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August 29, 2025

Via ECF

Honorable Pamela K. Chen
United States Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn New York 11201

Re: L.G.M. v. LaRocco, et al., No. 2:25-cv-02631-PKC

Dear Judge Chen:

Petitioner, L.G.M., in the above captioned Petition for a Writ of Habeas Corpus respectfully submits this letter in response to government Respondents' proposed bond conditions. *See* ECF 48; *see also*, August 28, 2025 Scheduling Order.

After applying Supreme Court and Second Circuit caselaw to Petitioner's due process claims challenging prolonged civil detention, this Court issued an order granting the writ of habeas corpus and ordering L.G.M.'s release from detention on bond. *See* ECF 30, 43. The Court ordered three bond conditions: home confinement, pro-social programs, and return to work. *See* ECF 43.

As to home confinement, both parties have agreed to a bond condition that requires L.G.M. to wear an Immigration and Customs Enforcement ("ICE") GPS monitoring device. *See* Pet. Proposed Bond Conditions, ECF 46 at 3 (agreeing to an ICE "GPS monitoring device, such as an ankle monitor, wrist-worn device or SmartLINK Mobile application"); Gov. Respondents' Proposed Bond Conditions, ECF 48 at 2 (proposing L.G.M. be "monitored through use of an ankle monitor and be enrolled in global positioning system ("GPS") monitoring."). Government Respondents have the ability to monitor the GPS device and can choose to do so as they deem appropriate in this case. *See* ECF 46-2, ICE ATD information (stating that the ATD monitoring program has been in place since 2004); ECF 46-5 at 3 –4, ICE ATD Handbook – ISAP Program, ("The GPS unit tracks the participant's location and movement history using satellite technology. At any time, the CS or ATD officer may send the participant a message (selected from a drop-down menu) via the GPS unit. GPS units may also be programmed to send a series of alerts for issues including, but not limited to, strap tampering, low battery, and the participant's entry into or exit from an 'inclusion' or 'exclusion' zone.")

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The main point of disagreement between the parties is the level of home confinement and the frequency of ICE monitoring. L.G.M. seeks to return to his home and to leave his unconstitutionally prolonged ICE detention as soon as possible. Therefore, L.G.M. is agreeable to many of the conditions proposed by government Respondents. L.G.M. consents to a bond condition for GPS monitoring as well as to government Respondents' proposed items 2(a), (b), (d), (f), (g), (i), and (j). *See* Doc 48.

However, L.G.M. objects to the government Respondents' proposal of complete home imprisonment. This Court is tasked with determining the appropriate alternatives to detention that will ensure a lack of danger to the community and prevent any flight risk. Requiring L.G.M. to "be restricted to his family's residence at all times" while also wearing a GPS monitoring device, attending bi-weekly ICE check-in's, and being present for unannounced random home contacts by ICE - as proposed by government Respondents' - amounts to punitive conditions and is not the least restrictive means necessary. *See Ozturk v. Trump*, 779 F. Supp. 3d 462, 492–93 (D. Vt.), amended sub nom. *Ozturk v. Hyde*, 136 F.4th 382 (2d Cir. 2025) ("The Supreme Court has reiterated that immigration detention is 'civil, not criminal, and we assume that they are nonpunitive in purpose and effect.'")(*citing Zadvydas*, 533 U.S. at 690, 121 S.Ct. 2491); *Mahdawi v. Trump*, 781 F. Supp. 3d 214, 232 (D. Vt. 2025) ("[Immigration] detention can never be punitive, either by design or effect."). Just as civil immigration detention itself must not be punitive, the related conditions of bond cannot be punitive. *Ozturk*, 779 F. Supp. 3d at 493 ("Where detention is incident to removal, the detention cannot be justified as punishment nor can the confinement or its conditions be designed in order to punish.") (*citing Zadvaydas*, 533 U.S. at 721 (Kennedy, J., dissenting)); *cf. United States v. Donziger*, 853 F. App'x 687, 689 (2d Cir. 2021), as amended (Apr. 26, 2021) (Affirming district court's release conditions because they were the least restrictive necessary in accordance with the Bail Reform Act). L.G.M. should be reasonably permitted to leave the home for very specific activities listed in Petitioner's proposed bond order. *See* ECF 46-1 (item 2). This includes his in-person engagement at the pro-social S.T.R.O.N.G. Youth program. *See* Exh. A, Letter of A. Guzman (8/29/25).

In addition, L.G.M. objects to the government Respondents' proposed condition that L.G.M. "be subject to being immediately re-detained" for a violation of bond conditions or "for other reasons." *See* ECF 48 at 3 (requesting that L.G.M. "be subject to being immediately re-detained on the same basis he is currently detained for violating any of the above conditions, and, *and for other reasons*, including evading GPS monitoring; consorting with gang members or associates; failing to maintain reporting check-ins; refusing to submit to home contacts; possession of a narcotic drug or other controlled substance not prescribed by a medical professional; arrests for criminal conduct; and possessing a weapon.") (emphasis added). A provision for immediate re-detention runs afoul of due process, and it is *not* part of immigration bond orders. *See* Exh. B, Department

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of Homeland Security ("DHS"), ICE "Immigration Bond," OMB No. 1653-0022; Exh. C, DHS ICE "Order of Supervision," ICE Form I-220B. First, the proposed condition is impermissibly broad and does not provide L.G.M. with sufficient notice of what actions will result in his immediate re-detention. *See Zongbo Zhu v. Genalo,* No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *5 (S.D.N.Y. Aug. 26, 2025) (Holding that non-citizen's re-detention was unlawful because ICE did not provide sufficient notice or explanation as required by regulations)(Exh. D). Second, the request runs afoul of due process considerations, which require notice and opportunity to respond *prior* to any civil re-detention. *Id.* As the Supreme Court has held, a person's liberty cannot be infringed upon without "adequate procedural protections." *Zadvydas v. Davis*, 533 U.S. 678, 690-91 (2001) ("the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."); *Kansas* v. *Hendricks*, 521 U.S. 346, 357 (1997); *see also Addington v. Texas*, 441 U.S. 418, 425-27 (1979). A long line of Supreme Court precedent recognizes the liberty interests of individuals on conditional release. In those cases, the Supreme Court holds that due process requires notice and an opportunity to be heard before the government deprives a person of their conditional liberty. *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (holding liberty interest of individual on parole requires probable cause and revocation hearings before the state may revoke parole); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (holding that individuals released on felony probation have a protected liberty interest that requires a pre-deprivation process of Morrissey before they can be sentenced to term of incarceration); *Young v. Harper*, 520 U.S. 143, 152 (1997) (individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest triggering the same pre-deprivation process as *Morrissey* provides); *see also Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is reincarcerated."). These cases apply to the civil immigration context as well. *See*, e.g., *Villiers v. Decker*, 31 F.4th 825, 833 (2d Cir. 2022) (applying *Gagnon* and *Morrissey* when reviewing government's motion to modify order granting release of ICE detainee and seeking re-detention); *Zongbo Zhu*, 2025 WL 2452352, at *4 (relying on *Morrisey*). Therefore, the government Respondents' proposal for immediate re-detention is not an appropriate bond condition.

Regarding L.G.M.'s ability to return to work, government Respondents are patently incorrect in their claim that L.G.M. cannot be employed in the United States. *See* ECF 48 at 4 (claiming that it "would be unlawful for [L.G.M.] to work in any capacity.") L.G.M. is eligible for work authorization upon release because he has received deferral of removal under the Convention Against Torture. *See* Exh. E, U.S. Citizenship and Immigration Services ("USCIS") Form I-765 "Instructions for Application for Employment Authorization," p. 12. As explained by USCIS,

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"Certain foreign nationals who are in the United States may file Form I-765, Application for Employment Authorization, to request employment authorization and an Employment Authorization Document (EAD). Other foreign nationals whose immigration status authorizes them to work in the United States without restrictions may also use Form I-765 to apply to U.S. Citizenship and Immigration Services (USCIS) for an EAD that shows such authorization. Review the Who May File Form I-765 section of these Instructions to determine whether you should use Form I-765." *Id.* at 1.

Specifically, work authorization category (c)(18) pertains to L.G.M. As set forth by the USCIS instructions, L.G.M. qualifies under the category for "Final Order of Deportation or Removal, including Deferral of Removal under the Convention Against Torture--(c)(18)" which requires L.G.M. to "File Form I-765 with a copy of the EOIR IJ's Order of Removal and Form I-220B, Order of Supervision (if any)." *Id.* at 12. As a result, L.G.M. will be able to return to work with his stepfather, who is ready and willing to assist in all manner of support. *See* Exh. F, Letter of J. Alberto Paz.

L.G.M. further objects to government Respondents' proposal of a $50,000 bond as excessive when considering L.G.M.'s ability to pay. *See Black v. Decker*, 103 F.4th 133, 159 (2d Cir. 2024) (Affirming district court's requirement for IJ to consider ability to pay when setting a bond amount). Immigration bonds, unlike criminal bonds, must be paid in full. Exh. G, EFF Letter dated August 27, 2025. L.G.M.'s family can afford a bond of $3,000 – 4,000. Exh. B, Letter of J. Alberto Paz; ECF 39-1, Letter of Support, from Lawful Permanent Resident sister. The Envision Freedom Fund, the largest immigration bond fund in the country, is unable to assist with a bond of $50,000 as proposed by government Respondents. Exh. G, EFF Letter.

Ultimately, L.G.M. consents to a bond condition for GPS monitoring as well as to government Respondents' proposed items 2(a), (b), (d), (f), (g), (i), and (j). *See* Doc 48. L.G.M. objects to the proposal for $50,000 bond and complete home imprisonment as unduly punitive and not supporting the objectives of danger to the community or flights risk, in light of the other bond conditions.

Thank you for your consideration of this submission.

Respectfully submitted,

/s/ Elyssa N. Williams
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THE BRONX DEFENDERS

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