

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

JUAN FRANCISCO MENDEZ,)
)
Petitioner,)
)
v.)
)
Superintendent CHRISTOPHER BRACKETT,)
Warden, Strafford County Department of)
Corrections, et al.,)
)
Respondents.)

C.A. No. 25-00147-JL-AJ

**FURTHER MEMORANDUM IN SUPPORT OF PETITION
AND REQUEST FOR STATUS CONFERENCE**

Mr. Francisco Mendez respectfully renews his request that this Court calendar a status conference, preferably in the first half of next week. As explained below, although Mr. Francisco Mendez prevailed at his bond hearing and is no longer in jail, U.S. Immigration and Customs Enforcement (“ICE”) is unlawfully subjecting him to an alternative form of custody: 24/7 GPS monitoring of his location and activities through a monitor attached to his leg, implemented with onerous conditions through ICE’s Intensive Supervision Appearance Program (“ISAP”). The Immigration Judge ordered certain conditions of release, but did *not* authorize or order GPS monitoring or ISAP as a condition. Additionally, ICE has unlawfully failed to return property it took from Mr. Francisco Mendez at the time of his arrest, specifically his cell phone and his wallet containing his identification. There is no lawful basis for ICE to continue to keep Mr. Francisco Mendez’s property, and the retention of his cell phone is particularly concerning given the high volume of personal information contained on any cell phone, plus the fact that this

particular phone may contain evidence of ICE's conduct during Mr. Francisco Mendez's unlawful arrest.

SUMMARY OF FACTS

The facts of Mr. Francisco Mendez's situation are summarized in his May 13 submission requesting a status conference, and the accompanying declarations. *See* D.E. 8. That prior submission argued that Mr. Francisco Mendez's detention is unlawful because (a) he had not had a bond hearing more than four weeks after arrest; (b) he had not had an initial appearance on the charges, and was not anticipated to have one until roughly six weeks after his arrest; (c) ICE had intentionally delayed his case and prolonged his detention (including by not filing a charging document for more than four weeks) to unlawfully punish Mr. Francisco Mendez for ICE's embarrassment in the media; and (d) that such prejudicial delay based on statements in the press also violates the First Amendment. *See id.* As evidence of ICE's improper intent, Mr. Francisco Mendez pointed particularly to that fact that ICE falsely informed this Court and (apparently) its own counsel that Mr. Francisco Mendez had never asked for a bond hearing, when in fact his counsel had filed a motion for a bond hearing on April 24. *See id.*; *see also* D.E. 8-1 & 8-4 (Sniffin Declaration and exhibit containing bond hearing motion).

Since Mr. Francisco Mendez's last filing, several things have happened.

First, on May 14, the U.S. Department of Homeland Security ("DHS") filed two documents in Mr. Francisco Mendez's immigration case. One of those documents appears to confirm that ICE generated a warrant for Mr. Francisco Mendez's arrest *after* it had already arrested him, and that ICE therefore had no warrant to break into Mr. Francisco Mendez's vehicle and force him out. *See* Suppl. Sniffin Decl. Ex. A. The other document shows that Mr. Francisco Mendez requested release on bond even earlier than previously disclosed by ICE. *See*

Suppl. Sniffin Decl. Ex. B. This document shows that Mr. Francisco Mendez submitted a request for bond *directly to ICE* on April 16, 2025—just *two days after his arrest*, and *more than a week* before his counsel filed the additional motion for a bond hearing. *See id.* ICE clearly had this request, and yet falsely informed this Court a week ago that no such request had ever been made in an apparent effort to conceal the fact that it unlawfully jailed Mr. Francisco Mendez for roughly a month without any filed charges and without the bond hearing mandated by law.

Second, on May 15, Mr. Mendez finally received his bond hearing. As the government explains, the Immigration Judge ordered Mr. Francisco Mendez to be released on what the government contends is the lowest bond allowable under law. *See Dronzek Decl. (D.E. 10-1) ¶ 3 & Immigration Judge Bond Order (D.E. 10-2).* The Immigration Judge also imposed these conditions, and *only* these conditions:

The Respondent is hereby warned of his obligation to file Form EOIR-33 whenever he changes his address during the pendency of this proceeding. The Respondent is also warned of his obligation to attend the hearings at the time and place designated by the immigration court. The Respondent's failure to attend any hearing scheduled by the immigration court may result in a removal order entering in his absence. Finally, the Respondent must learn and comply with the laws of the United States and the state of his residence.

Immigration Judge Bond Order (D.E. 10-2). The bond order did not order GPS monitoring as a condition of release. The bond order did not impose any location-based conditions, such as travel restrictions, an exclusion zone, a curfew, or house arrest. The bond order did not authorize ICE to select any additional conditions that had not been ordered by the Immigration Court.

Third, after Mr. Francisco Mendez paid the bond, ICE placed him into a new form of custody—24/7 GPS monitoring—without authorization from the Immigration Judge and contrary to the limited scope of conditions selected by the Immigration Judge at the bond hearing. *See Suppl. Sniffin Decl. ¶¶ 6-8.* Further, ICE apparently enrolled Mr. Francisco

Mendez in its “Intensive Supervision Appearance Program,” or “ISAP,” which generally involves other onerous conditions such as remote or in-person reporting requirements and home visits. *See* Suppl. Sniffin Decl. ¶ 10. ICE also did not return property it seized from Mr. Francisco Mendez at the time of his arrest, specifically his cell phone and his wallet containing his identification. *See id.* ¶ 8. Mr. Francisco Mendez’s immigration counsel made inquiries to ICE, and undersigned counsel made inquiries to opposing counsel, but it appears that ICE will not correct these problems. *See id.* ¶ 9-12; Suppl. Sullivan Decl. ¶ 5-6.

If these two problems were corrected, this case would likely be dismissed without opposition. But counsel cannot in good conscience conclude this case while Mr. Mendez is being subjected to custody in the form of an unauthorized 24/7 electronic surveillance device affixed to his body, and while he is being unlawfully deprived of a property containing important personal information. Particularly with regard to the phone, personal data and communications are at risk of being accessed and retrieved from the phone without permission or other legal authorization. Additionally, the phone in question was the device Mr. Francisco Mendez was carrying at the time ICE broke into his car without a warrant, and therefore it is likely to contain evidence relating to that interaction which must be preserved and must not be modified or deleted.

ARGUMENT

Mr. Francisco Mendez continues to request a status conference.

First, Mr. Francisco Mendez is still in custody, albeit a different form of custody. He is being required to wear a 24/7 GPS monitoring device on his ankle. That device allows ICE to observe Mr. Mendez’s every movement. ICE will not only be able to develop a detailed picture of Mr. Francisco Mendez’s routine activities, but also will be able to gather information about

highly personal activities, such as which doctors' offices Mr. Francisco Mendez might visit and what lawyers he might consult with. In addition, ICE apparently enrolled Mr. Francisco Mendez in an intensive supervision program, which will likely require such conditions as remote or physical check-ins and even home visits, notwithstanding that the Immigration Judge ordered Mr. Francisco Mendez's release on minimum bond with only generic conditions to update his address, attend hearings, and follow the law. *See* Suppl. Sniffin Decl. ¶¶ 5, 10. Although Mr. Francisco Mendez is not in jail, his freedoms and privacy are being so severely curtailed that he remains within the definition of "custody" for habeas purposes. *See Jones v. Cunningham*, 371 U.S. 236, 243 (1963) (parolee "in custody" due to "conditions which significantly confine and restrain his freedom").¹

Second, this infringement on Mr. Francisco Mendez's freedom and privacy is illegal. Mr. Francisco Mendez received a bond hearing because he is eligible for release on bond and conditions. *See* 8 U.S.C. § 1226(a). Where a bond hearing has been requested, the decision on bond and conditions is made by the Immigration Judge alone, based on the due process provided in the bond hearing. *See* 8 C.F.R. §§ 1003.19, 1236.1(d). Even if ICE is dissatisfied with the outcome of that process, there is no authority for ICE to unilaterally impose additional conditions of release without the Immigration Judge's authorization and without any other due process being provided to the noncitizen. *Cf. Hernandez-Lara v. Lyons*, 10 F.4th 19, 40 (1st Cir. 2021).

¹ *See also Justices of Boston Mun. Ct. v. Lydon*, 466 U.S. 294, 300-01 (1984) (holding that petitioner released on recognizance subject to conditions such as appearance as ordered by court "in custody" for habeas purposes); *Ali v. Napolitano*, No. 12-11384, 2013 WL 3929788, at *3 (July 26, 2013) (holding noncitizen granted withholding of removal but subject to order of supervision, including biennial reporting requirement, "in custody"); *Parsons v. Gilbert*, No. 1:16-cv-02343, 2018 WL 835661, at *4 (Feb. 13, 2018) (finding § 1983 plaintiff to be in custody in part because plaintiff "suffered from a complete lack of freedom" with respect to ankle monitor); *accord Peyton v. Rowe*, 391 U.S. 54, 64 (1968) (holding that the custody requirement "should be liberally construed").

Thus, Mr. Francisco Mendez is being deprived of his liberty unlawfully in violation of the Fifth Amendment due process requirements. Additionally, in this instance, the additional conditions unilaterally imposed by ICE in violation of the Immigration Court's bond order constitute a massive, warrantless, and unreasonable invasion of Mr. Francisco Mendez's privacy, in violation of his Fourth Amendment rights. *See Grady v. North Carolina*, 575 U.S. 306, 309-10 (2015) (per curiam) (requirement to wear tracking device in civil context constitutes Fourth Amendment search); *see also Carpenter v. United States*, 585 U.S. 296, 313 (2018) (cell phone location tracking invaded reasonable expectation of privacy when it functioned "as if [the government] had attached an ankle monitor to the phone's user").

Lastly, as described above, ICE's actions in connection with Mr. Francisco Mendez's continuing custody are depriving him of important personal property without any due process of law, specifically his cell phone and wallet. *See San Geronimo Caribe Project, Inc. v. Acevedo-Vila*, 687 F.3d 465, 478-79 (1st Cir. 2012) (deprivation of property without meaningful post-deprivation remedy or pursuant to established procedure violates due process). And particularly because any cell phone necessarily contains a highly private and personal mosaic of data concerning its owner's life, these seizures and the potential for unauthorized access also implicate the Fourth Amendment. *See Riley v. California*, 573 U.S. 373, 386 (2014) (cell phone data protected from warrantless search, even incident to arrest). And, again, there are additional considerations in this case, where the data on the phone likely documents conduct by ICE that should be preserved in Mr. Francisco Mendez's custody and guarded from unauthorized access, modification, and deletion. *See Elmo v. Callahan*, No. 10-cv-286, 2012 WL 3669010, at *11 (D.N.H. Aug. 24, 2012).

For all these reasons, Mr. Francisco Mendez is requesting a status conference to discuss these issues. If they cannot be resolved by agreement, then Mr. Francisco Mendez will request a briefing schedule to more fully articulate the facts and argument, in aid of the Court's ultimate decision on the legality of ICE's conduct.

Respectfully submitted,

/s/ Ryan P. Sullivan
Ryan P. Sullivan
NH Bar No. 278931
300 High Street
Andover, MA 01810
(978) 474-0054
Counsel for Petitioner

Dated: May 16, 2025