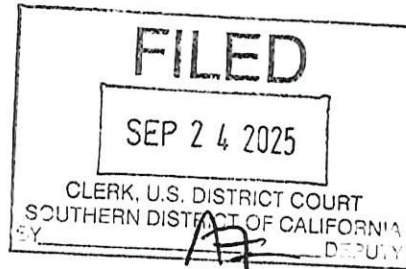


ORIGINAL



1 **Loc Minh Nguyen**
2 A# [REDACTED]
3 Otay Mesa Detention Center
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5 San Diego, CA 92143-9049
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Pro Se¹

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

LOC MINH NGUYEN,

Petitioner,

v.

WARDEN, Otay Mesa Detention
Facility; FIELD OFFICE DIRECTOR,
San Francisco Field Office, United States
Immigration and Customs Enforcement;
DIRECTOR, United States Immigration
and Customs Enforcement;
SECRETARY, United States Department
of Homeland Security; and UNITED
STATES ATTORNEY GENERAL,

Respondents.

CIVIL CASE NO.: 25-CV-2441-AGS

**Motion for Appointment
of Counsel**

¹ Mr. Nguyen is filing this motion for appointment of counsel with the assistance of the Federal Defenders of San Diego, Inc. Federal Defenders has consistently used this procedure in seeking appointment for immigration habeas cases. The Declaration of Katie Hurrelbrink in Support of Appointment Motion attaches case examples.

1 Loc Minh Nguyen respectfully moves this court to appoint Federal
 2 Defenders of San Diego, Inc., as counsel for petitioner. Mr. Nguyen has a strong
 3 claim to release under *Zadvydas v. Davis*, 533 U.S. 678 (2001). But *Zadvydas*
 4 cases are complex, implicating constitutional, statutory, regulatory, and
 5 immigration law. Additionally, an evidentiary hearing is sometimes required to
 6 resolve *Zadvydas* petitions. For these reasons, **Federal Defenders of San Diego,**
 7 **Inc. is routinely appointed to represent immigrants in bringing *Zadvydas***
 8 **claims.** See Exh. B, ¶¶ 2–3. This Court should follow that practice and appoint
 9 Federal Defenders of San Diego, Inc. to represent Mr. Nguyen in this habeas case.

10 STATEMENT OF FACTS

11 I. Mr. Nguyen was ordered removed 24 years ago, and ICE has 12 proved unable to remove him since then.

13 Mr. Nguyen came to the United States in December 1979, fleeing the
 14 communist regime in Vietnam. Exh. A at ¶ 1. He was about five years old. *Id.* A
 15 family from North Carolina sponsored him and his parents. *Id.* He was admitted as
 16 a refugee and received a green card. *Id.*

17 As a young man, Mr. Nguyen committed some theft offenses. After a felony
 18 offense around 1994, the government put him in removal proceedings. *Id.* at ¶ 2.
 19 But he missed his court date because of an arrest for another theft offense. *Id.* at
 20 ¶ 3. Eventually, on January 10, 2001, he was ordered removed. *Id.* at ¶ 4. All told,
 21 he spent about 16 months in immigration custody. *Id.* at ¶ 5. (It is not clear from
 22 Mr. Nguyen's memories how much of this detention occurred after he was ordered
 23 removed.) Though he never refused to cooperate with ICE in seeking removal, ICE
 24 proved unable to remove him, and he was released. *Id.*

25 Mr. Nguyen lived free in the community for over two decades. He did get
 26 some additional convictions, and ICE sometimes revoked his release under 8 C.F.R.
 27 § 241.4(*l*) for periods of 90 days or less. *Id.* at ¶ 6.

1 On June 4, 2025, ICE rearrested Mr. Nguyen. *Id.* at ¶ 7. This time, no one
 2 told him why he was being detained, and he did not get a chance to explain why he
 3 shouldn't be. *Id.* Nor did anyone tell him what had changed after 20-plus years to
 4 make his removal more likely. *Id.*

5 **II. Vietnam has a longstanding policy of not accepting Vietnamese**
 6 **immigrants who entered before 1995.**

7 There is an obvious reason why ICE has proved unable to remove
 8 Mr. Nguyen for the last 24 years: Vietnam has a longstanding policy of not
 9 accepting pre-1995 Vietnamese immigrants for deportation. In 2008, Vietnam and
 10 the United States signed a repatriation treaty under which Vietnam agreed to
 11 consider accepting certain Vietnamese immigrants for deportation. *See Trinh v.*
 12 *Homan*, 466 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020). The treaty exempted pre-
 13 1995 Vietnamese immigrants, providing, "Vietnamese citizens are not subject to
 14 return to Vietnam under this Agreement if they arrived in the United States before
 15 July 12, 1995." Agreement Between the United States of America and Vietnam,
 16 at 2 (Jan. 22, 2008).²

17 Despite that limit, the first Trump administration detained Vietnamese
 18 immigrants and held them for months, while the administration tried to pressure
 19 Vietnam to take them. *See Trinh*, 466 F. Supp. 3d at 1083–84. That possibility did
 20 not materialize, and the administration was forced to release many detainees in
 21 2018. *See id.* at 1084. "In total, between 2017 and 2019, ICE requested travel
 22 documents for pre-1995 Vietnamese immigrants 251 times. Vietnam granted
 23 those requests only 18 times, in just over seven percent of cases." *Id.*

24 Eventually, in 2020, the administration secured a Memorandum of
 25 Understanding ("MOU") with Vietnam, which created a process for removing
 26

27
 28 ² available at <https://www.state.gov/wp-content/uploads/2019/02/08-322-Vietnam-Repatriations.pdf>

1 pre-1995 Vietnamese immigrants.³ The MOU limited such removals to persons
 2 meeting certain criteria, but many these criteria have been shielded from public
 3 view. *See Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *14 (W.D.
 4 Wash. Aug. 21, 2025). Section 8 of the MOU also requires ICE to submit a
 5 documentation package along with repatriation requests, which includes a self-
 6 declaration from the person to be removed.⁴

7 Even after signing the MOU, Vietnam overwhelmingly declined to timely
 8 issue travel documents for pre-1995 immigrants. By October 2021, ICE had
 9 adopted a “policy of generally finding that ‘pre-1995 Vietnamese
 10 immigrants’ . . . are not likely to be removed in the reasonably foreseeable
 11 future.” Order on Joint Motion for Entry of Stipulated Dismissal, *Trihn*, 18-CV-
 12 316-CJC-GJS, Dkt. 161 at 3 (C.D. Cal. Oct. 7, 2021).⁵ That admission aligned
 13 with two years’ worth of quarterly reports that ICE agreed to submit as part of a
 14 class action settlement. Those quarterly reports showed that between September
 15 2021 and September 2023, only four immigrants who came to the U.S. before
 16 1995 were given travel documents and deported. Asian Law Caucus, *Resources*
 17 *on Deportation of Vietnamese Immigrants Who Entered the U.S. Before 1995* (Jul.
 18 15, 2025) (providing links to all quarterly reports).⁶ During the same period, ICE
 19 made 14 requests for travel documents that, as of 2023, had not been granted,
 20 including requests made months or years before the September 2023 cutoff. *See*
 21 *id.* (proposed counsel’s count based on quarterly reports).

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 23
 24 ³[https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-
 b55e67f8f04b/assets/media/ALC-FOIA-Re-Release-MOU-bates-1-8-8-10-21.pdf](https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-b55e67f8f04b/assets/media/ALC-FOIA-Re-Release-MOU-bates-1-8-8-10-21.pdf).

25 ⁴[https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-
 b55e67f8f04b/assets/media/ALC-FOIA-Re-Release-MOU-bates-1-8-8-10-21.pdf](https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-b55e67f8f04b/assets/media/ALC-FOIA-Re-Release-MOU-bates-1-8-8-10-21.pdf)

26 ⁵[https://static1.squarespace.com/static/5f0cc12a064e9716d52e6052/t/618e99e5613
 27 d7372c1bb197e1636735461479/Trinh+-
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28 ⁶ <https://www.asianlawcaucus.org/news-resources/guides-reports/trinh-reports>

On June 9, 2025, the Trump administration rescinded ICE's policy of generally finding that pre-1995 Vietnamese immigrants were not likely to be removed in the reasonably foreseeable future. *See Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *7 (W.D. Wash. Aug. 21, 2025). But since then, several courts have found that facts on the ground likely have not changed enough to show these detainees' timely removal. *See Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *17 (W.D. Wash. Aug. 21, 2025); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at *5 (D. Mass. June 20, 2025).

III. Mr. Nguyen cannot afford an attorney.

Mr. Nguyen has no savings, and he cannot make money while in immigration custody. Exh. A at ¶ 9. He therefore cannot afford a lawyer. *Id.* Nor does Mr. Nguyen have the legal education and training, or unrestricted access to internet research, needed to litigate a habeas petition by himself. *Id.* at ¶ 10.

ARGUMENT

"Habeas corpus proceedings are of fundamental importance . . . in our constitutional scheme because they directly protect our most valued rights." *Brown v. Vasquez*, 952 F.2d 1164, 1169 (9th Cir. 1991) (quoting *Bounds v. Smith*, 430 U.S. 817, 827 (1977)) (citations and internal quotations omitted). Consequently, federal law permits a district court to appoint counsel in a habeas proceeding under 28 U.S.C. § 2241 when the "interests of justice so require," if a Petitioner has shown that he is unable to afford an attorney. 18 U.S.C. § 3006A(a)(2)(B). To make this decision, this Court must "evaluate [1] the likelihood of success on the merits as well as [2] the ability of the Petitioner to articulate his claims pro se in light of the complexity of the legal issues involved."

1 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983); *accord Rand v. Rowland*,
 2 113 F.3d 1520, 1525 (9th Cir. 1997).

3 Mr. Nguyen is likely to succeed on the merits of his claim, but he will be
 4 unable to effectively articulate his claims without assistance. And he cannot
 5 afford to retain paid counsel to litigate his petition for a writ of habeas corpus
 6 under 28 U.S.C. § 2241. Thus, the appointment of counsel is appropriate.

7 **I. Mr. Nguyen will likely succeed on the merits.**

8 *Zadvydas v. Davis*, 533 U.S. 678 (2001), held that federal law does not
 9 authorize the government to detain an immigrant indefinitely pending removal. 533
 10 Rather, 8 U.S.C. § 1231(a)(6) presumptively permits the government to detain an
 11 immigrant for 180 days after their removal order becomes final. After those 180
 12 days have passed, the immigrant must be released unless their removal is
 13 reasonably foreseeable. *Zadvydas*, 533 U.S. at 701.

14 Thus, 180 days after a removal order becomes final, an immigrant facing
 15 indefinite detention may come forward with “good reason to believe that there is
 16 no significant likelihood of removal in the reasonably foreseeable future.” *Id.* If
 17 the immigrant meets their initial burden, “the Government must respond with
 18 evidence sufficient to rebut that showing.” *Id.* Otherwise, the immigrant must be
 19 released. *See id.*

20 Here, the six-month removal period has long since ended. The *Zadvydas*
 21 grace period lasts for “*six months* after a final order of removal—that is, *three*
 22 *months* after the statutory removal period has ended.” *Kim Ho Ma v. Ashcroft*, 257
 23 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, Mr. Nguyen’s order of removal was
 24 entered in January 2001. Exh. A at ¶ 4. Accordingly, his 90-day removal period
 25 began then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period thus expired six
 26 months after the entry of his removal order and three months after the end of his
 27 90-day removal period, both of which occurred in June 2001. On information and
 28 belief, Mr. Nguyen has also been detained for more than 6 months. He has been

1 denied for well over 3 months in 2025. Exh. A at ¶ 7. And he was also detained
2 around the time that he was ordered removed and when his release was briefly
3 revoked. *Id.* at ¶ 6. Thus, this threshold requirement is met.

4 The government has sometimes proposed calculating the removal period
5 differently where, as here, an immigrant is released and then rearrested. But these
6 proposed alternative calculations contradict the statute and *Zadvydas*.

7 *First*, the government has sometimes argued that release and rearrest resets
8 the six-month grace period completely, taking the clock back to zero.
9 “Courts . . . broadly agree” that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL
10 6003485, at *7 n.6 (W.D. La. Oct. 15, 2019), *report and recommendation adopted*,
11 2019 WL 6037220 (W.D. La. Nov. 13, 2019); *see also Sied v. Nielsen*, No. 17-CV-
12 06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018) (collecting cases).
13 This proposal would create an obvious end run around *Zadvydas*, because ICE
14 could detain an immigrant indefinitely by releasing and quickly rearresting them
15 every six months.

16 *Second*, the government has sometimes claimed that rearrest at least resets
17 the 90-day removal period under 8 U.S.C. § 1231(a)(1). *See, e.g., Farah v. INS*, No.
18 Civ. 02-4725(DSD/RLE), 2003 WL 221809, at *5 (D. Minn. Jan. 29, 2013)
19 (adopting this view). But as a court explained in *Bailey v. Lynch*, that view cannot
20 be squared with the statutory definition of the removal period in 8 U.S.C.
21 § 1231(a)(1)(B). No. CV 16-2600 (JLL), 2016 WL 5791407, at *2 (D.N.J. Oct. 3,
22 2016). “Pursuant to the statute, the removal period, and in turn the [six-month]
23 presumptively reasonable period, begins from the latest of ‘the date the order of
24 removal becomes administratively final,’ the date of a reviewing court’s final order
25 where the removal order is judicially removed and that court orders a stay of
26 removal, or the alien’s release from detention or confinement where he was detained
27 for reasons other than immigration purposes at the time of his final order of
28

1 removal.” *Id.* (quoting 8 U.S.C. § 1231(a)(1)). None of these statutory starting
2 points have anything to do with whether or when an immigrant is detained. *See id.*

3 Having passed the six-month threshold, Mr. Nguyen has provided a very
4 good reason to believe that he will not be removed. As explained above, Vietnam
5 has overwhelmingly denied pre-1995 Vietnamese immigrants’ travel document
6 requests, even after the MOU was signed. And ICE has had over 20 years, 5 of them
7 under the MOU, to try to remove Mr. Nguyen. Yet ICE has not been able to obtain
8 travel documents for him. Faced with similar facts, several courts have found that
9 ICE has not demonstrated changed circumstances suggesting that any individual
10 pre-1995 Vietnamese immigrant will be removed in the reasonably foreseeable
11 future. *See Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *17 (W.D.
12 Wash. Aug. 21, 2025); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL
13 1993771, at *4 (E.D. Cal. July 16, 2025); *Nguyen v. Hyde*, No. 25-CV-11470-MJJ,
14 2025 WL 1725791, at *5 (D. Mass. June 20, 2025).

15 Like these petitioners, Mr. Nguyen is likely to succeed on the merits. ICE is
16 free to keep trying to remove Mr. Nguyen, but not while he waits indefinitely in
17 detention.

18 **II. Mr. Nguyen cannot adequately articulate his claims in the absence**
19 **of counsel, in light of the complexity of the legal issues involved in**
20 **his habeas petition.**

21 In deciding whether a petitioner needs a lawyer’s assistance to effectively
22 litigate his habeas petition, a court must measure “the [petitioner]’s ability to
23 articulate his claims against the relative complexity of the matter.” *Rand*, 113
24 F.3d at 1525. In addition, counsel may be appointed during federal habeas
25 proceedings if the appointment of an attorney is “necessary for the effective
26 utilization of discovery procedures . . . [or] if an evidentiary hearing is required.”
27 *Weygandt*, 718 F.2d at 954 (cleaned up).
28

1 *Zadvydas* cases involve complex legal issues grounded in constitutional
2 law, statutory interpretation, administrative procedure, and habeas law. *See*
3 Attachments to Exh. B (describing complexities in appointing counsel). They also
4 implicate immigration law. The Ninth Circuit has declared that “[w]ith only a
5 small degree of hyperbole, the immigration laws have been deemed second only
6 to the Internal Revenue Code in complexity.” *United States v. Ahumada-Aguilar*,
7 295 F.3d 943, 950 (9th Cir. 2002) (citations and internal quotations omitted). “A
8 lawyer is often the only person who could thread the labyrinth.” *Id.*

9 Mr. Nguyen lacks the means and training to navigate this labyrinth on his
10 own. He has no savings and is not making money in detention. Exh. A at ¶ 9.

11 Nor does Mr. Nguyen have the legal training or internet access needed to
12 litigate this motion on his own. *Id.* at ¶ 10. Resources readily available on the
13 internet reveal the significant legal hurdles to removing Mr. Nguyen, as described
14 above. But Mr. Nguyen does not have free access to the internet. *Id.* And because
15 he does not have legal training, he did not know what facts were important for a
16 *Zadvydas* claim. He therefore included very few details about his own case, and
17 nothing about the treaties directly applicable to his claim, in his pro se petition.
18 Docket Number (“Doc.”) 1. Nor was he able to find the recent, prior cases cited
19 above, where courts had validated the continued barriers to removal for Vietnamese
20 detainees just like him. That Mr. Nguyen did not even mention the various treaties
21 obstructing pre-1995 Vietnamese immigrants’ removal shows that he cannot
22 effectively litigate this *Zadvydas* petition alone. Exh. B at ¶ 4.

23 Additionally, professional assistance may be “necessary for the effective
24 utilization of discovery procedures” in this case. *Weygandt*, 718 F.2d at 954. In
25 order to prove his eligibility for *Zadvydas* relief, Mr. Nguyen may well need to view
26 evidence in the government’s possession—for example, communications between
27 ICE and the Vietnamese governments or internal paperwork documenting ICE’s
28 removal efforts. *See, e.g., Lopez-Cacerez v. McAleenan*, No. 19-CV-1952-AJB-

1 AGS, 2020 WL 3058096, at *4 n.1 (S.D. Cal. June 9, 2020) (relying on ICE’s
2 “internal documentation” to reject ICE’s noncooperation defense and find that the
3 petitioner was fully cooperating with ICE’s efforts to remove him). Mr. Nguyen
4 would likely have to litigate his entitlement to any such discovery, because at least
5 some courts have required immigrants to show good cause before obtaining
6 discovery in a habeas case. *See Toolasprashad v. Tryon*, No. 12CV734, 2013 WL
7 1560176, at *2 (W.D.N.Y. Apr. 11, 2013) (collecting cases). Moreover,
8 Mr. Nguyen is entitled to an evidentiary hearing on any material factual disputes,
9 *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009), meaning that “an
10 evidentiary hearing [may be] required.” *Weygandt*, 718 F.2d at 954. Those
11 considerations also support the need for appointment of counsel. *See id.*

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Conclusion

For those reasons, this Court should follow the regular practice of courts in this district and appoint Federal Defenders of San Diego, Inc. to represent Mr. Nguyen in litigating this habeas petition.

DATED: 09/23/2025

Respectfully submitted,



LOC MINH NGUYEN

Petitioner

2. The government put me in removal proceedings when I got convicted for a felony theft offense, around 1994. I got 180 days for that offense, and the government released me OR while I fought my immigration case.
3. Within a year, I had another theft arrest. I missed my court date in immigration court because I was locked up.
4. I got released from jail and lived free in the community for some time. Eventually, I was detained for immigration proceedings, and the IJ ordered me removed on January 10, 2001.
5. I was detained for about 16 months. I was then released because ICE could not remove me. I never refused to do anything that ICE asked me to do during that time.
6. I had some additional convictions after that. When I got a conviction, ICE would usually take me back to immigration detention. I would do 90 days or less in ICE custody.
7. ICE arrested me on June 4, 2025.
8. No one told me why I was being detained, and I did not get a chance to explain why I shouldn't be detained. No one told me what had changed to make my removal more likely.
9. I do not have any savings. I cannot make money while in immigration detention. I do not think that I can afford a lawyer.
10. I have no legal education or training. I also cannot use the internet without restriction, so I cannot look up ICE's and Vietnam's latest policies toward people like me.

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1 I declare under penalty of perjury that the foregoing is true and correct,
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3 executed on 09/23/2025, in San Diego, California.

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5 **LOC MINH NGUYEN**

6 Declarant
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2 1. My name is Katie Hurrelbrink. I am an appellate attorney at Federal
3 Defenders of San Diego, Inc. In that capacity, I was assigned to
4 investigate Mr. Nguyen's immigration habeas case to determine
5 whether—in keeping with longstanding district practice—Federal
6 Defenders should seek to be appointed as counsel.
- 7 2. In this district, Federal Defenders is regularly appointed to handle
8 *Zadvydas* petitions for those who meet the six-month cutoff.
9 Traditionally, Federal Defenders helps the detainee prepare an initial
10 habeas petition and appointment motion, and the court formally appoints
11 Federal Defenders in the course of reviewing the petition. I learned of
12 Mr. Nguyen's case only after he had already filed a petition. I therefore
13 determined that I should seek appointment now, in hopes of assisting
14 Mr. Nguyen with his traverse.
- 15 3. This declaration attaches several orders appointing Federal Defenders to
16 *Zadvydas*-based habeas cases. The oldest order is from 2006 and the
17 most recent is from 2025.
- 18 4. To ensure that counsel was needed, I reviewed Mr. Nguyen's pro se
19 motion. I noticed that Mr. Nguyen did not at all allude to the various
20 treaties preventing most pre-1995 Vietnamese immigrants from being
21 deported—treaties that should be at the forefront of any *Zadvydas* claim
22 on behalf of this group. It is therefore apparent to me that Mr. Nguyen
23 needs help adequately articulating his *Zadvydas* claim.
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1 I declare under penalty of perjury that the foregoing is true and correct,
2 executed on September 23, 2025, in San Diego, California.
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5 /s/ Katie Hurrelbrink
6 **KATIE HURRELBRINK**
7 Declarant
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