Practice Alert[1]

Padilla v. ICE and Delays in Credible Fear Interviews

October 2026[2]

Padilla v. ICE is a lawsuit filed in the U.S. District Court for the Western District of Washington by four asylum seekers on behalf of two nationwide classes: the Credible Fear Class and Bond Hearing Class. On January 5, 2024, the district court approved a settlement agreement with respect to the claims of the Credible Fear Class, providing protections for detained asylum seekers who face prolonged delays before receiving their credible fear interview. On September 21, 2026, the U.S. Court of Appeals issued a decision regarding the Bond Denial Class's claims, affirming a district court decision that had denied the government's motion to dismiss the case. The case will now return to district court, unless the government seeks further review.

This practice alert addresses who falls within the classes. As to the Credible Fear Class, it explains what benefits they must receive under the agreement, and what attorneys should do if the government is not meeting its obligations under the agreement. As to the Bond Hearing Class, this practice alert informs readers about that class's claims and the effect of the recent decision by the U.S. Court of Appeals for the Ninth Circuit. It also addresses the viability of individual habeas petitions.

1. What is the *Padilla v. ICE* lawsuit?

Padilla is a lawsuit filed in the U.S. District Court for the Western District of Washington by four asylum seekers on behalf of two nationwide classes: the Credible Fear Class and Bond Hearing Class. The case challenged two sets of policies and practices by U.S. Immigration and Customs Enforcement (ICE), U.S. Citizenship and Immigration Services (USCIS) and the Executive Office for Immigration Review (EOIR).

First, Plaintiffs challenged government delays in providing credible fear interviews to individuals in expedited removal proceedings under 8 U.S.C. § 1225(b) who expressed a fear of persecution of torture in their country of origin (credible fear claims).

Second, Plaintiffs challenged government delays in providing bond hearings with procedural protections to individuals who entered the United States without inspection and were found to have a credible fear of persecution or torture (the bond hearing claims).

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[2] This practice alert updates the previous practice alert released on March 20, 2024.

In 2019, the district court certified the two classes and granted a preliminary injunction with respect to the Bond Hearing Class's claims.

When Plaintiffs filed the lawsuit, bond hearings were available to persons who entered without inspection and passed their credible fear interviews. Subsequently, in 2019, in *Matter of M-S-*, 27 I. & N. Dec. 509 (A.G. 2019), the Attorney General held that members of the Bond Hearing Class were not entitled to bond hearings. The district court subsequently modified the preliminary injunction, but still required the government to provide bond hearings. The Ninth Circuit affirmed, in part, the injunction, but the U.S. Supreme Court vacated the Ninth Circuit's decision in January 2021. The case was then returned to the district court, which vacated its injunction. However, the district court denied the government's motion to dismiss the remaining claims. The current status of the Bond Hearing Class's claims is addressed below.

Since the case was filed, the parties agreed to settle the claims of the Credible Fear Class. On January 5, 2024, following a fairness hearing, the court approved the settlement agreement. Importantly, the settlement agreement does ***not*** address nor resolve the claims of the Bond Hearing Class.

2. Who is a member of the *Padilla* Credible Fear Class?

In March 2019, the district court granted a motion for class certification, certifying the following nationwide class for Plaintiffs' credible fear claims:

> All detained asylum seekers in the United States subject to expedited removal proceedings under 8 U.S.C. § 1225(b) who are not provided a credible fear determination within ten days of *the later of* (1) requesting asylum or expressing a fear of persecution to a DHS official or (2) the conclusion of any criminal proceeding related to the circumstances of their entry, absent a request by the asylum seeker for a delayed credible fear interview.

The Credible Fear Settlement Agreement applies to all members of this Credible Fear Class.

3. What benefits do Credible Fear Class Members receive under the court-approved Credible Fear Settlement Agreement?

On January 5, 2024, the district court approved the settlement agreement related to the Credible Fear Class. The agreement addresses only the claims of the Credible Fear Class. It does not address nor resolve the claims of the Bond Hearing Class. *See infra* questions 6 and 7. The agreement will remain in effect for 4 years, i.e., until January 5, 2028.

Under the agreement, the Department of Homeland Security (DHS) must refer Credible Fear Class Members for a credible fear interview before an asylum officer employed by U.S. Citizenship and Immigration Services (USCIS) within **7 business days**, specifically:

- U.S. Customs and Border Protection (CBP) must refer a class member in a CBP holding facility within 7 business days of "processing complete" if the class member's credible

fear interview and any immigration judge review of a negative credible fear determination will take place while the noncitizen is in a CBP facility.
- U.S. Immigration and Customs Enforcement (ICE) must refer a class member in ICE custody within 7 business days of "book-in" absent exigent circumstances.
- The 7-business day referral timeline is triggered when:
    - The person has asserted—either orally or in writing—a fear of return to their country of origin, and
    - If applicable, upon the conclusion of any criminal proceeding related to the class member's entry.

With limited exceptions, USCIS has **no more than 60 days** from date of referral to complete the credible fear interview and serve the credible fear decision. If more than 60 days elapse, the government must issue a Notice to Appear (NTA) placing the class member in removal proceedings before an immigration judge under 8 U.S.C. § 1229a. "Limited exceptions" are defined as:

- Any delay caused by the class member or their attorney/accredited representative (e.g., to request to reschedule or for time to obtain documents, etc.); and
- Medical quarantine.

The settlement agreement does not prevent DHS from exercising its discretion to release, issue an NTA, or administratively close the case of a Credible Fear Class Member before any referral for a credible fear interview or before the 60-days from the date of referral elapses. For example, DHS may exercise such discretion where the class member seeks to dissolve their credible fear claim or withdraw their application for admission, taking them out of expedited removal proceedings and the credible fear process.

4. What effect will the agreement have on DHS's authority to detain Credible Fear Class Members?

The settlement agreement does not guarantee or provide for the release of class members. However, it may affect how DHS exercises its detention authority.

Individuals who receive a credible fear interview within the timeframe provided by the agreement will remain subject to expedited removal and detention. As of the date of this practice alert, all such individuals are subject to mandatory detention as arriving noncitizens or pursuant to *Matter of M-S-*, 27 I. & N. Dec. 509 (A.G. 2019).

Individuals in expedited removal proceedings may only be released on parole by ICE. Individuals seeking release should submit a parole application to the assigned ICE deportation officer detailing their release plans, lack of flight risk, plans for support, and other positive factors supporting release (like connections to family and friends in the United States and the community where they will live). Class members placed in standard removal proceedings under 8 U.S.C. § 1229a because they did not receive a timely credible fear interview as required by the agreement should be better positioned to receive discretionary parole.

Individuals who entered without inspection and pass their credible fear interview are members of the Bond Hearing Class, but currently are not entitled to a bond hearing. *See infra* questions 7–9.

5. What information is the government obligated to report under the Credible Fear Settlement Agreement?

Under the agreement, the government is obligated to report to class counsel every 90 days the number of:

- Individual detained credible fear cases pending more than 60 days from date of referral to USCIS;
- Individual detained credible fear cases pending more than 60 days from date of referral to USCIS that are *not* due to applicant-caused delay or medical quarantine;
- Individual detained credible fear cases pending more than 60 days from date of referral to USCIS that are due to applicant-caused delay or medical quarantine; and
- The total number of individual detained credible fear determinations made within the 60-day period.

The Northwest Immigrant Rights Project, National Immigration Litigation Alliance, and American Immigration Council will post these reports on their respective websites.

6. How are disputes regarding the Credible Fear Class resolved under the Credible Fear Settlement Agreement?

In the event of a pattern and practice of noncompliance with the timelines set forth in the settlement agreement, class counsel will provide written notice to government's counsel and, within 21 calendar days, counsel for the parties will engage in good faith efforts to resolve the compliance dispute. Alternative to a meet and confer, or following an unsuccessful meet and confer, the parties have the option to mediate the dispute before a mutually agreeable mediator, magistrate, or judge. Should the parties fail to resolve the dispute, with or without mediation, Plaintiffs may pursue a motion to enforce the agreement before the district court. Such motion may seek an order directing the government, in individual cases where the 60-day deadline for service of the credible fear decision has been exceeded, to issue an NTA.

Because the agreement requires the dispute resolution process go through class counsel, attorneys and/or Credible Fear Class Members who believe the government is violating the terms of the settlement agreement should reach out to class counsel by emailing padilla@nwirp.org or info@immigrationlitigation.org.

When contacting class counsel regarding a Credible Fear Class Member, please provide the following information:

- Name and A number of individual;
- Detention facility;
- Date of initial apprehension or detention by DHS;
- Date on which the individual expressed a fear of return (if known);
- Whether a credible fear interview has already taken place, and if so, the date of the interview; *and*

- Whether a credible fear determination has been made, and if so, the date of decision *and* date of service on the individual.

Please note that the Credible Fear Class settlement does not apply to individuals with reinstatement orders (based on reentry without inspection after a prior removal order) or individuals with orders under 8 U.S.C. § 1238(b) (non-lawful permanent residents with aggravated felony convictions). These individuals and are placed in reasonable fear proceedings under 8 C.F.R. § 241.8(e) and are awaiting reasonable fear interviews, not credible fear interviews.

7. Who is a member of the *Padilla* Bond Hearing Class?

In March 2019, the district court granted a motion for class certification, certifying the following nationwide class for Plaintiffs' bond hearing claims:

> 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.

The claims of the Bond Hearing Class are **not** covered by the settlement agreement discussed in this Practice Alert.

8. What is the status of the claims of the *Padilla* Bond Hearing Class?

As noted in Question 1, in July 2022, the district court vacated the injunction requiring bond hearings for Bond Hearing Class Members. Thus, the injunction is no longer in effect.

In remanded proceedings, the government moved to dismiss all the claims of the Bond Hearing Class. On December 4, 2023, the district court denied the government's motion in part. Subsequently, the district court granted a government motion to certify an interlocutory appeal to the U.S. Court of Appeals for the Ninth Circuit.

In doing, so, the district court certified two questions for review. The first certified question was whether the district court had jurisdiction, notwithstanding certain jurisdiction-stripping provisions in 8 U.S.C. § 1252. The second certified question asked whether the Supreme Court's decision in *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), barred the Bond Hearing Class's due process claim.

On September 21, 2026, the Ninth Circuit issued a decision affirming the district court as to both certified issues. As to the first, the Court of Appeals agreed that 8 U.S.C. § 1252(a)(2)(A) & (e) do not strip the district court of jurisdiction to hear the case. On the second issue, the Court of Appeals distinguished *Thuraissigiam*, explaining, inter alia, that (1) the Due Process Clause covers noncitizens in the United States, regardless of their manner of entry, (2) *Thuraissigiam* concerned a person on the "threshold of entry" to the United States, while most Bond Denial Class members are not similarly situated and so their due process rights are not simply limited to

whatever Congress provides, and (3) *Thuraissigiam*'s holding regarding due process concerned a noncitizen's right to admission, while this case concerns noncitizens' right to liberty, for which the Due Process Clause requires strong protections.

The Ninth Circuit's decision does not require the government to provide bond hearings to Bond Denial Class members. The decision simply affirms two certified questions from a district court order denying a motion to dismiss. If the government does not seek further review of this decision the case will return to district court, where the parties will begin to engage in discovery in preparation to litigate motions for summary judgment.

9. Can Bond Hearing Class Members file individual habeas petitions?

Yes. Bond Hearing Class Members can file individual habeas petitions to challenge their detention. The class litigation does not limit any individual's ability to seek habeas relief on their own behalf. Following the Supreme Court's decision in *Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022), the Bond Hearing Class is pursuing only classwide declaratory relief, not classwide injunctive relief. The September 21, 2026, Ninth Circuit opinion will be an important starting point for any practitioner filing such a habeas petition, given its due process analysis. It will also be a useful resource in responding to government claims that a Bond Hearing Class member lacks any due process right to a bond hearing.