**UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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| ELHASSEN NDIAYE,<br><br>*Petitioner*,<br>v.<br><br>J.L. JAMISON, et al.,<br><br>*Respondents*. | Case No. 2:25-cv-06007<br><br>J. Sánchez |

**BRIEF IN SUPPORT OF PETITIONER'S REQUEST FOR CLARIFICATION OF THE ORDER FOR RELEASE**

Petitioner, Elhassen Ndiaye, by and through his undersigned counsel, submits this brief in support of his March 5, 2026 letter,[1] ECF 22, requesting that the Court clarify its November 19, 2025 Order granting Petitioner's Immediate Release, ECF 15 (the "Order"). Specifically, Petitioner requests that the Court clarify the Order by (1) explicitly ordering that ICE may not impose additional conditions beyond those in place prior to his unlawful detention, thereby restoring Respondent to his pre-unlawful detention status; and (2) ordering Respondents to remove the ankle monitor and terminate all other reporting conditions placed on Mr. Ndiaye after his release from detention, pursuant to the Order.

## INTRODUCTION

Petitioner Elhassen Ndiaye requests the Court clarify the terms of his judicial release. On November 19, 2025, the Court ordered Mr. Ndiaye's immediate release from ICE custody. ECF 15. On November 20, 2025, Immigration and Customs Enforcement (ICE) released Mr. Ndiaye from its custody. ECF 16. Simultaneously as Respondents processed Mr. Ndiaye's release from

[1] Petitioner's letter and this brief can alternatively be construed as a Motion to Enforce. However, as the Order did not explicitly address ankle monitors or intensive supervision, Petitioner requests clarification that the order granting "immediately release" was intended to prohibit additional forms of custody and supervision such as these.

detention, Respondents ordered him to report to the Intensive Supervision Appearance Program (ISAP), where they shackled him with an ankle monitor and imposed onerous supervision conditions that were not included in this Court's release Order. In other words, dissatisfied with this Court's Order releasing Mr. Ndiaye from custody, Respondents sought a workaround by imposing a new form of custody: an ankle monitor and digital supervision. These conditions are *ultra vires* to the Court's order and constitute a continuing restraint on Petitioner's liberty, compelling this Court's intervention to clarify and enforce the terms of the judicial release.

As numerous courts have concluded, an ankle monitor and onerous ISAP supervision violate due process. *See, e.g.*, *N- N- v. McShane*, No. CV 25-5494, 2025 WL 3143594, at *4–5 (E.D. Pa. Nov. 10, 2025) (holding imposition of an ankle monitor and surveillance following release on an immigration judge's bond order violated constitutional due process and the *Accardi* doctrine); *Diahn v. Lowe*, No. 1:24CV1936, 2026 WL 84576, at *5 (M.D. Pa. Jan. 12, 2026) (finding "ICE acted without legal authority" in imposing ISAP and ankle monitoring where the IJ's bond amount "represented the specific condition that the IJ deemed sufficient"); *Orellana Juarez v. Moniz*, 788 F. Supp. 3d 61, 69 (D. Mass. 2025) (finding that ICE had no authority to impose additional restraints beyond those imposed by the immigration judge); *Khabazha v. United States Immigr. & Customs Enf't*, No. 25-CV-5279 (JMF), 2025 WL 3281514, at *8 (S.D.N.Y. Nov. 25, 2025) (concluding that respondents could not place further restraints on petitioner's liberty than existed prior to his unlawful re-detention, ordering removal of petitioner's ankle monitor and end of reporting requirements); *see also Garcia Domingo v. Castro*, No. 1:25-CV-00979-DHU-GJF, 2025 WL 2941217, at *5 (D.N.M. Oct. 15, 2025) (ordering release of petitioner on temporary restraining order pending final resolution of habeas case, and clarifying that "Respondents may not subject Petitioner to any post-release monitoring or supervision"); *Alvarez*

*Varela v. Dedos*, No. 1:25-cv-1085-DHU-KK, ECF No. 11 at 10 (D.N.M. Nov. 11, 2025) (same); *Cuya-Priale v. Castro*, No. 2:25-CV-01166-KG-DLM, 2025 WL 3564145, at *3 (D.N.M. Dec. 12, 2025) (same); *Danierov v. Noem*, No. 2:25-CV-01215-KG-KRS, 2025 WL 3653925, at *3 (D.N.M. Dec. 17, 2025) (same).

Accordingly, Mr. Ndiaye respectfully requests that the Court clarify its order to explicitly state that "immediate release" means that Respondents must release Mr. Ndiaye from all forms of custody, physical and digital. This Court's Order granting Mr. Ndiaye's immediate release intended to restore him to the condition he was in prior to his unlawful detention; therefore, Respondents must immediately remove Mr. Ndiaye's ankle monitor and terminate his ISAP supervision in absence of any changed circumstances. In the alternative, Mr. Ndiaye respectfully requests that the Court clarify that imposing post-release conditions such as the ankle monitor and digital supervision violates his due process rights and the *Accardi* doctrine.

## FACTUAL AND PROCEDURAL BACKGROUND

### I. MR. NDIAYE'S HISTORY OF COMPLIANCE WITH RESPONDENTS' REQUIREMENTS.

Petitioner Elhassen Ndiaye is an LGBT asylum seeker and torture survivor from Mauritania. He arrived in the United States on January 10, 2023, expressing a fear of persecution and seeking asylum. *See* ECF 5-1, Pet'r Brief. Respondents released him on his own recognizance pursuant to 8 U.S.C. § 1226 and issued a Notice to Appear, initiating removal proceedings that are still pending. *Id.*; *see also* ECF 5-5, Form I-220A Release on Recognizance; ECF 1-3, Notice to Appear.

Upon his release from the border, ICE instructed Mr. Ndiaye to report to the ISAP Office in Philadelphia. *See* Ex. 1, Pet'r Decl. Mr. Ndiaye reported to the ISAP office and complied with in-person office visits and phone-based reporting during his first few months in

the United States. *Id.*; *see also* Ex. 2, 2023 ISAP Documents. He had no ankle monitor during this time. Ex. 1, Pet'r Decl. On or around August 2023, after his full compliance with reporting requirements, ISAP ended its supervision of Mr. Ndiaye. *See* Ex. 1; Ex. 2.

Mr. Ndiaye complied with all other conditions of his removal proceedings and release. He timely-filed his pro se asylum application with the Philadelphia Immigration Court, kept his address updated with the Immigration Court, and obtained lawful work authorization from the Department of Homeland Security (DHS). *See* ECF 5-3, Pet'r Decl.; ECF 1-4, Asylum Application Receipt Notice. He retained undersigned *pro bono* counsel, who has represented him at every immigration court hearing in his pending proceedings. ECF 5-3, Pet'r Decl.

Mr. Ndiaye attended all ICE check-ins after his ISAP supervision concluded in August 2023. In August 2024, he attended his first routine ICE check-in on his own. *See* ECF 5-6, ICE Check-In Documents; Ex. 1, Pet'r Decl. On June 12, 2025, over two years after his initial entry to the United States, Mr. Ndiaye attended his second routine ICE check-in. *Id.* Finally, on October 20, 2025, over three years after his initial entry to the United States, Mr. Ndiaye attended his third routine ICE check-in. *Id.*; *see also* ECF 1-7, Attorney Declaration.

ICE detained Mr. Ndiaye at his third ICE check-in on October 20, 2025, despite his full compliance with all reporting requirements and no changed circumstances. Undersigned counsel urged ICE to exercise its discretion and not detain him, considering his full compliance and humanitarian concerns. ECF 1-7; *see also*, ECF 5-1, Pet'r's PI Brief. Nonetheless, ICE officers responded that positive discretionary factors "did not matter" because they had been instructed to detain everyone who had not been admitted. ECF 1-7. ICE did not assert that Mr. Ndiaye was a flight risk or danger when it detained him. *Id.* ICE subsequently argued that Mr. Ndiaye was subject to mandatory detention under its new interpretation and policy that all

individuals present in the United States without admission or parole are "applicants for admission" and therefore subject to mandatory detention. ECF 14, Memorandum.

## II. MR. NDIAYE'S PRIOR FEDERAL COURT PROCEEDINGS.

Mr. Ndiaye filed a Petition for Writ of Habeas Corpus, ECF 1, on October 20, 2025 and Motion for a Preliminary Injunction, ECF 5, on October 30, 2025, challenging his unlawful mandatory detention without bond. On November 19, 2025, this Court issued a Memorandum, ECF 14, and Order, ECF No. 15, granting Petitioner's Writ of Habeas Corpus and ordering Respondents to "RELEASE Ndiaye from custody immediately." ECF 15. The Court found that a bond hearing was unnecessary as Mr. Ndiaye's detention was unlawful. ECF 14. This Court's Order releasing Mr. Ndiaye contained no riders, conditions, notations for ISAP enrollment or electronic monitoring, or other restrictions. *Id.* In compliance with the Order, Respondents physically released Mr. Ndiaye from ICE custody on November 20, 2025. ECF 16.

This Court enjoined Respondents from re-detaining Mr. Ndiaye for seven days after his release from custody. ECF 15. The Court further ordered that "if the Government chooses to pursue re-detention of Ndiaye after that seven-day period, it must first provide him with a bond hearing, at which a neutral immigration judge shall determine whether detention is warranted pending the resolution of his removal proceedings." *Id.* No such hearing has occurred.

## III. RESPONDENTS IMPOSED AN ANKLE MONITOR ON MR. NDIAYE IMMEDIATELY AFTER THIS COURT'S ORDER GRANTING HIS IMMEDIATE RELEASE.

Despite this Court's clear order, the same day that Respondents processed Mr. Ndiaye's mandatory release from physical custody, they also set in motion new and burdensome conditions by ordering Mr. Ndiaye to report to ISAP for renewed intensive supervision. Ex. 1. Mr. Ndiaye recalls the agents telling him that "[he] had to go there, and if [he] didn't they were going to detain [him] again. The ICE officer told [him] that this was a condition of [his] release." *Id.* When Mr.

Ndiaye reported to the ISAP office on December 8, 2025—approximately one month after his release from physical custody—Respondents shackled him with an ankle monitor and imposed onerous supervision conditions without any judicial mandate. Mr. Ndiaye inquired as to the reason for the ankle monitor since it was not included in this Court's Order and Mr. Ndiaye had complied with all immigration requirements. Ex. 1, Pet'r Decl. The ISAP officer told Mr. Ndiaye that ICE's "instructions required her to [shackle him] and she couldn't do anything about it." *Id.*

These imposed conditions are unduly onerous and directly restrict Petitioner's liberty and impact his psychological wellbeing and ability to work. These conditions include:

- Mr. Ndiaye must wear the ankle monitor 24/7.[2] *See* Ex. 3, 2025-2026 ISAP Documents. The ankle monitor may emit messages. To hear or stop hearing messages from the ankle monitor, a person must tap it twice. *Id.* Petitioner finds the ankle monitor physically uncomfortable and has suffered skin irritation and shocks while wearing it. Ex. 1.

- Petitioner must charge the battery of the ankle monitor regularly. Ex. 1. To charge the ankle monitor, Petitioner must stop whatever he is doing and attach the battery. *Id.* This is supposed to take 30 minutes, but Petitioner states it actually takes two hours to fully charge the ankle monitor each time and he is not able to do anything except wait while it charges. *Id.*

- Petitioner must attend ISAP office visits every eight weeks. Ex. 3. There is no scheduled end date for Petitioner's reporting. *Id.*

- Petitioner must be alert as the ISAP agents may request verification of his location "24 hours a day, seven days a week." *Id.*

- Petitioner may not change his address or phone number without "ICE approval." *Id.*

- Petitioner must be subjected to in-person home visits every eight weeks. *Id.* There is not a specific time for the home visits; rather, Petitioner must be home and available the entire day. *Id.* This forces him to miss work. Ex. 1.

[2] 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).

- Petitioner's movement is restricted to a geographic area of Pennsylvania, New Jersey, and Delaware. Ex. 3. He must secure advance permission to travel outside of those states and/or to move addresses within those states. *Id.*

- Risk of Detention: He must comply with all requirements of ICE, the Court, release orders, and the ISAP program. The contract explicitly warns that non-compliance can result in ICE altering his conditions of release, which may include detention. *Id.*

## IV. THE ANKLE MONITOR HAS CAUSED MR. NDIAYE SUBSTANTIAL HARM.

Mr. Ndiaye continues to maintain full compliance with Respondents' renewed intensive supervision of him through ISAP and the ankle monitor, though these conditions have imposed substantial harm on him. Psychologically, the experience of being surveilled and tracked 24/7 causes Mr. Ndiaye a great amount of anxiety and stress, including difficulty sleeping at night. Ex. 1. He feels embarrassed and humiliated by the ankle monitor, and fear of people seeing it and judging him has caused him to refrain from many social activities. *Id*. Even when Mr. Ndiaye seeks out social connection, people ostracize him due to the ankle monitor, telling him they do not want to be associated with him while he has the ankle monitor because they think he is a criminal and worry that being near him could draw government surveillance upon themselves. *Id.*

Mr. Ndiaye lost his job due to his employer's similar negative reaction to the ankle monitor. Mr. Ndiaye's employer told him that he "can't work there until [Mr. Ndiaye] doesn't have the ankle monitor anymore," was concerned about employing someone under government surveillance, and treated Mr. Ndiaye as though he was a criminal. *Id*. Mr. Ndiaye has faced similar treatment from other employers. *Id.* Due to being shackled and surveilled, the only job Mr. Ndiaye can get to support himself is working for Uber, but he feels unsafe in this job and worries about accidentally violating the ankle monitor requirements by driving outside the allowed limits. *Id.*

The geographical limits imposed by the ankle monitor are interfering with Mr. Ndiaye's religious practices and community. *Id*. In particular, he is unable to participate in a gathering of his friends and community members to celebrate Eid, the holiday marking the end of Ramadan, as

the gathering is in Virginia and Mr. Ndiaye is not allowed to travel that far while he has the ankle monitor. *Id*. Mr. Ndiaye states that being unable to celebrate this central holiday with his community, solely due to the ankle monitor, makes him feel sad, isolated, and trapped. *Id.*

Finally, the ankle monitor has been physically painful for Mr. Ndiaye, including exacerbating his pre-existing injuries to his legs and back from being tortured in Mauritania. *Id*. The shackle irritates his skin, inhibits normal movement, prevents him from sleeping comfortably, and even delivered an electrical shock on at least one occasion while he was showering. *Id.* Though Mr. Ndiaye asked an ISAP officer to loosen the ankle monitor and they did so, he continues to suffer physical pain, discomfort, and irritation from the shackle. *Id.*

**ICE'S INTENSIVE SUPERVISION APPEARANCE PROGRAM**

ICE's Alternatives to Detention (ATD) program is "a [noncitizen] compliance tool overseen by [Enforcement and Removal Operations]." Electronic monitoring first became a 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. The "ATD [program] uses technology and case management to more closely monitor cases assigned to the non-detained docket where detention is not necessary or appropriate." U.S. Immigr. & Customs Enf't, *ICE Enforcement and Removal Operations Statistics* (updated May 30, 2025), https://perma.cc/MXZ3-RMUG.

The largest program within ICE's ATD programs is ISAP, which is administered by contractor BI Incorporated through its case specialists.[3] Under ISAP, individuals may be assigned to various forms of electronic monitoring technologies, including ankle monitors, telephonic

[3] 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).

reporting, or the smartphone application "SmartLINK." They may also be required to comply with periodic home and/or office visits.[4] ICE Enforcement and Removal Operations ("ERO") determines the intensity of the supervision and monitoring technology.[5]

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.[6] This handbook explicitly states that the ATD Program is not appropriate for an individual released by a neutral decision maker who did not include ATD as a provision *See* ICE 2017 Handbook: https://perma.cc/FDV5-W78V ("The ATD Program may be appropriate for a[] [noncitizen] who is released pursuant to: . . . a bond (**unless the immigration judge** or Board of Immigration Appeals **determined custody and did not include ATD as a provision**).") (citation modified).

For individuals who *are* eligible for ATD—people not released on judicial orders of release without conditions—ICE is supposed to assess the level of supervision based on various factors including: "current immigration status, criminal history, compliance history, community or family ties, caregiver or provider status, and other humanitarian or medical conditions." U.S. Immigr. & Customs Enf't, *Enforcement and Removal Operations Statistics* (updated May 30, 2025), https://perma.cc/MXZ3-RMUG; s*ee also* U.S. Immigr. & Customs Enf't, *Alternatives to Detention* at 1 (updated Feb. 27, 2025), https://perma.cc/W84B-2DAM ("Each [noncitizen]

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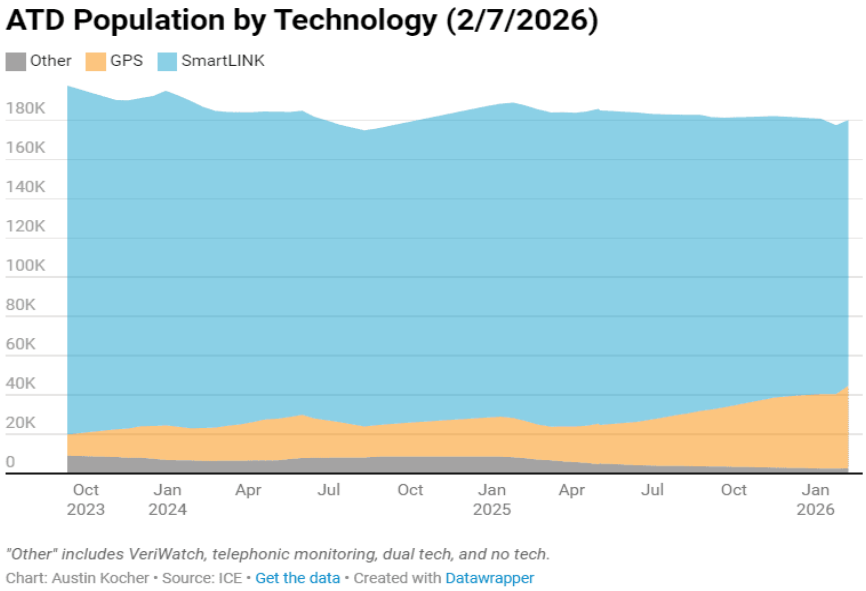
[4] ISAP Intensive Supervision Appearance Program Participant Handbook, ISAP, https://perma.cc/6VC5-EGTZ (last accessed Aug. 29, 2025).

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

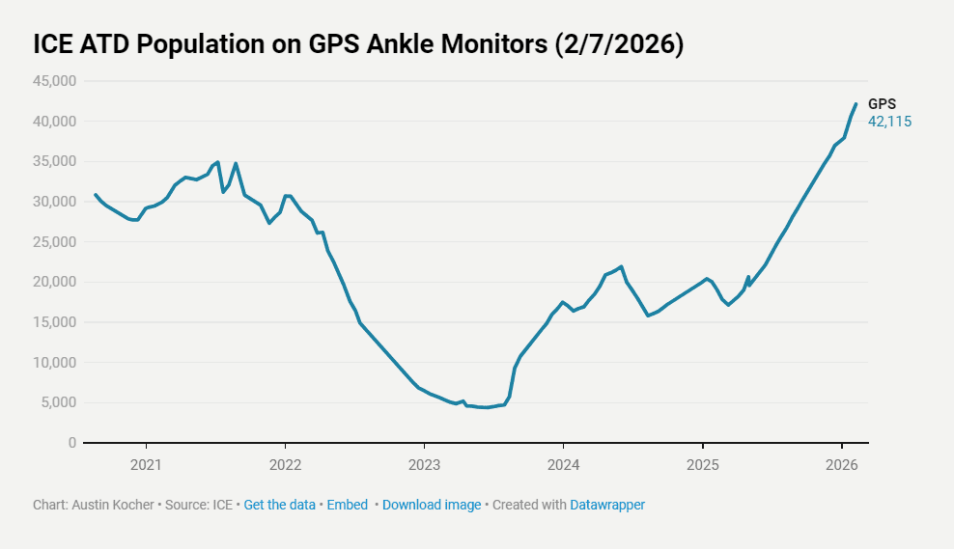
[6] *See* U.S. Gov't Accountability Off., GAO-22-104529, *Alternatives to Detention: ICE Needs to Better Assess Program Performance and Improve Contract Oversight* 27 (June 22, 2022), https://perma.cc/G348-VYC7 ("The ATD Handbook, published in 2017, outlines these policies and procedures, which ATD headquarters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

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."). DHS can enroll noncitizens in the ATD program "following a border apprehension by CBP or an ICE interior administrative arrest, or at a later stage in removal proceedings." U.S. Immigr. & Customs Enf't, *Enforcement and Removal Operations Statistics*, (updated May 30, 2025), https://perma.cc/MXZ3-RMUG.

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




[7] Austin Kocher, "ICE Arrests and Detention Numbers Decline in Early February, Latest Data Show," Substack (Feb. 12, 2026), https://perma.cc/L4RE-CL3C.
[8] U.S. Immigr. & Customs Enf't, *ICE Enforcement and Removal Operations Statistics* (updated May 30, 2025), https://perma.cc/MXZ3-RMUG.




This rapid expansion coincides with the June 9, 2025 issuance of the Helland Memo, which directs ICE Field Offices to expand the number of individuals subjected to ISAP. *See* Ex. 4, Helland Memo. 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. *Id.* The impact of this policy change is evident in the stark increase in the number of individuals subjected to ankle monitoring. As of May 1, 2025, prior to the issuance of the Helland Memo, ICE reported that 20,637 individuals were on ankle monitors.[9] Approximately eight months later, that number has more than doubled with 42,115 people subjected to ankle monitors as of February 7, 2026.[10] The increased use of digital supervision has also been widely documented by practitioners. *See* Ex. 5, Declaration of Lilah Thompson (describing the increased use of ankle monitors in three circumstances: (1) following an immigration judge's bond order; (2) following a release on habeas; and (3) following an ICE check-in where an individual is not physically detained). Notably, ICE

[9] Austin Kocher, "ICE Arrests and Detention Numbers Decline in Early February, Latest Data Show," Substack (Feb. 12, 2026), https://perma.cc/L4RE-CL3C.
[10] *Id.*

routinely imposes ankle monitors and other onerous conditions on individuals released on a grant of habeas corpus, regardless of whether the Judge ordered additional supervision. *Id.*

**ARGUMENT**

The issue Mr. Ndiaye seeks to clarify is simple: whether Respondents can violate a judicially-ordered release by immediately imposing another form of custody. The answer is no. It is well settled that ISAP's GPS monitoring, like Mr. Ndiaye's ankle monitor and supervision, constitutes a restraint on liberty so great to be "in custody" for habeas purposes. *See N-N-*, 2025 WL 3143594, at *3 (finding the assertion that use of an ankle monitor did not constitute custody "not [] persuasive in the slightest"); *see also Batz Barreno v. Baltasar.* --- F. Supp. 3d. ---, 2026 WL 120253, at *2 (D. Colo. Jan. 15, 2026) ("Petitioner remains in custody through the conditions of release [ankle monitor and other supervision] imposed by ICE."); *Orellana Juarez*, 787 F. Supp. 3d at 68 (same); *Flores Salazar v. Moniz*, Civ. No. 25-11159, 2025 WL 1703516 (D. Mass. June 11, 2025) (same); *Khabazha*, 2025 WL 3281514, at *3 (same); *Campbell v. Almodovar*, 1:25-cv-09509, 2025 WL 3626099, at *1 (S.D.N.Y. Dec. 10, 2025) (same).

The imposition of a new form of custody—digital supervision—violates this Court's Order for immediate release, intended to restore Mr. Ndiaye to his previous status prior to his unlawful detention. In the alternative, the imposition of this form of digital supervision violates Mr. Ndiaye's procedural and substantive due process rights and the *Accardi* doctrine.

## I. RESPONDENTS VIOLATED THIS COURT'S CONTROLLING ORDER BY IMPOSING AN ANKLE MONITOR.

In the underlying proceedings, the Court found that it had jurisdiction to hear Mr. Ndiaye's Petition for Writ of Habeas Corpus and request for release from unlawful detention. ECF 14. In determining that Mr. Ndiaye's detention under Respondent's interpretation of 8 U.S.C. § 1225(b)(2) was both unlawful and unconstitutional, *see id.*, this Court's ordered Respondents to

immediately release Mr. Ndiaye.[11] ECF 15. Releasing a petitioner from unlawful restrictions on his liberty in this context means restoration of the status quo ante. *See Flores Aparicio v. Ken Gelalo et al.*, 2:26-cv-1411, 2026 WL 698872, at *6 (E.D.N.Y. Mar. 12, 2026) (finding that to restore the status quo ante requires Respondents release petitioner without any condition for electronic monitoring) (citing *Khabazha*, 2025 WL 3281514, at *8 (S.D.N.Y. Nov. 25, 2025) (ordering government to release petitioner from "restrictions on his liberty imposed as a result of his unlawful [detention] … including the ankle monitor and reporting requirements").

The Court's decision on November 19, 2025 ordering Mr. Ndiaye's habeas relief was unambiguous. ECF 15; *see also Gonzalez Centeno v. Craig Lowe et al.*, ECF No. 15, No. 3:25-cv-02518, (M.D. Pa. Jan. 26, 2026) ("The court's prior order [directing respondents to immediately release petitioner] did not authorize respondents from the Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE") to impose the condition of an ankle monitor on the petitioner, which essentially keeps him in custody."). The Court's Order did not authorize the imposition of an ankle monitor or any further conditions. Respondents did not make any arguments in support of the imposition of an ankle monitor or other supervision at oral argument or in written briefing. Accordingly, DHS acted without authority and in violation of this Court's Order by imposing an ankle monitor and onerous supervision.

This Court ordered that Respondents "RELEASE Ndiaye from custody immediately . . . ." *Id.* This Court's Order did not say to immediately release Mr. Ndiaye and then subject him to another form of custody through an ankle monitor. Rather, this Court's Order said that "[t]he Government is temporarily enjoined from re-detaining Ndiaye for seven days following his release from custody." *Id.* However, in violation of this Court's Order, the same day that Respondents

[11] This Court found that "it is clear Ndiaye is not likely to flee or harm the community. A bond hearing would certainly result in Ndiaye's release and only serve to delay relief." ECF 14.

released Mr. Ndiaye, they ordered him to report to ISAP, where they subjected him to intensive supervision and imposed an ankle monitor. *See* Ex. 1. ("The ICE officer told [Mr. Ndiaye] that [reporting to ISAP] was a condition of [his] release"); *see also N-N-*, 2025 WL 3143594, at *3 (describing how an ankle monitor constitutes custody for habeas purposes); *Batz Barreno*, 2026 WL 120253, at *2 (same); *Orellana Juarez*, 787 F. Supp. 3d at 68 (same); *Flores Salazar*, 2025 WL 1703516 (same); *Khabazha*, 2025 WL 3281514, at *3 (same); *Campbell*, 2025 WL 3626099, at *1 (same).

These types of non-compliance and violations by Respondents have frustrated and been found unlawful by District Courts across the country. *See e.g.*, Order, ECF 23, *Baljinder Kumar v. Luis Soto et al.*, 2:26-cv-00777-MEF (D.N.J. Feb. 17, 2025) (describing violations of judicial orders enjoining transfer and failure to provide court ordered bond hearings). Furthermore, this specific bad faith interpretation of the plain language of Court Orders for immediate release, have led District Courts, including this Court, to state the obvious in their decisions to ensure compliance. *See e.g.*, Order, ECF 8, *Noicy v. Jamison*, No. 26-cv-1388 (ED. Pa. Mar. 6, 2026) (Sánchez, J.) ("In [releasing Noicy], the Government shall not subject Noicy to any conditions of release including the imposition of any and all GPS monitoring technology or devices."); *Zura Utiashivili v. Rose et al.*, No. 1:26-cv-243, 2026 WL 637642, at *4 (M.D. Pa. Mar. 6, 2026) (ordering release "without the imposition of additional conditions (such as ankle monitors or electronic tracking devices)."); *Diahn v. Lowe*, No. 1:24CV1936, at *1 (M.D. Pa. Jan. 12, 2026) (ordering that "respondents shall cease all supervision of Diahn under ISAP or any other program and remove the location tracker and GPS monitor placed on the petitioner, *i.e.*, the ankle monitor); *Ousmane Camara v. Craig Lowe et al.*, No. 3:26-cv-292, 2026 WL 625489, at *5 (M.D. Pa. Mar. 5, 2026) ("Respondents shall release Camara under the same conditions that existed prior to his

detention, including, release: . . . (2) without the imposition of additional conditions (such as ankle monitors or electronic tracking devices)."); *Abner Martinez Amaya v. Bondi et al.*, No. 26-cv-01945-ESK, 2026 WL 592137 (D.N.J. Mar. 3, 2026) (same); *Makhbatshoev v. Soto*, 26-cv-01092, 2026 WL 497023, at *2 (D.N.J. Feb. 23, 2026) (same); *Ruiz v. Bondi*, 26-cv-01073, 2026 WL 497025, at *3 (D.N.J. Feb. 23, 2026) (same); *Garcia Canales v. Florentino*, 26-cv-01461, 2026 WL 497134, at *2 (D.N.J. Feb. 23, 2026) (same); *Dalva Yerleska Cruz-Davila v. Bondi et al.*, 26-cv-01350, 2026 WL 497028, at *2 (D.N.J. Feb. 23, 2026) (same); *Tyagi v. Soto*, 26-cv-00962, 2026 WL 478184, at *2 (D.N.J. Feb. 20, 2026) (same).

The Court's intention here was clear: to "release" Mr. Ndiaye from custody. If the Court wished for Mr. Ndiaye to be subjected to a new form of custody, it would have said so. Any interpretation to the contrary is a violation of the plain language of this Court's Order.

## II. RESPONDENTS IMPOSITION OF AN ANKLE MONITOR AND ISAP CONDITIONS VIOLATE MR. NDIAYE'S DUE PROCESS RIGHTS.

Furthermore, ICE's unilateral decision to place Mr. Ndiaye in another form of custody, superseding this Court's order granting immediate release, and without any procedures, violates the Due Process Clause of the Fifth Amendment of the United States Constitution.

### A. Respondents' Imposition of an Ankle Monitor and Ongoing Supervision of Mr. Ndiaye Violates His Procedural Due Process Rights.

Mr. Ndiaye's intensive supervision with an ankle monitor, without any changed circumstances or individualized review, violates procedural due process. "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty[.]" *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). "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). 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*.

The first factor, the private interest at issue, favors Mr. Ndiaye. "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 v. Davis*, 533 U.S. 678, 690 (2001). Here, the private interest at stake is Mr. Ndiaye's freedom from the government's ongoing surveillance through ankle monitoring and other supervision, which has significantly and severely interfered with Mr. Ndiaye's quality of life by inflicting constant discomfort, causing daily psychological distress, aggravating his pre-existing physical and mental health conditions, subjecting him to social stigma and ridicule, interfering with his religious liberties and practices, and depriving him of gainful employment opportunities. Ex. 1. And, in light of the government's new policy that mandates the blanket usage of ankle monitors without any individualized determination, Mr. Ndiaye faces the daunting prospect of this infringement on his liberty interest continuing indefinitely.

The second factor, the risk of erroneous deprivation of liberty, favors Mr. Ndiaye. In fact, an "erroneous deprivation" of Mr. Ndiaye's liberty interest is not merely at risk but has been realized and may continue indefinitely, precisely because the government defied this Court's order granting immediate release, the risk of erroneous deprivation of liberty is not just high—it is certain. The value of requiring ICE to follow a Judge's reasoned decision is also certain because this 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. To date, Respondents have never argued that Mr. Ndiaye is a flight risk or a danger; rather, they

imposed ankle monitor custody on him simply as a matter of practice. *See* Ex. 4, Helland Memo (instructing ICE officials to impose ankle monitors "whenever possible").

However, both the law and this Court's order require that any decision by Respondents to "re-detain" Mr. Ndiaye must be made based on the facts and individualized circumstances. *Khabazha,* 2025 WL 3281514, at *6 (describing how when the government seeks to curtail a person's liberty, the law requires a change in "facts" not just "attitude"). Before exercising its discretion to detain a person under 8 U.S.C. § 1226(a), ICE must make an individualized custody determination. *See, e.g., Contant v. Holder*, 352 F. App'x 692, 695 (3d Cir. 2009) ("Unlike the mandatory detention statute… 1226(a) provides for individualized detention determinations"); *Sandhu v. Tsoukaris*, 2025 WL 3240810 (D.N.J Nov. 20, 2025) ("Individuals detained pursuant to the discretionary detention statute, § 1226(a), are entitled to a bond hearing"); *see also* ECF 15 (requiring that Respondents "must *first* provide [Mr. Ndiaye] with a bond hearing" before re-detaining him) (emphasis added). Here, Respondents did not do so, and no changed circumstances exist warranting such a re-determination. *See* Ex. 1 (describing Petitioner's full compliance with reporting requirements, pending asylum application, community ties, and steady employment); *see also* ECF 5-3 (same). Rather, Respondents detained Mr. Ndiaye with no individualized determination and despite no changed circumstances under their novel mandatory detention theory. When releasing Mr. Ndiaye, Respondents imposed a new form of custody, despite this Court's order granting his immediate release. Respondents did not conduct any individualized assessment. Because there were no changed circumstances, and Respondents unilaterally imposed custody on Mr. Ndiaye with no process whatsoever, the risk of erroneous deprivation is high.

The third factor, the government's interest, favors Mr. Ndiaye. The government cannot have an interest in violating the law or judicial orders, as it has done so here by imposing digital

custody and extra-judicial reporting requirements not permitted by this Court's Order. Moreover, if the government is permitted to defy a Judge's order by placing additional restraints on liberty that are not (1) ordered; and (2) 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. Agencies also have no statutory authority to consider issues arising from constitutional claims. *See Arango-Aradondo v. INS*, 13 F.3d 610, 614 (2d Cir. 1994); *Massieu v. Reno*, 915 F. Supp. 681, 691 (D.N.J. 1996). The resultant glut of increased legal filings will impose heavier administrative and fiscal burdens on the government than simply requiring ICE to honor the District Judge's original order. Finally, the government has no interest in spending taxpayer money on costly supervision and digital monitoring programs that are unwarranted because the Petitioner is not a flight risk.[12] The government was represented at the habeas hearing, but the United States attorney did not argue that Petitioner is a flight risk and should be released on an ankle monitor. Such an argument would be unfounded considering Petitioner's history of compliance. Now Respondents, unhappy with this Court's decision, have acted unlawfully and in unilaterally restraining Petitioner's liberty.

**B. Mr. Ndiaye's Supervision Violates his Substantive Due Process Rights.**

Mr. Ndiaye's intrusive ankle monitor also violates his substantive due process rights as it constitutes a "significant restraint on [his] liberty," where his movements and daily activities are restricted and subject to 24/7 surveillance. *Romero v. Sec'y, U.S. Dep't of Homeland Sec*., 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.*

[12] *See* Ralph Thomassaint Joseph and Paz Radovic, "The $470 Million Surveillance Program Watching Immigrants Across the U.S." Documented (Oct. 14, 2025), https://perma.cc/9ZCB-ZB9V (noting that private companies providing GPS ankle monitors received "lucrative government contracts" and that funding for ISAP rose to $470 million in FY2024).

*Warden*, 776 F. 3d 772, 775 (11th Cir. 2015))). As detailed in his updated affidavit describing his experience being shackled since December 2025, the ankle monitor has interfered with Mr. Ndiaye's social, work, and religious life. Mr. Ndiaye's employer immediately fired him upon learning he had an ankle monitor, stating that Mr. Ndiaye "can't work there until [he doesn't] have the ankle monitor anymore." Ex. 1. Mr. Ndiaye's friends and community members have ostracized him, telling him that they do not want to be associated with someone who is under 24/7 government surveillance out of fear it could draw negative attention to them. *Id*. The ankle monitor is interfering with Mr. Ndiaye's religious practices and community, preventing him from joining his in a celebration of Eid—a paramount Muslim holiday marking the end of Ramadan—because the celebration is outside the zone permitted by the ankle monitor. *Id*. The cumulative impact of social stigmatization, loss of his employment, and inability to attend fundamental community events has left Mr. Ndiaye isolated and trapped, and the everyday experience of being surveilled 24/7 and required to restructure his entire life around charging and maintaining the ankle monitor has caused him psychological distress. *Id*. The ankle monitor also causes Mr. Ndiaye physical pain, skin irritation, and even electrical shocks when showering. *Id*.

Respondents' imposition of electronic surveillance on Petitioner serves no legitimate nonpunitive objective. Neither public safety nor flight risk arguments are at issue here. When Respondents released Mr. Ndiaye on his own recognizance in 2023, it determined that he was not a danger and that the release on his own recognizance was sufficient to ensure his future appearance in immigration court. ECF 5-5. In fact, Respondents themselves removed all forms of technological supervision from Mr. Ndiaye in May 2023. *See* Ex. 3, Ex. 1. Since that time, the only changed circumstance is that Mr. Ndiaye has demonstrated his diligent compliance with all immigration requirements; he timely filed an application for asylum, he attended every ICE check-

in as ordered, and he continues to comply with unlawful ISAP supervision.

## III. RESPONDENTS' USE OF AN ANKLE MONITOR AND ISAP CONDITIONS VIOLATES THE *ACCARDI* DOCTRINE.

In the alternative, Respondents violated the *Accardi* doctrine by failing to follow their own procedures in imposing an ankle monitor following a judicially ordered release. *See N-N-*, 2025 WL 3143594, at *4 (finding that ICE violated the *Accardi* doctrine when it failed to follow its own regulations by imposing an ankle monitor on a petitioner after his release solely on a monetary bond). Under the *Accardi* doctrine, "federal agencies must follow their own binding regulations and formally established procedures, even if those procedures provide greater rights than required by the statute. *Id.* (citing *Accardi*, 347 U.S. at 260; *Service v. Dulles*, 354 U.S. 363 (1957); *Vitarelli v. Seaton*, 359 U.S. 535, 539–40 (1959)). "Once an agency chooses to promulgate such rules, it must adhere to them to ensure a fair administrative process." *Id.* This doctrine is limited and may require a showing of prejudice when an agency's failure to follow its policies does not implicate "important procedural benefits" impacting individual rights and liberties. *Am. Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 532, 538–39 (1970); *see also Leslie v. Att'y Gen.*, 611 F.3d 171, 178-79 (3d Cir. 2010) ("[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.").

As explained above, the ICE's ISAP handbook, constitutes the program's standard operating procedures, and is therefore understood as binding policy on ICE ATD officials. [13] This handbook does not contemplate the use of an ankle monitor or other ATD supervision following a

[13] *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.

judicially ordered release. *See* ICE 2017 Handbook: https://perma.cc/FDV5-W78V ("The ATD Program may be appropriate for a[] [noncitizen] who is released pursuant to: . . . a bond (**unless the immigration judge** or Board of Immigration Appeals **determined custody and did not include ATD as a provision**).") (citation modified). Here, this Court took jurisdiction over Mr. Ndiaye's custody after the government unlawfully detained him. This Court ordered his release and did not include ATD or any other supervision as a provision of his release. Accordingly, Respondent's violated its own internal procedures by imposing supervision in violation of the judicially ordered release.

In the alternative, Respondents violated the *Accardi* doctrine by imposing supervision without assessing Mr. Ndiaye's individual circumstances. As described *supra,* ICE is supposed to consider various factors including: "current immigration status, criminal history, compliance history, community or family ties, caregiver or provider status, and other humanitarian or medical conditions." U.S. Immigr. & Customs Enf't, *ICE Enforcement and Removal Operations Statistics*, (updated May 30, 2025), https://perma.cc/MXZ3-RMUG. Presumably, ICE considered all these factors in compliance with their policy handbook when it (1) released Mr. Ndiaye from the border without an ankle monitor in 2023 with ISAP conditions; (2) when it removed Mr. Ndiaye from *all* ISAP supervision in May 2023 following his complete compliance with ICE's requirements; and (3) when it did not impose any additional supervision from May 2023 to October 2025. When ICE unilaterally imposed an ankle monitor and onerous supervision following Mr. Ndiaye's judicially ordered release, it did not analyze these required factors. If it had, all danger and flight risk factors would have weighed *against* a finding that heightened supervision or custody was necessary. At no point during the proceedings before this Court, including oral argument, did ICE's attorneys argue that Mr. Ndiaye should be released subject to supervision.

ICE's failure to follow its own rules bears heavily on Mr. Ndiaye's procedural rights and individual liberties. He does not need to make an affirmative showing of prejudice because ICE's own rules and handbook for imposing supervision "protect fundamental constitutional or statutory rights . . . ." *Leslie v. Att'y Gen.*, 611 F.3d at 179. Nonetheless, Mr. Ndiaye has shown prejudice. His ankle monitor and supervision, removable solely at the discretion of ICE, violate due process. *N-N-*, 2025 WL 3143594, at * 3, 7-8; *see also Zadvydas*, 533 U.S. at 690 ("[P]ermitting indefinite detention of a[] [noncitizen] would raise a serious constitutional problem."). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Id.* Accordingly, Mr. Ndiaye has shown that ICE violated its own rules by imposing an ankle monitor in violation of a judicial order and alternatively, without considering its own factors. Because the ankle monitor protects Mr. Ndiaye's fundamental right to liberty, these actions violate the *Accardi* doctrine.

## CONCLUSION AND RELIEF SOUGHT

For the foregoing reasons, Petitioner Elhassen Ndiaye respectfully requests this Court to clarify its November 19, 2025 Order, and require Respondents to comply with the Order by:

a) **CLARIFYING** that the Order for Petitioner's immediate release, ECF 15, prohibits Respondents from imposing additional and alternative forms of custody or supervision that were not in place prior to Petitioner's unlawful detention, such that the Petitioner will be restored to his pre-detention status;

b) **ORDERING** Respondents to immediately remove Petitioner's ankle monitor and terminate his intensive reporting requirements under ISAP and all related monitoring and supervision, absent a change in circumstances;

c) **ORDERING** Respondents to show cause why they should not be held in contempt for failing to comply with the spirit and letter of the Judge's order.

Dated: March 16, 2026

Respectfully submitted,

*/s/ Maria Thomson*

Maria Thomson (Bar #332498)
Mikaela Wolf-Sorokin (Bar # 335725)
DEFENDER ASSOCIATION OF PHILADELPHIA
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**CERTIFICATE OF SERVICE**

I, undersigned counsel, hereby certify that on this date, I filed this **Brief in Support of Petitioner's Request for Clarification of the Order for Release** 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: March 16, 2026

*/s/ Maria Thomson*
Maria Thomson
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MThomson@philadefender.org

*Pro Bono Counsel for Petitioner*

# EXHIBIT 1

**Declaration of Elhassen Ndiaye on Ankle Monitor Supervision**

I, Elhassen Ndiaye, swear under penalty of perjury that the following is true and correct to the best of my knowledge, information, and belief:

1. My full name is Elhassen Yahya Ndiaye. I was born on [redacted] in Atar, Mauritania. I am 38 years old. My best language is Hassaniya, a dialect of Arabic.

2. I am writing this declaration to respectfully ask the Court to consider the difficulties and hardships I have been experiencing while wearing the ankle monitoring device ICE and ISAP required me to wear after I was released from detention in November 2025.

**Seeking Asylum & Pre-Detention Compliance**

3. [redacted]

4. I came to the United States to seek asylum. I entered through the southern border in January 2023. I turned myself in to immigration authorities and they detained me for about three days. After that, they released me with some paperwork regarding my case.

5. Seeking asylum is very important to me because I still fear for my life in the United States. I have always tried to follow every requirement of my proceedings here.

6. I was required to report to ISAP for the first three or four months that I was in the United States. After I was released from detention at the border, I had to go to an ISAP office and they gave me a phone and charger. They told me that each Friday I had to take a photo and send it to them. I also had to go to some appointments at the office. I never had an ankle monitor. I never missed any appointments. After about three months, the ISAP officer told me that I didn't need to come back anymore, and I would just be under the supervision of ICE. I turned in the phone, charger, and accessories they had given me. They gave me a date that I was required to check-in with ICE.

7. I went to my first ICE check-in on my own in August 2024. I went to my second ICE check-in with my lawyer on June 12, 2025. I confirmed my address and medical history, and ICE told me to come back for another check-in on October 20, 2025.

8. In addition to attending my ICE check-ins, I filed my asylum application on my own within my one-year filing deadline. After I filed my asylum application, I got a lawyer to help me continue seeking asylum. My lawyer has represented me at every Immigration Court hearing in my case, and we have never missed a hearing. I have kept my address updated with the Immigration Court as required. I applied for employment authorization and got my work permit in August 2024. I was really happy to work legally and be able to support myself. I usually work seven days a week.

**ICE Detention & Habeas Release**

9. When I went to my third ICE check-in on October 20, 2025, ICE detained me. They told me and my lawyer that even though I had done nothing wrong, they were required to detain me because of the way I entered the United States. I was very confused and overwhelmed. I tried to be calm but I started to panic for fear of what was going to happen to me. I felt very overwhelmed and couldn't think straight at all.

10. While I was detained, I suffered a lot physically and psychologically. The back pain I have from my injuries in Mauritania got a lot worse. Out of constant stress and anxiety, I couldn't eat or sleep, and [redacted] I felt depressed and hopeless that I had been detained when I always tried to do everything right in this country.

11. My lawyer was able to get me out of detention after about one month because of a habeas petition. I was very relieved when I learned I was going to be released and able to go back to my home and community.

**Post-Release Ankle Monitor**

12. While the ICE agents were processing my release from detention in November 2025, they gave me a paper with the address for an ISAP office. They told me I had to go there, and if I didn't they were going to detain me again. The ICE officer told me that this was a condition of my release.

13. My first ISAP appointment was on December 8, 2025. When I went to the appointment, they made me install an app on my phone, and they put an ankle monitor on me. I thought it was very strange and uncomfortable that they put the ankle monitor on me because I had just been detained and released. I even asked the officer, "why are you doing this

when I have been in your custody the whole time?" The officer told me that the instructions required her to do it and she couldn't do anything about it. I felt bad and shocked. I worried that people would think I am a criminal.

14. I have been required to do regular office check-ins, home visits, and reporting on the app since I have been released. I am trying to comply, but the home visits are frustrating because nobody actually came on multiple occasions. Multiple home visits have been scheduled where I could be visited at any point between 9am to 5pm, so I stayed home the whole day waiting for someone to come but no one ever came.

15. Charging the ankle monitor is time-consuming and disruptive to my life. I need to charge the ankle monitor regularly, and whenever I need to charge it I have to stop everything or else I could get in trouble. I need to find an outlet, and my ankle is attached to the outlet through the charger until it is done. The ankle monitor instructions say that it should charge within 30 minutes, but it usually takes 2 hours to fully charge. During this time, I cannot do anything or use the device; I can only sit and wait until the charging is finished.

16. At my first ISAP check-in, the officer said they might take the ankle monitor off me after two or three months. When I went to my ISAP check-in on February 2, 2026, I asked the officer about taking the ankle monitor off but they said the waiting period had been extended to four months and I needed to keep waiting. However, in the app it looks like they have scheduled home and office appointments for me at least until the end of May 2026. I do not know if they will take the ankle monitor off in May, or extend it again. I don't know why I need to have an ankle monitor when I have always showed up to every appointment and done everything required of me.

**Harm from Ankle Monitor**

17. I have tried my best to comply with all the rules and requirements. However, wearing the ankle monitor device for such a long time has caused significant psychological, social, and physical difficulties in my life.

18. Psychologically, the constant feeling of being monitored has created a great amount of stress and anxiety for me. I often feel nervous and uncomfortable knowing that I am being tracked at all times. This has affected my peace of mind and has made it difficult for me to relax. I also struggle with sleeping comfortably at night because the device is always on my ankle, which causes discomfort and constant awareness of it.

19. Socially, the device has caused me a great deal of embarrassment. I feel ashamed when people notice it in public. During warm weather, I cannot wear normal clothing such as

shorts like everyone else, because the device becomes visible and draws attention. Because of this, I often avoid going out with friends or participating in normal social activities.

20. I am hesitant to meet new people because of what they might think of me, and prefer to be alone instead of being judged like I am a criminal. Some people have said that they don't want to be associated with me because they can see that I am being watched through the ankle monitor, and they are worried that it will draw attention to them and bad things could happen to them because they are around me. I'm not able to convince them that I didn't do anything wrong - just seeing the shackle around my ankle makes them judge me like a criminal. This has made me feel isolated and has affected my confidence and emotional well-being.

21. I have close friends in Virginia, but I haven't been able to see them because I will violate the ankle monitor if I travel outside Philadelphia. This is especially sad for me right now, because I am Muslim we are about to have Eid, the celebration at the end of Ramadan. Many of my close friends and community are getting together in Virginia in a few days to have a feast and celebrate Eid. Normally I would go with them to celebrate this holiday and be with the people who support me. Instead, I feel like I'm trapped here.

22. The ankle monitor has also affected my ability to work. Before I was detained, I worked at a store. I never had a problem with my employer before I was detained. But when I was released and got the ankle monitor, my employer told me to go away and that I can't work there until I don't have the ankle monitor anymore. They treated me like I am a criminal. Like my friends, I think my employer was worried that I would draw attention to them because I am being surveilled.

23. Since then it has been very difficult for me to find new employment. Many employers notice the device or become uncomfortable when they learn about it, which has made it extremely challenging for me to move forward and rebuild my life. Now I work for Uber because life in the United States is expensive and I need to support myself, and it is the only job I can get. However, I do not like working for Uber because I don't like going into unsafe neighborhoods. I'm also worried about going somewhere outside the area allowed by the ankle monitor and that I could get in trouble and be detained again.

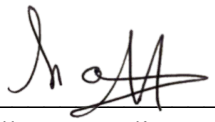
24. Physically, wearing the device continuously causes discomfort around my ankle. It irritates my skin and makes normal movement uncomfortable. Sometimes it is painful for me because I have prior injuries to my legs and back. It is so uncomfortable at night that I can't sleep well. Once while I was taking a shower, the ankle monitor gave me an electric shock. When I had my next ISAP appointment I asked them to loosen it because it was so

painful and I thought that might help with the shocks. The people at the office are respectful to me and did loosen it, but I still have pain and discomfort.

25. Your Honor, I am respectfully asking the Court to please consider these circumstances and the impact this device has had on my mental health, my social life, and my ability to work and live normally. I never wanted to have problems with any immigration authorities, but I worry that any small mistake could lead to them detaining me again. I am trying to move forward with my life in a positive way, and removing this device would greatly help me regain stability and continue improving my situation. Thank you for your time and consideration.

I, Elhassen Ndiaye, swear that the foregoing was read to me in a language I understand, and is true and correct to the best of my knowledge and belief.

Submitted,



Elhassen Ndiaye

03/11/2026

Date

# EXHIBIT 4

**From:** [redacted]
**Subject:** Increase of In-Person Check-Ins at Contractor Offices for ATD Participants
**Date:** Monday, June 9, 2025 4:43:01 PM
**Attachments:** [redacted]

Graphical user interface, text Description automatically generated

**To:** **All ERO Personnel**

**Subject:** **Increase of In-Person Check-Ins at Contractor Offices for ATD Participants**

**BLUF:** Please see below for changes to reporting requirements for aliens assigned to the ATD program.

**Details:**

- Post-order aliens in the ATD program, currently assigned to virtual check-ins, will now move to in-person check-ins.
- If the alien is not being arrested at the time of reporting, escalate their supervision level to GPS ankle monitors whenever possible and increase reporting requirements, regardless of case type (i.e., pre-order or post-order).
- Do not release any aliens on Order of Release on Recognizance (OREC) or Order of Supervision (OSUP) without technology.
- All pregnant females should be placed on wrist-worn technology.
- Local BI contractor offices can provide detailed reports to Field Offices of upcoming check-ins.

Questions related to this message can be directed to Unit Chief [redacted]

[redacted] Helland
[redacted]

This message was sent in concurrence with AD Field Operations.

This message expires one year from the date it was sent, pursuant to ERO Policy.

**Declaration of Lilah R. Thompson**

I, Lilah R. Thompson, do hereby declare under the penalty of perjury that the following is true and correct to the best of my knowledge and belief:

1. The facts set forth in this declaration are based on my personal knowledge, unless otherwise indicated, and, if called as a witness, I could and would testify thereto. I am over eighteen years of age and of sound mind to declare to the facts stated herein.

2. I am the Chief of the Community Defense Unit at the Defender Association of Philadelphia. Our unit provides *pro bono* representation to noncitizens detained by Immigration and Customs Enforcement (ICE) in Pennsylvania. Previously, I served as Supervising Attorney of the detained removal defense program at the Nationalities Service Center, a nonprofit legal service and refugee resettlement agency in Philadelphia, Pennsylvania. I have provided and supervised *pro bono* representation of individuals in removal proceedings before the Executive Office for Immigration Review (EOIR), with a focus on individuals in immigration detention, since 2020.

3. Since February of 2020, I have represented clients detained in the custody of ICE at York County Prison in York, Pennsylvania, Pike County Correctional Facility in Lords Valley, Pennsylvania, Clinton County Correctional Facility in McElhattan, Pennsylvania as well as facilities in Florida, Georgia, Texas, and Massachusetts.

4. I have been supervising the attorneys in our program in their representation of clients detained in these facilities since December 2021.

5. I have represented over 25 clients in custody proceedings before the immigration courts, and supervised at least a dozen more bond hearings. Prior to January 2025, I never had ICE impose an ankle monitor or additional supervision on a client released on a monetary bond after an order from an immigration judge, except on one occasion during a habeas-ordered bond hearing, where an immigration judge specifically ordered ankle monitoring given the client's inability to pay a high bond due to his lack of financial resources.

6. Prior to January 2025, the only clients or individuals I encountered who were subject to ankle monitors or supervision through the Intensive Supervision Appearance Program (ISAP) were individuals given alternatives to detention (ATD) by ICE. These individuals were released by ICE at the border instead of being detained or otherwise released by ICE from detention on orders of supervision or release on recognizance. ICE used to release individuals on ATD or on a monetary bond, separate and apart from an immigration judge ordering release. They no longer do that.

7. Since approximately May 2025, there has been an increase in ICE imposing ankle monitors on our clients in three primary situations:

    a. (1) after an immigration judge orders the person released on a monetary bond, including where the judge's bond order does not include imposition of an ankle monitor or any additional conditions;

b. (2) after an individual is ordered released by a District Court Judge following a successful habeas petition, even when the District Court Judge did not order additional conditions; and
c. (3) when an individual attends an ICE check-in and is not detained.

8. We have numerous examples of the imposition of ankle monitors on clients in each of the above situations.

**ICE imposes ankle monitors on clients released on monetary bond by immigration judges.**

9. My staff provide representation to detained noncitizens with ties to Philadelphia and the surrounding counties. I supervise each of our attorneys in their representation of individuals in removal proceedings and other matters. We have numerous examples of clients who ICE imposed ankle monitors on and/or other onerous supervision through ISAP after their release on monetary bonds. We have not had a single case where the immigration judge ordered these conditions.

10. For example, on April 22, 2025, an immigration judge found that our client NRV was not a danger and that any flight risk could be mitigated by the payment of a $7,500 bond. ICE released him from the Moshannon Valley Processing Center with an ankle monitor. When he arrived at the ICE-controlled supervision office (referred to here as ISAP) for a required check-in appointment, officers removed the ankle monitor, but imposed onerous supervision through a phone application that tracked his location through biometric check-in appointments. This client is illiterate but was told that his compliance with the phone application program was required, unless he wished to instead wear an ankle monitor.

11. Beginning in late summer/early fall of 2025, ICE began imposing ankle monitors on almost every client of ours who was released from custody.

12. For example, on August 5, 2025, an immigration judge found that our client N-N- was not a danger and that any flight risk could be mitigated by the payment of a $3,000 bond. The immigration judge did not impose any additional conditions on his release. On August 7, 2025, ICE released N-N- on bond. On August 11, 2025, ICE imposed an ankle monitor and onerous supervision requirements. The ankle monitor and supervision requirements were only removed after a District Court Judge ordered their removal in *N-N- v. McShane*, --- F. Supp. 3d ---, No. CV 25-5494, 2025 WL 3143594 (E.D. Pa. Nov. 10, 2025).

13. On January 27, 2025, an immigration judge found that our client, G-B-T- was not a danger and that any flight risk could be mitigated by the payment of a $7,000 bond. The immigration judge did not impose additional conditions and DHS released G-B-T- on January 30, 2026 upon the payment of the bond. However, on February 2, 2026, DHS imposed an ankle monitor and other onerous supervision requirements that were not ordered.

**ICE imposes ankle monitors on clients released through habeas.**

14. We also provide representation to noncitizens in petitions for habeas corpus. In many of our recent petitions, after a District Court Judge orders immediate release, DHS imposes an ankle monitor and onerous conditions.

15. For example, we represented petitioner in *Ndiaye v. Jamison et al.*, No. 25-6007, 2025 WL 3229307 (E.D. Pa. Nov. 19, 2025) in his petition for habeas corpus. After Judge Sanchez ordered his immediate release on November 19, 2025, DHS ordered Mr. Ndiaye to go to ISAP, and then imposed an ankle monitor on him on December 8, 2025. This has happened in other similar cases as well.

16. In another example, we represented petitioner YBC in his petition for habeas corpus, filing his petition in EDPA on January 7, 2026. After Judge Schmehl ordered YBC's immediate release on January 16, 2026, YBC was fitted with an ankle monitor and surveillance on approximately January 29, 2026.

**ICE imposes ankle monitors on clients at ICE check-ins.**

17. We also provide representation for our clients at ICE check-ins, accompanying them as they meet with ICE every three to six months, or every year. In addition to check-ins now being more frequent (every three to six months instead of every year), ICE often detains individuals at these check-ins, or imposes new supervision requirements on them. Our attorneys accompany all our existing clients to their ICE check-ins, so we keep track of what happens to our clients at these check-ins. In our experience, if ICE determines it will not detain a person at their regularly-scheduled ICE check-in, ICE instead orders that person to go to the Intensive Supervision Appearance Program (ISAP) office for imposition of an ankle monitor. This happens regardless of previous compliance with the person's release requirements or prior ICE check-ins.

18. For example, on Friday, November 28, 2025, I accompanied our client JCVM to his ICE check-in appointment. At the appointment, instead of detaining JCVM, who was with his minor child and suffers from post-traumatic stress disorder, ICE ordered him to report to the ISAP office at 1015 Chestnut Street, in Philadelphia, the following Monday, where he was shackled with an ankle monitor and placed on phone supervision.

19. In addition to this happening to our clients, our attorneys have witnessed this happening to individuals at their ICE check-ins. This is a noticeable increase from our previous interactions and observations at the Philadelphia ICE Field Office.

**Other practitioners report similar experiences with the ICE office.**

20. In addition to my role as the Chief of the Community Defense Unit, I also serve on numerous committees addressing immigration issues including the American Immigration Lawyers Association and several national detention accountability groups. Through these committees and groups, I have heard reports from non-profit attorneys and private practitioners across the region confirming that the experiences of our clients are not unique.

21. This has also been widely reported in the media and through verified reporting that ICE has increased its ankle monitoring and surveillance via its ATD program.[1] This began to increase dramatically in June 2025 after the issuance of a memorandum by Dawnisha Hellend which directed ICE staff and its contractors to place ankle monitors on all people in the ATD program whenever possible.[2] As of February 2026, it is reported that 179,991 people are on ATD, with an average duration in the program of 754.9 days.[3]

22. In addition to these conditions being overly onerous, it is incredibly dehumanizing and stigmatizing to our clients to have to wear these ankle monitors and be constantly surveilled by ICE.

I, Lilah R. Thompson, hereby swear that the above statements are true and correct to the best of my knowledge subject to the penalty of perjury pursuant to 28 U.S.C. § 1746.

Dated: 03/13/2026 */s/ Lilah Thompson*
Lilah R. Thompson

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1 https://www.borderreport.com/hot-topics/immigration/ice-increasing-use-of-ankle-monitors-for-non-detained-migrants-new-data-shows/; https://www.sltrib.com/news/2026/02/03/ankle-monitors-being-used-more/

2 *See* https://www.washingtonpost.com/immigration/2025/07/24/ice-check-in-ankle-monitor-immigrants/

3 https://tracreports.org/immigration/detentionstats/atd_pop_table.html (last visited Mar. 10, 2026).