

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 25-cv-003017-GPG

KHRISTYNE BATZ BARRENO,

Petitioner,

v.

JUAN BALTAZAR, Warden, Aurora Contract Detention Facility,
PAMELA BONDI, Attorney General of the United States,
KRISTI NOEM, Secretary, U.S. Department of Homeland Security,
TODD M. LYONS, Director, U.S. Immigration and Customs Enforcement, and
ROBERT HAGAN, Director, Denver Field Office, U.S. Immigration and Customs
Enforcement,

Respondents.

**RESPONDENTS' RESPONSE TO
PETITIONER'S MOTION TO ENFORCE (ECF No. 21)**

Respondents respond to Petitioner Khristyne Batz Barreno's Motion to Enforce (ECF No. 21). In the Motion to Enforce, Petitioner asks the Court to order Respondents "to remove the GPS ankle monitor device and any other intrusive conditions of release that were not ordered by the Immigration Judge" ("IJ"). ECF No. 21 at 7. In short, Petitioner alleges that Respondents are not fully complying with the IJ's order. She seeks an order from this Court to enforce its own order in accordance with her interpretation of the IJ's order. The Court should deny the Motion. First, Respondents have fully complied with this Court's Order, so there is nothing left for the Court to enforce. Second, Petitioner has not shown that the Court has the authority to grant her requested relief because this

Court does not have jurisdiction to review release conditions, the relief sought relief is not part of Petitioner's habeas petition, and she has not exhausted administrative remedies.

BACKGROUND

Petitioner is a native and citizen of Guatemala who entered the United States on an unknown date and location. ECF No. 14-1 ¶¶ 4-5. She has never been admitted or paroled into the United States. *Id.* ¶ 6-7. Petitioner has several criminal convictions in the United States, including for Driving While Intoxicated, Resisting Arrest and False Information, and Burglary of Vehicles. *Id.* ¶ 8. Petitioner also has a pending Burglary charge in Texas. *Id.* ¶¶ 9, 32.

In July 2024, while Petitioner was in the custody of Harris County, Texas, based on a burglary charge, Immigration and Customs Enforcement ("ICE") determined that Petitioner had entered the country illegally and issued an immigration detainer. *Id.* ¶ 9. On July 12, 2024, ICE took custody of Petitioner pursuant to 8 U.S.C. § 1226. *Id.* ¶ 10. On the same date, ICE issued a Notice to Appear ("NTA") initiating removal proceedings under 8 U.S.C. § 1229a. *Id.* ¶ 11.

On September 25, 2025, Petitioner initiated this action by filing her Petition, which challenged her detention as violating due process. ECF No. 1. In her Petition, she sought, *inter alia*, a bond hearing where the government bore the burden of proof. *Id.* at 33-34.

On November 14, 2025, the Court granted, in part, the Petition. ECF No. 18 ("November 14 Order"). In its November 14 Order, the Court ordered Respondents to "provide Petitioner with a bond hearing under § 1226(a) within SEVEN DAYS of this Order" at which Respondents bore the burden of proof to show that Petitioner's detention

was proper. *Id.* at 18. It enjoined Respondents “from denying bond to Petitioner on the basis that she is detained pursuant to § 1225(b)(2)(A)” and further ordered Respondents to file a status report after the bond hearing “stating whether she has been granted bond, and, if her request for bond was denied, the reasons for that denial.” *Id.* The November 14 Order did not impose any obligations or restrictions on Respondents related to Petitioner’s conditions of release if the IJ granted bond. *See generally id.*

Petitioner appeared for a bond hearing on November 20, 2025. ECF No. 19; ECF No. 21 at 2. At the hearing, the IJ set a bond at \$8,000. ECF No. 21-1; ECF No. 21-2 ¶ 3. During the hearing, the IJ declined to order additional release conditions beyond the bond, noting that it was not clear if the immigration court had authority to order additional release conditions. ECF No. 22-2 ¶ 3. However, the IJ did not forbid ICE from imposing additional release conditions and observed that ICE may impose additional release conditions. *See* ECF No. 21-2 ¶ 3. On November 26, 2025, Respondents filed a status report with the Court informing the Court that bond was granted. ECF No. 19.

On December 15, 2025, Petitioner filed her Motion to Enforce, which purports to seek enforcement of the Court’s November 14 Order, and challenges certain release conditions imposed by ICE, such as an ankle monitor. ECF No. 21.

ARGUMENT

I. Respondents have fully complied with the Court’s November 14 Order.

In the November 14 Order, the Court directed Respondents to provide Petitioner with a bond hearing and, thereafter, file a status report with the Court. ECF No. 18. Petitioner received a bond hearing on November 20, 2025, was released on bond on

November 21, 2025, and Respondents filed a status report on November 26, 2025. ECF No. 19. Thus, Respondents have fully complied with the November 14 Order and the Motion to Enforce should be denied. *See Pena-Gil v. Lyons, et al.*, No. 25-cv-03268-PAB-NRN (D. Colo. Jan. 5, 2026) (“Petitioner’s motion to enforce the Court’s order lacks a basis for relief where respondents have complied with the [Court’s] Order”).

The November 14 Order did not provide any restrictions on conditions that could be imposed upon Petitioner if she were released on bond. *See generally* ECF No. 18. Nor did Petitioner request in the Petition to be released without such conditions. *See generally* ECF No. 1. Notably, the Petition asked the Court to direct Respondents to hold a bond hearing where the IJ was required to consider “alternatives to detention, such as monitoring or periodic ICE check-ins.” *Id.* at 34. The Court’s November 14 Order was silent on such release conditions. Nevertheless, Petitioner argues that the Court should now issue an order directing Respondents to remove “any additional conditions of release, including the ankle monitor.” ECF No. 21 at 2.

The Court should not grant this additional relief. Respondents have not taken action that runs afoul of the Court’s Order. As noted above, the Court did not issue any orders to Respondents regarding the conditions of Petitioner’s release. The November 14 Order only required Respondents to provide a bond hearing. Petitioner does not allege that Respondents failed to provide a hearing that complied with the Court’s November 14 Order; nor does Petitioner allege that Respondents have failed to comply with any other specific requirement in the Court’s November 14 Order. The Motion to Enforce should therefore be denied.

II. Petitioner has not shown that this Court has authority to review Petitioner's conditions of release.

In her Motion to Enforce, Petitioner challenges conditions of release that were imposed after the Court-ordered bond hearing. This Court cannot hear such a challenge because (A) the Court lacks jurisdiction to review conditions of release ordered after a § 1226(a) bond hearing, (B) Petitioner has not exhausted her administrative remedies for such a claim, and (C) she did not raise this claim in her Petition.

The Court lacks jurisdiction to review Petitioner's conditions of release.

8 U.S.C. § 1226(e) states:

The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole.

Detention and release decisions, including the conditions of release imposed, made under § 1226(a) "are always necessarily founded upon a discretionary decision by the Attorney General." *El Gamal v. Noem, et al.*, 790 F. Supp. 3d 551, 558 n.4 (W.D. Tex. 2025); 8 C.F.R. § 236.1(c)(8) (stating that "[a]ny officer authorized to issue a warrant of arrest may, *in the officer's discretion*, release an alien . . . under the conditions at section 236(a)(2) and (3) of the Act" (emphasis added)).

Here, Petitioner admits that at the bond hearing, the IJ did not enjoin ICE from imposing additional release conditions. See ECF No. 21-2 ¶ 3. In fact, the IJ acknowledged that ICE "may" impose other conditions in addition to the bond. *Id.* Petitioner is thus attempting to challenge either the IJ's decision not to enjoin ICE from imposing such additional release conditions or ICE's decision to impose additional

conditions of release. In either case, she is attempting to challenge a discretionary decision not subject to judicial review. See *Wilfredo R. v. Noem*, No. 3:25-CV-1702-D-BK, 2025 WL 3520307, at *2 (N.D. Tex. Nov. 4, 2025) (finding that petitioner pled “no facts establishing this Court’s jurisdiction over DHS’ discretionary decision to commence removal proceedings much less its decision later to re-detain him or alter his conditions of release.”); see also *Elnour v. Crawford*, No. 1:13CV923 JCC/TCB, 2013 WL 6571828, at *2 (E.D. Va. Dec. 13, 2013) (noting that “the Court lacks jurisdiction to hear Petitioner’s claims regarding the conditions of his supervised release.”); *Mwangi v. Terry*, 465 F. App’x 784, 787 (10th Cir. 2012) (finding that the District Court lacked jurisdiction over a challenge to “the agency’s discretionary bond decision”). The Court therefore lacks jurisdiction to review Petitioner’s release conditions and her Motion to Enforce must be denied.

Petitioner has not exhausted her administrative remedies for the relief sought in the Motion to Enforce. Generally, “[t]he exhaustion of available administrative remedies is a prerequisite for § 2241 habeas relief, although . . . the statute itself does not expressly contain such a requirement.” *Garza v. Davis*, 596 F.3d 1198, 1203 (10th Cir. 2010). Exhaustion is ordinarily nonjurisdictional. *Santos-Zacaria v. Garland*, 598 U.S. 411, 417 (2023). In a different immigration context, the Tenth Circuit has held that “the failure to exhaust issues before the BIA bars judicial review through habeas just as it does through a petition for review.” *Soberanes v. Comfort*, 388 F.3d 1305, 1309 (10th Cir. 2004). Importantly, the habeas exhaustion requirement in the immigration context “extends not only to substantive issues, but to constitutional objections that involve

administratively correctable procedural errors, even when those errors are failures to follow due process." *Id.* (emphasis added) (citation omitted).

Here, Petitioner has failed to exhaust because she still has administrative remedies available to her. The Motion to Enforce challenges conditions of release imposed by ICE and discussed by the IJ at the bond hearing, but which were not mentioned in the IJ's form order. Pursuant to 8 C.F.R. § 1236.1(d), Petitioner can challenge the conditions of release by requesting that the IJ review those conditions, see 8 C.F.R. § 1236.1(d)(1), or by asking the ICE district director to change those conditions, see 8 C.F.R. § 1236.1(d)(2). Either decision could then be appealed to the Board of Immigration Appeals. See 8 C.F.R. § 1336.1(d)(3)(i); 8 C.F.R. § 1003.19(f).

The IJ and BIA are better suited to hear Petitioner's claim. Given that potential release conditions were discussed at the hearing, but the IJ's order was silent on such conditions, it makes sense to follow the applicable regulations and seek clarity through the administrative process. To the extent a more in-depth written decision is required for an appeal of the decision, the IJ could prepare a written decision based on notes from the hearing. See *Immigration Court Practice Manual*, Chapter 9.3(e)(7) (June 20, 2025), ("If either party appeals [the bond decision], the Immigration Judge prepares a written decision based on notes from the hearing."), available at <https://www.justice.gov/eoir/reference-materials/ic/chapter-9/3>.

Petitioner should not be permitted to use the Motion as a "substitute for direct appeal" to the BIA. *Soberanes*, 388 F.3d at 1309 (citation omitted); see also *Reyes v. Lynch*, No. 15-cv-00442-MEH, 2015 WL 5081597, at *3 (D. Colo. Aug. 28, 2015)

("[F]ederal courts must await exhaustion of all administrative appeals before reviewing immigration decisions, whether by a habeas corpus action or a petition for review."). Instead, as a matter of judicial efficiency and pursuant to the applicable regulations, Petitioner should be required to exhaust her administrative remedies before the IJ and the BIA.

Petitioner did not raise this claim in her Petition. As explained above, the Motion to Enforce challenges release conditions that Petitioner did not challenge in the Petition; nor did the Petition ask the Court to enjoin Respondents from imposing such conditions after a bond hearing. This issue is therefore not properly before the Court and Petitioner should be required to amend her petition to properly raise such claims. See 28 U.S.C. § 2242; *Elnour*, 2013 WL 6571828, at *2 ("A post-judgment motion . . . is an improper vehicle to bring new claims before the Court."); see also, *c.f.*, *Sierra Immigr. & Naturalization Serv.*, 258 F.3d 1213, 1220 (10th Cir. 2001) ("These issues were not raised in his habeas petition before the district court, and we do not consider them for the first time on appeal."); see also *Quang Minh Lien v. Sessions*, No. 18-CV-2146-WJM-SKC, 2018 WL 4853339, at *4 (D. Colo. Oct. 5, 2018) ("It is axiomatic that a person has no likelihood of success on the merits for a theory of relief not pled.").¹

¹ If Petitioner were to amend her petition to add this claim as currently alleged, it would fail to meet the "in custody" requirement of 28 U.S.C. § 2241(c). Compare *J.P. v. Santacruz*, No. 8:25-CV-01640-FWS-JC, 2025 WL 2633198, at *2 (C.D. Cal. Aug. 27, 2025) (finding Petitioner was not "in custody" despite release conditions such as mandatory check-ins that required Petitioner to be at home and a phone application that would track Petitioner's location), with *Orellana Juarez v. Moniz*, 788 F. Supp. 3d 61, 67-68 (D. Mass. 2025) (finding that petitioner adequately alleged custody where petitioner was required to "wear a 24/7 GPS device on his ankle which allows ICE to monitor him constantly" and to enroll in "an intensive supervision program which includes the

III. The cases cited by Petitioner are distinguishable.

None of the out-of-circuit district court cases to which Petitioner cites supports the instant motion because in each case the conditions of release were either raised in the underlying habeas petition or the petitioner's release was specifically ordered by the district court—as opposed to an IJ or a DHS official. Additionally, none of the cases cited by Petitioner include evidence that the IJ in those cases contemplated the government's ability to impose additional restrictions and specifically declined to enjoin the government from imposing them. As a result, the Court should not rely on those cases here.

First, Petitioner cites *N- N- v. McShane*, No. CV 25-5494, 2025 WL 3143594, at *4 (E.D. Pa. Nov. 10, 2025), and *Orellana Juarez v. Moniz*, 788 F. Supp. 3d 61 (D. Mass. 2025). In each of those cases, the petitioner filed a petition for writ of habeas corpus “alleging that ICE did not have authority under the Immigration and Nationality Act to impose added conditions to an immigration judge's order releasing [him].” *N- N-*, 2025 WL 3143594, at *1; *Orellana Juarez*, 788 F. Supp. 3d at 64 (same). Here, by contrast, the conditions of release were not challenged in the underlying Petition. Petitioner's challenge here thus represents an entirely new claim that is not properly before the Court and cannot be raised for the first time in a Motion to Enforce.

Second, Petitioner cites *Ortiz Martinez v. Wamsley*, 2025 WL 2899116 (W.D. Wash. Oct 10, 2025). But in *Ortiz Martinez* the Court specifically ordered the Petitioners'

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”).

release pursuant to conditional orders that had been previously entered by an immigration judge, some, but not all, of which noted that “conditional release is granted under any conditions set by ICE/DHS.” *Ortiz Martinez*, 2025 WL 2899116 at *5. Here, by contrast, the Court’s November 14 Order did not order Respondents to release Petitioner, with or without any specific conditions, and the IJ specifically contemplated that Respondents may impose additional release conditions without enjoining them from doing so.

Finally, Petitioner cites *Menjivar Sanchez v. Wofford*, No. 1:25-CV-01187-SKO (HC), 2025 WL 3089712 (E.D. Cal. Nov. 5, 2025). In that case, the petitioner, in a motion for a temporary restraining order, asked the Court to “order her release [from ICE custody] on \$3,000 bond under 8 U.S.C. § 1226(a) as initially ordered by the IJ.” *Menjivar Sanchez v. Wofford*, 2025 WL 2959274, at *1 (E.D. Cal. Oct. 17, 2025). The court granted her request. *Id.* *8. Petitioner then challenged the government’s imposition of an ankle monitor as part of that court-ordered release. *Menjivar Sanchez*, 2025 WL 3089712 (E.D. Cal. Nov. 5, 2025). The court ordered the government to remove the release conditions, in part because they were not ordered “by this Court in granting immediate release.” *Id.* at *10.²

Thus, the cases that Petitioner cites do not demonstrate that she is entitled to the relief she requests.

² The *Menjivar Sanchez* court also observed that the IJ did not make ankle monitors a condition of release at the initial custody hearing. *Id.* But there is no evidence in that case that the prospect of additional release conditions were discussed at all in the immigration court as they were here.

CONCLUSION

For the reasons above, Petitioner's Motion to Enforce should be denied.

Dated: January 5, 2026

Respectfully submitted,

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s/ Logan P. Brown

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CERTIFICATE OF SERVICE

I certify that on January 5, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following recipients by e-mail:

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