# PRESUMED DANGER●US

## BOND, REPRESENTATION, AND DETENTION IN THE BALTIMORE IMMIGRATION COURT

The authors of this report are **Gabriela Kahr**l, University of Maryland Carey School of Law Immigration Clinic Staff Attorney, **Michelle N. Mendez**, CLINIC Defending Vulnerable Populations Program Director, and **Maureen A. Sweeney**, Law School Professor and Director of the Immigration Clinic at the University of Maryland Carey School of Law.

**Maryland Immigrant Rights Coalition's (MIRC)** mission is to coordinate and maximize existing resources to increase the availability and quality of pro bono and low-cost legal representation to low-income immigrants; educate the community on immigration matters; and advocate on behalf of Maryland immigrants. MIRC believes that Maryland is stronger when our communities uphold the dignity and value of everyone.

Embracing the Gospel value of welcoming the stranger, **Catholic Legal Immigration Network, Inc. (CLINIC)** promotes the dignity and protects the rights of immigrants in partnership with a dedicated network of Catholic and community legal immigration programs. The network includes faith-based institutions, farmworker programs, domestic violence shelters, ethnic community-focused organizations, libraries and other entities that serve immigrants. CLINIC is the largest nationwide network of nonprofit immigration programs, with approximately 370 affiliated immigration programs in 49 states and the District of Columbia.

Following the 2016 presidential election, CLINIC established the Defending Vulnerable Populations (DVP) Program to help advocates meet the needs of the rapidly growing population of immigrants facing removal. The DVP Program works to increase the number of fully accredited representatives and attorneys who are qualified to represent immigrants in immigration court proceedings. To accomplish this, DVP conducts court skills trainings for nonprofit agency staff (accredited representatives and attorneys) and pro bono attorneys; develops practice materials to assist legal representatives; issues sample materials; and provides legal support on specific cases. By increasing access to competent, affordable representation, the program's initiatives focus on protecting the most vulnerable immigrants—those at immediate risk of deportation.

For more on CLINIC, please visit https://cliniclegal.org.

**The University of Maryland Carey School of Law Immigration Clinic** represents individuals in immigration proceedings before the Immigration Court and United States Citizenship and Immigration Services in Baltimore. Student attorneys, under the supervision of Maureen Sweeney and Gabriela Kahrl, perform all aspects of case preparation including client interviews, fact development, witness interviews, writing motions and legal briefs, court appearances, trial and post-relief issues. The immigration clinic also advocates for access to counsel and due process in immigration proceedings. To date, the immigration clinic has won dozens of cases before the Baltimore Immigration Court and boasts several significant wins before the Board of Immigration Appeals and the U.S. Court of Appeals for the Fourth Circuit. Two notable wins before the U.S. Court of Appeals include *Martinez v. Holder*, 740 F.3d 902 (4th Cir. 2014) and *Leyva Martinez v. Sessions*, 892 F.3d 655 (4th Cir. 2018).

For more on UM Carey Immigration Clinic, please visit http://www.law.umaryland.edu.

© 2019 UM Carey Immigration Clinic, MIRC, and CLINIC, Inc.

# TABLE
# OF
# CONTENTS

# I. EXECUTIVE SUMMARY

The U.S. Department of Homeland Security (DHS) through Immigration and Customs Enforcement (ICE) detains people for civil immigration violations. Detained people are less likely to win their immigration cases than people who are not detained.[1] A person's chance of lawfully remaining in the United States thus depends to a large degree on his or her ability to obtain and post a bond while fighting the deportation case.

ICE detains people who the agency alleges are in violation of immigration law. ICE detains people in jails that are run by local governments, DHS or private, for-profit companies. The private, for-profit prison companies — CoreCivic, Inc. and GEO Group, Inc. — collectively manage more than half of private prison contracts in the United States (including immigration and criminal incarceration).

ICE detains people during their civil removal proceedings or while they await deportation. ICE has the discretion to release people on an alternative to detention or set a bond amount. People have the right to request review of that bond amount from an immigration judge. In certain cases when an individual has established that he/she is not a flight risk and not dangerous, immigration judges may exercise discretion when determining whether to set a bond. At the bond proceeding, an immigration judge assesses the person's legal eligibility for bond and reviews the bond amount, if any, set by ICE. The immigration judge decides whether to set a bond, and, if so, the exact bond amount. The judge's decision is based on whether the person poses a danger to the community and whether the person is a flight risk. To obtain a bond, the detained person must prove to the judge that they are neither a danger nor a flight risk. Before the court renders its decision, the ICE attorney presents the government's argument typically in favor of no bond or a high bond amount. The immigration judge has significant discretion when considering the evidence and coming to a decision especially when determining the amount of bond. Notably, immigration judges are not federal judges under Article III of the U.S. Constitution. Rather, immigration judges are employees of the U.S. Department of Justice (DOJ), which the Attorney General oversees. Both the ICE attorneys who advocate for detention and deportation of the person and immigration judges therefore fall under the executive branch, established by Article II of the U.S. Constitution.

In January 2017, the University of Maryland Carey School of Law Immigration Clinic (UM Carey Immigration Clinic) and the Catholic Legal Immigration Network, Inc. (CLINIC) began a bond observation project at the immigration court in Baltimore, Maryland. The goal was to learn if and how immigration judge practices and decisions evolved under the Trump Administration and to obtain a localized, quantitative perspective on any changes. To obtain the data, law student volunteers and CLINIC staff attended the immigration court on a regular basis, recorded key metrics, and preserved the data in a unified database. This report represents the analysis of the first set of these observations, collected from January 24, 2017 to August 21, 2017. The results of a second observation project will be published in a subsequent report. The data included in this report will be used as a baseline to measure subsequent data and decipher trends under the Trump administration.

UM Carey Immigration Clinic and CLINIC recorded observations for 473 different bond hearings at the Baltimore Immigration Court, which represented 359 unique cases. The findings of this report include the following conclusions:
- In the six months following President Trump's inauguration, the average bond amount increased by 38% rising from an average of $8,597 in the first three months of the observations to $11,868 in the last two months; the data also reveal that the average rate of granting bond dropped by 7% from bond granted in 73% of cases to bond granted in 66% of cases.[2]
- Legal representation increased the likelihood of a lower bond and reduced by almost half the chances that the judge would deny bond altogether. The immigration court **set** a bond in 68% of cases.
    - o Represented people were granted a bond by the immigration court or obtained a reduction in the original bond set in 72% of cases.

- o Unrepresented people were less likely to prevail. Only 48% of those cases received bond or reduction in bond.
- The average bond amount granted for all cases was $11,408;
    - o For represented people, the average amount was $11,197; and
    - o For unrepresented people, the average amount was $12,800 (14% higher than represented respondents with similar facts).
- The immigration court **denied bond** in 32% of cases. 70% of the denied bonds were in cases in which the judge had discretion to set or deny bond. The remaining 30% were on mandatory detention grounds.
- Any allegation of gang membership or affiliation precipitously reduced the odds that the court would set any bond whatsoever; the court denied bond for 7 out of 8 people, or 88%, of the cases where the government alleged gang affiliation.
- The top countries of origin for detained people seeking bond were El Salvador (33% of recorded cases), Mexico (19%), Guatemala (15%), and Honduras (15%); with Spanish being the preferred language in most cases (82%).
- Nearly half of people had some potential form of immigration relief or protection identified, including humanitarian and family-based forms of relief.

# II. BACKGROUND

To remove or deport[3] a person, DHS places a person into deportation proceedings,[4] and sometimes detains them. Unlike the criminal justice system, the government does not provide attorneys to people facing deportation, even though people facing deportation are deprived of their liberty in the same facilities and under the same conditions as those facing criminal prosecution. People facing exile from the United States have access to legal counsel only if they have the financial means to hire private counsel or can find either pro bono or low-bono non-profit legal services.[5] People may and often do appear *pro se* in immigration court because of the high cost of private attorneys, the difficulty of securing counsel while in custody, the inherently limited nature of the pro bono model, and other factors that make it difficult or impossible to secure counsel.[6]

ICE can detain a person even in a case where detention is not mandatory while deportation proceedings before an immigration judge are ongoing. The decision hinges on various factors, including the circumstances of the case, the requirements of the Immigration and Nationality Act (INA), and the policies of the current administration. ICE can then decide whether to set an initial bond amount, and, if so, what the amount should be.[7]

Once detained, people may request a bond hearing when a bond has not yet been set, or a bond redetermination hearing when ICE has set a bond and the detained person wishes to seek a lower bond. If entitled to a bond hearing, the person (either through a lawyer or *pro se*), will ask a judge to set a bond if ICE has declined to set bond or to reduce the bond amount set by ICE.[8] ICE intentionally sets prohibitively high bond amounts or sets no bond at all. This is why detained people routinely request bond review from the immigration judge; they cannot afford to post the bond amount set by ICE. Immigration judges are prohibited from granting bond redetermination cases of people subject to mandatory detention provisions under the INA (though they can review whether a person was properly subjected to mandatory detention).[9] Consequently, and notwithstanding narrow exceptions, those people must remain in ICE detention throughout the duration of deportation proceedings.[10]

Detained people seeking to lower their bond must prove that they do not present a danger to the community or a flight risk. The detained person must, therefore, prove two negatives.[11] To successfully prove both negatives, the person must gather evidence to later present to the court; the difficulty of gathering evidence while detained cannot be overstated, particularly if the detained person has no legal representation. Depending on the facts of the case, the evidence may need to provide a compelling explanation concerning any criminal history, including contacts with the police, and mitigating evidence to counter any insinuations that there might be future potential criminal conduct. The person must also demonstrate through evidence that she has meaningful ties to the community, such as family ties, stable residence, and employment. Obtaining documents, like birth certificates, rental agreements, pay stubs, letters of support from friends, family, or employers that prove the requisite community ties is nearly impossible for a detained person without assistance. Moreover, the person must be able to provide a legal argument to the judge that he/she is eligible to stay in the United States; the judge views the likelihood of obtaining immigration relief as among the most important indicators that the person is not a flight risk and will return to court for subsequent hearings.

The ICE attorney may argue that the person is not bond eligible, contend that bond should be denied or remain as ICE originally set it, submit its own, usually high, bond recommendation, or, in theory though rarely if ever in practice in Baltimore, agree with the person's bond request. The ICE attorney can also defer to the court. The ICE attorney may also present evidence or arguments regarding bond, including evidence or allegations that the person is a danger to the community or a flight risk. Because immigration court hearings, including bond, are administrative proceedings governed by the executive branch, traditional due process safeguards are absent. For example, the Federal Rules of Evidence are not applicable in immigration court, so evidence that would be excluded in Article III federal courts, such as hearsay or evidence gathered in unconstitutional questioning, is generally admissible in immigration court.

As such, immigration judges can inquire about and consider pending, unresolved criminal charges and may rely on hearsay allegations (including allegations contained in police reports) that did not result in convictions. There is no required advisal regarding the Fifth Amendment protection against self-incrimination, even for *pro se* people.[12] Finally, the immigration judge has extremely broad discretion to determine whether a person merits liberty during the pendency of a deportation proceeding.[13] There is no meaningful appellate process to challenge a high bond or the bond process itself.[14] It can take many months for an appeal to be reviewed by the Board of Immigration Appeals.

In September 2015, the Department of Justice (DOJ) promulgated new regulations to encourage counsel to represent people at bond hearings.[15] Since then, people may obtain legal counsel to provide representation at the bond hearing stage of the proceeding only, without counsel having to undertake representation for the full deportation defense proceedings.[16] Limited representation for a bond hearing is more affordable than the cost of representation at the merits hearing stage. Bond hearing representation is relatively straightforward compared to the merits hearing stage during which the person must prove eligibility for a form of relief, if eligible for any form of relief. Further, many people are desperate to be released from ICE custody, and prioritize the bond proceeding, even when the case for bond is weak, over the merits hearing portion of the case. As a result, many people hire attorneys for representation at bond hearings, even if they cannot afford counsel for the removal proceedings. For example, while 82% of unique observed cases in the study had representation at a bond hearing (137 cases), only 59% (83 of these cases) had representation in the subsequent removal proceedings.[17]

# III. FINDINGS

The court observation project observed and recorded outcomes in a total of 473 hearings for 359 unique cases. There are more hearings than unique cases because observers regularly recorded hearing outcomes for the same person across multiple hearing dates. Of these cases, observers successfully obtained *Country of Origin* information for 248 cases; *Preferred Language* data for 309 cases; *Jail Held* data for 289 cases; *Bond* data for 168 cases;[18] and *Potential Relief* data for 359 cases, as shown in Table A. Within these categories, observers recorded a variety of subcategory data, discussed below.

**TABLE A.** RECORDED CASE OBSERVATIONS

| *Cases* | | | |
|---|---|---|---|
| Cases Observed | 473 | | |
| Unique Cases | 359 | | |

| | *Recorded* | *Not Recorded* | *Total* |
|---|---|---|---|
| County of Origin | 248 | 110 | 358 |
| Preferred Language | 309 | 50 | 359 |
| Jail Held | 289 | 70 | 359 |
| Bond | 168 | 191 | 359 |
| Potential Relief | 359 | 0 | 359 |

*Source: CLINIC/UM LAW 2017*

**TABLE B.** JAIL HELD

| *Jail* | *Cases* | *Percentage* |
|---|---|---|
| Frederick County | 65 | 22% |
| Howard County | 48 | 17% |
| U.S. Marshals Custody | 1 | 0% |
| Worcester County | 175 | 61% |
| **Total** | **289** | **100%** |

*Source: CLINIC/UM LAW 2017*

## A. ICE DETENTION

ICE Enforcement and Removal Operations (ERO) detains noncitizens in five types of facilities: Service Processing Centers, Contract Detention Facilities, Intergovernmental Service Agreements (IGSA), Dedicated Intergovernmental Service Agreements (DIGSA), and U.S. Marshals Service Intergovernmental Agreement (IGA).[19] Service Processing Centers are facilities owned by ICE and generally operated by contract detention staff. Private companies own and operate the facilities and contract directly with ICE.[20] IGSA facilities are local and county jails that house ICE detainees (in addition to other inmates such as those facing criminal charges or serving short-term criminal convictions).[21] DIGSAs refers to agreements where facilities are dedicated to housing only ICE detainees.[22] IGA refers to facilities contracted with by the U.S. Marshals Service.[23] In Maryland, ICE ERO detains people in IGSA facilities, meaning that ICE ERO detains people in jails rather than ICE detention centers.

During the time of the study, ICE ERO Baltimore primarily detained people in three Maryland jails located in the following Maryland counties: Frederick, Howard, and Worcester. The only facility that houses women is the detention center at Worcester, so that is where all women in ICE custody are held. In rare instances, ICE ERO may instead hold a person in U.S. Marshals custody. Those people held in Worcester County usually appear for bond hearings via video teleconference rather than in person.

The largest number of observed cases were of people held at the Worcester County Jail in Snow Hill, Maryland (175 or 61%). ICE ERO Baltimore detained most of the remaining people in either Frederick County (65 or 22%) or Howard County (48 or 16%).

If the immigration judge sets a bond amount, the person will remain in ICE detention until a qualifying individual posts the bond at an ICE ERO Field Office.[24] If the immigration judge denies bond or finds the person subject to mandatory detention, if the person cannot afford to post the bond amount, or if the person cannot find someone to serve as the obligor on the bond,[25] the person will remain in ICE detention until deportation proceedings conclude.

## B. BOND AND REPRESENTATION

At a bond hearing, a person asks an immigration judge to reduce or set a bond amount for his or her release. The person either requests a specific amount or presents the immigration court with a range. The person has the right to present evidence, though in practice this right is often highly restricted by the limited time for presentation. An immigration judge, after considering the person's request and arguments from ICE, decides whether to release the person on conditional parole (in other words, release without having to pay bond), issue a bond identifying a specific amount (such as the amount originally set by ICE or a different amount), or direct the person be detained without a bond if he/she is subject to mandatory detention, too great of a flight risk, or dangerous, or for discretionary reasons.

During these observations at the Baltimore Immigration Court, the project observed a single immigration judge, as there is only one immigration judge who presides over the detained docket.[26] Based on the project's observations, this immigration judge did not release anyone on conditional parole. Observations and the project's prior case representation experience before the immigration judge indicate that the immigration judge does not believe she has the authority to grant conditional parole. However, the statute expressly authorizes conditional parole[27] and DHS conceded during a class action lawsuit that immigration judges have conditional parole authority.[28]

### I. Representation at Bond and Master Calendar (Removal) Hearings
People had high rates of representation at their bond hearing (137 or 82%). Only about one in five people proceeded without counsel on a request for bond redetermination (31 or 18%).

Of the 168 individuals observed during the bond hearing stage, 141 of these same individuals also had recorded observations regarding whether they were represented by counsel for the removal aspect of their case (the Master Calendar hearing, at which a formal plea is taken on whether the person is deportable). The remaining 27 individuals did not have data recorded regarding whether they had counsel at the removal stage. Notably, representation at a bond hearing did not equate to representation on the merits of the immigration case. Only 59% of the 141 individuals that there are observations for were also represented during the Master Calendar (removal) hearing held immediately subsequent to the bond hearing.

A variety of possible factors may explain this disparity, including that hiring legal counsel for the bond hearing generally costs less than hiring legal counsel for the entire deportation case.

### II. Bond Amounts Requested
Averaging all bond amounts requested by people, either through counsel or pro se, results in an average of $4,722. The statutory minimum bond amount is $1,500.[29]

When a person, either through counsel or *pro se*, requested a specific bond amount, the most common bond amount requested was $5,000 (27 or 23%).

### III. Bond Disposition
The immigration judge granted or re-determined bond in nearly two-thirds of cases (114 or 68%) and denied bond in the remaining cases (54 or 32%).

**TABLE C1.** REPRESENTATION IN BOND AND REMOVAL PROCEEDINGS

| | Cases | Percentage |
|---|---|---|
| **Bond Hearing** | | |
| Represented | 137 | 82% |
| Pro Se | 31 | 18% |
| **Total** | **168** | **100%** |
| Not Recorded | 0 | |
| **Master Calendar** (removal) | | |
| Represented | 83 | 59% |
| Pro Se | 58 | 41% |
| **Total** | **141** | **100%** |
| Not Recorded | 27 | |

*Source: CLINIC/UM LAW 2017*

**TABLE C2.** AVERAGE BOND REQUESTED

AVERAGE  $4,722

*Source: CLINIC/UM LAW 2017*

**TABLE C3.** BOND AMOUNT REQUESTED

| | Cases | Percentage |
|---|---|---|
| $0 | 7 | 6% |
| $800 | 9 | 1% |
| $1,500 | 1 | 8% |
| $2,000 | 5 | 4% |
| $2,500 | 13 | 11% |
| $3,000 | 15 | 13% |
| $3,500 | 5 | 4% |
| $4,000 | 2 | 2% |
| $5,000 | 27 | 23% |
| $6,000 | 2 | 2% |
| $6,500 | 1 | 1% |
| $7,000 | 2 | 2% |
| $7,500 | 11 | 9% |
| $8,000 | 2 | 2% |
| $10,000 | 10 | 9% |
| $12,000 | 1 | 1% |
| $12,500 | 1 | 1% |
| $15,000 | 2 | 2% |
| **Total** | **116** | **100%** |

*Source: CLINIC/UM LAW 2017*

**TABLE C4.** NON-MANDATORY BOND DENIAL

| Disposition | Cases | Percentage |
|---|---|---|
| Bond Granted | 114 | 68% |
| Bond Denied | 54 | 32% |
| **Total** | **168** | **100%** |
| *Basis of Bond Denial* | | |
| Non-Mandatory Denial | 38 | 70% |
| Mandatory Detention | 16 | 30% |
| **Total** | **54** | **100%** |

*Source: CLINIC/UM LAW 2017*

Of the bond denials, 38 or 70% of cases were discretionary denials while 16 or 30% were denials because the immigration judge found the person was subject to mandatory detention. The immigration judge denied bond to almost all individuals otherwise eligible for it whenever there was a gang allegation, as described in Part III.D.v. *Effects of Gang Allegations on Bond.*

### IV. Bond Disposition and Representation

For all cases, while the immigration judge granted or re-determined bond in nearly two-thirds of *all* cases, this rate varied based on whether a person had legal counsel. In this context, approving bond includes both initial issuance of bond and re-determinations where the immigration judge issued bond in any amount. For represented people, the immigration judge approved bond in 72% of cases. In *pro se* cases, the immigration judge approved bond in only 48% of cases. The immigration judge was almost twice as likely to deny bond when the person was unrepresented. The immigration judge denied bond in only 28% of cases when the person was represented. When unrepresented, the bond denial rate was 52%.

The average bond amount in all bond cases (represented and *pro se*) was $11,408. For *pro se* people, the average bond amount was 14% higher, at $12,800. It is also worth noting that even those people who have legal representation face bond amounts that are prohibitively high for a civil custody setting. Furthermore, unlike those subject to the criminal justice system, people must pay the DHS bond amount in full instead of being able to pay a percentage of the bond amount.

## TABLE C5(a). BOND DISPOSITION BY REPRESENTATION

| Disposition | Cases | Percentage |
|---|---|---|
| **All Cases** | | |
| Total | 168 | 100% |
| Bond Denied | 54 | 32% |
| Bond Approved | 114 | 68% |
| | | |
| Average Bond | $11,408 | |
| Average Pro Se | $12,800 | |
| Average Rep. | $11,197 | |
| Difference | $1,603 | 14% |

*Source: CLINIC/UM LAW 2017*

## TABLE C5(b). BOND DISPOSITION FOR REP. RESPONDENTS

| Represented - All | | |
|---|---|---|
| Total | 137 | 100% |
| Bond Denied | 38 | 28% |
| Bond Approved | 99 | 72% |
| | | |
| **Average Bond** | **$11,197** | |
| *Represented - Mandatory Detention* | | |
| Total | 11 | |
| Bond Denied | 11 | 100% |
| Bond Approved | 0 | 0% |
| *Represented - Non-Mandatory Detention* | | |
| Total | 126 | |
| Bond Denied | 27 | 21% |
| Bond Approved | 99 | 79% |

*Source: CLINIC/UM LAW 2017*

## TABLE C5(c). BOND DISPOSITION FOR PRO SE RESPONDENTS

| Pro Se - All | | |
|---|---|---|
| Total | 31 | 100% |
| Bond Denied | 16 | 52% |
| Bond Approved | 15 | 48% |
| | | |
| **Average Bond** | **$12,800** | |
| *Pro Se - Mandatory Detention* | | |
| Total | 5 | |
| Bond Denied | 5 | 100% |
| Bond Approved | 0 | 0% |
| *Pro Se - Non-Mandatory Detention* | | |
| Total | 26 | |
| Bond Denied | 11 | 42% |
| Bond Approved | 15 | 58% |

*Source: CLINIC/UM LAW 2017*

## TABLE C6. EFFECTS OF GANG ALLEGATIONS ON BOND

| Bond Disposition | Cases | Percentage |
|---|---|---|
| Bond Granted | 1 | 13% |
| Bond Denied | 7 | 88% |
| **Total** | **8** | **100%** |
| | | |
| *Non-Gang Bond Disposition* | *Cases* | *Percentage* |
| Non-Mandatory Detention Dispositions | 152 | 100% |
| Granted | 114 | 75% |
| Denied | 38 | 25% |

*Source: CLINIC/UM LAW 2017*

In the eleven cases where an individual was represented and subject to mandatory detention, the immigration judge denied bond in 100% of cases. Of the 126 cases where an individual was represented and not subject to mandatory detention, the immigration judge approved bond in 79% of cases, denying only 21% of cases.

In the five cases where an individual was *pro se* and subject to mandatory detention, the immigration judge denied bond in 100% of the cases. Where a pro se individual was not subject to mandatory detention, the immigration judge issued bond in 58% of cases and denied bond in 42% of cases.

## V. Effects of Gang Allegations on Bond

While the data contains dispositions for a small number of cases where the government alleged gang affiliation (eight cases), a gang affiliation allegation by DHS had a significant impact on the ultimate bond disposition. In all 8

of the cases where a gang affiliation was made, the individuals were statutorily eligible for bond. In 7 of those cases, the immigration judge denied bond entirely as a matter of discretion. Though the immigration judge did grant bond in one of the gang allegation cases, she set the bond at a prohibitively high amount, $30,000. Notably, in that case, the person did have the benefit of counsel. Overall, 38% of people with gang allegations appeared *pro se*, with the remaining people having legal counsel. Cases with gang affiliation had a 13% bond grant rate. By comparison, non-mandatory detention cases, where an immigration judge had the discretion to grant bond and where there were no gang allegations had a 75% grant rate. In this context, granting bond includes both initial issuance of bond and re-determinations where the immigration judge considers whether to set a new bond amount.

Two cases observed by the project in particular illustrate the impact of gang allegations in bond cases. In one of the cases where a person appeared with counsel, the attorney challenged DHS's allegations of gang affiliation by questioning the validity of its photo evidence; the attorney argued that DHS based its allegation of gang affiliation entirely upon the person's friendship with other alleged gang members. The attorney further proffered that the person was assisting in a federal investigation of gang members. Notwithstanding this cogent explanation, the immigration judge still denied bond.

In the case of another represented person, local law enforcement arrested the person and completed a "gang field interview sheet," but did not charge him criminally or produce a police report.[30] Instead, local law enforcement immediately transferred him to ICE custody. The person's counsel contacted the local law enforcement officer who completed the "gang field interview sheet" to ask the officer to be present for cross-examination. The "gang field interview sheet" included subjective factors like clothing color, location of the arrest, and unidentified source(s) as evidence of gang affiliation. The officer responded via email that he would be present at the bond hearing for cross-examination. At the bond hearing, the DHS attorney informed the immigration judge that ICE had been in communication with the local law enforcement officer and that the officer would no longer be appearing for cross-examination. The local law enforcement officer had not informed the person's counsel about this change. The immigration judge nonetheless denied the person's Motion for Testimony or, in the alternative, Motion for Deposition.[31] Legal counsel then requested testimony from the person, but the immigration judge denied the request for the person to testify. The immigration judge denied bond. Subsequently, the immigration denied asylum, withholding of removal, and Convention Against Torture protection to this person who presented his case *pro se*. Ultimately, this person was deported.

While represented people faced significant due process hurdles to defend against gang allegations, the challenges faced by *pro se* respondents were, perhaps predictably, almost always insurmountable. When the immigration judge asked *pro se* people to respond to gang allegations, all *pro se* people could offer in defense was a non-testimonial, oral denial. Without access to evidence or the ability to present legal arguments in their defense, this oral denial was insufficient. In *pro se* cases, the immigration judge consistently deferred to the government's allegations and exercised discretion to not set a bond. The immigration judge did not allow the *pro se* respondents to present any detailed sworn oral testimony in their own defense.

The Baltimore Immigration Court is not the only court in which legal counsel and *pro se* people must defend against gang allegations by DHS. A national survey regarding the use of gang allegations in immigration proceedings revealed that 79% of 73 attorneys surveyed from 21 different states and the District of Columbia encountered cases that involved allegations of gang affiliation.[32] Seventy-eight percent of immigration attorneys and community leaders surveyed in New York City stated they experienced law enforcement alleging or implying that immigrant community members had gang affiliations.[33] This study was conducted over six months and had almost four dozen survey respondents.

| Month | Cases | Average | Granted | Granted (%) | Denied | Denied (%) | Man. Det. | Man. Det. (%) | Total |
|-------|-------|---------|---------|-------------|--------|------------|-----------|---------------|-------|
| **TABLE C7.** NON-MANDATORY BOND DISPOSITIONS | | | | | | | | | |
| January | 4 | $8,125 | 4 | 100% | 0 | 0% | 0 | 0% | 100% |
| February | 21 | $9,000 | 15 | 71% | 76 | 29% | 0 | 0% | 100% |
| March | 26 | $8,667 | 18 | 69% | 7 | 27% | 1 | 4% | 100% |
| April | 7 | $14,375 | 4 | 57% | 3 | 43% | 0 | 0% | 100% |
| May | 19 | $14,375 | 12 | 63% | 5 | 26% | 2 | 11% | 100% |
| June | 38 | $12,788 | 26 | 68% | 4 | 11% | 8 | 21% | 100% |
| July | 29 | $11,000 | 18 | 62% | 8 | 28% | 3 | 10% | 100% |
| August | 24 | $12,735 | 17 | 71% | 5 | 21% | 2 | 8% | 100% |
| **Total** | **168** | | **114** | | **38** | | **16** | | |

*Source: CLINIC/UM LAW 2017*

## VI. Bond Dispositions by Date

The bond hearing data recorded between Donald Trump's inauguration on January 20, 2017 and August 2017 reveals particular trends. The trends were most prominent when comparing cases from the beginning of the Trump Administration to the end of the observation period (approximately six months into the new administration). Table C7 compares all the bond case observations in January, February, and March (37 cases from the start of the Trump Administration) to a similar number of observations in July and August (35 cases from approximately half a year into the administration).

At the beginning of the Trump Administration, the average bond amount was $8,597. At the end of the observation period seven months later, the average bond amount was $11,868, a $3,270 or 38% increase. Bond approval rates also fell by 7% from 73% of bonds granted to 66%.

## C. COUNTRY OF ORIGIN

Country of origin represents the country of citizenship for a person, either admitted by the person or established by DHS. If DHS deports a person, in most cases, DHS will deport that person to their country of citizenship, assuming DHS obtains the necessary travel documents.

Over a third of observed cases were of people from El Salvador (82 or 33%). Mexico (46 or 19%), Guatemala (38 or 15%), Honduras (32 or 13%), and Jamaica (8 or 3%) comprised the remaining top countries of origin, with all other countries making up the remaining cases (42 or 17%). Table E2 includes a list of countries that the project observed.

## D. LANGUAGE

Preferred language represents the language that the person prefers using and, if not English, the language the court interpreter will interpret to and from. Of all recorded cases, Spanish was the most common preferred language (254 or 82%), followed by English (47 or 15%). Table F includes the full list of preferred languages recorded by the project.

## E. IMMIGRATION RELIEF

Observers noted the immigration relief identified or suggested during the hearing in nearly half (176 or 49%) of all cases. This percentage was relatively low, potentially because the *pro se* people could not articulate or did not know what relief they were eligible for. As previously discussed in Table C1, 18% of individuals were *pro se* in their bond hearing and 41% were *pro se* in their merits hearing. When the immigration judge inquired, the people would

## TABLE C8. INA 236(A) BOND AMOUNT COMPARISON

| Month | Cases | Average | Granted (%) |
|---|---|---|---|
| Jan./Feb./March | 37 | $8,597 | 73% |
| July/August | 35 | $11,868 | 66% |
| Change ($) | | $3,270 | N/A |
| Change (%) | | 38% | 7% |

Source: CLINIC/UM LAW 2017

## TABLE D1. POTENTIAL RELIEF IDENTIFIED

| | Cases | Percentage |
|---|---|---|
| Potential Relief | 176 | 49% |
| Relief Not Yet Identified | 183 | 51% |
| **Total** | **359** | **100%** |

Source: CLINIC/UM LAW 2017

## TABLE D2. SPECIFIC RELIEF IDENTIFIED

| Form of Relief | Cases | Percentage |
|---|---|---|
| **I-589** | **122** | **53%** |
| Asylum | 64 | 28% |
| CAT | 15 | 6% |
| Withholding | 20 | 9% |
| Not Specified | 23 | 10% |
| | | |
| **Adjustment of Status** | **30** | **13%** |
| Family | 24 | 10% |
| SIJS | 4 | 2% |
| VAWA | 2 | 1% |
| **Consular Processing** | **4** | **2%** |
| | | |
| **Cancellation** | **54** | **23%** |
| Non-LPR Cancellation | 49 | 21% |
| LPR Cancellation | 5 | 2% |
| | | |
| **Other** | **21** | **9%** |
| T Nonimmigrant Status | 1 | 0% |
| U Nonimmigrant Status | 11 | 5% |
| NACARA | 2 | 1% |
| DACA | 3 | 1% |
| TPS | 2 | 1% |
| 212(h) Waiver | 2 | 1% |
| | | |
| **Total** | **231** | **100%** |

Source: CLINIC/UM LAW 2017

not answer, did not know how to respond, or would ask for a continuance to obtain legal counsel. In the remaining cases, no immigration relief was immediately apparent or recorded by observers. However, this does not mean that the remaining cases had no potential form of relief available, simply that none was identified during the detained docket observations. This is readily explainable because although many people had legal representation at the bond hearing stage, they were not represented for the merits portion of the case, which often involves a more in-depth identification of potential relief.

People who claimed potential eligibility for immigration relief identified a variety of forms of relief. In 53% of cases (122 total), people were found to be potentially eligible for asylum or related relief and were given a Form I-589, Application for Asylum and for Withholding of Removal, which is submitted to apply for asylum, withholding of removal, and Convention Against Torture protection. The next largest category consisted of people who appeared eligible for cancellation of removal (54 or 23% of all cases where relief was identified at the bond hearing stage), of which 49 of those cases were non-LPR cancellation of removal. The third largest category of relief were people who could potentially adjust status (30 or 13%), mostly through family-based petitions (24 or 10%). Table D2 outlines all the specific forms of relief identified.

## TABLE E1. TOP COUNTRIES OF ORIGIN

| Country | Cases | Percentage |
|---|---|---|
| El Salvador | 82 | 33% |
| Mexico | 46 | 19% |
| Guatemala | 38 | 15% |
| Honduras | 32 | 13% |
| Jamaica | 8 | 3% |
| Other | 42 | 17% |
| **Total** | **248** | **100%** |

*Source: CLINIC/UM LAW 2017*

## TABLE F. PREFERRED LANGUAGE

| Language | Cases | Percentage |
|---|---|---|
| Creole | 1 | 0% |
| English | 47 | 15% |
| French | 1 | 0% |
| Mixtec | 1 | 0% |
| Portuguese | 2 | 1% |
| Romanian | 1 | 0% |
| Russian | 2 | 1% |
| Spanish | 254 | 82% |
| **Total** | **309** | **100%** |

*Source: CLINIC/UM LAW 2017*

## TABLE E2. COUNTRY OF ORIGIN

| Country | Cases | Percentage |
|---|---|---|
| Belarus | 1 | 0% |
| Brazil | 2 | 1% |
| Canada | 2 | 1% |
| Chad | 2 | 1% |
| Costa Rica | 1 | 0% |
| Cuba | 2 | 1% |
| Dominican Republic | 2 | 1% |
| El Salvador | 82 | 23% |
| Eritrea | 1 | 0% |
| Ethiopia | 1 | 0% |
| Gambia | 1 | 0% |
| Ghana | 2 | 1% |
| Guatemala | 38 | 11% |
| Guyana | 2 | 1% |
| Haiti | 2 | 1% |
| Honduras | 32 | 9% |
| India | 1 | 0% |
| Jamaica | 8 | 2% |
| Liberia | 1 | 0% |
| Mexico | 46 | 13% |
| Moldova | 1 | 0% |
| Morocco | 1 | 0% |
| Namibia | 1 | 0% |
| Nicaragua | 1 | 0% |
| Nigeria | 3 | 1% |
| Not Recorded | 111 | 31% |
| Pakistan | 1 | 0% |
| Peru | 2 | 1% |
| Portugal | 2 | 1% |
| Romania | 1 | 0% |
| Trinidad | 2 | 1% |
| Turkey | 1 | 0% |
| United Kingdom | 1 | 0% |
| Uzbekistan | 1 | 0% |
| Venezuela | 1 | 0% |
| **Total** | **359** | **100%** |

*Source: CLINIC/UM LAW 2017*

# IV. METHODOLOGY

## A. OBSERVATIONS AND RECORDATION OF DATA

Initially, CLINIC and the UM Carey Immigration Clinic established a framework regarding what data they would collect, including key data such as whether bond was granted, bond amount, and available forms of immigration relief. UM Carey Immigration Clinic subsequently conducted outreach to identify law students who could attend the Baltimore bond hearings and record the data. Once identified as court observers, the UM Carey Immigration Clinic conducted a formal training process for observers, which instructed them in court procedures, informed them of which data to collect, and standardized the process by which observers would input their court observations electronically. During an in-person meeting, CLINIC and UM Carey Immigration Clinic obtained the permission of the immigration court to conduct the observations. DHS was present during the meeting and raised no objection or concern that could not be addressed.

The data recording process functioned in the following manner. The project chose who would observe the upcoming detained dockets. At the beginning of each observation day,[34] the court observer arrived at court by 8:00 am, sat in the courtroom, and recorded their observations on paper or, when possible, electronic devices. The docket generally began between 8:30 am and 9:00 am and ended anywhere between 10:00 am and 1:00 pm. The observer sat through the entire detained docket. Within 48 hours, the observers transferred the recorded data into an electronic spreadsheet, standardizing that day's observations and data. Every case heard by the immigration judge represented a discrete observation. To identify each unique case, case observers recorded the full legal name and "alien registration number" (A-number) of each case, usually read into the record by the judge at the beginning of each case. In certain circumstances, case observers recorded the A-number when posted outside the courtroom by the immigration court.[35]

Due to the fast-moving nature of court proceedings and acoustical difficulties, court observers were not able to collect all information in certain cases. In other cases, court observers could not mark down observations for a specific data field because it was not applicable to the case, e.g. a case observation where the immigration judge rescheduled the bond hearing to a future date did not produce data on a bond amount. The above tables note when data points were and were not recorded for a specific metric. Consequently, *Table A. Recorded Case Observations* provides an overview of the number of total cases observed; unique cases observed; and percentage of cases where country of origin, language, bond, relief, and jail information were recorded.

This report incorporates observation data from January 24, 2017 to August 21, 2017. For observations during this period, CLINIC and UM Carey Immigration Clinic identified multiple observations regarding the same case, i.e. observations of the same person that took place on different dates as their case progressed and the person returned to court. CLINIC and UM Carey Immigration Clinic linked or "merged" this data together, to not double count people in their analysis and to better facilitate data analysis. This created a master observation spreadsheet (MOS). The MOS contained the following data fields, not all of which are discussed in this report: (a) *Procedural History*; (b) *Date*; (c) *Name of Respondent*; (d) *Alien Number*; (e) *Country of Origin*; (f) *Preferred Language*; (h) *Bond Hearing Represented or Pro Se*; (i) *Attorney Name*; (j) *Bond Amount Sought by Defendant*; (k) *Bond Amount Sought by DHS*; (l) *Bond Amount Given*; (m) *Undocumented or Criminal Conviction*; (n) *Removal Represented or Pro Se*; (o) *Attorney Name*; (p) *Jail Held*; (q) *Gang Affiliation and Proof*; (r) *Eligibility for Relief*; (s) *Detainee Requests Removal*; (t) *Individual Hearing*; (u) *Date Postponed*; and (v) *Notes*.

The court observation project involved a total of eleven individuals, including five volunteers and one primary project lead from CLINIC and one from the UM Carey Immigration Clinic.

## B. GENERAL METHODOLOGY

Generally, the project undertook the same process when analyzing each category of data and formulating tables. The project reviewed each data field for accuracy, including spelling and factual accuracy. The project then removed all duplicate entries stemming from multiple observations of the same person over separate dates. For unknown data fields that were not recorded, or were not recorded with sufficient specificity, the project noted *Not Recorded*. This data was excluded when calculating percentages. When *Not Recorded* cases affected the percentage of a specific metric, the project explicitly noted the inclusion of these cases in the tables and the percentage calculations. Note that percentages were rounded to the nearest whole number and may cause some minor inconsistencies in certain tables, such as Table C6.

To create *Table A. Recorded Case Observations*, the project exported the usable data for a variety of categories, including *Country of Origin, Language, Jail, Bond, and Potential Relief*.

## C. COUNTRY OF ORIGIN

The project began with the country field of the master observation spreadsheet (MOS). In one instance where a person had two different countries listed in separate observations, the project used basic onomastics (attributing the name with the most likely country/area of origin) to input the likely correct country of origin (Nigeria).

To create *Table E1. Top Countries of Origin* (which shows the top countries of origin for cases where data are available), the project extracted the top five countries of origin from *Table E2. Country of Origin*, all other countries where the project has data (placing them in *Other*) and excluded Not Recorded cases. The project then obtained the percentage of all recorded cases that each top country of origin (and *Other*) represents. Thus, *Table E1. Top Countries of Origin* provides a numeric and percentage overview of top countries of origin for cases where that information is available.

To create *Table E2. Country of Origin* (which shows all countries of origin, including the number of nationals from each country) the project exported a list of all unique and *Not Recorded* countries of origin. The project calculated the percentage of all recorded cases that each country of origin represents.

## D. LANGUAGE

When data reflected Spanish and another language (e.g. one or more languages were included in the same cell), the project chose Spanish. When there was a conflicting data entry point in a subsequent observation (e.g. a later observation for the same person had a different *Preferred Language* entry), the project chose the earliest observation.

To create *Table F. Preferred Language* (which shows all preferred languages, including the number of people that preferred each language) the project exported a list of all unique languages and excluded *Not Recorded* observations. The project then obtained the percentage of cases each preferred language represents.

## E. JAIL HELD

To create *Table B. Jail Held*, which shows all the Maryland jails where ICE ERO Baltimore holds people and the number of people at each jail, the project exported a list of all unique jails and excluded *Not Recorded* observations. The project then determined the percentage each jail represents. Where the data reflected two or more different jails (e.g. an earlier observation had a different jail listed because ICE ERO Baltimore transferred the person to another jail), the project chose the jail associated with the most recent observation.

## F. BOND AND REPRESENTATION

To create the bond and representation tables, the project employed the *Bond Hearing Represented or Pro Se, Bond*

*Amount Sought by Defendant, Bond Amount Given, Gang Affiliation and Proof* data fields of the MOS. From the unique cases observed, the project selected only those cases where it recorded whether bond was ultimately granted (including both re-determinations and initial grants) or denied; and that had sufficient information to identify the hearing as a bond-related hearing. This decreased the universe of observations for bond cases to 168 unique cases. References to "bond approval" or "bond granted" refer to cases where the immigration judge either issued initial bond (i.e. where DHS initially refused to set bond), re-determined bond to a lower amount than what DHS originally set, or maintained the initial bond amount.

To create *Table C1. Representation in Bond and Removal*, the project exported the number of cases where a person appeared at their bond hearing *pro se* or represented from the *Bond Hearing Represented or Pro Se, Bond Amount Sought by Defendant* data field. The project then obtained the respective percentage that these cases represented.

To create *Table C2. Average Bond Requested*, the project obtained the mean of all specific bonds amount in the *Bond Amount Sought by Defendant* data field of the MOS. To create *Table C3. Bond Amount Requested*, the project exported the various amounts under the *Bond Amount Sought by Defendant* data field (excluding bond amounts that were unspecified) along with the number of cases where the specific amount was requested. The project then obtained the respective percentage that these amounts represented.

To create *Table C4. Bond Disposition*, the project exported the data from *Bond Amount Given. Bond Granted* represents cases where the immigration judge granted some bond amount, regardless of the amount. *Bond Denied* represents where the immigration judge denied the bond. *Basis of Bond Denial* enumerates two subcategories within *Bond Denied: (a) Discretionary Denial*, which indicates that the person was eligible for bond but the immigration judge nonetheless denied bond as a matter of discretion; and (b) *Mandatory Detention*, which indicates that the immigration judge determined the person was ineligible for bond because the person was subject to mandatory detention.

To create tables C5(a) through C5(c), which provide bond dispositions by whether a person was represented, the project imported data from *Table C4. Non-Mandatory Bond Denial* (for the number of cases where the immigration judge denied or approved the bond). The project also calculated the average bond by obtaining the mean of all bond amounts from the *Bond Amount Given* data field in the MOS. For the *Represented* subcategory, the project exported all bond cases where a person was represented, along with whether the immigration judge denied or approved bond. The project also obtained the mean of all represented cases where the immigration judge granted bond. For the *Pro Se* subcategory, the project exported all bond cases where a person was unrepresented, along with whether bond was denied or approved. The project also obtained the mean of all *pro se* cases where the immigration judge granted bond. To obtain the difference between average bond for represented and *pro se* cases, the project simply subtracted the average bond amount for represented cases from the average bond amount for *pro se* cases.

To create *Table C6. Effect of Gang Allegations on Bond*, the project exported the number of cases where DHS alleged gang affiliation (from the *Gang Affiliation and Proof* data field) and the ultimate bond disposition.

To create *Table C7. Non-Mandatory Bond Dispositions*, the project exported, by month, the number of cases observed (*Cases*), mean bond amount (*Average*), whether the immigration judge granted bond (*Granted*), whether the immigration judge denied bond (*Denied*), and whether a person was subject to mandatory detention (*Man. Det.*).

To create *Table C8. INA 236(a) Bond Amount Comparison*, the project exported the number of cases in which the immigration judge granted bond (*Cases*) and average bond amount (*Average*) for January, February, and March; and July and August. The project chose data from the first three recorded months and data from the last two months as both groups, in aggregate, had a similar number of cases (35 and 37 bond cases, respectively). The cases

from January are all after President Trump's inauguration. To obtain the increase in bond amount from the first three observed months to the last two observed months, the project subtracted the former from the latter and calculated the percentage increase.

## G. IMMIGRATION RELIEF

The project identified potential relief for a person when, during an observation of a bond hearing, a person, attorney, immigration judge, or government counsel indicated that: (a) there was a pending application for relief; (b) there was an intention, willingness, or interest to apply for a form of relief; or (c) the underlying facts of the case suggested the person was potentially eligible for relief. People must still plead their case for relief, satisfy their evidentiary burden, and successfully proceed through the application process (either in immigration court or through U.S. Citizenship and Immigration Services) to obtain relief. Thus, even if a person was potentially eligible for relief, this potential eligibility does not guarantee that the person actually obtained relief.

To create *Table D1. Potential Relief Identified*, which shows the number of cases where the project identified potential relief and cases where relief was not yet identified (either because data was not recorded or nothing in the hearing indicated relief was available). The project created this table by tabulating the total number of cases where at least one type of relief was identified and comparing that number to the number of cases where the entry was "None Identified" in terms of potential claims for relief.

To create *Table D2. Specific Relief Identified*, the project exported the number of cases where volunteers identified a specific form of relief. I-589 functions as a broad category that encompasses cases where volunteers identified that a person was potentially eligible for asylum, withholding, or protection under the Convention Against Torture, or where an observer recorded general I-589 eligibility for relief. The observer recorded this when the person orally expressed fear of return to the home country. *Adjustment of Status* functions as a broad category that encompasses cases where a person was potentially eligible to apply for lawful permanent residence through a family-based petition, SIJS, or VAWA. *Consular Processing* represents cases where a person was potentially eligible to obtain lawful permanent resident status by leaving the United States and applying at the United States consulate. *Cancellation* represents cases where a person was eligible for cancellation of removal, with *LPR Cancellation* and *Non-LPR Cancellation* representing their own respective subcategories. *Other* functioned as a broad category that encompassed cases where a person was potentially eligible for a temporary or permanent form of relief. Notably, the project recorded the potential relief identified during the bond hearing, but it is possible, if not likely, that the non-citizen was eligible for additional forms of relief that the immigration judge, legal counsel, or person had not yet identified during the bond hearing.

# V. RECOMMENDATIONS

- Require that multiple immigration judges preside over the detained docket. When one immigration judge presides over the entire detained docket, it is crucial for that immigration judge to understand the law, as that immigration judge's misapplication of the law will affect 100% of the people detained in the jurisdiction.

- Considering 8 C.F.R. Section 1003.19(d), which requires that bond proceedings "shall be separate and apart from, and shall form no part of," any removal proceeding, a different immigration judge than she/he who presided over the bond hearing should hear the removal proceeding. Having two different immigration judges will ensure that information from the bond hearing will not play any role in the removal proceedings and will alleviate the practice of some immigration judges requiring pleadings before hearing the bond case.

- Ensure that the immigration judges presiding over the bond docket understand their conditional parole authority or "release on own recognizance" authority. Given the reduced chances of success on the merits for people who remain detained, misapplication of the law with regard to avenues for release from detention is extremely prejudicial.[36]

- In the event that gang allegations exist, ensure that respondents have a meaningful opportunity to review the evidence against them in advance of the hearing, challenge evidence of gang allegations prior to and during the hearing, and present their own evidence.

- Pursuant to their broad discretionary authority, immigration judges should consider the respondent's ability to pay in setting bond amounts.[37]

- Require that immigration judges, supervisors, and the public get regular reports on bond amounts, denials, and other relevant metrics, so trends are apparent and outcomes are comparable.

- Improve the appeal process so that appeals on bond are fast-tracked and do not languish; currently, the bond appellate process is a toothless remedy because of the delay. Perhaps a bond appeal could be directed to another immigration judge, rather than to the Board of Immigration Appeals.

# VI. ACKNOWLEDGEMENTS

Thanks to the Masa Group for assessing the data gathered for this project. CLINIC and UM Carey Immigration Clinic would like to especially acknowledge and thank three UM Carey law students without whom this project would not have been possible: John Sun, Virginia Giannini, and Daniel Schutrum-Boward for their tireless efforts, exceptional work, and dedication. CLINIC would like to thank Ann Garcia, Katy Lewis, Aimee Mayer-Salins, Victoria Neilson, and Rebecca Scholtz for their review and valuable feedback.

# VII. GLOSSARY

**Asylum:** A form of discretionary immigration relief granted to individuals fleeing persecution who belong to a specific protected class or category of people and whom the persecutor targets based on a particular characteristic and who are unable or unwilling to return to their country of nationality.[38] A person uses *Form I-589, Application for Asylum and for Withholding of Removal,* to apply for asylum.[39]

**Adjustment of Status:** A form of relief that allows a person to obtain lawful permanent resident (LPR) status, colloquially known as a "green card," while in the United States and without having to leave the United States for consular processing.[40]

**Best Language:** The language the person identifies as the language they know best and that will be used during the immigration court proceedings.

**Bond:** A monetary amount that a person subject to discretionary detention pays ICE to be released from detention and ensure the appearance of the person at future immigration court hearings. Bond is similar to bail in the criminal justice system. The initial bond amount may be set by ICE or by the immigration judge if ICE has declined to set a bond amount.

**Bond Hearing:** This is the common name for a custody redetermination hearing during which the immigration judge decides whether to set a bond amount or reviews the bond amount set by ICE. Bond hearings are "separate and apart" from the removal proceedings.[41]

**Bond Disposition:** An immigration judge's decision of a respondent's request for review of the bond amount set by ICE and, if the request is granted, re-determination of the bond amount (e.g. lowering or raising the bond amount) based on the bond amount the person has requested.

**Cancellation of Removal for Lawful Permanent Residents:** A form of defensive relief available only in removal proceedings before the immigration judge that allows LPRs or "green card" holders to maintain LPR status.[42]

**Cancellation of Removal for Non-Lawful Permanent Residents:** A form of defensive relief available only in removal proceedings before the immigration judge that allows people to become LPRs. To win non-LPR Cancellation of Removal, the person must demonstrate continuous physical presence in the United States for at least ten years, good moral character, are not inadmissible or deportable based on certain criminal grounds, and a relationship to a qualifying U.S. citizen or LPR relative who would suffer exceptional and extremely unusual hardship if the person was removed.[43]

**Consular Processing:** The process by which a person departs the United States, applies for LPR status at the United States consulate abroad, and, if successful, re-enters the United State as an LPR.[44]

**Continuance:** Rescheduling of a removal hearing to a later date upon showing good cause.

**Protection under the Convention Against Torture (CAT):** A mandatory form of relief, if the legal requirements are met, for people who can demonstrate that it is more likely than not that they will be tortured in their home country by or with the acquiescence of government officials. Unlike asylum, CAT does not provide a path to LPR status or U.S. citizenship and does not allow people to travel outside of the United States or bring family members to join them. A person uses *Form I-589, Application for Asylum and for Withholding of Removal,* to apply for CAT.

**Deferred Action for Childhood Arrivals (DACA):** Protection from removal formalized by the Obama administration and afforded to those people who entered the United States before the age of 16 by June 15, 2007, continuously resided in the United States since then, were under the age of 31 on June 15, 2012, met certain educational or military service requirements, and do not have certain criminal convictions or otherwise pose a threat to national security or public safety.[45] The Trump administration rescinded DACA on September 5, 2017, a decision that affects somewhere between 8,200 and 10,000 Maryland residents.[46] However, litigation has kept DACA in place for those who have already been granted DACA.[47] On June 28, 2019, the U.S. Supreme Court agreed to review three legal challenges and scheduled oral argument for November 12, 2019.[48]

**Deportation:** Colloquial term, referred to as "removal" under the current law, for the physical and legal removal of a person from the United States.[49]

**Deportation Proceeding:** The colloquial name for an administrative court hearing in which an immigration judge reviews any applications for immigration relief and determines whether to remove a person from the United States, issue a voluntary departure order, or grant relief. The Immigration and Nationality Act refers to this type of proceeding as a removal proceeding.

**Detained Docket:** The immigration court docket for people whom DHS detains.

**Executive Office for Immigration Review (EOIR):** Federal agency located within DOJ that contains the nation's immigration courts and the Board of Immigration Appeals.

**Family-Based Petitions:** Petitions filed by U.S. citizens or LPRs on behalf of their qualifying person family member, which includes parents, spouses, minor and some adult children, and, in limited cases, siblings.[50]

**Immigration and Customs Enforcement (ICE):** Federal immigration agency, housed within DHS, responsible for immigration enforcement in the interior of the United States. ICE encompasses Enforcement and Removal Operations, which is responsible for detention and removal of people, and the Office of Chief Counsel, the legal office that serves as the prosecutor in immigration court. This report uses ICE and DHS interchangeably.

**Immigration Court:** An administrative court (authorized under Article II of the U.S. Constitution and housed within the DOJ in EOIR) that adjudicates immigration cases, including bond proceedings.

**Immigration Judge:** An attorney whom the Attorney General appoints as an administrative judge within EOIR and who is qualified to conduct specified classes of proceedings, including removal and bond proceedings for non-citizens.

**Lawful Permanent Resident (LPR):** A person who has the right to reside indefinitely in the United States, travel outside of the United States, and eventually apply for U.S. citizenship. A person may obtain this status through family petitions, certain humanitarian relief, and several employment visas, but the status may be lost due to criminal convictions or certain periods of absence from the United States. Colloquially known as having a "green card."

**Nicaraguan Adjustment and Central American Relief Act 203 (NACARA):** Humanitarian relief that applies to certain individuals from Guatemala, El Salvador, and former Soviet bloc countries who entered the United States and applied for asylum by specified dates or registered for benefits under the settlement agreement in the class action lawsuit *American Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991). Section 203 of NACARA allows qualified individuals to apply for suspension of deportation or for cancellation of removal before an immigration judge.[51]

**Person:** An individual who is not a citizen of the United States, including undocumented people, LPRs, and other people with different types of immigration statuses.

**Not Recorded:** When information about a case was not recorded during an observation.

**Pro se:** Latin phrase meaning "on one's own behalf" used to denote when a person appears in court without an attorney and must represent themselves. *Pro se* appearances are common in immigration proceedings because the proceedings are considered civil and therefore the Sixth Amendment right to counsel does not apply.

**Relief:** Temporary or permanent immigration status that allows a person to remain in the United States.

**Removal Order:** Legal order or document that directs the deportation of an individual.

**Removal:** Legal term for the physical and legal removal of an individual from the United States. Also known colloquially as "deportation."

**Representation:** Legal counsel by a qualified attorney or representative who speaks for a person during removal proceedings.

**Special Immigrant Juvenile Status (SIJS):** A humanitarian classification for unmarried children present in the United States who prove through a state juvenile court predicate order that they have been abandoned, abused, or neglected (or a similar basis under state law) by one or both parents and that it is not in their best interests to be returned to their country of origin or last habitual residence.

**Temporary Protected Status:** A temporary humanitarian status that provides protection from deportation for people from certain countries designated by DHS as having circumstances that temporarily prevent the country's nationals from returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals adequately. Examples of such circumstances include civil war or natural disasters.[53] The Trump administration has terminated TPS designations for El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan, thus removing protections from deportation for approximately 23,000 Maryland residents.[54] However, following these terminations, litigation ensued to safeguard TPS protections.[55]

**T Nonimmigrant Status:** A temporary humanitarian status for people who have been the victims of human trafficking and have assisted law enforcement in an investigation or prosecution of the human trafficking.[56] T nonimmigrant status can lead to LPR status.

**U Nonimmigrant Status:** A temporary humanitarian status for people who have been the victims of certain crimes, have suffered mental or physical abuse as a result of the criminal activity, and have assisted in the investigation or prosecution of the crime leading to a certification by the investigatory or prosecuting agency.[57] U nonimmigrant status can lead to LPR status.

**U.S. Citizenship and Immigration Services (USCIS):** Federal agency located within DHS that processes certain petitions and applications for immigration benefits.

**U.S. Department of Homeland Security (DHS):** Federal agency that includes most immigration agencies, including ICE and USCIS. It does not include DOJ or EOIR. This report uses ICE and DHS interchangeably.

**U.S. Department of Justice (DOJ):** Federal agency that contains EOIR, which houses the immigration courts.

**Violence Against Women Act (VAWA):** Originally passed in 1994, Congress reauthorized VAWA, with revisions to its policies, in 2000, 2005, and 2013. This legislation provides humanitarian protection through a self-petition, cancellation of removal, or suspension of removal for people who can demonstrate that they have been the victim of battery or extreme cruelty by a qualifying family member.[58] The immigration judge has jurisdiction over VAWA cancellation of removal and VAWA suspension of removal.

**Waiver - INA § 212(h):** A discretionary waiver of some of the crime-based inadmissibility grounds.[59]

**Withholding of Removal:** A mandatory form of relief, if the person meets the legal requirements, for people who demonstrate that it is more likely than not that their life or freedom would be threatened because of certain protected characteristics.[60] Unlike asylum, withholding does not provide a path to LPR status or U.S. citizenship and does not allow people to travel outside of the United States or bring family members to join them. A person uses *Form I-589, Application for Asylum and for Withholding of Removal*, to apply for withholding.

# VIII. END NOTES

[1] Steering Comm. of the N.Y. Immigrant Representation Study Report, *Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings*, 33 CARDOZO L. REV. 357, 359 n.2 (2011). According to this study, people who are represented and released from detention or were never detained have a 74 % success rate in their removal cases. People who are represented but detained have an 18 % successful outcome. People who are unrepresented and detained have a 3 % success rate.

[2] The practice of the Baltimore Immigration Judge was to deny bond altogether rather than increase bond.

[3] This report uses the terms "removal" and "deportation" interchangeably. Before 1996, the federal government employed the terms "deportation" and "exclusion" when expelling people. After 1996, these mechanisms were merged and are now formally referred to as "removal."

[4] INA § 240.

[5] INA § 292.

[6] *Denied a Day in Court: The Government's Use of In Absentia Removal Orders Against Families Seeking Asylum*, CLINIC and Asylum Seeker Advocacy Project (ASAP), April 2018, *available at* https://cliniclegal.org/resources/denied-day-court; Ingrid Eagly & Steven Shafer, Access to Counsel in Immigration Court, American Immigration Council, Sept. 28, 2016, *available at* https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court.

[7] INA § 236; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, U.S. DEPARTMENT OF JUSTICE, Immigration Court Practice Manual, at 138, Nov. 2, 2017, *available at* https://www.justice.gov/eoir/office-chief-immigration-judge-0 ("In certain circumstances, an alien detained by the Department of Homeland Security (DHS) can be released from custody upon the payment of bond. Initially, the bond is set by DHS. Upon the alien's request, an Immigration Judge may conduct a 'bond hearing,' in which the Immigration Judge has the authority to redetermine the amount of bond set by DHS").

[8] *Id.*

[9] INA § 236(c).

[10] *See Jennings v. Rodriguez*, 138 S. Cт. 830, 838 (2018).

[11] EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, U.S. DEPARTMENT OF JUSTICE, Immigration Court Practice Manual, at 146, Nov. 2, 2017, *available at* https://www.justice.gov/eoir/office-chief-immigration-judge-0 ("If the alien is eligible for bond, the Immigration Judge considers whether the alien's release would pose a danger to property or persons, whether the alien is likely to appear for further immigration proceedings, and whether the alien is a threat to national security.").

[12] Rebecca Scholtz & Michelle Mendez, *A Guide to Obtaining Release From Immigration Detention*, CLINIC, 2018, *available at* https://cliniclegal.org/resources/bond-guide; *Representing Clients in Bond Hearings: An Introductory Guide 7*, Immigrant Legal Resource Center, Sept. 15, 2017, *available at* https://www.ilrc.org/representing-clients-bond-hearings-introductory-guide.

[13] INA § 236.

[14] An Immigration Judge's bond determination may be appealed to the Board of Immigration Appeals. *See* 8 C.F.R. § 1003.1(b)(7). However, lengthy case adjudication times can render this remedy ineffective, as the noncitizen will remain in custody during the period that the appeal is pending, and his or her removal proceedings will continue. Often, the appeal is rendered moot due to the events that occur in the removal proceedings while the bond appeal remains pending.

[15] 80 Fed. Reg. 59499 (Oct. 1, 2015), *available at* https://www.federalregister.gov/documents/2015/10/01/2015-24016/separate-representation-for-custody-and-bond-proceedings.

[16] Immigrant Legal Resource Center, *Representing Clients in Bond Hearings: An Introductory Guide*, at 4, Sept. 15, 2017, *available at* https://www.ilrc.org/representing-clients-bond-hearings-introductory-guide ("Note that the E-28 includes a box where you must indicate whether you are entering your appearance for all proceedings, the custody proceeding only, or all proceedings other than custody and bond proceedings").

[17] *See Part III.D.i. Table E1. Representation in Bond and Removal.*

[18] This category does not reflect 100% of the cases. The reason for this is that not all of the bond hearings were resolved. The immigration judge postponed many of the bond hearings and the observation team was unable to follow all of the cases to obtain the ultimate result. Furthermore, some of the people elected deportation rather than continue to seek bond and remain detained.

[19] DHS Office of Inspector General, ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards, Jan 29, 2019, *available at* https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf.

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] CLINIC released a resource, available in English and Spanish, on tips and the bond refund process. Michelle Mendez, *Immigration Bond: How to Get Your Money Back*, CLINIC, *available at* https://cliniclegal.org/resources/immigration-bond-how-get-your-money-back. Stanford Law School Immigrants' Rights Clinic, University of California Davis School of Law Immigration Law Clinic, and CLINIC issued a factsheet summarizing how those who have bonded out of ICE detention may reclaim their bond money. English and Spanish versions of the factsheets are available at https://cliniclegal.org/resources/factsheet-right-reclaim-your-immigration-bond-money.

[25] Not being able to find someone to serve as the obligor on the bond prompts some families to seek help anywhere meaning someone the family does not know well, which leads to other problems. Meagan Flynn, ICE is holding $204 million in bond money, and some immigrants might never get it back, THE WASHINGTON POST, April 26, 2019, *available at* https://www.washingtonpost.com/immigration/ice-is-holding-204-million-in-bond-money-and-some-immigrants-might-never-get-it-back/2019/04/26/dcaa69a0-5709-11e9-9136-f8e636f1f6df_story.html.

[26] TRAC Immigration, Judge Elizabeth A. Kessler FY 2013 - 2018, Baltimore Immigration Court, *available at* https://trac.syr.edu/immigration/reports/judgereports/00011BAL/index.html?sms_ss=twitter.

[27] INA § 236(a)(2)(B).

[28] *See Rivera v. Holder*, 307 F.R.D. 539 (W.D. Wash. 2015).

[29] INA § 236(c). (". . . may release the alien on . . . bond of at least $1,500 . . ."). Additionally, INA § 236(a)(2)(B) expressly authorizes conditional parole.

[30] A lack of criminal charges or a police report raises the specter that the arrest occurred for pre-textual deportation purposes or as the result of racial profiling, as the immigration court will generally only consider the civil immigration violations and not whether the arrest was constitutional. *See INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984) (holding that the exclusionary rule does not apply to suppress evidence of "garden variety" Fourth Amendment violations in immigration proceedings), *cf. Elkins v. United States*, 364 U.S. 206 (1960) (holding that the "silver platter doctrine," a practice that allowed evidence turned over to federal officials by state officials who obtained the evidence by means of an illegal search, violated the Fourth Amendment of the Constitution); *see also Sanchez v. Sessions*, 885 F.3d 782 (4th Cir. 2018) (holding that the likely additional deterrent value of applying the "full" exclusionary rule, as opposed to the "egregious violation" rule to stops by state and local officers is not "appreciable or substantial enough to justify its application given the combined effect of the 'egregious violation' rule and our recent holding in *Santos v. Frederick County Board of Commissioners*, 725 F.3d 451 (4th Cir. 2013)").

[31] In this case, the respondent appealed both the bond denial and the immigration judge's subsequent denial of asylum and related relief. The BIA misplaced the respondent's brief appealing the denial of asylum and related relief, which led to an erroneous dismissal of the case. That erroneous dismissal led the BIA to also erroneously render the bond appeal moot. While counsel worked to rectify the BIA's mistake and confer with ICE, the respondent was nearly deported.

[32] Laila L. Hlass & Rachel Prandini, *Deportation by Any Means Necessary: How Immigration Officials Are Labeling Immigrant Youth as Gang Members*, at 6, Immigrant Legal Resource Center, 2018, *available at* https://www.ilrc.org/deportation-by-any-means-necessary.

[33] Nermeen Arastu, et al., *Swept up in the Sweep: The Impact of Gang Allegations on Immigrant New Yorkers*, New York Immigration Coalition, May 2018, available at www.thenyic.org/sweptup.

[34] The project observed most bond hearings during the time frame of this project, but because of scheduling conflicts was unable to attend and observe every bond docket.

[35] Historically, the Baltimore Immigration Court posted in the hallway docketing sheets that included the respondents' names, full alien numbers, and attorneys of record, if any, under the assigned immigration judge. When this project began, the court staff provided observers a courtesy copy of the detained docket list. However, on March 6, 2017, the DHS attorney assigned to that day's detained docket complained to the immigration judge that the project should not receive the docketing sheet. The Baltimore Immigration Court subsequently ceased including the full alien numbers on the hallway posting and providing our observers a courtesy copy of the detained docket list. The project requested EOIR review of this decision, but there was no resolution by then Assistant Chief Immigration Judge Deepali Nadkarni. The project's emails to the then Deputy Chief for the EOIR Communications and Legislative Affairs Division (CLAD) went unanswered.

[36] *Supra* note 1.

[37] *See, e.g., Hernandez v. Sessions,* 872 F.3d 976 (9th Cir. 2017).

[38] INA § 208.

[39] U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY, I-589, Application for Asylum and for Withholding of Removal, June 28, 2017, *available at* https://www.uscis.gov/i-589.

[40] INA § 245.

[41] 8 C.F.R. § 1003.19(d).

[42] INA § 240A(a).

[43] INA § 240A(b)(1).

[44] INA § 221.

[45] *See* Memorandum from Janet Napolitano, Secretary, U.S. Department of Homeland Security, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children to David V. Aguilar, Acting Commissioner, U.S. Customs and Border Protection, et. al, (June 15, 2012), *available at* https://www.dhs.gov/publication/exercising-prosecutorial-discretion-respect-individuals-who-came-united-states-children.

[46] U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY, Approximate Active DACA Recipients: Country of Birth As of April 30, 2019, *available at* https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/Approximate_Active_DACA_Recipients_-_Apr_30_2019.pdf; Press Release, Attorney General Brian E. Frosh, Attorney General Frosh Joins DACA Lawsuit Against Trump Administration, *available at* http://www.marylandattorneygeneral.gov/press/2017/091117a.pdf

[47] U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY, Number of I-821D, Consideration of Deferred Action for Childhood Arrivals by Fiscal Year, Quarter, Intake, Biometrics and Case Status: 2012-2018, (January 31, 2018), *available at* https://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-i-821d-deferred-action-childhood-arrivals.

[48] *Regents of the University of California v. U.S. Dep't of Homeland Security*, No. 3-17-cv-05211 (N.D. Cal.); *Batalla Vidal, et al. v. Nielsen, et al.,* 1:16-cv-04756 (E.D.N.Y.); *NAACP v. Trump, et al.,* 1:17-cv-01907 (D.D.C.); *Trustees of Princeton University, et al. v. United States of America, et al.,* 1:17-cv-02325 (D.D.C.).

[49] Although only noncitizens may be legally deported, the DHS has deported U.S. citizens in error. Meredith Hoffman, *The US Keeps Mistakenly Deporting Its Own Citizens*, VICE NEWS, March 6, 2018, available at https://news.vice.com/article/the-us-keeps-mistakenly-deporting-its-own-citizens.

[50] INA § 203.

[51] U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY, Chapter 23 - Adjustment of Status Under NACARA, Adjudicator's Field Manual, *available at* https://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-8624/0-0-0-10328.html ("NACARA, a limited provision which provides relief in the form of lawful permanent residence to certain Nicaraguan and Cuban nationals, was signed

into law on November 19, 1997").

[52] U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY, Special Immigrant Juveniles, April 10, 2018, *available at* https://www.uscis.gov/green-card/sij.

[53] INA § 244.

[54] Robert Warren & Donald Kerwin, *A Statistical and Demographic Profile of the US Temporary Protected Status Populations from El Salvador, Honduras, and Haiti 578*, Center for Migration Studies, 2017, *available at* https://cmsny.org/publications/jmhs-tps-elsalvador-honduras-haiti/.

[55] *Saget v. Trump*, No. 18-cv-01599 (E.D.N.Y.) (enjoining the termination of TPS for Haiti, pending a final decision on the merits of the case); *Ramos, et al. v. Nielsen, et al.*, No. 18-cv-01554 (N.D. Cal. Oct. 3, 2018) (enjoining DHS from implementing and enforcing the decisions to terminate TPS for Sudan, Nicaragua, Haiti, and El Salvador, pending further resolution of the case); *Bhattarai v. Nielsen*, No. 19-cv-731 (N.D. Cal) (requiring USCIS to extend appropriate TPS-related documentation (Employment Authorization Documents; Forms I-797, Notice of Action; and Forms I-94, Arrival/Departure Record) for eligible beneficiaries of Honduras and Nepal).

[56] INA § 101 (a)(15)(T).

[57] INA § 101(a)(15)(U).

[58] INA § 204.

[59] INA § 212(h).

[60] INA § 241(b)(3).