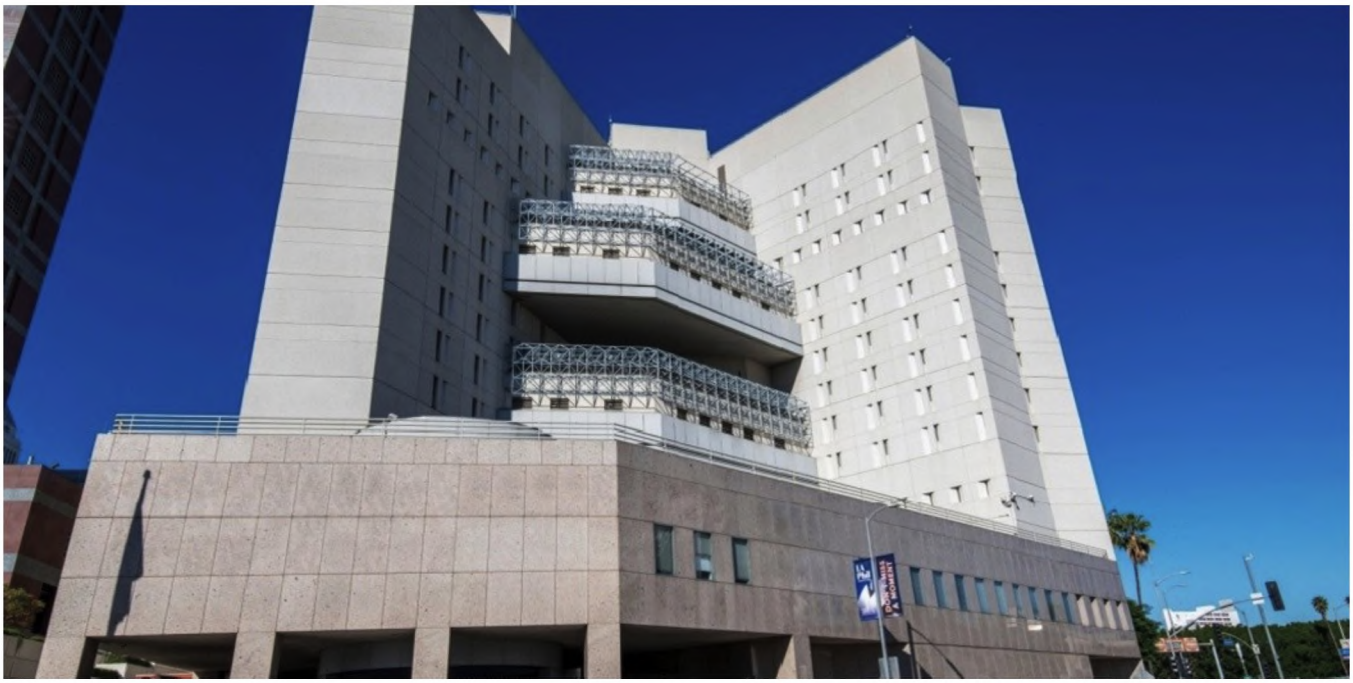
Trump's Radical Mandatory Immigration Detention Policy Upheld by US Appeals Court

We envision a nation where immigrants are embraced, communities are enriched, and justice prevails for all.

Published: February 10, 2026

Author: Sara Gomez Bohorquez

Topics: Detention, Interior Enforcement



The American Immigration Council is a non-profit, non-partisan organization. Sign up to receive our latest analysis as soon as it's published.

Late on February 6, a divided panel of the U.S. Court of Appeals for the Fifth Circuit issued a decision with staggering ramifications: it subjects millions of noncitizens in this country to the possibility of mandatory immigration detention without *any* opportunity for a bond hearing. The

court's decision is strikingly at odds with the vast majority of the federal judiciary—including dozens of conservative judges, many appointed by Republican presidents. And it gives the Trump administration support as it brazenly defends its new position.

As the dissent noted, the two judges comprising the majority of the Fifth Circuit panel eagerly accepted the government's invitation to re-write the statutory text of the Immigration and Nationality Act (INA) § 235(b)(2), issuing a ruling just three days after hearing oral argument.

The government's radical new theory of mandatory detention

Under the government's new reading of the immigration detention statutes, anyone who entered the United States without inspection is subject to no-bond detention—no matter how long they have resided in this country. This is in stark contrast to how INA § 235(b)(2) has historically been understood—namely, to apply only to those noncitizens who are in the process of seeking admission at our ports of entry.

As the dissenting judge on the Fifth Circuit panel noted, the government's position means that "for purposes of immigration detention, the border is now everywhere."

The majority of the panel gave this administration what it wanted by embracing a "purpose-centered reading" of the statute. But as over 350 federal judges in over 2,400 cases have found, the government's new interpretation of the statutory scheme contradicts a plain reading of the statute's language, as well as three decades of practice.

Too many habeas petitions? A problem of the government's own making

Because of the Trump administration's expansion of mandatory detention

starting last year, the federal courts have been flooded with *habeas corpus* petitions from detained individuals pleading for the opportunity for release. As of late January, only 20 federal judges—and now two more on the Fifth Circuit—have agreed with the government's changed interpretation.

While this deluge has garnered attention for taxing the federal judiciary and straining Department of Justice resources, the people actually harmed by this administration's new position are the noncitizens confined in horrifying conditions for absolutely no reason. And for most of those people, habeas litigation remains out of reach.

Notably, a federal court has issued a nationwide class declaratory judgment in *Maldonado Bautista v. Noem* finding the administration's interpretation of the detention statute is wrong. But following the Supreme Court's decision in *Garland v. Aleman Gonzalez* in 2022, lower federal courts are barred from issuing class-wide injunctions relating to immigration detention, so judges are left with little power to issue relief that would stop these ongoing injustices on a large scale.

Nonetheless, the *Maldonado Bautista* declaratory judgment should allow most noncitizens in detention to seek bond. But instead of complying with that judgment and saving itself and the federal judiciary from having to respond to thousands of habeas petitions, the government has refused to respect the court's order, arguing that the agency's decision in *Matter of Yajure Hurtado* overrides the federal court ruling. The Department of Justice's complaints about its unmanageable workload are thus a self-inflicted injury and poor justification for flouting court orders.

Litigation state of play

While the Fifth Circuit is the first appellate court to rule on the merits of the statutory question, appeals in these habeas cases have reached circuit courts across the country. In December 2025, a motions panel of

the Seventh Circuit found the government was not "likely" to succeed in arguing that INA § 235(b)(2) applies to all noncitizens who entered without inspection. That order is not technically binding because of the case's procedural posture, but another case raising the same issue will be fully briefed at the Seventh Circuit soon.

Appeals on this question are also pending in every other circuit (other than the D.C. Circuit, as there are no immigration detention centers in Washington, D.C.). In the Ninth Circuit, oral argument in a class appeal, *Rodriguez Vazquez v. Bostock*, is set for March, and a class appeal in *Guerrero Orellana v. Moniz* in the First Circuit will be fully briefed next month.

The government repeatedly sought to expedite its appeal at the Fifth Circuit. The administration's motivation for haste is clear: the Fifth Circuit controls detention centers in Texas, Louisiana, and Mississippi—the states where U.S. Immigration and Customs Enforcement (ICE) imprisons large numbers of people in some of the worst conditions. Getting the green light to hold everyone there in no-bond detention would make the administration's mass deportation efforts much easier. These conditions have proven to be so horrific that many individuals choose to give up their cases and "self-deport."

But the Fifth Circuit's decision does not close all avenues to habeas relief for people held in those states. That appeal only involved a claim that the petitioner's detention violated the INA – i.e., a statutory claim. Noncitizens in immigration custody may still bring claims that mandatory detention, as applied to them, violates their constitutional right to due process.

Real world consequences

The reality of what this administration's radical shift in statutory interpretation means is both shocking and heartbreaking. Thousands of noncitizens, including pregnant and nursing women, long term residents

with U.S. citizen families, and people with no criminal history are among the over 73,000 people currently languishing in immigration detention.

And millions more people are suddenly living under the threat of being subject to inhumane detention conditions *without* a bond hearing, if arrested, as indiscriminate immigration raids continue across the country. This interpretation of the statute has led to the wrongful detention of thousands of beloved family and community members, including DACA holders, vulnerable individuals with medical needs, and young people eligible for humanitarian relief.

Advocates have an important role to play in this fight. Attorneys can assist detained immigrants in filing habeas petitions to challenge their confinement. Practitioners should be working with impacted communities to meet their legal needs amidst this campaign of unwarranted detention. Allies are raising public awareness about the human rights violations happening during enforcement operations. As this administration incarcerates more people in immigration custody than ever before, the urgent need to help those detained fight for their freedom is clear.

Related Resources

Map The Impact

Explore immigration data where you live

Our Map the Impact tool has comprehensive coverage of more than 100 data points about immigrants and their contributions in all 50 states and the country overall. It continues to be widely cited in places ranging from Gov. Newsom's declaration for California's Immigrant Heritage Month to a Forbes article and PBS' Two Cents series that targets millennials and Gen Z.

100+

datapoints about immigrants and their contributions

Give Today

Defend Immigrant Rights, Defend Democracy

Expert analysis straight to your inbox