

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

LIDIA ESCOBAR MAYA,

PETITIONER,

V.

KRISTI NOEM, ET AL,

RESPONDENTS.

NO. 3:26-CV-00161-KC

**Respondents' Response to the Court's Show Cause Order
Entered on March 11, 2026**

STATEMENT OF ISSUES

1. Whether imposition of an ankle monitor as a condition of release is authorized.
2. Whether imposition of an ankle monitor as a condition of release is reasonable.

Whether Petitioner is entitled to removal of an ankle monitor in a habeas proceeding.

On February 3, 2026, this Court granted, in part, Petitioner's Petition for Writ of Habeas Corpus and ordered Respondents to either provide Petitioner a bond hearing before an immigration judge (IJ) or to release Petitioner from custody, under reasonable conditions of supervision. ECF No. 7, Order at 3. Petitioner was released from custody on February 10. ECF No. 14, at ¶ 3. However, Petitioner contends in her motion to remove ankle monitor that Respondents have violated the Court's Order of February 3, 2026, because an ankle monitor was imposed as a condition of Petitioner's release, and that such condition is unreasonable. *Id.* at ¶¶ 7-9. On March 11, 2026, this Court issued a Show Cause Order requiring the Respondents to explain what authority permits the imposition of an ankle monitor, the reasonableness of an ankle monitor as a condition of release, and the Court's authority to order removal of the ankle monitor in this habeas proceeding. ECF No. 15, at 2.

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. 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 "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.* at §§ 236.1(d)(1); 1236.1(d)(1). Thereafter, application for modification of bond or release may be

made only to DHS. *Id.* at §§ 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 to 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. 8 C.F.R. §§ 236.1(d)(1); 1236.1(d)(1); *Matter of Chew*, 18 I&N Dec. 262 (BIA 1962).

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 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 in immigration court during removal proceedings.

CONCLUSION

Petitioner does not properly allege a claim that ICE is unlawfully restricting her liberty in violation of the Immigration and Nationality Act (“INA”), or the United States Constitution. In fact, Petitioner neglects to even acknowledge that Petitioner is still in immigration removal proceedings, which generally subjects the Petitioner 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 this Petitioner.

Thus, there is authority for the imposition of the ankle monitor, and the imposition is reasonable as a condition of release. Consequently, the Court should not order removal of the ankle monitor in this habeas proceeding. Respondents, therefore, respectfully request that Petitioner’s motion to remove the ankle monitor be denied.

Dated: March 18, 2026

Respectfully submitted,

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