

Bond Basics and Prolonged Detention Bond Proceedings in the Ninth Circuit, Including Updates Since *Jennings v. Rodriguez*

San Francisco, Live Webcast and www.pli.edu, June 28, 2018

Why You Should Attend

Each year in the United States, The Department of Homeland Security places over 400,000 in immigration detention. Data shows that release from immigration detention on bond not only allows noncitizens to avoid detention during exceedingly lengthy court proceedings, but also greatly increases their success rates in ultimately avoiding deportation. Because individuals in Immigration Court proceedings generally only have once chance at a bond hearing, and bond is so vital to their cases, lives, and families, it is imperative to have a firm grasp of basic bond issues, such as how to adequately prepare clients for bond hearings. Even attorneys who have had experience handling bond hearings will benefit from a thorough review of the constantly evolving legal determinations of bond eligibility and the legal issues that often arise after bond is denied.

This three-part training is designed to provide immigration attorneys with the basic tools necessary to determine bond eligibility and to represent detained clients in bond proceedings, including the knowledge necessary to zealously advocate for clients subject to prolonged detention. This training will focus on practice in the Ninth Circuit and will address the recent Supreme Court decision *Jennings v. Rodriguez*, and what advocates in Northern California are doing to advocate in favor of periodic bond hearings for individuals subject to prolonged detention.

What You Will Learn

- **Who Is Eligible for Bond Hearings Initially?** How to determine initial bond or conditional parole eligibility based on the client's immigration history and criminal background, including *Matter of Joseph* hearings, and how to request a bond hearing for your client.
- **Who Is Eligible for Bond Proceedings Once Detention Is Prolonged?** How to determine eligibility after the Supreme Court's February 27, 2018 opinion in *Jennings v. Rodriguez* and how to obtain a prolonged detention bond hearing for your client.

- **How to Prepare for a Bond Hearing?** General mechanics and tips on preparing clients and witnesses for custody hearings and the different burdens of proof for initial bond hearings and prolonged detention bond hearings.

Who Should Attend

All attorneys assisting, or considering assisting, immigrant clients in the Ninth Circuit who are detained or subject to conditions of custody, including private and pro bono attorneys, public interest and non-profit organization attorneys, would benefit from attending this program. Participants are expected to have a basic knowledge of immigration law, but need not have prior experience with representing detained clients.

AGENDA

9:00

Opening Remarks

Monica Oca Howell, Valerie Anne Zukin

9:10

Who is Eligible for Bond Hearings Initially?

How to determine initial bond or conditional parole eligibility based on the client's immigration history and criminal background, including *Matter of Joseph* hearings, and how to request a bond hearing for your client.

There are four primary detention authorizing sections of the Immigration and Nationality Act (INA) for non-citizens the Department of Homeland Security seeks to remove, including: (1) INA §235(b), which addresses individuals seeking admission to the U.S. who are deemed to lack valid admission documents, pursuant to the expedited removal provisions; (2) INA § 236(a), which authorizes the discretionary detention of certain non-citizens in removal proceedings; and (3) INA §236(c), which deems individuals charged as inadmissible or deportable pursuant to certain criminal-related grounds ineligible for bond; and (4) INA §241, which authorizes a period of mandatory detention for individuals who have been ordered removed. This panel will provide a brief overview of the foregoing statutes, and also focus on how attorneys can determine whether detained clients are bond hearing eligible and how to request bond hearings. The panel will also cover when bond proceedings may be requested pursuant to *Matter of Joseph*, where there is a basis to contest the client's removability.

Christina H. Lee, Valerie Anne Zukin

10:10

Who Is Eligible for Bond Proceedings Once Detention Is Prolonged?

How to determine eligibility after the Supreme Court's February 27, 2018 opinion in *Jennings v. Rodriguez* and how to obtain a prolonged detention bond hearing for your client.

After an initial bond hearing, §1003.19(e) limits requests for subsequent bond hearings to written requests showing that the alien's circumstances have changed materially since the prior bond hearing. According to *Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999), a respondent is always entitled to a hearing to determine whether he or she is subject to mandatory detention. During a "Joseph Hearing," where an attorney challenges whether a client is subject to mandatory detention, one can argue that a client was never convicted of a crime, that the client is not removable, or, depending on the circuit, may be able to argue that ICE did not take custody of the client directly from physical criminal custody.

On February 27, 2018, the U.S. Supreme Court reversed a Ninth Circuit ruling in *Jennings v. Rodriguez*, ruling that immigrants do not have a right to periodic bond hearings. This panel will discuss pending litigation challenging the denial of six month bond hearings for respondents in reinstatement proceedings and other similar cases. There will also be a discussion regarding individuals in withholding-only proceedings, and how they are still eligible for prolonged detention bond hearings under *Diouf v. Napolitano*.

Lisa Knox, Alison Pennington

11:10 Networking Break

11:25

How to Prepare for a Bond Hearing?

General mechanics and tips on preparing clients and witnesses for custody hearings and the different burdens of proof for initial bond hearings and prolonged detention bond hearings.

This panel will focus on how to best advocate for clients to be released on bond or conditional parole. In preparing for a bond hearing, it is important to meet directly with the client beforehand to adequately prepare him or her for testimony. Additionally, supporting documents should be gathered for the detained client, including letters of support, proof of status of family members, and proof that a client will be entering into a rehabilitation program, depending on the circumstances of the case. Aside from working with the client directly, as well as the client's family members, other factors to consider are having pre-trial discussions with the Office of the Chief

Counsel, preparing a witness list, and establishing a record for appeal. This part of the panel will review the nuts and bolts of presenting a strong case during custody hearings, and also discuss what the immigration judge wants to know and will weigh as factors in determining whether your client will receive bond. There will also be a discussion regarding issues to consider in the context of *pro bono* representation.

Lisa Knox, Christina H. Lee

12:25 Adjourn

Faculty:

Co-Chairs:

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