

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

SAMUEL RESTREPO CANO,

Petitioner,

v.

**CHRISTOPHER BRACKETT,
Superintendent, Strafford County
Department of Corrections, et al.,**

Respondents.

Civil No. 1:26-cv-00217-JL-AJ

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

On March 24, 2026, the Court issued a service order in the above-captioned case directing Federal Respondents “to file an answer or dispositive motion in response to the Petition.” ECF No. 2 at 2. On the same day, the Court issued an endorsed order directing Petitioner “to supplement his petition with factual, non-conclusory information to substantiate his claim.” Endorsed Order Mar. 24, 2026. Petitioner filed a status report to address the Court’s endorsed order. ECF No. 3.

While reserving all rights, including the right to appeal, Federal Respondents submit this abbreviated response to preserve their legal arguments and to conserve judicial and party resources in light of the decision in *Destino*. Federal 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. Federal Respondents’ position is supported by recent decisions of the Fifth and Eighth Circuits and the Board of Immigration Appeals (“BIA”). See *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. 2026) (“applicants for admission” subject to mandatory detention provision and

not eligible for bond); *Avila v. Bondi*, 2026 WL 819258 (8th Cir. March 25, 2026) (because the terms applicant for admission and seeking admission are equivalent, aliens detained in the interior under § 1225(b)(2) allows for detention without bond); *see also Matter of Yajure Hurtado*, 29 I&N Dec. 616 (BIA 2025) (“aliens who are present in the United States without admission” are ineligible for bond). In the interest of judicial economy, and to expedite the Court’s consideration of this matter, Federal Respondents hereby rely upon, and incorporate by reference, the legal arguments set forth in their Responses to the Petition and to the Amended Petition in *Destino*, No. 25-cv-374, ECF Nos. 3, 8. For the reasons set forth in these filings, Federal Respondents object to this Court granting relief on the basis of *Destino*.

Despite the foregoing, Federal Respondents acknowledge that if the Court applies the reasoning set forth in *Destino* in the instant case, the Court would likely reach the same result and would order that Petitioner be afforded a bond hearing before an immigration judge (“IJ”). In *Destino*, another judge in this district 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. Were this Court to apply *Destino*’s reasoning in the instant case, it would likely reach the same result due to Petitioner’s time in the country after his initial release on parole.

Though the Court need not determine whether relief is also warranted on the basis of the decision in *Guerrero Orellana* or *Maldonado Bautista*, Federal Respondents state that Petitioner is not a member of the certified class because he was paroled into the country. *See* ECF No. 3 at 2; *see also Guerrero Orellana v. Moniz*, 2025 WL 3687757, at *10 (D. Mass. Dec. 19, 2025); *Maldonado Bautista v. Santacruz*, No 5:25-CV-01873-SSS-BFM (C.D. Cal.). ECF No. 17 at 2-3.

To the extent the Petitioner seeks relief beyond what is ordered in *Destino* – i.e. a bond hearing before an Immigration Judge (“IJ”) – the Court should deny the Petition. Specifically, the Court should deny Petitioner’s request for immediate release because the due process right recognized in that case was not an unqualified right to release from immigration custody. Rather, the right granted in that case was to have an IJ conduct a bond hearing to determine whether continued immigration detention is justified on the basis that Petitioner poses a danger to the community and/or a flight risk. Accordingly, if the Court finds that Petitioner is entitled to relief under *Destino* the relief granted must be limited to an order that Petitioner receive a bond hearing before an IJ.¹

CONCLUSION

Federal Respondents thank the Court for its consideration of this abbreviated submission and respectfully request that the Court deny the Petition. Federal Respondents submit that further briefing and/or oral argument on the issue of Petitioner’s eligibility for a bond hearing before an IJ would not substantively benefit the Court or the parties, nor would they be a good use of judicial or party resources. However, should the Court determine that additional briefing on these or other issues is warranted, Federal Respondents will provide such a brief upon the Court’s request.

Respectfully submitted,

ERIN CREEGAN
United States Attorney

Date: March 31, 2026

By: /s/ Jesse L. Renauld-Smith
Jesse L. Renauld Smith
Special Assistant U.S. Attorney

¹ If the Court orders a bond hearing, the U.S Department of Homeland Security (“DHS”) reserves the right to rely on 8 U.S.C. § 1226(c) in bond and removal proceedings before the Executive Office for Immigration Review (EOIR).

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