

1 **Hai Thai**

2 A# 

3 Otay Mesa Detention Center

4 P.O. Box 439049

5 San Diego, CA 92143-9049

6 Pro Se¹

FILED

Sep 17 2025

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

7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 HAI THAI,

11 Petitioner,

12 v.

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

22 Respondents.

CIVIL CASE NO.: 25CV2436 RBM MMP

**Motion for Appointment
of Counsel**

23 Hai Thai respectfully moves this court to appoint Federal Defenders of San
24 Diego, Inc., as counsel for petitioner. Mr. Thai has a strong claim to release under
25 *Zadvydas v. Davis*, 533 U.S. 678 (2001), the agency's own regulations, and the
26 Fifth Amendment. But these issues are complex, implicating constitutional,
27 statutory, regulatory, and immigration law. Additionally, an evidentiary hearing is
28 sometimes required to resolve *Zadvydas* petitions. For these reasons, **Federal**

¹ Mr. Thai is filing this motion with the assistance of the Federal Defenders of San Diego, Inc., who also drafted it. 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 **Defenders of San Diego, Inc. is routinely appointed to represent immigrants**
2 **in bringing *Zadvydas* claims.** See Exhibit A, Declaration of Kara Hartzler in
3 Support of Appointment Motion (“Hartzler Dec.”), ¶¶ 2–3 (attaching appointment
4 orders from 2006 to 2024). This Court should follow that practice and appoint
5 Federal Defenders of San Diego, Inc. to represent Mr. Thai in this habeas case.

6 **STATEMENT OF FACTS**

7 **I. Mr. Thai is detained indefinitely.**

8 Hai Thai fled Vietnam and arrived in the United States in 1979. Declaration
9 of Hai Thai attached to habeas petition as Exhibit A (“Thai Dec”), at ¶ 1. He
10 sustained several convictions and was ordered removed in 2009. *Id.* at ¶ 3. ICE
11 detained him for approximately 90 days while attempting to remove him. *Id.* at
12 ¶¶ 4–5. But when the Vietnamese consulate did not issue travel documents for
13 him, ICE released him on supervision. *Id.* at ¶ 5. After failing to attend a check in
14 appointment in 2011 or 2012, he was again detained for about 90 days. *Id.* at ¶ 6.
15 But since then, he has complied with his check in requirements.

16 ICE’s inability to remove Mr. Thai over the last 16 years reflects Vietnam’s
17 reticence to accept pre-1995 Vietnamese immigrants. As detained in Mr. Thai’s
18 habeas petition, the operative repatriation treaty with Vietnam exempts people
19 who immigrated to the United States before 1995. Agreement Between the United
20 States of America and Vietnam, at 2 (Jan. 22, 2008).² A subsequent MOU³
21 provides a framework for repatriating some people in that group, but Vietnam
22 accepted only four people in two years under that MOU, while not fulfilling 14
23 requests. Asian Law Caucus, *Resources on Deportation of Vietnamese*
24 *Immigrants Who Entered the U.S. Before 1995* (Jul. 15, 2025) (providing links to
25

26
27 ² available at <https://www.state.gov/wp-content/uploads/2019/02/08-322-Vietnam-Repatriations.pdf>

28 ³<https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-b55e67f8f04b/assets/media/ALC-FOIA-Re-Release-MOU-bates-1-8-8-10-21.pdf>.

all quarterly reports). Until the second Trump administration, ICE officials admitted that there is no reasonable likelihood of removing pre-1995 Vietnamese immigrants in the reasonably foreseeable future. Order on Joint Motion for Entry of Stipulated Dismissal, *Trihn*, 18-CV-316-CJC-GJS, Dkt. 161 at 3 (C.D. Cal. Oct. 7, 2021).⁴

II. Mr. Thai is indigent and lacks the education, experience, and language skills needed to litigate this habeas petition.

Mr. Thai has been working in a restaurant and does not have the necessary funds to hire an attorney. Thai Dec. at ¶ 7. Mr. Thai also does not have the legal education or training needed to litigate a complex habeas petition. *Id.* at ¶ 12.

Accordingly, Mr. Thai requests that this Court appoint the Federal Defenders of San Diego, Inc., to represent him in the instant habeas action. That office stands ready and able to assist Mr. Thai in this Petition.

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.”

⁴ <https://static1.squarespace.com/static/5f0cc12a064e9716d52e6052/t/618e99e5613d7372c1bb197e/1636735461479/Trinh+-+Doc+161+Order+Granting+Stip+Dismissal.pdf>.

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. Thai 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. Thai will likely succeed on the merits.**

8 As described in detail in Mr. Thai's habeas petition, which has been filed
9 concurrently with this motion and which he fully incorporates here by reference,
10 *Zadvydas* held that federal law does not authorize the government to detain an
11 immigrant indefinitely pending removal. Rather, 8 U.S.C. § 1231(a)(6)
12 presumptively permits the government to detain an immigrant for 180 days after
13 his or her removal order becomes final. After those 180 days have passed, the
14 immigrant must be released unless his or her removal is reasonably foreseeable.
15 *Zadvydas*, 533 U.S. at 701.

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

22 Here, Mr. Thai was ordered removed in 2009, and he spent about 90 days
23 in custody before ICE released him. *Id.* at ¶¶ 4–5. He was later redetained and
24 held for an additional 90 days in 2011 or 2012. *Id.* at ¶ 6. Thus, he has been
25 detained for more than six months.

26 There is good reason to believe that he will not be removed in the
27 reasonably foreseeable future. ICE has proved unable to remove him for 16 years.
28 The Vietnamese consulate rejected a travel documents request. And there is an

1 obvious explanation—the Vietnam’s policy toward pre-1995 Vietnamese
2 immigrants—for this refusal. Thus, this Court will likely grant *Zadvydas* relief,
3 just like other courts. *See Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL
4 2419288, at *17 (W.D. Wash. Aug. 21, 2025); *Hoac v. Becerra*, No. 2:25-CV-
5 01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Nguyen v.*
6 *Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at *5 (D. Mass. June 20, 2025).

7 What’s more, the regulations do not permit Mr. Thai’s re-detention. ICE
8 may revoke a noncitizen’s release and return them to ICE custody due to failure to
9 comply with conditions of release, 8 C.F.R. § 241.13(i)(1), or if, “on account of
10 changed circumstances, the Service determines that there is a significant
11 likelihood that the [noncitizen] may be removed in the reasonably foreseeable
12 future.” *Id.* § 241.13(i)(2). The regulations further provide noncitizens with a
13 chance to contest a re-detention decision. 8 C.F.R. § 241.13(i)(3).

14 Neither of these regulations were followed here. Mr. Thai did not violate
15 the conditions of his release. And there are no changed circumstances that justify
16 re-detaining him. Thus, he is likely to succeed on the merits of his petition.

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

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

27 *Zadvydas* cases involve complex legal issues grounded in constitutional
28 law, statutory interpretation, administrative procedure, and habeas law. *See*

1 Hartzler Dec, attached orders (describing complexities in appointing counsel).
2 They also implicate immigration law. The Ninth Circuit has declared that “[w]ith
3 only a small degree of hyperbole, the immigration laws have been deemed second
4 only to the Internal Revenue Code in complexity.” *United States v. Ahumada-*
5 *Aguilar*, 295 F.3d 943, 950 (9th Cir. 2002) (citations and internal quotations
6 omitted). “A lawyer is often the only person who could thread the labyrinth.” *Id.*

7 Mr. Thai lacks experience and legal training to contend with this
8 complicated area of law. Thai Dec. at ¶ 12. Nor does he have free access to the
9 internet, so he cannot research up-to-date information about Vietnam and its
10 policies. *Id.* He also lacks the funds needed to hire a lawyer. *Id.* at ¶¶ 7, 12.
11 Accordingly, he would likely be unable to litigate his habeas petition effectively.

12 Additionally, professional assistance may be “necessary for the effective
13 utilization of discovery procedures” in this case. *Weygandt*, 718 F.2d at 954. In
14 order to prove his eligibility for *Zadvydas* relief, Mr. Thai may well need to view
15 evidence in the government’s possession—for example, communications between
16 ICE and the Vietnamese governments or internal paperwork documenting ICE’s
17 removal efforts. *See, e.g., Lopez-Cacerez v. McAleenan*, No. 19-CV-1952-AJB-
18 AGS, 2020 WL 3058096, at *4 n.1 (S.D. Cal. June 9, 2020) (relying on ICE’s
19 “internal documentation” to reject ICE’s noncooperation defense and find that the
20 petitioner was fully cooperating with ICE’s efforts to remove him). Mr. Thai
21 would likely have to litigate his entitlement to any such discovery, because at
22 least some courts have required immigrants to show good cause before obtaining
23 discovery in a habeas case. *See Toolasprashad v. Tryon*, No. 12CV734, 2013 WL
24 1560176, at *2 (W.D.N.Y. Apr. 11, 2013) (collecting cases). Moreover, Mr. Thai
25 is entitled to an evidentiary hearing on any material factual disputes, *Owino v.*
26 *Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009), meaning that “an evidentiary
27 hearing [may be] required.” *Weygandt*, 718 F.2d at 954. Those considerations also
28 support the need for appointment of counsel. *See id.*

D. 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. Thai in litigating this habeas petition.

DATED: 9/11/2025

Respectfully submitted,



HAI THAI

Petitioner

PROOF OF SERVICE

I, the undersigned, caused to be served the within Motion for Appointment of
Counsel 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

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Otay Mesa Detention Center

P.O. Box 439049

San Diego, CA 92143-9049

Pro Se

**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 Kara Hartzler
in Support of Motion for
Appointment of Counsel**

- 1
2 1. My name is Kara Hartzler. I am an appellate attorney at Federal
3 Defenders of San Diego, Inc. In that capacity, I was assigned to
4 investigate Mr. Thai's immigration habeas case to determine whether—
5 in keeping with longstanding district practice—Federal Defenders
6 should seek to be appointed as counsel.
- 7 2. In this district, Federal Defenders is regularly appointed to handle
8 *Zadvyas* 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.
- 12 3. This declaration attaches several orders appointing Federal Defenders to
13 habeas cases following this procedure. The oldest order is from 2006
14 and the most recent is from 2024.
- 15 4. I have followed that procedure in this case by helping to prepare a
16 habeas petition and appointment motion. I believe that granting
17 appointment in this case would conform to longstanding district
18 practice.

19
20 I declare under penalty of perjury that the foregoing is true and correct,
21 executed on September 16, 2025, in San Diego, California.
22

23
24 

25 **KARA HARTZLER**
26 Declarant
27
28