

1 **Kha Nguyen Tran**

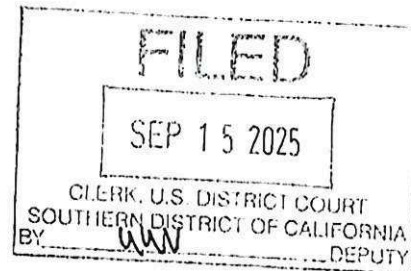
2 A# [REDACTED]

3 Otay Mesa Detention Center

4 P.O. Box 439049

5 San Diego, CA 92143-9049

6 Pro Se¹



7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 **KHA NGUYEN TRAN,**

11 **Petitioner,**

12 **v.**

13 **KRISTI NOEM, Secretary of the**
14 **Department of Homeland Security,**
15 **PAMELA JO BONDI, Attorney General,**
16 **TODD M. LYONS, Acting Director,**
17 **Immigration and Customs Enforcement,**
18 **JESUS ROCHA, Acting Field Office**
19 **Director, San Diego Field Office,**
20 **CHRISTOPHER LAROSE, Warden at**
21 **Otay Mesa Detention Center,**

22 **Respondents.**

CIVIL CASE NO.: '25CV2391 BTM BLM

**Motion for Appointment
of Counsel**

23 Kha Nguyen Tran respectfully moves this court to appoint Federal
24 Defenders of San Diego, Inc., as counsel for petitioner. Mr. Tran has a strong
25 claim to release under *Zadvydas v. Davis*, 533 U.S. 678 (2001). But *Zadvydas*
26 cases are complex, implicating constitutional, statutory, regulatory, and
27 immigration law. Additionally, an evidentiary hearing is sometimes required to
28 resolve *Zadvydas* petitions. For these reasons, **Federal Defenders of San Diego,**

26 ¹ Mr. Tran is filing a petition for a writ of habeas corpus and all associated
27 documents with the assistance of the Federal Defenders of San Diego, Inc., who
28 drafted the instant petition. As explained in this motion and the Declaration fo
Katie Hurrelbrink Federal Defenders has consistently used this procedure in
seeking appointment for immigration habeas cases.

1 **Inc. is routinely appointed to represent immigrants in bringing *Zadvydas***
2 **claims.** *See* Exhibit A, Declaration of Katie Hurrelbrink in Support of
3 Appointment Motion (“Hurrelbrink Dec.”), ¶¶ 2–3 (attaching appointment orders
4 from 2006 to 2025). This Court should follow that practice and appoint Federal
5 Defenders of San Diego, Inc. to represent Mr. Tran in this habeas case.

6 **STATEMENT OF FACTS**

7 **I. Mr. Tran is detained indefinitely.**

8 Kha Nguyen Tran fled Vietnam and arrived in the United States around
9 2004. Exh. A to Habeas Petition (“Tran Dec”), at ¶ 1. He sustained a conviction
10 and was ordered removed in 2007. *Id.* at ¶¶ 2-3. ICE detained him for about six
11 months while attempting to remove him, but when ICE proved unable to do so,
12 Mr. Tran was released. *Id.* at ¶ 4. After Vietnam and the United States signed a
13 new repatriation treaty in 2008, ICE re-detained Mr. Tran to try to remove him
14 under that treaty. *Id.* at ¶ 5. ICE failed again, and six months later, Mr. Tran was
15 again released. *Id.* He remained on release for nearly 17 years, during which time
16 he checked in with ICE each year, while sustaining no further convictions. *Id.* at
17 ¶¶ 6, 8-9.

18 On June 16, 2025, Mr. Tran appeared as scheduled for his ICE check in. *Id.*
19 at ¶ 7. ICE agents arrested him and took him to Otay Mesa Detention Center. *Id.*
20 ICE has not told him what has changed to warrant re-detaining him or given him a
21 chance to contest his re-detention. *Id.* He has been detained for nearly 3 months
22 but has not been removed to Vietnam.

23 **II. Mr. Tran cannot afford a lawyer and lacks the education and**
24 **experience needed to litigate this habeas petition.**

25 While in detention, Mr. Tran cannot make money. Tran Dec. at ¶ 9. He
26 pays about \$2,200 for his mortgage per month, along with \$140 child support. *Id.*
27 He has about \$9,000 in a bank account. *Id.* While in custody, he has had to enlist
28 his father’s help to keep paying his mortgage. *Id.*

1 In addition, Mr. Tran lacks the skills needed to litigate a habeas petition.
2 English is not his first language, he has no legal training, and he knows nothing
3 about immigration law. *Id.* at ¶ 10. And while detained, he cannot freely use the
4 internet to look up information about ICE's or Vietnam's policies. *Id.* at ¶ 11.

5
6 **ARGUMENT**

7 "Habeas corpus proceedings are of fundamental importance . . . in our
8 constitutional scheme because they directly protect our most valued rights."
9 *Brown v. Vasquez*, 952 F.2d 1164, 1169 (9th Cir. 1991) (quoting *Bounds v. Smith*,
10 430 U.S. 817, 827 (1977)) (citations and internal quotations omitted).
11 Consequently, federal law permits a district court to appoint counsel in a habeas
12 proceeding under 28 U.S.C. § 2241 when the "interests of justice so require," if a
13 Petitioner has shown that he is unable to afford an attorney. 18 U.S.C.
14 § 3006A(a)(2)(B). To make this decision, this Court must "evaluate [1] the
15 likelihood of success on the merits as well as [2] the ability of the Petitioner to
16 articulate his claims pro se in light of the complexity of the legal issues involved."
17 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983); *accord Rand v. Rowland*,
18 113 F.3d 1520, 1525 (9th Cir. 1997).

19 Mr. Tran is likely to succeed on the merits of his claim, but he will be
20 unable to effectively articulate his claims without assistance. And he cannot
21 afford to retain paid counsel to litigate his petition for a writ of habeas corpus
22 under 28 U.S.C. § 2241. Thus, the appointment of counsel is appropriate.

23 **A. Mr. Tran will likely succeed on the merits.**

24 As described in detail in Mr. Tran's habeas petition, which has been filed
25 concurrently with this motion and which he fully incorporates here by reference,
26 *Zadvydas* held that federal law does not authorize the government to detain an
27 immigrant indefinitely pending removal. Rather, 8 U.S.C. § 1231(a)(6)
28 presumptively permits the government to detain an immigrant for 180 days after
his or her removal order becomes final. After those 180 days have passed, the

1 immigrant must be released unless his or her removal is reasonably foreseeable.
2 *Zadvydas*, 533 U.S. at 701.

3 Thus, 180 days after a removal order becomes final, an immigrant facing
4 indefinite detention may come forward with “good reason to believe that there is
5 no significant likelihood of removal in the reasonably foreseeable future.” *Id.* If
6 the immigrant meets their initial burden, “the Government must respond with
7 evidence sufficient to rebut that showing.” *Id.* Otherwise, the immigrant must be
8 released. *See id.*

9 Here, Mr. Tran was ordered removed on January 23, 2007 and was detained
10 for over a year cumulatively. *Id.* at ¶¶ 3-5, 7. The six-month grace period has
11 therefore passed.

12 There is also every reason to believe that he will not be removed in the
13 reasonably foreseeable future. ICE has proved unable to remove him for over 18
14 years, despite a concerted effort to repatriate him under the operative, 2008 treaty
15 with Vietnam. *Id.* at ¶ 5. And ICE has given no indication that it has obtained a
16 travel document this time around, despite having held Mr. Tran in detention for
17 nearly 3 months. *Id.* at ¶ 7. This Court therefore will likely find that Mr. Tran
18 must be released under *Zadvydas*.

19 Additionally, ICE’s own regulations require an informal interview and a
20 chance to contest re-detention, and they specify that re-detention is proper only
21 upon a conditions violation or changed circumstances bearing on removability. 8
22 C.F.R. §§ 241.4(*I*), 241.13(i)(3). Here, Mr. Tran did not violate, nothing has
23 changed since the last time ICE tried to deport him in 2008, and he has gotten no
24 chance to contest his re-detention. *Tran Dec.* at ¶ 7. This Court therefore will
25 likely find that Mr. Tran must be released due to ICE’s failure to follow
26 regulations. *See, e.g., Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y.
27 2025); *You v. Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot v.*
28 *Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-

1 06523 (JLR), 2025 WL 2452352, at *7–9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v.*
2 *Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *10–12 (D. Or. Aug. 21,
3 2025).

4 Finally, due process requires adequate notice and an opportunity to raise a
5 fear-based claim before an immigration judge prior to removal. *See generally*
6 *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL
7 1453640 (D. Mass. May 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th
8 Cir. 1999). This Court will likely find that ICE’s latest policy, which permits
9 removal with either 6-to-24 hours’ notice or no notice, violates these protections.
10 *See* Exh. B to Habeas Petition.

11 **B. Mr. Tran cannot adequately articulate his claims in the absence**
12 **of counsel, in light of the complexity of the legal issues involved**
13 **in his habeas petition.**

14 In deciding whether a petitioner needs a lawyer’s assistance to effectively
15 litigate his habeas petition, a court must measure “the [petitioner]’s ability to
16 articulate his claims against the relative complexity of the matter.” *Rand*, 113
17 F.3d at 1525. In addition, counsel may be appointed during federal habeas
18 proceedings if the appointment of an attorney is “necessary for the effective
19 utilization of discovery procedures . . . [or] if an evidentiary hearing is required.”
20 *Weygandt*, 718 F.2d at 954 (cleaned up).

21 *Zadvydas* cases involve complex legal issues grounded in constitutional
22 law, statutory interpretation, administrative procedure, and habeas law. *See*
23 *Hurrelbrink Dec*, attached orders (describing complexities in appointing counsel).
24 They also implicate immigration law. The Ninth Circuit has declared that “[w]ith
25 only a small degree of hyperbole, the immigration laws have been deemed second
26 only to the Internal Revenue Code in complexity.” *United States v. Ahumada-*
27 *Aguilar*, 295 F.3d 943, 950 (9th Cir. 2002) (citations and internal quotations
28 omitted). “A lawyer is often the only person who could thread the labyrinth.” *Id.*

1 Mr. Tran lacks experience and legal training to contend with this
2 complicated area of law. Tran Dec. at ¶ 10. Nor does he have free access to the
3 internet, so he cannot research up-to-date information about Vietnam and its
4 policies. *Id.* at ¶ 11. He also lacks the funds needed to hire a lawyer, as he cannot
5 work while in custody yet must continue paying his mortgage and child support.
6 *Id.* at ¶ 9. Accordingly, he would very likely prove unable to litigate his habeas
7 petition effectively or hire a lawyer.

8 Additionally, professional assistance may be “necessary for the effective
9 utilization of discovery procedures” in this case. *Weygandt*, 718 F.2d at 954. To
10 prove his eligibility for *Zadvydas* relief, Mr. Tran may well need to view evidence
11 in the government’s possession—for example, communications between ICE and
12 the Vietnamese government or internal paperwork documenting removal efforts.
13 *See, e.g., Lopez-Cacerez v. McAleenan*, No. 19-CV-1952-AJB-AGS, 2020 WL
14 3058096, at *4 n.1 (S.D. Cal. June 9, 2020) (relying on ICE’s “internal
15 documentation” to grant habeas petition). Mr. Tran would likely have to litigate his
16 entitlement to any such discovery, because at least some courts have required
17 immigrants to show good cause before obtaining discovery. *See Toolasprashad v.*
18 *Tryon*, No. 12CV734, 2013 WL 1560176, at *2 (W.D.N.Y. Apr. 11, 2013)
19 (collecting cases). Moreover, Mr. Tran is entitled to an evidentiary hearing on any
20 material factual disputes, *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009),
21 meaning that “an evidentiary hearing [may be] required.” *Weygandt*, 718 F.2d at
22 954.

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D. Conclusion

For those reasons, this Court should follow the regular practice of courts in this district and appoint Federal Defenders of San Diego, Inc. to represent Mr. Tran in litigating this habeas petition.

DATED: 09 / 11 / 25

Respectfully submitted,



KHA NGUYEN TRAN
Petitioner

PROOF OF SERVICE

I, the undersigned, caused to be served the within Motion for Appointment of
Counsel by hand delivery to:

U.S. Attorney's Office, Southern District of California
Civil Division
880 Front Street
Suite 6253
San Diego, CA 92101

Date: 9/15/2025

/s/ Katie Hurrelbrink
Katie Hurrelbrink

Exhibit A

1 **Kha Nguyen Tran**

2 A# [REDACTED]

3 Otay Mesa Detention Center

4 P.O. Box 439049

5 San Diego, CA 92143-9049

6 Pro Se

7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9 **KHA NGUYEN TRAN,**

10 Petitioner,

11 v.

12 **KRISTI NOEM**, Secretary of the
13 **Department of Homeland Security,**
14 **PAMELA JO BONDI**, Attorney General,
15 **TODD M. LYONS**, Acting Director,
16 **Immigration and Customs Enforcement,**
17 **JESUS ROCHA**, Acting Field Office
18 **Director, San Diego Field Office,**
19 **CHRISTOPHER LAROSE**, Warden at
20 **Otay Mesa Detention Center,**

21 Respondents.

CIVIL CASE NO.:

**Declaration of Katie Hurrelbrink
in Support of Motion for
Appointment of Counsel**

- 1
2 1. My name is Katie Hurrelbrink. I am an appellate attorney at Federal
3 Defenders of San Diego, Inc. In that capacity, I was assigned to
4 investigate Mr. Tran's immigration habeas case to determine whether—
5 in keeping with longstanding district practice—Federal Defenders
6 should seek to be appointed as counsel.
- 7 2. In this district, Federal Defenders is regularly appointed to handle
8 *Zadvydas* petitions for those who meet the six-month cutoff.
9 Traditionally, Federal Defenders helps the detainee prepare an initial
10 habeas petition and appointment motion, and the court formally appoints
11 Federal Defenders in the course of reviewing the petition.
- 12 3. This declaration attaches several orders appointing Federal Defenders to
13 habeas cases following this procedure. The oldest order is from 2006
14 and the most recent is from 2025.
- 15 4. I have followed that procedure in this case by helping to prepare a
16 habeas petition and appointment motion. I believe that granting
17 appointment in this case would conform to longstanding district
18 practice.

19
20
21
22 I declare under penalty of perjury that the foregoing is true and correct,
23
24 executed on September 15, 2025, in San Diego, California.

25
26 /s/ Katie Hurrelbrink
27 **KATIE HURRELBRINK**
28 Declarant