

A New Calculus for the Measure of Mercy: Does the New Jersey Bail Reform Affect the Immigration Court Bond Hearings?

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The short answer is no, the New Jersey Bail Reform will not directly affect how the immigration courts determine immigration bonds. However, while the state criminal system is wholly distinct from the federal immigration system, there are increasing intersections of state law having unintended consequences in immigration proceedings. Under the Supremacy Clause of the US Constitution, federal law is the "Supreme Law of the Land," and states have no authority to regulate immigration enforcement. That said, there are a number of similar rationales between the new state bail reform and the existing bond determination criteria in the immigration court. This article outlines those similarities as well as the differences between the two. It is also important to note from a practical point of view that New Jersey bail reform has no impact on immigration detainees. An immigration detainer is the process by which Immigration and Customs Enforcement (ICE), a component of the Department of Homeland Security (DHS) may detain a non-citizen without a warrant, but only if ICE has "reason to believe" that the non-citizen "is likely to escape before a warrant can be obtained for his arrest."

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