

## Migrants facing detention find new reprieve from federal courts



*Detainees held at El Valle Detention Center in Raymondville, Texas are seen outside briefly, Thursday, May 1, 2025, after a federal judge in the district barred the Trump administration from deporting any Venezuelans from South Texas under the Alien Enemies...*

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By Stephen Dinan  
*The Washington Times*  
Tuesday, January 6, 2026

As the Trump administration moves to arrest and detain more illegal immigrants, their attorneys have figured out a way to fight back in regular federal courts by filing habeas corpus cases demanding that judges order their release.

The cases are flooding into the courts in record numbers. More than 3,000 alien habeas petitions were filed in December alone, up from just a couple of dozen cases a month in 2024.

The filing of the case is usually enough to slow down a deportation. In nearly every case, migrants are doing better than that by winning an order that they be granted a bond hearing in immigration courts and, in some cases, even being granted an outright release.

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Immigrant rights lawyers say they have been left with no choice after the Homeland Security Department and the Justice Department issued new interpretations of the law last year, finding that a wide swath of migrants who sneaked across the border are no longer eligible to ask for a bond hearing before an immigration judge.

Without recourse to the specialized immigration courts, the migrants have rushed to the regular federal district courts with their habeas corpus petitions.

“The surge in habeas filings isn’t about detainees bypassing immigration court; it’s about immigration courts no longer having the authority to conduct bond hearings. When bond is taken off the table, federal court becomes the only place left to argue for release,” said Adriana Coppola, supervising attorney of emerging issues at the Catholic Legal Immigration Network Inc.

The numbers are staggering.

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According to federal cases compiled at the Free Law Project’s CourtListener database, roughly 8,000 alien habeas petitions were filed last year, 3,000 in December alone.

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In all of 2024, just 222 such petitions were filed.

Some areas of the country have reported more action than others.

Eastern Texas, for example, recorded just a single alien habeas petition in 2025. Massachusetts reported 591 cases in 2025, up from four cases the previous year.

Some of those cases are the expected outcomes of the massive increase in arrests in the interior of the country by U.S. Immigration and Customs Enforcement. ICE averaged more than 1,100 book-ins per day for its own arrestees in the final months of 2025, up from about 250 a day in the final days of the Biden administration.

More arrests naturally mean more cases to challenge.

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Most of the surge appears to be fueled by the administration's new interpretation of a 1996 law governing when migrants facing potential deportation can be detained.

The Trump administration argues that anyone who sneaked across the border, known as entry without inspection, is considered an applicant for admission to the U.S., no matter how many years ago their illegal entry was and what sort of tentative legal status they have since been granted.

As applicants for admission, the law allows them to be detained until they are either deported or win relief from an immigration court.

Beyond that, the administration argues that even if they aren't applicants for admission, they can be detained under another section of the law.

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Those arguments have, so far, fared poorly in the courts, with a tsunami of judges siding with migrants.

The Washington Times sampled 40 alien habeas cases where substantive decisions have been rendered and found that in 35 of them, the government was ordered to allow a bond hearing or outright release. The other five cases were trending in the government's favor, although the issues in those cases were more about the timing of deportations than the authority to detain someone.

Administration officials are trying to figure out answers.

"What will fix it is when the Supreme Court weighs in, but it's unclear when a case will get there," one senior official told The Times.

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The U.S. attorney's offices, which end up fighting the habeas petitions, are overwhelmed by the cases and are looking to the solicitor general's office and the Justice Department's civil division for help, the official said.

Some appeals are now pending, but they are progressing at a slow pace.

"All of the U.S. attorneys are going to be in D.C. this week, and several want to raise the issue to DOJ leadership," the official said.

Detention is at the heart of President Trump's hopes of mass deportation.

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Experts say that if the government can detain people, it can deport them. If the government is forced to release the migrants into the community, their cases are pushed back months or years, and they have a chance to abscond and disappear into the shadows.

The number of people in ICE detention neared 70,000 as of the middle of last month. That was up from about 37,000 at the same time in 2024. A majority of those being held now were arrested in the interior by ICE. A year ago, apprehensions at the border were most prevalent.

The Justice Department said in a statement to *The Times* that it is carrying out the law “as it is written.”

Immigration arrests and deportation are generally civil matters, not criminal, and the cases are usually heard by a separate immigration court system, which is part of the Justice Department.

The regular federal district courts are generally excluded from the process; however, habeas corpus petitions, or challenges to detention, are an exception, and district judges have stepped in to assert their role.

“Immigration policies have long been subject to the changing tides of government. But those changing tides cannot usurp statutory authorization,” Judge Thomas L. Parker wrote in a case out of Tennessee ruling against the administration.

Andrew “Art” Arthur, a former immigration judge and longtime Capitol Hill staff member who helped craft immigration law, said two key questions are involved.

The first is whether migrants who sneak across the border are considered applicants for entry. The second is which rules for bonds apply if they are not considered entries without inspection.

On the first, he said, the administration is right, but judges are resisting.

“Congress did this thing in 1996, and nobody really listened to what they were doing. The Trump administration is now, as part of its mass detention program, attempting to use that language,” Mr. Arthur said. “Courts don’t like it because that’s not the way we’ve done it the last 29 years.”

Regarding the second question, Mr. Arthur said he could argue the law from both perspectives, and it would take an appeals court ruling, or perhaps the Supreme Court, to settle the matter.

“This is literally an interpretation that could go either way,” he said.

For now, immigration lawyers have been emboldened by their successes.

The American Immigration Lawyers Association ran web training sessions in June and October to instruct members on how to argue migrant detention habeas cases.

In August, it published a series of boilerplate habeas petitions for migrants from various nationalities.

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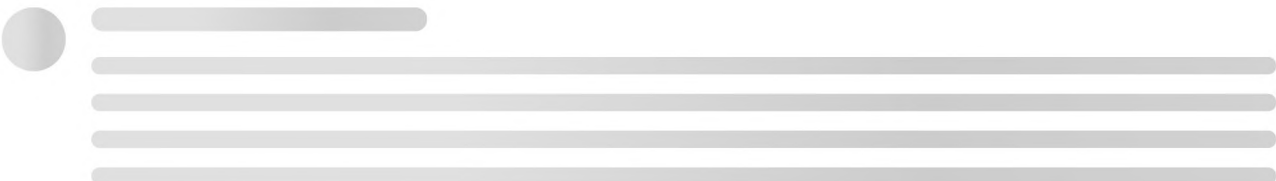
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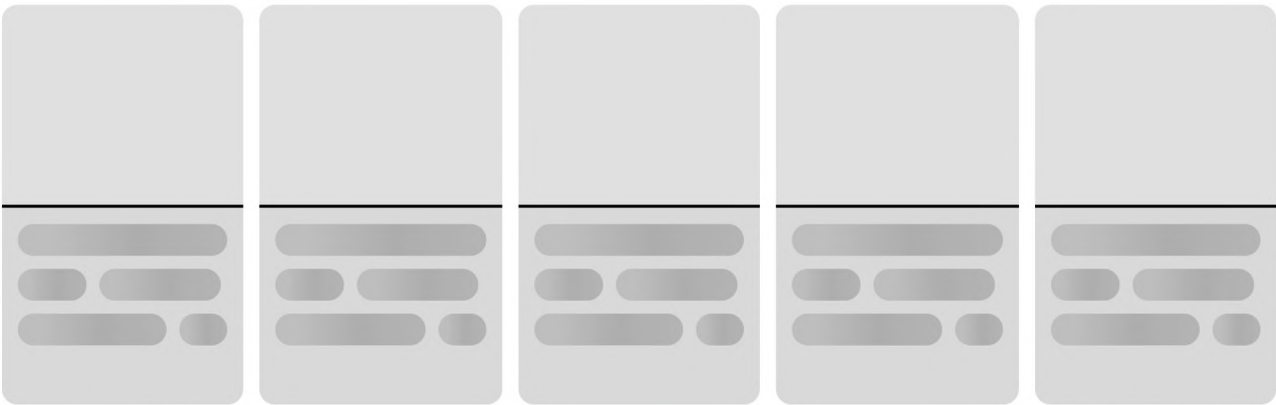
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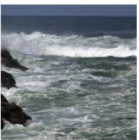
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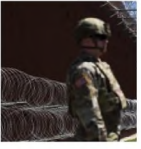
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