

**Federal Court Requires Immigration Courts to Continue to Provide Bond Hearings,
Despite *Matter of M-S-***

**Frequently Asked Questions¹
July 3, 2019**

On July 2, 2019, in a nationwide class action case, Judge Marsha J. Pechman of the U.S. District Court for the Western District of Washington [issued a decision](#) on the parties' respective motion to vacate and motion to modify the existing preliminary injunction in *Padilla v. U.S.*

Immigration & Customs Enforcement, No. 2:18-cv-00928-MJP (W.D. Wash.). **Under that decision, immigration courts must continue to provide bond hearings to individuals fleeing persecution who enter the United States without inspection, are placed in expedited removal proceedings, and pass their credible fear interviews. Those bond hearings must take place within 7 days of request and include certain procedural protections.**

In *Padilla*, Plaintiffs challenge delays in credible fear interviews and bond hearings for certain asylum seekers. The district court previously certified [two nationwide classes](#), including a Bond Hearing Class and a Credible Fear Class.

On April 5, 2019, the court granted a [preliminary injunction](#) that ordered the government either to provide members of the Bond Hearing Class with a bond hearing before an immigration judge with new procedural protections within 7 days of their request, or to release them from detention.

On April 16, 2019, before the court's order took effect, Attorney General Barr issued a decision in *Matter of M-S-*, 27 I&N 509 (AG 2019), that would have eliminated bond hearings for all members of the Bond Hearing Class. *Matter of M-S-* was set to take effect on July 15, 2019. In the *Padilla* litigation, Plaintiffs challenged the decision. On July 2, 2019, the district court held that, despite *Matter of M-S-*, immigration courts must continue to provide bond hearings to *Padilla* class members.

The Northwest Immigrant Rights Project, the American Immigration Council, and the ACLU Immigrants' Rights Project represent the Plaintiffs and class members in *Padilla*.

1. What did the district court hold in the July 2, 2019 preliminary injunction decision?

The district court held that immigration courts must provide bond hearings to individuals who enter the United States without inspection, are placed in expedited removal proceedings, and pass their credible fear interviews. The court found that class members were likely to succeed on their claim that the elimination of bond hearings violated their due process rights; that they faced

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irreparable harm absent access to bond hearings; and that the balance of hardships and public interest favored an injunction.

The court also found that, as required by the prior preliminary injunction, those bond hearings must take place within 7 days of a request and include certain procedural protections. If *Padilla* class members do not receive a bond hearing within 7 days of requesting a hearing, the government must release them from detention.

2. What did the district court order in the July 2, 2019 preliminary injunction decision?

The district court ordered that members of the Bond Hearing Class are “constitutionally entitled to a bond hearing” before an immigration judge pending resolution of their asylum claims. The court also ordered that the Executive Office for Immigration Review (EOIR) must:

- Conduct bond hearings for Bond Hearing Class members within 7 days of request, and release any class member detained beyond that period of time without a bond hearing;
- Place the burden of proof on DHS to demonstrate why a class member should not be released on bond, conditional parole, or other conditions;
- Record the hearing and make a recording or transcript of the recording available upon appeal; and
- Produce a written decision with individualized findings at the conclusion of the hearing.

Pursuant to the district court’s order, the government may not implement *Matter of M-S-*. The government also must implement additional procedural protections in bond hearings by July 16, 2019, unless the order is stayed by a higher court. For more information, see *infra* Question 5.

3. Who is covered by the July 2, 2019 preliminary injunction decision?

The preliminary injunction covers all members of the nationwide Bond Hearing Class in *Padilla*:

All detained asylum seekers who entered the United States without inspection, were initially subject to expedited removal proceedings under 8 U.S.C. § 1225(b), were determined to have a credible fear of persecution, but are not provided a bond hearing with a verbatim transcript or recording of the hearing within seven days of requesting a bond hearing.

As a result of the preliminary injunction, individuals who enter the United States without inspection, are placed in expedited removal proceedings, and pass their credible fear interviews continue to be entitled to bond hearings in immigration court.

The decision does not cover individuals who pass credible fear interviews after being inspected at a port of entry. These individuals are eligible for release on parole.

4. Does the district court’s July 2, 2019 order take effect immediately?

No. The district court’s decision will take effect 14 days from the date of the decision, i.e., July 16, 2019, unless a higher court rules otherwise. See *infra* Question 5.

5. What is likely to happen next?

Defendants have until September 3, 2019 to appeal the preliminary injunction order to the Ninth Circuit Court of Appeals. Defendants likely will file an appeal. Defendants may also ask the Ninth Circuit to stay the district court's decision until the Ninth Circuit decides the appeal.

If this happens, and if the Ninth Circuit denies the government's request to stay the decision, the district court's order will remain in effect pending appellate review. However, if the Ninth Circuit grants the government's request to stay the decision, the order will not take effect unless and until the order is affirmed by the Ninth Circuit.