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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FARS WADE KEROTA,

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.

Case No.: '26CV0140 RBM BLM

Petition for Writ of Habeas Corpus

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

[1] Federal Defenders of San Diego, Inc., is filing with provisional appointment under Chief Judge Order No. 134. Mr. Kerota's financial eligibility for representation is included in a sworn statement attached to this petition.

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A. Legal background: The statute, as interpreted by *Zadvydas*, renders detention mandatory for 90 days after removal is ordered and allowable after six months after removal is ordered only if there is a significant likelihood of removal in the reasonably foreseeable future. 9

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I. Introduction

Fars Wade Kerota has a complicated immigration case. He is originally from Iraq. In 2014, he came with his family to the U.S. to seek specialized healthcare for his daughter, who had a rare form of brain cancer. In 2018, he was ordered removed to the Netherlands, where he had citizenship. But ICE was never able to remove him to the Netherlands, and so it released him on an order of supervision. Mr. Kerota went to his check-ins every year without incident. He worked as a mechanic and supported his wife and children.

On September 30, 2025, ICE arrested Mr. Kerota at his check-in in downtown San Diego. He was given a notice of revocation of his supervision that did not make sense: It said he had been ordered removed to Iran, when, in fact, he is Iraqi, and he was ordered removed to the Netherlands. Exhibit B. When Mr. Kerota tried to explain that the revocation was based on wrong information, and that he should be released, ICE officers told him he "could just tell the judge." Exhibit A, Declaration of Mr. Kerota, ¶ 5. Mr. Kerota has remained detained at Otay Mesa Detention Center ever since.

Mr. Kerota's continued detention violates his statutory and regulatory rights, *Zadvydas v. Davis*, 533 U.S. 678 (2001), and the Fifth Amendment.

This habeas petition raises the following two claims:

(1) Regulatory and due process violations: Mr. Kerota must be released because ICE's failure to follow its own regulations—about timely notifying noncitizens of the actual reasons for re-detention, about promptly providing a meaningful opportunity to be heard following re-detention, and about the limited reasons ICE can invoke to re-detain someone who is complying with their conditions of release—repeatedly violated due process. *See, e.g., Nguyen v. Noem*, No. 25-cv-2791-BAS, ECF No. 12 (S.D. Cal. Nov. 7, 2025); *Nguyen v. Noem*, No. 25-cv-2792-LL, ECF No. 10 (S.D. Cal. Nov. 6, 2025); *Ghafouri v. Noem*, 25-cv-2675-RBM, ECF No. 11 (S.D. Cal. Nov. 4, 2025); *Tran v. Noem*, No. 25-cv-

2391-BTM, 2025 WL 3005347 (S.D. Cal. Oct. 27, 2025); *Truong v. Noem*, No. 25-cv-2597-JES, 2025 WL 2988357 (S.D. Cal. Oct. 22, 2025); *Constantinovici v. Bondi*, __ F. Supp. 3d __, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12, 17 (S.D. Cal. Oct. 9, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025) (granting temporary restraining orders releasing noncitizens, or granting habeas petitions, due to ICE regulatory violations during recent re-detentions of released noncitizens previously ordered removed under 8 C.F.R. §§ 241.13(i), 241.4(l)).

(2) Zadvydas violations: Mr. Kerota must also be released under *Zadvydas* because—having proved unable to remove him for the last several years—the government cannot show that there is a "significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. *See, e.g.*, *Gharakhan v. Noem*, No. 25-cv-2879-DMS, ECF No. 11 (S.D. Cal. Nov. 5, 2025); *Ho v. Noem*, No. 25-cv-2453-BAS, ECF No. 11 (S.D. Cal. Oct. 20, 2025); *Conchas-Valdez*, 2025 WL 2884822, No. 25-cv-2469-DMS (S.D. Cal. Oct. 6, 2025); *Rebenok v. Noem*, No. 25-cv-2171-TWR, ECF No. 13 (S.D. Cal. Sept. 25, 2025) (granting habeas petitions or TROs releasing noncitizens under *Zadvydas*).

II. Statement of facts

A. Mr. Kerota comes to the U.S., is ordered removed to the Netherlands, and is released on an order of supervision, before being detained this September.

Mr. Kerota was born and raised in Iraq. Exhibit A, ¶ 2. He and his family came to the U.S. from the Netherlands in August 2014 so his daughter could get specialized brain cancer treatment. *Id.*

In October 2018, Mr. Kerota was ordered removed to the Netherlands. *Id.* ¶ 3; Exhibit C (removal order). That order was affirmed in *Kerota v. Garland*, No. 21-514, 2023 WL 2535963 (9th Cir. Mar. 16, 2023).

But ICE has never been able to remove him to the Netherlands. *Id.* As a result, Mr. Kerota was released on an order of supervision. *Id.* He checked in every year without incident. *Id.* ¶ 4. He has gone to the Dutch consulate, most recently this year, yet they would not issue him a Dutch passport. *Id.*

On September 29, 2025, the Bureau of Immigration Appeals received a motion to reopen its jurisdiction filed on Mr. Kerota's behalf.[2] On September 30, 2025, Mr. Kerota was arrested by ICE at his check-in. *Id.* ¶ 5. He received a "Notice of Revocation of Release." Exhibit B; Exhibit A ¶ 5. It states in part:

> This letter is to inform you that your order of supervision has been revoked, and you will be detained in the custody of U.S. Immigration and Customs Enforcement (ICE) at this time. This decision has been made based on a review of your official alien file and a determination that there are changed circumstances in your case.
>
> ICE has determined that you can be expeditiously removed from the United States pursuant to the outstanding order of removal against you. On June 17, 2004, you were ordered removed to Iran by an authorized U.S. DHS/DOJ official and you were granted a withholding of removal to Iran. Your case is under current review for removal to an alternate country.
>
> Based on the above, and pursuant to 8 C.F.R. § 241.4 / 8 C.F.R. § 241.13, you are to remain in ICE custody at this time. You will be promptly afforded an informal interview at which you will be given an opportunity to respond to the reasons for the revocation.

Exhibit B.

Mr. Kerota explains:

> I tried to tell the ICE officers that the information in the notice was wrong, and the ICE officers responded that I could just tell the judge. I also tried to tell them that I had a pending motion to reopen my case so they shouldn't detain me, but they just said I could go tell the judge.

Exhibit A, ¶ 5.

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[2] *See* EOIR case look-up, https://acis.eoir.justice.gov/en/caseInformation.

Since Mr. Kerota has been in Otay Mesa, he has not been told what is happening with his deportation case. He has "never had a chance to fight [his] detention." *Id.* ¶ 6.

In the meantime, without Mr. Kerota able to work as a mechanic, his family has had to move. He is not sure how they will pay rent next month, now several months into his absence. ¶ 7.

III. This Court has jurisdiction.

This Court has jurisdiction to consider Mr. Kerota's claim of unlawful detention under 28 U.S.C. § 2241 while he is in detention at the Otay Mesa Detention Center.

The government's recent argument otherwise, that 8 U.S.C. § 1252(g) strips this Court of jurisdiction, "has been repeatedly 'rejected as implausible' by the Supreme Court." *Soryadvongsa v. Noem*, No. 25-cv-2663-AGS, 2025 WL 3126821, *1 (S.D. Cal. Nov. 8, 2025) (quoting *Department of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020)). The government's argument "would eliminate judicial review of immigration [detainees'] claims of unlawful detention . . . inconsistent with *Jennings v. Rodriguez* and the history of judicial review of the detention of noncitizens under 28 U.S.C. § 2241." *Phan v. Noem*, No. 25-cv-2422-RBM, 2025 WL 2898977, *3 (S.D. Cal. Oct. 10, 2025) (collecting cases agreeing on this jurisdictional point).

IV. Legal analysis.

This Court should grant this petition and order two forms of relief.

First, it should order Mr. Kerota's immediate release. ICE failed to follow its own regulations requiring notification of the *specific reasons* a noncitizen is being re-detained, a chance to promptly and meaningfully contest the reasons for a re-detention decision, and mandating noncitizens in Mr. Kerota's position only be re-detained upon a proper determination that "there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." 8

1 C.F.R. §§ 241.13(i)(2); *see also* 241.4(l). Further, *Zadvydas v. Davis* holds that
2 immigration statutes do not authorize the government to detain immigrants like
3 Mr. Kerota, whose removal period has ended, and for whom there is "no
4 significant likelihood of removal in the reasonably foreseeable future." 533 U.S.
5 678, 701 (2001).

6 **V. Claim 1: ICE failed to comply with its own regulations while re-**
7 **detaining Mr. Kerota, violating his rights under applicable regulations and due process.**

8 Two regulations establish the process due to someone who is re-detained in
9 immigration custody following a period of release. 8 C.F.R. § 241.4(l) applies to
10 all re-detentions, generally. 8 C.F.R. § 241.13(i) applies as an added, overlapping
11 framework to persons released upon good reason to believe that they will not be
12 removed in the reasonably foreseeable future, as Mr. Kerota was. *See Azzo v.*
13 *Noem*, No. 25-cv-3122-RBM-BJW, 2025 WL 3535208, *5–*6 (S.D. Cal. Dec. 10,
14 2025) (explaining this regulatory scheme); *Rokhfirooz*, No. 25-CV-2053-RSH-
15 VET, 2025 WL 2646165 at *2 (same).

16 These regulations establish important substantive limitations before a
17 noncitizen's re-detention. Officials are allowed to "return [the person] to custody"
18 only when the person "violate[d] any of the conditions of release," 8 C.F.R.
19 §§ 241.13(i)(1), 241.4(l)(1), or, in the alternative, if an appropriate official
20 "determines that there is a significant likelihood that the alien may be removed in
21 the reasonably foreseeable future," and makes that finding "on account of
22 changed circumstances," § 241.13(i)(2). Section "241.13(i)(2) requires that this
23 determination is made before the removable alien has had his release revoked."
24 *Nguyen v. Noem*, No. 25-cv-2792-LL-VET, 2025 WL 3101979, *2 (S.D. Cal.
25 Nov. 6, 2025) (quoting *Tran v. Noem*, No. 25-CV-2391-BTM-BLM, 2025 WL
26 3005347, *2 (S.D. Cal. Oct. 27, 2025)).

27 No matter the reason for re-detention, the re-detained person is also entitled
28 to certain procedural protections during and after re-detention.

First, "'[u]pon revocation,' the noncitizen 'will be notified of the reasons for revocation of his or her release or parole.'" *Phan v. Noem*, No. 25-cv-2422-RBM-MSB, 2025 WL 2898977, *3, *4 (S.D. Cal. Oct. 10, 225) (quoting §§ 241.4(l)(1), 241.13(i)(3)). A noncitizen must receive "adequate notice of the basis for the revocation decision such that he c[an] meaningfully respond at the post-detention informal interview." *Rasakhamdee v. Noem*, No. 25-cv-2817-RBM, ECF No. 10 at 7 (S.D. Cal. Nov. 6, 2025) (quoting *Diaz v. Wofford*, No. 25-cv-1079-JLT, 2025 WL 2581575, *8 (E.D. Cal. Sept. 5, 2025)).

Second, the person "'will be afforded an initial informal interview promptly after his or her return' to be given 'an opportunity to respond to the reasons for revocation stated in the notification.'" 8 C.F.R. §§ 241.13(i)(3), 241.4(l)(1). "[P]romptly," commonly understood, "means '[q]uickly; without delay' or '[a]s soon as practicable.'" *Soryadvongsa*, 2025 WL 3126821 at *3 (quoting *Promptly*, Black's Law Dictionary (12th ed. 2024)). "The chance to advocate for release must ordinarily come within days of a criminal arrest. Surely, it must happen at least that quickly in the more constitutionally protected civil-arrest arena, too." *Id.*

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

ICE is required to follow its own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004) ("The legal proposition that agencies may be required to abide by certain internal policies is well-established."). A court may review a re-detention decision for compliance with the regulations, and "where ICE fails to follow its own regulations in revoking release, the detention is unlawful and the

1 petitioner's release must be ordered." *Rokhfirooz*, 2025 WL 2646165 at *4
2 (collecting cases); *accord Phan*, 2025 WL 2898977 at *5.
3 ICE followed none of its substantive or procedural regulatory prerequisites
4 to re-detention or continued detention here.
5 First, ICE does not have a proper reason to re-detain Mr. Kerota: there is no
6 reason to think that there is "a significant likelihood that [he] may be removed in
7 the reasonably foreseeable future," § 241.13(i)(2), and he has not "violate[d] any
8 of the conditions of release," § 241.13(i)(1). There is no reason to think that,
9 having been unable to remove Mr. Kerota to the Netherlands for years, ICE is
10 likely to do so in the reasonably foreseeable future.
11 Second, ICE did not notify Mr. Kerota of the "reasons" for his re-detention
12 "upon revocation" of release. *See* 8 C.F.R. §§ 241.4(l)(1), 241.13(i)(3).
13 Mr. Kerota's notification mostly contained wrong information that would not
14 support reasons for his re-detention. And what remained was not enough. "Simply
15 to say that circumstances had changed or there was a significant likelihood of
16 removal in the foreseeable future is not enough." *Sarail A. v. Bondi*, __ F. Supp.
17 3d __, 2025 WL 2533673, *10 (D. Minn. 2025). "Petitioner must be told *what*
18 circumstances had changed or *why* there was now a significant likelihood of
19 removal in order to meaningfully respond to the reasons and submit evidence in
20 opposition." *Id.* The notice here included no information about what had changed
21 or why. It simply said "ICE has determined that you can be expeditiously
22 removed from the United States pursuant to the outstanding order of removal
23 against you." Exhibit B. It then identified a wrong removal order to a wrong
24 country. *Id.*
25 Third, Mr. Kerota has not received the informal interview required by
26 regulation. §§ 241.13(i)(2); 241.4(l)(1). If he were to receive one now, such an
27 interview would by no definition be a "prompt[]" one, as required by regulation.
28 *Id.*

1 Fourth, Mr. Kerota has not been afforded a meaningful opportunity to
2 respond to the reasons for revocation or submit evidence rebutting his re-
3 detention. §§ 241.13(i)(2); 241.4(l)(1). When he tried to tell ICE officers that the
4 notice he received contained the wrong information—he is Iraqi, not from Iran—
5 the officers "responded that [he] could just tell the judge." Exhibit A ¶ 5.
6 Numerous courts have released re-detained immigrants after finding that
7 ICE failed to comply with some or all of the applicable regulations this summer
8 and fall. *See, e.g.*, *Villanueva v. Tate*, __ F. Supp. 3d __, 2025 WL 2774610 (S.D.
9 Tex. Sept. 26, 2025); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y.
10 2025); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7–9
11 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL
12 2430267, at *10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-
13 00182-MJT, 2025 WL 2491782, at *2–3 (E.D. Tex. July 18, 2025); *Hoac v.*
14 *Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July
15 16, 2025); *Liu v. Carter*, 2025 WL 1696526, *2 (D. Kan. June 17, 2025); *M.Q. v.*
16 *United States*, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025);
17 *Constantinovici v. Bondi*, __ F. Supp. 3d __, 2025 WL 2898985, No. 25-cv-2405-
18 RBM (S.D. Cal. Oct. 10, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-
19 2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025); *Truong v. Noem*, No. 25-cv-
20 02597-JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*,
21 No. 25-cv-02575-JO-SBC, ECF No. 12, 17 (S.D. Cal. Oct. 9, 2025); *Sun v. Noem*,
22 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Tran v.*
23 *Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29, 2025).
24 "[B]ecause officials did not properly revoke petitioner's release pursuant to
25 the applicable regulations, that revocation has no effect, and [Mr. Kerota] is
26 entitled to his release (subject to the same Order of Supervision that governed his
27 most recent release)." *Liu*, 2025 WL 1696526, at *3.
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VI. Claim 2: Mr. Kerota's detention violates *Zadvydas* and 8 U.S.C. § 1231.

A. Legal background: The statute, as interpreted by *Zadvydas*, renders detention mandatory for 90 days after removal is ordered and allowable after six months after removal is ordered only if there is a significant likelihood of removal in the reasonably foreseeable future.

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered a problem affecting people like Mr. Kerota: Federal law requires ICE to detain an immigrant during the "removal period," which typically spans the first 90 days after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-day removal period expires, detention becomes discretionary—ICE may detain the immigrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily, this scheme would not lead to excessive detention, as removal happens within days or weeks. But some detainees cannot be removed quickly. Perhaps their removal "simply require[s] more time for processing," or they are "ordered removed to countries with whom the United States does not have a repatriation agreement," or their countries "refuse to take them," or they are "effectively 'stateless' because of their race and/or place of birth." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances, detained immigrants can find themselves trapped in detention for months, years, decades, or even the rest of their lives. If federal law were understood to allow for "indefinite, perhaps permanent, detention," it would pose "a serious constitutional threat." *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

Zadvydas held that § 1231(a)(6) presumptively permits the government to detain an immigrant for six months after his or her removal order becomes final. After those six months have passed, the immigrant must be released unless his or her removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 701. After six

1 months have passed, the petitioner must only make a prima facie case for relief—
2 there is "good reason to believe that there is no significant likelihood of removal
3 in the reasonably foreseeable future." *Id.* Then the burden shifts to "the
4 Government [to] respond with evidence sufficient to rebut that showing." *Id.*
5 Mr. Kerota can make all the threshold showings needed to shift the burden to the
6 government.

7 **B. Mr. Kerota's six-month grace period expired in 2023.**

8 The six-month grace period has ended. The *Zadvydas* grace period is linked
9 to, here, the "date of the court's final order" when a "removal order is judicially
10 reviewed" and the court "orders a stay of the removal." 8 U.S.C.
11 § 1231(a)(1)(B)(ii). It lasts for "six months after a final order of removal—that is,
12 three months after the statutory removal period has ended." *Kim Ho Ma v.*
13 *Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001).

14 Mr. Kerota's order of removal to the Netherlands was entered on October 4,
15 2018, Exhibit C, and the Ninth Circuit ordered a stay of the removal, but then
16 later denied his petition for review on March 16, 2023, *Kerota*, 2023 WL
17 2535963. His *Zadvydas* grace period expired six months later, on September 16,
18 2023.

19 **C. Mr. Kerota's experience and ICE's historical experience provide**
20 **good reason to believe that he will not likely be removed in the reasonably foreseeable future.**

21 This Court uses a burden-shifting framework to evaluate Mr. Kerota's
22 *Zadvydas* claim. At the first stage of the framework, Mr. Kerota must "provide[]
23 good reason to believe that there is no significant likelihood of removal in the
24 reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. This standard can be
25 broken down into three parts.

26 **"Good reason to believe."** The "good reason to believe" standard is a
27 relatively forgiving one. "A petitioner need not establish that there exists no
28 possibility of removal." *Freeman v. Watkins*, No. CV B:09-160, 2009 WL

1 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does "'[g]ood reason to
2 believe' . . . place a burden upon the detainee to demonstrate no reasonably
3 foreseeable, significant likelihood of removal or show that his detention is
4 indefinite; it is something less than that." *Rual v. Barr*, No. 6:20-CV-06215 EAW,
5 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401
6 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
7 Petitioners need only give a "good reason"—not prove anything to a certainty.

8 **"Significant likelihood of removal."** This component focuses on <u>whether</u>
9 Mr. Kerota will likely be removed: Continued detention is permissible only if it is
10 "significant[ly] like[ly]" that ICE will be able to remove him. *Zadvydas*, 533 U.S.
11 at 701. This inquiry targets "not only the *existence* of untapped possibilities, but
12 also [the] probability of *success* in such possibilities." *Elashi v. Sabol*, 714 F.
13 Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added).

14 In other words, even if "there remains *some* possibility of removal," a
15 petitioner can still meet its burden if there is good reason to believe that
16 successful removal is not significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-
17 8019, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

18 **"In the reasonably foreseeable future."** This component of the test
19 focuses on <u>when</u> Mr. Kerota will likely be removed: Continued detention is
20 permissible only if removal is likely to happen "in the reasonably foreseeable
21 future." *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE's
22 removal efforts.

23 If the Court has "no idea of when it might reasonably expect [Petitioner] to
24 be repatriated, this Court certainly cannot conclude that his removal is likely to
25 occur—or even that it might occur—in the reasonably foreseeable future." *Palma
26 v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3 (S.D. Miss. July
27 7, 2020), *report and recommendation adopted*, 2020 WL 4876859 (S.D. Miss.
28 Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y.

1 2019)). Thus, even if this Court concludes that Mr. Kerota "would *eventually*
2 receive" a travel document, he can still meet his burden by giving good reason to
3 anticipate sufficiently lengthy delays. *Younes v. Lynch*, 2016 WL 6679830, at *2
4 (E.D. Mich. Nov. 14, 2016).
5 Mr. Kerota satisfies this standard for two reasons.
6 First, ICE has been unable to remove Mr. Kerota to the Netherlands for the
7 last three years, since his removal order became final in March 2023. This, alone,
8 provides good reason to believe he cannot be removed.
9 Second, Mr. Kerota has tried himself to access travel documents to the
10 Netherlands, most recently this year, and been denied. He went to the Dutch
11 consulate this year but they would not issue him a passport. Exhibit A ¶ 4.
12 For both these reasons, this Court should hold that Mr. Kerota has
13 established good reason to believe there is no significant likelihood of his removal
14 in the reasonably foreseeable future, such that the burden shifts to the government
15 to rebut this showing.
16 **VII. This Court must hold an evidentiary hearing on any disputed facts.**
17 Resolution of a prolonged-detention habeas petition may require an
18 evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009). Mr.
19 Kerota hereby requests such a hearing on any material, disputed facts.
20 **VIII. Prayer for relief**
21 For the foregoing reasons, Petitioner respectfully requests that this Court:
22 1. Order and enjoin Respondents to immediately release Petitioner from
23 custody on the same conditions as previously contained in his order
24 of supervision;
25 2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.
26 § 1231(a)(6) unless and until Respondents obtain a travel document
27 for his removal;
28

3. Enjoin Respondents from re-detaining Petitioner without first following all procedures set forth in 8 C.F.R. §§ 241.4(*l*), 241.13(i), and any other applicable statutory and regulatory procedures; and
4. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: January 9, 2026

s/ Jessie Agatstein

Federal Defenders of San Diego, Inc.
Attorneys for Mr. Kerota
Email: jessie_agatstein@fd.org

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Proof of Service

I, the undersigned, will cause the attached Petition for a Writ of Habeas Corpus to be emailed to the U.S. Attorney's Office for the Southern District of California at USACAS.Habeas2241@usdoj.gov when I receive the court-stamped copy.

Dated: January 9, 2026

s/ Jessie Agatstein
Jessie Agatstein

Exhibit A

Jessie Agatstein
Cal. Bar No. 319817
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101-5030
Telephone: (619) 234-8467
Facsimile: (619) 687-2666
jessie_agatstein@fd.org

Attorneys for Mr. Kerota[1]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FARS WADE KEROTA, 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.: **Declaration of Fars Kerota in support of petition for writ of habeas corpus** **[Civil Immigration Habeas Petition Under 28 U.S.C. § 2241]**

I declare the following is true and correct under penalty of perjury:

1. My name is Fars Wade Kerota. I have also gone by Firas Hermiz. I have not been able to work since I have been detained, [redacted] I cannot afford an attorney.

[1] Federal Defenders of San Diego, Inc., is filing with provisional appointment under Chief Judge Order No. 134. Mr. Kerota's financial eligibility for representation is included in this sworn statement.

2. My A-number is [redacted]. I am Iraqi. I came to the United States from the Netherlands in August 2014 with my family so my daughter could get the brain cancer treatment she needed.
3. My immigration case has been complicated. I was ordered removed to the Netherlands in 2018. I was later released on an order of supervision because ICE could not remove me to the Netherlands.
4. I've always gone to my annual check-in with ICE and done whatever ICE asked me to do. The Netherlands has never accepted me for removal. I went to the Dutch consulate, most recently this year, and they would not issue me a passport.
5. This year, I went to my annual check-in in March, and then they told me to come back in September. When I came back in September for my check-in, ICE arrested me. They gave me a notice of revocation that said I was removed to Iran, but I am not from Iran. I am from Iraq. I tried to tell the ICE officers that the information in the notice was wrong, and the ICE officers responded that I could just tell the judge. I also tried to tell them that I had a pending motion to reopen my case so they shouldn't detain me, but they just said I could go tell the judge.
6. Since I've been in custody, I have never had a chance to fight my detention with ICE. ICE has never told me what is going on with my case.
7. Since I've been in custody, I've lost a lot. I haven't been able to work as a mechanic, which is my business. My family has had to move. I don't know how they're going to make rent next month.

1 I declare under penalty of perjury that the foregoing is true and correct,
2 executed on this date, 01-08-26, in San Diego, California.
3
4
5 Declarant

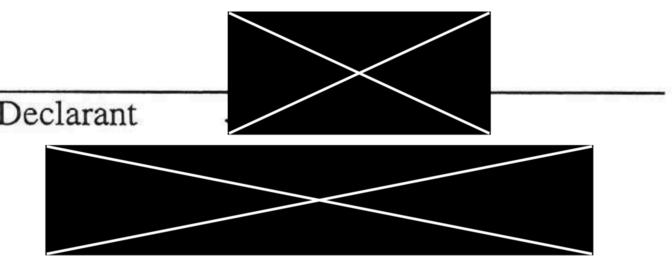

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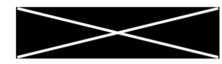
Exhibit B

Office of Enforcement and Removal Operations

U.S. Department of Homeland Security
880 Front ST
San Diego, CA, 92101

KEROTA, FARA WADE
c/o Immigration and Customs Enforcement
San Diego Field Office



Notice of Revocation of Release

This letter is to inform you that your order of supervision has been revoked, and you will be detained in the custody of U.S. Immigration and Customs Enforcement (ICE) at this time. This decision has been made based on a review of your official alien file and a determination that there are changed circumstances in your case.

ICE has determined that you can be expeditiously removed from the United States pursuant to the outstanding order of removal against you. On June 17, 2004, you were ordered removed to Iran by an authorized U.S. DHS/DOJ official and you were granted a withholding of removal to Iran. Your case is under current review for removal to an alternate country.

Based on the above, and pursuant to 8 C.F.R. § 241.4 / 8 C.F.R. § 241.13, you are to remain in ICE custody at this time. You will promptly be afforded an informal interview at which you will be given an opportunity to respond to the reasons for the revocation. You may submit any evidence or information you wish to be reviewed in support of your release. If you are not released after the informal interview, you will receive notification of a new review, which will occur within approximately three months of the date of this notice.

You are advised that you must demonstrate that you are making reasonable efforts to comply with the order of removal and that you are cooperating with ICE's efforts to remove you by taking whatever actions ICE requests to affect your removal. You are also advised that any willful failure or refusal on your part to make timely application in good faith for travel or other documents necessary for your departure, or any conspiracy or actions to prevent your removal or obstruct the issuance of a travel document, may subject you to criminal prosecution under 8 U.S.C. Section 1253(a).

SDDO
Signature and Title of Authorized Official

09/30/2025
Date

Exhibit C

UNITED STATES IMMIGRATION COURT
401 WEST A STREET, SUITE #800
SAN DIEGO, CA 92101

IN THE REMOVAL CASE OF
KEROTA, FARS WADE
RESPONDENT A.K.A Feras Yagab Hermiz

CASE NO.: [redacted]

COPY

ORDERS

[X] This is a memorandum of the Court's Decision and Orders entered on October 4, 2018. This memorandum is solely for the convenience of the parties. The oral or written Findings, Decision and Orders is the official opinion in this case. ~~Both parties waived issuance of a formal oral decision in the case.~~

[X] The respondent was ordered REMOVED from the United States to the Netherlands ~~in absentia~~

[X] Respondent's application for VOLUNTARY DEPARTURE was DENIED and respondent was ordered removed to the Netherlands ~~or in the alternative to~~

[—] Respondent's application for VOLUNTARY DEPARTURE was GRANTED until ________, upon posting a voluntary departure bond in the amount of $______ to DHS within five business days from the date of this Order, with an alternate Order of removal to ________ or ________. Respondent shall present to DHS within ( ) thirty days ( ) sixty days from the date of this Order, all necessary travel documents for voluntary departure.

[X] Respondent's application for ASYLUM was ( ) granted (X) denied ( ) withdrawn with prejudice.
( ) subject to the ANNUAL CAP under the INA section 207(a)(5).
~~(X) Respondent knowingly filed a FRIVOLOUS asylum application.~~

[X] Respondent's application for WITHHOLDING of removal under INA section 241(b)(3) was ( ) granted (X) denied ( ) withdrawn with prejudice.

[X] Respondent's application for WITHHOLDING of removal under the Torture Convention was ( ) granted (X) denied ( ) withdrawn with prejudice.

[—] Respondent's application for DEFERRAL of removal under the Torture Convention was ( ) granted ( ) denied ( ) withdrawn with prejudice.

[ ] Respondent's application for CANCELLATION of removal under section ( ) 203(b) of NACARA, ( ) 240A(a) ( ) 240A(b)(1) ( ) 240A(b)(2) of the INA, was ( ) granted ( ) denied ( ) withdrawn with prejudice. If granted, it was ordered that the DHS issue all appropriate documents necessary to give effect to this Order. Respondent ( ) is ( ) is not subject to the ANNUAL CAP under INA section 240A(e).

[ ] Respondent's application for a WAIVER under the INA section ________ was ( ) granted ( ) denied ( ) withdrawn or ( ) other ________. ( ) The conditions imposed by INA section 216 on the repondent's permanent resident status were removed.

[—] Respondent's application for ADJUSTMENT of status under section ______ of the ( ) INA ( ) NACARA ( ) ________ was ( ) granted ( ) denied ( ) withdrawn with prejudice. If granted, it was ordered that DHS issue all appropriate documents necessary to give effect to this Order.

CASE NUMBER: [redacted] RESPONDENT: KEROTA, FARS WADE

[ ] Respondent's status was RESCINDED pursuant to the INA section 246.
[ ] Respondent's motion to WITHDRAW his application for admission was ( ) granted ( ) denied. If the respondent fails to abide by any of the conditions directed by the district director of DHS, then the alternate Order of removal shall become immediately effective without further notice or proceedings: the respondent shall be removed from the United States to ______________.
[ ] Respondent was ADMITTED as a ______________ until ______________. As a condition of admission, the respondent was ordered to post a $ ______________ bond.
[ ] Case was ( ) TERMINATED ( ) with ( ) without prejudice ( ) ADMINISTRATIVELY CLOSED.
[ ] Respondent was orally advised of the LIMITATION on discretionary relief and consequences for failure to depart as ordered.
[ ] If you fail to voluntarily depart when and as required, you shall be subject to civil money penalty of at least $1,000, but not more than $5,000, and be ineligible for a period of 10 years for any further relief under INA sections 240A, 240B, 245, and 248 (INA Section 240B(d)).
[ ] If you are under a final order of removal, and if you willfully fail or refuse to 1) depart when and as required, 2) make timely application in good faith for any documents necessary for departure, or 3) present yourself for removal at the time and place required, or, if you conspire to or take any action designed to prevent or hamper your departure, you shall be subject to civil money penalty of up to $500 for each day under such violation. (INA section 274D(a)). If you are removable pursuant to INA 237(a), then you shall further be fined and/or imprisoned for up to 10 years. (INA section 243(a)(1)).
[*] Other:
The prior grant of asylum was terminated and R is ordered removed to the Netherlands.

Date: Oct 4, 2018

[signature]
RICO J. BARTOLOMEI, Judge

APPEAL: (*) waived (*) reserved by (*) Respondent ( ) DHS ( ) Both
By DHS only

DUE BY: Nov. 5, 2018

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: [ ] MAIL [X] PERSONAL SERVICE
TO: [P] DHS [ ] ALIEN [P] Alien's ATT/REP [ ] ALIEN c/o Custodial Officer
DATE: 10/04/2018 BY: [X] COURT STAFF [ ] JUDGE [signature]

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