Kara Hartzler
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101-5030
Telephone: (619) 234-8467
Facsimile: (619) 687-2666
kara_hartzler@fd.org

Attorneys for Mr. Sanchez

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

HILARIO SANCHEZ MONTALVO,

Petitioner,

v.

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

Respondents.

Civil Case No.: 26-cv-199-GPC-SBC

Traverse in Support of Petition for Writ of Habeas Corpus

INTRODUCTION

Having received the government's Return and exhibits, this Court should grant Mr. Sanchez's petition. The government does not deny that it failed to notify Mr. Sanchez of the reasons for revoking his supervised and provide him an informal interview in violation of the regulations. Instead, it only argues that "Petitioner has not established prejudice nor a constitutional violation." Dkt. 5 at 5. But in the past several months, judges in this district have granted dozens (if not hundreds) of habeas petitions on the basis of regulatory violations with no express showing of prejudice. And because the government admits that it cannot deport Mr. Sanchez to Mexico, and has not identified any third country willing to accept him, it has failed to meet its burden to show a significant likelihood of removal in the reasonably foreseeable future. For either reason, this Court should grant Mr. Sanchez's immediate release.

ARGUMENT

I. Mr. Sanchez's claims succeed on the merits.

A. Claim One: ICE did not adhere to the regulations governing re-detention.

ICE's failure to dispute its regulatory violations alone is sufficient to grant the habeas petition. Even assuming there was a basis to revoke Mr. Sanchez's supervised release, ICE did not provide him notice of that basis. Under the regulations, ICE must "notif[y] [the person] of the reasons for revocation of his or her release." 8 C.F.R. § 241.13(i)(3). But here, the government does not claim that ICE ever provided Mr. Sanchez a Notice of Revocation or otherwise explained to him why it was revoking his supervised release. *See* Dkt 5.

Moreover, ICE did not provide Mr. Sanchez an informal interview. Under § 241.13(i)(3), ICE must "conduct an initial informal interview promptly" after re-detention "to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." During the interview, the person "may

submit any evidence or information" showing that the prerequisites to re-detention have not been met, and the interviewer must evaluate "any contested facts." *Id.* Neither regulation allows ICE to re-detain someone with no interview and no chance to contest the decision. *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *8 n.3 (S.D.N.Y. Aug. 26, 2025) (finding that either § 241.4 or § 241.13 led to the same result).

Here, no such interview was conducted. Although the agent asked Mr. Sanchez several questions related to his name, date of birth, parents, and immigration status, Dkt. 5 at 20, the agent did not provide him "an opportunity to respond to the reasons for revocation stated in the notification" as required under § 241.13(i)(3). Thus, the government's response and evidence confirms that it committed at least two regulatory violations.

The government's only argument is that even if the agency "fell short" of complying with the regulations, "Petitioner has not established prejudice nor a constitutional violation." Dkt. 5 at 5. But "the government offers no compelling authority that a habeas petitioner must demonstrate this form of prejudice." *Soryadvongsa v. Noem*, No. 25-CV-2663-AGS-DDL, 2025 WL 3126821, at *3 (S.D. Cal. Nov. 8, 2025). "Especially in the context of civil detentions—when constitutional safeguards are at their zenith," courts have been "unwilling to import such a prejudice analysis into regulations or binding caselaw that don't mention it." *Id.* Indeed, a violation of a regulation that protects fundamental due process rights "implicates due process concerns even without a prejudice inquiry." *Touch v. Noem*, No. 3:25-CV-03118-RBM-AHG, 2025 WL 3296280, at *1 (S.D. Cal. Nov. 26, 2025) (quotations omitted).

Courts in this district have held that when "ICE violated regulations intended to provide due process protections," the petitioner "was prejudiced." *Id.* That is because "[r]egulations such as 8 C.F.R. §§ 241.4(l) and 241.13(i), which provide notice and an opportunity to be heard before indefinite detention, . . .

serve as the minimal process due before depriving a person of liberty." *Martinez v. Noem*, No. 25-CV-2740-BJC-BJW, 2025 WL 3171738, at *4 (S.D. Cal. Nov. 13, 2025). Thus, such claims are "actionable" regardless of whether a petitioner "demonstrates prejudice." *Id.*

Moreover, "[i]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). And contrary to the government's arguments, the Ninth Circuit has specifically recognized the "irreparable harms imposed on anyone subject to immigration detention." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). Thus, Mr. Sanchez need not show prejudice, and even if he did, three months of unjustified immigration detention certainly qualifies as prejudicial.

B. Claim Two: The government has not proved that there is a significant likelihood of removal in the reasonably foreseeable future.

This Court may also order Mr. Sanchez's immediate release under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Since Mr. Sanchez's order of removal became final in 2023, the government has not identified *any* country willing to accept Mr. Sanchez. In the three months he has been detained, ICE simply states that it has twice "requested assistance from ERO's Removal and International Operations (RIO) to identify a third country where Petitioner can be removed." Dkt. 5 at 11. The last request for assistance came on November 7, 2025—over two months ago—and ICE is "still in the process of identifying third countries that may be able to accept Petitioner for removal." Dkt. 5 at 11.

And though the government claims that ICE is working "as expeditiously as possible" to identify a third country for removal, Dkt. 5 at 11, "the reasonableness of Petitioner's detention does not turn on the degree of the government's good faith efforts." *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019

WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019). Rather, the reasonableness of Petitioner's detention turns on "whether and to what extent the government's efforts are likely to bear fruit." *Id.*

Here, the government has provided no evidence or persuasive assurances that Mr. Sanchez can be removed or that such a removal would happen in the reasonably foreseeable future. Thus, this Court could grant his immediate release on this claim alone.

Conclusion

For these reasons, this Court should grant the petition and order Mr. Sanchez's immediate release.

Respectfully submitted,

Dated: January 21, 2026

s/ Kara Hartzler

Kara Hartzler
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Sanchez
Email: kara_hartzler@fd.org