No. 26-1094

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

JOSE ARNULFO GUERRERO ORELLANA,

Petitioner - Appellee,

v.

ANTONE MONIZ, et al.,

Respondents - Appellants.

On appeal from the United States District Court for the District of Massachusetts
Hon. Patti B. Saris, District Judge, Case No. 1:25-cv-12664-PBS

PETITIONER-APPELLEE'S MOTION TO CONSOLIDATE APPEALS AND TO EXPEDITE BRIEFING AND ARGUMENT

Pursuant to Rules 3(b)(2) and 31(a) of the Federal Rules of Appellate Procedure, Petitioner-Appellant Jose Arnulfo Guerrero Orellana ("Petitioner"), on behalf of himself and the certified class, respectfully moves to consolidate the above-captioned matter with *Guerrero Orellana v. Moniz*, No. 25-2152 (1st Cir.) and to expedite the appeals. The government assents to consolidation. The government does not oppose expediting the appeals but opposes Petitioner's proposed briefing schedule and proposes an alternative schedule. As grounds in support of his motion, Petitioner states as follows:

1. This is one of hundreds of cases nationwide challenging the government's new policy to misclassify civil immigration detainees in order to unlawfully deny them access to bond hearings in the Immigration Court. *See, e.g.*, *Barco Mercado v. Francis*, --- F. Supp. 3d ----, 2025 WL 3295903, at *4, 13-14, & nn. 22, 23 (S.D.N.Y. Nov. 26, 2025) (identifying 362 federal cases challenging this policy, in which detainees prevailed in 350 cases decided by over 160 different judges).[1]

2. This new policy breaks with decades of settled law and practice by purporting to shift vast numbers of people arrested inside the United States from bond-eligible status under 8 U.S.C. § 1226(a) to no-bond status under 8 U.S.C. § 1225(b)(2), based solely on allegations that they are noncitizens who originally entered the country without inspection (often decades ago). This new policy was promulgated within the Department of Homeland Security in July 2025. It was then formally adopted by the Department of Justice (which administers the Immigration Courts) in early September through a Board of Immigration Appeals (BIA) decision called *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025).

[1] *See* Kyle Cheney, *Hundreds of judges reject Trump's mandatory detention policy, with no end in sight*, POLITICO (Jan. 5, 2026), https://www.politico.com/news/2026/01/05/trump-administration-immigrants-mandatory-detention-00709494.

3. The government's position appears to be that it can jail people arrested inside the United States without any due process to determine if that deprivation of liberty is justified. *But see Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021); *Doe v. Tompkins*, 11 F.4th 1, 2 (1st Cir. 2021); *Brito v. Garland*, 22 F.4th 240, 256-57 (1st Cir. 2021).

4. Every district judge in Massachusetts to have considered the issue has rejected the government's novel misinterpretation of the relevant statutes,[2] as has the one court of appeals to have addressed this issue to date in a preliminary posture. *See Castañon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1060-61 (7th Cir. 2025) ("Defendants' construction would render § 1225(b)(2)(A)'s use of the phrase 'seeking admission' superfluous, violating one of the cardinal rules of statutory construction.").

[2] *See, e.g.*, *Gomes v. Hyde*, --- F. Supp. 3d ----, 2025 WL 1869299 (D. Mass. July 7, 2025) (Kobick, J.); *Martinez v. Hyde*, 792 F. Supp. 3d 211 (D. Mass. 2025) (Murphy, J.); ECF No. 21 (Order), *Traslaviña Garcia v. Hyde*, No. 1:25-cv-11513 (D. Mass. July 14, 2025) (Sorokin, J.); ECF No. 22 (Order), *Hilario Rodriguez v. Moniz*, No. 1:25-cv-12358 (D. Mass. Sept. 18, 2025) (Joun, J.); ECF No. 15 (Order), *Morales v. Plymouth Cnty. Corr. Facility*, No. 1:25-cv-12602 (D. Mass. Sept. 30, 2025) (Burroughs, J.); *Guerrero Orellana v. Moniz*, 802 F. Supp. 3d 297 (D. Mass. 2025) (Saris, J.); *Elias Escobar v. Hyde*, No. 1:25-cv-12620, 2025 WL 2823324 (D. Mass. Oct. 3, 2025) (Talwani, J.); ECF No. 13 (Status Report), *Amaya Sanchez v. Moniz*, No. 1:25-cv-12806 (D. Mass. Oct. 10, 2025) (Kelley, J.); ECF No. 7 (Order), *Zamora v. Noem*, No. 25-12750 (D. Mass. Oct. 17, 2025) (Gorton, J.); *Araujo da Silva v. Bondi*, No. 25-cv-12672, 2025 WL 2969163 (D. Mass. Oct. 21, 2025) (Casper, J.); *Martins de Oliveira v. Hyde*, No. 25-13940, 2026 WL 74111 (D. Mass. Jan. 9, 2026) (Saylor, J.).

5. This case was filed in September as a putative class action challenging the government's new "no bond" policy on statutory, constitutional, and Administrative Procedure Act grounds. D.E. 10.

6. On October 3, the district court granted Petitioner's individual motion for preliminary injunction on statutory grounds and ordered that he receive a bond hearing. D.E. 54.

7. On October 30, the district court certified a class on the statutory claim. D.E. 81. On December 19, the district court allowed the class's motion for partial summary judgment on that claim, granted declaratory relief in the class's favor, and entered its ruling as a partial final judgment under Rule 54(b). D.E. 112, 113. The Court then made certain modifications to that judgment to adjust the notice procedures on December 31. D.E. 123.

8. The government has noticed appeal from both the preliminary injunction order and the class-wide partial final judgment. D.E. 98, 145. Those appeals are separately pending in this Court as Nos. 25-2152 and 26-1094. A briefing schedule has been set in the former, with the government's opening brief due February 17, 2026. No briefing schedule has been set in the latter.

9. Petitioner is moving to consolidate these two appeals. Consolidation will promote judicial economy because both appeals arise from the same case below, based on the same facts, and raise essentially the same question of law. Consolidated

briefing, oral argument, and decision will thus avoid duplication of effort and ensure the matter is presented in the most efficient manner possible.

10. Additionally, Petitioner moves to expedite the briefing and resolution of these appeals to the greatest extent possible. As noted above, the government's new policy has triggered unlawful civil detention on an extraordinary scale, resulting in a tidal wave of habeas litigation that is currently swamping the district courts. And, beyond that, many other victims of this policy are unrepresented, do not speak English, and are being transferred rapidly to distant detention locations in Texas, Louisiana, and other places far from their families, resources, and counsel. As a practical matter, those detainees often lack any effective ability to vindicate their rights in court on an individual basis.

11. Although the Court below entered a final judgment declaring the class members' rights to bond hearings, the Department of Justice has taken the extraordinary and unusual step of instructing the Immigration Judges to *ignore* that declaration and continue to deny bond hearings under *Hurtado*. Specifically, on January 13, 2026, the Chief Immigration Judge sent an email to all immigration judges effectively instructing them not to comply with the law as declared in final declaratory judgments like the one entered by the district court.[3] D.E. 134-1.

[3] The Chief Immigration Judge's email specifically references a similar final declaration entered in the *Maldonado Bautista* class action on this same issue out of

Immigration judges in Massachusetts and nationwide are refusing to hold bond hearings for class members, often referencing the Chief Immigration Judge's instructions specifically as the basis for denial. D.E. 134-2; 134-3; 147 (IJ: "Let me read my guidance."); 148. The Department of Justice has even gone so far as to remove an Immigration Judge who was following the declaration from her detained cases and apparently reassigned those cases to a different Immigration Judge who is following the instructions to deny hearings. D.E. 149 (stating IJ Cho was granting bond hearings for class members, then abruptly removed from detained docket, cases re-assigned to IJ Le); 150 (stating IJ Cho reassigned from Plymouth docket and cases reassigned go IJ Le); 151; 159 (stating IJ Le announced he will be following instruction to deny hearings and will not give bond hearings to class members without an individual habeas order).

12. When confronted in this litigation with the Chief Immigration Judge's instruction, the Department of Justice endorsed it. The government also does not dispute that the Immigration Judges are denying bond hearings to the class members, notwithstanding a final declaration by an Article III court that the law requires such bond hearings. D.E. 134 at 2, 154 (Jan. 20, 2026 Tr.) at 9:4-9 (Gov't counsel: "I don't have any reason to dispute what petitioners put in front of the Court in terms

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California, *see* No. 25-cv-01873 (C.D. Cal.), *on appeal* No. 25-7958 (9th Cir.), but the reasoning is being applied equally to ignore the declaration entered here.

of the facts happening in front of the IJs. The email from the Chief Immigration Judge is consistent with the government's position . . . .").

13. On January 29, 2026, U.S. District Judge Patti Saris, the presiding judge below, found that it is "undisputed" that "class members are being denied bond hearings as provided in the Court's declaratory judgment ruling." D.E. 162.

14. The government's extraordinary noncompliance with the district court's final declaratory judgment warrants expedited resolution of this appeal. The government has represented in this litigation that the immigration courts generally follow circuit precedent. *Cf. Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 350 n.10 (2005) (noting "the BIA follows the law of the circuit in which an individual case arises"). The vast number of alleged noncitizens who have been and will be unlawfully deprived of their liberty urgently require this Court's intervention.

15. The public interest weighs in favor of swiftly resolving this appeal for the additional reason that the government's refusal to act in accordance with the district court's declaration of the law—in the face of nearly universal rejection of its legal position by district courts in New England and nationwide—continues to inflict tremendous strain on the judicial system and the bar. Because the Department of Justice has instructed the Immigration Judges to refuse bond hearings, the class members have no choice but to file individual petitions for writs of habeas corpus to enforce their rights pursuant to the district court's declaration (if they can access the

court at all). Even as early as October, the District of Massachusetts issued over 30 habeas grants on this issue in a single two-week period. D.E. 53, 69. The pace of litigation has only increased since that time.

16. Accelerating the consolidated appeal will not unduly burden the government. This appeal presents essentially a question of statutory interpretation—one which the government has briefed extensively in the district court below and in litigation nationwide. The government has already briefed the statutory question (or will brief it imminently) in connection with several individual appeals currently pending in this Court.[4] Moreover, the government has already briefed the same statutory question in seven other circuits, where the cases have been expedited (including several following the government's request or non-opposition). *See Barbosa Da Cunha v. Moniz*, No. 25-3141 (2d Cir.); *Buenrostro-Mendez v. Bondi*, No. 25-20496 (5th Cir.); *Lopez-Campos v. Raycraft*, No. 25-1965 (6th Cir.); *Castañon-Nava v. U.S. Dep't of Homeland Sec.*, No. 25-3050 (7th Cir.); *Avila v. Bondi*, No. 25-3248 (8th Cir.); *Rodriguez Vazquez v. Bostock*, No. 25-6842 (9th Cir.); *Alvarez v. Warden, Fed. Detention Ctr. Miami*, No. 25-14065 (11th Cir.). Indeed, if anything, expediting this appeal will likely *reduce* the overall burden on the government: a prompt decision on appeal will likely obviate the need for the

[4] *See, e.g.*, *Silva Fernandes v. Moniz*, No. 25-2146; *Mendoza v. Hyde*, No. 25-2153; *Seidu v. Moniz*, No. 25-2205; *Aybar Reyes v. Moniz*, 26-1051.

class members to file dozens or even hundreds of habeas petitions in the months to come, eliminating the need for government attorneys to respond to such petitions on an individual basis.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant his motion to consolidate the appeals docketed at Case No. 25-2152 and 26-1094 and expedite briefing to the greatest extent practicable.

Petitioner proposes that the government's opening brief be advanced by four days to be due on February 13, with Petitioner's brief due 18 days later on March 3, and the government's reply brief due a week later on March 10.

Although the government opposes Petitioner's proposed schedule, the government alternatively proposes the following schedule: opening brief and appendix to be due on February 17; answering brief to be due on March 6 or March 9; and reply to be due on March 16 or 19 (10 days from whichever date is selected for the answering brief).

Date: January 30, 2026 Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 32(g)

This motion complies with the type-volume limitation of Rule 27(d)(2)(A) of the Federal Rules of Appellate Procedure because it contains 1,990 words, excluding the parts of the motion exempt by Rule 32(f).

This motion complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 365 in 14-point Times New Roman font.

Date: January 30, 2026

/s/ Julian Bava
Julian Bava

CERTIFICATE OF SERVICE

I hereby certify that, on January 30, 2026, I served the foregoing motion on counsel for Respondents-Appellants via CM/ECF.

Date: January 30, 2026

/s/ Julian Bava
Julian Bava