

SHINING A LIGHT ON ASYLUM ADJUDICATION—NEW IMMIGRATION JUDGE OUTCOME TRACKING TOOL

BY BLAINE BOOKEY AND KRISTEN HENDERSON¹

Introduction

Gross disparities in adjudication of asylum claims in the United States have been cause for concern among advocates, scholars, and government actors alike.² In their seminal 2008 study, Professors Jaya Ramji-Nogales, Andrew Schoenholtz, and Philip Schrag coined the phenomenon “refugee roulette”—a poignant and provocative term highlighting the high stakes involved in getting it “right” (or, more aptly, “wrong”). Little has changed in the intervening years, with an asylum applicant’s fate resting more on variables such as the identity of their immigration judge (“IJ”) than on the factual strength of their case. Indeed, the gulf has only widened as an IJ’s ideology has become a virtual litmus test for appointment to the bench, and those most dutiful to political ends are rewarded with promotions.³

Consensus has emerged regarding the existence of this “disease of random adjudication” and unfair treatment of litigants.⁴ But diagnosing its causes and concomitant responses has remained more elusive given the lack of transparency around asylum decision-making at the immigration court level. While organizations like the Transactional Records Access Clearinghouse (“TRAC”) have moved

mountains to obtain government data and shed light on the adjudicatory system, leading to groundbreaking discoveries, the results are quantitative in nature. Therefore, they cannot capture rich layers of analysis such as the underlying type of persecution feared and the legal bases for denial.

For twenty-five years, the Center for Gender & Refugee Studies (“CGRS”) at UC College of the Law, San Francisco, has been collecting outcomes from advocates across the country in cases involving asylum and other fear-based relief at all levels of adjudication to try to fill this gap. CGRS founding director and Professor Karen Musalo, working in collaboration with her co-authors, released a recent study, which was both quantitative and qualitative, building on those earlier quantitative findings.⁵ It involved a close review and coding of over 500 IJ decisions collected by CGRS, and revealed a number of illuminating trends. Professor Musalo and her co-authors observed, for example, that the most common rationales for denial were not that the asylum seeker was not credible, but were instead often rooted in overly restrictive interpretations of legal standards as well as “patterns of incompetence and bias.”⁶ These findings exposing the flawed nature of IJ denials can help guide applicants and their advocates as well as law- and policy-makers. And, importantly, they rebut harmful narratives undermining the veracity of asylum claims used to justify draconian measures eliminating protection.

CGRS has launched a new tool to bring this critical information directly to advocates representing individual asylum applicants in immigration court.⁷ With information on outcomes provided by advocates, the CGRS Immigration Judge Dashboard

¹ Blaine Booke is Legal Director at the Center for Gender & Refugee Studies (“CGRS”) and Visiting Assistant Professor at UC College of the Law, San Francisco. Kristen Henderson is CGRS Legal Program Coordinator. The authors thank Christine Lin, Moira Duvernay, and Karen Musalo for their contributions.

² See, e.g., Congressional Research Service, *Asylum and “Credible Fear” Issues in U.S. Immigration Policy* (2011).

³ Tanvi Misra, *DOJ Changed Hiring Changed Hiring to Promote Restrictive Immigration Judges*, Roll Call (Oct. 19, 2019); Ximena Bustillo, *Trump fires more immigration judges even as he aims to increase deportations*, NPR (Apr. 22, 2025).

⁴ *Refugee Roulette: Disparities in Asylum Adjudication*, 60 Stan. L. Rev. 295, 305–309 (2008); see also Ramji-Nogales, Schoenholtz, Schrag, *Refugee Roulette: Disparities in Asylum Adjudication and Proposals for Reform* (NYU Press 2009).

⁵ Karen Musalo, Anna Law, Annie Daher, Katharine M. Donato, and Chelesa Meiners, *With Fear, Favor, and Flawed Analysis: Decision-making in U.S. Immigration Courts*, 65 Boston College L. Rev. 2744 (2024).

⁶ *Id.* at 2745.

⁷ This article refers to “asylum” generally as inclusive of individuals applying for other fear-based relief including withholding of removal and protection under the Convention Against Torture.

("IJ Dashboard") aggregates and shares anonymized information to litigants appearing before a particular IJ or court to show in real time how an adjudicator is considering certain claims or legal theories. This article starts with a brief overview of the publicly available data on asylum adjudication and the lacuna it uncovers. It then addresses the consequences of a lack of transparency in adjudication in this area, particularly in this highly politicized moment. Finally, it concludes with an overview of the IJ Dashboard, including how advocates can access it and contribute to its growth and impact.

Secret Agency Law: Limited Publicly Available Data on Asylum Adjudication

In *New York Legal Assistance Group (NYLAG) v. Board of Immigration Appeals*, the U.S. Court of Appeals for the Second Circuit referred to immigration adjudication as "secret agency law."⁸ For good reason. Before that litigation, the Board of Immigration Appeals ("Board") released only a fraction of its opinions publicly given how few it designates as precedential and how few of its unpublished opinions it affirmatively posted online.⁹ To illustrate, in FY2024, the Board completed over 35,000 cases and rendered just fourteen precedential opinions. Now, pursuant to a federal court order achieved in the *NYLAG* suit, the Board is obligated to establish and maintain an online library of its unpublished opinions.¹⁰

The immigration courts, however, are still far from providing any equivalent transparency. No such public government database exists. With respect to asylum adjudication in particular, valid reasons exist for safeguarding any potentially identifying information.¹¹ As the Immigration and Customs Enforcement ("ICE") data breach in 2022 revealed, even the very fact that an individual has applied for asylum can increase the dangers they face in the event of removal. The remedial measures taken by ICE underscore the potential severity

of the consequences.¹² But redactions of personally identifiable information can strike an appropriate balance, providing protection for individuals while advancing the public interest in open and transparent government.

Although IJ decisions can be requested through the Freedom of Information Act ("FOIA"), when an individual other than the respondent requests them, the process is decidedly not simple. Nor could a concerted FOIA effort result in a universal set of decisions given so many are rendered orally and no transcript is created if the case is not appealed.¹³ As considered more below, this lack of public information on the contents of immigration judges' reasoned decisions puts asylum applicants at a disadvantage and imposes other pernicious effects on the system as a whole.¹⁴

Persistent FOIA advocacy by TRAC has led the Executive Office for Immigration Review ("EOIR") to share case-level adjudication data publicly on the EOIR site through the FOIA reading room.¹⁵ This data, updated roughly monthly, can be found only in a 3.4GB zip folder containing jumbled tables of information. The agency maintains it meets its statutory obligation by sharing dozens of tables and millions of rows of data. The information dump of adjudications and pending

¹² Immigration and Customs Enforcement, Unintentional Disclosures of Personally Identifiable Information on November 28 and December 7, 2022, <https://www.ice.gov/pii>.

¹³ Requesting review of recordings of the volume of decisions is not a practicable solution.

¹⁴ Adjudication at the Asylum Office ("AO") is similarly not made publicly available. CGRS tracks outcomes at the AO level as well, but the increasingly thin analysis provided in AO referrals limits their utility. See, e.g., 8 C.F.R. 208.19 (requiring written communication of the decision to the applicant but not specifying its required contents). Advocates have released damning studies of biased adjudication at the AO in recent years. See Brooklyn Law School, *A Fiefdom on Long Island: An Investigation Into the Culture and Practices of the New York Asylum Office* (2023); Refugee and Human Rights Clinic at the University of Maine School of Law et al., *Lives in Limbo: How the Boston Asylum Office Fails Asylum Seekers* (2022).

¹⁵ Inconsistent formatting and obvious errors, such as EOIR being misspelled in a filename, undermine the quality of the records; further, the labyrinthine structure is poorly explained in the provided EOIR Case Data Key, creating barriers to analysis for non-experts, <https://www.justice.gov/eoir/foia-library-0>.

⁸ 987 F.3d 207, 223 (2d Cir. 2021).

⁹ For many years, the Immigrant & Refugee Appellate Center ("IRAC") has made available an index of key unpublished Board decisions that has proven an invaluable resource to advocates.

¹⁰ The reading room has been created, but whether it offers a complete universe of decisions remains unclear. <https://foia.eoir.justice.gov/app/ReadingRoom.aspx>.

¹¹ See USCIS Factsheet: Federal Regulation Protecting the Confidentiality of Asylum Applicants (Oct. 18, 2012).

cases from immigration courts across the country includes demographics of individuals in proceedings and the forms of relief sought.

TRAC has steadfastly publicized this data on its site and provided essential analysis for practitioners, advocates, policymakers, and journalists. Other organizations have also drawn on the FOIA library data: notably, Immigration Commons¹⁶ and Mobile Pathways.¹⁷ While the data shared by EOIR contains important information, TRAC has highlighted serious concerns about the validity of the data in the past, including the agency's recordkeeping practices.¹⁸

Additionally, the EOIR FOIA data is bound by inherent limitations: the data is collected and organized for the purpose of rote government recordkeeping. It is not intended to be a full accounting of the types of claims being advanced and how adjudicators treat them. For example, one can see that IJ Tara Naselow-Nahas of the Los Angeles Immigration Court has denied 97.2% of asylum claims since 2019. But this leaves out broad swathes of relevant information about the case type and rationale behind these denials. It is not possible to determine what kinds of harm these applicants feared (e.g., gang violence, gender-based violence, or targeting due to religious beliefs); the rationale behind the denials (e.g., bars to relief, lack of nexus, or credibility issues); or how she has ruled on certain legal theories (e.g., particular social group articulation). And, perhaps more interestingly, it offers nothing about the underlying claim, evidence presented, or legal theory advanced to help expound on the 2.3% of claims she granted. There is a straightforward explanation for the missing information: the government does not track this data.

Justice Dies in the Dark: Lack of Transparency Has Consequences

The shroud of secrecy surrounding decision-making in the immigration courts is not an abstract, academic debate. The dearth of information undermines the

public's ability to navigate the system effectively and to hold it accountable to the dictates of the U.S. Constitution, statutes, and international norms. As operation of the immigration courts and treatment of immigrants becomes ever more politicized, the need for in-depth reliable information becomes even more critical. Nowhere is this demand clearer than in the area of asylum.

The damaging repercussions of opacity in asylum adjudication abound. Two are highlighted here.

First, asylum law is notoriously complex and imposes a hefty burden on applicants to establish eligibility. Although regulations and case law flesh out the requirements in certain areas, ambiguities persist and the factual nature of the analysis leaves IJs with significant discretion. IJ decisions are not binding in any future case, but as the court in *NYLAG* noted, "non-binding authority can be helpful" by offering "concrete examples of a rule's application."¹⁹ Reasoned IJ decisions typically include a recitation of the factual basis for the claim as well as the type of evidence presented and the legal theories advanced.²⁰ By reviewing them, advocates can evaluate how to overcome deficiencies in previous litigation. Just one example would be whether an expert's qualifications were accepted or challenged. With this information, they could better build a sufficient record to demonstrate their clients qualify for protection. Without access to these decisions, advocates are fighting in the dark against an adversary with a significant advantage. This asymmetry of information must be corrected to bring fairness to the system.

Second, successive administrations have relied on denial rates of asylum applications and credible fear findings to justify the elimination of protections.²¹ So the reasoning goes: if a significant number of applications are ultimately denied, the government can (and should) dispense with robust fear screening at the border and pretermite without a hearing. Worse, it can (and should) suspend asylum entirely because these individuals are just gaming the system with undeserving claims.²² Quantitative analysis of public data has done

¹⁶ Learn more and get access on their website: <https://immigrationcommons.org/summary>.

¹⁷ Learn more: <https://www.mobilepathways.org/immigration-court-data>.

¹⁸ See 2019 TRAC Report, <https://tracreports.org/immigration/reports/580/>. In 2020, after attempting to work with the agency to improve their recordkeeping, TRAC referred to the data as "too unreliable to be meaningful or to warrant publication." <https://tracreports.org/immigration/reports/611/>.

¹⁹ 987 F.3d at 223.

²⁰ No doubt the comprehensiveness and quality of IJ decisions vary widely. See generally Musalo et al., *With Fear, Favor, and Flawed Analysis*, *supra* n.5.

²¹ See, e.g., *Circumvention of Lawful Pathways*, 88 Fed. Reg. 31314, 33130 (May 16, 2023).

²² See, e.g., Presidential Proclamation No. 10888, 90 Fed. Reg. 8333 (Jan. 20, 2025). The second Trump administration has gone even further, accusing

a great deal to undermine these justifications, showing how extralegal variables like access to counsel have an outsized impact on success.²³ But without knowing the underlying basis of the claim or the legal reasoning adopted by IJs, harmful narratives regarding the merits of the claims perpetuate. Displaying this more textured information involving the type of persecution, the evidentiary record, and the legal analysis makes plain that many meritorious cases are denied for myriad reasons that are incorrect as a matter of fact or law under even the most cramped interpretation of the requirements.²⁴ Bringing in this context through qualitative analysis lays bare the specious nature of the allegations against asylum seekers.

CGRS Transparency Initiative: New Immigration Judge Asylum Outcome Dashboard

After achieving the first grant of asylum for a woman fleeing female genital cutting in the groundbreaking case, *Matter of Kasinga*,²⁵ Professor Musalo founded CGRS in 1999 to meet the needs of advocates requesting assistance in cases involving gender-based persecution, growing the organization into one of the leading resources for asylum law. The Center advances protections for refugees through its interlocking program areas of technical assistance ("TA") and training, strategic litigation, and policy and advocacy. From early days, CGRS has recognized the importance of tracking trends in cases across the country to support litigants and to identify cases involving important interpretive issues for appellate intervention as well as expose unlawful actions to raise in federal advocacy.

While CGRS's database has evolved over the years, it has followed the same fundamental data collection structure. In the majority of cases, site users start by submitting a case questionnaire²⁶ to access TA

resources.²⁷ Once an outcome has been rendered in the case, users can return to report the outcome via the same portal.²⁸ The outcome is linked directly to the initial case entry form through a CGRS-specific case number. When conducting analysis, basic demographic information from the case request form (e.g., country of origin, type of harm, gender of applicant) is joined with information from the outcome (e.g., date, adjudicator, jurisdiction, relief granted or denied) to form a comprehensive overview of who the applicant is, when and where the outcome was rendered, and how the claims were presented and treated. CGRS also monitors listservs and obtains information from FOIA requests, adding any relevant outcomes to the database.

CGRS has accumulated over 10,000 outcomes from 882 immigration judges across 82 immigration courts. Information gleaned from detailed reports of oral decisions and unpublished written decisions provided by advocates has powered CGRS's ability to analyze adjudication rationales. The IJ Dashboard now allows users direct access to aggregated, anonymized information on the IJ assigned to their case. The tool protects the confidentiality of individual asylum seekers and provides critical information to advocates.

The IJ Dashboard combines the initial case request and outcome information to present a fuller picture of the IJ's adjudication history, as reported to CGRS. Advocates can access case decision data organized by applicants' country of origin, age, and gender as well as the basis of a claim. Additionally, the dashboard contains information on specific protected-ground articulations considered by the IJ and their treatment of each, along with denial rationale if applicable.

One example from the CGRS database underscores the importance of public access to decision-making to assess the nuances in disparate treatment. CGRS received outcomes for the cases of two Guatemalan women whose cases were decided by two different judges in the San Francisco Immigration Court within months of each other: one granted, one denied. The facts of their cases are substantially similar; both fled domestic violence at the hands of their former partners.

attorneys of "coach[ing]" their clients to lie. *Preventing Abuses of the Legal System and the Federal Court* (Presidential Memoranda) March 22, 2025, <https://www.whitehouse.gov/presidential-actions/2025/03/preventing-abuses-of-the-legal-system-and-the-federal-court/>.

²³ See, e.g., Ingrid Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. Penn. L. R. 1 (2015).

²⁴ Musalo et al., *supra* n.5.

²⁵ 21 I&N Dec. 357 (BIA 1996).

²⁶ <https://cgrs.uclawsf.edu/access-tal>.

²⁷ After submitting a case via the CGRS portal, advocates will have access to a curated resource library with litigation support materials, including practice advisories, country conditions research, sample case materials, universal expert declarations, recorded webinars, and more. For more information on CGRS's technical assistance program, see <https://cgrs.uclawsf.edu/about-technical-assistance-program>.

²⁸ <https://cgrs.uclawsf.edu/submit-outcome>.

Moreover, their attorneys also presented the claims with similar evidentiary records and similar legal theories, both putting forward their membership in a gender-defined particular social group as the reason for the persecution (*e.g.*, “Guatemalan women”). The IJs cited the same governing precedent. Whereas one IJ found that the group satisfied the Board’s test for cognizability,²⁹ the other reached the opposite conclusion that the group lacks particularity because it does not have defining characteristics that would narrow the scope of membership.³⁰

Due to the sensitive nature of the information, access to the IJ Dashboard is limited to advocates who have registered for a CGRS user account and submitted a case for TA regarding an individual’s fear-of-return claim before a specific IJ. If these requirements are met, advocates can access the IJ Dashboard for each IJ for whom they have a registered CGRS case at any time. New outcomes reported to CGRS will be added to the dashboard on a weekly basis after passing a baseline redaction review.

Driven by advocate contributions, the IJ Dashboard is intended to in turn serve as a resource for advocates to share insights from their cases and learn from others. While the IJ Dashboard contains a unique depth of information, it is not representative of case adjudication trends on a national level, as it is limited to only the outcomes collected by CGRS. And, in many instances, the data is based on what attorneys report where no written decision is available for review. The IJ Dashboard is designed to complement information shared by CGRS in the TA Library, such as practice advisories on how to present specific types of cases, as well as information shared by TRAC and other organizations offering analysis of the EOIR FOIA data. Advocates are encouraged to consult all sources when preparing a case.

Conclusion

Fair adjudication of claims for protection matters to litigants and to the public with an interest in a system of justice premised on the rule of law. A key component to any fair system is transparency. Researchers have made strides in recent years by bringing information on outcomes in asylum cases to the public. CGRS is adding to this effort through the launch of its new IJ Dashboard tool, thanks in large part to the advocates and their clients who have contributed and will

continue to contribute to this project in the future.³¹ As faith in the government to engage in just adjudication and release reliable information deteriorates due to unprecedented actions by the Trump administration undermining institutions and protection frameworks, this tool comes at an opportune moment. Together, we can achieve positive outcomes in individual cases, while holding the system accountable to all.

Blaine Bookey is Legal Director at the Center for Gender & Refugee Studies (“CGRS”) and Visiting Assistant Professor at UC College of the Law, San Francisco. **Kristen Henderson** is CGRS Legal Program Coordinator. The authors thank Christine Lin, Moira Duvernay, and Karen Musalo for their contributions.

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²⁹ CGRS Database Case No. 26017 (Apr. 2019).

³⁰ CGRS Database Case No. 37383 (Feb. 2020).

³¹ We reiterate our appreciation for advocates who have shared outcomes with CGRS for the benefit of the community and encourage others to do the same, <https://cgrs.uclawsf.edu/submit-outcome>. For questions or to report issues, please do not hesitate to reach out to us at CGRS-TA@uclawsf.edu so we can support you in the process!