

No. 25-20496

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**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 M. Lyons, Acting Director, United States Immigration and Customs Enforcement; Matthew W. Baker, Acting ICE Houston Field Office Director, United States Immigration and Customs Enforcement; John Linscott, ICE Director, Houston Contract Detention Facility, United States Immigration and Customs Enforcement; Martin Frink, Warden, Houston Contract Detention Facility, CoreCivic,  
*Respondents-Appellants,*

consolidated with

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No. 25-40701

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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; Orlando Perez, Warden, Laredo Processing Center, Corrections Corporation of America; Susan Aikman, In her official capacity, as Assistant Chief Counsel Office of Chief Counsel, U.S. Immigration and Customs Enforcement,  
*Respondents-Appellants.*

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**OPPOSED MOTION OF RESPONDENTS-APPELLANTS'  
TO RECONSIDER DENIAL OF  
MOTION TO EXPEDITE APPEAL**

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## INTRODUCTION

Respondents-Appellants request that the Court reconsider its Order of November 19, 2025, denying Respondent-Appellants' motion to expedite these consolidated appeals. As explained in Respondent-Appellants' motion to expedite, these appeals raise an exceptionally important issue of statutory interpretation regarding the Department of Homeland Security's detention authority under the Immigration and Nationality Act. That same question of statutory interpretation is presented in *well over a thousand* cases pending or decided across the country, including *over five hundred* in district courts within this Circuit. As described in the attached declarations from U.S. Attorneys Offices across the Fifth Circuit, this tidal wave of litigation has placed a severe strain on U.S. Attorney Office resources and has required the diversion of resources committed to other important priorities, including criminal cases and other affirmative litigation. And the burden is not only on the Executive. The resources of district courts, too, are being heavily taxed. This Court's prompt resolution of this issue is urgently needed to bring clarity to the law of this Circuit.

Accordingly, Respondents-Appellants respectfully request that the Court reconsider its order denying the motion to expedite these consolidated appeals and enter the following briefing schedule:

**Opening Brief:** December 12, 2025

**Answering Brief:** January 12, 2026

**Reply Brief:** January 23, 2026

In addition, Respondents-Appellants request that the Court schedule the consolidated appeals for oral argument at the Court's earliest convenience.

### **BACKGROUND**

Petitioners are aliens who entered the United States without admission. ROA 25-40701.19 ¶12; No. 25-20496, Dkt. 1. Years later, Petitioners were 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. ROA 25-40701.19 ¶13; No. 25-20496, Dkt. 18. ICE determined that Petitioners' 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. ROA 25-40701.20 ¶15; No. 25-20496, Dkt. 18. Petitioners each filed habeas petitions in the District Court for the Southern District of Texas challenging the lawfulness of his detention under § 1225(b)(2). ROA 25-40701.11; No. 25-20496, Dkt. 1. The district courts granted both petitions and ordered the Government to provide Petitioners with bond hearings under 8 U.S.C. § 1226(a). ROA 25-

40701.262; No. 25-20496, Dkt. 18. Petitioners were released on bond. ROA 25-40701.263; No. 25-20496, Dkt. 19.

Respondents appealed both orders. Given the flood of similar habeas petitions and the resultant necessity for resolution of this significant issue by this Court, the Government moved to consolidate the appeals and expedite briefing and oral argument. *See* No. 25-20496, Dkt. 10; No. 25-40701, Dkt. 6. This Court granted Respondents' motion to consolidate the appeals but denied the motion to expedite. *See* No. 25-20496, Dkt. 30; No. 25-40701, Dkt. 29.

## **ARGUMENT**

### **I. The Court Should Reconsider its Order Denying the Motion to Expedite the Consolidated Appeals.**

Respondents-Appellants respectfully request that the Court reconsider its order denying their motion to expedite briefing and oral argument in these consolidated appeals. Both district court orders on appeal involve an exceptionally important issue regarding DHS's authority and obligation to detain aliens pending removal proceedings. That same issue has been at the heart of *over five hundred* lawsuits filed in district courts in this Circuit alone over just the last few months.

This flood of litigation is imposing severe burdens on Government and district court resources in this Circuit. As the attached declarations from U.S.

Attorneys attest, “534 habeas cases have been filed in the district courts within the Fifth Circuit since July of this year.” Decl. of Jay R. Combs, U.S. Attorney for the Eastern District of Texas (Ex. A); Decl. of Nicholas J. Ganjei, U.S. Attorney for the Southern District of Texas (Ex. B); Decl. of Zachary A. Keller, U.S. Attorney for the Western District of Louisiana (Ex. C); Decl. of J.E. Baxter Kruger, U.S. Attorney for the Southern District of Mississippi (Ex. D); Decl. of Ryan Raybould, U.S. Attorney for the Northern District of Texas (Ex. E); Decl. of Justin R. Simmons, U.S. Attorney for the Western District of Texas (Ex. F).

This wave of new litigation “has imposed a substantial drain on the resources of the U.S. Attorneys’ Office[s]” in the Fifth Circuit, and has forced U.S. Attorney Offices to shift already limited resources away from other important priorities. For example, in the Eastern District of Texas, “30% of [its] Civil Division is committed to the handling of habeas petitions,” with “plan[s] to shift criminal division attorneys to work on these cases as the staffing needs increase.” Combs Decl. ¶4 (Ex. A); *see also* Raybould Decl. ¶4 (Ex. E) (Office “has been forced” to dedicate “criminal AUSAs [to] work on civil cases”). In the Western District of Louisiana, civil attorneys are “working overtime hours and spending most of their time working on emergency habeas matters,” which has “divert[ed] resources from all other

pending civil dockets, including defensive, affirmative, and financial litigation work.” Keller Decl. ¶4 (Ex. C); *see also* Ganjei Decl. ¶4 (Ex. B) (Southern District of Texas has diverted attorneys from the Appellate Division and Asset Forfeiture Section to handle habeas cases and the Office has been “unable to handle certain bankruptcy and civil affirmative matters”); Kruger Decl. ¶4 (Ex. D) (similar).

This Court’s resolution of this significant and undeniably recurring issue is urgently needed. Until this Court resolves the statutory issue, the Government and district courts continue to be faced with a deluge of litigation, already limited resources will continue to be strained, and other important priorities will continue to be compromised. Recognizing the reality of these circumstances, the Sixth Circuit has expedited briefing on appeals the Government has filed in that circuit, with briefing set to conclude by mid-January and submission “to the court at the earliest practicable date.” Order, *Pizarro Reyes v. Raycraft*, No. 25-1982 (6th Cir. Nov. 25, 2025).

Accordingly, Respondents-Appellants respectfully request that the Court reconsider its order denying the motion to expedite and enter the following briefing schedule:

**Opening Brief: December 12, 2025**

**Answering Brief: January 12, 2026**

**Reply Brief: January 23, 2026**

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.

Respondents-Appellants have requested Petitioners' positions on this motion. Petitioners, through counsel, have not provided a position for the relief sought in this motion.

### **CONCLUSION**

The Court should grant this motion to reconsider and expedite briefing and oral argument of these consolidated appeals.

Dated: December 3, 2025

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 3, 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*  
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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 1,083 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.

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