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Migrant Surveillance: How the Federal Government Monitors Asylum Seekers

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Part 1: The Journey

When Vivian Hamilton arrived in New York City, she was exhausted from what she describes as the most difficult month in her 41 years. A native of Honduras fleeing gang violence, she and her two sons had travelled through Guatemala and Mexico by bus, car, and foot, trudged a river, and finally crossed the border in El Paso before being apprehended by border security on July 7, 2014.

The border patrol there asked where she was going and whether the two boys were hers. After turning over identification for herself and her sons, she told them she was traveling to New York City to stay with her niece's mother. The officers made her sign documents, at first refusing to let her read it, claiming she would not understand it anyway. They were surprised to learn she speaks English: Hamilton is from the Bay Islands off the northern coast of Honduras, where English has been the chief language since the 19th century due to the Island's past as an English colony.

She and her sons were put in immigration detention while officials called the relative and spoke to her, and Vivian says she had to ask her for \$200 for a bus ticket to Houston, where she'd need to purchase another ticket for the Greyhound to New York City. She was told when she got to New York she'd have to check in with Immigrations and Custom Enforcement ahead of a hearing regarding her immigration status.

Hamilton arrived at ICE's office in Federal Plaza in the Bronx and was met with a room full of other immigrants, mostly from different parts of Central America. After officers seated the adults and children in separate areas, the adult group was shown a video by an ICE officer.

It was an instructional video for a black ankle bracelet with a GPS; an electronic monitor of the kind mostly associated with parolees in the United States. When it became clear from the video that the immigrants in the room, many of whom were mothers with children, were to be fitted with the bracelet, many began crying, Hamilton says.

"They were heartbroken," Hamilton recalls.

The ICE employee explained that the monitor would be applied to their ankles for three months, and that they were required to check in once a month at the ICE office.

They were taken one at a time to a private room to be fitted with the bracelet. When the first woman was taken to an adjacent room to have her ankle monitor fitted, Hamilton says, she fainted as the device was being applied to her body. From outside the room, mothers and children watched the scene unfold.

When it was Hamilton's turn, she says the ICE officer looked at her and asked why she was so sad. Hamilton told him she just had a lot going through her mind. The officer assured her that she wouldn't have the bracelet on forever, promising it would be off in three months. Both of Vivian's sons watched as the bracelet was applied to her ankle. Her youngest, 13 at the time, began crying.

Since 2005, the U.S. government's immigration and customs enforcement agency, or ICE, has used electronic monitoring, consisting of ankle bracelets utilizing GPS and RFID technologies, as well as nascent voice recognition software, as a method of mitigating flight-risk. Flight-risk is the term used in the criminal justice world for the likelihood that someone awaiting potential incarceration or deportation can escape supervision. It's a way of making sure that undocumented people in precarious legal situations make it to immigration trials.

Increasing concerns among those in the civil liberties and immigration field is the fact that the program, called Intensive Supervision Appearance Program, or ISAP, is run under a contract by Behavioral Interventions, a subsidiary of GEO Group, one of the two largest private prison companies in the U.S. ICE renews its contract with B.I. every five years.

"For private companies, the degree to which profit motive influences how they deliver services (is a concern)," says Mary Small, policy director at Detention Watch Network.

ISAP, referred to by the U.S. government as an "Alternative to Detention" for the immigration system, comports elements of the criminal justice system that have been used since the 1990's into the immigration arena, creating a thorny ethical layer that has triggered a debate in the immigrant's rights world, including muted dissent from the American Civil Liberties Union.

To some, electronic monitoring can be appropriate in the immigration arena if used ethically and if it targets those with criminal backgrounds. To others, including many under monitoring, ankle bracelets bring the enormous weight and stigma from the parolee and criminal justice world to those who have committed no crime.

“It’s only supposed to be for the highest criminal wearing something like that,” Vivian says of her time wearing the bracelet, “And I didn’t want nobody in the street to think I was a criminal.”

She says at the time the bracelet was put on her, she had been wearing a skirt, making the bracelet visible. She was so terrified that she’d be mistaken for a criminal that she stopped at a store before taking a cab home to buy pants to avoid any misunderstandings.

She says she barely left the house during the two and a half months she wore an ankle bracelet, and when she did, “I made sure it was covered.”

Wanda Salaman, an immigrants rights advocate who works with Hamilton, worked with many women in the Bronx in the ISAP program and ran into the same concerns, as many are marked by a sense of humiliation and social stigma.

“Sometime they overheated. They were ashamed to go outside. They had to wear long pants all the time. Sometimes it would turn off without them knowing,” Salaman says. Or, she says, the device would not function properly and the person under supervision would get a visit by ICE officers early in the morning.

The bracelets also require recharging, adding an extra challenge to mobility. After the bracelet’s 10-hour charge runs out, the person under monitoring has to plug the device into a socket to recharge it, or it will begin loudly beeping. If they don’t recharge it, they get a visit from ICE.

The beeping has led to a layer of embarrassment for some under monitoring. Ruthie Epstein, a lawyer for the New York Civil Liberties Union, told a story about one immigrant whose bracelet ran out of charge while she was riding on the Long Island Rail Road. When the beeping began, people began staring at her. Fearing that people would think she had a bomb or was a danger to them, she got off at the wrong stop to avoid embarrassment.

ISAP was initially intended for those awaiting deportation trials, advocates say, but an influx of Central American immigrants escaping gang violence and residential displacement has led the program to be used in large numbers for mothers with small children seeking asylum from countries like Honduras.

The program has had its funding increased every year since it began. President Obama’s budget for fiscal year 2017 set aside \$126 million, an increase of \$11 million from the previous year intended to accommodate a total of 53,000 slots.

Advocates have been concerned that under the Obama administration the program has been used as a crutch to deal with the influx of Central American immigrants. While no one knows what will happen to its budget under the next presidential administration, there is growing concern about how the program could be used under an administration whose leader has been openly hostile toward undocumented immigrants.

Part II: A Controversial Solution

The Obama administration has been dealing with a large spike in illegal immigration from Central America beginning in 2014 and has attempted a messy range of solutions to mitigate a political crisis. In June of 2014, at the peak of the spike, the border patrol caught 10,631 minors and 16,357 family units.

According to the Migration Policy Institute, the trend of migrants coming from Central America will only increase. A reduction in the flow of migrants since the 2014 spike have been temporary, the result of policies implemented collaboratively between Mexico and the United States. From October 2015 to January 2016, U.S. border patrol apprehended 20,455 unaccompanied children and 24,616 family units at the border, mostly from Mexico and the “northern triangle,” El Salvador, Honduras, and Guatemala.

Over the past 15 years, a growing share of immigrants apprehended at the border have been from Central America rather than Mexico. 2014 was the first year that more immigrants apprehended at the border were from Central America, according to the Southwest Border Patrol. The reasons for the surge are increased gang violence

and poverty, according to the migration policy institute. El Salvador's homicide rate in 2015 was 104 per 100,000 people, the largest in the world. Honduras has a homicide rate of 90 per 100,000.

The problem has led to a change in migration demographics, toward immigrants who are families, mothers with children, or unaccompanied minors, with whom U.S. immigration courts are not properly equipped to deal.

The U.S. has tried to dissuade asylum-seekers from making the treacherous, often fatal journey up through Mexico through a series of advertisements in conjunction with the Mexican government. In January, the Obama administration announced a plan to work with the United Nations High Commissioner for Refugees to deal with increased asylum-seekers from Northern Triangle countries. It increases the amount of refugee processing that the U.S. will handle, but allows more of the processing to be done out of country.

Additionally, Congress has approved an increase in federal immigration judges, in the hopes of fast-tracking the cases currently pending. Asylum seekers are often caught in limbo, sometimes waiting for their trial to play out for up to four years, and very few are granted asylum.

In this context, a solution like electronic monitoring, immigration officials argue, is both cost-effective and humane.

But monitoring has divided immigrant activists. Some prefer it to detention: The A.C.L.U. called for an increase in alternative to detention programs generally, but recommended community based programs over electronic monitoring.

An A.C.L.U. attorney said that the group has no official stance on specific alternatives to detention, and in a public letter the organization said that it is preferable, and cheaper to detention.

Camille Mackler, a former A.C.L.U. attorney who works for the New York Immigration Coalition, is among those who thinks electronic monitoring is inhumane when applied to asylum-seekers, many of whom are mothers with children.

"In the context of Central American refugees in general, the use of ankle bracelets is outrageous," Mackler says, pointing out the stigma of wearing the bracelets, often associated with criminals.

Mackler says the Obama administration's policies toward Central American immigrants have been misguided, widening a net of surveillance against people who are mostly victims of violence.

"I don't think with the current policies in the Obama administration in terms of Central American refugees that there was any chance they would just let them in and not exert control over their movement," Mackler says. She says the ankle bracelets are a kind of insurance for the government, who are concerned about the volume of Central American refugees that have arrived in the past 2 years.

Vivian's experience matches those that immigrant advocates are concerned about. She separated from her husband years ago, when her youngest son was three months old. When she tried to apply for a passport in Honduras, the family court system required her to either have her husband present or formally divorce him. But she had not seen her husband in years.

As part of her proceedings to file for legal guardianship of her son, the courts required that she make three public declarations in the newspaper. But when she published the first declaration, she says, her husband's brother, a member of the largest gang in Honduras, saw that she was filing for legal guardianship and grew angry, claiming that the children should be his.

"He came to my house and he said, why do I want to take his rights from being his father," she says. Hamilton's brother-in-law refused to let her take the children out of the country, afraid she might not bring them back. He threatened to kill her and take the children if she continued the process of advertising her request for legal guardianship in the newspaper. Hamilton went on to the second and third publication, but before the third publication ran, she moved herself and her sons to Puerto Cortez, a different city in Honduras, for safety.

A friend back at her old apartment told her that after the third newspaper ad ran, her brother-in-law arrived at the door with "hundreds of men" looking for her, "knocking down the door." The friend says when he learned she had left town, he was determined to find her.

That's when Hamilton got in touch with her relative in the U.S., who told her that she could have a place to stay if she were to make the treacherous journey.

“I said I don’t have anyone to support me, if she’ll support me I’ll try it. I’ll take the journey,” Hamilton says. Salaman says Vivian’s experiences are common among refugees and asylum-seekers who’ve been under monitoring.

“Some of them had to give a war tax, some of them had violence against them,” she says, describing a “range of violence for going against gang members.”

Fernando Lopez, an immigrant rights organizer based in New Orleans, says the area has also seen an influx of immigrants from Central America who have been tracked by electronic monitors. There was an influx of immigrants after Hurricane Katrina, Lopez says, and in the past few years, there’s been a surge of undocumented immigrants from Honduras in particular. He says the number of people under electronic monitoring jumped in 2014, when the immigration spike happened. He estimates the number went from about 120 to 600.

Lopez has noticed that the bracelets were originally intended for people awaiting deportation hearings, but during the spike of migration they became more commonplace for asylum-seekers and refugees. Now “everyone is getting an ankle bracelet, regardless,” he says.

There are a range of reasons behind the more recent immigrant to New Orleans, Lopez says, but most of them stem from gang violence. Some gangs try to recruit children when they turn 10 years old, he says. Others are LGBT people fleeing discrimination. Others are escaping political and economic uncertainty. He says that after the 2009 coup in Honduras that narco-trafficking picked up and the country never recovered economically.

Lopez is troubled that those fleeing violence are given treatment associated with criminals.

“It’s a terrible condition to live to seek refuge and that’s what you get,” Lopez says. “It’s beyond the numbers ??and?? how problematic this program is.” He says that many under monitoring are embarrassed to leave the house, many face depression, mental and physical health problems.

In addition, he says that there is a discriminatory culture among the caseworkers and ICE employees who deal with those under monitoring. “They’re mean to people,” Lopez says. He says people often wait from 8 a.m. until 4 p.m. just to have paperwork signed. And there is a culture among those processing immigrants that promotes self-deportation, causing some to become discouraged and leave, despite the fact that many people have very strong cases for asylum.

Ruthie Epstein at the ACLU says that the monitors are better than detention, but that they should be used in the fewest cases possible. She’s more concerned about the lack of transparency in ISAP and on behalf of ICE. While ICE has published an official criteria for enrollment in ISAP, the consistency with which it applies that criteria has come under question. Epstein says it’s often not made clear to those being monitored or being released from monitoring as to why they are considered a flight-risk or not. And the length of monitoring can often feel arbitrary, decided at the whim of an ICE officer.

Hamilton eventually had her ankle bracelet taken after two and a half months. She says she became sick after the first two months and after a doctor’s visit discovered she had gallstones. She needed surgery to have the gallstones removed, but was hesitant. She told the doctor that she was worried because she didn’t have health insurance, and because she had an ankle monitor that would have to be removed. The doctor told her she’d be granted emergency medical insurance and that they’d see about having the monitor removed. While at Lincoln Hospital, her monitor lost its signal, and she got home to phone calls from ICE asking her where was. When she went into the office the next day to explain her situation, she was told to get a letter from the hospital prior to the surgery.

The Friday before she went to pick up the letter, she received a phone-call from her officer telling her she had good news. She could pass by the office to have her ankle bracelet removed. She asked if they needed the letter. She was told no, she didn’t need the letter anymore, she’d be released that day.

But she says other friends had to have the bracelet on for the full three months, some for up to six months, and when those under monitoring compared notes, the reasons were never clear.

“We don’t know that ICE has a consistent policy that’s being applied in a case by case basis,” Epstein says.

Part III: The Technology

GPS and RFID technologies have been used for parolees since the 1990's. Since the late nineties, there were discussions about using the technology in contexts outside of the criminal justice system, according to Mike Nellis, the editor of the Journal of Offender Monitoring, a trade publication based in the UK.

Nellis says there's nothing inherent in the technology that would keep it confined to a criminal justice setting and believes it can be used ethically in the immigration sphere, with caveats.

"It is a potentially dangerous technology," Nellis says. But, he adds, "it can be tamed by organizations in civil society."

One of the things Nellis says is dangerous about the technology is privatization.

"It's in the interest of organizations that make it that extend the market for as large as possible," Nellis says. Some have argued in the criminal justice and immigration world that private prison companies could persuade lawmakers to widen the net of who is ripe for monitoring, a genuine concern as private detention facilities go out of favor due to public backlash.

Nellis says that the private prison companies that make electronic monitors are competitive and try to undercut one another.

"It's a war out there in terms of technology," Nellis says. Companies update their models frequently and provide technical specifications on their websites, often using esoteric language that civil servants making contracts aren't familiar with.

"Obviously, they can baffle you with science if they want to," Nellis says. "Most civil servants won't know enough."

There are two types of electronic monitors used by GEO Group in both offender monitoring and immigration. One is a cheaper, lightweight technology called RFID, or radio frequency identification. RFID ankle monitors are usually fitted with a thin, plastic strap that breaks easily. RFID tags have been around in other contexts since 1982, and Nellis describes the technology as a "simple means of keeping people in a location." The technology is reliable, he says, and simply allows someone to be pinpointed. For this reason, it's typically used to keep people under some form of house arrest.

"It turns the home into jail space," Nellis says.

For this reason, they are a more low-security solution. "They won't be able to tell when you go out of your house, but they'll know you've broken the tag," Nellis says.

GPS is the heavier, more expensive, more sophisticated technology. The tag is "about the size of a mouse or a cigarette pack," Nellis says. Whereas RF only works over a short range, GPS can work anywhere in the world. But GPS requires a more powerful battery that needs to be recharged.

Nellis says one use of GPS is to create "inclusion" and "exclusion" zones. The tag will vibrate if a parolee or immigrant is approaching an exclusion zone. Whereas RFID can only keep you confined to a single place, in theory GPS allows more mobility and options for immigrants.

"That exclusion zone might be a neighborhood, a whole city. It's easy to do on the software," Nellis says.

With a GPS tag, a parole officer or an ICE officer can open their laptop and look back to see where the monitored person has been in the previous day, Nellis says.

The takeaway is that GPS is for mass use on low-risk people, like asylum-seekers who have committed no crime, while RF is for small-scale use on high-risk offenders.

Another element of the monitoring regime is voice recognition technology. Nellis says this is unreliable and still in its nascent stages. One problem is that the technology has trouble detecting different kinds of accents. But voice recognition is used in ISAP as the next step down from ankle bracelets and house visitations.

Vivian Hamilton receives her voice calls once a month. She hears a recorded voice and is given five numbers, she says. The recorded voice advises her that she will hear her own voice. Then she has to repeat the five digits into the phone. After she repeats the numbers, she gets approval, and the call ends. But the machine doesn't always work.

"She'll say like a hundred times, no entiendo, I'm not understanding. Then she hangs up. Then she calls you back. They'll say get in touch with their officers quick as possible." Hamilton says has been receiving these calls for over a year..

James Kilgore is a long-time criminal justice activist who has served prison sentences as well as experienced electronic monitoring under parole. His experience with monitors has led him to believe that they present an ethical no-man's land, where very few considerations of rights have been properly considered or articulated in policy.

"I think the biggest piece for me is the fact that there are no explicitly delineated rights or entitlements," Kilgore says. A monitored person needs to request permission to go to social gatherings or job interviews. And it's inherently limiting to people who want to find work in certain professions where they're outdoors or visible, like construction or gardening.

Kilgore says he ran into trouble while trying to visit his mother, who was having chest pains, during the period he was monitored. It turned out to be a heart attack. He was told he had to get written permission from a parole officer before visiting her. He decided to bypass this step. He explained the situation to his parole officer the next day, who said the situation was a "gray area." He says he's spoken to other monitored people in similar situations.

Another issue is data storage: There are no clear laws that would allow information about travel to be deleted. In Germany, GPS data from offender monitors is deleted after two months. Kilgore says for parolees in the U.S., data can be kept for up to seven years.

Kilgore says that without critical thought about the use of these technologies, they could slowly expand to other elements of civic life.

"There's nothing that stops this from shifting from prisons to homes," Kilgore says. "and otherwise shifting from facilities to communities."

He also takes issue with the term "Alternative to Incarceration," and "Alternative to Detention," which have been the umbrella under which monitor programs are packaged in the criminal justice and immigration world, respectively.

"Anybody that i've ever interviewed that's been on an ankle bracelet, if i ask them if it's a form of incarceration, they say of course," Kilgore says. "It's completely obvious to them."

Kilgore is currently working with a grassroots network to create what they call "the rights of the monitored," suggesting policy revisions that would grant parolees and immigrants additional rights and privileges.

"We think people should be able to attend work, seek work, all these sorts of things," Kilgore says, so that they are not a burden for their families.

Beyond the pragmatic considerations, Kilgore articulates a perpetual unease that immigrants under monitoring have also referred to.

"The discomfort was the idea that it was on your leg, the sneaking suspicion (that someone was there with you)" Kilgore says.

"The image I use is that when I got into bed, I felt like my parole agent was in my bed."

Part IV: An Uncertain Future

In December, Congress approved a \$750 million development assistance package for Central America. The package included narcotics enforcement, as well as something called the "Alliance for Prosperity in the Northern Triangle plan." The plan was formed by collaboration among the U.S. government and the governments of El Salvador, Guatemala, and Honduras, and is intended to stem migration to the U.S. from Central America by curbing poverty and gang violence.

For immigrants who are already in the U.S., there is incredible uncertainty about the incoming presidential administration.

Hamilton admits this is scary, but knows that the president-elect has made many promises that are difficult to keep and has changed positions often.

“Could he leave where he is and come from house to house and touch and deport you...how he gonna do it?”, Hamilton asked.

Her lawyer wrote her after the election to reassure her: they still have a court date. She and her two sons will apply for asylum.

Looking back on her journey to the U.S., Hamilton feels that if she came this far, it would be difficult to make her go back.

“It was like.. an awful month. the most awful month I spent in my 41 years,” Hamilton says. “And I said, if God has get me through that, then I still trust him that I’ll be okay.”