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U.S. ASYLUM SYSTEM

Significant Variation Existed in Asylum Outcomes across Immigration Courts and Judges

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Accountability ★ Integrity ★ Reliability

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Why GAO Did This Study

Each year, tens of thousands of people who have been persecuted or fear persecution in their home countries apply for asylum in the United States. Immigration judges (IJ) from the Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR) decide whether to grant or deny asylum to aliens in removal proceedings. Those denied asylum may appeal their case to EOIR's Board of Immigration Appeals (BIA). GAO was asked to assess the variability of IJ rulings, and the effects of policy changes related to appeals and claims. This report addresses: (1) factors affecting variability in asylum outcomes; (2) EOIR actions to assist applicants and IJs; (3) effects associated with procedural changes at the BIA; and (4) effects of the requirement that asylum seekers apply within 1 year of entering the country. GAO analyzed DOJ asylum data for fiscal years 1995 through mid-2007, visited 5 immigration courts in 3 cities, including those with 3 of the top 4 asylum caseloads; observed asylum hearings; and interviewed key officials. Results of the visits provided additional information but were not projectable.

What GAO Recommends

GAO recommends that EOIR use GAO's findings and examine cost-effective options for obtaining statistical information on IJs' asylum decisions to help it identify IJs with training and supervision needs; and assess resources and guidance needed to supervise IJs. DOJ and EOIR agreed with our recommendations.

To view the full product, including the scope and methodology, click on GAO-08-940. For more information, contact Richard M. Stana at (202) 512-8777 or stanar@gao.gov.

What GAO Found

In the 19 immigration courts that handled almost 90 percent of asylum cases from October 1994 through April 2007, nine factors affected variability in asylum outcomes: (1) filed affirmatively (originally with DHS at his/her own initiative) or defensively (with DOJ, if in removal proceedings); (2) applicant's nationality; (3) time period of the asylum decision; (4) representation; (5) applied within 1 year of entry to the United States; (6) claimed dependents on the application; (7) had ever been detained (defensive cases only); (8) gender of the immigration judge and (9) length of experience as an immigration judge. After statistically controlling for these factors, disparities across immigration courts and judges existed. For example, affirmative applicants in San Francisco were still 12 times more likely than those in Atlanta to be granted asylum. Further, in 14 of 19 immigration courts for affirmative cases, and 13 of 19 for defensive cases, applicants were at least 4 times more likely to be granted asylum if their cases were decided by the judge with the highest versus the lowest likelihood of granting asylum in that court.

EOIR expanded its programs designed to assist applicants with obtaining representation and has attempted to improve the capabilities of some IJs. EOIR has conducted two grant rate studies and was using information on IJs with unusually high or low grant rates, together with other indicators of IJ performance, to identify IJs who might benefit from additional training and supervision. However, EOIR lacked the expertise to statistically control for factors that could affect asylum outcomes, and this limited the completeness, accuracy, and usefulness of grant rate information. Without such information, to be used in conjunction with other performance indicators, EOIR's ability to identify IJs who may need additional training and supervision was hindered. EOIR assigned some IJ supervisors to field locations to improve oversight of immigration courts, but EOIR has not determined how many supervisors it needs to effectively supervise IJs and has not provided supervisors with guidance on how to carry out their supervisory role.

Following streamlining (procedural changes) at the BIA in March 2002, BIA's appeals backlog decreased, as did the number of decisions favoring asylum seekers. Such decisions were more than 50 percent lower in the 4 years after streamlining compared to 4 years prior. The authority to affirm the IJ's decisions without writing an opinion was used in 44 percent of BIA's asylum decisions. In June 2008, EOIR proposed regulatory changes to the streamlining rules, but it is too soon to tell how they will affect appeals outcomes.

Data limitations prevented GAO from determining the (1) effect of the 1-year rule on fraudulent applications and denials and (2) resources adjudicators have spent addressing related issues. EOIR lacked measures of fraud, data on whether the 1-year rule was the basis for asylum denials, and records of time spent addressing such issues. Congress would need to direct EOIR to develop a cost-effective method of collecting data to determine the effect of the rule.

United States Government Accountability Office

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Abbreviations

ACIJ	Assistant Chief Immigration Judge
ANSIR	Automated Nationwide System for Immigration Review
AWO	affirmance without opinion
BIA	Board of Immigration Appeals
CAT	United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CPDF	Central Personnel Data File
DHS	Department of Homeland Security
DOJ	Department of Justice
EOIR	Executive Office for Immigration Review
ICE	U.S. Immigration and Customs Enforcement
IJ	immigration judge
LOP	Legal Orientation Program
NAIJ	National Association of Immigration Judges
NJC	National Judicial College
OIL	Office of Immigration Litigation
USCIS	U.S. Citizenship and Immigration Services

September 25, 2008

The Honorable Joseph I. Lieberman
Chairman
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate

The Honorable Edward M. Kennedy
Chairman
Subcommittee on Immigration, Border Security, and Refugees
Committee on the Judiciary
United States Senate

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
House of Representatives

Globally, the total number of refugees reached an estimated 11.4 million
people at the end of 2007, of whom tens of thousands from over 100
countries came to the United States to apply for asylum. U.S. immigration
law provides that non-citizens who are in this country—regardless of
whether they entered legally or illegally—may be granted humanitarian
protection in the form of asylum if they demonstrate that they cannot
return to their home country because they have a well-founded fear of
persecution.[1]

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[1] The laws governing asylum protection were first established in statute with the passage of
the Refugee Act of 1980 (Pub. L. No. 96-212, § 201, 94 Stat. 102, 102-06 (1980) (codified at 8
U.S.C. §§ 1101(a)(42), 1157-1159)). The Refugee Act provided, for the first time, a U.S.
refugee policy that stated that persecuted aliens who are present in the United States and
who meet the definition of a refugee can apply for asylum protection in the United States.
The legal standard for a refugee and asylee are the same, but non-citizens must apply for
refugee status from outside the United States and for asylum status from within the United
States. The final regulations for implementing the Refugee Act of 1980 were issued in 1990.

Those who seek to apply for asylum generally go through an affirmative or defensive asylum process. Affirmative applications are voluntarily initiated by the applicants themselves, and their cases are reviewed by an asylum officer from the Department of Homeland Security (DHS). Affirmative applicants generally receive either a grant, a notice of intent to deny, or, if they do not have lawful immigration status, a referral to immigration court for removal proceedings and a second review of their claim. Defensive applications are filed by applicants against whom removal proceedings have been initiated, and their cases are presented to an immigration judge from the Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR). The accuracy of an asylum decision is critical because of the decision's potential impact on the safety of the asylum seeker and the security of our nation.[2] An incorrect denial may result in an applicant being returned to a country where he or she had been persecuted or where future persecution might occur. At the other extreme, an incorrect approval of an asylum application may allow a terrorist to remain in the United States, a concern that was heightened by the attacks of September 11, 2001.

Given the potential consequences of asylum decisions, it is important to ensure that the asylum system is not misused and that asylum decisions are being made consistently and fairly. Among other things, the REAL ID Act of 2005 was a legislative effort to provide consistent standards for adjudicating asylum applications and to limit fraud.[3] Several recently published reports have documented the existence of wide disparities in asylum decisions within and across particular asylum offices and immigration courts for cases brought by applicants from the same nationalities and during the same general time periods.[4] These reports have raised concerns that adjudicators may not be evaluating asylum claims in a consistent or fair manner.

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[2] Throughout the report, we use the term proceeding and hearing interchangeably. We also use the term asylum applicant, seeker, and claimant interchangeably, as the applicant is an individual who seeks asylum by filing an asylum claim.

[3] Pub. L. No. 109-13, div. B, § 101(a)(3), 119 Stat. 302, 303.

[4] See for example, J.Ramji-Nogales, A. I. Schoenholtz, and P. G. Schrag, "Refugee Roulette: Disparities in Asylum Adjudication," *Stanford Law Review*, vol. 60, no. 2 (2007), pp. 295-412; Transactional Records Access Clearinghouse, *Immigration Judges* (Syracuse, NY: 2006) and *Asylum Disparities Persist, Regardless of Court Location and Nationality* (Syracuse, NY: 2007). http://trac.syr.edu/immigration/reports/ (accessed Aug. 14, 2008).

Concerns have also been raised by Congress and immigration advocates about the effects of various policy changes intended to expedite asylum appeals and reduce fraudulent asylum claims. In 2002, DOJ attempted to address a large backlog of asylum appeals at EOIR's Board of Immigration Appeals (BIA) by streamlining certain appeals procedures with the goal of improving timeliness and efficiency. This has prompted questions about whether streamlined procedures have affected the ability of applicants appealing immigration judges' decisions to get a fair hearing and to obtain a well-reasoned opinion from the BIA.[5] Further, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 included a provision requiring asylum seekers to apply within the first year of entering the country.[6] While the 1 year requirement was intended to discourage asylum fraud, Congress and other stakeholders have raised questions about whether the resources expended on adjudicating the rule outweigh its effectiveness in deterring fraud, and about the numbers of people who were persecuted or tortured who may be denied the benefits of asylum because of the rule.[7] In response to your interest in these issues, this report addresses the following objectives:

- What factors have affected variability in asylum outcomes in EOIR's immigration courts?
- What actions has EOIR taken to assist applicants in obtaining representation and immigration judges in rendering asylum decisions, and how, if at all, could they be improved?
- What changes in asylum backlogs and outcomes occurred following the streamlining of appeals procedures at the BIA?

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[5] See for example: S.H. Legomsky, "Deportation and the War on Independence," *Cornell Law Review*, vol. 91, no. 2 (2006); Peter J. Levinson, "The Facade of Quasi-Judicial Independence in Immigration Appellate Adjudications" (Paper presented at the annual meeting of the American Political Science Association, Chicago, 2004); Ramji-Nogales, Schoenholtz and Schrag, "Refugee Roulette"; and J. R. B. Palmer, S. W. Yale-Loehr and E. Cronin, "Why Are So Many People Challenging Board Of Immigration Appeals Decisions in Federal Court: An Empirical Analysis of the Recent Surge in Federal Appeals," *Georgetown Immigration Law Journal*, vol. 20, no. 8 (2005).

[6] Pub. L. No.104-208, div. C, § 604(a), 110 Stat. 3009-546, 3009-690 to 94.

[7] See for example Elizabeth Brundige, *Too Late for Refuge: An International Law Analysis of IIRIRA's One-Year Filing Deadline for Asylum Applications* (American Immigration Law Foundation, Washington, D.C., 2002); K. Musalo and M. Rice, "The Implementation of the One-Year Bar to Asylum," *Hastings International and Comparative Law Review*, vol. 31, no. 2 (2008); M. R. Pistone, "Asylum Application Deadlines: Unfair and Unnecessary," *Georgetown Immigration Law Journal*, vol. 10, no. 1 (1996); and M. R. Pistone and P. G. Schrag, "The New Asylum Rule: Improved But Still Unfair," *Georgetown Immigration Law Journal*, vol. 16, no. 1 (2001).

- What information exists on the effects of the 1-year rule on reducing fraudulent asylum applications and preventing applicants from being granted asylum, and what resources have been expended in adjudicating it?

To address the first objective, we analyzed data from EOIR on all decisions rendered by immigration judges from October 1, 1994, through April 30, 2007, that involved asylum seekers from the 20 countries that produced the most asylum cases and the 19 immigration courts that handled the largest numbers of asylum cases. Each of the 20 countries and 19 immigration courts contributed a minimum of 800 affirmative and 800 defensive asylum cases to our analyses. The combination of countries and immigration courts yielded more than 198,000 cases for our analyses and constituted 66 percent of all asylum cases decided during the 12 ½ year period. We used EOIR's case management database to identify immigration court proceedings where an immigration judge had made a decision to grant or deny an applicant's asylum claim. We statistically controlled for the effects of a number of asylum applicant and immigration judge characteristics that were potentially related to asylum outcomes in order to determine whether the likelihood that an immigration judge would grant or deny an asylum application could be statistically attributed to those characteristics. In examining potential differences in asylum outcomes across immigration courts, we analyzed the following seven factors available in the EOIR immigration court proceedings data: (1) filed affirmatively or defensively; (2) the nationality of the applicant; (3) the time period in which the asylum decision was made; (4) whether the applicant had representation; (5) filed the application within 1 year of entry to the United States; (6) claimed dependents on the asylum application; and (7) had ever been detained (defensive cases only). In examining potential differences in asylum decisions across immigration judges, we analyzed an additional nine factors available from EOIR immigration court proceedings and biographical data, and the Office of Personnel Management's Central Personnel Data File. These included immigration judges' (1) age, (2) caseload size, (3) gender, (4) length of experience as an immigration judge, (5) race/ethnicity, (6) veteran status, (7) prior government immigration experience, (8) prior experience doing immigration work for a nonprofit organization, and (9) the presidential

administration under which the judges were appointed.[8] Our analyses did not control for factors related to the merits of asylum claims because such data were not available. Further, our findings on asylum outcomes cannot be generalized beyond the 20 countries and 19 immigration courts included in our analysis. We assessed the reliability of the data used in our analyses through electronic testing, analyzing related database documentation, and working with agency officials to reconcile discrepancies between the data and documentation that we received. We found the data to be sufficiently reliable for the purposes of this report.

We also interviewed officials from EOIR's Office of the Chief Immigration Judge and visited five immigration courts in three cities containing three of the four immigration courts with the highest asylum caseloads. At these immigration courts, we interviewed immigration judges with varying asylum grant rates, court administrators, DHS trial attorneys with varying levels of experience handling cases in the immigration courts, members of the private bar who represented asylum applicants in immigration court, and immigration advocates and pro bono legal providers. We also observed proceedings at each immigration court, including hearings on asylum cases, to enhance our understanding of the role of immigration judges. Because we selected nonprobability samples of immigration courts and stakeholders associated with these immigration courts, the information we obtained at these locations may not be generalized either within the immigration courts or to all immigration courts nationwide. However, the information we obtained at these locations provided us with a perspective on circumstances associated with asylum proceedings.

For the second objective, we reviewed the Attorney General's 2006 reforms directed to the immigration courts and information from EOIR regarding its implementation of the reforms. Regarding initiatives designed to assist applicants, we reviewed agency guidance on facilitating pro bono programs and evaluation reports on EOIR's Legal Orientation and BIA's pro bono programs. We also interviewed the EOIR official responsible for coordinating these programs. Regarding actions to assist immigration judges in adjudicating asylum cases, we reviewed agency guidance regarding processing asylum cases and preparing decisions and orders, training materials for immigration judges, and the legal examination

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[8] We examined various models of the likelihood of a grant or denial by an immigration judge and included different combinations of the factors in these models, as appropriate. Our statistical methodology is detailed in appendixes II and III.

administered to new immigration judges. We also interviewed EOIR's Assistant Chief Immigration Judges (ACIJ) for Conduct and Professionalism and for Training, and cognizant officials knowledgeable about EOIR's studies of immigration judge grant rates.

For the third objective, regarding changes in the asylum backlog and asylum outcomes following the streamlining of adjudication procedures at the BIA, we obtained and analyzed data from EOIR on the size of the pending asylum appeals caseload at the BIA for fiscal years 1995 through 2007, and the results of the BIA's decisions on appeals from immigration judge decisions for the period from October 1, 1997, through September 30, 2006. We assessed the reliability of the data used in our analyses by performing electronic testing, analyzing related database documentation, and working with agency officials to reconcile any discrepancies in the data and found the data to be sufficiently reliable for the purposes of this report. We did not use EOIR data on the number of board members at the BIA who were involved in deciding asylum appeals prior to fiscal year 2004 because of concerns regarding the reliability of the field in those years. We also interviewed federal circuit court judges in the two circuits handling the largest number of petitions for review of BIA decisions (the 2nd and 9th Circuits), and officials in DOJ's Office of Immigration Litigation (OIL) and the U.S. Attorney's Office for the Southern District of New York who defend the Department of Justice in appeals of BIA decisions to the federal courts.

Regarding the fourth objective, we reviewed the applicable law and regulations and discussed their impact on agency resources and applicants with the same immigration judges, attorneys, and members of advocacy groups whom we had selected to interview regarding our first objective. We also added questions about immigration judges' views of the 1-year rule to a Web-based survey of immigration judges that was being conducted as part of another GAO review, and obtained a 77 percent response rate.

We conducted this performance audit from December 2005 through September 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Appendix I contains more details about our data analysis, survey, and site visit methodology.

Results in Brief

The likelihood of being granted asylum varied considerably across immigration courts and judges, and nine factors, out of a total of 16 factors analyzed, had statistically significant effects on the variability of asylum outcomes.[9] Across the 19 large immigration courts in our review, seven factors significantly affected outcomes during the period October 1994 through April 2007: (1) filed affirmatively or defensively;[10] (2) applicant's nationality; (3) the time period in which the asylum decision was made; and whether the applicant (4) had representation, (5) filed the application within 1 year of entry to the United States, (6) claimed dependents on the asylum application, and (7) had ever been detained (defensive cases only).[11] Across immigration judges within these immigration courts, these same seven factors, plus the following additional two factors, had statistically significant effects on variability in asylum outcomes: (1) the gender of the immigration judge and (2) the length of experience as an immigration judge. We did not determine the extent to which the underlying facts or merits of the case affected differences in asylum outcomes, as EOIR did not have data on such factors. As an example of differences in asylum outcomes across immigration courts, affirmative applicants in the San Francisco immigration court were 12 times more likely to be granted asylum than affirmative applicants in the Atlanta immigration court, even after we controlled for the statistically significant effects of applicants' nationality, time period of the decision, representation, filing within 1 year of entry, and claiming dependents. The likelihood of being granted asylum increased significantly for both affirmative and defensive applicants who had representation, applied for asylum since fiscal year 2001, filed the application within 1 year of entry, and claimed dependents on the asylum application. Representation generally doubled the likelihood that immigration judges would grant asylum to affirmative and defensive asylum applicants compared to those without representation, after statistical controls were applied. In contrast, defensive applicants who had ever been detained were about two-thirds as

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[9] When we report that the likelihood of being granted asylum was significantly related to other factors, that indicates that the relationship is statistically significant at the 95 percent confidence level.

[10] Affirmative claims are first submitted to DHS by aliens who voluntarily initiate the asylum application process; defensive claims are first filed with DOJ by aliens who are in removal proceedings.

[11] The number of factors incorporated into the series of statistical analyses we conducted varied depending on the research question being addressed. In total, we examined the effects of 16 asylum applicant and immigration judge characteristics in determining which factors affected asylum outcomes.

likely to be granted asylum as those who had not been detained, after statistical controls were applied. In the New York City immigration court—which handles the largest number of asylum cases in the country— the likelihood of an affirmative applicant being granted asylum was 420 times greater if the applicant's case was decided by the immigration judge who had the highest likelihood of granting asylum than if the applicant's case was decided by the immigration judge who had the lowest likelihood in that immigration court. In 14 out of 19 immigration courts for affirmative cases, and 13 of 19 immigration courts for defensive cases, applicants were at least 4 times as likely to be granted asylum if their cases were decided by the immigration judge with the highest versus the lowest likelihood of granting in that immigration court. We found that male immigration judges were 60 percent as likely as female immigration judges to grant asylum. In contrast, immigration judge characteristics such as age, race/ethnicity, veteran status, prior government immigration experience, prior experience doing immigration work for a nonprofit organization, caseload size, and the presidential administration under which they were appointed were not statistically significantly associated with the likelihood of being granted asylum.

EOIR has taken a number of actions to improve its assistance to aliens in obtaining legal representation, such as expanding programs to help them access counsel, and EOIR has also sought to identify and improve the skills of immigration judges needing additional training or supervision; however, EOIR's actions in identifying and supervising immigration judges who may benefit from supplemental efforts to improve their performance could be improved. In 2006, partially in response to a directive from the Attorney General that EOIR identify judges in need of additional training or supervision, EOIR conducted a review of immigration judges' rates of granting asylum. EOIR updated its review in 2008. However, EOIR's grant rate studies did not take into account available data on the characteristics of asylum seekers (such as nationality and representation) and immigration judges (such as gender and length of experience) that could be statistically related to immigration judges' decisions to grant or deny asylum. The relationship between these characteristics (factors) and variability in asylum decisions by immigration judges across and within immigration courts can be determined using a multivariate statistical analysis. While generally accepted statistical practices include the use of multivariate analyses to statistically control for various factors that may affect outcomes when data on such factors are available, EOIR's studies did not statistically control for such factors, in part, because as EOIR acknowledges, it does not have a trained statistician on staff who could analyze its data using such sophisticated statistical controls. Furthermore,

EOIR officials stated that they did not have the funding available to contract for such expertise. While we recognize that EOIR lacks the expertise to statistically control for such factors, without doing so, the completeness, accuracy and usefulness of the information obtained from its grant rate reviews will be limited, and EOIR will be hindered in its efforts to identify immigration judges whose that require additional training and supervision.

EOIR said it was using information on which immigration judges had unusually high or low asylum grant rates, in conjunction with other indicators of performance, such as high reversal rate for legal error, to identify immigration judges in need of greater supervision. EOIR also said it was improving training for all immigration judges and developing a directory listing immigration judges' areas of expertise so judges could share best practices. Further, according to EOIR, from September 2006 through May 2008, 14 immigration judges were referred for additional or ameliorative training, of whom 6 were referred for additional legal training. EOIR said that it relied on immigration judges' supervisors, the Assistant Chief Immigration Judges (ACIJs), to identify immigration judges who could benefit from mentoring, training, and observing their peers adjudicating cases. However, as of August 2008, EOIR had six ACIJs in field locations who, in addition to handling their own caseload of immigration cases, supervised 148 immigration judges in 32 different immigration courts. EOIR had four ACIJs in EOIR headquarters who, in addition to handling administrative matters, supervised 68 immigration judges in 22 different immigration courts. EOIR did not provide these supervisors explicit guidance on how they should carry out their supervisory responsibilities—for example, on how they are to use information on immigration judges' asylum grant rates in combination with other performance information they may collect to improve immigration judges' performance. Internal control standards require federal agencies to design controls to assure that continuous supervision occurs to help ensure the effective management of the workforce. However, EOIR has not determined how many ACIJs it needs to effectively supervise immigration judges, and it has not provided ACIJs with guidance on how to carry out their supervisory role. Doing so would put EOIR in a better position to monitor immigration judges' performance and take appropriate action to correct or prevent immigration judges' performance issues that may arise.

Following BIA's March 2002 streamlining procedures, BIA's backlog of asylum appeals decreased, as did the number of BIA decisions favoring the alien. BIA's backlog of asylum appeals began to decrease in the fiscal year

that the streamlining began and reached its lowest level in 13 years in fiscal year 2007, at about 18,700 pending appeals. In addition, BIA decisions favoring the alien were almost 50 percent lower (declining from 21 percent to 10 percent) in the 4 ½ years following the 2002 streamlining compared with the 4 ½ years preceding it. Further, the percentage of BIA decisions in which asylum applicants were allowed to depart the United States voluntarily at their own expense (voluntary departure) rather than being removed by immigration enforcement personnel decreased from 25 percent to 17 percent, while the percentage of BIA decisions sustaining an appeal of an asylum grant by DHS or dismissing an applicant's appeal of an asylum denial remained the same at about 27 percent. At the same time, following the 2002 streamlining, BIA Board members used their new authority to affirm the immigration judge's asylum decision without writing an opinion in 44 percent of the asylum cases reviewed between March 14, 2002, and October 1, 2006, with 77 percent of these cases resulting in removal orders against the asylum applicant. The decrease in the percentage of BIA asylum decisions favoring the alien following the March 2002 streamlining occurred in both affirmative and defensive cases, and the decreases were significantly greater for those who applied defensively. Further, defensive asylum applicants who did not have representation experienced greater decreases in favorable asylum outcomes at the BIA than those with representation, and defensive applicants who were not detained experienced greater decreases in favorable outcomes than those who were detained. When BIA appeals were decided by a three-member panel, 52 percent of the decisions during fiscal years 2004 through 2006 favored the alien; when BIA appeals were decided by a single BIA member, 7 percent of the decisions favored the alien.

Data limitations prevented us from determining the effectiveness of the 1-year rule in reducing fraudulent applications and preventing applicants from being granted asylum, as well as the amount of resources that asylum officers, immigration judges, and DHS attorneys have spent addressing issues related to the rule. We could not determine the effectiveness of the 1-year rule in reducing fraudulent applications primarily because measures of deterring fraudulent behavior and reliable data on the presence of fraud are not available. We could not determine the number of asylum applications denied solely because of the 1-year rule because EOIR data do not identify how many of the asylum cases decided by immigration judges involved 1-year rule adjudications. According to agency officials, EOIR's mission of fair and prompt adjudication of immigration proceedings has not required its staff to track data on the legal basis for the decision. Agency officials stated that changes in its administrative

processing and data tracking systems in order to gather prospective data on the impact of the 1-year rule would involve some cost to the agency, with the risk that such data may not provide definitive results, since in many cases the immigration judge's ruling may have multiple legal bases. DHS maintains data on cases referred to immigration court because of the 1-year rule, but data were not available to determine if the case could also have been referred for other reasons. Without such data, we cannot determine the number of asylum applications denied solely because of the 1-year rule. We could not determine the amount of resources spent adjudicating the 1-year rule because DHS and DOJ do not maintain records on how much time asylum officers, immigration judges, and DHS attorneys spend addressing issues related to the 1-year rule.

To help EOIR develop more complete, accurate, and useful information on immigration judges whose asylum decisions are highly discrepant from those of their peers and to facilitate EOIR's goal of identifying immigration judges who may benefit from supplemental performance improvement and supervision efforts, we are making three recommendations. We are recommending that EOIR use the information we generated in our analyses, which statistically controlled for a number of claimant and immigration judge characteristics that could have affected asylum outcomes, to help identify immigration judges who may benefit from additional assistance such as supervision and training. We are also recommending that EOIR explore options for acquiring the statistical expertise needed to perform periodic multivariate analyses of asylum decisions. Finally, we are recommending that EOIR develop a plan for supervisory immigration judges, to include an assessment of the resources and guidance needed to ensure that immigration judges receive effective supervision.

DOJ and EOIR agreed with our recommendations.

Background

Asylum is a form of humanitarian protection that provides refuge for individuals who are unable or unwilling to return to their home countries because they were persecuted or have a well-founded fear of persecution on the basis of race, religion, nationality, membership in a particular social

group, or political opinion.[13] It is an immigration benefit that enables such individuals to remain in the United States and apply for lawful permanent residence 1 year after receiving the grant of asylum. Responsibility for adjudicating asylum applications is shared between U.S. Citizen and Immigration Services (USCIS) in DHS and EOIR in DOJ. Asylum officers in 8 USCIS Asylum Offices and immigration judges in 54 immigration courts within EOIR's Office of the Chief Immigration Judge adjudicate asylum and other cases. In fiscal year 2008, the Asylum Division received about $61 million from USCIS fee-based funding and EOIR received about $238 million from congressional appropriations for its entire operation, of which asylum adjudications are part.[14]

There are two main avenues for applying for asylum in the United States:

> *Affirmative asylum process*: DHS's asylum adjudication process involves affirmative asylum claims—that is, claims that are made at the initiative of aliens who are in the country either legally or illegally and who file directly with USCIS. Asylum officers are to conduct non-adversarial interviews in which they verify the applicant's identity, determine whether the applicant is eligible for asylum, and evaluate the credibility of the applicant's asylum claim. The asylum officer may (1) grant asylum, (2) deny asylum to applicants who are in legal status and issue a Notice of Intent to Deny, or (3) refer applicants not in legal status to the immigration court for a *de novo* review of their claim by an immigration judge.[15] Upon referral to the immigration court, the applicant is placed in removal proceedings.

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[13] Certain categories of non-citizens are statutorily ineligible for asylum even if they can demonstrate past persecution or a fear of persecution. The following individuals are ineligible to apply for asylum: (1) those who have been in the United States more than 1 year without filing for asylum, unless they can demonstrate changed or extraordinary circumstances; (2) those previously denied asylum unless they can show changed circumstances; and (3) those who may be removed to a third country where they would have access to fair asylum procedures. *See* 8 U.S.C. § 1158(a)(2). The following are ineligible for a grant of asylum: (1) persecutors of others and certain criminals; (2) those who are described in the terrorist grounds of inadmissibility or are reasonably regarded as a danger to the security of the United States; and (3) those who were firmly resettled in another country prior to arriving in the United States. *See* 8 U.S.C. § 1158(b)(2)(A).

[14] No fee is charged to apply for asylum.

[15] *De novo* review means that the immigration judge is to evaluate the applicant's claim anew, as the determination the asylum officer made in referring the case to immigration court is not binding on the immigration judge.

Defensive asylum process: Defensive claims are those that are first filed after removal proceedings have been initiated against an alien. An alien making a defensive claim may have been placed in removal proceedings after having been stopped at the border without proper documentation, identified as being in the United States illegally, or identified as deportable on one or more grounds, such as certain kinds of criminal convictions.

Immigration judges hear affirmative asylum claims referred to them by asylum officers, as well as defensive claims first raised before them. Adjudication of asylum claims in immigration court is adversarial in that aliens appear before EOIR immigration judges to defend themselves from removal from the United States. Immigration judges hear testimony given during direct and cross-examinations and review the evidence submitted. Immigration and Customs Enforcement (ICE) Assistant Chief Counsels (also known as ICE trial attorneys) represent DHS in these proceedings. Figure 1 illustrates the steps involved in the immigration proceedings process for affirmative and defensive claims.

Figure 1: Steps in the Immigration Proceedings Process

DHS-Affirmative claims	EOIR-Immigration court removal proceedings

DHS-Affirmative claims

Alien files asylum application

Asylum officer adjudicates asylum case including interview

Applicant generally picks up decision 14 days after the interview

If decision is to grant asylum:

If decision is to not grant asylum:

Is the applicant in the U.S. legally? — No

Asylum granted

Yes — Applicant is sent a Notice of Intent to Deny

Affirmative application is referred to immigration judge by asylum office and applicant is given a Notice to Appear

EOIR-Immigration court removal proceedings

Defensive claims

Alien is issued a Notice to Appear by DHS

Alien first submits an asylum claim before an immigration judge after being issued a Notice to Appear

Applicant is placed in removal proceedings

Applicant requests asylum as defense against removal

Master calander hearing is scheduled at an immigration court

Individual merits hearing is scheduled

Immigration judge typically:

Explains contents of the charging document

Inquires what applications for relief (e.g., asylum) will be made

Discusses issues that may arise in the application (e.g., 1-year rule)

Advises on availability of free legal services

Schedules Individual merits hearing

Immigration judge hears applicant's claim and makes a decision

Asylum or other relief granted

Asylum or other relief denied

DHS can appeal decision to the BIA within 30 days

Applicant can appeal decision to the BIA within 30 days

No — Applicant can within 30 days file a petition for review of decision in the U.S. Court of Appeals

BIA decision favorable to the alien

Yes — Applicant is eligible for asylum or other relief, case is remanded to the immigration court for rehearing

Source: GAO analysis of USCIS and EOIR data.

As shown in figure 1, EOIR's asylum process generally consists of the following steps. The applicant is to appear before an immigration judge for an initial, or master calendar, hearing, during which the immigration judge

is to, among other things, (a) ensure that the applicant understands the contents of the charging document, or Notice to Appear, (b) provide the applicant with information on available free of charge or low-cost legal representation in the area, and (c) schedule a subsequent date to hear the merits of the asylum claim and requests for other alternative forms of relief from persecution or torture, including withholding of removal and protection under the Convention Against Torture (CAT).[15] Prior to the merits hearing, both the ICE trial attorney and the applicant or his or her representative must submit applications, exhibits, motions, a witness list, and criminal history to the immigration court. At the merits hearing, where EOIR is to provide interpreters when necessary, parties present the case before the immigration judge by generally making opening statements, presenting witnesses who are subject to cross examination and evidence to the immigration judge, and making closing statements. The immigration judge may participate in the questioning of the applicant and other witnesses. At the end of the hearing, the immigration judge generally issues an oral decision that should include a statement of facts that were found to be true, the substantive law and the application of the law to the facts, what factors were considered, and what weight was given to the evidence presented (including the credibility of witnesses).

EOIR's asylum adjudication process can result in one of the following outcomes for applicants and their qualifying dependents:

> *Grant of asylum*: Immigration judges may grant asylum to applicants, enabling them to remain in the United States indefinitely, unless DOJ terminates asylum. Asylees are eligible to apply for certain benefits, such as an Employment Authorization Document, a Social Security card, medical and employment assistance, lawful permanent residence, and ultimately citizenship. Within 2 years of being granted asylum, asylees can also petition for a spouse or child to obtain derivative asylum status.

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[15] Withholding of removal prohibits removal if the applicant's life or freedom would be threatened because of persecution. Generally, individuals apply for asylum and withholding of removal at the same time, but only the immigration judge can grant withholding of removal. The applicant must demonstrate that it is "more likely than not" that he or she would be persecuted if returned to the country of origin, a higher standard than the "reasonable possibility" standard for asylum. Protection under regulations implementing the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) is another form of relief for individuals fearing torture. As with withholding of removal based on persecution, the applicant must establish that it is "more likely than not" that he or she would be tortured if returned to the country of origin.

Denial of asylum: Immigration judges may deny asylum to applicants and order them to be removed from the United States unless they qualify for another form of relief, s such as withholding or deferral of removal. However, these other forms of relief do not include all of the benefits of asylum, such as the ability to apply for permanent resident status and bring family members to the United States. In some cases, in lieu of an order of removal, immigration judges may grant voluntary departure.[16]

Case closure: Immigration judges may close a case without making a decision on the asylum application if, for example, applicants request moving their case from one immigration court to another or withdraw or abandon their application for asylum .

If either the applicant or ICE disagrees with the immigration judge's decision, either party may appeal the decision to the BIA within 30 days. The BIA is the highest administrative adjudicatory body for immigration decisions within DOJ, and its members hear appeals of decisions rendered by immigration judges and by DHS District Directors in a wide variety of proceedings.[17] If the BIA's decision is adverse to the applicant, he or she may, within 30 days of the decision, file a petition for review of the decision in the U.S. Court of Appeals with jurisdiction over the immigration court in which the decision was made.[18]

EOIR's Asylum Caseload and Staffing

EOIR's immigration courts received 1.9 million new cases during fiscal years 2002 through 2007, of which 19 percent were asylum cases.[19] The number of authorized immigration judges increased from 216 in fiscal year

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[16] Voluntary departure allows otherwise removable aliens to depart the United States at their own expense. They may be barred from reentering the United States for up to 10 years and be subject to civil and criminal penalties if they fail to depart or reenter without proper authorization.

[17] Generally, the BIA decides appeals by reviewing the record and documents submitted by the parties, as opposed to conducting courtroom proceedings.

[18] If DHS disagrees with BIA's ruling, in rare instances, the case may be referred to the Attorney General for review.

[19] Immigration judges make decisions on forms of relief other than asylum, including cancellation of removal and adjustment of status. They also make determinations regarding the level of bond set for aliens in custody, and consider motions by DHS or the alien to reopen or reconsider a case previously heard by an immigration judge.

2002, to 251 in fiscal year 2007.[20] During fiscal years 2002 through 2007, the BIA received 217,162 appeals of immigration judge decisions, of which 64 percent were appeals by applicants or by DHS in cases where an asylum application had been filed with the immigration court.

Hiring of Immigration Judges

Immigration judges are attorneys appointed under Schedule A of the excepted service who are managed by EOIR.[21] According to EOIR, three processes have been used to hire immigration judges: (1) The Attorney General directly appointed the immigration judge, or directed the appointment without a recommendation by EOIR;[22] (2) the immigration judge was appointed after directly responding to an announcement for an immigration judge position and submitting the appropriate documentation; or (3) EOIR identified a need and vacancies were filled from EOIR personnel or sitting immigration judges who requested and obtained transfers. Except for direct appointment by the Attorney General, to be considered for the position of immigration judge, an applicant must meet certain minimal qualifications, and DOJ considers a range of other selection factors in making a hiring decision.[23]

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[20] According to EOIR, as of May 2008 there were 216 immigration judges on board in the 54 immigration courts, 13 judges who had been hired and were undergoing training, and 19 judges who were at various stages of the background investigation, interview and selection processes.

[21] 5 C.F.R. § 6.3(a) allows the head of an agency to fill excepted service positions by appointment of persons without civil service eligibility or competitive status. Schedule A positions are "positions other than those of a confidential or policy determining character" and are considered career positions. The authority to appoint an immigration judge is vested in the Attorney General pursuant to 8 U.S.C. § 1101(b)(4).

[22] For direct appointments, the applicants are referred to EOIR from the deputy attorney general, who exercises the attorney general's appointment authority. The Office of the Chief Immigration Judge (OCIJ) confirms the qualifications, and usually interviews the applicant.

[23] The applicant must have a law degree and be duly licensed and authorized to practice law as an attorney under the laws of a state, territory, or the District of Columbia: be a United States Citizen; and have a minimum of 7 years relevant post-bar admission legal experience at the time the application is submitted, with 1 year experience equivalent to the GS-15 level in the federal service. According to EOIR, DOJ looks for experience in at least three of the following areas: substantial litigation experience, preferably in a high-volume context; knowledge of immigration laws and procedure; experience handling complex legal issues; experience conducting administrative hearings; or knowledge of judicial practices and procedures.

According to EOIR, from October 1993 through October 2007, three sitting Attorneys General directly appointed 26 immigration judges—19 were directly appointed by Alberto Gonzales, 4 by John Ashcroft, and 3 by Janet Reno. These three Attorneys General also appointed 181 immigration judges pursuant to an open announcement in which applicants competed for a vacant immigration judge position. An additional eight EOIR personnel who were not originally hired as immigration judges were identified by EOIR to fill immigration judge vacancies on EOIR's recommendation.

Immigration Judge Training

According to EOIR, since 1997, training for newly hired immigration judges has included attendance at a weeklong basic training session at the National Judicial College (NJC). The NJC training has included courses on immigration court procedure, immigration law, ethics, caseload management, and stress management. The training is delivered in a workshop format, and incorporates lecture instruction, small group exercises, and immigration court hearing demonstrations. In addition to this training, immigration judges complete 2 weeks of observations in their home immigration court and 2 weeks of observations and holding hearings in a training immigration court. According to EOIR, new immigration judges are also assigned mentors in both their home and observation immigration courts to guide their learning during the training. They are to remain their mentors throughout the probationary period. As of December 31, 2006, all newly appointed immigration judges have been required to pass an examination testing familiarity with key principles of immigration law and complete a set of mock-hearing and oral decision exercises before beginning to adjudicate matters.

For both new and veteran immigration judges, EOIR has convened an annual training conference, which includes lectures and presentations covering topics such as immigration law and procedure, ethics, religious freedom, disparities in asylum adjudications, and forensic analysis. Because of budget constraints, a virtual conference that included recorded presentations was offered in place of the in-person conference in fiscal years 2004, 2005, and 2008.

Additionally, according to EOIR, immigration judges have access to a variety of reference tools such as the *Immigration Judge Benchbook*, which includes information on substantive law, sample decisions, and forms; and EOIR's virtual law library, which has current publications and reference documents on immigration law, immigration procedure, international law, and country conditions and provides case summaries

distributed electronically on a weekly basis. In October 2007, EOIR launched the Immigration Law Advisor that provides a monthly analysis of statutory, regulatory, and case law developments.

Free Legal Services Available to Aliens in Removal Proceedings

Under U.S. immigration law, aliens in removal proceedings may be represented by an attorney at no expense to the government.[24] Aliens must either find and pay for counsel or secure free representation. Since April 2003, EOIR has administered the Legal Orientation Program (LOP), a court-based legal education program for detained non-citizens in immigration court proceedings.

The LOP seeks to educate detained persons in removal proceedings so they can make more informed decisions, thus increasing efficiencies in the immigration court and detention processes. The program offers individual and group orientation sessions; self-help workshops, and referrals to pro bono attorneys. In fiscal year 2008, $3.8 million was authorized for the program, and LOP presentations were offered at 12 sites. In May 2008, the Vera Institute of Justice reported that participation in the LOP was associated with faster immigration court processing times for aliens who were detained and more favorable case outcomes for aliens who represented themselves in removal hearings.[25]

EOIR's BIA Pro Bono Project assists several nongovernment organizations in their efforts to link volunteer legal representatives nationwide with aliens, most of whom are detained, who have immigration cases on appeal to the BIA and cannot afford legal representation. The project seeks to remove traditional obstacles private attorneys face in identifying, locating, and communicating with unrepresented aliens by providing EOIR case tracking and summary information to facilitate the initial contact.

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[24] 8 U.S.C. § 1362.

[25] Nina Siulc, Zhifen Cheng, Arnold Song and Olga Byrne, Vera Institute of Justice, *Legal Orientation Program Evaluation and Performance Outcome Measurement Report*, *Phase II*, a report prepared at the request of the Department of Justice, Executive Office for Immigration Review, May 2008. The evaluation combined statistical analysis of administrative data with interviews with LOP stakeholders.

EOIR also maintains a list of organizations and attorneys deemed qualified to provide free legal services to indigent individuals. EOIR is required by regulation to update the list not less than quarterly and to provide the list to all aliens in immigration proceedings.

BIA Procedures were Streamlined to Address an Increasing Backlog of Appeals

Historically, with a few exceptions, the BIA adjudicated its appeals in panels of three BIA members, which generally issued full written decisions explaining the order in each case. Because of an increasing number of appeals filed with the BIA and an increasing backlog of pending cases, DOJ began in 1999 to implement procedural changes at the BIA to better manage its docket. These regulatory changes, referred to as "streamlining" or "restructuring," occurred in phases. Changes starting in October 1999 and continuing through February 2002 authorized single Board members to affirm an immigration judge's decision (in certain categories of cases other than asylum appeals) without writing an opinion (referred to as "affirmances without opinion," or AWO orders).[26] On March 15, 2002, the Chairman of the BIA authorized cases involving appeals of asylum cases, withholding, and CAT applications to be decided by single members using affirmances without opinion (AWO). Until then, these matters had been handled by panels of three BIA members, and the panels had issued full written decisions explaining their reasoning. The Attorney General issued a final rule on August 26, 2002, that codified these changes in regulation and made other changes to BIA's structure and procedures.[27] For all cases before the BIA, including asylum cases, the rule made single member decisions the default procedure.

The rule gave greater deference to immigration judges' factual findings, changing the standard of BIA review from *de novo* to "clearly erroneous" for questions of fact, though not for questions of law or discretion; set deadlines for the completion of cases; and reduced the size of the BIA from its authorized 23 members to 11 members. According to DOJ, the incremental increases in the size of the BIA from 5 members in 1995 to 23 authorized members in 2002 had had no appreciable impact on the BIA's ability to decide appeals, the backlog had continued to increase, and the

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[26] 64 Fed. Reg. 56,135 (Oct. 18, 1999). An AWO decision contains two sentences prescribed by regulation, without any additional language or explanation about the reasons for the affirmance. The sentences state, "the Board affirms, without opinion, the decision below. The decision below is, therefore, the final agency determination."

[27] 67 Fed. Reg. 54,878 (Aug. 26, 2002). The rule became effective on September 25, 2002.

BIA had grown too large and unwieldy to reach consensus on individual cases and resolve complex legal questions effectively.

According to DOJ, the regulation was intended, at least in part, to improve the timeliness and efficiency of BIA's review. Specifically, the Attorney General stressed four objectives: (1) eliminate the current backlog of pending cases, (2) eliminate unwarranted delays in the adjudication of administrative appeals, (3) utilize BIA resources more efficiently, and (4) allow more resources for difficult or controversial cases that may warrant the issuance of precedent decisions.

Asylum Applicants Must File for Asylum within 1 Year of Entry

Under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and its implementing regulations, individuals seeking asylum after April 1, 1998, are generally required to apply within the first year of entering the United States. Specifically, the applicant must demonstrate by clear and convincing evidence during an interview with an asylum officer or during a removal proceeding in front of an immigration judge that the application has been filed within 1 year after the date of the applicant's last arrival in the country.[28] The time limit or "1-year rule" was intended to minimize fraudulent asylum applications and to encourage applicants who have illegally entered the country to present themselves without delay to the authorities.

The statute allows exceptions to the 1-year rule to the extent the applicant demonstrates changed circumstances materially affecting eligibility or extraordinary circumstances relating to the filing delay. Changed circumstances generally include changes in conditions in the applicant's country of nationality, changes in the applicant's circumstances, including changes in applicable law or changes in dependency status. Extraordinary circumstances affecting the filing delay may include serious illness or mental or physical disability, including any effects of persecution or violent harm suffered in the past; legal disability, such as for those applicants who are unaccompanied minors; ineffective assistance of counsel; or death or serious illness or incapacity of the applicant's legal representative, among a nonexhaustive list specified in the regulations.[29]

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[28] If asylum officers are unable to establish whether or not applicants have met the 1 year time limit, they are required to refer the cases to the immigration court, where the entirety of the application will be reviewed by the immigration judge.

[29] 8 C.F.R. § 208.4(a)(5).

Applicants who cannot demonstrate that their application was filed within 1 year after arrival in the United States and are not eligible for an exception to the bar, may be eligible for relief from persecution through withholding of removal because of persecution or withholding or protection under the Convention Against Torture. However, as discussed earlier, the standard of proof for withholding and CAT is higher than for asylum, and the benefits are more limited.

Various Factors Were Associated with Differences in the Likelihood of Being Granted Asylum in Immigration Courts

The likelihood of being granted asylum varied considerably across and within the 19 large immigration courts included in our review.[30] Of 16 asylum applicant and immigration judge characteristics that we examined in a series of bivariate and multivariate statistical analyses, 9 factors had statistically significant effects on asylum applicants' likelihood of being granted asylum. Across immigration courts, seven factors significantly affected asylum outcomes: (1) whether the asylum application was first filed affirmatively with DHS's asylum office or defensively with DOJ/EOIR's immigration court; (2) the nationality of the applicant; (3) the time period in which the asylum decision was made; (4) whether the applicant had representation; (5) filed the application within 1 year of entry to the United States; (6) claimed dependents on the asylum application; and (7) had ever been detained (defensive cases only). Across immigration judges, in addition to these seven factors, two other factors significantly affected asylum outcomes: (1) the gender of the immigration

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[30] Our analyses included all asylum cases decided between October 1, 1994, and April 30, 2007, that involved asylum seekers from the 20 countries that produced the most asylum cases and the 19 courts that handled a minimum of 800 affirmative and 800 defensive asylum cases. The 20 countries and 19 courts represented more than 198,000 cases, or 66 percent of all asylum cases decided during this period. Except where noted, our analyses included all immigration judges in all 19 immigration courts. In descriptively analyzing differences across immigration courts, we focused on immigration courts that heard 50 or more cases from a particular country. In analyzing differences in asylum decisions across immigration judges, we excluded those immigration judges who heard fewer than 50 affirmative cases in our analyses of affirmative asylum decisions and fewer than 50 defensive cases in our analyses of defensive asylum decisions and excluded cases heard by immigration judges other than in their primary court, in order to simplify the presentation and avoid reaching inappropriate conclusions that can occur when calculations are based on small numbers of cases.

judge and (2) the length of experience as an immigration judge.[31] The seven factors that did not significantly affect applicants' likelihood of being granted asylum were the following characteristics of immigration judges: (1) age, (2) caseload size, (3) race/ethnicity, (4) veteran status, (5) prior government immigration experience, (6) prior experience doing immigration work for a nonprofit organization, and (7) the presidential administration under which the judges were appointed.

Likelihood of Being Granted Asylum Varied across Immigration Courts

Differences in Grant Rates Were Sizable across Immigration Courts

The likelihood of being granted asylum differed for affirmative and defensive cases and varied depending on the immigration court in which the case was heard. Overall, the grant rate for affirmative cases (37 percent) was significantly higher than the grant rate for defensive cases (26 percent).[32] The affirmative asylum grant rate ranged from 6 percent in Atlanta to 54 percent in New York City. The grant rate for defensive cases ranged from 7 percent in Atlanta to 35 percent in San Francisco and New York City. (See fig. 2 and a detailed discussion of these differences in appendix II).

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[31] Several recent studies have also used EOIR data to examine asylum decisions by immigration judges and other adjudicators. We summarize this prior research in appendix IV. Our work overlaps with these earlier studies, although we analyze data that cover a longer period of time; are more recent; include both defensive and affirmative cases; cover a broader range of asylum producing countries; and provide information on in absentia cases as well as those in which applicants appeared for their asylum hearing. In contrast to previous studies of asylum decisions, we use multivariate statistical models that take account of potentially confounding factors and possible correlations within and between judges to estimate immigration court and judge differences.

[32] Unless otherwise noted, the analysis results presented in this section excluded cases that were denied in absentia, or denied when the asylum seeker failed to appear before the immigration judge. In appendix II (tables 8 though 11), we provide information on cases that were denied in absentia as well as cases that were granted and denied when the asylum seeker did appear before the judge.

Figure 2: Grant Rates for Affirmative and Defensive Asylum Cases, by Immigration Court
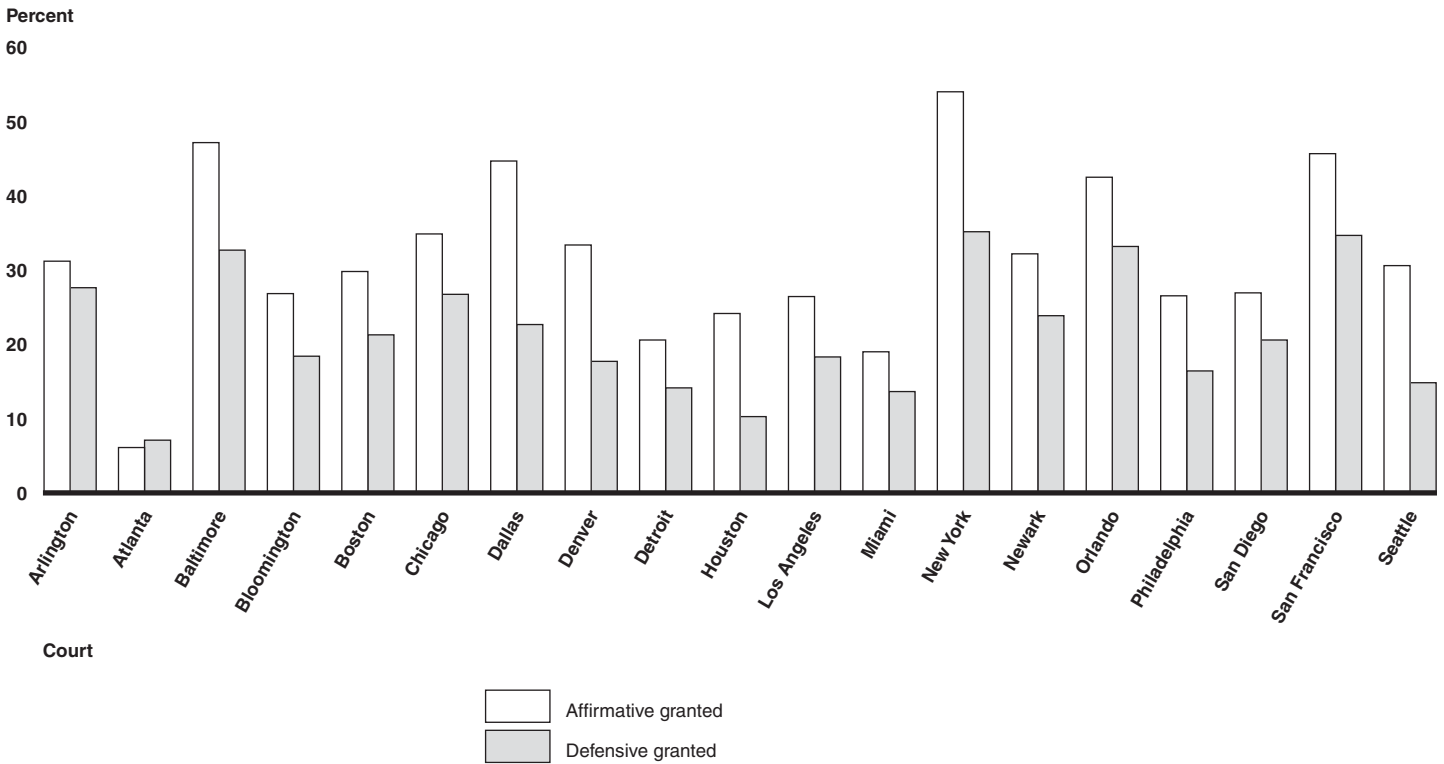
Source: GAO analysis of EOIR data.

We examined grant rates for applicants of the same nationality and found sizable differences across immigration courts for both affirmative and defensive cases. For example, for the 19 immigration courts that decided 50 or more cases from the 20 countries, we found that less than 1 percent of Guatemalan affirmative asylum seekers in Atlanta were granted asylum, while around 30 percent of those in San Francisco were granted asylum. Similarly, 12 percent of Chinese affirmative asylum seekers were granted asylum in Atlanta, while 75 percent were granted asylum in Orlando. Even when immigration courts are relatively close to one another geographically, there were sometimes large differences in asylum decisions for a particular nationality and sometimes not. For example, the grant rate for affirmative asylum cases in New York and Newark was identical or similar for Chinese, El Salvadoran, and Nigerian applicants (table 1). In contrast, the grant rate for affirmative applicants from Colombia, Indonesia, and Peru was more than 2.5 times higher in New York than in nearby Newark.

Table 1: Affirmative Grant Rate for Selected Nationalities in Two Geographically Proximal Immigration Courts

Immigration Court	Applicants' nationality					
	China	El Salvador	Nigeria	Colombia	Indonesia	Peru
New York	57%	9%	36%	69%	61%	54%
Newark	57%	7%	39%	26%	19%	17%

Source: GAO analysis of EOIR data.

Note: For full information on grant and denial rates for affirmative and defensive cases by country and immigration court for immigration courts deciding 50 or more cases, see table 12.

Likelihood of Being Granted Asylum Differed Significantly across Immigration Courts Even After the Effects of Other Factors Were Controlled

The likelihood of being granted asylum differed considerably across immigration courts, even after we statistically controlled simultaneously for the effects of a number of factors. For example, we found that relative to Atlanta, affirmative asylum applicants in San Francisco were about 12 times more likely to be granted asylum, applicants in New York were about 10 times more likely to be granted asylum, and applicants in Dallas and Houston were about 7 times more likely to be granted asylum. Defensive applicants in these cities were also more likely to be granted asylum than in Atlanta, with the likelihood being about 15 times greater in San Francisco, 8 times greater in New York, and about 4 times greater in Dallas and Houston. In these analyses we controlled for applicants' nationality; the time period in which their case was decided; and whether they had representation, claimed dependents, filed within 1 year of entry, and, among defensive cases, if they were ever detained. (See tables 13 and 14 in app. II for the likelihood of applicants being granted asylum in each of the 19 immigration courts.)

Data limitations prevented us from controlling for other factors that could have contributed to variability in case outcomes. Although we were able to control some factors related to the merits of asylum cases (such as nationality and whether the applicant appeared for the asylum hearing), we did not statistically control for the underlying facts and merits of the cases being decided because data were not available. This is because asylum decisions require a determination of applicant credibility, often without corroborating evidence, and immigration judges generally do not, and are not required to, document each factor (such as applicants' demeanor while testifying) that went into their overall assessment of credibility. It would be difficult and burdensome for them to do so. Therefore, we were not in a position determine the extent to which such factors accounted for the pronounced differences that we found in the likelihood of applicants being granted asylum across immigration courts

and judges. Nonetheless, these multivariate analyses can increase the understanding of variability in asylum decisions because our statistical controls help account for differences among immigration judges and applicants and enable comparisons to be made across immigration courts and judges.

In the following sections, we examine the effects of each of the factors that we were able to control in our statistical analyses.

Likelihood of Being Granted Asylum Varied by Nationality

Just as the likelihood of being granted asylum varied across immigration courts, it also varied by nationality. The grant rate for affirmative cases exceeded 50 percent for asylum seekers from some countries, including Albania, China, Ethiopia, Iran, Russia, Somalia, and Yugoslavia (see fig. 3). For other countries, including El Salvador, Guatemala, Honduras and Mexico, it was lower than 10 percent. Similarly, while about 50 percent of asylum seekers in defensive cases from Iran and Ethiopia were granted asylum and almost 60 percent of such cases from Somalia were granted asylum, the same was true of 13 percent or less defensive asylum cases from El Salvador, Honduras and Indonesia.

Figure 3: Percentage of Affirmative and Defensive Asylum Cases Granted, by Nationality
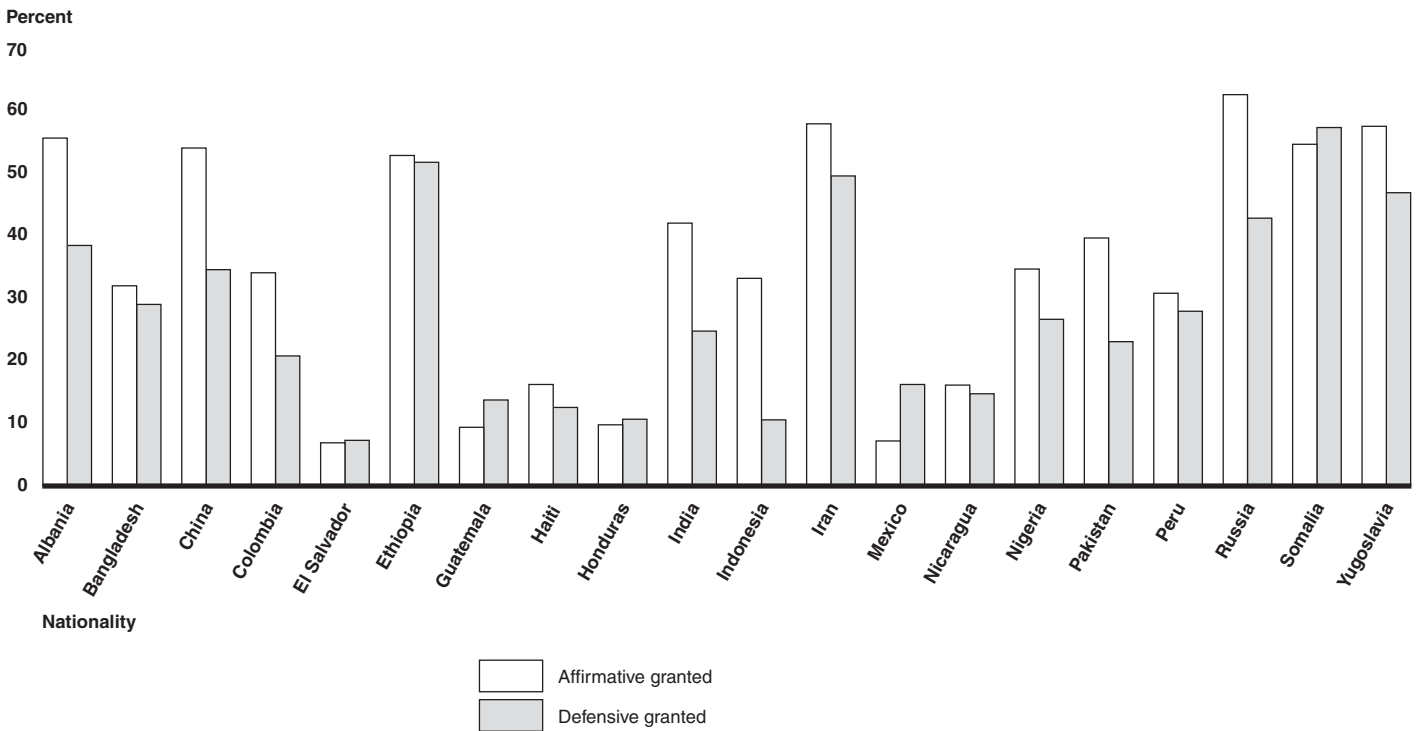
Source: GAO analysis of EOIR data.

The likelihood of being granted asylum also differed considerably across the 20 nationalities, even after we statistically controlled simultaneously for the effects of the immigration court the case was heard in; the time period in which the case was decided; and whether applicants had representation, claimed dependents, filed within 1 year of entry, and, among defensive cases, if they were ever detained. For example, among affirmative asylum applicants, the likelihood of being granted asylum after controlling for these factors was about 1.5 times greater if the applicant was from Russia than Albania, about 3 times greater if the applicant was from Somalia than Nigeria; and about 4 times greater if the applicant was from Iran than Bangladesh or India. Differences in the extent to which applicants from various countries are granted or denied asylum in the United States is not surprising in light of the differences that exist among countries' political climates and human rights records. (See tables 13 and 14 in app. II for full information on the likelihood of affirmative and defensive cases being granted asylum for the 20 nationalities we examined.)

Likelihood of Being Granted Asylum Has Increased over Time

Grant rates generally increased from fiscal year 1995 to fiscal year 2007 (see fig. 4). This was the case for both affirmative and defensive applicants, although grant rates for affirmative applicants increased substantially more than they did for defensive applicants. The grant rates for defensive applicants did not change substantially during the period from fiscal year 1997 through fiscal year 2005, and grant rates for affirmative applicants did not change substantially during the period from fiscal year 2001 through fiscal year 2005. Beginning in fiscal year 1998, affirmative asylum applications were more likely to be granted than defensive asylum applications, while the opposite was true in the 3 fiscal years for which we had data prior to that time.

Figure 4: Asylum Grant Rates for Affirmative and Defensive Applicants, by Fiscal Year of Immigration Judge Decision
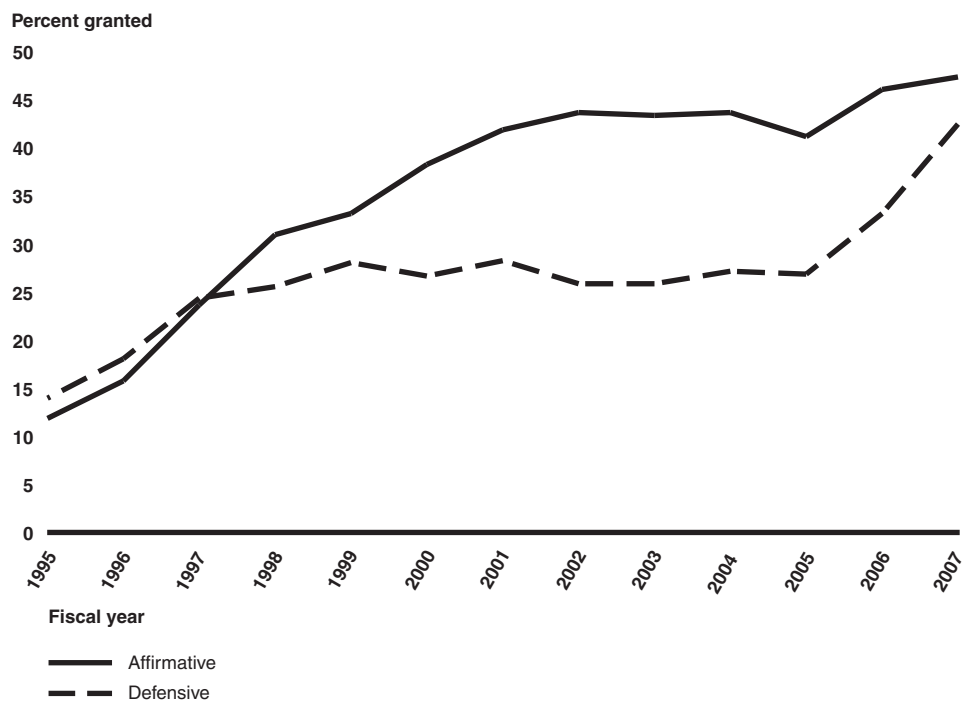
Source: GAO analysis of EOIR data.

When we examined grant rates in three distinct time periods—(1) from the beginning of our data series on October 1, 1994, through March 30, 1997, the day prior to the implementation date for the Illegal Immigration Reform and Immigrant Responsibility Act of 1996; (2) from April 1, 1997, through September 10, 2001; and (3) from September 11, 2001, through the final day in our data series on April 30, 2007—and we found that the grant

rate for affirmative cases doubled from the first to the second period (increasing from 17 percent to 35 percent) and increased by another 9 percent (to 44 percent) from the second to the third period. We also found that for affirmative cases, in particular, denials resulting from claimants not showing up for their asylum hearings decreased greatly over the three periods, from 44 percent in the first period to 23 percent in the second and only 4 percent in the third. The percentage of defensive cases granted asylum also increased in each period, from 17 percent to 27 percent to 29 percent, but not as much as affirmative cases. While we do not have direct evidence that explains these findings, the relatively lower grant rates in the early period may reflect the effects of reforms instituted in the mid 1990s to reduce fraud in the asylum system,[33] and the plateau in defensive grant rates after 1997 may reflect the effects of changes called for by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which made it more difficult for applicants with criminal records to get asylum. The overall increase in asylum grants over time may also have been because of, in part, an increase in asylum applications from and asylum grants to Chinese nationals. Chinese applicants accounted for 18, 26, and 34 percent of the total number of asylum cases in the three time periods, respectively.

The likelihood of being granted asylum also differed considerably across the three time periods, after we statistically controlled simultaneously for the effects of the immigration court the case was heard in; the applicant's nationality; and whether applicants had representation, claimed dependents, filed within 1 year of entry, and, among defensive cases, if they were ever detained. For example, among affirmative applicants, the likelihood of being granted asylum doubled from the first time period (October 1, 1994, to March 31, 1997) to the second (April 1, 1997 to September 10, 2001), and increased again from the second to the third time period (September 11, 2001 to April 30, 2007) by 35 percent. Officials at EOIR speculated that, in addition to the reasons cited above, regime change in some countries; changes in case law; and efforts to deter cases

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[33] In the mid 1990s, the Asylum Division implemented major reforms that decoupled employment authorization from asylum requests to discourage applicants with fraudulent asylum claims from applying for asylum solely to obtain a work authorization, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 added a requirement that the identity of all asylum applicants be checked against records or databases maintained by the Attorney General and Secretaries of State and later Homeland Security to determine if an applicant is ineligible to apply for or be granted asylum.

that lack merit may have been among the reasons for the increase in asylum grants over time.

Representation Was Associated with Greater Likelihood of Being Granted Asylum

For both affirmative and defensive cases, having representation was associated with more than a three-fold increase in the asylum grant rate compared to those without representation. The grant rate for affirmative applicants with representation was 39 percent, compared to 12 percent for those without representation. For defensive cases, the grant rate for applicants with representation was 27 percent, compared to 8 percent without.

Representation generally doubled the likelihood of affirmative and defensive cases being granted asylum, after we controlled for the effects of the immigration court the case was heard in; the applicant's nationality; the time period in which the decision was made; and whether the applicant claimed dependents, filed within 1 year of entry, and, among defensive cases, if the applicant was ever detained. According to EOIR officials, there could be several explanations for why representation can increase the likelihood of applicants being granted asylum. For example, officials said that attorneys can help applicants present their case more effectively because asylum law is complicated and applicants face cultural barriers; and attorneys can make better decisions about the viability of a case, so claims that are not likely to be granted won't go forward.

Filing Application within 1 Year of Entry Was Associated with Greater Likelihood of Being Granted Asylum

Just as having representation was associated with a greater likelihood of being granted asylum, so was filing an application within 1 year of entry to the United States. Affirmative applicants who filed their asylum application within 1 year of entry to the United States had a grant rate of 42 percent, compared with 26 percent of those who did not file within 1 year. The grant rate for defensive applicants was 29 percent among those who filed within 1 year of entry, and 22 percent among those who did not.

Filing within 1 year of entry increased the likelihood of affirmative and defensive cases being granted asylum by 40 percent and 30 percent, respectively, after we controlled for the effects of the immigration court in which the case was heard; the applicant's nationality; the time period in which the decision was made; and whether the applicant had representation, claimed dependents, and, among defensive cases, if the applicant was ever detained. Since those who fail to apply for asylum within 1 year of entry are generally barred from receiving asylum, the

positive association between filing within 1 year and immigration judges granting asylum is understandable.[34]

Claiming Dependents on the Asylum Application Was Associated with Greater Likelihood of Being Granted Asylum

For both affirmative and defensive cases, the grant rate for those who claimed dependents on their asylum application was higher than for those who did not. Among affirmative applicants, 43 percent of those who claimed dependents were granted asylum, compared to 36 percent of those who did not. Among defensive applicants, the grant rate was 37 percent for those who claimed dependents and 25 percent for those who did not.

The positive association between asylum grants and claiming dependents persisted after we controlled for the effects of the immigration court in which the case was heard; the applicant's nationality; the time period in which the decision was made; and whether the applicant had representation, filed within 1 year of entry, and, among defensive cases, if the applicant was ever detained. The likelihood of being granted asylum was roughly 50 percent greater for affirmative cases, and roughly 80 percent greater for defensive cases, when the asylum applicant claimed dependents on the asylum application. While we do not know why applicants with dependents were more likely to be granted asylum, those who came to their hearings with a spouse or dependent children may have appeared to adjudicators to have more sympathetic cases than applicants who appeared alone.

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[34] In a later section of this report, we discuss the unavailability of EOIR data to assess whether applicants' failure to apply for asylum within 1 year of entry to the United States was a basis for their being denied asylum. However, EOIR maintains a limited amount of data on the date of aliens' entry into the US and the date of the initial asylum application, and we used those data for this multivariate analysis. Of the 190,476 cases on which this analysis was based, data on whether the alien applied for asylum within 1 year of entry were missing in 9,051 of the 124,972 affirmative cases and 15,885 of the 65,504 defensive cases.

Defensive Applicants Who Had Been Detained Had Lower Likelihood of Being Granted Asylum Than Defensive Applicants Who Had Not Been Detained

Asylum results differed depending on whether the data were tabulated using grant rates or analyzed using statistical controls for the effects of other outcome-related factors. In terms of grant rates, there was little difference in the grant rates of defensive cases who had and had not been detained. The grant rate for applicants who had been detained was 25 percent, compared to 27 percent for those who had not been detained.

However, when we controlled for the effects of the immigration court the case was heard in; the applicant's nationality; the time period in which the decision was made; and whether the applicant had representation, filed within 1 year of entry, or claimed dependents on the asylum application, we found that those who had been detained were about two-thirds as likely to be granted asylum as those who had not been detained. According to EOIR officials, the category of applicants who had been detained may contain a higher percentage of criminal applicants, who may be statutorily ineligible to be granted asylum. Additionally, detained applicants may have more difficulty obtaining evidence in support of their claims. We did not examine the effects of detention in affirmative cases, as very few of the affirmative applicants, who are generally free to live in the United States pending the completion of their claims, were detained during their removal hearings.

Likelihood of Being Granted Asylum Differed across Immigration Judges

Immigration judges varied considerably in the asylum decisions they rendered, both across and within immigration courts, and in both affirmative and defensive cases. Grant rates for the immigration judges in our review ranged between 2 percent and 93 percent for affirmative cases, and between 2 percent and 72 percent for defensive cases. Our analysis was based on 196 immigration judges who heard more than 50 affirmative or defensive asylum cases from one or more of the 20 nationalities between October 1, 1994, and April 30, 2007. The asylum caseload of these 196 immigration judges consisted of more than three-quarters of all affirmative cases and nearly 90 percent of all defensive cases from the 19 different immigration courts we considered. (See fig. 5, below, and tables 17 and 18 in app. III, for the grant and denial rates of all the immigration judges included in our review.)

We examined the data to determine if variability in grant rates across immigration judges was at least partly because of the fact that different immigration courts have proportionately different numbers of cases from different countries. We found that even within immigration courts, there were pronounced differences in grant rates across immigration judges. This was the case even though asylum and other immigration cases were

reportedly assigned to immigration judges largely at random. For example, grant rates for affirmative cases ranged between 19 percent and 61 percent in Arlington, Va., 8 percent and 55 percent in Boston, 2 percent and 72 percent in Miami, and 3 percent and 93 percent in New York City (see fig. 5). The variation across immigration judges in many of the remaining courts was similarly large. For defensive cases, there was also large variability in the grant rates of immigration judges within the same immigration court, but the difference between the highest and lowest granting immigration judge within each immigration court was somewhat lower than for affirmative cases (see app. III, fig. 13).

Figure 5: Immigration Judge Asylum Grant Rates, Affirmative Cases, by Immigration Court
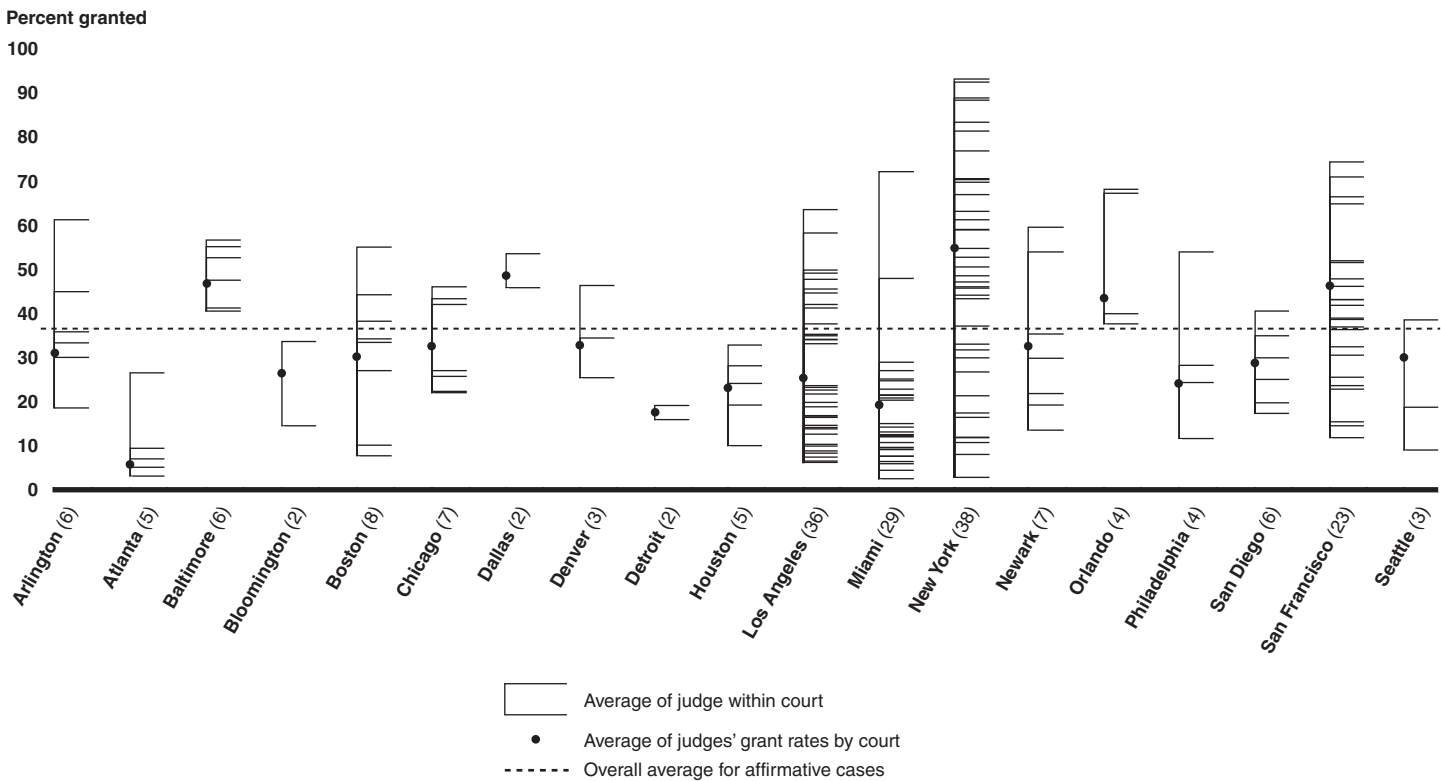
Source: GAO analysis of EOIR data.

Note: Each line within a court represents the average grant rate for a single immigration judge.

The likelihood of being granted asylum differed considerably across immigration judges within the same immigration court even after we statistically controlled simultaneously for the effects of applicants' nationality; the time period in which their case was decided; and whether

they had representation, claimed dependents, filed within 1 year of entry, and, among defensive cases, if they were ever detained. For example, in the New York immigration court, the likelihood of an affirmative applicant being granted asylum was 420 times greater if the applicant's case were handled by the immigration judge who had the highest likelihood of granting asylum than if the applicant's case were handled by the immigration judge who had the lowest likelihood in that immigration court. If we consider the two immigration judges at the highest and lowest ends of the granting spectrum to be outliers, and instead compare immigration judges who were second highest and second lowest, the disparity was still great. The likelihood of being granted asylum in New York was 122 times greater for applicants whose cases were decided by the immigration judge with the second highest versus the second lowest likelihood of granting asylum. Even when we compared the third highest and third lowest asylum granting immigration judges in New York, applicants were still 35 times more likely to be granted asylum by the former than the latter. For defensive cases in New York, the likelihood of being granted asylum was 93 times greater for applicants whose cases were decided by the immigration judge with the highest versus the lowest likelihood of granting asylum in the immigration court. (Table 2 below provides information on the extent to which the likelihood of being granted asylum varied within the same immigration court; and the last column of tables 17 and 18 in app. III shows the likelihood of being granted asylum by each immigration judge in each immigration court, after controlling for the effects of other factors.) As can be determined from table 2, in 14 out of 19 immigration courts for affirmative cases, and in 13 out of 19 immigration courts for defensive cases, the likelihood of being granted asylum was at least 4 times as great for applicants whose cases were decided by the immigration judge with the highest versus lowest grant rate in the immigration court. For example, an affirmative applicant whose case was assigned to the immigration judge most likely to grant asylum in Arlington, Va., had a likelihood (or odds ratio) of being granted asylum that was nearly 6 times as great as an applicant whose case was assigned to the immigration judge least likely to grant asylum in the Arlington immigration court. In a later section of this report, we discuss recent initiatives by EOIR to provide training, mentoring, and supervision to immigration judges whose performance EOIR has determined needs improvement, using indicators such as asylum grant rates of the immigration judges, complaints filed about immigration judge performance, and reversals and remands from the BIA.

Table 2: Likelihood of Being Granted Asylum If Case Was Heard by the Immigration Judge Most Likely to Grant Asylum, Compared to the Immigration Judge Least Likely to Grant Asylum, by Immigration Court

		Affirmative cases		Defensive cases	
		Number of immigration judges[a]	Adjusted odds ratio[b]	Number of immigration judges[c]	Adjusted odds ratio
1.	Arlington	6	5.95	7	21.73
2.	Atlanta	5	6.09	2	2.75
3.	Baltimore	6	4.10	5	4.45
4.	Bloomington	2	3.14	2	1.69
5.	Boston	8	12.71	9	6.19
6.	Chicago	7	4.05	8	2.46
7.	Dallas	2	1.68	4	11.73
8.	Denver	3	1.57	3	1.31
9.	Detroit	2	1.27	3	11.5
10.	Houston	5	6.56	8	18.65
11.	Los Angeles	36	18.19	32	24.78
12.	Miami	29	122.11	26	50.64
13.	New York	38	419.83	39	93.40
14.	Newark	7	7.46	8	9.15
15.	Orlando	4	2.93	3	5.51
16.	Philadelphia	4	9.76	3	2.57
17.	San Diego	6	4.07	8	4.93
18.	San Francisco	23	38.77	20	21.80
19.	Seattle	3	10.89	5	2.67

Source: GAO Analysis of EOIR data.

[a]Numbers represent immigration judges hearing 50 or more affirmative cases in their primary immigration court.

[b]Represents the relative likelihood (or odds ratio) of the immigration judge with the highest likelihood of granting asylum compared to the immigration judge with the lowest likelihood of granting asylum within each immigration court, after we statistically controlled for the effects of applicants' nationality; the time period in which their case was decided; and whether they had representation, claimed dependents, filed within 1 year of entry, and, among defensive cases, if they were ever detained.

[c]Numbers represent immigration judges hearing 50 or more defensive cases in their primary immigration court.

Asylum Grant Rates Were Weakly Related to Immigration Judge Characteristics

In a separate set of analyses, after statistically controlling for claimant and immigration judge characteristics, immigration judges' gender and length of experience as an immigration judge were associated with the likelihood of being granted asylum; while age, race/ethnicity, veteran status, prior government immigration experience, prior experience doing immigration work for a nonprofit organization, caseload size, and the presidential

administration under which judges were appointed were not. These results are detailed in appendix III, tables 19 and 20, and related text.

With respect to gender differences, male immigration judges' grant rate was lower than that of females for both affirmative and defensive asylum cases. We found that after statistically controlling for 14 factors, male immigration judges were about 60 percent as likely as female immigration judges to grant asylum in both affirmative cases and defensive cases. The 14 factors that we controlled statistically in this analysis were immigration judge's age, caseload size, length of service, race/ethnicity, veteran status, prior government immigration experience, prior experience doing immigration work for a non-profit organization, the presidential administration under which the immigration judge was appointed, applicant's nationality, whether the applicant was represented, time period when the case was decided, and if the applicant had claimed dependents on the asylum application, filed within 1 year of entry, and, among defensive cases, if the applicant was ever detained.

With respect to length of service, immigration judges with less than 3 ½ years of experience had a lower affirmative grant rate than those with 3 ½ to 10 years of experience, or those with 10 or more years of experience as an immigration judge. For defensive cases, immigration judges with 10 or more years of experience had the highest grant rate. After we statistically controlled for the effects of the same 14 factors as in our analysis of gender differences, we found that net of these other factors, immigration judges with 3 ½ to 10 years of experience were more likely than less experienced immigration judges to grant asylum in affirmative cases, by a factor of 1.25. In other words, controlling for the effects of the other factors, these immigration judges were 25 percent more likely to grant asylum than those with less experience. Immigration judges with more than 10 years of experience were also somewhat more likely than the least experienced immigration judges to grant asylum, but the difference was not statistically significant. Immigration judges' experience level was not significantly associated with outcomes in defensive asylum cases.

None of the other immigration judge characteristics had significant effects on the likelihood of being granted asylum. This suggests that the immigration judge characteristics for which we had data were not sufficient to account for the large differences in the likelihood of being granted asylum across individual judges.

Immigration Judges within the Same Immigration Courts Hearing Asylum Claims from Applicants of the Same Nationality Varied in Likelihood of Granting Asylum, but Immigration Judges' Characteristics Did Not Generally Affect Differences in Outcome

In our final set of analyses, we continued to find substantial disparities in the likelihood of being granted asylum even when we looked at cases that shared certain characteristics—that is, the cases of asylum applicants of the same nationality who appeared before immigration judges in the same immigration court. Our analyses focused on the likelihood of being granted asylum in four country-immigration court combinations for affirmative cases (China in New York, China in Los Angeles, Haiti in Miami, and India in San Francisco), and two country-immigration court combinations for defensive cases (China in New York, and Haiti in Miami).[35] The results of these analyses are summarized in table 21 in appendix III.

Many and often most of the immigration judges in the same immigration court differed significantly in their likelihood of granting asylum to applicants of the same nationality when compared to the immigration judge who represented the average likelihood of granting asylum in that immigration court (the "average immigration judge"). This was the case both before and after we statistically controlled for the effects of five claimant characteristics (representation, claimed one or more dependents on application, filed for asylum within 1 year of entry to the United States, time period in which application was filed, and, among defensive cases, if the applicant was ever detained). In the four immigration courts where we examined affirmative asylum cases and statistically controlled for the five claimant characteristics, we found that that between 34 percent of immigration judges handling cases from China in Los Angeles and 84 percent of immigration judges handling cases from China in New York had a likelihood of granting asylum that differed significantly from that of the average immigration judge in the same immigration court. In the two immigration courts where we examined defensive asylum cases and statistically controlled for claimant characteristics, we found that in both, approximately 40 percent of immigration judges differed significantly from the average immigration judge in the same immigration court in their likelihood of granting asylum.

The size of the estimated effects of the claimant characteristics was comparable in these analyses to what we found when we previously looked across all immigration judges and all 19 immigration courts. Having

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[35] We selected these country-immigration court combinations because they had a sufficiently large number of immigration judges rendering a sufficiently large number of decisions to produce reliable estimates in our logistic regression analyses.

dependents significantly increased the likelihood of being granted asylum in five of the six immigration court-country combinations, while having representation and applying for asylum within 1 year of entry to the United States significantly increased the likelihood of being granted asylum in four of the six combinations. Further, the likelihood of being granted asylum significantly increased over time for both affirmative and defensive Chinese applicants in New York, but significantly decreased for affirmative Chinese applicants in Los Angeles.

Noteworthy, also, is the absence of consistent effects of immigration judge characteristics. With some exceptions, we generally found that the following factors did not have statistically significant effects on the likelihood of being granted asylum: immigration judges' age, race/ethnicity, veteran status, prior government immigration experience, or prior experience doing immigration work for a nonprofit organization.

EOIR Has Taken Actions to Assist Applicants and Immigration Judges in the Asylum Process, but Some Actions to Identify Immigration Judges with Training Needs Were Limited, and the Resources and Guidance Needed to Ensure Effective Supervision Had Not Been Determined

EOIR has taken actions to improve its assistance to aliens in removal proceedings by, among other things, expanding programs to help aliens obtain representation, improving accuracy in EOIR's list of free legal service providers, and drafting proposed regulations to promote the availability of free and low-cost legal services. EOIR has also taken actions to identify and improve the performance of immigration judges who may need supervisory attention. EOIR conducted studies of immigration judges' grant rates, but did not statistically control for factors that can affect asylum outcomes. EOIR said it was using information on which immigration judges had unusually high or low asylum grant rates, in conjunction with other indicators of performance, to identify immigration judges in need of greater supervision, and has taken steps to increase training and make mentoring available for all immigration judges. However, EOIR's analyses of immigration judges' decisions did not statistically control for a number of factors that affected those decisions, and EOIR has not determined the ACIJ resources and guidance needed to ensure that immigration judges are effectively supervised.

EOIR Has Taken Actions to Expand Its Pro Bono Programs

EOIR has taken several actions to improve its assistance to aliens in removal proceedings, including expanding its Legal Orientation Program (LOP), improving the accuracy of its list of free legal providers, drafting proposed regulations to help promote the availability of free and low-cost legal services, and issuing a policy memorandum to facilitate pro bono

representation in removal proceedings. The LOP is an initiative designed to improve efficiency in immigration courts and assist adult detained aliens in removal proceedings by helping them understand their legal rights and how to access potential counsel.[36]

EOIR expanded its LOP in response to an August 2006 directive from the Attorney General to improve and expand pro bono services. Pursuant to the Attorney General's directive, EOIR increased its cadre of LOP sites from 6 to 13, although 2 sites were subsequently discontinued in 2007 and 1 additional site was added that year.[37] In March 2008, EOIR stated that because of an increase in funding for LOP in fiscal year 2008 (from $2 million to $3.76 million), it expected to establish new programs at 6 to 10 additional sites by the end of calendar year 2008 and to determine by September 1, 2008, at which current sites program services would be increased. In May 2008, an EOIR-funded evaluation of the outcomes and performance of the LOP reported that from January 1 through December 31, 2006, unrepresented asylum applicants were more likely to be granted asylum in immigration court when they received such LOP-provided services as individual orientations and self-help workshops, in addition to the initial group orientation that nearly all LOP participants receive.[38] According to the Vera Institute of Justice, asylum applicants who received any of these additional services were granted asylum 9.4 percent of the time, versus 2.4 percent for those LOP participants who attended group orientations alone. The evaluation also reported increases from 2002 (6 months before the program began) to 2005 in representation rates for individuals with applications for relief—including asylum—in sites with LOP programs, compared to sites without programs.[39] GAO did not assess the reliability of the data used by Vera in its analyses.

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[36] Immigration law provides that aliens in immigration proceedings shall have the privilege of being represented at no expense to the government by counsel selected by the alien and authorized to practice.

[37] The San Pedro, Calif., site was discontinued in November, 2007, because of ICE's decision to temporarily close the facility. EOIR chose not to renew the contract task order for the LOP program at the Laredo, Tex. facility, because of a significant reduction in the number of detained aliens in EOIR removal proceedings at the facility. The San Diego, Calif., ICE detention facility at Otay Mesa was added in fiscal year 2007.

[38] Siulc et al, *Legal Orientation Program Evaluation*, 63.

[39] Siulc et al, *Legal Orientation Program Evaluation*, 61.

EOIR has also taken actions to improve the accuracy of its list of eligible free legal service providers, and has drafted proposed regulations to strengthen the requirements for attorneys and organizations wishing to be placed on this list. According to EOIR, all individuals in immigration proceedings are to be provided a copy of the "List of Free Legal Service Providers," maintained by the Office of the Chief Immigration Judge. The list was created with the intent to increase opportunities for indigent aliens to obtain free legal counsel, and contains the names of attorneys, bar associations, and certain non-profit organizations who are willing to provide free legal services to indigent individuals in immigration proceedings. In 2005, EOIR audited the Free Legal Service Providers list for accuracy and eliminated providers that it determined were no longer providing pro bono services. In March 2008, EOIR stated that it had increased its monitoring of entities on the list and had acted to remove the names of attorneys and organizations that have not met the list's requirements. Furthermore, as a result of the Attorney General's directive to improve and expand pro bono programs, EOIR has drafted two proposed regulations which it says will ensure the integrity and promote the availability of free and low-cost legal services. As of September 2008, these draft proposed regulations were under review with DOJ's Office of Legal Policy. The first is to strengthen the requirements for entities and individuals wishing to be placed on the "Free Legal Service Providers" list. The second is to strengthen the process for recognizing and accrediting organizations and individuals charging only nominal fees for providing immigration services and wishing to be placed on EOIR's Recognition and Accreditation Roster, which appears on EOIR's Web site. EOIR's Pro Bono Coordinator stated that this regulation would take longer to develop, as it requires joint rule-making with DHS's USCIS and ICE.

EOIR issued a policy memorandum to the immigration courts in March 2008, which listed guidelines and best practices for facilitating pro bono representation in removal hearings—including such activities as appointing a liaison immigration judge to coordinate with local pro bono providers, and encouraging immigration judges to be flexible in scheduling hearings that involve pro bono providers who may require additional time to recruit and train representatives. The memorandum also listed guidelines for tracking pro bono cases in EOIR's case management database. EOIR stated that tracking appearances by pro bono counsel will enable it, among other things, to better monitor the number of pro bono cases handled by entities on the "Free Legal Service Providers" list and verify genuine pro bono representation. EOIR officials stated that EOIR planned to review how successfully immigration judges and immigration court personnel were tracking pro bono cases at the summer 2008 meeting

of the committee set up to implement the Attorney General's directive regarding pro bono representation.

EOIR Has Sought to Identify Immigration Judges Needing Supervisory Attention and Improve Their Performance, but EOIR's Analyses of Immigration Judge Decisions Were Limited, As Were the ACIJ Resources and Guidance Available to Supervise Immigration Judges

EOIR has taken several actions to identify immigration judges who may need supervisory attention and has designed mechanisms to improve the performance of those judges. Beginning in 2006, partially in response to a directive from the Attorney General that EOIR identify immigration judges in need of additional training or supervision, EOIR's Office of the Chief Immigration Judge conducted two internal studies to determine asylum grant rates across all immigration judges. However, these studies did not statistically control for the effects of a number of factors that could affect the asylum outcome. This statistical procedure would have increased the completeness, accuracy, and usefulness of comparing asylum decisions across immigration courts and judges. EOIR said it was using information reflecting which immigration judges had unusually high or low asylum grant rates, in conjunction with other indicators of performance, to identify immigration judges in need of greater supervision. EOIR has also taken actions to improve training for immigration judges and has developed a mentor directory to encourage immigration judges to share best practices. However, there are relatively few ACIJs available to supervise many geographically dispersed immigration judges, and EOIR did not provide explicit guidance to ACIJs on the elements of effective supervision of immigration judges.

EOIR Conducted Studies of Immigration Judges' Grant Rates, but the Usefulness of the Results Was Limited Because Factors Affecting Asylum Outcomes Were Not Statistically Controlled

EOIR conducted two studies of the asylum grant rates of its immigration judges, but neither study used statistical controls to examine the effects on grant rates of factors associated with asylum outcomes. EOIR stated that in 2006, its Office of the Chief Immigration Judge conducted a study to determine the grant rates for all immigration judges who made any asylum decision from fiscal years 2001 through 2006. EOIR conducted a follow-up study in June 2008, which updated the immigration judge grant rate information through the end of fiscal year 2007. EOIR said it did not run statistical analyses on the data, nor use the results of the 2006 study to identify immigration judges whose grant rates could be considered to be outliers. EOIR officials also said that immigration judges' supervisors—the ACIJs—had not been informed of the study's results as of May 2008 because EOIR had not decided the value of the grant rate information. In contrast, EOIR's June 2008 grant rate study determined the asylum grant and denial rate for each immigration judge and identified those deemed to be outliers—that is, according to EOIR, immigration judges who were among the top 16 percent of asylum granters and the top 16 percent of asylum deniers. Pursuant to the 2008 grant rate study, ACIJs were

provided information on those immigration judges under their supervision whose grant or denial rates were among the top 16 percent of immigration judges in their local immigration court and nationally.

When we compared the results of our multivariate statistical analyses with those based on immigration judge grant rates, we found considerable overlap as well as important differences between the two sets of results. Specifically, when we rank ordered the affirmative grant rates of all 196 immigration judges in our database (that is, organized them from highest to lowest granters) before statistical controls were applied, and correlated this with a similar rank ordering of the same 196 immigration judges' after statistical controls were applied, we found the correlation between the two to be high (.89). However, the relative position of a sizable number of immigration judges differed after we applied the statistical controls. With respect to affirmative cases, of the 25 immigration judges who had the highest asylum grant rates before we applied statistical controls and the 25 immigration judges who had the highest likelihoods of granting asylum after we statistically controlled for other factors, 3 immigration judges were the same and 22 were different. As an example of a difference, one immigration judge whose grant rate ranked him as the 105th highest asylum granter out of 196 immigration judges before statistical controls was the 17th highest granter after the effects of six factors associated with asylum outcomes were statistically controlled.[40] Therefore, this particular immigration judge, who would appear to be relatively average in terms of grant rate, was in the top 10 percent of asylum granters after accounting for other factors relevant to asylum outcomes. Another immigration judge's relative position changed from 186 to 117 out of 196 immigration judges when looking at the grant rate versus the likelihood of granting asylum. In this case, the immigration judge would appear to be in the top 10 percent of asylum deniers, but was, in fact, more in line with other immigration judges' decisions after other factors were statistically controlled. There were numerous other large discrepancies between the relative positions of immigration judges, including one immigration judge who ranked as the 189th highest asylum granter before other factors were statistically controlled, and the 121st highest granter after; and another

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[40] In rank ordering immigration judges based on the results of our multivariate analysis, the factors that we simultaneous statistically controlled for were applicants' nationality; the time period in which their case was decided; and whether applicants had representation, claimed dependents, filed within 1 year of entry, and, among defensive cases, if applicants were ever detained.

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immigration judge who ranked as the 171st highest granter before other factors were statistically controlled, and the 67th highest granter after.

In conducting its grant rate studies, EOIR attempted to take some factors into account such as whether the applicant was detained or had not appeared for the merits hearing. However, EOIR's grant rate studies did not take into account available data on the characteristics of asylum seekers (such as, nationality and representation) and immigration judges (such as gender and length of experience) that are statistically related to immigration judges' decisions to grant or deny asylum. The relationship between these characteristics and variability in asylum decisions by immigration judges across and within immigration courts can be determined using a multivariate statistical analysis. While generally accepted statistical practices include the use of multivariate analyses to statistically control for various factors that may affect outcomes when data on such factors are available, EOIR's studies did not statistically control for such factors. According to EOIR, (1) it does not have a trained statistician on staff who could analyze its data using such sophisticated statistical controls, and (2) its ability to obtain statistical expertise would depend on the availability of funding. While we recognize that EOIR does not currently have the expertise to conduct multivariate statistical analyses, without doing so, the completeness, accuracy, and usefulness of EOIR's grant rate studies are limited, and EOIR is hindered in its efforts to have the information it seeks to help it identify immigration judges who require additional training and supervision. The results of our statistical analyses could help EOIR, on an interim basis, further its understanding of immigration judges' asylum decisions.

EOIR duly noted that caution must be exercised when evaluating disparities in asylum grants because the asylum process is complex, asylum decisions can be affected by factors unrelated to the underlying merits of the case (such as compliance with the 1-year filing deadline), and each case is unique and cannot be directly compared with other cases. As noted earlier, EOIR said it was using information on which immigration judges had unusually high or low asylum grant rates, in conjunction with other indicators of performance (such as reversal rates for legal error), to identify immigration judges in need of greater supervision. Further, EOIR said it was improving training for immigration judges and developing a program to encourage immigration judges to share best practices.

Relatively Few ACIJs Were Tasked with Overseeing Many Immigration Judges, and Had Little Guidance to Help Assure Effective Supervision

In 2006, as part of an effort to increase management and oversight of immigration courts, EOIR reassigned a number of ACIJs from headquarters to immigration courts in field locations; however, insofar as ACIJs' being a key component of this effort, EOIR's ability to achieve its goal was hindered by limitations in both the availability of ACIJ resources and guidance to ensure that immigration judges were effectively supervised. EOIR's deployment of supervisors to field locations was a pilot program undertaken in response to the results of the Attorney General's 2006 review of the performance of immigration courts. This review was prompted by complaints from litigants and federal circuit courts, among others, about issues relating to the caliber of immigration judges' legal work and their treatment of aliens appearing before them.

ACIJs have a broad scope of responsibility, including supervising a number of immigration judges in different locations. As of August 2008, EOIR had 10 out of a total 11 ACIJs functioning in supervisory roles—6 were located in the field, and 4 were located in EOIR headquarters.[41] The 6 ACIJs in the field, in addition to handling their own caseload of immigration cases, supervised 148 immigration judges (69 percent of the total) in 32 different immigration courts.[42] The 4 ACIJs in EOIR headquarters, in addition to handling administrative matters, supervised 68 immigration judges (31 percent of the total) in 22 different immigration courts.[43] Exemplifying the span of supervisory responsibility assigned ACIJs, one field ACIJ was assigned to supervise 27 immigration judges in 8 immigration courts in Texas and Louisiana; and a headquarters ACIJ was assigned to supervise 24 immigration judges in 8 immigration courts in Illinois, Michigan, Missouri, Nebraska, Nevada, New Jersey, and Tennessee. Although EOIR's deployment of ACIJs to field locations was an effort to improve managerial contact and oversight of immigration courts, the limited number of ACIJs, in combination with ACIJs' broad span of control and limited time for supervision, limits EOIR's ability to ensure that immigration judges are being effectively supervised. EOIR has not determined how many ACIJs it needs to effectively supervise immigration

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[41] EOIR had an additional ACIJ who was not supervising any immigration judges.

[42] The 6 ACIJs deployed to immigration courts in the field were located in San Diego, Calif.; San Francisco, Calif.; Los Angeles, Calif.; Miami, Fla.; San Antonio, Tex.; and New York, N.Y.

[43] In addition to supervising immigration judges, the four headquarters ACIJs serve as focal points for the following areas: training and education; conduct and professionalism; the Institutional Hearing Program; and DHS and the Legal Orientation Program.

judges, and it has not provided ACIJs with guidance on how to carry out their supervisory role. Doing so would put EOIR in a better position to monitor immigration judge performance and take appropriate action to correct or prevent immigration judge performance issues that may arise.

Officials at EOIR said that they depend on the judgment of its ACIJs to help identify and address the mentoring, training, and peer observation needs of immigration judges and that asylum grant rate is only one of several factors that may alert EOIR management to concerns about the performance of immigration judges and the potential need for ameliorative action. These officials further noted that information on remands and reversals of immigration judge decisions, and complaints from a wide variety of sources were also of great importance in identifying the need for ameliorative action.

EOIR has a position description for its ACIJs that generically states that the role of the ACIJ is to manage and coordinate immigration judge activities and supervise the administrative operations of the adjudications program. It tasks ACIJs with a range of duties pertaining to legal, policy, operational, and human capital matters, including managing immigration judge activities. EOIR also has written performance appraisal standards for ACIJs' handling of people and workforce issues. However, these standards make brief and general reference to supervision in characterizing the behaviors that ACIJs are to demonstrate in order to obtain an outstanding, excellent, or successful rating on their handling of people and workforce issues. For example, to obtain a successful rating, ACIJs are to take actions such as training, discipline, and performance improvement plans to correct poor immigration judge performance. More detailed guidance did not exist regarding how ACIJs are to carry out their supervisory role, such as how to develop familiarity with the performance of the numerous, geographically dispersed immigration judges who were assigned to them, how they are to allocate their time between supervising immigration judges and handling their own caseload or operational duties, and how ACIJs are to use information on immigration judges' asylum grant rates in combination with other performance information they may collect.

According to a headquarters ACIJ, immigration courts are all different and the supervisory role of the ACIJs depends on their location, caseload, the immigration judges they supervise, and their relationship with the private bar. Further, according to EOIR, as of May 2008, DOJ had not yet determined whether or for how long the field ACIJ pilot program should continue. While the circumstances of immigration judges may differ and

while it is uncertain if the ACIJ pilot program will be temporary or permanent, ACIJs are nonetheless tasked with supervising immigration judges. Internal control standards call for federal agencies to design controls to assure that continuous supervision occurs to help ensure the effective management of the agencies' workforce. Given the ratio of ACIJs to immigration judges, the geographic distance between them in many cases, and the additional operational or adjudicative duties that consume the time of ACIJs, ensuring effective management through supervision cannot be easy to achieve. Providing more explicit guidance regarding the supervision ACIJs are to provide immigration judges, including how they are to use information on immigration judges' asylum grant rates in combination with other performance information they may collect, could put ACIJs in a better position to supervise immigration judges and take appropriate action to correct or prevent performance issues that may arise.

Although EOIR has not yet developed more explicit guidance for the ACIJ supervisory role, EOIR has been working on developing performance appraisals for immigration judges, as recommended by the Attorney General. EOIR reported it had implemented a system to evaluate the performance of newly appointed immigration judges.[44] In July 2008, EOIR told us it had also developed a performance appraisal system for the remaining immigration judges, but the system had not yet been implemented as the immigration judges' union had asked to negotiate on various aspects of the proposed system.

EOIR Has Taken Actions to Increase Training and Mentoring

According to EOIR, from September 2006[45] through May 2008, its Office of the Chief Immigration Judge referred 14 immigration judges for additional or ameliorative training, of whom 6 were referred for additional legal training. EOIR officials noted that additional training has typically lasted a week and that many of the immigration judges referred for training were required to participate in peer observation at the training court, in addition to individual training and mentoring. The precise number of peer observation sessions varied, but EOIR said that, in general, the immigration judges observed one mentor multiple times or observed

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[44] Additionally, EOIR began to implement a performance appraisal system for members of the BIA in July 2008.

[45] The Attorney General's recommendations for reforming immigration courts, including for improving training for immigration judges, and the Board of Immigration Appeals, were issued the previous month, in August 2006.

multiple immigration judges within the same immigration court over the course of the week, either in their own immigration court location or at a training court. According to EOIR officials, an attempt has been made to improve training for all immigration judges, and not just for those identified as needing ameliorative attention. EOIR officials said EOIR expanded its training for newly hired immigration judges in September 2006 by extending the time immigration judges are to observe hearings from 1 week to 4 weeks. In addition to the new immigration judge training program, EOIR also holds an annual immigration judge conference. This conference is a week-long training that includes lectures and presentations. Although immigration judges generally attended this conference in person, it was canceled in fiscal years 2003 through 2005 and again in 2008 as a result of budget constraints. A virtual conference that included recorded presentations was offered in place of the in-person conference in fiscal years 2004 and 2005, and EOIR officials told us in that a virtual conference, including one day devoted to asylum issues, was offered in August 2008. The virtual conference included interactive computer-based training addressing asylum issues before the immigration courts and a multimedia presentation emphasizing the importance and impact of immigration judge asylum decisions. According to EOIR, immigration judges' supervisors were instructed to organize time for each immigration judge to observe colleagues in immigration court prior to the virtual conference. EOIR officials stated that EOIR will assess the effectiveness of peer observation during the August training.

EOIR reported it has also developed a mentor directory to take advantage of the pool of expertise among the immigration judges, providing a list of immigration judges with expertise willing to serve as mentors to their colleagues on specific areas of immigration law and procedure. The mentors are to be available for consultation at any time, and supervisors may use the directory to identify resources to help sharpen immigration judges' legal skills. The mentor directory was made available to all immigration judges on-line in April 2008 through the *Immigration Judge Benchbook*.

BIA Streamlining Was Associated with a Reduction in BIA's Backlog and Fewer Outcomes Favorable to Asylum Seekers

The streamlining of BIA's administrative procedures was associated with a pronounced decrease in the overall backlog of appeals pending at the BIA, including asylum appeals, and in the number of BIA decisions favorable to asylum seekers.[46] Pursuant to the BIA's March 2002 streamlining changes in which cases involving asylum claims could, for the first time, be decided by a single BIA member and without a written opinion, there was a marked increase in the number of asylum decisions rendered by the BIA, coupled with a reduction in the average amount of time that asylum appeals were on the BIA docket. BIA decisions favorable to asylum applicants were more than 50 percent lower in the 4 years following the 2002 changes, a period during which BIA members made substantial use of the authority to affirm immigration judge decisions without writing an opinion (AWO). EOIR proposed regulations in 2008 allowing for more written opinions and expanding the criteria for referring appeals to three-member panels, but it is too soon to tell how these procedures will affect asylum appeals outcomes.

BIA's Backlog of Cases Decreased after Streamlining

DOJ realized its objective of reducing the BIA's overall backlog of cases, including asylum cases, by streamlining BIA's procedures for handling immigration appeals. During each of fiscal years 1995 through 2000, the annual number of cases completed at the BIA was generally lower than the number of cases received, driving up the appeals backlog to a peak of over 58,000 cases in fiscal year 2000 (see fig. 6). With the implementation of BIA's initial streamlining in late fiscal year 2000—which applied to a number of categories of appeals other than asylum, withholding, or CAT—BIA's overall backlog of cases began to decrease. In fiscal year 2002, when DOJ authorized the inclusion of asylum, withholding, and CAT appeals in the category of cases subject to streamlining procedures and made single member review the primary mode of BIA decision-making, the overall BIA backlog decreased further and was at its lowest level in 12 years in fiscal year 2006, with approximately 26,100 pending appeals, before increasing slightly in fiscal year 2007 to about 27,700 pending appeals.

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[46] BIA streamlining was authorized by regulation in October 1999, implemented for certain categories of appeals in September 2000, and expanded to apply specifically to asylum, withholding and CAT appeals in March 2002.

Figure 6: Overall BIA Receipts, Completions, and Pending Appeals of Immigration Judge Decisions, by Fiscal Year

Number of Appeals from IJ Decisions

Fiscal year of BIA decision

Receipts

Completions

Pending
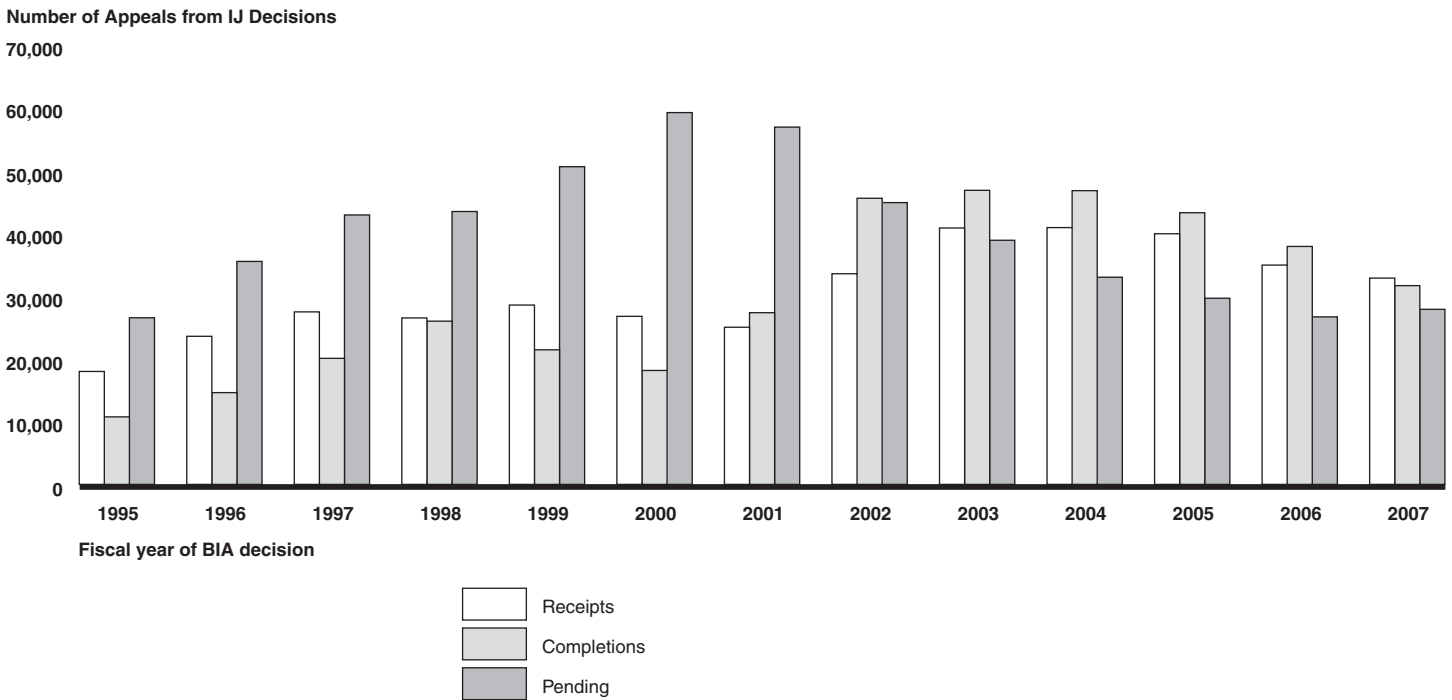
Source: GAO analysis of EOIR data.

For BIA appeals in cases involving asylum applications, the backlog of cases grew until fiscal year 2001, and then began to decrease beginning in fiscal year 2002, the year in which streamlining was extended to asylum, withholding, and CAT appeals. The backlog was at its lowest level in 13 years in fiscal year 2007, at about 18,700 pending appeals (see fig. 7).

Figure 7: BIA Asylum Receipts, Completions, and Pending Appeals of Immigration Judge Decisions, by Fiscal Year

Number of asylum appeals from IJ decisions

Fiscal year of BIA decision

- □ Asylum receipts
- ▨ Asylum completions
- ▨ Asylum pending
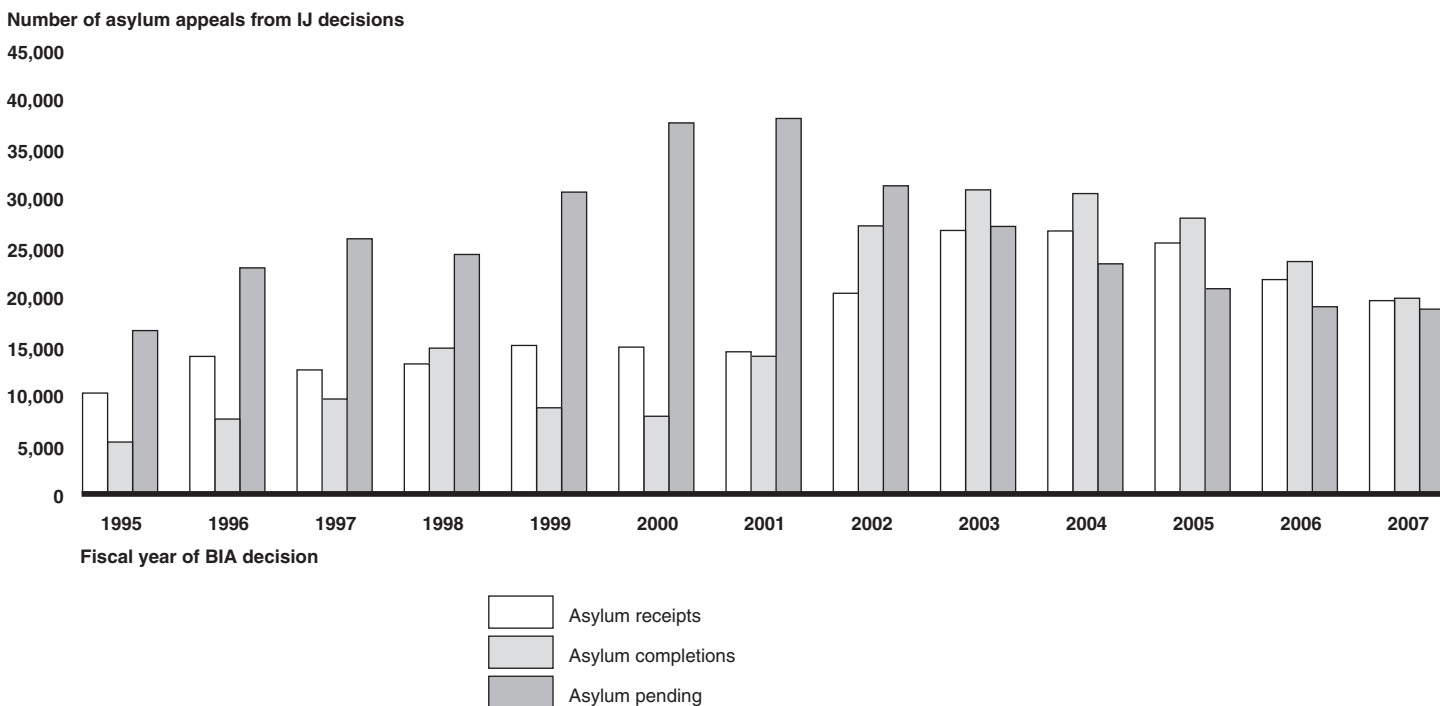
Source: GAO analysis of EOIR data.

Following the March 2002 streamlining, there was a pronounced increase in the annual number of BIA decisions involving asylum cases, and a decrease in the average amount of time taken to decide asylum cases on BIA's docket (see fig 8). The overall number of BIA asylum decisions was about 12,000 in fiscal year 2001, increased to a high of between about 22,000 and 23,000 in fiscal years 2002 through 2004, and decreased to about 15,000 in fiscal year 2006. From fiscal years 2000 through 2006, the average number of days from filing the appeal to the decision's being rendered decreased each year, decreasing from about 1,100 days in fiscal year 2000 to about 400 days in fiscal year 2006. These changes are understandable given that BIA's streamlining procedures—reducing the number of decision makers, in most cases from three to one, and reducing the requirements for documenting the rationale for the decision—could lead to expedited case processing.

Figure 8: Number of BIA Asylum Decisions and Average Time from Filing of Appeal to Decision, by Fiscal Year of BIA Decision
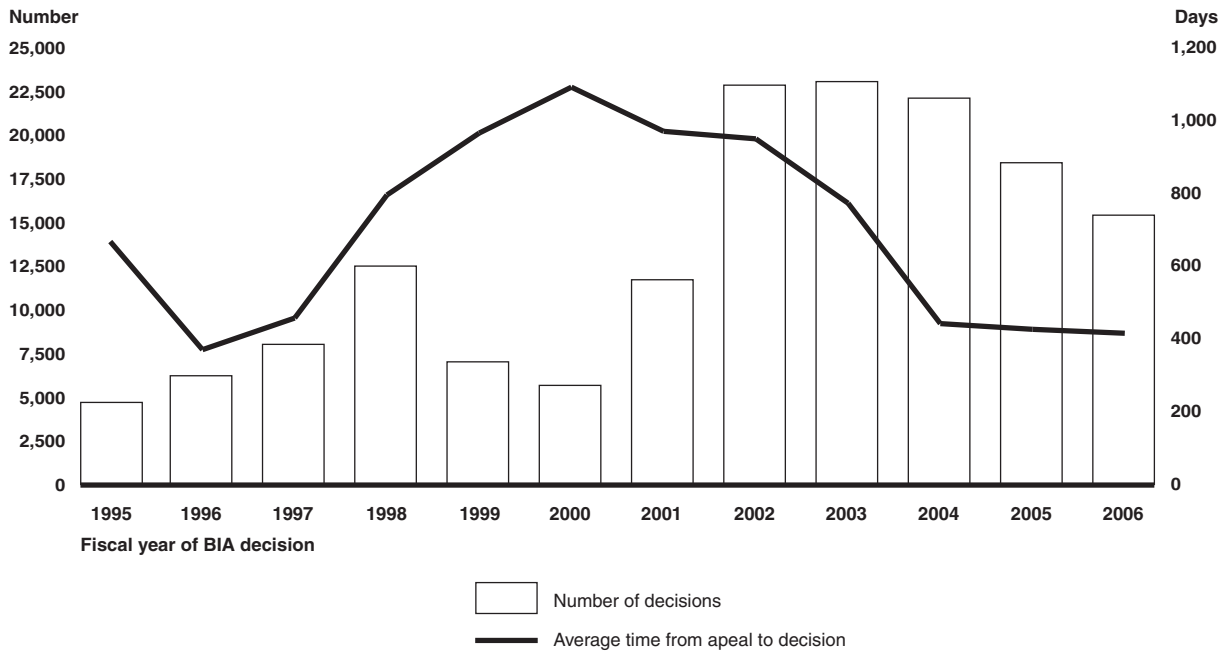
Source: GAO analysis of EOIR data.

BIA Decisions Favoring Asylum Applicants Decreased, and Decisions by Single BIA Members Were Less Favorable to Asylum Applicants than Decisions by Three-Member Panels

BIA Decisions Favoring Aliens Appealing Asylum Decisions Decreased Following the March 2002 Streamlining

BIA decisions favoring the alien in asylum appeals decreased following the 2002 streamlining. Although there were limitations in the data maintained by EOIR, we were able to derive general estimates of the change in outcomes for asylum applicants that were associated with the 2002 streamlining by merging EOIR data on decisions made by immigration

judges with EOIR data on the results of appeals of these decisions to the BIA.[47] BIA decisions favoring the alien in asylum appeals—including granting asylum, dismissing an appeal by DHS of an immigration judge's grant of relief through asylum, or remanding the case to the immigration judge—decreased following the 2002 streamlining, from 21 percent in the period from October 1, 1997, through March 14, 2002, to 10 percent in the period from March 15, 2002, through September 30, 2006. In addition, the percentage of BIA decisions granting the alien relief in the form of voluntary departure from the United States also decreased following the 2002 streamlining, from 25 percent to 17 percent.[48] BIA decisions that favored DHS (dismissing an applicant's appeal of an immigration judge's asylum denial) remained constant, at 27 percent in the periods before and after streamlining. Appeals by aliens and DHS represented 97 percent and 3 percent, respectively, of BIA's asylum appeals caseload from October 1997 to September 2006. BIA members used their authority to issue AWOs in 44 percent of the asylum cases they reviewed—35 percent without a grant of voluntary departure (with 98 percent of these resulting in removal orders)--and 9 percent resulting in grants of voluntary departure (see fig. 9). Overall, 78 percent of AWOs issued by the BIA after streamlining resulted in removal orders.

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[47] EOIR does not track in its data system the specific legal issues underlying an alien's or DHS's appeal of an immigration judge decision to the BIA, nor the BIA's decision on each of the issues raised in the appeal. The methods we used to merge the EOIR data sources and to categorize the BIA decision outcomes are described in appendix I.

[48] Voluntary departure allows an otherwise-removable alien to depart the United States at his or her own personal expense and return to his or her home country or another country if the individual can secure an entry there.

Figure 9: BIA Decisions in Asylum Appeals, before and after the March 2002 BIA Streamlining Reforms

Percent of all appeals outcomes

Outcomes of BIA asylum appeals decisions

☐ October 1, 1997, through March 14, 2002

▨ March 15, 2002, through September 30, 2006
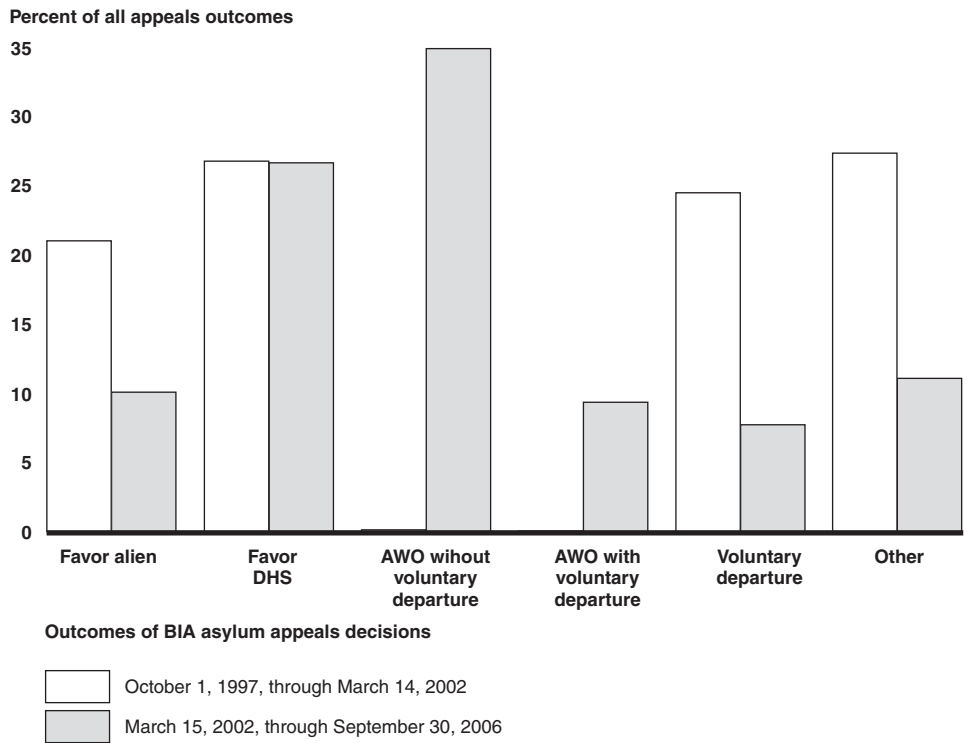
Source: GAO analysis of EOIR data.

Note: The category "other," encompasses BIA decision categories that were not readily coded as favoring one or the other appealing party, nor involved the BIA's AWO procedures or a grant of voluntary departure. It includes summary dismissals of appeals without briefs filed, grants of temporary protected status for certain nationals in specified time periods, cases where the BIA ruled that it did not have jurisdiction over the appeal, and other categories not clearly related to a decision on the merits of the appeal. See Appendix I for a detailed discussion of our coding decision rules.

The large pre- versus post-2002 differences in BIA decisions, as illustrated in figure 9, mask some annual variation in outcomes that occurred during the period covered by our analysis. For example, (1) the level of use of AWOs without voluntary departure that occurred after the 2002 streamlining increased for 2 years, and then began to decrease in recent years; and (2) decisions favorable to DHS fluctuated from fiscal year 1998 until 2002, with a substantial decrease occurring between fiscal years 2000 and 2002. Decisions favorable to DHS then increased substantially in the following 4 years (see fig. 10).

Figure 10: BIA Decisions in Asylum Appeals, by Fiscal Year of BIA Decision

Percent

Fiscal year of BIA decision

— — Voluntary departure
—— Favor alien
■ ■ ■ Favor DHS
- - - - Other
▬▬▬ AWO without voluntary departure
·········· AWO with voluntary departure
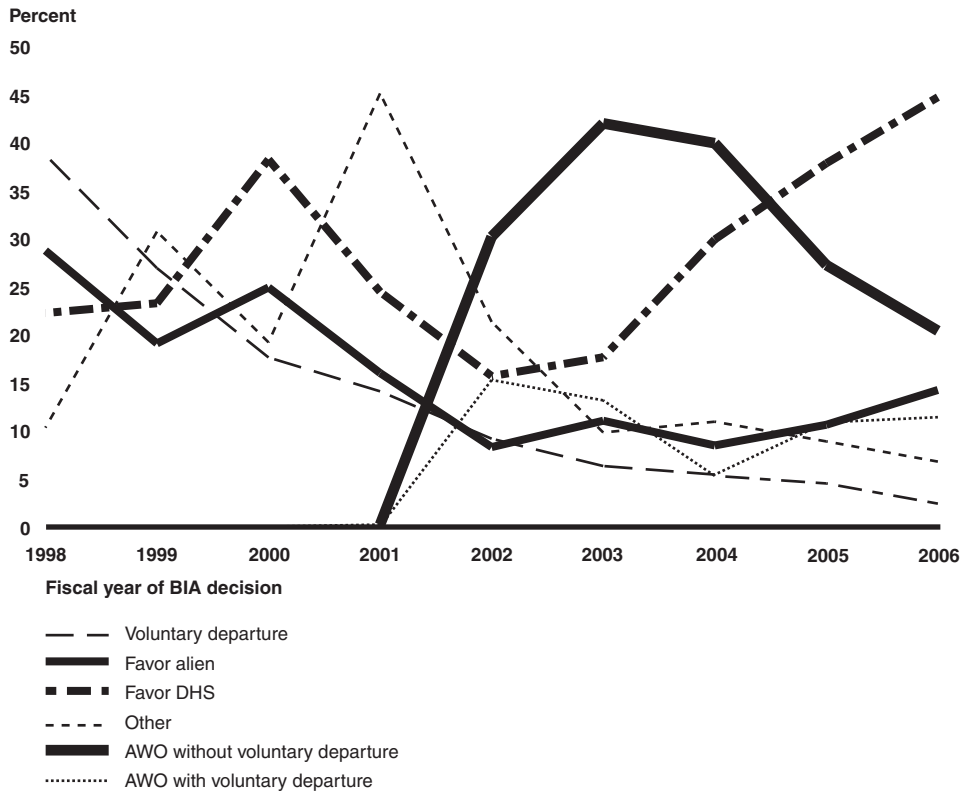
Source: GAO analysis of EOIR data.

The decrease in the percentage of BIA asylum decisions favorable to the alien following the March 2002 streamlining occurred in both affirmative and defensive asylum cases and was significantly greater for those who had applied defensively. Among applicants who had applied for asylum affirmatively, the decreases were significantly larger when the applicant was represented at the BIA and when the applicant had dependents.[49] Among the group of appellants who had applied for asylum defensively, those without representation experienced significantly larger declines in favorable outcomes, as did those who were not detained. Declines did not

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[49] Less than 1 percent of affirmative applicants in our analysis were detained at the time their appeals were decided by the BIA, and the increase in favorable outcomes for them shown in the table was not significant.

differ significantly between defensive applicants who had dependents and those who did not (see table 3.) [50]

Table 3: BIA Decisions Favoring Asylum Applicants, before and after March 2002 BIA Streamlining Reforms, by Claimant Characteristics

Claimant characteristic		Percent (of total number) of BIA decisions favoring affirmative asylum applicants		Percent (of total number) of BIA decisions favoring defensive asylum applicants	
		Pre- Streamlining: 10/1/97 – 3/14/02	Post-Streamlining: 3/15/02 – 9/30/06	Pre- Streamlining: 10/1/97 – 3/14/02	Post-Streamlining: 3/15/02 – 9/30/06
All		19	11	24	8
		(11,667)	(37,957)	(10,063)	(25,385)
Representation	**Yes**	23	13	26	9
		(7,629)	(29,954)	(7,280)	(19,671)
	No	10	7	19	5
		(4,038)	(8,003)	(2,783)	(5,714)
Dependents	**Yes**	24	10	29	10
		(956)	(5,689)	(402)	(1,048)
	No	18	12	24	8
		(10,711)	(32,268)	(9,661)	(24,337)
Currently detained	**Yes**	8	11	13	7
		(124)	(175)	(2,491)	(3,271)
	No	19	11	28	8
		(11,543)	(37,782)	(7,572)	(22,114)

Source: GAO Analysis of EOIR data.

Note: Numbers in the table are the total numbers of applicants on which the percentages are based.

Single Member BIA Decisions Were Associated with Less Favorable Outcomes for Asylum Applicants than Three-Member Panel Decisions

Of all BIA decisions in asylum appeals from fiscal years 2004 through 2006, 92 percent of decisions were made by single BIA members, of which 7 percent of these favored the alien. [51] (See table 4.) In contrast, 8 percent of decisions were made by panels, with 52 percent of these decisions favoring the alien. Although the percent of appeals favoring the alien increased significantly over this time period both for single-member decisions and three-member panel decisions, the increase in favorable decisions made by three-member panels was significantly greater and doubled during that period.

[50] Only 4 percent of defensive applicants in our analysis had dependents.

[51] EOIR officials stated that in fiscal year 2004 EOIR began maintaining reliable data regarding whether the appeal was decided by a single member or a three-member panel.

Table 4: BIA Asylum Decisions Favoring Alien Made by Three-Member Panels versus Single Members, Post 2002 Streamlining

Type of decision	Fiscal year 2004		Fiscal year 2005		Fiscal year 2006		Fiscal years 2004-2006	
	Percentage (number) of total decisions made	Percentage (number) of decisions favorable to alien	Percentage (number) of total decisions made	Percentage (number) of decisions favorable to alien	Percentage (number) of total decisions made	Percentage (number) of decisions favorable to alien	Percentage (number) of total decisions made	Percentage (number) of decisions favorable to alien
Three-member panel	9 (1,326)	37 (497)	7 (793)	54 (432)	8 (804)	74 (591)	8 (2,923)	52 (1,520)
Single member	91 (13,291)	6 (742)	93 (10,055)	7 (721)	92 (9,042)	9 (812)	92 (32,388)	7 (2,275)

Source: GAO analysis of EOIR data.

EOIR Has Been Making Additional Changes to the BIA Adjudication Process as a Result of the Attorney General's Review

Following a 2006 review of the immigration courts and the BIA, the Attorney General directed EOIR to undertake regulatory changes to the streamlining rules with the intent of improving BIA adjudicatory procedures. In June 2008, EOIR published proposed regulations for comment in the *Federal Register*.[52] The regulations are intended to codify the discretion that BIA members have in deciding whether to write opinions or issue AWOs. BIA officials told us that the BIA believed it always had this discretion under the 2002 streamlining regulations and had already begun to issue more written opinions. The regulations also propose to expand the criteria for the referral of appeals to three-member panels, allowing a single BIA member to refer a case to a three-member panel when the case presents a particularly complex, novel, or unusual legal or factual issue.

Additionally, following the Attorney General's review, EOIR published an interim rule in December 2006 increasing the size of the BIA by 4 members from the 11 members authorized by the 2002 streamlining to 15 members, and expanding the list of persons eligible to serve as temporary BIA members.[53] The rule became final in June 2008.[54] One of DOJ's stated reasons for the increase was to put the BIA in the best position to

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[52] 73 Fed. Reg. 34,654 (June 18, 2008).

[53] 71 Fed. Reg. 70,855 (Dec. 7, 2006).

[54] 73 Fed. Reg. 33,875 (June 16, 2008).

implement the Attorney General's directives encouraging the increased use of one-member written opinions and three-member panel decisions. Between December 2006 and May 2008, the number of permanent members did not exceed nine members, although EOIR stated that the BIA has used between two and five temporary members at any one time to help manage the caseload on a temporary basis. In May 2008, the BIA had 8 members, and the Attorney General appointed 5 new members, bringing the total number to 13. It is too soon to tell how these regulatory changes might affect outcomes for asylum appellants.

Data Limitations Precluded Determining the Effects of the 1-Year Rule and the Resources Expended Adjudicating It

Data limitations prevented us from determining the effects of the 1-year rule and the resources spent adjudicating it. EOIR does not collect data that would enable us to determine the effects of the 1-year rule on the filing of fraudulent asylum applications or on immigration judge decisions to deny asylum because of it. DHS and DOJ do not maintain records on how much time asylum officers, immigration judges, and DHS attorneys spend addressing issues related to the rule.

Data Were Not Available to Assess the Effects of the 1-Year Rule on Fraudulent Applications and Denials

We could not determine the effects of the 1-year rule on the filing of fraudulent asylum applications or on immigration judge decisions to deny asylum because data were not available to conduct such analyses. Currently, EOIR does not collect data related to the effect of the 1-year rule on asylum decisions and applicants because, according to agency officials, EOIR's mission of fair and prompt adjudication of immigration proceedings has not required its staff to track data on the legal basis for the decisions. Therefore, it remains unknown what impact the 1 year filing deadline may have had on asylum fraud or the extent to which this deadline may have prevented asylum seekers with a well-founded fear of persecution from being granted asylum.

It is difficult to assess the effect of the 1-year rule on reducing fraud because good measures of deterring fraudulent behavior are not available, and the presence of fraud is generally difficult to identify and prove. In contrast, it was difficult to assess the effect of the 1-year rule on asylum denials because EOIR does not maintain automated data on the reasons underlying immigration judge decisions. DHS does maintain data on whether the affirmative asylum cases it decides are referred to immigration court because of the 1-year rule. However, the data do not

shed light on whether the 1-year rule was the only reason for referring a case to immigration court or whether it was one of several possible reasons.

DHS data show that from fiscal years 1999 through 2006, asylum officers referred about 64,000 cases to immigration court based at least in part on the 1-year rule. During this period, cases referred by asylum officers to immigration court based on the 1-year rule, as a percent of total cases interviewed and referred by asylum officers, peaked in fiscal years 2001 through 2003 at around 43 to 45 percent, as shown in table 5.

Table 5: Asylum Cases Referred at Least in Part on the 1-Year Rule by DHS Asylum Officers to Immigration Judges, by Fiscal Year

Fiscal year	Asylum cases filed with DHS	Total interviewed cases referred to immigration judge	Cases referred on 1-year rule	1-year rule referrals as percentage of all interviewed cases referred
1999	37,896	19,422	3,876	20
2000	46,340	19,577	6,032	31
2001	62,871	25,126	11,188	45
2002	64,644	31,789	13,699	43
2003	46,945	26,185	11,131	43
2004	34,170	19,762	7,159	36
2005	32,899	18,835	6,307	33
2006	36,510	19,265	4,532	24
Total	**362,275**	**179,961**	**63,924**	**36**

Source: GAO analysis of DHS Asylum Office data.

However, the total number of cases referred by asylum officers to immigration judges constitutes only a portion of all the asylum cases in which the 1-year rule was adjudicated in the immigration courts. In the absence of EOIR data, our 2007 survey asked immigration judges to estimate the frequency and outcomes of their asylum cases that involved the 1-year rule during the past year. Nearly all (98 percent) of the respondents said the 1-year issue (questions about the date of entry or eligibility for exceptions to the rule) had to be resolved in at least some of the asylum cases they adjudicated, including 55 percent who said the rule was an issue in about one-half or more of their cases. Further, 85 percent of the respondents said they denied asylum in some of the cases they had heard in the past year (including 12 percent who said they had denied

asylum in about one-half or more of their cases) because they found that the applicant was ineligible because of the 1-year rule.

Data Were Not Available to Determine the Amount of Resources Expended In Adjudicating the 1-Year Rule

We could not determine the amount of resources spent adjudicating asylum cases related to the 1-year rule because DHS and DOJ do not maintain records on how much time asylum officers, immigration judges, and DHS attorneys spend addressing issues related to the rule. We asked immigration judges in our 2007 nationwide survey to provide estimates of the average amount of time they spent adjudicating the 1-year rule, and these ranged from less than 30 minutes to more than 2 hours. The majority of survey respondents (79 percent) said that adjudicating the rule took less than an hour; 15 percent, between 1 hour and less than 2 hours; 2.5 percent, 2 hours or more.

Immigrant advocates have argued that it is important to have data on how many applicants are denied asylum based on the 1-year rule because such applicants may have a well-founded fear of persecution, as do asylees, but they must meet a higher standard to remain in the United States; that is, to be granted a "withholding from removal."[55] Withholding from removal is a less favorable outcome than a grant of asylum because it confers fewer immigration benefits, including the inability to bring a spouse and minor children to the United States for family reunification. EOIR has stated that gathering historical data on the impact of the 1-year rule on applicants and their dependents would present difficulties for the agency because, among other things, (1) gathering this data would be prohibitively resource intensive to retrieve, transcribe, and review audio recordings of immigration hearings, which are typically transcribed only if the case is appealed to the BIA and (2) such an effort may not produce the desired result because immigration judges often address the merits of asylum cases in alternative findings so that the determinative basis for the ultimate denial is unclear. EOIR officials stated that they believed that of those cases where the 1-year rule is a factor in the immigration judge's denial of asylum, in most cases it is only one reason for denial. EOIR stated that gathering prospective data on the impact of the 1-year rule would involve considerable cost in that gathering this data would require changes in EOIR's administrative processing and data tracking systems.

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[55] As opposed to the requirement that the applicants demonstrate a "reasonable possibility" of persecution to be granted asylum, applicants must demonstrate that persecution is "more likely than not" to be granted a withholding from removal (see fn. 16).

If the Congress believes it is important for EOIR to begin collecting data on the impact of the 1-year rule on asylum decisions, the applicants, and their dependents, it would need to direct EOIR to develop a cost effective method for carrying this effort out. For such data collection activities to result in useful data, Congress would have to direct EOIR to develop mechanisms to directly capture the key elements underlying an immigration judge's decision, so that analysts would be able to identify those instances in which the 1-year rule was the determinative basis in the decision.

Conclusions

We found large differences in asylum decisions among immigration judges. Our analysis used more comprehensive statistical procedures, examined a longer period of time, and had data on more potential explanatory factors than the analyses reported in EOIR's grant rate studies. Because data were not available on the facts, evidence, and testimony presented in each asylum case, nor on immigration judges' rationale for deciding whether to grant or deny a case, we could not measure the effect of case merits on case outcomes. However, the size of the disparities in asylum grant rates creates a perception of unfairness in the asylum adjudication process within the immigration court system.

We commend EOIR for taking actions to collect information on the variation of asylum outcomes across immigration judges and to attempt to integrate that information into its oversight of immigration judges. However, we believe that EOIR's grant rate studies have weaknesses that limit their ability to identify immigration judges who have unusually high or low rates in the granting of asylum. Although EOIR has attempted to take into account a few of the factors that may be associated with variation in asylum grant rates among immigration judges, we believe that the statistical methods we applied to EOIR's data provide a more complete, accurate, and useful picture of asylum rulings for the immigration judges included in our analysis. Without statistically controlling for factors that could affect asylum decisions, including variations in the types of cases immigration judges adjudicate, some of the immigration judges who EOIR's grant rate studies determined to be unusually high granters and deniers of asylum may actually be less extreme than they appear, while others who do not appear to be outliers may actually be more extreme after statistical adjustment. Consequently, some immigration judges identified as needing supervisory assistance and attention when EOIR uses its grant rate results in combination with other performance indicators may sometimes not be the same individuals who are identified once certain factors associated with asylum decisions are

taken into account. We recognize that decisions about whether and which immigration judges' skills need improvement should not depend entirely on statistical disparities in asylum decisions, as there are other indicators (including high remand and reversal rates) that should be taken into account in making such decisions. Nevertheless, we believe that the information we produced, in conjunction with other indicators of immigration judge performance that EOIR is collecting and considers to be important, would put EOIR in a better position to identify immigration judges who would benefit from supervisory attention and assistance.

While the information we produced through our analyses can be useful to EOIR for a limited amount of time, it represents an analysis of immigration judges' decisions during a 12 ½ year period ending in April 2007. As time goes on, there will be turnover in immigration judges, changes in country conditions that will prompt changes in the composition of applicants seeking asylum in this country, and possibly other unanticipated changes that could affect variability in asylum outcomes. Periodic updates using the types of multivariate analyses that we did would provide EOIR with a more complete, accurate, and useful picture of immigration judge decision making over time than the current approach. These analyses would also facilitate EOIR's goal of using data on grants and denials, in combination with other information about immigration judges, to identify those whose skills may need to be improved through training or other means. We recognize that EOIR currently does not have the expertise or the budget to perform sophisticated statistical analyses and that acquiring the expertise would involve some cost. We believe that such an effort should be considered, however, because ensuring both the reality and perception of fairness in the asylum system is a worthwhile goal.

With regard to supervision, EOIR has made efforts to improve oversight and management of the immigration courts by redeploying some ACIJs from headquarters to field locations. However, EOIR has not determined how many ACIJs it needs to effectively supervise immigration judges, and it has not provided ACIJs with guidance on how to carry out their supervisory role. We believe that building blocks of an effective management system involve allocating the right number of resources and delineating the responsibilities of individuals tasked with carrying out supervisory functions. Doing so would put EOIR in a better position to monitor immigration judge performance and take appropriate action to correct or prevent immigration judge performance issues that may arise.

Recommendations for Executive Action

To address disparities in asylum outcomes that may be unwarranted and to facilitate EOIR's goal of identifying immigration judges who may benefit from supplemental efforts to improve their performance, we recommend that EOIR's Chief Immigration Judge take the following two actions:

- Utilize the information from our multivariate statistical analyses to identify which immigration judges remained many times more or less likely to grant asylum than others, after accounting for claimant and immigration judge characteristics.

- Identify and examine cost-effective options (e.g., developing an in-house capability or hiring a private contractor) for acquiring the expertise needed to perform periodic multivariate statistical analyses of immigration judges' asylum decisions.

In addition, to more fully respond to the Attorney General's directive to strengthen management and oversight of immigration courts, we recommend that EOIR's Chief Immigration Judge

- develop a plan for supervisory immigration judges, to include an assessment of the resources and guidance needed to ensure that immigration judges receive effective supervision.

Agency Comments

We requested comments on a draft of this report from DOJ and DHS. DOJ and DHS did not provide official written comments to include in our report. However, on September 11, 2008, EOIR's liaison stated that EOIR agreed with our recommendations. EOIR also provided technical comments, which we incorporated into the report, as appropriate. In an email received on September 19, 2008, DHS's liaison stated that DHS had no comments on the report.

We are sending copies of this report to the interested congressional committees, the Attorney General and the Secretary of Homeland Security. We will also provide copies to others on request. In addition, the report will be available at no charge on the GAO Web site at http://www.gao.gov.

Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. For further information about this report, please contact Richard M. Stana, Director, GAO Homeland Security and Justice Issues, at (202) 512-8777 or at stanar@gao.gov. GAO staff members who were major contributors to this report are listed in appendix V.

Richard M. Stana, Director,
Homeland Security and Justice Issues

Appendix I: Objectives, Scope, and Methodology

Our reporting objectives were to (1) identify what factors affected the variability in asylum outcomes in immigration courts; (2) identify what actions DOJ's Executive Office for Immigration Review (EOIR) has taken to assist applicants in obtaining legal representation and immigration judges in rendering asylum decisions, and how, if at all, these actions could be improved; (3) determine what changes in asylum backlogs and outcomes occurred following the streamlining of appeals procedures at the Board of Immigration Appeals (BIA); and (4) identify what information existed on the effects of the 1-year rule on reducing fraudulent asylum applications and preventing applicants from being granted asylum and what resources have been expended in adjudicating it.

To address the first and third objectives, we obtained and analyzed over 12 years of EOIR data on asylum outcomes in the immigration courts and at the BIA. Our methods for obtaining and analyzing these data are described below. Prior to developing and analyzing the EOIR data, we assessed the reliability of each data source and used only the data that we found to be sufficiently reliable for the purposes of our report. The actions we took to reach this conclusion are described in detail below.

To address our fourth objective, we also surveyed from May through July 2007 the 207 immigration judges who had been in their positions since at least September 30, 2006, and elicited responses from them regarding the challenges they faced in adjudicating the 1-year rule. In addition, we obtained from DHS data on the number of applicants referred to immigration court from the Asylum Division in fiscal years 1999 through 2007, and the percentage of referrals for which the 1-year rule was the stated reason for referral.

To address all four of our objectives, we also analyzed research on factors affecting asylum outcomes; reviewed DOJ documents covering asylum policies and procedures; interviewed agency officials at headquarters and in the field; and visited three of the four largest immigration courts in the country, ranked in terms of asylum decisions in fiscal year 2006—New York City, Los Angeles, and San Francisco—and two smaller immigration courts handling large percentages of cases of aliens in detention—Varick Street in New York City, and San Pedro, Calif.—where we spoke with immigration judges, court administrators, attorneys representing asylum applicants and for DHS, and representatives of immigrant advocacy groups. We also observed removal hearings. Because we selected nonprobablity samples of immigration courts and stakeholders associated with these immigration courts, the information we obtained at these locations may not be generalized either within the immigration courts or

to all immigration courts nationwide. However, the information we
obtained at these locations provided us with a perspective on
circumstances associated with asylum proceedings.

Factors Affecting Variability in Asylum Outcomes in Immigration Court

Analysis of Data on Immigration Judge Decisions

We used logistic regression multivariate statistical models to examine all
decisions rendered by immigration judges from October 1, 1994, through
April 30, 2007, that involved asylum seekers from the 20 countries that
produced the most asylum cases and the 19 immigration courts that
handled the largest numbers of asylum cases. Each of the 20 countries and
19 immigration courts contributed a minimum of 800 affirmative and 800
defensive asylum cases to our analyses. The results of our analysis cannot
be generalized to asylum seekers from other countries or to other
immigration courts. Our statistical models are described in more detail in
appendixes II and III.

To compile the data for analysis, we (1) obtained from EOIR, records of all
immigration court proceedings that occurred during the period covered by
the study, (2) selected those records where the immigration judge made
the first decision on the asylum application (eliminating decisions
rendered following appeals), (3) selected only the records for "lead"
applicants (eliminating duplicate decisions for a spouse and dependent
children), and (4) selected the immigration courts and countries that
contributed a minimum of 800 cases. We then (5) obtained biographical
information from EOIR on those immigration judges who had served
during the time period of the study, and (6) merged these data with the
EOIR proceedings data to produce a combined dataset for analysis that
contained proceedings records with information on the characteristics of
the applicants, the immigration judges, the immigration courts, and the
decision rendered on the applicants' asylum applications.

Because we were interested in those proceedings in which the
immigration judge made an asylum decision without any review or
direction from the BIA, we limited our analysis data set to only those
proceedings with records that included the first decision on the merits of
the asylum case made by an immigration judge.

Data on Immigration Judge Characteristics

EOIR provided us biographical information, including prior employment history and prior immigration court assignments, for 284 of the 295 immigration judges who had made asylum decisions during the period of our study. We obtained additional biographical information on four immigration judges by conducting searches on the Internet and confirmed the accuracy of this additional information with EOIR. We obtained data on immigration judges' race/ethnicity, gender, age, and veteran status from the Office of Personnel Management's database on federal civilian personnel, the Central Personnel Data File (CPDF). Table 6 below lists the variables used in our analysis and the source of the data.

Table 6: Variables Used in GAO Analyses of Factors Affecting Asylum Outcomes

Variable	Data source
Asylum decision	EOIR
Immigration court in which the asylum decision was made	EOIR
Immigration judge (name and code)	EOIR
Nationality of asylum seeker	EOIR
Asylum case type • Affirmative (filed with Asylum Office) • Defensive (filed at immigration court)	EOIR
Representation • Represented by counsel recognized to practice in immigration court • Not represented	EOIR
Dependents • Has one or more dependents • Has no dependents	EOIR
Time period during which the case was adjudicated 1. 10/1/1994 – 3/31/1997 2. 4/1/1997 – 9/10/2001 3. 9/11/2001 – 4/30/2007	EOIR
Detention status (defensive cases, only) • Currently or previously detained • Never detained	EOIR
Application filed within 1 year of entry • Yes • No • Date of initial application or date of entry missing in EOIR data	EOIR
Gender of immigration judge • Case adjudicated by male immigration judge • Case adjudicated by female immigration judge	CPDF

Variable	Data source
Age of immigration judge at the time of adjudication • Case adjudicated by immigration judge 50 years-old or older • Case adjudicated by immigration judge less than 50 years-old	CPDF
Race/ethnicity of immigration judge • Case adjudicated by white, nonHispanic immigration judge • Case adjudicated by all other immigration judges	CPDF
Immigration judge has prior government-related immigration experience • Yes • No	EOIR biographies
Immigration judge has prior experience doing immigration work for a nonprofit organization • Yes • No	EOIR biographies
Length of service as an immigration judge at time of adjudication • 3.49 years or less • 3.5 - 9.9 years • 10 years or more	EOIR and CPDF
Party of the administration under which the immigration judge was appointed • Democratic • Republican	CPDF
Veteran status • Veteran preference • No veteran preference	CPDF
Immigration judge caseload (number of decisions rendered in all types of cases in the 90 days preceding case adjudication) • Cases decided by immigration judges with a caseload of < 30 cases • Cases decided by immigration judges with a caseload of 30-64 cases • Cases decided by immigration judges with a caseload of more than 64 cases	EOIR

Source: GAO analysis of EOIR and CPDF data.

Data Analysis

The likelihood of a grant of asylum was the dependent variable in most of our analyses. To measure the effect of factors that could explain the variability in asylum outcomes, we modeled the effect of claimant, immigration judge, and immigration court characteristics on case outcome. We conducted separate analyses for affirmative and defensive cases in our sample to control for characteristics shared by cases in each of those groups that could affect case outcomes, such as whether the asylum application had already been reviewed by an asylum officer. Data

limitations prevented us from controlling for factors other than those
listed in table 6 that could have contributed to variability in case
outcomes. The models we used are described in more detail in appendixes
II and III.

Reliability of the Immigration Court and Immigration Judge Data

Prior to developing our database, we assessed the reliability of the EOIR
data and the immigration judges' biographical data. To assess the
reliability of the EOIR data, we (1) performed electronic testing for
obvious errors in accuracy and completeness; (2) analyzed related
documentation, including EOIR's Automated Nationwide System for
Immigration Review (ANSIR) *Field User Manual*, and ANSIR *Court
Administrators Handbook*, a 2002 KPMG study of the reliability of
selected EOIR fields,[1] and published research reports that made use of the
EOIR data;[2] and (3) worked with agency officials to identify any data
problems. When we found apparent discrepancies (such as fields
containing what appeared to be erroneous data), we brought them to the
agency's attention and worked with agency officials and data experts to
understand the data. We assessed the reliability of the immigration judge
biographical data by checking a selection of fields in our database against
information contained in the CPDF. Where direct comparison of the data
was not possible, we brought data that appeared to be erroneous to
EOIR's attention, and updated our records where appropriate. We
determined that the data were sufficiently reliable for the purposes of our
report.

Agency Interviews and Site Visits

To gain a better understanding of factors affecting asylum adjudications
and the reliability and validity of EOIR data on asylum adjudications, we
interviewed EOIR headquarters officials responsible for overseeing the
immigration courts, including the Chief Immigration Judge and Deputy

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[1] KPMG Consulting, Inc., *Data Validation for ANSIR and BIAP*, a report prepared at the
request of the Department of Justice, Executive Office for Immigration Review, December
2002.

[2] Siulc et al, *Legal Orientation Program Evaluation*; Patrick Baier, "Selected Statistical
Analyses of Immigration Judge Rulings on Asylum Applications, FY 2000–2003," in United
States Commission on International Religious Freedom, *Report on Asylum Seekers in
Expedited Removal, Volume II: Expert Reports* (Washington, D.C.: February 2005), 420-
443; and Transactional Records Access Clearinghouse, *Immigration Judges*; and
Transactional Records Access Clearinghouse, *Asylum Disparities Persist, Regardless of
Court Location and Nationality*.

Chief Immigration Judges; and the Assistant Director of EOIR's Office of
Planning, Analysis and Technology, which is responsible for EOIR's
information technology, program evaluation, statistical analysis, and
reporting activities.

To obtain an overview of and perspectives on the asylum process, we
visited five immigration courts in three cities—Los Angeles and San Pedro
in Los Angeles, Calif.; New York City and Varick Street in New York, NY;
and San Francisco, Calif. These immigration courts handled 43 percent of
all asylum cases decided in fiscal year 2006, and consisted of two
immigration courts that handled large percentages of detained cases (San
Pedro and Varick Street), and three immigration courts that handled
primarily non-detained cases (Los Angeles, New York City, and San
Francisco). In each immigration court, we observed immigration
proceedings, which included initial master calendar and merit hearings on
asylum cases. We conducted semi-structured interviews with the ACIJ
with responsibility for the immigration courts we visited. In addition, we
interviewed a total of 22 immigration judges representing a range of grant
rates in the five immigration courts. To further our understanding,
including how cases are allocated to immigration judges and how data on
immigration proceedings are recorded in EOIR's case management
system, we interviewed the court administrator of each of the five
immigration courts we visited.[3] In the three cities, we also interviewed (1)
seven ICE Assistant Chief Counsels (known as ICE trial attorneys) with
varying levels of experience prosecuting asylum cases in the five
immigration courts. We also interviewed the Deputy Chief Counsels in the
Los Angeles, New York, and San Francisco immigration courts; (2) six
members of the private bar who represented asylum applicants in
immigration court proceedings; and (3) groups of immigration advocates
and pro bono providers, totaling 25 participants across the three cities.
Because we selected nonprobability samples of immigration courts and
stakeholders associated with these courts, the information we obtained at
these locations may not be generalized either within immigration courts or
to all immigration courts nationwide. However, the information we
obtained at these locations provided us with a perspective on
circumstances associated with asylum proceedings.

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[3] Court administrators manage the daily operations and administrative staff of the
immigration courts.

EOIR Actions to Assist Applicants and Immigration Judges

To identify what actions EOIR has taken to assist applicants and immigration judges in the asylum process and how, if at all, these actions could be improved, we reviewed the Attorney General's 2006 directives to institute reforms in the immigration courts and BIA, and obtained information from EOIR regarding its implementation of the directives. Regarding initiatives designed to assist applicants, we reviewed the Vera Institute of Justice's evaluation of EOIR's Legal Orientation Program[4] and the BIA's evaluation of its pro bono program[5] as well as the Office of Chief Immigration Judge's "Guidelines for Facilitating Pro Bono Legal Services."[6] Regarding actions to assist immigration judges in adjudicating asylum cases, we reviewed EOIR's Operating Policy and Procedure Memorandums on Asylum Request Processing, and Immigration Judges Decisions and Immigration Judge Orders, among others; training materials for new immigration judges, including the agenda and materials from EOIR's 2007 annual Immigration Judges Training conference; the *Immigration Judge Benchbook*, and the legal examination administered to new immigration judges. We also interviewed EOIR's ACIJ for Conduct and Professionalism and ACIJ for Training as well as the coordinator for EOIR's Legal Orientation and Pro Bono Program, regarding the implementation of the Attorney General's 2006 directives. To obtain information on EOIR's studies of immigration judge grant rates, we interviewed knowledgeable EOIR officials, and obtained documentation on the data queries EOIR conducted to determine the grant rates.

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[4] Siulc et al, *Legal Orientation Program Evaluation.*

[5] Department of Justice, Executive Office for Immigration Review, *The BIA Pro bono Project Is Successful* (Falls Church, Va.: 2004). http://www.usdoj.gov/eoir/reports/BIAProBonoProjectEvaluation.pdf (accessed Aug. 4, 2008).

[6] Department of Justice, Executive Office for Immigration Review, *Guidelines for Facilitating Pro bono Legal Services* (Falls Church, Va.: 2008). http://www.usdoj.gov/eoir/efoia/ocij/oppm08/08-01.pdf (accessed Aug. 4, 2008).

Did the Asylum Backlog and Asylum Outcomes Change Following BIA Streamlining?

Analysis of Changes in the BIA Backlog

To examine what changes in asylum backlogs and outcomes occurred at the BIA following the streamlining changes implemented in March 2002,[7] we (1) obtained from EOIR records of all appeals of immigration judge decisions received or completed between October 1, 1994, and September 30, 2007,[8] and (3) selected only those records pertaining to lead applicants. For each fiscal year from 1995 through 2007, we computed the "pending caseload" as the number of appeals received during the current fiscal year or any prior fiscal year that had not been completed by the end of the current fiscal year. We repeated this analysis for those appeals involving aliens who had filed an asylum application in immigration court.

Analysis of Changes in Outcomes for Asylum Applicants

To determine if the proportion of decisions favorable to the asylum applicant changed following the March 2002 streamlining, we merged the BIA appeals records with the immigration proceedings records compiled for objective 1 and conducted a series of descriptive analyses comparing the outcomes of BIA decisions before and after the streamlined procedures took effect.

For our analysis of appeals outcomes, we limited our analysis data set to appeals (1) pertaining to lead applicants who had filed an asylum application in immigration court and (2) involving immigration judge decisions in removal, deportation, and exclusion hearings (what the BIA refers to as "Case Appeals") rather than other kinds of appeals arising

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[7] We used March 15, 2002 as the date BIA streamlining took effect for asylum cases, since it was on that day that the BIA Chair issued a memorandum expanded streamlining procedures to asylum, withholding and CAT cases.

[8] The data we obtained did not include records pertaining to appeals arising from decisions rendered by DHS, including family-based visa petitions adjudicated by DHS officials, fines and penalties imposed on carriers for violations of immigration laws, and waivers of inadmissibility for nonimmigrants under §212(d)(3) of the Immigration and Nationality Act. In fiscal year 2007, these appeals constituted 13 percent of the BIA's decisions.

from immigration judge proceedings.[9] These appeals accounted for 58 percent of all decisions stemming from appeals of immigration judge proceedings during fiscal year 2007. We matched the resulting set of BIA records with the database of immigration judge asylum decisions developed for objective 1. If more than one BIA case appeal record was associated with a single immigration judge decision, we selected the case appeal that occurred first in order to eliminate BIA decisions that resulted from a remand order from the U.S. courts of appeals.

We examined BIA decisions for fiscal years 1998 through 2006. We chose this time period because the starting point for our immigration judge data was October 1994, and a BIA appeal could take an average of 1 to 2 years to complete. We did not examine BIA decisions from fiscal year 2007 because we did not have immigration judge data for the full fiscal year.

To examine asylum appeals that BIA decided on the merits of the case, we analyzed only those cases where the appeal had been filed in a timely fashion, within 30 days of the decision rendered by the immigration judge. We selected only cases that involved applicants who had filed for asylum, rather than other forms of relief, to help ensure that the immigration judge's asylum decision was likely a central focus of the appeal.

In order to correctly categorize whether the BIA decision favored the alien or DHS, we had numerous meetings with EOIR officials and data specialists regarding the meaning of EOIR's codes for decisions rendered by the BIA. EOIR stated that its data system did not capture the specific issue on appeal to the BIA, and thus it would be difficult to determine whether some BIA decisions favored the alien or the DHS without examining the actual record of appeal. In other cases, according to EOIR, the decision could be identified as favoring the alien or DHS, if the decision field were examined simultaneously with other data elements, including the party that had filed the appeal and the decision of the immigration judge on the asylum application. In those cases where it was not possible to determine from the EOIR data if the decision favored the

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[9] BIA appeals arising from immigration judge decisions also include appeals of immigration judge decisions on motions to reopen proceedings at the immigration court level; appeals pertaining to bond, parole, or detention; motions to reopen cases already decided at the BIA; interlocutory appeals that relate to important jurisdictional questions regarding the administration of immigration law and recurring problems in the handling of cases by immigration judges; and appeals that result from a remand to the BIA from the U.S. courts of appeals.

alien or DHS, we coded the BIA decision as neither favoring the alien nor favoring DHS (such as in the case of an Affirmance without Opinion without a grant of Voluntary Departure). In those cases, we looked further to determine whether a formal order of removal had been entered by the BIA. Our coding scheme is detailed in table 7, below.

Table 7: Coding Scheme for BIA Decision Outcomes

BIA decision code	Which party filed appeal	Immigration judge asylum decision	GAO outcome code
Background check remand	Alien	Deny WH, CAT (persecution decision is deny)	Favor alien
Background check remand	DHS	Grant	Favor alien
Remand	Alien	Deny	Favor Alien
Coercive Population Control grant; deferred enforced departure; termination	Alien or DHS	Grant or deny	Favor alien
Dismissal	DHS	Grant	Favor alien
Dismissal	Alien	Deny	Favor DHS
Summary dismissal for "other" reason	Alien	Grant or deny	Favor DHS
Dismissal, Matter of Soriano	Alien or DHS	Grant or deny	Favor DHS
Summary affirmance	Alien or DHS	Grant or deny	Affirmance without Opinion (AWO) with no voluntary departure
Summary affirmance, voluntary departure	Alien or DHS	Grant or deny	Affirmance without Opinion (AWO) with voluntary departure granted
Voluntary departure	Alien or DHS	Grant or deny	Voluntary departure (not including those cases, above, where AWO was issued along with a grant of voluntary departure)
Remand	DHS	Grant	Other
Sustain appeal; summary dismissal (no brief filed, inadequate reason on appeal) no jurisdiction; Temporary Protected Status;; withdrawal of appeal; Other	Alien or DHS	Grant or deny	Other
Summary dismissal for "other" reason	DHS	Grant or deny	Other

Source: GAO Analysis of EOIR data.

Reliability of Data on BIA Appeals

We assessed the reliability of the EOIR's data on BIA asylum appeals decisions by (1) performing electronic testing for obvious errors in accuracy and completeness; (2) analyzing related documentation, including a 2002 KPMG study of the reliability of selected EOIR fields and published research reports that made use of the data sources; and (3) working closely with agency officials to identify any data problems. When we found apparent discrepancies (such as fields containing what appeared to be erroneous data) we brought them to the agency's attention and worked with it to understand the discrepancies before conducting our analyses. We determined that the data were sufficiently reliable for the purposes of our report.

Reliability of Data on Panel versus Single-Member BIA Decisions

We examined the outcomes of appeals that were decided by single BIA members and by panels of three members. Based on our analysis of the field indexing who made the decision and further discussions with EOIR data specialists, we determined that the reliability of the field indexing single versus panel decisions was unknown for years prior to fiscal year 2004 and was most reliable since fiscal year 2004, because of extensive training provided to the BIA staff. Thus, we examined outcomes for fiscal years 2004 through 2006.

Document Review and Interviews with Agency Officials

To gain a better understanding of the procedural changes in adjudication procedures that have occurred at the BIA since 1999 (referred to as "Streamlining"), we reviewed the streamlining regulations;[10] memorandums issued by the BIA Chairman between November 2000 and August 2002 expanding the categories of appeals for which streamlined procedures were authorized;[11] two independent assessments of the 1999 and 2002 procedural changes;[12] and an analysis of the association between the change in procedures at the BIA and the increase in petitions for

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[10] 54 Fed. Reg. 56,135 (Oct. 18, 1999) and 67 Fed. Reg. 54,878 (Aug. 26, 2002).

[11] Department of Justice, Executive Office for Immigration Review, *Streamlining* (Falls Church, Va.: 2002). http://www.usdoj.gov/eoir/vll/genifo/stream.htm (accessed Aug. 4, 2008).

[12] Andersen LLP, *Board of Immigration Appeals (BIA) Streamlining Pilot Project Assessment Report*, a special report prepared at the request of the Department of Justice, Executive Office for Immigration Review, December 2001; and Dorsey & Whitney LLP, *Board of Immigration Appeals: Procedural Reforms to Improve Case Management* (Washington, D.C.: 2003).

review of these decisions in the U.S. courts of appeal.[13] We also
interviewed the Chairman and Vice Chairman of the BIA; officials from
DOJ's Office of Immigration Litigation (OIL), which handles and
coordinates all federal court litigation arising under the Immigration and
Nationality Act, including petitions for review in the federal courts; and
Assistant U.S. Attorneys in the Southern District of New York. Until
recently, the U.S. Attorney's Office in the Southern District of New York
handled all alien petitions for review in the 2nd U.S. Circuit Court of
Appeals. We also interviewed seven federal appeals court judges who were
available and agreed to meet with us in the two circuits handling the
largest number of petitions for review of BIA decisions (the 2nd and 9th
circuits).

Information on the 1-Year Rule

To address issues regarding the effects of the 1-year rule and resources
expended adjudicating it, we added questions about immigration judges'
views of the 1-year rule to a Web-based survey of immigration judges that
was being conducted as part of another GAO review.[14] The survey was
sent to all immigration judges identified as having been in their position
since at least September 30, 2006—a total of 207 immigration judges. GAO
social science survey specialists along with GAO staff knowledgeable
about asylum adjudications developed the survey instrument. We sent a
draft of the survey to EOIR officials and ACIJs for preliminary review to
ensure that our questions were clear and unambiguous and used clear
terminology and appropriate response options, and that the survey was
comprehensive and unbiased. We also asked for and received comments
from National Association of Immigration Judges (NAIJ) representatives
on the draft immigration judge survey. We considered comments and
suggestions from all parties and made revisions where we thought
warranted. We conducted telephone pretests of the survey with three
immigration judges in three different immigration courts to ensure that the
questions were clear and concise, and refined the instrument based on
feedback we received. The survey, which was conducted between May 30
and July 29, 2007, resulted in a response rate of 77 percent. In analyzing
the survey data, we generated descriptive statistics on the close-ended

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[13] Palmer, Yale-Loehr and Elizabeth Cronin, "An Empirical Analysis of the Recent Surge in
Federal Appeals."

[14] GAO, *U.S. Asylum System: Agencies Have Taken Actions to Help Ensure Quality in the
Asylum Adjudication Process, but Challenges Remain*, GAO-08-935 (Washington, D.C.:
September 25, 2008).

survey responses and had two GAO analysts review all of the open-ended
responses.

To review information on how many cases were referred to the
immigration courts by DHS asylum officers, we obtained data from
USCIS's Asylum Division. To assess the reliability of these data, we
reviewed existing information about the Asylum Division's data systems
and reviewed the data for obvious errors in accuracy or completeness. We
determined that the data were sufficiently reliable for presenting overall
trends in 1-year rule referrals. We did not report data for fiscal year 2007
because we were unable to verify these data with the data from another
Asylum Division report.

We conducted this performance audit from December 2005 through
September 2008 in accordance with generally accepted government
auditing standards. Those standards require that we plan and perform the
audit to obtain sufficient, appropriate evidence to provide a reasonable
basis for our findings and conclusions based on our audit objectives. We
believe that the evidence obtained provides a reasonable basis for our
findings and conclusions based on our audit objectives.

Appendix II: Differences in Asylum Grant Rates across Immigration Courts

In this appendix, we present descriptive information on how immigration judge decisions differed for affirmative and defensive cases as a function of the asylum seeker's nationality, the immigration court, and time period the asylum case was heard in, and whether the asylum seeker was represented, had dependents, and applied for asylum within a year of entering the country. For defensive cases, we further considered whether the asylum seeker had ever been detained. We also provide statistical results from logistic regression models that estimated the effects of these different factors to determine whether differences in decisions across immigration courts persisted after these other factors were controlled.

Our analyses included all asylum cases decided from October 1, 1994, through April 30, 2007, that involved asylum seekers from the 20 countries that produced the most asylum cases and the 19 immigration courts that handled the largest numbers of asylum cases. Each of the 20 countries and 19 immigration courts contributed a minimum of 800 asylum cases to our analyses. The 20 countries represented 73 percent of all asylum cases that were decided during this period, and the 19 immigration courts represented 87 percent of all asylum cases. This combination of countries and immigration courts yielded slightly more than 198,000 cases for our analyses, which constituted 66 percent of all asylum cases decided during this period. We excluded roughly 4 percent of these cases because they had missing data on one or more of the variables we used in our analyses.

Overall Grant and Denial Rates

Table 8 shows the numbers and percentages of affirmative and defensive asylum cases across the countries and immigration courts analyzed that were granted and denied, with the denied cases broken out separately according to whether or not the asylum decision was made in absentia (that is, the asylum seeker failed to appear before the immigration judge). Asylum denials were far more frequent than grants, with immigration judges granting less than 30 percent of either affirmative or defensive asylum cases. They granted asylum in a somewhat higher percentage of affirmative cases (29.8 percent) than defensive cases (24.7 percent). The percentage of affirmative cases denied because the asylum seeker was in absentia was much higher for affirmative cases (19.0 percent) than for defensive cases (3.8 percent).

Table 8: Numbers and Percentages of Affirmative and Defensive Asylum Cases Granted and Denied

Type of asylum case	Asylum decision			
	Granted	Denied-in absentia	Denied-not in absentia	Total
Affirmative	37,266	23,741	63,965	**124,972**
	29.8	19.0	51.2	**100**
Defensive	16,180	2,486	46,838	**65,504**
	24.7	3.8	71.5	**100**
Total	**53,446**	**26,227**	**110,803**	**190,476**
	28.1	13.8	58.2	**100**

Source: GAO analysis of EOIR data.

Grant and Denial Rates by Immigration Court

Table 9 shows, separately for affirmative and defensive cases, differences in the percentages of cases granted and denied across the 19 different courts in our analysis. The percentage of affirmative cases that were granted asylum ranged from 2.4 percent in Atlanta to 47.6 percent in New York. The percentage of defensive cases that were granted asylum ranged from 6.7 percent in Atlanta to 34.6 percent in San Francisco. The percentages of cases denied because of the asylum seeker's being in absentia also varied markedly across the 19 courts, especially for affirmative cases where the numbers of in absentia cases were larger. In Los Angeles and Atlanta, 46.3 percent and 61.5 percent of affirmative asylum cases, respectively, were denied as a result of the asylum seeker's being in absentia, while the same was true of only roughly 1 percent of the affirmative cases in Orlando, San Francisco, and Seattle.

Table 9: Numbers and Percentages of Affirmative and Defensive Asylum Cases Granted and Denied, by Immigration Court

Numbers in percents

	Decision (by type of case)							
	Affirmative				Defensive			
Immigration Court	Granted (%)	Denied-in absentia (%)	Denied-not in absentia (%)	Total (%)	Granted (%)	Denied-in absentia (%)	Denied-not in absentia (%)	Total (%)
Arlington	858	766	1,878	**3,502**	480	122	1,249	**1,851**
	(24.5)	(21.9)	(53.6)	**(100)**	(25.9)	(6.6)	(67.5)	**(100)**
Atlanta	100	2,603	1,529	**4,232**	52	39	680	**771**
	(2.4)	(61.5)	(36.1)	**(100)**	(6.7)	(5.1)	(88.2)	**(100)**
Baltimore	1116	702	1235	**3053**	388	106	791	**1285**
	(36.6)	(23)	(40.5)	**(100.1)**	(30.2)	(8.2)	(61.6)	**(100)**
Bloomington	157	10	425	**592**	99	4	435	**538**
	(26.5)	(1.7)	(71.8)	**(100)**	(18.4)	(0.7)	(80.9)	**(100)**
Boston	551	277	1288	**2116**	381	57	1401	**1839**
	(26)	(13.1)	(60.9)	**(100)**	(20.7)	(3.1)	(76.2)	**(100)**
Chicago	833	96	1539	**2468**	521	48	1415	**1984**
	(33.8)	(3.9)	(62.4)	**(100.1)**	(26.3)	(2.4)	(71.3)	**(100)**
Dallas	382	25	467	**874**	144	7	488	**639**
	(43.7)	(2.9)	(53.4)	**(100)**	(22.5)	(1.1)	(76.4)	**(100)**
Denver	385	46	761	**1192**	98	6	452	**556**
	(32.3)	(3.9)	(63.8)	**(100)**	(17.6)	(1.1)	(81.3)	**(100)**
Detroit	208	72	795	**1075**	139	33	843	**1015**
	(19.3)	(6.7)	(74)	**(100)**	(13.7)	(3.3)	(83.1)	**(100.1)**
Houston	344	98	1072	**1514**	206	58	1798	**2062**
	(22.7)	(6.5)	(70.8)	**(100)**	(10)	(2.8)	(87.2)	**(100)**
Los Angeles	3626	11769	10029	**25424**	743	350	3297	**4390**
	(14.3)	(46.3)	(39.4)	**(100)**	(16.9)	(8)	(75.1)	**(100)**
Miami	3976	487	16891	**21354**	1683	186	10612	**12481**
	(18.6)	(2.3)	(79.1)	**(100)**	(13.5)	(1.5)	(85)	**(100)**
New York	16886	4436	14159	**35481**	8217	1240	15003	**24460**
	(47.6)	(12.5)	(39.9)	**(100)**	(33.6)	(5.1)	(61.3)	**(100)**
Newark	985	1078	2051	**4114**	509	66	1609	**2184**
	(23.9)	(26.2)	(49.9)	**(100)**	(23.3)	(3)	(73.7)	**(100)**
Orlando	1123	33	1500	**2656**	291	11	579	**881**
	(42.3)	(1.2)	(56.5)	**(100)**	(33)	(1.2)	(65.7)	**(99.9)**
Philadelphia	571	225	1570	**2366**	230	48	1162	**1440**
	(24.1)	(9.5)	(66.4)	**(100)**	(16)	(3.3)	(80.7)	**(100)**

Numbers in percents

	Decision (by type of case)							
	Affirmative				**Defensive**			
Immigration Court	**Granted (%)**	**Denied-in absentia (%)**	**Denied-not in absentia (%)**	**Total (%)**	**Granted (%)**	**Denied-in absentia (%)**	**Denied-not in absentia (%)**	**Total (%)**
San Diego	310	866	836	**2012**	251	53	959	**1263**
	(15.4)	(43)	(41.6)	**(100)**	(19.9)	(4.2)	(75.9)	**(100)**
San Francisco	4634	147	5443	**10224**	1540	38	2873	**4451**
	(45.3)	(1.4)	(53.2)	**(99.9)**	(34.6)	(0.9)	(64.5)	**(100)**
Seattle	221	5	497	**723**	208	14	1192	**1414**
	(30.6)	(0.7)	(68.7)	**(100)**	(14.7)	(1)	(84.3)	**(100)**
Total	**37266**	**23741**	**63965**	**124972**	**16180**	**2486**	**46838**	**65504**
	(29.8)	**(19)**	**(51.2)**	**(100)**	**(24.7)**	**(3.8)**	**(71.5)**	**(100)**

Source: GAO analysis of EOIR data.

Grant and Denial Rates by Nationality

We examined whether the sizable differences in the percentage of cases granted and denied asylum across immigration courts may be because the fact that immigration courts differ in the types of cases they handle, particularly in terms of differences in asylum seekers' nationality. Table 10 shows the different grant rates for asylum seekers from different countries, again for affirmative and defensive cases separately. While the percentage of affirmative cases granted asylum equaled or exceeded 50 percent for asylum seekers from some countries—including Albania, China, Ethiopia, Iran, Russia, and Yugoslavia—it was lower than 10 percent for asylum seekers from other countries, including El Salvador, Guatemala, Honduras and Mexico. Pronounced differences in the percentage of cases granted asylum across countries are evident for defensive cases, as well. Nearly half or more than half of the asylum seekers in defensive cases from Ethiopia, Iran, and Somalia were granted asylum, while the same was true of only about 10 percent, or less than 10 percent, of the asylum seekers in defensive cases from El Salvador, Honduras, and Indonesia. Among affirmative cases, there are also sizable differences in the percentages denied because of asylum seekers' being in absentia. For example, fully two-thirds of such cases from Mexico were denied, but only 2 or 3 percent of the cases involving Colombians or Haitians were denied with the claimant in absentia.

Table 10: Numbers and Percentages of Affirmative and Defensive Asylum Cases Granted and Denied, by Country

Country	Decision (by type of case)							
	Affirmative				Defensive			
	Granted (%)	Denied-in absentia (%)	Denied- not in absentia (%)	Total (%)	Granted (%)	Denied-in absentia (%)	Denied-not in absentia (%)	Total (%)
ALBANIA	2,134	153	1,675	**3,962**	665	43	1,052	**1,760**
	(53.9)	(3.9)	(42.3)	**(100.1)**	(37.8)	(2.4)	(59.8)	**(100)**
BANGLADESH	622	592	1310	**2524**	188	46	455	**689**
	(24.6)	(23.5)	(51.9)	**(100)**	(27.3)	(6.7)	(66)	**(100)**
CHINA	14800	2398	12384	**29582**	8240	673	15417	**24330**
	(50)	(8.1)	(41.9)	**(100)**	(33.9)	(2.3)	(63.4)	**(100.1)**
COLOMBIA	2775	201	5317	**8293**	512	55	1935	**2502**
	(33.5)	(2.4)	(64.1)	**(100)**	(20.5)	(2.2)	(77.3)	**(100)**
EL SALVADOR	369	4232	4971	**9572**	371	343	4705	**5419**
	(3.9)	(44.2)	(51.9)	**(100)**	(6.8)	(6.3)	(86.8)	**(99.9)**
ETHIOPIA	1713	123	1509	**3345**	652	26	599	**1277**
	(51.2)	(3.7)	(45.1)	**(100)**	(51.1)	(2)	(46.9)	**(100)**
GUATEMALA	826	6197	7927	**14950**	516	262	3220	**3998**
	(5.5)	(41.5)	(53)	**(100)**	(12.9)	(6.6)	(80.5)	**(100)**
HAITI	2232	372	11427	**14031**	1254	180	8665	**10099**
	(15.9)	(2.7)	(81.4)	**(100)**	(12.4)	(1.8)	(85.8)	**(100)**
HONDURAS	92	855	850	**1797**	181	143	1513	**1837**
	(5.1)	(47.6)	(47.3)	**(100)**	(9.9)	(7.8)	(82.4)	**(100.1)**
INDIA	3260	710	4438	**8408**	668	244	2018	**2930**
	(38.8)	(8.4)	(52.8)	**(100)**	(22.8)	(8.3)	(68.9)	**(100)**
INDONESIA	1244	160	2477	**3881**	167	41	1408	**1616**
	(32.1)	(4.1)	(63.8)	**(100)**	(10.3)	(2.5)	(87.1)	**(99.9)**
IRAN	927	144	663	**1734**	343	18	345	**706**
	(53.5)	(8.3)	(38.2)	**(100)**	(48.6)	(2.5)	(48.9)	**(100)**
MEXICO	184	5364	2373	**7921**	102	33	522	**657**
	(2.3)	(67.7)	(30)	**(100)**	(15.5)	(5)	(79.5)	**(100)**
NICARAGUA	106	230	549	**885**	216	52	1243	**1511**
	(12)	(26)	(62)	**(100)**	(14.3)	(3.4)	(82.3)	**(100)**
NIGERIA	334	216	622	**1172**	236	45	646	**927**
	(28.5)	(18.4)	(53.1)	**(100)**	(25.5)	(4.9)	(69.7)	**(100.1)**
PAKISTAN	757	662	1139	**2558**	373	196	1234	**1803**
	(29.6)	(25.9)	(44.5)	**(100)**	(20.7)	(10.9)	(68.4)	**(100)**

| | Decision (by type of case) | | | | | | | |
| | Affirmative | | | | Defensive | | | |
Country	Granted (%)	Denied-in absentia (%)	Denied- not in absentia (%)	Total (%)	Granted (%)	Denied-in absentia (%)	Denied-not in absentia (%)	Total (%)
PERU	610	235	1356	**2201**	217	15	555	**787**
	(27.7)	(10.7)	(61.6)	**(100)**	(27.6)	(1.9)	(70.5)	**(100)**
RUSSIA	1869	222	1100	**3191**	287	19	379	**685**
	(58.6)	(7)	(34.5)	**(100.1)**	(41.9)	(2.8)	(55.3)	**(100)**
SOMALIA	1343	547	1100	**2990**	471	11	345	**827**
	(44.9)	(18.3)	(36.8)	**(100)**	(57)	(1.3)	(41.7)	**(100)**
YUGOSLAVIA	1069	128	778	**1975**	521	41	582	**1144**
	(54.1)	(6.5)	(39.4)	**(100)**	(45.5)	(3.6)	(50.9)	**(100)**
Total	**37266**	**23741**	**63965**	**124972**	**16180**	**2486**	**46838**	**65504**
	(29.8)	**(19)**	**(51.2)**	**(100)**	**(24.7)**	**(3.8)**	**(71.5)**	**(100)**

Source: GAO analysis of EOIR data.

Grant and Denial Rates by Claimant Characteristics

Table 11 presents information, separately for affirmative and defensive asylum cases, on how grant rates differed across different claimant characteristics. For example, the percentage of affirmative and defensive cases that were granted asylum increased over time. The top panel of table 11 shows the percentages of cases granted and denied in three different periods. The three periods cover the interval (1) from the beginning of our data series on October 1, 1994, until March 30, 1997, the day prior to the implementation date for Immigration Reform and Immigrant Responsibility Act of 1996; (2) from April 1, 1997, through September 10, 2001; and (3) from September 11, 2001, through the final day in our data series on April 30, 2007. The percentage of affirmative cases that were granted asylum increased from 9.5 percent in the first period, to 26.8 percent in the second period, to 41.8 percent in the third. The percentage of defensive cases that were granted asylum increased from 15.3 percent in the first period to 26.0 percent in the second period and 28.6 percent in the third. For affirmative cases in particular, denials resulting from claimants' being in absentia decreased considerably over the three periods from 44.0 percent in the first period, to 22.7 percent in the second, and to 4.3 percent in the third. Case outcome also differed as a function of whether claimants were represented, had dependents, or filed their claims

within 1 year of entering the country. For affirmative cases, (1) 36.8
percent of claimants who were represented were granted asylum,
compared to 4.0 percent who were not represented; (2) 40.2 percent of the
claimants with dependents were granted asylum, compared with 28.4
percent of the claimants without dependents; and (3) 36.5 percent of
claimants who applied for asylum within 1 year of entering the country
were granted asylum, compared to 18.4 percent who applied more than 1
year later.[1] We found roughly similar, though somewhat less pronounced
differences, for claimants in defensive cases. For defensive cases, we also
considered whether there were differences between those who had and
had not been detained, but as the bottom panel of table 13 shows, those
differences were very small (24.1 percent versus 25.4 percent).

Table 11: Numbers and Percentages of Affirmative and Defensive Asylum Cases Granted and Denied, by Various Claimant Characteristics

| | Group (by type of case) | | | | | | | |
| | Affirmative | | | | Defensive | | | |
Claimant characteristic	Granted (%)	Denied-in absentia (%)	Denied-not absentia (%)	Total (%)	Granted (%)	Denied-in absentia (%)	Denied-not absentia (%)	Total (%)
10/1/94 − 3/30/97	2,087	9,712	10,268	22,067	2,521	1,305	12,635	16,461
	(9.5)	(44)	(46.5)	(100)	(15.3)	(7.9)	(76.8)	(100)
4/1/97 − 9/10/01	13991	11875	26402	52268	3784	553	10211	14548
	(26.8)	(22.7)	(50.5)	(100)	(26)	(3.8)	(70.2)	(100)
9/11/01 − 4/30/07	21188	2154	27295	50637	9875	628	23992	34495
	(41.8)	(4.3)	(53.9)	(100)	(28.6)	(1.8)	(69.6)	(100)
Period total	**37266**	**23741**	**63965**	**124972**	**16180**	**2486**	**46838**	**65504**
	(29.8)	**(19)**	**(51.2)**	**(100)**	**(24.7)**	**(3.8)**	**(71.5)**	**(100)**
Representation	36198	5994	56115	98307	15855	2049	43196	61100
	(36.8)	(6.1)	(57.1)	(100)	(25.9)	(3.4)	(70.7)	(100)
No representation	1068	17747	7850	26665	325	437	3642	4404
	(4)	(66.6)	(29.4)	(100)	(7.4)	(9.9)	(32.7)	(100)
Representation total	**37266**	**23741**	**63965**	**124972**	**16180**	**2486**	**46838**	**65504**
	(29.8)	**(19)**	**(51.2)**	**(100)**	**(24.7)**	**(3.8)**	**(71.5)**	**(100)**

[1] Data were missing for 7 percent of affirmative cases and 24 percent of defensive cases.
We present results separately for applicants with missing data, and we adjust for missing
data in our logistic regressions involving this variable.

Claimant characteristic	Group (by type of case)							
	Affirmative				Defensive			
	Granted (%)	Denied-in absentia (%)	Denied-not absentia (%)	Total (%)	Granted (%)	Denied-in absentia (%)	Denied-not absentia (%)	Total (%)
Dependents	6086	996	8065	15147	987	57	1700	2744
	(40.2)	(6.6)	(53.2)	(100)	(36)	(2.1)	(62)	(100.1)
No dependents	31180	22745	55900	109825	15193	2429	45138	62760
	(28.4)	(20.7)	(50.9)	(100)	(24.2)	(3.9)	(71.9)	(100)
Dependents total	**37266**	**23741**	**63965**	**124972**	**16180**	**2486**	**46838**	**65504**
	(29.8)	**(19)**	**(51.2)**	**(100)**	**(24.7)**	**(3.8)**	**(71.5)**	**(100)**
App not filed in 1 year	9132	14105	26284	49521	4124	666	14734	19524
	(18.4)	(28.5)	(53.1)	(100)	(21.1)	(3.4)	(75.5)	(100)
App filed w/in 1 year	24215	8589	33596	66400	8551	873	20671	30095
	(36.5)	(12.9)	(50.6)	(100)	(28.4)	(2.9)	(68.7)	(100)
Missing	3919	1047	4085	9051	3505	947	11433	15885
	(43.3)	(11.6)	(45.1)	(100)	(22.1)	(6)	(72)	(100.1)
App filed 1 year total	**37266**	**23741**	**63965**	**124972**	**16180**	**2486**	**46838**	**65504**
	(29.8)	**(19)**	**(51.2)**	**(100)**	**(24.7)**	**(3.8)**	**(71.5)**	**(100)**
Ever detained	103	122	952	1177	8329	1061	25152	34542
	(8.8)	(10.4)	(80.9)	(100.1)	(24.1)	(3.1)	(72.8)	(100)
Never detained	37163	23619	63013	123795	7851	1425	21686	30962
	(30)	(19.1)	(50.9)	(100)	(25.4)	(4.6)	(70)	(100)
Detained total	**37266**	**23741**	**63965**	**124972**	**16180**	**2486**	**46838**	**65504**
	(29.8)	**(19)**	**(51.2)**	**(100)**	**(24.7)**	**(3.8)**	**(71.5)**	**(100)**

Source: GAO analysis of EOIR data.

Grant and Denial Rates by Country and Immigration Court

To get a general sense of whether the seemingly large disparities in asylum outcomes across immigration courts were associated with the fact that different immigration courts handled different numbers of cases from the 20 countries we considered, we first looked at how, for claimants from the same country, decisions differed depending on which immigration court handled their case. In doing so, we restricted our analysis to immigration courts that handled 50 or more affirmative cases and 50 or more defensive cases from a given country, both to simplify our results and to avoid giving too much weight to differences in percentages that were based on very small numbers of cases. Table 12 shows the percentages granted and denied when the cases denied in absentia are excluded. When looking at differences in grant rates for the same country across immigration courts,

we excluded cases denied in absentia because the denial of in absentia cases involves no judicial discretion.

Table 12 shows the percentages granted and denied across immigration courts, for both affirmative and defensive cases, for cases from the 20 countries. While grant rates for affirmative cases were similar for a few countries, such as Bangladesh and Iran, there were large differences in grant rates across immigration courts for most countries. For example, 12 percent of Chinese asylum seekers in affirmative cases were granted asylum in Atlanta, while 75 percent were granted asylum in Orlando. Similarly, less than 1 percent of Guatemalans in affirmative cases were granted asylum in Atlanta, while slightly more than 30 percent were granted asylum in San Francisco. Claimants in affirmative cases from many other countries show markedly different percentages granted across the various immigration courts they came into. The percentages granted in such cases range from 21 percent to 68 percent for Albanians, from 14 percent to 69 percent for Colombians, and from 14 percent to 77 percent for Ethiopians. For many countries, the percentage of defensive cases that were granted asylum varied similarly depending upon the immigration court they came into.

Table 12: Percentages of Affirmative and Defensive Cases Granted and Denied, by Country and Immigration Court, for Immigration Courts Deciding 50 or More Cases from the Different Countries

| Country | Immigration court | Group decision (by type of case) | | | | | |
| | | Affirmative | | | Defensive | | |
		% Granted	% Denied	Total	% Granted	% Denied	Total
ALBANIA	Boston	48.1	51.9	**162**	42.2	57.8	**128**
	Chicago	46.4	53.6	**211**	31.1	68.9	**135**
	Detroit	21.4	78.6	**495**	9.1	90.9	**297**
	Miami	50.6	49.4	**81**	25.3	74.7	**178**
	New York	68.4	31.6	**2,330**	58.2	41.8	**656**
	Newark	40.6	59.4	**192**	30.3	69.7	**122**
	Orlando	39.8	60.2	**88**	.	.	**.**
	Philadelphia	41.2	58.8	**119**	.	.	**.**
	Total	**56.5**	**43.5**	**3,678**	**38.7**	**61.3**	**1,516**
BANGLADESH	Los Angeles	30.7	69.3	**339**	23.5	76.5	**68**
	New York	33.1	66.9	**1,256**	34	66	**415**
	Newark	26.1	73.9	**69**	.	.	**.**
	Total	**32.3**	**67.7**	**1,664**	**32.5**	**67.5**	**483**
CHINA	Arlington	42.7	57.3	**150**	29.8	70.2	**208**
	Atlanta	12	88	**92**	3.1	96.9	**286**
	Baltimore	42.2	57.8	**185**	33.3	66.7	**210**
	Bloomington	.	.	**.**	28.1	71.9	**57**
	Boston	53.9	46.1	**243**	40.1	59.9	**247**
	Chicago	49.8	50.2	**325**	32	68	**410**
	Dallas	.	.	**.**	39.5	60.5	**76**
	Denver	65	35	**60**	.	.	**.**
	Detroit	35.7	64.3	**56**	12.4	87.6	**234**
	Houston	56.8	43.2	**125**	.	.	**.**
	Los Angeles	43.9	56.1	**3,505**	41	59	**495**
	Miami	47.3	52.7	**74**	25.6	74.4	**316**
	New York	56.7	43.3	**19,993**	35.4	64.6	**18,424**
	Newark	57.1	42.9	**783**	35.6	64.4	**825**
	Orlando	75	25	**76**	60	40	**130**
	Philadelphia	42.5	57.5	**461**	25.2	74.8	**543**
	San Diego	66.7	33.3	**54**	32.3	67.7	**217**
	San Francisco	58.5	41.5	**914**	48.8	51.2	**645**
	Seattle	.	.	**.**	22	78	**254**
	Total	**54.5**	**45.5**	**27,096**	**34.8**	**65.2**	**23,577**

Country	Immigration court	Group decision (by type of case)					
		Affirmative			Defensive		
		% Granted	% Denied	Total	% Granted	% Denied	Total
COLOMBIA	Arlington	50.9	49.1	**55**	.	.	**.**
	Atlanta	13.9	86.1	**137**	.	.	**.**
	Boston	40.5	59.5	**111**	16.3	83.7	**203**
	Chicago	47.6	52.4	**84**	.	.	**.**
	Houston	29.3	70.7	**92**	11.9	88.1	**67**
	Los Angeles	36.8	63.2	**152**	22.2	77.8	**72**
	Miami	27.6	72.4	**5,539**	16.6	83.4	**1,318**
	New York	69.1	30.9	**291**	41.5	58.5	**212**
	Newark	25.8	74.2	**198**	18.1	81.9	**166**
	Orlando	55.9	44.1	**1,185**	44.6	55.4	**101**
	San Francisco	57.8	42.2	**64**	.	.	**.**
	Total	**34.1**	**65.9**	**7,908**	**20.5**	**79.5**	**2,139**
EL SALVADOR	Arlington	2.4	97.6	**333**	8	92	**338**
	Atlanta	2.4	97.6	**248**	.	.	**.**
	Baltimore	7.3	92.7	**177**	7.2	92.8	**180**
	Bloomington	7	93	**71**	1.4	98.6	**72**
	Boston	8.6	91.4	**245**	6.3	93.8	**192**
	Chicago	14.6	85.4	**158**	12.9	87.1	**132**
	Dallas	12.3	87.7	**81**	3.9	96.1	**103**
	Denver	1.7	98.3	**118**	1.5	98.5	**132**
	Houston	4.1	95.9	**440**	2.1	97.9	**793**
	Los Angeles	4	96	**1,403**	4.1	95.9	**1,014**
	Miami	9.1	90.9	**416**	6.2	93.8	**225**
	New York	8.8	91.2	**681**	16	84	**374**
	Newark	7	93	**201**	3.3	96.7	**122**
	San Diego	.	.	**.**	4.8	95.2	**147**
	San Francisco	15.8	84.2	**577**	14.7	85.3	**897**
	Seattle	2.1	97.9	**94**	2.3	97.7	**256**
	Total	7	93	**5,243**	7.2	92.8	**4,977**
ETHIOPIA	Arlington	39	61	**843**	49.3	50.7	**373**
	Atlanta	14.3	85.7	**56**	.	.	**.**
	Baltimore	57.2	42.8	**1,133**	59.3	40.7	**273**
	Bloomington	42.2	57.8	**109**	30.8	69.2	**52**
	Chicago	66.3	33.7	**98**	47.8	52.2	**69**
	Dallas	45	55	**131**	38.2	61.8	**55**

Country	Immigration court	Group decision (by type of case)					
		Affirmative			Defensive		
		% Granted	% Denied	Total	% Granted	% Denied	Total
	Denver	77.2	22.8	**79**	.	.	**.**
	Los Angeles	65.8	34.2	**225**	69	31	**71**
	New York	73.3	26.7	**60**	.	.	**.**
	San Diego	46.8	53.2	**77**	.	.	**.**
	San Francisco	74.7	25.3	**225**	77.8	22.2	**81**
	Seattle	.	.	**.**	43.1	56.9	**51**
	Total	**53.1**	**46.9**	**3,036**	**53.7**	**46.3**	**1,025**
GUATEMALA	Arlington	6.6	93.4	**228**	9.8	90.2	**123**
	Atlanta	0.4	99.6	**490**	.	.	**.**
	Baltimore	8.1	91.9	**99**	17.6	82.4	**68**
	Bloomington	3.1	96.9	**97**	12.3	87.7	**57**
	Boston	8	92	**375**	11	89	**236**
	Chicago	10.1	89.9	**673**	11.7	88.3	**334**
	Dallas	22	78	**50**	.	.	**.**
	Denver	5	95	**240**	5.2	94.8	**96**
	Detroit	1.1	98.9	**93**	.	.	**.**
	Houston	11.9	88.1	**293**	8.2	91.8	**306**
	Los Angeles	5.6	94.4	**2,871**	8.9	91.1	**789**
	Miami	12.9	87.1	**1,180**	11.8	88.2	**297**
	New York	12.4	87.6	**331**	22.5	77.5	**120**
	Newark	7.2	92.8	**279**	10.8	89.2	**74**
	Orlando	5.6	94.4	**54**	.	.	**.**
	Philadelphia	2.5	97.5	**319**	.	.	**.**
	San Diego	10	90	**250**	10.6	89.4	**301**
	San Francisco	30.5	69.5	**734**	33.7	66.3	**563**
	Seattle	8.2	91.8	**97**	4.3	95.7	**209**
	Total	**9.4**	**90.6**	**8,753**	**13.9**	**86.1**	**3,573**
HAITI	Atlanta	.	.	**.**	4.5	95.5	**66**
	Baltimore	24.1	75.9	**54**	11.1	88.9	**63**
	Boston	25.3	74.7	**237**	13.8	86.2	**362**
	Miami	14.7	85.3	**11,678**	11.5	88.5	**8,210**

Country	Immigration court	Group decision (by type of case)					
		Affirmative			Defensive		
		% Granted	% Denied	Total	% Granted	% Denied	Total
	New York	32.2	67.8	**332**	23.4	76.6	**299**
	Newark	12	88	**200**	11.7	88.3	**213**
	Orlando	25.7	74.3	**1,008**	21.2	78.8	**499**
	Philadelphia	34.5	65.5	**58**	21.8	78.2	**55**
	Total	**16.3**	**83.7**	**13,567**	**12.5**	**87.5**	**9,767**
HONDURAS	Arlington	.	.	**.**	11	89	**109**
	Houston	.	.	**.**	4.3	95.7	**328**
	Los Angeles	6.1	93.9	**329**	9.8	90.2	**224**
	Miami	13.9	86.1	**180**	9.7	90.3	**319**
	New York	14.3	85.7	**84**	28.7	71.3	**87**
	San Diego	.	.	**.**	6.3	93.7	**79**
	San Francisco	12.9	87.1	**62**	21.7	78.3	**152**
	Seattle	.	.	**.**	9.4	90.6	**85**
	Total	**9.9**	**90.1**	**655**	**10.8**	**89.2**	**1,383**
INDIA	Chicago	16.5	83.5	**91**	4.3	95.7	**115**
	Houston	.	.	**.**	20.9	79.1	**67**
	Los Angeles	36.5	63.5	**576**	34.6	65.4	**104**
	New York	32.4	67.6	**1,049**	18.6	81.4	**803**
	Newark	20.1	79.9	**278**	6.8	93.2	**118**
	Philadelphia	15	85	**60**	.	.	**.**
	San Francisco	48.3	51.7	**5,143**	36.2	63.8	**1,133**
	Seattle	44.3	55.7	**185**	26.1	73.9	**92**
	Total	**43.3**	**56.7**	**7,382**	**26.6**	**73.4**	**2,432**
INDONESIA	Arlington	18.3	81.7	**164**	.	.	**.**
	Atlanta	9.5	90.5	**63**	.	.	**.**
	Baltimore	46.8	53.2	**77**	.	.	**.**
	Boston	19.2	80.8	**177**	9.1	90.9	**132**
	Chicago	40.7	59.3	**54**	.	.	**.**
	Denver	17.2	82.8	**203**	.	.	**.**
	Los Angeles	31.8	68.2	**737**	11.5	88.5	**401**
	New York	61	39	**733**	28	72	**214**
	Newark	18.6	81.4	**145**	7.1	92.9	**84**

Country	Immigration court	Group decision (by type of case)					
		Affirmative			Defensive		
		% Granted	% Denied	Total	% Granted	% Denied	Total
	Philadelphia	14.9	85.1	**765**	1.7	98.3	**403**
	San Francisco	52.5	47.5	**442**	.	.	**.**
	Seattle	1.6	98.4	**64**	1.7	98.3	**116**
	Total	**33.6**	**66.4**	**3,624**	**9.9**	**90.1**	**1,350**
IRAN	Arlington	70.5	29.5	**61**	.	.	**.**
	Baltimore	67.3	32.7	**55**	.	.	**.**
	Houston	73.7	26.3	**57**	.	.	**.**
	Los Angeles	52.6	47.4	**970**	43.1	56.9	**218**
	San Diego	.	.	**.**	42.1	57.9	**57**
	San Francisco	72.7	27.3	**187**	65.2	34.8	**89**
	Total	**57.7**	**42.3**	**1,330**	**48.4**	**51.6**	**364**
MEXICO	Atlanta	2.8	97.2	**106**	.	.	**.**
	Houston	3.3	96.7	**60**	.	.	**.**
	Los Angeles	4	96	**1,124**	21.7	78.3	**115**
	Miami	5.3	94.7	**113**	.	.	**.**
	San Diego	8.3	91.7	**206**	10.1	89.9	**119**
	San Francisco	12.7	87.3	**764**	23.6	76.4	**161**
	Seattle	.	.	**.**	5.2	94.8	**58**
	Total	**7.2**	**92.8**	**2,373**	**17.2**	**82.8**	**453**
NICARAGUA	Houston	.	.	**.**	19.1	80.9	**89**
	Los Angeles	10.3	89.7	**136**	10.4	89.6	**164**
	Miami	15.9	84.1	**396**	14	86	**842**
	San Francisco	.	.	**.**	18.2	81.8	**148**
	Total	**14.5**	**85.5**	**532**	**14.4**	**85.6**	**1,243**
NIGERIA	Arlington	.	.	**.**	23.2	76.8	**69**
	Atlanta	.	.	**.**	9.1	90.9	**55**
	Baltimore	37.3	62.7	**110**	19	81	**84**
	Boston	45.1	54.9	**51**	33.9	66.1	**56**
	Chicago	32.2	67.8	**59**	32.5	67.5	**83**
	Dallas	.	.	**.**	14	86	**50**
	Houston	.	.	**.**	28.8	71.2	**59**
	New York	35.6	64.4	**315**	38.7	61.3	**119**
	Newark	39.2	60.8	**79**	.	.	**.**
	San Francisco	.	.	**.**	33.3	66.7	**51**
	Total	**36.8**	**63.2**	**614**	**27.2**	**72.8**	**626**

Country	Immigration court	Group decision (by type of case)					
		Affirmative			Defensive		
		% Granted	% Denied	Total	% Granted	% Denied	Total
PAKISTAN	Arlington	46.6	53.4	**116**	33.8	66.2	**74**
	Baltimore	60	40	**65**	33.3	66.7	**57**
	Chicago	35.1	64.9	**114**	21.3	78.7	**136**
	Dallas	37.9	62.1	**58**	14.3	85.7	**63**
	Houston	37.5	62.5	**64**	16.4	83.6	**122**
	Los Angeles	32.1	67.9	**246**	24.3	75.7	**74**
	New York	38.7	61.3	**716**	24.6	75.4	**635**
	Newark	30.8	69.2	**107**	9.2	90.8	**98**
	Philadelphia	63.8	36.3	**80**	9.8	90.2	**82**
	San Francisco	45.5	54.5	**200**	41.7	58.3	**120**
	Total	**40.2**	**59.8**	**1,766**	**23.5**	**76.5**	**1,461**
PERU	Arlington	.	.	**.**	20.3	79.7	**64**
	Los Angeles	20.6	79.4	**350**	16.1	83.9	**93**
	Miami	23.3	76.7	**871**	20.7	79.3	**246**
	New York	53.7	46.3	**95**	.	.	**.**
	Newark	17.2	82.8	**99**	.	.	**.**
	San Francisco	61.2	38.8	**304**	56.7	43.3	**141**
	Total	**30.8**	**69.2**	**1,719**	**29.2**	**70.8**	**544**
RUSSIA	Arlington	62.7	37.3	**51**	.	.	**.**
	Baltimore	67.9	32.1	**56**	.	.	**.**
	Chicago	44.6	55.4	**112**	47	53	**66**
	Denver	64.5	35.5	**124**	.	.	**.**
	Los Angeles	54.9	45.1	**384**	51.7	48.3	**60**
	Miami	61.3	38.7	**124**	.	.	**.**
	New York	69.7	30.3	**1,388**	55.2	44.8	**134**
	Newark	57.6	42.4	**144**	.	.	**.**
	Orlando	61.7	38.3	**81**	.	.	**.**
	Philadelphia	52.3	47.7	**86**	.	.	**.**
	San Francisco	75.2	24.8	**157**	44.8	55.2	**67**
	Seattle	44.8	55.2	**87**	18.9	81.1	**74**
	Total	**64**	**36**	**2,794**	**44.9**	**55.1**	**401**
SOMALIA	Arlington	39.6	60.4	**419**	53.3	46.7	**105**
	Atlanta	12.1	87.9	**174**	20.4	79.6	**54**
	Baltimore	55.7	44.3	**194**	68	32	**50**
	Bloomington	40.1	59.9	**137**	31.6	68.4	**114**

Country	Immigration court	Group decision (by type of case)					
		Affirmative			Defensive		
		% Granted	% Denied	Total	% Granted	% Denied	Total
	Chicago	80.7	19.3	**145**	78.1	21.9	**73**
	Dallas	76.5	23.5	**217**	.	.	**.**
	Denver	72	28	**132**	.	.	**.**
	Houston	82.4	17.6	**51**	.	.	**.**
	Los Angeles	60.7	39.3	**219**	.	.	**.**
	Miami	.	.	**.**	64.2	35.8	**95**
	San Diego	39.2	60.8	**365**	55.3	44.7	**76**
	San Francisco	83	17	**206**	.	.	**.**
	Seattle	63	37	**73**	58.5	41.5	**53**
	Total	**54.2**	**45.8**	**2,332**	**52.9**	**47.1**	**620**
YUGOSLAVIA	Chicago	48.9	51.1	**133**	33.1	66.9	**163**
	Detroit	19.6	80.4	**112**	11.5	88.5	**131**
	New York	64.5	35.5	**1,297**	60.5	39.5	**613**
	Newark	39.8	60.2	**128**	43.7	56.3	**71**
	Total	**58.3**	**41.7**	**1,670**	**48.2**	**51.8**	**978**

Source: GAO analysis of EOIR data.

Note: The empty cells in the above tables reflect immigration courts that heard fewer than 50 affirmative cases or 50 defensive cases involving claimants from a specific country.

Logistic Regression Results: Odds of Being Granted Asylum

One of the difficulties with interpreting the results shown in Table 12, above, is that there are so many comparisons that can be made and that these three-way cross-classifications (e.g., immigration court by asylum decision by country) do not take into account the other characteristics of the claimants that, as we showed in Table 11, can affect asylum decisions; namely, the period in which the cases were heard, whether the asylum seekers were represented, whether they had dependents, whether they applied for asylum within a year of entering the country, and whether, among those whose cases were defensive, they had ever been detained. An alternative approach to assessing the variability in granting asylum across immigration courts is to use logistic regression models, which allow us to estimate the differences across immigration courts in a multivariate context, or while controlling statistically (and simultaneously) for the effects of these other factors. In tables 13 and 14, we show the results of fitting logistic regression models to the data for affirmative and defensive cases respectively, in both cases after excluding those cases that were in absentia.

Before describing the results of the multivariate regression models, we first note one fundamental difference between them and our foregoing results, which is that in logistic regression models we use odds and odds ratios, rather than percentages and percentage differences, to compare countries (or differences by period, between cases represented, and so on). The odds themselves are fairly straightforward and can, when we are looking at the effect of one factor at a time on the likelihood of cases being granted asylum, be calculated directly from the percentages granted. To estimate the differences across immigration courts, for example, we can calculate the odds on cases' being granted in each immigration court, which is simply the percentage granted divided by the percentage not granted. In the case of the Atlanta immigration court, the odds on being granted would be 6.1/93.9 = 0.07 (see table 13). This odds has a straightforward interpretation, and indicates that 0.07 cases were granted for every 1 case that was not, or that 7 cases were granted for every 100 that were not. The odds on being granted can be similarly calculated and interpreted for the other immigration courts, and at the bottom of Tables 13 and 14, we also show the odds on cases' being granted across categories of the other factors as well (i.e., period, representation, etc.).

To compare immigration courts or different categories of the other variables, we choose one immigration court or one category of the other variables as a referent category, and calculate odds ratios that indicate how different the odds are for other immigration courts or other categories versus that one. In assessing immigration courts, we arbitrarily chose Denver as the referent category. As shown in columns 4 and 5 in table 13, by dividing, for example, the odds on being granted asylum in Atlanta (0.07) and the same odds in Baltimore (0.90) by the odds in Denver (0.51), we find that the odds on granting asylum (in affirmative cases) are lower in Atlanta than in Denver, by a factor of 0.13, but higher in Baltimore than in Denver, by a factor of 1.79. Without adjusting for the effects of immigration court, nationality, time period, representation, dependents, timeliness of application, and detention status, this means that for affirmative cases, the odds on asylum being granted in Baltimore were about 14 times greater than in Atlanta (1.79 unadjusted odds ratio in Baltimore divided by .13 unadjusted odds ratio in Atlanta, which are shown in column 5 in table 13).

The full set of "unadjusted" odds ratios comparing all immigration courts with Denver are given in column 5 of table 13 for affirmative cases, and column 5 of table 13 for defensive cases. These unadjusted odds ratios indicate the differences in the odds on being granted asylum across the various categories of the different factors, when factors are considered

one at a time. Tables 13 and 14 also show unadjusted odds ratios comparing differences across countries, periods, representation categories, dependents categories, entry-to-application categories and, in table 16, categories that indicate whether the applicants for asylum in defensive cases had ever been detained.

When considering one factor at a time, these unadjusted odds ratios can be directly calculated from the percentages granted and denied across the categories of each factor. However, when we want to consider the effects of the different factors simultaneously—that is, to estimate differences across immigration courts after taking account of which countries the asylum seekers came from, when their case was heard, whether they were represented, etc., we use multivariate logistic regression models which involve an iterative statistical estimation procedure to obtain a net effect estimate for each factor. These are referred to as "adjusted odds ratios," shown in column 6 of tables 13 and 14.

Table 13: Results of Modeling Affirmative Cases with Absentia Excluded

Factor (1)	Percent granted (2)	Percent denied (3)	Odds on granted (4)	Unadjusted odds ratios (5)	Adjusted odds ratios (6)
Arlington	31.4	68.6	0.46	0.9	0.69
Atlanta	6.1	93.9	0.07	0.13[a]	0.17[a]
Baltimore	47.5	52.5	0.9	1.79[a]	1.08
Bloomington	27	73	0.37	0.73	0.5[a]
Boston	30	70	0.43	0.85	1.14
Chicago	35.1	64.9	0.54	1.07	1.1
Dallas	45	55	0.82	1.62	1.19
Denver	33.6	66.4	0.51	Ref	Ref
Detroit	20.7	79.3	0.26	0.52[a]	0.29[a]
Houston	24.3	75.7	0.32	0.63[a]	1.19
Los Angeles	26.6	73.4	0.36	0.71	0.87
Miami	19.1	80.9	0.24	0.47[a]	0.7
New York	54.4	45.6	1.19	2.36[a]	1.74[a]
Newark	32.4	67.6	0.48	0.95	0.97
Orlando	42.8	57.2	0.75	1.48	1.6[a]
Philadelphia	26.7	73.3	0.36	0.72	0.69
San Diego	27.1	72.9	0.37	0.73	0.64[a]
San Francisco	46	54	0.85	1.68[a]	2.15[a]
Seattle	30.8	69.2	0.44	0.88	0.87

Factor (1)	Percent granted (2)	Percent denied (3)	Odds on granted (4)	Unadjusted odds ratios (5)	Adjusted odds ratios (6)
ALBANIA	56	44	1.27	Referent	Referent
BANGLADESH	32.2	67.8	0.47	0.37[a]	0.42[a]
CHINA	54.4	45.6	1.2	0.94	0.91
COLOMBIA	34.3	65.7	0.52	0.41[a]	0.52[a]
EL SALVADOR	6.9	93.1	0.07	0.06[a]	0.11[a]
ETHIOPIA	53.2	46.8	1.14	0.89	1.45[a]
GUATEMALA	9.4	90.6	0.1	0.08[a]	0.17[a]
HAITI	16.3	83.7	0.2	0.15[a]	0.27[a]
HONDURAS	9.8	90.2	0.11	0.08[a]	0.23[a]
INDIA	42.3	57.7	0.73	0.58[a]	0.45[a]
INDONESIA	33.4	66.6	0.5	0.39[a]	0.44[a]
IRAN	58.3	41.7	1.4	1.1	1.62[a]
MEXICO	7.2	92.8	0.08	0.06[a]	0.09[a]
NICARAGUA	16.2	83.8	0.19	0.15[a]	0.46[a]
NIGERIA	34.9	65.1	0.54	0.42[a]	0.68[a]
PAKISTAN	39.9	60.1	0.66	0.52[a]	0.68[a]
PERU	31	69	0.45	0.35[a]	0.57[a]
RUSSIA	63	37	1.7	1.33[a]	1.51[a]
SOMALIA	55	45	1.22	0.96	1.78[a]
YUGOSLAVIA	57.9	42.1	1.37	1.08	1.15[a]
Period 1	16.9	83.1	0.2	Referent	Referent
Period 2	34.6	65.4	0.53	2.61[a]	1.96[a]
Period 3	43.7	56.3	0.78	3.82[a]	2.65[a]
Not represented	12	88	0.14	Referent	Referent
Represented	39.2	60.8	0.65	4.74[a]	1.73a
Dependents-No	35.8	64.2	0.56	Referent	Referent
Dependents-Yes	43	57	0.75	1.35[a]	1.52[a]
Application not filed within 1 year of entry	25.8	74.2	0.35	Referent	Referent
Application filed within 1 year of entry	41.9	58.1	0.72	2.07[a]	1.44[a]
Information on whether application filed within 1 year of entry is missing	49	51	0.96		

Source: GAO analysis of EOIR data.

[a]Statistically significant difference from referent.

Table 14: Results of Modeling Defensive Cases with Absentia Excluded

Factor	Percent granted	Percent denied	Odds on granted	Unadjusted odds ratios	Adjusted odds ratios
Arlington	27.8	72.2	0.38	1.77[a]	1.21
Atlanta	7.1	92.9	0.08	0.35[a]	0.2[a]
Baltimore	32.9	67.1	0.49	2.26[a]	1.33
Bloomington	18.5	81.5	0.23	1.05	0.48[a]
Boston	21.4	78.6	0.27	1.25	1.14
Chicago	26.9	73.1	0.37	1.7[a]	1.1
Dallas	22.8	77.2	0.3	1.36	0.9
Denver	17.8	82.2	0.22	Ref	Ref
Detroit	14.2	85.8	0.16	0.76	0.3[a]
Houston	10.3	89.7	0.11	0.53[a]	0.72
Los Angeles	18.4	81.6	0.23	1.04	1.12
Miami	13.7	86.3	0.16	0.73	0.84
New York	35.4	64.6	0.55	2.53[a]	1.57[a]
Newark	24	76	0.32	1.46	1.02
Orlando	33.4	66.6	0.5	2.32[a]	2.14[a]
Philadelphia	16.5	83.5	0.2	0.91	0.7
San Diego	20.7	79.3	0.26	1.21	0.95
San Francisco	34.9	65.1	0.54	2.47[a]	2.94[a]
Seattle	14.9	85.1	0.17	0.8	0.72
ALBANIA	38.7	61.3	0.63	Ref	Ref
BANGLADESH	29.2	70.8	0.41	0.65[a]	0.66[a]
CHINA	34.8	65.2	0.53	0.85	0.74[a]
COLOMBIA	20.9	79.1	0.26	0.42[a]	0.43[a]
EL SALVADOR	7.3	92.7	0.08	0.12[a]	0.13[a]
ETHIOPIA	52.1	47.9	1.09	1.72[a]	2.26[a]
GUATEMALA	13.8	86.2	0.16	0.25[a]	0.31[a]
HAITI	12.6	87.4	0.14	0.23[a]	0.33[a]
HONDURAS	10.7	89.3	0.12	0.19[a]	0.22[a]
INDIA	24.9	75.1	0.33	0.52[a]	0.45[a]
INDONESIA	10.6	89.4	0.12	0.19[a]	0.18[a]
IRAN	49.9	50.1	0.99	1.57[a]	2.02[a]
MEXICO	16.3	83.7	0.2	0.31[a]	0.32[a]
NICARAGUA	14.8	85.2	0.17	0.27[a]	0.45[a]
NIGERIA	26.8	73.2	0.37	0.58[a]	0.89
PAKISTAN	23.2	76.8	0.3	0.48[a]	0.51[a]

Factor	Percent granted	Percent denied	Odds on granted	Unadjusted odds ratios	Adjusted odds ratios
PERU	28.1	71.9	0.39	0.62[a]	0.78
RUSSIA	43.1	56.9	0.76	1.2	1.65[a]
SOMALIA	57.7	42.3	1.37	2.16[a]	3.89[a]
YUGOSLAVIA	47.2	52.8	0.9	1.42[a]	1.68[a]
Period 1	16.6	83.4	0.2	Ref	Ref
Period 2	27	73	0.37	1.86[a]	2.05[a]
Period 3	29.2	70.8	0.41	2.06[a]	2.31[a]
Not represented	8.2	91.8	0.09	Ref	Ref
Represented	26.8	73.2	0.37	4.11[a]	2.31[a]
Dependents-No	25.2	74.8	0.34	Ref	Ref
Dependents-Yes	36.7	63.3	0.58	1.72[a]	1.81[a]
Application not filed within 1 year of entry	21.9	78.1	0.28	Ref	Ref
Application filed within 1 year of entry	29.3	70.7	0.41	1.48[a]	1.28[a]
Information on whether application filed within 1 year of entry is missing	23.5	76.5	0.31		
Never detained	26.6	73.4	0.36	Ref	Ref
Currently detained or released	24.9	75.1	0.33	0.91[a]	0.69[a]

Source: GAO analysis of EOIR data.

[a]Statistically significant difference from referent.

The adjusted odds ratios tell us that even after adjusting for the sizable differences in the odds on asylum's being granted across countries, across the different periods, and across categories of representation, dependents, entry-to-application time, and whether ever detained (for defensive cases only), there remain sizable differences across immigration courts. That is, even after we take account of the effects of all these other factors and how, for example, immigration courts differ in terms of the asylum seekers' nationalities and when asylum seekers' cases were heard, we find sizable differences across immigration courts in the odds on granting asylum. After controlling for all of these factors, the net effect was that in comparison with Denver, the likelihood of affirmative cases' being granted asylum was 2.15 times greater in San Francisco, half as likely in Bloomington, and less than one-fifth as likely in Atlanta. This implies that, for affirmative cases, the odds on asylum's being granted were about 4 times greater in San Francisco than in Bloomington (2.15 adjusted odds ratio in San Francisco divided by .5 adjusted odds ratio in Bloomington, which are shown in column 6 of table 13), and almost 13 times greater in San Francisco than in Atlanta (2.15 odds ratio in San Francisco divided by .17 odds ratio in Atlanta), even after the other differences in claimant

characteristics, including where they came from, were controlled. Other large differences are implied by these adjusted odds ratios, for both affirmative and defensive cases. The adjusted odds comparing each immigration court with every other immigration court are shown in table 15 (for affirmative cases) and table 16 (for defensive cases).

Table 15: Odds Ratios and Significance Levels of Differences across Immigration Courts, for Affirmative Asylum Cases

Court	ARL	ATL	BAL	BLM	BOS	CHI	DAL	DEN	DET	HOU	LOS	MIA	NYC	NEW	ORL	PHI	SDG	SFO	SEA
Arlington		**3.97**	0.64	1.40	0.61	0.63	0.58	0.69	**2.39**	0.58	0.80	1.00	**0.40**	0.71	**0.43**	1.01	1.09	**0.32**	0.80
Atlanta	**0.25**		**0.16**	**0.35**	**0.15**	**0.16**	**0.15**	**0.17**	0.60	**0.15**	**0.20**	**0.25**	**0.10**	**0.18**	**0.11**	**0.25**	**0.28**	**0.08**	**0.20**
Baltimore	1.55	**6.18**		2.17	0.94	0.99	0.91	1.08	**3.72**	0.90	1.24	1.55	**0.62**	1.11	**0.68**	1.57	**1.70**	**0.50**	1.24
Bloomington	0.72	**2.84**	**0.46**		**0.43**	**0.45**	**0.42**	**0.50**	1.71	**0.42**	0.57	0.71	**0.29**	0.51	**0.31**	0.72	0.78	**0.23**	0.57
Boston	1.65	**6.55**	1.06	**2.30**		1.04	0.96	1.14	**3.94**	0.96	1.31	**1.65**	0.66	1.18	0.72	1.67	**1.80**	**0.53**	1.32
Chicago	1.58	**6.27**	1.01	**2.20**	0.96		0.92	1.10	**3.77**	0.92	1.26	1.58	0.63	1.13	**0.69**	1.59	**1.72**	**0.51**	1.26
Dallas	1.71	**6.81**	1.10	**2.40**	1.04	1.09		1.19	**4.10**	1.00	1.37	1.71	0.68	1.22	0.75	1.73	**1.87**	0.55	1.37
Denver	1.44	**5.72**	0.93	**2.01**	0.87	0.91	0.84		**3.44**	0.84	1.15	1.44	0.57	1.03	**0.63**	1.46	**1.57**	**0.46**	1.15
Detroit	**0.42**	1.66	**0.27**	0.58	**0.25**	**0.27**	**0.24**	**0.29**		**0.24**	**0.33**	**0.42**	**0.17**	**0.30**	**0.18**	**0.42**	**0.46**	**0.13**	**0.33**
Houston	1.72	**6.83**	1.11	**2.40**	1.04	1.09	1.00	1.19	**4.11**		1.37	1.72	0.69	1.23	0.75	1.74	**1.88**	**0.55**	1.37
Los Angeles	1.25	**4.98**	0.81	1.75	0.76	0.79	0.73	0.87	**3.00**	0.73		1.25	**0.50**	0.90	**0.54**	1.27	1.37	**0.40**	1.00
Miami	1.00	**3.98**	0.64	1.40	**0.61**	0.63	0.58	0.70	**2.40**	0.58	0.80		**0.40**	0.72	**0.44**	1.01	1.09	**0.32**	0.80
New York City	**2.51**	**9.97**	**1.61**	**3.51**	1.52	1.59	1.46	**1.74**	**6.00**	1.46	**2.00**	**2.50**		1.79	1.09	**2.53**	**2.74**	0.81	2.00
Newark	1.40	**5.56**	0.90	1.96	0.85	0.89	0.82	0.97	**3.35**	0.81	1.12	1.40	**0.56**		0.61	1.41	1.53	**0.45**	1.12
Orlando	**2.30**	**9.14**	**1.48**	**3.21**	1.40	**1.46**	1.34	**1.60**	**5.50**	1.34	**1.83**	**2.30**	0.92	1.64		**2.32**	**2.51**	0.74	1.84
Philadelphia	0.99	**3.93**	0.64	1.38	0.60	0.63	0.58	0.69	**2.37**	0.58	0.79	0.99	**0.39**	0.71	**0.43**		1.08	**0.32**	0.79
San Diego	0.91	**3.64**	**0.59**	1.28	**0.56**	**0.58**	**0.53**	**0.64**	2.19	**0.53**	0.73	0.91	**0.36**	0.65	**0.40**	0.92		**0.29**	0.73
San Francisco	**3.10**	**12.33**	**2.00**	**4.34**	**1.88**	**1.97**	1.81	**2.15**	**7.42**	**1.80**	**2.48**	**3.10**	1.24	**2.22**	1.35	**3.13**	**3.39**		**2.48**
Seattle	1.25	**4.98**	0.81	1.75	0.76	0.79	0.73	0.87	**3.00**	0.73	1.00	1.25	0.50	0.89	0.54	1.27	1.37	**0.40**	

Source: GAO analysis of EOIR data.

Note: Values bolded where the odds ratio was significant at the p <.05 level.

Table 16: Odds Ratios and Significance Levels of Differences Across Immigration Courts, for Defensive Asylum Cases

Court	Reference Court																		
	ARL	ATL	BAL	BLM	BOS	CHI	DAL	DEN	DET	HOU	LOS	MIA	NYC	NEW	ORL	PHI	SDG	SFO	SEA
Arlington		**6.18**	0.91	**2.53**	1.07	1.10	1.35	1.21	**4.07**	1.68	1.08	1.45	0.77	1.19	0.57	1.74	1.28	**0.41**	1.69
Atlanta	**0.16**		**0.15**	**0.41**	**0.17**	**0.18**	**0.22**	**0.20**	0.66	**0.27**	**0.17**	**0.23**	**0.12**	**0.19**	**0.09**	**0.28**	**0.21**	**0.07**	**0.27**
Baltimore	1.10	**6.78**		**2.78**	1.17	1.21	1.47	1.33	**4.46**	1.84	1.19	**1.59**	0.85	1.31	**0.62**	**1.91**	1.40	**0.45**	**1.85**
Bloomington	**0.39**	**2.44**	**0.36**		**0.42**	**0.43**	0.53	**0.48**	1.61	0.66	**0.43**	0.57	**0.30**	**0.47**	**0.22**	0.69	**0.50**	**0.16**	0.67
Boston	0.94	**5.79**	0.85	**2.37**		1.03	1.26	1.14	**3.81**	1.57	1.01	1.36	0.72	1.12	**0.53**	1.63	1.19	**0.39**	1.58
Chicago	0.91	**5.62**	0.83	**2.30**	0.97		1.22	1.10	**3.70**	1.53	0.98	1.32	0.70	1.08	**0.52**	1.58	1.16	**0.37**	1.53
Dallas	0.74	**4.60**	0.68	1.88	0.79	0.82		0.90	**3.03**	1.25	0.80	1.08	0.57	0.89	**0.42**	1.30	0.95	**0.31**	1.26
Denver	0.82	**5.09**	0.75	**2.09**	0.88	0.91	1.11		**3.35**	1.38	0.89	1.19	0.64	0.98	**0.47**	1.43	1.05	**0.34**	1.39
Detroit	**0.25**	1.52	**0.22**	0.62	**0.26**	**0.27**	**0.33**	**0.30**		**0.41**	**0.27**	**0.36**	**0.19**	**0.29**	**0.14**	**0.43**	**0.31**	**0.10**	**0.42**
Houston	0.60	**3.68**	0.54	1.51	0.64	0.66	0.80	0.72	**2.42**		0.64	0.86	0.46	0.71	**0.34**	1.04	0.76	**0.25**	1.01
Los Angeles	0.92	**5.72**	0.84	**2.34**	0.99	1.02	1.24	1.12	**3.76**	1.55		1.34	0.71	1.10	**0.52**	1.61	1.18	**0.38**	1.56
Miami	0.69	**4.26**	**0.63**	1.75	0.74	0.76	0.93	0.84	**2.81**	1.16	0.75		**0.53**	0.82	**0.39**	1.20	0.88	**0.28**	1.16
New York City	1.29	**8.00**	1.18	**3.28**	1.38	1.43	1.74	**1.57**	**5.27**	**2.17**	1.40	**1.88**		1.54	0.73	**2.25**	**1.65**	**0.53**	**2.19**
Newark	0.84	**5.18**	0.76	**2.12**	0.90	0.92	1.13	1.02	**3.41**	1.41	0.91	1.22	0.65		**0.48**	1.46	1.07	**0.35**	1.42
Orlando	1.76	**10.90**	**1.61**	**4.46**	**1.88**	**1.94**	**2.37**	**2.14**	**7.17**	**2.96**	**1.91**	**2.56**	1.36	2.10		**3.07**	**2.25**	0.73	**2.98**
Philadelphia	0.57	**3.55**	**0.52**	1.45	0.61	0.63	0.77	0.70	**2.34**	0.96	0.62	0.83	**0.44**	0.69	**0.33**		0.73	0.24	0.97
San Diego	0.78	**4.85**	0.72	**1.99**	0.84	0.86	1.05	0.95	**3.19**	1.32	0.85	1.14	**0.61**	0.94	**0.44**	1.37		0.32	1.32
San Francisco	**2.42**	**14.98**	**2.21**	**6.14**	**2.59**	**2.67**	**3.26**	**2.94**	**9.86**	**4.07**	**2.62**	**3.52**	**1.87**	**2.89**	1.38	**4.22**	**3.09**		**4.09**
Seattle	0.59	**3.66**	**0.54**	1.50	0.63	0.65	0.80	0.72	**2.41**	0.99	0.64	0.86	**0.46**	0.71	**0.34**	1.03	0.76	0.24	

Source: GAO Analysis of EOIR Data.

Note. Values bolded where the odds ratio was significant at the p <.05 level.

While controlling for these other factors sometimes alters the relative likelihoods in granting asylum across the different immigration courts, it does not diminish the overall finding that there are substantial differences across immigration courts. Figures 11 and 12 show the odds ratios (with their 95 percent confidence intervals) that indicate how much different the odds on granting asylum were across immigration courts before and after adjusting for the other factors, for affirmative and defensive cases respectively. Figure 11 shows that for affirmative decisions, even after adjustments, three immigration courts (Orlando, San Francisco, and New York) had significantly higher odds than the referent immigration court

(Denver), by factors ranging from roughly 1.6 to 2.2.[2] Four other
immigration courts (Atlanta, Detroit, Bloomington, and San Diego) had
significantly lower odds of granting asylum than the Denver immigration
court, by factors ranging from 0.2 to 0.6. This implies that all of the former
three immigration courts had significantly higher odds of granting asylum
than the latter four immigration courts, by factors ranging from roughly 3
to 13. Figure 12 shows fairly similar disparities across immigration courts
for defensive decisions, with the Orlando, San Francisco, and New York
courts again being significantly more likely and the Atlanta, Detroit, and
Bloomington (but not San Diego) courts being significantly less likely than
other courts to grant asylum.

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[2] Figures 11 and 12 show the point estimates and 95 percent confidence interval estimates
for the adjusted and unadjusted odds ratios indicating the differences between each
immigration court and the referent immigration court (Denver), for affirmative cases and
defensive cases. Were there no differences across courts, all odds ratios would be 1.0 and
reside on the horizontal line shown at that point in all figures. In all figures the courts are
ordered from those having the lowest unadjusted odds on granting asylum to those having
the highest odds, and it is noteworthy that the adjusted odds involve a reordering of the
courts (i.e., the unadjusted odds ratio for Miami (relative to Denver) is lower than the
unadjusted odds ratio for Detroit (relative to Denver), while the adjusted odds ratio for
Miami (relative to Denver) is higher than the adjusted odds ratio for Detroit (relative to
Denver).

Figure 11: Unadjusted and Adjusted Odds Ratios Indicating Immigration Court Differences, with 95 Percent Confidence Intervals, for Affirmative Cases

Source: GAO analysis of EOIR data

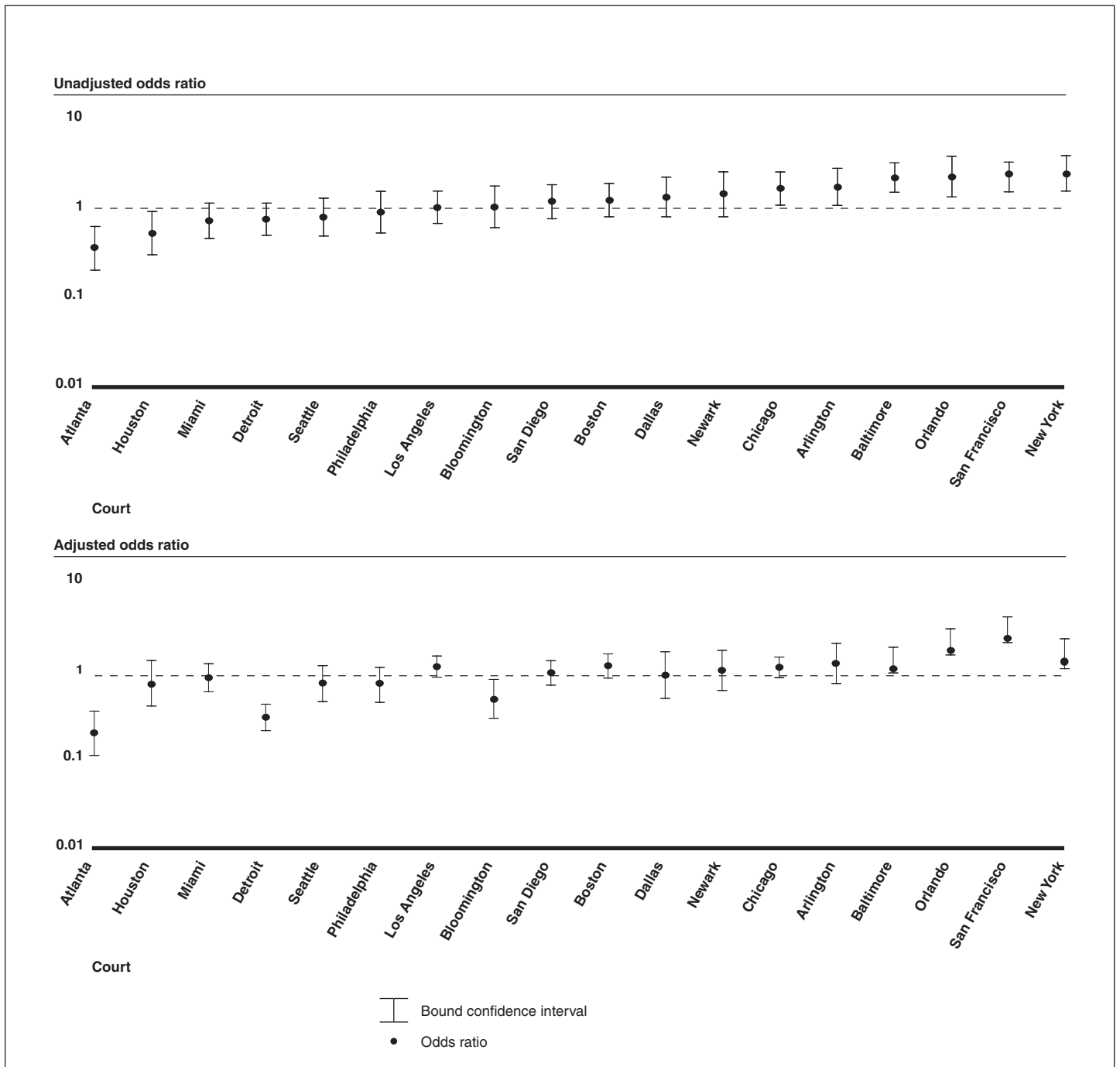**Figure 12: Unadjusted and Adjusted Odds Ratios Indicating Immigration Court Differences, with 95 Percent Confidence Intervals, for Defensive Cases**
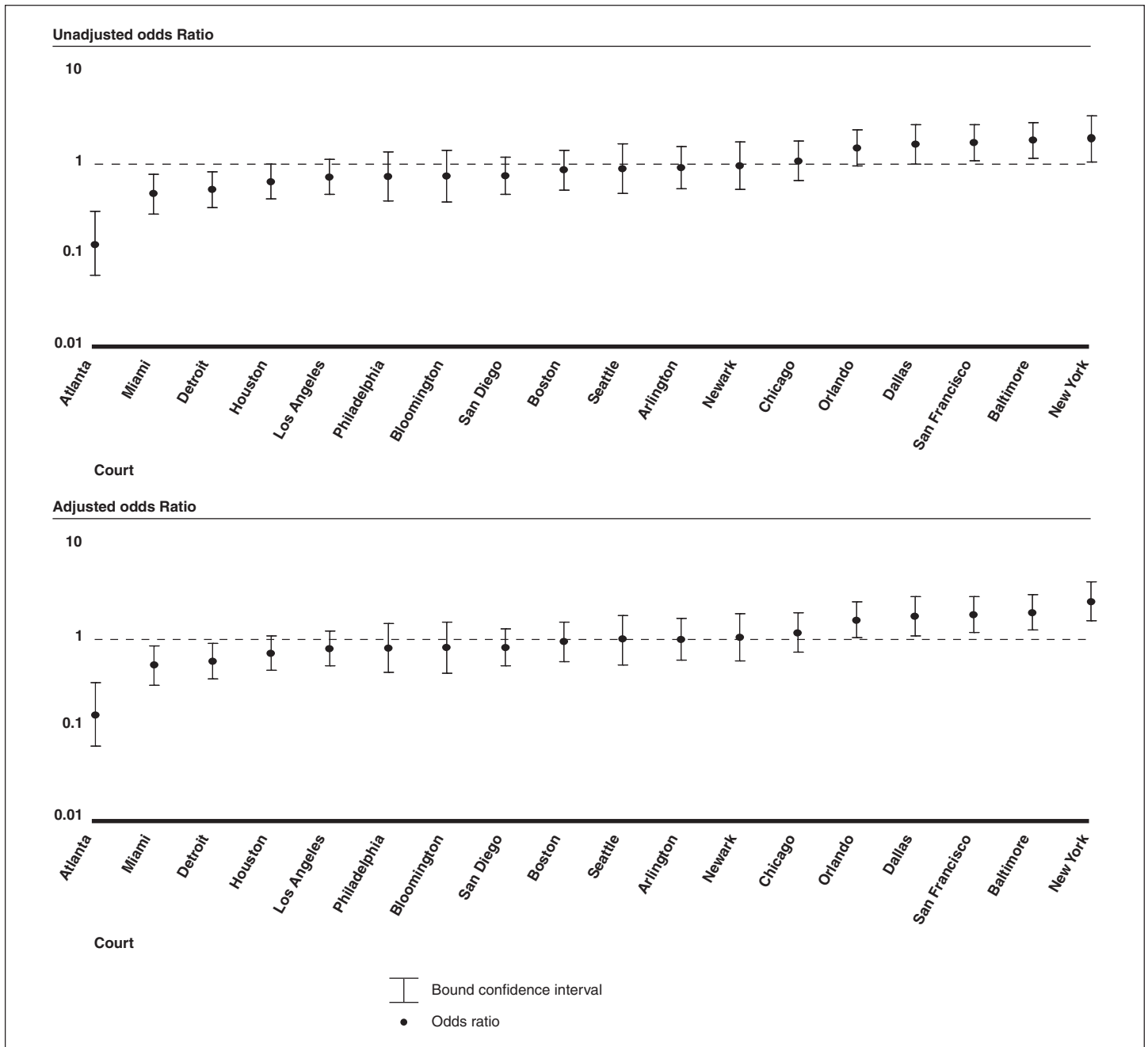
Source: GAO analysis of EOIR data

Appendix III: Differences in Asylum Grant Rates across Immigration Judges

In this appendix, we present information on how asylum decisions differed across immigration judges. First, we look at all immigration judges across the 19 immigration courts in our study who heard 50 or more affirmative or defensive cases in their primary immigration court. Then, we look at how decisions were affected by characteristics of the different immigration judges. And finally we look at selected immigration courts by country combinations to see how sizable differences were when different immigration judges heard cases involving applicants for the same country in the same immigration court. In the immigration court by country analyses, we limited the analysis to immigration judges who saw 20 or more affirmative and defensive cases. In these analyses, the immigration judges were not necessarily in their primary court.

Grant and Denial Rates by Immigration Judges

Table 17 (and fig. 5 on page 33 of this report) show the percentage of affirmative cases that were granted and denied for all immigration judges from the 19 different immigration courts that heard more than 50 affirmative asylum cases from October 1, 1994, through April 30, 2007, with the different immigration judges coded uniquely and arranged according to their primary immigration court; that is, the immigration court in which they heard the majority of their cases. The information in the figure and table is based on 196 immigration judges and represents over three-quarters of all affirmative cases heard by all immigration judges in the 19 immigration courts. In this and subsequent analyses not related to the immigration court by country analyses, we excluded immigration judges who heard fewer than 50 affirmative cases and cases heard by immigration judges other than in their primary immigration court, in order to simplify our presentation and avoid calculating percentages based on small numbers of cases.

Figure 5 and table 17 show that when immigration judges across all immigration courts were considered, pronounced differences existed across immigration judges in terms of the percentage of affirmative cases they granted. While some immigration judges granted asylum to fewer than 6 percent of the affirmative cases they hear, others granted asylum to more than 60 percent of their cases. This variability across the full set of immigration judges may be partly explained by the fact that those in different courts heard proportionately different numbers of cases from different countries; but even within courts, where cases are reportedly assigned at random, the differences in the percentages of affirmative asylum cases that were granted asylum often differed markedly. To take just a few examples, the percentages of affirmative cases granted asylum ranged across immigration judges from 19 percent to 61 percent in

Arlington, from 8 percent to 54 percent in Boston, from 2 percent to 72 percent in Miami, and from 3 percent to 93 percent in New York; and the variation across immigration judges in many of the remaining courts was similarly greatly disparate.

Logistic Regression Results: Odds of Being Granted Asylum

Given that immigration judges are reportedly assigned cases randomly within immigration courts, the variability in the percentages of cases granted asylum across immigration judges within immigration courts may provide a fairly accurate reflection of how much immigration judges differ in their handling of similar cases. However, not all immigration judges in each immigration court were on the bench during the whole of the period being considered and cases coming into the different immigration courts may have changed from early in the period to late in the period in terms of where they came from, whether they were represented, and so on.

For that reason, we also considered whether the variability across immigration judges persisted after taking account of the differences in the types of cases they heard using the same types of multivariate models and odds ratios that we described in the previous appendix that considered differences across immigration courts. As in the foregoing analyses of immigration court differences, we considered the odds on asylum's being granted rather than the percentage granted, and we compared those odds by choosing a referent category (in this case a referent immigration judge, rather than a referent immigration court) and taking ratios of the odds for every other immigration judge versus the referent immigration judge to estimate how different the judges' decisions were. As before, our choice of the referent category or immigration judge was arbitrary from a statistical point of view, and we selected an immigration judge (in this case Judge #9, from New York) whose odds on granting asylum, or whose percentage of cases that were granted asylum, was around the average for all immigration judges. The odds ratios in the sixth column of table 17 show the unadjusted differences across judges in the odds on granting asylum. The odds ratios in the last column of table 17 show the differences across immigration judges in those odds after statistically controlling for differences among immigration judges in the country their cases came from, the period in which the cases were heard, whether the asylum seekers were represented, whether they had dependents, and whether they applied for asylum within a year of entering the country.

The unadjusted odds ratios show, as the differences in percentages already discussed indicated, that there are substantial differences across immigration judges in the likelihood of granting asylum in the affirmative

cases they hear, at least before we control for case characteristics that
may differ from one immigration judge to another. To offer two examples,
the unadjusted odds on granting asylum were higher for Judge 192 in New
York than for the referent immigration judge, by a factor of 22.6, while the
unadjusted odds on granting asylum were lower for Judge 160 in Miami
than for the referent immigration judge, by a factor of 0.04. While these
differences are sizable in themselves, they imply an even greater
difference between Judges 192 and 160, since they imply that the former
had higher odds on granting asylum in affirmative cases, by a factor of
22.6/0.04 = 565. Moreover, and more importantly, while some immigration
judge differences are diminished by controlling for case characteristics,
others differences are increased, and significant and sizable differences
remain even after controls. Comparing the unadjusted and adjusted odds
ratios indicates that the differences just mentioned are quite similar after
controls. The full set of adjusted odds ratios, and the adjusted odds ratios
that can be computed from them to indicate differences between any
immigration judges in the table, indicate that even after we take account of
differences across cases in where the asylum seekers came from, whether
they were represented, and so on, some immigration judges were 10 or 20
or 30 or more times as likely as others to grant asylum in affirmative cases.

**Table 17: Percentages and Odds Ratios for Immigration Judges Hearing 50 or More Affirmative Cases in Their Primary
Immigration Court**

Primary Immigration court (1)	Immigration judge code (2)	Percent granted (3)	Percent denied (4)	Total number of cases (5)	Unadjusted odds ratios (6)	Adjusted odds ratios (7)
Arlington	198	61.1	38.9	131	2.67[a]	2.32[a]
Arlington	158	44.8	55.2	377	1.38[a]	1.44[a]
Arlington	183	35.7	64.3	140	0.94	2.27[a]
Arlington	122	33.2	66.8	530	0.85	0.8
Arlington	255	29.9	70.1	662	0.73[a]	0.79
Arlington	132	18.5	81.5	731	0.39[a]	0.39[a]
Atlanta	188	26.4	73.6	91	0.61	0.67
Atlanta	258	9.3	90.7	86	0.17[a]	0.21[a]
Atlanta	83	6.9	93.1	405	0.13[a]	0.24[a]
Atlanta	77	5.0	95.0	40	0.09[a]	0.11[a]
Atlanta	250	3.0	97.0	963	0.05[a]	0.13[a]
Baltimore	146	56.5	43.5	632	2.21[a]	2.01[a]
Baltimore	262	55.0	45.0	120	2.08[a]	4.1[a]
Baltimore	63	52.5	47.5	59	1.88[a]	1.14

Primary Immigration court (1)	Immigration judge code (2)	Percent granted (3)	Percent denied (4)	Total number of cases (5)	Unadjusted odds ratios (6)	Adjusted odds ratios (7)
Baltimore	116	47.4	52.6	424	1.53[a]	1.04
Baltimore	114	41.1	58.9	521	1.19	1.08
Baltimore	22	40.4	59.6	532	1.15	1
Bloomington	108	33.5	66.5	310	0.86	0.91
Bloomington	143	14.4	85.6	181	0.29[a]	0.29[a]
Boston	191	54.9	45.1	82	2.07[a]	2.57[a]
Boston	263	44.1	55.9	161	1.34	3.94[a]
Boston	67	38.1	61.9	336	1.05	2.1[a]
Boston	74	34.1	65.9	88	0.88	1
Boston	147	33.3	66.7	406	0.85	1.85[a]
Boston	194	26.9	73.1	323	0.63[a]	1.34
Boston	25	10.0	90.0	190	0.19[a]	0.73
Boston	245	7.6	92.4	144	0.14[a]	0.31[a]
Chicago	31	45.9	54.1	342	1.44[a]	2.55[a]
Chicago	120	43.2	56.8	81	1.29	1.23
Chicago	39	41.9	58.1	434	1.23	1.56[a]
Chicago	203	26.9	73.1	376	0.62[a]	0.79
Chicago	128	25.6	74.4	481	0.58[a]	1.16
Chicago	224	22.2	77.8	54	0.49[a]	0.77
Chicago	181	21.9	78.1	288	0.48[a]	0.63[a]
Dallas	70	53.4	46.6	320	1.95[a]	2.5[a]
Dallas	34	45.7	54.3	418	1.43[a]	1.49[a]
Denver	52	46.2	53.8	251	1.46[a]	1.36
Denver	51	34.3	65.7	466	0.89	1.49[a]
Denver	126	25.3	74.7	423	0.58[a]	0.95
Detroit	202	19.0	81.0	373	0.4[a]	0.33[a]
Detroit	62	15.8	84.2	253	0.32[a]	0.26[a]
Houston	259	32.7	67.3	168	0.83	1.69[a]
Houston	131	28.0	72.0	246	0.66[a]	4.66[a]
Houston	200	24.0	76.0	229	0.54[a]	1.51[a]
Houston	38	19.1	80.9	335	0.4[a]	1.45[a]
Houston	169	9.9	90.1	101	0.19[a]	0.71
Los Angeles	90	63.4	36.6	93	2.95[a]	3.57[a]
Los Angeles	76	58.1	41.9	222	2.36[a]	2.12[a]
Los Angeles	151	49.7	50.3	290	1.68[a]	2.41[a]
Los Angeles	196	49.0	51.0	147	1.63[a]	1.53[a]

Primary Immigration court (1)	Immigration judge code (2)	Percent granted (3)	Percent denied (4)	Total number of cases (5)	Unadjusted odds ratios (6)	Adjusted odds ratios (7)
Los Angeles	46	47.6	52.4	189	1.55[a]	1.33
Los Angeles	89	45.4	54.6	493	1.42[a]	2.31[a]
Los Angeles	229	44.5	55.5	696	1.37[a]	4.73[a]
Los Angeles	33	41.9	58.1	289	1.22	1.14
Los Angeles	113	41.1	58.9	258	1.19	1.15
Los Angeles	28	37.5	62.5	259	1.02	1.36
Los Angeles	100	35.1	64.9	442	0.92	1.8[a]
Los Angeles	18	35.1	64.9	569	0.92	2.06[a]
Los Angeles	47	34.8	65.2	457	0.91	1.39[a]
Los Angeles	115	34.0	66.0	406	0.88	1.14
Los Angeles	256	33.9	66.1	487	0.87	1.66[a]
Los Angeles	212	33.0	67.0	212	0.84	0.75
Los Angeles	99	23.5	76.5	413	0.52[a]	0.7[a]
Los Angeles	180	23.1	76.9	247	0.51[a]	2.13[a]
Los Angeles	148	22.5	77.5	404	0.49[a]	0.71[a]
Los Angeles	98	21.6	78.4	370	0.47[a]	0.59[a]
Los Angeles	13	19.7	80.3	147	0.42[a]	0.39[a]
Los Angeles	111	18.7	81.3	637	0.39[a]	0.9
Los Angeles	221	16.7	83.3	784	0.34[a]	0.69[a]
Los Angeles	171	16.6	83.4	362	0.34[a]	1.06
Los Angeles	121	16.3	83.7	258	0.33[a]	0.29[a]
Los Angeles	95	14.5	85.5	653	0.29[a]	0.76
Los Angeles	27	14.0	86.0	150	0.28[a]	0.26[a]
Los Angeles	59	13.7	86.3	555	0.27[a]	0.85
Los Angeles	240	12.5	87.5	472	0.24[a]	0.49[a]
Los Angeles	72	10.2	89.8	236	0.19[a]	1.65[a]
Los Angeles	167	9.8	90.2	132	0.19[a]	0.59
Los Angeles	214	8.7	91.3	263	0.16[a]	0.68
Los Angeles	195	8.2	91.8	98	0.15[a]	0.4[a]
Los Angeles	92	7.3	92.7	260	0.13[a]	0.88
Los Angeles	129	6.4	93.6	769	0.12[a]	0.37[a]
Los Angeles	119	6.1	93.9	214	0.11[a]	0.59
Miami	234	72.0	28.0	649	4.36[a]	10.99[a]
Miami	57	47.8	52.2	1,029	1.56[a]	4.17[a]
Miami	199	28.8	71.2	1,007	0.69[a]	1.71[a]
Miami	159	26.9	73.1	498	0.63[a]	1.32

Primary Immigration court (1)	Immigration judge code (2)	Percent granted (3)	Percent denied (4)	Total number of cases (5)	Unadjusted odds ratios (6)	Adjusted odds ratios (7)
Miami	233	25.0	75.0	675	0.57[a]	1.37[a]
Miami	226	24.6	75.4	1,013	0.55[a]	1.33[a]
Miami	68	22.7	77.3	842	0.5[a]	1.11
Miami	182	21.4	78.6	786	0.46[a]	0.96
Miami	178	21.3	78.7	841	0.46[a]	1.12
Miami	154	20.7	79.3	1,404	0.44[a]	1.09
Miami	227	20.2	79.8	848	0.43[a]	1.04
Miami	206	14.9	85.1	706	0.3[a]	0.66[a]
Miami	26	14.1	85.9	1,143	0.28[a]	0.61[a]
Miami	56	13.0	87.0	990	0.25[a]	0.5[a]
Miami	209	12.4	87.6	888	0.24[a]	0.51[a]
Miami	35	12.1	87.9	946	0.23[a]	0.49[a]
Miami	65	12.1	87.9	239	0.23[a]	0.5[a]
Miami	237	12.0	88.0	892	0.23[a]	0.5[a]
Miami	93	11.9	88.1	387	0.23[a]	0.77
Miami	110	10.6	89.4	925	0.2[a]	0.47[a]
Miami	139	9.5	90.5	662	0.18[a]	0.42[a]
Miami	163	9.4	90.6	128	0.18[a]	0.37[a]
Miami	138	9.0	91.0	667	0.17[a]	0.49[a]
Miami	102	7.5	92.5	212	0.14[a]	0.5[a]
Miami	40	7.5	92.5	147	0.14[a]	0.25[a]
Miami	223	6.3	93.8	80	0.11[a]	0.85
Miami	125	5.8	94.2	448	0.1[a]	0.19[a]
Miami	50	4.3	95.7	162	0.08[a]	0.28[a]
Miami	160	2.4	97.6	1,002	0.04[a]	0.09[a]
New York	192	93.0	7.0	1,202	22.63[a]	25.19[a]
New York	236	92.3	7.7	1,379	20.42[a]	22.09[a]
New York	265	88.7	11.3	574	13.32[a]	12.21[a]
New York	176	88.2	11.8	323	12.75[a]	11.06[a]
New York	248	83.2	16.8	470	8.42[a]	7.24[a]
New York	243	81.2	18.8	133	7.35[a]	6.01[a]
New York	21	76.7	23.3	1,058	5.61[a]	5.39[a]
New York	10	70.4	29.6	1,181	4.05[a]	3.93[a]
New York	64	70.4	29.6	1,289	4.05[a]	4.41[a]
New York	45	70.2	29.8	1,220	4[a]	3.85[a]
New York	184	69.6	30.4	1,427	3.89[a]	4.36[a]

Primary Immigration court (1)	Immigration judge code (2)	Percent granted (3)	Percent denied (4)	Total number of cases (5)	Unadjusted odds ratios (6)	Adjusted odds ratios (7)
New York	88	66.8	33.2	1,628	3.43[a]	3.68[a]
New York	91	63.0	37.0	976	2.9[a]	2.66[a]
New York	242	61.1	38.9	858	2.67[a]	2.47[a]
New York	230	58.9	41.1	1,320	2.43[a]	2.58[a]
New York	190	58.8	41.2	1,628	2.43[a]	2.7[a]
New York	156	54.6	45.4	443	2.05[a]	2.49[a]
New York	247	52.6	47.4	901	1.89[a]	2.18[a]
New York	37	50.4	49.6	470	1.73[a]	2.22[a]
New York	175	48.4	51.6	527	1.59[a]	1.58[a]
New York	105	47.0	53.0	1,031	1.51[a]	1.52[a]
New York	204	45.9	54.1	1,312	1.44[a]	1.78[a]
New York	232	45.6	54.4	158	1.42	1.16
New York	186	44.0	56.0	922	1.34[a]	1.28[a]
New York	130	43.2	56.8	923	1.29[a]	1.46[a]
New York	9	37.0	63.0	451	Ref	Ref
New York	201	32.9	67.1	532	0.83	0.83
New York	127	31.6	68.4	158	0.79	0.58[a]
New York	79	29.8	70.2	851	0.72[a]	0.78[a]
New York	253	26.6	73.4	64	0.62	0.58
New York	14	21.2	78.8	1,229	0.46[a]	0.48[a]
New York	152	17.3	82.7	162	0.36[a]	0.41[a]
New York	66	16.3	83.7	141	0.33[a]	0.67
New York	197	11.8	88.2	289	0.23[a]	0.44[a]
New York	228	11.7	88.3	1,063	0.22[a]	0.24[a]
New York	173	10.6	89.4	245	0.2[a]	0.35[a]
New York	118	7.9	92.1	277	0.15[a]	0.18[a]
New York	254	2.7	97.3	966	0.05[a]	0.06[a]
Newark	264	59.4	40.6	202	2.49[a]	3.88[a]
Newark	7	53.8	46.2	498	1.98[a]	3.27[a]
Newark	96	35.2	64.8	727	0.92	1.22
Newark	11	29.7	70.3	462	0.72[a]	1.02
Newark	177	21.7	78.3	203	0.47[a]	0.87
Newark	69	19.1	80.9	383	0.4[a]	0.59[a]
Newark	43	13.4	86.6	462	0.26[a]	0.52[a]
Orlando	78	68.0	32.0	50	3.61[a]	5.57[a]
Orlando	220	67.1	32.9	258	3.46[a]	5.11[a]

Primary Immigration court (1)	Immigration judge code (2)	Percent granted (3)	Percent denied (4)	Total number of cases (5)	Unadjusted odds ratios (6)	Adjusted odds ratios (7)
Orlando	215	39.8	60.2	1,162	1.13	1.9[a]
Orlando	213	37.5	62.5	357	1.02	2.1[a]
Philadelphia	187	53.8	46.2	199	1.98[a]	2.83[a]
Philadelphia	32	28.1	71.9	402	0.66[a]	1.57[a]
Philadelphia	217	24.2	75.8	393	0.54[a]	0.62[a]
Philadelphia	60	11.5	88.5	546	0.22[a]	0.29[a]
San Diego	107	40.4	59.6	161	1.15	1.22
San Diego	207	34.8	65.2	135	0.91	0.82
San Diego	101	29.8	70.2	198	0.72	0.95
San Diego	15	24.9	75.1	229	0.56[a]	0.87
San Diego	1	19.6	80.4	275	0.42[a]	0.68
San Diego	137	17.2	82.8	116	0.35[a]	0.3[a]
San Francisco	162	74.2	25.8	558	4.89[a]	11.63[a]
San Francisco	149	70.8	29.2	627	4.13[a]	9.11[a]
San Francisco	53	66.3	33.7	519	3.34[a]	6.36[a]
San Francisco	29	64.7	35.3	652	3.12[a]	6.85[a]
San Francisco	150	51.8	48.2	566	1.83[a]	4.09[a]
San Francisco	6	51.4	48.6	765	1.8[a]	5.58[a]
San Francisco	24	47.7	52.3	880	1.55[a]	4.02[a]
San Francisco	166	46.0	54.0	187	1.45[a]	3.94[a]
San Francisco	165	43.0	57.0	453	1.29	2.45[a]
San Francisco	185	43.0	57.0	791	1.28[a]	2.67[a]
San Francisco	246	41.7	58.3	609	1.22	2.83[a]
San Francisco	153	38.8	61.2	121	1.08	1.52
San Francisco	71	38.5	61.5	296	1.07	1.48[a]
San Francisco	19	36.8	63.2	57	0.99	3.72[a]
San Francisco	20	36.2	63.8	787	0.97	2.11[a]
San Francisco	172	32.3	67.7	328	0.81	1.87[a]
San Francisco	235	30.4	69.6	79	0.74	1.09
San Francisco	49	25.4	74.6	142	0.58[a]	1.57[a]
San Francisco	87	23.5	76.5	51	0.52	0.67
San Francisco	222	22.7	77.3	256	0.5[a]	0.71
San Francisco	252	15.3	84.7	98	0.31[a]	0.47[a]
San Francisco	17	14.4	85.6	450	0.29[a]	0.51[a]
San Francisco	12	11.7	88.3	137	0.22[a]	0.3[a]
Seattle	140	38.4	61.6	401	1.06	1.96[a]

Primary Immigration court (1)	Immigration judge code (2)	Percent granted (3)	Percent denied (4)	Total number of cases (5)	Unadjusted odds ratios (6)	Adjusted odds ratios (7)
Seattle	94	18.6	81.4	113	0.39[a]	0.44[a]
Seattle	142	8.9	91.1	90	0.17[a]	0.18[a]

Source: GAO analysis of EOIR data.

[a]Indicates immigration judge is statistically significantly different from referent judge.

In Figure 13 and table 18 we show the percentage of defensive cases that were granted and denied for all immigration judges from the 19 different immigration courts who heard more than 50 defensive asylum cases over the period we are considering, again with the different immigration judges coded uniquely and arranged according to their primary immigration court, or the immigration court in which they heard the majority of their cases. As in figure 5 and table 17 to simplify our presentation and subsequent analyses and to avoid calculating percentages based on small numbers of cases, we excluded from the figure and table immigration judges who heard fewer than 50 defensive cases, and cases heard by immigration judges other than their primary immigration court. The defensive cases heard by the 195 immigration judges in their primary immigration courts that are represented in the figure and the table collectively account for over 88 percent of all defensive cases heard by all immigration judges in the 19 immigration courts. As in table 17, we show differences not only in term of percentages granted and denied but also with unadjusted and adjusted odds ratios, the latter of which take into account differences among immigration judges in the country their cases came from, the period in which the cases were heard, whether the asylum seekers were represented, whether they had dependents, and whether they applied for asylum within a year of entering the country. In our logistic regression models for defensive cases, we also control for whether the asylum seeker was currently or had ever been detained.

As with the affirmative cases, figure 13 and table 18 reveal substantial differences in the percentage of defensive cases that were granted asylum across immigration judges overall and across immigration judges in the same immigration courts. Some immigration judges granted asylum to fewer than 6 percent of the defensive cases they heard, while others granted asylum to more than 60 percent of their cases, and the variation within immigration courts was often pronounced. The percentages of defensive cases granted asylum ranged across immigration judges from 2 percent to 39 percent in Los Angeles and from 9 percent to 58 percent in

San Francisco, and in other immigration courts the ranges were often as pronounced as these.

Figure 13: Immigration Judge Asylum Grant Rates, Defensive Cases, by Immigration Court
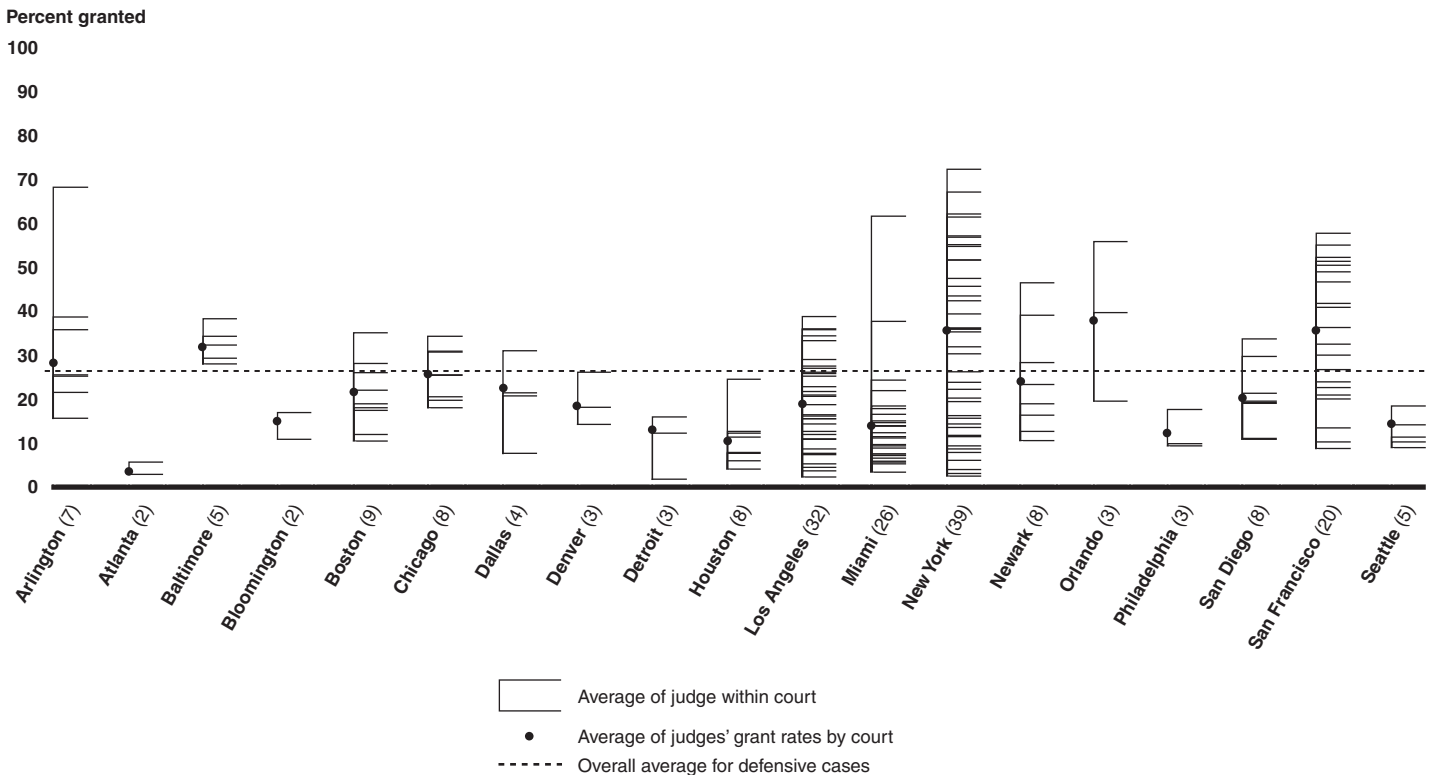
Source: GAO analysis of EOIR data.

Note: Each line within a court represents the average grant rate for a single immigration judge.

Moreover, the adjusted odds ratios shown in the last column of table 18 show that differences persist, albeit at a somewhat smaller level than for affirmative cases, even after controls for differences in the source country and types of cases heard by the different immigration judges. Some immigration judges, after controls, were 4 or 5 or more than 5 times as likely to grant asylum as the referent immigration judge, while many others were only one-third (i.e., odds ratio = 0.33) to one-fifth (odds ratio = 0.20) as likely as the referent immigration judge to grant asylum.

Table 18: Percentages and Odds Ratios for Immigration Judges Hearing 50 or More Defensive Cases in Their Primary Immigration Court

Primary court (1)	Immigration judge code (2)	Percent granted (3)	Percent Denied (4)	Total number of cases (5)	Unadjusted odds ratios (6)	Adjusted odds ratios (7)
Arlington	198	68.3	31.7	82	6.13[a]	7.17[a]
Arlington	183	38.7	61.3	199	1.8[a]	3.11[a]
Arlington	158	35.8	64.2	148	1.59	1.16
Arlington	122	25.5	74.5	467	0.97	0.84
Arlington	32	25.2	74.8	139	0.96	1.18
Arlington	255	21.5	78.5	330	0.78	0.43[a]
Arlington	132	15.6	84.4	269	0.53[a]	0.33[a]
Atlanta	188	5.6	94.4	72	0.17[a]	0.11[a]
Atlanta	83	2.8	97.2	181	0.08[a]	0.04[a]
Baltimore	146	38.3	61.7	209	1.77[a]	1.27
Baltimore	262	34.3	65.7	137	1.49	2.36[a]
Baltimore	114	32.3	67.7	337	1.36	1.11
Baltimore	116	29.3	70.7	167	1.18	0.53[a]
Baltimore	22	28.0	72.0	264	1.11	0.66
Bloomington	108	16.9	83.1	284	0.58[a]	0.27[a]
Bloomington	143	10.8	89.2	158	0.34[a]	0.16[a]
Boston	263	35.1	64.9	114	1.54	1.67
Boston	67	28.1	71.9	366	1.11	1.29
Boston	191	26.0	74.0	150	Ref	Ref
Boston	194	22.0	78.0	254	0.8	0.87
Boston	164	18.9	81.1	53	0.66	0.63
Boston	74	18.0	82.0	100	0.62	0.54
Boston	147	17.4	82.6	407	0.6[a]	0.7
Boston	245	11.9	88.1	126	0.38[a]	0.27[a]
Boston	25	10.4	89.6	115	0.33[a]	0.47[a]
Chicago	31	34.3	65.7	303	1.49	1.18
Chicago	120	30.9	69.1	94	1.27	0.96
Chicago	39	30.7	69.3	309	1.26	0.82
Chicago	181	25.5	74.5	286	0.98	0.65
Chicago	224	25.4	74.6	67	0.97	0.66
Chicago	4	20.5	79.5	73	0.74	0.58
Chicago	128	19.7	80.3	314	0.7	0.61[a]
Chicago	203	18.0	82.0	333	0.63[a]	0.48[a]

Primary court (1)	Immigration judge code (2)	Percent granted (3)	Percent Denied (4)	Total number of cases (5)	Unadjusted odds ratios (6)	Adjusted odds ratios (7)
Dallas	70	31.0	69.0	203	1.28	1.29
Dallas	44	21.4	78.6	70	0.78	0.84
Dallas	34	20.7	79.3	266	0.74	0.49[a]
Dallas	50	7.6	92.4	79	0.23[a]	0.11[a]
Denver	52	26.1	73.9	138	1	0.88
Denver	51	18.1	81.9	144	0.63	0.7
Denver	126	14.2	85.8	246	0.47[a]	0.67
Detroit	62	15.9	84.1	301	0.54[a]	0.23[a]
Detroit	202	12.2	87.8	287	0.4[a]	0.14[a]
Detroit	168	1.7	98.3	58	0.05[a]	0.02[a]
Houston	131	24.5	75.5	233	0.92	3.17[a]
Houston	119	12.6	87.4	87	0.41[a]	0.58
Houston	200	12.2	87.8	230	0.39[a]	0.59
Houston	38	11.3	88.7	462	0.36[a]	0.65
Houston	30	7.8	92.2	90	0.24[a]	0.35a
Houston	169	7.6	92.4	92	0.23[a]	0.67
Houston	259	5.9	94.1	339	0.18[a]	0.25[a]
Houston	195	4.0	96.0	272	0.12[a]	0.17[a]
Los Angeles	89	38.8	61.3	160	1.8[a]	2.12[a]
Los Angeles	33	36.0	64.0	114	1.6	1.73
Los Angeles	76	35.8	64.2	81	1.59	1.62
Los Angeles	18	34.4	65.6	183	1.49	2.23[a]
Los Angeles	90	33.3	66.7	42	1.42	2.06
Los Angeles	100	29.0	71.0	93	1.16	1.69
Los Angeles	113	27.5	72.5	80	1.08	1.21
Los Angeles	229	27.0	73.0	141	1.05	1.68
Los Angeles	151	26.1	73.9	88	1.01	0.76
Los Angeles	115	25.8	74.2	124	0.99	1.11
Los Angeles	180	25.2	74.8	119	0.96	1.89[a]
Los Angeles	95	22.8	77.2	101	0.84	0.89
Los Angeles	46	21.7	78.3	83	0.79	1.31
Los Angeles	256	20.9	79.1	235	0.75	1.37
Los Angeles	212	20.6	79.4	68	0.74	0.99
Los Angeles	47	18.7	81.3	166	0.65	0.65
Los Angeles	171	16.4	83.6	61	0.56	0.79
Los Angeles	28	16.1	83.9	56	0.55	0.54

Primary court (1)	Immigration judge code (2)	Percent granted (3)	Percent Denied (4)	Total number of cases (5)	Unadjusted odds ratios (6)	Adjusted odds ratios (7)
Los Angeles	148	15.5	84.5	161	0.52[a]	0.61
Los Angeles	221	15.5	84.5	219	0.52[a]	0.63
Los Angeles	196	14.3	85.7	56	0.47	0.59
Los Angeles	98	12.6	87.4	111	0.41[a]	0.57
Los Angeles	99	11.9	88.1	159	0.39[a]	0.38[a]
Los Angeles	129	10.9	89.1	119	0.35[a]	0.43[a]
Los Angeles	111	10.8	89.2	157	0.35[a]	0.53
Los Angeles	59	8.6	91.4	93	0.27[a]	0.44
Los Angeles	240	7.6	92.4	185	0.23[a]	0.35[a]
Los Angeles	92	7.3	92.7	82	0.22[a]	0.45
Los Angeles	27	5.2	94.8	135	0.16[a]	0.24[a]
Los Angeles	2	4.4	95.6	68	0.13[a]	0.19[a]
Los Angeles	121	3.6	96.4	83	0.11[a]	0.11[a]
Los Angeles	13	2.2	97.8	93	0.06[a]	0.09[a]
Miami	234	61.7	38.3	295	4.58[a]	5.57[a]
Miami	57	37.7	62.3	411	1.72[a]	2.59[a]
Miami	199	24.3	75.7	309	0.91	1.38
Miami	233	21.9	78.1	397	0.8	1.05
Miami	68	18.4	81.6	477	0.64[a]	0.88
Miami	226	17.8	82.2	550	0.62[a]	0.89
Miami	178	16.5	83.5	814	0.56[a]	0.8
Miami	159	15.0	85.0	472	0.5[a]	0.8
Miami	56	14.6	85.4	563	0.49[a]	0.56[a]
Miami	182	13.9	86.1	563	0.46[a]	0.66
Miami	227	13.9	86.1	482	0.46[a]	0.46[a]
Miami	26	13.8	86.2	458	0.45[a]	0.71
Miami	154	12.3	87.7	406	0.4[a]	0.51[a]
Miami	102	11.4	88.6	175	0.37[a]	0.77
Miami	93	11.1	88.9	180	0.36[a]	0.44[a]
Miami	35	9.6	90.4	513	0.3[a]	0.42[a]
Miami	110	9.3	90.7	735	0.29[a]	0.4[a]
Miami	189	8.8	91.2	239	0.27[a]	0.91
Miami	206	7.5	92.5	562	0.23[a]	0.29[a]
Miami	138	7.2	92.8	513	0.22[a]	0.44[a]
Miami	223	7.1	92.9	42	0.22[a]	0.64
Miami	139	6.5	93.5	418	0.2[a]	0.21[a]

Primary court (1)	Immigration judge code (2)	Percent granted (3)	Percent Denied (4)	Total number of cases (5)	Unadjusted odds ratios (6)	Adjusted odds ratios (7)
Miami	209	5.8	94.2	762	0.17[a]	0.21[a]
Miami	65	5.6	94.4	124	0.17[a]	0.21[a]
Miami	237	5.2	94.8	632	0.16[a]	0.19[a]
Miami	160	3.3	96.7	523	0.1[a]	0.11[a]
New York	176	72.4	27.6	322	7.45[a]	4.13[a]
New York	248	67.2	32.8	527	5.82[a]	3.43[a]
New York	236	62.2	37.8	1,012	4.67[a]	4.09[a]
New York	192	61.5	38.5	1,290	4.54[a]	4.65[a]
New York	242	57.2	42.8	666	3.8[a]	2.38[a]
New York	21	56.9	43.1	754	3.76[a]	2.25[a]
New York	64	55.2	44.8	746	3.51[a]	2.22[a]
New York	265	54.8	45.2	423	3.46[a]	2.86[a]
New York	45	51.7	48.3	774	3.04[a]	1.81[a]
New York	88	51.7	48.3	746	3.05[a]	1.97[a]
New York	243	47.5	52.5	118	2.57[a]	1.31
New York	184	45.7	54.3	1,203	2.4[a]	2.1[a]
New York	91	43.5	56.5	345	2.19[a]	1.25
New York	190	42.4	57.6	973	2.1[a]	1.33
New York	130	39.4	60.6	282	1.85[a]	1.63[a]
New York	156	36.2	63.8	130	1.61	1.46
New York	10	36.1	63.9	905	1.61[a]	1.46
New York	204	35.9	64.1	1,083	1.6[a]	1.32
New York	230	35.3	64.7	976	1.56[a]	1.23
New York	105	31.9	68.1	477	1.33	0.89
New York	247	30.3	69.7	347	1.23	0.83
New York	186	26.2	73.8	543	1.01	0.59[a]
New York	167	23.8	76.2	130	0.89	0.51[a]
New York	232	22.2	77.8	117	0.81	0.44[a]
New York	201	20.2	79.8	967	0.72	0.43[a]
New York	175	19.4	80.6	556	0.69	0.62[a]
New York	79	16.2	83.8	761	0.55[a]	0.45[a]
New York	253	15.6	84.4	224	0.53[a]	0.31[a]
New York	9	14.3	85.7	895	0.47[a]	0.28[a]
New York	14	13.5	86.5	835	0.45[a]	0.28[a]
New York	127	11.7	88.3	111	0.38[a]	0.19[a]
New York	66	11.4	88.6	105	0.37[a]	0.48[a]

Primary court (1)	Immigration judge code (2)	Percent granted (3)	Percent Denied (4)	Total number of cases (5)	Unadjusted odds ratios (6)	Adjusted odds ratios (7)
New York	197	9.3	90.7	150	0.29[a]	0.41[a]
New York	228	8.6	91.4	1,102	0.27[a]	0.19[a]
New York	125	7.8	92.2	631	0.24[a]	0.14[a]
New York	118	6.0	94.0	382	0.18[a]	0.23[a]
New York	173	3.9	96.1	76	0.12[a]	0.15[a]
New York	250	3.0	97.0	366	0.09[a]	0.14[a]
New York	254	2.4	97.6	423	0.07[a]	0.05[a]
Newark	264	46.5	53.5	230	2.48[a]	2.38[a]
Newark	7	39.1	60.9	281	1.83[a]	1.55
Newark	11	28.3	71.7	361	1.12	0.94
Newark	73	23.3	76.7	43	0.86	0.58
Newark	96	18.9	81.1	349	0.66	0.48[a]
Newark	177	16.3	83.7	92	0.55	0.35[a]
Newark	43	12.6	87.4	318	0.41[a]	0.34[a]
Newark	69	10.5	89.5	343	0.33[a]	0.26[a]
Orlando	220	55.9	44.1	93	3.61[a]	4.46[a]
Orlando	215	39.7	60.3	340	1.87[a]	1.74[a]
Orlando	213	19.5	80.5	123	0.69	0.81
Philadelphia	37	17.6	82.4	313	0.61[a]	0.59[a]
Philadelphia	217	9.8	90.2	285	0.31[a]	0.3[a]
Philadelphia	60	9.3	90.7	356	0.29[a]	0.23[a]
San Diego	107	33.7	66.3	104	1.44	1.48
San Diego	207	29.7	70.3	138	1.2	1.18
San Diego	1	21.3	78.8	240	0.77	0.56[a]
San Diego	101	19.5	80.5	113	0.69	0.74
San Diego	123	19.2	80.8	125	0.68	0.6
San Diego	15	19.0	81.0	153	0.67	0.52[a]
San Diego	84	11.0	89.0	127	0.35[a]	0.43[a]
San Diego	137	10.8	89.2	139	0.34[a]	0.3[a]
San Francisco	149	57.8	42.2	166	3.9[a]	4.11[a]
San Francisco	162	55.1	44.9	198	3.49[a]	4.22[a]
San Francisco	19	52.3	47.7	155	3.12[a]	8.94[a]
San Francisco	6	51.4	48.6	181	3.01[a]	4.69[a]
San Francisco	166	50.5	49.5	323	2.9[a]	2.44[a]
San Francisco	29	49.0	51.0	210	2.74[a]	4.64[a]
San Francisco	53	46.7	53.3	304	2.49[a]	5.35[a]

Primary court (1)	Immigration judge code (2)	Percent granted (3)	Percent Denied (4)	Total number of cases (5)	Unadjusted odds ratios (6)	Adjusted odds ratios (7)
San Francisco	165	41.8	58.2	134	2.04[a]	2.38[a]
San Francisco	150	40.9	59.1	335	1.97[a]	3.97[a]
San Francisco	185	36.3	63.7	212	1.62[a]	2.53[a]
San Francisco	24	32.5	67.5	397	1.37	2.65[a]
San Francisco	246	30.0	70.0	260	1.22	1.62
San Francisco	172	26.7	73.3	90	1.03	1.79
San Francisco	153	23.9	76.1	46	0.89	1.38
San Francisco	20	22.6	77.4	455	0.83	1.44
San Francisco	187	20.9	79.1	91	0.75	0.49[a]
San Francisco	49	20.0	80.0	45	0.71	1.1
San Francisco	12	13.4	86.6	97	0.44[a]	0.49
San Francisco	222	10.2	89.8	59	0.32[a]	0.42
San Francisco	17	8.7	91.3	344	0.27[a]	0.41[a]
Seattle	140	18.4	81.6	745	0.64[a]	0.72
Seattle	249	14.1	85.9	85	0.47[a]	0.47
Seattle	94	11.3	88.7	292	0.36[a]	0.29[a]
Seattle	71	10.2	89.8	98	0.32[a]	0.39[a]
Seattle	142	8.9	91.1	180	0.28[a]	0.27[a]

Source: GAO analysis of EOIR data.

[a]Indicates immigration judge is statistically significantly different from referent immigration judge.

Differences in Grant and Denial Rates as a Function of Characteristics of the Immigration Judge

In a separate set of analyses we also investigated how outcomes varied based on the characteristics of the immigration judges. Tables 19 and 20, below, show how the percentages of affirmative and defensive cases that were granted and denied differed depending on immigration judges' age, caseload, gender, length of service as an immigration judge, race/ethnicity, veteran preference, prior public immigration experience, prior experience doing immigration work for a nonprofit organization, and whether the immigration judge was appointed by a Republican or Democratic president. We assessed the statistical significance of the differences across the categories of these variables by using logistic regression models, which yielded the unadjusted odds ratios given in the penultimate columns of these tables. The values of these odds ratios tell us how different immigration judges in one particular category of each variable were from the immigration judges in the referent category for that variable—for example, how different male immigration judges are from female immigration judges—when each variable is considered one at a time and

all other variables or immigration judge characteristics are ignored. In the last column of tables 19 and 20, we provide adjusted odds ratios that re-estimate the effects of these factors (or the differences across categories used to represent them), when all factors are considered simultaneously and when the same case characteristics used in the foregoing analyses (i.e., nationality, representation, etc.) were controlled. In these models we adjusted the standard errors for possible clustering at the immigration judge level. This is reflected in the statistical significance of the result.

Table 19 shows that, with respect to affirmative cases, the immigration judge characteristics that had significant effects on asylum decisions, at least when we considered each characteristic one at a time, were gender, length of service as an immigration judge, veterans preference, prior public immigration experience, and prior experience doing immigration work for a non-profit organization. When all of the immigration judge characteristics were considered in a multivariate model, however, the ones that emerged as significant were gender and length of service as an immigration judge. Net of other factors, male immigration judges were less likely than female immigration judges to grant asylum in affirmative cases, by a factor of 0.6. Immigration judges with 3 ½ to 10 years of service were more likely than less experienced immigration judges to grant asylum, by a factor of 1.25. Immigration judges with more than 10 years of service were also somewhat more likely than the least experienced immigration judges to grant asylum, but here the difference was not statistically significant.

Table 20 shows that, with respect to defensive cases, the immigration judge characteristics that had significant effects on asylum decisions when we considered each characteristic one at a time, were caseload, gender, length of service, veterans preference, and prior experience doing immigration work for a non-profit organization. When all of the immigration judge characteristics were considered in a multivariate model for defensive cases, the only factor that emerged as significant was immigration judge's gender. Here too, as with affirmative cases, male immigration judges were less likely to grant asylum than female immigration judges, by a factor of 0.6. None of the other immigration judge characteristics had statistically significant effects. Clearly, differences in the immigration judge characteristics that we could assess do not suffice to account for the very large differences across immigration judges in the likelihood of granting asylum that were shown in tables 17 and 18.

Table 19: Percentages and Odds Ratios for Immigration Judges Hearing 50 or More Affirmative Cases in their Primary Immigration Court, by Immigration Judge Characteristics

Factor Immigration judge characteristic	Percentage granted	Percentage denied	Total number of cases	Unadjusted odds ratios	Adjusted odds ratios
Age <50	34.9	65.1	41,469	Ref	Ref
Age >=50	38.8	61.2	53,196	1.18	1.08
Caseload : 0-29	34.5	65.5	23,219	Ref	Ref
Caseload: 30-64	36.4	63.6	47,283	1.09	0.9
Caseload: 65+	41.0	59.0	24,163	1.32	1.08
Female	48.2	51.8	36,746	Ref	Ref
Male	30.1	69.9	57,919	0.46[a]	0.61[a]
Experience 0 – 3 ½ years	28.9	71.1	25,205	Ref	Ref
Experience 3 ½ - 10 years	40.7	59.3	42,796	1.69[a]	1.25[a]
Experience more than 10 years	39.2	60.8	26,664	1.59[a]	1.19
Other race/ethnicity	35.5	64.5	27,210	Ref	Ref
White, nonHispanic	37.8	62.2	67,455	1.1	0.99
No veterans preference	38.7	61.3	81,834	Ref	Ref
Veterans preference	27.2	72.8	12,831	0.59[a]	0.91
No prior government immigration experience	41.9	58.1	46,847	Ref	Ref
Prior government immigration experience	32.4	67.6	47,818	0.67[a]	0.84
No non profit immigration experience	33.3	66.7	76,323	Ref	Ref
Non profit immigration experience	53.1	46.9	18,342	2.26[a]	1.49
Appointed during Democratic presidential administration	36.3	63.7	68,878	Ref	Ref
Appointed during Republican presidential administration	39.2	60.8	25,787	1.13	1.13

Source: GAO analysis of EOIR data.

Note: The adjusted model includes: claimant nationality, if there was representation, the period when case was decided, if claimant had dependents, and if the applicant filed within 1 year of entry.

[a]Statistically significant difference from referent category. (Note: standard errors have been adjusted for possible clustering of the immigration judges.)

Table 20: Percentages and Odds Ratios for Immigration Judges Hearing 50 or More Defensive Cases in their Primary Immigration Court, by Immigration Judge Characteristics

Factor Immigration judge characteristic	Percent granted	Percent denied	Total number of cases	Unadjusted odds ratios	Adjusted odds ratios
Age <50	24.4	75.6	25,522	Ref	Ref
Age >=50	27.5	72.5	32,954	1.18	1.11
Caseload : 0-29	21.8	78.2	15,893	Ref	Ref
Caseload: 30-64	24.6	75.4	26,515	1.17	0.86
Caseload: 65+	33.1	66.9	16,068	1.78[a]	1.02
Female	34.9	65.1	22,440	Ref	Ref
Male	20.7	79.3	36,036	0.49a	0.58[a]
Experience 0 – 3 ½ years	20.4	79.6	13,729	Ref	Ref
Experience 3 ½ - 10 years	26.8	73.2	26,392	1.43[a]	1.09
Experience more than 10 years	29.6	70.4	18,355	1.65[a]	1.21
Other race/ethnicity	26.5	73.5	14,849	Ref	Ref
White, nonHispanic	26.1	73.9	43,627	0.98	0.91
No veterans preference	27.2	72.8	51,256	Ref	Ref
Veterans preference	18.6	81.4	7,220	0.61[a]	0.88
No prior government immigration experience	29.5	70.5	28,759	Ref	Ref
Prior government immigration experience	23	77	29,717	0.71	0.82
No non profit immigration experience	23.1	76.9	46,475	Ref	Ref
Non profit immigration experience	38	62	12,001	2.04[a]	1.36
Appointed during Democratic presidential administration	25	75	39,941	Ref	Ref
Appointed during Republican presidential administration	28.7	71.3	18,535	1.21	1.37

Source: GAO analysis of EOIR data.

Note: The adjusted model includes: claimant nationality, if there was representation, period when case was decided, if claimant had dependents, if the applicant filed within 1 year of entry, and if applicant was ever detained.

[a]Statistically significant difference from referent category . (Note: standard errors have been adjusted for possible clustering of the immigration judges).

Logistic Regression Analyses of Grant and Denial Rates for Immigration Judges from the Same Immigration Courts Handling Asylum Cases from the Same Countries

In our final set of analyses, we focused on asylum outcomes in six country-immigration court combinations (1) affirmative Chinese cases in New York, (2) affirmative Chinese cases in Los Angeles, (3) affirmative Haitian case in Miami, (4) affirmative Indian cases in San Francisco, (5) defensive Chinese cases in New York, and (6) defensive Haitian cases in Miami. We selected these country- immigration court combinations because they had a sufficiently large number of immigration judges rendering a sufficiently large number of decisions to produce reliable estimates in our logistic regression analyses. We examined differences across immigration judges within the same immigration court in judges' likelihood of granting asylum to applicants of the same nationality. Because the number of immigration judges in these analyses ranged from only 25 to 47, we looked at the effect of immigration judge characteristics one at a time, while controlling for the full set of claimant characteristics. The results of these analyses are summarized in table 21, below. Immigration judges used in the analysis had seen at least 20 cases during this time period, and we excluded immigration judges who had all grants or all denials.

Many and often most of the immigration judges in the same immigration court differed significantly in their likelihood of granting asylum to applicants from the same nationality when compared to the immigration judge who represented the average likelihood of granting asylum in that immigration court (the "average immigration judge"). This was the case both before and after we statistically controlled for the effects of five claimant characteristics (represented, claimed one or more dependents on application, filed for asylum within 1 year of entry to the United States, time period in which application was filed, ever detained). When the effects of these 5 factors were accounted for, it was still the case that relative to the grant rate of the "average immigration judge" who ruled on similar cases in each immigration court, the grant rates of many immigration judges in the same immigration court were significantly different (either in the direction of having grant rates that were significantly higher or lower than that of the average immigration judge). Specifically,

- the decisions of 77 percent of immigration judges in New York differed significantly from that of the average immigration judge for affirmative applicants from China,

- the decisions of 55 percent of immigration judges in Los Angeles differed significantly from that of the average immigration judge for affirmative applicants from China.

- the decisions of 70 percent of immigration judges in Miami differed significantly from that of the average immigration judge for affirmative applicants from Haiti,

- the decisions of 79 percent of immigration judges in San Francisco differed significantly from that of the average immigration judge for affirmative applicants from India,

- the decisions of 41 percent of immigration judges in New York differed significantly from that of the average immigration judge for defensive applicants from China, and

- the decisions of 39 percent of immigration judges in Miami differed significantly from that of the average immigration judge for defensive applicants from Haiti.

We found that certain claimant and immigration judge characteristics did not have significant effects on asylum outcomes for the nationalities examined within the same immigration court, while others did. Specifically, after simultaneously controlling for the effects of the other factors, we found that for the six specific immigration court/nationality combinations in our analysis, asylum outcomes were generally not significantly affected by

- whether or not an immigration judge had previous experience doing immigration work for a nonprofit organization;

- whether or not an immigration judge had previous immigration experience in government;

- the immigration judge's gender (except for Haitians in Miami, where both affirmative and defensive applicants were 30 percent as likely to be granted asylum if the immigration judge was male rather than female);

- The immigration judge's race/ethnicity (except for Chinese in Los Angeles and Haitians in Miami, where affirmative applicants were more than twice as likely to be granted asylum if the immigration judge was white, nonHispanic rather than other race/ethnicity);

- the immigration judge's veteran status (except for Haitians in Miami, where defensive applicants were 40 percent as likely to be granted asylum if the immigration judge was a veteran);

- whether the immigration judge was appointed during a Democratic or Republican presidential administration (except for Chinese in New York, where affirmative applicants were more than twice as likely to be granted asylum, and defensive applicants were almost 3 times as likely to be granted asylum by immigration judges who were appointed during a Republican presidential administration); or

- the age of the immigration judge (except for Haitians in Miami where affirmative applicants were nearly twice as likely to be granted asylum by older rather than younger immigration judges).

In contrast, certain characteristics did have significant effects on asylum outcomes, and we found the size of these effects in the six immigration court/nationality combinations to be similar to those found across all immigration judges and all immigration courts. Specifically, asylum grants were generally significantly higher when the following circumstances were present:

- Applicants were represented. This was the case in five of the six immigration court/nationality combinations we examined. For example, representation was associated with a six-fold increase in asylum grants for affirmative applicants from India who filed their cases in San Francisco and a two-fold increase in asylum grants for affirmative applicants from China who filed their cases in Los Angeles, as well as defensive applicants from Haiti who filed their case in Miami. Only affirmative Chinese applicants in New York failed to gain significantly more grants of asylum when represented.

- Applicants claimed one or more dependents on the asylum application. This was the case in five of the six immigration court/nationality combinations we examined. For example, claiming dependents was associated with nearly a fourfold increase in asylum grants for defensive applicants from China who filed their cases in New York City; and a twofold increase in asylum grants for affirmative applicants from China who filed their cases in New York or Los Angeles, as well as affirmative applicants from Haiti who filed their case in Miami. Of the six, only defensive Haitian applicants in Miami failed to obtain significantly more grants of asylum when claiming one or more dependents on the asylum application.

Results for other characteristics were mixed. For example, immigration judges who handled 65 cases or more at the time of the hearing were in some instances more likely, and in others less likely to grant asylum than those who handled less than 30 cases at the time of the hearing.

Immigration judges in Miami who handled affirmative and defensive
Haitian cases, were only 60 percent as likely to grant asylum if their
caseload size was 65 or more rather than less than 30.

Table 21: Summary of Analyses of Asylum Seekers in Specific Combinations of Immigration Courts and Countries

Descriptive information	Affirmative cases				Defensive cases	
	China/NYC	China/LA	Haiti/ Miami	India/SF	China/ NYC	Haiti/Miami
Number of immigration judges	45	32	35	25	47	33
Number of claimants	19,704	3,271	11,636	4,902	18,205	8,172
Overall percent of cases granted	56.8%	43.8%	14.8%	49.1%	35.4%	11.6%
Percent of cases granted by referent immigration judge	55.4%	40.9%	16.7%	54.2%	35.7%	12.0%
Percent of immigration judges differing from referent (unadjusted)	80.0%	37.5%	65.7%	76.0%	44.7%	45.5%
Percent of immigration judges differing from referent (adjusted)	84.4%	34.3%	60.0%	72.0%	42.6%	39.4%
Claimant factors included simultaneously in the adjusted models						
Represented	0.9	2.3[a]	1.5[a]	5.8[a]	0.6[a]	2.1[a]
One or more dependents	2.2[a]	2.0[a]	1.8[a]	1.5[a]	3.2[a]	1.0
Application filed within 1 year of entry	1.5[a]	2.5[a]	0.9	1.4[a]	1.1	1.4[a]
Period of decision:						
4/1/97-9/10/01 v. 10/1/94-3/31/97	10.3[a]	0.2[a]	0.8	1.1	11.0[a]	1.1
9/11/01-4/30/07 v. 10/1/94-3/31/97	23.3[a]	0.2[a]	1.0	1.1	14.6[a]	1.5
Claimant ever detained	n/a	n/a	n/a	n/a	0.6[a]	0.9
Immigration judge factors included simultaneously in the adjusted models						
Previous non profit immigration experience	1.3	n/a	n/a	1.8	1.2	1.0
Previous government immigration experience	0.9	1.3	0.8	0.8	0.8	0.7
Male	0.6	1.1	0.3[a]	0.8	0.5	0.3[a]
White, nonHispanic	1.0	2.5[a]	1.8	0.8	0.9	1.5
Veteran	n/a	1.3	0.4	1.3	n/a	0.5[a]
Appointed during Republican administration	2.3[a]	0.8	0.7	0.9	2.7[a]	1.0
Age 50+	0.9	1.6	1.8[a]	0.8	1.0	1.6
Immigration judge caseload effects :						
30-64 cases v. <30	1.2	0.8	0.7[a]	0.9	1.1	0.8
>=65 cases v. <30	1.5	0.6	0.6[a]	0.9	1.4	0.6[a]

Source: GAO analysis of EOIR data.

Note: "n/a" indicates that the variable was not included in the model due to lack of sufficient number
of immigration judges with the particular attribute

ªIndicates statistically significant difference from referent group (Note: standard errors are adjusted for clustering at the immigration judge level).

Appendix IV: Prior Research on Factors Affecting Asylum Decisions

Several recent studies have used EOIR administrative data to examine asylum decisions by immigration judges and other adjudicators and have concluded that asylum decisions varied significantly across immigration judges, and immigration courts, for both affirmative and defensive applicants from a variety of countries of origin. Of these, three studies attempted to statistically control for differences among cases by looking at "similarly situated" applicants. These studies cross-tabulated adjudicators' asylum grant rates with one or two other factors, such as applicants of the same nationality in the same immigration court or applicants of the same nationality who were also represented by counsel. Two studies attempted to correlate adjudicators' grant rates with other factors, such as the gender of the adjudicator or his or her prior employment experience.

Two studies published in 2006 and 2007 by Syracuse University's Transactional Records Analysis Clearinghouse examined decisions by immigration judges who decided at least 100 asylum cases during the period covering fiscal years 1995 to 2005 and 2001 to 2006, respectively. Each study reported that there was substantial variation in asylum grant rates across judges in many of the nation's immigration courts and for applicants from a wide range of countries of origin.[1]

A study published in 2007 by researchers at Temple and Georgetown universities found substantial variation in asylum decisions made by asylum officers, immigration judges, and federal appeals court judges.[2] To examine adjudicator decisions in "similarly situated" cases, the researchers selected applicants from 15 "Asylee Producing Countries" that produced at least 500 cases before the Asylum Office or immigration court during fiscal year 2004 and a national grant rate of at least 30 percent in either of these venues. The study defined "substantial variation" as deviations by individual adjudicators in asylum offices, immigration courts, or federal courts of more than 50 percent from that venue's

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[1] Transactional Records Access Clearinghouse, *Immigration Judges*; and Transactional Records Access Clearinghouse, *Asylum Disparities Persist, Regardless of Court Location and Nationality*, July 31, 2006 and September 24, 2007, respectively.

[2] Ramji-Nogales, Schoenholtz, and Schrag, "Refugee Roulette." The researchers were not able to examine disparity across members of the BIA, because of limitations in the data collected by EOIR. Other obstacles prevented the researchers from examining disparity across federal appeals court judges in federal appeals courts other than the 3rd and 6th circuits.

average.[3] Among other things, the study found that more than 25 percent of the immigration judges in the three largest immigration courts had asylum grant rates that deviated from their own immigration court's average asylum grant rate by more than 50 percent. The study also found that female immigration judges were more likely to grant asylum than male immigration judges, and immigration judges who came from private law practices, often representing aliens, were more likely to grant asylum than immigration judges who previously worked for the government. These findings were similar to those of the San Jose Mercury News, which in 2000 reported on its analysis of asylum decisions made between 1995 and 1999. [4]

A 2005 report by the U.S. Commission on International Religious Freedom examined a subset of immigration judge decisions for defensive asylum applicants who were apprehended when they attempted to enter the country illegally at or between ports of entry. Using a nonrepresentative sample of 14 immigration courts, the study analyzed variation in asylum

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[3] For example, if the asylum grant rate for applicants from the 15 selected countries was 30 percent in a particular immigration court, then a "substantial deviation" from that average by an individual immigration judge would be an asylum grant rate of less than 15 or more than 45 percent.

[4] Fredric N. Tulsky, "Asylum Seekers Face Capricious Legal System. Some Judges Grant Asylum In Only 1 In 20 Cases, Others In 1 In Every 2. Former Government Immigration Lawyers Are Toughest. Asylum Judges Rulings Vary Widely, Even For Applicants With Similar Stories." *San Jose Mercury News*, October 18, 2000.

grant rates across immigration judges for fiscal years 2000 to 2003.[5] The study found statistically significant variations in the asylum decisions of immigration judges in the same immigration court. The study did not examine other factors that could contribute to variability in asylum decisions such as the nationality of the applicants or characteristics of the immigration judges.

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[5] Baier, "Selected Statistical Analyses of Immigration Judge Rulings on Asylum Applications." The study examined 20,839 asylum decisions made by immigration judges and used a statistical design where individual judges' decisions were "nested" within the immigration court in which they resided. EOIR selected the courts included in the analysis.

Appendix V: GAO Contact and Staff Acknowledgments

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