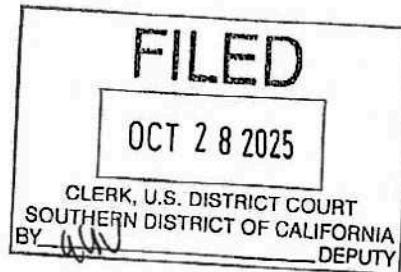


1 **Saengphet**  
2 (a.k.a., Saengphet No Last Name, Saengphet NLN)

3 A   
4 Otay Mesa Detention Center  
5 P.O. Box 439049  
6 San Diego, CA 92143-9049

7 Pro Se<sup>1</sup>



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

10  
11 **SAENGPHET**  
12 (a.k.a., Saengphet No Last Name,  
13 Saengphet NLN),

14 Petitioner,

15 v.

16 KRISTI NOEM, Secretary of the  
17 Department of Homeland Security,  
18 PAMELA JO BONDI, Attorney General,  
19 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,

20 Respondents.

21 CIVIL CASE NO.: '25CV2909 JES BLM

22  
23 **Motion for Appointment  
24 of Counsel**

25  
26 Mr. Saengphet respectfully moves this court to appoint Federal Defenders  
27 of San Diego, Inc., as counsel for petitioner. Mr. Saengphet has a strong claim to  
28 release under *Zadvydas v. Davis*, 533 U.S. 678 (2001), the agency's own

26  
27  
28 <sup>1</sup> Mr. Saengphet 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 regulations, and the Fifth Amendment. But these issues are complex, implicating  
2 constitutional, statutory, regulatory, and immigration law. Additionally, an  
3 evidentiary hearing is sometimes required to resolve *Zadydas* petitions. For these  
4 reasons, **Federal Defenders of San Diego, Inc. is routinely appointed to**  
5 **represent immigrants in bringing regulatory and *Zadydas* claims.** See  
6 Exhibit A, Declaration of Kara Hartzler in Support of Appointment Motion  
7 (“Hartzler Dec.”), ¶¶ 2–3. This Court should follow that practice and appoint  
8 Federal Defenders of San Diego, Inc. to represent Mr. Saengphet in this habeas  
9 case.

10 **STATEMENT OF FACTS**

11 **I. Mr. Saengphet is detained indefinitely.**

12 Mr. Saengphet was born in a refugee camp in Thailand and came to the  
13 United States with his family in 1989. Declaration of Mr. Saengphet attached to  
14 habeas petition as Exhibit A (“Saengphet Dec.”), at ¶ 1. When they arrived in the  
15 U.S., they became lawful permanent residents. *Id.*

16 In 2002, Mr. Saengphet was ordered removed on the basis of a conviction  
17 for assault. *Id.* at ¶ 2, 3. ICE detained him for about two-and-a-half months while  
18 attempting to remove him. *Id.* at ¶ 4. But when the Laotian consulate did not issue  
19 travel documents for him, ICE released him on an order of supervision. *Id.*

20 Since his release from ICE custody, Mr. Saengphet has had no supervised  
21 release violations. *Id.* at ¶ 5. But when his probation officer told him to come in  
22 for a check in on October 15, 2025, ICE arrested him. *Id.* at ¶ 6.

23 ICE’s inability to remove Mr. Saengphet over the last 23 years reflects  
24 Laos’s reticence to accept deportees. As detailed in Mr. Saengphet’s habeas  
25 petition, no repatriation agreement exists between Laos and the United States.  
26 Laos has also been historically unwilling to accept deportees from the United  
27 States through informal negotiations. As a result, there are around 4,800 nationals  
28 of Laos living in the United States with final removal orders who have not been

1 removed. Asian Law Caucus, *Status of Ice Deportations to Southeast Asian*  
2 *Countries: Laos* (July 29, 2025).

3 **II. Mr. Saengphet is indigent and lacks the education, experience,**  
4 **and language skills needed to litigate this habeas petition.**

5 Mr. Saengphet does not have the legal education or training needed to  
6 litigate a complex habeas petition and lacks the money to hire a lawyer.

7 Saengphet Dec. at ¶ 7, 8. Accordingly, Mr. Saengphet requests that this Court  
8 appoint the Federal Defenders of San Diego, Inc., to represent him in the instant  
9 habeas action. That office stands ready and able to assist him in this Petition.

10 **ARGUMENT**

11 “Habeas corpus proceedings are of fundamental importance . . . in our  
12 constitutional scheme because they directly protect our most valued rights.”

13 *Brown v. Vasquez*, 952 F.2d 1164, 1169 (9th Cir. 1991) (quoting *Bounds v. Smith*,  
14 430 U.S. 817, 827 (1977)) (citations and internal quotations omitted).

15 Consequently, federal law permits a district court to appoint counsel in a habeas  
16 proceeding under 28 U.S.C. § 2241 when the “interests of justice so require,” if a  
17 Petitioner has shown that he is unable to afford an attorney. 18 U.S.C.  
18 § 3006A(a)(2)(B). To make this decision, this Court must “evaluate [1] the  
19 likelihood of success on the merits as well as [2] the ability of the Petitioner to  
20 articulate his claims pro se in light of the complexity of the legal issues involved.”

21 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983); *accord Rand v. Rowland*,  
22 113 F.3d 1520, 1525 (9th Cir. 1997).

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

1     **I. Mr. Saengphet will likely succeed on the merits.**

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

9             Neither of these regulations were followed here. Mr. Saengphet has not  
10    violated the conditions of his release, and there are no changed circumstances that  
11    justify re-detaining him. Thus, he is likely to succeed on the merits of this claim.

12             Additionally, *Zadvydas* held that federal law does not authorize the  
13    government to detain an immigrant indefinitely pending removal. Rather, 8  
14    U.S.C. § 1231(a)(6) presumptively permits the government to detain an  
15    immigrant for 180 days after his or her removal order becomes final. After those  
16    180 days have passed, the immigrant must be released unless his or her removal is  
17    reasonably foreseeable. *Zadvydas*, 533 U.S. at 701.

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

24             Here, Mr. Saengphet was detained for about two-and-a-half months after he  
25    was ordered removed, and he has been detained for more than a month this year.  
26    Exh. A at ¶¶ 4, 6. By the time this Court resolves this case, Mr. Saengphet may  
27    have been detained for a total of six months, if not more; ICE will also, of course,

1 have had 23 years since his removal order issued to remove him. Thus, the six-  
2 month grace period has expired.

3 There is good reason to believe that he will not be removed in the  
4 reasonably foreseeable future. ICE has proved unable to remove him for 23 years.  
5 The Laotian consulate rejected a travel documents request. Thus, this Court will  
6 likely grant *Zadvydas* relief, just like other courts. *See Nguyen v. Scott*, No. 2:25-  
7 CV-01398, 2025 WL 2419288, at \*17 (W.D. Wash. Aug. 21, 2025); *Hoac v.*  
8 *Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at \*4 (E.D. Cal. July  
9 16, 2025); *Nguyen v. Hyde*, No. 2:25-CV-11470-MJJ, 2025 WL 1725791, at \*5 (D.  
10 Mass. June 20, 2025). Thus, he is likely to succeed on the merits of his petition.

11 **II. Mr. Saengphet cannot adequately articulate his claims in the absence  
12 of counsel, in light of the complexity of the legal issues involved in his  
13 habeas petition.**

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

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

1                   Mr. Saengphet lacks experience and legal training to contend with this  
2 complicated area of law. Saengphet Dec. at ¶ 8. Accordingly, he would likely be  
3 unable to litigate his habeas petition effectively.

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

21                   For these reasons, appointing Federal Defenders here would therefore  
22 accord with the Criminal Justice Act and decades-long practices. *See, e.g., Ho v.*  
23 *Noem et al*, 25-cv-02453-BAS-BLM, Dkt. No. 7 (S.D. Cal. Oct. 3, 2025); *Phan v.*  
24 *Warden*, 25-cv-02369-AJB-BLM, Dkt. No. 8 (S.D. Cal. Sept. 25, 2025); *Tran v.*  
25 *Noem*, 25-cv-02334-JES-MSB, Dkt. No. 4 (S.D. Cal. Sept. 17, 2025); *Rebenok v.*  
26 *Noem*, 25-cv-02171-TWR-AHG, Dkt. No. 6 (S.D. Cal. Sept. 19, 2025); *Lopez-*  
27 *Cacerez v. McAleenan*, 19-cv-01952-AJB-AGS, Dokt. No. 8 (Feb. 26, 2020);  
28 *Casas Castrillon v. DHS*, 06-cv-01552-BEN-NLS, Dkt. No. 3 (Jan. 31, 2006).

## 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: 10/25/2015

Respectfully submitted,

SAENGPHET NO

Petitioner

**PROOF OF SERVICE**

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

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

Date: 10-28-25



Kara Hartzler

# EXHIBIT A

1 **Saengphet**

2 **(a.k.a., Saengphet No Last Name, Saengphet NLN)**

3 A# ~~██████████~~

4 Otay Mesa Detention Center

5 P.O. Box 439049

6 San Diego, CA 92143-9049

7 Pro Se

8

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

11 **SAENGPHET**

12 **(a.k.a., Saengphet No Last Name,  
Saengphet NLN),**

Civil Case No.:

13 Petitioner,

14 v.

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

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

21 Respondents.

22

23

24

25

26

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28

1. My name is Kara Hartzler. I am an appellate attorney at Federal Defenders of San Diego, Inc. In that capacity, I was assigned to investigate Mr. Soryadvongsa's immigration habeas case to determine whether—in keeping with longstanding district practice—Federal Defenders should seek to be appointed as counsel.
2. In this district, Federal Defenders is regularly appointed to handle *Zadvydas* petitions for those who meet the six-month cutoff. Traditionally, Federal Defenders helps the detainee prepare an initial habeas petition and appointment motion, and the court formally appoints Federal Defenders in the course of reviewing the petition.
3. This declaration attaches several orders appointing Federal Defenders to habeas cases following this procedure. The oldest order is from 2006 and the most recent is from 2024.
4. I have followed that procedure in this case by helping to prepare a habeas petition and appointment motion. I believe that granting appointment in this case would conform to longstanding district practice.

I declare under penalty of perjury that the foregoing is true and correct, executed on October 28, 2025, in San Diego, California.



**KARA HARTZLER**  
Declarant