

# Courting Disaster

Rights at Risk in Omaha Immigration Court



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**ACLU**  
Nebraska

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# Introduction

For over 50 years in Nebraska, the ACLU has worked in courts, legislatures, and communities to protect the constitutional and individual rights of *all* people. With a nationwide network of offices and millions of members and supporters, we take up the toughest civil liberties fights. Beyond one person, party, or side — we the people dare to create a more perfect union.

The ACLU of Nebraska (ACLU-NE) is committed to protecting the rights of all people. The fundamental protections of due process and equal protection embodied in our Constitution and Bill of Rights apply to every person, regardless of immigration status. Using targeted impact litigation, advocacy, and public education, the ACLU-NE protects the civil rights and liberties of immigrants. From fighting back against discriminatory housing and "show me your papers" policies, to empowering young immigrants to gain driver's licenses and educational opportunities, to seeking justice for immigrants targeted or abused at the hands of law enforcement, the ACLU-NE works in courts and communities around Nebraska to advance the rights of immigrants.

Over the course of five months, the ACLU-NE, in coordination with the University of Nebraska-Lincoln (UNL) Legal Decision-Making Lab, observed more than 500 pretrial hearings in the Omaha immigration court. The findings paint a stark picture in which the due process rights of people in removal proceedings (*see terminology section on the following page*) are routinely compromised by immigration judges. Immigration judges conclude these hearings in mere minutes, often inadequately advise people of their rights and provide insufficient access to language interpretation — particularly for speakers of certain languages — all while many people face these hearings without legal representation.

This report begins with a discussion of the national landscape and overview of the immigration court system followed by a discussion of the Nebraska landscape. Next, this report turns to the method of the court watching and data collection process and discusses the findings based on observations of the Omaha immigration court. The findings relate to the practices and patterns of the court regarding the duration of hearings, advisement of rights, as well as access to language interpretation and legal representation. The report concludes with recommendations for federal, state and local policymakers and immigration judges.

#### **TERMINOLOGY:**

##### **As used in this report,**

**“Deportation”** refers to the government process of forcefully removing an immigrant from the United States, either temporarily or permanently. Since 1997, the government has referred to this process as “removal,” but this report uses the more distinct term of “deportation.”<sup>1</sup>

**“Immigrant”** refers to any person present in the United States who is not a citizen of the United States and is currently in deportation proceedings.

**“Individual Calendar Hearing”** refers to the final evidentiary hearing (or “trial”) an immigrant must attend as part of the deportation process. During the Individual Calendar Hearing, an Immigration and Customs Enforcement (ICE) attorney brings forth evidence to show the immigrant violated an immigration law. The immigrant can bring evidence that they did not violate the law or show that they are otherwise eligible to stay in the United States.<sup>2</sup>

**“Immigration judge”** refers to the lawyers appointed by the United States Department of Justice (DOJ) Attorney General as an administrative judge in the Executive Office for Immigration Review (EOIR) to preside over immigration court and hear matters regarding immigrants’ rights to remain in the United States. Immigration judges are unlike judges in state and federal courts because they are part of the executive branch and report to the Attorney General.<sup>3</sup>

**“Master<sup>4</sup> Calendar Hearing”** (MCH) refers to the pretrial hearings (the hearings preceding the Individual Calendar Hearing) that an immigrant must attend as part of their deportation process for pleadings (or “admissions”), scheduling, and other more technical matters. At MCHs, the immigrant will appear before the immigration judge and will be opposed by an ICE attorney who is charged with arguing the immigrant’s alleged violations of immigration law. There is often more than one MCH.

## National Landscape

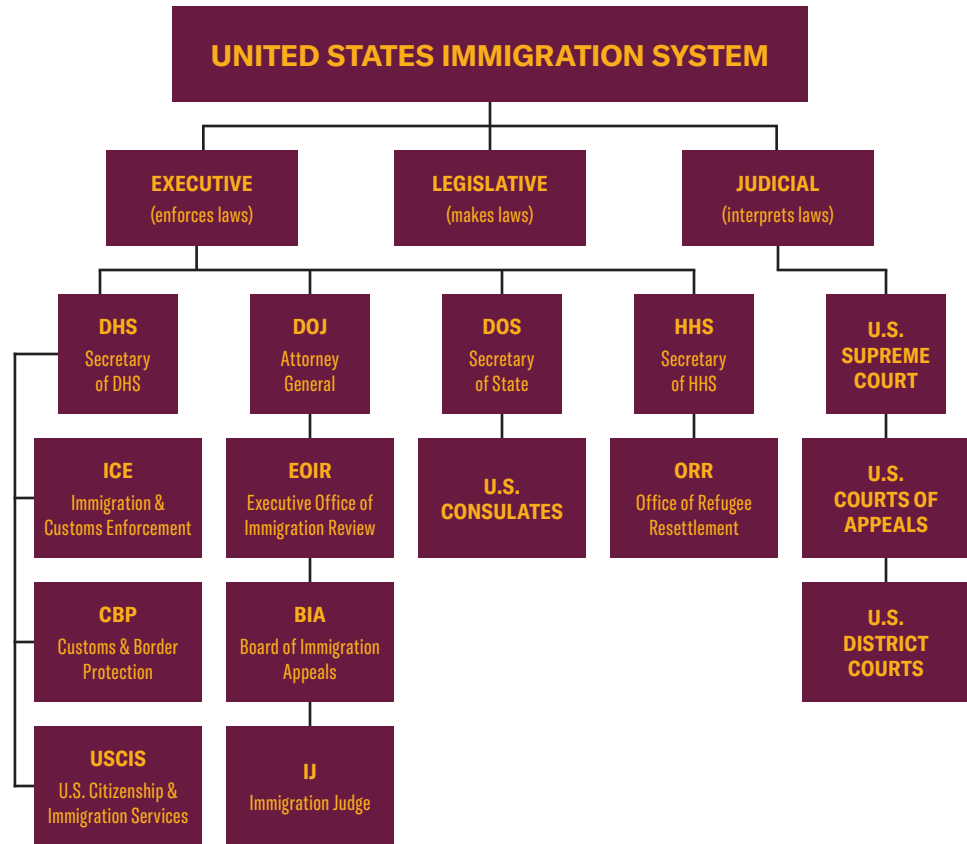
The United States Constitution and the Immigration and Nationality Act guarantee all people in the immigration system “a full and fair [deportation] hearing.”<sup>5</sup> However, this fundamental right is often compromised and overlooked when legal systems fail to keep up with social and political changes. Today 682 immigration judges are assigned over three million immigration cases — about 4,500 cases per immigration judge, if distributed evenly.<sup>6</sup>

## Overview of the United States Immigration System

In 1952, Congress passed the Immigration and Nationality Act, the source of most federal immigration law.<sup>7</sup> Today, the Department of Homeland Security (DHS) and its component agencies of Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), and the United States Citizenship and Immigration Services (USCIS) are tasked with overseeing the immigration

system.<sup>8</sup> See Chart 1. When one of these agencies alleges that a person has violated an immigration law, the individual is issued a charging document, Form I-862 Notice To Appear (NTA) in immigration court, where an immigration judge will ultimately decide whether that person will be deported from the country.<sup>9</sup>

Chart 1



Immigration courts are civil courts that are part of an agency within the DOJ called the Executive Office of Immigration Review (EOIR),<sup>10</sup> which runs over 60 immigration courts across the country and the Board of Immigration Appeals (BIA), an appellate court.<sup>11</sup> Immigration courts are not like state or federal courts, which are more insulated from the political process than immigration courts. In contrast to immigration judges, federal judges have a lifetime appointment and may only be removed through impeachment by the House of Representatives and conviction by the Senate.<sup>12</sup>

On the other hand, immigration judges lack judicial independence, life tenure, and can be fired like any other federal employee. Moreover, immigration judges are part of the executive branch and are hired by and answer to the Attorney General,<sup>13</sup> who is also responsible for overseeing the office in charge of advocating for the deportation of immigrants in federal courts, the Office of Immigration Litigation.<sup>14</sup>

At times, hiring has been based on the candidate's political affiliation rather than qualifications for being an immigration judge,<sup>15</sup> or immigration judges were given strict case quotas,<sup>16</sup> both of which resulted in a noticeable shift in immigration court rulings.<sup>17</sup>

## Nebraska Landscape

The Omaha immigration court hears immigration cases primarily of people living in Nebraska and Iowa who are currently involved in deportation proceedings.<sup>18</sup> As of November 2023, there are over 37,000 immigration cases pending at the Omaha immigration court.<sup>19</sup> There are three immigration judges at the Omaha immigration court, all of whom are former ICE attorneys, and, as such, were tasked with arguing for the deportation of immigrants.<sup>20</sup> The court watchers only gathered data from the courtrooms of Judge Alexandra R. Larsen and Judge Abby L. Meyer. The vast majority of observations involved nondetained cases. Courtroom access requirements made it infeasible to observe cases presided by Judge Matthew E. Morrissey, who primarily presides over cases of individuals who are detained. Individualized data for Judge Larsen and Judge Meyer can be found at **Appendix A**.

## Method

This report reveals the findings of the ACLU-NE immigration court watching project in which a team of graduate students and law students spent five months observing 534 Master Calendar Hearings at the Omaha immigration court. The team observed hearings in the courtrooms of Judge Meyer and Judge Larsen between April and August 2023. The team recorded the process and outcome of each observed hearing, including the length of each hearing, whether the person appearing before the court was advised of their rights, the language the person spoke, whether an interpreter was provided, and whether they were represented by an attorney. All observations were made in person and tracked via the observation form at **Appendix B**.<sup>21</sup>

The court watching team compiled the information and provided the data in electronic format to the UNL Legal Decision-Making Lab to analyze the raw data for themes and statistically significant relationships among the factors observed. The findings were submitted to the ACLU-NE in a comprehensive report. The following narrative describes some of the most notable results, which were tested for statistical significance to rule out chance findings where appropriate. The report is additionally complemented by ACLU-NE legal and policy research informing the analysis of the findings.

# Findings

Findings from court watching observations relate to the duration of the proceedings, advisement of rights, access to interpretation in proceedings, and attorney representation in MCHs conducted by the Omaha immigration court.

## 1. Short Duration of Proceedings

**The duration of the average MCH was just 3.9 minutes.**

At a person's first MCH, the following actions must occur:

- The immigrant's case is called for hearing;
- The immigration judge asks the immigrant to pronounce their name;
- The immigration judge asks the immigrant to announce their preferred language;
- The immigration judge requests that the immigrant name their attorney, if they have one;
- The immigration judge advises the immigrant of all their rights in immigration court;
- The ICE attorney describes all the allegations against the immigrant;
- The immigration judge asks the immigrant to deny or admit each of the allegations;
- The immigration judge asks the immigrant to choose what country they will be deported to. If the immigrant refuses to select a country, because, for instance, they are seeking asylum from their home country, the country will be chosen for them;
- The immigration judge asks if there are any legal reasons that the immigrant should not be deported;
- The immigration judge sets deadlines for the submission of forms, applications, statements and more; and
- The immigration judge schedules another MCH to ensure the case is ready for adjudication or schedules an Individual Calendar Hearing to decide the case.<sup>22</sup>

While MCHs are procedural in nature, what happens during these hearings can have long-lasting and even determinative consequences. For instance, if an immigrant does not understand what the immigration judge is telling them during the hearing, they will not know that the immigration judge can order them to be deported simply for failing to attend a subsequent hearing.<sup>23</sup>

The actions listed above are required and must also be interpreted during a MCH, yet the typical MCH lasts only 3.9 minutes. When MCHs last only a few minutes, it is doubtful that all of these actions occur, and that due process can be fully afforded.



This data is further evidence of the disregard for the rights of immigrants in the Courts.”

Rachel Yamamoto,  
immigration attorney,  
Omaha



## 2. Inadequate Advisement of Rights

### **Immigration judges advise people of their rights in only 18% of observed MCHs.**

Immigration judges must advise immigrants of their rights at deportation proceedings, including MCHs.<sup>24</sup> Four out of 12 of the listed goals in the immigration court's practice manual issued by the DOJ provide for the advisement of rights.<sup>25</sup> These rights, including but not limited to the right to an attorney, the right to present evidence and cross-examine witnesses and the right to appeal,<sup>26</sup> can only be exercised if they are known, understood and made accessible to the immigrant. Despite the importance of rights advisements, our findings present cause for concern including that immigration judges only read immigrants their rights in 93 of 529 (18%) observed hearings.

### **When immigration judges did read rights, they read rights to immigrants as a group rather than individually in 83% of observed MCHs.**

Often, an individual's MCH is scheduled for the same time as other MCHs. Individuals typically sit on benches at the back of the courtroom and wait for their case to be called. In 77 of 93 (83%) observed hearings where an immigration judge provided a rights advisory, the immigration judge read the rights to everyone as a group before calling individual cases. In only 16 of 93 (17%) observed hearings where an immigration judge did read the immigrant their rights, the immigration judge read the rights to the immigrant individually after calling that person's case.

## 3. Deficient Interpretation Services for Some Languages

Immigration courts are required to provide interpretation in the preferred language of anyone appearing at a deportation proceeding hearing at no cost to the immigrant.<sup>27</sup> Having an interpreter present allows an individual who has limited English proficiency the opportunity to understand their rights, to state the legal reasons they may be allowed to stay in the United States and to properly deny or admit allegations in the NTA charging document. Unless the individual can understand the information at their hearings, due process is not fulfilled.<sup>28</sup>

Without proper language interpretation, the promise of a "full and fair [deportation] hearing" rings hollow.<sup>29</sup> A hearing simply cannot be fair when one party does not understand the proceedings due to limited English proficiency. The Omaha immigration court must consistently provide interpreters for all languages to meet due process and EOIR standards.<sup>30</sup>



**In observed hearings, many immigrants spoke Spanish as their preferred language and interpretation was regularly provided for Spanish speakers.**

Immigration courts typically retain a Spanish interpreter to be present at every hearing that requires Spanish interpretation.<sup>31</sup> In 423 of 534 (79%) hearings observed, immigrants spoke Spanish as their preferred language. Observers witnessed an interpreter present at 416 of 423 (98%) observed hearings in which the immigrant preferred to speak Spanish.

**In observed hearings where the preferred language was a Central American Indigenous language, the court failed to provide interpretation in that language 81% of the time.**

The largest group of foreign language speakers after Spanish speakers in observed hearings were speakers of Central American Indigenous languages, such as Mam, Q'anjob'al, and K'iche'. Together, these languages were the preferred language of immigrants in 28 of 534 (5%) observed hearings. Though Indigenous languages were the most spoken languages after Spanish and English, only 6 of 32 (19%) immigrants who preferred to speak an Indigenous language in observed hearings had an interpreter for their preferred language at their hearing.

Furthermore, in the hearings we observed that required Indigenous language interpretation, the immigration judges rarely used a telephonic interpreter, which is encouraged by EOIR when in-person interpretation is not possible.<sup>32</sup>

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If the immigrant does not have an interpreter at their first hearing, it is EOIR's best practice for the judge to stop the hearing and reschedule for when the court can provide interpretation in the immigrant's preferred language.<sup>33</sup> Our court watchers did not observe the immigration judges reschedule a hearing for this reason.

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## 4. Some Immigrants Did Not Have Attorney Representation

One of the greatest predictors of success in immigration court is if an immigrant is represented by an attorney. Data shows that a person is nearly 11 times more likely to be successful in their deportation case if they are represented by an attorney; in cases involving women and children, representation makes them 14 times more likely to be successful in their case.<sup>34</sup> All people have a right to be represented by an attorney in their deportation proceedings, but they must find, retain, and pay for their own attorney — an attorney is not provided or paid for by the government.<sup>35</sup>



Removal proceedings have drastic effects not only on the immigrant, but on their families and society at large. They determine whether a person is allowed to continue to enrich their community and contribute to the economy, or instead will be forced to return to a country they left behind often for security reasons. As such, it is of utmost importance that our immigration courts uphold immigrants' due process rights. This, at minimum, requires that immigrants be read their rights and have their removal hearings conducted in their native language. Moreover, due to extreme complexity of our immigration laws and the high stakes of removal proceedings, the immigration court system should work towards ensuring all immigrants have access to counsel.”

Brian Blackford,  
immigration attorney,  
Omaha

**Many immigrants failed to secure attorney representation by their first hearing, and most continued seeking representation if they did not have it.**

In 99 of 534 (19%) observed hearings, the immigrant was not represented by an attorney. In initial MCHs, the immigrant was represented by an attorney in only 32 of 108 (30%) observed hearings. At subsequent MCHs, the immigrant was represented by an attorney at 270 of 286 (94%) observed hearings. In 80 of 99 (81%) observed hearings involving an immigrant not represented by an attorney, the unrepresented immigrant was seeking an attorney. With concerns of inadequate advisement of rights and access to interpretation, the need for representation at the Omaha immigration court is especially pronounced.

## Recommendations

The findings suggest that the right to due process for immigrants in deportation proceedings at the Omaha immigration court are routinely compromised. The right to due process is a safeguard that ensures that all people in the United States, including people entangled in the immigration system are given a “full and fair [deportation] hearing.”<sup>36</sup> To ensure all immigration proceedings promote due process, the ACLU-NE makes the following recommendations to the Omaha immigration court and local, state and federal policymakers.

### Omaha Immigration Court

#### *Provide Individual Rights Advisements at Every Hearing*

Advisement of rights should be provided to every individual appearing before the Omaha immigration court at every hearing. Providing an individual with knowledge of their rights is fundamental to ensuring due process. Advising an immigrant of their rights — individually — at each one of their hearings is a necessary step so that each immigrant can understand and therefore exercise their rights.<sup>37</sup>

#### *Inquire and Provide Interpretation for All Languages*

Immigration courts are required to provide interpreters for both MCHs and Individual Calendar Hearings.<sup>38</sup> As provided in a DOJ memorandum, the immigration court should inquire about the preferred language of the individual before the court and provide interpretation in that language.<sup>39</sup> Individuals with limited English proficiency are guaranteed an interpreter at government expense and courts can use telephonic interpreters if in-court interpretation is not available.<sup>40</sup> If in-person interpretation is not possible, the

court should use telephonic interpretation to ensure that all people, not just those who speak primarily English and Spanish, can fully understand and be involved in the deportation proceedings.

## State and Local Governments

### ***Create a Program for Guaranteed Representation for Immigrants in Deportation Proceedings***

As discussed above, attorney representation significantly impacts the outcome of deportation proceedings. Omaha, Lincoln and other communities in Nebraska with immigrant community members who strive to be equitable, diverse, welcoming and safe should consider establishing guaranteed legal representation for all individuals in deportation proceedings. New York City created a program in 2013, the New York Immigrant Family Unity Project (“NYIFUP”), with the goal of providing representation to every immigrant who passes through the New York City immigration court. The program generates \$2.7 million in tax revenue each year, compounded annually, because more immigrants succeed in their cases and are able to work and fill vacant positions.<sup>41</sup>

Since NYIFUP began in 2013, over 50 cities, counties, and states, including Colorado and Illinois, have followed suit in creating publicly funded deportation defense programs.<sup>42</sup> These government-funded universal representation programs for immigrants in deportation proceedings are supported by 67% of people in the United States.<sup>43</sup>

Community advocates and business leaders throughout the state are clear that Nebraska needs more workers to fill open positions and immigrants are poised to fill this need.<sup>44</sup> We urge state and local leaders to consider how to implement a program in the Omaha immigration court that will simultaneously provide Nebraskans with legal representation and benefit the state through workforce expansion and development.

## Department of Justice

### ***Appoint More Immigration Judges with Diverse Work Experiences***

A majority of immigration judges are former ICE attorneys, whose job it was to argue for the deportation of immigrants in immigration court.<sup>46</sup> Immigration judges who were former ICE attorneys are “significantly more prone to rule in favor of the government” than those who were not former ICE attorneys, and this tendency grows the longer their tenure as an ICE attorney.<sup>47</sup>

“

[Deportation] proceedings are the only legal proceedings in the United States where people are detained by the federal government and required to litigate for their liberty against trained government attorneys without any assistance from counsel.”<sup>45</sup>

Vera Institute of Justice

All of the immigration judges at the Omaha immigration court are former ICE attorneys and had been an ICE attorney or legal advisor for at least eight years before becoming an immigration judge.<sup>48</sup> At the beginning of fiscal year 2023, the Omaha immigration court had the highest asylum denial rate in the country, and the rate has been increasing for years despite the decreasing national trend.<sup>49</sup>

As new immigration judge positions open up, we recommend hiring more immigration judges from outside the government, ICE in particular — such as practicing immigration attorneys or immigration law professors, who do not have these same biases — to diversify the representation of experience in immigration courts.

### ***Depoliticize Immigration Courts***

The influence the executive branch has over immigration courts has compromised their neutrality. EOIR’s regulations require immigration judges to “exercise their independent judgment and discretion” when deciding cases.<sup>50</sup> Yet, the political influence that the Attorney General and other agencies within the executive branch have is powerful and biased in favor of the government.<sup>51</sup>

The lack of insulation from the executive branch results in an injection of politics into what should be a strictly neutral judicial role.<sup>52</sup> For instance, in 2019, then-Deputy Attorney General Rod Rosenstein told newly hired immigration judges that they were “not only judges” because they also “follow lawful instructions from the Attorney General, and [they] share a duty to enforce the law.”<sup>53</sup> A year earlier, then-Attorney General Jeffrey Sessions had instructed newly hired immigration judges that when there is a conflict between judicial precedent and the Attorney General’s instructions, an immigration judge may lose their job if they do not prioritize the Attorney General’s instructions.<sup>54</sup> This leaves immigration judges subject to the whims of political appointees.

In a system that pits immigrants against the government, that bias can be determinative in life-or-death asylum cases. Until Congress insulates immigration courts as an Article I court, the onus of depoliticization falls on the DOJ to actively work to make immigration courts more independent.

### ***Rename MCHs and Individual Calendar Hearings***

The term “master” used to describe pretrial hearings (“Master Calendar Hearing”) should be eliminated and replaced with a term that is not only free from association with racism, slavery or status hierarchy,<sup>55</sup> but also a term that may more accurately describe the nature of the hearings. Most people appearing before immigration courts likely have a general idea of what a trial is, and would therefore intuitively understand, at least on a basic level, what a pretrial hearing is. However, the terms “Individual Calendar Hearing” and

“MCH” give no indication of their nature, their relationship to each other, nor their importance. Therefore, these terms should be replaced with a self-explanatory term that has no negative connotations.

## United States Congress

### *Make Immigration Courts an Article I Court*

In February 2022, Congresswoman Lofgren introduced the “Real Courts, Rule of Law Act of 2022,” which would take immigration courts out of the DOJ and restructure them into an independent immigration court system set up by Congress under Article I of the United States Constitution.<sup>56</sup> Article I court refers to Congress’ power under Article I to “constitute Tribunals inferior to the [S]upreme Court.”<sup>57</sup> Reestablishing the immigration court system set up by Congress under Article I would be “the only way to restore integrity and fairness to immigration court” and insulate it from the politics of the executive branch, as discussed earlier in the report.<sup>58</sup> As such, we encourage Congress to pass the Real Courts, Rule of Law Act of 2022 and make immigration courts an Article I court.

### *Pass Comprehensive Immigration Reform*

Congress should pass comprehensive immigration reform which creates pathways to citizenship for the estimated 11 million undocumented and stateless<sup>59</sup> immigrants living in and contributing to the United States — without caveats or tradeoffs or scapegoating immigrants deemed less than deserving. Fundamental fairness as guaranteed by the Constitution requires that these individuals be brought within the legal embrace of United States citizenship. “We the people” means all of us, regardless of immigration status.

## Conclusion

Our findings demonstrate that our immigration court system is failing to deliver the constitutional promise of due process. Immigration judges make consequential decisions, often with life-or-death consequences, in mere minutes, denying immigrants full and fair participation in their own hearings.

Important aspects of due process are being sidelined to cut the average duration of MCHs down to a mere 3.9 minutes. What is more, rights advisements are often not given individually; given only once at the initial hearing, when an immigrant is unlikely to have a lawyer; or are inadequate due to a lack of interpretation in preferred languages, particularly languages other than Spanish.

Changes within the Omaha immigration court itself and the establishment of a program to guarantee representation would go a long way to safeguard the due process rights of people facing deportation. Moreover, the DOJ and Congress should take actions to insulate immigration courts from political interference, so that people in deportation proceedings can be assured that they have an independent and neutral judge adjudicating their case. Ultimately, Congress must pass much needed comprehensive immigration reform.

Instead of shortcutting established standards of due process and best practice, immigration judges should prioritize the rights of the people appearing before them. The long-term effects of taking these actions will mean greater respect for the rights of immigrants, higher rates of individuals moving to and putting down roots in Nebraska, and a stronger workforce that benefits all Nebraskans.

# Appendix A: Findings by Immigration Judge

## Number of Hearings:

Our court observers observed 387 of 534 (73%) Master Calendar Hearings presided by Judge Larsen and 147 of 534 (28%) Master Calendar Hearings presided by Judge Meyer.

## Duration of Hearings:<sup>60</sup>

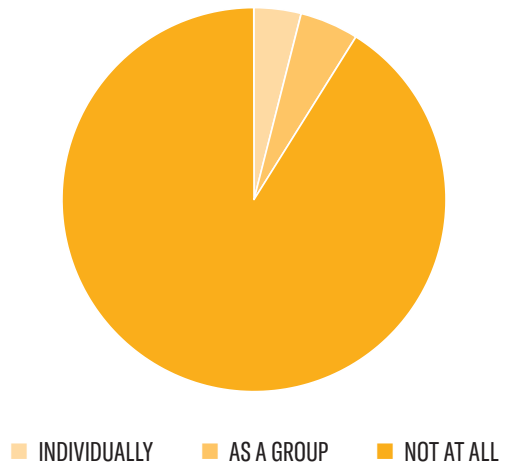
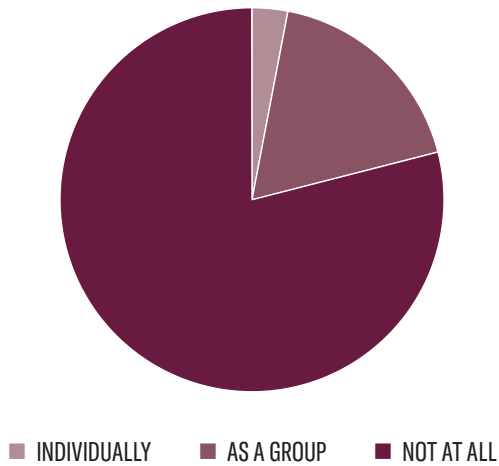
The average hearing presided by:

- Judge Larsen was 3.8 minutes
- Judge Meyer was 3.0 minutes.

## Advisal of Rights:

Judge Larsen individually advised rights to 11 of 385 (3%) immigrants, advised rights as a group to 70 of 385 (18%) immigrants, and did not advise rights to 304 of 385 (79%) immigrants.

Judge Meyer individually advised rights to 5 of 144 (4%) immigrants, advised rights as a group to 7 of 144 (5%) immigrants, and did not advise rights to 132 of 144 (92%) immigrants.



*NOTE: Values adding up to 101% are due to rounding.*



# Appendix B: Court Watching Observation Form

## Observation Sheet for Immigration Court Master Calendars Hearings ACLU/UNL Court Watching Project

**Observer:**

**Date:**

**Time the hearing began:**

**Time the hearing ended:**

**Respondent State:**

**Respondent City:**

**Observation No:**

<b>Factor</b>	<b>Answer</b>
<b>Preliminary Issues and Language Interpreter</b>	
1. Did the presiding Judge appear in person or via video?	<b>Circle One:</b> <b>In person</b> <b>Video</b>
2. What was the presiding judge's name?	<b>Name:</b>
3. What was the name of the Department of Homeland Security (DHS) or government's attorney?	<b>Name:</b>
4. Was this the respondent's first immigration hearing?	<b>Circle One:</b> <b>Yes</b> <b>No</b> <b>Unknown</b>
5. Did the judge advise the respondent of her or his rights individually or as a group?	<b>Circle One:</b> <b>Individ</b> <b>Group</b> <b>Neither</b> <b>Unknown</b>
6. Is the hearing for one respondent or are there "riders"?	<b>Circle One:</b> <b>One Respondent</b> <b>"Riders"</b> <b>Unknown</b>
7. Was the main respondent an adult or minor (under 18)?	<b>Circle One:</b> <b>Adult</b> <b>Minor</b> <b>Unknown</b>
8. Was the "rider" an adult or minor (under 18)?	<b>Circle One:</b> <b>Adult</b> <b>Minor</b> <b>Unknown</b>
9. If the main respondent was a minor, was he or she accompanied by an adult advocate?	<b>Circle One:</b> <b>Yes</b> <b>No</b> <b>Unknown</b> <b>NA</b>
10. If yes what was the relationship of the adult to the child?	<b>Circle One:</b> <b>Father</b> <b>Mother</b> <b>Guardian</b> <b>Other Family Member</b> <b>Other Adult</b> <b>NA</b>

11. What was the main respondent's gender (by observation)?	<b>Circle One:</b> <b>Male</b> <b>Female</b> <b>Nonbinary</b> <b>Unknown</b>
12. Main Respondent's language (Circle one)	<b>Spanish</b> <b>English</b> <b>Arabic</b> <b>Unknown</b> <b>Other:</b> _____
13. Was there an interpreter present for the hearing?	<b>Circle One:</b> <b>Yes</b> <b>No (skip to question #16)</b> <b>Unknown (skip to question #9)</b>
14. What was the status of the interpreter's presence?	<b>Circle One:</b> <b>In person</b> <b>Virtual</b> <b>Telephonic</b>
15. Did the judge inquire if the respondent understood the interpreter?	<b>Circle One:</b> <b>Yes</b> <b>No</b> <b>Unknown</b>
16. Did the respondent understand the interpreter (by his or her own answer)?	<b>Circle One:</b> <b>Yes</b> <b>No</b> <b>Unknown</b>
Comments: interpretation (e.g. did the interpreter interpret the entire hearing? Was there any indication that Respondent did not understand the interpreter), etc.:	
<b>Respondent Background</b>	
17. Had the respondent been detained?	<b>Circle One:</b> <b>Yes</b> <b>No</b> <b>Unknown</b>
18. Did the respondent have a criminal conviction?	<b>Circle One:</b> <b>Yes</b> <b>No</b> <b>Unknown</b>
<b>Legal Observations</b>	
19. Did the respondent have an attorney to represent her or him?	<b>Circle One:</b> <b>Yes (in person)</b> <b>Yes (virtual)</b> <b>No</b> <b>Unknown</b>
20. If the respondent did not have legal representation did they indicate that they were trying to secure an attorney?	<b>Circle One:</b> <b>Yes</b> <b>No</b> <b>Unknown</b> <b>NA</b>
21. Did the court provide a list of possible attorneys or legal agencies that could represent the respondent?	<b>Circle One:</b> <b>Yes</b> <b>No</b> <b>Unknown</b> <b>NA</b>

22. Did the respondent designate a country of removal?	<b>Circle One:    Yes    No    Unknown</b>
23. Did the court indicate the respondent's country of removal?	<b>Circle One:    Yes    No    Unknown</b>
24. If known what was the country of removal? (if unknown – UNKN)	<b>Name:</b>
<b>Respondent Rights &amp; Forms of Relief</b>	
25. Did the judge ask the respondent or respondent's attorney if they objected to the service of the Notice to Appear being proper?	<b>Circle One:    Yes    No    Unknown</b>
26. Did the respondent or the respondent's attorney indicate whether the Notice to Appear have a date/time?	<b>Circle One:    Yes    No    Unknown</b>
27. Did the the respondent indicate they have applied for or will be applying for any forms of immigration relief?	<b>Circle One:    Yes    No    Unknown</b>
28. Which of the following was the basis for relief: Circle any that were named:	
a. I-589 or CAT petition (asylum or torture) c. Relationship hardship I-130/I-485 e. I-360 Petition Violence against women (VAWA) g. U-Visa (victim of crime) i. DACA (prosecutorial discretion)	b. Cancellation of Removal (EQIR-42B) d. I-360 Petition Juvenile (SIJ) f. I-360 Petition Other h. T-Visa (trafficking)
29. Did the respondent <b>deny</b> at least one allegation contained in the Notice to Appear (NTA) at the current hearing or at one that came before?	<b>Circle One:    Yes    No    Unknown</b>
30. Did the respondent <b>concede</b> at least one allegation contained in the Notice to Appear (NTA) at the current hearing or at one that came before?	<b>Circle One:    Yes    No    Unknown</b>

31. Did the judge rely on the Respondent's attorney to relay the rights advisement to them?	<b>Circle One:    Yes    No    Unknown</b>
32. Did the respondent (or their attorney) waive their rights of advisement?	<b>Circle One:    Yes    No    Unknown</b>
<b>Hearing Outcomes</b>	
33. Was the outcome of the hearing affirmative relief (dismissal)?	<b>Circle One:    Yes    No    -- If yes, what kind</b> _____
34. Was the outcome of the hearing a bond setting?	<b>Circle One:    Yes    No    -- If yes, what kind</b> _____
35. Was the outcome of the hearing another master calendar hearing?	<b>Circle One:    Yes    No    -- If yes, what date</b> _____
36. Was an individual hearing date set? (Individual = final = merit hearing)	<b>Circle One:    Yes    No    -- If yes, what date</b> _____
37. Was there an opportunity for the respondent to object to the judge assigned to a individual hearing? (the judge was a former DHS or government attorney with a connection to the case).	<b>Circle One:    Yes    No    Unknown</b>
38. Did the respondent or the respondent's attorney object to the assigned judge based upon the judge's conflict of interest?	<b>Circle One:    Yes    No    Unknown</b>
39. Was the individual hearing set and transferred to Judge Martinez in Fort Worth?	<b>Circle One:    Yes    No    Unknown</b>
40. When during the day was the individual hearing set?	<b>Circle One:    A.M.    P.M.    Unknown    NA</b>

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# ENDNOTES

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- 2 *Id.* at IC-4.16(d).
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- 4 The term “master” has fallen out of usage in legal discourse due to its connotation with the historical practice of chattel slavery, therefore the ACLU-NE chooses to use only the acronym “MCH” throughout this report, wherever possible. David Yosifon, *Agent Correction: Chastisement, Wellness, and Personal Ethics*, 50 Fla. St. U. L. Rev. 427, 452–53 (2023); see also *Comstock v. Zoning Bd. of Appeals of Gloucester*, 98 Mass. App. Ct. 168, 173, 153 N.E.3d 395, 400 (2020).
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- 21 From the outset, the court watching team established the reliability of their observations with a sample of court hearings utilizing the observation form. This ensured the court watching team was recording the same information for identical test cases before moving forward with actual court observations. The agreement rates of the team using the observation form was 89%, which is very high for this type of evaluation study.
- 22 “As a general matter, the purpose of the Master Calendar Hearing is to:
- advise the respondent of the right to a practitioner at no expense to the government
  - advise the respondent of the availability of pro bono legal service providers and provide the respondent with a list of such providers in the area where the hearing is being conducted
  - advise the respondent of the right to present evidence
  - advise the respondent of the right to examine and object to evidence and to cross-examine any witnesses presented by the Department of Homeland Security
  - explain the charges and factual allegations contained in the Notice to Appear (Form I-862) to the respondent in non-technical language
  - take pleadings
  - identify and narrow the factual and legal issues
  - set deadlines for filing applications for relief, briefs, motions, pre-hearing statements, exhibits, witness lists, and other documents
  - provide certain warnings related to background and security investigations
  - schedule hearings to adjudicate contested matters and applications for relief
  - advise the respondent of the consequences of failing to appear at subsequent hearings
  - advise the respondent of the right to appeal to the Board of Immigration Appeals”
- Immigration Court Practice Manual*, *supra* note 1 at IC-4.15(e).
- 23 *Id.* at IC-4.17(a).
- 24 8 C.F.R. § 1240.10(a)(1).
- 25 *Immigration Court Practice Manual*, *supra* note 1 at IC-4.15(e).
- 26 See 8 U.S.C. § 1229a(b)(4); 8 C.F.R. § 1240.10(a)(1).
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- 31 Dep't of Just., Exec. Off. for Immigr. Rev., *The Executive Office for Immigration Review's Plan for Ensuring Limited English Proficient Persons Have Meaningful Access to EOIR Services 3* (2012), <https://www.justice.gov/sites/default/files/eoir/legacy/2012/05/31/EOIRLanguageAccessPlan.pdf>; see also Dep't of Just., Off. for Access to Just., *Language Access Plan 12*, 16 (2023), <https://www.justice.gov/d9/2023-08/DOJ-Language-Access-Plan-August-2023.pdf>.
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- 33 Neal, *supra* note 27.
- 34 Am. Bar Ass'n, *Reforming the Immigration System Update Report UD 5-3, UD 5-10* (2019), [https://www.americanbar.org/content/dam/aba/publications/commission\\_on\\_immigration/2019\\_reforming\\_the\\_immigration\\_system\\_volume\\_2.pdf](https://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/2019_reforming_the_immigration_system_volume_2.pdf).
- 35 8 U.S.C. § 1229a(b)(4)(A).
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- 37 Immigrant Legal Ctr., *Rights and Planning Guide 7* (2019), <https://www.immigrantlc.org/wp-content/uploads/2018/08/The-Rights-and-Plannig-Guide-2019.pdf>.
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- 41 Jennifer Stave, Peter Markowitz, Karen Berberich, Tammy Cho, Danny Dubbaneh, Laura Simich, Nina Siulc, & Noelle Smart, Vera Inst. of Just., *Evaluation of the New York Immigrant Family Unity Project* 6, 10 (2017), <https://www.vera.org/downloads/publications/new-york-immigrant-family-unity-project-evaluation.pdf>; The City Budget, N.Y. City Council (last accessed Jan. 1, 2024), <https://council.nyc.gov/budget/>.
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