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8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 MARCOS PAULO GUERCIO SANDOLI,

12 *Petitioner,*

13 v.

14 CHARLES WALL, Acting Director, U.S.
15 Immigration and Customs Enforcement; *et*
16 *al.,*

17 *Respondents.*

Case No. 26-cv-03110-RSH-BJW

PETITIONER'S REPLY TO
RESPONDENTS' RETURN TO PETITION
FOR WRIT OF HABEAS CORPUS

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19 Petitioner Marcos Paulo Guercio Sandoli respectfully submits this Traverse in reply to
20 Respondents' Return to the Petition for a Writ of Habeas Corpus (ECF No. 4). The Return does
21 not engage the merits of Petitioner's claim. Instead, it raises three threshold objections, that
22 Petitioner is not "in custody," that he consented to the GPS ankle monitor, and that he failed to
23 exhaust an administrative grievance. None has merit. Petitioner remains subject to continuous
24 GPS monitoring imposed without notice, individualized findings, or any opportunity to be heard,
25 and this Court has jurisdiction to reach the constitutional question the Return leaves unanswered.

26
27 **ARGUMENT**

1 continued the petitioner's custody and violated his Fifth Amendment due process rights).
2 Although out-of-circuit, that reasoning applies with equal force here.

3 Respondents' reliance on *Miranda v. Reno*, 238 F.3d 1156 (9th Cir. 2001), is misplaced.
4 *Miranda* held only that a petitioner who has already been physically removed from the United
5 States is no longer "in custody" and therefore cannot invoke habeas jurisdiction. *Id.* at 1158–59.
6 The petitioner there had been deported; the question was whether a completed removal
7 extinguished jurisdiction. *Miranda* says nothing about a petitioner who remains in the United
8 States under active, continuous electronic supervision. If anything, *Miranda* confirms the
9 governing framework, expressly recognizing that habeas custody reaches non-physical restraints,
10 including the supervised status described in *Hensley*. The authority Respondents invoke thus
11 supports jurisdiction here rather than defeating it.
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14 **II. PETITIONER'S INITIAL AGREEMENT TO RELEASE CONDITIONS DID**
15 **NOT WAIVE HIS RIGHT TO CHALLENGE A LATER, MORE RESTRICTIVE**
16 **ESCALATION.**
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18 Respondents argue that Petitioner consented to electronic monitoring as a condition of his
19 enrollment in the Intensive Supervision Appearance Program, and that he did so while represented
20 by counsel. (Return at 2.) The argument conflates two distinct things. Petitioner does not
21 challenge the conditions he originally accepted upon his release. He challenges the unilateral
22 imposition, on April 22, 2026, of a GPS ankle monitor, a materially more restrictive condition,
23 added without notice, without any individualized finding of flight risk or danger, and without any
24 opportunity to be heard. Agreeing to participate in a supervision program is not a blanket,
25 prospective waiver of due process for every future restraint the agency may later choose to impose.
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1 A waiver of a constitutional right must be knowing, voluntary, and intelligent, and it
2 cannot be inferred from mere participation in a program whose terms the agency reserves the
3 power to alter. Petitioner could not have waived an objection to a monitoring condition that did
4 not yet exist when he enrolled. Nor does the presence of counsel at enrollment supply the missing
5 waiver: counsel's assistance in accepting one set of conditions says nothing about consent to a
6 different and harsher condition imposed unilaterally months later. The relevant question is not
7 whether Petitioner once agreed to supervision, but whether the Government may escalate that
8 supervision to continuous GPS surveillance without the process the Fifth Amendment requires. It
9 may not.
10

11
12 Respondents' invocation of *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017), only
13 underscores the point. *Hernandez* requires the Government, in setting conditions of release, to
14 consider an individual's circumstances and the availability of less restrictive alternatives, and it
15 situates that inquiry within constitutional due-process limits. *Id.* at 990–91. *Hernandez* does not
16 stand for the proposition that the Government may impose the most intrusive available condition
17 by default and without process. It stands for the opposite, that conditions of supervision must be
18 justified on an individualized basis. Respondents have offered no such justification here. More
19 fundamentally, even where a statute authorizes the Government to detain or supervise, that
20 authority “does not foreclose as-applied challenges, that is, constitutional challenges to
21 applications of the statute.” *Nielsen v. Preap*, 586 U.S. 392, 419 (2019). Petitioner's claim is
22 precisely such an as-applied challenge: he does not dispute that the agency may supervise him,
23 but contends that the particular manner in which it escalated that supervision, unilaterally and
24 without process, violates the Fifth Amendment. Neither his enrollment in the program nor the
25 agency's general supervisory authority forecloses that challenge.
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1 Because Respondents' threshold objections fail, the Court should reach the merits, which
2 the Return does not meaningfully contest. The Petition demonstrates that the imposition of
3 continuous GPS monitoring without notice, individualized findings, or a hearing violates the Fifth
4 Amendment under the familiar balancing test of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).
5

6 The first *Mathews* factor, the private interest at stake, is substantial. Continuous GPS
7 monitoring is a significant intrusion on liberty and privacy. It tracks Petitioner's every movement,
8 marks him physically with a visible device, and subjects him to constant governmental
9 surveillance. The second factor, the risk of erroneous deprivation and the value of additional
10 safeguards—weighs heavily in Petitioner's favor. The monitor was imposed with no
11 individualized determination that Petitioner poses a flight risk or danger, and Petitioner has at all
12 times complied with his reporting obligations and appeared as required. Without notice and an
13 opportunity to be heard, there is no check against precisely the kind of arbitrary, unexplained
14 escalation that occurred here. The third factor, the Government's interest, does not outweigh the
15 first two. The Government's legitimate interest in ensuring appearance is already served by
16 Petitioner's existing supervision and unblemished compliance record, and providing notice and a
17 hearing before escalating conditions imposes minimal additional burden.
18
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20 Petitioner's second claim is independently meritorious. The escalation to GPS monitoring
21 was arbitrary: it was untethered to any individualized finding and unsupported by any articulated
22 justification. Agency action that imposes a significant new restraint on liberty without reasoned,
23 individualized explanation cannot be reconciled with due process. A federal district court in this
24 State recently confirmed as much, enjoining ICE from re-arresting or re-restraining released
25 noncitizens, including at Intensive Supervision Appearance Program check-ins, absent "a
26 material change in circumstances as to their dangerousness or flight risk." *Garro Pinchi v. Noem*,
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1 No. 3:25-cv-09423 (N.D. Cal. Dec. 19, 2025). The same principle governs here: having released
2 Petitioner on conditions, the Government could not escalate those conditions without an
3 individualized showing it never made.
4

5 **CONCLUSION**

6 For the foregoing reasons, Petitioner respectfully requests that the Court reject
7 Respondents' threshold defenses, grant the writ, declare that the imposition of GPS monitoring
8 without notice, individualized findings, and a hearing violates the Fifth Amendment, order the
9 monitor removed and Petitioner's prior conditions of release restored, and enjoin Respondents
10 from escalating his conditions of supervision in the future without notice, individualized findings,
11 and an opportunity to be heard.
12

13 Dated: June 3, 2026

14 Respectfully submitted,

15 /s/ Marcelo Gondim
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CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Date: June 4, 2026

/s/ Marcelo Gondim

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