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Provisionally Appointed for Mr. Nguyen

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 **Reply in Support of Motion for Appointment of Counsel**

This Court should appoint Federal Defenders to represent Mr. Nguyen in litigating his habeas petition.

I. The Criminal Justice Act permits appointment of counsel at this Court's discretion, with no need to make out a due process violation.

Opposing this request, the government claims that this Court may only appoint counsel if not doing so would violate due process. Dkt. 8 at 1, 3-4. That is incorrect. Appointment of counsel in a § 2241 case is governed by statute, not the Constitution, and it allows appointment at this Court's discretion.

Title 18 U.S.C. § 3006A(a)(2) provides, "Whenever the United States magistrate judge or the court determines that the interests of justice so require,

representation may be provided for any financially eligible person who . . . is seeking relief under section 2241 . . . of title 28." As the statute's plain language indicates, then, "counsel may be appointed for an impoverished habeas petitioner whenever 'the court determines that the interests of justice so require.'" *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir. 1984). This is a "discretionary" standard, giving courts wide latitude to decide whether appointment is called for. *Id.*

That discretionary standard becomes mandatory "when the complexities of the case are such that denial of counsel would amount to a denial of due process." *Brown v. United States*, 623 F.2d 54, 61 (9th Cir. 1980). *Id.* But "[i]n the absence of such circumstances, a request for counsel . . . is addressed to the sound discretion of the trial court." *Id.* Thus, Mr. Nguyen need not make out a due process claim to get discretionary appointment.

II. In claiming that Mr. Nguyen will not succeed on the merits, the government's response invokes standards that *Zadvydas* squarely rejected or that other courts have roundly criticized.

The government gives two reasons why Mr. Nguyen will not succeed on the merits. Both are legally erroneous.

First, the government presses the view that the six-month *Zadvydas* grace period restarts every time ICE re-detains an immigrant, meaning that Mr. Nguyen's six-month period has not passed. Dkt. 8 at 2-3. The government does not cite a single case endorsing that view, and for good reason: "Courts . . . broadly agree" that it is wrong. *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *7 n.6 (W.D. La. Oct. 15, 2019), *report and recommendation adopted*, 2019 WL 6037220 (W.D. La. Nov. 13, 2019); *see also Sied v. Nielsen,* No. 17-CV-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018) (collecting cases). This proposal would create an obvious end run around *Zadvydas*, because ICE could detain an immigrant indefinitely by releasing and rearresting them every six months. Contrary to the government's claim, Dkt. 8 at 3, Mr. Nguyen need not identify binding authority saying that. The only relevant consideration is Mr. Nguyen's prospects for success

on the merits. *See Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983). The prospects are good that this Court will reject the government's *Zadvdyas*-circumventing understanding of the grace period, just as other courts have.

Second, the government says that Mr. Nguyen "is not likely to succeed on the merits because . . . diligent efforts are being made to prepare a travel document package to send to the Vietnamese embassy." Dkt. 8 at 2. But it is black letter law that good faith efforts to secure a travel document do not satisfy *Zadvydas*. The petitioner in *Zadvydas* appealed a "Fifth Circuit h[olding] [that] [the petitioner's] continued detention [was] lawful as long as good faith efforts to effectuate deportation continue and [the petitioner] failed to show that deportation will prove impossible." 533 U.S. at 702 (cleaned up). The Supreme Court reversed, finding that the Fifth Circuit's good-faith-efforts standard "demand[ed] more than our reading of the statute can bear." *Id.* Thus, "under *Zadvydas*, the reasonableness of Petitioner's detention does not turn on the degree of the government's good faith efforts. Indeed, the *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of Petitioner's detention turns on whether and to what extent the government's efforts are likely to bear fruit." *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019).

Here, then, "[w]hile the respondent asserts that [Mr. Nguyen's] travel document requests with [the Vietnamese] Consulate[]" will be lodged, "this is insufficient. It is merely an assertion of good-faith efforts to secure removal; it does not make removal likely in the reasonably foreseeable future." *Gilali v. Warden of McHenry Cnty.*, No. 19-CV-837, 2019 WL 5191251, at *5 (E.D. Wis. Oct. 15, 2019). Many courts have agreed that requesting travel documents does not itself make removal reasonably likely. *See, e.g.*, *Andreasyan v. Gonzales*, 446 F. Supp. 2d 1186, 1189 (W.D. Wash. 2006) (holding evidence that the petitioner's case was "still under review and pending a decision" did not meet respondents' burden); *Islam v. Kane*, No. CV-11-515-PHX-PGR, 2011 WL 4374226, at *3 (D. Ariz. Aug.

30, 2011), *report and recommendation adopted*, 2011 WL 4374205 (D. Ariz. Sept. 20, 2011) ("Repeated statements from the Bangladesh Consulate that the travel document request is pending does not provide any insight as to when, or if, that request will be fulfilled."); *Khader v. Holder*, 843 F. Supp. 2d 1202, 1208 (N.D. Ala. 2011) (granting petition despite pending travel document request, where "[t]he government offers nothing to suggest when an answer might be forthcoming or why there is reason to believe that he will not be denied travel documents"); *Mohamed v. Ashcroft*, No. C01-1747P, 2002 WL 32620339, at *1 (W.D. Wash. Apr. 15, 2002) (granting petition despite pending travel document request).

III. The government's recent filings illustrate the complexity of these *Zadvydas* petitions.

Next, the government suggests that this case may not be complex enough to warrant appointment if no evidentiary hearing is ordered. Arguments made in recent government filings belie that claim.

For example, in one recent *Zadvydas* case, the government's Return informed a petitioner for the first time that ICE was actively trying to remove him to a third country. *Rebenok v. Noem*, 25-CV-2171-TWR, Dkt. No. 5. Counsel had to amend his petition to allege that third-country removal was unlawful under 8 U.S.C. § 1231(b)(2). *Id.*, Dkt. No. 8. Judge Robinson ultimately barred ICE from effectuating the third country removal and ordered the petitioner's immediate release. *Id.*, Dkt. No. 13. In several other recent cases, the government has defended against a habeas petition materially identical to this one on (1) jurisdictional grounds, and (2) justiciability/Article III grounds. *See, e.g.*, *Phan v. Bondi*, 25-CV-2422-RBM, Dkt. No. 6, at 1-3; *Tran v. Noem*, 25-CV-2334-JES, Dkt. No. 13 at 1-3. Pro se petitioners are not equipped to meet these kinds of challenges.

IV. Mr. Nguyen qualifies financially.

Mr. Nguyen's original declaration indicates that he has no savings and is making no money. Yet the government suggests that he might still be able to afford

an attorney. To lay any such doubts to rest, he now files a supplemental declaration indicating that he has no other assets of any kind. *See* Exh. A at ¶ 1. His only asset, a car, was impounded while he was in detention. *Id.* at ¶ 2.

V. No other court in this district has denied appointment, and this is the only case in which the government has even contested appointment.

With one exception,[1] no other court in this district has declined a Federal Defenders request to represent a § 2241 habeas petitioner in 2025. Not only that, but the government has not contested Federal Defenders' appointment in any 2025 case other than this one. There is nothing special about this case that would make appointment singularly inappropriate here.

The government may be singling out this case in hopes that this Court will reach the same conclusion as in *Randhawa v. Warden, et al.*, Case No. 25-cv-02444-AGS-BLM (S.D. Cal. Sept. 23, 2025). But the petitioner in *Randhawa* filed his appointment motion pro se, without the robust arguments presented in Mr. Nguyen's appointment motion. This Court should not treat the two requests the same but should appoint Federal Defenders.

Respectfully submitted,

Dated: October 8, 2025

s/ Katie Hurrelbrink
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[1] In *Alic v. Dep't of Homeland Sec., et al.*, Case No. 25-cv-1749-AJB-BLM (S.D. Cal. Sept. 26, 2025), Judge Battaglia denied appointment where a habeas petition was fully briefed and the Court had already ordered the petitioner to appear at a hearing by the time Federal Defenders sought appointment. In *McSweeney v. Warden, et al.*, Case No. 25-cv-2488-RBM-DEB (S.D. Cal. Sept. 24, 2025), Judge Montenegro initially denied a pro se motion for appointment but granted appointment as soon as Federal Defenders sought it.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LOC MINH NGUYEN,

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.: 25-CV-2441-AGS

Second Declaration of Loc Minh Nguyen

I, Loc Minh Nguyen, declare:

1. I do not have money to pay for an attorney. I have no assets, no property, or savings.

2. Four months before my arrest, I bought a new car. I paid about $850 a month for the car payment and insurance. Because I have been detained and cannot make my bills, my car was impounded and I have lost the car.

I declare under penalty of perjury that the foregoing is true and correct, executed on October 7, 2025 in San Diego, California.

LOC MINH NGUYEN
Declarant