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Fifth Circuit Upholds Mass Detention: 300+ Judges Said No, Two Said Yes

In **Buenrostro-Mendez v. Bondi**, the Fifth Circuit just handed the Trump administration its first appellate victory on mandatory indefinite detention of asylum seekers — contradicting over 350 district court decisions. Full ruling embedded below.

✓ Sergei Tokmakov, Esq. ⚖ Fifth Circuit • Nos. 25-20496 & 25-40701 📅 February 6, 2026 🔴 **Developing**

FREE ASSESSMENT TOOL

Am I Subject to Mandatory Detention?

Answer 6 questions to assess your risk level under the Fifth Circuit's ruling.
This is not legal advice.

QUESTION 1 OF 6

How did you enter the United States?

- Port of entry with inspection
- Between ports of entry (crossed the border)
- Visa overstay
- Other

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This tool provides general information only and does not constitute legal advice. Immigration law is complex and fact-specific. Consult a licensed immigration attorney for advice about your particular situation.

350+District court decisions
for detainees**2**Fifth Circuit judges who
disagreed**29 – 6**Judge split in 5th Circuit
district courts**43**

Pages in the ruling

THE RULING

What Just Happened

On February 6, 2026, a two-judge majority of the Fifth Circuit Court of Appeals reversed two district courts and held that **INA § 1225(b)(2)(A)** requires the mandatory detention of noncitizens "seeking admission" to the United States — with no right to bond hearings.

△ Bottom Line

Judge Edith Jones, joined by Judge Duncan, ruled that noncitizens who entered without inspection and were placed in removal proceedings are "seeking admission" and **must be detained** without the possibility of release on bond. Judge Douglas dissented sharply.

The consolidated cases — *Buenrostro-Mendez v. Bondi* (S.D. Tex.) and *Padron Covarrubias v. Vergara* (W.D. Tex.) — both involved individuals who entered the United States, were apprehended, placed in removal proceedings, and sought habeas corpus relief arguing they were entitled to bond hearings.

The district courts agreed with the detainees. The Fifth Circuit reversed.

The Statutory Question

Everything turns on three words: "**seeking admission.**"

Section 1225(b)(2)(A) of the Immigration and Nationality Act says that if a noncitizen who is an "applicant for admission" is not clearly and beyond a doubt entitled to be admitted, they "**shall be detained**" for removal proceedings. The government argues this covers everyone placed in § 1229a proceedings who hasn't been formally admitted. The detainees argue that "seeking admission" means affirmatively presenting at a port of entry — not someone who crossed the border covertly and was caught.

BY THE NUMBERS

The Judicial Scoreboard

This is the statistic that makes the ruling extraordinary. Before today, the government's position had been **rejected by the overwhelming majority of federal judges** who considered it.

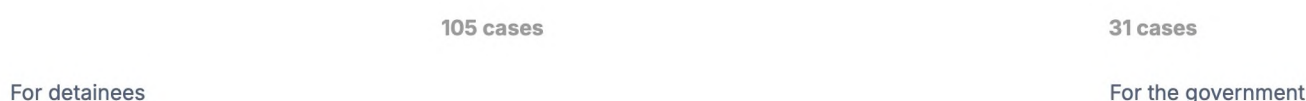
National: District Court Decisions on § 1225(b)(2)(A) Mandatory Detention



Fifth Circuit District Courts Only



Fifth Circuit District Court Cases



Where These Numbers Come From

The dissent (Judge Douglas) catalogs these figures in footnote 15, citing a habeas tracker maintained by the Innovation Law Lab as of January 26, 2026. The majority opinion acknowledges "roughly 350 district court decisions" went against the government (Slip Op. at 6).

Put differently: the Fifth Circuit panel majority has now adopted a position that **roughly 92% of federal district judges** who ruled on the question rejected. This is not a close call that the circuit court weighed in on — it is a dramatic reversal of near-unanimous lower-court consensus.

MAJORITY OPINION

The Majority: Jones, Joined by Duncan

Judge Edith Jones, joined by Judge Duncan, writes the majority opinion. The core reasoning proceeds in two

steps:

Step 1: "Applicant for Admission" = "Seeking Admission"

The majority holds that § 1225(a)(1) defines "applicant for admission" to include every noncitizen "present in the United States who has not been admitted." Under this reading, anyone who entered without inspection is automatically an applicant for admission.

Jones argues this is textually compelled: Congress defined the term in 1996 (IIRIRA) and expanded it beyond the old "entry doctrine." The statute doesn't distinguish between someone who presents at a port of entry and someone apprehended after crossing the border.

Step 2: Mandatory Detention Under § 1225(b)(2)(A)

Once someone is an "applicant for admission," and they aren't clearly entitled to be admitted, the statute says they "shall be detained." Jones reads "shall" as mandatory — no bond, no discretionary release.

The Key Move

The majority equates "applicant for admission" in § 1225(a)(1) with "seeking admission" in § 1225(b)(2)(A), treating the phrases as interchangeable. This collapses any distinction between voluntary and involuntary applicants for admission — the linchpin the dissent attacks.

▾ What About INA § 1226? (The Bond Statute)

The petitioners argued they should be processed under § 1226, which governs detention of aliens "pending a decision on whether the alien is to be removed" and allows bond hearings. The majority says § 1226 applies only to individuals already admitted — not to applicants for admission under § 1225. Since these individuals were never "admitted," § 1225's mandatory detention controls.

▾ How Does the Majority Handle the 350+ Contrary Decisions?

Dismissively. Jones acknowledges the volume but says the lower courts committed "fundamental analytic error" by confusing physical presence with admission status. She describes the district court consensus as the result of a "cascade" of copy-paste reasoning that doesn't engage the statutory text correctly.

▾ The Jennings v. Rodriguez Argument

The majority leans heavily on *Jennings v. Rodriguez* (2018), in which the Supreme Court rejected a constitutional avoidance reading that would have implied bond hearings into § 1225(b). Jones reads *Jennings* as strongly signaling that § 1225(b) means what it says: mandatory detention with no bond.

THE DISSENT

The Dissent: Judge Douglas

Judge Douglas writes a 22-page dissent that attacks the majority at every level — textual, structural, and doctrinal.

The Core Textual Argument

Douglas argues that **"seeking admission" is not the same as "applicant for admission."** Congress used both phrases in the INA, and they mean different things. "Seeking admission" implies affirmative, voluntary conduct — presenting yourself at a port of entry. "Applicant for admission" is the broader statutory umbrella term. The majority collapses this distinction.

If Congress meant "applicant for admission" in § 1225(b)(2)(A), it would have said "applicant for admission." It said "seeking admission" — a narrower, conduct-based phrase.

— Judge Douglas, dissenting

The Elephants-in-Mouseholes Doctrine

Douglas invokes the Supreme Court's "elephants in mouseholes" principle: Congress does not hide major policy changes in ambiguous statutory language. If Congress intended to authorize indefinite mandatory detention of potentially millions of people with no judicial review, it would have said so explicitly.

The Scale Argument

The dissent emphasizes the real-world consequences: the government's interpretation would mandate detention — with **no bond, no release, no hearing** — for every noncitizen in the country who entered without inspection, including longtime residents. As of 2022, an estimated 10.5–11.5 million people fit this definition. This is not a "mousehole."

The Structural Problem

Douglas identifies what she calls a structural incoherence in the majority's reading: if § 1225(b)(2)(A) mandates detention of all unadmitted noncitizens, then **§ 1226 has no function**. Why would Congress create a parallel detention statute with bond hearing provisions if § 1225 already mandated detention for the same population?

▼ The Due Process Shadow

Although the majority avoids the constitutional question, Douglas notes the elephant in the room: indefinite mandatory detention without judicial review raises serious **Fifth Amendment due process** concerns. She cites *Zadvydas v. Davis* (2001), in which the Supreme Court read an implicit reasonableness limitation into a detention statute to avoid constitutional problems. The majority's reading invites the very constitutional challenge the Supreme Court has tried to avoid.

▼ The Dissent's Judge Count

Footnote 15 of the dissent provides the most detailed accounting: within the Fifth Circuit alone, **29 district judges** ruled for the petitioners, with only **6** ruling for the government. Across **105 cases** for petitioners versus **31** for the government. Nationally, the ratio is even more lopsided — 350+ to roughly 27.

HEAD TO HEAD

Majority vs. Dissent: Side by Side

ISSUE	MAJORITY (JONES + DUNCAN)	DISSENT (DOUGLAS)
"Seeking admission" = "applicant for admission"?	Yes. Same thing. Congress defined the term in § 1225(a)(1) to include all unadmitted aliens.	No. Different phrases, different meanings. "Seeking admission" requires affirmative conduct.
Role of § 1226	Only applies to admitted aliens. Not relevant here.	§ 1226 is the default detention provision for most removal proceedings. Majority's reading makes it superfluous.
350+ contrary decisions	"Fundamental analytic error" cascading through the district courts.	Near-unanimous consensus reflecting the correct reading.
Elephants in mouseholes	Not addressed directly.	Congress doesn't hide mandatory mass detention in ambiguous language.
Due process	Constitutional question not reached.	The interpretation creates obvious Fifth Amendment problems; <i>Zadvydas</i> counsels avoidance.
Practical scope	The statute means what it says. Policy consequences are for Congress.	Would mandate detention of 10.5+ million people. Operationally impossible.

WHAT'S NEXT

What Happens Now

This ruling does not end the fight. Several things will happen in short order:

- **En banc petition:** The losing parties are virtually certain to petition for rehearing en banc by the full Fifth Circuit. Given that 29 of 35 district judges in the circuit ruled the other way, this will be closely watched.
- **Circuit split:** Other circuits have not yet ruled. If another circuit reaches the opposite conclusion, a Supreme Court grant of certiorari becomes nearly inevitable.
- **Supreme Court:** Even without a split, the scale of the question (potentially millions of people, 350+ contrary rulings) may attract Supreme Court review on its own.
- **Practical enforcement:** ICE and DHS detention capacity is finite. Mandatory detention of all unadmitted noncitizens is operationally impossible at scale, regardless of what the statute says.

 **Keep Watching**

This page will be updated as the case progresses. The en banc petition, any stays, and Supreme Court developments will be tracked here.

 **Full Ruling: Read It Yourself**[↓ Download PDF \(43 pages\)](#)