

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

ZAKI,

Petitioner,

v.

WARDEN, FCI BERLIN, ET AL.

Respondents.

Civil Action No. 1:25-cv-00460-PB-TSM

**PETITIONER'S MEMORANDUM OF LAW
IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

This habeas petition challenges Petitioner Zaki's ongoing civil immigration detention as unconstitutional and unlawful. Despite prolonged detention and repeated requests for a bond hearing, the Government continues to detain Petitioner without providing the individualized custody determination required by the Due Process Clause of the Fifth Amendment. Petitioner is detained at FCI Berlin under immigration authority and seeks immediate habeas relief, including an order requiring a prompt bond hearing before an Immigration Judge—or, in the alternative, immediate release.

This case presents the same constitutional defect identified by this Court in *Destino v. FCI Berlin*, No. 1:25-cv-00374 (D.N.H. Dec. 24, 2025): detention without a meaningful bond hearing violates procedural due process regardless of the statutory label DHS assigns to detention authority. As in *Destino*, Petitioner's detention has crossed the line from permissible civil custody into unconstitutional punishment.

JURISDICTION AND VENUE

This Court has jurisdiction pursuant to 28 U.S.C. § 2241 because Petitioner is in custody within the District of New Hampshire and challenges the legality and constitutionality of that custody. Venue is proper in this District because Petitioner is detained at FCI Berlin, located within this Court's territorial jurisdiction.

FACTUAL BACKGROUND

1. Zaki is a 21-year-old citizen and national of Egypt who entered the United States on or about August 4, 2024. He has no criminal history.
2. Upon arrival, Zaki presented himself to a U.S. Customs and Border Protection (CBP) officer and was initially placed into expedited removal under INA § 235(b)(1).
3. During expedited removal processing, Zaki expressed a fear of persecution and torture in Egypt based on [REDACTED] A CBP officer determined that Zaki demonstrated a "significant possibility" of establishing eligibility for asylum.
4. As a result, DHS decided to exercise their discretion and vacated the expedited removal order pursuant to 8 C.F.R. §§ 208.30 and 235.3(b)(5)(iv), released Zaki into the United States on his own recognizance under Alternatives to Detention (ATD), and issued a Notice to Appear placing him into regular removal proceedings under INA § 240.
5. On February 14, 2025, USCIS approved Zaki's Form I-360, granting him Special Immigrant Juvenile (SIJ) classification. USCIS expressly found, among other required findings, that it is in Zaki's best interests to remain in the United States and not to return to Egypt.
6. On or about October 27, 2025, DHS contacted Zaki and directed him to report to the local ICE office based on alleged ATD online "check-in violations." Zaki voluntarily appeared at the ICE office on October 28, 2025.

7. Upon reporting, Zaki was immediately taken into ICE custody before he had any meaningful opportunity to explain that the alleged check-in violations were caused by technical, non-intentional issues related to the CBP One application and problems with his mobile phone, not willful noncompliance.

8. Zaki is currently detained at FCI Berlin and is scheduled for an individual merits hearing on January 14, 2026.

9. If Zaki is not granted asylum or related protection, he faces imminent risk of removal to Egypt—a result that directly conflicts with his approved SIJ classification and USCIS’s binding determination that return to Egypt is contrary to his best interests.

10. Zaki meets all substantive statutory requirements to adjust status to lawful permanent residence based on his approved SIJ petition. He is unable to adjust solely due to annual visa number limitations in the SIJ category. The estimated wait time for visa availability is approximately four years.

11. If removed from the United States, Zaki will permanently lose his ability to adjust status because SIJ-based adjustment requires continued presence in the United States. Removal would therefore extinguish congressionally granted relief.

12. Continued detention severely prejudices Zaki’s ability to litigate his case. If released, he would be placed on the non-detained docket, increasing the likelihood that he can safely pursue lawful permanent residence without risking removal. Detention has already impeded his defense, including his ability to present physical evidence of torture—such as burn scars inflicted by his father—and to communicate directly and effectively with counsel.

LEGAL STANDARD

The writ of habeas corpus serves as a critical safeguard against unlawful executive detention. *Boumediene v. Bush*, 553 U.S. 723, 739 (2008). Even where Congress authorizes civil detention, the Constitution imposes limits: detention must bear a reasonable relation to its purpose and must be accompanied by adequate procedural protections. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Demore v. Kim*, 538 U.S. 510 (2003).

ARGUMENT

I. PETITIONER IS A MEMBER OF THE GUERRERO-ORELLANA CERTIFIED CLASS BECAUSE DHS VACATED EXPEDITED REMOVAL

Petitioner Zaki is a member of the certified class in *Guerrero-Orellana v. Barr*, because, as a matter of law, he is **no longer in expedited removal**. DHS exercised its discretion to vacate the § 235(b)(1) expedited removal order and to terminate the expedited-removal / credible-fear track, thereby placing Petitioner into standard removal proceedings under INA § 240.

Once DHS makes the affirmative election to vacate an expedited removal order, expedited removal no longer exists “as a matter of law.” The Board of Immigration Appeals has repeatedly recognized that DHS’s charging and procedural elections are legally dispositive. See *Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520, 523–24 (BIA 2011) (explaining that DHS’s **charging decision is dispositive** and that when DHS elects to place a noncitizen in § 240 proceedings, expedited removal under § 235(b)(1) does not apply as a matter of law); *Matter of J-A-B- & I-J-V-A-*, 27 I. & N. Dec. 168, 170–71 (BIA 2017) (holding that DHS has **exclusive authority to terminate, vacate, or decline expedited removal** and that once DHS proceeds under regular removal proceedings, the expedited-removal framework no longer governs detention or jurisdiction).

Where DHS vacates expedited removal pursuant to 8 C.F.R. §§ 208.30 and 235.3(b)(5)(iv), detention authority under § 235(b)(1) necessarily ends. The Government is estopped from simultaneously abandoning expedited removal for charging purposes while continuing to invoke it to deny bond jurisdiction. Accordingly, Petitioner satisfies the Guerrero-Orellana class definition because he “is not in any Expedited Removal process under 8 U.S.C. § 1225(b)(1)” and “is not currently in proceedings before an immigration judge due to having been found to have a credible fear of persecution.”

As a certified class member, Petitioner is entitled to a bond hearing under the terms of the Guerrero-Orellana injunction and under the Due Process Clause.

II. EVEN IF PETITIONER WERE NOT A CLASS MEMBER, THE SAME DUE PROCESS ANALYSIS REQUIRES A BOND HEARING

In the alternative, even if the Court were to conclude that Petitioner is not a Guerrero-Orellana class member, the constitutional analysis remains unchanged. As this Court held in *Destino v. FCI Berlin*, No. 1:25-cv-00374 (D.N.H. Dec. 24, 2025), prolonged immigration detention without an individualized bond hearing violates procedural due process regardless of the statutory detention label DHS invokes.

The Fifth Amendment imposes an independent constitutional requirement that prolonged civil detention be accompanied by meaningful procedural safeguards. *Reid v. Donelan*, 819 F.3d 486 (1st Cir. 2016). Once detention becomes prolonged, the Government must justify continued custody before a neutral decisionmaker. *Jennings v. Rodriguez*, 583 U.S. 131 (2018), expressly preserved constitutional habeas challenges such as this one.

Thus, whether analyzed under Guerrero-Orellana or directly under the Due Process Clause, Petitioner is entitled to a prompt bond hearing with the burden on the Government.

III. PERSUASIVE AUTHORITY CONFIRMS THAT DHS'S DETENTION AND REMOVAL POSITION CONFLICTS WITH FEDERAL LAW

Persuasive authority further confirms the unlawfulness of DHS's position. In *A.C.R. v. Noem*, the court held that DHS's effort to detain and remove individuals with approved Special Immigrant Juvenile (SIJ) status conflicted with federal statutory protections and congressional intent. The court emphasized that once USCIS grants SIJ classification, DHS may not treat the individual as categorically removable without regard to those protections.

Here, DHS's attempt to deny bond jurisdiction and to effectuate removal notwithstanding protective statutory frameworks mirrors the conduct rejected in *A.C.R. v. Noem*. While not binding, *A.C.R.* is highly persuasive and reinforces that DHS may not circumvent federal law through detention and charging decisions that strip individuals of procedural safeguards.

IV. PROLONGED IMMIGRATION DETENTION WITHOUT A BOND HEARING VIOLATES DUE PROCESS

The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. Immigration detention, though civil, constitutes a severe restraint on liberty and therefore requires heightened procedural protections once detention becomes prolonged. *Reid v. Donelan*, 819 F.3d 486 (1st Cir. 2016).

Here, Petitioner has been detained for a prolonged period without any neutral decisionmaker assessing whether continued detention is justified. The Government's continued reliance on statutory authority cannot override constitutional requirements. As this Court recognized in *Destino v. FCI Berlin*, due process independently requires a bond hearing even where the statute is ambiguous or silent.

V. PETITIONER IS ENTITLED TO A BOND HEARING WITH THE BURDEN ON THE GOVERNMENT

Consistent with First Circuit precedent and fundamental due process principles, the Government must prove by clear and convincing evidence that Petitioner poses a danger or flight risk. *Reid*, 819 F.3d at 498. Absent such proof, continued detention is unconstitutional.

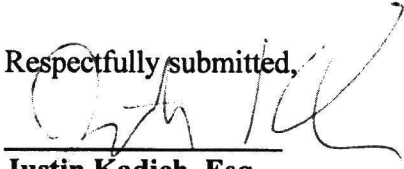
Petitioner respectfully requests that this Court:

1. Grant the Petition for Writ of Habeas Corpus;
2. Order Respondents to provide a prompt bond hearing before 1/14/2026 or order the Immigration Court to continue the Individual Hearing scheduled for 1/14/2026 until at a minimum 5 days after the Court has concluded Respondent's bail hearing
3. Require that the Government bear the burden of proof by clear and convincing evidence;
4. Alternatively, order Petitioner's immediate release from custody;
5. Grant any other relief the Court deems just and proper.

CONCLUSION

Civil immigration detention is not punishment. When detention becomes prolonged and unreviewed, it violates the Constitution. For the foregoing reasons, the Petition should be granted.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that on this date, 1.8.2026 a true and correct copy of the foregoing was served on counsel for Respondents via the Court's CM/ECF system.

Dated: 01/08/2026

Printed Name: Justin Kadich

Signature: 