

1 **Hien Vu**

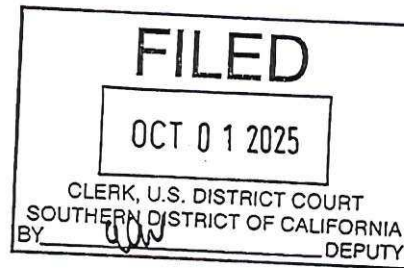
2 A# [REDACTED]

3 Otay Mesa Detention Center

4 P.O. Box 439049

5 San Diego, CA 92143-9049

6 Pro Se¹



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

10 **HIEN VU,**

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.: '25CV2586 BJC KSC

**Motion for Appointment
of Counsel**

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

¹ Mr. Vu is filing a petition for a writ of habeas corpus with the assistance of the Federal Defenders of San Diego, Inc., who drafted the instant petition. As this motion explains, Federal Defenders has consistently used this procedure in seeking appointment for immigration habeas cases.

1 **appointed to represent immigrants in bringing *Zadvydas* claims.** *See* Exhibit
2 A, Declaration of Katie Hurrelbrink in Support of Appointment Motion
3 (“Hurrelbrink Dec.”), ¶¶ 2–3 (attaching appointment orders from 2006 to 2025).
4 This Court should follow that practice and appoint Federal Defenders of San
5 Diego, Inc. to represent Mr. Vu in this habeas case.

6 STATEMENT OF FACTS

7 **I. Mr. Vu is detained indefinitely, his release was revoked contrary**
8 **to ICE regulation, and ICE policy permits his removal to a third**
9 **country without due process.**

10 Hien Vu fled Vietnam and arrived in the United States in 1984. Exh. A to
11 Habeas Petition (“Vu Dec”), at ¶ 2. He sustained a conviction and was ordered
12 removed in 2000. *Id.* at ¶¶ 3–4. ICE detained him for about 10 months after his
13 removal became final. *Id.* at ¶ 4; Exh. C to Habeas Petition (“Release Order”).
14 Mr. Vu was then ordered released under *Zadvydas*. *See* Release Order. He
15 remained on release for the next 24 years. Vu Dec. at ¶¶ 4, 7. During that time, he
16 became a single father to five kids, including two with autism. *Id.* at ¶ 11.

17 On August 14, 2025, Mr. Vu appeared as scheduled for his ICE check in.
18 *Id.* at ¶ 7. ICE agents arrested him. *Id.* ICE has not told him what has changed to
19 warrant re-detaining him or given him a chance to contest his re-detention. *Id.* at
20 ¶ 9. He has been detained for nearly a month and a half, but there is no indication
21 that ICE has gotten travel documents to remove him to Vietnam. *Id.* at ¶ 7.

22 There is an obvious reason why Mr. Vu has not been removed. The
23 operative repatriation treaty with Vietnam does not apply to people like Mr. Vu
24 who entered before 1995. Agreement Between the United States of America and
25 Vietnam, at 2 (Jan. 22, 2008).² And though a 2020 Memorandum of
26 Understanding (“MOU”) permits Vietnam to consider some pre-1995 immigrants

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

1 for removal, Vietnam has continued refusing most travel document requests even
2 under the MOU. *See* Order on Joint Motion for Entry of Stipulated Dismissal,
3 *Trinh v. Homan*, 18-CV-316-CJC-GJS, Dkt. 161 at 3 (C.D. Cal. Oct. 7, 2021);
4 Asian Law Caucus, *Resources on Deportation of Vietnamese Immigrants Who*
5 *Entered the U.S. Before 1995* (Jul. 15, 2025) (providing links to all quarterly
6 reports). Because the government has never disclosed the full eligibility criteria
7 under the MOU, Mr. Vu does not even know if he qualifies for removal under that
8 agreement, *see Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *14
9 (W.D. Wash. Aug. 21, 2025), and in any case, Vietnam retains discretion to
10 evaluate removal requests “on a case-by-case basis.” *Hoac v. Becerra*, No. 2:25-
11 CV-01740-DC-JDP, 2025 WL 1993771, at *5 (E.D. Cal. July 16, 2025).

12 Meanwhile, ICE has begun removing immigrants to third countries without
13 adequate notice or a hearing. Under prevailing ICE policy, an immigrant can be
14 removed to a third country with no notice, 6 hours’ notice, or 24 hours’ notice
15 depending on the circumstances. Exh. B to Habeas Petition (“Third Country
16 Removal Policy”). Many of these countries are extremely dangerous and/or
17 subject immigrants to imprisonment without sentence or charge. *See generally*
18 Edward Wong et al, *Inside the Global Deal-Making Behind Trump’s Mass*
19 *Deportations*, N.Y. Times, June 25, 2025.

20 **II. Mr. Vu cannot afford a lawyer and lacks the education and**
21 **experience needed to litigate this habeas petition.**

22 Mr. Vu cannot afford a lawyer. He has about \$3,500 in the bank. Vu Dec. at
23 ¶ 12. All of his remaining income goes to help his girlfriend care for his five kids.
24 *Id.* While Mr. Vu is in custody, the family must rely on Mr. Vu’s aunt to help
25 make ends meet. Exhibit A to Motion for a Temporary Restraining Order (“La
26 Rue Dec.”) at ¶¶ 2, 7.

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

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

A. Mr. Vu will likely succeed on the merits.

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

Thus, 180 days after a removal order becomes final, an immigrant facing indefinite detention may come forward with “good reason to believe that there is

1 no significant likelihood of removal in the reasonably foreseeable future.” *Id.* If
2 the immigrant meets their initial burden, “the Government must respond with
3 evidence sufficient to rebut that showing.” *Id.* Otherwise, the immigrant must be
4 released. *See id.*

5 Here, Mr. Vu’s removal became final in September 2000, and he was
6 detained for 10 months after that. Vu Dec. at ¶ 4; Release Order. The six-month
7 grace period has therefore passed.

8 There is every reason to believe that he will not be removed in the
9 reasonably foreseeable future. Because of Vietnam’s decades-long refusal to
10 repatriate most pre-1995 Vietnamese immigrants, ICE has proved unable to
11 remove Mr. Vu for over 24 years. This Court therefore will likely find that
12 Mr. Vu must be released under *Zadvydas*.

13 Additionally, ICE’s own regulations require an informal interview and a
14 chance to contest re-detention, and they specify that re-detention is proper only
15 upon a conditions violation or changed circumstances bearing on removability. 8
16 C.F.R. §§ 241.4(l), 241.13(i)(3). Here, ICE did not re-detain Mr. Vu for a
17 violation, nothing has changed since the last time ICE tried to deport him in 2008,
18 and he has gotten no chance to contest his re-detention. Vu Dec. at ¶ 7. This Court
19 therefore will likely find that Mr. Vu must be released due to ICE’s failure to
20 follow regulations. *See, e.g., Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166
21 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018);
22 *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017); *Zhu v. Genalo*, No.
23 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7–9 (S.D.N.Y. Aug. 26, 2025);
24 *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *10–12 (D. Or.
25 Aug. 21, 2025).

26 Finally, due process requires adequate notice and an opportunity to raise a
27 fear-based claim before an immigration judge prior to removal. *See generally*
28 *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL

1 1453640 (D. Mass. May 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th
2 Cir. 1999). This Court will likely find that ICE's latest policy, which permits
3 removal with either 6-to-24 hours' notice or no notice, violates these protections.
4 See Exh. B to Habeas Petition.

5 **B. Mr. Vu cannot adequately articulate his claims in the absence of**
6 **counsel, in light of the complexity of the legal issues involved in his**
7 **habeas petition.**

8 In deciding whether a petitioner needs a lawyer's assistance to effectively
9 litigate his habeas petition, a court must measure "the [petitioner]'s ability to
10 articulate his claims against the relative complexity of the matter." *Rand*, 113
11 F.3d at 1525. In addition, counsel may be appointed during federal habeas
12 proceedings if the appointment of an attorney is "necessary for the effective
13 utilization of discovery procedures . . . [or] if an evidentiary hearing is required."
14 *Weygandt*, 718 F.2d at 954 (cleaned up).

15 *Zadvydas* cases involve complex legal issues grounded in constitutional
16 law, statutory interpretation, administrative procedure, and habeas law. See
17 Hurrelbrink Dec, attached orders (describing complexities in appointing counsel).
18 They also implicate immigration law. The Ninth Circuit has declared that "[w]ith
19 only a small degree of hyperbole, the immigration laws have been deemed second
20 only to the Internal Revenue Code in complexity." *United States v. Ahumada-*
21 *Aguilar*, 295 F.3d 943, 950 (9th Cir. 2002) (citations and internal quotations
22 omitted). "A lawyer is often the only person who could thread the labyrinth." *Id.*

23 The government's recent filings in immigration habeas cases illustrate this
24 complexity. For example, in one recent *Zadvydas* case, the government's Return
25 informed a petitioner for the first time that ICE was actively trying to remove him
26 to a third country. *Rebenok v. Noem*, 25-CV-2171-TWR, Dkt. No. 5. Counsel had
27 to amend his petition to allege that third-country removal was unlawful under 8
28 U.S.C. § 1231(b)(2). *Id.*, Dkt. No. 8. Judge Robinson ultimately barred ICE from

1 effectuating the third country removal and ordered the petitioner's immediate
2 release. *Id.*, Dkt. No. 13. A pro se petitioner likely would not have been able to
3 identify and make those arguments while facing down the prospect of third-
4 country removal. In several other cases, the government has defended against a
5 habeas petition on jurisdictional grounds and justiciability/Article III grounds.
6 *See, e.g., Phan v. Bondi*, 25-CV-2422-RBM, Dkt. No. 6, at 1-3; *Tran v. Noem*, 25-
7 CV-2334-JES, Dkt. No. 13 at 1-3. The government has also been pressing a novel
8 theory for why *Zadvydas*'s 6-month grace period starts over upon re-detention,
9 which—if not effectively countered—would defeat all re-detained immigrants'
10 habeas petitions. *See, e.g., Bui v. Warden*, 25-CV-2111-JES, Dkt. No. 10 at 4-5;
11 *Tran v. Noem*, 25-CV-2334-JES, Dkt. No. 13 at 5-6. Pro se petitioners are not
12 equipped to meet these kinds of challenges.

13 Mr. Vu in particular lacks the experience and legal training to contend
14 with this complicated area of law. He does not have any legal education and
15 knows nothing about immigration law. Vu Dec. at ¶ 13. Nor does he have
16 unrestricted access to the internet, so he cannot research up-to-date information
17 about Vietnam and its policies. *Id.*

18 Furthermore, he lacks the funds needed to hire a lawyer. He only has a few
19 thousand dollars in savings, and all of his income goes to support his five
20 children. *Id.* at ¶ 13. Mr. Vu's girlfriend and aunt are already having to pitch in to
21 keep the family afloat while Mr. Vu is in custody. La Rue Dec. at ¶¶ 2, 7.

22 Additionally, professional assistance may be “necessary for the effective
23 utilization of discovery procedures” in this case. *Weygandt*, 718 F.2d at 954. To
24 prove his eligibility for *Zadvydas* relief, Mr. Vu may well need to view evidence in
25 the government's possession—for example, communications between ICE and the
26 Vietnamese government or internal paperwork documenting removal efforts. *See,*
27 *e.g., Lopez-Cacerez v. McAleenan*, No. 19-CV-1952-AJB-AGS, 2020 WL
28 3058096, at *4 n.1 (S.D. Cal. June 9, 2020) (relying on ICE's “internal

1 documentation” to grant habeas petition). Mr. Vu would likely have to litigate his
2 entitlement to any such discovery, because at least some courts have required
3 immigrants to show good cause before obtaining discovery. *See Toolasprashad v.*
4 *Tryon*, No. 12CV734, 2013 WL 1560176, at *2 (W.D.N.Y. Apr. 11, 2013)
5 (collecting cases). Moreover, Mr. Vu is entitled to an evidentiary hearing on any
6 material factual disputes, *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009),
7 meaning that “an evidentiary hearing [may be] required.” *Weygandt*, 718 F.2d at
8 954.

9 **C. Federal Defenders has a statutory mandate and a decades-long, circuit-**
10 **wide practice of representing immigrants in § 2241 proceedings.**

11 Appointing Federal Defenders to this case is in keeping with statute and
12 circuit-wide practice. The Criminal Justice Act provides:

13 Whenever the United States magistrate judge or the court determines that
14 the interests of justice so require, representation may be provided for any
15 financially eligible person who . . . is seeking relief under section 2241 . . .
16 of title 28.

17 18 U.S.C. § 3006A(a)(2).

18 Pursuant to that grant, judges have been appointed Federal Defenders to
19 *Zadvydas* cases since the beginning. *Zadvydas* itself arose from two consolidated
20 cases, *Zadvydas* and *Ma v. Ashcroft*, 208 F.3d 815 (9th Cir. 2000). Western District
21 of Washington Federal Defenders represented Mr. Ma in the Supreme Court and in
22 the Ninth Circuit. Brief for the Respondent, *Reno v. Ma*, 2000 WL 1891006; *Ma v.*
23 *Ashcroft*, 257 F.3d 1095 (9th Cir. 2001).

24 Appointment continued after *Zadvydas* was handed down. For example, in
25 *Binh et al. v. INS*, 01-cv-00188-W-AJB, Judge Whalen appointed Federal
26 Defenders of San Diego to represent 28 petitioners—including Mr. Vu—in one of
27 the first post-*Zadvydas* habeas petitions. *Binh et al. v. INS*, 01-cv-00188-W-AJB,
28 Dkt. No. 5. A declaration submitted in support of the appointment motion attested

1 that Federal Defenders were doing similar work in the Western and Eastern
2 Districts of Washington, the District of Oregon, the Eastern and Central Districts
3 of California, and the District of Nevada. *Id.*, Dkt. No. 3 at ¶ 3.

4 Today, judges across the Ninth Circuit continue to appoint federal defenders
5 in immigration habeas cases like this one. *See, e.g., Tairov v. Bondi*, 25-CV-1558-
6 RSM, Dkt. No. 4 (W.D. Wash. Aug. 22, 2025); *Malitskyi v. Rivas*, 25-CV-2929-
7 PHX-MTL, Dkt. No. 7 (D. Ariz. Aug. 20, 2025); *Cruz v. Mattos*, 25-CV-1340, Dkt.
8 No. 3 (D. Nev. Aug. 6, 2025); *Martinez-Sanchez v. Nielsen*, 18-CV-25920JGB
9 (C.D. Cal. Dec. 19, 2018). Oregon even has a standing order charging Federal
10 Defenders with screening and providing representation in immigration habeas
11 cases. *In Re: Appointment of Counsel for Immigration Detainees Seeking Habeas*
12 *Relief Under 28 U.S.C. § 2241*, Standing Order 2025-6, available at
13 <https://www.ord.uscourts.gov/index.php/rules-orders-and-notice/standing-orders>.

14 Appointing Federal Defenders here would therefore accord with the Criminal
15 Justice Act and decades-long practices in this district and beyond.

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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. Vu in litigating this habeas petition.

DATED: 9-28-25

Respectfully submitted,



HIEN VU

Petitioner

PROOF OF SERVICE

I, the undersigned, will cause the attached Motion for Appointment of Counsel to be emailed to Janet Cabral, janet.cabral@usdoj.gov, when I receive the court-stamped copy.

Date: 9/30/2025

/s/ Katie Hurrelbrink
Katie Hurrelbrink

Exhibit A

1 **Hien Vu**

2 A# 

3 Otay Mesa Detention Center

4 P.O. Box 439049

5 San Diego, CA 92143-9049

6 Pro Se

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

9 HIEN VU,

CIVIL CASE NO.:

10 Petitioner,

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12 KRISTI NOEM, Secretary of the
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16 Immigration and Customs Enforcement,
17 JESUS ROCHA, Acting Field Office
18 Director, San Diego Field Office,
19 CHRISTOPHER LAROSE, Warden at
20 Otay Mesa Detention Center,

21 Respondents.

**First Declaration
of
Katie Hurrelbrink**

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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. Vu's immigration habeas case to determine whether—in
5 keeping with longstanding district practice—Federal Defenders should
6 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.
- 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 2025.
- 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 I declare under penalty of perjury that the foregoing is true and correct,
20 executed on September 30, 2025, in San Diego, California.

21
22
23 /s/ Katie Hurrelbrink
24 **KATIE HURRELBRINK**
25 Declarant
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