

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JOEL LAZARO LAZARO,

Petitioner,

v.

**NIKITA BAKER, ICE Baltimore Field
Office Director; TODD LYONS,
Acting Director, U.S. Immigration and
Customs Enforcement; KRISTI
NOEM, Secretary of the U.S.
Department of Homeland Security; and
PAMELA BONDI, Attorney General
of the United States, in their official
capacities,**

Respondents.

Case No: 8:25-cv-3162

SUPPLEMENTAL LEGAL MEMORANDUM

This is a supplemental legal memorandum in support of Petitioner Lazaro Lazaro's Petition for Writ of Habeas Corpus. Petitioner maintains that his strict electronic monitoring and Intensive Supervision Appearance Program (ISAP) amounts to "government custody" for purposes of habeas jurisdiction. Additionally, Petitioner asserts that his ankle monitor and ISAP subject him to unlawful and arbitrary government custody in violation of his right to due process under the 5th Amendment to the United States Constitution.

- I. This Court has jurisdiction over the Petitioner's habeas case because he is in "government custody."**

Petitioner's ankle monitor constitutes custody for the purposes of this Court's jurisdiction

under 28 U.S.C. § 2241(c). Although Petitioner in the instant case is not confined in a detention center, courts have long recognized that the writ of habeas corpus is available to those who suffer such a significant restraint on liberty as to render them in custody for the purposes of 28 U.S.C. § 2241(c). See *Jones v. Cunningham*, 371 U.S. 236, 239-240 (1963). This concept has also been extended and applied to the immigration enforcement context.

The Supreme Court's seminal case that interprets the scope of "custody" under the writ of habeas corpus is *Jones v. Cunningham*, 371 U.S. 236 (1963). Here, the Supreme Court found that a Virginia state parolee was under "custody" for purposes of 28 U.S.C. § 2241 because the Virginia statute subjected the parolee to "significant restraints on petitioner's liberty," such as restrictions on his movement, residence, and employment, as well as the requirement to report to a parole officer. *Id.* at 242. Even though the parolee was not in physical confinement, these conditions met the "custody" requirement as they significantly restrained his freedom. *Id.* at 234. The Supreme Court also emphasized the flexibility of the habeas writ, stating that it "never has been a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose—the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty." *Id.*

Another concept from *Jones* that informs the definition of custody under the habeas statute is whether a Petitioner is subject to "restraints not shared by the public generally." *Id.* at 240. Since *Jones*, the Supreme Court has also expanded the "custody" requirement to awaiting trial on bail. In *Hensley v. Municipal Court*, the Supreme Court found that a person released on bail was "in custody" because he was "subject to restraints not shared by the public generally" in that he had an "obligation to appear at all times and places as ordered by any court or magistrate of competent jurisdiction" and his "freedom of movement rest[ed] in the hands of state judicial officers, who may demand his presence at any time and without a moment's notice." 411 U.S. 345, 351 (1973).

In *Strait v. Laird*, the Supreme Court also extended the scope of habeas custody to military reserve service. 406 U.S. 341 (1972).

The Fourth Circuit has adopted *Jones*'s reading of the custody requirement for habeas jurisdiction, and notes that an **impediment to movement** is necessary to find that a restraint on liberty constitutes custody. In *Wilson v. Flaherty*, the Fourth Circuit considered whether sex offender registration requirements constituted "custody" for purposes of habeas jurisdiction. 689 F.3d 332 (4th Cir. 2012). The court found that the requirements did not constitute custody because they did not "impair Wilson's 'ability to move to a different community or residence'" or condition such movements "on approval by a government official." *Id.* at 338 (quoting *Leslie v. Randle*, 296 F.3d 518, 522 (6th Cir. 2002)). The examined law lacked the "discernible impediment to movement that typically satisfies the 'in custody' requirement." *Id.* (quoting *Williamson v. Gregoire*, 151 F.3d 1180, 1184 (9th Cir. 1998)).

Courts in the Fourth Circuit have also specifically adopted *Jones*'s concept of "restraints not shared by the public generally" to inform whether a restraint meets the definition of "custody." See *Walker v. Dillard*, 353 F. Supp. 566, 570 (W.D. Va. 1972) (determining that "expectation of future imprisonment, should Petitioner's habeas case fail, renders him in custody sufficient for the action"); See also *Wilson*, 689 F.3d at 336; *Brooks v. North Carolina Dep't of Correction*, 984 F. Supp. 940 (E.D.N.C. 1997).

The Federal District Court for the District of Maryland extended this broad interpretation of custody to the immigration context, including for noncitizens with final orders of removal. In *Ortiz v. Wolf*, albeit different factually as the case concerned a noncitizen who filed a habeas after he was removed from the U.S., the court noted that "the petitioner need not be physically detained to pursue habeas relief." No. ELH-20-12222020, WL 3791959, at *4 (D. Md. July 7, 2020). And

that “an ongoing term of probation or parole is a sufficient restraint on a petitioner’s liberty” for purposes of habeas jurisdiction. *Id.* (quoting *Jones*, 371 U.S. at 242). The *Ortiz* court also recognized that “a [noncitizen] located in the United States who is subject to a final deportation order is considered to be “in custody” for habeas purposes, whether or not he is detained. *Id.*; accord *Simmonds v. INS*, 326 F.3d 351, 356 (2d Cir. 2003); *Aguilera v. Kirkpatrick*, 241 F.3d 1286, 1291 (10th Cir. 2001); *Nakaranurack v. United States*, 68 F.3d 290, 293 (9th Cir. 1995).

The *Ortiz* court’s view of custody for habeas jurisdiction comports with interpretations in other district courts around the country, which have found that an ankle monitor under an ISAP constitutes custody for habeas purposes.¹

In *Urbina v. Godfrey*, the Federal District Court for the District of Oregon found that a petitioner met the custody requirement for habeas jurisdiction where he was enrolled in a “program which places significant restraints on his liberty by requiring him to wear an electronic monitoring device around his ankle, observe a curfew, and agree to unscheduled home visits.” No. CV 06-538-ST, 2006 WL 2474881, at *3 (D. Or. Aug. 22, 2006). That petitioner was also subject to a final removal order and under threat of deportation. *Id.* The court determined that “these restraints on petitioner’s liberty place him squarely within the habeas corpus “custody” requirement.” *Id.*

In *Xiaoyuan Ma v. Holder*, the Federal District Court for the Northern District of California found that a petitioner enrolled in ISAP “falls within the ambit of 28 U.S.C. § 2241(c).” 860 F. Supp. 2d 1048, 1052-54 (N.D. Cal. 2012). And in *Nguyen v. B.I. Inc.*, the District of Oregon heard a noncitizen’s habeas claim challenging his enrollment in ISAP. 435 F. Supp. 2d 1109 (D. Or. 2006).

¹ Note that while *Diawara v. Secretary of DHS*, No. AW-09-2512, 2010 WL 4225562 (D. Md. Oct. 25, 2010) found that an ankle monitor **did not** amount to custody for habeas jurisdiction, that decision failed to analyze custody under the *Jones v. Cunningham* framework, as it has been adopted under the Fourth Circuit. *Diawara* was also decided two years before the published Fourth Circuit case *Wilson v. Flaherty*.

More recently, The Federal District Court for the District of Massachusetts closely examined *Jones v. Cunningham* and extended it to a noncitizen who was subject to identical ISAP and electronic monitoring conditions as Petitioner Lazaro Lazaro. *Orellana Juarez v. Moniz*, 2025 WL 1698600 (D. Mass. June 11, 2025). The noncitizen petitioner in *Orellana Juarez* was subject to the following restraints: wearing a “24/7 GPS device on his ankle which allows ICE to monitor him constantly,” enrolled in an “intensive supervision program which includes the requirements of regular reporting, allowing ICE to enter his residence at home visits, a curfew of 10 PM, and geographic restrictions which prohibit him from traveling outside of Massachusetts, New Hampshire, Rhode Island, and Connecticut.” *Id.* at *4. The court specifically quoted the language from *Jones* and found the noncitizen’s restraints on liberty to be analogous to the parolee in that case, and as such, under government custody. *Id.*

Here, the Petitioner is under identical physical restraints on his person and impediments to his movement as *Orellana Juarez*. He is restricted from traveling outside of the state of Maryland and must ask for permission from ICE if he wishes to do so. He is required to allow ICE to enter his house and he must regularly report to ICE. He must stay at home one day a week, which prevents him from attending his job. He is essentially under house arrest, a condition he has **never** been subject to prior to September 9th, and despite his removal proceedings being settled through a withholding of removal order.

Under *Jones*, as interpreted by numerous courts around the country including in the Fourth Circuit, this Court should find that it has jurisdiction over Petitioner’s case because his ankle monitor constitutes “government custody” for purposes of the writ of habeas corpus. Petitioner is subject to a significant restraint on his freedom, as he endures physical restraints on his person, impediments to his freedom of movement, and these restraints are not shared by the public

generally.

II. Petitioner's ankle monitor violates his due process rights under the Fifth Amendment to the United States Constitution.

In *Zadvydas v. Davis*, the Supreme Court held that 8 U.S.C. § 1231(a)(6) authorizes detention only for “a period reasonably necessary to bring about the [noncitizen]’s removal from the United States.” 553 U.S. 678, 689 (2001). If removal is not reasonably foreseeable in the future, the government must justify continued custody through “special circumstances” such as if the noncitizen is a national security or public health concern. *Id.* at 701; 8 C.F.R. § 241.14(b)-(d).

Zadvydas also emphasized “[f]reedom from imprisonment – from **government custody**, detention, or other forms of physical restraint – lies at the heart of the liberty protected by that clause.” *Zadvydas*, 533 U.S. at 630. This comports with the flexible reading of “government custody” as prescribed in *Jones*, and as adopted in the Fourth Circuit and this District in *Wilson* and *Ortiz*.

Zadvydas, together with the regulations regarding the justification of detention, require the government to meet a high standard when it imposes custody requirements on a noncitizen after the statutory removal period. *See also Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (interpreting *Zadvydas* to suggest that “the burden the detainee must carry within the first six months of [postorder] detention is a heavier one than after six months has elapsed”).

Here, there is no justification which the government can assert to impose such restrictive conditions on Petitioner’s liberty. Respondents did not take any steps to effectuate Petitioner’s removal during the statutory removal period. Despite telling Petitioner verbally that they intend to remove him to a third country, Respondents have taken no steps to initiate this process, nor is it reasonably foreseeable that they will be able to accomplish this removal. Over six months have passed since the Petitioner’s removal order became final, and prior to September 9th, Petitioner

had no conditions placed on him besides a yearly check-in with ICE under his order of supervision.

Petitioner's ankle monitor grossly deprives him of his liberty as he cannot leave the state of Maryland without permission from a government official, he must stay at home during certain hours, and he has frequent check-ins with ICE. Petitioner has no criminal record and lives peacefully in Maryland with his family. He is not a national security or public health concern. There is simply no "special circumstance" that justifies the Petitioner's restrictive conditions. As such, he is being subject to arbitrary restraints on his freedom which violates his substantive due process rights. *See Foucha v. Louisiana*, 504 U.S. 71, 86 (1992) ("Freedom from physical restraint [is] a fundamental right . . ."); *United States v. Salerno*, 481 U.S. 739, 750 (1987) ("We do not minimize the importance and fundamental nature of [the individual's strong interest in liberty].").

Petitioner's procedural due process rights are also violated by his restrictive ankle monitor and ISAP conditions. This court applies the three-factor balancing test set out in *Mathews v. Eldridge* in the context of civil immigration detention. *See, e.g., Leal-Hernandez v. Noem*, 2025 WL 2430025, at *13-*14 (D. Md. Aug. 24, 2025). The three factors are (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

Here, the factors weigh heavily in favor of the petitioner. First, the Petitioner has a significant private interest at stake. Freedom from bodily restraint "lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 630. The petitioner is shackled with an ankle monitor and his freedom of movement is significantly impeded by the conditions of his

ISAP since he must ask a government official for permission to leave the state of Maryland, and he cannot physically leave his home one day a week. Petitioner's ISAP conditions could also be indefinite, because as far as Petitioner knows, the Respondents have taken no steps to effectuate his removal. Additionally, the Petitioner will seek to challenge his removal to any other third country, which will subject him to further legal proceedings, during which the Respondents may continue to impose restrictions on his liberty.

As to the second factor, there is an enormous risk of deprivation of liberty for the Petitioner here. The regulations which govern the custodial conditions of noncitizens with final removal orders fail to set forth any process under which a noncitizen or their counsel can seek amelioration of these conditions. Indeed, while 8 C.F.R. § 241.4(a)-(1) sets out detailed procedures for review of ICE decisions to continue detention of noncitizens with final removal orders beyond the 90-day removal period, no such periodic review exists for noncitizens released on orders of supervision whom thereafter may be subject to additional restrictions on their liberty.

Moreover, the list of conditions of supervision that the regulation contemplates under § 241.5(a)(1)-(5) does not even mention ankle monitoring or other GPS monitoring. One of the seminal procedural due process cases, *Goldberg v. Kelly*, required more procedures before the deprivation of welfare benefits than those which are required before the government imposes an ISAP on a noncitizen. 397 U.S. 254, 264 (1970) (explaining that procedural due process necessitates an evidentiary hearing before the termination of welfare benefits).

On September 9, 2025, Petitioner reported to an ICE office as per ICE's orders, and was shackled with an ankle monitor without explanation. He was never told why his specific case requires him to receive an ankle monitor and restrictive movement conditions, other than that the Respondents would seek to remove him to another country. Since his removal is not reasonably

foreseeable, this is hardly a justifiable explanation for imposing such restrictive conditions and constitutes a high risk of erroneous deprivation of liberty with no procedures in place to safeguard against this deprivation.

Finally, as to the third factor, the government's interest in imposing these restrictive custodial requirements on the Petitioner is miniscule. The government may have a greater interest in a noncitizen's custody when removal is imminent, but that is not the case here. While Respondents state they are attempting to bring about Petitioner's removal to a third country, there is no evidence to suggest this is reasonably foreseeable. Further, the Petitioner has never given the Respondents reason to believe that he would abscond if his removal was imminent. He never missed his immigration court hearings, never violated the terms of his order of supervision, and he has strong community ties to Maryland, as this is where his wife and child reside. The government's interest in imposing extensive monitoring and custodial requirements on the Petitioner is non-existent. On balance, the *Mathews v. Eldridge* factors weigh heavily in favor of the Petitioner.

III. Conclusion

Petitioner respectfully submits this legal memorandum in support of two legal issues in this case. First, this Court does have jurisdiction over Petitioner's habeas case because his ankle monitoring and ISAP conditions constitute "government custody" for purposes of 28 U.S.C. § 2241(c). Second, the restriction on Petitioner's liberty violates his due process right under the 5th Amendment to the U.S. Constitution.

Respectfully submitted,

/s/ Zachary Kohn
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Joel Lazaro Lazaro, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 3 day of October, 2025.

s/Zachary Kohn