

Hai Thai

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Otay Mesa Detention Center

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Pro Se¹

FILED

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY  s/ Gloria Vocal DEPUTY

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

HAI THAI,

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.: '25CV2436 RBM MMP

**Petition for Writ
of
Habeas Corpus**

[28 U.S.C. § 2241]

¹ Mr. Thai is filing this petition for a writ of habeas corpus with the assistance of the Federal Defenders of San Diego, Inc., who drafted the instant petition. That same counsel also assisted the petitioner in preparing and submitting his request for the appointment of counsel, which has been filed concurrently with this petition, and all other documents supporting the petition. Federal Defenders has consistently used this procedure in seeking appointment for immigration habeas cases. The Declaration of Kara Hartzler in Support of Appointment Motion attaches case examples.

INTRODUCTION

Hai Thai, who fled the communist regime in Vietnam in 1979, lost his green card and was ordered removed in 2009. But there was a problem: Vietnam has a longstanding policy of not accepting pre-1995 Vietnamese immigrants for deportation. After realizing that Mr. Thai had no remaining family in Vietnam, the consulate refused to accept him, and ICE was forced to release him. Apart from a three-month detention when he failed to check in over a decade ago, Mr. Thai then remained on supervision for the next 16 years.

On August 25, 2025, however, ICE rearrested Mr. Thai. The arresting agents agreed that Mr. Thai had been checking in and that they had no problems with him. But they made him sign a revocation of his order of supervision, and when he asked why, they said, “haven’t you been watching the news?” And on July 9, 2025, ICE adopted a new policy permitting removals to third countries with as little as six hours’ notice and no meaningful opportunity to make a fear-based claim against removal.

Mr. Thai’s detention violates *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), which holds that immigrants must be released if there is “no significant likelihood of removal in the reasonably foreseeable future.” His detention also violates ICE’s own regulations, which require either a new violation or changed circumstances before a person can be re-detained. 8 C.F.R. §§ 241.4(l), 241.13(i). And under the Fifth Amendment, immigrants cannot be detained indefinitely with no bond hearing and no reasonably foreseeable prospect of removal. Finally, ICE may not remove Mr. Thai to a third country without providing an opportunity to assert fear of persecution or torture before an immigration judge. This Court should grant Mr. Thai’s habeas petition.

STATEMENT OF THE CASE

I. In 2009, ICE tried and failed to remove Mr. Thai because the Vietnamese consulate refused to issue travel documents.

Hai Thai and his family came to the United States in 1979, fleeing the communist regime in Vietnam. Exhibit A, “Thai Declaration,” at ¶ 1. Mr. Thai became a lawful permanent resident and remained so until 2009, when he was ordered removed due to a conviction for simple drug possession and the violation of a protection order. *Id.* at ¶ 3. After he was ordered removed, he was detained pending his removal. *Id.* at ¶ 5.

Removing him to Vietnam, however, was no simple task: Vietnam has a longstanding policy of not accepting pre-1995 Vietnamese immigrants for deportation. *See infra*. Nevertheless, the first Trump administration detained Vietnamese immigrants and held them for long periods of time, while pressuring Vietnam to take them. *See First Amended Habeas Corpus Class Action Petition and Class Action Complaint, Trinh v. Johnson*, 18-CV-316-CJC-GJS, Dkt. 27 (May 11, 2018).

In Mr. Thai’s case, the immigration officials seemed to understand in 2009 that they could not remove him and told him as much. Exh. A at ¶ 4. They never asked him to fill out travel documents or meet with the consulate, though Mr. Thai would have complied if they did. *Id.* at ¶ 4. When Vietnam refused to accept Mr. Thai for deportation, ICE continued to detain Mr. Thai and then released him after about 90 days. *Id.* at ¶ 5.

Although Mr. Thai generally attended his annual check-in appointments, he missed one in 2011 or 2012. ICE then picked him up and held him for another 90 days before releasing him again. *Id.* at ¶ 6.

In the last several years, Mr. Thai has suffered medical issues, including surgeries for a stomach ulcer and to remove a lacrimal gland tumor from his left eye. *Id.* at ¶ 9. Mr. Thai’s common-law wife also suffers from serious medical

1 issues. She has Type I and possibly Type II diabetes and recently had heart
 2 surgery. Because she cannot work or drive, she is very dependent on Mr. Thai to
 3 get all her medications and groceries. *Id.* at ¶ 8.

4 On August 25, 2025, ICE went to Mr. Thai's workplace and arrested him.
 5 *Id.* at ¶ 10. They made him sign a revocation of his order of supervision, and
 6 when he asked why they were arresting him, they responded, "haven't you been
 7 watching the news?" *Id.* at ¶ 10.

8 **II. Vietnam has a longstanding policy of refusing to take pre-1995**
 9 **Vietnamese immigrants.**

10 There is an obvious reason why ICE has proved unable to remove Mr. Thai
 11 for the last 29 years: Vietnam has a longstanding policy of not accepting pre-1995
 12 Vietnamese immigrants for deportation. The United States and Vietnam did not
 13 have normalized diplomatic relations between the end of the war and 1995.²
 14 Despite extensive negotiation that followed the resumption of diplomatic
 15 relations, when Vietnam and the United States finally signed a repatriation treaty
 16 in 2008, the treaty exempted pre-1995 Vietnamese immigrants. (This treaty
 17 remains operative today.) The treaty provides, "Vietnamese citizens are not
 18 subject or return to Vietnam under this Agreement if they arrived in the United
 19 States before July 12, 1995." Agreement Between the United States of America
 20 and Vietnam, at 2 (Jan. 22, 2008).³

21 The first Trump Administration detained pre-1995 Vietnamese immigrants
 22 anyway, hoping to pressure Vietnam to take them. *See* First Amended Habeas
 23 Corpus Class Action Petition and Class Action Complaint, *Trinh v. Johnson*, 18-
 24 CV-316-CJC-GJS, Dkt. 27 (May 11, 2018).⁴ That possibility did not materialize,

26 ² *See* U.S. Embassy & Consulate in Vietnam, *Chronology of US-Vietnam Relations*,
 27 available at <https://vn.usembassy.gov/chronology-of-u-s-vietnam-relations/#1991>.

28 ³ available at <https://www.state.gov/wp-content/uploads/2019/02/08-322-Vietnam-Repatriations.pdf>

⁴ available at

1 and the administration was forced to release many detainees in 2018. *See id.* at
 2 1084. “In total, between 2017 and 2019, ICE requested travel documents for pre-
 3 1995 Vietnamese immigrants 251 times. Vietnam granted those requests only 18
 4 times, in just over seven percent of cases.” *Id.*

5 Eventually, in 2020, Vietnam signed a Memorandum of Understanding
 6 (“MOU”), which created a process for removing pre-1995 Vietnamese
 7 immigrants.⁵ But the MOU limited such removals to persons meeting certain
 8 criteria, many of which have been shielded from public view. *See Nguyen v. Scott*,
 9 No. 2:25-CV-01398, 2025 WL 2419288, at *14 (W.D. Wash. Aug. 21, 2025).
 10 Section 8 of the MOU also requires ICE to submit a documentation package along
 11 with repatriation requests, which includes a self-declaration from the person to be
 12 removed.⁶

13 Even after signing the MOU, Vietnam overwhelmingly declined to timely
 14 issue travel documents for pre-1995 immigrants. By October 2021, ICE had
 15 adopted a “policy of generally finding that ‘pre-1995 Vietnamese
 16 immigrants’ . . . are not likely to be removed in the reasonably foreseeable
 17 future.” Order on Joint Motion for Entry of Stipulated Dismissal, *Trihn*, 18-CV-
 18 316-CJC-GJS, Dkt. 161 at 3 (C.D. Cal. Oct. 7, 2021).⁷ That admission aligned
 19 with two years’ worth of quarterly reports that ICE agreed to submit as part of a
 20 class action settlement. Those quarterly reports showed that between September
 21

22 <https://static1.squarespace.com/static/5f0cc12a064e9716d52e6052/t/6101c5798e7c3856610233fb/1627506041756/Trinh+-+Doc+27+First+Amended+Complaint.pdf>.

24 ⁵<https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-b55e67f8f04b/assets/media/ALC-FOIA-Re-Release-MOU-bates-1-8-8-10-21.pdf>.

25 ⁶<https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-b55e67f8f04b/assets/media/ALC-FOIA-Re-Release-MOU-bates-1-8-8-10-21.pdf>

26 ⁷<https://static1.squarespace.com/static/5f0cc12a064e9716d52e6052/t/618e99e5613d7372c1bb197e/1636735461479/Trinh+-+Doc+161+Order+Granting+Stip+Dismissal.pdf>.

1 2021 and September 2023, only four immigrants who came to the U.S. before
 2 1995 were given travel documents and deported. Asian Law Caucus, *Resources*
 3 *on Deportation of Vietnamese Immigrants Who Entered the U.S. Before 1995* (Jul.
 4 15, 2025) (providing links to all quarterly reports).⁸ During the same period, ICE
 5 made 14 requests for travel documents that, as of 2023, had not been granted,
 6 including requests made months or years before the September 2023 cutoff. *See*
 7 *id.* (proposed counsel's count based on quarterly reports).

8 On June 9, 2025, the Trump administration rescinded ICE's policy of
 9 generally finding that pre-1995 Vietnamese immigrants were not likely to be
 10 removed in the reasonably foreseeable future. *See Nguyen v. Scott*, No. 2:25-CV-
 11 01398, 2025 WL 2419288, at *7 (W.D. Wash. Aug. 21, 2025). Since then, several
 12 courts have rejected the Trump administration's efforts to detain these
 13 immigrants, enjoining their detention or granting their petitions outright. *See*
 14 *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *17 (W.D. Wash.
 15 Aug. 21, 2025); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL
 16 1993771, at *4 (E.D. Cal. July 16, 2025); *Nguyen v. Hyde*, No. 25-CV-11470-
 17 MJJ, 2025 WL 1725791, at *5 (D. Mass. June 20, 2025).

18 **III. The government is carrying out deportations to third countries without**
 19 **providing sufficient notice and opportunity to be heard.**

20 When immigrants cannot be removed to their home country—including
 21 Vietnamese immigrants—ICE has begun deporting those individuals to third
 22 countries without adequate notice or a hearing. The Trump administration
 23 reportedly has negotiated with at least 58 countries to accept deportees from other
 24 nations. Edward Wong et al, *Inside the Global Deal-Making Behind Trump's*
 25 *Mass Deportations*, N.Y. Times, June 25, 2025. On June 25, 2025, the New York
 26 Times reported that seven countries—Costa Rica, El Salvador, Guatemala,
 27

28 ⁸ <https://www.asianlawcaucus.org/news-resources/guides-reports/trinh-reports>

1 Kosovo, Mexico, Panama, and Rwanda—had agreed to accept deportees who are
2 not their own citizens. *Id.* Since then, ICE has carried out highly publicized third
3 country deportations to South Sudan and Eswatini.

4 The Administration has reportedly negotiated with countries to have many
5 of these deportees imprisoned in prisons, camps, or other facilities. The
6 government paid El Salvador about \$5 million to imprison more than 200
7 deported Venezuelans in a maximum-security prison notorious for gross human
8 rights abuses, known as CECOT. *See id.* In February, Panama and Costa Rica
9 took in hundreds of deportees from countries in Africa and Central Asia and
10 imprisoned them in hotels, a jungle camp, and a detention center. *Id.*; Vanessa
11 Buschschluter, *Costa Rican court orders release of migrants deported from U.S.*,
12 BBC (Jun. 25, 2025). On July 4, 2025, ICE deported eight men, including one
13 pre-1995 Vietnamese refugee, to South Sudan. *See Wong, supra.* On July 15, ICE
14 deported five men to the tiny African nation of Eswatini, including one man from
15 Vietnam, where they are reportedly being held in solitary confinement. Gerald
16 Imray, *3 Deported by US held in African Prison Despite Completing Sentences*,
17 *Lawyers Say*, PBS (Sept. 2, 2025). Many of these countries are known for human
18 rights abuses or instability. For instance, conditions in South Sudan are so
19 extreme that the U.S. State Department website warns Americans not to travel
20 there, and if they do, to prepare their will, make funeral arrangements, and appoint
21 a hostage-taker negotiator first. *See Wong, supra.*

22 On June 23 and July 3, 2025, the Supreme Court issued a stay of a national
23 class-wide preliminary injunction issued in *D.V.D. v. U.S. Department of*
24 *Homeland Security*, No. CV 25-10676-BEM, 2025 WL 1142968, at *1, 3 (D.
25 Mass. Apr. 18, 2025), which required ICE to follow statutory and constitutional
26 requirements before removing an individual to a third country. *U.S. Dep't of*
27 *Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (mem.); *id.*, No. 24A1153, 2025
28 WL 1832186 (U.S. July 3, 2025). On July 9, 2025, ICE rescinded previous

1 guidance meant to give immigrants a “‘meaningful opportunity’ to assert claims
2 for protection under the Convention Against Torture (CAT) before initiating
3 removal to a third country” like the ones just described. Exhibit B, ICE
4 Memorandum on Third Country Removals, July 9, 2025.

5 Under the new guidance, ICE may remove any immigrant to a third country
6 “without the need for further procedures,” as long as—in the view of the State
7 Department—the United States has received “credible” “assurances” from that
8 country that deportees will not be persecuted or tortured. *Id.* at 1. If a country fails
9 to credibly promise not to persecute or torture releasees, ICE may still remove
10 immigrants there with minimal notice. *Id.* Ordinarily, ICE must provide 24 hours’
11 notice. But “[i]n exigent circumstances,” a removal may take place in as little as
12 six hours, “as long as the alien is provided reasonably means and opportunity to
13 speak with an attorney prior to the removal.” *Id.*

14 Upon serving notice, ICE “will not affirmatively ask whether the alien is
15 afraid of being removed to the country of removal.” *Id.* (emphasis original). If the
16 noncitizen “does not affirmatively state a fear of persecution or torture if removed
17 to the country of removal listed on the Notice of Removal within 24 hours, [ICE]
18 may proceed with removal to the country identified on the notice.” *Id.* at 2. If the
19 noncitizen “does affirmatively state a fear if removed to the country of removal”
20 then ICE will refer the case to U.S. Citizenship and Immigration Services
21 (“USCIS”) for a screening for eligibility for withholding of removal and
22 protection under the Convention Against Torture (“CAT”). *Id.* at 2. “USCIS will
23 generally screen within 24 hours.” *Id.* If USCIS determines that the noncitizen
24 does not meet the standard, the individual will be removed. *Id.* If USCIS
25 determines that the noncitizen has met the standard, then the policy directs ICE to
26 either move to reopen removal proceedings “for the sole purpose of determining
27 eligibility for [withholding of removal protection] and CAT” or designate another
28 country for removal. *Id.*

CLAIMS FOR RELIEF

This Court should order Mr. Thai's immediate release on conditions. *Zadvydas* holds that immigration statutes do not authorize the government to detain immigrants like Mr. Thai, for whom there is "no significant likelihood of removal in the reasonably foreseeable future." 533 U.S. 678, 701 (2001). ICE's own regulations require a violation or changed circumstances before re-detention, as well as a chance to contest a re-detention decision. Finally, Mr. Thai cannot be ordered removed to a third country without adequate notice and an opportunity to move for reopening before an IJ. These claims are taken in turn.

I. First claim: Mr. Thai's detention violates *Zadvydas* and 8 U.S.C § 1231.

A. Legal background

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered the issue of indefinite immigration detention. Federal law requires ICE to detain an immigrant during the "removal period," which typically spans the first 90 days after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-day removal period expires, detention becomes discretionary—ICE may detain the migrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily, this scheme would not lead to excessive detention, as removal happens within days or weeks. But some detainees cannot be removed quickly. Perhaps their removal "simply require[s] more time for processing," or they are "ordered removed to countries with whom the United States does not have a repatriation agreement," or their countries "refuse to take them," or they are "effectively 'stateless' because of their race and/or place of birth." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances, detained immigrants can find themselves trapped in detention for months, years, decades, or even the rest of their lives.

If federal law were understood to allow for "indefinite, perhaps permanent,

1 detention,” it would pose “a serious constitutional threat.” *Zadvydas*, 533 U.S. at
2 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by
3 interpreting the federal detention statute to incorporate implicit limits. *Id.* at 689.

4 As an initial matter, *Zadvydas* held that detention is “presumptively
5 reasonable”—and therefore, authorized—for at least six months. *Id.* at 701. This
6 acts as a kind of grace period for effectuating removals.

7 Following the six-month grace period, courts must use a burden-shifting
8 framework to decide whether detention remains authorized. First, the petitioner
9 must make a prima facie case for relief: He must prove that there is “good reason
10 to believe that there is no significant likelihood of removal in the reasonably
11 foreseeable future.” *Id.*

12 If he does so, the burden shifts to “the Government [to] respond with
13 evidence sufficient to rebut that showing.” *Id.* Ultimately, then, the burden of
14 proof rests with the government: The government must prove that there is a
15 “significant likelihood of removal in the reasonably foreseeable future,” or the
16 immigrant must be released. *Id.*

17 Using this framework, Mr. Thai already has made all the threshold
18 showings needed to shift the burden to the government, back in 1999, after he had
19 been detained pending removal for close to four years. He can make them again
20 today.

21 **B. The six-month grace period has expired.**

22 As an initial matter, the six-month grace period has long since ended. The
23 *Zadvydas* grace period lasts for “*six months* after a final order of removal—that is,
24 *three months* after the statutory removal period has ended.” *Kim Ho Ma v.*
25 *Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, Mr. Thai’s order of
26 removal was entered in 2009. Exh. A at ¶ 3. He was detained for 90 days in 2009,
27 and then detained for another 90 days in 2011 or 2012. *Id.* at ¶¶ 5–6. Thus, this
28 threshold requirement is met.

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

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

13 *Second*, the government has sometimes claimed that rearrest at least resets
14 the 90-day removal period under 8 U.S.C. § 1231(a)(1). *See, e.g., Farah v. INS*,
15 No. Civ. 02-4725(DSD/RLE), 2003 WL 221809, at *5 (D. Minn. Jan. 29, 2013)
16 (adopting this view). But as a court explained in *Bailey v. Lynch*, that view cannot
17 be squared with the statutory definition of the removal period in 8 U.S.C.
18 § 1231(a)(1)(B). No. CV 16-2600 (JLL), 2016 WL 5791407, at *2 (D.N.J. Oct. 3,
19 2016). “Pursuant to the statute, the removal period, and in turn the [six-month]
20 presumptively reasonable period, begins from the latest of ‘the date the order of
21 removal becomes administratively final,’ the date of a reviewing court’s final
22 order where the removal order is judicially removed and that court orders a stay of
23 removal, or the alien’s release from detention or confinement where he was
24 detained for reasons other than immigration purposes at the time of his final order
25 of removal.” *Id.* None of these statutory starting points have anything to do with
26 whether or when an immigrant is detained. *See id.* Because the statutorily-defined
27 removal period has nothing to do with release and rearrest, releasing and
28 rearresting the immigrant cannot reset the removal period.

1 **C. Vietnam’s refusal to accept Mr. Thai, along with Vietnam’s**
2 **longstanding policy of not accepting pre-1995 Vietnamese**
3 **immigrants, provides good reason to believe that he will not**
4 **likely be removed in the reasonably foreseeable future.**

5 Because the six-month grace period has long passed, this Court must
6 evaluate Mr. Thai’s *Zadvydas* claim using the burden-shifting framework. At the
7 first stage of the framework, Mr. Thai must “provide[] good reason to believe that
8 there is no significant likelihood of removal in the reasonably foreseeable future.”
9 *Zadvydas*, 533 U.S. at 701. This standard can be broken down into three parts.

10 **“Good reason to believe.”** The “good reason to believe” standard is a
11 relatively forgiving one. “A petitioner need not establish that there exists no
12 possibility of removal.” *Freeman v. Watkins*, No. CV B:09-160, 2009 WL
13 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does “[g]ood reason to
14 believe’ . . . place a burden upon the detainee to demonstrate no reasonably
15 foreseeable, significant likelihood of removal or show that his detention is
16 indefinite; it is something less than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW,
17 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401
18 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
19 Petitioners need only give a “good reason”—not prove anything to a certainty.

20 **“Significant likelihood of removal.”** This component focuses on whether
21 Mr. Thai will likely be removed: Continued detention is permissible only if it is
22 “significant[ly] like[ly]” that ICE will be able to remove him. *Zadvydas*, 533 U.S.
23 at 701. This inquiry targets “not only the *existence* of untapped possibilities, but
24 also [the] probability of *success* in such possibilities.” *Elashi v. Sabol*, 714 F.
25 Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added). In other words,
26 even if “there remains *some* possibility of removal,” a petitioner can still meet its
27 burden if there is good reason to believe that successful removal is not
28 significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL
 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

1 **“In the reasonably foreseeable future.”** This component of the test
2 focuses on when Mr. Thai will likely be removed: Continued detention is
3 permissible only if removal is likely to happen “in the reasonably foreseeable
4 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s
5 removal efforts. If the Court has “no idea of when it might reasonably expect
6 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal
7 is likely to occur—or even that it might occur—in the reasonably foreseeable
8 future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3
9 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL
10 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d
11 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that Mr. Thai
12 “would *eventually* receive” a travel document, he can still meet his burden by
13 giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*,
14 2016 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

15 Mr. Thai readily satisfies this standard for two reasons.

16 *First*, as explained above, Vietnam generally does not accept pre-1995
17 Vietnamese immigrants for deportation. Even after Vietnam signed the 2020
18 MOU, ICE had to admit that there was no reasonable likelihood of removing such
19 immigrants in the reasonably foreseeable future—an admission amply backed up
20 by two years’ experience under the MOU. Though the Trump administration
21 rescinded this admission, there is no evidence that facts on the ground have
22 changed. Thus, several courts have found that these barriers likely continue to
23 obstruct removal for people like Mr. Thai. *See Nguyen*, 2025 WL 2419288; *Hoac*,
24 2025 WL 1993771; *Nguyen*, 2025 WL 1725791.

25 *Second*, Mr. Thai’s own experience bears this out. ICE has now had 16
26 years to deport him, including 5 years under the MOU. Yet ICE has proved
27 unable to remove him.
28

1 Thus, Mr. Thai has met his initial burden, and the burden shifts to the
2 government. Unless the government can prove a “significant likelihood of
3 removal in the reasonably foreseeable future,” Mr. Thai must be released.
4 *Zadvydas*, 533 U.S. at 701.

5 **D. *Zadvydas* unambiguously prohibits this Court from denying**
6 **Mr. Thai’s petition because of his criminal history.**

7 If released on supervision, Mr. Thai poses no risk of danger or flight. He
8 has been on supervision for over 16 years. He spends most of his time working
9 and caring for his invalid wife. *Id.* at ¶ 7–9. Mr. Thai fully acknowledges his
10 criminal history and deeply regrets his conduct.

11 But even if the government did try to argue that Mr. Thai posed a danger or
12 flight risk, *Zadvydas* squarely holds that those are not grounds for detaining an
13 immigrant when there is no reasonable likelihood of removal in the reasonably
14 foreseeable future.

15 The two petitioners in *Zadvydas* both had significant criminal history.
16 Mr. *Zadvydas* himself had “a long criminal record, involving drug crimes,
17 attempted robbery, attempted burglary, and theft,” as well as “a history of flight,
18 from both criminal and deportation proceedings.” *Id.* at 684. The other petitioner,
19 Kim Ho Ma, was “involved in a gang-related shooting [and] convicted of
20 manslaughter.” *Id.* at 685. The government argued that both men could be
21 detained regardless of their likelihood of removal, because they posed too great a
22 risk of danger or flight. *Id.* at 690–91.

23 The Supreme Court rejected that argument. The Court appreciated the
24 seriousness of the government’s concerns. *Id.* at 691. But the Court found that the
25 immigrant’s liberty interests were weightier. *Id.* The Court had never
26 countenanced “potentially permanent” “civil confinement,” based only on the
27 government’s belief that the person would misbehave in the future. *Id.*
28

1 The Court also noted that the government was free to use the many tools at
2 its disposal to mitigate risk: “[O]f course, the alien’s release may and should be
3 conditioned on any of the various forms of supervised release that are appropriate
4 in the circumstances, and the alien may no doubt be returned to custody upon a
5 violation of those conditions.” *Id.* at 700. The Ninth Circuit later elaborated, “All
6 aliens ordered released must comply with the stringent supervision requirements
7 set out in 8 U.S.C. § 1231(a)(3). [They] will have to appear before an immigration
8 officer periodically, answer certain questions, submit to medical or psychiatric
9 testing as necessary, and accept reasonable restrictions on [their] conduct and
10 activities, including severe travel limitations. More important, if [they] engage[]
11 in any criminal activity during this time, including violation of [their] supervisory
12 release conditions, [they] can be detained and incarcerated as part of the normal
13 criminal process.” *Ma*, 257 F.3d at 1115. These conditions have proved sufficient
14 to protect the public over the last 16 years and will continue to.

15 **II. Second claim: ICE failed to comply with its own regulations before re-**
16 **detaining Mr. Thai, violating his rights under the Fifth Amendment**
17 **and the Administrative Procedures Act.**

18 In addition to *Zadvydas*’s protections, a series of regulations provide extra
19 process for someone who, like Mr. Thai, is re-detained following a period of
20 release. Under 8 C.F.R. § 241.4(l), ICE may re-detain an immigrant on
21 supervision only with an interview and a chance to contest a re-detention. When
22 an immigrant is specifically released after giving good reason why they cannot be
23 removed, additional regulations apply. ICE may revoke a noncitizen’s release and
24 return them to ICE custody due to failure to comply with conditions of release, 8
25 C.F.R. § 241.13(i)(1), or if, “on account of changed circumstances, the Service
26 determines that there is a significant likelihood that the [noncitizen] may be
27 removed in the reasonably foreseeable future.” *Id.* § 241.13(i)(2).
28

1 The regulations further provide noncitizens with a chance to contest a re-
2 detention decision. ICE must “notif[y] [the person] of the reasons for revocation
3 of his or her release.” *Id.* § 241.13(i)(3). ICE must then “conduct an initial
4 informal interview promptly” after re-detention “to afford the alien an opportunity
5 to respond to the reasons for revocation stated in the notification.” *Id.* During the
6 interview, the person “may submit any evidence or information” showing that the
7 prerequisites to re-detention have not been met, and the interviewer must evaluate
8 “any contested facts.” *Id.* Neither regulation allows ICE to re-detain someone with
9 no interview and no chance to contest the decision. *Zhu v. Genalo*, No. 1:25-CV-
10 06523 (JLR), 2025 WL 2452352, at *8 n.3 (S.D.N.Y. Aug. 26, 2025) (finding that
11 either § 241.4 or § 241.13 led to the same result).

12 ICE is required to follow its own regulations. *United States ex rel. Accardi*
13 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150,
14 1162 (9th Cir. 2004) (“The legal proposition that agencies may be required to
15 abide by certain internal policies is well-established.”). A court may review a re-
16 detention decision for compliance with the regulations. *See Phan v. Beccerra*, No.
17 2:25-CV-01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025); *Nguyen v.*
18 *Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025)
19 (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

20 None of the prerequisites to detention apply here. Mr. Thai did not violate
21 the conditions of his release. And there are no changed circumstances that justify
22 re-detaining him. The same treaty has applied since 2008, and ICE tried and failed
23 to remove Mr. Thai under those treaty’s terms. Of course, ICE may be planning to
24 try yet again. But absent any evidence for “why obtaining a travel document is
25 more likely this time around[,] Respondents’ intent to eventually complete a
26 travel document request for Petitioner does not constitute a changed
27 circumstance.” *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL
28 1993771, at *4 (E.D. Cal. July 16, 2025) (citing *Liu v. Carter*, No. 25-3036-JWL,

1 2025 WL 1696526, at *2 (D. Kan. June 17, 2025)). Nor has Mr. Thai received the
2 interview required by regulation. No one from ICE has ever invited him to contest
3 his detention. *Id.*

4 Numerous courts have released re-detained immigrants after finding that
5 ICE failed to comply with applicable regulations. *Ceesay v. Kurzdorfer*, 781 F.
6 Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F. Supp. 3d 451, 463
7 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017);
8 *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7–9 (S.D.N.Y.
9 Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267,
10 at *10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT,
11 2025 WL 2491782, at *2–3 (E.D. Tex. July 18, 2025); *Hoac v. Becerra*, No. 2:25-
12 cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Liu*, 2025
13 WL 1696526, at *2; *M.Q. v. United States*, 2025 WL 965810, at *3, *5 n.1
14 (S.D.N.Y. Mar. 31, 2025). “[B]ecause officials did not properly revoke
15 petitioner’s release pursuant to the applicable regulations, that revocation has no
16 effect, and [Mr. Thai] is entitled to his release (subject to the same Order of
17 Supervision that governed his most recent release).” *Liu*, 2025 WL 1696526, at
18 *3.

19 **III. Claim 3: ICE may not remove Mr. Thai to a third country without**
20 **adequate notice and an opportunity to be heard.**

21 In addition to unlawfully detaining him, ICE’s policies threaten Mr. Thai’s
22 removal to a third country without adequate notice and an opportunity to be heard.
23 These policies violate the Fifth Amendment, the Convention Against Torture, and
24 implementing regulations.

1 **A. Legal background**

2 U.S. law enshrines protections against dangerous and life-threatening
3 removal decisions. By statute, the government is prohibited from removing an
4 immigrant to any third country where they may be persecuted or tortured, a form
5 of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A).
6 The government “may not remove [a noncitizen] to a country if the Attorney
7 General decides that the [noncitizen’s] life or freedom would be threatened in that
8 country because of the [noncitizen’s] race, religion, nationality, membership in a
9 particular social group, or political opinion.” *Id.*; *see also* 8 C.F.R. §§ 208.16,
10 1208.16. Withholding of removal is a mandatory protection.

11 Similarly, Congress codified protections prohibiting the government from
12 removing a person to a country where they would be tortured. *See* FARRA 2681-
13 822 (codified as 8 U.S.C. § 1231 note) (“It shall be the policy of the United States
14 not to expel, extradite, or otherwise effect the involuntary return of any person to
15 a country in which there are substantial grounds for believing the person would be
16 in danger of being subjected to torture, regardless of whether the person is
17 physically present in the United States.”); 28 C.F.R. § 200.1; *id.* §§ 208.16-
18 208.18, 1208.16-1208.18. CAT protection is also mandatory.

19 To satisfy due process, the government must provide notice of the third
20 country removal and an opportunity to respond. Due process requires “written
21 notice of the country being designated” and “the statutory basis for the
22 designation, i.e., the applicable subsection of § 1231(b)(2).” *Aden v. Nielsen*, 409
23 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); *accord D.V.D. v. U.S. Dep’t of*
24 *Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May
25 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

26 The government must also “ask the noncitizen whether he or she fears
27 persecution or harm upon removal to the designated country and memorialize in
28 writing the noncitizen’s response. This requirement ensures DHS will obtain the

1 necessary information from the noncitizen to comply with section 1231(b)(3) and
2 avoids [a dispute about what the officer and noncitizen said].” *Aden*, 409 F. Supp.
3 3d at 1019. “Failing to notify individuals who are subject to deportation that they
4 have the right to apply for asylum in the United States and for withholding of
5 deportation . . . violates both INS regulations and the constitutional right to due
6 process.” *Andriasian*, 180 F.3d at 1041.

7 If the noncitizen claims fear, measures must be taken to ensure that the
8 noncitizen can seek asylum, withholding, and relief under CAT before an
9 immigration judge in reopened removal proceedings. The amount and type of
10 notice must be “sufficient” to ensure that “given [a noncitizen’s] capacities and
11 circumstances, he would have a reasonable opportunity to raise and pursue his
12 claim for withholding of deportation.” *Aden*, 409 F. Supp. 3d at 1009
13 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132
14 F.3d 405, 408 (7th Cir. 1998)); cf. *D.V.D.*, 2025 WL 1453640, at *1 (requiring the
15 government to move to reopen the noncitizen’s immigration proceedings if the
16 individual demonstrates “reasonable fear” and to provide “a meaningful
17 opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening
18 of their immigration proceedings” if the noncitizen is found to not have
19 demonstrated “reasonable fear”); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice
20 and time for a respondent to file a motion to reopen and seek relief).

21 “[L]ast minute” notice of the country of removal will not suffice,
22 *Andriasian*, 180 F.3d at 1041; accord *Najjar v. Lunch*, 630 Fed. App’x 724 (9th
23 Cir. 2016), and for good reason: To have a meaningful opportunity to apply for
24 fear-based protection from removal, immigrants must have time to prepare and
25 present relevant arguments and evidence. Merely telling a person where they may
26 be sent, without giving them a chance to look into country conditions, does not
27 give them a meaningful chance to determine whether and why they have a
28 credible fear.

B. The June 6, 2025 memo's removal policies violate the Fifth Amendment, 8 U.S.C. § 1231, the Conviction Against Torture, and Implementing Regulations.

The policies in the June 6, 2025, memo do not adhere to these requirements. First, under the policy, ICE need not give immigrants *any* notice or *any* opportunity to be heard before removing them to a country that—in the State Department's estimation—has provided “credible” “assurances” against persecution and torture. By depriving immigrants of any chance to challenge the State Department's view, this policy violates “[t]he essence of due process,” “the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it.” *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (cleaned up).

Second, even when the government has obtained no credible assurances against persecution and torture, the government can still remove the person with between 6 and 24 hours' notice, depending on the circumstances. That is not enough time for a detained person to assess their risk in the third country and marshal evidence to support any credible fear—let alone a chance to file a motion to reopen with an IJ. An immigrant may know nothing about a third country when scheduled for removal, but if given the opportunity to investigate, immigrants would find credible reasons to fear persecution or torture—like patterns of holding deportees indefinitely without charge in solitary confinement or extreme instability raising a high likelihood of death—in many of the third countries that have agreed to removal thus far. Due process requires an adequate chance to identify and raise these threats to health and life. This Court must prohibit the government from removing Mr. Thai without these due process safeguards.

IV. This Court must hold an evidentiary hearing on any disputed facts.

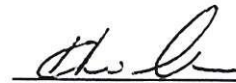
Resolution of a prolonged-detention habeas petition may require an evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009). Mr. Thai hereby requests such a hearing on any material, disputed facts.

Conclusion

For those reasons, Mr. Thai requests that this Court order the respondents to prove that there is a “significant likelihood of removal in the reasonably foreseeable future” and, if they do not, order his release. *Zadvydas*, 533 U.S. at 701. In the alternative, he requests that this Court order a bond hearing.

DATED: 9/11/25

Respectfully submitted,



HAI THAI

Petitioner

PROOF OF SERVICE

I, the undersigned, caused to be served the within Petition for Writ of Habeas

Corpus by hand delivery to:

U.S. Attorney's Office, Southern District of California
Civil Division
880 Front Street
Suite 6253
San Diego, CA 92101

Date: 9/17/2025


Kara Hartzler

EXHIBIT A

Hai Thai

A# 

Otay Mesa Detention Center

P.O. Box 439049

San Diego, CA 92143-9049

Pro Se¹

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

HAI THAI,

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.:

**Declaration of
Hai Thai
in Support of Petition
for a Writ of Habeas Corpus**

I, Hai Thai, declare:

1. I came to the United States with my family in 1979. We were refugees fleeing from the communist regime in Vietnam. We all became lawful permanent residents.
2. In 2002, I was convicted of domestic violence and served about three days in jail. However, I was put into removal proceedings for this conviction. I

¹ Mr. Thai is filing this motion and all associated documents 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 Kara Hartzler in Support of Appointment Motion attaches case examples.

1 bonded out of immigration custody and continued to attend my removal
2 hearings and fight to keep my green card. Ultimately, I was granted
3 cancellation of removal, and the immigration judge allowed me to keep my
4 green card.

- 5 3. However, between 2004 and 2009, I was convicted of several other
6 offenses, including simple possession of methamphetamine and violating a
7 restraining order. In 2009, I was again put in removal proceedings, but this
8 time, the judge ordered me removed.
- 9 4. After the immigration judge ordered me removed, ICE tried to remove me.
10 However, because I did not have any family left in Vietnam and I came to
11 the United States before 1995, they told me they probably could not remove
12 me. They never asked me to fill out travel documents, but I would have
13 complied if they had asked me.
- 14 5. ICE continued to detain me for about 90 days and then released me.
- 15 6. While on release, I generally attended my check in appointments. However,
16 in 2011 or 2012, I missed one of my check in appointments. ICE picked me
17 up and held me for another 90 days.
- 18 7. My family is all here, including my parents and my 11 siblings. I work as
19 the assistant manager at a restaurant and do not make much money, and I
20 have no savings.
- 21 8. My common-law wife has Type I and possibly Type II diabetes, as well as
22 a heart stent. She is not able to work or drive and is very dependent on me
23 to get all her medications and groceries.
- 24 9. I have also had medical problems, including recent surgeries to remove a
25 lacrimal gland tumor from my left eye and a stomach ulcer.
- 26 10. ICE came to my workplace and arrested me on August 25, 2025. They
27 made me sign a revocation of my order of supervision. When I asked them
28 why they were doing so, they said, "haven't you been watching the news?"
11. While in custody, I cannot pay my bills or help support my family.
12. I have no legal education or training. I also do not have free access to the
internet in custody.

1 I declare under penalty of perjury that the foregoing is true and correct,
2
3 executed on 9/11/2025, in San Diego, California.

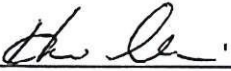
4 
5 **HAI THAI**
6 Declarant
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EXHIBIT B

CASE NO. PX 25-951

IDENTIFICATION: JUL 10 2025

ADMITTED: JUL 10 2025

To All ICE Employees
July 9, 2025

Third Country Removals Following the Supreme Court's Order in *Department of Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025)

On June 23, 2025, the U.S. Supreme Court granted the Government's application to stay the district court's nationwide preliminary injunction in *D.V.D. v. Department of Homeland Security*, No. 25-10676, 2025 WL 1142968 (D. Mass. Apr. 18, 2025), which required certain procedures related to providing a "meaningful opportunity" to assert claims for protection under the Convention Against Torture (CAT) before initiating removal to a third country. Accordingly, all previous guidance implementing the district court's preliminary injunction related the third country removals issued in *D.V.D.* is hereby rescinded. Absent additional action by the Supreme Court, the stay will remain in place until any writ of certiorari is denied or a judgment following any decision issues.

Effective immediately, when seeking to remove an alien with a final order of removal—other than an expedited removal order under section 235(b) of the Immigration and Nationality Act (INA)—to an alternative country as identified in section 241(b)(1)(C) of the INA, ICE must adhere to Secretary of Homeland Security Kristi Noem's March 30, 2025 memorandum, *Guidance Regarding Third Country Removals*, as detailed below. A "third country" or "alternative country" refers to a country other than that specifically referenced in the order of removal.

If the United States has received diplomatic assurances from the country of removal that aliens removed from the United States will not be persecuted or tortured, and if the Department of State believes those assurances to be credible, the alien may be removed without the need for further procedures. ICE will seek written confirmation from the Department of State that such diplomatic assurances were received and determined to be credible. HSI and ERO will be made aware of any such assurances. In all other cases, ICE must comply with the following procedures:

- An ERO officer will serve on the alien the attached Notice of Removal. The notice includes the intended country of removal and will be read to the alien in a language he or she understands.
- ERO will not affirmatively ask whether the alien is afraid of being removed to the country of removal.
- ERO will generally wait at least 24 hours following service of the Notice of Removal before effectuating removal. In exigent circumstances, ERO may execute a removal order six (6) or more hours after service of the Notice of Removal as long as the alien is provided reasonable means and opportunity to speak with an attorney prior to removal.
 - Any determination to execute a removal order under exigent circumstances less than 24 hours following service of the Notice of Removal must be approved by the DHS General Counsel, or the Principal Legal Advisor where the DHS General Counsel is not available.

- If the alien does not affirmatively state a fear of persecution or torture if removed to the country of removal listed on the Notice of Removal within 24 hours, ERO may proceed with removal to the country identified on the notice. ERO should check all systems for motions as close in time as possible to removal.
- If the alien does affirmatively state a fear if removed to the country of removal listed on the Notice of Removal, ERO will refer the case to U.S. Citizenship and Immigration Services (USCIS) for a screening for eligibility for protection under section 241(b)(3) of the INA and the Convention Against Torture (CAT). USCIS will generally screen the alien within 24 hours of referral.
 - USCIS will determine whether the alien would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal.
 - If USCIS determines that the alien has not met this standard, the alien will be removed.
 - If USCIS determines that the alien has met this standard and the alien was not previously in proceedings before the immigration court, USCIS will refer the matter to the immigration court for further proceedings. In cases where the alien was previously in proceedings before the immigration court, USCIS will notify the referring immigration officer of its finding, and the immigration officer will inform ICE. In such cases, ERO will alert their local Office of the Principal Legal Advisor (OPLA) Field Location to file a motion to reopen with the immigration court or the Board of Immigration Appeals, as appropriate, for further proceedings for the sole purpose of determining eligibility for protection under section 241(b)(3) of the INA and CAT for the country of removal. Alternatively, ICE may choose to designate another country for removal.

Notably, the Supreme Court's stay of removal does not alter any decisions issued by any other courts as to individual aliens regarding the process that must be provided before removing that alien to a third country.

Please direct any questions about this guidance to your OPLA field location.

Thank you for all you continue to do for the agency.

Todd M. Lyons
Acting Director
U.S. Immigration and Customs Enforcement

Attachments:

- U.S. Supreme Court Order
- Secretary Noem's Memorandum
- Notice of Removal