

An Expensive Pass to Freedom: Bond Amounts Trajectories in Immigration Court

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Abstract

Thousands of immigrants are in civil detention awaiting case adjudication in the United States. Unguaranteed legal representation and stringent access to bond hearings restrict the chances of release. Though the institutional purpose of civil detention and bonds in Immigration Court is to secure safety and the public good, we find contradictions in such purpose: increasingly high bonds are mandated regardless of individual circumstances, in a context of legal violence, or the loss and uncertainty experienced by a subclass of individuals scrutinized by the law, characterized by heightened criminalization, scarce legal protections, and broad judicial discretion. We use bond case administrative data from the Executive Office of Immigration Review between 1991 and 2020 in a multivariate analysis that centers on the influence of criminal records and legal representation to get lower bond amounts granted. We find that criminal records predict risk before 2001, but after, individuals with no records are also mandated to pay higher amounts to Immigration Courts. After 2001, legal representation's influence on reducing bond amounts is subtle but relevant. We analyze these findings in light of policy changes and provide evidence on how increasingly high bonds fracture social and economic determinants of immigrants' well-being by altering their economic stability while they and their communities also suffer the psychological and physical tolls of detention.

Keywords

immigration, criminal records, legal representation, bond amounts

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Immigration adjudication's increased reliance on civil detention (Hiemstra, 2019; García Hernández, 2019) is arguably a mechanism to keep communities safe while securing noncitizens' presence in future proceedings (ICE, 2023). There is no evidence, however, that immigrants threaten communities (Light & Miller, 2018; Ousey & Kubrin, 2018) or that they abscond if allowed to remain free while proceedings last. Conversely, recent studies show that 98% of immigrants in removal proceedings who were released returned to court in a timely manner (Siuc & Smart, 2020; Stave et al., 2017). Immigrants' detention, instead, has shattered entire communities with scarce means to access immigration justice (for a review, see Ryo, 2019b).

The literature on the pains of imprisonment describes how detainees experience deprivation and loss (Fleury-Steiner & Longazel, 2014; Haggerty & Bucierius, 2020). In civil detention, legal violence is one of these *pains*. It refers to how legal systems deprive immigrants of basic constitutional protections, infringing a sense of loss, and creating uncertainty while trapping them in facilities indistinguishable from prisons and jails (Longazel et al., 2016; Menjivar & Abrego, 2012). Besides the psychological toll of being away from their social networks, there is also suffering for the families and friends of detainees (Brabeck et al., 2014; Brabeck & Xu, 2010). The time in detention impacts immigrants' social and economic dimensions of well-being (Helliwell & Putnam, 2005), as it relates to interruptions in employment and income, both determinants of social and economic mobility (Abrego & LaRossa, 2009; Patler, 2015; Patler & Golash-Boza, 2017).

Bond release could mean a way out of detention for immigrants to work on expeditious case resolution, but the system procures stringent pathways to bond hearings (DeMattee et al., 2021; Gilman, 2016; Holper, 2016). For instance, individuals convicted of certain crimes are ineligible (8 U.S.C. §§ 1225[b], 1226[c]). Offenses in this category are not necessarily aggravated nor felonies but could be assessed as such by immigration law (e.g., identity theft, such as a fraudulent Social Security Number to get employment, could amount to deportation) (García Hernández, 2014; Tosh, 2022). Still, criminal records can prevent documented and undocumented individuals from having a bond hearing, keeping them in mandatory detention. For those eligible for bond proceedings (e.g., mild or no records), they can secure a bond with a starting amount of \$1,500¹ (8 U.S.C. § 1226[a]). The rationale is the same as in detention: someone gets a bond if that person is not considered a safety or flight risk (8 C.F.R. §236.1[c][8]). This is problematic, first, because the right to a bond hearing is segmented, creating a subclass of individuals that remains in detention; second, the lack of clear risk assessment criteria fuels detention; and third, even minimal bond amounts pose financial barriers for economically vulnerable immigrants. Evidence shows that Immigration Judges keep increasing the bond amounts to pay, with extensive discretion to shield their determinations of risk (Kim & Semet, 2019; TRAC, 2023).

Although immigrants have a right to legal defense in Immigration Court, the government is not obliged to provide attorney representation for those unable to afford it, unlike in the criminal legal system (Eagly & Shafer, 2015). Although detention reduces the chances of finding attorneys (Menjívar et al., 2018; Ryo, 2019b), we still do not

know the influence of legal representation on securing lower bond amounts. Individuals may appear in Immigration Court without an attorney, making securing a bond hearing and release on bond unlikely (Ryo, 2016). The immigration system procures scarce due process protections, but multiple avenues to “default to detention” (Gilman, 2016, p. 174).

Immigration Judges’ extensive discretion determines whether a person can be released on bond based on the individual circumstances of the case. The Board of Immigration Appeals suggests domains to assess safety or flight risk, including permanent domicile in the United States and length of time since arrival. Regarding criminal history, Immigration Judges can decide whether rehabilitative efforts are valuable, or they may consider a record even if a conviction has not been reached or the verdict is on appeal.² The interpretation of extensiveness, recency, and seriousness of criminal records (including immigration law violations) knits together family and community ties, employment history, and the appearance records in other courts. Immigration Judges weigh these factors and decide whether to release on bond, and the bond amount (Gilman, 2016; Ryo, 2019a). The complex rules of procedure and the characteristics of immigration cases turn Immigration Judges’ discretion into a powerful tool of social control over immigrants (Vega, 2019).

Amid precarious constitutional protections and expansive criminalization, we use descriptive analysis and multivariate models to assess the relevance of legal counsel in bond amount determinations and explore whether criminal records influence such decisions, estimating the trajectories of bond amounts that Immigration Judges decide across the United States between 1991 and 2020. Drawing from the Executive Office for Immigration Review bond proceedings data published by the Department of Justice (DOJ), complemented by administrative data from different sources at the regional, national, and state levels, we use Bai and Perron’s (2003) technique of multiple structural breaks to identify significant changes in the bond amount trends. Subsequently, we estimate two logistic models to determine the odds of a bond amount above or below the state mean as a linear combination of the predictor variables. The analytical strategy points to determining bond amounts’ variations within states alongside federal legislation changes. Departing from the legal purpose of bonds to determine risk, the anticipated outcome is that individuals with a criminal record would pay higher bonds due to their perceived elevated risk factor. We explore whether that is the case and if legal representation attenuates the immigration consequences of these records. We discuss whether bonds are a mechanism to overcome the pain of legal violence by procuring a way out of detention or are a mechanism to fuel economic strain and uncertainty as forms of legal violence over immigrant detainees and their communities.

We make three contributions to the literature on the pains of immigrant imprisonment and legal violence. First, while there are studies assessing the perils of the deportation regime, our analyses reveal the connection of immigration adjudication to forms of legal violence nested in the expansive use of detention practices, an intersection that fosters economic and social strains over immigrants via scarce legal protections and

obligations with Immigration Court such as cash-based sureties. Second, prior studies rely on bond proceedings in specific states reviewing the relevance of records and legal representation within specific samples (Kim & Semet, 2019, 2020; Ryo, 2016). Our data allow us to draw conclusions from the total population of cases reported by federal authorities at the national level, reducing problems with selection bias. Finally, the time span of the cases allows us to capture 30 years of bond amount decisions, nested within a structural break. Our findings suggest that 2001 was the moment when the pattern of adjudication toward more expensive bonds started, which provides empirical support to narratives where the emphasis on national security that followed the September 11 attacks was followed by a staunch approach to immigration law by Immigration Judges (Golash-Boza, 2016; Taylor, 2004). We suggest policy recommendations to secure legal representation and abolish cash bonds in immigration bond proceedings.

Theoretical Background

The pains of imprisonment framework refer to forms of loss and uncertainty experienced in contexts of incarceration (Crewe, 2022; for a review, see Haggerty & Bucerius, 2020). Applied to the experiences of immigrants in detention (Longazel et al., 2016), legal violence is one of those pains. As expanded by Menjívar and Abrego (2012), it refers to the “harmful effects of the law that can potentially obstruct and derail immigrants’ paths of incorporation, manifested in harmful ways for the livelihood of immigrants” (1383). Legal violence is “embedded in legal practices, sanctioned, and actively implemented through formal procedures,” nested in a complex structure of rules, a specific jargon, and broad judicial discretion, “legitimated and consequently seen as ‘normal’ and natural because it ‘is the law’” (1387). We contextualize legal violence within bond proceedings, demonstrating that not only immigration prisons but also Immigration Courts are punitive.

Immigration law’s use of detention and cash bonds purports the objectives of protecting rights, guarding common safety, and controlling behavior for the common good, but it also reproduces harmful practices. Immigration Court makes immigrants vulnerable to a “multipronged system of laws promoting a climate of insecurity and suffering” that is individual and collective (Menjívar & Abrego, 2012, p. 1387). The mass creation of criminal records and increased surveillance and detention of immigrant communities are aspects that manifest the intersection between criminal and immigration laws and policies through a deep contradiction: immigrants are “simultaneously accountable to the law but also (excluded) from legal protections and rights” (Longazel et al., 2016, p. 1385; see also Chacón, 2012).

By analyzing bond amount decisions, we address the incidence of criminal histories in immigrants’ legal outcomes in a context of absent legal protections and elusive/expensive mechanisms for release. Amid heightened stigmatization and the mass creation of criminal records, legally violent effects in bond decisions are plausible: securing release, when available through a cash bond, also signifies a fracture to the social and economic determinants of immigrants’ well-being.

Method

We draw from the Executive Office of Immigration Review (EOIR) bond cases national data (1991–2020) published by the DOJ (See Appendix A). We revise the trajectories of bond amounts centering the cases of individuals with a bond granted, comprising 488,928 cases of a population of 1,032,138 bond proceedings. We follow the ACLU (2019) methodology, which populates as many bond values as possible, leaving only those over the legal minimum³ of \$1,500 (8 U.S.C. § 1226[a]).

We built a dependent dichotomous variable: 1 if the bond amount is above the mean of the distribution of bond amounts in the state where the immigrant lives the year when the hearing happened, and 0 when the bond is equal to or below the mean of the bond distribution. The analytical strategy points to determining amounts' variations within states alongside federal legislation changes and the influence of a criminal record and legal representation in the bond amounts granted by judges, addressing differential treatment, potential biases, and exogenous elements. The independent variables are legal and extralegal factors influencing the bond amount determination, including exogenous controls to improve the fitness of the models. The legal variables are statutory elements expected to influence judicial decision-making, and the extralegal variables contain identifiable characteristics of the individual respondent and the judge (Nagel, 1983).

Legal representation and criminal records are the independent legal variables we prioritize in our analysis⁴; both are interpreted as dimensions of legal violence related to immigrants' criminalization and access to legal protections. A dummy variable for attorneys if available = 1 or not = 0, created from the registries of the E28 form⁵ dates (Kramer, 2019). The criminal record is a dummy variable whereby someone has a record = 1 or not = 0. Regarding the extralegal variables, we created a dichotomous nationality variable whereby Mexico or Central American⁶ countries = 1, other countries = 0 (Ryo, 2016, 2019a). We include the language spoken by respondents (English = 1, non-English = 0). Apropos the sex of the immigrant, we used Kim and Semet (2019, 2020) approach as they default to categorizing cases as "male" if "female" is not explicitly listed; hence, man = 1 and woman = 0. The dataset allowed us to identify judges' sex, and we appealed to the same dummy characterization used for respondents.

We add multilevel controls that supersede and expand characteristics of the cases, situating place, time, and sociopolitical aspects as factors hypothesized to influence Immigration Judges' bond determinations (Kim & Semet, 2020; Ryo, 2016, 2019a). These variables reduce unobservable effects and capture information on structural determinants. Regarding placeness, we use the court where the hearings are carried out⁷ whether in cities at the Southern Border = 1 or large cities = 0. Relatedly, we complement EOIR case data with the Bureau of Labor Statistics data to include unemployment rates in the city where the hearing occurs. At the state level, we include immigrant participation over the state population using the Migration Policy Institute Data. Adding a temporal dimension, a categorical variable links the date when the final bond decision is reported and connects it to the presidential period under which the decision occurred. A random criterion is used to select the base group, the Obama

administration; the coefficients are read compared to that period. The information about the respondents' country of origin includes income level defined by the World Bank and coded as "low income," "mid-income," or "high income." We also include the Freedom in the World annual global report with a code for countries cataloged by Freedom House as "free," "partly free," or "not free."

We use Bai and Perron's (2003) technique of multiple structural breaks to identify the critical moment when significant changes occur in bond amount trends and two logistic models (before and after the structural break) to estimate the log odds of a bond amount above or below the mean as a linear combination of the predictor variables. The equation below represents the approximation to assess the influence of criminal records and access to legal representation over the odds of a bond amount above or below the mean

$$Y_i = \alpha + \beta_1 X_{1,i} + \beta_2 X_{2,i} + \sum \beta_j Z_{j,i} + \varepsilon_i$$

where

$$Y_i = \begin{cases} 1, & \text{if } \textit{Bond Granted} > \textit{Mean of Bond granted} \\ 0, & \text{if } \textit{Otherwise} \end{cases}$$

$$X_{1,i} = \begin{cases} 1, & \text{if } \textit{Has Attorney} \\ 0, & \text{if } \textit{Otherwise} \end{cases}$$

$$X_{2,i} = \begin{cases} 1, & \text{if } \textit{Has Criminal History} \\ 0, & \text{if } \textit{Otherwise} \end{cases}$$

$Z_{j,i}$ is the matrix of confounding variables that may affect the relationship between Y_i , $X_{1,i}$, and $X_{2,i}$. Including relevant controls increases the fitness of the model, an assessment based on three criteria: lower Akaike information criterion, lower Bayesian information criterion, and higher r squared.

Results

Figure 1 illustrates the consistent growth in bond amounts over time. This trend is the same across all states, regardless of differing political climates and protective policies for immigrants (Kim & Semet, 2020). The mean bond amount granted, expressed in constant 2010 dollars, started at \$5,034 during the 1990s, rose to \$7,849 throughout the 2000s, and increased to \$8,216 in the 2010s. Through Bai and Perron's (2003) technique of multiple structural breaks,⁸ we find that the growth of bond amounts started in 2001 (dotted line) and turned steadily upward since then. Overall, before 2001, the mean bond amount granted was \$5,095, and for all the cases after 2001, the mean bond amount augmented to \$7,343.

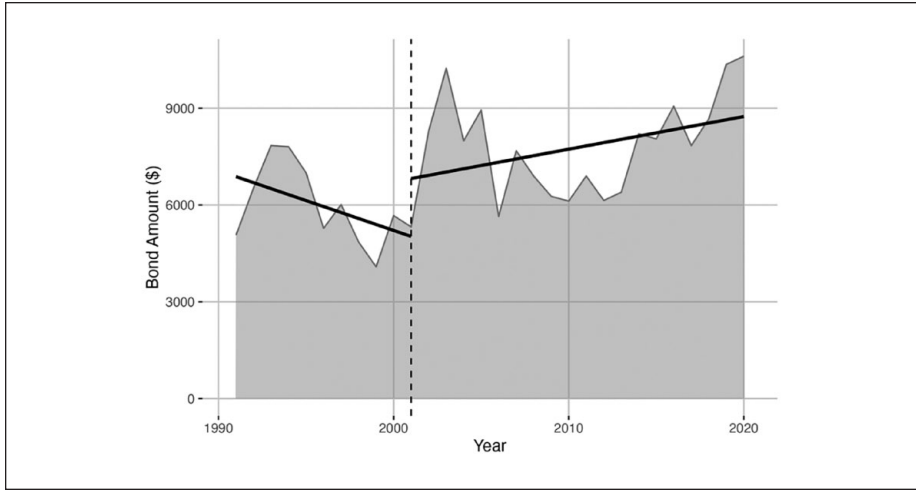


Figure 1. Trajectories of mean bond amounts before and after 2001.

Note. Bond amounts are expressed in constant 2010 dollars. The estimations are drawn from EOIR bond case data.

See Appendix A for a comprehensive description of the immigration bond cases spanning 1991 to 2020. From the 488,928 cases analyzed, 89.4% do not have criminal records. Conversely, 81% of the proceedings had legal representation. We find that criminal records progressively became a filter to restrain bond proceedings, and although legal representation is fundamental to securing a bond-granted outcome in Immigration Court, lower bonds are less likely across cases over time. We now turn to results from our multivariate models preceding and following the structural break to establish how criminal record and legal representation influence bond amount determinations. Table 1 shows the logit coefficients of the selected group of variables.⁹

Since the institutional purpose of bonds is to promote safety, the anticipated outcome is that individuals with a criminal record would get higher bonds to pay due to their perceived elevated risk factor, an outcome only attenuated if they have legal counsel. Our findings suggest that criminal records predict more expensive bonds before 2001. However, after 2001, criminal records ceased to be statistically significant, likely due to the restrictive access to bond hearings for the population with such records. Simultaneously, bond amounts, on average, increase for all cases, irrespective of whether immigrants have a criminal record. Notwithstanding the structural break, legal representation reduces the likelihood of getting a higher bond amount.

First, the legal violence framework suggests that the increase in the use of criminal records and civil detention to socially control immigrant communities is a delayed impact of intersected criminal and immigration policies designed during the 1980s and 1990s to promote a specific subclass of individuals considered a generalized risk (Das, 2020; Nevins, 2010). Immigrants play this part as their foreignness can be read as a marker of difference. The heightened surveillance and the securitization rhetoric

Table 1. Logit Coefficients of Legal Representation and Criminal Records Over the Mean Bond Amount Before and After the Structural Break of 2001.

Measures	(1)	(2)
	Mean Bond Amount Before 2001	Mean Bond Amount After 2001
Has legal representation	-0.06*** (0.02)	-0.12*** (0.00)
Has criminal record	0.70*** (0.02)	0.04 (0.03)
Constant	-2.97*** (0.56)	-0.09*** (0.04)
Observations	131,300	347,266

Note. Standard errors in parentheses. The entire list of controls is included in Appendix A. The estimations are drawn from EOIR bond case data.

*** $p < .01$, ** $p < .05$, * $p < 0.1$.

Table 2. Estimated Mean Bond Amounts by Criminal Record and Legal Representation Before and After 2001.

Criminal record	Mean bond amounts	
	Before 2001	After 2001
No	\$3,724	\$5,117
Yes	\$7,341	\$7,018

Legal representation	Mean bond amounts	
	Before 2001	After 2001
No	\$5,106	\$7,337
Yes	\$4,753	\$6,818

Note. Bond values are in constant 2010 dollars. The estimations are drawn from EOIR bond case data.

derived from the September 11, 2001 attacks influenced public views on immigrants (Armenta, 2019; Golash-Boza, 2016). Since the law and legal actors are not neutral entities, the Immigration Judges' heuristics are also embedded in a baseline of suspicion: having a criminal record is an automated risk indicator that legitimizes detention and constrains access to release options (e.g., bond hearings), but lacking a criminal record is not determinant to avoid distrust over those perceived as *illegal* or *terrorists* by default (Chavez, 2001; De Genova, 2004). Before 2001, a record was a clear predictor of risk, but more individuals with criminal histories could access bond hearings, and the mean bond amount they paid was \$7,341. After 2001, only those with mild or no criminal records accessed bond hearings, which could influence the reduction of the bond mean to \$7,018 (see Table 2).

Second, access to legal representation supports arguments in Immigration Court regarding rehabilitative efforts and other aspects relevant to getting a bond with a lower amount, such as social ties, and belonging to U.S. society. This argument has a caveat: generalized perceptions of risk have attenuated the incidence of legal counsel, meaning that the difference in mean bond amounts with and without an attorney is slight. Before 2001, individuals without legal counsel were granted a mean bond of \$5,106. After that, legal representation's statistical significance increased, but the mean bond amount still rose to \$7,337, a difference of \$2,231. In cases where an attorney was secured, the mean amount to be paid went from \$4,753 before 2001, to \$6,818 afterward, a difference of \$2,065. Despite attorneys being secured in 81% of the cases, scarce legal protections also translate into the broad judicial discretion that allows Immigration Judges' decisions over bond amounts to be harsher in time (more expensive bond determinations).

The scarcity of legal protections to confront biased legal structures is another feature of legal violence. Individuals in civil detention face uncertainty amid the extra hurdles to ensure legal counsel toward their release, especially after prolonged waiting for a bond hearing. Acknowledging the limitations of administrative sources, we aggregated the number of days between the date of detention and the date of release per case stated in EOIR case data. We estimated the total average before and after the structural break. Before 2001, the average length of detention was 64 days, which increased to 88 days after 2001, a clear indicator of the augmented deprivation of freedom that immigrants endured. When they are released with a cash bond, the loss of freedom is replaced by the loss of economic fluency to secure a payment that can take the sufferings of detention to the outside. We expand on these arguments next.

Criminalization and Bias in Bond Amount Determinations

The growth of criminal records and incarceration is an interwoven reality of social control around those framed as dangerous under the labels of criminals (Longazel et al., 2016). The policy frameworks for detention in the criminal and immigration systems are intertwined. The Anti-Drug Abuse Act of 1988 (later expanded during the 1990s) and the 1996 Illegal Immigration Reform and Immigrant Responsibility Act are foundational to the "tough on crime" era, promoting moral codes under the assumption that heightened enforcement, incarceration, civil detention, and eventual deportation are instrumental in guaranteeing communities' safety from "criminal aliens." This discourse solidified during the Bush Administration's "war on terror," which shaped the Homeland Security Act of 2002. Immigration offenses such as entry and re-entry became part of the list of aggravated felonies, and drug crimes and crimes of moral turpitude (or those with convictions of more than 1 year) became common mechanisms to flag "criminal aliens." Violent and nonviolent offenses became equally felonious if committed by noncitizens, easing the pathway to prolonged detention and banning access to bond hearings (Das, 2013; Kanstroom, 2010). The Obama and Trump administrations continued the application of these frameworks, expanding

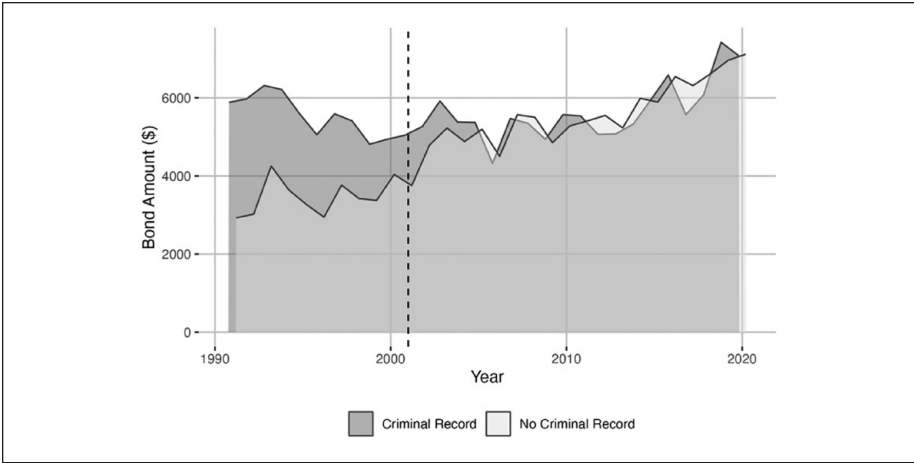


Figure 2. Difference in bond amounts trajectories for cases with and without criminal records before and after 2001.

Note. Bond amounts are expressed in constant 2010 dollars. The estimations are drawn from EOIR bond case data.

containment for those framed as “criminals” (Brotherton & Kretsedemas, 2017; Tosh, 2023).

In reality, “tough on crime” laws propelled an overall criminalization and overpolicing of low-level behavior, arguably in discriminatory ways (Alexander, 2012; Nellis, 2023). Overall, more than 80% of all criminal arrests by the criminal system have been for low-level, nonviolent offenses and poverty-related conduct (e.g., substance use, and mental health issues); those who cannot pay court fines, fees, or bail for minor violations confront extended jail time (Vera Institute of Justice, 2023). Connectedly, civil detention for nonviolent offenses also increased (Bier, 2018; Cook, 2003). Programs such as Secure Communities or 287(g), created during the late 2000s, eased information sharing between police departments and immigration authorities, using biometric technology to surveil immigrants who had any contact with the criminal legal system and then send them to civil detention (MuPro, 2022). Immigrants are seen through a double standard of moral appropriateness, where low-level conduct before the criminal legal system could amount to deportable offenses in the immigration system.

For the individuals that had a bond hearing, our findings show that criminal records influenced higher bond amount determinations before 2001. Policy arrangements and generalized perceptions of risk of immigrants that occurred in the climate of heightened surveillance could explain why, regardless of whether they had contact with the criminal system, they were deemed at higher risk after 2001. Figure 2 shows a discernible convergence in the bond amount trajectories of those with and without criminal records. We argue that from 2001, a criminal record began to work simply as a filter to

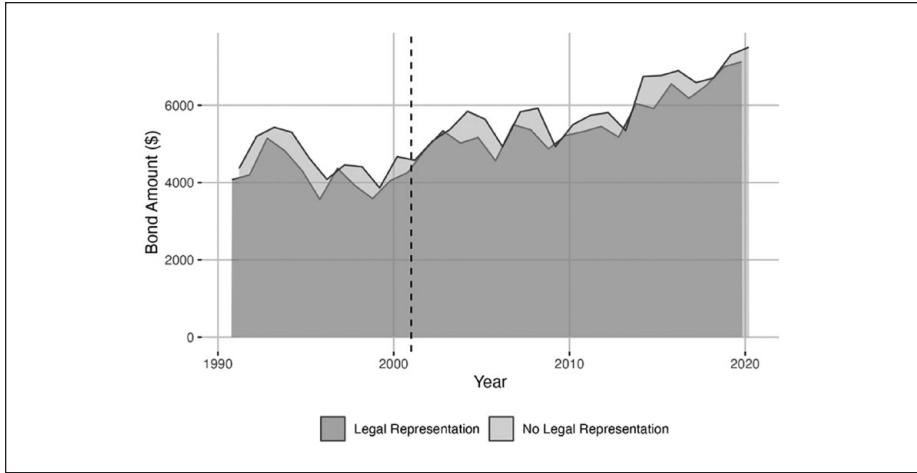


Figure 3. Difference in bond amounts trajectories for those with and without legal representation before and after 2001.

Note. Bond amounts are expressed in constant 2010 dollars. The estimations are drawn from EOIR bond case data.

ease the denial of access to a bond hearing. Simultaneously, immigrants (and their social networks) have been punished with more expensive bonds even if they do not have criminal histories.

Legal Representation: Subtle but Relevant Effect

Legal representation is fundamental to getting a bond granted (Ryo, 2019a) and influences the odds of getting a lower bond amount. Figure 3 shows that cases with legal counsel can secure, overall, a lower bond amount, although the difference with those without attorneys is subtle.

Attorneys are important in dealing with the increased intricacy of immigration hearings (Kalhan, 2010). Since bonds are not a form of relief within removal proceedings, evidence standards can be confusing. In bond hearings, the burden of proof is on the respondent, meaning that immigrants must prove that they do not pose a risk (Holper, 2016; Kramer, 2019). Respondents can ask the Immigration Judge to consider attenuating circumstances and, if granted a bond, to reduce it to the minimum amount (FIRRP, 2011). However, scarce legal protections are a feature of legal violence, relating to the few resources such as pro-bono and jailhouse lawyers taking detainees' cases (Martinez-Aranda, 2023). In other instances, families secure private attorneys to handle bond and removal cases, but there is no evidence differentiating the quality of representation between nonprofit and private services. Scarce legal resources can support or complicate cases. Our findings should be interpreted carefully, as not only having legal representation secures a lower bond amount. Attorneys can ease the

navigation of procedures that are complex and highly unequal, but in bond proceedings, family ties, and the socioeconomic characteristics of the places where immigrants live also influence the decision.

Amid broad judicial discretion and a generalized trajectory to increase the amounts, legal representation is insufficient to secure significantly lower financial obligations with the Immigration Court. Thus, judicial discretion is part of the scarce legal protections that immigrants confront, not only the absence of secured representation.

Bonds as Fractures of Social and Economic Well-Being

As legal advocates and migrant communities navigate possible avenues to secure bond hearings, their wins around the time limits of detention are relevant in certain Circuits. Still, we find an overall increase in detention length for those waiting for a bond hearing. Extended confinement compromises immigrants' ability to keep stable employment, support their families, and achieve economic self-sufficiency (Patler, 2015; Saadi et al., 2020). Detention interrupts earnings, and expensive bonds add economic strain to individuals in detention and the communities outside seeking to gather the financial means for their release.

To provide insight into the economic strain that detention and expensive bonds put on immigrants, consider the subsequent scenario. A Pew Research Center report estimated the annual family income for unauthorized immigrants in 2007, which stood at \$36,000 (Passel & Cohn, 2009). During the same year, the average bond granted amounted to \$7,680. Concurrently, in our set of cases for 2007, the average detention period for migrants was 75 days. This translates to a financial toll of \$7,500 in unearned income over the days of detention, without accounting for additional costs, such as the eventual payment to an immigration attorney. The aggregate for the bond and the income loss attributed to detention totals 43% of the annual household income (\$15,180) for that year. To the loss of freedom and the uncertainty of immigration proceedings, bonds add to the economic loss of resources that are hardly restored without an attorney or forms of legal support to guide the process.

Bail Funds nationwide are now part of the precarious resources available, providing free bail assistance, and paying bonds for under-resourced community members (Tolentino, 2020). However, as in the criminal legal system, private bond companies also contact individuals to expedite loans to release detainees. These companies are sources of impoverishment with documented predatory practices in the pretrial cash-based systems (Page, 2017; Silver-Greenberg & Dewan, 2018), such as elevated interest rates and aggressive approaches to families to secure payments, including harassment, and the use of electronic monitoring over debtors.

Low-income households with mixed and undocumented legal statuses are exposed to multiple stressors associated with detention (Brabeck et al., 2014; Zayas et al., 2015). Specifically, loss of income is essential for social mobility, housing stability, and economic sustainability of immigrant households and those in their countries of origin (Abrego, 2014; Abrego & LaRossa, 2009). If detention interrupts cash flow, cash bonds are hardly a way out.

Conclusion and Policy Recommendations

This study contributes to understanding the impact of immigration bonds in the socioeconomic determinants of immigrant well-being in the United States. Immigration Court financial obligations without legal protections foster economic vulnerabilities and entrap individuals before deportation. Thus, Immigration Judges are not only agents of bureaucratic decision-making (Asad, 2019) but also agents of social control over immigrant communities (Vega, 2019). Their orders reproduce legal violence as they are embedded in the stigmatization and criminalization of an underclass of individuals harshly scrutinized by immigration law (Longazel et al., 2016; Menjívar & Abrego, 2012). We add to the scarce legal protections of being exposed to civil detention without legal representation the broad discretion of Immigration Judges to mandate increasingly high bond amounts, both as sources of loss and uncertainty.

The structural break of 2001 is an empirical marker that illustrates the changing landscape of bond outcomes in the context of broader policies influencing judicial discretion. We argue that the heightened emphasis on national security as a feature of immigration and criminal policies, and the increased complexity of the immigration system justified the detention of immigrants and restricted their chances of having bond hearings. Our findings reveal that criminal records held greater sway as a distinct predictor of risk before 2001, but after, higher bond amounts resulted equally from cases without criminal records. Post 2001, criminal history in immigration adjudication simply confirms the presumption of inherent peril and non-compliance with the law that pervades migrant communities and deprives them of the possibility of release on bond (García Hernández, 2019; Golash-Boza, 2016; Taylor, 2004).

Those who can access a bond proceeding confront preconceived notions about their illegality regardless of the “criminal” label, whereby immigrant communities (documented and undocumented, with and without criminal records) are generally considered a heightened risk vis-à-vis higher bond amounts. In that context, legal representation is relevant. Attorneys get bonds granted depending on case characteristics, building up arguments about social ties and belonging. However, their sole role is not enough to guarantee significantly cheaper bonds.

The *pain* of legal violence is not just a systemic feature; it is individual and collective as it influences the socioeconomic determinants of immigrant well-being. Bonds, as detention, expand the area of loss that immigrants experience. We refer to how bonds are a clear marker of reduced income in immigrant households, where economic mobility is interrupted by the costs of detention (as documented by Patler, 2015) and immigration adjudication.

Most bond cases in the study do not have associated criminal records, and there is evidence that immigrants are interested in returning to court to solve their migratory status (Siuc & Smart, 2020). Why do we continue seeing elevated sums of money for their release then? This is not to say that criminal records constitute an accurate indicator of risk. Documented forms of inequities in the production of criminal histories historically have made the argument clear (Alexander, 2012). But instead of keeping

communities safe and looking out for the common good, bonds constrain and impoverish immigrant communities that wish to solve their immigration cases. Immigration law is harmful from this perspective: in the context of bond hearings, it backs an environment of enclosure that resembles the punitive characterization of the criminal legal system without the procedural guarantees it has (García Hernández, 2014; Patler & Golash-Boza, 2017).

Thus, there are two actions to reduce losses and uncertainties for immigrant communities. First, policymakers should focus efforts on eliminating cash-based sureties. This discussion has already occurred in criminal law settings (Rahman, 2019). Using a cash-based system to assess risk mirrors in many aspects the rationale of pretrial justice in criminal law, where the evidence of its impertinence is overwhelming (Heaton et al., 2017; Maruna et al., 2012). The use of bail in the United States contributes to a rising number of pretrial detainees and incarcerated populations (Reiman & Leighton, 2020). Economic vulnerabilities refrain accused individuals from awaiting their trial in freedom unable to pay court obligations (Koepke & Robinson, 2018; Stevenson, 2018). Others are thrown into bond companies propelling debt and instilling poverty (Page, 2017). However, unlike other policies that interconnect immigration and criminal policies, bail reform in pretrial justice has no legal effect on bond proceedings within federal Immigration Courts (Harbeck, 2016). Still, the debate requires institutional revision of the expired purpose of bonds in the immigration system as they do not correspond to safety or public good.

Second, secured legal representation is necessary to promote fairer outcomes, secure access to justice, and to mitigate the influence of stigmatization on any immigration outcome. Legal counsel reduces adjudication uncertainty; if secured for economically vulnerable immigrants, the pains of imprisonment would be lessened for immigrant communities.

Institutional frameworks state that bail is no punishment. Still, prolonged detention, lack of access to bond proceedings, and high amounts of cash-based sureties are tools to keep poor immigrants in prison or indebted, sacrificing the socioeconomic well-being of entire communities to sustain a system that defaults to detention without due process protections. As in the criminal legal system where people are thrown to guilty pleas to ensure release, the conditions of detention and elusive or expensive bonds in Immigration Court could be throwing immigrants into accepting voluntary departures and removal orders, a matter that deserves further inquiry. Cash bonds deserve further evaluation as we note a generalized approach to charge high values to immigrants regardless of the circumstances of their cases; broad judicial discretion creates uncertainty even for legal attorneys, which cannot always secure lower bonds, even for immigrants without criminal histories. Still, legal representation should be secured for economically vulnerable immigrants as the work toward dismantling immigration detention continues.

Appendix A

Descriptive Statistics of Cases with Bond Granted between 1991 and 2020.

Measure	Percent of total sample	<i>n</i>
Cases with bond amount above the mean	42.55	208,032
Cases with legal representation	83.23	406,742
Cases with criminal record	10.62	51,920
At least 4 immigration charges 212 (ref. 0–3)	0.04	219
At least 4 immigration charges 237 (ref. 0–3)	0.08	375
One immigration charge 242 (ref. 0)	0.02	86
Case with family members involved	2.88	14,069
Asylum case	33.36	163,127
Permanent resident case	0.07	355
Cases transferred to different courts	54.34	265,699
Juvenile case	17.57	85,907
Nationality of the immigrant (Mexico and Central America)	67.26	328,863
Immigrant speaks English	16.72	81,772
Female immigrant	4.44	21,710
Female judge	29.51	144,279
Large city	14.74	72,091
South border city	19.68	96,199
President in charge		
George Bush	1.88	9,200
Bill Clinton	14.99	73,290
George Bush Jr.	19.85	97,055
Barack Obama	39.60	193,631
Donald Trump	23.51	114,962
Joe Biden	0.16	790

Note. *N* = 488,928. Controls derived from EOIR immigration bond cases. Immigration charges (212, 237, and 242) are distinct from criminal records (see note 4 methods section).

Variables	(1)	(2)
	Mean Bond Amount Before 2001	Mean Bond Amount After 2001
Legal representation	-0.06*** (0.02)	-0.12*** (0.00)
Criminal record	0.70*** (0.02)	0.04 (0.03)
Number of charges 212	0.29*** (0.01)	0.06*** (0.00)
Number of charges 237	-0.02 (0.01)	-0.02** (0.01)

(continued)

Appendix A. (continued)

Variables	(1)	(2)
	Mean Bond Amount Before 2001	Mean Bond Amount After 2001
Number of charges 242	0.54** (0.23)	—
Cases with family	-0.37*** (0.05)	-0.36*** (0.02)
Cases with asylum	0.07*** (0.02)	0.22*** (0.00)
Cases with law permanent resident	1.48 (1.21)	-0.35*** (0.12)
Transfer	-0.18*** (0.01)	-0.10*** (0.00)
Juvenile	-0.65*** (0.13)	-0.29*** (0.01)
Freedom house	0.04*** (0.01)	0.11*** (0.00)
Speak English	-0.12*** (0.02)	-0.08*** (0.01)
Nationality	-0.73*** (0.01)	-0.06*** (0.00)
Immigrant sex	0.52* (0.28)	0.14*** (0.01)
Judge sex	0.49*** (0.02)	0.04*** (0.00)
Country's income	0.03* (0.02)	-0.05*** (0.02)
Immigrant share	-0.01*** (0.00)	-0.01*** (0.00)
Unemployment	0.05*** (0.00)	-0.04*** (0.00)
Large city	0.57*** (0.02)	-0.16*** (0.01)
South border city	0.48*** (0.02)	-0.03*** (0.00)
President in charge		
George Bush	-0.23*** (0.03)	
George Bush Jr.	0.45*** (0.01)	-0.23*** (0.01)
Donald Trump		0.43*** (0.07)
Constant	-2.97*** (0.55)	-0.09** (0.04)
Observations	131,300	347,266

Note. Standard errors in parentheses.

*** $p < .01$, ** $p < .05$, * $p < .1$.

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Notes

1. Throughout the text, "\$" refers to U.S. dollars.
2. *Matter of Guerra*, 24 I&N Dec. 37 (Board of Immigration Appeals [BIA] 2006).
3. The data included initial bond amounts and a different amount after a reconsideration process (e.g., appeal). We preserved the final amount. If the amount was blank or below the legal minimum, such cases were excluded due to suspicion over the accuracy of the data.
4. Other independent legal variables considered were whether the case has any family members tied to it (lead or rider), whether a request for asylum ("ASYL") or asylum withholding ("ASYW") is associated with the case, whether the respondent is a lawful permanent resident=1, otherwise=0, whether the respondent/case was transferred=1 or had the venue changed to another location across the country=0, whether it was a juvenile case=1, otherwise=0. Immigration charges are categorized by the Immigration and Nationality Act chapters; these are violations of immigration law that could or could not be related to criminal charges. We made a variable composed by the number of immigration charges a case lists in the Notice to Appear, relating to three main categories: 212, which refers to those considered inadmissible; 237, relating to those that assisted others in entering the U.S. territory in violation of the law with varying recency; and 242, involving those with a removal order and subject to judicial review.
5. Document that attorneys file when representing an individual on a case.
6. The countries included in Central America are El Salvador, Guatemala, Honduras, Belize, Nicaragua, Costa Rica, and Panamá.
7. Kim and Semet (2019, 2020) created two variables that we use in this study: "Border cities" include El Paso, TX ("ELP"); Eloy, AZ ("ELO"); Florence, AZ ("FLO"); Harlingen, TX ("HLG"); Imperial, CA ("IMP"); Otay Mesa, CA ("OTM"); Otero, NM ("OTO"); San Diego, CA (SND); and Tucson, AZ ("TUC"). "Large cities" encompasses New York, NY (NYV); Los Angeles, CA (LOS); Chicago, IL (CHI); Houston, TX (HOU); Phoenix, AZ (PHO); Philadelphia, PA (PHI); San Antonio, TX (SNA); San Diego, CA (SND); Dallas, TX (DAL); and Charlotte, NC (CHL). San Diego is the only city that is present in both categories.
8. Estimation of structural break available upon request.
9. Full logit model with coefficients for all control variables available in Appendix A.

References

- Abrego, L. (2014). *Sacrificing families: Navigating laws, labor, and love across borders*. Stanford University Press.

- Abrego, L., & LaRossa, R. (2009). Economic well-being in Salvadoran transnational families: How gender affects remittance practices. *Journal of Marriage and Family*, 71(4), 1070–1085.
- ACLU. (2019). *Immigration bond analysis: Methodology*. ACLU Analytics. https://www.aclu.org/sites/default/files/field_document/immigration_bonds_methodology_-_aclu_analytics_0.pdf
- Alexander, M. (2012). *The new Jim Crow: Mass incarceration in the age of colorblindness* (Revised ed.). New Press.
- Armenta, A. (2019). Policing and punishing illegality in the United States. In A. Peguero & H. V. Miller (Eds.), *Routledge Handbook on immigration and crime*. Routledge.
- Asad, A. L. (2019). Deportation decisions: Judicial decision-making in an American Immigration Court. *American Behavioral Scientist*, 63(9), 1221–1249.
- Bai, J., & Perron, P. (2003). Computation and analysis of multiple structural change models. *Journal of Applied Econometrics*, 18: 1–22. <https://doi.org/10.1002/jae.659>
- Bier, D. (2018, June 6). 60% of deported “Criminal Aliens” committed only victimless crimes. *Cato Institute*. <https://www.cato.org/blog/60-deported-criminal-aliens-committed-only-victimless-crimes-few-violent-crimes>
- Board of Immigration Appeals. (2006). *Matter of Guerra*, 24 I&N Dec. 37.
- Brabeck, K., Lykes, M. B., & Hunter, C. (2014). The psychosocial impact of detention and deportation on U.S. migrant children and families. *American Journal of Orthopsychiatry*, 84(5), 496–505.
- Brabeck, K., & Xu, Q. (2010). The impact of detention and deportation on Latino immigrant children and families: A quantitative exploration. *Hispanic Journal of Behavioral Sciences*, 32(3), 341–361.
- Brotherton, D. C., & Kretsedemas, P. (Eds.). (2017). *Immigration policy in the age of punishment: Detention, deportation, and border control*. Columbia University Press.
- Chacón, J. M. (2012). Overcriminalizing immigration. *The Journal of Criminal Law and Criminology*, 102(3), 613–652.
- Chavez, L. (2001). *Covering immigration: Popular images and the politics of the nation*. University of California Press.
- Cook, M. (2003). Banished for minor crimes: The aggravated felony provision of the immigration and nationality act as human rights violation note. *Boston College Third World Law Journal*, 23(2), 293–330.
- Crewe, B. (2022). Beyond deprivations: The pains of imprisonment and the prisoner social system. In B. Crewe, A. Goldsmith, & M. Halsey (Eds.), *Power and pain in the modern prison: The society of captives revisited*. Oxford University Press.
- Das, A. (2013). Immigration detention: Information gaps and institutional barriers to reform. *The University of Chicago Law Review*, 80(1), 137–164.
- Das, A. (2020). *No justice in the shadows: How America criminalizes immigrants* (1st ed.). Bold Type Books.
- De Genova, N. (2004). The legal production of Mexican/migrant “illegality.” *Latino Studies*, 2(2), 160–185.
- DeMattee, A. J., Ludsin, H., Shrestha, G., Gerenday, G., Thurman, D., & Staton, J. K. (2021). *Burden and standard shifting in immigration bond decisions* (Working paper).
- Eagly, I., & Shafer, S. (2015). A national study of access to counsel in immigration court. *University of Pennsylvania Law Review*, 164(1), 1–92.
- FIRRP. (2011). *All about bonds*. Florence Immigrant and Refugee Rights Project.
- Fleury-Steiner, B., & Longazel, J. (2014). *The pains of mass imprisonment*. Routledge, Taylor & Francis Group.

- García Hernández, C. C. (2014). Immigration detention as punishment. *UCLA Law Review*, 61(5), 1346–1414.
- García Hernández, C. C. (2019). *Migrating to prison: America's obsession with locking up immigrants*. The New Press.
- Gilman, D. (2016). To loose the bonds: The deceptive promise of freedom from pretrial immigration detention. *Indiana Law Journal*, 92(1), 157–226.
- Golash-Boza, T. (2016). *Immigration nation: Raids, detentions, and deportations in post-9/11 America*. Taylor & Francis.
- Haggerty, K. D., & Bucerius, S. (2020). The proliferating pains of imprisonment. *Incarceration*, 1(1), 263266632093643.
- Harbeck, D. (2016). A new calculus for the measure of mercy: Does the New Jersey bail reform affect the immigration court bond hearings. *Rutgers Law Record*, 44, 106–117.
- Heaton, P., Mayson, S., & Stevenson, M. (2017). The downstream consequences of misdemeanor pretrial detention. *Stanford Law Review*, 69, 711–794.
- Helliwell, J. F., & Putnam, R. D. (2005). The social context of well-being. In F. A. Huppert, N. Baylis, & B. Keverne (Eds.), *The science of well-being*. Oxford University Press.
- Hiemstra, N. (2019). *Detain and deport: The chaotic U.S. immigration enforcement regime*. The University of Georgia Press.
- Holper, M. (2016). The beast of burden in immigration bond hearings. *Case Western Reserve Law Review*, 67(1), 75–134.
- ICE. (2023). *Detention facilities*. U.S. Immigration and Customs Enforcement.
- Kalhan, A. (2010). Rethinking immigration detention. *Columbia Law Review Sidebar*, 110, 42–58.
- Kanstroom, D. (2010). *Deportation nation: Outsiders in American history*. Harvard University Press.
- Kim, C. Y., & Semet, A. (2019). Presidential ideology and immigrant detention. *Duke Law Journal*, 69(8), 1855–1903.
- Kim, C. Y., & Semet, A. (2020). An empirical study of political control over immigration adjudication. *The Georgetown Law Journal*, 108(579), 579–647.
- Koepke, J. L., & Robinson, D. G. (2018). Danger ahead: Risk assessment and the future of bail reform. *Washington Law Review*, 93(4), 1725–1808.
- Kramer, M. E. (2019). *Immigration consequences of criminal activity: A guide to representing foreign-born defendants* (8th ed.). American Immigration Lawyers Association.
- Light, M. T., & Miller, T. (2018). Does undocumented immigration increase violent crime? *Criminology*, 56(2), 370–401.
- Longazel, J., Berman, J., & Fleury-Steiner, B. (2016). The pains of immigrant imprisonment. *Sociology Compass*, 10(11), 989–998.
- Martinez-Aranda, M. G. (2023). Precarious legal patchworking: Detained immigrants' access to justice. *Social Problems*, 1–16.
- Maruna, S., Dabney, D., & Topalli, V. (2012). Putting a price on prisoner release: The history of bail and a possible future of parole. *Punishment & Society*, 14(3), 315–337.
- Menjívar, C., & Abrego, L. (2012). Legal violence: Immigration law and the lives of Central American Immigrants. *American Journal of Sociology*, 117(5), 1380–1421.
- Menjívar, C., Gómez Cervantes, A., & Alvord, D. (2018). The expansion of “crimmigration,” mass detention, and deportation. *Sociology Compass*, 12(4), e12573.
- Muñoz, A. (2022). *Borderland circuitry: Immigration surveillance in the United States and beyond*. University of California Press.

- Nagel, I. H. (1983). The legal/extra-legal controversy: Judicial decisions in pretrial release. *Law & Society Review*, 17(3), 481–515.
- Nellis, A. (2023). *Mass incarceration trends*. The Sentencing Project. <https://www.sentencing-project.org/reports/mass-incarceration-trends/>
- Nevins, J. (2010). *Operation gatekeeper and beyond: The war on “Illegals” and the remaking of the U.S.—Mexico boundary* (2nd ed.). Routledge. <https://doi.org/10.4324/9780203857731>
- Ousey, G. C., & Kubrin, C. E. (2018). Immigration and crime: Assessing a contentious issue. *Annual Review of Criminology*, 1(1), 63–84. <https://doi.org/10.1146/annurev-criminol-032317-092026>
- Page, J. (2017). Desperation and service in the bail industry. *Contexts*, 16(2), 30–37.
- Passel, J. S., & Cohn, D. (2009). *A portrait of unauthorized immigrants in the United States*. Pew Research Center. <https://www.pewresearch.org/hispanic/2009/04/14/a-portrait-of-unauthorized-immigrants-in-the-united-states/>
- Patler, C. (2015). *The economic impacts of long-term immigration detention in Southern California*. UCLA: Institute for Research on Labor and Employment.
- Patler, C., & Golash-Boza, T. M. (2017). The fiscal and human costs of immigrant detention and deportation in the United States. *Sociology Compass*, 11(11), e12536.
- Rahman, I. (2019). *New York, New York: Highlights of the 2019 bail reform law* (p. 20). Vera Institute of Justice.
- Reiman, J. H., & Leighton, P. (2020). *The rich get richer and the poor get prison: Thinking critically about class and criminal justice*. Taylor & Francis.
- Ryo, E. (2016). Detained: A study of immigration bond hearings: Detained. *Law & Society Review*, 50(1), 117–153.
- Ryo, E. (2019a). Predicting danger in immigration courts. *Law and Social Inquiry*, 44(1), 227–256.
- Ryo, E. (2019b). Understanding immigration detention: Causes, conditions, and consequences. *Annual Review of Law and Social Science*, 15(1), 97–115.
- Saadi, A., De Trinidad Young, M. E., Patler, C., Estrada, J. L., & Venters, H. (2020). Understanding US immigration detention: Reaffirming rights and addressing social-structural determinants of health. *Health and Human Rights Journal*, 22(1), 187–198.
- Silver-Greenberg, J., & Dewan, S. (2018, March 31). When bail feels less like freedom, more like extortion. *The New York Times*. <https://www.nytimes.com/2018/03/31/us/bail-bonds-extortion.html>
- Siuc, N., & Smart, N. (2020). *Evidence shows that most immigrants appear for immigration court hearings* [Fact Sheet]. Vera Insittute of Justice.
- Stave, J., Markowitz, P., Berberich, K., Cho, T., Dubbaneh, D., Simich, L., Siulc, N., & Smart, N. (2017). *Evaluation of the New York immigrant family unity project: Assessing the impact of legal representation on family and community unity* (p. 69). Vera Institute of Justice.
- Stevenson, M. T. (2018). Distortion of justice: How the inability to pay bail affects case outcomes. *The Journal of Law, Economics, and Organization*, 34(4), 511–542.
- Taylor, M. H. (2004). Dangerous by decree: Detention without bond in immigration proceedings symposium on immigration law and terrorism. *Loyola Law Review*, 50(1), 149–172.
- Tolentino, J. (2020, June 11). Where bail funds go from here. *The New Yorker*.
- Tosh, S. (2022). Mandatory detention for criminal convictions: The reproduction of racial inequality through U.S. immigration law. *Law & Policy*, 44(1), 70–97.
- Tosh, S. (2023). *The immigration law death penalty: Aggravated felonies, deportation, and legal resistance*. New York University Press.
- TRAC. (2023). *Immigration court bond hearings and related case decisions*. TRAC Immigration. <https://trac.syr.edu/phptools/immigration/bond/>

- Vega, I. I. (2019). Toward a cultural sociology of immigration control: A call for research. *American Behavioral Scientist*, *63*(9), 1172–1184.
- Vera Institute of Justice. (2023). Criminalization and racial disparities. *Vera Institute of Justice*. <https://www.vera.org/ending-mass-incarceration/criminalization-racial-disparities>
- Zayas, L. H., Aguilar-Gaxiola, S., Yoon, H., & Rey, G. N. (2015). The distress of citizen-children with detained and deported parents. *Journal of Child and Family Studies*, *24*(11), 3213–3223.

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