ICE Detention: Legal Framework, Rights Protections, and Current Policy Landscape in 2026

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FINDINGS

ICE DETENTION: LEGAL FRAMEWORK, RIGHTS PROTECTIONS, AND CURRENT POLICY LANDSCAPE IN 2026

Executive Summary

Immigration and Customs Enforcement (ICE) detention has undergone dramatic transformation during the Trump administration's second term, with the detainee population reaching record highs of approximately 73,000 individuals as of late January 2026-an 84% increase from the same period in 2025 when detention averaged below 40,000.[18] This expansion occurs amid systemic constitutional concerns, documented deaths in custody at unprecedented rates, and active litigation challenging both detention authority and the administration's policies restricting congressional oversight. The legal landscape reflects fundamental tensions between prosecutorial detention authority under the Immigration and Nationality Act (INA) and constitutional protections for due process, access to counsel, and protection from unreasonable searches and seizures. Federal judges across multiple circuits have intervened to block detention practices they found legally problematic, yet the regulatory and statutory framework continues to evolve as the administration employs creative interpretations of appropriations law and detention authority. For immigrants in detention and their advocates, this period represents both heightened legal vulnerability and unprecedented litigation activity, with habeas corpus petitions filed in record numbers-exceeding all of 2025's filings within just the first month of 2026.[10] Understanding the current legal framework requires simultaneous analysis of binding INA provisions, recent Board of Immigration Appeals decisions substantially restricting bond eligibility, federal court interventions protecting constitutional rights, and the emerging practices within the Trump administration that blur lines between immigration enforcement and what civil rights organizations characterize as mass detention without due process.

Statutory and Constitutional Framework Governing ICE Detention

The Immigration and Nationality Act Detention Authority

The INA provides the foundational statutory authority for immigration detention, establishing both mandatory and discretionary detention schemes that fundamentally structure government authority over detained noncitizens. [8 U.S.C. § 1226][47] establishes the primary detention framework for the Attorney General (whose immigration enforcement functions are delegated to the Secretary of Homeland Security and ICE), providing that on a warrant issued by the Attorney General, an alien may be arrested and detained pending removal determination.[47] This section further provides that except as provided in the mandatory detention provisions, the Attorney General may continue to detain an arrested alien or may release the alien on bond of at least $1,500 with security approved by the Attorney General, or on conditional parole.[47] The critical phrase "except as provided" creates the interface between discretionary and mandatory detention, a distinction that has become the subject of intense litigation in 2025 and 2026.

The mandatory detention provisions are found in [8 U.S.C. § 1225][47], which establishes that certain noncitizens must be detained for inspection and processing. The framework distinguishes between different categories of applicants for admission, each subject to mandatory detention for specific periods. Section 1225(b)(1) applies to noncitizens who arrive at a port of entry and are determined to be deportable based on certain criminal or security grounds.[47] Section 1225(b)(2) creates a "catch-all" category applying to any

noncitizen who has not been admitted or paroled and whom an immigration officer determines is not clearly and beyond a doubt entitled to admission.[47] This statutory language has become central to a critical question dividing immigration judges and creating a litigation surge: whether someone present in the United States for years after entering without inspection remains an "applicant for admission" subject to mandatory detention under section 1225(b)(2) rather than discretionary detention under section 236(a).

In the landmark 2025 decision [Matter of Yajure-Hurtado, 29 I&N Dec. 216 (BIA 2025)][58], the Board of Immigration Appeals resolved this question in favor of the government, holding that noncitizens who entered without inspection and remained in the United States without being admitted-regardless of how many years they had lived here-are "applicants for admission" subject to mandatory detention and ineligible for bond hearings before immigration judges.[58] This decision reversed decades of BIA practice and has become one of the most consequential developments in detention law, immediately rendering hundreds of thousands of noncitizens ineligible for bond consideration and triggering the wave of federal habeas corpus petitions that has become the primary litigation mechanism for challenging detention.[10] The BIA's interpretation reads section 235(b)(2) as applying to any noncitizen apprehended in the interior of the United States who has not been admitted and is not clearly and beyond a doubt entitled to admission, effectively subjecting all undocumented immigrants to mandatory detention regardless of length of residence, family ties, or community integration.[58]

Constitutional Protections: Due Process, Fourth Amendment, and Right to Counsel

Beyond statutory detention authority, constitutional law establishes fundamental protections that constrain detention practices regardless of INA provisions. The Fifth Amendment's Due Process Clause protects all persons in the United States, regardless of immigration status, from arbitrary deprivation of liberty.[1] This protection requires that detention be based on individualized determinations and procedures that provide fair notice and opportunity to be heard. The Supreme Court has recognized that immigration detention is fundamentally different from criminal detention because it is theoretically not punitive but rather civil-designed to facilitate removal proceedings rather than to punish criminal conduct.[1] Nevertheless, courts have held that the Due Process Clause requires that detention be reasonably related to its purposes, whether ensuring appearance at removal proceedings or addressing flight risk and danger to the community.

The Fourth Amendment's protection against unreasonable seizure and search applies to immigration enforcement operations. Federal courts have found that agents cannot stop and detain individuals based solely on perceived immigration status, and recent litigation has established that immigration agents cannot rely on racial profiling, language spoken, or appearance as the basis for detention without individualized suspicion or probable cause.[37] Multiple lawsuits filed in 2025 and 2026 have challenged ICE operations in cities including Minneapolis, Washington D.C., and elsewhere on grounds that agents are conducting mass arrests without warrants or probable cause, violating Fourth Amendment protections that apply regardless of immigration status.[37][57] In Minnesota, federal litigation has alleged that ICE agents arrested U.S. citizens based on perceived ethnicity and continued detaining them despite proof of citizenship.[37] The Supreme Court's January 2026 emergency order in Vasquez Perdomo v. Noem overturned a lower court ban on ICE's use of roving patrols and racial profiling, but that decision has itself prompted constitutional litigation from multiple jurisdictions, with advocates arguing that Fourth Amendment protections cannot be suspended even in immigration contexts.[45]

The right to counsel, protected by the Fifth and Sixth Amendments in criminal proceedings and by the Due Process Clause of the Fifth Amendment in civil proceedings, applies with qualified force in immigration detention contexts. The INA provides in section 292 that noncitizens have the right to be represented by

counsel of their choosing at no government expense.[59] However, unlike criminal proceedings, the government is not required to provide free legal counsel to those who cannot afford representation. Multiple federal courts have recognized that meaningful access to counsel is essential to fair immigration proceedings, particularly for detained individuals who face severe constraints on their ability to investigate cases, gather evidence, or locate and communicate with attorneys. In Innovation Law Lab v. Mayorkas, a federal district court found that the cumulative effect of restricted attorney access, conflicting visitation policies, and denial of legal orientation programs constituted a violation of the right to meaningful access to counsel.[59] Federal judges in multiple jurisdictions have ordered that detention facilities must permit attorney-client meetings, confidential phone calls, and adequate visiting hours to ensure counsel can meaningfully represent detained clients.[34][59]

Recent allegations from attorneys working in detention contexts reveal that ICE facilities are systematically denying detainees access to attorneys through various mechanisms: refusing to permit attorney visits, ignoring phone calls and emails from counsel, failing to relay messages between detainees and their lawyers, and moving detainees to other facilities without notice to make attorney location and representation impossible.[24][27][34] In Minneapolis, advocacy organizations have filed class action lawsuits alleging that ICE agents at the Bishop Henry Whipple Federal Building are preventing attorneys from visiting clients, threatening attorneys who attempt to enter the facility, and denying detainees phone access to counsel-conduct that would constitute Fifth and Sixth Amendment violations if successfully proven.[27][34] The Department of Homeland Security's official position is that detainees have access to phones and can contact attorneys, but detained individuals and their counsel dispute this characterization, noting that phone access during limited hours does not cure the denial of in-person attorney consultation.[24]

Current Legal Landscape: Crisis Points in February 2026

Congressional Oversight Authority and Section 527 Appropriations Restrictions

One of the most active contested areas of immigration detention law in early 2026 concerns the authority of Congress to conduct unannounced inspections of ICE detention facilities. Federal appropriations law, specifically [Section 527 of the Further Consolidated Appropriations Act of 2024 (Public Law 118-47)][2], explicitly restricts the use of DHS appropriated funds to deny members of Congress access to detention facilities: "none of the funds appropriated or otherwise made available to the Department of Homeland Security may be used to prevent any of the following persons from entering, for the purpose of conducting oversight, any facility operated by or for the Department of Homeland Security used to detain or otherwise house aliens."[2][17] The statute further provides that nothing requires members of Congress to provide prior notice before conducting such oversight visits.

In December 2025, [U.S. District Judge Jia M. Cobb][2], an appointee of former President Joe Biden, issued a preliminary injunction blocking DHS Secretary Kristi Noem's policy requiring that members of Congress provide seven days' notice before visiting ICE detention facilities, finding that the policy violated Section 527.[2] Judge Cobb reasoned that the appropriations rider was designed to ensure that lawmakers could make timely visits to facilities whose populations often spike and decline with little notice, and that advance notice requirements would defeat that purpose by allowing facility administrators to prepare the facility for inspection and potentially conceal problems.[2]

Undeterred, the Trump administration's DHS issued a new policy in January 2026 claiming that the advance notice requirement would be enforced solely with funding from the "[One Big Beautiful Bill Act]," passed in

July 2025, which DHS contended does not contain the same appropriations restrictions as Section 527.[2] On February 2, 2026, Judge Cobb issued a second preliminary injunction blocking the revised policy, finding that it was virtually impossible for DHS to segregate funding streams in the manner claimed and that, in any event, DHS had already used Section 527-restricted funds to develop and promulgate the policy.[2] The court's decision restored Congress's ability to conduct unannounced oversight visits, a power that became particularly urgent following two January 2026 deaths of U.S. citizens (Renee Good and Alex Pretti) at the hands of ICE agents in Minneapolis and subsequent revelations about detention facility conditions.[5][8]

This legal battle reveals fundamental tensions over institutional oversight authority and the executive's ability to circumvent statutory restrictions on the use of appropriated funds. The critical legal principle at stake is whether funds appropriated for a specific purpose (funding ICE detention while permitting Congressional oversight) can be replaced with funds from a different appropriation (the One Big Beautiful Bill Act) to accomplish an objective that would violate the original appropriations restriction if done with the original funds. Judge Cobb's ruling suggests that courts will scrutinize such attempts to evade appropriations restrictions, at least where the evidence shows that restricted funds were used to develop the policy.[2]

Board of Immigration Appeals Decisions Eliminating Bond Eligibility

The most consequential development in detention law since Trump's return to office is the Board of Immigration Appeals' September 2025 decision in [Matter of Yajure-Hurtado][58] and subsequent related decisions ([Matter of Dobrotvorskii, 29 I&N Dec. 211 (BIA 2025)][61] and [Matter of Q. Li][61]), which have fundamentally restructured who is eligible for bond hearings. Prior to these decisions, established BIA practice held that noncitizens who entered without inspection and remained in the United States were subject to discretionary detention under INA § 236(a) and could request bond hearings before immigration judges, who had authority to release them on bond if they could demonstrate they were not flight risks and posed no danger to the community.

The Yajure-Hurtado decision reversed this understanding, holding that anyone who entered without inspection and admission remains an "applicant for admission" subject to mandatory detention under INA § 235(b)(2) for the duration of their removal proceedings, regardless of how long they have resided in the United States.[58] The respondent in that case had entered without inspection in November 2022, was granted Temporary Protected Status (TPS) in 2024, but when his TPS expired in April 2025, ICE apprehended and detained him. The BIA concluded that his TPS grant did not constitute "admission" because TPS is a protected status that does not convert one into a lawful permanent resident or otherwise change one's fundamental immigration status.[58] Therefore, when he was apprehended after his TPS expired, he reverted to being an "applicant for admission" subject to mandatory detention and ineligible for a bond hearing.[58]

The BIA's reasoning generated immediate and substantial controversy within the immigration bar.[61] The decision represents a dramatic departure from decades of practice under which DHS had not consistently treated long-term residents without inspection as applicants for admission. District court judges across the country have disagreed with the BIA's interpretation, leading to the explosive growth in habeas corpus litigation. For example, [U.S. District Judge James Hanlon in the Southern District of Indiana][7] ruled that Section 1225 applies only to "arriving" noncitizens and not to those living in the interior of the United States, finding that the BIA's interpretation "disregards" the plain meaning of the statute and is "inconsistent with decades of prior statutory interpretation and practice."[7] Nevertheless, because the BIA decision is binding precedent on immigration judges, practitioners have been forced to pursue habeas corpus petitions in federal court rather than bond hearings before immigration judges, creating the litigation surge documented in January 2026.[28]

Record Detention Population and Expansion Funding

As of January 2026, ICE was detaining approximately 73,000 individuals-the highest level in the agency's 23-year history and an increase of 84% from the same period in 2025.[18] The Trump administration has publicly stated its goal of expanding detention capacity to 100,000 or more beds.[18] This dramatic expansion is funded by the [One Big Beautiful Bill Act (OBBA), passed in July 2025][9][22], which allocates $45 billion exclusively to ICE detention expansion, plus an additional $14 billion for deportation operations and $3.5 billion for reimbursement to state and local governments for detention-related costs.[22] The total immigration enforcement allocation in the OBBA is approximately $170 billion, with the $45 billion detention allocation constituting the single largest investment in immigration detention infrastructure in U.S. history.[22]

Private prison corporations have been the primary beneficiaries of this expansion. [CoreCivic and GEO Group][9], which operate approximately 90% of ICE detention beds, have received numerous contracts to reopen closed facilities and expand existing ones.[9][12] Between January 2025 and early 2026, GEO Group reopened four facilities with 6,600 total beds and expects these facilities alone to generate over $240 million annually in revenue.[12] CoreCivic has indicated that it has approximately 30,000 additional beds available across nine empty facilities and through expansion of existing sites.[12] Both companies' stock prices have risen substantially since the election-CoreCivic by 56% and GEO Group by 73%-largely in anticipation of the detention expansion funding.[9]

Notably, [data compiled by Syracuse University researcher Austin Kocher][13] indicates that the overwhelming majority of the detention population growth since September 2025 consists of individuals with no criminal convictions or pending charges. Between September 21, 2025, and January 7, 2026, ICE detention (excluding Border Patrol transfers) increased by 11,296 people, of which 8,121 (72%) were classified as having only immigration violations with no criminal convictions or pending charges.[13] Only 902 of the 11,296 increase involved individuals with criminal convictions.[13] This data undermines the Trump administration's framing of detention expansion as necessary to incapacitate dangerous criminals, revealing instead a system designed to maximize detention of noncitizens regardless of public safety risk.

Deaths in Custody and Medical Neglect

The year 2025 marked the deadliest year in ICE detention history outside the COVID-19 pandemic, with at least 30 documented deaths.[11] In just the first three weeks of 2026, six additional individuals have died in ICE custody.[8] At [Fort Bliss military base in El Paso, Texas][11], which has become the largest migrant detention facility in the United States with capacity for up to 5,000 people, three individuals died within 44 days in December 2025 and January 2026. Most significantly, on January 21, 2026, the El Paso County Medical Examiner's office ruled that the death of Geraldo Lunas Campos, a 55-year-old Cuban national, was a homicide.[11] According to the autopsy, Campos died of "asphyxia due to neck and torso compression" while being physically restrained by law enforcement-initially characterized by ICE as a possible suicide despite the physical evidence of restraint-related asphyxiation.[11]

Beyond the documented deaths, systemic medical neglect has been documented across multiple detention facilities. [Representative Ro Khanna conducted an unannounced congressional visit to the California City Detention Facility in January 2026][3] and documented grave deficiencies including locked medical request boxes that staff could not confirm were being processed, detainees reporting requests for medical care going unaddressed for weeks, and detainees being placed in solitary confinement when they complained of medical needs.[3] Khanna reported meeting with detainees, including one who had been urinating blood without receiving medical care and another who agreed to deportation simply to escape the facility's conditions, which he characterized as "torture."[3] The facility had operated since August 2025 without a single Office of

Detention Oversight inspection, audit, or verified compliance review under the Prison Rape Elimination Act.[3]

A critical structural problem contributing to medical neglect is that [in October 2025, ICE halted payments to medical contractors providing care in detention facilities][11], with payments unlikely to resume until April 2026. ICE's failure to pay has caused some medical providers to deny services to ICE detainees entirely.[11] This payment stoppage resulted from a lawsuit by a conservative advocacy group that challenged Veterans Administration involvement in processing ICE medical claims.[11]

[Physicians for Human Rights examined 52 deaths in ICE custody from 2017 to 2021 and found that 95 percent were preventable or possibly preventable if appropriate medical care had been provided.][8] The medical neglect documented in 2025 and early 2026 suggests that preventable deaths will likely continue to increase as detention expansion outpaces medical infrastructure and oversight capacity.[8]

Solitary Confinement and Vulnerable Populations

ICE's use of solitary confinement has escalated dramatically during 2025. [Data analyzed by Physicians for Human Rights][35] indicates that during the first quarter of 2025, solitary confinement placements involving people with vulnerabilities (mental illness, trauma history, etc.) lasted an average of 38 days compared to 14 days in late 2021, when ICE began tracking these statistics. The average cumulative days in solitary confinement per vulnerable person increased to 44 days in early 2025 compared to 20 days in late 2021.[35] Notably, the average number of vulnerable individuals subjected to solitary confinement nationally increased by approximately 56 percent per quarter in fiscal year 2025 compared to 2022.[35] Detailed analysis of New England facilities revealed that nearly three of four solitary confinement placements lasted 15 days or longer-the threshold that United Nations human rights experts consider to constitute torture.[35]

Individual case analysis reveals systemic use of solitary confinement for arbitrary and retaliatory purposes, including punishing individuals for filing grievances, requesting basic needs like showers, sharing food, or reporting sexual assault.[35] These practices violate both ICE detention standards and international human rights law prohibitions on arbitrary detention.[35]

Racial Profiling and Fourth Amendment Violations

Federal courts and civil rights organizations have documented that ICE is conducting mass arrests of individuals, including U.S. citizens, based on perceived immigration status derived from race, ethnicity, or language spoken. In Minneapolis, during "Operation Metro Surge" beginning in December 2025, [ICE agents arrested at least 20-year-old Mubashir Khalif Hussen, a U.S. citizen, after he was stopped by multiple masked agents while walking to lunch in the Cedar-Riverside neighborhood.][37] Hussen repeatedly told agents "I'm a citizen," but agents refused to look at his identification and transported him to the Whipple Federal Building, where he was detained for multiple hours before being released after showing a photo of his passport.[37]

[The ACLU, ACLU of Minnesota, and private law firms filed a class action lawsuit on behalf of three community members whose constitutional rights were violated by ICE and CBP agents conducting suspicionless stops and warrantless arrests based on perceived ethnicity.][37] The complaint alleges that masked federal agents in military gear ignored basic human rights and targeted Somali and Latino communities, arresting individuals without warrants or probable cause based solely on perceived immigration status.[37]

More broadly, [attorneys have documented over 40 cases of ICE agents using banned chokeholds and other techniques that cut off breathing during arrest operations in 2025][8], with at least one 16-year-old U.S.

citizen subjected to a chokehold by ICE agents while his undocumented father was arrested.[8][14] ProPublica's investigation found that the government has not disclosed whether any agents have been disciplined for these practices.[11]

San Francisco-Specific Immigration Detention Context

San Francisco Immigration Court and Ninth Circuit Precedent

For detained immigrants in Northern California, the San Francisco Immigration Court (located at [100 Montgomery Street, Suite 800, San Francisco, CA 94104 and at 630 Sansome Street, 4th Floor, Room 475, San Francisco, CA 94111][3]) serves as the primary venue for removal proceedings, with a concord hearing location at [1855 Gateway Blvd., Suite 850, Concord, CA 94520][3]. Immigration judges in this court operate within the Ninth Circuit's controlling precedent, which in some respects diverges from Board of Immigration Appeals interpretations.

The Ninth Circuit has recognized robust Due Process protections in detention contexts. In [Rodriguez v. Marin, 909 F.3d 252, 256 (9th Cir. 2018)][61], the Ninth Circuit held that detainees who have been in custody for six months or longer are entitled to bond hearings in which the government-not the detainee-bears the burden of demonstrating that the detainee is a flight risk or danger to the community.[61] This framework, requiring the government to justify continued detention through clear and convincing evidence, reflects a more protective approach than many other circuits. However, the Board of Immigration Appeals' Yajure-Hurtado decision strips immigration judges of jurisdiction to consider bond requests altogether for certain categories of noncitizens, potentially limiting the applicability of the Rodriguez framework.

Federal district courts in Northern California and the Central District of California have been particularly active in granting habeas corpus relief to detained immigrants. [The Third Circuit Court of Appeals, in a recent decision addressing habeas corpus jurisdiction][39], affirmed that district courts retain jurisdiction over habeas petitions even after ICE transfers a detainee to a different judicial district, rejecting the government's argument that transfers deprive courts of jurisdiction.[39] This holding is particularly important given that ICE has been transferring detainees across the country immediately after arrest-sometimes within hours-to complicate attorney access and representation.[27]

California State Law Protections and Limitations on Local Cooperation

California has enacted several state-level protections that constrain local participation in immigration enforcement and provide remedies for immigration consequences of criminal convictions. [Penal Code § 1473.7 permits individuals convicted of crimes to petition for vacation of their convictions based on invalid immigration advisements or newly discovered evidence that the conviction had adverse immigration consequences that the defendant did not understand at the time of conviction.][4] This remedy can be critical for individuals whose detention may be based on criminal convictions that could be vacated if counsel can demonstrate that the conviction carried immigration consequences the defendant did not understand or that were not validly advised.

[California's SB 54, the California Values Act][4], establishes that state and local law enforcement agencies do not participate in ICE immigration enforcement operations unless the person has been convicted of specific serious or violent felonies. The statute provides that state and local law enforcement cooperate with federal immigration enforcement only for individuals who have been convicted of certain serious or violent crimes, not for civil immigration violations or minor offenses.[4]

However, California still permits county jails and other local facilities to contract with ICE to house immigration detainees through Intergovernmental Service Agreements (IGSAs). While California does not require county jails to honor ICE detainer requests (which are nonbinding civil immigration requests), some counties have entered contracts making their jails available for ICE detention use.

Compliance with Detention Standards and Private Contractor Accountability

[The American Immigration Council and civil rights organizations have documented that ICE does not fully use contracting tools to hold detention facility contractors accountable for performance standards.][30] Despite documentation of thousands of deficiencies and instances of serious harm to detainees, ICE rarely imposes financial penalties on contractors.[30] At the federal level, this creates liability gaps; at the state and local level, jurisdictions contracting jail beds to ICE may have opportunities to strengthen contract language requiring compliance with specific detention standards and imposing financial penalties for violations.

Habeas Corpus as the Primary Litigation Mechanism

The Explosion in Federal Habeas Petitions

The [Yajure-Hurtado decision eliminating bond eligibility for certain noncitizens][58] prompted an unprecedented surge in federal habeas corpus petitions. In 2024, only 222 immigration habeas petitions were filed nationwide for the entire year.[28] In 2025, approximately 8,000 habeas petitions were filed, with 3,000 filed in December alone.[28] In Minnesota alone, immigration attorneys filed more habeas petitions in January 2026 than in all of 2025, with one firm filing 45 habeas petitions in a five-day period.[10] In Texas, more than 675 immigration habeas petitions were filed between January and November 2025.[28] The Western District of Texas (based in El Paso) received 759 federal habeas petitions in 2025-more than any previous year-and that record was broken in just the first month of 2026.[28]

Extraordinarily High Success Rates

Despite this litigation volume, federal judges have been granting habeas relief at extraordinarily high rates. [Data compiled from federal court filings indicates that detained immigrants have won their habeas petitions in approximately 97% of decided cases in 2025 (350 wins out of 362 decided cases across approximately 160 different judges in about 50 federal courts nationwide).][28] In Minnesota, immigration attorney David Wilson estimated that detained immigrants are receiving favorable outcomes from federal judges in more than 90% of habeas filings, leading to either immediate release or access to a bond hearing.[28] [U.S. District Judge Lewis A. Kaplan in the Southern District of New York noted that noncitizens have won their habeas petitions in 350 of 362 cases.][28]

These extraordinarily high success rates reflect federal judges' strong skepticism of the government's legal positions on mandatory detention and bond eligibility. Judges have issued rulings finding that the Board of Immigration Appeals' interpretation of section 235(b)(2) conflicts with the plain language of the statute, that decades of prior practice do not support applying mandatory detention to long-term residents, and that Due Process requires individualized determination of whether detention is reasonably related to its purposes even if the INA permits detention.[28][61]

Remedies Granted in Habeas Petitions

When federal judges grant habeas petitions, the remedies vary depending on the specific circumstances. In cases where ICE lacked authority to detain the person in the first place, judges have ordered immediate

release.[28] In other cases, particularly where flight risk or danger concerns are present, judges have ordered release subject to conditions such as GPS monitoring through ICE's Alternatives to Detention (ATD) program.[28] When judges determine that detention is not properly authorized but the person may pose a flight risk or danger, they may remand for a bond hearing before an immigration judge with instructions that the government bears the burden of demonstrating flight risk or danger.[28]

Bond amounts granted by federal judges have varied substantially but have generally ranged from $1,500 to $25,000 or higher, with average bonds increasing significantly under the current enforcement priorities.[28]

Private Detention Contractor System and Liability Framework

The CoreCivic and GEO Group Duopoly

Approximately 90% of ICE detainees are held in privately-operated facilities run by for-profit corporations, predominantly CoreCivic and GEO Group.[9][22] These two companies have been the primary beneficiaries of the OBBA detention funding. [Between Trump's inauguration and mid-2025, CoreCivic and GEO Group had already been awarded nine new or expanded contracts, including reopening of facilities such as Delaney Hall in New Jersey (1,000 beds, run by GEO) and the Dilley and Karnes family detention centers in Texas.][22] [GEO Group has informed shareholders that it is "built for this unique moment," while CoreCivic told investors to expect "continued robust contracting activity throughout 2025."[9] In their first quarter 2025 financial reports, both companies indicated that they expect to surpass their 2024 revenue (CoreCivic: $1.96 billion; GEO: $2.41 billion) based on new ICE contracts.[9]

[CoreCivic and GEO Group, together with their PACs, subsidiaries and executives, donated nearly $2.8 million to Trump's 2024 election efforts and inaugural fund.][9] These substantial contributions, followed immediately by lucrative government contracts, raise ethics and corruption concerns.[9] While federal law prohibits current federal contractors from making "pay-to-play" contributions, this prohibition does not extend to inaugural fund contributions, and federal law does not prohibit contributions by wholly-owned subsidiaries of corporations-a gap that GEO Group exploited by donating $1 million through a wholly-owned subsidiary.[9]

Contractor Liability and Negligence Standards

When detention occurs in privately-operated facilities, liability questions arise regarding both the contractor's direct responsibility and the government's liability for contractor misconduct. Federal courts have recognized that private contractors operating government detention facilities remain subject to constitutional constraints and can be held liable for constitutional violations.[1][30] Detainees have pursued negligence claims against private contractors for medical neglect, assault by staff, denial of basic necessities, and other harms.[3][8]

However, [the federal government's contracting practices have created accountability gaps: ICE has documented thousands of deficiencies and instances of serious harm but rarely imposed financial penalties on contractors for violations of detention standards.][30] ICE contracts often do not include robust Quality Assurance Surveillance Plans that would outline detailed requirements for compliance and potential financial penalties for non-compliance.[30] When contractors fail to meet detention standards, ICE can theoretically issue Contract Discrepancy Reports and withhold payment, but this enforcement mechanism has been used rarely, and facilities frequently receive waivers exempting them from compliance requirements.[30]

Federal Appropriations and Contract Transparency

The massive $45 billion appropriation for detention expansion has been distributed through a combination of direct contracts, blanket purchase agreements, and task orders.[22] The contracts themselves have often not been made public. However, [FOIA litigation by the National Immigrant Justice Center has resulted in disclosure of some previously withheld contracts.][33] The American Civil Liberties Union has also used FOIA litigation to obtain documents revealing ICE's plans for facility expansion, discovering that ICE is considering reopening facilities with documented histories of violence, sexual abuse, and corruption.[54]

Medical Care Standards and Enforcement Gaps

ICE Detention Standards for Medical Care

[All facilities that house ICE detainees for more than 72 hours are required to have some type of onsite clinical setting for examinations and treatment.][6] The [Performance-Based National Detention Standards (PBNDS) 2011 (revised 2016)][41] establish comprehensive medical care requirements including medical screening upon arrival, communicable disease screening, prenatal care for pregnant detainees, mental health services, and emergency medical care.[41] The standards require that detention facilities maintain medical records, provide medications prescribed by facility medical staff, and permit qualified medical personnel to make medical determinations about appropriate care levels.[41]

However, as documented by Congressional visits and civil rights investigations, these standards are routinely violated with minimal enforcement consequences. [At the California City Detention Facility, detainees reported infrequent access to showers and clean clothing, unaddressed medical requests sitting for weeks without review, and grievance boxes that remained locked with no evidence of processing.][3] The facility operated for months without Office of Detention Oversight inspection or audit.[3]

Accountability Mechanisms and Their Limitations

Multiple oversight bodies theoretically maintain responsibility for monitoring detention conditions. [Within DHS, several offices conduct inspections and reviews: the Detention Monitoring Unit runs the On-Site Detention Compliance Oversight Program with federal Detention Service Managers stationed at large facilities; ERO contracts with third parties (currently Nakamoto Group, Inc.) to conduct annual inspections of most facilities; and the Office of Detention and Removal Operations Enforcement and Removals Unit reviews death cases and Prison Rape Elimination Act compliance.][33] Outside DHS, the Office of Inspector General can conduct unannounced inspections, though these occur infrequently (only four facilities inspected in FY 2019).[33]

The Office of Inspector General's Office of Custody and Community Safety (OCCS) maintains a Detention Oversight Division that conducts announced and unannounced visits and publishes reports, though these reports are often delayed.[33] The Office of Acquisitions Management oversees contracts and can theoretically impose financial penalties, but rarely does so.[30]

The critical oversight gap is that there is no independent oversight body for immigration detention-all oversight remains within DHS, meaning agency officials oversee their own practices.[33] Congress eliminated the Office of the Immigration Detention Ombudsman (which employed nearly 100 staff members) and the Office of Civil Rights and Civil Liberties (which employed over 150 staff members) in early 2025, further reducing internal oversight capacity.[17][22]

Access to Legal Counsel and Denials of Due Process

Statutory and Constitutional Right to Counsel

The INA provides that noncitizens have the right to be represented by counsel of their choosing at no government expense.[59] The constitutional Due Process Clause of the Fifth Amendment similarly protects the right to meaningful access to counsel for detainees challenging the legality of their detention.[59] These rights are foundational to fair proceedings in which detained individuals can present evidence of their eligibility for relief, challenge the government's allegations, and make informed decisions about their cases.

However, access to counsel has become severely restricted under current detention practices. [Multiple attorneys reported being denied access to their clients at the Bishop Henry Whipple Federal Building in Minneapolis in January 2026.][24][27][34] Attorneys described standing outside designated attorney visitation rooms for four hours trying to see clients, being told by ICE agents "we don't do attorney visitation," and being physically confronted by armed security personnel who told them to leave the facility.[27][34] In one case, an attorney was denied access to a client with severe medical concerns despite specifically informing ICE that the client needed medications that had not been confirmed as received.[24]

Patterns of Denial and Systemic Barriers

The denials are not limited to Minneapolis. [Federal courts have previously enjoined ICE from denying attorney access at detention facilities in California, with judges finding that ICE agents' repeated denial of confidential attorney-client meetings despite court orders constituted ongoing violations of the right to counsel.][27][34] In one instance, [federal judges found that ICE's relocation of detainees to other detention centers without notice to their attorneys had "hindered attorney-client visitation because, on a number of occasions, counsel could not find their clients," prompting the judge to order that detained individuals must be permitted confidential attorney-client meetings seven days a week.][27] Yet despite these orders, immigration agents continued to deny access using the justification that permitting attorney visits would "cause chaos."[27]

The Advocates for Human Rights filed a class action lawsuit in January 2026 alleging that ICE and DHS are following the same pattern they used in California: denying attorney visitation, ignoring phone calls and emails from counsel, failing to relay messages between detainees and attorneys, moving detainees out of state before they can speak to lawyers, and pressuring detainees to sign voluntary departure forms while in solitary confinement or lacking access to legal counsel.[27][34]

Impact on Detainee Outcomes

The denial of meaningful access to counsel has predictable consequences: detainees without attorneys or with severely limited attorney access are more likely to abandon valid legal claims and accept deportation. The Trump administration's public messaging emphasizes "self-deportation" as a desirable outcome, and detention conditions appear deliberately designed to pressure detainees toward this choice rather than fighting cases. [Detainees have reported agreeing to deportation simply to escape inhumane detention conditions, describing conditions as "torture."[3][8] This pattern-creating conditions so dire that continued detention becomes unbearable, then encouraging "voluntary" departure-represents a coercive denial of due process disguised as administrative efficiency.[1]

Detention Expansion: Facilities, Capacity, and Systemic Concerns

Current and Planned Detention Infrastructure

As of early 2026, ICE operates approximately 200 detention facilities nationwide, with plans to expand substantially. [With OBBA funding of $45 billion for detention expansion, ICE could potentially acquire enough detention beds to house 135,000 people-far exceeding the stated goal of 100,000 average daily population.][16] The expansion includes use of non-traditional facilities: [Fort Bliss military base in El Paso, Texas, has been designated as holding up to 5,000 people at one of the world's largest immigrant detention facilities][46], a makeshift tent facility built on military property; and the administration has also planned to convert industrial warehouses into detention facilities.[22]

[GEO Group has reactivated four facilities with a total of 6,600 beds and expects them to generate over $240 million annually][12]; CoreCivic has indicated availability of approximately 30,000 additional beds across nine empty facilities and through expansion at existing sites.[12] [ACLU FOIA litigation has revealed that ICE is considering at least seven new detention center locations, including several with documented histories of abuse, including the Augusta Correctional Center in Virginia and Rivers Correctional Facility in North Carolina, where former officers have been sentenced for contraband, bribery, and other corruption.][54]

Military Bases and Legal Issues

The use of military bases for civilian immigration detention raises constitutional and administrative law questions. [Fort Bliss's use as an immigration detention facility is the latest escalation in a disturbing historical pattern: the facility was previously used to intern German and Italian immigrants and people of Japanese descent during World War II, then used to detain unaccompanied children in 2016 and from 2021 to 2023, where some were subjected to severe abuse.][46] The renewed use echoes this history and raises questions about the propriety of using military installations for civilian law enforcement purposes.[46]

Family Detention and Children

Particularly troubling is the Trump administration's resumption of family detention at Texas facilities. [ICE has revived the practice of detaining families with children at Karnes City and Dilley facilities in Texas after the practice was discontinued under the Biden administration.][48][51] As of late January 2026, the Dilley facility held approximately 1,100 people including a two-month-old infant, with Marshall Project reporters documenting a six-fold jump in children in detention.[51]

Families detained at Dilley have reported moldy, worm-filled food; foul-tasting, undrinkable water; and psychological trauma in children, with parents describing children hitting themselves in their faces or wetting themselves despite being potty-trained.[51] One family-Hayam El-Gamal and her five children, including 5-year-old twins-has been locked in Dilley for eight months, with legal counsel reporting daily calls from family members crying about conditions they characterized as "an unmitigated horror show."[51] El-Gamal's eldest daughter, 18-year-old Habiba Soliman, has been moved to a different detention area-what counsel characterizes as retaliation for speaking to the press about family detention conditions.[51]

Risk Assessment: Likelihood of Success in Challenging Detention

Favorable Factors for Detainees

Several factors currently favor detainees challenging their detention or seeking release:

High Federal Court Success Rate: Federal judges are granting habeas corpus petitions at 90%+ rates, suggesting strong skepticism of the government's legal positions.[28] This reflects judicial concerns about both the Board of Immigration Appeals' interpretation of mandatory detention and the administration's

detention practices.

Controlling Ninth Circuit Precedent: The Ninth Circuit's Rodriguez v. Marin decision requires bond hearings and places the burden on government to demonstrate flight risk or danger-a more protective standard than many other circuits.[61] Northern California detainees and those whose cases reach Ninth Circuit appellate review may benefit from this precedent.

Congressional Oversight Authority: Federal courts have twice blocked DHS efforts to restrict Congressional access to detention facilities, affirming that appropriations restrictions cannot be evaded through creative fund-segregation arguments.[2][5] This suggests courts will continue policing administration end-runs around statutory protections.

Constitutional Protections: Federal courts have recognized that Fourth Amendment protections against unreasonable seizure apply to immigration enforcement, that Fifth Amendment Due Process protects detainees from arbitrary detention, and that Sixth Amendment right-to-counsel protections apply in immigration detention contexts.[1][37][59] Even where the INA provides detention authority, courts can find that detention practices violate constitutional constraints.

Unfavorable Factors for Detainees

However, significant obstacles remain:

Board of Immigration Appeals Precedent: The Yajure-Hurtado decision strips immigration judges of jurisdiction to consider bond for a broad category of noncitizens, forcing reliance on federal habeas corpus as the only remedy.[58] While habeas success rates are high, this two-step process creates delay and requires federal litigation resources.[58][61]

Appellate Uncertainty: Although federal district courts are granting habeas petitions at high rates, government appeals and potential Supreme Court review could reverse this trajectory. The Supreme Court's emergency order in Vasquez Perdomo v. Noem overturning racial profiling restrictions signals willingness to intervene on behalf of the administration in immigration enforcement contexts.[45]

Detention as Default Policy: The administration is treating detention as the default for virtually all individuals, making release or bond a fought-for exception rather than norm.[1] The shift from detention as a tool for flight risk/danger assessment to detention as a control mechanism requires detainees to overcome this presumption.

Medical Neglect and Deaths: The combination of deteriorating conditions and systematic medical neglect creates health risks regardless of legal success. Even successful habeas petitions provide release, not compensation for past harms during detention.[8]

Qualitative Risk Assessment for Different Categories

Long-term residents without criminal history detained under Yajure-Hurtado analysis: Moderate to high likelihood of habeas corpus success (based on 90%+ federal court grant rates), but success requires federal litigation and may involve months of detention while cases proceed. The government may appeal, prolonging litigation.

Individuals with pending criminal charges: Lower likelihood of habeas success if government argues that criminal charges establish flight risk or danger, though detainees without violent convictions have prevailed in federal court.[28]

U.S. citizens wrongfully detained: High likelihood of success on constitutional grounds (Fourth Amendment

seizure claims), but timing is critical-detainees may be transferred across the country before securing legal representation.[37]

Detainees denied meaningful counsel access: Moderate likelihood of success on Fifth/Sixth Amendment right-to-counsel claims, with federal courts having previously enjoined such denials, but injunctions may not prevent future violations.[24][27][34]

Strategic Alternatives and Mitigation Measures

Alternatives to Detention (ATD) Program

Rather than face detention, eligible individuals may be placed in ICE's Alternatives to Detention (ATD) program, primarily the Intensive Supervision Appearance Program (ISAP).[40] The ATD program uses case management and GPS monitoring to ensure compliance with immigration proceedings while keeping individuals in the community.[40] The daily cost per ATD participant is less than $8 compared to approximately $150 per day for detention, yet ICE has historically been reluctant to expand ATD use.[40]

Counsel should advocate for ATD enrollment, particularly for individuals with community ties, employment, and family relationships that demonstrate community-based alternatives are viable.[40] Under current administrative practices, ICE indicates that officers should perform compliance reviews every 30 days for ISAP participants, though this practice varies and often requires active advocacy.[40]

State and Local Cooperation Limitations

For clients in California and other sanctuary jurisdictions, state law limitations on local cooperation with ICE provide some protection. [California's SB 54 limits state and local law enforcement participation in immigration enforcement to individuals convicted of specific serious or violent felonies.][4] This means that state and local police in California are less likely to arrest individuals for immigration violations and transfer them to ICE custody.

However, county jails may still contract with ICE to provide detention beds through IGSAs, and this remains an enforcement avenue.[32] Counsel should investigate whether the county where the client would be detained has an IGSA with ICE and, if so, advocate for limiting such agreements or imposing stricter detention standards.

Litigation Strategies for Preserving Arguments

For practitioners representing detained clients in immigration court, it is critical to preserve arguments for federal court review even if initial positions are rejected by immigration judges. Arguments regarding constitutional detention limits, right to counsel, and Due Process protections should be clearly stated in immigration court even if the immigration judge indicates lack of authority, as this creates a record for habeas corpus petitions and potentially for federal court review under the Administrative Procedure Act.[1]

Conclusion: The Current Moment in Immigration Detention Law

The immigration detention system in February 2026 stands at an inflection point. The Trump administration has assembled unprecedented resources-$45 billion in dedicated detention funding, 100+ federal agents deployed to target specific cities, military bases repurposed for civilian detention, and private contractors

positioned to profit substantially from expanded detention. The administration has simultaneously pursued aggressive interpretations of detention authority that maximize detention populations while simultaneously attempting to restrict Congressional oversight, deny access to counsel, and prevent meaningful review of detention decisions.

Yet federal courts have pushed back forcefully against the most legally extreme positions. The nearly universal grant rates for habeas corpus petitions, the repeated judicial blocking of Congressional access restrictions, the recognition of constitutional protections in detention contexts-these developments suggest that courts view the current system as having breached basic legal limits. The extraordinarily high habeas success rates indicate that federal judges find the government's legal positions, particularly regarding mandatory detention and bond ineligibility, unconvincing even when binding BIA precedent purports to support the government.

For detained immigrants in Northern California and nationwide, the immediate practical reality combines danger with opportunity. Danger stems from the systemic conditions-medical neglect, solitary confinement, denial of counsel access-that create real health and psychological risks. Opportunity arises from the federal courts' willingness to grant habeas relief and the emerging litigation strategies that have succeeded in securing releases for hundreds of individuals in the first month of 2026 alone.

Practitioners representing detained clients must simultaneously pursue immediate remedies through habeas corpus petitions, preserve arguments for longer-term litigation, advocate for alternatives to detention, and document violations of detention standards for potential future civil rights litigation. The law governing immigration detention is evolving rapidly-new precedent emerges monthly, courts are actively intervening in detention practices, and the administration continues to pursue novel legal theories that courts must address.

The current detention expansion reflects policy choices, not legal inevitability. The statutes permit detention authority but do not require mass detention. The INA permits bond hearings and provides protective procedures that the administration seeks to circumvent. Constitutional protections remain available even where statutes provide detention authority. Federal courts have begun reasserting these protections. Whether this judicial reassertion will prove durable or will be overcome by administrative persistence, Supreme Court intervention, or legislative change remains uncertain-but for this moment, federal judges are providing meaningful checks on detention practices that would otherwise proceed unchallenged.

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Note on Currency: This research reflects the legal landscape as of early February 2026, incorporating recent developments through the first week of February including Judge Jia Cobb's February 2, 2026 preliminary injunction and detention population statistics as of late January 2026. Rapid developments in federal litigation, administrative policy, and congressional action make this an evolving field requiring regular updates to maintain current legal analysis.