



**COMMUNITY EXPLAINER**

## **WHAT'S HAPPENING WITH IMMIGRATION COURT ARRESTS AND BONDS**

Recent news of ICE making arrests at immigration courts has caused widespread fear, and you may wonder whether your risk of detention has increased. **There are two main reasons for this increase in immigration court arrests: expanded expedited removal and a new Board of Immigration Appeals decision, [Matter of Q. Li](#).**

### **What is expedited removal?**

Expedited removal is a process through which the Department of Homeland Security (DHS) can deport a person without giving them a hearing in immigration court. **People who are placed in expedited removal cannot be released under bond, even if they are later placed in regular removal proceedings.** Not being eligible for release on bond is called “mandatory detention.”

Expedited removal is only supposed to apply to certain people, but the Trump Administration is applying expedited removal to a larger group of people than before, including anyone who:

- entered the U.S. without permission and has spent less than 2 years in the U.S.;
- entered the U.S. without permission and was initially arrested by ICE or CBP within 2 years of entry, even if they were later released and have now spent more than 2 years in the U.S.;
- entered via parole at a port of entry (which the Department of Homeland Security then revokes).<sup>1</sup>

Organizations have sued the Administration, arguing that its use of expedited removal is unlawful, and a court decision might change ICE’s use of expedited removal in the future. Be aware that DHS is not consistently following the laws or court orders, and is applying its own policies inconsistently.

### **How does expedited removal apply to people who are in immigration court proceedings?**

ICE detention has increased since January, and people who were not at much risk of being detained before might be now. It is important to understand who is at risk in different situations.

**This explainer is about DHS asking immigration judges to dismiss cases in immigration court and making arrests after the hearing.** DHS (the DHS attorneys in immigration court are called “OPLA”)

<sup>1</sup> Expedited removal should not apply to unaccompanied children who are not from Canada or Mexico.

has recently begun trying to get people's immigration court proceedings dismissed so that it can put them in **expedited removal. Someone cannot be in both immigration court removal proceedings and expedited removal at the same time. DHS is asking that the immigration court dismiss** the existing immigration court proceedings so that the person's case cannot be heard there, and so that ICE can put them into expedited removal and deport them without any further hearings in court. **People who fear returning to their countries of origin are entitled to a Credible Fear Interview; if you are afraid, you must tell ICE and should also tell the Immigration Judge.**

Other organizations have issued [Know Your Rights](#) pamphlets to help people who are at risk of being arrested by ICE at immigration court and [people accompanying them](#). We have issued [this oral template](#) (meant to be spoken aloud in court) to oppose dismissal of your case if you are pro se (representing yourself).

### **Are more people being detained without any opportunity to ask for bond?**

Another event that has expanded detention is **the recent Board of Immigration Appeals decision, *Matter of Q. Li*, which has now made many more people subject to mandatory detention.** Mandatory detention means that ICE can hold a person in an immigration jail while their removal proceedings are pending without the opportunity to ask an immigration judge to give them a bond. Therefore, even if someone's case is not dismissed and they are not put in expedited removal, ICE may still decide to detain them without an opportunity for a bond if they are in one of the groups of people described in *Matter of Q. Li*.

Previously, people who were arrested after they had entered the U.S. by crossing the border between ports of entry, and who were placed in regular removal proceedings in immigration court (as opposed to starting out in expedited removal), were eligible for a bond hearing, meaning that they could go to the immigration judge and ask to be released if they paid an amount of money that the immigration judge set. *Matter of Q. Li* says that **mandatory detention now applies to people who were arrested by immigration officials shortly after entering the United States between ports of entry.** While the decision does not define exactly what "shortly" means, the person the case is about was arrested by DHS on **the same day that she entered, within 100 yards of the border, and without a warrant.**<sup>2</sup> In Ms. Q. Li's case, DHS had released her on parole after she was arrested near the border, and they re-detained her a few years later and revoked her parole. Therefore, people in similar situations may also be subject to mandatory detention.

**Someone who was initially arrested by immigration authorities on the same day that they crossed and close to the border may potentially be at risk of detention without the opportunity for bond, if they are in immigration court proceedings or are placed into immigration proceedings in the future. This is true even if DHS previously granted the person parole and then later re-detains the person.**

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<sup>2</sup> The warrant that the decision mentions is an administrative arrest warrant issued by ICE, not a judicial warrant by a federal court judge.

If you are in regular removal proceedings in immigration court, **you always have the right to request a bond hearing and for an Immigration Judge to determine whether you are eligible for bond.**

We are not sure yet of all of the circumstances where courts will decide that *Matter of Q. Li* applies and future cases may change who is eligible for bond.

The IJ may find most relevant in deciding whether *Matter of Q. Li* applies to you:

- how you entered the United States and with what documents;
- how long after you entered you were arrested by an immigration official;
- where you were arrested; and
- which agency arrested you.

If you are represented, you should discuss these facts with your lawyer.

You may want to sign a few [G-28](#) forms in ink and give them to your attorney if you are represented. In order to advocate with the Department of Homeland Security on your behalf, it is important that any attorney you hire now or in the future have a form G-28 signed in ink.