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Rapid Response Update on Bond Eligibility for Undocumented Immigrants

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Nov 26, 2025 Read our latest legal explainer to learn how a new ICE policy attempts to expand immigration detention by limiting bond eligibility, and

what this means for noncitizens under U.S. immigration law.

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What's Happening: A federal district court has given back the right of many immigrants to ask for release from immigration detention on bond. On November 25, 2025, the court overruled a Board of Immigration Appeals (BIA) case called [Matter of Yajure Hurtado, 29 I & N](#)

Dec. 216 (BIA 2025). The case involves a Venezuelan man who crossed the border into the U.S. without permission. After living in the country for a few years, ICE decided to arrest Mr. Yajure Hurtado. The immigration judge denied Mr. Yajure Hurtado's request for bond because of new ICE legal arguments that said he was not eligible for bond. This was a major change and forced millions of immigrants to stay in immigration detention while their cases moved through immigration courts.

In response, the Northwest Immigrant Rights Project (NWIRP) filed a lawsuit against ICE and argued that it was illegal to deny immigrants in Mr. Yajure Hurtado's situation the right to ask for a bond hearing. The judge agreed and issued an order requiring bond hearings to begin again. **Until the government appeals**

this decision, immigrants across the country have the right to ask an immigration judge for a bond hearing. Note that the court's decision does not require an immigration judge to grant bond, only that the judge must hold a bond hearing.

Prior Updates:

To understand these bond changes, we start with how the government defines the immigration status of noncitizens in the U.S.

- First, some immigrants are categorized as “arriving aliens” by U.S. immigration law. The law says that someone who comes or attempts to come to the U.S. at a port of entry and seeks entry or is detained at sea and brought to the U.S. is an “arriving alien.” A port of entry can be an airport or a border

crossing point. The law says that “arriving aliens” cannot ask an immigration judge to release them from detention on an immigration bond. This is not a new legal theory. In fact, this part of our immigration laws has led to thousands of immigrants being forced to remain in ICE detention (also known as “mandatory detention”).

- Second, some immigrants are labeled as “applicants for admission.” This label carries important consequences when it comes to someone’s eligibility to request a bond that we will cover below.
- Third, an “applicant for admission” is someone who arrives at the U.S. either at a port of entry or between ports of entry. An “applicant for admission” is also someone who is physically in the country, but U.S. immigration authorities have not given

them permission to be here. The third category of immigrants who are considered “applicants for admission” are individuals brought to the U.S. by immigration authorities after being detained at sea.

The *significant* and new change made by ICE’s policy is their argument that regardless of how long someone has been in the U.S. or whether they were arrested shortly after they arrived in the country, they are considered “applicants for admission.”

- As an “applicant for admission,” ICE argues they are not eligible to ask an Immigration judge for release from detention on bond. In other words, even if an immigrant has spent years inside the country, they are legally speaking still trying to enter the U.S. because they were never given permission

to enter in the first place.

- The new ICE guidance is not published. However, based on arguments made in immigration court by ICE prosecutors, it seems they are relying on prior Supreme Court and Board of Immigration Appeals (BIA) cases. The relevant cases for this explainer include *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018) and *Matter of Q. Li*, 29 I & N Dec. 66 (BIA 2025). Please see this [June 2025 National Immigration Project explainer](#) with an extended explanation on *Matter of Q. Li*.
- However, this new guidance appears to go even further than the conclusion in *Matter of Q. Li* which was about a Chinese woman who entered the U.S. without permission, was arrested at the border shortly after she arrived, and released the next day to continue with her immigration court case.

In the past, most immigrants who entered without permission and were later arrested by immigration authorities were typically eligible to ask for bond. Usually, the immigration judge would decide to grant or deny bond if the immigrant could show they were not a danger or a flight risk. With this new policy, this is no longer the case.

Who Is Most At Risk For Prolonged Detention Under this New Policy?

- 1 Immigrants who entered without permission and have never been arrested by Border Patrol or ICE. It does not seem to matter how long they have lived in the U.S. For example, ICE may now argue that a farm worker with no criminal history who crossed the border from Mexico years ago and has been working in the United States is

ineligible for bond.

- 2 Immigrants who were initially arrested by Border Patrol soon after crossing into the U.S. without permission (in between ports of entry) and then released. It was common for Border Patrol to release immigrants at the border with instructions to report to an ICE office, with a future immigration court hearing notice, and/or released with parole. For example, an asylum seeker who entered with her children and was released to pursue their asylum claim could now be detained without bond.
- 3 Immigrants who arrived at the U.S. border at a port of entry and were paroled into the U.S. (including likely people who entered at U.S. airports under Biden-era parole programs) are likely to be considered ineligible for bond. For example, a Haitian

migrant who was granted parole by the Biden administration under the Cuban, Haitian, Nicaraguan, and Venezuela (CHNV) parole program would not be eligible for bond under ICE's new interpretation.

How to Prepare & Respond?

- Regardless of what ICE says, immigrants should still ask for a bond hearing. Immigration judges still have the authority to agree or disagree with ICE's legal arguments on their eligibility for a bond. Immigrants can also still ask ICE to release them on "parole" using their discretion. This request should be made especially if someone is experiencing mental or physical vulnerabilities. Some sample requests can be found [here](#).
- There are strong arguments that ICE's

position is not reasonable or legally correct. The Northwest Immigrant Rights Project (NWIRP) has pending litigation from March 2025 (the case is *Rodriguez Vazquez, v. Bostock*) that is relevant to this update, although their case only covers the people who are already part of the lawsuit.

- Immigrant community members should keep documents showing how they entered the U.S. such as passports with a visa and/or entry stamps in a safe place and make sure loved ones know where to find it. They should also find and secure any other documents given to them when they were released at the border. All this information could be useful evidence to argue that they are still eligible for bond. Please see NILC's resource on what to do if arrested or detained by immigration authorities (multi-

lingual).

- Speaking with an immigration attorney familiar with these recent updates could be helpful. Once an attorney has been hired, they can provide community members with a form ahead of time that says they have an attorney. The form is called G-28 Notice of Entry of Appearance as Attorney or Accredited Representative and having one signed ahead of time may help in fighting for release from detention.

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