



## EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

### MYTHS vs FACTS ABOUT IMMIGRATION PROCEEDINGS

MAY 2019

- 1.**           **MYTH:**       Most aliens who claim a fear of persecution in expedited removal proceedings have meritorious asylum claims.

**FACT:**        Out of every 100 credible fear claims, on average, only about 12 result in a grant of asylum by an immigration judge.
  
- 2.**           **MYTH:**       Most aliens who claim a credible fear of persecution are asylum seekers.

**FACT:**        On average, at least half of aliens who make a credible fear claim and are subsequently placed in removal proceedings do not actually apply for asylum.
  
- 3.**           **MYTH:**       There is wide discrepancy in asylum grant rates across all immigration courts.

**FACT:**        The median asylum grant rate for all immigration courts is eleven percent (11%). Eighty percent (80%) of immigration courts, 50 out of 62, have a grant rate of twenty-one percent (21%) or lower. Only 12 out of 62 courts have grant rates more than ten percent (10%) above the median grant rate. Only 1 out of 62 courts has a grant rate above fifty percent (50%).
  
- 4.**           **MYTH:**       Few aliens fail to attend their immigration court proceedings.

**FACT:**        Forty-four percent (44%) of all non-detained removal cases end with an *in absentia* order of removal due to an alien's failure to attend a scheduled immigration court hearing.



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5. **MYTH:** Most aliens in immigration proceedings do not have representation. Most asylum applicants and unaccompanied alien children (UAC) in immigration proceedings do not have representation. Most aliens who appeal an immigration judge's decision do not have representation on appeal.
- FACT:** Sixty-eight percent (68%) of aliens with pending immigration cases and eight-five percent (85%) of pending asylum applicants in immigration proceedings have representation. Sixty-five percent (65%) of all UAC cases and seventy-nine percent (79%) of UAC cases that have been pending for more than one year have representation. Eighty-one percent (81%) of aliens in cases on appeal have representation.
6. **MYTH:** Most aliens with representation are granted asylum in immigration proceedings.
- FACT:** The asylum grant rate for cases with representation is approximately twenty-one percent (21%). The asylum denial rate for cases with representation is approximately forty-eight percent (48%). These rates are essentially the same as the national averages.
7. **MYTH:** Immigration adjudicators in the Department of Justice are prosecutors.
- FACT:** Immigration removability proceedings are civil proceedings, not criminal. The Department of Homeland Security, not the Department of Justice, represents the enforcement interests of the government in those proceedings. Department of Justice adjudicators, including immigration judges and the Attorney General, are neutral adjudicators who make decisions based on the facts and applicable law in each case.



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8. **MYTH:** EOIR is the only federal administrative agency that uses video teleconferencing (VTC) for court hearings or case adjudications, and eliminating or restricting the use of VTC through litigation would affect only EOIR.
- FACT:** VTC is widely used at numerous federal administrative agencies for court hearings or case adjudications similar to how it is used by EOIR, including at the Social Security Administration, the Department of Veterans Affairs, and the Department of Health and Human Services. Any restriction or elimination of the use of VTC for court hearings or case adjudications would have implications for all agencies utilizing VTC—not just EOIR.
9. **MYTH:** VTC is unreliable, and its use violates due process.
- FACT:** VTC has been used by EOIR since the 1990s, and its use was expressly authorized by statute in 1996. It is used widely throughout many federal agencies, and federal courts have consistently rejected general challenges to its use as a violation of due process. There is no indication of a statistically significant difference in outcomes between VTC cases and in-person cases. Less than one-tenth of one percent (.0052%) of EOIR VTC hearings, 310 out of nearly 60,000, are continued due to a VTC malfunction.
10. **MYTH:** Participation in the Legal Orientation Program (LOP) reduces the length of an alien's proceedings, reduces the time an alien spends in detention, and reduces costs to the Department of Homeland Security (DHS).
- FACT:** Aliens who participate in LOP spend an average of 30 additional days in detention, have longer case lengths, and add over \$100 million in detention costs to DHS.



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- 11. MYTH:** EOIR is the only federal agency in which judges or administrative adjudicators are subject to performance measures or case completion goals.
- FACT:** Ninety-seven percent (97%) of administrative judges or administrative adjudicators, excluding administrative law judges, are subject to performance measures just as immigration judges are. Although not subject to performance evaluations, many administrative law judges are subject to case processing goals, just as immigration judges are.
- 12. MYTH:** EOIR's case completion goals are unfounded in law and contrary to the recommendations of other governmental bodies.
- FACT:** Multiple statutory provisions reflect the intent of Congress to adjudicate immigration cases within specified time frames. The Government Accountability Office, the Department of Justice Office of the Inspector General, and Congress have all called for EOIR to establish case completion goals, particularly for non-detained cases that make up the bulk of the pending caseload.
- 13. MYTH:** EOIR contains the only federal adjudicatory system in which the head of the agency, the Attorney General, may review administrative adjudicatory decisions.
- FACT:** Agency head review has been a common feature of adjudications at many federal administrative agencies for decades.



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14. **MYTH:** Immigration judges lack decisional independence because they are required to follow precedent and their decisions are subject to administrative review.
- FACT:** Immigration judges are required by regulation to “exercise their independent judgment and discretion” and may take any action consistent with their authority under the law. In the United States, almost all types of judges at all levels are required to follow precedent, and a requirement to adhere to precedent does not mean that a judge does not exercise independent decisionmaking in individual cases. Similarly, decisional independence is not compromised by the availability of administrative appellate review of an immigration judge’s decision.
15. **MYTH:** Administrative judges and administrative adjudicators, including immigration judges, can easily be converted to Article I judges with no disruption to adjudications.
- FACT:** There are over 10,000 federal administrative judges and administrative adjudicators, in addition to over 1900 administrative law judges and over 430 immigration judges. No organization has studied the cost or fully explored the ramifications of converting tens of thousands of administrative judges and adjudicators to Article I judges.
16. **MYTH:** Immigration judges cannot complete 700 cases per year without violating due process.
- FACT:** Historically, multiple sources have asserted that immigration judges have completed well over 700 cases per year with no noted allegations of due process violations associated with those higher completion numbers, including the Government Accountability Office and the National Association of Immigration Judges. The American Bar Association has also twice recommended that immigration judges should manage a caseload “roughly on par with the number of cases decided each year by judges in other federal administrative adjudicatory systems (around 700 cases annually).”



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- 17. MYTH:** Immigration judges routinely engage in unprofessional or unethical behavior or violate due process and the rights of respondents in adjudicating immigration cases.
- FACT:** Despite an increase in the number of immigration judges in FY 2018, the number of complaints of judicial misconduct decreased.
- 18. MYTH:** Immigration judges have financial incentives to complete cases with particular outcomes.
- FACT:** Immigration judge pay is set by a statutory scale based solely on length of service with adjustments based on locality. Immigration judges do not receive bonuses or financial awards based on the number of cases they complete or the outcomes of those cases.