District Judge Ricardo S. Martinez
Magistrate Judge Michelle L. Peterson

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Wilmer Enrique QUIVA PALACIO, Petitioner, v. Cammilla WAMSLEY, et al., Respondents.	Case No. 2:25-cv-1983-RSM-MLP **PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

On October 14, 2025, Petitioner Wilmer Enrique Quiva Palacio filed his Petition for Writ of Habeas Corpus (Dkt. 1) alleging that he had previously been released from ICE custody on an order of release on recognizance and that Respondents had violated his due process rights by re-detaining him without a pre-deprivation hearing. Dkt. 1 at ¶¶ 34-46. In their Response, Respondents state that they released Mr. Quiva from detention the following day, October 15, but with the additional imposition of an ankle monitor. Dkt. 10 at 2.

Respondents suggest that Mr. Quiva's release moots his habeas petition, but this ignores substantial case law, including from the Supreme Court, holding that significant impositions on an individual's liberty – such as the ankle monitor in this case – mean that the person is still "in custody" for habeas purposes. This case is not moot.

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Respondents argue that there is no due process problem with their decision to attach an ankle monitor to Mr. Quiva. Had Respondents not voluntarily released Mr. Quiva from detention, there is little doubt that the weight of substantial case law – including from this Court – would have required his release *under the same terms* as his earlier order of release on recognizance. His preemptive release does not alter the legal analysis: Respondents never afforded Mr. Quiva a pre-deprivation hearing and therefore never properly terminated the earlier order of release on recognizance. Any new imposition of custody without such process is arbitrary, as it was not tied to a meaningful process determining whether the additional restraint was justified. Therefore, the Court should order Mr. Quiva restored to his status before this litigation, *i.e.*, without the ankle monitor. Furthermore, inasmuch as the decision to impose an ankle monitor was based not on any individualized determination of dangerousness or flight risk but rather because of a new ICE policy requiring monitoring *en masse* for all released noncitizens, this Court should find that Respondents' imposition of an ankle monitor violates due process and order it removed.

ARGUMENT

I. Mr. Quiva is still "in custody" for habeas purposes because of Respondents' requirement that he wear an ankle monitor, and therefore this case is not moot.

A petitioner may seek a writ of habeas corpus under 28 U.S.C. § 2241 when "[h]e is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Respondents imply, without actually saying, that this case was mooted by Mr. Quiva's release. Dkt. 10 at 2-3. However, substantial case law, including from the Supreme Court, makes clear that he is still "in custody" for habeas purposes.

As set forth in the accompanying declaration, Respondents' imposition of an ankle monitor requirement places significant restrictions on Mr. Quiva's liberty. He is prevented from leaving the state, finds it difficult to sleep or perform certain activities, and has been hampered in seeking

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employment because potential employers may believe he is a criminal. Dkt. 13-1 (Decl. of Wilmer Quiva Palacio) at ¶¶ 3, 5-7, 9. Courts in other cases have cited further restrictions imposed by an ankle monitor, including having to charge it for two to three hours daily with a battery that prohibits one's ability to walk, as well as the need to avoid contact with water or certain types of exercise. *See N-N- v. McShane*, 2025 WL 3143594, at *1 (E.D. Pa. Nov. 10, 2025).

In analogous situations, courts have held that ICE's imposition of an ankle monitor satisfies the "in custody" requirement of the habeas statute. *See, e.g., Orellana Juarez v. Moniz*, 788 F. Supp. 3d 61, 67-69 (D. Mass. 2025); *N-N-*, 2025 WL 3143594, at *2, n.1 (noting that "[t]he Government does not contest that N- N-'s ankle monitor qualifies as being 'in custody' for purposes of a Section 2241 habeas petition."). "Restraints short of incarceration may satisfy the 'in custody' requirement for habeas relief, but the restraint must significantly compromise the individual's 'liberty to do those things which in this country free men are entitled to do.'" *Lopez Lopez v. Charles*, 2020 WL 419598, at *3 (D. Mass. Jan. 26, 2020) (quoting *Jones v. Cunningham*, 371 U.S. 236, 243 (1963)). The Supreme Court has found the "in custody" element to be satisfied in cases where a petitioner has been released from custody, such as when he is on parole or awaiting trial on bail. *See Jones*, 371 U.S. at 243; *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973). In *Orellana Juarez*, the court cited the fact that the petitioner "is being required to wear a 24/7 GPS device on his ankle which allows ICE to monitor him constantly" and other supervision requirements to be akin to the situation in *Jones* and found that the petitioner was still "in custody" for habeas purposes. *Orellana Juarez*, 788 F. Supp. 3d at 68. The Court should similarly find that ICE's 24/7 monitoring of Mr. Quiva and other restrictions, such as his inability to travel outside the state, demonstrates that Mr. Quiva is still "in custody" and that his habeas petition is therefore not moot.

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In addition, Mr. Quiva's release does not moot his underlying claim that prior to re-detention Respondents must provide a hearing before a neutral decisionmaker where the government must prove a violation of release conditions and that Mr. Quiva is now a flight risk or danger by clear and convincing evidence. As the Supreme Court observed in *Nielsen v. Preap*, the claims of the plaintiffs in that case who were previously released on bond did not become moot "[u]nless th[e] preliminary [relief] was made permanent" because the plaintiffs still "faced the threat of re-arrest and mandatory detention." 586 U.S. 392, 403 (2019) (plurality opinion). That same rationale applies here. *See also Ortiz Martinez v. Wamsley*, No. 2:25-CV-01822-TMC, 2025 WL 2899116, at *4 (W.D. Wash. Oct. 10, 2025) (habeas petition not moot where released "Petitioners 'face[d] the threat of re-arrest and mandatory detention' under the same detention scheme this Court has already declared unlawful as applied to them."); *cf. Francois v. Wamsley*, 2025 WL 3496557, at *1 (W.D. Wash. Dec. 5, 2025) (Martinez, J.) (granting final relief to Petitioners previously released on TRO).

II. Under this Court's precedents, Mr. Quiva should be restored to the terms of his previous order of release on recognizance due to Respondents' failure to afford him a pre-deprivation hearing.

In *Francois*, this Court considered a habeas petition filed by three asylum seekers whom ICE had previously released on parole, but who were later re-detained. 2025 WL 3063251, at *1-2. As this Court noted, "The Supreme Court 'has repeatedly recognized that individuals who have been released from custody, even where such release is conditional, have a liberty interest in their continued liberty.'" *Id.* at *4 (citing *Doe v. Becerra*, 2025 WL 691644, at *5 (E.D. Cal. March 3, 2025)). "Courts in this circuit have found that 'the government's subsequent release of [an] individual from detention creates 'an implicit promise' that the individual's liberty will be revoked only if they fail to abide by the conditions of their release.'" *Id.* at *4 (citing *Ramirez Tesara v.*

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Wamsley, -- F. Supp. 3d --, 2025 WL 2637663, at *3 (W.D. Wash. Sept. 12, 2025)). Mr. Quiva, like the three petitioners in *Francois*, "complied with all requirements, including court hearings, and [was] given no reason or notice or opportunity to respond prior to [his] arrest[]," which "suggests arbitrary re-detention[]." *Id.* In *Francois*, this Court ordered Respondents to "immediately release [petitioners] from detention on the conditions of release in place prior to their arrests." *Id.* at *6. Accord *Phetsadakone v. Scott*, 2025 WL 2579569, at *6 (W.D. Wash. Sept. 5, 2025) (ordering release "under the conditions of [petitioner's] most recent order of supervision"); *Ramirez Tesara*, 2025 WL 2637663, at *5 (ordering immediate release "under the conditions of [petitioner's] expired parole agreement" to "restore the status quo *ante litem*.").

Under these cases and others cited in the Petition (Dkt. 1 at ¶¶ 5, 45), Mr. Quiva is entitled to be released subject to the same conditions prior to his arbitrary re-detention, *i.e.*, the conditions specified in his preexisting order of release on recognizance. Since Mr. Quiva was never provided with a pre-deprivation hearing before Respondents terminated his order of release on recognizance, this Court should order him restored to that status, which did not include an ankle monitor. *See Ramirez Tesara*, 2025 WL 2637663, at *5.

Although arising in a slightly different procedural posture, a number of courts have recently granted habeas relief to require ICE to remove an ankle monitor. *See, e.g., N-N-*, 2025 WL 3143594, at *4; *Orellana Juarez*, 788 F. Supp. 3d at 70; *Ortiz Martinez*, 2025 WL 2899116, at *5; *Menjivar Sanchez v. Wofford*, 25-cv-1187-SKO, 2025 WL 3089712, at *10 (E.D. Cal. Nov. 5, 2025). In these cases, an IJ had ordered the petitioner released on bond without additional conditions, but ICE subsequently required the petitioners to wear ankle monitors. In ordering ICE to remove the ankle monitor in one case, the court noted that the petitioner "has no avenue to seek relief in the immigration court," citing "at least one very recent case where an IJ determined that

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she did not have authority to alter additional conditions imposed by ICE." *Orellana Juarez*, 788 F. Supp. 3d at 67, n.3. Similarly, this Court should order Mr. Quiva's release without an ankle monitor.

It is worth noting, too, that the Ninth Circuit has found that "the prolonged detention of [a noncitizen] without an individualized determination of his dangerousness or flight risk would be constitutionally doubtful." *Rodriguez v. Robbins*, 715 F.3d 1127, 1137 (9th Cir. 2013); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (noting that "[f]reedom from … government custody, detention, or other forms of physical restraint [] lies at the heart of the liberty [the Due Process] Clause protects"). Similarly, prolonged and potentially indefinite restraints on a noncitizen's liberty – such as the 24/7 GPS monitoring in this case – should be based on an individualized determination of dangerousness or flight risk. *See, e.g., E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1323 (W.D. Wash. 2025) (applying balancing test from *Mathews v. Eldridge*, 424 U.S. 319 (1976), and rejecting "any suggestion that government agents may sweep up any person they wish and hold that person" indefinitely "without consideration of dangerousness or flight risk") (cleaned up); *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1185 (D. Colo. 2024) ("It would stand to reason if a noncitizen was neither a flight risk nor dangerous, there would be no government or public interest in detention."). However, in the course of the *N-N-* litigation, the Government produced an internal ICE memo from Acting Assistant Director Dawnisha Helland mandating that ICE agents impose "GPS ankle monitors whenever possible" and ordering officers "not [to] release any aliens on Order of Release on Recognizance (OREC) or Order of Supervision (OSUP) without technology." ECF No. 13-2 (Helland Memo); *see also* Douglas MacMillan & Aaron Schaffer, "ICE Moves to Shackle Some 180,000 Immigrants with GPS Ankle Monitors," *Washington Post* (July 24, 2025), https://perma.cc/YU83-ZMQ7. Under ICE's new policy as laid out in the Helland Memo, ICE

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personnel are to fit as many noncitizens with ankle monitors as possible and not to release "any" noncitizens without one. This is a far cry from the sort of individualized determination of dangerousness or flight risk that due process requires; indeed, in this case ICE previously determined that Mr. Quiva was neither a danger nor a flight risk, as evidenced by his 2021 release on his own recognizance, and Respondents have not alleged that anything has happened in the interim to show that circumstances have changed. Dkt. 1 at ¶ 1-2.

III. The Court should order that prior to any re-detention, Respondents must justify detention before a neutral decisionmaker.

Respondents have not identified a single reason they re-detained Mr. Quiva. Instead, they simply assert they have unfettered authority to re-detain a person regardless of the liberty interest they now possess. But those arguments have been repeatedly and resoundingly rejected in this district and elsewhere. As a result, in addition to ordering that Respondents take off Mr. Quiva's ankle monitor, the Court should require that, prior to any re-detention of Mr. Quiva, Respondents must justify his detention before a neutral decisionmaker by clear and convincing evidence that he is now a flight risk or danger to the community. *See, e.g.*, *E.A. T.-B.*, 795 F. Supp. 3d at 1324 (granting habeas petition, ordering immediate release due to lack of pre-deprivation hearing, and requiring adequate notice and an immigration court hearing prior to any future re-detention); *P.T. v. Hermosillo*, 2025 WL 3294988, at *4 (W.D. Wash. Nov. 26, 2025); *Ramirez Tesara v. Wamsley*, 2025 WL 3288295, at *6 (W.D. Wash. Nov. 25, 2025) (same); *Ledesma Gonzalez v. Bostock*, 2025 WL 2841574, at *9 (W.D. Wash. Oct. 7, 2025) (same); *Y.M.M. v. Wamsley*, 2025 WL 3101782 (W.D. Wash. Nov. 6, 2025) (same); *Kumar v. Wamsley*, 2025 WL 2677089, at *3 (W.D. Wash. Sept. 17, 2025) (granting TRO and ordering immediate release due to lack of pre-deprivation hearing); *Pinchi v. Noem*, 2025 WL 2084921, at *7 (N.D. Cal. July 24, 2025) (granting preliminary injunction and ordering that petitioner not be re-detained without a pre-deprivation

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hearing before a neutral immigration judge where the government must demonstrate by clear and convincing evidence that she is a flight risk or danger).

CONCLUSION

Because this Court's case law requires that Mr. Quiva be restored to the status he had before this litigation, and because ICE's imposition of an ankle monitor violates his due process rights, the Court should grant the petition for writ of habeas corpus and order ICE to remove the ankle monitor and any other conditions imposed on Mr. Quiva not contained in the original order of release on recognizance. In addition, it should further order that, prior to any re-detention, Respondents must prove before a neutral decisionmaker by clear and convincing that Mr. Quiva violated a condition of release and that he now poses a flight risk or danger to the community.

Dated: December 12, 2025

Respectfully submitted,

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WORD COUNT CERTIFICATION

I certify that this memorandum contains 2,335 words, in compliance with the Local Civil Rules.

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