



**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515**

February 22<sup>nd</sup>, 2022

The Honorable Alejandro Mayorkas  
Secretary of Homeland Security  
Washington, DC 20528

Dear Secretary Mayorkas:

We write to express our concern over the drastic increase in Immigration and Customs Enforcement (ICE)'s Intensive Supervision Appearance Program (ISAP) which relies on punitive surveillance, such as the use of ankle shackles, and facial recognition and geolocation tracking through a mobile application called SmartLINK as an ill-conceived "alternative" to detention.

ICE has excessively deployed ISAP supervision on immigrants who would have otherwise not been detained. Ankle shackles, once a rarity, are now "standard equipment".<sup>1</sup> Individuals previously considered low risk such as family units, asylum seekers, or pregnant or nursing people are subjected to intensive supervision and for excessive periods of time.<sup>2</sup> Shockingly, ICE's ISAP program – originally proposed in 2004 as a more "humane" alternative to detention with the goal of reducing the number of detained immigrants<sup>3</sup> – now monitors 182,607

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<sup>1</sup> Molly Hennessy-Fiske, *Immigrants Object to Growing Use of Ankle Monitors After Detention*, L.A. Times, Aug. 2, 2015, <https://www.latimes.com/nation/immigration/la-na-immigrant-ankle-monitors-20150802-story.html>.

<sup>2</sup> David Yaffe-Bellany, *"It's Humiliating": Released Immigrants Describe Life With Ankle Monitors*, Texas Tribune, Aug. 10, 2018, <https://www.texastribune.org/2018/08/10/humiliating-released-immigrants-describe-life-ankle-monitors>; E. C. Gogolak, *Ankle Monitors Weigh on Immigrant Mothers Released From Detention*, N.Y. Times, Nov. 15, 2015, <https://www.nytimes.com/2015/11/16/nyregion/ankle-monitors-weigh-on-immigrant-mothers-released-from-detention.html>; Sara DeStefano, *Unshackling the Due Process Rights of Asylum-Seekers*, Virginia Law Review 105, no. 8, December 29, 2019.

<sup>3</sup> Angelika Albaladejo, *Despite Biden's Promises, Immigrant Detention and Surveillance Grow*, Capital & Main, Aug. 10, 2021, <https://capitalandmain.com/despite-bidens-promises-immigrant-detention-and-surveillance-grow>; Julie Pittman, *Released into Shackles: the Rise of Immigrant E-Carceration*, 108 CA. Law Review 2, Apr. 2020.

individuals at any given time<sup>4</sup>, making it the largest supervision program of any U.S. law enforcement agency.<sup>5</sup> According to recent reports, DHS is seeking to expand this program to 400,000 individuals by the end of the year and to add house arrest as a supervision condition.<sup>6</sup>

As members of Congress who represent many of the immigrant communities disproportionately impacted by this program, it is important for us to underscore the extreme physical and mental damage that ISAP has on our residents and their families. A recent report found that over 90% of participants experienced physical harm due to ankle shackles including swelling, open wounds, and even permanent scars and electrical shocks. 88% of immigrants in the ISAP program reported the shackles harmed their mental health and an alarming 12% reported experiencing suicidal thoughts.<sup>7</sup> The onerous surveillance and fear of re-detention takes a mental toll, possibly retraumatizing people who are fleeing persecution. Moreover, the restrictive supervision terms and social stigma around ISAP make it difficult for individuals to sustain employment and relationships with family, causing social isolation.<sup>8</sup> Such harms are exacerbated by the extremely long periods of time — an average of 629 days — that ICE requires individuals to be in the program.<sup>9</sup>

Moreover, ICE's budget for the ISAP program has grown exponentially alongside its budget for immigrant detention. Between 2006 to 2021, ISAP's budget increased from \$28 million to \$475 million, while the detention budget increased from \$1 billion to \$2.8 billion.<sup>10</sup> ICE cannot reasonably call ISAP an "alternative to detention" if the program effectively subjects more immigrants to the agency's supervision while it simultaneously expands formal detention programs. Furthermore, since the program's start in 2004 ISAP has been operated by B.I. Incorporated (B.I.), a subsidiary of the private prison company GEO Group.<sup>11</sup> ICE's multi-billion dollar partnership with B.I. is yet another troubling indication that ISAP fits into the broader system of profiting from surveillance and caging, as opposed to providing a proven, community-

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<sup>4</sup> U.S. Immigration and Customs Enforcement, *Detention Oversight: Detention Statistics*, accessed Feb. 18, 2022, <https://www.ice.gov/detain/detention-oversight#tab2>.

<sup>5</sup> In the last five months alone, ICE has enrolled more than 45,000 immigrants into this intensive program. ICE, Detention Management, <https://www.ice.gov/detain/detention-management>; *see also*, Pew Charitable Trs., *Use of Electronic Offender-Tracking Devices Expands Sharply* (2016).

<sup>6</sup> Ted Hesson, "U.S. to try house arrest for immigrants as alternative to detention," Reuters, Feb. 8, 2022 <https://www.reuters.com/world/us/us-try-house-arrest-immigrants-alternative-detention-2022-02-08/>

<sup>7</sup> Benjamin N. Cardozo School of Law Kathryn O. Greenberg Immigration Justice Clinic, Freedom for Immigrants & Immigrant Defense Project, *Immigration Cyber Prisons: Ending the Use of Electronic Ankle Shackles*, Report (July 2021).

<sup>8</sup> *Id.*; *see also* MediaJustice, *No More Shackles*, Report (Apr. 2020), [https://mediajustice.org/wpcontent/uploads/2020/04/NoMoreShackles\\_PretrialReport\\_2019-final-draft.pdf](https://mediajustice.org/wpcontent/uploads/2020/04/NoMoreShackles_PretrialReport_2019-final-draft.pdf).

<sup>9</sup> ICE, Detention Management, <https://www.ice.gov/detain/detention-management>.

<sup>10</sup> *See supra* fn. 3; *see also* Press Release, Appropriations Committee Releases Fiscal Year 2022 Homeland Security Funding Bill, U.S. House of Representatives, <https://appropriations.house.gov/news/press-releases/appropriations-committee-releases-fiscal-year-2022-homeland-security-funding>.

<sup>11</sup> ICE's ISAP contract with B.I. is worth \$2.2 billion. *The GEO Group Announces Five-Year Contract With U.S. Immigration and Customs Enforcement for Intensive Supervision and Appearance Program (ISAP)*, Business Wire, March 20, 2020, <https://www.businesswire.com/news/home/20200324005145/en/The-GEO-Group-Announces-Five-Year-Contract-With-U.S.-Immigration-and-Customs-Enforcement-for-Intensive-Supervision-and-Appearance-Program-ISAP>.

based approach<sup>12</sup> to serving immigrant communities outside of the walls of immigration detention facilities.

Lastly, we are alarmed by ICE's rapid enrollment of individuals into the ISAP SmartLINK program, which requires individuals to download a mobile application onto their phone that subjects them to facial recognition, geolocation tracking, and video and voice communication with ICE at certain intervals. Currently around 64% of the people in ISAP (95,782 individuals) are subjected to the SmartLINK program.<sup>13</sup> We have serious concerns over data sharing and privacy of this application including the ability of ICE and B.I. to track individuals in real-time and collect and repurpose the data. SmartLINK's privacy policy is extremely broad,<sup>14</sup> and this technology has the capability of surveilling not only the subject but also bystanders – including U.S. citizens and individuals with legal status – raising further civil rights concerns and creating a potential for unwarranted surveillance of U.S. residents without just cause, their knowledge or their consent. We already know that data collected from ankle shackles has been used to conduct enforcement and deportation operations.<sup>15</sup>

For the foregoing, we respectfully request that ICE take the following actions or explain why they will not by March 8<sup>th</sup>, 2022:

- *ICE should significantly reduce the number of individuals subjected to ISAP by conducting a wide scale de-escalation review of its ISAP docket, and adjust its funding request for the program accordingly:* ICE should conduct a thorough de-escalation review of its ISAP case docket across all ICE Field Offices. There should be a prosecutorial discretion practice of routine de-escalation for the ISAP docket and a presumption of de-escalation after 90 days in the ISAP program. Ankle shackles and SmartLINK should not be the de facto supervision practice as ICE currently operates. ICE must also consider the prosecutorial discretion requests of individuals or counsel asking for ISAP de-escalation. If ICE will not commit to these policy changes, please explain why in writing.
- *ICE should publicly disclose its data and civil liberties policy for the SmartLINK application.* The agency should be transparent about what types of data it or B.I. collect or should be allowed to collect on an individual and their surrounding community, and

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<sup>12</sup> National Immigrant Justice Center, *A Better Way: Community-Based Programming as an Alternative to Immigrant Incarceration*, Apr. 2019, <https://immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2019-04/A-Better-Way-report-April2019-FINAL-full.pdf>

<sup>13</sup> ICE, Detention Management, <https://www.ice.gov/detain/detention-management>

<sup>14</sup> Just Futures Law and Mijente, *ICE Digital Prisons: The Expansion of Mass Surveillance As ICE's Alternative to Detention*, Report (May 2021), <https://www.flipsnack.com/justfutures/ice-digital-prisons-1u8w3fnd1j/Full-view.html>; B.I. SmartLINK Privacy Policy, B.I. Incorporated, <https://web.archive.org/web/20210526234349/https://bi.com/products-and-services/bi-smartlink-privacy-policy/>.

<sup>15</sup> Jeff Amy, *Documents: Plant Owners 'Willfully' Used Ineligible Workers*, Associated Press, Aug. 9, 2019, <https://apnews.com/article/711d52e4bccd41bc894907a9e1645d09>.

for what purpose. If ICE will not commit to these policy changes, please explain why in writing.

- *ICE should reevaluate its ISAP IV contract with B.I.* As President Biden indicated earlier this year, private entities should not profit from incarceration.<sup>16</sup> The same applies here — no private entity should profit from surveillance and e-carceration. If ICE will not commit to these policy changes, please explain why in writing.

As a nation that values immigrant communities as part of the fabric of our society, we can no longer criminalize immigration and replace brick and mortar prisons with high-tech ones. Instead, we must divert resources from detention programs like ISAP to community-based services that serve the very real needs of our communities.

Signed,



RASHIDA TLAIB  
Member of Congress



JESÚS G. "CHUY" GARCÍA  
Member of Congress



AYANNA PRESSLEY  
Member of Congress

JAMAAL BOWMAN, ED.D.  
Member of Congress

JUDY CHU  
Member of Congress

CORI BUSH  
Member of Congress

YVETTE D. CLARKE  
Member of Congress

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<sup>16</sup> Joel Rose, *Biden Wants To End For-Profit Immigrant Detention. His Administration Isn't So Sure*, NPR, June 15, 2021, <https://www.npr.org/2021/06/15/1006728924/biden-wants-to-end-for-profit-immigrant-detention-his-administration-isnt-so-sur>.

J. LUIS CORREA  
Member of Congress

JAMES P. MCGOVERN  
Member of Congress

DANNY K. DAVIS  
Member of Congress

GRACE MENG  
Member of Congress

ADRIANO ESPAILLAT  
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ELEANOR HOLMES NORTON  
Member of Congress

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Member of Congress

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Member of Congress

RAÚL GRIJALVA  
Member of Congress

ILHAN OMAR  
Member of Congress

PRAMILA JAYAPAL  
Member of Congress

MARK POCAN  
Member of Congress

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Member of Congress

JAN SCHAKOWSKY  
Member of Congress

BARBARA LEE  
Member of Congress

NYDIA M. VELÁZQUEZ  
Member of Congress

ALAN S. LOWENTHAL  
Member of Congress

BONNIE WATSON COLEMAN  
Member of Congress