Ecuador, and Liberia have consistently been among the top ten countries of origin. For the last year and a half, South Sudan and Burma have been among the top ten countries.

During this reporting period we saw people from 44 countries, in addition to those listed above, respondents came from Australia, Bhutan, Bosnia, Burkina-Faso, Cambodia, Cameroon, Canada, Chad, China, Cuba, Democratic Republic of Congo, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Ghana, Guyana, Jamaica, Kenya, Nepal, Nicaragua, Nigeria, Pakistan, Philippines, Republic of Palau, Romania, Sierra Leone, South Korea, Thailand, and Vietnam.

6 M ending June 2019, by # of hearings	6 M ending February 2020, by # of hearings	6 M ending August 2020 by # of individuals	6 M ending March 2021 by # of individuals
Mexico- 43.0%	Mexico- 40.2%	Mexico- 35.9%	Mexico- 40.4%
Guatemala- 9.4%	Guatemala- 11.7%	Guatemala- 13.0%	Guatemala- 8.2%
Honduras- 5.1%	Honduras- 7.0%	Honduras- 8.0%	Honduras- 6.3%
El Salvador- 4.5%	El Salvador- 5.4%	Somalia- 6.4%	Ecuador- 5.9%
Cuba- 4.5%	Somalia- 4.7%	El Salvador- 4.0%	Somalia- 5.1%
Somalia- 4.4%	Ecuador- 4.5%	Laos- 3.3%	El Salvador- 3.9%
Liberia- 3.9%	Cuba- 2.9%	Ecuador- 2.9%	Laos- 2.4%
Nicaragua- 3.2%	Liberia- 2.1%	Liberia- 2.2%	Liberia- 2.0%
Ecuador- 2.9%	Burma- 1.8%	Burma- 1.8%	Burma- 2.0%
Spain- 1.8%	South Sudan- 1.5%	South Sudan- 1.5%	South Sudan- 1.6%
India- 1.8%	All Others- 18.7%	Cuba- 1.5%	Columbia- 1.6%
All Others- 15.5%		All others- 19.7%	Sudan- 1.6%
			All Others- 19.2%

LEGAL REPRESENTATION



The percentage of people represented by attorneys increased slightly from the early months of the pandemic, from 52.9% to 54.6%. Remote attorney appearance, mostly by phone, continued to increase substantially over pre-pandemic levels with more than 30% of attorneys appearing remotely for bond or master calendar hearings. This reporting period saw the introduction of WebEx, a secure videoconferencing system, to the Fort Snelling Court. Government attorneys also began remote appearances during this reporting period, though the observation form did not track this.

Attorney Didn't Appear:

In cases monitored between March 2021 and August 2021, observers reported that the respondent's attorneys failed to appear as expected in 4 percent of cases. Observers documented instances where respondents appeared to expect an attorney who did not show up. While observers could not determine where the confusion arose in these cases, it may be the result of the speed at which cases are scheduled on the docket; confusion about whether the lawyer was hired for only a bond or a removal hearing or to represent the person in both; and difficulty communicating with attorneys. These cases highlight the difficulty respondents have in finding legal representation and communicating clearly and easily with family, counsel, and the court.

"These hearings get scheduled so fast the attorney isn't aware of the hearing."
Immigration Judge

Observers reported several instances of the bond hearing getting scheduled before the attorney, having just been hired, was able to file a motion to with the court to request more time to prepare. Observers also reported a few cases of the respondent giving the name of an attorney who had not filed an appearance in the case. Sometimes a respondent gave only the first name of an attorney who had not entered an appearance with the court and whom the court could not identify. In a few cases the

respondent reported that the family had hired an attorney, but the respondent did not know the attorney's name and no attorney appeared in court.

RESPONDENT'S APPEARANCE AT HEARINGS

All detained bond and master calendar hearings were held via Video Tele-Conference (VTC) or telephone because this entire reporting period occurred during the COVID-19 pandemic. People appeared by VTC in 97% of hearings and by telephone in 1.3% of hearings. Respondents did not appear in 1.7% of hearings that went forward in their absence.



Reasons for audio connection only:

- Respondent had been deported, only audio remote connection from other country (1)
- Video in jail was not working (4)
- Screen was frozen on empty room or on a previous respondent's image (4)

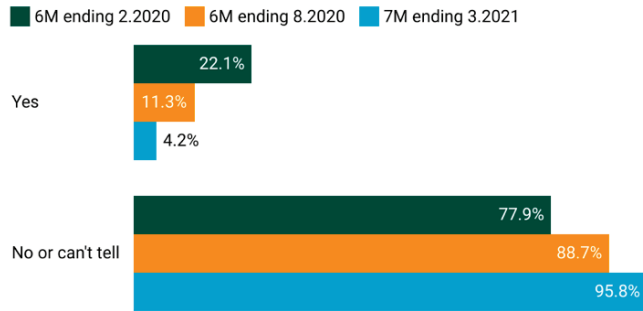
Observers found a frozen screen especially problematic and dehumanizing. *“Frozen screen doesn't allow a person's humanity.” “Sometimes they [the Judge] couldn't even tell if the person was there or not. How does that uphold human dignity?”*

Reasons detainee didn't appear:

- Deported (4)
- Attorney waived appearance (2)
- Couldn't connect with jail (2)
- Case was terminated (1)
- Respondent was in quarantine (1)
- Attorneys agreed to bond in advance (1)
- Out on a writ for criminal case (1)

SUPPORTERS IN COURT

Support by family, friends, and community at hearings dramatically decreased since the onset of VTC hearings. During this reporting period, supporters were present in only 4.2% of hearings. While the cause for the decrease in family presence is unknown, there are many plausible explanations: fear of contracting the COVID-19; not being aware that supporters were still allowed to attend court in-person; remote appearances by attorneys and inability to connect with counsel at court; economic hardship of travel or missed work exacerbated by the pandemic; and the unsatisfying nature of video compared in-person appearance of their loved ones.



In the chart to the left, “No or can’t tell” includes cases when an observer wasn’t sure for whom the supporters were present and attributed them to another person’s case.

LANGUAGE

Language Preference

People requested interpretation in a total of 16 languages during this reporting period, fewer than the number of languages requested in the past. The primary languages of respondents this reporting period include: Burmese, Dinka, English, Hmong, K’iche (Quiche), Karen (or Karen Sgaw), Mandarin, MWW/Hmong (or possibly Nyaw, a Lao dialect), Nuer, Somali, Spanish, Swahili, Thai, Tigrinya, Urdu, and Vietnamese.

This following chart compares the requested language over the past several reporting periods. In this report, we were able to analyze requested language per hearing and per each unique individual. Some individuals requested their native language for some hearings and English for others. The percentage of Spanish and English Speakers combined has averaged 88% over the last 4 reporting periods.

	6M end 6.2019	6M end 2.2020	6M end 8.2020	7M end 3.2021 by hearings	7M end 3.2021 by individuals
Spanish	64.9%	61.7%	48.4%	53.2%	57.0%
English	24.9%	30.0%	31.7%	37.2%	33.2%
Somali	0.5%	1.2%	4.5%	1.7%	2.0%
Karen		0.3%	1.6%	1.3%	1.6%
K’iche	1.3%		1.0%	2.0%	1.2%
Hmong	0.4%	0.3%	1.0%	0.6%	0.8%
Tigrinya				0.6%	0.4%
Mandarin	0.9%	0.8%		0.3%	0.4%
Burmese				0.3%	0.4%
MWW				0.3%	0.4%
Swahili				0.3%	0.4%
Urdu				0.3%	0.4%
Dinka			1.2%	0.1%	0.4%
Arabic		0.5%	1.6%		
Amharic			1.0%		
Bengali	0.6%		0.8%		
Russian			0.8%		
French	0.9%	0.5%			
Remainder	5.6%	4.7%	6.4%	1.8%	1.4%

Interpretation

The observation form failed to adequately capture all the permutations of interpretation during the COVID-19 pandemic. Interpreters may have been in the courtroom with the judge; in the courtroom with the observers appearing on video for the respondent; or by audio only. The interpreter may have appeared via video from home or another courthouse, again visible to the respondent or only via audio. The interpreter may have been audio-only from an interpreter service or on contract from another court. Sometimes technical problems kept scheduled video appearance from working and allowing audio-only.

September 3, 2020, saw the return of simultaneous interpretation for Spanish speakers, as the detention facilities figured out phone connections and headsets. There were frequent glitches and thus consecutive interpretation was still the norm. With the exception of one Somali interpreter, simultaneous interpretation was only available in Spanish. For other languages, an interpreter service via phone allowed only consecutive interpretation.

Observers noted several instances of the judge's failure to ask the respondent if they could hear and understand the interpreter.

Interpretation Problems

Problem	#	Comment
Multiple attempts to find interpreter	8	For 3 of these the hearing was conducted in English, for one K'iche speaker was conducted in Spanish, for 3 other K'iche speakers and one Tigrinya speaker an interpreter was eventually found
Not preferred language	11	For 9 of these, hearing was conducted in English, for 2 K'iche speakers hearing was conducted in Spanish. For 4 of these, the attorney waived, 5 of these individuals were pro se. Requested languages: Hmong, Karen, K'iche, Somali, Spanish, Thai, Tigrinya, Urdu, and a Lao dialect (either MWW or NYAW)
Technical problems	28	Many instances of phone connection breaking up and static on the line, several complaints of background noise, several instances getting disconnected, trouble initially connecting, inconsistent volume. Not everyone could hear each of the speakers. One guard accidentally hit a button that muted everything; it took a while to figure out. For one, tech problems delayed start, attorney waived interpretation, poor connection with Somali interpreter, continued in English). Not listed as a tech issue in # to right, but because of all being remote, there are transmission delays, it can be unclear who is talking, especially with lack of visual clues, so lots of people inadvertently talking over or interrupting each other.
Incomplete interpretation*	23	Common to only summarize at the end or to let someone speak a long time without a pause for interpretation, not interpreting conversation that detainee overhears before on record (" <i>How do they know they aren't being talked about?</i> "), being less thorough after technical delays.

* Incomplete interpretation occurrence is likely underestimated, as not all versions of the form prompt for completeness/incompleteness, and when present was often left blank. With the resumption of simultaneous interpretation, incomplete interpretation was less frequent than at the beginning of the pandemic.

These quotes sum up several of the challenges with interpretation:

“Most of the hearing was not translated (Interpretation was by phone, but not simultaneous). When the hearing was adjourned, the detainee asked the guard if he could post bail. Judge said, ‘Bring him back! Bring him back!’ Attorney said, ‘Was none of that translated? Oh my god!’ Judge recapped and asked detainee if he understood and he very quietly said yes.”

“There was feedback in the audio for this entire hearing. The interpreter told the judge that it was making it hard to interpret but the judge did not hear the feedback and asked her to proceed. She did, but it appeared that she was having a hard time hearing the detainee and the judge at times. At two points in the hearing, the judge and detainee's attorney talked for extended periods without any interpretation. Then the judge asked the interpreter to interpret 5 minutes of conversation, which she did. That seemed a little suspect because I'm not sure how she could capture that much conversation.”

“There was trouble reaching an interpreter. Something wrong with judge's phone. Calls kept getting disconnected and then his system froze and needed to be re-booted. Eventually he used a desk phone not connected with the VTC.”

These comments show when it works:

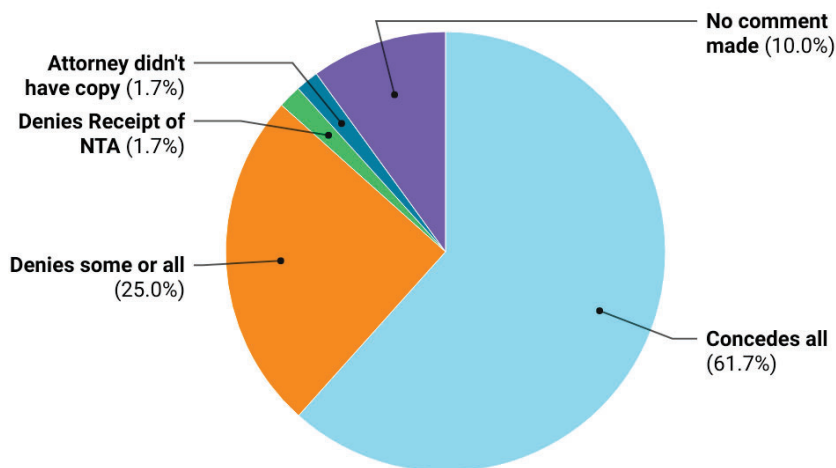
“Interpreter was excellent -- even interrupted the judge to make sure he interpreted chatter between the judge and the on-camera detention center guard.”

“Attorney and interpreter worked together word by word slowly and effectively. Impressive.”

“[Name] provided all the Spanish translation today. She does simultaneous translation, which helps the hearings go so much faster. She is really easy to understand. So NO problems with translation.”

PLEADINGS

The revised observation form, beginning in January of 2021, contains new questions about pleadings. The revised observation form has several check boxes to denote how the respondent responds to the allegations and charge of removability during pleadings. Pleadings were taken in 174 of the hearings during this reporting period, 60 of these hearings were since the new questions were added to the observation form.



The respondent conceded all allegations and charges in nearly 62% of cases. They denied some or all of the allegations and charges in 25% of cases. There were some instances where the only comment made was that the attorney had not received a copy of the NTA or that the respondent denied ever

receiving a copy. Ten percent of observers did not comment on pleadings other than to note that they occurred.

The pleadings stage of a removal hearing sets the trajectory of the legal case by ICE against the individual. Removal proceedings legally begin when a Notice to Appear (NTA) is filed with the immigration court. The NTA lays out which federal immigration laws ICE believes the individual has violated. The NTA also includes any factual allegations (such as when the individual's authorized stay in the United States expired or that a person was convicted of a deportable crime) to support the legal charges against the person. In court, the immigration judge reviews the factual allegations and legal charges brought by ICE in the NTA and asks the person who is charged with being removable from the United States to respond to those allegations and charges.

Admitting to certain factual allegations or conceding certain charges can impact a person's eligibility for bond and for defenses to deportation. In the instances where the respondent or their attorney denied the factual allegations, most disputed the details about criminal convictions. There was one case with a dispute about the respondent's legal name, a couple cases denying the charge of deportability, and a couple cases with a dispute about the country of citizenship.

In addition to responding to factual allegations and legal charges, the judge asks respondents to designate or to decline to designate a country of removal. Respondents declined to designate in 25% of cases observed during this reporting period. People seeking asylum, withholding of removal, or protection under the Convention Against Torture typically "decline to designate" a country of removal to avoid a contradiction with their claims for protection. Though the immigration judge will then direct that the person be removed to their country of citizenship, the refusal of the respondent to designate a country the respondent's way of saying "Do not send me back to a country that I fled."

Comments About Pleadings:

"The judge went ahead with the pleadings even though, he said he had an attorney. She did this because he said he wanted to go back. The judge asked if he would rather wait and talk to the attorney. The detainee said his sister told him he wouldn't be able to stay because of a Fargo conviction."

"The detainee said he did not remember signing the Notice to Appear. Right away the judge said that it had a signature on the papers she would declare they were his signatures."

"Does not think he is removable due to when his mother received citizenship"

"Respondent's attorney admitted the detainee had been convicted of an aggravated felony conviction in 2019 but then disputed this charge during the pleadings. She said she believes that her client is eligible for post-conviction relief. When the attorney tried to deny removability, the Judge sustained the removability, saying that if the attorney is successful later at overturning the conviction, they can consider that in the upcoming hearing."

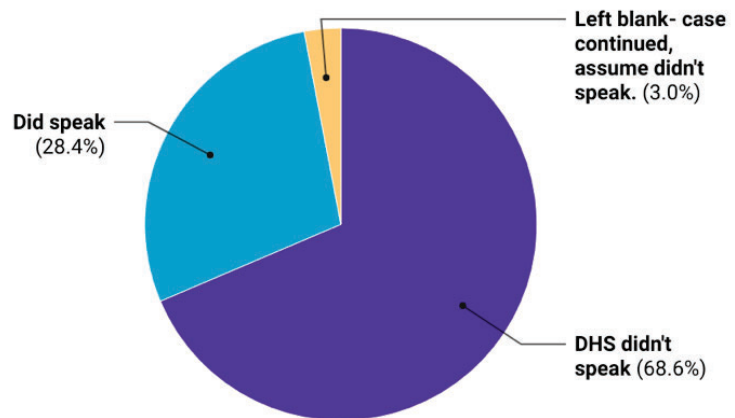
"Detainee said that he didn't know if he'd entered legally in 1998 (he was 4). Judge responds by saying she finds him deportable."

"Respondent's attorney said that the detainee is NOT a citizen of Sudan. He should be considered a citizen of South Sudan or stateless, but not Sudan. So Judge agrees to not designate a country of removal."

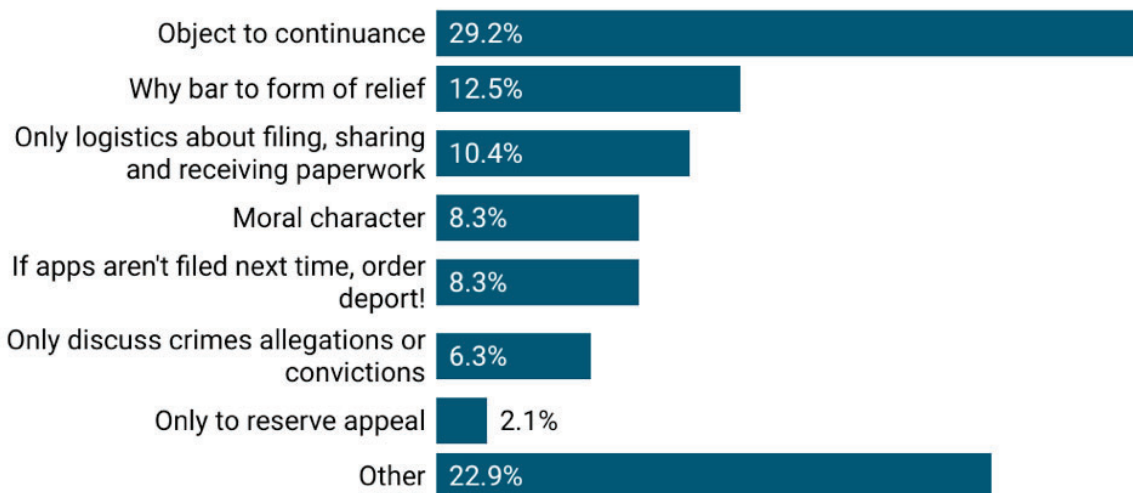
DHS ATTORNEY ARGUMENTS

After years of anecdotal comments about the DHS attorneys being either excessively argumentative or largely disengaged/silent, a question was added to the observation form beginning January 2021. The form now asks about the primary argument by the DHS attorney, with a checkbox if the government attorney did not speak. There were 169 unique removal hearings where this question was asked.

The DHS attorney did not speak at all in 68.6% of the removal cases observed where this question was asked.



In the 28.4% of observed cases where the government attorney did speak, the most common reason (29.2%) was to object to a continuance. In some cases, DHS actively argued against a continuance; in other cases, DHS simply asked to register an objection on the record, typically when a respondent wanted more than one continuance to find an attorney. In an additional 8.3% of cases, DHS argued against respondents' requests for additional time to complete forms. *"DHS stated they would like the application for relief to be deemed abandoned if not complete at the next hearing."*



Observer Comments about the DHS attorneys

Observers noted several instances they perceived DHS attorneys to be rude, disinterested, or otherwise unprofessional in the courtroom.

"The DHS attorney said virtually nothing. The judge was doing all of DHS' work."

"[Respondent's] attorney (firm/clear) did a great job countering DHS (angry/harsh/shrill) arguments."

"DHS attorney was loud, impatient and argumentative."

"DHS was really rude and kept laughing throughout the trial."

"DHS opposes continuance (quite rudely by the way)."

"The DHS attorney was twirling her hair and reading news stories during the hearing."

"DHS attorney speaks loudly with urgency and contempt."

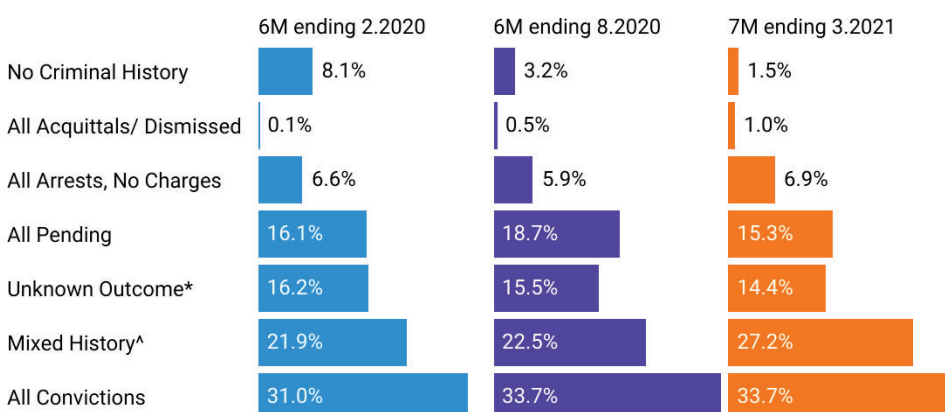
CRIMINAL HISTORY

For immigrants, an encounter with police often leads to an encounter with ICE. Mandatory detention laws mean that non-citizens with convictions for a range of low-level to more serious crimes must be detained by ICE throughout the pendency of their removal cases and cannot be released on bond. As a result, the proportion of people with criminal histories is disproportionately high for those in ICE detention compared to non-detained people facing removal or to the immigrant population as a whole.

This reporting period occurred during a period of decreased immigration enforcement due to both the pandemic and President Biden's new ICE enforcement priorities. As a result, a higher percentage of respondents were detained following an arrest or a release from prison (as opposed to workplace, raids, arrests at home, or general sweeps) than in prior reporting periods.

We collated all observer reports for each individual respondent to analyze what was stated during each of multiple observed hearings for each respondent. This is important, as arrests, charges, and convictions might not be discussed at each of a respondent's multiple court appearances. Out of 255 individuals seen in court, there was no discussion of criminal history in 56 (22%) of cases. It's possible it was discussed in hearings prior to or following the reporting period or that it was just never mentioned in master calendar or bond hearings. We cannot assume that no mention means there have been no arrests, but that is certainly a possibility, at least in some of these cases. Observers documented seventy-eight percent (199 individuals) reporting some sort of police encounter. This is significantly higher than the previous reporting period in which 64% of respondents were known to have had an arrest, charge, or conviction. This may or may not indicate an increase in criminal encounters, it may simply be an indication of what was discussed during the observed proceedings.

Criminal History if Discussed

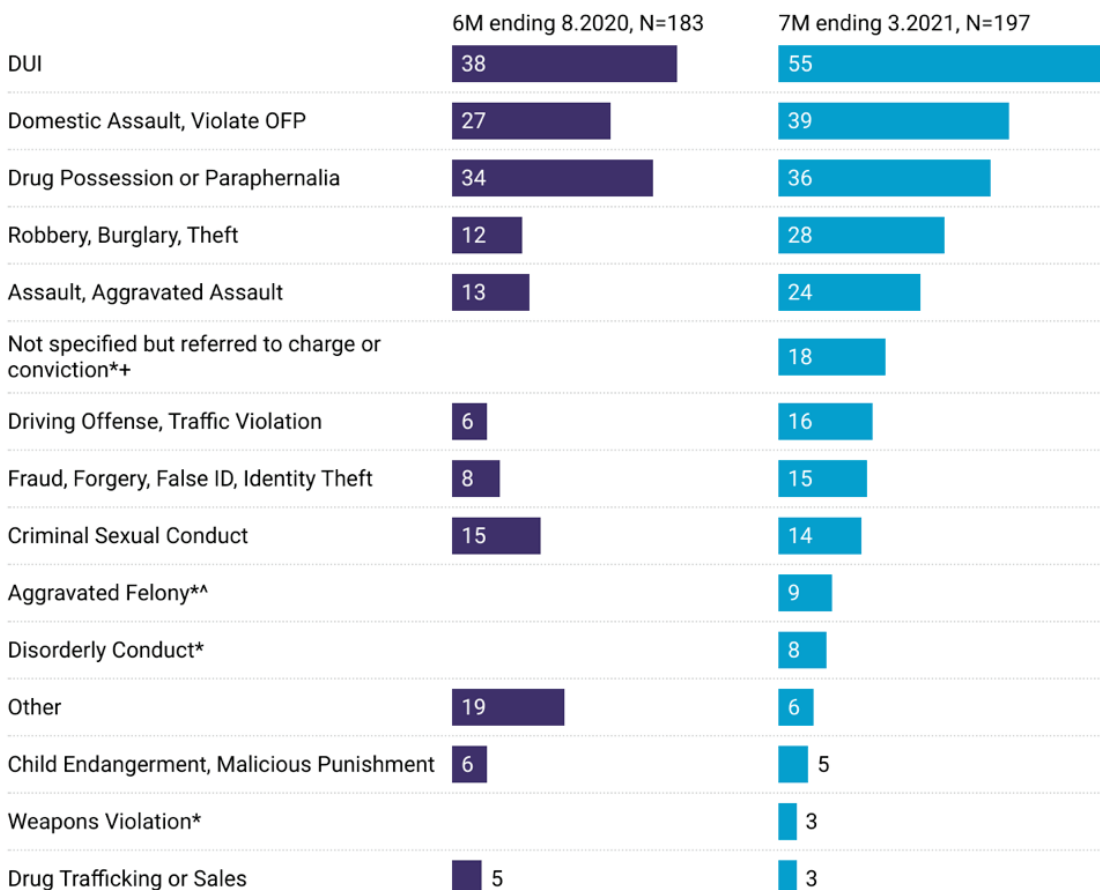


* Unsure outcome: There has been an arrest or a charge but it is not clear if it is pending, dismissed, or resulted in a conviction.

^ Mixed history: There is at least one conviction, plus other pending cases or cases with unsure outcomes.

Crime By Type

The following chart combines individuals with an arrest, but not charged; pending cases; convictions; and cases on appeal. It includes one where a conviction was vacated and a couple where drug crimes were expunged after a diversion program, but these still count as convictions for immigration purposes. Two respondents for whom cases were dismissed are not included below. The number of crimes exceeds the number of respondents with a criminal record as some respondents had multiple arrests or convictions. In many instances, a single arrest led to multiple charges.



* Some crimes were classified in this reporting period that may not have occurred in the previous reporting period or that were lumped together under “Other” in the previous report.

+There were instances where there was note of a conviction or arrest record but the details were not discussed. These appear under “Not specified”.

^ Some people were specifically noted as having an aggravated felony conviction, which carries significant immigration consequences. It was not clear in the cases where an aggravated felony was listed in addition to other specified crimes whether the criminal sentence in a specified crime qualified as an aggravated felony or if the aggravated felony was a distinct conviction. There may be some crimes counted under both categories.

The criminalization of addiction is a crisis in the United States, and it carries significant immigration consequences. As has been the case since this project started, arrests and convictions for DUI (driving under the influence) have been the most prevalent. As one observer noted:

“When are we going to stop treating drinking crimes as moral failures instead of medical problems? Even the NIH and DHHS define addiction as a medical issue.”

This is the first time since the project began that arrests and convictions for domestic assault were more prevalent than for drug possession.

BOND

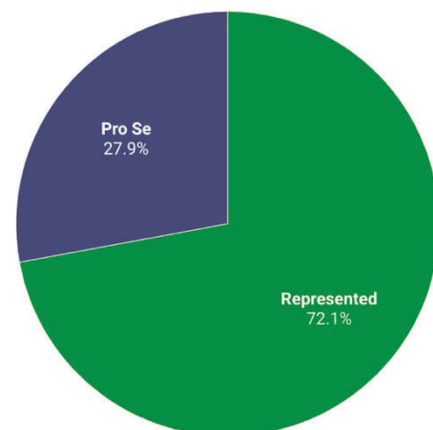
Federal law permits the detention of people pending their removal hearing and, in some cases, federal law mandates detention without bond. People detained by ICE may request a custody redetermination hearing before an immigration judge to lower a bond set by ICE or to set a bond if ICE has declined to set one. People detained by ICE under mandatory detention laws can request that the immigration judge examine whether ICE’s decision is accurate, but an immigration judge cannot order someone released who is subject to mandatory detention.

People who are statutorily eligible for release – those who are not subject to mandatory detention – have the burden of proving that they are not a “danger to society” or “flight risk.” To get review by the immigration judge, the respondent must request a bond hearing. Many people file this request at the time they are “processed” by ICE, meaning that their hearings often happen very soon after being detained and frequently before they have the opportunity to consult with a lawyer. Federal regulations limit people to one bond hearing before an immigration judge, unless they file a written motion showing that their circumstances have changed materially since the prior bond redetermination.

In this section, we looked at hearings where the bond hearing actually took place, excluding those where the bond request was withdrawn or the case was continued.

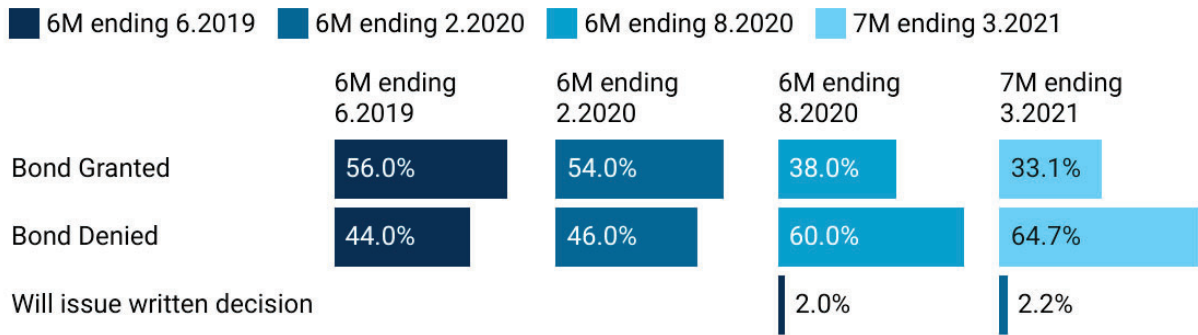
Bond Representation

People without attorneys often asked for continuances to find an attorney. It was very rare for someone who was pro se (non-represented) to get more than one continuance to find an attorney; this occurred only 3 times during the 7-month reporting period. Most multiple continuances occurred at the request of an attorney who needed time to prepare. At their final bond hearing, 72.1% were represented and 27.9% were pro se.



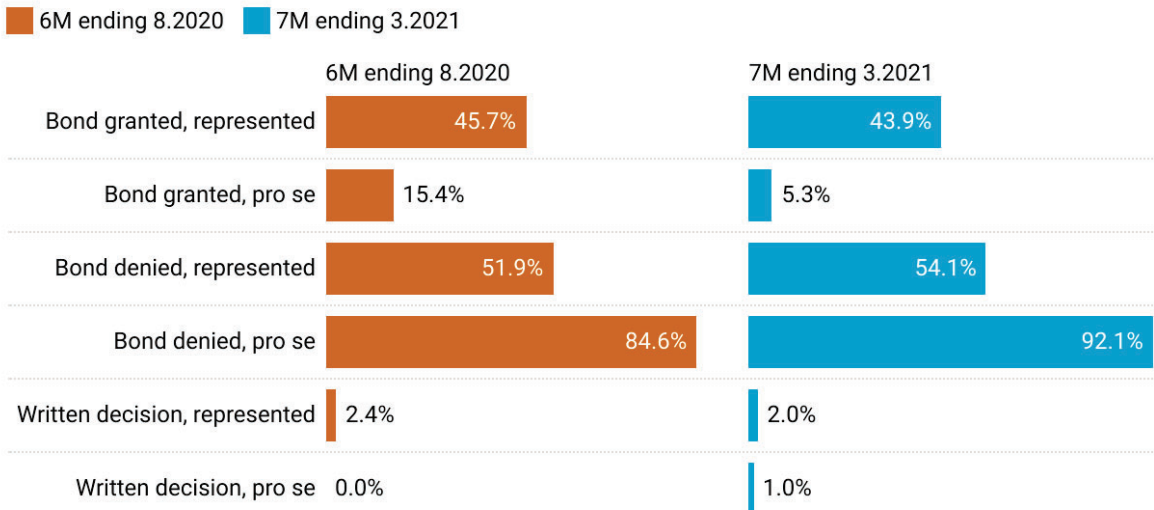
Bond Decisions

Bond grants in the previous two reporting periods, both during the COVID-19 pandemic, were significantly lower than pre-pandemic rates. This is probably a result of COVID-related factors: decreased internal immigration enforcement resulting in a greater proportion of people in detention being turned over to ICE from jails or prisons and increased parole of people by ICE due to COVID-19 risks. People with a criminal record are more likely to be deemed a “danger to society” and denied bond, even if they are not subject to mandatory detention. In essence, if people in detention during the reporting period are more likely to have a criminal record, we expect fewer bond grants.



Impact of Representation on Bond

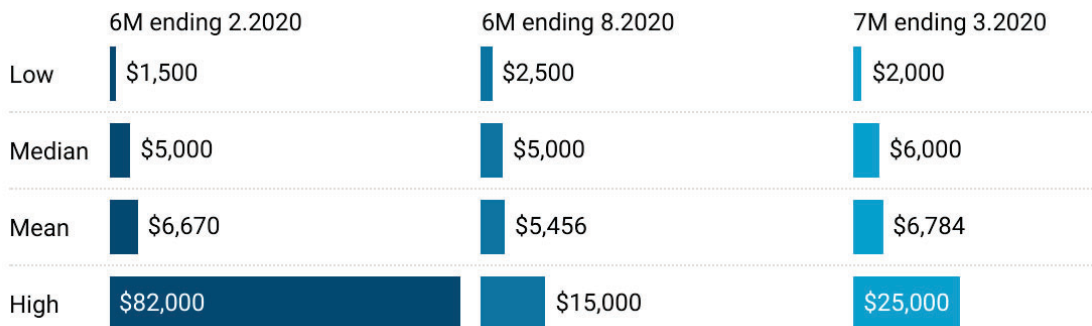
The single biggest factor in a bond case appears to be attorney representation. **Of the 45 cases where the individual’s bond request was granted, 95.6% had an attorney.** While attorneys may decline to represent a case where they believe a person is unlikely to be granted bond, this alone doesn’t account for the overwhelmingly different outcomes between represented and pro se cases. Only 5.3% of pro se respondents were awarded bond in this reporting period. The disparity between represented and pro se respondents in winning release on bond is greater than at any time since the Immigration Court Observation Project began.



Bond Agreements

When a person is represented, their attorney will often reach out to the DHS attorney to negotiate on bond. When the two parties reach an agreement the immigration judge typically grants bond in the agreed upon amount. The respondent and the government attorney reached a bond agreement in 11.2% of bond cases that proceeded. (This calculation excluded represented cases that were continued and bond requests that were withdrawn). The ability to negotiate likely impacts the success rate for represented individuals.

Bond Amount Granted

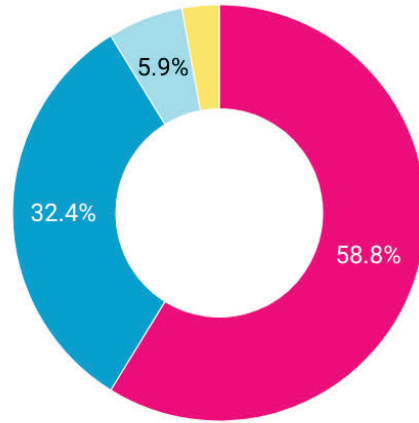
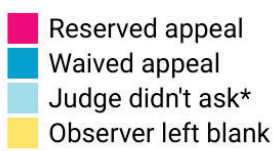


The immigration judge does not consider a respondent's ability to pay, a serious due process concern. As in criminal court, immigration court penalizes poverty. Observers regularly report that a lack of funds causes people to give up and ask to be deported.

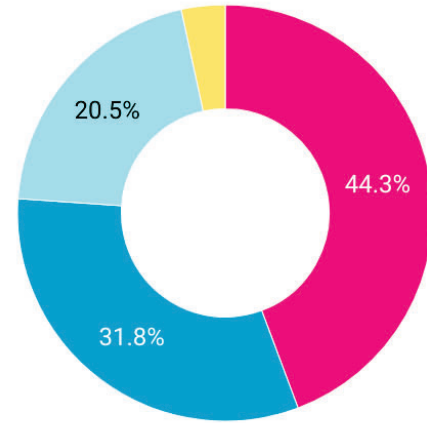
The statutory minimum bond is \$1,500, but judges at the Fort Snelling Immigration Court have not granted any bonds as low as \$1,500 in the last two reporting periods. The median is typically the most instructive for understanding how a court grants bonds as the mean bond can be skewed by an excessively high bond. The median bond has increased beyond \$5,000 for the first time since this project began observing in 2017.

Appeals of IJ Bond Decision

Both the respondent and DHS have the right to appeal the immigration judge's decision to set bond. Appeals must be filed within 30 days of the decision. The immigration judge typically will ask if either party wishes to reserve appeal; if not asked, the right to appeal is reserved. The graphic below shows the percentage of time DHS reserved appeal for a bond grant and the respondent reserved appeal for a bond denial. There were no instances in this reporting period of the respondent reserving appeal when bond was granted, although this sometimes occurs when the immigration judge orders a very high bond amount.



DHS



Respondent

The above chart shows when parties reserved appeal. The observation project does not have a way to track whether the parties actually filed appeals in these cases or the outcome of any appeals.

DETAINEES GIVE UP AND ASK TO BE DEPORTED

Each stakeholder report examines cases in which detained people give up and ask for a removal order either prior to filing an application for relief, or after filing but before a hearing on the merits of their application.

People give up because for many reasons, including that detention itself is corrosive and coercive. Fighting for the ability to stay in the United States takes a long time, especially if there is an appeal, meaning that detention is prolonged and indefinite. Many choose deportation after bond is denied, reporting they cannot continue to live in the dehumanizing conditions of detention. And, for many, the separation from family is stressful and heartbreaking.

Prolonged detention also causes extreme financial burdens. Those detained are unable to work, which can prove devastating when the family breadwinner is detained. Bonds, if they can even get one, are extremely high. People often must choose between hiring an attorney, supporting their family, or having money left when deported.

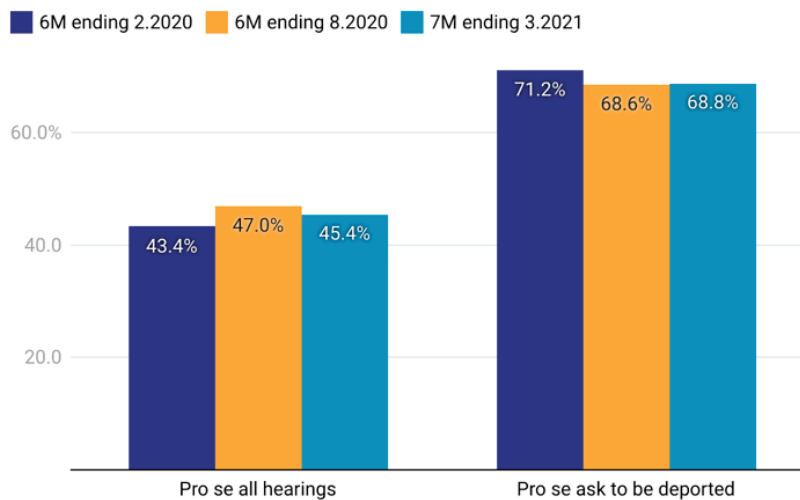
Some people choose not to languish in detention given the relatively small chance of being able to stay permanently in the United States. Immigration law has few ways to gain lawful status and many ways to lose it, and many people have no defense to deportation. Those who do have a viable deportation defense face steep odds of ultimately winning their cases. People in detention have scant access to legal information in languages people can understand or to the evidence they need to prove their cases. Access to legal counsel is extremely limited, despite data suggesting that legal representation substantially increases the likelihood of prevailing. And, even when people win their cases in front of a judge, DHS appeals lead to prolonged detention.

The pandemic added additional stresses: vulnerability due to COVID in detention, additional financial strain on families, increased difficulty obtaining documents, accessing the telephone & law library, and

the despair from increased isolation, lockdowns, and solitary confinement. Observers also noted that sometimes the needs of family in their home country compel respondents to return.

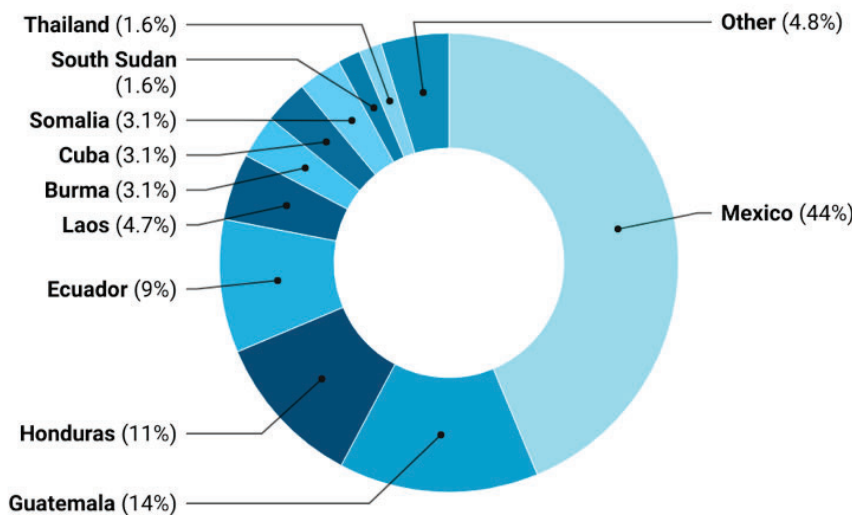
In this 7-month reporting period **64 people asked for a removal order** during a master calendar hearing, without waiting for the immigration judge to look at the merits of their case. **This amounts to 25% of all individuals seen in court over this reporting period.** This is a significant increase over the previous reporting period, where 17% of people gave up and asked for a removal order. Of those who asked for deportation, one person received a continuance and went on to have a merits hearing; the remaining 63 received deportation orders. Four of these individuals asked to be deported immediately following the denial of their bond requests. The average length of time these individuals had lived in the United States, when known, was 12.3 years, just slightly below the 12.5 years for all of the respondents seen in court. Five percent of people asking for a removal order were women and 95% were men.

Pro Se Individuals Disproportionately Ask to be Deported without Hearing



Being unrepresented correlates strongly with people’s decision to give up and ask to be deported. While respondents were pro se in 45.4% of observed hearings, 68.8% of those asking to be deported were pro se.

Asking to be Deported

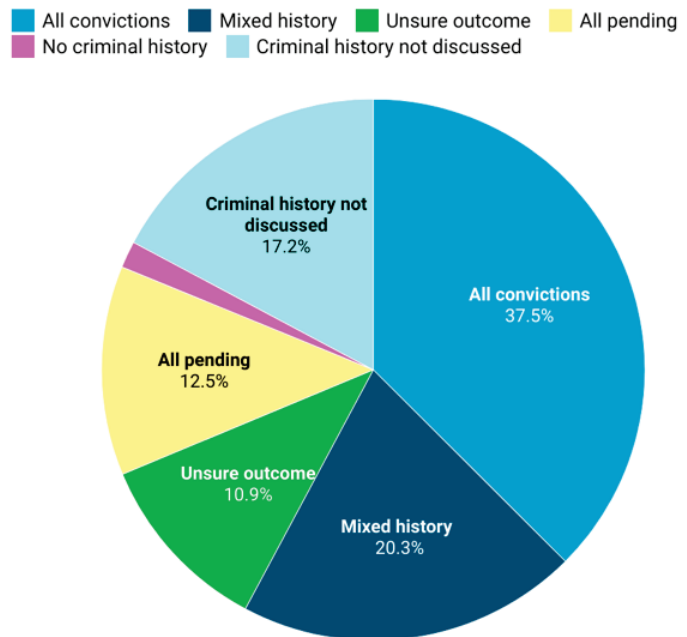


Country of Origin: Those

As with the last reporting period, people from Mexico and Central America were overrepresented among those who asked to be deported compared to their prevalence in the total population of respondents seen in court.

Criminal History of Those Asking to be Deported

In 17 percent of the cases where the respondent requested a removal order criminal history was never discussed (including in preceding or following hearings). Looking solely at those respondents where criminal history was discussed, we compare the group of respondents who asked to be deported to the overall respondents appearing in court during this reporting period. Those who asked to be deported are more likely to have at least one conviction (69.8% vs. 60.9%), about as likely to have a criminal charge where the outcome is unknown (13.2% vs. 14.4%), and less likely to have pending charges or a pending trial (15.1% vs. 22.2%). The percentage of people with no criminal history or all acquittals is roughly the same between the two groups (1.9% vs 2.5%). It is plausible that criminal bars to deportation defenses play a role in people giving up and requesting a removal order.



Voices of those asking to be deported

"My asylum application involves the threat of kidnapping. Now they are threatening my family in Mexico. I will have to waive my right to asylum because I don't want anything to happen to my family in Mexico. Judge asks, "Are you asking for removal?" Respondent replies, "Unfortunately yes."
 Male from Mexico, eligible to apply for asylum; length of time in US unknown, unknown if family here.

"It would have been easier to fill out applications [withholding of removal] if I had bond. Since I have been denied bond, I want deportation."
 Male from El Salvador, eligible to file I-589 withholding of removal; 17 years in US, sister and mother are LPRs, brother is US citizen.

"I've been detained 15 months already. If I can't get bond, I want to be deported."
 Male from Mexico, eligible to file I-589 asylum; 21 years in US, mother LPR, father has U-Visa.

"I'm not going to fight my case. I want to be deported back where I came from. I don't have any money. I don't want to be here. I don't want an attorney. I don't want to fight my case. I'm not going to win it."
 Male from Mexico, eligible to apply for CAT, U visa, T visa; 15 years in US, unknown if family here.

"I don't want to fight the case or anything. I just want to get it over with."
 Male from Laos, eligible to apply for cancellation, Withholding of Removal, CAT; 32 years in US, unknown if family here.

"Yes, it's a big decision but I want to see my mother [in Mexico] because I believe she is in danger."
Male from Mexico, eligible to apply for asylum; 4 years in US, US Citizen wife and 3 children, ages 5, 6, 11.

"With due respect, I am honest. I can't fulfill the requirements for asylum, so I want to ask for deportation." (Filed asylum but asked judge to cancel it). After the judge ordered deportation, the detainee asked if there was any way to speed up his deportation, as his mother had just died and he wanted to go back to be with his family. The judge expressed condolences before explaining that she couldn't control the deportation process.

Male from Mexico, eligible to apply for 42B cancellation, I-589 asylum; 11 years in US, girlfriend in US has child, respondent has 3 children in Mexico.

Said he would rather be deported so he can take care of his family in Guatemala rather than wait here without bond.

Male from Guatemala, relief not discussed, 2 years in US, son in US.

Respondent said he has no money for bond. Needs to see his grandmother who cared for him since age of 3 months. Says he has no other family, and she is ill in Honduras.

Male from Honduras, relief not discussed; withdrew bond request, 4 years in US, 7-month-old US citizen child.

"My family can't eat. I need to work. I can't wait for Voluntary Departure."

Male from Mexico, eligible to file 42A cancellation of removal, voluntary departure; 15 years in US, 1 US citizen child, girlfriend is pregnant.

After being denied bond at previous hearing, his attorney competed asylum application, respondent wouldn't sign while in detention. Denied voluntary departure by Judge. "It is all the same to me. I am not going to be alive for long." He said that he was a professor in Ecuador and had taught for 28 years. Stated that he will be dead so at least his children can have his pension.

Male from Ecuador, 6 years in US, brother and sister, both LPR.

"I want to be deported since my Mom needs my help in Mexico; I don't have money for bond or an attorney. I want to sign my deportation papers today. My dad died 3 years ago and had wanted to see me before he died." His mom is sick and he wants to help her, see her, and not be selfish this time. He didn't want to wait 100 days to be deported until the temporary halt under the new Biden administration, but the IJ noted she didn't have authority.

Male from Mexico, eligible for cancellation of removal, I-589, CAT; 16 years in US, 6-year-old US citizen daughter.

"I want to cancel everything. I want to go to my country. My mother is sick with advanced diabetics."
Male from Mexico, eligible for voluntary departure; 12 years in US, unknown if family here.

It is "very difficult for me to be locked up here. I'm very anxious here. If I can't apply [for relief] from outside, I want to leave".

Male from Mexico, eligible to file I-589 U visa, T visa; 12 years in US, wife without status, sister, nieces and nephew all in MN, immigration status unknown.

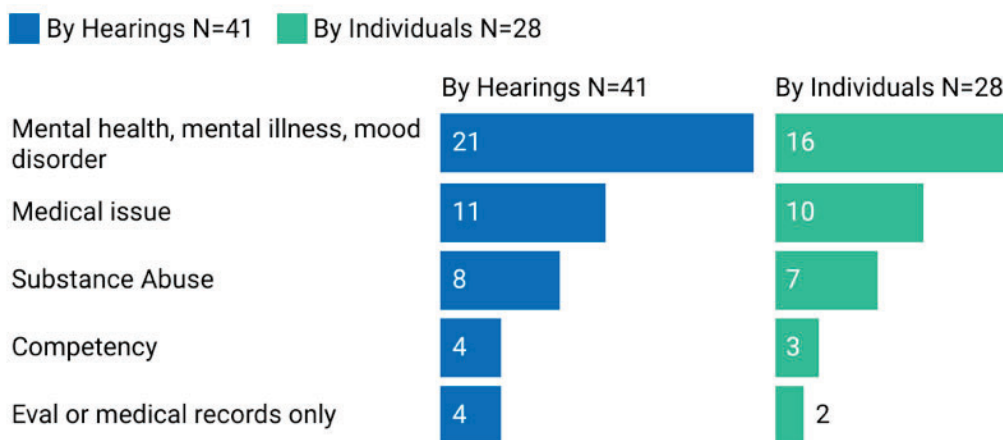
Some respondents were eligible for Voluntary Departure, a discretionary form of relief which allows them to leave without a deportation on their record. In each observed case, the DHS attorney opposed a grant of Voluntary Department and the respondent opted for a deportation order rather than wait in jail while DHS appealed. Leaving with a removal order, rather than Voluntary Departure, carries serious consequences. People who return to the United States without permission after being removed can face criminal prosecution. People who have an avenue for returning lawfully face bars because of their removal.

HEALTH CONCERNS

Observers documented some sort of medical, mental health, or competency concern or diagnosis raised in hearings of 11% of individual respondents during the reporting period. Observers documented mentions of health concerns expressed during hearings. These were categorized by the number of mentions during all hearings and also categorized per individual (consolidating information gleaned at multiple hearings for a single respondent). Several people expressed multiple concerns or raised those concerns at different hearings.

This is likely a vast undercount of health problems experienced by people in detention. Because questions about health are not a routine part of the immigration judge’s questions during bond or removal hearings, people must take the initiative to raise their concerns with the immigration judge. This lack of routine inquiry into health status means that immigration judges and DHS counsel are largely unaware of barriers individual respondents might face in withstanding detention; reading forms or written instructions; understanding oral instructions from the court; or other conditions that can impact their ability to have a fair day in court.

Medical neglect and mistreatment in our carceral system is well documented. This was the subject of a recent report from The Advocates for Human Rights, Binger Center for New Americans at the UMN Law School, and Minnesota Immigrant Health Alliance, [Immigration Detention and Covid-19: Illuminating Human Rights Concerns in Minnesota Jails](#).



Observers documented a range of serious health conditions including:

Mental health: schizophrenia, depression, anxiety, mood disorder, mood swings, bipolar disorder, suicidal ideation, suicide attempts, mental health concerns, and deteriorating mental health due to detention.

Medical: high blood pressure, thyroid cancer, back injury, pancreatitis, concussion, diabetes, physical injuries from assault, seizure disorder, headaches, upper respiratory infection.

Competency: competency concerns or issues, deemed incompetent, head injury, neuro-cognitive damage.

Substance Abuse: Rule 25 assessment, alcohol abuse, history of alcohol treatment

In addition, the need for medical evaluations or records arose in hearings, including requests for neuro-psychological exams, psychological assessment, health exam, and medical records needed as evidence in deportation defense case.

Immigration judges did seem to accommodate the need for mental health evaluations by issuing continuances, sometimes over the objections of the government attorneys. *"DHS wanted next hearing to be the merit hearing; judge denied request and said she was being 'liberal with continuance due to pending mental health evaluation.'"* A number of detainees had Rule 25 chemical dependency assessments; it was not documented who facilitated arranging the testing.

OBSERVERS EVALUATE DUE PROCESS AND JUSTICE

Since the inception of this project observers have objected to serious barriers to due process and justice. Observers' comments reveal continued concerns with systemic problems during this reporting period, including:

The lack of language resources

"Respondent has been given an Asylum application to complete in January, early February and again today. From his responses it seemed like he was having trouble completing them because of a lack of English writing skills. Judge did not appear sympathetic."

"Detainee could speak English but not very well. Could not read or write in English so was unable to fill out relief forms."

"The judge gave him the list of low cost and free attorneys but who will understand him when he calls? (Speaks Karen)"

The speed of such complex hearings

"This is my first time so this may be a norm, but I am shocked at how short this whole process is ~ 2 minutes."

"The continuance granted is WAY too short -- as always -- to find an attorney, especially with MLK day this Monday."

The absence of universal representation

"UNFAIR - An Attorney would have made a difference, but detainee didn't have the money."

"Detainee has been calling pro bono attorney numbers and none have answered. Judge tells him to keep trying."

"I don't think the detainee got a fair shot because he needed a lawyer to help him understand his situation."

Logistical and technological barriers

"Detainee's lawyer reported that they hadn't been able to file their asylee adjustment because Kandiyohi jail can't print a document that is 20 pages in length. So, she had to print documents and mail them back-and-forth with her client. This is nuts and should be fixed. I can see refusing to print a 100-page country conditions report, but they should print a 20-page legal application for a detainee."

"R states that he sent the application to the court via the mail and did not keep a copy of that application. The court did not find his application. IJ will give him another app. and she suggests that he email it to the court and keep a copy of this new application for himself. IJ wants this new application in one week. (one week; and he doesn't speak English!) R said that he would try but he needs some assistance"

"Lots & lots of technical problems delaying hearing, both audio & visual. There was a second detainee in a different room pictured on the screen during this hearing. I don't know if he could hear or see the proceeding, but this seems disrespectful if he could. At the very least, it was distracting."

The coercive nature of detention

"Detainee fears being kidnapped in Mexico but says if alternative is continuance that would leave him in jail without his family 'I would rather die than stay here.'"

The underlying racism of the system

"I have been observing for over three years, this is the first Caucasian R that I have ever seen in immigration court. Would a respondent of color have 8 felonies and just be showing up to court now?"

Lack of compassion and empathy

"Judge was UNFAIR, UNREASONABLE & HARSH"

"Judge was short, curt, and cut the detainee off."

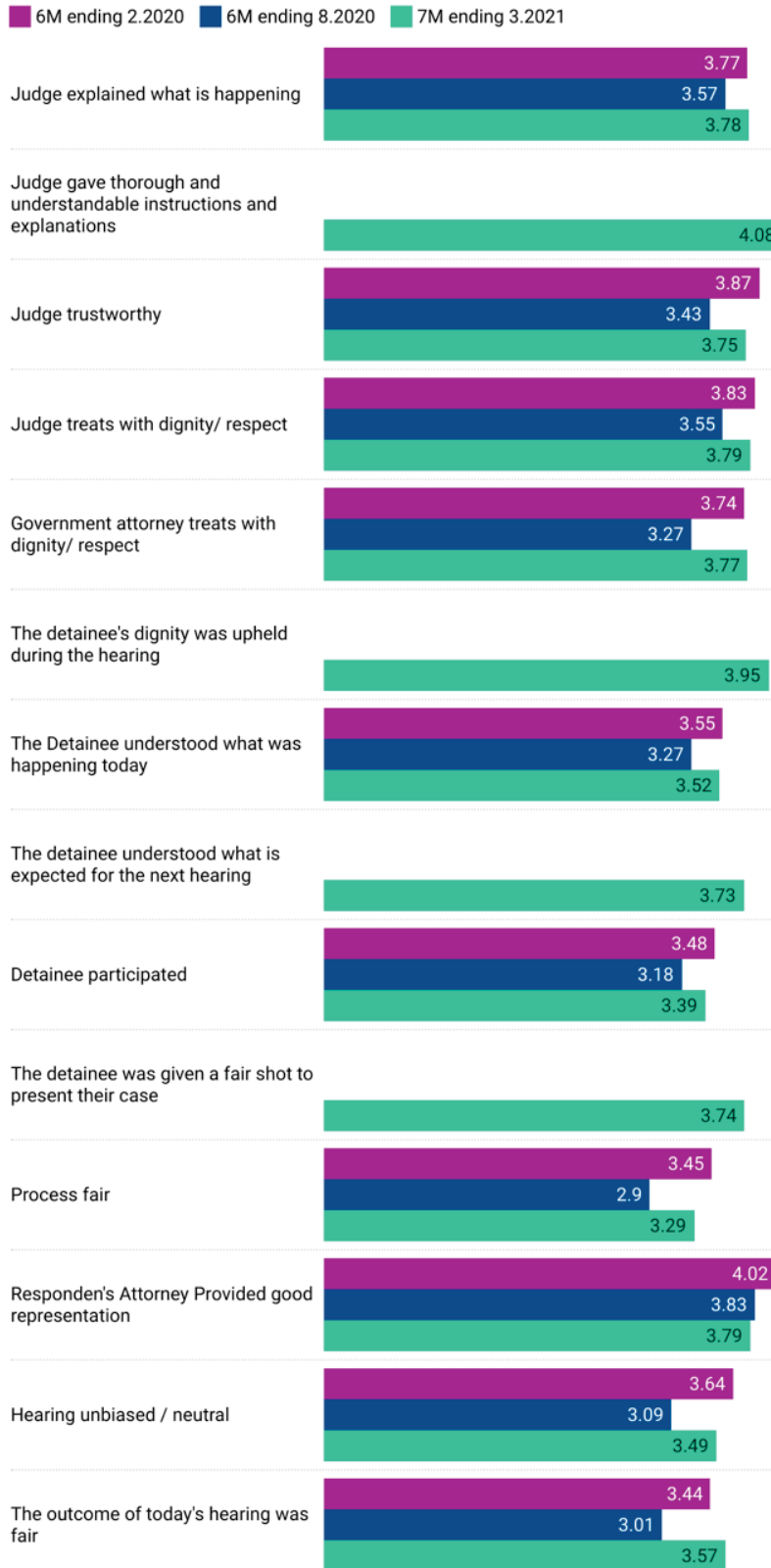
"Judge was verbally rude to detainee - shouting at him to stop talking to allow interpretation & telling him to be brief in some of his comments because she had a long docket to finish."

Inadequate avenues of relief

"The judge asked if he would be harmed if he went back to Mexico. The detainee said that if he went back to MX, he could be harmed by cartels. He said he'd be kidnaped, ransomed and then killed because that's what happens when you're deported. The judge asked 'why you?' He responded "they'll know I have family in US and will be able to pay that kind of money". His conviction is a CIMT which

ruled out some forms of relief. The judge told him that if he was not interested in any applications to stay in the US then she'll have to order him removed. He asked 'if I apply for relief, will I have to remain in jail?' Judge said yes since he was denied bond. At that point the detainee said he wanted to be deported. The detainee asked when he could come back and the judge explained it was 10 years unless he got permission to come back legally with a waiver."

Observers' subjective assessments



The observation forms asks the observer a series of subjective questions about the proceedings. The questions changed slightly in January 2021 as noted in the graphic to the left.

Overall, observers rated hearings more favorably this reporting period over the previous one. This may reflect increased comfort of the judges, attorneys, and observers with video teleconferenced hearings and improvements in interpretation (with the resumption of simultaneous interpretation.)

The Immigration Court Observation Project has given feedback to the court and shared project reports offering suggestions about upholding human dignity, assuring adequate interpretation, and facilitating respondents' understanding of proceedings (all concerns as noted on the previous page).

APPENDIX- Observation Form

Human Rights Defender Project: Court Observation -Detained Docket

Date: _____ Observer (full name): _____ This is my first shift

GENERAL

1. Last 3 digits of A#: _____ 2. Country of origin : _____

3. Gender: Male Female Transgender/ non-binary

4. Detainee Appears: in Person via Video By phone Didn't appear, reason: _____

5. Judge: Carr Hansen Mazzie Miller Sardelli Wood Other: _____

6. DHS Attorney: _____ Appears: In person Phone/Audio Video

7. Was the detainee represented? In person By phone By Video No, pro se Attorney failed to appear

Comment: _____

8. Type of Hearing : Custody/ Bond Removal Unknown Other _____

9. Detainee preferred language: _____ 10. Language (interpreter) provided: _____

11. Was interpreter used? Not needed In Courtroom By phone By video Not available Attorney waived

12. Interpretation (check all that apply) : Sequential Simultaneous, Complete Incomplete, Technical problems

Multiple attempts to find Not in preferred language Comment: _____

BOND HEARING (skip if no bond hearing scheduled today)

13. Did both parties agree to bond amount in advance? Yes, \$ _____ No (if yes, skip remaining bond ?s)

14. Bond amount requested? \$ _____ No amount specified

15. DHS's principle argument: _____
_____ DHS did not speak

16. Outcome: Bond Granted Bond Denied Withdrew bond request Continuance granted

Advised to request new hearing when ready Judge will issue written decision

17. if Granted, Bond Amount: \$ _____

18. If denied, why? Ineligible/mandatory detention Danger to society Flight risk Other _____

19. What factors were mentioned in granting or denying bond? _____

20. Did parties reserve appeal on bond? DHS: Yes No, waived Detainee: Yes No, waived Judge didn't ask

21. If Continued, next bond hearing: _____ No date given Continuance granted to find attorney

REMOVAL HEARING

22. Were pleadings taken? Yes No If yes, select all that apply: concedes all in NTA denies some or all in NTA

denies receipt of NTA denies understanding NTA detainee attorney doesn't have NTA declines designate country

Comment: _____

23. Discussion of relief? Not discussed Judge screened for eligibility

Applic. requested/Plans apply Submitted application previously Unsure/ Other: _____

Submitted application today Application Before USCIS

24. Relief applications requested, to be submitted, or pending? Not discussed Cancellation: 42A (LPR) 42B

Voluntary Departure U-Visa or T-Visa

I-589 Asylum / WOR / CAT Other/ unsure: _____

Adjustment of Status (I-485)

25. Did detainee asked to be removed (deported)? Yes No If asked for deportation, what words did detainee say?

26. DHS's principle argument: _____
_____ DHS did not speak

27. Outcome: Continuance granted Removal order (Deportation) Termination of proceedings
 Other relief granted. Specify: _____

28. If continued, next hearing Date/Time: _____/_____/_____ Next is Individual/ Merits Continued to find atty

CRIMINAL HISTORY

29. Was a criminal history mentioned? Not Discussed No criminal Hx All convictions All cases are pending
 Arrests but no charges All cases acquitted/dismissed Mixed History Unknown outcome of charges/ cases

Comments: _____

30. Any indication of discriminatory policing? Yes No Unsure Not discussed Comment: _____

EQUITIES

31. Length of time in the US: _____ Unknown 32. Entered US: Legally EWI Unk.

33. Family in the US? Yes: _____ No Unknown

34. Supporters in court? Family Other supporters Can't tell None Supporters acknowledged

HEALTH

35. Any concern about mental health, physical illness, or competency Yes No Unsure

Explain: _____

HEARING OVERALL:

For the next set of questions use a 5 point scale 1= strongly disagree 3= neutral, 5= strongly agree

- 36. The Judge gave thorough & understandable instructions and explanations 1 2 3 4 5
- 37. The detainee's attorney provided good representation N/A 1 2 3 4 5
- 38. The detainee's dignity was upheld during the hearing 1 2 3 4 5
- 39. The detainee (and/or their attorney) understood what was happening today 1 2 3 4 5
- 40. The detainee (and/or their attorney) understood what is expected for next hearing N/A 1 2 3 4 5
- 41. The detainee (and/or their attorney) was given a fair shot to present their case 1 2 3 4 5
- 42. The outcome of today's hearing was fair 1 2 3 4 5

New procedures, arguments, policies noted: _____

Additional impressions, questions, observations, quotes: _____

Detained at: Carver Freeborn Kandiyohi Sherburne IHP (Prison) Other Unknown

This 7-month data report was prepared by Amy Lange, Project Coordinator, Immigration Court Observation Project for The Advocates for Human Rights.

Graphics were prepared using Datawrapper: <https://www.datawrapper.de/>

Special thanks to court observer Tia Wilcek for helping analyze criminal history and narrative comments in the data, and to Sabine Shanaa and Avigail Bailon, interns at the James H. Binger Center for New Americans, for editing assistance.

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