

Congress of the United States

Washington, DC 20515

July 26, 2024

Dennis Jesielowski
Chief Operating Officer
BI Incorporated
6265 Gunbarrel Avenue Suite B
Boulder, Colorado 80301

Brian R. Evans
Chief Executive Officer
GEO Group
4955 Technology Way
Boca Raton, Florida 33431

Dear Mr. Evans and Mr. Jesielowski:

We write to express deep concern about emerging trends in the electronic monitoring (EM) industry. Individuals who are subject to EM face a range of abuses that are largely hidden from public view, and they are often charged abusive and unnecessary fees that effectively penalize those who live in poverty. Because your company is a key player in the electronic monitoring market, we seek additional information to better understand your operations.

Electronic monitors are technologies designed to track and analyze an individual's movements or location through a wearable or non-wearable device, such as an ankle monitor, wristwatch, or smartphone app.¹ In the criminal system, EM is used for people on pretrial release, probation, parole, and other forms of court supervision.

The United States' reliance on EM has skyrocketed almost tenfold since 2005.² EM is often considered an alternative to detention, and its rise has coincided with a reduction in America's prison population.³ However, as jurisdictions increasingly default to the use of EM, many individuals who are placed on monitors would have otherwise been released without supervision rather than detained.⁴ A recent report by the Vera Institute found that the expansion of EM often is not associated with a reduction of the jail population, and indeed EM exposes individuals to new risks of jail time for technical violations of EM conditions.⁵ In effect, EM appears to quietly

¹ Fines & Fees Justice Center, "Electronic Monitoring Fees," September 2022, pp. 1-2, <https://finesandfeesjusticecenter.org/content/uploads/2022/09/FFJC-Electronic-Monitoring-Fees-Survey-2022.pdf>.

² *Id.*

³ U.S. Department of Justice Office of Justice Programs, "U.S. Correctional Population Continued to Decline in 2021," press release, February 23, 2023, <https://www.ojp.gov/files/archives/pressreleases/2023/us-correctional-population-continued-decline-2021#:~:text=The%20number%20of%20males%20in,%25%20and%20females%20decreased%2025%25.>

⁴ Vera Institute, "People on Electronic Monitoring," Jess Zhang, Jacob Kang-Brown, and Ari Kotler, January 2024, pp. 7-8, <https://www.vera.org/downloads/publications/Vera-People-on-Electronic-Monitoring.pdf>; Prison Policy Initiative, "Not an alternative: The myths, harms, and expansion of pretrial electronic monitoring," Emmett Sanders, October 30, 2023, https://www.prisonpolicy.org/blog/2023/10/30/electronic_monitoring/.

⁵ Vera Institute, "People on Electronic Monitoring," Jess Zhang, Jacob Kang-Brown, and Ari Kotler, January 2024, p. 7, <https://www.vera.org/downloads/publications/Vera-People-on-Electronic-Monitoring.pdf>; *see also* Harvard Kennedy School, "Between a Rock and a Hard Place: The Social Costs of Pretrial Electronic Monitoring in San Francisco," Sandra Susan Smith, September 2022, p. 11, <https://www.hks.harvard.edu/publications/between-rock-and-hard-place-social-costs-pretrial-electronic-monitoring-san-francisco>.

widen the net of who all is subject to supervision, while imposing severe burdens on those who are subject to monitoring.⁶

EM is part of a growing trend of the government handing off the administration of criminal and immigration supervision to the private sector — and then allowing private companies to collect excessive fees. A few large companies dominate the North American EM market,⁷ which is estimated to have reached \$1.2 billion as of 2023.⁸ In the criminal system, almost all states pay EM companies for their services, while also permitting EM companies to charge “users” an additional supervision fee.⁹ “User” fees typically range from \$5-30 per day¹⁰ — a significant upcharge from the \$2-3 daily fee often billed to cities when they cover the cost of EM.¹¹ In addition, EM companies charge up to hundreds of dollars in hidden junk fees for mandatory services, such as for battery replacements or device installations.¹² These fees are imposed on top of any probation or substance-use monitoring fees to which the monitored individual may also be subject. All told, a person on EM can end up owing over \$3,000 per year to an EM company.¹³ Unlike bail payments, that money is not reimbursable, even if the person is not ultimately convicted.¹⁴ EM also inflicts peripheral financial burdens, including through conditions that require maintaining a landline telephone and that impede finding and retaining employment.¹⁵

These unnecessary and excessive fees drive many individuals on EM — who disproportionately live below the poverty line¹⁶ — into crushing cycles of debt.¹⁷ Some companies refuse to remove EM devices until debt to the company is paid in full, even after the monitor is no longer legally

⁶ ProPublica, “Digital Jail: How Electronic Monitoring Drives Defendants Into Debt,” Ava Kofman, July 3, 2019, <https://www.propublica.org/article/digital-jail-how-electronic-monitoring-drives-defendants-into-debt>.

⁷ Pew Charitable Trusts, “Use of Electronic Offender-Tracking Devices Expands Sharply,” September 2016, p. 2, https://www.pewtrusts.org/-/media/assets/2016/10/use_of_electronic_offender_tracking_devices_expands_sharply.pdf.

⁸ Vera Institute, “People on Electronic Monitoring,” Jess Zhang, Jacob Kang-Brown, and Ari Kotler, January 2024, pp. 7, 16, <https://www.vera.org/downloads/publications/Vera-People-on-Electronic-Monitoring.pdf>.

⁹ Fines & Fees Justice Center, “Electronic Monitoring Fees,” September 2022, p. 4-5, <https://finesandfeesjusticecenter.org/content/uploads/2022/09/FFJC-Electronic-Monitoring-Fees-Survey-2022.pdf>.

¹⁰ *Id.*, pp. 17-19; American Bar Association, “Privatization of Services in the Criminal Justice System,” June 2020, p. 9, https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls-sclaid-def-aba-privatization-report-final-june-2020.pdf.

¹¹ ProPublica, “Digital Jail: How Electronic Monitoring Drives Defendants Into Debt,” Ava Kofman, July 3, 2019, <https://www.propublica.org/article/digital-jail-how-electronic-monitoring-drives-defendants-into-debt>.

¹² National Consumer Law Center, et al., “Unfair or Deceptive Fees ANPR, R207011,” February 8, 2023, p. 16-17, https://www.nclc.org/wp-content/uploads/2023/02/Unfair-or-Deceptive-Fees-ANPR-R207011_NCLC-et-al.pdf.

¹³ Fines & Fees Justice Center, “Electronic Monitoring Fees,” September 2022, p. 17-19, <https://finesandfeesjusticecenter.org/content/uploads/2022/09/FFJC-Electronic-Monitoring-Fees-Survey-2022.pdf>.

¹⁴ *Id.*; The Bail Project, “Policy Position Brief: On Electronic Monitoring,” Jeremy Cherson, August 29, 2022, <https://bailproject.org/policy/electronic-monitoring/>.

¹⁵ *Id.*, p. 3.

¹⁶ *Id.*, p. 7.

¹⁷ Brennan Center for Justice, “Revenue Over Public Safety,” Ram Subramanian, et al., July 6, 2022, p. 14, <https://www.brennancenter.org/our-work/research-reports/revenue-over-public-safety>; American Civil Liberties Union, “Three People Share How Ankle Monitoring Devices Fail, Harm, and Stigmatize,” Ayomikun Idowu, et al., September 29, 2022, <https://www.aclu.org/news/criminal-law-reform/ankle-monitoring-devices-fail-harm-and-stigmatize>.

required,¹⁸ with debt continuing to mount until the monitor is removed. Furthermore, despite constitutional prohibitions to the contrary, those who cannot pay are sometimes jailed for violating the payment terms of their release.¹⁹

EM also imposes serious non-financial burdens. Compared to people under general court supervision without EM, individuals on EM are bound by more extensive conditions.²⁰ They are more often subject to curfews and are heavily confined to their homes, sometimes while tethered to a wall to charge the EM device, and face arbitrary denials of requests to leave home for essential purposes.²¹ They also face an erosion of privacy rights: built-in microphones and cell phone apps capture and store their data,²² which is sometimes shared with third parties for marketing purposes.²³ At times, data is also shared with law enforcement, and EM conditions frequently permit warrantless searches of homes.²⁴ Furthermore, EM devices cause psychological harm, including sleep deprivation and anxiety, as well as physical harm, with one-fifth of wearers experiencing electric shocks.²⁵ Finally, software glitches are common.²⁶ Glitches can trigger false positives that interfere with wearers' ability to maintain employment and can even land them in jail for a suspected violation of the terms of release.²⁷

¹⁸ Fines & Fees Justice Center, "Digital Jail: How Electronic Monitoring Drives Defendants Into Debt," Ava Kofman, July 30, 2019, <https://finesandfeesjusticecenter.org/articles/electronic-monitoring-debt/>.

¹⁹ ProPublica, "Digital Jail: How Electronic Monitoring Drives Defendants Into Debt," Ava Kofman, July 3, 2019, <https://www.propublica.org/article/digital-jail-how-electronic-monitoring-drives-defendants-into-debt>.

²⁰ George Washington Law School, "Electronic Prisons: The Operation of Ankle Monitoring in the Criminal Legal System," Kate Weisburd, 2021, p. 19, <https://go.gwu.edu/electronicprisons>.

²¹ *Id.*; Cardozo Law Review, "From Decarceration to E-Carceration," Vol. 41, Chaz Arnett, May 14, 2019, p. 643, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3388009.

²² ProPublica, "Digital Jail: How Electronic Monitoring Drives Defendants Into Debt," Ava Kofman, July 3, 2019, <https://www.propublica.org/article/digital-jail-how-electronic-monitoring-drives-defendants-into-debt>; Vera Institute, "People on Electronic Monitoring," Jess Zhang, Jacob Kang-Brown, and Ari Kotler, January 2024, p. 27, <https://www.vera.org/downloads/publications/Vera-People-on-Electronic-Monitoring.pdf>; George Washington Law School, "Electronic Prisons: The Operation of Ankle Monitoring in the Criminal Legal System," Kate Weisburd, 2021, p. 9, <https://go.gwu.edu/electronicprisons>.

²³ George Washington Law School, "Electronic Prisons: The Operation of Ankle Monitoring in the Criminal Legal System," Kate Weisburd, 2021, p. 10-13, <https://go.gwu.edu/electronicprisons>; San Francisco Standard, "ACLU sues over SF sheriff subjecting people on ankle monitors to 'unlimited' search and surveillance conditions," Michael Barba, September 8, 2022, <https://sfstandard.com/2022/09/08/aclu-sues-over-sf-sheriff-subjecting-people-on-ankle-monitors-to-unlimited-search-and-surveillance-conditions/>; Usenix, "Electronic Monitoring Smartphone Apps: An Analysis of Risks from Technical, Human-Centered, and Legal Perspectives," Kentrell Owens, et al., August 2022, p. 4086, <https://www.usenix.org/system/files/sec22-owens.pdf>.

²⁴ *Id.*

²⁵ Vera Institute, "People on Electronic Monitoring," Jess Zhang, Jacob Kang-Brown, and Ari Kotler, January 2024, p. 8, <https://www.vera.org/downloads/publications/Vera-People-on-Electronic-Monitoring.pdf>.

²⁶ Vox, "The faulty technology behind ankle monitors," Delia Paunescu, December 1, 2019, <https://www.vox.com/recode/2019/12/1/20986262/ankle-monitor-technology-reset-podcast>.

²⁷ Vera Institute, "People on Electronic Monitoring," Jess Zhang, Jacob Kang-Brown, and Ari Kotler, January 2024, p. 19, <https://www.vera.org/downloads/publications/Vera-People-on-Electronic-Monitoring.pdf>; Brookings, "Decades later, electronic monitoring of offenders is still prone to failure," commentary, Jack Karsten and Darrell M. West, September 21, 2017, <https://www.brookings.edu/articles/decades-later-electronic-monitoring-of-offenders-is-still-prone-to-failure/>.

The burdens of EM are particularly severe for vulnerable groups, including unhoused individuals without reliable access to electricity to charge the devices, domestic violence survivors and vulnerable youth whose EM conditions force them to remain in unsafe homes, and individuals with intellectual or physical disabilities who may face additional difficulty complying with EM's intricate and often ambiguous conditions. In the criminal system, EM's nightmarish cascade of consequences is disproportionately faced by Black Americans, who are more likely to be placed on EM and face more restrictive EM conditions than their white counterparts.²⁸

Despite the risks posed by this system of monitoring, EM companies are subject to little oversight or regulation. Jurisdictions inadequately oversee the operations of EM companies, even when outsourcing government functions, such as the responsibility of communicating with supervised individuals about apparent EM violations.²⁹ And sometimes it is not even a government jurisdiction but a bail bond agent that orders an individual to wear an EM device.³⁰ EM companies are sometimes given enormous responsibility to set the rules by which individuals on EM must live, such as the particular circumstances under which someone may leave home for employment or medical purposes. In practice, individuals are largely subject to the whims of EM company employees, who may arbitrarily deny urgent requests to leave home or abuse their power by extorting individuals for extra money and threatening jail time for those who do not pay.³¹

Meanwhile, there is little evidence on the efficacy of EM to counterweigh these harms. In theory, EM is meant to reduce rates of recidivism and failure to appear for court, but the data on whether it does so is mixed at best — with some studies even finding that criminal fees are generally associated with an *increase* in recidivism.³²

²⁸ UCLA Criminal Justice Program, “Pretrial Electronic Monitoring in Los Angeles County: 2015 through 2021,” Alicia Virani, 2021, p. 10, https://law.ucla.edu/sites/default/files/PDFs/Criminal_Justice_Program/Electronic_Monitoring_in_Los_Angeles_Report-FINAL.pdf; Fines & Fees Justice Center, “Electronic Monitoring Fees,” September 2022, p. 8, <https://finesandfeesjusticecenter.org/content/uploads/2022/09/FFJC-Electronic-Monitoring-Fees-Survey-2022.pdf>.

²⁹ George Washington Law School, “Electronic Prisons: The Operation of Ankle Monitoring in the Criminal Legal System,” Kate Weisburd, 2021, p. 22, <https://go.gwu.edu/electronicprisons>.

³⁰ Consumer Financial Protection Bureau, “Justice-Involved Individuals and the Consumer Financial Marketplace,” January 2022, p. 11, https://files.consumerfinance.gov/f/documents/cfpb_jic_report_2022-01.pdf.

³¹ Vera Institute, “People on Electronic Monitoring,” Jess Zhang, Jacob Kang-Brown, and Ari Kotler, January 2024, p. 16-17, <https://www.vera.org/downloads/publications/Vera-People-on-Electronic-Monitoring.pdf>; Truthout, “Lawsuit Confronts Extortion of Prisoners by Electronic Monitoring Firm,” Emmett Sanders & James Kilgore, August 2, 2018, <https://truthout.org/articles/lawsuit-confronts-extortion-of-prisoners-by-electronic-monitoring-firm/>.

³² Advancing Pretrial Policy & Research, “Pretrial Location Monitoring,” October 2023, pp. 3-5, [https://www.mdrC.org/sites/default/files/PJC_Special_Conditions.pdf](https://cdn.filestackcontent.com/security=policy:eyJleHBpenkiOjQwNzg3NjQwMDAsImNhbGwiOlsicGljayIsInJlYWQilCj3cmI0ZSIsIndyaXRlVXJsIiwic3RvcmluLjI0IiwicmVtb3ZlIiwicnVuV29ya2Zsb3ciXX0=,signature:9df63ee50143fbd862145c8fb4ed2fcc17d068183103740b1212c4c9bc858f63/wu8eOlvGSoSOGGCaqwU8; mdrC, “Assessing the Effectiveness of Pretrial Special Conditions,” June 2023, pp. 2-3, <a href=); Brookings, “Study after study shows ex-prisoners would be better off without intense supervision,” commentary, Jennifer L. Doleac, July 2, 2018, <https://www.brookings.edu/articles/study-after-study-shows-ex-prisoners-would-be-better-off-without-intense-supervision/>; Fines & Fees Justice Center, “Electronic Monitoring Fees,” September 2022, p. 8, <https://finesandfeesjusticecenter.org/content/uploads/2022/09/FFJC-Electronic-Monitoring-Fees-Survey-2022.pdf>; Tyler Giles, “The Government Revenue, Recidivism, and Financial Health Effects of Criminal Fines and Fees,” September 9, 2023, pp. 6, 27, 36, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4568724.

EM appears to offer many jurisdictions a cheap shortcut at the cost of individuals' safety, freedom, and privacy. Amidst growing reliance on EM, it is crucial that Congress and the public understand how EM companies operate. Therefore, we request responses to the following questions no later than August 8, 2024, with respect to your company and any of your subsidiaries that provide EM services:

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.
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?
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.
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?
5. Please indicate if your company has any subsidiary, parent, or affiliate companies that provide EM services and provide those companies' names.
6. Please list all jurisdictions with which you contract to provide EM services. For each jurisdiction, please indicate:
 - a. Whether your company has the exclusive contract to provide EM services in that jurisdiction.
 - b. How much you charge for EM services.
 - 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?
 - d. Whether your company or the government entity oversees drafting and enforcing rules provided to people on EM.
 - e. Please share a copy of the contract(s) between you and the jurisdiction.

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?
 - 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.
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?
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.
10. What personal data does your company collect about individuals supervised using your devices or software?
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?
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.
13. What training, if any, do you provide employees on the constitutional prohibition against jailing someone due to an inability to make payments?
 - a. What is your company's protocol for responding to failures to make payments?
 - b. How does your company assess an individual's ability to pay company fees?
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.
15. What role do you play 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.
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.
18. In the past 12 months, how many GPS alerts were false positives?
- a. What percentage of GPS alerts were false positives?
19. What are your company's safety standards for the devices or software?
- a. What is your process for testing these safety standards?
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.

If you are unable to answer a question above, please explain why and share any alternative information relevant to the question. Thank you for your attention to this important matter.

Sincerely,




Elizabeth Warren
United States Senator



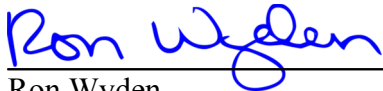
Tony Cárdenas
Member of Congress



Cory A. Booker
United States Senator



Sydney Kamlager-Dove
Member of Congress



Ron Wyden
United States Senator



David J. Trone
Member of Congress



Peter Welch
United States Senator



Rashida Tlaib
Member of Congress



Bernard Sanders
United States Senator



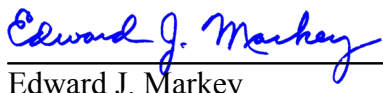
Delia C. Ramirez
Member of Congress



Jeffrey A. Merkley
United States Senator



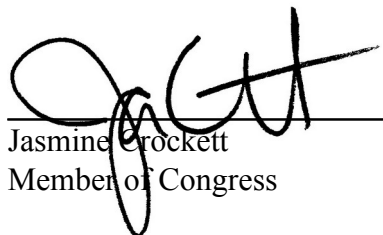
Pramila Jayapal
Member of Congress



Edward J. Markey
United States Senator



Cori Bush
Member of Congress



Jasmine Crockett
Member of Congress



Alexandria Ocasio-Cortez
Member of Congress

Danny K. Davis

Danny K. Davis
Member of Congress

Ayanna S. Pressley

Ayanna Pressley
Member of Congress