Reclassifying 'Applicants for Admission': How the Second Trump Administration is Reshaping Mandatory Detention

The use of mandatory detention has grown dramatically since the beginning of 2025. Relying on new immigration detention capacity funded by the passage of The One Big Beautiful Bill Act (OBBBA) and applying new and novel interpretations of longstanding legal authorities, the second Trump administration has significantly expanded the number of individuals in immigration detention.

Central to this expansion is the reclassification of many noncitizens—including long-term residents arrested in the interior—as "applicants for admission" subject to mandatory detention under a provision of the Immigration and Nationality Act (INA), § 235(b). The provision historically applied to newly-arriving individuals at ports of entry. This reinterpretation, formalized in a July 8, 2025 U.S. Immigration and Customs Enforcement (ICE) memo and reinforced by the Board of Immigration Appeals (BIA) in *Matter of Yajure Hurtado*, directed that individuals detained under § 235(b)(2)(A) are not eligible for custody redetermination (a bond hearing) by an immigration judge. The guidance dramatically expanded the population subject to mandatory detention, shifting release decisions to the Department of Homeland Security (DHS), and limiting detained individuals ability to challenge their detainment and eventual removal.

Earlier, before the issuance of the memo, Congress recently expanded mandatory detention under INA § 236(c) to include noncitizens arrested for or charged with a broader set of offenses, including theft, burglary, and certain property crimes through the passage of the Laken Riley Act.

Together, these policy and statutory changes have contributed to record immigration detention levels. They have also caused a dramatic increase in detention-related litigation, with noncitizens and their advocates filing thousands of habeas corpus petitions in federal district courts to challenge the legality of prolonged detention without bond. Federal judges across the country have begun weighing in on the scope of executive detention authority, due process protections, and the limits of administrative reinterpretation of immigration statutes. This resource provides an overview of the legal framework underlying the expansion of mandatory detention, its implementation and impacts, and the emerging patterns in federal court responses.

Detention Statutes and the "Applicant for Admission" Category

U.S. immigration law provides multiple statutory authorities for detaining noncitizens during removal proceedings, each with different procedural protections and release mechanisms. By statute, INA § 235(b) covers those who entered without admission and cannot show two years of

continuous presence in the United States. In practice, that has meant people apprehended near the border or who cannot document two years of presence were subject to mandatory detention. Thus, INA § 235(b) traditionally applied to noncitizens seeking initial entry at ports of entry or apprehended after crossing the border, requiring their detention without a bond hearing before an immigration judge. In contrast, INA § 236(a) governed custody decisions for noncitizens arrested in the interior of the United States, generally allowing immigration judges to conduct bond hearings and order release if the individual was neither a flight risk nor a danger to the community.[1] A third provision, INA § 236(c), has long required mandatory detention without bond eligibility for certain noncitizens with specified criminal convictions or charges, although its scope had been historically narrower than the current administration's interpretation.

The July 8, 2025 ICE memo, entitled "Interim Guidance Regarding Detention Authority for Applications for Admission," applies the statutory definition of "applicant for admission" in INA § 235(a) to a much broader group by asserting that any noncitizen who entered the United States without inspection may be treated as an applicant for admission and detained under § 235(b), regardless of how long they have lived in the country or their ties to U.S. communities. In essence, those who never entered lawfully at a port of entry (as opposed to someone whoi entered lawfully and overstayed a visa) remain “applicants for admission” indefinitely.

In practice, this position treats individuals arrested years or even decades after entry as legally equivalent to those stopped at the border and, by locating their custody under § 235(b) instead of § 236(a), makes them ineligible for immigration judge bond hearings and leaves release to discretionary parole by DHS officers.

The Board of Immigration Appeals’ (BIA) September 2025 decision in *Matter of Yajure Hurtado* adopted the same understanding of § 235(b)(2)(A) – individuals present in the United States "without admission" fall under § 235(b) rather than § 236(a), meaning they cannot seek bond before an immigration judge and must instead pursue release through DHS parole or challenge their detention in federal district court. Because it considered those individuals to be noncitizens detained under § 235(b)(2)(A), BIA held that immigration judges lack jurisdiction to conduct custody redeterminations for people detained under that provision.

By design, BIA is part of the immigration court system in the U.S. Department of Justice, distinct from independent “Article III” federal courts. Notably, the September 2025 decision reversed an earlier 2025 BIA precedential decision and was issued by a reconstituted BIA that followed the removal of several appointees of the prior administration. Critics have asserted that the ruling is inconsistent with the statutory text, decades of agency practice, and , as detailed below, has been the subject of numerous federal court challenges to this reading of the INA, channeling legal challenges away from the immigration court system and into federal habeas corpus litigation, where many federal judges have rejected the administration’s expanded reading of § 235(b).

Implementation and Detention Impacts

[1] Congress adopted this framework in IIRIRA in 1996, creating the current §§ 235 and 236, to distinguish newly arriving noncitizens from those already present, and to give people with longer residence greater procedural protections and access to bond under § 236(a).

The July 2025 memo and BIA decision designate many longtime residents as "applicants for admission" and then mandate their detention. With the Trump administration engaging in an aggressive interior enforcement posture, these policy changes are affecting groups that previously were largely not subject to detention, including noncitizens arrested during routine immigration check-ins, traffic stops, workplace enforcement operations, and other interior encounters with immigration authorities. Many individuals who previously had regular contact with ICE under orders of supervision or alternatives to detention programs are now finding themselves subject to immediate detention without the possibility of a bond hearing before an immigration judge. The memo instructs ICE officers to maintain custody of individuals classified as applicants for admission for the duration of their removal proceedings, fundamentally altering prior practice that allowed people who were not flight risks and who posed no danger to community safety to remain in their communities while their cases proceeded, and these shifts occur alongside new limits on BIA review of many appeals that further narrow opportunities to challenge detention decisions.[2]

The population of those in immigration detention has grown substantially under these policies. By January 2026, ICE was holding approximately 73,000 individuals in custody, a record high and nearly double the average daily detained population in prior years. As of early February 2026, more than 50,000 of the roughly 68,000 people currently detained lacked a prior criminal record. This represents a marked departure from historical enforcement priorities that focused detention resources on individuals with serious criminal backgrounds or recent border crossers. The operational consequences of these policies include longer wait times for immigration court hearings and custody reviews. As the detained population has rapidly increased, capacity constraints at detention facilities and immigration courts have led to extended periods of confinement for many individuals, with some detained for months without resolution of their removal cases or access to a forum to argue for release.

The Laken Riley Act and Expansion of Mandatory Detention

The Laken Riley Act (LRA), signed into law on January 29, 2025, expanded the categories of noncitizens subject to mandatory detention under INA § 236(c). Prior to the Act, § 236(c) required detention for noncitizens convicted of specific crimes enumerated in the statute, including certain aggravated felonies, drug offenses, firearms violations, and crimes involving moral turpitude. The LRA broadened this mandate to require detention of noncitizens who are charged with, arrested for, convicted of, or admit to committing theft, shoplifting, larceny, burglary, or assault on a law enforcement officer, as well as any crime resulting in death or serious bodily injury.

A distinctive feature of the LRA is its reliance on state law definitions of covered offenses. The statute specifies that the listed crimes have "the meanings given such terms in the jurisdiction in

[2] In February 2026, the Executive Office for Immigration Review issued an interim final rule, "Appellate Procedures for the Board of Immigration Appeals," that makes BIA merits review largely discretionary, shortens the filing deadline for most appeals from 30 to 10 days, and provides for summary dismissal unless a majority of Board members votes to accept an appeal within a brief screening period. As a result, a greater share of immigration court decisions, including custody determinations, will become final without full appellate review, further narrowing opportunities to challenge detention decisions.

which the acts occurred," tying immigration detention consequences directly to how individual states define property crimes and other offenses. This creates variation in which conduct triggers mandatory detention depending on where an arrest or charge occurred. The LRA also applies to individuals based on arrests or accusations alone, not just convictions, meaning that people can be detained without bond even if criminal charges are later dismissed or result in acquittal. Additionally, the LRA incentivizes detention in most circumstances, including a provision effectively granting states a new mechanism (lawsuits by state attorneys general) to challenge DHS release or parole determinations in federal court.

Growth in Habeas Corpus Litigation

Habeas corpus (Latin for "produce the body") is a powerful and ancient legal mechanism that allows individuals to challenge the legality of their detention in federal court. In the immigration context, noncitizens typically file habeas petitions under 28 U.S.C. § 2241, which grants federal district courts jurisdiction to review whether someone is being held "in custody in violation of the Constitution or laws or treaties of the United States." The writ of habeas corpus is protected by the Suspension Clause of the U.S. Constitution, which prohibits Congress from suspending the writ except in cases of rebellion or invasion. Following the dramatic increase in the mandatory detained population arising from the July 2025 ICE memo and the BIA's decision in *Matter of Yajure Hurtado*, immigration-related habeas corpus petitions filed in federal district courts increased dramatically. Approximately 8,000 habeas petitions were filed in 2025, compared to just 222 in 2024 – a more than thirtyfold increase. This surge in habeas corpus has overwhelmed U.S. Attorney's Offices across the country, with some offices requesting assistance from the Justice Department's Civil Division to manage the caseload.

The flood of habeas litigation reflects the elimination of immigration judge bond hearings for individuals classified under § 235(b). With that avenue closed, federal district court habeas petitions have become the primary mechanism for detained noncitizens to challenge the legality of their confinement and seek release. Common issues raised in these petitions include whether the individual is properly classified as an "applicant for admission" under § 235(b), whether prolonged detention without a bond hearing violates constitutional due process, whether the LRA applies to a particular arrest or charge, and whether detention conditions meet constitutional standards.

In response to these changes, federal courts in Texas have have been particularly busy addressing this litigation. Some federal district courts in the state received over 700 immigration-related habeas filings in 2025 alone, more than the total number filed during the entire first Trump administration. Legal experts attribute this concentration of cases to the fact that Texas detention facilities hold more than 25 percent of the national detained population, making federal courts in the state a central battleground for challenges to the administration's detention policies.

Federal Court Responses and Fifth Circuit Ruling

Federal district courts have repeatedly rejected the Trump administration's legal interpretations surrounding mandatory detention policies, with judges across the country repeatedly issuing orders requiring bond hearings or release for detained noncitizens. By early 2026, more than

300 federal judges had ruled against the administration's categorical no-bond interpretation in over 1,600 instances, including judges appointed by both Republican and Democratic presidents. Several cases have resulted in consequential relief. In October and December 2025, a federal court in California certified a nationwide class in *Maldonado Bautista v. DHS* and entered final judgment ordering that individuals who entered without inspection but were not apprehended at the border are eligible for bond hearings, holding that they are detained under INA § 236 rather than § 235(b). A Massachusetts district court granted class-action status to detainees in several New England states challenging bond-hearing denials, and in December 2025 a Florida district court granted habeas relief to a long-term resident, ruling that he was not properly subject to expedited removal under § 235(b) and was entitled to a bond hearing under § 236(a).

Reporting on decided habeas cases indicates that courts have granted relief in the overwhelming majority of substantive rulings, with some analyses suggesting that detained plaintiffs prevailed in as many as 98 percent of immigration-related habeas cases decided in 2025. In key decisions, including the nationwide class ruling in *Maldonado Bautista*, federal judges have rejected the administration's reading of INA § 235(b) and concluded that many people who entered without inspection but were not apprehended at the border are properly detained under § 236 and therefore eligible for bond hearings before an immigration judge. Judges have frequently described the government's statutory arguments as "exasperating" and have emphasized that executive policy cannot substitute for or override the limits Congress wrote into the detention provisions of the INA or the requirements of constitutional due process. Courts have also invoked due process principles, particularly in cases involving prolonged detention based solely on unproven accusations or where individuals have substantial ties to the United States.

On February 6, 2026, however, a divided panel of the U.S. Court of Appeals for the Fifth Circuit in *Buenrostro-Mendez v. Bondi*, became the first appellate court to uphold the administration's expanded mandatory detention policy. The majority agreed that noncitizens who entered without inspection and are arrested in the interior may be treated as "applicants for admission" under § 235(b)(2)(A) and therefore held without bond hearings, reasoning that prior administrations' narrower use of this authority did not limit the government's power to apply it more broadly. In dissent, one judge warned that the ruling could require detention without bond for up to two million people and observed that, "for purposes of immigration detention, the border is now everywhere," a result the dissent argued Congress never clearly authorized. The Fifth Circuit's decision applies to Texas, Louisiana, and Mississippi and stands in sharp contrast to hundreds of district court rulings in other jurisdictions that have found the same statutory interpretation unlawful, including recent district court decisions from outside the Fifth Circuit that explicitly rejected the majority's ruling in *Buenrostro-Mendez v. Bondi*. An appeal to the decision to the full Fifth Circuit sitting *en banc* or to the U.S. Supreme Court is likely to be filed in the coming months. For the time being, the differing standards raise the possibility that DHS may seek further transfers of detained individuals into Texas and neighboring Fifth Circuit states.

Conclusion

The rapid expansion of mandatory detention under the second Trump administration has reshaped both the scale and character of the U.S. immigration enforcement system. Record-high detention levels, combined with policies that newly classify many long-term residents as "applicants for admission," mean that large numbers of people with deep ties to the United States are now held without access to immigration judge bond hearings and with limited avenues to seek release while their cases proceed. The Laken Riley Act's broadened detention triggers and the increasing use of § 235(b) for interior arrests have further blurred longstanding distinctions between recent border arrivals and people arrested after years in the country, raising persistent questions about proportionality, accuracy, and the risk of detention based on unproven allegations.

At the same time, the detention system's growth has placed significant pressure on courts and institutions. Federal district courts have responded with thousands of habeas decisions, often finding the administration's statutory interpretation inconsistent with the text and structure of the INA, while a Fifth Circuit ruling has created a competing appellate view. This emerging split, combined with the sheer volume of cases, is likely to ultimately be appealed in the coming months and underscores the uncertainty facing detained noncitizens, who may encounter very different legal landscapes depending on where they are held. The result is an immigration detention regime that is larger, more complex, and more dependent on federal court intervention than at any prior point, with ongoing litigation likely to determine how far mandatory detention can extend and what procedural safeguards remain available.