

No. 25-30620

---

IN THE 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; TODD LYONS, IN HIS OFFICIAL CAPACITY AS ACTING DIRECTOR AND SENIOR OFFICIAL PERFORMING THE DUTIES OF THE DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; BRIAN ACUNA, IN HIS OFFICIAL CAPACITY AS ACTING FIELD OFFICE DIRECTOR, NEW ORLEANS FIELD OFFICE, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, ENFORCEMENT AND REMOVAL OPERATION; KEITH DEVILLE, IN HIS OFFICIAL CAPACITY AS FACILITY ADMINISTRATOR, LASALLE CORRECTIONS FACILITY, RICHWOOD CORRECTIONAL CENTER; DOJ EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,

*RESPONDENTS - APPELLANTS*

---

On Appeal from the United States District Court for the Western  
District of Louisiana (No. 3:25-CV-1093)

---

PETITIONER'S RESPONSE TO RESPONDENTS' MOTION

---

Charles Andrew Perry  
Nora Ahmed  
ACLU of Louisiana  
1340 Poydras St.

Suite 2160  
New Orleans, LA 70112  
(504) 522-0628  
*Counsel for Petitioner-  
Appellee*

## INTRODUCTION

This case is one of five pending Fifth Circuit appeals dealing with the same question: whether the Immigration and Nationality Act (“INA”) allows the government to mandatorily detain millions of longtime U.S. residents charged with having entered the country without proper documents long ago. The Court recently granted the government’s motion to consolidate two of those appeals: *Buenrostro-Mendez v. Bondi* (No. 25-20496) and *Covarrubias v. Vergara* (No. 25-40701). See Unpublished Order, *Buenrostro-Mendez v. Bondi*, No. 25-20496 (5th Cir. Nov. 19, 2025), Dkt. 30-2. The government seeks to hold this case in abeyance pending resolution of those two consolidated appeals.<sup>1</sup> See Dkt. 17. Petitioner-Appellee (hereinafter “Petitioner”) does not oppose the government’s abeyance motion in principle, nor its suggestion that *Buenrostro-Mendez* and *Covarrubias* be designated as the lead consolidated cases on the relevant issue of statutory interpretation. However, if *Buenrostro-Mendez* and *Covarrubias* will be the lead cases going forward, Petitioner respectfully suggests that the Court should

---

<sup>1</sup> The government has also moved to hold in abeyance its appeal in *Ventura Martinez v. Trump*, No. 25-30621.

hold in abeyance the other pending appeals and any future government appeals raising the same legal issue, for the reasons outlined in the government's motion of judicial economy and to avoid inconsistent rulings between different panels.

## I. BACKGROUND

For decades, the government has provided noncitizens like Petitioner—a longtime U.S. resident who was detained by immigration authorities and charged with having entered the country without proper documents long ago—bond hearings under 8 U.S.C. § 1226(a), the INA's discretionary detention provision. Had immigration authorities arrested Petitioner at any point before July 2025, the government would have provided him with that bond hearing, as it has to millions of detained noncitizens for many decades. But because of a newly announced policy flipping the prevailing understanding of the INA on its head, the government is now forcing long-time U.S. residents to remain in detention without the possibility of bond for the many months, or years, it will take for their immigration cases to conclude. Specifically, the government now contends that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), which is part of the INA's

border inspection provision.

Like countless courts around the country, the court below rejected the government's novel interpretation of the immigration statutes and granted a writ of habeas corpus. *See Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025). The government appealed. As far as Petitioner is aware, the government has also filed appeals in four other cases involving identically situated petitioners and raising the same legal questions. Those four additional cases on appeal are: *Buenrostro-Mendez v. Bondi*, No. 25-20496, Originating Case Number: 4:25-cv-3726 (S.D. Tex., Rosenthal, J); *Covarrubias v. Vergara*, No. 25-40701, Originating Case Number: No. 5:25-cv-112 (S.D. Tex., Kazen, J.); *Ventura Martinez v. Trump*, No. 25-30621, Originating Case Number: No. 3:25-cv-1445 (W.D. La., Edwards, J.); and, *Lopez Santos v. Noem*, No. 25-30656, Originating Case Number: 3:25-cv-1193 (W.D. La., Doughty, J.).

The Court has granted the government's motion to consolidate two of those cases, *Buenrostro-Mendez* and *Covarrubias*, and seeks to hold this case in abeyance pending resolution of those two appeals. *See* Dkt. 17. The government has also filed a motion to hold *Ventura Martinez* in

abeyance, but not yet in *Lopez Santos*. See Mot., *Ventura Martinez v. Trump*, No. 25-30621 (5th Cir. Nov. 25, 2025), Dkt. 15.

## II. PETITIONER DOES NOT OBJECT TO HOLDING THIS CASE IN ABEYANCE.

Petitioner's obvious priority is to ensure that this Court's consideration of her appeal adequately accounts for her interests. However, Petitioner also recognizes the importance of judicial economy, that the same legal question is present in all five current appeals, and that it may be more efficient to litigate that question in the consolidated cases rather than five separate ones. For that reason, Petitioner does not oppose holding this case in abeyance, and does not oppose *Buenrostro-Mendez* and *Covarrubias* moving forward as the lead cases on a routine briefing schedule that will allow for robust briefing on a supremely consequential issue that will impact not only Petitioner but also many others in the Fifth Circuit.

As the government notes in its motion, the Court's decision in *Buenrostro-Mendez* and *Covarrubias* may ultimately decide Petitioner's instant appeal if Petitioner's case since they involve the exact same issue of statutory interpretation regarding the scope of the government's detention authority under 8 U.S.C. § 1225(b)(2). See Dkt. 17 at 3. In

addition to holding this case in abeyance, Petitioner respectfully suggests that the Court should also hold in abeyance *Ventura Martinez, Lopez Santos*, and any other case that the government may appeal raising the same legal issue for judicial economy and to ensure that separate panels do not reach contradictory holdings.

In sum, Petitioner does not object to holding this case in abeyance pending *Buenrostro-Mendez* and *Covarrubias* presuming that other similar appeals will also be held in abeyance pending the outcome of those two cases. Should this appeal be held in abeyance, the parties can be directed to file a joint status report following resolution of *Buenrostro-Mendez* and *Covarrubias* regarding the impact of those cases on this appeal.

Dated: December 1, 2025

Respectfully submitted,

/s/Charles Andrew Perry  
Charles Andrew Perry  
Nora Ahmed  
ACLU of Louisiana  
1340 Poydras St.  
Suite 2160  
New Orleans, LA 70112  
(504) 522-0628

## **CERTIFICATE OF SERVICE**

I hereby certify that on December 1, 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.

*/s/ Charles Andrew Perry*

## **CERTIFICATE OF COMPLIANCE**

1. This response complies with Fed. R. App. P. 27(d)(2)(A) because it contains 855 words, excluding the parts of the response exempted by Fed. R. App. P. 32(f).
2. This response complies with the typeface and typestyle requirements of Fed. R. App. P. 32(g) because the brief has been prepared in Century Schoolbook font using Microsoft Word.

*/s/ Charles Andrew Perry*