

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

FAUSTO MARTINEZ REYES,

PETITIONER,

V.

**KRISTI NOEM, ET AL,
RESPONDENTS.**

NO. 3:25-CV-00658-KC

Respondents' Response to the Courts Order to Show Cause Entered on January 7, 2026.

STATEMENT OF ISSUES

1. Whether ICE has authority apply conditions of release to the Petitioner.
2. Whether Petitioner's SIJ status has any effect on ICE's ability to apply conditions of release.

On December 23, 2025, this Court granted Petitioners' Writ of Habeas Corpus Petition and ordered ICE to release "Martinez Reyes from custody." ECF No. 6, Order 3. Petitioner was released from ICE custody on December 29, 2025. ECF No. 7. On January 7, 2026, this Court issued an Order to Show Cause, requiring the Respondent's to "specifically identify what authority permits such monitoring of an individual with SIJS." ECF No. 9 at 1.

Current statutes, regulation, and case law do not impose an explicit or implicit prohibition on ICE's ability to enroll aliens in alternatives to detention ("ATD"). ICE's actions come from a reasonable and good faith basis rooted in the United States Code, federal regulations, and relevant case law.

I. Statutory and Precedential Authority Regarding Alternatives to Detention

The answer to the question presented by the Court is found in 8 U.S.C. § 1226(a)(2) of the Immigration and Nationality Act ("INA") and 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8). The Court's inquiry is squarely focused on the authority bestowed upon ICE, but to provide context and comparison, Respondent's will also briefly discuss the authority of the immigration judges.

The INA provides distinct sections and regulations that delineate ICE and the immigration judge's custody determinations. ICE's authority is found in 8 U.S.C. § 1226 (INA § 236(a)) and 8 C.F.R. § 1236(c), while the immigration judge authority is found in 8 C.F.R. § 1236(d). This division is important because an immigration judge's authority is to "detain the alien in custody, release the alien, and determine the amount of bond, if any, under which the respondent may be released. . . ." and review conditions of relief imposed by ICE. 8 C.F.R. § 1236(d)(1); *see Matter of Aguilar-Aquino*, 24 I&N Dec. 747 (BIA 2009); *see also Matter of Garcia-Garcia*, 25 I&N Dec. 93 (BIA 2009). Conversely, Congress gave ICE authority to detain, release on bond and impose conditions on that release, or conditionally parole an alien in removal proceedings. 8 U.S.C. §

1226(a)(1),(2); *see also* 8 C.F.R. § 236.1(c)(8) (“Any officer...in the officer’s discretion, release an alien...under the conditions at section 236(a)(2) [8 U.S.C. § 1226(a)(2)] of the Act.) Consequently, while an immigration judge may release on a bond order, the power to impose release conditions rests solely with ICE, with an opportunity for an IJ to review.

II. Petitioners SIJ Status Does Not Restrict Nor Obviate ICE’s Ability To Apply Conditions Of Release.

The Petitioner’s SIJ status merely creates eligibility to apply for adjustment of status once a visa becomes available, leaving him subject to removal proceedings until (or if) he adjusts to a lawful permanent resident. In other words, SIJ status confers humanitarian relief, but not complete relief from removal.¹ By way of analogy, § 212(d)(5) of the Act provides humanitarian parole, but parolees still face routine removal proceedings as this status is temporary and revocable. *See* 8 C.F.R. § 212.5. Additionally, ICE may require reasonable assurances that the alien will appear at all hearings and/or depart the United States when required to do so. *See id.* If humanitarian parole under the very same § 212(d)(5) that Congress used for urgent humanitarian cases leaves ICE free to impose bond conditions and pursue removal, SIJS—a mere eligibility classification, does not restrict or obviate ICE’s ability to apply conditions of release. Therefore, in this case, ICE has the ability to apply conditions of release at its discretion.

III. Due Process Regarding Decisions Involving Alternatives To Detention Remain Available To Petitioner

If Petitioner wishes to challenge the discretionary conditions of release that ICE imposed on them in the exercise of their statutory authority, such a challenge is properly raised with the immigration judge. *See* 8 C.F.R. §§ 1003.19, 236.1(d), 1236.1(d); *see also Misquitta v. Warden*, 353 S.Fupp.3d 518 at 522 (W.D. La. 2018) (detention under § 1226(a) is generally referred to a s

¹ DHS can still issue a notice of revocation of SIJ for a variety of circumstances. *See* 8 C.F.R. § 205.1(b).

“discretionary detention”). The immigration judge has jurisdiction to reconsider conditions on release such as house arrest and electronic monitoring. *See Matter of Garcia-Garcia*, 25 I&N Dec. 93 (BIA 2009); *see also Cevallos v. Ashcroft*, No. 04-CV-23210-SEITZ (S.D. Fla. 2005). Where the immigration judge has authority to redetermine bond or review the conditions of release, the application must be first made to the immigration court nearest the place of detention. 8 C.F.R. § 1003.19(c)(1). If the person is released from custody and wishes to challenge the conditions of release, the motion must be filed with the immigration court within seven days of release. *Id.* §§ 236.1(d)(1); 1236.1(d)(1). Thereafter, application for modification of bond or release may be made only to DHS. §§ 236.1(d)(1); 1236.1(d)(1); *Matter of Chew*, 18 I&N Dec. 262 (BIA 1962).

A person enrolled in electronic monitoring is not deemed to be “in custody” for purposes of a bond hearing in immigration court, and therefore, a motion for bond redetermination must be filed with the immigration court with seven days of release from immigration detention:

Because the DHS released the [alien] from actual physical detention, we find that he was “released from custody” within the meaning of 8 C.F.R. § 1236.1(d)(1). The conditions placed by the DHS on the respondent's release, including the home confinement and electronic monitoring device, constituted “terms of release” and were not “custody” within the meaning of section 236(a) of the Act and 8 C.F.R. § 1236.1(d)(1). Our conclusion is consistent with the cases cited by the DHS, which hold that home confinement and requiring a person to wear an electronic monitoring device do not constitute “detention.” *See Fraley v. U.S. Bureau of Prisons*, 1 F.3d 924, 926 & n.1 (9th Cir. 1993) (holding that home confinement combined with electronic monitoring does not constitute “official detention”); *Nguyen v. B.I. Inc.*, 435 F. Supp. 2d 1109, 1114 (D. Ore. 2006) (finding that placement in the DHS's Intensive Supervision Appearance Program, which requires an alien to wear an electronic monitoring device on his ankle and remain under home confinement for 12 hours each day, is not “detention”).

Matter of Aguilar-Aquino, 24 I&N Dec. 747, 753 (BIA 2009). If Petitioner wanted to challenge ICE’s imposition of conditions on their release, that challenge needed first be filed with the Immigration Court. Because we are past the seven-day deadline created by regulation and

affirmed by the BIA, the application for modification of bond or release may be made only to DHS. §§ 236.1(d)(1); 1236.1(d)(1); *Matter of Chew*, 18 I&N Dec. 262 (BIA 1962).

When analyzing ankle monitoring as applied to aliens with final orders of removal, courts have found that electronic ankle monitoring is a reasonable restraint that does not violate an alien's, due process rights in removal proceedings because it is rationally related to the government's interest in deterring absconders and protecting the community. *See Gozo v. Mayorkas*, No. 1:23-CV-159, 2024 WL 2027510, at *4 (S.D. Tex. Mar. 4, 2024); *Iruene v. Weber*, No. 3:12-cv-1864-o-BH, 2012 WL 5945079, at *2 (N.D. Tex. Aug. 1, 2012) (citing *Nguyen v. B.I. Inc.*, 435 F.Supp.2d 1109, 1111–13 (D. Oregon 2006)). Although Petitioner is not subject to a final order of removal, the same government interests apply in this case. Petitioners' due process rights remain fully intact and available to them in immigration court during removal proceedings.

CONCLUSION

Petitioners do not properly allege a claim that ICE is unlawfully restricting their liberty in violation of the Immigration and Nationality Act (“INA”), or the United States Constitution. In fact, Petitioners neglect to even acknowledge in their pleading that Petitioner is still in immigration removal proceedings, which generally subjects him to discretionary conditions of release under 8 U.S.C. § 1226(a) to address flight risk and public safety concerns. ICE's discretionary detention authority under § 1226(a) necessarily extends to these Petitioners, notwithstanding his SIJ status.

Respectfully submitted,

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