

US appeals court rejects Trump's immigration detention policy

In a 3-0 ruling, court says Trump administration misread a decades-old immigration law to justify mandatory detention.

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A protest placard is placed near a warehouse bought by Immigration and Customs Enforcement (ICE) for use as a detention centre in Salt Lake City, US [File: Jim Urquhart/Reuters]

A United States federal appeals court has rejected the Trump administration's practice of subjecting most people arrested in its immigration crackdown to mandatory detention without the opportunity to seek release on bond.

In a 3-0 ruling on Tuesday, a panel of the New York-based US Court of Appeals for the Second Circuit said the administration relied on a novel but incorrect interpretation of a decades-old immigration law to justify the policy.

Writing for the panel, US Circuit Judge Joseph F Bianco, a Trump appointee, warned that the government's reading "would send a seismic shock through our immigration detention system and society", straining already overcrowded facilities, separating families and disrupting communities.

Lawyers for the Trump administration say the mandatory detention policy is legal under the Illegal Immigration Reform and Immigrant Responsibility

Act, passed in 1996.

But Bianco said the government had made "an attempt to muddy" the law's "textually clear waters", arguing that the administration's interpretation "defies the statute's context, structure, history, and purpose" and contradicts "longstanding executive branch practice".

Under the Trump administration policy, the Department of Homeland Security last year took the position that non-citizens already living in the US, not just those arriving at the border, qualify as "applicants for admission" and are subject to mandatory detention.

Under federal immigration law, "applicants for admission" to the US are detained while their cases proceed in immigration courts and are ineligible for bond hearings.

The Department of Homeland Security has been denying bond hearings to immigrants arrested across the country, including those who have been living in the US for years without any criminal history, the Associated Press (AP) news agency reports.

That is a departure from the practice under previous US administrations, when most non-citizens with no criminal record who were arrested away from the border were given the opportunity to request a bond while their cases moved through immigration court, according to AP.

In such cases, bonds were 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.

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Amy Belsher, director of immigrants rights' litigation at the New York Civil Liberties Union, said the appeals court ruling affirmed "that the Trump

administration's policy of detaining immigrants without any process is unlawful and cannot stand".

"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," Belsher said in a statement.

Conflicting rulings set stage for Supreme Court review

The New York court's decision comes after two other appeals courts ruled in favour of the Trump administration's policy.

Acknowledging the opposing rulings, Judge Bianco said the panel was parting ways with them and instead aligning with more than 370 lower-court judges nationwide who have rejected the administration's position as a misreading of the law.

The split among the courts increases the likelihood that the US Supreme Court will weigh in.

The latest ruling also upheld an order by a New York judge that led to the release of Brazilian national Ricardo Aparecido Barbosa da Cunha, who was arrested by immigration officials last year while driving to work after living in the US for more than 20 years.

"The court was right to conclude the Trump administration can't just reinterpret the law at its own whim," Michael Tan, a lawyer for Barbosa at the American Civil Liberties Union, said in a statement.

The Department of Justice, which is defending the mandatory detention policy in court, did not respond to a request for comment.