

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)

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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 4th and 2nd Circuit decisions

People who are inadmissible or removable for certain criminal offenses - INA § 236(c)

3

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 was delayed for 90 days

Padilla v. ICE, 953 F.3d 1134 (9th 2020)
(circuit court affirms nationwide injunction and enjoins *Matter of M-S-*)

4

INA § 236(C)

AG “shall” detain certain classes of people “when the alien is released” even if released on parole, supervised release, or probation. IJ has no jurisdiction to set a bond for noncitizen subject to mandatory detention.

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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First appeared as part of the conference materials for the
2020 A Practical Guide to Immigration Removal Proceedings session
"Bond Proceedings (approx. 30 min.)"