

## Bond Hearings for Immigrants Subject to Prolonged Immigration Detention in the Ninth Circuit

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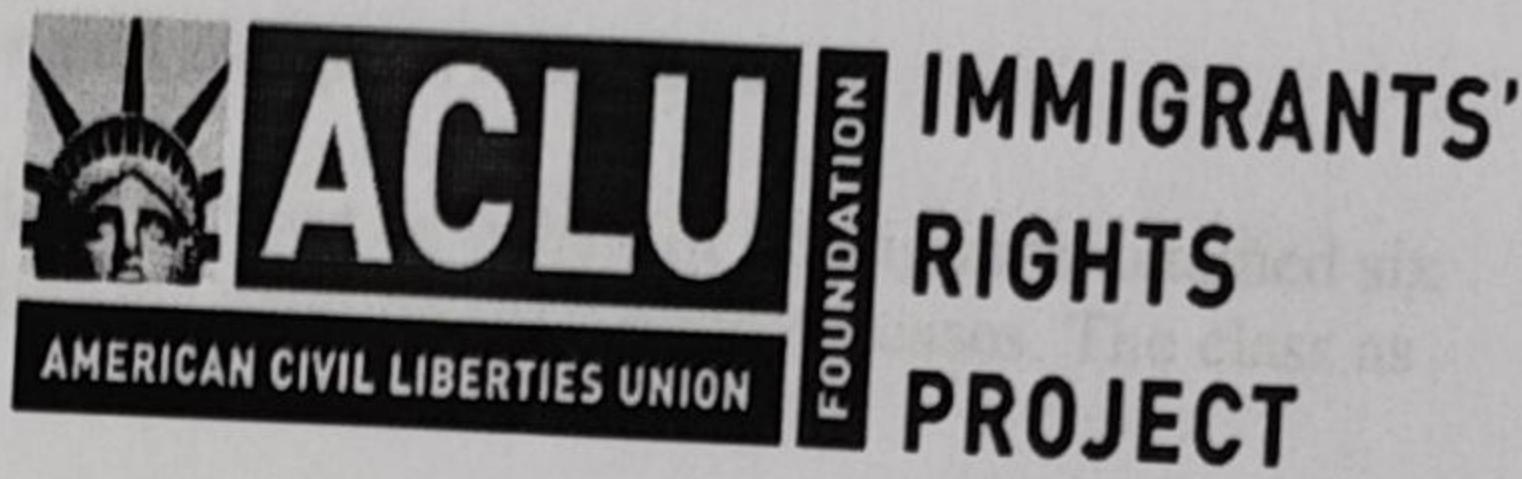
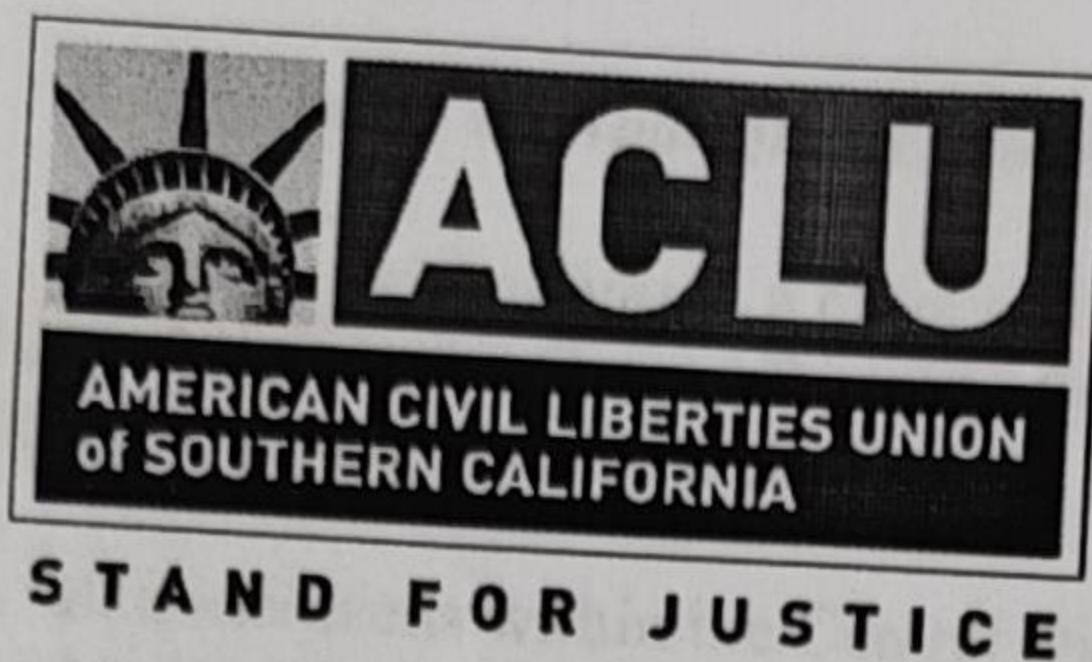
This advisory discusses Ninth Circuit case law ordering bond hearings for certain immigrants subjected to long-term immigration detention. In October 2015, the Ninth Circuit held in *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015) (*Rodriguez III*), that noncitizens detained pending their removal cases are entitled to an automatic bond hearing before an Immigration Judge ("IJ") at six months of detention, where the government bears the burden of justifying their continued imprisonment. The Court also required that the hearing be accompanied by several procedural safeguards. The Court thus reaffirmed and expanded upon its prior decision in *Rodriguez*, 715 F.3d 1127 (9th Cir. 2013) (*Rodriguez II*). Although the *Rodriguez* decisions specifically address an injunction governing immigration detention in the Los Angeles area, the decision applies across the Circuit.<sup>1</sup>

This advisory is intended for attorneys and advocates who work with immigrants detained in the Ninth Circuit. It explains who qualifies for a prolonged detention bond hearing after six months of detention under Ninth Circuit case law and the procedural safeguards that should accompany a prolonged detention hearing. The advisory proceeds in three parts. Part I provides background on *Rodriguez* and a related case on prolonged detention, *Diouf v. Napolitano*, 634 F.3d 1081 (9th Cir. 2011). Part II discusses which groups of immigrants are entitled to a bond hearing at six months under Ninth Circuit law. Part III discusses the special procedural safeguards that must be provided at that hearing and other issues.

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<sup>1</sup> See *Gonzalez v. Arizona*, 677 F.3d 383, 389 n.4 (9th Cir. 2012) (en banc) (holding that all published opinions constitute "law of the circuit" and thus "binding authority which must be followed unless and until overruled by a body competent to do so").



## 针对在第九巡回法院区域接受长期移民拘留的移民进行保释听证会

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2015年12月

本通知讨论了第九巡回法院案例法,判令对某些长期移民拘留的移民进行保释听证会。2015年10月,第九巡回法院在Rodriguez v. Robbins, 804 F.3d 1060 (9th Cir. 2015) (Rodriguez III)一案中裁定,等待遣返案件的非公民有权在拘留6个月时自动获得移民法官("IJ")的保释听证会,政府承担继续监禁的责任证明。法院还要求该听证会附带几项程序保障。因此,法院重申并扩大了其先前在Rodriguez, 715 F.3d 1127 (9th Cir. 2013) (Rodriguez II)一案中做出的裁决。尽管Rodriguez裁决专门针对洛杉矶地区的移民拘留禁令,但该裁决在全巡回区域适用。

本通知旨在为在第九巡回法院区域为被拘留移民工作的律师和倡导者服务。它解释了在第九巡回法院案例法下,哪些移民在拘留6个月后有资格获得长期拘留保释听证会,以及应该伴随长期拘留听证会的程序保障。本通知分为三个部分。第一部分提供了Rodriguez案件和一起与长期拘留有关的Diouf v. Napolitano, 634 F.3d 1081 (9th Cir. 2011)案件的背景。第二部分讨论了哪些移民群体在第九巡回法院法律下有权在6个月后获得保释听证会。第三部分讨论了在该听证会上必须提供的特殊程序保障以及其他问题。

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1 参见Gonzalez诉Arizona, 677 F.3d 383, 389 n.4 (第9巡回法院2012年)(全体法官合议)('判决发属的憲法禁制因此为宜海的東必頗趣感的具有约束力的裁决,根据推翻到被有权这样做的机构推翻')

## I. Background on *Rodriguez v. Robbins* and *Diouf v. Napolitano*

*Rodriguez v. Robbins* is a class action lawsuit filed on behalf of immigrants detained six months or longer in the Central District of California pending their removal cases. The class as certified by the district court includes:

all noncitizens within the Central District of California who: (1) are or were detained for longer than six months pursuant to one of the general immigration detention statutes pending completion of removal proceedings, including judicial review, (2) are not and have not been detained pursuant to a national security detention statute, and (3) have not been afforded a hearing to determine whether their detention is justified.

See *Rodriguez III*, 804 F.3d at 1066. The district court also approved subclasses, which correspond to each of the four general detention statutes under which the class members were detained: 8 U.S.C. §§ 1225(b), 1226(a), 1226(c), and 1231(a). See *id.*<sup>2</sup>

*Rodriguez III* builds on a series of cases in the Ninth Circuit recognizing that prolonged immigration detention without a bond hearing raises serious due process concerns and construing the immigration statutes to require a constitutionally adequate bond hearing over such detention.<sup>3</sup> In September 2012, the district court granted a preliminary injunction for two of the subclasses—i.e., Sections 1225(b) and 1226(c). The injunction required that the government “provide each [detainee] with a bond hearing” at six months and to “release each Subclass member on reasonable conditions of supervision . . . unless the government shows by clear and convincing evidence that continued detention is justified based on his or her danger to the community or risk of flight.” *Id.* In April 2013, the Ninth Circuit affirmed. See *Rodriguez II*, 715 F.3d 1127.

In August 2013, the district court granted summary judgment and entered a permanent injunction on behalf of the entire class. The Ninth Circuit affirmed in part and reversed in part in October 2015. See *Rodriguez III*, 804 F.3d at 1071, 1090-91. The Court required the government to provide an automatic IJ bond hearing at six months of detention, where the government bears the burden of justifying continued detention by clear and convincing evidence. The Court further required that the IJ consider releasing individuals on reasonable conditions of supervision and the length of the individual’s detention in making its custody decision. Finally, the Court ordered

<sup>2</sup> The individuals who fall in each subclass are explained in more detail below. Under the original certification orders, the only immigration detainees who do not fall within the *Rodriguez* class are: (1) individuals with administratively final orders of removal and no stay of removal, such that the government has present authority to remove them; and (2) individuals detained on terrorism related grounds under 8 U.S.C. §§ 1226A and 1537, who are subject to specialized custody review processes. Nonetheless, there is some ambiguity about the extent to which there remains a class of detainees held under Section 1231.

<sup>3</sup> See *Tijani v. Willis*, 430 F.3d 1241 (9th Cir. 2005); *Casas-Castrillon v. Dep’t of Homeland Security*, 535 F.3d 942 (9th Cir. 2008); *Diouf v. Napolitano*, 634 F.3d 1081 (9th Cir. 2011); *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011); see also *Nadarajah v. Gonzales*, 443 F.3d 1069, 1078-79 (9th Cir. 2006).

## I. 针对罗德里格斯诉罗宾斯和迪奥夫诺纳波利塔诺的背景信息

罗德里格斯诉罗宾斯是一起集体诉讼,代表在加州中区等待遣返案件超过6个月的被拘留移民提起。该集体包括:

加州中区所有非公民:(1)根据一般移民拘留法案被拘留超过6个月,等待移民案件结束,包括司法审查,(2)未受过国家安全拘留法的拘留,且(3)未获得听证会以确定其拘留是否合理。

见罗德里格斯三案,804 F.3d 1066。地区法院还批准了各子集体类型:

对应每一种移民拘留法案,即8 U.S.C. §§ 1225(b), 1226(a), 1226(c)和1231(a)。

罗德里格斯三案是在第九巡回法院一系列案件的基础上建立的,这些案件认定:无保释听证的长期移民拘留会引发严重的正当程序问题,并解释了移民法案要求对此类拘留进行宪法上充分的保释听证。2012年9月,地区法院就1225(b)和1226(c)子集体发出初步禁令。禁令要求政府'在6个月后为每位[被拘留者]举行保释听证',并'除非政府凭借确凿证据证明其对社区构成危险或有逃逸风险,否则就释放每位子集体成员,并给予合理的监管条件'。2013年4月,第九巡回法院予以维持。见罗德里格斯二案,715 F.3d 1127.

2013年8月,地区法院裁定摘要判决并下达了针对整个群体的永久禁令。第九巡回法院在2015年10月部分维持,部分推翻。见罗德里格斯三案,804 F.3d at 1071, 1090-91。法院要求政府在拘留6个月后自动举行移民法官保释听证会,政府负责提供确凿的证据证明继续拘留的正当性。法院还要求移民法官在作出拘留决定时,考虑是否以合理的监管条件释放个人,以及个人的拘留时长。最后,法院下令

2 每个子组中的个人将在下文中有更详细的解释。根据原始认证令,不属于罗德里格斯

群体的只有: (1) 有最终驱逐命令且无驱逐延期的个人,政府当前有权将其驱逐;以及 (2) 根据8 U.S.C. §§ 1226A和1537被拘留的涉恐个人,他们受到专门的审查程序的约束。尽管如此,仍然存在一些关于第1231条被拘留人员是否构成一个群体的模糊之处。

3 见Tijani诉Willis案,430 F.3d 1241

(第9巡回法院2005年);Casas-Castrillon诉国土安全部案,535 F.3d 942 (第9巡回法院2008年);Diouf诉Napolitano案,634 F.3d 1081 (第9巡回法院2011年);Singh诉Holder案,638 F.3d 1196 (第9巡回法院2011年);另见Nadarajah诉Gonzales案,443 F.3d 1069, 1078-79 (第9巡回法院2006年)。

## § 1231(a)-HR bond hearing

periodic bond hearings, every six months, for detainees who are not released after their first hearing. See *id.* at 1087-89.

The Ninth Circuit reversed the district court as to the Section 1231(a) subclass on the grounds that the class by definition excluded such individuals.<sup>4</sup> However, prior to *Rodriguez III*, the Ninth Circuit had held, in *Diouf v. Napolitano*, 634 F.3d 1081 (9th Cir. 2011) (*Diouf II*), that individuals detained under Section 1231(a) are entitled to a bond hearing at six months, where the government bears the burden of proof. *Id.* at 1082. *Rodriguez III* in no way purports to limit *Diouf*; indeed, the Court relied on *Diouf II* throughout the opinion.<sup>5</sup> Thus, although *Rodriguez III* does not apply to Section 1231(a), individuals held under that statute are still entitled to a bond hearing at six months under *Diouf II*.

## **II. Who Is Entitled to a Prolonged Detention Hearing?**

**All immigrants detained under the general immigration detention statutes are entitled to a prolonged detention bond hearing after six months of detention.** *Rodriguez III* applies to individuals detained six months or longer under Sections 1226(a), 1226(c), and 1225(b). Moreover, *Diouf II* requires bond hearing at six months for individuals detained under Section 1231(a).

### ***Individuals detained under Section 1226(a)***

Section 1226(a) generally authorizes detention “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). The statute authorizes release on “bond of at least \$1,500” or “conditional parole.” *Id.* § 1226(a)(2). Following an initial custody determination by the Department of Homeland Security (“DHS”), a noncitizen may apply for a redetermination by an IJ, and that decision may be appealed to the Board of Immigration Appeals (“BIA”). See 8 C.F.R. §§ 1236.1, 1003.19. At the bond hearing, the detainee bears the burden of establishing “that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight.” *Matter of Guerra*, 24 I. & N. Dec. 37, 38 (BIA 2006).

*Rodriguez III* holds that individuals who had a bond hearing at the outset of their cases under Section 1226(a) but remain detained are automatically entitled to another bond hearing after six months of detention, where the government bears the burden of justifying their continued detention by clear and convincing evidence. See *Rodriguez III*, 804 F.3d at 1085.

<sup>4</sup> See *Rodriguez*, 804 F.3d at 1086 (concluding that because the class includes only “non-citizens who are detained pending completion of removal proceedings, including judicial review,” it “by definition excludes any detainee subject to a final order of removal” and that “[s]imply put, the § 1231(a) subclass does not exist”).

<sup>5</sup> See, e.g., *Rodriguez*, 804 F.3d at 1069-70, 1077-78, 1088-89.

定期保释听证,每 6 个月一次,适用于在首次听证后未获释放的被拘留者。见第 1087-89 页。

#### 第九巡回法院在涉及第 1231(a)

条款的子类中推翻了地区法院的裁决,理由是该类按定义排除了这些人。然而,在 Rodriguez III 之前,第九巡回法院在 Diouf v. Napolitano 一案中裁定,根据第 1231(a) 条款被拘留的个人有权在拘留 6 个月后获得保释听证,由政府承担举证责任。第 1082 页。Rodriguez III 并未试图限制 Diouf;事实上,该法院在整个案件中都引用了 Diouf II。因此,尽管 Rodriguez III 不适用于第 1231(a) 条款,但根据 Diouf II,在此条款下被拘留的个人仍有权在拘留 6 个月后获得保释听证。

## II. 谁有权获得长期拘留听证?

根据一般移民拘留法规,所有被拘留的移民在拘留 6 个月后都有权获得长期拘留保释听证。Rodriguez III 适用于根据第 1226(a)、1226(c) 和 1225(b) 条款被拘留 6 个月或更长时间的个人。此外,Diouf II 要求对根据第 1231(a) 条款被拘留的个人在拘留 6 个月后进行保释听证。

#### 根据第 1226(a) 条款被拘留的个人

第 1226(a) 条款通常授权在'是否将外国人遣返回境'作出决定时予以拘留。8 U.S.C. § 1226(a)。该法规授权提供'至少 1,500 美元'的保释金或'有条件假释'。Id. § 1226(a)(2)。在国土安全部(DHS)作出初次监管决定后,非公民可向移民法官申请重新裁定,该裁定可上诉至移民上诉委员会(BIA)。见 8 C.F.R. §§ 1236.1、1003.19。在保释听证中,被拘留者负有证明'自己不会对他人或财产构成危险,不会威胁国家安全,也不会有逃脱风险'的责任。Guerr a 案,24 I. & N. Dec. 37, 38 (BIA 2006)。

罗德里格斯三世裁定,根据第 1226(a) 条的规定,在初期案件中获得保释听证会但仍被拘留的个人,在被拘留 6 个月后有权自动获得另一次保释听证会,此时政府须承担以明确和确凿的证据证明继续拘留的举证责任。见罗德里格斯三世,804 F.3d at 1085。

<sup>4</sup> 见罗德里格斯,804 F.3d at 1086(裁定该类仅包括'等待移民诉讼完成的非公民,包括司法审查',由此'根本排除任何受最终遣返令约束的被拘留者',并且'简单地说,第 1231(a) 条细分类不存在')。

<sup>5</sup> 见罗德里格斯案,例如,804 F.3d at 1069-70, 1077-78, 1088-89。

### *Individuals detained under Section 1226(c)*

Section 1226(c) imposes mandatory detention on individuals who are “deportable” or “inadmissible” due to their criminal history while their cases are pending before the IJ or BIA. Such individuals are not entitled to an IJ bond hearing at the outset of their cases. Instead, the only review they may request is a hearing, under *In Re Joseph*, 22 I. & N. Dec. 799 (BIA 1999), and 8 C.F.R. § 1003.19(h)(2)(ii) to determine if they are “properly included” under the terms of the statute.

*Rodriguez* holds that Section 1226(c) authorizes detention for only six months, at which point the authority for detention shifts to Section 1226(a), and the person is entitled to a bond hearing before the IJ. Moreover, at that hearing, the government bears the burden of justifying the individual’s continued detention by clear and convincing evidence. *Rodriguez III*, 804 F.3d at 1079-81.

### *Individuals detained under Section 1225(b)*

Section 1225(b) applies to “applicants for admission” who are stopped at the border or a port of entry, or who are “present in the United States” but “ha[ve] not been admitted.” 8 U.S.C. § 1225(a)(1). The statute provides that asylum seekers “shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.” *Id.* § 1225(b)(1)(B)(iii)(IV). As to all other applicants for admission, “if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained” for removal proceedings. *Id.* § 1225(b)(2)(A). Prior to the *Rodriguez* decisions, noncitizens detained pursuant to Section 1225(b) were generally not eligible for a bond hearing. See 8 C.F.R. § 1236.1(c)(2). However, the Attorney General has discretion to parole the noncitizen into the United States if there are “urgent humanitarian reasons or significant public benefit[s]” at stake, and individual presents neither a danger nor a risk of flight. 8 U.S.C. § 1182(d)(5)(A).

*Rodriguez III* holds that Section 1225(b) authorizes detention for only six months, at which point the authority for detention shifts to Section 1226(a), and the person is entitled to a bond hearing before the IJ. Moreover, at that hearing, the government bears the burden of justifying the individual’s continued detention by clear and convincing evidence. *Rodriguez III*, 804 F.3d at 1082-84.

### *Individuals detained under Section 1231(a)*

Section 1231(a) authorizes the detention of individuals subject to a final order of removal. 8 U.S.C. § 1231(a). It requires detention during the 90-day removal period for noncitizens ordered removed on criminal or terrorist grounds after entry of a final order. 8 U.S.C. § 1231(a)(2). If the noncitizen is not removed during the removal period, Section 1231(a)(6) authorizes continued detention at the discretion of the Attorney General. By regulation, individuals detained under Section 1231 do not receive a bond hearing before an IJ, but rather only periodic post-order custody reviews (“POCRs”) by DHS. See 8 C.F.R. § 241.4.4.

### 被根据第1226(c)条款拘留的个人

第1226(c)条款对因犯罪历史而被认定为'可驱逐出境'或'不得准入'的个人在其案件待在移民法官(IJ)或移民上诉委员会(BIA)审理期间强制拘留。此类个人无权在案件开始时获得移民法官的保释听证。相反,他们可以申请的唯一审查是根据《In Re Joseph》案、22 I. & N. Dec. 799 (BIA 1999)和8 C.F.R. § 1003.19(h)(2)(ii)来确定他们是否'应当包括'在该法律条款范围内。

《罗德里格斯案》裁定,第1226(c)条款只授权拘留6个月,之后拘留权限转移到第1226(a)条款,个人有权在移民法官面前申请保释听证。此外,在该听证中,政府必须提供明确而有说服力的证据来证明继续拘留该个人的正当性。罗德里格斯三案,804 F.3d at 1079-81。

### 根据第1225(b)条款被拘留的个人

第1225(b)条款适用于在边境或入境口岸被截获或者'在美国境内'但'未被许可入境'的'申请入境者'。8 U.S.C. § 1225(a)(1)该法律规定,寻求庇护者'应被拘留直至最终确定其是否有可信的迫害恐惧,如果认定其没有此种恐惧,则一直被拘留直至被驱逐出境'。Id. § 1225(b)(1)(B)(i ii)(IV)。对于其他所有申请入境者,如果移民检查官认定申请入境者毫无疑问地无资格被准许入境,则该申请人'应被拘留'进行驱逐程序。Id. § 1225(b)(2)(A)。在《罗德里格斯案》做出裁决之前,根据第1225(b)条款被拘留的非公民通常无资格获得保释听证。参见8 C.F.R. § 1236.1(c)(2)。然而,司法部长有酌处权将非公民假释进入美国,如果存在'紧急人道原因或重大公共利益',且该个人既不构成威胁也不存在逃逸风险。8 U.S.C. § 1182(d)(5)(A)。

罗德里格斯三世认为,第 1225(b) 条授权仅拘留六个月,之后拘留权限转移至第 1226(a) 条,该人有权在移民法官面前获得保释听证。而且在该听证中,政府须提供明确而有力的证据,证明继续拘留该人有充分理由。罗德里格斯三世,804 F.3d 第 1082-84 页。

### 根据第 1231(a) 条被拘留的个人

第 1231(a) 条授权拘留面临最终驱逐出境令的个人。8 U.S.C. § 1231(a)。它要求在最终驱逐令发布 90 天内拘留因刑事或恐怖主义原因被驱逐的非公民。8 U.S.C. § 1231(a)(2)。如果在驱逐期限内未能将该非公民驱逐出境,第 1231(a)(6) 条授权司法部长自行决定是否继续拘留。根据法规,根据第 1231 条被拘留的个人不会在移民法官面前获得保释听证,而是由移民海关执法局定期进行羁押后续评审。见 8 C.F.R. § 241.4.4。

As explained above, *Rodriguez III* holds that the Section 1231 subclass “does not exist.” It is unclear how this statement would apply to detainees who apparently are held under that provision, such as those who have a stay and are detained pending review of a denied motion to reopen. While the meaning of the Court’s holding on this issue is unclear, prior to *Rodriguez III*, the Ninth Circuit held in *Diouf II* that individuals held under Section 1231 are entitled to a bond hearing after six months of detention, where the government bears the burden of justifying their continued imprisonment. *Diouf II*, 634 F.3d at 1082.<sup>6</sup> Notably, the Court found the POCR process to fail to provide adequate safeguards against unlawfully prolonged detention.<sup>7</sup>

#### *Individuals detained pending judicial review*

The Ninth Circuit has also addressed what detention statute applies when **removal is stayed pending judicial review** in the removal case. The Court has held that Section 1226(a) governs detention when an individual has moved for a stay of removal or obtained a stay of removal pending a petition for review of a removal order.<sup>8</sup> In contrast, the Court has held that Section 1231(a) applies where removal is stayed pending judicial review of a denied motion to reopen.<sup>9</sup> However, for purposes of obtaining a bond hearing over prolonged detention, the distinction does not matter, since the Ninth Circuit has construed *all* the general immigration detention statutes to require a bond hearing at six months.



#### *Individuals with reinstated orders of removal who are seeking withholding of removal*

There is a dispute in the courts about what detention statute applies **pending a reasonable fear determination and/or withholding-only proceedings**: Section 1226 or Section 1231. Regardless of which detention statute applies, an individual in withholding-only

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<sup>6</sup> The government has argued that a *Diouf* hearing is required only once the individual has been subject to six months of detention *under Section 1231*—and not six *total* months of detention. This position is contrary to Ninth Circuit case law, which has focused on the due process problems presented by *prolonged* detention without a bond hearing, as opposed to the periods of detention under each respective detention statute. *See Diouf II*, 634 F.3d at 1091-92 (holding that “[w]hen *detention* crosses the six-month threshold and release or removal is not imminent, the private interests at stake are profound” (emphasis added)); *see also Tijani*, 430 F.3d at 1242, 1246 (Tashima, J., concurring) (characterizing detention as having lasted for two years and eight months, even though 20 of those months were for detention during removal proceedings before the IJ and BIA, and the rest while removal was stayed pending a petition for review); *Casas-Castrillon*, 535 F.3d at 948 (characterizing detention as lasting nearly seven years while case passed through different phases of proceedings).

<sup>7</sup> *See id.* at 1091 (explaining that “[t]he regulations do not afford adequate procedural safeguards because they do not provide for an in-person hearing, they place the burden on the alien rather than the government and they do not provide for a decision by a neutral arbiter such as an immigration judge.”).

<sup>8</sup> *Prieto-Romero v. Clark*, 534 F.3d 1053, 1059-60 & n.5 (9th Cir. 2008); *Casas-Castrillon*, 535 F.3d at 947.

<sup>9</sup> *Diouf v. Mukasey* (“*Diouf I*”), 542 F.3d 1222, 1229-30 (9th Cir. 2008).

如上所述，Rodriguez III认为第1231节“不存在”。目前尚不清楚该陈述将如何适用于显然是根据该规定持有的被拘留者，例如那些有暂停并被拘留的人，等待对拒绝重新开放的动议进行审查。尽管法院对这个问题的持有的含义尚不清楚，但在罗德里格斯三世之前，在迪奥夫二世（Diouf II）举行的第九巡回法院在第1231条中持有的个人有权在六个月的拘留后进行债券听证会，政府承担了持续的监禁负担。DIOUF II, 634 F.3d, 1082。6值得注意的是，法院发现，POCR进程未能提供足够的保障措施，以防止非法延长拘留。

Several courts have concluded that detention pending such proceedings may violate the due process guarantee in the pre-final order detention statute, Section 1231. The court in Rodriguez III, however, found that the procedure was constitutional.

### 个人被拘留在司法审查之前

第九巡回法院还解决了在撤职案件中审查司法审查的撤职时适用的拘留法规。法院裁定，第1226（a）条规定了一个人搬迁以撤职或获得撤职的暂停，等待请愿书以审查撤职令。第九巡回法院已将所有一般移民拘留法规解释为需要在六个月时进行债券听证。

The Ninth Circuit has held that Rodriguez bond hearings must be conducted before procedural proceedings in light of the serious deprivation of liberty at issue. Although the Ninth Circuit has not directly addressed this issue, the same procedural framework should apply to Diouf cases to ensure that a court has recognized that problem.

### 寻求扣留撤职令的恢复撤职令的个人在法院就拘留法规的适用有争议提出争议

The procedures for a Rodriguez hearing differ in several ways from the procedures that apply to a standard bond hearing conducted at the outset of a person's case. For example, a person must be entitled to obtain such a bond hearing and, at the hearing, the alien must demonstrate why he or she should not be detained. See supra

### 1231. 无论哪种拘留法案适用

6政府辩称，只有在第1231条受到六个月的拘留，而总共被拘留六个月后，只需要进行DIOUF听证会。该立场违反了第九巡回法定判例法，该判例法的重点是长期拘留而没有债券听证会带来的正当程序问题，而不是根据各自的拘留法规所规定的拘留期。参见DIOUF II, 634 F.3d, 第1091-92页（认为“拘留所越过了六个月的阈值，释放或拆除并不是迫在眉睫，私人利益的危险很大”（添加了强调））；另请参见Tijani, 430 F.3d, 1242, 1246 (Tashima, J., 同意)（将拘留持续了两个月零八个月，即使其中20个月在IJ和BIA之前撤职期间被拘留，而其余的则是在撤职期间继续进行审查的请愿书）；Casas-Castrillon, 535 F.3d, 948（将拘留的特征持续了将近七年，而案件经过了不同的诉讼阶段）。

7请参阅ID。在1091年（解释说：“法规不承担足够的程序保护措施，因为他们没有提供面对面的听证会，因此他们将负担置于外国人而不是政府的负担，并且他们没有提供像移民法官这样的中性仲裁者的决定。”）。

8 Prieto-Romero诉Clark, 534 F.3d 1053, 1059-60 & N.5 (9th Cir. 2008) ; Casas-Castrillon, 535 F.3d, 第947页。

9 Diouf诉Mukasey (“Diouf I”), 542 F.3d 1222, 1229-30 (9th Cir. 2008) .

proceedings should be entitled to a prolonged detention bond hearing after six months of detention.

The Ninth Circuit held in *Ortiz-Alfaro v. Holder*, 694 F.3d 955 (9th Cir. 2012), that individuals do not have a “final” order of removal for purposes of judicial review until the conclusion of reasonable fear and withholding-only proceedings. *Id.* at 958. Citing *Ortiz-Alfaro*, several district courts have concluded that detention pending such proceedings must be authorized by the pre-final order detention statute, Section 1226.<sup>10</sup> By contrast, the government generally has taken the position that individuals in withholding-only proceedings are detained under Section 1231. But even assuming Section 1231 applies, the distinction is irrelevant with respect to prolonged detention, as *Diouf II* establishes that noncitizens detained under Section 1231 are entitled to a bond hearing after six months of detention.

### III. What Procedural Safeguards Are Required at a *Rodriguez* Hearing?

The Ninth Circuit has held that *Rodriguez* bond hearings must be accompanied by robust procedural protections in light of the serious deprivation of liberty at stake. Although the Ninth Circuit has not directly addressed this issue, the same procedural framework should apply to *Diouf* hearings because the Court has recognized that prolonged detention under Section 1231 presents the same due process concerns.<sup>11</sup>

The procedures for a *Rodriguez* hearing differ in several ways than the procedures that apply to a Section 1226(a) bond hearing conducted at the outset of a person’s case. For example, a noncitizen must make a request to obtain such a bond hearing and, at the hearing, the noncitizen bears the burden to demonstrate why he or she should not be detained. *See supra* Section II.

By contrast, the Ninth Circuit has required greater protections for prolonged detention bond hearings:

- The government must provide the hearing automatically after six months of detention, rather than at the detainee’s request, see *Rodriguez III*, 804 F.3d at 1085;<sup>12</sup>
- The government bears the burden to justify continued detention by clear and convincing evidence, see *Singh v. Holder*, 638 F.3d 1196, 1205 (9th Cir. 2011);

<sup>10</sup> See, e.g., *Lopez v. Napolitano*, No. 1:12-CV-01750 MJS (HC), 2014 WL 1091336, at \*3 (E.D. Cal. Mar. 18, 2014) (holding that Section 1226 applies in these circumstances); accord *Guerra v. Shanahan*, No. 14-CV-4203 (KMW), 2014 WL 7330449, at \*3-5 (S.D.N.Y. Dec. 23, 2014); *Guerrero v. Aviles*, No. 14-4367 (WJM), 2014 WL 5502931, at \*3-9 (D.N.J. Oct. 30, 2014).

<sup>11</sup> See *Diouf II*, 634 F.3d at 1086 (finding “no basis for withholding from aliens detained under § 1231(a)(6) the same procedural safeguards accorded to aliens detained under § 1226(a)”).

<sup>12</sup> By order of the district court in *Rodriguez*, the government must schedule and notice the bond hearing for *Rodriguez* class members prior to 180 days of detention, but the hearing need not take place until the 195th day of detention. *See Rodriguez III*, 804 F.3d at 1071.

## 在拘留6个月后,案件应有权获得延长保释听证会

第九巡回法院在Ortiz-Alfaro诉Holder, 694 F.3d 955 (9th Cir. 2012)一案中裁定,对于司法审查而言,个人在合理恐惧和仅限于拒绝遣返的诉讼程序结束之前没有'最终'遣返令。引用Ortiz-Alfaro,几家地方法院得出结论,在此类诉讼程序期间的拘留必须由最终遣返令之前的拘留法规第1226条授权。相比之下,政府通常认为仅限于拒绝遣返的诉讼程序下的个人是根据第1231条拘留的。但即使假定第1231条适用,对于延长拘留而言,这种区分并无紧要,因为Diouf II判决规定,根据第1231条被拘留的非公民在拘留6个月后有权获得保释听证会。

### III. 在Rodriguez听证会上需要哪些程序保障?

第九巡回法院裁定,鉴于自由受到严重剥夺,Rodriguez保释听证会必须伴有强有力的程序保护。尽管第九巡回法院并未直接解决这一问题,但由于法院承认第1231条下的延长拘留会带来同样的正当程序问题,相同的程序框架应适用于Diouf听证会。

Rodriguez听证会的程序在几个方面不同于开案初期进行的第1226(a)条保释听证会。例如,非公民必须申请获得此类保释听证会,在听证会上,非公民承担证明自己不应被拘留的责任。见上文第II部分。

与之相比,第九巡回法院要求对长期拘留保释听证程序提供更多保护:

- 政府必须在拘留六个月后自动提供听证会,而不是根据被拘留人的要求,见Rodriguez III, 804 F.3d at 1085;<sup>12</sup>
- 政府有责任通过明确和有说服力的证据来证明继续拘留的正当性,见Singh v. Holder, 638 F.3d 1196, 1205 (9th Cir. 2011);

10 例如,见Lopez v. Napolitano, No. 1:12-CV-01750 MJS (HC), 2014 WL 1091336, at \*3 (E.D. Cal. Mar. 18, 2014)(判决第1226节适用于这些情况);与此相符的还有Guerra v. Shanahan, No. 14-CV-4203 (KMW), 2014 WL 7330449, at \*3-5 (S.D.N.Y. Dec. 23, 2014);Guerrero v. Aviles, No. 14-4367 (WJM), 2014 WL 5502931, at \*3-9 (D.N.J. Oct. 30, 2014);Diouf II, 634 F.3d at 1086 ('不存在不向根据 § 1231(a)(6)被拘留的外国人提供与根据 § 1226(a)被拘留的外国人相同的程序保障的理由')。

12 根据Rodriguez案的地方法院命令,政府必须在拘留180天前为Rodriguez集团成员安排和通知保释听证会,但听证会无需在第195天前进行。见Rodriguez III, 804 F.3d at 1071。

- The IJ must consider whether the noncitizen can be released on **reasonable conditions of supervision**, *see Rodriguez III*, 804 F.3d at 1087-88;
- The IJ must take into account **the amount of time that the noncitizen has been detained** in determining whether continued detention is justified, *see Rodriguez III*, 804 F.3d at 1088-89;
- While the IJ need not consider **likelihood of removal** in all cases, the IJ should consider it in particular cases where there may be some impediment to the noncitizen's removal (e.g., he or she is stateless), *see Rodriguez III*, 804 F.3d at 1089 n.18 (citing *Owino v. Napolitano*, 575 F.3d 952, 955-56 (9th Cir. 2009));
- The government must make a **contemporaneous record of the hearing**, such that a transcript can be prepared for an appeal of the bond determination, *see Singh*, 638 F.3d at 1207;
- The government must provide **periodic hearings every six months** for individuals who remain detained for additional periods of prolonged detention, *see Rodriguez III*, 804 F.3d at 1089.

The following discussion addresses these procedural requirements in more detail.

#### ***Does my client need to request a Rodriguez bond hearing?***

No, the government is required to **automatically** schedule a bond hearing after six months of detention and, if your client remains detained, for periodic bond hearings every six months. *See id.* at 1085, 1089. However, if you believe that your client qualifies under Rodriguez but has not been scheduled for a bond hearing, you should request a bond hearing by filing a motion with the immigration court that is handling your immigration case. In addition, detainees arguably held under Section 1231 should always request a hearing, as the application of *Rodriguez III* to their cases remains unclear.

#### ***What does the “clear and convincing evidence” standard mean in practice?***

At the hearing, **the government bears the burden** to justify continued detention by **clear and convincing evidence** that the individual is either a flight risk or a danger to the community. If the government fails to meet its burden, the individual is entitled to release on monetary bond and/or reasonable conditions of supervision.

The “clear and convincing evidence” standard is a higher evidentiary standard than the “preponderance of the evidence” standard, which only requires a showing that something is more likely than not to be true. *See Black’s Law Dictionary* (10th ed. 2014) (defining “clear and convincing” standard as being “highly probable” or “reasonably certain”); *see also Colorado v. New Mexico*, 467 U.S. 310, 316 (1984) (to meet the clear and convincing evidence standard, the evidence presented must “place in the ultimate factfinder an abiding conviction that the truth of

- 移民法官 (IJ) 必须考虑是否可以根据合理条件将非公民释放, 参见Rodriguez III, 804 F.3d 第1087-88页;
- 移民法官 (IJ) 在确定是否继续拘留时, 必须考虑非公民被拘留的时间长短, 参见Rodriguez III, 804 F.3d 第1088-89页;
- 虽然移民法官 (IJ) 不必在所有情况下都考虑能否遣返, 但在有一些障碍阻碍非公民遣返 (例如他/她是无国籍人) 的特殊情况下, 移民法官 (IJ) 应该予以考虑, 参见Rodriguez III, 804 F.3d 第1089页脚注18 (引用Owino诉Napolitano一案, 575 F.3d 952, 955-56 (9th Cir. 2009));
- 政府必须保存听证会的同步记录, 以便为获释保证金裁定的上诉准备成文记录, 参见Singh一案, 638 F.3d 第1207页;
- 政府必须对被长期拘留的个人每六个月提供定期听证会, 参见Rodriguez III, 804 F.3d 第1089页。

以下讨论更详细地介绍了这些程序要求。我的当事人是否需要要求Rodriguez保释听证会?

不, 政府有义务在拘留六个月后自动安排保释听证会, 如果你的当事人仍然被拘留, 还需要每隔六个月安排定期保释听证会。参见上述判决第1085和1089页。但是, 如果您认为您的当事人符合Rodriguez的条件但尚未安排保释听证会, 您应当向正在处理您的移民案件的移民法院提出要求保释听证会的动议。此外, 那些可能根据1231条被拘留的被拘留者应该始终要求听证会, 因为Rodriguez III 对他们案件的适用性仍然不明确。

'清晰和有力的证据'标准在实践中意味着什么?

在听证会上, 政府有责任通过清晰和有力的证据证明被拘留的个人要么有逃跑的风险, 要么对社区构成危险。如果政府未能履行此责任, 个人有权以金钱保释和/或受合理监管的条件获释。

'清晰和有力的证据'标准比'优势证据'标准更高, 后者只需要证明某事可能属实。见《布莱克法津词典》(第10版, 2014年)(将'清晰和有力的'标准定义为'高度概率'或'合理确定'); 另见科罗拉多州诉新墨西哥州, 467 U.S. 310, 316 (1984年)(要达到'清晰和有力的证据'标准, 提交的证据必须'使最终事实裁定者对真相深信不疑')。

the factual contentions are highly probable") (internal quotation marks and citations omitted)). It also requires more than a showing of reasonable, substantial, and probative evidence. *See Woodby v. INS*, 385 U.S. 276, 287 (1966) (Clark, J., dissenting on other grounds) (calling the "clear, unequivocal, and convincing" standard of proof placed on the government in deportation proceedings a higher standard of proof than the "long-established 'reasonable, substantial, and probative' burden"); *cf.* 8 U.S.C. § 1229a(c)(3)(A) (specifying that "clear and convincing" evidence for establishing that a noncitizen is deportable and also requiring that the immigration judge's decisions be based on "reasonable, substantial, and probative evidence.").

Thus, to determine whether the government has met its burden, the IJ should consider whether the government has presented reasonable, substantial, and probative evidence that demonstrates that the individual is "highly probable" or "reasonably certain" to be a flight risk or a danger if released. Importantly, this analysis must be prospective in nature. In other words, past evidence of flight risk or dangerousness is only sufficient if it demonstrates that an individual is highly probable or reasonably certain to be a future risk of flight or danger.

To justify detention on dangerousness grounds, the Ninth Circuit has required that the government put forward substantial evidence that a person is highly likely to engage in criminal activity. As the Ninth Circuit has explained, "[a]lthough an alien's criminal record is surely relevant to a bond assessment, . . . criminal history alone will not always be sufficient to justify denial of bond on the basis of dangerousness. Rather, the recency and severity of the offenses must be considered." *Singh*, 638 F.3d at 1206 (discussing *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006)); *id.* ("not all criminal convictions conclusively establish that an alien presents a danger to the community, even where the crimes are serious enough to render the alien removable"). The IJ must determine that the government's asserted interest in "protecting the community from danger 'is actually served by detention in [t]his case.'" *Id.* (quoting *Casas-Castrillon*, 535 F.3d at 949) (emphasis in original). For example, in *Singh*, the Ninth Circuit found that a man convicted of several offenses including receiving stolen property, petty theft with priors, and controlled substance offenses, could be found not to be a danger to the community, even though at least one of those offenses was an aggravated felony. 638 F.3d at 1200-01, 1205.

Moreover, the Ninth Circuit has held that a past criminal record should only be considered to the extent it shows the individual will be dangerous in the future. *See id.* at 1205 (observing that even a lengthy record of prior convictions, including some past violent convictions, may not meet the standard for clear and convincing evidence of "future dangerousness" where the "impetus for his previous offenses[ ] has ceased.").

Likewise, to justify detention on flight risk grounds, the Ninth Circuit has required government to put forward substantial, individualized evidence as to why that individual is highly likely to flee if released. In *Singh*, the Ninth Circuit found that the fact that a noncitizen has a final administrative order of removal is "common" to all noncitizens who are seeking judicial review and that it "alone does not constitute clear and convincing evidence that [the noncitizen] presented a flight risk justifying denial of bond." 638 F.3d at 1205.

) (省略了内部引号和引文) )。它还需要更多的表现，不仅仅显示出合理，实质性和证明性证据。参见Woodbyv. Ins., 385 U.S. 276, 287 (1966) (Clark, J., Clark, J., 以其他理由进行反对) (称为“明确，同意”的规定，并符合规定的依据，并且是一定程度上的标准，并且是标准的标准，该标准是一定的，一定是一样的标准，并且是一样的标准，并且是一个标准的依据。“长期以来的‘合理，实质性和证明性’负担”；

因此，为了确定政府是否承担了负担，IJ应该考虑政府是否提供了合理，实质性和证明性的证据，证明该个人是“高度可能”或“合理确定”的飞行风险或危险的证据。重要的是，这种分析本质上必须是潜在的。换句话说，只有在证明个人高度可能或合理地确定是飞行或危险的未来风险时，过去的飞行风险或危险性证据才足够。

为了证明危险理由的拘留是合理的，第九巡回法院要求政府提出大量证据，表明一个人很可能从事犯罪活动。正如第九巡回法院所解释的那样：“尽管外国人的犯罪记录肯定与债券评估有关……仅犯罪史并不总是足以证明基于危险性的拒绝债券是合理的。相反，必须考虑犯罪的新近度和严重性。” Singh, 638 F.3d, 1206 (讨论Guerra的问题, 24 I.&N. 37, 40 (Bia 2006)) ; ID. (“并非所有的刑事定罪都可以得出结论，即外国人对社区构成危险，即使犯罪足以使外星人移除”)。IJ必须确定政府对“保护社区免受危险的危险‘实际上是由他的案件拘留的危险’的主张的利益。” 同上。  
(引用Casas-Castrillon, 535 F.3d, 第949页) (原始重点)。例如，在辛格 (Singh)，第九巡回法院发现，一名男子被定罪的几项罪行，包括收到被盗的财产，盗窃先验的盗窃和受控物质罪，也不是对社区的危险，即使至少其中一项犯罪是一种严重的重罪。638 F.3d, 1200-01, 1205。

此外，第九巡回法院认为，过去的犯罪记录只能在表明个人将来会很危险的范围内考虑。请参阅ID。在1205年(观察到，即使是先前的定罪记录，包括过去的暴力定罪，也可能不符合“未来危险”的清晰和令人信服的证据的标准，而“他以前的犯罪动力已经停止了。”)。

同样，为了证明以飞行风险理由的拘留是合理的，第九巡回法院要求政府提出大量的，个性化的证据，说明为什么该个人很可能会释放。在辛格 (Singh) 中，第九巡回法院发现，非公民在寻求司法审查的所有非公民中具有最终的行政撤职顺序是“普遍”的，并且“仅凭这一事实并不构成清晰且令人信服的证据，证明[非公民]表现出违反邦德的拒绝拒绝的飞行风险。” 638 F.3d, 1205。

① detain 被捕, SOV 需要 evidence 被捕的

*Is it relevant how long my client has been detained?*

Yes, the Ninth Circuit has held that that IJ “must consider the length of time for which a non-citizen has already been detained” in determining whether continued detention is justified. *Rodriguez III*, 804 F.3d at 1089. As the length of detention grows, the government correspondingly must present stronger evidence to justify detention: “a non-citizen detained for one or more years is entitled to greater solicitude than a non-citizen detained for six months.” *Id.*

The relevance of detention length may change over time. At the first *Rodriguez* bond hearing conducted after six months of detention, you can emphasize that your client has already been detained for a period that the Ninth Circuit has recognized as “profound,” *Diouf II*, 634 F.3d at 1092, and may exceed the period that he or she served for any criminal offense. For any subsequent *Rodriguez* hearings conducted after longer periods of detention, the IJ should require that the government present more or different evidence to justify continued detention. You should argue that your client’s prior criminal history is less indicative of future dangerousness as time passes, *see Singh*, 638 F.3d at 1205, and present any evidence demonstrating rehabilitation since that time.

Moreover, the Ninth Circuit has made clear that, “[a]t some point, the length of detention could become[] so egregious that it can no longer be said to be reasonably related to an alien’s removal” and that continued detention is therefore no longer justified. *Rodriguez III*, 804 F.3d at 1089 (internal quotation marks and citation omitted).

*Can my client ask to be released on conditions other than a monetary bond?*

Yes, the Ninth Circuit has required IJs to consider whether the individual can be released on “reasonable conditions of supervision” at a *Rodriguez* hearing. *See Rodriguez III*, 804 F.3d at 1087-88. IJs have the authority to order a detainee released on their “own recognizance” without a monetary bond or conditions of supervision.<sup>13</sup> An IJ can also order release on conditions besides a monetary bond, including attendance in drug treatment or counseling, regular phone or in-person reporting, or electronic monitoring.

At the hearing, you should request release on appropriate, reasonable conditions. In particular, if your client cannot afford a monetary bond or it would create financial strain for your client or his or her family, the individual should request that the IJ order release on alternative conditions of supervision. *See Pugh v. Rainwater*, 572 F.2d 1053, 1057-58 (5th Cir. 1978) (en banc) (emphasizing that “[t]he incarceration of those who cannot [pay a money bail], without meaningful consideration of other possible alternatives, infringes on both due process and equal protection requirements”).

<sup>13</sup> See *Rivera v. Holder*, 307 F.R.D. 539, 553 (W.D. Wash. 2015). Notably, DHS has conceded in a brief to the BIA that IJs have “authority under section INA § 236(a) to release a respondent on her own recognizance and pursuant to conditional parole, as opposed to settling a monetary bond with a minimum amount of \$1,500.” *In re V-G*, DHS Br. at 3 (BIA filed Jan. 21, 2015). For more information and a copy of DHS’s brief, *see ACLU Practice Advisory on Rivera v. Holder* (Sept. 2015), <https://www.aclu.org/legal-document/rivera-v-holder-practice-advisory>.

### 客户被扣押的时间长短是否相关?

是的,第九巡回法院判决,移民法官在决定是否继续扣押的合理性时,'必须考虑非公民已被扣押的时间长短'。罗德里格斯三案,804 F.3d at 1089。扣押时间越长,政府相应必须出示更有力的证据来证明扣押的合理性:'一年或更长时间被扣押的非公民应该得到更多同情,而六个月被扣押的则不同。'同上。

扣押时间长短的相关性可能随时间而改变。在六个月扣押后进行的第一次罗德里格斯保释听证会上,您可以强调您的当事人已经被扣押了第九巡回法院认定为'深重'的时间,634 F.3d at 1092,甚至可能超过其曾犯罪的刑期。对于任何后续的更长时间扣押的罗德里格斯听证会,移民法官应该要求政府出示更多或不同的证据来证明继续扣押的合理性。您应该主张,随着时间的推移,您的当事人之前的犯罪记录对其未来的危险性影响较小,见辛格案,638 F.3d at 1205,并提供任何表明其自那时起有改过自新的证据。

此外,第九巡回法院已明确指出,'在某些时候,扣押时间可能变得如此令人发指,以至于不能再说是与外国人遣返合理相关',因此继续扣押就不再合理了。罗德里格斯三案,804 F.3d at 1089(内部引号和引用省略)。

### 客户能否要求以非金钱保释条件获释?

是的,第九巡回上诉法庭要求移民法官在Rodriguez听证会上考虑是否以'合理监管条件'释放个人。根据Rodriguez III,804 F.3d at 1087-88,移民法官有权命令被拘留人员在无需金钱保释或监管条件下获释。移民法官还可以除了金钱保释以外命令以其他条件释放,例如参加戒毒治疗或辅导、定期电话或面谈报告,或电子监控。

在听证会上,你应该请求以适当、合理的条件获释。特别是,如果你的客户无法负担金钱保释或这会给你的客户或其家人带来经济负担,该个人应请求移民法官下令以其他监管条件释放。参见Pugh v. Rainwater, 572 F.2d 1053, 1057-58 (5th Cir.

1978) (全院决议)(强调'不考虑其他可能的替代方案而将那些无力支付金钱保释的人拘禁,侵犯了正当程序和平等保护的要求')。

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参见Rivera v. Holder, 307 F.R.D. 539, 553 (W.D. Wash. 2015)。值得注意的是,国土安全部在递交给移民上诉委员会的一份简报中承认,移民法官有'根据移民及国籍法第236(a)条的权力,以无需保释金的自愿认罪或有条件假释的方式释放应诉人,而不是设定不低于1,500美元的金钱保释'。参见In re V-G, DHS Br. at 3 (BIA filed Jan. 21, 2015)。欲了解更多信息及该简报的副本,请参阅美国公民自由联盟关于Rivera v. Holder的实践建议(2015年9月),<https://www.aclu.org/legal-document/rivera-v-holder-practice-advisory>。

# *removal proceeding to bond proceeding Separated*

## ***Are the Merits of My Client's Immigration Case Relevant?***

The government may argue that your client is a flight risk because he or she is unlikely to win his or her immigration case (for example, if the client has already been ordered removed by an IJ). However, the Ninth Circuit has suggested that IJ generally should not consider the strength of the individual's removal case at a bond hearing. See *Rodriguez III*, 804 F.3d at 1089 (holding that “likelihood of eventual removal . . . [is] too speculative and too dependent upon the merits of the detainee’s claims for us to require IJs to consider during a bond hearing.”). If the IJ nonetheless considers this factor, you should explain to the judge why your client will prevail on his or her claims or on appeal.

## ***Challenging an adverse IJ decision through a BIA appeal or in a habeas petition***

If your client is dissatisfied with the IJ's bond determination, you can appeal the determination to the BIA. 8 C.F.R. 1003.19(f).

The Ninth Circuit has also recognized that the federal districts have jurisdiction to consider habeas petitions challenging immigration bond determinations in certain circumstances. In *Leonardo v. Crawford*, 646 F.3d 1157 (9th Cir. 2011), the Ninth Circuit held that habeas petitioners should typically first exhaust their administrative remedies by appealing the IJ's decision at a prolonged detention hearing to the BIA. *Id.* at 1160-61. However, there is no statutory exhaustion requirement. Exhaustion is required, if at all, as a prudential matter alone, and the traditional exceptions to such exhaustion apply. See *id.* at 1160 (citing *McCarthy v. Madigan*, 503 U.S. 140, 146-49 (1992), superseded by statute on other grounds as stated in *Booth v. Churner*, 532 U.S. 731 (2001); *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007)).<sup>14</sup>

The Ninth Circuit has held that the federal courts have jurisdiction to consider legal issues raised in a habeas petition challenging a bond decision, but lack jurisdiction over purely discretionary determinations. See *Singh*, 638 F.3d at 1202 (holding that the immigration statutes “restrict[] jurisdiction only with respect to the executive’s exercise of discretion” and the federal courts retain “habeas jurisdiction over questions of law. . . including ‘application of law to undisputed facts, sometimes referred to as mixed questions of law and fact,’” and constitutional claims) (quoting *Ramadan v. Gonzales*, 479 F.3d 646, 648 (9th Cir. 2007) (per curiam)). See also *Prieto-Romero*, 534 F.3d at 1067; *Doan v. INS*, 311 F.3d 1160, 1162 (9th Cir. 2002).

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If you have any questions or would like further information on prolonged detention hearings, please contact Rodriguez Class Counsel at [rodriguezclasscounsel@aclusocal.org](mailto:rodriguezclasscounsel@aclusocal.org).

<sup>14</sup> See also *McCarthy*, 503 U.S. at 146-49 (observing that the traditional exceptions to prudential exhaustion include where exhaustion would cause “undue prejudice to the subsequent assertion of a court action” or “irreparable harm” to the petitioner, there is “some doubt as to whether the agency was empowered to grant effective relief,” or it would be futile because “the administrative body is shown to be biased or has otherwise predetermined the issue before it” (internal citations and quotation marks omitted)).

我客户移民案的优点是否相关？

政府可能会争辩说您的客户是一种飞行风险，因为他或她不太可能赢得他或她的移民案（例如，如果客户已经被IJ订购的委托人）。但是，第九巡回法院建议，IJ通常不应该在债券听证会上考虑个人撤离案件的强度。参见Rodriguez III, 804 F.3d, 第1089页（认为“最终删除的可能性……[是]过于推测性，过于依赖于被拘留者要求我们要求IJS在债券听证期间考虑的优点。”）。如果IJ仍然考虑了这个因素，则应向法官解释为什么您的客户会占主导地位或上诉。

通过BIA上诉或在人身保护的请愿书中挑战不利的IJ决定，如果您的客户对IJ的债券确定不满意，您可以上诉

对BIA的决心。8 C.F.R. 1003.19 (f)。

第九巡回法院还认识到，联邦地区有管辖权考虑在某些情况下挑战移民债券确定的人身保护请愿书。在Leonardo诉Crawford, 646 F.3d 1157 (2011年9月9日) 中，第九巡回法院认为，人身保护者的请愿人通常应首先首先通过对IJ的判决提出对BIA的长时间拘留听证会上提出上诉。ID。在1160-61。但是，没有法定的疲惫要求。仅作为保诚的话，就需要精疲力尽，并且这种疲惫的传统例外适用。请参阅ID。在1160年（引用McCarthy诉Madigan案, 503 U.S. 140, 146-49 (1992)，以其他为理由取代法规，如Boothv. Churner, 532 U.S. 731 (2001)；Pugav. Chertoff诉Chertoff, Pugav. Chertoff, 488 F.3d 812, 812, 815 cir cir cir）。

第九巡回法院裁定，联邦法院具有管辖权，考虑在人身保护的请愿书中提出的法律问题质疑债券的决定，但缺乏纯粹的酌处决定的管辖权。参见Singh, 638 F.3d, 第1202页（认为，“对移民法规‘仅对行政人员行使酌处权的行使酌处权只限制[]管辖权’，而联邦法院保留‘对法律问题的人身管辖权……’”。479 F.3d 646, 648 (9th Cir. 2007) (每个Curiam)）。另请参见Prieto-Romero, 534 F.3d, 1067; Doanv. Ins, 311 F.3d 1160, 1162 (9th Cir. 2002)。

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如果您有任何疑问或希望在延长的拘留听证会上提供更多信息，请通过rodriguezclass counsel@aclusocal.org与Rodriguez班级顾问联系。

14另请参见麦卡锡, 503 U.S., 第146-49页（观察到审慎疲惫的传统例外包括疲惫会导致“不必要的法院诉讼的主张”或“不可弥补的伤害”或对请愿人的“不可弥补的伤害”，这是对机构是否有能力授予有效救济的”，因为它是否有效，”预定了问题之前的问题”（省略了内部引用和引文标记））。