

PURPOSE & BACKGROUND

It has been suggested that Portland is above average in friendliness to asylum seekers. The intent of this brief analysis is to explore how Portland realistically compares to other cities in terms of asylum decisions.

In the first six months of FY 2019, Portland's asylum claim denial rate was 67.2%--quite close to the national average of 69%. However, anecdotal information has suggested that some deliberately choose Portland to file their claims because of a perceived leniency relative to other cities.

Several different approaches were used to assess how Portland's court compared to others. First, we identified four cities of similar politics, size, and caseloads and compared historical trends. We then followed this with a multivariate analysis examining how Portland compared to all cities in the country

when also taking into account various regional and case-specific details, using EOIR's CASE database.

It quickly became apparent that judge-level analyses were also necessary. Two out of three of Portland's judges have been replaced in the last two years, rendering many summary statistics available through resources like TRAC obsolete. This led us to consider the impact that judges' personal backgrounds have on the process, and more specifically, to analyze how Portland's current judges compare to other judges nationwide while controlling for factors similar to those in the first analysis.

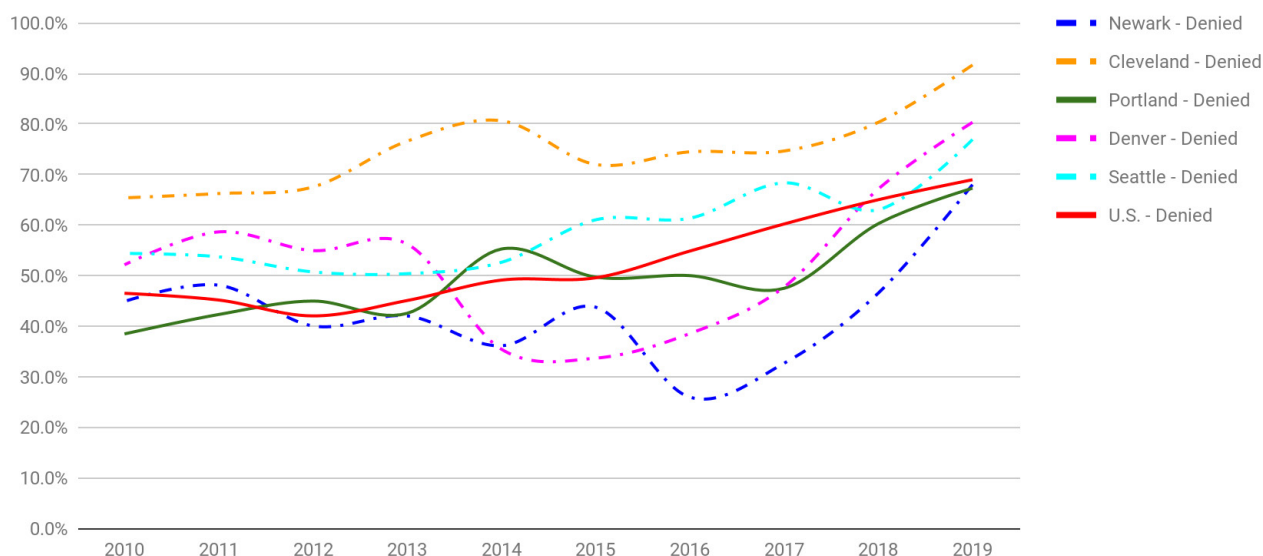
PORTLAND AMONG ITS PEERS

Newark, Cleveland, Denver, and Seattle were selected as our four comparison cities--all left-leaning, small- to mid-sized metropolitan areas with similar asylum caseloads. Among these cities, Portland ranks as relatively lenient, virtually tied with Newark to have the lowest denial rate of all five. The range between these relatively similar cities is rather wide, however, with the gap between Portland and Cleveland ranging nearly 25 percentage points. This wide

variability among theoretically similar cities lays the foundation for a theme we will continue to see, in both the current data and past research.

Overall, denial rates have been increasing for the last several years for each city. Prior to that, however, Portland's denial rate had actually been declining--by nearly 15% between 2014 and 2017, even while the country as a whole increased. However,

Asylum decisions, 2010-2019



that trajectory appeared to change at approximately the same time that two Portland judges were replaced, and the denial rate rose quickly to meet the national level once again. (If this trend persists, it may surpass the national average.)

Another point of comparison is the proportion of clients with legal representation. Lack of representation is a significant risk factor for having one's asylum claim denied--TRAC estimates that over 90% of claims are denied if there is no attorney. About 20% of Portland's asylum seekers were unrepresented in the last year--seven times that of Newark, twice that of Cleveland and Seattle, and a quarter higher than Denver. Interestingly, however, Newark and Port-

land have had virtually the same denial rate thus far in 2019, and both lower than the other three cities, indicating that Portland may have some protective factors its peer cities do not possess, significant differences in the types of cases that come before it, or some other variable that mitigates that effect.

It is questions like these that make a multivariate approach more attractive--controlling for any known variables that may impact outcome and comparing cities on an "all else held equal" basis. However, the above is still a valuable illustration of how theoretically similar courts can adjudicate in extremely different ways.

LIKELIHOOD OF DENIALS BASED ON GEOGRAPHY, POLITICS, AND CASE DETAILS, PART I

We conducted multiple logistic analyses that examined the odds of denial for cases heard in Portland versus the rest of the country. Available control variables included [whether or not criminal charges were involved](#), whether the client had legal representation, what geographic region the asylum-seeker was from¹, what year the case was decided (narrowed to calendar years 2017, 2018, and the first half of 2019, to maximize relevance), whether the court was in a southern border state, and the political profile of the state (red, blue, or swing state²). The dataset included nearly 135,000 unique asylum cases.

Examining Portland next to the rest of the country showed interesting results. When only examining the odds of denial based on it being in Portland, criminal charges, legal representation, and which year it was, cases in Portland were significantly less likely to be denied than the average city. However, when adding in controls for border states and red and swing states³, Portland actually became significantly more likely to *deny* cases than the average--over 50% more likely, in fact. This suggests that, when compared to a state like Texas, Portland may be a more attractive option for asylum seekers, but in reality may actually be harsher among its more blue, non-border state peers.

1. Countries were divided into seven categories: Latin America, Asia, Africa, Middle East, Eastern Europe, Caribbean, 'other'.

2. Red states were defined as those that voted for Republican presidential candidates in both 2012 and 2016; blue states as those that voted for Democrat candidates both of those years; swing states as those that voted each way once.

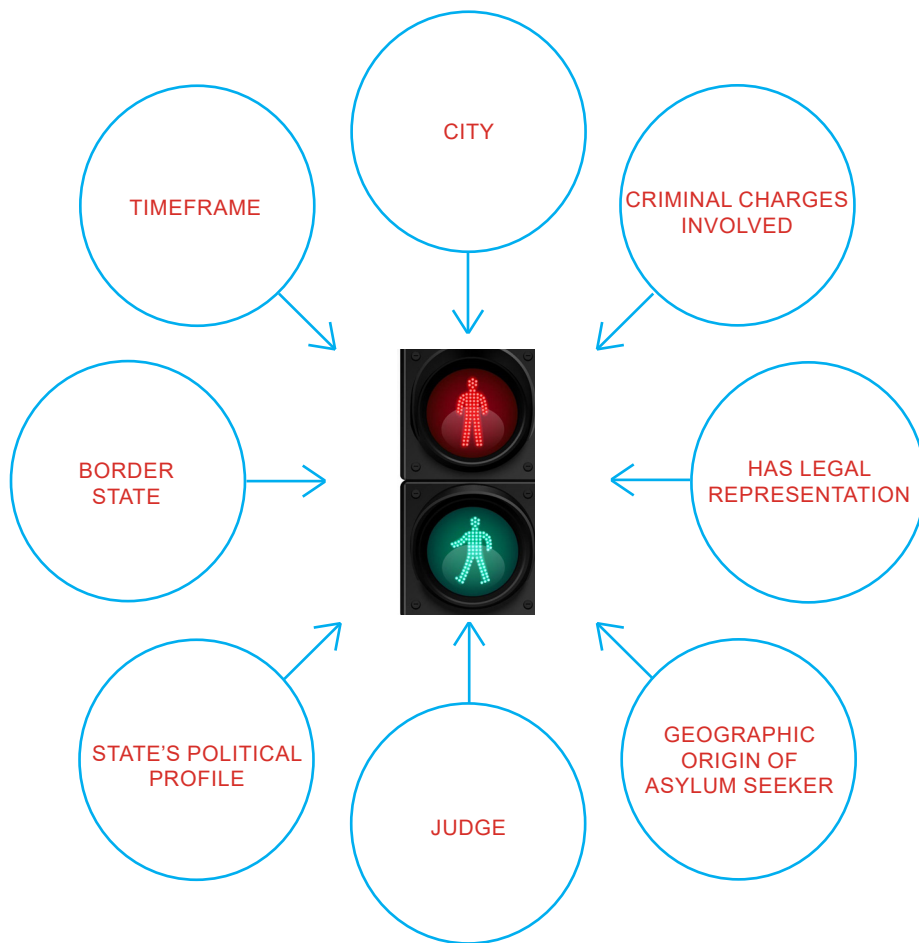
3. Unsurprisingly, border states and states voting Republican in one or both election years were significantly more likely to deny an asylum case than non-border states and solidly blue states. Criminal charges also significantly increased the likelihood of denial, representation decreased that likelihood, and the rate of denials increased each year as well, independent of location, demonstrating an increasing national trend.

Adding the asylum seeker's geographic region of origin also presented an interesting twist. When taking this into account, Portland actually appeared to be more lenient than the average once again. On closer examination, this appears to be related to how Portland adjudicates different countries' cases compared to the national averages. Within Portland's court, geographic origin appeared to have no significant impact on case outcome in those 2.5 years--e.g., a person from Latin America was just as likely, statistically speaking, to be denied or approved as a person from Africa, who was just as likely to be denied or approved as someone from Asia.

However, this is not true nationally, nor is it likely to remain so in Portland. While still taking the aforementioned control variables into account, we found that asylum-seekers from Latin America are substantially more likely to have their claims denied relative to those from any other region of the world.⁴ The result of this is that, in comparison to national trends, Portland has achieved some sort of strange parity--it is more lenient on its Latin American asylum-seekers (which comprise the majority of its cases), but also far less lenient on everyone else. However, that does not mean the Portland court isn't harsh to Latin American asylum seekers. Even if the denial rate is less than in other courts, this is likely not the standard to which we wish to aspire--especially as evidence suggests that Portland's denial rate is trending upwards and will likely continue to do so. While we should desire that asylum seekers from all regions be judged on the merits of their cases and not ethnicity or national origin, settling for treating all equally *poorly* would not be the ideal solution.

4. The Caribbean was the second most likely, followed by Africa and the 'other' category, followed by Eastern Europe, followed by Asia and the Middle East.

MEASURABLE VARIABLES WITH STATISTICALLY SIGNIFICANT IMPACT ON ASYLUM DECISIONS

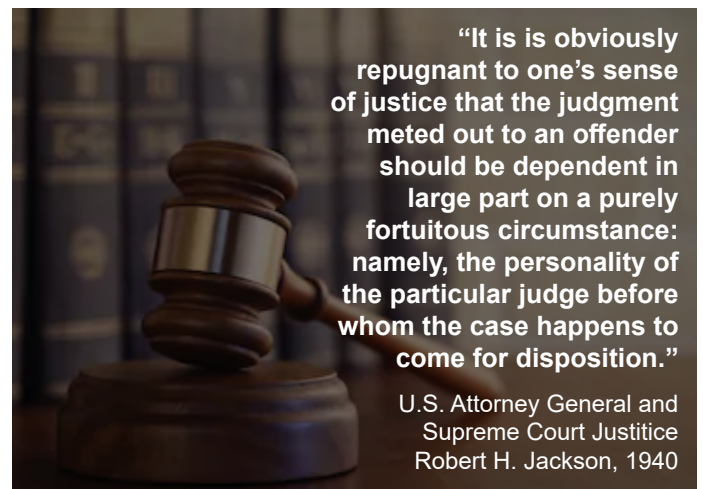


TURNOVER WITHIN THE PORTLAND COURT AND VARIABILITY AMONG JUDGES

Having discussed court-level statistics, we turn to the judges themselves--the true arbiters of justice, or lack thereof, in this system. We believe one of the most important elements of this analysis is the recognition of the substantial changes that have happened on the Oregon immigration court. There are only three judges, and two of them have come onto the court in the last two years--which makes many of the at-a-glance statistics available through sites like TRAC obsolete, and which may give a skewed impression to those who initially think Portland a friendlier place for asylum seekers.

In simple denial rates, incumbent judge Joren Lyons hews well below the national average. Newcomers Mindy Hoeppner (an [assistant general counsel for ICE](#) for 13 years before her appointment) and [Richard Zanfardino](#) (who attracted [media attention](#) for his asylum denials in the Northwest Detention Center) both had denial rates approximately 50% higher than Lyons in their first two years in Portland. (In comparison, their predecessors on the court, Andrea Sloan and Michael Bennett, both hovered around 50% denial rates, similar to Lyons.)

This recent disparity between the incumbent and the two newest judges appears to make asylum cases a far greater gamble in Portland than previously, and highlights that differences between immigration courts do not only reside at the city level. The 2013-2017 judge-specific denial rates reported by TRAC range from 3% to 100%, with wide variation even within single cities. (For example, Arlington, Virginia's judges range from 16.1% denied to 88% denied;



"It is is obviously repugnant to one's sense of justice that the judgment meted out to an offender should be dependent in large part on a purely fortuitous circumstance: namely, the personality of the particular judge before whom the case happens to come for disposition."

U.S. Attorney General and Supreme Court Justice Robert H. Jackson, 1940

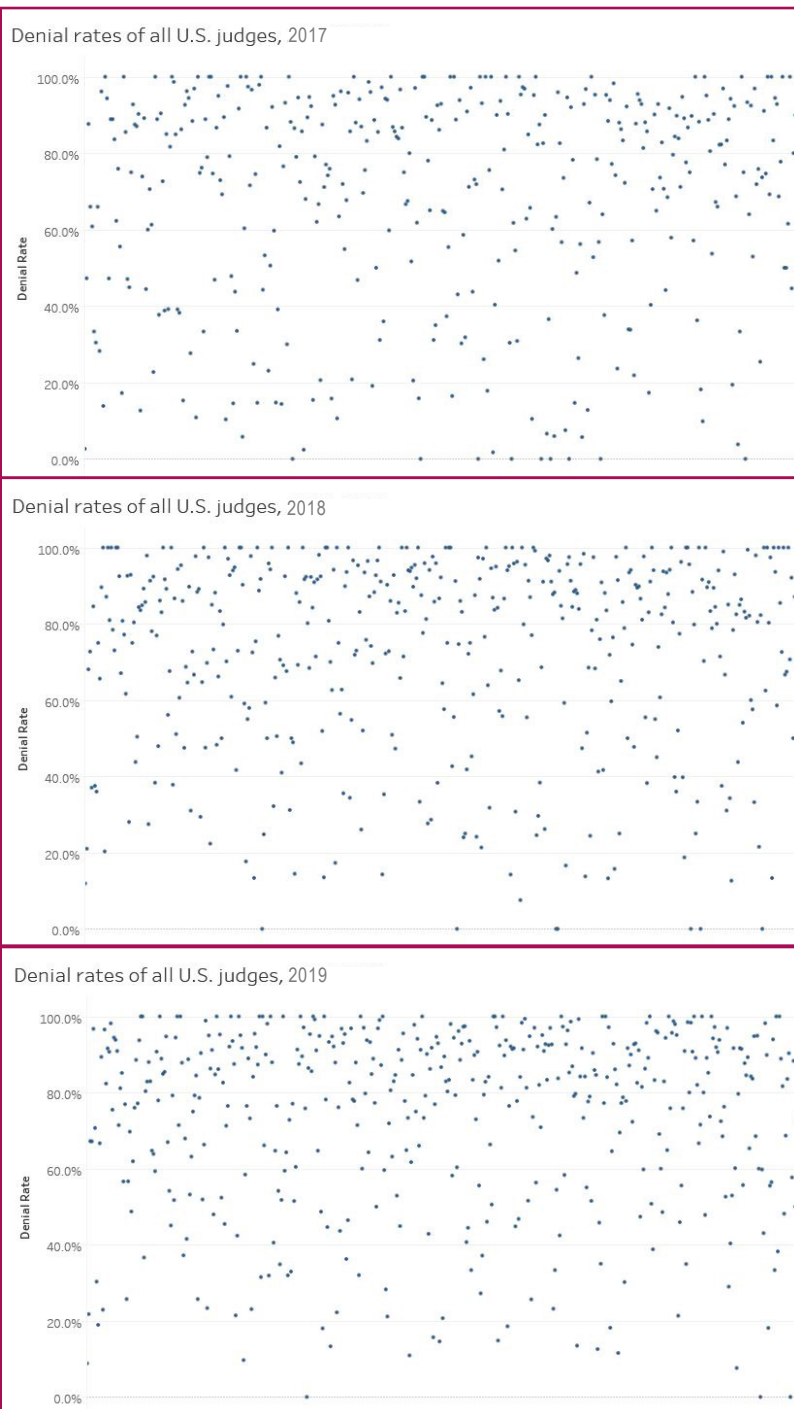
Chicago's range from 15.8% to 95.9% denied.)

Diving into the raw data from the most recent years further illustrates this. These graphs (right) were computed from the EOIR CASE database, and represent all judges who adjudicate asylum claims nationwide--every dot is an individual judge's denial rate. This visually demonstrates some of the evidence for the claim of wide variability in decision-making. It also demonstrates the increasing rate of denials over the last several years, as the dots drift toward the higher end of the scale. While these are unadjusted for the different case mixes individual judges see, it is disconcerting to see the incredible spread of decision-making rates in a judicial system that operates under the theoretical principle of impartial adherence to the law.¹

1. The author has no illusions that the American judicial system actually functions with neutrality; it is quite clear that race, class, national origin, and many other factors significantly impact the course of justice in this country. But this is the principle we outwardly claim for the system, and this analysis once again shows that it is not a principle uniformly followed.

LIKELIHOOD OF DENIALS BASED ON GEOGRAPHY, POLITICS, AND CASE DETAILS, PART II

We did, however, also want to take elements like case mix into account--therefore, we repeated the same type of modelling we used to compare cities earlier to also compare judges, weighing Portland's five judges that have served between 2017 and 2019 against the rest of the nation's judges. When examining judge, year of decision, legal representation, and criminal charges, the two past Portland judges (Bennett and Sloan) and the incumbent judge (Lyons) all had significantly lower than average odds of denying claims, ranging from 50% to 57% lower odds than the national average, all else held constant. However, the two newcomers (Hoepfner and Zanfardino) have significantly higher than average denial rates: 33% higher odds of denial for Hoepfner, 56% higher for Zanfardino. When adding border state and political status, Bennett, Sloan, and Lyons become statistically indistinguishable from the nationwide average (indicating once again that, among its more liberal peers, Portland may actually be somewhat more harsh than it appears). Meanwhile, Hoepfner and Zanfardino stand out even further--169% and 236% more likely to deny, respectively; substantial anomalies.



When also accounting for the asylum seeker's geographic region of origin, Zanfardino is the only judge that remains significantly above average in denial rates--113% above average, while Lyons, Sloan, and Bennett are significantly below average and Hoepfner isn't significantly different than the average. We mentioned earlier that there were no significant differences by geographic region for the Portland court as a whole. However, this is not true for each judge. Bennett and Sloan, the two past judges, and Lyons, the longer-term incumbent, have no statistically significant differences by geographic region in their individual caseloads; when taking into account

criminal charges and representation, they adjudicate similarly for asylum-seekers of all nationalities. However, both Hoepfner and Zanfardino do have disparities. They both demonstrate a higher likelihood to deny Latin Americans than other asylum seekers from any other geographic regions, in keeping with

the rest of the country--something which is by no means unheard of (as [this 2018 New York Times article](#) describes). This pervasive bias has added yet another layer of inconsistency to asylum adjudication, on top of judges' personal characteristics and biases and court-specific variations.

CONCLUSION

So, how does Portland rank against other cities? This is a complex question with no simple answer, and the above analysis cannot take every potential circumstance into account. But the evidence suggests that, while Portland may be a haven relative to courts in some parts of the country, and may have been more fair historically in its consideration of national origin than much of the country, it is still not necessarily a particularly safe haven for asylum-seekers. The composition of the current court appears to undo that historical parity, with data suggesting that the newest judges are more closely aligned with the prejudicial bias against Latin American asylum seekers seen in the rest of the country; the newer judges rank unfavorably even when considering state politics or proximity to the border, let alone for a blue state far from a southern border crossing. Judge assignment once in Portland will thus play a substantial role in one's fate--a situation beyond an applicant's control, and whose unpredictability may come as an unwelcome surprise to asylum seekers. The turnover in the last two years has created a different environment for asylum seekers than previously seen, and is not adequately reflected in the most frequently cited statistics yet. This may lead immigrant communities and local organizations to draw erroneous conclusions, to their detriment.

While a full literature review was beyond the scope of this analysis, it would be remiss to not at least briefly explore how these findings stack up against other work. Journalists, the federal government,

and academics have also analyzed and noted the wide variation between cities and between individual judges. Even when controls for specific case and client variables are taken into account, both court and judge assignment has still been seen to be a significant predictor of success or failure. For example, [a 2008 GAO study](#) found wide variability among courts, even after taking into account the same types of case-specific elements we used in our analyses. For example, the San Francisco court, one of the more lenient in the analysis, was 12 times more likely to grant an affirmative claim and 15 times more likely to grant a defensive claim than the Atlanta court, all else held constant.

Multiple studies have also indicated that judges who have worked for DHS or INS in the past, newer judges, and male judges may be significantly more harsh in their decision-making than average, even when seeing similar cases. For example, [a 2007 Stanford study](#) found that the grant rate for female judges with no immigration law enforcement background was nearly twice that as a male judge with such a background. When adding in other factors, such as client representation, such gaps increase--a client with adequate legal representation facing a female judge with no INS/DHS background is 289% more likely to be granted asylum than a client without representation facing a male judge with an INS/DHS background, all else held constant.

These are not old issues, and furthermore, some are worsening. [A 2017 Reuters analysis](#) (which also found the same types of court and judge disparities) made the disturbing observation that within the first six months of Donald Trump's presidential tenure, nearly 60% of Attorney General Jeff Sessions' immigration judge appointees came from ICE--a factor that indicated a 23% higher likelihood of denial in that study. (A reminder that Hoepfner, one of Portland's new judges, is in this class of appointees.) And while examining who appointed each judge was also beyond the scope of this project, it is only fair to note that former Attorney General Loretta Lynch appointed Zanfardino, the strictest judge in our city. While states' political leanings did have some weight



Of Portland's three judges, two deny asylum claims at substantially higher rates than the national average. When year of decision, legal representation, criminal charges, state politics, and border state status are held constant, Judge Richard Zanfardino and Judge Mindy Hoepfner were 236% and 169% more likely to deny claims.

in predicting asylum case outcomes, there is no political party immune from bias, prejudice, or whim.

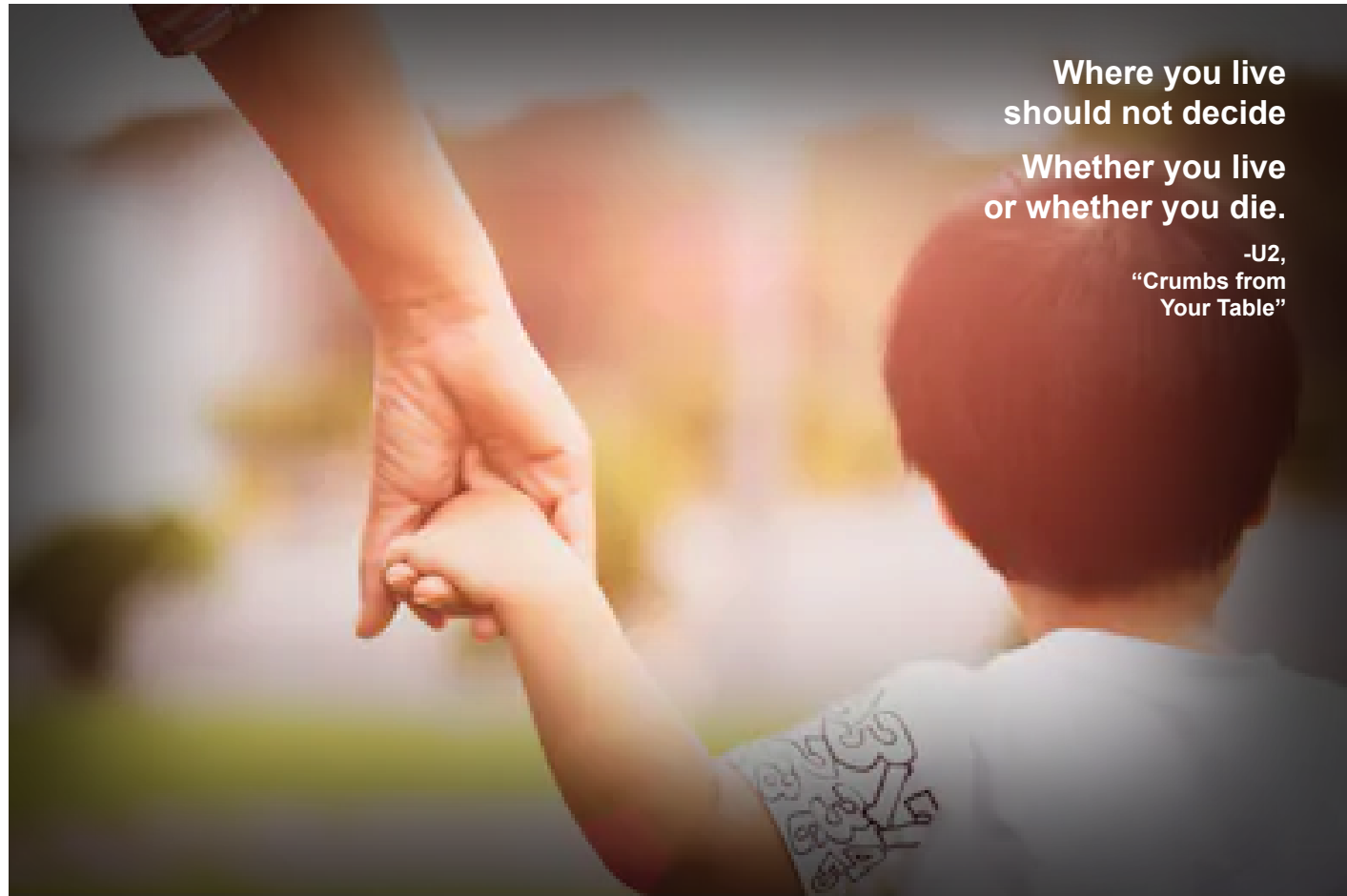
In short, whether one should consider Portland a true safe haven will likely depend upon one's options. If the choice is between filing a defensive claim in a border town in Texas and an affirmative claim here, Portland is likely the safer option (although not a given, considering the substantial and not always predictable variation that exists between different courts and judges). But if we consider Portland among those we would more often consider its peers, the choice may not be as obvious--and Portland cannot necessarily claim its liberal bastion, 'sanctuary city' credentials in good faith. For example, Portland compares rather unfavorably when judged against fellow "Left Coast" city San Francisco--whereas Portland was 50% *above* the national average in likelihood of denying a claim when accounting for all previously described case- and court-specific variables, San Francisco was nearly 80% *less* likely than the national average under the same criteria. Yet, one could also choose a blue non-border city worse than Portland--for example, our neighbor to the north, Seattle, whose odds of

POSSIBLE ACTIONS

Increasing legal resources for asylum seekers is a concrete area in which local organizations can take action; lack of legal representation is a significant predictor of negative outcomes, and Portland's proportion of unrepresented asylees is above average.

Another is considering what legal avenues are available for contesting individual decisions, or a judge's patterns of adjudicating more broadly. Given the wide range of denial rates among Portland's judges, and that one of Portland's judges has even drawn national media attention for their denials, this may be something to consider.¹

denial are 240% higher than the national average. The incredible variation in courts and judges indicate that a closer look is warranted at all options available to an asylum seeker--an examination that can certainly be guided by the knowledge of how political leanings, geography, and legal representation may influence the odds, but that must also acknowledge the powerful role individual judges play and the extreme inconsistencies exhibited in our immigration judicial system.



Where you live
should not decide
Whether you live
or whether you die.

-U2,
"Crumbs from
Your Table"