

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA**

ROBERTO CRUZ ARCOS,

A [REDACTED]

Petitioner,

v.

GEORGE STERLING, Field Office Director
of Enforcement and Removal Operations,
Atlanta Field Office (ERO Atlanta);

DAVID J. VENTURELLA Senior Official
Performing the Duties of Director, Immigration
and Customs Enforcement;

MARKWAYNE MULLIN, Secretary, U.S.
Department of Homeland Security(DHS); and

TODD BLANCHE, U.S. Attorney General; in
their official capacities,

Respondents.

Case No.

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner, Mr. ROBERTO CRUZ ARCOS, (Alien Number XXXXXXXXXX), brings this Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 to challenge his ongoing custody by U.S. Immigration and Customs Enforcement (“ICE”), by means of the custodial restraints ICE illegally and improperly imposed on him outside the bounds of an immigration judge’s order for his release.
2. The core question for this Court is whether a government agency can openly flout the order of an Immigration Judge (“IJ”) by applying additional restraints on liberty beyond the scope of the IJ’s custody redetermination order and release on bond.
3. After he was detained in ICE custody and forced to get a habeas order to compel the Immigration Court to grant him a bond hearing, Mr. Cruz Arcos received a bond hearing. After a full custody proceeding, the IJ ordered Mr. Cruz Arcos released on an \$8,000 bond. That bond amount was the only condition of his release pursuant to the IJ’s order.
4. Yet, when Mr. Cruz Arcos posted bond and was released from immigration detention, ICE unlawfully and unilaterally subjected him to a new form of custody that constitutes a continuing restraint on his liberty—an ankle monitor with 24/7 GPS tracking and onerous reporting conditions under ICE’s Intensive Supervision Appearance Program (“ISAP”).
5. 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 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,

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>.

1 as implemented by the Helland Memo, negates any individualized review that ICE, prior
2 to June 9, 2025, conducted of a noncitizen before applying ankle monitoring. The
3 Helland Memo mandates increased surveillance and carceral supervision conditions
4 without consideration of a noncitizens' compliance history or other individualized
5 analysis.

- 6 6. Ankle monitors and attendant supervision conditions are applied by ICE through its
7 contract with BI Incorporated ("BI"), the subsidiary of private prison company GEO
8 Group, Inc. ("GEO"). ISAP's reliance on GPS monitoring and other forms of surveillance
9 are a significant revenue source for GEO. Each Alternatives to Detention ("ATD")
10 participant generates approximately \$3.70 in daily revenue for the private prison
11 company.² In the first six months of 2025, GEO reported a net income of \$48.6 million³
12 and stands to further increase profits in light of ICE's new ATD policy.
- 13 7. In Mr. Cruz Arco's custody proceedings, the IJ neither authorized nor ordered 24/7 GPS
14 monitoring through an ankle monitor or ISAP as a condition of release. ICE has not
15 abided by and does not have authority to deviate from the IJ's order by imposing
16 additional conditions to Mr. Cruz Arco's release.
- 17 8. Now subjected to ICE's ISAP program, Mr. Cruz Arcos is in constructive custody. He is
18 forced to wear an intrusive and painful ankle monitor weighing six ounces. His every
19 move is subject to 24/7 GPS monitoring by ICE. His travel is restricted. He must
20 continually report in with the agency, living with the knowledge that any minor mistake
21 can be construed as noncompliance, subjecting him to re-detention.

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

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

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9. ICE's unilateral decision to place Mr. Cruz Arcos in another form of custody in violation of the IJ's order violates the Due Process Clause of the Fifth Amendment of the U.S. Constitution, the Administrative Procedure Act ("APA"), the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, and a non-statutory right against ultra vires agency action.
10. Courts across the country have held that ICE continues to hold a noncitizen "in custody" through the conditions of release imposed by ICE. *C.C.S., et al. v. Wamsley, et al.*, No. 6:25-cv-02014-AA, 2026 WL 178306, at *8 (D. Or. Jan. 22, 2026); *Batz Barreno v. Baltasar*, No. 25-cv-03017-GPG-TPO, 2026 WL 120253, at *2 (D. Colo. Jan. 15, 2026); *Campbell v. Almodovar*, No. 1:25-cv-09509 (JLR), 2025 WL 3626099, at *1 (S.D.N.Y. Dec. 15, 2025); *Orellana Juarez v. Moniz*, 788 F.Supp.3d 61, 68 (D. Mass. 2025); *N-N- v. McShane*, No. CV 25-5494, 2025 WL 3143594, at *3 (E.D. Pa. Nov. 10, 2025); *Hogarth v. Santacruz*, No. 5:25-cv-09472-SPG-MAR, 2025 WL 3211461, at *13 (C.D. Cal. Oct.23, 2025).
11. Mr. Cruz Arcos asserts that he remains in constructive ICE custody and requests that this Court order his release from all conditions other than the monetary bond ordered by the IJ.

JURISDICTION

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12. This Court has jurisdiction under 28 U.S.C. § 2241 (the general grant of habeas authority to the district court); 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause); 5 U.S.C. § 702 (Administrative Procedures Act); and 28 U.S.C. § 2201 (Declaratory Judgment Act). This

1 action further arises under the Due Process Clause of the Fifth Amendment to the U.S.
2 Constitution.

3 13. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act,
4 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

5 14. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging
6 the lawfulness of their detention. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678 (2001).

7 15. Federal courts also have federal question jurisdiction, through the Administrative
8 Procedure Act (APA), to “hold unlawful and set aside agency action” that is “arbitrary,
9 capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C.
10 706(2)(A).

11 VENUE

12 16. Venue is proper because Mr. Cruz Arcos resides in Atlanta, Georgia, which is within the
13 jurisdiction of this District. He is subject to ongoing constructive custody in this district
14 and in fact is ordered by Respondent ICE to not travel more than 75 miles from his home
15 in this judicial district. Venue is also proper in this Court pursuant to 28 U.S.C. §
16 1391(e)(1)(A) because Respondents are operating within this District.

17 PARTIES

18 17. Mr. **ROBERTO CRUZ ARCOS** (Alien Number A ) is a 35-year-old citizen
19 of Mexico who has resided in the United States since 2004. He was detained by ICE in
20 January 2026, before being released on an \$8,000 bond in February 2026. Mr. Cruz Arcos
21 is in active removal proceedings, where he is applying for relief in the form of
22 Cancellation of Removal for Certain Non-permanent Residents. He remains in the

1 constructive custody of Respondents due to their unilateral decision to subject him to an
2 ankle monitor and ongoing ISAP monitoring requirements.

- 3 18. Respondent, Mr. **GEORGE STERLING**, Field Office Director of Enforcement and
4 Removal Operations, is the Director of the Atlanta Field Office of ICE's Enforcement
5 and Removal Operations division (ERO Atlanta). He runs the agency office that is
6 responsible for placing Mr. Cruz Arcos in the ISAP ankle monitoring program. As such,
7 Mr. Sterling is Petitioner's immediate custodian. He is named in his official capacity.
- 8 19. Respondent, **DAVID J. VENTURELLA**, is the Senior Official Performing the Duties
9 of Director of ICE, the federal agency responsible for managing all aspects of the
10 immigration enforcement process, including immigration detention and ISAP
11 monitoring and supervision. ICE is responsible for the apprehension, incarceration, and
12 removal of noncitizens from the United States. As such, Respondent Venturella is a legal
13 custodian of Petitioner. He is sued in his official capacity.
- 14 20. Respondent, **MARKWAYNE MULLIN**, is the Secretary of the Department of
15 Homeland Security (DHS). He is responsible for the implementation and enforcement of
16 the INA, and oversees ICE, which is responsible for Petitioner's ongoing custody. Mr.
17 Mullin has ultimate custodial authority over Petitioner and is sued in his official
18 capacity.
- 19 21. Respondent, **TODD BLANCHE**, is the Attorney General of the United States. He is
20 responsible for the Department of Justice, of which the Executive Office for
21 Immigration Review and the immigration court system it operates is a component
22 agency. He is sued in his official capacity.

RELEVANT BACKGROUND AND STATEMENT OF FACTS

ICE's Intensive Supervision Appearance Program

22. ICE's Alternatives to Detention (ATD) program is "a [noncitizen] compliance tool overseen by [Enforcement and Removal Operations]"⁴ 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 in Boulder, Colorado.
23. In recent years, the ATD program has rapidly expanded.⁵
24. 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
25. 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

⁴ 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 (February 27, 2025), <https://www.ice.gov/features/atd#content1> ("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.").

⁵ Austin Kocher, Immigration Arrests and Detention Numbers Decline Slightly, but Court Rulings and Flood of Funding Likely to Change All That, SUBSTACK (Sept. 12, 2025) <https://austinkocher.substack.com/p/immigration-arrests-and-detention>.

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

1 ankle monitors “whenever possible” and to “escalate their supervision level to GPS ankle
2 monitors . . . and increase reporting requirements” for individuals not being arrested.

3 26. Data indicates that ICE currently monitors 181,401 families and single individuals
4 through its ATD programs.⁷ The Atlanta ICE Field Office currently monitors more than
5 12,000 people on ATD programs, among the highest in the nation.⁸

6 27. The largest program within ICE’s ATD programs is ISAP, which is administered by
7 contractor BI Incorporated through its case specialists.⁹ Under ISAP, individuals may be
8 assigned to various forms of electronic monitoring technologies, including ankle
9 monitors, telephonic reporting, or the smartphone application “SmartLINK.” They may
10 also be required to comply with periodic home and/or office visits.¹⁰ ICE Enforcement
11 and Removal Operations (“ERO”) determines the intensity of the supervision and
12 monitoring technology.¹¹

13 28. According to a U.S. Government Accountability Office (“GAO”) report from 2022, ICE
14 ATD headquarters considers the ISAP handbook to be the program’s standard operating
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16 ⁷ TRAC Reports, “Immigration Detention Quick Facts”, (last accessed June 4, 2026) (data current as of September
17 6, 2025) <https://perma.cc/A4EN-JRKE> (data current as of August 23, 2025).

18 ⁸ TRAC Reports, Immigration Detention Quick Facts, (last visited June 4 2026) <https://perma.cc/9QK5-NJWW>
19 (data current as of September 6, 2025).

20 ⁹ BI Incorporated operates ISAP under a contract with the Department of Homeland Security and Immigration and
21 Customs Enforcement. *See* ISAP Intensive Supervision Appearance Program Participant Handbook, ISAP,
22 <https://perma.cc/6VC5-EGTZ> (last accessed Aug. 29, 2025).

23 ¹⁰ ISAP Intensive Supervision Appearance Program Participant Handbook, ISAP, <https://perma.cc/6VC5-EGTZ> (last
24 accessed Aug. 29, 2025).

25 ¹¹ ICE, “Alternatives to Detention: ISAP Transition” (updated Feb. 27, 2024), <https://perma.cc/NG9S-SQGA>.

1 procedure, and it is therefore reasonably understood as binding policy on ICE ATD
2 officials.¹²

3 *Statutory and Regulatory Background on Immigration Custody Proceedings*

4 29. 8 U.S.C. § 1226(a) authorizes the detention of noncitizens during removal proceedings
5 and permits (but does not require) those who are not subject to mandatory detention to be
6 released on bond or their own recognizance. *See* 8 U.S.C. § 1226(a)(1), (2) (ICE “may
7 continue to detain the arrested alien” pending removal proceedings or it “may release the
8 alien” on bond in the amount of at least \$1500, or on “conditional parole”); *see also* 8
9 C.F.R. 236.1(c)(8) (ICE may “release an alien not described in section 236(c)(1) of the
10 Act [i.e. one subject to mandatory detention], under the conditions at [INA] section
11 236(a)(2).”

12 30. Upon the noncitizen’s request, ICE’s initial custody or bond determination under 8 U.S.C.
13 § 1226(a) is reviewable by an IJ within the Department of Justice’s (DOJ) Executive
14 Office for Immigration Review (EOIR). *See* 8 C.F.R. §§ 1003.19(a) (“Custody and bond
15 determinations made by [ICE] pursuant to 8 CFR part 1236 may be reviewed by an
16 Immigration Judge pursuant to 8 CFR part 1236.”); 1236.1(d)(1) (providing that when a
17 noncitizen is initially released from custody by ICE with conditions, the noncitizen may
18 “request amelioration of the conditions under which he or she may be released” within
19 seven days). The Supreme Court has held that after the initial detention determination, a
20 petitioner may request a bond hearing before an IJ, who has the authority to determine

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23 ¹² *See* U.S. Gov’t Accountability Off., GAO-22-104529, Alternatives to Detention: ICE Needs to Better Assess
24 Program Performance and Improve Contract Oversight 27 (June 22, 2022), <https://perma.cc/G348-VYC7> (“The
25 ATD Handbook, published in 2017, outlines these policies and procedures, which ATD headquarters officials stated
26 they consider the program’s standard operating procedure.”). ICE 2017 Handbook: <https://perma.cc/FDV5-W78V>.

“the alien’s detention conditions.” *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527–28 (2021).

31. When an IJ’s custody review is triggered by a noncitizen’s request, the IJ exercises the authority granted to ICE in 8 U.S.C. § 1226(a). *See 8 C.F.R. § 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”).
32. 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.* at §§ 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).
33. 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).

Facts relating to Mr. Cruz Arcos’ immigration custody case

34. Mr. Cruz Arcos is a foreign national born in Mexico.

- 1 35. Mr. Cruz Arcos entered the United States without inspection in 2004, when he was 13
2 years old. He was not encountered or detained by immigration officials at that time.
- 3 36. In or about January 2026, Mr. Cruz Arcos was detained by ICE after an officer
4 approached him on the street.
- 5 37. Mr. Cruz Aros was detained at the Stewart Detention Center in Lumpkin, Georgia.
- 6 38. Mr. Cruz Arcos was placed in removal proceedings through the issuance of a Notice to
7 Appear, which charged him with violating the INA by being present in the United States
8 without having been admitted or paroled. INA §212(a)(6)(A)(i), codified at 8 U.S.C.
9 §1182(a)(6)(A)(i).
- 10 39. On February 3, 2026, IJ James Ward at the Stewart Immigration Court ordered Mr. Cruz
11 Arcos released from custody under a bond in the amount of \$8,000.
- 12 40. The IJ's order contains no language imposing any restraints on Mr. Cruz Arcos' liberty
13 other than payment of the bond.
- 14 41. Shortly after the IJ's order, Mr. Cruz Arcos paid the bond and was released from ICE
15 custody.
- 16 42. On February 4, 2026, Respondents issued a "call-in letter" to Mr. Cruz Arcos, requesting
17 that he report to ICE at 503 Oak Place, Suite 510, Atlanta, GA 30349 on February 10,
18 2026. The notice stated the reason for the appointment as "required to report."
- 19 43. The address on the call-in letter corresponds to the offices of BI, Inc., the government
20 contractor that administers the ISAP program.
- 21 44. Mr. Cruz Arcos reported as requested on February 10, 2026, and was placed on ankle
22 monitoring.

1 45. The ISAP ankle monitoring requirements place several restraints on Mr. Cruz Arcos'
2 liberty.

3 46. Mr. Cruz Arcos is restricted from traveling outside of the Atlanta metropolitan area. This
4 means he is unable to visit family outside that area or even travel to the beach for
5 vacation.

6 47. The ankle monitor is uncomfortable, particularly when Mr. Cruz Arcos is trying to sleep.
7 He is unable to rest his leg comfortably, which disturbs his sleep. He has tried to move
8 the monitor around, but this does not help. If he is not careful in attempting to move the
9 monitor for comfort, he could be accused of trying to remove it, upon penalty of being
10 arrested for a violation.

11 48. Mr. Cruz Arcos has to charge the ankle monitor battery every night for at least two hours.
12 If the battery loses charge, he will be accused of a violation.

13 49. Mr. Cruz Arcos finds physical activity very difficult to accomplish with the ankle monitor
14 on. He had to stop playing soccer because he could damage the monitor and risk a
15 violation if he hits it with the ball.

16 50. Mr. Cruz Arcos feels strong social embarrassment and stigma from being seen with the
17 ankle monitor on. He wears pants to cover it up when he goes outside, which is
18 burdensome during the hot summer months. This also impacts his ability to play other
19 sports, such as volleyball.

20 51. The ISAP ankle monitoring comes with more enhanced reporting requirements than
21 under traditional ICE supervision. Mr. Cruz Arcos must report to ISAP every month,
22 alternating between home visits and going in person to ISAP.
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1 52. During home visits, the agents come to his door and ask him several questions about his
2 living situation. They do not enter the home.

3 53. During office visits, he is asked questions about his home life, work situation, his family,
4 and whether he has changed his address. He has to give fingerprints and sign a form at
5 every appointment.

6 54. Overall, these restrictions, discomforts, and added obligations contribute to a feeling that
7 Mr. Cruz Arcos is not at liberty.

8 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

9 55. Exhaustion is not required in this case because no alternative forum exists in
10 which Petitioner can obtain relief on the claims presented here, nor is there any statutory
11 requirement that Petitioner exhaust remedies before seeking habeas relief under 28 U.S.C. §
12 2241. *See Callwood v. Enos*, 230 F.3d 627, 634 (3d Cir. 2000) (“[T]here is no statutory
13 exhaustion requirement attached to § 2241[.]”). Mr. Cruz Arco’s claims—that his ongoing
14 custody by Respondents outside the scope of his bond order is unlawful and
15 unconstitutional—are not subject to any statutory requirements of administrative exhaustion,
16 and thus, exhaustion is not a jurisdictional prerequisite. *See McCarthy v. Madigan*, 503 U.S.
17 140, 144 (1992).

18 56. Exhaustion is also not required before seeking judicial review of an agency
19 decision when otherwise not required by the APA. *See Darby v. Cisneros*, 509 U.S. 137, 154
20 (1993) (holding that courts do not have the authority to require a plaintiff to exhaust available
21 administrative remedies before seeking judicial review under the APA, where neither the
22 relevant statute nor agency rules specifically mandate exhaustion as a prerequisite to judicial
23 review).

- 1 57. A party need not exhaust administrative remedies, however, when the available remedies
2 would “provide no genuine opportunity for adequate relief” or when “administrative
3 appeal would be futile.” *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor,
4 J.) (quoting *Able v. United States*, 88 F.3d 1280, 1288 (2d Cir. 1996)). See also *McCarthy*
5 *v. Madigan*, 503 U.S. 140, 146-49 (1992), *superseded by statute on other grounds as*
6 *stated in Booth v. Churner*, 532 U.S. 731 (2001) (noting that traditional exceptions
7 include where exhaustion would cause “undue prejudice to subsequent assertion of a
8 court action” or “irreparable harm” to the petitioner, where there is “some doubt as to
9 whether the agency was empowered to grant effective relief,” or where it would be futile
10 because “the administrative body is shown to be biased or has otherwise predetermined
11 the issue before it”) (internal quotation marks omitted).
- 1 58. In the context of immigration, Congress has not explicitly mandated exhaustion. Where
2 Congress has not explicitly spoken, requiring the exhaustion of administrative remedies
3 lies within “sound judicial discretion.” *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992).
4 In exercising that discretion, the Supreme Court has stated that “federal courts must
5 balance the interest of the individual in retaining prompt access to a federal judicial
6 forum against countervailing institutional interests favoring exhaustion.” *Id.* at 146.
7 Those institutional interests are “protecting administrative agency authority and
8 promoting judicial efficiency.” *Id.* at 145.
- 9 59. The *McCarthy* Court also identified situations in which the interest of the individual
10 weighs heavily against the institutional interests. See *id.* at 146–49. Relevant here, “an
11 administrative remedy may be inadequate where the administrative body . . . has

otherwise predetermined the issue before it.” *Id.* at 148 (citing *Gibson v. Berryhill*, 411 U.S. 564, 575, n.14 (1973)).

60. Further, constitutional challenges have been found exempt from administrative exhaustion requirements. *See Khan v. Atty. Gen. of U.S.*, 448 F.3d 226, 236 n.8 (3d Cir. 2006) (internal alterations and quotations omitted) (“[D]ue process claims generally are exempt from the exhaustion requirement because the BIA does not have jurisdiction to adjudicate constitutional issues.”); *United States v. Gonzalez-Roque*, 301 F.3d 39, 48 (2d Cir. 2002) (“[T]he BIA does not have jurisdiction to adjudicate constitutional issues” (quoting *Vargas v. U.S. Dep’t of Immigration & Naturalization*, 831 F.2d 906, 908 (9th Cir. 1987))).

61. Here, administrative exhaustion is excused where pursuing administrative remedies would be futile, unavailable, and unreasonable.

62. Further, the ongoing deprivation of Mr. Cruz Arco’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 the petitioner “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).

63. In any event, Mr. Cruz Arcos has already exhausted all administrative remedies available to him. He 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. Cruz Arcos seeks to uphold—has already been exhausted. After ICE made an initial custody determination, Mr. Cruz Arcos requested a redetermination of that decision from the IJ via a bond hearing. *See* 8 C.F.R. § 1003.19(a), (c), (f); § 1236.1(d). Following that administrative process, Mr Cruz Arcos was ordered released on an \$8,000 bond *and no other restrictions*. In defiance of that bond order, ICE applied additional conditions of Mr. Cruz Arcos' release, the agency action he now challenges.
64. Accordingly, Mr. Cruz Arcos has exhausted his administrative remedies to the extent required by law and his only remedy is by way of this judicial action.

CLAIM FOR RELIEF

COUNT 1: VIOLATION OF FIFTH AMENDMENT SUBSTANTIVE DUE PROCESS

65. Petitioner, Mr. Cruz Arcos, repeats, re-alleges, and incorporates by reference allegations in the preceding paragraphs 1-64 as if fully set forth herein.
66. "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 v. Davis*, 533 U.S. 678, 690 (2001).. 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).

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

6 68. Mr. Cruz Arcos’ ankle monitor constitutes a “significant restraint on [his] liberty,” where
7 his movements and daily activities are restricted and subject to 24/7 surveillance.
8 *Romero*, 20 F.4th at 1379.

9 69. Respondents’ imposition of electronic surveillance on Mr. Cruz Arcos serves no
10 legitimate nonpunitive objective. Neither public safety nor flight risk are at issue here. An
11 IJ has already determined that Mr. Cruz Arcos is not a danger to the community and that
12 the only condition necessary to ensure his future appearance in immigration court is
13 payment of a cash bond.

14 70. Because Respondents have no legitimate nonpunitive objective in imposing electronic
15 surveillance on Mr. Cruz Arcos in defiance of an IJ’s order, they violate the substantive
16 due process clause doctrine of the Fifth Amendment.

17 **COUNT 2: VIOLATION OF FIFTH AMENDMENT PROCEDURAL DUE**
18 **PROCESS**

19 71. Petitioner, Mr. Cruz Arcos, repeats, re-alleges, and incorporates by reference allegations
20 in the preceding paragraphs 1-64 as if fully set forth herein.

21 72. “Procedural due process imposes constraints on governmental decisions which deprive
22 individuals of liberty” under caselaw interpreting the Due Process Clause. *Mathews v.*
23 *Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). “The fundamental requirement of
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1 due process is the opportunity to be heard at a meaningful time and in a meaningful
2 manner.” *Id.* at 333 (citation modified).

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

9 74. The first factor, the private interest at issue, favors Mr. Cruz Arcos. “Freedom from
10 imprisonment—from government custody, detention, *or other forms of physical*
11 *restraint*—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth
12 Amendment] protects.” *Zadvydas*, 533 U.S. at 690 (emphasis added).

13 75. The second factor, the risk of erroneous deprivation of liberty, favors Mr. Cruz Arcos. In
14 fact, here, an “erroneous deprivation” of Mr. Cruz Arco’s liberty interest is not merely at
15 risk, it has been realized and may continue indefinitely because the process available to
16 him to challenge the conditions of his custody has already occurred during his custody
17 hearing before the IJ. When the government defies an IJ’s order that restrains it from
18 imposing surveillance, the risk of erroneous deprivation of liberty is not just high—it is
19 certain. The value of requiring ICE to follow an IJ’s reasoned order is also certain
20 because it guarantees that any restrictions on liberty were justified by findings obtained at
21 a hearing before a neutral decision-maker at which both parties were able to present
22 evidence and arguments.

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

12 77. For these reasons, the imposition of electronic surveillance on Mr. Cruz Arcos in defiance
13 of an IJ's order violates the procedural due process doctrine of the Fifth Amendment.

14
15 **COUNT 3: VIOLATION OF ADMINISTRATIVE**
16 **PROCEDURES ACT, 5 U.S.C. § 706(2)(A), (B), AS**
17 **CONTRARY TO LAW AND CONSTITUTIONAL RIGHT**

18 78. Petitioner, Mr. Cruz Arcos, repeats, re-alleges, and incorporates by reference allegations
19 in the preceding paragraphs 1-64 as if fully set forth herein.

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

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

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

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

11 83. ICE's refusal to follow the IJ's order also violates substantive and procedural due process
12 under the Fifth Amendment's Due Process Clause, as described in Counts One and Two.
13 *See also Torres-Jurado v. Biden*, 2023 WL 7130898, at *4 (S.D.N.Y. Oct. 29, 2023)
14 (finding violation of procedural due process where ICE failed to follow regulations for
15 revocation of an order of supervision).

16 84. ICE's policy is not in accordance with law because it is contrary to the INA, its
17 implementing regulations, and the Due Process Clause of the Constitution's Fifth
18 Amendment.

19 **COUNT 4: VIOLATION OF ADMINISTRATIVE**
20 **PROCEDURES ACT, 5 U.S.C. § 706(2)(A), (B), AS**
21 **ARBITRARY AND CAPRICIOUS**

22 85. Petitioner, Mr. Cruz Arcos, repeats, re-alleges, and incorporates by reference allegations
23 in the preceding paragraphs 1-64 as if fully set forth herein.

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

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

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

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

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

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

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

4 93. For these and other reasons, ICE's policy is arbitrary and capricious.

5 **COUNT 5: VIOLATION OF ADMINISTRATIVE PROCEDURES**
6 **ACT, 5 U.S.C. § 706(2)(C), AS IN EXCESS OF STATUTORY**
7 **AUTHORITY**

8 94. Petitioner, Mr. Cruz Arcos, repeats, re-alleges, and incorporates by reference allegations
9 in the preceding paragraphs 1-64 as if fully set forth herein.

10 95. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be .
11 . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right."

12 5 U.S.C. § 706(2)(C).

13 96. "An agency . . . literally has no power to act—including under its regulations—unless
14 and until Congress authorizes it to do so by statute." *FEC v. Cruz*, 596 U.S. 289, 301
15 (2022) (internal quotation marks and citation omitted).

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

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

19 **COUNT 6: VIOLATION OF THE *ACCARDI* DOCTRINE**

20 99. Petitioner, Mr. Cruz Arcos, repeats, re-alleges, and incorporates by reference allegations
21 in the preceding paragraphs 1-64 as if fully set forth herein.

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

101. 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.”).

102. “[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 IJs 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.”).

103. 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

1 at 176, 181 (drawing on *Accardi*, in which the court prevented the Attorney General from
2 “sidestep[ping] the Board or dictat[ing] its decision”).

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

7 105. Here, Respondents have promulgated agency rules that require ICE to obey an IJ’s
8 order following a custody determination at a bond hearing. *See* 8 C.F.R. § 1003.19(a)
9 (“Custody and bond determinations made by [ICE] pursuant to 8 C.F.R. part 1236 may be
10 reviewed by an Immigration Judge pursuant to 8 C.F.R. part 1236.”); *Id.* § 1236.1(d)(1).
11 (“[T]he immigration judge is authorized to exercise the authority in section 236 of the
12 Act . . . to detain the alien in custody, release the alien, and determine the amount of
13 bond, if any, under which the respondent may be released”). These rules protect the
14 fundamental right to liberty of a noncitizen in removal proceedings. “Freedom from
15 imprisonment-from government custody, detention, or other forms of physical
16 restraint-lies at the heart of the liberty that Clause protects.” *Zadvydas*, 533 U.S. at 690
17 (citing *Foucha v. Louisiana*, 504 U. S. 71, 80 (1992)). Allowing the government to bypass
18 the bond order of an IJ and apply conditions outside those ordered after a full custody
19 hearing “undermines the structure of the hearing and necessarily prejudices the outcome.”
20 *Aquino*, 53 F.4th at 766.

21 106. Regardless, ICE’s failure to follow its rules is prejudicial to Mr. Cruz Arcs where the
22 rule implicates his fundamental liberty interest and due process rights. *See Leslie*, 611
23 F.3d at 182; *see also Delgado-Corea v. INS*, 804 F.2d 261, 263 (4th Cir. 1986) (holding

1 that “violation of a regulation can serve to invalidate a deportation order when the
2 regulation serves a purpose to benefit the [noncitizen]” and the violation affected
3 “interests of the [noncitizen] which were protected by the regulation” (internal quotations
4 and citation omitted)). If ICE were to follow its rules and obey the IJ’s order—requiring
5 release with only the condition of payment of a bond—it would be required to
6 discontinue Mr. Cruz Arcos’s enrollment in ISAP and release him from the ankle
7 monitor.

8 107. 113. Under the *Accardi* doctrine, Mr. Cruz Arcos has a right to set aside ICE’s
9 decision to impose electronic surveillance on him and to enjoin ICE from defying the IJ’s
10 order by imposing additional restraints on his liberty beyond the IJ’s order.

11 **COUNT 7: *ULTRA VIRES* ACTION**

12 108. Petitioner, Mr. Cruz Arcos, repeats, re-alleges, and incorporates by reference
13 allegations in the preceding paragraphs 1-64 as if fully set forth herein.

14 109. The Supreme Court has held that after the initial detention determination, a petitioner
15 may request a bond hearing before an IJ, who has the authority to determine “the alien’s
16 detention conditions.” *See Johnson*, 594 U.S. at 527–28; *see also Huang v. Decker*, 599
17 F. Supp. 3d 131, 138 (S.D.N.Y. 2022) (“Section 1226(a) gives the Attorney General the
18 choice to ‘continue to detain the arrested alien,’ or ‘release the alien on (A) bond of at
19 least \$1,500 with security approved by, and containing conditions prescribed by, the
20 Attorney General; or (B) conditional parole.’ The Attorney General has delegated this
21 authority to immigration judges.”).

22 110. Although an IJ determined that Mr. Cruz Arcos is not a flight risk or a danger to the
23 community, ordering him released from custody on a minimal bond with no additional
24

1 conditions, ICE is unlawfully subjecting him to an alternative form of custody through
2 the ankle monitor and other onerous conditions.

3 111. ICE's unlawful application of conditions outside the IJ Order reflects its new policy,
4 as described in the Helland Memo, to outfit noncitizens with ankle monitors "whenever
5 possible."

6 112. Mr. Cruz Arcos received a bond hearing because he is eligible for release on bond and
7 conditions. *See* 8 U.S.C. § 1226(a). During a bond hearing, the decision on bond and
8 conditions is made by the IJ alone, based on the due process provided in the bond
9 hearing. *See* 8 C.F.R. §§ 1003.19, 1236.1(d). Thus, here, the administrative process has
10 been completed and an IJ determined the conditions of Mr. Cruz Arcos's release—a
11 \$8,000 bond. Even if ICE is dissatisfied with the outcome of that process, it has no
12 authority to unilaterally impose additional conditions of release without the IJ's
13 authorization. If ICE was dissatisfied by the decision to release Mr. Cruz Arcos on a
14 \$8,000 bond, ICE would have had the opportunity to appeal that decision to the BIA.
15 However, ICE waived appeal in this case.

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

4 114. Mr. Cruz Arcos has a non-statutory right of action to declare unlawful, set aside, and
5 enjoin Respondents' *ultra vires* actions.

6 PRAYER FOR RELIEF

7 WHEREFORE, Petitioner, ROBERTO CRUZ ARCOS, prays that this Court grant the following
8 relief:

- 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 of him;
- c. Set aside Respondents' 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 Respondents 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 Respondents' policy and practice of imposing additional restraints on liberty that go beyond an immigration judge's custody redetermination;
- f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- g. Grant any other and further relief that this Court deems just and proper.

Respectfully submitted,

/s/ Michael Urbina, Esq.

Michael Urbina, Esq.

michael@urbinaimmigrationlaw.com

Counsel for Petitioner

Dated: 19th day of June, 2026

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

I represent Petitioner, Roberto Cruz Arcos, 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 19th day of June, 2026.

/s/Michael Urbina
Michael Urbina
Counsel for Petitioner
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