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Attorney for Respondent

**United States Department of Justice  
Executive Office for Immigration Review  
Immigration Court  
[Location]**

In the Matter of

**[Respondent First Name]  
[Respondent Last Name]**  
Respondent

In Removal Proceedings

File No. **A#**

Immigration Judge: [Name]  
Next Hearing: [Date] at  
[Time]

NON-DETAINED

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**RESPONDENT'S APPLICATION TO  
AMELIORATE CONDITIONS OF RELEASE**

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## INTRODUCTION

Respondent's Full Name ("Mr./Mrs. Respondent's Last Name") should be granted an amelioration of her release from custody and be relieved from the obligation of wearing an electronic monitoring device ("ankle shackle"). Mr./Mrs. Respondent's Last Name requests that this Court exercise its authority under 8 C.F.R. § 1236.1(d)(1) to ameliorate the terms of her release from custody by ordering the removal of the ankle shackle that the Department of Homeland Security ("DHS") placed upon her release on **[Date]**. The use of an ankle shackle is unnecessary in Mr./Mrs. Respondent's Last Name's case because it is unnecessary, as he/she is neither a flight risk nor a danger to the community. The condition of an ankle shackle is also inhumane. The Immigration Judge should find that the other conditions imposed by the DHS are sufficient to ensure Mr./Mrs. Respondent's Last Name's attendance at future court hearings and remove the ankle shackle as a condition of her release. Alternatively, the Immigration Judge should replace all conditions imposed by the DHS with a bond in the amount of \$1500.

## JURISDICTION

Mr./Mrs. Respondent's Last Name is a [Age] year-old citizen of [Country]. Mr./Mrs. Respondent's Last Name was taken into custody on [Date] and was detained at [Detention Center]. He/She was released from custody on [Date] subject to conditions imposed by the DHS, including the placement of an ankle shackle. *See* Order of Release. Mr./Mrs. Respondent's Last Name's application for amelioration of her terms of release is timely because it is filed within seven days of her release from detention. *See* 8 C.F.R. § 1236.1(d)(1).

At any time before a final order, an Immigration Judge has authority to ameliorate the conditions of a noncitizen's release from detention. 8 C.F.R. § 1236.1(d)(1); INA § 236(a). An Immigration Judge "has broad authority to review and modify the terms imposed by the DHS on an alien's release from custody," including the placement of an ankle shackle. *Matter of Garcia-Garcia*, 25 I&N Dec. 93, 96–98 (BIA 2009); *see also Matter of Toscano-Rivas*, 14 I&N Dec. 523, 526 (BIA 1973) (affirming ability of Immigration Judge "to review and modify" conditions of release).

## **ARGUMENT**

Mr./Mrs. Respondent's Last Name should receive amelioration of her obligation to wear an ankle shackle because this condition is unnecessary and inhumane. The use of an ankle shackle is unnecessary because Mr./Mrs. Respondent's Last Name is neither a flight risk nor a danger to the community. Additionally, the ankle shackle that has been placed on Mr./Mrs. Respondent's Last Name is inhumane because it is painful and stigmatizing. The Immigration Judge should relieve Mr./Mrs. Respondent's Last Name of her obligation to wear an ankle shackle as a condition of her release, either finding that the remaining conditions imposed by the DHS are sufficient or replacing the current conditions of her release with a \$1500 bond.

### **A. The Condition of an Ankle Shackle is Unnecessary in Mr./Mrs. Respondent's Last Name's Case**

Mr./Mrs. Respondent's Last Name should not be required to wear an ankle shackle because she is neither a danger to the community nor a flight risk. To the extent that any risk of flight exists, her appearance in court is reasonably assured by the other conditions of release imposed by the DHS or, in the alternative, by a \$1500 bond.

Under BIA precedent, “[a]n alien generally is not and should not be detained or required to post bond except on a finding that he is a threat to the national security, or that he is a poor bail risk.” *Matter of Patel*, 15 I&N Dec. 666, 666 (BIA 1976); *see also Stack v. Boyle*, 342 U.S. 1, 5 (1951) (finding that in the criminal context, “the fixing of bail for any individual defendant must be based upon standards relevant to the purpose of assuring the presence of that defendant”). The BIA has also found that “an assessment of [an] alien’s danger to property or persons is a relevant consideration” in determining whether release from detention is appropriate. *Matter of Adeniji*, 22 I&N Dec. 1102, 1103 (BIA 1999) (citing 8 C.F.R. § 236.1(c)(8)). In *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006), the BIA delineated nine nonexclusive factors that may be considered by an immigration judge in determining whether to grant release from detention and the conditions of release that are appropriate:

- (1) whether the alien has a fixed address in the United States; (2) the alien's length of residence in the United States; (3) the alien's family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future; (4) the alien's employment history; (5) the alien's record of appearance in court; (6) the alien's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the alien's history of immigration

violations; (8) any attempts by the alien to flee prosecution or otherwise escape from authorities; and (9) the alien's manner of entry to the United States.

These factors are similar to the factors considered in the federal criminal context “in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community.” *See* 18 U.S.C. 3142(g); *U.S. v. Salerno*, 481 U.S. 739, 742–43 (1987) (noting with approval that the specification of relevant factors ensures that a “judicial officer is not given unbridled discretion in making the detention determination”).

As explained below, Mr./Mrs. Respondent’s Last Name is not a danger to the community. Applying the *Matter of Guerra* factors, it is also clear that Mr./Mrs. Respondent’s Last Name does not pose a flight risk. *See* 24 I&N Dec. at 40. The Immigration Judge should remove the ankle shackle as a condition of Mr./Mrs. Respondent’s Last Name’s release.

**1. Mr./Mrs. Respondent’s Last Name is not a danger to the community**

Reviewing the factors in this case, there can be no reasonable dispute that Mr./Mrs. Respondent’s Last Name is not a danger to the

community, and the DHS recognized as much in deciding to grant her release under any conditions. **[Describe is Respondent has no criminal arrest history, no criminal convictions, or no history of violence]**. Accordingly, Mr./Mrs. Respondent's Last Name cannot be classified as a danger to the community.

**2. Mr./Mrs. Respondent's Last Name is not a danger to national security**

For similar reasons, Mr./Mrs. Respondent's Last Name cannot be classified as a danger to national security.

**[Explain]**

**3. Mr./Mrs. Respondent's Last Name is not a flight risk and other conditions of release will reasonably assure her appearance**

The totality of factors presented in this case, as assessed below, plainly indicate that Mr./Mrs. Respondent's Last Name is not a flight risk. *See Matter of Guerra*, 24 I&N Dec. at 40. To the extent there is any flight risk, there are conditions of release, such as the other conditions imposed by the DHS or the posting of a \$1500 bond, that will reasonably assure Mr./Mrs. Respondent's Last Name's appearance. *See Matter of Drysdale*, 20 I&N Dec. 815, 817–18 (BIA 1994) (noting that

flight risk is a flexible standard under which an immigration judge should set conditions of release appropriate “to motivate the respondent to appear in light of the considerations deemed relevant to bond determinations”). The condition of an ankle shackle is thus unnecessary to mitigate Mr./Mrs. Respondent’s Last Name’s risk of flight.

**a. Mr./Mrs. Respondent’s Last Name has a fixed address in the United States**

Mr./Mrs. Respondent’s Last Name is residing with Mr./Mrs. Sponsor’s Name, **[Sponsor Relationship]**, at the fixed address of **[Address]**. A fixed address is a very weighty factor against the likelihood of flight risk.

**[Add quotes supporting evidence]**

**b. Mr./Mrs. Respondent’s Last Name’s length of residence in the United States**

The length of residence in the United States is a neutral factor in this case. In *Matter of Guerra*, the BIA considered the case of a native and citizen of the Dominican Republic who was admitted to the United States as a nonimmigrant visitor and was charged with removability for remaining in this country longer than his period of authorized stay. 24 I&N Dec. at 37. By contrast, Mr./Mrs. Respondent’s Last Name is a



recent entrant to the United States who entered with the explicit purpose of seeking asylum. Given Mr./Mrs. Respondent's Last Name's distinction from the respondent in *Matter of Guerra* and {his|her} desire to seek refuge in the United States, Mr./Mrs. Respondent's Last Name's length of residence in the United States should not be considered in determining her risk of flight and is, thus, a neutral factor.

**OR**

Mr./Mrs. Respondent's Last Name's residence in the United States is a weighty factor in favor of bond. It demonstrates several things including his/her stability in the community, ties to the community, and, generally speaking, support within the community. **[Add additional Description].**

**c. Mr./Mrs. Respondent's Last Name has family ties in the United States**

**[Describe family ties]**

**d. Mr./Mrs. Respondent's Last Name has eligibility for relief that may entitle her to reside permanently in the United States**

Mr./Mrs. Respondent's Last Name is eligible for relief.

**[Relief Summary]**

The third *Matter of Guerra* factor addresses “family ties” as well as whether these ties “may entitle the alien to reside permanently in the United States in the future.” 24 I&N Dec. at 40. Likewise, the BIA has recognized that “some aliens may demonstrate to the Immigration Judge a strong likelihood that they will be granted relief from removal and thus have great incentive to appear for further hearings,” and that an Immigration Judge “must assess” this factor in determining the conditions of release. *Matter of X-K-*, 23 I&N Dec. 731, 736 (BIA 2005); *see also Matter of Andrade*, 19 I&N Dec. 488, 490 (BIA 1987); *Matter of D-J-*, 23 I&N Dec. 572, 582 (AG 2003).

As supported by the evidence submitted with this motion, Mr./Mrs. Respondent's Last Name has eligibility for relief and therefore a strong incentive to appear for future hearings. Mr./Mrs. Respondent's Last Name received a positive credible fear determination by an asylum officer, including a finding that there was a “significant possibility” that

Mr./Mrs. Respondent's Last Name could present a credible asylum case. Due to the strength of her asylum claim, Mr./Mrs. Respondent's Last Name thus has a "greater motivation to appear" for future court hearings, supporting a finding that she is not a flight risk. *See Matter of Andrade*, 19 I&N Dec. at 490.

Under the INA, asylum officers have statutory authority to determine whether an individual has a credible fear of returning to his home country that entitles him to a full asylum hearing on the merits of his case. INA § 235(b)(1)(B). In making a positive credible fear determination for Mr./Mrs. Respondent's Last Name, an asylum officer determined that there is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing. This legally significant finding should operate as a presumption that Mr./Mrs. Respondent's Last Name has set forth a strong likelihood of prevailing on a merits claim for relief and, accordingly, has a strong motivation for appearing at a future hearing. It is plainly an abuse of discretion for an immigration judge to disregard this legally significant finding.}

**e. Mr./Mrs. Respondent's Last Name's employment history**

Mr./Mrs. Respondent's Last Name's employment history is a neutral or positive factor in this matter. Mr./Mrs. Respondent's Last Name was employed at [employer name]. Due to his/her recent arrival and immediate detention, Mr./Mrs. Respondent's Last Name has no previous employment in the United States. As the specific facts of her case are thus distinguishable from the facts in *Matter of Guerra*, 24 I&N Dec. at 37, Mr./Mrs. Respondent's Last Name's employment history is a neutral factor in determining her eligibility for bond. Likewise, given her past employment in the country of origin, Mr./Mrs. Respondent's Last Name has demonstrated stability which also weighs against her risk of flight.

Mr./Mrs. Respondent's Last Name's prior employment in the United States is clearly a positive factor in assessing her flight risk.

**[Describe]**

**f. Mr./Mrs. Respondent's Last Name has attended every court appearance**

Mr./Mrs. Respondent's Last Name has never failed to appear for her immigration court hearings. **[If this is a neutral or positive**

**factor because he/she was detained directly upon entry into the United States.] [If this is a very weighty factor that supports a low flight risk.]**

**g. Mr./Mrs. Respondent's Last Name has no criminal record [if applicable]**

g. Mr./Mrs. Respondent's Last Name has no criminal record in either the United States or **[country of origin]**.

**h. g. Mr./Mrs. Respondent's Last Name's entry without inspection is a neutral factor because of his/her intent to seek asylum**

g. Mr./Mrs. Respondent's Last Name's entry without inspection is a neutral or positive factor in a bond determination because he/she was entering the United States in order to seek asylum. Unlike BIA precedent in which a pattern of legal violations has been found to "indicate a consistent disrespect for the law of the United States," *Matter of Andrade*, 19 I&N Dec. at 490, g. Mr./Mrs. Respondent's Last Name's entry was a single occurrence intended solely to seek refuge. Under Article 31(1) of the Refugee Convention, the United States is prohibited from penalizing refugees for illegal entry. *See* United Nations High Commission for Refugees, 1951 Convention Relating to

the Status of Refugees, 29, available at <http://www.unhcr.org/en-us/3b66c2aa10>. As g. Mr./Mrs. Respondent's Last Name's flight from persecution is sanctioned as a matter of United States and international law, his/her intention to seek refuge in the United States is sufficiently "substantial countervailing evidence" that his/her manner of entry should not negatively impact the assessment of his/her flight risk. *See Matter of D-J-*, 23 I&N Dec. at 581.}

**i. Mr./Mrs. Respondent's Last Name has never attempted to flee prosecution or otherwise escape from authorities**

Mr./Mrs. Respondent's Last Name has never attempted to flee prosecution or to otherwise escape from authorities in either the United States or [country of origin].

**j. Mr./Mrs. Respondent's Last Name's manner of entry was intended to seek protection in the United States**

For the reasons articulated *supra*, the manner of Mr./Mrs. Respondent's Last Name's entry to the United States does suggest a heightened flight risk as he/she was exercising his/her well-recognized right to seek asylum under United States and international law.

**k. Other factors particular to Mr./Mrs. Respondent's Last Name's case demonstrate that he/she is not a flight risk**

In addition to the nine *Matter of Guerra* factors, 24 I&N Dec. at 40, additional factors in Mr./Mrs. Respondent's Last Name's case further demonstrate that he/she is not a flight risk. **[if other factors applicable]**.

Mr./Mrs. Respondent's Last Name is eligible for screening for representation by a legal organization located within the jurisdiction of his/her fixed address. **[Legal organization name]** is an organization that provides assistance for individuals in removal proceedings. [if applicable]

Mr./Mrs. Respondent's Last Name merits ameliorated conditions of release because of the support he/she has from faith and community based organizations. **[Legal organization name]** is a faith or community based organization in her current jurisdiction that is providing support to Mr./Mrs. Respondent's Last Name.

As delineated above, the totality of factors in this case clearly show that Mr./Mrs. Respondent's Last Name is not a flight risk. *See Matter of Guerra*, 24 I&N Dec. at 40. "Once it is determined that an alien does not

present a danger to the community or any bail risk,” then no conditions of release should be imposed.<sup>1</sup> *See Matter of Drysdale*, 20 I&N Dec. 815, 817 (BIA 1994); *see also Matter of Patel*, 15 I&N Dec. at 666. To the extent that any risk does exist, it is minimal. *See Matter of Drysdale*, 20 I&N Dec. at 818 (noting that under the flexible standard for evaluating flight risk, the “[t]he likelihood, or probability, of appearance could vary from none to great”). The remaining conditions imposed by the DHS or, in the alternative, the posting of bond in the amount of \$1500 would reasonably assure Mr./Mrs. Respondent’s Last Name’s appearance at future court dates. *See Matter of Drysdale*, 20 I&N Dec. at 817–18. The Immigration Judge should thus remove the placement of an ankle shackle as a condition of Mr./Mrs. Respondent’s Last Name’s release.

### **B. The Condition of an Ankle Shackle is Inhumane**

In addition to being unnecessary, the condition of an ankle shackle is inhumane because it is painful and stigmatizing.

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<sup>1</sup> Additionally, research suggests that over-supervision through conditions such as ankle shackles may actually be counterproductive to reducing flight risk. *See, e.g.,* Noferi & Koulisch, “The Immigrant Detention Risk Assessment,” 29 *Geo. Immigr. L.J.* 45, 91 (2014); Gilman, “To Loose the Bonds: The Deceptive Promise of Freedom from Pretrial Immigration Detention,” 92 *Ind. L.J.* 157, 220 (2016).



Ankle shackles have been widely documented to cause physical pain, including bleeding, burns, blisters, and swelling. *See, e.g.*, Gogolak, “Ankle Monitors Weigh on Immigrant Mothers Released From Detention,” *New York Times* (Nov. 2015); Sacchetti, “Newest Illegal Immigrants Face More Scrutiny Than Many Criminals,” *Boston Globe* (Jul. 2015). This physical discomfort often prevents individuals from sleeping or walking normally and can exacerbate existing medical conditions. *See id.*; Stuart, “ICE Is Fitting Immigrant Mothers with Ankle Monitors When They Arrive in New York,” *The Village Voice* (Aug. 2014). Ankle shackles also impose severe stigma, as members of the public associate shackles with dangerous criminals rather than peaceful asylum seekers such as Mr./Mrs. Respondent’s Last Name. *See, e.g.*, Gogolak; Sacchetti. This stigma contributes to the unjust alienation of asylum seekers and discourages them from integrating into their new communities.

In Mr./Mrs. Respondent’s Last Name’s case, **[Insert any case-specific facts about pain/difficulty/stigma imposed by the ankle shackle]**.

## CONCLUSION

For the reasons above, the Immigration Judge should ameliorate the condition that Mr./Mrs. Respondent's Last Name wear an ankle shackle, either finding that the remaining conditions imposed by the DHS are sufficient or replacing the DHS conditions of release with a \$1500 bond.

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Attorney Name  
Attorney Address

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT – {XXXXXX} DETENTION CENTER**

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<b>In the Matter of:</b>	)	
	)	
<b>/NAME</b>	)	<b>File No.:      A /XXX-XXX-XXX</b>
	)	
<b>In removal proceedings</b>	)	
	)	

**ORDER OF THE IMMIGRATION JUDGE**

Upon consideration of Respondent's Application to Ameliorate Conditions of Release, it is  
HEREBY ORDERED that the motion be ☐ **GRANTED** ☐ **DENIED** because:

- ☐ The DHS does not oppose the motion.
- ☐ The Respondent does not oppose the motion.
- ☐ A response to the motion has not been filed with the court.
- ☐ Good cause has been established for the motion.
- ☐ The court agrees with the reasons stated in the opposition to the motion.
- ☐ The motion is untimely per \_\_\_\_\_.
- ☐ Other: \_\_\_\_\_.

Deadlines:

- ☐ The application(s) for relief must be filed by \_\_\_\_\_.
- ☐ The respondent must comply with DHS biometrics instructions by \_\_\_\_\_.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Immigration Judge

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Certificate of Service

This document was served by:    ☐ Mail        ☐ Personal Service

To:    ☐ Alien    ☐ Alien c/o Custodial Officer    ☐ Alien's Atty/Rep    ☐ DHS

Date: \_\_\_\_\_

By: Court Staff \_\_\_\_\_

## **CERTIFICATE OF SERVICE**

I hereby certify that I caused the foregoing to be served on the Office of Chief Counsel by first-class mail by depositing the same for mail delivery on [Date].

Office of Chief Counsel

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Name