

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MARIA CRISTINA SURA ROMERO,

Petitioner,

v.

JOSH JOHNSON, et al.,

Respondents.

Civil Action No. 3:25-CV-02853-O

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner filed a writ of habeas corpus and seeks immediate removal of her EPC Intensive Supervision Appearance Program (ISAP) GPS ankle-monitor. *See* ECF 1. As explained herein, the ankle-monitor is not an unconstitutional restraint. The Court should deny the habeas petition.

I. Background

Petitioner is a native and citizen of El Salvador. App. p.16. She entered the United States at an unknown place, on an unknown date, without admission or parole after inspection. *Id.* On March 25, 2025, Petitioner was initially placed in custody by Rowlett Police Department after she was arrested and charged with a DWI and of fleeing the police officer which was dismissed. App. p. 17. However, Petitioner was convicted of the DWI BAC \geq 0.15 on April 22, 2025, and was sentenced to 60 days of confinement for the DWI conviction. App. p. 18.

Petitioner was transferred to the custody of ICE on April 24, 2025, and was placed into removal proceedings through an issuance of the Notice to Appear, charged as removable under INA § 212(a)(6)(A)(i). App. p. 18. On June 5, 2025, Petitioner requested a custody redetermination and on June 6, 2025, the Immigration Judge granted her bond pursuant to 8 C.F.R. § 1236. App. p. 2. Petitioner was released from El Paso Processing Center on June 9, 2025. DHS appealed on June 30, 2025, and the case is pending before the Immigration Court. App. p. 7. On December 21, 2025, Petitioner's spouse, a United States citizen, filed an I-130 Petition for Alien Relative, which is pending at USCIS.

II. Argument and Authorities

A. Petitioner is not in custody.

Petitioner argues that the ankle-monitor is a restraint on her liberty in violation of the Constitution. As this Court is aware, the Supreme Court has held that an alien does not have a constitutional right to be released from detention during the limited period in which removal proceedings are pending. *Demore v. Kim*, 538 U.S. 510, 531 (2003); *Carlson v. Zydok*, 342 U.S. 524, 545-46 (1952). The right to release, therefore, is a right granted and controlled by statute. *See generally Carlson v. Zydok*, 342 U.S. 524. Specifically, when and under what circumstances an alien may be released while removal proceedings are pending is governed by 8 U.S.C. § 1226(a). An alien may be detained or released on bond or conditional parole. 8 U.S.C. § 1226(a) Here, Petitioner was granted bond and released from custody. App. p. 2. Petitioner is no longer in custody. That she has an ankle-monitor does not change her release from custody on bond. *See Nguyen v. B.I. Inc.*, 435 F.Supp.2d 1109, 1115 (D. Oregon 2006)(concluding that placement in ISAP is not detention but a

form of supervision.)

Section 2241(a) provides district courts the power to grant a writ of habeas corpus, but an individual may seek relief under 2241 only if he is “in custody.” 28 U.S.C. § 2241. The “in custody” is a jurisdictional prerequisite. *Maleng v. Cook*, 490 U.S. 488, 490 (1989). Petitioner is no longer in custody; she is on bond and thus is not entitled to habeas relief.

B. Petitioner’s ankle-monitor does not violate her due process rights.

The Supreme Court has held that the liberty interest of an alien pending their final removal order is not a fundamental right. *Denmore v. Kim*, 538 U.S. 510, 528 (2003). Therefore, the restrictions placed on Petitioner under the ISAP need only be rationally related to a legitimate government interest. *Id.* at 528. To survive a “rational basis” review, a reasonable fit between the governmental purpose and the means chosen to advance that purpose must be demonstrated. *Reno v. Flores*, 507 U.S. 292, 305–06 (1993). In the context of deportable aliens, which Petitioner is, the government’s action is subject only to rational basis review. *Id.* at 528. Requiring Petitioner to wear an ankle-monitor does not violate due process rights because it is rationally related to a legitimate government interest—monitoring aliens on release and protecting the community—even though less burdensome conditions may be available. *Zavala v. Prendes*, 2010 WL 4454055 *2 (N. D. Tex. Oct. 5, 2010). Petitioner cannot establish a due process violation.

C. Petitioner is not entitled to injunctive relief.

Petitioner’s request for injunctive relief is premised on her claim that the ankle-monitor violates her due process rights. ECF 1. However, Petitioner is not in custody and not entitled to habeas relief. Moreover, Petitioner cannot show a due process violation as

there is a legitimate government interest in monitoring aliens on release in the community.

But for all the reasons already discussed above in connection with the consideration of these issues in the context of Petitioner's habeas petition, her claims fail on the merits and therefore Petitioner also is not entitled to any temporary or preliminary relief on them. Petitioner cannot show that these claims are likely to succeed on the merits because, in fact, they fail on the merits as outlined herein. *See Canal Auth. of State of Fla. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974).

III. Conclusion

Petitioner's habeas petition should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On December 15, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic

case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Ann E. Cruce-Haag
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