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10 

11 **UNITED STATES DISTRICT COURT**  
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 HILARIO SANCHEZ MONTALVO,<sup>1</sup>

14 Petitioner,

15 v.

16 KRISTI NOEM, Secretary of the  
17 Department of Homeland Security,  
18 PAMELA JO BONDI, Attorney General,  
19 TODD M. LYONS, Acting Director,  
20 Immigration and Customs Enforcement,  
21 JESUS ROCHA, Acting Field Office  
22 Director, San Diego Field Office,  
23 CHRISTOPHER LAROSE, Warden at  
24 Otay Mesa Detention Center,

25 Respondents.

26 CIVIL CASE NO.: '26CV0199 GPC SBC

27 **Petition for Writ  
of  
Habeas Corpus**

28 **[Civil Immigration Habeas,  
28 U.S.C. § 2241]**

<sup>1</sup> Federal Defenders of San Diego, Inc., is filing the instant petition with provisional appointment under Chief Judge Order No. 134.

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    A. Claim One: ICE failed to comply with its own regulations when it re-detained Mr. Sanchez, violating his rights under applicable regulations and due process. .... 3

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1 **I. Introduction**

2 Mr. Sanchez is a citizen of Mexico but was granted withholding of removal  
3 to Mexico in 2023 due to the murder of ten of his family members. In October  
4 2025, he received a letter telling him to report ICE. But when he went to report on  
5 October 23, 2025, ICE arrested him. Contrary to regulation, ICE did not notify  
6 Mr. Sanchez of any changed circumstances that made his removal more likely,  
7 nor did it provide him an informal interview. Instead, ICE simply told him that  
8 they were going to deport him, even though he could not be deported to Mexico  
9 due to the grant of withholding of removal.

10 Mr. Sanchez's detention violates his statutory and regulatory rights,  
11 *Zadvydas v. Davis*, 533 U.S. 678 (2001), and the Fifth Amendment. Courts in this  
12 district have agreed in similar circumstances as to both of Mr. Sanchez's claims.  
13 Specifically:

14 (1) *Regulatory and due process violations*: Mr. Sanchez must be released  
15 because ICE's failure to follow its own regulations about notice and an  
16 opportunity to be heard violate due process. *See, e.g., Constantinovici v. Bondi*,  
17 \_\_\_ F. Supp. 3d \_\_\_, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10,  
18 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal.  
19 Sept. 15, 2025); *Sanchez v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-  
20 MSB, \*3-\*5 (S.D. Cal. Oct. 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-  
21 cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Sanchez v. Noem*, 2025 WL  
22 2770623, No. 25-cv-2334-JES, \*3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*,  
23 No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang*  
24 *v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025)  
25 *Sphabmixay v. Noem*, 25-cv-2648-LL-VET (S.D. Cal. Oct. 30, 2025); *Sayvongsa*  
26 *v. Noem*, 25-cv-2867-AGS-DEB (S.D. Cal. Oct. 31, 2025); *Thammavongsa v.*  
27 *Noem*, 25-cv-2836-JO-AHG (S.D. Cal. Nov. 3, 2025); *Phakeokoth v. Noem*, 25-  
28 cv-2817-RBM-SBC (S.D. Cal. Nov. 7, 2025); *Soryadvongsa v. Noem*, 25-cv-

1 2663-AGS-DDL (S.D. Cal. Nov. 8, 2025) (all either granting temporary  
2 restraining orders releasing noncitizens, or granting habeas petitions outright, due  
3 to ICE regulatory violations during recent re-detentions of released noncitizens  
4 previously ordered removed).

5 (2) *Zadvydas* violations: Mr. Sanchez must also be released under  
6 *Zadvydas* because the government cannot show that there is a “significant  
7 likelihood of removal in the reasonably foreseeable future.” *Id.* at 701. *See, e.g.,*  
8 *Conchas-Valdez*, 2025 WL 2884822, No. 25-cv-2469-DMS (S.D. Cal. Oct. 6,  
9 2025); *Rebenok v. Noem*, No. 25-cv-2171-TWR, ECF No. 13 (S.D. Cal. Sept. 25,  
10 2025) (granting habeas petitions releasing noncitizens due to *Zadvydas*  
11 violations).

12 This Court should grant this habeas petition and issue appropriate  
13 injunctive relief on both grounds.

## 14 **II. Statement of Facts**

15 Mr. Sanchez was born in Mexico and came to the United States in 2004.  
16 Exhibit A at ¶ 1. In 2016, Mr. Sanchez’s brother and ten other members of his  
17 family were killed. *Id.* at ¶ 2. He was placed in removal proceedings but applied  
18 for relief in the form of withholding of removal. *Id.* at ¶ 2. The immigration judge  
19 ordered him removed on January 26, 2023, but granted him withholding of  
20 removal to Mexico. *Id.* at ¶ 2.

21 After the judge granted Mr. Sanchez withholding of removal, the  
22 government could not remove him to Mexico because of the judge’s withholding  
23 order. *Id.* at ¶ 3. But in October 2025, ICE sent Mr. Sanchez a letter telling him  
24 that he needed to report in. *Id.* at ¶ 5. He reported in on October 20, 2025. *Id.* at ¶  
25 5. On that day, ICE took him into custody and told him that they were going to  
26 deport him. *Id.* at ¶ 6. ICE did not tell him why they were revoking their decision  
27 to release him, nor did they give him an informal interview or a chance to contest  
28 his detention. *Id.* at ¶ 6.

1 **III. Legal Analysis.**

2 This Court should grant this petition and order Mr. Sanchez’s immediate  
3 release. ICE failed to follow its own regulations requiring changed circumstances  
4 before re-detention, as well as a chance to promptly contest a re-detention  
5 decision. And *Zadvydas v. Davis* holds that immigration statutes do not authorize  
6 the government to detain immigrants like Mr. Sanchez, for whom there is “no  
7 significant likelihood of removal in the reasonably foreseeable future.” 533 U.S.  
8 678, 701 (2001).

9 **A. Claim One: ICE failed to comply with its own regulations when**  
10 **it re-detained Mr. Sanchez, violating his rights under applicable**  
11 **regulations and due process.**

12 Two regulations establish the process due to someone who is re-detained in  
13 immigration custody following a period of release. 8 C.F.R. § 241.4(l) applies to  
14 all re-detentions, generally. 8 C.F.R. § 241.13(i) applies as an added, overlapping  
15 framework to persons released upon good reason to believe that they will not be  
16 removed in the reasonably foreseeable future, as Mr. Sanchez was. *See Phan v.*  
17 *Noem*, 2025 WL 2898977, No. 25-CV-2422-RBM-MSB, \*3–\*5 (S.D. Cal. Oct.  
18 10, 2025) (explaining this regulatory framework and granting a habeas petition for  
19 ICE’s failure to follow these regulations for a refugee of Vietnam who entered the  
20 United States before 1995); *Rokhfirooz*, No. 25-CV-2053-RSH-VET, 2025 WL  
21 2646165 at \*2 (same as to an Iranian national).

22 These regulations permit an official to “return [the person] to custody” only  
23 when the person “violate[d] any of the conditions of release,” 8 C.F.R.  
24 §§ 241.13(i)(1), 241.4(l)(1), or, in the alternative, if an appropriate official  
25 “determines that there is a significant likelihood that the alien may be removed in  
26 the reasonably foreseeable future,” and makes that finding “on account of  
27 changed circumstances,” 8 C.F.R. § 241.13(i)(2).

28 No matter the reason for re-detention, the re-detained person is entitled to  
certain procedural protections. For one, “[u]pon revocation,” the noncitizen “will

1 be notified of the reasons for revocation of his or her release or parole.” *Phan*,  
2 2025 WL 2898977 at \*3, \*4 (quoting §§ 241.4(l)(1), 241.13(i)(3)). Further, the  
3 person “‘will be afforded an initial informal interview promptly after his or her  
4 return’ to be given ‘an opportunity to respond to the reasons for revocation stated  
5 in the notification.’” *Id.*

6 In the case of someone released under § 241.13(i), the regulations also  
7 explicitly require the interviewer to allow the re-detained person to “submit any  
8 evidence or information that he or she believes shows there is no significant  
9 likelihood he or she be removed in the reasonably foreseeable future, or that he or  
10 she has not violated the order of supervision.” § 241.13(i)(3).

11 ICE is required to follow its own regulations. *United States ex rel. Accardi*  
12 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150,  
13 1162 (9th Cir. 2004) (“The legal proposition that agencies may be required to  
14 abide by certain internal policies is well-established.”). A court may review a re-  
15 detention decision for compliance with the regulations, and “where ICE fails to  
16 follow its own regulations in revoking release, the detention is unlawful and the  
17 petitioner’s release must be ordered.” *Rokhfirooz*, 2025 WL 2646165 at \*4  
18 (collecting cases); *accord Phan*, 2025 WL 2898977 at \*5.

19 ICE followed none of its regulatory prerequisites to re-detention here.

20 First, ICE did not identify a proper reason under the regulations to re-detain  
21 Mr. Sanchez. Mr. Sanchez was not returned to custody because of a conditions  
22 violation, and there was apparently no determination before or at his arrest that  
23 there are “changed circumstances” such that there is “a significant likelihood that  
24 [Mr. Sanchez] may be removed in the reasonably foreseeable future.” 8 C.F.R.  
25 § 241.13(i)(2).

26 Second, ICE did not notify Mr. Sanchez of the reasons for his re-detention  
27 upon revocation of release. *See* 8 C.F.R. §§ 241.4(l)(1), 241.13(i)(3). He was re-

28

1 detained on October 20, 2025. Exh. A at ¶ 6. As he has explained, “[t]hey did not  
2 tell me why they were revoking my supervision.” *Id.* at ¶ 6.

3 Third, Mr. Sanchez does not believe he received an informal interview  
4 where an officer explained the purported “changed circumstances” underlying his  
5 revocation. “Simply to say that circumstances had changed or there was a  
6 significant likelihood of removal in the foreseeable future is not enough.” *Sarail*  
7 *A. v. Bondi*, No. 25-CV-2144, 2025 WL 2533673, at \*3 (D. Minn. Sept. 3, 2025).  
8 Rather, “Petitioner must be told *what* circumstances had changed or *why* there  
9 was now a significant likelihood of removal in order to meaningfully respond to  
10 the reasons and submit evidence in opposition, as allowed under § 241.13(i)(3).”  
11 *Id.* By “identif[ying] the category—‘changed circumstances’—but fail[ing] to  
12 notify [Petitioner] of the reason—the circumstances that changed and created a  
13 significant likelihood of removal in the reasonably foreseeable future—[ICE]  
14 failed to follow the relevant regulation.” *Id.* This failure to identify any changed  
15 circumstances also means he has he been afforded a meaningful opportunity to  
16 respond to the reasons for revocation or submit evidence rebutting his re-  
17 detention. Exh. A at ¶ 6.

18 “[B]ecause officials did not properly revoke petitioner’s release pursuant to  
19 the applicable regulations, that revocation has no effect, and [Mr. Sanchez] is  
20 entitled to his release (subject to the same Order of Supervision that governed his  
21 most recent release).” *Liu*, 2025 WL 1696526, at \*3.

22 **B. Claim Two: Mr. Sanchez’s detention violates *Zadvydas* and 8**  
23 **U.S.C. § 1231.**

24 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered  
25 a problem affecting people like Mr. Sanchez: Federal law requires ICE to detain  
26 an immigrant during the “removal period,” which typically spans the first 90 days  
27 after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-  
28 day removal period expires, detention becomes discretionary—ICE may detain

1 the migrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily,  
2 this scheme would not lead to excessive detention, as removal happens within  
3 days or weeks. But some detainees cannot be removed quickly. Perhaps their  
4 removal “simply require[s] more time for processing,” or they are “ordered  
5 removed to countries with whom the United States does not have a repatriation  
6 agreement,” or their countries “refuse to take them,” or they are “effectively  
7 ‘stateless’ because of their race and/or place of birth.” *Kim Ho Ma v. Ashcroft*,  
8 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances, detained  
9 immigrants can find themselves trapped in detention for months, years, decades,  
10 or even the rest of their lives. If federal law were understood to allow for  
11 “indefinite, perhaps permanent, detention,” it would pose “a serious constitutional  
12 threat.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided the  
13 constitutional concern by interpreting § 1231(a)(6) to incorporate implicit limits.  
14 *Id.* at 689.

15 *Zadvydas* held that § 1231(a)(6) presumptively permits the government to  
16 detain an immigrant for 180 days after his or her removal order becomes final.  
17 After those 180 days have passed, the immigrant must be released unless his or  
18 her removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 701. After six  
19 months have passed, the petitioner must only make a prima facie case for relief—  
20 there is “good reason to believe that there is no significant likelihood of removal  
21 in the reasonably foreseeable future.” *Id.* Then the burden shifts to “the  
22 Government [to] respond with evidence sufficient to rebut that showing.” *Id.*

23 Further, even before the 180 days have passed, the immigrant must still be  
24 released if he *rebut*s the presumption that his detention is reasonable. *See, e.g.*,  
25 *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal. 2020) (collecting cases  
26 on rebutting the *Zadvydas* presumption before six months have passed); *Zavvar v.*  
27 *Scott*, Civil No. 25-2104-TDC, 2025 WL 2592543, \*6 (D. Md. Sept. 8, 2025)

28

1 (finding the presumption rebutted for a person who was immediately released  
2 after being ordered removed and, years later, re-detained for less than six months).

3 Mr. Sanchez can make all the threshold showings needed to prove his  
4 *Zadvydas* claim and shift the burden to the government.

5 First, the six-month grace period has long since ended. The *Zadvydas* grace  
6 period is linked to the date the final order of removal is issued. It lasts for “six  
7 months after a final order of removal—that is, three months after the statutory  
8 removal period has ended.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th  
9 Cir. 2001); *see also* 8 U.S.C. § 1231(a)(1)(B) (linking the statutory removal  
10 period to issuance of the final order and other proceedings associated with the  
11 original removal order).

12 Here, Mr. Sanchez’s order of removal was entered in January 2023. Exh. A  
13 at ¶ 2. Accordingly, his 90-day removal period began then. 8 U.S.C.  
14 § 1231(a)(1)(B). The *Zadvydas* grace period thus expired in July 2023, three  
15 months after the removal period ended. *See, e.g., Tadros v. Noem*, 2025 WL  
16 1678501, No. 25-cv-4108(EP), \*2–\*3.<sup>2</sup>

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18  
19 <sup>2</sup> The government has sometimes argued that release and rearrest resets the six-  
20 month grace period completely, taking the clock back to zero. “Courts . . . broadly  
21 agree” that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL 6003485, at \*7 n.6  
(W.D. La. Oct. 15, 2019), *report and recommendation adopted*, 2019 WL  
22 6037220 (W.D. La. Nov. 13, 2019); *see also Sied v. Nielsen*, No. 17-CV-06785-  
23 LB, 2018 WL 1876907, at \*6 (N.D. Cal. Apr. 19, 2018) (collecting cases).

24 It has also sometimes argued that rearrest creates a new three-month grace  
25 period. As a court explained in *Bailey v. Lynch*, that view cannot be squared with  
26 the statutory definition of the removal period in 8 U.S.C. § 1231(a)(1)(B). No. CV  
27 16-2600 (JLL), 2016 WL 5791407, at \*2 (D.N.J. Oct. 3, 2016). “Pursuant to the  
28 statute, the removal period, and in turn the [six-month] presumptively reasonable  
period, begins from the latest of ‘the date the order of removal becomes  
administratively final,’ the date of a reviewing court’s final order where the  
removal order is judicially removed and that court orders a stay of removal, or the  
alien’s release from detention or confinement where he was detained for reasons  
other than immigration purposes at the time of his final order of removal.” *Id.*  
None of these statutory starting points have anything to do with whether or when  
an immigrant is detained. *See id.* Because the statutorily-defined removal period

1 This Court uses a burden-shifting framework to evaluate Mr. Sanchez’s  
2 *Zadvydas* claim. At the first stage of the framework, Mr. Sanchez must “provide[]  
3 good reason to believe that there is no significant likelihood of removal in the  
4 reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. This standard can be  
5 broken down into three parts.

6 **“Good reason to believe.”** The “good reason to believe” standard is a  
7 relatively forgiving one. “A petitioner need not establish that there exists no  
8 possibility of removal.” *Freeman v. Watkins*, No. CV B:09-160, 2009 WL  
9 10714999, at \*3 (S.D. Tex. Dec. 22, 2009). Nor does “[g]ood reason to  
10 believe’ . . . place a burden upon the detainee to demonstrate no reasonably  
11 foreseeable, significant likelihood of removal or show that his detention is  
12 indefinite; it is something less than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW,  
13 2020 WL 3972319, at \*3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401  
14 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:  
15 Petitioners need only give a “good reason”—not prove anything to a certainty.

16 **“Significant likelihood of removal.”** This component focuses on whether  
17 Mr. Sanchez will likely be removed: Continued detention is permissible only if it  
18 is “significant[ly] like[ly]” that ICE will be able to remove him. *Zadvydas*, 533  
19 U.S. at 701. This inquiry targets “not only the *existence* of untapped possibilities,  
20 but also [the] probability of *success* in such possibilities.” *Elashi v. Sabol*, 714 F.  
21 Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added). In other words,  
22 even if “there remains *some* possibility of removal,” a petitioner can still meet its  
23 burden if there is good reason to believe that successful removal is not  
24 significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL  
25 31520362, at \*4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

26  
27  
28 \_\_\_\_\_  
has nothing to do with release and rearrest, releasing and rearresting the  
immigrant cannot reset the removal period.

1           **“In the reasonably foreseeable future.”** This component of the test  
2 focuses on when Mr. Sanchez will likely be removed: Continued detention is  
3 permissible only if removal is likely to happen “in the reasonably foreseeable  
4 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s  
5 removal efforts. If the Court has “no idea of when it might reasonably expect  
6 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal  
7 is likely to occur—or even that it might occur—in the reasonably foreseeable  
8 future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at \*3  
9 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL  
10 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d  
11 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that Mr. Sanchez  
12 “would *eventually* receive” a travel document, he can still meet his burden by  
13 giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*,  
14 2016 WL 6679830, at \*2 (E.D. Mich. Nov. 14, 2016).

15           Mr. Sanchez satisfies this standard for two reasons.

16           First, Mr. Sanchez has been granted withholding protection that prevents  
17 his removal to Mexico—the place where he was born. Exh. A at ¶ 2. Thus,  
18 immigration law and the U.S.’s treaty obligations preclude any possibility that he  
19 will be removed to the country where he is a citizen.

20           Second, Mr. Sanchez’s personal experience shows that the government of  
21 cannot remove him to a third country. After Mr. Sanchez was granted withholding  
22 of removal to Mexico, the government was not able to remove him to a third  
23 country. Exh. A at ¶ 3. ICE has now had three years to deport him to any country  
24 but has not been able to. Thus, there is good reason to believe that there is not a  
25 significant likelihood of removal in the reasonably foreseeable future.

26           Because Mr. Sanchez has met his initial burden, the burden shifts to the  
27 government. Unless the government can prove a “significant likelihood of  
28

1 removal in the reasonably foreseeable future,” Mr. Sanchez must be released.  
2 *Zadvydas*, 533 U.S. at 701.

3 **IV. This Court must hold an evidentiary hearing on any disputed facts.**

4 Resolution of a prolonged-detention habeas petition may require an  
5 evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009).  
6 Mr. Sanchez hereby requests such a hearing on any material, disputed facts.

7 **V. Prayer for relief**

8 For the foregoing reasons, Petitioner respectfully requests that this Court:

- 9 1. Order and enjoin Respondents to immediately release Petitioner from  
10 custody;
- 11 2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.  
12 § 1231(a)(6) unless and until Respondents obtain a travel document for  
13 his removal;
- 14 3. Enjoin Respondents from re-detaining Petitioner without first following  
15 all procedures set forth in 8 C.F.R. §§ 241.4(l), 241.13(i), and any other  
16 applicable statutory and regulatory procedures;
- 17 4. Order all other relief that the Court deems just and proper.

18  
19 Respectfully submitted,

20  
21 Dated: January 13, 2026

*s/ Kara Hartzler*

22 Federal Defenders of San Diego, Inc.  
23 Attorneys for Mr. Sanchez  
24 Email: kara\_hartzler@fd.org

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**Proof of Service**

I, the undersigned, caused to be served the within Petition for Writ of Habeas Corpus by email, at the request of Janet Cabral, Chief of the Civil Division, to:

U.S. Attorney’s Office, Southern District of California  
Civil Division  
USACAS.Habeas2241@usdoj.gov

Date: January 13, 2026

/s/ Kara Hartzler  
Kara Hartzler