



Although the Fifth Circuit has Justified Detention Without Bond for Noncitizens who Entered Without Inspection, Courts Outside the Fifth Circuit Are Not Bound and Can Use Independent Judgment Under Loper Bright

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In its June 28, 2024 decision in *Loper Bright Enterprises v. Raimondo* [https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf] , the Supreme Court abolished the long-standing Chevron doctrine. Under this doctrine, courts were required to defer to the government agency's interpretation of an ambiguous statute. Chief Justice John Roberts, writing for the majority, stated that "Chevron is overruled. Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires", but made clear that prior cases decided under the Chevron framework are not automatically overruled. We have discussed *Loper Bright* at length in prior blogs (here [<https://blog.cyrusmehta.com/2024/07/sec-v-jarkesy-and-loper-bright-v-raimondo-how-the-supreme-courts-dismantling-of-the-administrative-state-impacts-immigration-law.html>] , here [<https://blog.cyrusmehta.com/2025/09/bia-grasps-for-loper-bright-like-a-drowning-person-grasps-for-straws.html>] , here



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Thus far, Loper Bright's influence on federal courts' handling of immigration cases is relatively subtle [<https://blog.cyrusmehta.com/2026/01/no-dramatic-changes-in-immigration-cases-after-loper-bright.html>] under the Immigration and Nationality Act (INA) but has proved a powerful tool for challenging the Board of Immigration Appeal (BIA)'s reinterpretation of INA 235(b)(2)(A), 8 U.S.C. 1225(b)(2)(A), and INA 236(a), 8 U.S.C. 1226(a). On September 5, 2025, the BIA held in *Matter of Yajure Hurtado* [<https://www.justice.gov/eoir/media/1413311/dl?inline>], 29 I&N Dec. 216 (BIA 2025), that a noncitizen respondent who entered the US without inspection and was placed in proceedings is not eligible for bond under INA 235(b)(2)(A). This BIA decision was a reversal of policy, as bond had been permitted for noncitizens who entered with inspection for three decades, since the passage of the Immigration Act of 1996. The BIA also disregarded INA 236(a), which provides for the release on bond of a noncitizen who is not ineligible under the categories prescribed in INA 236(c), which notably excludes respondents who have entered without inspection. Addressing this discrepancy, the BIA stated that "nothing in the statutory text of section 236(c), including the text of the amendments made by the Laken Riley Act, purports to alter or undermine the pre-2025 definition of the statute 'shall be detained for a proceeding under section 240'".

Aware that a federal court would not give deference to its interpretation of the law as posed by two competing statutory provisions, INA 235(b)(2)(A) and INA 236(c), the BIA in *Loper Bright* concluded that the language under INA 235(b)(2)(A) is clear and excludes respondents who have entered without inspection. In regard to the contradiction posed in neighboring INA 236(c), stating: "the statute under INA is not 'doubtful and ambiguous' but is instead clear and explicit in requiring the detention of all aliens who are applicants for admission, without regard to how long the alien has been residing in the United States without lawful status. See INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(1), (2)."

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However, a string of recent district court rulings have relied on *Loper Bright* to re theory that noncitizens who entered without inspection are ineligible for bond as Matter of *Yajure Hurtado*. These decisions invoke *Loper Bright* to emphasize that independently interpret INA §§ 235 and 236, rather than automatically deferring interpretation, and arguing that EWIs are eligible for § 236(a) detention and, thus hearings. The courts reasoned that DHS's new policy departs from three decades consistent practice and lacks clear statutory grounding, thereby maintaining bon for these individuals. See, for example, *Barco Mercado v. Francis* [<https://law.justia.com/cases/federal/district-courts/new-york/nysdce/1:2025cv06582/647311/28/>] , *Guerrero Orellana v. Moniz* [<https://caselaw.findlaw.com/court/us-dis-crt-d-mas/117890054.html>] , and *Pizar ICE* [<https://law.justia.com/cases/federal/district-courts/michigan/miedce/2:2025cv12546/387778/12/>] .

In *Buenrostro-Mendez v. Bondi* [<https://s3.documentcloud.org/documents/26884355/ca5detention.pdf>] (5th Cir. Fifth Circuit agreed with *Yajure Hurtado*, holding that noncitizens who entered w inspection are ineligible for bond. The court addressed the statutory discrepancy that “Section 1226(a) undeniably does work independent from § 1225(b)(2)(A) be 1226(a) applies to admitted aliens who overstay their visas, become deportable c different grounds, or were admitted erroneously due to fraud or some other err does § 1226(c) sweep in deportable aliens in addition to the inadmissible aliens c 1225(b)(2)(A)...it also eliminates the option of parole for those to whom it applies dissenting opinion, Justice Douglas found that “Combining the ordinary meaning with the statutory definition of ‘admission,’ there is no need to resort to strained with the college admissions process to determine the meaning of key statutory t governing detention.”

Nonetheless, most district courts outside the Fifth Circuit have not been persuad continue to rule in favor of releasing the citizen using their own independent inte of the INA under *Loper Bright*. District court cases that have cited *Buenrostro* to primarily done so to point out that the Fifth Circuit's holding is an outlier and nor See, for exmple, *Aroca v. Mason* [<https://law.justia.com/cases/federal/district-c virginia/wvsdce/2:2026cv00057/242913/32/>] , *Pascual Jose-de-Jose v. Noem*

[<https://cases.justia.com/federal/district-courts/oklahoma/okwdce/5:2025cv01454/133544/16/0.pdf?ts=1770736425>] , Ca Chang v. Noem [<https://www.aclunnebraska.org/app/uploads/2026/02/Chang-Mei-and-Order.pdf>] . In a New Jersey district court case [https://x.com/kyledcheney/status/2020621518418669930?s=43&t=oiMt8BRU5GmO_r99349n7A] , Judge Padin wrote in her opinion that the “unpersuaded” by the Fifth Circuit’s decision in Buenrostro, reasoning that “the n interpretation risks rendering substantial portions of the statutory scheme super internally inconsistent”. The Seventh Circuit preliminarily concluded that the U.S. of Homeland Security was not likely to prevail on its argument that “§ 1225(b)(2)(noncitizen who is unlawfully already in the United States as well as those who pr themselves at its borders,” Castanon-Nava v. U.S. Dep’t of Homeland Sec [https://www.pacermonitor.com/public/filings/D2IQPNAA/Zhuang_v_Bondi_et_al_25-00201__0016.0.pdf] . Even the Fifth Circuit’s decision in Buenrostro-Mendez a preclude release based on constitutional grounds [[The BIA in Yajure Hurtado invoked Loper Bright to conclude that the language ur 235\(b\)\(2\)\(A\) is clear and explicit to justify the detention of a noncitizen who enter inspection without bond. Paradoxically, the majority of courts who have also invc Bright have done so to justify that they need not pay deference to the BIA’s inter INA 235\(b\)\(2\)\(A\) in Yajure Hurtado. An administrative agency like the BIA cannot t Bright to insulate itself from a court’s independent review of the statute. Only a f can invoke Loper Bright to justify why it is not deferring to the agency’s erroneou](https://txilc.org/immigration-l practice-alert-post-buenrostro-mendez-v-bondi/#:~:text=Buenrostro%20does%20not%20address%2C%20and,a%20matter . In Buenrostro-Mendez, the Fifth Circuit did not consider whether a noncitizen d under 8 U.S.C. § 1225 may be constitutionally entitled to a bond hearing at the o proceedings, or even to release on constitutional grounds. It also leaves intact h as a key mechanism for challenging unlawful prolonged detention.</p></div><div data-bbox=)

interpretation of a statute. To date, there have been hundreds of federal court d have not paid deference to Yajure Hurtado and are also not deferring to the Fifth decision in *Buenrostro-Mendez v. Bondi* [https://s3.documentcloud.org/documents/26884355/ca5detention.pdf] .

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