United States District Court
Western District of Texas
El Paso Division

Jesus Eduardo Cano-Sida, Petitioner, v. Joel Garcia, in his official capacity as Field Office Director of the ICE El Paso Field Office of Enforcement and Removal Operations, U.S. Immigrations and Customs Enforcement; U.S. Department of Homeland Security; *et al.*, Respondents.	Case No. 3:25-cv-00726-LS

Respondents' Response to the Court's Order to Show Cause Entered on December 30, 2025

On December 30, 2025, this Court entered an order for service and for Respondents to show cause why the Court should not grant the relief Petitioner seeks by filing an answer or other responsive pleading. ECF No. 3, Order at 2. The Court set the matter for hearing to be held on January 20, 2026. ECF No. 6. Petitioner was released from ICE custody on January 15, 2026, and served with an Order of Release on Recognizance (OREC) on ICE Form I-220A. As a condition of release, Petitioner was enrolled with the Alternatives to Detention program, to include GPS monitoring. *See* Exh. A, OREC at 1 (redacted). Because Petitioner has been released from custody, his habeas petition is now moot and should be dismissed. *See Bacilio-Sabastian v. Barr*, 980 F.3d 480, 483 (5th Cir. 2020) (habeas relief mooted where noncitizen released from custody).

Although Petitioner is subject to conditions of release, including GPS monitoring, he is no longer in detention and is free to return to his home while he is in removal proceedings, consistent with 8 U.S.C. § 1226(a) and the discretionary conditions outlined in his OREC notice. *See Jennings v. Rodriguez*, 583 U.S. 281, 307-12 (2018) (the word "detained" under the immigration statues

does not include aliens who ICE has released from confinement and who are "free to walk the streets," regardless of imposed restrictions to their freedom of movement); *see also Zadvydas v. Davis*, 533 U.S. 678, 683, 690, 697 (2001) (using the words "detain" and "custody" to refer exclusively to physical confinement and restraint); *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579-82 (2022).

Petitioner in this case remains 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 Petitioner, notwithstanding his DACA status or U visa deferred action status, because the Supreme Court rejects "detention" as including aliens with imposed conditions on their release who nonetheless remain "free to walk the streets." *See Jennings*, 583 U.S. at 307. The removal proceedings afford Petitioner due process to challenge not only his conditions of removability, but also any conditions the government imposes on him to minimize flight risk and ensure safety during the removal proceedings. *See, e.g.*, 8 U.S.C. §§ 1182, 1226(a).

I. Statutory and Precedential Authority Regarding Alternatives to Detention

The authority of ICE and the immigration judge (IJ) to impose conditions regarding alternatives to detention may be 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 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's 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. 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 him 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, 522 (W.D. La. 2018) (detention under § 1226(a) is generally referred to as "discretionary detention"). The immigration judge has jurisdiction to reconsider conditions of 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. *Id.* §§ 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 within 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 wants to challenge ICE's imposition of conditions on his release, that challenge must first be filed with the Immigration Court.

Courts have found that electronic ankle monitoring is a reasonable restraint that does not violate an alien's, who is subject to a final order of removal, 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 here is not subject to a final order of removal, the same government interests apply in this case. Petitioner's due process rights remain fully intact and available to him in immigration court during removal proceedings.

III. Petitioner's Deferred Action Status Does Not Restrict Nor Obviate ICE's Ability To Apply Conditions Of Release

The Petitioner's deferred action status for DACA and his U visa application constitutes an exercise of enforcement discretion not to pursue removal for a limited period taking into consideration humanitarian and other considerations but does not preclude DHS from commencing removal proceedings at any time. 8 C.F.R. § 236.21(c)(1). In other words, deferred action 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, a deferred action classification would 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.

CONCLUSION

Because Petitioner has been released from custody, and obtained the relief sought in his habeas petition, the petition is moot and should be dismissed in its entirety. 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) to impose conditions of release necessarily extends to Petitioner, notwithstanding his deferred action status. His GPS monitoring does not

[1] USCIS may terminate a grant of Deferred Action for Childhood Arrivals at any time in its discretion. *See* 8 C.F.R. § 236.23(d)(1). Similarly, a petitioner may be removed from the U visa waiting list, and the deferred action or parole may be terminated at the discretion of the USCIS. *See* 8 C.F.R. § 214.14(d)(3).

constitute custody, and thus he is released from custody thereby mooting his habeas petition. Therefore, Respondents respectfully request that the habeas petition be dismissed as moot.

Dated: January 16, 2026

Respectfully submitted,

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