
From: Roger Parloff
Sent: Tuesday, September 8, 2026 2:22 PM
To: RulesCommittee Secretary
Subject: Rules suggestion re Fed. R. Civ. P. 5.2(c) and Fed. R. App. P. 25(a)(5)

Roger Parloff
Senior Editor
Lawfare Media
Washington, D.C.
roger.parloff@lawfaremedia.org

Carolyn A. Dubay, Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE, Room 7-300
Washington, D.C. 20544
RulesCommittee_Secretary@ao.uscourts.gov

RE: Rules Suggestion regarding Fed. R. Civ. P. 5.2(c) and Fed. R. App. P. 25(a)(5)

Dear Ms. Dubay:

I cover court proceedings in my capacity as a senior editor at Lawfare Media. I endorse the letter submitted by the Reporter's Committee for Freedom of the Press requesting removal of restrictions on electronic access to records in immigration cases in federal court. Alternatively, I recommend amending and narrowing the existing rules to require only narrow redactions of truly private and sensitive personal information. Specifically, I am seeking removal or narrowing of Fed. R. Civ. P. 5.2(c) and Fed. R. App. P. 25(a)(5). My understanding is the U.S. Supreme Court also follows Rule 5.2(c) in its own [guidelines](#) for electronic filings.

Although these rules have created numberless problems for me in trying to cover important immigration cases of great public moment in the district courts, I would like to highlight here certain anomalies in the way the rules currently operate at the appellate level, where their operation is particularly indefensible. The first example concerns cases involving mandatory immigration detention without bail, an issue of enormous current importance to the public, the courts, the individuals involved, and their families. The legal issue is how to interpret 8 U.S.C. § 1225(b)(2). [More than 10,000 district court cases](#) have issued rulings on this question, and [at least ten circuit courts of appeals](#) have weighed in. The circuit courts are split, and at least two petitions for certiorari review—one by the United States and another by two detained noncitizens—are pending before the Supreme

Court. See [Putra v. Lopez-Campos](#), No. 25-1415 and [Buenrostro-Mendez v. Blanche](#), No. 26-43.

Although these petitions address one of the most important legal issues now being litigated in the country and involve only pure questions of law that pose no conceivable threat to the privacy interests of any of the petitioners, none of the briefs or amicus briefs in either of the dockets is currently available on public court sites. The Supreme Court public information officers appear to recognize that disseminating these documents is innocuous. If one writes to them, as I have, to request a digital copy of a brief in these dockets, they will happily send one without noting any limitations on use. In both of these cases, for instance, I have requested digital copies of the certiorari petitions and have then posted them online as a service for readers. But this is a pointlessly cumbersome process. It also doubtless leaves many members of the public who have an interest in seeing these documents in the dark as to whether they are entitled to see them and, if so, how they should go about gaining access to them.

I wanted to highlight one other recent example of an anomaly that the current rules caused, unnecessarily confusing the public. It occurred in [Sosnava Rodriguez v. Oretaga](#), Docket No. 25-50183, a Fifth Circuit case that addresses issues adjacent to—but not identical to—those involved in the mandatory immigration detention cases mentioned above. The panel in the Sosnava Rodriguez cases found that the detentions of noncitizens held pursuant to the interpretation of 8 U.S.C. § 1225(b)(2) that the U.S. Court of Appeals for the Fifth Circuit had earlier adopted could quickly become unconstitutional after a certain length of time.

That controversial panel ruling came down on July 2, 2026. On July 10, acting on its own motion, the full Fifth Circuit granted rehearing en banc, vacating the panel decision. The same day, the government asked the en banc court to stay three district court judgments implicated in the consolidated panel ruling. On July 21, that motion was [granted](#) in a one-line order with no reasoning.

Assistant Attorney General Brett Shumate then [issued a post](#) on X stating: “The full Fifth Circuit has issued an extraordinary precedential order making clear that illegal aliens do not have a constitutional right to roam free in the United States during their removal proceedings.”

Exceedingly few people knew what Shumate was talking about. I did not, for instance, although I am a journalist and retired-lawyer who has been following these issues. A one-line order with no reasoning does not ordinarily make precedent. It developed that Shumate was referring to the fact that the government had included a line in its motion—which was not available on the public court docket due to Fed. R. Civ. P. 5.2(c) and Fed. R.

App. P. 25(a)(5)—that requested the Fifth Circuit to “issue a precedential order staying the district court’s judgments pending rehearing by the full Court.” (The [motion](#) was later posted online by the American Immigration Council.) Shumate was interpreting the en banc Fifth Circuit’s one-line order as having granted that request. Others, of course, took issue with Shumate’s interpretation. But the point here is that the general public had no idea what Shumate was even talking about, because the text of the brief he was referring to was not even available online.

And, again, for no good reason. The issues were purely legal, and no private or sensitive personal information was in danger of being divulged.

Thank you very much for your time and attention.

Roger Parloff
Senior Editor
Lawfare Media
roger.parloff@lawfaremedia.org