

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

JUNIO DE OLIVEIRA COSTA

Petitioner,

v.

ANDREW ACKLEY, *et al.*,

Respondents.

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No. 1:26-cv-00026-JL-AJ

RESPONSE TO ORDER TO SHOW CAUSE

On January 21, 2026, this Court issued an Order in the above-captioned matter, directing Respondents “to show cause in writing on or before January 28, 2026 why this court should not order the same relief ordered in *Destino* [*v. FCI Berlin*, No. 25-374 (D. New Hampshire, December 24, 2025) (Elliott, C.J.)].” ECF No. 3.

Respondents respectfully maintain that *Destino* was wrongly decided, and that Petitioner’s detention is governed by 8 U.S.C. § 1225 because he is an applicant for admission subject to mandatory detention. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) (so holding); *see also Vargas Lopez v. Trump*, No. 25-526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Barrios Sandoval v. Acuna*, No. 25-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Silva Oliveira v. Patterson*, No. 25-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Mejia Olalde v. Noem*, No. 25-00168, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025).

However, Respondents acknowledge if this Court applies the reasoning in *Destino* to the facts here, that reasoning would require this Court to order that Petitioner be afforded a bond hearing before an immigration judge. The *Destino* court found that the petitioner’s prolonged presence in the United States during the pendency of his removal proceedings gave rise to an

accrued liberty interest on due process grounds “regardless of statutory allowances,” noting that such “interests may spring from lives lived, connections fostered, and promises made or implied.” *Destino*, No. 25-cv-374, ECF No. 9, at 13. Here, like *Destino*, Petitioner has lived in the United States for several years. Pet. ¶ 1. Moreover, his removal proceedings were terminated in 2025, and he has been granted Special Immigrant Juvenile status (“SIJ”). *Id.* Although SIJ status provides no legal basis to remain in the United States, *see Cortez-Amador v. Att’y Gen.*, 66 F.4th 429, 432 (3d Cir. 2023), under *Destino*’s expansive ruling, it arguably reflects a connection to this country, and that status paired with termination of his removal proceedings contribute to an expectancy that he would be allowed to remain in that status. Little here would appear to alter the remainder of *Destino*’s analysis under *Mathews v. Eldridge* 424 U.S. 319, 335 (1976).

To preserve their objection for appeal, Respondents hereby rely upon, and incorporate by reference, the legal arguments they presented in opposition to the petition in *Destino*. No. 25-cv-374 (D.N.H.), ECF Nos. 3, 8. They nonetheless submit that the interests of judicial economy and expeditious resolution weigh against additional briefing, especially where this issue has been extensively litigated nationwide, and ask the Court to accept this abbreviated briefing and rule on the pleadings.¹

¹ Because Respondents concede that the reasoning in *Destino* applies equally to Petitioner here, this Court need not reach the question of whether Petitioner is entitled to a bond hearing as a class member under *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, 2025 WL 3687757 (D. Mass. Dec. 19, 2025) or *Maldonado Bautista v. Santacruz*, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025).

However, Respondents object to Petitioner’s request for relief beyond provision of a bond hearing, namely, a declaration that “Petitioner may remain in the United States pursuant to his November 22, 2024 grant of Deferred Action in order to pursue adjustment of status when his priority date becomes current,” and a stay of “Petitioner’s removal proceedings until he exhausts the process, successfully or otherwise, of pursuing relief from removal by virtue of his Special Immigrant Juvenile Status.” Pet. at 14 (ECF No. 1). Petitioner has not offered any authority

Therefore, Respondents acknowledge that they cannot show cause why this Court should not order the same relief ordered in *Destino*, if this Court adopts the reasoning in that case here.

Respectfully submitted,

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supporting this relief, and it runs counter to the Supreme Court's ruling in *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020). There, the Supreme Court reaffirmed its precedent that "the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody." *Id.* 117 (cleaned up). Accordingly, it concluded that the writ was unavailable to a petitioner who "does not want 'simple release' but, ultimately, the opportunity to remain lawfully in the United States." *Id.* at 119 (petitioner who sought vacatur of his final order of removal and "a new . . . opportunity to apply for asylum and other relief from removal" sought relief that fell outside the historic role of habeas and could not receive that relief through a habeas petition). Here, as in *Thuraissigiam*, Petitioner's requested relief (other than a bond hearing) seeks not release from unlawful custody, but the opportunity to stay in the United States lawfully, and that relief is not cognizable under habeas.