Three BIA Decisions Severely Limit Bond Eligibility

Topics: Removal Proceedings, Enforcement and Detention, Bond

The Board of Immigration Appeals (BIA) recently issued three precedential decisions relating to custody redetermination, or "bond," proceedings before immigration judges (IJs) that limit — or eliminate altogether — bond eligibility for many detained individuals. This article analyzes these three decisions.

Matter of Yajure-Hurtado

In the most recent case, *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), the BIA held that under INA § 235(b)(2)(A), IJs lack authority to hear bond requests or grant bond to noncitizens who are present in the United States without inspection and admission. The respondent, Mr. Yajure-Hurtado, is a Venezuelan national who entered the United States without inspection in November 2022. He was granted Temporary Protected Status (TPS) in 2024, which expired in April 2025. Department of Homeland Security (DHS) officials apprehended him shortly after his TPS expired and issued him a Notice to Appear (NTA) charging him under INA § 212(a)(6)(A)(i) for being present in the United States without admission. Mr. Yajure-Hurtado requested a bond hearing, and the IJ determined the court lacked jurisdiction over his custody redetermination proceedings. Mr. Yajure-Hurtado then filed an appeal of the IJ's bond decision to the BIA.

The BIA affirmed the IJ's decision and held that an IJ lacks the authority to consider a bond request made by a noncitizen who entered the United States without inspection and admission, regardless of the length of time they have been present in the United States. The BIA reasoned that INA § 235 governs the inspection, detention, and removal of noncitizens who have not been admitted and are therefore "applicants for admission." Under this provision, such noncitizens are subject to being placed into expedited removal proceedings and mandatorily detained for the duration of those proceedings. The BIA explained that INA § 235(a)(1)(A) provides two categories of applicants for admission: (1) arriving noncitizens inadmissible under INA §§ 212(a)(6)(C) (fraud and material misrepresentation) or 212(a)(7) (lack of valid entry documentation); and (2) noncitizens present in the United States without admission who are inadmissible under those sections and who have not been physically present in the United States continuously for at least two years prior to their apprehension. The BIA then stated that INA § 235(b)(2)(A) provides a third category of applicants for admission who are not subject to expedited removal but must still be mandatorily detained during the pendency of their INA § 240 removal proceedings. They referred to this section as a "catch-all provision" that includes any individual apprehended inside the United States who has not been inspected and admitted and whom an immigration officer has determined is "not clearly and beyond a doubt entitled to be admitted."

The BIA then held, contrary to decades of BIA precedent and DHS enforcement practices, that any individual present in the United States without having been inspected and admitted who is arrested with or without a warrant in the interior is subject to detention under INA § 235(b)(2) and not INA § 236(a). The BIA rejected the argument that interpreting § 235(b)(2) to apply to noncitizens who entered without inspection renders much of § 236(c) superfluous, including recent amendments in the Laken Riley Act (LRA). It explained that nothing in the text of § 236(c) — whether in its original form or as amended by the LRA — alters or undermines the provisions of INA § 235(b)(2)(A).

The BIA further asserted that noncitizens may be subject to mandatory detention under both § 236(c) and § 235(b)(2)(A) at the same time. In support, it quoted Barton v. Barr, 590 U.S. 222, 239 (2020), noting that "redundancies are common in statutory drafting — sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication." It also asserted that legislative history supports its interpretation of § 235(b)(2)(A) because the Illegal Immigration Reform and Immigration Responsibility Act substituted the term "admission" for "entry" to remedy the "unintended and undesirable consequence" of creating a statutory scheme where noncitizens who entered without inspection are eligible for bond, but those who entered through a port of entry are not.

The BIA also attempted to account for the inconsistencies in its recent custody and bond decisions. For example, in Matter of Akhmedov, 29 I&N Dec. 166 (BIA 2025), discussed below, Mr. Akhemdov entered without inspection just like Mr. Yajure-Hurtado, but the BIA stated that Mr. Akhemdov's custody determination was governed by INA § 236(a), not § 235(b)(2). The BIA tried to explain this disparity by stating that the IJ's authority to grant bond was not an issue presented to them on appeal. The BIA also claimed that *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), in which it held that noncitizens detained without a warrant while arriving in the United States are held pursuant to INA § 235(b), did not imply that all noncitizens detained inside the United States with a warrant are held pursuant to INA § 236(a).

In sum, the decision in Matter of Yajure-Hurtado strips IJs of jurisdiction over bond proceedings for individuals who entered without inspection and admission at any point in the past and have not since been admitted into lawful status in the United States. As such, these individuals are not bond eligible and must consider filing habeas petitions in federal court to seek release from custody.

Matter of Dobrotvorskii

On September 5, 2025, the BIA issued *Matter of Dobrotvorskii*, 29 I&N Dec. 211 (BIA 2025). In this case, DHS bore the burden of showing that the respondent posed a flight risk or danger, pursuant to an injunction in effect within the Ninth Circuit. *Rodriguez v. Marin*, 909 F. 3d 252, 256 (9th Cir. 2018) (requiring bond hearings for all individuals after six months in detention in which DHS — rather than the detained respondent — bears the burden to demonstrate that the respondent is not a flight risk or danger to the community). The IJ granted the respondent a $10,000 bond, finding that the DHS did not meet its burden of showing the noncitizen was a flight risk or danger to the community. The DHS appealed, arguing that Mr. Dobrotvorskii is a flight risk.

Factors that demonstrate that a respondent is not a flight risk include: (1) whether the respondent has a fixed address in the United States; (2) the length of the respondent's residence in the United States; (3) the respondent's family ties in the United States; and (4) the respondent's manner of entry into the United States. *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). Although it was the DHS's burden to prove flight risk in *Dobrotvorskii*, the BIA did not mention any evidence submitted by the DHS. Instead, it focused on the evidence Mr. Dobrotvorskii presented, including evidence showing that he intended to live with a friend, a copy of his friend's driver's license and lawful permanent resident (LPR) card, and his friend's lease and electric bill. His evidence submission did not include a letter from the friend stating his willingness to provide support to the respondent and assist him in attending future hearings. The BIA found that this missing information undermined the respondent's request for bond and found him to be a flight risk. In its decision, the BIA cites to *Matter of R-A-V-P* to support its position that a respondent is a flight risk unless they submit a letter from a sponsor that explicitly states that the sponsor will provide support to the respondent — whether it be economic, housing, or any other type of support as they reestablish themselves in the community — and assist the respondent in attending any future hearings is required. 27 I&N Dec. 803, 804 (BIA 2020).

The BIA vacated the IJ's bond order and ordered Mr. Dobrotvorskii detained. In doing so, the BIA added another factor — sponsorship — on top of those enumerated in Matter of Guerra.

Matter of Akhmedov

On June 30, 2025, the attorney general directed the BIA to publish *Matter of Akhmedov*, a previously unpublished case. 29 I&N Dec. 166 (BIA 2025). The IJ granted the respondent, Mr. Akhmedov, a $15,000 bond. The DHS appealed, arguing that Mr. Akhmedov did not meet his burden to demonstrate that he was not a flight risk. The BIA agreed and vacated the IJ's bond order. In its decision, the BIA noted that Mr. Akhmedov initially resided in Michigan following his arrival in 2022. In 2023, he moved to change venue from Michigan to New York. On Jan. 15, 2025, ICE agents encountered Mr. Akhmedov in Michigan. He told those agents during that encounter that he was living in Michigan. On Feb. 12, 2025, almost one month after the encounter, he filed an EOIR-33 change of address form with the immigration court. Regulations require this form to be filed within five days of a respondent's move to a new address. 8 CFR § 1003.15(d)(2). The BIA found that these discrepancies indicated that Mr. Akhmedov was a flight risk and that "no monetary bond, even if coupled with alternatives to detention," would be sufficient to ensure that he attended his future hearings.

Advice to Practitioners

- For individuals who entered as minors, were designated as Unaccompanied Children (UC), and later detained, practitioners should argue that UCs are exempt from INA § 235 while their UC designation remains in place. Children who are under 18 should remain protected by the Trafficking Victims Protection Act of 2000 (TVPRA) and governed by the proceedings under that statute, including initial custody by the Office of Refugee Resettlement and subsequent release to a suitable sponsor. For those who have reached 18 years of age after their entry and are detained by DHS, advocates should argue that their detention is pursuant to INA § 236 and that they are thus bond eligible. Although CLINIC has received at least one report that this argument has been rejected by an IJ who found that the over 18-year-old respondent no longer met the definition of a UC, the argument has not yet been rejected by the BIA or any circuit courts.
- Individuals who entered with a valid visa and overstayed their authorized period of stay are not considered applicants for admission. If they are detained, they are bond eligible (unless they are separately subject to mandatory detention based on a criminal or national security ground), as their detention is governed by INA § 236.
- Noncitizens who entered without inspection and were released from ICE custody with parole are likely also subject to mandatory detention under *Matter of Yajure-Hurtado* in the event of a subsequent re-detention, as parole is not considered an "admission." Unless these individuals have been admitted into lawful status, such as lawful permanent resident or U nonimmigrant status, they may also be subject to mandatory detention if ICE detains them. Practitioners should argue that ICE must demonstrate changed circumstances specific to the individual respondent that warrant re-detention after release.
- Attorneys should consider seeking admission to practice in the federal district court where their clients are detained in order to file habeas petitions on behalf of clients found ineligible for bond under *Matter of Yajure-Hurtado* and *Matter of Q Li*. For more information and template habeas petitions, see the National Immigration Litigation Alliance (NILA) catalog of resources. Attorneys should strongly consider becoming a NILA member if engaging in federal litigation practice. Given the complexities of federal court practice, practitioners should consider co-counseling with attorneys experienced in habeas petitions, at least for their initial filings.
- Practitioners should not proceed with a request for bond until all evidence is prepared. *Matter of Dobrotvorskii* and *Matter of Akhmedov* signal that the BIA will overturn bond grants where the respondent's evidence does not satisfy all factors laid out in *Matter of Guerra*. In addition to the *Matter of Guerra* factors, practitioners should not proceed without an affidavit from a sponsor confirming that they will provide assistance to the respondent and ensure that the respondent will attend future hearings.
- File all EOIR-33s (change of address forms) within five days of the client's move or as soon as possible thereafter. In *Matter of Akhmedov*, the BIA indicated that the timely filing of Form EOIR-33will be considered in assessing whether a respondent poses a flight risk. If an EOIR-33 is not filed within five days, be prepared to explain at the bond hearing why it was not filed on time.

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Posted on December 17, 2025

The Board of Immigration Appeals (BIA) issued a precedential decision in November 2025, in Matter of Cahuec Tzalam, 29 I&N Dec. 300 (BIA 2025), relating to administrative closure for those with pending petitions for Special Immigrant Juvenile (SIJ) classification. In the decision, the BIA found that the respondent had not shown prima facie eligibility for SIJ and, in the alternative, that administrative closure was not warranted given the extended delay in visa availability. In this decision, the BIA continues a pattern of issuing decisions that align closely with the administration's enforcement priorities and raise significant concerns about their legal soundness and impartiality.

Removal Proceedings, Special Immigrant Juvenile Status

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Posted on

The Board of Immigration Appeals (BIA) issued a precedential decision in September 2025 relating to asylum eligibility based on perceived gang membership. In Matter of L-A-L-T-, 29 I&N Dec. 269 (BIA 2025), the BIA held that the proposed particular social group, defined as "perceived Salvadoran gang members," is not cognizable under the Immigration and Nationality Act. The decision also contains troubling and sweeping language that adjudicators may use to summarily deny certain asylum applications without providing a case-by-case analysis.

Removal Proceedings, Appeals

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