[redacted]

DETAINED

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
FT. SNELLING, MINNESOTA

In the Matters of:

[redacted]

In removal proceedings

File No. A [redacted]

Immigration Judge Ryan Wood

Next Hearing: [redacted] **2018 at 1:00 PM**

RESPONDENT'S BOND PACKET

[redacted] (A No.: [redacted])

CERTIFICATE OF SERVICE

I, [redacted], certify that on [redacted] 2018 I served by hand, a complete copy of the **Respondent's Bond Packet** on the Office of Chief Counsel for the Department of Homeland Security by hand delivery to the following address: Bishop Henry Whipple Federal Building, 1 Federal Drive, Suite 1800, Fort Snelling, MN 55111.

[redacted]

[redacted]
Date

In the Matter of: [redacted]

A [redacted]

INDEX

All documents, articles and publications retrieved from the internet include, on the initial page, the URL where the full document may be retrieved.

[redacted]

DETAINED

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
FT. SNELLING, MINNESOTA

In the Matters of: [redacted]	**File No. A** [redacted]
In removal proceedings	

Immigration Judge Ryan Wood **Next Hearing:** [redacted]

RESPONDENT'S PRELIMINARY MEMORANDUM OF FACTS, POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION FOR BOND

INTRODUCTION

Respondent's criminal record prior to her [redacted] 2018 arrest was limited to charges in Minnesota for driving permit-related traffic offenses which were both petty misdemeanors (*see,* pp C-1, C-2). Respondent now faces charges (which to the undersigned's knowledge have not yet been filed) resulting from her arrest in Bloomington, MN on allegations of gross misdemeanor 5th degree drug possession, DWI, open bottle, and traffic violations. To obtain release from ICE custody, Respondent is forced to bear the burden of proving to the Court that she is not a danger to society and that she is not a flight risk. To meet that burden, Respondent must necessarily testify regarding the only facts where the Government might colorably argue dangerousness – namely, the facts surrounding her [redacted] 2018 arrest and the as-yet-unfiled charges connected with that arrest.

A bond hearing that places the burden of proof on Respondent to demonstrate that her release would not pose a danger to society and that she is not a flight risk fails to comply with the minimum requirements of the Due Process Clause of the Fifth Amendment. This is particularly so when the detainee is facing potential criminal charges, where testimony by the detainee about the circumstances of those charges would effectively require the immigration detainee to waive her right against self-incrimination and could in addition have profoundly severe consequences for her future immigration status. Furthermore, a correct reading of 8 U.S.C. § 1226(a) requires the government to bear the burden of proof in immigration bond hearings.

That said, as discussed below it is clear that Respondent is not a danger to persons or property, nor is she a flight risk.

Finally, if the court determines that Respondent is eligible for release and requires the posting of a monetary bond, the court should consider Respondent's ability to pay any such bond; and the court should not address the merits of any potential immigration relief that may be available to Respondent.

FACTS

Respondent is alleged to be a Mexican national who arrived in the US as a child in or about 2005, at an unknown location. She has lived here for more than 10 years. She has a US citizen daughter, [redacted] (*see,* p. D1), [redacted] younger US citizen siblings (*see,* pp.

D2-D3), and a sister with DACA status. Respondent has valid DACA status, with her most recent application having been approved by US CIS on [redacted] 2017, Receipt No. [redacted] (*see,* I-213, p. 3 of 3). Respondent's former boyfriend, who is Sarai's father, and Respondent's sister have submitted letters attesting to her character as a long-standing friend, loving mother, and non-violent person. (*see* pp. B1-B3).

Respondent came into Immigration and Customs Enforcement custody in connection with her arrest on [redacted] 2018 in Bloomington, MN on allegations of gross misdemeanor 5th degree drug possession[1], DUI, open bottle, and instruction permit violations (*see,* pp. C3–C9)

Following her arrest and booking, Respondent was released pending charges (*see,* I-213, p. 2 of 3). However, ICE had issued a detainer and took custody of Respondent on [redacted] 2018. (*Id.*). As of [redacted] 2018, based upon a review of the MnCIS website, no charges have yet been filed in connection with her November arrest.

Prior to her arrest in [redacted] 2018, Respondent's only other encounter with Minnesota law enforcement were two charges involving violation of her learner's permit, both petty misdemeanors (*see*, pp. C1-C2). Respondent has a fixed residence in Minnesota (*see,* I-213, p. 1 of 3). She is a high school graduate, has received a certification as a Nursing Assistant / Home Health Aide and has recently worked in that field at a [redacted] care center (*see* p. D4), and has received more than 250 hours' training in the fields of workplace essentials, business and computer applications, and medical office support. (*see* pp. D5-D7).

ARGUMENT

An alien may be released on bond under INA §236(a) if the court finds that (1) she is not a threat to national security; (2) her release would not pose a danger to property or persons; and (3) she is likely to appear for any future proceedings. *Matter of Guerra*, 24 I&N Dec. 37, at 38, 40; *Matter of Adeniji*, 22 I. & N. Dec 1102, 1112-13 (BIA 1999). In *Matter of Adeniji*, the Board of Immigration Appeals held for the first time that the burden of proof in bond proceedings falls on the detainee to demonstrate "to the satisfaction of the Immigration Judge" that she or she "does not present a danger to property or persons." 22 I. & N. Dec. at 1113. In Parts III and IV below

[1] Some portions of the police report indicate that the arrest was for felony possession; the I-213 states that the arrest was for gross misdemeanor possession (*see,* I-213, p. 3 of 3). The facts alleged in the police report are not clear as to whether the charges, if ultimately brought, would be for a felony or a gross misdemeanor under Minn. Stat. §152.025, subd. 4.

Respondent submits that this burden-shifting is an unconstitutional violation of due process and results from an erroneous reading of the INA, both in the context of this particular case, and generally.

Nonetheless, subject to these objections, Respondent submits that she is eligible for a bond in this case. Respondent further submits that, should the court determine she is eligible for bond, the court should consider Respondent's ability to pay the bond and indeed the court should consider the possibility of releasing Respondent without monetary bond, subject to appropriate conditions.

I. Respondent Is Not a Danger to Persons or Property.

The following argument (and the police report included at pp. C4-C9) is offered subject to Respondent's objections, set forth in Sections III and IV of this memorandum, regarding the impropriety of placing the burden of proof regarding dangerousness on detainees, especially with regard to pending criminal charges.

There is nothing in the current record suggesting Respondent is a national security risk, or that she presents a danger to persons or property. Certainly, since the holding in *Matter of Siniauskas*, 27 I&N Dec. 207 (BIA 2018), a DUI arrest can be considered a "significant adverse consideration" in determining dangerousness; however the BIA in that case reaffirmed the principle, outlined in *Matter of Guerra,* that the court should consider all relevant factors including how extensive, recent, and serious the alien's proven or alleged criminal activity is. *Matter of Siniauskas*, 27 I&N Dec. at 208-09, citing *Matter of Guerra,* 24 I&N Dec.37, 40 (BIA 2006).

The arrest on [redacted] s Respondent's first significant encounter with law enforcement after living [redacted] years in the U.S. Respondent's alleged behavior on [redacted] does not suggest in any way that she has an ongoing issue with driving under the influence, causing accidents or other property damage, or injuring other people. Respondent's former boyfriend states that Respondent "does not abuse drugs or alcohol[; she] just made mistakes." (*See,* p. B1). Mr. Siniauskas, in contrast, had three prior DUI convictions in addition to the arrest that led to his immigration detention. Three of Mr. Siniauskas' DUIs, including his most recent one, involved traffic accidents. *Matter of Siniauskas*, 27 I&N Dec. at 208.

That said, Respondent does not in any way intend to minimize the significance of the conduct alleged in connection with her [redacted] arrest. She fully intends to give up driving and willingly submitted to a "Rule 25" chemical health assessment on [redacted] 2018. The assessor, Kyle Lipinski, LADC, summarizes her findings as follows:

> The client is highly motivated to seek treatment, and appears to be aware of ways in which she could improve her overall quality of life as well as ways in which she could prevent her self from becoming a victim of domestic abuse at this time. She appears high ly motivated for treatment, as evidenced by the fact that she asked the writer questions about establishing emotional boundaries throughout the assessment. These questions were related to a book she checked out of the library entitled, "Boundaries", and were less ons she was trying to take to heart. The client at this time is recommended to attend medium intensity outpatient treatment for substance use at a program that has a mental health component. She is also encouraged to follow through with the request she made for seeking support from a counselor to learn how to become a "strong woman". The client is encouraged to attend treatment as a means of learning her emotional triggers, and developing coping skills to aid her in learning how recognize patterns in her life that have lead [sic] to
> use. She is also encouraged to attend treatment to develop a sober supportive community outside of her family to aid her in establishing emotional support that will aid her in achieving her goals of becoming a CNA [certified nursing assistant].

(*see,* p. B19). Respondent commits that she will follow the recommendations and treatment plan developed by Ms. Lipinski. In meeting with the evaluator, Ms. Lipinski, Respondent showed that she was "highly motivated to change," "eager to attend treatment," and "expressed a desire for support and education that will allow her in improving her overall mental health to aid her in continued sobriety." (*see,* p. B13). Respondent realizes that she has responsibility to take care of, and to set a good example for, her 10-year-old daughter – who, according to her father and aunt, cries about Respondent's absence daily (*See,* pp. B1-B3). Respondent has a loving and attentive family who are committed to making sure that Respondent does not use drugs or alcohol, and who will make sure Respondent does not get behind the wheel of a vehicle. Respondent's sister has promised to "help her get around when she needs to…, help her get to courts when needed…and help her stay sober." (*See,* p. B3). Her former boyfriend, Mr. [redacted] has promised to "help her stay in the right path". (*See,* p. B1). In addition the Rule 25 evaluator, Ms. Lipinski, confirmed her continuing availability

> …to ensure that the client follows through with these recommendations by aiding her in connecting with free counseling for mental health as well as securing funding to attend an MICD (mental illness chemical dependency) outpatient treatment program.

(*see*, p. B16). Given the determination that Respondent has shown in attending and graduating from high school while pregnant; obtaining advanced educational training; and in obtaining and renewing her DACA status, there is no reason to doubt that -- with the assistance of her family and Ms. Lipinski -- Respondent can show the same grit and determination to address the issues that led to her November 26 arrest.

II. Respondent Is Not a Flight Risk.

As discussed in the preceding sections, Respondent has lived in the US for more than 10 years and has current DACA status; she has a fixed address here; and she has a US citizen daughter, US citizen siblings, and a sister with legal status in the US. In addition, her daughter's father has status in the US. Beyond renewal of her DACA status when the time comes (assuming the program continues), Respondent in addition has a number of potential paths to permanent status in the US including non-LPR cancellation of removal, potential relief under INA §240B(b), and – based on her statement of a fear of returning to Mexico (*see* I-213, p. 3 of 3) – potential relief under statutes governing asylum, withholding of removal (INA §241(b)(3)(A)), and relief under the Convention Against Torture.[2] In addition, in her Rule 25 assessment, Respondent reported being in an emotionally abusive relationship with her then-current boyfriend (not Sarai's father). Further investigation into potential VAWA relief may be appropriate.

Respondent has not lived in Mexico since she was a pre-teen, and country conditions evidence (*see* pp. E12-E18) presents a terrifying picture regarding the current situation for immigrants deported to Mexico, particularly women and girls. Respondent has invested hundreds of hours in obtaining workforce training. Respondents' family members have promised to help her get to court. She clearly has every incentive to stay in the Twin Cities and work hard to adjust her immigration status and to address the potential charges against her in connection with her [redacted]2018 arrest. She is not a flight risk.

---

[2] It should be noted that, although an court may consider an individual's "potential eligibility for relief from deportation" in making a bond determination, the bond hearing is not an appropriate forum to litigate the merits of a case that will be presented in an individual hearing. *Matter of Andrade*, 19 I&N Dec. 488 (BIA 1987). "A respondent with a greater likelihood of being granted relief from deportation has a greater motivation to appear for a deportation hearing than one who, based on a criminal record or otherwise, has less potential of being granted such relief."

III. Interpreting U.S.C. § 1226(a) as Requiring the Detainee to Bear the Burden of Proving Eligibility for Release--Thus Creating a Presumption of Detention--Violates Due Process.

In *Matter of Adeniji*, 22 I. & N. Dec 1102 (BIA 1999), the Board of Immigration Appeals held for the first time that the burden of proof in bond proceedings under § 1226(a) falls on the detainee to demonstrate "to the satisfaction of the Immigration Judge" that he or she "does not present a danger to property or persons." 22 I. & N. Dec. at 1113. Respondent submits that this burden-shifting is an unconstitutional violation of due process, both in the context of this particular case, and generally.

A. Requiring Respondent to Bear the Burden of Proving Non-Dangerousness, with Respect to Pending Criminal Charges, Violates Respondent's Fifth Amendment Right Against Self-Incrimination.

The Fifth Amendment provides that "[n]o person…shall be compelled in any criminal case to be a witness against himself." *U.S. Const., amend. V. 3*. The privilege extends not only to answers that would in themselves support a conviction under a criminal statute, but also to answers "which would furnish a link in the chain of evidence needed to prosecute the claimant…" *Hoffman v. United States*, 341 U.S. 479, 486 (1951). The privilege is not limited to criminal proceedings, but may be asserted "in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory[.]" *Kastigar v. United States*, 406 U.S. 441, 444 (1972).

Immigration matters are of course civil, not criminal proceedings. Thus, an adverse inference ordinarily may be drawn against a person who has asserted the privilege in an immigration case. *See, Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976); *See, Gutierrez v. Holder*, 662 F.3d 1083, 1091 (9th Cir. 2011). However, under *Baxter*, adverse inferences in civil matters may be drawn from the defendant's assertion of Fifth Amendment rights only where the privilege was invoked: (1) in a civil proceeding and (2) in response to evidence offered against the person asserting the privilege. 425 U.S. at 318. Where the Government has the burden of proof in an immigration matter and the respondent as sole witness refuses to testify at all, or to answer questions, the Government cannot satisfy its burden, "in the absence of any substantive evidence ..., based solely upon the adverse inference drawn from... silence." *Matter of Guevara*, 20 I. & N. Dec. 238, 244 (BIA 1990). As the BIA noted in *Guevara*, "if the `burden' of proof were satisfied by a respondent's silence alone, it would be practically no burden at all." Id. at 244.

Here, because of the incorrect holding in *Adeniji*, it is not the Government, but Respondent, who supposedly has the burden of proof. This places Respondent in an impossible, almost Kafkaesque position:

(1) If she offers no proof or testimony whatsoever on the issue of dangerousness because of the risk of jeopardy in her potential criminal case, she will have preserved her Fifth Amendment rights and avoided any "adverse inference" risk; but she might well be held to have failed to meet her burden.

(2) If she does offer evidence on dangerousness, she must either completely avoid talking about the incident leading to her arrest (the only topic where there is even any hint of potential of dangerousness), or risk waiving her constitutional privilege. But if she tries to testify about dangerousness without talking about the "elephant in the room," this would again lead to a potential finding that she failed to meet her burden.

(3) Even if Respondent somehow successfully navigates these shoals, it is possible that the Government will argue that it has the right to cross-examine Respondent regarding the incident anyway, since it might argue that such questions bear on dangerousness. In response to such questions, Respondent must either waive her right against self-incrimination and testify in detail about the incident, or "take the fifth". If she takes the latter course, Respondent is subject to the risk of an adverse inference finding – potentially resulting, yet again, in a finding that Respondent failed to meet her burden.

This process, where Respondent is likely to lose no matter what she does, is the direct result of the erroneous placement of the burden on Respondent. It cannot possibly meet constitutional scrutiny. The only proper approach is to place on the Government the burden to prove, by clear and convincing evidence, that Respondent is a danger to society and/or a flight risk. Then Respondent would be in a position to address and question the evidence and witnesses presented by the Government, without necessarily having to waive her constitutional rights.

B. Requiring Respondent to Bear the Burden of Proving Non-Dangerousness Violates Respondent's Fifth Amendment Right to Due Process of Law.

The Due Process Clause "applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Civil detention "for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas*, 441 U.S. 418, 425 (1979). Restrictions on the right to liberty must accord with both procedural and substantive due process.

The Supreme Court's jurisprudence on civil "preventive" detention has firmly established "strict procedural safeguards" that must be in place in order to comport with due process. *See Hendricks* 521 U.S. at 368. Detention must be limited to a narrow class of particularly dangerous individuals. *Zadvydas,* 533 U.S. at 690-91 ("we have upheld preventive detention based on dangerousness only when limited to specially dangerous individuals...."); *Hendricks*, 521 U.S. at 357 (detention of "limited subclass of dangerous people"). There must be an individualized determination of the necessity for detention in an adversarial hearing. *Id.* And in that hearing, the government must bear the burden of proof by clear and convincing evidence that the individual poses a threat of *future* danger. *Addington* 441 U.S. at 431-32; *Foucha v. Louisiana*, 504 U.S. 71, 81-2 (1992). Finally, civil detention must be "strictly limited in duration," or it risks becoming punitive. *Salerno* 481 U.S. at 747; *Foucha*, 504 U.S. at 77, 82; *Hendricks*, 521 U.S. at 363.

The assignment of the burden of proof to the government, and insistence on a heightened standard of proof, play a key role in this framework. *See Addington* at 427 ("Increasing the burden of proof is one way to impress the factfinder with the importance of the decision and thereby perhaps to reduce the chances that inappropriate commitments will be ordered"). For example, in *Salerno* the Court upheld pre-trial detention where the government was required to prove by clear and convincing evidence that "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community." *Salerno*, 481 U.S. at 751; *see also Hendricks*, 521 U.S. at 353. In contrast, the Court has invalidated statutes that sought to place the burden of proof on the detained individual to establish eligibility for release. *Foucha*, 504 U.S. at 81–83 (striking down statute that placed burden on detainee to prove that she was not dangerous). In *Zadvydas*, the Court, relying on these precedents, found constitutionally suspect a separate immigration detention statute (8 U.S.C. § 1231(a)(6)) that the government argued authorized indefinite detention. 533 U.S. at 690. The Court emphasized the constitutional inadequacy of the available administrative custody review procedure, in which "the alien bears the burden of proving she is not dangerous," and only limited judicial review was available. *Id.* at 692.

The Board's interpretation, in *Adeniji*, of § 1226(a) contravenes the strict limits on civil detention that the Supreme Court has laid out. The burden of proof to justify detention is not on the government, but rests with the detained noncitizen, who must convince the immigration judge that she or she does not pose a danger to society if released. *Adeniji*, 22 I&N Dec. at 110.

By creating a presumption of detention –starting from the premise that the individual is dangerous—the law does not "apply narrowly to a small segment of particularly dangerous individuals" *Zadvydas* 533 U.S. at 691 (citing *Hendricks*, 521 U.S. at 368), whom the government has proven pose a "specific and articulable threat" of danger if released. *Salerno*, 481 U.S. at 751-52. Rather, the law sweeps broadly and encompasses "ordinary visa violators" as well as many others whose release would clearly pose no threat. *See Zadvydas* 533 U.S. at 697. By definition, § 1226(a) already excludes those noncitizens whom Congress determined should be subject to mandatory detention based on their criminal convictions. *See* 8 U.S.C. § 1226(c). Yet the Board has created a presumption of danger, and thus of detention for them as well. *See Matter of Urena*, 25 I. & N. Dec. at 141 (any finding of "potential danger" requires detention without bond, without consideration of whether some conditions of release would mitigate danger); *Matter of Siniauskas*, 27 I. & N. Dec. 207 (BIA 2018) (IJ may consider arrests as well as convictions, and "family and community ties generally do not mitigate an alien's dangerousness").

As interpreted by the Board, § 1226(a) is unconstitutional. It violates due process because it does not "apply narrowly to a small segment of particularly dangerous individuals." *Zadvydas* 533 U.S. at 691 (citing *Hendricks*, 521 U.S. at 368). There is no requirement from the Board that past arrests or allegations result in convictions in order to form the basis of a finding of dangerousness. Rather than requiring that the government prove "that no condition or combination of conditions will reasonably assure the…safety of any other person and the community" before holding an individual without bond, the Board requires detention without bond regardless of the existence of viable conditions of release. *See Salerno*, 481 U.S. at 742-43; *Matter of Urena*, 25 I. & N. Dec. at 141.

Not all courts have accepted the Board's expansion of detention to individuals that are not clearly dangerous. *See Tuan Thai v. Ashcroft*, 366 F.3d 790, 796-7 (9th Cir. 2004) (relying on *Zadvydas* to find detention of noncitizen based on danger not rising to the level of national security unlawful). Indeed in other areas of the INA, detention beyond six months is limited to noncitizens deemed "specially dangerous." *See* 8 C.F.R. §§ 241.14, *et seq.* (limiting detention beyond six months under 8 U.S.C. § 1231(a)(6) to individuals deemed "specially dangerous," and subject to heightened burden). It would be anomalous for the statute here, which applies to

categorically less dangerous individuals, to allow detention for an unspecified period of time without any heightened burden or subsequent process.

In other areas of immigration law, the standard of proof is "clear and convincing evidence." *See*, e.g., *Woodby v. INS*, 385 U.S. 276, 285 (1966) (clear and convincing evidence standard should be used for deportability); *Schneiderman v. U.S.*, 320 U.S. 118, 122 (1943) (clear and convincing evidence standard should be used for denaturalization); *In re Huang*, 19 I. & N. Dec. 749, 754 (BIA 1988) (once returning lawful permanent resident presents "colorable claim" to returning permanent resident status, government bears burden of proving abandonment by clear, unequivocal, and convincing evidence). The government should meet this standard of proof for all detention proceedings; including custody redetermination conducted under 8 U.S.C. § 1226(a).

Requiring the government to bear the burden of proof in bond hearings also satisfies the three-part balancing test in *Mathews v. Eldridge*. 424 U.S. 319, 333 (1976). First, in determining the adequacy of placing the burden of proof on detainees in § 1226(a) custody redeterminations, the Court must consider the private interest that is affected by the government's action. In this case, the interest of detainees is tremendous because their liberty is at stake. *See Roberts v. State of Me.*, 48 F.3d 1287, 1292–93 (1st Cir. 1995) (applying step one of the *Mathews* test and concluding that "[the petitioner's] interest in freedom from incarceration is certainly worthy of substantial due process protections") (citing *U.S. v. Salerno*, 481 U.S. 739, 750 (1987) and *Addington*, 441 U.S. at 423–25).

Second, the Court must consider "the risk of an erroneous deprivation of such interest through the procedures used." *Mathews*, 424 U.S. at 335. Considering the difficulty of a detained person obtaining the requisite criminal record documents from courts or law enforcement agencies, compounded by the fact that nearly half of all immigrants go through proceedings without an attorney, there is a high risk that an individual will be needlessly detained because she cannot obtain the evidence needed to meet her burden. *See* Department of Justice, FY 2015 Statistical Yearbook F1 (showing that, in cases adjudicated during 2015, 42% of noncitizens were unrepresented). Because the burden of proof is on the detainee, the needless detention of noncitizens who neither pose a danger to the community nor present a flight risk—"false positives"—is happening daily across the United States and exacting a toll on our society and on the lives of the detained non-dangerous individuals and their families. *See* Stephen H. Legomsky,

The Detention of Aliens: Theories, Rules, and Discretion, 30 U. MIAMI INTER-AM. L. REV. 531, 547 (1999) (describing how false positives in the context of detention generate needless costs, including "the deprivation of individual liberty, the inability to work, socialize, or travel, the isolation from friends, family, and community, the reciprocal losses of those from whom the detainees are cut off, the economic losses for those detainees who would otherwise have been permitted to work, and the increased public costs of providing detention, paying public assistance to the detainee's dependents in some cases, and foregoing the income tax revenue that the detained person's employment would have generated").

Third, the government's interests would not be negatively impacted by the additional process sought here—a government-borne burden of proof—because the government, a law enforcement agency, can much more easily obtain the criminal record evidence it needs to meet its burden than a detained non-citizen. *See* Mathews, 424 U.S. at 335; *see* also *Santosky v. Kramer*, 455 U.S. 745, 767 (1982) ("Unlike a constitutional requirement of hearings . . . or court-appointed counsel, a stricter standard of proof would reduce factual error without imposing substantial fiscal burdens upon the State. As we have observed, 35 States already have adopted a higher standard by statute or court decision without apparent effect on the speed, form, or cost of their factfinding proceedings."). The government is in the best position to establish the first and foremost factor of a bond hearing: dangerousness. *See Matter of Urena*, 25 I. & N. Dec. 140, 141 (BIA 2009) ("An Immigration Judge should only set a bond if he first determines that the alien does not present a danger to the community."). IJs determine dangerousness by reviewing records of conviction and police reports, documents that are at the government's fingertips but that are extremely difficult for detained immigrants to obtain. *De La Cruz*, 20 I. & N. Dec. at 361 ("[P]rior convictions, police reports, and other investigatory documents are, as a matter of course, used to show past histories of violence. From these objective sources, trial judges may infer a present danger to the community."); *see also Moncrieffe v. Holder*, 133 S. Ct. 1678, 1690 (2013) (noting that immigrant detainees "have little ability to collect evidence"). The government can much more easily obtain criminal record documentation from federal, state, and local law enforcement than a detained non-citizen, and so the government's interests would not be adversely impacted in a significant way. The balancing test under *Matthews*, and the requirements of due process in the civil detention context laid out elsewhere by the Supreme

Court indicate the of the Board's interpretation of 1226(a) violates due process by placing the burden of proof on the non-citizen.

IV. 8 U.S.C. § 1226(a) Requires the Government to Bear the Burden of Proof in Immigration Bond Hearings.

The isolated text of 8 U.S.C. § 1226(a) does not explicitly mention burdens of proof, but the only permissible reading of the statute places the burden of proof on the government to justify detention, and for two reasons. First, and most fundamentally, a contrary interpretation would be unconstitutional, or at a minimum raise grave constitutional concerns such that the doctrine of constitutional avoidance requires that § 1226(a) be read to require the government to bear the burden of proof to justify detention. Second, The *Adeniji* panel applied the wrong regulation to determine the applicable standards for a bond redetermination by an immigration judge.

A. § 1226(a) Must Be Read To Avoid an Unconstitutional Allocation of the Burden of Proof

Most fundamentally, § 1226(a) must be read consistent with due process. Respondent asserts the agency's reading of the statute and regulations violates due process, *see Section I, infra*. Alternatively, and at the very minimum, the agency's interpretation raises grave constitutional concerns. "[I]f an otherwise acceptable construction of a statute would raise serious constitutional problems, and where an alternative interpretation of the statute is fairly possible, [the court is] obligated to construe the statute to avoid such problems." *I.N.S. v. St. Cyr*, 533 U.S. at 299–300; *Jennings v. Rodriguez*, 138 S. Ct. 830, 836 (2018). The doctrine of constitutional avoidance requires that § 1226(a) be interpreted as placing the burden of proof on the government to avoid serious due process concerns presented by requiring the noncitizen detainee to prove her own eligibility for bond. Not only is an "alternative interpretation" of § 1226(c) "fairly possible," but its predecessor statute, § 1252(a), was actually interpreted in the manner proposed here by the agency and the courts for over forty years. *See Carlson v. Landon*, 342 U.S. 524, 530 (1952); *Matter of Patel*, 15 I. & N. Dec. 666; *Matter of Andrade*, 19 I. & N. Dec. 488 (BIA 1987). It was not until the Board's decision in *Matter of Adeniji* in 1999 that the Board reversed course and created a presumption of detention by requiring the noncitizen to bear the burden of proving that she or she does not pose a danger to society or risk of flight. 22 I. &

N. Dec. 1102. As discussed in the preceding section, this interpretation of § 1226(a) creates an unacceptable, and unconstitutional burden on Respondent.

B. *Adeniji* Applied the Wrong Regulation.

The *Adeniji* panel applied the wrong regulation to determine the applicable standards for a bond redetermination by an immigration judge. In holding that Mr. Adeniji had the burden of establishing her eligibility for release, the BIA claimed to have found support in 8 C.F.R. § 236.1(c)(8). 22 I. & N. Dec. at 1112; *see also* 8 C.F.R. § 236.1(c)(8) ("Any officer authorized to issue a warrant of arrest may . . . release an alien not described in section 236(c)(1) of the Act . . . provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.") (emphasis added). Although 8 C.F.R. § 236.1(c)(8) did place the burden of proof on the noncitizen, this regulation governed the initial custody determination of noncitizens made by the Immigration and Naturalization Service ("INS") (now DHS).

The regulation cited by the Board in *Adeniji*, 8 C.F.R. § 236.1(c)(8), does not govern the bond hearing, which is the first opportunity for a neutral judge to evaluate the propriety of detention. *See In re De La Cruz*, 20 I. & N. Dec. 346, 359-60 (BIA 1991) (Heilman, Board Member, dissenting) ("Unlike the criminal justice system, the initial decision to jail a person is made by the very law enforcement agency which ordered arrest. There is no impartial magistrate or judge involved at that stage. The hearing before the immigration judge offers the first opportunity for an alien to appear before an impartial trier of fact."); *see also Gerstein v. Pugh*, 420 U.S. 103, 114 (1975) ("[T]he Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest").

Because a bond hearing is a custody *re-determination*, subsequent to the initial determination made by the then-INS, the controlling regulation was not 8 C.F.R. § 236.1(c)(8) but rather 8 C.F.R. § 236.1(d)(1). In contrast to subsection (c)(8), subsection (d)(1) is silent on who bears the burden of proof. *See* 8 C.F.R. § 236.1(d)(1) ("After an initial custody determination by the district director . . . the respondent may . . . request amelioration of the conditions under which she or she may be released . . . . [and] the immigration judge is authorized to exercise the authority in section 236 of the Act . . . to detain the alien in custody,

release the alien, and determine the amount of bond . . . under which the respondent may be released . . .").

In sum, the BIA panel in *Adeniji* justified shifting the burden during custody redeterminations by referencing a regulation that governs initial custody determinations by the arresting agency. The regulation that actually governs custody redeterminations before an independent IJ, 8 C.F.R. § 236.1(d)(1), does not allocate the burden of proof to the detained non-citizen as the BIA has impermissibly held. Because the BIA implemented this otherwise impermissible burden shift in reliance on the wrong regulation, *Adeniji* must be held unlawful and set aside as arbitrary and capricious on this basis too. *See* Administrative Procedure Act, 5 U.S.C. § 706(2).

V. If the Court Determines Bond Is Warranted in this Case, the Court Must Consider Respondent's Ability to Pay; And it Should Not Address the Merits of any Potential Immigration Relief Available To Respondent.

If the Court determines that Respondent is eligible for release from custody, the court should also consider an individual's "ability to pay," to comply with Due Process. *Hernandez v. Sessions*, 872 F.3d 976 (2017) (Failure to consider detainee's ability to pay, and to consider alternatives to cash bond, violates the Due Process Clause of the Fifth Amendment. The lower federal court also determined that such failure violated (2) the Equal Protection Guarantee of the Fifth Amendment; and (3) the Excessive Bail Clause of the Eighth Amendment). Respondent is currently unemployed and, even with help from family, may not be able to afford even the minimum $1,500 bond (discussion with family members is ongoing as this memorandum is being written). A bond on release on recognizance under INA Section 236(a)(2)(B) is appropriate in Respondent's case. Moreover, given that Respondent clearly is not a flight risk, a monetary bond would serve no practical purpose. The vast majority of individuals released from immigration custody show up for their subsequent hearings (*see,* pp. E1-E11). Conditional parole is more appropriate, including requiring Respondent to undergo any treatment programs recommended by her assessor. In the alternative, should the court disagree, Respondent requests that the court order the minimum $1,500 bond on conditions.

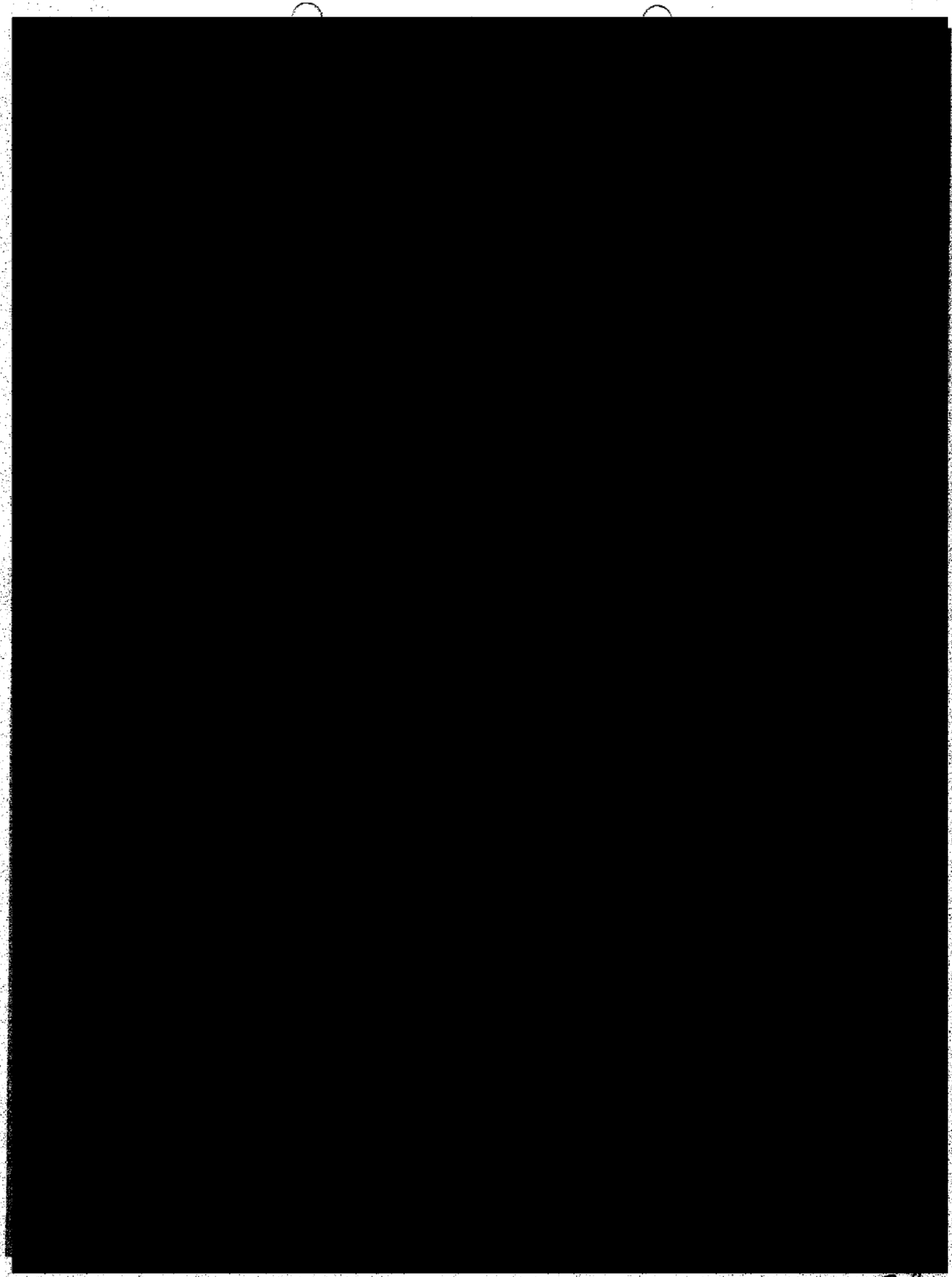
CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court require the Government to assume the burden of proving that Respondent is not eligible for bond in this

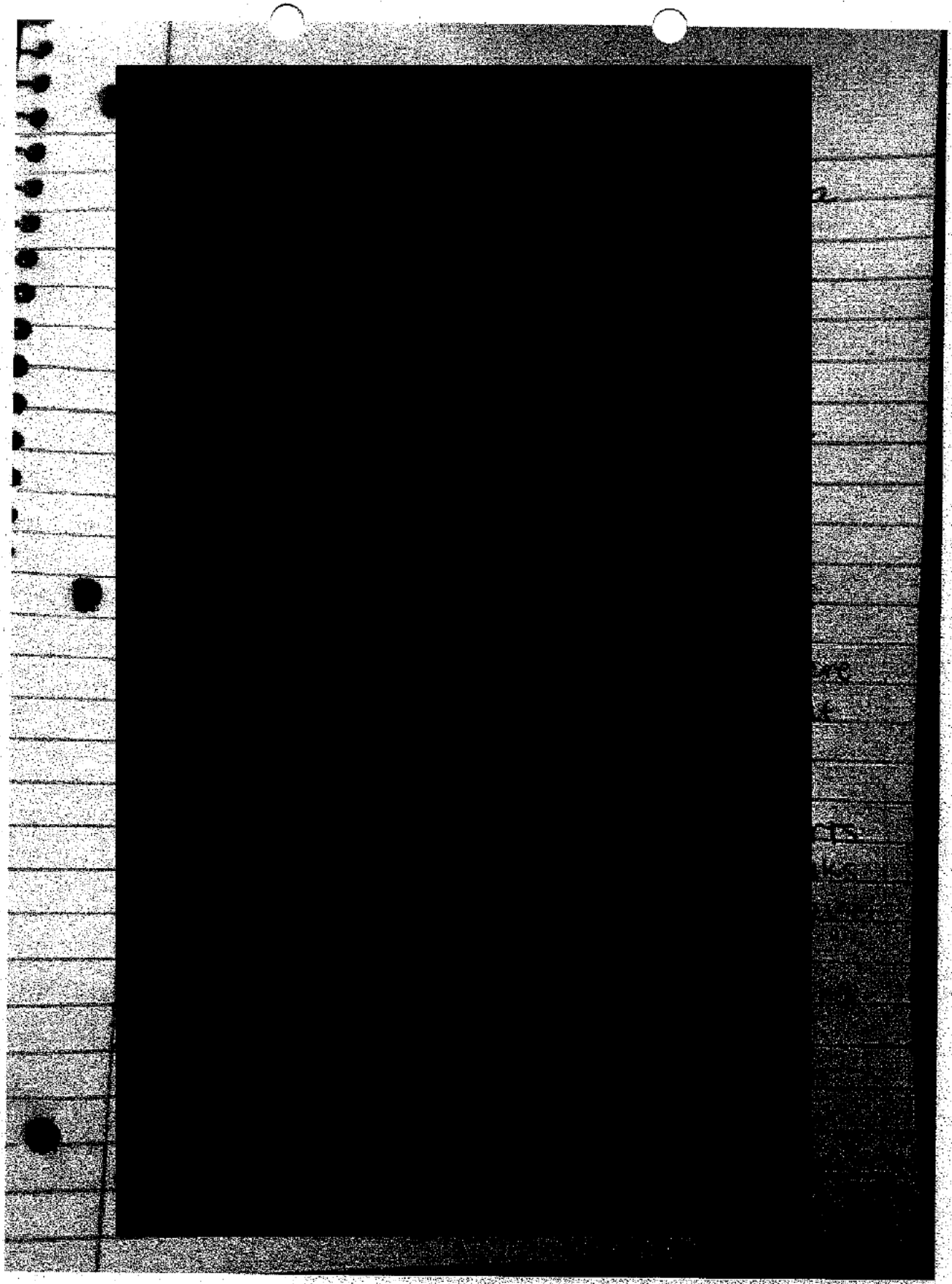
matter, and grant release of Respondent from the custody of DHS, on such conditions as the Court deems just and proper.

Respectfully Submitted,

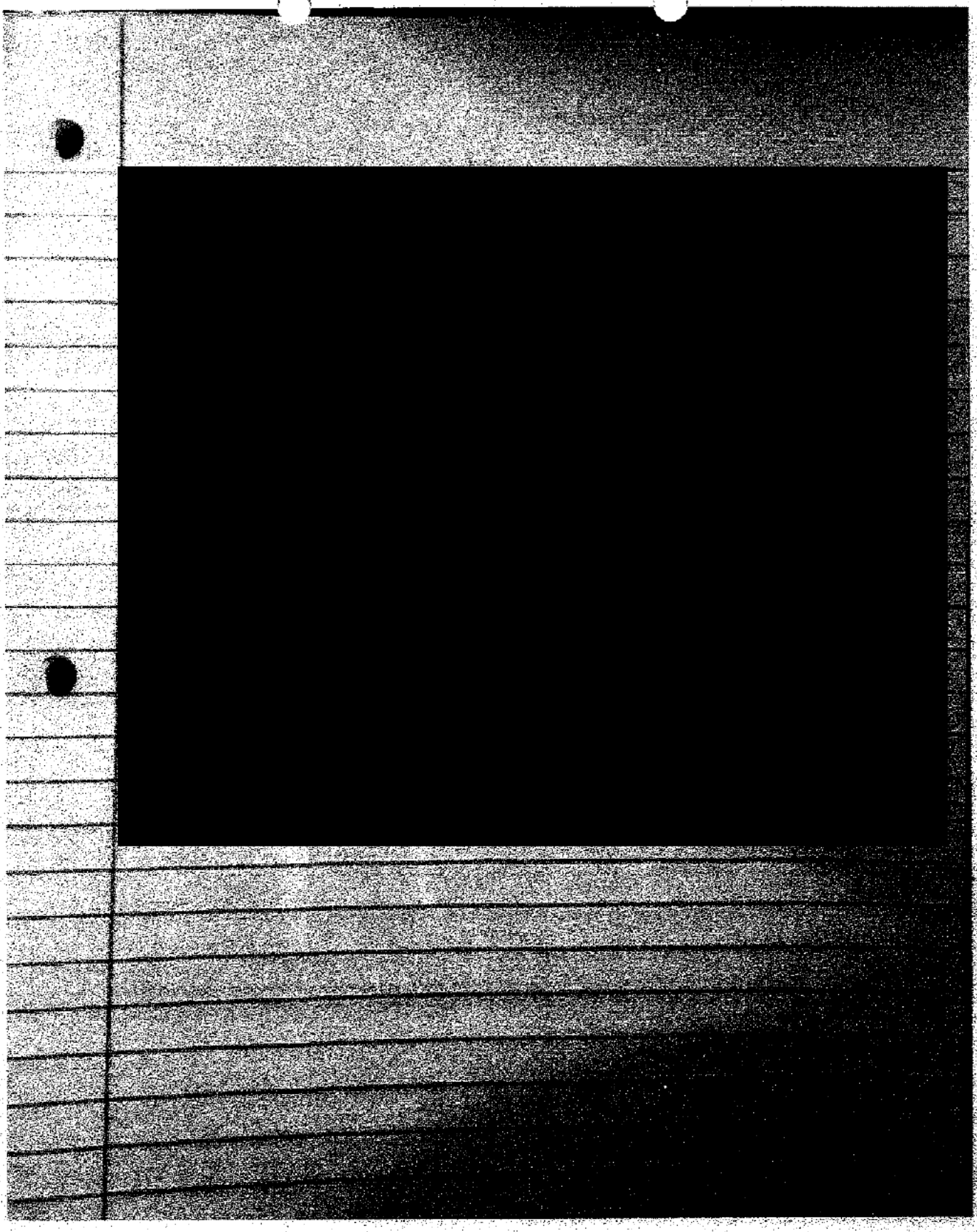
Dated: _____



B1



B2



B3

Register of Actions

State of Minnesota vs [redacted]

Case Type: Crim/Traf Non-Mand
Date Filed: [redacted]
Location: [redacted]

Party Information

Defendant [redacted]

Female [redacted]

Lead Attorneys

Jurisdiction: State of Minnesota

WEST ST. PAUL CITY ATTORNEY'S OFFICE
651-451-2100(W)

Case Information

Charges: [redacted]

		Level	Date	Disposition	Level of Sentence
1.	DL-[redacted]	Petty Misdemeanor	09/19/2016	11/24/2016 Convicted	11/24/2016 Convicted of a Petty Misdemeanor

Events & Orders of the Court

[redacted]

DISPOSITIONS

Disposition
1. DL-VIOLATION OF INSTRUCTION PERMIT - NO LI
Convicted

Plea
1. DL-VIOLATION OF INSTRUCTION PERMIT - NO LI
Guilty

Payable without appearance
1. DL-VIOLATION OF INSTRUCTION PERMIT - NO LI
09/19/2016 (PMD) 171.05.1(a) (171051a)

Fees - Adult: (Grand Total: $130.00)
Due 11/24/2016
Fine: $50.00
Fees: (Fees Total: $80.00)
Criminal Surcharge: $75.00
Law Library: $5.00
Level of Sentence:
Convicted of a Petty Misdemeanor

OTHER EVENTS AND HEARINGS

09/19/2016 Citation E-Filed
09/19/2016 Citation Index # 1
09/19/2016 Driver's Record Index # 2
10/24/2016 [redacted]
10/24/2016 Case Notice Sent
11/24/2016 Conviction Sent to DPS

Financial Information

Defendant [redacted]
Total Financial
Total Payments and Credits
Balance Due as of 12/8/2016

136.50
136.50
0.00

09/19/2016	Transaction Assessment		130.00
10/24/2016	Transaction Assessment		5.00
11/23/2016	MR Payment	Receipt # EP19-2016-48045	(135.00)
11/23/2016	Transaction Assessment		1.50
11/23/2016	MR Payment	Receipt # EP19-2016-48046	(1.50)

[redacted]

C1

House of Charity
the heart of the city

510 South 8th Street
Minneapolis, Minnesota 55404-1079
phone: 612-594-2000
fax: 612-594-2020
www.houseofcharity.org

Bishop Henry Whipple Federal Building
1 Federal Drive, Suite 1850
Fort Snelling, MN 55111

[redacted]

Re: Samanatha Gaytan Rodriquez

To: The Honorable Members of the Court,

My name is Kyle Lipinski, and I am a Licensed Alcohol and Drug Counselor. I met with [redacted] on Saturday [redacted] for two hours. During that time I conducted a two hour clinical interview evaluating her overall mental status and chemical health. [redacted]

Thank you for consideration.

Sincerely,

Kyle Lipinski, MSS, LADC
Licensed Alcohol and Drug Counselor
Licensed Professional Clinical Counselor Candidate
Mental Health Practitioner

[redacted]

MEETS STANDARDS

BY

Minnesota Department of Human Services

Alcohol and Drug Abuse Division

Rule 25 Assessment

Instructions

This form has been designed with fillable form fields and the capability to save completed forms on your computer. You must have Adobe Reader 9.1 or higher or Acrobat to use this form (Get Adobe Reader). If you open this form with an older version of Adobe Reader or Acrobat, a dialog box will appear indicating that some features will not be available and you will be prompted to download a current version of Adobe Reader.

Before filling out this form, **save this PDF to your computer.** To do this, go to the File menu, choose Save As, and save it with a file name that you recognize.

Files such as Microsoft Word, Excel, etc. can be electronically attached to this PDF. To do this in Acrobat 7, go to Tools → Commenting → Attach a File as a Comment. In Acrobat 8, go to Tools → Comment & Markup → Attach a File as a Comment. In Acrobat 9 or higher, go to Comment → Attach File. When you save this PDF, all attached files will be saved with it.

Make sure to **save an electronic copy** of the completed document.

Client-specific information contained in this document may be subject to Federal Confidentiality 42 CFR Chapter 1, Part 2, Minnesota Data Practices Act Chapter 13 and HIPAA 45 CFR parts 160 and 164.

Alcohol and Drug Abuse Division

Rule 25 Assessment

Background Information

1. DATE OF ASSESSMENT REQUEST	2. DATE OF ASSESSMENT	3. DATE SERVICE AUTHORIZED
[redacted]	[redacted]	

4. ASSESSOR	5. ASSESSOR PHONE NUMBER	6. REFERENT	7. ASSESSMENT SITE
Kyle Lipinski, LADC	[redacted]	[redacted]	Sherburne County Jail

8. CLIENT NAME	9. DATE OF BIRTH	AGE	10. GENDER	11. PMI/INSURANCE NUMBER
[redacted]		[redacted]	○ M ◉ F	

12. CLIENT'S PRIMARY LANGUAGE	13. Do you require special accommodations, such as an interpreter or assistance with written material?
Spanish/English	○ YES ◉ NO

14. CURRENT ADDRESS	CITY	STATE	ZIP CODE
Sherburne County Jail	Elk River	MN	

15. CLIENT PHONE NUMBER	16. ALTERNATE (CELL) PHONE NUMBER

17. TELL ME WHAT HAS HAPPENED TO BRING YOU HERE TODAY?

[redacted]

18. Have you had other rule 25 assessments? ○ YES ◉ NO

IF YES, WHEN, WHERE AND WHAT CIRCUMSTANCES?

B6

PMI # or insurance number _____

DIMENSION I – Acute Intoxication/Withdrawal Potential

1. Chemical use most recent 12 months outside a facility and other significant use history (client self-report)

☐ ALCOHOL	20	[redacted]	[redacted]		oral
☐	REDACTED ON ADVICE OF COUNSEL				
☐ COCAINE/CRACK					
	REDACTED ON ADVICE OF COUNSEL				
☐ HEROIN					
☐ OTHER OPIATES/ SYNTHETICS					
☐ INHALANTS					
☐ BENZODIAZEPINES					
☐ HALLUCINOGENS					
☐ BARBITURATES/ SEDATIVES/HYPNOTICS					
☐ OVER-THE-COUNTER DRUGS					
☐ OTHER					
☐ NICOTINE					

2. Do you use greater amounts of alcohol/other drugs to feel intoxicated or achieve the desired effect? Or use the same amount and get less of an effect? ○ YES ◉ NO (DSM) — EXAMPLE

3A. Have you ever been to detox? ○ YES ◉ NO	**3B.** WHEN WAS THE FIRST TIME?	**3C.** HOW MANY TIMES SINCE THEN?	**3D.** DATE OF MOST RECENT DETOX

B7

4. Withdrawal symptoms: Have you had any of the following withdrawal symptoms? ○ YES ○ NO

SWEATING (RAPID PULSE)			NAUSEA/VOMITING		
SHAKY/JITTERY/TREMORS			DIZZINESS		
UNABLE TO SLEEP			SEIZURES		
AGITATION			DIARRHEA		
HEADACHE			DIMINISHED APPETITE		
FATIGUE/EXTREMELY TIRED	X		HALLUCINATIONS		
SAD/DEPRESSED FEELING			FEVER		
MUSCLE ACHES			UNABLE TO EAT		
VIVID/UNPLEASANT DREAMS			PSYCHOSIS		
IRRITABILITY			CONFUSED/DISRUPTED SPEECH		
SENSITIVITY TO NOISE			ANXIETY/WORRIED		
HIGH BLOOD PRESSURE					

NOTES:
The client is currently in immigration detention. [redacted]

5. ASSESSOR'S VISUAL OBSERVATIONS AND SYMPTOMS

Based on the above information, is withdrawal likely to require attention as part of treatment participation? ○ YES ◉ NO

Dimension I (Acute)

Acute intoxication/Withdrawal potential – The placing authority **must** use the criteria in Dimension I to determine a client's acute intoxication and withdrawal potential.

RISK DESCRIPTIONS – Severity ratings

[redacted]
0 Client displays full functioning with good ability to tolerate and cope with withdrawal discomfort. No signs or symptoms of intoxication or withdrawal or resolving signs or symptoms.
1 Client can tolerate and cope with withdrawal discomfort. The client displays mild to moderate intoxication or signs and symptoms interfering with daily functioning but does not immediately endanger self or others. Client poses minimal risk of severe withdrawal.
2 Client has some difficulty tolerating and coping with withdrawal discomfort. Client's intoxication may be severe, but responds to support and treatment such that the client does not immediately endanger self or others. Client displays moderate signs and symptoms with moderate risk of severe withdrawal.
3 Client tolerates and copes with withdrawal discomfort poorly. Client has severe intoxication, such that the client endangers self or others, or intoxication has not abated with less intensive levels of services. Client displays severe signs and symptoms; or risk of severe, but manageable withdrawal; or withdrawal worsening despite detox at less intensive level.
4 Client is incapacitated with severe signs and symptoms. Client displays severe withdrawal and is a danger to self or others.

REASONS SEVERITY WAS ASSIGNED (What about the amount of the person's use and date of most recent use and history of withdrawal problems suggests the potential of withdrawal symptoms requiring professional assistance?)

The client is currently in immigration detention in Sherburne County Jail. S[redacted]

[redacted]

Withdrawal symptoms outside of fatigue the day

58

DIMENSION II – Biomedical Complications and Conditions

1. Do you have any current health/medical concerns? *(Include any infectious diseases, allergies, or chronic or acute pain, history of chronic conditions)*
Client reports [redacted]

2. Do you have a health care provider? When was your most recent appointment? What concerns were identified?
[redacted]

3. *If indicated by answers to items 1 or 2:* How do you deal with these concerns? Is that working for you? If you are not receiving care for this problem, why not?

4A. List current medication(s) including over-the-counter or herbal supplements—including pain management
[redacted]

4B. Do you follow current medical recommendations/take medications as prescribed?
○ YES ○ NO

4C. When did you last take your medication?

5. Has a health care provider/healer ever recommended that you reduce or quit alcohol/drug use? [redacted] (DSM)

6A. Are you pregnant?
[redacted]

6B. RECEIVING PRENATAL CARE?
[redacted]

6C. WHEN IS YOUR BABY DUE?

7. Have you had any injuries, assaults/violence towards you, accidents, health related issues, overdose(s) or hospitalizations related to your use of alcohol or other drugs; EXPLAIN:
[redacted]

8. Do you have any specific physical needs/accommodations?

Dimension II Ratings

Biomedical Conditions and Complications – The placing authority **must** use the criteria in Dimension II to determine a client's biomedical conditions and complications.

RISK DESCRIPTIONS – Severity rating

[redacted]

0 Client displays full functioning with good ability to cope with physical discomfort.
1 Client tolerates and copes with physical discomfort and is able to get the services that the client needs.
2 Client has difficulty tolerating and coping with physical problems or has other biomedical problems that interfere with recovery and treatment. Client neglects or does not seek care for serious biomedical problems.
3 Client tolerates and copes poorly with physical problems or has poor general health. Client neglects medical problems without active assistance.
4 Client is unable to participate in CD treatment and has severe medical problems, a condition that requires immediate intervention, or is incapacitated.

REASONS SEVERITY WAS ASSIGNED (What physical/medical problems does this person have that would inhibit his or her ability to participate in treatment? What issues does he or she have that require assistance to address?)
[redacted]

B9

PMI # or insurance number _____

DIMENSION III – Emotional, Behavioral, Cognitive Conditions and Complications

1. *(Optional)* Tell me what it was like growing up in your family. (substance use, mental health, discipline, abuse, support)

[redacted]

2. When was the last time that you had *significant* problems...	Past month	2–12 months ago	1+ years ago	Never
A. with feeling very trapped, lonely, sad, blue, depressed or hopeless about the future?	[redacted]			
B. with sleep trouble, such as bad dreams, sleeping restlessly, or falling asleep during the day?				
C. with feeling very anxious, nervous, tense, scared, panicked, or like something bad was going to happen?				
D. with becoming very distressed and upset when something reminded you of the past?				
E. with thinking about ending your life or committing suicide?				

3. When was the last time that you did the following things two or more times?	Past month	2–12 months ago	1+ years ago	Never
A. Lied or conned to get things you wanted or to avoid having to do something?	[redacted]			
B. Had a hard time paying attention at school, work, or home?				
C. Had a hard time listening to instructions at school, work, or home?				
D. Were a bully or threatened other people?				
E. Started physical fights with other people?				

Note: These questions are from the Global Appraisal of Individual Needs—Short Screener. Any item marked "past month" or "2 to 12 months ago" will be scored with a severity rating of at least 2. For each item that has occurred in the past month or past year ask follow up questions to determine how often the person has felt this way or has the behavior occurred? How recently? How has it affected their daily living? And, whether they were using or in withdrawal at the time?

[redacted]

4.	A. *If the person has answered item 2E with "in the past year" or "the past month", ask about frequency and history of suicide in the family or someone close and whether they were under the influence*	B. *If the person answered item 2E "in the past month" ask about intent, plan, means and access and any other follow-up information to determine imminent risk. Document any actions taken to intervene on any identified imminent risk.*
	[redacted]	

5. A. Have you ever been diagnosed with a mental health problem? ○ YES ◉ NO

B. Are you receiving care for any mental health issues? If yes, what is the focus of that care or treatment? Are you satisfied with the service? Most recent appointment? How has it been helpful?

[redacted]

6. A. Have you been prescribed medications for emotional/psychological problems? [redacted]

B. Current mental health medication(s) *If these medications are listed for Dimension II, reference item II-5.*

[redacted]

C. Are you taking your medications as instructed? [redacted]

7. A. Does your MH provider know about your use? [redacted]

B. What does he or she have to say about it? (DSM)

[redacted]

8. A. Have you ever been verbally, emotionally, physically or sexually abused? [redacted]

Follow up questions to learn current risk, continuing emotional impact.

[redacted]

B. Have you received counseling for abuse? [redacted]

9. A. Have you ever experienced or been part of a group that experienced community violence, historical trauma, rape or assault?
◉ YES ○ NO

B. How has that affected you?

[redacted]

C. Have you received counseling for that? ○ YES ○ NO

10. A. VETERAN [redacted] B. EXPOSURE TO COMBAT [redacted]

11. Do you have problems with any of the following things in your daily life?

[redacted]

Note: If the person has any of the above problems, how do they deal with them, have they developed coping mechanisms? Have they received treatment? Follow up with items 12, 13, and 14. If none of the issues in item 11 are a problem for the person, skip to item 15.

[redacted]

B11

12. Have you been diagnosed with traumatic brain injury or Alzheimer's? ○ YES ◉ NO

13. If the answer to #12 is no, ask the following questions:

Have you ever hit your head or been hit on the head? [redacted]

Were you ever seen in the Emergency room, hospital, or by a doctor because of an injury to your head? [redacted]

Have you had any significant illness that affected your brain (brain tumor, meningitis, West Nile Virus, stroke or seizure, heart attack, near drowning or near suffocation)? [redacted]

14. If the answer to #12 is yes, ask if any of the problems identified in #11 occurred since the head injury or loss of oxygen: [redacted]

15. **A.** HIGHEST GRADE OF SCHOOL COMPLETED [redacted]

B. Do you have a learning disability? [redacted]

C. Did you ever have tutoring in Math or English? [redacted]

D. Have you ever been diagnosed with Fetal Alcohol Effects or Fetal Alcohol Syndrome? [redacted]

EXPLAIN [redacted]

16. If yes to item 15 B, C, or D: How has this affected your use or been affected by your use?

Dimension III Emotional

Emotional/Behavioral/Cognitive – The placing authority **must** use the criteria in Dimension III to determine a client's emotional, behavioral, and cognitive conditions and complications.

RISK DESCRIPTIONS – Severity rating

[redacted]

0 Client has good impulse control and coping skills and presents no risk of harm to self or others. Client functions in all life areas and displays no emotional, behavioral, or cognitive problems or the problems are stable.

1 Client has impulse control and coping skills. Client presents a mild to moderate risk of harm to self or others or displays symptoms of emotional, behavioral or cognitive problems. Client has a mental health diagnosis and is stable. Client functions adequately in significant life areas.

2 Client has difficulty with impulse control and lacks coping skills. Client has thoughts of suicide or harm to others without means; however, the thoughts may interfere with participation in some treatment activities. Client has difficulty functioning in significant life areas. Client has moderate symptoms of emotional, behavioral, or cognitive problems. Client is able to participate in most treatment activities.

3 Client has a severe lack of impulse control and coping skills. Client has frequent thoughts of suicide or harm to others including a plan and the means to carry out the plan. In addition, the client is severely impaired in significant life areas and has severe symptoms of emotional, behavioral, or cognitive problems that interfere with the client's ability to participate in treatment activities.

4 Client has severe emotional or behavioral symptoms that place the client or others at acute risk of harm. Client also has intrusive thoughts of harming self or others. Client is unable to participate in treatment activities.

REASONS SEVERITY WAS ASSIGNED – What current issues might with thinking, feelings or behavior pose barriers to participation in a treatment program? What coping skills or other assets does the person have to offset those issues? Are these problems that can be initially accommodated by a treatment provider? If not, what specialized skills or attributes must a provider have?

[redacted]

DIMENSION IV – Readiness for Change

1. You've told me what brought you here today. *(first page)* What do you think the problem really is?

[redacted]

2. Tell me how things are going. *Ask enough questions to determine whether the person has use related problems or assets that can be built upon in the following areas: Family/friends/relationships; Legal; Financial; Emotional; Educational; Recreational/leisure; Vocational/employment; Living arrangements (DSM)*

[redacted]

3. What activities have you engaged in when using alcohol/other drugs that could be hazardous to you or others (i.e. driving a car/motorcycle/boat, operating machinery, unsafe sex, sharing needles for drugs or tattoos, etc.)? (DSM)

[redacted]

4. How much time do you spend getting, using or getting over using alcohol or drugs? (DSM)

[redacted]

5. Reasons for drinking/drug use *(Use the space below to record answers. It may not be necessary to ask each item.)*

Like the feeling	[redacted]
Trying to forget problems	
To cope with stress	
To relieve physical pain	
To cope with anxiety	
To cope with depression	
To relax or unwind	
Makes it easier to talk with people	
Partner encourages use	
Most friends drink or use	
To cope with family problems	
Afraid of withdrawal symptoms/to feel better	
Other *(specify)*	

A. What concerns other people about your alcohol or drug use/Has anyone told you that you use too much? What did they say? (DSM)

[redacted]

B. What did you think about that/ do you think you have a problem with alcohol or drug use?

[redacted]

B13

6. What changes are you willing to make? What substance are you willing to stop using? How are you going to do that? Have you tried that before? What interfered with your success with that goal?

[redacted]

7. What would be helpful to you in making this change?

[redacted]

Readiness for Change – The placing authority **must** use the criteria in Dimension IV to determine a client's readiness for change.

RISK DESCRIPTIONS – Severity rating

- 0 Client is cooperative, motivated, ready to change, admits problems, committed to change, and engaged in treatment as a responsible participant.
- 1 Client is motivated with active reinforcement, to explore treatment and strategies for change, but ambivalent about illness or need for change.
- 2 Client displays verbal compliance, but lacks consistent behaviors; has low motivation for change; and is passively involved in treatment.
- 3 Client displays inconsistent compliance, minimal awareness of either the client's addiction or mental disorder, and is minimally cooperative.
- 4 The client is: **(A)** non-compliant with treatment and has no awareness of addiction or mental disorder and does not want or is unwilling to explore change or is in total denial of the illness and its implications, or **(B)** dangerously oppositional to the extent that the client is a threat of imminent harm to self and others.

REASONS SEVERITY WAS ASSIGNED (What information did the person provide that supports your assessment of his or her readiness to change? How aware is the person of problems caused by continued use? How willing is she or he to make changes? What does the person feel would be helpful? What has the person been able to do without help?)

[redacted]

B14

DIMENSION V – Relapse, Continued Use, and Continued Problem Potential

1. In what ways have you tried to control, cut-down or quit your use? If you have had periods of sobriety, how did you accomplish that? What was helpful? What happened to prevent you from continuing your sobriety? (DSM)

[redacted]

2. Have you experienced cravings? *If yes, ask follow up questions to determine if the person recognizes triggers and if the person has had any success in dealing with them.*

[redacted]

3.

A. Have you been treated for alcohol/other drug abuse/dependence? [redacted]

B. NUMBER OF TIMES (LIFETIME) (OVER WHAT PERIOD)

C. NUMBER OF TIMES COMPLETED TREATMENT (LIFETIME)

[redacted]

D. During the past three years have you participated in outpatient and/or residential? [redacted]

E. WHEN AND WHERE?

[redacted]

F. What was helpful? What was not?

[redacted]

4. Support group participation: Have you/do you attend support group meetings to reduce/stop your alcohol/drug use? How recently? What was your experience? Are you willing to restart? If the person has not participated, is he or she willing?

[redacted]

5. What would assist you in staying sober/straight?

[redacted]

B15

Relapse/Continued Use/Continued problem potential – The placing authority must use the criteria in Dimension V to determine a client's relapse, continued use, and continued problem potential.

RISK DESCRIPTIONS – Severity rating

0 Client recognizes risk well and is able to manage potential problems.

1 Client recognizes relapse issues and prevention strategies, but displays some vulnerability for further substance use or mental health problems.

2 **(A)** Client has minimal recognition and understanding of relapse and recidivism issues and displays moderate vulnerability for further substance use or mental health problems. **(B)** Client has some coping skills inconsistently applied.

3 Client has poor recognition and understanding of relapse and recidivism issues and displays moderately high vulnerability for further substance use or mental health problems. Client has few coping skills and rarely applies coping skills.

4 No awareness of the negative impact of mental health problems or substance abuse. No coping skills to arrest mental health or addiction illnesses, or prevent relapse.

REASONS SEVERITY WAS ASSIGNED (What information did the person provide that indicates his or her understanding of relapse issues? What about the person's experience indicates how prone he or she is to relapse? What coping skills does the person have that decrease relapse potential?)

[redacted]

DIMENSION VI – Recovery Environment

1. Are you employed/attending school? Tell me about that.

[redacted]

2A. Describe a typical day; evening for you. *Work, school, social, leisure, volunteer, spiritual practices. Include time spent obtaining, using, recovering from drugs or alcohol.* (DSM)

[redacted]

2B. How often do you spend more time than you planned using or use more than you planned? (DSM)

[redacted]

3. How important is using to your social connections? Do many of your family or friends use?

[redacted]

B16

4A. Are you currently in a significant relationship?	**4B.** IF YES, HOW LONG?	**4C.** SEXUAL ORIENTATION
[redacted]	[redacted]	

5A. Who do you live with?

[redacted]

5B. Tell me about their alcohol/drug use and mental health issues

[redacted]

5C. Are you concerned for your safety there?

[redacted]

5D. Are you concerned about the safety of anyone else who lives with you?

[redacted]

6A. Do you have children who live with you? *If the person lives with children, ask follow-up questions to determine the person's relationship and responsibility, both legal and care giving; and what arrangements are made for supervision for the children when the person is not available.*

[redacted]

6B. Do you have children who do not live with you? *If yes, ask follow up questions to learn where the children are, who has custody and what the person's relationship and responsibility is with these children and what hopes the person has for his or her future with these children*

[redacted]

7A. Who supports you in making changes in your alcohol or drug use? What are they willing to do to support you? Who is upset or angry about you making changes in your alcohol or drug use? How big a problem is this for you?

[redacted]

7B. *This table is provided to record information about the person's relationships and available support It is not necessary to ask each item; only to get a comprehensive picture of their support system.*

How often can you count on the following people when you need someone?	Always supportive	Usually supportive	Rarely supportive	Never supportive	Willing to stop using?
Partner/spouse	[redacted]				
Parent(s)/Aunt(s)/Uncle(s)/Grandparent(s)					
Sibling(s)/Cousin(s)					
Child(ren)					
Other relative(s)					
Friend(s)/neighbor(s)					
Child(ren)'s father(s)/mother(s)					
Support group member(s)					
Community of faith members					
Social worker/counselor/therapist/healer					
Other *(specify)*					

8A. What is your current living situation?

[redacted]

8B. What is your long term plan for where you will be living?

[redacted]

8C. Tell me about your living environment/neighborhood? *Ask enough follow up questions to determine safety, criminal activity, availability of alcohol and drugs, supportive or antagonistic to the person making changes.*

[redacted]

B17

9. Criminal justice history: *Gather current/recent history and any significant history related to substance use—Arrests? Convictions? Circumstances? Alcohol or drug involvement? Sentences? Still on probation or parole? Expectations of the court? Current court order? Any sex offenses – lifetime? What level?* (DSM)

[redacted]

10. What obstacles exist to participating in treatment? (Time off work, childcare, funding, transportation, pending jail time, living situation)

[redacted]

Dimension VI Criteria

Recovery environment – The placing authority must use the criteria in Dimension VI to determine a client's recovery environment.

RISK DESCRIPTIONS – Severity rating

[redacted]

0 Client is engaged in structured, meaningful activity and has a supportive significant other, family, and living environment.

1 Client has passive social network support or family and significant other are not interested in the client's recovery. The client is engaged in structured meaningful activity.

2 Client is engaged in structured, meaningful activity, but peers, family, significant other, and living environment are unsupportive, or there is criminal justice involvement by the client or among the client's peers, significant others, or in the client's living environment.

3 Client is not engaged in structured, meaningful activity and the client's peers, family, significant other, and living environment are unsupportive, or there is significant criminal justice system involvement .

4 Client has **(A)** Chronically antagonistic significant other, living environment, family, peer group or long-term criminal justice involvement that is harmful to recovery or treatment progress, or **(B)** Client has an actively antagonistic significant other, family, work, or living environment with immediate threat to the client's safety and well-being.

REASONS SEVERITY WAS ASSIGNED (What support does the person have for making changes? What structure/stability does the person have in his or her daily life that will increase the likelihood that changes can be sustained? What problems exist in the person's environment that will jeopardize getting/staying clean and sober?)

[redacted]

Client Choice/Exceptions

Would you like services specific to language, age, gender, culture, religious preference, race, ethnicity, sexual orientation or disability? [redacted] IF YES, SPECIFY: [redacted]

What particular treatment choices and options would you like to have?

[redacted]

Do you have a preference for a particular treatment program?

[redacted]

B 18

DSM-V Criteria for Substance Abuse

Instructions

Determine whether the client currently meets the criteria for a Substance Use Disorder using the diagnostic criteria in the DSM-V, pp. 481-589. Current means during the most recent 12 months outside a facility that controls access to substances.

Category of substance	Severity	ICD-10 Code/DSM V Code
Alcohol Use Disorder	Mild	(F10.10) (305.00)
	Moderate	(F10.20) (303.90)
	Severe	(F10.20) (303.90)
Cannabis Use Disorder	Mild	(F12.10) (305.20)
	Moderate	(F12.20) (304.30)
	Severe	(F12.20) (304.30)
Hallucinogen Use Disorder	Mild	(F16.10) (305.30)
	Moderate	(F16.20) (304.50)
	Severe	(F16.20) (304.50)
Inhalant Use Disorder	Mild	(F18.10) (305.90)
	Moderate	(F18.20) (304.60)
	Severe	(F18.20) (304.60)
Opioid Use Disorder	Mild	(F11.10) (305.50)
	Moderate	(F11.20) (304.00)
	Severe	(F11.20) (304.00)
Sedative, Hypnotic, or Anxiolytic Use Disorder	Mild	(F13.10) (305.40)
	Moderate	(F13.20) (304.10)
	Severe	(F13.20) (304.10)
Stimulant Related Disorders	Mild	(F15.10) (305.70) Amphetamine type substance (F14.10) (305.60) Cocaine (F15.10) (305.70) Other or unspecified stimulant
	Moderate	(F15.20) (304.40) Amphetamine type substance (F14.20) (304.20) Cocaine (F15.20) (304.40) Other or unspecified stimulant
	Severe	(F15.20) (304.40) Amphetamine type substance (F14.20) (304.20) Cocaine (F15.20) (304.40) Other or unspecified stimulant
Tobacco use Disorder	Mild	(Z72.0) (305.1)
	Moderate	(F17.200) (305.1)
	Severe	(F17.200) (305.1)
Other (or unknown) Substance Use Disorder	Mild	(F19.10) (305.90)
	Moderate	(F19.20) (304.90)
	Severe	(F19.20) (304.90)

B19

Collateral Contact Summary

NUMBER OF CONTACTS MADE	CONTACT WITH REFERRING PERSON
[redacted]	[redacted]

If court related records were reviewed, summarize here:

[redacted]

[redacted] Information from collateral contacts supported/largely agreed with information from the client and associated risk ratings.

Information from collateral contacts was significantly different from information from the client and lead to different risk ratings.
Summarize new information here:

Rule 25 Assessment Summary and Plan

ASSESSOR'S RECOMMENDATION

[redacted]

B20

INTERVIEW CONDUCTED BY (SIGNATURE)	**DATE**

Collateral Contacts

Please duplicate this page for each contact. If this includes information which is sensitive and not public, separate this page from the rest of the assessment before sharing. Retain the page in the assessment file.

NAME	RELATIONSHIP	PHONE NUMBER	RELEASES
			○ YES ○ NO

INFORMATION PROVIDED

BH

Collateral Contacts

Please duplicate this page for each contact. If this includes information which is sensitive and not public, separate this page from the rest of the assessment before sharing. Retain the page in the assessment file.

NAME	RELATIONSHIP	PHONE NUMBER	RELEASES
			○ YES ○ NO

INFORMATION PROVIDED

B2

Register of Actions

[redacted]

Case Type:
Date Filed:
Location:

Party Information

Defendant [redacted]

Female
DOB: [redacted]

Lead Attorneys

Jurisdiction State of Minnesota

Case Information

Charges: [redacted] Statute Level Date Disposition Level of Sentence

1. DRIVING W/O VALID LICENSE/CLASS 171.02.1(a)Misdemeanor 04/07/2017 Convicted 04/07/2017 Conviction deemed a Petty Misdemeanor pursuant to Minn. R. Crim. P 23.02

Events & Orders of the Court

DISPOSITIONS

Disposition:
1. DRIVING W/O VALID LICENSE/CLASS
Convicted

Plea:
1. DRIVING W/O VALID LICENSE/CLASS
Guilty

Payable without appearance
1. DRIVING W/O VALID LICENSE/CLASS
04/07/2017 (Docs) 171.02.1(a)(1 PETSer)

Fees - Adult: (Grand Total: $185.00)
Due 4/7/2017
Fine: $100.00
Fees: (Fees Total: $85.00)
Criminal Surcharge: $75.00
Law Library: $10.00
Level of Sentence:
Conviction deemed a Petty Misdemeanor pursuant to Minn. R. Crim. P 23.02

OTHER EVENTS AND HEARINGS
Citation E-Filed
Officer Notes
Conviction Sent to DPS

Financial Information

[redacted]

Total Fees	197.50
Total Payments and Credits	197.50
Balance Due as of 12/05/2018	0.00
Termination Assessment	185.00
MR Payment	(185.00)
Termination Assessment	1.50
MR Payment	(1.50)

C2

[redacted]

18010545

[redacted]

C4

[redacted]

Offenses (5)

[redacted]

Severity Level:	MISDEMEANOR
Method of Entry (Burglary):	
Reportable:	No

C5

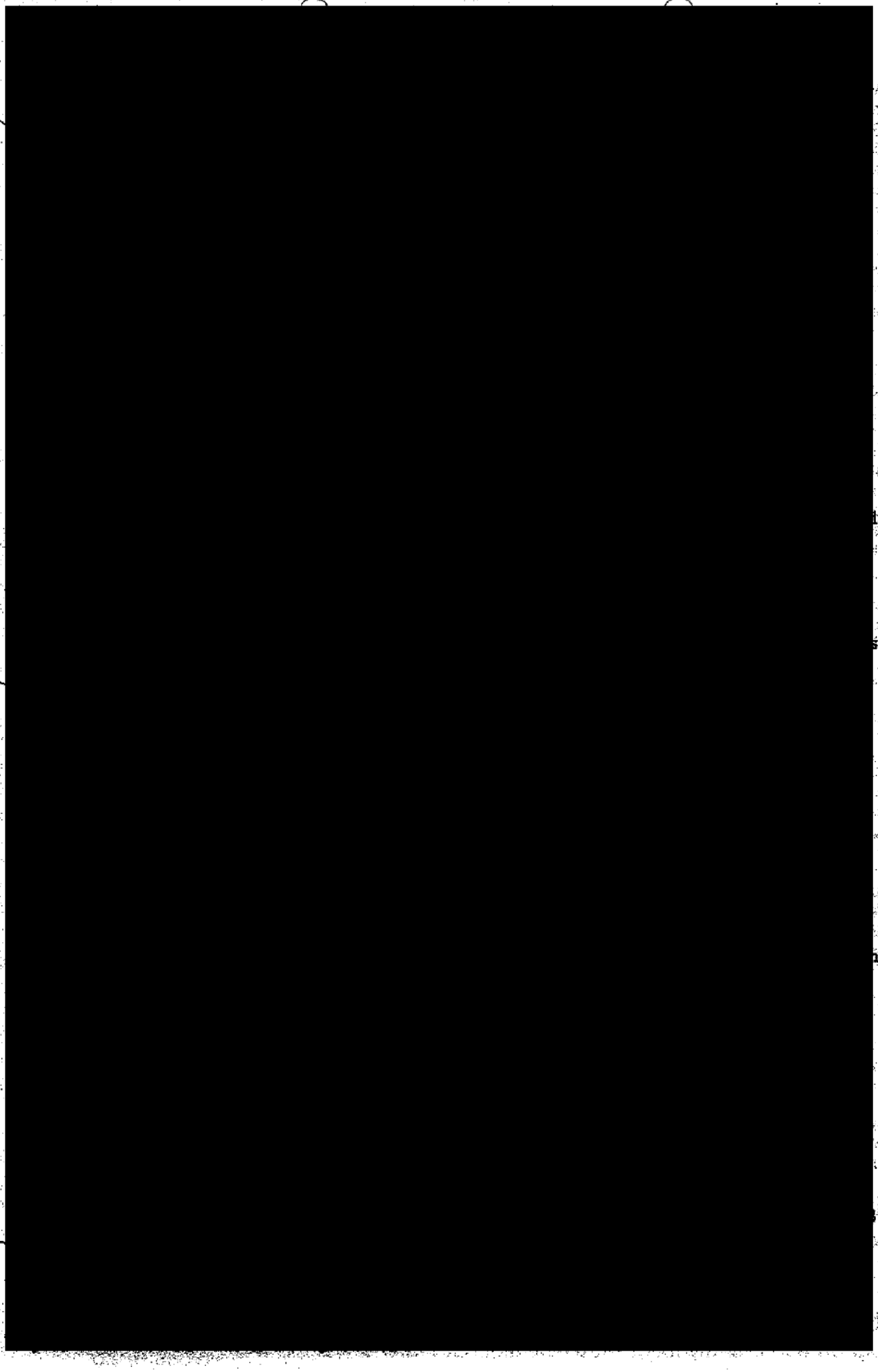
[redacted]

93

Bloomington Police Department

1800 W Old Shakopee Rd Bloomington, MN 55431
(952) 563-4900

[redacted]



[redacted]

STATE OF MINNESOTA

CERTIFICATION OF VITAL RECORD

CERTIFICATE OF BIRTH

[redacted]

THIS RECORD HAS NOT BEEN AMENDED

THIS IS A TRUE AND CORRECT RECORD OF BIRTH REGISTERED IN THE MINNESOTA OFFICE OF THE STATE REGISTRAR

MR&O Certificate ID
[redacted]

FILED: OCTOBER 10, 2004

STEVE ELKINS
STATE REGISTRAR

ISSUED: DECEMBER 12, 2018 - RAMSEY COUNTY DEPT. OF PUBLIC HEALTH

THIS CERTIFICATION IS VALID ONLY WHEN RECORDED ON WATERMARKED SECURITY PAPER WITH A RAISED SEAL AND SIGNATURE OF THE STATE REGISTRAR

D1

STATE OF MINNESOTA

CERTIFICATION OF VITAL RECORD

BIRTH CERTIFICATE

FULL NAME

[redacted]

SEX | DATE OF BIRTH | TIME OF BIRTH

[redacted]

CITY OR TOWNSHIP OF BIRTH: SAINT PAUL

COUNTY: RAMSEY

PARENT(S)

[redacted]

PARENT(S) BIRTHPLACE

MEXICO

MEXICO

[redacted]

0082463

THIS IS A TRUE AND OFFICIAL RECORD OF THE BIRTH REGISTERED IN THE OFFICE OF THE STATE REGISTRAR. DATE FILED: JUNE 25, 2006

D2

PLACE ISSUED: RAMSEY

DATE ISSUED: [redacted]

Linda A. Kaftan

Acting State Registrar

STATE OF MINNESOTA

CERTIFICATION OF VITAL RECORD

CERTIFICATE OF BIRTH

STATE FILE NUMBER [redacted]

FULL NAME [redacted]

DATE OF BIRTH [redacted]

TIME

PLURALITY

SEX

PLACE OF BIRTH

PARENT

NAME AT BIRTH

DATE OF BIRTH

PLACE OF BIRTH

PARENT

DATE OF BIRTH

PLACE OF BIRTH

THIS RECORD HAS NOT BEEN AMENDED

THIS IS A TRUE AND CORRECT RECORD OF BIRTH REGISTERED IN THE MINNESOTA OFFICE OF VITAL RECORDS.

[redacted]

FILED: [redacted]

[redacted]

Molly Mulcahy Crawford

Molly Mulcahy Crawford
STATE REGISTRAR

ISSUED: OCTOBER 02, 2014 RAMSEY COUNTY DEPT. OF PUBLIC HEALTH

03

THIS CERTIFICATION IS VALID ONLY WHEN REPRODUCED ON WATERMARKED SECURITY PAPER WITH A RAISED BORDER AND RAISED STATE SEAL OF MINNESOTA.

Hubert H. Humphrey Job Corps Center

[redacted]

Is awarded this certificate in recognition of satisfactory completion of

Nursing Assistant / Home Health Aide Program

given th[redacted]

Instructors: [redacted]

LaDonna White, RN

[redacted]

D4

CERTIFICATE OF COMPLETION

[redacted]

has successfully completed the
RESOURCE Career Education
60-hour Workplace Essentials Training Course

[redacted]

Lena Balk, Career Education Director

Kyle Smyth, Trainer

6 Continuing Education Units (CEU's)

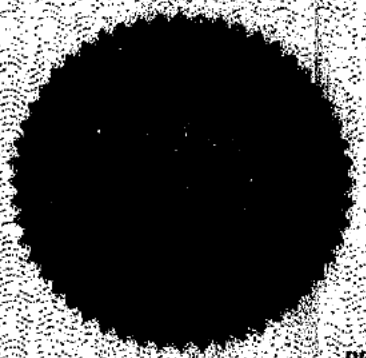
RESOURCE is a licensed career school, a certified training provider under the Workforce Innovation and Opportunity Act and a CARF accredited skills training program. RESOURCE Career Education is accredited by the Council on Occupational Education.

CERTIFICATE OF COMPLETION

[redacted]

has successfully completed the
RESOURCE Career Education
96-hour Business & Computer Applications
Specialist Training Course

[redacted]



Lena Balk, Career Education Director

Kyle Smyth, Trainer

10 Continuing Education Units (CEU's)

RESOURCE is a licensed career school, a certified training provider under the Workforce Innovation and Opportunity Act and a CARF accredited skills training program. RESOURCE Career Education is accredited by the Council on Occupational Education.

CERTIFICATE OF COMPLETION

[redacted]

has successfully completed the
RESOURCE Career Education
Medical Office Support Training Program

Workplace Essentials Training - 60 Hours
Business and Computer Applications Specialist Training - 96 Hours
Healthcare Technician Training - 112 Hours

[redacted]

[redacted]

Lena Balk, Career Education Director

27 Continuing Education Units (CEU's)

RESOURCE Career Education is a licensed career school, a certified training provider under the Workforce Opportunity & Investment Act and a CARF accredited skills training program.
RESOURCE Career Education is accredited by the Council on Occupational Education.

United States Government Accountability Office

GAO

Report to Congressional Committees

November 2014

ALTERNATIVES TO DETENTION

Improved Data Collection and Analyses Needed to Better Assess Program Effectiveness

GAO-15-26

GAO Highlights

Highlights of GAO-15-26, a report to congressional committees

November 2014

ALTERNATIVES TO DETENTION

Improved Data Collection and Analyses Needed to Better Assess Program Effectiveness

Why GAO Did This Study

Aliens awaiting removal proceedings or found to be removable from the United States are detained in ICE custody or released into the community under one or more options, such as release on bond and under supervision of the ATD program. Within the Department of Homeland Security (DHS), ICE is responsible for overseeing aliens in detention and those released into the community. In 2004 ICE implemented the ATD program to be a cost-effective alternative to detaining aliens [redacted]

[redacted] the Joint Explanatory Statement to the 2014 Consolidated Appropriations Act mandated that GAO evaluate ICE's implementation of the ATD program.

This report addresses (1) trends in ATD program participation from fiscal years 2011 through 2013 and the extent to which ICE provides oversight to help ensure cost-effective program implementation, and (2) the extent that ICE measured the performance of the ATD program for fiscal years 2011 through 2013. GAO analyzed ICE and ATD program data, reviewed ICE documentation, and interviewed ICE and ATD contractor officials.

What GAO Recommends

GAO recommends that ICE analyze data to monitor ERO field offices' implementation of guidance and require the collection of data on the Technology-only component. DHS concurred with the recommendations.

View GAO-15-26. For more information, contact Rebecca Gambler at (202) 512-8777 or gamblerr@gao.gov.

What GAO Found

From fiscal year 2011 through fiscal year 2013, the number of aliens who participated in the U.S. Immigration and Customs Enforcement's (ICE) Alternatives to Detention (ATD) program increased from 32,065 to 40,864, in part because of increases in either enrollments or the average length of time aliens spent in one of the program's components. For example, during this time period, the number of aliens enrolled in the Full-service component, which is run by a contractor that maintains in-person contact with the alien and monitors the alien with either Global Positioning System (GPS) equipment or a telephonic reporting system, increased by 60 percent. In addition, the average length of time aliens spent in the Technology-only program component, which offers a lower level of supervision at a lower contract cost than the Full-service program component and involves ICE monitoring of aliens using either telephonic reporting or GPS equipment provided by a contractor, increased by 80 percent—from about 10 months to about 18 months. In 2011, ICE recommended practices in guidance to its Enforcement and Removal Operations (ERO) field offices to better ensure cost-effective implementation of the program. For example, ICE recommended that field officers move aliens who have demonstrated compliance under the Full-service component to the less costly Technology-only component. GAO's work showed differences in ERO field offices' implementation of the guidance. However, ICE headquarters officials said that because of limitations in how they collect and maintain program data, they do not know the extent to which field officers have consistently implemented this guidance. ICE plans to institute new data collection requirements to address these limitations and use these data for a variety of purposes; however, ICE has not considered how to analyze these data to monitor the extent to which ERO field offices are implementing the guidance. Analyzing these data, once collected, could help ICE better monitor the extent to which ERO field offices are implementing the practices in its guidance intended to ensure more cost-effective program operation.

ICE has established ATD program performance measures to, among other things, assess alien compliance with requirements to appear in court and leave the country after receiving a final order of removal, but it has not collected complete data for assessing progress against these measures [redacted] However, ICE did not collect similar performance data to report results for aliens enrolled in the Technology-only component—which composed 39 percent of the overall ATD program participants in fiscal year 2013—because when the program was first created, ICE officials stated that they envisioned that most aliens would be in the Full-service component with data tracked by the contractor. ICE plans to expand the contractor's role in data collection but does not plan to require collection of performance data for aliens enrolled in the Technology-only component; rather ICE plans to leave it to the discretion of field officials as to whether to require the contractor to collect these data. Without requirements to collect these data, ICE may not have complete information to fully assess program performance.

TRACImmigration

What Happens When Individuals Are Released On Bond in Immigration Court Proceedings?

Court records show that at least half - and in some years upwards of two-thirds - of individuals are held in ICE custody at the time the Department of Homeland Security (DHS) starts Immigration Court proceedings seeking to deport them. As the backlog in the Immigration Court continues to grow and wait times increase,[1] the issue of whether individuals should remain locked up while their Immigration Court case is pending has garnered increased attention.

Even though detained individuals receive priority in scheduling court hearings, some individuals remain locked up for many months and even years before their cases are finally concluded.[2] A growing number of lawsuits in federal courts are challenging the constitutionality of locking up individuals during this period when their detention is "prolonged."[3]

The government argues that continued detention is needed to ensure that these individuals will not abscond and will show up for their hearing. For a smaller subset, there also may be public safety concerns. However, detention imposes real costs. There are to begin with the costs to taxpayers who foot the substantial bill to keep individuals locked up even though there has been no finding that the individual is actually deportable. But there are also real and significant costs to the individuals who are being detained, and frequently also to their family members.

It is unquestioned that the loss of freedom and all that this implies often imposes substantial hardships. Further, it is widely acknowledged that it is more difficult to carry out activities necessary to mount a successful defense in the deportation proceeding itself when individuals remain locked up.

Some individuals, but historically only a minority, have been able to challenge the necessity of their continued detention in a hearing before an immigration judge. However, due in part to court rulings, the right to a hearing before an immigration judge to challenge ICE's decision to keep individuals detained has been extended to a wider group of individuals. Unfortunately, very little information has been published by the Immigration Court on these custody hearings, leaving many questions unanswered. These questions include:

- What proportion of detained individuals in Immigration Court hearings actually receive a custody hearing before a judge?
- Once they receive a hearing, how often do immigration judges grant bond or release persons on personal recognizance?
- Do individuals who are released as a result of these decisions then abscond or do they show up for their subsequent court hearings?
- And finally what ultimately happens in their removal cases, does the court find they are actually deportable?

This report for the first time seeks to address these fundamental questions. It uses the court's own case-by-case records on each custody hearing, matched with parallel case-by-case records on what ultimately happens in their subsequent removal proceeding. The underlying court records were obtained by the Transactional Records Access Clearinghouse (TRAC) at Syracuse University from the Executive Office for Immigration Review (EOIR) under the Freedom of Information Act (FOIA).

Results presented are based upon a detailed analysis of these records by TRAC. The analysis spanned the last twenty years. In brief, TRAC's findings are as follows:

- First, the proportion of detained individuals in Immigration Court proceedings receiving custody hearings before an immigration judge has risen from one in five, to about half over the last twenty years.
- Second, the bond request was frequently turned down -- sometimes more, and sometimes a bit less than half the time. For those granted bond, about one in five remained detained until the end of their case, presumably because they were unable to post the bond amount set.

- Third, for those who posted bond and were then released, relatively few individuals currently abscond. During FY 2015, for example, only 14 percent failed to turn up at their subsequent court hearing.

- Fourth most individuals who were released prevailed in their court proceedings. Last year fully two out of every three (68%) won their case and were found not to be deportable.

Details on these findings are presented below. This report expands the topics covered in TRAC's extensive publication series on Immigration Court matters, and was made possible through the support of Syracuse University and a recent grant from the Carnegie Corporation of New York.

How Many Individuals Receive Immigration Court Custody Hearings?

During FY 2015, immigration court records show that a total of 50,654 individuals received custody hearings before a judge, up from 14,169 twenty years earlier. Much of this increase reflects the growing number of detained individuals in Immigration Court. As shown in Figure 1 and Appendix Table 1, individuals detained at the start of their immigration proceedings generally grew from 66,000 in FY 1995 to nearly 164,000 in FY 2011, and then declined back to roughly 98,000 last year as overall court filings declined.[4]

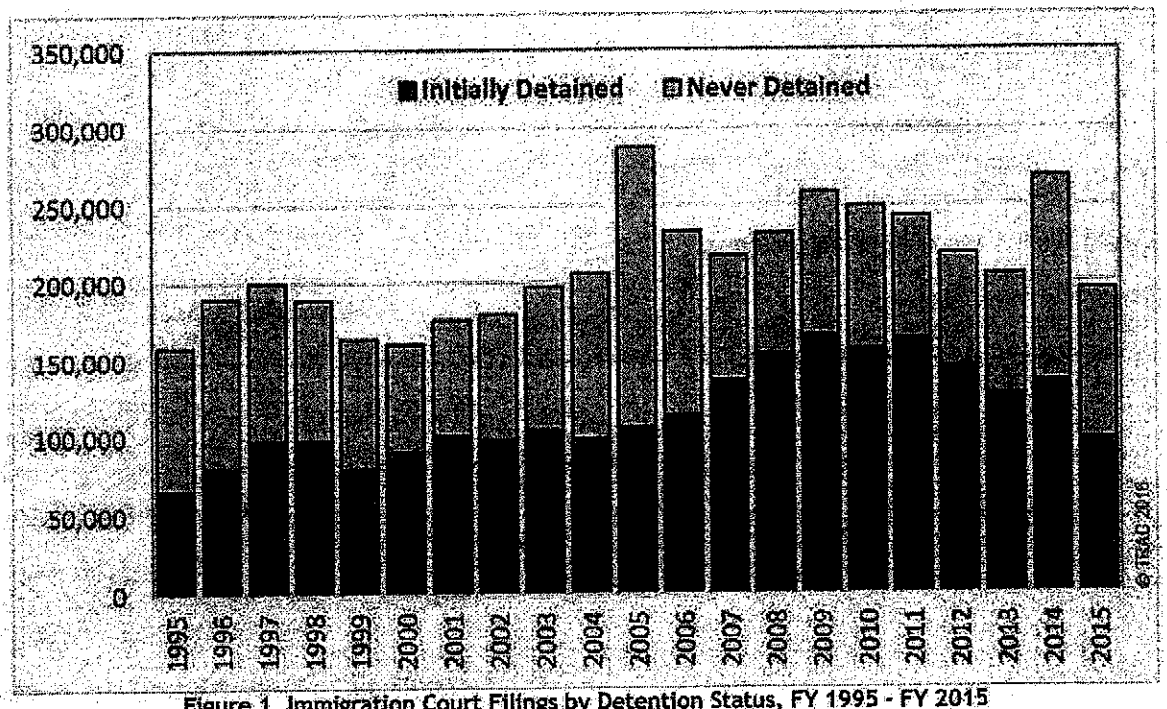
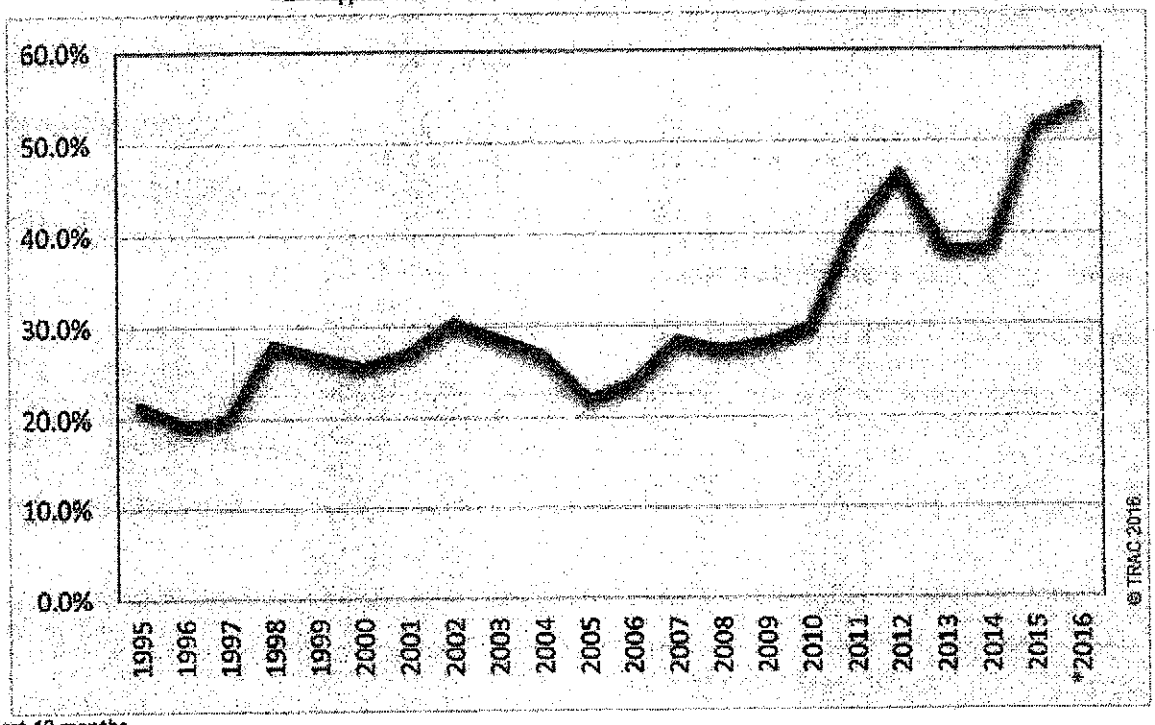


Figure 1. Immigration Court Filings by Detention Status, FY 1995 - FY 2015

For many years about one in four initially detained individuals received custody hearings before an immigration judge. Although this percentage has varied a bit from year to year, during the fifteen-year period between FY 1995 and FY 2010 it rarely was as low as 20 percent, or higher than 30 percent.

As shown in Figure 2, since FY 2010 the picture has changed. There are a growing proportion of detainees receiving bond hearings. During FY 2015 custody hearings were held for half of those detained. While hearing numbers jumped to over 66,000 in FY 2011 and FY 2012, since then the number of individuals with custody hearings has been falling. What has happened is that the number of individuals in detained proceedings has fallen faster, so that the proportion with custody hearings still increased. See Figure 2 and Appendix Table 1.



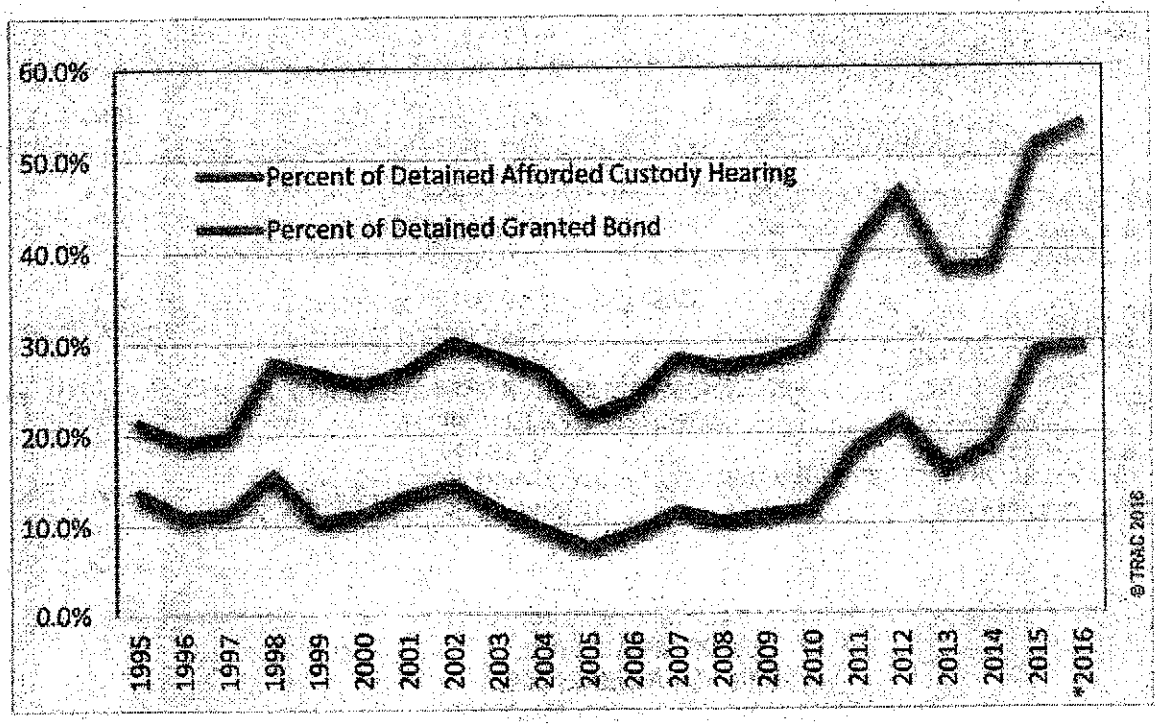
* *first 10 months*

Figure 2. Percent of Initially Detained Individuals Afforded Custody Hearing

How Often Do Immigration Judges Grant Bond or Release on Personal Recognizance?

On average over this twenty-year period, slightly more than half (54%) of bond hearings resulted in the immigration judge denying the bond motion. In the remaining 46 percent, the bond motion was granted.[5] There has been considerable year-to-year variation in these rates. In general, judges are no more likely to grant bond today than they were twenty years ago.

Figure 3 displays this release rate from a slightly different angle - those released as compared with the total number of individuals in detained immigration proceedings. Historically, only one in ten detained individuals had a favorable judge ruling at a bond hearing. Last year three out of every ten detained individuals had a bond motion granted by an immigration judge. This increase reflects the growing proportion of detained individuals who had hearings. See Figure 3 and Appendix Table 1.



* *first 10 months*

Figure 3. Percent of Detained with Custody Hearings and Granted Bond

The character of bond hearings has also changed over the past two decades. Twenty years ago court records indicate in three out four cases an initial bond had been set by the immigration enforcement officials and the hearing was over whether the bond amount should be reduced -- not whether the individual should be released at all. However, the number of these cases has steadily dwindled. By FY 2015, in 94 percent of the cases ICE was apparently insisting that the individual must be kept locked up since court records indicated enforcement officials had not set any bond amount. Accordingly, the judge was being asked to set a bond to allow the individual to be released.

When the bond motion was granted, bond amounts naturally varied. A few were granted release on personal recognizance, or the bond amount was simply set at $0. At the other extreme, occasionally bond amounts of a million dollars or more were set by the judge. The median bond amount set twenty years ago was $3,000. By FY 2002 it rose to $5,000 where it remained until FY 2014 when it increased to $6,000. In FY 2015 the median bond amount was $6,500. See Appendix Table 2.

Figure 4 shows, where bond was granted, the distribution of the amount of bond set by the judge in each of the past five years. In FY 2015 fully half of all bonds set were between $4,000 and $10,000. A total of four percent did not have to post any bond, while according to court records, seven individuals had bonds set of over a million dollars.

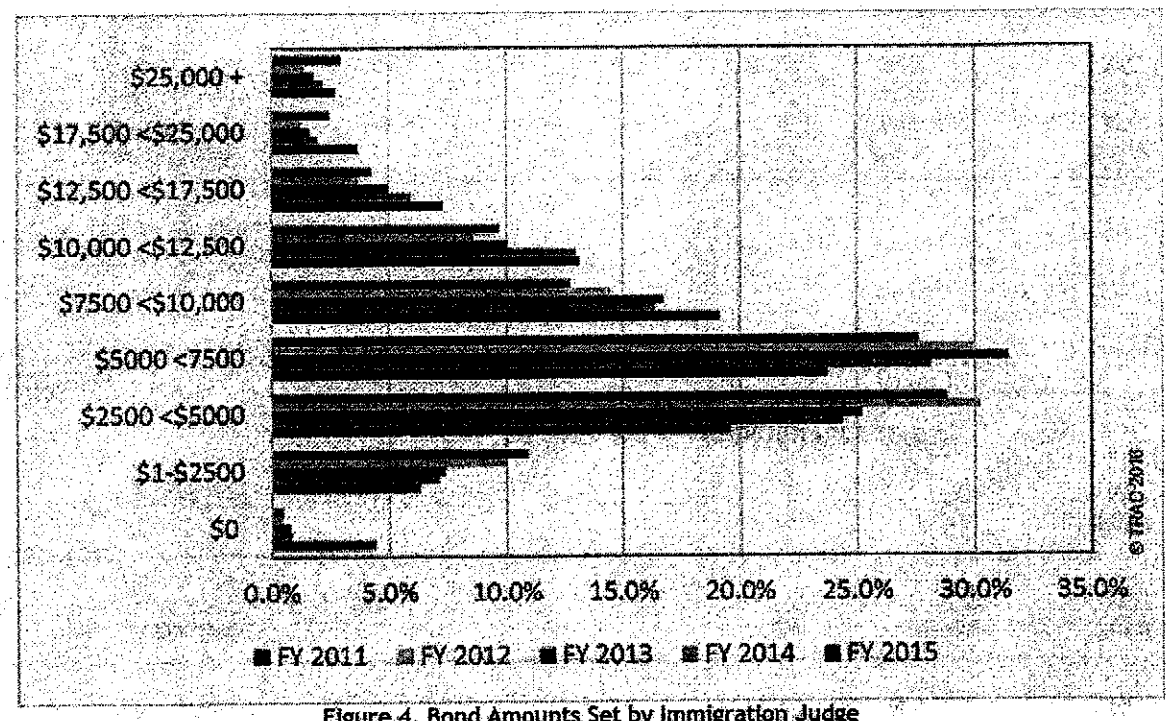


Figure 4. Bond Amounts Set by Immigration Judge

For those granted bond, having a bond set still was not synonymous with being released. While figures varied from year to year, according to court records about one in five remained detained at the conclusion of their case, presumably because they were unable to post that bond amount. For cases concluded during FY 2015, 13 percent remained detained even after the judge granted bond, down from 28 percent who had still been detained at the conclusion of their case in FY 2011 after bond was granted. See Appendix Table 3.

The remaining sections of this report focus on those individuals who secured their release from detention. That is, they had a bond hearing before a judge, were then successful in having their motion granted, and finally were as a result released from ICE custody.

Did Released Individuals Turn Up at Their Subsequent Court Hearings?

failed to appear and the immigration judge - in their absence -- granted the government's request for a removal order to deport them.[6]

The "*in absentia*" rate overall for released individuals during FY 2015, for example, was 23.4 percent[7], as compared to only 14.0 percent for the subset of those released after an immigration judge had set bond. This is noteworthy since the cases immigration judges were reviewing were almost always those where the government had refused to release the individual. Such cases, if the system operated logically, would be thought to present a higher, not lower, flight risk.

after their custody hearings peaked at 47 percent during FY 2002 and have generally fallen since then despite the increasing percentage of detained individuals being released on bond by judges[8]. See Figure 5 and Appendix Table 3.

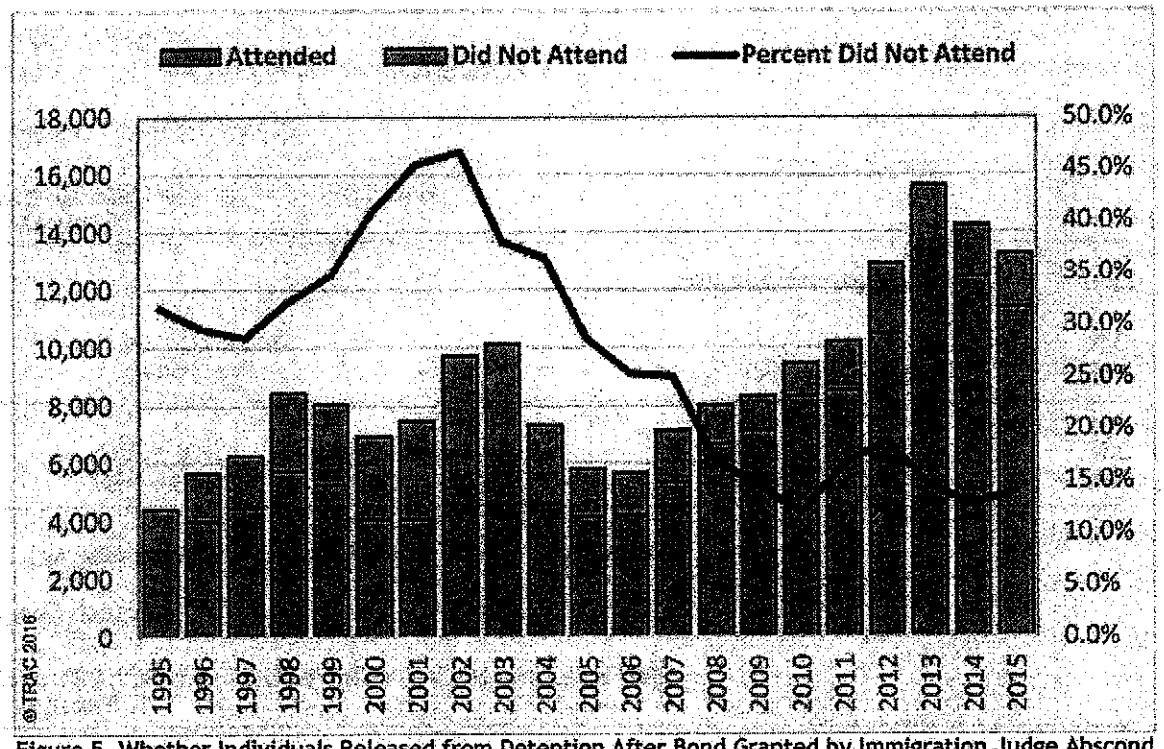


Figure 5. Whether Individuals Released from Detention After Bond Granted by Immigration Judge Abscond

Immigration Judge Decisions on Deportation and Removal Proceedings

The remaining proportion ordered deported - that is, one out of three - was significantly lower than those ordered deported overall in Immigration Court proceeding completed last year. As TRAC has previously reported, in FY 2015 the overall proportion of individuals ordered deported in Immigration Court proceedings was just under half, or 46 percent.

Outcomes in deportation and removal proceedings over the past two decades for individuals released after a judge granted bond in their custody hearing are shown in Figure 6 and Appendix Table 4. As can be seen, these individuals who have been released from detention have over time increasingly prevailed in their Immigration Court cases.

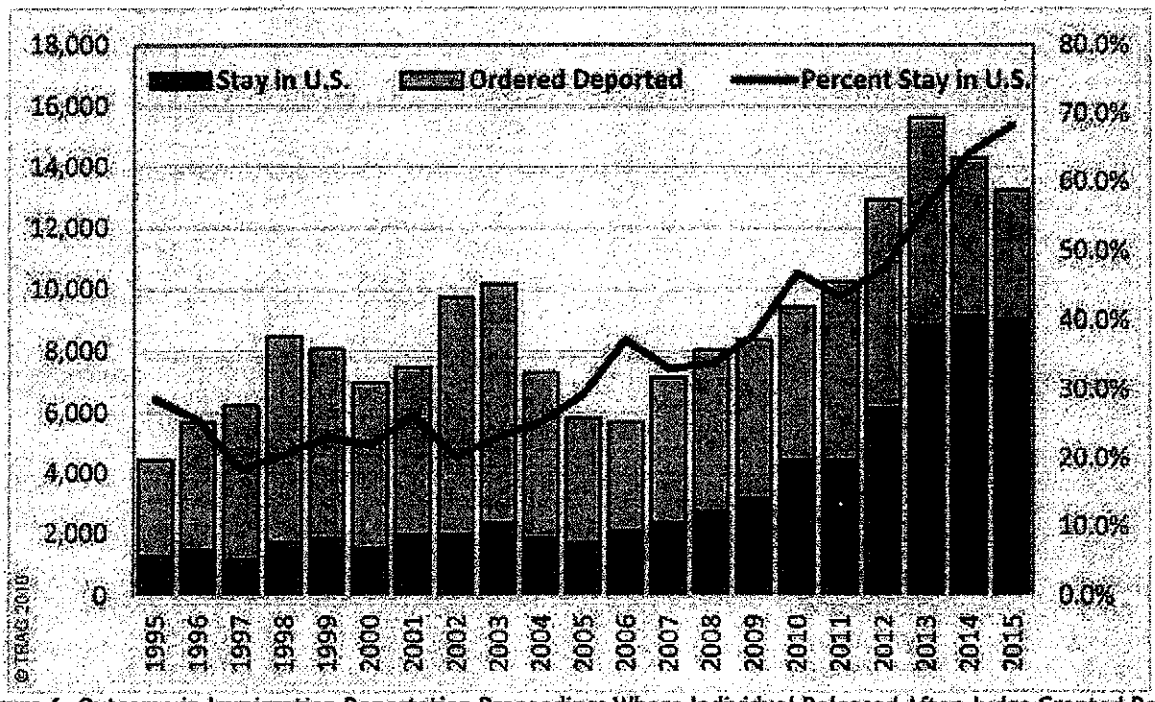


Figure 6. Outcome in Immigration Deportation Proceedings Where Individual Released After Judge Granted Bond

Conclusion

Court records so far demonstrate that the practical result of the release of increasing numbers of individuals on bond has not resulted in any significant increase in those who abscond and fail to show up for their immigration hearings. Trends, if anything, show declines. At the same time, it has allowed thousands of individuals who ultimately were found not to be deportable to avoid being held during their lengthy court proceedings. The number of those judged not deportable who escaped unnecessary detention grew over the last decade from 1,697 individuals in FY 1995 to 9,158 individuals in FY 2015.

Footnotes

[1] *See, for example, July 2016 TRAC report on increasing backlogs, and September 2015 report on ballooning wait times.*

[2] *See, for example, recent EOIR statistics. Also see TRAC report that found legal noncitizens had received the longest ICE detention times simply because of the lengthy procedures required to prove they had the legal right to remain in the U.S.*

[3] *The U.S. Supreme Court, for example, recently granted certiorari to review the Ninth Circuit's Rodriguez opinion in a class action involving prolonged detention in Immigration Court proceedings holding that those individuals had a right to a bond hearing before an Immigration judge. See also, Denmore v. Kim, 538 U.S. 510 (2003).*

[4] *These recent declines reflect the decrease in the overall number of court filings after FY 2011 in large part because of DHS's increasing reliance on administrative deportation procedures that bypass the Immigration Court. The larger number in FY 2014 reflects cases from the surge of unaccompanied children and women with children that arrived that year seeking refuge in this country*

[5] *For individuals who had multiple bond hearings, figures are based upon the outcome of the last hearing. Grant rates are lower if counts include all hearings since unsuccessful candidates account for most requests for repeat hearings.*

[6] *Given the Court's backlog, there was typically a long delay between the date of their bond hearing and the hearing that concluded removal proceedings. For example, the median bond hearing date for FY 2015 dispositions was back in April 2012.*

[7] *This rate, using the same methodology, compares the total number of* in absentia *decisions in cases in which the individuals had been released from custody to the total cases involving released individuals concluded that year. These results are also shown in Appendix Table 3. Where there have been multiple proceedings for the same individual, the outcome for the last - that is, final -- proceeding is used. TRAC's result differs from what EOIR publishes as its "*in absentia*" rate for the following two reasons. First, EOIR's rate is based upon the initial, rather than the last proceeding. If this rate is being used as an indicator of individuals absconding, rather than simply failing to appear,*

then using the first proceeding and ignoring subsequent ones is quite inappropriate. Where, for example, the individual never received notice of the hearing, the case may be reopened and a later hearing take place. Use of the last proceeding, rather than the first, is thus a more accurate measure in this context. In fact, using the last proceeding instead of the first significantly impacts and reduces the calculated rates. Second, EOIR unlike TRAC does not include all individuals with hearings that conclude their case, choosing to exclude some because of the particular type of decision the court ultimately made. While anyone who absconded would not be qualified to receive the type of decision that EOIR labels as "other completions", the agency excludes these from its total case completion count when computing in absentia *rates. Although formerly insignificant in number, these "other completions" have grown in recent years. They have the same practical effect of closing the case and allowing the individual to remain in the U.S. In FY 2015, these "other completions" made up around a quarter of the cases the court decided. EOIR appears to continue to exclude them for what appears to be largely historical reasons when its case counting methodology was quite different. No rationale now for their current exclusion remains. Indeed, continuing to exclude them results in publishing misleading and greatly inflated* in absentia *rates.*

[8] *Supplemental Note (October 6, 2016). TRAC just completed a supplemental analysis of the subset of cases that EOIR recently began identifying as "individuals released from custody as a result of a bond hearing conducted pursuant to the decision in Rodriguez v. Robbins, 804 F.3rd 1060 (9th Cir. 2015)." TRAC found there are a relatively small number that EOIR has identified thus far as applicable Rodriguez cases. In addition, only a very few of these Rodriguez cases have reached a conclusion on their merits. As a result it is much too early to even attempt to determine what proportion ultimately will be decided "in absentia." To place these very preliminary numbers into context, TRAC reported in Appendix Table 3 that during the first 10 months of FY 2016 there were 12,022 cases of all types that had been concluded in which the individual earlier had been released from custody as a result of immigration judges granting them bond. TRAC found only two out of the 12,022 were identified as Rodriguez cases and, according to Immigration Court records, both of these released individuals showed up for their immigration hearings.*

Appendix

Appendix Table 1. Immigration Court Detained Cases with Custody Hearings

Fiscal Year	New Court Filings		Custody Hearings*		Percentage of Detained	
	Total	Individual Detained	All	Bond Granted**	With Custody Hearings	With Bond Granted
1995	159,135	66,017	14,169	9,056	21.46%	13.7%
1996	190,170	80,423	15,595	9,005	19.4%	11.2%
1997	200,316	98,094	19,637	11,462	20.0%	11.7%
1998	189,070	98,160	27,636	15,559	28.2%	15.9%
1999	164,186	80,129	21,515	8,499	26.9%	10.6%
2000	160,852	89,875	23,116	10,328	25.7%	11.5%
2001	176,230	100,980	27,451	13,540	27.2%	13.4%
2002	180,249	98,475	29,955	14,469	30.4%	14.7%
2003	196,905	104,467	30,040	12,415	28.8%	11.9%
2004	205,818	98,907	26,685	9,614	27.0%	9.7%
2005	287,240	105,838	23,408	8,164	22.1%	7.7%
2006	233,269	114,113	27,117	10,658	23.8%	9.3%
2007	217,088	136,206	38,793	15,870	28.5%	11.7%
2008	231,504	153,531	42,232	16,089	27.5%	10.5%
2009	258,036	165,500	46,707	18,563	28.2%	11.2%
2010	249,452	156,999	46,819	18,549	29.8%	11.8%
2011	242,932	163,716	66,913	30,398	40.9%	18.6%
2012	218,483	145,785	68,014	31,688	46.7%	21.7%
2013	205,142	127,573	48,722	20,587	38.2%	16.1%
2014	268,095	135,434	52,138	25,644	38.5%	18.9%
2015	194,798	97,927	50,654	28,637	51.7%	29.2%
2016***	157,664	80,482	43,317	23,996	53.8%	29.8%

** The number of individuals with custody hearings.*
*** Where an individual had their custody reviewed more than once, the outcome at the last custody hearing is used.*
****Covers the first 10 months of FY 2016 (through the end of July).*

Appendix Table 2. Bond Decisions* to Grant Bond or Release on Personal Recognizance

Fiscal Year	Number	Median Amount	Percentage by Bond Amount

Fiscal Year	Number	Median Amount	Percentage by Bond Amount									
			$0	$1-$2,500	$2,500<$5,000	$5,000<$7,500	$7,500<$10,000	$10,000<$12,500	$12,500<$17,500	$17,500<$25,000	$25,000+	Total
1995	9,056	$3,000	7.1%	32.6%	19.2%	16.2%	7.5%	6.2%	3.4%	3.1%	2.6%	100.0%
1996	9,005	$2,500	5.9%	30.5%	21.3%	13.3%	10.0%	12.5%	4.5%	1.0%	1.0%	100.0%
1997	11,462	$3,000	5.9%	29.9%	26.9%	15.7%	4.3%	8.1%	3.6%	2.6%	2.8%	100.0%
1998	15,559	$3,500	5.0%	19.6%	37.7%	17.6%	5.1%	7.3%	2.8%	2.6%	2.2%	100.0%
1999	8,499	$3,000	8.1%	28.3%	39.5%	13.9%	3.3%	3.6%	1.4%	0.9%	0.9%	100.0%
2000	10,328	$3,000	5.7%	25.7%	35.4%	20.1%	3.3%	4.1%	2.5%	0.9%	2.3%	100.0%
2001	13,540	$3,500	7.9%	17.6%	37.7%	23.1%	4.2%	4.2%	2.8%	0.6%	1.9%	100.0%
2002	14,469	$5,000	5.7%	14.1%	28.0%	23.5%	7.1%	8.6%	4.9%	2.5%	5.5%	100.0%
2003	12,415	$5,000	5.5%	15.2%	24.2%	24.6%	7.9%	8.8%	4.9%	2.9%	6.0%	100.0%
2004	9,614	$5,000	4.6%	13.0%	21.0%	29.3%	10.4%	9.5%	3.9%	3.4%	4.9%	100.0%
2005	8,164	$5,000	4.6%	12.8%	18.8%	31.2%	9.2%	10.7%	4.3%	2.6%	5.9%	100.0%
2006	10,658	$5,000	3.4%	14.5%	22.3%	27.4%	10.1%	10.2%	4.7%	2.8%	4.6%	100.0%
2007	15,870	$5,000	3.2%	12.6%	22.5%	26.1%	11.3%	11.9%	5.4%	3.3%	3.7%	100.0%
2008	16,089	$5,000	1.8%	10.4%	26.2%	28.0%	11.0%	11.9%	4.9%	2.7%	3.2%	100.0%
2009	18,563	$5,000	1.4%	10.3%	25.4%	27.7%	12.3%	11.6%	5.3%	2.7%	3.4%	100.0%
2010	18,549	$5,000	1.1%	12.5%	30.6%	27.6%	12.2%	8.7%	4.0%	1.8%	1.6%	100.0%
2011	30,398	$5,000	0.5%	19.9%	28.8%	27.6%	12.7%	9.7%	4.3%	2.5%	3.0%	100.0%
2012	31,688	$5,000	0.5%	10.0%	30.2%	29.9%	14.5%	8.6%	3.7%	1.3%	1.4%	100.0%
2013	20,587	$5,000	0.8%	7.4%	25.2%	31.4%	16.8%	10.1%	5.0%	1.6%	1.8%	100.0%
2014	25,644	$6,000	0.8%	7.1%	24.4%	28.2%	16.4%	13.0%	5.9%	1.9%	2.2%	100.0%
2015	28,637	$6,500	4.4%	6.3%	19.6%	23.7%	19.1%	13.1%	7.3%	3.7%	2.7%	100.0%
2016**	23,996	$8,000	0.7%	4.1%	12.5%	19.9%	22.6%	18.0%	9.2%	6.5%	6.5%	100.0%

** Where an individual had their custody reviewed more than once, the outcome at the last custody hearing is used.*
*** Covers the first 10 months of FY 2016 (through the end of July).*

Appendix Table 3. Completed Immigration Court Cases Where Initially Detained Individual Had Been Released

Fiscal Year Case Completed	Immigration Judge Granted Bond*						All Completions Where Released		
	Total	Remained Detained	Gained Release	Attended Court Hearing	Did Not Attend**	Percent "In Absentia"	Total Released	Did Not Attend**	Percent "In Absentia"
1995	6,820	2,381	4,439	3,038	1,401	31.6%	11,898	4,249	35.7%
1996	8,227	2,546	5,681	4,001	1,680	29.6%	12,484	4,328	34.7%
1997	9,228	2,977	6,251	4,455	1,796	28.7%	12,767	4,145	32.5%
1998	12,297	3,841	8,456	5,731	2,725	32.2%	16,308	5,775	35.4%
1999	10,214	2,146	8,068	5,260	2,808	34.8%	16,226	6,050	37.3%
2000	8,967	2,006	6,961	4,101	2,860	41.1%	17,251	7,641	44.3%
2001	9,781	2,302	7,479	4,082	3,397	45.4%	22,986	11,098	48.3%
2002	12,574	2,855	9,719	5,187	4,532	46.6%	27,646	13,058	47.2%
2003	13,310	3,153	10,157	6,303	3,854	37.9%	27,258	11,008	40.4%
2004	9,818	2,509	7,309	4,648	2,661	36.4%	20,074	7,362	36.7%
2005	7,765	1,969	5,796	4,142	1,654	28.5%	17,287	5,951	34.4%
2006	7,783	2,113	5,670	4,235	1,435	25.3%	18,387	5,899	32.1%
2007	9,858	2,697	7,161	5,368	1,793	25.0%	19,082	5,243	27.5%
2008	10,656	2,635	8,021	6,671	1,350	16.8%	19,111	4,137	21.6%
2009	11,353	3,000	8,353	7,140	1,213	14.5%	18,336	3,764	20.5%
2010	12,184	2,735	9,449	8,322	1,127	11.9%	20,583	3,845	18.7%
2011	14,211	3,985	10,226	8,537	1,689	16.5%	24,587	5,778	23.5%

Fiscal Year Case Completed	Immigration Judge Granted Bond*						All Completions Where Released		
	Total	Remained Detained	Gained Release	Attended Court Hearing	Did Not Attend**	Percent "In Absentia"	Total Released	Did Not Attend**	Percent "In Absentia"
2012	17,023	4,109	12,914	10,480	2,434	18.8%	29,573	6,821	23.1%
2013	18,504	2,876	15,628	13,370	2,258	14.4%	36,307	8,260	22.8%
2014	17,221	2,951	14,270	12,448	1,822	12.8%	38,685	9,547	24.7%
2015	15,269	2,028	13,241	11,391	1,850	14.0%	44,280	10,379	23.4%
2016***	13,485	1,463	12,022	10,009	2,010	16.7%	38,770	7,912	20.4%

** This table covers only those cases where Immigration Court proceedings were completed. Thus, the outcome is known and whether the decision was made "in absentia" can be determined. Individuals granted bond by Immigration Judge where cases are still pending are not included.*
*** Based on court records that decision was made "in absentia" when individual failed to appear for their court hearing.*
**** Covers the first 10 months of FY 2016 (through the end of July).*

Appendix Table 4. Outcome in Immigration Deportation Proceedings Where Individual Released After Judge Granted Bond

Fiscal Year Case Completed	Total*	Stay in U.S.	Ordered Deported	Percent Stay in U.S.
1995	4,439	1,272	3,167	28.7%
1996	5,680	1,457	4,223	25.7%
1997	6,249	1,142	5,107	18.3%
1998	8,456	1,734	6,722	20.5%
1999	8,068	1,862	6,206	23.1%
2000	6,961	1,528	5,433	22.0%
2001	7,479	1,959	5,520	26.2%
2002	9,719	1,965	7,754	20.2%
2003	10,156	2,355	7,801	23.2%
2004	7,308	1,848	5,460	25.3%
2005	5,796	1,697	4,099	29.3%
2006	5,670	2,106	3,564	37.1%
2007	7,160	2,363	4,797	33.0%
2008	8,021	2,703	5,318	33.7%
2009	8,351	3,156	5,195	37.8%
2010	9,449	4,415	5,034	46.7%
2011	10,226	4,437	5,789	43.4%
2012	12,914	6,135	6,779	47.5%
2013	15,627	8,814	6,813	56.4%
2014	14,268	9,158	5,110	64.2%
2015	13,225	9,031	4,194	68.3%
2016**	12,012	8,040	3,972	66.9%

** Covers deportation and removal proceedings. Slight difference between the totals in Appendix Tables 3 and 4 are because a small number of non-deportation/removal case types handled by the Immigration Court are not included in this table.*
*** Covers the first 10 months of FY 2016 (through the end of July).*

Report date: September 14, 2016

https://www.cleveland.com/metro/index.ssf/2017/08/us_sends_deportees_into_violen.html (last visited 31 May 2018)

U.S. sends deportees into violent Mexican cities: 'Willful blindness,' or 'No good choices'?

Updated August 27, 2017 at 8:22 AM; Posted August 27, 2017 at 6:04 AM

By Michael Sangiacomo, The Plain Dealer
msangiacomo@plaind.com

With additional reporting by Alfredo Corchado, Dallas Morning News.

NUEVO LAREDO, Mexico -- The United States Immigration and Customs Enforcement agency knows the city of Nuevo Laredo is one of the most dangerous places in Mexico, yet it continues to send tens of thousands of deportees there every year.

Within a span of a recent week, three Painesville residents were deported to the border town in northeast Mexico. Two were kidnapped and beaten. They were released only after their families in the U.S. paid the cartel thousands of dollars.A third was robbed as she tried to reach family members.

Many other deportees are far less fortunate.

Those who have studied the town's violence say many victims kidnapped as they cross into Mexico are not released, even if their families pay. They are forced to work in marijuana fields and drug factories, or are forced to kill for the cartel. Young women end up as prostitutes.

All to support the gang's criminal enterprise.

- **Related: Fractured cartels driving up violence as murders soar**
- **Related: Kidnapped in Mexico: Painesville deportee shares story**
- **Related: Deported Painesville mom: 'They treat us like insects, they don't care if we live or die'**

Critics say the U.S. Immigration and Customs Enforcement's practice of sending tens of thousands of potential victims there every year is bankrolling the drug cartels that send drugs and criminals into the United States.

"They get a great deal of money from the kidnap victims and also are using them in the gangs," said Veronica Dahlberg, director of the immigration support group, HOLA of Ashtabula. "This produces a great deal of money for the cartels, which enables them to send drugs into the United States. Why is ICE playing into the cartel's hands?"

Jeremy Slack, an assistant professor in the sociology department at the University of Texas at El Paso, spent several years studying the region's violence and said that the U.S. immigration officials are aware of it and just don't seem to care.

"This is not a new problem," he said. "The Mexican government and support groups have been asking the United States for years not to deport people through Nuevo Laredo because of the crime. They have not stopped."

'The worst places to send people'

The Mexican office of migration reported that 22,022 people from the United States were deported to Mexico in the three cities of the state of Tamaulipas in the first six months of this year. Of that number, 11,110 went through Nuevo Laredo; and 6,170 through Reynosa and 4,742 through Matamoros, where the violence is almost as bad.

The Tamaulipas cities were the most used of the 11 deportation sites agreed upon by the United States and Mexico. Baja, on the California border, had the second largest number with 21,205.

"Tamaulipas and Nuevo Laredo in particular are the worst places to send people being deported from the United States," said Slack. "They are dropped off often with no friends of relatives in Mexico, little money and totally unprepared to deal with the criminal element that overruns the city."

E12

The U.S. Immigration and Customs Enforcement has refused to explain why it continues to deport people through Tamaulipas despite the State Department's warnings to U.S. citizens to stay away. Numerous requests made to the agency to discuss the policy have gone unanswered.

According to the State Department: "U.S. citizens should defer all non-essential travel to the state of Tamaulipas due to violent crime including homicide, armed robbery, carjacking, extortionand sexual assault. The number of reported kidnappings in Tamaulipas is among the highest in Mexico."

The warning adds that law enforcement in the state is "limited to non-existent" and that the most violent activity occurs near the U.S. border.

A spokesman for ICE would only say, "ICE ensures that detainees are maintained in safe, secure and humane environments while in agency custody."

A half-dozen federal and state senators and congress members from both parties were contacted and asked for comment and to discuss the rationalE for sending deportees to Tamaulipas. One responded.

Debate over how to fix problem

U.S. Rep. David Joyce, Republican of Russell Township, whose district includes Lake and Geauga counties, suggested that stopping illegal immigration is an answer.

"Unfortunately, all those ports of entry are dangerous," he said. "The reality is there are no good choices, as close to 75 percent of Mexico is under a travel warning. The only real solution is to stop people from entering the country illegally in the first place."

"There is growing debate in [the Mexican] Congress on the need to do more to protect them," said Sen. Marco Antonio Olvera Acevedo of the state of Zacatecas, where millions of Mexican immigrants who go to the U.S. originate from. "We need to find other places less dangerous to deport them."

"This is willful blindness on the part of the United States and a binational conspiracy," said Carlos Spector, a longtime immigration lawyer in El Paso.

He said gangs operate along the Texas border as authorized criminal groups because the relationship between the state and criminal cartels make it possible.

Slack said Americans have little concept of what happens to the people who were deported for being in the United States illegally. Most do not have criminal records and have worked and lived in U.S. communities for years.

"Many are robbed, many are kidnapped," he said. "They are ransomed for every penny the cartels can get from the families and friends, and paying the ransom is far from a guarantee they will be released. The victims are killed or even forced to work for the cartels that captured them."

He said kidnapping has become such a problem in Mexico that the government has increased the penalty to 80 years in prison. Unfortunately, that made the kidnappers less likely to ever releasetheir victims alive.

"If a witness can identify the kidnapper, a conviction is assured," Slack said. "That means the cartel is taking a chance every time they allow a kidnap victim to go free. Instead, they force them to work in their marijuana fields or drug factories. The women are forced into the sex industry."

"They force some men to become murderers," Slack said. "They tell them they want them to kill someone for the cartel. If they refuse, they will be killed. Once a man has murdered someone, he's in the cartel's power and is forced to keep killing."

Cartels control border city

Mexican officials said the crime problem in Nuevo Laredo began to seriously worsen 10 years ago as crime cartels battled one another for control of the valuable border city, the main entry point for drugs to the United States.

ICE flies deportees from various parts of the United States on a private plane to Laredo, Texas. There, they are put on a bus and taken to the center of the bridge that borders Mexico and Nuevo Laredo and released. Mexican government officials quickly screen the deportees, offering them shelter for the night, then leaving them to walk into the dangerous city on their own.

The danger in the city is underscored every day. On July 27, the bloody bodies of five men and four women were found dumped on a Nuevo Laredo sidewalk near the American border, the work of a cartel.

Ira Mehlman, spokesman for the Federation for American Immigration Reform, a group that seeks to limit immigration, said only ICE can explain why it continues to send people to Nuevo Laredo, but he noted that the situation underlines the problems in the area.

"The situation in Nuevo Laredo and in other border cities in Mexico provides additional reasons why we need to get the border under control," he said. "The failure tocontrol our southern border has drawn criminal cartels to border towns in northern Mexico ... These violent cartels, in some cases, control these cities and are more powerful (and certainly more feared) than the Mexican government."

He added that increasing border security would make it "clear to would-be illegal aliens that we intend to enforce our laws in the interior of the country."

Dahlberg said deporting people to "the most dangerous city in Mexico" is unconscionable.

"There is a 2,000-mile border with Mexico," she said. "Why not send them through safer cities like Tijuana, Nogales or Juarez where there is considerably less crime? It makes no sense on any level."

Tougher treatment of deportees

In many cases, ICE does not allow the deportees to even contact their families or lawyers to tell them when and where to meet them. Usually, these are people who have been deported once before and are not given access to immigration court hearings. Their deportation is swift, often within two weeks of arrest.

"It's hard to believe," said Slack. "Maybe it's being done deliberately to discourage people from entering the United States illegally. For years, illegal immigration was handled as a bureaucratic issue, people were given stays to remain in the country. But in the past few years, ICE has gotten tougher on illegal immigrants, very tough."

ICE has not released figures on the number of arrests of illegal immigrants for 2016 or 2017, but immigration lawyers and experts say the numbers have increased this year under President Donald Trump.

ICE now says anyone in the country illegally is automatically guilty of a crime and is subject to arrest and deportation. Under the Obama administration, ICE concentrated on people who were convicted of crimes beyond being in the country illegally.

According to ICE, the total number of Mexican nationals deported reached a high in 2010 with 632,034. In 2011, it was 517,472; in 2012, 468,766; in 2013, 424,978; in 2014, 350,177 and in 2015, 267,885 Mexican citizens were arrested for entering the U.S. illegally.

https://www.theguardian.com/world/2017/dec/14/mexico-murders-women-rise-sharply-drug-war-intensifies (last visited 12 Dec 2018)

Associated Press in Mexico City

Thu 14 Dec 2017 02.00 EST

Mexico: murders of women rise sharply as drug war intensifies

Of more than 50,000 killings of women since 1985, nearly a third took place in last six years, official report says

The number of women being murdered in Mexico has risen sharply over the last decade amid the country's drug war, more than wiping out two decades of gains when the rate fell by half, a new study shows.

The report from Mexico's interior department, the country's National Women's Institute and the UN Women agency said the annual femicide rate was 3.8 per 100,000 women in 1985 before it began a steady decline to 1.9 in 2007. From there it rose sharply to peak at 4.6 per 100,000 in 2012, tapering off in the following years and then rising again last year to 4.4.

Of the 52,210 killings of women recorded over the 32-year period, nearly a third took place in the last six years, the report said.

The rise in such killings coincided with Mexico's militarised offensive against drug cartels launched in late 2006 by then-president Felipe Calderón. It also roughly tracks overall homicide trends during the period.

About 12% of homicide victims in Mexico last year were women, compared with about 10% in 1985. That was down slightly from the early and mid-2000s.

"Violence against women and girls – which can result in death – is perpetrated, in most cases, to conserve and reproduce the submission and subordination of them derived from relationships of power," the report said.

The tiny state of Colima registered the country's highest femicide rate in 2016, with 16.3 per 100,000. It was followed by the states of Guerrero, Zacatecas, Chihuahua and Morelos.

For sheer numbers, the highest for a single state was 421 in the state of Mexico, which surrounds the capital on three sides and is the country's most populous state.

Most of those are states with a heavy presence of organized crime gangs. Guerrero, in particular, is a hotspot of cartel violence. The Pacific coast resort city of Acapulco in Guerrero registered more killings of women last year than any other municipality, with 107.

The study also noted an increase in recent years of murders of women outside the home, "which probably is related to the increase in organised crime activities". Last year 41% of murders of women happened outside the home.

"The increase in killings of women in public constitutes one of the most important findings of this study, which explains a good part of the recent total growth of femicides in Mexico," the report said.

The study also said that while the vast majority of male homicide victims are killed with firearms, many femicides continue to be by "the most cruel means" such as stabbing, beating and strangling, which it said reflects misogyny.

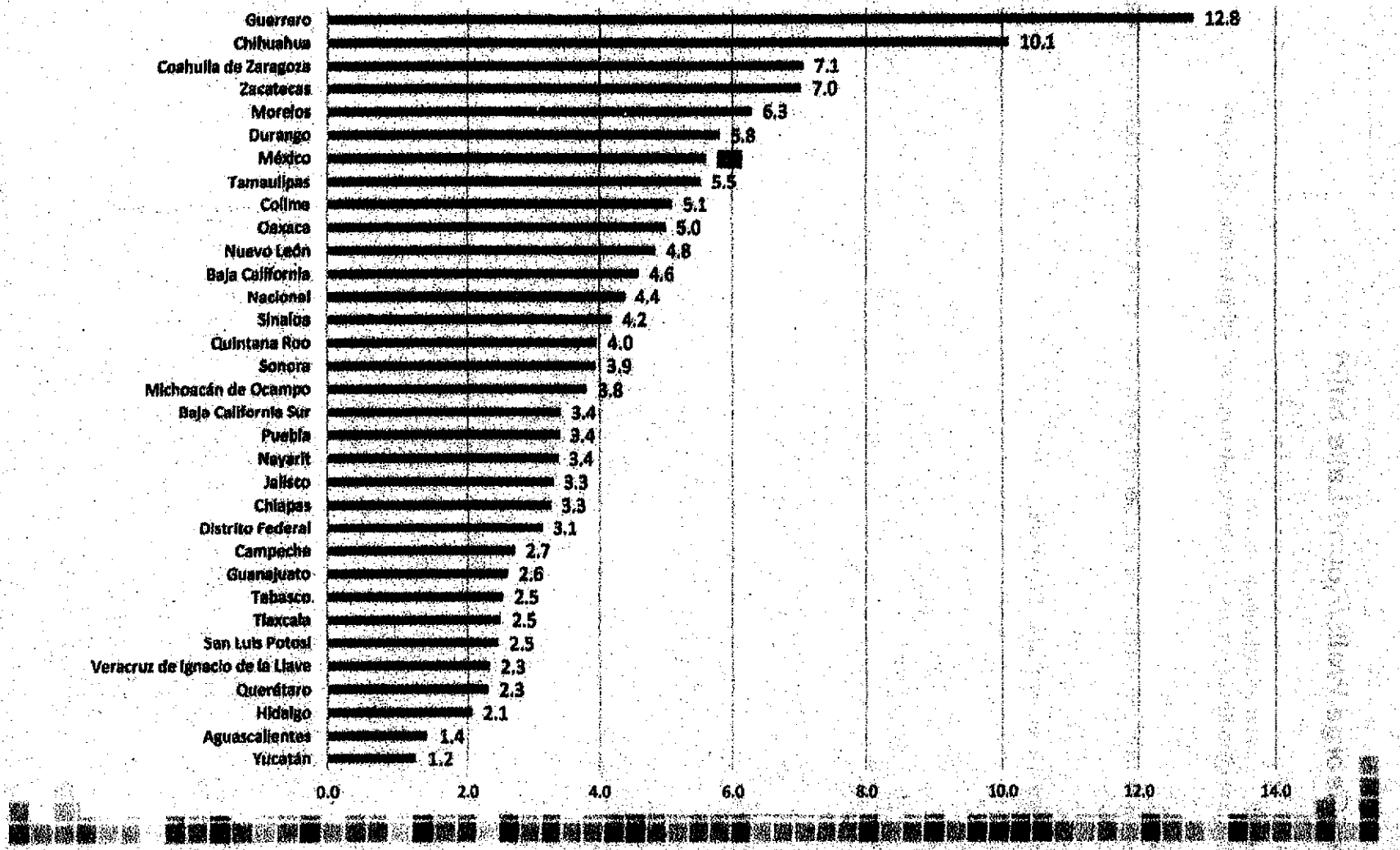
"This means there has not been success in changing the cultural patterns that devalue women and consider them disposable, allowing for a social permissiveness in the face of violence and its ultimate expression, femicide," the report said.

It recommended all levels of government tackle the problem by strengthening "public policies to prevent violence and to achieve greater empowerment and economic autonomy for women, as well as eliminating the risks they face in public spaces".

E15

https://unstats.un.org/unsd/gender/Events/20%20Oct%202015/Mexico.pdf ,p. 20 (last visited 12 Dec 2018)

Annual crude death rate for homicide of women by state (by each 100 thousand women), 2013



https://mexiconewsdaily.com/news/may-homicide-numbers-worst-on-record/ (Last visited 12 Dec 2018)
Mexico News Daily
June 21, 2018

Another record month: May homicide numbers worst ever seen
Reported cases of intentional homicide totaled 2,530

Homicide numbers in May were the highest ever recorded, according to the National Public Security System (SNSP).

There were 2,530 reported cases of intentional homicides during the month, breaking the previous record of 2,371 set last October.

The total number of victims was 2,890, a figure that is 360 more than the number of cases because some investigations related to two or more deaths. On average, there were 93 intentional homicides per day last month, or almost four per hour.

Three of the four most violent months of the past 20 years have now been recorded this year. March 2018 was the third most violent month since comparable records were first kept in 1997 while April was the fourth most violent.

In its latest crime rate report, the SNSP also said there were 11,437 intentional homicide investigations in the five-month period to the end of May which related to the murder of a total of 13,298 people.

The number of cases is 15% higher than the 9,937 reported in the same period last year.

Colima remained the most violent state in the country, according to per-capita murder rates, with 33 intentional homicides per 100,000 residents in the January to May period.

Baja California was next with 29 intentional homicides per 100,00 followed by Guerrero with 26, Chihuahua with 17 and Guanajuato with 16. The increase in the rate in Guanajuato is particularly notable.

There were 1,302 murder victims in the state during the first five months of the year, more than double the 575 cases recorded in the same period last year.

The number of intentional homicides also increased in Mexico City between January and May, where there were 480 reported cases and 550 victims.

The homicide rate for Mexico as a whole was just over nine per 100,000 residents.

In raw numbers, Baja California recorded the highest number of cases during the period with 1,071 followed by Guanajuato with 1,005 and Guerrero with 966.

Yucatán had the lowest number of cases of any state with 18, followed by Campeche with 20 and Aguascalientes with 35.

SNSP data shows that just over two-thirds, or 68%, of the total number of murders were committed with firearms.

It also shows that gun-related homicides increased by more than 100% in nine of the country's 30 most violent municipalities in the first four months of the year.

Tepic, Nayarit, experienced the sharpest spike with a 555% increase followed by the Guanajuato municipalities of Irapuato and Salamanca, both of which recorded upsurges greater than 350%.

The number of femicide victims — women and girls killed on account of their gender — is also on the rise.

There were 328 femicide victims in the first five months of the year, 135 more than in the same period last year. The incidence of the crime has more than doubled in the space of just three years.

In contrast, kidnapping rates were down. There were 401 cases reported at the state level in the first five months of the year compared to 482 last year.

Federal investigations into the crime are also down slightly, from 143 last year to 121 cases this year.

[redacted]

A total of 29,168 homicides last year made 2017 Mexico's most violent year of at least the last two decades but if the rate recorded in the first five months of this year continues, 2018 will surpass that.

Source: Milenio (sp), Animal Político (sp)

E17

http://www.xinhuanet.com/english/2018-07/17/c_137330459.htm (last visited 12 Dec 2018)

At least 6 killed, 17 injured in Mexico City funeral shooting

Source: Xinhua 2018-07-17 14:01:08

MEXICO CITY, July 16 (Xinhua) -- A group of gunmen attacked a funeral home in Fresnillo in the north-central Mexican state of Zacatecas Sunday night, causing six deaths and 17 injuries, according to the local government.

The attack took place around 10 p.m. local time (0300 GMT) on Sunday when several armed men fired at a group of mourners holding vigil for a 17-year-old who was gunned down Saturday night outside a local bar.

Zacatecas' public safety office said in a statement that five people died minutes after the attack and a sixth person died in hospital Monday morning.

The 17 wounded were sent to several local hospitals, with one of them in critical condition.

Search for the attackers is underway in the city.

Preliminary investigation by the local prosecutors' office indicated that the 17-year-old was arrested in June for having 80 doses of the synthetic drug crystal. He was charged with crimes against health in the form of selling drugs, ordered to stand trial and prohibited from leaving the city.

Since 2016, Zacatecas has witnessed violence and increasing homicides which the local government attributes to local organized crime rings.

E18