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COMMUNITY EXPLAINER

Detention and Release Options in the Fifth Circuit



A new court decision makes it much harder for people to get out of ICE detention in Texas, Louisiana, and Mississippi. Here is what changed and what options remain.

What you need to know

The Fifth Circuit court, which covers Texas, Mississippi, and Louisiana, made a new rule saying that people who **entered the United States without permission** (or "inspection," in legal terms; this is also called "**EWI**" for short) and have never been arrested by ICE before cannot get released from ICE detention through a habeas petition based on their Constitutional due process rights. The Fifth Circuit is the only area of the country with this rule. In most other states, someone who entered without inspection and has never been arrested by ICE before can ask for a bond hearing with the immigration judge without filing a habeas petition.

The only other place where someone who EWIed and has never been arrested by ICE before would need to file a habeas petition to seek release from detention is the Eighth Circuit.

People who are arrested in other parts of the country should consider filing a habeas petition immediately after they are arrested so that the laws where they are arrested will apply to them even if they get transferred to Texas, Mississippi, or Louisiana.

Did something change about EWI cases for release from ICE detention?

On October 23, 2026, in a case called ***Sosnava Rodriguez v. Vergara***, the Fifth Circuit (which covers **Louisiana**, **Texas**, and **Mississippi**) rejected the habeas petitions from three men who were detained in Texas. The Fifth Circuit said that the men – who had **entered without inspection (EWIed)** and been in the country for many years – were not protected by the Constitution's due process clause to get a bond hearing or release from detention. In this explainer, we are calling this the "**EWI no-bond rule**."

The *Sosnava Rodriguez* decision is a big change because before this, district courts had been ordering people released on habeas petitions based on Constitutional due process rights. Now it's not an option in **Fifth Circuit states**.

Can I get released from detention in Texas, Mississippi, and Louisiana?



Please note that whether these arguments are actually successful depends on the judge! There might also be new arguments to make that become successful - this is an area of law that is changing every day! **See below for more information about what a habeas petition is.**

Someone who **entered without inspection** (also known as "**EWI**," meaning they crossed the river or desert without going through a border office) **and has never been arrested by ICE before**, **generally cannot get a bond in immigration court or released from detention through a habeas petition**. **This is the "EWI no-bond rule."** ICE releases a very small number of people on "humanitarian parole."

However, there are limited situations where someone who entered without inspection and has never been arrested by ICE before ***could*** still argue for release from detention through a habeas petition:

1. they were arrested without an administrative warrant and ICE didn't have probable cause that they were a noncitizen and were going to escape; or
2. they can't be deported (some examples are people with TPS or people with current Deferred Action); or
3. they filed a habeas petition in a different state before they were transferred to Texas, Mississippi, or Louisiana, even if they are currently detained in one of those states.

Someone who **was admitted to the US on a visa or who has a green card (is a "lawful permanent resident")**, even if they have overstayed their visa or violated its terms, should be able to file a bond motion with the immigration court without needing a habeas petition first. However, someone who has certain criminal convictions or arrests will not be able to get a bond (read why here and here).

Someone who **presented themselves at a port of entry without an approved valid visa**, including on **parole programs like CHNV or U4U**, cannot get a bond from an immigration judge, but might be able to get released through a habeas petition by arguing that DHS violated the law when it took back, or revoked, their parole.

Someone who **was previously detained & released by CBP or ICE** (even if they were in custody for just a little while at the border), cannot get a bond directly from an immigration judge, but there might be an argument that they can make in a habeas petition that they should either be released or be given a bond hearing. This could include:

- Someone released on an **Order of Release on Recognizance (Form I-220A)** - there is an argument that in order to re-detain someone, ICE has to determine that something has changed that now makes that person a danger or a flight risk. There is also an argument that ICE can't change their mind and say that someone who was previously eligible for release is not anymore.
- Someone released on **Humanitarian Parole** - there is an argument that ICE can't revoke parole for no reason, and this argument can apply regardless of how someone entered the US (see above for people who presented at a port of entry) if they were eventually released under humanitarian parole.

Someone who entered without inspection and was arrested when they entered and was never released in the U.S. probably cannot get released from detention while their immigration case is still pending. Keep in mind that ICE *can* release someone on "humanitarian parole," but they rarely do, and generally courts can't force them to grant it.

Someone who has **a final order of removal**, regardless of how they entered the U.S., can seek release from detention with a habeas petition if they have already been detained for at least six months with a final removal order and their deportation is not likely to happen in the foreseeable future. You can find out if there's a final order of removal on the immigration court website.

- There are also arguments for release from detention specific to people who were previously released on an **Order of Supervision, or OSUP (Form I-220B)** and have been re-detained, because the regulations require very specific processes in order to revoke an OSUP. In the Fifth Circuit it may be very hard to stop an imminent deportation from happening because of a decision in a case called *Gakou v. Warden*.

Does the EWI no-bond rule extend to other parts of the country?

In **most other places**, someone who has **entered without inspection and was not arrested at the time of their entry** can request a bond hearing with an immigration judge in immigration court without filing a habeas petition.

The only states where this is **not** true are Louisiana, Texas, and Mississippi (the **Fifth Circuit**), as is explained above, and Minnesota, North Dakota, South Dakota, Nebraska, Iowa, Missouri, and Arkansas (the **Eighth Circuit**).

The rules in the **Eighth Circuit** are not the same as in the Fifth Circuit. In the Eighth Circuit states, someone in this situation might be able to get release or a bond hearing by filing a habeas petition (see below) based on their Constitutional right to due process if they have strong ties to this country or if they were previously released from immigration detention.

What is a "habeas petition" and how do I file one?

A "habeas petition," also called a "petition for writ of habeas corpus," is a lawsuit filed in federal court arguing that someone's detention is not lawful. We have a guide to filing a habeas petition on your own without an attorney (called "pro se") here[1] and there is an online app to help people complete a habeas petition without a lawyer at DetentionHelp.org.

The petitions are filed in the **federal district court** where someone is detained at the time the petition is filed. The petition stays in that court, with the law that applies in that court, even if a person is transferred to a different detention center. This means if someone gets arrested outside of the Fifth Circuit states and files a habeas petition in the federal district court where they are being held, the law of that court will apply even if they get transferred somewhere else. You do not have to file a new petition in the district court for where you have been transferred.

What's next?

The Supreme Court has agreed to hear a case (*Rhoney v. Barbosa da Cunha*) that challenges EWIs not getting bond hearings. The Supreme Court took this case in part because different Circuit Courts have decided differently: the Fifth and Eighth Circuits have agreed with the government's position while eight other Circuit Courts have disagreed and allow people who EWIed and have never been arrested by ICE before to have bond hearings.

And if the Supreme Court decides that the government is right about what the immigration laws allow when it comes to people who EWIed, then there is the separate question of whether the government is violating a person's *Constitutional* due process rights when it detains them without an opportunity for a bond hearing. The Fifth Circuit ruled on this Constitutional question in *Sosnava Rodriguez* and said that detention without a bond hearing does not violate due process rights, and the Eighth Circuit will likely answer that question soon. This question is not currently before the Supreme Court

Because people in detention have a multitude of issues, and because of ICE's abusive arrest and detention policies, courts are coming across new questions every day, and this is a very quickly changing area of law.



1 This guide has not yet been updated for the EWI no-bond rule in the Fifth Circuit that this explainer is about, but the other sections, including the ones that help you make arguments that ICE illegally arrested you; that DHS illegally revoked your parole or OSUP; or that you had some protection from deportation at the time of your arrest are all still up to date and you can try them. Remember, the law changes a lot, and whether or not these arguments will work depends on the judge.