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10 A# 

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

13 HIEN NGOC HUYNH,<sup>1</sup>

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.: '25CV3601 LL AHG

**Petition for Writ  
of  
Habeas Corpus**

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

26  
27  
28 <sup>1</sup> Federal Defenders of San Diego, Inc., is filing the instant petition with  
provisional appointment under Chief Judge Order No. 134.

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1 **I. Introduction**

2 Mr. Huynh was born in a refugee camp in Thailand after his parents fled  
3 the Vietnam War. He and his family came to the United States and became lawful  
4 permanent residents. In 2004, Mr. Huynh was ordered removed. But Vietnam  
5 wouldn't accept him, in line with its general policy of not accepting pre-1995  
6 immigrants for deportation. Mr. Huynh was then released on an order of  
7 supervision.

8 Mr. Huynh remained on supervision for the next 20 years and has no other  
9 criminal history. But on November 13, 2025, ICE agents surrounded his car while  
10 he was driving to the gym and arrested him. Contrary to regulation, ICE did not  
11 notify Mr. Huynh of any changed circumstances that made his removal more  
12 likely, like receiving news from Vietnam that it would now accept Mr. Huynh  
13 despite not accepting him 20 years ago. Nor did it give Mr. Huynh an opportunity  
14 to contest his re-detention.

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

19 (1) *Regulatory and due process violations*: Mr. Huynh must be released  
20 because ICE's failure to follow its own regulations about notice and an  
21 opportunity to be heard violate due process. *See, e.g., Constantinovici v. Bondi*,  
22 \_\_\_ F. Supp. 3d \_\_\_, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10,  
23 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal.  
24 Sept. 15, 2025); *Huynh v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB,  
25 \*3-\*5 (S.D. Cal. Oct. 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-  
26 2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Huynh v. Noem*, 2025 WL 2770623,  
27 No. 25-cv-2334-JES, \*3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-  
28 02597-JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*,

1 No. 25-cv-02575-JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025) *Sphabmixay v.*  
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4 JO-AHG (S.D. Cal. Nov. 3, 2025); *Phakeokoth v. Noem*, 25-cv-2817-RBM-SBC  
5 (S.D. Cal. Nov. 7, 2025); *Soryadvongsa v. Noem*, 25-cv-2663-AGS-DDL (S.D.  
6 Cal. Nov. 8, 2025) (all either granting temporary restraining orders releasing  
7 noncitizens, or granting habeas petitions outright, due to ICE regulatory violations  
8 during recent re-detentions of released noncitizens previously ordered removed).

9 (2) *Zadvydas* violations: Mr. Huynh must also be released under *Zadvydas*  
10 because—having proved unable to remove him for the last 20 years—the  
11 government cannot show that there is a “significant likelihood of removal in the  
12 reasonably foreseeable future.” *Id.* at 701. *See, e.g., Conchas-Valdez*, 2025 WL  
13 2884822, No. 25-cv-2469-DMS (S.D. Cal. Oct. 6, 2025); *Rebenok v. Noem*, No.  
14 25-cv-2171-TWR, ECF No. 13 (S.D. Cal. Sept. 25, 2025) (granting habeas  
15 petitions releasing noncitizens due to *Zadvydas* violations).

16 This Court should grant this habeas petition and issue appropriate  
17 injunctive relief on both grounds.

## 18 II. Statement of Facts

19 A. **Mr. Huynh is ordered removed, held in ICE custody, and**  
20 **released as ICE proves unable to deport him for the next 20**  
**years, until he is arrested while going to the gym.**

21 Mr. Huynh was born in a refugee camp in Thailand to Vietnamese parents.  
22 In 1984, Mr. Huynh and his family entered the United States as refugees.  
23 Declaration of Ilien Ngoc Huynh, Exhibit A (“Exh. A”) ¶ 1. They soon obtained  
24 green cards. *Id.*

25 In 2004, Mr. Huynh was convicted of an offense assault. *Id.* at ¶ 2. As a  
26 result of this conviction, Mr. Huynh was placed in removal proceedings. *Id.* at ¶ 2.  
27 An immigration judge ordered him removed on December 7, 2004. *Id.* at ¶ 3.

28 //

1 But ICE was not able to effectuate Mr. Huynh’s removal to Vietnam and  
2 continued to detain him for about six months before releasing him on an order of  
3 supervision. *Id.* In the 20 years since his removal order, Mr. Huynh has no other  
4 criminal convictions. *Id.* at ¶ 5.

5 On November 13, 2025, ICE agents surrounded his car and arrested him on  
6 his way to the gym. *Id.* at ¶ 6. They did not tell him why they were revoking his  
7 supervision or give him an interview or an opportunity to contest his detention. *Id.*

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

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

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

27 <sup>2</sup> [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 Eventually, in 2020, the administration secured a Memorandum of  
2 Understanding (“MOU”) with Vietnam, which created a process through which  
3 the Vietnamese government could consider some pre-1995 Vietnamese  
4 immigrants for removal.<sup>3</sup> The MOU limited consideration to persons meeting  
5 certain criteria, but many these criteria have been shielded from public view. *See*  
6 *Huynh v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at \*14 (W.D. Wash.  
7 Aug. 21, 2025). When an immigrant does qualify, the MOU provides only that  
8 Vietnam has “discretion whether to issue a travel document,” which it exercises  
9 “on a case-by-case basis.” *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025  
10 WL 1993771, at \*5 (E.D. Cal. July 16, 2025).

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

24 \_\_\_\_\_  
25 <sup>3</sup> [https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-  
b55c67f8f04b/assets/media/ALC-FOIA-Re-Release-MOU-bates-1-8-8-10-21.pdf](https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-b55c67f8f04b/assets/media/ALC-FOIA-Re-Release-MOU-bates-1-8-8-10-21.pdf)

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

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

1 including requests made months or years before the September 2023 cutoff. *See*  
2 *id.* (proposed counsel’s count based on quarterly reports).

3 On June 9, 2025, the Trump administration rescinded ICE’s policy of  
4 generally finding that pre-1995 Vietnamese immigrants were not likely to be  
5 removed in the reasonably foreseeable future. *See Huynh v. Scott*, No. 2:25-CV-  
6 01398, 2025 WL 2419288, at \*7 (W.D. Wash. Aug. 21, 2025). But since then,  
7 several courts have found that facts on the ground likely have not changed enough  
8 to show that any individual pre-1995 Vietnamese immigrant will be timely  
9 removed to Vietnam. *See Huynh v. Scott*, No. 2:25-CV-01398, 2025 WL  
10 2419288, at \*17 (W.D. Wash. Aug. 21, 2025); *Hoac*, 2025 WL 1993771, at \*4;  
11 *Huynh v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at \*5 (D. Mass. June  
12 20, 2025); *Ho v. Noem*, No. 25-cv-2453-BAS, ECF No. 11 at 3, 6 (S.D. Cal. Oct.  
13 20, 2025); *Thanh Huynh v. Noem*, No. 25-cv-2760-TWR, ECF No. 12 (S.D. Cal.  
14 Oct. 23, 2025).

15 **III. Legal Analysis.**

16 This Court should grant this petition and order Mr. Huynh’s immediate  
17 release. ICE failed to follow its own regulations requiring changed circumstances  
18 before re-detention, as well as a chance to promptly contest a re-detention  
19 decision. And *Zadvydas v. Davis* holds that immigration statutes do not authorize  
20 the government to detain immigrants like Mr. Huynh, for whom there is “no  
21 significant likelihood of removal in the reasonably foreseeable future.” 533 U.S.  
22 678, 701 (2001).

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

25 Two regulations establish the process due to someone who is re-detained in  
26 immigration custody following a period of release. 8 C.F.R. § 241.4(l) applies to  
27 all re-detentions, generally. 8 C.F.R. § 241.13(i) applies as an added, overlapping  
28 framework to persons released upon good reason to believe that they will not be

1 removed in the reasonably foreseeable future, as Mr. Huynh was. *See Phan v.*  
2 *Noem*, 2025 WL 2898977, No. 25-CV-2422-RBM-MSB, \*3–\*5 (S.D. Cal. Oct.  
3 10, 2025) (explaining this regulatory framework and granting a habeas petition for  
4 ICE’s failure to follow these regulations for a refugee of Vietnam who entered the  
5 United States before 1995); *Rokhfirooz*, No. 25-CV-2053-RSH-VET, 2025 WL  
6 2646165 at \*2 (same as to an Iranian national).

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

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

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

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

1 detention decision for compliance with the regulations, and “where ICE fails to  
2 follow its own regulations in revoking release, the detention is unlawful and the  
3 petitioner’s release must be ordered.” *Rokhfirooz*, 2025 WL 2646165 at \*4  
4 (collecting cases); *accord Phan*, 2025 WL 2898977 at \*5.

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

6 First, ICE did not identify a proper reason under the regulations to re-detain  
7 Mr. Huynh. Mr. Huynh was not returned to custody because of a conditions  
8 violation, and there was apparently no determination before or at his arrest that  
9 there are “changed circumstances” such that there is “a significant likelihood that  
10 [Mr. Huynh] may be removed in the reasonably foreseeable future.” 8 C.F.R.  
11 § 241.13(i)(2).

12 Second, ICE did not notify Mr. Huynh of the reasons for his re-detention  
13 upon revocation of release. *See* 8 C.F.R. §§ 241.4(l)(1), 241.13(i)(3). He was re-  
14 detained on November 13, 2025. Exh. A at ¶ 5. As he has explained, “[t]hey told  
15 me they were revoking my supervision but did not say why.” *Id.* at ¶ 6.

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

1 respond to the reasons for revocation or submit evidence rebutting his re-  
2 detention. Exh. A at ¶ 6.

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

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

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15 <sup>6</sup> *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); *Huynh 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).

23 <sup>7</sup> *Grigorian*, 2025 WL 2604573; *Delkash v. Noem*, 2025 WL 2683988; *Ceesay v.*  
24 *Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F.  
25 Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387  
26 (D. Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352,  
27 at \*7–9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA,  
28 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           **B. Claim Two: Mr. Huynh’s detention violates *Zadvydas* and 8**  
2           **U.S.C. § 1231.**

3                   **1. Legal background**

4           In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered  
5 a problem affecting people like Mr. Huynh: Federal law requires ICE to detain an  
6 immigrant during the “removal period,” which typically spans the first 90 days  
7 after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-  
8 day removal period expires, detention becomes discretionary—ICE may detain  
9 the migrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily,  
10 this scheme would not lead to excessive detention, as removal happens within  
11 days or weeks. But some detainees cannot be removed quickly. Perhaps their  
12 removal “simply require[s] more time for processing,” or they are “ordered  
13 removed to countries with whom the United States does not have a repatriation  
14 agreement,” or their countries “refuse to take them,” or they are “effectively  
15 ‘stateless’ because of their race and/or place of birth.” *Kim Ho Ma v. Ashcroft*,  
16 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances, detained  
17 immigrants can find themselves trapped in detention for months, years, decades,  
18 or even the rest of their lives. If federal law were understood to allow for  
19 “indefinite, perhaps permanent, detention,” it would pose “a serious constitutional  
20 threat.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided the  
21 constitutional concern by interpreting § 1231(a)(6) to incorporate implicit limits.  
22 *Id.* at 689.

23           *Zadvydas* held that § 1231(a)(6) presumptively permits the government to  
24 detain an immigrant for 180 days after his or her removal order becomes final.  
25 After those 180 days have passed, the immigrant must be released unless his or  
26 her removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 701. After six  
27 months have passed, the petitioner must only make a prima facie case for relief—  
28 there is “good reason to believe that there is no significant likelihood of removal

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.*

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

10 Mr. Huynh can make all the threshold showings needed to prove his  
11 *Zadvydas* claim and shift the burden to the government.

12 **C. Mr. Huynh’s six-month grace period expired in 2005.**

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

20 Here, Mr. Huynh’s order of removal was entered in December 2004. Exh.  
21 A at ¶ 3. Accordingly, his 90-day removal period began then. 8 U.S.C.  
22 § 1231(a)(1)(B). The *Zadvydas* grace period thus expired in June 2005, three  
23 months after the removal period ended. *See, e.g., Tadros v. Noem*, 2025 WL  
24 1678501, No. 25-cv-4108(EP), \*2–\*3.<sup>8</sup>

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

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

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

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21           It has also sometimes argued that rearrest creates a new three-month grace  
22           period. As a court explained in *Bailey v. Lynch*, that view cannot be squared with  
23           the statutory definition of the removal period in 8 U.S.C. § 1231(a)(1)(B). No. CV  
24           16-2600 (JLL), 2016 WL 5791407, at \*2 (D.N.J. Oct. 3, 2016). “Pursuant to the  
25           statute, the removal period, and in turn the [six-month] presumptively reasonable  
26           period, begins from the latest of ‘the date the order of removal becomes  
27           administratively final,’ the date of a reviewing court’s final order where the  
28           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           **“Significant likelihood of removal.”** This component focuses on whether  
2 Mr. Huynh will likely be removed: Continued detention is permissible only if it is  
3 “significant[ly] like[ly]” that ICE will be able to remove him. *Zadvydas*, 533 U.S.  
4 at 701. This inquiry targets “not only the *existence* of untapped possibilities, but  
5 also [the] probability of *success* in such possibilities.” *Elashi v. Sabol*, 714 F.  
6 Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added). In other words,  
7 even if “there remains *some* possibility of removal,” a petitioner can still meet its  
8 burden if there is good reason to believe that successful removal is not  
9 significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL  
10 31520362, at \*4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

11           **“In the reasonably foreseeable future.”** This component of the test  
12 focuses on when Mr. Huynh will likely be removed: Continued detention is  
13 permissible only if removal is likely to happen “in the reasonably foreseeable  
14 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s  
15 removal efforts. If the Court has “no idea of when it might reasonably expect  
16 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal  
17 is likely to occur—or even that it might occur—in the reasonably foreseeable  
18 future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at \*3  
19 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL  
20 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d  
21 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that Mr. Huynh  
22 “would *eventually* receive” a travel document, he can still meet his burden by  
23 giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*,  
24 2016 WL 6679830, at \*2 (E.D. Mich. Nov. 14, 2016).

25           Mr. Huynh satisfies this standard for two reasons.

26           First, Mr. Huynh’s own experience bears this out. ICE has now had 20  
27 years to deport him, including five years under the MOU. He has cooperated with

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1 ICE’s removal efforts throughout that time. Yet ICE has proved unable to remove  
2 him.

3 Second, the general experience of other Vietnamese immigrants also bears  
4 this out. Vietnam often does not accept pre-1995 Vietnamese immigrants for  
5 deportation. Even after Vietnam signed the 2020 MOU, ICE had to admit that  
6 there was no reasonable likelihood of removing such immigrants in the  
7 reasonably foreseeable future, Order on Joint Motion for Entry of Stipulated  
8 Dismissal, *Trihn*, 18-CV-316-CJC-GJS, Dkt. 161 at 3 (C.D. Cal. Oct. 7, 2021)—  
9 an admission backed up by two years’ experience under the MOU, Asian Law  
10 Caucus, *Resources on Deportation of Vietnamese Immigrants Who Entered the*  
11 *U.S. Before 1995* (Jul. 15, 2025) (providing links to all quarterly reports). Though  
12 the Trump administration rescinded this admission, *Huynh*, 2025 WL 2419288, at  
13 \*7, several courts have explained that barriers continue to obstruct removal for  
14 people like Mr. Huynh. *See Huynh*, 2025 WL 2419288; *Hoac*, 2025 WL 1993771;  
15 *Huynh*, 2025 WL 1725791; *see also Than Huynh*, No. 25-CV-2760-TWR at ECF  
16 No. 12 (minute order noting grant of *Zadvydass* petition as to pre-1995 Vietnamese  
17 immigrant on October 23, 2025); *Ho*, No. 25-cv-2453-BAS at ECF No. 11  
18 (granting preliminary injunction ordering release as to pre-1995 Vietnamese  
19 immigrant on October 20, 2025).

20 Thus, Mr. Huynh has met his initial burden, and the burden shifts to the  
21 government. Unless the government can prove a “significant likelihood of  
22 removal in the reasonably foreseeable future,” Mr. Huynh must be released.  
23 *Zadvydass*, 533 U.S. at 701.

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

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

27 Mr. Huynh hereby requests such a hearing on any material, disputed facts.

28 //

1 **V. Prayer for relief**

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

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

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Respectfully submitted,

Dated: December 15, 2025

s/ Kara Hartzler  
Federal Defenders of San Diego, Inc.  
Attorneys for Mr. Huynh  
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 15, 2025

/s/ Kara Hartzler  
Kara L. Hartzler

# EXHIBIT A

1 **Kara Hartzler**  
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3 **Federal Defenders of San Diego, Inc.**  
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6 Telephone: (619) 234-8467  
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8 Kara\_hartzler@fd.org

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

11 **HIEN NGOC HUYNH,**  
12 **Petitioner,**

13 **v.**

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

Civil Case No.:

**Declaration of**  
**Hien Ngoc Huynh**  
**in Support of Petition**  
**for a Writ of Habeas Corpus**

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I, Hien Ngoc Huynh, declare:

1. I was born in a refugee camp in Thailand to Vietnamese parents. We came to the United States in 1984 as refugees and became lawful permanent residents soon after we arrived.
2. In approximately 2004, I was convicted of an assault. As a result of this conviction, I was put into removal proceedings.
3. On December 7, 2004, an immigration judge ordered me removed on the basis of this conviction.
4. After I was ordered removed, ICE tried to deport me to Vietnam. However, Vietnam did not issue me travel documents. ICE continued to detain me for about six months before releasing me on an order of supervision.
5. Since my release from ICE custody in 2005, I have not been convicted of any other crimes.
6. On November 13, 2025, several ICE agents surrounded my car as I was driving from the gym and arrested me. They told me they were revoking my supervision but did not say why, nor did they give me an informal interview or a chance to contest my detention.
7. Prior to my detention, I was working at a nursing facility. I do not make enough money to hire a lawyer.

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I declare under penalty of perjury that the foregoing is true and correct,  
executed on 12/14/25, in San Diego, California.

  
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Declarant