

No. 25-40400

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In the United States Court of Appeals for the Fifth Circuit

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**J.A.V.**, on their own behalf and on behalf of others similarly situated;  
**J.G.G.**, on their own behalf and on behalf of others similarly situated;  
**W.G.H.**, on their own behalf and on behalf of others similarly situated,

*Petitioners–Appellees,*

v.

**DONALD J. TRUMP**, in his official capacity as President of the United States; **PAMELA BONDI**, Attorney General of the United States, in her official capacity; **KRISTI NOEM**, Secretary of the U.S. Department of Homeland Security, in her official capacity; **U.S. DEPARTMENT OF HOMELAND SECURITY**; **TODD LYONS**, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; **U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT**; **MARCO RUBIO**, Secretary of State, in his official capacity; **U.S. STATE DEPARTMENT**; **ROBERT CERNA**, in his official capacity as acting Harlingen Field Office Director for U.S. Immigration and Customs Enforcement; **FRANK VENEGAS**, in his official capacity as the Facility Administrator of the El Valle Detention Facility,

*Respondents–Appellants.*

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On Appeal from a Judgment of the United States District Court  
for the Southern District of Texas

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**RESPONDENTS' MOTION TO HOLD APPEAL IN ABEYANCE**

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## Introduction<sup>1</sup>

The bulk of the issues in this case are duplicative of issues raised in expedited proceedings already before this Court in *W.M.M. v. Trump*, No. 25-10534 (5th Cir.). To promote the efficient disposition of proceedings, this Court should exercise its inherent docket-management power to hold this appeal in abeyance pending the outcome of *W.M.M.*

## Background

In March, the President issued a Proclamation invoking the Alien Enemies Act (“AEA”), 50 U.S.C. § 21, to detain and remove Venezuelan nationals who are members of the designated foreign terrorist organization Tren de Aragua (“TdA”). Proclamation No. 10,903, *Invocation of the Alien Enemies Act Regarding the Invasion of the United States by Tren de Aragua*, 90 Fed. Reg. 13,033, 13,034 (Mar. 20, 2025) (the “Proclamation”). In the early hours of March 15, the three named Petitioners, among others, representing a putative class, sought immediate injunctive relief against their removal under the AEA. See ECF Nos. 1, 4 in *J.G.G. v. Trump*, No. 25-cv-00766 (D.D.C.). In the

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<sup>1</sup> Per 5th Cir. R. 27.4, Respondents’ counsel has informed Petitioners’ counsel about this motion. Petitioners are unopposed.

ensuing litigation, the Supreme Court held that, because the aliens' claims "fall within the 'core' of the writ of habeas corpus and thus must be brought in habeas," "jurisdiction lies in only one district: the district of confinement." *Trump v. J.G.G.*, 145 S. Ct. 1003, 1005 (2025) (per curiam) (quoting *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004)). Petitioners then sought habeas relief in the district, again seeking relief as part of a class—essentially, aliens detained in the Southern District of Texas subject to removal under the Proclamation. See ECF Nos. 1, 4. After granting provisional relief pending resolution of the case, the district court ultimately certified a class and granted permanent injunctive relief to Petitioners and the class. ECF Nos. 57–58; *see also* ECF No. 59 ("Respondents are permanently enjoined from detaining, transferring, or removing [named Petitioners] and the members of the certified class" under the AEA and Proclamation.).

In a separate case, petitioners in the United States District Court for the Northern District of Texas challenged their detention and impending removal under the AEA in a putative class action. *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1366 (2025). Those petitioners moved for a temporary restraining order, but before that motion was fully briefed,

they filed a notice of appeal in this Court and an emergency application in the Supreme Court. *See id.* This Court denied those petitioners' appeal as premature. *Id.* at 1367. The Supreme Court later vacated this Court's judgment and remanded the case for this Court to "address (1) all the normal preliminary injunction factors, including likelihood of success on the merits, as to the named plaintiffs' underlying habeas claims that the AEA does not authorize their removal . . . and (2) the issue of what notice is due, as to the putative class's due process claims against summary removal." *Id.* at 1368, 1370. This Court has expedited proceedings for the remanded case: it is now fully briefed and calendared for oral argument on June 30, 2025. *See* Docket Nos. 33–34 in *W.M.M. v. Trump*, No. 25-10534 (5th Cir. May 21, 2025).

### Argument

Holding this appeal in abeyance pending this Court's decision in *W.M.M.* and the Supreme Court's decision on any request for certiorari in *W.M.M.* would promote "economy of time and effort for [this Court], for counsel, and for litigants." *United States v. Rainey*, 757 F.3d 234, 241 (5th Cir. 2014) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). The Supreme Court enjoined the Government "from removing the named

plaintiffs or putative class members in this action under the AEA pending order by the Fifth Circuit and disposition of the petition for a writ of certiorari, if such writ is timely sought.” *A. A. R. P.*, 145 S. Ct. at 1370. So the Supreme Court will take some action in *W.M.M.* and has signaled that it sees *W.M.M.* as a valuable vehicle for resolving the legal disputes surrounding the AEA. *See id.* at 1370–71 (Kavanaugh, J., concurring) (calling for the Court to resolve the legal questions). Because the issues on appeal in this case are nearly identical to the ones in *W.M.M.*, which has been scheduled for expedited disposition, requiring briefing in the usual course in this case would lead to an unnecessary duplication of effort.

That is doubly true here where this Court is deciding the same issues on an expedited schedule in *W.M.M.* The holdings in that case will be binding precedent and resolve the issues presented in this case. The issues on appeal in *W.M.M.* include:

- (1) To what extent courts may review whether the Proclamation complies with the AEA. *See* Opening Br., Docket No. 55, at 20–22 *in W.M.M.*, No. 25-10534 (5th Cir. May 30, 2025) (“*W.M.M.* Opening Br.”); Answering Br., Docket No. 129, at 22–27 *in*

*W.M.M.*, No. 25-10534 (5th Cir. June 10, 2024) (“*W.M.M. Answering Br.*”);

(2) Whether the Proclamation complies with the AEA. *See W.M.M.*

*Opening Br.* 23–38; *W.M.M. Answering Br.* 27–48;

(3) What due process requires for designations under the Proclamation. *See W.M.M. Opening Br.* 38–47; *W.M.M. Answering Br.* 49–61; and

(4) To what extent the Immigration and Nationality Act and the Convention Against Torture apply to the President’s removal authority under Title 50 and to what extent aliens designated under the AEA must be afforded a voluntary-departure period. *See W.M.M. Opening Br.* 47–54; *W.M.M. Answering Br.* 61–64.

Most of the issues that might arise in this appeal are covered by the above. *See Mem. Op.*, ECF No. 58, at 11–20 (justiciability of Proclamation’s validity under AEA); *id.* at 20–22 (notice requirements and voluntary departure); *id.* at 23–34 (whether Proclamation comports with AEA); *id.* at 34–36 (jurisdiction to hear challenges based on Convention Against Torture).

Although this appeal would also encompass the certifiability of the putative class below, *see* Order & Op., ECF No. 57, because the resolution of the merits questions could moot the certification question, it would be more efficient to permit *W.M.M.* to proceed on an expedited basis before engaging the certification question. And because the district court has enjoined removals from the Southern District of Texas under the AEA and Proclamation, Petitioners in this case will not be prejudiced by a temporary abeyance.

### **Conclusion**

This Court should hold this appeal in abeyance pending the disposition of *W.M.M.*



Respectfully submitted,

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**Dated: July 9, 2025 Counsel for Respondents-Appellants**

The Respondents-Appellants have filed this motion for summary judgment with the Court. The Respondents-Appellants have filed this motion for summary judgment with the Court. The Respondents-Appellants have filed this motion for summary judgment with the Court.

This document contains the Respondents-Appellants' motion for summary judgment. The Respondents-Appellants have filed this motion for summary judgment with the Court. The Respondents-Appellants have filed this motion for summary judgment with the Court. The Respondents-Appellants have filed this motion for summary judgment with the Court.

Respectfully,  
Counsel for Respondents-Appellants

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Fed. R. App. P. 27(d)(2)(A)**

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Dated: July 9, 2025

s/Brian V. Schaeffer  
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