

No. 25-20496

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

Victor Buenrostro-Mendez,
Petitioner-Appellee,

v.

Pamela Bondi, U.S. Attorney General; Kristi Noem, Secretary, U.S. Department of Homeland Security; Todd Lyons, Acting Director, U.S. Immigration and Customs Enforcement; Mathew W. Baker, Acting Field Office Director, Houston Field Office of U.S. Immigration and Customs Enforcement; John Linscott, ICE Director HCDF, U.S. Immigration and Customs Enforcement; Martin Frink, Warden, Houston Contract Detention Facility CoreCivic,
Respondents - Appellants.

On Appeal from the United States District Court
for the Southern District of Texas
No. 4:25-cv-03726 (Rosenthal, J.)

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

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

BRIAN V. SCHAEFFER
Trial Attorney
Office of Immigration Litigation
P.O. Box 868, Ben Franklin
Station
Washington, DC 20044
Telephone: (202)598-7311
Email: Brian.Schaeffer@usdoj.gov

*Counsel for Respondents-
Appellants*

INTRODUCTION

Pursuant to Federal Rule of Appellate Procedure 3(b)(2) and Circuit Rule 27.5, Respondents-Appellants request that the Court consolidate this appeal (No. 25-20496) with No. 25-40701¹ and expedite consideration of the consolidated appeals.

These appeals raise a significant and recurring issue of statutory interpretation regarding the Department of Homeland Security's detention authority under the Immigration and Nationality Act. Each of the petitioners is an alien who entered the United States without admission, was detained by the Department of Homeland Security ("DHS"), and requested a bond hearing with an immigration judge ("IJ"). Consistent with DHS's interpretation and Board of Immigration of Appeals precedent, the IJ in each case concluded that the petitioner is subject to mandatory detention under the Immigration and Nationality Act, 8 U.S.C. §§ 1225(a)(1), 1225(b)(2) and ineligible for bond. The district court decisions in this appeal and No. 25-40701 rejected DHS's interpretation of its statutory authority, granted petitioners' writs of habeas corpus, and ordered the agency to provide petitioners bond hearings.

¹ Respondents-Appellants are also filing a similar motion in No. 25-40701. At this time, ECF has not accepted counsel's Notice of Form of Appearance. Once accepted, Respondents-Appellants will file the motion in No. 25-40701.

The district courts' orders in this appeal and No. 25-40701 thus raise an important and pressing issue regarding DHS's statutory authority. That same question of statutory interpretation is presented in well over a hundred cases pending or decided across the country, including dozens pending in district courts within this Circuit. This Court's prompt resolution of this issue is urgently needed to bring clarity to the law of this Circuit.

Accordingly, Respondents-Appellants request that the Court consolidate these appeals and enter the following briefing schedule for the consolidated appeals:

Opening Brief: November 21, 2025

Answering Brief: December 12, 2025

Reply Brief: December 23, 2025

In addition, Respondents-Appellants request that the Court schedule the consolidated appeals for oral argument during the February 2-5, 2026, sitting, or at an earlier time of the Court's preference.

BACKGROUND

Petitioner is an alien that entered the United States without admission, who was subsequently detained by U.S. Immigration and Customs Enforcement ("ICE"), determined to be inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), and placed in removal proceedings under Section 240 of

the Immigration and Nationality Act, 8 U.S.C. § 1229a. ECF No. 18 (Ex. A). ICE determined that Petitioner's detention is controlled by 8 U.S.C. § 1225(b)(2), which requires the agency to detain "applicants for admission" during the pendency of their removal proceedings. *Id.* Petitioner filed a petition for a writ of habeas corpus in the District Court for the Southern District of Texas challenging the lawfulness of his detention under § 1225(b)(2). The district court held that 8 U.S.C. § 1226, § 1225(b)(2) applied to Petitioner's detention. *Id.* at 5. The district court ordered Respondents to provide Petitioner with a bond hearing under 8 U.S.C. § 1226(a) by October 21, 2025. *Id.* at 6. Petitioner was released on bond.

In appeal No. 25-40701, Jose Padron Covarrubias is an alien who entered the United States in 2001 without admission and was subsequently detained by ICE, determined to be inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), and placed in removal proceedings under Section 240 of the Immigration and Nationality Act, 8 U.S.C. § 1229a. ECF No. 30 (Ex. B). ICE determined that Padron Covarrubias's detention is controlled by 8 U.S.C. § 1225(b)(2), which requires the agency to detain "applicants for admission" during the pendency of their removal proceedings. Padron Covarrubias filed a petition for a writ of habeas corpus in the District Court for the Southern District of Texas challenging the lawfulness of his detention under §

1225(b)(2).

Appeal No. 25-40701 is from October 8, 2025, order of the district court granting Padron Covarrubias's application for a writ of habeas corpus. *Id.* The district court held that Padron Covarrubias's detention under 8 U.S.C. § 1225(b)(2) is unlawful and that Padron Covarrubias's detention is instead governed by the separate detention authority in 8 U.S.C. § 1226(a), which allows the agency to release an alien on conditional parole or bond during the pendency of removal proceedings. *Id.* at 4. Accordingly, the district court ordered Respondents-Appellants to either provide Padron Covarrubias a bond hearing under § 1226(a) by October 17, 2025 or release him. *Id.* at 7-8. Padron Covarrubias was released on bond.

ARGUMENT

I. This Court should Consolidate this Appeal with No. 25-40701 for Expedited Consideration.

This Court should consolidate this appeal with No. 25-40701 to avoid the potential for injustice to the parties and to avoid conflicting decisions.

“When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court of appeals.” Fed. R. App. P. 3(b)(2). This rule was adopted to encourage consolidation of appeals whenever possible. See 1967 Advisory Committee Notes to Fed. R. App. P. 3. Consolidation with another pending appeal is appropriate when it “will

facilitate resolution of the important issues raised by the appeal and better serve the interests of judicial economy[.]” *Rodgers v. U.S. Steel Corp.*, 536 F.2d 1001, 1009 (3d Cir. 1976); *see also United States v. Washington*, 573 F.2d 1121, 1123 (9th Cir. 1978) (Kennedy, J.) (noting that consolidation is proper when court of appeals has jurisdiction over each appeal and consolidation is “in the interests of justice”). Consolidation is also appropriate when appeals involve the same facts or issues. *See Redmond v. Gill*, 352 F.3d 801, 802 n.1 (3d Cir. 2003).

Here, consolidation is warranted because both appeals raise the exact same question of statutory interpretation regarding DHS’s detention authority under the Immigration and Nationality Act. Therefore, both appeals can be cleanly resolved together through a single, consolidated appellate proceeding, which will avoid the possibility of separate panels reaching contradictory holdings and necessitating *en banc* consideration. *See Farish for Farish v. Courion Industries, Inc.* 754 F.2d 1111, 1114 (4th Cir. 1985). Accordingly, concerns of judicial economy strongly weigh heavily in favor of consolidation.

Moreover, consolidation will not result in any delay. A briefing schedule has not been issued in either appeal. Moreover, Respondents-Appellants are requesting that the Court expedite briefing upon

consolidating the cases, which will only accelerate resolution of these appeals. *See* Part II, *infra*. Finally, Petitioners in both cases are represented by the same counsel, and the Respondents both appeals are essentially the same. *Cf. Scriptomatic, Inc. v. United States*, 555 F.2d 364, 367 n.3 (3d Cir. 1977).

Respondents-Appellants have requested Petitioner's position on consolidation. Through counsel, Petitioner informs that he intends to file a response to this motion.

II. The Court Should Expedite Briefing and Oral Argument in these Appeals.

In addition to consolidating this appeal with No. 25-40701, the Court should expedite briefing and oral argument in these appeals under Fifth Circuit Rule 27.5.

Good cause exists to justify expedited consideration. The district court's order squarely implicates a significant and widely impactful question of statutory interpretation regarding the scope of DHS's authority and obligation to detain aliens pending removal proceedings. Both DHS and the Board of Immigration Appeals have concluded that 8 U.S.C. § 1225(a) and (b)(2) mandate the detention of aliens – like Petitioner – who is present in the United States without admission, during the pendency of removal proceedings. *See Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216, 220 (BIA

2025) (holding that aliens present in the United States without inspection are subject to mandatory detention under § 1225(b)(2) and not eligible for bond). The district court's order rejecting that interpretation and ordering DHS to grant Petitioner a bond hearing directly restrains the Government's operation and implementation of its statutory detention authority. Therefore, there is good cause to expedite this appeal. *See Maryland v. King*, 567 U.S. 1301, 1303 (2012) (recognizing that the government "suffers a form of irreparable injury" "[a]ny time [it] is enjoined by a court from effectuating statutes enacted by representatives of its people.") (Roberts, C.J., in chambers) (citation omitted).

Expedited consideration is even more essential given the 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. This Court's prompt resolution of this important and recurring question of DHS's immigration authority is necessary to bring clarity to the law of this Circuit.

Accordingly, Respondents-Appellants request that the Court set the following briefing schedule for the appeals:

Opening Brief: November 21, 2025

Answering Brief: December 12, 2025

Reply Brief: December 23, 2025

In addition, Respondents-Appellants request that the Court schedule the appeals for oral argument during the February 2-5, 2026, sitting, or at an earlier time of the Court's preference.

Respondents-Appellants has requested Petitioner's position on expediting briefing and oral argument. Petitioner, through counsel, indicates that he intends to file a response to this motion.

CONCLUSION

The Court should grant Respondents-Appellants' motion to consolidate this appeal with No. 25-40701 and to expedite briefing and oral argument of the consolidated appeals.

Dated: November 7, 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 7, 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 1,335 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.

/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