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

12 FARS WADE KEROTA,

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 Respondents.

Case No.: '26CV0140 RBM BLM

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

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27 ¹ Federal Defenders of San Diego, Inc., is filing the instant motion and associated
28 petition with provisional appointment under Chief Judge Order No. 134. Mr.
Kerota's financial eligibility for representation is included in a sworn statement
attached to his habeas petition.

1 **I. Introduction**

2 Fars Wade Kerota faces immediate irreparable harm: (1) revocation of his
3 release on immigration supervision despite ICE’s failure to follow its own
4 revocation procedures, resulting in his family having to move and being in a
5 position where they do not know how they will pay rent; (2) indefinite
6 immigration detention with no individualized, significantly likely prospect of
7 removal to Iran in the reasonably foreseeable future; and (3) potential movement
8 from this jurisdiction during the pendency of this petition.

9 Issuing the requested temporary restraining order (“TRO”) would preserve
10 the status quo while Petitioner litigates these claims by (1) reinstating
11 Mr. Kerota’s release on supervision, and (2) prohibiting the government from
12 moving him out of this district during the pendency of this litigation, potentially
13 depriving this Court of jurisdiction.²

14 In granting this motion, this Court would not break new ground. Courts in
15 this district and around the Ninth Circuit have granted TROs or preliminary
16 injunctions mandating release for post-final-removal-order immigrants like
17 Petitioner. *See, e.g., Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D.
18 Cal. Sept. 30, 2025); *Van Aghajavadyha v. Noem*, 2025 WL 2770623, No. 25-cv-
19 2334-JES, *3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES,
20 ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-
21 02575-JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025); *see also, e.g.,*
22 *Phetsadakone v. Scott*, 2025 WL 2579569, at *6 (W.D. Wash. Sept. 5, 2025);
23 *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7 (E.D.
24 Cal. July 16, 2025); *Phan v. Becerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL
25 1993735, at *7 (E.D. Cal. July 16, 2025); *Nguyen v. Scott*, No. 2:25-CV-01398,

26 _____
27 ² Mr. Kerota requests this Court order Respondents not move him out of this
28 district during the pendency of litigation *ex parte*. He requests that this Court
reinstate him on release on supervision following briefing on this TRO motion
from Respondents.

1 2025 WL 2419288, at *29 (W.D. Wash. Aug. 21, 2025). These courts have
2 determined that, for these long-term releasees, liberty is the status quo, and only a
3 return to that status quo can avert irreparable harm.

4 Courts have likewise granted temporary restraining orders preventing third-
5 country removals without due process. *See, e.g., Nguyen Tran v. Noem*, No. 25-
6 cv-2391-BTM, ECF No. 6 (S.D. Cal. Sept. 18, 2025); *Louangmilith v. Noem*,
7 2025 WL 2881578, No. 25-cv-2502-JES, *4 (S.D. Cal. Oct. 9, 2025); *see also*,
8 *e.g., J.R. v. Bostock*, 25-cv-01161-JNW, 2025 WL 1810210 (W.D. Wash. Jun. 30,
9 2025); *Vaskanyan v. Janecka*, 25-cv-01475-MRA-AS, 2025 WL 2014208 (C.D.
10 Cal. Jun. 25, 2025); *Ortega v. Kaiser*, 25-cv-05259-JST, 2025 WL 1771438 (N.D.
11 Cal. June 26, 2025); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL
12 1993771, at *7 (E.D. Cal. July 16, 2025); *Phan*, 2025 WL 1993735 at *7.

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

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

19 In October 2018, Mr. Kerota was ordered removed to the Netherlands. *Id.*
20 ¶ 3; Exhibit C to Habeas Petition (removal order). That order was affirmed in
21 *Kerota v. Garland*, No. 21-514, 2023 WL 2535963 (9th Cir. Mar. 16, 2023).

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

26 On September 29, 2025, the Bureau of Immigration Appeals received a
27 motion to reopen its jurisdiction filed on Mr. Kerota's behalf.³ On September 30,

28 ³ *See* EOIR case look-up, <https://acis.eoir.justice.gov/en/caseInformation>.

1 2025, Mr. Kerota was arrested by ICE at his check-in. *Id.* ¶ 5. He received a
2 “Notice of Revocation of Release.” Exhibit B; Exhibit A ¶ 5. It states in part:

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

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

15 Based on the above, and pursuant to 8 C.F.R. § 241.4 / 8 C.F.R.
16 § 241.13, you are to remain in ICE custody at this time. You will
17 be promptly afforded an informal interview at which you will be
18 given an opportunity to respond to the reasons for the revocation.

19 Exhibit B.

20 Mr. Kerota explains:

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

26 Exhibit A, ¶ 5.

27 Since Mr. Kerota has been in Otay Mesa, he has not been told what is
28 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.

1 **III. Argument: Mr. Kerota meets all *Winter* factors.**

2 To obtain a TRO, a petitioner “must establish that he is likely to succeed on
3 the merits, that he is likely to suffer irreparable harm in the absence of preliminary
4 relief, that the balance of equities tips in his favor, and that an injunction is in the
5 public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008);
6 *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839-40 & n.7
7 (9th Cir. 2001) (noting that a TRO and preliminary injunction involve
8 “substantially identical” analysis). A “variant[] of the same standard” is the
9 “sliding scale”: “if a plaintiff can only show that there are ‘serious questions
10 going to the merits—a lesser showing than likelihood of success on the merits—
11 then a preliminary injunction may still issue if the balance of hardships tips
12 sharply in the plaintiff’s favor, and the other two *Winter* factors are satisfied.”
13 *Immigrant Defenders Law Center v. Noem*, 145 F.4th 972, 986 (9th Cir. 2025)
14 (internal quotation marks omitted). Under this approach, the four *Winter* elements
15 are “balanced, so that a stronger showing of one element may offset a weaker
16 showing of another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131
17 (9th Cir. 2011). A TRO may be granted where there are “‘serious questions going
18 to the merits’ and a hardship balance. . . tips sharply toward the plaintiff,” and so
19 long as the other *Winter* factors are met. *Id.* at 1132.

20 Here, this Court should issue a temporary restraining order because
21 “immediate and irreparable injury . . . or damage” is occurring and will continue
22 in the absence of an order. Fed. R. Civ. P. 65(b). Respondents re-detained
23 Mr. Kerota in violation of his due process, statutory, and regulatory rights. This
24 Court should order Petitioner’s release and enjoin removal from this Court’s
25 jurisdiction during the pendency of litigation.

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1 **A. Mr. Kerota is likely to succeed on the merits, or at a minimum,**
2 **raises serious merits questions.**

3 As described in detail in Mr. Kerota’s habeas petition, he is likely to
4 succeed on both of his claims.

5 First, ICE failed to follow its own regulations requiring changed
6 circumstances before Mr. Kerota’s re-detention, as well as its procedural
7 regulations requiring it to notify him of those circumstances and allow him an
8 opportunity to contest them. This was a violation of both the regulations and due
9 process and requires his release. *See, e.g., See Phan v. Noem*, 2025 WL 2898977,
10 No. 25-CV-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025) (explaining this
11 regulatory framework and granting a habeas petition for ICE’s failure to follow
12 these regulations for a refugee of Vietnam who entered the United States before
13 1995); *Rokhfirooz*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165 at *2 (same
14 as to an Iranian national).

15 Second, *Zadvydas v. Davis* holds that immigration statutes do not authorize
16 the government to detain immigrants like Mr. Kerota, for whom there is “no
17 significant likelihood of removal in the reasonably foreseeable future.” 533 U.S.
18 678, 701 (2001); *see, e.g., Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL
19 2419288 *17 (W.D. Wash. Aug. 21, 2025) (granting habeas petition on *Zadvydas*
20 grounds and ordering pre-1995 Vietnamese immigrant released); *Hoac v. Becerra*,
21 No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, *5, *7 (E.D. Cal. July 16,
22 2025) (granting preliminary injunction and temporary restraining order on these
23 same grounds).

24 **B. Mr. Kerota will suffer irreparable harm absent injunctive relief.**

25 Mr. Kerota also meets the second factor, irreparable harm. “It is well
26 established that the deprivation of constitutional rights ‘unquestionably constitutes
27 irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)
28 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the “alleged

1 deprivation of a constitutional right is involved, most courts hold that no further
2 showing of irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d
3 989, 1001-02 (9th Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal*
4 *Practice and Procedure*, § 2948.1 (2d ed. 2004)).

5 The Ninth Circuit has specifically recognized the “irreparable harm”
6 created by the likelihood of being “unconstitutionally detained for an
7 indeterminate period of time” in immigration detention. *Hernandez v. Sessions*,
8 872 F.3d 976, 995 (9th Cir. 2017).

9 Further, Mr. Kerota’s continued detention creates significant burdens on his
10 family. Because he has not been able to work for the last three months, his family
11 has had to move. It is not clear how they will make rent next month. Exhibit A to
12 Habeas Petition, ¶ 7.

13 **C. The balance of hardships and the public interest weigh heavily in**
14 **Mr. Kerota’s favor.**

15 The final two factors for a TRO—the balance of hardships and public
16 interest—“merge when the Government is the opposing party.” *Nken v. Holder*,
17 556 U.S. 418, 435 (2009). That balance tips decidedly in Mr. Kerota’s favor.

18 On the one hand, the government “cannot reasonably assert that it is
19 harmed in any legally cognizable sense” by being compelled to follow the law.
20 *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983). It is always in the public
21 interest to prevent violations of the U.S. Constitution and ensure the rule of law.
22 *See Nken*, 556 U.S. at 436 (describing public interest in preventing noncitizens
23 “from being wrongfully removed, particularly to countries where they are likely
24 to face substantial harm”); *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208,
25 1218 (W.D. Wash. 2019) (when government’s treatment “is inconsistent with
26 federal law, . . . the balance of hardships and public interest factors weigh in favor
27 of a preliminary injunction.”).

28

1 On the other hand, Mr. Kerota faces weighty hardships: unlawful, indefinite
2 detention, and possible movement out of this district and out of the Court's
3 jurisdiction. The balance of equities thus favors preventing the violation of
4 "requirements of federal law," *Arizona Dream Act Coal. v. Brewer*, 757 F.3d
5 1053, 1069 (9th Cir. 2014), by granting temporary emergency relief to protect
6 against unlawful detention and loss of this Court's jurisdiction.

7 **IV. Mr. Kerota will give the government notice of this TRO motion**
8 **immediately, and the TRO should remain in place throughout habeas**
9 **litigation.**

10 When Federal Defenders first started filing TROs in immigration habeas
11 cases, a Federal Defenders attorney called the U.S. Attorney's Office and was put
12 in touch with Janet Cabral. Ms. Cabral requested that Federal Defenders provide
13 notice of these motions via email after the motion has been filed with the court.
14 Federal Defenders will do so in this case.

15 Additionally, Mr. Kerota requests that this TRO remain in place until the
16 habeas petition is decided. Fed. R. Civ. Pro. 65(b)(2). Good cause exists, because
17 the same considerations will continue to warrant injunctive relief throughout this
18 litigation, and habeas petitions must be adjudicated promptly. *See In re Habeas*
19 *Corpus Cases*, 216 F.R.D. 52 (E.D.N.Y. 2003).

20 Respectfully submitted,

21
22 Dated: January 9, 2026

s/ Jessie Agatstein

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

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Proof of Service

I, the undersigned, will cause the attached motion for temporary restraining order 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