

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION**

CARLOS GABRIEL MARTINEZ SANTANDER,
Petitioner,

v.

Case No. 2:26-CV-164-KCD-NPM

WARDEN MATTHEW MORDANT, *et al.*,
Respondents.

**PETITIONER'S REPLY IN OPPOSITION TO
RESPONDENTS' MOTION TO DISMISS**

Respondents' Motion to Dismiss (Doc. 8) should be denied. Respondents contend that posting a \$3,500 immigration bond mooted this petition. The argument fails under settled Eleventh Circuit law. The petition remains live for two independent reasons: (1) Petitioner remains "in custody" under 28 U.S.C. § 2241 because ICE has imposed continuous GPS monitoring, mandatory reporting, and other significant restraints not authorized by the Immigration Judge's bond order and (2) meaningful declaratory and injunctive relief remains available.

BACKGROUND

On January 17, 2026, ICE apprehended Petitioner. (Doc. 1 ¶22.) On February 10, 2026, Immigration Judge Jose Rivera-Ortiz granted a \$3,500 bond. (Doc. 8-1.) Petitioner posted that bond. (Doc. 8-2.) The IJ's bond order did not impose GPS monitoring or specify the additional supervisory restraints later imposed by ICE.

Following release, ICE imposed on Petitioner (1) continuous 24/7 GPS ankle monitoring and (2) mandatory in-person reporting. Petitioner cannot remove the GPS device, and remains under continuous government surveillance. ICE imposed these conditions unilaterally, without IJ authorization.

ARGUMENT

I. PETITIONER REMAINS “IN CUSTODY”

A. Governing Standard: The Eleventh Circuit Applies a Functional Test.

The “in custody” requirement is jurisdictional and must be satisfied at the time the petition is filed. *See Unger v. Moore*, 258 F.3d 1260, 1263 (11th Cir. 2001). A petitioner must be “in custody under the conviction or authority under attack at the time his petition is filed.” *Maleng v. Cook*, 490 U.S. 488, 490–91 (1989). The relevant inquiry is whether Petitioner is presently subject to significant restraints on liberty attributable to ICE authority.

The Eleventh Circuit applies a functional test to determine whether a petitioner remains “in custody” for purposes of § 2241. A person is in custody when subject to “present, significant restraints on liberty not shared by the public generally,” imposed by government authority, and sufficiently connected to the challenged governmental action.¹

Physical incarceration is not required. The Supreme Court held in *Jones* that a parole—free from prison but subject to government supervision, reporting requirements, geographic restrictions, and re-incarceration for noncompliance — remains in custody for habeas purposes.² Probationers are in custody for the same reasons.³ The inquiry before this Court is

¹ *Howard v. Warden*, 776 F.3d 772, 775 (11th Cir. 2015) (applying *Jones v. Cunningham*, 371 U.S. 236, 240–43 (1963)); *see also Hensley v. Mun. Court*, 411 U.S. 345, 351 (1973).

² *Jones*, 371 U.S. at 242–43.

³ *Hensley*, 411 U.S. at 351.

functional: what restraints does the government actually impose, and how significantly do they limit liberty. The Eleventh Circuit has likewise recognized that non-incarcerative supervision constitutes custody for habeas purposes. *See Van Zant v. Florida Parole Commission*, 104 F.3d 325, 327 (11th Cir. 1997) (holding that parole supervision satisfies the “in custody” requirement). Thus, physical incarceration is not required; functional restraints suffice.

B. ICE’s Post-Bond Conditions Satisfy the Custody Standard.

Under the *Jones* framework, Petitioner remains in custody.

1. *Degree of Movement Restriction.* Petitioner is subject to continuous GPS monitoring. His movements are electronically tracked at all times, and deviation from designated parameters may result in immediate re-detention. Such geographic and mobility restrictions constitute substantial restraints on liberty.

2. *Continuous Supervision.* GPS monitoring subjects Petitioner to uninterrupted government surveillance. Unlike ordinary reporting conditions, this supervision operates continuously rather than episodically. Courts have recognized that sustained electronic monitoring may qualify as custody where it functions as an ongoing restraint on liberty.

3. *Mandatory Reporting.* Petitioner must appear for in-person reporting. ICE directed Petitioner to appear in person at the Orlando office on February 25, 2026, and subsequently scheduled another in-person reporting date for March 1, 2027. Exh. 2. These mandatory appearances reflect ongoing supervision extending well beyond initial release. The mandatory appearances are affirmative obligations imposed by the government and are not conditions experienced by members of the general public. *See Jones*, 371 U.S. at 242 (parole supervision sufficient to constitute custody).

4. *Immediate Revocability.* ICE retains unilateral authority to re-detain Petitioner upon alleged noncompliance. The power of summary re-incarceration is a defining characteristic of custodial supervision under habeas jurisprudence.

The Supreme Court has further held that even a petitioner released on recognizance pending appeal remains “in custody” because he is subject to restraints and the possibility of future confinement. *Hensley*, 411 U.S. at 351–53. Like the petitioner in *Hensley*, Petitioner here is conditionally free but subject to immediate re-detention upon alleged noncompliance.

5. *Nexus to the Challenged Authority.* The same agency authority whose detention decision is challenged in this action now imposes the supervisory regime. The restraints arise directly from, and are legally intertwined with, the detention framework at issue.

6. *Duration.* The supervision is indefinite and continues throughout removal proceedings that may extend for months or years. The open-ended nature of the restraint further supports a finding of custody.

Unlike *Diaz v. State of Florida Fourth Judicial Circuit*, 683 F.3d 1261 (11th Cir. 2012), where the petitioner’s sentence had fully expired and no present restraint remained attributable to the challenged sovereign. Here, ICE continues to impose active supervisory restraints, including GPS monitoring and mandatory reporting. The restraint has not expired; it is ongoing.

Taken together, these conditions are functionally comparable to the parole and probation restraints long recognized as sufficient to satisfy habeas custody requirements. Federal courts addressing ICE’s Intensive Supervision Appearance Program (ISAP), including its GPS monitoring component, have likewise concluded that such supervision may satisfy § 2241’s custody requirement. Because Petitioner remains subject to significant restraints on liberty and

the threat of immediate re-detention, he remains “in custody” within the meaning of § 2241. Accordingly, this Court retains habeas jurisdiction.

II. MEANINGFUL RELIEF REMAINS AVAILABLE.

Mootness exists only where “it is impossible for a court to grant any effectual relief whatever.” *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1336 (11th Cir. 2001) *See also Church of Scientology of California v. United States*, 506 U.S. 9, 12 (1992) (a case is not moot so long as the court can fashion any meaningful relief). Said demanding standard is not satisfied here because meaningful relief remains available.

1. *Declaratory Relief.* The Court may declare that Petitioner’s initial detention was unlawful and or that ICE lacks authority to impose GPS monitoring conditions beyond those authorized by the Immigration Judge’s bond order. Such relief would directly alter the legal authority governing Petitioner’s present supervision.

2. *Injunctive Relief.* Petitioner remains subject to GPS monitoring and mandatory reporting requirements. An order modifying or vacating those conditions would directly redress his ongoing restraints. Relief directed at current supervision is prospective in nature and therefore effectual under Article III.

3. *Habeas Relief From Custodial Supervision.* Habeas jurisdiction extends to significant restraints on liberty, not merely physical incarceration. Because Petitioner remains subject to government supervision and the threat of immediate re-detention, an order terminating or narrowing those restraints constitutes cognizable habeas relief independent of release from a detention facility.

Respondents contend that the case is moot because Petitioner sought “a low bond or reasonable conditions of supervision” and has since been released. (Doc. 8 at 4.) The Petition expressly sought unconditional release and declaratory relief. (Doc. 1 at 20.) Moreover, continued GPS monitoring and reporting requirements does not resolve the legal questions presented herein— namely, the lawfulness of the initial detention and ICE’s authority to impose supervisory conditions beyond the Immigration Judge’s order.

Moreover, voluntary cessation of challenged conduct does not moot a case unless it is “absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.” *Friends of the Earth, Inc. v. Laidlaw Environmental Services*, 528 U.S. 167, 189 (2000). ICE’s decision to release Petitioner on bond—while continuing significant restraints—does not eliminate the controversy. This Court has not adjudicated the legality of the detention, and has not determined the scope of ICE’s supervisory authority. Nor has Respondents met their heavy burden to show that the challenged detention practices or supervisory conditions cannot recur. Because those issues remain unresolved and because the Court can still grant relief that alters Petitioner’s present legal restraints, the case is not moot.

CONCLUSION

Posting bond subject to continuous GPS monitoring and mandatory reporting does not terminate custody within the meaning of § 2241. Petitioner remains subject to significant restraints on liberty and the threat of immediate re-detention. Because meaningful relief remains available, the case is not moot. The Court should deny the Motion to Dismiss and proceed to adjudicate the merits of the habeas petition.

Respondents’ Motion to Dismiss (Doc. 8) should be DENIED.

Respectfully submitted,

s/ Laura S. Hernandez

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CERTIFICATE OF SERVICE

I certify that on February 27, 2026, I electronically filed the foregoing with the Clerk of Court using CM/ECF, which will serve all counsel of record.

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