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

MARCIN KEGEL

Petitioner,

Case Action No.: 2:26-cv-1213
Hon. Murphy

v.

MICHAEL ROSE, et. al.

Respondents.

**PETITIONER'S RESPONSE TO RESPONDENT'S
OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS**

A. CHANGED CIRCUMSTANCES SINCE INITIAL FILING.

Since Mr. Kegel initially filed the above caption Petition for Writ of Habeas Corpus on February 25, 2026, there have been material changes in the facts surrounding the case.

On March 3, 2026, in response to this Petition, counsel for Respondents contacted Petitioner's counsel offering to de-escalate the extra-judicial conditions that ICE had unilaterally added to Mr. Kegel's bond the Immigration Judge had set a \$5000. Despite being unable to reach an agreement – Petitioner's counsel had asked that the government remove any and all extra-judicial conditions – on March 6, 2025, ICE did remove Mr. Kegel's ankle monitor. In its

place, however, ICE merely changed the monitoring program to their less cumbersome, but still extra-judicially restrictive SmartLINK phone “app” -- GPS-based supervision program.¹

The BI SmartLINK Agreement requires that individuals:

1. Install the SmartLINK application on their personal mobile device;
2. Keep their personal mobile device charged, powered on, and on their person at all times;
3. Allow SmartLINK to access location information;
4. Submit to random check-ins which provide biometric information to GEO Group;
5. *Remain within the area designated by ERO [Pennsylvania, New Jersey, and Delaware], and seek, and receive, ICE’s permission to travel beyond the area.*

B. MR. KEGEL REMAINS “IN CUSTODY” BY VIRTUE OF HIS ENROLLMENT IN ISAP.

Respondents argue that Mr. Kegel is no longer “in custody” and so does no longer meet the threshold requirement for habeas relief. But custody is not limited to actual physical detention in a jail or prison. Rather, the Petitioner must only show that he is "subject to restraints 'not shared by the public generally'" to qualify for habeas relief. *Hensley v. Municipal Ct.*, 411 U.S. 345, 351, 93 S.Ct. 1571, 36 L.Ed.2d 294 (1973) (quoting *Jones v. Cunningham*, 371 U.S. 236, 240, 243, 83 S.Ct. 37, 39 L.Ed.2d 285 (1963)). That is certainly the case here, as the public, generally, is not connected and monitored to a government GPS tethering device, nor do members of the public have to remain in the tri-state area, nor ask for, and wait for, permission to travel beyond those states’ borders.

¹ The BI SmartLINK application is an alternate form of electronic monitoring used by ICE for individuals enrolled in the Intensive Supervision Appearance Program (ISAP). BI SmartLINK is owned by GEO group, a for profit company which operates prisons and immigration detention centers in the United States.

Respondents have conceded that in the immigration context, the use of GPS monitoring through ISAP constitutes custody and meets the threshold requirement for habeas relief. Gov't Resp. at 5. Indeed, the Respondents have acknowledged that courts have found that even just an order of supervision upon release from detention is custody. Gov't Resp. at 6.

Although ICE removed Mr. Kegel's ankle monitor, the government continues to impose significant restraints on his liberty through its SmartLINK monitoring program.² These restrictions, mandatory GPS monitoring, compelled electronic reporting, and geographic confinement, are precisely the types of restraints that the Supreme Court has long held constitute "custody" for purposes of habeas jurisdiction.³

C. THE CONDITIONS OF RELEASE IMPOSE VIOLATE CONSTITUTIONAL DUE PROCESS

The Due Process violation that undergirds this petition is that the government (i.e., ICE), despite participating as Petitioner's adversary in a full and fair detention hearing, has gone far beyond what the Immigration Judge imposed, after hearing the very government's arguments. Not only is Mr. Kegel restricted in his physical movement, but ICE and its "app" now require him not only to install the SmartLINK application on his personal mobile phone but also permit ICE to monitor the status of his cellular data coverage, Wi-Fi connectivity, and location services.

As a result, Mr. Kegel cannot freely visit his family in Maryland, where he and his wife spend nearly half their time caring for her elderly mother and visiting family. Nor can he freely

² In an apparent attempt to assuage the Petitioners, Respondents assert that SmartLINK uses only "single GPS point monitoring" and point to ICE's own publication to confirm this notion. Gov't Resp. at 5. Respondents fail to note that the cited description of the Alternatives to Detention program is archived and "not reflective of current practice." ICE, Alternatives to Detention, <https://www.ice.gov/features/atd> (last updated Jan. 7, 2026). As a result, neither Mr. Kegel nor the Court can determine whether ICE is using SmartLINK for continuous location monitoring or whether Mr. Kegel's personal device is functioning as a 24-hour tracking device. But that ambiguity is of no moment, as members of the public, generally, have no such enforceable tethers to the government.

³ Respondents mischaracterize Mr. Kegel's current reporting conditions as "temporary" and "minimally invasive." Although ICE removed Mr. Kegel's ankle monitor after he challenged its legality, he remains subject to onerous reporting requirements that significantly burden his liberty, far beyond what a member of the public experiences.

plan the couple's marriage celebration scheduled in Maryland in August 2026. See Document 1. These restrictions exist despite an Immigration Judge's determination that Mr. Kegel is not a flight risk and setting a minimal bond.

SmartLINK does more than restrict Mr. Kegel's ability to move freely, it also is highly invasive. The application requires access not only to camera and location services but also requests permission to record audio and make phone calls. Its privacy policy indicates that it may collect extensive app activity, including responses to notifications, in-app searches, web browsing, phone calls, and video conferencing. Documents, *Meet SmartLINK, the App Tracking Nearly a Quarter Million Immigrants*, <https://documentedny.com/2022/06/27/smartlink-app-tracking-immigrants-ice-privacy/> (June 27, 2022).

Respondents also state that the conditions imposed on Mr. Kegel are "temporary in nature." Gov't Resp. at 6. Respondents claim that these conditions are "temporary" because ICE's "best practices" recommend periodic review.⁴ Gov't Resp. at 6. But members of the public are not subject to any form of targeted government restraint, let alone one with "period review." Respondent's invocation of internal "best practices" therefore provides little assurance that these restrictions will be temporary, but rather may be more accurately classified as indefinite.

⁴ Reporting has shown that ICE frequently fails to follow its own policies, let alone its best practices. For example, a 2025 investigation found that ICE detained individuals in temporary holding rooms for weeks or even months despite agency policy limiting such confinement to short periods. The Guardian, *Revealed: ICE Violates Its Own Policy by Holding People in Secretive Rooms for Days or Weeks*, <https://www.theguardian.com/us-news/2025/oct/30/ice-hidden-detention-sites> (Oct. 30, 2025). Likewise, federal inspections have repeatedly found ICE detention facilities operating in violation of the agency's own detention standards. The Washington Post, *60 violations in 50 days: Inside ICE's giant tent facility at Ft. Bliss*, <https://www.washingtonpost.com/business/2025/09/16/ice-detention-center-immigration-violations/> (Sept. 16, 2025).

D. ICE DOES NOT HAVE AUTHORITY TO SET ADDITIONAL CONDITIONS OF RELEASE FOLLOWING A CUSTODY RE-DETERMINATION BY AN IMMIGRATION JUDGE.

Respondents assert that the power to impose release conditions rests solely with ICE, with an opportunity for an immigration judge to review. Gov't Resp. at 9. But that is as incorrect as it is disingenuous. The under the INA , ICE has the authority in the first instance, for obvious reasons of efficiency, to release one of their detainees subject to “bond of at least \$1,500 with security approved by, and containing conditions prescribed by, [ICE]; or conditional parole” 8 U.S.C. § 1226(a). But, if aggrieved by ICE’s decision, the detainee may request a bond *redetermination* hearing – where ICE is represented by counsel – before an Immigration Judge. *Borbot v. Warden Hudson Cnty. Corr. Facility*, 906 F.3d 274, 275 (3d Cir. 2018) (cleaned up); 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8)2; 8 C.F.R. 1003.19(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1) (identical text; separate codifications for DHS and DOJ). If ICE is there aggrieved or if the detainee is, either may then appeal to the Board of Immigration Appeals (“BIA”). 8 C.F.R. § 1236.1(d)(3).

This regulatory framework is sequential and must be read altogether to avoid surplusage. 8 C.F.R. Sections 236.1(c)(8) and 1236.1(c)(8) give ICE authority only to set conditional parole in the first instance. This regulatory power is derived from 8 U.S.C. Section 1226(a)(2). But if ICE denies a detainee conditional parole or sets an unaffordable bond, the detainee may request an immigration judge’s review. *Johnson v. Guzman Chavez*, 594 U.S. 523, 527-28 (2021) (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)). Because of this framework, the name of the hearing before an immigration judge is a “bond redetermination hearing.”

If a party is dissatisfied with the immigration judge’s custody redetermination, either may appeal the immigration judge’s order to the Board of Immigration Appeals. That is, ICE cannot simply add a custody or other special condition to a bond unilaterally as the bonded person

makes his way out of the forum, into the community, and back to his home and family.

Accordingly, based on ICE's own regulations, only an immigration judge and the BIA may redetermine custody conditions. Permitting ICE to impose additional conditions after a full and fair adversarial hearing during which an immigration judge ordered release and set conditions renders the administrative adjudicatory process null.

Respondents contend that the regulations are nonsequential and exist independently of each other. Respondents state that the power to "impose release conditions rests solely with ICE," and an immigration judge's power pursuant to 8 C.F.R. Section 1236.1(d) pertains only to review of ICE's release conditions. Gov't Resp. at 9. A complete textual analysis of the regulations requires that they be read together, giving meaning to each section so as to avoid absurd outcomes, redundancy, and futility of certain provisions. If ICE's interpretation of the process were correct—that ICE may initially determine release conditions under 8 C.F.R. Section 1236.1(c)(8), the immigrant may appeal those conditions to an immigration judge under 8 C.F.R. Section 1236.1(d)(1) in a bond redetermination hearing, yet ICE can thereafter impose additional harsher release conditions notwithstanding the immigration judge's order, all while never having advocated for such conditions before the immigration judge or appealed to the BIA under Section 1236.1(d)(3)—then the administrative adjudicatory process would be rendered meaningless and superfluous.

In sum, although ICE did remove the GPS monitory that they had strapped onto Mr. Kegel's ankle after the judge's grant of the \$5,000 bond, he remains subject to significant restraints on his liberty through the SmartLINK monitoring and geographic travel restrictions imposed unilaterally by ICE. These conditions place Mr. Kegel firmly "in custody" for purposes of habeas jurisdiction and impose burdens that are inconsistent with the Immigration Judge's

custody determination. ICE cannot circumvent the administrative custody process by imposing additional surveillance and travel restrictions after an Immigration Judge has ordered release on bond. As such, the Court should grant the petition and provide appropriate relief.

Respectfully Submitted,

/s/ Fiona Powell

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CERTIFICATE OF SERVICE

I certify that, on this date, I filed the foregoing Response to the Opposition to Petition for Writ of Habeas Corpus via the Court's CM/ECF System, thereby making it available for viewing and download for all parties to the case.

Dated: March 16, 2026

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