JORDAN WEINER (SBN 356297)
Jordan@LRCL.org
La Raza Centro Legal
474 Valencia St., Ste 295
San Francisco, CA 94103
Telephone: (415) 553-3435

Attorney for Petitioner

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

M.A.M.G and L.H.M.F,

Petitioner,

v.

SERGIO ALBARRAN et al.,

Respondents.

CASE No. 3:26-cv-06143-RFL

PETITIONERS' TRAVERSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

In their return, Respondents do not mention *Harrington v. Albarran*, the leading case in this district on the issues presented here. *See* No. 26-cv-01889-JST, 2026 WL 800113, at *3 (N.D. Cal. Mar. 23, 2026). But they do recycle arguments that the Court in *Harrington* has already rejected, particularly that Petitioners are not in custody for habeas purposes. Respondents are also wrong that ICE has discretion to re-detain individuals who have pending removal proceedings. Return at 4 (citing 8 U.S.C. § 1226(a)(2)). Numerous district courts have recognized that ICE's conditional release of noncitizens creates a liberty interest that the government cannot strip away without adequate due process. Here, ICE has unilaterally subjected Petitioners, who have committed no crimes and are peacefully living in the United States awaiting the outcome of their asylum hearings, to inhumane release conditions, in violation of the Due Process Clause. Accordingly, Petitioners ask the Court to release Petitioners from all custody measures, including removing their ankle monitors and relieving them from ISAP monitoring.[1]

ARGUMENT

I. Petitioners are "in custody" for the purposes of 28 U.S.C. § 2241.

A court in this district recently held that conditions such as "attending regularly scheduled in-person check-ins and 'reporting via the SmartLINK application's facial recognition technology as well as a GPS ankle monitor'" constitute custody for habeas purposes. *See Ayala v. Albarran*, No. 5:26-cv-03092-BLF, 2026 U.S. Dist. LEXIS 95883, at *10 (N.D. Cal. April 30, 2026). Here, Petitioners' conditions are nearly identical to those conditions. Petitioners have been required to regularly report to ICE in-person and via an ATD-ISAP application for years. *See* Declaration of

[1] Petitioners acknowledge that their prayer for relief in the Petition only asks the Court to remove Petitioners' ankle monitors. *See* Petition for Writ of Habeas Corpus (Pet.), ECF 1 at 12. But Petitioners' request for the Court to order ICE to relieve Petitioners' from ISAP monitoring is encompassed in their request for the Court to "[g]rant such further relief as the Court deems just and proper." Pet. at 12.

Angelo D. Velastegui, ECF 10-1, ¶¶ 9–19; Declaration of Angelo D. Velastegui, ECF 10-2, ¶¶ 9–16; Second Declaration of M.A.M.G. ("Second M.A.M.G. Decl."), ¶ 7; Second Declaration of L.H.M.F. ("Second L.H.M.F. Decl."), ¶ 7. When placing the ankle monitors on Petitioners, ICE told them that they could not travel outside of Northern California. Second M.A.M.G. Decl., ¶ 8; Second L.H.M.F. Decl., ¶ 5. These are "restraints not shared by the public generally." *Harrington*, 2026 WL 800113, at *10 (quoting *Jones v. Cunningham*, 371 U.S. 236, 240 (1963)). As such, they amount to custody. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 968 (N.D. Cal. 2019) ("A person need not be physically imprisoned to be in custody under [§ 2241].").

In claiming Petitioners' conditions do not amount to custody, Respondents rely on arguments that the court in *Harrington* has already rejected. Respondents argue this case is analogous to *Ba*, an out-of-district decision relying on *Munoz v. Smith* to find the petitioner's restrictive conditions did not constitute custody.[2] Return at 4, (citing *Ba v. Lyons*, No. 3:25-cv-2871, 2026 U.S. Dist. LEXIS 16011, at *4 (S.D. Cal. Jan. 27, 2026)). But the court in *Harrington* explicitly stated it "[was] not persuaded by *Ba's* reasoning." No. 26-cv-01889-JST, 2026 at *12. In *Munoz v. Smith*, the Ninth Circuit rejected the argument that the petitioner's release conditions, including sex offender registration, fees, and ankle monitoring, amounted to custody. *See* 17 F.4th 1237, 1246 (9th Cir. 2021). The court in *Harrington* explained the release conditions in *Munoz* "could be regarded as collateral consequences of conviction," but the conditions in *Harrington* were "unrelated to any conviction." No. 26-cv-01889-JST, 2026 at *13 (citing 17 F.4th at 1246). The petitioner's conditions in *Harrington* also required him to "appear at regular supervision check-ins"

[2] Respondents also mischaracterize this claim as challenging Petitioners' conditions of confinement. Return at 4. However, Petitioners' release conditions "significantly confine and restrain [their] freedom." *See Ayala*, 2026 U.S. Dist. LEXIS 95883, at *9. Petitioners are thus challenging their custody and not conditions of confinement. *See id.*

and did not let him "travel outside of a narrow radius in Northern California," thereby significantly restraining his liberty. *See id.* at *13.

Here, Petitioners' conditions are identical to the petitioners' conditions in *Harrington* and *Ayala*. Like those Petitioners, Petitioners here must wear ankle monitors that confine them to Northern California, and they must check in regularly with ICE. An increasing number of district courts are distinguishing Petitioners' conditions from the ones in *Munoz* and finding they amount to custody for habeas purposes. *See Harrington,* 2026 U.S. Dist. LEXIS 95883, at *13; *Abdeltawab v. Armant*, No. EDCV 26-01520-MWF (DTB), 2026 U.S. Dist. LEXIS 134066 (C.D. Cal. June 4, 2026); *Kegel v. Rose*, No. 26-1213, 2026 U.S. Dist. LEXIS 82736, at *13 (E.D. Pa. Apr. 15, 2026) (same); *Claros v. Sage*, No. 3:26-CV-00204, 2026 U.S. Dist. LEXIS 148000, at *5 (M.D. Pa. July 6, 2026) (same); *Jimenez v. Barnett*, No. 3:26-0327, 2026 U.S. Dist. LEXIS 110667 (S.D. W. Va. May 19, 2026) (same). The Court should do the same here.

II. The conditions serve no justifiable purpose.

The government does not attempt to argue that the conditions are necessary to address any flight risk concerns. Rather, the government claims the conditions are justified because Petitioners "violated the requirements for their release on multiple occasions." Return at 4.

As an initial matter, Respondents present no evidence of what the release conditions were that Petitioners purportedly violated. *See Bernal v. Albarran*, No. 25-cv-09772-RS, 2025 U.S. Dist. LEXIS 232122, at *16 (N.D. Cal. Nov. 25, 2025) (noting the petitioner's release documents did not contain the requirements the petitioner allegedly violated). The two skeletal declarations Respondents submitted, both from a single ICE officer, are not backed up with any documentation showing what release conditions Petitioners were subject to. Even if Petitioners were subject to the release conditions they purportedly violated, they were never told that the placement of an

ankle monitor would be the consequence of failing to submit a photo on time, which raises due process concerns. *See* Second M.A.M.G. Decl., ¶ 9; Second L.H.M.F. Decl., ¶ 6.

Respondents argue that "ICE's decision to impose ankle monitors was a lawful and discretionary supervision measure under 8 U.S.C. § 1226(a)." Return at 1. But "the government's discretion to incarcerate non-citizens is always constrained by the requirements of due process." *See Hernandez v. Sessions*, 872 F.3d 976, 981, 994–95 (9th Cir. 2017). This is especially true where, as here, the conditions "appear[] excessive in relation to its regulatory purpose." *See United States v. Torres*, 995 F.3d 695, 708 (9th Cir. 2021); *Bell v. Wolfish*, 441 U.S. 520, 561 (1979) ("[T]he determination whether these restrictions and practices constitute punishment in the constitutional sense depends on whether they are rationally related to a legitimate nonpunitive governmental purpose and whether they appear excessive in relation to that purpose.").

To the extent that Petitioners did violate any conditions of release, they were *de minimis*. *See Bernal*, 2025 U.S. Dist. LEXIS 232122, at *18 ("Though the[] [government] point[s] to minor, technical violations, they have not explained how those violations make Bernal dangerous or a flight risk…[t]hat is probably because, of course, they do not."). M.A.M.G. and L.H.M.F. have both overwhelmingly complied with everything ICE has asked them to do. *See generally* Second M.A.M.G. Decl.; Second L.H.M.F. Decl. There is no credible argument that the few times they faced logistical hurdles in submitting the photos to an application on time, which they remedied as soon as they could, merits the physical pain and restrictions on travel that the ankle monitors subject them to. *See Torres*, 995 F.3d at 708. The conditions are therefore "excessive in relation to [their] non-punitive purpose." *See Jones v. Blanas*, 393 F.3d at 934.

III. Petitioners' conditions violate procedural due process.

Due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the individual's constitutionally

protected interest in avoiding physical restraint." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (internal quotation marks omitted). "The fundamental requirement of [procedural] due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (internal citation and quotation marks omitted). The Due Process Clause generally "requires some kind of a hearing before the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990).

Courts across this district and others within the jurisdiction of the Ninth Circuit have consistently held that if DHS has released a noncitizen from immigration custody, the noncitizen has a protected liberty interest in remaining out of immigration custody. *See, e.g., Roa v. Albarran*, No. 25-cv-07802-RS, 2025 WL 2732923, at *5 (N.D. Cal. Sept. 25, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-cv-06248-BLF, 2025 WL 2419263, at *6 (N.D. Cal. Aug. 21, 2025).

In determining what procedures are appropriate to protect a petitioner's liberty interest, courts across this district and others have applied the three-factor test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). *See, e.g., J.A.M.C. v. Albarran*, No. 25-CV-09649-WHO, 2025 WL 3268816, at *4 (N.D. Cal. Nov. 24, 2025); *Pinchi v. Noem, No. 5:25-CV-05632-PCP, 2025 WL 2084921*.

Further, courts in this district and others have applied this analysis to petitioners who were released from immigration detention and then placed back "in custody" through custodial restrictions such as the imposition of an ankle monitor and other ATD reporting conditions. *See Harrington*, 2026 WL 800113, at *5-7; A.B.D., 2026 WL 178306, at *9-11; *Khabazha v. United States Immigr. & Customs Enf't*, No. 25-CV-5279, 2025 WL 3281514, at *5 (S.D.N.Y. Nov. 25, 2025); *Arcos v. Semaia*, No. 2:26-cv-01975-AYP, 2026 WL 1771048, at *5 (C.D. Cal. June 17, 2026); *Palacio v. Hermosillo*, No. C25-1983-RSM-MLP, 2025 WL 4033287, at *2 (W.D. Wash. Dec. 22, 2025), report and recommendation adopted by *Quiva Palacio v. Wamsley*, 2026 WL 84930 (Jan. 12, 2026).

Under the *Mathews v. Eldridge* framework, courts analyzing a procedural due process claim consider (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, of additional or substitute procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 335.

Under the first *Mathews* factor, Petitioner's private interests are "undeniably substantial." *Harrington*, 2026 WL 800113, at *6. Freedom from government custody "lies at the heart of the liberty [the Due Process] Clause protects." *Id.* (quoting *Zadvydas*, 533 U.S. at 690). Courts have emphasized "the increased salience of the liberty interest" of people like Petitioners who have been living peacefully in the United States for years while awaiting the result of their asylum applications, "forming all of the emotional, social, and professional attachments that come with a free life." *Id.* (citing *J.A.M.C. v. Albarran*, No. 25-CV-09649-WHO, 2025 WL 3268816, at *4 (N.D. Cal. Nov. 24, 2025); *Emilio E. M. v. Chestnut*, No. 1:25-CV-02054-SKO (HC), 2026 WL 395634, at *3 (E.D. Cal. Feb. 12, 2026)). Like in *Harrington*, Petitioners' liberty interest in remaining free from custody has been significantly diminished by the conditions, which cause them significant emotion distress and physical pain. *See* 2026 WL 800113, at *6; Declaration of M.A.M.G., ¶¶ 7–11, ECF 1-1; Declaration of L.H.M.F., ECF 1-2, ¶¶ 7–11. As the court in *A.B.D.* found, the first Mathews factor "strongly favors" Petitioner. 2026 WL 178306, at *9; *see also Khabazha*, 2025 WL 3281514, at *5 (finding the petitioner's private interest to be "strong").

The second *Mathews* factor also "strongly favors" Petitioner. *See A.B.D.*, 2026 WL 178306, at *9. As the court in *Harrington* found, "he risk of erroneous deprivation through the procedures used here is also great, because no procedures were used at all. See 2026 U.S. Dist. LEXIS 61204, at *16; *Khabazha*, 2025 WL 3281514, at *9 ("Respondents' ongoing restrictions of [the petitioner's] liberty, 'with no process at all, much less prior notice, no showing of changed

circumstances, or opportunity to respond, violates his due process rights.'"). As the court in *Harrington* stated, "The risk of erroneous deprivation becomes overwhelmingly high when immigration officers act with unrestrained discretion to detain noncitizens without an individualized showing of why detention is warranted or an effective process for noncitizens to challenge the exercise of such discretion." 2026 WL 800113, at *6 (quoting *Pichardo Medina v. Hermosilla*, No. 3:25-CV-02233-MC, 2025 WL 3712271, at *4 (D. Or. Dec. 22, 2025)). This is even more true where Petitioners were previously released from immigration custody based on determinations that Petitioners would not pose a danger to property or persons and is likely to appear for any future proceeding, *see* 8 C.F.R. § 236.1(c)(8), and there have been no material changes in circumstances that would indicate otherwise.

The third Mathews factor also strongly favors Petitioners. In *Harrington*, the court found that "[t]he effort and cost of an additional hearing before an [immigration judge] to consider the appropriateness of ankle monitoring and ISAP supervision is 'minimal.'" 2026 WL 800113, at *6 (citing *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1094 (E.D. Cal. 2025)). Further, "the administrative cost of holding such a hearing is offset by the high personnel and resource costs of the ankle monitoring and ISAP supervision, which an [immigration judge] may deem not to be necessary." *Id.* As the court in *A.B.D.* noted, "Respondents' 'intensive supervision' measures, which include 24/7 GPS ankle monitoring and unreasonably frequent ICE check-ins in person and by phone app, unnecessarily add to the costs to such programs." 2026 WL 178306, at *10.

Respondents argue "the process due aliens must account for the government's countervailing interests in immigration enforcement." Return at 3 (citing *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1205-06 (9th Cir. 2022)). But Respondents have not presented any individualized reason why the conditions are necessary to ensure Petitioners' compliance with any immigration laws. The government's interest is in ensuring appearance and public safety — not in restraint for its own sake.

Considering each of these factors, the courts in *Harrington* and *A.B.D.* determined that notice and a pre-deprivation hearing are required before imposing such custodial restrictions. See 2026 WL 800113, at *7–8; 2026 WL 178306, at *10. This is consistent with the holdings of hundreds of cases across this district and others which have held that where the government has released a noncitizen from immigration custody, the demands of due process require a pre-deprivation hearing before a noncitizen previously released from ICE custody is returned to custody. *See, e.g., Ortega v. Bonnar*, 415 F. Supp. 3d 963, 968-70 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3; *Jorge M. F. v. Wilkinson,* No. 21-CV-01434-JST, 2021 WL 783561, at *3 (N.D. Cal. Mar. 1, 2021).

Accordingly, the appropriate remedy for the procedural due process violation, as the courts in *Harrington*, *A.B.D.*, and *Khabazha* each concluded, is for the Court to enter an order requiring Respondents to release Petitioners from all custody measures, including removing Petitioners' ankle monitor and relieving Petitioners from ISAP monitoring. *See* 2026 WL 800113, at *8; 2026 WL 178306, at *13; 2025 WL 3281514, at *9; *see also Palacio*, 2025 WL 4033287, at *3 (finding that imposition of an ankle monitor and related conditions violated due process and ordering rescission of the newly imposed conditions); *Arcos*, 2026 WL 1771048, at *7 (same). Further, like the court in *Harrington*, this Court should also enter an order prohibiting Respondents from remanding Petitioners back to custody, including by imposing an ankle monitor or ISAP monitoring conditions, without notice and a hearing to determine whether a material change of circumstances justifies any renewed measures. *See* 2026 WL 800113, at *8. For such a hearing to comply with due process, the government must bear the burden of proof to demonstrate, by clear and convincing evidence, that the noncitizen poses a risk of flight or danger. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011), abrogated on other grounds by *Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Doe v. Becerra*, 704 F. Supp. 3d. 1006, 1019 n.8 (N.D. Cal 2023).

CONCLUSION

For the foregoing reasons, Petitioners respectfully request this Court grant their Petition for Writ of Habeas Corpus and order the requested relief.

Date: July 10, 2026

Respectfully Submitted,

/s/ Jordan Weiner
Jordan Weiner