


1 **Kara Hartzler**
2 Cal. Bar No. 293751
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 Kara_hartzler@fd.org

9 Counsel for Mr. Xi
10 

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

13 SANG XI,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,
21 JESUS ROCHA, Acting Field Office
22 Director, San Diego Field Office,
23 CHRISTOPHER LAROSE, Warden at
24 Otay Mesa Detention Center,

25 Respondents.

26 CIVIL CASE NO.: '26CV0175 TWR SBC

27 **Petition for Writ
of
Habeas Corpus**

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

29 _____
30 ¹ Federal Defenders of San Diego, Inc., is filing the instant petition with
31 provisional appointment under Chief Judge Order No. 134.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Table of Contents

I. Introduction 1

II. Statement of Facts 2

 A. Mr. Xi is ordered removed, held in ICE custody, and released as ICE proves unable to deport him, until he is arrested at his annual check in..... 2

 B. Vietnam has a longstanding policy of not accepting Vietnamese immigrants who entered before 1995. 3

III. Legal Analysis..... 5

 A. Claim One: ICE failed to comply with its own regulations when it re-detained Mr. Xi, violating his rights under applicable regulations and due process. 6

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

IV. This Court must hold an evidentiary hearing on any disputed facts. 13

V. Prayer for relief 13

1 **I. Introduction**

2 Mr. Xi was born in Vietnam and came to the United States in 1989 as a
3 refugee. He became a lawful permanent resident but was ordered removed in 1998
4 due to several criminal convictions. But Vietnam wouldn't accept him, in line
5 with its general policy of not accepting pre-1995 immigrants for deportation.
6 Mr. Xi was then released on an order of supervision in approximately 2002 or
7 2003.

8 Mr. Xi remained on supervision for the next 23 years and has no other
9 criminal history. But on December 19, 2025, ICE agents took him into custody
10 when he appeared for his annual check in. Contrary to regulation, ICE did not
11 notify Mr. Xi of any changed circumstances that made his removal more likely,
12 like receiving news from Vietnam that it would now accept Mr. Xi despite not
13 accepting him years ago. Nor did it give Mr. Xi an opportunity to contest his re-
14 detention.

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

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

1 (S.D. Cal. Oct. 30, 2025); *Sayvongsa v. Noem*, 25-cv-2867-AGS-DEB (S.D. Cal.
2 Oct. 31, 2025); *Thammavongsa v. Noem*, 25-cv-2836-JO-AHG (S.D. Cal. Nov. 3,
3 2025); *Phakeokoth v. Noem*, 25-cv-2817-RBM-SBC (S.D. Cal. Nov. 7, 2025);
4 *Soryadvongsa v. Noem*, 25-cv-2663-AGS-DDL (S.D. Cal. Nov. 8, 2025) (all
5 either granting temporary restraining orders releasing noncitizens, or granting
6 habeas petitions outright, due to ICE regulatory violations during recent re-
7 detentions of released noncitizens previously ordered removed).

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

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

17 **II. Statement of Facts**

18 **A. Mr. Xi is ordered removed, held in ICE custody, and released as** 19 **ICE proves unable to deport him, until he is arrested at his** 20 **annual check in.**

21 Mr. Xi was born in Vietnam and came to the United States in 1989 as a
22 refugee. Declaration of Sang Xi, Exhibit A (“Exh. A”) ¶ 1. Soon after, he became
23 a lawful permanent resident. *Id.*

24 Between 1995 and 2002, Mr. Xi was convicted of various crimes relating to
25 drugs and domestic violence. *Id.* at ¶ 2. As a result of these convictions, Mr. Xi
26 was placed in removal proceedings. *Id.* at ¶ 2. An immigration judge ordered him
27 removed on March 25, 1998. *Id.* at ¶ 3.

28 //

1 But ICE was not able to effectuate Mr. Xi’s removal to Vietnam and
2 continued to detain him before eventually releasing him on an order of
3 supervision around 2002 or 2003. *Id.* In years since then, Mr. Xi has not missed a
4 check-in appointment and has no other criminal convictions. *Id.* at ¶ 5.

5 On December 19, 2025, ICE agents took him into custody when he went to
6 his check-in appointment. *Id.* at ¶ 6. They did not tell him why they were revoking
7 his supervision or give him an interview or an opportunity to contest his
8 detention. *Id.*

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

11 There is a reason why ICE has proved unable to remove Mr. Xi for the last
12 23 years: Vietnam has a general policy of not accepting pre-1995 Vietnamese
13 immigrants for deportation. In 2008, Vietnam and the United States signed a
14 repatriation treaty under which Vietnam agreed to consider accepting certain
15 Vietnamese immigrants for deportation. *See Trinh v. Homan*, 466 F. Supp. 3d
16 1077, 1083 (C.D. Cal. 2020). The treaty exempted pre-1995 Vietnamese
17 immigrants, providing, “Vietnamese citizens are not subject to return to Vietnam
18 under this Agreement if they arrived in the United States before July 12, 1995.”
19 Agreement Between the United States of America and Vietnam, at 2 (Jan. 22,
20 2008).²

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

3 Eventually, in 2020, the administration secured a Memorandum of
4 Understanding (“MOU”) with Vietnam, which created a process through which
5 the Vietnamese government could consider some pre-1995 Vietnamese
6 immigrants for removal.³ The MOU limited consideration to persons meeting
7 certain criteria, but many these criteria have been shielded from public view. *See*
8 *Xi v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *14 (W.D. Wash. Aug. 21,
9 2025). When an immigrant does qualify, the MOU provides only that Vietnam
10 has “discretion whether to issue a travel document,” which it exercises “on a case-
11 by-case basis.” *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL
12 1993771, at *5 (E.D. Cal. July 16, 2025).

13 Even after signing the MOU, Vietnam overwhelmingly declined to timely
14 issue travel documents for pre-1995 immigrants. By October 2021, ICE had
15 adopted a “policy of generally finding that ‘pre-1995 Vietnamese
16 immigrants’ . . . are not likely to be removed in the reasonably foreseeable
17 future.” Order on Joint Motion for Entry of Stipulated Dismissal, *Trihn*, 18-CV-
18 316-CJC-GJS, Dkt. 161 at 3 (C.D. Cal. Oct. 7, 2021).⁴ That admission aligned
19 with two years’ worth of quarterly reports that ICE agreed to submit as part of a
20 class action settlement. Those quarterly reports showed that between September
21 2021 and September 2023, only four immigrants who came to the U.S. before
22 1995 were given travel documents and deported. Asian Law Caucus, *Resources*
23 *on Deportation of Vietnamese Immigrants Who Entered the U.S. Before 1995* (Jul.
24

25 _____
26 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)

27 ⁴ [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).

1 15, 2025) (providing links to all quarterly reports).⁵ During the same period, ICE
2 made 14 requests for travel documents that, as of 2023, had not been granted,
3 including requests made months or years before the September 2023 cutoff. *See*
4 *id.* (proposed counsel’s count based on quarterly reports).

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

16 **III. Legal Analysis.**

17 This Court should grant this petition and order Mr. Xi’s immediate release.
18 ICE failed to follow its own regulations requiring changed circumstances before
19 re-detention, as well as a chance to promptly contest a re-detention decision. And
20 *Zadvydas v. Davis* holds that immigration statutes do not authorize the
21 government to detain immigrants like Mr. Xi, for whom there is “no significant
22 likelihood of removal in the reasonably foreseeable future.” 533 U.S. 678, 701
23 (2001).

24
25
26
27
28 ⁵ <https://www.asianlawcaucus.org/news-resources/guides-reports/trinh-reports>

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

4 Two regulations establish the process due to someone who is re-detained in
5 immigration custody following a period of release. 8 C.F.R. § 241.4(l) applies to
6 all re-detentions, generally. 8 C.F.R. § 241.13(i) applies as an added, overlapping
7 framework to persons released upon good reason to believe that they will not be
8 removed in the reasonably foreseeable future, as Mr. Xi was. *See Phan v. Noem*,
9 2025 WL 2898977, No. 25-CV-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10,
10 2025) (explaining this regulatory framework and granting a habeas petition for
11 ICE’s failure to follow these regulations for a refugee of Vietnam who entered the
12 United States before 1995); *Rokhfirooz*, No. 25-CV-2053-RSH-VET, 2025 WL
13 2646165 at *2 (same as to an Iranian national).

14 These regulations permit an official to “return [the person] to custody” only
15 when the person “violate[d] any of the conditions of release,” 8 C.F.R.
16 §§ 241.13(i)(1), 241.4(l)(1), or, in the alternative, if an appropriate official
17 “determines that there is a significant likelihood that the alien may be removed in
18 the reasonably foreseeable future,” and makes that finding “on account of
19 changed circumstances,” 8 C.F.R. § 241.13(i)(2).

20 No matter the reason for re-detention, the re-detained person is entitled to
21 certain procedural protections. For one, “[u]pon revocation,’ the noncitizen ‘will
22 be notified of the reasons for revocation of his or her release or parole.’” *Phan*,
23 2025 WL 2898977 at *3, *4 (quoting §§ 241.4(l)(1), 241.13(i)(3)). Further, the
24 person “‘will be afforded an initial informal interview promptly after his or her
25 return’ to be given ‘an opportunity to respond to the reasons for revocation stated
26 in the notification.’” *Id.*

27 In the case of someone released under § 241.13(i), the regulations also
28 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

1 likelihood he or she be removed in the reasonably foreseeable future, or that he or
2 she has not violated the order of supervision.” § 241.13(i)(3).

3 ICE is required to follow its own regulations. *United States ex rel. Accardi*
4 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150,
5 1162 (9th Cir. 2004) (“The legal proposition that agencies may be required to
6 abide by certain internal policies is well-established.”). A court may review a re-
7 detention decision for compliance with the regulations, and “where ICE fails to
8 follow its own regulations in revoking release, the detention is unlawful and the
9 petitioner’s release must be ordered.” *Rokhfirooz*, 2025 WL 2646165 at *4
10 (collecting cases); *accord Phan*, 2025 WL 2898977 at *5.

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

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

17 Second, ICE did not notify Mr. Xi of the reasons for his re-detention upon
18 revocation of release. *See* 8 C.F.R. §§ 241.4(l)(1), 241.13(i)(3). He was re-
19 detained on December 19, 2025. Exh. A at ¶ 5. As he has explained, “[t]hey told
20 me they were revoking my supervision because I didn’t have a green card.” *Id.* at
21 ¶ 6.

22 Third, Mr. Xi does not believe he received an informal interview where an
23 officer explained the purported “changed circumstances” underlying his
24 revocation. “Simply to say that circumstances had changed or there was a
25 significant likelihood of removal in the foreseeable future is not enough.” *Sarail*
26 *A. v. Bondi*, No. 25-CV-2144, 2025 WL 2533673, at *3 (D. Minn. Sept. 3, 2025).
27 Rather, “Petitioner must be told *what* circumstances had changed or *why* there
28 was now a significant likelihood of removal in order to meaningfully respond to

1 the reasons and submit evidence in opposition, as allowed under § 241.13(i)(3).”
2 *Id.* By “identif[ying] the category—‘changed circumstances’—but fail[ing] to
3 notify [Petitioner] of the reason—the circumstances that changed and created a
4 significant likelihood of removal in the reasonably foreseeable future—[ICE]
5 failed to follow the relevant regulation.” *Id.* This failure to identify any changed
6 circumstances also means he has he been afforded a meaningful opportunity to
7 respond to the reasons for revocation or submit evidence rebutting his re-
8 detention. Exh. A at ¶ 6.

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

12 //

13
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); *Xi 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 “[B]ecause officials did not properly revoke petitioner’s release pursuant to
2 the applicable regulations, that revocation has no effect, and [Mr. Xi] is entitled to
3 his release (subject to the same Order of Supervision that governed his most
4 recent release).” *Liu*, 2025 WL 1696526, at *3.

5 **B. Claim Two: Mr. Xi’s detention violates *Zadvydas* and 8 U.S.C.
6 § 1231.**

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

26 *Zadvydas* held that § 1231(a)(6) presumptively permits the government to
27 detain an immigrant for 180 days after his or her removal order becomes final.
28 After those 180 days have passed, the immigrant must be released unless his or

1 her removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 701. After six
2 months have passed, the petitioner must only make a prima facie case for relief—
3 there is “good reason to believe that there is no significant likelihood of removal
4 in the reasonably foreseeable future.” *Id.* Then the burden shifts to “the
5 Government [to] respond with evidence sufficient to rebut that showing.” *Id.*

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

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

21 Here, Mr. Xi’s order of removal was entered in March 1998. Exh. A at ¶ 3.
22 Accordingly, his 90-day removal period began then. 8 U.S.C. § 1231(a)(1)(B).
23 The *Zadvydas* grace period thus expired in September 1998, three months after
24 the removal period ended. *See, e.g., Tadros v. Noem*, 2025 WL 1678501, No. 25-
25 cv-4108(EP), *2–*3.⁸

26 _____
27 ⁸ The government has sometimes argued that release and rearrest resets the six-
28 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

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

6 **“Good reason to believe.”** The “good reason to believe” standard is a
7 relatively forgiving one. “A petitioner need not establish that there exists no
8 possibility of removal.” *Freeman v. Watkins*, No. CV B:09-160, 2009 WL
9 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does “[g]ood reason to
10 believe’ . . . place a burden upon the detainee to demonstrate no reasonably
11 foreseeable, significant likelihood of removal or show that his detention is
12 indefinite; it is something less than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW,
13 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401
14 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
15 Petitioners need only give a “good reason”—not prove anything to a certainty.

16 **“Significant likelihood of removal.”** This component focuses on whether
17 Mr. Xi will likely be removed: Continued detention is permissible only if it is
18 “significant[ly] like[ly]” that ICE will be able to remove him. *Zadvydas*, 533 U.S.

19 _____
20 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).

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 at 701. This inquiry targets “not only the *existence* of untapped possibilities, but
2 also [the] probability of *success* in such possibilities.” *Elashi v. Sabol*, 714 F.
3 Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added). In other words,
4 even if “there remains *some* possibility of removal,” a petitioner can still meet its
5 burden if there is good reason to believe that successful removal is not
6 significantly likely. *Kacanvic v. Elwood*, No. CIV.A. 02-8019, 2002 WL
7 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

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

22 Mr. Xi satisfies this standard for two reasons.

23 First, Mr. Xi’s own experience bears this out. ICE has now had 23 years to
24 deport him, including five years under the MOU. He has cooperated with ICE’s
25 removal efforts throughout that time. Yet ICE has proved unable to remove him.

26 Second, the general experience of other Vietnamese immigrants also bears
27 this out. Vietnam often does not accept pre-1995 Vietnamese immigrants for
28 deportation. Even after Vietnam signed the 2020 MOU, ICE had to admit that

1 there was no reasonable likelihood of removing such immigrants in the
2 reasonably foreseeable future, Order on Joint Motion for Entry of Stipulated
3 Dismissal, *Trihn*, 18-CV-316-CJC-GJS, Dkt. 161 at 3 (C.D. Cal. Oct. 7, 2021)—
4 an admission backed up by two years’ experience under the MOU, Asian Law
5 Caucus, *Resources on Deportation of Vietnamese Immigrants Who Entered the*
6 *U.S. Before 1995* (Jul. 15, 2025) (providing links to all quarterly reports). Though
7 the Trump administration rescinded this admission, *Xi*, 2025 WL 2419288, at *7,
8 several courts have explained that barriers continue to obstruct removal for people
9 like Mr. Xi. *See Xi*, 2025 WL 2419288; *Hoac*, 2025 WL 1993771; *Xi*, 2025 WL
10 1725791; *see also Than Xi*, No. 25-CV-2760-TWR at ECF No. 12 (minute order
11 noting grant of *Zadvydas* petition as to pre-1995 Vietnamese immigrant on
12 October 23, 2025); *Ho*, No. 25-cv-2453-BAS at ECF No. 11 (granting
13 preliminary injunction ordering release as to pre-1995 Vietnamese immigrant on
14 October 20, 2025).

15 Thus, Mr. Xi has met his initial burden, and the burden shifts to the
16 government. Unless the government can prove a “significant likelihood of
17 removal in the reasonably foreseeable future,” Mr. Xi must be released. *Zadvydas*,
18 533 U.S. at 701.

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

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

23 **V. Prayer for relief**

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

- 25 1. Order and enjoin Respondents to immediately release Petitioner from
26 custody;

27
28

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

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully submitted,

Dated: January 12, 2026

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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: January 12, 2026 /s/ Kara Hartzler
Kara L. Hartzler