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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

_____	)
Rimelek	)
BERNARDES DE FREITAS	)
A 	)
	)
Petitioner	)
	)
Patricia HYDE, Field Office	)
Director of Enforcement and Removal	)
Operations, Boston Field Office,	)
Immigration and Customs Enforcement;	)
	)
John TSOUKARIS, Field Office	)
Director of Enforcement and Removal	)
Operations, Newark Field Office,	)
Immigration and Customs Enforcement;	)
	)
WARDEN, Delaney Hall Detention	)
Facility;	)
	)
Todd LYONS, Acting Director of U.S.	)
Immigration and Customs Enforcement	)
	)
Kristi NOEM, Secretary,	)
U.S. Department of Homeland Security;	)
	)
and	)
	)
Pam BONDI, Attorney General	)
of the United States;	)
	)
in their official capacities,	)
	)
Respondents	)
_____	)

PETITION FOR A WRIT OF HABEAS CORPUS  
PURSUANT TO 28 U.S.C. § 2241

## INTRODUCTION

1. On Monday, November 10, 2025, Petitioner, Rimelck Bernardes De Freitas, was in the custody of Respondent U.S. Immigration and Customs Enforcement in Burlington, Massachusetts. He is now in the physical custody of the Respondent Warden at the Delancy Detention Facility in New Jersey. He faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have erroneously concluded that Petitioner is subject to mandatory detention and prompt removal from the United States (U.S.), or alternatively, have not made a determination as to whether circumstances justify his continued detention.

2. Petitioner brings this action to challenge the process Respondents are actively employing in their effectuation of his detention and removal. Petitioner has resided in the United States for several years and is a single-father to a one-year-old U.S. citizen child, and an important member of his community. He was detained by ICE on November 7, 2025, when ICE agents came to his neighborhood, took him from his young U.S. citizen child, and placed him in detention. He now faces imminent removal from the United States.

3. Petitioner has a pending asylum claim with USCIS. Petitioner has also received approval for the preliminary step in his U visa process, and he is pursuing his U visa with separate counsel.

4. To vindicate Petitioner's rights, this Court should grant the instant petition for a writ of habeas corpus. Petitioner asks this Court to find that Respondents' attempts and actions to detain, transfer, and remove Petitioner are arbitrary and capricious and in violation of the law, and to immediately issue an order preventing Petitioner's transfer out of this district and ordering his return to Massachusetts.

## JURISDICTION

5. This action arises under the Constitution of the United States, and the Immigration and Nationality Act (“INA”), 8 U.S.C. § 101 *et. seq.*, as amended by the *REAL ID Act*, and the Administrative Procedures Act (“APA”), 5 U.S.C. § 701 *et. seq.* The Court has jurisdiction under 28 U.S.C § 1331 federal question jurisdiction, as Petitioner is presently in custody under the color of authority of the United States, and such custody is in violation of the Constitution, laws or treaties of the United States.

6. While the amendments of the *REAL ID Act* limit federal court jurisdiction over petitions for habeas corpus review of administrative orders of removal or deportation, those provisions do not affect this Court’s jurisdiction over Petitioner’s claim. *See* 8 U.S.C. §§ 1252(a)(5), (b)(9). The First Circuit Court of Appeals has recognized that those provisions do not preclude district courts’ jurisdiction to review direct challenges to the legality of an alien’s detention that are independent of challenges to removal orders. *Ishak v. Gonzales*, 422 F.3d 22, 29 n.5 (1st Cir. 2005). The Third Circuit, where Petitioner is currently located, has also recognized that “the power of a federal court to grant a writ of habeas corpus under § 2241 extends to any prisoner who ‘is in custody in violation of the Constitution or laws or treaties of the United States.’” *Zubeda v. Elwood*, 265 F. Supp. 2d 509 (E.D. Pa. 2003); 28 U.S.C. § 2241(c) (3) (2002); *see also Perez v. Elwood*, 294 F.3d 552, 555 (3d Cir.2002) (holding that § 2241 grants district courts authority to issue writs of habeas corpus in cases involving detainees held under United States’ authority).

7. Through his petition, Petitioner seeks to challenge Respondent’s authority to continue to detain him indefinitely pending a resolution to his removal proceedings. As such, this Court

may grant relief pursuant to 28 U.S.C. § 2241; 5 U.S.C. § 702; and the All Writs Act, 28 U.S.C. § 1651.

8. The Court also has jurisdiction under 28 U.S.C. §§ 2241 (habeas corpus). A final order of removal constitutes a “severe restraint” on Petitioner’s individual liberty such that he is “in custody” for purposes of 28 U.S.C. § 2241. *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973). Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of the government’s conduct. Federal courts are not stripped of jurisdiction under 8 U.S.C. § 1252. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

9. Petitioner was detained by ICE on November 7, 2025 in his neighborhood in Massachusetts.

10. Petitioner has not committed any crimes that would make him a danger to the public, and has never evaded law enforcement.

11. Prior to his detention, Petitioner was the sole provider and caretaker for his one-year old U.S. citizen daughter. Petitioner’s ex-wife, and the mother of his child, had previously stabbed Petitioner and is no longer in the family’s life. Thus, Petitioner’s child relies solely on Petitioner’s care and support, and is experiencing extreme hardship while Petitioner is in detention. Petitioner remains detained in DHS custody to this day, despite the fact that he has a pending asylum application with USCIS, is expected to have a U visa application with USCIS, and is neither a danger to the community nor a flight risk.

#### **CAUSES OF ACTION AND CLAIMS FOR RELIEF**

12. Individuals who pursue lawful immigrant status in the United States have rights under the Due Process Clause of the Fifth Amendment. The fundamental requirement of due process

is the opportunity to be heard “at a meaningful time and in a meaningful manner.” *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976). Procedural due process “imposes constraints on government decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due process Clause of the Fifth or Fourteenth Amendment.” *Id.* at 332.

13. Individuals who pursue lawful immigrant status in the United States have rights under the Due Process Clause of the Fifth Amendment. The fundamental requirement of due process is the opportunity to be heard “at a meaningful time and in a meaningful manner.” *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976). Procedural due process “imposes constraints on government decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due process Clause of the Fifth or Fourteenth Amendment.” *Id.* at 332.

14. Petitioner is entitled to due process because he has a pending affirmative asylum application with USCIS. Petitioner has a liberty interest and a property interest at stake under the statute. ICE’s effort to prematurely deport Petitioner before USCIS can adjudicate his Form I-589, Application for Asylum and Withholding of Removal, constitutes an attempt to shortchange this process.

15. Further, Respondent has received Form I-918 Supp. B, Certification from Law Enforcement Agency, certifying that [REDACTED] Upon information and belief, Respondent is ready to submit his U-Visa application to USCIS, and is working diligently with his attorney to complete this process.

16. Petitioner has a protected due process interest in his ability to have his asylum application adjudicated and to remain in the United States and ultimately receive lawful permanent status. Should Petitioner be removed prior to the adjudication of his asylum application, Petitioner would be permanently deprived of his ability to acquire asylum status because he would no

longer be physically present in the United States. Thus, Petitioner faces a risk of erroneous deportation because physical presence in the United States is a condition of eligibility, and his asylum application cannot be granted if he is prematurely removed from the country by Respondent. 8 C.F.R. § 214.11(g).

17. Further, Petitioner has a protected due process interest in his ability to have his U-Visa application adjudicated and to remain in the United States to care for his daughter. Petitioner's one-year-old U.S. citizen daughter was severely affected when her mother stabbed Petitioner. Specifically, Petitioner's ex-wife was arrested, and ultimately removed from the United States, and Petitioner has been a single parent ever since. Thus, removing Petitioner before his U-Visa application is adjudicated would not only deprive Petitioner of his liberty interest in pursuing his pending application, but would also cause extreme hardship to his young U.S. citizen daughter.

**A. Petitioner cannot protect his liberty interest while in detention and should be released to Massachusetts, or a bond determination hearing should be ordered.**

18. When Petitioner was arrested by ICE, his one-year-old U.S. citizen daughter was left without any parents. Prior to his arrest, Petitioner was working hard as a single parent to care for his daughter after his ex-wife was arrested for stabbing him. Now that Petitioner is in detention, his one-year-old daughter is extremely distressed. Without any parents to take care of her, Petitioner's daughter does not have any stability in her life, and is completely overwhelmed. If DHS continues to detain Petitioner, his daughter will face traumatic custody redeterminations, or even be at risk of being placed under "guardianship of the state." This is no fate that a U.S. citizen one-year-old child should ever have to face. Further, these extreme

hardships to Petitioner's daughter will ultimately prevent Petitioner from pursuing his asylum status, as well as his U-Visa application.

19. If he remains in detention, Petitioner will not be able to present his asylum claim or submit his U-Visa application. Instead of communicating with his lawyer, Petitioner will be forced to coordinate with his family members to arrange for the care of his one-year-old daughter. Further, Petitioner will be unable to provide for his daughter, who will require a lot of support as she grows up. All of Petitioner's family members have demanding lives of their own, and will be unable to adequately provide care and financial support to his daughter. Petitioner's family members will also be unable to dedicate their time to Petitioner's immigration matter, as they will be focused on providing care for his daughter. Thus, Petitioner will be unable to adequately pursue his asylum and U-Visa matters; a sacrifice Petitioner should not have to make to protect his one-year-old U.S. citizen child.

20. Thus, as Petitioner has demonstrated that he will be deprived of his liberty interest if he remains in detention, this Court should order that DHS immediately release Petitioner from detention on an Order of Recognizance. Alternatively, Petitioner should immediately receive a Bond Determination Hearing, so that he may demonstrate that he should not be subject to mandatory detention.

21. Petitioner recognizes that the Board has stated that Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission. INA § 235(b)(2)(A); 8 U.S.C. § 1225(b)(2)(A). Petitioner also recognizes that the Board in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of V-X-*, 26 I&N Dec. 147 (BIA 2013) has held that asylum seekers are applicants for admission.

22. However, Petitioner has resided in the United States for several years since his last entry into the U.S., has not received a Credible Fear Interview after submitting his I-589 Application to USCIS, and has other viable forms of immigration relief available to him, including a U-Visa. Additionally, Petitioner is a single-father to his one-year-old U.S. citizen daughter, and has demonstrated significant ties to the United States that distinguish him from any other asylum seeker or U visa applicant. Thus, the Immigration Judge should have authority to hear Petitioner's Bond request, as he is not a typical applicant for admission under INA § 235(b)(2)(A). 8 U.S.C. § 1225(b)(2)(A).

23. Further, in September 2025, Judge Patti B. Saris of the U.S. District Court for the District of Massachusetts, granted Guerrero Orellana's motion for class certification on their mandatory detention challenge. *Orellana v. Moniz*, 2025 U.S. Dist. \*37.

24. Petitioner is a presumed member of the *Guerrero Orellana* class because (i) he was arrested in Massachusetts after September 22, 2025; (ii) he will be subject to the jurisdiction of an Immigration Court located in Massachusetts when he files a motion to reopen his removal and submits a copy of his I-589 Application with the Court; (iii) he is not in Expedited Removal, does not have an Expedited Removal Order, and is not currently in proceedings before an immigration judge due to being found to have a credible fear of future persecution; (iv) the government has not alleged that petitioner was admitted or paroled into the U.S.; (v) he does not meet the criteria for mandatory detention; (vi) he is not subject to post-final order detention; and (vii) he was not arrested at the border. *Id.*; 8 U.S.C. § 1225(b)(1); 8 U.S.C. § 1225(b)(1)(B)(ii); 8 U.S.C. § 1182(d)(5)(A); 8 U.S.C. § 1226(c); 8 U.S.C. § 1231.

25. While Petitioner independently argues that the Immigration Judge has jurisdiction over his matter, his membership in the *Guerrero Orellana* class should also be considered. Though

the pending class action has not yet reached a final determination, the shared factual and legal components of this action and Petitioner's individual matter highlight the legitimacy of Petitioner's position that he is only subject to discretionary detention and must be awarded a bond hearing. Thus, Petitioner has demonstrated that if he is not immediately released, he is entitled to an immediate Bond Determination Hearing to plead the illegality of his detention.

26. Further, there exist several discretionary factors in favor of Petitioner's release on bond. Not only has Petitioner been a victim of a crime in the United States, but his own ex-wife was the one who stabbed him. Additionally, as mentioned previously, Petitioner is the father of a one-year-old U.S. citizen child, who is suffering greatly in his absence. For all of the aforementioned reasons, Petitioner has demonstrated that he should be awarded a Bond Determination Hearing.

**B. Alternatively, if Petitioner cannot be released from detention, Petitioner should be returned to Massachusetts, and not be removed from Massachusetts.**

27. If Petitioner is not released from detention, it is imperative that he be returned to and remain in the state of Massachusetts while he awaits a decision on his pending asylum application. Petitioner is a single parent of a one-year old U.S. citizen child. Petitioner's daughter has relied solely on Petitioner for her care. If Petitioner is to be detained indefinitely, he will need to arrange long-term care for his young daughter and needs to be close to his family to do so. Petitioner's young daughter is already distressed without her father, and needs to be able to visit Petitioner frequently. Further, if any formal delegation of parental authority is required, Petitioner needs to be nearby to make rapid decisions and act in his daughter's best interests.

28. Further, due process requires that Petitioner remain in Massachusetts. Should Petitioner be detained in another state, Petitioner will be permanently deprived of his ability to pursue asylum and a U-Visa in the United States. Specifically, if Petitioner detained in another state, he will lose access to counsel and family members, which are crucial in Petitioner's pursuit of asylum status. Further, Petitioner's attorney will not be able to effectively communicate with Petitioner, which will significantly hinder Petitioner's ability to submit his U-Visa application to USCIS. Thus, as Petitioner has a protected due process interest in having his asylum application adjudicated, and as Petitioner is ready to submit his U-Visa application, due process requires that Petitioner be returned back to and remain in Massachusetts without transfer to another state's detention facility.

**CLAIMS FOR RELIEF**

**COUNT ONE**

**Violation of Due Process of the Fifth Amendment of the U.S. Constitution**

28. The allegations in the above paragraphs are realleged and incorporated herein.
29. ICE has violated Petitioner's due process rights by denying him an individualized custody review to which he is entitled under ICE policy.

**COUNT TWO**

**Violation of 8 U.S.C. § 1231(a)(6)**

30. The allegations in the above paragraphs are realleged and incorporated herein.
31. 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*, authorizes detention only for "a period reasonably necessary to bring about the alien's removal from the United States." 533 U.S. at 689, 701.

32. Petitioner's transfer and continued detention has become unreasonable because his removal is not reasonably foreseeable. Therefore, his transfer continued detention violates 8 U.S.C. § 1231(a)(6), and he must be immediately released and returned to Massachusetts.

### **COUNT THREE**

#### **Arbitrary and Capricious Agency Action Under the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)**

33. The allegations in the above paragraphs are realleged and incorporated herein.

34. Courts must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

35. Petitioner's detention violates the APA because ICE has not determined why Petitioner's detention is warranted, or whether exceptional circumstances warrant his continued detention under ICE policy.

### **PRAYER FOR RELIEF**

WHEREFORE, Petitioner prays that this Court grant the following relief:

- (1) Assume jurisdiction over this matter;
- (2) Stay Petitioner's removal from Massachusetts so that he may pursue his asylum claim and submit his U-Visa application;
- (3) Issue an Order declaring that Petitioner's detention by Respondents is contrary to law and unconstitutional;
- (4) Issue an order that DHS immediately release Petitioner, with or without conditions, such as pursuant to an Order of Supervision;
- (5) Award Petitioner his reasonable costs and fees;
- (6) Alternatively, issue an Order that DHS immediately schedule a Bond determination Hearing;
- (7) Alternatively, issue an Order that DHS hold Respondent in the state of Massachusetts;
- (8) Grant any other and further relief that this Court may deem fit and proper.

Dated November 12, 2025

Respectfully submitted,

Rimelck Bernardes De Freitas

By his attorney,

/s/ William P. Joyce

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