UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARCIN KEGEL

Petitioner,

v.

MICHAEL ROSE, in his office capacity as Acting Field Office Director of the Philadelphia Field Office of U.S. Immigration and Customs Enforcement and Removal Operations;

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

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

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

Respondents.

PETITION FOR A WRIT OF HABEAS CORPUS

Case No.

INTRODUCTION

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

2. After he was detained in DHS custody for nearly one month, Petitioner, Marcin Kegel ("Petitioner" or "Mr. Kegel"), a citizen and national of Poland, moved for and

received a bond hearing before the Immigration Court. After a full custody hearing, the Immigration Judge ("IJ") found that Mr. Kegel was neither a flight risk nor a danger to the community and ordered Mr. Kegel released on a $5,000 bond. The IJ imposed four additional conditions to bond, stating that Mr. Kegel may have "no arrests; no harmful contact; no driving without a valid driver's license; [and] no illegal drugs." See Order of the IJ at Tab A. The bond amount and enumerated conditions were the *only* condition of his release pursuant to the IJ's order.

3. Yet, when Mr. Kegel posted bond and was released from immigration detention to reunite with his wife in Langhorne, Pennsylvania, ICE unlawfully and unilaterally subjected him to a new form of custody which constitutes a continuing restraint on his liberty—an ankle monitor with 24/7 GPS tracking and onerous reporting conditions.

4. A recent ICE policy shift, described in a June 9, 2025, memorandum, instructs ICE officials to adhere GPS-enabled ankle monitors to noncitizens "whenever possible."[1] The internal memo from the Acting Assistant Director Dawnisha Helland instructs agents to "escalate their supervision level to GPS ankle monitors...and increase reporting requirements" for individuals not being arrested ("Helland Memo"). ICE's blanket policy, as implemented by the Helland Memo, negates any individualized review that ICE, prior to June 9, 2025, conducted of a noncitizen before applying ankle monitoring. The Helland Memo mandates increased surveillance and carceral supervision conditions without a consideration of a noncitizen's compliance history or other individualized analysis. See Helland Memo.

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

5. Ankle monitors and attendant supervision conditions are applied by ICE through its contract with BI Incorporated ("BI"), the subsidiary of private prison company GEO Group, Inc. ("GEO"). The Intensive Supervision Appearance Program's ("ISAP") reliance on GPS monitoring and other forms of surveillance are a significant revenue source for GEO. Each Alternatives to Detention ("ATD") participant generates approximately $3.70 in daily revenue for the private prison company. [2] In the first six months of 2025, GEO reported a net income of $48.6 million[3] and stands to further increase profits in light of ICE's new ATD policy.[4]

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

7. Now subjected to ICE's Intensive Supervision Appearance Program ("ISAP"), Mr. Kegel is in a digital cage. He is forced to wear an intrusive and sometimes painful ankle monitor weighing six ounces. His every move is subject to 24/7 GPS monitoring by ICE. His travel is restricted.

8. ICE's unilateral decision to place Mr. Kegel in another form of custody in violation of the IJ's order violates the Due Process Clause of the Fifth Amendment of the United States Constitution, the Administrative Procedure Act ("APA"), the *Accardi* doctrine,

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

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

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

which obligates administrative agencies to follow their own rules, and a non-statutory right against *ultra vires* agency action. *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). Accordingly, Mr. Kegel respectfully asks this Court to order his immediate release from his unlawful continuing government custody.

9. Pursuant to 28 U.S.C. § 2243, Mr. Kegel respectfully requests an order to show cause be issues within three business days.

JURISDICTION AND VENUE

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

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

12. As the subject of ongoing governmental supervision through ISAP, Mr. Kegel remains in government custody, infringing upon his "liberty to do those things which in this country free men are entitled to do," as fundamentally protected by the Due Process Clause. *See Jones v. Cunningham*, 371 U.S. 236, 243 (1963); *Justices of Boston Mun. Ct. v. Lydon,* 466 U.S. 294, 300-01 (1984) (holding that petitioner released on recognizance subject to conditions such as appearance as ordered by court "in custody" for habeas purposes); *Romero v. Sec'y, U.S. Department of Homeland Security,* 20 F.4th 1374, 1379 (11th Cir. 2021) (the "in custody" requirement of 28 U.S.C. § 2241 "should be construed 'very

liberally'" and habeas petitioners "need only show that they are subject to a significant restraint on their liberty that is not shared by the general public." (quoting *Howard v. Warden*, 776 F. 3d 772, 775 (11th Cir. 2015))).

13. Recently, district courts have found that ISAP GPS monitoring constitutes a restraint on liberty so great to be "in custody" for habeas purposes. *See Orellana v. Moniz,* ---F.Supp.3d---, 2025 WL 1698600 (D. Mass. June 11, 2025) (finding that additional conditions of release imposed by ICE satisfy "in custody" requirement for § 2241 habeas release); *Flores Salazar v. Moniz*, 2025 WL 1703516 (D. Mass. June 11, 2025) (same).

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

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

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

EXHAUSTION OF ADMINISTRATIVE REMEDIES

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

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

19. With regard to prudential considerations, the Third Circuit has held that exhaustion is not required where the administrative remedy would be futile, there is a likelihood of irreparable injury absent immediate judicial relief, or the administrative remedy would not serve the requirement's underlying policy goals. *Brown v. Warden Canann USP*, 763 F. App'x 296, 297 (3d Cir. 2019); *see also Cerverizzo v. Yost,* 380 F. App'x 115, 116 (3d Cir. 2010) ("[W]e have held that the administrative exhaustion requirements in this context may be excused if an attempt to obtain relief would be futile or where the purposes of exhaustion would not be served.) (citing *Woodall v. Fed. Bureau of Prisons*, 432 F.3d 235, 236 n. 2 (3d Cir. 2005)); *Lyons v. U.S. Marshals*, 840 F.2d 202, 205 (3d Cir. 1988) (explaining even when exhaustion is required by law rather than judicial discretion, "[e]xhaustion is not required if administrative remedies would be futile, if the actions of the agency clearly and unambiguously violate statutory or constitutional rights, or if the administrative procedure is clearly shown to be inadequate to prevent irreparable injury"); *Carling v. Peters*, No. Civ. A. 00-CV-2958, 2000 WL 1022959, at *2 (E.D. Pa. July 10, 2000) (excusing prisoner's failure to exhaust because he "would suffer irreparable injury if he is compelled to wait until an administrative petition is ruled upon").

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

21. Further, the ongoing deprivation Mr. Kegel's liberty interest ultimately weighs against requiring administrative exhaustion. See *McCarthy*, 503 U.S. at 147 (finding that exhaustion might not be required if petitioner challenged an ongoing deprivation of her liberty interest). The Supreme Court has recognized that courts should not require exhaustion where there is an unreasonable or indefinite timeframe for administrative action. Exhaustion is thus not appropriate where plaintiff "may suffer irreparable harm if unable to secure immediate judicial consideration of his claim." Id. at 147. Petitioner has a constitutionally protected liberty interest in his freedom from government custody. *Zadvydas*, 533 U.S. at 690. And his unlawful, indefinite custody by Respondents constitutes irreparable harm. See *Seretse-Khama v. Ashcroft*, 215 F. Supp.2d 37, 53 (D.D.C. 2002).

22. In any event, here, Petitioner has already exhausted all administrative remedies available to him. Petitioner does not challenge the IJ's decision regarding the bond order but rather challenges ICE's imposition of an alternative form of custody and additional conditions of release outside the scope of the IJ's order. Here, the administrative process—the bond adjudication that Mr. Kegel seeks to uphold—has already been exhausted. After ICE made an initial custody determination, i.e. to detain. Mr. Kegel requested a redetermination of that decision by the IJ via a bond hearing. See 8 C.F.R. § 1003.19(a), (c), (f); § 1236.1(d). Following that administrative process, Mr. Kegel was ordered released on a $5,000 bond with limited conditions. And in defiance of that bond order, and apparently dissatisfied with the IJ's decision, DHS applied additional conditions of Mr. Kegel's release, the agency action he now challenges.

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

PARTIES

24. Petitioner, Mr. Kegel is a 41-year-old citizen and national of Poland who currently lives in Newtown, Pennsylvania with his US citizen wife. On January 26, 2026, an IJ found that Mr. Kegel presents no risk of danger or flight and ordered him released from immigration detention on a $5,000 bond with conditions of "no arrests; no harmful contact; no driving without a valid driver's license; [and] no illegal drugs." But, upon release, ICE unilaterally applied an ankle monitor with 24/7 GPS monitoring and other onerous reporting requirements and conditions without notice or motion to the immigration court.

25. Respondent Brian McShane is ICE's Acting Field Office Director for the Philadelphia Field Office of ICE Enforcement and Removal Operations. As Field Office Director, Respondent McShane oversees ICE's enforcement and removal operations in the Philadelphia Area of Responsibility ("AOR"). Petitioner is currently detained within this area of responsibility and, as such, Respondent McShane is a legal custodian of Mr. Kegel. Upon information and belief, Respondent McShane is responsible for the decision to apply the ankle monitor to Mr. Kegel. He is sued in his official capacity.

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

27. Respondent Pamela Bondi is the Attorney General of the United States. As Attorney General, Respondent Bondi oversees the immigration court system, including the immigration judges who conduct bond hearings as her designees, and is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(g). She is legally responsible

for administering Petitioner's removal and bond proceedings, including the standards used in those proceedings, and as such, she is Mr. Kegel's legal custodian. She is sued in her official capacity.

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

STATEMENT OF FACTS

Mr. Kegel's Immigration Procedural History and Removal Proceedings.

29. Mr. Kegel was born on [redacted] in Poland. In 2005, Mr. Kegel entered the United States on a B2 visitor visa and has not departed the United States since that date.

30. In 2021, Mr. Kegel met Paula Falkowski, a U.S. citizen. Mr. Kegel and Paula fell in love and eventually got married in October 2025. In January 2026, Mr. Kegel and Ms. Falkowski filed a Form I-130 Petition for Alien Relative to begin the process of obtaining legal permanent residency for Mr. Kegel.

Mr. Kegel's Bond Proceedings and Release from Immigration Detention.

31. On January 2, 2026, Mr. Kegel was travelling with his US citizen wife and family to the U.S. Virgin Islands. Though there was no border-crossing, or inspection and admission issues, US Immigration officials questioned Mr. Kegel about his immigration status at the airport in St. Croix prior to boarding their flight to Pennsylvania.

32. DHS then detained Mr. Kegel in St. Croix and transported him to a detention facility in Puerto Rico. Mr. Kegel was subsequently transferred into detention at Florida Soft Side South (a.k.a. "Alligator Alcatraz"). DHS eventually transferred Mr. Kegel to his third

place of detention, Miami Krome Detention Center where he remained until his custody redetermination hearing, some 24 days after his detention began.

33. During this time, Ms. Falkowski filed an I-130, Petition for Alien Relative, on behalf of Mr. Kegel and counsel requested that the decision be expedited.

34. In advance of the bond hearing. Mr. Kegel filed evidence in support of his request including letters of support, documentation showing his eligibility for relief, and a brief in support of his eligibility for bond.

35. On January 26, 2026, Mr. Kegel had a custody redetermination hearing before IJ Pereira. IJ Pereira found that Mr. Kegel is not a danger to the community or a flight risk and thus granted his request for custody redetermination. He ordered a bond of $5,000 and imposed limited conditions.

36. On January 27, 2026, Mr. Kegel's wife paid bond and attempted to pick up Mr. Kegel from detention. However, prior to his release, DHS placed an ankle monitor on Mr. Kegel and gave him a DHS Call-In Letter, instructing him to report to the Philadelphia ERO Office at 8:00am on Thursday January 29, 2026, and ask for the King of Prussia ISAP Office.

37. Upon arriving at the Philadelphia ERO Office, Mr. Kegel was told by ICE officials that he was meant to appear at the King of Prussia Office and had one hour to report.

38. DHS instructed Mr. Kegel that he must fully comply with the following restrictions and requirements:

a. Mr. Kegel must report to the King of Prussia Office every 2-4 weeks for monitoring.

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

c. Mr. Kegel must attach a large, bulky battery to the ankle monitor one to two times a day to charge the monitor. Mr. Kegel must be stationary while the monitor charges.

d. Mr. Kegel cannot fully submerge the ankle monitor in water, such as in a pool or bath since this will damage the ankle monitor.

e. Mr. Kegel must wear loose fitting ants which do not interfere with the ankle monitor.

39. During this appointment, Mr. Kegel requested his passport and driver's license, which had been taken from him in St. Croix and are presently held in ICE custody. The ISAP officer told Mr. Kegel that ICE would not return them and advised that he apply for a new passport and license.

<u>Mr. Kegel's Ongoing Supervision Under the Philadelphia Field Office.</u>

40. Mr. Kegel has struggled with mental health since ICE unilaterally placed an ankle monitor on him. He is uncomfortable leaving his house with the ankle monitor out of fear he may be perceived as a criminal, or that it will malfunction and cause ICE to re-detain him.

41. Mr. Kegel also reports that on numerous occasions since his release, his ankle monitor has experienced technical difficulties. When this occurs, he must report in person to the ISAP office, which is over 45 minutes from his home. He reports that during many of these instances, he has had to wait multiple hours before he is seen by officials.

42. Moreover, Mr. Kegel's mother-in-law owns a property in Maryland, outside of the geographic limits of the ankle monitor. Prior to his detention, Mr. Kegel and Ms. Falkowski travelled to Maryland frequently to assist Ms. Falkowski's mother with her property.

43. Additionally, Mr. Kegel and Ms. Falkowski have planned a large wedding celebration in Maryland in August of 2026. Mr. Kegel's geographic boundaries limit his ability to plan or participate in his own wedding celebration.

RELEVANT BACKGROUND

ICE's Intensive Supervision Appearance Program

44. ICE's Alternatives to Detention ("ADT") program is "a [noncitizen] compliance tool overseen by [Enforcement and Removal Operations]."[5] 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 on Boulder, Colorado.

45. 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.[6]

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[5] U.S. Immigr. & Customs Enf't, Enforcement and Removal Operations Statistics, (updated May 30, 2025), https://perma.cc/MXZ3-RMUG ("ATD uses technology and case management to more closely monitor cases assigned to the non-detained docket where detention is not necessary or appropriate. The level of supervision and technology participants are assigned is based on their current immigration status, criminal history, compliance history, community or family ties, caregiver or provider status, and other humanitarian or medical conditions. Officials may enroll aliens in ATD following a border apprehension by CBP or an ICE interior administrative arrest, or at a later stage in removal proceedings."); see also U.S. Immigration and Customs Enforcement, Alternatives to Detention at 1 (updated February 27, 2025), https://perma.cc/W84B-2DAM ("Each [noncitizen] enrolled in ATD-ISAP receives an individualized determination as to their level of supervision. ERO may transition [a noncitizen]'s supervision level by considering certain factors. Factors considered in both initial placement and changes to supervision level, as relevant, include criminal history, compliance history, community or family ties, caregiver concerns, and other humanitarian or medical concerns.")

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

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

47. Data indicates that ICE currently monitors 182,584 families and single individuals through its ATD programs.[7] The Philadelphia ICE Field Office currently monitors 7,114 people on ATD programs, among the highest in the nation.[8]

48. The largest program within ICE's ATD programs is ISAP, which is administered by contractor BI Incorporated through its case specialists.[9] Under ISAP, individuals may be assigned to various forms of electronic monitoring technologies, including ankle monitors, telephonic reporting, or the smartphone application "SmartLINK." They may also be required to comply with periodic home and/or office visits.[10] ICE Enforcement and Removal Operations ("ERO") determines the intensity of the supervision and monitoring technology.

49. 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.[11]

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[7] TRAC Reports, "Immigration Detention Quick Facts", (last accessed Sept. 23, 2025) (data current as of August 23, 2025) https://perma.cc/A4EN-JRKE (data current as of August 23, 2025).
[8] TRAC Reports, Immigration Detention Quick Facts, (last visited Sept. 23, 2025) (data current as of August 23, 2025) (Philadelphia ranks 10th among ICE Field Offices with highest number of people monitored on ATDs in the United States) https://perma.cc/9QK5-NJWW (data current as of August 23, 2025) (Philadelphia ranks 10th among the 25 ICE Field Offices with highest number of people monitored on ATDs in the United States).
[9] BI Incorporated operates ISAP under a contract with the Department of Homeland Security and Immigration and Customs Enforcement. See ISAP Intensive Supervision Appearance Program Participant Handbook, ISAP, https://perma.cc/6VC5-EGTZ (last accessed Aug. 29, 2025).
12 ISAP Intensive Supervision Appearance Program Participant Handbook, ISAP, https://perma.cc/6VC5-EGTZ (last accessed Aug. 29, 2025)
[10] ICE, "Alternatives to Detention: ISAP Transition" (updated Feb. 27, 2024), https://perma.cc/NG9S-SQGA.
[11] 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,

Statutory and Regulatory Background on Immigration Custody Proceedings

50. Section 1226(a) authorizes the detention of noncitizens during removal proceedings and permits (but does not require) those who are not subject to mandatory detention to be released on bond or their own recognizance. *See* 8 U.S.C. § 1226(a)(1), (2) (ICE "may continue to detain the arrested alien" pending removal proceedings or it "may release the alien" on bond in the amount of at least $1500, or on "conditional parole"); *see also* 8 C.F.R. 236.1(c)(8) (ICE may "release an alien not described in section 236(c)(1) of the Act [i.e. one subject to mandatory detention], under the conditions at [INA] section 236(a)(2)."

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

52. When an IJ's custody review is triggered by a noncitizen's request, the IJ exercises the same authority granted to ICE in 8 U.S.C. § 1226(a). *See* 8 C.F.R. §

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.

1236.1(d)(1). ("[T]he immigration judge is authorized to exercise the authority in section 236 of the Act . . . to detain the alien in custody, release the alien, and determine the amount of bond, if any, under which the respondent may be released").

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

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

LEGAL BACKGROUND

I. PETITIONER'S CONTINUING DETENTION VIOLATES THE PETITIONER'S DUE PROCESS RIGHTS UNDER THE 5TH AMENDMENT OF THE UNITED STATES CONSTITUTION

a. Petitioner Can Show Substantive Due Process Violations

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

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

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

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

58. Respondents' imposition of electronic surveillance on Mr. Kegel serves no legitimate nonpunitive objective. Neither public safety nor flight risk are at issue here.

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

a. Petitioner Can Show Due Process Violations Through the Matthews v. Eldridge test.

60. "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty" under case law interpreting the Due Process Clause. *Matthews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* At 333 (citation modified).

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

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

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

64. The second factor, the risk of erroneous deprivation of liberty, favors Mr. Kegel. In fact, here, an "erroneous deprivation" of Mr. Kegel's liberty interest is not merely at risk, it has been realized and may continue indefinitely because the process available to him to challenge the conditions of his custody has already occurred during his custody hearing before the IJ. When DHS defies an IJ's order that restrains DHS from imposing surveillance, the risk of erroneous deprivation of liberty is not just high—it is certain. The value of requiring ICE to follow an IJ's reasoned order is also certain because it guarantees that any

restrictions on liberty were justified by findings obtained at a hearing before a neutral decision-maker at which both parties were able to present evidence and arguments.

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

II. PETITIONER'S CONTINUING DETENTION VIOLATES THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. §706(2)

a. Petitioner's Continuing Detention is Contrary to Law and Constitutional Right

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

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

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

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

70. ICE's refusal to follow the IJ's order also violates substantive and procedural due process under the Fifth Amendment's Due Process Clause, as described above. *See also Torres-Jurado v. Biden*, 2023 WL 7130898, at *4 (S.D.N.Y. Oct. 29, 2023) (finding violation of procedural due process where ICE failed to follow regulations for revocation of an order of supervision).This policy is not in accordance with law because it is contrary to the INA, its implementing regulations, and the Due Process Clause of the Constitution's Fifth Amendment.

b. Petitioner's Continuing Detention is Arbitrary and Capricious

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

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

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

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

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

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

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

78. For these and other reasons, ICE"s policy is arbitrary and capricious.

c. Petitioner's Continuing Detention is In Excess of Statutory Authority.

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

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

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

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

III. PETITIONER'S CONTINUING DETENTION IS A VIOLATION OF THE *ACCARDI* DOCTRINE

83. In *Accardi* a noncitizen challenged his deportation, and the Supreme Court held that agencies are bound to follow their own rules that affect the fundamental rights of individuals. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (holding that the Board of Immigration Appeals must follow its own regulations in its exercise of discretion); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

84. "[W]hen an agency promulgates a regulation protecting fundamental statutory or constitutional rights of parties appearing before it, the agency must comply with that regulation. Failure to comply will merit invalidation of the challenged agency action without

regard to whether the alleged violation has substantially prejudiced the complaining party." *Leslie v. Attorney General*, 611 F.3d 171, 180 (3d Cir. 2010) (finding that the government's failure to implement its regulation requiring IJ's to advise noncitizens of their right to counsel violated noncitizens' right to counsel and undermined the structure of the hearing such that it automatically invalidated the agency action); *Aquino v. Attorney General*, 53 F.4th 761, 766 (3d Cir. 2022) ("So to clarify Leslie, we hold that for a regulation to protect a fundamental right, a violation must be a structural error that necessarily makes proceedings fundamentally unfair.").

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

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

87. Here, Respondents have promulgated agency rules that require ICE to obey an IJ's order following a custody determination at a bond hearing. See 8 C.F.R. § 1003.19(a) ("Custody and bond determinations made by [ICE] pursuant to 8 C.F.R. part 1236 may be reviewed by an Immigration Judge pursuant to 8 C.F.R. part 1236."); *Id.* § 1236.1(d)(1). ("[T]he immigration judge is authorized to exercise the authority in section 236 of the Act . . . to detain the alien in custody, release the alien, and determine the amount of bond, if

any, under which the respondent may be released"). These rules protect the fundamental right to liberty of a noncitizen in removal proceedings. "Freedom from imprisonment-from government custody, detention, or other forms of physical restraint-lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690 (citing *Foucha v. Louisiana*, 504 U. S. 71, 80 (1992)). Allowing the government to bypass the bond order of an IJ and apply conditions outside those ordered after a full custody hearing "undermines the structure of the hearing and necessarily prejudices the outcome." *Aquino*, 53 F.4th at 766.

88. Regardless, ICE's failure to follow its rules is prejudicial to Mr. Kegel where the rule implicates his fundamental liberty interest and due process rights. See *Leslie*, 611 F.3d at 182; see also *Delgado-Corea v. INS*, 804 F.2d 261, 263 (4th Cir. 1986) (holding that "violation of a regulation can serve to invalidate a deportation order when the regulation serves a purpose to benefit the [noncitizen]" and the violation affected "interests of the [noncitizen] which were protected by the regulation" (internal quotations and citation omitted)). If ICE were to follow its rules and obey the IJ's order—requiring release with payment of a $5,000 bond and conditions limited to "no arrests; no harmful contact; no driving without a valid driver's license; [and] no illegal drugs," it would be required to discontinue Mr. Kegel's enrollment in ISAP and release him from the ankle monitor.

IV. PETITIONER'S CONTINUING DETENTION IS A RESULT OF ULTRA VIRES ACTION.

89. The Supreme Court has held that after the initial detention determination, a petitioner may request a bond hearing before an IJ, who has the authority to determine "the alien's detention conditions." *See Johnson*, 594 U.S. at 527–28; *see also Huanga v. Decker,* 599 F. Supp. 3d 131, 138 (S.D.N.Y. 2022) ("Section 1226(a) gives the Attorney General the

choice to 'continue to detain the arrested alien,' or 'release the alien on (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole.' The Attorney General has delegated this authority to immigration judges.").

90. Although an IJ determined that Mr. Kegel is not a flight risk or a danger to the community, ordering him released from custody on a minimal $5,000 bond with limited, enumerated additional conditions, ICE is unlawfully subjecting him to an alternative form of custody through the ankle monitor and other restrictive conditions.

91. ICE's unlawful application of conditions outside the IJ Order reflects its new policy, as described in the Helland Memo, to outfit noncitizens with ankle monitors "whenever possible," a phrase which does not evaluate individuate need.

92. Mr. Kegel received a bond hearing because he was eligible for release on bond and conditions. See 8 U.S.C. § 1226(a). During a bond hearing, the decision on bond and conditions is made by the IJ alone, based on the due process provided in the bond hearing. See 8 C.F.R. §§ 1003.19, 1236.1(d). Thus, here, the administrative process has been completed and an IJ determined the conditions of Mr. Kegel's release. Even if ICE is dissatisfied with the outcome of that process, it has no authority to unilaterally impose additional conditions of release without IJ's authorization.

CLAIMS FOR RELIEF

COUNT ONE:

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

Substantive Due Process

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

94. The ankle monitor imposed on Mr. Kegel by ICE is a significant restraint on his liberty which serves no legitimate nonpunitive purpose.

95. Respondent's imposition of the ankle monitor with no legitimate nonpunitive purpose in defiance of an IJ's order violates the substantive due process clause doctrine of the Fifth Amendment.

COUNT TWO:

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

Procedural Due Process

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

97. ICE's imposition of electronic monitoring puts Mr. Kegel at risk of indefinite restraints on his liberty.

98. The imposition of electronic surveillance on Mr. Kegel in defiance of an IJ's order violates the procedural due process doctrine of the Fifth Amendment.

99. Therefore, Petitioner requests this Court order the immediate removal of the ankle monitor.

COUNT THREE:

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

Contrary to Law and Constitutional Right

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

101. Under the APA, a court must set aside agency action which is not in accordance with law or contrary to constitutional right.

102. ICE'S refusal to follow the IJ's order violates 8 CFR § 1003.19(A).

103. ICE's refusal to follow the IJ's order violates substantive and procedural due process.

104. Therefore, Petitioner requests this Court set aside the illegal agency action taken by imposing an ankle monitory contrary to the IJ's order.

COUNT FOUR:

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

Arbitrary and Capricious

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

106. Under the APA, a court must hold unlawful agency action found to be arbitrary or capricious.

107. ICE's policy of ignoring an IJ's order and unilaterally imposing additional restraints on liberty is arbitrary and capricious.

108. Therefore, Petitioner requests this court hold unlawful ICE's unilateral application of an ankle monitor.

COUNT FIVE:

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

In Excess of Statutory Authority

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

110. Respondents acted in excess of statutory authority in unilaterally overruling an IJ's order at a bond hearing.

111. The imposition of electronic monitoring on Mr. Kegel under ICE policy and contrary to the IJ's order is in excess of statutory authority.

COUNT SIX:

VIOLATION OF *ACCARDI* DOCTRINE

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

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

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

COUNT SEVEN:

ULTRA VIRES ACTION

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

a) Assume jurisdiction over this matter;

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

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

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

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

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

Respectfully Submitted,

/s/ Fiona Powell

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fiona@shglawpa.com

Attorney for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Marcin Kegel, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 25th Day of February, 2026.

s/ Fiona Powell
Fiona Powell

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Marcin Kegel

(b) County of Residence of First Listed Plaintiff: Bucks County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Solow, Hartnett & Galvan, LLC, 1601 Walnut St., Suite 1200, Philadelphia, PA 19102, 215-330-5244

DEFENDANTS

Michael Rose, et. al.

County of Residence of First Listed Defendant: Philadelphia
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☑ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☑ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

INTELLECTUAL PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- ☑ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 USC 2243

Brief description of cause:
Habeas Corpus

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE: 02/25/2026

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.)**

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. **Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

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Tel: (215) 330-5244
fiona@shglawpa.com
Attorney for the Petitioner

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARCIN KEGEL *Petitioner,* v. BRIAN MCSHANE, in his office capacity as Acting Field Office Director of the Philadelphia Field Office of U.S. Immigration and Customs Enforcement and Removal Operations; KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security; PAMELA BONDI, in her official capacity as Attorney General of the United States; TODD LYONS, in his official capacity as Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement *Respondents.*	**PETITION FOR A WRIT OF HABEAS CORPUS** Case No.

HABEAS ORDER

Upon consideration of the pleadings in this case and oral argument held on __________ and for good cause, it is hereby ordered that a writ of habeas corpus should issue and that Respondents shall immediately remove the ankle monitor from Petitioner.

Dated: ______________________ ________________________________

U.S.D.C.J

Fiona Powell
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Attorney for the Petitioner

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARCIN KEGEL

Petitioner,

Case Action No.:
Hon.

v.

MICHAEL ROSE, et. al.

Respondents.

PROOF OF SERVICE

I, Fiona Powell, hereby certify that in accordance with Federal Rule of Civil Procedure, I caused to be served Petitioner's Petition for writ of Habeas Corpus, civil cover sheet, exhibits, by electronic mail and via Federal Express overnight delivery, on the U.S. Attorney for the Eastern District of Pennsylvania, and on each Respondent in this action as follows:

1. **Michael Rose, Acting Field Office Director (Via US Express Mail)**

   Immigration and Customs Enforcement
   Philadelphia Field Office
   114 North 8th Street
   Philadelphia, PA 19107

2. **Kristi Noem, Secretary of the Department of Homeland Security**

   Kristi Noem
   Secretary of the Department of Homeland Security
   2707 Martin Luther King Jr. Ave, SE
   Washington DC, 20528

3. **Pamela J. Bondi, Attorney General of the United States**

   Pamela J. Bondi
   Attorney General of the United States
   U.S. Department of Justice
   950 Pennsylvania Ave., N.W. Room 45-45
   Washington DC. 20530

4. **Todd Lyons, Acting Director (Via US Express Mail)**

   500 12th Street
   Immigration and Customs Enforcement
   Washington, DC 20536

Dated: February 25, 2026.

/s/ Fiona Powell, Esq.
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH GBAMOI, Petitioner, v. MICHAEL ROSE, Acting Field Office Director, Immigration & Customs Enforcement, Philadelphia Field Office; SIRCE OWEN, Acting Director, Executive Office For Immigration Review, Elizabeth Immigration Court; KRISTI NOEM, in her official capacity as Secretary of Homeland Security; TODD M. LYONS, Acting Director, United States Immigration and Customs Enforcement; PAMELA BONDI, Attorney General of the United States of America; Respondents	Case Action No.: Hon. **ORDER TO SHOW CAUSE AND PRELIMINARY INJUNCTION**

ORDER TO SHOW CAUSE

AND NOW, this _____ day of February, 2026, upon consideration of the Verified Petition for a Writ of Habeas Corpus and Motion for Preliminary Injunction filed by Petitioner MARCIN KEGEL and it appearing that the petition raises substantial questions concerning the legality of Petitioner's continued detention under 8 U.S.C. § 1225(b), and that immediate judicial review is necessary under 28 U.S.C. § 2243 and the Due Process Clause of the Fifth Amendment, it is hereby ORDERED as follows:

1. **ORDER TO SHOW CAUSE**: The Respondents shall show cause in writing on or before ___ day of ________, 2026 (within seven (7) days) from the date of this Order, why the relief requested in the Petition should not be granted.

2. **RESPONSE DEADLINE**: Respondents' return shall be accompanied by a memorandum of law and all relevant portions of Petitioner's immigration and detention records.

3. **PETITIONER'S REPLY**: Petitioner may file a reply memorandum within three (3) days of Respondents' filing of their return.

4. **HEARING**: A hearing on the Petition and Motion for Preliminary Injunction shall be held on the ___ day of ________, 2026, at ___ ___.m., in Courtroom ___ of the United States Courthouse, 700 Grant Street, Pittsburgh, PA 15219.

6. **SERVICE**: Petitioner's counsel shall promptly serve a copy of this Order, together with the Petition for Writ of Habeas Corpus and all supporting exhibits, upon the United States Attorney's Office for the Eastern District of Pennsylvania by hand, electronic, or overnight service, and shall file proof of service with the Clerk of Court.

SO ORDERED.

____

HONORABLE JUDGE

United States District Judge

AFFIDAVIT OF FIONA POWELL IN SUPPORT OF TEMPORARY RESTRAINING ORDER

I, Fiona Powell, being duly sworn, depose and state as follows:

1. I am an attorney admitted to practice before this Court and am counsel of record for Petitioner, Marcin Kegel, in the above-captioned matter. I make this affidavit in support of Petitioner's petition for writ of habeas corpus.

2. The statements contained herein are made upon my personal knowledge, my review of records maintained by my office, communications with Petitioner and his family, and information and belief.

3. On January 2, 2026, Petitioner, a native and citizen of Poland, was taken into custody without a warrant or any individualized determination that he posed a danger to the community or was a flight risk. Mr. Kegel was arrested in the Saint Croix, U.S.V.I. airport while returning from a domestic trip.

4. On January 26, 2026, Mr. Kegel had a custody redetermination hearing before IJ Pereira. IJ Pereira found that Mr. Kegel is not a danger to the community or a flight risk and thus granted his request for custody redetermination. He ordered a bond of $5,000 and imposed conditions of "no arrests; no harmful contact; no driving without a valid driver's license; [and] no illegal drugs."

5. On January 27, 2026, Mr. Kegel's wife paid bond and attempted to pick up Mr. Kegel from detention. However, prior to his release, DHS placed an ankle monitor on Mr. Kegel and gave him a DHS Call-In Letter, instructing him to report to the Philadelphia ERO Office at 8:00am on Thursday January 29, 2026.

6. Mr. Kegel was enrolled in the Intensive Supervision Appearance Program and is required to wear an ankle monitor until his removal proceedings conclude or he is granted legal permanent residency.

7. DHS instructed Mr. Kegel that he must fully comply with the following restrictions and requirements:

    a. Mr. Kegel must report to the King of Prussia Office every 2-4 weeks for monitoring.

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

c. Mr. Kegel must attach a large, bulky battery to the ankle monitor one to two times a day to charge the monitor. Mr. Kegel must be stationary while the monitor charges.

d. Mr. Kegel cannot fully submerge the ankle monitor in water, such as in a pool or bath since this will damage the ankle monitor.

e. Mr. Kegel must wear loose fitting ants which do not interfere with the ankle monitor.

8. Mr. Kegel has reported that his ankle monitor has malfunctioned on numerous occasions, requiring him to report to the ISAP office, over 45 minutes from his home. Mr. Kegel has then been required to wait multiple hours before officers have repaired the ankle monitor.

9. As a result, Petitioner faces indefinite detention in the form of electronic monitoring during the pendency of his immigration proceedings, which could extend for many months or years, in violation of his constitutional right to due process under the Fifth Amendment.

10. Petitioner's detention is arbitrary, excessive, unlawful, and unconstitutional, as DHS has provided no justification for continued detention, and no process by which Petitioner can challenge the deprivation of his liberty.

11. Immediate judicial intervention is necessary because Petitioner continues to suffer irreparable harm each day he endures invasive electronic monitoring.

12. Petitioner respectfully seeks immediate removal of the ISAP ankle monitor.

13. No prior application for the same or similar relief has been made to this or any other court.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 25th Day of February, 2026, in Philadelphia, Pennsylvania.

/S/ Fiona Powell, Esq.

FIONA POWELL, ESQ

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