UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

G.B.T., *Petitioner*, v. JOHN RIFE, et al., *Respondents*.	Case No. 2:26-cv-01842 Judge John M. Younge

PETITIONER'S STAY MOTION UNDER
THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 705

Petitioner G.B.T. ("Petitioner"), for the reasons outlined in the attached memorandum, hereby moves the Court for an Order granting Petitioner's motion to stay, pursuant to the Administrative Procedure Act (APA), 5 U.S.C. § 705, the Philadelphia ICE surveillance policy: Respondents' policy of subjecting noncitizens to surveillance, including GPS ankle monitors and supervision requirements, in the absence of an individualized review of their cases, even in violation of court release orders.

Pursuant to Local Civil Rule 7.1, Petitioner's counsel conferred with Respondents' counsel. Counsel for Respondents' indicated that Respondents oppose Petitioner's motion for a stay under § 705 of the APA.

Dated: April 28, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed Petitioner's Stay Motion Under The Administrative Procedure Act, 5 U.S.C. § 705; Petitioners' Memorandum of Law in Support of Stay Motion under the Administrative Procedure Act, 5 U.S.C. § 705; and Exhibits A through H using the CM/ECF system. I will furthermore send a courtesy copy via email to the office of the United States Attorney for the Eastern District of Pennsylvania.

DATED: April 28, 2026

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v.

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Respondents.

Case No. 2:26-cv-01842-JMY

Judge John M. Younge

[PROPOSED] ORDER

Upon consideration of Petitioner's Motion to Stay, pursuant to the Administrative Procedure Act (APA), 5 U.S.C. § 705, the motion is hereby GRANTED.

Having considered the parties' briefing, evidence, and arguments, as well as the authorities cited in support of their positions, the Court finds that Petitioner has demonstrated a likelihood of success on the merits; that, absent the requested relief, he faces irreparable injury from Respondents' policy; and that the balance of equities and the public interest favor immediate relief.

Therefore, the Court hereby GRANTS the motion and orders Respondents to stay implementation of the Philadelphia ICE surveillance policy in order to preserve the status and rights of Petitioner pending judicial review of the policy's lawfulness.

IT IS SO ORDERED:

Dated:_____

_____

Judge John M. Younge

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

G.B.T., *Petitioner*, v. JOHN RIFE, et al., *Respondents*.	Case No. 2:26-cv-01842 Judge John M. Younge

MEMORANDUM OF LAW IN SUPPORT OF STAY MOTION UNDER THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 705

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INTRODUCTION

Pending judicial review of his claim under the Administrative Procedure Act (APA), Petitioner seeks a stay of the Philadelphia ICE surveillance policy, by which Respondents shackle noncitizens with electronic GPS ankle monitors and intensive supervision appearance requirements without individualized review of their cases, even in violation of court release orders. Respondents adopted the Philadelphia ICE surveillance policy after a June 2025 memorandum from the ICE Acting Assistant Director instructed ICE agents to "escalate [noncitizens'] supervision level to GPS ankle monitors wherever possible and increase reporting requirements, regardless of case type." ECF No.1-4, Helland Memo.

The policy reverses the Field Office's previous practice of conducting individualized review of a noncitizen's case before applying conditions of release. It mandates increased surveillance and intensive supervision conditions without consideration of a noncitizens' compliance history or other individualized analysis, even in direct violation of immigration and federal court orders. After respondents adopted the policy, there was a 167.5% increase in use of ankle monitors by the Philadelphia ICE Field Office compared with the previous fiscal year. And multiple Pennsylvania district courts have granted habeas petitions for people subject to the policy. *See, e.g., N-N- v. McShane*, 813 F. Supp. 3d 496, 501 (E.D. Pa. 2025); *Kegel v. Rose*, Case No. 26-1213, 2026 WL 1018335, at *8 (E.D. Pa. April 15, 2026). But the unlawfully adopted policy continues to subject Petitioner and other noncitizens to unlawful restraints on their liberty.

In Petitioner's case, after a full bond proceeding before an immigration judge (IJ), he was released from Respondents' custody because the IJ determined that he was not a danger to the community and that any flight risk would be addressed by payment of a cash bond alone. Respondents did not appeal this decision. Instead, when Petitioner was released, Respondents unilaterally imposed conditions beyond the IJ bond order under the Philadelphia ICE surveillance

policy, shackling him with an ankle monitor and other onerous reporting requirements. After Petitioner filed this complaint, Respondents replaced the ankle monitor with enrollment in the Compliance Assistance Reporting Terminal (CART) program, a monitoring program that requires compulsory physical appearance to ICE's office at a time and place controlled by Respondents. The policy thus continues to be applied to Petitioner because he remains subject to conditions of release—restraints on his liberty—absent individualized review of his circumstances, including a court order prohibiting restraints on his liberty beyond payment of cash bond.

Under the APA, agencies must provide reasoned explanations for policy changes, acknowledge departures from past practice, and account for reliance interests and legal constraints on their authority. Respondents did none of those things when adopting the Philadelphia ICE surveillance policy. Petitioner is thus likely to succeed on the merits of his claims that the Philadelphia ICE surveillance policy is arbitrary and capricious, contrary to law, and in excess of statutory authority under the APA. Petitioner is currently suffering irreparable harm, psychologically tormented by the restraints on his liberty, exacerbating his pre-existing mental health conditions. For these reasons, this Court should stay the implementation of the Philadelphia ICE surveillance policy under 5 U.S.C. § 705 of the APA to preserve the status and rights of Petitioner pending conclusion of judicial review of his APA claim.

RELEVANT FACTUAL BACKGROUND

A. ICE's Alternatives to Detention program requires individualized review before implementing conditions on a noncitizen released from custody.

Since its inception over two decades ago, ICE's Alternatives to Detention (ATD) program, "a [noncitizen] compliance tool overseen by [Enforcement and Removal Operations]," has required officials to conduct an individualized review of a noncitizen's circumstances—including whether a court order controls the conditions of their release—prior to applying any form of

surveillance. *See* Exh. A, ICE ERO Statistics; ECF No. 1, Pet. & Compl. at ¶¶ 42-46 (describing ICE's prior ATD practice). The ICE Intensive Supervision Appearance Program (ISAP) and CART are both ATD programs. ECF No. 1, Pet. & Compl. at ¶ 42 (describing ISAP); ECF No. 13-3 (describing CART program requirements).

ICE guidelines outline how officials must consider individualized factors when determining the "level of supervision and technology participants are assigned" in ATD programming, including "current immigration status, criminal history, compliance history, community or family ties, caregiver or provider status, and other humanitarian or medical conditions." Exh. A, ICE ERO Statistics. "The ATD Handbook, published in 2017, outlines these policies and procedures, which ATD headquarters officials stated they consider the program's standard operating procedure." Exh. B, GAO 2022 ATD Report at 27. The ICE ATD Handbook explicitly states that "[t]he ATD Program may be appropriate for a[] [noncitizen] who is released pursuant to: . . . a bond (unless the immigration judge or Board of Immigration Appeals determined custody and did not include ATD as a provision)." Exh. C, ICE ATD Handbook at ii.

B. The Philadelphia ICE Field Office implemented a policy of arbitrarily subjecting noncitizens to surveillance without any individualized consideration.

Respondents adopted the Philadelphia ICE surveillance policy after a June 2025 memorandum from the ICE Acting Assistant Director instructed ICE agents to "escalate [noncitizens'] supervision level to GPS ankle monitors . . . and increase reporting requirements" for individuals not being arrested "whenever possible." ECF No. 1-4, Helland Memo; *see also* ECF No. 1, Pet. & Compl. at ¶¶ 47-51. The Philadelphia ICE surveillance policy, carrying out the Helland Memo's instructions, overrides the Philadelphia Field Office's previous policy of conducting individualized consideration of the need for surveillance and intensive supervision. *See* Exh. A, ICE ERO Statistics; Exh. C, ICE ATD Handbook.

Since the implementation of this policy in June 2025, in the Philadelphia Field Office Area of Responsibility (AOR), ICE has nearly tripled its application of ankle monitors on noncitizens. ECF No. 1, Pet. & Compl. at ¶ 48 (Philadelphia Field Office AOR data set). According to ICE data, in FY2025, the Philadelphia Field Office monitored 474 noncitizens on ankle monitors. Exh. D, FY 2025 ICE Statistics. But ICE's latest data indicates that in fiscal year 2026, that number has reached a record-high of 1,268 noncitizens on ankle monitors, a 167.5% increase in use of ankle monitors by the Philadelphia ICE Field Office. Exh. E, FY 2026 ICE Statistics.

Petitioner's own experience confirms the policy's existence and effects. Under the policy, the Philadelphia Field Office has increased Petitioner's reporting requirements "whenever possible," including when those requirements violate the IJ bond order controlling his release. ECF No. 1, Pet. & Compl. at ¶¶ 52-69. Local immigration practitioners also confirm that in the months following the June 2025 Helland Memo, the Philadelphia ICE Field Office has implemented this policy to impose forms of surveillance on noncitizens released from custody. *See* ECF No. 1-6, Thompson Decl. (reporting that "[b]eginning in late summer/early fall of 2025, ICE began imposing ankle monitors on almost every client of ours who was released from custody" including those released on bond and at habeas). Those subjected to these forms of ICE surveillance, including the CART program, have been re-detained at mandated check-in appointments at the Philadelphia ICE Field Office. *See* ECF No. 17-1, Chen Decl. (describing re-detentions by ICE at CART kiosk check-ins).

C. Under the Philadelphia ICE surveillance policy, Petitioner remains unlawfully subjected to conditions of his release that were not ordered by the IJ.

Petitioner, a 30-year-old national and citizen of Nicaragua, fled his country of origin after suffering torture, sexual abuse, and starvation at the hands of Nicaraguan officials. *See* ECF No. 1, Pet. & Compl. at ¶¶ 52-58 (describing Petitioner's immigration history). Petitioner has been

diagnosed with Post-Traumatic Stress Disorder (PTSD) and Obsessive Compulsive Disorder (OCD). *Id.* at 12. The government detained Petitioner on the day he entered the United States to apply for asylum in September 2022 but after determining that he was not a danger and that any flight risk could be mitigated, the government released him on parole two days later and enrolled him in CART. *Id.* at ¶¶ 53, 55. Petitioner settled in Philadelphia, where he built his life in the United States. He applied for asylum and received authorization to work in the local restaurant industry. *Id.* at ¶ 57. He served as the primary caretaker to his United States citizen aunt as she battled breast and skin cancer. *Id.* at ¶ 56.

While subject to the CART program, Petitioner attended annual ICE check-ins on October 23, 2023; October 24, 2024; and October 24, 2025 while waiting for his asylum interview. *Id.* at ¶ 58. On October 24, 2025, Petitioner attended his fourth routine ICE check-in appointment, three years after arriving in the United States, expecting to check in at the CART kiosk and return home. However, after checking in at the kiosk, ICE sent Petitioner to the third floor where officers arrested and detained him despite no changed circumstances. *Id.* at ¶ 59.

On January 27, 2026, Respondents held a bond hearing for Petitioner that had been ordered by a federal court upon grant of a habeas corpus petition. *See G-B-T- v. Oddo*, No. 3:25-cv-00477-SLH-KAP (W.D. Pa. Jan. 20, 2026). Petitioner and government counsel both submitted evidence in support of their positions. The IJ found that Petitioner was not a danger to the community and that any flight risk could be mitigated by the payment of a $7,000 bond. ECF No. 1-5, Bond Order. The IJ did not impose any additional conditions or surveillance necessary for release. *Id.* Respondents did not appeal the bond decision. ECF No. 1, Pet. & Compl. at ¶ 69.

Upon release, Respondents instructed Petitioner to report in person to the Philadelphia ICE Office, where they enrolled him in the Intensive Supervision Appearance Program and fitted him

with a GPS-enabled ankle monitor. *Id.* at ¶¶ 65-68 (describing ankle monitor restrictions and requirements). Following the filing of this lawsuit, Respondents removed Petitioner's ankle monitor and disenrolled him from the Intensive Supervision Appearance Program. *See* ECF No. 13, Opp. However, Respondents re-enrolled Petitioner in CART, which requires compulsory in person check-ins at the Philadelphia ICE Field Office. *See* ECF No. 17, Reply at 1; 9, n.2 (describing implementation of CART program).

These mandated ICE check-in appointments are causing Petitioner, diagnosed with OCD and PTSD, acute emotional harm. Exh. G, Biopsychosocial Evaluation by L.C.S.W. Jennifer A. Bulcock at 13-14 (finding that Petitioner experiences "acute recurrence [of anxious type symptoms], including rapid heartbeat, difficulty breathing, and tightness in his chest, during the days leading up to an ICE check-in," "an inability to focus, and an inability to sleep"); *See generally* Exh. H, G.B.T. Supp. Decl. Petitioner feels "days of anxiety and fear leading up to these appointments" and has "trouble sleeping." *Id.* at ¶ 11-12; ¶ 13 ("I am also nervous that ICE will just change their minds about when I have to come back. I am worried they will just tell me that I have to come in tomorrow or they will detain me."). Petitioner's psychological reaction to the Philadelphia ICE Filed Office is so severe, he avoids walking past the office when he goes to work. *Id.* at ¶ 14 ("I always go to a different street or change directions to avoid having to pass the office because it makes me feel so horrible to be near it."). In the expert opinion of L.C.S.W. Bulcock, "the requirement for him to attend ICE check-ins on a regular basis will continue to hinder his psychological recovery from the traumatic events he experienced." Exh. G, Bulcock Report at 14.

The ICE check-in appointments implicate Petitioner's ability to manage his family responsibilities, including caring for his aunt who is undergoing treatment to prevent the resurgence of her breast and skin cancer. *See* Exh. H, G.B.T. Supp. Decl. Petitioner at ¶ 11 ("It

also makes me very worried about my aunt. Without me, I don't know who will help her do basic things like walk down the stairs to do laundry, prepare special meals when she is undergoing treatment and take her to doctor's appointments."). And they implicate Petitioner's ability to maintain employment, which he relies upon to support his family. *Id.* at ¶ 13 ("This fear and ICE check-ins make it more difficult to maintain a job. If ICE decides that I need to go more often, I will have to request time off of work. I work as a chef in various restaurants and usually have to request time off at least a week in advance. When I take a day off, even if it is just for one appointment, I lose income for the entire day.").

LEGAL STANDARD

The APA authorizes courts to "issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending" judicial review. 5 U.S.C. § 705. A request to stay agency action in order to preserve the movants' status or rights under § 705 is governed by the preliminary injunction factors. *See, e.g., Novo Nordisk Inc. v. U.S. Dep't of Health and Hum. Servs.*, 2021 WL 3668168, at *3 (D.N.J. June 1, 2021) (citing *Colorado v. EPA*, 989 F.3d 874, 883 (10th Cir. 2021)); *Make the Road N.Y. v. Noem*, 805 F.Supp.3d 139, 155-56 (D.D.C. 2025) (appeal filed) (outlining § 705 stay factors).

Under that framework, Petitioner must demonstrate that: (1) he is likely to succeed on the merits; (2) he is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in his favor; and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Hope v. Warden York Cnty. Prison*, 972 F.3d 310, 319–20 (3d Cir. 2020). The first two factors are the "most critical." *Reilly v. City of Harrisburg*, 858 F.3d 173, 179 (3d Cir. 2017). If these "gateway factors" are met, then the court should consider the remaining factors and balance all four factors together. *Id.* The last two factors merge when the government is the opposing party. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

ARGUMENT

I. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS.

Petitioner is likely to succeed on the merits of his APA claims. ECF No. 1, Pet. & Compl. at ¶¶ 107-132 (Claims V-VII). Under the APA, "final agency action" is subject to judicial review. 5 U.S.C. § 704. A court "shall" set aside final agency action if, among other reasons, it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," "contrary to constitutional right," or "in excess of statutory . . . authority[.]" 5 U.S.C. § 706(2)(A)–(C).

As a threshold matter, as demonstrated by statistical and anecdotal evidence, including Respondents' admissions, the Philadelphia ICE surveillance policy is a reviewable final agency action. Additionally, the policy violates the APA for three independent reasons. First, the Philadelphia ICE surveillance policy is arbitrary and capricious both because Respondents' have offered no reasoned explanation for their change, and because they have failed to consider at least five independent aspects of the problem. Second, the policy is contrary to law and constitutional right, in violation of the regulation, statute, and the Fifth Amendment Due Process Clause. Third, the policy exceeds Respondents' authority under the statutory and regulatory framework governing a noncitizens' release from custody and is not in accordance with law.

A. The Philadelphia ICE surveillance policy is a reviewable final agency action.

i. The Philadelphia ICE surveillance policy exists.

"[A]gency action . . . need not be in writing to be final and judicially reviewable. . . ." *Al Otro Lado, Inc. v. McAleenan*, 394 F. Supp. 3d 1168, 1206 (S.D. Cal. 2019) (quoting *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 184 (D.D.C. 2015)); *Aracely v. Nielsen*, 319 F. Supp. 3d 110, 139 (D.D.C. 2018); *Ramirez v. U.S. Immigr. & Customs Enf't*, 310 F. Supp. 3d 7, 20-21 (D.D.C. 2018). A rule stating otherwise, "would allow an agency to shield its decisions from judicial review

simply by refusing to put those decisions in writing." *Grand Canyon Tr. v. Pub. Serv. Co. of N.M.*, 283 F. Supp. 2d 1249, 1252 (D.N.M. 2003). To deny review of an agency action that is essentially conceded but ostensibly unwritten would fly in the face of the Supreme Court's instruction that courts "interpret[] finality in a pragmatic way." *FTC v. Standard Oil Co. of Cal.*, 449 U.S. 232, 239 (1980). Instead, courts "look to whether the action amounts to a definitive statement of the agency's position or has a direct and immediate effect on the day-to-day operations of the subject party[.]" *Ctr. for Biological Diversity v. Haaland*, 58 F.4th 412, 417 (9th Cir. 2023).

Courts have found that a policy exists through circumstantial evidence of an agency's behavior, including statistical evidence, statements by government officials, and anecdotal evidence from practitioners and individual plaintiffs. *See Escobar Molina v. Dep't of Homeland Security*, 2025 WL 3465518 (D.D.C. Dec. 2, 2025) (establishing existence of unwritten policy through defendants' statements and statistical evidence); *Garro Pinchi v. Noem*, 813 F. Supp. 3d 973, 1022 (N.D. Cal. 2025) (similar); *Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) (relying upon dataset in a "no release" policy challenge that "shows a substantial increase in detention rates for final decisions in the New York Field Office beginning in 2017"). *See also Amadei v. Nielsen*, 348 F. Supp. 3d 145, 165 (E.D.N.Y. 2018) ("[N]umerous courts have found that a plaintiff can satisfy the finality requirement without offering evidence of a formal or official statement regarding the agency's position.") (collecting cases).

Prior to June 2025, Respondents adhered to a policy of reviewing a noncitizens' individualized circumstances prior to implementing conditions of release. *See supra* Relevant Factual Background, Section A. For individuals previously detained, Respondents did not impose conditions of release absent an individualized determination of a material change in a noncitizen's circumstances, such that they had become a flight risk or a danger to the community. *Id.* (detailing

ICE's prior ATD policy). This review included adherence to controlling IJ or federal court orders that did not permit the imposition of additional conditions of release. *See, e.g., Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981) ("[W]here a previous bond determination has been made by an immigration judge, no change should be made by a District Director absent a change of circumstance[.]"). For individuals who were not previously detained, Respondents did not impose conditions of release absent an individualized review analyzing that noncitizens' risk of flight. This approach complied with the Immigration and Nationality Act's statutory and regulatory scheme governing releases from custody, *see infra* Section I.B.i, and foundational Fifth Amendment due process principles, which require that a restriction on liberty be justified by individualized circumstances like flight risk, *see infra* Section I.B.ii. Then, following the June 2025 Helland Memo (ECF No. 1-4), Respondents abruptly changed course, applying forms of surveillance, including ankle monitors, to noncitizens without individualized review, even in violation of court orders. *Supra* Relevant Factual Background, Section B.

Here, statistical evidence, anecdotal evidence, and Respondents' own statements demonstrate the existence of the Philadelphia ICE surveillance policy. *See Amadei*, 348 F. Supp. 3d at 166 ("[A] defendant agency's behavior [is] relevant to inferring the existence of a policy."). First, statistical evidence clearly indicates that since the implementation of this policy, the Philadelphia ICE Field Office has tripled the number of noncitizens subjected to ankle monitors. *Compare* Exh. D, FY 2025 ICE Statistics with Exh. E, FY 2026 ICE Statistics.

Second, local immigration practitioners have reported a mass increase in ICE's implementation of ankle monitors, even in violation of court orders. *See* ECF No. 1-6, Thompson Decl. The fact that Respondents' have executed this policy against Petitioner and countless others "plausibly point[s] to the existence of an unwritten policy." *Al Otro Lado*, 394 F. Supp. 3d at 1208.

Third, Respondents' own admissions—including the Helland memo—indicate the existence of the policy. The June 2025 Helland Memo instructs ICE agents to "escalate [noncitizens'] supervision level to GPS ankle monitors wherever possible and increase reporting requirements, regardless of case type." ECF No.1-4. Respondents' admissions in their Opposition further support the existence of the policy. ECF No. 13, Opp. at 2. They concede that the only factors relied upon in deciding to implement additional monitoring in Petitioner's case were the "recency of his release" and the fact that his "removal proceedings remained ongoing." *Id.* These factors necessarily apply to everyone released from ICE custody, so they are not individualized. The fact that Respondents admit that Petitioner's ongoing surveillance was not warranted by individualized factors confirms that it is operating under a different policy than in decades prior. *See R.I.L-R*, 80 F. Supp. 3d at 175 (determining that an unwritten policy existed where defendants had "essentially conceded" its existence on the record).

ii. The adoption of the Philadelphia ICE surveillance policy was a final agency action.

Under the APA, an action is final when it: (1) "mark[s] the consummation of the agency's decision-making process;" and (2) "determines rights or obligations or imposes legal consequences." *Chemours Co. FC, LLC v. United States EPA*, 109 F.4th 179, 184 (3d Cir. 2024) (applying the Supreme Court's two-prong test in *Bennett v. Spear*, 520 U.S. 154 (1997)) (citation modified). Here, Petitioner meets both criteria.

First, Respondents' adoption of the Philadelphia ICE surveillance policy was the consummation of their decision to implement the Helland Memo by applying conditions of release to noncitizens without the required individualized analysis. *See Tendo v. United States*, 2024 WL 3650462, at *14 (D. Vt. Aug. 5, 2024) (finding that ICE's "'concerted decision' to use force and full-body restraining devices during detainee transport procedures" was sufficient to state a claim

of final agency action at the motion to dismiss stage). The fact that Respondents' have executed this policy against Petitioner and countless other noncitizens demonstrates that the policy is neither "tentative [n]or interlocutory." *Bennet*, 520 U.S. at 177–78. Because the Philadelphia ICE Field Office has "execute[d] on the directive . . . its decision-making processes are clearly consummated." *San Francisco Herring Ass'n v. Dep't of the Interior*, 946 F.3d 564, 579 (9th Cir. 2019); *see also J.L. v. Cissna*, 341 F. Supp. 3d 1048, 1067 (N.D. Cal. 2018) (executing new guidance regarding the Special Immigration Juvenile statute against pending applications showed consummation of agency's decision-making); *Lopez v. Sessions*, 2018 WL 2932726, at *7-8 (S.D.N.Y. June 12, 2018) (detaining noncitizen in violation of required procedure marked the consummation of the agency's decision-making).

Second, the Philadelphia ICE surveillance policy constitutes final agency action because Respondents' action produced legal consequences: an ongoing, unlawful restraint on Petitioner's liberty and that of others subject to the policy. Thus, significant "legal consequences" for Petitioner and others "flow" directly from the policy. *Bennet*, 520 U.S. at 177–78; *Jie Fang v. Dir. United States Immigration & Customs Enf't*, 935 F.3d 172 (3d Cir. 2019) (finding that termination of students' visa status was a final agency action because it stripped the students of their legal status).

Here, Petitioner remains subject to an ICE surveillance program in continuing violation of an IJ bond order that explicitly set a cash bond as the only condition of his release. *See, e.g., R.I.L-R*, 80 F. Supp. 3d at 184 (impermissible detention pursuant to DHS's policy caused "profound and immediate consequences" for affected asylum seekers under the second *Bennet* factor); *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 894 (1990) (agency action is reviewable "to the extent that, a specific 'final agency action' has an actual or immediately threatened effect."); *see also* ECF No. 17, Reply at 2-8 (articulating reasons why Petitioner maintains standing). As a result, Petitioner is

forced to attend in-person ICE check-in appointments at the government's whim and consequently unable to plan for his life in Philadelphia. *See generally* Exh. H, G.B.T. Supp. Decl. And Petitioner lives in fear that his re-detention is imminent, knowing that appearing at his mandated CART check-in may result in his re-detention. *See* ECF No. 17-1, Chen Decl. (describing re-detentions by ICE at CART kiosk check-ins).

The adoption of the Philadelphia ICE surveillance policy constitutes final agency action for purposes of the APA because it marks the consummation of the agency's decision-making process and was one by which rights and obligations or legal consequences flow. *See, e.g., Make the Road N.Y.*, 805 F.Supp.3d at 174 (issuing a § 705 stay where plaintiffs demonstrated substantial likelihood of success on their due process claims challenging a 2025 policy applying expedited removal to a broader group of noncitizens). The record as a whole shows that the policy was enacted and the legal consequences flowing from it could not be more concrete. *See Venetian Casino Resort, LLC v. EEOC*, 530 F.3d 925, 929 (D.C. Cir. 2008) ("the record" as a whole "leaves no doubt" that a policy exists, even though "the details . . . are still unclear").

B. The Philadelphia ICE surveillance policy violates the APA because it is contrary to law and constitutional right.

Under the 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). 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). Here, the Philadelphia ICE surveillance policy contravenes both the statutory and regulatory scheme governing a noncitizens' release from custody and the Fifth Amendment Due Process Clause. *See* ECF No. 1, Pet. & Compl. at ¶¶ 107-115 (Claim V).

i. The Philadelphia ICE surveillance policy contravenes the agency's rules and the statutory and regulatory scheme governing a noncitizens' release from custody.

First, the Philadelphia ICE surveillance policy is not in accordance with law under the APA because it violates the government's own rules regarding the implementation of ATDs. *See* Exh. A, ICE ERO Statistics; Exh. C, ICE ATD Handbook. ICE's ATD Handbook, considered by the agency to be the program's binding standard operating procedure, cabins ICE's discretion to impose conditions of release on noncitizens and is enforceable under the *Accardi* doctrine. *See* Exh. B, GAO 2022 ATD Report at 27 ("The ATD Handbook, published in 2017, outlines these policies and procedures, which ATD headquarters officials stated they consider the program's standard operating procedure."); *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). *See Morton v. Ruiz*, 415 U.S. 199, 235–36 (1974) (under *Accardi*, holding that an internal manual that sets out agency procedures is enforceable law).

ICE procedures require the agency to apply ATDs only after an individualized review of a noncitizen's circumstances. *See* Exh. A, ICE ERO Statistics; Exh. C, ICE ATD Handbook. Here, ICE procedures ensure that noncitizens have sufficient process when the government imposes a restraint on their liberty. Thus, under *Morton* and the *Accardi* doctrine generally, ICE's failure to comply with its own procedures governing its ATD programs is an unlawful agency action. *See also Leslie v. Att'y Gen.*, 611 F.3d 171, 180 (3d Cir. 2010) ("[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."); *Damus v. Nielsen*, 313 F. Supp. 3d 317, 337-38 (D.D.C. 2018) (holding that an ICE directive on parole decisions fell "squarely within the ambit of those agency actions to which the [*Accardi*] doctrine may attach," in part because it "establish[ed] a set of minimum protections for those seeking asylum.").

Second, in cases like Petitioner's, where a noncitizen's custody is controlled by an IJ or

federal court order, the Philadelphia ICE surveillance policy further violates government regulations and the statute governing noncitizens' release from custody. *See, e.g., African Communities Together v. Lyons,* 799 F. Supp. 3d 362 (S.D.N.Y. 2025) (policy interfering with IJ discretion is in conflict with regulation and contrary to law). The policy requires ICE to violate 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." *See also Matter of Sugay*, 17 I. & N. Dec. at 640. 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"); ECF No. 1, Pet. & Compl. at ¶¶ 33-40 (describing statutory and regulatory framework). Because the statutory and regulatory framework is sequential and IJs have the power to set conditions, the IJ has final authority to set conditions of release, including the implementation of ICE surveillance programs and check-in requirements. *See N-N-*, 813 F. Supp. 3d at 501 ("[T]he regulations do not permit ICE to impose additional release conditions without utilizing the administrative appeal process."); *Gonzalez Mojica v. Lyons*, 2026 WL 266502, at *1 (D. Mass. Feb. 2, 2026) ("[T]here is nothing in the procedural scheme that authorizes ICE to impose additional conditions following the immigration judge's decision."). ICE's failure to comply with that authority by unilaterally applying conditions of release not articulated in controlling release orders is therefore an unlawful agency action.

Because the Philadelphia ICE surveillance policy requires ICE to violate its own enforceable procedures governing the implementation of ATDs and the relevant statutory and regulatory framework, Petitioner is likely to succeed in his claim that the policy is "contrary to law" in violation of the APA. 5 U.S.C. § 706(2)(B).

ii. The Philadelphia ICE surveillance policy contravenes the Fifth Amendment.

First, the policy is contrary to constitutional right under the APA because it violates noncitizens' substantive due process rights where, due to lack of individualized consideration, the restrictions on liberty imposed serve no legitimate nonpunitive objective. ECF No. 1, Pet. & Compl. at ¶¶ 94-99 (Count III); ECF No. 17, Reply at 7-8. "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 governmental purpose" and civil detention "imposed for the purpose of punishment" violates due process. *Schall v. Martin*, 467 U.S. 253, 269 (1984); *Demore v. Kim*, 538 U.S. 510, 532–33 (2003) (Kennedy, J., concurring) (the question is "whether the detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons."); *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 209 (3d Cir. 2020) ("[D]ue process bars the Government from depriving people of liberty arbitrarily.") (citation modified).

Here, the policy's imposition of surveillance on noncitizens without individualized review serves no legitimate nonpunitive objective. Neither public safety nor flight risk are at issue because ICE has imposed restrictions on liberty without considering either. And for people like Petitioner, who were released by court order, a judge has affirmatively determined that they are not a danger to the community and that the only condition necessary to ensure future appearance in immigration court is payment of a cash bond. *See* ECF No. 1-5, Bond Order.

Second, the policy's imposition of surveillance programs without notice and an opportunity to be heard violates procedural due process. ECF No. 1, Pet. & Compl. at ¶¶ 75-82 (Count I).

Under the policy, ICE assigns restrictions on liberty without any pre-deprivation notice or opportunity to be heard, without any showing of the need for surveillance, and even in defiance of a court order, permitting one party in the adversarial process to unilaterally override the outcome of a bond hearing. The policy fails the procedural due process test articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *Id.* at ¶¶ 75- 82 (applying the three-factor *Mathews* test).

The first *Mathews* factor, the private interest at issue, favors noncitizens because "[f]reedom 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).

The second factor, the risk of erroneous deprivation of liberty, also favors noncitizens. An "erroneous deprivation" of their liberty interest is not merely at risk. It has been realized and will continue so long as Respondents' policy overrides the individualized analysis of flight risk and danger an ICE officer must engage in before assigning surveillance. And in cases where the government defies an IJ's order that restrains it from imposing surveillance, the risk of erroneous deprivation of liberty is not just high—it is certain, because a court has already determined that surveillance is not necessary to manage flight risk. The value of requiring ICE to follow its own rules requiring individualized review prior to applying ATDs is also certain because it guarantees that any restrictions on liberty be a legitimate response to a noncitizen's individual circumstances, including whether there is a well-reasoned order of an IJ or a federal court prohibiting further restrictions on liberty after analysis at a hearing before a neutral decision-maker at which both parties were able to present evidence and arguments.

Third, the government has no legitimate interest in applying surveillance to noncitizens without individualized review, in violation of its own rules. It is a massive waste of government

resources to unnecessarily apply ankle monitors and onerous reporting conditions to noncitizens who do not pose a danger or flight risk. *See* ECF No. 1, Pet. & Compl. at ¶ 42, n. 3. This is particularly true in cases like Petitioner's, where the government already had an opportunity to present evidence and argument regarding conditions of release, but chose not to. Permitting ICE to override release orders has and will continue to result in increased legal filings, imposing greater administrative and fiscal burdens on the government and the courts. Because all three *Mathews* factors favor noncitizens, Respondents' policy violates procedural due process.

The Philadelphia ICE surveillance policy thus violates noncitizens' substantive and procedural due process rights, so Petitioner is therefore likely to succeed in his claim that the policy is "contrary to constitutional right" in violation of the APA. 5 U.S.C. § 706(2)(B).

C. The Philadelphia ICE surveillance policy violates the APA because it is arbitrary and capricious.

"[The APA] requires agencies to engage in 'reasoned decision-making, and directs that agency actions be set aside if they are arbitrary [and] capricious." *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 16 (2020) (citation modified). "[A]n agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, [or] entirely failed to consider an important aspect of the problem[.]" *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

Here, the Philadelphia ICE surveillance policy is arbitrary and capricious for at least two reasons. *See* ECF No. 1, Pet. & Compl. at ¶¶ 116-127 (Claim VI). First, the Philadelphia ICE Field Office never provided any contemporaneous explanation for its shift in policy. Second, there is no evidence that Philadelphia ICE Field Office ever considered the many important factors related to its change in policy, including noncitizens' reliance interests in the government's prior course of action and the agency's duty to avoid infringing on their constitutionally protected liberty interests.

i. Respondents failed to provide a reasoned basis for their change in policy.

When an agency changes course, it is required to provide a "reasoned explanation for the change." *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016); *see also State Farm*, 463 U.S. at 42. ("[A]n agency changing its course . . . is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance."). A reviewing court "must ensure, among other things, that the agency has offered a satisfactory explanation for its action" and did not "simply ignore an important aspect of the problem." *Ohio v. EPA*, 603 U.S. 279, 292–93 (2024). At a minimum, "the agency must at least display awareness that it is changing position and show that there are good reasons for the new policy." *See Encino Motorcars*, 579 U.S. at 221 (citation modified); *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) ("An agency may not, for example, depart from a prior policy sub silentio or simply disregard rules that are still on the books."). Additionally, the court's review of agency action is limited to "the grounds that the agency invoked when it took the action." *Regents*, 591 U.S. at 20. Courts may not consider "post hoc rationalizations" and "convenient litigating positions" offered after the policy was implemented. *Id.* at 23–24.

When Respondents began implementing the Philadelphia ICE surveillance policy after June 2025, they provided no reasoned basis for having abandoned the agency's long-standing practice to only apply conditions of release pursuant to an individualized review of a noncitizens' circumstances. Instead, without warning or explanation, Respondents "simply disregard[ed the prior] rules . . . on the books." *F.C.C.,* 556 U.S. at 515. The Helland memo does not articulate any reasoned basis for imposing surveillance "whenever possible." ECF No. 1-4. There is no formal memorandum rescinding ICE's prior policy regarding the implementation of ATDs. *Supra,* Relevant Factual Background, Section A. Nor is there any formal guidance, rulemaking

proceeding, or contemporaneous explanation of any kind to justify the sharp departure that ICE's own data confirms. *See* ECF No. 1, Pet. & Compl. at ¶ 48 (Philadelphia Field Office AOR data set). This fact alone is sufficient to find the Philadelphia ICE surveillance policy arbitrary and capricious. *See Encino Motorcars*, 579 U.S. at 221 ("[W]here the agency has failed to provide [a] minimal level of analysis, its action is arbitrary and capricious and so cannot carry the force of law.") (citation modified); *see also Regents*, 591 U.S. at 29 (finding the government's decision to terminate the deferred action portion of DACA arbitrary and capricious where it did so "without any consideration whatsoever" (quoting *State Farm*, 463 U.S. at 51)).

Since its implementation, Respondents have yet to provide a reasoned explanation for the change in policy. For example, in justifying the application of this policy to Petitioner, Respondents argue that they have authority under the relevant statutory and regulatory framework to impose conditions of release at all times, with no individualized consideration and regardless of a controlling court order. *See* ECF No. 13, Opp. at 2 (clarifying that in Petitioner's case, the only factors relied upon in deciding to implement additional monitoring were the "recency of his release" and the fact that his "removal proceedings remained ongoing."). But even assuming Respondents believed this newly claimed authority existed all along, this does not explain why they changed course from their previous decision not to exercise it. The absence of any explanation for the change in course that is the Philadelphia ICE surveillance policy is arbitrary and capricious under the APA. *Hispanic Affairs Project v. Acosta*, 901 F.3d 2018 (D.C. Cir. 2018) (agency's unannounced departure from regulation is arbitrary and capricious).

ii. The Philadelphia ICE surveillance policy is arbitrary and capricious because Respondents failed to consider key aspects of the problem.

Agency action is also arbitrary and capricious when the agency fails to consider an "important aspect of the problem before the agency." *State Farm*, 463 U.S. at 43. Here, the

Philadelphia ICE surveillance policy is arbitrary and capricious for the independent reason that the agency did not consider "important aspect[s] of the problem" before it, such as the costs of departing from prior policy, obvious alternatives to the policy, and reliance interests in the prior course of action. *Id.*

First, the Philadelphia ICE surveillance policy fails to address the serious constitutional and democratic concerns arising from a practice where a federal agency implements constraints on noncitizens' liberty without individualized review, even in violation of a clear federal statute and regulations that carefully circumscribes the agency's scope of authority. *Supra* Section I.B.i (discussing violations of the relevant statutory and regulatory framework). *See Cacares v. Joyce,* 2025 WL 3171865 (S.D.N.Y. Nov. 13, 2025) (failure to provide custody reviews required by regulation was arbitrary and capricious in violation of the APA); *Orellana v. Francis*, 2025 WL 2402780 (S.D.N.Y. Aug. 19, 2025) (failure to comply with parole revocation regulations is arbitrary and capricious).

Second, the Philadelphia ICE surveillance 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 for whom a judge decided there was no need for surveillance in order to guarantee court appearance and harms caused to the rule of law by agency action that regularly contravenes judges' orders. *Supra* Section I.B.ii (discussing due process violations). Respondents' provided no reasoned basis for its change in policy, and thus there is no evidence that they ever accounted for these constitutional constraints when implementing the Philadelphia ICE surveillance policy or considered alternatives that might avoid constitutional conflict. Quite the opposite, Respondents' have admitted that under this new policy, they did not consider whether Petitioner was a flight risk or danger, or whether there has otherwise been any change in

circumstances justifying surveillance. ECF No. 13, Opp. at 2. *See, e.g., Garro Pinchi*, 2025 WL 2084291, at *5 ("The government does not claim that any material circumstances have changed that would warrant reassessment of Ms. Garro Pinchi's risk of flight or dangerousness."). Because Respondents do not explain how their policy can be squared with or account for these bedrock due process principles, the Philadelphia ICE surveillance policy is arbitrary and capricious. *See, e.g, Nat'l Urban League v. Ross*, 489 F.Supp.3d 939, 981-89 (N.D. Cal. 2020) (failure by the agency to consider its constitutional obligations in an accurate census was likely arbitrary and capricious).

Third, the Philadelphia ICE surveillance 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. *See* ECF No. 1, Pet. & Compl. at ¶ 42, n. 3 (discussing costs of ICE's ATD programs to U.S. taxpayers); Exh. F, ICE FY 2026 Budget Overview, Congressional Justification at 50 (proposing $485,899,000 in funding for FY2026 dedicated to Alternatives to Detention—a $15,709,000 increase from FY2025). And the policy also requires the government and the federal district courts to expend mounting resources and expenses litigating claims resulting from this policy. *See* ECF No. 1, Pet. & Compl. at ¶ 11 (collecting cases).

Fourth, the Philadelphia ICE surveillance policy fails to consider reasonable alternatives. An agency is required "to consider responsible alternatives to its chosen policy and to give a reasoned explanation for its rejection of such alternatives." *Spirit Airlines, Inc. v. Dep't of Transp.*, 997 F.3d 1247, 1255 (D.C. Cir. 2021). "The failure of an agency to consider obvious alternatives has led uniformly to reversal." *Yakima Valley Cablevision, Inc. v. FCC*, 794 F.2d 737, 746 n.36 (D.C. Cir. 1986). For example, in cases with a court-ordered release, ICE leadership could issue

internal directives that agency employees follow release orders, and statutory and regulatory procedures to appeal IJ custody orders if the agency wishes to maintain custody by imposing electronic surveillance. Or Respondents could consider referrals to legal and social services providers to ensure appearances at immigration proceedings and timely filing of immigration applications. These alternatives would achieve ICE's interests and save it the unnecessary expense of imposing surveillance on those who do not need it in order to guarantee court appearance.

Fifth, the Philadelphia ICE surveillance policy fails to consider the substantial reliance interests of people released and then subject to unwarranted surveillance. These people relied upon the expectation that, absent a change in circumstances, they would be able to live, travel, and work in the United States free from the constraints of mandatory reporting requirements. *See Garro Pinchi*, 2025 WL 2084921, at *3 (finding that release from detention itself creates an "an implicit promise, upon which that individual may rely, that their liberty will be revoked only if [they] fail[ ] to live up to the . . . conditions [of release]."") (citation modified). When an agency changes or rescinds a prior policy, it is "required to assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against [any] competing policy concerns." *Regents*, 591 U.S. at 33; *see also Fox Television Stations*, 556 U.S. at 516 (an agency is required to provide reasons "for disregarding facts and circumstances that underlay or were engendered by the prior policy"). And like the plaintiffs in *Regents*, Petitioner has relied upon ICE's prior policy to build a life in Philadelphia under the expectation that he will be free from unlawful government restraints on his liberty and surveillance. 591 U.S. at 31 (finding government's action arbitrary and capricious where "DACA recipients have enrolled in degree programs, embarked on careers, started businesses, purchased homes, and even married and had children, all in reliance on the DACA program.").

Because Respondents' failed to consider these important aspects of the problem, their implementation of the Philadelphia ICE surveillance policy was arbitrary and capricious.

D. The Philadelphia ICE surveillance policy violates the APA because it is in excess of statutory authority.

The Philadelphia ICE surveillance policy also violates the APA because it is contrary to law and "in excess of [Respondents'] statutory . . . authority." 5 U.S.C. § 706(2)(C). *See* ECF No. 1, Pet. & Compl. at ¶¶ 128-132 (Claim VII). 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." *Id.* "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) (citation modified). No statute authorizes ICE to summarily apply surveillance to noncitizens without individualized consideration. *Supra* Section I.B.ii (discussing due process violations). And no statute authorizes ICE to unilaterally overrule a bond order, whereas clear statute and regulation render an IJ's bond order binding on ICE. *See* 8 U.S.C. §§ 1103(a), (g); 8 U.S.C. § 1226(a) (granting the Attorney General authority to set the conditions for release of noncitizens). *Supra* Section I.B.i (discussing violations of statutory and regulatory framework).

Multiple courts have found individual applications of the Philadelphia ICE surveillance policy, and similar policies carried out by other ICE field offices, to be in excess of statutory jurisdiction, authority, or limitations, or short of statutory right. *See N-N-*, 813 F. Supp. 3d at 500; *Orellana Juarez*, 788 F. Supp. at 69 ("To take the Respondents' position as true would be to render the AG's delegation to an IJ meaningless, and would defeat the purpose of having a knowledgeable, neutral third party review the appropriateness of a noncitizen's detention."); *Gonzalez Mojica*, 2026 WL 266502, at *1 ("[T]here is nothing in the procedural scheme that authorizes ICE to impose additional conditions following the immigration judge's

decision. ICE's only recourse following a decision not to its liking is an appeal to the BIA."); *Moreira da Silva v. LaForge*, 2026 WL 45165, at *4 (D.N.J. Jan. 7, 2026) ("ICE violated its own regulations when, instead of appealing the Immigration Court's Order to the BIA as it should have, it imposed additional restrictions on Petitioner's supervised release."); *Kegel v. Rose*, Case No. 26-1213, 2026 WL 1018335, at *8 (E.D. Pa. April 15, 2026) ("ICE violated its own regulations when it imposed additional conditions of release on Mr. Kegel after the IJ's order . . . . ICE cannot sidestep the process to unilaterally impose new terms of release.").

The Philadelphia ICE surveillance policy thus exceeds the scope of Respondents' authority under the fundamental due process protections and the statutory and regulatory framework governing a noncitizens' release from custody.

II. ABSENT A STAY, PETITIONER IS LIKELY TO EXPERIENCE IRREPARABLE HARM.

Irreparable harm is "injury of such an irreversible character that prospective judgment would be inadequate to make the movant whole." *Camacho Lopez v. Lowe*, 452 F.Supp.3d 150, 163 (M.D. Pa. 2020). Here, Petitioner's irreparable harm takes two forms.

First, Petitioner faces ongoing violations of his constitutional due process rights, a form of irreparable harm. *See Susquehanna Valley All. v. Three Mile Island Nuclear Reactor*, 619 F.2d 231, 245 (3d Cir. 1980) ("[P]laintiffs' . . . allegation of irreparable harm to their constitutional right to 'life and liberty' meets the irreparable harm standard."); *see also Ass'n for Fairness in Bus., Inc. v. New Jersey*, 82 F. Supp. 2d 353, 363 (D.N.J. 2000) ("[A]n alleged constitutional infringement will often alone constitute irreparable harm.") (citation modified). Any violation of any constitutional right causes irreparable injury. *See e.g., D.C. v. Heller*, 554 U.S. 570, 634 (2008) ("The very enumeration of the right takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is really worth

insisting upon."); A.C. Wright, A. Miller, & Mary Kay Kane, Federal Practice and Procedure, § 2948.1 at 161 (2d ed. 1995) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.").

Courts have also found that the deprivation of liberty is a form of irreparable harm. *See Samassa v. Lowe*, 2025 WL 3653751, at *3 (M.D. Pa. Dec. 17, 2025) (finding that deprivation of liberty "is a sufficient injury for the purposes of a motion for a [Temporary Restraining Order]"); *Velesaca*, 458 F. Supp. 3d at 240-41 ("[D]eprivation of [a noncitizen's] liberty is, in and of itself, irreparable harm."); *United States v. Bogle*, 855 F.2d 707, 710–11 (11th Cir. 1988) ("Such unnecessary deprivation of liberty clearly constitutes irreparable harm."); *see also Ercelik v. Hyde*, 2025 WL 1361543, at *14 (D. Mass. May 8, 2025) (recognizing that the fear of being subject to unlawful arrest may constitute irreparable harm). Here, Petitioner faces irreparable harm because Respondents' ongoing monitoring of Petitioner constitutes a restraint on his liberty that violates his constitutional due process rights. ECF No. 1, Pet. at ¶¶ 75-82 (Claim I); ¶¶ 94-99 (Claim III).

Second, it is well established that psychological harm, including damage to one's mental health, is a form of irreparable harm. *See Johnson v. Wetzel*, 209 F.Supp.3d 766 (W.D. Pa. 2016) (Petitioner's mental degradation, including his problems with concentration and sleep, anxiety, and depression, constituted irreparable harm); *Hall v. Wetzel*, Civ. No. 17-CV-4738, 2018 WL 1035780 at *7 (E.D. Pa. Feb. 22, 2018) (granting preliminary injunction in light of Petitioner's mental health conditions); *Andreiu v. Ashcroft*, 253 F.3d 477, 484 (9th Cir. 2001) (en banc) (finding that medical needs can serve as irreparable harm factors).

While detained in Nicaragua, Petitioner was tortured and sexually abused, leading to his PTSD and OCD diagnoses. ECF No.1, Pet. at ¶ 52; Exh. G, Bulcock Report at 2-3. Following Respondents' imposition of CART, Petitioner has experienced a continual state of emotional

dysregulation due to Respondents' requirement that he report in-person upon their command. *Supra* Relevant Factual Background, Section C; Exh. G, Bulcock Report at 13-14; Exh. H, G.B.T. Supp. Decl. The unlawful conditions of Petitioner's release have triggered nightmares, anxiety, stress, difficulty sleeping, and flashbacks, implicating his ability to work and attend to his family responsibilities. Exh. H, G.B.T. Supp. Decl. at ¶¶ 11-14. Petitioner's mental health has deteriorated immediately and precipitously upon Respondents' implementation of conditions, and his vulnerable psychological state now leaves him at risk of further mental and emotional distress. *See* Exh. G, Bulcock Report at 14. A stay of the policy will ensure that Petitioner is not arbitrarily placed on surveillance if he obtains a court order granting him release in his pending habeas—and is thus immediately necessary to avoid further degradation of Petitioner's mental health.

III. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST STRONGLY FAVOR A STAY.

"Where the Government is the non-moving party in the immigration context, the third and fourth factors [balance of equities and whether an injunction is in the public interest] generally 'merge' into one." *Osorio–Martinez v. Att'y Gen.*, 893 F.3d 153, 178 (3d Cir. 2018) (citing *Nken,* 556 U.S. at 435). Here, where the challenged governmental conduct deprives Petitioner of his rights and is contrary to the rule of law, both factors favor Petitioner.

"If a plaintiff proves both a likelihood of success on the merits and irreparable injury, it almost always will be the case that the public interest favors preliminary relief." *Issa v. School Dist. of Lancaster*, 847 F.3d 121, 143 (3d Cir. 2017) (citation modified); *AT&T v. Winback & Conserve Program*, 42 F.3d 1421, 1427, n.8 (3d Cir. 1994). This is especially so when, as here, constitutional rights are at issue—because "the public interest clearly favors the protection of constitutional rights." *Tenafly Eruv Ass'n, Inc. v. Borough of Tenafly,* 309 F.3d 144, 178 (3d Cir. 2002); *Council of Alternative Pol. Parties v. Hooks*, 121 F.3d 876, 883–84 (3d Cir. 1997); *see also*

Issa, 847 F.3d at 143–44 (agreeing with the district court that it is "undeniably in the public interest for providers of public education to comply with the requirements" of the Equal Educational Opportunities Act of 1974).

As discussed, the hardship to Petitioner is grave. *Supra* Section III. Petitioner asks the Court to temporarily stay the Philadelphia ICE surveillance policy pending final adjudication of his APA claims—preventing ICE from arbitrarily increasing his surveillance level in the future or imposing additional surveillance inconsistent with this court's order in his pending habeas petition.

Here, Respondents have subjected Petitioner to ceaseless procession of due process violations: first, detaining him unlawfully at his CART appointment; then subjecting him to an ankle monitor and the Intensive Supervision Appearance Program in violation of his IJ bond order; and now still maintaining his ongoing custody in CART, in an attempt to evade this Court's review. *See Tengfang Huang v. ICE*, Case No. 2:26-cv-01800-GAW, ECF No. 11 (E.D. Pa. Apr. 2, 2026) (noting concerns about "gamesmanship" when petitioner's ankle monitor was removed only after a show cause hearing was scheduled). When a fundamental right like Petitioner's liberty is at stake, it weighs heavily against any harm posited by the opposing party. *See, e.g., Reilly v. City of Harrisburg*, 336 F.3d 451, 472 (M.D. Pa. 2018), aff'd, 790 F. App'x. 468 (3d Cir. 2019) ("It goes without saying, however, that a deprivation of a constitutional right is contrary to the public interest and the harm to others . . . although substantial, does not outweigh such a denial."). This is particularly so where, as here, the burden on the government is, at most, merely administrative. *See United States v. Berks County*, 250 F. Supp. 2d 525, 541 (E.D. Pa. 2003) (finding that minimal administrative expenses were "far outweighed by the fundamental right at issue").

Unlike Petitioner, Respondents will suffer no material harm should this Court grant Petitioner's requested stay. Respondents' have no legitimate interest in continuing to implement a

policy that violates noncitizens' due process rights. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution"); *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983) ("The government is not 'harmed in any legally cognizable sense by being enjoined from constitutional violations'"). Nor do Respondents have an interest in acting pursuant to unlawful agency decisions that violate the APA. *See League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016).

Any conjured hardship to the government is minimal. After a full custody proceeding where Respondents were represented by counsel and presented evidence, an IJ determined that Petitioner was not a danger and any flight risk would be mitigated by payment of cash bond alone. ECF No. 1, Pet. at ¶¶ 61-62. In fact, it is significantly less burdensome for Respondents and the taxpayers if Petitioners and others who are not flight risks are able to work, pay taxes, and provide support to loved ones—as Petitioner does for his aunt while she recovers from cancer—free from ongoing surveillance and restrictions on their liberty that the government must pay private contractors to administer. There is no interest in purposeless surveillance, and it only creates additional administrative burdens on Respondents and costs on the taxpayers.

No public interest is served by subjecting noncitizens to unlawful conditions of release pursuant to the ICE Philadelphia surveillance policy. Rather, the public interest lies in preventing Respondents from further violating noncitizens' constitutional rights. *See Osorio–Martinez*, 893 F.3d at 179 ("[I]t is squarely in the public interest to enable individuals to partake of statutory and constitutional rights and meaningful judicial review[.]"). Because the public interest is served by requiring the government to comply with the Constitution and the APA, the balance of the equities and the public interest support a preliminary stay of agency action in this case. *See Ozturk v.*

Trump, — F. Supp. 3d —, 2025 WL 3514320, at *10 (D. Mass. Dec. 8, 2025, appeal docketed sub nom., *Ozturk v. Hyde*, No. 26-1135 (1st Cir. Feb. 7, 2026) ("The public has an important interest in making sure government agencies follow the law.") (citation modified); *Richmond Tenants Org., Inc. v. Kemp*, 956 F.2d 1300, 1308 (4th Cir. 1992) ("[T]he public interest is served when administrative agencies comply with their legal obligations.").

CONCLUSION

For the foregoing reasons, Petitioner respectfully request that the Court grant his motion and issue the requested stay of the Philadelphia ICE surveillance policy.

//

Dated: April 28, 2026

Respectfully submitted,

/s/ Sarah E. Decker
Sarah E. Decker*
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decker@kennedyhumanrights.org

/s/ Sarah T. Gillman
/s/ Anthony Enriquez
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/s/ Mikaela Wolf-Sorokin
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* *Admitted pro hac vice*

Pro Bono Counsel for Petitioner

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

G.B.T., *Petitioner*, v. JOHN RIFE, et al., *Respondents*.	Case No. 2:26-cv-01842 Judge John M. Younge

DECLARATION OF SARAH E. DECKER

I, Sarah E. Decker, declare and state as follows:

1. I am counsel of record for the petitioner in this case, G.B.T. I submit this declaration in support of Petitioner's motion for a stay of the Philadelphia ICE surveillance policy pursuant to the Administrative Procedure Act (APA), 5 U.S.C. § 705.

2. Attached here as Exhibit A is a true and correct copy of the ICE Enforcement and Removal Operations Statistics. I downloaded this document from the website of U.S. Immigration and Customs Enforcement on April 25, 2026. A permalink to the website is available at: https://perma.cc/MXZ3-RMUG.

3. Attached here as Exhibit B is a true and correct copy of the United States Government Accountability Office (GAO) ATD Report, U.S. Gov't Accountability Off., GAO-22-104529, "Alternatives to Detention: ICE Needs to Better Assess Program Performance and Improve Contract Oversight" (June 22, 2022). I downloaded this document from the website of the U.S. GAO on April 25, 2026. A permalink to the website is available at: https://perma.cc/G348-VYC7.

4. Attached here as Exhibit C is a true and correct copy of the ICE Alternative to Detention Handbook. I downloaded this document from the website of U.S. Immigration and Customs

Enforcement on April 25, 2026. A permalink to the website is available at: https://perma.cc/4NWW-D2DP.

5. Attached here as Exhibit D is a true and correct copy of the ICE Fiscal Year 2025 Alternative to Detention Statistics. I downloaded this document from the website of U.S. Immigration and Customs Enforcement on April 25, 2026. A permalink to the website is available at: https://perma.cc/85DN-6G39.

6. Attached here as Exhibit E is a true and correct copy of the ICE Fiscal Year 2026 Alternative to Detention Statistics. I downloaded this document from the website of U.S. Immigration and Customs Enforcement on April 25, 2026. A permalink to the website is available at: https://perma.cc/85DN-6G39.

7. Attached here as Exhibit F is a true and correct copy of the U.S. Department of Homeland Security, Immigration and Customs Enforcement, Budget Overview, Fiscal Year 2026, Congressional Justification. I downloaded this document from the website of the U.S. Department of Homeland Security on April 25, 2026. A permalink to the website is available at: https://perma.cc/U9NB-7LNK.

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

/s/ Sarah E. Decker
Sarah E. Decker

Executed on April 26, 2026
Washington, DC

EXHIBIT A

An official website of the United States government

Official websites use .gov
A **.gov** website belongs to an official government organization in the United States.

Secure .gov websites use HTTPS
A **lock** (🔒) or **https://** means you've safely connected to the .gov website. Share sensitive information only on official, secure websites.

En Español Contact Us Quick Links

U.S. Immigration and Customs Enforcement

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Call 1-866-DHS-2-ICE Report Crime

ICE Enforcement and Removal Operations Statistics

U.S. Immigration and Customs Enforcement's Enforcement and Removal Operations (ERO) officers enforce immigration laws within the interior to preserve national security and public safety.

ERO manages all aspects of the immigration enforcement process, including the identification, arrest, detention and removal of aliens who are subject to removal or are unlawfully present in the United States.

Like all law enforcement agencies, ERO officers prioritize their enforcement actions based on agency and department priorities, funding and capacity. ERO operations are flexible enough to allow its officers to respond to events such as spikes in border crossings, modifications to U.S. laws, pandemics, and natural disasters at home and abroad.

The following dashboards present for the first time information and trends in arrests, detentions, removals and alternatives to detention as of December 31, 2024.

The dashboards will be updated quarterly.



ERO enforces laws by arresting immigration violators in the interior of the United States. It relies on statutory law enforcement authority to identify and arrest aliens who may present threats to national security or public safety, or who otherwise undermine the integrity of U.S. immigration laws. ERO uses targeted, intelligence-driven operations to prioritize its enforcement actions in ways that help protect communities nationwide. While ERO primarily conducts administrative arrests of aliens it has probable cause to believe are removable from the United States, it also has the authority to execute criminal arrest warrants and initiate prosecutions for criminal activity, including immigration-related crimes. ERO officers assigned to task forces also help target and apprehend foreign fugitives in the United States who are wanted for crimes here and abroad by working with domestic and international partners.

- **Arrests by country of citizenship and criminal history:** ERO arrests are broken down by country of citizenship and categories of criminal history that include people with:
  - U.S. criminal convictions.
  - Pending criminal charges in the United States.
  - No convictions or pending charges but who have broken U.S. immigration laws including visa overstays and Visa Waiver Program violators.*

    *This category includes those who have repeatedly violated U.S. law by reentering after deportation, immigration fugitives with an executable final order of removal, and international fugitives wanted for crimes committed abroad.
  - For fiscal years 2021 and 2022, this category also includes individuals apprehended while attempting to unlawfully enter the United States after January 1, 2021.
- **ERO arrests over time:** Historically, ERO most commonly arrests immigration violators with convictions involving DUI, drug possession, assault and criminal (non-civil) traffic offenses such as hit-and-run or leaving the scene of an accident.

- **Arrests by Area of Responsibility (AOR):** ERO has 25 field offices, which are geographic areas of responsibility, around the country, each headed by a field office director.

ARRESTS

U.S. IMMIGRATION AND CUSTOMS E
ADMINISTRATIVE ARREST ST

Arrests

527,459

Date Selector

Year

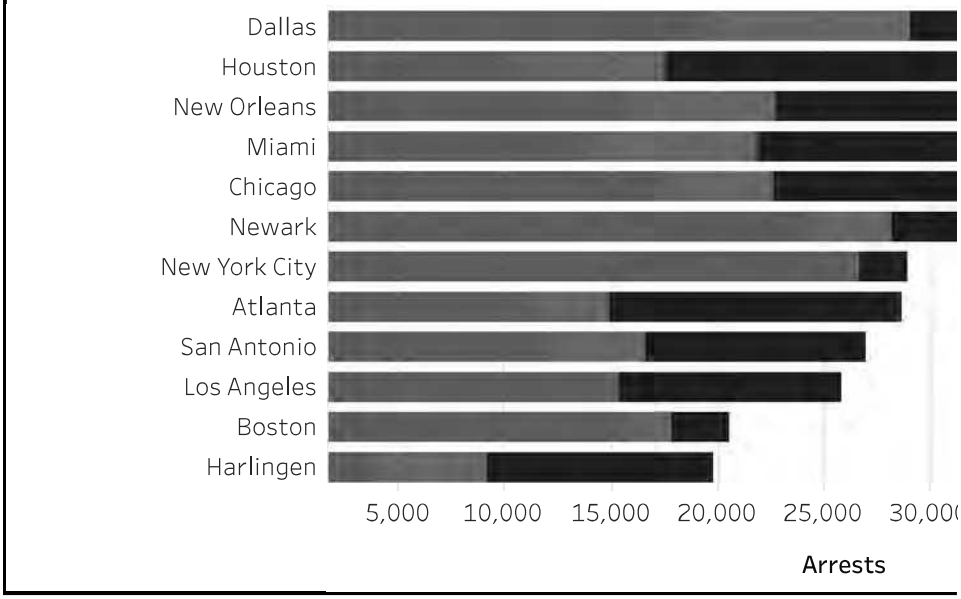
Arrest Fiscal Year

(All)

Criminality

- Criminal Conviction
- Pending Criminal Charges
- Other Immigration Violator

Arrests by Criminality and AO



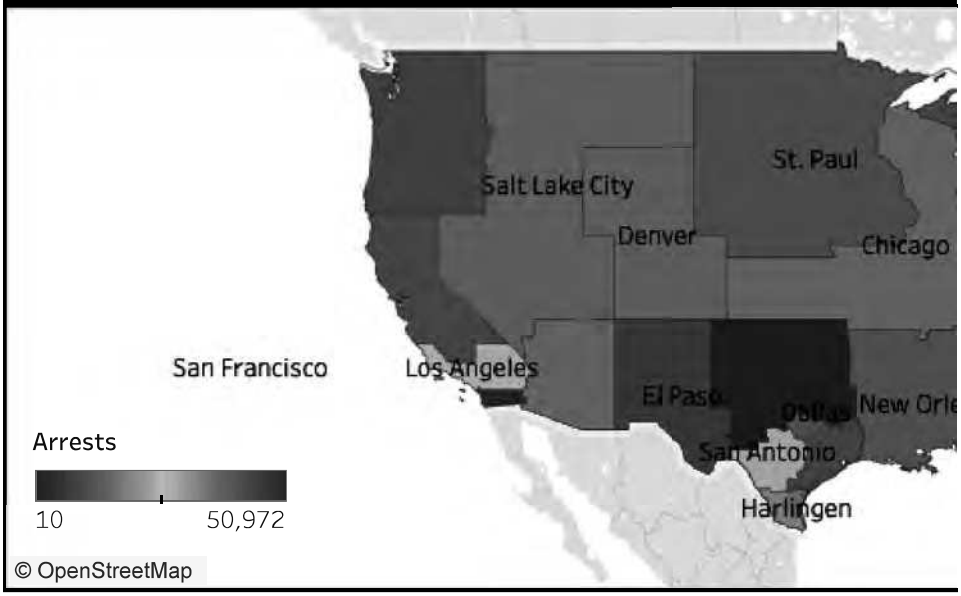
Color Selector

Criminality

Axis Selector

Area of Responsibility

Arrests by Area of Responsibility



ICE provides the above Arrests, Removal, Detention and Alternatives to Detention statistics for public use. ICE confirms the integrity of the data as published on this site and cannot attest to subsequent transmissions. Data fluctuate until "locked" at the conclusion of the fiscal year. These statistics are published with data one quarter in arrears. Future quarter-end and year-end reporting may include corrections and other updates and will supersede previous quarter's data.

*The Harlingen AOR was added from parts of San Antonio and Houston in FY2022.



ERO oversees the civil immigration detention of one of the most diverse and rapidly changing detained populations in the world. The ERO Headquarters Custody Management and ICE Health Service Corps divisions help officers in the field manage the detained population and ensure detained aliens' health and safety, ensure compliance with ICE's detention standards, and provide medical care — including mental health care — to detained individuals.

ICE detains individuals as necessary, including to secure their presence for immigration proceedings and removal from the United States. ICE also detains those who are subject to mandatory detention under U.S. immigration law and those a supervisor has determined are public safety or flight risks.

After ICE arrests and processes individuals for administrative immigration violations or CBP and other state, local and federal law enforcement partners turn them over to ICE, officials may detain them while their immigration cases are pending or release them under a form of supervision. Both ICE and the Department of Justice's Executive Office for Immigration Review — the office that oversees the immigration court system — can impact custody status at various points during a alien's immigration proceedings.

Officials make custody determinations on an individual basis, taking into account all facets of a person's situation, including their immigration history and criminal records. Authorities also

consider family ties, humanitarian issues and whether a person may be a flight risk.

Whenever possible, ICE seeks to house detained individuals within the geographical areas of their arrests to minimize their time in ICE custody and keep them close to family, friends and legal representatives.

Most detained individuals are transfers from CBP following arrests at the border. ICE is legally obligated to detain some of these people, including those with certain criminal histories.

If an alien or their representative believes they should not be subject to enforcement, detention or removal, they should contact their local ERO field office to request a case review or initiate the ICE Case Review process. People who want to contact ICE about their cases should first notify their local ERO field office via email with supporting documentation for an initial review.

- **Detention by country of citizenship and criminal history:** Detained individuals are categorized in the following ways:
  - Individuals with criminal convictions.
  - Individuals with pending criminal charges.
  - Those with no convictions or pending charges but who have broken U.S. immigration laws.*

    *The third category includes individuals without any known criminal convictions or pending charges who have repeatedly violated U.S. law by reentering after deportation; immigration fugitives with a final order of removal by an immigration judge; and foreign fugitives wanted for crimes committed abroad.
- **Detention over time:** Most detained individuals are transfers from CBP following arrests made at the border. Higher numbers of border crossings are typically associated with higher detention numbers.

DETENTION

U.S. Immigration and Customs Enf
Detention Statistics

Detentions

1,141,047

Date Selector

Year

Detention Fiscal Year

(All)

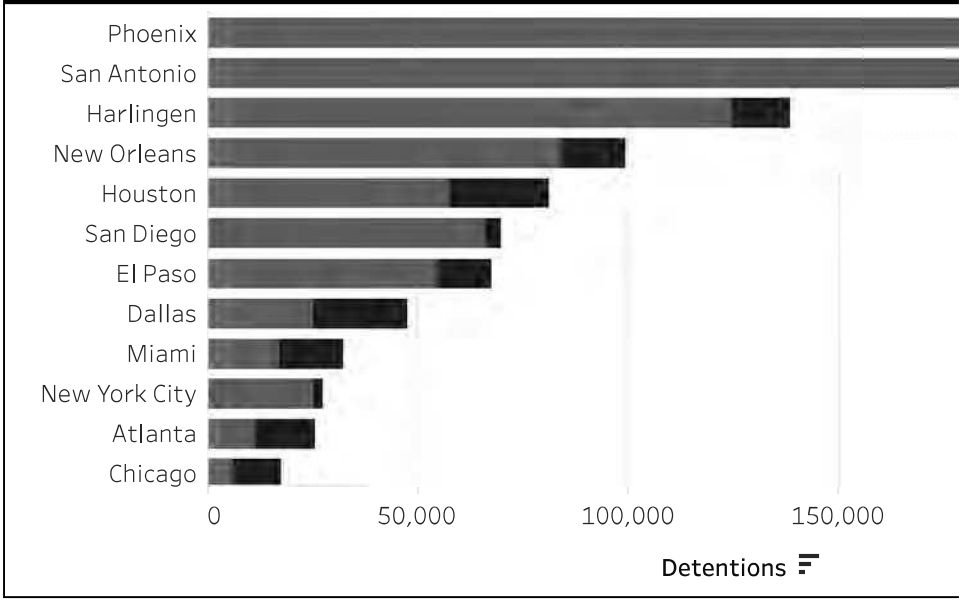
Detention Mor

(All)

Criminality

Criminal Conviction
Other Immigration Violator
Pending Criminal Charges

Detentions by Criminality and AOR



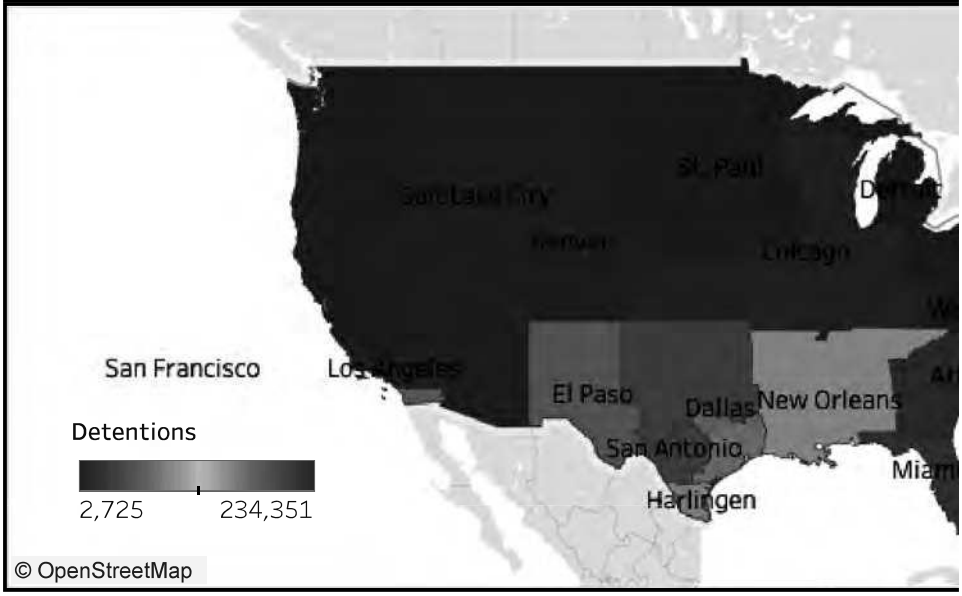
Color Selector

Criminality

Axis Selector

Area of Responsibility

Detentions by Area of Responsibility (A



ICE provides the above Arrests, Removal, Detention and Alternatives to Detention statistics for public use. ICE confirms the integrity of the data as published on this site and cannot attest to subsequent transmissions. Data fluctuate until "locked" at the conclusion of the fiscal year. These statistics are published with data one quarter in arrears. Future quarter-end and year-end reporting may include corrections and other updates and will supersede previous quarter's data.

*The Harlingen AOR was added from parts of San Antonio and Houston in FY2022.



ICE's authority to remove aliens exists under the Immigration and Nationality Act pursuant to Title 8 of the U.S. Code, sometimes called "Title 8 authority."

Between March 2020 and May 2023, the Department of Homeland Security quickly expelled irregular border crossers from the United States under a public health order the Centers for Disease Control and Prevention issued March 21, 2020, sometimes called "Title 42 authority."

Title 8: ICE principally removes aliens from the United States after they have received a final order of removal. These removal operations require complex coordination, management and facilitation efforts to successfully remove and return aliens from the United States. ERO accomplishes this mission through charter flights and on commercial airlines for escorted and unescorted removals, in addition to ground transportation missions on the northern and southern borders and at ports of entry.

ERO's highest-profile removals generally comprise fugitives wanted for serious crimes in other countries, such as homicide, gang-related offenses, corruption and fraud. Often, these individuals come to ERO's attention because of Interpol notices. Other high-profile removals include known or suspected terrorists, those involved in counterproliferation crimes, and those on the terrorist watch list and no-fly list. War criminals and others convicted or suspected of committing human rights abuses — including torture, ethnic cleansing and genocide — are also

in this category. Authorities escort high-profile removals out of the country via commercial flights, regularly scheduled ICE charter flights and special high-risk charters. In many cases, the individuals are turned over to law enforcement authorities in their home country to face charges or sentencing.

Title 42: Title 42 is a public health authority guided by the CDC and is not an immigration authority. On March 21, 2020, The U.S. Department of Health and Human Services transferred Title 42 Public Health Authority to CBP. Under Title 42, CBP prohibited the entry of certain people who potentially posed a health risk by being subject to previously announced travel restrictions or having unlawfully entered the country to bypass health screening measures. Under Title 42 authority, DHS rapidly expelled irregular border crossers to their country of last transit — Canada or Mexico — or, when such an expulsion was not possible, interagency partners engaged foreign government officials to secure aliens' expulsion to their countries of origin.

REMOVALS

U.S. IMMIGRATION AND CUSTOMS REMOVALS STATISTI

Removals

616,657

Date Selector

Year

Removal Fiscal Year

(All)

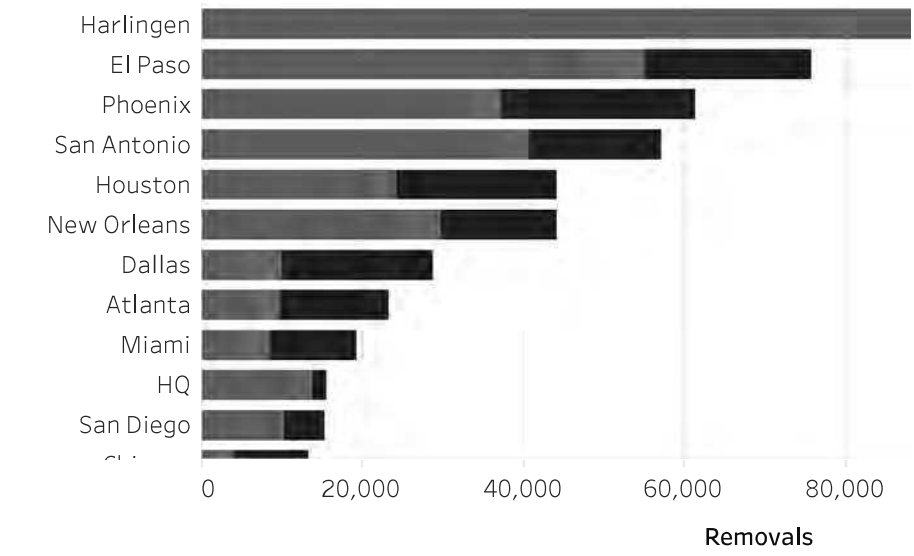
Remov

(All)

Criminality

- Criminal Conviction
- Pending Criminal Charges
- Other Immigration Violator

Removals by Criminality and A



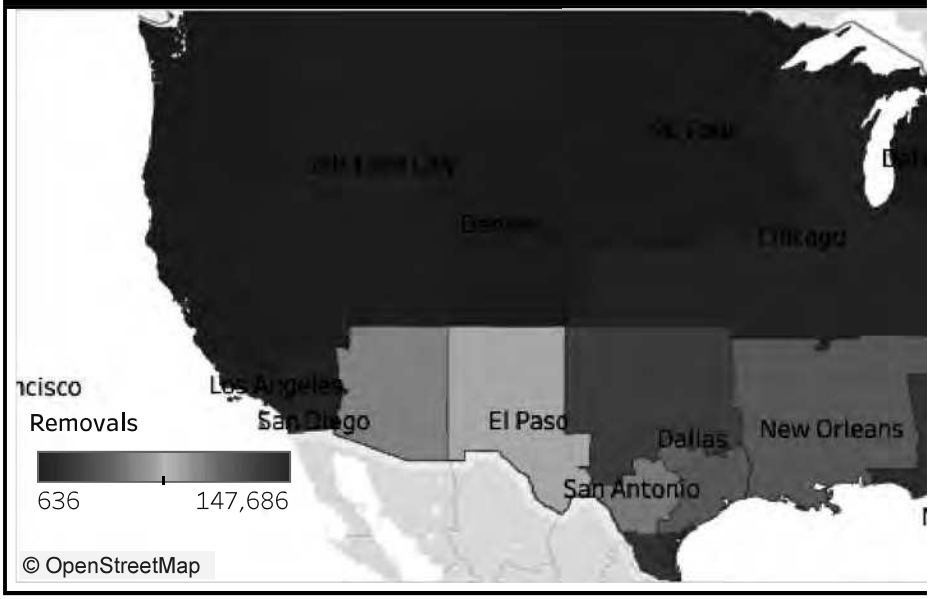
Color Selector

Criminality

Axis Selector

Area of Responsibility

Removals by Area of Responsibili



ICE provides the above Arrests, Removal, Detention and Alternatives to Detention statistics for public use. ICE confirms the integrity of the data as published on this site and cannot attest to subsequent transmissions. Data fluctuate until "locked" at the conclusion of the fiscal year. These statistics are published with data one quarter in arrears. Future quarter-end and year-end reporting may include corrections and other updates and will supersede previous quarter's data.

*The Harlingen AOR was added from parts of San Antonio and Houston in FY2022.

ICE served a role in transporting aliens expelled under Title 42 via ICE charter flights.

The data in the chart below represents only Title 42 expulsions conducted by ICE via ICE charter flights. Effective May 11, 2023, President Joe Biden declared the end of the COVID-19 national emergency.

Comprehensive data related to Title 42 expulsions for the United States is available through CBP. For additional information, please visit CBP's Title 42 statistical report.

EXPULSIONS

U.S. IMMIGRATION AND CUSTOMS
TITLE 42 EXPULSIONS STA

T42 Expulsions

149,347

Metric Selection

T42 Expulsions (Individuals)

Date Selector

Year

Country of Citizenship

- Brazil
- Colombia
- Dominican Republic
- Ecuador
- El Salvador
- Guatemala
- Haiti
- Honduras
- Mexico
- Nicaragua
- Peru

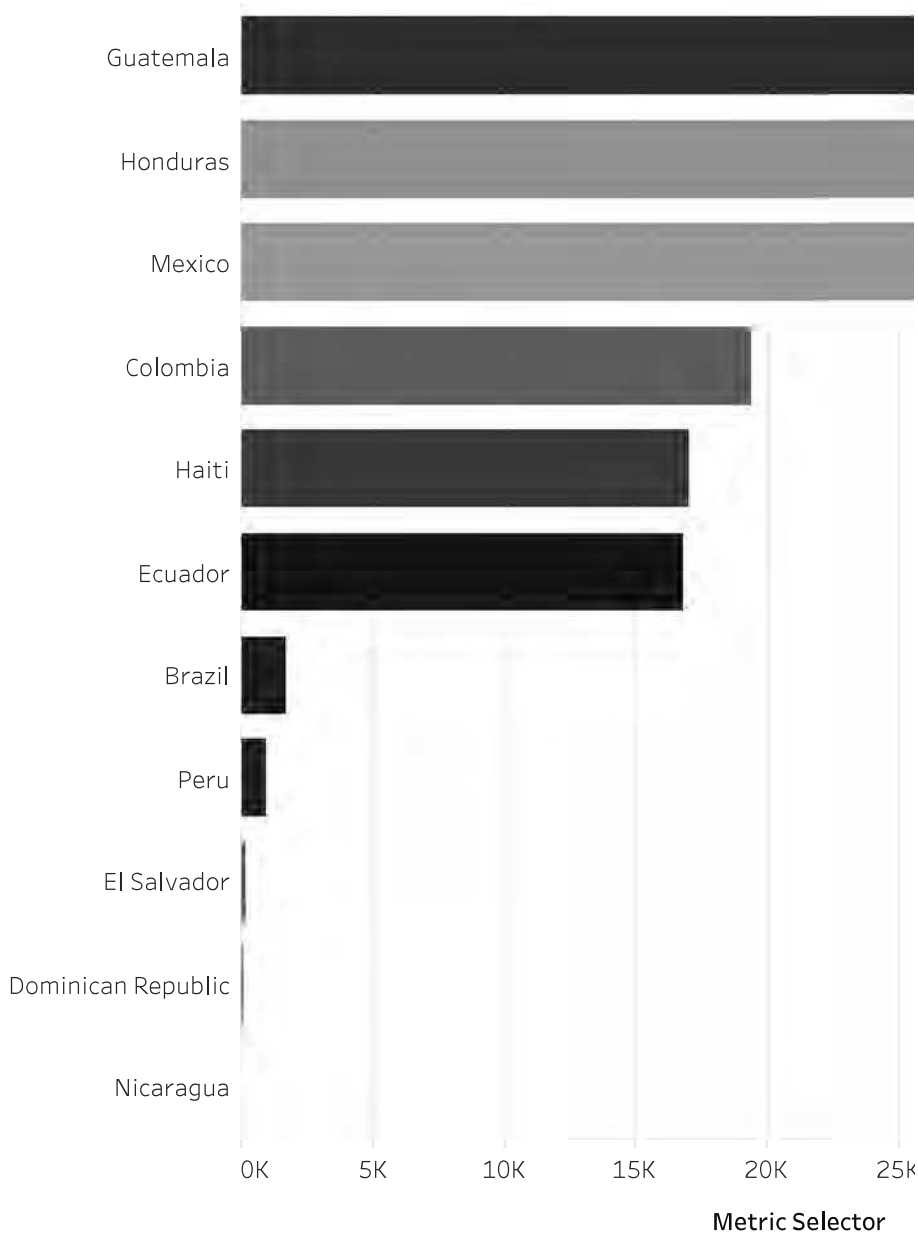
Color Selector

Country of Citizenship

Axis Selector

Country of Citizenship

T42 Expulsions (Individuals) by Country



Individual T42 Expulsion flights may stop at multiple locations. ICE confirms the integrity of the data as published on this site and cannot attest to subsequent transmissions. Data fluctuates until "locked" at the conclusion of the fiscal year. These statistics are published with data one quarter in arrears. Future quarter-end and year-end reporting may include corrections and other updates and will supersede previous quarter's data.



The Alternatives to Detention (ATD) program's Intensive Supervision Appearance Program is an alien compliance tool overseen by ERO.

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.

In fiscal year 2023, ICE's ATD program deployed the following types of monitoring:

- **Facial matching technology:** Facial matching technology allows participants to report compliance via an app installed on an alien's own smartphone or a dedicated government-issued device.
- **GPS monitoring:** Satellites track participants' location to ensure compliance with conditions of release.
- **Telephonic reporting (telephonic check-in):** Phone calls are compared against a voiceprint obtained during enrollment.

- **Wrist worn device:** Provides GPS monitoring, facial matching, and virtual case management functionality, including virtual check-ins and reminders. ICE is conducting a limited deployment of 50 wrist worn devices in the Denver AOR.

ALTERNATIVES TO DETENTION

U.S. Immigration and Customs Enf
Alternatives to Detention Sta

Snapshot of ATD Participants as of: December 2024

187,544

Date of ATD Snapshot

December 2024

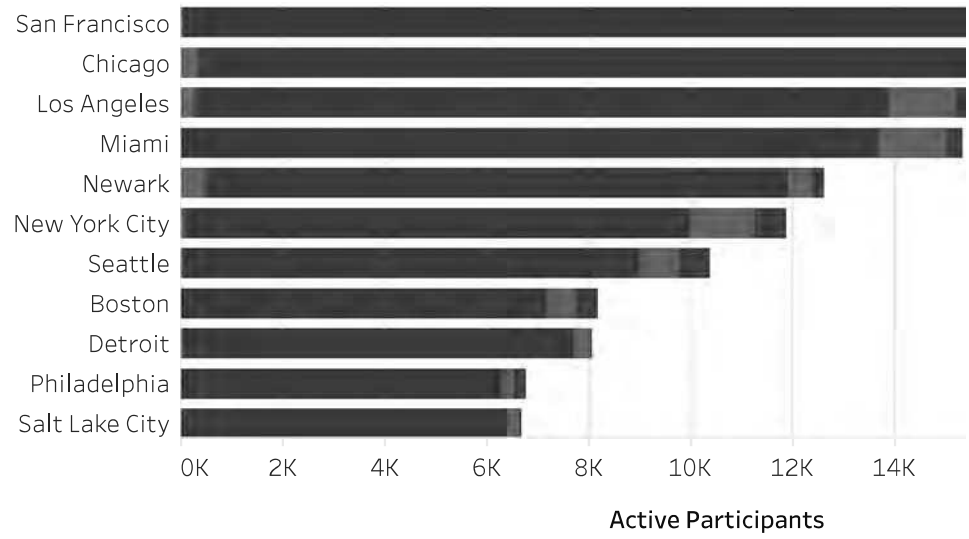
Area

(All)

Tech

- BI VeriWatch
- GPS Ankle Monitor
- SmartLINK Facial Matching
- VoiceID Telephonic Check-in

ATD by AOR and Tech



Color Selector

Tech

Axis Selector

Area of Responsibility

ATD by Area of Responsibility (AOR)



ICE provides the above Arrests, Removal, Detention and Alternatives to Detention statistics for public use. ICE confirms the integrity of the data as published on this site and cannot attest to subsequent transmissions. Data fluctuate until "locked" at the conclusion of the fiscal year. These statistics are published with data one quarter in arrears. Future quarter-end and year-end reporting may include corrections and other updates and will supersede previous quarter's data.

*The Harlingen AOR was added from parts of San Antonio and Houston in FY2022.

*Unknown Legal Stage: Legal stage data was unavailable when the record was produced. Data is extracted under a point-in-time scenario.

Additional Resources

- ICE Fiscal Year 2024 Annual Report
- ICE Fiscal Year 2023 Annual Report
- ICE Fiscal Year 2022 Annual Report
- ICE Fiscal Year 2021 Annual Report
- ICE Annual Report Fiscal Year 2020
- Fiscal Year 2020 Enforcement and Removal Operations Report | Local Statistics 2020
- Fiscal Year 2020 Homeland Security Investigations
- Fiscal Year 2019 Enforcement and Removal Operations | Local Statistics 2019
- Fiscal Year 2019 Homeland Security Investigations
- Fiscal Year 2018 Enforcement and Removal Operations | Local Statistics 2018
- Fiscal Year 2018 Homeland Security Investigations
- Fiscal Year 2017 Enforcement and Removal Operations | Local Statistics 2017
- Fiscal Year 2017 Homeland Security Investigations
- Fiscal Year 2016 Enforcement and Removal Operations | Local Statistics 2013-2016
- Fiscal Year 2016 Homeland Security Investigations
- Fiscal Year 2015 Enforcement and Removal Operations
- Fiscal Year 2014 Enforcement and Removal Operations
- Fiscal Year 2013 ICE Immigration Removals

Definitions

Term	Definition
Aliens	People without U.S. citizenship or nationality, which may include stateless people.
AOR	AOR refers to the area of responsibility that ICE has identified as a geographic region for an action taken.
Arresting Agency	Arresting agency is either CBP or ICE. Border patrol and inspections by air, land or sea are the program areas included within the CBP data.
Arrests	ICE administrative arrests occur when an ICE officer physically apprehends an alien for a non-criminal civil infraction. The immigration courts hear these cases. ICE civil immigration enforcement arrests do not always lead to detention.
ATD	ATD refers to ICE's Alternatives to Detention program. ATD is a flight-mitigation tool that uses technology and case management to ensure alien compliance with release conditions, court hearings and final orders of removal while allowing them to remain in their communities as they move through the immigration process or prepare for departure from the United States.
CBP	U.S. Customs and Border Protection.
Citizenship Country	Country of citizenship of the alien . Country of Citizenship is derived from the ICE system of record as it is input by the officer at the time of processing. An "Unknown" Country indicates the alien failed or refused to identify a country of citizenship or the officer lacked documentation to do so at the time. Country of Birth or Citizenship can be updated at anytime during the Immigration Lifecycle by an Officer. These aliens can include those that were born in Palestine, West Bank, or the Gaza strip and considered Stateless.
Criminality	Criminality encompasses three categories: individuals with criminal convictions, people with pending criminal charges, and other immigration violators. Those with convictions are immigration violators who have a criminal conviction in ICE's system of record at the time of the enforcement action. Pending criminal charges refers to an immigration violator with pending criminal charges in ICE's system of record at the time of the enforcement action. Other immigration violators are individuals

Term	Definition
	without any known criminal convictions or pending charges in ICE's system of record at the time of the enforcement action.
Detentions	The detention data presented counts the number of initial book-ins into ICE facilities and does not include juveniles who are transferred to Office of Refugee Resettlement custody or housed in an ORR facility. U.S. Marshals Service prisoners are also excluded. Transfers between ICE facilities are not counted as new detention events, and aliens may be booked into ICE facilities more than once without triggering a new detention event.
Expulsions	The term 'Expulsion' refers to the removal of an alien pursuant to the United States Code other than Title 8 such as Title 42 or Title 50.
Facial Monitoring	Facial monitoring technology is a form of monitoring for ATD participants. It is a smartphone application that uses facial recognition technology to verify the user's identity and physical location. This application also provides video conferencing, community referrals, messaging between the alien and an officer, document capturing, appointment reminders and a calendar.
GPS Ankle Monitor	A GPS ankle monitor is a low-profile ankle bracelet that uses GPS to provide detailed information about an ATD participant's movement.
ICE	U.S. Immigration and Customs Enforcement.
Removals	ICE removal data includes returns. Returns include: • Voluntary returns: Discretionary relief granted by an ICE officer at the border by permitting an alien to depart the United States without a removal order and related immigration consequences. • Voluntary departures: Discretionary relief granted in removal proceedings or by an ICE officer in lieu of removal proceedings permitting an alien to depart the United States voluntarily without a removal order and related immigration consequences. • Withdrawals under docket control: Discretionary relief granted by an ICE officer or immigration judge to an alien encountered at a port of entry that permits the alien to voluntarily withdraw an application for admission to the United States and depart the United States without a removal order and related immigration consequences.

Term	Definition
	ICE Removals include aliens processed for Expedited Removal (ER) or Voluntary Return (VR) that are turned over to ERO for detention. As of May 12, 2023, aliens processed for ER that were turned over from Border Patrol to ICE for removal via ICE Air are also included. Aliens processed for ER and not detained by ERO or VR after June 1, 2013, and not detained by ERO are primarily processed by Border Patrol. Those statistics are not included in this dashboard and are maintained by CBP. This does not include Title 42 expulsions.
Staging sites or S-sites	Staging sites, also known as S-Sites, are locations mostly along the Southwest Border that enroll participants being released from CBP or ICE custody. These participants are generally given fewer than 30 days to report to an ERO office in their final destination AOR. After a participant arrives in their AOR, local ATD officers determine their continued suitability in the ATD program and possible transition to other sites.
Telephonic Check-in	Telephonic check-in is a form of monitoring in the ATD program and is a multilingual telephonic voice recognition system. Telephonic check-in automatically calls ATD program participants in one of 36 languages and validates participants' voices against a master template resulting in pass or failure.
Unmapped AOR Records	An 'Unmapped AOR' indicates that the location of a given enforcement action is not mapped to a specific AOR in the database.
Wrist worn device	Provides GPS monitoring, facial matching, and virtual case management functionality, including virtual check-ins and reminders.

Access and Export Congressionally Mandated ICE Data

- ICE Detention Statistics

Access and Export ICE Data

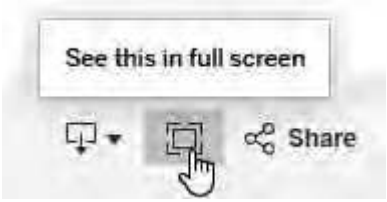
To download the underlying ICE data from all the dashboards as an Excel spreadsheet, click here.

**Applied filters will not be captured in the data download.*

**Records with less than 10 aliens are excluded for privacy reasons.*

Tips for Using the ICE Dashboards

This page is best viewed on a desktop computer. If you are using Internet Explorer, you may have issues viewing the charts on this page. Please use another browser, such as Chrome, Safari, Firefox or Edge to view. When using a mobile device, the charts are best displayed in landscape mode. If the charts are not loading or appear overlapping, refresh your browser or press Ctrl+F5 on a PC or Cmd+R on a Mac.
Dashboards are best viewed in "Full Screen." To enter "Full Screen" click the "Full Screen" button next to "Share" at the bottom-right corner of each dashboard.



Tips for Exporting ICE Dashboards as Images

To download the underlying data as an Image, PDF, or PowerPoint spreadsheet, click the “Download” button next to "Full Screen" at the bottom-right corner of each dashboard.
**Records with less than 10 aliens are excluded for privacy reasons.*



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EXHIBIT B

United States Government Accountability Office



Report to Congressional Committees

June 2022

ALTERNATIVES TO DETENTION

ICE Needs to Better Assess Program Performance and Improve Contract Oversight

GAO-22-104529

GAO Highlights

Highlights of GAO-22-104529, a report to congressional committees

June 2022

ALTERNATIVES TO DETENTION

ICE Needs to Better Assess Program Performance and Improve Contract Oversight

Why GAO Did This Study

ICE has wide discretion to detain or release individuals of foreign nationality awaiting resolution of their immigration court proceedings, except for individuals subject to mandatory detention. The ATD program, which ICE administers through a $2.2 billion contract, uses electronic monitoring and case management to help ensure that individuals enrolled comply with release conditions, such as appearing at immigration court hearings. The explanatory statement accompanying the Consolidated Appropriations Act, 2020 includes a provision for GAO to review the ATD program.

This report examines, among other objectives, (1) what data show about participation in the ATD program, (2) the extent to which ICE has assessed ATD performance, and (3) how ICE manages and oversees the ATD contractor. GAO analyzed ICE contractor data from November 2014 through 2020; and reviewed ATD policies, performance reports, and contract documents. GAO also interviewed ICE and contractor officials from headquarters and the field.

What GAO Recommends

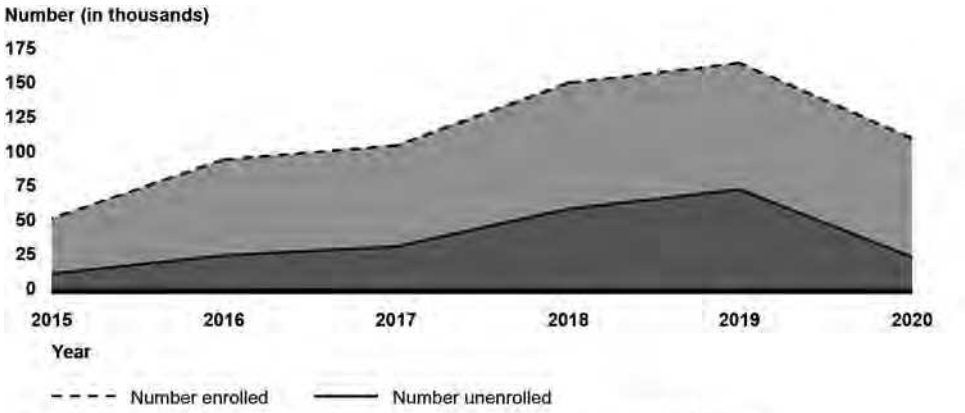
GAO is making 10 recommendations, including that ICE establish performance goals that cover core program activities, improve external reporting of absconsion information, collect information needed to assess the contractor's performance against standards, and ensure the contractor addresses all audit findings. DHS concurred with the recommendations.

View GAO-22-104529. For more information, contact Rebecca Gambler at (202) 512-8777 or GamblerR@gao.gov.

What GAO Found

U.S. Immigration and Customs Enforcement (ICE) uses the Alternatives to Detention (ATD) program as one way to monitor individuals it releases into the community. GAO's analysis of ICE contractor data found that the number of individuals enrolled in the ATD program more than doubled from approximately 53,000 in 2015 to 111,000 in 2020. See figure. During this period, ICE unenrolled most participants before their immigration proceedings concluded. ICE placed about half of unenrolled participants on monitoring outside of the ATD program and about a quarter absconded (i.e. fled their address and could not be located).

Number of Participants Enrolled and Unenrolled in the Alternatives to Detention Program, 2015-2020



Source: GAO analysis of U.S. Immigration and Customs Enforcement contractor data. | GAO-22-104529

ICE collects data on the ATD program, such as whether participants attend their scheduled court hearings. ICE also developed a performance goal for fiscal year 2022, but ICE does not assess program performance for all core program activities and outcomes, such as referrals for community services. Establishing such goals would position ICE to assess the extent to which the program is achieving intended results and identify any needed improvements. In addition, ICE has not completely presented information on participants who abscond from the ATD program. For example, ICE does not include all relevant participants when calculating absconsion rates. By doing so, ICE could more completely demonstrate program performance related to absconsions and help ensure policymakers have the context needed to appropriately use the information.

ICE conducts some oversight of the contractor that helps implement the ATD program nationwide. For example, ICE conducts weekly audits intended to ensure that ATD participants receive the assigned level of supervision and services. However, ICE does not fully assess the contractor against the standards for performance established in the contract, nor follow-up and document whether the contractor resolves issues it identifies. Taking steps to improve contract oversight would help ICE ensure that the contractor is achieving outcomes as identified in the contract and provide reasonable assurance that the contractor is correcting identified issues.

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Abbreviations

ATD	Alternatives to Detention
COR	Contracting Officer's Representative
DHS	Department of Homeland Security
ECMS	Extended Case Management Services
ERO	Enforcement and Removal Operations
ICE	U.S. Immigration and Customs Enforcement
MARVIN	Multi-Aspect Removal Verification Initiative

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U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

June 22, 2022

The Honorable Chris Murphy
Chairman
The Honorable Shelley Moore Capito
Ranking Member
Subcommittee on Homeland Security
Committee on Appropriations
United States Senate

The Honorable Lucille Roybal-Allard
Chairwoman
The Honorable Chuck Fleischmann
Ranking Member
Subcommittee on Homeland Security
Committee on Appropriations
House of Representatives

Within the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) is responsible for enforcing immigration laws, including arresting, charging, detaining or releasing, and removing certain individuals of foreign nationality. Except for those who are required by law to be detained during removal proceedings, ICE has wide discretion to detain or release individuals awaiting resolution of their proceedings in immigration court. When ICE releases individuals in removal proceedings on a conditional basis into the community, it is responsible for monitoring their compliance with the terms of their release. At the end of fiscal year 2020, there were approximately 3.26 million individuals who had been conditionally released while awaiting resolution of their removal proceedings, according to ICE.[1]

One way ICE monitors released individuals is through the Alternatives to Detention (ATD) program, administered by ICE's Enforcement and Removal Operations (ERO). The program uses case management and electronic monitoring to help ensure participants comply with their release conditions, such as requirements to appear at immigration court hearings, and with final orders of removal from the U.S. The number of ATD

[1]Department of Homeland Security, *U.S. Immigration and Customs Enforcement Fiscal Year 2020 Enforcement and Removal Operations Report.*

participants has grown in recent years, from an average of less than 27,000 per day in fiscal year 2015 to an average of more than 90,000 per day at the end of fiscal year 2020, according to ICE documents.[2] In March 2020, ICE awarded a contract with a total value of $2.2 billion to BI Incorporated to help implement the ATD program.[3]

In November 2014, we reported on the ATD program and found that ICE issued guidance to ERO field offices with recommended practices to help facilitate cost-effective use of the program.[4] However, we also found that ICE did not monitor the extent to which the ERO field offices consistently implemented the guidance. Additionally, ICE had established performance measures for the ATD program to, for example, assess participant compliance with requirements to appear in immigration court. However, ICE had not collected complete data for assessing progress against the measures. We made two recommendations to ICE in November 2014 to address these issues, which ICE subsequently implemented.

The explanatory statement accompanying the Consolidated Appropriations Act, 2020, includes a provision for us to conduct a review of the ATD program.[5] This report examines (1) what data show about participation in the ATD program, (2) the extent to which ICE has developed and implemented policies and procedures for managing the ATD program, (3) the extent to which ICE has assessed ATD program

[2]Department of Homeland Security, *Congressional Budget Justification FY22* (2021); and *Congressional Budget Justification FY17* (2016).

[3]BI Incorporated is the full name of the company and is not an abbreviation.

[4]GAO, *Alternatives To Detention: Improved Data Collection and Analyses Needed to Better Assess Program Effectiveness*, GAO-15-26 (Washington, D.C. Nov. 13, 2014).

[5]Explanatory Statement, 165 Cong. Rec. H10613, H11017 (daily ed. Dec. 17, 2019), accompanying Pub. L. No. 116-93, 133 Stat. 2317 (Dec. 20, 2019). The Secretary of Homeland Security was required to submit a report analyzing each active ATD program in the last 5 years to the Senate Appropriations Committee within 60 days of enactment (DHS report due by February 18, 2020). S. Rep. No. 116-125, at 56-57 (Sep. 26, 2019). We are required to review the reliability and accuracy of data in DHS's report and provide a preliminary briefing to the Committees on its review within 120 days of receipt of such report. We are also directed to conduct a review of ATD and report its findings to the Committees on the date agreed upon at the preliminary briefing. 165 Cong. Rec. at H11017. On April 11, 2022, DHS submitted its ATD report to us as required by the Explanatory Statement accompanying Public Law 116-93 and we have begun reviewing it.

performance, and (4) how ICE manages and oversees the ATD program contractor.

To address all four objectives, we interviewed ICE officials from ERO's ATD Division (ATD headquarters), which is responsible for managing and overseeing ATD operations, and contractor officials responsible for overall management of the contractor's responsibilities. We also interviewed ERO and contractor officials in seven of 24 ERO field offices.[6] We purposefully selected these seven locations to include each type of ATD site; a range in the number of participants enrolled; geographic diversity; and participants who received enhanced case management services.[7] For each field office, we interviewed ATD monitoring officers who provide oversight and training in the field, ERO field officials assigned to the ATD program, and contractor officials who implement the program at ATD sites in the field office's area of responsibility. The information we obtained from these field interviews cannot be generalized to all ERO field offices, but provides insights and illustrative examples based upon a range of perspectives and experiences regarding implementation and oversight of the ATD program.

To address our first objective, we analyzed data from the ATD contractor's database to identify trends in program participation, including in enrollment; the types of ATD sites to which participants were assigned; participant countries of birth; and referrals for additional services. We analyzed data from November 1, 2014, when the contractor began using the database, through December 31, 2020, the most recent data available at the time of our request.[8] Additionally, we interviewed ERO field officials

[6]Each of ERO's field offices oversees sub-offices located in its geographic area of responsibility, which may include all or part of a state or several states. At the time of our site selection, ERO had 24 field offices, but subsequently added a 25th field office in 2021. We interviewed ERO officials from the El Paso, Chicago, Miami, San Diego, San Francisco, Seattle, and Philadelphia field offices; as well as officials from sub-offices in these field offices' areas of responsibility.

[7]There are five types of ATD sites, which vary with respect to the scope of services the contractor provides and other factors. We discuss the site types and ATD's Extended Case Management Services program later in this report.

[8]To identify overall program trends, we analyzed data from the entire time period of November 1, 2014 through December 31, 2020. To identify trends by year, we focused our analysis on the time period for which we had full calendar years of data—2015 through 2020. We only included data on participants' most recent enrollments in our analysis if they were enrolled in the program more than once, except for in our analysis of re-enrollments.

and contractor officials to obtain contextual information on trends in program data. We also interviewed representatives from four non-governmental organizations that provide clinical services for ATD participants regarding their experiences receiving referrals from the contractor and working with the program.[9]

To address our second objective, we reviewed ICE policies, procedures, and guidance for the ATD program, such as the ATD Handbook and related policy memos. We interviewed ATD headquarters officials about the development of these policies, and ERO field officials and ATD monitoring officers to determine the extent to which they use these policies to implement the program. In addition, we analyzed data related to changes in supervision levels of ATD participants and assessed this information against ICE guidance for reviewing changes in supervision levels. Specifically, we analyzed contractor data from January 1, 2018 through December 31, 2020 that showed the level of electronic monitoring technology assigned to new participants and any subsequent changes to the technology assigned (e.g. moving from a GPS ankle bracelet to a smartphone application).[10] We also assessed ICE's efforts to develop and implement policies and procedures for managing the program against internal control standards for monitoring internal control systems and using quality information.[11]

To address our third objective, we reviewed ICE documentation related to ATD program data and performance measurement, including documents describing past performance goals and methodologies for calculating program statistics. We also analyzed contractor data from November 1, 2014 through December 31, 2020 on court hearings and reasons participants were unenrolled from ATD that ICE uses to calculate program

[9]As discussed later in this report, the contractor works with non-governmental organizations to provide clinical services and legal orientation presentations to ATD participants. We interviewed representatives from the four organizations the contractor identified as the primary ones it works with at a national level: Lutheran Social Services of the National Capital Area, Bethany Christian Services, U.S. Conference of Catholic Bishops, and Endeavors. The information we gathered through these interviews cannot be generalized to all the non-governmental organizations that work with ATD participants, but it provides useful perspectives on working with ICE and the contractor to offer services to ATD participants.

[10]We analyzed data beginning in calendar year 2018 because ICE issued guidance in 2017 that updated the recommended frequency of supervision reviews.

[11]GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington D.C.: September 2014).

statistics, such as absconsion rates.[12] To assess how ICE externally reports absconsion rates, we reviewed relevant ICE documentation, congressional budget justifications, and performance reports. We also interviewed ICE officials in headquarters and field offices to understand how they collect and analyze program data to assess the ATD program. To assess ICE's efforts to measure ATD program performance, we reviewed principles for performance reporting in the *GPRA Modernization Act of 2010* and important attributes of successful performance measures described in our prior work.[13]

To address our fourth objective, we reviewed the ATD program contract and related documentation describing requirements of the program contractor and how ICE is to manage and oversee the contractor. We also reviewed documentation of ICE's oversight activities, including examples of audits ERO field officials perform of the contractor's billing statements and a sample of weekly case file audits conducted by ATD officials at headquarters. Specifically, we analyzed the findings of 16 weekly case file audits conducted from February 1, 2021 through June 3, 2021.[14]

We also analyzed contractor data on attendance at legal orientation presentations for ATD participants enrolled on or after August 1, 2020, when a new contract began requiring the contractor to make

[12]We selected this time frame for analysis to coincide when the contractor began using a new database and include the most recent data available at the time of our request. An ATD participant is considered to have absconded if the individual flees from their current address without any notification or forwarding information and cannot be located by the contractor or ERO.

[13]Government Performance and Results Act of 1993, Pub. L. No. 103-62, 107 Stat. 285, as updated by the *GPRA Modernization Act of 2010*, Pub. L. No. 111-352, 124 Stat. 3866 (2011). While the *GPRA Modernization Act of 2010* is applicable to the department or agency level, performance measures and goals are important management tools at all levels of an agency, including the program, project, or activity level. We have previously reported that performance measures and goals can serve as leading practices at various organizational levels. For example, see GAO, *Coast Guard: Actions Needed to Enhance Performance Information Transparency and Monitoring,* GAO-18-13 (Washington, D.C.; Oct. 27, 2017). Our prior work describing important attributes of performance measures includes, among other reports, *Native American Youth: Agencies Incorporated Almost All Leading Practices When Assessing Grant Programs That Could Prevent or Address Delinquency,* GAO-20-600 (Washington, D.C.: Aug. 6, 2020).

[14]This period encompassed case file audits that ICE had recently performed when it provided them to us in July 2021. The information we gathered through analyzing the audit findings cannot be generalized to all case file audits, but offers insight into the information ICE collects through the audits and how ICE records the information.

presentations available to participants enrolled at certain ATD sites. We focused our analysis on participants who were assigned to those sites for more than 30 days between March 1, 2021, the month after the contractor began offering a recorded presentation, and October 31, 2021, the most recent month of data available at the time of our request.[15] We also interviewed ICE officials responsible for ATD contract oversight, including the Contracting Officer's Representative (COR) and other officials from ATD headquarters, ERO field officials, and ATD monitoring officers.[16] We compared ICE's contract oversight efforts against requirements for oversight in the ATD contract, DHS and ICE guidance on contract oversight, and internal control standards related to completing and documenting corrective actions to resolve deficiencies in a timely manner.[17]

To assess the reliability of the contractor data analyzed for all four objectives, we reviewed related documentation, such as data dictionaries; interviewed knowledgeable ERO and contractor officials; and reviewed the data to identify any errors or omissions. We found the data sufficiently reliable for our purposes of identifying trends in program participation and assessing ICE efforts to implement policies, assess program performance, and oversee the contract.

We conducted this performance audit from October 2020 to June 2022 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

[15]We restricted our analysis to participants who were assigned to contractor sites for at least 30 days because contractor officials stated that time may elapse between when an individual is enrolled at an ATD site and participates in a presentation.

[16]The COR is appointed by a Contracting Officer to monitor contract performance on their behalf.

[17]Department of Homeland Security, Office of the Chief Procurement Officer, *Contracting Officer Representative (COR) Guidebook* (October 2019); U.S Immigration and Customs Enforcement, Enforcement and Removal Operations, *Contracting Officer's Representative Supplement, Version 1.0* (October 2015); and GAO-14-704G.

Background

Immigration Court Removal Proceedings

For purposes of ATD program management, the immigration court proceedings process can be divided into three stages: (1) "pre-decision," before an immigration judge issues a decision or otherwise disposes of a case; (2) "post-decision," after an immigration judge issues a decision or other disposition; and (3) "appeal," for those who seek administrative appeal of an immigration judge's decision.

The pre-decision stage typically begins when DHS serves an individual with a charging document known as a "notice to appear" and files the notice with immigration court staff in the Department of Justice's Executive Office for Immigration Review. The notice to appear orders the individual to appear before an immigration judge to respond to listed removal charges.[18] Upon issuance and filing of a notice to appear, immigration court staff schedule hearings where issues of removability and any applications for relief, such as asylum, are adjudicated. Attorneys with ICE's Office of the Principal Legal Advisor represent the U.S. government by providing civil litigation services to ICE in removal proceedings. Counsel authorized to practice in removal proceedings may represent charged individuals at no expense to the government.[19]

The judge may ultimately decide to grant requested relief or issue an order of removal without any associated relief, among other outcomes.[20] An immigration judge may issue orders of removal in absentia for individuals who fail to attend a scheduled hearing.[21] After the immigration judge issues a decision or otherwise disposes of the case, the individual

[18]Allegations of removability typically included in a notice to appear in immigration court are based on civil violations of U.S. immigration law, which would render a charged person statutorily inadmissible (if they have no prior lawful admission) or deportable (if they were previously lawfully admitted) and therefore subject to removal from the U.S. See 8 U.S.C. §§ 1182, 1227, 1229, 1229a. The lawfulness of a prior admission may be at issue in removal proceedings. See 8 U.S.C. §§ 1182(a)(6)(C)(i) (inadmissibility for having fraudulently obtained admission into the United States), 1227(a)(1)(A) (deportability for having been inadmissible at the time of entry).

[19]8 U.S.C. § 1362.

[20]A removal order becomes administratively final when all avenues for review or appeal through the Executive Office for Immigration Review have been exhausted or waived. See 8 C.F.R. § 1241.1.

[21]8 U.S.C. § 1229a(b)(5)(A).

enters the post-decision stage of removal proceedings.[22] If an individual or DHS appeals the immigration judge's decision, the case enters the appeal stage and goes to the Executive Office of Immigration Review's Board of Immigration Appeals for further administrative review.[23]

ICE determines whether to detain individuals in its custody, on a discretionary or mandatory basis, or release them to the community while their removal proceedings are ongoing, subject to certain criteria.[24] Upon an individual's request, an immigration judge may conduct a hearing during which the judge may redetermine ICE's custody decision.[25] ICE uses one or more release options when it determines that an individual is not to be detained—including bond, order of recognizance, order of supervision, or on parole for urgent humanitarian reasons or significant public benefit—as shown in table 1. The ATD program serves as a supplemental requirement that may be added to one of these release options. Individuals enrolled in the ATD program receive more intensive supervision through case management and electronic monitoring than those released solely under other options.

[22]After conclusion of proceedings, ICE is generally required to detain those who have an order of removal throughout the 90-day period after the order becomes administratively final. If an individual does not depart or is not removed within the 90-day removal period and is not detained, then they are to be subject to supervision pending removal. ATD program participants may remain in ATD after receiving an order of removal or may be temporarily detained subject to certain criteria while awaiting removal after the judge's order is made final.

[23]After exhausting administrative remedies within the Department of Justice, an individual may appeal a final order of removal to the U.S. Court of Appeals for the circuit in which the immigration judge completed the initial removal proceedings. For the purposes of ATD management and data, ICE considers a case as returning to the post-decision stage once the Board of Immigration Appeals has rendered a decision, including if the participant has a pending federal court appeal.

[24]DHS has broad statutory discretion (subject to certain legal standards) to detain, or release foreign nationals on bond, conditional parole, terms of supervision, or other conditions, depending on the circumstances and statutory basis for detention. The law requires DHS to detain particular categories of foreign nationals, such as those deemed inadmissible for certain criminal convictions or terrorist activity. See 8 U.S.C. §§ 1225, 1226, 1226a, 1231; 8 C.F.R. § 236.1.

[25]Regarding custody redetermination by an immigration judge, see 8 C.F.R. §§ 1003.19 (custody/bond), 1236.1 (apprehension, custody, and detention).

Table 1: Release Options for Foreign Nationals

Release option	Description
Bond	If individuals are not a threat to public safety, present a low risk of flight, and are not required to be detained, U.S. Immigration and Customs Enforcement (ICE) may release them on a bond of at least $1,500.[a]
Order of recognizance	If individuals are not a threat to public safety, present a low risk of flight, and are not required to be detained, an order of recognizance requires they abide by specified release conditions but does not require them to post a bond.[a]
Order of supervision	ICE may release individuals on orders of supervision, despite them being subject to a final order of removal, where there is no significant likelihood of removal in the reasonably foreseeable future, because, for example, they are unable to obtain passports or other travel documents to return to their country of origin.[b]
Parole	ICE may release certain individuals on parole for urgent humanitarian reasons or significant public benefit, such as for a medical emergency or legitimate law enforcement objective, on a case-by-case basis. Parole constitutes temporary permission to enter the U.S. without admission.[c]

Source: GAO analysis of statute and ICE information. | GAO-22-104529

[a]See 8 U.S.C. § 1226; 8 C.F.R. § 236.1. The Department of Homeland Security (DHS) may set a bond, which may also be used in conjunction with other release conditions, such as placement in the Alternatives to Detention program. Upon the foreign national's request, an immigration judge may redetermine the amount of bond set by DHS. 8 C.F.R. § 1236.1(d)(1).

[b]See 8 U.S.C. § 1231; 8 C.F.R. §§ 241.1, 241.4, 241.5, 241.13, 241.14. ICE officers determine the frequency with which foreign nationals released on an order of supervision must report to ICE.

[c]See 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. §§ 212.5, 235.3(b)(2)(iii).

According to ICE guidance, any individual who is placed in immigration court removal proceedings and released from custody is to be referred to the ATD program for potential enrollment. Other offices within ICE, such as the Criminal Apprehension Program or Homeland Security Investigations, or other DHS entities, such as U.S. Border Patrol, may refer an individual for potential enrollment in the ATD program.[26] Other federal, state, and local law enforcement agencies, or an immigration judge as a condition of release, may also refer individuals for potential enrollment. The ATD program is then to determine whether the individual

[26]The Criminal Apprehension Program provides direction and support across ICE in the identification, arrest, and removal of priority foreign nationals who are incarcerated and criminal foreign nationals at-large. Homeland Security Investigations is responsible for investigating terrorist, transnational, and other criminal organizations. Beginning in July 2021, U.S. Border Patrol has paroled into the U.S. some family unit members apprehended at the southwest border and referred them to ICE to enroll heads of households of those family units into ATD (while releasing the rest of the household on parole without being enrolled in ATD). We have ongoing work reviewing this use of parole—referred to as Parole Plus ATD—and plan to report on the results of the work later this year.

is eligible for enrollment and whether participation in ATD would be a reasonable supplemental condition of release.

Overview of the ATD Program

ICE established the ATD program in 2004 to provide an alternative to detention for individuals of foreign nationality over the age of 18 who are not subject to mandatory detention and who are awaiting a final resolution to their immigration court removal proceedings. ICE's fiscal year 2021 appropriation provided approximately $440.1 million for ATD. This represented an increase of $110 million over the President's budget request to expand ATD and for related case management services.[27] The program aims to use case management and monitoring technology to ensure compliance with program requirements, court appearances, and final orders issued by immigration judges while allowing participants to remain in their communities. Within ICE, ERO administers the program in conjunction with a contractor that provides case management and technology monitoring services for ATD participants at 242 sites across the country.[28] ERO field officials make enrollment decisions and assign the level of supervision and monitoring that each ATD participant is to receive. In most cases, contractor case specialists perform case management and supervision as assigned. The ATD program also includes access to additional supervision and support services for particularly vulnerable participants.

Organizational Structure

Several ERO offices are involved in managing, overseeing, and implementing the ATD program, as shown in figure 1. At ICE headquarters, the ATD Division is located within ERO's Non-Detained Management Division. ATD headquarters officials make programmatic decisions, issue policies and procedures, and oversee operations. Additionally, there are quality assurance officials within ATD headquarters responsible for overseeing the contractor's performance. Each of ERO's field offices is generally assigned at least one ATD monitoring officer who is located in the field but reports to ATD headquarters, and is to provide

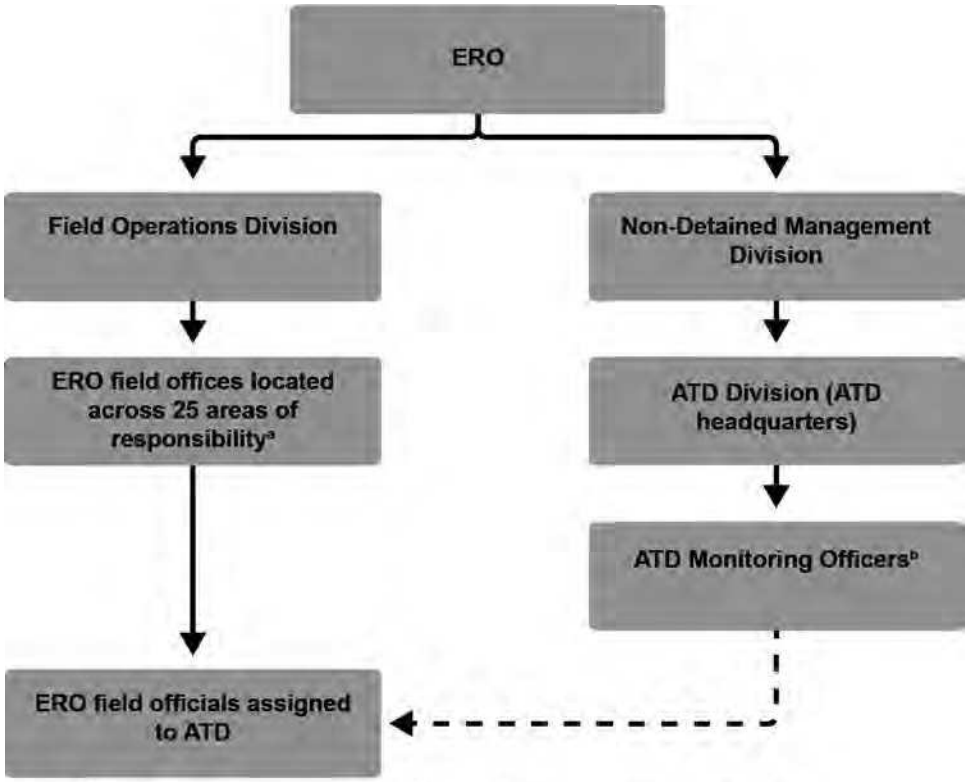
[27]The net increase above the request taking into account reductions is approximately $86.2 million. Adjustments from the request are an increase of $85 million to expand ATD; an increase of $25 million to expand participation in case management services provided by nongovernmental organizations and community partners; a reduction of approximately $1.8 million for personnel cost adjustments; and a reduction of approximately $22 million associated with proposed hiring. See 2021 Explanatory Statement, 166 Cong. Rec. H8311, H8471-2 (daily ed. Dec. 21, 2020).

[28]ICE has contracted with BI Incorporated since the program began in 2004. The contract is currently in its fourth iteration. The number of ATD sites is the total number of active sites as of the end of fiscal year 2021.

oversight and training to field officials and contractor officials who implement the program at the local level.[29] ERO officials located across field offices are assigned to manage ATD cases on a rotating basis. These officials decide whether to enroll eligible individuals into the program. They also assess and determine participants' assigned level of supervision, such as the type of monitoring technology used, and when to unenroll participants. ERO field officials are to determine the level of supervision and technology assigned to an individual based on several factors, such as individuals' immigration status, criminal history, and whether they have been complying with program requirements, if already enrolled. Once ERO field officials decide to enroll individuals into the ATD program, they assign participants to an ATD site based on where the participants establish residency.

[29]The Buffalo field office has not had an ATD monitoring officer assigned since 2018 due to the limited number of ATD sites in its area of responsibility. Some field offices may have more than one ATD monitoring officer who may focus on particular program priorities. Additionally, there are ATD monitoring officers assigned to oversee and manage ATD's Extended Case Management Services, which provides additional supervision to certain ATD participants.

Figure 1: Enforcement and Removal Operations (ERO) Offices Responsible for Managing, Overseeing, and Implementing the Alternatives to Detention (ATD) Program



Source: : GAO analysis of U.S. Immigration and Customs Enforcement documentation. | GAO-22-104529

[a]At the start of our audit work, ERO had field offices located across 24 areas of responsibility. ERO created a 25th field office in July 2021, which became operational in October 2021.

[b]ATD Monitoring Officers are ATD headquarters employees located in ERO field offices.

Site Types and Locations

ERO field officials and contractor case specialists implement the ATD program at sites across the country. There are five types of ATD sites, as shown in table 2, where participants receive either case management services, electronic monitoring, or both. At sites with contractor case specialists—staging, contractor, and government sites—the case specialists carry out the case management and monitoring tasks as directed by ERO field officials. At technology-only sites, ERO field officials conduct electronic monitoring of participants using the contractor's monitoring equipment, but the contractor does not provide case management services. At maintenance sites, contractor case specialists conduct more limited electronic monitoring and escalate issues as needed to ERO field officials. The ATD program established maintenance

sites as a pilot in December 2020 to provide lower cost monitoring of participants with a history of compliance.

Table 2: Types of U.S. Immigration and Customs Enforcement (ICE) Alternatives to Detention (ATD) Program Sites

Site type	Description	Number of sites as of end of fiscal year 2021
Staging	Staging sites are generally located along the U.S. southwest border. At staging sites, contractor case specialists or ICE Enforcement and Removal Operations (ERO) officials perform initial enrollments for new participants and use technology as directed by ERO officials to monitor them as they travel to their final location within the U.S.	29
Contractor	Contractor case specialists at contractor sites perform a full enrollment for ATD participants and develop an individualized service plan to provide both electronic monitoring and case management services, as directed by ERO officials.	54
Government	At government sites, one or two contractor case specialists provide both electronic monitoring and case management services, similar to contractor sites. However, government sites are located at ERO offices.	31
Technology-only	At technology-only sites, ERO field officials electronically monitor participants remotely, such as through GPS, and do not provide case management services. ERO field officials may request the contractor monitor these participants' immigration court hearing schedules and attendance.	112
Maintenance	Maintenance sites are part of a pilot that began in December 2020 where contractor case specialists and ERO field officials provide more limited electronic monitoring of participants with a history of compliance. ERO field officials may request the contractor monitor these participants' immigration court hearing schedules and attendance.	16
Total		**242**

Source: ICE data and GAO analysis of ICE documentation. | GAO-22-104529

Types of Monitoring Technology

- GPS ankle bracelet: uses GPS, Wi-Fi, and cellular technology to track the participant's location. The devices have anti-tamper features and can send alerts to the contractor.
- Smartphone application: identifies participants through facial matching against an image taken during enrollment and has limited location tracking capabilities. The application also supports messaging and video conferencing with contractor officials.
- Telephonic reporting: a voice-recognition system calls participants monthly to verify their identities and locations and supports 35 languages.

Source: GAO analysis of U.S. Immigration and Customs Enforcement and contractor information. | GAO-22-104529

For participants ERO assigns to contractor or government sites, the contractor is to (1) complete an enrollment and orientation for each participant to provide an overview of the program, including its rules and consequences for violating them, (2) explain the assigned monitoring technology, and (3) record participant information into the contractor's database. The contractor is also to develop an individual service plan that lays out the monitoring technology and case management services assigned to the individual by ERO. These can include in-person check-ins through home or office visits, tracking and informing participants of their scheduled court appearances, and assessing whether to offer referrals to participants and their families for outside assistance. The monitoring technology includes options for GPS ankle bracelets, a smartphone application with facial matching capabilities, and telephonic reporting using voice recognition (see sidebar). Figure 2 shows the types of supervision and monitoring available at the different site types.

Figure 2: Types of Supervision and Monitoring Available at Alternatives to Detention (ATD) Sites

	Type of ATD site				
	Contractor	Government	Staging	Technology	Maintenance
Court tracking: the contractor tracks ATD participants' hearing schedules and attendance	✓	✓	✓[a]	✓[b]	✓[b]
Home visits: the contractor visits participants' homes at scheduled times to discuss case information and look for evidence of flight risk	✓	✓			
Office visits: ATD participants meet with the contractor at the site location to discuss case information	✓	✓			
Residence verification: the contractor visits ATD participants' homes within 48 hours of enrollment or change of address to verify the address	✓	✓			
Community referral coordination: the contractor assesses whether ATD participants need referrals to outside services, such as food assistance or medical care	✓	✓			
Legal orientation presentation: ATD participants attend a presentation describing the immigration court process and their legal rights	✓[c]				
Electronic monitoring: ATD participants are assigned montoring technology, such as GPS units or voice recognition software	✓	✓	✓	✓	✓
Alert management: the contractor or Enforcement and Removal Operations (ERO) officials monitor and respond to alerts regarding the status of electronic monitoring technology	✓	✓	✓	✓	✓
Extended Case Management Services: the contractor provides increased supervision for certain ATD participants with significant vulnerabilities intended to ensure program compliance	✓				

Source: GAO analysis of U.S. Immigration and Customs Enforcement documentation. | GAO-22-104529

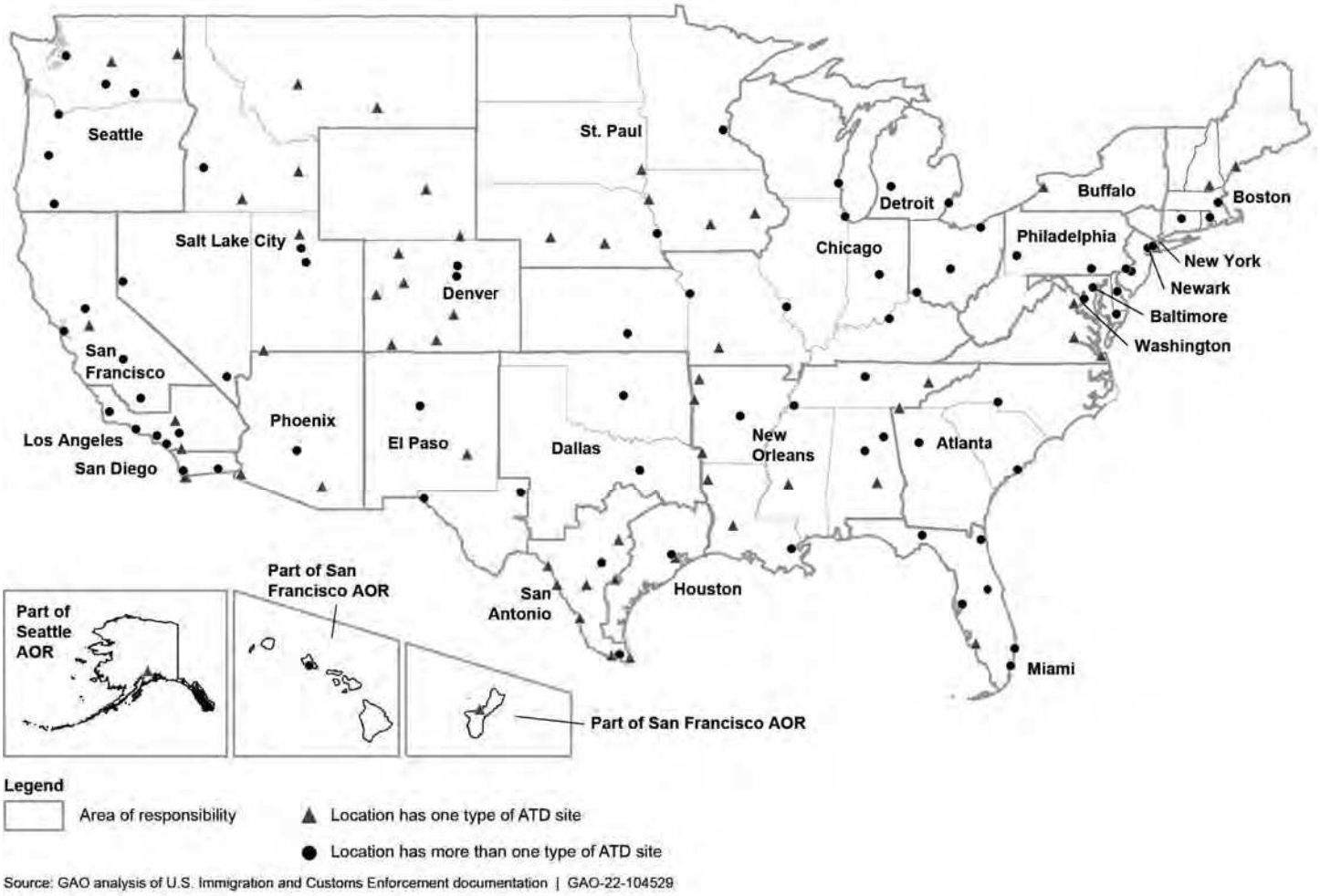
[a]Contractor and ERO officials told us that while staging site participants are technically eligible for court tracking, it is not typically part of the service plan for those participants, as they are meant to be in transit to another location.

[b]Technology-only and maintenance sites do not have contractor officials, but ERO officials may ask the contractor to provide court tracking for ATD participants at these sites.

[c]The contractor is only required to provide legal orientation presentations to ATD participants at contractor sites. However, contractor officials told us in February 2022 that the contractor had begun sending links to a recorded presentation to ATD participants at government sites as well as contractor sites.

ATD program sites are spread across the nation throughout ERO field offices' geographic areas of responsibility. Figure 3 shows their distribution as of the end of fiscal year 2021.

Figure 3: Alternatives to Detention (ATD) Site Types by Enforcement and Removal Operations Field Office Areas of Responsibility (AOR), Fiscal Year 2021



Source: GAO analysis of U.S. Immigration and Customs Enforcement documentation | GAO-22-104529

Note: ERO established a 25th field office that became operational in October 2021—after our period of analysis—that is not included in the figure.