

APPENDIX A

SAMPLE REQUESTS TO DE-ESCALATE CONDITIONS OF SUPERVISION (FOR SUBMISSION TO ICE)

These requests are not a substitute for independent legal advice supplied by a lawyer familiar with a client's case. They are not intended as, nor do they constitute, legal advice. DO NOT TREAT THESE SAMPLE REQUESTS AS LEGAL ADVICE.



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LAW

July 25, 2023

Field Office Director
Baltimore Field Office
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement

RE: Request for Ankle Monitor Removal

[REDACTED], A [REDACTED]

Dear Field Office Director,

We are writing to respectfully request the de-escalation of [REDACTED]'s conditions of supervision with the timely removal of his ankle monitor because it causes him emotional and physical distress, affects his ability to access lawful employment, and is unnecessary.

[REDACTED] has worn the ankle monitor since September 2022, when he was released after more than five years of ICE detention. He should be relieved from the obligation of wearing the electronic monitoring device because he is neither a flight risk nor a danger to the community. Moreover, his continuous compliance with his other supervision obligations already fulfills the purpose of the ankle monitor.

I. The ankle monitor should be removed because [REDACTED] is not a flight risk.

[REDACTED] has a fixed address at [REDACTED] and a reliable phone number, which is [REDACTED]. His family ties to Maryland include his aunt, with whom he resides, and other aunts, uncles, and cousins living nearby. [REDACTED] has an Employment Authorization Document (EAD) and is lawfully employed in Maryland.

[REDACTED] has been fighting his immigration case for almost six years. He has every incentive to continue to participate in proceedings and appear in court. His case is currently at the BIA on appeal, and no briefing schedule has been set yet. It could be many more months or years before his case is finally resolved and continuing to require the ankle monitor during that process would be unreasonable.

Moreover, the ankle monitor is unnecessary to assure that [REDACTED] continues to reside in Maryland and appear in court because he already has other reporting obligations that confirm his location. At least once a month he is ordered to stay home to receive the phone call "visit" from ISAP, and about once a month he is ordered to remain at home during a mandated curfew.¹ On several occasions when ISAP did not conduct the visit or call as scheduled, [REDACTED] went above and beyond his reporting obligations and engaged counsel to contact ISAP and reschedule. More than once he was mandated to come to the ISAP Baltimore office the same or next day due to his GPS monitor malfunctioning, which he diligently did both times. He has fully complied with all these requirements and will continue to do so because, as he says, he respects the law and ICE's supervision systems.

Given these facts and all his other reporting obligations, [REDACTED] is not a flight risk, and the ankle monitor is not necessary.

¹ Unless otherwise noted, all statements and facts from [REDACTED] come from TAB A: *Declaration of [REDACTED]*, enclosed.

II. The ankle monitor should be removed because █ is neither a threat to the community nor a threat to national security.

█ has no criminal convictions. His one arrest, in 2017, involved nonviolent offenses relating to his homelessness and all charges were later dismissed. *See TAB B.* He is focused on working to support himself and spends the little time when he is not working resting at home. █ does not present a threat to public safety or to national security, and so the ankle monitor is also unnecessary on these grounds.

III. The ankle monitor should be removed because it causes █ emotional and physical distress and impacts his employment.

█ reports significant anxiety stemming from the ankle monitor. Primarily, he worries that he will suffer a serious injury while on the job, since he works in construction and the ankle monitor prevents him from properly securing his required footwear. What's more, he regularly trips because of the bulky device. He also indicates that when he is charging the ankle monitor, it becomes extremely hot and his skin very itchy, provoking fears that this will lead to health complications.

█ finds himself fixating on what will happen to him if he is unable to work because of an injury or health complication. Additionally, █ worries that the presence of the ankle monitor will cause employers to fire him or decline to hire him. His history of housing insecurity and experience with homelessness prior to being detained amplifies these anxieties and compounds his emotional distress. He reports feeling desperate and that what he most yearns for is freedom of movement of the affected ankle to give him peace of mind.

IV. Conclusion

For these reasons, we respectfully request the timely removal of his ankle monitor. █ has demonstrated full compliance with his other reporting alternatives, and he intends to continue to comply in the future. Those alternative reporting requirements in which he already participates make the ankle monitor unnecessary.

Thank you for your consideration of this request and please do not hesitate to contact us.

Sincerely,

/s/ Austin Rose

Austin Rose, Esq. | Senior Attorney |
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ENCLOSURES

- TAB A** Declaration of [REDACTED]
- TAB B** Criminal Dispositions
- TAB C** Employment Authorization Document Copy
- TAB D** Social Security Card
- TAB E** Form G-28



[REDACTED]

Sent via email and FedEx

Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
Department of Homeland Security
Boston Field Office
1000 District Avenue
Burlington, MA 01803

RE: [REDACTED] A# [REDACTED] De-escalation Request from ERO Check-ins

Dear Non-Detained Unit:

On behalf of Mr. [REDACTED] (“Mr. [REDACTED]”), A# [REDACTED] Just Futures Law respectfully requests that the ERO Boston Field Office (“ERO”) favorably exercise prosecutorial discretion by removing Mr. [REDACTED] from ERO check-ins, or in the alternative, assign him the minimum level of ERO check-ins such as one annual or once every two-year check-ins.

We believe taking our client off of ERO check-ins is warranted given the medical and humanitarian considerations set forth below. Moreover, Mr. [REDACTED] does not fall within ERO’s enforcement priorities, does not have a final order of removal, and does not have any criminal conviction.

This request for a favorable exercise of prosecutorial discretion is made based on the September 30, 2021, memorandum issued by Secretary Alejandro Mayorkas, which became effective on November 29, 2021 (“the Mayorkas memo”).¹ ERO’s authority for prosecutorial discretion extends throughout the entirety of the removal process, and at each stage ERO may decide whether or not to pursue any action.² The memo bases its guidance in the principle that the Department will be prioritizing its enforcement resources in a more selective way: “The fact an

¹ Secretary Alejandro N. Mayorkas, Guidelines for the Enforcement of Civil Immigration Law, <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>.

² *Id.*, p. 2 (“[E]nforcement discretion extends throughout the entire removal process, and at each stage of it the executive has the discretion to not pursue it.”).

individual is a removable noncitizen therefore should not alone be the basis of an enforcement action against them. We will use our discretion and focus our enforcement resources in a more targeted way.”³

I. Background

Mr. [REDACTED] [REDACTED] years old, has lived in the U.S. for over twenty years. He has two U.S. Citizen children and strong ties to his community. Mr. [REDACTED]’s physical and mental health are negatively affected by ICE check-ins, which exacerbate already existing conditions.

The following significant equities weigh towards Mr. [REDACTED]’s de-escalation:

- **Mr. [REDACTED] has been a resident of the U.S. for 21 years.** Mr. Langa is a [REDACTED] year old [REDACTED] national. He first entered the United States in March 2001 on a [REDACTED] Visa [REDACTED]. He has resided in the U.S. since then, totaling over twenty years of living in the country.
- **Mr. [REDACTED] has two U.S. Citizen children, a [REDACTED] year old and a [REDACTED] year old who has a developmental disability.** Mr. [REDACTED] provides financial and emotional support to both of his children.
 - One of Mr. [REDACTED]’s [REDACTED], [REDACTED] age [REDACTED] is [REDACTED]. As a result, [REDACTED] has a learning disability and requires accommodations in school. As Mr. [REDACTED] says in his personal statement, “[m]y [REDACTED] really need their father.”⁴
- **Mr. [REDACTED] has deep and well-established ties to the community.⁵ He is a community leader.**
 - Mr. [REDACTED] has a graduate degree in [REDACTED].
 - Before coming to the U.S., Mr. [REDACTED] taught negotiation and mediation skills, sat in mediation sessions, and facilitated workshops. Once in the U.S., he saw a need for these programs and became one of the founding members of [REDACTED] [REDACTED], a [REDACTED] based in [REDACTED] focusing on providing the community with education on conflict resolution and peacemaking skills.
 - Mr. [REDACTED] is also actively involved in his church.⁶
- **Mr. [REDACTED] suffers from [REDACTED] and a possible [REDACTED].⁷**
- **ICE supervision check-ins are harmful to Mr. [REDACTED]’s physical health and pre-existing conditions.**

³ *Id.*

⁴ Exhibit B, Personal Statement of Mr. [REDACTED] [REDACTED] [REDACTED]

⁵ Exhibit C, Letters of Support from Rev. [REDACTED] [REDACTED] [REDACTED] Rev. [REDACTED] [REDACTED] and [REDACTED]

⁶ *Id. See also* Exhibit C, Letter of Support from [REDACTED] [REDACTED]

⁷ Exhibit C, Letter from [REDACTED] MD.

- Dr. [REDACTED] notes, “The persistent anxiety that Mr. [REDACTED] experiences from the Smartlink surveillance program is likely exacerbating his high blood pressure. Additionally, he is a [REDACTED] year old man, making him more at risk to medical conditions such as cardiovascular disease which may lead to heart attacks, strokes, and other cardiovascular complications as a result of his high blood pressure.”⁸
- **ICE check-ins and electronic surveillance cause Mr. [REDACTED] emotional harm, resurfacing trauma from having lived under [REDACTED].**⁹
 - Based on Dr. [REDACTED]’s assessment, Mr. [REDACTED] meets criteria for a diagnosis of post-traumatic stress disorder (PTSD).¹⁰
 - As noted by [REDACTED] LICSW, “[t]he lack of autonomy and control that [REDACTED] experiences because of Smartlink replicates trauma and amplifies negative mental health repercussions.”¹¹
 - Mr. [REDACTED] notes in his personal statement, “The current monitoring system I am enrolled in through ICE reminds me of the surveillance system that I lived under in [REDACTED].”¹²
- **Frequent ICE check-ins would create significant financial hardship on Mr. [REDACTED] and his family.** Mr. [REDACTED] was recently approved for a work permit. Frequent check-ins would create a significant barrier in Mr. [REDACTED]’s life, making it more difficult to find a job and support his children.
- **Mr. [REDACTED] has a demonstrated history of compliance with ISAP supervision for nearly two years.** Since his release from ICE custody, Mr. [REDACTED] has complied with every condition of his release and has never been found to be in violation of any of its terms. Mr. [REDACTED] was taken into ICE custody in [REDACTED] of 2019 and released on [REDACTED], 2020. When released from ICE custody, Mr. [REDACTED] was placed on GPS monitoring and had to use an ankle monitor. In the past months since having the GPS ankle monitor removed, Mr. [REDACTED] has continued his check-ins with ICE via the SmartLink application, and he has consistently been in compliance with every requirement and appointment. In fact, in part due to Mr. [REDACTED]’s nearly two-year history of ISAP compliance as we understand, he was recently taken off the SmartLink check-in requirement and BI advised that Mr. [REDACTED] may remove the application off of his cellular phone.
- **Mr. [REDACTED] does not have a final order of removal. This case is pending appeal before the BIA and counsel for Mr. [REDACTED] is seeking prosecutorial discretion in the form of termination or administrative closure from opposing counsel at ICE and DOJ in regards to this case.**
- **Mr. [REDACTED] has no criminal convictions.** His prior case before the [REDACTED] for a nonviolent offense was granted pre-trial diversion [REDACTED]. This

⁸ *Id.* (emphasis added)

⁹ Exhibit B, Personal Statement of [REDACTED]

¹⁰ Exhibit C, Letter from [REDACTED] MD.

¹¹ Exhibit C, Letter from [REDACTED] LICSW.

¹² Exhibit B, Personal Statement of [REDACTED]

was Mr. [REDACTED]’s first and only matter in the criminal legal system. As the personal statement and letters of support demonstrate, Mr. [REDACTED] is an advocate for peace in his community.

II. Mr. [REDACTED] Does Not Fall Within ERO’s Enforcement Priorities.

The Mayorkas memo requires that ERO focus its efforts on individuals who are a threat to either (1) national security, (2) public safety, or (3) border security. Pursuant to the guidance established in the memo, Mr. [REDACTED] is not a threat to national security, public safety, or border security. Mr. [REDACTED] is not a threat to national security because he has never engaged in or has been suspected of terrorism, espionage, or any terrorism or espionage-related activiteis. Mr. [REDACTED] is not a threat to public safety because he does not have any criminal conviction, either in the U.S. or any other country. Lastly, Mr. [REDACTED] is not a threat to border security because he was not apprehended at a port of entry and he entered the United States far prior to November 1, 2020.

In conclusion, Mr. [REDACTED] is not a priority for ERO and thus merits a favorable exercise of prosecutorial discretion.

III. Mr. [REDACTED] Warrants a Favorable Exercise of Prosecutorial Discretion.

The Mayorkas memo states that exercising prosecutorial discretion is guided “by the fact that the majority of undocumented noncitizens who could be subject to removal have been contributing members of our communities for years.”¹³ Mr. [REDACTED] a [REDACTED] year old who has lived in the U.S. for over 20 years, is exactly that—a contributing member of his community. He is a founding member of [REDACTED] and an advocate for peace. He also has two U.S. Citizen children for whom he provides financial and emotional support.

Since his release on his own recognizance from ICE custody in 2020, Mr. [REDACTED] has complied with every condition of his release, including complying with the terms of his electronic monitoring. Up until he was removed from the program, Mr. [REDACTED] complied with his weekly check-ins through the SmartLink application and stayed home one day a month, even though he had been out of ICE custody for about a year and eight months. Despite these burdensome conditions and the barriers they create, Mr. [REDACTED] continuously complied with the terms of his release and continues to support his USC children and his community.

If taken off ERO check-ins, Mr. [REDACTED] will continue to abide by all conditions of his release and appear for all immigration-related appointments required by the immigration court. ERO’s check-in requirements place a significant burden on his physical and mental health as well as the ability to easily and more readily provide financial support and plan visits to his children. If

¹³ *Id.*

taken off check-ins, Mr. [REDACTED] will be able to more seamlessly contribute to his family and his community, just as he has for the last 20+ years living in the U.S.

Attached to this letter, please find the following exhibits:

- A. A fully executed G-28;
- B. A personal statement from Mr. [REDACTED]
- C. Letters of support from the following individuals:
 - o Dr. [REDACTED], MD diagnosing Mr. [REDACTED] with PTSD and noting his pre-existing physical and mental health conditions;
 - o [REDACTED], LICSW confirming symptoms of PTSD and noting physical and emotional stress due to immigration supervision;
 - o [REDACTED] volunteer with [REDACTED] and the [REDACTED] Coordinator with the [REDACTED];
 - o [REDACTED] member of the [REDACTED] Committee for [REDACTED] at [REDACTED] in [REDACTED]
 - o Rev. [REDACTED] Minister [REDACTED] member; and
 - o [REDACTED] Attorney for Prisoners' Legal Services of MA

For the foregoing reasons, including the positive equities listed above and the fact he has complied with every check-in requirement since his release from custody, Mr. [REDACTED] merits a favorable exercise of prosecutorial discretion and should be taken off ERO check-ins. Per the guidance issued in the 2017 ATD Handbook, we expect to receive your response in 2 business days.¹⁴ Please do not hesitate to reach out should you have any questions regarding the contents of this request.

Sincerely,

[REDACTED]
[REDACTED]
Just Futures Law
Phone: [REDACTED]
Email: [REDACTED]

¹⁴ Alternatives to Detention Handbook - Intensive Supervision Appearance Program, Document Number: 11305, p. 18-19, August 16, 2017.