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

Docket No. 25-40701

Jose Padron Covarrubias,

Petitioner – Appellee,

v.

Michael Vergara, in his official capacity as ICE Field Office Director, San Antonio
ICE Detention and Removal, *et al.*,

Respondents – Appellants,

On Appeal from
United States District Court for the Southern District of Texas,
No. 5:25-cv-00112 (Kazen, J.)

**PETITIONER-APPELLEE’S OPPOSITION TO RESPONDENTS-
APPELLANTS’ MOTION TO EXPEDITE APPEALS IN
BUENROSTRO-MENDEZ V. BONDI, NO. 25-20496 AND
COVARRUBIAS V. VERGARA, NO. 25-40701**

Note: Nearly an identical opposition is being filed in:
Buenrostro-Mendez v. Bondi, No. 25-20496.

Stephen O’Connor
O’CONNOR & ASSOCIATES,
PLLC
7703 N. Lamar Blvd., Suite 300
Austin, TX 78752
Tel: 512-617-9600
steve@oconnorimmigration.com

Counsel for Petitioner-Appellee

INTRODUCTION

Until recently, noncitizens living in the United States who were detained by immigration authorities on a charge of having entered the country without proper documents received bond hearings under the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1226(a). Had immigration authorities arrested the Petitioners-Appellees (“Petitioners”) in the appeals the government seeks to expedite—both long-time residents of the United States—at any point before July 2025, the government would have provided them with that bond hearing, as it has to millions of similarly-situated detained people for decades. But based on a newly announced policy that has turned the long-established understanding of the INA on its head, the government is now forcing long-time U.S. residents like Petitioners to remain in detention without the possibility of bond for the many months, or years, it will take to conclude their immigration cases. Specifically, the government now contends that Petitioners are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

The district courts below—like hundreds of others—rejected the government’s novel interpretation of the immigration statutes and granted relief by ordering a bond hearing in immigration court. *See* Order, *Buenrostro-Mendez v. Bondi*, No. 4:25-cv-03726 (S.D. Tex. Oct. 7, 2025), ECF No. 18 at 2–7 (Rosenthal, J.); *Padron Covarrubias v. Vergara*, No. 5:25-cv-00112, 2025 WL 2950097, at *2–5 (S.D. Tex. Oct. 8, 2025) (Kazen, J.); *see also* Argument, Point I, *infra*.

Although Petitioners does not oppose the government's motion to consolidate the appeals, he does oppose the government's motion for an expedited briefing schedule because the government has failed to show good cause. *See* 5th Cir. Rule 27.5 ("Only the court may expedite an appeal and only for good cause."). Respondents-Appellants' ("Respondents") position before this Court is the exact opposite of its position in identical appeals in the First Circuit, where the government sought and obtained a stay of all briefing due to the federal government shutdown. Because of the critical legal issue in these appeals, the Court would benefit from fulsome briefing from all parties and interested *amici*. Therefore, Petitioner respectfully requests that the Court enter the standard briefing schedule as provided in Fed. R. App. P. 31(a) and 5th Cir. Rule 31.

ARGUMENT

I. THE COURT SHOULD SET A CONSOLIDATED, STANDARD BRIEFING SCHEDULE.

The two cases on appeal are:

- ***Buenrostro-Mendez v. Bondi*, No. 25-20496.** Originating Case Number No. 4:25-cv-03726 (S.D. Tex., Rosenthal, J.) Petitioner, a long-time resident of the U.S. whom Respondents were holding in mandatory detention under 8 U.S.C. § 1225(b)(2)(A), filed a petition for a writ of habeas corpus on August 8, 2025, arguing that his detention was governed by 8 U.S.C. § 1226(a), and that his detention without the opportunity for a bond hearing violated due process. On October 7, 2025, the district court agreed that § 1226(a) applies to Petitioner's detention, granted the habeas corpus petition, and ordered Respondents to conduct a bond hearing or release him. Petitioner is now released after the Immigration Judge found him not to pose a flight risk or danger and ordered release on bond.

- ***Covarrubias v. Vergara*, No. 25-40701.** Originating Case Number: No. 5:25-cv-00112 (S.D. Tex., Kazen, J.). Petitioner, a long-time resident of the U.S. whom Respondents were holding in mandatory detention under 8 U.S.C. § 1225(b)(2)(A), filed a petition for a writ of habeas corpus on July 8, 2025, arguing that his detention was governed by 8 U.S.C. § 1226(a), and that his detention without the opportunity for a bond hearing violated due process. On October 8, 2025, the district court agreed that petitioner was eligible for a bond hearing under 8 U.S.C. § 1226(a), granted the petition and issued the writ, and ordered a bond hearing. Petitioner has been released after the Immigration Judge found him not to pose a flight risk or danger and ordered release on bond.

The Court should deny Respondents' motion to expedite the appeal and instead should set a consolidated, standard briefing schedule for the two cases. Respondents' motion neglects to mention several key facts, which are relevant to the briefing schedule the Court should set and which counsel strongly in favor of a consolidated, routine schedule.

First, the government's demand for judicial urgency, because "hundreds of cases that have been filed in the district courts, including dozens in this Circuit, raising this exact same question of DHS's statutory detention authority," ECF No. 6 at 8, overlooks that the government has sought to hold identical matters in abeyance nationwide. In a pending First Circuit appeal presenting the exact same legal questions as here,¹ the government filed a motion to *stay* proceedings, arguing that

¹ *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238 (D. Mass. Jul. 24, 2025) (ruling that 8 U.S.C. § 1226, not § 1225, governs the detention of noncitizen who entered the U.S. without inspection and granting habeas petition).

due to the lapse in federal appropriations, “DOJ attorneys are prohibited from working, even on a voluntary basis, except in very limited circumstances, including ‘emergencies involving the safety of human life or the protection of property.’” *See* Mot. for Stay at 1, *Martinez v. Hyde*, No. 25-1902 (1st Cir. Oct. 10, 2025) (Ex. A) (quoting 31 U.S.C. § 1342). The First Circuit subsequently granted the government’s request that the appeal be stayed until appropriations are restored. Order Granting Stay, *Martinez v. Hyde*, No. 25-1902 (1st Cir. Oct. 31, 2025) (Ex. B); *see also* Docket, *dos Santos v. Lyons*, No. 25-1996 (1st Cir.) (motion to stay in similar appeal filed by government on Oct. 27, 2025) (Ex. C). Indeed, in correspondence with Petitioner’s counsel, Respondents’ counsel’s own email indicated that they were placed in furlough status and prohibited from working except in very limited circumstances. *See* Ex. D (Email dated Nov. 6, 2025). This Court should not reward the government’s transparent gamesmanship, where it insists that briefing must happen urgently in two cases, while arguing to another Circuit that it is barred by law from doing any briefing. Instead, this Court should set a consolidated, routine schedule that would allow for robust briefing of the important legal questions common to these cases.

Second, Respondents claim there is good cause to justify expedited consideration because the district court rejected the government’s interpretation of 8 U.S.C. § 1225(b)(2), asserting that the government suffers irreparable injury

“‘[a]ny time [it] is enjoined by a court from effectuating statutes enacted by representatives of its people.’” Mot. at 8 (quoting *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)). But the district courts here did not *enjoin* the statutes but rather *interpreted* them. See *Buenrostro-Mendez*, No. 4:25-cv-03726, ECF No. 18 at 5 (“The issue here largely ‘boils down to a matter of statutory interpretation,’ which ‘belong[s] historically within the province of the courts.’”); *id.* (“As almost every district court to consider this issue has concluded, ‘the statutory text, the statute’s history, Congressional intent, and § 1226(a)’s application for the past three decades’ support finding that § 1226 applies to these circumstances.” (citing *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *4 (E.D. Mich. Sept. 9, 2025))); accord *Covarrubias*, 2025 WL 2950097, at *2-5. On the government’s logic, anytime it disagrees with a court’s statutory interpretation, the appellate courts would need to expedite the appeal. The exception would swallow the rule.

Respondents also complain about the substantial number of cases raising the same issue filed in this Circuit and nationwide, arguing that “clarity” in the law is needed. Mot. at 8. Where the government’s novel reading of the immigration laws has been rejected by nearly every judge to consider the issue in this Circuit²—and

² See, e.g., *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136, at *2–4 (W.D. La. Aug. 27, 2025) (Edwards, J.); *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278, at *3–5 (W.D. La. Sept. 11, 2025) (Doughty, J.); *Ventura*

by nearly every other court to have addressed the issue across the country³—the law is scarcely unclear. While the government is free to argue on appeal that hundreds of lower court decisions are all incorrect, the fact that the government must respond to a significant number of habeas petitions is a problem entirely of its own making. As numerous courts have noted, it is the government that has suddenly reversed on its own decades-long practice of providing bond hearings, and the only outcome of the wave of adverse decisions has been restoring discretion to immigration judges to consider individuals' suitability for release on bond. *See Buenrostro-Mendez*, No. 4:25-cv-03726, ECF No. 18 at 5 (collecting cases). Moreover, the large number of cases on the exact same legal question signals its importance, which counsels for a routine schedule that would allow for robust briefing, consultation with counsel in other appeals pending in this Court on the same issue, and involvement by interested *amici* who can provide the Court with additional perspectives.

Finally, it bears noting that both Petitioners have been released while the immigration courts consider their applications for relief from removal, after the immigration courts found that both Petitioners posed no threat of flight risk or

Martinez v. Trump, No. 3:25-cv-01445-JE-KDM (W.D. La. Oct. 22, 2025), ECF No. 17 at 4–7 (Edwards, J.); *see also supra*.

³ *See* Kyle Cheney & Myah Ward, *Trump's New Detention Policy Targets Millions of Immigrants. Judges Keep Saying It's Illegal*, Politico (Sept. 20, 2025), <https://www.politico.com/news/2025/09/20/ice-detention-immigration-policy-00573850>.

danger. Respondents present no evidence (nor can they) that allowing Petitioners to remain in their communities while their cases are on appeal would harm the government in any way. Thus, all the circumstances in both cases favor setting a single, routine briefing schedule.

REQUEST FOR RELIEF

For the reasons set out above, Petitioners respectfully request that this Court:

1. Deny Respondents-Appellants' Motion to Expedite Appeals.
2. Consolidate *Buenrostro-Mendez v. Noem*, No. 25-20496 and *Covarrubias v. Noem*, No. 25-40701.
3. Modify the consolidated briefing schedule to set Respondents-Appellees' opening brief deadline to December 8, 2025, or 30 days after the Court's order; 30 days for Petitioners to respond; and 21 days for the reply.
4. Order that Respondents-Appellants and Petitioners-Appellees file one opening, response, and reply brief in the consolidated cases, with the following word limits:
 - a. Respondents-Appellants' opening brief: 16,000 words.
 - b. Petitioners-Appellees' response brief: 16,000 words.
 - c. Respondents-Appellants' reply brief: 6,500 words.⁴

⁴ Petitioner is aware of two other appeals pending before this Court that raise the exact same question, both filed by the government on October 24, 2025. *See Kostak v. Trump*, No. 25-30620 (Originating Case Number: 3:25-cv-01093 (W.D. La., Edwards, J.)); *Ventura Martinez v. Trump*, No. 25-30621 (Originating Case Number: 3:25-cv-01445 (W.D. La., Edwards, J.)). Petitioner respectfully submits that should the Court grant the government's motion to consolidate the two appeals in *Buenrostro-Mendez* and *Covarrubias*, the Court should also hold in abeyance the appeals in *Kostak*, *Ventura Martinez*, and any other appeal raising the same issues, pending decision in the consolidated cases here.

CONCLUSION

For the foregoing reasons, the Court should grant the government's motion to consolidate but deny its motion to expedite the appeals.

Dated: November 10, 2025

Respectfully submitted,

/s/ Stephen O'Connor

Stephen O'Connor
O'CONNOR & ASSOCIATES,
PLLC
7703 N. Lamar Blvd., Suite 300
Austin, TX 78752
Tel: 512-617-9600
steve@oconnorimmigration.com

Counsel for Petitioner-Appellee

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 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/ Stephen O'Connor

Stephen O'Connor

O'CONNOR & ASSOCIATES,
PLLC

7703 N. Lamar Blvd., Suite 300

Austin, TX 78752

Tel: 512-617-9600

steve@oconnorimmigration.com

CERTIFICATE OF COMPLIANCE

1. This response to a motion complies with the length limits of Fed. R. App. P. 27(d)(2)(A) because it contains 1,830 words.

2. This response to a motion complies with the typeface and typestyle requirements of Fed. R. App. P. 27(1)(E) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point.

/s/ Stephen O'Connor

Stephen O'Connor

O'CONNOR & ASSOCIATES,
PLLC

7703 N. Lamar Blvd., Suite 300

Austin, TX 78752

Tel: 512-617-9600

steve@oconnorimmigration.com