



ACLU Advisory: Bond Hearings for Certain Immigrants Subject to Prolonged Immigration Detention Under *Rodriguez v. Robbins*

This advisory discusses a recent federal court decision ordering bond hearings for certain immigrants subjected to long-term immigration detention in the Los Angeles area. In September 2012, the U.S. District Court for the Central District of California ordered a preliminary injunction in *Rodriguez v. Robbins*, a class action lawsuit on behalf of immigration detainees in the Los Angeles district who have been detained for six months or more while they fight their immigration cases. As a result of the order, certain class members will receive bond hearings before an immigration judge where the government has to prove that it should continue detaining these individuals.

This advisory will help you determine 1) whether you qualify for a *Rodriguez* hearing and, if you do, 2) will help you request and prepare for your bond hearing in immigration court. Lawyers from the ACLU and Sidley Austin LLP will be monitoring the bond hearings and, where possible, providing assistance to affected detainees. If you believe you qualify for a hearing under the court order, please send a letter to:

Michael Kaufman
ACLU-SC
1313 West 8th Street
Los Angeles, CA 90017

A copy of the district court's order and the order of the Ninth Circuit Court of Appeals directing the government to begin providing bond hearings on October 12, 2012 is attached to this advisory.

Am I entitled to a bond hearing under the district court's order?

Under the court order, you are entitled to a bond hearing if all of the following are true:

- ✓ You are detained at one of the following detention facilities: Mira Loma Detention Center, Adelanto Detention Facility, Santa Ana Jail, Theo Lacy Detention Facility, and James Musick Detention Center.
- ✓ You are currently fighting your immigration case before the *immigration judge or the Board of Immigration Appeals (BIA)*.
- ✓ You are subject to *mandatory detention under 8 U.S.C. § 1226(c)*.

- You are probably subject to mandatory detention under § 1226(c) if the government is trying to deport you based on your criminal history.
- You are also probably subject to mandatory detention if you received a Form I-286 Notice of Custody Determination stating that you could not seek review of your detention from an immigration judge.

OR

- ✓ You are subject *to detention under 8 U.S.C. § 1225(b)*.
 - You are probably subject to detention under § 1225(b) if you were taken into custody while trying to enter the country at the border or at an airport.
 - You are also probably subject to detention under § 1225(b) if you received a document denying you release on parole.
- ✓ You will have been detained for *six months or longer* by U.S. Immigration and Customs Enforcement (ICE) on or after November 12. If you were detained *on or before May 12, 2012* and have been detained since that time you qualify immediately. If not, you become eligible as soon as your detention reaches six months.

How do I request a *Rodriguez* bond hearing?

A *Rodriguez* bond hearing is also called a custody redetermination hearing. Attached to this advisory is a sample motion requesting a *Rodriguez* hearing. You should complete the blanks in this motion and file it with the immigration court reviewing your case. You will then be assigned a hearing date, probably at some time after November 12, 2012.

Here are the addresses for the Los Angeles Immigration Court and Lancaster Immigration Court:

Executive Office for Immigration Review
Immigration Court
300 North Los Angeles Street, Room 4330 or Room 8547
Los Angeles, CA 90012

Executive Office for Immigration Review
Immigration Court
45100 60th St. W
Lancaster, CA 93536

You will also need to send a copy of your request to the government. Here are the addresses for ICE counsel:



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Office of the Chief Counsel
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
606 South Olive Street, 8th Floor
Los Angeles, CA 90014

Mira Loma Detention Center
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
45100 60th Street West
Lancaster, CA 93536

According to the court order, *Rodriguez* bond hearings must be recorded. The attached sample motion requests that the immigration court record your bond hearing.

Who is supposed to present evidence at the hearing?

At a *Rodriguez* bond hearing, only the *government*—not you—is required to prove by clear and convincing evidence that (1) you are a “flight risk” or (2) a “danger to society” in order to keep you detained. However, it will probably strengthen your argument for release on bond if you can present evidence on your own behalf.

What evidence should you submit for your bond hearing?

What follows is a description of suggested evidence to submit for your bond hearing. You can present two types of evidence at the hearing: documents and testimony. It may not be necessary to present all the suggested evidence, but you should try to gather as much of it as possible if you think it will help your case.

Criminal history

The immigration judge is going to want to hear testimony about any criminal convictions, arrests, warrants, and restraining orders. You should familiarize yourself with your criminal record. The judge may want to know about the circumstances of each arrest and offense: What were you doing? Why were you doing it? Have you accepted responsibility for your record? How are you going to make sure that you do not reoffend?

If you cannot remember all of your arrests or convictions, many of them may be listed on a document you received from the government during your immigration case. For example, the government might have given you Form I-213, which has information about your record. Or the government might have given you the conviction documents for the offense(s) that they believe make you deportable.



At the bond hearing, it is very important to talk honestly and fully about your criminal record. Notably, bond hearings are separate and distinct from your immigration case, and so the government is not allowed to use the evidence of your convictions and arrests from your bond hearing in your immigration case.

Best Evidence: your testimony

Rehabilitation

The immigration judge will want to know what actions you have taken and what thoughts you have about your criminal record. The judge will want to know whether you have accepted your past crimes and whether you have taken responsibility. The judge will want to know what steps you have taken to rehabilitate yourself and your present frame of mind in order to make sure that you do not reoffend after you are released on bond.

Best Evidence: your testimony; letters from probation officers, public defenders, social workers; proof that you have contacted programs you could attend if you are released, certificates of participation in a program while in detention.

Compliance with immigration proceedings and orders

The judge will be very concerned about whether you will attend any future hearings and comply with a deportation order if that is the final outcome in your case. He may ask you to promise that you will attend all hearings and comply with a deportation order if an order is entered.

Best Evidence: your testimony; letters from friends, family, teachers, and other members of the community (along with a copy of their identification showing lawful status in the U.S.), who have known you for a long time and know you to be a responsible person; evidence that you have paid bills and taxes in a timely fashion; evidence that you have complied with other types of court proceedings; evidence of employment; evidence that you wish to enroll in a school or training program (like a course catalogue or admissions information); evidence that you have a place to live when you are released; evidence that you belong to a community organization.

Whether you have a place to live once released

The judge will want to know where you are planning to live if you are released and that you will be living with a responsible person.

Best Evidence: a signed letter from a friend or family stating that they agree to provide a home for you upon your release.

Your behavior during your detention

The judge will probably focus on both good and bad things about your behavior while you were detained.



If there have been any “write ups” or “incident reports,” the government will probably submit those as evidence. You should object and argue that they were prepared by a person who is not in court for you to cross-examine, but the judge will likely overrule the objection and let the documents in. If this happens, try to explain what happened and correct any errors or missing information in the write-ups and disciplinary reports.

Best Evidence: your testimony and letters from other detainees who witnessed the incident.

Also make sure to emphasize the good things that you have done while you have been detained. For example, this might include working, attending programs and religious services, reading books, keeping a journal, writing, exercising, helping others prepare or practice for a hearing, repairing relationships with friends and family outside, etc.

Best Evidence: letters from detention center employees and ICE officers that have supervised your work or religious volunteers or the chaplain; a list of the books that you have read; certificates of any programs you have completed, etc.

The merits of your immigration case

The judge will probably spend a fair amount of time examining whether there is any chance you will win your immigration case. You may want to explain to him why you believe you have a strong case. However, it is fine not to discuss the law if you do not feel comfortable doing so.

Best Evidence: proof that you have an attorney; copies of a court decision from any stage in your case that was in your favor; copies of your opening brief at the BIA if you are pursuing an appeal.

Length of Detention

You should emphasize the length of your detention if you have been detained for a long time, or it will take a long time for your immigration case to be resolved.

Best Evidence: your testimony; your Form I-286 Notice of Custody Determination.

Other Miscellaneous Issues and Evidence

Many other issues may arise in a particular case. If there is something else that reflects positively on you and that has not been mentioned here, it is probably a good idea to submit or discuss it at your hearing. Here are other issues that you may want to raise at your hearing or that the government might raise:

- You are from a country that does not issue travel documents or your embassy has said they will not issue travel documents.



- Whether you have had prior deportations, voluntary departures, or previous immigration problems.
- Whether you complied with terms of probation.
- Whether you have ever failed to appear for a court date or attempted to escape.
- Whether you own property (a car, a house etc.)
- Whether you completed a GED, high school, training program or certificate program, college, etc.

Letters as Evidence

Letters are an important type of documentary evidence. Letters should be signed and include the following language: “I swear that everything I said is true and correct.” Letters do not have to be notarized.

Letters from family, friends, church, former employers, landlords and other community members should discuss:

- Their relationship to you; how they know you; how long they have known you.
- What your relationship means to them and how you are a valuable member of the community.
- Specific stories about good things you have done as a responsible adult, caregiver, etc.
- What they will do to make sure you will attend your hearings and comply with orders.
- What they can offer to ensure that your return to non-detained living is smooth and comfortable (e.g., provide a home, help you enroll in classes or find a job, etc.).

Appeals

If the judge sets a bond that you cannot afford, or decides that you are a flight risk or a danger, you may be able to appeal his decision either to the BIA or in federal court. There are several steps you should take to prepare for an appeal:

- Bring a pen and paper to take notes at the hearing. If you can’t take notes at the hearing, write as much down as you can from memory immediately afterwards.
- If the judge decides that you are a flight risk or a danger, or sets a bond amount that is high, ask him to explain his decision. Take notes on his answer.



- When the judge asks, “do you want to appeal my decision?” make sure to say “yes” if you are not satisfied with the decision.

Bond stays

If the judge sets bond, the government may try to “stay the bond” for 48 hours. Make sure to contact the ACLU if this happens.

Conclusion

We wish you good luck at your *Rodriguez* hearing. Again, please remember to contact Carmen Iguina to keep the ACLU and Sidley Austin LLP informed about what happened at your hearing.



UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE
_____, CALIFORNIA

In the Matter of: _____)
,) In Bond Proceedings
A# _____)
)
Respondent)

REQUEST FOR CUSTODY HEARING UNDER *RODRIGUEZ V. ROBBINS*

I respectfully request a custody redetermination hearing. I am currently detained under INA § 235 or INA § 236(c) and have been detained for six months or longer pending completion of my removal proceedings. Thus, by order of the U.S. District Court for the Central District of California in *Rodriguez v. Robbins*, 2:07-cv-03239 (C.D. Cal. Sept. 13, 2012), I am entitled to a bond hearing before this Court where I must be “release[d] on reasonable conditions of supervision . . . unless the government shows by clear and convincing evidence that continued detention is justified based on . . . danger to the community or risk of flight.” *Id.* at 2. Moreover, pursuant to the district court’s order, the “bond hearing[] shall be recorded, so that transcriptions will be available in the event of any appeal.” *Id.*

Respectfully submitted this _____ day of _____, 20____,

Respondent, pro se

CERTIFICATE OF SERVICE

I, _____ hereby certify that a copy of the attached was mailed to
_____, on the
date indicated below.

Signature _____

Date _____