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

12  
13 HUNG CAO LE NGUYEN,<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 JEREMY CASEY, Warden at Imperial  
24 Regional Detention Center,

25 Respondents.

CIVIL CASE NO.: '26CV0426 RSH SBC

**Petition for Writ  
of  
Habeas Corpus**

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

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

**Table of Contents**

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

**I. Introduction ..... 1**

**II. Statement of Facts ..... 2**

    A. Mr. Nguyen is ordered removed, held in ICE custody, and released as ICE proves unable to deport him for the next 25 years. .... 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. Nguyen, violating his rights under applicable regulations and due process. .... 6

    B. Claim Two: Mr. Nguyen’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 ..... 14**

1 **I. Introduction**

2 Mr. Nguyen was born in Vietnam and came to the United States with his  
3 family in 1979. In 2001, Mr. Nguyen was ordered removed. But Vietnam  
4 wouldn't accept him, in line with its general policy of not accepting pre-1995  
5 immigrants for deportation. Mr. Nguyen was then released on an order of  
6 supervision.

7 Mr. Nguyen remained on supervision for the next 25 years. But in August  
8 2025, ICE agents arrested Mr. Nguyen when he came for his annual check in.  
9 Contrary to regulation, ICE did not notify Mr. Nguyen of any changed  
10 circumstances that made his removal more likely, like receiving news from  
11 Vietnam that it would now accept Mr. Nguyen despite not accepting him 25 years  
12 ago. Nor did it give Mr. Nguyen an informal interview or an opportunity to  
13 contest his re-detention.

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

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

1 *Sphabmixay v. Noem*, 25-cv-2648-LL-VET (S.D. Cal. Oct. 30, 2025); *Sayvongsa*  
2 *v. Noem*, 25-cv-2867-AGS-DEB (S.D. Cal. Oct. 31, 2025); *Thammavongsa v.*  
3 *Noem*, 25-cv-2836-JO-AHG (S.D. Cal. Nov. 3, 2025); *Phakeokoth v. Noem*, 25-  
4 cv-2817-RBM-SBC (S.D. Cal. Nov. 7, 2025); *Soryadvongsa v. Noem*, 25-cv-  
5 2663-AGS-DDL (S.D. Cal. Nov. 8, 2025) (all either granting temporary  
6 restraining orders releasing noncitizens, or granting habeas petitions outright, due  
7 to ICE regulatory violations during recent re-detentions of released noncitizens  
8 previously ordered removed).

9 (2) *Zadvydas* violations: Mr. Nguyen 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. Nguyen is ordered removed, held in ICE custody, and** 20 **released as ICE proves unable to deport him for the next 25** 21 **years.**

22 Mr. Nguyen was born in Vietnam and came to the United States with his  
23 family in 1979. Exhibit A, Declaration of Hung Cao Le Nguyen, at ¶ 1. Soon  
24 after, he became a lawful permanent resident. *Id.*

25 After he became a lawful permanent resident, Mr. Nguyen was convicted of  
26 a drug-related crime in Louisiana. *Id.* at ¶ 1. As a result of this conviction, he was  
27 put into deportation proceedings. *Id.* at ¶ 2. On March 22, 2001, an immigration  
28 judge ordered him removed. *Id.* at ¶ 3.

1 After the immigration judge ordered Mr. Nguyen removed, ICE continued  
2 to detain him. *Id.* at ¶ 4. But because they were not able to deport him to Vietnam,  
3 they eventually released him on an order of supervision. *Id.* at ¶ 4.

4 Since 2001, Ms. Nguyen has been reporting to ICE and has not missed a  
5 check-in appointment. *Id.* at ¶ 5.

6 In August 2025, ICE redetained Mr. Nguyen when he came for his check in  
7 appointment. *Id.* at ¶ 6. He received some sort of written notice, but ICE did not  
8 interview him about it until one-and-a-half to two months later. *Id.* at ¶ 6. ICE  
9 officers also told him that their travel document request was sent back and that  
10 they twice had to correct it. *Id.* at ¶ 6.

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

13 There is a reason why ICE has proved unable to remove Mr. Nguyen for  
14 the last 25 years: Vietnam has a general policy of not accepting pre-1995  
15 Vietnamese immigrants for deportation. In 2008, Vietnam and the United States  
16 signed a repatriation treaty under which Vietnam agreed to consider accepting  
17 certain Vietnamese immigrants for deportation. *See Trinh v. Homan*, 466 F. Supp.  
18 3d 1077, 1083 (C.D. Cal. 2020). The treaty exempted pre-1995 Vietnamese  
19 immigrants, providing, “Vietnamese citizens are not subject to return to Vietnam  
20 under this Agreement if they arrived in the United States before July 12, 1995.”  
21 Agreement Between the United States of America and Vietnam, at 2 (Jan. 22,  
22 2008).<sup>2</sup>

23 Despite that limit, the first Trump administration detained Vietnamese  
24 immigrants and held them for months, while the administration tried to pressure  
25 Vietnam to take them. *See Trinh*, 466 F. Supp. 3d at 1083–84. That possibility did  
26

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 not materialize. “In total, between 2017 and 2019, ICE requested travel  
2 documents for pre-1995 Vietnamese immigrants 251 times. Vietnam granted  
3 those requests only 18 times, in just over seven percent of cases.” *Id.* at 1084. The  
4 administration was forced to release many of these detainees in 2018. *See id.*

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

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

25  
26 <sup>3</sup> [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 <sup>4</sup> [https://static1.squarespace.com/static/5f0cc12a064e9716d52e6052/t/618e99e561  
3d7372c1bb197e/1636735461479/Trinh+-  
28 +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 1995 were given travel documents and deported. Asian Law Caucus, *Resources*  
2 *on Deportation of Vietnamese Immigrants Who Entered the U.S. Before 1995* (Jul.  
3 15, 2025) (providing links to all quarterly reports).<sup>5</sup> During the same period, ICE  
4 made 14 requests for travel documents that, as of 2023, had not been granted,  
5 including requests made months or years before the September 2023 cutoff. *See*  
6 *id.* (proposed counsel’s count based on quarterly reports).

7 On June 9, 2025, the Trump administration rescinded ICE’s policy of  
8 generally finding that pre-1995 Vietnamese immigrants were not likely to be  
9 removed in the reasonably foreseeable future. *See Nguyen v. Scott*, No. 2:25-CV-  
10 01398, 2025 WL 2419288, at \*7 (W.D. Wash. Aug. 21, 2025). But since then,  
11 several courts have found that facts on the ground likely have not changed enough  
12 to show that any individual pre-1995 Vietnamese immigrant will be timely  
13 removed to Vietnam. *See Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL  
14 2419288, at \*17 (W.D. Wash. Aug. 21, 2025); *Hoac*, 2025 WL 1993771, at \*4;  
15 *Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at \*5 (D. Mass. June  
16 20, 2025); *Ho v. Noem*, No. 25-cv-2453-BAS, ECF No. 11 at 3, 6 (S.D. Cal. Oct.  
17 20, 2025); *Thanh Nguyen v. Noem*, No. 25-cv-2760-TWR, ECF No. 12 (S.D. Cal.  
18 Oct. 23, 2025).

### 19 **III. Legal Analysis.**

20 This Court should grant this petition and order Mr. Nguyen’s immediate  
21 release. ICE failed to follow its own regulations requiring changed circumstances  
22 before re-detention, as well as a chance to promptly contest a re-detention  
23 decision. And *Zadvydas v. Davis* holds that immigration statutes do not authorize  
24 the government to detain immigrants like Mr. Nguyen, for whom there is “no  
25 significant likelihood of removal in the reasonably foreseeable future.” 533 U.S.  
26 678, 701 (2001).

27  
28 <sup>5</sup> <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. Nguyen, 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. Nguyen was. *See Phan v.*  
9 *Noem*, 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. Nguyen. Mr. Nguyen was not returned to custody because of a conditions  
14 violation, and there was apparently no determination before or at his arrest that  
15 there are “changed circumstances” such that there is “a significant likelihood that  
16 [Mr. Nguyen] may be removed in the reasonably foreseeable future.” 8 C.F.R.  
17 § 241.13(i)(2).

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

22 Third, Mr. Nguyen does not believe he received an informal interview  
23 where an 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,<sup>6</sup> as well as courts outside this district.<sup>7</sup>

12  
13  
14  
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); *Nguyen 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).

<sup>7</sup> *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. Nguyen] is  
3 entitled to his release (subject to the same Order of Supervision that governed his  
4 most recent release).” *Liu*, 2025 WL 1696526, at \*3.

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

7 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered  
8 a problem affecting people like Mr. Nguyen: Federal law requires ICE to detain  
9 an 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. Nguyen can make all the threshold showings needed to prove his  
14 *Zadvydas* claim and shift the burden to the government because the six-month  
15 grace period has long since ended. The *Zadvydas* grace period is linked to the date  
16 the final order of removal is issued. It lasts for “*six months* after a final order of  
17 removal—that is, *three months* after the statutory removal period has ended.” *Kim*  
18 *Ho Ma v. 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. Nguyen’s order of removal was entered on March 22, 2001. Exh.  
22 A at ¶ 3. Accordingly, his 90-day removal period began then. 8 U.S.C.  
23 § 1231(a)(1)(B). The *Zadvydas* grace period thus expired in September 2001,  
24 three months after the removal period ended. *See, e.g., Tadros v. Noem*, 2025 WL  
25 1678501, No. 25-cv-4108(EP), \*2–\*3.<sup>8</sup>

26  
27  
28 <sup>8</sup> 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

1 This Court uses a burden-shifting framework to evaluate Mr. Nguyen’s  
2 *Zadvydas* claim. At the first stage of the framework, Mr. Nguyen must “provide[]  
3 good reason to believe that there is no significant likelihood of removal in the  
4 reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. This standard can be  
5 broken down 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. Nguyen will likely be removed: Continued detention is permissible only if it

18  
19 (W.D. La. Oct. 15, 2019), *report and recommendation adopted*, 2019 WL  
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 is “significant[ly] like[ly]” that ICE will be able to remove him. *Zadvydas*, 533  
2 U.S. at 701. This inquiry targets “not only the *existence* of untapped possibilities,  
3 but also [the] probability of *success* in such possibilities.” *Elashi v. Sabol*, 714 F.  
4 Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added). In other words,  
5 even if “there remains *some* possibility of removal,” a petitioner can still meet its  
6 burden if there is good reason to believe that successful removal is not  
7 significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL  
8 31520362, at \*4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

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

23       Mr. Nguyen satisfies this standard for two reasons.

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

28

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

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

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

23           Resolution of a prolonged-detention habeas petition may require an  
24 evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009).  
25 Mr. Nguyen hereby requests such a hearing on any material, disputed facts.  
26  
27  
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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,

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15 Dated: January 23, 2026

*s/ Kara Hartzler*

Federal Defenders of San Diego, Inc.

Attorneys for Mr. Nguyen

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: January 23, 2026

/s/ Kara Hartzler  
Kara L. Hartzler