

RESTORING DUE PROCESS

HOW BOND HEARINGS UNDER *RODRIGUEZ* v. *ROBBINS*
HAVE HELPED END ARBITRARY IMMIGRATION DETENTION

DECEMBER 2014



In *Rodriguez v. Robbins*, the American Civil Liberties Union represents a class of noncitizens who have been incarcerated for six months or longer in the Los Angeles area while they litigate their immigration cases, and who have been denied a constitutionally-adequate bond hearing to determine whether their prolonged detention is justified. In the past three years, the ACLU has won important rulings that have required the government to provide bond hearings to class members—their first meaningful opportunity to seek release and return to their loved ones during the lengthy time it can take for their cases to wind their way through the immigration court process.

The government has conducted thousands of bond hearings for class members under the court’s orders over the past three years. Based on data produced by the government, this report presents statistics on the outcomes of class members’ bond hearings during an 18-month period, from October 2012 to April 2014. The report provides the first comprehensive examination of *Rodriguez* bond hearings, and provides important insight into the implementation of the court’s orders and the immigration detention system more generally.

As documented herein, immigration judges have found that the overwhelming majority of class members should be released on bond or other conditions of release. Thus, their prolonged detention—at great personal cost to themselves and their families and massive financial cost to taxpayers – was unnecessary.

FINDINGS

Analysis of bond hearing data demonstrates the following major findings:

- Immigration judges found that the vast majority of class members—approximately 7 out of 10—warranted release on bond or other conditions of release (Figure 1)
- Immigration judges rarely order class members released on conditions other than bond, despite the court’s order to consider such conditions of release (Figure 5)
- From October 2012 to April 2014, approximately 700 class members were released as a result of a *Rodriguez* hearing (Figure 2)

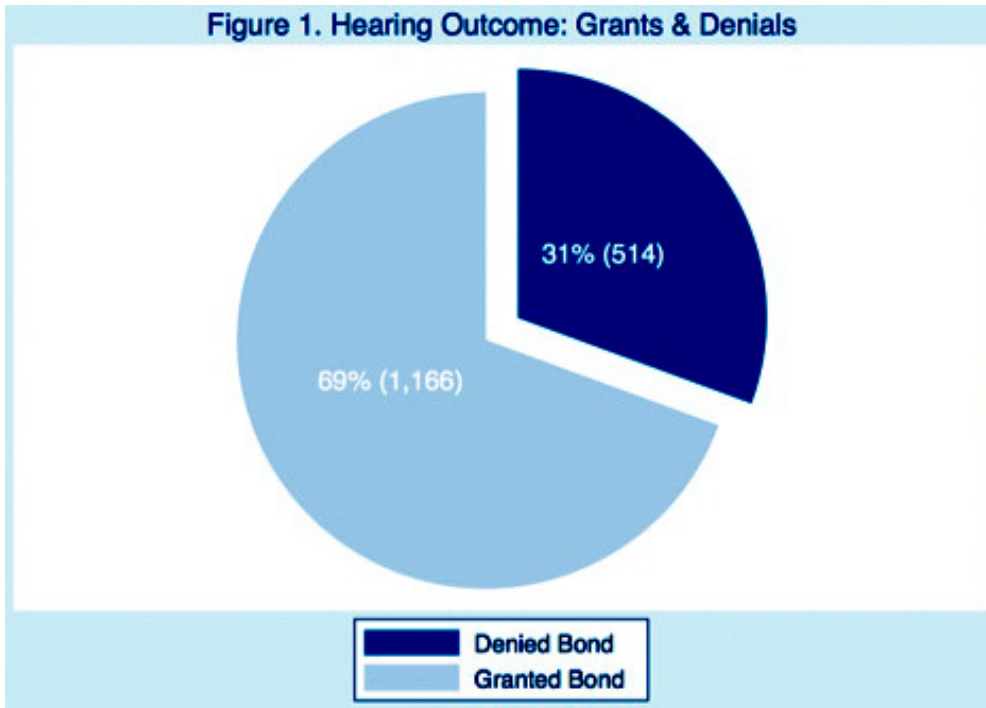
METHODOLOGY

All the data reported herein was drawn from databases maintained by the government. Pursuant to court order, the government is required to file periodic status reports with data regarding the conduct of *Rodriguez* bond hearing for each class member, including whether the class member was granted release on bond or other conditions, the outcome of any appeal of the bond decision, and whether the class member posted bond and was released. This report presents aggregate data drawn from the government reports covering the 18-month period from October 2012 to April 2014.

ACKNOWLEDGEMENTS

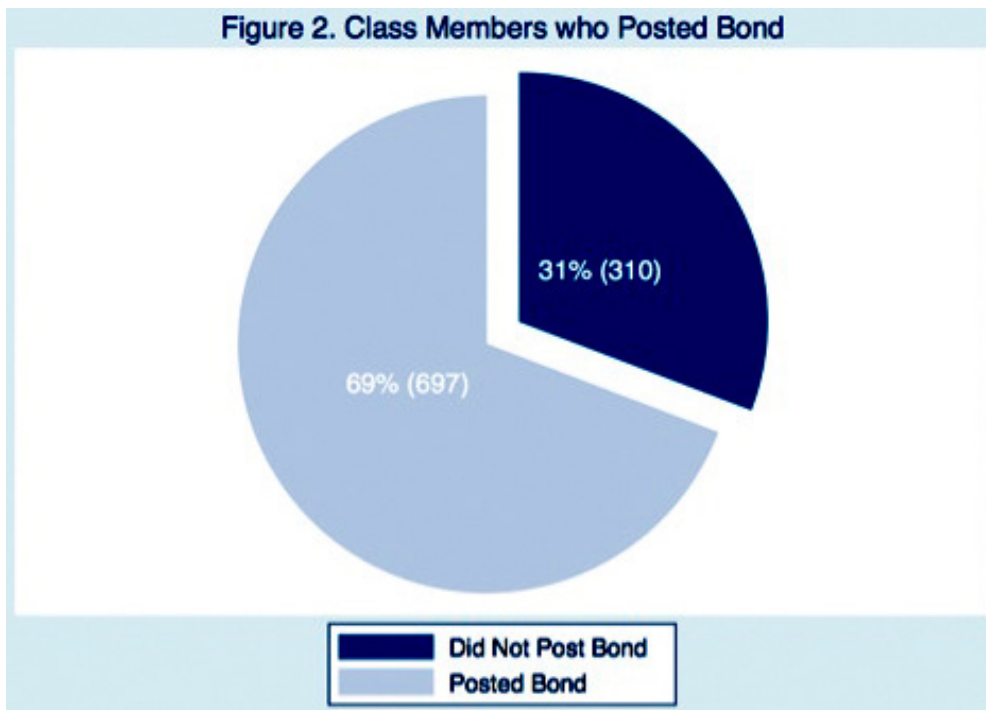
This report is authored by the ACLU of Southern California and ACLU Immigrants’ Rights Project, with the support of the Stanford Law School Immigrants’ Rights Clinic and Sidley Austin LLP. Data analysis was conducted by Dr. Emily Ryo, Assistant Professor of Law and Sociology, University of Southern California Gould School of Law, and Dr. Caitlin Patler, University of California President’s Postdoctoral Fellow, UC Irvine Department of Criminology, Law and Society.

OUTCOME OF BOND HEARINGS¹



From October 2012 to April 2014, approximately 1,680 bond hearings were conducted for *Rodriguez* class members in which an immigration judge made a determination whether the class member should be released on bond or other condition of release. In 69.4% [1166/1680] of cases, immigration judges found class members suitable for release.

CLASS MEMBERS WHO POSTED BOND²



Of the class members who were ordered released on bond and for whom the government provided information about whether the detainee posted bond, 69.2% [697/1007] posted bond and were released from detention. As of April 2014, a total of 697 people were released from detention as a result of a *Rodriguez* bond hearing, and 310 remained detained because they could not afford the amount of bond set.

¹ Figure 1 summarizes data on bond hearings in which the class member was ordered released on bond (in some amount) or other conditions of release, or was denied release. The chart omits bond hearings in which the outcome was reported as “no jurisdiction,” “continued/rescheduled” or “no action – released.”

² The government status reports do not report posting data for all class members ordered released on bond. Accordingly, the total number of class members in this chart is less than the number who were granted bond in Figure 1.

CASE STUDY: MEET MARK

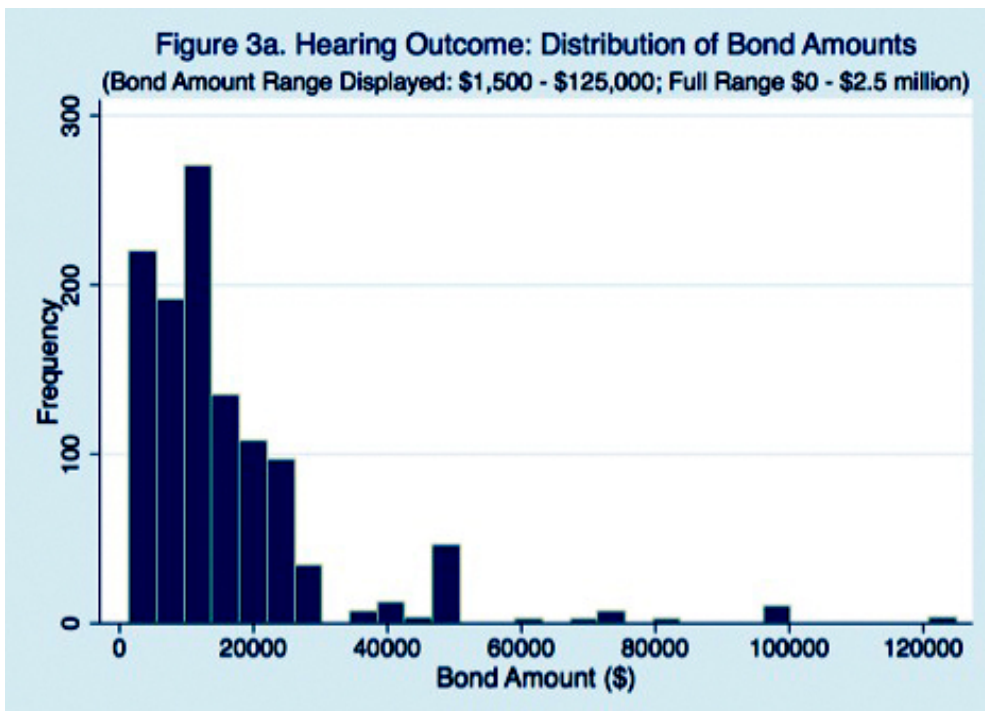
Mark had just returned to his home in Orange County from the hospital with his newborn twin daughters, who had been born prematurely, when he was arrested by ICE in March 2013. He had arrived in the U.S. from South Korea at the age of 9, and had been a legal permanent resident since 1988. Nonetheless, the government arrested Mark and placed him in mandatory detention based on a single conviction -- marijuana possession with intent to sell -- from almost fifteen years prior. When he learned why he was being arrested, Mark was "shocked" and thought it "didn't make any sense": his conviction had been minor, he had done everything to comply with his sentence, and he had remained out of trouble since that time.

The government subsequently detained Mark at Adelanto Detention Facility, leaving his U.S. citizen wife Sarah alone to care for their newborns and 2 year old son, as well to run their logistics and shipping business. Being detained was extremely stressful for Mark. He was unable to see his family for long periods, and even when they visited, he couldn't hold his children. He also tried to get his conviction vacated, but was unable to appear at any court hearings due to his detention. Finally, after six months of detention, in July 2013 he was given a *Rodriguez* hearing and ordered released on a \$9,000 bond. Mark later had his marijuana conviction vacated, and his removal proceedings were subsequently terminated in August 2014.



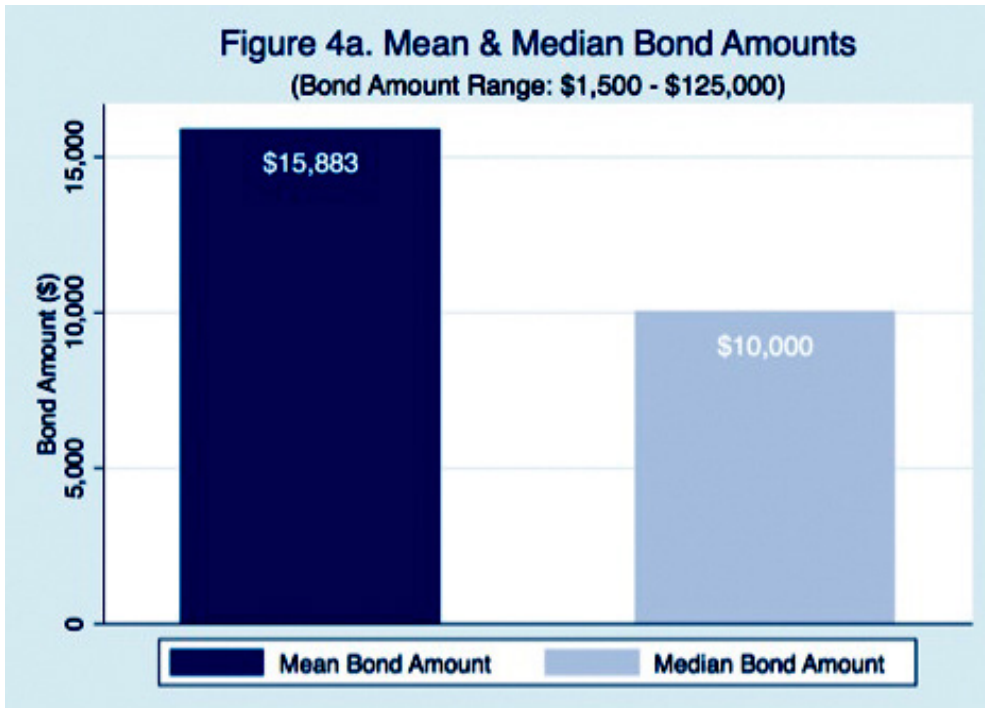
Mark is now applying for citizenship and says that since his release, he has been very involved with his church and community, and shares the story of his difficult journey as often as he can. "If it wasn't for the *Rodriguez* bond," he said, "I don't know what would have transpired. I was about to give up and sign deportation papers." Instead, he was able to win his freedom and ultimately his case, and now can live comfortably and plan for his family's future.

BOND AMOUNTS³



³ Figure 3a presents the distribution of bond amounts ordered for class members between \$1,500 and \$125,000. Figure 3a omits approximately 18 bond hearings (8 in which the amount of bond set was \$0, and 10 in which the amount was greater than \$125,000). Figure 3a's narrowed range allows it to present a more detailed distribution of bond amounts.

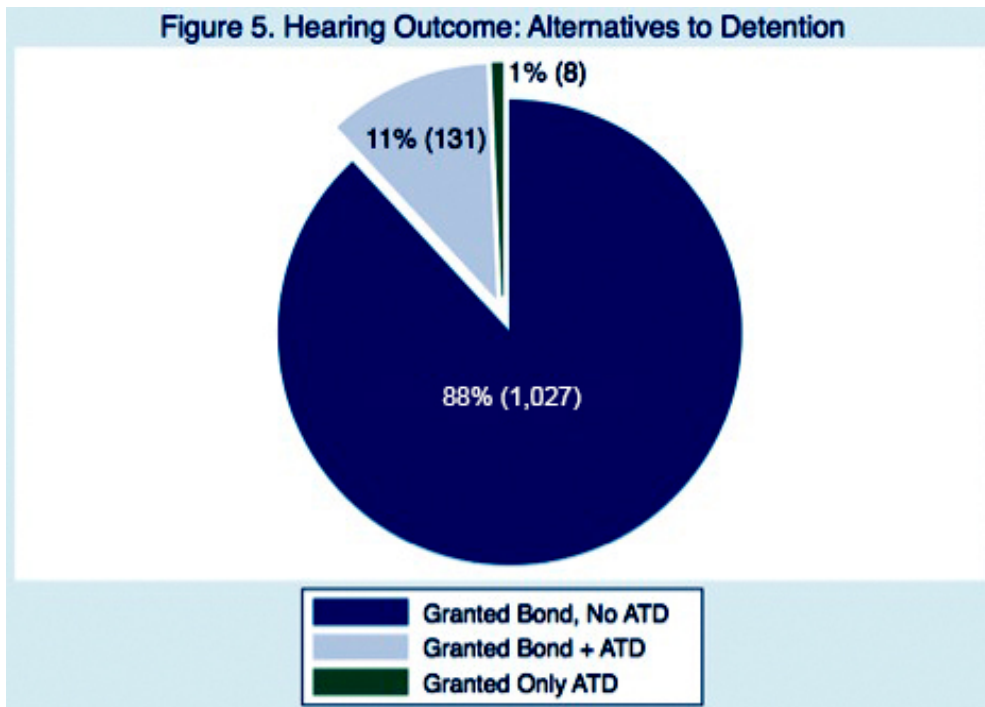
MEAN AND MEDIAN BOND AMOUNTS⁴



Of class members who received a bond amount between \$1,500 and \$125,000, the median bond amount was \$10,000—that is, more than half received a bond amount of \$10,000 or less. The average bond amount for class members was \$15,883.

If the full range of bond amounts is included – including the class members who received extremely high bond amounts in excess of 125,000 – the average bond amount increases to \$20,372, while the median bond amount remains \$10,000.

ALTERNATIVES TO DETENTION



“Alternatives to Detention” refers to conditions of release besides bond. Despite the fact that the court in *Rodriguez* ordered immigration judges to consider whether class members could be released on such conditions, immigration judges only ordered them in 11.7% (136/1162) of cases, and only ordered release on Alternatives alone—without also ordering a bond—in less than 1% of cases (6/1026).

⁴ Figures 4a presents the mean and median bond amounts for class members corresponding to the figures reported in Figures 3a. Because Figure 3a is limited to bond amounts between \$1,500 and \$125,000, Figure 4a reports the mean and median bond amounts for bonds set within those ranges.

CASE STUDY: MEET SOLEDAD

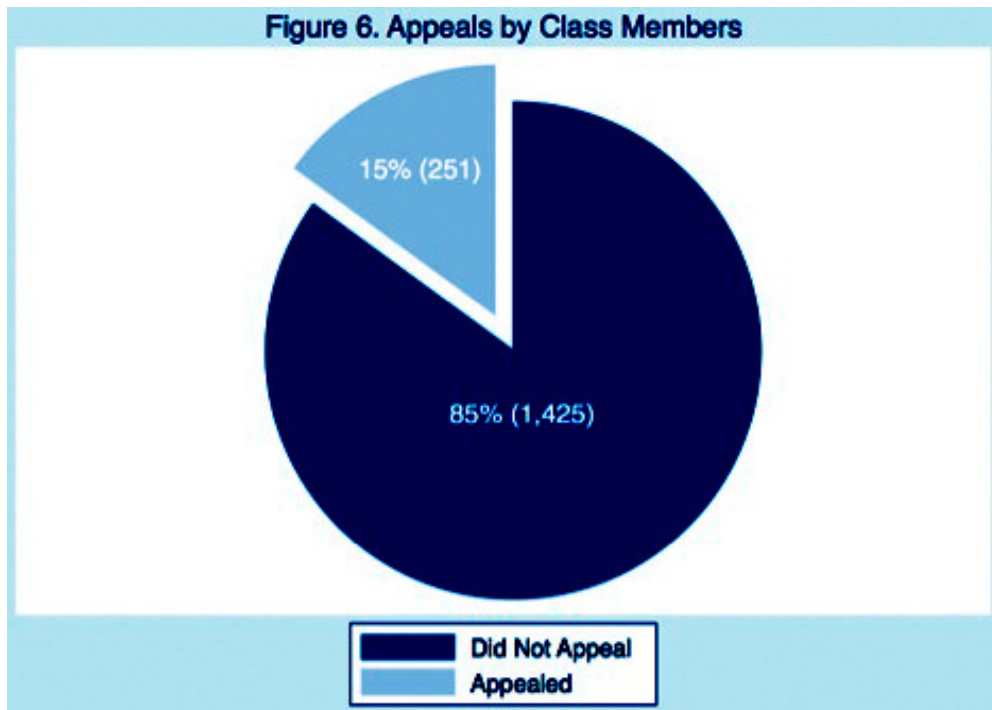
Soledad, 58, originally came to the U.S. in 2007 fleeing decades of physical and psychological abuse by her husband, as well as rampant violence in Mexico that resulted in the murder of two of her three sons. Despite the persecution she suffered, Soledad was repeatedly deported without being provided an opportunity to seek protection under the asylum laws. In 2010, after returning from Mexico to visit the dying aunt who raised her, Soledad was convicted of illegal reentry and was sentenced to 10-months in federal prison. After she completed her sentence in April 2012, she was transferred to ICE custody and detained at the West County Detention Facility in Richmond, California, where she remained for over a year while she applied for asylum.

While she was detained, Soledad suffered from lack of treatment for her serious health issues--diabetes, liver cirrhosis, and depression. The worst part for her, however, was that she could not care for her only surviving son Roberto, who was hospitalized due to severe intestinal issues and the compounding stress of her prolonged detention. She felt "worried to death" that she was about to lose her last remaining family member.



Soledad repeatedly asked immigration officers to release her, whether on a bond or an ankle monitoring device, for just a few days so she could be with him, but they refused. In July 2013, Soledad finally received a bond hearing under *Rodriguez* and was released on a \$5,000 bond. Were it not for *Rodriguez*, she would still be detained awaiting the resolution of her case. Instead, she lives with and cares for her son, and has been able to seek therapy and other treatments for her own health issues.

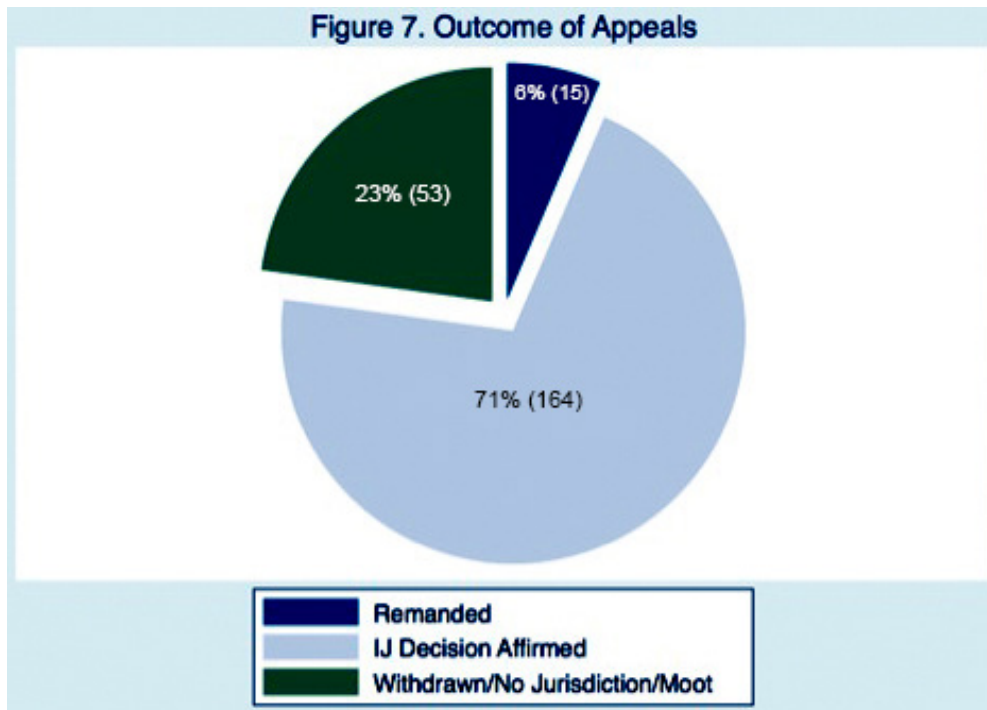
APPEALS TAKEN⁵



Class members appeal bond decisions to the Board of Immigration Appeals ("BIA") in approximately 15% of cases.

⁵ Figure 6 presents data on appeals taken by class members. According to the government's status reports, the government only produced information on appeals taken by class members. Therefore, this table summarizes no data on appeals taken by the government.

APPEALS OUTCOMES⁶



The BIA rarely reversed an immigration judge's decision in cases in which a class member appealed. The BIA "remanded" bond determinations (which may indicate a reversal, but could also indicate some other error that does not necessarily reflect that the judge's decision was incorrect) in only 6% of cases (15/232). In all other cases, the BIA affirmed the immigration judge's decision. Thus an immigration judge's bond decision typically represented the final determination as to whether a class member would be released while their case remains pending.

⁶ Figure 7 presents the outcomes of appeals taken by class members. The category "Remanded" refers to cases in which the outcome was reported as "remanded." The category "IJ Decision Affirmed" includes cases in which the outcome was reported as "dismissed," "affirm decision," "summary affirmance," "sustain," or "dismiss appeal/affirm IJ decision." The category "Withdrawn/No Jurisdiction/Moot" includes cases in which the outcome was reported as "withdrawn/appeal withdrawn," "lacks

jurisdiction," "moot bond," "pending" or "other." Figure 1 summarizes data on bond hearings in which the class member was ordered released on bond (in some amount) or other conditions of release, or was denied release. The chart omits bond hearings in which the outcome was reported as "no jurisdiction," "continued/rescheduled" or "no action – released."

