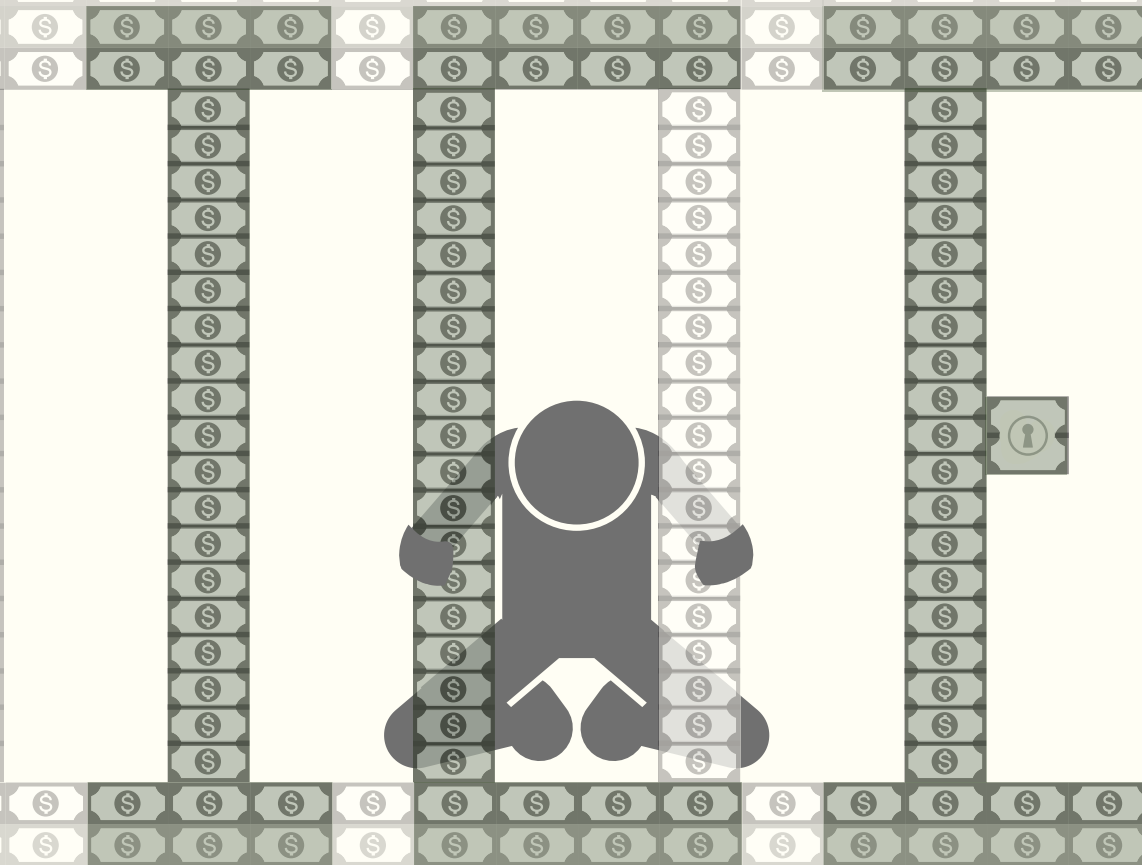


FOLLOWING THE MONEY

New Information about the Federal Government's Billion Dollar Immigration Detention and Bond Operations



A Report by the
Immigrants' Rights Clinic at Stanford Law School
and the
Immigration Law Clinic at the UC Davis School of Law

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Immigration Law Clinic

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Rafael¹ has been a lawful permanent resident of the United States since 2000. In 2015, due to a nonviolent offense, Rafael was detained by Immigration and Customs Enforcement (ICE) and wrongly placed in removal proceedings. After ICE detained him for six months, an immigration judge granted him a \$3,000 bond. Rafael's wife, Ana, who works as a house cleaner, enlisted the help of family members to pay the required bond for Rafael's release. After weeks of collecting loans from family members, Ana paid Rafael's bond and managed to free him from ICE custody while his case was pending.

In October of 2018, Rafael's case was successfully terminated as the government was unable prove that he was deportable. Despite the termination of Rafael's case, which automatically cancelled Rafael's bond, ICE failed to send Ana a notice of bond cancellation for more than three months.

Without the cancellation notice, Ana could not reclaim her bond money. Ana first traveled to a remote detention facility several hours from her home to request that ICE return her bond money so she could repay her family members. ICE refused to return the money because its system still showed Rafael's case as pending. Ana provided a copy of the judge's order terminating Rafael's proceedings; the ICE agents would not accept Ana's order and incorrectly told her that they needed a copy of the termination order from the court.

Ana contacted Rafael's attorney for advice. The attorney confirmed that Rafael's case was terminated by calling the immigration court's information line, and the attorney gave Ana a cleaner copy of the termination order. Ana then went to a different ICE office with the new order to request her money. ICE again refused.

ICE's wrongful withholding of Ana's money over several months has caused Ana and Rafael significant financial hardship. Rafael was in a rehabilitation facility upon release from detention, so he could not work. Ana is the sole breadwinner for the family. She has been struggling to make ends meet due to a slow down in her work.

To this day, Ana is still waiting to get her bond money back. Her only option is to repay the loans with her current earnings until she receives her bond money.

Over a year ago, Asian Americans Advancing Justice-Asian Law Caucus (AAAJ-ALC) filed a request under the Freedom of Information Act (FOIA) to uncover information about ICE's bond practices. This report summarizes the information that AAAJ-ALC uncovered from its request.

KEY FINDINGS

- Immigrant communities suffer a **loss of approximately \$43-\$45 million each year** from money paid into the immigration bond system.
- The amount of money in DHS's unclaimed bond account alone has reached an all-time high of **over \$200 million**.
- The immigration bond system **incentivizes ICE to incarcerate more noncitizens** by allowing ICE to use money it collects from breached bonds to pay for more detention bed space.

¹ Rafael (and his wife, Ana) is a pseudonym for a real client who remains anonymous. The immigrants we have represented, and others who we know have similarly suffered from the bond system, are reluctant to speak publicly because of a worry about retaliation by Immigration and Customs Enforcement (ICE).

IMMIGRATION DETENTION AND BOND BASICS

ICE detains an average of 350,000 immigrants each year.ⁱ Approximately 30-42% of those individuals are granted bond by an immigration judge, while others are granted bond by ICE agents.ⁱⁱ

Detained immigrants or their families may pay an immigration bond to secure the immigrant's release from ICE custody while their immigration case is pending. The bond serves as a guarantee that an immigrant will attend all of their court hearings and, if ordered removed, appear in response to a notice to surrender.

Paying an immigration bond poses a tremendous and often insurmountable financial obstacle for many immigrants. The bond system, however, serves another purpose beyond incentivizing immigrants to attend their court dates from outside a detention facility. This report reveals that the money ICE collects from breached bonds is used to fund ICE's detention of even greater numbers of immigrants.ⁱⁱⁱ

Immigration bond amounts vary, but are usually set at least \$1,500,^{iv} and average \$7,000 to \$10,000.^v Once an immigration judge or ICE sets an immigration bond, the person paying the bond can elect to pay a **cash bond** or a **surety bond**.

- **Cash bonds** are those paid entirely in cash (or a cash equivalent). Approximately 90% of bonds issued by ICE are cash bonds.
- **Surety bonds**, an alternative to cash, require the person to pay a surety or bond company a non-refundable percentage of the bond amount (usually 15-20%) and post collateral for the remainder of the bond.
- Depending on how the bond is paid, the person paying the cash or the surety company then becomes the **obligor**. An obligor is liable to ICE in the event that an immigrant breaches the bond.
- If all bond conditions are substantially fulfilled (such as when an immigrant wins her case), ICE is supposed to **cancel** the bond and reimburse the **obligor** the full bond amount, plus interest.
- Bonds are **breached** when an immigrant fails to substantially comply with the terms of the bond. If a bond is breached, the value of the bond is forfeited to ICE.

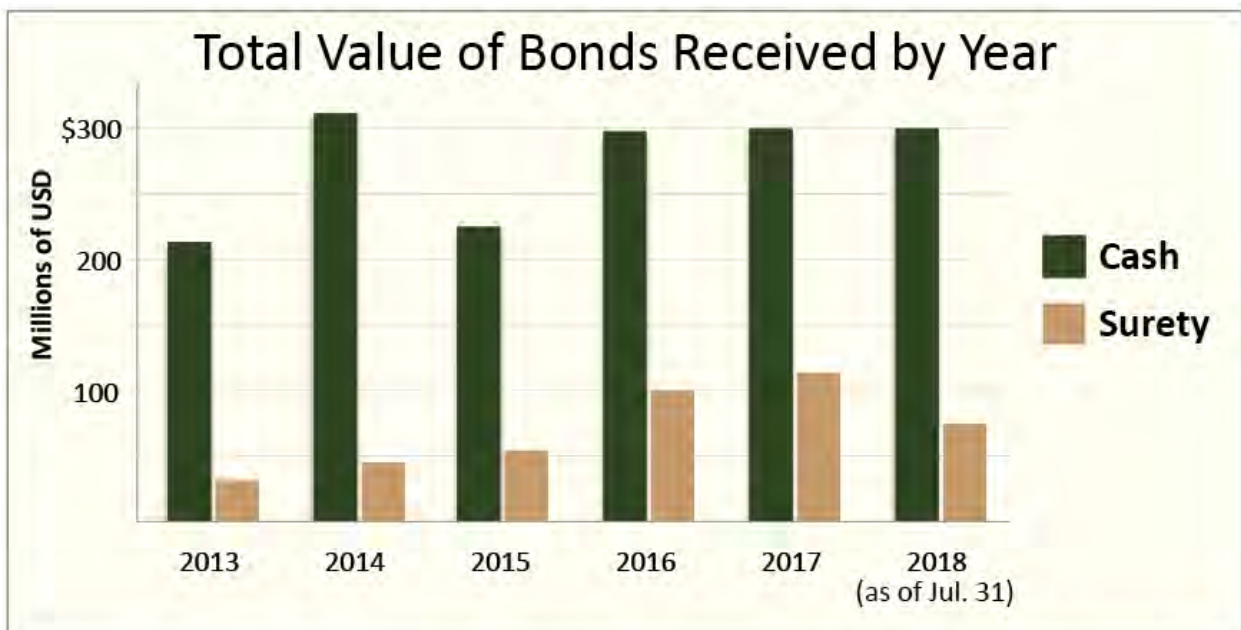
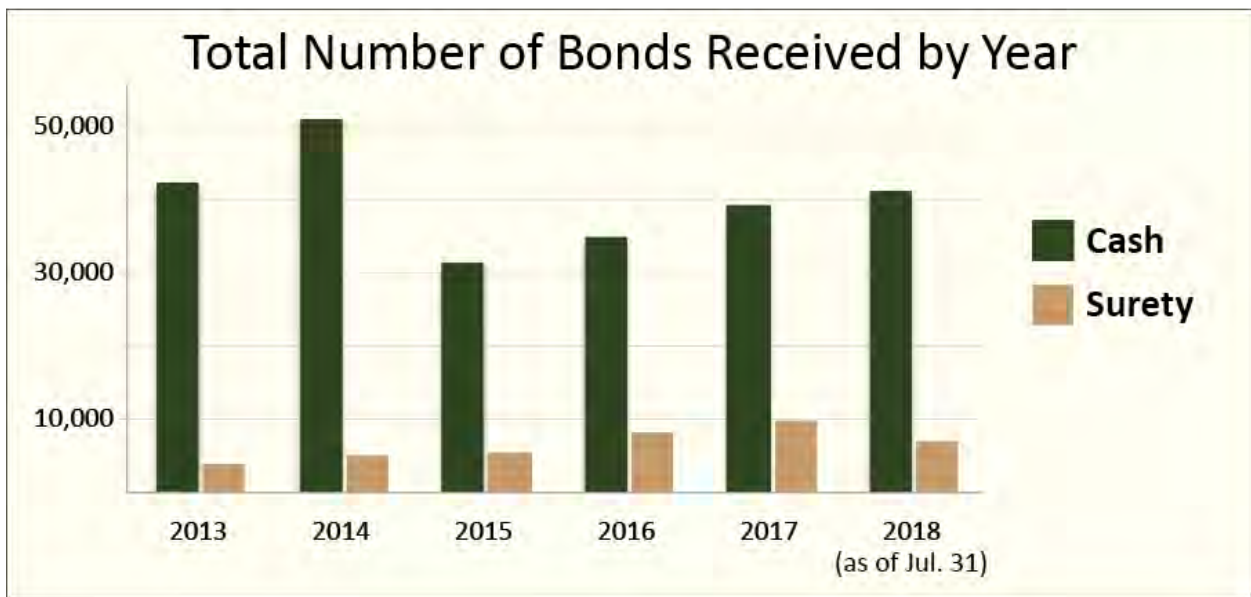
KEY TERMS

- **OBLIGOR:** The person/organization paying bond money to the government and responsible for ensuring the conditions of the bond are met.
- **CASH BOND:** Money paid in cash by an obligor to the government for release of an immigrant from detention while the immigrant's case is pending. Cash bonds are fully refundable.
- **SURETY BOND:** Money paid to a company, acting as obligor, which makes the company responsible for paying the government in the event of a breach.
- **CANCELLATION:** When an immigrant substantially meets bond conditions (*e.g.*, attends all court dates and is granted relief from removal), the government returns the bond to the obligor.
- **BREACH:** When the immigrant fails to substantially comply with the terms of the bond (*e.g.*, does not attend an ICE check-in meeting), the government keeps the entire bond from the obligor.

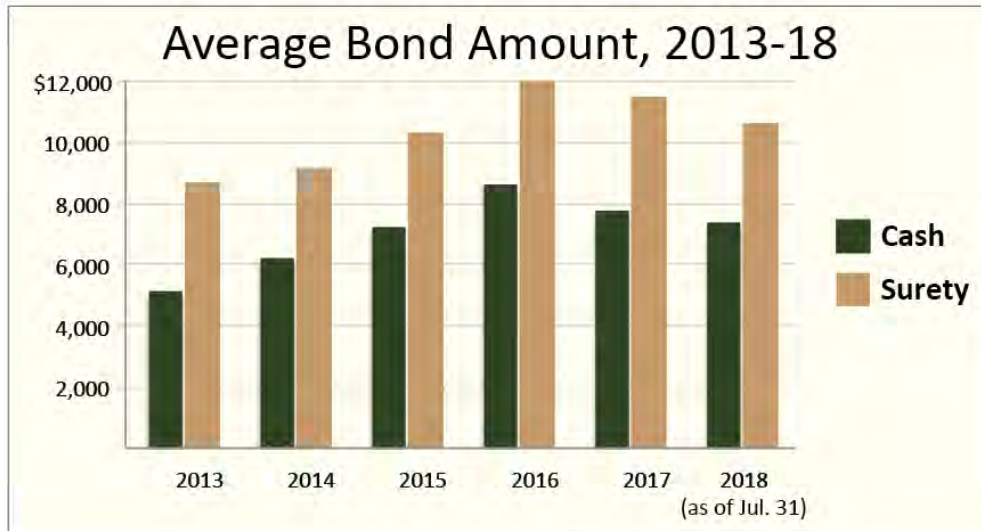
NEW RECORDS REVEAL THE VAST SCOPE OF THE IMMIGRATION BOND SYSTEM AND RISING BOND AMOUNTS

New information obtained through AAJC-ALC’s FOIA request reveals that the scope of the immigration bond system is immense and the average bond amount is rising. As of July 2018, the total value of all open, currently active cash bonds was approximately **\$1.5 billion**, and the open, currently active surety bonds totaled approximately **\$360 million**.^{vi}

During just the first ten months of Fiscal Year 2018, the federal government issued 47,424 new bonds, the vast majority of which (40,579) were cash bonds. These bonds totaled over \$370 million.^{vii}



Over the last five years, the average bond amount set in immigration courts has risen over 50%.^{viii} The nationwide median bond is about \$7,500, but this number varies widely based on court location.^{ix} The average bond amount set in Los Angeles, for example, is over \$17,000, while the average in Chicago is just over \$5,000.^x In 2018, 40% of detained immigrants posted bonds of \$10,000 or more, and 5% posted bonds of \$25,000 or more.^{xi} Unfortunately, due to many immigrants’ financial realities, numerous people cannot afford to pay the bonds that are set and therefore remain detained unnecessarily.



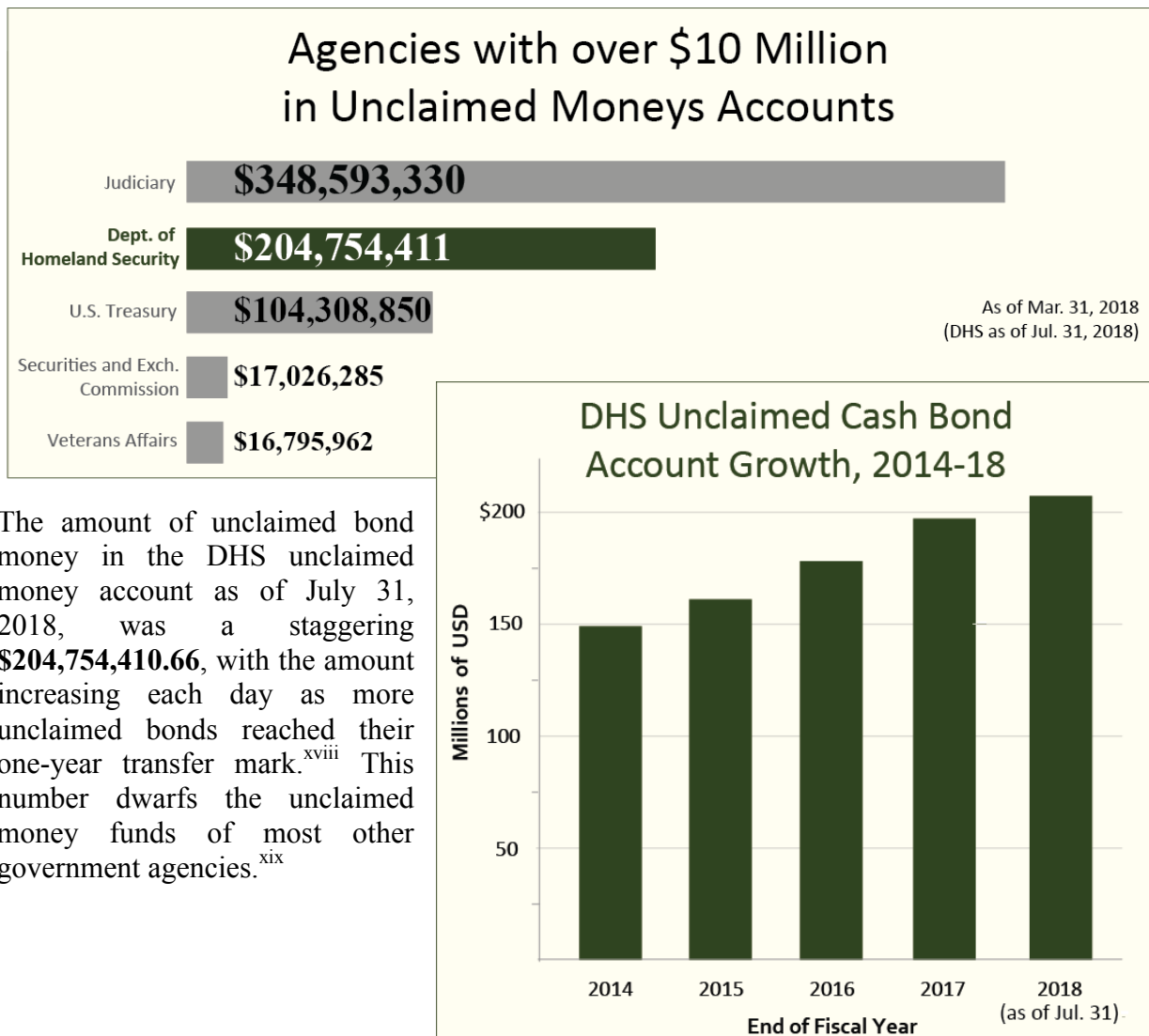
The average bond amount has grown considerably over the past five years, peaking in 2016 at over \$8,500 for bonds secured by cash and over \$12,000 for bonds secured by surety contracts. Bond averages in the past fiscal year have remained at unaffordable levels.

For those who are able to secure the resources, paying an immigration bond often poses a tremendous financial hardship. The median yearly household income for undocumented individuals in the United States is about \$40,000.^{xii} The average bond amount is therefore nearly one-quarter of such a household’s yearly income, and could even be as high as one-half of their yearly income.^{xiii} The cost of a bond is also compounded by the related costs that immigrants must bear: filing court documents, paying for an attorney in their immigration case, and the litany of expenses accrued in their journey to the United States. Thus, for many immigrants, paying an immigration bond can be a huge financial burden, and families are left with the impossible choice of going into extreme debt or leaving a loved one detained.

\$200 MILLION IN UNCLAIMED BONDS

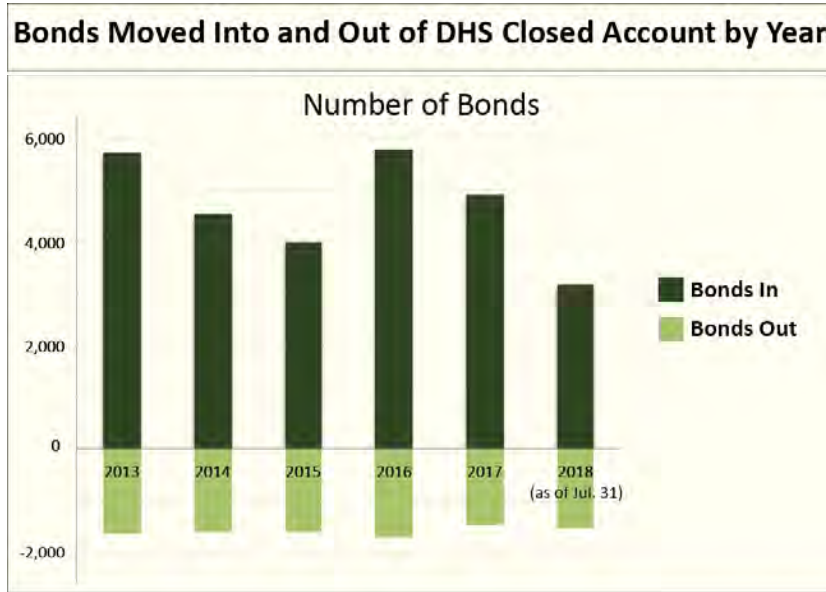
Even when an individual substantially fulfills a bond’s conditions and the bond is cancelled, the bond payment is not automatically returned to the obligor. To reclaim the money, the obligor must affirmatively act and send ICE their original bond contract and the notice of bond cancellation.^{xiv} Many obligors, however, do not receive the bond cancellation notice. This can happen for a variety of reasons, including if ICE fails to send the notice of cancellation, if an obligor moves and changes their address after signing the bond contract without subsequently notifying ICE, if an obligor is removed from the United States, or if an obligor simply is not aware that they are entitled to collect a bond refund.^{xv}

When a cancelled bond has gone unclaimed for six months, ICE is supposed to send a second notice to the obligor’s address.^{xvi} If the bond goes uncollected for one year, ICE sends a final notice to the obligor and transfers the funds into a U.S. Treasury account titled “Unclaimed Moneys of Individuals Whose Whereabouts Are Unknown.”^{xvii} The unclaimed money then sits in this account, waiting for a collection that becomes increasingly unlikely as time passes.

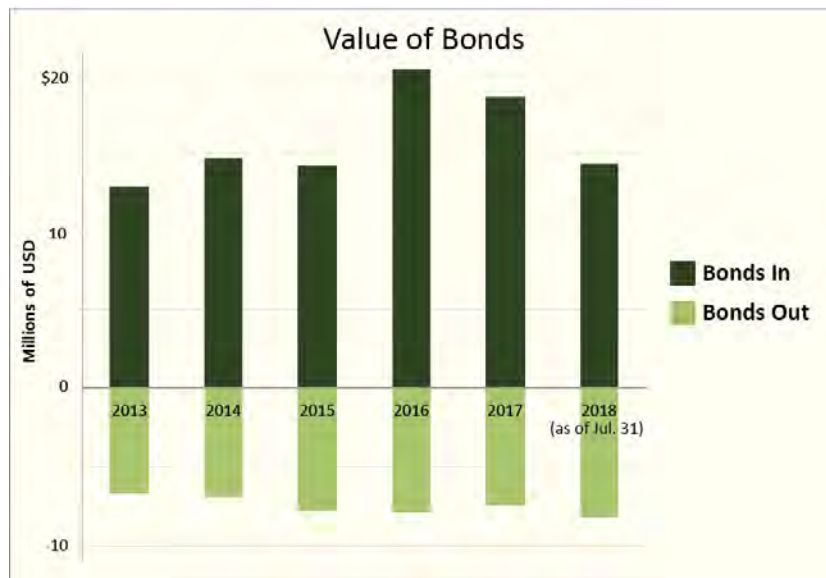


The amount of unclaimed bond money in the DHS unclaimed money account as of July 31, 2018, was a staggering **\$204,754,410.66**, with the amount increasing each day as more unclaimed bonds reached their one-year transfer mark.^{xviii} This number dwarfs the unclaimed money funds of most other government agencies.^{xix}

Between October 2017 and July 2018, it appears that less than half the number of unclaimed bonds moved into the unclaimed account were subsequently paid out to their rightful owners. While 3,162 bond payments went into the account, only 1,511 payments, worth \$8,322,050, were paid out, marking a six-year low in both number and value of unclaimed bond payouts.^{xx}



The bonds moved to the unclaimed bond account as of July 2018 were worth about \$14,203,100.^{xxi} This amount likely increased by at least \$2 million by the end of the 2018 fiscal year, since the average yearly amount moved into the account for the period of 2013-2017 was \$16,097,765.^{xxii}



The loss of millions of dollars that legally belong to immigrants and their families is particularly devastating since an estimated 30% of undocumented immigrants live in poverty and nearly 66% earn less than twice the federal poverty line.^{xxiii}

ICE BENEFITS FROM BREACHED BONDS

Immigrant communities also lose millions of dollars each year due to breached bonds. Between October 2017 and July 2018, ICE breached an average of approximately 656 cash bonds each month.^{xxiv} A bond is marked breached when ICE determines that the obligor has not “substantially performed” the bond’s terms.^{xxv} ICE officers are given guidelines for determining when a bond’s terms have been substantially performed, but ICE nonetheless retains some amount of discretion over when to cancel and when to breach bonds.^{xxvi} ICE also has discretion over whether or not to cancel a bond when the immigrant receives certain forms of relief from deportation, including temporary protected status, withholding of removal, or asylum.^{xxvii}

According to ICE’s Bond Detention Handbook, the money ICE collects from breached bonds helps to fund ICE’s enforcement apparatus, including paying for detention bed space.^{xxviii} By statute, the money ICE collects from breached bonds gets deposited into a “Breached Bond Detention Fund.”^{xxix} The amount of money that ICE places in this fund can be quite significant. For example, in Fiscal Year 2010, ICE deposited approximately \$37.6 million into the Breached Bond Detention Fund.^{xxx} As of the first ten months in Fiscal Year 2018, it appears that ICE may be eligible to deposit at least \$39.4 million into the Breached Bond Detention Fund.^{xxxi} Based on this system, ICE appears to have a financial incentive to breach bonds.

IMMIGRATION DETENTION & BONDS: A DEEPLY FLAWED SYSTEM

This report reveals that the scope of the immigration bond system is immense, average bond amounts are increasing nationwide, and the immigration bond system extracts millions of dollars from immigrant families annually. While some immigrants and their families are able to recoup their bond money, over \$200 million dollars owed to immigrants and their families remains unclaimed. During just the first ten months of FY 2018, immigrant families lost approximately \$43 - \$45 million from both unclaimed bond money and breached bonds.^{xxxii} ICE benefits from breached bonds by using the millions of dollars that it collects annually to fund its detention operations, including paying for detention bed space.

We urge Congress to provide greater oversight on ICE’s detention and bond system.

KEY RECOMMENDATIONS FOR REFORM

- Congress should investigate whether DHS has a **conflict of interest** in absorbing money bail as a source of agency funding. As long as the cash bond system remains, no breached bond funds should fund DHS operations. This money could instead fund legal representation for immigrants, legal aid programs, and know your rights trainings.
- Congress should require ICE to be far more **transparent** about its policies and procedures on money bail. ICE should inform the public on an annual basis as to the money it collects from immigrant communities.
- Congress should require ICE to adopt **more affirmative policies** to contact obligors once their bonds are cancelled.

ⁱ J. Rachel Reyes, *Immigration Detention: Recent Trends and Scholarship*, CENTER FOR MIGRATION STUDIES (Mar. 26, 2018), <http://cmsny.org/publications/virtualbrief-detention/>.

ⁱⁱ Mica Rosenberg & Reade Levinson, *Trump's Catch-and-Detain Policy Snares Many Who Have Long Called U.S. Home*, REUTERS INVESTIGATES (June 20, 2018), <https://www.reuters.com/investigates/special-report/usa-immigration-court/>; *Three-Fold Difference in Immigration Bond Amounts by Court Location*, TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE IMMIGRATION (July 2, 2018), <http://trac.syr.edu/immigration/reports/519/>. It is unknown exactly how many individuals are granted bond by ICE immigration officials without ever appearing before an Immigration Judge. See Rosenberg & Levinson, *supra* note ii.

ⁱⁱⁱ U.S. IMMIGRATION AND CUSTOMS ENF'T, BOND MANAGEMENT HANDBOOK 2 (Aug. 19, 2014), <https://www.aila.org/File/Related/16051730f.pdf> ("ICE may use money deposited in the [Breached Bond Detention Fund] to pay for detention bed space and costs incurred in collecting amounts due on breached bonds.").

^{iv} 8 U.S.C. § 1226(a)(2)(A).

^v See, e.g., Alejandro Fernández Sanabria, et al., *Costly Bonds: For Undocumented Immigrants, Bail Depends on a Judge's Subjectivity*, UNIVISION NEWS (Feb. 26, 2018), <https://www.univision.com/univision-news/immigration/costly-bonds-for-undocumented-immigrants-freedom-depends-on-a-judges-subjectivity>; Dianne Solis & Jenny Manrique, *Could It Get Any Tougher for Immigrant Detainees? High Bonds Are New Hurdle*, DALLAS NEWS (July 23, 2018), <https://www.dallasnews.com/news/immigration/2018/07/23/could-get-tougher-immigrant-detainees-high-bonds-new-hurdle>; *Three-Fold Difference in Immigration Bond Amounts by Court Location*, *supra* note ii.

^{vi} DEP'T OF HOMELAND SEC., *BFC Monthly Statistical Report Fiscal Year 2013-Fiscal Year 2018* (on file with author) (information obtained through Freedom of Information Act (FOIA) request and subsequent lawsuit, *Asian Americans Advancing Justice - Asian Law Caucus v. Department of Homeland Security*, No. 17-4388 (N.D. Cal. filed Aug. 2, 2017). Although surety bonds are not paid to DHS unless and until the bond is breached, DHS still records the value of the surety bond as though it were paid in cash. See *id.*

^{vii} *Id.*

^{viii} Solis & Manrique, *supra* note v.

^{ix} Fernández Sanabria, *supra* note v.

^x *Id.*

^{xi} *Three-Fold Difference in Immigration Bond Amounts by Court Location*, *supra* note ii.

^{xii} Robert Warren & Donald Kerwin, *Mass Deportations Would Impoverish U.S. Families and Create Immense Social Costs*, 5 J. MIGRATION & HUM. SEC. 1, 5 (2017), <http://cmsny.org/publications/mass-deportations-impoverish-us-families-create-immense-costs/>.

^{xiii} *Id.* at 5-6. Although both documented and undocumented immigrants are held in immigration detention, the vast majority of detained immigrants are undocumented. See, e.g., Brittny Mejia, *It's Not Just People in the U.S. Illegally- ICE Is Nabbing Lawful Permanent Residents Too*, L.A. TIMES (June 28, 2018), <http://www.latimes.com/local/lanow/la-me-ln-lawful-resident-20180628-htmlystory.html> (detailing a Los Angeles ICE raid that resulted in 162 arrests, including 15 lawful permanent residents).

^{xiv} See U.S. IMMIGRATION AND CUSTOMS ENF'T, BOND MANAGEMENT HANDBOOK 10, 42 (Aug. 19, 2014), *supra* note iii.

^{xv} See, e.g., Michelle Mendez, *Immigration Bond: How to Get Your Money Back*, CATHOLIC LEGAL IMMIGRATION NETWORK, INC., <https://cliniclegal.org/resources/immigration-bond-how-get-your-money-back> (last visited Feb. 6, 2019).

^{xvi} See DEP'T OF HOMELAND SEC., IMMIGRATION & CUSTOMS ENF'T, BURLINGTON FINANCE CENTER, CASH BOND PROCEDURES (on file with author) (information obtained through FOIA request and subsequent lawsuit, *Asian Americans Advancing Justice - Asian Law Caucus v. Department of Homeland Security*).

^{xvii} *Id.*; DEP'T OF HOMELAND SEC., *Technical Amendments Relating to Immigration Bonds*, 8 C.F.R. Part 103, 293 at 4 (on file with author) (information obtained through FOIA request and subsequent lawsuit, *Asian Americans Advancing Justice - Asian Law Caucus v. Department of Homeland Security*).

^{xviii} E-mail from Julie Davis, Assistant United States Attorney, to Holly Cooper, Jennifer Stark, and Jayashri Srikantiah (Aug. 16, 2018, 1:42 PST) (on file with author) (information obtained through FOIA request and subsequent lawsuit, *Asian Americans Advancing Justice - Asian Law Caucus v. Department of Homeland Security*).

^{xix} See *id.*; TREASURY DIRECT, *Treasury Managed Accounts Reports: Unclaimed Moneys* (Mar. 31, 2018), <https://treasurydirect.gov/govt/reports/tma/unclaimed.htm>.

^{xx} *BFC Monthly Statistical Report Fiscal Year 2013-Fiscal Year 2018*, *supra* note vi.

^{xxi} *Id.*

^{xxii} *Id.*

^{xxiii} Ben Casselman, *Undocumented Immigrants Aren't Who You Think They Are*, FIVETHIRTYEIGHT (Nov. 21, 2014), <https://fivethirtyeight.com/features/undocumented-immigrants-arent-who-you-think-they-are/>.

^{xxiv} *See BFC Monthly Statistical Report Fiscal Year 2013-Fiscal Year 2018*, *supra* note vi.

^{xxv} U.S. IMMIGRATION AND CUSTOMS ENF'T, BOND MANAGEMENT HANDBOOK, *supra* note iii, at 2.

^{xxvi} *See* U.S. IMMIGRATION AND CUSTOMS ENF'T, BOND MANAGEMENT HANDBOOK, *supra* note iii, at 8-10, 11-12; *see also* IMMIGRATION AND CUSTOMS ENF'T DETENTION AND REMOVAL OPERATIONS DIV., INTRODUCTION TO BOND MANAGEMENT (on file with author) (information obtained through FOIA request and subsequent lawsuit, *Asian Americans Advancing Justice - Asian Law Caucus v. Department of Homeland Security*); U.S. IMMIGRATION AND CUSTOMS ENF'T MEMORANDUM RE DECLARATIONS OF BREACH OF DELIVERY BONDS. (on file with author) (information obtained through FOIA request and subsequent lawsuit, *Asian Americans Advancing Justice - Asian Law Caucus v. Department of Homeland Security*).

^{xxvii} U.S. IMMIGRATION AND CUSTOMS ENF'T, BOND MANAGEMENT HANDBOOK, *supra* note iii, at 9.

^{xxviii} *Id.* at 2 (“ICE may use money deposited in the [Breached Bond Detention Fund] to pay for detention bed space and costs incurred in collecting amounts due on breached bonds.”).

^{xxix} *Id.*

^{xxx} *See* U.S. IMMIGRATION AND CUSTOMS BOND UNIT, ERO MULTI-DISCIPLINARY TRAINING 2011: IMMIGRATION BONDS (on file with author) (information obtained through FOIA request and subsequent lawsuit, *Asian Americans Advancing Justice - Asian Law Caucus v. Department of Homeland Security*).

^{xxxi} *BFC Monthly Statistical Report Fiscal Year 2013-Fiscal Year 2018*, *supra* note vi.

^{xxxii} *Id.*



The authors wish to recognize the inspiring artistic productions of José Quintero at [Taller Arte del Nuevo Amanecer \(TANA\)](#), a program of the Chicana/o Studies Department at the University of California Davis (**left**), and of Josue Rojas at [Acción Latina](#) (**right**).