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

12  
13 HAI THAI,<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.

26 CIVIL CASE NO.: '26CV0252 TWR MSB

27 **Petition for Writ  
of  
Habeas Corpus**

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

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

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1 **I. Introduction**

2 This Court previously granted Mr. Thai’s immigration habeas petition and  
3 ordered him released on October 23, 2025, due to ICE’s regulatory and due  
4 process violations during Mr. Thai’s re-detention. *See Thai v. Noem*, 25-cv-2436-  
5 RBM-MMP. The Court found that because Respondents had “not yet submitted a  
6 travel document request to Vietnam,” among other circumstances, they had not  
7 “show[n] that there is now a significant likelihood of Petitioner’s removal due to  
8 changed circumstances.” ECF No. 10 at 8 (tentative order); *see* ECF No. 12  
9 (adopting tentative order).

10 After his release, ICE told Mr. Thai to appear for a check-in appointment in  
11 downtown San Diego on December 16, 2025. At that appointment, an officer said  
12 that ICE had obtained Mr. Thai’s travel document from Vietnam and took him  
13 into custody in the downtown facility.

14 After he was transferred to Otay Mesa Detention Center, a different ICE  
15 officer expressed surprise that Mr. Thai had been redetained. This officer said that  
16 “[w]e don’t have your travel document. I don’t know why they took you in.”  
17 Declaration of Hai Thai, Exhibit A at ¶ 5. The same thing happened to at least  
18 three other individuals who were redetained but then told that local ICE did not  
19 have a travel document for them. *See* Exhibits B, C, and D (declarations of Sonxai  
20 Rasakhamdee, Saengphet Lnu, and Bounpheng Soryadvongsa).

21 Because a factual dispute exists as to whether “changed circumstances”  
22 exist that justified the revocation of Mr. Thai’s order of supervision under 8  
23 C.F.R. §§ 241.4 and 241.13, this Court should hold an evidentiary hearing with  
24 relevant ICE witnesses to resolve whether local ICE has a travel document for  
25 Mr. Thai.

26 Alternatively, this Court should find that Mr. Thai’s removal is not  
27 significantly likely in the reasonably foreseeable future. In the month since his  
28 redetention, Mr. Thai has not been removed, nor has ICE scheduled him for any

1 upcoming flights. And a week ago, the primary airline ICE uses for chartered  
2 flights cancelled its contract with the agency.<sup>2</sup> These facts, combined with the  
3 conflicting accounts of the existence of a travel document, show that removal is  
4 not significantly likely in the reasonably foreseeable future. Thus, this Court  
5 should order Mr. Thai released, or at least hold an evidentiary hearing on the  
6 likelihood of his removal in the reasonably foreseeable future.

## 7 **II. Statement of Facts**

8 Mr. Thai came from Vietnam to the United States with his family in 1979  
9 and became a lawful permanent resident soon after. Exh. A at ¶ 1. In 2009, he was  
10 ordered removed on the basis of a criminal conviction. *Id.* at ¶ 2. But because  
11 Vietnam would not issue him a travel document, ICE eventually released him on  
12 an order of supervision.

13 In August 2025, ICE revoked Mr. Thai's order of supervision and took him  
14 back into custody. *Id.* at ¶ 3. He filed a petition for a writ of habeas corpus, which  
15 this Court granted on October 23, 2025. *See Thai v. Noem*, 25-cv-2436-RBM.  
16 ICE released him but told him he needed to continue to check in. *Id.* at ¶ 3.

17 When he went to his ICE check in San Diego on December 16, 2025, the  
18 officer told Mr. Thai that they had received a travel document for him. *Id.* at ¶ 4.  
19 ICE redetained him and transferred him back to Otay Mesa Detention Center. *Id.*  
20 at ¶ 4. But when he subsequently talked to an ICE officer at the facility, the  
21 officer told him, "We don't have your travel document. I don't know why they  
22 took you in." *Id.* at ¶ 4.

23 At least three other individuals have been redetained under similar  
24 circumstances. One individual was redetained on December 18, 2025, and told  
25 that ICE had his travel document but then subsequently informed by an ICE  
26 officer that "I don't see your travel document." Exhibit B, Declaration of

27 \_\_\_\_\_  
28 <sup>2</sup> See "Avelo Airlines to Halt Deportation Flights for ICE," CBS News, Jan. 8, 2026,  
*available at*: <https://www.cbsnews.com/news/avelo-stops-ice-deportation-flights/>.

1 Saengphet Lnu, at ¶ 5. Another person was redetained on December 19, 2025, and  
2 and later told by an ICE officer, “I don’t have nothing on you.” Exhibit C,  
3 Declaration of Sonxai Rasakhamdee at ¶ 5. Another person was redetained on  
4 December 18, 2025, and not even told that ICE had a travel document—only that  
5 he was “ordered removed by the judge.” Exhibit D, Declaration of Bounpheng  
6 Soryadvongsa. None of these four individuals have been scheduled for a flight or  
7 told when they would be removed.

8 **III. Legal Analysis.**

9 This Court should grant the petition and order Mr. Thai’s immediate release  
10 or at least hold an evidentiary hearing. Under the regulations, ICE must show  
11 “changed circumstances” before revoking supervised release, yet a material  
12 question of fact exists as to whether local officials have a travel document for Mr.  
13 Thai. Alternatively, ICE’s failure to remove Mr. Thai in the month since it  
14 claimed to have his travel document, along with the cancellation of ICE’s contract  
15 with its primary airline carrier, shows that there is “no significant likelihood of  
16 removal in the reasonably foreseeable future.” *Zadvydas v. Davis*, 533 U.S. 678,  
17 701 (2001).

18 **A. Claim One: A material issue of fact exists as to whether local**  
19 **ICE officials actually have a travel document for Mr. Thai.**

20 The applicable regulations permit ICE to revoke an individual’s order of  
21 supervised release in two circumstances: 1) when the person “violate[d] any of the  
22 conditions of release,” 8 C.F.R. §§ 241.13(i)(1), 241.4(l)(1), or; 2) if an  
23 appropriate official “determines that there is a significant likelihood that the alien  
24 may be removed in the reasonably foreseeable future,” and makes that finding “on  
25 account of changed circumstances,” 8 C.F.R. § 241.13(i)(2).

26 Here, Mr. Thai has not violated the conditions of his supervised release  
27 since this Court granted his habeas petition several months ago. So the only  
28 question is whether there are “changed circumstances”—i.e., whether ICE has

1 obtained a travel document for Mr. Thai—that could show a “significant  
2 likelihood that [he] may be removed in the reasonably foreseeable future.” 8  
3 C.F.R. § 241.13(i)(2). The question of whether local ICE officials do, in fact, have  
4 a travel document for Mr. Thai is a material issue of fact, for at least three  
5 reasons.

6 First, ICE officials have made inconsistent representations about the  
7 existence of Mr. Thai’s travel document. When Mr. Thai went for his check in  
8 downtown on December 16, 2025, the official told him that they had received his  
9 travel document. Exh. A at 4. But after he was transferred to Otay Mesa Detention  
10 Center, a different ICE official told him, “We don’t have your travel document. I  
11 don’t know why they took you in.” *Id.* at 5.

12 Second, ICE has made similar inconsistent representations about travel  
13 documents in at least four recent cases. In addition to Mr. Thai, three other  
14 individuals who were redetained around the same time have declared under  
15 penalty of perjury that they also received conflicting messages from ICE officials.  
16 One individual remembers that ICE told him at the downtown check in that they  
17 had a travel document but that a different ICE official at Otay Mesa said, “I don’t  
18 see your travel document.” Exh. B, Lnu declaration at ¶ 5. Another individual was  
19 redetained and later told by an ICE officer, “I don’t have nothing on you.” Exh. C,  
20 Rasakhamdee declaration at ¶ 5. And one individual only remembers the official  
21 in the downtown San Diego check in saying that he was “ordered removed,” not  
22 that ICE even had a travel document for him. Exh. D, Soryadvongsa declaration at  
23 ¶ 5. Thus, ICE appears to be routinely redetaining individuals when local officials  
24 disagree on whether a travel document exists.

25 Third, despite one officer originally telling Mr. Thai that the government  
26 has a travel document, ICE has not removed Mr. Thai (or the three other  
27 individuals) in the month since they were redetained. If ICE had a travel  
28 document for Mr. Thai, it would presumably schedule him on the next available

1 flight, yet it has not done so. In fact, a flight departed for Vietnam and Laos on  
2 January 13, 2025, a month after Mr. Thai’s redetention, yet Mr. Thai was not on  
3 it. Not only does this raise suspicions about the existence of a travel document, it  
4 calls into question why the government redetained Mr. Thai at all when he was  
5 not even scheduled for a flight.

6 Given that a material issue of fact exists as to whether ICE has a travel  
7 document, this Court should hold an evidentiary hearing to allow local ICE  
8 officers to be questioned under oath about the existence of a travel document and  
9 flight for Mr. Thai. This is the remedy the Ninth Circuit found appropriate when a  
10 material issue of fact existed in a similar habeas petition. *See Owino v.*  
11 *Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009).

12 In *Owino*, an immigrant detainee filed a habeas petition challenging his  
13 detention under *Zadvydas* on the basis that his removal was not significantly  
14 likely in the reasonably foreseeable future. 575 F.3d at 954. The government filed  
15 a declaration from a deportation officer stating that “the consulate first said that  
16 Kenya would not accept Owino” but then “changed course” and advised it that it  
17 would “issue him a travel document” under certain circumstances. *Id.* On the  
18 basis of this declaration, the district court “denied [the] habeas petition on the  
19 parties’ filings without holding an evidentiary hearing.” *Id.*

20 The Ninth Circuit remanded for an evidentiary hearing. *Id.* at 955. It noted  
21 the parties’ competing evidence—particularly the fact that “[t]he government  
22 relies on the Hayes declaration to show Owino can be removed,” while the  
23 petitioner “argues that the Hayes declaration only illustrates the Kenyan  
24 consulate’s shifting and unpredictable official position about the prerequisites of  
25 returning to Kenya.” *Id.* at 956. The Ninth Circuit held that, “under these  
26 circumstances, the question of whether Owino faces a significant likelihood of  
27 removal cannot be resolved without an evidentiary hearing.” *Id.* It thus remanded  
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1 and held that “[o]n remand, the district court may accept evidence other than the  
2 Hayes declaration relevant to whether Owino is entitled to habeas relief.” *Id.*

3 *Owino* thus establishes two important principles relevant to this case. First,  
4 a deportation officer’s declaration alone cannot resolve a disputed and material  
5 issue of fact. *See id.* at 956. So here, while the government’s return is likely to  
6 include a declaration from a deportation officer purporting to have a travel  
7 document, that declaration alone does not resolve the question of whether there  
8 are “changed circumstances.”

9 Second, when a material issue of fact exists in the context of an  
10 immigration habeas petition, an evidentiary hearing is appropriate to resolve it.  
11 *See id.* at 956. Here, ICE’s inconsistent statements of whether it has travel  
12 documents for multiple individuals, combined with its failure to remove those  
13 individuals after redetention, creates a material issue of fact that can only be  
14 resolved through an evidentiary hearing. Thus, this Court should order such an  
15 evidentiary hearing to determine whether local ICE officials have a travel  
16 document for Mr. Thai.

17 **B. Claim Two: Mr. Thai’s detention violates *Zadvydas* and 8 U.S.C.  
18 § 1231.**

19 Given ICE’s failure to timely remove Mr. Thai, as well as the government’s  
20 cancelled contract with its primary airline carrier, this Court should alternatively  
21 release Mr. Thai under *Zadvydas v. Davis*, 533 U.S. 678 (2001), or at least hold  
22 an evidentiary hearing to determine whether his removal is significantly likely in  
23 the reasonably foreseeable future.

24 In *Zadvydas*, the Supreme Court held that 8 U.S.C. § 1231(a)(6)  
25 presumptively permits the government to detain an immigrant for 180 days after  
26 his or her removal order becomes final. After those 180 days have passed, the  
27 immigrant must be released unless his or her removal is reasonably foreseeable.  
28 *Zadvydas*, 533 U.S. at 701. After six months have passed, the petitioner must only

1 make a prima facie case for relief—that there is “good reason to believe that there  
2 is no significant likelihood of removal in the reasonably foreseeable future.” *Id.*  
3 Then the burden shifts to “the Government [to] respond with evidence sufficient  
4 to rebut that showing.” *Id.* Further, even before the 180 days have passed, the  
5 immigrant must still be released if he *rebutts* the presumption that his detention is  
6 reasonable. *See, e.g., Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal.  
7 2020) (collecting cases on rebutting the *Zadvydas* presumption before six months  
8 have passed); *Zavvar v. Scott*, Civil No. 25-2104-TDC, 2025 WL 2592543, \*6 (D.  
9 Md. Sept. 8, 2025) (finding the presumption rebutted for a person who was  
10 immediately released after being ordered removed and, years later, re-detained for  
11 less than six months).

12 Here, the six-month grace period has long since ended. The *Zadvydas* grace  
13 period is linked to the date the final order of removal is issued. It lasts for “*six*  
14 *months* after a final order of removal—that is, *three months* after the statutory  
15 removal period has ended.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th  
16 Cir. 2001); *see also* 8 U.S.C. § 1231(a)(1)(B) (linking the statutory removal  
17 period to issuance of the final order and other proceedings associated with the  
18 original removal order). Because Mr. Thai’s order of removal was entered in  
19 2009, the six months have long since expired. Exh. A at ¶ 2; *Tadros v. Noem*,  
20 2025 WL 1678501, No. 25-cv-4108(EP), \*2–\*3.<sup>3</sup> Moreover, he has been detained  
21 for at least six months since his final order of removal issued.

22 Accordingly, Mr. Thai satisfies the “significantly likely” standard for two  
23 reasons. First, ICE has failed to deport him in the 17 years since he was ordered  
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25 <sup>3</sup> The government has sometimes argued that release and rearrest resets the six-  
26 month grace period completely, taking the clock back to zero. “Courts . . . broadly  
27 agree” that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL 6003485, at \*7 n.6  
28 (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 removed—including during the months he has been detained this year. Second,  
2 ICE’s primary airline carrier for deportations recently cancelled its contract with  
3 the agency. *See* “Avelo Airlines to Halt Deportation Flights for ICE,” CBS News,  
4 Jan. 8, 2026, *available at*: [https://www.cbsnews.com/news/avelo-stops-ice-](https://www.cbsnews.com/news/avelo-stops-ice-deportation-flights/)  
5 [deportation-flights/](https://www.cbsnews.com/news/avelo-stops-ice-deportation-flights/). Importantly, “Avelo appears to be the only commercial  
6 airline carrying out full aircraft deportation flights on a regular schedule for ICE.”  
7 *See* “Key airline used by Trump for deportations cuts ties with ICE,” Axios, Jan.  
8 8, 2026, *available at*: [https://www.axios.com/2026/01/07/ice-trump-avelo-airlines-](https://www.axios.com/2026/01/07/ice-trump-avelo-airlines-deportations)  
9 [deportations](https://www.axios.com/2026/01/07/ice-trump-avelo-airlines-deportations). Given that the agency was not able to effectuate Mr. Thai’s removal  
10 *before* this airline cancelled its contract with ICE, it is doubtful that it will be able  
11 to do so afterwards. Accordingly, Mr. Thai has met his initial burden to show that  
12 his removal is not significantly likely in the reasonably foreseeable future.

13 Because Mr. Thai has met his initial burden, the burden shifts to the  
14 government to prove a “significant likelihood of removal in the reasonably  
15 foreseeable future.” *Zadvydas*, 533 U.S. at 701. Because it cannot do so, this  
16 Court should order Mr. Thai released.

17 **IV. Prayer for relief**

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

- 19 1. Order and enjoin Respondents to immediately release Petitioner from  
20 custody;
- 21 2. Conduct an evidentiary hearing to determine the material issue of  
22 whether local ICE officials have a travel document for Mr. Thai;
- 23 3. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.  
24 § 1231(a)(6) unless and until Respondents establish the existence of a  
25 travel document and confirm that Mr. Thai is on a scheduled flight no  
26 later than one week after his redetention;

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

Respectfully submitted,

Dated: January 15, 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 15, 2026

/s/ Kara Hartzler  
Kara Hartzler