UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

VICTOR MANUEL SANCHEZ LOPEZ, *Petitioner,* v. MICHAEL NESSINGER, in his official capacity as Warden of the Donald W. Wyatt Detention Facility; PATRICIA H. HYDE, in her official capacity as Acting Field Office Director of the Boston and Customs Enforcement Office; TODD M. LYONS, in his official capacity as Acting Director of United States Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as Secretary of the United States Department of Homeland Security, *Respondents.*	No. 1:25-cv-00484-MRD-PAS October 1, 2025

MOTION TO RECONSIDER DENIAL OF WRIT OF HABEAS CORPUS

Pursuant to Federal Rules of Civil Procedure 59(e) and 60, Petitioner Victor Manuel Sanchez Lopez ("Mr. Sanchez") respectfully requests that the Court reconsider its ruling denying Mr. Sanchez's Petition for Writ of Habeas Corpus ("Petition"), ECF No 1. The fact that Mr. Sanchez has a final order of removal is not dispositive. This is because the Petition challenges the government's *redetention* of Mr. Sanchez following years of supervised release, even after he had a final order of removal, without complying with its own agency regulations and the procedural requirements of due process under the Fifth Amendment. Agency regulations under 8 C.F.R. § 241.4 require that where, as here, ICE seeks to re-detain an individual with a final order of removal who is on supervised release, they must take specific procedural steps, none of which were taken here. Failure to do so, as occurred here, violates Mr Sanchez's due process rights.

In numerous cases, district courts in this circuit have granted habeas relief to noncitizens when ICE has not followed the procedural requirements under § 241.4. *See Perez-Escobar v. Moniz*, No. 25-CV-11781-PBS, 2025 WL 2084102, at *2 (D. Mass. July 24, 2025) (holding that ICE "fail[ed] to give Petitioner meaningful notice of the basis for its revocation of his release [and] violated the regulation and due process," noting that "[n]oncitizens, even those subject to a final removal order, are entitled to due process" including adequate notice and an opportunity to be heard before revocation of release, and ordering petitioner released); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387-88 (D. Mass. 2017) (ordering petitioner released from detention because ICE did not follow the procedures set out in 8 C.F.R. § 241.4; agency failed to offer petitioner an informal interview, the record did not show ICE made the requisite threshold determinations under § 241.4(l)(2), and it was unclear whether the correct ICE official authorized the revocation of release); *Jimenez v. Cronen,* 317 F. Supp. 3d 626, 652, 658 (D. Mass. 2018) (stating that ICE must provide individuals released on conditions with a revocation notification and offer them an opportunity to respond to the stated reasons in an informal interview after re-detaining them under § 241.4(l)(1)) (noting that after petitioners were released, "ICE reviewed detainee files in the Burlington, Massachusetts Field Office, found 30 to 40 additional cases in which the § 241.4 procedures had not been followed, and released approximately 20 aliens").

In doing so, these district courts have recognized that when ICE fails to abide by the procedural protections in its own regulations, including § 241.4, habeas relief in the form of immediate release is proper. ICE is obligated to follow its own regulations. *See Rotinsulu v. Mukasey,* 515 F.3d 68, 72 (1st Cir. 2008) ("An agency has an obligation to abide by its own regulations") (citing *Accardi v. Shaughnessy,* 347 U.S. 260, 265 (1954)). Its failure to do so here

also constitutes a violation of the Due Process Clause, as Mr. Sanchez alleges in his Petition. ECF No. 1, ¶¶ 19-21.

Petitioner also calls to the Court's attention a material misstatement in the government's submission, on which the Court appears to have relied in dismissing the Petition. The government states, "Given that Petitioner is subject to a final order of removal, he is ineligible for release pursuant to [8 U.S.C.] Section 1231." Opposition to Petition for Writ of Habeas Corpus and Motion to Dismiss, ECF No. 7 ("Opp. and Mot. to Dismiss") at 7. But as the government concedes in the next paragraph, 8 U.S.C. § 1231(a)(2) authorizes supervised release precisely *for* individuals with a final order of removal once the "removal period" has run. *Id.* Here, as the government also concedes, Mr. Sanchez has been on supervised release, subject to "periodic appearances" before ICE, *pursuant* to § 1231(a)(2)—the very section under which the government claims he is ineligible for release. In fact, Mr. Sanchez has been on such supervised release for years. The central issue presented by the Petition is whether the government followed the necessary procedures required by regulation and due process before abruptly terminating his supervised release under § 1231(a)(2).

Given the liberty interests at stake in this matter—the surprise re-arrest of an individual who has resided in the United States for twenty-six years and separation from his family, including three U.S. citizen children, including a two-year-old son with profound medical hardships and developmental delays—Petitioner respectfully requests that the Court reconsider its decision and afford him the opportunity to present these arguments in support of his Petition.

LEGAL STANDARD

A motion to reconsider should be granted "if the moving party presents newly discovered

evidence, if there has been an intervening change in the law, or if the movant can demonstrate that the original decision was based on a manifest error of law or was clearly unjust." *Gomes v. U.S. Dep't of Homeland Sec., Acting Sec'y*, 561 F. Supp. 3d 198, 200 (D.N.H. 2020) (citing *United States v. Allen,* 573 F.3d 42, 53 (1st Cir. 2009)). In addition, a district court has discretion to reconsider its own ruling, constrained only by the "highly flexible" doctrine of law of the case. *United States v. Almonte,* 454 F. Supp. 3d 146, 151 (D.R.I. 2020) (citing *Pickett v. Prince,* 207 F.3d 402, 407 (7th Cir. 2000)).

Here, the Court ruled on the government's motion to dismiss before Petitioner's time to respond had expired and without the benefit of Petitioner's elaboration of his claims or rebuttal of the government's incorrect statements of law. Given the enormous stakes of this case, it is fair and just to give Petitioner the opportunity to present his case to the Court.

The government argues that Mr. Sanchez has no legal basis upon which to contest this confinement and misstates the relevant statute in claiming that Mr. Sanchez is ineligible for release. But Mr. Sanchez's arbitrary re-detention is contrary to ICE's own regulations, and due process mandates his release.

STATEMENT OF FACTS

Undersigned counsel represent the following facts and, if the present motion is granted, will submit declarations and other evidence to support them:

1. Victor Manuel Sanchez Lopez is a noncitizen whose detention is governed by 8 U.S.C. § 1231, which pertains to noncitizens with a final order of removal.

2. While Mr. Sanchez is subject to a final order of removal issued on May 19, 2020, he has a pending application for stay of removal filed on September 24, 2025.

3. For five years, he has been at liberty, even while he has had a final order of removal. From April 8, 2020, to April 15, 2021, he was released on his own recognizance by ICE.

4. From April 15, 2021, to September 24, 2025, Mr. Sanchez was released under an order of supervision.

5. The Department of Homeland Security granted Mr. Sanchez work authorization, starting in 2021, and continued to renew his work authorization annually.

6. Prior to his arrest, Mr. Sanchez was not provided with notice that the government intended to re-detain him. He did not violate the conditions of his supervised release. Nor did he commit any crimes in the period he was at liberty.

7. Mr. Sanchez never received a Notice of Revocation of Release from ICE.

8. At no time did ICE ever ask Mr. Sanchez to make any application for travel or departure from the United States.

9. On September 24, 2025, Mr. Sanchez was arrested and re-detained during his ICE check-in in Hartford, Connecticut.

10. At no point did ICE provide Mr. Sanchez with a reason for revoking his release.

ARGUMENT

I. ICE VIOLATED MR. SANCHEZ'S PROCEDURAL DUE PROCESS RIGHTS BY FAILING TO ABIDE BY THEIR OWN REGULATION'S REQUIREMENTS UNDER 8 C.F.R. § 241.4

ICE violated Mr. Sanchez's procedural due process rights by failing to abide by its own regulations under 8 C.F.R. § 241.4 in re-detaining Mr. Sanchez. These regulations explicitly govern noncitizens with final orders of removal who are beyond the removal period, the same position Mr. Sanchez is in.

ICE's violations of their own regulation provide a proper foundation for granting habeas relief to Mr. Sanchez. In numerous cases, district courts in this circuit have granted habeas relief to noncitizens when ICE has not followed the procedural requirements under § 241.4. *See, e.g., Perez-Escobar v. Moniz*, No. 25-CV-11781-PBS, 2025 WL 2084102, at *2 (D. Mass. July 24, 2025) (holding that ICE "fail[ed] to give Petitioner meaningful notice of the basis for its revocation of his release [and] violated the regulation and due process," noting that "[n]oncitizens, even those subject to a final removal order, are entitled to due process" including adequate notice and an opportunity to be heard before revocation of release, and ordering petitioner released); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387-88 (D. Mass. 2017) (ordering petitioner released from detention because ICE did not follow the procedures set out in 8 C.F.R. § 241.4, agency failed to offer Petitioner an informal interview, the record did not show ICE made the requisite threshold determinations under § 241.4(l)(2), and it was unclear whether the correct ICE official authorized the revocation of release); *Jimenez v. Cronen,* 317 F. Supp. 3d 626, 652, 658 (D. Mass. 2018) (stating that ICE must provide individuals released on conditions with a revocation notification and offer them an opportunity to respond to the stated reasons in an informal interview after re-detaining them under § 241.4(l)(1)) (noting that after petitioners were released, "ICE reviewed detainee files in the Burlington, Massachusetts Field Office, found 30 to 40 additional cases in which the § 241.4 procedures had not been followed, and released approximately 20 aliens"). In doing so, these district courts have recognized that when ICE fails to abide by the procedural protections in its own regulations, including § 241.4, habeas relief in the form of immediate release is proper.

Courts have held, repeatedly, that any ICE nonadherence to the regulations that govern post-order re-detention is impermissible. *See United States v. Chinchilla,* 987 F.3d 1303, 1310

(11th Cir. 2021) (holding that "[i]n order to remove an unlawful alien subject to an order of supervision, immigration officials must first revoke the order of supervision . . . and must notify the alien of the 'reasons for revocation'"); *Jaime Eduardo Villanueva Herrera v. Randall Tate*, No. CV H-25-3364, 2025 WL 2774610, at *6, 11 (S.D. Tex. Sep. 26, 2025) (holding that ICE violated 8 C.F.R. § 241.4 when it re-detained Petitioner, who was on supervised release, and ordering immediate release after conducting the *Mathews v. Eldridge*, 424 U.S. 319 (1976) balancing test to determine the appropriate scope of relief); *Sering Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 164-65, 170 (W.D.N.Y 2025) (holding that ICE violated its own procedures by re-detaining petitioner subject to a final removal order without due process, including an informal interview, and ordering petitioner's release from custody); *You v. Nielsen,* 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018) ("Even assuming arguendo that [r]espondents had the authority to revoke [p]etitioner's release under [section] 241.4 . . . they could not detain him without providing him with notice and an informal interview").

The regulation at hand, 8 C.F.R. § 241.4, governs the "detention of inadmissible, criminal, and other aliens beyond the removal period." Specifically at issue here is § 241.4(l), which delineates procedures ICE must follow when revoking release under an order of supervision. Section 241.4(l) provides for the revocation of release under an order of supervision in two circumstances. First, release can be revoked because of a "violation of [the] conditions of release." 8 C.F.R. § 241.4(l)(1). In such circumstances, ICE must notify the noncitizen of "the reasons for revocation of his or her release or parole" and be "afforded an initial informal interview . . . to afford [him] an opportunity to respond to the reasons for revocation stated in the notification." *Id.* Second, an Executive Associate Commissioner or district director (where "revocation is in the public interest and circumstances do not reasonably permit referral of the

case to the Executive Associate Commissioner"), can terminate the revocation on four discretionary grounds. *Id.* §241.4(l)(2). The statute also provides that "a copy of any decision by the district director, Director of the Detention and Removal Field Office, or Executive Associate Commissioner to release or detain an alien shall be provided to the detained alien," with the "reasons" for the determination. *Id.* §241.4(d).

These procedures "are not meant merely to 'facilitate internal agency housekeeping, but rather afford important and imperative procedural safeguards to detainees.'" *Jimenez v. Cronen,* 317 F. Supp. 3d 626, 642 (D. Mass. 2018) (quoting *Bonitto v. ICE*, 547 F. Supp. 2d 747, 757-58 (S.D. Tex. 2008)). "They protect the fundamental Fifth Amendment right to notice and an opportunity to be heard, and must be followed." *Id.* Further, ICE must adhere to its own regulations. *Rotinsulu v. Mukasey,* 515 F.3d 68, 72 (1st Cir. 2008); *Accardi v. Shaughnessy,* 347 U.S. 260 (1954).

Even where only § 241.4(l)(2) applies, due process requires the provision of notice and opportunity to respond, especially in circumstances where as here, Mr. Sanchez has been under supervised release for several years and has strong equities in remaining at liberty, including three U.S. citizen children. For example, in *Perez-Escobar v. Moniz*, Judge Patti Saris held that even where DHS revoked release under § 241.4(l)(2), DHS was still required to "give Petitioner meaningful notice of the basis for its revocation of [Petitioner's] release." No. 25-CV-11781-PBS, 2025 WL 2084102, at *1-2 (D. Mass. July 24, 2025); *see also Noem v. Abrego Garcia,* —— U.S. ——, 145 S. Ct. 1017, 1019 (2025) (statement of Sotomayor, J.) ("[I]n order to revoke conditional release, the Government must provide adequate notice" and give the noncitizen "an opportunity to respond to the reasons" offered for the revocation.) (quoting 8 C.F.R. § 241.4(l)). None of these procedures were followed here.

The government inaccurately states that Mr. Sanchez is categorically ineligible for post-order release from ICE custody because he "failed to make any application in good faith for travel or departure from the United States" during the 90-day period that followed his removal order. ECF No. 7 at 7. The statute that governs the detention of post-order noncitizens reads otherwise; it merely allows that individuals *may* be re-detained after the 90-day period under certain circumstances. 8 U.S.C. § 1231(a)(6) ("An alien ordered removed who is inadmissible under section 1182 of this title, removable under sections 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, *may be detained* beyond the removal period." (emphasis added)). In any event, Mr. Sanchez was never asked to make any application for travel or departure from the United States, and therefore could not have failed to do so. And he was in fact *released* pursuant to § 1231.

II. THE INADVERTENT OMISSIONS IN MR. SANCHEZ'S ORIGINAL PETITION DO NOT WARRANT DISMISSAL

As the Court notes, the original petition in this case did not describe Mr. Sanchez's immigration history and did not explicitly state that he has removal order. The undersigned takes seriously the duty of candor to the tribunal and regrets those inadvertent omissions, which prevented the Court from developing a deeper understanding of the case. But those omitted facts are not prejudicial because this case is about re-detention, not removability. Specifically, Mr. Sanchez submits that the government may not re-detain him in a way that violates the procedural due process protections of the Fifth Amendment, *see* ECF 1 ¶¶ 19-21, or applicable ICE regulations, *see supra* Section I (discussing 8 C.F.R. § 241.4). The existence of a final removal order does not negate procedural due process protections. *See Perez-Escobar v. Moniz*, No. 25-CV-11781-PBS, 2025 WL 2084102, at *2 (D. Mass. July 24, 2025) (citing *Zadvydas v. Davis*,

533 U.S. 678, 690, 693-94 (2001)). And it is the final order itself that renders the ICE regulations applicable. *See* 8 C.F.R. § 241.4. The omission of Mr. Sanchez's immigration history and reference to his removal order from Mr. Sanchez's original petition do not warrant dismissal.

III. CONCLUSION

Had Mr. Sanchez had the opportunity to respond to the government, he would have rebutted the government's assertion that Mr. Sanchez is not entitled to relief because he has a final order of removal and demonstrated that the manner by which ICE re-detained him was violative of his due process rights pursuant to ICE's own regulations. He respectfully asks the court to vacate the dismissal of the Petition and, insofar as the Court deems it appropriate, seeks leave to amend his original habeas petition.

Dated: October 1, 2025

Respectfully submitted,

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** For identification purposes. Nothing in this pleading is intended to represent the institutional views of Yale Law School, if any.*