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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

JOSE ARNULFO GUERRERO ORELLANA,	)	
	)	
Petitioner	)	
	)	
-VS-	)	CA No. 25-12664-PBS
	)	Pages 1 - 31
ANTON MONIZ, et al,	)	
	)	
Respondents	)	

**STATUS CONFERENCE BY VIDEO**

BEFORE THE HONORABLE PATTI B. SARIS  
UNITED STATES DISTRICT JUDGE

United States District Court  
1 Courthouse Way  
Boston, Massachusetts 02210  
January 20, 2026, 11:07 a.m.

LEE A. MARZILLI  
OFFICIAL COURT REPORTER  
United States District Court  
1 Courthouse Way, Room 7200  
Boston, MA 02210  
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1     A P P E A R A N C E S:

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3     American Civil Liberties Union, One Center Plaza, Suite 850,  
4     Boston, Massachusetts, 02108, for the Petitioner.

5             CHRISTOPHER ESCOBEDO HART, ESQ. and ANTHONY MIRENDA, ESQ.,  
6     Foley Hoag, Seaport West. 155 Seaport Boulevard, Boston,  
7     Massachusetts, 02210, for the Petitioner.

8             KATHERINE J. SHINNERS, ESQ., U.S. Department of Justice,  
9     Civil Division, PO Box 868, Ben Franklin Station, Washington,  
10    DC, 20044, for the Respondents.

11            ANUJ K. KHETARPAL, ESQ., Assistant U.S. Attorney,  
12    Office of the U.S. Attorney, 1 Courthouse Way, Room 9200,  
13    Boston, Massachusetts, 02210, for the Respondents.

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P R O C E E D I N G

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THE CLERK: Good morning, Judge.

THE COURT: Hi. Good morning.

THE CLERK: I have both sides on, so I'll call the case.

THE COURT: Thank you.

THE CLERK: The Court calls Civil Action 25-12664, Orellana v. Moniz, et al. Could counsel please identify themselves.

MR. McFADDEN: Good morning, your Honor. Dan McFadden from the ACLU of Massachusetts on behalf of the petitioner and the class.

THE COURT: Thank you.

MR. HART: Good morning, your Honor. Chris Hart, Foley Hoag, for petitioner and the class.

MR. MIRENDA: Good morning, your Honor. Anthony Mirenda from Foley Hoag for the petitioner and the class.

MR. ROSSMAN: And good morning, your Honor. Jesse Rossman for the petitioner and the class.

THE COURT: For the defense?

MS. SHINNERS: Good morning, your Honor. This is Katie Shinnery on behalf of the defendants from U.S. Department of Justice, Office of Immigration Litigation.

THE COURT: Thank you.

MR. KHETARPAL: Good morning, your Honor. Anuj

1 Khetarpal from the U.S. Attorney's Office in Massachusetts on  
2 behalf of defendants.

3 THE COURT: Thank you. So I don't want to turn  
4 immediately to you, Mr. McFadden, but you've always taken the  
5 lead. You suggested this conference.

6 MR. McFADDEN: Yes, your Honor, and thank you for  
7 having us in so quickly. The reason we asked for the conference  
8 was, there has been an apparent change in the posture of the  
9 Immigration Court towards the class members, different from  
10 what we discussed at the last status conference last week. As  
11 we laid out in our status report, last week, actually I think  
12 while we were in the status conference, the Chief Immigration  
13 Judge from the Department of Justice sent an email to all of  
14 the other immigration judges, and that email essentially says  
15 that as to the *Maldonado* final declaration out of California,  
16 it's an instruction not to comply with the final declaration  
17 because it doesn't constitute an injunction and it doesn't  
18 vacate *Hurtado*.

19 It appears that that reasoning is now also being  
20 applied by immigration judges here in Chelmsford and in Boston  
21 to deny bond hearings systematically to our class members. We  
22 had a report last week that this was happening at the end of  
23 the week, and we submitted evidence of that in a declaration.  
24 We've seen that separately around the country. Other  
25 immigration judges essentially are repeating the reasoning from

1 the Chief Immigration Judge to not provide bond hearings to  
2 class members; and just this morning we received additional  
3 reports that another immigration judge in Chelmsford is  
4 refusing to provide bond hearings for class members, again  
5 citing the same reasoning that the Chief Immigration Judge --

6 THE COURT: Are these immigration judges informing the  
7 immigrants who are being detained to contact you or to file a  
8 habeas petition individually in the courts?

9 MR. McFADDEN: I don't believe the immigration judges  
10 are telling them that, to the best of my knowledge. We are in  
11 some cases in contact with their counsel for those who are  
12 represented. We are certainly telling them that the habeas  
13 petition is the next step. You know, I think that --

14 THE COURT: So they're going to get the relief from  
15 the habeas petition; it was as we spoke about last week. I at  
16 this point probably need to inform my judges, but for the most  
17 part, what we've been doing is, each one of us has been granting  
18 the habes as they came in, but the hope had been we wouldn't  
19 have to go through all that paperwork.

20 MR. McFADDEN: That was our hope as well, your Honor.  
21 And one of the reasons, of course, is that some detainees have  
22 access to the Federal Court. You know, those who are  
23 represented typically would, but some do not. Those who are  
24 pro se may not have access, either practically or in terms of  
25 the knowledge to file a habeas petition. They are in some

1 cases able to contact us, but, again, you know, our ability to  
2 intervene individually is limited. And, you know, so I think  
3 there are --

4 THE COURT: Well, can I ask you this. They should all  
5 be getting -- first of all, the entire immigration bar should  
6 be familiar with this at this point. And each one of these  
7 people who applied directly and got notice, I assume they got  
8 notice, so they could then call you, right?

9 MR. McFADDEN: They are getting the number in the  
10 notice, if they received the notice. The Department of Justice  
11 has represented that the notice is being distributed, although  
12 there is, again, a continuing dispute about whether or not the  
13 notice has been distributed to the entire class currently  
14 detained.

15 But, your Honor, I mean, I think just to take a step  
16 back, you know, we had a situation here where it appears that  
17 the Department of Justice has instructed the immigration judges  
18 not to comply with your final declaration. That's a pretty  
19 extraordinary circumstance for the government to instruct its  
20 employees not to comply with the law as finally declared by an  
21 Article III court, especially when the government has not even  
22 appealed the declaration at issue. And I think the practical  
23 consequences for the class members are very severe. There are  
24 people being arbitrarily and illegally detained right now as a  
25 result of this action by the government. I think there is

1 another tool --

2 THE COURT: Can I ask you -- I forget the statute. I  
3 should know these statutes by heart and I don't because every  
4 time I look at them, they seem denser and denser, but who is it  
5 that can issue an injunction? Is it only the Supreme Court or  
6 can the Court of Appeals?

7 MR. McFADDEN: You mean under 212(f)(1), your Honor?

8 THE COURT: I'm stripped of jurisdictional ability to  
9 issue an injunction, not a declaratory judgment. Can the First  
10 Circuit issue an injunction?

11 MR. McFADDEN: I would have to check that, your Honor.

12 THE COURT: So you don't know either. I just think  
13 that may be the answer here. I can't do it.

14 MR. McFADDEN: Well, your Honor, I think that there is  
15 another tool in your judicial toolbox to address this issue.  
16 The instructions from the government to the immigration judges  
17 are relying in significant part on the fact that *Hurtado* has  
18 not been vacated under the Administrative Procedure Act, and we  
19 have a count in our complaint to vacate *Hurtado* under the  
20 Administrative Procedure Act. The Court reserved on that count  
21 because I think the Court was trying to determine if the  
22 declaration itself would be sufficient. Our proposal would be  
23 to move forward on an expedited basis on that APA count and ask  
24 the Court to vacate *Hurtado*.

25 THE COURT: I've recently come to the conclusion that

1 the most important class one should take in law school is the  
2 Administrative Procedure Act, but has any judge ever declared a  
3 decision by the BIA vacated, a decision of the BIA under the  
4 APA?

5 MR. McFADDEN: So in *Pereira Brito*, your Honor, part  
6 of your order at the end of *Pereira Brito* in fact was to find  
7 that the policy at issue was unlawful under the APA, which was  
8 part of the prior BIA decisions. It was instructed by several  
9 BIA decisions --

10 THE COURT: It was a due process decision, wasn't  
11 *Brito*?

12 MR. McFADDEN: Yes, but also as part of your final  
13 order in that case, you also declared it unlawful under the  
14 APA. So I do think that there is a basis for the Court to  
15 consider under the APA the legality of *Hurtado* and to vacate  
16 it, and, at minimum, we would very much like to brief that  
17 issue for the Court on an expedited basis. I think that that's  
18 sort of the next step up the ladder as we seek additional  
19 relief to try to insure our class members are not being  
20 unlawfully jailed.

21 THE COURT: Okay. Let me go to the government at this  
22 point. Do you understand at this point the immigration judges  
23 are effectively ignoring my decision and the decision in  
24 California and just following *Hurtado*? Or is that just on a  
25 judge-specific basis? Do you know, anybody?

1 MS. SHINNERS: I think what we know is what petitioner  
2 has put in front of the Court. We do understand that this  
3 email was sent out regarding the effect of the declaratory  
4 judgment. I don't have any reason to dispute what petitioners  
5 put in front of the Court in terms of the facts happening in  
6 front of the IJs. The email from the Chief Immigration Judge  
7 is consistent with the government's position as we've taken and  
8 stated in this case, that a declaratory judgment doesn't  
9 require the agencies to act; and if it did, that wouldn't be  
10 consistent with Section 12(b)(2)(F)(i) as your Honor stated,  
11 and that's why, you know, we had argued that this case might  
12 not be the appropriate type of action for class treatment.

13 THE COURT: Well, no, it's not class treatment. It's  
14 simply two different judicial systems, the immigration and me,  
15 and whether or not my order takes priority. It's sort of an  
16 act of, I don't know, "defiance" might be the word. Or maybe  
17 she's getting pressure from her higher-ups in the Department of  
18 Justice, and maybe I shouldn't fault her individually, but I'm  
19 not quite sure what to do about this. Do you know whether the  
20 First Circuit can issue an injunction?

21 MS. SHINNERS: No, the statute does allow the Supreme  
22 Court to issue an injunction; but appellate resolution would  
23 have another effect, in that generally law of the Circuit  
24 Courts is followed by immigration judges, so there's a couple  
25 of different layers.

1 THE COURT: Can the government basically stipulate  
2 that if the First Circuit goes the way of almost every court in  
3 the United States of America, that the immigration system will  
4 follow it, even though they can't issue an injunction?

5 MS. SHINNERS: I'm sorry. I'm not prepared to --

6 THE COURT: I know I'm putting you on the spot.

7 MS. SHINNERS: Yes.

8 THE COURT: But here's the problem: Right now, these  
9 people are all going to get a detention hearing, a bond hearing.  
10 They're all going to get one because the majority of them are  
11 either going to come immediately through ACLU and come to me,  
12 and then I'll send it back. So it's this circuitous route, if  
13 you will, right? Or -- or --

14 MS. SHINNERS: We --

15 THE COURT: Anyway, go ahead.

16 MS. SHINNERS: We understand the Court's desire for a  
17 more efficient process, but this is the circumstances under  
18 which we are with respect to what Congress (Interrupted audio)  
19 regarding the unavailability of classwide relief, but --

20 THE COURT: Well, would you --

21 (Overlapping speech.)

22 THE COURT: Go ahead.

23 MS. SHINNERS: No, I just wanted to reiterate, the  
24 government is actively seeking appellate resolution. Even  
25 though the notice of appeal hasn't been filed from the partial

1 final judgment in this case, we do plan an appeal, subject to  
2 approval of the Solicitor General, and there are at least two  
3 appeals pending that raise at least similar statutory  
4 interpretation issues in the First Circuit. And there are  
5 appeals pending, some in a very advanced stage, in other  
6 circuits as well, including in the Ninth and the Fifth, but  
7 there are appeals pending I think in every circuit at this  
8 point.

9 THE COURT: Are either of the government attorneys  
10 here experts in appellate jurisprudence? What if you all  
11 agreed to expedited review in the First Circuit and in the  
12 Supreme Court? I mean, this is affecting -- I saw in the  
13 New York Times 200,000 people have been arrested. Wasn't that  
14 the number in that bar graph? And it will continue affecting  
15 this number.

16 MS. SHINNERS: Apologies, your Honor. I believe I was  
17 just dropped from the --

18 THE COURT: I'm sorry, I'm sorry.

19 MS. SHINNERS: No, no.

20 THE COURT: Is there a way of getting expedited review  
21 before the Supreme Court?

22 MS. SHINNERS: I know that two appeals have been  
23 expedited in the Ninth and in the Fifth in terms of seeking  
24 expedited review before the Supreme Court. I can't speak to  
25 what the government may or may not do, given that that's in the

1 province of the Solicitor General. But I understand the desire  
2 for resolution, and we are working toward appellate resolution  
3 of the issues.

4 THE COURT: I know, but slow as molasses, and meanwhile  
5 I think -- was it you or was it somebody else from your office  
6 who told me we are number one in the United States of America  
7 in the number of habeas petitions? It is absolutely swamping  
8 this court, and it's swamping the U.S. Attorney's offices.  
9 They're barely keeping their heads -- I think Mr. Farquhar told  
10 me that -- barely keeping their heads above water. And yet  
11 it's their right to freedom, so it goes to the top of the pile  
12 every single time so that we can get them out. And it's almost  
13 pro forma at this point based on my declaratory judgment  
14 action. It's almost like -- the U.S. Attorney's Office has  
15 been very cooperative. They simply say, "We understand, given  
16 your order, that this is it," and so it takes basically five  
17 days -- what do I give them usually? Seven days I think most  
18 judges give the Immigration Court to hold a bail hearing. So  
19 it's basically, I don't know, a week to two weeks extra that  
20 someone is spending in prison, and almost all of those people  
21 are getting out.

22 Is that the experience of the ACLU at this point,  
23 almost everyone is getting out who files for a detention  
24 hearing?

25 MR. McFADDEN: From what we've seen, your Honor, yes,

1 many, many of those who get bond hearings by habeas are then  
2 determined to be eligible for release by the Immigration Court;  
3 but it's currently requiring individualized intervention from  
4 the Federal Court to make that happen, which I know puts a  
5 tremendous burden on the court and also a tremendous burden on  
6 the class members and the bar to bring this very high volume of  
7 litigation. So, again, I do think that there's some other  
8 potential tools that we could try to --

9 THE COURT: I'm not going to be able to fast order a  
10 due process opinion and a vacatur opinion. It's just not going  
11 to go that fast. It's going to take another month by the time  
12 the briefing comes in and I hear argument. And the reason I  
13 didn't do it right away is because I didn't think it was easy.  
14 I thought the statutory argument was fairly easy and  
15 straightforward. So I'm wondering what to do in the interim  
16 because, you know, it will take a month or two; and whatever I  
17 rule, another one of you will appeal it.

18 MR. McFADDEN: I understand, your Honor. And, you  
19 know, to be clear, we were very hopeful that the declaration  
20 would resolve the issue, at least until, you know, the First  
21 Circuit had a chance to address it. But we're in a very  
22 extraordinary position now where the government has instructed  
23 its own people not to comply with your declaration. I mean, I  
24 really think that puts us in pretty uncharted territory, really  
25 at a precipice of a crisis in the rule of law for the Executive

1 Branch to refuse to recognize the validity of a declaration  
2 from an Article III court declaring what the law is. And I  
3 understand the government suggested appellate resolution may  
4 address this, but they haven't even appealed this declaration.  
5 It's not on its way to the First Circuit right now because  
6 there's been no appeal filed, and the First Circuit has not  
7 reached the point where briefing is completed, as far as I'm  
8 aware, in any of the appeals of these matters yet, and  
9 certainly argument has not been scheduled. And, again, I'm not  
10 aware of any appellate court that is currently hearing these  
11 matters that has an argument this week or next week. And  
12 certainly the timeline for any type of appellate resolution is  
13 very unclear, and, you know, our concern is really just for the  
14 class members right now who are walking into Immigration Court  
15 having received a notice that says, you know, "You can ask for  
16 a bond hearing," and they're just being told "No."

17 THE COURT: Should we revise the notice and say that  
18 the immigration judges -- "You're urged to call the ACLU or  
19 your attorney because many immigration courts are not following  
20 this order"?

21 MR. McFADDEN: I mean, I think that we could propose a  
22 revision to the notice to help the class members understand  
23 their rights in this new environment, but, your Honor, I really  
24 am concerned that that will not solve the problem for a lot of  
25 our class members. At a minimum, having to pursue individual

1 relief takes some time, but accessing the courts for a detained  
2 immigrant who has no legal background, has no lawyer and is  
3 managing to do this is very difficult.

4 (Overlapping speech.)

5 THE COURT: -- aren't you? I mean, just last week --  
6 by the way, I'm not taking all these cases as related personally,  
7 but just last week someone filed five cases, and they all  
8 deemed them related. So then I have to un-relate them just  
9 because the court has agreed that I can't possibly handle them  
10 all personally. And so I'm just wondering whether or not --  
11 but at the very least, it's some recourse, and I'm not sure  
12 they understand that if they're denied by the Immigration  
13 Court, that they still have a right to come here. It strikes  
14 me that we need a new notice for anyone denied by the  
15 Immigration Court.

16 MR. McFADDEN: We can certainly propose an amended  
17 notice to the Court, your Honor, and --

18 THE COURT: Or even a new notice.

19 MR. McFADDEN: -- we can do that very quickly.

20 THE COURT: Yes, I think we need to do something  
21 because the reality is, most of these people, I think -- well,  
22 I shouldn't say that -- many of these people don't have  
23 lawyers, and many of them don't speak English, and many of them  
24 will think, oh, they saw this notice, they'll just ask for a  
25 bail hearing, right?

1 MR. McFADDEN: I mean, it is concerning, yes.

2 THE COURT: And then they're going to get denied, and  
3 then they're not going to know what to do because they're going  
4 to be confused.

5 MR. McFADDEN: Yes, I think that that level of  
6 confusion is very possible, given that the Immigration Court is  
7 systemically refusing to provide the bond hearing that you  
8 ruled that they are required to provide. I think that we  
9 certainly could propose a new notice, but also, your Honor,  
10 there is a motion to dismiss that was filed at the end of last  
11 week by the government on the APA claim. We could also cross-  
12 move for APA relief with our opposition and get that moved up  
13 very quickly.

14 THE COURT: You can do what you want. I'm only one  
15 human being, and I have, believe it or not, two other massive  
16 class actions, one of which is scheduled for this afternoon and  
17 another of which I held a hearing on last week, and I'm on  
18 trial next week. So I'm trying to go as quickly as I can, but  
19 I'm looking for what I know is an avenue for relief right now,  
20 which is coming to Federal Court. I know that, and I know that  
21 I think every judge right now on this court has individually  
22 ordered that kind of relief. I don't know that that's true in  
23 Vermont or Maine, or whatever the other jurisdictions are, I  
24 just don't know, but, in any event, in Massachusetts it's true.

25 And I'm eager to do the following, which is to provide

1 notice to people who go directly to Immigration Court and are  
2 denied under whatever the order is by the immigration judge  
3 that they have, that they should contact you, or not you  
4 personally but the ACLU, and they may have rights in Federal  
5 Court and should contact you about filing a habeas petition.

6           Meanwhile, is there any way in which -- I understand  
7 that the government lawyers are limited in what they can do.  
8 Is there any way in which there's a work-around here,  
9 Ms. Shinnars, so we're not going -- I hear Mr. Farquhar in my  
10 mind talking about the piles, the Mount Everest of paper on his  
11 desk. You know, you're doing the best you can to figure out  
12 where they are and what their status is and on and on and on.  
13 I mean, you're at a breaking point too, right?

14           MR. KHETARPAL: You know, we are, your Honor. And  
15 that said, I mean, I don't think that we are at liberty right  
16 now in open court, we're able to say that there's any other  
17 workaroud at the moment. We similarly were wondering whether  
18 this is going to provide any other sort of relief, and, you  
19 know, I think we're working through it. But I think that there  
20 is the jurisdiction-stripping statute that is in place, and I  
21 think that's been the government's argument kind of all along,  
22 that this may not be the most appropriate way to --

23           THE COURT: Well, it's going to be the way we're going  
24 to do it because these people are entitled to bond.

25           And let me ask the DOJ, do you have any suggestions?

1 You're Main DOJ, right?

2 MS. SHINNERS: Yes. I'm with the Office of Immigration  
3 Litigation.

4 THE COURT: Do you have any --

5 MS. SHINNERS: I don't believe there's a workaround in  
6 terms of not filing habeas petitions. I mean, we can look  
7 into -- would streamline briefing assist?

8 THE COURT: We already have that, I believe.

9 MS. SHINNERS: Okay. I do believe we need to raise  
10 the objections, and I know we're not necessarily appealing  
11 every habeas petition, but that's just something that is the  
12 reason why we have to file the streamlined oppositions.

13 THE COURT: Well, what are other District Courts  
14 doing?

15 MS. SHINNERS: I would have to -- I don't have  
16 probably the most updated information from New Hampshire and  
17 Vermont, if that's what you're asking.

18 THE COURT: Well, how about across the United States  
19 of America? What's happening in California?

20 MS. SHINNERS: It's a good question. There are a  
21 number -- I -- in terms of what are they doing with respect to  
22 bond?

23 THE COURT: Yes. I mean, it's just basically is  
24 everybody getting denied, and then they have to come -- because  
25 if we've got this problem in my area, California must have it

1 tenfold.

2 MS. SHINNERS: There are a number of cases in  
3 California. There are, just as in other circuits, there are  
4 some judges that have agreed with the government's statutory  
5 interpretation and agreed with the denial, or that there's no  
6 jurisdiction of the IJ to grant a bond hearing because of  
7 1225(b)(2)(A), and others have ruled consistently or ruled  
8 similarly to your Honor. So there are in fact I believe a  
9 number --

10 THE COURT: So in short, you're not giving me -- what  
11 I'm going to do, you don't know. So let me just say, I'm going  
12 to say to the plaintiffs that they should issue me a new  
13 notice -- I can't issue that injunction -- that anyone who goes  
14 directly to Immigration Court and gets denied because of this  
15 new policy of the Chief Immigration Judge get another notice  
16 saying that they have other options; they have the option of  
17 going to Federal Court, "Please call this phone number if you  
18 cannot get bail."

19 I don't know how we're going to -- if you could  
20 inquire as to how we can effectively make sure that that's  
21 served. That isn't an injunction that I think would violate  
22 the law because you can provide notice, and we'll try and  
23 figure that out.

24 We need to move on because there are other issues  
25 here. I do agree with the new class definition. Was I getting

1 an opposition on that?

2 MS. SHINNERS: Yes. We will be filing before 6:00 p.m.  
3 we understand your Honor's intention to clarify the class  
4 definition, and, again, we just wanted to file our reasons  
5 for --

6 THE COURT: Well, okay, I'll wait to see. You know  
7 where I'm leaning --

8 MS. SHINNERS: Yes.

9 THE COURT: -- and I don't have the bandwidth to keep  
10 issuing massive decisions. So that will be clarified that it  
11 will move to September 22nd. The government has now moved for  
12 a protective order to protect the privacy of the information of  
13 the individual immigrants, other than to counsel, as I  
14 understand it. Is there a problem with that?

15 MR. McFADDEN: Yes, your Honor. We do have a number  
16 of objections to that motion. The government has said they  
17 will be producing information to us while that motion is  
18 pending, so we were planning to file a written response in the  
19 ordinary course. I could address it now if you'd prefer, but  
20 we can file --

21 THE COURT: But let me just say we as a court preserve  
22 the confidentiality of every immigration petitioner. We protect  
23 that privacy, so I for sure wouldn't want you releasing it  
24 broadly as to who's in what facility and that sort of thing.

25 MR. McFADDEN: Yes, your Honor. So, I mean, I can

1 address just briefly --

2 THE COURT: Yes, go ahead.

3 MR. McFADDEN: So there's a few concerns about the  
4 protective order. One is, the scope of the restrictions are  
5 very strict on us. They would appear to prevent us from  
6 telling the class members that they're on the list, telling  
7 their lawyers, telling our class representative it's just an  
8 "attorneys' eyes only" document protective order, which is  
9 obviously very problematic from our perspective.

10 Also, we don't think it's very necessary. You know,  
11 we are lawyers representing the class. Every lawyer  
12 representing a person in immigration matters have their name  
13 and A number and knows where they are, and this information of  
14 course is not misused; and we would never misuse it in our  
15 capacity, of course, as the representatives of this class. So  
16 we don't view it as necessary, your Honor.

17 And to be clear, I mean, the Department of Homeland  
18 Security releases information routinely about people it arrests  
19 on immigration charges, including their photograph. You could  
20 go to the DHS or ICE press release website and see the  
21 photographs of dozens of people that they release as arrestees.  
22 So this is not, in our view, a particular privacy concern of  
23 DHS, and we don't think there's any showing that we as counsel  
24 would be in any way misusing this information, and so we don't  
25 think it's necessary at all.

1           THE COURT: Well, let's put it this way: I'm open to  
2 a protective order but not as narrowly as "attorneys' eyes  
3 only." I think it's appropriate to go to the attorneys. Their  
4 family members as to where they might be seems appropriate to  
5 me. Not the press, although as far as I'm concerned, they can  
6 present aggregate numbers, like so many people have been -- I  
7 think you put it -- someone put in that what, 170 people have  
8 been notified so far and that sort of thing? The aggregate  
9 numbers I don't care; but in particular details perhaps, how  
10 many are in -- what's it called? -- Alligator Alcatraz is  
11 fine, how many are in Vermont, how many are -- but I think in  
12 terms of individual, I don't know what kind of private  
13 information is being disclosed, but it can go to attorneys,  
14 family members.

15           MR. McFADDEN: Understood, your Honor, and when we  
16 respond in writing, we can provide a proposed alternative if  
17 the Court decides to enter an order.

18           THE COURT: Well, yes, I don't know why we can't just  
19 agree in the interim. So none of the details of each individual  
20 should go to the press, let's put it that way, but aggregate  
21 numbers can go to the press. And you can give it to family  
22 members, and they can do with it what they choose. It's just  
23 it should at this point, since it's part of my order.

24           But, you know, one of the big problems I've had, I  
25 have to say -- and I'm not blaming the Assistant U.S.

1 Attorneys -- it's just even knowing where they are is a big  
2 battle. You can even see with that young woman who was  
3 deported erroneously last week, mistakes are being made; and  
4 not even bad-faith mistakes, just confusion. So I think the  
5 attorneys need to get that information ASAP, and I'm hoping  
6 that isn't being held up. Is it?

7 MR. McFADDEN: Your Honor, the government has told us  
8 that they will be producing the information on the agreed  
9 schedule, even while the motion for protective order is pending.

10 MS. SHINNERS: Yes, and we will be producing a list  
11 today. I think there's over 200 detainees who have been served  
12 on the list. And we're just hopeful for some assurances that  
13 in particular the A numbers and the details are not sort of --  
14 if there's no confidentiality protection, just it would be out  
15 there, and those people's A numbers would just be out there,  
16 which can link them to their immigration cases. So that's our  
17 main concern. But we will be producing, not holding up the  
18 information today, and DHS just was hoping for that additional  
19 safeguard.

20 THE COURT: When can you come up with an opposition?

21 MR. McFADDEN: You know, whenever would be convenient  
22 for the Court, your Honor. We could file something Wednesday  
23 or Thursday if that's --

24 THE COURT: Well, you people are swamped too because  
25 you keep filing lawsuits, so you must be beside yourself as

1 well.

2 Listen, until I've ruled, you should not disclose  
3 anything other than to the lawyers involved and to the family  
4 members as to where they are. I mean, they have a right to  
5 know. Often they can't find it.

6 And then hopefully you'll negotiate something that  
7 deals in as narrow a way as possible. Like, I don't know why  
8 you have to disclose the A numbers. That's an example. On the  
9 other hand, I think the public has a right to know how many  
10 people are being held in the aggregate and where they're being  
11 held in the aggregate. So maybe you'll negotiate it. It's not  
12 so urgent now, but all the information should be provided  
13 forthwith. But I think the most important thing at this point  
14 is to get to people who have been denied by the Immigration  
15 Court a notice of a right to file a habeas.

16 MS. SHINNERS: If I may, your Honor, I just wanted to  
17 clarify. For any amended notice, that would be to serve going  
18 forward to new arrestees?

19 THE COURT: Well, not necessarily. If someone was  
20 denied last week for this reason --

21 MS. SHINNERS: Well, it's that the government does  
22 have a process in place where notice is being provided through  
23 ICE Enforcement and Removal Operations, one, to those who have  
24 already been detained and that process is complete, and then  
25 moving forward and since the time of the Court's order to --

1           THE COURT: I understand. Yes, I haven't totally  
2 thought it through, but my goal, at least going forward is, if  
3 someone is denied because of this brand-new thing that came out  
4 last -- Friday?

5           MR. McFADDEN: I believe it's last Tuesday or Wednesday,  
6 your Honor.

7           THE COURT: All right, fair enough, last week -- if  
8 someone's denied on that basis, then they should be getting a  
9 new notice. So you're going to have to get that.

10          MR. KHETARPAL: Your Honor, if I may also add that we  
11 here in the U.S. Attorney's Office, we're not even making  
12 arguments that there's any exhaustion requirement prior to  
13 filing a habeas petition. I understand we're discussing notice  
14 for those who have been denied, but petitioners do not need to  
15 wait until a bond is denied prior to filing a habeas petition.  
16 And also we're seeing them, these templates that have been  
17 circulating amongst the immigration bar, being filed the day  
18 the individuals are detained; and as soon as we can adequately  
19 identify that they are in fact class members, we're filing our  
20 abbreviated briefs.

21          THE COURT: Well, I've been making it a practice to  
22 hold status hearings, but I've been told that many judges  
23 aren't even doing that, and so it might make sense just to have  
24 it be as automatic as a press of a button. So that's something  
25 that you should think about. We've been using a lot of our

1 time in these status conferences just to make sure they were  
2 class members, but --

3 MR. KHETARPAL: Yes, and that is the only delay on the  
4 part of our office, is just verifying that they are in fact  
5 class members; and if they are, we're filing these abbreviated,  
6 as your Honor has seen, these abbreviated responses as soon as  
7 we can. But we're not requiring exhaustion, so I just want to  
8 point that out.

9 THE COURT: I just think we need to get to the Supreme  
10 Court, is what I think we need to do. I know that may reach  
11 some skepticism in some folks in terms of whether that's the  
12 best road to go, but they're the only ones who can issue an  
13 injunction. Not even the First Circuit can.

14 MR. McFADDEN: Your Honor, may I ask, just to step  
15 back for one second, may I ask for clarification on the  
16 restrictions for the information we're getting today. I just  
17 want to make sure. Can we tell the class member and their  
18 immigration counsel that their name and A number is on the  
19 list?

20 THE COURT: Yes.

21 MR. McFADDEN: Okay, I just wanted to make sure.

22 THE COURT: And their family. I think there's no  
23 reason why they shouldn't know all the details.

24 MR. McFADDEN: Understood.

25 THE COURT: I think that's fine. But, you know, I'm

1 not going to remember this, there's so much happening so  
2 quickly. I would prefer to actually have something in writing  
3 so everyone can go back and look at it --

4 MR. McFADDEN: Understood, your Honor. We'll prepare  
5 a response.

6 (Overlapping speech.)

7 THE COURT: -- the government's protected, if I can  
8 put something in writing, it's just better. So, anyway, thank  
9 you very much and --

10 MS. SHINNERS: And if I -- I'm so sorry, your Honor.  
11 I just want to note one more thing about the notice, if there's  
12 any new notice. There's three translations, three written  
13 translations of the prior notice, and other translation is  
14 being accomplished through an interpreter line that's used in  
15 the detention facilities. So, again, that's sort of the  
16 process that allows providing the notice in the language that  
17 the detainee understands. And so we would request that any  
18 additional notice could align with those procedures so that  
19 we're able to provide the --

20 THE COURT: Well, it may take a while to get them  
21 translated, and ideally you'd agree on the wording of it. I'd  
22 love to do something consistent across the United States. By  
23 the way, what is the name of that judge? I probably should  
24 call her. What's her name, the one in California?

25 MS. SHINNERS: Sunshine Sykes, S-y-k-e-s. And my

1 understanding --

2 THE COURT: So has she done anything yet? Has she  
3 done anything? Does anyone know?

4 MS. SHINNERS: On notice? I believe there's a status  
5 conference this Thursday in which they're addressing that  
6 issue.

7 THE COURT: Okay, that's very helpful. Thank you. I  
8 just think it's confusing for Immigration when they have  
9 different orders and different things in different places, and  
10 we're better off having some national process. But, anyway,  
11 right now I'm only worried about my class right here, and I'm  
12 very worried about it because I thought things were going so  
13 well.

14 So, anyway, okay, all right, so right now there's no  
15 other hearing scheduled. I'll be getting your opposition today  
16 on the class definition. I've orally issued, which will appear  
17 on the notice, the protective order. I allow the motion for  
18 protective order to the extent that I just said, and hopefully  
19 you'll follow up with something fancier. When can you get me a  
20 notice to get to people who are denied in Immigration Court?

21 MR. McFADDEN: I would anticipate we could submit a  
22 proposal tomorrow, your Honor.

23 THE COURT: All right.

24 MS. SHINNERS: Well, would that be something that the  
25 parties would meet and confirm the language on?

1           THE COURT: Yes, maybe you give it to opposing counsel  
2 tomorrow, and then I get either an agreed-upon thing by Friday  
3 or each side comes up with their own.

4           MR. McFADDEN: Understood, your Honor.

5           THE COURT: Sometimes the way I've found it really  
6 useful is have a bracket around, say, the plaintiff's side and  
7 parentheses around the defendant's view on the language you  
8 can't agree on, rather than me getting barraged.

9           Is there anything else I forgot to mention? There's  
10 notice. There's protective order. There's class cert. Oh,  
11 and when did you want to file an opposition to the motion to  
12 dismiss and your own -- do you want to wait the 14 days, the 21  
13 days? I think 21 days actually on a dispositive. Why don't I  
14 say no later than 21 days? But knowing you, you'll get it to  
15 me earlier, okay?

16           MR. McFADDEN: Yes, your Honor. I mean, I think we  
17 could file an opposition as soon as perhaps next Tuesday, but  
18 we will expedite it as much as possible, including the APA  
19 motion in there.

20           THE COURT: So I was thinking about it. Since the  
21 whole thing on *Brito* was a constitutional case and this is both  
22 statutory and constitutional, so you had said *Brito* was a  
23 precedent for if it's unconstitutional. And I'm not even sure,  
24 I don't remember the briefing on it, but with respect to just  
25 pure statutory, make sure that you address that as well because

1 usually BIA decisions are appealed only in the circuit. I've  
2 never reviewed a BIA decision, so I'm struggling with it a bit,  
3 on pure statutory grounds.

4 MR. McFADDEN: Yes, your Honor, we can certainly  
5 address that. I think just a couple points we'll probably  
6 make: One is that because *Hurtado* was a bond appeal, not a  
7 final order of removal, it is now something that we understand  
8 it goes to the circuit. Habeas is the mechanism for review for  
9 something like *Hurtado*.

10 And then I think the other thing I would just say is,  
11 that in *Brito*, I think it was a constitutional decision on the  
12 due process claim, which determined that the BIA decisions at  
13 issue were contrary to law. This Court then used that  
14 "contrary to law" ruling to also find a violation of the APA.  
15 So I think here we would be similarly situated where you've  
16 already found that *Hurtado* was contrary to law, and that's an  
17 APA ground for relief, and therefore --

18 THE COURT: I see. So I look forward to it, but that  
19 was a long time ago, and I don't know where the case law has  
20 gone.

21 And the other issue is whether or not the Department  
22 of Justice interpretation upon which *Hurtado* was based is a  
23 final agency action. I'm just saying, I thought about these  
24 issues the first time around and found them complex, so --

25 MR. McFADDEN: Understood, your Honor.

1           THE COURT: Okay, thank you. All right, see you next  
2 time. Thank you, especially since I know, Anuj, I'll see you  
3 soon. Thank you. Bye-bye.

4           MR. KHETARPAL: See you soon, your Honor.

5           MR. McFADDEN: Thank you, your Honor.

6           (Adjourned, 11:47 a.m.)  
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C E R T I F I C A T E

UNITED STATES DISTRICT COURT )  
DISTRICT OF MASSACHUSETTS ) ss.  
CITY OF BOSTON )

I, Lee A. Marzilli, Official Federal Court Reporter,  
do hereby certify that the foregoing transcript, Pages 1  
through 31 inclusive, was recorded by me stenographically at  
the time and place aforesaid in CA No. 25-12664-PBS, Jose  
Arnulfo Guerrero Orellana v. Anton Moniz, et al, and thereafter  
by me reduced to typewriting and is a true and accurate record  
of the proceedings.

Dated this 26th day of January, 2026.

/s/ Lee A. Marzilli  
\_\_\_\_\_  
LEE A. MARZILLI, CRR  
OFFICIAL COURT REPORTER