

# Jennings v. Rodriguez: SCOTUS okays indefinite detention of aliens - AvvoStories

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## Jennings v. Rodriguez, so far

Alejandro Rodriguez came to the United States as a child. He obtained legal permanent resident status and worked as a dental assistant until, at age 24, he pleaded guilty to misdemeanor possession of a controlled substance. At that point, Rodriguez was jailed pending deportation, and he spent the next three years in detention without a bond hearing.

In 2007, Rodriguez filed a class action lawsuit in federal district court, asking if prolonged detention of immigrants was justified. After the district court ruled that Rodriguez should have received a bond hearing, the government appealed to the U.S. Court of Appeals for the Ninth Circuit. The Ninth Circuit ruled that the government must provide individualized bond hearings to assess danger and flight risk when detention exceeds six months, and every six months thereafter, thereby restricting existing mandatory detention laws.

## Indefinite detention upheld

The Ninth Circuit's ruling was appealed to the Supreme Court as Jennings v. Rodriguez, and on February 27, 2018, a divided court concluded that non-citizen immigrants – even permanent, legal residents of the United States – do not have the right to a bond hearing when being held in detention. In his majority opinion, Justice Samuel Alito wrote, “Immigration officials are authorized to detain certain aliens in the course of immigration proceedings while they determine whether those aliens may be lawfully present in the country.”

The late conservative Justice Antonin Scalia once wrote, “The very core of liberty secured by our Anglo-Saxon system of separated powers has been freedom from indefinite imprisonment at the will of the Executive.” Perhaps he would have sided with Justice Stephen Breyer, who maintained in his dissent that “No one can claim, nor since the time of slavery has anyone to my knowledge successfully claimed, that persons held within the United States are totally without constitutional protection.”

The Supreme Court's decision in *Rodriguez* potentially impacts thousands of detained immigrants, whose numbers have grown dramatically under the strict immigration enforcement priorities of the Trump administration.

## Unresolved questions

The decision is a severe blow to immigrants at risk of deportation. According to the ACLU, few detainees – who spend an average of 13 months in detention, at a cost to taxpayers of about \$150 per prisoner per day – have access to legal counsel, and even those who do face a backlog of individual habeas corpus petitions that guarantees a lengthy detention. But the case is not completely resolved.

The Supreme Court sent the case back to the lower court with two unanswered questions:

- Is indefinite detention without a chance for bail unconstitutional?
- Can a challenge to the no-bail provision be brought as a class action?

Despite Rodriguez's defeat in this round, the answers to these questions could eventually put an end to indefinite detention of immigrants in the United States.

Tagged ACLU, Alejandro Rodriguez, Antonin Scalia, bond hearing, detained indefinitely, detention, ICE, immigration, Immigration and Customs Enforcement, Jennings v. Rodriguez, non-citizen immigrants, permanent resident, Samuel Alito, SCOTUS, Supreme Court

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