

1 **Kara Hartzler**
2 Cal. Bar No. 293751
3 **Federal Defenders of San Diego, Inc.**
4 225 Broadway, Suite 900
5 San Diego, California 92101-5030
6 Telephone: (619) 234-8467
7 Facsimile: (619) 687-2666
8 Kara_hartzler@fd.org

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

11 HILARIO SANCHEZ MONTALVO,
12
13 Petitioner,

14 v.

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

Civil Case No.: '26CV0199 GPC SBC

**Notice of motion and memorandum
of law in support of temporary
restraining order**

26
27
28

1 **I. Introduction**

2 Petitioner Hilario Sanchez Montalvo faces immediate irreparable harm:
3 revocation of his release on immigration despite ICE’s failure to follow its own
4 revocation procedures.

5 Mr. Sanchez was granted withholding of removal to Mexico in 2023. But
6 on October 20, 2025, ICE took him into custody, purportedly to effectuate his
7 removal. ICE has given no reason for revoking his release, did not provide him
8 with an informal interview, and has not told him when he will be released.

9 Because Mr. Sanchez is facing unlawful detention, the requested temporary
10 restraining order (“TRO”) would preserve the status quo while Petitioner litigates
11 these claims by reinstating Mr. Sanchez’s release.

12 In granting this motion, this Court would not break new ground. Courts in
13 this district and around the Ninth Circuit have granted TROs or preliminary
14 injunctions mandating release for post-final-removal-order immigrants like
15 Petitioner. *See, e.g., Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D.
16 Cal. Sept. 30, 2025); *Van Sanchez v. Noem*, 2025 WL 2770623, No. 25-cv-2334-
17 JES, *3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF
18 No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-
19 JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025); *see also, e.g., Phetsadakone v.*
20 *Scott*, 2025 WL 2579569, at *6 (W.D. Wash. Sept. 5, 2025); *Hoac v. Becerra*, No.
21 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7 (E.D. Cal. July 16, 2025);
22 *Sanchez v. Becerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7
23 (E.D. Cal. July 16, 2025); *Sanchez v. Scott*, No. 2:25-CV-01398, 2025 WL
24 2419288, at *29 (W.D. Wash. Aug. 21, 2025). These courts have determined that,
25 for these long-term releasees, liberty is the status quo, and only a return to that
26 status quo can avert irreparable harm. Mr. Sanchez therefore respectfully requests
27 that this Court grant this TRO.

28

1 **II. Statement of Facts**

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

8 After the judge granted Mr. Sanchez withholding of removal, the
9 government could not remove him to Mexico because of the judge’s withholding
10 order. *Id.* at ¶ 3. But in October 2025, ICE sent Mr. Sanchez a letter telling him
11 that he needed to report in. *Id.* at ¶ 5. He reported in on October 20, 2025. *Id.* at ¶
12 5. On that day, ICE took him into custody and told him that they were going to
13 deport him. *Id.* at ¶ 6. ICE did not tell him why they were revoking their decision
14 to release him, nor did they give him an informal interview or a chance to contest
15 his detention. *Id.* at ¶ 6. He has been in detention for approximately three months,
16 yet ICE has not removed him to a third country.

17 **Argument**

18 To obtain a TRO, a plaintiff “must establish that he is likely to succeed on
19 the merits, that he is likely to suffer irreparable harm in the absence of preliminary
20 relief, that the balance of equities tips in his favor, and that an injunction is in the
21 public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008);
22 *Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839-40 & n.7
23 (9th Cir. 2001) (noting that a TRO and preliminary injunction involve
24 “substantially identical” analysis). A “variant[] of the same standard” is the
25 “sliding scale”: “if a plaintiff can only show that there are ‘serious questions
26 going to the merits—a lesser showing than likelihood of success on the merits—
27 then a preliminary injunction may still issue if the balance of hardships tips
28 sharply in the plaintiff’s favor, and the other two *Winter* factors are satisfied.”

1 *Immigrant Defenders Law Center v. Noem*, 145 F.4th 972, 986 (9th Cir. 2025)
2 (internal quotation marks omitted). Under this approach, the four *Winter* elements
3 are “balanced, so that a stronger showing of one element may offset a weaker
4 showing of another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131
5 (9th Cir. 2011). A TRO may be granted where there are “serious questions going
6 to the merits’ and a hardship balance. . . tips sharply toward the plaintiff,” and so
7 long as the other *Winter* factors are met. *Id.* at 1132.

8 Here, this Court should issue a temporary restraining order and an
9 injunction because “immediate and irreparable injury . . . or damage” is occurring
10 and will continue in the absence of an order. Fed. R. Civ. P. 65(b). Respondents
11 have re-detained Petitioner in violation of his due process, statutory, and
12 regulatory rights, and this Court should order Petitioner’s immediate release.

13 **I. Petitioner is likely to succeed on the merits, or at a minimum, raises**
14 **serious merits questions.**

15 **A. Petitioner is likely to succeed on the merits of his claim that ICE**
16 **violated its own regulations.**

17 The regulations set forth the procedures for someone who, like Petitioner, is
18 re-detained following a period of release. Under 8 C.F.R. § 241.4(l), ICE may re-
19 detain an immigrant on supervision only with an interview and a chance to contest
20 a re-detention. When an immigrant is specifically released after giving good
21 reason why they cannot be removed, additional regulations apply: ICE may
22 revoke a noncitizen’s release and return them to ICE custody due to failure to
23 comply with conditions of release, 8 C.F.R. § 241.13(i)(1), or if, “on account of
24 changed circumstances,” a noncitizen likely can be removed in the reasonably
25 foreseeable future. *Id.* § 241.13(i)(2).

26 The regulations further provide noncitizens with a chance to contest a re-
27 detention decision. ICE must “notif[y] [the person] of the reasons for revocation
28 of his or her release.” *Id.* § 241.13(i)(3). ICE must then “conduct an initial
informal interview promptly” after re-detention “to afford the alien an opportunity

1 to respond to the reasons for revocation stated in the notification.” *Id.* During the
2 interview, the person “may submit any evidence or information” showing that the
3 prerequisites to re-detention have not been met, and the interviewer must evaluate
4 “any contested facts.” *Id.*

5 ICE is required to follow its own regulations. *United States ex rel. Accardi*
6 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150,
7 1162 (9th Cir. 2004) (“The legal proposition that agencies may be required to
8 abide by certain internal policies is well-established.”). A court may review a re-
9 detention decision for compliance with the regulations. *See Sanchez v. Beccerra*,
10 No. 2:25-CV-01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025); *Sanchez*
11 *v. Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20,
12 2025) (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

13 None of the prerequisites to detention apply here. Since the IJ granted Mr.
14 Sanchez withholding of removal in 2023, he has not missed a check-in
15 appointment or been convicted of a crime. When ICE took him into custody, it
16 failed to cite any regulatory basis justifying the revocation of his supervised
17 release or explain that basis to Mr. Sanchez. “Simply to say that circumstances
18 had changed or there was a significant likelihood of removal in the foreseeable
19 future is not enough.” *Sarail A. v. Bondi*, __ F. Supp. 3d __, 2025 WL 2533673,
20 *10 (D. Minn. 2025). “Petitioner must be told *what* circumstances had changed or
21 *why* there was now a significant likelihood of removal in order to meaningfully
22 respond to the reasons and submit evidence in opposition.” *Id.* Any notice here
23 included no particularized information about what had changed with Mr.
24 Sanchez’s supervised release or why.

25 “[B]ecause officials did not properly revoke petitioner’s release pursuant to
26 the applicable regulations,” this Court will likely find that “petitioner is entitled to
27 his release” on an order of supervision. *Liu*, 2025 WL 1696526, at *3.

28

1 **III. Petitioner will suffer irreparable harm absent injunctive relief.**

2 Petitioner also meets the second factor, irreparable harm. “It is well
3 established that the deprivation of constitutional rights ‘unquestionably constitutes
4 irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)
5 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the “alleged
6 deprivation of a constitutional right is involved, most courts hold that no further
7 showing of irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d
8 989, 1001-02 (9th Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal*
9 *Practice and Procedure*, § 2948.1 (2d ed. 2004)).

10 Here, the potential irreparable harm to Petitioner is even more concrete.
11 “Unlawful detention certainly constitutes ‘extreme or very serious damage, and
12 that damage is not compensable in damages.’” *Hernandez v. Sessions*, 872 F.3d
13 976, 999 (9th Cir. 2017). Third-country deportations pose that risk and more.
14 Recent third-country deportees have been held, indefinitely and without charge, in
15 hazardous foreign prisons. *See Wong et al., supra*. They have been subjected to
16 solitary confinement. *See Imray, supra*. They have been removed to countries so
17 unstable that the U.S. government recommends making a will and appointing a
18 hostage negotiator before traveling to them. *See Wong, supra*. These and other
19 threats to Petitioner’s health and life independently constitute irreparable harm.

20 **IV. The balance of hardships and the public interest weigh heavily in**
21 **petitioner’s favor.**

22 The final two factors for a TRO—the balance of hardships and public
23 interest—“merge when the Government is the opposing party.” *Nken v. Holder*,
24 556 U.S. 418, 435 (2009). That balance tips decidedly in Petitioner’s favor. On
25 the one hand, the government “cannot reasonably assert that it is harmed in any
26 legally cognizable sense” by being compelled to follow the law. *Zepeda v. I.N.S.*,
27 753 F.2d 719, 727 (9th Cir. 1983). Moreover, it is always in the public interest to
28 prevent violations of the U.S. Constitution and ensure the rule of law. *See Nken*,

1 556 U.S. at 436 (describing public interest in preventing noncitizens “from being
2 wrongfully removed, particularly to countries where they are likely to face
3 substantial harm”); *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218
4 (W.D. Wash. 2019) (when government’s treatment “is inconsistent with federal
5 law, . . . the balance of hardships and public interest factors weigh in favor of a
6 preliminary injunction.”). On the other hand, Petitioner faces weighty hardships:
7 unlawful, indefinite detention and removal to a third country where he is likely to
8 suffer imprisonment or serious harm. The balance of equities thus favors
9 preventing the violation of “requirements of federal law,” *Arizona Dream Act*
10 *Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014), by granting emergency
11 relief to protect against unlawful detention and unlawful third country removal.

12 **V. Petitioner gave the government notice of this TRO, and the TRO should**
13 **remain in place throughout habeas litigation.**

14 Upon filing this motion, proposed counsel emailed Janet Cabral, from the
15 United States Attorney’s Office, notice of this request for a temporary restraining
16 and all the filings associated with it. Additionally, Petitioner requests that this
17 TRO and injunction remain in place until the habeas petition is decided. Fed. R.
18 Civ. Pro. 65(b)(2). Good cause exists, because the same considerations will
19 continue to warrant injunctive relief throughout this litigation, and habeas
20 petitions must be adjudicated promptly. *See In re Habeas Corpus Cases*, 216
21 F.R.D. 52 (E.D.N.Y. 2003).

22 Respectfully submitted,

24 Dated: January 13, 2026

s/ Kara Hartzler

25 Federal Defenders of San Diego, Inc.
26 Attorneys for Mr. Sanchez
27 Email: kara.hartzler@fd.org
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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