

IMMIGRATION

# Appeals court rejects Trump's no-bond immigration detentions, setting stage for Supreme Court review

A federal appeals court ruled that the Trump administration can't jail immigrants without the chance to seek bond, citing "serious constitutional questions."



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— The Department of Homeland Security's ICE detention facility in Jena, La., in March 2025.

Stephen Smith / AP file

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**By The Associated Press**

A federal appeals court ruled Tuesday the Trump administration cannot jail immigrants without the chance to seek bond, citing "serious constitutional questions" related to what it said would otherwise be the broadest mass-detention-without-bond mandate in the nation's history for millions of noncitizens.



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The unanimous ruling from a panel of the 2nd U.S. Circuit Court of Appeals in New York City sets the stage for a possible U.S. Supreme Court appeal. That's because panels on the 8th and 5th circuit courts have already upheld the policy put in place by President Donald Trump's administration last July.

"Today, although we part ways with two other circuits that have addressed this question, we join the overwhelming majority of federal judges across the Nation to consider it and conclude that the government's novel interpretation of the immigration statute defies their plain text," Judge Joseph F. Bianco wrote for the panel, which included Judges Alison J. Nathan and Jose A. Cabranes.

## **Mandatory detention for all is a new and contentious approach**

Under the policy, the Department of Homeland Security has been denying bond hearings to immigrants arrested across the country, including those who have been in the U.S. for years without any criminal history. That's a departure from the practice under previous administrations, when most noncitizens with no criminal record who were arrested away from the border were given the opportunity to request a bond hearing while their cases moved through immigration court.

In those cases, bond was often granted to people who were deemed not to be flight risks, and mandatory detention was limited to those who had just entered the country.

## **Federal courts are flooded with detainees seeking relief**

The new approach has strained the federal courts, with judges across the country facing more than 30,000 lawsuits from immigrants locked up under the Trump administration's mass deportation campaign. Left with no way to request bond in immigration court, many immigrants have turned to the federal courts instead, requesting bond through a process known as a habeas corpus petition.

Attorneys for the Trump administration say the mandatory detention policy is legal under the Illegal Immigration Reform and Immigrant Responsibility Act passed in 1996. That law streamlined the process to deport people who were newly arriving in the U.S. without permission, but immigrants who were already in the country were still allowed to seek bond from an immigration judge under a different law.

That changed in July, when Todd Lyons, acting director of the U.S. Immigration and Customs Enforcement, said all immigrants targeted for deportation would be treated the same way as new arrivals.

The three-judge panel found that the government's interpretation of the 1996 law defies the plain text of the law, its purpose and its history, and noted that Congress had set up a tiered system for immigration cases based in part on how long an immigrant had been in the country.

## **The lower courts have widely rejected mandatory detention**

So far, more than 370 federal judges – or about 90% – to consider those habeas cases have also rejected the government's new approach, Bianco wrote. Bianco was nominated by Trump, Nathan by former President Joe Biden and Cabranes by former President Bill Clinton.

The 2nd Circuit case involves a man from Brazil who entered the U.S. around 2005, applied for asylum in 2016 and was granted work authorization while his application was under review.

Ricardo Aparecido Barbosa da Cunha has never been arrested or charged with a crime, owns his own home in Massachusetts where he lives with his wife and two U.S. citizen children, and runs a small construction business. He was arrested on an administrative warrant in September 2025 and placed in removal proceedings, and filed a habeas petition after an immigration judge found he was subject to mandatory detention.

The mandatory detention of noncitizens like Barbosa da Cunha for a substantial period of time would "raise serious constitutional questions, especially because the government has failed to explain how it would bear a 'reasonable relation' to any legitimate, non-punitive purpose," Bianco wrote.

## **DHS suggests an appeal could be coming**

"Today's ruling rightly affirms that the Trump administration's policy of detaining immigrants without any process is unlawful and cannot stand," said Amy Belsher, director of Immigrants' Rights Litigation at the New York Civil Liberties Union. "The government cannot mandatorily detain millions of noncitizens, many of whom have lived here for decades, without an

opportunity to seek release. It defies the Constitution, the Immigration and Nationality Act, and basic human decency."

In a statement emailed to The Associated Press, the Department of Homeland Security pointed to a Board of Immigration Appeals ruling upholding the mandatory detention policy, and said Trump and DHS Secretary Markwayne Mullin "are now enforcing this law as it was actually written to keep America safe."

"Regarding decisions from federal courts about mandatory detention, judicial activists have been repeatedly overruled by the Supreme Court on these questions. ICE has the law and the facts on its side and will be vindicated by higher courts," DHS said. 