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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

Melina Solano Bejarano,

*Petitioner,*

v.

Christopher CHESTNUT, Warden,  
California City Correctional Facility;

Todd M. LYONS, Acting Director,  
Immigration and Customs Enforcement, U.S.  
Department of Homeland Security;

Kristi NOEM, in her Official Capacity,  
Secretary, U.S. Department of Homeland  
Security; and

Pam BONDI, in her Official Capacity,  
Attorney General of the United States;

*Respondents - Defendants,*

No.

PETITIONER'S NOTICE OF MOTION  
AND EMERGENCY EX PARTE MOTION  
FOR TEMPORARY RESTRAINING  
ORDER

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF EX  
PARTE MOTION FOR TEMPORARY  
RESTRAINING ORDER

Challenge to Unlawful Incarceration;  
Request for Declaratory and Injunctive  
Relief

**NOTICE OF MOTION AND EX PARTE MOTION**

PLEASE TAKE NOTICE as soon as it may be heard in the United States District Court for the Eastern District of California, that Petitioner, Melina Solano Bejarano ("Ms. Solano Bejarano") will and hereby does move for a temporary restraining order pursuant to Federal Rules of Civil Procedure 65(b) and Civil Local Rule 65-1. Because Petitioner's detention violates the Due Process Clause of the Fifth Amendment to the United States, Petitioner respectfully requests that this Court (1) orders Petitioner's immediate release from Respondent's custody pending these proceedings, without requiring bond or electronic monitoring, or, in the alternative, (2) orders Petitioner's immediate release from Respondents' custody and, within 14 days, order a pre-deprivation bond hearing before the San Francisco Immigration Court, where Respondents will have the burden of proof to show, by clear and convincing evidence, that Petitioner is a danger or a flight risk. To preserve this Court's jurisdiction, Petitioner further seeks an order (3) enjoining Respondents from deporting Petitioner during the pendency of this proceeding. Enjoins Respondents (1) from continuing to detain Petitioner based on an unlawful action by ICE, (2) orders her immediate release from Respondents' custody; and (3) from re-arresting Ms. Solano Bejarano until she is afforded a hearing before a neutral decisionmaker, as required by the Due Process clause of the Fifth Amendment, to determine whether circumstances have materially changed such that her re-incarceration would be justified because there is clear and convincing evidence establishing that she is a danger to the community or a flight risk.

Consistent with Civil L.R. 65-1, Petitioner seeks relief at the earliest possible opportunity. Petitioner filed this motion the same day she filed her Petition for Writ of Habeas Corpus. Her Writ of Habeas Corpus stated that she would be filing this motion forthwith.

If the Court deems oral argument necessary, Petitioner requests to appear by video.

Dated: December 17, 2025 Respectfully submitted,

/s/ Robert J. Beles

Robert Beles

Attorney for Petitioner-Plaintiff

Melina Solano Bejarano

**I. INTRODUCTION**

Respondents unlawfully detained Petitioner-Plaintiff Ms. Solano Bejarano on November 3, 2025. Ms. Solano Bejarano is a native and citizen of Peru. Ms. Solano Bejarano entered the United States with inspection on June 25, 2021 seeking asylum. When Ms. Solano Bejarano arrived in the United States, federal agents briefly detained her, determined that she was not a flight risk or danger to the community, and released her on her own recognizance. On October 18, 2021, the court filed a notice for her to appear in immigration court on January 25, 2022. Since then, Petitioner has done everything the government asked her to do; she has diligently attended every Immigration and Customs Enforcement (“ICE”) and United States Citizenship and Immigration Services (“USCIS”) appointment and check-in.

November 20, 2023, Ms. Solano Bejarano filed an asylum application with the immigration court. Ms. Solano Bejarano subsequently attended her biometrics appointment with USCIS.

Solano Bejarano appeared at all her immigration court hearings at the Van Nuys Immigration court. Ms. Solano Bejarano also complied with all her ISAP and ICE appointments. On November 3, 2025, Ms. Solano Bejarano was two minutes late for an ISAP interview at her home. Ms. Solano Bejarano was returning home from taking her daughter to pre-school. When Ms. Solano Bejarano was almost home, she was informed by ISAP that they were at the house. Ms. Solano Bejarano informed ISAP that she was very close to the house but ISAP informed her that it was too late. When Ms. Solano Bejarano made it home, she saw the ISAP officer but the ISAP officer ignored Ms. Solano Bejarano and left. The ISAP officer simply told her that she was in violation. Minutes later, Ms. Solano Bejarano received a message on her phone instructing her to appear at the ISAP office the following day, Tuesday, November 4, 2025. However, to avoid any misunderstanding and acting in good faith, Ms. Solano Bejarano immediately went the same day, November 3, 2025, to the ISAP office to explain to them that she was at home while the ISAP officer was still there, but ICE detained her. This occurred at the ICE office at 2001 N Chester Avenue in Bakersfield, CA 93308.

At the time of detention, Ms. Solano Bejarano was taking care of fiancé and two young children ages nine years old and three years old. The three-year-old is a United States citizen. Ms. Solano Bejarano suffers from health issues which require surgery and a debilitating post-operative recovery.



1 Ms. Solano Bejarano's summary arrest and indefinite detention flout the Constitution.  
2 The only legitimate interests that civil immigration detention serves are mitigating the risk of  
3 flight and preventing danger to the community. When those interests are absent, the Fifth  
4 Amendment's Due Process Clause squarely prohibits detention. Additionally, by summarily  
5 arresting and detaining Ms. Solano Bejarano without making any affirmative showing of  
6 immigration violations, flight risk or danger to the community, the government violated  
7 Petitioner's procedural due process rights. At the very least, she was constitutionally entitled to  
8 a hearing before a neutral decisionmaker at which the government should have justified her  
9 detention.

9 Ms. Solano Bejarano must be accorded her 5th amendment due process rights as affirmed  
10 in the US Supreme Court case *Department of Homeland Security v. Thuraissigium*, 140 S.Ct.  
11 1959 (2020). Specifically, in *Thuraissigium*, the Supreme Court Stated: "aliens who have  
12 established connections in this country have due process rights in deportation proceedings,"

13 As a result of her arrest and detention, Ms. Solano Bejarano is suffering irreparable and  
14 ongoing harm. The unconstitutional deprivation of "physical liberty" unquestionably constitutes  
15 irreparable injury." *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017). Indeed,  
16 "[f]reedom from imprisonment—from government custody, detention, or other forms of physical  
17 restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v.*  
18 *Davis*, 533 U.S. 678, 690 (2001). Ms. Solano Bejarano's arrest and detention have caused and  
19 will cause immediate, tremendous, and ongoing harm, which include health problems that may  
20 result in hospitalization and/or death due to her ongoing health issues, hygiene, sleep and  
21 nutrition deprivation, family separation, emotional and economic harm, loss of employment, and  
22 psychological harm.

23 In light of this irreparable harm, and because she is likely to succeed on the merits of her  
24 due process claims, Ms. Solano Bejarano respectfully requests that this Court issue an Ex Parte  
25 temporary restraining order ("TRO") immediately releasing her from custody and enjoining the  
26 government from re-arresting her absent the opportunity to contest that arrest at a hearing before  
27 a neutral decision maker. Confronted with substantially identical facts and legal issues, this and  
28 other courts in this circuit have recently granted the exact relief Petitioner seeks.

See *J.O.L.R. v Wofford*, 2025 WL 2718631 \* 11 (E.D. Cal Sept. 23, 2025); *R.D.T.M. v Wofford*,

1 2025 WL 2617255 \* 11 (E.D. Cal. Sept. 9, 2025), *Garro Pinchi v. Noem*, 2025 WL 1853763, \*4  
2 (N.D. Cal. July 4, 2025), converted to preliminary injunction at \_\_ F. Supp. 3d \_\_, 2025 WL  
3 2084921 (N.D. Cal. July 24, 2025); *Singh v. Andrews*, 2025 WL 1918679, \*10 (E.D. Cal. July  
4 11, 2025) (granting preliminary injunction).

5 To maintain this Court's jurisdiction, the Court should also prohibit the government from  
6 transferring Ms. Solano Bejarano out of this District and removing her from the country until  
7 these proceedings have concluded.

## 8 **II. STATEMENT OF FACTS AND CASE**

9 Since mid-May 2025, DHS has initiated an aggressive new enforcement campaign  
10 targeting people who are not in status, many of whom have pending applications for asylum or  
11 other relief. This "coordinated operation" is "aimed at dramatically accelerating deportations" by  
12 arresting people at the courthouse, USCIS interviews, or at the ICE office and placing them into  
13 expedited removal. The Trump administration implemented a policy to drastically increase  
14 immigration arrests to a target of at least 3,000 per day. According to White House officials, such  
15 as Stephen Miller, this directive prioritized arrest numbers over individuals' criminal history,  
16 encouraging agents to conduct mass round-ups in public spaces rather than targeted  
17 investigations.

18 As a result, arrests of non-citizens with no criminal record surged by over 800%, and two-  
19 thirds of those deported had no criminal history. This focus on quantity over public safety led to  
20 a new and aggressive tactic: systematically arresting immigrants at courthouses and ICE  
21 appointments, regardless of the status of their legal cases. This has created a climate of fear,  
22 discouraging people from attending their mandatory hearings or ICE appointments.

23 In addition, individuals are now held for extended periods, sometimes days, in temporary  
24 holding cells that are not designed for overnight or prolonged detention, often under inhumane  
25 conditions. Government officials have justified these harsh conditions not as a matter of  
26 necessity, but as an intentional deterrent, which is not a constitutionally permissible reason for  
27 detention.

28 Ms. Solano Bejarano has lived in the United States for four and half years. She has many  
family members in the United States. At the time of detention, Ms. Solano Bejarano was  
providing for her two young children. Ms. Solano Bejarano has no criminal history anywhere in  
the world. She has established strong connections to the United States.



1 Ms. Solano Bejarano's arrest and detention have caused and will cause immediate,  
2 tremendous, and ongoing harm, which includes serious health problems which could lead to  
3 hospitalization and/or death, hygiene, sleep, and nutrition deprivation, family separation,  
4 emotional and economic harm to her family and USC child, loss of employment, and  
5 psychological harm. Ms. Solano Bejarano is not a flight risk, as evidenced by her deep ties to the  
6 community, including her relatives in the US. She is not a danger to the community. Her  
detention serves no legitimate purpose.

7 This case has substantial factual and legal support to be granted, resulting in Ms. Solano  
8 Bejarano release from custody, and enjoining DHS from detaining Ms. Solano Bejarano pending  
9 a hearing before a neutral adjudicator, to substantiate a material change in circumstances  
10 indicating that Ms. Solano Bejarano is either a flight risk or a danger to the community.

11 Intervention from this Court is therefore required to ensure that Ms. Solano Bejarano is  
12 released from her current custody based on her unlawful arrest, returned to her home in  
13 Bakersfield, California, where ICE can then provide her with a hearing before determining to re-  
14 arrest her pursuant to the Due Process Clause of the Fifth Amendment.

### 14 **III. LEGAL STANDARD**

15 Ms. Solano Bejarano is entitled to a temporary restraining order if she establishes that she  
16 is "likely to succeed on the merits...likely to suffer irreparable harm in the absence of preliminary  
17 relief, that the balance of equities tips in [her] favor, and that an injunction is in the public  
18 interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co.*  
19 *v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction  
20 and temporary restraining order standards are "substantially identical"). Even if Ms. Solano  
21 Bejarano does not show a likelihood of success on the merits, the Court may still grant a  
22 temporary restraining order if she raises "serious questions" as to the merits of her claims, the  
23 balance of hardships tips "sharply" in his favor, and the remaining equitable factors are satisfied.  
24 *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more  
detail below, Ms. Solano Bejarano overwhelmingly satisfies both standards.

25 Furthermore, the requirements for issuing a temporary restraining order without notice  
26 are met here. See Fed. R. Civ. P. 65(b). Ms. Solano Bejarano has attempted to secure her release  
27 from ICE but has received no response. Ms. Solano Bejarano also set out specific facts  
28 demonstrating that immediate and irreparable injury, loss, or damage may result before

respondents can be heard in opposition. See *Pinchi v. Noem*, No. 25-cv-05632-RML, 2025 L 1853763, at \*4 (N.D. Cal. July 4, 2025); *J.O.L.R. v Wofford*, 2025 WL 2718631 \* 11 (E.D. Cal Sept. 23, 2025); *R.D.T.M. v Wofford*, 2025 WL 2617255 \* 11 (E.D. Cal Sept. 9, 2025)(granting ex parte temporary restraining order in similar circumstances).

#### **IV. ARGUMENT**

##### **A. Ms. Solano Bejarano WARRANTS A TEMPORARY RESTRAINING ORDER**

A temporary restraining order should be issued if “immediate and irreparable injury, loss, or irreversible damage will result” to the applicant in the absence of an order. Fed. R. Civ. P. 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. See *Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). Ms. Solano Bejarano is likely to remain in unlawful custody in violation of her due process rights without intervention by this Court. Ms. Solano Bejarano will continue to suffer irreparable injury if she continues to be detained without due process.

##### **1. Ms. Solano Bejarano is likely to succeed on the merits because her detention violates substantive due process.**

The Due Process Clause applies to “all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693. “The touchstone of due process is protection of the individual against arbitrary action of government,” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including “the exercise of power without any reasonable justification in the service of a legitimate government objective,” *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas*, 533 U.S. at 690.

To comply with substantive due process, the government’s deprivation of an individual’s liberty must be justified by a sufficient purpose. Therefore, immigration detention, which is “civil, not criminal,” and “nonpunitive in purpose and effect,” must be justified by either (1) dangerousness or (2) flight risk. *Zadvydas*, 533 U.S. at 690; see *Hernandez*, 872 F.3d at 994 (“[T]he government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by a lesser bond or alternative conditions.”). When these rationales



1 are absent, immigration detention serves no legitimate government purpose and becomes  
2 impermissibly punitive, violating a person's substantive due process rights. See *Jackson v.*  
3 *Indiana*, 406 U.S. 715, 738 (1972) (detention must have a "reasonable relation" to the  
4 government's interests in preventing flight and danger); see also *Mahdawi v. Trump*, No. 2:25-  
5 CV-389, 2025 WL 1243135, at \*11 (D. Vt. Apr. 30, 2025) (ordering release from custody after  
6 finding petitioner may "succeed on his Fifth Amendment claim if he demonstrates either that the  
7 government acted with a punitive purpose or that it lacks any legitimate reason to detain him").

8 The Supreme Court has recognized that noncitizens may bring as-applied challenges to  
9 detention, including so-called "mandatory" detention. *Demore v. Kim*, 538 U.S. 510, 532-33  
10 (2003) (Kennedy, J., concurring) ("Were there to be an unreasonable delay by the INS in pursuing  
11 and completing deportation proceedings, it could become necessary then to inquire whether the  
12 detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but  
13 to incarcerate for other reasons."); *Nielsen v. Preap*, 586 U.S. 392, 420 (2019) ("Our decision  
14 today on the meaning of [§ 1226(c)] does not foreclose as-applied challenges—that is,  
15 constitutional challenges to applications of the statute as we have now read it.").

16 Ms. Solano Bejarano is neither a danger nor a flight risk. Therefore, her detention is both  
17 punitive and not justified by a legitimate purpose, violating her substantive due process rights.  
18 Ms. Solano Bejarano's ongoing detention is unconstitutional, and substantive due process  
19 principles require her immediate release.

20 **2. Ms. Solano Bejarano is Likely to Succeed on the Merits of Her Claim That**  
21 **in This Case the Constitution Requires a Hearing Before a Neutral**  
22 **Adjudicator Prior to Any Re-Incarceration by ICE.**

23 Ms. Solano Bejarano is likely to succeed on her claim that, in her particular  
24 circumstances, her current detention is unlawful because the Due Process Clause of the  
25 Constitution prevents Respondents from detaining her without first providing a pre-deprivation  
26 hearing before a neutral adjudicator where the government demonstrates by clear and convincing  
27 evidence that she is a danger to the public or a flight risk.

28 Courts analyze procedural due process claims, such as this one, in two steps: the first asks  
whether a protected liberty interest exists under the Due Process Clause, and the second examines  
the procedures necessary to ensure that 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).



1                   **a. Ms. Solano Bejarano Has a Protected Liberty Interest**

2           The Due Process Clause protects Ms. Solano Bejarano's liberty from immigration  
3 custody: "Freedom from imprisonment—from government custody, detention, or other forms of  
4 physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."  
5 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

6           Ms. Solano Bejarano has an established life in California. Ms. Solano Bejarano has lived  
7 in the United States for four and a half years. She resides with her significant other and children  
8 in Bakersfield, California. Ms. Solano Bejarano has no criminal history anywhere in the world.  
9 Ms. Solano Bejarano suffers from health issues which require surgery. Ms. Solano Bejarano  
10 currently is opposed to surgery and post-operative recovery while detained due to the dire health  
11 conditions at the California City Correctional Facility.

12                   **b. Ms. Solano Bejarano's Liberty Interest Mandates Her Release from**  
13                   **Unlawful Custody And A Hearing Before any Re-Arrest.**

14           Ms. Solano Bejarano asserts that, here, (1) where her detention would be civil; (2) where  
15 she has viable immigration relief; (3) where no circumstances exist that would justify her lawful  
16 detention; and (4) where ICE's move to arrest as many people as possible under the new  
17 administration's initiative, due process mandates that she be released from her unlawful custody  
18 and receive notice and a hearing before a neutral adjudicator before any re-arrest or revocation  
19 of her custody release.

20           "Adequate, or due, process depends upon the nature of the interest affected. The more  
21 important the interest and the greater the effect of its impairment, the greater the procedural  
22 safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d  
23 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey v. Brewer*, 408 U.S. 471, at 481-82  
24 (1972)). This Court must "balance [Ms. Solano Bejarano's] liberty interest against the  
25 [government's] interest in the efficient administration of" its immigration laws to determine what  
26 process she is owed to ensure that ICE does not unconstitutionally deprive her of her liberty. *Id.*  
27 at 1357. Under the test outlined in *Mathews v. Eldridge*, this Court must consider three factors in  
28 conducting its balancing test: "first, the private interest that will be affected by the official action;  
second, the risk of an erroneous deprivation of such interest through the procedures used, and the  
probative value, if any, of additional or substitute procedural safeguards; and finally the  
government's interest, including the function involved and the fiscal and administrative burdens

1 that the additional or substitute procedural requirements would entail.” *Haygood*, 769 F.2d at  
2 1357 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

3 The Supreme Court “usually has held that the Constitution requires some kind of a  
4 hearing before the State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S.  
5 113, 127 (1990) (emphasis in original). Only in a “special case” where post-deprivation remedies  
6 are “the only remedies the State could be expected to provide” can the post-deprivation process  
7 satisfy the requirements of due process. *Zinerman*, 494 U.S. at 985. Moreover, only where “one  
8 of the variables in the *Mathews* equation—the value of pre-deprivation safeguards—is negligible  
9 in preventing the kind of deprivation at issue” such that “the State cannot be required  
10 constitutionally to do the impossible by providing pre-deprivation process,” can the government  
11 avoid providing pre-deprivation process. *Id.*

12 Because, in this case, the provision of a pre-deprivation hearing is both possible and  
13 valuable to prevent an erroneous deprivation of liberty, ICE is required to provide Ms. Solano  
14 Bejarano with notice and a hearing prior to any incarceration. See *Morrissey*, 408 U.S. at 481-  
15 82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinerman*, 494 U.S. at 985; see also  
16 *Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982). Under *Mathews*, “the balance weighs heavily  
17 in favor of [Ms. Solano Bejarano’s] liberty” and requires a pre-deprivation hearing before a  
18 neutral adjudicator.

19 **i. Ms. Solano Bejarano Private Interest in Her Liberty is Profound.**

20 What is at stake in this case for Ms. Solano Bejarano is one of the most profound  
21 individual interests recognized by our legal system: whether ICE may unilaterally detain a non-  
22 citizen and be able to take away her physical freedom, i.e., her “constitutionally protected interest  
23 in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)(internal  
24 quotation omitted). “Freedom from bodily restraint has always been at the core of the liberty  
25 protected by the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). See also  
26 *Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment—from government custody, detention,  
27 or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause  
28 protects.”); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

Thus, there is a profound private interest at stake in this case, which must be weighed  
heavily when determining what process she is owed under the Constitution. See *Mathews*, 424  
U.S. at 334-35.



1                    **ii. The Government's Interest in Incarcerating Ms. Solano Bejarano**  
2                    **Without a Hearing is Low and the Burden on the Government to**  
3                    **Refrain from Re-Arresting Her Unless and Until She is Provided a**  
4                    **Hearing is Minimal**

5                    The government's interest in maintaining an unlawful detention without a due process  
6                    hearing is low, and when weighed against Ms. Solano Bejarano significant private interest in her  
7                    liberty, the scale tips sharply in favor of enjoining Respondents (1) from keeping her in unlawful  
8                    custody; (2) re-arresting Ms. Solano Bejarano unless and until the government demonstrates to a  
9                    neutral adjudicator by clear and convincing evidence that she is a flight risk or danger to the  
10                  community; and (3) removing her from the United States in violation of an agency order and  
11                  district court injunction. It becomes abundantly clear that the *Mathews* test favors Ms. Solano  
12                  Bejarano when the Court considers that the process he seeks—notice and a bond hearing before  
13                  a neutral decision maker—is a standard course of action for the government. Providing Ms.  
14                  Solano Bejarano with a hearing before this Court (or a neutral decision maker) to determine  
15                  whether there is clear and convincing evidence that Ms. Solano Bejarano is a flight risk or danger  
16                  to the community would impose only a de minimis burden on the government, because the  
17                  government routinely provides this sort of hearing to individuals like Ms. Solano Bejarano.

18                  As immigration detention is civil in nature, it cannot serve a punitive purpose. The  
19                  government's only interest in holding an individual in immigration detention can be to prevent  
20                  danger to the community or to ensure a noncitizen's appearance at immigration proceedings. See  
21                  *Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any  
22                  basis for detaining Ms. Solano Bejarano since she has lived at liberty with her community,  
23                  without any criminal or civil traffic infractions and has attended all court hearings and ICE check-  
24                  ins. The government's interest in detaining Ms. Solano Bejarano currently is extremely low. That  
25                  ICE has a new policy to make a minimum number of arrests each day under the new  
26                  administration does not constitute a valid reason to detain her.

27                  Moreover, the "fiscal and administrative burdens" that her immediate release and a lawful  
28                  pre-detention hearing would impose is nonexistent in this case. See *Mathews*, 424 U.S. at 334-  
35. Ms. Solano Bejarano does not seek a unique or expensive form of process, but rather a routine  
hearing. As the Ninth Circuit noted in 2017, which remains true today, "[t]he costs to the public  
of immigration detention are 'staggering': \$158 each day per detainee, amounting to a total daily

1 cost of \$6.5 million.” *Hernandez*, 872 F.3d at 996. It is only fair to say these costs have increased  
2 in the past 8 years.

3 Alternatively, providing Ms. Solano Bejarano with a hearing before this Court (or a  
4 neutral decision-maker) regarding release from custody is a routine procedure that the  
5 government provides to those in immigration detention facilities daily. At that hearing, the Court  
6 would have the opportunity to determine whether circumstances justify her arrest and detention.  
7 But there is no justifiable reason to incarcerate Ms. Solano Bejarano before such a hearing takes  
8 place.

9 Releasing Ms. Solano Bejarano from unlawful custody and enjoining Ms. Solano  
10 Bejarano’s arrest until ICE (1) moves for a custody re-determination before an IJ and (2)  
11 demonstrates by clear and convincing evidence that Ms. Solano Bejarano is a flight risk or danger  
12 to the community is far less costly and burdensome for the government than keeping her detained  
13 to a total daily cost of over \$6.5 million. *Hernandez*, 872 F.3d at 996.

14 **iii. Without a Due Process Hearing Prior to Any Arrest, the Risk of an  
15 Erroneous Deprivation of Liberty is High, and Process in the Form of  
16 a Constitutionally Compliant Hearing Where ICE Carries the Burden  
17 Would Decrease That Risk.**

18 Releasing Ms. Solano Bejarano from unlawful custody and providing Ms. Solano  
19 Bejarano a pre-deprivation hearing would decrease the risk of her being erroneously deprived of  
20 her liberty. Before Ms. Solano Bejarano can be lawfully detained, she should have been provided  
21 with a hearing before a neutral adjudicator at which the government is held to show that there are  
22 sufficient circumstances to detain her. Clear and convincing evidence exists to establish that Ms.  
23 Solano Bejarano is not a danger to the community or a flight risk.

24 The procedure Ms. Solano Bejarano seeks—a hearing in front of a neutral adjudicator at  
25 which the government must prove by clear and convincing evidence to justify her detention. “A  
26 neutral judge is one of the most basic due process protections.” *Castro-Cortez v. INS*, 239 F.3d  
27 1037, 1049 (9th Cir. 2001), abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548  
28 U.S. 30 (2006). The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty  
under *Mathews* can be decreased where a neutral decisionmaker, rather than ICE alone, makes  
custody determinations. *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir.  
2011).



1 Due process also requires consideration of alternatives to detention at any custody  
2 redetermination hearing that may occur. The primary purpose of immigration detention is to  
3 ensure a noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697.

4 Detention is not reasonably related to this purpose if there are alternatives to incarceration  
5 that could mitigate the risk of flight. See *Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly,  
6 alternatives to detention must be considered in determining whether Ms. Solano Bejarano's  
7 reincarceration is warranted.

8 As the above-cited authorities show, Ms. Solano Bejarano is likely to succeed in her claim  
9 that the current arrest and detention that ICE effected November 21, 2025, are unlawful. The Due  
10 Process Clause requires notice and a hearing before a neutral decision-maker before any  
11 reincarceration by ICE. And, at the very minimum, she clearly raises serious questions regarding  
12 this issue, thus also meriting a TRO. See *Alliance for the Wild Rockies*, 632 F.3d at 1135.

13 **3. Ms. Solano Bejarano Will Suffer Irreparable Harm Absent Injunctive**  
14 **Relief**

15 Ms. Solano Bejarano will suffer irreparable harm if she remains detained after being  
16 deprived of her liberty and subjected to unlawful incarceration by immigration authorities  
17 without being provided with the constitutionally adequate process that this motion for a  
18 temporary restraining order seeks. Detainees in ICE custody are held in "prison-like conditions."  
19 *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained,  
20 "[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means  
21 loss of a job; it disrupts family life; and it enforces idleness." *Barker v. Wingo*, 407 U.S. 514,  
22 532-33 (1972); accord *Nat'l Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th  
23 Cir. 1984).

24 Moreover, the Ninth Circuit has recognized in "concrete terms the irreparable harms  
25 imposed on anyone subject to immigration detention," including "subpar medical and psychiatric  
26 care in ICE detention facilities, the economic burdens imposed on detainees and their families as  
27 a result of detention, and the collateral harms to children of detainees whose parents are  
28 detained." *Hernandez*, 872 F.3d at 995.

29 The government itself has documented alarmingly poor conditions in ICE detention  
30 centers. See, e.g., DHS, Office of Inspector General (OIG), Summary of Unannounced  
31 Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations

1 of environmental health and safety standards; staffing shortages affecting the level of care  
2 detainees received for suicide watch, and detainees being held in administrative segregation in  
3 unauthorized restraints, without being allowed time outside their cell, and with no documentation  
4 that they were provided health care or three meals a day).

5 Conditions at the California City Detention Facility – where plaintiff is being held - are  
6 so inhumane that the ACLU recently filed a Class Action lawsuit detailing the grotesque,  
7 inhumane, and substandard conditions of the facility. *Gomez Ruiz v. U.S. Immigration and*  
8 *Customs Enforcement*, (N.D. Cal. Case 3:25-cv-09757, filed 11/12/25).

9 As detailed supra, Petitioner contends that her arrest, absent a hearing before a neutral  
10 adjudicator, violates her due process rights under the Constitution. It is clear that “the deprivation  
11 of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695  
12 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a  
13 temporary restraining order is necessary to prevent Ms. Solano Bejarano from suffering  
14 irreparable harm by being subject to unlawful and unjust detention.

15 **4. The Balance of Equities and the Public Interest Favor Granting the**  
16 **Temporary Restraining Order.**

17 The balance of equities and the public interest undoubtedly favor granting this temporary  
18 restraining order. First, the balance of hardships strongly favors Ms. Solano Bejarano. The  
19 government cannot suffer harm from an injunction that prevents it from engaging in an unlawful  
20 practice. See *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (“[T]he INS cannot reasonably  
21 assert that it is harmed in any legally cognizable sense by being enjoined from constitutional  
22 violations.”). Therefore, the government cannot allege harm arising from a temporary restraining  
23 order or preliminary injunction ordering it to comply with the Constitution.

24 Further, any burden imposed by requiring the ICE to release Ms. Solano Bejarano from  
25 unlawful custody and refrain from re-arrest unless and until she is provided with a hearing before  
26 a neutral arbitrator is both de minimis and clearly outweighed by the substantial harm she will  
27 suffer as if she is detained. See *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) (“Society’s  
28 interest lies on the side of affording fair procedures to all persons, even though the expenditure  
of governmental funds is required.”).

A temporary restraining order is in the public interest. First and most importantly, “it  
would not be equitable or in the public’s interest to allow [a party] . . . to violate the requirements



1 of federal law, especially when there are no adequate remedies available.” *Ariz. Dream Act Coal.*  
2 *v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d  
3 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the government would  
4 effectively be granted permission to detain Ms. Solano Bejarano in violation of the requirements  
5 of Due Process. “The public interest and the balance of the equities favor ‘prevent[ing] the  
6 violation of a party’s constitutional rights.’” *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quoting  
7 *Melendres*, 695 F.3d at 1002); see also *Hernandez*, 872 F.3d at 996 (“The public interest benefits  
8 from an injunction that ensures that individuals are not deprived of their liberty and held in  
9 immigration detention because of bonds established by a likely unconstitutional process.”); cf.  
10 *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public interest concerns  
11 are implicated when a constitutional right has been violated, because all citizens have a stake in  
upholding the Constitution.”).

12 Therefore, the public interest overwhelmingly favors entering a temporary restraining  
13 order and preliminary injunction.

#### 14 **V. CONCLUSION**

15 For all the above reasons, this Court should find:

16 (1) that Ms. Solano Bejarano warrants a temporary restraining order and a preliminary  
17 injunction ordering that Respondents Declare that Petitioner’s detention violates the Due Process  
Clause of the Fifth Amendment;

18 (2) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately  
19 and schedule a bond hearing before an immigration judge;

20 (3) Declare immediately that Defendants are prohibited from moving Petitioner outside  
21 of the jurisdiction of the Eastern District of California and enjoin Defendants from sending her  
to any place outside of the United States;

22 (4) Enjoin defendant from re-detaining Petitioner without a pre-deprivation hearing  
23 before an immigration judge where the Government bears the burden of proving that  
24 circumstances have materially changed, rendering Petitioner a danger to the community or a  
25 flight risk;

26 (5) Order Defendants to file a written declaration attesting to full compliance with these  
27 obligations.  
28

1 (6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and  
2 on any other basis justified under law; and

3 (7) Grant any further relief this Court deems just and proper.

4 Dated: December 17, 2025

Respectfully submitted,

5 /s/ Robert Beles

6 Robert J. Beles

7 Attorney for Petitioner

8 Melina Solano Bejarano  
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**VERIFICATION PURSUANT TO 28 U.S.C. 2242**

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I have discussed the events described in the Petition with the Petitioner. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on December 17, 2025, in Oakland, CA.

/s/ Robert Beles  
Robert Beles  
Attorney for Melina Solano  
Bejarano