

THE BIDEN ADMINISTRATION'S DEDICATED DOCKET

*Inside Los Angeles'
Accelerated Court Hearings for
Families Seeking Asylum*

Immigrants' Rights Policy Clinic
part of the
Center for Immigration Law and Policy
UCLA School of Law

May 2022

Acknowledgements

This report was prepared by the Immigrants' Rights Policy Clinic, part of the Center for Immigration Law and Policy at UCLA School of Law. Special thanks go to UCLA Law students Tiffany Kim, Jordan Smiley, and Katherine Wardlaw who co-authored this report, under the supervision of Professors Talia Inlender and Hiroshi Motomura.

We thank the families on the Los Angeles Dedicated Docket with whom we spoke, and whose hearings we observed. We are also grateful to the legal services providers at Esperanza Immigrant Rights Project and the Immigrant Family Legal Clinic at UCLA School of Law who shared their experiences. Finally, we are indebted to Dr. Susan B. Long of the Transactional Records Access Clearinghouse (TRAC) for assistance preparing specialized data, and to Dr. Henry Kim and Dr. Benjamin Nyblade of the Empirical Research Group at UCLA School of Law for assistance with data analysis.

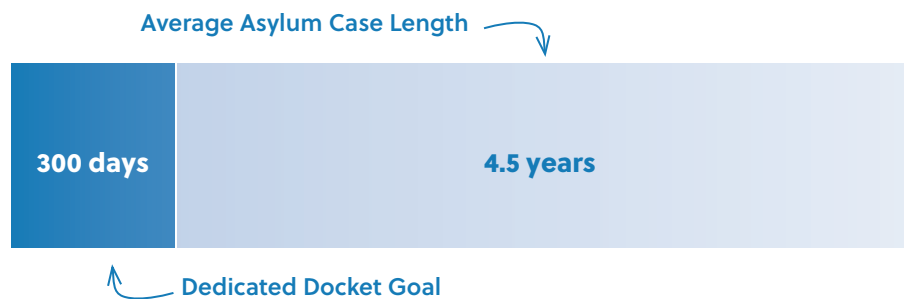
TABLE OF CONTENTS

I. Introduction	1
II. What Is the Dedicated Docket?	2
A. History of Accelerated Dockets	2
B. The Biden Administration's Dedicated Docket	3
III. Who Is on the Dedicated Docket in Los Angeles?	4
A. Families	4
B. Children	4
C. Nationality	4
D. Language	5
IV. Alternatives to Detention	5
V. Inside the Courtroom	6
A. Appearing in court	6
B. Counsel	7
1. Access to counsel	7
2. Limitations of counsel	9
3. Friend of the Court	10
4. Access to information	10
C. Court Proceedings	10
1. Group hearings	10
2. In-person vs. televideo hearings	11
3. Use of interpreters	12
4. Court atmosphere	12
5. Court administration	13
D. Continuances	13
E. Outcomes	14
VI. Revisiting Efficiency and Fairness	15
VII. Conclusion	16

I. INTRODUCTION

Ben¹, age 4, treated the courtroom like his playground. Unable to sit still, Ben ran his blue toy truck on the floor and along the edge of the public bench. The judge, angered by the disarray in his courtroom, demanded the mother remove her son from the ground at once. Bored with his truck, the boy turned and flashed a smile. It was clear—he wanted to play.

Ben is among the nearly 3,000 children assigned to the Los Angeles Immigration Court's "Dedicated Docket."² Launched in May 2021 amid controversy about how to process asylum cases at the southern border, the Biden administration's Dedicated Docket is an accelerated court that targets families seeking asylum, aiming to resolve their cases in 300 days—significantly shorter than the 4.5-year average of asylum cases in immigration court.³ The administration's stated goal is to adjudicate these cases "more expeditiously and fairly."⁴ Our study of the Dedicated Docket in Los Angeles, one of 11 cities hosting an accelerated court, finds that the administration has failed to keep this promise.⁵



Drawing on interviews of legal service providers and immigrants on the L.A. Dedicated Docket,⁶ analysis of recently released data from the Transactional Research Access Clearinghouse (TRAC),⁷ and court observations,⁸ this report identifies various due process deficiencies. The most serious problems are reflected in the low levels of legal representation—70.1% of those on the Docket lack counsel—as well as the case outcomes themselves: 99.1% of the 449 cases completed by February 2022 resulted in removal orders. The overwhelming majority of those removal orders—72.4%—were issued *in absentia*—i.e., the immigrant families never had their day in court. Worst of all, almost half of those *in absentia* removal orders (48.4%) were

1 All names of individuals on the Dedicated Docket have been changed to preserve anonymity.

2 See Executive Office for Immigration Review, Policy Memorandum 21–23, Dedicated Docket (May 27, 2021), <https://www.justice.gov/eoir/book/file/1399361/download>.

3 Compare *id.* with *A Mounting Asylum Backlog and Growing Wait Times* (2021), TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE, <https://trac.syr.edu/immigration/reports/672/>.

4 See Executive Office for Immigration Review, Additional Dedicated Docket Statistics (Sept. 29, 2021), <https://www.justice.gov/eoir/additional-dedicated-docket-statistics>.

5 The 11 selected cities are Boston, Denver, Detroit, El Paso, Los Angeles, Miami, Newark, New York City, San Diego, San Francisco, and Seattle. *Id.*

6 Between February and April 2022, we conducted four in-depth interviews. Any references in this study to interviews with legal service providers practicing on the L.A. Dedicated Docket represent the perspectives of two providers: Esperanza Immigrant Rights Project and the Immigrant Family Legal Clinic at UCLA School of Law. Any references to interviews with people whose cases are assigned to the Docket represent two interviews with individuals who agreed to share their experiences.

7 The authors were appointed and served as TRAC Fellows for this research project. The Transactional Records Access Clearinghouse (TRAC), a data research center at Syracuse University, administers the TRAC Fellows program to facilitate specialized data access and support for scholarly research. Unless otherwise stated, all statistics referenced herein are drawn from data provided by TRAC. This data is limited to information relating to the L.A. Dedicated Docket as of February 1, 2022.

8 Throughout March 2022, students in the Immigrants' Rights Policy Clinic and the Immigrant Family Legal Clinic at UCLA School of Law conducted in-person observations of hearings on the L.A. Dedicated Docket. They observed 17 court sessions, consisting of dozens of hearings, during this period.

entered against children, nearly two-thirds of whom were age 6 and under, and most of whom had no lawyer.

The report finds that the Dedicated Docket's unique characteristics—in particular, its accelerated timeline and focus on families with young children—exacerbate the difficulties in ensuring due process for people seeking asylum under federal immigration law. Unless changes are made to address the concerns set forth here, the dearth of legal representation will persist and the lopsided number of removal orders—including against children—is likely to grow substantially as the Docket continues to operate.

II. WHAT IS THE DEDICATED DOCKET?

A. History of Accelerated Dockets

The concept of an accelerated docket is not new. In July 2014, the Obama administration initiated “rocket dockets” for families seeking asylum.⁹ Two years later, TRAC found that 70% of families whose cases were completed on the rocket docket never obtained representation.¹⁰ Indeed, the vast majority of these unrepresented families never submitted an application for relief, and over 50% were ordered removed when a family failed to appear (or “*in absentia*”).¹¹ In September 2018, the Trump administration launched its own version of an accelerated docket. Less than one year later, 80% of families on the docket had been ordered removed *in absentia*.¹²

Despite attempting to distinguish itself from prior rocket dockets, the Biden administration's Dedicated Docket is on track to result in the same low levels of representation and in a similar, if not greater, proportion of removal orders for families.

⁹ The Obama administration's “rocket docket” policy implicated both asylum-seeking families (also referred to as “adults with children” cases) and unaccompanied minors. See Sarah Pierce, “As the Trump Administration Seeks to Remove Families, Due-Process Questions over Rocket Dockets Abound,” MIGRATION POLICY INSTITUTE, July 2019, <https://www.migrationpolicy.org/news/due-process-questions-rocket-dockets-family-migrants>; see also *The Artesia Report*, ILG, <https://perma.cc/4CU6-WBWY>. The Obama administration's accelerated docket received much criticism in the press, while the current Docket has received far less attention, at least in its first year. For more information regarding the Obama administration's accelerated docket, see, e.g., Kate Linthicum, “7,000 Immigrant Children Ordered Deported Without Going to Court,” L.A. TIMES (Mar. 6, 2015), <https://www.latimes.com/local/california/la-me-children-deported-20150306-story.html>. See also Tom Jawetz, *Addressing the Flow of Central American Mothers and Children Seeking Protection*, CENTER FOR AMERICAN PROGRESS (Jan. 12, 2016), <https://www.americanprogress.org/issues/immigration/news/2016/01/12/128645/addressing-the-flow-of-central-american-mothers-and-children-seeking-protection/>.

¹⁰ See *With the Immigration Court's Rocket Docket Many Unrepresented Families Quickly Ordered Deported*, TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE, <https://trac.syr.edu/immigration/reports/441/>.

¹¹ *Id.*

¹² See Sarah Pierce, “As the Trump Administration Seeks to Remove Families, Due-Process Questions over Rocket Dockets Abound,” July 2019, available at <https://www.migrationpolicy.org/news/due-process-questions-rocket-dockets-family-migrants>.

Against this backdrop, the Biden administration's announcement of the Dedicated Docket was met with significant criticism.¹³ Our findings confirm that despite its attempt to distinguish itself from prior rocket dockets, the Biden administration's Dedicated Docket presents the same serious concerns regarding due process and fairness. Indeed, it is on track to result in the same low levels of representation and in a similar—if not greater—proportion of removal orders for families.

B. The Biden Administration's Dedicated Docket

On May 27, 2021, the Biden administration announced the creation of the Dedicated Docket, and set forth procedures governing its operation.¹⁴ In each case, an immigration judge “will endeavor to issue a decision ... within 300 days after the initial master calendar hearing.”¹⁵ Families “will be provided with a number of services, including access to information services and possible referral services to facilitate legal representation.”¹⁶ The Biden administration expects that its “immigration judges will make these determinations with full consideration for a respondent's statutory right to counsel and consistent with due process and fundamental fairness.”¹⁷ However, as in all immigration proceedings, noncitizens must hire or otherwise secure their own legal representation.¹⁸

The two primary immigration judges assigned to the Dedicated Docket in Los Angeles are Judge Aina and Judge Travieso. As a general matter, both appear to be less favorable to applicants seeking asylum than the typical immigration judge nationally. Prior to being assigned to the Dedicated Docket, from 2016 to 2021 Judge Aina had an overall denial rate of 80.6%¹⁹ for individuals seeking asylum, while Judge Travieso had a denial rate of 92.1%.²⁰ Nationally during this same period, immigration judges denied 67.6% of asylum claims, while judges in the Los Angeles Immigration Court where Judges Aina and Travieso preside denied 90.7% of such claims.²¹ From the start of the L.A. Dedicated Docket in August 2021 through the end of January 2022, there were a total of 6,536 individuals placed on the Docket. Of those, 5,915 individuals (90.5%) were assigned to these two judges.

13 See Letter of Legal Services Providers to Department of Homeland Security, Department of Justice, and White House re Dedicated Dockets, June 21, 2021, available at https://www.nwirp.org/uploads/2021/06/Letter_to_DOJ_DHS_WH_re_Dedicated_Dockets.pdf.

14 See Executive Office for Immigration Review, Policy Memorandum 21-23, Dedicated Docket (May 27, 2021), <https://www.justice.gov/eoir/book/file/1399361/download>.

15 *Id.*

16 *Id.*

17 *Id.*

18 Unlike criminal proceedings under the Sixth Amendment, there is no recognized right to appointed counsel in immigration proceedings. See *Tawardus v. Ashcroft*, 364 F.3d 1099, 1103 (9th Cir. 2004).

19 Nathan N. Aina – Los Angeles – North, TRAC Immigration Judge Reports (2021), <https://trac.syr.edu/immigration/reports/judgereports/00412NLA/index.html>.

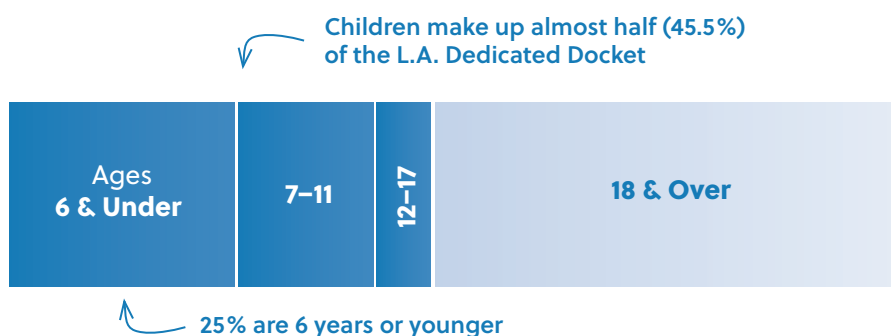
20 Frank M. Travieso – Los Angeles – North, TRAC Immigration Judge Reports (2021), <https://trac.syr.edu/immigration/reports/judgereports/00105NLA/index.html>.

21 *Id.*

III. WHO IS ON THE DEDICATED DOCKET IN LOS ANGELES?

A. Families

The L.A. Dedicated Docket, as elsewhere, is comprised of families who entered the United States at the southern border on or after May 28, 2021. As of February 1, 2022, approximately 2,410 families were assigned to the Docket.²² Most of the families are charged with entry without inspection (EWI).



B. Children

Children make up almost half (45.5%) of those on the L.A. Dedicated Docket.²³ As of February 2022, 2,968 children were assigned to the Docket, all as part of family units. Many of these children are very young: Of the overall Docket, 25% are no older than 6, 15% are ages 7 to 11 years old, and 6% are ages 12 to 17 years old.

C. Nationality

The five most represented nationalities on the L.A. Dedicated Docket—Guatemala, El Salvador, Nicaragua, Honduras, and Colombia—make up 82.4% of cases. Legal service providers explained that the nationalities differ from those typically represented in past administrations' accelerated dockets. For example, while there are few families from Mexico (0.8%) on this Docket, there are a greater number of families from Nicaragua (17%) and Colombia (11%).²⁴

²² This figure was calculated based on statistical analysis performed on TRAC datasets, *supra* note 7. The values used to group cases by families were zip code, entry date, hearing date, and judge. Specifically, a group of persons were defined as a likely family if they shared the same zip code, entered the United States on the same date, and had the first hearing on the same day before the same judge. This analysis is imperfect in part because the government's data is missing values for some of these variables, leaving 605 individuals whose family status is uncertain.

²³ Adults make up 52% of the Docket. TRAC data for age was not reported for 2.5% cases.

²⁴ The Trump administration responded to the COVID-19 pandemic with a policy based on Title 42, expelling those attempting to enter the United States using a public health rationale. Cristobal Ramón, *How the Trump Administration is Using COVID-19 to Continue its Border Deterrence Efforts*, BIPARTISAN POLICY CTR., May 21, 2020, <https://bipartisanpolicy.org/blog/how-the-trump-administration-is-using-covid-19-to-continue-its-border-deterrence-efforts/>. This policy may have impacted the demographics on the Docket because certain countries do not accept families who have been expelled under Title 42. Aline Barros, *Explainer: What is Title 42 and Its Effect on U.S. Southern Border?*, VOA, Apr. 7, 2022, <https://www.voanews.com/a/explainer-what-is-title-42-and-its-effect-on-us-southern-border-/6518286.html>. Families from those countries appear more likely to be processed into the United States and assigned to the Dedicated Docket.

D. Language

The primary language for 88.7% of individuals on the L.A. Dedicated Docket is listed as Spanish. Our observations and research suggest that this percentage may be misleading. For instance, Guatemalan individuals make up around 20% of the Docket; however, “Guatemala has a population of fifteen million people, [40%] of them indigenous, according to the most recent census.”²⁵ Many Guatemalans coming to the United States “speak little or no Spanish.”²⁶ Thus, asylum seekers from Central America—presumed Spanish speaking by the immigration court—may in fact speak indigenous languages and lack fluency in Spanish.²⁷

IV. ALTERNATIVES TO DETENTION

Per the Biden administration’s guidelines, parents placed on the Dedicated Docket are subject to a surveillance regime, referred to as “alternatives to detention” (“ATDs”).²⁸ The practice of placing people in immigration proceedings under surveillance has been massively expanded under the Biden administration both on this Docket and throughout the immigration system.²⁹ Attorneys with clients on the Docket have described these forms of ATDs as more intense than they have previously observed. For example, William—a 42-year-old father—had a GPS monitor affixed to his ankle for about four months. It was very tight and harmed his foot muscle, causing an abrasion. William still has a dark scar on his ankle and shin from where it burned him. Immigration and Customs Enforcement (“ICE”) later replaced the ankle monitor with an app on his phone, as part of the Intensive Supervision Appearance Program (“ISAP”). The program sends one-way messages to William’s phone—i.e., he cannot respond to them. Similarly, Linda—a 23-year-old mother—struggled to navigate her mandatory ATD. Assigned to the Docket with her toddler, mother, and younger sister, Linda was not told what time the ISAP officer would conduct their weekly home check-ins. As a result, Linda and her mother—the sole providers for the family—were required to stay inside their home all day, every Thursday, for over seven months. At the moment ISAP chose to contact them, they were required to send confirmation photos from inside their home.

25 Rachel Nolan, *A Translation Crisis at the Border*, THE NEW YORKER, Jan. 6, 2020, <https://www.newyorker.com/magazine/2020/01/06/a-translation-crisis-at-the-border>.

26 *Id.*

27 There are a number of indigenous Guatemalan languages in the dataset, e.g., Ixil, Quiche, Kekchi, and Konjobal. However, these account for only 52 persons of 1,332 Guatemalans listed.

28 See DHS and DOJ Announce Dedicated Docket Process for More Efficient Immigration on Hearings, DEPT. OF JUST., May 28, 2021, <https://www.justice.gov/opa/pr/dhs-and-doj-announce-dedicated-docket-process-more-efficient-immigration-hearings>.

29 “Officials have asked Congress to find funds to allow as many as 350,000 people to be enrolled by the end of the year or next, according to sources familiar with the issue.” Stef W. Kight, *Scoop: Biden reinvents migrant detention*, AXIOS, Feb. 7, 2022, <https://www.axios.com/scoop-biden-reinvents-migrant-detention-6a41d0a7-8ac2-4038-86d8-cf1e46228710.html>; Stef W. Kight, *The For-Profit Detention Circle*, AXIOS, Feb. 14, 2022, <https://www.axios.com/biden-for-profit-detention-alternative-b9c584da-9ad6-4767-8652-710279da5bc8.html>.

V. INSIDE THE COURTROOM

The Docket's unique characteristics—in particular, its accelerated timeline and focus on families with young children—exacerbate the difficulties in ensuring due process to people seeking asylum under federal immigration law. Despite the many challenges that families face when they arrive in the United States, all those seeking asylum must produce detailed evidence of persecution and fear of returning to their country of origin. This proof is typically in the form of official government records, newspaper articles, and declarations from witnesses—all of which are very difficult to obtain and at times unavailable.³⁰ In addition to the accelerated nature of the Docket, discrepancies related to Notices to Appear,³¹ access to counsel, the structure of proceedings, and judges' discretion have led to adverse outcomes. These problems require immediate attention, as they severely curtail fairness and due process.

A. Appearing in court

The Notice to Appear (“NTA”)—the charging document issued to immigrants facing removal—is critical to ensuring a family's appearance in court. Yet, on the Dedicated Docket (as in all cases), the NTA is written only in English. This makes it impossible for most families to understand the document—which contains essential information, including the court hearing date and location—without outside assistance. Because of the Docket's rapid scheduling, finding that outside assistance in time is particularly challenging.

Our research also revealed multiple concerns with the content of NTAs on the L.A. Dedicated Docket. Early in the Docket's operation, many cases were dismissed for failure to prosecute because of errors on the NTA, including incorrect hearing dates or a complete lack of hearing information. These errors raise grave concerns because the NTA appears to be the *sole* source of hearing information for families on the Docket. This deviates from standard practice, where the government generally provides a separate hearing notice. To attempt to remedy faulty NTAs on the L.A. Dedicated Docket, ICE agents have provided updated NTAs with the correct hearing date to parents with ATDs at their check-in appointments. This has led to a different type

³⁰ See <https://www.unhcr.org/en-us/excom/scip/3ae-68cce4/identity-documents-refugees.html>.

³¹ A Notice to Appear is the charging document issued by the DHS agency to individuals facing removal in adversarial proceedings. Under 8 U.S.C. § 1229(a)(1), the Notice to Appear must include the details of the charges and the date and time of the individual's court hearing.

William and his 6-year-old son were ordered removed for failing to show up in court, despite the fact that they spent seven hours waiting in the lobby of the court building on the day of their hearing. An immigration officer simply failed to explain to them that they needed to go upstairs to the courtroom. As a result, William and his young son became subject to immediate deportation from the United States, without having a chance to present their claim for protection.

of confusion: parents incorrectly believe they need to show up at the ICE check-in location, rather than the courtroom, at the assigned date and time.

William's experience is a case in point. During his first ICE check-in, William was given an NTA with a court date, which he incorrectly believed to be the date for his next check-in. When he showed up at the L.A. Federal Building—where both ICE check-ins and court hearings take place—he and his 6-year-old son checked in with ICE a little after 7 a.m. He was told to wait in the lobby until he was called, despite being assigned to the courtroom on the fourth floor. After 2 p.m., the ICE officer who conducted his check-in informed him that he had missed his hearing and asked why he never went to the fourth floor. Despite seven hours of waiting, William was told that he and his son had been ordered removed *in absentia*. That order made William and his young son subject to physical deportation at any time.³² It deprived them of a right to appeal, leaving a complex and time-sensitive motion to reopen as their only avenue to rescind the removal order.³³ And it erected significant barriers to lawfully reentering the United States in the future, including subjecting them to potential criminal prosecution upon reentry.³⁴

“These people are being left with no options and no resources. Sometimes we’ll see very easy things that could have been resolved in like a 15-minute conversation, and instead [it] ends up in a removal order.”

B. Counsel

1. Access to counsel

Access to counsel, crucial in all immigration cases, becomes even more urgent on the Dedicated Docket's accelerated timeline.³⁵ The Biden administration assured families that they would “be provided... access to information services and possible referral services to facilitate legal representation. Each city [with the Dedicated Docket] has

³² See 8 C.F.R. § 1241.1(e).

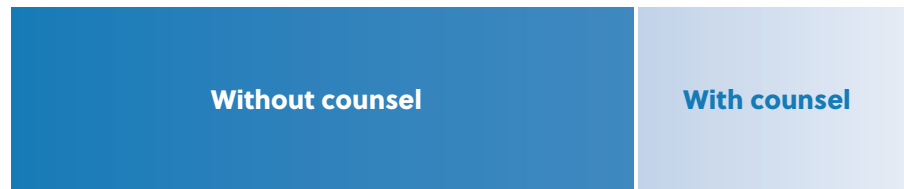
³³ See 8 U.S.C. § 1229a(b)(5)(c); 8 C.F.R. § 1003.23(b)(4)(ii).

³⁴ See, e.g., 8 U.S.C. § 1182(a)(6)(B), (a)(9)(A) (making individuals who fail to attend removal proceedings inadmissible to the United States for five years); 8 U.S.C. § 1229a(b)(7) (rendering people with *in absentia* removal orders ineligible for certain immigration benefits); see 8 U.S.C. § 1326 (allowing for criminal prosecution for unlawful reentry after removal order).

³⁵ See Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 76 (2015) (finding that in a six-year period, only 2% of immigrants without counsel in removal proceedings prevailed in their cases).

an established pro bono network.”³⁶ In Los Angeles, pro se families appearing at their first master calendar hearing are provided with a double-sided sheet that lists counsel information.³⁷ The sheet includes contact information for 11 nonprofit organizations. After being ordered removed *in absentia*, William called every provider on the list, only to find that none had the capacity to represent him.³⁸ His experience is not unique. According to legal service providers—even in a city like Los Angeles—agencies were already operating at capacity prior to the initiation of the Dedicated Docket.³⁹

70.1% of people on the L.A. Dedicated Docket do not have lawyers



Without representation, noncitizens are far less likely to be granted relief.⁴⁰ Yet the majority of individuals (70.1%) on the L.A. Dedicated Docket are unrepresented. By contrast, only 33% of those on the Los Angeles Immigration Court’s non-accelerated docket lack counsel.⁴¹ One legal service provider explained: “These people are being left with no options and no resources. Sometimes we’ll see very easy things that could have been resolved in like a 15-minute conversation, and instead [it] ends up in a removal order.”

The vast majority of those ordered removed in absentia (86.6%) were unrepresented.

The difference that counsel—or lack thereof—makes is clear. Lawyers make a difference in who shows up to court: As of February 1, 2022, the vast majority of those ordered removed *in absentia* (86.6%) were unrepresented. They also make a difference in who is able to file applications for relief: Only 13.6% of families on the L.A. Dedicated Docket filed applications for asylum; of those that filed asylum applications, 96.9% had legal representation. Similarly, we found a correlation between representation and a successful change of venue

³⁶ See *supra* note 14.

³⁷ The pro bono legal services provider list is available at <https://www.justice.gov/eoir/file/ProBonoCA/download>.

³⁸ William also sought help beyond the list in an unlikely place: his kindergartner’s school. The school was able to connect William with a legal clinic that did not have capacity to represent him, but assisted in filing a pro se motion to have his family’s case reopened.

³⁹ Legal service providers’ limited capacity was exacerbated by the Trump administration through hardline immigration policies. See *President Trump’s Executive Orders on Immigration and Refugees*, CENTER FOR MIGRATION STUDIES, <https://cmsny.org/trumps-executive-orders-immigration-refugees/>.

⁴⁰ See Eagly & Shafer, 164 U. PA. L. REV. at 9 (“Among similarly situated respondents, the odds were fifteen times greater that immigrants with representation, as compared to those without, sought relief and five-and-a-half times greater that they obtained relief from removal.”).

⁴¹ See Ingrid Eagly & Steven Shafer, *Access to Counsel in Immigration Court*, AMERICAN IMMIGRATION COUNCIL (Sept. 18, 2016) (Fig. 3 showing 67% representation rate for non-detained respondents in Los Angeles), <https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court>.

motion. A successful motion transfers a family off of the accelerated Docket onto a regular docket in the surrounding L.A. area. Of the 189 successful change of venue motions made by families, 68.3% were represented by counsel. By having more time to prepare their case, a represented family has a greater opportunity to meet their burden for asylum.

2. Limitations of counsel

The relatively small number of families on the L.A. Dedicated Docket who do obtain representation are often served by private attorneys, rather than the low bono (discounted price) or pro bono (free of charge) practitioners listed in the immigration court's handout. Of the dozens of telephonic appearances by counsel we observed, the majority were made by private practitioners. For most families, however, obtaining private representation is difficult and expensive. Like many others, William has found a private attorney, but cannot afford the \$7,000–\$8,000 in fees to retain them.

Furthermore, while there are certainly many private immigration attorneys who provide quality representation, other members of the private immigration bar have significant difficulty providing ethical and effective advocacy.⁴² During court observations, the lack of proficient counsel was evident. For instance, one attorney arrived late to the telephonic hearing and failed to address the separate relief available to the children he represented. In another instance, an attorney was unable to communicate with her client because of a language barrier. During the single merits hearing (the equivalent of a trial in immigration court) that we were able to observe, the attorney did not ask questions of the client. Instead, both the ICE attorney and the judge asked her client several leading questions about his general fear of returning to his home country, and cut short the client's responses. The attorney said nothing other than to ask the judge for a copy of the removal order and to describe her schedule that day to him. The hearing ended in 30 minutes. Both the client and his children were ordered removed.

⁴² See, e.g., Benjamin Edwards, *Immigrants Need Better Protection from Their Lawyers*, WALL ST. J., Nov. 26, 2017, <https://www.wsj.com/articles/immigrants-need-better-protection-from-their-lawyers-1511730450>.

3. Friend of the Court

The Biden administration recently launched a Friend of the Court (“FOC”) program on the L.A. Dedicated Docket, presumably to help ensure due process. The Department of Justice defines an FOC “as an individual or organization that interposes in a judicial proceeding to assist the court.”⁴³ Those who view the model with optimism argue that the mere presence of the FOC changes the dynamic of the hearing; an FOC can share information and ask questions on behalf of the family and ensure that relevant facts are on the record. Those who view the model with skepticism worry that while the FOC helps to process the case efficiently, they do not address the due process concerns of noncitizens who must litigate their immigration cases without legal representation. In the early stages of the FOC model on the L.A. Dedicated Docket, we observed that FOCs join telephonically and do not actively participate in the proceedings.

4. Access to information

Judges strongly encouraged the families to seek outside information about the Docket. At each of the court sessions we observed, there was an attorney from either the California Bar Association or Esperanza Immigrant Rights Project present in the courthouse—either in the courtroom or in the hallway outside of it. Unlike FOCs, these attorneys did not participate in the court proceedings. Instead, they provided free information about how to obtain legal representation and advised the families of their rights. This practice aligns with existing programs that aim to provide basic information to unrepresented individuals about their rights when facing removal.

C. Court Proceedings

1. Group hearings

The immigration judges on the L.A. Dedicated Docket conduct group hearings for unrepresented families. In these hearings, judges process between two and six families at the same time. While the families are seated on the court’s public benches, the judge (1) confirms the families’ addresses; (2) informs them of their rights, (3) provides them with a list of counsel, and (4) leaves time for questions at the end. Group advisals appear to serve the goals of efficiency and

⁴³ Off. of the Chief Immigration Judge, Exec. Office for Immigration Review, *The Friend of Court Model for Unaccompanied Minors in Immigration Proceedings* (Sept. 10, 2014), <https://www.justice.gov/sites/default/files/pages/attachments/2016/12/21/friendofcourtguidancememo091014.pdf>.

During one observation, a judge twice confused the residential addresses of the families before him, reading one family the other's address. The judge later reprimanded both families for failing to correct him. If such an error were to cause the court to maintain an erroneous address for an immigrant family on file, it could lead the court to issue an *in absentia* removal order through no fault of the family's.

expediency; however, this group format may sacrifice the individual family's due process rights.

First, our observations revealed administrative errors during group hearings. For instance, during one observation, a judge twice confused the residential addresses of the families before him, reading one family the other's address. The judge later reprimanded both families for failing to correct him. If such an error were to cause the court to maintain an erroneous address for an immigrant family on file, it could lead the court to issue an *in absentia* removal order through no fault of the family's. The judges also at times failed to confirm addresses, listed the wrong court on a change of venue, or stated the wrong date for a rescheduled hearing. Additionally, both judges appeared dismissive of families' questions. For instance, Linda noted that when she raised her hand to ask a question, the judge did not give her an opportunity to ask her question, and the interpreter reprimanded her. In other instances, we observed that when families expressed their various concerns at the end of the group advisals, the judges failed to acknowledge their responses, asserting that they were not questions.

Second, during group hearings, one judge required affirmative responses from each family to his questions while the other judge accepted informal head nods, and commanded responses from the families in unison (making it difficult to know if everyone had actually spoken). Additionally, both judges skipped over reading most of the families' evidentiary rights, reasoning that evidence had not yet been submitted.

2. *In-person vs. televideo hearings*

The L.A. Dedicated Docket operates both in person and via televideo technology. In our observations, families without legal representation were required to travel to court for in-person hearings. Families with legal representation were permitted to appear for their initial hearings via televideo technology. Attorneys representing the government appeared via televideo technology, rather than in person, for all cases.

3. Use of interpreters

Our observations revealed serious due process violations arising from the highly irregular use of interpreters on more than one occasion. In one instance, a judge asked the ICE attorney's wife to communicate via televideo in Mandarin to a family about the rescheduling of proceedings. At another time, the judge knowingly utilized a Spanish-speaking interpreter for an individual whose primary language was Creole. The judge asked the interpreter to speak slowly.

Beyond those egregious errors, we found that the L.A. Dedicated Docket judges took different approaches from one another as to the use of interpreters for court hearings. Where an in-person interpreter was not available, one judge used a phone service to access assistance, even calling two different interpreter services for a family. The other judge automatically instructed his staff to reschedule the individual for a different day where an in-person interpreter would be made available. For instance, staff sent away a woman and her 2-month-old baby and instructed her in English to come back over a month later for a hearing with an in-person Romani interpreter.

To complicate matters, families sometimes do not disclose their primary language to the court. As a result, "asylum seekers whose primary language is not Spanish [such as indigenous language speakers from Guatemala] may agree to a Spanish interpreter—or immigration judges may use Spanish interpreters—even when the non-citizen is not proficient in that language."⁴⁴

4. Court atmosphere

Our observations revealed a courtroom atmosphere marked by confusion and expedience. From our observations, most of the children attending court with their parents were very young. During the reading of rights, observers noted that children were crying, playing, or otherwise demanding the attention of their parents. Thus, it was unclear whether the families truly understood the hearings or what was expected of them. In both courtrooms, the judges encouraged families to leave their children at home or keep their children in school. While one judge consistently acknowledged the difficulty of bringing children to court, the other judge was less patient when

44 *40 Languages Spoken Among Asylum Seekers with Pending MPP Cases*, TRAC IMMIGRATION (Apr. 26, 2021), <https://trac.syr.edu/immigration/reports/644/>.

children played or made noise in the courtroom. Additionally, interpreters usually spoke at the same time as the judges. Linda expressed that the simultaneous translation made it difficult to understand the interpreter over the judge's voice.

Our observations revealed a courtroom atmosphere marked by confusion and expedience. Most of the children attending court with their parents were very young.

5. Court administration

Inconsistencies in the scheduling of merits hearings have further contributed to confusion across the L.A. Dedicated Docket. In December 2021, some families had merits hearings scheduled for October 2022. Less than four months later, families appearing for their second or third time had merits hearings scheduled to take place within mere weeks. Attorneys reported that their clients' merits hearings have been rescheduled without warning for months earlier than their original date, leaving the attorneys with far less time to prepare the case than they had planned.

Additionally, both judges appeared more willing to deviate from their general approach when dealing with families identified as non-Spanish-speaking. For example, one judge scheduled merits hearings later in the year only for families identified as non-Spanish-speaking, while families identified as Spanish-speaking were set for trial a few weeks out. The other judge assisted an unrepresented Haitian family with a change of venue motion to remove them from the Dedicated Docket, while not affording the same treatment to others.

D. Continuances

The administration set 300 days as an "internal goal" for completing cases on the Dedicated Docket, but it states that "immigration judges retain discretion to determine whether a continuance should be granted for good cause. *See* 8 C.F.R. § 1003.29." We observed a

discrepancy between how judges view their discretion to grant continuances. One judge appeared willing to provide only one continuance to find counsel and was reluctant to provide additional time. The other judge routinely granted up to two continuances without inquiring if the families needed more time. While the average length between the filing of the NTA to completion of the case for individuals has been about 50 days before one judge, it has been about 73 days before the other. Of the 44.3% of individuals who have had three or more hearings, 33.1% were before one judge, and 48.5% were before the other. Supporting our observations, these data suggest that judges exercise significant discretion in providing continuances. Because of the time-sensitive nature of the Docket, a family given a shorter timeline may be more constrained in developing their case than a family given a longer timeline.

E. Outcomes

As of February 2022, 449 cases (6.8% of the Docket)⁴⁵ were completed. Of those, 99.1% resulted in removal, while only 0.9% resulted in relief.

0.9% of completed cases
resulted in relief

99.1% of completed cases
resulted in removal orders

The majority of removal orders—72.4%—were issued *in absentia*; nearly half (48.4%) of these *in absentia* removal orders were entered against children, nearly two-thirds of whom were age 6 and under. Indeed, 150 children—some less than a year old—were ordered removed *in absentia*, most without legal representation.⁴⁶ When a parent misses court, the entire family is ordered removed for failure to appear. In some instances, only one parent attended the hearing on behalf of the unrepresented family, while the other parent watched the children. In each of these cases, the judge threatened to remove the absent parent *in absentia*.

⁴⁵ This number does not include cases that resulted in transfer or change of venue.

⁴⁶ In our observations, ICE attorneys regularly made boilerplate requests for motions to stay removal orders on behalf of families who would otherwise be removed *in absentia*, and in rare instances, were successful. However, most times, the judge denied the motion and ordered the families removed *in absentia*.

While children facing removal often have claims to relief independent of their parents, many family members appear to be unaware of the possibility of separate relief (unsurprising in light of the low rates of legal representation) or have been encouraged by the judge to consolidate all their claims. Whatever the reason, we found that children were rarely able to pursue their independent relief claims, despite the profound benefits to them and their families that could arise from their doing so.

150 children—some less than a year old—were ordered removed in absentia, most without legal representation.

Unless changes are made to address the concerns set forth in this paper, the number of completed cases—and the outsized number of removal orders, including against children—is likely to grow substantially in the coming months as the Docket continues to operate.

vi. REVISITING EFFICIENCY AND FAIRNESS

Our research made clear that all parties agree the single most effective way to achieve the Biden administration's goal of a fair and efficient Dedicated Docket is by ensuring everyone has access to quality legal representation. Judges advised families to obtain counsel so that proceedings would operate more efficiently. Legal service providers shared their view that universal representation is the only way to achieve fair results. The families on the Docket feel similarly about the crucial need for representation. The vast majority of families cannot assert the rights afforded them by the immigration laws without legal representation. Moreover, not only do attorneys provide the families with clarity regarding what is happening in the proceedings, but they also provide a sense of calm. Attorneys can check in on the families and share necessary information about proceedings that the families cannot receive without representation. And attorneys can ensure both that families can attend their hearings (and therefore

are not ordered removed *in absentia*) and that families' confusion about the Docket does not hamper their ability to present their case.

Nevertheless, families are not guaranteed counsel. Instead, they are expected to find attorneys within a complex network in which pro bono representation is very limited. Although the Biden administration promised the families "access to information services,"⁴⁷ families have shared that they do not receive enough support, resources, or information to know how to navigate the system. Our data and observations corroborate their experience. To achieve the stated goals of expediency and fairness without sacrificing due process, there must be, as one legal services provider explained, "genuine access to counsel."

The single most effective way to achieve the Biden administration's goal of a fair and efficient Dedicated Docket is by ensuring everyone has access to quality legal representation.

VII. CONCLUSION

The L.A. Dedicated Docket has failed to meet most of the Biden administration's purported goals. While the few completed cases on the L.A. Docket have satisfied the 300-day timeline thus far, the administration has failed to "facilitate legal representation." As a result, the Docket does not operate consistent with "due process and fundamental fairness."

Although our study is limited to Los Angeles, it may reveal national trends across the 11 selected cities. If the Docket is to continue, the Biden administration must address the lack of available legal resources, fix the other due process deficiencies we identify, and re-commit to its promise of "treating families and children with compassion and sensitivity."⁴⁸

⁴⁷ See *supra* note 14.

⁴⁸ The Biden Plan for Securing Our Values as a Nation of Immigrants, <https://joebiden.com/immigration/>.