

JOSE ARNULFO GUERRERO ORELLANA,
Petitioner
-VS-
PATRICIA H. HYDE, et al,
Respondents

CA No. 25-12664-PBS
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BEFORE THE HONORABLE PATTI B. SARIS
UNITED STATES DISTRICT JUDGE

United States District Court
1 Courthouse Way
Boston, Massachusetts 02210
November 3, 2025, 1:02 p.m.

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

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P R O C E E D I N G

THE CLERK: Hi, Judge. I have everybody on on both sides.

THE COURT: Okay.

THE CLERK: So I'll call the case. The Court calls Civil Action 25-12664, Orellana v. Moniz, et al. Could counsel please identify themselves.

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

MR. HART: Chris Hart with Foley Hoag, also petitioner and the class.

MS. ARAUJO: Attorney Annelise Araujo on behalf of the petitioner and the class.

MR. KHETARPAL: Good afternoon, your Honor. Anuj Khetarpal on behalf of the respondents.

THE COURT: Good afternoon.

MR. FLENTJE: And August Flentje on behalf of the respondents.

THE COURT: Thank you. So late Thursday night I issued my opinion on class cert, so I'm trying to figure out what's the next step, but what I really want to do is get this up to the Circuit. So I know that some of the other cases have been appealed, but is there a way that we can bypass a motion to dismiss and an op or get us to maybe judgment on the

1 pleadings quickly OR -- I don't know if you've all thought
2 about this at all -- so that I can issue a classwide judgment
3 on a declaratory basis, not an injunctive basis, that would
4 then fully, I don't know, present the issue to the First
5 Circuit or maybe the Supreme Court?

6 MR. McFADDEN: Your Honor, we have had some
7 conversations with the government since your order last week.
8 I think on the petitioner's side, our expectation is to
9 promptly file a motion for a partial summary judgment on
10 Count 1, which is the certified count, and to seek a Rule 54(b)
11 partial judgment to enter with the Court's resolution of the
12 partial summary judgment motion.

13 My understanding from the government, having spoken to
14 them this morning, is that the government intends to cross move
15 for summary judgments in connection with our motion, so we have
16 discussed a potential schedule that would allow us to brief up
17 summary judgments as well as the government's cross-motion.

18 THE COURT: Let me ask you this: I've basically
19 already ruled, albeit in the context of one individual. So
20 while I'm happy to have you do that, inevitably that will take
21 us to the end of the year. And this is happening fast and
22 furious, so... I'm just thinking out loud. I'm glad you're
23 going straight to summary judgment rather than motion to
24 dismiss or judgment on the pleadings. Is there a way in which
25 you could move for summary judgment based on my rulings on the

1 individual case, and then for 54(b), without having to go
2 through an entire briefing? I don't know.

3 What does the government think?

4 MR. FLENTJE: I mean, we worked out a tentative
5 possible schedule that would get summary judgment heard
6 December 15, the week of December 15. I don't know if that's
7 too slow for the Court, but I --

8 THE COURT: No, that may be fine, but I'm not
9 spending -- I mean, I'm going away Christmas week. So as a
10 practical matter, just saying, they probably won't have a
11 ruling until early January.

12 MR. FLENTJE: I also look to do that. I mean, if
13 we're, you know, filing motions on summary judgment on the
14 merits, we do need to brief up our arguments for preservation
15 purposes, and I'm not sure we can simply rely on prior
16 briefing. And as the class cert --

17 THE COURT: That's interesting. Have there been any
18 appellate rulings since then?

19 MR. FLENTJE: No. There's definitely a lot of cases
20 heading up to the appellate courts all around the country, and
21 they're moving pretty fast but no rulings yet; that I'm aware
22 of, I should say.

23 THE COURT: Well, if you agree, I agree. I am just
24 simply saying that I'm going away the following week, as
25 probably many of you are, so as a practical matter, I won't be

1 ruling on this till January, early January. And so many people
2 are being arrested every day, it's just moving so quickly, I
3 was hoping to try and do something more quickly than that. But
4 if you've all agreed on the schedule, I'm happy to go along
5 with it.

6 MR. McFADDEN: Your Honor, perhaps, you know, in light
7 of the Court's comments, if I could have some time to confer
8 with some folks on our end, and perhaps with the government
9 again, and then we could file a joint submission to you?

10 THE COURT: It was so thoroughly briefed on the
11 individual case, and indeed on the motion for class cert,
12 unless there are new cases that have come in.

13 MR. McFADDEN: Your Honor, to my knowledge, there are
14 not any new decisions that would likely, you know, require the
15 Court to reach a different outcome. The First Circuit, it's my
16 understanding, has stayed the *Martinez* appeal that was being
17 discussed. There is no First Circuit ruling that has occurred
18 since the Court's ruling on the PI. There have been a number
19 of decisions nationwide addressing this issue, largely going in
20 the direction that the petitioner is arguing in this case, so
21 I'm not aware of any decisions that would undermine or require
22 changes to what the Court already ruled.

23 THE COURT: All right, well, why don't we do this
24 then. What is your proposal for when -- who's going to move
25 for summary -- when are the cross-motions for summary judgment

1 going to be filed?

2 MR. McFADDEN: So what we had discussed, your Honor,
3 with the government was filing petitioner's cross-motion or
4 petitioner's motion on November 7, the government then filing a
5 cross-motion and opposition on the 21st, the petitioner's reply
6 and cross-opposition on the 5th, the government cross-reply on
7 the 12th, and then a hearing the week of the 15th. That was
8 the proposal that --

9 THE COURT: Well, we're here the week of the 15th, so
10 I can accommodate all of that, but given the volume of
11 writing --

12 THE CLERK: Judge, I'm looking at your schedule for
13 the 15th. It's tight. So right now, the only time you have
14 available is Wednesday, December 16 in the afternoon, I think.
15 That looks wide open, if that works for everybody, or Friday
16 the 19th, or Monday the 22nd. Otherwise you're booked.

17 THE COURT: Well, what's Wednesday the 16th in the
18 afternoon? Is that doable?

19 THE CLERK: Wednesday the 17th, you mean.

20 THE COURT: The 17th. I'm sorry.

21 THE CLERK: That's open for you. You have a RISE
22 Committee at 1:00, and then that's it. So if counsel is
23 available, do you want it in person or by video?

24 MR. FLENTJE: The government thinks it -- well, I
25 don't know if that's a question for us or the Judge. Sorry.

1 THE COURT: I'm only doing this by video now because
2 it's literally a scheduling conference, but I think the world
3 is interested in this opinion. So that's December 17th. Why
4 don't we do that at 2:00 o'clock? There's a chance I may be on
5 trial for much of December. Not clear yet.

6 THE CLERK: All right, so 2:00 o'clock on the 17th in
7 person.

8 THE COURT: Does that sound -- now, I understand that
9 if the shutdown is still happening, it's very hard to fly, even
10 in and out of Logan. I don't know what Washington is like, but
11 if this gets too thorny, maybe I should do it on Zoom. So I'm
12 willing to revisit that, but I think we should have that
13 argument as soon as possible, which turns out for me to be on
14 the 17th. So I'll block what, an hour, an hour and a half,
15 something like that?

16 MR. McFADDEN: I think that would work for petitioners,
17 your Honor.

18 THE COURT: Now, there's another logistical issue that
19 I don't know the answer to. First of all, should there be
20 discovery?

21 MR. McFADDEN: At this stage, your Honor, the
22 petitioners are not seeking discovery. It's predominantly a
23 legal question, we think, and so are prepared to file this
24 coming Friday a motion for partial summary judgment. If there
25 are areas that the Court believes it would be helpful, we're

1 happy to explore that, but our plan had been to file for
2 partial summary judgment as quickly as possible.

3 MR. FLENTJE: The government agrees on that.

4 THE COURT: Okay. There was one issue that flummoxed
5 us at the last minute, which is the government's proposed class
6 referred to "the physical border" as opposed to just "the
7 border." We just put down "the border." I don't know if
8 there's a difference. It really wasn't a point of briefing,
9 and I don't know whether it would cause confusion, so it is
10 something I'd like you to address: Is it a physical border?
11 Does that include maritime? Does it include people entering
12 the country through immigration ports, say in Ireland, who have
13 their own immigration? I actually don't know what it means.
14 So we just said "the border," which would pick up all of the
15 above. But if the parties have some specific meaning about
16 "physical border," you're just going to have to let me know,
17 and that may be something that I'll need to understand better.

18 The second issue is -- and this is really more a court
19 problem than your problem -- technically, most of these cases
20 are now part of the class. I don't think I have the bandwidth,
21 because so many people are being arrested and held, to take all
22 of the cases, and I don't have -- I don't know what you all
23 thought about that. I think I'm going to vet the issue with my
24 court. My sense is that I just couldn't possibly take every
25 single one, and yet I am not providing injunctive relief except

1 on an individual basis. That's what the statute says. Have
2 you any thoughts on that subject?

3 MR. McFADDEN: In terms of petitions that are being
4 filed right now, your Honor, or being litigated currently, I
5 think, you know, our view is that particularly where we're
6 talking about declaratory relief as the likely component or the
7 remedy for partial summary judgment, I think our view is that
8 those petitions can continue to be filed and litigated in the
9 ordinary course. I think our view is that if there's a
10 declaration, if it enters, this Court also would have authority
11 to enforce the declaration as to individuals; but for the
12 moment, I think our view had been that individuals could
13 continue to pursue their claims in the ordinary course during
14 the pendency of the summary judgment briefing.

15 THE COURT: I think that makes the most sense because
16 I literally couldn't handle it all, and we have a protocol
17 going forward. But it may be that some people are going to
18 deem it related, and I'm not quite sure what I'll do with that.

19 MR. FLENTJE: I would say I think the government
20 disagrees with that view, and we expressed that in our class
21 cert opposition as one reason not to grant class cert.

22 THE COURT: Would you explain just a little bit more.
23 They're not related, you would say?

24 MR. FLENTJE: No, we think they're precluded by
25 claim-splitting rules. There's now a certified class. These

1 are the members of the class. The relief they get is the
2 relief they get in this proceeding, and filing a separate
3 lawsuit or a separate habeas we would say is precluded.

4 THE COURT: Well, I didn't agree with that, but to the
5 extent that there are any questions about it, I will be
6 providing relief. I don't want people being held in prison
7 over the holidays if they are without a crime and don't qualify
8 as seeking admission. If some judge agrees with that argument,
9 they can switch it to me. I would prefer not to go that route
10 because I'm just one court, and I think each judge is getting
11 at least three a week.

12 So what's the U.S. Attorney, what are you seeing?

13 MR. KHETARPAL: Yeah, we're seeing more than three a
14 week, your Honor.

15 THE COURT: I'm saying each judge.

16 MR. KHETARPAL: Oh, yeah, I think that's about
17 consistent with what we've been seeing, you know, if you
18 separate -- if you're looking at how many petitions we're
19 getting, it's about that. I will say, your Honor, is that as
20 we get these, when we confer with OPLA, the Office of Principal
21 Legal Advisor to DHS, they usually provide for us whether an
22 individual is included as part of a class, so the *Calderone*
23 class is one example of that in which they've identified those
24 for us.

25 The concern that I see is, a lot of these petitions

1 that are being filed are very terse, and individuals are
2 marking them as related. And then we dig in, and oftentimes
3 that's not in fact the case. And so I wouldn't want all those
4 necessarily coming to your Honor as being labeled as part of
5 the class, and then us having to essentially go through the
6 whole process of looking it up and figuring out for the Court
7 that these are not individuals who are properly part of the
8 class, and so I just wanted to flag that issue for the Court.

9 THE COURT: Well, I don't know what you just said. So
10 let's say it was a run-of-the-mill case: Somebody who's been
11 here fifteen years, no crime, got picked up, they're held
12 without bond.

13 MR. KHETARPAL: Sure, your Honor. The --

14 THE COURT: And then you file your standard
15 opposition, right? "Yes, your Honor has already ruled."
16 You're not going to file that anymore?

17 MR. KHETARPAL: I think they're labeled as part of the
18 class, and I think we identify them for the Court as
19 individuals who this Court has ruled as part of the class.
20 What I'm saying, your Honor, there are individuals who say that
21 they're parts of classes --

22 THE COURT: But they're not.

23 MR. KHETARPAL: -- but they're not properly part of
24 the class once we dig in. And these petitions that are being
25 filed that many of the judges in this court will see are

1 essentially templates that are being circulated amongst --

2 THE COURT: I get that, and you've been very good
3 about immediately responding saying this, you know -- there
4 have been a few, by the way, that you correctly point out did
5 have criminal records or something like that, but most of them
6 fall into the category of they are the same person, and they
7 send it to Immigration Court.

8 MR. KHETARPAL: Right, right, so I just wanted to flag
9 that issue for the Court.

10 THE COURT: I'm not sure where that leaves me.

11 MR. KHETARPAL: I'm not sure either, your Honor.

12 THE COURT: I'm not sure what the court will want to
13 do on it. So I guess that's it. Right now, that's just a big
14 question mark for me, and I'll meet -- hopefully I'll raise it
15 with the court about what they want to do. But I haven't yet
16 issued a judgment yet is part of the additional complication.
17 That's another reason I wanted to move quickly. Once I issue a
18 judgment, it's binding on the Immigration Court until it's
19 appealed and maybe upheld or reversed, but I haven't done it
20 yet. Could you all talk among yourselves and see if there's a
21 good procedural approach to this? I mean, is there a way the
22 government can agree that they all go to the individual judges
23 without waiving the claims-splitting argument?

24 MR. FLENTJE: We can confer on the government's side.

25 THE COURT: And maybe you could just say without

1 waiving -- I don't even really understand the claim-splitting
2 argument, quite candidly, because, I mean, if they have other
3 claims other than bond, they can raise it, as far as I'm
4 concerned. But if it's just about bond, it's not claim
5 splitting. So maybe I've just missed your point, the
6 government. My law clerk has become a genius, a learned person
7 on declaratory judgments, plowing through the Restatement. And
8 we ended up thinking that it didn't work, but I'm not positive.
9 It's really very much like a Federal Courts issue.

10 MR. FLENTJE: The government's position was in our
11 class cert op, and the Court went the way it did in spite of
12 that position. I certainly don't think the government's
13 position is that every case should go to you since you
14 certified a class. That's not what I was meaning to suggest.
15 What I was meaning to suggest is that the Court's role is to
16 issue classwide relief, not individual relief, and that to the
17 extent there is individual relief that overlaps the classwide
18 relief, it would be improper for that to be brought now that
19 folks are part of the class. But as I said --

20 THE COURT: They can't seek a bond hearing --

21 MR. FLENTJE: I mean, that's I think --

22 THE COURT: -- until December 17th, or whatever date
23 we picked?

24 MR. FLENTJE: Well, again, I'm telling you the
25 government's position. I'm not saying that position will

1 prevail before any judge on the court, but I think that's the
2 way we laid it out in our class cert op as a reason why these
3 are individualized cases, so --

4 THE COURT: Yes.

5 MR. FLENTJE: -- that's our position. But I don't
6 expect it to change anything. And I think one key point is, we
7 don't think every case should go to you to look at individually.

8 THE COURT: That's music to my ears. We will just be
9 overwhelmed. So I will tell the members of the court they
10 should just keep these cases until -- and I suppose, once I've
11 issued a judgment, it may be a different situation, but let me
12 think that one through.

13 MR. McFADDEN: Understood, your Honor. And I think
14 even after a declaratory judgment enters, your Honor, you know,
15 people would still be able to file individual habeas petitions
16 to enforce their rights under the declaration. And so, you
17 know, I think certainly before a declaration enters, they
18 certainly retain the rights to file habeas petitions.

19 THE COURT: I agree with that. I just anticipate that
20 some people, as the word gets out, if you know what I mean,
21 will start deeming them related; and I think I'm going to just
22 un-relate them, at least until we work this through.

23 Do you know how it was handled in the State of
24 Washington? Was it different from what I did?

25 MR. FLENTJE: I think there was a classwide

1 declaratory judgment issue. I don't know what the status was
2 in the interim between the certification of the class and the
3 issuance of a declaratory judgment, or if there was even much
4 time gap there. I do know that there's ongoing litigation in
5 that court over enforcing the declaratory judgment and that --

6 THE COURT: Oh, really? Like what? Like -- that's
7 interesting. You mean appealing it, or are you just saying
8 making sure that the immigration judges do it?

9 MR. FLENTJE: Well, the immigration judges are, you
10 know, subject to vertical precedent in their court system, and
11 they had binding, you know, BIA decisions saying that there
12 can't be a bond hearing, and then they have the declaratory
13 judgment saying that there must be a bond hearing. So the
14 different immigration judges, my understanding, have handled
15 that in different ways, and it's still a work in progress. I
16 think the overall message is: Appellate review is what is
17 really needed.

18 THE COURT: I completely agree. That's exactly what
19 we need. And we need it, if necessary, if there's a split in
20 the circuits, to go up to the Supreme Court. It's a very hard
21 issue, and it's affecting a lot of people and their liberty,
22 and people who are not bad people. I mean, they're not
23 criminals. They've just been here a long time, they've been
24 working, and they haven't got a criminal record. So it's a
25 hard issue for everyone, I'm sure.

1 Okay, we'll set that up for the 17th.

2 THE CLERK: And can counsel submit that new briefing
3 schedule they've all agreed upon?

4 MR. McFADDEN: Yes, we can submit that. Would email
5 be appropriate?

6 THE CLERK: No. File it on the docket so it's
7 official, the briefing schedule, on the public docket.

8 MR. McFADDEN: Okay, we can do that.

9 THE COURT: Oh, and should I add, just to make sure,
10 I'm planning on it being in person, unless the air traffic
11 situation or weather get in the way.

12 MR. FLENTJE: We have (Inaudible) Boston.

13 THE COURT: Say it again?

14 MR. FLENTJE: We have people in Boston.

15 THE COURT: You do. I'm looking at one of them.

16 MR. KHETARPAL: I'll be here, your Honor.

17 THE COURT: Yes, we do, but I don't know whether the
18 department wants Main Justice or the local U.S. Attorney's
19 Office to handle it. But I love our local people, so I'm more
20 than happy to go that route.

21 MR. FLENTJE: We'll work it out.

22 THE COURT: Okay, thank you. All right, all right
23 good-bye.

24 MR. FLENTJE: Your Honor, one issue?

25 THE COURT: Yes. I'm sorry. Go ahead.

1 MR. FLENTJE: We have an answer deadline of November 17
2 and are hoping to get some relief from that. We think
3 plaintiffs agree, given the focus on the classwide partial
4 summary judgment.

5 THE COURT: What do you have, 60 days? Is that how it
6 usually --

7 MR. FLENTJE: Yes.

8 THE COURT: I'm happy, but I think we should put some
9 stipulation in the record because otherwise the court is going
10 to say: What are you talking about? You haven't even
11 answered. Do you plan on answering eventually, or you just
12 want to focus your attention on the motion for summary
13 judgment?

14 MR. FLENTJE: We are hoping to get an extension until
15 two weeks after you decide the partial motions for summary
16 judgment, and we can file something on that.

17 THE COURT: Why don't you just put a stipulation on
18 the record, okay?

19 MR. FLENTJE: Okay.

20 THE COURT: Okay, great. Thank you. All right,
21 bye-bye.

22 MR. KHETARPAL: Thank you, your Honor.

23 (Adjourned, 1:25 p.m.)
24
25

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 18 inclusive, was recorded by me stenographically at
the time and place aforesaid in CA No. 25-12664-PBS, Jose
Arnulfo Guerrero Orellana v. Patricia H. Hyde, et al, and
thereafter by me reduced to typewriting and is a true and
accurate record of the proceedings.

Dated this 5th day of November, 2025.

/s/ Lee A. Marzilli

LEE A. MARZILLI, CRR
OFFICIAL COURT REPORTER