

ICE's theory, exhaustion would be futile. Moreover, there is no statute of limitations in challenging unlawful detention. Ultimately, the Court should not be persuaded by Respondents' attempt to distract from their unlawful actions and it should grant Mr. Garcia's release because ICE's conditions were unlawful and thus it did not have the authority to re-detain Mr. Garcia who has not violated any conditions of the immigration judge's September 2025 custody order.

I. Respondents are bound by the immigration judge's September 2025 custody order and did not have authority to unilaterally modify it.

Addressing the merits first, this Court should grant the habeas petition because ICE did not have the authority to set additional conditions beyond those imposed by the immigration judge. As a factual matter, there is no question that the immigration judge's order providing for Mr. Garcia's release from custody upon payment of a monetary bond did not provide for any additional conditions to be set by ICE.² See ECF No. 1-1, Immigration Judge Custody Order (ordering Mr. Garcia's release from custody upon payment of a bond), ECF No. 1-7, Immigration Bond (providing for only a monetary payment and no additional conditions). Although additional conditions are allowed as part of an immigration judge's custody order, no additional conditions were provided for here. *Cf. Khabazha v. United States Immigration and Customs Enforcement*, 2025 WL 3281514, at *2 (S.D.N.Y. Nov. 25, 2025) (noting that the immigration judge's bond order included ICE's discretionary authority to require the petitioner to wear an ankle monitor and attend regular check-ins); *Oliveria v. Albarran*, 2025 WL 3525923, at *1 (E.D. Cal. Dec. 9, 2025) (recognizing that the petitioner's release from custody "conditioned, among other things, on mandated reporting requirements under the Intensive Supervision Appearance Program."). Thus,

² Respondents assert that Mr. Garcia was enrolled in the ATD program "[a]s part of his release," but the documentary evidence makes clear that neither the immigration judge's order nor the immigration bond itself included ATD enrollment as part of the conditions, ECF Nos. 1-1, 1-7, and Respondents provide no actual evidence to the contrary.

there is no question that ICE violated the immigration judge's order in imposing additional requirements. *Orellana Juarez v. Moniz*, 788 F. Supp. 3d at 69 (concluding that ICE "may not impose additional conditions *after an IJ has ordered release on a bond and set conditions of release.*"). These additional conditions constitute custody and are ultra vires to the immigration judge's order, in violation of ICE's own regulations and Mr. Garcia's due process rights. *See Barreno v. Baltasar*, -- F. Supp. 3d --, 2026 WL 120253, at *2-3 (D. Colo. Jan. 15, 2026) (concluding that the imposition of additional conditions of release that were not part of the immigration judge's custody order constituted custody and violated the petitioner's due process rights and warranted immediate release); *accord Orellana Juarez*, 788 F. Supp. 3d at 68; *see also* 8 C.F.R. §§ 236.1, 1236.1. Accordingly, this Court should conclude that ICE's failure to comply with the immigration judge's order constitutes an *Accardi* violation, as well as a violation of Mr. Garcia's substantive and procedural due process rights. As a result, immediate release is warranted, with an order enjoining ICE from imposing conditions beyond those set by the immigration judge and also enjoining ICE from re-detaining Mr. Garcia absent evidence that Mr. Garcia violated the terms of the immigration judge's custody order or that there has been a material change in circumstances (other than the circumstances unlawfully created by ICE itself). *See Batz Barreno*, 2026 WL 120253, at *2-3; *Ramirez Ovando v. Noem*, -- F. Supp. 3d --, 2025 WL 3293467, at *11 (D. Colo. Nov. 25, 2025) (precluding ICE from detaining plaintiffs who had been arrested in violation of law "for any period of time or impose conditions that are any more onerous than the present ones").

A. ICE's violation of the custody regulations constitutes an *Accardi* violation.

The Court should conclude that ICE violated the regulations in unilaterally imposing additional conditions upon Mr. Garcia's release that were not set by the immigration judge. The

relevant detention statute, 8 U.S.C. § 1226(a) provides for detention of a noncitizen facing removal proceedings upon a finding of dangerousness and flight risk. 8 U.S.C. § 1226(a); *Campbell v. Almodovar*, 2025 WL 3626099, at *1 (S.D.N.Y. Dec. 15, 2025) (marks and citation omitted). A noncitizen who is neither a danger nor a flight risk may be released on a “bond of at least \$1,500 with security approved by, and containing conditions prescribed by [ICE].” 8 U.S.C. § 1226(a); *see N-N-*, 2025 WL 3143594, at *2. The regulations specify that the decision whether to detain or release a noncitizen must first be made by ICE. 8 C.F.R. § 236.1(c)(8). At that point, ICE may decide to detain the noncitizen, release the noncitizen on an order of recognizance, or order conditions of release, including a bond or other monitoring conditions.

If a noncitizen disagrees with ICE’s initial custody determination, the noncitizen may seek a custody redetermination before an immigration judge. 8 C.F.R. §§ 1003.19(a) 1236.1(c)(8), (d)(1); *Mendoza Gutierrez v. Baltasar*, 2025 WL 2962908, at *7 (D. Colo. Oct. 17, 2025). In that redetermination proceeding, the immigration judge may similarly order that the noncitizen be released on recognizance, that the noncitizen remain detained upon a determination of dangerousness, that the noncitizen be released upon payment of a bond calculated in light of flight risk, and/or that the noncitizen’s release be premised upon conditions set by ICE. *See e.g., Salvador F.-G. v. Noem*, 2025 WL 1669356, at *1 (W.D. Okla. June 12, 2025) (noting DHS had made an initial determination to keep the noncitizen in custody but the immigration judge made a redetermination that the noncitizen should be released on a \$5,500 bond); *Khabazha*, 2025 WL 3281514, at *2 (including conditions in addition to a monetary bond); *Oliveria*, 2025 WL 3525923, at *1 (recognizing that the petitioner’s release was partially conditioned upon reporting requirements imposed by ICE). “If either party is dissatisfied with the immigration judge’s custody determination, there are two methods of recourse: (a) appeal the immigration judge’s order” to the

Board of Immigration Appeals, or “(b) after an initial bond redetermination, a detainee may request a subsequent bond redetermination upon a showing that their ‘circumstances have changed materially since the prior bond redetermination.” *N-N-*, 2025 WL 3143594, at *3 (quoting 8 C.F.R. §§ 1236.1(d)(3), 1003.19(a), 1003.19(e)); *see also Johnson v. Guzman Chavez*, 594 U.S. 523, 527-28 (2021); *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1179 (D. Colo. 2024).

Here, Mr. Garcia did not appeal the immigration judge’s bond redetermination. Instead, his obligor paid the bond and Mr. Garcia was released upon payment. *See* ECF No. 1-7. Because Mr. Garcia did not seek to amend or appeal the immigration judge’s actual decision, there was no further administrative action for him to take under the regulation. Likewise, if ICE was dissatisfied with the immigration judge’s order, it should have complied with the administrative appeal process, either appealing that decision to the Board of Immigration Appeals or seeking a new determination by the immigration judge upon showing a change in circumstances. *See N-N-*, 2025 WL 3143594, at *3.

ICE did not follow that process, instead unilaterally imposing additional requirements upon Mr. Garcia’s release. *See* ECF No. 11-1 at ¶¶ 4-5. In fact, ICE initially imposed only GPS monitoring but *the next day* it added several more conditions to Mr. Garcia’s ATD enrollment for no articulated reason and with no apparent authorization.³ *Id.* at ¶ 5. ICE’s failure to comply with the regulations surrounding how to challenge an immigration judge’s custody order violates *Accardi* and warrants habeas relief. *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260,

³ Respondents make much of the fact that Mr. Garcia did not immediately challenge his enrollment in the ATD program. *See, e.g.,* Resp. at 3, ECF No. 11-1 at ¶ 6. However, it is unclear from ICE’s declaration whether ICE informed him of his right to challenge the enrollment in the program or if he knew at that time that the ATD program would legally constitute “custody.” Moreover, ICE has not produced any evidence regarding what written notice it provided Mr. Garcia regarding his enrollment in ATD. Respondents did not provide notice of the ATD enrollment to undersigned counsel.

267-68 (1954); *Ramos v. Bondi*, 155 F.5th 1154, 1165 (10th Cir. 2025) (recognizing that an agency is expected to follow its own regulations).

In response, Respondents justify ICE's ultra vires actions by asserting that ICE has sole authority to impose conditions upon release, and that an immigration judge can only set a bond amount in a custody redetermination proceeding. Resp. 11. As a threshold matter, this is plainly not true; there are many cases demonstrating that immigration judge custody decisions can include conditions or reporting requirements, leaving ICE with authority to determine *which* additional conditions are provided—but those cases do not stand for the proposition that ICE can unilaterally decide *whether* additional conditions can be provided. *Khabazha*, 2025 WL 3281514, at *2 (ordering the imposition of conditions in addition to a monetary bond); *Oliveria*, 2025 WL 3525923, at *1 (recognizing that the petitioner's release was partially conditioned upon reporting requirements imposed by ICE). Respondents ignore and fail to engage with both these cases as well as *Orellana Juarez*, all of which were cited in Mr. Garcia's petition and motion. See ECF No. 1 at ¶¶ 52, 81, 83, 85. Moreover, while *Batz Barreno* was not cited in Mr. Garcia's initial pleadings, it is a recent decision of this Court that Respondents' counsel is likely aware of, as that case was litigated by the same U.S. Attorney's Office. See 2026 WL 120253, at *1.

To be sure, Respondents provide no authority directly on point for their proposition. Specifically, Respondents reference 8 C.F.R. § 1236.1(d)(1) and cite two decisions from the Board of Immigration Appeals, *Matter of Aguilar-Aquino*, 24 I. & N. Dec. 747 (BIA 2009), and *Matter of Garcia-Garcia*, 25 I. & N. Dec. 93 (BIA 2009). But these citations do not support Respondents' assertion that immigration judges are limited to only ordering release or monetary bond in bond redetermination proceedings and that ICE can separately impose conditions.

The regulation Respondents cite, § 1236.1(d)(1), provides that a noncitizen may seek amelioration of any conditions *set on DHS's initial custody determination*. The regulation specifies that an immigration judge may consider any such request up until the resolution of the removal proceedings, but that if the noncitizen is released, any application for amelioration of conditions must be filed within seven days of release. *Id.* After that time, any request for review of conditions ordered upon release shall be directed to ICE. 8 C.F.R. § 1236.1(d)(2). Nothing in this regulation gives DHS authority to set additional conditions *after* the immigration judge's determination. Likewise, *Matter of Aguilar-Aquino* evaluated the timing to challenge conditions imposed by ICE, but does not discuss whether ICE can impose additional conditions outside the scope of the immigration judge's custody order. 25 I. & N. Dec. at 750, 753. In fact, the Board in that case explicitly declined to consider "DHS's alternative argument regarding the Immigration Judge's authority to set conditions beyond the establishment of a monetary bond." *Id.* at 753.⁴ The Board reached that issue in *Matter of Garcia-Garcia*, holding that the immigration judge did have jurisdiction in custody redetermination proceedings to consider the conditions placed on a noncitizen after DHS's initial release from custody. 25 I. & N. Dec. at 95. Thus, both of these cases only evaluated an immigration judge's ability to review conditions placed as part of the initial custody determination, and they cannot be read to conclude that an immigration judge can only consider ICE's imposition of conditions but are not allowed to impose the existence of conditions themselves.

⁴ In *Matter of Aguilar-Aquino*, the Board ruled differently on what constitutes custody than courts within this circuit. Compare *Matter of Aguilar-Aquino*, 24 I. & N. Dec. at 753, with *Batz Barreno v. Baltasar*, -- F. Supp. 3d --, 2026 WL 120253, at *2 (D. Colo. Jan. 15, 2026), and *Peruch-Vicente v. Longshore*, 2015 WL 1594013, at *2 (D. Colo. Apr. 7, 2015). Respondents have not contested Mr. Garcia's assertion that the conditions ICE imposed constituted "custody." See ECF No. 1 at ¶ 36.

Respondents also inaccurately state (without citation) that Mr. Garcia “contends that ICE may only impose conditions of release as part of an IJ bond hearing.” Resp. 10. Not true. ICE may impose conditions both as part of its initial custody determination under 8 C.F.R. § 236.1(c)(8). It may also impose conditions if an immigration judge’s custody redetermination order provides for such conditions. *See Khabazha*, 2025 WL 3281514, at *2; *Oliveria*, 2025 WL 3525923, at *1. But ICE cannot impose conditions if an immigration judge’s redetermination order does not provide for such conditions, without seeking appeal of that immigration judge decision. As one district court noted, “[p]ermitting ICE to impose additional conditions *after* an immigration judge has ordered release and set conditions renders the administrative adjudicatory process null.” *N-N-*, 2025 WL 3143594, at *3. Because no such appeal happened here, ICE’s actions were unlawful and in violation of its own regulations.⁵ *Id.*; *Batz Barreno*, 2026 WL 120253, at *2; 8 C.F.R.

⁵ Finally, while Respondents do not explicitly argue that there has been a change of circumstance warranting Mr. Garcia’s re-arrest, they make much of the allegations that Mr. Garcia has purportedly violated ICE’s own conditions of his release. *See* Resp. 5, 8. However, to be clear, Mr. Garcia has not admitted to violating any conditions set by ICE as part of the Alternative to Detention program. The record is not clear regarding the terms of the ATD, Mr. Garcia’s knowledge of those terms, and any notice ICE provided of alleged violations. Indeed, nothing in the record demonstrates what notice Mr. Garcia had of any conditions established by ICE on top of the immigration judge’s bond order, as neither the immigration judge’s order nor the bond itself identified any conditions. ECF Nos. 1-1, 1-7. While Respondents’ declaration lists conditions that were provided on two different days, the declarant provided no details about what ICE told Mr. Garcia or what documents ICE provided Mr. Garcia about these conditions. *See* ECF No. 11-1. Nor does the declarant provide any specifics about what happened on the days Mr. Garcia allegedly violated the reporting requirements other than software not registering a photo of Mr. Garcia and that a contractor might have called Mr. Garcia. But there is no information, for example, regarding who called Mr. Garcia and when such a call was placed, whether the contractor identified themselves, or whether the contractor left a message if Mr. Garcia did not answer such that Mr. Garcia would be on notice of the call. Mr. Garcia is a commercial painter and is often unable to use his phone if, for example, he is on scaffolding. Moreover, it is not clear from Respondents’ pleadings whether Mr. Garcia’s facial scan did not register his own image, whether he did not submit a photo (and the notice and timeline he was provided to submit such photo), or if there was some other “violation.” *See* Resp. at 3 n.2. There is also no information about whether or when Mr. Garcia was informed of any alleged violation. Without any specifics, this Court should give

§§ 236.1, 1236.1; *see also Leal-Hernandez v. Noem*, 803 F. Supp. 3d 409, 420 (D. Md. 2025) (noting that the “[p]etitioner wants the IJ’s bond determination honored” and that ICE’s decision to unilaterally control the petitioner’s detention was contrary to law).

B. ICE violated Mr. Garcia’s substantive due process rights by imposing additional conditions.

Additionally, ICE violated Mr. Garcia’s liberty interest in remaining free from custody, particularly in light of the immigration judge’s order finding him to not be a flight risk or a danger to the community. *Llanes Tellez v. Bondi*, 2025 WL 3677937, at *5 (N.D. Cal. Dec. 18, 2025) (recognizing that a petitioner has a protected liberty interest in remaining free from custody after being released from immigration custody on recognizance, and that liberty interest can “be taken away only if the government’s procedure for doing so accorded with due process.”); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (“Just as people on preparole, parole, and probation status have a liberty interest, so too does Ortega have a liberty interest in remaining out of custody on bond.”); *see also Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025); *J.E.H.G. v. Chesnut*, 2025 WL 3523108, at *10 (E.D. Cal. Dec. 9, 2025); *Gamez Lira v. Noem*, 2025 WL 2581710, at *3 (D.N.M. Sept. 5, 2025).

As with the prior argument, Respondents do not engage with any of these cases, instead claiming that Mr. Garcia’s due process rights are less because he is a noncitizen. Resp. 7-8. Respondents insist that the additional monitoring conditions are necessary in case Mr. Garcia “becomes subject to a final order of removal, if he attempts to abscond, or if ICE determines that returning him to custody is otherwise justified.” Resp. 8. But Respondents fail to acknowledge that such a determination is within ICE’s purview at the initial custody determination, and that an

no weight to Respondents’ reliance on Mr. Garcia’s alleged violation the terms of the ultra vires conditions.

immigration judge gets to weigh in on those issues, as well. Here, the immigration judge found that Mr. Garcia is neither a flight risk nor a danger to the community and that a monetary bond was sufficient to guarantee his appearance at his immigration court hearings and against any risk of absconding. ECF No. 1-1. Moreover, USCIS found him prima facie eligible for relief from removal. ECF No. 1-6. Mr. Garcia has a protected liberty interest in remaining free from detention, particularly while pursuing his prima facie approvable application to adjust status, and Respondents' re-detention violates that due process right. *J.E.H.G.*, 2025 WL 3523108, at *10; *Llanes Tellez*, 2025 WL 3677937, at *5.

C. ICE violated Mr. Garcia's procedural due process rights by imposing additional conditions.

ICE's actions also violated Mr. Garcia's procedural due process rights by imposing additional conditions outside the authority of the immigration judge's bond order. *Cardenas v. Almodovar*, 2025 WL 3215573, at *3 (S.D.N.Y. Nov. 18, 2025) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976)). Such a procedural due process challenge is governed by a three-factor balancing test weighing: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, or additional or substitute procedural safeguards"; and (3) "the Government's interest." *Mathews*, 424 U.S. at 335. As established, Mr. Garcia has a Constitutionally protected interest in his release from custody, particularly after an immigration judge specifically found that he is neither a flight risk nor a danger to the community. ECF No. 1-1. The risk of erroneous deprivation of this right through continued detention at ICE's insistence despite the immigration judge's order is high, and ICE's unlawful actions in this case ignore the procedural safeguards that are in place for custody determinations. Finally, the government can identify no interest, as there

is no indication that Mr. Garcia is a flight risk or a danger to the community. While Respondents have an interest in Mr. Garcia appearing before his removal proceedings, the immigration judge's grant of bond was sufficient consideration of that interest. Moreover, detention serves no purpose at this time when USCIS has indicated that Mr. Garcia is prima facie eligible for relief but that his application will not be processed until at least May 2026. *See* Exhibit 2. Weighed against the "staggering" "costs to the public of immigration detention[.]" *J.E.H.G.*, 2025 WL 3523108, at *12, there is no justifiable reason to detain Mr. Garcia when he is neither a flight risk nor a danger.

In addressing this claim, Respondents argue that *Mathews* is not applicable because the Supreme Court has not applied it in this setting. Resp. 8-9. While the Supreme Court has not yet been presented with the issue raised in this case, courts in this circuit regularly apply the *Mathews* balancing test when determining what process is due for continuing detention. *See, e.g., L.G.*, 744 F. Supp. 3d at 1181 (citing *Marin v. King*, 720 F. App'x 923, 940 (10th Cir. 2018); *J.B. v. Washington Co.*, 127 F.3d 919, 924 (10th Cir. 1997)); *Garcia Cortes v. Noem*, 2025 WL 2652880, at *4 (D. Colo. Sept. 16, 2025). Moreover, each of the cases Respondents rely upon involve specific populations of nonimmigrants that Congress has specifically identified as subject to at least a period of mandatory detention. *See Demore v. Kim*, 538 U.S. 510 (2003) (addressing noncitizens with certain criminal convictions); *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020) (addressing custody of individuals at the border who are subject to expedited removal); *Zadvydas v. Davis*, 533 U.S. 678 (2001) (addressing post-removal order custody). Here, this Court has already determined that Mr. Garcia is subject to permissive detention under 8 U.S.C. § 1226(a). *Garcia Cortes*, 2025 WL 2652880, at *3. Indeed, in so finding, the Court already distinguished *Thuraissigiam* from Mr. Garcia's case, and applied the *Mathews* factors. *Id.* at *4. It should apply that framework here, as well.

Notably, Respondents' only procedural due process defense is that Mr. Garcia can "appeal" the detention decision to the immigration judge. Resp. 9. But, as discussed above, that is not the procedure provided for Mr. Garcia's circumstances. Mr. Garcia already obtained immigration judge custody review, and the immigration judge determined that release was warranted solely on payment of a (high) monetary bond. ECF Nos. 1-1, 1-7. As discussed above, if ICE disagreed with the immigration judge's decision, *it* should have appealed that decision to the Board of Immigration Appeals. Or if ICE concluded that Mr. Garcia had violated the terms of the immigration judge's order, it should have issued a notice for Mr. Garcia's bond obligor, as required by the immigration bond. *See* ECF No. 1-7. But ICE cannot impose additional conditions *ultra vires* to the immigration judge's order and unilaterally detain him without providing him any notice alleging non-compliance, and then place the burden back on Mr. Garcia to start over and justify his release without any due process along the way. Indeed, ICE did not provide Mr. Garcia with a Notice of Custody Determination until *after* he filed this lawsuit, and closer to a week after he was detained without notice or opportunity to respond. *See* ECF No. 11-2. Such delayed "notice" does not comply with principles of notice and an opportunity to respond prior to being detained. Accordingly, because Respondents have not demonstrated that Mr. Garcia received the process he was due, and for the reasons discussed in the petition, ECF No. 1 at ¶¶ 74-78, the Court should determine that ICE violated Mr. Garcia's procedural due process rights by imposing additional conditions and then placing him in detention for allegedly violating those conditions without notice of the alleged violations prior to detention. Such a violation can only be remedied at this point by an order requiring release and compliance with the immigration judge's order and regulations. *Batz Barreno*, 2026 WL 120253, at *3.

II. The Court should reject Respondents' procedural arguments.

Not only should the Court determine that ICE's actions violated the law and Mr. Garcia's constitutional rights, but the Court should conclude that Mr. Garcia did not procedurally default in bringing this petition as Respondents submit. First, there is no administrative exhaustion required that would preclude the Court's consideration of this petition. In support of its position, Respondents cite cases that each involve explicit exhaustion requirements, unlike here. *See Garza v. Davis*, 596 F.3d 1198, 1204 (10th Cir. 2010) (discussing the "BOP regulations requir[ing] a prisoner to attempt informal resolution of a complaint, and, if that fails, to submit a formal request for an administrative remedy to the institution."); *Santos-Zacaria v. Garland*, 598 U.S. 411, 418 (2023) (discussing 8 U.S.C. § 1252(d)(1), which requires administrative exhaustion of all administrative remedies for a court to consider an issue in a petition for review). Respondents also cite two cases involving immigration habeas petitions, but one case was actually a challenge to an un-appealed deportation order that was brought in habeas prior to the REAL ID Act, *see Soberanes v. Comfort*, 388 F.3d 1305, 1309 (10th Cir. 2004), and the other involved a statement about exhausting a challenge to a removal order but the court in that case did not actually dismiss the habeas petition for a failure to exhaust, *Reyes v. Lynch*, 2025 WL 5081597, at *6 (D. Colo. Aug. 28, 2015). Thus, Respondents have failed to establish that there is an exhaustion requirement that could or should apply here. Rather, for cases like this one, which challenge the constitutionality of a noncitizen's detention, this Court retains discretion whether to require exhaustion. *See L.G.*, 744 F. Supp. 3d at 1181-82. The Court should not require exhaustion here.

Notably, while there is an administrative appeal process to address disagreement with an immigration judge's custody decision, there is no regulatory procedure for exhaustion of *additional* conditions set by ICE after an immigration judge's custody order was rendered. Moreover, because Respondents only provided a custody determination for their current detention *after* receiving

notice of this lawsuit, there was no way to request a custody redetermination before the immigration judge prior to bringing this lawsuit when ICE did not actually complete its “initial” custody determination until after Mr. Garcia filed this petition.⁶ See ECF No. 11-2. Notwithstanding that it would be procedurally impossible to have exhausted the claim as Respondents submit, this Court should not require exhaustion here where Mr. Garcia raises a constitutional issue. See *Guitard v. U.S. Sec’y of the Navy*, 967 F.2d 737, 741 (2d Cir. 1992) (“Exhaustion of administrative remedies may not be required when . . . a plaintiff has raised a ‘substantial constitutional question.’”).

Second, Respondents make much of the fact that Mr. Garcia did not bring a claim challenging ICE’s additional conditions when they were imposed. Resp. 5. But there is no statute of limitations for when a noncitizen can bring a challenge claiming that their custody is not lawful. Moreover, while Respondents do not present any evidence about what they told Mr. Garcia about the ATD program or his obligations to comply, it is possible that Mr. Garcia did not know he could challenge those conditions or that they were unlawful. It is reasonable to consider that Mr. Garcia, who had been initially arrested when appearing lawfully to work as a contractor at the ICE Field Office building, would not want to cause a stir by questioning ICE’s authority.

Moreover, Respondents’ argument that Mr. Garcia should have sought amelioration of the conditions before the immigration judge and not this Court, Resp. 5, contradicts their own

⁶ To the extent Respondents argue that Mr. Garcia declined to seek immigration judge review of the January 2026 Notice of Custody Determination, Resp. 6, Mr. Garcia, through counsel, contests that assertion at this time. Upon information and belief, Mr. Garcia did not decline immigration judge review, he instead told the ICE officers that he wished to speak with his attorney before signing the document. On January 26, 2026, undersigned counsel requested a confidential attorney call with Mr. Garcia to confirm this information (which undersigned also relayed to counsel for Respondents) but the detention facility was unable to schedule that call for last week. Should counsel obtain any additional information about this allegation, she will submit a witness declaration.

arguments that ICE can determine whatever conditions it chooses on top of an immigration judge's imposition of a monetary bond. Resp. 11. This is the quintessential "heads I win, tails you lose" proposition; Respondents seek to both require Mr. Garcia to raise his challenge to reporting conditions before an immigration judge and to obtain a ruling that an immigration judge cannot issue a custody determination regarding reporting conditions upon release. The Court should reject such a proposition and conclude that there is no exhaustion requirement here.

CONCLUSION

For the foregoing reasons, as well as those raised in the petition and Mr. Garcia's motion for injunctive relief, Mr. Garcia requests the Court issue an order requiring his immediate release and enjoining Respondents from re-detaining him absent violation of the custody order set by the immigration judge or other changed circumstances, and also enjoining Respondents from imposing any conditions on Mr. Garcia's release other than those set by the immigration judge in the September 2025 order.

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Respectfully submitted,

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