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A Data Toolkit | February 2024

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

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INTRODUCTION

This toolkit summarizes new academic research published in the *American Behavioral Scientist*, “An Expensive Pass to Freedom: Bond Amounts Trajectories in Immigration Court,” examining how bond amounts set in immigration court impact the wellbeing of immigrants and their families. It serves as a resource for policymakers, advocates, the media, and others interested in understanding this less explored dimension of immigration enforcement and adjudication.

The toolkit highlights key findings from a quantitative study analyzing over 480,000 immigration cases where bond was granted between 1991 and 2020. The data comes from court records on immigration proceedings published by the Department of Justice (DOJ) Executive Office of Immigration Review (EOIR). This allows insight into national trends in bond determinations over three decades while controlling for other variables via a statistical regression analysis.

While bond offers a path out of detention for immigrants, this study analyzes bond amounts as reflective of the overall climate of immigration enforcement. The research posits that increasingly high bonds amid expanded enforcement point to “heightened punitivism,” diminished rights in immigration proceedings, and adverse economic impacts on immigrant families. Although removal proceedings have gained scrutiny, bond hearings represent another consequential yet understudied arena affecting immigrants’ rights and economic security

This toolkit summarizes the study’s statistical analysis of bond amount trends and predictors. The findings show that mean bond amounts rose substantially after 2001 across the U.S., corresponding with policy changes after 9/11. The data also reveals concerning implications regarding the influence of criminal records and access to counsel on bond outcomes. For instance, bonds for immigrants with and without criminal records converged to similar high averages over time – a concerning trend which suggests a departure from the previous practice of tailoring bond amounts to individualized circumstances.

Overall, the study surfaces how bond determinations in immigration courts have become increasingly stringent and burdensome for immigrants and their families. By making these complex findings accessible, the toolkit aims to inform discussions on reducing the punitiveness of cash bail in immigration proceedings and ending cash-based sureties altogether. It highlights the need to ensure just and equitable outcomes for immigrants navigating the adjudication system.



PURPOSE

This toolkit summarizes a peer-reviewed study and highlights key data on bond amounts in immigration court. The statistics illustrate how cash bail requirements have become increasingly punitive, burdening immigrants and their families. This document compiles the findings into accessible talking points to inform advocacy on this issue.

How to Use This Toolkit

This toolkit takes a peer-reviewed study and summarizes its findings and key statistics. The study analyzes over 480,000 cases where bond was granted in immigration court from 1991-2020. The data reveals a substantial rise in mean bond amounts after 2001, corresponding to post-9/11 policy changes. This indicates heightened punitiveness in setting bonds that broadly affects immigrants' rights and economic security when navigating immigration proceedings. This document compiles statistics, graphs, talking points, and additional resources to use as a resource for those who want to make change in immigration policy on immigration courts and bond amounts.

Advocates

- Cite the statistics when meeting with policymakers to put an evidence-based face on the issue.
- Cite the peer-reviewed study in written materials—quote statistics and key findings.

Congress Members and Staffers

- Cite the peer-reviewed study in analyses and written materials
- Highlight the impacts of high bond amounts on immigration families in your district.

Press

- Cite the peer-reviewed study and its findings.
- To speak with the researcher or access the data analyzed in this study, contact admin@iwbcollab.org.

Activists and Public

- Use the peer-reviewed study as a vehicle to speak out against and abolish cash-based sureties in the United States immigration court system.

Overall, this toolkit turns research into accessible advocacy assets to demand more just and equitable bond requirements in immigration courts while calling for their abolishment altogether. The overarching goal is reducing the burdens increasingly punitive bonds place on immigrants and their families.



KEY TAKEAWAYS

- The study analyzes over 480,000 cases where bond was granted in immigration court from 1991-2020.
- The data reveals a substantial rise in mean bond amounts after 2001 across the U.S., corresponding to post-9/11 policy changes.
- This indicates heightened punitiveness in setting bonds that broadly affects immigrants' rights and economic security.
- Bonds for immigrants with and without criminal records converged to similarly high averages over time.
- The growing gap between lower and higher bond quartiles shows greater disparity in financial requirements.
- After 2001, legal representation became more influential in reducing chances of above-average bonds.
- Detention periods increased alongside higher bond amounts after the 2001 structural break.
- The findings suggest a generalized suspicion of immigrants has replaced individualized bond determinations.
- Increasingly burdensome bonds amid expanded enforcement reflects diminished rights in immigration proceedings.

TALKING POINTS ON BOND AMOUNTS TRAJECTORIES IN IMMIGRATION COURTS

Below are some general talking points and statistics on immigration court bond amounts based on the findings from the peer-reviewed article, *A way out of detention or an alternative punishment? Bond amounts trajectories in immigration courts*. For more information on immigration courts and bond amounts, see Section: Additional Resources of this toolkit.

Talking Points

- Mean bond amounts rose over 60% from 1990s to 2000s and another 32% from 2000s to 2010s, showing substantial growth in bonds over time.
- After 2001, bonds for immigrants with and without criminal records converged to similarly high averages, departing from individual determinations.
- Legal representation became more influential in reducing chances of above-average bonds after 2001, reflecting the increased complexity of proceedings.
- Detention periods increased nearly 70% from 1990s to 2000s, remaining high in 2010s, accompanying the rise in bond amounts over time.
- Increasingly high bonds amid expanded enforcement indicates heightened punitiveness and eroded rights in immigration proceedings.



Statistics

- The study analyzes over 480,000 cases where bond was granted from 1991-2020.
- In the 1990s, the average bond amount was \$5,034.
- In the 2000s, the average bond amount rose to \$7,849 - a 60% increase from the 1990s.
- In the 2010s, the average bond reached \$8,216 - a 32% increase from the 2000s.
- The study identified 2001 as a structural break point in bond amount trajectories.
- From the 1990s to 2000s, average detention time increased 68.7% from 83 days to 140 days.
- By the 2010s, the average detention length was 110 days - an additional 32.5% increase from the 1990s.
- In 2019, before the pandemic, over 500,000 immigrants were held in immigration detention.
- Daily immigration detentions reached around 50,000 in 2019 and over 20,000 by the end of 2021.
- There are over 2 million pending immigration cases as of January 2023, up from 100,000 pending cases in 1998.
- The study analyzed national data but focused specifically on the Southwest border region.
- The Southwest border region accounted for over 75% of total immigration bonds from 1991-2020.

QUESTIONS & ANSWERS

What are immigration courts?

Immigration courts are administrative courts that are part of the Executive Office for Immigration Review (EOIR), falling under the Department of Justice. In immigration courts, judges determine whether non-citizens charged with violating immigration law can be deported or can remain in the United States through forms of relief or protection. Immigration court handles proceedings including removal hearings, bond hearings, asylum claims, and other immigration matters. There are currently over 500 immigration judges in 68 immigration courts nationwide.

What is a bond or cash-based surety in immigration court?

In immigration court, judges can grant bonds as a way for detained non-citizens to be released while their immigration case is pending. Immigrants must pay the set bond amount as a guarantee that they will appear at future hearings. If they miss hearings, they forfeit the money paid.



Bonds' alleged aim is to incentivize appearance in court and are based on judges' assessments of flight risk and dangerousness. Some view cash bonds as excessive financial burdens on non-citizens amid heightened immigration enforcement. Advocates argue cash bail leads to wealth-based detention of immigrants who can't afford to pay.

Who oversees immigration courts?

Immigration courts fall under the Executive Office for Immigration Review (EOIR), which is an agency within the Department of Justice and part of the executive branch. The Attorney General appoints immigration judges and oversees policies and procedures governing immigration proceedings.

EOIR is headed by a director who reports to the Attorney General. Immigration judges are intended to exercise independent judgment in adjudicating cases, but some criticize executive branch influence over courts as undermining impartiality.

What is the difference between bond hearings and removal proceedings in terms of the significance for the non-citizens stay?

Bond hearings determine whether a detained immigrant can be released on bond while their immigration case proceeds. It focuses on flight risk and danger to the community. Removal proceedings decide the central issue of whether the non-citizen can remain in the U.S. or will be deported based on reviews of immigration status, criminal issues, asylum claims etc. While related, they involve separate deliberations and evidence.

Bond is not in itself a form of immigration relief. But release allows immigrants to fight their case from outside detention, which often improves chances of staying. So bond critically impacts ability to remain in the U.S. in an indirect way.

Could you elaborate on the span of discretion that the immigration judge have?

Immigration judges have broad discretion in setting bond amounts during bond hearings. They weigh factors like family/community ties, flight risk, criminal history, prior immigration violations, and threat to public safety. But statutes give only general guidance on assessing flight risk and danger. There are no statutory limits on bond amounts that can be set. Judges set amounts based on individual discretion within loose criteria. This wide latitude has been criticized as leading to arbitrary, inconsistent bonds, with amounts increasingly used to keep immigrants detained.



What is the argument in favor of granting bail to non-citizens with a criminal record?

Advocates argue that denying bail and prolonging detention based on criminal history perpetuates racial inequities, as immigrants face over-policing. Immigrants often plead to minor charges to exit the criminal system quickly. Drug offenses and illegal entry/reentry are top conviction types that shouldn't categorically prohibit bail.

Detention based on minor records punishes socioeconomic vulnerabilities. Additionally, citizens with similar records routinely get bail, so immigrants are deprived of equal justice protections. Consideration of rehabilitative efforts is also lacking. Individualized assessments weighing full contexts, not blanket denial of bail, is needed for fair adjudication.

What is the role of bond companies when discussing bond hearings?

When an immigration bond is granted, bond companies can assist immigrants in paying the amount set. They charge a fee for their service. To secure release, they require collateral and proof of strong community/family ties to ensure the immigrant will appear in court. Their role remains controversial.

Some argue they enable predatory practices, extracting high fees from desperate immigrants. But others view them as crucial for under-resourced immigrants to pay bonds. More oversight is likely needed of bond company practices within immigration bail.

What are some of the possible alternatives to the current bond-setting current system?

There are several possible alternatives to the current status quo:

- Statutory limits on maximum bond amounts that can be imposed to improve fairness and consistency.
- Remove or restrict the use of any cash-based bonds to reduce wealth-based detention. Options include releasing immigrants on their own recognizance or establishing non-monetary conditions of supervision.
- Community-based support programs providing case management, social services, and legal aid as an alternative to bonds.
- Universal access to publicly-funded appointed counsel during bond hearings to equalize representation.
- Enhanced procedures like court-wide bond hearing standards and required review of bond denials.
- External oversight boards and complaint processes to identify and reform punitive practices.
- Ideally bond reform would be part of broader immigration reforms focused on due process, proportionality, and human rights protections.



Are the bond amounts in Figure 1 adjusted for inflation? If not, does this have a significant effect on the trends that are illustrated?

Yes, the bond amount values shown in Figure 1 have been adjusted to account for inflation over the time period examined. This adjusts the dollar amounts to equivalent present-day values, allowing for accurate comparison and trend analysis over three decades despite inflation.

If raw dollar amounts were used without inflation adjustment, it would distort the magnitude of the increase in bonds over time, since dollar values were higher in the past. Accounting for this context is essential for understanding the scope and implications of the rise in bond requirements.

Beyond general assertions of 9/11 policy changes, what are some other things that occurred in this year that contributed to the structural break in 2001?

The identified structural break in bond trajectories in 2001 stems from major immigration and enforcement policy changes in the 1990s combined with post-9/11 security policy shifts. In 1996, IIRIRA expanded the set of crimes constituting removal offenses and reduced discretion in detention/deportation. Detention capacity grew as a result in the late 1990s.

Then after 9/11, immigration was increasingly framed as an issue of national security and public safety threats, enabling further expansion of enforcement powers. The Homeland Security Act in 2002 also transferred detention and deportation duties to the new DHS. These changes criminalized immigrants and promoted mandatory detention. So while 9/11 was a catalyst, the break reflects an accumulation of punitive policy shifts in the surrounding years.

Within state data in the bond amount granted, are there any outliers that are worth discussing? What could be some of the reasons that they are outliers?

The state-level bond data does reveal some high outlier values, primarily concentrated along the Southwest border. For example, bonds in California, Arizona and Texas show a wider right tail distribution of high amounts exceeding \$15,000. The regional concentration suggests local contextual factors like enforcement patterns and judge discretion in border zones may contribute to unusually high bonds as outliers in those states. Proximity to detention facilities and immigration courts dealing with border apprehensions could also influence comparatively higher bonds granted in border states.



What about receiving legal representation is such a significant factor in being granted bail below the mean, especially in recent years?

Post-2001 immigration proceedings have grown increasingly complex and punitive. Laws greatly expanded the grounds for deportation and detention while reducing discretionary relief. Having counsel versed in the complex web of immigration law has become more essential.

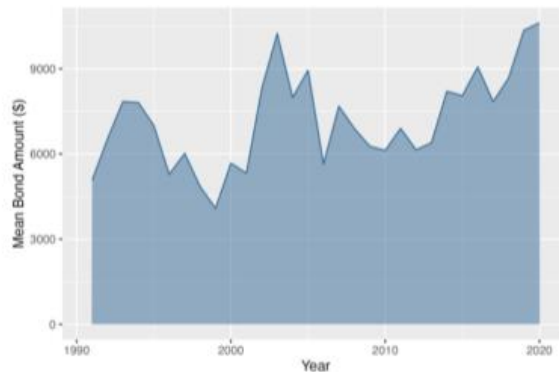
Representation provides a better ability to navigate processes and present evidence tailored to the individual that can positively influence bond outcomes. The data shows those with attorneys have higher chances of below-average bond, and this effect strengthened after 2001, likely reflecting the mounting legal barriers immigrants now face without counsel. Access to representation mitigates procedural inequality.

DATA REPOSITORY

Trends in Mean Bond Amounts

Figure 1 shows an upward trend from 1991 to 2020 in bond amounts. The average bond amount by decade increases from \$5,034 (1990s) to \$7,849 (2000s) to \$8,216 (2010s) adjusted for inflation.

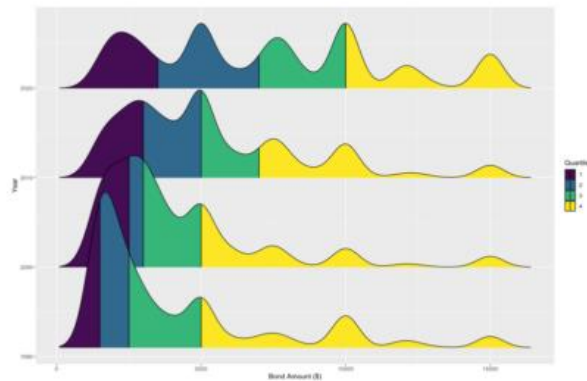
Figure 1: Mean Bond Amounts, 1991-2020



Amount Distribution

Figure 2 shows quartile distribution (separated by color) over four time periods. In 1991, we see bond amounts concentrated on the median and 1st quartile. By 2020, this shifts toward higher values. The higher frequency of IJs setting high bond amounts is reflected by the fact that higher bond amounts stop being outliers as time progresses. Lastly, we see minimum bond amounts increase.

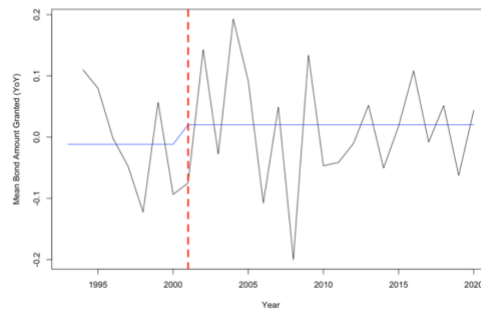
Figure 2: Distributions of Bonds Granted



Structural Breaks

This component of the analysis finds a significant structural break in 2001. This was likely influenced by 9/11 policy changes that prioritized national security, where immigration flow was perceived to risk bringing dangerous people across the border. This legal shift led to stricter evaluation standards by IJs resulting in higher bond amounts being set.

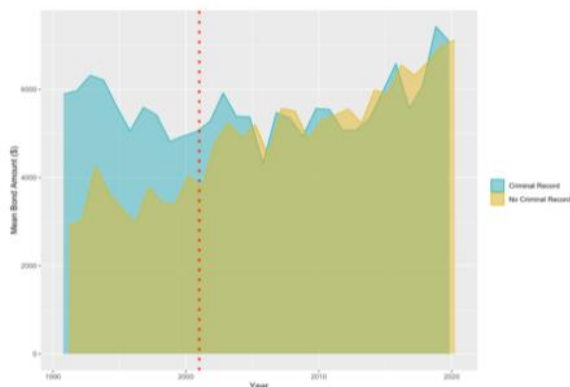
Figure 3: Structural Break in Bond Granted



Criminal Record

Figure 4 reveals that after 2001, the paths of bond amounts for migrants with or without a criminal record followed a similar upward trend. This suggests that bonds have departed from considerations of individual circumstances.

Figure 4: Trends of Mean Bond Amount Granted by Criminal Record, 1991-2020



DRAFT SOCIAL MEDIA POSTS

- New study on 480,000+ immigration cases shows mean bond amounts rose over 60% from 1990s to 2000s. Detention time also increased nearly 70%. Learn more: iwbcollab.org/briefing
- Immigrants face increasingly unaffordable bonds in immigration court amid heightened enforcement. Average bond reached \$8,216 in the 2010s. Read the full article and policy brief here: iwbcollab.org/briefing
- Research identifies 2001 as a turning point where immigration bonds sharply increased, reflecting punitive policy changes after 9/11. Learn more: iwbcollab.org/briefing
- Research shows immigration bonds have become increasingly arbitrary and stringent, departing from individualized determinations with impacts on immigrant well-being. Learn more: iwbcollab.org/briefing
- Study reveals bonds amid expanded enforcement reflect heightened punitiveness in immigration proceedings, adversely impacting immigrant well-being. Read new article and policy brief here: iwbcollab.org/briefing



ADDITIONAL RESOURCES

- Syracuse University Transactional Records Access Clearinghouse (TRAC), [Three-fold Difference in Immigration Bond Amounts by Court Location](#)
- TRAC, [Detained Immigrants Seeking Release on Bond Have Widely Different Outcomes - Overall Bond Grant Rates Have Dropped](#)
- The Advocates for Human Rights, [Understanding Immigration Bonds](#)
- Sarah Betancourt, *The Guardian*, [Immigrants pay crippling high bail bonds to be released from detention across US](#)
- Freedom for Immigrants, [Freedom for Immigrants' National Immigration Detention Bond Fund](#)
- Southern Poverty Law Center, [Bond Hearings: What Immigration Courts Should Consider](#)
- Daniel Bush, *PBS*, [Under Trump, higher immigration bonds mean longer family separations](#)
- Human Rights First, [Immigration Court Appearance Rates](#)
- National Immigration Justice Center, [Policy Brief | Locked Away: The Urgent Need For Immigration Detention Bond Reform](#)
- American Immigration Council, [Access to Counsel in Immigration Court](#)