The Eighth Circuit Just Made It Two.

A second federal appeals court has sided with the government on mandatory detention. The dissent tells you why that matters more than the holding.

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If you read the Bond Hearing Wars piece from last month, you know the que does the government have the authority to detain people who entered the Ur States without inspection — years or decades ago — without any bond heari based on a detention statute historically applied to people stopped at the bor

The Fifth Circuit said yes in February. On March 25, 2026, the Eighth Circui yes too.

The vote in *Herrera Avila v. Bondi*, No. 25-3248, was 2-1. Judges Shepherd and Grasz in the majority. Judge Erickson dissenting.

Two circuits have now ruled for the government's statutory position. The Se Circuit's full merits ruling is still pending. The Ninth Circuit heard argumen March. Five more circuits are in active briefing.

Who Joaquin Herrera Avila is

Joaquin Herrera Avila is a native and citizen of Mexico. He entered the Unit States without inspection in 2006 and again in 2016. On August 29, 2025, deportation officers stopped him while he was driving on Cedar Avenue in Minneapolis. He had been living in the United States for nearly 20 years. Asi from a single DUI, he had no criminal record.

DHS arrested him, initiated removal proceedings, and detained him without An immigration judge denied his request for a bond hearing. He filed a habe petition in the District of Minnesota. The district court granted it, concludir that § 1225(b)(2)(A) — the mandatory detention statute — did not apply to sor who had lived here for years without seeking any lawful status, and that he w entitled to a hearing under § 1226(a).

The Eighth Circuit reversed. Avila was released on $7,500 bond during the ap after the district court's order — that bond hearing, compelled by the ruling Eighth Circuit just overturned, is the only reason he is not in mandatory det today.

What the majority held

The majority's reasoning tracks the Fifth Circuit's decision in *Buenrostro-Me Bondi* so closely that it cites it on nearly every page. It's safe to say this is not independent statutory analysis…it is the Fifth Circuit's framework, adopted b second court.

The core argument is textual. Section 1225(a)(1) defines "applicant for admiss as any alien present in the United States who has not been admitted. Section 1225(b)(2)(A) then mandates detention of "an alien seeking admission" who is clearly entitled to be admitted. The question is whether those two phrases — "applicant for admission" and "seeking admission" — mean the same thing.

The majority says yes. It reasons that "apply" means to make a formal reques "seek" means to request or ask for. When a person applies for something, the necessarily seeking it. The college applicant analogy the court uses: once you submit your application, you are seeking admission for as long as it is pendi even if you take no further affirmative steps. So too, the majority holds, an al remains "seeking admission" for as long as he is present in the United States without having been lawfully admitted — regardless of whether he entered l week or twenty years ago, regardless of whether he was stopped at the borde on Cedar Avenue in Minneapolis.

The majority also concludes that "seeking admission" is not a standalone condition for detention separate from being an "applicant for admission." It synonym embedded in the statute's structure, not an additional requirement. Because there is no conjunctive term like "and" linking "seeking admission" separate condition, the majority reads it as doing no independent work.

On the thirty-year history of contrary practice — every administration from to 2025 applied § 1226(a) to interior arrests — the majority follows *Buenrostro Mendez* again: authority granted by Congress cannot evaporate through lack administrative exercise. Prior administrations may have declined to use thei enforcement authority under § 1225. That does not mean the authority was n there.

The dissent

Judge Erickson's dissent (Pg. 12) is the more searching piece of legal writing this opinion.

ERICKSON, Circuit Judge, dissenting.

Except for a single DUI, for nearly 20 years, Joaquin Herrera Avila had been living a law-abiding life in the United States. On August 29, 2025, he was stopped by deportation officers while driving on Cedar Avenue in Minneapolis, Minnesota. For the past 29 years, Avila would have been entitled to a bond hearing during his removal proceedings. The court now holds that Avila—and millions of others—are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). In doing so, the court does not rely on recent Congressional action or a change in the regulations governing detention but rather engages in a novel interpretation of "alien seeking admission" that eluded the courts and five previous presidential administrations. Because the court's interpretation is not supported by the plain meaning of "seeking," the context of the INA, or the history of the IIRIRA, I respectfully dissent.

The plain meaning problem

The dissent starts with the word "seeking." As a present participle, it typicall expresses present action — someone presently trying to gain something. Ap the ordinary meaning of "seeking" alongside the INA's own definition of "admission" — "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer" — the dissent concl that § 1225(b)(2)(A) applies to aliens presently trying to gain lawful entry. Avil who has lived in Minneapolis for twenty years and was stopped during a traf stop, is not doing that.

The dissent identifies the move the majority makes and names it: the court u the statutory definition to deem Avila an "applicant for admission," then tur around and uses the ordinary meaning of that same phrase to find he is also "seeking admission." The dissent's response is that the phrases are not coterminous. Avila's reading gives effect to every word in § 1225(b)(2)(A) — th statute applies only when an alien is both an "applicant for admission" and

actually seeking admission. The majority's reading collapses the two phrases one and renders "seeking admission" redundant.

The majority's answer is that redundancy is not a silver bullet, and Congress permitted to use synonyms. The dissent's answer: Congress went out of its w include the phrase. A variation in terms suggests a variation in meaning.

The structural history argument

This is where the dissent does its most significant work.

Before the Illegal Immigration Reform and Immigrant Responsibility Act of — the statute that created the current framework — immigration law treate categories of people differently. Aliens who arrived at a port of entry were pl in "exclusion proceedings" and subject to mandatory detention. Aliens who entered without inspection were placed in "deportation proceedings" and eli for bond. The IIRIRA replaced both with the unified "removal" framework, substituting "admission" for "entry."

The dissent argues that the IIRIRA maintained the border/interior distinctio detention purposes. The evidence: Congress used "seeking admission" in § 1 a phrase that, in context, tracks the old exclusion framework — while § 1226 broadly applies to "aliens," without the admission-seeking qualifier. The stat own title refers to "Inspection by immigration officers" and "expedited remc inadmissible arriving aliens." Statutory titles are not commanding, the disser acknowledges, but they supply cues.

Then there is the Laken Riley Act. The dissent's sharpest structural point: th added specific exceptions to bond eligibility for inadmissible noncitizens wh entered without inspection. **If all inadmissible noncitizens were already sub to mandatory detention under § 1225(b)(2)(A), those exceptions would have entirely unnecessary.** Congress does not legislate superfluously. The majorit answer — that § 1226(c) applies a different set of penalties to a broader grou

the overlap is just overlap — does not satisfy the dissent. If Congress's only g was to eliminate parole for certain inadmissible noncitizens, it would have addressed that in the parole provision or in § 1225(b)(2)(A) itself.

The constitutional dimension

The dissent closes with *Zadvydas v. Davis*, 533 U.S. 678 (2001): once an alien e the country, the Due Process Clause applies — to all persons within the Unit States, regardless of whether their presence is lawful, unlawful, temporary, o permanent. The distinction between an alien who has entered and one who h never entered runs throughout immigration law. Government intrusions tole at the border have never been tolerated in the interior. The majority's holdin extends the border detention regime to people living on Cedar Avenue in Minneapolis. The dissent argues that reading should give pause to anyone w thinks the Due Process Clause means something.

The due process front is already moving

The dissent's constitutional point is not academic. It is already being litigate and in the circuits where the statutory battle has been lost, it is the live seco front.

Footnote 8 of the dissent documents it directly. After the Fifth Circuit issue *Buenrostro-Mendez* in February, district courts within the Fifth Circuit began granting habeas petitions on due process grounds. The dissent cites *Alvarez- Noem*, decided February 25, 2026, in the Southern District of Texas — a court operating squarely within the Fifth Circuit's jurisdiction, accepting the statu holding and granting relief anyway on constitutional grounds.

This matters for how to read the Eighth Circuit ruling. The majority resolve statutory question against Avila. It did not reach the constitutional question.

dissent's invocation of *Zadvydas* and its framing of the border/interior distinc signal that the constitutional argument remains available — and that at least judge on this panel thinks it has real force.

The practical structure of the litigation is now this: in circuits that have acce § 1225 applies to interior arrests, petitioners are shifting to due process. The *Mathews v. Eldridge* balancing test is the vehicle — weighing the individual's liberty interest against the government's interest and the risk of erroneous deprivation. Courts applying that test to someone who has lived in the Unite States for twenty years, has no violent criminal history, has family here, and no demonstrated flight risk are producing a different answer than the statut question alone.

The statutory circuit split is the most likely vehicle to reach the Supreme Co But the due process cases are building a parallel record — one that matters regardless of how the Court resolves the statutory question. Even a ruling th 1225 applies as written does not settle whether indefinite mandatory detenti long-term residents without any individualized review satisfies the Constitu

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The circuit map as of March 25

Two circuits have ruled for the government's statutory position: the Fifth o February 6 and the Eighth on March 25, both 2-1 on contested records with substantive dissents.

The Seventh Circuit heard merits argument on February 3 — three days bef the Fifth Circuit ruled — and has not yet issued its decision. Its motions pan concluded in December that the government was not likely to succeed on the 1225 argument. Both the Fifth and Eighth Circuit majorities cited that motic panel decision and declined to be persuaded. When the Seventh Circuit's me

panel rules, it will be the first court to either break from the emerging major position or cement it further.

The Ninth Circuit heard argument in March. **The First Circuit** is in active briefing following Judge Saris's December class-wide declaration in *Guerrero Orellana v. Moniz*. The Second, Third, Fourth, Sixth, and Tenth Circuits are a carrying active proceedings.

Nine circuits. Two have ruled. Seven more are coming.

The Supreme Court will take this case. The only remaining question is whicl circuit's ruling serves as the vehicle — and whether the constitutional due pr question travels with it when it does.

Discussion about this post