

# Bond Proceedings

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## Legal Authority for Detention

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- 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:

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- 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)
  - *Johnson v. Guzman-Chavez*, 141 S.Ct. 2771 (2021) overruling 4<sup>th</sup> and 2<sup>nd</sup> circuits
- People who are inadmissible or removable for certain criminal offenses - INA § 236(c)

## *Matter of M-S-* update

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- 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
- In January 2021, Supreme Court vacated *Padilla v. ICE*, 953 F.3d 1134 (9th 2020) (circuit court affirms nationwide injunction and enjoins *Matter of M-S-*)

## INA § 236(c)

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- 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):

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- 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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