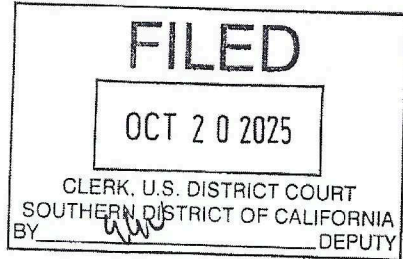


1 **Quoc Anh Nguyen**

2 ~~XXXXXXXXXX~~
3 Otay Mesa Detention Center
4 P.O. Box 439049
San Diego, CA 92143-9049

5 Pro Se¹



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

10 QUOC ANH NGUYEN,
11
12 Petitioner,

13 v.

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

18 Respondents.
19

CIVIL CASE NO.: '25CV2792 LL VET

**Petition for Writ
of
Habeas Corpus**
[28 U.S.C. § 2241]

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25 ¹ Mr. Nguyen is filing this petition for a writ of habeas corpus with the assistance
26 of the Federal Defenders of San Diego, Inc., who drafted the instant petition. That
27 same counsel also assisted the petitioner in preparing and submitting his request
28 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 Katie Hurrelbrink in Support of Appointment Motion
attaches case examples.

1 INTRODUCTION

2 Mr. Nguyen and his family fled Vietnam in 1982. In the mid-2000s, he
3 sustained some theft-related convictions, leading to a final order of removal in
4 2007. But there was a problem: Vietnam has a longstanding policy of not
5 accepting pre-1995 Vietnamese immigrants for deportation. Thus, after detaining
6 Mr. Nguyen for three to four months, ICE had to release him.

7 Mr. Nguyen remained on supervision for 18 years. During that time, he
8 checked in with ICE as scheduled, and he sustained no convictions.

9 Nevertheless, ICE arrested him at his scheduled check in on April 14, 2025.
10 He has now been **detained for over 6 months in 2025**, meaning that the **current**
11 **administration** has tried without success to remove him for an entire *Zadvydas*
12 grace period. Contrary to regulation, ICE has never identified any changed
13 circumstances that made his removal more likely or given Mr. Nguyen an
14 opportunity to contest re-detention. Worse yet, on July 9, 2025, ICE adopted a
15 new policy permitting removals to third countries with no notice, six hours'
16 notice, or 24 hours' notice depending on the circumstances, providing no
17 meaningful opportunity to make a fear-based claim against removal.

18 Mr. Nguyen's detention violates *Zadvydas v. Davis*, 533 U.S. 678 (2001),
19 Mr. Nguyen's statutory and regulatory rights, and the Fifth Amendment.
20 Mr. Nguyen must be released under *Zadvydas* because—having proved unable to
21 remove him for over 18 years, including during a 6-month detention stint in
22 2025—the government cannot show that there is a “significant likelihood of
23 removal in the reasonably foreseeable future.” *Id.* at 701. ICE's failure to follow
24 its own regulations provides a second, independent ground for release. Finally,
25 ICE may not remove Mr. Nguyen to a third country without providing an
26 opportunity to assert a fear-based claim before an immigration judge. This Court
27 should grant this petition on all three grounds.
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STATEMENT OF FACTS

I. When ICE could not remove Mr. Nguyen to Vietnam, he lived peacefully in the community for 18 years.

In 1982, Mr. Nguyen fled the Communist regime in Vietnam with his parents and two older brothers. Exh. A at ¶ 1. The family received green cards. *Id.* In the mid-2000s, Mr. Nguyen sustained some convictions. He cannot remember exactly what he was convicted of—he thinks it might have been check fraud and burglary. *Id.* at ¶ 2. The timeline is also uncertain. According to the EOIR website, Mr. Nguyen was ordered removed on March 13, 2007.² But Mr. Nguyen thought that the convictions and his removal order date to around 2011. Exh. A at ¶ 2. Either way, he remembers that ICE held him in detention for three or four months after he was ordered removed. *Id.* ICE then released Mr. Nguyen because he could not be removed to Vietnam. *Id.*

Since Mr. Nguyen’s release, he has not sustained any further convictions. *Id.* at ¶ 5. And he has always checked in with ICE as scheduled, first monthly, then annually. *Id.* at ¶ 4. Mr. Nguyen has lived quietly with his mother, assisting her with mortgage payments and doing chores around the house. *Id.* at ¶ 9.

When he came to his annual check-in in 2025, however, ICE told him to come back in four months. *Id.* at ¶ 6. When he showed up as scheduled on April 14, 2025, ICE detained him. *Id.*

From April to July, Mr. Nguyen had no meetings with his deportation officer. *Id.* at ¶ 7. Finally, in July, ICE asked him to fill out travel document forms. He did. *Id.* ICE asked him to fill out forms in August and October, too. He agreed. *Id.* It is now mid-October—over six months after he was first detained—and he has not heard anything about a travel document. *Id.* He has tried asking for updates from ICE employees who come into his pod, and he has attempted to

² <https://acis.eoir.justice.gov/en/>

1 email his deportation officer on a detention center tablet. *Id.* But he always
2 receives the same response: that ICE is working on obtaining travel documents
3 and he must be patient. *Id.*

4 Mr. Nguyen has never received an informal interview explaining the
5 reasons for his re-detention. *Id.* at ¶ 9. He has not gotten an opportunity to explain
6 why he should not be re-detained. *Id.* No one has told him what changed to make
7 his removal more likely. *Id.*

8 While Mr. Nguyen is detained, his mother must cover the entire mortgage
9 herself. *Id.* at ¶ 9. Though she is 72 years old, she has to work 11- or 12-hour
10 shifts to make ends meet. *Id.*

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

13 There is an obvious reason why ICE has proved unable to remove
14 Mr. Nguyen for the last 25 years: Vietnam has a longstanding policy of not
15 accepting pre-1995 Vietnamese immigrants for deportation. In 2008, Vietnam and
16 the United States signed a repatriation treaty under which Vietnam agreed to
17 consider accepting certain Vietnamese immigrants for deportation. *See Trinh v.*
18 *Homan*, 466 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020). The treaty exempted pre-
19 1995 Vietnamese immigrants, providing, “Vietnamese citizens are not subject to
20 return to Vietnam under this Agreement if they arrived in the United States before
21 July 12, 1995.” Agreement Between the United States of America and Vietnam,
22 at 2 (Jan. 22, 2008).³

23 Despite that limit, the first Trump administration detained Vietnamese
24 immigrants and held them for months, while the administration tried to pressure
25 Vietnam to take them. *See Trinh*, 466 F. Supp. 3d at 1083–84. That possibility did
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28 ³ available at <https://www.state.gov/wp-content/uploads/2019/02/08-322-Vietnam-Repatriations.pdf>

1 not materialize. “In total, between 2017 and 2019, ICE requested travel
2 documents for pre-1995 Vietnamese immigrants 251 times. Vietnam granted
3 those requests only 18 times, in just over seven percent of cases.” *Id.* at 1084. The
4 administration was forced to release many of these detainees in 2018. *See id.*

5 Eventually, in 2020, the administration secured a Memorandum of
6 Understanding (“MOU”) with Vietnam, which created a process through which
7 the Vietnamese government could consider some pre-1995 Vietnamese
8 immigrants for removal.⁴ The MOU limited consideration to persons meeting
9 certain criteria, but many these criteria have been shielded from public view. *See*
10 *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *14 (W.D. Wash.
11 Aug. 21, 2025). When an immigrant does qualify, the MOU provides only that
12 Vietnam has “discretion whether to issue a travel document,” which it exercises
13 “on a case-by-case basis.” *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025
14 WL 1993771, at *5 (E.D. Cal. July 16, 2025).

15 Even after signing the MOU, Vietnam overwhelmingly declined to timely
16 issue travel documents for pre-1995 immigrants. By October 2021, ICE had
17 adopted a “policy of generally finding that ‘pre-1995 Vietnamese
18 immigrants’ . . . are not likely to be removed in the reasonably foreseeable
19 future.” Order on Joint Motion for Entry of Stipulated Dismissal, *Trihn*, 18-CV-
20 316-CJC-GJS, Dkt. 161 at 3 (C.D. Cal. Oct. 7, 2021).⁵ That admission aligned
21 with two years’ worth of quarterly reports that ICE agreed to submit as part of a
22 class action settlement. Those quarterly reports showed that between September
23 2021 and September 2023, only four immigrants who came to the U.S. before
24

25 _____
26 ⁴[https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-
b55e67f8f04b/assets/media/ALC-FOIA-Re-Release-MOU-bates-1-8-8-10-21.pdf](https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-b55e67f8f04b/assets/media/ALC-FOIA-Re-Release-MOU-bates-1-8-8-10-21.pdf).
27 ⁵[https://static1.squarespace.com/static/5f0cc12a064e9716d52e6052/t/618e99e5613
d7372c1bb197e/1636735461479/Trinh+-
+Doc+161+Order+Granting+Stip+Dismissal.pdf](https://static1.squarespace.com/static/5f0cc12a064e9716d52e6052/t/618e99e5613d7372c1bb197e/1636735461479/Trinh+-+Doc+161+Order+Granting+Stip+Dismissal.pdf).

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

7 On June 9, 2025, the Trump administration rescinded ICE’s policy of
8 generally finding that pre-1995 Vietnamese immigrants were not likely to be
9 removed in the reasonably foreseeable future. *See Nguyen v. Scott*, No. 2:25-CV-
10 01398, 2025 WL 2419288, at *7 (W.D. Wash. Aug. 21, 2025). But since then,
11 several courts have found that facts on the ground likely have not changed enough
12 to show that these detainees will be timely removed to Vietnam. *See Nguyen v.*
13 *Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *17 (W.D. Wash. Aug. 21,
14 2025); *Hoac*, 2025 WL 1993771, at *4; *Nguyen v. Hyde*, No. 25-CV-11470-MJJ,
15 2025 WL 1725791, at *5 (D. Mass. June 20, 2025).

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

18 When immigrants cannot be removed to their home country—including
19 Vietnamese immigrants—ICE has begun deporting those individuals to third
20 countries without adequate notice or a hearing. The Trump administration
21 reportedly has negotiated with at least 58 countries to accept deportees from other
22 nations. Edward Wong et al, *Inside the Global Deal-Making Behind Trump’s*
23 *Mass Deportations*, N.Y. Times, June 25, 2025. On June 25, 2025, the New York
24 Times reported that seven countries—Costa Rica, El Salvador, Guatemala,
25 Kosovo, Mexico, Panama, and Rwanda—had agreed to accept deportees who are
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28 ⁶ <https://www.asianlawcaucus.org/news-resources/guides-reports/trinh-reports>

1 not their own citizens. *Id.* Since then, ICE has carried out highly publicized third
2 country deportations to South Sudan and Eswatini.

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

21 On June 23 and July 3, 2025, the Supreme Court issued a stay of a national
22 class-wide preliminary injunction issued in *D.V.D. v. U.S. Department of*
23 *Homeland Security*, No. CV 25-10676-BEM, 2025 WL 1142968, at *1, 3 (D.
24 Mass. Apr. 18, 2025), which required ICE to follow statutory and constitutional
25 requirements before removing an individual to a third country. *U.S. Dep't of*
26 *Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (mem.); *id.*, No. 24A1153, 2025
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1 WL 1832186 (U.S. July 3, 2025).⁷ On July 9, 2025, ICE rescinded previous
2 guidance meant to give immigrants a “‘meaningful opportunity’ to assert claims
3 for protection under the Convention Against Torture (CAT) before initiating
4 removal to a third country” like the ones just described. Exh. B.

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
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24 ⁷ Though the Supreme Court’s order was unreasoned, the dissent noted that the
25 government had sought a stay based on procedural arguments applicable only to
26 class actions. *Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2160 (2025)
27 (Sotomayor, J., dissenting). Thus, “even if the Government [was] correct that
28 classwide relief was impermissible” in *D.V.D.*, Respondents still “remain[]
obligated to comply with orders enjoining [their] conduct with respect to individual
plaintiffs” like Mr. Nguyen. *Id.* Thus, the Supreme Court’s decision does not
override courts’ authority to grant individual injunctive relief. *See Nguyen v. Scott*,
No. 2:25-CV-01398, 2025 WL 2419288, at *20–23 (W.D. Wash. Aug. 21, 2025).

1 generally screen within 24 hours.” *Id.* If USCIS determines that the noncitizen
2 does not meet the standard, the individual will be removed. *Id.* If USCIS
3 determines that the noncitizen has met the standard, then the policy directs ICE to
4 either move to reopen removal proceedings “for the sole purpose of determining
5 eligibility for [withholding of removal protection] and CAT” or designate another
6 country for removal. *Id.*

7 CLAIMS FOR RELIEF

8 This Court should grant this petition and order Mr. Nguyen’s immediate
9 release. *Zadvydas v. Davis* holds that immigration statutes do not authorize the
10 government to detain immigrants like Mr. Nguyen, for whom there is “no
11 significant likelihood of removal in the reasonably foreseeable future.” 533 U.S.
12 678, 701 (2001). ICE’s own regulations require changed circumstances before re-
13 detention, as well as a chance to contest a re-detention decision. And due process
14 requires ICE to provide notice and an opportunity to be heard before any removal
15 to a third country.

16
17 **I. Count 1: ICE failed to comply with its own regulations before re-**
18 **detaining Mr. Nguyen, violating his rights under the Fifth Amendment**
19 **and the Administrative Procedures Act.**

20 The Department of Homeland Security has enacted a series of regulations to
21 protect the due process rights of someone who, like Mr. Nguyen, is re-detained
22 following a period of release. Title 8 C.F.R. § 241.4(*l*) applies to re-detention
23 generally, while 8 C.F.R. § 241.13(i) applies to persons released after providing
24 good reason to believe that they will not be removed in the reasonably foreseeable
25 future, *see Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165,
26 at *2 (S.D. Cal. Sept. 15, 2025), as Mr. Nguyen was, Exh. A at ¶ 2.

27 Under these regulations, ICE may “return [a releasee] to custody” because
28 they “violate[d] any of the conditions of release.” 8 C.F.R. § 241.13(i)(1); *see also*
id. § 241.4(*l*)(1). Otherwise, § 241.13(i) permits revocation of release only if the

1 appropriate official (1) “determines that there is a significant likelihood that the
2 alien may be removed in the reasonably foreseeable future,” *id.* § 241.13(i)(2), and
3 (2) makes that finding “on account of changed circumstances.” *Id.*

4 No matter the reason for re-detention, the re-detained person is entitled to
5 “an initial informal interview promptly,” during which they “will be notified of the
6 reasons for revocation.” *Id.* §§ 241.4(l)(1), 241.13(i)(3). The interviewer must
7 “afford[] the [person] an opportunity to respond to the reasons for revocation,”
8 allowing them to “submit any evidence or information” relevant to re-detention and
9 evaluating “any contested facts.” *Id.*

10 ICE is required to follow its own regulations. *United States ex rel. Accardi*
11 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150, 1162
12 (9th Cir. 2004) (“The legal proposition that agencies may be required to abide by
13 certain internal policies is well-established.”). A court may review a re-detention
14 decision for compliance with the regulations. *See Phan v. Beccerra*, No. 2:25-CV-
15 01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025); *Nguyen v. Hyde*, No.
16 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (citing *Kong*
17 *v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)). Many judges in this district
18 have granted habeas petitions or temporary restraining orders when ICE failed to
19 follow these regulations. *See, e.g., Constantinovici v. Bondi*, ___ F. Supp. 3d ___,
20 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025); *Rokhfirooz v.*
21 *Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Phan*
22 *v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct.
23 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept.
24 30, 2025); *Van Tran v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D.
25 Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D.
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1 Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF
2 No. 12 (S.D. Cal. Oct. 9, 2025).⁸

3 None of the prerequisites to detention apply here. Mr. Nguyen was not
4 returned to custody because of a conditions violation. And there are no changed
5 circumstances that justify re-detaining him. The same treaty has applied since 2008,
6 and the same MOU has applied since 2020. Of course, ICE may be planning to try
7 again to remove Mr. Nguyen. But absent any evidence for “why obtaining a travel
8 document is more likely this time around[,] Respondents’ intent to eventually
9 complete a travel document request for Petitioner does not constitute a changed
10 circumstance.” *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771,
11 at *4 (E.D. Cal. July 16, 2025) (citing *Liu v. Carter*, No. 25-3036-JWL, 2025 WL
12 1696526, at *2 (D. Kan. June 17, 2025)). Nor has Mr. Nguyen received the
13 interview required by regulation. Exh. A at ¶ 8. No one from ICE has ever invited
14 him to contest his detention. *Id.*

15 “[B]ecause officials did not properly revoke petitioner's release pursuant to
16 the applicable regulations, that revocation has no effect, and [Mr. Nguyen] is
17 entitled to his release (subject to the same Order of Supervision that governed his
18 most recent release).” *Liu*, 2025 WL 1696526, at *3.

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23 ⁸ Courts in other districts have done the same. *Ceesay v. Kurzdorfer*, 781 F. Supp.
24 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y.
25 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017); *Zhu v. Genalo*,
26 No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7–9 (S.D.N.Y. Aug. 26, 2025);
27 *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *10–12 (D. Or.
28 Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2491782,
at *2–3 (E.D. Tex. July 18, 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP,
2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Liu*, 2025 WL 1696526, at *2;
M.Q. v. United States, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025).

1 **II. Count 2: Mr. Nguyen’s detention violates *Zadvydas* and 8 U.S.C. § 1231.**

2 **A. Legal background**

3 Beyond these regulatory violations, Mr. Nguyen’s detention violates the
4 statute authorizing detention, 8 U.S.C. § 1231(a)(6). In *Zadvydas v. Davis*, 533
5 U.S. 678 (2001), the Supreme Court considered a problem affecting people like
6 Mr. Nguyen: Federal law requires ICE to detain an immigrant during the
7 “removal period,” which typically spans the first 90 days after the immigrant is
8 ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-day removal period
9 expires, detention becomes discretionary—ICE may detain the migrant while
10 continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily, this scheme would
11 not lead to excessive detention, as removal happens within days or weeks. But
12 some detainees cannot be removed quickly. Perhaps their removal “simply
13 require[s] more time for processing,” or they are “ordered removed to countries
14 with whom the United States does not have a repatriation agreement,” or their
15 countries “refuse to take them,” or they are “effectively ‘stateless’ because of their
16 race and/or place of birth.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir.
17 2001). In these and other circumstances, detained immigrants can find themselves
18 trapped in detention for months, years, decades, or even the rest of their lives.

19 If federal law were understood to allow for “indefinite, perhaps permanent,
20 detention,” it would pose “a serious constitutional threat.” *Zadvydas*, 533 U.S. at
21 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by
22 interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

23 As an initial matter, *Zadvydas* held that detention is “presumptively
24 reasonable” for at least six months. *Id.* at 701. This acts as a kind of grace period
25 for effectuating removals.

26 Following the six-month grace period, courts must use a burden-shifting
27 framework to decide whether detention remains authorized. First, the petitioner
28 must make a prima facie case for relief: He must prove that there is “good reason

1 to believe that there is no significant likelihood of removal in the reasonably
2 foreseeable future.” *Id.*

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

8 Using this framework, Mr. Nguyen can make all the threshold showings
9 needed to shift the burden to the government.

10 **B. The six-month grace period expired long ago, and he has been**
11 **detained for another, full six-month *Zadvydas* grace period in**
12 **2025.**

13 As an initial matter, the six-month grace period has long since ended. The
14 *Zadvydas* grace period lasts for “*six months* after a final order of removal—that is,
15 *three months* after the statutory removal period has ended.” *Kim Ho Ma v. Ashcroft*,
16 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, Mr. Nguyen’s order of removal was
17 entered on March 13, 2007. Accordingly, his 90-day removal period began then. 8
18 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period thus expired six months after
19 he was ordered removed and three months after the removal period expired, both
20 of which occurred in September 2007. Not only that, but over six months have
21 elapsed since Mr. Nguyen was re-detained in 2025. *Id.* at ¶ 6. ICE has therefore had
22 an entire, second *Zadvydas* grace period to remove him but has proved unable to
23 do so. Thus, this threshold requirement is indisputably met.

24 **C. Vietnam’s decades-long policy of not repatriating most pre-1995**
25 **Vietnamese immigrants provides good reason to believe that**
26 **Mr. Nguyen will not likely be removed reasonably soon.**

27 Because the six-month grace period has passed, this Court must evaluate
28 Mr. Nguyen’s *Zadvydas* claim using the burden-shifting framework. At the first

1 stage of the framework, Mr. Nguyen must “provide[] good reason to believe that
2 there is no significant likelihood of removal in the reasonably foreseeable future.”
3 *Zadvydas*, 533 U.S. at 701. This standard can be broken down into three parts.

4 **“Good reason to believe.”** The “good reason to believe” standard is a
5 relatively forgiving one. “A petitioner need not establish that there exists no
6 possibility of removal.” *Freeman v. Watkins*, No. CV B:09-160, 2009 WL
7 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does “[g]ood reason to
8 believe’ . . . place a burden upon the detainee to demonstrate no reasonably
9 foreseeable, significant likelihood of removal or show that his detention is
10 indefinite; it is something less than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW,
11 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401
12 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
13 Petitioners need only give a “good reason”—not prove anything to a certainty.

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

24 **“In the reasonably foreseeable future.”** This component of the test
25 focuses on when Mr. Nguyen will likely be removed: Continued detention is
26 permissible only if removal is likely to happen “in the reasonably foreseeable
27 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s
28 removal efforts. If the Court has “no idea of when it might reasonably expect

1 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal
2 is likely to occur—or even that it might occur—in the reasonably foreseeable
3 future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3
4 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL
5 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d
6 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that Mr. Nguyen
7 “would eventually receive” a travel document, he can still meet his burden by
8 giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*,
9 2016 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

10 Mr. Nguyen readily satisfies this standard for two reasons.

11 *First*, as explained above, Vietnam generally does not accept pre-1995
12 Vietnamese immigrants for deportation. Even after Vietnam signed the 2020
13 MOU, ICE had to admit that there was no reasonable likelihood of removing such
14 immigrants in the reasonably foreseeable future, Order on Joint Motion for Entry
15 of Stipulated Dismissal, *Trihn*, 18-CV-316-CJC-GJS, Dkt. 161 at 3 (C.D. Cal.
16 Oct. 7, 2021)—an admission amply backed up by two years’ experience under the
17 MOU, Asian Law Caucus, *Resources on Deportation of Vietnamese Immigrants*
18 *Who Entered the U.S. Before 1995* (Jul. 15, 2025) (providing links to all quarterly
19 reports). Though the Trump administration rescinded this admission, *Nguyen*,
20 2025 WL 2419288, at *7, several courts have found that these barriers continue to
21 obstruct removal for people like Mr. Nguyen. *See Nguyen*, 2025 WL 2419288;
22 *Hoac*, 2025 WL 1993771; *Nguyen*, 2025 WL 1725791.

23 *Second*, Mr. Nguyen’s own experience in years past bears this out. ICE has
24 now had 18 years to deport him, including 5 years under the MOU. He has fully
25 cooperated with ICE’s removal efforts throughout that time, including at yearly
26 check-ins. Exh. A ¶¶ 3–4. Yet ICE has proved unable to remove him.

27 *Third*, Mr. Nguyen’s experience in 2025 reaffirms that he will not be
28 removed in the reasonably foreseeable future. He has already been detained for

1 six months since his arrest in mid-April. *Id.* at ¶ 6. The current administration has
2 therefore had an entire *Zadvydas* grace period to remove him. It still has not been
3 able to do so.

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

8 **D. *Zadvydas* unambiguously prohibits this Court from denying**
9 **Mr. Nguyen’s petition because of his criminal history.**

10 If released on supervision, Mr. Nguyen poses no risk of danger or flight. He
11 has been on supervision for going on two decades. Exh. A at ¶¶ 2–4. He has not
12 had any trouble on supervision. *Id.* In particular, he has reported every year as
13 scheduled, including two check-ins in 2025. *Id.* at ¶¶ 4, 6.

14 Even if the government did try to argue that Mr. Nguyen posed a danger or
15 flight risk, however, *Zadvydas* squarely holds that those are not grounds for
16 detaining an immigrant when there is no reasonable likelihood of removal in the
17 reasonably foreseeable future. 533 U.S. at 684–91.

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

26 The Supreme Court rejected that argument. The Court appreciated the
27 seriousness of the government’s concerns. *Id.* at 691. But the Court found that the
28 immigrant’s liberty interests were weightier. *Id.* The Court had never

1 countenanced “potentially permanent” “civil confinement,” based only on the
2 government’s belief that the person would misbehave in the future. *Id.*

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

16 These conditions have proved sufficient to protect the public for almost two
17 decades. They will continue to do so while ICE keeps trying to deport
18 Mr. Nguyen.

19 **III. Count 3: ICE may not remove Mr. Nguyen 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 his removal
22 to a third country without adequate notice and an opportunity to be heard. These
23 policies violate the Fifth Amendment, the Convention Against Torture, and
24 implementing regulations.

25 **A. Legal background**

26 U.S. law enshrines protections against dangerous and life-threatening
27 removal decisions. By statute, the government is prohibited from removing an
28 immigrant to any third country where they may be persecuted or tortured, a form

1 of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A). The
2 government “may not remove [a noncitizen] to a country if the Attorney General
3 decides that the [noncitizen’s] life or freedom would be threatened in that country
4 because of the [noncitizen’s] race, religion, nationality, membership in a particular
5 social group, or political opinion.” *Id.*; *see also* 8 C.F.R. §§ 208.16, 1208.16.
6 Withholding of removal is a mandatory protection.

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

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

22 The government must also “ask the noncitizen whether he or she fears
23 persecution or harm upon removal to the designated country and memorialize in
24 writing the noncitizen’s response. This requirement ensures DHS will obtain the
25 necessary information from the noncitizen to comply with section 1231(b)(3) and
26 avoids [a dispute about what was said].” *Aden*, 409 F. Supp. 3d at 1019. “Failing to
27 notify individuals who are subject to deportation that they have the right to apply
28 for asylum in the United States and for withholding of deportation to the country to

1 which they will be deported violates both INS regulations and the constitutional
2 right to due process.” *Andriasian*, 180 F.3d at 1041.

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

17 “[L]ast minute” notice of the country of removal will not suffice, *Andriasian*,
18 180 F.3d at 1041; *accord Najjar v. Lunch*, 630 Fed. App’x 724 (9th Cir. 2016), and
19 for good reason: To have a meaningful opportunity to apply for fear-based
20 protection from removal, immigrants must have time to prepare and present
21 relevant arguments and evidence. Merely telling a person where they may be sent,
22 without giving them a chance to look into country conditions, does not give them a
23 meaningful chance to determine whether and why they have a credible fear.

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

27 The policies in the June 6, 2025 memo do not adhere to these requirements.
28 First, under the policy, ICE need not give immigrants *any* notice or hearing before

1 removing them to a country that—in the State Department’s estimation—has
2 provided “credible” “assurances” against persecution and torture. Exh. B. By
3 depriving immigrants of any chance to challenge the State Department’s view, this
4 policy violates “[t]he essence of due process,” “the requirement that a person in
5 jeopardy of serious loss be given notice of the case against him and opportunity to
6 meet it.” *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (cleaned up).

7 Second, even when the government has obtained no credible assurances
8 against persecution and torture, the government can still remove the person with
9 between 6 and 24 hours’ notice, depending on the circumstances. Exh. B.
10 Practically speaking, there is not nearly enough time for a detained person to assess
11 their risk in the third country and marshal evidence to support any credible fear—let
12 alone a chance to file a motion to reopen with an IJ. An immigrant may know
13 nothing about a third country, like Eswatini or South Sudan, when they are
14 scheduled for removal there. Yet if given the opportunity to investigate conditions,
15 immigrants would find credible reasons to fear persecution or torture—like patterns
16 of keeping deportees indefinitely and without charge in solitary confinement or
17 extreme instability raising a high likelihood of death—in many of the third
18 countries that have agreed to removal thus far. Due process requires an adequate
19 chance to identify and raise these threats to health and life. This Court must prohibit
20 the government from removing Mr. Nguyen without these due process safeguards.

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

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

25 **V. Prayer for relief**

26 For the foregoing reasons, Petitioner respectfully requests that this Court:

- 27 1. Order Respondents to immediately release Petitioner from custody;
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2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C. § 1231(a)(6) unless and until Respondents obtain a travel document for his removal;
3. Enjoin Respondents from re-detaining Petitioner without first following all procedures set forth in 8 C.F.R. §§ 241.4(l), 241.13(i), and any other applicable statutory and regulatory procedures;
4. Enjoin Respondents from removing Petitioner to any country other than Vietnam, unless they provide the following process, *see D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025):
 - a. written notice to both Petitioner and Petitioner’s counsel in a language Petitioner can understand;
 - b. a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal;
 - c. if Petitioner is found to have demonstrated “reasonable fear” of removal to the country, Respondents must move to reopen Petitioner’s immigration proceedings;
 - d. if Petitioner is not found to have demonstrated a “reasonable fear” of removal to the country, a meaningful opportunity, and a minimum of fifteen days, for the Petitioner to seek reopening of his immigration proceedings.
5. Order all other relief that the Court deems just and proper.

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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 Petitioner in litigating this habeas petition.

DATED: 10/15/25

Respectfully submitted,



QUOC ANH NGUYEN

Petitioner

PROOF OF SERVICE

I, the undersigned, will cause the attached Petition for a Writ of Habeas Corpus to be emailed to Janet Cabral, janet.cabral@usdoj.gov, when I receive the court-stamped copy.

Date: 10/17/2025

/s/ Katie Hurrelbrink
Katie Hurrelbrink

Exhibit A

1 **Quoc Anh Nguyen**

2 ~~XXXXXXXXXX~~
3 Otay Mesa Detention Center
4 P.O. Box 439049
San Diego, CA 92143-9049

5 Pro Se¹

6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 QUOC ANH NGUYEN,

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,
JESUS ROCHA, Acting Field Office
Director, San Diego Field Office,
CHRISTOPHER LAROSE, Warden at
Otay Mesa Detention Center,

18 Respondents.

CIVIL CASE NO.:

**First Declaration
of
Quoc Anh Nguyen**

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20
21 I, Quoc Anh Nguyen, declare:

- 22
23 1. I came to the United States with my parents and two older brothers in 1982.
24 We were refugees fleeing the Communist regime in Vietnam. We got green
25

26 ¹ Mr. Nguyen is filing this petition for a writ of habeas corpus and all associated
27 documents with the assistance of the Federal Defenders of San Diego, Inc.
28 Federal Defenders has consistently used this procedure in seeking appointment for
immigration habeas cases. The Declaration of Katie Hurrelbrink in Support of
Appointment Motion attaches case examples.

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cards.

2. In the mid-2000s, I sustained some convictions. I believed that those convictions happened around 2011. But I was informed that the EOIR website says that I was ordered removed on March 13, 2007. That is not what I remembered. I remember my convictions and removal order happening around 2011. But I could be wrong. To the best of my memory, the convictions were for check fraud and burglary. ICE held me for three or four months after I signed for my deportation. ICE then released me because they could not remove me to Vietnam.
3. I have always complied with ICE's efforts to remove me. I have never refused to do anything that an ICE officer asked me to do to help with my removal.
4. Since my release, I have always checked in with ICE as scheduled. At first, ICE had me checking in monthly, but over time, ICE told me to start checking in annually.
5. I have had no criminal convictions since ICE released me in 2011.
6. In 2025, however, I came to my annual check in and was told to come back in 4 months, on April 14, 2025. I showed up on April 14, and ICE detained me.
7. ICE did not ask me to fill out any travel document forms until July. I filled them out. ICE gave me another set of travel document forms in August. I filled them out too. ICE gave me a third form to sign in October. I filled that out as well. I've tried to talk to ICE officers that come into my pod about my

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case. The only thing that they've told me about my case is that I have to be patient. I've also been messaging ICE on a tablet and asking for updates about my case. I've been doing that since April. Every time I ask, ICE says that they are processing my travel document and to be patient. Apart from these conversations, I have not had any other meetings with my deportation officers.

8. No one has ever given me an informal interview where I was allowed to explain why I should not be re-detained. No one has ever told me what changed to make my removal more likely.

9. My mom is 72 years old. When I was on release, I helped her with her house payment and everything around the house. Now, she has to work 11 or 12 hour shifts to make the mortgage payment.

10. I have a 401K. I believe that I have about [REDACTED] in that account. I have no other bank accounts. I live in my mom's house—it is not in my name. I have a car, but I am still paying it off. I have about [REDACTED] that I still have to pay off. My son is having to make car payments for me while I am in detention. I have no other assets. While detained, I have no income. I do not think that I can afford an attorney.

11. I have no legal education or training. I know nothing about immigration law. I do not have unrestricted access to the internet, so I cannot research ICE's and Vietnam's latest policies toward people like me.

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I declare under penalty of perjury that the foregoing is true and correct,
executed on Oct 15 2025, in San Diego, California.


QUOC ANH NGUYEN
Declarant