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Gregory Fay, 035534
Green Evans-Schroeder
130 West Cushing Street
Tucson, Arizona 85701
480-588-3430
greg@arizonaimmigration.net

Laura Belous, 028132
Florence Immigrant & Refugee Rights Project
P.O. Box 86299
Tucson, AZ 85754
520-934-7257
lbelous@firrp.org
Attorneys for Petitioner

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Juan Sanchez-Hernandez

Petitioner,

v.

Christopher Howard, et al.

Respondents.

No. 2:25-cv-02351-PHX-DWL-MTM

**REPLY TO RESPONSE TO
SECOND AMENDED PETITION
FOR HABEAS CORPUS**

1 Petitioner Angel Sanchez-Hernandez, through counsel, hereby files the following
2 reply to Respondents' Response to her Second Amended Petition for Habeas Corpus and
3 Complaint for Declaratory and Injunctive Relief. *See* Doc. 54.

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5 **1. The Government Cannot and Has Not Rebutted Petitioner's Showing That
6 Removal Is Not Remotely Foreseeable.**

7 Respondents agree (at 4) that it has been more than 17 years since Petitioner was
8 ordered removed and that her time in detention has "exceeded" what the Supreme Court
9 presumed to be Constitutional, yet they insist that her removal is reasonably foreseeable
10 because they assume that her appeal to the Board of Immigration Appeals will be
11 dismissed (at 4) and that she will not be able to pursue review at the Ninth Circuit (at 2).
12 This argument fails to provide a rebuttal to Petitioner's showing that her removal is not
13 reasonably foreseeable—and in fact is undermined by Respondents themselves in her
14 October 10 OSUP revocation when they stated "[d]ue to your pending case, ICE is unable
15 to move forward with your removal at this time." Doc. 51-6.

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18 Respondents' argument also fails to recognize that, as the period post-removal order
19 grows, "what counts as the 'reasonably foreseeable future' would have to shrink."
20 *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). No party disputes that Petitioner's removal
21 order has been final since 2007, after which the removal period commenced. ECF 51-1.
22 This Court has found that after much shorter time periods, including as little as 10 months,
23 "the 'reasonably foreseeable future' is soon." *See, e.g., Malik v. Figueroa*, 2:25-cv-03570-
24 GMS-JFM Doc. 15 (D. Ariz. Dec. 5, 2025). Given that they have had nearly *two decades*
25 to remove Petitioner, Respondents cannot pin the legality of Petitioner's detention on
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1 speculative distant future, months away, in which the BIA dismisses her case and the Ninth
2 Circuit refuses to consider her *Riley* petition for review. The BIA review will last at least
3 months, and Ninth Circuit review could add a year onto that. *See Rodriguez v. Robbins*,
4 804 F.3d 1060, 1072 (9th Cir. 2015), *rev'd on other grounds by Jennings v. Rodriguez*, 583
5 U.S. 281, (2018) (“[A]ppealing a claim to the BIA adds, on average, another four months;
6 and appealing a BIA decision to the Ninth Circuit typically leads to an additional eleven
7 months of confinement”).
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10 Further, Respondents concede (at 4) that even if they *were* to prevail at both the
11 BIA and the Ninth Circuit, there may still be “diplomatic” or “logistical” barriers that
12 would prevent her removal to Mexico as there were on June 29, 2025 when ICE
13 “attempted” to remove Ms. Sanchez to Mexico but could not. *See* ECF 19-1 ¶ 26. Or July
14 11, 2025, when “Mexico had indicated it would no longer agree to third country removals,
15 despite its prior agreement to do so.” ECF 20 ¶ 2. “A remote possibility of an eventual
16 removal is not analogous to a significant likelihood that removal will occur in the
17 reasonably foreseeable future.” *Kane v. Mukasey*, 2008 WL 11393137, at *5 (S.D. Tex.
18 Aug. 21, 2008) (superseded on mootness grounds by *Kane v. Mukasey*, 2008 WL
19 11393094 (S.D. Tex. Sept. 12, 2008)). Respondents must show “evidence of progress ...
20 in negotiating [her] repatriation.” *Gebrelibanos v. Wolf*, 2020 WL 5909487 (S.D. Cal. Oct.
21 6, 2020), at *3. Respondents have wholly failed to do so and Petitioner must be released.
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26 **2. Respondents’ October 10 OSUP Revocation Violated the APA.**

27 Sections 241.4 and 241.13 of Title 8 of the Code of Federal Regulations operate in
28 tandem and must be read together to understand the regulatory framework governing post-

1 order detention. Section 241.4 establishes the general procedures and criteria for custody
2 reviews following the removal period. Section 241.13, in turn, provides a specific,
3 mandatory process for cases in which removal is not reasonably foreseeable, implementing
4 the constitutional limits articulated in *Zadvydas*. When DHS revokes an Order of
5 Supervision, it must comply with both §§ 241.4 and 241.13. Although § 241.4 permits
6 DHS to revoke an OSUP based on an alleged violation or a reassessment of custody factors,
7 it does not authorize detention without a lawful basis for continued confinement, including
8 when removal is not reasonably foreseeable. Notably, Respondents do not dispute and
9 therefore conceded that revoking Petitioner’s OSUP order when removal is not reasonably
10 foreseeable violates 8 C.F.R. § 241.4(1)(2) and therefore the APA. On that basis alone,
11 Petitioner must be released.

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15 **A. Respondents’ Argument About Authority to Revoke OSUP Only Considers §**
16 **241.13 and Fails to Acknowledge Restrictions Provided Under § 241.4.**

17 Respondents’ sole reliance (at 4) on 8 C.F.R. § 241.13 to argue that the OSUP was
18 revoked by a person with the authority to do so is misplaced. Section 241.13 addresses
19 when DHS may lawfully detain an individual whose removal is not reasonably foreseeable;
20 it does not delegate authority to revoke supervision to any particular official. The term “the
21 Service” in § 241.13 is an institutional reference to DHS and cannot be read to confer
22 blanket revocation authority on all ICE personnel without rendering § 241.4 superfluous.
23 Section 241.4 is the only regulation that expressly governs who may revoke an OSUP and
24 how that decision must be made, limiting that authority to designated custody officials—
25 and in fact, Petitioner’s OSUP revocation cites only 241.4, *not* 241.13. ECF 51-6. Reading
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1 § 241.13 as an independent source of revocation authority, as Respondents ask the Court
2 to do (at 5), collapses these distinct regulatory functions, nullifies § 241.4’s specific
3 delegation limits, and permits re-detention even where DHS concedes removal is not
4 presently possible—just as Respondents have attempted to do to Ms. Sanchez. As such,
5 failure to provide notice of revocation that is signed by an individual with authority to do
6 so means that the “release was not lawfully revoked, and . . . [Petitioner] is entitled to
7 release on that basis alone.” *See Ceesay v. Kurzdorfer*, 781 F.Supp. 3d 137, 162 (W.D.N.Y.
8 2025).

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12 **B. Because of the Serious Liberty Interest at Stake, Conducting an Informal**
13 **Interview Six Days After the Revocation of the OSUP Order Was Unlawful.**

14 Compounding the error above, DHS did not provide the required informal interview
15 until six days after Petitioner was returned to custody. The government’s assertion (at 5)
16 that a six-day delay constitutes a “prompt” informal interview misapprehends both the
17 regulations and their purpose. The informal interview required by 8 C.F.R. § 241.4 is not
18 a post-hoc formality; it is the sole procedural safeguard afforded to an individual facing
19 revocation of an Order of Supervision and renewed detention. Its purpose is to provide a
20 timely opportunity to be heard before or contemporaneously with the custody
21 determination—not days after the decision to revoke has already been made and detention
22 imposed. Where, as here, DHS had already decided to revoke supervision and re-detain
23 Petitioner, a six-day delay deprived the interview of any meaningful function and rendered
24 it incapable of influencing the outcome. In this context, “prompt” must be understood in
25 functional, not merely chronological, terms: a delayed interview that occurs after detention
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1 has begun and after the revocation decision is finalized cannot satisfy the regulatory
2 requirement or basic due process. Allowing DHS to detain first and interview later would
3 reduce the informal interview to an empty exercise and effectively eliminate the only
4 procedural protection the regulations provide.
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7 **3. Given the Serious Due Process Concerns, As Well As Respondents' Past Non-**
8 **Compliance With This Court's Orders, Respondent Must Be Given a Pre-**
9 **Deprivation Hearing.**

10 Respondents do not contest that, after this Court ordered her released subject to
11 conditions imposed prior to her unlawful detention, they did not fully comply with the
12 Court's order. *See* Doc. 51 at ¶ 4 (noting that Respondents imposed additional conditions
13 not consistent with this Court's order, including electronic monitoring and weekly instead
14 of annual check-ins). Given that this Court has had to intervene twice to order Respondents
15 to comply with the law, *see* Doc. 33 (Order Regarding First Amended Petition for Habeas
16 Corpus); Doc. 48, (Order Regarding Motion to Show Cause), and yet Respondents still re-
17 detained Ms. Sanchez on October 10, 2025 with serious procedural errors, a pre-
18 deprivation hearing is necessary in order to prevent further due process violations.
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21 Respondents argue (at 6–8) that Ms. Sanchez's claim that procedural due process
22 requires a pre-deprivation hearing cannot pass the *Mathews v. Eldridge* test. This Court's
23 order in *Rosado v. Figueroa* strongly undercuts that position. In that case, the Court applied
24 the three-factor test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) and
25 concluded that DHS violated the Fifth Amendment by re-detaining a petitioner after years
26 of successful release in the community without prior notice, a showing of changed
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1 circumstances, or a meaningful opportunity to object. No. CV 25-02157 PHX DLR
2 (CDB), 2025 WL 2337099, at *10–14 (D. Ariz. Aug. 11, 2025), report and
3 recommendation adopted, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025).

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5 While Respondents argue (at 7) that Ms. Sanchez’s private interest in liberty is “less
6 than full,” *Rosado* already rejected that argument, emphasizing that the interest in physical
7 liberty is “the most sacred and profound right afforded by the United States Constitution”
8 particularly where, as here, the petitioner had lived at liberty for years with the
9 government’s acquiescence and had not violated any conditions of release. *Rosado*, 2025
10 WL 2337099, at *13. This interest was further heightened by the conditions of
11 confinement at the Eloy Detention Center, a facility designed for criminal incarceration
12 where the federal government’s own oversight organizations have documented complaints
13 of “excessive lockdowns, unsanitary living conditions, inadequate access to showers and
14 recreation, and unhygienic food service operations.” *Id.* at *13–14. Ms. Sanchez has been
15 held at Eloy for each of her detentions and is even more vulnerable than the petitioner in
16 *Rosado* because she is a transgender woman housed with men, which makes her feel
17 “unsafe, afraid, and humiliated,” and who has had sporadic access to necessary
18 medication, which has taken a “serious toll” on her health. ECF 51-2.

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23 *Rosado* also rejected Respondent’s second Mathews factor argument (at 7) that
24 there is “no risk” of erroneous deprivation because of the procedural protections provided
25 in the regulations. Like Ms. Sanchez, Ms. Rosado was afforded no meaningful custody
26 hearing regarding the basis for her detention. *Id.* at *14. The court held that where a
27 substantial liberty interest is at stake, “the government should have the burden of proving,
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1 by clear and convincing evidence, that an individual is a danger or flight risk before
2 depriving the individual of their liberty.” *Id.* The *Rosado* court noted that, as in Ms.
3 Sanchez’s case, the lengthy prior release and lack of violations and the absence of such
4 due process procedures created an unacceptably high risk of erroneous detention. *Id.*
5 Although the government asserts (at 7) that the protections under 8 C.F.R. § 241.13 are
6 “more than adequate,” they do not contest that she did not receive that interview until
7 nearly a week after her OSUP was already revoked—hardly a meaningful test of the
8 government’s justification for her re-detention.
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11 Third, *Rosado* held that government’s interest did not outweigh petitioner’s liberty
12 interest. *Id.* The court reiterated that civil detention is permissible only where a “special
13 justification” outweighs the individual’s interest in avoiding physical restraint. *Id.* at *14.
14 Respondents argue (at 7–8) that a pre-deprivation hearing would be “an unworkable
15 solution to a situation already addressed by the current procedures.” But those minor
16 administrative burdens cannot outweigh Petitioner’s liberty interest—especially where
17 “[t]he government’s only apparent interest in taking [Petitioner] into custody, which
18 actually places an additional fiscal and administrative burden on the government, is to
19 fulfill a quota of arrests . . . set by the current administration. *Id.* at *14.
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23 Accordingly, this Court should affirm that noncitizens have a liberty interest in their
24 conditional release and order that Ms. Sanchez must be released unless and until she
25 receives a pre-deprivation hearing before a neutral adjudicator where Respondents bear
26 the burden of showing changed circumstances justifying her detention, including danger
27 and flight risk, and any adjudicator must consider alternatives to detention.
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1 **4. This Court’s jurisdiction is not affected by either 8 U.S.C. § 1252(g) or the**
2 **Foreign Affairs Reform and Restructuring Act.**

3 **A. Section 1252(g) does not bar review of Petitioner’s due process claims.**

4 Respondents argue (at 8) that “Petitioner’s claim seeking a stay of removal ... is
5 barred by 8 U.S.C. § 1252(g).” Ms. Sanchez is not asking for a stay of removal. Instead
6 she has asked this Court to declare that her detention violates both the Supreme Court’s
7 ruling in *Zadvydas v. Davis*, the Due Process clause of the Fifth Amendment, and the APA,
8 and therefore enter an order releasing her from detention, or alternatively, enter an order
9 to require notice and a meaningful opportunity to voice a fear claim if Respondents wish
10 to remove her to a third country. *See* ECF 51, pp. 37. Section § 1252(g) does not bar any
11 of these forms of relief.

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14 The argument that § 1252(g) bars Ms. Sanchez’s *Zadvydas* claim is a nonstarter.
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16 The Supreme Court made clear in that case that the jurisdiction-stripping provisions of 8
17 U.S.C. § 1252 do not preclude challenges to unconstitutionally prolonged detention.
18 *Zadvydas*, 533 U.S. at 687-88 (holding that § 1252(a)(1), § 1252(a)(2)(C) and § 1252(g)
19 do not bar “statutory and constitutional challenges to post-removal-period detention”).

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21 The cases Respondents rely on (at 8) involve petitioners who sued in district court
22 seeking an injunction to stay their removal from the United States. *See, e.g., Rauda v.*
23 *Jennings*, 55 F.4th 773 (9th Cir. 2022) (denying a noncitizen’s request for a TRO to prevent
24 his removal while the BIA adjudicated his motion to reopen). Respondents’ argument
25 regarding § 1252(g) is foreclosed by the Ninth Circuit’s decision in *Ibarra-Perez v. United*
26 *States*, No. 24-631, 2025 WL 2461663, at *7 (9th Cir. Aug. 27, 2025), which held that §
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1 1252(g) does not bar review of procedural protections that must be provided prior to a
2 third country removal. *See id.* at *7 (“The government’s broad reading of § 1252(g) would
3 lead to a result that is not contemplated in the statute and that has been disavowed by the
4 Supreme Court. The government’s reading of § 1252(g) would entirely insulate from
5 judicial review any post-hearing decision by ICE to remove noncitizens to third countries
6 where they would be in danger of persecution, torture, and even death.”).

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9 But in any event, Ms. Sanchez has not asked this Court to enjoin her removal from
10 the United States; she has only asked that such removal be conducted in a manner that
11 comports with due process. And courts have not hesitated to grant such relief, or indeed,
12 in some cases even broader relief. *See, e.g., Arostegui-Maldonado*, 2025 WL 2280357, at
13 *16 (enjoining removal or transfer pending resolution of habeas petition); *Misirbekov v.*
14 *Venegas*, 2025 WL 2201470 (S.D. Tex. Aug. 1, 2025) (enjoining removal without court’s
15 permission); *Nguyen v. Scott*, 2025 WL 2165995 (W.D. Wash. July 30, 2025) (enjoining
16 removal to any country besides Vietnam); *Vaskanyan v. Janecka*, 2025 WL 2014208 (C.D.
17 Cal. June 25, 2025), at *9 (granting TRO to prevent third-country removal without 10
18 days’ written notice and a meaningful opportunity to raise a fear-based claim); *D.V.D. v.*
19 *U.S. Dep’t of Homeland Sec.*, 778 F. Supp. 3d 355, 376-77 (D. Mass. 2025) (court “will
20 not construe section 1252(g) to immunize an unlawful practice from judicial review”). In
21 short, since Ms. Sanchez is seeking only the limited alternative relief of notice and
22 adequate process before her removal and does not ask this Court to stay or otherwise
23 interfere in the removal process, this Court should follow other courts that have found no
24 jurisdictional bar.
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1 **B. FARRA presents no jurisdictional bar in this case.**

2 Next Respondents argue (at 9) that Ms. Sanchez’s claims “run[] afoul of” the
3 Foreign Affairs Reform and Restructuring Act of 1998 (“FARRA”). In *Ortega v. Kaiser*,
4 2025 WL 2243616 (N.D. Cal. Aug. 6, 2025), the court rejected the very same argument:
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6 Ortega does not seek review of “the regulations adopted to implement” CAT
7 or “claims considered under” CAT. Instead, he asks not to be detained or
8 removed without first receiving due process as to any CAT claim he might
9 have for a third country to which the Government seeks his removal.
FARRA, by its plain language, does not bar this Court’s review of such
claims.

10 *Id.* at *4. *See also D.V.D. v. U.S. Dep’t of Homeland Sec.*, -- F. Supp. 3d --, 2025
11 WL 1487238, at *5 (also rejecting FARRA argument); *J.G.G. v. Trump*, 772 F. Supp. 3d
12 18, 40-41 (D.D.C. 2025) (“that jurisdiction-stripping mandate pertains only to the review
13 of the *substance* of CAT claims” not claims that the government is “denying [] any
14 opportunity to *raise* CAT claims before [] deportation”) (emphasis in original). In short,
15 FARRA has no application to this case.
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18 **C. The non-opt-out class provisions of *D.V.D.* do not prevent the Court from**
19 **granting injunctive relief in this case.**

20 Respondents argue (at 11) that “Petitioner’s claims seeking to delay or otherwise
21 prohibit his removal to a third country ... substantially overlap with the nationwide class
22 action, *D.V.D.*”, and should therefore be dismissed. A sister court in this circuit recently
23 addressed these same arguments in *Nguyen v. Scott*, -- F. Supp. 3d --, 2025 WL 2419288
24 (W.D. Wash. Aug. 21, 2025). The court relied upon the Ninth Circuit’s decision in *Pride*
25 *v. Correa*, 719 F.3d 1130 (9th Cir. 2013) to find that the petitioner’s claims were not barred.
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28 *Id.* at *20. The *Nguyen* court held that the petitioner “may bring his independent claim for

1 injunctive relief because it is not duplicative of the [*D.V.D.*] litigation” and because
2 “without that opportunity, Petitioner would be left ‘powerless to petition the courts for
3 redress’ until the *D.V.D.* class action has been ‘fully resolved.’” *Id.* at *21 (citing *Pride*,
4 719 F.3d 1137-38). The court also pointed out that:
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6 The Court also notes that Respondents’ position contradicts the position they
7 have taken in *D.V.D.* itself ... [O]ne of the government’s primary arguments
8 against the injunction in *D.V.D.* is that there is a jurisdictional bar to
9 classwide injunctive relief in that case. [...] In other words, the government
10 is arguing in *D.V.D.* that injunctive relief cannot be granted to the class, and
11 may only be pursued (if at all) through individual cases, while arguing here
12 that Petitioner’s individual claim should be barred because his injunctive
13 claims should be adjudicated as part of the *D.V.D.* class. The contradiction
14 in these arguments further undermines Respondents’ position here. The class
15 certification order in *D.V.D.* does not prevent this Court from adjudicating
16 Petitioner’s claims regarding third-country removal.

17 *Id.* at *21. This Court should follow the detailed and thorough reasoning of the
18 court in *Nguyen* and conclude that Ms. Sanchez’s inclusion in the non-opt-out class in
19 *D.V.D.* does not preclude this Court from adjudicating her individual claims in this case.

20 5. Conclusion

21 For the reasons above, Petitioner respectfully requests that the Court grant the relief
22 requested and order her immediate release.

23 Dated: December 22, 2025

Respectfully submitted,

24 By *s/ Laura Belous*
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