United States District Court
Western District of Texas
El Paso Division

Julio Cesar Sanchez Puentes, and Luddis Norelia Sanchez Garcia, Petitioners, v. Mary De-Anda-Ybarra, in her official capacity as Field Office Director of the U.S. Immigration and Customs, Enforcement and Removal Operations in El Paso Field Office, *et al,* Respondents.	No. 3:25-CV-00127-DB

Respondents' Opposition to Petitioners' Motion to Enforce Judgment

On April 25, 2025, this Court granted Petitioners' Writ of Habeas Corpus Petition and ordered ICE to release them from "federal immigration custody." ECF No. 27, Order, at 34. Within a few hours of the Order, ICE complied with the Order by releasing both Petitioners from detention and serving them with Orders of Release on Recognizance ("OREC") on ICE Form I-220A. ECF No. 28-1. Petitioners are not in detention and are free to return to their home while they are in removal proceedings, consistent with 8 U.S.C. § 1226(a) and the discretionary conditions outlined in their OREC notices. *See Jennings v. Rodriguez*, 583 U.S. 281, 307–12 (2018) (the word "detained" under the immigration statutes does not include aliens who ICE has released from confinement and who are "free to walk the streets," regardless of imposed restrictions to their freedom of movement); *see also Zadvydas*, 533 U.S. 678, 683, 690, 697 (using the words "detain" and "custody" to refer exclusively to physical confinement and restraint); *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579-582 (2022).

Petitioners do not properly allege a claim that ICE is unlawfully restricting their liberty in violation of the Immigration and Nationality Act ("INA"), the United States Constitution, or even this Court's release order. In fact, Petitioners neglect to even acknowledge in their Motion that Petitioners are still in immigration removal proceedings, which generally subjects them to discretionary conditions of release under 8 U.S.C. § 1226(a) to address flight risk and public safety concerns. ICE's discretionary detention authority under § 1226(a) necessarily extends to these Petitioners, notwithstanding their Temporary Protected Status, because even if their TPS provided the "benefit" of freedom from detention under 8 U.S.C. § 1254a(d)(4), the Supreme Court rejects "detention" as including aliens with imposed conditions on their release who nonetheless remain "free to walk the streets." *Jennings*, 583 U.S. at 307.

Because ICE has complied with this Court's April 25, 2025, Order to release these aliens from detention, Respondents oppose Petitioners' Motion requesting that the Court "enforce" the Order to require ICE to remove lawfully imposed conditions of release. ICE already enforced the order.

I. Relevant Facts and Procedural History

Regardless of the Court's various findings in this case related to Temporary Protected Status or the Alien Enemies Act, ***Petitioners remain in removal proceedings*** under 8 U.S.C. § 1182 where they bear the burden of proof that they are not removable from the United States under the INA as charged. *See* ECF No. 1–6. Those removal proceedings afford them due process to challenge not only their charges of removability, but also any conditions the government imposes on them to minimize flight risk and ensure public safety during those removal proceedings. *See, e.g.,* 8 U.S.C. §§ 1182; 1226(a).

The OREC notices that ICE served Petitioners on April 25, 2025, notify them that they are being released from detention on their own recognizance while they are in removal proceedings, but only if they comply with certain conditions identified therein. ECF No. 28-1. Many of these "conditions" simply reiterate what the INA already requires of them, like showing up to removal hearings and surrendering for removal if so ordered. *Id.* The other "conditions" identified in the OREC are minimal and narrowly tailored to assist ICE in complying with the duty under the INA to maintain public safety and minimize flight risk (*i.e.*, keeping ICE apprised of their current home address and any parole/probation reporting requirements; assisting ICE with obtaining travel documents; refraining from socializing with known gang members or other criminals; refraining from committing crimes or otherwise violating the law, etc.). Other than these routine safeguards, there are only two specific conditions imposed here: (1) appear in person to check in with ICE on May 28, 2025, at 10am at the Washington Field Office, which has jurisdiction over Petitioners' residence; and (2) enroll and participate in a DHS Alternatives to Detention (ATD) program, which requires electronic monitoring and a potential curfew. *Id.*

Petitioners signed the OREC forms to acknowledge receipt of the pertinent documents and confirm that the documents were sufficiently interpreted or explained to them in Spanish. *Id.* Shortly thereafter, Petitioners' counsel began contacting the U.S. Attorney's Office after hours, demanding that ICE immediately remove these conditions. The U.S. Attorney's immediately responded, explained ICE's general position on these types of release conditions, and requested that counsel provide the relevant legal authority to support their demand. Given the late hour, the undersigned AUSA indicated a willingness to continue conferring on the issue over the weekend but requested that specific citations to binding authority be provided so that the request could be

meaningfully considered and elevated for consideration. Counsel has not yet provided any binding authority that these release conditions are unlawful either under the INA or the U.S. Constitution.

On Saturday, April 26, 2025, Petitioners filed their opposed Motion to enforce the judgment, arguing that the conditions identified in the OREC notices impose unlawful restraints on their liberty in violation of this Court's April 25th order to "immediately release Petitioners from custody". ECF No. 28. Petitioners claim that the OREC conditions "are all new conditions that ICE placed on Petitioners' liberty for the first time last night, after this Court had already ordered them released from custody." *Id.* at 2. Respondents timely complied with this Court's Order and are within their statutory authority to impose these conditions during removal proceedings.

II. Petitioners Must Seek This Administrative Relief in the First Instance by Filing a Motion with The Immigration Judge Within Seven Days of Release from Detention.

If Petitioners wish to challenge the discretionary conditions of release that ICE imposed on them in the exercise of their statutory authority, such a challenge is properly raised with the immigration judge. *See* 8 C.F.R. §§ 1003.19, 236.1(d), 1236.1(d); *see also Misquitta v. Warden*, 353 S.Fupp.3d 518 at 522 (W.D. La. 2018) (detention under § 1226(a) is generally referred to a s "discretionary detention"). The immigration judge has jurisdiction to reconsider conditions on release such as house arrest and electronic monitoring. *See Matter of Garcia-Garcia*, 25 I&N Dec. 93 (BIA 2009); *see also Cevallos v. Ashcroft*, No. 04-CV-23210-SEITZ (S.D. Fla. 2005). Where the immigration judge has authority to redetermine bond or review the conditions of release, the application must be first made to the immigration court nearest the place of detention. 8 C.F.R. § 1003.19(c)(1). If the person is released from custody and wishes to challenge the conditions of release, the motion must be filed with the immigration court within seven days of release. *Id.*

§§ 236.1(d)(1); 1236.1(d)(1). Thereafter, application for modification of bond or release may be made only to DHS. §§ 236.1(d)(1); 1236.1(d)(1); *Matter of Chew*, 18 I&N Dec. 262 (BIA 1962).

A person enrolled in electronic monitoring is not deemed to be "in custody" for purposes of a bond hearing in immigration court, and therefore, a motion for bond redetermination must be filed with the immigration court with seven days of release from immigration detention:

> Because the DHS released the [alien] from actual physical detention, we find that he was "released from custody" within the meaning of 8 C.F.R. § 1236.1(d)(1). The conditions placed by the DHS on the respondent's release, including the home confinement and electronic monitoring device, constituted "terms of release" and were not "custody" within the meaning of section 236(a) of the Act and 8 C.F.R. § 1236.1(d)(1). Our conclusion is consistent with the cases cited by the DHS, which hold that home confinement and requiring a person to wear an electronic monitoring device do not constitute "detention." *See Fraley v. U.S. Bureau of Prisons*, 1 F.3d 924, 926 & n.1 (9th Cir. 1993) (holding that home confinement combined with electronic monitoring does not constitute "official detention"); *Nguyen v. B.I. Inc.*, 435 F. Supp. 2d 1109, 1114 (D. Ore. 2006) (finding that placement in the DHS's Intensive Supervision Appearance Program, which requires an alien to wear an electronic monitoring device on his ankle and remain under home confinement for 12 hours each day, is not "detention").

Matter of Aguilar-Aquino, 24 I&N Dec. 747, 753 (BIA 2009). If Petitioners wish to challenge ICE's imposition of conditions on their release, that challenge must first be filed with the Immigration Court.

III. Petitioners Fail to State a Claim That ICE's Conditions of Release Are Unlawful.

ICE has both statutory and regulatory authority to release persons in removal proceedings on their own recognizance subject to certain discretionary conditions to ensure public safety and minimize flight risk. *Jennings*, 583 U.S. at 306. Petitioners here are not in detention, because they are free to return to their home while they are in removal proceedings. *Id.* This action is consistent with 8 U.S.C. § 1226(a), even while subject to the discretionary conditions outlined in their OREC notices. *See Jennings*, 583 U.S. at 307–12; *Zadvydas*, 533 U.S. at 683, 690, 697; *Johnson v.*

Arteaga-Martinez, 596 U.S. 573, 579-582 (2022); *Meme v. ICE*, EP-23-CV-00233-DB, 2023 WL 6319898 at *3 (W.D. Tex. Sept. 27, 2023) (examining *Jennings* and distinguishing between discretionary and mandatory detention authority); *Atemafac v. Wolf*, No. 6:20-CV-01697, 2021 WL 1972577 at *1-2 (W.D. La. Mar. 8, 2021) (upholding 12-month § 1226(a) detention during removal proceedings as constitutional).

In their Motion, Petitioners rely on a district court case out of the Second Circuit for the proposition that the "in-custody requirement … is met where the Government restricts a petitioner's freedom of action or movement." *Id.* (citing *Doe v. Barr*, 479 F. Supp. 3d 20, 26 (S.D.N.Y. 2020)). To be clear, Respondents do not contest that enrollment in ATD may be considered "in custody" for purposes of establishing a district court's jurisdiction to review habeas claims in certain circumstances. Establishing habeas jurisdiction, however, is not a petitioner's only burden. A habeas petitioner must sufficiently plead facts showing that their § 1226(a) custody or the conditions of their release from detention are unlawful. Indeed, Petitioners fail to even identify which of these specific OREC conditions are unconstitutional or unlawful under the INA, much less provide a legal basis for that argument.

In any event, the *Doe* "custody" decision on which Petitioners here rely actually ***upheld*** ICE's discretion to place conditions on an alien's release from detention, because the statutes permitted such action to alleviate flight risk concerns. *Doe*, 479 F. Supp. 3d at 30. Petitioners here wholly neglect to mention that the *Doe* court found in the government's favor on the merits of these arguments. *Id.* ("In short, the agency did not violate Doe's procedural due-process rights, so he is likewise not entitled to habeas relief on this basis."). Courts have found that electronic ankle monitoring is a reasonable restraint that does not violate an alien's due process rights in removal proceedings because it is rationally related to the government's interest in deterring absconders and

protecting the community. *See Gozo v. Mayorkas*, No. 1:23-CV-159, 2024 WL 2027510, at *4 (S.D. Tex. Mar. 4, 2024); *Iruene v. Weber*, No. 3:12-cv-1864-o-BH, 2012 WL 5945079, at *2 (N.D. Tex. Aug. 1, 2012) (citing *Nguyen v. B.I. Inc.*, 435 F.Supp.2d 1109, 1111–13 (D. Oregon 2006)). Petitioners' due process rights remain fully intact and available to them in immigration court during removal proceedings.

As such, there is nothing for this Court to enforce, as ICE timely complied with the Court's order by releasing Petitioners from detention on their own recognizance under 8 U.S.C. § 1226(a), subject to conditions to ensure their compliance with the law during their removal proceedings. This motion should be denied.

Respectfully submitted,

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Certificate of Service

I hereby certify that on the 30th day of April 30, 2025, a true and correct copy of the foregoing document was electronically filed with the Clerk of Court using the CM/ECF system, which will transmit notification of such filing to the following to all counsel of record.

/s/Lacy L. McAndrew
Lacy L. McAndrew
Assistant United States Attorney

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Order

The Court considered Petitioners' Motion to Enforce Judgment and Respondents' Opposition and finds that the Motion should be **DENIED**. Respondents complied with the Court's order to release Petitioners from detention. Any challenges to the conditions ICE imposed on Petitioners' release to minimize flight risk or otherwise ensure public safety during removal proceedings are properly lodged in a Motion for Bond Redetermination filed directly with the Immigration Court.

IT IS SO ORDERED this _____ day of _____ 2025.

_____
David Briones
Senior U.S. District Judge