

## **APPENDIX B**

### **SAMPLE MOTIONS TO AMELIORATE CONDITIONS OF RELEASE**

**(FOR FILING WITH THE IMMIGRATION COURT)**

**These motions are not a substitute for independent legal advice supplied by a lawyer familiar with a client's case. They are not intended as, nor do they constitute, legal advice. DO NOT TREAT THESE SAMPLE MOTIONS AS LEGAL ADVICE.**

R

**John Gihon, Esquire**  
**Attorney for the Respondent**  
**Florida Bar No: 0604321**  
**409 Montgomery Road, Suite 115**  
**Altamonte Springs, FL 32714**  
**(407) 229-2019**

**NON-DETAINED**

[REDACTED]

**UNITED STATES DEPARTMENT OF JUSTICE**  
**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**  
**IMMIGRATION COURT**  
**ORLANDO, FLORIDA**

**In the Matter of:**

[REDACTED]

**In removal proceedings**

**File No: A [REDACTED]**

**Immigration Judge: [REDACTED]**

**Next Hearing: MARCH 18, 2020**

**MOTION FOR A HEARING TO AMELIORATE CONDITIONS OF RELEASE**

c.

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
ORLANDO, FLORIDA**

**In the Matter of:**

**In removal proceedings**

**File No: A**

**MOTION FOR A HEARING TO AMELIORATE CONDITIONS OF RELEASE**

Respondent (Mrs. ██████████) should be granted a hearing to amelioration the conditions of her release from custody and be relieved from the obligation of wearing an electronic monitoring device (“ankle shackle”). Mrs. ██████████ 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 on November 14, 2019. The use of an ankle shackle is unnecessary in Mrs. ██████████ case because she is neither a flight risk nor a danger to the community. This Court should find that the other conditions imposed by the Department are sufficient to ensure Mrs. ██████████ attendance at future court hearings and remove the ankle shackle as a condition of her release.

Mrs. ██████████ is a 44 year-old, married, citizen of Lithuania. See Exh. 1 (NTA). Mrs. ██████████ was placed in removal proceedings after being issued a Form I-862, Notice to Appear on January 10, 2019. *Id.* On that same date, Mrs. ██████████ was placed on an Order of Recognizance by ICE-ERO-Orlando. See attached, Tab A. Mrs. ██████████ was released with a list of conditions to ensure that she appeared for court. *Id.* As of the filing of this Motion, Mrs.

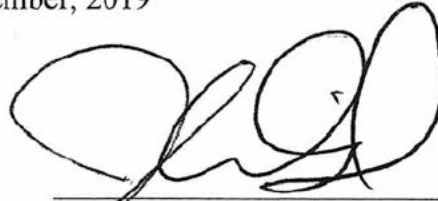
██████████ has complied with all of the conditions of her release. However, during a routine check-in with ICE-ERO-Orlando on November 14, 2019, the Department placed an ankle shackle on her as an additional condition of release, with no further explanation.

Mrs. ██████████'s application for amelioration of her terms of release is timely because it is filed within seven days of her release from detention (placement of the ankle shackle). 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).

Mrs. ██████████ requests a hearing before this Court for consideration of the amelioration of her terms of release and will provide a memorandum in support of this motion and evidence in advance of said hearing. Mrs. ██████████ 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 Department. Tab A.

**Wherefore**, the respondent respectfully requests that the Court set a hearing to ameliorate the conditions of respondent's release.

Respectfully submitted on this 19th day of November, 2019

A handwritten signature in black ink, appearing to read 'John Gihon', written over a horizontal line.

John Gihon

Attorney for the Respondent

Florida Bar No: 0604321

409 Montgomery Road, Suite 115

Altamonte Springs, FL 32714

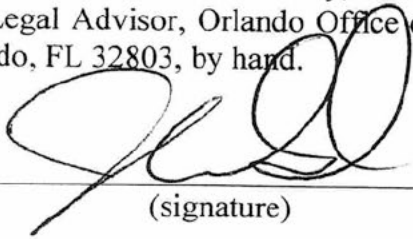
(407) 229-2019





**PROOF OF SERVICE**

On November 20, 2019, I, John Gihon, attorney for the respondent, mailed or delivered a copy of this **MOTION FOR A HEARING TO AMELIORATE CONDITIONS OF RELEASE** to the Department of Homeland Security, Immigration and Customs Enforcement, Office of the Principal Legal Advisor, Orlando Office of Chief Counsel located, at 3535 Lawton Road Suite 100, Orlando, FL 32803, by hand.



---

(signature)

11/20/19

---

(date)

R

**John Gihon, Esquire  
Attorney for the Respondent  
Florida Bar No: 0604321  
409 Montgomery Road, Suite 115  
Altamonte Springs, FL 32714  
(407) 228-2019  
John@slgattorneys.com**

**NON-DETAINED**

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
ORLANDO, FLORIDA**

In the Matter of: )  
)  
)  
)  
[REDACTED] )  
)  
In removal proceedings )  
)

File No: A [REDACTED]

Immigration Judge: Grin

Next Hearing: January 13, 2020

**MEMORANDUM IN SUPPORT OF MOTION TO AMELIORATE CONDITIONS OF  
RELEASE**

*[Faint, illegible text or stamp in the bottom right corner]*

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
ORLANDO, FLORIDA**

**In the Matter of:**

[REDACTED]

**In removal proceedings**

**File No: A** [REDACTED]

**MEMORANDUM IN SUPPORT OF MOTION TO AMELIORATE CONDITIONS OF  
RELEASE**

Respondent (Ms. [REDACTED]), through undersigned counsel, 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 placed upon her on November 14, 2019. The use of an ankle shackle is unnecessary in Mrs. [REDACTED] case because she is neither a flight risk. This Court should find that the other conditions imposed by the Department are sufficient to ensure Mrs. [REDACTED] attendance at future court hearings and remove the ankle shackle as a condition of her release.

**STATEMENT OF FACT**

1. Mrs. [REDACTED] is a 44 year-old, married, citizen of Lithuania. See Exh. 1 (NTA). Mrs. [REDACTED] was placed in removal proceedings after being issued a Form I-862, Notice to Appear on January 10, 2019. *Id.*
2. The sole charge in the Notice to Appear is that the respondent is a non-immigrant visa overstay pursuant to INA § 237(a)(1)(B). *Id.*



3. On that same date the NTA was served, Mrs. [REDACTED] was placed on an Order of Recognizance by ICE-ERO-Orlando. See Tab A, R's Motion to Ameliorate. Mrs. [REDACTED] was released with a list of conditions to ensure that she appeared for court. *Id.*
4. As of the filing of this Motion, Mrs. [REDACTED] has complied with all of the conditions of her release. However, during a routine check-in with ICE-ERO-Orlando on November 14, 2019, the Department placed an ankle shackle on her as an additional condition of release, with no further explanation.
5. Mrs. [REDACTED] filed a timely motion to Ameliorate the Conditions of her Release on November 19, 2019 and this Court granted the motion for a hearing and scheduled the hearing for January 13, 2020.
6. The respondent is not subject to any allegations or charges of removability related to any criminal conviction that would subject her to mandatory detention pursuant to INA § 236(c). Undersigned counsel is not aware of any convictions for which the respondent is not charged and that would subject her to mandatory detention. In fact, to counsel's knowledge, the respondent has never been arrested for any crime anywhere in the world. Therefore, the respondent is eligible for, and merits the removal of her ankle shackle.
7. Mrs. [REDACTED] is a 44-year old married native and citizen of Lithuania who has continuously resided in the United States since May 11, 2000. See Tab A, Respondent's July 30, 2019 filing of her EOIR-42B application.
8. Mrs. [REDACTED] has been married to her husband, the co-respondent Mr. [REDACTED] since 1998 and the two own a house together in Orlando, the city they have called home for almost 20 years. See her EOIR-42B application and Tab E, Respondent's Third Notice of Filing (NOF) dated January 9, 2020.

9. Mrs. [REDACTED] and her husband have a 16 year old U.S. citizen son, [REDACTED] who suffers from multiple serious medical conditions for which he sees multiple physicians. See R's Third NOF, Tabs K, L. [REDACTED] suffers from Juvenile Idiopathic Arthritis (JIA) and anemia and takes several medications for his conditions. *Id.* His conditions are severely debilitating and he travels to Gainesville, Florida to visit specialists at the University of Florida on a regular basis for evaluation, testing and treatment. *Id.*

10. Mrs. [REDACTED] is employed as a server at the Golden Corral, a position she has held for over 10 years. See her EOIR-42B Application.

11. Mrs. [REDACTED] has no criminal history, no history of failing to appear for court, no known history of failing to appear for appointments with the Department and has extensive and longstanding ties to the Central Florida community.

#### STATEMENT OF LAW AND ARGUMENT

This Court has the authority to review and modify the conditions of release imposed by the Department under INA § 236(a)(2)(A). See *Garcia-Garcia*, 25 I&N at 98. Therefore, this Court has jurisdiction to remove the ankle shackle from Mrs. [REDACTED] pursuant to INA § 236(a).

As the power to review the conditions of release set by the Department is found in INA § 236(a), the factors the immigration judge should consider during the review of the conditions should also be governed by that same provision. "Immigration Judges may look to a number of factors in determining whether an alien merits release from bond, as well as the amount of bond that is appropriate," including but not limited to: (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." *Matter of Guerra*, 24 I&N Dec. 37 at 40; *Matter of Andrade*, 19 I&N Dec. 488, 490 (BIA 1987).

Positive Factors that Merit a Change in her Conditions of Release.

Mrs. [REDACTED] has resided in the United States for almost 20 years and lives at a fixed address in Orlando; the home she owns with her husband. Mrs. [REDACTED] has strong family ties in this country, including her U.S. citizen minor son and her husband. Both Mrs. [REDACTED] and her husband are in removal proceedings and have applied for relief from removal in the form of Cancellation of Removal for Certain Nonpermanent residents, which, if granted, will allow them to become permanent residents of the United States. Mrs. [REDACTED] is currently employed and has been continuously while she has resided in the United States. She has no history of failing to appear for any court and no criminal record. Other than overstaying her visa in the year 2000 and unauthorized employment, she has no history of any other immigration violations. She has no history of fleeing prosecution or avoiding immigration or criminal authorities and she lawfully entered the United States in 2000.

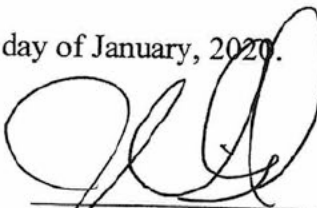
Wearing the ankle shackle has made everything in her life, from lawfully working in her job as a server at a restaurant to taking care of her son and taking him to his necessary out of town doctor's appointments more difficult. She will expand upon these hardships at the upcoming hearing if needed.

Flight Risk

The respondent has resided in the United States for almost 20 years and has a U.S. citizen son whom she takes care of and who suffers from serious and debilitating conditions. She is eligible for and has applied for relief from removal in the form of cancellation of removal. She has a strong application given her son's conditions and required treatment and she knows she can only obtain that relief in court. As the respondent is eligible for and has applied for relief from removal, she has every incentive to appear for court and fight her case.

**Wherefore**, counsel respectfully requests that this Court grant Mrs. [REDACTED] request to modify her conditions of release and issue an order for the Department to remove the ankle shackle and not require her to wear the ankle shackle again in the future absent a material change in circumstances related to her conditions of release.

Respectfully submitted on this 9th day of January, 2020.



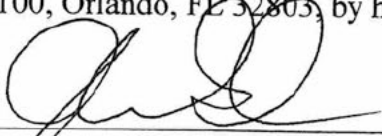
---

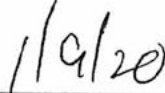
John Gihon  
Attorney for the Respondent  
Florida Bar No: 0604321  
409 Montgomery Road, Suite 115  
Altamonte Springs, FL 32714  
(407) 228-2019  
John@slgattorneys.com



**PROOF OF SERVICE**

On January 9, 2020, I, John Gihon, attorney for the respondent, mailed or delivered a copy of this MEMORANDUM IN SUPPORT OF MOTION TO AMELIORATE CONDITIONS OF RELEASE to the Department of Homeland Security, Immigration and Customs Enforcement, Office of the Principal Legal Advisor, Orlando Office of Chief Counsel located, at 3535 Lawton Road Suite 100, Orlando, FL 32803, by hand.

  
\_\_\_\_\_  
(signature)

  
\_\_\_\_\_  
(date)

March 3, 2014

Immigration Court  
Executive Office for Immigration Review  
477 Michigan Ave., Suite 440  
Detroit, MI 48226

**Re: XXXX – A0**  
**Motion to Ameliorate Conditions of Release**

Dear Clerk of the Court:

I have enclosed for filing the Respondent's Motion to Ameliorate Conditions of Release. I have served this motion as indicated in the Certificate of Service. Thank you for your consideration of this matter.

Very truly yours,

Marshal E. Hyman

MEH:rra  
Enclosures

Cc: ICE Chief Counsel, 333 Mount Elliott St., 2<sup>nd</sup> Floor, Detroit, MI 48207

XXX

A0

**CERTIFICATE OF SERVICE**

On this date, I served a copy of Respondent's Motion to Ameliorate Conditions of Release and any attached pages on ICE Chief Counsel, at 333 Mt. Elliott Street, 2<sup>nd</sup> Floor, Detroit, Michigan 48207 by first class mail.

\_\_\_\_\_  
Marshal E. Hyman  
Attorney for Respondent

\_\_\_\_\_  
Date

Marshal E. Hyman  
Marshal E. Hyman & Associates, P.C.  
3250 W. Big Beaver Road, Suite 529  
Troy, Michigan 48084  
(248) 643-0642

**Not detained**

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
DETROIT, MICHIGAN**

---

In the Matter of

XXXX

A0

Respondent.

---

BOND PROCEEDINGS

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



## MOTION

The Respondent, Ms. A H, respectfully requests that the Court ameliorate the harsh and unnecessary conditions of release placed on her by ICE. On February 25, 2014, ICE briefly detained Ms. H and released her on an ISAP program.

The Immigration Court has jurisdiction to ameliorate the conditions of Ms. H's release from custody within seven days of her release. *Matter of Garcia-Garcia*, 25 I&N Dec. 93 (BIA 2009); 8 C.F.R. § 1236.1(d)(1) (imposing seven day deadline for requesting amelioration of the conditions of release). The Immigration Court has the authority to redetermine the conditions of Ms. H's release, including her bond and other reporting requirements. 8 C.F.R. § 1003.19(e); *Matter of Toscano-Rivas*, 14 I&N Dec. 523, 525 (BIA 1972, 1973; A.G. 1974) (the Immigration Judge had jurisdiction to remove conditions of release imposed by the legacy INS).

When ICE released her, it imposed significant restrictions on her liberty. She must appear in person every 15 days, invite an agent into her home once a month, and be available for a telephone call every Monday. These conditions are not necessary to secure her appearance at future hearings or to protect the public. Ms. H has lived in the U.S. for 18 years, has no criminal record, has appeared for all of her court hearings, and has a pending application for cancellation of removal. While ICE is contesting whether she has met the hardship requirement for cancellation of removal for nonpermanent residents, it has conceded that she is a person of good moral character and would otherwise merit relief as a matter of discretion. Next

year, Ms. H should be eligible for adjustment of status under INA § 245(i) when her adult son naturalizes.

These conditions have impacted her ability to work and take care of her family. Being required to attend in-person appointments with ICE every 15 days will force her to miss a full day of work.

She respectfully requests that the Court ameliorate the conditions of her release by eliminating the in-person and at-home appointment requirements. She is not a flight risk or a threat to the community. She will provide additional testimony and evidence at the hearing on this motion.

Respectfully submitted this 3<sup>rd</sup> day of March 2014.

---

Marshal E. Hyman  
Attorney for Respondent