HIDDEN BARRIERS TO ENTRY: LANGUAGE INJUSTICE, NOTICE, AND THE *IN ABSENTIA* REMOVAL OF FAMILIES ON LA'S DEDICATED DOCKET

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ABSTRACT

The Dedicated Docket is among the latest in a series of fast-tracked immigration adjudication systems. Enacted by President Biden in 2021, it was designed to process families' immigration cases within 300 days. Since its inception, advocates have repudiated the docket, reporting grave due process and transparency concerns. This Article supplements advocates' findings by centering the lived experiences of families placed on the Dedicated Docket. It presents empirical and narrative reporting from 88 families' cases across nine Dedicated Docket hearings in the North Los Angeles immigration court. Accordingly, this Article aims to break through systemic opacity within the Executive Office of Immigration Review (EOIR) to document the specific barriers that families encounter on the docket.

From the moment they are summoned to court to the conclusion of their cases, families confront a slew of compounding notice, language, transportation, clerical, and related due process barriers that impede their ability to access immigration relief. Among these procedural and operational deficiencies, the Docket's inadequate language access and notice procedures combine to result in a disproportionately severe penalty for many families: an in absentia *removal order. These removal orders, moreover, often target vulnerable populations, including young children, non-English speaking individuals, and People of Color. Despite assurances that families have* ™*many rights*∫ *in Docket proceedings, they are in fact forced to navigate a system– often without representation and in a foreign language– that fails to acknowledge their due process rights or humanity. This Article thus echoes advocates' repeated calls to terminate the Dedicated Docket and prevent the creation of similar expediting structures that exacerbate existing due process violations in immigration court.*

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Author's Note

I wrote most of this Article in 2024, in the shadow of a presidential election and at a time when the future of immigration policy felt uncertain but precarious. Now, as this piece goes to print, the Trump administration has unleashed a wave of enforcement and policy changes that have not only confirmed every advocate's worst fears, but have also deepened every structural injustice I document in this Article. The very barriers I describe– expedited dockets that gut due process, the thickening opacity of immigration agencies, the relentless targeting of children and families, and the growing militarization of both enforcement and the spaces where proceedings unfold– have all intensified. In Los Angeles and across the country, immigrant communities now face an environment of fear and exclusion, where attending court means risking detention and deportation, and where the few remaining procedural protections are being dismantled with alarming speed.

The stories and empirical observations in this Article are not relics of a past administration; they are a warning and a call to action. The abuses I witnessed– families ordered removed *in absentia* for missing hearings after never receiving proper notice, children forced to navigate a hostile system, and the daily indignities suffered by people of color in the name of expediency– are now more widespread and entrenched. The current administration's escalation of enforcement has made the system even more impenetrable and punitive, further exposing the myth of due process in the current immigration adjudication system.

Now, the need to end expedited structures like the Dedicated Docket is more urgent than ever. These "rocket dockets" do not solve backlogs; they are engines of exclusion, designed to funnel vulnerable families toward deportation while denying them the most basic procedural rights. As the system grows more opaque and hostile, court watch programs and corresponding storytelling efforts have become essential tools for accountability and resistance. Bearing witness and amplifying the lived experiences of those ensnared in the deportation machine are acts of defiance against a system that depends on invisibility and silence.

I wrote this Article to re-center the humanity of families and individuals funneled through the machinery of expedited removal and punitive immigration court processes, exposing the structural racism and violence that sustain them. As the crisis deepens, I am more convinced than ever that only by telling these stories– and rejecting policies that prioritize expediency over constitutional guarantees– can we hope to ever build a system rooted in fairness and dignity.

Introduction

"In these proceedings, you and your family have many rights."

Immigration judge on the Los Angeles Dedicated Docket, said to asylum-seeking families in each initial removal hearing

"For William [], the [Dedicated D]ocket's expeditious nature meant he had only six weeks to secure legal representation before his first court hearing, leaving him to navigate a complex and often confusing system without an attorney. Immigration officials provided him with documents heavy with legal jargon in English. He could read only in Spanish. . . . Ultimately, an immigration judge ordered William and his 6-year-old to be deported in `absentia' when they didn't show up for their court hearing at U.S. Immigration Court in downtown Los Angeles. In fact, at the time the judge gave the order, William was in the building, but was three floors below the courtroom in a waiting area at the direction of an Immigration and Customs Enforcement official. By the time William was told he was in the wrong place, the judge had already ordered the father and son's removal from the U.S."[1]

Cindy Caramo, *LA Times* Staff Writer, documenting UCLA Immigrants' Rights Policy Clinic reporting

The Executive Office for Immigration Review ("EOIR") is a black box. Shielded from public view, the agency enjoys minimal accountability while asylum seekers on its dockets are forced to tolerate systemic violations of their due process rights. Though many EOIR immigration court hearings are open to the public as a matter of policy,[2] few enter these spaces. Attorneys rarely appear physically in immigration courtrooms,[3] and journalists infrequently

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[1] Cindy Caramo, *99% of L.A. Asylum Seekers– many kids– in Biden Program Face Deportation, Report Says*, L.A. Times (May 25, 2022, 11:56 AM) (citing UCLA Law Immigrants' Rts. Pol'y Clinic, The Biden Administration's Dedicated Docket: Inside Los Angeles' Accelerated Court Hearings for Families Seeking Asylum 7 (2022), https://law.ucla.edu/sites/default/files/PDFs/Center_for_Immigration_Law_and_Policy/Dedicated_Docket_in_LA_Report_FINAL_05.22.pdf [https://perma.cc/HYG9-UCF3] [hereinafter UCLA Report]) https://www.latimes.com/california/story/2022-05-25/biden-program-deportation-orders-los-angeles-asylum-seekers-report [https://perma.cc/E23F-G49S].

[2] Dep't of Just. [hereinafter DOJ] Exec. Off. for Immigr. Rev. [hereinafter EOIR], Immigration Court. Practice Manual ch. 4.15(b)±(c) (2022), https://www.justice.gov/eoir/reference-materials/ic/chapter-4/15 [https://perma.cc/3NVJ-LMVK] [hereinafter Immigr. Ct. Prac. Manual].

[3] *See* Am. Immigr. Law. Ass'n [hereinafter AILA], Policy Brief: Use of Virtual Hearings in Removal Proceedings (noting that EOIR often prioritizes "convenience" over respondents' rights when using video teleconferencing) https://www.aila.org/advo-media/aila-policy-briefs/policy-brief-use-of-virtual-hearings-in-removal [https://perma.cc/T689-9PY6]; Harv. Immigr. and Refugee Clinical Program, The Biden Administration's Dedicated Docket in the Boston Immigration Court 23 (2023) (explaining that represented individuals and their attorneys generally appear virtually for master calendar hearings), https://harvardimmigrationclinic.org/files/2023/06/Dedicated-Docket-Report_FINAL.pdf [https://perma.cc/QS93-QVBC] [hereinafter Harv. Report].

cover what occurs inside these spaces due to significant logistical hurdles.[4] It is nearly as difficult to obtain information from EOIR as a member of the public, as immigration courts infrequently answer their phones, and EOIR staff are often unable to offer reliable information regarding hearing schedules. This general opacity creates an environment ripe for discrimination and abuse that is exacerbated by adjudicators' ample discretion to deny relief or procedural recourse. This is especially true on the Dedicated Docket.

Among the latest in a series of fast-tracked immigration adjudication systems,[5] the Dedicated Docket was created by President Biden in May 2021. The Docket aims to decide all cases within 300 days of a person's arrival to the United States.[6] Families placed in removal proceedings on the Dedicated Docket face a near impossible task: they must learn to navigate an impenetrable system– usually in a foreign language and without an attorney– on an arbitrarily expedited timeline. The Dedicated Docket's procedural and operational deficiencies compound this challenge, producing due process violations at an alarming scale and funneling families into a deportation pipeline[7]– one that is propped up by harmful racial narratives about immigrant families of color and the need to exclude them.[8]

The primary aim of this project is to peel back the curtain, shedding light on specific notice practices in expedited proceedings that, together with inadequate language access policies, unfairly target non-English speakers, people of color, and young children for removal in violation of both Government policy and fundamental fairness. Though advocates and scholars

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[4] *See* Brendan Fitzgerald, *Covering Immigration in the Time of Trump*, Columbia Journalism Rev. (Jan. 27, 2020), https://www.cjr.org/politics/immigration-journalism-trump-migratory-notes.php [https://perma.cc/8LJR-MD68] (surveying ten journalists in ten different U.S. cities, reporting their observations about immigration courts being "undercovered in general," noting the need for litigation to "open up" the immigration court system to journalists) ; Phoebe Taylor-Vuolo, *How ICE Controls Journalists' Access to the Immigration Courts*, Documented (Oct. 15, 2020), https://documentedny.com/2020/10/15/how-ice-controls-journalists-access-to-the-immigration-courts/ [https://perma.cc/8XB4-3XBU] (detailing a two-month investigation into New York's immigration courts, observing, "[v]ery rarely did we see other reports in these courts"); Gretchen A. Peck, *Reporting on Immigration: Journalists Share the Perils & Importance of the Beat*, Editor & Publisher (Aug. 29, 2022, 12:00 AM), https://www.editorandpublisher.com/stories/reporting-on-immigration,238590 [https://perma.cc/FE42-JLPF] (explaining that reporting on immigration court entails great logistical challenges, noting the lack of any "Pacer-type system for accessing immigration court filings"). Throughout my own time in Los Angeles immigration courtrooms, I came across only a handful of other observers, none of them being journalists.

[5] The Dedicated Docket, however, is not the only expedited immigration court docket in operation. For instance, in May 2024, the Department of Homeland Security ("DHS") and the DOJ announced the creation of the "Recent Arrivals" Docket. DOJ Off. of Pub. Aff., *Department of Homeland Security and Justice to Announce "Recent Arrivals" Docket Process for More Efficient Immigration Hearings* (May 16, 2024), https://www.justice.gov/opa/pr/departments-homeland-security-and-justice-announce-recent-arrivals-docket-process-more [https://perma.cc/G66U-YEZK]. The docket, which currently operates in five cities, places "certain noncitizen single adults" in proceedings aimed to conclude within 180 days. *Id*.

[6] Policy Memorandum 21±23 from Jean King, EOIR Acting Director, to all of EOIR (May 27, 2021), https://www.justice.gov/eoir/book/file/1399361/download [https://perma.cc/MZM5-HU69].

[7] *See* UCLA Report, *supra* note 1, at 2, 16; Harv. Report, *supra* note 3, at 12, 18±19.

[8] *See infra* Section IV.C.2.

have documented notice defects[9] and inadequate language access policies[10] separately, there has been less conversation about the compounding nature of these two harmful practices, particularly in the context of expedited removal proceedings. This Article bridges these two parallel discussions. In the process, it aims to break through EOIR's layers of opacity to document the stories of people and families who are forced to contend with a system, the Los Angeles (T¥LA∫) Dedicated Docket, that does not acknowledge their due process rights or humanity. More broadly, it aims to serve as an indictment of the Dedicated Docket and similar expediting structures, echoing immigration advocates' repeated demands to end so-called T¥rocket dockets.∫[11]

Due to EOIR's lack of transparency, this project necessarily takes an empirical approach. From September to December 2023, I observed immigration court removal proceedings for 88 families across nine separate hearings, documenting their individual and shared experiences in immigration court. In the absence of reliable information about current practices, this was the only way to accurately document the material realities that families face on the Dedicated Docket and similar expedited proceedings.

My observations reveal that for families on the LA Dedicated Docket, the stakes of being able to navigate EOIR proceedings are high. Grasping nuanced immigration court rules can spell the difference between a respondent being permitted to remain in the United States and being deported to a country where they fear persecution alongside their entire family. But in a cruel twist, families must typically navigate such complexities without an attorney and, even more often, in a language they do not speak. Worse, families must also endure a courtroom environment where they are berated and threatened, often in the presence of their young children, who are required to attend initial proceedings.

In initial removal hearings, the stakes are arguably highest when it comes to notice. Though the government is required to notify families that they are mandated to appear in court[12]– and crucially, that they will be ordered removed if they fail to appear[13]– there is often an open question as to whether families were properly notified. Due to clerical errors and an emphasis on ex-

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[9] *See, e.g.*, UCLA Report, *supra* note 1, at 6 (reporting notice defects on the LA Dedicated Docket); Harv. Report, *supra* note 3, at 20 (detailing prevalent notice-related issues on the Boston Dedicated Docket); Cath. Legal Immigr. Network, Inc., Denied a Day in Court: The Government's Use of *In Absentia* Removal Orders Against Families Seeking Asylum 16±27 (2018) (providing an overview of government practices that lead to inadequate notice, often resulting in *in absentia* removal orders), https://asylumadvocacy.org/wp-content/uploads/2018/04/Denied-a-Day-in-Court-2019-Update.pdf [https://perma.cc/6989-PH89].

[10] *See, e.g.*, Laura Abel, Language Access in Immigration Courts (Brennan Center for Justice ed., 2011); Zefitret Abera Molla, *Improving Language Access in the U.S. Asylum System*, Ctr. for Am. Progress (May 25, 2023), https://www.americanprogress.org/article/improving-language-access-in-the-u-s-asylum-system/.

[11] T¥Rocket dockets,∫ or fast-tracked immigration court dockets, have existed as a response to immigration patterns since at least 2014– the year that thousands of children and families crossed the southern border seeking safety. J. Nicole Alanko, *In-and-Out Justice: How the Acceleration of Families through Immigration Court Violates Due Process*, Univ. of Pa. J. of L. and Soc. Change 1, 4 (2021). Policymakers have continued to rely on these expediting structures since then. *Id.* at 14±15.

[12] 8 U.S.C. ß 229(a)(1) (2023).

[13] 8 U.S.C. ß 229(a)(1)(G), (2)(A) (2023).

pediency, families on the Dedicated Docket sometimes do not receive notice of their hearing at all. When they do receive written or oral notice, it is often in a language they do not speak.

This Article sheds light on these due process violations through the lens of individual lived experiences on the Docket. Section I provides a general background of removal proceedings. Section II situates the Dedicated Docket within these broader removal proceedings and discusses the due process violations that have pervaded the Docket since its inception. Section III introduces the paper's methodological approach and the unique challenges associated with empirical work in immigration court. Section IV, the heart of this Article, uplifts the stories of individual families on the LA Dedicated Docket, documenting the challenges they must endure from start to finish in a system veiled from public scrutiny. From the moment that they are summoned to immigration court to the conclusion of their cases, families are forced to confront compounding barriers that undercut their right to a fundamentally fair procedure. Such barriers result in the systemic deportation of vulnerable populations– namely, families with limited English proficiency, families of Color, and young children. Section V underscores the urgent need to terminate the Dedicated Docket and similar expediting structures, in addition to reimagining existing immigration court institutions. Absent systemic changes to prioritize transparency and adjudicator accountability, the abuses recounted in this Article will continue, fueling a cycle that violates asylum-seeking families' right to full and fair procedures.

I. Background on Removal Proceedings

A. A Note on Scope and Terminology

Despite this Article's focus, most people who are ordered removed from the United States never step foot in a courtroom. Indeed, immigration court adjudication has become the ™exception rather than the norm.∫[14] In recent history, asylum bans implemented across multiple presidential administrations have denied thousands of individuals the opportunity to contest their removal to a country where they feared harm or persecution.[15] This Article focuses on the relatively small portion of families who are assigned a court date on the Dedicated Docket.

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[14] Jennifer Lee Koh, *Removal in the Shadows of Immigration Court*, 90 S. Cal. L. Rev. 181, 193 (2017).

[15] *See, e.g.*, Sergio MartÌnez-Beltr· n, *President Trump's Suspension of Asylum Marks a Break from U.S. Past*, NPR (Jan. 23, 2025), https://www.npr.org/2025/01/23/nx-s1-5272406/trump-suspends-asylum [https://perma.cc/SV98-QMQM]; East Bay Sanctuary Covenant v. Biden: *Challenging Biden's May 2023 Asylum Ban*, Nat'l Immigr. Just. Ctr. (Aug. 4, 2023), https://immigrantjustice.org/court_cases/east-bay-sanctuary-covenant-v-biden [https://perma.cc/49K8-H6UK]; *US: Biden `Asylum Ban' Endangers Lives at the Border*, Hum. Rts. Watch (May 11, 2023, 7:55 PM), https://www.hrw.org/news/2023/05/11/us-biden-asylum-ban-endangers-lives-border [https://perma.cc/866M-K9BT].

Though this Article refers repeatedly to immigration "court," this word is misleading.[16] Immigration courts are completely divorced from the judicial branch, including its rules of evidence and the procedural protections that it offers to criminal defendants and civil litigants. Though this Article will employ the words "court"[17] and "judge," the reader should not assume that typical legal rules apply, or that asylum seekers enjoy the same procedural safeguards as parties to criminal and civil judicial proceedings.

B. The Executive Office for Immigration Review and Its Adjudicators

Understanding the Dedicated Docket– and similar fast-tracked adjudication systems– requires contextualizing it within the broader removal process. For people assigned a court hearing, removal proceedings begin as an administrative process overseen by the Department of Homeland Security ("DHS"), the agency tasked with administering and enforcing immigration law.[18] When DHS believes that an individual who is present in the United States is legally removable, it issues a charging document to that person known as the Notice to Appear ("NTA").[19] The NTA can be served personally or via U.S. Mail.[20] Removal proceedings formally begin once DHS files the NTA with an immigration court.[21]

The immigration courts themselves are overseen by the Executive Office for Immigration Review ("EOIR"), an agency within the Department of Justice ("DOJ").[22] Immigration judges ("IJs") are the primary adjudicators in removal proceedings.[23] Unlike Article III judges, IJs serve the executive branch and are appointed by the Attorney General.[24] Their powers and responsibilities derive primarily from the Immigration and Nationality Act as well as other federal regulations.[25] IJs exercise "independent judgment and discretion" in deciding individual cases in their courtrooms[26]– a concept explored in detail in subsequent sections.

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[16] *See* Amit Jain, *Bureaucrats in Robes: Immigration "Judges" and the Trappings of "Courts,"* 33 GEO. IMMIGR. L.J. 261, (2019) (arguing that immigration courts are not "courts" at all but instead "mask[] a bureaucracy with judicial trappings," resulting in a "deceptive façade of process").

[17] Notes, *Courts in Name Only: Repairing America's Immigration Adjudication System*, 136 HARV. L. REV. 908, 908 (2023) (arguing that executive control over the immigration system "bias[es] the entire adjudicatory system in favor of removal, resulting in an irreparably dysfunctional system").

[18] 8 C.F.R. § 103(a)(1) (2022).

[19] 8 C.F.R. § 239.1(a); 8 U.S.C. § 229(a)(1).

[20] 8 U.S.C. § 229(a)(1).

[21] 8 C.F.R. § 239.1(a).

[22] 6 U.S.C. § 521; 8 U.S.C. § 103(g)(1)±(2); 8 C.F.R. § 003.0.

[23] 8 U.S.C. § 229a(a)(1).

[24] 8 C.F.R. § 003.10(a).

[25] 8 C.F.R. § 1003.10(b). IJs are empowered to determine whether an individual is removable; to adjudicate individual applications for relief from removal, such as asylum or cancellation of removal; to order withholding of removal; and consider "material and relevant evidence, rule upon objections, and otherwise regulate the course of the hearing." 8 C.F.R. § 1240.1(a), (c).

[26] 8 C.F.R. § 003.10(b).

C. Asylum Seekers' Constitutional Right to Fundamental Fairness

The Supreme Court classifies deportation as a civil rather than criminal penalty.[27] People placed in removal proceedings are therefore not entitled to the same protections as criminal defendants;[28] nonetheless, they possess certain rights under the Due Process Clause (TMDPC∫) that entitle them to TMfundamental fairness∫ in proceedings.[29] In *Landon v. Plasencia*, the U.S. Supreme Court outlined the framework for assessing whether an immigration case's procedures complied with the DPC's fairness mandate.[30] The Court employed the same framework used in *Mathews v. Eldridge*,[31] a non-immigration case that provided the basic test for due process claims. The *Plasencia* Court stated that TMthe interest at stake for the individual, the risk of an erroneous deprivation of the interest through the procedures used as well as the probable value of additional or different procedural safeguards∫ must be weighed against TMthe interest of the government in using the current procedures rather than additional or different procedures.∫[32] In the context of exclusion and deportation, the Court specifically noted that the individual interest is TMwithout question, a weighty one.∫[33] The Court also found, however, that the government's interest in the TMefficient administration of the immigration laws at the border also is weighty,∫ particularly given the Executive and Legislative branches' plenary power over matters of immigration.[34] Courts continue to apply the *Mathews* test when assessing whether an asylum seekers' procedural due process rights were violated.[35]

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[27] *See* Fong Yue Ting v. United States, 149 U.S. 698, 730 (1893) (holding that deportation is a TMcivil∫ penalty, that immigrants in removal proceedings are not entitled to the same constitutional due process protections as criminal defendants).

[28] *Id.*

[29] *See* Hammad v. Holder, 603 F.3d 536, 545 (9th Cir. 2008) (explaining that immigration proceedings must be conducted TMin accord with due process standards of fundamental fairness∫) (quoting Ramirez-Alejandre v. Ashcroft, 319 F.3d 365, 370 (9th Cir. 2003) (en banc)). The right to fair process is also protected by the Immigration and Nationality Act. *See* 8 U.S.C. ß 1229a(b)(4)(B) (2020) (stating that TMthe alien shall have a reasonable opportunity to examine the evidence against the alien, to present evidence on the alien's own behalf, and to cross-examine witnesses presented by the Government∫).

[30] 459 U.S. 21, 34 (1985).

[31] 424 U.S. 319, 334±35 (1976).

[32] *Plasencia*, 459 U.S. at 34.

[33] *Id. See also* Bridges v. Wixon, 326 U.S. 135, 154 (1945) (TMThough deportation is not technically a criminal proceeding, it visits a great hardship on the individual and deprives him of the right to stay and live and work in this land of freedom. That deportation is a penalty– at times a most serious one– cannot be doubted. Meticulous care must be exercised lest the procedure by which he is deprived of that liberty not meet the essential standards of fairness.∫).

[34] *Id.*

[35] *See, e.g.*, B.C. v. AG United States, 12 F.4th 306 (3d Cir. 2021) (applying *Mathews* test to find due process violations where IJ failed to adequately assess and identify asylum applicant's interpretation needs); Pleitez v. Barr, 938 F.3d 1141 (9th Cir. 2019) (applying *Mathews* and concluding that providing a 16-year-old child with notice without informing a responsible adult did not violate due process).

Both Courts of Appeal[36] and the Board of Immigration Appeals (TMBIA∫)[37] have used this framework to identify procedural rights for asylum seekers. These include, among others, the right to be properly notified,[38] the right to competent translation and interpretation,[39] and the right to a neutral fact-finder.[40] More broadly, procedural fairness under the DPC stands for the proposition that individual cases shall be decided according to TMstandardized norms∫ rather than an arbitrary list of factors, such as a judge's personal biases, attitudes, or opinions.[41]

In recent years, Supreme Court decisions have eroded asylum seekers' due process rights. In *DHS v. Thuraissigiam*, the Court held that a noncitizen apprehended just inside the U.S. border TMat the threshold of initial entry∫ cannot claim the same due process rights as noncitizens with established connections in the United States.[42] Instead, these individuals may only claim statutory rights enacted by Congress.[43] This case has dangerous implications for the due process rights of all asylum seekers, particularly those apprehended at or near the border. As Justice Sotomayor remarks in her dissent, the decision disregards the constitutional imperative that due process applies to all TMpersons'

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[36] *See, e.g.*, Perez-Lastor v. INS, 208 F.3d 773 (9th Cir. 2000) (reversing BIA order affirming asylum denial where the poor quality of translation at the petitioner's hearing violated his right to due process); Amadou v. INS, 226 F.3d 724 (6th Cir. 2000) (finding that a lack of proper translation during petitioner's hearing constituted a violation of the petitioner's constitutional due process rights to a TMfull and fair∫ hearing).

[37] *See, e.g.*, Matter of Exame, 18 I.&N. Dec. 303 (BIA 1982) (finding that the applicant was denied the opportunity to present a TMfull and fair hearing∫ based on the IJ's TMcategorical rejection∫ of relevant country condition information); Matter of Y-S-L-C-, 26 I.&N. Dec. 688 (finding that the IJ violated a 15-year-old applicant's due process rights by subjecting him to unfair, bullying questioning that limited his opportunity to present evidence).

[38] *See, e.g.*, Khan v. Ashcroft, 374 F.3d 825, 829 (9th Cir. 2004); Flores-Chavez v. Ashcroft, 362 F.3d 1150, 1155±56 (9th Cir. 2004) (finding that a Notice to Appear (NTA) must be reasonably calculated to reach the person who is being summoned to immigration court).

[39] *See, e.g.*, United States v. Reyes-Bonilla, 671 F.3d 1036, 1044 (9th Cir. 2012) (holding that an asylum seeker could not properly waive their rights where an explanation of those rights was given in a language the person did not understand).

[40] Courts have found that TM[a] neutral judge is one of the most basic due process protections.∫ Reyes-Melendez v. INS, 342 F.3d 1001, 1006 (9th Cir. 2003) (internal quotation marks omitted). This includes the right to be heard in front of a judge that does not mistreat the applicant or act with hostility or aggression toward them. *Id.* at 1006±09 (concluding that the petitioner's due process rights were violated where the IJ was TMaggressive∫ and TMhostile∫ toward them and also accused them of moral impropriety). In addition, applicants have the right to have their cases heard before an adjudicator that does not possess any unfettered bias toward them. *See* Lopez-Umanzor v. Gonzales, 405 F.3d 1049, 1058±59 (9th Cir. 2005) (finding that the petitioner's due process rights were violated where the IJ disbelieved them because of TMpersonal speculation, bias, conjecture, and prejudgment∫ and refused to allow the petitioner to present contrary expert evidence).

[41] Jaya Ramji-Nogales, Andrew I. Schoenholtz & Philip G. Schrag, *Refugee Roulette: Disparities in Asylum Adjudication*, 60 STAN. L. REV. 295, 299±300 (2007).

[42] 591 U.S. 103, 107 (2020) (TMan alien at the threshold of initial entry cannot claim any greater rights [than those provided by Congress]. . . . Respondent attempted to enter the country illegally and was apprehended just 25 yards from the border. He therefore has no entitlement to procedural rights other than those afforded by statute.∫).

[43] *Id.* at 140. These statutory rights are primarily outlined in 8 U.S.C. ß 1225 and include the right to receive a credible fear interview TMeither at a port of entry or at such other place designated by the Attorney General.∫ 8 U.S.C. ß 225(b)(1)(B)(i).

without qualification,∫[44] regardless of immigration status. Justice Sotomayor further notes that the rule TMlacks any limiting principle,∫[45] and thus could allow Congress to eliminate all procedural protections for noncitizens found to have entered unlawfully. As advocates have pointed out, this is inconsistent with governing law and constitutional precedent that enshrine asylum seekers' right to fundamental fairness in removal proceedings.[46]

II. The Dedicated Docket: Expedited Removal Absent Fundamental Fairness

A. The Docket's Genesis

Despite recent constitutional backsliding, courts have long enshrined asylum seekers' due process rights on paper. In practice, however, few families are able to fully assert these rights. This discrepancy is particularly pronounced in expedited removal proceedings, as this Article demonstrates.

The Dedicated Docket is neither the first nor last of its kind: It is simply one iteration of several fast-tracked removal proceedings that have existed under the Obama, Biden, and Trump presidencies.[47] Created by President Biden in May 2021, the Dedicated Docket is specifically designed for families who recently arrived in the United States between ports of entry at the southwest border. It prioritizes expediency, with a stated objective of deciding all cases within 300 days after the initial hearing.[48] In its memo announcing the creation of the Dedicated Docket, the DOJ claimed that the Docket would TMfacilitate

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[44] *Thuraissigiam*, 591 U.S. at 192 (Sotomayor, J., dissenting) (citing Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886)).

[45] *Id*.

[46] *See, e.g.*, Brief for Immigr. Scholars as Amici Curiae Supporting Respondent, Dep't. of Homeland Sec. v. Thuraissigiam, 140 S. Ct. 1959 (2020) (No. 19-161), 2020 WL 402610, at *22 (arguing that the decision ultimately reached in *Thuraissigiam* will allow Congress TMto dictate the reach of a constitutional provision [the Due Process Clause] that should instead restrict unfettered power∫); Daniel Kanstroom, *Deportation in the Shadows of Due Process: The Dangerous Implications of* DHS v. Thuraissigiam, 50 Sw. L. Rev. 342 (2021) (arguing that *Thuraissigiam* has dangerous, corrosive implications for the due process rights of noncitizens, that Justice Sotomayor may have understated such dangers in her dissent); Jennifer M. ChacÛh, *Stranger Still:* Thuraissigiam *and the Shrinking Constitution*, Am. Const. Soc'y, https://www.acslaw.org/stranger-still-thuraissigiam-and-the-shrinking-constitution/#_ednref1 [https://perma.cc/54CF-QDKU] (last visited Jan. 19, 2025) (TM[*Thuraissigiam*] misreads over one hundred years of immigration case law to advance an impoverished understanding of constitutional due process protections for noncitizens.∫).

[47] *See Sarah Pierce, As the Trump Administration Seeks to Remove Families, Due Process Questions over Rocket Dockets Abound*, Migration Pol'y Inst. (Jul. 2019), https://www.migrationpolicy.org/news/due-process-questions-rocket-dockets-family-migrants; Safia Samee Ali, *Obama's `Rocket Docket' Immigration Hearings Violate Due Process, Experts Say*, NBC News (Oct. 27, 2016), https://www.nbcnews.com/news/us-news/obama-s-rocket-docket-immigration-hearings-violate-due-process-experts-n672636 [https://perma.cc/8PG8-N76N]; Jennifer Chan, *Rocket Dockets Leave Due Process in the Dust*, Nat'l Immigr. Just. Ctr. (Aug. 11, 2014), https://immigrantjustice.org/staff/blog/rocket-dockets-leave-due-process-dust [https://perma.cc/PGP6-YMCA]; DOJ Off. of Pub. Aff., *supra* note 5.

[48] Policy Memorandum 21±23 from Jean King, EOIR Acting Director, to all of EOIR, *supra* note 6, at 21±23.

timeliness while providing due process.∫[49] The Docket operates in eleven cities and runs alongside typical removal proceedings in EOIR immigration courts.[50]

B. Advocates' Swift Rebuke of the Dedicated Docket

Since the program's inception, advocates have spoken out about its due process deficiencies. Immediately after the program's announcement, legal service providers wrote to the executive branch leadership expressing their concern that the Dedicated Docket would undermine respondents' fundamental due process rights.[51] Advocates noted that both Presidents Obama and Trump attempted to implement similar ™rocket dockets∫ to ease the immigration case backlog,[52] but these programs functioned to ™undermine due process∫ for individuals seeking humanitarian protection while ™exacerbat[ing] dysfunctions∫ within U.S. immigration courts.[53] Despite these concerns, the government pushed forward.

Since the Dedicated Docket's implementation, advocates have continued petitioning the executive branch for its termination through direct communications and comprehensive reports.[54] At the top of their list of concerns

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[49] *Id*.

[50] *Id*. The original memo identified ten cities where the Dedicated Docket would be implemented: Denver, Detroit, El Paso, Los Angeles, Miami, Newark, New York City, San Diego, San Francisco, and Seattle. Boston was later added as an eleventh city. 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 [https://perma.cc/BP3Z-N56V].

[51] Letter from Legal Services Providers Serving Immigration Courts in Ten Cities Named in May 28 Announcement to Merrick Garland, Att'y Gen., U.S. Dep't of Just., Alejandro N. Mayorkas, Secretary, U.S. Dep't of Homeland Sec., Susan Rice, Director, Domestic Policy Council (June 21, 2021), https://www.nwirp.org/uploads/2021/06/Letter_to_DOJ_DHS_WH_re_Dedicated_Dockets.pdf [https://perma.cc/68ZR-G8D4] [hereinafter June 2021 Advocate Letter].

[52] Yvonne Abraham, *Rocket Docket Redux. Still a Bad Idea. The Biden Administration's Attempts to Expedite Families' Asylum Claims Come at the Expense of Due Process*, The Boston Globe (July 20, 2022, 6:44 PM), https://www.bostonglobe.com/2022/07/20/metro/rocket-docket-redux-still-bad-idea/ [perma.cc/54CF-QDKU].

[53] *Id*.

[54] *See, e.g.*, Letter from Various Immigration Advocacy Organizations to Merrick Garland, Att'y Gen., U.S. Dep't of Just., Alejandro N. Mayorkas, Secretary, U.S. Dep't of Homeland Sec., Betsy Lawrence, Deputy Assistant to the President for Immigration, Domestic Policy Council (Oct. 5, 2022), https://harvardimmigrationclinic.org/files/2023/04/Letter-to-the-Biden-Administration-on-Grave-Concerns-Related-to-the-Dedicated-Docket-for-Families-and-Request-for-Immediate-Action.pdf [https://perma.cc/TA95-9JVS] [hereinafter October 2022 Advocate Letter]; Letter from Various Immigration Advocacy Organizations to Merrick Garland, Att'y Gen., U.S. Dep't of Just., Alejandro N. Mayorkas, Sec'y, U.S. Dep't of Homeland Sec., Betsy Lawrence, Deputy Assistant to the President for Immigration, Domestic Policy Council (June 22, 2023), https://law.ucla.edu/sites/default/files/PDFs/Center_for_Immigration_Law_and_Policy/Dedicated_Docket_Response_to_DOJ_Letter.pdf [https://perma.cc/7NRT-22K3] [hereinafter June 2023 Advocate Letter]. In May of 2022, the University of California Los Angeles School of Law Immigrants' Rights Policy Clinic released a report detailing various due process deficiencies on the Los Angeles Dedicated Docket. UCLA Report, *supra* note 1. In June of 2023, the Harvard Immigration and Refugee Clinical Program (™HIRCP∫) published a similar comprehensive report on Boston's Dedicated Docket, which confirmed that the due process violations observed in Los Angeles also pervaded the Boston docket. Harv. Report, *supra* note 3.

is the mass removal of families, including small children and infants. From approximately December 2021 to October 2022, 99.3% of the 1,687 cases on the Dedicated Docket resulted in removal orders, with a large portion of these issued *in absentia*. Advocates have stressed that these removal adjudications are highly correlated with a lack of legal representation, with a large majority (70.1%) of people on the Dedicated Docket being unrepresented.[55] As a result, families are forced to navigate complex immigration court procedures and endure hostile courtroom environments without legal assistance, and more often, in a language they do not speak. This experience is exacerbated by wholly inadequate translation and language access practices, as this Article illustrates.

DHS, moreover, often fails to respect families' constitutional right to a full and fair hearing by failing to issue adequate notice of families' removal hearings. As this Article argues, these violations result in the mass *in absentia* removal of families, including young children, without a shred of process.

III. Methodology and Positionality

A. Courtroom Observation and Documenting Families' Experiences

Like other examinations of the Dedicated Docket, this Article takes an empirical approach, largely out of necessity. Due to EOIR's lack of transparency, one of the few ways to assess the Docket's operation is to physically enter the courtroom. For observers, the master calendar hearings are the primary window into immigration court proceedings, as they are open to the public.[56] Accordingly, I attended nine separate Dedicated Docket master calendar hearings from September to December 2023, documenting the experiences of 88 families.[57] This included 79 total initial removal hearings– in which families appeared before the court for the first time– and 9 continued removal hearings– in which families returned for a subsequent hearing. During each hearing, I sat silently in the back of the courtroom and wrote down everything that I observed.[58] At first, I tried to remain a passive observer, but the Dedicated Docket's convoluted procedures, combined with immigration court's racialized nature, sometimes thrust me into the center of the narrative, as this Article's vignettes illustrate.

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[55] UCLA Report, *supra* note 1, at 8.

[56] Immigr. Ct. Prac. Manual, *supra* note 2, at ch. 1.5(b), 4.9, 4.14; IJs can still choose to "limit attendance or close a hearing" in order to "protect parties, witnesses, or the public interest, even if the hearing would normally be open to the public." *Id.* at ch. 4.9(2); *see* 8 C.F.R. § 1003.27(b).

[57] I traveled to the courthouse a total of twelve times, but on three occasions, Dedicated Docket hearings had been canceled with little or no notice.

[58] Recording is prohibited in EOIR proceedings, so I rely on my own written observations for this Article. 8 C.F.R. § 1003.28 ("No photographic, video, electronic, or similar recording device will be permitted to record any part of the proceeding"). On several occasions, the judge repeated this warning at the beginning of the hearing, citing the regulation and noting that "all parties, witnesses, or observers" could be subject to legal penalties for recording.

B. Pushing Past the Curtain: Documenting an Opaque System

Though this Article originally set out to document observations from the same number of hearings before each judge on the LA Dedicated Docket,[59] the opacity surrounding hearing schedules made this impossible. While one judge held hearings roughly at the same time each week, the other judge did not. When I inquired with EOIR staff about the second judge's schedule, they informed me that hearing times can change from day to day, despite families receiving their summons with the original date and time of the hearing weeks in advance. Staff suggested that I call their office after 3:30pm on the day before an anticipated hearing to confirm that it would take place– a tall order given EOIR's inconsistency with answering phone calls.

Though I tried to estimate when the hearings would take place, sometimes I showed up to the courthouse and found there was nothing scheduled, or that families' hearings had been canceled that same morning (despite them traveling hours with their young children to get to court). The first judge's treatment of families was noticeably more hostile than the second judge, but because I could only observe a few hearings with the second judge, the accounts offered in this Article tend to reflect a more hostile courtroom atmosphere.

My struggles to document and observe families' experiences underscore one of the central problems with the Dedicated Docket (and EOIR in general): It is utterly opaque. This lack of transparency makes it difficult for advocates to observe what goes on inside the docket, and as this Article argues, it also creates an environment ripe for abuse.

C. Race, Language, and Empirical Positionality

For decades, scholars have documented the marked racialization of the U.S. immigration system.[60] It is therefore impossible to separate my observational work within these spaces from my own racial makeup as a White woman. My race undoubtedly changed how I experienced the Dedicated Docket as an observer– both inside and outside the courtroom. More importantly, it also likely impacted how people of color experienced the U.S. immigration system,

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[59] In the fall of 2023, Judge Frank M. Travieso and Judge Lily C. Hsu heard Dedicated Docket cases at the North Los Angeles Immigration Court. During my observations, I learned that Judge Hsu was stepping down and that Judge James M. Left would be receiving her Dedicated Docket caseload. During one hearing that I observed, however, Judge Hsu was training a newly-appointed Judge Nair to oversee Dedicated Docket hearings. This turnover added to the general sense of confusion about when Dedicated Docket hearings would be scheduled.

[60] *See, e.g.*, Ian Haney López, *Racial Restrictions in the Law of Citizenship*, *in* White by Law: The Legal Construction of Race 27±34 (2006); Kevin R. Johnson, *Exclusion and Deportation of Racial Minorities*, *in* The "Huddled Masses" Myth: Immigration and Civil Rights 13±54 (2004); Tina Al-khersan & Azadeh Shahshahani, *From the Chinese Exclusion Act to the Muslim Ban: An Immigration System Built on Systemic Racism*, 17 Harv. L. & Pol'y Rev. 131 (2022) (offering substantial evidence that President Trump's "Muslim ban" was not a divergence from "American values" but in fact a continuation of systemic racism built into U.S. immigration policy).

as my presence sometimes seemed to change the conduct of federal staff.[61] I received observably favorable treatment in the lines outside the federal building, for instance. The following vignette illustrates this contrast:

> *After waiting in line for fifteen minutes, I reached the security checkpoint at the front of the federal building, where the immigration court is located. An older man of Asian descent stood in front of me and was clearly struggling to understand the security guard's English instructions. Becoming observably frustrated and throwing his hands in the air, the guard complained aloud, ™He's not listening!∫*
>
> *The man continued to the screening area, and I started to do the same. As I waited for my things to clear the x-ray, one of the security guards began a friendly conversation with me. He told me he had seen me there before and asked me if I was working on a project. I explained that I was writing a paper about the immigration court. He enthusiastically responded, ™That's so cool!∫ Looking confused, he then asked, ™But how did you get access to do that?∫ I then explained that immigration court master calendar hearings were open to the public– a fact he was not aware of.*

On another occasion, I was standing toward the back of the line outside the federal building for several minutes. A security guard recognized me and instructed me to follow him. Confused, I followed him, only to be placed in a much shorter line at the front of the building. When I returned to observe additional hearings, I continued entering at the back of the line, aware that many families were racing against the clock to get to their hearings. Federal building staff, however, continued urging me to enter at the front. When I asked directly if there was a separate, shorter line for EOIR, they informed me that ™technically there is∫ but because they ™had proof∫ that I was there to attend EOIR proceedings, I could be ™expedited.∫ In fact, I had never presented any proof or documentation of my purpose for being at the federal building, whereas families waiting in line held their official summons in hand.

My own racialized experiences observing the Dedicated Docket are evidence of the system's inherent racial bias. Most days, the long line to get inside was made up of families of color, many of whom did not speak English. On the days that I observed, none of these families received the same preferential treatment that I did. Instead, they often faced outright hostility, as guards would become observably frustrated with families who could not understand their instructions. Such treatment reflects entrenched racial and ethnic biases about immigrants that have plagued the U.S. immigration system and its

[61] This can also occur regardless of the observer's race, as courthouse employees may behave differently when they realize an outsider has entered the space to document their conduct and procedures.

operators for decades. This racialized dynamic pervaded families' interactions with EOIR on the Dedicated Docket at every step, exacerbating their lack of access to fair procedure, and ultimately exposing them to a heightened risk of deportation.

The following section, the heart of this Article, examines families' lived experiences on the LA Dedicated Docket– stories that add urgency to advocates' calls to terminate the Docket and its expediting structures. Though Section IV provides a holistic account of families' experience from start to finish, it also examines in detail the compounding effects of inadequate language access practices and defective notice procedures, which often result in a disproportionately severe penalty: a summary deportation order.

IV. Hidden Barriers to Entry: A Family's Journey Through the LA Dedicated Docket

My experiences offered a small glimpse into the logistical hurdles, procedural injustices, and outright hostility that families on the Dedicated Docket must face to pursue their asylum claims. Each step of the process– from being summoned to court to navigating courtroom procedure– highlighted the fundamental unfairness woven into this fast-tracked adjudication system. Accordingly, this Section presents my observations in a chronological fashion, discussing obstacles in the order that families typically experience them. Interwoven with background research on the Dedicated Docket and its procedures, this sequential presentation aims to capture the compounding nature of these barriers and their cumulative, exclusionary effects on asylum-seeking families.

This Section begins with an explanation of how the summoning and notice process, riddled with clerical errors and language barriers, violates both internal department policy and asylum-seekers' right to fundamental fairness, thus exposing families to heightened risk of *in absentia* removal. Next, this Section explains how mundane logistical barriers restrict families' access to the courts, further increasing the likelihood that they will be deported. Once families enter the courtroom, they must confront a complex web of procedural challenges, usually without the help of an attorney. These barriers are exacerbated by subtle yet pervasive forms of adjudicator bias that impact families, children, and people of color. Worse, families must often navigate immigration court procedure in a language they do not understand, as EOIR fails to follow even its own language access policies. This combination of clerical errors, defective language practices, and unchecked adjudicator bias reach an inflection point when judges exercise their power to deport families who fail to appear in court, often through no fault of their own. Though the DOJ maintains that families have the right to reopen their cases, this ignores the stark reality that motions to reopen are almost never granted without the assistance of counsel– a scarce and expensive resource for families on the Dedicated Docket.

A. Getting Summoned to Immigration Court: Inadequate Notice & Language Injustice

1. Burying the Lead: The Notice to Appear and Its Obscured Warnings

A family's first contact with the immigration court system is via the Notice to Appear ("NTA"), a document available exclusively in English that buries its most important warnings amidst dense text. Statute requires that the respondent(s)[62] receive the NTA, or I-862, in person or via regular mail.[63] It must explain that the respondent(s) has been placed in removal proceedings in immigration court[64] and provide the date, time, and location of the initial hearing where the respondent(s) is required to appear in-person before an IJ.[65] The NTA also informs respondents of their obligation to provide written notice to the immigration court within five days of moving to a new home and to disclose their new postal address.[66] Crucially, the NTA must explain the serious consequences of failing to appear– namely, that the respondent and their derivative family members will be ordered removed *in absentia*.[67]

Given the grave repercussions of failing to appear, one might expect the NTA to emphasize the hearing date and time, much like a juror summons; it could be bolded, highlighted, or at least placed at the top of the document. Instead, the hearing information is listed in small font at the bottom of the first page.[68] The document explains that the respondent may be ordered removed if they fail to appear, but this information is buried amidst dense, small-print text on the second page.[69] For a family who has limited to no English proficiency, identifying and understanding this fine-print warning would require the assistance of an attorney, or at the very least, a friend or family member who speaks English.

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[62] The immigration court refers to individuals placed in removal proceedings as "respondents." IMMIGR. CT. PRAC. MANUAL, *supra* note 2, at ch. 2.1 (2022).

[63] 8 U.S.C. § 1229(a)(1).

[64] The NTA must explain to respondent(s) the "nature of the proceedings" against them; the legal authority for those proceedings; the factual allegations levied against them; the specific statutory charges the government is asserting; and the respondents' right to obtain an attorney at no cost to the government. *Id.*

[65] *Id.*

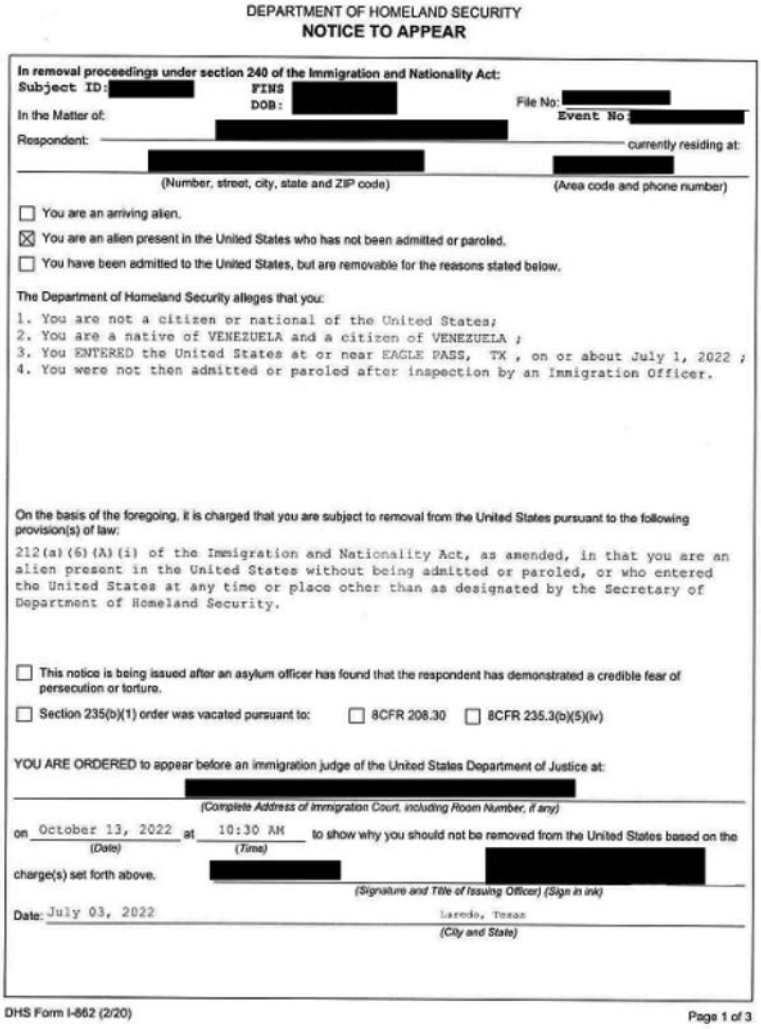
[66] Respondents are required to fill out what is colloquially referred to in Court as "the blue change of address form," or "Form EOIR-33/IC" within 5 days of moving. IMMIGR. CT. PRAC. MANUAL, *supra* note 2, at ch. 2.1 (2022); 8 C.F.R. § 1003.15(d)(2).

[67] 8 U.S.C. § 1229a(b)(5).

[68] *See* Figure 1.

[69] *See* Figure 2.

Figure 1: Notice to Appear, First Page[70]



DEPARTMENT OF HOMELAND SECURITY
NOTICE TO APPEAR

In removal proceedings under section 240 of the Immigration and Nationality Act:
Subject ID: [redacted] FINS [redacted]
DOB: [redacted] File No: [redacted]
In the Matter of: Event No: [redacted]
Respondent: [redacted] currently residing at:
[redacted]
(Number, street, city, state and ZIP code) (Area code and phone number)

☐ You are an arriving alien.
☒ You are an alien present in the United States who has not been admitted or paroled.
☐ You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:
1. You are not a citizen or national of the United States;
2. You are a native of VENEZUELA and a citizen of VENEZUELA ;
3. You ENTERED the United States at or near EAGLE PASS, TX , on or about July 1, 2022 ;
4. You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:
212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who entered the United States at any time or place other than as designated by the Secretary of Department of Homeland Security.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8CFR 208.30 ☐ 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:
[redacted]
(Complete Address of Immigration Court, including Room Number, if any)
on October 13, 2022 (Date) at 10:30 AM (Time) to show why you should not be removed from the United States based on the charge(s) set forth above.
[redacted]
(Signature and Title of Issuing Officer) (Sign in ink)
Date: July 03, 2022 Laredo, Texas
(City and State)

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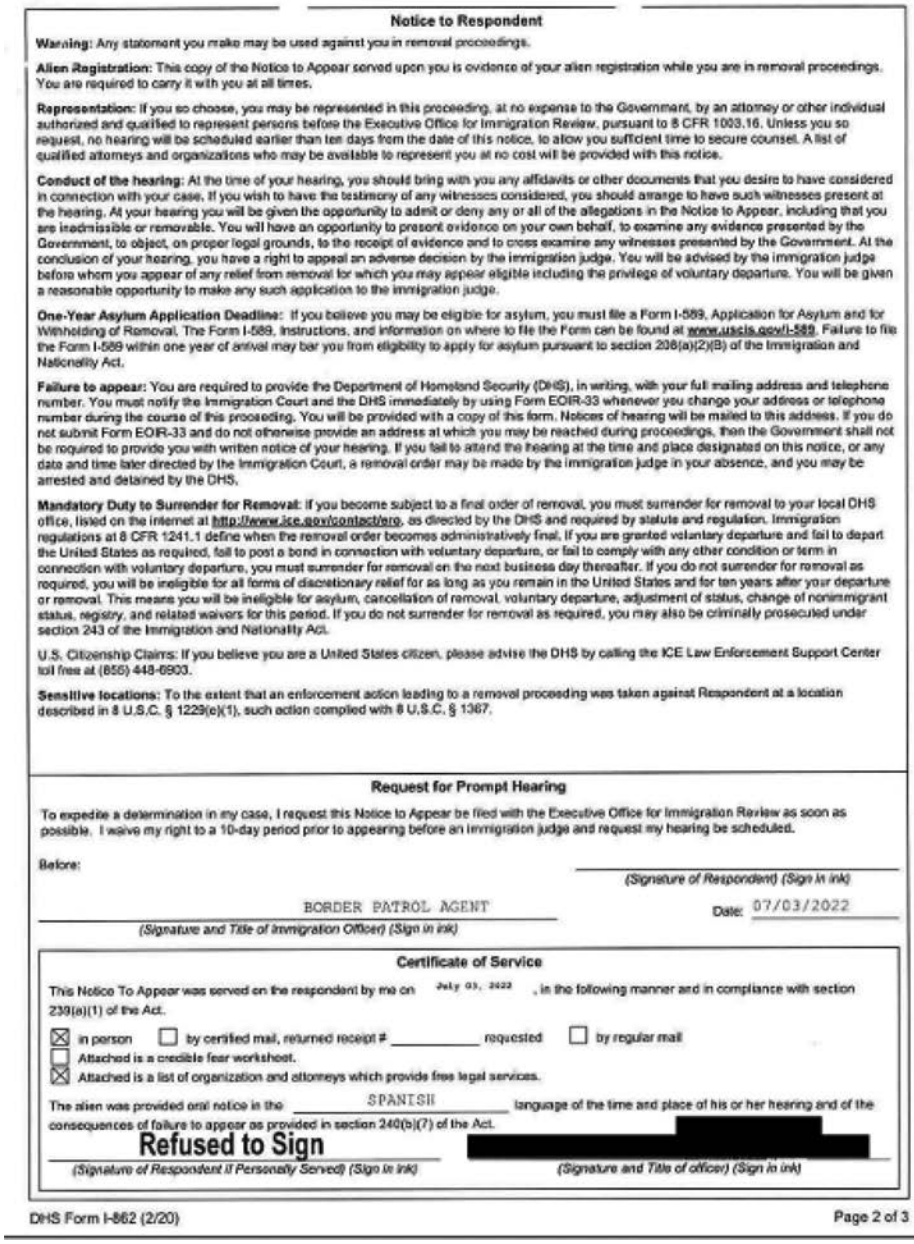
[70] Dep't Homeland Security, DHS Form I-862 (2022), https://www.nyc.gov/assets/hra/downloads/pdf/newsletter/Redacted-I-862-Notice-to-Appear.pdf [https://perma.cc/8PJQ-P2J5].

Figure 2: Notice to Appear, Second Page[71]



Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear, including that you are inadmissible or removable. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge. You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of voluntary departure. You will be given a reasonable opportunity to make any such application to the immigration judge.

One-Year Asylum Application Deadline: If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, Instructions, and information on where to file the Form can be found at www.uscis.gov/i-589. Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

Failure to appear: You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the internet at http://www.ice.gov/contact/ero, as directed by the DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

U.S. Citizenship Claims: If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

Sensitive locations: To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1367.

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office for Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an immigration judge and request my hearing be scheduled.

Before:

(Signature of Respondent) (Sign in ink)

BORDER PATROL AGENT

(Signature and Title of Immigration Officer) (Sign in ink)

Date: 07/03/2022

Certificate of Service

This Notice To Appear was served on the respondent by me on July 03, 2022, in the following manner and in compliance with section 239(a)(1) of the Act.

☒ in person ☐ by certified mail, returned receipt # _____ requested ☐ by regular mail

☐ Attached is a credible fear worksheet.

☒ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the SPANISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

Refused to Sign

(Signature of Respondent if Personally Served) (Sign in ink)

[redacted]

(Signature and Title of officer) (Sign in ink)

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[71] *Id.* The warning about the respondent(s) obligation to appear in court, and the consequences of failing to do so, is located in the middle of the page at the very end of the paragraph labeled "Failure to appear". It reads, "If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by DHS." *Id.* Though the use of "may" suggests that judges may offer leniency for families that fail to appear, this was not the case on the LA Dedicated Docket. Judges removed 100% of individuals who failed to appear. *See infra* Section IV.C.4 (discussing *in absentia* removal).

Moreover, the NTA contains no explicit warning that a family has been placed in expedited Dedicated Docket proceedings. Some NTAs have "DD" stamped at the top of the document, but absent additional context, families would have no reason to know the acronym's significance.[72]

2. Nonsensical Notice: Misleading Hearing Dates and Times

Buried warnings about the consequences of failing to appear, combined with language barriers, are compounded by commonplace errors on the NTA. DHS frequently serves faulty notices, including NTAs without a hearing date or time.[73] Sometimes DHS serves NTAs with hearing dates or times that are nonsensical, or even in the past.[74]

For years, DHS followed a 1997 regulation stating that the agency need only specify a hearing date and time on the NTA "where practicable."[75] In effect, "almost 100 percent" of NTAs omitted the date and time that a respondent would be obligated to appear.[76] But recently, both the Ninth Circuit[77] and the Supreme Court[78] made clear that the NTA must denote the time and date of a respondent's initial hearing to properly comply with statutory and due process requirements. Moreover, the Supreme Court found that such errors could not be cured by subsequent hearing notices.[79]

Despite such binding precedent, the government persisted in its practice of issuing defective NTAs. DHS began issuing some NTAs with phantom

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[72] My own observations revealed that some families' NTAs have "DD" stamped at the top of the document, but some do not.

[73] During its October 2023 term, the Supreme Court heard the issue of NTAs being served without a specific hearing date or time. Campos-Chavez v. Garland, SCOTUSblog, https://www.scotusblog.com/case-files/cases/campos-chaves-v-garland/ [https://perma.cc/4KGT-7SUU] (last visited).

[74] *Practice Alert: DHS Issuing NTAs with Fake Times and Dates*, AILA (Nov. 26, 2019), https://www.aila.org/library/practice-alert-dhs-issuing-ntas-with-fake-times [https://perma.cc/7FXP-SS7Y] (reporting that some respondents received NTAs with a hearing time of midnight or on a date that does not exist). For instance, one Notice to Appear publicized by Border Angels mandated that a respondent that was apprehended on May 1 at 6:25am to appear for a hearing at 12:00am the night before. Border Angels, Facebook (Jul. 20, 2018), https://www.facebook.com/BorderAngels/posts/ice-is-issuing-notices-to-appear-at-1200-am-midnight-for-a-court-hearing-so-on-t/10155892729511886/ [https://perma.cc/M4EH-MC6M].

[75] Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10332 (1997). *See* Pereira v. Sessions, 585 U.S. 198, 204±05 (2018) (explaining that DHS "almost always" served NTAs that failed to include the hearing date or time).

[76] *Pereira*, 585 U.S. at 205. *See* Campos-Chavez, 602 U.S. at 466 (Jackson, J., dissenting) ("For years, the Government has failed to ensure that . . . [the NTA] contains all the information [8 U.S.C. ß 1229(a)(1)] mandates. Specifically, the Government has issued NTAs that lack the exact time (and date) of a noncitizen's removal hearing.").

[77] *See* Singh v. Garland, 24 F.4th 1315, 1320 (9th Cir. 2022).

[78] *See Pereira*, 585 U.S. at 208-09 (stating that "a putative notice to appear that fails to designate the specific time or place of the noncitizen's removal proceedings" is not proper notice under 8 U.S.C. ß 1229(a)); Niz-Chavez v. Garland, 593 U.S. 155, 172 (2021) (holding that statutory notice requires a single NTA rather than multiple documents that first provide the charges and subsequently provide the hearing date and time).

[79] *Niz-Chavez*, 593 U.S. 155. *See* Singh, 24 F.4th at 1320 (holding that DHS's failure to denote a time or date of a respondent's initial hearing on the NTA was not cured by subsequent hearing notices, citing Supreme Court precedent in *Pereira* and *Niz-Chavez*).

hearing date and times, in what advocates guessed was a bad faith effort to comply with the rulings.[80] As a result, immigrants began showing up to immigration court on certain dates in massive numbers only to find that there was no hearing scheduled.[81] Some courts have continued deporting individuals who received an initial NTA with no hearing date or time.[82]

In 2024, the Supreme Court again took up the issue of NTAs that lacked a hearing time or place in *Campos-Chavez v. Garland*.[83] But this time, it reversed course, finding that the government could deport noncitizens *in absentia* even after it failed to provide an NTA with the time and place of the initial hearing. The Court ruled that noncitizens in this situation could not reopen their cases based on this government omission alone.[84] As Justice Jackson underscored in her dissent, this decision contradicts the statutory notice requirements crafted by Congress,[85] as well as Supreme Court precedent affirming those requirements.[86] Worse, it invites the government to continue its years-long practice of T¶ºout[ing] its NTA obligations∫ by tasking noncitizens with little knowledge of U.S. immigration laws to identify its mistakes.[87]

3. Notice and Language Injustice

The government's NTA errors are compounded by language barriers built into the notice process. EOIR's language access policy reads, T¶º[w]e at EOIR have an obligation to ensure that all individuals have the opportunity to present their case, regardless of their English proficiency.∫[88] And yet, sending

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[80] AILA, *supra* note 74; VICE News, *ICE Is Sending Immigrants Fake Court Dates. Here's Why. (HBO)*, YouTube (Oct. 31, 2018) (immigration attorneys across the country reported their clients receiving notices with phantom dates both before and after the 2018 *Pereira* ruling), https://www.youtube.com/watch?v=S8pqOeRrjTM [https://perma.cc/9LY2-MRX8].

[81] *Id.*

[82] *See, e.g.*, Rodriguez v. Garland, 15 F.4th 351, 355±56 (5th Cir. 2021) (vacating a BIA dismissal, finding that the IJ erred by denying a motion to reopen based on an *in absentia* removal order because the noncitizen's NTA did not contain the hearing date and time, as *Niz-Chavez* requires).

[83] 602 U.S. ___ (2024).

[84] *Id.* at 13±16.

[85] *Id.* at 6±13 (Jackson, J., dissenting) (conducting a textual analysis of 8 U.S.C. ßß 1229(a)(1)-(2) to demonstrate Congress's mandate that the government provide a compliant NTA with a hearing place and time prior to issuing amended hearing notices).

[86] *Id.* at 14±16. Justice Jackson notes that the majority T¶ºbarely pauses to acknowledge∫ the Court's precedents in *Pereira* and *Niz-Chavez* requiring that the NTA include a hearing time and place. *Id.* at 14. She explains that in those cases, the Supreme Court interpreted the notice regime as requiring a single NTA containing information about the first hearing. Then, only after issuing the compliant NTA, the government can send a supplemental hearing notice amending the time or place. *Id.* at 15 (citing *Pereira*, 585 U.S. at 210, 218; *Niz-Chavez*, 593 U.S. at159, 170).

[87] *Id.* at 22.

[88] EOIR, *EOIR Language Access Plan. A Message from EOIR Leadership*, U.S. Dep't. of Just., https://www.justice.gov/eoir/language-access-plan/message (last visited Dec. 28, 2024). It is notable that this language was scaled back from the 2012 language access plan, which read, T¶º[I]t is the responsibility of EOIR and *not the LEP person* to ensure that communications between EOIR and the LEP person are not impaired as a result of the limited English proficiency of the person∫ (emphasis added). EOIR, The Executive Office for Immigration Review's Plan for Ensuring Limited English Proficient Persons Have Meaningful Access to EOIR Services 9 (2012),

English-language notices to respondents with Limited English Proficiency (TMLEP∫) puts those individuals at a severe disadvantage, heightening their risk of *in absentia* removal.[89]

Though EOIR does provide interpretations of certain TMvital documents∫ for individuals with limited English proficiency, the NTA is not one of them.[90] Per EOIR's language access plan, a document's TMvital∫ designation TMdepends upon the nature of the program, information, encounter, or service involved, and the *consequence to the person with LEP* if the information in question is not provided accurately or in a timely manner∫[91] (emphasis added). Taking this language at face value, it is difficult to imagine a more serious legal consequence to the LEP person and their family than an *in absentia* removal order– a likely result if the family is unable to understand the NTA's warnings.

By the time DHS serves the NTA, moreover, the agency typically knows the respondent's primary language. Families on the Dedicated Docket have all presumably entered the United States via the southern border, where they had an interaction with Customs and Border Patrol (TMCBP∫). CBP officers are required to notate the respondents' primary language– information that gets passed on to ICE and the immigration courts.[92] The immigration courts then use this information to determine which interpreters they will need on a given day. Language information associated with each case is also notated on the public-facing list of cases posted daily outside the courtroom. Why, then, DHS does not use this information to issue notice in the correct language– particularly given their policy on TMvital documents∫– is unclear. To be sure, this would require coordination within DHS to ensure that respondents were sent notice in the correct language, in addition to one-time translation costs. Potential operational difficulties, however, do not justify repeatedly violating families' constitutional due process rights. This failure to provide notice in the correct language was particularly striking under the Biden administration, given its special emphasis on addressing inadequate language access policies in federal programs.[93]

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https://www.justice.gov/sites/default/files/eoir/legacy/2012/05/31/EOIRLanguageAccessPlan.pdf [https://perma.cc/C8C9-ZE8S] [hereinafter 2012 EOIR Language Access Plan].

[89] *See* Section IV.C.4 *infra* regarding the *in absentia* removal of families that fail to appear at their scheduled hearings.

[90] *See* EOIR, *Language Access Plan. E - Process to Translate Vital Documents, U.S. Dep't. of Just.,* https://www.justice.gov/eoir/language-access-plan/lap-e (last visited Dec. 28, 2024).

[91] *Id*.

[92] U.S. Customs and Border Protection [CBP], *Language Access Plan,* DHS 8 (Nov. 18, 2016) https://www.dhs.gov/sites/default/files/publications/CBP%20Language%20Access%20Plan_11-28-16.pdf [https://perma.cc/X2BA-JM52] (noting the use of an TME3 Processing system to track the languages spoken by [individuals with limited English proficiency] who are apprehended and/or detained∫). EOIR has at least some access to this information, as the author observed an IJ referencing language information documented by CBP officials.

[93] Memorandum for Heads of Federal Agencies, Heads of Civil Rights Offices, and General Counsels, from Merrick Garland, Office of the Attorney General (Nov. 21, 2022), https://www.justice.gov/d9/pages/attachments/2022/11/21/attorney_general_memorandum_-_strengthening_the_federal_governments_commitment_to_language_access_0.pdf [https://perma.cc/22B8-DUYP] [hereinafter AG Language Access Memo] (requesting all federal agencies to review their language access policies to improve individuals' with limited English proficiency (LEP) access to federal programs and services).

4. Calling the Court for More Information

Given the NTA's buried warnings, commonplace clerical errors, and language access problems, families may wish to call the immigration court to obtain additional information about their case and corresponding procedural obligations. Though EOIR's office at 300 North Los Angeles Street has a public phone line, staff are often unreachable, answering phones at unpredictable times of day. Moreover, some Los Angeles immigration courts appear to have a policy of not answering their phones at all.[94] EOIR does have a 1-800 line that families can call for information about future court dates, but many families are unaware of this service.[95] Moreover, the service does not allow respondents to talk to an actual person, and the recorded information is only available in English and Spanish.[96]

These practices contradict internal EOIR policy, which acknowledges that "[p]eople with LEP routinely contact EOIR by telephone."[97] The policy goes on to require that "all EOIR components and offices have access to the contracted telephonic interpreter services. Therefore, when persons with LEP call one of . . . [the EOIR field offices], EOIR employees can obtain an interpreter in many languages."[98] Such policies,[99] however, are futile where families cannot reach an EOIR staff person in the first place.

B. Mundane Injustices, Severe Consequences: Barriers Associated with Getting to Court

The doors flung open, and at 8:38am, a flustered-looking mother and her 10-year-old daughter took their seat in the back of the courtroom. The judge gave the woman a long stare, conveying

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[94] Though it did not host a Dedicated Docket, the former Los Angeles immigration court located at 606 South Olive Street, less than two miles from the 300 North Los Angeles Street immigration court, never answered its phone. I called roughly twelve times over the course of three days and was never able to reach anyone. Advocates later informed me that they do not answer their phone.

[95] Ingrid Eagly & Stephen Shafer, *Measuring* In Absentia *Removal in Immigration Court*, 168 U. PA. L. REV. 817, 862 (2020). I never observed a judge or EOIR staff person inform families that this service existed.

[96] *Id.*

[97] EOIR, *EOIR Language Access Plan. D - Contact with LEP Persons Outside the Courtroom*, U.S. Dep't. of Just., https://www.justice.gov/eoir/language-access-plan/procedures-d [https://perma.cc/9FUW-CKNG] (last visited Dec. 28, 2024).

[98] *Id.*

[99] EOIR has tacitly acknowledged its failure to comply with its own policies. In a January 27, 2025 memo, EOIR's Acting Director lamented on the state of EOIR, noting that its values have been "severely eroded in recent years". Policy Memorandum 25±02 from Sirce E. Owen, EOIR Acting Director, to all of EOIR (Jan. 27, 2025), https://www.justice.gov/eoir/media/1386541/dl?inline. However, the memo seems to explain away EOIR's lack of compliance with its own policies by arguing that "no single policy can ever account of 100% of hypothetical scenarios . . ." *Id.* It goes on to blame "advocacy organizations or those with biased interests" for misinterpreting EOIR's policies. *Id.* It then encourages EOIR employees not to "read policies obtusely or ridiculously" but "with a modicum of common sense." *Id.* Though the memo was crafted to encourage "integrity" in EOIR policymaking, the agency takes no responsibility for its lack of compliance with existing policy.

> *his disapproval. She and her daughter had been scheduled for an 8:00am initial removal hearing, but they were thirty-eight minutes late. The line to get inside the court had been particularly long that day, taking nearly thirty minutes to reach the entrance. To make matters worse, an emergency shutdown of the I-10 freeway downtown had caused major traffic delays for all commuters that morning.*[100]
>
> *The family's hearing commenced, and the judge began by noting on the record, "The respondents are present here in Court. They arrived at 8:38am today." At the end of the hearing, the judge addressed the mother directly, saying, "You're fortunate that I had other cases today. Otherwise, you would've been ordered deported because you came late."*

Going to court is never an enjoyable experience– long lines, strict security policies, and poorly-designed government signage make the ordeal stressful for anyone. But for families in removal proceedings, mundane logistical inconveniences can result in a severe penalty: summary deportation. One former immigration judge put this contrast between procedure and consequences aptly, remarking that removal defense cases amounted to "death penalty cases heard in traffic court settings."[101]

This subsection provides a glimpse into the barriers that families face before even stepping foot in the courtroom. In LA, Dedicated Docket families must travel with their small children to the federal building located downtown, often hours away from their homes.[102] They must pay steep parking fees and arrive at least an hour early to allow time to wait in a notoriously long line, clear strict security protocols, and locate the correct courtroom, all in English– a language most Dedicated Docket families do not speak.[103]

To the casual observer, each of these barriers may appear individually inconsequential. But taken together, they comprise a well-oiled deportation machine that systematically denies families access to their own hearings, often resulting in their *in absentia* removal.

1. Transportation and Parking Barriers

For families fortunate enough to receive notice of and comprehend their obligation to attend court proceedings, transportation and infrastructure

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[100] Ruben Vives, *10 Freeway in Downtown L.A. Will Remain Closed Indefinitely until Damage Assessment and Repairs Can Be Made*, L.A. Times (Nov. 11, 2023, 2:10PM), https://www.latimes.com/california/story/2023-11-11/10-freeway-shut-down-indefinitely-in-downtown-los-angeles-following-fire [https://perma.cc/3R6G-KC9W].

[101] Dana Leigh Marks, Opinion, *Immigration Judge: Death Penalty Cases in A Traffic Court Setting*, CNN (June 26, 2014, 9:29 AM), https://www.cnn.com/2014/06/26/opinion/immigration-judge-broken-system/index.html [https://perma.cc/KT9C-TVLX].

[102] Many families traveled from locations closer to Riverside or San Bernardino, and they must wait in several hours of morning traffic to get to court hearings on time.

[103] Spanish is the primary language for approximately 89% of individuals on the Dedicated Docket. UCLA Report, *supra* note 1, at 5.

challenges associated with travel to downtown LA impose serious due process barriers. As Professor Valeria Gomez of the University of Baltimore School of Law argues, these challenges are more than a "mere inconvenience": They implicate asylum seekers' fundamental right to access the court adjudicating their claim.[104]

Many economically disadvantaged families living in LA County do not own a vehicle.[105] For these families placed in Dedicated Docket proceedings, they must rely on lengthy, sometimes costly, public transit trips to get to the federal building at 300 North Los Angeles Street in downtown LA, where the immigration court is located. Families that lack access to a vehicle face another barrier: driving without a license. Though Assembly Bill 60 requires the Department of Motor Vehicles to issue driver's licenses to any California resident regardless of immigration status,[106] the expedited nature of the Dedicated Docket drastically reduces the time a person has to obtain a license. This creates an impossible choice for families: either drive without legal permission, sometimes through jurisdictions hostile to undocumented immigrants, or risk a summary deportation order.[107]

My observations revealed that many families in proceedings lived hours away, closer to Riverside or San Bernardino. For these families, arriving downtown for an 8:00 a.m. hearing meant braving several hours of commuter traffic, requiring them to begin their journey in the early hours of the morning, often with small children.

When families do arrive downtown, parking options are limited, particularly in the area near the federal building. There is a parking garage in the Los Angeles Mall immediately across the street from the building, but at $17.00, the cost is exorbitant for Dedicated Docket families who are not

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[104] Valeria Gomez, *Geography as Due Process in Immigration Court*, 2023 Wis. L. Rev. 1, 5 (2023).

[105] *See* Paul M. Ong, et al., Mobility, Accessibility and Disadvantaged Neighborhoods: Assessing Diversity in Transportation-Related Needs and Opportunities 33–34 (2021), https://escholarship.org/content/qt88d5v6wm/qt88d5v6wm.pdf [https://perma.cc/47S3-RHSP] (finding that among disadvantaged communities in Los Angeles, 14% of households do not down a vehicle, and of those that do own a vehicle, many are "clunker vehicles" that are over 20 years old).

[106] A.B. 60, Gen. Assemb., Reg. Sess. (Ca. 2013) (enacted).

[107] *See* Gomez, *supra* note 104, at 5 (discussing the safety risks associated with driving without a license through jurisdictions that cooperate with ICE authorities). Though Los Angeles passed a sanctuary city ordinance in late 2024, the new law will not protect individuals in neighboring jurisdictions. It also cannot prohibit ICE from acting independently to arrest undocumented individuals within city limits. *See* Dakota Smith, *L.A. `Sanctuary City' Law Won't Prevent Deportations. But `We Are Hardening Our Defenses'*, L.A. Times (Nov. 19, 2024), https://www.latimes.com/california/story/2024-11-19/l-a-city-council-tentatively-backs-sanctuary-city-law-it-wont-stop-mass-deportations. [https://perma.cc/VCT9-WDH7] Some sources, moreover, report that DHS intends to target jurisdictions with sanctuary protections for mass deportations during the second Trump administration. *See, e.g.*, Camilo Montoya-Galvez, *ICE Planning to Ramp up Arrests in Major U.S. Cities after Trump Takes Offices, Sources Say*, CBS News (Jan. 18, 2025), https://www.cbsnews.com/news/ice-planning-increase-arrests-undocumented-immigrants-major-u-s-cities-after-trump-takes-office/ [https://perma.cc/Z65L-JVTN]; Zolan Kanno-Youngs & Hamed Aleaziz, *Trump's Deportation Plan Is Said to Start Next Week in Chicago*, N.Y. Times (Jan. 18, 2025), https://www.nytimes.com/2025/01/17/us/politics/trump-immigration-raids-chicago.html.

legally authorized to work.[108] There are other lots ranging between $8.00 and $12.00 located within a mile of the courthouse, but they are difficult to locate, and their distance from the federal building may not be worth the risk of arriving late to a hearing.

2. An Impenetrable Fortress: The Federal Building at 300 North Los Angeles Street

Immigration court is made more inaccessible and foreboding thanks to its location in the heart of downtown LA, just three blocks from City Hall– an area marked by extreme poverty, intense police presence, heavily surveilled megastructures, and few public spaces or pedestrian links to other areas of the city.[109] On many days that I arrived at the federal building, LAPD or DHS officers and squad cars lined the block, adding to the air of militarization that the imposing, gray stone complex projects.[110] Figure 3 shows a Google Maps TMStreet ViewÍ of the federal building, complete with a DHS vehicle and austere stone architecture. This scene encapsulates what Mike Davis terms the TMfortress effectÍ[111]– an explicit TMsocio-spatialÍ architecture strategy designed to project security– that is endemic to this area of downtown LA. The building, with its modernist architecture and isolation from public spaces, seems that it was TMdesigned for you not to succeed.Í[112]

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[108] Noncitizens cannot apply for work authorization until 150 days after the date their asylum application is filed, subject to additional restrictions. 8 C.F.R. ß 208.7(a)(1). Applicants who receive authorization to work do not receive such permission until at least 180 days after they apply for asylum. *Id.*

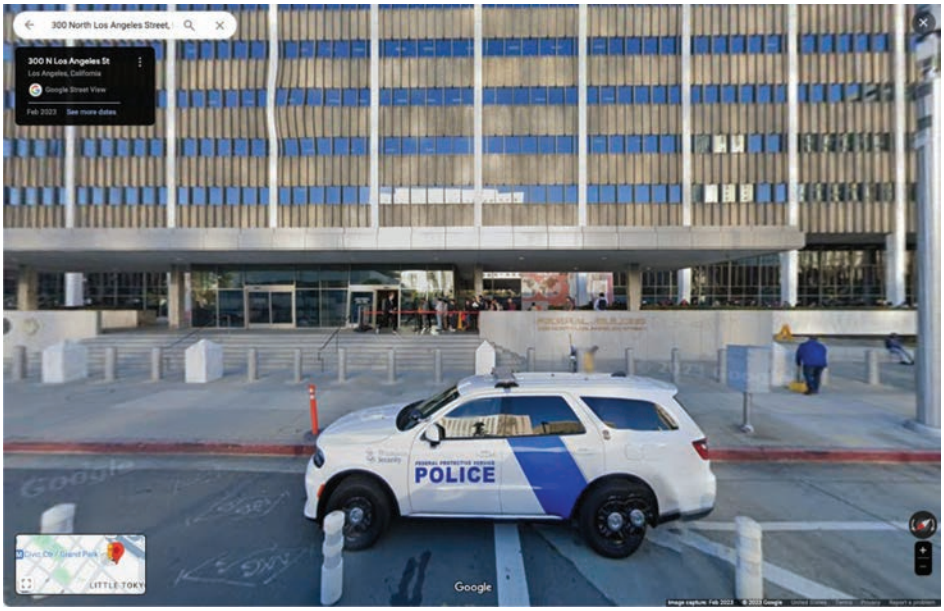
[109] *See* Mike Davis, *Fortress Los Angeles: The Militarization of Urban Space*, *in* Variations on a Theme Park: The New American City and the End of Public Space 154, 158±59 (Michael Sorkin ed., 1992) (describing how downtown LA developers began moving the city's corporate and financial district from near Broadway and Spring streets to Bunker Hill because they considered the TMold Broadway coreÍ and its property values to be TMirreversibly eroded by the area's status as the hub of public transportation primarily used by [B]lack and Mexican poor.Í).

[110] Mike Davis argues that many of the buildings in this area of Los Angeles were intentionally designed to look like fortresses to create a regime of repression and exclusion meant to keep out the urban poor. *Id.* at 167±69.

[111] *Id.* at 158±59.

[112] Grime artist Tinie Tempah employed this phrase to describe how the modernist British housing projects, where he grew up, were similarly designed to make one feel isolated from the wider community. Michael Bond, *The Hidden Ways that Architecture Affects How You Feel*, BBC (Feb. 24, 2022, 9:35AM), https://www.bbc.com/future/article/20170605-the-psychology-behind-your-citys-design [https://perma.cc/T529-MRY3].

Figure 3: Google Maps ™Street View∫ of The Federal Building at 300 North Los Angeles Street.



For families on the Dedicated Docket, many of whom have already experienced trauma-inducing interactions with law enforcement and DHS officials,[113] entering these heavily militarized spaces can have retraumatizing effects, compounding the difficulties of accessing immigration court.

a) Step 1: Getting Inside

Such trauma is exacerbated by innumerable logistical hurdles that asylum seeking families must overcome to reach the courtroom. Each morning, a long line snakes along the front of the federal building, as shown in Figure 3. Many of those in line hold their Notice to Appear, some stamped with a ™DD∫ on the upper right-hand side (shorthand for ™Dedicated Docket∫). Sometimes the line moves quickly, but depending on the day, it can take upwards of forty minutes to get to the building's entrance. There is a general sense of confusion, and some families attempt to ask those around them if they are in the right place. But language barriers often compound the confusion, as security guards usually only give group instructions in English. On several occasions, families asked me to translate what was being said from English to Spanish, including instructions to keep appointment documentation at the ready and

[113] *See, e.g.*, ™*They Treat You Like You Are Worthless*∫*: Internal DHS Reports of Abuses by US Border Officials*, HUM. RTS. WATCH (Oct. 21, 2021, 7:00AM), https://www.hrw.org/news/2021/10/21/us-records-show-physical-sexual-abuse-border [https://perma.cc/3FC5-9N28] (documenting numerous abuses that migrants face at the hands of DHS officials at the border, including physical and sexual abuse and violations of federal, state, and local law, in addition to agency rules and regulations).

warnings not to bring any weapons or dangerous items onto federal property. Amidst the confusion, families nervously wait to reach the front.

There is a marked racialization to the line. Most of those waiting are people of color who do not speak English. When attorneys or other working professionals, often White, approach the line, they sometimes do a double take, trying to decide whether the line is for *them*. The following anecdote encapsulates the environment on many mornings:

> *A man who presented as White approached the federal building clad in a suit and carrying a briefcase. Apparently unfamiliar with entry procedures, he first looked to the line, then to the entrance itself. After a moment's pause, he walked the building's perimeter to the back of the line. He looked down at his watch, then addressed the family in front of him in line, asking them, "Is this the line to get in?" Not understanding his question, the father of the family replied, "Only Spanish." Visibly flustered, the man set off to speak with the security guards at the entrance. He returned several minutes later, apparently having confirmed that he was to wait in line. He entered behind the same family, paying no heed to the families that had since arrived holding their notices for a morning hearing.*

Upon reaching the front of the line, families must pass through security. The screening procedures are strict. Electronics, including all cables and accessories, must be removed from their bags. There are often observable language barriers between families and the security guards, and the guards are sometimes abrasive with people who cannot understand their directions.

b) Step 2: Locating the Courtroom and EOIR Reception

Getting past security is only half the battle for families trying to arrive on-time for their Dedicated Docket hearings. Locating the courtroom itself is a challenge, even for those who speak fluent English. There is only one bulletin board in the main lobby, and even for an English speaker, it is difficult to decipher.[114] It lists EOIR as "Executive Office for Immigration Court" – a phrase that appears nowhere on the respondent's hearing notice.[115] Moreover, "EOIR" appears only in fine-print text on the notice, so unrepresented respondents have no reason to recognize it as the department where their hearing will be located.

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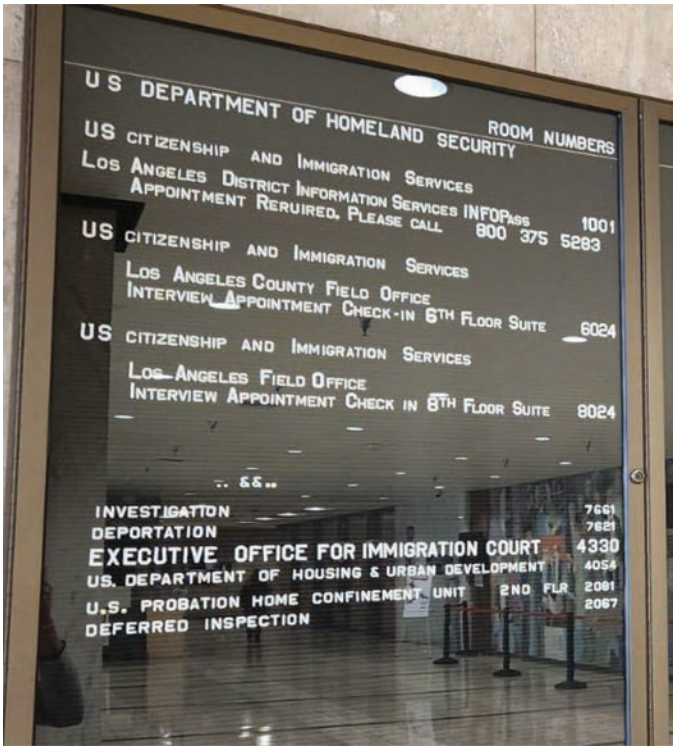
[114] *See* Figure 4.
[115] *See id.*

Figure 4: The Only Directional Signage in the Federal Building Lobby



Other immigration agencies, including U.S. Citizenship and Immigration Services (TUSCIS∫) and Immigration and Customs Enforcement (TICE∫) are also located in the building and are listed on the same bulletin board. Most families on the Dedicated Docket are also required to attend check-in appointments with ICE officers,[116] so determining which office summoned them can be a confusing task in and of itself. The bulletin board offers little help, listing the ICE field office as TDeportation,∫ confusing families who are attending deportation *proceedings* within EOIR. The UCLA Report specifically noted that one man was ordered removed *in absentia* after he reported to the ICE field office rather than EOIR. It was only after he had been ordered removed that ICE officers informed him that he had been waiting in the wrong department for hours.[117] This was consistent with my own observations. Confused by the lack of adequate signage, families often approached me with questions, showing me their NTAs and asking for directions to immigration court.[118]

[116] These check-ins are part of the Dedicated Docket's Alternatives to Detention (TATD∫) measures, a surveillance regime imposed on docket families. As a part of this program, some individuals are mandated to wear ankle monitors, place real-time location monitoring apps on their phones, send-real time photos of their location, and attend regular check-in meetings with ICE officers. UCLA Report, *supra* note 1.

[117] UCLA Report, *supra* note 1, at 7.

[118] Referencing the NTA did not help locate the correct courtroom, as the NTAs did not list the individual judge or room number.

Though EOIR courtrooms are spread across several floors, EOIR's main reception is located on the fourth floor. The floor's hallways are incredibly long, and without signs, art, or directional aids, and they all look the same.[119] Outside the fourth-floor elevator bank, there is a single English language bulletin board listing departments and their respective room numbers.[120] There is little directional signage indicating where the departments are located. As a result, finding a particular courtroom may require doing an entire lap around the building's massive corridors.[121]

Figure 5: The Fourth Floor Hallways Where EOIR Reception Is Located

[119] *See* Figures 3 and 4. The hallways are reminiscent of the office hallways in the Apple TV series, *Severance*. It would be unsurprising if set designers drew inspiration from the hallways at 330 North Los Angeles Street. *See* Carita Rizzo, *How ™Severance∫ Office Is Designed to Play Tricks on Viewers*, Hollywood Reporter (Jul. 31, 2022), https://www.hollywoodreporter.com/tv/tv-features/severance-production-design-office-workplace-1235188766/ [https://perma.cc/F5J9-NQ6Z] (describing the *Severance* office set as intentionally ™discombobulating∫ and ™a never-ending maze of hallways∫).

[120] *See* Figure 6.

[121] The first time that I observed Dedicated Docket hearings, I walked around the perimeter of the entire building and had to ask a security guard for directions before locating EOIR's reception area.

Figure 6: Bulletin Board Outside the Fourth Floor Elevator Bank

Worse, all signage is in English, despite approximately 88.7% of respondents on the Los Angeles Dedicated Docket being Spanish speakers.[122] This practice violates EOIR's own policy on signage in immigration courts. The agency's 2024 language access plan provides that ™each immigration court and the [BIA] will review posted signs and notices and then recommend to [the Office of the Chief Immigration Judge] or BIA [Component Language Access Coordinator] whether additional languages are necessary for these postings.∫[123] The agency's previous 2012 language access plan also required a ™standing language access committee∫ (™LAC∫) to consider whether there were additional ™vital documents∫, such as signage, that should be translated.[124] Based on the lack of signage in *any* language, it is not clear that either policy was ever implemented.[125]

c) EOIR Reception & Accessing Reliable Information

Logistical barriers continue after families locate EOIR's reception desk. Despite most LA Dedicated Docket families being fluent in Spanish but not English,[126] not all EOIR staff speak Spanish. As a result, families are sometimes sent upstairs to wait at the Immigration Court Helpdesk to get simple questions answered, like how to fill out a change of address form.[127]

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[122] UCLA Report, *supra* note 1, at 5.
[123] EOIR, *supra* note 90.
[124] *Id*.
[125] The 2012 language access plan also required that ™each Immigration Court will review the signs that it posts and recommend to [the Office of the Chief Immigration Judge]'s language access coordinator whether signs in additional languages are necessary.∫ EOIR 2012 Language Access Plan, *supra* note 88, at 11.
[126] UCLA Report, *supra* note 1, at 5.
[127] Catholic Charities of Los Angeles runs the Esperanza Immigrant Rights Project, an organization that staffs the Immigration Court Helpdesk (™ICH∫) on the 8th floor of the federal building, outside of Courtroom 4. The ICH offers essential gap-filling services for

In addition, EOIR reception staff are often unable to offer reliable information about hearing dates and times. Not only does this opacity surrounding scheduling frustrate efforts to monitor EOIR practices, but it also underscores a striking knowledge imbalance with material consequences for asylum seeking families. While the consequences of a respondent confusing a hearing date are severe, if the Court mis-schedules or cancels a hearing with no or little notice, it can simply reschedule.

> *After waiting in a long line and passing through security, I arrived at EOIR reception at 7:52am– just eight minutes before hearings were scheduled to begin. Surprisingly, the reception area was packed with families and their small children. Confused why no one had entered the courtroom yet, I waited in line to inquire at the reception window. As I waited, I listened as EOIR staff explained to family after family that their hearings had been rescheduled that very morning. Families repeatedly asked when they would be expected to return, but staff had no answer. They instructed families to monitor their mail in the coming weeks for a new notice.*
>
> *When I asked staff what happened, they explained that DHS had rescheduled all hearings with no further explanation. Notably, it was the Monday before Thanksgiving holiday, and staff confirmed that the judge was not present that day. I inquired if the families that failed to show up would be prejudiced in future hearings, but they informed me that they were not privy to that information.*

For those families who appeared for the originally scheduled hearing, they bore the burden of traveling back to court and navigating federal building procedure once again, despite the last-minute cancellation being the result of government error. On another day that I attended court, a family had traveled from Panama City, Florida, with their infant son to attend a scheduled hearing. For such families, a scheduling error can cost them hundreds or thousands of

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unrepresented asylum seekers, including walk-in appointments where staff members provided legal education, case support, and assistance with filling out EOIR forms. *See Community Education for Unrepresented Immigrants*, Esperanza Immigr. Rts. Project, https://www.esperanza-la.org/programs-ce-undetained-adults-fam (last visited Dec. 11, 2023) [https://perma.cc/U898-6ZQ5]. ICH programs exist in 23 immigration courts across the country, offering legal education and ™ modicum of due process in a high-stakes and complex legal system.∫ *Immigration Court Helpdesk*, Acacia Ctr. for Just. , https://acaciajustice.org/what-we-do/immigration-court-helpdesk/ [https://perma.cc/E8JA-GFP7] (last visited Feb. 1, 2025). Two days after Trump took office for his second term, the DOJ directed these federally funded service providers to immediately stop work, despite the program's bipartisan support in Congress. Amanda Robert, *Behind the Scenes as the ABA Reacts to DOJ's Order to Stop Providing Legal Support to Immigrants*, ABA J. (Jan. 30, 2025), https://www.abajournal.com/web/article/aba-affected-by-dojs-order-to-stop-providing-legal-support-to-immigrants [https://perma.cc/9694-PJLR]. Soon after, the Amica Center for Immigrant Rights, along with various partner organizations, sued the DOJ, EOIR, DHS, and the heads of those agencies seeking injunctive relief to reinstate ICH and other legal access programs for unrepresented noncitizens. *Nonprofits Sue the Department of Justice and Kristi Noem to Restore Legal Access for Immigrants Facing Deportation*, Nat'l Immigrant Just. Ctr. (Jan. 31, 2025), https://immigrantjustice.org/press-releases/nonprofits-sue-department-justice-and-kristi-noem-restore-legal-access-immigrants#:~:text=Today%2C%20the%20Amica%20Center%20for,and%20Customs%20Enforcement%20 [https://perma.cc/TE26-CLB9].

dollars in travel costs and lost wages. It can also pose a safety risk, as returning to court may require respondents to travel through hostile jurisdictions without documentation, increasing the chances of their arrest and detention.[128]

In addition to rescheduling hearings at a moment's notice, EOIR staff sometimes provided incorrect information about hearing times. The following vignette describes one such scenario. Though this observation took place during a removal proceeding off the Dedicated Docket, and at the former Olive Street Immigration Court in downtown Los Angeles,[129] it illustrates how EOIR and DHS generally fail to provide accurate information to respondents in proceedings.

> *A 19-year-old boy appeared in the courtroom specified on his NTA at the correct date and time. I was observing in the same courtroom at the suggestion of an EOIR receptionist, who had informed me minutes earlier that the judge had master calendar hearings that morning.*
>
> *We both waited for ninety minutes in an empty courtroom. When the judge still had not appeared, the nineteen-year-old nervously asked me in Spanish if he would be blamed if the judge did not show up. I explained that I was only a law student, but generally, the onus was on the asylum-seeker to attend their hearing on the date provided in their NTA.*
>
> *When it became clear that the hearing was not happening, we returned to EOIR reception on another floor to get more information. The receptionist suddenly realized that the nineteen-year-old's hearing had been rescheduled and dismissed him. After the nineteen-year-old left, the receptionist blamed him, telling me that EOIR probably sent him an updated NTA, but he either failed to read it, or did not receive it because he failed to follow EOIR's change of address policy. The receptionist did not acknowledge that just ninety minutes earlier they had directed me to attend the judge's morning calendar.*

DHS and EOIR thus place the burden squarely on asylum seekers to adapt to ever-changing hearing schedules– all amidst a slew of other defective notice and language practices. This reality is underscored by EOIR's general lack of knowledge about Dedicated Docket hearing schedules. Each time I

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[128] Valeria Gomez explores these risks in detail, noting that many respondents in removal proceedings are forced to travel through jurisdictions that have cooperative agreements with ICE in order to get to Court, putting them at high risk of arrest and detention. Gomez, *supra* note 104, at 5.

[129] I attempted to attend a hearing at this courthouse to compare what I had been observing at the federal building. The former Olive Street Immigration Court was located less than two miles from the federal building at 300 North Los Angeles where the Dedicated Docket is housed. The Olive Street court heard typical removal proceedings and did not host Dedicated Docket cases. However, the court was officially closed on April 17, 2024, just before EOIR opened the new West Los Angeles Immigration Court on April 30, 2024. EOIR, *EOIR to Open West Los Angeles Immigration Court, U.S. Dep't. of Just.* (Apr. 9, 2024), https://www.justice.gov/eoir/media/1347191/dl?inline [https://perma.cc/9ESF-U3WC].

asked staff when hearings would take place, I was given confusing answers, with staff explaining that hearings are sometimes rescheduled the night before. Apart from constitutional notice defects, such practices also impose heavy logistical, economic, and safety burdens on families that must travel long distances, or skip work, to attend their hearings.

C. Inside the Courtroom

1. General Atmosphere

After confronting a slew of compounding notice, language, transportation, and scheduling barriers to the courtroom, the families that managed to make it inside faced a new set of challenges. On a given morning of Dedicated Docket master calendar hearings, the inside of the courtroom was packed with families and small children. Typically, unrepresented families appeared in court, while respondents fortunate enough to find an attorney were not required to attend. It was rare for attorneys to be present in the courtroom,[130] and most appeared virtually over WebEx.[131] On most days, the only people physically present in court were the families, the bailiff, the clerk, the judge, and sometimes an interpreter.

When one judge would enter the courtroom, everyone rose to their feet, but the judge never addressed or greeted the families. Instead, the judge moved straight into hearings for represented respondents, speaking directly to their attorneys via WebEx. This process was entirely in English and could sometimes take upwards of thirty minutes. Meanwhile, unrepresented families waited patiently, their children squirming, to hear an explanation of how their hearing would proceed.[132]

2. Discretion to Intimidate and Discriminate: IJ Treatment of Children, Families, and People of Color

Though families, children, and people of color on the Dedicated Docket each faced distinct challenges navigating courtroom proceedings, as detailed in this subsection, they all endured hostile treatment from EOIR adjudicators– treatment that often goes unchecked and unpunished by DOJ superiors. Advocates, journalists, and even appellate judges have remarked on IJs' unfair

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[130] The only attorney I observed to make an in-person appearance before the Court was a DHS attorney on Judge Hsu's docket.

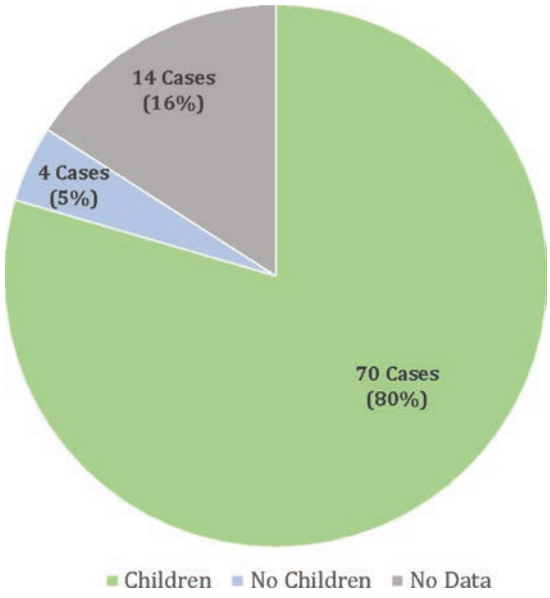
[131] WebEx is a video conferencing platform that EOIR uses to allow attorneys to join their hearings remotely. Policy Memorandum 21±03 from James R. McHenry III, EOIR Director, to all of EOIR (Nov. 6, 2020), https://www.justice.gov/eoir/reference-materials/OOD2103/dl [https://perma.cc/7PBE-QMZ8]. *See* Ingrid V. Eagly, *Remote Adjudication in Immigration*, 109 Nw. L. Rev. 933, 934 (2015) (describing how federal immigration courts have come to rely more heavily on remote videoconferencing technology in recent years).

[132] Unrepresented families make up a large majority of the LA Dedicated Docket at approximately 70.1%. UCLA Report, *supra* note 1, at 8.

treatment of respondents in removal proceedings.[133] This is also true on the Dedicated Docket, where families and children are often subjected to hostile and unprofessional adjudicator conduct.[134] The cases observed for this Article only confirm such findings.

Of the 88 cases I observed, 80% involved children, 5% did not, and in another 16% of cases, it was unknown whether children were involved, likely because a large portion of these cases were *in absentia* removals where the Court did not specify the ages of the respondents it ordered deported.[135]

Figure 7: Cases Observed with Children in Proceedings*



*Percentages may not add to 100 due to label rounding.

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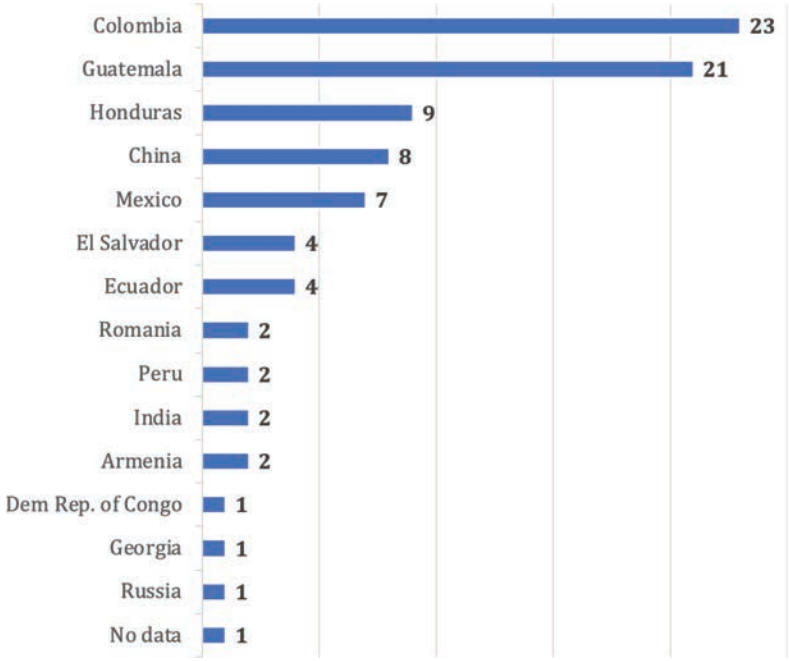
[133] *See, e.g.*, Fatma Marouf, *Implicit Bias and Immigration Courts*, 45 New Eng. L. Rev. 417, 424±25, 428±441 (2011) (describing the role that racial prejudice plays in IJs' decision-making); Nina Rabin, *Searching for Humanitarian Discretion in Immigration Enforcement: Reflections on a Year as an Immigration Attorney in the Trump Era*, 53 U.Mich. J.L. Reform 139, 156±59 (2019) (describing an IJ's hostile treatment of a family seeking asylum on the basis of gender-based violence); Molly Hennessy-Fiske, *The Judge Says Toddlers Can Defend Themselves in Immigration Court*, L.A. Times (Mar. 6, 2016, 3:00AM), https://www.latimes.com/nation/immigration/la-na-immigration-judge-20160306-story.html [https://perma.cc/638Y-48FK]; Islam v. Gonzales, 469 F.3d 53, 55 (2d. Cir. 2006) (finding that the IJ treated the asylum seeker in ™an argumentative, sarcastic, impolite, and overly hostile manner that went beyond fact-finding and questioning∫); Fiadjoe v. Att'y Gen. of U.S., 411 F.3d 135, 155±56 (3d. Cir. 2005) (finding that the IJ bullied the asylum seeker during her hearing by creating an ™extraordinarily abusive∫ atmosphere and engaging in a hostile line of questioning about her past sexual abuse).

[134] *See, e.g.,* UCLA Report, *supra* note 1, at 12±13 (noting one LA Dedicated Docket IJ's impatience with young children and families); October 2022 Advocate Letter, *supra* note 54, at 7±8 (reporting that IJs in at least 6 of the 11 Dedicated Docket cities had displayed aggressive or hostile behavior toward respondents, often in the presence of children, berating some respondents to the point of tears).

[135] *See* Figure 7.

To understand IJs' treatment of children and families, it is crucial to understand that most families on the Dedicated Docket are families of color. Though I was not able to document information on race as a part of my research, my own observations, along with demographic information on families' country of origin, reveal that families of color make up a large portion of the LA Dedicated Docket.[136] As Figure 8 demonstrates, most families– 80 percent– sought asylum from countries located in Latin America, including Colombia, Guatemala, Honduras, Mexico, El Salvador, Ecuador, and Peru. A smaller portion of families hailed from China or India– 11 percent– and only 5 percent sought asylum from European countries. One family also sought protection in the United States from the Democratic Republic of the Congo.

Figure 8: Number of Cases Observed by Country of Origin



How these families and their children were treated depended largely on which IJ oversaw their proceedings. For instance, one judge seemed to have little patience for noise in his courtroom. When children would coo softly, even imperceptibly, the judge would remove the child from the courtroom,

[136] It is crucial here to note the contributions of Critical Race Theory (CRT) scholars, who have demonstrated that though race is an invented political demarcation disguised as a biological category, it carries enormous political meaning and material consequences for people's ∫health, wealth, social status, reputation, and opportunities in life.∫ Moreover, though race is intimately related to nationality constructs, the two are separate political categories whose meanings can change according to the context. *See id.* at 22±23. Dorothy Roberts, *The Invention of Race*, *in* Fatal Invention: How Science, Politics and Big Business Re-Create Race in the Twenty-First Century 4±5 (2011).

requiring that their parent also exit the hearing. When children continued to cry when their parents' hearing began, the judge sometimes scolded the parent for bringing their child to court, despite the NTA stating that the child was legally obligated to appear.[137]

> *A man from Russia approached the stand for his initial removal proceeding, pushing his infant son's stroller. His wife had already been removed from the courtroom with their one-year-old daughter, who had been crying earlier. The man, alone in the courtroom with his infant son, proceeded to take the oath through the remote Russian interpreter,*[138] *but his son also began crying. The judge, appearing exasperated, instructed the father, ™You can take the child out [of the stroller], Sir, if that will control it.∫ The father did so, but the child did not stop crying. Flustered, the judge threatened to reset the family's case if the crying continued.*
>
> *Realizing that the man's wife was in the hallway, the judge instead told the man, ™Take your son out now, then come right back.∫ The man exited the courtroom to leave the child with his mother and their daughter, then returned alone. As the hearing concluded, and the judge gave the man his next hearing date, the judge told him, ™I strongly urge you not to bring your children because your wife has the same right you do to be present listening to the Court.∫ The judge did not acknowledge that DHS had mandated the children to appear, nor that the Court excluded his wife from her own hearing.*

Indeed, in hearings with two parents, removing children from the courtroom often resulted in one parent being excluded from the hearing entirely, as the judge found it adequate for one respondent to represent the entire family. On one occasion, the judge removed a respondent's entire family from the courtroom just before she proceeded to represent herself, her spouse, her six-year-old child, and her three-year-old child. She pled to DHS allegations against her entire family and listened to a long-winded reading of their procedural and evidentiary rights (through a Mandarin interpreter), all without a single person in the courtroom to support her or later confirm the information the judge read back to her.

The Court, moreover, was apathetic toward pregnant asylum seekers and the unique challenges they face in complying with expedited hearing timelines.

> *A visibly pregnant woman from Guatemala appeared for her initial removal hearing, along with her partner and three-year-old daughter. As their hearing concluded, the judge asked her, ™What is your condition?∫ The woman responded that she was seven*

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[137] Separate NTAs were often served on the adult respondents and on their minor children, making it clear that both the adults and their children were obligated to attend the hearing.

[138] The man's primary language was Chechen, but he assured the Court he was comfortable proceeding in Russian.

> *months pregnant. The judge proceeded to schedule her next hearing for one month away, when she would be eight months pregnant. The judge offered, "If for any reason you cannot come in next month, have your partner come in and explain [why you could not make it]." The judge did not give the woman any assurance that she would not be ordered removed* in absentia *if she failed to appear because of her pregnancy.*

On another occasion, a woman from Colombia was scheduled for a continued removal hearing during the same month that she gave birth. She brought her newborn baby to court, where she was asked to explain why she had not yet found an attorney to represent her family. She explained the obvious to the Court: that she had just given birth and did not have the time or money to find someone.

Such treatment is unsurprising,[139] given entrenched narratives in the U.S. immigration system about the dangers of Latinx fertility and reproduction to national (i.e.: White) identity.[140] Perhaps as a partial consequence of such narratives, apathy toward families with children– particularly Latinx families– occasionally morphed into outright hostility when individuals failed to comport with the judge's strict preferences for courtroom conduct. The following account illustrates one such example:

> *As morning hearings continued, the courtroom clerk approached a family with two small children waiting for their case to be heard. The clerk quietly handed the parents a blue form*[141] *and softly explained to them in Spanish that they could go outside into the waiting area to fill it out. The hearing was still ongoing, and the couple briefly and quietly whispered to themselves to determine who would go outside to fill out the form and who would remain with the two children.*

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[139] Indeed, such treatment has been observed by advocates in other immigration courts. *See* Carimah Townes, *Judge Won't Delay Hearing for Lawyer's Maternity Leave, Then Berates Her for Bringing Baby to Court*, ThinkProgress (Oct. 17, 2014, 1:06PM), https://archive.thinkprogress.org/judge-wont-delay-hearing-for-lawyer-s-maternity-leave-then-berates-her-for-bringing-baby-to-court-a698db0177fd/ [https://perma.cc/D3EY-MPSH]. Abusive treatment toward individuals who are pregnant, post-partum, and nursing has also been observed throughout the U.S. immigration system. *See* Pedro Rios, *Opinion: A Baby Was Born Beside a Trash Can at a Chula Vista Border Patrol Station. It's Inhumane.*, San Diego Union Trib. (updated May 11, 2023 1:02AM), https://www.sandiegouniontribune.com/opinion/commentary/story/2023-05-10/opinion-mothers-day-title-42-border-patrol-chula-vista-pregnant-nursing-migrants#:~:text=As%20attorney%20Langarica%20has%20said,against%20the%20dangers%20of%20border [https://perma.cc/SG63-UDPF].

[140] *See* Leo Chavez, *Latina Sexuality, Reproduction, and Fertility as Threats to the Nation*, *in* The Latino Threat: Constructing Immigrants, Citizens, and the Nation 73, 87 (2d ed. 2013) (describing the public myths that Mexicans' and Latin American immigrants' fertility rates represent a threat to America's traditional, White identity); Sam Huntington, *The Hispanic Challenge*, 141 Foreign Policy 30 (2004) (describing fertility rates of Latin American, and especially Mexican immigrants as "the single most immediate and most serious challenge to America's traditional identity").

[141] Dedicated Docket judges routinely referred to the EOIR-33, or the "Change of Address/Contact Information Form" as the "blue form". *See* EOIR, *Change of Address/Contact Information Form*, U.S. Dep't. of Just., https://www.justice.gov/eoir/page/file/1230661/dl?inline [https://perma.cc/BH4T-JJNN] (last visited Jan. 19, 2025).

> *Suddenly, the judge went off the record, directly addressing the pair in Spanish. The judge threatened, TMIf you keep talking, I will extend your case to 4:00pm, would you like me to do that?∫ Observably startled, both parents shook their heads and quickly answered, TMNo.∫ The judge continued, TMEveryone else here is sitting respectfully and not talking.∫ The clerk said nothing about his request that the family go into the hall to fill out the form.*

Such interactions are alarming because they underscore how some IJs fail to treat asylum-seeking families on the Docket with professionalism and respect. As advocates have pointed out in communications to the DOJ, the consequences of such hostile exchanges also deeply impact children, who are mandated to attend initial removal hearings. Witnessing the mistreatment of their parents in a courtroom setting may worsen the trauma that children on the Dedicated Docket already experience, which can produce detrimental long-term health effects and make it more difficult for children to pursue and obtain relief.[142]

In some moments, it appeared that the same judge tried to treat children on the Dedicated Docket with more empathy. Even these interactions, however, were sometimes tinged with subtle yet observable forms of racial bias. The following is one such example:

> *A mother and her nine-year-old daughter from Guatemala took the stand for their initial removal hearing. They spoke Spanish, and they communicated with the judge through an interpreter. As the hearing concluded, the judge addressed the young girl directly, asking her, TMWhat grade are you in?∫ She responded that she was in fourth grade. The judge replied, TMStay in school.∫*

While some may argue that this was a harmless admonishment to encourage a child to pursue her education, this ignores the broader context: Such comments are often made in a markedly hostile courtroom setting that dismisses asylum seekers as burdens on the U.S. legal system, education system, and economy. Moreover, such implicitly biased statements feed into harmful narratives in the public consciousness that Latinx immigrants are TMintellectually and morally inferior∫ and therefore deserving of mass expulsion.[143]

These statements also reflect a tendency to TMadultify∫ children of color in immigration proceedings: Immigration adjudicators often perceive children

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[142] October 2022 Advocate Letter, *supra* note 54, at 8. The BIA has specifically noted that IJs who subject minor children to hostile questioning that could be perceived as TMbullying∫ violate children's due process rights by creating a TMchilling effect∫ on the child's testimony that can TMlimit his or her ability to fully develop the facts of the claim.∫ Matter of Y-S-L-C-, *supra* note 37, at 690±91.

[143] *See* Mary Romero, *State Violence, and the Social and Legal Construction of Latino Criminality: From El Bandido to Gang Member*, 78 DENV. U. L. REV. 1081, 1084±85, 1093 (2001) (discussing how Mexican juveniles in particular became scapegoats for crime in the United States, how Latinx juveniles who have been TMcircumscribed as dangerous∫ have been termed TMsuper-predators∫ due to the perception that they are delinquent and engage in criminal activity); Juan F. Perea, *Immigration Policy as a Defense of White Nationhood*, 12 GEO. J.L. & MOD. CRITICAL RACE PERSP 1, 11±12 (2020).

of color as ™more mature∫ and therefore ™[old them] to a higher standard of responsibility with less forgiveness.∫[144] The IJs' broad degree of discretion can exacerbate the problem.[145] Though IJs face enormous political pressure to move cases forward, they rarely face consequences for their mistreatment of individual respondents,[146] as discussed later in this subsection.

Such discretion can also result in striking differences in the treatment of children. In contrast to the first judge, families appearing before a second Dedicated Docket judge were treated more humanely. When children softly cooed or cried, this judge did not remove them. Instead, the judge conducted hearings with all parties present in the room. At one point, the judge commended a family for traveling from Hesperia to attend their hearing, a drive that can take between ninety minutes and four hours depending on traffic conditions. The judge noted, ™That's a long way to drive, I really appreciate you arriving on time, especially with three small children.∫

These stark differences in the treatment of children are consistent with what scholars have termed ™refugee roulette.∫[147] Just as asylum outcomes may be impacted by ™arbitrary factors,∫ such as a particular adjudicators' ™biases, attitudes, policies, or ideologies,∫[148] a family's treatment in immigration hearings can be impacted by similar variables, as illustrated by the vignette above. Professor Fatma Marouf of Texas A&M University School of Law conducted research confirming this, finding that underlying prejudice toward immigrants of Color in removal proceedings is ™widespread.∫[149] Latinx asylum seekers, for instance, are routinely forced to confront long-standing racial narratives about ™the Latino threat,∫ a public sentiment that immigrants from Latin America must be excluded at all costs in order to defend a shared national identity of

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[144] Laila Hlass, *The Adultification of Immigrant Children*, 34 Geo. Immigr. L.J. 199, 202-03 (2020).

[145] *See id.*; Jyoti Nanda, *Blind Discretion: Girls of Color & Delinquency in the Juvenile Justice System*, 59 UCLA L. Rev. 1502 (2012) (describing how adjudicator discretion in the juvenile criminal justice system results in girls of color facing harsher punishment than boys).

[146] For instance, the only remedial action for Courts of Appeals when confronted with IJ misconduct in a particular case is to remand the case with the strong recommendation that the case not be returned to the same IJ. *See, e.g.*, I.N.S. v. Orlando Ventura, 537 U.S. 12, 16 (2002) (citing Florida Power & Light Co. v. Lorion, 470 U.S. 729, 744 (1985) (™the proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation∫).

[147] Ramji-Nogales et al., *supra* note 41, at 301±302 (finding that in some instances, certain judges are 1820% more likely to grant an application for relief than another judge in the same courthouse, that case outcomes are ™strongly influenced by the identity or attitude of the officer or judge∫ assigned to the case).

[148] *Id.* at 300. Authors of the ™Refugee Roulette∫ study also found that other factors such as including the IJ's gender and prior work experience seem to impact asylum grant rates. *Id.* at 342 (finding that female IJs granted asylum at a rate of 53.8% while their male counterparts did so at a rate of 37.3%). Statistical analysis also demonstrated significantly lower asylum grant rates for IJs with prior work experience in DHS or its predecessor agency, the Immigration and Naturalization Service (™INS∫). The effect increased with years of prior experience. IJs with military experience also had lower overall grant rates than their counterparts. IJs who worked in the private sector, at a nonprofit, or in academia, conversely, granted asylum at higher overall rates. *Id.* at 345±49.

[149] *See* Marouf, *supra* note 133, at 424±25, 428±441 (describing the role that racial prejudice plays in IJs' decision-making, outlining the factors that contribute to implicit bias in immigration courts).

Whiteness.[150] As Professor Marouf argues, such biases, however implicit, are likely to influence individual IJs' treatment of asylum seekers, in large part due to their political accountability to DOJ superiors and the inquisitorial nature of asylum adjudication.[151] This phenomenon is only exacerbated by the stress of overwhelming caseloads, which reduces IJs' capacity to engage in deliberative thinking, likely causing them to give greater weight to negative attitudes or stereotypes in their decision-making.[152]

Moreover, EOIR suffers from an institutional culture that tolerates widespread IJ misconduct. Though the Office of the Chief Immigration Judge (OCIJ) monitors IJs' "performance and conduct" through EOIR's "performance management program,"[153] IJs are rarely disciplined. Of at least 448 complaints against IJs filed from fiscal years 2018 to 2022, IJs were disciplined in no more than five instances.[154] The large majority of these complaints were based on IJs' in-court conduct, and a substantial portion were also based on an IJs' biased behavior.[155]

Figure 9: Percentage of Complaints Against IJs By Nature of Complaint

	"In-Court Conduct"	**"Bias"**	**"Due Process"**
FY2022	77%	27%	33%
FY2021	71%	29%	30%
FY2020	83%	28%	48%
FY2019	64%	37%	63%
FY2018	71%	39%	39%

[150] *See Leo Chavez*, *Introduction, in* The Latino Threat: Constructing Immigrants, Citizens, and The Nation, 7 (2013) ("Debates over immigration reform provide ample opportunities for the Latino Threat Narrative to become invoked. In addition, immigration reform legislation is an exercise in inclusion and exclusion when it comes to defining who is legitimately able to join the community of citizens"); Joseph Nevins, Operation Gatekeeper and Beyond: The War on "Illegals" and the Remaking of the U.S.-Mexico Boundary 104 (2010) ("The perceived failure of IRCA to address the issue of unauthorized boundary crossing from Mexico sufficiently helped to fuel a resurgence of anti-immigration sentiment"); Perea, *supra* note 143, at 2, 10±11.

[151] Marouf, *supra* note 133, at 429±34.

[152] *Id.* at 431±32 (citing a body of social science research demonstrating that cognitive biases thrive under conditions of stress).

[153] EOIR, *Summary of OCIJ Procedure for Handling Complaints Concerning Immigration Judges*, U.S. Dep't. of Just., https://www.justice.gov/eoir/page/file/1039481/download [https://perma.cc/XVX4-8GFM] [hereinafter OCIJ].

[154] This estimate is based on publicly-available complaint data on EOIR's website. *See* EOIR Office of the Director, Complaints Against Immigration Judges: Fiscal Year 2018 (2018), https://www.justice.gov/media/972171/dl?inline [hereinafter FY18 IJ Complaint Report]; EOIR Office of the Director, Complaints Against Immigration Judges: Fiscal Year 2019 (2019), https://www.justice.gov/media/1111456/dl?inline [https://perma.cc/C658-YLSC] [hereinafter FY19 IJ Complaint Report]; EOIR Office of the Director, Complaints Against Immigration Judges: Fiscal Year 2020 (2020), https://www.justice.gov/media/1111461/dl?inline [https://perma.cc/Y856-LS3H] [hereinafter FY20 IJ Complaint Report]; EOIR Office of the Director, Complaints Against Immigration Judges: Fiscal Year 2021 (2021), https://www.justice.gov/media/1221056/dl?inline [https://perma.cc/V675-KQMH] [hereinafter FY21 IJ Complaint Report]; EOIR Office of the Director, Complaints Against Immigration Judges: Fiscal Year 2022 (2022), https://www.justice.gov/media/1257806/dl?inline [https://perma.cc/DK84-FXZK] [hereinafter FY22 IJ Complaint Report].

[155] *See* Figure 9.

Though respondents can submit official complaints through this process, OCIJ has made clear that it ™cannot guarantee∫ the confidentiality of the respondents who submit them.[156] This is consistent with official complaint data, which shows that 1% or fewer of annual complaints remained anonymous.[157] Advocates have expressed concern about this process, noting that most respondents are ™wary∫ of reporting IJ misconduct because they fear retaliation by judges who have already treated them with apathy and hostility.[158] Moreover, for pro se respondents, the complaint process imposes additional procedural and documentation requirements, which ultimately fail to address the underlying systemic causes of IJ misconduct.[159]

In effect, IJs face little accountability for their mistreatment of individual families. Children and families of color, who make up the majority of the LA Dedicated Docket, continue to face hostile treatment and implicit bias in the courtroom that both denies their humanity and negatively impacts their ability to pursue and obtain relief.

3. Inadequate Language Access Practices

Such hostile and biased treatment toward families on the Dedicated Docket is exacerbated by discriminatory language access practices. Asylum seekers' constitutional due process right to a full and fair hearing specifically includes the right to receive adequate interpretation and translation.[160] In 2000, President Clinton signed Executive Order 13166, requiring federal agencies to ensure that individuals with limited English proficiency (™LEP∫) had meaningful access to all federal services, including immigration hearings.[161] Under the order, DHS agencies, including EOIR, each created their own individual language access plans outlining specific strategies for staff to carry out the order's mandate. Such compliance, however, has fallen short, as this Article's observations reveal. Though the Biden administration prioritized language access issues, with the DOJ appointing a new language access coordinator and requiring updates to all language access plans,[162] families on the Dedicated Docket did not see the benefits of these initiatives.

The UCLA Immigrants' Rights Policy Clinic, for instance, reported difficulties in obtaining interpretation, as well as more egregious errors, such as a judge asking an ICE attorney's wife to communicate with a family in

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[156] OCIJ, *supra* note 153, at 1 (™If requested, OCIJ will maintain the confidentiality of the complainant's identity when possible; however, for formal written complaints, OCIJ cannot guarantee such confidentiality.∫).

[157] FY18 IJ Complaint Report, *supra* note 154; FY19 IJ Complaint Report, *supra* note 154; FY20 IJ Complaint Report, *supra* note 154; FY21 IJ Complaint Report, *supra* note 154; FY22 IJ Complaint Report, *supra* note 154.

[158] June 2023 Advocate Letter, *supra* note 54, at 5.

[159] *Id.* at 5±6.

[160] B.C. v. Att'y Gen. of U.S., 12 F.4th 306, 309 (3d Cir. 2021) (finding that asylum seeker was denied due process rights after IJ failed to evaluate the need for an interpreter); Amadou v. I.N.S., 226 F.3d 724 (6th Cir. 2000) (finding that the respondent was denied due process right to a full and fair hearing where he received inadequate interpretation that prejudiced his asylum decision).

[161] Exec. Order No. 13166, 65 Fed. Reg. 50121 (Aug. 11, 2000).

[162] AG Language Access Memo, *supra* note 93.

Mandarin.[163] To EOIR's credit, for the cases observed in connection with this Article, judges went out of their way to identify the respondents' primary language and obtain the correct type of interpretation. This extended to languages not commonly spoken, such as Armenian, Kanjobal, Kekchi, Khazak, and Punjabi. Likewise, IJs were careful to provide telephonic interpretation in the correct language, rescheduling hearings and granting continuances where necessary.[164]

Still, grave language access problems persisted. Possibly influenced by the tense courtroom environment, or a desire to placate an observably irritable judge, some respondents insisted that they were comfortable proceeding in a language other than their primary language. The following account is illustrative of this type of interaction:

> *A man and his young son were on the stand for their initial removal hearing. Knowing the family was from Romania, the judge asked the father in English if he spoke Romanian or Romani. The father replied, "Romani," but the judge misheard him, repeating back, "Okay, Romanian."*
>
> *After calling the telephonic interpretation service and getting a Romanian interpreter on the line, the judge asked the father through the interpreter, "Is Romanian your best language?" The father responded that he could speak both Romani and Romanian. The judge suddenly appeared angry, demanding, "Would you like to answer my questions or are you going to argue with me?" The father immediately responded that he wanted to answer the judge's questions, to which the judge replied, "Then please do." The judge repeated, "Is Romanian your best language?" The father again admitted that he preferred Romani. The judge rescheduled his hearing for several weeks later with a Romani interpreter.*

This account, moreover, does not capture what can go wrong even when individuals receive interpretation in the correct language. Unlike federal civil and criminal courts, interpreters in immigration court do not need professional certification.[165] Federal regulations merely require that contracted

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[163] UCLA Report, *supra* note 1, at 12. *See also* Harv. Report, *supra* note 3, at 22 (describing language access challenges on the Boston Dedicated Docket).

[164] IJs on the LA Dedicated Docket use a service called LionBridge for telephonic interpretation in a variety of languages. The judge calls the line and asks for a particular language. Then, typically within several minutes, they are connected with an interpreter who provides services over the phone. *See* EOIR, Uniform Docketing System Manual V-1 (Sept. 2018), https://www.justice.gov/eoir/file/1157516/download [https://perma.cc/3ZDP-VMRS]. Where a LionBridge interpreter is not available in the correct language, judges have access to multiple other telephonic interpretation services. On one occasion, a judge called three separate interpretation services in an effort to obtain a Kekchi interpreter for a family from Guatemala. Until 2015, LionBridge had the exclusive contract with EOIR for interpretation. After that, SOS International (SOSi) took over as the primary contractor. *See* Maya P Barak, *Can You Hear Me Now? Attorney Perceptions of Interpretation, Technology, and Power in Immigration Court*, 9 J. on Migration and Hum. Sec. 207, 215±16 (2021). Nonetheless, some IJs on the Dedicated Docket still used LionBridge as the default interpretation service.

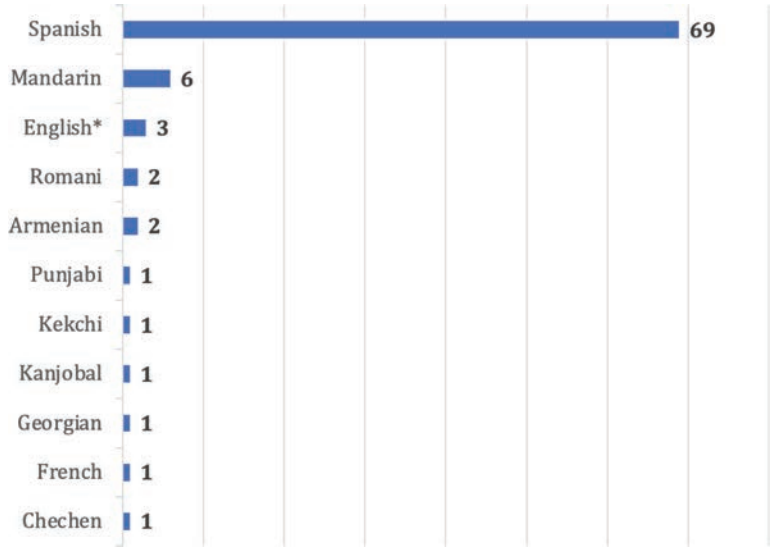
[165] Anna C. Everett, Note, *The Language of Record: Finding and Remedying Prejudicial Violations of Limited English Proficiency Individuals' Due Process Rights in Immigration Court*, 55 Conn. L. Rev. 1, 6 (2023).

interpreters perform their duties ™accurately.∫[166] In addition, contracted interpreters working in immigration court have experienced drastic pay reductions and deteriorating working conditions over the last decade.[167] Such circumstances increase the likelihood of errors and omissions resulting in miscommunications and misunderstandings,[168] exacerbating the language barriers that individuals in immigration court already face.[169]

Language problems were also observable on the written docket. On the list of case names posted outside of each courtroom, it was common practice for ™English∫ to be listed as a default where the court had no language information about the family. Some of these families were removed *in absentia*, even though the court had no information about their level of English proficiency or their ability to receive proper notice in the English language– a phenomenon explored in detail in the next section.

Of the eighty-eight cases I observed, the large majority were Spanish-speaking families (sixty-nine, or 78%). Mandarin was the second most spoken language, followed by Romani and Armenian.[170] Though some families spoke limited English, none of the families that appeared in court spoke it as a primary language.

Figure 10: Number of Cases Observed by Primary Language of Lead Respondent



**English was listed on the written docket for these individuals, who were later removed* in absentia *for failing to appear. But it was determined that this notation was in error, and the respondents likely spoke Mandarin.*

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[166] 8 C.F.R. ß 1003.22 (™Any person acting as an interpreter in a hearing shall swear or affirm to interpret and translate accurately, unless the interpreter is an employee of the United States Government, in which event no such oath or affirmation shall be required.∫).

[167] Barak, *supra* note 164, at 215±16.

[168] *Id.* at 216.

[169] Even if the individual realizes that the interpretation is faulty, their access to judicial review for inadequate or accurate interpretation is limited, as they must prove that the interpretation prejudiced their rights or affected the outcome of the hearing. *See* Everett, *supra* note 165, at 18.

[170] *See* Figure 10.

Despite the docket's large contingent of Spanish speakers, not all core EOIR staff spoke Spanish. As a result, some families with simple questions about court forms or policies were sent up to the Immigration Court Helpdesk on the eighth floor to wait in a long line to get their questions answered. This is despite EOIR's language access plan stating that "[o]ther multilingual employees may provide basic assistance to people with LEP (e.g., simple instructions at a service window or on the phone and on an informal basis)."[171]

Language barriers were exacerbated for families who spoke non-Latin script languages like Mandarin. In some of these cases, oral interpretation services were not sufficient to navigate EOIR procedure. Strict change of address reporting obligations required respondents to submit written notice to the court, but families were required to do so using Latin alphabet forms. EOIR provided translated samples of certain forms, but even with this tool, Mandarin-speaking families often required special assistance from Immigration Court Helpdesk representatives to comply with address reporting obligations. When IJs asked Mandarin-speaking families to confirm their addresses on the record, families were often unable to do so. Two respondents in separate hearings had to explain to the judge, through an interpreter, that they had no way to orally confirm their address because they could not read the characters on the page. Such barriers place Mandarin-speaking families at heightened risk of removal because clerical errors increase the chances that a family will not receive updated hearing notices.

4. Notice, Language Injustice, and In Absentia Removal

Clerical errors and inadequate language access policies, in combination with IJs' largely unchecked discretion to deport, produce the most severe consequences at the notice stage. As described in Section IV.C, insufficient notice can lead to a family's failure to appear.[172] Unlike at a criminal trial, a failure to appear in immigration court results in summary adjudication on the merits of the underlying case, along with a disproportionately severe penalty: deportation.[173] The government has long justified this practice by spinning a false narrative that most asylum seekers "simply disappear and never show up to their immigration hearings."[174] But in fact, one study by Ingrid Eagly and

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[171] EOIR, *EOIR Language Access Plan. G - Provision of Language Assistance Services*, U.S. Dep't. of Just., https://www.justice.gov/eoir/language-access-plan/lap-g (last visited Jan. 19, 2025). This language has been scaled back from EOIR's 2012 plan, which included a separate "Service Window" policy. The policy read, "EOIR has employees who are multilingual and can speak to LEP persons at service windows to provide basic information. . . . EOIR also relies on contracted telephonic interpreter services that provide qualified interpreters for numerous languages on an unscheduled basis within three minutes of EOIR's request." EOIR 2012 Language Access Plan, *supra* note 88, at 4.

[172] *See supra* Section IV.C.

[173] *See* Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. Pa. L. Rev. 1, 11 (2015).

[174] Ingrid Eagly & Steven Shafer, Am. Immigr. Council, Measuring In Absentia Removal in Immigration Court 6 (2021), https://www.americanimmigrationcouncil.org/sites/default/files/research/measuring_in_absentia_in_immigration_court.pdf [https://perma.cc/7LKJ-V2YJ] (quoting Jeff Sessions, Attorney General, Remarks to the Executive

Steven Shafer examined thousands of cases between 2008 and 2018 and found that 88% of all people in removal proceedings attended *all* of their hearings.[175] This finding suggests that absent arbitrary procedural hurdles, the large majority of asylum-seeking families *want* to attend their hearings and have a fair opportunity to prove their claims.

Though scholars have acknowledged that little is known about why the remaining portion of people fail to appear,[176] the observations in this Article provide some insight into this question. Advocates have previously documented how inadequate notice has resulted in high rates of *in absentia* removal in regular removal proceedings.[177] But on the Dedicated Docket, where everything is done on an arbitrarily expedited timeline, there is a heightened risk of clerical errors and inadequate language practices– mistakes that cause notice defects resulting in summary removal orders.

Despite the government's failures to provide adequate notice, judges on the LA Dedicated Docket exercise their deportation power liberally when families fail to appear.[178] Although IJs possess broad discretion in their treatment of individual families, IJs are politically accountable for case outcomes in a way that Article III judges are not. They are appointed by the Attorney General, who can hire, fire, train, and review the judges as they see fit.[179] As Amit Jain argues, judges are "bureaucrats in robes" in this sense.[180] They are vulnerable to the political machinations of their executive supervisors, who may fire them based on their political loyalties or their case decisions.[181]

Office for Immigration Review (Oct. 12, 2017), https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-executive-office-immigration-review [https://perma.cc/R2KN-ELHQ]).

[175] Eagly & Shafer, *supra* note 95, at 848.

[176] *See id.* at 823.

[177] *See, e.g.*, Cath. Legal Immigr. Network, *supra* note 9, at 18±21.

[178] This is apparent both from my own observations as well as reporting by advocacy groups. *See, e.g.*, UCLA Report, *supra* note 1, at 14±15 (reporting that 99.1% of completed Dedicated Docket cases as of February 2022 resulted in removal orders, the large majority of them– 72.4%– being issued *in absentia*).

[179] 8 C.F.R. ß 1003.10 (2024) ("Immigration judges shall act as the Attorney General's delegates in the cases that come before them"). *See* Jill E. Family, *Beyond Decisional Independence: Uncovering Contributors to the Immigration Adjudication Crisis*, 59 U. Kan. L. Rev. 541, 543 (2011); Stephen H. Legomsky, *Learning to Live with Unequal Justice: Asylum and the Limits to Consistency*, *in* Refugee Roulette: Disparities in Asylum Adjudication and Proposals for Reform 250, 260±61 (Jaya Ramji-Nogales, Andrew I. Schoenholtz, & Philip G. Schrag eds., 2009) (explaining how a lack of decisional independence results in IJs with varying levels of willingness to risk the displeasure of their politically-accountable superiors in the DOJ and executive branch).

[180] *See* Jain, *supra* note 16.

[181] A 2008 report by the DOJ Office of Professional Responsibility and the DOJ Inspector General found that Attorney General office staff "improperly took political and ideological affiliations into account when they were involved in hiring immigration judges." U.S. Dep't of Just. Off. of Pro. Resp. & U.S. Dep't of Just. Off. of the Inspector Gen., An Investigation of Allegations of Politicized Hiring by Monica Goodling and Other Staff in the Office of the Attorney General 69 (2008), http://www.justice.gov/opr/goodling072408.pdf [https://perma.cc/KX9J-7F4U]. Indeed, just hours after the second Trump administration began, the acting head of EOIR and three other high-level EOIR officials were fired. Two of these officials, including EOIR's acting head, had been with the agency for approximately fifteen years prior to their dismissal. Hamed Aleaziz, *Trump Administration Fires Immigration Court Officials as Crackdown Begins*, N.Y. Times (Jan. 20, 2025), https://www.nytimes.com/2025/01/20/us/politics/trump-administration-fires-immigration-judges.

As opposed to Article III judges, IJs' job security is much more fragile, a consideration that likely influences their decisions on individual cases. Colossal caseloads and a backlog of over two million cases[182] exacerbates the problem. To address the growing backlog, the DOJ imposed a case completion quota on IJs in 2018, requiring that each IJ complete at least 700 cases each year for their job performance to be deemed ™satisfactory.∫[183]

Such pressures appeared to be at work in the cases I observed. Despite DHS asking for continuances for every family that failed to appear for their initial hearing,[184] the Court denied 100% of these motions. Worse, even when DHS attorneys accompanied their motions with substantial justification, the Court dismissed them outright. Some DHS attorneys noted that ™these are special Dedicated Docket cases∫ and that ™the government has spent a lot of resources∫ to move these cases along and ensure that respondents show up to their court dates. DHS attorneys often stated that they were requesting additional time to ™try to make contact∫ and get respondents to appear in court.

Ironically, such appeals to the Court suggest that DHS, the agency tasked with prosecuting Dedicated Docket families in the first place, acknowledges that *in absentia* removal is an unjustly severe consequence for failing to appear. Moreover, DHS's emphasis on trying to ™make contact∫ with families and ensure proper notice implies an understanding that many families fail to appear through no fault of their own.

Such awareness is underscored by DHS's efforts to shield families who complied with other procedural requirements. In cases where families had been complying with Enforcement and Removal Operations' (™ERO∫) check-in requirements prior to the hearing date, DHS noted this to the Court.[185] A family's attendance at scheduled check-ins would suggest that a family intended to comply with all procedural requirements, but may have become confused

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html?smid=nytcore-ios-share&referringSource=articleShare. This was followed by an internal memo from the new acting director accusing some EOIR employees of engaging in ™abhorrent∫ misconduct that was ™contrary to law∫, suggesting that the politically motivated personnel changes would continue. Devlin Barrett, Hamed Aleaziz & Adam Goldman, *Across Justice Dept., Fear, Anxiety and Angry Bosses*, N.Y. Times (Jan. 28, 2025), https://www.nytimes.com/2025/01/28/us/politics/justice-department-trump.html?unlocked_article_code=1.tk4.b0uM.6amaGVlV_7Zd&smid=nytcore-ios-share&referringSource=articleShare.

[182] *Historical Immigration Court Backlog Tool*, Transactional Recs. Access Clearinghouse, https://trac.syr.edu/phptools/immigration/court_backlog/ [https://perma.cc/F67E-PJGQ] (last updated Jan. 2023).

[183] Am. Bar Ass'n, Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases 16 (2019).

[184] One DHS attorney asserted that it was ™[d]epartment current policy∫ to request a ™brief continuance∫ for Dedicated Docket cases. This is consistent with my own observations of initial removal hearings, though I was unable to locate any publicly available documents setting forth this policy.

[185] Enforcement and Removal Operations (ERO) is ICE's enforcement arm. ERO oversees the agency's ATD program, which subjects families on the Dedicated Docket to routine surveillance, including the check-ins discussed in Section IV.B.2.b. *See* UCLA Report, *supra* note 1, at 5.

about the time, date, or location of their appearance.[186] For families on the LA Dedicated Docket, the ICE field office for ERO check-ins is located in the same federal building as the immigration court, prompting substantial confusion about where they are required to appear. The lack of directional signage and Spanish-language instructions only compounds this issue, resulting in the *in absentia* removal of families that are present in the building– just in the wrong department.[187] In an alarming exercise of adjudicator discretion, the Court overlooked instances of ERO compliance, removing families that had failed to appear but had been complying with all check-in requirements.

Unsurprisingly, IJs also seemed to overlook instances where notice was clearly defective due to inadequate language practices. The following vignette illustrates how this sometimes played out in court:

> *When the court reached the end of its calendar, it addressed the cases for families who had not appeared, including an individual from China. The DHS attorney requested that the judge continue the individual's hearing date to ensure that they got proper notice of the hearing. Pausing to consider the individual's file, the judge noted aloud that oral notice was given in English, and the respondent's primary language was listed on the docket as English. He then read from the respondent's file, noting aloud that* TW*the CBP Translate App was used to communicate with the subject in their native language.*∫ *He then observed, on the record, that it appeared that the respondent's native language was Mandarin. The judge proceeded to deny DHS's request to continue and ordered the family removed in absentia.*

This family's case encapsulates the compounding and grave effects of clerical errors,[188] notice defects, inadequate language access practices, and unchecked IJ discretion. CBP's error in documenting the respondent's language as TWEnglish∫ likely resulted in oral notice being given in a language the family did not speak.[189] But even when the immigration court caught the error, the judge exercised their discretion to find that notice was proper and removed the person *in absentia* over DHS's objection.

Like the case described above, judges typically issued *in absentia* removal orders at the end of a scheduled master calendar. The IJ would note the

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[186] This compliance is also consistent with Eagly and Shafer's finding that the majority of respondents who receive defective notice make it to their hearings after the notice issue is addressed. Eagly & Shafer, *supra* note 95, at 852±53.

[187] As recounted in the Introduction, there is at least one documented instance of this occurring. Specifically, a man and his six-year-old child were removed *in absentia* after checking in with ICE and waiting for seven hours to be called. Though they were present in the building, their hearing proceeded, and they were ordered removed *in absentia*. UCLA Report, *supra* note 1, at 7.

[188] *See* Eagly & Shafer, *supra* note 95, at 852 (underscoring how clerical errors, including serving a notice to the wrong address, can result in respondents never receiving adequate notice of their hearing).

[189] This is not uncommon; CBP has been known to misidentify individuals' primary language in initial interactions. *See* Barak, *supra* note 164, at 209.

time on the record and observe that a group of families had failed to appear. The judge would then send a court clerk or an interpreter out to the lobby to call the names of those families. The following anecdote illustrates how the court sometimes handled these cases:

> *It was 9:26am, and five families had not appeared for their scheduled hearings. The judge asked the Spanish-language interpreter present in court that day to go into the hallway and call out the names of the respondents. Several minutes later, the interpreter returned. Referring to a case the interpreter had earlier discussed with the judge, they said, "He's coming judge." The judge, looking surprised, replied, "Really?" The interpreter responded, "No, just kidding." Both the judge and interpreter laughed, and the judge proceeded to remove the man in absentia.*

This interaction illustrates how the court treated the majority of *in absentia* cases– with a marked level of indifference. And while political pressure from DOJ superiors may explain high rates of *in absentia* removal, it cannot explain such striking displays of apathy and disrespect. Instead, deep-seated biases about migrant families may fuel this conduct, as Professor Marouf's work indicates.[190] Such attitudes, moreover, remain unchecked in a system where IJs are rarely censured or disciplined for such conduct.[191]

This apathetic treatment persisted even as judges issued deportation orders for small children. When one immigration judge issued *in absentia* removal orders for minors, they noted on the record, "In the case of the minors, notice was gleaned by the parent." The IJ made this statement even in cases where it was unclear that the parent had been properly notified, or where the parent was complying with ICE check-ins. In their letters to executive leadership, advocates across the country have repeatedly requested that the government stop removing children *in absentia*.[192]

Though children are often "adultified" in immigration court, they are also infantilized when it is in the adjudicator's favor. On the Dedicated Docket, children are largely viewed as appendages of their parent(s) with no legal agency or independent claims of their own. They are both figuratively and literally silenced during Dedicated Docket proceedings, told that they do not have the right to appointed counsel and must therefore represent themselves.[193] They are also physically removed from the courtroom if they make the slightest noise. Children and infants are then ordered removed *in absentia* when they fail to appear alongside their parents, despite their lack of

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[190] *See generally* Marouf, *supra* note 133.

[191] *See supra* Section IV.C.2.

[192] October 2022 Advocate Letter, *supra* note 54, at 9; June 2023 Advocate Letter, *supra* note 54, at 8.

[193] AILA, the ACLU, and other groups filed a 2014 lawsuit against the DOJ, DHS, and ICE asserting the right to appointed counsel for unrepresented children in removal proceedings. The Ninth Circuit eventually dismissed the case on jurisdictional grounds. J.E.F.M. v. Lynch, 837 F.3d 1026 (9th Cir. 2016).

knowledge about the hearing. Apparently, an infant child can ™glean∫ notice from their parent– notice that is often defective on its face.[194]

As detailed in Section IV.A, clerical errors and defective language access practices often result in families never receiving fair notice of their obligation to appear in court. Though IJs possess the power to identify and correct such errors, they rarely do, opting instead to impose a disproportionately harsh penalty: deportation, including of minor children. Though political pressures to close cases may explain such outcomes, the marked level of apathy that I observed during *in absentia* removals suggests that entrenched biases about immigrant families may also influence IJ decisions on the LA Dedicated Docket. EOIR's institutional failure to hold IJs accountable, moreover, perpetuates such conduct and limits available remedies for asylum-seeking families that are not afforded fair process.

5. Motions to Reopen and the Necessity of Counsel

For families that have been ordered removed *in absentia*, their only recourse is a motion to reopen. The difficulty of reopening a case, however, underscores the severity and finality of IJs' unchecked discretion to issue *in absentia* removal orders. As recently as 2023, EOIR has claimed that ™[I]mmigration judges appreciate that they are dealing with family cases and routinely grant motions to reopen in absentia orders.∫[195] This claim, however, ignores the reality that a motion to reopen requires the assistance of an attorney, which most Dedicated Docket respondents do not have. Motions to reopen are both procedurally and substantively complex, requiring that the respondent demonstrate one of the following: (1) improper notice, (2) that they were in custody at the time of the notice, or (3) ™extraordinary circumstances.∫[196] In one study examining *in absentia* removals from 2008 to 2018, data showed that 84% of people who successfully reopened their cases had an attorney.[197] Moreover, immigration court advocates and immigration law precedent demonstrate that IJs often abuse their discretion in denying motions to reopen.[198]

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[194] This is in line with adjudicator expectations that very young children understand immigration law. *See* Hennessy-Fiske, *supra* note 133.

[195] June 2023 Advocate Letter, *supra* note 54, at 3 (quoting EOIR's response to October 2022 Advocate Letter).

[196] *See* Rebecca Feldmann, *What Constitutes Exceptional? The Intersection of Circumstances Warranting Reopening of Removal Proceedings After Entry of an In Absentia Order of Removal and Due Process Rights of Noncitizens,* 27 WASH. U. J. L. & POL'Y 219, 220±21 (2008). *See also* CATH. LEGAL IMMIGR. NETWORK, *supra* note 9, at 27 (observing that it requires ™significant legal skill∫ to rescind a removal order and reopen a case).

[197] Eagly & Shafer, *supra* note 95, at 860 n.176 (finding that of 47,952 respondents who were removed *in absentia* and successfully reopened their cases, 40,303 had attorneys at their most recent hearing).

[198] *See, e.g.*, CATH. LEGAL IMMIGR. NETWORK, *supra* note 9, at 11 n.29 (noting that in the cases that the Catholic Legal Immigration Network and their partner organization have represented, advocates have observed immigration judges denying motions to reopen by applying an improperly stringent legal standard); Feldmann, *supra* note 196, at 221 n.15 (pointing to BIA and Circuit precedent overturning an IJ's denial of motions to reopen due to abuse of discretion).

My own observations confirm this finding. Of eighty-eight total observed cases, there was only one attempted motion to reopen. The following anecdote describes what occurred:

> *A family of three appeared at their hearing via WebEx, as instructed by their attorney. The man, woman, and their small child only spoke Spanish and communicated with the Court through an interpreter. Their attorney was also present via WebEx. Before the hearing began, the judge was visibly agitated. Addressing the family directly in Spanish, the judge demanded to know why they were not in court. But before the father could explain, the judge cut him off to address their attorney. The attorney explained that the family had hired him to file a motion to reopen after they were ordered removed* in absentia. *However, the family had been unable to pay him the required fee. As a result, he was bringing a motion to withdraw as their attorney.*
>
> *The hearing began, and the judge once again spoke directly to the family, asking through the interpreter, ™Why aren't you here in Court?∫ The father responded apologetically that he was told the hearing would be through video. The judge asked, ™Who told you that?∫ Pausing, the man admitted that his attorney had told the family that they could appear via video. The attorney conceded that this was true, adding that he would only proceed with the motion to withdraw if [it] would not prejudice the family. The judge responded, ™It won't prejudice [them] other than the fact that [they're] not here.∫*
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> *The judge proceeded to accept the attorney's motion to withdraw. The judge then addressed the family directly, telling them that they would be required to appear in person on a date just two weeks away– a timeframe that would make it impossible for them to obtain new counsel. The male respondent, sounding confused, asked for the address of where his family was required to appear. The judge responded, ™If you had been here, sir, you would know it clearly.∫ The judge then provided the generic street address for the federal building, but made no mention of the department, floor, or courtroom where the hearing would take place. The judge claimed that the family would receive written notice of their appearance, but the family had moved and had provided their new address orally. Despite being represented by counsel, the family had been unaware that the Court required them to submit a change of address form within five days of moving. It was unclear if the family would receive written mailed notice prior to their hearing date.*

Though just one account, this family's experience encapsulates the fundamental unfairness of *in absentia* removals and the uphill battle required to rescind them. After going to great lengths to find and obtain a lawyer to help them reopen their case, they faced financial hardships that forced them

to proceed without legal assistance. With only two weeks to find another attorney, without written notice of the time or location of their next hearing, and absent any information about *how* to reopen their case, it is unlikely that this family will be successful. This places the family, including their toddler son, at risk of deportation to a country where they may face serious harm or persecution, with no legal recourse.

This family's experience also serves as another example of the hostile treatment that some IJs level at families on the Dedicated Docket. Though the family reasonably relied on the advice of their retained counsel to appear via WebEx, the judge seemed to place all blame on the respondents themselves, repeatedly chastising them but saying nothing to their attorney.

This account, moreover, underscores a problem that this Article has grappled with from the outset: the unpredictable nature of EOIR policy and procedure.[199] Most respondents with retained counsel are not required to attend their hearings at all– not even virtually. In fact, in observed cases where represented families appeared physically in court to attend their hearings, the judge typically dismissed them outright, preferring to deal directly with their attorneys. This practice not only robs respondents of their right to participate in their own hearings, but it also generates confusion. Represented respondents are simultaneously told that if they fail to appear, they will be automatically removed, but when they do appear, they are thrown out of the courtroom and excluded from their own proceedings. Such confusion only compounds the challenges associated with reopening a case after an *in absentia* removal order.

V. No More "Rocket Dockets"

When the Dedicated Docket was created, the Biden administration promised to prioritize expediency "while providing due process."[200] The DOJ ensured that it would "remain[] committed" to ensuring that cases were resolved in a "fair and impartial manner."[201] The agency also stated that it expects its IJs to render decisions with "full consideration" of families' right to counsel, due process, and fundamental fairness.[202]

Such promises ring hollow, as this Article and other advocacy efforts have demonstrated. EOIR has demonstrated time again that prioritizing expediency is synonymous with gutting asylum-seeking families' statutory and constitutional rights. In a system that measures success by the number of cases closed, each agency practice works toward funneling families toward *in absentia* removal. Each step of the way, families face an uphill battle:

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[199] Immigration advocates have expressed concern about inconsistent policies relating to remote appearances. Each IJ can impose their own protocols for video hearings, making it impossible for attorneys to accurately predict a judge's preferences. *See* AILA, *supra* note 3, at 7–8.

[200] Policy Memorandum 21–23 from Jean King, EOIR Acting Director, to all of EOIR, *supra* note 6, at 1.

[201] *Id.*

[202] *Id.* at 1–2.

They must decipher error-riddled NTAs, battle substantial infrastructure and logistical barriers to get to court, identify the department that summoned them amidst an English-language alphabet soup of agency names, sift through unreliable information from EOIR staff, face pervasive adjudicator bias and hostility, and navigate complex immigration court procedures. Worse, families must do all of this in a language they do not speak, and most often, without the assistance of an attorney.

In the face of such fundamental unfairness, there is a pressing need to terminate the Dedicated Docket and prevent the creation of similar "rocket dockets." Advocates have repeatedly urged the DOJ to terminate the Dedicated Docket,[203] noting that it does not allow families a "fair shot" at seeking safety in the United States.[204] As this Article demonstrates, the DOJ has failed to follow its own policies on the Dedicated Docket. It is therefore no surprise that it has also failed to honor asylum-seeking families' statutory and constitutional rights to fundamental fairness. Absent compliance with its own mandate, DOJ's justifications for the Docket's continued operation fall flat.

While there is a pressing need to end "rocket dockets" like the Dedicated Docket, this Article identifies broader structural problems within EOIR that cannot be resolved by ending fast-tracked immigration adjudication. EOIR suffers from a culture of opacity, which fosters a lack of accountability for its individual operators. The public, including attorneys, community advocates, policymakers, journalists, and law students, require better access to EOIR proceedings, scheduling information, data, and policies. Without such access, families' lived experiences will never see the light of day, and agency adjudicators will continue to mistreat and deport them absent meaningful oversight.

There is also an urgent need for effective accountability measures within EOIR, particularly for IJs who lack the independence to separate removal decisions from political considerations. Though it is beyond the scope of this Article to identify proposals to address this institutional problem, systemic problems call for systemic solutions. Pointing families to a defunct complaint process– one that fails to protect families' anonymity, exposes them to retaliatory deportation, and results in no meaningful discipline[205]– is an inadequate and harmful response. Broader, institutional changes are needed to ensure that people and families in removal proceedings receive the statutory and constitutional protections to which they are entitled.

Conclusion

In every hearing that I observed, one of the judges on the Dedicated Docket made the same assurance to each family: "In these proceedings, you and your family have many rights." But this statement became more meaningless, and even absurd, after each recitation. In these same hearings, families are forced to navigate a system, usually without counsel, that neither

[203] *See supra* Section II.A.
[204] June 2023 Advocate Letter, *supra* note 54, at 7.
[205] *See supra* Section IV.C.2.

recognizes their right to fundamental fairness nor their humanity. Worse, families suffer these abuses within institutional and physical structures hidden from public view.

But many families never make it to court. A combination of clerical errors, defective notice policies, and inadequate language practices causes some families to never receive proper notice of their hearing in the first place. Other barriers to entry are hidden from public view: infrastructure, transportation, and other logistical challenges compound families' lack of access to the court. The court, however, has little sympathy for families facing these barriers. On the Dedicated Docket, where expediency is prioritized above all else, vast adjudicator discretion allows IJs to deny continuances for families who failed to appear but clearly did not receive adequate notice. Such practices yield disproportionately severe consequences: summary deportation orders that *pro se* families cannot functionally appeal. These outcomes often impact the most vulnerable populations, including families, young children, and people of color who do not speak English. If my observations reveal one thing, it is this: despite assurances of "fundamental fairness," families on the LA Dedicated Docket currently navigate a system that is fundamentally and categorically *un*fair.