



Practice Alert

***Sosnava Rodriguez v. Ortega* and 8 U.S.C. § 1225(b)(2)(A) Detention in the Fifth Circuit¹**

August 4, 2026

On July 2, 2026, the Fifth Circuit held that certain people detained in Texas, Louisiana, and Mississippi should have a right to a bond hearing within 90 days where the government has to justify why they remain detained and, if the person did not have a bond hearing within that time, they should be released. However, on July 10, 2026, the Fifth Circuit en banc vacated the panel's order. Then, on July 21, 2026, the en banc Court stayed the underlying district court judgments pending en banc review. While the counsel team is engaged in briefing that is scheduled to conclude before the case is re-heard en banc on September 24, 2026, many open questions as to the impact and application of the case remain.²

This practice alert describes the ongoing Fifth Circuit litigation, *Sosnava Rodriguez v. Ortega*, No. 26-50183, explains the holding of the now-vacated decision on the merits from a panel of the Fifth Circuit and collects caselaw in which district judges have granted habeas relief despite the Fifth Circuit's recent decisions to vacate the panel's merits decision and enter a stay of the district court orders pending en banc review.

Background on *Sosnava Rodriguez*

Sosnava Rodriguez consolidated three appeals of habeas grants. All three petitioners are long-time residents of Texas who entered the United States without inspection over a decade ago, have U.S. citizen children, and lack criminal history. All were arrested following routine traffic stops and held in immigration detention without access to a bond hearing under 8 U.S.C. § 1225(b)(2)(A). Petitioners brought individual habeas petitions in the U.S. District Court for the Western District of Texas, where in each case the district court held that detaining them without

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² The counsel team will continue to update this resource as circumstances develop and, as such, encourage practitioners to report post-*Sosnava Rodriguez* by emailing clearinghouse@immcouncil.org.

any individualized hearing violated the Due Process Clause and ordered their immediate release. The government appealed the three cases and sought expedited review from the Fifth Circuit.

The Fifth Circuit Panel’s Merits Decision (now vacated)

On July 2, 2026, in a 2-1 split decision, a panel of the Fifth Circuit affirmed the district courts’ habeas grants in a published opinion, **which has since been vacated and is therefore no longer in effect**. The panel held that the Fifth Amendment of the U.S. Constitution precludes the Department of Homeland Security (DHS) from detaining a noncitizen under the mandatory detention authority of 8 U.S.C. § 1225(b)(2)(A) for “indefinite and extensive periods of time without an individualized determination.” [*Sosnava Rodriguez v. Ortega*, 180 F.4th 702, 723 \(5th Cir. 2026\)](#), [*vacated pending en banc reh’g*, 2026 WL 2014647 \(5th Cir. July 10, 2026\) \(Mem.\)](#). The decision required that “the executive branch” provide bond hearings to noncitizens held under § 1225(b)(2)(A) *within* 90 days of their detention, at which “the Government must articulate an individualized justification for further detention without bond.” *Id.* at 728. In coming to this conclusion, the panel rejected the government’s attempt to expand the “entry fiction”—under which noncitizens who are detained upon arrival in the United States, even if subsequently paroled, are treated as if they remain at the border—to all noncitizens who have not been admitted. *Id.* at 714–15. The panel reviewed Supreme Court decisions on the constitutional rights of noncitizens dating back to the 19th century. It found that, despite “Congress’s nearly unlimited power over the exclusion of [noncitizens] from this country,” case after case establishes that “the Due Process Clause protects all persons residing in the United States.” *Id.* at 712–13. That line of precedent, in combination with the Supreme Court’s civil detention caselaw, informed the majority’s holding that “[t]he Fifth Amendment requires, at minimum, that there must be some reason for the Government to detain any person,” including noncitizens held under § 1225(b)(2)(A). *Id.* at 724.

The panel further elaborated on the substantive and procedural due process components of the Fifth Amendment, concluding that while petitioners asserted a substantive right—that of physical liberty—their claims sounded in procedural due process as they challenged the *process* owed when the government deprives them of their liberty interest. *Id.* at 718. The panel affirmed that freedom from detention, including immigration detention, is a fundamental right that is expressly named in the Due Process Clause. *Id.* at 719. (“We are clearly not breaking new ground. . . . ‘Freedom from physical restraint [is] a fundamental right.’”) (quoting *Foucha v. Louisiana*, 504 U.S. 71, 86 (1992)). In doing so, the panel rejected the government’s assertion that the liberty interest petitioners sought to vindicate was not freedom from detention, but rather the right to remain in the United States. No. 26-50183, Respondents-Appellants’ Reply Brief, at 3. The panel went on to apply the well-established *Matthews v. Eldridge*, 424 U.S. 319 (1976), analysis to determine what process was owed to the petitioners. 180 F.4th at 725.

The majority also distinguished the Supreme Court’s decision in *Demore v. Kim*, 538 U.S. 510 (2003). In *Demore*, the Supreme Court upheld the facial constitutionality of 8 U.S.C. § 1226(c), which mandates the detention of noncitizens convicted of certain crimes³ while their removal

³ At the time *Demore* was decided, subjection to mandatory detention under 8 U.S.C. § 1226(c) largely required a conviction; since that time, the Laken Riley Act broadened the mandatory

case proceeds through the immigration court. *Id.* at 517–19. In *Demore*, however, the Supreme Court found that in enacting § 1226(c), Congress had made a categorical judgment, based on the substantial evidence before it, that noncitizens with certain convictions presented both a danger to the community and higher flight risk; that was the reason that the government did not have to present individualized reasons for noncitizens’ detention in those circumstances. *Id.* at 527–28; *see also* 180 F.4th at 721–22. The *Sosnava Rodriguez* panel found that, by contrast, for detention under § 1225(b)(2)(A), the government presented no evidence that Congress had made any categorical justification for no-bond detention. 180 F.4th at 723–24. The panel therefore held that without a categorical justification, the government must provide an individualized justification for detention under § 1225(b)(2)(A) through a bond hearing.

Although the district court decisions below focused on the petitioners’ due process rights at the moment of their detention, the panel majority opinion rested its holding on the proposition that some period of mandatory detention of noncitizens pending removal proceedings is presumptively reasonable, but that the Due Process Clause requires individualized justification when the detention becomes prolonged or indefinite. *Id.* at 726–28. Accordingly, the panel held that a bond hearing must be provided within 90 days of detention.⁴ *Id.* at 728.

The Fifth Circuit’s Vacatur of the Panel’s Decision in *Sosnava Rodriguez*

On July 10, 2026, the Fifth Circuit ordered that *Sosnava Rodriguez* will be reheard en banc and vacated the panel’s merits decision. [*Sosnava Rodriguez v. Ortega*, No. 26-50183, 2026 WL 2014647 \(5th Cir. July 10, 2026\) \(Mem.\)](#). Therefore, **the panel decision’s requirement that noncitizens detained pursuant to § 1225(b)(2)(A) receive a bond hearing after 90 days is no longer in effect.** *Sosnava Rodriguez* is scheduled for en banc oral argument on September 24, 2026.

The vacatur of the panel decision does not affect the authority of district judges within the Fifth Circuit in other habeas cases to grant relief; district judges have continued to do so. For example:

- *Milan v. Warden, Joe Corley Processing Ctr.*, No. 4:26-cv-2001, 2026 WL 2100493, at *1 (S.D. Tex. July 21, 2026) (ordering release and rejecting government request to stay case pending *en banc* review in *Sosnava Rodriguez* “because the rehearing will take an unknown amount of time, and because the petitioner’s injury from continued detention is ongoing”)
- *Sanchez v. Warden ERO El Paso Camp E. Montana*, No. EP-26-cv-00654, 2026 WL 2045477, at *1 (W.D. Tex. July 10, 2026) (“The Court cannot infer from the Fifth

detention provision to cover certain arrests, charges, and admissions for non-admitted noncitizens.

⁴ Neither party sought a bright-line rule on appeal. The majority looked to the Supreme Court’s decisions in *Demore* and *Zadvydas v. Davis*, 533 U.S. 678 (2001), a case about indefinite detention after a final removal order, and determined that some period of mandatory detention is constitutional, but that detention without the opportunity for a bond hearing becomes unconstitutional at a certain point in time. Based on its interpretation of *Demore* and *Zadvydas*, the panel identified 90 days as the threshold.

Circuit's decision to rehear the case, however, that the 'panel was incorrect in its conclusions.' Indeed, in at least one case in recent memory, the full Fifth Circuit reached substantially the same ruling as the three-judge panel after rehearing the case *en banc*. The Court will continue to follow the panel decision 'as persuasive, non-binding authority.'" (citations omitted)).

- *Oumar v. Warden, C. La. ICE Processing Ctr.*, No. 26-cv-1885, 2026 WL 2170424, at *4 (W.D. La. July 28, 2026) (ordering release, and noting that because the panel decision is no longer binding precedent, release as a remedy is not foreclosed before 90 days of detention have elapsed)
- *Suazo Gomez v. Acuna*, No. 1:26-cv-00220, 2026 WL 2111943, at *2 (W.D. La. July 22, 2026) (granting habeas release in redetention case and noting *Sosnava Rodriguez* is factually and legally distinguishable, vacatur of the panel decision notwithstanding)

The Fifth Circuit's Stay of the District Court Orders in *Sosnava Rodriguez*

On July 21, 2026, the Fifth Circuit ordered that the individual district court decisions in the three consolidated cases in *Sosnava Rodriguez* be stayed pending appeal. [*Sosnava Rodriguez v. Ortega*, No. 26-50183, 2026 WL 2104747 \(5th Cir. July 21, 2026\) \(Mem.\)](#). While the stay is designated as a "published order," it contains no legal reasoning indicating the basis for the stay decision, deciding any of the issues in the case, or directing district courts to take or not take any actions in other cases.

While the order is published, because it does not even note the grounds for the Court's decision, much less provide any reasoning, many courts have determined that it should not be considered binding (or even strong persuasive authority) in any other district court habeas case beyond the three individual petitioners'. *See, e.g., Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025) (noting that "interim orders are not conclusive as to the merits," although "they inform how a court should" treat similar issues in like cases—but only to the extent the orders "reflect our judgment" as to a specific legal point); *cf. Nat'l Institutes of Health v. Am. Pub. Health Ass'n*, 145 S. Ct. 2658, 2663 (2025) (positing that "even probabilistic holdings," such as that a party is likely to succeed on the merits, "must 'inform how a [lower] court' proceeds 'in like cases,'" but only because "regardless of a decision's procedural posture, its 'reasoning—its ratio decidendi'—carries precedential weight in 'future cases'" (Gorsuch, J., concurring) (citations omitted); *ExxonMobil Rsch. & Eng'g Co., Inc. v. Nat'l Lab. Rels. Bd.*, 163 F.4th 140, 143 n.2 (5th Cir. 2025) (Oldham, J., dissenting) (noting only that the court "should take seriously" specific reasoning from a Supreme Court emergency order).

The government will likely argue that because the stay order says that it is "published," it precludes district judges in other cases from granting habeas relief and instead requires district judges stay all similar cases pending the outcome in *Sosnava Rodriguez*. *See, e.g., Scott Camacho v. DHS*, No. EP-26-cv-01717, 2026 WL 2137156, at *2 (W.D. Tex. July 24, 2026); *Perozo-Mata v. Blanche*, No. 4:26-cv-05679, 2026 WL 2195373, at *3 (S.D. Tex. July 27, 2026).

Numerous judges in the Fifth Circuit have rejected the government's arguments about the effect of the stay order, however. For example:

- *Mercado Leyva v. U.S. DOJ Immigration Court*, No. EP-cv-01196, 2026 WL 2211321, at *1 n.1 (S.D. Tex. July 23, 2026)
- *Tolentino-Rodriguez v. Blanche*, No. 4:26-cv-05611, 2026 WL 2211318, at *1 n.1 (S.D. Tex. July 23, 2026)
- *Scott Camacho v. DHS*, No. EP-26-cv-01717, 2026 WL 2137156, at *3 (W.D. Tex. July 24, 2026)
- *Perozo-Mata v. Blanche*, No. 4:26-cv-05679, 2026 WL 2195373, at *3 (S.D. Tex. July 27, 2026)
- *Guerra Estrada v. De Anda Ybarra*, No. EP-26-cv-1897, 2026 WL 2168090, at *1–2 (W.D. Tex. July 28, 2026)
- *Martinez Jarquin v. Warden, Rio Grande Detention Ctr.*, No. 5:26-cv-01208, 2026 WL 2198932, at *2–3 (S.D. Tex. July 28, 2026)
- [Order, Tiquiram-Us v. Warden, Dilley Immigration Processing Ctr., No. 5:26-cv-04473 \(W.D. Tex. July 31, 2026\), ECF No. 6](#)
- *Garcia Rodriguez v. Blanche*, No. EP-26-cv-01769, 2026 WL 2221493, at *2–13 (W.D. Tex. Aug. 3, 2026) (ordering response from the government after concluding at screening stage that the stay order does not require staying new habeas case)

The reasoning district courts have relied on in reaching these results includes:

- **Stay orders are not conclusive as to the merits.**
 - *Mercado Leyva*, 2026 WL 2211321, at *1 n.1 (citing *Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025); *Merrill v. Milligan*, 142 S. Ct. 879, 879 (2022) (Kavanaugh, J., concurring); and *U.S. Navy SEALs 1-26 v. Biden*, 72 F.4th 666, 675 n.9 (5th Cir. 2023) (A stay does not “spawn binding legal consequences regarding the merits of [a] case.”))
 - *Tolentino-Rodriguez*, 2026 WL 2211318, at *1 n.1 (similar)
 - *Perozo-Mata*, 2026 WL 2195373, at *3 (similar)
 - *Guerra Estrada*, 2026 WL 2168090, at *1 (similar)
 - *Martinez Jarquin*, 2026 WL 2198932, at *2–3 (similar)
 - *Tiquiram-Us*, No. 5:26-cv-04473, at 1 n.1 (similar)
- **The government asks courts to speculate about the merits, which the Fifth Circuit has declined to do in similar circumstances; the best course is to abide by a court’s settled view of the law rather than speculate.**
 - *Scott Camacho*, 2026 WL 2137156, at *3 (the government seeks “mere speculation of what the *en banc* court will decide”)
 - *Guerra Estrada*, 2026 WL 2168090, at *1–2 (explaining that “the Fifth Circuit itself has declined to engage in,” such speculation, “finding that ‘guess[ing] [at] the meaning of unexplained grants of a stay or writs of certiorari’ makes it ‘even more difficult [to] rationally [] order outcomes,’” and that “abiding [by the court’s] settled view of the law until told to do otherwise best strikes for rational and evenhanded justice” (quoting *Sagastizado v. Noem*, 802 F. Supp. 3d 992, 1013 (S.D. Tex. 2025) and *Selvae v. Lynaugh*, 842 F.2d 89, 94–95 (5th Cir. 1988), *vacated sub nom. Selvae v. Collins*, 494 U.S. 108 (1990)).

- *Mercado Leyva*, 2026 WL 2211321, at *1 n.1 (similar)
 - *Perozo-Mata*, 2026 WL 2195373, at *3 (similar)
 - *Martinez Jarquin*, 2026 WL 2198932, at *2–3 (similar)
 - *Tiquiram-Us*, No. 5:26-cv-04473, at 1 n.1 (“[I]nsofar as the interim stay order is precedential, it ‘was issued without any explanation [or] analysis whatsoever,’ making it impossible to determine its meaning and scope.” (quoting *Guerra Estrada*, 2026 WL 2168090, at *1–2))
- **For a stay order to inform the exercise of equitable discretion in a later case, the stay order includes analysis and explanation of why; such analysis is absent here.**
 - *Guerra Estrada*, 2026 WL 2168090, at *1–2 (“Where stay orders in one case have informed the Supreme Court’s exercise of its equitable discretion to stay a subsequent case, the original stay orders analyzed the relevant factors and explained why the balance of the equities weighed in favor of a stay. . . . Because the stay order does not explain why the competing equities in the three consolidated cases in *Sosnava Rodriguez* warranted a stay, the Court is unable to discern how the balancing of the equities there informs the equities present here.” (citing *Boyle*, 145 S. Ct. at 2654; *Trump v. Wilcox*, 145 S. Ct. 1415 (2025); *Nat’l Institutes of Health v. Am. Pub. Health Ass’n*, 145 S. Ct. 2658, 2659 (2025); and *Dep’t of Educ. v. California*, 604 U.S. 650 (2025))
 - *Perozo-Mata*, 2026 WL 2195373, at *3 (similar)
 - *Garcia Rodriguez*, 2026 WL 2221493, at *13 (noting that the stay order does not explain how it balanced the equities, and declining to stay proceedings after finding the equities balanced in the noncitizen’s favor)
- **The stay order does not explain what precedential effect it has, if any.**
 - *Tolentino-Rodriguez*, 2026 WL 2211318, at *1 n.1 (the stay order “does not clearly state what precedential effect, if any, it has on the district courts in general”)
 - *Scott Camacho*, 2026 WL 2137156, at *3 (the stay order “is silent as to the contours of its applicability”)
 - *Perozo-Mata*, 2026 WL 2195373, at *3 (similar)
 - *Tolentino-Rodriguez*, 2026 WL 2211318, at *1 n.1 (similar)
 - *Garcia Rodriguez*, 2026 WL 2221493, at *4 (“It’s at least clear that the Stay Order does not *by its own terms* stay all district court proceedings in all § 1225(b)(2)(A) cases pending within the Fifth Circuit’s boundaries.”)
- **Staying pending habeas cases for the months while *Sosnava Rodriguez* is pending would harm noncitizens stuck languishing in detention.**
 - *Garcia Rodriguez*, 2026 WL 2221493, at *11–13 (citing *Wedgeworth v. Fibreboard Corp.*, 706 F.2d 541, 545 (5th Cir. 1983) and *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936))

- *Tiquiram-Us*, No. 5:26-cv-04473, at 1 n.1 (“[P]rompt resolution is contemplated by the nature of the writ of habeas corpus, which “must not be allowed to founder in a procedural morass.”” (quoting *Harris v. Nelson*, 394 U.S. 286, 291 (1969) (citation modified)); *see id.* (noting 28 U.S.C. § 2243 requires that courts sitting in habeas “shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted”).
- **Whatever the effect of the stay order in similar cases, it does not preclude *relief* in cases that are factually or legally distinguishable.**
 - *Tolentino-Rodriguez*, 2026 WL 2211318, at *1 n. (distinguishing case decided on substantive rather than procedural due process grounds)
 - *Perozo-Mata*, 2026 WL 2195373, at *3 (distinguishing case where noncitizen was paroled into the United States five years prior, “has resided here with the full knowledge of the United States Government ever since,” and court’s analysis “focused on the arbitrary revocation of DHS’ prior determination that Ms. Perozo-Mata was neither a flight risk nor a danger to the community without notice, opportunity to be heard, or any allegation of changed individual circumstances”)
 - *Martinez Jarquin*, 2026 WL 2198932, at *2–3 (distinguishing case where noncitizen was released on order of recognizance and later redetained)
- **If the stay order precludes anything, it might preclude a claim that would facially invalidate § 1225(b)(2)(A), but it does not preclude as-applied challenges, which existing precedent allows.**
 - *Scott Camacho*, 2026 WL 2137156, at *3
 - *Martinez Jarquin*, 2026 WL 2198932, at *2–3 (specifically distinguishing a case where noncitizen was released on order of recognizance and later redetained)
- **If the stay order requires anything, it might require a *post-judgment stay pending appeal* in a case that is legally, factually and procedurally indistinguishable, but nothing more; the stay order certainly does not require the wholesale stay of proceedings in different cases.**
 - *Garcia Rodriguez*, 2026 WL 2221493, at *4–9
- **Staying pending habeas cases as the government has requested would grow the case backlog at the district courts.**
 - *Scott Camacho*, 2026 WL 2137156, at *3
 - *Martinez Jarquin*, 2026 WL 2198932, at *2–3
- **A court of appeals may not have appellate jurisdiction to stay an unrelated case, and a pending appeal in a separate case raising a similar issue does not divest district courts of their judicial power to decide cases properly before them in the meantime.**

- *Garcia Rodriguez*, 2026 WL 2221493, at *4 n.35 (“[T]he Court questions whether a federal court of appeals has appellate jurisdiction to stay a case that no party has yet appealed. Compare, e.g., *United States v. Chisum*, 156 F. App’x 75, 76 (10th Cir. 2005) (“Appellate jurisdiction over the underlying appeal is a prerequisite for this court’s consideration of a stay pending appeal.”), with, e.g., *In re Deepwater Horizon*, 785 F.3d 1003, 1009 (5th Cir. 2015) (“Timely notice of appeal is a mandatory prerequisite for this Court’s appellate jurisdiction.”)); *id.* at *10 (discussing district courts’ inherent competence and duty to decide cases before them despite a pending appeal raising a similar issue)

Conclusion

The immigration detention landscape in the Fifth Circuit is likely to continue to evolve rapidly over the coming months as the Fifth Circuit rehears *Sosnava Rodriguez*. Practitioners are encouraged to remain in communication with the counsel team and with each other about victories, setbacks, and other developments, both in the district and immigration courts, and the counsel team will continue to regularly update this practice advisory to keep practitioners informed.