

assessment—literally checking every box without regard to the particulars of Ms. Ekembe’s case.¹ The Fifth Circuit requires more. This Court should strike these conditions or, at a minimum, require the government to make specific, record-supported findings demonstrating that any condition is necessary and is the least restrictive means to achieve the legitimate purposes of supervision.

First, the Fifth Circuit requires an individualized assessment based on person-specific risk factors before imposing electronic monitoring as a condition of supervision. *See United States v. Miller*, 530 F. App’x 335, 337 (5th Cir. 2013) (upholding GPS monitoring only after finding specific justification based on the defendant’s “history of stalking, escape, angry outbursts, and erratic behavior”). Here, the Government offers no evidence of flight, danger, or noncompliance (indeed, no such risk exists), nor any individual basis to justify electronically monitoring Ms. Ekembe. *See generally* Ex. 1. Based on the record, ATD with GPS ankle monitoring is an unnecessary and burdensome restraint that lacks legitimate, evidence-based support and should be stricken as a condition to Ms. Ekembe’s supervision.

Second, mandatory registration in a substance abuse program is likewise unwarranted where, like here, there is an “absence of evidence that defendant actually used drugs.” *United States v. Ramos-Gonzales*, 857 F.3d 727, 731 (5th Cir. 2017) (holding that the district court improperly imposed drug surveillance conditions on a defendant in the absence of such evidence), *as revised* (June 12, 2017). There is no indication that Ms. Ekembe has a substance use disorder or needs substance abuse treatment, nor is there any apparent nexus between substance abuse and this case. *See generally* Ex. 1. Moreover, decisions to mandate clinical treatment implicate liberty

¹ Given that every box in the OSUP form and addendum is checked, this appears to be the result of careless drafting rather than any analysis or consideration of the needs of the case. The Government has provided no reasons for its selections, nor are there any, as discussed herein.

interests and require appropriate findings; they are not properly delegated to enforcement officers. In analogous contexts, the determination of whether a defendant must undergo substance abuse counseling rests solely with the court and may not be delegated. *See United States v. Griffin*, 780 F. App'x 103, 106–07 (5th Cir. 2019) (holding that the district court erred by delegating a core judicial function to the probation office, as imposing supervised release conditions like substance abuse counseling is a judicial function that cannot be delegated). The Government offers no justification for imposing this condition on Ms. Ekembe, and indeed, none exist. Therefore, this condition too should be stricken.

Third, a requirement that Ms. Ekembe register in a sexual deviancy counseling program is unsupported and especially improper. Individuals never convicted of sex offenses have liberty interests in being free from sex offender registration and counseling requirements because such requirements are “highly stigmatizing and invasive” and “qualitatively different” from ordinary supervision conditions. *Meza v. Livingston*, 607 F.3d 392, 401 (5th Cir. 2010), *decision clarified on denial of reh'g*, No. 09-50367, 2010 WL 6511727 (5th Cir. Oct. 19, 2010); *see also Coleman v. Dretke*, 395 F.3d 216, 223 (5th Cir. 2004) (“[T]he Due Process Clause . . . provides [the defendant] with a liberty interest in freedom from the stigma and compelled [counseling] treatment on which his parole was conditioned, and the state was required to provide procedural protections before imposing such conditions.”). No such predicate findings exist here; there is no conviction, no alleged conduct, and no record evidence that could justify this condition. Imposing sexual deviancy counseling without notice, an opportunity to be heard, and specific factual findings violates due process, and this condition of supervision should also be stricken.

In sum, the Government’s indiscriminate approach to imposing supervision conditions does not satisfy its obligations under the law. This mirrors the same lack of diligence with which

it approached Ms. Ekembe's 90- and 180-day custody reviews and efforts to secure her removal to a third country. Because Ms. Ekembe presents no flight risk and has no record of criminal conduct, substance abuse, or sexual deviancy, the Court should strike these conditions of supervision and order that Ms. Ekembe not be subject to ATD ankle monitoring or required to register with substance abuse or sexual deviancy counseling programs.

As part of the meet-and-confer process for this Joint Status Report, the Government's counsel indicated that ICE would issue a new OSUP that removes several conditions, including the second and third items discussed in Petitioner's objections herein, but would not remove the ATD program with GPS ankle monitoring. As of this filing, Petitioner's counsel has not received the proposed new OSUP. Petitioner continues to object to the conditions for the reasons addressed.

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CERTIFICATE OF SERVICE

I certify that on the 23rd day of December, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and that Respondents Orlando Perez, Miguel Vergara, Kristi Noem, and Pamela Bondi were served via CM/ECF through the email address of their Counsel of Record at Gabriel.Abebe@usdoj.gov.

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