

## SCOTUS Overturns Decision on Bond Hearings for Detainees Subject to Indefinite Detention

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Do noncitizens detained for a long time while their cases are pending have the right to a hearing to determine whether they can be released on bond? This was the question posed in the *Jennings v. Rodriguez* case, a constitutional class-action challenge against federal immigration statutes requiring the detention of certain noncitizens while they defend their right to stay in the United States. The Supreme Court issued its 5-3 decision on February 27, 2018.

The case was on appeal from the Ninth Circuit Court of Appeals, which had decided that in order for the statutes to be constitutional, providing detainees with a bond hearing after six months of detention was necessary.

### Who is concerned?

The case concerns the government's detention of three categories of noncitizens:

- (1) noncitizens arriving at the border seeking asylum and found by an immigration official to have a "credible fear of persecution";
- (2) noncitizens, including legal permanent residents, who have been convicted of crimes, but have already finished serving their sentences, and are now defending their right to stay in the United States; and
- (3) noncitizens arriving at the border who lack a clear entitlement to enter the country, but still may have the right to do so.

The record in *Jennings* showed that many of the detainees eventually win their cases and are found to have the right to remain in the United States. On average, asylum seekers were detained for a year; some were detained for two and a half years. One noncitizen was detained for four years before winning his case and receiving relief from removal. Detainees may only be released on bond provided they do not pose a risk of flight or a threat to the community's safety.

### What is the outcome?

The majority of the Supreme Court sidestepped the central constitutional question, focusing instead on the text of the immigration statutes. It concluded that immigrants do not have a specific statutory right to periodic hearings, and left the door open for a ruling that they do have a constitutional right. The Court remanded the case to the Ninth Circuit Court of Appeals to decide the central constitutional issue. The Ninth Circuit Court of Appeals may still rule that the immigration statutes on mandatory detention are unconstitutional. The case is all the more significant given President Trump's promise to increase immigration detention.

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