

December 16, 2024

*VIA EMAIL*

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Dear Messrs. Cohen and Elsayed:

Securus Monitoring (“Securus Monitoring” or “Company”) provides this further response to the letter dated July 26, 2024, from Senator Elizabeth Warren, Congressman Tony Cardenas and other Members of Congress and as a supplement to Securus Monitoring’s initial response dated August 8, 2024. This response begins by summarizing the relevant legal framework governing electronic monitoring, then explains Securus Monitoring’s electronic monitoring business line. Lastly, Securus Monitoring addresses the specific questions posed by your office.

## **I. ELECTRONIC MONITORING**

The Bail Reform Act, enacted on September 20, 1966, expanded the bail rights of federal criminal defendants by giving non-capital defendants a statutory right to be released pending trial, on their personal recognizance or on personal bond, unless a judicial officer determined that there was a serious risk of flight or danger to the community.<sup>1</sup> Today, release and detention determinations

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<sup>1</sup> Bail Reform Act of 1966, Pub. L. No. 89-465 80 Stat. 214 (1966) (prior to 1984 amendment).

are governed by the Bail Reform Act of 1984.<sup>2</sup> This Act authorizes preventive detention, but it requires courts to consider the *least* restrictive condition or combination of conditions needed to reasonably assure a defendant’s appearance in court *and* the safety of others.<sup>3</sup>

The Bail Reform Act of 1984 establishes that in all cases a judicial officer *shall* apply a presumption of release on personal recognizance unless the *individual* circumstances of a case warrant more restrictive release conditions.<sup>4</sup> If the presumption of release fails to apply, a criminal defendant may be: (i) released on a condition or combination of conditions; (ii) temporarily detained to permit revocation of conditional release or deportation; (iii) or detained.<sup>5</sup> Accordingly, in appropriate circumstances, the government’s regulatory interest in community safety can outweigh an individual’s liberty interest.<sup>6</sup> Under these circumstances, Electronic Monitoring (“EM”) often becomes an option to balance community safety and individual liberty.

Pursuant to 18 U.S.C. § 3601, federal defendants who have been sentenced to probation or supervised release are required to be supervised by a U.S. probation officer “to the degree warranted by the conditions specified by the sentencing court.”<sup>7</sup> A court *must* impose any statutorily mandated “standard” conditions of supervision, and a court *may* also impose discretionary “special” conditions of supervision.<sup>8</sup>

EM is an example of a “special” condition of probation<sup>9</sup> or supervised release. Its use is governed by the Bail Reform Act of 1984 and the Administrative Office of the U.S. Courts. The National Association of Attorneys General’s Criminal Law Committee has endorsed its use. The United States Sentencing Commission has endorsed its use as a tool within a larger framework of sentencing options in the United States Sentencing Guidelines.<sup>10</sup>

In general, EM is used to track and supervise individuals who are under various forms of legal supervision. EM provides a tool to verify—in real-time—a person’s whereabouts for specific risk issues or court-ordered release conditions.<sup>11</sup> In this way, EM aids law enforcement in effectively satisfying specific court-mandated supervision functions without loss of officer efficiency.

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<sup>2</sup> 18 U.S.C §§ 3141-3150.

<sup>3</sup> Pretrial Release and Detention in the Federal Judiciary, <https://www.uscourts.gov/services-forms/probation-and-pretrial-services/pretrial-services/pretrial-release-and-detention> (last visited, Nov. 27, 2024).

<sup>4</sup> 18 U.S.C § 3143(a)(1).

<sup>5</sup> 18 U.S.C § 3143(a)(1)-(4).

<sup>6</sup> *United States v. Salerno*, 481 U.S. 739, 107 S.Ct. 2095, 95 L.Ed. 2d 697 (1987).

<sup>7</sup> 18 U.S.C. § 3601.

<sup>8</sup> Administrative Office of the U.S. Courts, “Overview of Probation and Supervised Release Conditions”, <https://www.uscourts.gov/services-forms/overview-probation-supervised-release-conditions> (last visited, Nov. 27, 2024).

<sup>9</sup> Authority to Impose Location Monitoring, <https://www.uscourts.gov/services-forms/probation-and-pretrial-services/supervision/authority-impose-location-monitoring> (last visited Nov. 27, 2024).

<sup>10</sup> The United States Sentencing Guidelines (“USSG”) makes specific references for the use of EM under USSG §§ 5B1.3 and 5D1.3, respectively, as a “special condition” of probation and supervised release.<sup>10</sup> Under the USSG’s guidance, EM devices are considered under the special conditions category of probation and supervised release and can be used in connection with a court-imposed home detention or curfew order.

<sup>11</sup> Darren Gowen, Remote Location Monitoring – Supervision Strategy to Enhance Risk Control, Vol. 65 No. (2001), [https://www.uscourts.gov/sites/default/files/65\\_2\\_8\\_0.pdf](https://www.uscourts.gov/sites/default/files/65_2_8_0.pdf).

Additionally, EM can be used to monitor defendants in the various stages of the criminal law process. In the pretrial context, EM is an alternative to detention used to assist in ensuring community safety.<sup>12</sup> In the post-conviction and post-release contexts, EM is viewed as more restrictive than regular supervision but less restrictive than imprisonment.<sup>13</sup>

EM offers benefits for EM users, their families, government agencies, and society. For EM users and their families, the benefits arise from an EM user's ability to largely maintain their normal activities. This includes being present in their community, maintaining familial relationships, continuing gainful employment, receiving education, and accessing a variety of social programs.

Government agencies also save criminal justice resources with EM, as EM is more cost-effective than incarceration. For example, "[t]he cost of imprisonment is about six times higher than the cost of electronic monitoring."<sup>14</sup> Preventing a rearrest of an EM user can also save police time, court time, jail or prison time, and ultimately, state and federal funds.<sup>15</sup> EM can also alleviate the impact of prison overcrowding on correctional agencies and incarcerated individuals.

Moreover, EM benefits society by reducing recidivism. For example, a National Institute of Justice-funded study of Florida EM users found that EM significantly reduced the rate of repeat offenses by 31%.<sup>16</sup> Similarly, a District of Columbia Crime Policy Institute study concluded that, on average, EM reduces arrests by 24% and would prevent at least one arrest 84% of the time in a one year period.<sup>17</sup> EM thereby benefits society by preventing offenses from occurring.

## **II. SECURUS MONITORING**

Securus Monitoring provides EM hardware and software to government agencies and private entities who work with EM users (together, the "supervising entities"). The great majority of the Company's contracts are with government agencies. While Securus Monitoring works in the EM industry, it does not act as an enforcement agency.

The Company uses two business models in its contracts with supervising entities. Under both models, the parameters of Securus Monitoring's products and services being provided – and the rates charged for those products and services – are dictated by the supervising entity and the related

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<sup>12</sup> Court & Community: Home Confinement, [https://www.nyspt.uscourts.gov/forms/Home\\_Confinement.pdf](https://www.nyspt.uscourts.gov/forms/Home_Confinement.pdf) (last visited Nov. 27, 2024)

<sup>13</sup> Court & Community: Home Confinement, [https://www.nyspt.uscourts.gov/forms/Home\\_Confinement.pdf](https://www.nyspt.uscourts.gov/forms/Home_Confinement.pdf) (last visited Nov. 27, 2024)

<sup>14</sup> U.S. DOJ Dep't of Justice, Office of Justice Programs, National Institute of Justice, "Electronic Monitoring Reduces Recidivism" (Sept. 2011).

<sup>15</sup> John Roman, et al., District of Columbia Crime Policy Institute, *The Costs and Benefits of Electronic Monitoring for Washington, D.C.*, p.6 (Sept. 2012).

<sup>16</sup> Types of community supervision include probation, drug offender probation, sex offender probation, house arrest, supervised conditional release, supervised parole, addiction recovery supervision. U.S. DOJ Dep't of Justice, Office of Justice Programs, National Institute of Justice, "Electronic Monitoring Reduces Recidivism," pp. 17-21 (Sept. 2011).

<sup>17</sup> John Roman, et al., District of Columbia Crime Policy Institute, *The Costs and Benefits of Electronic Monitoring for Washington, D.C.*, p.6 (Sept. 2012).

contract terms. Securus Monitoring **never** dictates the terms of an individual's supervision or decides whether those terms were violated.

The first business model (the "Primary Model") applies to [REDACTED] percent ([REDACTED]) of individuals using Company devices. With this model, Securus Monitoring employees play no role in monitoring EM users and have no communication with these individuals. Rather, the Company's involvement is limited to providing hardware and software to the supervising entity. The supervising entity sets parameters for the software, and the software notifies the supervising entity when a parameter has been violated. The supervising entity then responds to that notice as they deem appropriate. At no point does Securus Monitoring determine what parameter to set, whether an EM user is out of compliance with the terms of their supervision, or whether repercussions for such non-compliance should be taken. Additionally, the Company does not collect money from the individuals under supervision.

For example, if the supervising entity determines that an EM user must stay within a certain locational range, the supervising entity will have that range input into the software and configured for notification if the range is breached. If the EM user goes outside the range, the software will notify the supervising entity. The supervising entity will then determine whether the breach constitutes a violation of the EM user's supervision term and whether any action should be taken with the EM. Securus Monitoring has no contact with the EM user.

The second business model applies to the remaining [REDACTED] percent ([REDACTED]) of individuals using Company devices (the "Remaining [REDACTED] Percent" model). Like in the Primary Model, the Company provides hardware and software to the supervising entity, and the supervising entity (not Securus Monitoring) determines what parameters to set in the software. Unlike in the Primary Model, contracts for the Remaining [REDACTED] Percent require the Company to play a role in supervising EM users and/or assist with fee collection. Not all contracts in the Remaining [REDACTED] Percent model require both supervision assistance and fee collection.

For the subset of contracts that require Securus Monitoring to assist with supervision, employees do so by acting as a liaison between the supervising entity and the EM user, inputting and/or updating parameters that are provided by the supervising entity, and reporting to the supervising entity if a parameter has been violated. Depending on the terms of the contract with the supervising entity, employees may also be responsible for installing, repairing, and removing EM devices on EM users. However, the parameters of supervision are still set by the supervising entity and the Company has no discretion in determining the terms of supervision or whether or not there is a violation.

For the subset of contracts that require the Company to collect fees from EM users, the Company does so as set forth in the contract. Securus Monitoring may inform a supervising entity if an EM user is unable to pay. However, the Company does not determine what happens to EM users who cannot pay. These decisions are made and enforced by the supervising entity.

### **III. SECURUS MONITORING'S RESPONSE TO QUESTIONS POSED IN YOUR JULY 26, 2024, LETTER**

Our responses to your office's questions are below.

- 1. Please provide the following data, disaggregated by race/ethnicity, gender, the type of technology used for supervision, and whether the person is pre- or post-trial:**
  - a. Total number of individuals who are currently supervised using your EM devices or software.**
  - b. Total number of individuals who were supervised using your EM devices or software at any point over the past year.**

1(a)-(b): The Company respectfully declines to respond to this request as it seeks confidential and proprietary business information protected from disclosure.

- 2. Over the past year, how many individuals using your EM devices or software were reported to a governmental authority for a technical violation of supervision terms?**
  - a. What percentage were reported for failing to pay EM-related fines or fees?**

Securus Monitoring lacks the information needed to substantively answer this question. The Company does not determine EM conditions, is generally unaware of an EM user's supervision terms, and does not "report" individuals for alleged violations of conditions. Rather, the Company's software allows supervising entities to set parameters and receive a notification if a parameter is violated. The notifications that Securus Monitoring provides to the supervising entities indicate that a parameter has been violated. The supervising entity then determines how the parameter relates to a supervision term.

- 3. In the last year, how much has your company collected from EM fines and fees?**
  - a. Please provide a breakdown of total collections from each type of fine or fee.**

The Company respectfully declines to provide this information as it seeks confidential and proprietary business information protected from disclosure.

- 4. Please provide your company's revenue and profits for each of the last five years.**
  - a. What percentage of revenue was from EM services?**
  - b. What was the total compensation (including equity and bonuses) paid to your top three executives in each of the past five years?**

4(a)-(b): The Company respectfully declines to provide this information as it seeks confidential and proprietary business information protected from disclosure.

**5. Please indicate if your company has any subsidiary, parent, or affiliate companies that provide EM services and provide those companies' names.**

Securus Monitoring does not have any subsidiary, parent, or affiliate companies that provide EM services.

**6. Please list all jurisdictions with which you contract to provide EM services. For each jurisdiction, please indicate:**

Securus Monitoring contracts with supervising entities (mostly government entities) in all states other than Connecticut, Delaware, Hawaii, Vermont, and Wyoming. Securus Monitoring also contracts with agencies and/or entities in Canada, Puerto Rico, and the District of Columbia.

**a. Whether your company has the exclusive contract to provide EM services in that jurisdiction.**

The Company does not track which contracts have exclusivity provisions and cannot answer this question without manually reviewing every contract. It is generally aware that there are instances where Securus Monitoring has the exclusive contract to provide EM services in certain jurisdictions. However, in these instances, the exclusivity is required by the supervising entity and not the Company. Securus Monitoring's standard agreements do not require exclusivity clauses.

**b. How much you charge for EM services.**

The costs for Securus Monitoring's EM services are set by its contracts with supervising entities and vary based on the services the Company provides under the contract. The costs can include, but are not limited to, the cost of the hardware and software, device repair costs, and labor where applicable. These fees range from \$1 per day to around \$13 per day, depending on the contract and the product(s) and service(s) provided.

**c. Whether the fee is charged to the government entity (state, city, county, court district, etc.), the individual being monitored, or a hybrid of the two.**

**i. If charged to the individual on EM, do you transfer any funds you receive from the individual back to the jurisdiction?**

**ii. Are any installation fees or any other auxiliary fees also charged to supervised individuals?**

6(c)(i)-(ii): Under the Primary Model, applicable fees are assessed to the supervising entity. For the Remaining ██████ Percent, the Company collects applicable fees from the EM user and/or the supervising entity. In some of the contracts where the fee is assessed to the EM user rather than the supervising entity, a portion of the fee is then remitted to the supervising entity.

- d. Whether your company or the government entity oversees drafting and enforcing rules provided to people on EM.**

The Company does not draft or enforce conditions for individuals utilizing its EM services.

- e. Please share a copy of the contract(s) between you and the jurisdiction.**

The Company is unable to provide each contract without causing an undue burden.

- 7. Please describe the technical capabilities of the various devices or software your company provides.**

- a. What are the device's or software's capabilities for tracking, storing, and analyzing geolocation or biometric data?**
- b. How long do device batteries take to recharge and last before needing to be recharged?**
- c. If worn, are the devices waterproof?**

7(a-c): Securus Monitoring's offerings include the below.

- **BLUtag®**: This is a GPS tracking device, which provides 24/7 location tracking for curfew and location compliance. It collects and stores geolocation data, and does not collect, store, or analyze biometric data. The devices require a 60-minute continuous charge and have a battery life of approximately 50 hours. The devices are waterproof up to 50 feet.
- **BLUband®**: This is a radio frequency curfew-only tracking device that must be used in conjunction with an ancillary home-based device. These devices provide 24/7 time and attendance data to determine curfew compliance. It does not collect, store, or analyze geographic location or biometric data. The battery does not require charging and lasts approximately 18 months. The devices are waterproof up to 50 feet.
- **VeriTracks®**: This is a customer interface software used by supervising entities to monitor EM compliance with set parameters. The software collects, stores, and analyzes geolocation data, and collects and stores biometric data. The software operates and is made available to agencies 24/7.

- BLUhome® collects, stores, and analyzes biometric data only. It is a home-based unit that can be used in conjunction with BLUtag® and is required for use with the BLUband® device. BLUhome® utilizes RF technology to confirm curfew with both products. BLUhome® is able to collect fingerprint data from a supervised individual if required by the supervising entity. This fingerprint data is only stored locally on the BLUhome® device.

**d. Please provide any materials you share with EM users directing them in the appropriate care and use of each of your various devices or software.**

Securus Monitoring does not generally provide materials to EM users directly. The supervising entities who are in contact with the individuals on EM advise enrollees on the care and use of the devices.

**8. Please share your company’s protocol for approving a supervised individual’s request to leave home. (If no company-wide standard exists, please provide a selection of at least five samples of written protocols or standards from your local operations.) Whether nationally or broken out by jurisdiction, please indicate:**

- a. How many requests to leave home did you receive over the past 12 months?**
- b. What percentage of those requests were granted?**

8(a)-(b): In the Primary Model, Securus Monitoring’s services do not include scenarios where it would receive requests to leave home. For the Remaining ██████ Percent, requests to leave home may be communicated to Securus Monitoring employees. In these scenarios, Company employees rely on the requirements and direction of the supervising entity and process the requests consistent with those requirements. The Company does not track how many requests are received or granted.

**9. Does your company share supervised individuals’ location data with law enforcement?**

- a. What is your company’s protocol for determining whether to share location data with law enforcement?**
- b. For how many supervised individuals did you share location data with law enforcement during the past 12 months? Please disaggregate by type of technology and type of law enforcement agency.**

9(a)-(b): Securus Monitoring shares location data with law enforcement if required by contract, subpoena, or other legal process. The Company does not track how often it has shared location data with law enforcement, including in the past 12 months.



**10. What personal data does your company collect about individuals supervised using your devices or software?**

The personal data in Securus Monitoring's system is provided by the supervising entity. Securus Monitoring does not verify the accuracy or completeness of the data. The Company's software includes the data fields shown below, but none are mandatory.

- Product
- Name
- Gender
- Race
- Physical characteristics
- Contact information
- Vehicle information
- Supervision levels and dates
- Employment information

**11. What is your company's policy on the following:**

- a. The use, destruction, and retention of individuals' data?**
- b. Sharing location data with other private entities?**
- c. Ceasing EM monitoring after it is no longer legally required?**
- d. Responding to supervised individuals' violations of the payment terms of release?**
- e. Reporting supervised individuals' pregnancies to government officials?**

11(a)-(e): Pursuant to contract requirements, the data collected is the property of the supervising entity. Securus Monitoring uses, retains, and/or shares that data as required by contracts and generally does not destroy data unless specified in a contract's terms. Under the Primary Model, the supervising entity is responsible for ceasing EM services and removing physical hardware. For some contracts applicable to the Remaining [REDACTED] Percent, the Company may remove the physical hardware at the supervising entity's direction. Securus Monitoring does not deal with any payment terms of release or report pregnancies to government officials.

- 12. Please provide a copy of any standard operating procedures and guidelines that your company provides to employees who supervise individuals on EM and describe the company's system for holding those employees accountable to company guidelines.**

The Company does not supervise EM users under the Primary Model. For the Remaining [REDACTED] Percent, any instructions, procedures, or guidelines relating to the terms of supervision are given to the supervised individual by the supervising entity responsible for the specific contract at issue.

- 13. What training, if any, do you provide employees on the constitutional prohibition against jailing someone due to an inability to make payments?**

The Company cannot and does not have the ability or authority to jail anyone. It does not provide training on the topic.

- a. What is your company's protocol for responding to failures to make payments?**

Securus Monitoring plays no role in fee collection under the Primary Model. For the Remaining [REDACTED] Percent, if a person has not paid, the Company will follow the requirements of the supervising entity. If the person cannot or will not pay the contractually required fees, the Company notifies the supervising entity and follows the supervising entity's direction on how to proceed.

- b. How does your company assess an individual's ability to pay company fees?**

Securus Monitoring does not assess an individual's ability to pay. These decisions are made by the supervising entities.

- 14. What is your company's policy regarding collection of payment for EM services?**

- a. Please describe all the methods you use to collect payment from people subject to monitoring (or, if relevant, any family members or guarantors) for EM services.**
- b. Do you contract with, or sell debt to, any private collection agencies? If so, which ones?**
- c. Please share the standard language you use in notices to individuals explaining the possible consequences of failure to pay (or failure to timely pay) charges associated with their EM services.**

14(a)-(c): Securus Monitoring plays no role in fee collection under the Primary Model. For the Remaining [REDACTED] Percent, the Company offers the ability to pay online or by money order. If the person cannot or will not pay the contractually required fees, the Company will notify the

supervising entity and follow the supervising entity's direction on how to proceed. Securus Monitoring does not send individuals who have failed to pay to collections agencies.

Securus Monitoring does not provide formal notices to individuals on the consequences of failure to pay. However, at the beginning of an individual's supervision, based on direction from the supervising entity, Securus Monitoring informs individuals what is expected of them and the consequences for failure to pay, which may result in termination if the supervising entity so decides.

**15. What role do you play in setting the terms of an EM user's supervision?**

Securus Monitoring plays no role in setting the terms of an EM user's supervision.

**16. What role do you play in deciding whether to extend the period of electronic supervision or deciding whether someone has violated the terms of their supervision?**

- a. Do you notify the court or any state agency directly about suspected violations? If so, please share your company's policy regarding these communications.**
- b. Do you notify the individual EM user directly about suspected violations? If so, please share your company's policy regarding these communications.**

16(a)-(b): Securus Monitoring plays no role in deciding whether to extend the period of electronic supervision or whether someone has violated the terms of supervision. Securus Monitoring has no supervisory role under the Primary Model. For the Remaining ██████ Percent, the Company's role is limited to determining whether a parameter imposed by the supervising entity has been breached and informing the supervising entity accordingly. The Company does not inform courts or EM users of suspected violations.

**17. What is your company's process for testing the reliability of your devices or software?**

- a. What standard of accuracy do you require devices or software meet?**
- b. How often do you test the devices or software?**
- c. Please share data from the most recent tests of the reliability of the devices or software.**

17(a)-(c): Performance and functional testing is completed on all devices before distribution. The Company ensures all devices meet performance guidelines for battery voltage, cellular power, and GPS accuracy with minimal GPS skip points. The specific data related to our testing is proprietary, confidential and trade secret information and protected under federal and state law from disclosure.

**18. In the past 12 months, how many GPS alerts were false positives?**

**a. What percentage of GPS alerts were false positives?**

The Company is unaware of any GPS alerts that would be considered “false positives” in the past 12 months.

**19. What are your company’s safety standards for the devices or software?**

**a. What is your process for testing these safety standards?**

All devices meet or exceed Federal Communications Commission, Industry Canada, and Underwriters Laboratories standards. The specific data related to our testing is proprietary, confidential and trade secret information and protected under federal and state law from disclosure.

**20. What supervision program services, if any, do you offer?**

**a. For each, please indicate whether the service is voluntary or compulsory, the cost for participation (if any), and the consequence for failing to pay for the service.**

The Company does not offer supervision program services. Securus Monitoring does not supervise EM users under the Primary Model. Employees play a role in supervising individuals in the Remaining [REDACTED] Percent, but they do not control or direct the program. Any instructions, procedures, or guidelines relating to the terms of supervision are given to the supervised individual by the supervising entity responsible for the specific contract at issue.

Very truly yours,

Squire Patton Boggs (US) LLP



Gabriel Colwell