

United States District Court
Western District of Texas
El Paso Division

Elizabeth Clemente Ceballos,
Petitioner,

v.

Angel Garite, *et al.*,
Respondents.

Case No. 3:26-CV-00312-DB

**Federal Respondents' Response to Petitioner's Notice of Violation of Order
and Motion to Enforce**

Federal Respondents submit the following response in opposition to Petitioner's Notice of Violation of Order and Motion to Enforce, filed on February 26, 2026, (ECF No. 10), and would respectfully show the Court the following.

Introduction and Procedural Background

In her motion, Petitioner contends that Respondents failed to comply with the Court's Order entered on February 10, 2026, (ECF No. 6). Petitioner seeks an order for immediate return of her personal documents and removal of the GPS ankle monitor, based on the grounds that Respondents failed to comply with the Court's orders.

On February 10, 2026, the Court entered its order granting in part the habeas petition and ordered Respondents to either provide a bond hearing or release Petitioner on or before February 12, 2026. ECF No. 6. On February 12, 2026, the immigration judge (IJ) granted the custody redetermination and granted release on a bond of \$2,500.00. *See* ECF No. 7-1.

On February 17, 2026, Respondents filed an Advisory to the Court notifying the Court that on February 12, 2026, the IJ granted the custody redetermination and granted release on a bond of \$2,500.00. *See* ECF Nos. 7, 7-1. Attached as Exhibit A to the advisory was a copy of the IJ's order. ECF No. 7-1.

On February 18, 2026, the Court entered an order for the parties to confer and file notice by February 25, 2026, of any remaining matters to be resolved. ECF No. 8. On February 25, 2026, the parties filed a joint status report indicating that Petitioner had paid her bond and been released, but that there was disagreement on whether there were remaining issues. ECF No. 9.

On February 26, 2026, Petitioner filed her notice of violation of the Court's order and motion to enforce. ECF No. 10. On March 2, 2026, Petitioner filed a status update that Respondents intended to return the Petitioner's Minnesota ID but retain her Mexican passport, and that the ankle monitor remained in place. *See* ECF No. 11. Respondents mailed Petitioner's Minnesota ID on March 4, 2026, to the address provided by her attorney. *See* Exh A., Declaration. Respondents file this response in opposition to Petitioner's motion.

Discussion

In the present case, Petitioner contends that Respondents have failed to comply with this Court's orders. More specifically, Petitioner asserts that the failure to return her property amounts to an unauthorized restraint on her liberty, and that the imposition of an ankle monitor is also an unauthorized restraint on her liberty. Petitioner further contends that the failure to return property and the imposition of an ankle monitor are conditions that were not imposed by the Court or the IJ and are thus unlawful and in conflict with the Court's orders. Respondents contend that the return of property is not a habeas matter, though they worked diligently to locate and return the property. Further, Respondents contend the imposition of an ankle monitor is not an undue restraint for the reasons explained below.

I. Statutory and Precedential Authority Regarding Alternatives to Detention

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 as "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.*

§§ 236.1(d)(1); 1236.1(d)(1). Thereafter, application for modification of bond or release may be made only to DHS. §§ 236.1(d)(1); 1236.1(d)(1); *Matter of Chew*, 18 I&N Dec. 262 (BIA 1962).

III. Petitioner's Claim for Return of Property is not Cognizable under Federal Habeas

Respondents contend that Petitioner is not entitled to relief regarding her property as a claim for the return of private personal property or for financial compensation for lost property is not cognizable under federal habeas review. *See Rincon v. U.S. Dept. of Homeland Security*, No. 5:23cv88, 2024 WL 715078 at *2 (S.D. Ga. Jan. 31, 2024) (report and recommendation adopted by 2024 WL 714317); *Dingler v. Rockwall County Court #2*, No. 3:22cv1252, 2022 WL 2964665 (N.D. Tex. Jul. 25, 2022); *Reynolds v. Werlich*, No. 18cv1186, 2018 WL 3536753 at *2 (S.D. Ill. Jul. 23, 2018); *Smith v. Dismas Charities*, No. 2:15cv10749, 2016 WL 2893783 at *3 (S.D. W.Va. Apr. 8, 2016); *Alcenat v. FCI Schuylkill*, No. Civ. 3:cv05-2601, 2006 WL 148880 at *1-2 (M.D. Pa. Jan. 18, 2006). Here, Petitioner is not challenging the duration or propriety of her confinement. Instead, Petitioner is seeking the return of personal property allegedly confiscated or lost pursuant to her detention by ICE. The favorable resolution of the issue raised in the petition will not result in the Petitioner's release. *See Alcenat*, 2006 WL 148880 at *1-2. Consequently, Petitioner's claim for the return of his property is not cognizable here under 28 U.S.C. § 2241, and should be dismissed. *See Rincon*, 2024 WL 715078 at *2. Moreover, Petitioner's Minnesota ID was mailed via certified mail to the address provided by her attorney, and the Mexican passport is being retained to facilitate the removal proceedings. *See* Exh. A, Declaration.

IV. Ankle Monitor Does Not Amount to Custody

Although Petitioner is subject to conditions of release, including GPS monitoring, she is no longer in detention and is free to return to her home while she is in removal proceedings, consistent with 8 U.S.C. § 1226(a) and the discretionary conditions of release. *See Jennings v.*

Rodriguez, 583 U.S. 281, 307-12 (2018) (the word “detained” under the immigration statutes does not include aliens who ICE has released from confinement and who are “free to walk the streets,” regardless of imposed restrictions to their freedom of movement); *see also Zadvydas v. Davis*, 533 U.S. 678, 683, 690, 697 (2001) (using the words “detain” and “custody” to refer exclusively to physical confinement and restraint); *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579-82 (2022).

Petitioner in this case remains in immigration removal proceedings, which generally subjects her 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 Petitioner, because the Supreme Court rejects “detention” as including aliens with imposed conditions on their release who nonetheless remain “free to walk the streets.” *See Jennings*, 583 U.S. at 307. The removal proceedings afford Petitioner due process to challenge not only her conditions of removability, but also any conditions the government imposes on her to minimize flight risk and ensure safety during the removal proceedings. *See, e.g.*, 8 U.S.C. §§ 1182, 1226(a).

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 within 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 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. §§ 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 to her in immigration court during removal proceedings.

V. Petitioner Fails to Establish Contempt

Petitioner moves the Court to enter an order of contempt against Respondents. However, she fails to establish any contempt on the part of Respondents. Willfulness is an element of criminal contempt and must be shown beyond a reasonable doubt. *U.S. v. Remini*, 508 F.2d 529, 531 (7th Cir. 1974). A finding of civil contempt may be rebutted upon a showing of mitigating circumstances and good faith attempts to comply. *Carter v. Local 556, Transport Workers Union of America*, 156 F.4th 459, 502 (5th Cir. 2025). The Court has discretion to hold a party in contempt.

Gashco v. Global Fitness Holdings, LLC, 875 F.3d 795, 800 (6th Cir. 2017). However, contempt is a sanction that should be used with caution and as a measure of last resort. *Id* at 799.

In the present case, as set forth above, the Respondents made good faith attempts to comply with this Court's orders. Respondents filed a status report on February 17, 2026, in accordance with the Court's orders. There is no evidence of any willful disregard by Respondents of the Court's orders. Further, Respondents located and returned Petitioner's Minnesota ID. Her Mexican passport is being retained to facilitate removal proceedings. *See* Exh. A, Declaration. In addition, ICE is authorized to impose conditions of release, such as an ankle monitor, separate and apart from the immigration judge. Thus, because Respondents have shown their efforts of compliance with the Court's orders, Petitioner fails to make a showing sufficient to warrant a finding of contempt.

Conclusion

Consequently, Petitioner's motion is without merit and should be denied, given that Petitioner has failed to show any willful noncompliance with the Court's orders by Respondents. Based on the foregoing, Respondents respectfully request that the Court find that Petitioner has failed to support their motion, and that the Court deny Petitioner's motion.

Dated: March 6, 2026

Respectfully submitted,

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