

1 **Kara Hartzler**
 2 Federal Defenders of San Diego, Inc.
 3 225 Broadway, Suite 900
 4 San Diego, California 92101-5030
 5 Telephone: (619) 234-8467
 6 Facsimile: (619) 687-2666
 7 kara_hartzler@fd.org
 8
 9 Attorneys for Mr. Truong¹

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

12 TAI TRUONG,

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
 21 Director, San Diego Field Office,
 22 CHRISTOPHER LAROSE, Warden at
 23 Otay Mesa Detention Center,

24 Respondents.

CIVIL CASE NO.: '25CV3189 RBM MSB

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

25 ¹ “A person for whom counsel is appointed shall be represented at every stage of
 26 the proceedings from his initial appearance before the United States magistrate
 27 judge or the court through appeal, including ancillary matters appropriate to the
 28 proceedings.” 18 U.S.C. § 3006A. Because this petition is ancillary to *Truong v. Noem*, 25-CV-2597-JES-MMP, in which Federal Defenders was previously appointed, Federal Defenders understands its appointment to extend to this petition.

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INTRODUCTION

This Court previously granted Mr. Truong’s habeas petition based on the government’s failure to comply with its own regulations regarding the procedures for revoking Mr. Truong’s supervised release and re-detaining him. *See Truong v. Noem*, 25-cv-2597-JES-MMP, Dkt. 10, 13. As a result, Mr. Truong was released on October 10, 2025.

But two weeks after his release, the government re-detained Mr. Truong. In three separate documents, it has claimed that it intends to remove Mr. Truong “no later than” October 22, November 1, and November 6. Each of those dates has now come and gone. Yet Mr. Truong remains detained in Otay Mesa. What’s more, it is unclear whether the government still has a valid travel document for Mr. Truong or whether that document has expired.

Given that the government has now tried—and failed—three times to remove Mr. Truong, the government has not shown that his removal to Laos is not significantly likely in the reasonably foreseeable future. Accordingly, this Court should grant his petition for habeas corpus and order him released.

STATEMENT OF THE CASE

I. Mr. Truong was a lawful permanent resident who was ordered removed on the basis of a state criminal conviction.

Tai Truong and his family entered the United States from Laos as refugees in 1979. Exhibit A, Truong Declaration at ¶ 1. Mr. Truong became a lawful permanent resident and remained so until 2015, when he was ordered removed due to a sex offense. *Id.* at ¶ 2. After he was ordered removed, ICE detained him and attempted to obtain travel documents to deport him to Laos. *Id.* at ¶ 3. But when ICE was unable to deport him after five months, he was released on an order of supervision. *Id.* at ¶ 3.

For the next decade, Mr. Truong remained in the United States on this order of supervision. He has no other criminal convictions. *Id.* at ¶ 3.

1 **II. Mr. Truong is detained and files a successful habeas petition.**

2 On July 12, 2025, as he was driving to his father’s funeral, Mr. Truong was
3 pulled over by four unmarked vehicles. *Id.* at ¶ 5. ICE officers arrested him and
4 brought him to the downtown ICE office for several days before taking him to
5 Otay Mesa Detention Center. *Id.*

6 On approximately September 24, 2025, a deportation officer told
7 Mr. Truong that they had obtained his travel documents. *Id.* at ¶ 6. The officer
8 told him that he would be deported to Laos soon. *Id.*

9 On October 1, 2025, Mr. Truong filed a habeas petition alleging three
10 claims: 1) the Court should stay his removal pending his motion to vacate his
11 criminal conviction; 2) the government failed to comply with its own regulations;
12 and 3) ICE should not remove him to a third country without notice and an
13 opportunity to be heard. *See Truong v. Noem*, 25-cv-2597-JES-MMP, Dkt. 1.
14 Mr. Truong did *not* file a claim on the basis that he was being indefinitely
15 detained under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

16 In its return to Mr. Truong’s habeas petition, the government included a
17 declaration from Deportation Officer Jason Cole. *See Exhibit B*. This declaration
18 stated that “ERO has obtained a travel document from Laos to effectuate
19 [Mr. Truong’s] removal order,” and that Mr. Truong had been “nominated for an
20 upcoming charter flight to Laos.” *Exh. B* at ¶ 12. It also stated that the
21 government “anticipates Petitioner will be removed to Laos by November 1,
22 2025.” *Id.*

23 On October 10, 2025, Judge Simmons granted Mr. Truong’s habeas
24 petition as to the regulatory claim and ordered his release. Dkt. 10. Judge
25 Simmons also ordered the government to file a Status Report in the event it
26 intended to re-detain Mr. Truong. *See Exhibit C, Order Granting Petition* at 12.
27 The Order also stated that, “[i]n the event Petitioner seeks further habeas relief
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1 arising from the Government’s conduct related to its future execution of the
2 removal order, Petitioner must file a new Petition.” Exh. C at 12.

3 **III. The government re-detains Mr. Truong but misses all three of its**
4 **stated deadlines to remove him.**

5 Six days after Mr. Truong was released, the government filed a status report
6 stating its intent to re-detain Mr. Truong. *See* Exhibit D, Notice Regarding Status.
7 This Notice stated that the government intended to execute his removal order “no
8 later than October 22, 2025.” *Id.*

9 But the government did not remove Mr. Truong on October 22, 2025.
10 Nevertheless, it re-detained him two days later, on October 24, 2025.

11 When it re-detained Mr. Truong, the government provided him a Notice of
12 Revocation of Release. *See* Exhibit E, Notice of Revocation of Release. This
13 Notice stated, “ICE has obtained a valid travel document and a flight to LAOS is
14 scheduled on or before November 6, 2025.” *Id.*

15 But the government did not remove Mr. Truong on November 6, 2025. To
16 his knowledge, Mr. Truong is not scheduled for any upcoming flights.

17 Mr. Truong also believes his travel document may have expired. Most
18 travel documents to Laos are valid for 90 days, and the government obtained
19 Mr. Truong’s travel document months ago. *See* Exh. B, Cole Declaration.
20 Furthermore, Mr. Truong’s aunt reached out to an ambassador at the Laotian
21 consulate, who indicated that his travel document was issued sometime over the
22 summer. Thus, the travel document the government previously obtained for
23 Mr. Truong has likely expired.

24 **ARGUMENT**

25 **The government’s repeated failures to remove Mr. Truong show that his**
26 **removal is not significantly likely in the reasonably foreseeable future.**

27 **A. Legal background**

28 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered

1 a problem affecting people like Mr. Truong: Federal law requires ICE to detain an
2 immigrant during the “removal period,” which typically spans the first 90 days
3 after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-
4 day removal period expires, detention becomes discretionary—ICE may detain
5 the migrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily,
6 this scheme would not lead to excessive detention, as removal happens within
7 days or weeks. But some detainees cannot be removed quickly. Perhaps their
8 removal “simply require[s] more time for processing,” or they are “ordered
9 removed to countries with whom the United States does not have a repatriation
10 agreement,” or their countries “refuse to take them,” or they are “effectively
11 ‘stateless’ because of their race and/or place of birth.” *Kim Ho Ma v. Ashcroft*,
12 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances, detained
13 immigrants can find themselves trapped in detention for months, years, decades,
14 or even the rest of their lives. If federal law were understood to allow for
15 “indefinite, perhaps permanent, detention,” it would pose “a serious constitutional
16 threat.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided the
17 constitutional concern by interpreting § 1231(a)(6) to incorporate implicit limits.
18 *Id.* at 689.

19 *Zadvydas* held that § 1231(a)(6) presumptively permits the government to
20 detain an immigrant for 180 days after his or her removal order becomes final.
21 After those 180 days have passed, the immigrant must be released unless his or
22 her removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 701. After six
23 months have passed, the petitioner must only make a prima facie case for relief—
24 there is “good reason to believe that there is no significant likelihood of removal
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1 in the reasonably foreseeable future.” *Id.* Then the burden shifts to “the
2 Government [to] respond with evidence sufficient to rebut that showing.” *Id.*²
3 Mr. Truong can make all the threshold showings needed to shift the burden to the
4 government.

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

6 The six-month grace period has long since ended. The *Zadvydas* grace
7 period is linked to the date the final order of removal is issued. It lasts for “*six*
8 *months* after a final order of removal—that is, *three months* after the statutory
9 removal period has ended.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th
10 Cir. 2001). Indeed, the statute defining the beginning of the removal period is
11 linked to the latest of three dates, all of which relevant here are tied to when the
12 removal order is issued. 8 U.S.C. § 1231(a)(1)(B).³

13 Here, Mr. Truong’s order of removal was entered on December 1, 2015.
14 Exh. B at ¶ 6.⁴ Accordingly, his 90-day removal period began then. 8 U.S.C.
15 § 1231(a)(1)(B). The *Zadvydas* grace period thus expired in June 2016, three
16 months after the removal period ended. *See, e.g., Tadros v. Noem*, 2025 WL
17 1678501, No. 25-cv-4108(EP), *2–*3.

18 Regardless, Mr. Truong was detained for about three months after he was
19 ordered removed, and he has been detained for at least three months this year.
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22 ² Further, even before the 180 days have passed, the immigrant must still be
23 released if he *rebutts* the presumption that his detention is reasonable. *See, e.g.,*
24 *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal. 2020) (collecting cases
25 on rebutting the *Zadvydas* presumption before six months have passed); *Zavvar*,
2025 WL 2592543 at *6 (finding the presumption rebutted for a person who was
released and, years later, re-detained for less than six months).

26 ³ Those dates are, specifically, (1) “[t]he date the order of removal becomes
27 administratively final;” (2) “[i]f the removal order is judicially reviewed and if a
28 court orders a stay of the removal of the alien, the date of the court’s final order;”
or (3) “[i]f the alien is detained or confined (except under an immigration
process), the date the alien is released from detention or confinement.” *Id.*

⁴ EOIR, *Automated Case Information*, <https://acis.eoir.justice.gov/en/>.

1 Exh. B at ¶¶ 6, 8. And ICE has had ten years since his removal order issued to
2 remove him.⁵

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4 **C. The government’s failure to remove Mr. Truong by three of its**
5 **own deadlines, combined with doubts about the validity of his**
6 **travel document, provide good reason to believe that he will not**
7 **likely be removed in the reasonably foreseeable future.**

8 This Court uses a burden-shifting framework to evaluate Mr. Truong’s
9 *Zadvydas* claim. At the first stage of the framework, Mr. Truong must “provide[]
10 good reason to believe that there is no significant likelihood of removal in the
11 reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. This standard can be
12 broken down into three parts.

13 “**Good reason to believe.**” The “good reason to believe” standard is a
14 relatively forgiving one. “A petitioner need not establish that there exists no
15 possibility of removal.” *Freeman v. Watkins*, No. CV B:09-160, 2009 WL
16 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does “[g]ood reason to
17 believe’ . . . place a burden upon the detainee to demonstrate no reasonably
18 foreseeable, significant likelihood of removal or show that his detention is

19 ⁵ The government has sometimes argued that release and rearrest resets the six-
20 month grace period completely, taking the clock back to zero. “Courts . . . broadly
21 agree” that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *7 n.6
22 (W.D. La. Oct. 15, 2019), *report and recommendation adopted*, 2019 WL
23 6037220 (W.D. La. Nov. 13, 2019); *see also Sied v. Nielsen*, No. 17-CV-06785-
24 LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018) (collecting cases).

25 It has also sometimes argued that rearrest creates a new three-month grace
26 period. As a court explained in *Bailey v. Lynch*, that view cannot be squared with
27 the statutory definition of the removal period in 8 U.S.C. § 1231(a)(1)(B). No. CV
28 16-2600 (JLL), 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016). “Pursuant to the
statute, the removal period, and in turn the [six-month] presumptively reasonable
period, begins from the latest of ‘the date the order of removal becomes
administratively final,’ the date of a reviewing court’s final order where the
removal order is judicially removed and that court orders a stay of removal, or the
alien’s release from detention or confinement where he was detained for reasons
other than immigration purposes at the time of his final order of removal.” *Id.*
None of these statutory starting points have anything to do with whether or when
an immigrant is detained. *See id.* Because the statutorily-defined removal period
has nothing to do with release and rearrest, releasing and rearresting the
immigrant cannot reset the removal period.

1 indefinite; it is something less than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW,
2 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401
3 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
4 Petitioners need only give a “good reason”—not prove anything to a certainty.

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

15 **“In the reasonably foreseeable future.”** This component of the test
16 focuses on when Mr. Truong will likely be removed: Continued detention is
17 permissible only if removal is likely to happen “in the reasonably foreseeable
18 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s
19 removal efforts. If the Court has “no idea of when it might reasonably expect
20 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal
21 is likely to occur—or even that it might occur—in the reasonably foreseeable
22 future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3
23 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL
24 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d
25 93, 102 (W.D.N.Y. 2019)).

26 Mr. Truong satisfies this standard for two reasons.

27 *First*, as explained above, the government asserted three dates by which it
28 would remove Mr. Truong—all of which have come and gone. First, DO Cole

1 claimed that “Petitioner is nominated for an upcoming charter flight to Laos,” and
2 that he would be “removed to Laos by November 1, 2025.” Exh. B at ¶ 12.
3 Second, the government’s Status Report filed on October 16 claimed that
4 Mr. Truong would be removed “no later than October 22, 2025.” Exh. D. Third,
5 the Notice of Revocation of Release Mr. Truong received when he was redetained
6 stated that “a flight to LAOS is scheduled on or before November 6, 2025.” Exh.
7 E. The government’s failure to comply with any of its own deadlines for
8 removing Mr. Truong demonstrate that his removal is not significantly likely in
9 the reasonably foreseeable future—if it were, the government would have already
10 removed him on one of the three dates it claimed it would do so.

11 *Second*, Mr. Truong has reason to believe that his travel document has
12 expired. Mr. Truong’s aunt has reached out to the Laotian consulate, which
13 indicated that his travel document issued more than three months ago. Because
14 Laotian travel documents are only valid for 90 days, Mr. Truong’s travel
15 document has likely expired. At a minimum, the Court should order the
16 government to provide information on whether the travel document it previously
17 obtained remains valid or has expired.

18 For these reasons, Mr. Truong has met his initial burden, and the burden
19 shifts to the government. Unless the government can prove a “significant
20 likelihood of removal in the reasonably foreseeable future,” Mr. Truong must be
21 released. *Zadvydas*, 533 U.S. at 701.

22 **D. *Zadvydas* unambiguously prohibits this Court from denying**
23 **Mr. Truong’s petition because of his criminal history.**

24 If released on supervision, Mr. Truong poses no risk of danger or flight. He
25 has been on supervision for ten years and has sustained no new convictions. And
26 he has checked in regularly with ICE during this time.

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1 Regardless, *Zadvydas* squarely holds that danger or flight are not grounds for
2 detaining an immigrant when there is no reasonable likelihood of removal in the
3 reasonably foreseeable future. 533 U.S. at 684–91.

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

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

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

3 These conditions have proved sufficient to protect the public over the last
4 decade. They will continue to do so while ICE keeps trying to deport Mr. Truong.

5 **II. This Court must hold an evidentiary hearing on any disputed facts.**

6 Resolution of a prolonged-detention habeas petition may require an
7 evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009).

8 Mr. Tran hereby requests such a hearing on any material, disputed facts.

9 **III. Prayer for relief**

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

- 11 1. Order Respondents to immediately release Petitioner from custody;
- 12 2. Enjoin Respondents from re-detaining Petitioner without providing
13 evidence that Mr. Truong has a valid travel document and has been
14 confirmed on an upcoming flight;
- 15 3. Enjoin Respondents from re-detaining Petitioner no earlier than three
16 days before a scheduled flight; and
- 17 4. Order all other relief that the Court deems just and proper.

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19 Respectfully submitted,

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21 Dated: November 17, 2025

s/ Kara Hartzler

22 Kara Hartzler
23 Federal Defenders of San Diego, Inc.
24 Attorneys for Mr. Truong
25 Email: kara_hartzler@fd.org