

**From:** [REDACTED]  
**To:** OPLA HQ Personnel; OPLA Field Personnel  
**Subject:** Broadcast Message: Permanent Injunction Impacting Burden and Standard of Proof in INA 236(a) Bond Hearings -- Brito v. Barr, No. 19-11314, 2019 WL 6333093 (D. Mass. Nov. 27, 2019)  
**Date:** Monday, December 9, 2019 3:31:04 PM

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*Disseminated on behalf of Ken Padilla and Adam V. Loiacono . . .*

On November 27, 2019, in *Brito v. Barr*, No. 19-11314, 2019 WL 6333093 (D. Mass. Nov. 27, 2019), the U.S. District Court for the District of Massachusetts granted Plaintiffs' motion for summary judgment and entered a permanent injunction, **effective December 13, 2019**, affecting the standard of proof for bond hearings under section 236(a) of the Immigration and Nationality Act (INA) for detained aliens subject to the jurisdiction of the Boston Immigration Court. The injunction applies to:

Pre-Hearing Class: All individuals who:

- (1) are or will be detained pursuant to INA section 236(a);
- (2) are held in immigration detention in Massachusetts or are otherwise subject to the jurisdiction of the Boston Immigration Court, and
- (3) *have not* received a bond hearing before an immigration judge; and

Post-Hearing Class: All individuals who:

- (1) are or will be detained pursuant to INA section 236(a);
- (2) are held in immigration detention in Massachusetts or are otherwise subject to the jurisdiction of the Boston Immigration Court, and
- (3) *have* received a bond hearing before an immigration judge.

Members of the certified classes are entitled to receive bond hearings in which the Government must prove by clear and convincing evidence that the alien is a danger or by a preponderance of the evidence that the alien is a flight risk. Moreover, in those bond hearings, the immigration judge must consider the alien's ability to pay in setting a bond over \$1,500, as well as alternative conditions of release, such as GPS monitoring, that "reasonably assure the safety of the community and the alien's future appearances." **This injunction is applicable only to aliens detained in Massachusetts or otherwise subject to the jurisdiction of the Boston Immigration Court.**

The Government must provide a copy of the district court's order to all class members by December 13, 2019, and to all new members of the Pre-Hearing Class once ICE makes an initial determination to detain them pursuant to INA section 236(a). Enforcement and Removal Operations will provide the district court's order, along with a certificate of service, to currently detained class members by December 13, 2019. [REDACTED]

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Post-Hearing class members are entitled to a new bond hearing if they can demonstrate prejudice due to constitutional defects in the original bond hearing(s), but they may secure this new bond hearing only through the filing of individual habeas petitions.

OPLA attorneys should consider the following practice pointers:

- [REDACTED]

(b)(5)

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Thank you,

Ken Padilla

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