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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.

No.: 26-cv-140-RBM-BLM

Traverse in Support of Petition for Writ Of Habeas Corpus and Reply in Support of Motion for Temporary Restraining Order

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

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I. Introduction

Respondents' return includes a declaration from a San Diego deportation officer stating that:

- Mr. Kerota "was ordered removed to the Netherlands" on October 4, 2018;
- On March 20, 2023, Mr. Kerota was enrolled in a check-in system for low-risk noncitizens, the ICE Compliance Assistance Reporting Terminal (CART),[1] through which he complied with his order of supervision;
- On September 30, 2025, Mr. Kerota "reported to his scheduled CART check-in and was detained by ICE to effectuate removal"'
- "On September 30, 2025, [Mr. Kerota] filed a second MTR [motion to reopen] with the BIA. The motion remains pending. ERO does not intend to effectuate removal absent a decision on the MTR";
- The day of Mr. Kerota's re-detention, he received the Notice of Revocation of Removal he attached to his habeas petition;
- "An informal interview was not provided";
- "Since Petitioner's re-detention, ICE has worked expeditiously to obtain a travel document from the Netherland government [*sic*]," without any details as to that work; and
- "Should the Netherland government deny the request for a travel document, ERO . . . will attempt to seek a third country." ECF No. 7, Declaration of Hugo Lara Ramirez, ¶¶ 8–13.

[1] *See* U.S. Dep't of Homeland Sec., *Privacy Impact Assessment Update for the Enforcement Integrated Database (EID)*, at 7–9 (Dec. 3, 2018) (noting that "CART is expected to . . . allow ERO to focus on [other] higher-risk cases, such as aliens who pose a threat to public safety and other enforcement priorities"), available at https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice-eid-december2018.pdf.

Some of this evidence is factually incorrect. For example, the DOJ's Automated Case Information System reports that the Bureau of Immigration Appeals received Mr. Kerota's motion to reopen on September 29, 2025—the day before he was arrested. *See* Exhibit D (screenshot of case information system reporting that a "Motion to Reopen BIA Jurisdiction was RECEIVED on September 29, 2025").

Regardless, none of this evidence rebuts Mr. Kerota's claim that he was re-detained in violation of his regulatory and due process rights. It certainly does not rebut Mr. Kerota's claim that the reasons given in his Notice of Revocation were incorrect, and that he was never given an "informal interview" or "afford[ed] . . . an opportunity to respond to the reasons for revocation." §§ 241.13(i)(3), 241.4(l)(1). Nor does it rebut his claim that there were no "changed circumstances" such that there is now "a significant likelihood that [he] may be removed in the reasonably foreseeable future." § 241.13(i)(2).

Nor does the government rebut Mr. Kerota's *Zadvydas* claim that there is not an individualized, significant likelihood of his removal in the foreseeable future. Despite having several years to attempt it, ICE has never been able to receive a travel document for Mr. Kerota's removal to the Netherlands. ECF No. 7, Declaration of Hugo Lara Ramirez, ¶ 13. "[T]he Government's minimal work on this case . . . do[es] not instill confidence that it will be able to secure Petitioner's removal in the reasonably foreseeable future." *Conchas-Valdez v. Casey*, No. 25-cv-2469-DMS-JLB, 2025 WL 2884822, *3 (S.D. Cal. Oct. 6, 2025).

This Court should grant the petition and order Mr. Kerota released on his pre-existing order of supervision. In the alternative, it should order the temporary relief of Mr. Kerota's immediate release while it considers any remaining issues as to the habeas petition.

II. This Court has jurisdiction.

The government suggests in a paragraph that this Court lacks jurisdiction under 8 U.S.C. § 1252(g). *See* ECF No. 7 at 7. Section 1252(g) does not bar review of "all claims arising from deportation proceedings." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Courts still "have jurisdiction to decide a purely legal question that does not challenge the Attorney General's discretionary authority." *Ibarra-Perez v. United States*, 154 F.4th 989, 996 (9th Cir. 2025).

In *Ibarra-Perez*, the Ninth Circuit squarely held that § 1252(g) does not prohibit immigrants from asserting a "right to meaningful notice and an opportunity to present a fear-based claim before [they] [are] removed." *Id.* at 997. The Court reasoned that "§ 1252(g) does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders." *Id.* Instead, § 1252(g) is "limited . . . to actions challenging the Attorney General's discretionary decisions to initiate proceedings, adjudicate cases, and execute removal orders." *Arce v. United States*, 899 F.3d 796, 800 (9th Cir. 2018). The statute does not apply to arguments that the government "entirely lacked the authority, and therefore the discretion," to carry out a particular action. *Id.* at 800. Instead, § 1252(g) applies to "discretionary decisions that [the Secretary] actually has the power to make, as compared to the violation of his mandatory duties." *Ibarra-Perez*, 2025 WL 2461663, at *9.

The same logic applies to Mr. Kerota's claims. He challenges violations of ICE's mandatory duties under statutes, regulations, and the Constitution. "Though 8 U.S.C § 1252(g) precludes this Court from exercising jurisdiction over the executive's decision to 'commence proceedings, adjudicate cases, or execute removal orders against any alien,' this Court has habeas jurisdiction over the issues raised here, namely the lawfulness of [Mr. Kerota's] continued detention . . . ." *Y.T.D.*, 2025 WL 2675760 at *5.

In short, Mr. Kerota does not challenge whether the government may "execute" his removal under 8 U.S.C § 1252(g)—only whether it may detain him up to the date it does so. This Court has jurisdiction.

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

A. Mr. Kerota did not receive notice of the reasons for his revocation or have an opportunity to contest them.

The government does not claim to have fully complied with 8 C.F.R. §§ 241.4 and 241.13. *See* ECF No. 7 at 6. For Mr. Kerota, those regulations permit his re-detention only if ICE: (1) "determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future," § 241.13(i)(2); (2) makes that finding "on account of changed circumstances," *id.*; (3) "upon revocation," "notifie[s]" the noncitizen "of the reasons for revocation of his or her release," § 241.13(i)(2)(iii), 241.4(*l*)(1); and (4) "conduct[s] an initial informal interview promptly after his or her return to Service custody to afford the [person] an opportunity to respond to the reasons for revocation stated in the notification." *Id.*

As Mr. Kerota explained in his petition and motion, ICE did not comply with these requirements.

Most prominently, ICE has *never* afforded Mr. Kerota a "prompt[]" "informal interview," at which he can have "an opportunity to respond to the reasons for revocation." 8 C.F.R. §§ 241.13(i)(3); 241.4(l)(1). Four months into Mr. Kerota's re-detention, it has still never conducted an informal interview. *See* ECF No. 7, Declaration ¶ 12.

Next, there are not "changed circumstances" such that, unlike in January 2025, there is now "a significant likelihood that [Mr. Kerota] may be removed in the reasonably foreseeable future." § 241.13(i)(2). To this day, the government has identified no reason to think that, having been unable to remove him to the

Netherlands for the last several years, it now can.

Finally, upon Mr. Kerota's revocation, ICE did not notify him of the actual "the reasons for revocation of his . . . release." § 241.13(i)(2)(iii); § 241.4(l)(1). He was given a written notice of revocation that said only that his supervision was being revoked "based on a review of your official alien file and a determination that there are changed circumstances in your case," that "you can be expeditiously removed from the United States." ECF No. 1, Exhibit C (Notice of Revocation of Release). "ICE's conclusory explanations for revoking Petitioner's release 'did not offer him adequate notice of the basis for the revocation decision such that he could meaningfully respond at the post-detention informal interview.'" *Raskhamdee v. Noem*, No.25-cv-2816-RBM-DEB, 2025 WL 3102037, *4 (S.D. Cal. Nov. 6, 2025) (quoting *Diaz v. Wofford*, No. 25-cv-1079-JLT-EPG, 2025 WL 2581575, *8 (E.D. Cal. Sept. 5, 2025)); *accord Quoc Anh Nguyen v. Noem*, No. 25-cv-2792-LL-VET, 2025 WL 3101979, *2 (S.D. Cal. Nov. 6, 2025) (holding that a similarly "bare-bones explanation does not contain reasons for the revocation of Petitioner's release").

And what was specific in Mr. Kerota's notice was wrong. The Notice of Revocation of Release alleged that Mr. Kerota, "[o]n June 17, 2004 . . . w[as] ordered removed to Iran . . . and you were granted a withholding of removal to Iran." Exhibit B; *accord* ECF No. 7, Exhibit 1. In fact, as the government notes, he is Iraqi, and he was ordered removed only to the Netherlands in 2018. *See* Exhibit A; *accord* ECF No. 7, Declaration of Hugo Lara Ramirez.

B. Mr. Kerota need not show prejudice, although he can, because the regulations implement the core due process guarantees of notice and an opportunity to be heard while being detained.

The government's two remaining arguments on Mr. Kerota's regulatory claims—that Mr. Kerota must show prejudice, and that the regulations do not implement due process and protected liberty interests—also fail.

First, Mr. Kerota need not show prejudice from these regulatory claims.

"[T]he 'norm' when ICE fails to conduct an 'informal interview promptly' is that 'courts across the country have ordered the release of individuals stemming from ICE's illegal detention." *Soryadvongsa*, 2025 WL 3125821 at *3 (quoting *KEO v. Woosley*, No. 4:25-CV-74-RGJ, 2025 WL 2553394, *6–*7 (W.D. Ky. Sept. 4, 2025)). "Especially in the context of civil detentions—when constitutional safeguards are at their zenith—this Court is unwilling to import such a prejudice analysis into regulations or binding caselaw that don't mention it." *Id.*

"There are two types of regulations: (1) those that protect fundamental due process rights, and (2) and those that do not." *Martinez v. Barr*, 941 F.3d 907, 924 n.11 (9th Cir. 2019) (cleaned up). "A violation of the first type of regulation . . . implicates due process concerns even without a prejudice inquiry." *Id.* (cleaned up). Here, "[t]here can be little argument that ICE's requirement that noncitizens be afforded an informal interview—arguably the most bare-bones form of an opportunity to be heard—derives from the fundamental constitutional guarantee of due process." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 165 n.26 (W.D.N.Y. May 2, 2025). No showing of prejudice is required.

Regardless, a violation of a regulation is prejudicial where, as here, "the merits" of an immigrant's case for relief "were never considered by the agency at all." *Arizmendi-Medina v. Garland*, 69 F.4th 1043, 1052 (9th Cir. 2023). Faced with that total deprivation, a petitioner need not point to the specific "evidence [he] would have presented to support [his] assertions" or make "any allegations as to what the petitioner or his witnesses might have said." *Id.* (cleaned up).

And Mr. Kerota could "present plausible scenarios in which the outcome of the proceedings would have been different if a more elaborate process were provided." *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 495 (9th Cir. 2007) (cleaned up). He would have had a very strong argument against re-detention had ICE given him notice and an opportunity to respond.

For example, Mr. Kerota could have explained that he had a pending

motion to reopen that had been received by the Bureau of Immigration Appeals the day before his check-in. *See* Exhibit D. Because ICE does not intend to effectuate any removal during the pendency of a motion to reopen, there was no basis for ICE to re-detain him to effectuate his removal. *See* ECF No. 7, Declaration of Hugo Lara Ramirez, ¶¶ 12–13.

Mr. Kerota could have also explained that he had continued to seek travel documents to the Netherlands on his own, and had been unable to. In 2025, he applied for a passport for the Netherlands directly with the consulate himself, but was denied. Exhibit A ¶ 4. There is thus no reason to believe he can be deported in the reasonably foreseeable future.

And, as to third-country removal, ICE is fully capable of trying to "identify" a third country while Mr. Kerota remains at liberty; it could have done so at any point in the last several years in which it had released Mr. Kerota on an order of supervision.

Second, of course § 241.13(i) and § 241.4(l)(1) implement the basic due process protections of notice and an opportunity to be heard before being detained indefinitely. Their violation is an enforceable violation of a protected interest in being free from indefinite detention. "When someone's most basic right of freedom is taken away, that person is entitled to at least some minimal process; otherwise, we all are at risk to be detained—and perhaps deported—because someone in the government thinks we are not supposed to be here." *Ceesay*, 781 F. Supp. 3d at 165.

In arguing otherwise, the government "confuses [Mr. Kerota's] right to an order of supervision, which ICE indeed has discretion to grant or deny, with his right not to be detained without adequate—in fact, without *any*—process. The right to be free from detention can never be dismissed as discretionary." *Id.* (citing *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)).

"When the INS published 8 C.F.R. § 241.4 on December 21, 2000, it

explained that the regulation was intended to provide aliens procedural due process, stating that § 241.4 'has the procedural mechanisms that . . . courts have sustained against due process challenges.'" *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 641 (D. Mass. 2018) (quoting Detention of Aliens Ordered Removed, 65 FR 80281-01). And "[s]ection 241.13(i) includes provisions modeled on § 241.4(1) to govern determinations to take an alien back into custody," Continued Detention of Aliens Subject to Final Orders of Removal, 66 FR 56967-01, meaning that it addresses the same due process concerns as 241.4(*l*).

"The procedures in § 241.4" and § 241.13 therefore "are not meant merely to facilitate internal agency housekeeping, but rather afford important and imperative procedural safeguards to detainees." *Jimenez*, 317 F. Supp. 3d at 642. Because the procedures in 8 C.F.R. §§ 241.4, 241.13 are "intended to provide due process to individuals in [Mr. Kerota's] position," *Santamaria Orellana v. Baker*, No. CV 25-1788-TDC, 2025 WL 2444087, *6 (D. Md. Aug. 25, 2025), they are enforceable.

Because the government failed to comply with core requirements of § 241.4 and § 241.13 when revoking Mr. Kerota's release, it should, "[l]ike many other district courts within this circuit," "find[] that these failures constitute a violation of Petitioner's due process rights and justif[y] his release." *Bui v. Warden of Otay Mesa Detention Facility*, No. 25-cv-2111-JES, 2025 WL 2988356, *5 (S.D. Cal. Oct. 23, 2025).

IV. Claim 2: Mr. Kerota's detention violates *Zadvydas* and 8 U.S.C. § 1231.

Next, the government provides insufficient evidence to meet its burden to show that Mr. Kerota will likely be removed to an unidentified third country in the reasonably foreseeable future.

A. The six-month grace period has already passed, contrary to the government's assertion.

The government seems to agree that Mr. Kerota's removal order became

final on March 16, 2023, when Mr. Kerota lost his appeal before the Ninth Circuit. ECF No. 7 at 2. It is thus not clear why the government asserts that Mr. Kerota's "presumptively reasonable removal period here should extend into March of 2026." *Id.*

As Mr. Kerota explained, and as the government does not dispute, the 90-day statutory removal period in his case is tied to "the date of the court's final order." 8 U.S.C. § 1231(a)(1)(B)(ii). Under that statute, the 90-day removal period expired in June 2023. And, as the Ninth Circuit has explained, the *Zadvydas* six-month period of presumptively reasonable detention only lasts for "three months after the statutory removal period has ended"—*i.e.*, "six months after a final order of removal." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). So, as Mr. Kerota explained, his six-month period under *Zadvydas* ended in September 2023

Regardless, even if the removal period *did* restart when Mr. Kerota was re-detained, he could still prevail on his *Zadvydas* claim. The six-month grace period is only "*presumptively* reasonable." *Zadvydas*, 533 U.S. at 701 (emphasis added). Several courts have concluded that an immigrant may rebut that presumption with sufficiently compelling evidence that his removal is not foreseeable. *See Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal. 2020) (collecting cases). And where, as here, ICE has had significant time to remove a person while they remained on supervision, the presumption is readily rebutted. *See Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, *4 (D. Md. Sept. 8, 2025).

B. The government has not rebutted Mr. Kerota's showing that his removal is not significantly likely in the reasonably foreseeable future.

"[M]ere generalizations, divorced from any documentary support," do not "suffice for *Zadvydas* purposes." *Azzo*, 2025 WL 3535208 at *4 n.3. The government has offered no more than mere generalizations in this case.

Azzo is instructive. There, the district court received a similar declaration,

there for a habeas petitioner who had received relief from removal to his only country of citizenship under the Convention Against Torture. *Id.* at *1. Upon surveying relevant case law, the court noted that the declaration resulted in an "even weaker evidentiary showing" than in other cases that had still granted *Zadvydas* petitions and ordered immediate relief. *Id.* *4 (discussing, among other cases, *Kamyab v. Bondi*, No. C-25-389RSL, 2025 WL 2917522 (W.D. Wash. Oct. 14, 2025), and *Phan v. Warden of Otay Mesa Detention Facility*, No. 25-cv-2369-AJB-BLM, 2025 WL 3141205 (S.D. Cal. Nov. 10, 2025)). There, as here, with "'little more than generalizations regarding the likelihood that removal will occur,'" Respondents "have not met their burden to 'respond with evidence sufficient to rebut' Petitioner's showing." *Id.*

ICE here submits a general statement only that, "Since Petitioner's re-detention, ICE has worked expeditiously to obtain a travel document from the Netherland government." ECF No. 7, Declaration of Hugo Lara Ramirez, ¶ 13. This statement does not meet the government's burden in two distinct ways. First, it indicates ICE had *not* put work into seeking a travel document for Mr. Kerota for the last few years while he was on release, ever since his order became final in March 2023. Second, it provides no specific evidence of information for what work ICE has done—and why it believes it will be successful now. ICE's efforts were not successful several years ago. And Mr. Kerota's efforts were also not successful as recently as last year, when Mr. Kerota himself sought Dutch travel documents directly from the consulate and was denied a passport.

This evidence does not show that Mr. Kerota's removal to the Netherlands is "significant[ly] like[ly]." *Zadvydas*, 533 U.S. at 701. Nor does it show that his removal to an unidentified third country will happen "in the reasonably foreseeable future." *Id.* For the reasons Mr. Kerota identified in his habeas petition—his individual circumstances and ICE's lack of progress—this Court should grant this petition.

V. The remaining TRO factors decidedly favor Mr. Kerota.

The government does not dispute Mr. Kerota's motion explaining why the remaining TRO factors weigh in favor of his immediate release.

Of course, this Court need not evaluate the other TRO factors—the Court may simply grant the petition outright. But if the Court does decide to evaluate irreparable harm, the balance of harms, and the public interest, Mr. Kerota should prevail.

VI. Conclusion

This Court should order Mr. Kerota's immediate release on his pre-existing order of supervision, either through a grant of his habeas petition or through a grant of his motion for temporary relief.

Respectfully submitted,

Dated: January 21, 2026

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