

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

THIAGO MORAES BASTOS,
Petitioner,

Civil Action No.:1:26-cv-00003

v.

RICHARD A. LUNA,
in his official capacity as Director/Warden of
Federal Correctional Institution Berlin;

DAVID WESLING,
in his official capacity as Acting Director,
Boston Field Office, U.S. Immigration &
Customs Enforcement;

PAMELA BONDI,
in her official capacity as Attorney General,
U.S. Department of Justice;

KRISTI NOEM,
in her official capacity as Secretary, U.S.
Department of Homeland Security; and

TODD M. LYONS,
in his official capacity as Acting Director,
U.S. Immigration & Customs Enforcement;

Respondents.

**PETITION FOR WRIT OF
HABEAS CORPUS PURSUANT
TO 28 U.S.C. § 2241
AND MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

INTRODUCTION.

1. Petitioner, Thiago Moraes Bastos (“Mr. Bastos”), respectfully petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 to remedy unconstitutional conditions of civil immigration detention, and moves for emergency injunctive relief to prevent ongoing harm, as follows:

2. Mr. Bastos is a citizen of Brazil who entered the United States in July 2009, at age eleven, on a B-2 visitor visa and has lived here ever since. He is a loving fiancé, a father to three young U.S. citizen children, and a business owner. See Exhibit A (Declaration of Thiago Moraes Bastos).

3. On May 29, 2025, immediately after a state-court hearing in Massachusetts, U.S. Immigration and Customs Enforcement (“ICE”) took Mr. Bastos into custody. He has been detained since that date at Federal Correctional Institution Berlin (“FCI Berlin” or “Berlin”), a medium-security federal prison. See Exhibit A ¶ 14.

4. Civil immigration detention is nonpunitive. The Fifth Amendment’s Due Process Clause therefore requires the Government to provide safe and humane conditions of confinement and to supply basic human needs such as food, clothing, shelter, medical care, and reasonable safety. See *Gomes v. U.S. Dep’t of Homeland Sec., Acting Sec’y*, 460 F. Supp. 3d 132 (D.N.H. 2020).

5. Instead, while held at Berlin, Mr. Bastos has been subjected to dangerous and degrading conditions, including: showers contaminated with thick black mold; meals contaminated with mold; inadequate protection from frigid temperatures and the denial of winter clothing; severe restrictions on recreation; and repeated denials and delays of necessary medical care. See Exhibit A ¶¶ 16-21.

6. These conditions deny Mr. Bastos the minimal civilized measure of life’s necessities and reflect deliberate indifference to his health and safety. Under the Fifth Amendment, Mr. Bastos’s continued confinement in these conditions is unlawful.

7. Mr. Bastos is separately seeking a new immigration bond hearing based on changed circumstances now that his criminal charges have been dismissed. The immigration court and the BIA cannot adjudicate detention conditions or order remedies for unconstitutional conditions at a

federal prison. If bond is denied in contravention of binding First Circuit precedent requiring the Government to bear the burden of proof and to establish dangerousness by clear and convincing evidence and risk of flight by a preponderance of the evidence, Mr. Bastos will seek leave to amend this Petition to add an additional custody related claim. See *Hernandez-Lara v. Lyons*, 10 F.4th 19, 46-48 (1st Cir. 2021).

8. Mr. Bastos respectfully requests that this Court order immediate relief, including release or transfer, because the Constitution does not permit his continued confinement in unsafe and degrading conditions.

PARTIES

9. Mr. Bastos has been detained by Respondents since May 29, 2025, at FCI Berlin in Berlin, New Hampshire.

10. Respondent Richard A. Luna is the Director/Warden of FCI Berlin and is Mr. Bastos's immediate physical custodian.

11. Respondent David Wesling is the Acting Director of the Boston Field Office of ICE Enforcement and Removal Operations ("ICE/ERO") and is responsible for ICE detention operations affecting Mr. Bastos.

12. Respondent Pamela Bondi is the Attorney General of the United States and heads the Department of Justice, which houses the Executive Office for Immigration Review ("EOIR").

13. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security ("DHS"), which houses ICE.

14. Respondent Todd M. Lyons is the Acting Director of ICE and is responsible for ICE detention and removal operations nationwide.

JURISDICTION

15. This Court has jurisdiction over this Petition pursuant to 28 U.S.C. § 2241 because Mr. Bastos is in federal custody within this District.

16. This Court also has jurisdiction under 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States.

17. The Court has authority to grant habeas relief and to issue all necessary and appropriate orders, including temporary restraining orders and preliminary injunctive relief, to prevent ongoing constitutional violations.

VENUE

18. Venue is proper in the District of New Hampshire because Mr. Bastos is detained at FCI Berlin in this District, and a substantial part of the events and omissions giving rise to this Petition occurred here.

EXHAUSTION

19. There is no statutory exhaustion requirement applicable to habeas petitions brought under 28 U.S.C. § 2241 by civil immigration detainees challenging unconstitutional conditions of confinement.

20. To the extent a court may consider prudential exhaustion principles, exhaustion should be excused here because there is no adequate administrative procedure for raising, litigating, and remedying claims concerning conditions of confinement at a federal prison. Immigration Judges

and the Board of Immigration Appeals (“BIA”) have no jurisdiction to decide whether conditions at FCI Berlin violate the Constitution or ICE detention standards, and they cannot order Berlin, ICE, DHS, or the Bureau of Prisons to remediate sanitation, food safety, temperature, medical care, or recreation conditions.

21. Although ICE detention standards contemplate internal grievance processes and communication with ICE/ERO, those processes are nonjudicial, do not provide an independent adjudicator for constitutional claims, and cannot award the habeas relief sought here (including release or transfer from unlawful conditions).

22. Mr. Bastos also faces ongoing health and safety risks each day he remains confined in these conditions. Requiring him to pursue or complete internal complaints before seeking judicial relief would cause undue prejudice and would be futile.

STATEMENT OF FACTS

A. Background and Family Ties

23. Mr. Bastos was born on , in Paraiso do Tocantins, Brazil. He came to the United States as a child and has built his life here. See Exhibit A ¶¶ 1, 4-6.

24. Mr. Bastos is the father of three minor children who are U.S. citizens. His fiancé is the primary caregiver for the children while he is detained. See Exhibit A ¶¶ 13, 22.

B. Immigration Proceedings

25. Mr. Bastos has significant pending immigration matters, including: (1) a Form I-918 petition as a qualifying family member of a U-visa recipient (based on his mother’s petition); (2) a Form

I-360 VAWA petition for which he received a prima facie determination; and (3) a pending BIA appeal in connection with his application for cancellation of removal. See Exhibits B-D.

C. Events Leading to ICE Detention and Dismissal of Criminal Charges

26. On May 11, 2025, Mr. Bastos was stopped by law enforcement and charged with misdemeanors and traffic violations. He denies that he was under the influence while driving. See Exhibit A ¶ 13.

27. On May 29, 2025, following a hearing related to the traffic stop, ICE took Mr. Bastos into custody at the courthouse. See Exhibit A ¶ 14.

28. Because Mr. Bastos was detained by ICE, a Massachusetts judge repeatedly issued orders/writs seeking to secure his presence for the state criminal proceedings. ICE did not produce him. See Exhibit E.

29. On December 22, 2025, the Massachusetts court dismissed the criminal charges on speedy-trial grounds, finding that Mr. Bastos's rights were violated by the Federal Government's repeated refusal to honor state process and bring him to court. See Exhibit H.

D. Custody Determinations (Bond) and Pending Request for New Hearing

30. Shortly after his arrest by ICE, Mr. Bastos sought release on bond. The Immigration Judge denied bond and relied heavily on the then-pending criminal charges in finding that Mr. Bastos was a danger to the community. See Exhibit I.

31. Now that the criminal charges have been dismissed, Mr. Bastos has requested a new bond hearing (custody redetermination) based on changed circumstances.

32. This Petition does not ask the Court to decide if Petitioner is entitled to release on bond issue at this time. The bond proceeding is relevant because it confirms that no administrative immigration tribunal can adjudicate or remedy the unlawful conditions at Berlin. If the immigration court denies bond in contravention of binding First Circuit precedent requiring the Government to bear the burden of proof and to establish dangerousness by clear and convincing evidence and risk of flight by a preponderance of the evidence, Mr. Bastos will seek leave to amend this Petition to add a custody related claim. See *Hernandez-Lara v. Lyons*, 10 F.4th 19, 46-48 (1st Cir. 2021).

E. Conditions of Confinement at FCI Berlin

33. Mr. Bastos is detained at FCI Berlin, a medium-security federal prison, notwithstanding that he is a civil immigration detainee who may not be punished. See Exhibit A ¶ 14.

34. Housing and sanitation. Mr. Bastos is confined in a tiny cell with a bed “as hard as concrete” and a toilet exposed in the open. See Exhibit A ¶ 16. The showers are contaminated with thick black mold, creating unsanitary and hazardous conditions. See Exhibit A ¶ 17.

35. Food. On multiple occasions, Mr. Bastos was served meals contaminated with mold and has been forced to inspect his food before eating to avoid illness. See Exhibit A ¶ 19.

36. Cold temperatures and lack of clothing. Mr. Bastos is permitted only one hour of outdoor activity per day, yet he was not provided with winter clothing or other adequate means to remain warm, indoors or outdoors. See Exhibit A ¶ 18.

37. Medical care failures. Mr. Bastos has fallen ill on multiple occasions and has not received timely or adequate medical care. On one occasion, he was sick for over three weeks despite

repeated requests for care and was eventually diagnosed with the flu. On another occasion, he reported extreme scalp irritation (seborrhea) requiring treatment, but the medical unit refused to provide appropriate medication. See Exhibit A ¶ 20. His cellmate, who suffered seizures and vomited blood, also reportedly received no medical aid. *Id.*

38. Notice to Respondents. Mr. Bastos has repeatedly sought help and requested care while detained at Berlin. The conditions described above have persisted despite those requests. See Exhibit A ¶¶ 20-21.

LEGAL STANDARD

39. The Due Process Clause of the Fifth Amendment protects all “persons” within the United States, including noncitizens, whether their presence is lawful, unlawful, temporary, or permanent. *Gomes*, 460 F. Supp. 3d at 145.

40. When the Government restrains an individual’s liberty such that he cannot care for himself, and then fails to provide for basic human needs (including food, clothing, shelter, medical care, and reasonable safety), it transgresses substantive limits on government action. *Id.* at 145-47.

41. Because civil immigration detainees “may not be punished at all,” the duties owed under the Due Process Clause to civil detainees are at least as extensive as those owed under the Eighth Amendment to convicted prisoners. *Id.* at 145-46; see also *Youngberg v. Romeo*, 457 U.S. 307, 315 (1982); *Bell v. Wolfish*, 441 U.S. 520, 545 (1979).

42. A constitutional violation occurs where: (1) the conditions or deprivations are objectively serious; and (2) responsible officials act with deliberate indifference to detainee health or safety. *Gomes*, 460 F. Supp. 3d at 146-47 (discussing *Farmer v. Brennan*, 511 U.S. 825 (1994) and

Leite v. Bergeron, 911 F.3d 47 (1st Cir. 2018)). The Constitution protects detainees from conditions that cause both current and future harm. *Id.* at 146-47 (discussing *Helling v. McKinney*, 509 U.S. 25 (1993)).

43. ICE's own National Detention Standards further reflect the basic conditions of confinement that ICE expects facilities to provide. U.S. Immigr. & Customs Enf't, 2025 National Detention Standards (June 18, 2025), <https://www.ice.gov/detain/detention-management/2025>. Among other requirements, the Standards call for safe, sanitary environments and appropriate temperatures (Standard 1.1); sanitary food service with meals fit for consumption (Standard 4.1); access to appropriate and necessary medical, dental, and mental health care and timely responses to requests (Standard 4.3); provision of clean, temperature-appropriate clothing at no cost (Standard 4.4); and access to at least one hour of recreation per day, five days per week, weather permitting (Standard 5.2).

Mr. Bastos, as a civil immigration detainee, may not be subjected to punitive or unsafe conditions.

44. Civil immigration detention serves administrative purposes and must not function as punishment. Conditions that are not reasonably related to a legitimate governmental objective, or that are excessive in relation to that objective, may be inferred to be punitive and therefore unconstitutional. See *Bell*, 441 U.S. at 538-39; *Gomes*, 460 F. Supp. 3d at 145.

The conditions at FCI Berlin deny basic human needs and reflect deliberate indifference to health and safety.

45. Mr. Bastos's allegations describe deprivations of basic human needs and exposure to substantial risks of serious harm: repeated exposure to black mold in showers; contaminated food; prolonged exposure to cold without adequate clothing; severe restrictions on recreation;

and repeated failures to provide timely and appropriate medical care, even when serious symptoms are reported. See Exhibit A ¶¶ 16-21.

46. These deprivations are objectively serious. Mold exposure, unsafe food, the denial of adequate warmth, and the denial of medical care are precisely the types of basic needs the Government must provide to individuals it confines. See *Gomes*, 460 F. Supp. 3d at 145-47.

47. They also reflect deliberate indifference. Mr. Bastos has repeatedly requested medical attention and basic necessities, yet he has been forced to endure the same conditions for months. See Exhibit A ¶¶ 20-21. Where officials know of an excessive risk to health or safety and fail to take reasonable steps to abate it, the Due Process Clause is violated. *Gomes*, 460 F. Supp. 3d at 146-47.

III. ICE detention standards underscore the unreasonableness of the conditions and the need for immediate relief.

48. ICE's National Detention Standards require a safe, sanitary environment with appropriate temperatures and housekeeping procedures to keep living areas and fixtures clean and in good repair. National Detention Standards (Revised 2025) Standard 1.1.

49. They also require sanitary food service with meals fit for consumption (Standard 4.1), access to appropriate medical care and timely responses to requests (Standard 4.3), the issuance of clean, temperature-appropriate clothing at no cost (Standard 4.4), and at least one hour of recreation per day, five days per week, weather permitting (Standard 5.2).

50. The conditions described by Mr. Bastos are inconsistent with these basic requirements and reinforce that continued detention at Berlin is unsafe and unreasonable.

IV. Habeas and injunctive relief are appropriate remedies for ongoing unconstitutional conditions of detention.

51. Federal courts have authority under 28 U.S.C. § 2241 to remedy unconstitutional custody, including custody made unlawful by unconstitutional conditions of confinement. See *Gomes*, 460 F. Supp. 3d at 145-52 (adjudicating Fifth Amendment conditions-of-detention claims in habeas proceedings).

52. Where unconstitutional conditions pose an ongoing and substantial risk of serious harm, emergency injunctive relief is warranted, and release or transfer may be necessary to make the habeas remedy effective. See *Gomes*, 460 F. Supp. 3d at 152 (release may be necessary to make the habeas remedy effective where detainees face significant risk of harm).

CLAIM FOR RELIEF

COUNT ONE

**VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT
(UNLAWFUL CONDITIONS OF DETENTION)**

53. Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

54. Mr. Bastos is a civil immigration detainee who may not be punished. Respondents nevertheless confine him at FCI Berlin under conditions that deny basic human needs and expose him to a substantial risk of serious harm, including but not limited to: black mold in showers; contaminated food; lack of adequate warmth and winter clothing; severe restrictions on recreation; and repeated failures to provide timely and appropriate medical care. See Exhibit A ¶¶ 16-21.

55. Respondents' conduct and omissions constitute deliberate indifference to Mr. Bastos's health and safety and violate the Fifth Amendment's Due Process Clause. Gomes, 460 F. Supp. 3d at 145-47.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- A. Assume jurisdiction over this matter;
- B. Issue a writ of habeas corpus ordering Mr. Bastos's immediate release from custody, or, in the alternative, ordering his immediate transfer to a non-carceral setting or to a facility that can provide constitutionally adequate conditions of confinement;
- C. Enter a temporary restraining order and preliminary and permanent injunction requiring Respondents to cease subjecting Mr. Bastos to unconstitutional conditions and, at minimum, to provide: (a) a sanitary living environment free from mold; (b) food that is safe and fit for consumption; (c) temperature-appropriate clothing and adequate warmth; (d) timely and appropriate medical care; and (e) recreation consistent with ICE detention standards, pending final resolution of this Petition;
- D. Enjoin Respondents from returning Mr. Bastos to detention conditions that violate the Fifth Amendment; and
- E. Grant such other and further relief as the Court deems just and proper.

Dated: January 6th, 2026

Respectfully Submitted,

/s/ Alexandra Minogue

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Thiago Moraes Bastos, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 6th day of January 2026.

/s/ Alexandra Minogue

/s/ Maeve Healy

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