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[redacted]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

THAT TOM NGIAM,[1]

Petitioner,

v.

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

Respondents.

CIVIL CASE NO.: '26CV0172 RSH BLM

Petition for Writ of Habeas Corpus

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

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

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I. Introduction

Mr. Ngiam and his family fled Cambodia in 1979 and came to the United States. In 1998, Mr. Ngiam was ordered removed, but Cambodia would not accept him. After spending six months total in ICE custody, Mr. Ngiam was released on an order of supervision.

Mr. Ngiam remained on supervision for the next 25 years. He checked in with ICE every year without incident and has had no new criminal convictions. When he went for his check-in on November 28, 2025, ICE re-detained him. Contrary to regulation, ICE did not notify Mr. Ngiam of any changed circumstances that made his removal more likely, like receiving news from Cambodia that it would now accept Mr. Ngiam. Nor did it give Mr. Ngiam an opportunity to contest his re-detention.

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

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

2867-AGS-DEB (S.D. Cal. Oct. 31, 2025); *Thammavongsa v. Noem*, 25-cv-2836-JO-AHG (S.D. Cal. Nov. 3, 2025); *Phakeokoth v. Noem*, 25-cv-2817-RBM-SBC (S.D. Cal. Nov. 7, 2025); *Soryadvongsa v. Noem*, 25-cv-2663-AGS-DDL (S.D. Cal. Nov. 8, 2025) (all either granting temporary restraining orders releasing noncitizens, or granting habeas petitions outright, due to ICE regulatory violations during recent re-detentions of released noncitizens previously ordered removed).

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

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

II. Statement of Facts

In 1979, Mr. Ngiam fled Cambodia and entered the United States with his family. Declaration of That Tom Ngiam, Exhibit A ("Exh. A") ¶ 1. He soon obtained a green card. *Id.*

In 1990s, Mr. Ngiam was convicted of various non-violent offenses. *Id.* at ¶ 2. He was placed in removal proceedings, and an immigration judge ordered him removed on July 10, 1998. *Id.* at ¶ 2, 3.

After the immigration judge ordered Mr. Ngiam removed, ICE continued to detain him for three months. *Id.* at ¶ 4. But because they were not able to deport him to Cambodia, they eventually released him on an order of supervision. *Id.* at ¶ 4.

In 2001, Mr. Ngiam had a violation of probation in one of his criminal cases. *Id.* at ¶ 5. After he served time for this probation violation, ICE took him

into custody and held me for another three months before releasing him. *Id.* at ¶ 5. Since that time, he has not violated his supervised release or been convicted of any other crimes. *Id.* at ¶ 5.

Although the United States signed a repatriation agreement with Cambodia in 2002, Cambodia is one of the 13 countries and territories that the U.S. considers "recalcitrant." *See* Paasche, Erlend, "'Recalcitrant' and 'Uncooperative': Why Some Countries Refuse to Accept Return of Their Deportees," Migration Policy Institute, Dec. 20, 2022, *available at*: https://www.migrationpolicy.org/article/recalcitrant-uncooperative-countries-refuse-deportation. Mr. Ngiam's own history confirms this—24 years after the repatriation agreement, Cambodia has not accepted Mr. Ngiam. Exh. A at ¶ 5.

But on November 28, 2025, ICE officials arrested Mr. Ngiam during his check in appointment. *Id.* at ¶ 6. They did not provide him any notice or give him an interview or an opportunity to contest his detention. *Id.*

III. Legal Analysis.

This Court should order Mr. Ngiam's immediate release. ICE failed to follow its own regulations requiring changed circumstances before re-detention, as well as a chance to promptly contest a re-detention decision. And *Zadvydas v. Davis* holds that immigration statutes do not authorize the government to detain immigrants like Mr. Ngiam, for whom there is "no significant likelihood of removal in the reasonably foreseeable future." 533 U.S. 678, 701 (2001).

A. Claim One: ICE failed to comply with its own regulations before re-detaining Mr. Ngiam, violating his rights under applicable regulations and due process.

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

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

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

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

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

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

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

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

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

Second, ICE did not notify Mr. Ngiam of the reasons for his re-detention upon revocation of release. *See* 8 C.F.R. §§ 241.4(l)(1), 241.13(i)(3). He was re-detained on November 28, 2025. Exh. A at ¶ 6. As he has explained, "[t]hey did not tell me why they were revoking my supervision." *Id.* at ¶ 6.

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

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

Numerous courts have released re-detained immigrants after finding that ICE failed to comply with applicable regulations. These have included courts in this district,[2] as well as courts outside this district.[3]

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

B. Claim Two: Mr. Ngiam's detention violates *Zadvydas* and 8 U.S.C. § 1231.

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

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

[3] *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).

after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-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 days or weeks. But some detainees cannot be removed quickly. Perhaps their removal "simply require[s] more time for processing," or they are "ordered removed to countries with whom the United States does not have a repatriation agreement," or their countries "refuse to take them," or they are "effectively 'stateless' because of their race and/or place of birth." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances, detained immigrants can find themselves trapped in detention for months, years, decades, or even the rest of their lives. If federal law were understood to allow for "indefinite, perhaps permanent, detention," it would pose "a serious constitutional threat." *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

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

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

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

Mr. Ngiam can make all the threshold showings needed to prove his *Zadvydas* claim and shift the burden to the government. The *Zadvydas* grace period is linked to the date the final order of removal is issued. It lasts for "*six months* after a final order of removal—that is, *three months* after the statutory removal period has ended." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001); *see also* 8 U.S.C. § 1231(a)(1)(B) (linking the statutory removal period to issuance of the final order and other proceedings associated with the original removal order).

Here, Mr. Ngiam's order of removal was entered in July 1998. Exh. A at ¶ 3. Accordingly, his 90-day removal period began then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period thus expired in January 1999, three months after the removal period ended. *See, e.g.*, *Tadros v. Noem*, 2025 WL 1678501, No. 25-cv-4108(EP), *2–*3.[4]

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[4] The government has sometimes argued that release and rearrest resets the six-month grace period completely, taking the clock back to zero. "Courts . . . broadly 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).

It has also sometimes argued that rearrest creates a new three-month grace period. As a court explained in *Bailey v. Lynch*, that view cannot be squared with 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

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

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

"Significant likelihood of removal." This component focuses on <u>whether</u> Mr. Ngiam will likely be removed: Continued detention is permissible only if it is "significant[ly] like[ly]" that ICE will be able to remove him. *Zadvydas*, 533 U.S. at 701. This inquiry targets "not only the *existence* of untapped possibilities, but also [the] probability of *success* in such possibilities." *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added). In other words, even if "there remains *some* possibility of removal," a petitioner can still meet its burden if there is good reason to believe that successful removal is not

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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.

significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

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

Mr. Ngiam's own experience bears this out. ICE has now had 27 years to deport him. He has cooperated with ICE's removal efforts throughout that time. Yet ICE has proved unable to remove him.

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

D. This Court must hold an evidentiary hearing on any disputed facts.

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

IV. Prayer for relief

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

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

Respectfully submitted,

Dated: January 12, 2026

s/ Kara Hartzler

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PROOF OF SERVICE

I, the undersigned, caused to be served the within Petition for Writ of Habeas Corpus by email, at the request of Janet Cabral, Chief of the Civil Division, to:

U.S. Attorney's Office, Southern District of California
Civil Division
USACAS.Habeas2241@usdoj.gov

Date: January 12, 2026

/s/ *Kara Hartzler*
Kara Hartzler