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

12 HASEEB JAMIL MIKHAIL,
13
14 Petitioner,

15 v.

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

25 Respondents.

CASE NO.: '26CV0572 CAB JLB

**Petition for Writ
of
Habeas Corpus**

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

26 _____
27 ¹ Federal Defenders of San Diego, Inc., is filing the instant petition with
28 provisional appointment under Chief Judge Order No. 134. Mr. Mikhail's
financial eligibility for representation is included in a sworn statement attached to
this petition.

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1 **I. Introduction**

2 Haseeb Mikhail is from Iraq. He was ordered removed in 2002 and then
3 released on an order of supervision. For the last fourteen years, he has complied
4 with all his check-ins and supervision terms.

5 Despite Mr. Mikhail’s compliance with all immigration supervision terms
6 since, ICE has detained him twice in the last six months. The first time, in August,
7 he was held just long enough to lose his job. Then ICE released him. The second
8 time, on December 18, an ICE officer told him they had a travel document to
9 deport him. The day of his arrest, Mr. Mikhail and his immigration attorney
10 explained that ICE could not deport him, even if it had a travel document: The
11 Bureau of Immigration Appeals was considering his case, and there was a stay of
12 removal while it did so. The officers said they would “take [him] in anyways.”
13 Exhibit A, Declaration of Haseeb Mikhail, ¶ 8. They said they “had no choice.”
14 *Id.* ¶ 10. In the month and a half since, while he has remained in custody at the
15 Otay Mesa Detention Center, no one from ICE has explained what has changed in
16 his case such that it is proper for ICE to re-detain him.

17 Mr. Mikhail must be released because ICE’s failure to follow its own
18 regulations—about providing a meaningful opportunity to be heard following re-
19 detention, about evaluating new information a noncitizen provides during that
20 meaningful opportunity and taking it into account in its decision whether to
21 revoke someone’s release, and about the limited reasons ICE can invoke to re-
22 detain someone who is complying with their conditions of release—violated due
23 process. *See, e.g., Nguyen v. Noem*, No. 25-cv-2791-BAS, ECF No. 12 (S.D. Cal.
24 Nov. 7, 2025); *Nguyen v. Noem*, No. 25-cv-2792-LL, ECF No. 10 (S.D. Cal. Nov.
25 6, 2025); *Ghafouri v. Noem*, 25-cv-2675-RBM, ECF No. 11 (S.D. Cal. Nov. 4,
26 2025); *Tran v. Noem*, No. 25-cv-2391-BTM, 2025 WL 3005347 (S.D. Cal. Oct.
27 27, 2025); *Bui v. Warden*, No. 25-cv-2111-JES, ECF No. 18 (S.D. Cal. Oct. 23,
28 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12, 17

1 (S.D. Cal. Oct. 9, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB
2 (S.D. Cal. Sept. 30, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL
3 2646165 (S.D. Cal. Sept. 15, 2025) (considering ICE regulatory violations during
4 re-detentions of released noncitizens ordered removed).

5 **II. Statement of facts**

6 **A. Mr. Mikhail comes to the U.S. from Iraq, is ordered removed,
7 and is released on an order of supervision before being arrested
8 at his check-ins.**

8 Haseeb Mikhail is originally from Iraq. Exhibit A ¶ 2. He came to the
9 United States through Greece in 2000. *Id.* In 2002, he was ordered removed to
10 Iraq. *Id.* ¶ 3. He was released on an order of supervision about 90 days after that
11 because ICE could not remove him. *Id.*

12 In the sixteen years since, Mr. Mikhail has gone to his annual check-ins
13 with ICE and has never had any issues. *Id.* ¶ 4.

14 At his annual check-in in April 2025, ICE told him to return in August.
15 *Id.* ¶ 5. Trying to clarify what was going on in his case, Mr. Mikhail went to the
16 Iraqi Embassy. They wrote that the Embassy “ha[s] no record of [his] name,” so
17 they “cannot give [him] a travel document.” *Id.* ¶ 6. That made sense to
18 Mr. Mikhail: He had left Iraq in 1996, and his “city burned down since then from
19 ISIS.” *Id.*

20 At his follow-up check-in on August 12, 2025, ICE arrested him, even
21 though he had “g[iven] them the paper [he] got from the embassy.” *Id.* ¶ 7. ICE
22 officers told him “they were trying to take [him] back to Iraq.” *Id.* Then, on
23 September 3, 2025, ICE released him from detention. *Id.* But he had been
24 detained long enough to lose his job as a delivery driver for a bakery. *Id.*

25 Mr. Mikhail had his next check-in on December 18, 2025, and “they
26 arrested [him] again.” *Id.* ¶ 8. He received a Notice of Revocation of Release that
27 stated in relevant part:
28

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

7 ICE has determined that you can be expeditiously removed from the
8 United States pursuant to the outstanding order of removal against
9 you. ICE has obtained a travel document to effectuate your removal.
10 A removal flight will be scheduled as soon as possible.

11 Based on the above, and pursuant to 8 C.F.R. § 241.13(i)(2), your
12 release on an order of supervision will be revoked today and you
13 will be taken into ICE custody. You will be afforded an informal
14 interview today at which you will be given an opportunity to
15 respond to the reasons for the revocation. You may submit any
16 evidence or information you wish to be reviewed in support of your
17 release.

18 Exhibit B.

19 Upon reviewing the notice, Mr. Mikhail and his immigration attorney
20 explained to an ICE officer at the check-in that he could not be deported.
21 “[T]here’s a stay of removal on [his] case” from the Bureau of Immigration
22 Appeals. Exhibit A ¶ 8. “Then the officer called someone to confirm that that was
23 what was going on on speakerphone, and the person on the phone confirmed it.”

24 *Id.*

25 Even so, “After the officer hung up the phone, he still arrested
26 [Mr. Mikhail]. He said his supervisor told him to take [Mr. Mikhail] in anyways.”
27 *Id.* They “said they had no choice and they had to take [him] into custody
28 anyways.” *Id.* ¶ 10. As a result, Mr. Mikhail has “never had a real chance to fight
his arrest.” *Id.*

Further, at the check-in, “two different ICE officers . . . told [him] different
things. One said they did have a travel document. Another said they did not have
a travel document.” *Id.* ¶ 9.

1 **III. This Court has jurisdiction.**

2 This Court has jurisdiction to consider Mr. Mikhail’s claims of unlawful
3 detention under 28 U.S.C. § 2241.

4 The government’s recent argument otherwise, that 8 U.S.C. § 1252(g) strips
5 this Court of jurisdiction, “has been repeatedly ‘rejected as implausible’ by the
6 Supreme Court.” *Soryadvongsa v. Noem*, No. 25-cv-2663-AGS, 2025 WL
7 316821, *1 (S.D. Cal. Nov. 8, 2025) (quoting *Department of Homeland Sec. v.*
8 *Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020)). The government’s argument
9 “would eliminate judicial review of immigration [detainees’] claims of unlawful
10 detention . . . inconsistent with *Jennings v. Rodriguez* and the history of judicial
11 review of the detention of noncitizens under 28 U.S.C. § 2241.” *Phan v. Noem*,
12 No. 25-cv-2422-RBM, 2025 WL 2898977, *3 (S.D. Cal. Oct. 10, 2025)
13 (collecting cases agreeing on this jurisdictional point).

14 **IV. Legal Claim: ICE failed to comply with its own regulations while re-**
15 **detaining Mr. Mikhail, violating his rights under applicable**
16 **regulations and due process.**

17 Two regulations establish the process due to someone who is re-detained in
18 immigration custody following a period of release. 8 C.F.R. § 241.4(l) applies to
19 all re-detentions, generally. 8 C.F.R. § 241.13(i) applies as an added, overlapping
20 framework to persons released upon good reason to believe that they will not be
21 removed in the reasonably foreseeable future, as Mr. Mikhail was. *See Phan*,
22 2025 WL 2898977 at *3–*5 (S.D. Cal. Oct. 10, 2025) (explaining this regulatory
23 framework and granting a habeas petition for ICE’s failure to follow these
24 regulations for a refugee of Vietnam who entered the United States before 1995);
25 *Rokhfirooz*, 2025 WL 2646165 at *2 (same as to an Iranian national).

26 These regulations establish important substantive limitations before a
27 noncitizen’s re-detention. Officials are allowed to “return [the person] to custody”
28 only when the person “violate[d] any of the conditions of release,” 8 C.F.R.
§§ 241.13(i)(1), 241.4(l)(1), or, in the alternative, if an appropriate official

1 “determines that there is a significant likelihood that the alien may be removed in
2 the reasonably foreseeable future,” and makes that finding “on account of
3 changed circumstances,” § 241.13(i)(2). Section “241.13(i)(2) requires that this
4 determination is made before the removable alien has had his release revoked.”
5 *Quoc Anh Nguyen*, No. 25-cv-2792-LL, ECF No. 10 at 3 (quoting *Tran*, 2025 WL
6 3005347 at *2).

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

9 First, “[u]pon revocation,” the noncitizen “will be notified of the reasons
10 for revocation of his or her release or parole.” *Phan*, 2025 WL 2898977 at *3, *4
11 (quoting §§ 241.4(l)(1), 241.13(i)(3)). A noncitizen must receive “adequate notice
12 of the basis for the revocation decision such that he c[an] meaningfully respond at
13 the post-detention informal interview.” *Rasakhamdee v. Noem*, No. 25-cv-2817-
14 RBM, ECF No. 10 at 7 (S.D. Cal. Nov. 6, 2025) (quoting *Diaz v. Wofford*, No.
15 25-cv-1079-JLT, 2025 WL 2581575, *8 (E.D. Cal. Sept. 5, 2025)).

16 Second, the person ““will be afforded an initial informal interview promptly
17 after his or her return’ to be given ‘an opportunity to respond to the reasons for
18 revocation stated in the notification.”” 8 C.F.R. §§ 241.13(i)(3), 241.4(l)(1).

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

24 Fourth, and finally, ICE will conduct “an evaluation of any contested facts
25 relevant to the revocation,” and it must make “a determination whether the facts
26 as determined warrant revocation and further denial of release.” § 241.13(i)(3).

27 ICE is required to follow its own regulations. *United States ex rel. Accardi*
28 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); see *Alcaraz v. INS*, 384 F.3d 1150,

1 1162 (9th Cir. 2004) (“The legal proposition that agencies may be required to
2 abide by certain internal policies is well-established.”). A court may review a re-
3 detention decision for compliance with the regulations, and “where ICE fails to
4 follow its own regulations in revoking release, the detention is unlawful and the
5 petitioner’s release must be ordered.” *Rokhfirooz*, 2025 WL 2646165 at *4
6 (collecting cases); *accord Phan*, 2025 WL 2898977 at *5.

7 **ICE did not follow at least two essential procedural regulatory**
8 **prerequisites to re-detention or continued detention here.**

9 **First, ICE does not have a proper reason to re-detain Mr. Mikhail:**
10 there is no reason to think that there is “a significant likelihood that [he] may be
11 removed in the reasonably foreseeable future,” § 241.13(i)(2), and he has not
12 “violate[d] any of the conditions of release,” § 241.13(i)(1). There is currently a
13 stay on his removal from the BIA during a pending appeal. Exhibit A ¶ 8. This is
14 a “perfectly legitimate proceeding[] he is legally entitled to pursue,” and ICE
15 “cannot predict with any degree of confidence when the BIA appeal will be
16 resolved,” which in turn can “lead to further proceedings that might take up many
17 more months, or even years.” *Masood v. Barr*, No. 19-cv-7623-JD, 2020 WL
18 95633, *3 (N.D. Cal. Jan. 8, 2020); *accord Hussain v. LaRose*, No. 26-cv-194-
19 RBM-MSB, 2026 WL 206715, *3 (S.D. Cal. Jan. 27, 2026) (citing *Masood* and
20 noting this point about the length and unpredictability of BIA appeals).

21 **Second, ICE refused to “evaluat[e] . . . any contested facts relevant to**
22 **the revocation,”** including Mr. Mikhail’s information regarding his stay of
23 removal “show[ing] there is no significant likelihood he . . . [will] be removed in
24 the reasonably foreseeable future.” §§ 241.13(3). *see* Exhibit A ¶¶ 8–10. Although
25 Mr. Mikhail was given time by an ICE officer to introduce significant evidence
26 that he cannot be removed due to a pending BIA proceeding, ICE refused to
27 consider that information before re-detaining him. An ICE officer told
28 Mr. Mikhail “they still had no choice and they had to take [him] into custody

1 anyways.” Exhibit A ¶ 10. Had ICE actually evaluated contested facts, it would
2 have come to the conclusion that there was no significant likelihood of
3 Mr. Mikhail’s removal in the reasonably foreseeable future, and it would have had
4 to release him.

5 Numerous courts have released re-detained immigrants after finding that
6 ICE failed to comply with some or all of the applicable regulations this summer
7 and fall. *See, e.g., Villanueva v. Tate*, ___ F. Supp. 3d ___, 2025 WL 2774610 (S.D.
8 Tex. Sept. 26, 2025); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y.
9 2025); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7–9
10 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL
11 2430267, at *10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-
12 00182-MJT, 2025 WL 2491782, at *2–3 (E.D. Tex. July 18, 2025); *Hoac v.*
13 *Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July
14 16, 2025); *Liu v. Carter*, 2025 WL 1696526, *2 (D. Kan. June 17, 2025); *M.Q. v.*
15 *United States*, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025); *Bui v.*
16 *Warden*, No. 25-cv-2111-JES, ECF No. 18 (S.D. Cal. Oct. 23, 2025); *Thai v.*
17 *Noem*, No. 25-cv-2436-RBM, ECF No. 10, 12 (S.D. Cal. Oct. 17, 2025);
18 *Constantinovici v. Bondi*, ___ F. Supp. 3d ___, 2025 WL 2898985, No. 25-cv-2405-
19 RBM (S.D. Cal. Oct. 10, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-
20 2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025); *Truong v. Noem*, No. 25-cv-
21 02597-JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*,
22 No. 25-cv-02575-JO-SBC, ECF No. 12, 17 (S.D. Cal. Oct. 9, 2025); *Sun v. Noem*,
23 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Tran v.*
24 *Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29, 2025);
25 *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept.
26 15, 2025).

27 “[B]ecause officials did not properly revoke petitioner’s release pursuant to
28 the applicable regulations, that revocation has no effect, and [Mr. Mikhail] is

1 entitled to his release (subject to the same Order of Supervision that governed his
2 most recent release).” *Liu*, 2025 WL 1696526, at *3.

3 **V. This Court must hold an evidentiary hearing on any disputed facts.**

4 Resolution of a prolonged-detention habeas petition may require an
5 evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009). Mr.
6 Mikhail hereby requests such a hearing on any material, disputed facts.

7 **VI. Prayer for relief**

8 For the foregoing reasons, Petitioner respectfully requests that this Court:

- 9 1. Order and enjoin Respondents to immediately release Petitioner from
10 custody on his pre-existing Order of Supervision;
- 11 2. Enjoin Respondents from re-detaining Petitioner without first
12 following all procedures set forth in 8 C.F.R. §§ 241.4(l), 241.13(i),
13 and any other applicable statutory and regulatory procedures; and
- 14 3. Order all other relief that the Court deems just and proper.

15
16 Respectfully submitted,

17
18 Dated: January 29, 2025

19 *s/ Jessie Agatstein*
 20 _____
 21 Federal Defenders of San Diego, Inc.
 22 Attorneys for Mr. Mikhail
 23 Email: jessie_agatstein@fd.org
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Proof of Service

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I, the undersigned, will cause the attached Petition for 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 29, 2026

s/ Jessie Agatstein
Jessie Agatstein

Exhibit A

1 **Jessie Agatstein**
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 3 **Federal Defenders of San Diego, Inc.**
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 5 San Diego, California 92101-5030
 6 Telephone: (619) 234-8467
 7 Facsimile: (619) 687-2666
 8 jessie_agatstein@fd.org
 9 Attorneys for Mr. Mikhail¹

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

12 HASEEB MIKHAIL,
 13 Petitioner,

14 v.

15 KRISTI NOEM, Secretary of the
 16 Department of Homeland Security,
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 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.

Civil Case No.:

**Declaration of Haseeb Mikhail in
 support of petition for writ of
 habeas corpus**

**[Civil Immigration Habeas Petition
 Under 28 U.S.C. § 2241]**

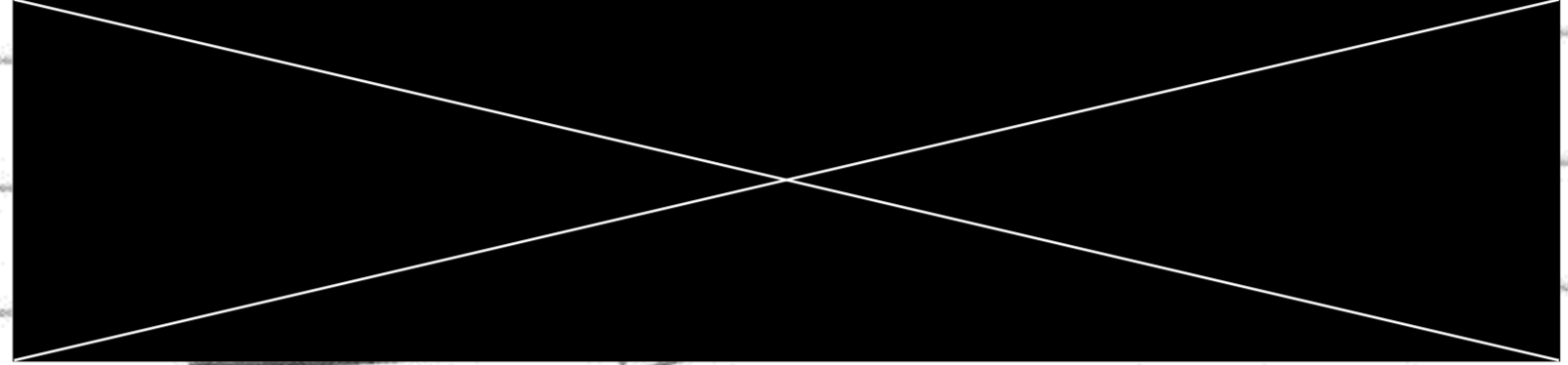
27 ¹ Federal Defenders of San Diego, Inc., is filing with provisional appointment
 28 under Chief Judge Order No. 134. Mr. Mikhail's financial eligibility for
 representation is included in this sworn statement.

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

- 2 1. My name is Haseeb Jamil Mikhail. I own a 2012 Sprinter that
3 doesn't work and a 2016 S550 Mercedes. I do not own a house or
4 any other assets. I don't have any savings, and I have a few hundred
5 dollars in my checking account. I was working as a handyman here
6 and there before I was arrested this time, making between \$1500 to
7 \$2500 a month.
- 8 2. My A-number is ~~XXXXXXXXXX~~ I came to the United States from
9 Greece in 2000. I am originally from Iraq, and I came from there
10 through Greece before coming to the U.S.
- 11 3. I was ordered removed to Iraq in 2002. I was released on an order of
12 supervision after 90 days after that because ICE could not remove me
13 to Iraq.
- 14 4. I've always gone to my annual check-in with ICE and have never
15 had any issues.
- 16 5. This year, I went to my annual check-in around April, and they told
17 me to check-in about 90 days later.
- 18 6. Between April and July, I got a paper from the Iraqi Embassy
19 explaining that they cannot give me a travel document, because they
20 have no record of my name. I left Iraq in 1996, and my city burned
21 down since then from ISIS. As a result I think Iraq doesn't have good
22 records of me.
- 23 7. When I went in 90 days later, on August 12, 2025, I gave them the
24 paper I got from the embassy. They still arrested me and said they
25 were trying to take me back to Iraq. I spent just under a month in
26 Otay Mesa and then they released me on September 3. While I was
27 in detention, I lost my job. I had been making good money driving as
28 a delivery driver for a bakery.

- 1 8. I went back on my supervision. I had my next check-in on
2 December 18, and they arrested me again. My immigration attorney
3 was on the phone with me and with ICE, and he talked to the officer
4 and explained there's a stay of removal on my case from the court
5 because they're waiting for a judge to decide it. Then the officer
6 called someone to confirm that that was what was going on on
7 speakerphone, and the person on the phone confirmed it. After the
8 officer hung up the phone, he still arrested me. He said his supervisor
9 told him to take me in anyways.
- 10 9. When I got my notice of revocation on the 18th, it said that ICE had
11 a travel document for me. When I asked if they really had a travel
12 document, two different ICE officers at the check-in told me
13 different things. One said they did have a travel document. Another
14 said they did not have a travel document.
- 15 10. I've never had a real chance to fight my arrest. Even when my
16 attorney and I explained the situation to ICE, including the stay of
17 removal, they still said they had no choice and they had to take me
18 into custody anyways.
- 19 11. They kept me downtown in the basement of the federal building that
20 day. They drove us back and forth between the federal building and
21 Otay Mesa for the next four days, driving us down to Otay around
22 midnight, and they would take us back. The first two days, we were
23 only at Otay for a short time. The next two days, they had us sleep on
24 the floor at Otay for four or five hours. Finally, I was booked into
25 Otay on the fifth day.
- 26 12. Since I've been in custody, an ICE officer has told me that they want
27 to deport me to Iraq. I don't know how they can or what has changed
28 since the last time they released me.

I declare The foregoing is true and correct under penalty of perjury, This eighteenth day of January in Otay Mesa Detention Center in San Diego, California.



HASEEB MIKHAIL

Exhibit B

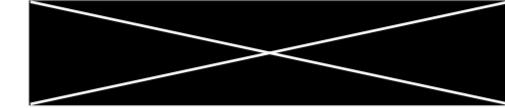
Office of Enforcement and Removal Operations

U.S. Department of Homeland Security
880 Front Street, Suite 3200
San Diego, CA, 92101



U.S. Immigration
and Customs
Enforcement

MIKHAIL, Haseeb Jamil



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. ICE has obtained a travel document to effectuate your removal. A removal flight will be scheduled as soon as possible.

Based on the above, and pursuant to 8 C.F.R. § 241.13(i)(2), your release on an order of supervision will be revoked today and you will be taken into ICE custody. You will be afforded an informal interview today 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.

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).

D. Cordero | SDDO
Signature and Title of Authorized Official

12/18/2025
Date