UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

FRANCISCO RODRIGUEZ MARTINEZ, Petitioner, v. CHRIS BRACKETT, Warden, Strafford Detention Facility; DAVID WESLING, Acting Field Office Director, MICHALE KROL, HSI New England Special Agent in Charge, Department of Homeland Security; TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement; KRISTI NOEM, U.S. Secretary of Homeland Security; and PAMELA BONDI, U.S. Attorney General, Respondents.	)	No. 1:26-cv-00028-LM-TSM

FEDERAL RESPONDENTS' ABBREVIATED
RESPONSE TO ORDER TO SHOW CAUSE

On January 21, 2026, the Court issued an order in the above-captioned case directing Federal Respondents to show cause in writing on or before January 28, 2026 at 9:00 a.m., why, given the rulings issued in *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, 2025 WL 3687757, Dkt. No. 113 (D. Mass. Dec. 19, 2025) and in *Destino v. FCI Berlin*, No. 25-cv-374, Dkt. No. 9 (D.N.H. Dec. 24, 2025), the Court should not issue an order requiring Respondents to afford Petitioner a bond hearing under 8 U.S.C. § 1226(a). Dkt. No. 2.

Respondents submit this abbreviated response to preserve its legal arguments and to conserve judicial and party resources in light of the decisions in *Destino* and *Guerrero Orellana*.

Federal Respondents respectfully maintain that *Destino* and *Guerrero Orellana* were 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. Respondents' position is supported by a recent decision of the Board of Immigration Appeals ("BIA") in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In the interest of judicial economy, and to expedite the Court's consideration of this matter, Respondents hereby rely upon, and incorporate by reference, the legal arguments it has presented in prior cases dealing with ICE's detention authority, including those presented in *Alvarez Caizan v. Ackley et al.*, No. 1:25-cv-382-SE-TSM, Dkt. No. 10 (D.N.H. Oct. 10, 2025), and *Lagos Carrasco v. ICE et al.*, No. 1:25-cv-00400-SE-TSM, Dkt. No. 4 (D.N.H. Oct. 23, 2025). Respondents also refer the Court to their 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, Dkt. No. 95 (D. Mass. Nov. 21, 2025). For the reasons set forth in these cases, Respondents object to this Court granting relief in the instant case on the basis of either *Destino* or *Guerrero Orellana*.

Although Respondents respectfully object to this Court ordering relief based on *Destino* and *Guerrero Orellana*, Respondents acknowledge that if the Court adopts and applies the reasoning set forth in those cases in the instant case, the Court would reach the same result and would order that Petitioner be afforded a bond hearing before an IJ. The *Destino* court 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, Dkt. No. 9 at 13. Were this Court to apply *Destino's* reasoning in the instant case, it would reach the same result.

Accordingly, should the Court conclude that *Destino's* reasoning applies here, Respondents submit that the Court can decide this matter without further briefing and without oral argument. The Court need not determine whether relief is also warranted on the basis of the decision in *Guerrero Orellana*, as the relief to which Petitioner would be entitled under either case is the same: a bond hearing before an IJ. Nevertheless, Respondents note that ICE considers Petitioner to be a *Guerrero Orellana* class member and have therefore served him with a class notice.[1]

CONCLUSION

Respondents thank the Court for its consideration of this abbreviated submission and respectfully request that the Court deny the Petition.[2] Respondents submit 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, Respondents will provide such a brief upon the Court's request.

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[1] Respondents do not intend to waive any legal arguments or challenges they might raise 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 the *Guerrero Orellana* court's jurisdiction over custodians who are outside District of Massachusetts and who are not named parties in that case.

[2] Respondents note that the Court held a status conference today and indicated that it would be issuing an Order today granting Petitioner a bond hearing. Respondents nevertheless make this submission to preserve it legal arguments.

Respectfully submitted,

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United States Attorney

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