UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA

ZU PING CHEN A# [redacted] Petitioner, vs. MELLISSA B. HARPER, Field Office Director *New Orleans Field Office*, and TODD LYONS, *in his official capacity as Acting Director of Immigration and Customs Enforcement*, and KRISTI NOEM, *Secretary of Homeland Security* and PAMELA BONDI, *U.S. Attorney General* Respondents.	CASE NO.: 3:25-cv-00970

REPLY TO RESPONDENTS' SUPPLEMENTAL RESPONSE

TO THE ORDER TO SHOW CAUSE

Petitioner, by and through counsel, hereby submits this Reply to Respondents' Supplemental Response to the Order to Show Cause (ECF No. 20).

I. INTRODUCTION AND PROCEDURAL HISTORY

Judicial intervention is needed to restore the status quo ante, in which Petitioner was free from custody and was in full compliance with his Order of Supervision (OSUP) before the Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE) unlawfully revoked his OSUP without justification and essentially re-detained him by subjecting him to constructive custody via the imposition of an ankle monitor and mandatory participation in the ISAP program, causing irreparable harm to Petitioner. The decision to put Petitioner on the ISAP program was made without the proper authority and without giving Petitioner and his counsel an opportunity to defend against those actions.

II. RESPONSE TO "FACTS RELATED TO QUESTIONS 1 AND 2

In response to the Court's inquiry regarding DHS's detention and transfer of Mr. Chen to Louisiana in 2024, Respondents stated that:

> Mr. Chen's transportation to Louisiana in 2024 was done neither pursuant to § 241.4 or § 241.13 because at that time, Mr. Chen was not subject to an OSUP. Mr. Chen was transported pursuant to a "bag and baggage" letter.

ECF No. 20 at 1. The term "bag and baggage" is used in the context of immigration enforcement to refer to a formal notice or letter issued by ICE that instructs an individual who has a final order of removal to report to a specific ICE office on a certain date and time, with all their belongings, ready to be removed from the United States. DHS defines the term "Bag and Baggage" as "[a] process where an alien that has been previously ordered removed by an immigration judge is apprehended and the removal order is immediately executed." *See* Short-Term Detention Standards and Oversight, Fiscal Year 2015 Report to Congress, dated December 8, 2015, https://www.dhs.gov/sites/default/files/publications/CBP%20-%20Short-Term%20Detention%20Standards%20and%20Oversight.pdf at 3 (last visited December 30, 2025).

Respondents' admission that they used a "bag and baggage" letter is damning, as it exposes their 2024 detention of Mr. Chen as an abuse of process from its inception. The legal predicate for issuing a "bag and baggage" notice is the government's imminent ability to execute a removal. This is not a trivial procedural step; it is a substantive prerequisite. As Respondents' own cited authority confirms, the process is for when a removal order can be "immediately executed." This necessarily requires that ICE has already secured the required travel documents from the destination country.

Here, Respondents have produced no evidence that they had travel documents for Mr. Chen in October 2024. See ECF No. 20 at 1-2. By issuing a "bag and baggage" letter without the legal

authority to act on it, Respondents were not using the process for its sole lawful purpose—effectuating a removal. Instead, they were using it as a pretext to unlawfully detain Mr. Chen. The subsequent disastrous transport attempt, which resulted in significant injury to Petitioner, was not merely an unfortunate failed removal; it was the direct consequence of an action that was legally baseless from the start. This history establishes a clear pattern of Respondents disregarding lawful procedures to deprive Mr. Chen of his liberty, a pattern repeated in their actions on December 16, 2025.

A year later, despite still not providing any evidence that Respondents have procured a final travel documents to execute Petitioner's removal to China, or an agreement with the destination country, or any other development that would make Petitioner's removal likely in the reasonably foreseeable future, ICE arbitrarily and unlawfully revoked his OSUP. Worse yet, ICE revoked the OSUP without following the required regulatory procedures outlined in 8 C.F.R. §§ 241.4 or 241.13. *See* ECF Nos. 1, 5, 16 (Petitioner's filing outlining the OSUP revocation process and ICE's failure to comply with it).

Further, without justification or any lawful basis, Respondents imposed a new form of custody on Petitioner by shackling him with an ankle monitor and arbitrarily subjecting him to the Intensive Supervision Appearance Program ("ISAP").

III. RESPONDENTS' IMPOSITION OF AN ANKLE MONITOR AND ISAP CONSTITUTES AN IMPERMISSIBLE REVOCATION OF PETITIONER'S OSUP AND AN UNLAWFUL FORM OF CUSTODY

Despite Respondents' protestations in their Response (ECF No. 20), the imposition of the ankle monitor and forced participation in ISAP **does constitute a form of custody** placed upon Petitioner. Although they have not provided evidence that his OSUP has been revoked, placement of the ankle monitoring device and the onerous ISAP program reporting constitutes a de facto revocation of Petitioner's OSUP.

Based on Respondents' own evidence, the ISAP program was designed "to monitor a proportionally small segment of individuals and family heads of household assigned to the nondetained docket (less than three percent of the nondetained docket is enrolled in alternatives to detention.) This program allows contracted case managers to notify ICE of any significant developments in an individual's case, including when individuals fail to appear for their scheduled court hearings or other appointment as required by their conditions of release." *See* U.S. Immigr. & Customs Enft., *Intensive Supervision Appearance Program Report to Congress, FYs 2017-2020* at ii, https://www.dhs.gov/sites/default/files/2022-06/ICE%20-%20Intensive%20Supervision%20Appearance%20Program%2C%20FYs%202017%20-%202020.pdf (last visited Dec. 30, 2025). Also, "ISAP is designed to help mitigate flight risk by providing ICE officers with up-to-date case statuses and collection of information to assist with locating individuals or families should they abscond." *Id.* Clearly, Petitioner is not the type of individual the ISAP program was designed for. Notably, Petitioner's removal proceedings have concluded, and he is not on any immigration court docket. Further, Petitioner complied with all the terms of his release from 2003 until December 2025, when ICE arbitrarily revoked it without cause. Of note, ICE previously determined Petitioner is not a danger or flight risk when releasing Petitioner in 2003, and, for the next 22 years, Petitioner maintained full compliance with all conditions, never missing any check-ins or reporting requirements. He has U.S. citizen family members and owns a business with employees. Thus, ICE had no cause or justification to suddenly revoke Mr. Chen's OSUP in December 2025, placing Petitioner in constructive custody via an ankle monitor and demanding his participation in the ISAP program. Respondents have not provided any reason why Mr. Chen was placed on the ISAP program on the day of his most recent reporting.

Moreover, Respondents' own evidence states that "Prior to enrollment in the [ISAP] program, ICE officers review and consider an individual's criminal, immigration, and supervision history; family and/or community ties; status as a caregiver or provider; and humanitarian or medical considerations, among other factors." Yet, Respondents have failed to provide any evidence that they conducted such analysis regarding Petitioner. If they had, all those factors would have weighed **against** imposing ISAP on Petitioner. He has no criminal history, he has significant family and community ties including a wife and two United States citizen children, he is the main provider for his family, ICE previously determined he is not a danger or flight risk when issuing his OSUP, and he fully complied with all the conditions of his OSUP.

Next, while ICE may claim that "ISAP is not classified as detention; it is release with enhanced supervision," the reality is that Petitioner is "in custody" for the purposes of the habeas statute at 28 U.S.C. § 2241, because he is subject to conditions and significant constraints on his liberty, which suffices for "in custody" requirement. *See Orellana Juarez v. Moniz*, 788 F. Supp. 3d 61, 67-68 (D. Mass. 2025) (finding that conditions such as 24/7 GPS monitoring, curfews, geographic restrictions, and home visits are significant compromises on an individual's liberty that are analogous to parole and satisfy the "in custody" requirement for habeas relief). The "in-custody" requirement is construed "very liberally." *Clements v. Florida*, 59 F.4th 1204, 1213 (11th Cir. 2023) (quoting *Howard v. Warden*, 776 F.3d 772, 775 (11th Cir. 2015)). As Petitioner outlined in ECF No. 16, there are countless authorities on the matter, including for example, two binding authorities from the 11th circuit, *Romero v. Sec'y, U.S. Dep't of Homeland Sec.*, 20 F.4th 1374, 1379 (11th Cir. 2021) (A non-detained foreign national subject to predeportation supervision and removal was "in custody" as described in 28 U.S.C. § 2241); *see also U. S. ex rel. Marcello v. Dist. Dir. of Immigr. & Naturalization Serv., New Orleans, La.*, 634 F.2d 964, 971 n. 11 (5th Cir.

1981) (finding that a noncitizen subject to pre-deportation supervision and a deportation order was "in custody" as required by 28 U.S.C. § 2241). Therefore, the custody requirement is not only satisfied by showing that a petitioner is in physical custody, but it can also be satisfied where a petitioner identifies "'a significant restraint'" on individual liberty that is not shared by the general public." *Whitfield v. United State Secretary of State*, 853 F. App'x 327, at 329 (11th Cir. 2021) (quoting *Howard v. Warden*, 776 F.3d 772, 775 (11th Cir. 2015)).

Given that Petitioner is constructively detained via the physical restraint of an ankle monitor and forced ISAP participation, it is clear that Respondents have revoked Mr. Chen's OSUP that previously granted him freedom to live with his wife and United States children and work **without any** physical restraint or other onerous conditions. He was only subjected to yearly reporting to the Montgomery ICE field office. Yet, as Petitioner as outlined in all his filings, Respondents failed to follow their own regulations and procedures in revoking his OSUP and have violated his due process. *See* ECF Nos. 1, 5, 16.

The government may revoke an OSUP only upon a showing of "changed circumstances" that make removal significantly likely in the reasonably foreseeable future (SLRRFF). *See* 8 C.F.R. § 241.13(i). This is not a mere formality. Courts have repeatedly held that ICE must identify specific, individualized changes—such as new evidence of flight risk, danger to the community, or a concrete development making removal newly feasible. *See Roble v. Bondi*, 2025 WL 2443453 at *4 (D. Minn. Aug. 25, 2025) (the regulations place the burden on ICE to first establish changed circumstances that make removal significantly likely in the reasonably foreseeable future); *Sarail A. v. Bondi*, 2025 WL 2533673 (D. Minn. Sep. 3, 2025) (notification of "changed circumstances" without explanation is insufficient); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771 at *4 (E.D. Cal July 16, 2025) (rejecting the government's assertion that ICE's intent to

apply for a travel document constituted changed circumstances, explaining that the government failed to provide "any details about why a travel document could not be obtained in the past, nor have they attempted to show why obtaining a travel document is more likely this time around."). In most of these cases, courts have granted habeas relief after finding that the government failed to identify sufficient changed circumstances or demonstrate a significant likelihood of removal in the reasonably foreseeable future. To date, Respondents have not shown that they have travel documents to execute for Mr. Chen's removal, and they cannot demonstrate a significant likelihood of his removal in the reasonably foreseeable future. Therefore, the Court should order ICE to restore Mr. Chen to the status quo ante before the unlawful OSUP revocation and imposition of the physical shackle and ISAP.

IV. PETITIONER'S CLAIMS ARE RIPE AND THE COURT SHOULD IMMEDIATELY ORDER A RESTORATION OF THE STATUS QUO ANTE

A. Petitioner Does Not Need to Exhaust his Habeas Claims

Petitioner's habeas petition outlining severe deprivation of his Constitutional Due Process and Respondents' failure to follow its own laws and regulations in violation of the *Accardi* Doctrine and the APA, are ripe for review. Respondents' claim that Petitioner must raise his concerns with his ankle monitor to the ISAP case manager and "exhaust his administrative remedies" are both inappropriate and wrong. Initially, no statutory exhaustion requirement applies to habeas cases. "Under the INA exhaustion of administrative remedies is only required by Congress for appeals on ***final*** orders of removal." *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D. Tex. 2007); *see* 8 U.S.C. § 1252(d)(1); *see Louisaire v. Muller*, 758 F. Supp. 2d 229, 234 (S.D.N.Y. 2010) (There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his detention).

Moreover, ICE's unlawful revocation of the OSUP twice (once last year and once this

year), imposition of an ankle monitor tracking device, and determination that Petitioner must participate in the ISAP program leaves no administrative avenue to secure release; additional agency steps would be futile. Where the agency has predetermined a dispositive issue, no further action with the agency is necessary. *See, e.g., Monestime v. Reilly*, 704 F. Supp. 2d 453, 456-57 (S.D.N.Y. 2010) (holding that administrative challenges to a noncitizen's classification under the mandatory detention statute would be futile given the agency's precedent on the issue); *Gibson v. Berryhill*, 411 U. S., 564 at 575, n. 14, (1973) (An administrative remedy may be inadequate where the administrative body is shown to be biased or has otherwise predetermined the issue before it). Requiring Petitioner to further request ICE reconsider its unlawful actions and await a decision when the agency has already unlawfully revoked his OSUP and shackled him with an ankle monitor[1] "would be to demand a futile act" as Petitioner would not be granted relief while languishing in jail. *See Houghton v. Shafer*, 392 U.S. 639, 640 (1968); *see also Santiago-Lugo v. Warden*, 785 F.3d 467 (11th Cir. 2015).

Finally, even if the doctrine of exhaustion of administrative remedies applied, it would have been futile on claim attacking constitutionality of DHS's actions. It would be futile to await further administrative remedies when proceedings before ICE cannot in any way address the constitutional claims at issue in this case, and where ICE seeks to quickly remove noncitizens like

[1] Respondents' evidence makes it clear that the ISAP program managing company, "BI Incorporated" operates ISAP under a contract with DHS-ICE after ICE refers individuals to the program. *See* 2022-12-09_ISAP-FOIA_ICEProduction2Re-Release_ISAP-IVParticipantHandbookEnglish.pdf. And individuals "will remain in ISAP until ICE determines you are no longer required to participate, or you depart from the United States." *Id.* "ISAP employees, including your Case Specialist, are NOT allowed to give you any legal advice about your case." And "Office visit and home visit frequency is determined by an ERO officer." *Id.* Thus, all custody decisions are made exclusively by ICE. And while the BI Incorporated Case Specialist may be able to address Mr. Chen's pain and discomfort with the GPS device or possibly address a grievance regarding mistreatment, he or she lacks any authority to review the imposition of the ankle monitor in the first place.

Petitioner without due process due to deportation quotas and other costraints. Petitioner has exhausted all administrative remedies to the extent required by law, and Petitioner's only remedy is by way of this judicial action.

Related, where Respondents unlawfully revoked Petitioner's OSUP, they cannot now argue for a chance to "formally review the terms of the ISAP an address any grievances Mr. Chen may have." ECF 20 at 5. Respondents cannot cure their constitutional violations of Mr. Chen's due process with an after-the-fact attempt to follow their own procedures retroactively. His claims show a live controversy where his OSUP has been unlawfully revoked in violation of the regulations and resulting in his unlawful deprivation of liberty. Several courts have determined that Respondents cannot cure these defects after the fact and the only remedy here is release and reinstatement to the prior OSUP status. The Supreme Court has recognized that the loss of liberty, even for minimal periods, constitutes irreparable injury and cannot be remedied by later proceedings or monetary damages. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."). In the context of immigration detention, courts have emphasized that strict compliance with regulatory assignments of authority and procedural safeguards is a substantive requirement, not a mere technicality that can be excused or remedied after the fact. Where, as here, the agency fails to provide timely notice, an opportunity to respond, or a meaningful informal interview, the deprivation of liberty is arbitrary and capricious, and the only adequate remedy is restoration of the status quo ante—immediate removal of the ankle monitor, dismissal from the ISAP, and full release under the original OSUP.

B. The Ankle Monitor Is a Physical Shackle That Constitutes an Ongoing, Irreparable Injury.

Any attempt by Respondents to narrow the interpretation of "redetention" to exclude Respondents' action of shackling Petitioner to a GPS device ignores the fundamental liberty interests protected by the Fifth Amendment and the practical realities of modern immigration enforcement, which increasingly rely on electronic surveillance as a form of control and restraint on liberty. An ankle monitor is not a mere administrative condition; it is a physical shackle, an electronic tether that binds him to constant government surveillance when a government device is physically attached to his body 24 hours a day, restricting his movement, interfering with his work, and disrupting his sleep. This constant physical restraint, coupled with the mandate that he report in person regularly, means Petitioner is not free to move about his life. Such intrusive and debilitating conditions, imposed unilaterally by ICE, are a clear form of governmental restraint that severely curtails Petitioner's freedom and autonomy, effectively placing him in a state of "constructive" or "de facto" detention. This physical shackle is a significant compromise on an individual's liberty, creating an open-air prison where the walls are electronic but the loss of freedom is just as real. It is further exacerbated by the complete absence of any individualized justification for its imposition. Respondents have not and cannot articulate why placement of the ankle monitor was reasonable or necessary now after 22 years of full compliance with all conditions of his release.

C. The Court Must Restore the True *Status Quo Ante*, Not Endorse Respondents' Unlawful Conduct

A foundational purpose of injunctive relief is to preserve the status quo ante—the last, peaceable, uncontested state of affairs that existed before the controversy began. Here, Respondents will likely argue that the current "status quo" is Mr. Chen's release on an ankle

monitor. This is a cynical and self-serving mischaracterization. The GPS shackle is not the status quo to be preserved; it is the very irreparable harm resulting from Respondents' unlawful actions on December 16, 2025.

To accept Respondents' framing would be to reward an agency for violating its own regulations. It would create a perverse incentive for the government to act first and unlawfully, thereby establishing a new, more restrictive baseline from which to litigate. The Court's equitable powers should not be used to ratify such conduct. The Eleventh Circuit explicitly recognizes that equitable relief can and should be used to restore a party to the position they occupied before the wrongful act occurred. See *Lewis v. Federal Prison Industries, Inc.*, 953 F.2d 1277, 1286 (11th Cir. 1992) (recognizing the use of equitable relief to restore the status quo ante).

The only legitimate status quo ante in this case is the one that existed for 22 years prior to Respondents' unlawful actions: Mr. Chen's freedom from physical restraint under an Order of Supervision with which he had maintained perfect compliance. The Court is not deprived of its authority to compel a defendant to undo what has been wrongfully done. Therefore, the only appropriate remedy is not to preserve the fruits of an illegal act but to unwind it, restoring Mr. Chen to the position he lawfully held before his rights were violated.

V. CONCLUSION

The equitable powers of the Court and the purpose of preliminary injunctions—to prevent harm and preserve meaningful remedies— and the total inability to remedy such harm if the Court does not order Respondents to act immediately, support Petitioner's request for the Court to restore the status quo ante and —immediate removal of the ankle monitor, dismissal from the ISAP, and

full release under the original OSUP.[2] *See Rokhfirooz v. Larose*, Case No.: 25-cv-2053-RSH-VET, 2025 WL 2646165, at *4 (S.D. Cal. Sept. 15, 2025) (granting a habeas petition and ordering the petitioner's release where the Government failed to comply with § 241.13); *Constantinovici v. Bondi*, No. 3:25-CV-02405-RBM-AHG, 2025 WL 2898985, at *6 (S.D. Cal. Oct. 10, 2025); *Hamidi v. Bondi*, No. CIV-25-1205-G, 2025 WL 3452454, at *4 (W.D. Okla. Dec. 1, 2025) (Because Petitioner has shown that he is "in custody in violation of the ... laws ... of the United States," he is entitled to habeas relief); *Pham v. Bondi*, No. CIV-25-1157-SLP, 2025 WL 3243870, at *1 (W.D. Okla. Nov. 20, 2025) (regulatory defects amount to due process violations that entitle a petitioner to habeas relief.)

For the above stated reasons, Petitioner renews his request for Court to order the following:

(1) Restore Petitioner to the *status quo ante* that existed prior to December 16, 2025, by reinstating his release under the original Order of Supervision (OSUP) and ordering the immediate removal of all conditions imposed thereafter, including the requirements for GPS ankle monitoring, participation in the Intensive Supervision Appearance Program (ISAP), and any other form of Alternative to Detention (ATD);

(2) Enjoin Respondents from altering or revoking Petitioner's original Order of Supervision (OSUP) unless and until they first demonstrate full compliance with

[2] The plain terms of 8 U.S.C. § 1252(f)(1) also proscribe the Court's ability to issue injunctive relief. Habeas relief has long been recognized as a unique and district remedy. The Court has broad discretion to fashion appropriate remedies to dispose of habeas corpus matters "as law and justice require." 28 U.S.C. § 2243; *see Hilton v. Braunskill*, 481 U.S. 770, 775 (1987). A "habeas corpus proceeding must not be allowed to fonder in a 'procedural morass'" and the "power of federal courts to conduct inquiry in habeas corpus is equal to the responsibility which the writ involves." *Harris v. Nelson*, 394 U.S. 286, 291-2 (1969). That responsibility is greatest where, as here, the Court is reviewing "detention by executive authorities without judicial trial." *Brown v. Allen*, 344 U.S. 443, 533 (1953); *Boumediene v. Bush*, 553 U.S. 723, 783 (2008).

all mandatory procedural and substantive requirements set forth in 8 C.F.R. §§ 241.4 and 241.13, as well as the Due Process Clause of the Fifth Amendment;

(3) Mandate that any future action by Respondents seeking to deprive Petitioner of his liberty—including but not limited to any alteration or revocation of his OSUP—be preceded by: (a) advance, particularized written notice detailing the specific factual and legal grounds for the proposed action; and (b) a pre-deprivation hearing before a neutral decision-maker at which Petitioner has a meaningful opportunity to be heard and present evidence; and

(4) Enjoin the Respondents from transferring the Petitioner outside of this judicial district while this action is pending.

Respectfully Submitted,

This 30th day of December, 2025.

/s/ Karen Weinstock

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CERTIFICATE OF SERVICE

I certify that on December 30 2025, I electronically filed the foregoing Document with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to Respondents' attorney(s) of record.

/s/ Karen Weinstock

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