



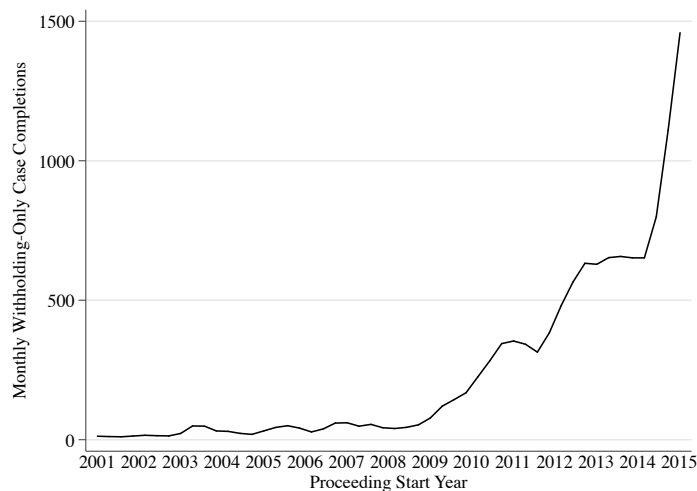
Fact Sheet: Withholding-Only Cases and Detention An Analysis Based on Data Obtained Through the Freedom of Information Act ("FOIA")

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Recent surge in case numbers

Since the Executive Office of Immigration Review ("EOIR") began keeping an electronic database two decades ago, the immigration courts have heard 10,105 withholding only cases. Nearly all of these cases have been recent. Half of the cases were decided by an Immigration Judge ("IJ") after April 24, 2013. IJs decided nearly ten times as many of these cases in 2014 (2,551 completions) as they did in 2010 (278 completions).¹ Figure 1 shows this exponential increase in case numbers graphically.

Figure 1: Withholding Only Caseload Since 2001



Success Rate in Withholding-Only Cases

In 25.4% of the 5,481 cases in which the IJ or Board of Immigration Appeals ("BIA") reached an identifiable decision,² the respondent obtained the right to remain in the

¹ About a third of the cases in the database had not been completed as of Jan. 31, 2015, when the database was most recently provided by FOIA request (EOIR FOIA 2015-9780).

² This number excludes cases that ended with administrative closure as well as cases with outcomes marked "Other" or "Withdrawn," since neither of these outcomes reflected an identifiable decision by the IJ. This also excludes "conditional grants," which usually reflect changes of venue.

United States. In 1,105 (20.2%) of these cases, the court granted the respondent's application for withholding of removal or withholding under the Convention Against Torture ("CAT"). 3,034 cases—about a third of the total—remained pending in immigration court or on appeal as of January 31, 2015.³ Outcomes before the IJ or BIA in cases within the Third Circuit closely tracked the national average: 27.3% of respondents in withholding-only proceedings obtained the right to remain within the United States.⁴

Detention Length

In over 85% of withholding-only cases, respondents remained detained throughout their proceedings.⁵ Cases in which the IJ made a final decision and neither party appealed resulted in an average detention length of **114 days** (116 days in the Third Circuit), or nearly four months.⁶ When at least one party appealed and the BIA issued a final decision, respondents spent an average of **301 days** (317 days in the Third Circuit), or more than ten months, in detention.⁷ When the BIA remanded the case and the IJ made a final decision, respondents spent an average of **447 days** (430 days in the Third Circuit), or nearly 15 months, in detention.⁸ Finally, in the rare cases in which respondents petitioned for review of a final order of removal and the case was remanded, they spent an average of **1,065 days**, or nearly three years, in detention.⁹ These averages understate the length of people's actual detention as they do not include the time individuals spent in detention pending a reasonable fear determination, but only the time they spent detained pending their withholding-only case.

³ These outcomes reflect the final decision of the IJ or, if the case was appealed and not remanded, the BIA.

⁴ 174 respondents in the Third Circuit obtained the right to remain in the United States, 463 were removed, and 518 awaited a final decision as of January 31, 2015. The Third Circuit includes cases from York County Prison in York, Pennsylvania; the Elizabeth Detention Center in Elizabeth, New Jersey; the Newark Immigration Court in Newark, New Jersey; and the Immigration Court in Philadelphia, Pennsylvania. I also included cases initiated after February 1, 2010 at New York Service Processing Center (Varick St.) in New York City, New York, as those cases involved individuals who were detained in the Third Circuit (i.e. New Jersey).

⁵ 6,106 of 7,071 respondents whose cases are complete remained detained throughout their proceedings.

⁶ 4,764 cases were completed without appeal. I measure the length of detention for respondents detained throughout proceedings as the period of time between the date of the Notice to Appear and the date of the final decision by the IJ or BIA. In some cases, respondents might have been detained for more days if, for example, actual removal did not occur immediately after the final removal order was issued. In measuring lengths of detention, I exclude detention lengths longer than 1,500 days, since these may reflect multiple proceedings for a single respondent.

⁷ 1,215 cases were completed by a final BIA decision. In the 60 cases in which ICE was the appealing party, respondents spent even longer in detention—382 days, on average.

⁸ This occurred in 84 cases.

⁹ There have been only ten such cases, and only a single one in the Third Circuit. 434 respondents have petitioned for review of their orders of removal, but the average length of their cases is impossible to measure, since the EOIR database does not accurately record decision dates in federal court cases that do not result in a remand. More generally, the data on outcomes on petition for review may be less reliably maintained than other data in the EOIR database.