

July 2014

TAKING ATTENDANCE: New Data Finds Majority of Children Appear in Immigration Court

As the number of unaccompanied children arriving at the United States border has increased, some lawmakers have argued that children frequently fail to appear for proceedings and thus proposed mandatory detention as a solution. Some say as many as 90 percent fail to attend their immigration court hearings.¹ Yet government data recently [published](#) by Syracuse University's Transactional Records Access Clearinghouse (TRAC) indicates the opposite.² Not only do a majority of children attend their immigration proceedings, according to TRAC, but 90 percent or more attend when represented by lawyers.

TRAC Data Offers Comprehensive Look at Children in Immigration Court

TRAC's [data](#), obtained through the Freedom of Information Act, examines 101,850 immigration court proceedings begun while a child was under 18, from Fiscal Year (FY) 2005 through June 2014.³ The information tabulated in TRAC's database includes data on both completed cases, in which there was an official outcome, and cases still pending. The data also includes information on "*in absentia*" cases, Latin for "in absence," which is a term for a judicial hearing held without the individual present. Any delay in appearing at any immigration hearing may lead to a court removing someone *in absentia*.⁴ The Department of Justice's Executive Office for Immigration Review (EOIR), which runs U.S. immigration courts, uses a similar methodology of reporting "*in absentia*" numbers as its best available indicator of failures to show. However, EOIR has not historically broken out children's cases.⁵

The following analysis uses the TRAC data to determine rates of appearance in court based on completed cases. Additional analysis of all cases, both completed and still pending, also provides a snapshot of overall current appearance rates to date.

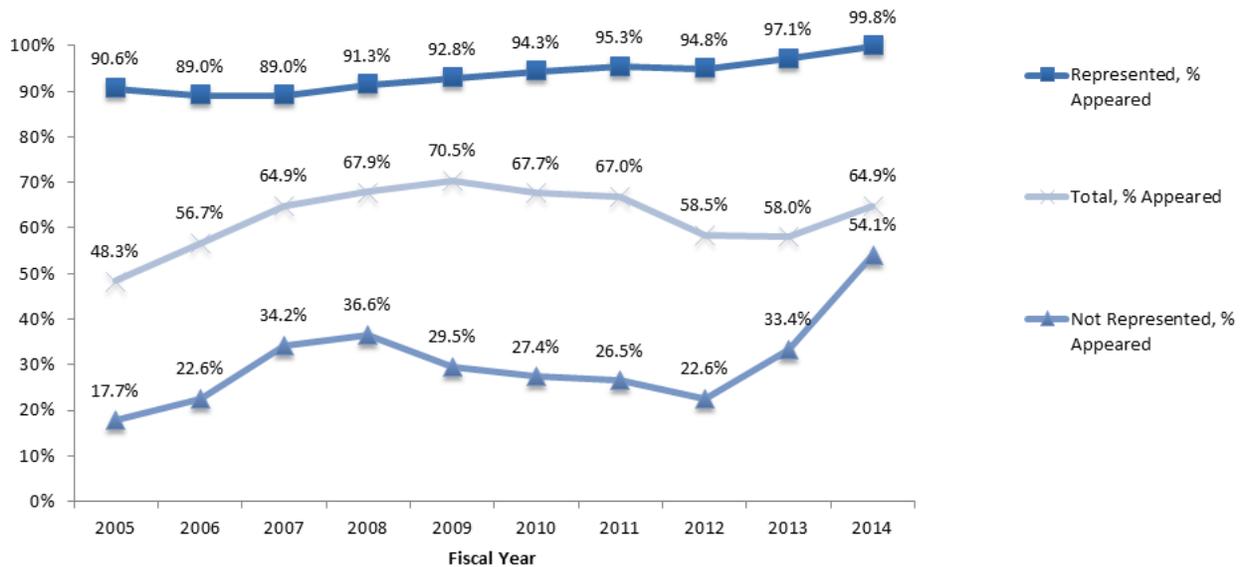
Children Appear in Immigration Court

Analyzing TRAC's data shows that juveniles who were not detained or released have a lower *in absentia* rate than previously reported. Not only do a majority of children appear in immigration court, but the *vast* majority of children represented by *lawyers* appear.⁶

Appearance Rate, Immigration Cases Begun Against Children, Not Detained By End of Case, Now Closed, All Cases Since FY 2005

Represented	92.5%
Not Represented	27.5%
Total	60.9%

Appearance Rate, Immigration Cases Begun Against Children, Not Detained by End of Case, Now Closed, All Cases Since FY 2005.



Key findings are:

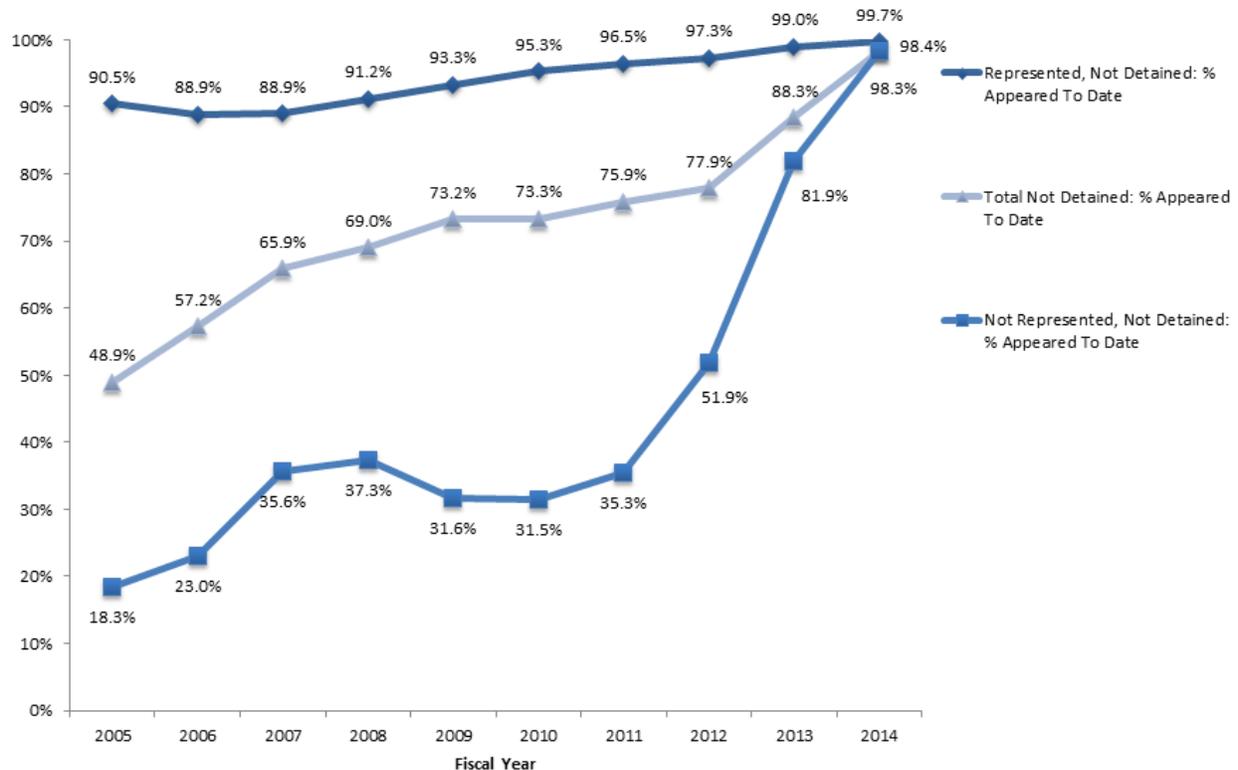
- For completed cases, **60.9 percent** of juveniles appeared in immigration court.
- **92.5 percent** of children represented by **lawyers** appeared for their court proceedings. This number is **historically consistent**—never below 89 percent since FY 2005.
- This data is consistent with reports from *pro bono* organizations that provide counsel to children. For example, New York’s Safe Passage Project reported that of approximately three hundred children it screened, only two children failed to appear for immigration court hearings after they were matched with *pro bono* counsel.⁷

When Pending Cases are Factored In, Appearance Rates Are Even Greater

Appearance Rate, Immigration Cases Begun Against Children, Not Detained By End of Case, All Cases Since FY 2005, Both Pending and Closed

Represented	94.7%
Not Represented	66.3%
Total	78.6%

Appearance Rate, Immigration Cases Begun Against Children, Not Detained by End of Case, All Cases Since FY 2005, Both Pending and Closed



Key findings, when including pending cases, are:

- A greater **majority—78.6 percent**— of juveniles appear in immigration court, of those not detained in all cases. Moreover:
- The **vast majority** of juveniles represented by **lawyers** appear (**94.7 percent**).

Placement with Parents or Guardians Appears to Help Children Appear in Court

Additionally, TRAC’s data calls into question claims by lawmakers that children, once placed with U.S. family (some without lawful status), will not show for immigration proceedings.⁸ Most do, according to TRAC:⁹

- In **79.5 percent** of cases (both closed and pending) in which a child was released or never detained, and in a parent or guardian’s custody, the child has not been designated *in absentia*.
- For children represented by lawyers, **95.1 percent** of those in a parent or guardian’s custody have not been designated *in absentia* (in both closed and pending cases).

Conclusion

Evidence obtained from EOIR's own data suggests that children appear in immigration court—and that when children are represented by counsel, appearance rates are even higher. This data suggests children's supposed failures to appear in court are red herring arguments—designed to place blame for the system's deficits on children themselves, rather than on courts' lack of resources to ensure a timely and fair process.¹⁰ Moreover, given TRAC's data showing the relationship between representation and attendance, the appointment of counsel to children may help ensure attendance at proceedings in a more cost-effective, humane, and fair manner.¹¹

Endnotes

¹ Dan Nowicki, "Flake, McCain claim that 90 percent of migrants skip hearings disputed," *Arizona Republic*, July 11, 2014, <http://www.azcentral.com/story/news/politics/immigration/2014/07/12/flake-mccain-claim-percent-migrants-skip-hearings-disputed/12563361/>.

² TRAC Immigration, Syracuse University, *New Data on Unaccompanied Children in Immigration Court* (July 15, 2014), at <http://trac.syr.edu/immigration/reports/359/> [hereinafter TRAC, *New Data*].

³ TRAC Immigration, Syracuse University, *Juveniles—Immigration Court Deportation Proceedings, Court Data through June 2014*, <http://trac.syr.edu/phptools/immigration/juvenile/> [hereinafter TRAC, *Juveniles Tool*]. The data encompasses every immigration court case begun in these years, and coded as "juvenile," since FY 2005—101,850 cases in total. See TRAC Immigration, *About the Data* (July 15, 2014), http://trac.syr.edu/immigration/reports/359/include/about_data.html [hereinafter TRAC, *About the Data*]. TRAC reports that immigration courts define a "juvenile" as a child under 18 when their immigration case begins, and appearing alone in court (which TRAC reports that EOIR defines as not being deported by DHS with a parent as a family unit). This data does not include children not processed through immigration court (such as Mexican children who accepted voluntary return).

⁴ U.S. Department of Justice, Executive Office for Immigration Review, Office of the Chief Immigration Judge, *Immigration Court Practice Manual* Ch. 4.17, p. 82 (August 2009), at http://www.justice.gov/eoir/vll/OCIJPracManual/ocij_page1.htm; 8 C.F.R. § 1003.26, *In Absentia Hearings*, <http://www.law.cornell.edu/cfr/text/8/1003.26>.

⁵ U.S. Department of Justice, Executive Office for Immigration Review, *FY 2013 Statistics Yearbook*, pp. P1-P4, "Immigration Courts: *In Absentia* Orders," comparing *in absentia* rates to case completions for all noncitizens; those never detained and released, separately; and the "not detained" (combining those never detained and released), <http://www.justice.gov/eoir/statspub/fy13syb.pdf>. See also Bipartisan Policy Center, *Child Migration by the Numbers*, p. 8 Fig. 8 (June 2014) (reporting EOIR data through 2012), at <http://bipartisanpolicy.org/library/research/child-migration-numbers>.

⁶ We arrived at this result, using TRAC's *Juveniles Tool*, by first calculating closed cases (all cases with an outcome other than "pending"), representation rates, and *in absentia* rates, by fiscal year. We then calculated a fourth variable, whether the noncitizen was detained. We then backed out from these numbers (1) those detained, and (2) of those not *in absentia*, 97 percent of those detained (since TRAC's numbers show that 97 percent of those detained in closed cases were not *in absentia*). By doing so, we calculated an appearance rate in cases of those not detained. These numbers appear to be consistent with TRAC's other reporting of detention rates.

⁷ See Safe Passage Project, *Statement to House Judiciary Committee*, June 25, 2014, at p. 2, <http://www.safeassageproject.org/safe-passage-testimony-to-congress-on-child-migrants/>.

⁸ Senator Lindsay Graham, U.S. Senate Committee on Appropriations, *Hearing: President's Emergency Supplemental Request* (July 10, 2014) (Q: "Are we turning children over to people here illegally? ...I think the chance of them showing up to a hearing is zero."), <http://www.appropriations.senate.gov/webcast/full-committee-hearing-president%E2%80%99s-emergency-supplemental-request>.

⁹ According to TRAC, EOIR tracks whether a child is listed as in the custody of a parent or guardian, or not. See TRAC, *About the Data* (“A significant number of unaccompanied children who are apprehended at the border have a parent already residing in the United States. If at some point, even after court proceedings begin, a parent or court-ordered legal guardian assumes custody of the child, then procedures call for the EOIR’s database to be updated to indicate this change in custody. This change is recorded by updating the particular juvenile case type.”). EOIR, according to TRAC, still lists the case as “juvenile,” however.

¹⁰ Dana Leigh Marks, President, National Association of Immigration Judges, *Letter re Special Concerns Relating to Juveniles in Immigration Courts* (July 22, 2014).

¹¹ American Immigration Council, *Two Systems of Justice* 10 (2013), at <http://www.immigrationpolicy.org/special-reports/two-systems-justice-how-immigration-system-falls-short-american-ideals-justice>; New York City Bar Association, *City Bar Welcomes NERA Report Finding Immigration Appointed Counsel Would Pay for Itself* (May 30, 2014), <http://www.nycbar.org/44th-street-blog/2014/05/30/city-bar-welcomes-nera-report-finding-appointed-immigration-counsel-would-pay-for-itself/>.