

Immigration Court: BIA**Case:** *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025)**Date:** May 15, 2025**Adjudicated by:** Malphrus, Goodwin, Mullane**Opinion:** Malphrus**Tags:** 235(b) detention (“arriving alien”), bond eligibility, parole, 236(a) detention,**Question Presented:** Who is an “arriving alien”?**Holdings:**

- “[W]e hold that an applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a).” 69

Rationale:

- If you are arrested immediately upon entry (whether at POE or not), no warrant is needed, so you’re automatically in the 235(b) category, and you are subject to mandatory detention, the only exception being release on parole. If rearrested, you go back into mandatory detention. 70

Facts: (67) Citizen of China crossed border EWI 2022, was encountered by DHS 5.4 miles from POE and 100 yards north of the border. Briefly detained; released under 212(d)(5)(A) (parole). INTERPOL Red Notice for crimes in Spain led to her rearrest by DHS & NTA with 212(a)(6)(A)(i) removability.

Procedural History:

- June 27, 2022: DHS apprehension & release under 212(d)(5)(A) (parole).
- Oct. 30, 2024: INTERPOL Red Notice
- Nov. 25, 2024: DHS rearrest & NTA
- Respondent requested bond hearing
- IJ denied custody redetermination for jx reasons
- BIA appeal

Appeals to Statute & Precedent:

- **INA § 212(a)(6)(A)(i) / 8 U.S.C. § 1182(a)(6)(A)(i):** removability finding as alien present in the U.S. without being admitted or paroled or who arrived in the U.S. at any time or place other than that designated by the A.G.
- **INA § 212(d)(5)(A)(i) / 8 U.S.C. § 1182(d)(5)(A)(i):** parole authority—“the only exception permitting release of aliens detained under section 235(b) of the INA, 8 U.S.C. § 1182(d)(5)(A).” (*Q. Li* at 69). Once the parole terminates, the noncitizen should be returned to the same detention they started with.
- **8 C.F.R. § 212.5(e)(2)(i) (2025):** “providing that when parole granted to an alien is terminated ‘he or she shall be restored to the status that he or she had at the time of parole.’” (*Q. Li* at 70)

- **INA § 235(a)(1) / 8 U.S.C. § 1225(a)(1):** “applicant for admission” – defined as an alien “who arrives in the U.S. whether or not at a designated port of arrival.”
- **INA § 235(b)(1) / 8 U.S.C. § 1225(b)(1):** expedited removal proceedings
- **INA § 235(b)(1)(B)(ii) / 8 U.S.C. § 1225(b)(1)(B)(ii):** mandatory detention until final adjudication of asylum application
- **INA § 235(b)(2)(A) / 8 U.S.C. § 1225(b)(2)(A):** mandatory detention of arriving alien – “in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 240.”
- **INA § 236(a) / 8 U.S.C. § 1226(a):** “authorizes DHS to arrest and detain aliens on a **warrant** pending a decision on their removal from the United States.” (*Q. Li* at 69) “. . . aliens detained under section 236(a) may be eligible for discretionary release on bond pursuant to section 236(a)(2).” **Applies ONLY to aliens already present in the U.S.**
- **INA § 240 / 8 U.S.C. § 1229a(2018):** Full removal proceedings
- ***DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020):** An alien “who tries to enter the country illegally is treated as an ‘applicant for admission.’” . . . “an alien who is detained shortly after unlawful entry cannot be said to have ‘effected an entry.’”
- ***Matter of M-D-C-V-*, 28 I&N Dec. 18, 23 (BIA 2020):** “arriving” applies to noncitizens who are apprehended not at a POE and on the same day they crossed into the U.S.
- ***Matter of M-S-*, 27 I&N Dec. 509, 516 (A.G. 2019):** Expedited removal requires detention until asylum application is adjudicated. Section 236(a) requires a warrant for arrest (at 515).
- ***Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018):** Mandatory detention for arriving aliens until regular removal proceedings have ended. Only exception is parole authority (212(d)(5)(A)) (at 300). A warrant is required for 236(a) arrests. (at 302-303)
- ***Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012):** Applicants for admission “who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be ‘seeking admission’ under the immigration laws.” (quoted in *Q. Li* at 68 n.3)

Respondent’s Arguments:

- Claims she’s actually eligible for bond because she was detained under section 236(a) not 235(b) and is therefore eligible for discretionary release on bond.

Discussion:

- Re. “arriving aliens”: “Similarly, we have held, in other contexts, that the term ‘arriving’ applies to aliens, like the respondent, ‘who [are] apprehended’ just inside ‘the southern border, and not at a point of entry, on the same day [they] crossed into the United States.’ *Matter of M-D-C-V-*, 28 I&N Dec. 18, 23 (BIA 2020). Thus, the respondent is an alien ‘who arrives in the United States’ under section 235(a)(1) of the INA, 8 U.S.C. § 1225(a)(1).” 68
- Mandatory detention = for 235(b) arriving aliens placed in expedited removal OR placed in regular removal proceedings.

- No post-hoc warrants possible (to convert 235(b) to 236(a) in order to make the noncitizen eligible for bond.) 69 n.4
- “The only exception permitting the release of aliens detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), is the parole authority provided by section 212(d)(5)(A) of the INA, 8 U.S.C. § 1882(d)(5)(A).” 69
- “When parole granted by DHS is terminated, ‘the alien shall forthwith return to or be returned to the custody from which he was paroled.’ INA § 212(d)(5)(A), 8 U.S.C. § 1882(d)(5)(A).” 69
- “While DHS’ grant of parole under section 212(d)(5)(A) of the INA, 8 U.S.C. § 1182(d)(5)(A), allowed for the respondent’s temporary release from custody, it was automatically terminated when she was served with a notice to appear. . . . Once the grant of parole was terminated, she was required to ‘forthwith return or be returned to the custody’ under section 235(b) ‘from which [she] was paroled.’” 70

Commentary:

- **Relevance for CAA:** Cuban citizens who were released with I-220A at the border were “applicants for admission” subject to mandatory detention. Their release into the U.S. was by default parole, because DHS has no authorization to release an arriving alien EXCEPT via parole.
 - **This matters because the CAA requires that there be inspection & admission or parole into the U.S.**
 - **RISK:** If DHS agrees, they could subject these people to mandatory detention.