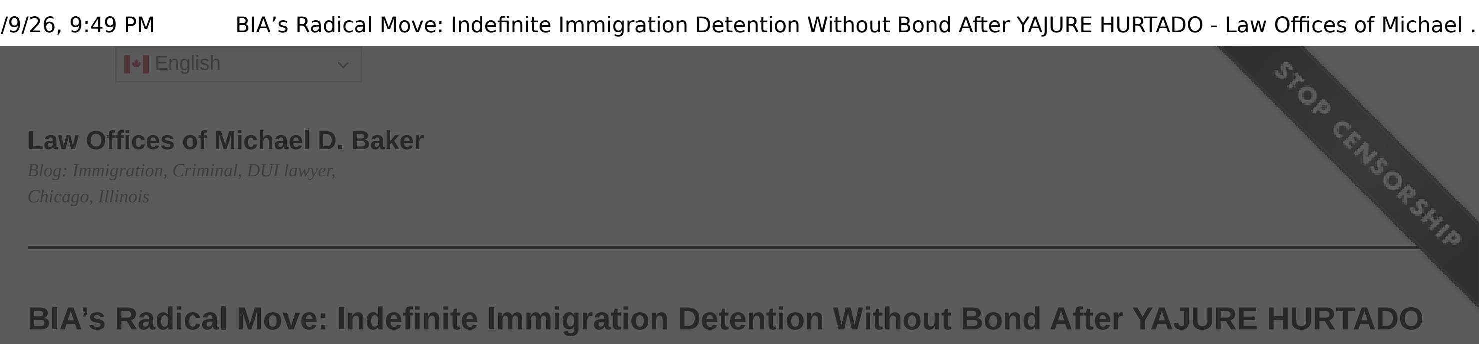

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BIA's Radical Move: Indefinite Immigration Detention Without Bond After YAJURE HURTADO

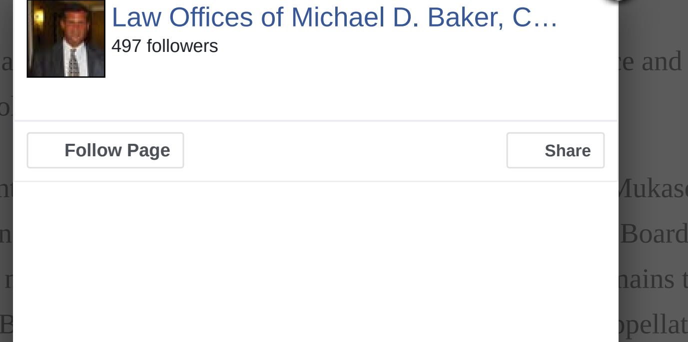
Posted on February 7, 2026 by Mike Baker

Breaking: BIA Eliminates Bond Hearings for Millions in *Matter of YAJURE HURTADO* –

Published September 5, 2025

On September 5, 2025, the Board of Immigration Appeals (BIA) issued one of its most controversial decisions in recent memory. In *Matter of YAJURE HURTADO*, the BIA ruled that Immigration Judges completely lack authority to conduct bond hearings for anyone present in the United States "without admission"—a category that includes millions of people who crossed the border without inspection, even decades ago.

This sweeping decision represents a[...]e and creates a constitutional crisis that federal courts are unlikely to to[...]


Law Offices of Michael D. Baker, C…
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Nearly all BIA members are appoin[...]Mukasey—with just two Holder Democrats left out of eighteen. Bon[...]Board fast-tracks cases involving detainees. The intent is to pressure r[...]ains tightly controlled, blocking any fair draw for immigrants. The B[...]ppellate body.

The Facts: A Venezuelan's Years-Long Wait for Justice

Jonathan Javier Yajure Hurtado, a Venezuelan citizen, crossed the U.S. border without inspection near El Paso in November 2022. USCIS granted him Temporary Protected Status (TPS) in 2024, but that status expired on April 2, 2025. Six days later, DHS issued a Notice to Appear charging him as inadmissible under INA § 212(a)(6)(A)(i) for being present without admission.

Crucially, DHS arrested Yajure Hurtado **on a warrant**—the exact trigger that normally gives Immigration Judges bond authority under INA § 236(a). The Immigration Judge denied bond, ruling he lacked jurisdiction because Yajure Hurtado was subject to mandatory detention under § 235(b)(2)(A). The respondent had been in the U.S. for almost three years and had previously received legal status, yet the BIA affirmed: no bond hearing, ever.

The BIA's Ruling

Immigration Judge's Authority on Bond Requests

English

The BIA **…igration Judges lack authority to grant bond to aliens present in the U.S. …ut admission, as mandated by the Immigration and Nationality Act (INA)**. The Board reviewed the case and re…d supplemental briefs specifically addressing the authority of Immigration Judges regarding bond hearings for individ… Yajure Hurtado's situation.

STOP CENSORSHIP

The Immigration Judge denied bond due to lack of jurisdiction under section 235(b)(2)(A) of the INA, even though the respondent had entered the U.S. without inspection in November 2022 and was detained only after his temporary protected status expired in April 2025—nearly three years later.

Statutory and Regulatory Framework Analysis

The BIA emphasized that **the authority of Immigration Judges is strictly defined by the INA and related regulations, which limit their jurisdiction over bond requests**. Key findings include:

- Immigration Judges can only adjudicate matters specifically delegated by the INA and the Attorney General
- Section 235 of the INA governs the detention of aliens who have not been admitted, mandating their detention during immigration proceedings
- The INA categorizes applicants for admission and specifies that those who are not admitted are subject to mandatory detention

Detention Categories Under th…

The BIA outlined how the INA crea… …ch with specific detention requirements:

- **Section 235(b)(1):** Includes arri… …bject to mandatory detention
- **Section 235(b)(2)(A):** Serves as… …early entitled to be admitted, also mandating detention
- **Section § 236(c):** Provides a different framework for aliens who are deportable, allowing for bond hearings under certain conditions. "The Attorney General shall take into custody any alien who is deportable by reason of having committed" these crimes. INA § 236(c)(1).

INA § 236(c) Mandatory Detention Applies To:
Aggravated felonies (murder, drug trafficking, major fraud)
Crimes involving moral turpitude (within 5 years of admission, 1-year+ sentence)
Controlled substance offenses (not single small marijuana)
Firearms offenses
Domestic violence, stalking, child abuse/neglect
Human trafficking
Espionage, sabotage, terrorism

No ... able for these categories.

STOP CENSORSHIP

The Board's Rejection of Respondent's Arguments

Time-Based Argument

The respondent argued that his prolonged presence in the U.S. without lawful status should exempt him from mandatory detention under section 235, claiming he cannot be considered "seeking admission" after residing in the U.S. for nearly three years. **The Board found this argument legally unsupported, as it creates ambiguity regarding his status and would undermine the statutory framework established by the INA.**

Legislative History and Intent

The BIA conducted an extensive analysis of legislative history, finding that it supports the interpretation that aliens present without admission are subject to mandatory detention:

- The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) changed the terminology from "entry" to "admission," affecting the rights of those entering without inspection
- Congress aimed to eliminate disparities in procedural rights between those who entered without inspection and those who presented themselves at ports of ...
- The legislative history confirms ... ed applicants for admission and thus subject to mandatory detention

Statutory Interpretation Metho...

The BIA emphasized that **the interp... NA) is complex due to its historical modifications and inter...**

- The INA consists of various legal provisions created and modified over time
- Statutory provisions must be read in context, not in isolation
- Immigration Judges cannot perform acts that are not specifically authorized by the INA

Definition of Applicants for Admission

The Board clarified that **aliens present in the U.S. without formal admission are considered applicants for admission under the INA**:

- An alien who has not been admitted is deemed an "applicant for admission"
- This includes those who have crossed the border unlawfully and have not been inspected
- Applicants remain in this status until they are clearly entitled to admission
- Aliens who unlawfully enter the U.S. remain applicants for admission and are subject to mandatory detention

The Board's Final Determination

Immigration Judges lack authority to grant bond hearings for applicants for admission who crossed unlawfully, regardless of the time elapsed since entry. The Board stated that holding otherwise would create an "incongruous legal

English

situation [...] evaded detection longer would receive better treatment than those who presented [...]selves at ports of entry.

STOP CENSORSHIP

The BIA noted significant consequences for violating the INA:

- Violations can lead to significant consequences for aliens seeking relief from removal
- Certain aliens may face a rebuttable presumption of asylum ineligibility if they did not use lawful pathways to enter the U.S.
- Aliens not inspected and admitted are ineligible for adjustment of status under section 245(a) of the INA
- Asylum applicants must file within one year of their last arrival to be eligible for relief

What This New Case Actually Does: Mandatory Detention for All EWI Cases

YAJURE HURTADO creates a rule of mandatory detention for nearly all noncitizens in removal proceedings who entered the United States without inspection—regardless of criminal history, community ties, or length of time inside the country.

The BIA's Sweeping Rule

The Board holds that anyone presen[...] uninspected entrants, EWI), is classified as an "applicant for admis[...] section, Immigration Judges **cannot conduct bond hearings** or [...]ly exceptions involve parole granted directly by DHS or the Atto[...]ion to consider release or conditions.

> ### Legislative History Confirm[...]ion
>
> The legislative history of INA § 235(b) makes clear—particularly in H.R. Rep. No. 104-469, pt. 1, at 225–226, 229 (1996)—that Congress intended mandatory detention without bond hearings for applicants for admission, including those present without lawful admission.
>
> In House Judiciary Committee Report H.R. Rep. No. 104-469, pt. 1, at 225–226 (1996), Congress replaced the concept of "entry" with "admission" and clarified that aliens who enter without inspection are not entitled to more rights than those who present themselves for inspection at a port of entry.
>
> **This House Report states:**
>
> > *"…the pivotal factor in determining an alien's status will be whether or not the alien has been lawfully admitted." H.R. Rep. No. 104-469, pt. 1, at 225.*
>
> **It specifies further:**

English

> *…such aliens will not be considered to have been admitted, and thus, must be subject to a ground of inadmissibility, rather than a ground of deportation, based on their presence without admission." Id. at*

STOP CENSORSHIP

The report discusses the transition of bond authority for deportable aliens and clarifies that this does not alter Congress's intent to apply mandatory detention to those not lawfully admitted.

> *"…section 236(a) restates the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States."*

Key Takeaways

- The legislative history confirms that Congress intended to eliminate the greater procedural and substantive rights (such as bond hearings) previously available to those who entered without inspection, compared to those inspected at a port of entry.
- After IIRIRA, applicants [...]ction—are covered by the mandatory detention prov[...]ation Judges are not authorized.
- The challenge must be on[...]nds.

How Is This Different From th[...]

This is where many practitioners get confused. The Laken Riley Act and YAJURE HURTADO work differently:

- **The Laken Riley Act** creates mandatory detention for EWI and other noncitizens who have been *arrested, charged, or convicted* of specified offenses, barring them from bond and requiring ICE to detain them.
- **YAJURE HURTADO** makes detention mandatory for **all EWIs in removal proceedings** under INA § 235(b)(2)(A)—not just those with crimes. This case applies even to those who have lived in the U.S. for years with no criminal history.

Under this new case, the **mere fact of entry without inspection is enough** to bar Immigration Judges from considering release on bond. The case declares that, while proceedings are pending, Immigration Judges "lack authority to hear bond requests or to grant bond" for these individuals.

Practical Consequences

- **No bond hearings:** Individuals who crossed the border without inspection cannot ask an Immigration Judge for a bond, even if they've never been arrested, have U.S. citizen family, or strong community ties.
- **Mandatory ICE detention:** They are held in detention for the entire period of their case, unless DHS (not the judge) grants parole for humanitarian purposes—a rare event.

English

- **Yea**[...]his ruling allows ICE to detain people for months or years without judicial revi[...]ed entirely on the manner of initial entry decades ago.

STOP CENSORSHIP

Bottom Line: YAJURE HURTADO means **mandatory detention, no possibility of judicial release on bond, for al[...] all people placed in removal proceedings who entered without inspection**, unless separately eligible for humanitarian parole by DHS or the Attorney General.

The Laken Riley Act: A Critical Distinction You Need to Understand

To fully grasp the devastating impact of YAJURE HURTADO, you must understand how it differs from the Laken Riley Act—and why this distinction matters enormously for your clients.

What the Laken Riley Act Actually Does

The Laken Riley Act, signed into law in January 2025, **expands mandatory detention under INA § 236(c)** to include certain noncitizens who are:

- Present in the United States[...]
- Have been *arrested, charge*[...]
  - Theft (including shoplif[...]
  - Assault on law enforcer[...]
  - Causing serious bodily [...]

Key Point: The Laken Riley A[...]duct to trigger mandatory detention.

Why YAJURE HURTADO Is Far More Dangerous

While the Laken Riley Act targets EWI individuals with criminal issues, **YAJURE HURTADO eliminates bond hearings for ALL EWI cases under INA § 235(b)(2)(A)**—regardless of criminal history. Here's the critical difference:

Scenario	Laken Riley Act	YAJURE HURTADO
EWI + No Criminal History	**Bond Hearing Available**	**NO BOND HEARING**
EWI + Old Arrest (No Conviction)	**Mandatory Detention**	**NO BOND HEARING**
EWI + U.S. Citizen Children	**Bond Hearing Available**	**NO BOND HEARING**
EWI + 20 Years in U.S.	**Bond Hearing Available**	**NO BOND HEARING**

The BIA's Flawed Logic on Laken Riley

English

In Y the respondent argued that if all EWI individuals were already subject to man detention under § 235(b)(2)(A), **why would Congress need to pass the Laken Riley Act to detain some o ?** This is actually a powerful argument that the BIA dismisses too quickly.

STOP CENSORSHIP

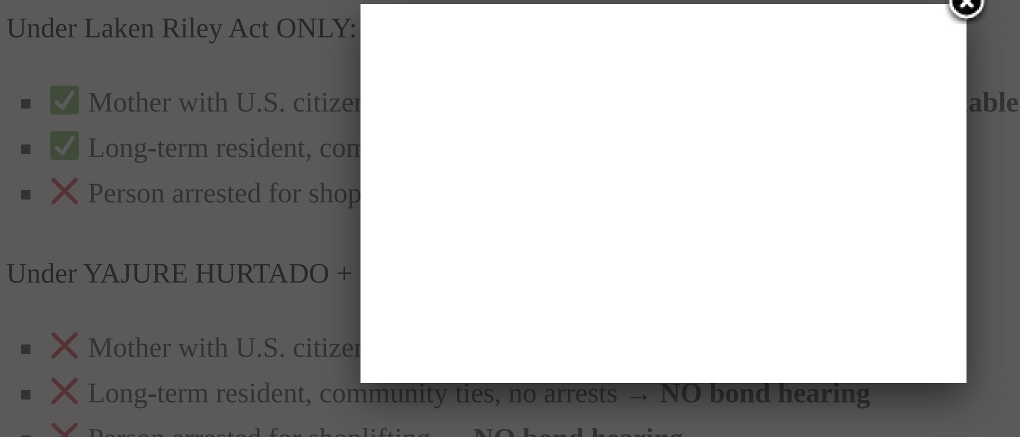
The BIA responds that the Laken Riley Act doesn’t “alter or undermine” § 235(b)(2)(A), but this misses the point entirely. The real question is: **If Congress believed all EWI individuals were already detained under § 235(b)(2)(A), why create redundant detention authority?**

The Logical Problem

- Congress specifically targeted *criminal* EWI cases in the Laken Riley Act
- This suggests Congress believed *non-criminal* EWI cases were eligible for bond
- Otherwise, why distinguish between criminal and non-criminal EWI cases at all?

Practical Impact: Who Gets Hurt Most

The YAJURE HURTADO decision creates a perverse result where people with **zero criminal history** face the same mandatory detention as those arrested for crimes:



Under Laken Riley Act ONLY:

- ✅ Mother with U.S. citize **able**
- ✅ Long-term resident, con
- ❌ Person arrested for shop

Under YAJURE HURTADO +

- ❌ Mother with U.S. citize
- ❌ Long-term resident, community ties, no arrests → **NO bond hearing**
- ❌ Person arrested for shoplifting → **NO bond hearing**

Why This Matters for Constitutional Challenges

The distinction between Laken Riley and YAJURE HURTADO provides powerful ammunition for constitutional challenges:

1. **Congressional Intent:** The Laken Riley Act shows Congress distinguished between criminal and non-criminal EWI cases, undermining the BIA’s broad interpretation
2. **Equal Protection:** YAJURE HURTADO creates arbitrary distinctions where manner of entry (not dangerousness) determines detention
3. **Due Process:** Indefinite detention without individualized hearings violates constitutional norms, especially for non-criminal cases

Bottom Line: The Laken Riley Act was designed to detain dangerous individuals who committed crimes. YAJURE HURTADO sweeps far broader, eliminating bond hearings for everyone who entered without inspection—including those who pose no danger and have deep community ties. This distinction will be crucial in federal court challenges.

English

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The Government's Own Contradiction

Remarkably, the BIA acknowledges that "for years Immigration Judges have conducted bond hearings for aliens who entere the United States without inspection." They even admit that in 1997, the INS officially stated that such individuals "will be eligible for bond and bond redetermination."

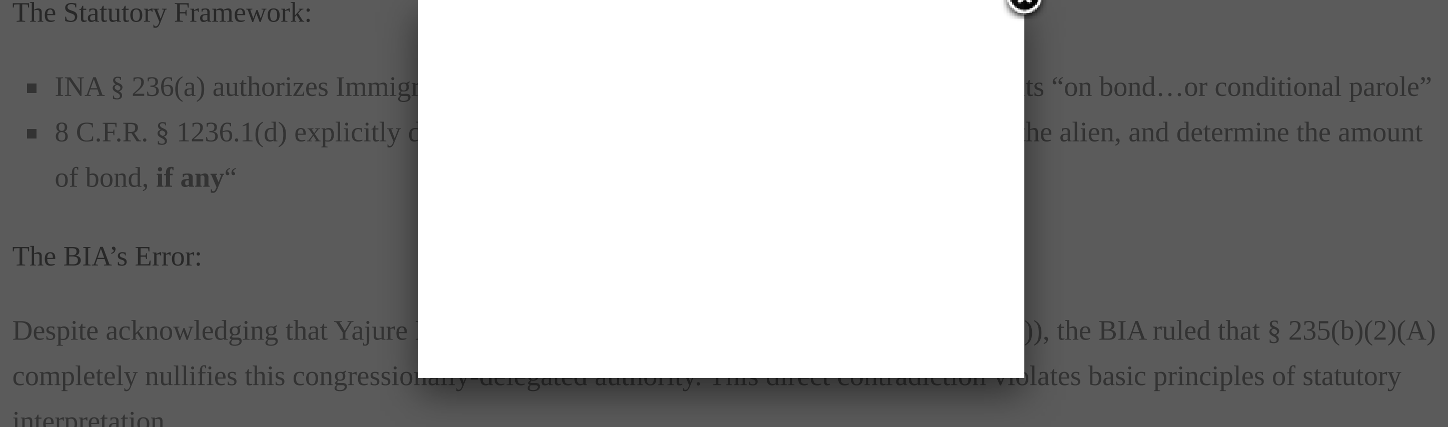
If the BIA is correct that § 235(b)(2)(A) eliminates bond hearings entirely, this raises uncomfortable questions:

- Why did the government conduct thousands of illegal hearings for 28 years?
- Why did Congress need to pass the Laken Riley Act to expand detention if everyone was already detained?
- How can decades of established practice suddenly become unauthorized?

Three Fatal Legal Errors

1. Violation of Clear Congressional Delegation

The Statutory Framework:



- INA § 236(a) authorizes Immigr ts "on bond…or conditional parole"
- 8 C.F.R. § 1236.1(d) explicitly c he alien, and determine the amount of bond, **if any**"

The BIA's Error:

Despite acknowledging that Yajure)), the BIA ruled that § 235(b)(2)(A) completely nullifies this congressio lates basic principles of statutory interpretation.

2. Failure to Apply Constitutional Avoidance

When a statute can be interpreted multiple ways, courts must choose the interpretation that avoids serious constitutional problems. In *Zadvydas v. Davis*, the Supreme Court applied this principle to avoid indefinite detention by reading implicit time limits into detention statutes.

YAJURE HURTADO's Violation:

The BIA chose the **most extreme interpretation possible**—indefinite detention without any judicial review based solely on manner of entry. They had several constitutional alternatives:

- Allow bond hearings after reasonable periods (like the Ninth Circuit's six-month rule)
- Preserve § 236(a) authority for warrant-based arrests
- Read implicit time limits into § 235(b)(2)(A) detention

Instead, they embraced the interpretation that creates the most serious constitutional problems.

3. Crea[English] Detention Without Due Process

STOP CENSORSHIP

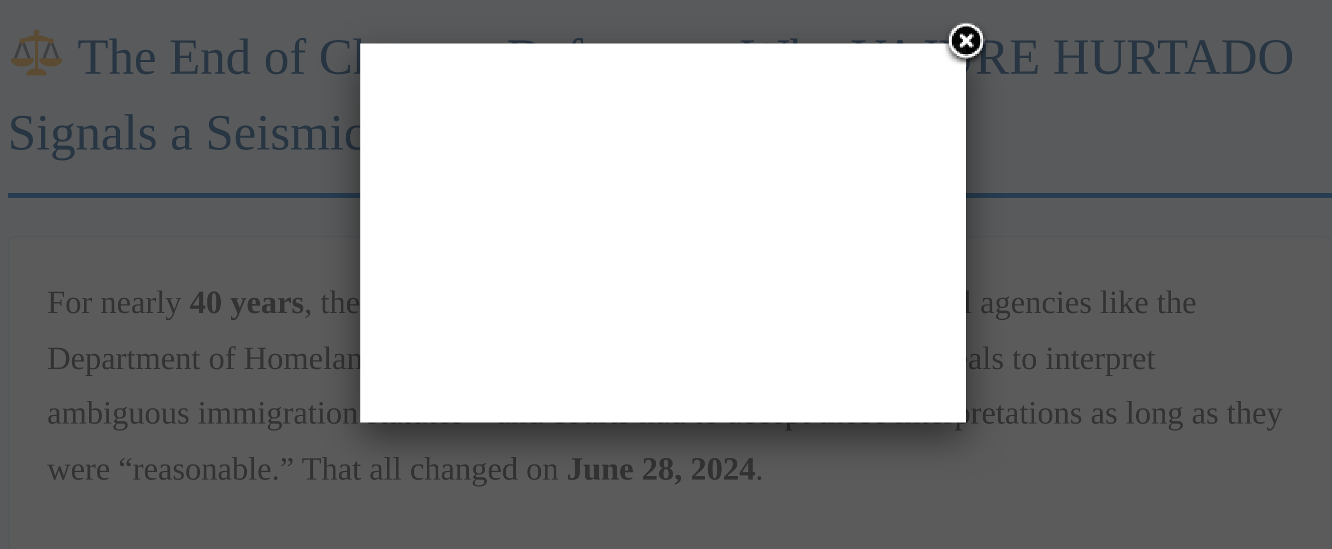
YAJURE HURTADO authorizes permanent detention without hearings for individuals who may have:

- Lived in the U.S. peacefully for decades
- U.S. citizen children and spouses
- No criminal history or flight risk
- Strong community ties and employment

This creates exactly the due process violation the Supreme Court warned against in *Zadvydas*—indefinite detention based on status rather than individual dangerousness or flight risk.

The Absurd Result:

- **Visa overstay** (admitted then stayed): Gets bond hearing under § 236(a)
- **30-year resident** who crossed as a child: No hearing, ever



⚖️ The End of Cl... RE HURTADO Signals a Seismic...

For nearly **40 years**, the ... agencies like the Department of Homelan... als to interpret ambiguous immigration ... retations as long as they were "reasonable." That all changed on **June 28, 2024**.

Loper Bright Enterprises v. Raimondo (2024)

In ***Loper Bright Enterprises v. Raimondo***, 603 U.S. 369 (2024), the Supreme Court **overruled *Chevron* deference** in a landmark 6-3 decision written by Chief Justice John Roberts. The Court held that the Administrative Procedure Act (APA) requires courts to "exercise their independent judgment" when deciding whether an agency has acted within its statutory authority—**not defer to the agency's interpretation** simply because a statute is ambiguous.

> *"Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority… agencies have no special competence in resolving statutory ambiguities.* ***Courts do."***

English

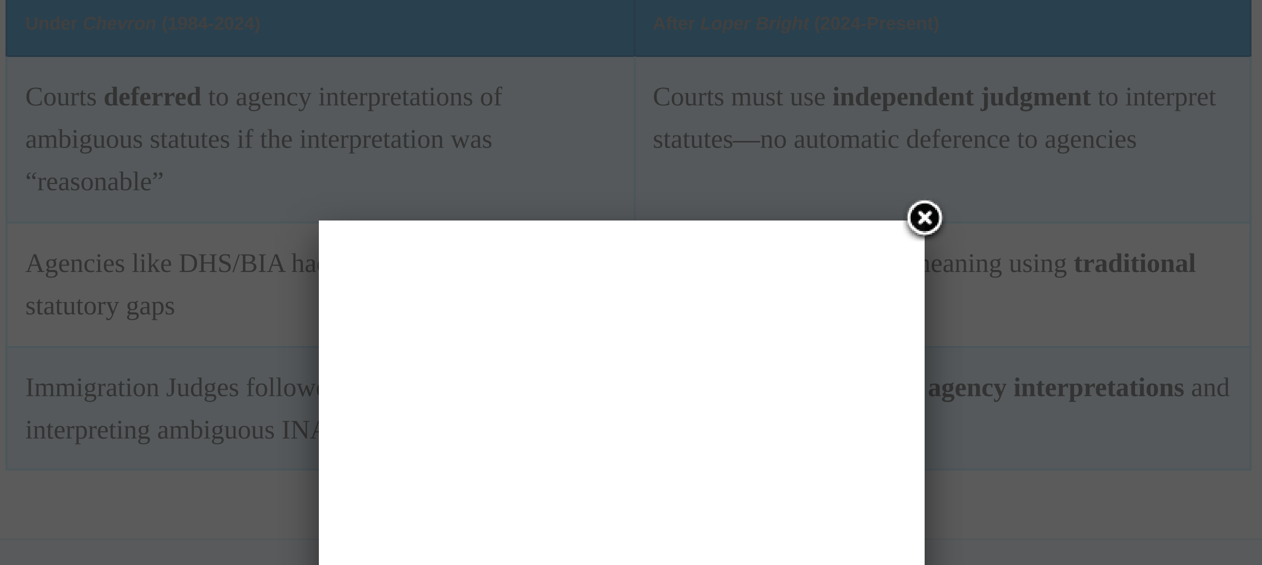
...n Roberts, Loper Bright, 603 U.S. at 384-85

STOP CENSORSHIP

Read the Full Decision:

Supreme Court Opinion: *Loper Bright Enterprises v. Raimondo* (PDF)

What Changed: Before vs. After *Loper Bright*



Under *Chevron* (1984-2024)	After *Loper Bright* (2024-Present)
Courts **deferred** to agency interpretations of ambiguous statutes if the interpretation was "reasonable"	Courts must use **independent judgment** to interpret statutes—no automatic deference to agencies
Agencies like DHS/BIA ha... statutory gaps	...eaning using **traditional**
Immigration Judges follow... interpreting ambiguous INA...	...**agency interpretations** and

⚡ How *Loper Bright* Applies to YAJURE HURTADO

YAJURE HURTADO was decided in the **post-*Loper Bright* world**, and the BIA's analysis reflects this seismic shift. The Board explicitly rejected the respondent's argument that decades of agency practice (allowing bond hearings for EWI cases) should control statutory interpretation. Under *Chevron*, that longstanding practice might have carried significant weight. **Not anymore.**

The BIA's *Loper Bright* Analysis

In footnote 6, the BIA acknowledged that for years, Immigration Judges conducted bond hearings for EWI aliens, and the INS's 1997 rule stated these individuals "will be eligible for bond." But the Board held this practice **cannot override explicit statutory text**:

> *"The Supreme Court in* Loper Bright *made that statement specifically with respect to judicial interpretation of a 'doubtful and ambiguous law.' As explained above, the statutory text of the INA*

English

and ambiguous' but is instead ***clear and explicit*** *in requiring mandatory detention."*

STOP CENSORSHIP

⚠️ **Translation:** The BIA used *Loper Bright* to say that INA § 235(b)(2)(A)'s mandatory detention language is so clear that **no deference to agency practice matters**. The plain text controls—period.

⚖️ The Double-Edged Sword: Why *Loper Bright* Cuts Both Ways

While *Loper Bright* allowed the BIA to eliminate bond hearings by reading the statute literally, it also creates **powerful opportunities for constitutional challenges**:

✅ Opportunities for Advocates

- **No more BIA defere**... ns without automatically deferring
- **Constitutional avoi**... tional problems—YAJURE HURTADO ...
- **Independent review**... their own readings of INA § 235(b)(2)(A) ...
- **Equal protection ar**... on between EWI and visa overstays without deferring to agency justifications

⚠️ The Risks

- **Conservative circuits emboldened:** Anti-immigrant judges in circuits like the Fifth can impose even harsher interpretations
- **Loss of favorable precedent:** Past BIA decisions that helped immigrants may be more vulnerable to challenge
- **Litigation uncertainty:** Different circuits may reach wildly different conclusions on the same statutory language

The Path Forward: Constitutional Challenges in a Post-*Loper Bright* World

English

...entally changes how federal courts will review YAJURE HURTADO. Rather t... deferring to the BIA's interpretation, courts must independently decide whether § 235(b)(2)(A) truly eliminates all bond authority—and whether such an interpretation violates the Constitution.

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Key Arguments for Litigation:

1. **Statutory Construction:** § 236(a) and § 235(b)(2)(A) must be read together—courts can harmonize rather than eliminate bond authority
2. **Constitutional Avoidance Canon:** When two interpretations exist, courts must choose the one that avoids serious constitutional problems (indefinite detention without review)
3. **Due Process:** *Zadvydas v. Davis* requires implicit time limits on detention to avoid constitutional violations
4. **Equal Protection:** Treating 20-year residents with families identically to recent border crossers is constitutionally suspect

Bottom Line: ***Loper Bright* empowers federal courts to reject YAJURE HURTADO's extreme interpretation on both s... ...g any deference to the BIA's reading. This is th...**

The DHS Power Play: How § 235(b) Detention Actually Works

Source: This section draws from the comprehensive *Practice Advisory: Detention under INA § 235(b): The Statutory Scheme and Strategies for Release* published by the **American Immigration Council** and **The Legal Aid Society** (September 2025).

Download the Full Practice Advisory (PDF)

English

The [obscured] under INA § 235(b) has changed dramatically. Understanding the distinction be[obscured] § 235(b) and § 236(a) detention is now **mission-critical** for every immigration practitioner.

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🔴 The Critical Distinction: § 235(b) vs. § 236(a)

INA § 235(b) Detention	INA § 236(a) Detention
NO statutory right to bond hearing before an IJ	**YES** – right to bond hearing before an IJ
NO eligibility for administrative bond from DHS	**YES** – can request bond from DHS
Only release option: Parole under INA § 212(d)(5)	Multiple release options: bond, parole, recognizance
Applies to "applicants for admission"	Applies to those arrested in interior on warrant
MANDATORY detention	**DISCRETIONARY detention**

⚠️ **CRITICAL CHANGE:** The number of noncitizens detained under INA § 235(b) has increased **exponentially** during the second Trump administration. Supreme Court and agen[obscured] decisions in 2018, 2019, and 2025 have expanded the scop[obscured] previously been subject to § 236(a) with full bond rights.

📋 Who Falls Under § 2[obscured]

- **Arriving noncitizens** pre[obscured]
- **Anyone in expedited removal** who passes a credible fear interview
- **Anyone who entered without inspection (EWI)** — regardless of how long ago
- **Anyone present without admission** — even if they've lived here for decades
- **Parolees** whose parole has expired or been revoked

💡 **Key Insight:** Despite the "mandatory" designation of § 235(b) detention, DHS **retains authority** to release individuals on parole under INA § 212(d)(5). This is your client's lifeline — but recent policies have severely restricted its use.

English

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🛡 Your Client's Secret Weapons: Parole, Habeas & Due Process Cl... s

Even when bond hearings are unavailable, practitioners have **multiple tools** to fight for client release. Here's your tactical arsenal:

1 Parole Requests Under INA § 212(d)(5)

For clients detained under § 235(b), parole is often the **only administrative avenue** for release. ICE Field Office Directors retain discretionary authority to grant parole for:

- **Urgent humanitarian reasons** — serious medical conditions, pregnancy, family emergencies
- **Significant public benefit** — witnesses in legal proceedings, asylum seekers with strong cases
- **Individuals who are neither flight risks nor dangers** to the community

⚠ **Reality Check:** Recent T... parole grants. The January 2025 executive orders effecti... rs should **document everything** and prepare for d...

2 Habeas Corpus Petiti...

When administrative remedies fail, **federal habeas corpus** remains the most powerful tool. File in the district where your client is detained.

📝 Habeas Petition Checklist — Claims to Raise:

- **INA Violation:** Client is not properly subject to § 235(b) detention
- **APA Violation:** Unreasonable delay in parole adjudication
- **Accardi Doctrine:** ICE failed to follow its own parole policies
- **Procedural Due Process:** No individualized hearing before neutral arbiter
- **Substantive Due Process:** Detention unreasonable given flight risk/danger assessment
- **Prolonged Detention:** Constitutional violation after 6+ months without review

3 Due Process Claims — Your Constitutional Shield

English

The … arantees **both substantive and procedural due process** to detained noncitizen… arguments:

STOP CENSORSHIP

- **Procedural due process** requires individualized hearings before a neutral decision-maker to justify continued detention
- **Substantive due process** prohibits detention that is arbitrary, unreasonable, or punitive
- **Prolonged detention** without review violates due process — courts have found violations after 6-24 months depending on circuit
- **Absence of individualized assessment** of dangerousness or flight risk is constitutionally deficient

✅ **Winning Argument:** Emphasize that your client has **no criminal history**, **strong community ties**, and **no individualized finding** of dangerousness. The government’s blanket policy of detention without any assessment violates fundamental due process principles.

⚖️ Distinguishing M… Vin

The BIA’s decision in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), created a framework that practitioners can use to **distinguish their clients’ cases** and argue for bond eligibility.

🎯 Key Factors for Distinguishing Q. Li:

- **Recency of Entry:** Q. Li involved someone apprehended *shortly after* crossing the border. If your client entered years or decades ago, argue they are not “in the process of entering”
- **Proximity to Border:** Q. Li was arrested near the border. Interior apprehensions should trigger § 236(a), not § 235(b)
- **Warrant vs. Warrantless Arrest:** If your client was arrested *on a warrant*, argue this indicates § 236(a) detention authority
- **Prior Parole Status:** Argue that prior parole under INA § 212(d)(5) does not automatically subject someone to § 235(b) upon re-detention

English

...ocation: If your client was first encountered in the *interior* of the U.S. — not a... ...r the border — § 235(b) should not apply

STOP CENSORSHIP

💡 **Practice Tip — DHS's Burden of Proof:**

DHS must provide **evidence** establishing that a noncitizen is properly detained under § 235(b). If DHS fails to meet this burden, the Immigration Judge should **not** require the noncitizen to prove their detention status. The lack of evidence from DHS supports arguments for bond eligibility.

⚠️ Watch Out: Collateral Consequences

WARNING: Arguments for bond eligibility may affect your client's eligibility for **other immigration benefits**. Before arguing against § 235(b) classification, ensure your bond arguments won't negatively impact:

- Adjustment of status eligi...
- Parole-based benefits
- Asylum filing deadlines (1...

Coordinate your bond strateg...

🏛️ Circuit Court Victories: Where Courts Have Ordered Bond Hearings

Despite the government's aggressive detention policies, **federal courts across the country** have ordered bond hearings for individuals detained under § 235(b). Here's the circuit-by-circuit breakdown:

Circuit	Key Holdings	Detention Period
First Circuit	Recognized as-applied due process challenges; indefinite detention violates substantive due process	12-17 days: no violation Prolonged: case-by-case

English

STOP CENSORSHIP

Second Circuit	9-10 months of detention violated due process; ordered bond hearings	**9-10 months violation**
Third Circuit	Detention unreasonable after 10-17 months; bond hearings ordered	**10-17 months = unreasonable**
Fourth Circuit	Similar findings; unreasonable detention after extended periods	**13-24 months = unreasonable**
Fifth Circuit	Split results; some courts found violations for 12+ months	Mixed — case dependent
Seventh Circuit	Strong procedural due process precedent; fertile ground for challenges	Developing — opportunity!
Eighth Circuit	Ordered bond hearing after 19 months; but recent ruling limits challenges	19 months = bond ordered
Ninth Circuit	Multiple cases ordering bond hearings for prolonged detentior	**6+ months = strong claims**

✅ **BREAKING NEWS —** [illegible] **n 100 federal judges** have now ruled **over 200 times** ag[illegible] policy. Judges appointed by **every president since Ronal**[illegible] found the policy unlawful or violative of due process.

📋 Step-by-Step: How to File a Habeas Petition Under 28 U.S.C. § 2241

When all else fails, **federal habeas corpus** is your client's constitutional lifeline. Here's your roadmap:

Step 1: Determine Proper Venue

File in the **federal district court** where your client is physically detained. The warden or facility administrator is typically the named respondent.

Step 2: Exhaust Administrative Remedies (Or Argue Futility)

English

- Document all parole requests and denials
- Show that administrative remedies would be futile given blanket detention policies
- Argue that constitutional claims need not be exhausted administratively

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Step 3: Draft Your Petition — Key Claims

🎯 Claims to Include:

- **Claim 1:** Petitioner is not subject to § 235(b) — should be under § 236(a) with bond rights
- **Claim 2:** APA violation — unreasonable delay in parole adjudication
- **Claim 3:** Accardi doctrine — ICE violated its own policies
- **Claim 4:** Procedural due process — no individualized hearing before neutral arbiter
- **Claim 5:** Substantive due
- **Claim 6:** Prolonged deter ion

Step 4: Request Specific

- **Immediate release** from
- **Constitutionally adequate bond hearing** within 7 days before a neutral arbiter
- **Government bears burden** of proving dangerousness/flight risk by clear and convincing evidence
- **Declaratory judgment** identifying proper statutory basis for detention
- **Injunction** against transferring petitioner during habeas proceedings
- **Custody determination** in district court rather than immigration court

Step 5: Request Emergency Relief

⚡ **Emergency Motion:** File a motion for temporary restraining order (TRO) or preliminary injunction seeking immediate release or bond hearing. Courts have inherent authority to release petitioners pending determination of merits.

English

S[illegible]e:

- Second Circuit: Bail allowed if "substantial claims" and "extraordinary circumstances"
- First/Third Circuits: Require "extraordinary circumstances" — health issues, unusual delays
- Consider: health complications, credible claims to citizenship, length of detention

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✅ **WINNING STRATEGY:** Federal district courts have been **overwhelmingly receptive** to habeas challenges against the mandatory detention policy. As of October 2025, courts have ruled against the government **over 200 times**. File aggressively, document everything, and emphasize your client's individual circumstances.

Full Resource: For comprehensive guidance, templates, and additional case citations, download the complete *Practice Advisory: Detention under INA § 235(b)*:

Download Full Practice Advisory (PDF)

Strategic Litigation Opp

Federal Habeas Corpus (28 U.S

Federal district courts retain jurisdic[illegible] tention. Key arguments:

1. **Procedural Due Process:** *Mathews v. Eldridge* requires individualized hearings when fundamental liberty is at stake
2. **Substantive Due Process:** Indefinite detention based solely on manner of entry lacks rational basis
3. **Constitutional Avoidance:** Courts must interpret § 235(b)(2)(A) to preserve some form of judicial review

Target Cases:

- Anyone detained over six months without a bond hearing
- Long-term residents with strong community ties
- Individuals with U.S. citizen family members
- Those who previously held legal status

Circuit Court Appeals

The Seventh Circuit presents particularly fertile ground for challenge:

- Strong history of applying constitutional avoidance principles
- Emphasis on procedural due process
- No binding precedent supporting YAJURE HURTADO's extreme position

English

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Practical Guidance for Practitioners

Immediate Actions

1. **File Habeas Petitions:** Any client detained over six months should file 28 U.S.C. § 2241 petitions in federal court
2. **Preserve Arguments:** Continue requesting bond hearings to preserve appellate rights
3. **Document Constitutional Violations:** Build records showing individual hardship, family separation, and lack of dangerousness

Constitutional Arguments

Focus on constitutional violations rather than statutory interpretation:

1. **Due Process:** Emphasize that detention without individualized hearings violates fundamental fairness
2. **Equal Protection:** Highlight the arbitrary distinction between visa overstays and border crossers
3. **Separation of Powers:** Argue that complete elimination of judicial review exceeds executive authority

Why This Decision Won’t Survive Federal Court Review

The BIA’s position represents the **m**
. The Ninth Circuit has applied
constitutional avoidance to require b
ve recognized constitutional limits
on prolonged detention.

In *Jennings v. Rodriguez*, the Supre
stion of whether indefinite detention
violates due process. More importar
e could authorize indefinite
detention, courts must read implicit

Conclusion: A Decision Destined to Fall

Matter of YAJURE HURTADO represents the BIA at its worst—ignoring clear congressional delegation, violating constitutional avoidance principles, and creating the exact type of indefinite detention the Supreme Court has repeatedly warned against.

The decision’s fundamental flaws make it exceptionally vulnerable to constitutional challenge. Federal courts that have spent decades limiting immigration detention authority are unlikely to accept the BIA’s claim that Congress intended to authorize permanent detention without review based solely on decades-old border crossings.

For Illinois practitioners and immigration attorneys nationwide, this decision presents both a crisis and an opportunity. While YAJURE HURTADO threatens to strip away basic due process rights for millions, its legal vulnerability creates multiple avenues for successful federal court challenges.

The key is to frame these challenges not as immigration law disputes, but as fundamental constitutional questions about the limits of government detention power—an area where federal courts are most protective of individual rights.

English

The fig[illegible] URTADO starts now. Armed with strong constitutional arguments and decades [illegible]trary precedent, practitioners have every reason to expect federal courts will reject this extreme interpretation and res[illegible] bond hearings that have been a cornerstone of immigration due process for nearly three decades.

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This analysis is for educational purposes and does not constitute legal advice. Practitioners should consult current case law and local practice before filing habeas petitions or other challenges to immigration detention.

Download the Decision

Read the complete BIA decision for yourself:

Download Matter of YAJURE HURTADO (PDF)

UPDATE: Federal Courts Overwhelmingly Reject YAJURE HURTADO's Mandatory Detention Interpretation

Posted: *November 1, 2025*

The federal judiciary is speaki[illegible] when YAJURE HURTADO was decided. In a stunning leg[illegible] **[illegible]00 federal judges have now ruled at least 200 times** that [illegible]licy—based on the same statutory interpretation adopted in YAJURE HURTADO—appears to violate immigrants' constitutional rights or is simply illegal.

The Numbers Tell the Story

- **200+ rulings** against the mandatory detention policy since July 2025
- **100+ federal judges** have rejected the administration's interpretation
- Judges appointed by **every president since Ronald Reagan**—including **12 Trump-appointed judges**
- **Only 2 judges** (one Obama appointee, one Trump appointee) have sided with the government

Federal judges across ideological lines have explicitly stated what legal scholars and advocates warned from day one: treating longtime U.S. residents as "applicants for admission" subject to mandatory detention without bond hearings is a dangerous misreading of immigration law that violates due process. As U.S. District Judge Richard Boulware (an Obama appointee) ruled, **"The overwhelming majority of district courts across the country… have found [this] statutory interpretation incorrect and unlawful."**

English

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⚠️ **What This Means:** Even Trump-appointed judges like Kyle Dudek (Florida), Terry Doughty (Louisiana), and Jason Pulliam (Texas) have rejected this interpretation, finding it strips individuals of basic constitutional protections. Judge Pulliam specifically ruled that detaining someone without an "individualized assessment" of dangerousness violates due process—the exact concern we raised in our original analysis.

This judicial consensus vindicates the constitutional arguments we outlined when YAJURE HURTADO was first issued. The Board of Immigration Appeals may have adopted this extreme reading, but **federal courts with life tenure and constitutional authority aren't buying it**. The administration has begun appealing these decisions to circuit courts, but the sheer volume and bipartisan nature of these rejections suggests appellate judges will face overwhelming pressure to side with constitutional principles over administrative overreach.

The Bottom Line: YAJURE HURTADO's mandatory detention interpretation is collapsing under judicial scrutiny nationwide. For Illinois practitioners and advocates, this means habeas c[illegible]ous petitions under 28 U.S.C. § 2241 challenging d[illegible] interpretation battle is far from over, but the constituti[illegible] coast to coast.

Read the Full Report:

POLITICO: "More than [illegible]s mandatory detention policy"
(October 31, 2025)

Kyle Cheney on X/Twitter:

Kyle Cheney's Twitter thread on 100+ judges ruling against mandatory detention

COMPREHENSIVE UPDATE: Fifth Circuit Mandatory Detention Ruling

Updated: Saturday, February 7, 2026, 12:51 PM CST

The Ruling

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On February 6, 2026, a divided Fifth Circuit panel delivered a seismic shift in immigration detention law. In a 2-1 deci[sion] authored by Judge Edith Jones (Reagan appointee) and joined by Judge Kyle Duncan (Trump appointee), the court held that the Trump administration possesses authority under 8 U.S.C. § 1225(b)(2)(A) to indefinitely detain without bond any noncitizen arrested in the interior of the United States who originally entered without inspection—regardless of how many years or decades ago that entry occurred.

The consolidated cases—*Buenrostro-Mendez v. Bondi* and *Padron Covarrubias v. Vergara* (Case Nos. 25-20496 and 25-40701)—involved two Mexican nationals who entered the U.S. illegally in 2009 and 2001 respectively, had lived in the country for years, and were arrested by ICE in 2025. Both district courts granted habeas relief and ordered bond hearings, but the Fifth Circuit reversed and remanded for proceedings consistent with mandatory detention.

> **Official Case PDF:** https://www.ca5.uscourts.gov/opinions/pub/25/25-20496-CV0.pdf

The Court's Reasoning

The Fifth Circuit majority embrac[...] anyone "present in the United States who has not been admitte[...] (a)(1), and therefore subject to mandatory detention under § 12[...] rejected arguments that "seeking admission" requires active, pres[...] stead that an applicant for admission is necessarily someo[...] ues "seeking admission" while her application remains pending[...]

The majority dismissed 28 years [...] to statutory text, citing *Pereira v. Sessions* for the proposition that decades of consistent practice cannot vindicate an interpretation inconsistent with plain statutory language.

The Three Fatal Flaws

> **First: § 236(a) Nullification.** The government's interpretation renders § 236(a)—Congress's general provision authorizing bond hearings for warrant-based arrests—applicable to almost no one. If anyone who entered without inspection decades ago remains permanently subject to § 1225(b)(2)(A)'s mandatory detention, then § 236(a)'s bond framework becomes a dead letter for the vast majority of interior enforcement cases.
>
> **Second: Absurd Results.** The Fifth Circuit's holding treats a person who entered 30 years ago, raised U.S. citizen children, and was arrested in Chicago identically to someone apprehended at the border yesterday. Both face mandatory indefinite detention without any individualized assessment of flight risk, dangerousness, family ties, or equities.
>
> **Third: Border-Interior Collapse.** The ruling collapses the border-interior distinction that Congress carefully constructed through separate statutory frameworks. It treats interior enforcement—warrant-based arrests of

English

as if it were border processing, despite IIRIRA creating distinct provisions for each

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The 1997 INS Got It Right

Facing the same statutory text, the INS made the sensible choice in 1997: § 1235(b) applies to arriving aliens at or near the border; § 1226(a) applies to interior arrests on warrants, regardless of original entry method. This interpretation gave effect to both provisions, avoided absurdity, preserved the statutory structure, and held for 28 years until the Trump administration abandoned it in July 2025 following the BIA's decision in *Matter of Yajure Hurtado*. **Textualism** means reading statutes as a coherent whole, not nullifying entire provisions to privilege one over another.

Constitutional Avoidance Demands Reversal

Zadvydas v. Davis established that indefinite detention without individualized review raises "serious constitutional concerns," requiring courts to read implicit limits even into mandatory language. The Fifth Circuit's interpretation authorizes exactly what *Zadvydas* forbade—indefinite imprisonment without any assessment of flight risk or dangerousness.

The Immediate Cri ... ate Transfers

The Fifth Circuit's jurisdiction co ... ow rush to transfer detainees arrested anywhere in the United ... thin these three Fifth Circuit states. Once physically transferr ... hat mandates detention without bond and will not consider the 3, ...

Unless habeas petitions are filed **before physical transfer** to Fifth Circuit jurisdiction, detainees lose access to courts in other circuits that have overwhelmingly rejected mandatory detention and face indefinite confinement without any opportunity for bond hearings. This creates an urgent race: attorneys must file habeas corpus petitions immediately upon learning of potential ICE transfers to Texas, Louisiana, or Mississippi facilities. The window closes the moment a detainee crosses into Fifth Circuit territory.

The Core Question

The question isn't whether immigration enforcement matters—it's whether Congress in 1996 eliminated bond hearings for millions of people based solely on decades-old entry, regardless of U.S. citizen family ties, criminal history (or lack thereof), employment authorization, pending applications for relief, or any individualized assessment of flight risk or public safety.

The INS said **no** in 1997. Three thousand district judges said **no** since 2025. The Supreme Court should say **no** in 2026.

English

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⚖ FIFTH CIRCUIT DECISION ANALYSIS

THE EXTREME CONSERVATIVE OUTLIER

The Fifth Circuit's February 6, 2026 decision in *Buenrostro-Mendez v. Bondi* stands as a **radical outlier** in American immigration jurisprudence. The Fifth Circuit is widely recognized as **the most conservative federal appellate court in the nation**—frequently positioning itself **even to the right of the U.S. Supreme Court**. This reputation makes the Fifth Circuit the government's preferred forum for testing aggressive legal theories that face rejection elsewhere.

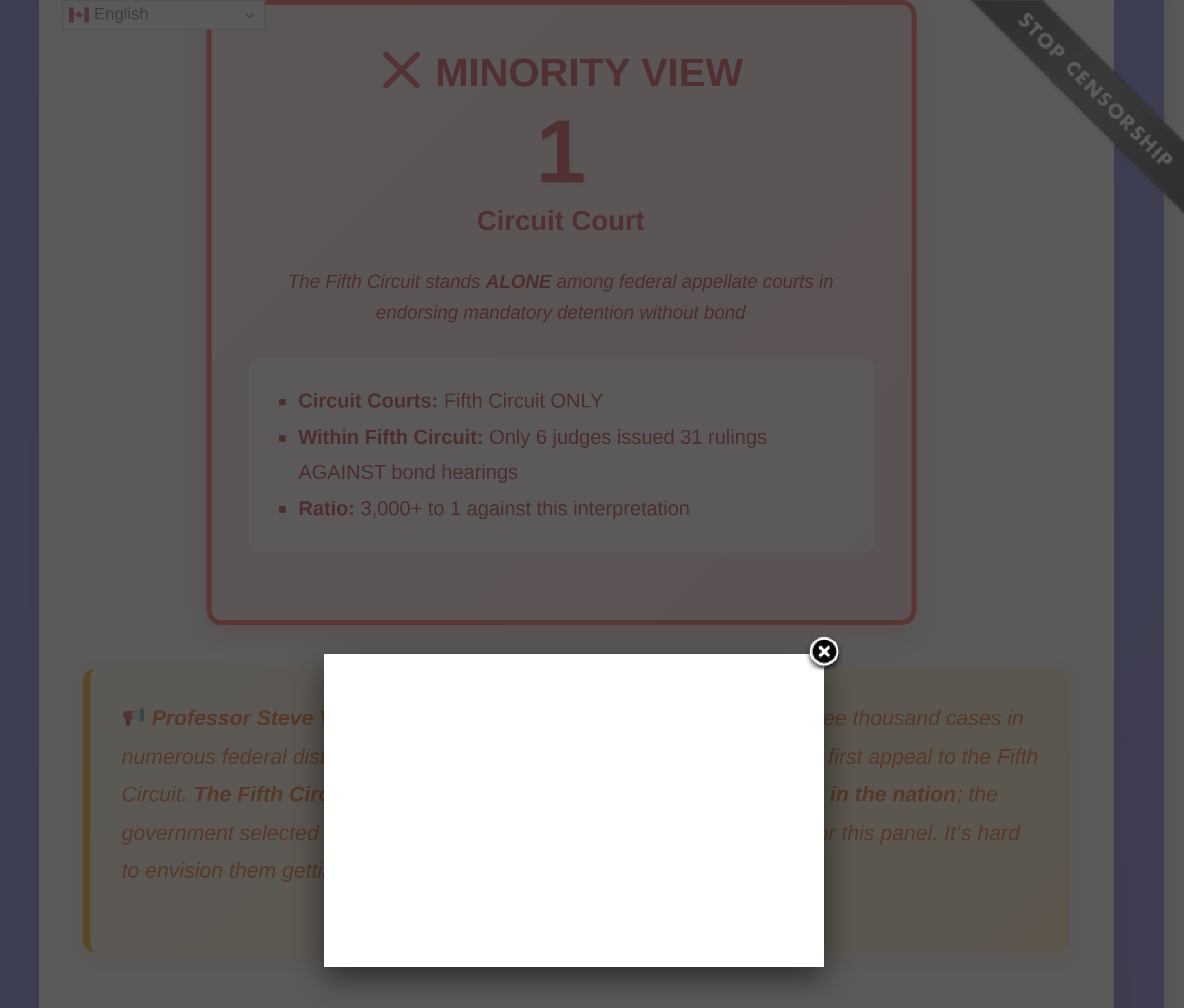
THE OVE ... E ISOLATED

3,000+

District Court Rulings

*Judges "across the ideological spectrum, including plenty of dyed-in-the-wool conservative stalwarts" have **rejected** the government's mandatory detention interpretation*

- **Nationwide:** 3,000+ favorable decisions
- **Within Fifth Circuit:** 29 judges issued 105 rulings FOR bond hearings
- **Seventh Circuit:** Preliminary rejection of government position



⚖️ MAJORITY vs. DISSENT: The Legal Battle

🔴 MAJORITY OPINION (Judges Jones & Duncan)

The "College Applicant" Analogy: Just as a college applicant "seeks admission" while their application is pending, an inadmissible noncitizen continues "seeking admission" indefinitely until granted lawful status.

Result: Mandatory detention under § 1225(b)(2)(A) without bond—regardless of 25-year presence, U.S. citizen children, or zero flight risk.

Practice Dismissed: 28 years of contrary executive practice (1997-2025) deemed irrelevant to statutory text.

English

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🟢 DISSENTING OPINION (Judge Douglas)

> ***"No one has ever thought that § 1225(b)(2)(A) means what the government and majority say it means—because it does not mean it."***

Five Fatal Flaws in Majority Reasoning:

1. **Independent Meaning:** "Seeking admission" has independent meaning from "applicant for admission"—Congress used both deliberately (surplusage canon)
2. **Active Conduct Required:** "Seeking" requires present, active conduct—not passive status from decades ago
3. **Laken Riley Act Rendered Superfluous:** Majority's reading makes the 2025 Act unnecessary since those noncitizens would already be detained
4. **Context Matters:** § 1225 titled "Inspection by immigration officers" and "...ng aliens" vs. § 1226 "Apprehension and...
5. **Supreme Court Al...** ...aliens seeking admission **into the** ... (§ 1226)

🚨 THE PROCEDURAL CHAOS

🎲 Geographic Detention Roulette

Government can **deliberately transfer detainees to Fifth Circuit facilities** (Texas, Louisiana, Mississippi) to strip bond eligibility. A person arrested in Chicago with deep community ties loses bond rights simply because ICE moved them to a Texas detention center.

⏱ The Habeas Petition Race

Attorneys must file habeas petitions **BEFORE** ICE transfers clients to Fifth Circuit states. Transfers often announced with only hours' notice. Only Fifth Circuit-licensed attorneys can file, creating resource bottlenecks.

English

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✕ Class Action Certification: Impossible

Geographic-dependent interpretation makes class certification virtually impossible. Forces thousands of individual petitions instead of coordinated litigation, creating inconsistent outcomes based on detention location rather than legal merits.

Government Non-Compliance

Reports indicate government is **simply ignoring district court bond orders** in anticipation of Fifth Circuit review, leaving detainees in legal limbo.

🏛 SUPRE[...] REVERSAL

Exp[...]ces)

Chief Justice [...] [...]ce Sotomayor

Justice Kagan Justice Jackson

Why Reversal Is Likely:

- **Textualism requires it:** Majority violates canons against surplusage and absurd results
- ***Jennings* controls:** Supreme Court already distinguished § 1225(b) (border) from § 1226 (interior)
- **Constitutional avoidance:** *Zadvydas* forecloses indefinite detention without individualized review
- **Institutional credibility:** Court cannot allow detention authority to depend on which state ICE chooses
- **3,000+ to 1 judicial consensus:** Overwhelming rejection of this interpretation signals statutory misreading

English

Justice Barrett's textualist methodology will likely prove decisive, emphasizing surplusage canon and statutory coherence.

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⚖️ BOTTOM LINE

The Fifth Circuit got it WRONG.

The Supreme Court will say so.

But not before thousands more people lose their liberty

to the Fifth Circuit's judicial activism.

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