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

12 PHUOC VAN NGO,

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.: '25CV3234 JLS MMP

**Petition for Writ  
of  
Habeas Corpus**

**[Civil Immigration Habeas,  
28 U.S.C. § 2241]**

25  
26 \_\_\_\_\_  
27 <sup>1</sup> Federal Defenders of San Diego, Inc., is filing the instant petition with  
28 provisional appointment under Chief Judge Order No. 134. Mr. Ngo's financial  
eligibility for representation is included in a sworn statement attached to this  
petition.

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1  
2 **I. Introduction**

3 Mr. Ngo fled Vietnam in 1981. In 1995, Mr. Ngo was ordered removed.  
4 But Vietnam wouldn't accept him, in line with its longstanding policy of not  
5 accepting pre-1995 immigrants for deportation. Mr. Ngo remained on supervision,  
6 including for five years under the still-operative agreement between Vietnam and  
7 the United States permitting the limited deportation of some pre-1995 immigrants.

8 On November 7, 2025, ICE arrested Mr. Ngo at the restaurant where he  
9 works. It gave him a piece of paper in English, a language he does not speak, with  
10 no translation into Vietnamese. Contrary to regulation, that paper did not notify  
11 Mr. Ngo of the specific “reasons” for his re-detention that made his removal more  
12 likely, 8 C.F.R. § 241.13(i)(3)—like it receiving news from Vietnam that it would  
13 now accept Mr. Ngo, despite not accepting him for all these decades. Nor has it  
14 given Mr. Ngo a “prompt[]” “informal interview,” or any other opportunity to  
15 contest his re-detention, in any language. 8 C.F.R. §§ 241.13(i)(3), 241.4(l)(1).

16 Mr. Ngo's unnecessary re-detention violates his statutory and regulatory  
17 rights, *Zadvydas v. Davis*, 533 U.S. 678 (2001), and the Fifth Amendment. Courts  
18 in this district have agreed in similar circumstances. Specifically:

19 (1) *Regulatory and due process claim*: Mr. Ngo must be released because  
20 ICE's failure to follow its own regulations—about timely notifying noncitizens of  
21 the reasons for their re-detention, about promptly providing a meaningful  
22 opportunity to be heard following re-detention, and about the limited reasons ICE  
23 can invoke to re-detain someone—repeatedly violated due process. *See, e.g.*,  
24 *Nguyen v. Noem*, No. 25-cv-2791-BAS, ECF No. 12 (S.D. Cal. Nov. 7, 2025);  
25 *Nguyen v. Noem*, No. 25-cv-2792-LL, ECF No. 10 (S.D. Cal. Nov. 6, 2025);  
26 *Ghafouri v. Noem*, 25-cv-2675-RBM, ECF No. 11 (S.D. Cal. Nov. 4, 2025); *Tran*  
27 *v. Noem*, No. 25-cv-2391-BTM, 2025 WL 3005347 (S.D. Cal. Oct. 27, 2025); *Bui*  
28 *v. Warden*, No. 25-cv-2111-JES, ECF No. 18 (S.D. Cal. Oct. 23, 2025);

1 *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12, 17 (S.D. Cal.  
2 Oct. 9, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal.  
3 Sept. 30, 2025); *Rokhfirooz v. Larose*, \_\_ F. Supp. 3d \_\_, 2025 WL 2646165  
4 (S.D. Cal. Sept. 15, 2025) (granting temporary restraining orders releasing  
5 noncitizens, or granting habeas petitions, due to ICE regulatory violations during  
6 recent re-detentions of released noncitizens previously ordered removed under 8  
7 C.F.R. §§ 241.13(i), 241.4(l)).

8 (2) *Zadvydas claim*: Mr. Ngo must also be released under *Zadvydas*  
9 because—having proved unable to remove him for the last thirty years—the  
10 government cannot show that there is a “significant likelihood of removal in the  
11 reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. *See, e.g., Phan v.*  
12 *Warden of Otay Mesa Detention Facility*, No. 25-cv-2369-AJB, 2025 WL  
13 3141205 (S.D. Cal. Nov. 10, 2025); *Gharakhan v. Noem*, No. 25-cv-2879-DMS,  
14 ECF No. 11 (S.D. Cal. Nov. 5, 2025); *Ho v. Noem*, No. 25-cv-2453-BAS, ECF  
15 No. 11 (S.D. Cal. Oct. 20, 2025); *Conchas-Valdez*, 2025 WL 2884822, No. 25-cv-  
16 2469-DMS (S.D. Cal. Oct. 6, 2025); *Rebenok v. Noem*, No. 25-cv-2171-TWR,  
17 ECF No. 13 (S.D. Cal. Sept. 25, 2025) (granting habeas petitions or TROs  
18 releasing noncitizens under *Zadvydas*).

19 **II. Statement of Facts**

20 **A. Mr. Ngo is ordered removed, held in ICE custody, and released**  
21 **as ICE proves unable to deport him for the next three decades,**  
22 **until he is arrested at his ICE check-in.**

23 In 1981, Phuoc Ngo fled Vietnam. Declaration of Phuoc Ngo, Exhibit A  
24 ¶ 2. He obtained a green card. *Id.* Following a conviction in San Diego County,  
25 Mr. Ngo was ordered removed to Vietnam on June 2, 1995. *Id.* ¶ 3. <sup>2</sup> ICE held  
26 him “for about five to six months” after that, but it was unable to deport him. *Id.*

27 \_\_\_\_\_  
28 <sup>2</sup> EOIR, *Automated Case Information*, <https://acis.eoir.justice.gov/en/> (searching  
with Mr. Ngo’s A-number 

1 He was released on an order of supervision. *Id.*

2 On November 7, 2025, Mr. Ngo was arrested by ICE agents at the  
3 restaurant where he works and brought to the Otay Mesa Detention Center, where  
4 he remains. *Id.* at ¶ 4. He explains:

5 They gave me pieces of paper in English and told me to sign and I  
6 signed. They didn't let me talk. They did not translate anything into  
Vietnamese. I do not know what the papers say.

7 I understand some English words, but not most. I speak and  
8 understand Vietnamese.

9 As of today, no one has told me the reasons why I was arrested in a  
10 language I can understand. No one has given me a chance to fight  
11 my arrest. No one has told me what changed to make it more likely  
that I can be deported to Vietnam. I haven't been able to talk to an  
ICE officer since the day I was arrested.

12 Exhibit A ¶¶ 4–6 (Declaration of Mr. Ngo dated November 19, 2025).

13 The papers Mr. Ngo received are entitled “Notice of Revocation of  
14 Release.” The notice explains, “This letter is to inform you that your order of  
15 supervision has been revoked, and you will be detained in the custody of U.S.  
16 Immigration and Customs Enforcement (ICE) at this time. This decision has been  
17 made based on a review of your official alien file and a determination that there  
18 are changed circumstances in your case.” Exhibit B. It provides no further  
19 information as to what, exactly, changed in Mr. Ngo's case.

20 **B. Vietnam has a longstanding policy of not accepting Vietnamese**  
21 **immigrants who entered before 1995, including under the still-**  
**operative memorandum of understanding it has with the U.S.**

22 There is a reason why ICE has proved unable to remove Mr. Ngo for the  
23 last thirty years: Vietnam has a longstanding general policy of not accepting pre-  
24 1995 Vietnamese immigrants for deportation. In 2008, Vietnam and the United  
25 States signed a repatriation treaty under which Vietnam agreed to consider  
26 accepting certain Vietnamese immigrants for deportation. *See Trinh v. Homan*,  
27 466 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020). The treaty exempted pre-1995  
28 Vietnamese immigrants, providing, “Vietnamese citizens are not subject to return

1 to Vietnam under this Agreement if they arrived in the United States before July  
2 12, 1995.” Agreement Between the United States of America and Vietnam, at 2  
3 (Jan. 22, 2008).<sup>3</sup>

4 Despite that limit, the first Trump administration detained Vietnamese  
5 immigrants and held them for months, while the administration tried to pressure  
6 Vietnam to take them. *See Trinh*, 466 F. Supp. 3d at 1083–84. That possibility did  
7 not materialize. “In total, between 2017 and 2019, ICE requested travel  
8 documents for pre-1995 Vietnamese immigrants 251 times. Vietnam granted  
9 those requests only 18 times, in just over seven percent of cases.” *Id.* at 1084. The  
10 administration was forced to release many of these detainees in 2018. *See id.*

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

21 Even after signing the MOU, Vietnam overwhelmingly declined to timely  
22 issue travel documents for pre-1995 immigrants. By October 2021, ICE had  
23 adopted a “policy of generally finding that ‘pre-1995 Vietnamese  
24

25 \_\_\_\_\_  
26 <sup>3</sup><https://www.state.gov/wp-content/uploads/2019/02/08-322-Vietnam-Repatriations.pdf>

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

1 immigrants’ . . . are not likely to be removed in the reasonably foreseeable  
 2 future.” Order on Joint Motion for Entry of Stipulated Dismissal, *Trihn*, 18-CV-  
 3 316-CJC-GJS, Dkt. 161 at 3 (C.D. Cal. Oct. 7, 2021).<sup>5</sup> That admission aligned  
 4 with two years’ worth of quarterly reports that ICE agreed to submit as part of a  
 5 class action settlement. Those quarterly reports showed that between September  
 6 2021 and September 2023, only four immigrants who came to the U.S. before  
 7 1995 were given travel documents and deported. Asian Law Caucus, *Resources*  
 8 *on Deportation of Vietnamese Immigrants Who Entered the U.S. Before 1995* (Jul.  
 9 15, 2025) (providing links to all quarterly reports).<sup>6</sup> During the same period, ICE  
 10 made 14 requests for travel documents that, as of 2023, had not been granted,  
 11 including requests made months or years before the September 2023 cutoff. *See*  
 12 *id.* (proposed counsel’s count based on quarterly reports).

13 On June 9, 2025, the Trump administration rescinded ICE’s policy of  
 14 generally finding that pre-1995 Vietnamese immigrants were not likely to be  
 15 removed in the reasonably foreseeable future. *See Nguyen v. Scott*, No. 2:25-CV-  
 16 01398, 2025 WL 2419288, at \*7 (W.D. Wash. Aug. 21, 2025).

17 Since then, many courts have still found that facts on the ground have not  
 18 changed enough to show that any individual pre-1995 Vietnamese immigrant will  
 19 be timely removed to Vietnam. *See, e.g., Phan*, 2025 WL 3141205 at \*4–\*5; *Ho*  
 20 *v. Noem*, No. 25-cv-2453-BAS, ECF No. 11 at 3, 6 (S.D. Cal. Oct. 20, 2025);  
 21 *Thanh Nguyen v. Noem*, No. 25-cv-2760-TWR, ECF No. 12 (S.D. Cal. Oct. 23,  
 22 2025); *Vo v. Noem*, No. 25-cv-3031-JO, ECF No. 14 (S.D. Cal. Nov. 19, 2025);  
 23 *see also Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at \*17 (W.D.

24  
 25 \_\_\_\_\_  
 26 s

26 [https://static1.squarespace.com/static/5f0cc12a064e9716d52e6052/t/618e99e5613](https://static1.squarespace.com/static/5f0cc12a064e9716d52e6052/t/618e99e5613d7372c1bb197e/1636735461479/Trinh+-+Doc+161+Order+Granting+Stip+Dismissal.pdf)  
 27 [d7372c1bb197e/1636735461479/Trinh+-](https://static1.squarespace.com/static/5f0cc12a064e9716d52e6052/t/618e99e5613d7372c1bb197e/1636735461479/Trinh+-+Doc+161+Order+Granting+Stip+Dismissal.pdf)  
 28 [+Doc+161+Order+Granting+Stip+Dismissal.pdf](https://static1.squarespace.com/static/5f0cc12a064e9716d52e6052/t/618e99e5613d7372c1bb197e/1636735461479/Trinh+-+Doc+161+Order+Granting+Stip+Dismissal.pdf).

<sup>6</sup> <https://www.asianlawcaucus.org/news-resources/guides-reports/trinh-reports>

1 Wash. Aug. 21, 2025); *Hoac*, 2025 WL 1993771, at \*4; *Nguyen v. Hyde*, No. 25-  
2 CV-11470-MJJ, 2025 WL 1725791, at \*5 (D. Mass. June 20, 2025).

3 **III. This Court has jurisdiction.**

4 This Court has jurisdiction to consider Mr. Ngo’s claims of unlawful  
5 detention and unlawful third-country removal under 28 U.S.C. § 2241.

6 The government’s recent argument otherwise, that 8 U.S.C. § 1252(g) strips  
7 this Court of jurisdiction, “has been repeatedly ‘rejected as implausible’ by the  
8 Supreme Court.” *Soryadvongsa v. Noem*, No. 25-cv-2663-AGS, 2025 WL  
9 316821, \*1 (S.D. Cal. Nov. 8, 2025) (quoting *Department of Homeland Sec. v.*  
10 *Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020)). The government’s argument  
11 “would eliminate judicial review of immigration [detainees’] claims of unlawful  
12 detention . . . inconsistent with *Jennings v. Rodriguez* and the history of judicial  
13 review of the detention of noncitizens under 28 U.S.C. § 2241.” *Phan v. Noem*,  
14 No. 25-cv-2422-RBM, 2025 WL 2898977, \*3 (S.D. Cal. Oct. 10, 2025)  
15 (collecting cases agreeing on this jurisdictional point).

16 **IV. Claim 1: ICE failed to comply with its own regulations before re-**  
17 **detaining Mr. Ngo, violating his rights under applicable regulations and**  
**due process.**

18 ICE is required to follow its own due-process-implementing regulations  
19 under *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). *See*  
20 *Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004) (“The legal proposition that  
21 agencies may be required to abide by certain internal policies is well-  
22 established.”). A court may review a re-detention decision for compliance with  
23 the regulations, and “where ICE fails to follow its own regulations in revoking  
24 release, the detention is unlawful and the petitioner’s release must be ordered.”  
25 *Rokhfirooz v. Larose*, \_\_ F. Supp. \_\_, 2025 WL 2646165, \*4 (S.D. Cal. Sept. 15,  
26 2025); *accord Reyes v. Larose*, No. 25-cv-2959-JLS, 2025 WL 3204733 at \*2  
27 (S.D. Cal. Nov. 17, 2025) (collecting cases).

28

1 Two regulations establish the process due to someone who is re-detained in  
2 immigration custody following a period of release. 8 C.F.R. § 241.4(l) applies to  
3 all re-detentions, generally. 8 C.F.R. § 241.13(i) applies as an added, overlapping  
4 framework to persons released upon good reason to believe that they will not be  
5 removed in the reasonably foreseeable future, as Mr. Ngo was. *See Duong v.*  
6 *Charles*, No. 25-cv-1375-SKO, 2025 WL 3187313 (E.D. Cal. Nov. 14, 2025)  
7 (explaining this regulatory framework and granting a habeas petition for ICE’s  
8 failure to follow these regulations for a refugee of Vietnam who entered the  
9 United States before 1995); *Nguyen v. Noem*, No. 25-cv-2792-LL-VET, 2025 WL  
10 3101979 (S.D. Cal. Nov. 6, 2025) (same); *Phan v. Noem*, 2025 WL 2898977, No.  
11 25-CV-2422-RBM-MSB, \*3–\*5 (S.D. Cal. Oct. 10, 2025) (same).

12 These regulations establish important substantive limitations before a  
13 noncitizen’s re-detention. Officials are allowed to “return [the person] to custody”  
14 only when the person “violate[d] any of the conditions of release,” 8 C.F.R.  
15 §§ 241.13(i)(1), 241.4(l)(1), or, in the alternative, if an appropriate official  
16 “determines that there is a significant likelihood that the alien may be removed in  
17 the reasonably foreseeable future,” and makes that finding “on account of  
18 changed circumstances,” § 241.13(i)(2). Section “241.13(i)(2) requires that this  
19 determination is made before the removable alien has had his release revoked.”  
20 *Nugyen*, 2025 WL 3101979 at \*2 (quoting *Tran v. Noem*, No. 25-cv-2391-BTM-  
21 BLM, 2025 WL 3005347, \*2 (S.D. Cal. Oct. 27, 2025)).

22 No matter the reason for re-detention, the re-detained person is also entitled  
23 to certain procedural protections during and after re-detention.

24 First, “[u]pon revocation,” the noncitizen “will be notified of the reasons  
25 for revocation of his or her release or parole.” *Phan*, 2025 WL 2898977 at \*3, \*4  
26 (quoting §§ 241.4(l)(1), 241.13(i)(3)). A noncitizen must receive “adequate notice  
27 of the basis for the revocation decision such that he c[an] meaningfully respond at  
28 the post-detention informal interview.” *Rasakhamdee v. Noem*, No. 25-cv-2817-

1 RBM, ECF No. 10 at 7 (S.D. Cal. Nov. 6, 2025) (quoting *Diaz v. Wofford*, No.  
2 25-cv-1079-JLT, 2025 WL 2581575, \*8 (E.D. Cal. Sept. 5, 2025)).

3 Second, the person “‘will be afforded an initial informal interview promptly  
4 after his or her return’ to be given ‘an opportunity to respond to the reasons for  
5 revocation stated in the notification.’” 8 C.F.R. §§ 241.13(i)(3), 241.4(l)(1).  
6 “[P]romptly,” commonly understood, “means ‘[q]uickly; without delay’ or ‘[a]s  
7 soon as practicable.’” *Soryadvongsa*, 2025 WL 3126821 at \*3 (quoting *Promptly*,  
8 Black’s Law Dictionary (12th ed. 2024)). “The chance to advocate for release  
9 must ordinarily come within days of a criminal arrest. Surely, it must happen at  
10 least that quickly in the more constitutionally protected civil-arrest arena, too.” *Id.*

11 Third, in the case of someone released under § 241.13(i), the regulations  
12 also explicitly require the interviewer to allow the re-detained person to “submit  
13 any evidence or information that he or she believes shows there is no significant  
14 likelihood he or she be removed in the reasonably foreseeable future, or that he or  
15 she has not violated the order of supervision.” § 241.13(i)(3).

16 ICE followed none of its substantive or procedural regulatory prerequisites  
17 to re-detention or continued detention here.

18 First, ICE does not have a proper reason to re-detain Mr. Ngo: there is no  
19 reason to think that there is “a significant likelihood that [he] may be removed in  
20 the reasonably foreseeable future,” § 241.13(i)(2), and he has not “violate[d] any  
21 of the conditions of release,” § 241.13(i)(1). There is no individualized reason to  
22 think that, having been unable to remove Mr. Ngo for the last thirty years, ICE is  
23 likely to do so in the foreseeable future.

24 Second, ICE did not notify Mr. Ngo of the “reasons” for his re-detention  
25 “upon revocation” of release. *See* 8 C.F.R. §§ 241.13(i)(3); 241.4(l). He was re-  
26 detained on November 7, 2025, at a check-in. Exhibit A ¶ 4. ICE gave him  
27 “pieces of paper in English and told [him] to sign.” *Id.* He “do[es] not know what  
28 the papers say”; he is a Vietnamese speaker who does not understand “most”

1 English. *Id.* ¶¶ 4–5.

2       Regardless, even if Mr. Ngo did know English, the information provided in  
3 ICE’s “Notice of Revocation of Release” was not sufficient to explain why his  
4 detention was being revoked under ICE’s own regulations. Exhibit B. The notice  
5 said only that, “based on a review of your official alien file,” ICE had made “a  
6 determination that there are changed circumstances in your case.” *Id.* “Simply to  
7 say that circumstances had changed or there was a significant likelihood of  
8 removal in the foreseeable future is not enough.” *Sarail A. V. Bondi*, \_\_ F. Supp.  
9 3d \_\_, 2025 WL 2533673, \*10 (D. Minn. 2025). “Petitioner must be told *what*  
10 circumstances had changed or *why* there was now a significant likelihood of  
11 removal in order to meaningfully respond to the reasons and submit evidence in  
12 opposition.” *Id.* The notice here included no information about what had changed  
13 or why. Exhibit B. Nor did it even allege that there was now a significant  
14 likelihood of Mr. Ngo’s removal in the foreseeable future. *Id.*

15       Third, as of November 19, Mr. Ngo had not yet received the informal  
16 interview required by regulation. §§ 241.13(i)(2); 241.4(l)(1); *see* Exhibit A ¶ 6. If  
17 he were to receive one now, such an interview would not be “prompt[,]” as  
18 required by regulation. *Id.* “The regulatory context is civil detention, which is a  
19 strictly limited form of restraint on liberty.” *Soryadvongsa*, 2025 WL 3126821 at  
20 \*2 (citing *Rodriguez v. Marin*, 909 F.3d 252, 257 (9<sup>th</sup> Cir. 2018)). “The chance to  
21 advocate for release must ordinarily come within days of a criminal arrest. Surely,  
22 it must happen at least that quickly in the more constitutionally protected civil-  
23 arrest arena, too.” *Id.*

24       Fourth, Mr. Ngo has not been afforded a meaningful opportunity to respond  
25 to the reasons for revocation or submit evidence rebutting his re-detention.  
26 §§ 241.13(i)(2); 241.4(l)(1); *see* Exhibit A ¶ 6. He has not “been able to talk to an  
27 ICE officer since the day [he] was arrested.” *Id.* He notes, “No one has given me a  
28 chance to fight my arrest. No one has told me what changed to make it more

1 likely that I can be deported to Vietnam.” *Id.*

2 Numerous courts have released re-detained immigrants after finding that  
3 ICE failed to comply with some or all of the applicable regulations this summer  
4 and fall. *See, e.g., Villanueva v. Tate*, \_\_\_ F. Supp. 3d \_\_\_, 2025 WL 2774610 (S.D.  
5 Tex. Sept. 26, 2025); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y.  
6 2025); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at \*7–9  
7 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL  
8 2430267, at \*10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-  
9 00182-MJT, 2025 WL 2491782, at \*2–3 (E.D. Tex. July 18, 2025); *Hoac*, 2025  
10 WL 1993771 at \*4; *Liu v. Carter*, 2025 WL 1696526, \*2 (D. Kan. June 17, 2025);  
11 *M.Q. v. United States*, 2025 WL 965810, at \*3, \*5 n.1 (S.D.N.Y. Mar. 31, 2025);  
12 *Bui*, No. 25-cv-2111-JES, ECF No. 18; *Thai*, No. 25-cv-2436-RBM, ECF No. 10,  
13 12; *Constantinovici v. Bondi*, 2025 WL 2898985; *Sun*, 2025 WL 280003;  
14 *Rokhfirooz*, 2025 WL 2646165. “[B]ecause officials did not properly revoke  
15 petitioner’s release pursuant to the applicable regulations, that revocation has no  
16 effect, and [Mr. Ngo] is entitled to his release (subject to the same Order of  
17 Supervision that governed his most recent release).” *Liu*, 2025 WL 1696526 at \*3.

18 **V. Claim 2: Mr. Ngo’s detention violates *Zadvydas* and 8 U.S.C. § 1231.**

19 **A. Legal background: The statute renders detention mandatory for**  
20 **three months after removal, presumptively acceptable for six**  
21 **months after removal is ordered, and allowable six months after**  
22 **removal is ordered only if there is a significant likelihood of**  
23 **removal in the reasonably foreseeable future.**

24 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered  
25 a problem affecting people like Mr. Ngo: Federal law requires ICE to detain an  
26 immigrant during the “removal period,” which typically spans the first 90 days  
27 after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-  
28 day removal period expires, detention becomes discretionary—ICE may detain  
the migrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily,  
this scheme would not lead to excessive detention, as removal happens within

1 days or weeks. But some detainees cannot be removed quickly. Perhaps their  
2 removal “simply require[s] more time for processing,” or they are “ordered  
3 removed to countries with whom the United States does not have a repatriation  
4 agreement,” or their countries “refuse to take them,” or they are “effectively  
5 ‘stateless’ because of their race and/or place of birth.” *Kim Ho Ma v. Ashcroft*,  
6 257 F.3d 1095, 1104 (9<sup>th</sup> Cir. 2001). In these and other circumstances, detained  
7 immigrants can find themselves trapped in detention for months, years, decades,  
8 or even the rest of their lives. If federal law were understood to allow for  
9 “indefinite, perhaps permanent, detention,” it would pose “a serious constitutional  
10 threat.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided the  
11 constitutional concern by interpreting § 1231(a)(6) to incorporate implicit limits.  
12 *Id.* At 689.

13 *Zadvydas* held that § 1231(a)(6) presumptively permits the government to  
14 detain an immigrant for 180 days after his or her removal order becomes final.  
15 After those 180 days have passed, the immigrant must be released unless his or  
16 her removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 701. After six  
17 months have passed, the petitioner must only make a prima facie case for relief—  
18 there is “good reason to believe that there is no significant likelihood of removal  
19 in the reasonably foreseeable future.” *Id.* Then the burden shifts to “the  
20 Government [to] respond with evidence sufficient to rebut that showing.” *Id.*

21 Further, even before the 180 days have passed, the immigrant must still be  
22 released if he *rebut*s the presumption that his detention is reasonable. *See, e.g.,*  
23 *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal. 2020) (collecting cases  
24 on rebutting the *Zadvydas* presumption before six months have passed); *Zavvar v.*  
25 *Scott*, Civil No. 25-2104-TDC, 2025 WL 2592543, \*6 (D. Md. Sept. 8, 2025)  
26 (finding the presumption rebutted for a person who was immediately released  
27 after being ordered removed and, years later, re-detained for less than six months).

28 Mr. Ngo can make all the threshold showings needed to prove his *Zadvydas*

1 claim and shift the burden to the government.

2 **B. Mr. Ngo’s six-month grace period expired in December 1995.**

3 The six-month grace period has long since ended. The *Zadvydas* grace  
4 period is linked to the date the final order of removal is issued. It lasts for “*six*  
5 *months* after a final order of removal—that is, *three months* after the statutory  
6 removal period has ended.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9<sup>th</sup>  
7 Cir. 2001); *see also* 8 U.S.C. § 1231(a)(1)(B) (linking the statutory removal  
8 period to issuance of the final order and other proceedings associated with the  
9 original removal order).

10 Here, Mr. Ngo’s order of removal was entered in June 1995. Exhibit A  
11 ¶ 3.<sup>7</sup> Accordingly, his 90-day removal period began then. 8 U.S.C.  
12 § 1231(a)(1)(B). The *Zadvydas* grace period expired in December 1995, three  
13 months after the removal period ended.

14 Regardless, Mr. Ngo has been detained for about six months and counting.  
15 He was detained “for about five to six months” after he was ordered removed in  
16 June 1995. Exhibit A ¶ 3. He was re-detained this year on November 7, 2025, and  
17 thus has been detained for another two weeks. *Id.* ¶ 4. *See, e.g., Abuelhawa*, 2025  
18 WL 2937692 at \*4 (noting that “[m]ost courts to consider the issue have  
19 concluded that the *Zadvydas* [six-month] period is cumulative, motivated by a  
20 concern that the federal government could otherwise detain aliens indefinitely by  
21 continuously releasing and re-detaining them,” and agreeing that “a uniform rule  
22 that counts and sums prior time in detention is appropriate”); *Nguyen*, \_\_\_ F. Supp.  
23 3d \_\_\_, 2025 WL 2419288 at \*13 (rejecting the argument that when “detention was  
24 not consecutive, the clock . . . restart[s]).

25 Under either framework, the *Zadvydas* grace period has expired.

26  
27  
28 <sup>7</sup> EOIR, *Automated Case Information*, <https://acis.eoir.justice.gov/en/>.

1           **C. Mr. Ngo’s personal experience, and Vietnam’s general policy of**  
2           **not repatriating most pre-1995 Vietnamese immigrants, provide**  
3           **good reason to believe that Mr. Ngo will not likely be removed in**  
4           **the reasonably foreseeable future.**

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

10           **“Good reason to believe.”** The “good reason to believe” standard is a  
11           relatively forgiving one. “A petitioner need not establish that there exists no  
12           possibility of removal.” *Freeman v. Watkins*, No. CV B:09-160, 2009 WL  
13           10714999, at \*3 (S.D. Tex. Dec. 22, 2009). Nor does “[g]ood reason to  
14           believe’ . . . place a burden upon the detainee to demonstrate no reasonably  
15           foreseeable, significant likelihood of removal or show that his detention is  
16           indefinite; it is something less than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW,  
17           2020 WL 3972319, at \*3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401  
18           F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:  
19           Petitioners need only give a “good reason”—not prove anything to a certainty.

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

1           **“In the reasonably foreseeable future.”** This component of the test  
2 focuses on when Mr. Ngo will likely be removed: Continued detention is  
3 permissible only if removal is likely to happen “in the reasonably foreseeable  
4 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s  
5 removal efforts. If the Court has “no idea of when it might reasonably expect  
6 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal  
7 is likely to occur—or even that it might occur—in the reasonably foreseeable  
8 future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at \*3  
9 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL  
10 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d  
11 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that Mr. Ngo  
12 “would *eventually* receive” a travel document, he can still meet his burden by  
13 giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*,  
14 2016 WL 6679830, at \*2 (E.D. Mich. Nov. 14, 2016).

15           Mr. Ngo satisfies this standard for two reasons.

16           First, Mr. Ngo’s own experience bears this out. ICE has now had thirty  
17 years to deport him, including five years under the MOU. Yet ICE has proved  
18 unable to remove him.

19           Second, the general experience of other Vietnamese immigrants also bears  
20 this out. Vietnam often does not accept pre-1995 Vietnamese immigrants for  
21 deportation. Even after Vietnam signed the still-operative 2020 MOU, ICE had to  
22 admit that there was no reasonable likelihood of removing such immigrants in the  
23 reasonably foreseeable future, Order on Joint Motion for Entry of Stipulated  
24 Dismissal, *Trihn*, 18-CV-316-CJC-GJS, Dkt. 161 at 3 (C.D. Cal. Oct. 7, 2021)—  
25 an admission backed up by two years’ experience under the MOU, Asian Law  
26 Caucus, *Resources on Deportation of Vietnamese Immigrants Who Entered the*  
27 *U.S. Before 1995* (Jul. 15, 2025) (providing links to all quarterly reports).

28           In the past two months, several courts have explained that barriers continue

1 to obstruct removal for pre-1995 immigrants like Mr. Ngo. *See, e.g., Phan*, 2025  
2 WL 3141205 at \*4–\*5; *Ho*, No. 25-cv-2453-BAS, ECF No. 11 at 3, 6; *Nguyen*,  
3 No. 25-cv-2760-TWR, ECF No. 12; *Vo*, No. 25-cv-3031-JO, ECF No. 14.

4 Thus, Mr. Ngo 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. Ngo must be released.  
7 *Zadvydas*, 533 U.S. at 701.

8 **VI. This Court must hold an evidentiary hearing on any disputed facts.**

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

12 **VII. Prayer for relief**

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

- 14 1. Order and enjoin Respondents to immediately release Petitioner from  
15 custody;
- 16 2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.  
17 § 1231(a)(6) unless and until Respondents obtain a travel document for  
18 his removal;
- 19 3. Enjoin Respondents from re-detaining Petitioner without first following  
20 all procedures set forth in 8 C.F.R. §§ 241.4(l), 241.13(i), and any other  
21 applicable statutory and regulatory procedures; and
- 22 4. Order all other relief that the Court deems just and proper.

23 Respectfully submitted,

24  
25 Dated: November 20, 2025

*s/ Jessie Agatstein*  
Federal Defenders of San Diego, Inc.  
Attorneys for Mr. Ngo  
Email: jessie\_agatstein@fd.org

# Exhibit A

1 **Jessie Agatstein**  
2 Cal. Bar No. 319817  
3 **Federal Defenders of San Diego, Inc.**  
4 225 Broadway, Suite 900  
5 San Diego, California 92101-5030  
6 Telephone: (619) 234-8467  
7 Facsimile: (619) 687-2666  
8 jessie\_agatstein@fd.org  
9 Attorneys for Mr. Ngo<sup>1</sup>

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

12 PHUOC VAN NGO,  
13  
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,  
20 Immigration and Customs Enforcement,  
21 JESUS ROCHA, Acting Field Office  
22 Director, San Diego Field Office,  
23 CHRISTOPHER LAROSE, Warden at  
24 Otay Mesa Detention Center,  
25 Respondents.


Civil Case No.:

**Declaration of Phuoc Ngo  
in support of petition for writ of  
habeas corpus**

**[Civil Immigration Habeas Petition  
Under 28 U.S.C. § 2241]**

26  
27 <sup>1</sup> Federal Defenders of San Diego, Inc., is filing with provisional appointment  
28 under Chief Judge Order No. 134. Mr. Ngo's financial eligibility for  
representation is included in this sworn statement.


1 I, Phuoc Ngo, declare the following is true and correct under penalty of  
2 perjury:

- 3 1. My name is Phuoc Ngo. I don't have a bank account, and I have  
4 about \$500 to \$700 in cash total, held by my employer for me. I  
5 make between \$2,000 to \$3,000 a month at a restaurant. I live  
6 paycheck to paycheck. I don't have a home. I live in my car, which is  
7 a 2006 Nissan minivan. I cannot afford an attorney.
- 8 2. My A-number is  I came to the United States from  
9 Vietnam in 1981 by myself when I was 20 or 21 years old. I got a  
10 green card.
- 11 3. I was ordered removed on June 2, 1995. I was detained after that for  
12 about five to six months. ICE eventually released me on an order of  
13 supervision because they couldn't to deport me to Vietnam.
- 14 4. On November 7, 2025, ICE arrested me at my restaurant where I  
15 work. They gave me pieces of paper in English and told me to sign  
16 and I signed. They didn't let me talk. They did not translate anything  
17 into Vietnamese. I do not know what the papers say.
- 18 5. I understand some English words, but not most. I speak and  
19 understand Vietnamese.
- 20 6. As of today, no one has told me the reasons why I was arrested in a  
21 language I can understand. No one has given me a chance to fight my  
22 arrest. No one has told me what changed to make it more likely that I  
23 can be deported to Vietnam. I haven't been able to talk to an ICE  
24 officer since the day I was arrested.

25  
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28

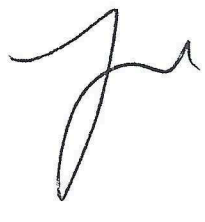
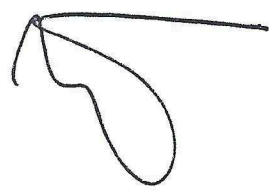
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I declare under penalty of perjury that the foregoing is true and correct,  
executed on 11.19.25, in San Diego, California.

  
\_\_\_\_\_

Declarant

The foregoing declaration was read and translated into Vietnamese by a certified virtual interpreter in my presence on 11/19/2025.

# Exhibit B

Office of Enforcement and Removal Operations

U.S. Department of Homeland Security  
880 Front ST  
San Diego, CA, 92101



U.S. Immigration  
and Customs  
Enforcement

Ngo, Phuoc Van  
c/o Immigration and Customs Enforcement  
San Diego Field Office

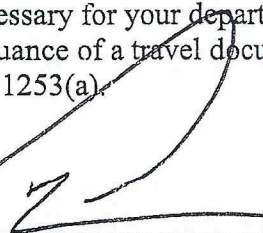


**Notice of Revocation of Release**

This letter is to inform you that your order of supervision has been revoked, and you will be detained in the custody of U.S. Immigration and Customs Enforcement (ICE) at this time. This decision has been made based on a review of your official alien file and a determination that there are changed circumstances in your case.

Based on the above, and pursuant to 8 C.F.R. § 241.4 / 8 C.F.R. § 241.13, you are to remain in ICE custody at this time.

You are advised that you must demonstrate that you are making reasonable efforts to comply with the order of removal and that you are cooperating with ICE's efforts to remove you by taking whatever actions ICE requests to affect your removal. You are also advised that any willful failure or refusal on your part to make timely application in good faith for travel or other documents necessary for your departure, or any conspiracy or actions to prevent your removal or obstruct the issuance of a travel document, may subject you to criminal prosecution under 8 U.S.C. Section 1253(a).

*SADO*  *76213*  
Signature and Title of Authorized Official

*11/07/25*  
Date

Notice to Alien of File Custody Review


Ngo, Phuoc Van 025 159 006

Page 2

PROOF OF SERVICE

(1) Personal Service

(a) I JILL LANDIN, DEPORTATION OFFICER,  
Name of ICE Officer Title  
 certify that I served NGO, PHUOC VAN with a copy of  
Name of detainee  
 this document at SAN DIEGO, CALIFORNIA on 11/07/2025 at 5:30 PM.  
Institution Date Time

Detainee Signature:  Date: 11/07/2025

- ( ) cc: Attorney of Record or Designated Representative
- ( ) cc: A-File