

Stateline

Some immigrants face indefinite detention, likely leading to Supreme Court case

Three courts have struck down a Trump administration policy, and two have upheld it.

BY: **TIM HENDERSON** - MAY 12, 2026 5:00 AM *UPDATED 10:35 AM*



📷 Migrants, many fleeing violence in Haiti, cross the Rio Grande at Del Rio, Texas, in 2021 to buy supplies in Mexico while waiting to claim asylum in the United States. The U.S. Supreme Court is likely to weigh in on a Trump administration policy that allows detention without bond for millions of migrants who illegally crossed a border. (Photo by Jordan Vonderhaar/The Texas Tribune)

As appeals courts split on the constitutionality of mandatory detention for millions of immigrants, the U.S. Supreme Court is likely to decide the matter.

A Trump administration policy threatening imprisonment without bond has been struck down by three appeals courts, which could soon be joined by a fourth, but upheld by two others. The conflicting orders mean the Supreme Court must straighten out the situation as immigrants now could face different fates in different states.

The new detention policy, implemented in a [July 2025 memo](#), threatens millions of immigrants with imprisonment without bond if they crossed a border illegally to get into the United States, no matter how long ago or whether they've applied for asylum. Without bond means they must be detained while awaiting court action.

The policy is a key part of the Trump administration's stated goal to get 1 million removals a year, including deportations and voluntary returns.

So far the pace is about half that, or roughly 460,000 for the current fiscal year, if the daily rate as of mid-April continues, according to an [analysis](#) by Austin Kocher, a research assistant professor at Syracuse University.

This spring's mixed appeals court rulings mean that in some states, detainees may be offered bond hearings and a chance to be released pending new court dates. In other states, people can now be held indefinitely.

Most recently, the 6th U.S. Circuit Court of Appeals, covering Kentucky, Michigan, Ohio and Tennessee, [struck down](#) the policy Monday, saying it "strains reason" to suggest Congress intended to put millions of people into immigration detention. The 11th U.S. Circuit Court of Appeals, covering Alabama, Florida and Georgia, [also](#) struck it down last week, saying the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 does not give President Donald Trump "unfettered authority to detain, without the possibility of bond, every unadmitted alien present in the country."

In April, the 2nd U.S. Circuit Court of Appeals, covering Connecticut, New York and Vermont, [also struck down](#) the policy, calling it "the broadest mass-detention-without-bond mandate in our Nation's history for millions of noncitizens."

Judges in another appeals court covering New England states, the 1st U.S. Circuit Court of Appeals, appeared skeptical of the policy in [a hearing](#) this month but have not yet ruled.

Meanwhile the 5th U.S. Circuit Court of Appeals, encompassing Louisiana, Mississippi and Texas, upheld the new policy, saying the status quo gives people living here illegally more rights than those at the border seeking legal admission.

"It seems strange to suggest that Congress would have preserved bond hearings exclusively for unlawful entrants," the 5th Circuit ruling said. Those states have some of the [largest detention centers](#) in the country, often accepting transfers from other states. The cross-state transfers complicate legal cases attempting to free those detained there.

The 8th U.S. Circuit Court of Appeals, covering Arkansas and several Midwestern states, also upheld the Trump policy.

Conflicting appeals rulings like these, known as "[circuit splits](#)," generally lead to a Supreme Court ruling to settle them, experts say.

The Department of Homeland Security did not respond to a Stateline request for comment. Last July, a department spokesperson told [The Associated Press](#) that "President (Donald) Trump

and Secretary (Kristi) Noem are now enforcing this law as it was actually written to keep America safe.”

The Trump administration policy flies in the face of decades of federal practice that let many immigrants stay free on bond while they pursue their court cases, said Vanessa Dojaquez-Torres, practice and policy counsel at the American Immigration Lawyers Association, a trade group.

“This has done a lot of damage to people who are caught in detention with a very low amount of due process,” Dojaquez-Torres said.

The policy has also flooded federal courts with petitions for release by people denied bond under the policy, she added. Thousands were filed each week from January through late April, compared with a few dozen a week last year before the policy was enacted, according to a [ProPublica report](#).

The threat of indefinite detention can be an incentive for immigrants who have been arrested to agree to the administration’s option of “voluntary departure.”



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– *Vanessa Dojaquez-Torres of the American Immigration Lawyers Association*

Hannia Ortega, who left Oklahoma for her native Mexico at age 22 last fall to avoid the threat of detention, said the policy has “helped me not to regret leaving.”

“I’ve had the opportunity to meet people here who were deported and were not given the chance to fight their cases in front of a judge. One of the people I met was an Uber driver who was deported after 36 years in the states,” Ortega wrote in an email to Stateline.

Ortega [won an award](#) for leadership and good grades in a Tulsa high school, and said she also earned a community college degree there with the help of a private scholarship for students living in the country illegally.

She decided staying in the U.S. was too risky. Her parents brought her illegally as a 6-year-old and she did not qualify for Deferred Action for Childhood Arrivals, known as DACA, a program with some deportation protections.

“It is scary and just speaks to how dangerous it has gotten for every single immigrant in the United States. I pray that better days are ahead for all but it seems unlikely any time soon,”



📷 Hannia Ortega. (Photo courtesy of Hannia Ortega)

Ortega wrote.

It's hard to tell exactly how many immigrants are threatened with indefinite detention, but [of about 14.6 million](#) undocumented residents, the Center for Migration Studies estimates, something like 5.5 million could have entered the country illegally, making them subject to the detention policy.

There are no recent estimates for the percentage, said Robert Warren, senior visiting fellow at the Center for Migration Studies of New York. But in 2017 the center [estimated 38%](#) of unauthorized immigrants crossed the

border illegally either by evading border patrol officers or surrendering to them and getting a court notice to fight deportation proceedings. Others overstayed legal visas and would not be subject to the new policy.

Mustafa Cetin, a New Jersey immigration attorney, said two of his clients from Turkey were denied bond despite a clean criminal record and active asylum cases in court. Both were arrested in October during routine check-ins with Immigration and Customs Enforcement, he said.

Both won release on bond through federal court decisions, and one has already won an asylum case, he said. Both followed a familiar pattern of seeking asylum in 2023 and 2024.

“They say, ‘Don’t come in,’ but if you come in, they will process you (with a court appearance ticket),” Cetin said. “We’ve seen this play out for hundreds of thousands of people. Then, this administration, instead of trying to deal with those who come to the border, they decided to scare people away.”

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Editor's note: This story has been updated to include a May 11 ruling in the 6th U.S. Circuit Court of Appeals.