CRAIG H. MISSAKIAN (CABN 125202)
United States Attorney

PAMELA T. JOHANN (CABN 145558)
Chief, Civil Division

NAG YOUNG CHU (NYBN 5925821)
Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495
Telephone: (415) 436-7478
FAX: (415) 436-7234
Jeremy.Chu@usdoj.gov

Attorneys for Defendant

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

M.A.M.G. and L.H.M.F., Petitioner, v. SERGIO ALBARRAN *et al.*, Respondents.	Case No.: 3:26-cv-06143-RFL **RESPONDENTS' RETURN TO PETITION FOR WRIT OF HABEAS CORPUS** Hon. Rita F. Lin

INTRODUCTION

Petitioners are noncitizens who have violated their conditions for release multiple times. As a result, they have not met their burden of providing a good reason that the ankle monitors placed on them by Immigration and Customs Enforcement ("ICE") are unconstitutional. Contrary to the implications in Petitioners' petition for writ of habeas corpus (ECF No. 1, the "Petition"), they have not complied with all of their immigration requirements. Hence, ICE's decision to impose ankle monitors was a lawful and discretionary supervision measure under 8 U.S.C. § 1226(a).

Further, the alleged conditions do not amount to unlawful custody and therefore cannot be challenged through habeas corpus, which is limited to contesting the fact or duration of detention rather than conditions of supervision. Instead, challenges to monitoring or supervision terms must be pursued through administrative channels or via a civil rights action, not a habeas petition, rendering the Petitioners' current claims improper for judicial review.

I. FACTUAL BACKGROUND

Petitioners are individuals with pending claims for asylum who have a history of violating their terms of release or missing their appointments with ICE.

Petitioner M.A.M.G. has a pending application for asylum, withholding of removal, and protection under the Convention Against Torture. Petition ¶ 12. After entering the United States without authorization, Petitioner M.A.M.G. was processed for a Warrant of Arrest and Notice to appear pursuant to 8 U.S.C. §1182 and was enrolled in the Alternative to Detention, Intensive Supervision Appearance Program (the "ATD-ISAP"), which imposes various conditions for release. First Angelo D. Velastegui Declaration ("First Velastegui Decl.") ¶¶ 8-9. On April 25, 2024, ICE contacted Petitioner M.A.M.G. to check her status, because she had not reported for some time. *Id.* ¶ 10. Afterwards, Petitioner missed three separate appointments with ICE, violating the conditions of her release under the ATD-ISAP. *Id.* ¶¶ 12, 14, 18. As a result of the multiple violations of her conditions, the Petitioner was placed on GPS monitoring. *Id.* ¶ 20.

Petitioner L.H.M.F. has a pending petition for review challenging the denial of her application for asylum, withholding of removal, and protection under the Convention Against Torture before the Ninth Circuit Court of Appeals, which has issued a temporary stay of removal. Petition ¶ 13. After entering the

United States illegally, Petitioner L.H.M.F. was processed for expedited removal and subsequently enrolled in the ATD-ISAP. Second Angelo D. Velastegui Declaration ("Second Velastegui Decl.") ¶¶ 7-9. On December 4, 2024, the Petitioner missed her appointment with ICE, as required under the ATD-ISAP. *Id.* ¶ 10. On February 28, 2025, Petitioner L.H.M.F. was ordered to be removed from the United States by an immigration judge; she appealed that decision with the Board of Immigration Appeals (the "BIA"), which was dismissed on August 19, 2025. *Id.* ¶¶ 11-12. The Ninth Circuit Court of Appeals has issued a temporary stay of removal for Petitioner L.H.M.F. Petition ¶ 13. Still, Petitioner L.H.M.F. continued to miss her appointments on February 20, 2026, and March 10, 2026. Second Velastegui Decl. ¶¶ 14-15. As a result, Petitioner L.H.M.F.—like Petitioner M.A.M.G.—was placed with an ankle monitor to ensure that the Petitioner properly appears for any future appointments or proceedings and that the agency can locate the Petitioners if they fail to do so.

II. LEGAL STANDARDS

Congress enacted a multi-layered statute that provides for the civil detention of aliens pending removal. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008). Where an individual falls within this scheme affects whether his detention is discretionary or mandatory, as well as the kind of review process available. *Id.* at 1057. ICE's authority to detain noncitizens while removal proceedings are pending is generally governed by 8 U.S.C. § 1226. *Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018).

Section 1226(a) provides for the arrest and detention of these aliens "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), the Department of Homeland Security may, in its discretion, detain an alien during his removal proceedings, release him on bond, or release him on conditional parole. By regulation, immigration officers can release an alien if he demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). An alien can also request a custody redetermination (i.e., a bond hearing) by an immigration judge at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. At a custody redetermination, "the immigration judge is authorized to exercise the authority in [8 U.S.C. § 1226] . . . 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. §§ 236.1(d)(1), 1236.1(d)(1). Immigration judges have broad

discretion in deciding whether to release an alien on bond. *Matter of Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for immigration judges to consider).

A noncitizen who has been released from custody may request an immigration judge to ameliorate the terms of their release, but it must be filed within seven days of release from detention. *See* 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1); *see also Matter of Garcia-Garcia*, 25 I. & N. Dec. 93 (BIA 2009). After seven days, a noncitizen can only seek a change in their release conditions with ICE. 8 C.F.R. §§ 236.1(d)(2), 1236.1(d)(2). If ICE does not choose to change the noncitizens supervision conditions, the noncitizen can appeal that decision to the "BIA, but must do so within ten days of the decision. 8 C.F.R. §§ 236.1(d)(3), 1236.1(d)(3).

III. ARGUMENTS

A. The Government Has Explicit Statutory Authority to Set Conditions on Petitioners' Release from Custody

"A habeas petition challenges the custody of an individual, not their release conditions" and "does not empower courts to manage ICE supervision programs." *Ba v. Lyons*, No. 3:25-cv-2871, 2026 WL 218936, at *1 (S.D. Cal. Jan. 27, 2026); *see also Munoz v. Smith*, 17 F.4th 1237 (9th Cir. 2021) (denying a habeas petition where the petitioner argued that his conditions—including sex offender registration, fees, and ankle monitoring—amounted to custody).

The Due Process Clause does not prohibit Petitioner's detention. *See Arteaga-Martinez*, 596 U.S. at 583 (declining to decide whether a bond hearing is constitutionally required if detention is prolonged under § 1231(a)(6)). Although the Fifth Amendment entitles aliens to due process of law, the Ninth Circuit interprets the Due Process Clause "consistent with longstanding precedent recognizing that the process due aliens must account for the government's countervailing interests in immigration enforcement – considerations that do not apply to U.S. citizens." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1205-06 (9th Cir. 2022). It is well-established that "Congress may make rules as to aliens that would be unacceptable if applied to citizens." *Demore v. Kim*, 538 U.S. 510, 522 (2003). This is true because "any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government, which are core sovereign powers." *Id.*

Here, while Petitioners claim that they do not pose a "danger or flight risk" and were restricted "without justification," Petitioners themselves acknowledge that ICE placed the ankle monitors after Petitioners failed to appear during their previous appointments. Petition ¶¶ 35, 42, 47. In fact, both Petitioners violated the requirements for their release on multiple occasions. *See* First Velastegui Decl. ¶¶ 12, 14, 18; *see also* Second Velastegui Decl. ¶¶ 14-15. Moreover, ICE's conditional release of Petitioners, who have pending removal proceedings, is discretionary. *See* 8 U.S.C. § 1226(a)(2). And removable noncitizens, like Petitioners, may be detained throughout removal proceedings without offending due process. *See Demore*, 538 U.S. at 531.

Further, Petitioner's case is analogous to the case in *Ba.* In *Ba*, an immigration judge ordered the petitioner's release on bond, and upon release, ICE imposed new conditions including an ankle monitor and frequent in person office visits. *Ba*, 2026 WL 218936 at *1. The petitioner challenged these conditions of release through habeas, arguing, like Petitioner here, that the new conditions amount to custody. *Id.* However, the Court found that even though the petitioner had "new restrictive conditions imposed on him, he is not in custody" and denied his petition as moot, reiterating the holding in *Munoz* that to "meet the custodial threshold, conditions must 'severely and immediately restrain' physical liberty." *Id.* at 2 (quoting *Munoz*, 17 F.4th at 1239). As in *Ba*, the proper avenue for Petitioners to seek relief is through an appeal to the BIA. *See Prieto–Romero v. Clark*, 534 F.3d 1053, 1058 (9th Cir. 2008) ("The alien may appeal the [Immigration Judge]'s bond decision to the BIA, *see* 8 C.F.R. § 236.1(d)(3), but discretionary decisions granting or denying bond are not subject to judicial review, *see* § 1226(e)."). Therefore, the detention of Petitioners, who have violated the condition of their release, is constitutional.

B. Petitioners' Conditions of Confinement Should Not be Brought in a Habeas Petition

To the extent Petitioners seek recovery through this writ of habeas corpus, the Court lacks jurisdiction to consider Petitioners' claims regarding their condition of confinement. Generally, challenges to the legality or duration of confinement are pursued in a habeas corpus proceeding, *see Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979), while challenges to conditions of confinement are pursued in a civil rights action, *see Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991). The Supreme Court has stated that "the essence of habeas corpus is an attack by a person in custody upon the legality of that custody[.]" *See Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). In contrast, a detainee raising

constitutional claims challenging the conditions or circumstances of confinement should bring a civil rights action. *See Nelson v. Campbell*, 541 U.S. 637, 643 (2004); *Hill v. McDonough*, 547 U.S. 573, 579 (2006) ("[a]n inmate's challenge to the circumstances of his confinement" must be brought through a civil rights action). The Ninth Circuit has "long held that prisoners may not challenge mere conditions of confinement in habeas corpus." *Nettles v. Grounds*, 830 F.3d 922, 933 (9th Cir. 2016) (en banc) (citing *Crawford*, 599 F.2d at 891-92). Instead, the appropriate remedy for a federal prisoner to raise a challenge to his conditions of confinement lies in a civil rights action under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). *See Tucker v. Carlson*, 925 F.2d 330, 332 (9th Cir. 1991).

Petitioners here ask the Court to "immediately remove Petitioners' ankle monitors." Petition at 13. However, such claims are not cognizable via a 28 U.S.C. § 2241 habeas petition because they are challenges to Petitioners' conditions of confinement, not to the fact or duration of their confinement. *See Nelson*, 541 U.S. at 643. Thus, "it appears from the application that the applicant or person detained is not entitled" to issuance of a writ of habeas corpus. 28 U.S.C. § 2243.

IV. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court dismiss Petitioners' petition for writ of habeas corpus.

Date: July 7, 2026

Respectfully submitted,

CRAIG MISSAKIAN
United States Attorney

By: */s/ Nag Young Chu*
NAG YOUNG CHU
Assistant United States Attorney

Attorneys for the Respondents