



Practice Advisory UPDATE

Detention under INA § 235(b): *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)

September 11, 2025

On September 5, 2025, the Board of Immigration Appeals (BIA) issued *Matter of Yajure Hurtado*, a precedent decision that found that any noncitizen who is present in the United States without having been inspected and admitted is subject to detention under INA § 235(b)(2), not INA § 236(a). 29 I&N Dec. 216 (BIA 2025). The decision is based on a new reading of § 235, adopted by DHS in July 2025, that has already been widely rejected by federal courts.

Yajure Hurtado strips Immigration Judges of jurisdiction over custody redeterminations for noncitizens who entered without inspection and have not subsequently obtained lawful status. As such, noncitizens who would otherwise be eligible for bond under the government's long-standing interpretation of INA §§ 235 and 236 may consider seeking release via habeas petitions in federal district court.¹

This alert provides a brief update to [Detention under INA § 235\(b\): The Statutory Scheme and Strategies for Release](#), a practice advisory released on September 2, 2025, that discusses Section 235's inspection and detention provisions and provides guidance on how to seek release from immigration custody.

1. What does *Matter of Yajure Hurtado* hold and who does it impact?

Matter of Yajure Hurtado affirms the Immigration Judge's (IJ) finding that he lacked jurisdiction to conduct a custody redetermination for a noncitizen who was present in the United States without admission because such noncitizens are subject to mandatory detention under INA § 235(b)(2). It creates a sweeping new rule that strips most noncitizens who entered without inspection of the right to seek bond from an IJ, regardless of how long they have been residing in the country and where they were apprehended by immigration authorities. Under *Yajure Hurtado*, only noncitizens who have been "admitted," *see* INA § 101(a)(13)(A), retain bond eligibility. 29 I&N Dec. at 218, 223.

The case involves Mr. Yajure Hurtado, a citizen of Venezuela who entered without inspection in November 2022 and subsequently obtained Temporary Protected Status, which expired in April

¹ While noncitizens classified by DHS as detained pursuant to INA § 235(b)(2) are eligible to seek parole from custody under INA § 212(d)(5), DHS has not released people on parole in any meaningful numbers since the spring of 2025, apparently in accordance with agency policy. *See* Section II, Part 2.I.A & notes 109-110, American Immigration Council & Legal Aid Society, *Detention under INA § 235(b): The Statutory Scheme and Strategies for Release* (Sept. 2, 2025), <https://www.americanimmigrationcouncil.org/practice-advisory/ina-235b-detention-practice-advisory/>.

2025. DHS then detained him and issued a NTA charging him with inadmissibility under INA § 212(a)(6)(A)(i), as a noncitizen “present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General.”

Mr. Yajure Hurtado conceded he was “an applicant for admission” but argued, based on his residence in the United States for three years, that he was not “seeking admission” as required by INA § 235(b)(2)(A). The BIA rejected this argument because, in the BIA’s view, it would leave him without any “legal status” and would create a purported line-drawing problem. 29 I&N Dec. at 221.

Next, the BIA rejected the argument that interpreting § 235(b)(2) to cover noncitizens like Mr. Yajure Hurtado renders much of § 236(c), including recent amendments in the Laken Riley Act, superfluous. Instead, it posited without explanation that limiting the reach of § 235(b)(2), as the agency had for decades, would render that provision superfluous. *Id.* at 221-22.

The Board also claimed that the legislative history supported its construction of § 235, because in enacting IIRIRA Congress sought to remedy the inequity of the prior statutory scheme, which provided greater procedural and substantive rights to noncitizens who entered without inspection (and were placed in deportation proceedings) than those who presented themselves to authorities for inspection (and were placed in exclusion proceedings). However, the BIA did not cite any legislative history specifically addressing detention statutes or custody determinations that would support its interpretation. *Id.* at 223-25.

Lastly, the BIA attempted to distinguish its recent case law on custody matters. Regarding *Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025), which stated that the noncitizen’s custody determination was governed by § 236(a) even though he was present in the United States without inspection, the Board observed that the IJ’s authority to grant bond was not an issue presented to the Board in the case. *Yajure Hurtado*, 29 I&N Dec. at 226. Regarding *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), the Board claimed it resulted in a narrow holding that noncitizens detained without a warrant while arriving in the United States are held pursuant to § 235(b); under the Board’s reading, *Q. Li* did not conversely imply that all noncitizens detained with a warrant while in the United States are held pursuant to § 236(a). *Yajure Hurtado*, 29 I&N Dec. at 227.

2. Have federal courts agreed with this statutory interpretation?

No. Federal district courts that have recently analyzed which statute covers noncitizens who previously entered without inspection and were apprehended in the interior of the country have consistently found that INA § 236, not § 235(b)(2), authorizes their detention. In so finding, courts have relied on the record evidence and factual circumstances in a noncitizen’s immigration proceedings, the text of both provisions, the statutory context and structure, the Supreme Court’s decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and the legislative history of § 235 (as discussed below).

Numerous district courts have disagreed with the government's new interpretation of § 235(b)(2) and subsequently granted relief to habeas petitioners (often on due process grounds). Below is a non-exhaustive list of relevant decisions:

- **First Circuit**
 - [*Sampiao v. Hyde*](#), 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (noting court's disagreement with BIA's analysis in *Yajure Hurtado*)
 - [*Jimenez v. FCI Berlin, Warden*](#), No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025)
 - [*Doe v. Moniz*](#), 2025 WL 2576819 (D. Mass. Sept. 5, 2025)
 - [*Romero v. Hyde*](#), 2025 WL 2403827 (D. Mass. Aug. 19, 2025)
 - [*Martinez v. Hyde*](#), 2025 WL 2084238 (D. Mass. July 24, 2025)
 - [*dos Santos v. Noem*](#), 2025 WL 2370988 (D. Mass. Aug. 14, 2025)
 - [*Gomes v. Hyde*](#), 2025 WL 1869299 (D. Mass. July 7, 2025)

- **Second Circuit**
 - [*Lopez Benitez v. Francis*](#), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025)
 - [*Samb v. Joyce*](#), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025)

- **Fourth Circuit**
 - [*Leal-Hernandez v. Noem*](#), 2025 WL 2430025 (D. Md. Aug. 24, 2025)

- **Fifth Circuit**
 - [*Kostak v. Trump*](#), 2025 WL 2472136 (W.D. La. Aug. 27, 2025)

- **Sixth Circuit**
 - [*Pizarro Reyes v. Raycraft*](#), 2025 WL 2609425 (E..D. Mich. Sept. 9, 2025) (disagreeing with BIA's analysis in *Yajure Hurtado*)
 - [*Lopez-Campos v. Raycraft*](#), 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025)

- **Eighth Circuit**
 - [*Carmona-Lorenzo v. Trump*](#), 2025 WL 2531521 (D. Neb. Sept. 3, 2025)
 - [*Cortes Fernandez v. Lyons*](#), 2025 WL 2531539 (D. Neb. Sept. 3, 2025)
 - [*Palma Perez v. Berg*](#), 2025 WL 2531566 (D. Neb. Sept 3, 2025)
 - [*O.E. v. Bondi*](#), 2025 WL 2466670 (D. Minn. Aug. 27, 2025)
 - [*Jacinto v. Trump*](#), 2025 WL 2402271 (D. Neb. Aug. 19, 2025)
 - [*Maldonado v. Olson*](#), 2025 WL 2374411 (D. Minn. Aug. 15, 2025)
 - [*Garcia Jimenez v. Kramer*](#), 2025 WL 2374223 (D. Neb. Aug. 14, 2025)
 - [*Anicasio v. Kramer*](#), 2025 WL 2374224 (D. Neb. Aug. 14, 2025)

- **Ninth Circuit**
 - [*Cuevas Guzman v. Andrews*](#), 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025) (distinguishing *Yajure Hurtado*)
 - [*Caicedo Hinestroza v. Kaiser*](#), 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025)

- *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (noting that BIA’s decision in *Yajure Hurtado* renders requiring prudential exhaustion futile)
- *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025)
- *Vasquez Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025)
- *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025)
- *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025)
- *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025)

3. What arguments have been raised in these cases?

For a fuller discussion of INA, Administrative Procedure Act, and constitutional claims that may be available when DHS alleges a noncitizen is detained pursuant to INA § 235(b), please see Part 2, Sections I.B & II of the practice advisory, [Detention under INA § 235\(b\): The Statutory Scheme and Strategies for Release](#).² Below is a brief summary of some of the points that have been successful in arguing for an interpretation of § 235(b)(2) that excludes noncitizens apprehended in the interior of the United States.

There are several reasons why the government’s expansive interpretation of INA § 235(b)(2) misreads the statute. As the Supreme Court recognized in *Jennings*, § 235(b) is concerned “primarily [with those] seeking entry,” and is generally imposed “*at the Nation’s borders and ports of entry*, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible.”³ Throughout its text, the statute refers to “inspections”—a term not defined in the INA but which typically connotes an examination upon or soon after physical entry.⁴ Many statutory provisions, various regulations and agency precedent discuss “inspection” in the context of admission processes at ports of entry, further supporting the conclusion that § 235 has a limited temporal and geographic scope.⁵

² For a discussion of procedural considerations and other substantive challenges, as well as a template petition and application for order to show cause, see National Immigration Litigation Alliance, *Habeas Corpus Petitions* (Jan. 15, 2025), <https://immigrationlitigation.org/new-practice-advisory-habeas-corpus-petitions/>.

³ *Jennings*, 583 U.S. at 297, 287.

⁴ See INA § 235 (titled “Inspection by immigration officers; expedited removal of inadmissible arriving [noncitizens]; referral for hearing”); INA §§ 235(b)(1)–(2) (referring to “inspections” in their titles); INA § 235(d)(1) (authorizing immigration officials to search certain conveyances in order to conduct “inspections” where noncitizens “are being brought into the United States”).

⁵ See, e.g., INA §§ 217(h)(2)(B)(i), 235A; 8 U.S.C. § 1752a; 8 C.F.R. § 235.1; *Matter of Quilantán*, 25 I&N Dec. 285 (BIA 2010). For a full discussion of how the term “inspection” generally relates to determinations of admissibility at the time of entry, see Brief for American Immigration Lawyers Association and Capital Area Immigrants’ Rights Coalition as Amici Curiae Supporting Plaintiffs’ Motion for Preliminary Injunction, *Farmworker Ass’n of Fl. v. DeSantis*, 23-cv-226655-RKA, 716 F.Supp.3d 1312 (S.D. Fl. filed Aug. 25, 2023).

Consistent with this focus on the moment of physical entry, § 235(b)(2) is limited to those in the process of “seeking admission.” Similarly, the implementing regulations at 8 C.F.R. § 1.2 address noncitizens who are presently “coming or attempting to come into the United States.” The statutory and regulatory text’s use of the present and present progressive tenses excludes noncitizens apprehended in the interior, because they are no longer in the process of arriving in or seeking admission to the United States.⁶ A number of the courts cited above have agreed that § 235(b)(2) only reaches individuals who are in the process of entering or who have just entered the United States.

Additionally, the INA’s statutory structure makes clear that § 236 also reaches individuals who have not been admitted and have entered without inspection. Section 236(c) exempts specific categories of noncitizens from the default eligibility to seek release on bond in § 236(a), including noncitizens subject to certain grounds of inadmissibility. Moreover, Congress recently added new mandatory detention grounds to § 236(c) that apply only to noncitizens who have not been admitted, expressly including those who are inadmissible under § 212(a)(6)(A), or (7)—that is, persons who entered without being admitted.⁷ If § 236(a) did not apply to inadmissible noncitizens, then the carve out in § 236(c) that refers to inadmissibility and Congress’ most recent amendments would all be surplusage.

The statutory history also supports a limited reading of § 235(b)’s reach. When Congress amended § 235(b)’s predecessor statute—which authorized detention only of arriving noncitizens—to include individuals who had not been admitted, legislators expressed concerns about recent arrivals to the United States who lacked the documents to remain in the country. There was no suggestion in the legislative history that Congress intended to subject all people present in the United States after an unlawful entry to mandatory detention and thereby transform immigration detention and sweep millions of noncitizens into § 235(b).⁸

Under the Supreme Court’s recent decision in *Loper Bright v. Raimondo*, a federal habeas court should independently interpret the meaning and scope of § 235(b) using the traditional tools of statutory construction.⁹ Because the BIA’s decision in *Matter of Yajure Hurtado* is a deviation from the agency’s long-standing interpretation of §§ 235 and 236; is not guidance issued contemporaneously with enactment of the relevant statutes; and contradicts the statutory interpretations of dozens of federal courts, a habeas court should give it no weight under *Loper*

⁶ See, e.g., *Martinez*, 2025 WL 2084238 at *6 (citing the use of present and present progressive tense to support conclusion that INA § 235(b)(2) does not apply to individuals apprehended in the interior); accord *Lopez Benitez*, 2025 WL 2371588 at *6–7. See also *United States v. Wilson*, 503 U.S. 329, 333 (1992) (“Congress’ use of a verb tense is significant in construing statutes.”); *Al Otro Lado v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) (construing “is arriving” in INA § 235(b)(1)(A)(i) and observing that “[t]he use of the present progressive, like use of the present participle, denotes an ongoing process”).

⁷ INA § 236(c)(1)(E), as amended by Laken Riley Act, Pub. L. 119-1, 139 Stat. 3 (2025).

⁸ See H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29 (1996); H.R. Rep. No. 104-828, at 209 (1996) (Conf. Rep.).

⁹ 603 U.S. 369, 385, 401 (2024); see also *Rodriguez*, 2025 WL 1193850, at *12; *Kostak*, 2025 WL 2472136 at *2 n.29; *Gomes*, 2025 WL 1869299 at *8 n.9.

Bright or *Skidmore*.¹⁰ Indeed, a number of courts have instead found that under *Loper Bright*, the prior longstanding practice of the government—under which noncitizens who resided in the United States and previously entered without inspection were deemed subject to INA § 236—is a useful interpretive aid.¹¹

4. Is there nation-wide litigation challenging this interpretation?

The Northwest Immigrant Rights Project, ACLU, ACLU Southern California, and the USC Immigration Clinic have filed a lawsuit on behalf of a nationwide class challenging this statutory interpretation (both DHS and DOJ's policies). The case, *Maldonado-Bautista v. Noem*, is pending in the Central District of California.¹²

The lawsuit includes a proposed nationwide class of “[a]ll noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under [INA § 236(c), § 235(b)(1), or § 241] at the time [DHS] makes an initial custody determination,” and seeks class-wide declaratory relief and vacatur of DHS’ policy under the APA.¹³

The petitioners have moved for summary judgment on behalf of the class, and a hearing on class certification and summary judgment is scheduled for October 17, 2025. The district judge previously granted a temporary restraining order on behalf of the named plaintiffs. However, because class-wide preliminary injunctive relief is not available through the *Maldonado Bautista* litigation, noncitizens should consider filing individual habeas petitions raising similar arguments, as discussed above.

¹⁰ See *Loper Bright*, 603 U.S. at 395 (citing *Skidmore v. Swift & Co*, 323 U.S. 134, 140 (1944) for the proposition that agency interpretations issued contemporaneously with the statute at issue and that have remained consistent over time “may be especially useful in determining the statute’s meaning”).

¹¹ See, e.g., *Maldonado*, 2025 WL 2374411 at *11.

¹² See Class Action Complaint and Amended Petition for Writ of Habeas Corpus, *Maldonado Bautista v. Noem*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025), available at <https://www.nwirp.org/our-work/impact-litigation/> (providing *Maldonado Bautista* papers).

¹³ *Id.*