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

Jose Padron Covarrubias

Petitioner-Appellee,

v.

Miguel Vergara, ICE Field Office Director, San Antonio ICE Detention and Removal; Kristi Noem, Secretary, U.S. Department of Homeland Security; Pamela Bondi, U.S. Attorney General; Kristi Noem, Secretary, U.S. Department of Homeland Security; Juan S. Diaz, Warden, Laredo Processing Center, Corrections Corporation of America; Attorney Susan Aikman, Assistant Chief Counsel, Office of Chief Counsel, U.S. Immigration and Customs Enforcement,

Respondents - Appellants.

**REPLY IN SUPPORT OF MOTION OF RESPONDENTS-
APPELLANTS' TO CONSOLIDATE
AND EXPEDITE APPEALS**

Petitioner agrees with Respondent-Appellants request to consolidate this appeal with No. 25-20496, but offers no sound justification for opposing Respondents-Appellants' motion to expedite briefing and oral argument in these appeals. Petitioner concedes that hundreds of cases are currently pending in federal district courts raising the exact question of statutory interpretation at issue in this appeal, including dozens of cases pending or decided by district courts in this circuit. And there is no question that the legal question implicated in these appeals is eminently worthy of expedited treatment. The district courts below, along with many others across this

Circuit, has ordered the Department of Homeland Security to offer bond hearings to aliens who have unlawfully entered and resided in the United States, contrary to the plain language of the governing statute, 8 U.S.C. § 1225. This Court’s swift resolution of the Department’s statutory authority is necessary to bring clarity to the law of this Circuit “[g]iven the stakes and given the volume of litigation over this one issue.” *Guartazaca Sumba v. Crowley*, No. 1:25-CV-13034, 2025 WL 3126512, at *2 n.5 (N.D. Ill. Nov. 9, 2025).

Accordingly, the Court should grant Respondents-Appellants’ motion to consolidate these appeals and expedite consideration of these appeals according to the following briefing schedule, with oral argument to be scheduled for the February 2-6 sitting.

- (1) Opening Brief:** November 21, 2025
- (2) Answering Brief:** December 12, 2025
- (3) Reply Brief:** December 23, 2025

ARGUMENT

Petitioner raises several arguments against expedited consideration of these appeals—none of which detract from the urgency of this Court’s resolution of the statutory question.

Petitioner makes much of the fact that the Government moved to stay

proceedings in an appeal filed in the First Circuit based on the lapse in appropriations. See Opp. 4-5 (citing *Martinez v. Hyde*, No. 25-1902 (1st Cir.) and *dos Santos v. Lyons*, No. 25-1996 (1st Cir.)). There is no “gamesmanship.” The U.S. Attorney’s Office filed protective appeals to preserve the Government’s appellate rights and to enable review by the Solicitor General. The Government frequently files protective appeals for that very purpose, and it is not obligated to pursue, much less seek expedited consideration, of such appeals—let alone all of them. At bottom, the Government’s filing of protective appeals in another circuit does not undermine Respondents-Appellants’ argument that the legal dispute at the heart of these appeals—which has resulted in *hundreds* of district court decisions—warrants expedited treatment.

Next, Petitioner says there is no good cause to expedite because the district court did not “enjoin” the operation of the statute. Opp. 6. The lower court’s order—like the numerous other decisions from within this Circuit that Petitioner cites, see Opp. 6-7 & nn.2-3 (collecting decisions)—prevents the Department of Homeland Security from implementing its interpretation of 8 U.S.C. § 1225(b)(2) against Petitioner.¹ See Mot. 8. That is a restraint

¹ Petitioner argues that “the government’s novel reading of immigration laws has been rejected by nearly every judge to consider the issue in this Circuit. Petitioner is wrong. See *Barrios Sandoval v. Acuna*, No. 25-01467, 2025 WL

on the Department’s actions—a restraint that has been replicated by the “wave of adverse decisions” (Opp. 7) across the country, including in this Circuit. That significant injury to the Government warrants expedited proceedings so this Court may definitively resolve the statutory issue and bring clarity to the law in this Circuit. And it is no answer to suggest that the Government can stop the flood of litigation by providing aliens, like Petitioner, with bond hearings; the Government cannot set aside its best reading of the law to avoid litigation.

Lastly, Petitioner requests that the Court for an additional 3,000 words to the standard word limit for the parties’ principal briefs. Petitioner has not offered any explanation as to why an additional 3,000 words is needed for this appeal, which involves a narrow issue of statutory interpretation and is not fact intensive. The Court should therefore deny the request to expand the word-limits for the parties’ principal briefs.

CONCLUSION

The Court should grant Respondents-Appellants’ motion to consolidate and expedite briefing and oral argument in these appeals.

3048926 (W.D. La. Oct. 31, 2025); see also *Silva Oliveira v. Patterson*, No. 25-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025).

Dated: November 12, 2025

Respectfully submitted,

BRETT A. SHUMATE
Assistant Attorney General

DREW C. ENSIGN
Deputy Assistant Attorney General

BENJAMIN HAYES
Senior Counsel to the Assistant Attorney
General

MELISSA NEIMAN-KELTING
Assistant Director
Office of Immigration Litigation

/s/ Brian V. Schaeffer
BRIAN V. SCHAEFER
Trial Attorney
U.S. Department of Justice
Civil Division
Office of Immigration Litigation
General Litigation and Appeals
P.O. Box 868, Ben Franklin
Station Washington, DC 20044
(202) 598-7311
E-mail: brian.schaeffer@usdoj.gov

Counsel for Respondents-Appellants

CERTIFICATE OF SERVICE

I hereby certify that on November 12, 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/ Brian V. Schaeffer
BRIAN V. SCHAEFER
Trial Attorney
Office of Immigration Litigation
U.S. Department of Justice, Civil Division
P.O. Box 868, Ben Franklin
Station Washington, DC 20044
(202) 598-7311

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 765 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 Times New Roman fourteen-point.

/s/ Brian V. Schaeffer

BRIAN V. SCHAEFFER

Trial Attorney

Office of Immigration Litigation

U.S. Department of Justice, Civil Division

P.O. Box 868, Ben Franklin

Station Washington, DC 20044

(202) 598-7311