

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
GAINESVILLE DIVISION

MIGUEL HERNANDEZ, )

Petitioner, )

vs. )

DENNIS UDZINSKI, *in his official capacity as* )

*Warden of Hall County Jail; and* )

LADEON FRANCIS, *ICE Atlanta* )

*Field Office Director; and* )

TODD LYONS, *in his official capacity as Acting* )

*Director of Immigration and Customs* )

*Enforcement; and* )

KRISTI NOEM, *Secretary of Homeland Security*)

And PAMELA BONDI, *U.S. Attorney General.* )

Respondents. )

CASE NO.:  
2:25-cv-00373-RWS

**PETITIONER’S REPLY TO RESPONDENTS’ RESPONSE TO  
MOTION TO ENFORCE JUDGEMENT  
OR ALTERNATIVELY, TO SHOW CAUSE RE CONTEMPT**

Petitioner, through undersigned counsel, respectfully and vehemently disagrees with Respondent’s position in their brief ECF 19.

As detailed herein, Respondents’ unilateral imposition of an ankle monitor and enrollment in the ISAP on Petitioner, following his release on bond without additional conditions, constitutes an unlawful redetention and an unauthorized modification of a judicial order, thereby violating the letter and spirit of this Court’s injunction and Mr. Hernandez’s due process rights.

This Reply demonstrates that Respondents' actions are unsupported by legal authority and directly contravene established precedent regarding the limits of agency discretion once a judicial determination on release conditions has been made, as further elaborated below. The Court should therefore grant the relief requested in Petitioner's motion, as outlined in the Prayer for Relief. Respondents' actions are a transparent attempt to accomplish through "supervision" what this Court's Order and the law expressly forbid.

### **I. Respondents Violated the Text of the Order**

Respondents' primary defense is a feat of semantic gymnastics. They assert compliance with this Court's TRO because Petitioner has not been "rearrested" in the traditional sense, out of jail and not subject to physical restraint or custody. Their narrow interpretation of "redetention" ignores the fundamental liberty interests protected by the Fifth Amendment and the practical realities of modern immigration enforcement, which increasingly rely on electronic surveillance as a form of control and restraint on liberty. Whether termed a 're-detention,' a 'constructive arrest,' or a 'continuing seizure,' Respondents' action of shackling Petitioner to a GPS device is the functional equivalent of the 'rearresting' this Court explicitly forbade.

The government's attempt to define "detention" as exclusively meaning confinement within the four walls of a jail is a dangerous fiction that ignores the physical reality of Mr. Hernandez's current existence. An ankle monitor is

not a mere administrative condition; it is a physical shackle, an electronic tether that binds him to constant government surveillance. To argue, as Respondents do, that Petitioner has not been “grasped or touched” is absurd when a government device is physically attached to his body 24 hours a day, restricting his movement, interfering with his work, and disrupting his sleep. This constant physical restraint, coupled with the mandate that he report in person every Friday, means Petitioner is not free to move about his life. This physical shackle is precisely such a restraint. It is a significant compromise on an individual’s liberty, creating an open-air prison where the walls are electronic but the loss of freedom is just as real.

The Supreme Court has consistently held that freedom from imprisonment—from government custody, detention, **or other forms of physical restraint**—lies at the heart of the liberty that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The TRO specifically enjoined Respondents from “redetaining” Mr. Hernandez unless certain conditions were met. The term “redetaining” must be interpreted broadly, consistent with this fundamental constitutional protection, to encompass not only physical incarceration but also any substantial governmental imposition of conditions that significantly curtail an individual’s freedom of movement and autonomy, thereby creating a de facto detention.

The imposition of an ankle monitor ISAP reporting constitutes precisely such a significant deprivation of liberty. These conditions are not mere administrative inconveniences; they subject Petitioner to pervasive surveillance, frequent home visits, mandatory check-ins (every Friday in person), and restrict his movement to a specific geographic radius. The physical presence of the GPS ankle monitor causes him pain, interferes with his sleep, walking, standing, hygiene, and ability to work in his landscaping profession. Such intrusive and debilitating conditions, imposed unilaterally by ICE, are a clear form of governmental restraint that severely curtails Petitioner's freedom and autonomy, effectively placing him in a state of "constructive" or "de facto" detention.

The government's action—compelling Mr. Hernandez to submit to a GPS ankle monitor under threat of actual incarceration—is a new seizure under the Fourth Amendment. When Respondents shackled Mr. Hernandez with a monitoring device, they re-asserted a level of physical control and surveillance that is fundamentally at odds with the liberty he was granted by the Immigration Judge.

The IJ, after considering all relevant factors, determined that a \$5,500 bond was sufficient to ensure Mr. Hernandez's appearance at a future hearing, without imposing any additional conditions. ICE's subsequent unilateral imposition of an ankle monitor and ISAP effectively modified that judicial

order, adding a layer of restraint that the IJ deemed unnecessary to appease ICE and mitigate any flight risk by Petitioner.

To suggest that these conditions do not constitute “redetention” simply because Mr. Hernandez is not physically confined within a jail cell is to elevate form over substance and to disregard the significant impact on his constitutionally protected liberty. The government cannot circumvent a judicial order by imposing conditions that, while not traditional incarceration, severely restrict an individual’s liberty without judicial authorization or a showing of changed circumstances. The TRO’s prohibition against “redetaining” Mr. Hernandez was intended to prevent precisely this type of unauthorized and liberty-depriving action. Therefore, the government’s assertion that it did not violate the TRO’s text is unavailing, as its actions clearly constitute a form of redetention.

While Respondents expend considerable energy debating the abstract definition of “detention”, their argument collapses under the weight of a singular, fatal omission: the complete absence of *any* individualized justification for their actions against Petitioner. Nowhere in their opposition brief or supporting declaration do Respondents articulate *why* placement of the ankle monitor was reasonable or necessary in Mr. Hernandez’s specific case. They offer no non-punitive rationale for his forced enrollment in the ISAP program only a few days after his release from unlawful detention. Most

tellingly, Respondents fail to identify any material change in circumstances whatsoever occurring between Petitioner's court-ordered release and the imposition of these new, severe restraints that would warrant overriding the Immigration Judge's considered determination.

## **II. Respondents Violated the Spirit of the Order and Lacked Statutory Authority for their Actions**

Respondents contend that the "spirit" of the TRO was limited to addressing detention authority under 8 U.S.C. § 1225 versus § 1226, and did not pertain to post-release conditions. This argument fundamentally misconstrues the nature of the TRO, the IJ's bond order, and the limits of ICE's authority, particularly when an IJ has already made a specific determination regarding release conditions.<sup>1</sup>

Ankle monitors require noncitizens to adhere to strict reporting and movement restrictions, which can be seen as a form of control akin to detention. This is because the noncitizen's ability to move freely is curtailed, and they are subject to constant surveillance. Such monitoring can be intrusive and punitive, blurring the line between detention and non-detention.

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<sup>1</sup> The authority to impose conditions beyond monetary bond, such as electronic monitoring, is not explicitly granted to IJs. The regulations focus on the determination of bond amounts and do not provide for the imposition of additional conditions like ankle monitors. In the context of bond proceedings, an IJ's authority is limited to what is explicitly provided by statute and regulation. The imposition of conditions such as ankle monitors would require specific statutory authorization, which is absent in the current legal framework. Therefore, the IJ does not have explicit statutory authority to authorize ankle monitors and had the IJ imposed one, it would have been *ultra vires*. The role of IJs is to assess the risk of flight and danger to the community, typically addressed through monetary bond.

**A. Respondents Cannot Unilaterally Override the IJ's Order Without Changed Circumstances.**

An agency lacks the authority to impose additional conditions that were not part of a judicial order absent a showing of changed circumstances. As one court held, “[w]here a previous bond determination has been made by an immigration judge, no change should be made by [the DHS] absent a change of circumstance.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 966 (N.D. Cal. 2019). The *Ortega* court further held that a noncitizen has a liberty interest in remaining on bond, and due process requires a hearing before an Immigration Judge to determine whether bond should be revoked or altered. *Id.* at 970.

The government’s reliance on “longstanding practice” is misleading. Undersigned counsel has been practicing immigration law for over two decades and until 2025 cannot recall even a single client of her law firm was ever shackled with an ankle monitor pursuant to § 1226. She can only recall clients with final removal orders under § 1231 being subject to them. Moreover, an agency “practice” cannot create power where a statute withholds it. Their reliance is also misplaced when an IJ has already adjudicated the conditions of release. Tellingly, Respondents cannot cite to a single statute or regulation that authorizes them to unilaterally place the device on Mr. Hernandez after

the IJ's order.<sup>2</sup> This unilateral action violates the *Accardi* doctrine, which mandates that agencies adhere to their own regulations and procedures, such as appealing to the BIA if they disagree with an IJ's order. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266 (1954).

The government's argument that monitoring conditions are "subject to review by an IJ" places the burden on Mr. Hernandez to challenge ICE's unauthorized actions, rather than requiring ICE to seek judicial approval for modifying a judicial order. This inversion of responsibility is contrary to due process and the established framework for bond determinations.

ICE's unilateral imposition of these conditions, therefore, not only violates the spirit of the TRO but also undermines the integrity of the IJ's decision-making process and the due process rights it was designed to protect. Therefore, the government's claim that its actions align with the "spirit" of the TRO is without merit.

**B. Respondents Lacked Statutory Authority for a Warrantless Seizure Because It Could Not Meet the "Likely to Escape" Standard.**

Even if the Court were to analyze Respondents' actions not as a violation of the prior Order, but as a new and distinct exercise of enforcement authority,

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<sup>2</sup> While 8 U.S.C. § 1226(a) grants discretion to the Attorney General (and by delegation, DHS/ICE) to detain or release an alien on bond or conditional parole, this discretion is exercised *before or in conjunction with* an IJ's bond determination, not as a means to override it. It does not grant ICE the power to unilaterally add conditions after an IJ has set bond without them. Tellingly, Respondents cannot cite to one statute or regulations that authorizes them to place the device on Petitioner.

the action would still be unlawful. A seizure of this nature must be authorized by statute. The government's authority to conduct a warrantless arrest of an alien for a civil immigration violation is strictly limited by Congress.<sup>3</sup>

Respondents cannot meet this standard. The IJ, after a full bond hearing, had already determined that Respondent was not a flight risk and that a low bond was sufficient to ensure his appearance. Respondents have not alleged, nor could they, that any circumstances materially changed in the few days between his release and the imposition of the ankle monitor to suddenly make him a flight risk. Without an individualized finding that Petitioner was "likely to escape," Respondents had no statutory basis to subject him to a new warrantless seizure. Their actions were not a lawful exercise of authority under § 1226(a), but an unauthorized arrest that violates 8 U.S.C. § 1357(a)(2).

### **III. Challenge to Monitoring Is Squarely Within Court's Scope**

Respondents argue that challenges to monitoring are beyond the scope of the habeas petition, and that contempt is not the proper vehicle for such a challenge. They assert that the legality of post-bond monitoring is a separate matter, not properly before this Court in this proceeding. This argument

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<sup>3</sup> Title 8 U.S.C. § 1357(a)(2) explicitly states that an immigration officer may arrest an alien without a warrant only if the officer has "reason to believe" that the alien is in the United States unlawfully AND "is likely to escape before a warrant can be obtained." The government's own regulations mirror this high standard, stating that a "warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained" (8 C.F.R. § 287.8(c)(2)(ii)).

attempts to compartmentalize and dismiss a direct challenge to the government's compliance with a judicial order, which is precisely what a motion to enforce judgment or for contempt is designed to address.

As established in Section I, the unilateral imposition of an ankle monitor is a *de facto* redetention that directly violates the TRO. Therefore, Petitioner's challenge is not a separate matter but a direct request for enforcement, which falls squarely within this Court's habeas and inherent supervisory jurisdiction regarding the legality of detention **and the conditions of release**.

The government's attempt to reframe this as a challenge to the "legality of post-bond monitoring" in general is a misdirection. The issue is not the abstract legality of such monitoring, but its specific, unilateral imposition on Mr. Hernandez *after* an Immigration Judge set bond without such conditions, and *in contravention* of this Court's TRO. This is a direct challenge to the government's authority to override a judicial determination and to impose new restraints on liberty without due process.

Moreover, a motion to enforce judgment or for contempt is the appropriate procedural mechanism to address a party's non-compliance with a court order. The government's actions, taken unilaterally after an IJ set bond without these conditions, directly undermine the authority of the IJ and this Court's prior directive. To argue that such a challenge is "beyond scope" would render judicial orders meaningless and allow executive agencies to disregard

them with impunity. The very purpose of the motion is to ensure that the Court's prior order, which protected Mr. Hernandez from unlawful due process restraints on his liberty, is respected and enforced. This is not an abstract challenge to agency policy but a concrete claim of non-compliance in Mr. Hernandez's specific case. Therefore, the government's attempt to dismiss this challenge as beyond the scope of the current proceeding is unfounded.

#### **IV. Civil Contempt Standard Is Clearly Met**

The government argues that the standard for civil contempt has not been met, asserting that civil contempt requires clear and convincing evidence of a violation of a court order, and that substantial compliance and good faith efforts may excuse noncompliance. Respondents contend that there is no clear and convincing evidence of a violation, and that ICE made reasonable efforts to comply with the order and acted in good faith, thus rendering civil contempt unwarranted. This argument misapplies the standard for civil contempt and attempts to shield a clear violation behind a claim of subjective good faith, which is generally irrelevant in such proceedings.

Civil contempt is established by clear and convincing evidence that a party violated a clear and unambiguous court order. *See, e.g., Howard Johnson Co. v. Khimani*, 892 F.2d 1512, 1516 (11th Cir. 1990). The TRO unambiguously enjoined Respondents from "redetaining" Petitioner. As detailed above, Respondents violated this order when, despite the IJ's contrary ruling and with

no change in circumstances, they unilaterally compelled GPS monitoring—a significant restriction on liberty that constitutes a de facto redetention. This undisputed sequence of events provides clear and convincing evidence of a violation.

The government’s claim of “good faith efforts to comply” is largely irrelevant where an objective violation of a clear order has occurred. The focus in civil contempt proceedings is on the fact of non-compliance, not the contemnor’s state of mind. *See Mercer v. Mitchell*, 908 F.2d 763, 767 (11th Cir. 1990) (stating that intent is not an element of civil contempt). Whether ICE believed its actions were permissible does not negate the fact that it imposed conditions that were not part of the Immigration Judge’s bond order and were not authorized by this Court’s TRO. The imposition of an ankle monitor and ISAP is a concrete, undeniable action that directly impacts Petitioner’s liberty, contradicting the letter and spirit of the TRO and the IJ bond decision. This is not a case of ambiguity or minor deviation; it is a clear instance of an agency acting unilaterally to impose significant restraints on an individual’s liberty after a court has already determined the appropriate conditions of release.

Furthermore, the government’s actions cannot be characterized as “reasonable efforts to comply” when they directly undermine a judicial order. A reasonable effort to comply would have involved seeking a modification from the Immigration Judge or this Court if ICE believed additional conditions were

necessary. Instead, ICE took matters into its own hands, effectively overriding the Immigration Judge's decision. This unilateral action, which deprived Petitioner of his judicially determined liberty, cannot be excused by a subjective claim of good faith. The clear and convincing evidence demonstrates that Respondents violated a clear and unambiguous order of this Court. Therefore, the standard for civil contempt has been met.

#### **V. Clarification Would Not Remedy the Flagrant Violation**

Respondents suggest that if the Court finds any violation, it should clarify or enforce its injunction rather than impose contempt sanctions. While clarification and enforcement are indeed primary goals, Respondents minimize the gravity of their actions and the necessity of contempt as a deterrent and remedial measure, particularly when fundamental liberty interests are at stake. This Court possesses broad discretion in fashioning remedies for violations of its orders, particularly in habeas proceedings where fundamental liberty interests are at stake. The government's unilateral imposition of an ankle monitor and ISAP enrollment, after an IJ had set bond without such conditions and this Court had enjoined redetention, was not a mere oversight or an action requiring simple clarification. It was a direct and substantial interference with Petitioner's judicially determined liberty, effectively modifying a court-sanctioned release without proper authority or procedure.

Such actions undermine the integrity of the judicial process and the finality of judicial orders.

Respondents' argument that contempt is a "severe remedy" fails to acknowledge the severity of its own actions. Unilaterally imposing conditions that amount to de facto redetention, in defiance of a judicial order, is a serious matter that directly impacts an individual's constitutional rights. The purpose of civil contempt is not solely punitive; it is primarily coercive, aimed at compelling compliance with court orders, and compensatory, to make whole the injured party. *See Citronelle-Mobile Gathering, Inc. v. Watkins*, 943 F.2d 1297, 1301 (11th Cir. 1991). Given the clear violation of Petitioner's liberty interests and the direct contravention of this Court's prior order, contempt is not merely an "alternative" but a necessary and appropriate remedy to ensure that Respondents understand the seriousness of their non-compliance and to prevent similar actions in the future.

While a clarifying order might address the immediate issue, it may not adequately deter future unilateral actions by the agency. The government's willingness to impose these conditions without seeking prior judicial approval, despite a clear TRO, demonstrates a disregard for the Court's authority. To allow the government to unilaterally impose such conditions and then merely receive a "clarifying order" would send a message that judicial orders regarding liberty can be disregarded without significant consequence. The Court's

authority to enforce its orders is paramount to maintaining the rule of law. Therefore, the Court should consider the full range of its remedial powers, including contempt, to ensure robust enforcement of its prior order and to safeguard Petitioner's liberty.

### **CONCLUSION**

The clear spirit and intention of this Court's November 24, 2025, Order was to serve as a judicial shield, protecting Petitioner's fundamental right to liberty from the precise type of arbitrary executive deprivation he now endures. That Order was not a mere suggestion to follow a procedural checklist; it was a direct command to stop violating due process. Respondents' response, however, was to treat this Court's mandate as a temporary inconvenience. Having been forced to release Petitioner from one form of unlawful custody, they immediately shackled him with another—a physical and digital leash that tracks his every move—unilaterally, and without a shred of judicial oversight. This action is a flagrant defiance of the Order's core purpose, rendering the judicially-ordered bond hearing a hollow exercise and substituting the agency's unchecked will for the rule of law this Court sought to enforce. It is the very essence of the due process violation the TRO was designed to prevent. Therefore, Petitioner's motion should be granted.

Respectfully submitted this 11<sup>th</sup> Day of December, 2025,

/s/ Karen Weinstock

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**CERTIFICATE OF COMPLIANCE**

I hereby certify, pursuant to Local Rules 5.1 and 7.1(D), that the filing(s) filed herewith have been prepared using Century Schoolbook, 13 point font.

/s/ Karen Weinstock  
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**CERTIFICATE OF SERVICE**

I certify that on December 11, 2025, I electronically filed the foregoing Document with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to Respondents' attorney(s) of record.

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