

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

REMON RAYEK ISKANDAR ZAKI,

Petitioner,

v.

Warden, FCI Berlin, et al.,

Respondents.

Civil No. 1:25-cv-460-PB-TSM

OBJECTION TO MOTION

On December 1, 2025, the Court set a briefing schedule in this matter after consultation with the parties. Petitioner was afforded 30 days upon receipt of Petitioner's immigration file to submit an amended Petition and Respondents were to have 14 days to respond. Respondents produced Petitioner's immigration file to Petitioner on December 12, 2025. Petitioner filed their amended Petition on January 8, 2026, and contemporaneously filed an Emergency Motion to Expedite, raising for the first time concerns related to an impending hearing in Immigration Court. Respondents object to the Motion to Expedite.

Petitioner could have alerted the Court and Respondents to any concerns about the timing of his immigration hearing when the briefing schedule was set. Alternatively, counsel could have raised the issue in any of his numerous communications with undersigned counsel since the December 1 status conference. Counsel has never raised with Respondents or the Court concerns regarding access to counsel nor had he previously framed his request for relief as seeking release *before* any hearing in immigration court. Indeed, Petitioner raised no concerns about the timing of any upcoming hearing until less than a week before the scheduled hearing.

He now frames the impending hearing as an emergency warranting expedited treatment of his just-filed Petition, urging the Court to rule on the Petition without affording Respondents adequate time to gather information, confer with agency counsel, and respond to the arguments set forth in the Petition as amended. Respondents object and respectfully ask the Court to afford them the full 14 days set forth in the Court's prior order.

Were it obvious that Petitioner was entitled to relief under either *Guerrero Orellana* or *Destino*, Respondents' position on the Motion to Expedite would likely be different. But Petitioner is not, as he alleges, a *Guerrero Orellana* class member. He was originally processed for expedited removal but was transferred to full removal proceedings after establishing a credible fear of persecution. This specifically excludes him from the *Guerrero Orellana* class.¹ Moreover, it is not clear from the Petition that *Destino* applies.² Petitioner here was present in the United States for about 14 months prior to being taken into immigration custody, a considerably shorter period than *Destino*. Moreover, the holding in *Destino* was premised in

1 The *Guerrero Orellana* class is defined to include, as relevant here:

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, where:

- (a) the person is not in any Expedited Removal process under 8 U.S.C. § 1225(b)(1), does not have an Expedited Removal order 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 under 8 U.S.C. § 1225(b)(1)(B)(ii).*

Guerrero Orellana v. Moniz, No. 25-CV-12664-PBS, 2025 WL 3687757 (D. Mass. Dec. 19, 2025) (emphasis added). The final clause above describes Petitioner and makes him ineligible for membership in the *Guerrero Orellana* class.

2 Though Respondents would object to relief being granted on the basis of *Destino*, they have acknowledged in abbreviated pleadings in other cases circumstances in which the reasoning set forth in *Destino* would, if applied, likely lead to a similar outcome. It is not obvious that the instant case presents such circumstances.

part on the Court's finding that Destino's continued presence in the United States *while abiding by all conditions of release* gave rise to an expectation that he would remain free. The Petition here appears to acknowledge that Petitioner's immigration arrest was prompted by violations of his reporting requirements. DN 8 at 2. Undersigned counsel requires time to obtain information about the nature and frequency of Petitioner's alleged violations and analyze how these facts impact the analysis in *Destino*.

The Motion to Expedite states that "[t]he core relief sought in this habeas action is a constitutionally required bond hearing—or in the alternative, release from custody—**before** Petitioner's removal case is adjudicated on the merits." DN 9 at 1. Of the cases where courts have ordered habeas relief to immigration detainees in the form of a bond hearing before an IJ, undersigned counsel is aware of no instances in which the court has ordered that such hearing occur *prior* to the adjudication of the detainees' immigration case. Petitioner cites no authority for the premise that any such entitlement exists. While it would undoubtedly be convenient—perhaps even advantageous—for Petitioner to litigate his immigration case while out of custody, that is not a basis for this Court to grant habeas relief absent an allegation that Petitioner has been denied the right to counsel. Petitioner here has alleged no such deprivation.

CONCLUSION

Respondents respectfully request that the Court deny the Motion to Expedite and afford Respondents their full 14 days to respond to the Amended Petition.

Dated: January 12, 2026

Respectfully submitted,

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