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UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

YONNATAN SOTO GARCIA,<sup>1</sup>

Petitioner,

vs.

TONYA ANDREWS, in official capacity,  
Facility Administrator of Golden State Annex;  
ORESTES CRUZ, in official capacity, Field  
Office Director of ICE's San Francisco Field  
Office; TODD M. LYONS, in official capacity,  
Acting Director of ICE, KRISTI NOEM, in  
official capacity, Secretary of the U.S.  
Department of Homeland Security; PAM  
BONDI, in official capacity, Attorney General  
of the United States;

Respondents.

Case No.: 2:25-cv-01884-TLN-SCR

**CORRECTED AMENDED EX-PARTE  
MOTION FOR TEMPORARY  
RESTRAINING ORDER; POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR TEMPORARY  
RESTRAINING ORDER AND MOTION  
FOR PRELIMINARY INJUNCTION**

Immigration Habeas Case

Date: July 10, 2025

Time: 2:00pm

Place: Courtroom 2

Before: Chief District Judge Troy L. Nunley

<sup>1</sup> This filing solely updates the caption page, the Table of Authorities, and the date of Petitioner's Amended Motion for Temporary Restraining Order filed earlier today. *See* ECF No. 7. Undersigned counsel sincerely apologizes to the Court and Respondents for the errors, the resulting undue delay, and any inconvenience they may cause.

**CORRECTED AMENDED EX-PARTE MOTION FOR TEMPORARY RESTRAINING  
ORDER; POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR TEMPORARY  
RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION**

1 Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Rule 231 of the Local  
2 rules of this Court, Petitioner Yonnatan Soto Garcia ("Mr. Soto") hereby moves this Court for an  
3 order enjoining Defendants Department of Homeland Security ("DHS"), United States  
4 Immigration and Customs Enforcement ("ICE"), Pam Bondi, in her official capacity as the U.S.  
5 Attorney General, and Tonya Andrews, in her official capacity as Facility Administrator at  
6 Golden State Annex, McFarland, California to release Mr. Soto until he is afforded a hearing, as  
7 required by the Due Process clause of the Fifth Amendment, to determine whether the  
8 government can justify the necessity of his reincarceration by clear and convincing evidence.  
9

10 The reasons in support of this Motion are set forth in the accompanying Memorandum of  
11 Points and Authorities. This Motion is based on the attached Declaration of Lydia Sinkus with  
12 Accompanying Exhibits in Support of Petition for Writ of Habeas Corpus and Ex-Parte Motion  
13 for Temporary Restraining Order. As set forth in the Points and Authorities in support of this  
14 Motion, Mr. Soto raises that he warrants a temporary restraining order due to his weighty liberty  
15 interest under the Due Process Clause of the Fifth Amendment in remedying his unlawful re-  
16 incarceration, which was imposed absent a pre-deprivation due process hearing.  
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27 CORRECTED AMENDED EX-PARTE MOTION FOR TEMPORARY RESTRAINING  
28 ORDER; POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR TEMPORARY  
RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION 1

1 WHEREFORE, Mr. Soto prays that this Court grant his request for a temporary  
2 restraining order enjoining ICE to release him from custody unless and until he is afforded a  
3 hearing before on the question of whether his re-incarceration would be lawful. The only  
4 mechanism to ensure that he is not continuously unlawfully detained in violation of his due  
5 process rights is an temporary restraining order from this Court.  
6

7  
8 Respectfully submitted this 7th day of July, 2025.

9 /s/ Kelsey Morales  
10 Kelsey Morales  
11 Attorney for Petitioner  
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## INTRODUCTION

Petitioner Yonnatan Soto Garcia (“Mr. Soto”), by and through undersigned counsel, hereby files this motion for a temporary restraining order (“TRO”) and preliminary injunction to order the Department of Homeland Security’s (“DHS”) Immigration and Customs Enforcement (“ICE”) to release him from custody until he is afforded notice and a hearing before a neutral decisionmaker to decide whether his bond should be revoked and, if so, whether he must be re-incarcerated because ICE has established by clear and convincing evidence that he is a danger to the community or a flight risk.

On September 14, 2022, DHS detained Mr. Soto alleging that he had an aggravated felony conviction that subjected him to an administrative order of removal. Mr. Soto claimed a fear of removal, which an asylum officer deemed reasonable, and was placed in withholding-only proceedings. While his proceedings were pending, Mr. Soto had a bond hearing pursuant to *Gonzalez v. Sessions*, 325 F.R.D. 616 (N.D. Cal. 2018). On May 25, 2023, an Immigration Judge (“IJ”) concluded the government was unable to justify, the necessity of Mr. Soto’s detention and ordered his release on a bond of \$3,000 and participation in alternatives to detention (“ATD”).

In the two years since, Mr. Soto has been living with his family and diligently working in food service and event production. He has complied with and was discharged from parole in April 2024.

On May 28, 2025, ICE unexpectedly detained Mr. Soto at an in-person appointment at the Stockton office of the Intensive Supervision Appearance Program (“ISAP”). When he asked for a warrant, an ICE officer told him he did not have to give him one. The next day, during a

1 phone call with Mr. Soto's immigration attorney, an ICE officer stated that ICE had re-  
2 incarcerated Mr. Soto due to over 30 alleged ATD program violations and his pending criminal  
3 charges—misdemeanor charges that the agency has known about for over a year. During that  
4 time, Mr. Soto had twice attended in-person check-ins with ICE and participated in his  
5 monitoring requirements with ISAP.  
6

7 Individuals released from incarceration have an established liberty interest in their  
8 freedom. *See, e.g., Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972); *Doe v. Becerra*, No.  
9 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at \*4 (E.D. Cal. Mar. 3, 2025). Due process  
10 requires that any redetention of Mr. Soto happen only *after* a neutral adjudicator has determined  
11 he poses a present danger and unmitigable flight risk. Because DHS deprived him of due process  
12 by re-detaining him without notice or a hearing, Mr. Soto must be released from custody until he  
13 is afforded a hearing before a neutral adjudicator  
14

15 Mr. Soto meets the standard for a TRO. He will suffer immediate and irreparable harm  
16 absent an order from this Court enjoining the government to release him from detention unless  
17 and until he receives a hearing before a neutral adjudicator, as demanded by the Constitution.  
18 Since ensuring federal officials' fealty to the constitution is in the public interest, the balance of  
19 equities and public interest are also strongly in Mr. Soto's favor.  
20

## 21 **STATEMENT OF THE FACTS AND CASE**

22 Petitioner Yonnatan Soto Garcia ("Mr. Soto") is currently detained at Golden State  
23 Annex in McFarland, California. He is thirty-two years old. *See* Declaration of Lydia Sinkus  
24 (hereinafter "Sinkus Decl.") at Exhibit ("Exh.") A, Declaration of Mr. Soto Garcia (hereinafter  
25 "Soto Decl.") at ¶ 1. Mr. Soto arrived in the U.S. when he was around four years old, and has  
26

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1   sincelived in Patterson, California, with his mother and stepfather. *See Soto Decl.* at ¶ 3. Mr.  
2   Soto was raised alongside his two younger brothers, whom are U.S. citizens. *Id.* He has many  
3   aunts, uncles, and cousins who live nearby. *Id.* Mr. Soto graduated from Patterson High School,  
4   and he attended community colleges in Hayward, Livermore, and Modesto. *Id.* He took courses  
5   ranging from automotive technology to art to criminal justice. *Id.*

7   **Mr. Soto's Detention by Immigration Authorities in 2022**

8         ICE detained Mr. Soto on September 14, 2022, outside of his home. *Id.* at ¶ 5. That day,  
9   ICE issued him a Notice of Intent to Issue a Final Administrative Removal Order ("FARO"). *See*  
10   8 U.S.C. § 1228(b); Exh. L, Notice. In that Notice, DHS alleged that (1) Mr. Soto was not a  
11   citizen of the United States, (2) that he was not admitted or paroled into the United States, and  
12   (3) that on June 9, 2020, he was convicted of Cal. Penal Code section 664/288(A) before the  
13   Superior Court of California for the County of San Joaquin, for which he received an 18-month  
14   sentence. Exh. L. DHS charged him as removable for having been convicted of an aggravated  
15   felony based on this conviction and issued the Notice of Intent on this basis. *See id.*; *see also* 8  
16   U.S.C. § 1227(a)(2)(A)(iii); 8 U.S.C. § 1101(a)(43)(U/A). DHS issued the FARO that same day.  
17   *See* Exh. K, FARO; 8 C.F.R. §§ 238.1(b)(2)(i), (c)(1). Based on this order, Mr. Soto is subject to  
18   detention under 8 U.S.C. § 1231.

19         Mr. Soto claimed a fear of removal to Mexico and was ultimately placed in withholding-  
20   only proceedings. Sinkus Decl. at ¶ 7; *see also* Soto Decl. at ¶ 5. Mr. Soto presented his case on  
21   his own, as he did not have counsel at the time. *Id.* The IJ denied Mr. Soto's applications for  
22   protection on March 15, 2023. *Id.* Mr. Soto obtained counsel in April 2023 and filed an appeal of  
23   the IJ's decision with the assistance of counsel on April 10, 2023. *Id.* at ¶ 8. He also filed a

1 motion to remand on May 2, 2024. Sinkus Decl. at 8. His appeal and motion to remand are  
2 currently pending before the BIA. *Id.*

3 On May 25, 2023, Mr. Soto appeared for an *Aleman* bond hearing with the assistance of  
4 counsel. *Id.* at ¶ 9. At that bond hearing, the IJ held that the government had been unable to  
5 establish that Mr. Soto posed a risk of danger or flight risk by clear and convincing evidence and  
6 ordered his release on a \$3,000 bond and placement on release conditions (i.e. “alternatives to  
7 detention,” known as ATD). *Id.* See also Exh. D, IJ’s Bond Order.

9 Mr. Soto was released from immigration custody that same day under an Order of  
10 Supervision (“OSUP”). His OSUP imposed release conditions, including that he wear an  
11 electronic ankle monitor, check-in regularly with ICE, and participate in the Intensive  
12 Supervision Appearance Program (“ISAP”), a form of ATD. Sinkus Decl. at ¶ 10.

14 **Mr. Soto’s Release from Immigration Custody, from May 2023 to May 2025**

15 Since his release, Mr. Soto has lived with his mother and stepfather in Patterson. Soto  
16 Decl. at ¶ 7. He has maintained close relationships with his family. *Id.* at ¶ 7. Mr. Soto also  
17 started dating his girlfriend in August 2024 and rejoined his Catholic Church and reconnected  
18 with his mentor there. *Id.* at ¶ 7, 35. He obtained a work permit and focused on his career. Exh.  
19 E, Copy of Work Permit. Mr. Soto began working with six different employers in event  
20 production and food service. Soto Decl. at ¶ 8. Through his work, Mr. Soto plays a vital role in  
21 hosting corporate and community events. *Id.* at ¶¶ 8-11. His employers describe him as hard-  
22 working and reliable. See Exh. I, Letters of Support.

25 In April 2024, Mr. Soto successfully completed parole for his 2020 conviction. *Id.* at ¶  
26 12. He finished his required courses and was discharged from CDCR supervision. See *id.*; see

1 also Exh. F, Proof of discharge from state parole.

2 In May 2024, Mr. Soto was arrested in Stanislaus County and was charged with Cal.  
3 Vehicle Code § 14601.2(a), driving on a suspended license, and Cal. Vehicle Code § 23247(e),  
4 operating a vehicle not equipped with a functioning ignition interlock device. *See* Soto Decl. at ¶  
5 12; Exh. N, Copy of Complaint. Both charges are misdemeanors. His next hearing date is July  
6 17, 2025. Sinkus Decl. at ¶ 17. He is represented by the Stanislaus County Public Defender's  
7 Office. *Id.* Mr. Soto's ankle monitor was removed as part of the arrest process. Soto Decl. at ¶  
8 13. He reported to the ISAP office following his release from police custody. *Id.* ISAP put  
9 another ankle monitor on him. *Id.*

10 He completed regular check-ins with ISAP, both in person and virtually. *See* Soto Decl.  
11 at ¶¶ 15-19. He shared his location with ISAP through the SmartLINK application on his phone.  
12 *Id.* at ¶ 15. He also submitted a photo to ISAP every day through the SmartLINK application. *Id.*  
13 He was deescalated from an ankle monitor to a smartwatch in March 2025. *Id.* at ¶ 16. It was at  
14 this time that he began experiencing regular issues with ISAP due to technological issues with  
15 the smartwatch, despite his best efforts. *Id.* For example, his smartwatch often lost internet  
16 connection and he would have to ask his officer to upload his daily photo through the application  
17 rather than the watch. *Id.* Mr. Soto also received calls in the middle of the night asking him to  
18 charge his watch, even though his watch was fully charged. *Id.* at ¶ 16. He called the ISAP office  
19 on four separate occasions to have his watch checked – ISAP cleaned the sensor and even shaved  
20 his wrist once to improve detection accuracy. *Id.* In light of all these issues, Mr. Soto asked to be  
21 switched back to the ankle monitor. *Id.*

22 In addition to ISAP requirements, Mr. Soto must attend in person check-ins with ICE.  
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Mr. Soto last attended an ICE check-in at the Stockton office on March 20, 2025. *See* Exh. B, OSUP documents. This was his fifth time reporting to ICE in person. *Id.* ICE scheduled his next check-in for June 20, 2025. *Id.*

Meanwhile, soon after taking office, the Trump administration directed ICE officials to increase their daily arrests to between 1,200 and 1,500.<sup>2</sup> To reach this quota, each ICE field office was expected to make at least 75 arrests per day.<sup>3</sup> In a May 21, 2025, meeting with ICE leaders, White House Deputy Chief of Staff Stephen Miller announced DHS's increased goal of 3,000 daily ICE arrests to reach the target of one million deportations per year.<sup>4</sup>

Six days later, on May 27, 2025, ICE called and asked Mr. Soto to report to the ISAP office in Stockton to have his watch checked. Soto Decl. at ¶ 21. Mr. Soto asked if he could go the next day, as he was tired from a work event and sick, and ISAP agreed. *Id.*

**Mr. Soto's Redetention by ICE on May 28, 2025, and Detention at Golden State Annex**

Mr. Soto was arrested by three ICE officers while he was waiting in the lobby at the ISAP office. *Id.* at ¶¶ 22-25. The ICE officers took him to the Stockton ICE office, and then subsequently transferred him to Golden State Annex ("GSA").

On May 29, 2025, Mr. Soto's immigration attorney, Lydia Sinkus, was able to speak with

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<sup>2</sup> Nick Miroff and Maria Sacchetti, "Trump officials issue quotas to ICE officers to ramp up arrests," *The Washington Post* (Jan. 26, 2025) at <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

<sup>3</sup> *Id.*

<sup>4</sup> *See supra* n. 2; Jose Oliveras, "Trump administration sets quota to arrest 3,000 people a day in anti-immigration agenda," *The Guardian* (May 29, 2025) at <https://www.theguardian.com/us-news/2025/may/29/trump-ice-arrest-quota>.

1 deportation officer (“DO”) Miller. Sinkus Decl. at ¶ 21. DO Miller informed her that Mr. Soto  
2 was being redetained because he “allegedly had over 30 ATD program violations.” *Id.* He also  
3 mentioned Mr. Soto’s 2024 arrest and stated that it would be considered a violation of the ATD  
4 program until such time that the charges were dismissed or he was found not guilty. *Id.* DO  
5 Miller declined to provide her with the list of the alleged violations.<sup>5</sup> *Id.* DO Miller also stated  
6 that Mr. Soto’s bond did not appear to have been formally revoked as normally done. *Id.*  
7

8 Mr. Soto also requested a copy of his arrest report, which he received on June 25, 2025.  
9 Soto Decl. at ¶ 27. The report states that “Subject will be processed as a custody redetermination  
10 based on ATD program violations, criminal history, and recent post-release arrest....” *Id.*  
11

12 Mr. Soto reports difficulties sleeping, crowded facilities, and inadequate medical care at  
13 GSA. *See* Soto Decl. at ¶ 31. His emotional state is not well, and he is concerned about the  
14 impact of his redetention on his family and his partner. *Id.* at ¶ 33. Further, with summer being a  
15 busy time for event production work, he and his employers report hardship with him missing  
16 previously scheduled work responsibilities. *Id.* at ¶ 11; *see also* Exh.I. Mr. Soto is also missing  
17 the chance to earn money to help support himself and his family. *Id.* If released, Mr. Soto plans  
18 to reside back with his family and puppy in Patterson. He intends to keep focused on his career  
19 and return to working with his employers. *Id.* at ¶¶ 37. He has future goals of returning to school  
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24 <sup>5</sup> Attorney Sinkus sought to obtain copies of documents related to Mr. Soto’s redetention,  
25 including an itemized list of the alleged 30 ATD program violations, via a FOIA request and  
26 emails to ERO Bakersfield, the best method for reaching a deportation officer for a noncitizen  
27 detained at Golden State Annex. *Id.* at ¶¶ 22-24. Ms. Sinkus has yet to receive any documents  
28 from the agency regarding Mr. Soto’s redetention. *Id.* at ¶ 24.

1 to take computer science classes and to one day open his own business. *Id.* at ¶ 34.

## 2 **LEGAL STANDARD**

3 Mr. Soto is entitled to a temporary restraining order if he establishes that he is “likely to  
4 succeed on the merits... likely to suffer irreparable harm in the absence of preliminary relief, that  
5 the balance of equities tips in [his] favor, and that an injunction is in the public interest.” *Winter*  
6 *v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int’l Sales Co. v. John D. Brush*  
7 *& Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary  
8 restraining order standards are “substantially identical”). Even if Mr. Soto does not show a  
9 likelihood of success on the merits, the Court may still grant a temporary restraining order if he  
10 raises “serious questions” as to the merits of his claims, the balance of hardships tips “sharply” in  
11 his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v.*  
12 *Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, Mr. Soto  
13 overwhelmingly satisfies both standards.

## 14 **ARGUMENT**

### 15 **MR. SOTO GARCIA WARRANTS A TEMPORARY RESTRAINING ORDER**

#### 16 **A. MR. SOTO GARCIA IS LIKELY TO SUCCEED ON THE MERITS OF 17 HIS CLAIM THAT, IN THIS CASE, THE CONSTITUTION REQUIRED A 18 HEARING BEFORE A NEUTRAL ADJUDICATOR PRIOR TO ANY RE- 19 INCARCERATION BY ICE.**

20 Mr. Soto is likely to succeed on his claim that, in his particular circumstances, the Due  
21 Process Clause of the Constitution prevents Respondents from re-arresting him without first  
22 providing a pre-deprivation hearing before a neutral adjudicator where the government justifies  
23 the necessity of his redetention by clear and convincing evidence.



ICE's power to re-arrest a noncitizen who is at liberty following a release on bond is also constrained by the demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) ("[T]he government's discretion to incarcerate non-citizens is always constrained by the requirements of due process"). Federal district courts in California have repeatedly recognized that the demands of due process require a pre-deprivation hearing for a noncitizen on bond, like Mr. Soto, *before* ICE re-detains him. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at \*4 (N.D. Cal. June 14, 2025).<sup>6</sup>

Courts analyze procedural due process claims such as this one in two steps: the first asks whether there exists a protected liberty interest under the Due Process Clause, and the second examines the procedures necessary to ensure any deprivation of that protected liberty interest accords with the Constitution. *See Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989). As for the process due to noncitizen following their redetention by ICE, the Court's decision in ordering a bond hearing is illustrative. *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at \*8 (E.D. Cal. Mar. 3, 2025).

### **1. Mr. Soto Has a Protected Liberty Interest in His Conditional Release.**

Mr. Soto's liberty from immigration custody is protected by the Due Process Clause:

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<sup>6</sup> *See e.g., Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at \*3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at \*2 (N.D. Cal. Mar. 1, 2021); *Garcia v. Bondi*, No. 3:25-CV-05070, 2025 WL 1676855, at \*4 (N.D. Cal. June 14, ECF No. 9, *Guillermo M.R. v. Polly Kaiser*, No. 3:25-cv-05436-RFL (N.D. Cal. June 30, 2025).

1 “Freedom from imprisonment—from government custody, detention, or other forms of physical  
2 restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v.*  
3 *Davis*, 533 U.S. 678, 690 (2001). For two years preceding his re-detention on May 28, 2025, Mr.  
4 Soto exercised that freedom under the IJ’s 2023 order granting him release on a low bond and  
5 release conditions. Exh. D. Although he was released on bond (and thus under government  
6 custody), he retained a weighty liberty interest under the Due Process Clause in avoiding re-  
7 incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S.  
8 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972).

10 In *Morrissey*, the Supreme Court examined the “nature of the interest” that a parolee has  
11 in “his continued liberty.” 408 U.S. at 481-82. The Court noted that, “subject to the conditions of  
12 his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to  
13 form the other enduring attachments of normal life.” *Id.* at 482. The Court explained that “the  
14 liberty of a parolee, although indeterminate, includes many of the core values of unqualified  
15 liberty and its termination inflicts a grievous loss on the parolee and often others.” *Id.* In turn,  
16 “[b]y whatever name, the liberty is valuable and must be seen as within the protection of the  
17 [Fifth] Amendment.” *Id.*

18 This basic principle—that individuals have a liberty interest in their conditional release—  
19 has been reinforced by both the Supreme Court and the circuit courts on numerous occasions.  
20 *See, e.g., Young*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created  
21 to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation  
22 process); *Gagnon*, 411 U.S. at 781-82 (holding that individuals released on felony probation  
23 have a protected liberty interest requiring pre-deprivation process). As the First Circuit has  
24

1 explained, when analyzing the issue of whether a specific conditional release rises to the level of  
2 a protected liberty interest, “[c]ourts have resolved the issue by comparing the specific  
3 conditional release in the case before them with the liberty interest in parole as characterized by  
4 *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010). *See Hurd v. District*  
5 *of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017). Courts in this district and the Northern District  
6 of California have found that noncitizens released on a bond have a similar protectable liberty  
7 interest. *See Doe*, 2025 WL 691664, at \*5; *Diaz*, 2025 WL 1676854, at \*2 (“Courts have  
8 previously found that individuals released from immigration custody on bond have a protectable  
9 liberty interest in remaining out of custody on bond.”).

12 Here, when this Court “‘compar[es] the specific conditional release in [Mr. Soto’s case],  
13 with the liberty interest in parole as characterized by *Morrissey*,” they are strikingly similar. *See*  
14 *Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Mr. Soto’s release “enables him to do a  
15 wide range of things open to persons” who have never been in custody or convicted of any  
16 crime, including to live at home, work, and “be with family and friends and to form the other  
17 enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482.

19 Since his release in May 2023, Mr. Soto has returned to living with his family and started dating  
20 his girlfriend. Soto Decl. at ¶ 7. He maintained consistent employment in the fields of food  
21 service and event production. *Id.* at ¶¶ 8-11. While released, he participated in the “attachments  
22 of normal life,” *Morrissey*, 408 U.S. at 482, and as such, he has a protected liberty interest and  
23 his continued detention without adequate process violates his due process rights.

25 **2. Mr. Soto’s Liberty Interest Mandated a Hearing Before any Re-**  
26 **Arrest and Revocation of Bond.**

1 Mr. Soto asserts that, here, due process mandates that he was required to receive notice  
2 and a hearing before a neutral adjudicator prior to any re-arrest or revocation of a bond.

3 “Adequate, or due, process depends upon the nature of the interest affected. The more  
4 important the interest and the greater the effect of its impairment, the greater the procedural  
5 safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769  
6 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc). This Court must “balance [Mr. Soto’s] liberty  
7 interest against [DHS’s] interest in the efficient administration of” its immigration laws to  
8 determine what process he is owed to ensure that ICE does not unconstitutionally deprive him of  
9 his liberty. *Id.* at 1357. Under the test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335  
10 (1976), this Court must consider three factors in conducting its balancing test to determine the  
11 process due.  
12

13  
14 Further, the Supreme Court “usually has held that the Constitution requires some kind of  
15 a hearing *before* the State deprives a person of liberty or property.” *Zinermon v. Burch*, 494 U.S.  
16 113, 127 (1990) (emphasis in original). Only in a “special case” where post-deprivation remedies  
17 are “the only remedies the State could be expected to provide” can post-deprivation process  
18 satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where “one  
19 of the variables in the *Mathews* equation—the value of predeprivation safeguards—is negligible  
20 in preventing the kind of deprivation at issue” such that “the State cannot be required  
21 constitutionally to do the impossible by providing predeprivation process,” can the government  
22 avoid providing pre-deprivation process. *Id.*  
23  
24

25 In this case, the provision of a pre-deprivation hearing was both possible and valuable in  
26 preventing an erroneous deprivation of liberty, ICE was required to provide Mr. Soto with notice  
27

1 and a hearing *prior* to any re-incarceration. *See Morrissey*, 408 U.S. at 481-82. Under *Mathews*,  
2 “the balance weighs heavily in favor of [Mr. Soto’s] liberty” and required a pre-deprivation  
3 hearing before a neutral adjudicator, which ICE failed to provide.

4  
5 **i. Mr. Soto’s Private Interest in His Liberty is Profound.**

6 Under *Morrissey* and its progeny, individuals conditionally released from serving a  
7 criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. Further,  
8 the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical  
9 confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to  
10 constitutional due process before he is re-incarcerated—apply with even greater force to  
11 individuals like Mr. Soto, who have been released pending civil removal proceedings.  
12 Nonetheless, even in the criminal parolee context, the courts have held that the parolee cannot be  
13 re-arrested without a due process hearing in which they can raise any claims they may have  
14 regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes*, 607 F.3d at 891-  
15 92; *Hurd*, 864 F.3d at 683. Thus, Mr. Soto retains a truly weighty liberty interest even though he  
16 was under conditional release prior to his re-arrest.

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18  
19 What is at stake for Mr. Soto is one of the most profound individual interests recognized  
20 by our legal system: whether ICE may unilaterally nullify a prior bond decision and take away  
21 his physical freedom, his “constitutionally protected interest in avoiding physical restraint.”  
22 *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). Thus, there is a profound private interest  
23 at stake in this case, which must be weighed heavily when determining what process Mr. Soto is  
24 owed under the Constitution. *See Mathews*, 424 U.S. at 334-35.

**ii. The Government's Interest in Keeping Mr. Soto Detained Without a Hearing is Low and the Burden on the Government to Release Him from Custody Unless and Until he is Provided a Hearing is Minimal.**

The government's interest in keeping Mr. Soto in detention without a due process hearing is low, and when weighed against Mr. Soto's significant private interest in his liberty, the scale tips sharply in favor of releasing him from custody unless and until the government demonstrates by clear and convincing evidence that he is a flight risk or danger to the community.

As immigration detention is civil, it can have no punitive purpose. The government's only interests in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it had a sudden interest in detaining Mr. Soto in May 2025 due to his pending misdemeanor charges for driving without a license and failure to install an interlock device, when it has been aware of the arrest for at least a year. *See Sinkus Decl. at ¶ 18; Soto Decl. at ¶ 13.*

These charges do not establish that Mr. Soto is a danger to the community. Exh. D. While ICE states that one of the reasons for his redetention was his state arrest in May 2024, this arrest should not change the dangerousness analysis. A charge or an arrest, without more, is proof of nothing. This derives from the presumption of innocence, where one is "to judge an accused's guilt or innocence solely on the evidence adduced at trial and not on the basis of suspicions that may arise from the fact of his arrest, indictment, or custody, or from other matters not introduced as proof at trial." *Bell v. Wolfish*, 441 U.S. 520, 533 (1979). These principles are especially true here, as these charges do not imply a danger to persons or property, use of a weapon or unlawful

substance, or any sort of violent conduct. In fact, there is no assertion that anyone was injured or that any property was damaged at all when Mr. Soto was stopped by the police. The existence of non-violent allegations that the agency has been aware of since May 2024 did not significantly increase the government's interest in detaining him in May 2025, and it certainly did not increase that interest enough to outweigh his private interests. *See Morrissey*, 408 U.S. at 482 n.8.

As to flight risk, the IJ already determined that a bond of \$3,000 and ATD were sufficient to guard against any possible flight risk. Exh. D. Mr. Soto's post-release conduct in the form of consistent attendance at his ICE check-in requirements further confirms that he is not a flight risk and that he is likely to present himself at any future hearings or ICE appearances. *See* Exhs. B; C. Further, while the government purports that it redetained Mr. Soto in part due to over 30 alleged ATD violations, the government has not proffered a list of the supposed violations, nor has it provided Mr. Soto an opportunity to respond to these allegations, which is critical given Mr. Soto's documented issues with the SmartLINK application and reporting on malfunctions with the monitoring technology further establishing the need for a neutral adjudicator to review the validity of these purported violations. *See* Soto Decl. at ¶¶ 15-20; Sinkus Decl. at ¶¶ 13, 15.<sup>7</sup>

Moreover, even assuming Mr. Soto had over 30 violations of his ATD program, such

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<sup>7</sup> *See* Exh. O, Johana Bhuiyan, "Poor tech, opaque rules, exhausted staff: inside the private company surveilling US immigrants," *The Guardian* (March 7, 2022) at <https://www.theguardian.com/us-news/2022/mar/07/us-immigration-surveillance-ice-bi-isap>.<sup>7</sup> An investigation into BI Inc., the company that manages ISAP, cites frequent malfunctions of the SmartLINK app, which often prevent users from checking in as required. *See* Exh. O. A BI Incorporated case manager told *The Guardian* that the BI system would send her "warning every time one of the people she was monitoring appeared to be out of compliance" but that those "warnings were frequently triggered by errors from the company's own technology." *Id.*

CORRECTED AMENDED EX-PARTE MOTION FOR TEMPORARY RESTRAINING ORDER; POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION 15

1 violations do not, on their face, establish materially changed circumstances as to flight risk,  
2 especially where Mr. Soto has consistently appeared at his assigned ICE check-ins. Exh. B; Exh.  
3 C, Letter from DHS. Indeed, ICE detained Mr. Soto after he complied with ISAP's request  
4 asking him to appear for an unscheduled in-person appointment at their office.  
5

6 The government's interest in detaining Mr. Soto at this time is therefore low. That ICE  
7 has a new policy to make a minimum number of arrests each day under the new administration  
8 does not constitute a material change in circumstances in his case or increase the government's  
9 interest in detaining him.<sup>8</sup> Moreover, the "fiscal and administrative burdens" that release from  
10 custody, unless and until a pre-deprivation bond hearing is provided, would impose are  
11 nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. Mr. Soto does not seek a unique or  
12 expensive form of process, but rather his release from custody until a routine hearing regarding  
13 whether he should be re-incarcerated takes place.  
14

15 Alternatively, providing Mr. Soto with an immediate hearing before this Court (or a  
16 neutral adjudicator) regarding bond is a similarly routine procedure that ICE provides to those in  
17 immigration jails on a daily basis. *See Doe* at \*6. At that hearing, the Court would have the  
18 opportunity to determine whether the non-violent allegations from over a year ago change the  
19 dangerousness analysis sufficiently to require a different amount of bond—or if bond should be  
20 revoked. But there was no justifiable reason to re-incarcerate Mr. Soto while his case is pending  
21 on appeal. As the Supreme Court noted in *Morrissey*, even where the State has an  
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24

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25  
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27 <sup>8</sup> *See supra* n. 3.



1 “overwhelming interest in being able to return [a parolee] to imprisonment without the burden of  
2 a new adversary criminal trial if in fact he has failed to abide by the conditions of his parole...the  
3 State has no interest in revoking parole without some informal procedural guarantees.” 408 U.S.  
4 at 483. Release from custody a neutral adjudicator has determined that DHS has justified Mr.  
5 Soto’s redetention by clear and convincing evidence is far *less* costly and burdensome for the  
6 government than keeping him detained. *Hernandez*, 872 F.3d at 996.

8 **iii. Without Release from Custody Until the Government Provides**  
9 **a Due Process Hearing, the Risk of Erroneous Deprivation of**  
10 **Liberty is High and Process in the Form of a Hearing Where**  
11 **ICE Carries the Burden Would Decrease That Risk.**

12 Releasing Mr. Soto from custody until he is provided a pre-deprivation hearing would  
13 decrease the risk of him being erroneously deprived of his liberty. Before Mr. Soto can be  
14 lawfully detained, he must be provided with a hearing before a neutral adjudicator at which the  
15 government is held to show that there has been sufficiently changed circumstances such that the  
16 May 2023 bond determination should be altered or revoked because clear and convincing  
17 evidence exists to establish that Mr. Soto is a danger to the community or a flight risk. *See e.g.*  
18 *Diaz*, 2025 WL 1676854, at \*3. Mr. Soto has already been erroneously deprived of his liberty,  
19 and the risk that he will continue to be deprived is high if ICE is permitted to keep him detention  
20 after making a unilateral decision to re-detain him. Mr. Soto was previously granted release via a  
21 bond hearing provided by litigation. *See Gonzalez v. Sessions*, 325 F.R.D. 616 (N.D. Cal. 2018).  
22 No statutory mechanism provides Mr. Soto any process before a neutral adjudicator following  
23 his redetention. As a result, under current procedures, the validity or necessity of Mr. Soto’s  
24 redetention would evade any review by the IJ or any other neutral arbiter.  
25  
26

1 By contrast, the procedure Mr. Soto seeks—release from custody and reinstatement of  
2 bond until he is provided a hearing in front of a neutral adjudicator at which the DHS proves by  
3 clear and convincing evidence that his re-detention is necessary—is much more likely to produce  
4 accurate determinations regarding factual disputes, such as whether he is a present danger or  
5 unmitigable flight risk. *See Doe*, 2025 WL 691664, \*1. The Ninth Circuit has noted that the risk  
6 of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral  
7 decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano*, 634  
8 F.3d 1081, 1091-92 (9th Cir. 2011).

11 Due process also requires consideration of alternatives to detention and ability to pay at  
12 any custody redetermination hearing that may occur. *See Hernandez*, 872 F.3d at 997. Further,  
13 due process also requires that at any hearing ICE provide Mr. Soto with details regarding the  
14 date, time, place, and substance of any conduct being used by ICE justify his redetention.  
15 Foundational due process requires that Mr. Soto receive notice and an opportunity to review  
16 information concerning his redetention.

18 In conclusion, Mr. Soto is likely to succeed on his claim that the Due Process Clause  
19 requires required notice and a hearing before a neutral adjudicator *prior to any* re-incarceration  
20 by ICE. And, at the very minimum, he clearly raises serious questions regarding this issue, thus  
21 also meriting a TRO. *See Alliance for the Wild Rockies*, 632 F.3d at 1135; *Doe* at \*8.

23 **B. MR. SOTO GARCIA WILL SUFFER IRREPARABLE HARM ABSENT  
24 INJUNCTIVE RELIEF.**

25 Mr. Soto will suffer irreparable harm were he to remain deprived of his liberty and  
26 subjected to continue incarceration by immigration authorities without being immediately

1 released and provided the constitutionally adequate process that this motion for a temporary  
2 restraining order seeks. Detainees in ICE custody are held in “prison-like conditions.” *Preap v.*  
3 *Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). Moreover, the Ninth Circuit has recognized in  
4 “concrete terms the irreparable harms imposed on anyone subject to immigration detention”  
5 including “subpar medical and psychiatric care in ICE detention facilities, the economic burdens  
6 imposed on detainees and their families as a result of detention, and the collateral harms to  
7 children of detainees whose parents are detained.” *Hernandez*, 872 F.3d at 995.

9 Mr. Soto had been out of ICE custody for two years. During that time, he returned to his  
10 family in Patterson, California. *See* Soto Decl. at ¶ 7. He started dating his girlfriend. *Id.* He  
11 obtained work authorization and began working with six employers in the food service and event  
12 production industries. *Id.* at ¶¶ 8-11. If he remains incarcerated, he will lose out on upcoming  
13 jobs and the chance to earn needed income. *Id.* at ¶ 11. Every day he remains detained in a  
14 crowded facility that impacts his emotional state, with him already feeling helpless and hopeless  
15 while detained. *id.* at ¶ 33.

16  
17  
18 Finally, as detailed *supra*, Mr. Soto contends that his re-arrest absent a hearing before a  
19 neutral adjudicator violated his due process rights. As this Court put it in *Doe*, the “violation of  
20 Petitioner’s due process rights is sufficient to satisfy the irreparable harm requirement.” 2025  
21 WL 691664, at \*6. That same reasoning applies here. A temporary restraining order is necessary  
22 to prevent Mr. Soto from suffering irreparable harm by remaining in unlawful detention.  
23

24 **C. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST FAVOR**  
25 **GRANTING THE TEMPORARY RESTRAINING ORDER.**

26 The balance of hardships strongly favors Mr. Soto. The government cannot suffer harm  
27  
28 CORRECTED AMENDED EX-PARTE MOTION FOR TEMPORARY RESTRAINING  
ORDER; POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR TEMPORARY  
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1 from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda v. INS*, 753  
2 F.2d 719, 727 (9th Cir. 1983) (“[T]he INS cannot reasonably assert that it is harmed in any  
3 legally cognizable sense by being enjoined from constitutional violations.”); *see also Doe*, 2025  
4 WL 691664, at \*6. Therefore, the government cannot allege harm arising from a temporary  
5 restraining order or preliminary injunction ordering it to comply with the Constitution.  
6

7 Further, any burden imposed by requiring the DHS to release Mr. Soto from custody until  
8 he is provided notice and a hearing before a neutral decisionmaker is both *de minimis* and clearly  
9 outweighed by the substantial harm he will suffer as long as he continues to be detained. *See*  
10 *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983). Finally, a temporary restraining order is  
11 in the public interest. First and most importantly, “it would not be equitable or in the public’s  
12 interest to allow [a party] . . . to violate the requirements of federal law, especially when there are  
13 no adequate remedies available.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th  
14 Cir. 2014). If a temporary restraining order is not entered, the government would effectively be  
15 granted permission to detain Mr. Soto in violation of the requirements of Due Process. “The  
16 public interest and the balance of the equities favor ‘prevent[ing] the violation of a party’s  
17 constitutional rights.’” *id.* Therefore, the public interest overwhelmingly favors entering a  
18 temporary restraining order and preliminary injunction.  
19  
20

## 21 CONCLUSION

22 For all the above reasons, this Court should find that Mr. Soto warrants a temporary  
23 restraining order and a preliminary injunction ordering that Respondents release him from  
24 custody and refrain from re-arresting him until he is afforded a hearing that complies with due  
25 process on whether his redetention is justified.  
26

27 CORRECTED AMENDED EX-PARTE MOTION FOR TEMPORARY RESTRAINING  
28 ORDER; POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR TEMPORARY  
RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION 20

1 Dated: July 7, 2025

Respectfully submitted,

2 /s/ Kelsey Morales

3 Kelsey Morales  
4 Attorney for Petitioner