Bond Proceedings

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Legal Authority for Detention

- INA § 236; 8 CFR 1003.14; 8 CFR § 1236.1; 8 CFR 1003.19 (general)
- INA § 241 (final orders)
- INA § 235 (arriving aliens/expedited removal)
- INA § 238 (administrative removal)

Mandatory Detention Applies to:

- Arriving aliens - INA § 235(b)(2)
- Expedited removal - INA § 235(b)(1)
  - See *Matter of M-S-*, 27 I&N Dec. 476 (A.G. 2019) overruling *Matter of X-K*, 23 I&N 731 (BIA 2005)
- People with final removal orders, including those in reinstatement - INA § 241(a)
  - But see 9th and 2nd Circuit decisions
- People who are inadmissible or removable for certain criminal offenses - INA § 236(c)

Matter of M-S- update

- Impacts asylum seekers
- Overrules prior precedent allowing bond hearings for individuals who entered without inspection, were initially processed for expedited removal, but passed their credible fear interviews
- Implementation delayed for 90 days

INA § 236(c)

- Statute indicates AG "shall" detain certain classes of people "when the alien is released" even if released on parole, supervised release, or probation. If the person is subject to mandatory detention, IJ has no jurisdiction to set a bond.
- Exception for people in witness protection program or to protect other witnesses
- Applies to people released after Oct. 9, 1998

236(c)(1) - Mandatory detention if inadmissible* pursuant to INA § 212(a)(2):

- Crimes involving moral turpitude (CIMT)
- Controlled substance violations
- Multiple criminal convictions with aggregate sentence of confinement of 5 years or more
- Reason to believe trafficker of controlled substance
- Prostitution
- Trafficking in persons
- Money laundering
- People who have asserted immunity from prosecution
- Foreign government officials who have committed particularly severe violations of religious freedom

*no conviction necessary if admission of essential elements

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