

1 **Minh Nhat Phan**

2 A# [REDACTED]

3 Otay Mesa Detention Center

4 P.O. Box 439049

5 San Diego, CA 92143-9049

6 Pro Se¹

FILED

Sep 16 2025

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY s/ danielmartinez DEPUTY

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

10 **MINH NHAT PHAN,**

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.: '25CV2422 RBM MSB

**Motion for Appointment
of Counsel**

23 Minh Nhat Phan respectfully moves this court to appoint Federal Defenders
24 of San Diego, Inc., as counsel for petitioner. Mr. Phan has a strong claim to
25 release under *Zadvydas v. Davis*, 533 U.S. 678 (2001). But *Zadvydas* cases are
26 complex, implicating constitutional, statutory, regulatory, and immigration law.
27 Additionally, an evidentiary hearing is sometimes required to resolve *Zadvydas*
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¹ Mr. Phan is filing this petition for a writ of habeas corpus with the assistance of the Federal Defenders of San Diego, Inc., who drafted the instant petition. That same counsel also assisted the petitioner in preparing and submitting this request for the appointment of counsel. Federal Defenders has consistently used this procedure in seeking appointment for immigration habeas cases. The Declaration of Katie Hurrelbrink in Support of Appointment Motion attaches case examples.

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

7 STATEMENT OF FACTS

8 I. Mr. Phan is detained indefinitely.

9 Minh Nhat Phan fled Vietnam and arrived in the United States around
10 1981. Exh. A to Habeas Petition (“Phan Dec”), at ¶ 1. He sustained a conviction
11 and was ordered removed in 1996. *Id.* at ¶ 2. ICE detained him for almost four
12 years but proved unable to remove him. *Id.* at ¶¶ 3–5. In February 2000, Judge
13 Keep ordered Mr. Phan’s release on conditions “pursuant to 8 C.F.R. §§ 241.4
14 and 241.5.” Exh. B to Habeas Petition. Mr. Phan remained on release for the next
15 25 years. *Id.* at ¶ 5. He did not commit any further crimes. *Id.*

16 On September 5, 2025, ICE agents arrested Mr. Phan and took him to Otay
17 Mesa Detention Center. *Id.* at ¶ 9. ICE has not told him what has changed to
18 warrant re-detaining him or given him a chance to contest his re-detention. *Id.* at
19 ¶ 10.

20 ICE’s inability to remove Mr. Phan over the last 29 years reflects Vietnam’s
21 reticence to accept pre-1995 Vietnamese immigrants. As detailed in Mr. Phan’s
22 habeas petition, the operative repatriation treaty with Vietnam exempts people who
23 immigrated to the United States before 1995. Agreement Between the United States
24 of America and Vietnam, at 2 (Jan. 22, 2008).² A subsequent MOU³ provides a
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26
27 ² available at <https://www.state.gov/wp-content/uploads/2019/02/08-322-Vietnam-Repatriations.pdf>

28 ³ <https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-b55e67f8f04b/assets/media/ALC-FOIA-Re-Release-MOU-bates-1-8-8-10-21.pdf>.

1 framework for repatriating some people in that group, but Vietnam accepted only
2 four people in two years under that MOU, while not fulfilling 14 requests. Asian
3 Law Caucus, *Resources on Deportation of Vietnamese Immigrants Who Entered*
4 *the U.S. Before 1995* (Jul. 15, 2025) (providing links to all quarterly reports). Until
5 the second Trump administration, ICE officials admitted that there is no reasonable
6 likelihood of removing pre-1995 Vietnamese immigrants in the reasonably
7 foreseeable future. Order on Joint Motion for Entry of Stipulated Dismissal, *Trihn*,
8 18-CV-316-CJC-GJS, Dkt. 161 at 3 (C.D. Cal. Oct. 7, 2021).⁴

9 **II. Mr. Phan is indigent and lacks the education, experience, and**
10 **language skills needed to litigate this habeas petition.**

11 While detained, Mr. Phan's only income is \$2,300 retirement per month
12 from the city of San Diego. Exh. A at ¶ 12. (He used to work in the Metro Waste
13 Water Collection Department. *Id.*) His wife does not work outside the home. *Id.*
14 He has no savings with which to support his wife and six children. *Id.* Though his
15 father and sister bought the family a house, his sister owns it, and Mr. Phan must
16 pay utilities, taxes, and insurance, among other bills for himself and the family.
17 *Id.* He therefore cannot afford a lawyer.

18 In addition, Mr. Phan lacks the skills needed to litigate a habeas petition.
19 He has no legal training, and he knows nothing about immigration law. *Id.* at ¶ 11.
20 And while detained, he cannot freely use the internet to look up information about
21 ICE's or Vietnam's policies. *Id.*

22 **ARGUMENT**

23 "Habeas corpus proceedings are of fundamental importance . . . in our
24 constitutional scheme because they directly protect our most valued rights."
25

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27 ⁴
28 <https://static1.squarespace.com/static/5f0cc12a064e9716d52e6052/t/618e99e5613d7372c1bb197e/1636735461479/Trinh+-+Doc+161+Order+Granting+Stip+Dismissal.pdf>.

1 *Brown v. Vasquez*, 952 F.2d 1164, 1169 (9th Cir. 1991) (quoting *Bounds v. Smith*,
2 430 U.S. 817, 827 (1977)) (citations and internal quotations omitted).
3 Consequently, federal law permits a district court to appoint counsel in a habeas
4 proceeding under 28 U.S.C. § 2241 when the “interests of justice so require,” if a
5 Petitioner has shown that he is unable to afford an attorney. 18 U.S.C.
6 § 3006A(a)(2)(B). To make this decision, this Court must “evaluate [1] the
7 likelihood of success on the merits as well as [2] the ability of the Petitioner to
8 articulate his claims pro se in light of the complexity of the legal issues involved.”
9 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983); *accord Rand v. Rowland*,
10 113 F.3d 1520, 1525 (9th Cir. 1997).

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

15 **A. Mr. Phan will likely succeed on the merits.**

16 As described in detail in Mr. Phan’s habeas petition, which has been filed
17 concurrently with this motion and which he fully incorporates here by reference,
18 *Zadvydas* held that federal law does not authorize the government to detain an
19 immigrant indefinitely pending removal. Rather, 8 U.S.C. § 1231(a)(6)
20 presumptively permits the government to detain an immigrant for 180 days after
21 his or her removal order becomes final. After those 180 days have passed, the
22 immigrant must be released unless his or her removal is reasonably foreseeable.
23 *Zadvydas*, 533 U.S. at 701.

24 Thus, 180 days after a removal order becomes final, an immigrant facing
25 indefinite detention may come forward with “good reason to believe that there is
26 no significant likelihood of removal in the reasonably foreseeable future.” *Id.* If
27 the immigrant meets their initial burden, “the Government must respond with
28

1 evidence sufficient to rebut that showing.” *Id.* Otherwise, the immigrant must be
2 released. *See id.*

3 Here, Mr. Phan was ordered removed on September 17, 1996, and was
4 detained for almost 4 years. *Id.* at ¶¶ 2-4. The six-month grace period has
5 therefore passed.

6 There is also every reason to believe that he will not be removed in the
7 reasonably foreseeable future. ICE has proved unable to remove him for 29 years.
8 And there is an obvious explanation—Vietnam’s policy toward pre-1995
9 Vietnamese immigrants—for this refusal. Thus, this Court will likely grant relief,
10 just like other courts. *See Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL
11 2419288, at *17 (W.D. Wash. Aug. 21, 2025); *Hoac v. Becerra*, No. 2:25-CV-
12 01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Nguyen v.*
13 *Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at *5 (D. Mass. June 20, 2025).

14 Additionally, ICE’s own regulations and Judge Keep’s order require an
15 informal interview and a chance to contest re-detention, and they specify that re-
16 detention is proper only upon a conditions violation or changed circumstances
17 bearing on removability. *See* Exhibit B to Habeas Petition; 8 C.F.R. §§ 241.4(l),
18 241.13(i)(3). Here, Mr. Phan did not violate, Mr. Phan’s deportation has been
19 governed by the same agreements for at least the last 5 years, and he has gotten no
20 chance to contest his re-detention. Phan Dec. at ¶ 10. This Court will likely find
21 that Mr. Phan must be released due to ICE’s failure to follow regulations. *See,*
22 *e.g., Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v.*
23 *Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F.
24 Supp. 3d 383, 387 (D. Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR),
25 2025 WL 2452352, at *7–9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No.
26 6:25-CV-01204-AA, 2025 WL 2430267, at *10–12 (D. Or. Aug. 21, 2025).

27 Finally, due process requires adequate notice and an opportunity to raise a
28 fear-based claim before an immigration judge prior to removal. *See generally*

1 *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL
2 1453640 (D. Mass. May 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th
3 Cir. 1999). This Court will likely find that ICE's latest policy, which permits
4 removal with either 6-to-24 hours' notice or no notice, violates these protections.
5 *See* Exh. B to Habeas Petition.

6 **B. Mr. Phan cannot adequately articulate his claims in the absence**
7 **of counsel, in light of the complexity of the legal issues involved**
8 **in his habeas petition.**

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

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

24 Mr. Phan lacks experience and legal training to contend with this
25 complicated area of law. *Phan Dec.* at ¶ 11. Nor does he have free access to the
26 internet, so he cannot research up-to-date information about Vietnam and its
27 policies. *Id.* He also lacks the funds needed to hire a lawyer, as he cannot work
28 while in custody yet must continue paying bills for his large family. *Id.* at ¶ 12.

1 Accordingly, he would very likely prove unable to litigate his habeas petition
2 effectively or hire a lawyer.

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

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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. Phan in litigating this habeas petition.

DATED: 9-14-2025

Respectfully submitted,



MINH NHAT PHAN

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
ATTN: Janet Cabral
880 Front Street
Suite 6253
San Diego, CA 92101

Date: 9/16/2025

/s/ Katie Hurrelbrink
Katie Hurrelbrink

Exhibit A

1 **Minh Nhat Phan**

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**

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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. Phan'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 I declare under penalty of perjury that the foregoing is true and correct,
20 executed on September 16, 2025, in San Diego, California.

21
22
23 /s/ Katie Hurrelbrink

24 **KATIE HURRELBRINK**

25 Declarant
26
27
28