

Mandatory Detention

In this context, mandatory detention means no right to a bond hearing or release but that ICE has authority to **release on parole** under INA § 212(d)(5) in its discretion.

Section 235(b) of the INA mandates detention of aliens subject to ER:

- An alien "shall be detained pending a final determination of credible fear [] and, if found not to have such a fear, until removed." INA § 235(b)(1)(B)(iii)(IV)
- An alien "shall be detained for further consideration of the application for asylum" if the alien is found to have a credible fear. INA § 235(b)(1)(B)(ii)
- An alien issued an ER order "shall be detained pending . . . removal." 8 C.F.R. § 235.3(b)(2)(iii)

