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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 MARCOS PAULO GUERCIO SANDOLI, Case No.: 26-cv-03110-RSH-BJW

11 Petitioner,

**RETURN TO PETITION FOR WRIT
OF HABEAS CORPUS**

12 v.

13 CHARLES WALL, Acting Director, U.S.
14 Immigration and Customs Enforcement;
et al.,

15 Respondents.
16

17
18 Petitioner has filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241
19 and requested injunctive relief. ECF No. 1. Petitioner argues, among other things, that
20 being subject to GPS monitoring while his immigration proceedings are pending
21 violates the Fifth Amendment. *Id.* at ¶¶ 30-44. Petitioner requests that this Court declare
22 that ICE’s “imposition of GPS ankle monitoring without individualized process violates
23 the Due Process Clause of the Fifth Amendment” and “[o]rder Respondents
24 immediately to remove Petitioner’s GPS ankle monitor” *Id.* at ¶¶ b-c. However, this
25 Court lacks jurisdiction to review Petitioner’s claims as Petitioner has never been in
26 physical immigration custody and agreed to participate in the Alternatives to Detention
27 program with an ankle monitor, which, does not satisfy the “in custody” requirement
28 for habeas jurisdiction. *Miranda v. Reno*, 238 F.3d 1156, 1159 (9th Cir. 2001).

1 Even if the Court found it had jurisdiction over these claims, the Ninth Circuit
2 has encouraged the consideration of “less restrictive alternatives to detention” such as
3 GPS monitoring as a procedural safeguard against violating due process. *Hernandez v.*
4 *Sessions*, 872 F.3d 976, 987 (9th Cir. 2017). Despite overstaying his tourist visa,
5 Petitioner has never been subject to immigration detention and has been allowed to stay
6 on supervised release throughout the pendency of his immigration proceedings. Now,
7 for the first time, Petitioner alleges the conditions of release he agreed to now violate
8 his Fifth Amendment right to due process. *See* Exhibit 4 (ISAP Consent Forms).
9 However, Petitioner cites to no authority to support his argument that Respondents
10 violated a statute, or the Constitution, when Petitioner agreed to adhere to the conditions
11 of the ISAP program. Furthermore, Petitioner was represented by his current attorney
12 when he agreed to be placed in the ISAP program. *Id.* at 8.

13 Finally, even if Petitioner’s arguments regarding due process were valid, the
14 Court would still have to dismiss the Petition, because Petitioner has not filed a
15 grievance as required by the conditions of his ISAP. *Id.* at 4.

16 For the foregoing reasons, Respondents respectfully request that the Court
17 dismiss this action.

18 DATED: June 3, 2026

Respectfully submitted,

ADAM GORDON
United States Attorney

s/ Hunter V. Norton
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