

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 26-cv-00294-CNS

JAVIER ANDRES GARCIA CORTES,

Petitioner,

v.

ROBERT HAGAN, Director, Denver Field Office, U.S. Immigration & Customs
Enforcement,

JUAN BALTAZAR, Warden of Denver Contract Detention Facility, and
KRISTI NOEM, Secretary, U.S. Department of Homeland Security,

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 7)

Petitioner's Petition for Writ of Habeas Corpus (ECF No. 1, the "Petition") and Motion for Temporary Restraining Order (ECF Nos. 2 & 3, the "Motion") should be dismissed or denied.

In his Petition, Petitioner Javier Andres Garcia Cortes challenges ICE's authority to require him to submit to reporting and monitoring requirements. Since September 2025, Petitioner did not challenge any of these requirements, and has violated the requirements at least 10 different times. ICE subsequently detained him under Section 1226(a) based on the repeated violations.

Petitioner argues that the imposition of these conditions and detention violated due process, the *Accardi* doctrine, and the Immigration and Nationality Act ("INA"). *First*, this Court should decline to hear Petitioner's challenge to ICE's decision to impose his current

conditions of release because Petitioner has not exhausted his administrative remedies. He is required by statute to challenge these conditions and his detention under Section 1226(a) before an Immigration Judge ("IJ"), and then, if he so desires, appeal any decision to the Board of Immigration Appeals ("BIA"). He has not done so at any point since September 2025.

Second, the Petition should also be denied on the merits. ICE has statutory authority to impose reporting requirements, and the reporting and monitoring requirements do not violate the Constitution or any statute.

BACKGROUND

Petitioner is a native and citizen of Columbia. ECF No. 3 at 2. On or around August 15, 2025, Petitioner was detained pursuant to 8 U.S.C. § 1225. *See Garcia Cortes v. Noem et al.*, Case No. 25-cv-02677-CNS, ECF No. 7 at 3-4. On August 26, 2025, Petitioner filed the previous habeas case, Case No. 25-cv-02677-CNS, challenging his detention under Section 1225. *See id.* ECF No. 1.

On September 16, 2025, the Court ordered that Petitioner was improperly held under Section 1225, and ordered that Respondents provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a). *See id.* ECF No. 8 at 11. On September 22, 2025, an IJ held a custody redetermination hearing (*i.e.*, a bond hearing) under Section 1226(a), and ordered Petitioner released on a bond of \$15,000. *See Case No. 26-cv-00294-CNS*, ECF No. 1-1.

On September 23, 2025, Petitioner was released from custody on the \$15,000 bond. *See Exhibit 1, Declaration of M. Kinsey ("Kinsey Decl.")* ¶ 4. As part of his release,

ICE enrolled Petitioner in the ICE Alternatives to Detention (“ATD”) program. *Id.* As part of this enrollment, Petitioner was required to wear a wrist-worn GPS device, submit to check-ins every four weeks, submit to home visits every eight weeks, residence verification for reported address changes, check-ins through a mobile app, and court tracking and reminders. *Id.* ¶ 5. Petitioner did not challenge the ATD program or the monitoring or reporting requirements. *Id.* ¶ 6.

Since September 23, 2025, Petitioner has violated these ATD conditions as follows, see *id.* ¶ 7:

1. October 25, 2025: missed biometric check-in;¹
2. October 26, 2025: missed biometric check-in;
3. October 31, 2025: tracker missed callback;²
4. December 21, 2025: missed biometric check-in;
5. December 24, 2025: missed biometric check-in;
6. December 25, 2025: missed biometric check-in;
7. December 26, 2025: missed biometric check-in;
8. December 28, 2025: missed biometric check-in;
9. December 31, 2025: missed biometric check-in; and
10. January 1, 2026: missed biometric check-in.

¹ Biometric check-ins are managed through an app called the SmartLINK mobile app. See Kinsey Decl. ¶ 7, n.1. This app uses facial recognition technology. *Id.*

² A tracker missed call back involves a failure of the GPS device to capture Petitioner’s location data. *Id.* n. 2. In such an event, the contractor attempts to make contact with Petitioner, typically through the primary phone number. *Id.* If it is unsuccessful, it is deemed a missed check-in. *Id.*

Accordingly, on January 21, 2026, ICE arrested Petitioner due to his ten ATD violations. *Id.* ¶ 8. Petitioner was, and remains, detained pursuant to Section 1226(a). *Id.* On January 26, 2026, Petitioner was served with a Form I-286, Notice of Custody Determination. *Id.* ¶ 9, Attach. 1. This provided Petitioner with the opportunity to request an IJ review of his custody determination. *Id.* Petitioner did not request an IJ review of his custody determination. *Id.* Indeed, as of the date of this Response, Petitioner has not requested an IJ review of his custody determination. *Id.* ¶ 10.

On January 24 and 25, 2026, respectively, Petitioner filed the Petition and Motion, challenging ICE's imposition of the reporting and monitoring requirements. *See generally* ECF Nos. 1, 3. He alleges that the imposition of these conditions, and his detention, violate his substantive and procedural due process rights, the *Accardi* Doctrine, and the INA. *Id.*

ARGUMENT

I. **Petitioner has not exhausted his administrative remedies for the relief sought in the Petition.**

This Court should decline to hear Petitioner's challenge to ICE's decision to impose his current conditions of release because Petitioner has not exhausted his administrative remedies.

Generally, "[t]he exhaustion of available administrative remedies is a prerequisite for § 2241 habeas relief, although . . . the statute itself does not expressly contain such a requirement." *Garza v. Davis*, 596 F.3d 1198, 1203 (10th Cir. 2010). Exhaustion is ordinarily nonjurisdictional. *Santos-Zacaria v. Garland*, 598 U.S. 411, 417 (2023). In a different immigration context, the Tenth Circuit has held that "the failure to exhaust issues

before the BIA bars judicial review through habeas just as it does through a petition for review.” *Soberanes v. Comfort*, 388 F.3d 1305, 1309 (10th Cir. 2004). Importantly, the habeas exhaustion requirement in the immigration context “extends not only to substantive issues, but to constitutional objections that involve administratively correctable procedural errors, even when those errors are failures to follow due process.” *Id.* (citation omitted).

Here, Petitioner has failed to exhaust his administrative remedies. As an initial matter, the reporting and monitoring requirements that Petitioner is challenging were placed upon him back in September 2025. See Kinsey Decl. ¶¶ 4-5. For nearly four months, Petitioner did not challenge or raise issue with those requirements before the IJ, the BIA, or any other mechanism available to him. Petitioner was, and remains, detained pursuant to Section 1226(a). *Id.* ¶ 6. It was only after Petitioner repeatedly violated those requirements, *id.* ¶ 7, and after ICE detained Petitioner for those repeated violations, *id.* ¶ 8, that Petitioner filed the Petition, challenging for the first time the conditions imposed by ICE upon Petitioner.

But as Petitioner admits, there is an entirely separate procedure available to Petitioner to contest the imposition of these conditions. See ECF No. 3 at 5-6. Pursuant to 8 C.F.R. § 1236.1(d), Petitioner can challenge the conditions of release by requesting that the IJ review those conditions, see 8 C.F.R. § 1236.1(d)(1), or by asking the ICE district director to change those conditions, see 8 C.F.R. § 1236.1(d)(2). Either decision could then be appealed to the BIA. See 8 C.F.R. § 1336.1(d)(3)(i); 8 C.F.R. § 1003.19(f).

Pursuant to Section 1226,³ on January 26, 2026, Petitioner was served with a Form I-286, Notice of Custody Determination. See Kinsey Decl. ¶ 9. This provided Petitioner with the opportunity to request an IJ review of his custody determination. *Id.* Petitioner indicated on the form that he did not request an IJ review of his custody determination, *id.*, and as of the date of this response, he has not sought IJ review of his custody determination due to his ATD violations. *Id.* ¶ 10.

Petitioner should not be permitted to use the Petition to circumvent IJ review, or as a “substitute for direct appeal” to the BIA, particularly when his Petition was filed only after his repeated violations of the reporting requirements over the past four months. *Soberanes*, 388 F.3d at 1309 (citation omitted); see also *Reyes v. Lynch*, No. 15-cv-00442-MEH, 2015 WL 5081597, at *3 (D. Colo. Aug. 28, 2015) (“[F]ederal courts must await exhaustion of all administrative appeals before reviewing immigration decisions, whether by a habeas corpus action or a petition for review.”).

Instead, as a matter of judicial efficiency and pursuant to the applicable regulations, Petitioner should be required to exhaust his administrative remedies before the IJ and the BIA.⁴ The Court should deny the Petition and the Motion for that reason.

³ “The Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien.” 8 U.S.C. § 1226(b); see also *Salvador F.-G. v. Noem*, No. 25-CV-0243-CVE-MTS, 2025 WL 1669356, at *9 (N.D. Okla. June 12, 2025) (finding “no support for imposing a ‘change in circumstances’ requirement on DHS before it can revoke a bond under § 1226(b)”).

⁴ In addition, to the extent Petitioner is challenging ICE’s discretionary bond determination, decisions, including decisions to revoke or modify the conditions of release, are barred from judicial review from this Court. See 8 U.S.C. § 1226(e) (“discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole.”).

II. Petitioner's claims should be denied.

Even if this Court hears Petitioner's challenge to his release conditions, it should find that his arguments lack merit.

A. Petitioner's release conditions do not violate substantive due process.

"In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to its citizens." *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). Accordingly, "[w]hile the Due Process Clause does apply to aliens within the United States, the government enjoys relatively wide latitude in imposing restrictions on the liberty of such individuals." *Peruch-Vicente v. Longshore*, No. 15-CV-00068-GPG, 2015 WL 1594013, at *4 (D. Colo. Apr. 7, 2015) (citing *Mathews v. Diaz*, 426 U.S. 67, 77 (1976), and *Demore v. Kim*, 538 U.S. 510, 528 (2003)). "Thus, courts reviewing the constitutionality of supervision for aliens subject to removal orders have employed a rational basis standard of review." *Id.*; see also *Yusov v. Shaughnessey*, 671 F. Supp. 2d 523, 530 (S.D.N.Y. 2009); *Zavala v. Prendes*, No. 3–10–CV–1601–K–BD, 2010 WL 4454055, *1-2 (N.D. Tex. Oct. 5, 2010) (same); *Nguyen v. B.I. Inc.*, 435 F. Supp. 2d 1109, 1115 (D. Or. 2006) ("Because the right at stake is not fundamental, the government's action is subject only to rational basis review" (citing *Demore*, 538 U.S. at 528)).

The Tenth Circuit has confirmed that, "to the extent [a petitioner] challenges the agency's discretionary bond decision . . . the court lack[s] jurisdiction" pursuant to § 1226(e). *Mwangi v. Terry*, 465 F. App'x 784, 787 (10th Cir. 2012); see also *Jennings v. Rodriguez*, 583 U.S. 281, 295-96 (2018) (concluding that § 1226(e) does not bar challenges to "the statutory framework that permits detention without bail" but does preclude challenges to a discretionary judgment to detain. (citation modified)).

“To survive rational basis review, a government action must be rationally related to some legitimate government purpose.” *Id.* (citing *Reno v. Flores*, 507 U.S. 292, 305-06 (1993)). “The goals of ‘reducing the number of absconding aliens’ and ‘accounting for and being able to produce any alien who becomes removable’ are legitimate government interests.” *Yusov*, 671 F. Supp. 2d at 530 (quoting *Nguyen*, 435 F. Supp. 2d at 1115).

Here, the reporting and monitoring requirements imposed on Petitioner do not violate his substantive-due-process rights. Although, as Petitioner notes, the IJ’s bond order was silent as to whether Petitioner should be subject to ADT, ECF No. 1 at 15, these requirements ensure that the government will be able to locate and produce Petitioner if he becomes subject to a final order of removal, if he attempts to abscond, or if ICE determines that returning him to detention is otherwise justified. Indeed, highlighting the purpose of the reporting and monitoring requirements, Petitioner violated these requirements at least ten times, as discussed above. The Court should therefore reject this claim.

B. Petitioner’s release conditions do not violate procedural due process.

Petitioner argues that the imposition of his release conditions violated his procedural-due-process rights under *Mathews v. Eldridge*, 424 U.S. 319 (1976). But the Supreme Court has not applied the *Mathews* analysis in this context.

In *Demore*, the Supreme Court expressly addressed due process implications of detention pending removal proceedings and never suggested that it was proper to use the *Mathews* factors. *See generally* 538 U.S. at 517-31. Rather, to resolve the due

process challenge, the Supreme Court noted differences in the immigration context (“Congress may make rules as to aliens that would be unacceptable if applied to citizens,” *id.* at 522), and considered that detention was “necessarily a part of this deportation procedure,” *id.* at 524 (quoting *Carlson v. Landon*, 342 U.S. 524, 538 (1952)), and not indefinite, *id.* at 527-29. In *Thuraissigiam*, the Supreme Court addressed due-process issues about admission and likewise made no reference to *Mathews*. See *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 110, 138-140 (2020). In *Zadvydas*, the Supreme Court considered due-process implications of “indefinite detention” when deportation was “no longer practically attainable,” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), and considered the justification for nonpunitive detention against the individual’s interest in avoiding physical restraint, but did not cite *Mathews* or employ its three-factor test. See *id.* at 690-701.

Indeed, just a few months after deciding *Mathews v. Eldridge*, the Supreme Court considered a different due-process question about “an alien’s eligibility for participation in a federal medical insurance program,” and did not apply the three-factor test in *Mathews*. *Mathews v. Diaz*, 426 U.S. 67, 69 (1976). As explained above, in *Demore*, the Supreme Court concluded that “[d]etention during removal proceedings is a constitutionally permissible part of that process.” 538 U.S. at 531. The Court, therefore, should not conduct a separate analysis.

In any event, procedural due process is satisfied because the Petitioner had (and still has) the opportunity to appeal to the IJ ICE’s decision regarding conditions of release. 8 C.F.R. § 1236.1(d); *Matter of Garcia-Garcia*, 25 I&N Dec. 93 (BIA 2009).

That Petitioner has failed to do so does not alter the fact that he had, and has, the opportunity to seek review of the conditions of his release. Therefore, Petitioner's procedural-due-process claim fails.

C. Respondents did not violate the *Accardi* Doctrine.

ICE is authorized by statute and regulation to set conditions upon Petitioner's release from physical custody. Petitioner asserts that Respondents violated the *Accardi* doctrine because the IJ bond order is silent as to any conditions of release. ECF No. 1 at 16. Petitioner contends that the September 2025 bond hearing was the sole authority governing his release from detention, and because the IJ's original bond order did not address whether Petitioner should submit to ADT, *see, e.g.*, ECF No. 1-1 at 2-4, ICE is prohibited from imposing any release conditions.

As noted above, ICE has statutory authority to revoke bond and impose conditions of release. That authority is found in 8 U.S.C. § 1226(a)(2) of the INA and 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8). The IJs authority is to grant or deny bond to an alien, but also to review ICE's decision regarding conditions of release. 8 C.F.R. § 1236.1(d). In sum, Petitioner contends that ICE may only impose conditions of release as part of an IJ bond hearing.

The INA provides distinct sections and regulations that delineate and distinguish between custody determinations by ICE and an IJ. ICE's authority is found in 8 U.S.C. § 1226 and 8 C.F.R. § 1236(c), while the IJs authority is found in 8 C.F.R. § 1236(d). This division is important because an IJ 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). And most relevant to this matter—an IJ 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). Thus, consistent with statute and regulation, since September 2025, Petitioner had (and continues to have) the ability to have an IJ review the ADT conditions. *See Kinsey Decl.* ¶¶ 9-11.

Conversely, Congress authorized ICE 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). Consequently, while an IJ may release Petitioner on a bond order, the power to impose release conditions rests solely with ICE—with an opportunity for an IJ to review should Petitioner seek such review.

Petitioner asks this Court to find ICE lacks that statutory authority. It does not. Petitioner’s *Accardi* doctrine claim thus fails.

III. The Motion should be denied.

The Motion should be denied for at least two reasons. First, as discussed above, Petitioner should be required to exhaust his claims before bringing his claims to this Court. Second, for the reasons discussed above, Petitioner cannot show that he is likely to succeed on the merits of his claims. *See Free the Nipple-Fort Collins v. City of Fort Collins*, 916 F.3d 792, 797 (10th Cir. 2019) (substantial likelihood to prevail first of four required showings for a preliminary injunction).

CONCLUSION

For the foregoing reasons, the Petition and the Motion should be denied.

Submitted: January 26, 2026

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s/ Andrew M. Soler

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CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to counsel of record.

s/ Andrew M. Soler
U.S. Attorney's Office