

## Immigrants Detained By The Government Not Entitled To Bond Hearings

27 Feb 2018

Under immigration law, applicants for admission to the United States may be detained by the Government until certain proceedings have concluded. Nothing in the applicable statutes limit the duration of detention, nor mention bond hearings. In [Jennings v. Rodriguez](#), an immigrant filed a habeas corpus suit arguing that he should be entitled to a bond hearing once his detention reached six months in duration. After certifying all similarly-situated immigrants in the Central District of California as a class, the district court entered a permanent injunction in favor of the immigrants. The Ninth Circuit affirmed, relying on the doctrine of constitutional avoidance to hold that the statutes imposed an implicit six-month time limit on detentions, and requiring that bond hearings be given every six months, with further detention allowed only if the Government provided clear and convincing evidence to justify it. The Court, in an opinion by Justice Alito, reversed, explaining that constitutional avoidance did not allow courts to “rewrite a statute,” but only to “choose between competing plausible interpretations of a statutory text.” The statutes in this case made no mention of bond hearings or of any limit in duration, and so such limitations could not be added by a court. The Court further ordered on remand that the Ninth Circuit review the immigrants’ constitutional claims, and whether the immigrants can proceed in litigation as a class. Justice Thomas, joined by Justice Gorsuch except as to a footnote, filed a concurrence to argue that, in his view, no court has jurisdiction over the case under 8 U.S.C. sec. 1252(b)(9), which limits judicial review to final removal orders or other inapplicable circumstances. Justice Breyer, in a length dissent joined by Justices Ginsburg and Sotomayor (although Sotomayor agreed with the majority’s view that the Ninth Circuit could not add procedures not set forth in the statutory text), argued that the majority’s view, precluding any bond hearing or limitation on detention, was likely unconstitutional, and so he would have upheld the Ninth Circuit’s ruling.

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