UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 0:25-cv-62148-MD

LILIAN VALLEJO,

Petitioner,

v.

DIRECTOR, DHS ICE ERO
Miami Field Office, *et al.*,

Respondents.
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RESPONSE TO PETITIONER'S MOTION TO ENFORCE

Respondent, through the undersigned Assistant U.S. Attorney and pursuant to the Court's Order affirmatively directing this filing [DE 17], responds to the "Motion to Enforce" embedded in Petitioner's January 26 status report. *See* DE 16. In compliance with the Court's directive to respond, Respondent states:

A. Background

1. On January 13, 2026, the Court granted the Petition, in part. *See* DE 15. Through its order, the Court required one thing of Respondent: "to afford [Petitioner] a bond determination hearing FORTHWITH and in no event later than January 23, 2026." *Id.* at 2.

2. As Petitioner correctly notes in her status report, upon the issuance of the habeas order, Respondent secured a hearing date with the immigration court just three days later, and Petitioner appeared before an immigration judge (IJ) for a bond hearing on January 16. DE 16 at ¶ 1.

3. Accordingly, as of January 16, 2026, Respondent had fully complied with the Court's order—which required nothing more of Respondent than to present Petitioner to an

IJ for a bond hearing prior to January 23, 2026.

4. As further noted in the status report, at the bond hearing, the IJ released Petitioner from immigration detention under a bond of $10,000, which she posted. Petitioner was subsequently released from immigration detention. DE 16 at ¶ 4.

5. Yet Petitioner now seeks to "enforce" the Court's order. As noted above, Respondent fully complied with it and respectfully submits there is nothing to enforce. Instead, Petitioner seeks additional relief.

6. Setting aside the propriety of Petitioner seeking further relief from this Court via a "motion to enforce" embedded within a status report,[1] Respondent addresses Petitioner's contention that there has been a violation of this Court's (or the immigration court's) order, or that ICE acted *ultra vires* by imposing conditions on Petitioner's release from detention after she posted bond.

B. Response

7. The motion raises the question of whether ICE has legal authority to place conditions upon an alien's release from custody, independent of any authority an IJ may have in that regard or where the IJ does not expressly do so.

8. The answer is "yes": ICE's authority is found in 8 U.S.C. § 1226(a)(2) and 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8).

9. The INA provides distinct sections and regulations that delineate and distinguish between custody determinations by ICE and an immigration judge. ICE's

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[1] Petitioner is effectively seeking declaratory and injunctive relief ordering ICE to remove her ankle monitor. "An injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). Instead, injunctions "may only be awarded upon a clear showing that the [movant] is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008).

authority is found in 8 U.S.C. § 1226 (INA § 236(a)) and 8 C.F.R. § 1236(c), while the immigration judge's authority is found in 8 C.F.R. § 1236(d). This division is important because an immigration judge has authority to "detain the alien in custody, release the alien, and determine the amount of bond, if any, under which the respondent may be released." 8 C.F.R. § 1236(d)(1).

10. And, relevant to this matter, the immigration court is authorized to review conditions of relief imposed by ICE. *Id.*; *see also Matter of Aguilar-Aquino*, 24 I&N Dec. 747 (BIA 2009); *Matter of Garcia-Garcia*, 25 I&N Dec. 93 (BIA 2009).

11. Conversely, Congress authorized ICE to detain, to release on bond and *impose conditions* on that release, or to conditionally parole an alien in removal proceedings. 8 U.S.C. § 1226(a)(1)–(2). Consequently, while an immigration judge may release on a bond order, the power to impose release conditions rests with ICE—with an opportunity for an IJ to review those conditions.[2]

12. Petitioner's motion is effectively premised on an *Accardi* argument; she asserts ICE has acted *ultra vires* and is therefore not following its own regulations. DE 16 at ¶ 4. But Petitioner's invocation of the *Accardi* doctrine is misplaced because, as explained above, ICE

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[2] Notably, Petitioner has not sought review from the IJ, instead coming back to this Court under the guise of "enforcing" its prior order. Accordingly, in addition to failing to show that ICE's action violates this Court's or the IJ's orders, Petitioner has also failed to exhaust administrative remedies. She may either file an appeal of the conditions of her release to the IJ, or request review by the district director. 8 C.F.R. § 1236.1(d)(1)-(2); *Matter of Garcia-Garcia*, 25 I&N Dec. 93, 98 (BIA 2009) ("[S]ection 236(a)(2)(A) of the Act clearly gives the Attorney General authority to place conditions on an alien's release from custody when setting a monetary bond of at least $1,500.").

The regulatory process affords Petitioner the opportunity to redress her concerns administratively. Moreover, following it would provide this Court a full record to review should Petitioner seek district court review. *See Santos-Zacaria v. Garland*, 598 U.S. 411, 418 (2023) ("That is, exhaustion promotes efficiency, including by encouraging parties to resolve their disputes without litigation.") Petitioner's failure to exhaust should cause this Court to deny her motion, in favor of the administrative process.

has the statutory and regulatory authority to impose enhanced supervision such as an ankle monitor—irrespective of whether such conditions were contemplated or imposed by an IJ.[3]

13. Respondent acknowledges that a smattering of district courts around the country have found ICE's requirement that some habeas petitioners released on bond comply with ICE's ISAP program is akin to them remaining "in custody." DE 16 at ¶¶ 8-9.

14. The decisions Petitioner relies on are, of course, not binding on this Court. Indeed, there is no binding authority in this Circuit on this precise issue[4] or, upon last check, any on-point decisions of courts within this District.

15. However, one district court from within this Circuit recently rejected the exact position Petitioner advances here. *See Hernandez v. Udzinski*, No. 2:25-cv-373, 2025 WL 4093557 (N.D. Ga. Dec. 16, 2025).

16. In *Udzinski*—as here—Judge Story granted a habeas petition, directed the respondents to provide petitioner a prompt bond hearing, and enjoined them from rearresting petitioner.[5] *Id.* at *1. After the bond hearing, the IJ ordered petitioner's release on a $5,500 bond and ICE released him after he posted it. *Id.* After the petitioner's release from custody, ICE imposed an ankle monitor and required the petitioner to enroll in the ISAP. *Id.* As here,

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[3] That *this Court* didn't impose any such conditions makes sense, in that this Court ordered only that a bond hearing take place—not that Petitioner be released. Although it didn't occur here, bond may well have been *denied* by the IJ, in which case this Court would have no reason to set any release conditions. Respondent would still have been in full compliance with this Court's habeas order had the IJ denied bond.

[4] Albeit unpublished and not involving ICE imposing release conditions after an IJ had granted bond without imposing any, *Avarez v. Holder*, 454 Fed. Appx. 769 (11th Cir. 2011) is also instructive. There, the Eleventh Circuit held, among other things, that "ICE has broad discretion to construct reasonable conditions of supervision. Accordingly, we conclude that the district court erred in striking these conditions as unduly 'restrictive.'" *Id.* at 773.

[5] Although this Court said nothing of the sort, Petitioner notes that the IJ's bond order here included a prohibition against "further arrests." *See* DE 16 at ¶ 1; DE 16-1.

the IJ's bond order did not mandate the ankle monitor or enrollment in ISAP. *Id.* The petitioner did not challenge these conditions before the IJ, but instead filed a "motion to enforce" in the district court. *Id.*

17. Thus, the facts of *Udzinski* and virtually identical to those at issue here, so, while of course not binding, Respondent submits the decision is highly persuasive.

18. Judge Story denied the petitioner's motion. *Id.* at *5. In doing so, the court determined—as argued above—that 8 C.F.R. § 1236.1(c)(8) expressly authorized ICE to impose the ankle monitor and ISAP enrollment. *Id.* at *3. Accordingly, ICE could not have acted *ultra vires* at the petitioner contended (and as Petitioner contends here). *Id.*

19. The court also noted that "the proper avenue" for a habeas petitioner to challenge release conditions was to return to the IJ to seek "amelioration" of the ICE-imposed conditions. *Id.* (citing 8 C.F.R. § 1236.1(d)(1), which allows an alien subject to conditions of release after a custody determination to "request amelioration" of those conditions from an IJ). As noted above, Petitioner did not follow that "proper avenue" here. *See* n.2, *supra.*

20. And—although, unlike Mr. Udzinski, Petitioner here does not premise her motion to enforce on any constitutional concerns—the court "recognize[d] that subjecting [p]etitioner to electronic surveillance implicates his liberty and thus his due process rights." *Id.* at * 3. But, the court determined:

> that such surveillance is permissible in many circumstances and that here, ICE adhered to the proper procedures. Further, Petitioner may seek review of his conditions of release before an IJ or before the ICE Director, and Petitioner does not dispute the adequacy of this review.

Id. (internal citations omitted). Accordingly, the *Udzinski* court "reject[ed] Petitioner's due process claim and conclude[d] that the government had authority to impose conditions of

release on him as it did here." *Id.*[6]

C. Conclusion

21. Irrespective of the lack of any release conditions imposed by the IJ, ICE has independent authority to impose such conditions. It therefore has not acted *ultra vires* or otherwise failed to comply with this Court's habeas order. Moreover, Petitioner has chosen the "wrong avenue" by seeking further relief from this Court, where she should challenge any ICE-imposed release conditions in the immigration court.

Regardless, there is nothing to "enforce," and the motion should be denied.

Respectfully submitted,

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[6] Although Petitioner does not advance such a claim here—for good reason, given Respondent's objective and timely compliance with DE 15—the *Udzinski* court also rejected the petitioner's contention that imposition of the ankle monitor and enrollment in ISAP constituted contempt. *Id.* at *4.