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

12
13 **HOANG KIET LAM,¹**

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

21 **Respondents.**

22 **CIVIL CASE NO.: '25CV3470 JO VET**

Petition for Writ
of
Habeas Corpus

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

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

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1 **I. Introduction**

2 Mr. Lam and his brother fled Vietnam in 1985. In 2011, Mr. Lam was
3 ordered removed. But Vietnam wouldn't accept him, in line with its general
4 policy of not accepting pre-1995 immigrants for deportation. Mr. Lam was then
5 released on an order of supervision.

6 Mr. Lam remained on supervision for the next 14 years. He checked in with
7 ICE every year without incident. When he went for his annual check-in on August
8 22, 2025, ICE re-detained him. Contrary to regulation, ICE did not notify
9 Mr. Lam of any changed circumstances that made his removal more likely, like
10 receiving news from Vietnam that it would now accept Mr. Lam despite not
11 accepting him 14 years ago. Nor did it give Mr. Lam an opportunity to contest his
12 re-detention.

13 Mr. Lam's detention violates his statutory and regulatory rights, *Zadvydas*
14 *v. Davis*, 533 U.S. 678 (2001), and the Fifth Amendment. Courts in this district
15 have agreed in similar circumstances as to both of Mr. Lam's claims. Specifically:

16 (1) *Regulatory and due process violations*: Mr. Lam must be released
17 because ICE's failure to follow its own regulations about notice and an
18 opportunity to be heard violate due process. *See, e.g., Constantinovici v. Bondi*,
19 __ F. Supp. 3d __, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10,
20 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal.
21 Sept. 15, 2025); *Lam v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB,
22 *3–*5 (S.D. Cal. Oct. 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-
23 2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Lam v. Noem*, 2025 WL 2770623, No.
24 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-
25 02597-JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*,
26 No. 25-cv-02575-JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025) *Sphabmixay v.*
27 *Noem*, 25-cv-2648-LL-VET (S.D. Cal. Oct. 30, 2025); *Sayvongsa v. Noem*, 25-cv-
28 2867-AGS-DEB (S.D. Cal. Oct. 31, 2025); *Thammavongsa v. Noem*, 25-cv-2836-

1 JO-AHG (S.D. Cal. Nov. 3, 2025); *Phakeokoth v. Noem*, 25-cv-2817-RBM-SBC
2 (S.D. Cal. Nov. 7, 2025); *Soryadvongsa v. Noem*, 25-cv-2663-AGS-DDL (S.D.
3 Cal. Nov. 8, 2025) (all either granting temporary restraining orders releasing
4 noncitizens, or granting habeas petitions outright, due to ICE regulatory violations
5 during recent re-detentions of released noncitizens previously ordered removed).

6 (2) *Zadvydas* violations: Mr. Lam must also be released under *Zadvydas*
7 because—having proved unable to remove him for the last 14 years—the
8 government cannot show that there is a “significant likelihood of removal in the
9 reasonably foreseeable future.” *Id.* at 701. *See, e.g., Conchas-Valdez*, 2025 WL
10 2884822, No. 25-cv-2469-DMS (S.D. Cal. Oct. 6, 2025); *Rebenok v. Noem*, No.
11 25-cv-2171-TWR, ECF No. 13 (S.D. Cal. Sept. 25, 2025) (granting habeas
12 petitions releasing noncitizens due to *Zadvydas* violations).

13 This Court should grant this habeas petition and issue appropriate
14 injunctive relief on all three grounds.

15 II. Statement of Facts

16 A. Mr. Lam is ordered removed, held in ICE custody, and released 17 as ICE proves unable to deport him for the next 14 years, until 18 he is arrested at his annual ICE check-in.

18 In 1985, Mr. Lam fled Vietnam and entered the United States as a refugee.
19 Declaration of Hoang Kiet Lam, Exhibit A (“Exh. A”) ¶ 1. He soon obtained a
20 green card. *Id.*

21 In 2009, Mr. Lam was convicted of an offense relating to robbery. *Id.* at
22 ¶ 2. As a result of this conviction, Mr. Lam was placed in removal proceedings.
23 *Id.* at ¶ 2. An immigration judge ordered him removed on June 1, 2011. *Id.* at ¶ 3.

24 But ICE was not able to effectuate Mr. Lam’s removal to Vietnam and
25 released him on an order of supervision. *Id.* In the years since his removal order,
26 Mr. Lam has never missed a check-in appointment. *Id.* at ¶ 5.

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1 On August 22, 2025, ICE officials arrested Mr. Lam during his annual
2 check in appointment. *Id.* at ¶ 6. They did not provide him any notice or give him
3 an interview or an opportunity to contest his detention. *Id.*

4 **B. Vietnam has a longstanding policy of not accepting Vietnamese**
5 **immigrants who entered before 1995.**

6 There is a reason why ICE has proved unable to remove Mr. Lam for the
7 last 14 years: Vietnam has a general policy of not accepting pre-1995 Vietnamese
8 immigrants for deportation. In 2008, Vietnam and the United States signed a
9 repatriation treaty under which Vietnam agreed to consider accepting certain
10 Vietnamese immigrants for deportation. *See Trinh v. Homan*, 466 F. Supp. 3d
11 1077, 1083 (C.D. Cal. 2020). The treaty exempted pre-1995 Vietnamese
12 immigrants, providing, “Vietnamese citizens are not subject to return to Vietnam
13 under this Agreement if they arrived in the United States before July 12, 1995.”
14 Agreement Between the United States of America and Vietnam, at 2 (Jan. 22,
15 2008).²

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

23 Eventually, in 2020, the administration secured a Memorandum of
24 Understanding (“MOU”) with Vietnam, which created a process through which
25 the Vietnamese government could consider some pre-1995 Vietnamese
26

27 ² [https://www.state.gov/wp-content/uploads/2019/02/08-322-Vietnam-](https://www.state.gov/wp-content/uploads/2019/02/08-322-Vietnam-Repatriations.pdf)
28 [Repatriations.pdf](https://www.state.gov/wp-content/uploads/2019/02/08-322-Vietnam-Repatriations.pdf)

1 immigrants for removal.³ The MOU limited consideration to persons meeting
2 certain criteria, but many these criteria have been shielded from public view. *See*
3 *Lam v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *14 (W.D. Wash. Aug.
4 21, 2025). When an immigrant does qualify, the MOU provides only that Vietnam
5 has “discretion whether to issue a travel document,” which it exercises “on a case-
6 by-case basis.” *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL
7 1993771, at *5 (E.D. Cal. July 16, 2025).

8 Even after signing the MOU, Vietnam overwhelmingly declined to timely
9 issue travel documents for pre-1995 immigrants. By October 2021, ICE had
10 adopted a “policy of generally finding that ‘pre-1995 Vietnamese
11 immigrants’ . . . are not likely to be removed in the reasonably foreseeable
12 future.” Order on Joint Motion for Entry of Stipulated Dismissal, *Trihn*, 18-CV-
13 316-CJC-GJS, Dkt. 161 at 3 (C.D. Cal. Oct. 7, 2021).⁴ That admission aligned
14 with two years’ worth of quarterly reports that ICE agreed to submit as part of a
15 class action settlement. Those quarterly reports showed that between September
16 2021 and September 2023, only four immigrants who came to the U.S. before
17 1995 were given travel documents and deported. Asian Law Caucus, *Resources*
18 *on Deportation of Vietnamese Immigrants Who Entered the U.S. Before 1995* (Jul.
19 15, 2025) (providing links to all quarterly reports).⁵ During the same period, ICE
20 made 14 requests for travel documents that, as of 2023, had not been granted,
21 including requests made months or years before the September 2023 cutoff. *See*
22 *id.* (proposed counsel’s count based on quarterly reports).

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25 ³ [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)

26 ⁴ [https://static1.squarespace.com/static/5f0cc12a064e9716d52e6052/t/618e99e561
3d7372c1bb197e/1636735461479/Trinh+-
27 +Doc+161+Order+Granting+Stip+Dismissal.pdf](https://static1.squarespace.com/static/5f0cc12a064e9716d52e6052/t/618e99e5613d7372c1bb197e/1636735461479/Trinh+-+Doc+161+Order+Granting+Stip+Dismissal.pdf).

28 ⁵ <https://www.asianlawcaucus.org/news-resources/guides-reports/trinh-reports>

1 On June 9, 2025, the Trump administration rescinded ICE’s policy of
2 generally finding that pre-1995 Vietnamese immigrants were not likely to be
3 removed in the reasonably foreseeable future. *See Lam v. Scott*, No. 2:25-CV-
4 01398, 2025 WL 2419288, at *7 (W.D. Wash. Aug. 21, 2025). But since then,
5 several courts have found that facts on the ground likely have not changed enough
6 to show that any individual pre-1995 Vietnamese immigrant will be timely
7 removed to Vietnam. *See Lam v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288,
8 at *17 (W.D. Wash. Aug. 21, 2025); *Hoac*, 2025 WL 1993771, at *4; *Lam v.*
9 *Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at *5 (D. Mass. June 20,
10 2025); *Ho v. Noem*, No. 25-cv-2453-BAS, ECF No. 11 at 3, 6 (S.D. Cal. Oct. 20,
11 2025); *Thanh Lam v. Noem*, No. 25-cv-2760-TWR, ECF No. 12 (S.D. Cal. Oct.
12 23, 2025).

13 **III. Legal Analysis.**

14 This Court should grant this petition and order Mr. Lam’s immediate
15 release. ICE failed to follow its own regulations requiring changed circumstances
16 before re-detention, as well as a chance to promptly contest a re-detention
17 decision. And *Zadvydas v. Davis* holds that immigration statutes do not authorize
18 the government to detain immigrants like Mr. Lam, for whom there is “no
19 significant likelihood of removal in the reasonably foreseeable future.” 533 U.S.
20 678, 701 (2001).

21 **A. Claim One: ICE failed to comply with its own regulations when**
22 **it re-detained Mr. Lam, violating his rights under applicable**
23 **regulations and due process.**

24 Two regulations establish the process due to someone who is re-detained in
25 immigration custody following a period of release. 8 C.F.R. § 241.4(l) applies to
26 all re-detentions, generally. 8 C.F.R. § 241.13(i) applies as an added, overlapping
27 framework to persons released upon good reason to believe that they will not be
28 removed in the reasonably foreseeable future, as Mr. Lam was. *See Lam v. Noem*,
2025 WL 2898977, No. 25-CV-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10,

1 2025) (explaining this regulatory framework and granting a habeas petition for
2 ICE’s failure to follow these regulations for a refugee of Vietnam who entered the
3 United States before 1995); *Rokhfirooz*, No. 25-CV-2053-RSH-VET, 2025 WL
4 2646165 at *2 (same as to an Iranian national).

5 These regulations permit an official to “return [the person] to custody” only
6 when the person “violate[d] any of the conditions of release,” 8 C.F.R.
7 §§ 241.13(i)(1), 241.4(l)(1), or, in the alternative, if an appropriate official
8 “determines that there is a significant likelihood that the alien may be removed in
9 the reasonably foreseeable future,” and makes that finding “on account of
10 changed circumstances,” 8 C.F.R. § 241.13(i)(2).

11 No matter the reason for re-detention, the re-detained person is entitled to
12 certain procedural protections. For one, “[u]pon revocation,’ the noncitizen ‘will
13 be notified of the reasons for revocation of his or her release or parole.’” *Lam*,
14 2025 WL 2898977 at *3, *4 (quoting §§ 241.4(l)(1), 241.13(i)(3)). Further, the
15 person “‘will be afforded an initial informal interview promptly after his or her
16 return’ to be given ‘an opportunity to respond to the reasons for revocation stated
17 in the notification.’” *Id.*

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

23 ICE is required to follow its own regulations. *United States ex rel. Accardi*
24 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150,
25 1162 (9th Cir. 2004) (“The legal proposition that agencies may be required to
26 abide by certain internal policies is well-established.”). A court may review a re-
27 detention decision for compliance with the regulations, and “where ICE fails to
28 follow its own regulations in revoking release, the detention is unlawful and the

1 petitioner's release must be ordered." *Rokhfirooz*, 2025 WL 2646165 at *4
2 (collecting cases); *accord Lam*, 2025 WL 2898977 at *5.

3 ICE followed none of its regulatory prerequisites to re-detention here.

4 First, ICE did not identify a proper reason under the regulations to re-detain
5 Mr. Lam. Mr. Lam was not returned to custody because of a conditions violation,
6 and there was apparently no determination before or at his arrest that there are
7 "changed circumstances" such that there is "a significant likelihood that
8 [Mr. Lam] may be removed in the reasonably foreseeable future." 8 C.F.R.
9 § 241.13(i)(2).

10 Second, ICE did not notify Mr. Lam of the reasons for his re-detention
11 upon revocation of release. *See* 8 C.F.R. §§ 241.4(l)(1), 241.13(i)(3). He was re-
12 detained on August 22, 2025. Exh. A at ¶ 5. As he has explained, "[t]hey did not
13 tell me why they were revoking my supervision." *Id.* at ¶ 6.

14 Third, Mr. Lam does not believe he received an informal interview where
15 an officer explained the purported "changed circumstances" underlying his
16 revocation. "Simply to say that circumstances had changed or there was a
17 significant likelihood of removal in the foreseeable future is not enough." *Sarail*
18 *A. v. Bondi*, No. 25-CV-2144, 2025 WL 2533673, at *3 (D. Minn. Sept. 3, 2025).
19 Rather, "Petitioner must be told *what* circumstances had changed or *why* there
20 was now a significant likelihood of removal in order to meaningfully respond to
21 the reasons and submit evidence in opposition, as allowed under § 241.13(i)(3)."
22 *Id.* By "identif[ying] the category—'changed circumstances'—but fail[ing] to
23 notify [Petitioner] of the reason—the circumstances that changed and created a
24 significant likelihood of removal in the reasonably foreseeable future—[ICE]
25 failed to follow the relevant regulation." *Id.* This failure to identify any changed
26 circumstances also means he has he been afforded a meaningful opportunity to
27 respond to the reasons for revocation or submit evidence rebutting his re-
28 detention. Exh. A at ¶ 6.

1 Numerous courts have released re-detained immigrants after finding that
2 ICE failed to comply with applicable regulations this summer and fall. These have
3 included courts in this district,⁶ as well as courts outside this district.⁷

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

8 **B. Claim Two: Mr. Lam’s detention violates *Zadvydas* and 8 U.S.C.
9 § 1231.**

10 **1. Legal background**

11 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered
12 a problem affecting people like Mr. Lam: Federal law requires ICE to detain an
13 immigrant during the “removal period,” which typically spans the first 90 days

14
15 ⁶ *Constantinovici v. Bondi*, ___ F. Supp. 3d ___, 2025 WL 2898985, No. 25-cv-
16 2405-RBM (S.D. Cal. Oct. 10, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-
17 RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Lam v. Noem*, 2025 WL
18 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025); *Sun v.*
19 *Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van*
20 *Tran v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29,
21 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal. Oct. 10,
22 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12 (S.D.
23 Cal. Oct. 9, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal.
24 Oct. 10, 2025); *Sphabmixay v. Noem*, 25-cv-2648-LL-VET (S.D. Cal. Oct. 30,
25 2025); *Sayvongsa v. Noem*, 25-cv-2867-AGS-DEB (S.D. Cal. Oct. 31, 2025);
26 *Thammavongsa v. Noem*, 25-cv-2836-JO-AHG (S.D. Ca. Nov. 3, 2025) (same);
27 *Phakeokoth v. Noem*, 25-cv-2817-RBM-SBC (S.D. Cal. Nov. 7, 2025);
28 *Soryadvongsa v. Noem*, 25-cv-2663-AGS-DDL (S.D. Cal. Nov. 8, 2025).

⁷ *Grigorian*, 2025 WL 2604573; *Delkash v. Noem*, 2025 WL 2683988; *Ceesay v.*
Kurzdorfer, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F.
Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387
(D. Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at
*7–9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025
WL 2430267, at *10–12 (D. Or. 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 after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-
2 day removal period expires, detention becomes discretionary—ICE may detain
3 the migrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily,
4 this scheme would not lead to excessive detention, as removal happens within
5 days or weeks. But some detainees cannot be removed quickly. Perhaps their
6 removal “simply require[s] more time for processing,” or they are “ordered
7 removed to countries with whom the United States does not have a repatriation
8 agreement,” or their countries “refuse to take them,” or they are “effectively
9 ‘stateless’ because of their race and/or place of birth.” *Kim Ho Ma v. Ashcroft*,
10 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances, detained
11 immigrants can find themselves trapped in detention for months, years, decades,
12 or even the rest of their lives. If federal law were understood to allow for
13 “indefinite, perhaps permanent, detention,” it would pose “a serious constitutional
14 threat.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided the
15 constitutional concern by interpreting § 1231(a)(6) to incorporate implicit limits.
16 *Id.* at 689.

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

25 Further, even before the 180 days have passed, the immigrant must still be
26 released if he *rebut*s the presumption that his detention is reasonable. *See, e.g.,*
27 *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal. 2020) (collecting cases
28 on rebutting the *Zadvydas* presumption before six months have passed); *Zavvar v.*

1 *Scott*, Civil No. 25-2104-TDC, 2025 WL 2592543, *6 (D. Md. Sept. 8, 2025)
2 (finding the presumption rebutted for a person who was immediately released
3 after being ordered removed and, years later, re-detained for less than six months).

4 Mr. Lam can make all the threshold showings needed to prove his
5 *Zadvydas* claim and shift the burden to the government.

6 **C. Mr. Lam’s six-month grace period expired in 2011.**

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

14 Here, Mr. Lam’s order of removal was entered in June 2011. Exh. A at ¶ 3.
15 Accordingly, his 90-day removal period began then. 8 U.S.C. § 1231(a)(1)(B).
16 The *Zadvydas* grace period thus expired in December 2011, three months after the
17 removal period ended. *See, e.g., Tadros v. Noem*, 2025 WL 1678501, No. 25-cv-
18 4108(EP), *2–*3.⁸

19 _____
20 ⁸ The government has sometimes argued that release and rearrest resets the six-
21 month grace period completely, taking the clock back to zero. “Courts . . . broadly
22 agree” that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *7 n.6
23 (W.D. La. Oct. 15, 2019), *report and recommendation adopted*, 2019 WL
24 6037220 (W.D. La. Nov. 13, 2019); *see also Sied v. Nielsen*, No. 17-CV-06785-
25 LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018) (collecting cases).

26 It has also sometimes argued that rearrest creates a new three-month grace
27 period. As a court explained in *Bailey v. Lynch*, that view cannot be squared with
28 the statutory definition of the removal period in 8 U.S.C. § 1231(a)(1)(B). No. CV
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.*

1 **D. Mr. Lam’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. Lam will not likely be removed in**
4 **the reasonably foreseeable future.**

5 This Court uses a burden-shifting framework to evaluate Mr. Lam’s
6 *Zadvydas* claim. At the first stage of the framework, Mr. Lam 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. Lam 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

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28 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 burden if there is good reason to believe that successful removal is not
2 significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL
3 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

4 “In the reasonably foreseeable future.” This component of the test
5 focuses on when Mr. Lam will likely be removed: Continued detention is
6 permissible only if removal is likely to happen “in the reasonably foreseeable
7 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s
8 removal efforts. If the Court has “no idea of when it might reasonably expect
9 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal
10 is likely to occur—or even that it might occur—in the reasonably foreseeable
11 future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3
12 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL
13 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d
14 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that Mr. Lam
15 “would *eventually* receive” a travel document, he can still meet his burden by
16 giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*,
17 2016 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

18 Mr. Lam satisfies this standard for two reasons.

19 First, Mr. Lam’s own experience bears this out. ICE has now had 14 years
20 to deport him, including five years under the MOU. He has cooperated with ICE’s
21 removal efforts throughout that time. Yet ICE has proved unable to remove him.

22 Second, the general experience of other Vietnamese immigrants also bears
23 this out. Vietnam often does not accept pre-1995 Vietnamese immigrants for
24 deportation. Even after Vietnam signed the 2020 MOU, ICE had to admit that
25 there was no reasonable likelihood of removing such immigrants in the
26 reasonably foreseeable future, Order on Joint Motion for Entry of Stipulated
27 Dismissal, *Trihn*, 18-CV-316-CJC-GJS, Dkt. 161 at 3 (C.D. Cal. Oct. 7, 2021)—
28 an admission backed up by two years’ experience under the MOU, Asian Law

1 Caucus, *Resources on Deportation of Vietnamese Immigrants Who Entered the*
2 *U.S. Before 1995* (Jul. 15, 2025) (providing links to all quarterly reports). Though
3 the Trump administration rescinded this admission, *Lam*, 2025 WL 2419288, at
4 *7, several courts have explained that barriers continue to obstruct removal for
5 people like Mr. Lam. *See Lam*, 2025 WL 2419288; *Hoac*, 2025 WL 1993771;
6 *Lam*, 2025 WL 1725791; *see also Than Lam*, No. 25-CV-2760-TWR at ECF No.
7 12 (minute order noting grant of *Zadvydas* petition as to pre-1995 Vietnamese
8 immigrant on October 23, 2025); *Ho*, No. 25-cv-2453-BAS at ECF No. 11
9 (granting preliminary injunction ordering release as to pre-1995 Vietnamese
10 immigrant on October 20, 2025).

11 Thus, Mr. Lam has met his initial burden, and the burden shifts to the
12 government. Unless the government can prove a “significant likelihood of
13 removal in the reasonably foreseeable future,” Mr. Lam must be released.
14 *Zadvydas*, 533 U.S. at 701.

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

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

19 **V. Prayer for relief**

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

- 21 1. Order and enjoin Respondents to immediately release Petitioner from
22 custody;
- 23 2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.
24 § 1231(a)(6) unless and until Respondents obtain a travel document for
25 his removal;
- 26 3. Enjoin Respondents from re-detaining Petitioner without first following
27 all procedures set forth in 8 C.F.R. §§ 241.4(I), 241.13(i), and any other
28 applicable statutory and regulatory procedures;

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4. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: December 8, 2025

s/ Kara Hartzler
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Lam
Email: kara_hartzler@fd.org

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Proof of Service

I, the undersigned, will cause the attached Petition for a Writ of Habeas Corpus to be emailed to the U.S. Attorney’s Office for the Southern District of California at USACAS.Habeas2241@usdoj.gov when I receive the court-stamped copy.

Dated: December 8, 2025

/s/ Kara Hartzler
Kara L. Hartzler