

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

**PETITIONER'S REPLY TO RESPONDENTS' RESPONSE
AND MOTION TO DISMISS**

Petitioner Joel Lazaro Lazaro, by and through undersigned Counsel, files this reply to Respondent's Response and Motion to Dismiss his Petition for a Writ of Habeas Corpus. *See* ECF No. 15. Petitioner maintains the position that his strict supervision conditions constitute government custody for jurisdictional purposes, and that these conditions violate his due process rights under the Fifth Amendment to the U.S. Constitution. These arguments have been fully briefed in Petitioner's initial habeas petition and subsequent legal memoranda. As such, the Petitioner is responding to several points raised by the government in their response, ECF No. 15.

- I. Respondents' jurisdictional arguments are belied by their own caselaw, and the Court should analyze this issue under more recent Fourth Circuit law.**

The only case in this judicial district that has specifically considered whether an ankle monitor may constitute “government custody” for purposes of habeas jurisdiction is *Diawara v. Secretary of DHS*, No. AW-09-2512, 2010 WL 4225562 (D. Md. Oct. 25, 2010). While the *Diawara* court answered this question in the negative, the factual background is distinguishable from the instant case, and the legal landscape in the Fourth Circuit regarding what constitutes government custody has evolved since this case was decided.

First, the petitioner in *Diawara* had a final removal order based on a criminal conviction, never contested his removability, and had been detained by ICE for a long period prior to his release on ISAP and supervision conditions. Here, the Petitioner has no criminal history, nor has he been subject to ICE detention. He contested his removal in immigration court and won withholding of removal, as the immigration judge found that he would suffer persecution or torture if returned to Peru. ECF No. 1, at ¶ 40.

Second, *Diawara* failed to analyze “government custody” under the Supreme Court’s *Jones v. Cunningham* framework, which courts in the Fourth Circuit had done in the past, utilizing *Jones*’s more flexible definition of “custody” for habeas jurisdiction. See *Walker v. Dillard*, 353 F. Supp. 566, 570 (W.D. Va. 1972); *Brooks v. North Carolina Dep’t of Correction*, 984 F. Supp. 940 (E.D.N.C. 1997). Additionally, since *Diawara* was decided, the Fourth Circuit and this judicial district have explicitly adopted *Jones*’s more expansive definition of government custody for habeas jurisdiction. *Wilson v. Flaherty*, 689 F.3d 332, 338 (4th Cir. 2012) (holding that “government custody” includes situations where the government imposes a “discernible impediment to [Petitioner’s] movement.”); *Ortiz v. Wolf*, No. ELH-20-12222020, WL 3791959, at *4 (D. Md. July 7, 2020) (extending a *Jones v. Cunningham* analysis to the immigration habeas context). The Petitioner’s supplemental legal memoranda outlines this legal evolution in further

detail. *See* ECF No. 14 at 1-4. It would be prudent for the Court to engage with this jurisdictional issue at this time, and to apply the *Jones* framework.

Additionally, the other case that Respondents rely on for their jurisdictional argument, *J.P. v. Ernesto Santacruz Jr.*, actually supports the Petitioner in the instant matter. No. 8:25-cv-01640-FWS-JC, 2025 WL 2633198 (C.D. Cal. Aug. 27, 2025). There, the Central District of California found that the restraints the government placed on the noncitizen petitioner were not restrictive enough to constitute government custody. *Id.* at *3. Notably, the petitioner in *J.P.* did not have an ankle monitor and was only required to check in with ICE on a smartphone app. *Id.* The *J.P.* court compared the case to *Orellana Juarez v. Moniz*, 2025 WL 1698600 (D. Mass. June 11, 2025) to highlight a situation where ICE’s supervisory conditions indeed constituted “government custody.” *Id.* Importantly, the petitioner in *Orellana Juarez* endured nearly identical supervision conditions that Petitioner Lazaro Lazaro is currently experiencing, including an ankle monitor and impediments to his movement. *Id.* Therefore, the custody analysis in *J.P.* actually supports the petitioner in the instant matter.¹

II. The Petitioner’s supervision conditions are not “appropriate under the circumstances” and thus not rationally related to a legitimate government interest.

Petitioner does not challenge the Respondents’ statutory or regulatory authority to supervise him while he has a final order of removal. It is true that the government has a legitimate interest in monitoring and producing for removal those subject to a final order of removal when their removal is imminent. It is also true that under *Zadvydas*, when removal is not reasonably foreseeable, the government can condition a noncitizen’s release from detention on “on any of the various forms of supervised release that are *appropriate in the circumstances.*” *Zadvydas v. Davis*,

¹ It is worth noting that the district court in *J.P.* referenced *Jones v. Cunningham* in their “government custody” jurisdictional analysis. *J.P.*, 2025 WL 2633198 at *2.

533 U.S. 678, 699–700 (2001) (emphasis added). Here, however, the restraints on Petitioner’s liberty are far from “appropriate in the circumstances” and the government has taken no steps that demonstrate his removal is imminent or even reasonably foreseeable. Thus, the restrictions on Petitioner’s liberty are wholly arbitrary and violate his due process rights.

The Respondents argue that the government’s legitimate interests in this matter are to ensure Petitioner does not abscond, and to account for their need to produce him for removal if it arises. ECF No. 15 at 10. To support their position that the Petitioner’s restrictive conditions are rationally related to a legitimate government interest, the Respondents lean heavily on the fact that Petitioner signed two forms acknowledging enrollment in electronic monitoring and the acceptance of an ankle bracelet in October 2023. ECF No. 15, at 10. Respondents contort this fact into an argument that because the Petitioner accepted a supervisory condition in October 2023, he therefore accepted this condition in September 2025, which somehow makes it rationally related to a legitimate government interest. ECF No. 15, at 11. However, the legal and procedural posture of these two time periods could not be more different, and this Court should wholly reject Respondents’ argument.

When Petitioner signed the agreement to participate in ISAP GPS monitoring on October 2, 2023, including an ankle monitor, he had crossed the southwestern border of the United States *one day* prior. ECF No. 15, Exh. 2. Petitioner turned himself in to Customs and Border Patrol shortly thereafter and indicated his intent to apply for asylum because he feared persecution in his country. Respondent DHS authorized Petitioner to travel to Maryland where he would be placed in removal proceedings, conditioned on his participation in ISAP and GPS monitoring. *Id.* So, in October 2023, Petitioner had just entered the U.S., stated his intent to apply for humanitarian protection, and was placed into removal proceedings. At that time, the government had an interest

in ensuring that he did not abscond and attended these proceedings. These proceedings proceeded in immigration court, and the Petitioner won a grant of withholding of removal based on the persecution that he and his family fear in Peru.²

Under Petitioner's withholding of removal grant, he was not subject to any conditions besides reporting to ICE for a yearly check-in. He was never enrolled in an ISAP, and he was legally entitled to live freely (and free from any physical restraints) in the United States, as a neutral fact finder had determined that he should not be removed to Peru. This all changed in September 2025, well past the statutory period of removal, when agents of Respondent DHS ICE notified him that his protection would no longer be honored and thrust upon him an ankle bracelet and restrictive supervision conditions. It is entirely unclear what legitimate interest is served from subjecting Petitioner to these restraints on his liberty. He has no criminal history. His removal proceedings have ended, and the government did not seek to remove him during the six-month removal period. He won relief from removal in immigration court, and he has given Respondents no reason to think that he would abscond or otherwise not be available if they did actually attempt to remove him. Petitioner always attended his immigration proceedings and has strong ties to the state of Maryland. At no time have Respondents demonstrated any concrete steps towards effectuating his removal, so his removal is neither imminent, nor reasonably foreseeable.³

² Petitioner did not qualify for asylum because of a federal policy that went into effect in May 2023, the Circumvention of Lawful Pathways Rule. 88 Fed. Reg. 31314 (May 16, 2023). This rule creates a presumption against eligibility for asylum if a noncitizen enters the United States without inspection. *Id.* The Petitioner did not qualify for an exception to rebut the presumption of ineligibility.

³ The petition is not "devoid" of allegations that Respondent DHS intends to remove Petitioner to a third country. ECF No. 1, at ¶ 37. Respondents' agents have clearly demonstrated their intent to do so through their actions, statements, and messages to the Petitioner. *Id.* at ¶¶ 36-37. As far as undersigned counsel knows, they have not initiated this process as of yet, but it is likely that they will, as they have told Petitioner that his protection from removal is no longer valid. *Id.* This can only mean that DHS will no longer honor his withholding of removal and will seek to remove him to a third country.

Given the facts at hand, the conditions imposed on Petitioner are “not appropriate in the circumstances.” *Zadvydas*, 533 U.S. 678 at 700. The government does not have a legitimate interest in imposing such restrictive conditions on the Petitioner’s liberty where he has given them no reason to believe that he would abscond, and the government has taken no steps toward effectuating his removal. Far from “rational,” the restraints on his liberty are arbitrary and punitive, and not rationally related to a legitimate government interest in this case.

Petitioner’s interest in his bodily liberty is fundamental, and this interest outweighs the government’s. *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].”). Further, since the government has taken no concrete steps towards effectuating his removal, there is no specific end date for the conditions placed upon the Petitioner. The conditions could be indefinite, which will cause Petitioner immense and irreparable harm.

III. Conclusion

This Court should deny the Respondents’ motion to dismiss as this Court does have jurisdiction over Petitioner’s writ of habeas corpus claim because he should be considered under “government custody.” Further, this Court should find that the Respondents’ conditions subject Petitioner to due process violations as they are not rationally related to a legitimate government interest in this case.

Respectfully submitted,

/s/ Zachary Kohn
Zachary Kohn
Counsel for Petitioner
HAYNES NOVICK KOHN
2001 S St NW, Suite 550

Washington, DC 20009
Phone: 202-914-0830
Fax: 202-293-6230
Dated: October 24, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of October, 2025, a copy of the foregoing Petitioner's Reply to Respondent's Response and Motion to Dismiss with the accompanying Memorandum of Law in Support thereof was served via CM/ECF on all parties and counsel receiving electronic notice in this case.

/s/ Zachary Kohn

Zachary Kohn

Counsel for Petitioner

HAYNES NOVICK KOHN

2001 S St NW, Suite 550

Washington, DC 20009

Phone: 202-914-0830

Fax: 202-293-6230

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