

# Trump administration's immigrant detention policy broadly rejected by federal judges

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Federal agents search for undocumented immigrants in Chicago on Nov. 6, 2025.

*Scott Olson/Getty Images*

In federal courtrooms across America, a pattern has emerged in cases in which immigrants are being rounded up and jailed without a hearing. That's a departure from fundamental constitutional protections in the U.S. that provide the right to a hearing before indefinite imprisonment.

In response, federal judges are systematically rejecting the Trump administration's attempt to drastically expand who can be locked up without a hearing while awaiting deportation proceedings.

The Trump White House policy has been challenged in at least 362 cases in federal district courts, according to a recent ruling by U.S. District Judge Lewis A. Kaplan. Challengers have prevailed in 350 of those cases – decided by over 160 different judges sitting in about 50 different courts across the United States.

Behind those numbers are thousands of people whose freedom hangs in the balance while courts decide whether their imprisonment is lawful.

Trump administration officials claim they are targeting only “the worst of the worst” in immigration enforcement. Yet nearly three-quarters of people detained had no criminal history at all. Of those with criminal histories, many involved only minor offenses such as traffic violations.

The immigrants are in civil immigration proceedings to determine whether they can remain in the United States. Yet under the administration’s new policy, many are being held in jail-like facilities indefinitely, including “state-run prisons located in remote areas, soft-sided tent structures, military bases, and even in prisons in other countries,” according to a report from the Migration Policy Institute think tank.

As a law professor who studies due process in immigration proceedings, I view the overwhelming judicial consensus against this policy as the federal courts performing their essential constitutional function: checking executive overreach. The courts are enforcing fundamental due process protections.

Whether this consensus will prevail, however, depends on appeals courts and, ultimately, the Supreme Court.



U.S. Customs and Border Patrol Commander Gregory Bovino, center, stands with agents in Metairie, La., on Dec. 3, 2025.

*Adam Gray/AFP via Getty Images*

## A radical reinterpretation

The current controversy centers on a policy shift the Department of Homeland Security implemented in July 2025.

In an internal memo, DHS reinterpreted decades-old immigration law to classify virtually all undocumented immigrants in the U.S. as “applicants for admission” who are subject to mandatory detention under the Immigration and Nationality Act.

For 30 years, this provision applied primarily to people apprehended at the border shortly after entering the country. The new interpretation extends it to anyone present in the U.S. illegally. That includes people who entered years or decades ago, have established families and businesses and are pursuing legal pathways to remain in the U.S.

The practical effect of the change is that people who were previously entitled to request release on bond while their deportation cases proceeded are now subject to automatic, indefinite detention without court review of whether their imprisonment is justified.

## Courts overwhelmed by petitions

Within months of the July policy announcement, more than 700 emergency habeas petitions – legal challenges to unlawful imprisonment – reached federal courts nationwide.

In Michigan alone, U.S. District Judge Hala Jarbou – a Trump appointee – received more than 100 individual cases from detainees challenging their imprisonment. Then, 97 additional detainees filed a joint lawsuit. Cases arose across the country as immigrants who were arrested at workplaces, courthouses or during routine check-ins with immigration officers asked federal courts to order their release or grant them bond hearings.

The Trump administration has fought these cases on multiple fronts. It has argued that the detention policy is lawful and that federal courts lack jurisdiction to review it at all. The government has invoked provisions of the Immigration and Nationality Act that it claims strip courts of jurisdiction over certain immigration decisions.



Protesters gather outside an Immigration and Customs Enforcement processing facility in Broadview, Ill., on Nov. 21, 2025.

*AP Photo/Nam Y. Huh*

But federal judges have largely rejected these jurisdictional arguments. They have found that courts retain the power to review whether detentions comply with the Constitution and federal law.

As one district court judge explained, accepting the government's position would mean the executive branch could detain noncitizens indefinitely without ever having to justify that detention to a court. It's a result that would raise "serious constitutional concerns" about suspending habeas corpus, the fundamental right to challenge unlawful imprisonment.

Judge Kaplan similarly concluded that the "current administration's unilateral decision that all noncitizens ... are to be mandatorily detained affords to such individuals no process, let alone due process. It is unconstitutional."

The policy's ripple effects extend beyond the courts.

Immigration and Customs Enforcement detained a record 66,000 people in November 2025 – more than any previous administration had ever held at one time. The American Immigration Council, which advocates for immigration rights, documented 23 deaths in ICE detention during fiscal year 2025. The previous four years combined saw 24 such deaths.

## A nationwide remedy

The piecemeal nature of hundreds of individual court rulings creates its own problems. Each emergency petition requires rushed briefing and a hearing. That strains the courts and detained immigrants' ability to secure representation. Outcomes can vary based on which judge hears a case, creating geographic disparities in who remains detained and who is released.

That's why the November decision in *Maldonado Bautista v. Santacruz* is potentially transformative. U.S. District Judge Sunshine S. Sykes certified a nationwide class of noncitizens subject to the policy and separately ruled that the government's interpretation of the law was wrong – detainees are entitled to bond hearings. Combined with the nationwide class certification, this ruling could require the Trump administration to provide bond hearings to thousands of people currently in mandatory detention.

But implementation has been uneven. Immigration judges – who are Justice Department employees, not independent federal judges – have responded inconsistently to Judge Sykes' order.

In a recent immigration court decision in Memphis, Tenn., a judge denied a bond hearing request. The judge stated that further guidance from the Executive Office for Immigration Review, a Department of Justice office, was required before complying with Sykes' order.

Attorneys representing the class say they've seen similar resistance from some immigration judges, while others have begun granting bond hearings. They plan to return to federal court in January 2026 to present evidence of this confusion and seek further relief.

The near-unanimous rejection by federal judges – insulated from political pressure by lifetime appointments – demonstrates why the Constitution grants judges life tenure. Federal courts remain the final check when executive action threatens fundamental due process rights.

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