
MARIA CRISTINA SURA ROMERO,

Petitioner,

v.

JOSH JOHNSON, et al.,

Respondents.

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

REPLY TO RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Respondents' sole threshold argument—that Ms. Sura is “not in custody” because she is not jailed—fails. Habeas “custody” encompasses substantial restraints on liberty short of physical confinement. *Jones v. Cunningham*, 371 U.S. 236, 242–43 (1963); *Hensley v. Municipal Court*, 411 U.S. 345, 351–53 (1973). The Fifth Circuit applies this principle in immigration cases. *Rosales v. BICE*, 426 F.3d 733, 735 (5th Cir. 2005). District courts in Texas have likewise treated supervised noncitizens as “in custody” under § 2241. *Gozo v. Mayorkas*, No. 1:23-cv-159, 2024 WL 2027510, at *1 (S.D. Tex. Mar. 4, 2024).
2. Petitioner adopts and incorporates by reference all prior pleadings, motions, and exhibits previously filed in this case—including the Petition and all attached exhibits, record excerpts, and supporting declarations—as though fully set out herein. *See* Fed. R. Civ. P. 10(c). This includes all prior filings and exhibits in this action, including the Petition for Writ of Habeas Corpus (with all attachments and exhibits), the motion papers for temporary and injunctive relief, the record excerpts (including the El Paso bond release and Request for Removal of Ankle Monitoring Device with supporting photos), and the briefing order and service materials. *See, e.g.,* ECF [Petition, filed Oct. 20, 2025]; ECF [TRO/PI papers]; ECF [Exhibits 1–6 and inserts]; ECF [El Paso Bond Release]; ECF [Removal-Request Letter]; ECF [Briefing Order, Nov. 12, 2025]. This Reply cites and relies on those materials as if set forth herein

3. The record shows continuous GPS tracking (ISAP ankle device), recurring reporting/home checks, movement constraints, physical injury from the device, and sustained compliance—textbook “significant restraints on liberty.”
4. The Government’s “60 days of confinement” assertion is incorrect, and unfortunately, misleading. Respondents state that “Petitioner was ... sentenced to 60 days of confinement for the DWI conviction. App. p. 18.” The record in this case shows Ms. Sura received time served (≈21 hours) and completion of a 12-hour DWI Education Program—not a 60-day jail sentence. Petitioner’s original Statement of Facts likewise confirms she “pled guilty ... in exchange for time served and completion of a 12-hour DWI Education Program.” *See* Pet. At 1 & Exhibit 2.
5. By contrast, Ms. Sura spent 78 days in ICE detention facilities (*Id.*), and since the filing of the Petition for Habeas Corpus, she will have been in detention facilities and ankle bracelet/GPS for a combined 279 days.
6. Within the last two weeks, upon verification to counsel by Petitioner and her husband, ICE brought her in to change the device as it was thought to be faulty. Almost every outcome of a faulty device weighs against Petitioner. The device can stop working, misread her location and say she is outside of her given range (a detention in and of itself), and more.

I. HABEAS JURISDICTION EXISTS BECAUSE ISAP/GPS SUPERVISION IS “CUSTODY.”

4. “Custody” under § 2241 includes restraints “not shared by the public generally.” *Jones*, 371 U.S. at 242–43; *Hensley*, 411 U.S. at 351–53. The Fifth Circuit recognizes the same. *Rosales*, 426 F.3d at 735. Ms. Sura is under 24/7 electronic tracking with mandatory check-ins and home/video visits. That suffices. The Petition details the restraints and relief sought (remove GPS or substitute a less-restrictive ATD).

II. THE REAL ID ACT DOES NOT BAR THIS CASE

5. Petitioner does not challenge a final order of removal; she challenges present conditions of custody

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(the GPS shackle) while released under 8 U.S.C. § 1226(a). Such claims proceed under § 2241, and venue/respondent are proper in this District because the Dallas FOD is the immediate custodian exercising day-to-day control.

III. RESPONDENTS' RELIANCE ON DEMORE V. KIM AND RENO V. FLORES IS MISPLACED

6. Demore is about brief, mandatory detention of certain criminal noncitizens—not intrusive GPS shackles on a compliant adult released under § 1226(a). Respondents overread *Demore v. Kim*, 538 U.S. 510 (2003). Demore upheld mandatory detention under § 1226(c) for a narrow class of criminal noncitizens, stressing Congress's judgment and the brief, definite duration of that detention (“an average time of 47 days,” and for those who appeal to the BIA, “an average of four months”). Cornell Law School+2Library of Congress Tiles+2 Demore did not address intrusive conditions of supervised release like 24/7 electronic tracking, and it certainly did not bless such restraints without individualized justification for adults released on discretionary bond under § 1226(a). Here, Ms. Sura is not incarcerated, yet she is detained within limited spacedetained; she is released yet continuously tracked and subjected to check-ins and home/video visits, despite full compliance and strong ties. Demore's rationale therefore does not apply to an as-applied challenge to GPS monitoring where less-restrictive tools (telephonic/app-based or routine in-person reporting) already work. (And to the extent Demore relied on EOIR “average” timelines, subsequent disclosures show those statistics were materially inaccurate—another reason not to extend Demore beyond its narrow holding. TracReports)

7. *Flores* is a juvenile, facial challenge about who may take custody of minors—not adult GPS monitoring conditions. *Reno v. Flores*, 507 U.S. 292 (1993) upheld, on a facial challenge, a juvenile release regulation for unaccompanied minors, treating it as a reasonable child-welfare placement policy with IJ redetermination and an expected short custodial stay (the Court noted “an average of only 30 days”). Justia Law+2Cornell Law School+2 Flores says nothing about imposing 24/7 electronic monitoring on adults who have already been released on bond under § 1226(a). It provides no safe harbor for adult ATD shackling and does not

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diminish the requirement that custody conditions be individualized and reasonable. See also your pleaded regulatory framework and individualized-decision requirement.

8. Even if rational-basis review applied, the Government still must show a real fit—it hasn't. Neither *Demore* nor *Flores* grants a blank check for intrusive conditions divorced from individualized findings. Even under rational-basis, the Government must show a reasonable connection between the specific restraint and legitimate aims, especially where less-restrictive alternatives (SmartLINK/phone, periodic reporting) already succeed and the record shows documented physical harm from the device. *Demore*'s approval of brief detention for criminal noncitizens cannot be stretched to justify indefinite electronic shackling of a compliant adult released under § 1226(a).

III. THE GPS CONDITION IS UNLAWFUL AND VIOLATES DUE PROCESS.

9. Statutory/regulatory limits. Under § 1226(a) and 8 C.F.R. § 236.1, ICE must make individualized, reasonable custody decisions and consider less restrictive alternatives. The Petition pleads that ICE has defaulted to GPS despite compliance, ties, and documented injury, which is ultra vires/contrary to law.

10. Constitutional limits. Continuing 24/7 electronic shackling without evidence-based findings, when less-restrictive monitoring (telephonic, app-based, or routine in-person reporting) suffices, is an excessive civil restraint violating due process.

11. Even if the Court disagrees with Petitioner's assertion regarding legality, 279 days is a significant amount of time for Petitioner to remain compliance and earn the trust of the Court, ICE and the Attorney General. Discretionary relief is earned.

IV. IRREPARABLE HARM, EQUITIES, AND PUBLIC INTEREST FAVOR RELIEF

8. The device causes ongoing bruising, irritation, pain, and dignitary/liberty harms not compensable by damages; narrow relief (remove GPS or switch to phone/app reporting) preserves appearance interests

V. **PRUDENTIAL EXHAUSTION IS SATISFIED (AND IN AND NOT JURISDICTIONAL)**

9. Counsel sought administrative removal of the device with supporting facts and alternatives; ICE refused. That demonstrates no adequate, prompt alternative remedy and satisfies prudential concerns.

REQUESTED RELIEF

10. The Court should: (1) reject the government's "no custody" argument; (2) grant the writ and order immediate removal of the ankle bracelet/GPS device; or, alternatively, (3) enjoin re-imposition absent written, individualized findings showing that no less-restrictive alternative will reasonably assure appearance and safety. (Prayer already pleaded.)

CONCLUSION

11. Habeas jurisdiction is proper; the merits and equities favor tailored relief. The Court should grant the Petition and accompanying injunctive relief.

Dated: December 18, 2025
Respectfully submitted,
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CERTIFICATE OF SERVICE

I certify that on December 18, 2025, I filed the foregoing Reply in Support of Petition for Writ of Habeas Corpus and Injunctive Relief via the Court's CM/ECF system, which will serve all registered counsel for Respondents, including the United States Attorney's Office for the Northern District of Texas.

I further certify service consistent with Rules 4(i) and 5 where applicable.

/s/ Sean P. Cordobés
SEAN P. CORDOBÉS
Attorney for Petitioner