

Challenging Immigration Detention in Federal Court, Even in Hard-to-Win Districts

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Federal courts continue to address important questions surrounding immigration detention and the constitutional rights of individuals facing removal proceedings, questions that have taken on new urgency as several federal appellate courts have recently expanded the government's authority to mandatorily detain certain noncitizens without a bond hearing.

Against that backdrop, Porzio secured habeas corpus relief for an immigration client who had been re-detained by ICE years after being lawfully released following his entry into the United States. The client, a parent of three U.S. citizen children, was held for roughly a month before the United States District Court for the Western District of Texas ordered his release, finding that continued detention without any individualized assessment of flight risk or danger violated the Due Process Clause, even though the Fifth Circuit (where the Petition was filed) had recently upheld the government's mandatory detention authority as a matter of statute.¹ To protect client privacy, identifying details have been omitted from this discussion.

The ruling is a reminder that even in jurisdictions where ICE's mandatory detention policy has been upheld as a matter of statute, federal courts continue to define the constitutional limits on that authority, particularly where the government previously chose to release the individual and is now detaining them again.

What Is a Habeas Corpus Petition in Immigration Cases?

A petition for writ of habeas corpus allows an individual to challenge the legality of government detention in federal court.

Although immigration authorities have broad authority to detain certain noncitizens during removal proceedings, federal courts may review whether that detention complies with constitutional requirements. Habeas petitions are frequently used to raise questions involving due process, prolonged detention, release from ICE custody, and other detention-related issues.

Due Process Rights and Immigration Detention

The Fifth Amendment's Due Process Clause applies to noncitizens within the United States. Courts have repeatedly recognized that individuals may have a right to a hearing based on significant liberty interests that must be considered when evaluating the legality of immigration detention.

In the recent case mentioned above, the Western District of Texas concluded that the detainee had a protected liberty interest and that detention without an individualized determination at the time of arrest created an unacceptably high risk of an erroneous deprivation of liberty.

As a result, the court ordered the individual's release from custody.

When Can Immigration Detention Be Challenged?

Whether immigration detention can be challenged depends on the specific facts and procedural posture of a case. However, legal challenges often involve questions such as:

- Whether detention is authorized under federal immigration law;
- Whether due process rights have been violated;
- Whether a detainee is entitled to an individualized custody determination;
- Whether continued detention is reasonable under the circumstances; and
- Whether federal court review is available through a habeas corpus petition.

Because these issues frequently involve evolving case law and constitutional considerations, outcomes can vary significantly from one case to another.

These questions are especially significant for individuals who were previously released from immigration custody, through a bond hearing, parole, or an earlier grant of relief, and are later re-detained. That history can itself create a protected liberty interest entitling a detainee to an individualized hearing before being taken back into custody.

Why This Area of Law Matters

This summer, in July and August, ICE arrested approximately 100,000 individuals nationally. It is therefore no wonder that immigration detention remains one of the most actively litigated areas of immigration law, and this legal landscape is developing quickly. Several federal appellate courts, including the court with jurisdiction over this case, have recently upheld the government's authority to mandatorily detain certain noncitizens without a bond hearing under the applicable detention statute, foreclosing that statutory argument for many detainees.

Even so, courts continue to recognize constitutional limits on that detention authority. The ruling discussed above illustrates that a due process challenge, distinct from, and unforeclosed by, the statutory arguments many courts have rejected, can still succeed, and result in a client's immediate release, where a detainee has a protected liberty interest, such as one arising from a prior detention and release. It is a useful illustration that a seemingly foreclosed statutory theory does not end the inquiry: due process arguments remain available, and in this case handled by Porzio, was a successful path to liberty.

¹See 8 U.S.C. § 1225(b)(2)(A); *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026).