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

12 **BOUANGERN PHOUTTHAVONG,<sup>1</sup>**  
 13 **Petitioner,**  
 14 **v.**  
 15 **KRISTI NOEM, Secretary of the**  
 16 **Department of Homeland Security,**  
 17 **PAMELA JO BONDI, Attorney General,**  
 18 **TODD M. LYONS, Acting Director,**  
 19 **Immigration and Customs Enforcement,**  
 20 **JESUS ROCHA, Acting Field Office**  
 21 **Director, San Diego Field Office,**  
 22 **CHRISTOPHER LAROSE, Warden at**  
 23 **Otay Mesa Detention Center,**  
 24 **Respondents.**

CIVIL CASE NO.: '26CV0583 LL DDL

**Petition for Writ  
 of  
 Habeas Corpus**  
**[Civil Immigration Habeas,  
 28 U.S.C. § 2241]**

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

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1 **I. Introduction**

2 Mr. Phouthavong and his family came from Laos to the United States in  
3 1986. In 2011, Mr. Phouthavong was ordered removed. But Laos wouldn't  
4 accept him, and Mr. Phouthavong was released on an order of supervision.

5 Mr. Phouthavong remained on supervision for the next 15 years. He  
6 checked in with ICE every year without incident. When he went for his annual  
7 check-in on December 2, 2025, ICE re-detained him. Contrary to regulation, ICE  
8 did not notify Mr. Phouthavong of any changed circumstances that made his  
9 removal more likely, like receiving news from Laos that it would now accept him  
10 despite not accepting him 15 years ago. Nor did it give Mr. Phouthavong an  
11 opportunity to contest his re-detention.

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

16 (1) *Regulatory and due process violations*: Mr. Phouthavong must be  
17 released because ICE's failure to follow its own regulations about notice and an  
18 opportunity to be heard violate due process. *See, e.g., Constantinovici v. Bondi*,  
19 \_\_ F. Supp. 3d \_\_, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10,  
20 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal.  
21 Sept. 15, 2025); *Phouthavong v. Noem*, 2025 WL 2898977, No. 25-cv-2422-  
22 RBM-MSB, \*3-\*5 (S.D. Cal. Oct. 10, 2025); *Sun v. Noem*, 2025 WL 2800037,  
23 No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Phouthavong v. Noem*,  
24 2025 WL 2770623, No. 25-cv-2334-JES, \*3 (S.D. Cal. Sept. 29, 2025); *Truong v.*  
25 *Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025);  
26 *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12 (S.D. Cal.  
27 Oct. 9, 2025) *Sphabmixay v. Noem*, 25-cv-2648-LL-VET (S.D. Cal. Oct. 30,  
28 2025); *Sayvongsa v. Noem*, 25-cv-2867-AGS-DEB (S.D. Cal. Oct. 31, 2025);

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

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

14 This Court should grant this habeas petition and issue appropriate  
15 injunctive relief on either ground.

## 16 **II. Statement of Facts**

### 17 **A. Mr. Phouthavong is ordered removed, held in ICE custody, and** 18 **released as ICE proves unable to deport him for the next 15** **years, until he is arrested at his annual ICE check-in.**

19 In 1986, Mr. Phouthavong fled Laos and entered the United States as a  
20 refugee. Declaration of Bouangern Phouthavong, Exhibit A (“Exh. A”) ¶ 1. He  
21 soon obtained a green card. *Id.*

22 In 2011, as a result of several criminal convictions, Mr. Phouthavong was  
23 placed in removal proceedings. *Id.* at ¶ 2. An immigration judge ordered him  
24 removed on May 25, 2011. *Id.* at ¶ 3.

25 But after ICE was not able to effectuate Mr. Phouthavong’s removal to  
26 Laos, ICE continued to detain him for three months before finally releasing him  
27 on an order of supervision. *Id.* at ¶ 4. In the years since his removal order,  
28

1 Mr. Phouthavong does not believe he has missed a check-in appointment. *Id.* at  
2 ¶ 5.

3 On December 2, 2025, ICE officials arrested Mr. Phouthavong during his  
4 annual check in appointment. *Id.* at ¶ 6. He does not believe that they provided  
5 him any notice or gave him an interview or an opportunity to contest his  
6 detention. *Id.*

7 **B. Laos has no repatriation agreement with the United States and a**  
8 **longstanding policy of refusing to accept deportees.**

9 The Lao People’s Democratic Republic is an authoritarian state and one of  
10 the poorest nations in Asia. *See* Congressional Research Service, *In Focus: Laos*  
11 (Dec. 2, 2024) (“2024 CRS”).<sup>2</sup> When the communist party came to power in Laos  
12 in 1975, hundreds of thousands of refugees fled, including many who had fought  
13 alongside the U.S. government in the Vietnam War. *Id.*; *see* The Economist,  
14 *America’s secret war in Laos* (Jan. 21, 2017).<sup>3</sup> During the war, the United States  
15 had dropped over 2.5 million tons of bombs on Laos in what remains the largest  
16 bombardment of any country in history. *Id.*

17 No repatriation agreement exists between Laos and the United States. Laos  
18 has also been historically unwilling to accept deportees from the United States  
19 through informal negotiations. As a result, there are around 4,800 nationals of  
20 Laos living in the United States with final removal orders who have not been  
21 removed. Asian Law Caucus, *Status of Ice Deportations to Southeast Asian*  
22 *Countries: Laos* (July 29, 2025).<sup>4</sup> Last year, zero people were removed to Laos; in  
23 the five years before that, between 0 and 11 people were removed per year. *See*  
24

25 <sup>2</sup> <https://www.congress.gov/crs-product/IF10236>.

26 <sup>3</sup> [https://www.economist.com/books-and-arts/2017/01/21/americas-secret-war-in-](https://www.economist.com/books-and-arts/2017/01/21/americas-secret-war-in-laos)  
27 [laos](https://www.economist.com/books-and-arts/2017/01/21/americas-secret-war-in-laos).

28 <sup>4</sup> [https://www.asianlawcaucus.org/news-resources/guides-reports/resources-](https://www.asianlawcaucus.org/news-resources/guides-reports/resources-southeast-asian-refugees-facing-deportation)  
[southeast-asian-refugees-facing-deportation](https://www.asianlawcaucus.org/news-resources/guides-reports/resources-southeast-asian-refugees-facing-deportation).

1 U.S. Immigration and Customs Enforcement, *Annual Report: Fiscal Year 2024*, at  
2 100 (Dec. 19, 2024).<sup>5</sup>

3 In 2018, the United States issued visa sanctions on Laos “due to lack of  
4 cooperation in accepting their citizens who have been ordered removed.”<sup>6</sup> The  
5 federal government explained that Laos had not “established repeatable processes  
6 for issuing travel documents to their nationals ordered removed from the United  
7 States.” *Id.*

8 In June of this year, President Trump reiterated, “Laos has historically  
9 failed to accept back its removable nationals.” *See* Presidential Proclamation,  
10 *Restricting the Entry of Foreign Nationals to Protect the United States from*  
11 *Foreign Terrorists and Other National Security and Public Safety Threats*,  
12 § 3(c)(i) (June 4, 2025).<sup>7</sup> As a result, he included Laos as one of 19 countries in  
13 his travel ban, banning all Lao immigrant, tourist, student, and exchange visitors  
14 from the United States. *Id.*; *see* American Immigration Council, *Trump’s 2025*  
15 *Travel Ban* (Aug. 6, 2025).<sup>8</sup> In response, the Lao government has issued travel  
16 documents to a few dozen nationals of Laos with final removal orders. *See* Ben  
17 Warren, *Hmong refugees from Michigan among those deported to Laos, despite*  
18 *calls for release*, *The Detroit News* (Aug. 15, 2025) (noting 32 Laotian nationals  
19 were deported on a flight in August).<sup>9</sup>

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22 \_\_\_\_\_  
23 <sup>5</sup> <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf>.

24 <sup>6</sup> <https://www.dhs.gov/archive/news/2018/07/10/dhs-announces-implementation-visa-sanctions>.

25 <sup>7</sup> <https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety-threats/>

26 <sup>8</sup> <https://www.americanimmigrationcouncil.org/report/trump-2025-travel-ban/>.

27 <sup>9</sup> <https://www.detroitnews.com/story/news/local/michigan/2025/08/15/hmong-refugees-among-those-deported-to-laos/85680464007/>.

1 Since then, several courts have rejected the Trump administration's efforts  
2 to re-detain a Laotian immigrant without following its own regulations. *See*  
3 *Phetsadakone v. Scott*, No. 25-cv-1678-JNW, 2025 WL 2579569 (W.D. Wash.  
4 Sept. 5, 2025) (granting TRO to Laotian national in light of the government's  
5 failure to follow its regulations regarding re-detention and questions regarding the  
6 validity of his underlying criminal conviction); *Khambounheuang v. Noem*, No.  
7 25-cv-02575-JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025) (granting habeas for  
8 Laotian citizen and ordering immediate release); *Truong v. Noem*, No. 25-cv-  
9 02597-JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025) (same); *Sphabmixay v. Noem*,  
10 25-cv-2648-LL-VET (S.D. Cal. Oct. 30, 2025) (same); *Sayvongsa v. Noem*, 25-  
11 cv-2867-AGS-DEB (S.D. Cal. Oct. 31, 2025) (same); *Thammavongsa v. Noem*,  
12 25-cv-2836-JO-AHG (S.D. Ca. Nov. 3, 2025) (same).

### 13 **III. Legal Analysis.**

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

#### 21 **A. Claim One: ICE failed to comply with its own regulations when** 22 **it re-detained Mr. Phouthavong, violating his rights under** 23 **applicable regulations and due process.**

24 Two regulations establish the process due to someone who is re-detained in  
25 immigration custody following a period of release. 8 C.F.R. § 241.4(l) applies to  
26 all re-detentions, generally. 8 C.F.R. § 241.13(i) applies as an added, overlapping  
27 framework to persons released upon good reason to believe that they will not be  
28 removed in the reasonably foreseeable future, as Mr. Phouthavong was. *See*  
*Nguyen v. Noem*, 2025 WL 2898977, No. 25-CV-2422-RBM-MSB, \*3–\*5 (S.D.

1 Cal. Oct. 10, 2025) (explaining this regulatory framework and granting a habeas  
2 petition for ICE’s failure to follow these regulations for a refugee of Laos who  
3 entered the United States before 1995); *Rokhfirooz*, No. 25-CV-2053-RSH-VET,  
4 2025 WL 2646165 at \*2 (same as to an Iranian national).

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

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

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

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

1 petitioner's release must be ordered." *Rokhfirooz*, 2025 WL 2646165 at \*4  
2 (collecting cases); *accord Phouthavong*, 2025 WL 2898977 at \*5.

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

4 First, ICE did not identify a proper reason under the regulations to re-detain  
5 Mr. Phouthavong. Mr. Phouthavong was not returned to custody because of a  
6 conditions violation, and he was not advised at the time of his arrest about the  
7 details of any "changed circumstances" that would create "a significant likelihood  
8 that [Mr. Phouthavong] may be removed in the reasonably foreseeable future." 8  
9 C.F.R. § 241.13(i)(2).

10 Second, ICE did not meaningfully notify Mr. Phouthavong of the reasons  
11 for his re-detention upon revocation of release. *See* 8 C.F.R. §§ 241.4(l)(1),  
12 241.13(i)(3). He was re-detained on December 2, 2025. Exh. A at ¶ 5. As he has  
13 explained, "I did not understand why they were revoking my supervision." *Id.* at  
14 ¶ 6.

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

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

3 Numerous courts have released re-detained immigrants after finding that  
4 ICE failed to comply with applicable regulations this summer and fall. These have  
5 included courts in this district,<sup>10</sup> as well as courts outside this district.<sup>11</sup>

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

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15 <sup>10</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); *Phouthavong v. Noem*, 2025  
18 WL 2898977, No. 25-cv-2422-RBM-MSB, \*3–\*5 (S.D. Cal. Oct. 10, 2025); *Sun*  
19 *v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025);  
20 *Van Tran v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, \*3 (S.D. Cal. Sept.  
21 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal. Oct.  
22 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).

23 <sup>11</sup> *Grigorian*, 2025 WL 2604573; *Delkash v. Noem*, 2025 WL 2683988; *Ceesay v.*  
24 *Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F.  
25 Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387  
(D. Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352,  
26 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.  
27 9:25-CV-00182-MJT, 2025 WL 2491782, at \*2–3 (E.D. Tex. July 18, 2025);  
28 *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at \*4 (E.D.  
Cal. July 16, 2025); *Liu*, 2025 WL 1696526, at \*2; *M.Q. v. United States*, 2025  
WL 965810, at \*3, \*5 n.1 (S.D.N.Y. Mar. 31, 2025).

1           **B. Claim Two: Mr. Phouthavong’s detention violates *Zadvydas***  
2           **and 8 U.S.C. § 1231.**

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

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

1 in the reasonably foreseeable future.” *Id.* Then the burden shifts to “the  
2 Government [to] respond with evidence sufficient to rebut that showing.” *Id.*

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

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

12 First, 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).

19 Here, Mr. Phouthavong’s order of removal was entered on May 25, 2011.  
20 Exh. A at ¶ 3. Accordingly, his 90-day removal period began then. 8 U.S.C.  
21 § 1231(a)(1)(B). The *Zadvydas* grace period thus expired in August 2011, three  
22 months after the removal period ended. *See, e.g., Tadros v. Noem*, 2025 WL  
23 1678501, No. 25-cv-4108(EP), \*2–\*3.<sup>12</sup>

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26 <sup>12</sup> The government has sometimes argued that release and rearrest resets the six-  
27 month grace period completely, taking the clock back to zero. “Courts . . . broadly  
28 agree” that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL 6003485, at \*7 n.6  
(W.D. La. Oct. 15, 2019), *report and recommendation adopted*, 2019 WL  
6037220 (W.D. La. Nov. 13, 2019); *see also Sied v. Nielsen*, No. 17-CV-06785-  
LB, 2018 WL 1876907, at \*6 (N.D. Cal. Apr. 19, 2018) (collecting cases).

1 This Court uses a burden-shifting framework to evaluate  
2 Mr. Phouthavong’s *Zadvydas* claim. At the first stage of the framework,  
3 Mr. Phouthavong must “provide[] good reason to believe that there is no  
4 significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*,  
5 533 U.S. at 701. This standard can be 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. Phouthavong will likely be removed: Continued detention is permissible  
18 only if it is “significant[ly] like[ly]” that ICE will be able to remove him.  
19 *Zadvydas*, 533 U.S. at 701. This inquiry targets “not only the *existence* of

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

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

21 Mr. Phouthavong satisfies this standard for two reasons.

22 First, Mr. Phouthavong’s own experience bears this out. ICE has now had  
23 15 years to deport him. He has cooperated with ICE’s removal efforts throughout  
24 that time. Yet ICE has proved unable to remove him.

25 Second, as explained above, Laos generally does not accept deportees. Last  
26 year, zero people were removed to Laos; in the five years before that, between 0  
27 and 11 people were removed per year. *See* U.S. Immigration and Customs  
28

1 Enforcement, *Annual Report: Fiscal Year 2024*, at 100 (Dec. 19, 2024).<sup>13</sup>  
2 Although President Trump has pressured Laos to begin accepting deportees, that  
3 has resulted in Laos issuing travel documents for only a few dozen nationals out  
4 of thousands of Laotians. And since then, multiple courts have rejected the Trump  
5 administration’s efforts to re-detain Laotian immigrants without following its own  
6 regulations. *See, e.g., Khambounheuang*, No. 25-cv-02575-JO-SBC, ECF No. 12  
7 (S.D. Cal. Oct. 9, 2025); *Phetsadakone v. Scott*, No. 25-cv-1678-JNW, 2025 WL  
8 2579569 (W.D. Wash. Sept. 5, 2025).

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

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

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

17 **V. 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. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.  
22 § 1231(a)(6) unless and until Respondents obtain a travel document for  
23 his removal;
- 24 3. Enjoin Respondents from re-detaining Petitioner without first following  
25 all procedures set forth in 8 C.F.R. §§ 241.4(*I*), 241.13(*i*), and any other  
26 applicable statutory and regulatory procedures;

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<sup>13</sup> <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf>.

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

Respectfully submitted,

Dated: January 29, 2026

s/ Kara Hartzler  
Federal Defenders of San Diego, Inc.  
Attorneys for Mr. Phouthavong  
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 29, 2026

/s/ Kara Hartzler  
Kara L. Hartzler