

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

JOAN SEBASTIAN LOPEZ CACERES,

Petitioner,

v.

**DAVID WESLING, Acting Field Office
Director of the Immigration and Customs
Enforcement, Enforcement and Removal
Operations, Boston Field Office;
CHRISTOPHER BRACKETT,
Superintendent of the Strafford County
Department of Corrections**

Respondents.

Civil No. 1:26-cv-00408-PB-TSM

**FEDERAL RESPONDENT'S RESPONSE TO PETITION FOR WRIT OF HABEAS
CORPUS AND THE COURT'S ORDER**

On May 21, 2026, the Court issued an order in the above-captioned case directing Federal Respondent to file a response to the petition for writ of habeas corpus (the "Petition") within seven days of the date of the Order. (See Doc. No. 5.) Also, in the order the Court directed Federal Respondent to show cause why the Court should not issue an order granting the Petition to the extent of ordering Federal Respondent to afford Petitioner a bond hearing based on Petitioner's claimed class membership in *Guerrero Orellana v. Moniz*, No. 25-cv-12664-PBS, 2025 WL 3687757 (D. Mass. Dec. 19, 2025) and similarity situated to petitioner in *Destino v. FCI Berlin Warden*, 2025 DNH 149, 2025 WL 4010424 (D.N.H. Dec. 24, 2025). Federal Respondent submits the following response to the Petition and the Court's order.

While reserving all rights, including the right to appeal, Federal Respondent submits this abbreviated response to the orders issued by this Court to preserve their legal arguments and to conserve judicial and party resources in light of the decisions in *Guerrero Orellana* and *Destino*.

Federal Respondent respectfully maintains that *Destino* and *Guerrero Orellana* were wrongly decided and that, in the instant case, Petitioner's detention is governed by 8 U.S.C. § 1225 because he was an applicant for admission subject to mandatory detention. Federal Respondent's position is supported by the decisions of the United States Court of Appeals for the Fifth Circuit, the Eighth Circuit, and the Board of Immigration Appeals ("BIA"). See *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026) ("applicants for admission" subject to mandatory detention provision and not eligible for bond); *Avila v. Bondi*, No. 25-3248, 2026 WL 819258 (8th Cir. Mar. 25, 2026) (same); 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 Respondent hereby relies upon, and incorporates by reference, the legal arguments presented in prior cases dealing with ICE's detention authority, including those presented in *Destino* as well as *Alvarez Caizan v. Ackley, et al.*, No. 1:25-cv-382-SE-TSM, Doc. No. 10 (D. N. H. Oct. 10, 2025), and *Lagos Carrasco v. ICE et al.*, No. 1:25-cv-00400-SE-TSM, Doc. No. 4 (D. N. H. Oct. 25, 2025). Federal Respondent also refers the Court to the Memorandum in Opposition to Petitioner's Motion for Partial Summary Judgment and In Support of Respondents' Cross-Motion for Partial Summary Judgment filed in the District of Massachusetts in *Guerrero Orellana*, No. 1:25-cv-12664-PBS, Doc. No. 95 (D. Mass. Nov. 21, 2025).¹ For the reasons set forth in these

¹ Federal Respondent does not intend to waive any legal arguments or challenges he might raise in this or similar cases as to the application of *Guerrero Orellana* to habeas petitioners in the District of New Hampshire, including, but not limited to, challenges to: the preclusive effect of the declaratory judgment in *Guerrero Orellana*; the *Guerrero Orellana* Court's jurisdiction over habeas petitioners confined outside the District of Massachusetts and who are not named parties in this case. Should the Court determine that full briefing on these issues is necessary to preserve them for appeal, Federal Respondent respectfully requests that he be allowed an opportunity to submit such briefing.

cases, Federal Respondent objects to this Court granting relief in the instant case on the basis of either *Destino* or *Guerrero Orellana*.

Despite Federal Respondent's position that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), *Destino* held that the petitioner had accrued a protected liberty interest that entitled him to a bond hearing as a matter of procedural due process notwithstanding that his detention was mandated by statute. *Destino*, 2025 WL 4010424 at *8-10. Specifically, the Court held that the petitioner had "a due process right to an individualized bond hearing, and neither the legislature nor the executive can strip him of that right by classifying him as detained under § 1225." *Id.* at 9. The Court's holding was premised on petitioner's prolonged presence in the United States, during which he resided in the community subject to conditions of release imposed by DHS. The court found that these facts gave rise to a protected liberty interest "regardless of statutory allowances," noting that such "interests may spring from lives lived, connections fostered, and promises made or implied." *Id.* at 7.

Though Federal Respondent objects to the court's holding in *Destino*, he acknowledges that if this Court applies that reasoning here, it would likely reach the same conclusion and order that Petitioner be afforded a bond hearing before an Immigration Judge ("IJ").² Here, Petitioner entered the United States without inspection on or about an unknown date at a unknown place. (Doc. No. 1-1.) On or about May 6, 2026, Petitioner was encountered during a motor vehicle stop

² This case is factually distinguishable from *Destino* in that Petitioner's detention is governed by § 1225(b)(2)—not (b)(1) like the petitioner in *Destino*. That said, the Court's holding in *Destino* was grounded in the Constitution and not the statutory scheme governing immigration detention. Accordingly, while Federal Respondent objects to the extension of *Destino* to the § 1225(b)(2) context, they acknowledge that this statutory distinction would not meaningfully alter the Court's due process analysis. In fact, courts in this district have been affording relief based on *Destino* to habeas petitioners detained under § 1225(b)(2). See, e.g., *Guntepe v. FCI Berlin, Warden, et al.*, No. 1:25-cv-00531-SE-TSM, Order, Doc. No. 7; *Del Cid v. Strafford County Sheriff, et al.*, No. 1:25-cv-00473-PB-AJ, Order, Doc. No. 15.

and turned over to ICE custody. (Doc. No. 1 at 2.) Therefore, like the petitioner in *Destino*, Petitioner has lived in this country for a number of years, and his release supported an expectation that he would be able to continue on that release, barring violation of the conditions of his release. Accordingly, Federal Respondent submits that the Court can decide this matter without further briefing and without oral argument.

Though the Court need not determine whether relief is also warranted on the basis of the decision in *Guerrero Orellana*, Federal Respondent asserts that Petitioner appears to be a member of the certified class.

To the extent the Petitioner seeks relief beyond what is ordered in *Destino* – i.e. a bond hearing before an 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.

CONCLUSION

Federal Respondent thanks the Court for its consideration of this abbreviated submission and respectfully request that the Court deny the Petition. To the extent that the Court determines that relief is warranted, that relief must be limited to an order that Petitioner receive a bond hearing before an IJ as soon as practicable. Federal Respondent submits that further briefing and/or oral argument 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 is warranted, Federal Respondent will provide such a brief upon the Court's request.

Respectfully submitted,

ERIN CREEGAN
United States Attorney

Dated: May 28, 2026

By: /s/ Bridget I. Davidson
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CERTIFICATE OF SERVICE

I, Bridget I. Davidson, hereby certify that on May 28, 2026, a true and accurate copy of this document was filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and that paper copies will be sent to those indicated as non-registered participants.

/s/ Bridget I. Davidson
Bridget I. Davidson