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March 26, 2026

By ECF

Honorable LaShann DeArcy Hall
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Fredy Eduviel Arriaga Hernandez v. Judith Almodovar, et al. Civil Action No. 26-cv-01572 (LDH)

Dear Judge DeArcy Hall:

This letter is to inform the Court that our client, Fredy Eduviel Arriaga Hernandez, was unilaterally placed on an Order of Supervision ("OSUP") following his release from ICE custody on March 20, 2026.

As per the attached "Order of Release on Recognizance," dated March 20, 2026, Mr. Hernandez was advised that his "release is contingent upon [his] enrollment and successful participation in an Alternatives to Detention (ATD) program as designated by the U.S. Department of Homeland Security.[1] As part of the ATD program, he will be subject to electronic monitoring and may be subject to a curfew. Failure to comply with the requirements of the ATD program will result in a redetermination of his release conditions or his arrest and detention." *See Exh. A.*- Order of Supervision at 1 (hereafter "OSUP"). Upon release, he was affixed with an ankle monitor and instructed to present himself at 26 Federal Plaza the following morning.

Following Mr. Hernandez's check-in at 26 Federal Plaza, the ankle monitor was removed and he was placed on monitoring through the Smartlink App on his phone. Additionally, he was instructed to present himself for a series of check-ins, including several in-person check-ins and home visits. He is currently scheduled for in-person or home visits on April 2, April 24, July 5, May 28, and June 19. *See* Smartlink Screenshot.[2] These appointments are not discretionary and his liberty is now contingent on his compliance. It is worth noting here that Mr. Hernandez has already been scheduled for a master calendar hearing on May 26, 2026, before the immigration judge at the Varick Street Immigration Court.

Based on the foregoing restrictions, Petitioner disputes that the Petition should be dismissed as moot and further disputes that he is no longer "in custody." Petitioner has informed opposing counsel that he would consent to a dismissal without prejudice were the government to vacate Petitioner's OSUP.

The Second Circuit and courts in this Circuit recognize that release from a particular detention facility does not moot a habeas petition where the petitioner remains subject to significant restraints on liberty as part of an immigration custody regime, particularly where those restraints arise out of the same challenged authority. See, for example, in the COVID-related ICE habeas litigation, district courts granting habeas relief to ICE detainees crafted release orders that required conditions such as home incarceration, electronic monitoring (including ankle bracelets and beacon devices), and weekly call-ins to ICE. *Basank v. Decker*, 613 F. Supp. 3d 776, 789–90 (S.D.N.Y. 2020); *Ferreyra v. Decker*, 456 F. Supp. 3d 538, 546–47 (S.D.N.Y. 2020). Those decisions treated such conditions as substantial restraints that function, in part, as substitutes for physical detention.

In *Khabazha v. United States Immigr. & Customs Enf't,* No. 25-CV-5279 (JMF), 2025 WL 3281514 (S.D.N.Y. Nov. 25, 2025), Judge Furman held unequivocally that requiring a non-citizen to "check in at regular intervals" satisfied the "in custody" requirement of §2241 habeas proceedings. He then found that the 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" and therefore, that the remedy of unconditional release was warranted. *Id.* at 8. This decision is joined by a host of decisions from across the country ordering the same. *See, e.g., Montes Aguillon v. Bondi*, No. EP-26-CV-71-KC, 2026 WL 531899, at *2 (W.D. Tex. Feb. 25, 2026); *Orellana Juarez v. Moniz*, 788 F. Supp. 3d 61, 69 (D. Mass. 2025); *Rivas v. Baltazar,* No. 26-cv-442, 2026 WL 444732, at *4 (D. Colo. Feb. 17, 2026); *A.B.D. v. Wamsley,* No. 25-cv-2014, 2026 WL 178306, at *8,*13 (D. Or. Jan. 22, 2026); *Batz Barreno v. Baltasar*, No. 25-cv-3017, ---- F. Supp. 3d ----, 2026 WL 120253, at *2 (D. Colo. Jan. 15, 2026); *Campbell v. Almodovar*, No. 25-cv-9509, 2025 WL 3626099, at *1 (S.D.N.Y. Dec. 15, 2025); *Khabazha v. United States Immigr*, No. 25-cv-5279, 2025 WL 3281514, at *9 (S.D.N.Y. Nov. 25, 2025); *Hogarth v. Santacruz*, No. 25-cv-9472, 2025 WL 3211461, at *13 (C.D. Cal. Oct. 23, 2025).

[1] Attached as Exhibit A.
[2] Attached as Exhibit B.

Accordingly, Petitioner disagrees with opposing counsel that the Petition should be dismissed as moot merely because he has been released from Metropolitan Detention Center. Rather, Petitioner remains "in custody" pursuant to requirements imposed by the government on the OSUP - his liberty is, in fact, expressly contingent on his successful compliance with the terms of supervision. *See* OSUP at 1. Therefore, Petitioner hereby informs the Court that he continues to seek an order from the Court granting him unconditional release and vacating the conditions unilaterally imposed by the government.

Respectfully Submitted,

/ss/Keith White

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cc: All Counsel of Record (via ECF)