

No. 25-30620

**UNITED STATES COURT OF APPEALS FOR THE FIFTH
CIRCUIT**

Larysa Kostak
Petitioner – Appellee

v.

Donald J. Trump, President of the United States, Kristi Noem, Secretary,
U.S Department of Homeland Security; Pamela Bondi, U.S. Attorney
General; Executive Office for Immigration Review; Todd Lyons, Acting
Director, U.S. Immigration and Customs Enforcement; Brian S. Acuna,
Acting Field Office Director, New Orleans Field Office of U.S. Immigration
and Customs Enforcement; Keith Deville, Facility Administrator, Richwood
Correctional Center
Respondents - Appellants.

**ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE WESTERN DISTRICT OF
LOUISIANA**

No. 3:25-CV-1093

**RESPONDENTS – APPELLANTS’
MOTION TO HOLD APPEAL IN ABEYANCE PENDING
RESOLUTION of Nos. 25-20496, 25-40701**

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INTRODUCTION

Respondents-Appellants respectfully request that the Court hold this appeal in abeyance, pending resolution of appeal in *Buenrostro Mendez v. Bondi*, No. 25-20496,¹ which involves the exact same issue of statutory interpretation. The Court should hold this appeal in abeyance because it is in the interest of justice, respects judicial economy, and would result in little to no delay.

Petitioner is an alien who entered the United States without admission and was detained by U.S. Immigration and Customs Enforcement. Petitioner sought a bond hearing before an Immigration Judge who concluded that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) and ineligible for bond. The Immigration Judge's decision was consistent with DHS's interpretation and Board of Immigration Appeals precedent that "applicants for admission under 8 U.S.C. § 1225(a), like Petitioner, must be detained pending removal proceedings.

In the August 27, 2025, order on appeal, the district court rejected DHS's interpretation of its statutory authority, granted Petitioner's Motion for Temporary Restraining Order, and ordered the agency to provide

¹ On November 19, 2025, the Court consolidated appeal *Buenrostro Mendez v. Bondi*, No. 25-20496 and *Padron Covarrubias v. Vergara*, No. 25-40701.

Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a). ECF No. 20. Petitioner was subsequently granted release on bond.

In *Buenrostro Mendez v. Bondi*, No. 25-20496, Respondents-Appellants challenge an order from another district judge entered on October 7, 2025, ordering release of an alien who, like Petitioner, is an “applicant for admission” under 8 U.S.C. § 1225(a) and was subjected to mandatory detention 8 U.S.C. § 1225(b)(2)(A), consistent with DHS’s interpretation of the statute and Board precedent. In that order, the court granted the petitioner’s application for a writ of habeas corpus, held that the petitioner may only be detained under the discretionary detention statute of 8 U.S.C. § 1226(a), rather than the mandatory detention statute of 8 U.S.C. § 1225(b)(2), and ordered Respondents-Appellants to provide that petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a). Thus, the same issue of statutory interpretation—whether “applicants for admission” are subject to mandatory detention 8 U.S.C. § 1225(b)(2)(A)—is at the heart of this appeal and *Buenrostro Mendez*.

THE COURT SHOULD HOLD THIS APPEAL IN ABEYANCE

To avoid the potential for injustice to the parties and to avoid conflicting decisions, this Court should hold this appeal in abeyance pending the resolution of appeal *Buenrostro Mendez v. Bondi*, No. 25-20496.

Holding a case in abeyance promotes judicial economy when the case has issues in common with other pending cases. *See, e.g., Order, Shane Group Inc. v. Blue Cross Blue Shield of Mich.*, Nos. 19-2260/19-2261/19-2336, 2020 WL 8163437 (Aug. 21, 2020, 6th Cir.) (holding appeal in abeyance with similar issues as two other pending cases). This appeal and *Buenrostro Mendez* involve the exact same issue of statutory interpretation regarding the scope of DHS's detention authority under 8 U.S.C. § 1225(b)(2). Therefore, this Court's resolution in *Buenrostro Mendez* will resolve this appeal.

Judicial economy also weighs heavily in favor of holding this case in abeyance. Without abeyance, these appeals will require separate panels of this Court to review and analyze similar records. Holding this case in abeyance also precludes the possibility of separate panels reaching contradictory holdings and necessitating consideration of the issues by this Court sitting *en banc*. *See Farish for Farish v. Courion Industries, Inc.*, 754 F.2d 1111, 1114 (4th Cir. 1985). Moreover, holding this appeal in abeyance will not unduly interfere with proceedings in this appeal. Briefing has not begun in the instant appeal. Nor could Petitioner be prejudiced by holding this appeal in abeyance, as she has already been released on bond.

Respondents-Appellants has requested Petitioner's position on

holding this appeal in abeyance. Counsel for Petitioner states that Petitioner will file a response upon receipt of Respondents-Appellants' motion.

CONCLUSION

The Court should hold this appeal in abeyance pending resolution of *Buenrostro Mendez v. Bondi*, No. 25-20496.

DATE: November 24, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 24, 2025 I electronically filed the foregoing with the Clerk of the Court through the Court's ECF system and that it will be served electronically upon registered participants identified on the Notice of Electronic Filing.

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CERTIFICATE OF COMPLIANCE

1. This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because:

The brief contains 724 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface and typestyle requirements of Fed. R. App. P. 32(g)(1) because:

The brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Georgia fourteen-point.

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