Lorne Kelman, Esq.
Attorney for petitioner
70 East Sunrise Highway, Suite 500
Valley Stream NY 11581
(516) 887-0730

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ERICK ALEXANDER QUIJADA MELARA
[redacted]

-Petitioner,

v.

Joseph Cardinale in his official capacity as Acting Field Office Director of the New York Field Office of U.S. Immigration and Customs Enforcement; Markwayne Mullin, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Todd Blanche, U.S. Attorney General

-Respondents.

Case No.

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

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

2. After he was detained in immigration custody for approximately one month, Petitioner, a citizen and national of El Salvador, received a bond hearing.

3. After a full custody redetermination proceeding, the IJ found that Petitioner was neither a flight risk nor a danger to the community and ordered Petitioner released on $10,000 bond. That bond amount was the *only* condition of his release pursuant to the IJ's order.

4. Yet, when Petitioner posted bond and was released from immigration detention to reunite with his family, ICE unlawfully and unilaterally subjected him to a new form of custody that constitutes a continuing restraint on his liberty—an ankle monitor with 24/7 GPS tracking and onerous reporting conditions under their Intensive Supervision Appearance Program ("ISAP").

5. Upon information and belief, ankle monitors and attendant supervision conditions are applied by ICE through its contract with BI Incorporated ("BI"), the subsidiary of private prison company GEO Group, Inc. ("GEO"). ISAP's reliance on GPS monitoring and other forms of surveillance are a significant revenue source for GEO.

6. In Petitioner's custody redetermination proceedings, the IJ neither authorized nor ordered 24/7 GPS monitoring through an ankle monitor or ISAP as a condition of release.

7. ICE has not abided by and does not have authority to deviate from the IJ's order by imposing additional conditions to Petitioner's release.

8. Now subjected to ICE's ISAP program, Petitioner is in a digital cage. He is forced to wear an intrusive and painful ankle monitor weighing six ounces, about the same as a regulation hockey puck. His every move is subject to 24/7 GPS monitoring by ICE. His travel is restricted.

9. And he is tormented with the constant barrage of reporting requirements and the threat of re-detention.

JURISDICTION

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

11. As the subject of ongoing governmental supervision through ISAP, Petitioner remains in government custody, infringing upon his "liberty to do those things which in this country free men are entitled to do," as fundamentally protected by the Due Process Clause. *SeeJones v. Cunningham*, 371 U.S. 236, 243 (1963); *Justices of Boston Mun. Ct. v. Lydon*, 466 U.S. 294, 300-01 (1984) (holding that petitioner released on recognizance subject to conditions such as appearance as ordered by court is "in custody" for habeas purposes); *Romero v. Sec'y, U.S. Department of Homeland Security*, 20 F.4th 1374, 1379 (11th Cir. 2021) (the "in custody" requirement of 28 U.S.C. § 2241 "should be construed 'very liberally'" and habeas petitioners "need only show that they are subject to a significant restraint on their liberty that is not shared by the general public." (quoting *Howard v. Warden*, 776 F. 3d 772, 775 (11th Cir. 2015).

12. Recently, district courts have found that ISAP GPS monitoring constitutes a restraint on liberty so great as to be "in custody" for habeas purposes. *See Orellana v. Moniz*,---F.Supp.3d---, 2025 WL 1698600 (D. Mass. June 11, 2025) (finding that additional conditions of release imposed by ICE satisfied "in custody" requirement for § 2241 habeas release); *Flores Salazar v. Moniz*, 2025 WL 1703516 (D. Mass. June 11, 2025) (same) and *Centeno v. Lowe et al, 3:25-cv-02518-JKM (M.D. Pa. 2026)*, (finding that an ankle monitor on the petitioner essentially keeps him in custody).

13. Federal courts also have federal question jurisdiction, through the APA, to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). APA claims are cognizable through habeas. 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may proceed by "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or

habeas corpus"). The APA affords a right of review to a person who is "adversely affected or aggrieved by agency action." 5 U.S.C. § 702.

14. Respondents' ongoing custody of Petitioner has adversely and severely affected Petitioner's liberty and freedom.

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

16. The government has waived its sovereign immunity pursuant to 5 U.S.C. § 702.

VENUE

17. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner was fitte with the ankle monitor by ICE Field Office, in Syosset, New York, within the jurisdiction of the Eastern District of New York. In addition, a substantial part of the events giving rise to this action occurred and continues to occur within this district.

18. Petitioner is a resident of Central Islip, New York.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

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

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

21. With regard to prudential considerations, the Second Circuit has held that exhaustion is not required where the administrative remedy would be futile: *see Saeli v. Chautauqua Cty., 36 F.4th 445 (2d Cir. 2022).*; *see also Neal v. Goord,* 267 F.3d 116 (2d Cir. 2001), (discussing the exhaustion requirement, where seeking administrative remedies would cause irreparable harm) .

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

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

24. In any event, here, Petitioner has already exhausted all administrative remedies available to him. Petitioner does not challenge the IJ's decision regarding the bond order but rather challenges ICE's imposition of an alternative form of custody and additional conditions of release **outside the scope of the IJ's order**.

25. Here, the administrative process—the bond adjudication that Petitioner seeks to uphold—has already been exhausted. After ICE made an initial custody determination, Petitioner requested a redetermination of that decision from the IJ via a bond hearing. *See* 8 C.F.R. § 1003.19(a), (c), (f); § 1236.1(d). Following that administrative process, Petitioner was ordered released on a $10,000 bond with no other conditions. In defiance of that bond order, ICE applied additional conditions of Petitioner's release, the agency action he now challenges.

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

PARTIES

27. Petitioner is a 28-year-old citizen and national of El Salvador who currently lives in Central Islip.

28. On January 13, 2026, an IJ found that Petitioner presents no risk of danger or flight and ordered him released from immigration detention on a $3,000 bond with no additional conditions of release.

29. But on January 16, 2026, ICE unilaterally enrolled Petitioner in ISAP, applying an ankle monitor with 24/7 GPS monitoring and other onerous reporting requirements and conditions without notice or motion to the immigration court.

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

31. Respondent, Markwayne Mullin, is sued in his official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, he is responsible for overseeing ICE's day-to-day operations, leading approximately 20,000 ICE employees, including Respondent Cardinale. Secretary Mullin is the ultimate legal custodian of Petitioner.

32. Respondent Todd Blanche is the Attorney General of the United States. As Attorney General, Respondent Blanche oversees the immigration court system, including the immigration judges who conduct bond hearings as his designees, and is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(g). He is legally responsible for administering Petitioner's removal and bond proceedings, including the standards used in those proceedings, and as such, he is Petitioner's legal custodian. He is sued in his official capacity.

RELEVANT BACKGROUND AND STATEMENT OF FACTS

Statutory and Regulatory Background on Immigration Custody Proceedings

33. 8 U.S.C. § 1226(a) authorizes *both* ICE and the Attorney General to detain or release noncitizens who are not subject to mandatory detention during the pendency of removal proceedings. *See* 8 U.S.C. § 1226(a)(1), (2) (the Attorney General "may continue to

detain the arrested alien" pending removal proceedings or it "may release the alien" on bond in the amount of at least $1500, or on "conditional parole"). This authority is not co-extensive, while ICE is authorized to make decisions about who to arrest, place into removal proceedings, and initially detain, the Attorney General, acting through the Executive Office of Immigration Review (EOIR), may review that initial determination. EOIR consists of the immigration courts, and the Board of Immigration Appeals (BIA), the highest immigration administrative appeals body at DOJ. *See* 8 C.F.R. § 1003.0.

34. This process begins with ICE. After a noncitizen has been placed into removal proceedings, ICE may "arrest[] and take[] [them] into custody." 8 C.F.R. 236.1(b)(1). ICE may also release noncitizens and set conditions of release, except for those subject to mandatory detention. 8 C.F.R. 236.1(c)(8). ICE's initial custody determination is not final—the noncitizen can seek de novo review of ICE's initial custody or bond determination under 8 U.S.C. § 1226(a) with an immigration judge. *See* 8 C.F.R. §§ 1003.19(a) ("Custody and bond determinations made by [ICE] pursuant to 8 CFR part 1236 may be reviewed by an Immigration Judge pursuant to 8 CFR part 1236."); 8 C.F.R. 1236.1(d)(1) (describing how "[a]fter an initial custody determination by the district director [ICE] . . . the immigration judge is authorized to exercise the authority in section 236 of the Act. . . to detain the alien in custody, release the alien, and determine the amount of bond, if any, under which the respondent may be released. . ."). This shifts jurisdiction from the arresting agency to the immigration court. *Id.; see Nielsen v. Preap*, 586 U.S. 392, 397-98, (2019) (describing how the Secretary of Homeland Security has discretion to detain or release a noncitizen and if that noncitizen is detained, he or she may seek review of his detention first with ICE, and then by an Immigration Judge); *Johnson v. Guzman Chavez*, 594 U.S. 523, 527–28 (2021) (after the initial detention determination, a petitioner may request a bond hearing before an IJ, who has the authority to redetermine "the alien's detention conditions.").

35. The IJ will then schedule a "custody redetermination hearing" to review ICE's decision, consider evidence by both parties including ICE counsel, and then issue a decision about whether to release a noncitizen on bond. Like ICE, IJs also have the authority to impose

additional conditions on a noncitizen's release in addition to a cash bond, as the BIA has repeatedly

36. If ICE, as part of the initial custody determination, decides to release the non-citizen and impose conditions on that release, 8 C.F.R. § 1236.1(d)(1) provides that the noncitizen may "request amelioration of the conditions under which he or she may be released" within seven days. recognized. *See Matter of Garcia-Garcia*, 25 I&N Dec. 93, 96 (BIA 2009) (holding that IJs have authority to impose, modify, or remove conditions when releasing an individual); *see e.g.*, H-S-, AXXX XXX 365 (BIA Dec. 20, 2018) (BIA vacated an IJ imposed condition of release that noncitizen present his passport before he could post bond because the passport was lost).

37. The IJ's decision must be entered on a form at the time the decision is made, and both the noncitizen and ICE must be informed of the decision orally or in writing. 8 C.F.R. §1003.19(f). Both the noncitizen and ICE may appeal the IJ's decision on custody or bond to the Board of Immigration Appeals ("BIA"). *Id.* §§ 1003.1(d)(1), 1236.1(d)(3)(i). During removal proceedings, if ICE changes the location, releases, or re-detains a previously released noncitizen, it must immediately notify the IJ. *Id.* § 1003.19(g). The regulation also allows noncitizens to request a subsequent bond redetermination "upon a showing that the alien's circumstances have changed materially since the prior bond redetermination." 8 C.F.R. § 1003.19(e).

38. The regulations governing custody redetermination hearings provide for only two circumstances in which an IJ's bond order may be modified: (1) the noncitizen or ICE may appeal the IJ's custody redetermination to the BIA, *see* 8 C.F.R. § 1003.19(f); and (2) a noncitizen may later request a new custody re-determination hearing upon a showing of materially changed circumstances, *see id.* § 1003.19(e) (as was the case for Petitioner).

CLAIMS FOR RELIEF

COUNT ONE: VIOLATION OF THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION Substantive Due Process

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

40. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas*, 533 U.S. at 690. Under the substantive due process doctrine, restraints on liberty associated with civil detention are only permissible if they serve a "legitimate nonpunitive objective." *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997).

41. ISAP "relies on the use of electronic ankle monitors, biometric voice recognition and image recognition software, unannounced home visits, employer verification, and in-person reporting to supervise participants." *Mathon v. Searls*, 623 F. Supp. 3d 203, 217 (W.D.N.Y. 2022).

42. The program can be understood as "a form of supervised parole." *Nken v. Napolitano*, 607 F. Supp.2d 149, 151 (D.D.C. 2009).

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

44. Respondents' imposition of electronic surveillance on Petitioner serves no legitimate nonpunitive objective. Neither public safety nor flight risk are at issue here. An IJ has already determined that Petitioner is not a danger to the community and that the only condition necessary to ensure his future appearance in immigration court is payment of a cash bond.

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

COUNT TWO: VIOLATION OF THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION Procedural Due Process

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

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

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

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

50. Here, the private interest at stake is Petitioner's freedom from the government's ongoing surveillance through ankle monitoring, which has significantly and severely interfered with his quality of life by preventing him from getting necessary care for his mental health conditions, inflicting constant physical pain and discomfort, causing daily psychological distress, and subjecting him to social stigma and ridicule. Petitioner has been forced to withdraw from his prescribed medical treatment plan for PTSD and severe sleep issues in order to be alert throughout the night and comply with ankle monitor charging requirements whenever necessary. In light of the government's new policy encouraging blanket application of ankle monitors, Petitioner faces the prospect of having this infringement on his liberty interest continue indefinitely.

51. The second factor, the risk of erroneous deprivation of liberty, favors Petitioner. In fact, here, an "erroneous deprivation" of Petitioner's liberty interest is not merely at risk, it has been realized and may continue indefinitely because the process available to him to challenge the conditions of his custody has already occurred during his custody hearing before the IJ. When 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. The

value of requiring ICE to follow an IJ's reasoned order is also certain because it guarantees that any restrictions on liberty were justified by findings obtained at a hearing before a neutral decision-maker at which both parties were able to present evidence and arguments.

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

53. For these reasons, the imposition of electronic surveillance on Petitioner in defiance of an IJ's order violates the procedural due process doctrine of the Fifth Amendment.

COUNT THREE: VIOLATION OF ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A), (B). Contrary to Law and Constitutional Right

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

55. 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).

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

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

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

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

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

COUNT FOUR: VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A) Arbitrary and Capricious

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

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

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

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

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

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

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

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

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

COUNT FIVE: VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(C) In Excess of Statutory Authority

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

71. 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." 5U.S.C. § 706(2)(C).

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

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

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

COUNT SIX: VIOLATION OF THE *ACCARDI* DOCTRINE

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

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

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

78. "[W]hen an agency promulgates a regulation protecting fundamental statutory or constitutional rights of parties appearing before it, the agency must comply with that regulation. Failure to comply will merit invalidation of the challenged agency action without regard to whether the alleged violation has substantially prejudiced the complaining party." *Leslie v. Attorney General*, 611 F.3d 171, 180 (3d Cir. 2010) (finding that the government's failure to implement its regulation requiring IJ's to advise noncitizens of their right to counsel violated noncitizens' right to counsel and undermined the structure of the hearing such that it automatically invalidated the agency action); *Aquino v. Attorney General*, 53 F.4th 761, 766 (3d Cir. 2022) ("So to clarify *Leslie*, we hold that for a regulation to protect a fundamental right, a violation must be a structural error that necessarily makes proceedings fundamentally unfair").

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

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

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

82. Regardless, ICE's failure to follow its rules is prejudicial to Petitioner where the rule implicates his fundamental liberty interest and due process rights. *See Leslie*, 611 F.3d at 182; *see also Delgado-Corea v. INS*, 804 F.2d 261, 263 (4th Cir. 1986) (holding that "violation of a regulation can serve to invalidate a deportation order when the regulation serves a purpose to benefit the [noncitizen]" and the violation affected "interests of the [noncitizen] which were protected by the regulation" (internal quotations and citation omitted)). If ICE were to follow its rules and obey the IJ's order—requiring release with

only the condition of payment of a $10,000 bond—it would be required to discontinue Petitioner's enrollment in ISAP and release him from the ankle monitor.

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

COUNT SEVEN: ULTRA VIRES ACTION

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

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

86. Although an IJ determined that Petitioner is not a flight risk or a danger to the community, ordering him released from custody on a $10,000 bond with no additional conditions, ICE is unlawfully subjecting him to an alternative form of custody through the ankle monitor and other onerous conditions.

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

88. Petitioner received a bond hearing because he is eligible for an IJ to review his detention and order him released. *See* 8 U.S.C. § 1226(a). Bond hearings before an IJ provide an impartial proceeding where ICE and the noncitizen are present and have access to counsel. At this hearing, both sides have the opportunity to present evidence, make legal arguments, and appeal an unfavorable decision. *See* 8 C.F.R. §§ 1003.19, 1236.1(d). Thus, here, the administrative process has been completed and an IJ determined the conditions of Petitioner's release—a $10,000 bond. Even if ICE is dissatisfied with the

outcome of that process, it has no authority to unilaterally impose additional conditions of release in violation of the IJ's bond order. If DHS is dissatisfied by the decision to release Petitioner on a $10,000 bond, DHS can appeal the decision to the BIA – which it did not do. Instead, DHS is trying to do an end run around the IJ bond hearing and the procedural protections it ensures.

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

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

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

a) Assume jurisdiction over this matter;

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

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

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

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

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

28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in this Complaint and Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

DATED this April 14, 2026.

/s/ Lorne J Kelman

LORNE J. KELMAN, *Attorney for Petitioner*