

JURISDICTION

A. Timing of Redetermination Requests

Redetermination requests must be made:

1. After DHS makes its initial custody determination. 8 C.F.R. §§ 1003.19(a), 1236.1(d). The DD initially sets bond. 8 C.F.R. § 1236.1(c). The DD must state reasons for the decision. *Matter of Daryoush*, 18 I&N Dec. 352, 353 (BIA 1982).

and

2. Before an administratively final order of deportation or removal. 8 C.F.R. §§ 1236.1, 1003.19(a); *Matter of Uluocha*, 20 I&N Dec. 133, 134 (BIA 1989); *Matter of Sanchez*, 20 I&N Dec. 176, 177 (BIA 1981).

B. General Jurisdiction for Redetermination Hearings

1. No charging document is required to be filed with the immigration court to commence bond proceedings. 8 C.F.R. § 1003.14(a); *Matter of Sanchez*, 20 I&N Dec. 223, 225 (BIA 1990).

2. *If the alien is in state or federal custody, even with a DHS detainer, the IJ does not have jurisdiction to hold a bond hearing where DHS has not set bond (even if removal proceedings have been initiated by the respondent). *Matter of Sanchez*, 20 I&N Dec. 223, 225 (BIA 1990).

3. *If the alien is released from custody, application to the IJ for redetermination of bond must be made within seven days of the date of release. 8 C.F.R. § 1236.1(d)(1). Thereafter, application for modification of bond or release may only be made to the DD. 8 C.F.R. § 1236.1(d)(2); *Matter of Chew*, 18 I&N Dec. 262, 263 (BIA 1982).

4. If there are changed circumstances, the DD may redetermine bond or revoke bond even when bond was earlier redetermined by IJ. *Matter of Sugay*, 17 I&N Dec. 637, 639-40 (BIA 1981). The DD may also redetermine or revoke bond after there is a final administrative order of removal. 8 C.F.R. § 1236.1(c)(9).

C. Location

The application for a bond redetermination hearing is made to one of the following offices, in the following order prescribed at 8 C.F.R. § 1003.19:

1. If the alien is detained, to the Immigration Court that has jurisdiction over the place of detention. 8 C.F.R. § 1003.19(c)(1);

2. To the Immigration Court that has administrative control over the case. 8 C.F.R. § 1003.13(c)(2); or,

3. To the Office of the Chief Immigration Judge for designation of the appropriate Immigration Court to accept and hear the application. 8 C.F.R. § 1003.13(c)(3).

D. Bars to IJ Jurisdiction

An IJ does not have jurisdiction to redetermine the conditions of custody imposed by the DHS with respect to the following aliens:

1. Aliens in exclusion proceedings. 8 C.F.R. § 1003.19(h)(2)(i)(A).
2. Arriving aliens in removal proceedings, including aliens paroled after arrival under INA § 212(d)(5). 8 C.F.R. § 1003.19(h)(2)(i)(B). An arriving alien is defined as “an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport.” 8 C.F.R. § 1001.1(q).
3. Aliens described in INA § 237(a)(4) of the Act [security and related grounds]. 8 C.F.R. § 1003.19(h)(2)(i)(C).
4. Aliens in removal proceedings subject to INA § 236(c)(1) (as in effect after expiration of the Transition Period Custody Rules). 8 C.F.R. § 1003.19(h)(2)(i)(D). The following aliens are subject to INA § 236(c)(1):
 - a. An alien who is inadmissible by reason of having committed any offense covered in INA § 212(a)(2);
 - b. An alien who is deportable by reason of having committed any offense covered in INA § 237(a)(2)(A)(ii), A(iii), B, C, or D;
 - c. An alien who is deportable under INA § 237(a)(2)(A)(i) [CIMT] on the basis of an offense for which the alien has been sentenced to a term of imprisonment of at least 1 year; and
 - d. An alien who is inadmissible under INA § 212(a)(3)(B) [terrorist activity] or deportable under INA § 237(a)(4)(B) [terrorist activity].
5. Aliens in deportation proceedings subject to INA § 242(a)(2) (as in effect prior to April 1, 1997, and as amended by section 440(c) of Pub. L. 104-132). 8 C.F.R. § 1003.19(h)(2)(i)(E).
6. Aliens who have an administratively final order of removal or deportation. 8 C.F.R. § 1236.1(d)(1). However, IJs do have jurisdiction to determine whether the DHS may continue to detain an alien after the 90-day removal period, even where there is no significant likelihood of removal in the reasonably foreseeable future, because the release of the alien “would pose a special danger to the public.” 8 C.F.R. § 1241.14(a)(2). Jurisdiction commences when the DHS files Form I-863, Notice of Referral to the Immigration Judge, with the Immigration Court having jurisdiction over the place of the alien’s custody. 8 C.F.R. § 1241.14(g).
7. Aliens in expedited removal proceedings under INA § 238. 8 C.F.R. § 1238.1(g)

An IJ does retain limited jurisdiction to determine whether an alien is “properly included” within 8 C.F.R. §§ 1003.19(h)(2)(i)(C), (D), and (E). See 8 C.F.R. § 1003.19(h)(3).

E. Jurisdiction Over Aliens Initially Screened for Expedited Removal Under INA § 235

An alien who is initially screened for expedited removal under INA § 235, but is subsequently placed in removal proceedings under INA § 240 (e.g. following a final positive credible fear determination) is eligible for a custody redetermination hearing before an IJ, unless he is within a class of aliens specifically excluded from the custody jurisdiction of IJs under 8 C.F.R. § 1003.19(h)(2)(i). Matter of X-K-, 23 I&N Dec. 731 (BIA 2005). Because an IJ lacks custody jurisdiction over arriving aliens pursuant to 8 C.F.R. § 1003.19(h)(2)(i)(B), only "certain other aliens," as designated by the Secretary of the DHS in his discretion (e.g. EWIs who have been in the United States for less than 14 days and are apprehended within 100 miles of the border, including coastal areas), will be eligible. See *id.*