



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

*By Lorena Avila in Collaboration with the Im/migrant Well-Being Scholar Collaborative*

*February 2024*

### **INTRODUCTION**

Over the last four decades, harsh immigration policies borne out of the War on Drugs and War on Terror have given immigration judges (IJs) broad discretion in determining whether an immigrant in the custody of the United States is granted a bond throughout their immigration proceedings. [An Expensive Pass to Freedom: Bond Amounts Trajectories in Immigration Court](#) by Lorena Avila analyzes bond amount trajectories in immigration cases since 1991 to demonstrate how the increased criminalization of immigration has resulted in “heightened punitivism” practices with damaging consequences for the social and economic well-being of immigrants and their families.

The study uses Executive Office of Immigration Review case data published by the Department of Justice (DOJ) between 1991-2020 to analyze trends and distribution variations of bond amounts as they relate to changing dynamics outside and within the legal system. The study finds that post-9/11 changes to immigration enforcement have impacted the relevance of legal representation over prior criminal record in the awarding and setting of bonds. These findings have important implications for the economic and social well-being of people detained and their families that can inform discussions and policymaking decisions to ensure fair and equitable immigration adjudication.

### **BACKGROUND**

When navigating the immigration court system, non-citizens go through bond hearings and removal proceedings. This study focuses on the bond hearings that precede removal proceedings and determine whether a detained non-citizen is eligible to be released on a bond. During this process, IJs consider various factors, including family/community ties, employment history, court appearance record, criminal history, and detention length, among others to determine eligibility for a bond and the amount at which to set it. The supposed purpose of these hearings is to ensure that non-citizens do not present a “danger to persons or property” and to ensure they return to court for further hearings. However, these hearings do not consider the financial situation of respondents, have no set maximum bond amounts, and rely heavily on the discretion of IJs.

“Tough on crime” immigration legislation like the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) have made the possibility of being released on bond more difficult. These pieces of legislation incorporated unauthorized entry and re-entry, among other factors, into the lengthy list of aggravated felonies for which non-citizens can be denied bond, funneling more non-citizens into the immigration court system while simultaneously making it more difficult to navigate. Between 2001 and 2019, there was an approximate 150% increase from 209,000 to more than 500,000 non-citizens who were held in custody during their immigration court proceedings. While bonds ostensibly offer a way out of detention, the financial burdens of legal representation and bonds themselves can be detrimental to not only detained non-citizens, but also to the financial and social stability of the families and communities they support.

## FINDINGS

- **Average immigration court bond amounts have increased by 63% over the past three decades.**
  - Adjusted for inflation, the average IC bond increased from \$5,034 in the 1990s to an average bond of \$8,216 during the 2010s.
- **Since 2001, Average bond amounts for non-citizens have increased regardless of whether the non-citizen had a previous criminal record.**
  - This likely reflects stricter evaluation standards by immigration courts that reflect larger policy changes that characterize immigration flow as an increased risk to national security.
  - The upward trend suggests that individual circumstances have become less relevant for bond-setting, denying non-citizens a “reasonable” assessment, despite posing low flight risk.
- **Bonds as Fractures of Social and Economic Well-Being**
  - Together, the average bond and average loss of income from detention total over 40% of average annual earnings for an undocumented household.
  - Loss of earnings due to detention and high bail amounts impose economic burdens on immigrant families detrimental to social mobility and stability.
- **Legal representation is more important but less accessible than ever.**
  - Legal representation is more influential than factors like previous criminal record in setting a lower bail and opening a path out of detention for non-citizens.
  - Legal representation is increasingly inaccessible in the face of the economic burden of detention and bonds, and community responses are limited to address the growing number of non-citizens held in detention.

## RECOMMENDATIONS

- **Abolish cash-based sureties in the immigration system** to reduce financial burdens on migrant families and ensure a more equitable process for securing release.
- **Implement a reasonableness framework for bond assessments**, similar to criminal law settings, that take into consideration factors like criminal history, severity of offense, community ties, and flight risk, to ensure that bail is not used as a punishment and to prevent the unjust detention of individuals without convictions.
- **Conduct further research and inquiry into the practices of bond companies** in the immigration system to address potential predatory practices and projected precarity faced by migrant communities.
- **Explore the establishment of funds for representation or codifying universal representation** to ensure the protection of immigrant rights.
  - Cities and States in the absence of federal action can establish bail funds for the immigration court system, similar to those in criminal law, to provide free bail assistance and support for under-resourced communities.
- **Examine the impact of increased detention and higher bond amounts on the wellbeing of migrant families**, considering the stress, anxiety, and hardship that may arise from financial strain.