UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

SELVIN ISAIAS SITUJ GARCIA, Petitioner, v. DERRICK STAMPER, Chief Patrol Agent, Houlton Sector, U.S. Border Patrol, MATTHEW HLADIK, Area Port Director, Area Port of Portland, Maine, Office of Field Operations, U.S. Customs and Border Protection, RODNEY SCOTT, Commissioner, U.S. Customs and Border Protection, DAVID WESLING, Acting Field Office Director, Boston Field Office, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement, KRISTI NOEM, Secretary, U.S. Department of Homeland Security, PAMELA BONDI, Attorney General, U.S. Department of Justice, Respondents.	Case No. **PETITION FOR WRIT OF HABEAS CORPUS**

PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241

1. Petitioner, Selvin Isaias Situj Garcia (henceforth "Petitioner"), is a national and citizen of Guatemala. *See* Exhibit A. Petitioner has been in the United States since September of 2021.

2. Petitioner is a resident of Framingham, in Middlesex County, Massachusetts.

3. On information and belief, Petitioner was unlawfully detained by U.S. Customs and Border Patrol federal agents on January 15, 2026, in Bethel, Maine. Accordingly, to vindicate Petitioner's constitutional rights against unlawful arrest and detention, Petitioner respectfully requests this Court to grant this petition for a writ of habeas corpus under 28 U.S.C. § 2241.

4. Specifically, Petitioner asks this Court (I) to issue an Order under Fed. R. Civ. P. 65(b)

prohibiting Respondents from transferring Petitioner out of the District of Maine without the Court's approval; and (II) to find that Petitioner's unlawful arrest and detention is a violation of his constitutional rights and to issue a writ of habeas corpus ordering Respondents to release Petitioner from custody immediately. In the alternative, Petitioner asks this Court (III) to order that Petitioner be granted a bond hearing on the merits in accordance with *Hernandez-Lara v Lyons*, 10 F.4th 19 (1st Cir. 2021), and 8 U.S.C. § 1226.

JURISDICTION

5. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et. seq.

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus), and 28 U.S.C. § 1331 (federal question).

7. Petitioner is presently in custody under color of authority of the United States and such custody is in violation of the U.S. Constitution, laws, or treaties of the United States. Thus, jurisdiction lies within this Court pursuant to 28 U.S.C. § 1331.

8. Under 28 U.S.C. § 2241, "[w]rits of habeas corpus may be granted by . . . the district courts within their respective jurisdictions" when a petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." This jurisdiction includes "writs of habeas corpus filed by immigration detainees before and after a final order of removal has been issued." *Dambrosio v. McDonald*, 2025 U.S. Dist. LEXIS 67848 at * 4 (D. Mass Apr 9, 2025) (citing *Zadvydas v. Davis*, 533 U.S. 678, 688, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001); *Jennings v. Rodriguez*, 583 U.S. 281, 296 (2018)).

9. The First Circuit has routinely held that "district courts retain jurisdiction over challenges to the legality of detention the immigration context." *Aguilar v. U.S. Immigr. & Customs Enf't div.*

of Dep't of Homeland Sec., 510 F.3d 1, 11 (1st Cir. 2007) (citing *Hernandez v. Gonzales*, 424 F.3d 42 (1st Cir. 2005) (holding that detention claims are independent of removal proceedings and, thus, not barred by section 1252(b)(9))). Specifically, "constitutional challenges regarding the availability of bail" fall within this Court's habeas review. *Id.* (citing *Demore v. Kim*, 538 U.S. 510 (2003)). Notably, the issue at hand is "wholly collateral to the removal process." *Gicharu v. Carr*, 983 F.3d 13, 16 (1st Cir. 2020).

10. Because Petitioner is solely contesting his ongoing detention through his Petition, this Court has jurisdiction and maintains the authority to order him immediately released. *See contra Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020) ("[Section] 1252(b)(9) 'does not present a jurisdictional bar' where those bringing suit 'are not asking for review of an order of removal,' 'the decision to seek removal,' or 'the process by which removability will be determined'" (ellipses omitted) (quoting *Jennings*, 583 U.S. at 294-95)).

11. In the alternative, this Court has jurisdiction and maintains the authority to order Petitioner be provided with a bond hearing in the Immigration Court where DHS bears the burden of demonstrating he is a danger to the community or a flight risk. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021) ("[D]ue process requires the government to either (1) prove by clear and convincing evidence that [he] poses a danger to the community or (2) prove by a preponderance of the evidence that [he] poses a flight risk.").

12. Accordingly, this Court may grant Petitioner's requested relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

VENUE

13. Venue is proper and lies in the U.S. District Court for the District of Maine because

Petitioner was detained in Maine, and on information and belief is being detained in the District of Maine. 28 U.S.C. § 1391(e); *see also Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) ("The plain language of the habeas statute thus confirms the general rule that . . . jurisdiction lies in only one district: the district of confinement.") (*cited in Trump v. J.G.G.*, 145 S. Ct. 1003, 1006-07 (2025) (per curiam)).

PARTIES

14. The Petitioner, Selvin Isaias Situj Garcia, is a national and citizen of Guatemala. Petitioner has been in the United States since approximately September of 2021.

15. The U.S. Department of Homeland Security ("DHS") is an executive department of the government of the United States.

16. U.S. Customs and Border Protection ("CBP") is a component of DHS. The U.S. Border Patrol and the CBP Office of Field Operations ("OFO") fall within CBP.

17. U.S. Customs and Immigration Enforcement ("ICE") is a component of DHS. ICE Enforcement and Removal Operations ("ERO") falls within ICE.

18. The U.S. Department of Justice ("DOJ") is an executive department of the government of the United States. The Executive Office of Immigration Review ("EOIR") is a component within DOJ. Immigration Courts and the Board of Immigration Appeals fall within EOIR.

19. Respondent Derrick Stamper is the Chief Patrol Agent for the Houlton Sector of the U.S. Border Patrol. He is Petitioner's immediate and legal custodian.

20. Respondent Rodney Scott is the Commissioner of CBP. He is also Petitioner's immediate and legal custodian.

21. Respondent David Wesling is the Field Office Director for the Boston Field Office of ICE. He is also Petitioner's legal custodian.

22. Respondent Todd Lyons is the Acting Director of ICE. He is also Petitioner's legal custodian.

23. Respondent Kristi Noem is the Secretary of DHS. She is also Petitioner's legal custodian.

24. Respondent Pamela J. Bondi is the United States Attorney General, and, as such, the head of DOJ. She oversees the Immigration Courts and the Board of Immigration Appeals. She is also Petitioner's legal custodian.

25. All respondents are named and sued in their official capacities. One or more of the respondents is Petitioner's immediate custodian.

FACTUAL ALLEGATIONS

26. Petitioner, Selvin Isaias Situj Garcia, is a national and citizen of Guatemala.

27. Petitioner entered into the United States between ports of entry without status, in or around September of 2021. Petitioner was not arrested or detained at the time.

28. Petitioner is a resident of Framingham, in Middlesex County, Massachusetts.

29. Since his arrival in the United States, Petitioner has worked to support and feed himself, including working in construction. He has established a safe life in this country.

30. On information and belief, Petitioner traveled to Maine to work on a construction project in Bethel, Maine, that would take a few days to complete.

31. On January 15, 2026, U.S. Border Patrol agents targeted the worksite and conducted warrantless arrests of Petitioner and his fellow coworkers.

LEGAL FRAMEWORK

A. PETITIONER IS A CLASS MEMBER OF *GUERRERO ORELLANA*

32. ***Guerrero Orellana* Certified Class.** On October 30, 2025, Senior District Judge Patti B. Saris for the District of Massachusetts certified a class action for "All people who are arrested or

detained in Massachusetts, or are detained in a geographical area over which, as of September 22, 2025, an Immigration Court located in Massachusetts is the administrative control court, or who are otherwise subject to the jurisdiction of an Immigration Court located in Massachusetts," with a few exceptions.[1] Memorandum and Order, *Guerrero Orellana v. Moniz*, 1:25-cv-12664 at * 37 (D. Mass. Oct. 30, 2025). On information and belief, none of the exceptions apply to Petitioner.

33. **Declaratory Judgment.** On December 19, 2025, Judge Saris declared "members of the certified class are not subject to detention under 8 U.S.C. § 1225(b)(2)" and "members of the certified class are subject to detention under 8 U.S.C. § 1226(a), including access to consideration for release on bond and/or conditions before immigration officers and Immigration Judges." Partial Final Judgment, *Guerrero Orellana v. Moniz*, 1:25-cv-12664 at * 2 (D. Mass. Dec. 19, 2025).

34. **Noncompliance with *Guerrero Orellana*.** Petitioner is a member of the *Guerrero Orellana* class but will likely be denied a bond hearing due to Chief Immigration Judge ("CIJ") Teresa L. Riley instructing Immigration Judges that a declaratory judgment "does not, by itself, have the effect of compelling specific action by a party." *See* Attached Exhibit B, Copy of Email from CIJ Riley. Since this email, a pattern has been observed that Immigration Judges are finding that the class action does not bind the Immigration Court and are denying noncitizens access to bond hearings.

B. WAIVER OF EXHAUSTION OF ADMINISTRATIVE REMEDIES

35. Exhaustion of administrative remedies falls within two distinct categories: statutory and common law. *See Brito v. Garland*, 22 F.4th 240, 255 (1st Cir. 2021). The statute does not require

[1] The exceptions include persons previously in Expedited Removal, people paroled into the United States pursuant to humanitarian parole, persons subject to mandatory detention, persons subject to removal orders, and arriving aliens that have been continuously detained.

administrative exhaustion, "sound judicial discretion governs." *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992), *cited in Morgan v. Garland*, 120 F.4th 913, 927 (1st Cir. 2024).

36. Decades of precedent stands for the proposition that "*generally speaking*, a plaintiff's failure to exhaust his or her administrative remedies precludes the plaintiff from obtaining federal review of claims that would have properly been raised before the agency in the first instance." *Brito*, 22 F.4th at 255 (emphasis added); *see McCarthy*, 503 U.S. at 144-45 ("This Court long has acknowledged the *general rule* that parties exhaust prescribed administrative remedies before seeking relief from the federal courts.") (emphasis added).

37. As the use of the phrases "generally speaking" and "general rule" imply, there are exceptions to the exhaustion requirement. *See McCarthy*, 503 U.S. at 146 ("This Court's precedents have recognized at least three broad sets of circumstances in which the interests of the individual weigh heavily against requiring administrative exhaustion.").

38. Waiver of the exhaustion requirement is justified in three circumstances: (1) "when unreasonable or indefinite delay threats unduly to prejudice the subsequent bringing of a judicial action," (2) "if a substantial doubt exists about whether the agency is empowered to grant meaningful redress," and (3) "if the potential decisionmaker is biased or can be shown to have predetermined the issue." *Portela-Gonzalez v. Secretary of the Navy*, 109 F.3d 74, 77 (1st Cir. 1997) (citing *McCarthy*, 503 U.S. at 145-48). This third circumstance is commonly used where seeking administrative remedies would be "futile." *Portela-Gonzalez*, 109 F.3d at 78; *McCarthy*, 503 U.S. at 148.

39. **Futility.** The Board of Immigration Appeal's recent decision in *Matter of Yajure Hurtado* singlehandedly demonstrates why exhaustion is futile. On September 5, 2025, the Board issued a decision finding that Immigration Judges "have no authority to redetermine the custody conditions

of an alien who crossed the border unlawfully without inspection." *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 228 (BIA 2025). Prior to *Matter of Yajure Hurtado*, requiring Petitioner to first seek a custody redetermination hearing with the immigration court was inefficient, prejudicial, and needlessly delayed the release of noncitizens; however, this ruling further solidified that seeking a custody redetermination hearing with the Immigration Court before a finding of jurisdiction by the federal court is meaningless, as is appealing its denial to the Board of Immigration Appeals. *See Romero v. Hyde*, __ F.Supp.3d __, 2025 U.S. Dist. LEXIS 160622 at *14 (D. Mass. Aug. 19, 2025) (noting that "the prospect of an unaffected decisionmaker seems unrealistically thin" for bond hearings at the Chelmsford Immigration Court). This remains true, despite the *Guerrero Orellana* decision that finds noncitizens in Petitioner's position are bond eligible.

40. **Unreasonable and Indefinite Delay.** In the current political and legal climate, requiring Petitioner to first seek a custody redetermination hearing with the immigration court is inefficient, prejudicial, and needlessly delays his release. Under *Matter of Yajure Hurtado*, DHS will argue Petitioner is detained under § 1225 and an immigration judge will find him ineligible for custody redetermination. By requiring Petitioner exhaust administrative remedies, Petitioner must wait until after he is denied bond to begin his habeas proceedings. In *Sampiao*, the Court noted that "Irreparable harm may be established where a petitioner will be incarcerated or detained pending the exhaustion of administrative remedies." 2025 U.S. Dist. LEXIS 175513 at *15. The Court further noted that "the average processing time for bond appeals exceeded 200 days in 2024." *Id.* at * 16 (citing *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1248 (W.D. Wash. 2025)). Without this Petition, Respondents would have the ability to transfer Petitioner within the United States with no oversight for over 200 days, between his detention, bond denial, and appeal. *See id.* Enforcing an administrative remedies exhaustion requirement in ICE detention proceedings would only serve

to prejudice noncitizens and allow the government free reign to transfer, detain, and otherwise infringe on the liberty of noncitizens without checks and balances.

CLAIMS FOR RELIEF

41. The Government is holding Petitioner in violation of the Due Process Clause of the U.S. Constitution, the Immigration and Nationality Act, and federal regulations. The allegations aforementioned in this Petition are incorporated into each of the causes of actions below.

COUNT 1: VIOLATION OF THE DUE PROCESS CLAUSE OF THE 5TH AMENDMENT

42. Petitioner incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

43. The Due Process Clause of the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

44. Petitioner has a fundamental interest in liberty and being free from official restraint. The government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process. Thereby, Petitioner's continued detention violates due process.

COUNT II: UNLAWFUL DENIAL OF RELEASE ON BOND UNDER 8 U.S.C. § 1226(a)

45. Petitioner incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

46. Mandatory detention does not apply to Petitioner because he is not an applicant for admission seeking admission under 8 U.S.C. § 1225(b)(2). Instead, Petitioner's detention is

governed by 8 U.S.C. § 1226 and makes him eligible for a custody redetermination hearing on the merits in front of the Immigration Court.

47. Nonetheless, the Board of Immigration Appeals has issued a decision binding on all IJs, rendering Petitioner ineligible for a bond hearing. Given the clear language in the *Hurtado* decision, there is no question that an IJ will find he or she does not have jurisdiction to consider Petitioner for release on bond.

COUNT III: VIOLATION OF THE *GUERRERO ORELLANA* CLASS ACTION

48. Petitioner incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

49. Mandatory detention does not apply to Petitioner because he is a member of the *Guerrero Orellana* class.

50. Despite the partial final judgment in *Guerrero Orellana*, Respondents continue to argue that detention is mandatory.

51. Instead, Petitioner's detention is governed by 8 U.S.C. § 1226 and makes him eligible for a custody redetermination hearing on the merits in front of the Immigration Court.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Order that Petitioner shall not be removed from the United States nor transferred from outside of the District of Maine;

(3) Issue an Order to Show Cause pursuant to 28 U.S.C. § 2243, ordering Respondents to show cause as to why this Petition should not be granted;

(4) Declare that Petitioner's detention is unlawful;

(5) Issue a Writ of Habeas Corpus ordering Respondents:

(a) to immediately release Petitioner from detention;

(b) if at the time of the hearing for this habeas the Court has already ordered Petitioner released under its inherent Article III authority, to not re-detain Petitioner;

(c) in the alternative, to provide Petitioner an individualized bond hearing before an Immigration Judge on the merits in accordance with *Hernandez-Lara v Lyons*, 10 F.4th 19 (1st Cir. 2021), and 8 U.S.C. § 1226, at a time and in a manner that places Petitioner in the same position he would be if not for the Respondents' unlawful conduct, and, if the Immigration Judge grants bond, to immediately accept payment of the bond and release Petitioner from detention.

(6) Award Petitioner's attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

(7) Grant any further relief this Court deems just and proper.

Respectfully submitted on January 18, 2026.

Selvin Isaias Situj Garcia,

By and through his Counsel,

/s/ Paula Esteves

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

I represent Petitioner, Selvin Isaias Situj Garcia, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 are true and correct to the best of our knowledge.

Respectfully submitted on January 18, 2026.

/s/ Paula Esteves
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