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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 Romel SOLIS-BECERRIL,

11 Petitioner,

12 v.

13 Markwayne MULLIN, Secretary, U.S.
14 Department of Homeland Security; Todd
15 BLANCHE, Acting U.S. Attorney General;
16 David VENTURELLA, Acting Director,
17 Immigration and Customs Enforcement; Patrick
18 DIVVER, Director, San Diego Field Office,
19 Immigration and Customs Enforcement,
20 Enforcement and Removal Operations;
21 Christopher J. LAROSE, Warden, Otay Mesa
22 Detention Center;
23 U.S. DEPARTMENT OF HOMELAND
24 SECURITY; IMMIGRATION AND
25 CUSTOMS ENFORCEMENT and
26 EXECUTIVE OFFICE FOR IMMIGRATION
27 REVIEW,
28

Respondents.

Case No. 3:26-cv-03688-DMS-BJW

**PETITION'S REPLY TO
RESPONDENT'S RESPONSE
TO PETITION**

Name of Judicial Officer:
The Honorable Dana M. Sabraw
United States District Judge

1 Respondents filed a response to Mr. Solis' Petition, stating they do not oppose the
 2 Petition and defer to the Court on the appropriate relief. ECF 4, at 2. Mr. Solis hereby
 3 submits this traverse.

4 Respondents did not address Petitioner's claims under the Administrative
 5 Procedure Act, the Fourth Amendment, or the Fifth Amendment in their response.
 6 Failure to respond to Petitioner's arguments in support of his claims for relief constitutes
 7 waiver. *See United States v. Cabrera*, 796 F. Supp. 3d 660, 664 (S.D. Cal. 2025) (finding
 8 that "[g]enerally, a party waives argument when it fails to respond to an argument made
 9 to the court," and ruling that this alone constituted grounds to grant immediate
 10 release) (citing *United States v. Caceres-Olla*, 738 F.3d 1051, 1053 n.1 (9th Cir. 2013)).

11 In this traverse, Mr. Solis expands on (1) his request for immediate release as the
 12 appropriate remedy and (2) his request that this Court enjoin the Respondents from re-
 13 detaining him without notice and a pre-deprivation hearing before a neutral
 14 decisionmaker, where Respondents, not Petitioner, bear the burden of proving by clear
 15 and convincing evidence that circumstances have materially changed.

16 **I. Immediate release to the status quo ante is the appropriate remedy.**

17 In this traverse, Mr. Solis reiterates that immediate release is the proper remedy
 18 here, because it would return him to status quo ante, meaning "the last uncontested status
 19 which preceded the pending controversy." *Doe v. Noem*, 778 F. Supp. 3d 1151, 1166
 20 (W.D. Wash. 2025). Respondents have produced *no evidence* that Mr. Solis is a danger
 21 to the community or a flight risk. On the contrary, Respondents considered Mr. Solis'
 22 facts and circumstances in June 2017, over nine years ago, and determined that he was
 23 not a flight risk or danger to the community, and thus released him on a \$1,500 bond,
 24 with no ATD (Alternatives to Detention) monitoring by DHS. The Respondents have
 25 presented *no evidence* of any changes to the facts that justify Mr. Solis' re-arrest and re-
 26 detention over nine years after his release on bond in June 2017.

27 Mr. Solis has established that his re-arrest and re-detention without notice and a
 28 pre-deprivation hearing violates his Fifth Amendment right to procedural due process, *see*

ECF 1, ¶¶ 74-84, and therefore, he must be immediately released. *See Ramirez Avila v. Divver*, No. 26-cv-1977-DMS-BLM, 2026 WL 1146092 (S.D. Cal. Apr. 28, 2026) (ordering immediate release of previously released petitioner based on Fifth Amendment procedural due process grounds); *Alvarez Gallardo v. Attorney General of the United States*, No. 26-cv-2273-DMS-JLB, 2026 WL 1146166 (S.D. Cal. Apr. 28, 2026) (same); *Yatcin v. Lyons*, No. 26-cv-1707-DMS-VET, 2026 WL 1133899 (S.D. Cal. Apr. 27, 2026) (same); *see also Lesic v. LaRose*, No. 3:25-cv-02746-LL-BJW, 2025 WL 3158675, at *2-3 (S.D. Cal. Nov. 12, 2025) (ordering immediate release where bond was revoked without any “material or individualized change in circumstance for Petitioners,” in violating petitioner’s procedural due process rights); *Pinchi v. Noem*, No. 25-CV-05632-RMI (RFL), 2025 WL 1853763, at *3 (N.D. Cal. July 4, 2025) (ordering immediate release of noncitizen unlawfully re-detained without a pre-deprivation hearing) (internal citations omitted); *Chancely Fanfan, et al. v. Noem*, No. 25-cv-3291-DMS-BJW, 2025 WL 3563739, at *5 (S.D. Cal. Dec. 12, 2025) (ordering immediate release); *McSweeney v. Warden*, No. 3:25-cv-02488-RBM-DEB, 2025 WL 2998376 (S.D. Cal. Oct. 24, 2025) (same); *Constantinovici v. Bondi*, 806 F.Supp.3d 1155, (S.D. Cal. 2025) (same).

Mr. Solis’ also demonstrates that his re-arrest and re-detention violates his rights under the Fourth Amendment, *see* ECF 1, ¶¶ 64-69, as it is premised on nothing more than his unauthorized presence in the United States which formed the basis of his initial detention and subsequent release from custody in 2017. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1196 (N.D. Cal. 2017), *aff’d sub nom., Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (a person who immigration authorities released from initial custody cannot be rearrested “solely on the ground that he is subject to removal proceedings” and without some new, intervening cause). Therefore, immediate release is warranted on Fourth Amendment grounds as well.

II. The Court should issue the requested injunctive relief and order that the Government must follow the law if it re-detains Petitioner.

Mr. Solis has requested that this Court issue injunctive relief and order that prior to any re-detention, he is entitled to notice and a pre-detention hearing before an immigration judge to determine whether detention is warranted, and that Respondents bear the burden of establishing, by clear and convincing evidence that he poses a danger to the community or a risk of flight at that hearing. ECF 1, at p. 17. Mr. Solis further requests that Respondents be enjoined from adding DHS monitoring requirements to his release conditions; indeed, the Immigration Judge ordered no DHS monitoring when Mr. Solis was granted bond in 2017. *Id.* at 16.

Given that Respondents have violated Mr. Solis' due process rights, the requested injunctive relief is appropriate. Indeed, "such harm is likely to continue or recur absent injunctive relief against further constitutional violations," given that "ICE has already detained [Mr. Solis] without process, and [he] has been identified as [a] target[] for detention." *Espinoza-Palacios v. Hermosillo*, No. 2:26-cv-491-JNW, 2026 WL 686138, at *10 (W.D. Wash. Mar. 11, 2026). "Each of the four *eBay* factors supports this conclusion." *Id.*, citing *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006). First, Mr. Solis has suffered irreparable harm as a result of being detained in violation of his due process rights, and, as discussed above, such harm is likely to continue or recur absent injunctive relief – indeed, "[a]bsent injunctive relief, Mr. Solis may be subject to the same due process violation again." *Id.* "Second, monetary damages are inadequate to remedy the deprivation of liberty, and third, requiring the Government to follow constitutional procedures imposes no undue hardships. Lastly, the public interest favors compliance with the law." *Id.*

Several courts in this district have granted similar relief under comparable circumstances. *See Astafev v. Warden, Otay Mesa Det. Ctr.*, No. 3:26-cv-00313-RBM-AHG, 2026 WL 654247, at *5 (S.D. Cal. Mar. 9, 2026); *Velasquez-Chinga v. Noem*, No. 3:26-cv-00105-RBM-KSC, 2026 WL 311507, at *3 (S.D. Cal. Feb 5, 2026); *Perez v.*

1 *LaRose*, No. 25-cv-02620-RBM-JLB, 2025 WL 3171742, at *6 (S.D. Cal. Nov. 13,
2 2025); *Salazar v. Casey*, No. 25-cv-2784 JLS-VET, 2025 WL 3063629, at *6 (S.D. Cal.
3 Nov. 3, 2025); *Fanfan*, 2025 WL 3563739, at *5.

4 **III. Conclusion**

5 Respondents have failed to respond to Petitioner's claims under the Administrative
6 Procedure Act, the Fourth Amendment, or the Fifth Amendment in their response, and
7 furthermore they have presented *no evidence* of any changes to the facts that justify
8 Petitioner's re-arrest and re-detention by Respondents.

9 The re-arrest and re-detention of Mr. Solis by the Respondents violated his Due
10 Process rights, and the appropriate remedy is to order his immediate release and to enjoin
11 the Respondents from re-detaining him without notice and a pre-deprivation hearing
12 before a neutral decisionmaker, where Respondents bear the burden of proving by clear
13 and convincing evidence that circumstances have materially changed.

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15 DATED: July 2, 2026

s/ Jan Joseph Bejar

Jan Joseph Bejar, Esq.

For: JAN JOSEPH BEJAR,

A Professional Law Corporation

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20 *Attorney for Petitioner*
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