UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

N- N-,

Petitioner,

v.

BRIAN MCSHANE, in his official capacity as Acting Field Office Director of the Philadelphia Field Office of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations;

KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security,

PAMELA BONDI, in her official capacity as Attorney General of the United States;

TODD LYONS, in his official capacity as Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement;

Respondents.

PETITION FOR A WRIT OF HABEAS CORPUS AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Case No.

INTRODUCTION

1. This case asks whether a government agency, Immigration and Customs Enforcement ("ICE"), can openly flout the order of an Immigration Judge ("IJ") by applying additional restraints on liberty not contained in an order granting a noncitizens' release on bond.

2. After he was detained in immigration custody for two months, Petitioner N- N-[1] ("Petitioner" or "N- N-"), a citizen and national of Nigeria, received a bond hearing. After a full

[1] Petitioner will separately file motion for leave to proceed under pseudonym using Petitioner's initials, "N- N-."

custody proceeding, the IJ found that N- N- was neither a flight risk nor a danger to the community and ordered N- N- released on a minimal $3,000 bond. That bond amount was the *only* condition of his release pursuant to the IJ's order.

3. Yet, when N- N- posted bond and was released from immigration detention to reunite with his family in Drexel Hill, Pennsylvania, ICE unlawfully and unilaterally subjected him to a new form of custody that constitutes a continuing restraint on his liberty—an ankle monitor with 24/7 GPS tracking and onerous reporting conditions under their Intensive Supervision Appearance Program ("ISAP").

4. A recent ICE policy shift, described in a June 9, 2025 memorandum, instructs ICE officials to adhere GPS-enabled ankle monitors to noncitizens "whenever possible."[2] The internal memo from Acting Assistant Director Dawnisha Helland instructs agents to "escalate their supervision level to GPS ankle monitors . . . and increase reporting requirements" for individuals not being arrested ("Helland Memo"). ICE's blanket policy, as implemented by the Helland Memo, negates any individualized review that ICE, prior to June 9, 2025, conducted of a noncitizen before applying ankle monitoring. The Helland Memo mandates increased surveillance and carceral supervision conditions without consideration of a noncitizens' compliance history or other individualized analysis.

5. Ankle monitors and attendant supervision conditions are applied by ICE through its contract with BI Incorporated ("BI"), the subsidiary of private prison company GEO Group, Inc. ("GEO"). ISAP's reliance on GPS monitoring and other forms of surveillance are a significant revenue source for GEO. Each Alternatives to Detention ("ATD") participant generates

[2] Douglas MacMillan & Aaron Schaffer, "ICE Moves to Shackle Some 180,000 Immigrants with GPS Ankle Monitors", Wash. Post (July 24, 2025), https://perma.cc/YU83-ZMQ7.

approximately $3.70 in daily revenue for the private prison company.[3] In the first six months of 2025, GEO reported a net income of $48.6 million[4] and stands to further increase profits in light of ICE's new ATD policy.[5]

6. In N- N-'s custody proceedings, the IJ neither authorized nor ordered 24/7 GPS monitoring through an ankle monitor or ISAP as a condition of release. ICE has not abided by and does not have authority to deviate from the IJ's order by imposing additional conditions to N- N-'s release.

7. Now subjected to ICE's ISAP program, N- N- is in a digital cage. He is forced to wear an intrusive and painful ankle monitor weighing six ounces. His every move is subject to 24/7 GPS monitoring by ICE. His travel is restricted. And he is psychologically tormented with the constant barrage of reporting requirements and the threat of re-detention, exacerbating his pre-existing mental health conditions, including his Post-traumatic Stress Disorder ("PTSD").

8. ICE's unilateral decision to place N- N- in another form of custody in violation of the IJ's order violates the Due Process Clause of the Fifth Amendment of the United States Constitution, the Administrative Procedure Act ("APA"), the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, and a non-statutory right against ultra vires

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[3] Pedro Camacho, "Private Prison Giant to Ramp Up Production of Ankle Monitors After ICE Announced Plan to Shackle 180,000 Immigrants: Report" Latin Times (Aug. 2, 2025) https://perma.cc/7YCC-CU3E.

[4] Geo Grp., "The GEO Group Reports Second Quarter 2025 Results and Announces $300 Million Share Repurchase Program" (Press Release, Aug. 6, 2025), https://perma.cc/4FDF-Y6TJ.

[5] Paul Mozur, Adam Satariano & Aaron Krolik, "This Company's Surveillance Tech Makes Immigrants 'Easy Pickings' for Trump", N.Y. Times (Apr. 15, 2025), https://perma.cc/TP4N-2Q9M ("Mr. Trump's immigration policies have sent Geo Group's stock price soaring and kept its share price afloat even as the stock market gyrates. While digital monitoring generates only about 14 percent of its $2.4 billion in annual revenue, the company, which is based in Boca Raton, Fla., has said its immigrant surveillance could more than double. Profit margins on the monitoring business hover at around 50 percent.").

agency action. Accordingly, N- N- respectfully asks this Court to order his immediate release from his unlawful continuing custody.

9. Pursuant to 28 U.S.C. § 2243, N- N- respectfully requests an order to show cause be issued within three days.

JURISDICTION & VENUE

10. Petitioner is currently in federal immigration custody and seeks habeas corpus relief for ongoing violations of the U.S. Constitution, the Administrative Procedure Act, federal statutes, and applicable regulations. This Court has jurisdiction pursuant to 28 U.S.C. § 2241 (the general grant of habeas authority to the district court); Art. I § 9 cl. 2 of the U.S. Constitution ("Suspension Clause"); and 28 U.S.C. § 1331 (federal question jurisdiction).

11. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their custody. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

12. As the subject of ongoing governmental supervision through ISAP, N- N- remains in government custody, infringing upon his "liberty to do those things which in this country free men are entitled to do," as fundamentally protected by the Due Process Clause. *See Jones v. Cunningham*, 371 U.S. 236, 243 (1963); *Justices of Boston Mun. Ct. v. Lydon*, 466 U.S. 294, 300-01 (1984) (holding that petitioner released on recognizance subject to conditions such as appearance as ordered by court "in custody" for habeas purposes); *Romero v. Sec'y, U.S. Department of Homeland Security*, 20 F.4th 1374, 1379 (11th Cir. 2021) (the "in custody" requirement of 28 U.S.C. § 2241 "should be construed 'very liberally'" and habeas petitioners "need only show that they are subject to a significant restraint on their liberty that is not shared by the general public." (quoting *Howard v. Warden*, 776 F. 3d 772, 775 (11th Cir. 2015))).

13. Recently, district courts have found that ISAP GPS monitoring constitutes a

restraint on liberty so great to be "in custody" for habeas purposes. *See Orellana v. Moniz*,---F.Supp.3d---, 2025 WL 1698600 (D. Mass. June 11, 2025) (finding that additional conditions of release imposed by ICE satisfied "in custody" requirement for § 2241 habeas release); *Flores Salazar v. Moniz*, 2025 WL 1703516 (D. Mass. June 11, 2025) (same).

14. Federal courts also have federal question jurisdiction, through the APA, to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). APA claims are cognizable on habeas. 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may proceed by "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus"). The APA affords a right of review to a person who is "adversely affected or aggrieved by agency action." 5 U.S.C. § 702. Respondents' ongoing custody of Petitioner has adversely and severely affected Petitioner's liberty and freedom.

15. The case arises under the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq., the regulations implementing the INA, the Administrative Procedure Act (APA), 5 U.S.C. §§ 551-559 et seq.; and 5 U.S.C. § 552 et. seq. Jurisdiction is proper under 28 U.S.C. § 1331, as this action arises under the laws and Constitution of the United States. The government has waived its sovereign immunity pursuant to 5 U.S.C. § 702.

16. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because N- N- is in the custody of the Philadelphia ICE Field Office, in Philadelphia, Pennsylvania, within the jurisdiction of the Eastern District of Pennsylvania. In addition, a substantial part of the events giving rise to this action occurred and continues to occur within this district.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

17. Exhaustion is not required in this case because no alternative forum exists in which Petitioner can obtain relief on the claims presented here, nor is there any statutory requirement that Petitioner exhaust remedies before seeking habeas relief under 28 U.S.C. § 2241. *See Callwood v. Enos*, 230 F.3d 627, 634 (3d Cir. 2000) ("[T]here is no statutory exhaustion requirement attached to § 2241[.]"). N- N-'s claims—that his ongoing custody by Respondents outside the scope of his bond order is unlawful and unconstitutional—are not subject to any statutory requirements of administrative exhaustion, and thus, exhaustion is not a jurisdictional prerequisite. *See McCarthy v. Madigan*, 503 U.S. 140, 144 (1992).

18. Exhaustion is also not required before seeking judicial review of an agency decision when otherwise not required by the APA. *See Darby v. Cisneros,* 509 U.S. 137, 154 (1993) (holding that courts do not have the authority to require a plaintiff to exhaust available administrative remedies before seeking judicial review under the APA, where neither the relevant statute nor agency rules specifically mandate exhaustion as a prerequisite to judicial review); *Jie Fang v. Dir. U.S. Immigr. & Cust. Enfor.*, 935 F.3d 172, 181 (3d Cir. 2019) (reaffirming *Darby*).

19. With regard to prudential considerations, the Third Circuit has held that exhaustion is not required where the administrative remedy would be futile, there is a likelihood of irreparable injury absent immediate judicial relief, or the administrative remedy would not serve the requirement's underlying policy goals. *Brown v. Warden Canaan USP*, 763 F. App'x 296, 297 (3d Cir. 2019); *see also Cerverizzo v. Yost*, 380 F. App'x 115, 116 (3d Cir. 2010) ("[W]e have held that the administrative exhaustion requirement in this context may be excused if an attempt to obtain relief would be futile or where the purposes of exhaustion would not be served." (citing *Woodall v. Fed. Bureau of Prisons*, 432 F.3d 235, 236 n. 2 (3d Cir. 2005)); *Lyons v. U.S. Marshals*,

840 F.2d 202, 205 (3d Cir. 1988) (explaining, even when exhaustion is required by law rather than judicial discretion, that "[e]xhaustion is not required if administrative remedies would be futile, if the actions of the agency clearly and unambiguously violate statutory or constitutional rights, or if the administrative procedure is clearly shown to be inadequate to prevent irreparable injury"); *Carling v. Peters*, No. Civ. A. 00-CV-2958, 2000 WL 1022959, at *2 (E.D. Pa. July 10, 2000) (excusing a prisoner's failure to exhaust because he "would suffer irreparable injury if he is compelled to wait until an administrative petition is ruled upon").

20. Here, administrative exhaustion is excused where pursuing administrative remedies would be futile, unavailable, and unreasonable. Courts have routinely found that constitutional challenges in the immigration context, like N- N-'s claims, are exempt from exhaustion requirements. *See Sewak v. Immigration & Naturalization Serv.*, 900 F.2d 667, 670 (3d Cir. 1990) ("[T]he exhaustion of administrative remedies is not always required when the petitioner advances a due process claim.") (citing *Vargas v. United States Dep't of Immigration & Naturalization*, 831 F.2d 906, 908 (9th Cir. 1987).

21. Further, the ongoing deprivation of N- N-'s liberty interest ultimately weighs against requiring administrative exhaustion. *See McCarthy*, 503 U.S. at 147 (finding that exhaustion might not be required if petitioner challenged an ongoing deprivation of her liberty interest). The Supreme Court has recognized that courts should not require exhaustion where there is an unreasonable or indefinite timeframe for administrative action. Exhaustion is thus not appropriate where plaintiff "may suffer irreparable harm if unable to secure immediate judicial consideration of his claim." *Id.* at 147. Petitioner has a constitutionally protected liberty interest in his freedom from government custody. *Zadvydas*, 533 U.S. at 690. And his unlawful, indefinite

custody by Respondents constitutes irreparable harm. *See Seretse-Khama v. Ashcroft*, 215 F. Supp.2d 37, 53 (D.D.C. 2002).

22. In any event, here, Petitioner has already exhausted all administrative remedies available to him. Petitioner does not challenge the IJ's decision regarding the bond order but rather challenges ICE's imposition of an alternative form of custody and additional conditions of release outside the scope of the IJ's order. Here, the administrative process—the bond adjudication that N- N- seeks to uphold—has already been exhausted. After ICE made an initial custody determination, N- N- requested a redetermination of that decision from the IJ via a bond hearing. *See* 8 C.F.R. § 1003.19(a), (c), (f); § 1236.1(d). Following that administrative process, N- N- was ordered released on a $3,000 bond. And in defiance of that bond order, ICE applied additional conditions of N- N-'s release, the agency action he now challenges.

23. Accordingly, N- N- has exhausted his administrative remedies to the extent required by law and his only remedy is by way of this judicial action.

PARTIES

24. Petitioner N- N- is a 33-year-old citizen and national of Nigeria who currently lives in the Philadelphia area with his wife, a United States citizen, and their children. He suffers from mental health conditions, including PTSD. On August 5, 2025, an IJ found that N- N- presents no risk of danger or flight and ordered him released from immigration detention on a $3,000 bond with no additional conditions of release. But on August 11, 2025, ICE unilaterally enrolled N- N- to ISAP, applying an ankle monitor with 24/7 GPS monitoring and other onerous reporting requirements and conditions without notice or motion to the immigration court.

25. Respondent Brian McShane is ICE's Acting Field Office Director for the Philadelphia Field Office of ICE Enforcement and Removal Operations. As Field Office Director,

Respondent McShane oversees ICE's enforcement and removal operations in the Philadelphia Area of Responsibility ("AOR"). Petitioner is currently detained within this area of responsibility and, as such, Respondent McShane is a legal custodian of N- N-. Upon information and belief, Respondent McShane is responsible for the decision to apply the ankle monitor and other ISAP conditions to N- N-. He is sued in his official capacity.

26. Respondent, Kristi Noem, is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security. In this capacity, she is responsible for overseeing ICE's day-to-day operations, leading approximately 20,000 ICE employees, including Respondent Lyons. Secretary Noem is the ultimate legal custodian of Petitioner.

27. Respondent Pamela Bondi is the Attorney General of the United States. As Attorney General, Respondent Bondi oversees the immigration court system, including the immigration judges who conduct bond hearings as her designees, and is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(g). She is legally responsible for administering Petitioner's removal and bond proceedings, including the standards used in those proceedings, and as such, she is N- N-'s legal custodian. She is sued in her official capacity.

28. Respondent Todd Lyons is sued in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement, and as such is the legal custodian of N- N-.

RELEVANT BACKGROUND AND STATEMENT OF FACTS

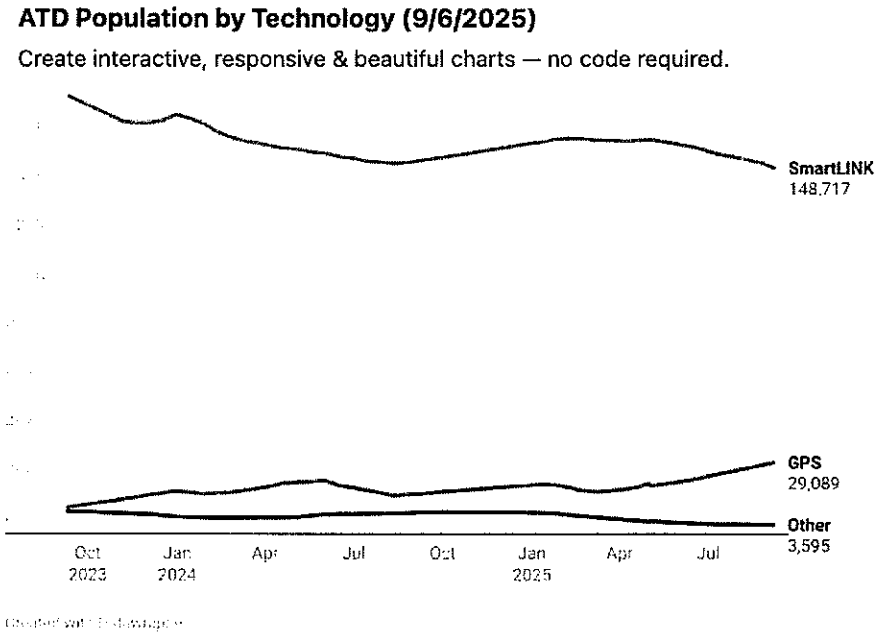
ICE's Intensive Supervision Appearance Program

29. ICE's Alternatives to Detention ("ATD") program is "a [noncitizen] compliance tool overseen by [Enforcement and Removal Operations]."[6] Electronic monitoring first became a

[6] U.S. Immigr. & Customs Enf't, *Enforcement and Removal Operations Statistics*, (updated May 30, 2025), https://perma.cc/MXZ3-RMUG ("ATD uses technology and case management to more closely monitor cases assigned to the non-detained docket where detention is not necessary or

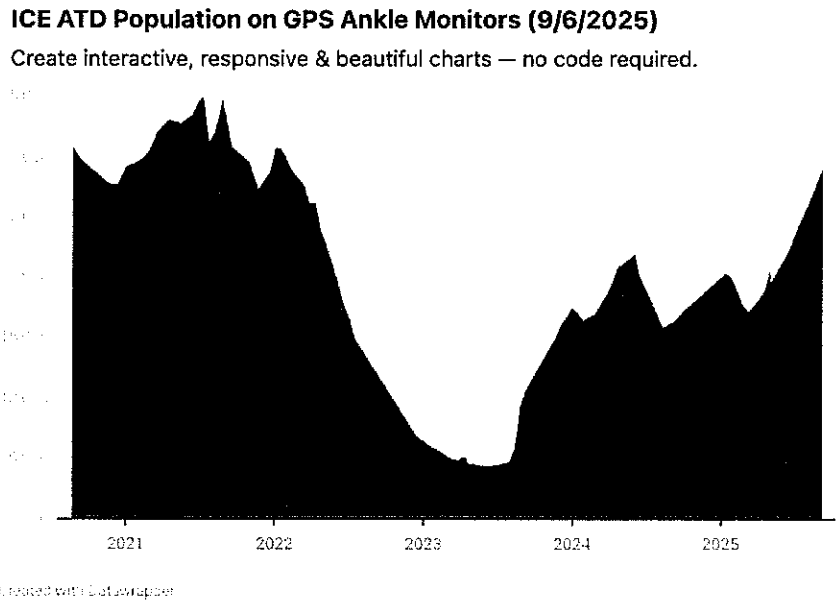
part of ICE's ATD program in 2004, when Congress appropriated funding to DHS to create two new programs, including ISAP. The ISAP contract was awarded to BI, a former cattle tracking service based in Boulder, Colorado.

30. In recent years, the ATD program has rapidly expanded.[7]



appropriate. The level of supervision and technology participants are assigned is based on their current immigration status, criminal history, compliance history, community or family ties, caregiver or provider status, and other humanitarian or medical conditions. Officials may enroll aliens in ATD following a border apprehension by CBP or an ICE interior administrative arrest, or at a later stage in removal proceedings."); s*ee also* U.S. Immigration and Customs Enforcement, *Alternatives to Detention* at 1 (updated February 27, 2025), https://perma.cc/W84B-2DAM ("Each [noncitizen] enrolled in ATD-ISAP receives an individualized determination as to their level of supervision. ERO may transition [a noncitizen]'s supervision level by considering certain factors. Factors considered in both initial placement and changes to supervision level, as relevant, include criminal history, compliance history, community or family ties, caregiver concerns, and other humanitarian or medical concerns.").

[7] Austin Kocher, "Immigration Arrests and Detention Numbers Decline Slightly, but Court Rulings and Flood of Funding Likely to Change All That" Substack (Sept. 12, 2025) https://perma.cc/66MV-7TL6.



31. In 2015, ICE reported that 26,625 people were enrolled in ISAP. That number increased by nearly 300% in 2019, with over 100,000 people enrolled in ISAP, and then tripled in 2022, with over 320,000 people enrolled in ISAP.[8]

32. The Helland Memo directs ICE Field Offices to expand the number of individuals subjected to ISAP. The new policy instructs ICE officials to monitor with GPS-enabled ankle monitors "whenever possible" and to "escalate their supervision level to GPS ankle monitors . . . and increase reporting requirements" for individuals not being arrested.

33. Data indicates that ICE currently monitors 182,584 families and single individuals through its ATD programs.[9] The Philadelphia ICE Field Office currently monitors 7,114 people on ATD programs, among the highest in the nation.[10]

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[8] U.S. Immigr. & Customs Enf't, *Enforcement and Removal Operations Statistics*, (updated May 30, 2025), https://perma.cc/MXZ3-RMUG.

[9] TRAC Reports, "Immigration Detention Quick Facts", (last accessed Sept. 23, 2025) (data current as of August 23, 2025) https://perma.cc/A4EN-JRKE (data current as of August 23, 2025).

[10] TRAC Reports, Immigration Detention Quick Facts, (last visited Sept. 23, 2025) (data current as of August 23, 2025) (Philadelphia ranks 10th among ICE Field Offices with highest number of people monitored on ATDs in the United States) https://perma.cc/9QK5-NJWW (data current as of August 23, 2025) (Philadelphia ranks 10th among the 25 ICE Field Offices with highest number of people monitored on ATDs in the United States).

34. The largest program within ICE's ATD programs is ISAP, which is administered by contractor BI Incorporated through its case specialists.[11] Under ISAP, individuals may be assigned to various forms of electronic monitoring technologies, including ankle monitors, telephonic reporting, or the smartphone application "SmartLINK." They may also be required to comply with periodic home and/or office visits.[12] ICE Enforcement and Removal Operations ("ERO") determines the intensity of the supervision and monitoring technology.[13]

35. According to a U.S. Government Accountability Office ("GAO") report from 2022, ICE ATD headquarters considers the ISAP handbook to be the program's standard operating procedure, and it is therefore reasonably understood as binding policy on ICE ATD officials.[14]

Statutory and Regulatory Background on Immigration Custody Proceedings

36. 8 U.S.C. § 1226(a) authorizes the detention of noncitizens during removal proceedings and permits (but does not require) those who are not subject to mandatory detention to be released on bond or their own recognizance. *See* 8 U.S.C. § 1226(a)(1), (2) (ICE "may continue to detain the arrested alien" pending removal proceedings or it "may release the alien" on bond in the amount of at least $1500, or on "conditional parole"); *see also* 8 C.F.R. 236.1(c)(8)

[11] BI Incorporated operates ISAP under a contract with the Department of Homeland Security and Immigration and Customs Enforcement. *See* ISAP Intensive Supervision Appearance Program Participant Handbook, ISAP, https://perma.cc/6VC5-EGTZ (last accessed Aug. 29, 2025).

[12] ISAP Intensive Supervision Appearance Program Participant Handbook, ISAP, https://perma.cc/6VC5-EGTZ (last accessed Aug. 29, 2025).

[13] ICE, "Alternatives to Detention: ISAP Transition" (updated Feb. 27, 2024), https://perma.cc/NG9S-SQGA.

[14] *See* U.S. Gov't Accountability Off., GAO-22-104529, *Alternatives to Detention: ICE Needs to Better Assess Program Performance and Improve Contract Oversight* 27 (June 22, 2022), https://perma.cc/G348-VYC7 ("The ATD Handbook, published in 2017, outlines these policies and procedures, which ATD headquarters officials stated they consider the program's standard operating procedure."). ICE 2017 Handbook: https://perma.cc/FDV5-W78V.

(ICE may "release an alien not described in section 236(c)(1) of the Act [i.e. one subject to mandatory detention], under the conditions at [INA] section 236(a)(2)."

37. Upon the noncitizen's request, ICE's initial custody or bond determination under 8 U.S.C. § 1226(a) is reviewable by an IJ within the Department of Justice's (DOJ's) Executive Office for Immigration Review (EOIR). *See* 8 C.F.R. §§ 1003.19(a) ("Custody and bond determinations made by [ICE] pursuant to 8 CFR part 1236 may be reviewed by an Immigration Judge pursuant to 8 CFR part 1236."); 1236.1(d)(1) (providing that when a noncitizen is initially released from custody by ICE but with conditions, the noncitizen may "request amelioration of the conditions under which he or she may be released" within seven days). The Supreme Court has held that after the initial detention determination, a petitioner may request a bond hearing before an IJ, who has the authority to determine "the alien's detention conditions." *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527–28 (2021).

38. When an IJ's custody review is triggered by a noncitizen's request, the IJ exercises the authority granted to ICE in 8 U.S.C. § 1226(a). *See* 8 C.F.R. § 1236.1(d)(1). ("[T]he immigration judge is authorized to exercise the authority in section 236 of the Act . . . to detain the alien in custody, release the alien, and determine the amount of bond, if any, under which the respondent may be released").

39. The IJ's decision on custody or bond must be entered on a form at the time the decision is made and both the noncitizen and ICE must be informed of the decision orally or in writing. 8 C.F.R. § 1003.19(f). Both the noncitizen and ICE may appeal the IJ's decision on custody or bond to the Board of Immigration Appeals ("BIA"). *Id.* §§ 1003.1(d)(1), 1236.1(d)(3)(i). During removal proceedings, if ICE changes the location, releases, or re-detains a previously released noncitizen, it must immediately notify the IJ. *Id.* at § 1003.19(g).

40. The regulations governing custody redetermination hearings provide for only two circumstances in which an IJ's bond order may be modified: (a) the noncitizen or ICE may appeal the IJ's custody redetermination to the BIA, *see* 8 C.F.R. § 1003.19(f); and (b) a noncitizen may later request a new custody re-determination hearing upon a showing of materially changed circumstances, *see id.* § 1003.19(e).

N- N-'s Immigration Procedural History and Removal Proceedings.

41. Petitioner N- N- was born in January 1992, in Lagos, Nigeria. In 2020, N- N- fled Nigeria for Ghana, after being enslaved, beaten, and tortured in Nigeria on account of his political opinion, race, membership in various protected particular social groups, and the Torture Convention. *See* Exh. A, Declaration of Petitioner N- N-, Dated September 18, 2025 ("Petr. Decl."). He remained in Ghana until December 2024.

42. In Ghana in May 2022, N- N- met his now wife, a U.S. citizen. *Id.* N- N-'s wife was born in the United States, but her family is Ghanian, and she regularly traveled back and forth to see family. *Id.* N- N- and his wife began dating and in September 2022, she brought three of her four children to Ghana to live with Petitioner as a family. *Id.*

43. Several months later, N- N-'s wife decided it was in her children's best interests to return to the United States. *Id.* She and N- N- decided to get engaged so that they could remain together as a family. *Id.*

44. On March 14, 2024, N- N-'s wife filed an I-129F, Petition for Alien Fiancé to bring N- N- to the United States . This petition was approved on July 9, 2024. On November 22, 2024, N- N- was issued a K-1 visa to enter the United States. N- N- arrived in the United States on December 3, 2024. Upon his arrival, N- N- began living with his wife and three of her children. *Id.* The couple married on January 25, 2025.

45. On April 16, 2025, N- N- was arrested and charged with misdemeanor simple assault under 18 Pa. Cons. Stat. § 2701(a)(1) and summary harassment under 18 Pa. Cons. Stat. § 2709(a)(1). These charges stem from an incident where, due to a false accusation that N- N- hit his stepson, N- N-'s wife's ex-husband came to the family home wielding a gun and beat N- N- violently. *Id.* N- N- was released on bail on April 17, 2025, and the case remains pending.

N- N-'s Bond Proceedings and Release from Immigration Detention.

46. On May 31, 2025, N- N- was pulled over by ICE officers while driving down the street from his house. The officers then arrested N- N- and transported him to the Moshannon Valley Processing Center ("Moshannon") where he was detained. *See* Exh. B, Department of Homeland Security Notice of Custody Determination, Dated May 31, 2025 ("Custody Det.").

47. The Department of Homeland Security ("DHS") issued a "Notice of Custody Determination" on May 31, 2025, deciding to continue N- N-'s detention. *Id.* N- N- requested an IJ review of this determination. *Id.* The IJ scheduled a custody redetermination hearing (also known as a bond hearing) on June 12, 2025. *See* Exh. C, Notice of June 12, 2025, Custody Redetermination Hearing ("June 12, 2025 Hearing Notice").

48. During the June 12, 2025, initial custody redetermination hearing, N- N- withdrew his request so that he would have time to find counsel and gather evidence. Exh. A, Petr. Decl.; *see also* Exh. D, IJ Bond Order, Dated June 12, 2025 ("June 12, 2025 IJ Bond Order").

49. On June 30, 2025, N- N- retained *pro bono* immigration counsel through the Nationalities Service Center.

50. On July 11, 2025, N- N- filed form I-485, Application for Adjustment of Status, with the Immigration Court. On July 14, 2025, N- N- filed his I-589, Application for Asylum,

Withholding of Removal, and relief under the Convention Against Torture with the Immigration Court.

51. On July 24, 2025, N- N- filed a motion for a custody redetermination hearing, which the IJ scheduled for August 5, 2025. *See* Exh. E, Motion for Custody Redetermination Hearing, Dated July 24, 2025 ("Mot. Hearing"); Exh. F, Notice of August 5, 2025 Custody Redetermination Hearing ("August 5, 2025 Hearing Notice").

52. In advance of the bond hearing, N- N- filed evidence in support of his request including sworn affidavits, letters of support, documents showing his eligibility for relief, and a brief in support of his eligibility for bond. *See* Exh. G, Petitioner's Submission of Bond Evidence and Brief ("Petr.'s Bond Submission"). The government also filed evidence in support of their position on N- N-'s custody.

53. On August 5, 2025, N- N- had a custody redetermination hearing before IJ Adam Panopolous. *See* Exh. F, August 5, 2025 Hearing Notice. IJ Panopolous found that N- N- is not a danger to the community or a flight risk, and thus granted his request for custody redetermination. He noted that N- N- is *prima facie* eligible to adjust status to become a lawful permanent resident, and so ordered a low bond of $3,000. *See* Exh. H, IJ Bond Order, Dated August 5, 2025 ("August 5, 2025 IJ Bond Order"). IJ Panopolous did not impose any additional conditions for his release. Notably, DHS waived appeal. *Id.*

54. On August 7, 2025, DHS released N- N- from custody pursuant to the payment of the bond. *See* Exh. I, Form I-830E ("I-830E"). His United States citizen spouse picked him up from the Moshannon on that same date. Exh. A, Petr. Decl. Upon his release, N- N- was referred to clinical therapy. *See* Exh. J, Declaration of Moumena Sarador, Dated September 8, 2025

("Sarador Decl."). His treating therapist describes how he displays symptoms consistent with PTSD. *Id.*

55. Upon release, DHS gave N- N- a DHS Call-In Letter, instructing him to come to the "Docket Control Office Philadelphia" on August 11, 2025, at 9:00 am and to ask for the ATD officer. *See* Exh. K, Department of Homeland Security Call-In Letter, Dated August 7, 2025 ("Call-In Letter").

56. On August 11, 2025, N- N- and Mike Geoffino, an attorney from the Nationalities Service Center, attended this appointment. *See* Exh. L, Declaration from Mike Geoffino, Dated September 23, 2025 ("Geoffino Decl."). Petitioner and Attorney Geoffino arrived at the ISAP office (1015 Chestnut Street) in Philadelphia around 9:00 am. They spoke with the front desk secretary and explained that N- N- was there for an appointment. N- N- handed her the paper he had been given by ICE. The secretary asked if this was his first appointment. Then the secretary asked for his identification. N- N- did not have any photo identification with him. Then the secretary asked for his phone number.

57. The secretary located N- N- in their system. She then explained that they were going to monitor N- N- with an ankle monitor for at least three months. She also said that she was going to inform ICE that N- N- was present. She provided N- N- with a form to fill out. Approximately thirty minutes later, the secretary called N- N- up to the front desk and took a picture of him.

58. N- N- waited for approximately an hour before another employee entered the waiting room and requested that N- N- come to his office. In this employee's office, he asked N- N- questions about his living situation (who was there, phone numbers, addresses). Then this employee explained how N- N- would need to wear the ankle monitor for at least three months because ICE required it. The ISAP employee told N- N- that if he does not violate his conditions

for three months, they may be able to remove the ankle monitor and instead install supervision on his phone.

59. The employee told N- N- to stand and put his knee on a chair in the employee's office. Then the employee bent down and affixed the ankle monitor to N- N-'s ankle. Exh. M, Intensive Supervision Appearance Program Paperwork ("ISAP Paperwork"). The employee provided instructions to N- N- for how to wear the ankle monitor. *See* Exh. N, ISAP Ankle Monitor Instructions.

60. DHS placed N- N- in the "Pre-Order" supervision plan and ordered him to comply with office visits, ISAP case management, ISAP court tracking, and ISAP home visits in addition to wearing the ankle monitor. Exh. M, ISAP Paperwork.

61. DHS instructed N- N- that he must fully comply with the following restrictions and requirements:

- N- N- must wear the ankle monitor 24/7. [15] The ankle monitor may omit messages. To hear or stop hearing messages from the ankle monitor, a person must tap it twice. *Id.* N- N- finds the ankle monitor physically uncomfortable as it rubs against his skin. Exh. A, Petr. Decl.

- N- N- must charge the battery of the ankle monitor for two to three hours daily before going to sleep. Exh. N, ISAP Ankle Monitor Instructions. To charge the ankle monitor, N- N- has to attach a bulky battery to the ankle monitor. Because the battery is bulky and heavy, N- N- is unable to walk around while the battery is attached to the ankle monitor. Exh. A, Petr. Decl. Instead, he must be stationary and lying down for 30 to 50 minutes every time the monitor needs to charge.

- N- N- must not go into the water at the beach or pool since this will damage the device. Exh. N, ISAP Ankle Monitor Instructions.

[15] A Guardian Investigation found that "BI's ankle monitors can overheat, have shocked people, and at times are put on too tightly by Immigration and Customs Enforcement (Ice)." *See* Johana Bhuiyan, *Poor tech, opaque rules, exhausted staff: inside the private company surveilling US immigrants,* The Guardian (Mar. 7, 2022) https://perma.cc/7VAE-MW8T (last accessed Aug. 29, 2025).

- N- N- must not run on a treadmill because this could lead to a false alert. *Id.*
- N- N- must attend in-person office visits every 32 weeks and virtual office visits every eight weeks. Exh. M, ISAP Paperwork.
- N- N- must attend in-person home visits every 32 weeks. *Id.* There is not a specific time for the home visits; rather, N- N- must be home and available the entire day. *Id.*
- N- N- must attend virtual home visits every eight weeks during which time he must be home to receive this phone call. *Id.*
- N- N- must save $100 a month and set aside this money in case he is issued a final order to depart the United States. *Id.*
- N- N-'s movement is restricted to a geographic area of Pennsylvania, New Jersey, and Delaware. *Id.* He must secure advance permission to travel outside of those states and/or to move addresses within those states. *Id.*

62. DHS ordered N- N- to return to the BI Incorporated office on August 25, 2025, at 9:00 am for another in person appointment. N- N- and his primary attorney, Mikaela Wolf-Sorokin, attended this appointment. *Id.* During the appointment, the case worker asked N- N- many personal questions. The caseworker asked N- N- about his address, transportation, children, who he lived with, how long he had resided at his current address, whether he had plans to move, how many rooms there were, whether he felt safe, whether he had mental health or medical issues, whether and what type of trauma he had experienced, how he supported himself, and whether he had food and clothes. *See* Exh. A, Petr. Decl. The caseworker explained that if N- N- finds work outside of the three-state area he is restricted to, he must provide a work permit, the name of the company, and documentation showing that travel is required to ISAP at least a week before he needs to travel so they can approve it. *Id.*

63. If N- N- ever seeks to travel for more than two days outside of the three-state area, ISAP must get approval from ICE for this unless the travel is for work. *Id.* The case specialist explained that he is "just the messenger." *Id.*

64. The case specialist also explained that if DHS chooses to "deescalate" N- N- from the ankle monitor, DHS will instead require that he participate in weekly or monthly biometric check ins in lieu of the ankle monitor. *Id.* The case specialist explained that there is no guarantee ICE will approve de-escalation and ISAP cannot remove the ankle monitor without ICE's approval because "they control the technology, and we are essentially at their mercy." *Id.*

N- N-'s Ongoing Supervision Under the Philadelphia ICE Field Office.

65. N- N- began therapy with Moumena Sarador, the Senior Manager of Wellness at the Nationalities Service Center on August 21, 2025. *See* Exh. J, Sarador Decl. N- N- displays symptoms of anxiety, crying, and unwanted memories, which are consistent with PTSD, likely from his time in ICE custody. *Id.* Ms. Sarador recommended that N- N- continue one-on-one trauma treatment and talk therapy for at least the next six months. *Id.*

66. Ms. Sarador describes how the ankle monitor poses a daily reminder for N- N- that he could be detained again and sent back to a facility where he experienced significant trauma including depression and the death of a dormmate who died by suicide.

67. When ICE shackled N- N- with the ankle monitor, he describes that he instantly began to feel anxious and depressed. Exh. A, Petr. Decl. Because of the stigma associated with the ankle monitor, he does not want anyone to see it when he is in public. *Id.* After, ICE shackled him, he remained at home, unwilling to leave the house for three days. *Id.* Although he now leaves the house to help his family, he only wears trousers or loose pants that conceal the monitor. *Id.* He is unable to go swimming with his children or go on vacation with his wife due to the ankle monitor and its geographic restrictions. *Id.*

68. N- N- experienced significant trauma while in ICE custody. He witnessed fights between other detainees, including two incidents where individuals were stabbed. *Id.* These

experiences reminded him of his past trauma in Nigeria and were very upsetting. *Id.* A fellow detained individual, who N- N- knew personally, recently took his own life at Moshannon while N- N- was detained there.[16] *Id.* N- N- began experiencing significant depression and anxiety, having difficulty sleeping, fearing for his safety, and avoiding going outdoors. *Id.* Moreover, the guards mistreated the individuals detained at Moshannon providing inadequate food including uncooked hotdogs and moldy bread and calling noncitizens names like "bitch ass nigger."

69. Since N- N-'s release, he has enrolled in therapy to address the trauma inflicted on him by ICE. The thought of arrest and detention triggers N- N-'s trauma symptoms. *Id.* He is constantly alert when outside, checks the windows every morning to make sure that ICE agents are not there to arrest him, and experiences significant anxiety when thinking about detention and being separated from his family. *Id.*

CLAIMS FOR RELIEF

COUNT ONE:

VIOLATION OF THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION

Substantive Due Process

70. Petitioner realleges all paragraphs above as if fully set forth here.

71. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas*, 533 U.S. at 690. Under the substantive due process

[16] This individual's death was widely reported in various news outlets including the Philadelphia Inquirer. *See* Jeff Gammage, *ICE detainee found hanging in Moshannon shower room, was awaiting immigration hearing, officials say,* The Philadelphia Inquirer (Aug. 7, 2025) https://perma.cc/Q2HE-BKTV (last accessed Aug. 29, 2025) ("An ICE detainee was found hanging by his neck in a shower room at the Moshannon Valley Processing Center on Tuesday morning and pronounced dead shortly afterward, the agency said late Wednesday night.").

doctrine, restraints on liberty associated with civil detention are only permissible if they serve a "legitimate nonpunitive objective." *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997).

72. ISAP "relies on the use of electronic ankle monitors, biometric voice recognition and image recognition software, unannounced home visits, employer verification, and in-person reporting to supervise participants." *Mathon v. Searls*, 623 F. Supp. 3d 203, 217 (W.D.N.Y. 2022). The program can be understood as "a form of supervised parole." *Nken v. Napolitano*, 607 F. Supp. 2d 149, 151 (D.D.C. 2009).

73. N- N-'s ankle monitor constitutes a "significant restraint on [his] liberty," where his movements and daily activities are restricted and subject to 24/7 surveillance. *Romero*, 20 F.4th at 1379.

74. Respondents' imposition of electronic surveillance on N- N- serves no legitimate nonpunitive objective. Neither public safety nor flight risk are at issue here. An IJ has already determined that N- N- is not a danger to the community and that the only condition necessary to ensure his future appearance in immigration court is payment of a cash bond.

75. Because Respondents have no legitimate nonpunitive objective in imposing electronic surveillance on N- N- in defiance of an IJ's order, they violate the substantive due process clause doctrine of the Fifth Amendment.

COUNT TWO:

VIOLATION OF THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION

Procedural Due Process

76. Petitioner realleges all paragraphs above as if fully set forth here.

77. "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty" under case law interpreting the Due Process Clause. *Mathews v.*

Eldridge, 424 U.S. 319, 332 (1976) (citation modified). "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* at 333 (citation modified).

78. Under *Mathews v. Eldridge*, courts must balance three factors to determine whether procedural due process is satisfied: (1) the private interest at issue; (2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value, if any, of additional procedural safeguards; and, (3) the Government's interest, including fiscal and administrative burdens that additional or substitute procedural requirements entail. *Id.* at 333.

79. The first factor, the private interest at issue, favors N- N-. "Freedom from imprisonment—from government custody, detention, *or other forms of physical restraint*—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas*, 533 U.S. at 690 (emphasis added).

80. Here, the private interest at stake is N- N-'s freedom from the government's ongoing surveillance through ankle monitoring, which has significantly and severely interfered with his quality of life by inflicting constant physical pain and discomfort, causing daily psychological distress, aggravating his pre-existing mental health conditions, and subjecting him to social stigma and ridicule. In light of the government's new policy encouraging blanket application of ankle monitors, N- N- faces the prospect of having this infringement on his liberty interest continue indefinitely.

81. The second factor, the risk of erroneous deprivation of liberty, favors N- N-. In fact, here, an "erroneous deprivation" of N- N-'s liberty interest is not merely at risk, it has been realized and may continue indefinitely because the process available to him to challenge the conditions of his custody has already occurred during his custody hearing before the IJ. When the government

defies an IJ's order that restrains it from imposing surveillance, the risk of erroneous deprivation of liberty is not just high—it is certain. The value of requiring ICE to follow an IJ's reasoned order is also certain because it guarantees that any restrictions on liberty were justified by findings obtained at a hearing before a neutral decision-maker at which both parties were able to present evidence and arguments.

82. The third factor, the government's interest, also favors N- N-. During N- N-'s bond hearing, the government was represented by counsel who presented evidence and the government's position concerning N- N-'s conditions of release. Following the custody determination by the IJ, the government waived appeal. If the government is permitted to defy an IJ's order by placing additional restraints on liberty that are not made on the basis of individualized evidence, a noncitizen's only recourse will be to seek relief in a habeas corpus petition before the federal courts. The resultant glut of increased legal filings will impose greatly heavier administrative and fiscal burdens on the government than would simply requiring an ICE trial attorney to seek reporting or surveillance conditions at the original bond hearing before an immigration judge.

83. For these reasons, the imposition of electronic surveillance on N- N- in defiance of an IJ's order violates the procedural due process doctrine of the Fifth Amendment.

COUNT THREE:

VIOLATION OF ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A), (B)

Contrary to Law and Constitutional Right

84. Petitioner realleges all paragraphs above as if fully set forth here.

85. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be . . . not in accordance with law" or "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(A), (B).

86. The APA's reference to "law" in the phrase "not in accordance with law," "means, of course, any law, and not merely those laws that the agency itself is charged with administering." *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original).

87. The IJ's authority to set conditions of release derives from the INA § 236, codified at 8 U.S.C. § 1226(a). *See* 8 CFR § 1236.1(d)(1) ("[T]he immigration judge is authorized to exercise the authority in section 236 of the Act"). ICE's failure to comply with that authority is therefore a violation of the INA.

88. ICE's refusal to follow the IJ's order also violates 8 C.F.R. § 1003.19(a), under which "[c]ustody and bond determinations made by [ICE] pursuant to 8 CFR part 1236 may be reviewed by an Immigration Judge pursuant to 8 CFR part 1236."

89. ICE's refusal to follow the IJ's order also violates substantive and procedural due process under the Fifth Amendment's Due Process Clause, as described in Counts One and Two. *See also Torres-Jurado v. Biden*, 2023 WL 7130898, at *4 (S.D.N.Y. Oct. 29, 2023) (finding violation of procedural due process where ICE failed to follow regulations for revocation of an order of supervision).

90. ICE's policy is not in accordance with law because it is contrary to the INA, its implementing regulations, and the Due Process Clause of the Constitution's Fifth Amendment.

COUNT FOUR:

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A)

Arbitrary and Capricious

91. Petitioner realleges all paragraphs above as if fully set forth here.

92. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be arbitrary [or] capricious." 5 U.S.C. § 706(2)(A).

93. ICE's policy of ignoring an IJ's order and unilaterally imposing additional restraints on liberty not contained in the order, is arbitrary and capricious because it violates statute, regulation, and the Constitution, as described above in Counts One, Two, and Three.

94. ICE's policy also "failed to consider important aspects of the problem" before the agency, rendering it arbitrary and capricious in multiple respects. *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1910 (2020).

95. First, the policy fails to address the serious constitutional concerns arising from a practice to ignore the orders of a neutral decisionmaker, including harms to the liberty interests of people adjudicated to not need surveillance in order to guarantee court appearance and harms caused to the rule of law by agency action that fails to follow reasoned decision-making.

96. Second, the policy ignores the increased administrative burden on the government caused by subjecting people to unnecessary electronic surveillance and reporting, including financial costs to the government from contracts for services with private companies that run surveillance programs and personnel costs spent on processing unnecessary requests for surveillance.

97. Third, the policy fails to consider reasonable alternatives, like following an IJ's order or requiring ICE attorneys to raise arguments for surveillance and reporting at a bond hearing in order to obtain an IJ order for such. This alternative would vindicate the government's interests in imposing surveillance on people likely to abscond and save it the unnecessary expense of imposing surveillance on those who do not need it in order to guarantee court appearance.

98. Fourth, the policy fails to consider the substantial reliance interests of people subject to unwarranted surveillance, who might have raised arguments against its imposition at a bond hearing had they been given notice.

99. For these and other reasons, ICE's policy is arbitrary and capricious.

COUNT FIVE:

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(C)

In Excess of Statutory Authority

100. Petitioner realleges all paragraphs above as if fully set forth here.

101. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C).

102. "An agency . . . literally has no power to act—including under its regulations—unless and until Congress authorizes it to do so by statute." *FEC v. Cruz*, 596 U.S. 289, 301 (2022) (internal quotation marks and citation omitted).

103. No statute authorizes ICE to unilaterally overrule an IJ's order at a bond hearing.

104. ICE's policy is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.

COUNT SIX:

VIOLATION OF THE *ACCARDI* DOCTRINE

105. Petitioner realleges all paragraphs above as if fully set forth here.

106. Respondents violated the *Accardi* doctrine in failing to follow its regulations, 8 C.F.R. § 1003.19(a), requiring compliance with an IJ bond order.

107. In *Accardi* a noncitizen challenged his deportation, and the Supreme Court held that agencies are bound to follow their own rules that affect the fundamental rights of individuals. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (holding that the Board of Immigration Appeals must follow its own regulations in its exercise of discretion); *Morton v.*

Ruiz, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

108. "[W]hen an agency promulgates a regulation protecting fundamental statutory or constitutional rights of parties appearing before it, the agency must comply with that regulation. Failure to comply will merit invalidation of the challenged agency action without regard to whether the alleged violation has substantially prejudiced the complaining party." *Leslie v. Attorney General*, 611 F.3d 171, 180 (3d Cir. 2010) (finding that the government's failure to implement its regulation requiring IJ's to advise noncitizens of their right to counsel violated noncitizens' right to counsel and undermined the structure of the hearing such that it automatically invalidated the agency action); *Aquino v. Attorney General*, 53 F.4th 761, 766 (3d Cir. 2022) ("So to clarify *Leslie*, we hold that for a regulation to protect a fundamental right, a violation must be a structural error that necessarily makes proceedings fundamentally unfair.").

109. In applying *Accardi* and determining whether a failure to comply with a regulation warrants invalidation of the agency action, the Third Circuit has focused on the significance of the right and the structure needed to secure that right. *See Leslie*, 611 F.3d at 176, 181 (drawing on *Accardi,* in which the court prevented the Attorney General from "sidestep[ping] the Board or dictat[ing] its decision").

110. The remedy for an *Accardi* violation is to set aside the agency action and enjoin the agency to follow its rules. *Accardi*, 347 U.S. at 268 ("If petitioner can prove the allegation [that agency failed to follow its rules in a hearing] he should receive a new hearing").

111. Here, Respondents have promulgated agency rules that require ICE to obey an IJ's order following a custody determination at a bond hearing. *See* 8 C.F.R. § 1003.19(a) ("Custody

and bond determinations made by [ICE] pursuant to 8 C.F.R. part 1236 may be reviewed by an Immigration Judge pursuant to 8 C.F.R. part 1236."); *Id.* § 1236.1(d)(1). ("[T]he immigration judge is authorized to exercise the authority in section 236 of the Act . . . to detain the alien in custody, release the alien, and determine the amount of bond, if any, under which the respondent may be released"). These rules protect the fundamental right to liberty of a noncitizen in removal proceedings. "Freedom from imprisonment-from government custody, detention, or other forms of physical restraint-lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690 (citing *Foucha* v. *Louisiana,* 504 U. S. 71, 80 (1992)). Allowing the government to bypass the bond order of an IJ and apply conditions outside those ordered after a full custody hearing "undermines the structure of the hearing and necessarily prejudices the outcome." *Aquino,* 53 F.4th at 766.

112. Regardless, ICE's failure to follow its rules is prejudicial to N- N- where the rule implicates his fundamental liberty interest and due process rights. *See Leslie*, 611 F.3d at 182; *see also Delgado-Corea v. INS*, 804 F.2d 261, 263 (4th Cir. 1986) (holding that "violation of a regulation can serve to invalidate a deportation order when the regulation serves a purpose to benefit the [noncitizen]" and the violation affected "interests of the [noncitizen] which were protected by the regulation" (internal quotations and citation omitted)). If ICE were to follow its rules and obey the IJ's order—requiring release with only the condition of payment of a $3,000 bond—it would be required to discontinue N- N-'s enrollment in ISAP and release him from the ankle monitor.

113. Under the *Accardi* doctrine, N- N- has a right to set aside ICE's decision to impose electronic surveillance on him and to enjoin ICE from defying the IJ's order by imposing additional restraints on his liberty beyond the IJ's order.

COUNT SEVEN:

ULTRA VIRES ACTION

114. Petitioner realleges all paragraphs above as if fully set forth here.

115. The Supreme Court has held that after the initial detention determination, a petitioner may request a bond hearing before an IJ, who has the authority to determine "the alien's detention conditions." *See Johnson*, 594 U.S. at 527–28; *see also Huanga v. Decker*, 599 F. Supp. 3d 131, 138 (S.D.N.Y. 2022) ("Section 1226(a) gives the Attorney General the choice to 'continue to detain the arrested alien,' or 'release the alien on (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole.' The Attorney General has delegated this authority to immigration judges.").

116. Although an IJ determined that N- N- is not a flight risk or a danger to the community, ordering him released from custody on a minimal $3,000 bond with no additional conditions, ICE is unlawfully subjecting him to an alternative form of custody through the ankle monitor and other onerous conditions.

117. ICE's unlawful application of conditions outside the IJ Order reflects its new policy, as described in the Helland Memo, to outfit noncitizens with ankle monitors "whenever possible."

118. N- N- received a bond hearing because he is eligible for release on bond and conditions. *See* 8 U.S.C. § 1226(a). During a bond hearing, the decision on bond and conditions is made by the IJ alone, based on the due process provided in the bond hearing. *See* 8 C.F.R. §§ 1003.19, 1236.1(d). Thus, here, the administrative process has been completed and an IJ determined the conditions of N- N-'s release—a $3,000 bond. Even if ICE is dissatisfied with the outcome of that process, it has no authority to unilaterally impose additional conditions of release

without the IJ's authorization. If ICE was dissatisfied by the decision to release N- N- on a $3,000 bond, ICE would have had the opportunity to appeal that decision to the BIA. However, ICE waived appeal in this case.

119. There is no statute, constitutional provision, or other source of law that authorizes this action or ICE's new policy regarding broad implementation of ankle monitors. And the policy is contrary to law and constitutional right, as set forth above.

120. N- N- has non-statutory right of action to declare unlawful, set aside, and enjoin Respondents' ultra vires actions.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

a) Assume jurisdiction over this matter;

b) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately from the supervision of ISAP/BI Incorporated and remove the ankle monitor and other supervision requirements;

c) Set aside defendants' decision to place Petitioner on electronic surveillance, supervision requirements, and any other restraint on liberty that goes beyond the IJ's custody redetermination;

d) Enjoin defendants from imposing electronic surveillance and supervision requirements in the future absent a showing of changed circumstances that make Petitioner a flight risk;

e) Declare unlawful, set aside, and enjoin from carrying out defendants' policy and practice of imposing additional restraints on liberty that go beyond an immigration judge's custody redetermination;

f) Grant any further relief this Court deems just and proper.

Dated: September 24, 2025

Respectfully submitted,

/s/ Sarah E. Decker
Sarah E. Decker*
ROBERT F. KENNEDY HUMAN RIGHTS
1300 19th Street NW, Suite 750
Washington, DC 20036
Tel.: (908) 967-3245
decker@rfkhumanrights.org

/s/ Sarah T. Gillman
Sarah T. Gillman*
ROBERT F. KENNEDY HUMAN RIGHTS
88 Pine Street, 8th Floor, Suite 801
New York, New York 10005
Tel.: (646) 289-5593
gillman@rfkhumanrights.org

/s/ Mikaela Wolf-Sorokin
Mikaela Wolf-Sorokin
NATIONALITIES SERVICE CENTER
1216 Arch Street, 4th Floor
Philadelphia, PA 19107
Tel.: 267-807-9396
mwolfsorokin@nscphila.org

/s/Jonah Eaton
Jonah Eaton
NATIONALITIES SERVICE CENTER
1216 Arch Street, 4th Floor
Philadelphia, PA 19104
215-609-1527
Jeaton@nscphila.org

* *Pro hac vice applications forthcoming*

Pro Bono Counsel for Petitioner

28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in this Complaint and Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

DATED: September 24, 2025

/s/ Mikaela Wolf-Sorokin
Mikaela Wolf-Sorokin
NATIONALITIES SERVICE CENTER
1216 Arch Street, 4th Floor
Philadelphia, PA 19107
Tel.: 267-807-9396
mwolfsorokin@nscphila.org

Pro Bono Counsel for Petitioner

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system. I will furthermore send a courtesy copy via email to the office of the United States Attorney for the Eastern District of Pennsylvania.

DATED: September 24, 2025

/s/ Mikaela Wolf-Sorokin
Mikaela Wolf-Sorokin
NATIONALITIES SERVICE CENTER
1216 Arch Street, 4th Floor
Philadelphia, PA 19107
Tel.: 267-807-9396
mwolfsorokin@nscphila.org

Pro Bono Counsel for Petitioner