Emmanuel McSweeney
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Pro Se[1]

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SOUTHERN DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

EMMANUEL MGWEENEY,[2]

Petitioner,

v.

WARDEN, Otay Mesa Detention Facility; FIELD OFFICE DIRECTOR, San Francisco Field Office, United States Immigration and Customs Enforcement; DIRECTOR, United States Immigration and Customs Enforcement; SECRETARY, United States Department of Homeland Security; and UNITED STATES ATTORNEY GENERAL,

Respondents.

CIVIL CASE NO.: 25-cv-02488-RBM-DEB

Renewed Motion for Appointment of Counsel

[1] Mr. McSweeney filed a pro se motion signed August 29, 2025 without the assistance of Federal Defenders of San Diego. ECF 1. The pro se motion was originally filed in the Eastern District of California. The magistrate judge in the Eastern District transferred the petition to this district on September 17, 2025. ECF 4. The pro se motion did not appear on the Southern District's Docket until September 22, 2025. ECF 4.

[2] Mr. McSweeney's true name is Emmanuel McSweeney. His pleading was incorrectly entered as "MGweeney." This was likely due to the fact that Mr. McSweeney handwrote his name and the "cS" was mistaken as a "G."

Emmanuel McSweeney respectfully moves this court to appoint Federal Defenders of San Diego, Inc., as counsel for petitioner. In a recent order, the Court denied the original *pro se* motion for appointment of counsel filed by Mr. McSweeney. ECF 6. In that order, the Court stated that Mr. McSweeney could "renew[] the motion for appointment of counsel that addresses his financial eligibility. *Id.*

Mr. McSweeney now files this renewed motion for appointment. He is financially eligible. Prior to being detained, he was raising two young children on a low income and does not have savings. Exhibit A, Declaration of Emmanuel McSweeney ("McSweeney Decl."), at ¶ 11. Additionally, he has now been detained for over six months and has no source of income. *Id.* He cannot afford to pay for an attorney.

Moreover, Mr. McSweeney has a strong claim to release under *Zadvydas v. Davis*, 533 U.S. 678 (2001) and the government's failure to comply with its own regulations. But *Zadvydas* cases and immigration law are complex, implicating constitutional, statutory, regulatory, and immigration law. Additionally, an evidentiary hearing is sometimes required to resolve *Zadvydas* petitions. What's more, the fact that Mr. McSweeney initially used the wrong form and filed his petition in the Eastern District of California confirms that he needs the assistance of legal counsel. For these reasons, **Federal Defenders of San Diego, Inc. is routinely appointed to represent immigrants in bringing *Zadvydas* claims**. *See* Exhibit B, Declaration of Zandra L. Lopez in Support of Appointment Motion ("Lopez Decl."), ¶¶ 2–3 (attaching appointment orders from 2006 to 2025). This Court should follow that practice and appoint Federal Defenders of San Diego, Inc. to represent Mr. McSweeney in this habeas case.

STATEMENT OF FACTS

I. Despite ICE being unable to remove Mr. McSweeney for over 5 years while he was on supervised release, ICE detained him and over six months later has proved unable to remove him.

Mr. McSweeney was born in the Bahamas. He came to the United States with his mother as a one-year-old. McSweeney Decl. at ¶ 1. Ever since coming to the United States, he has lived in the State of Florida. *Id.*

On May 21, 2020, he was ordered removed to the Bahamas by an immigration judge. On April 20, 2021, the Board of Immigration Appeals denied his appeal. McSweeney Decl. at ¶ 2. Since 2020, Mr. McSweeney has been under immigration supervision. That means that every year he was required to report to an immigration officer for a check-in while ICE attempts to obtain travel documents for his removal. *Id.* at ¶ 3. He has complied with the conditions of his supervision. *Id.*

On March 18, 2025, Mr. McSweeney went to immigration offices in Florida to comply with his yearly check-in. *Id.* at ¶ 4. He was detained and provided with a "Notice of Revocation of Release" ("Notice of Revocation"). *Id.* at ¶ 5. The Notice of Revocation stated that the reason for the revocation of his release was that the government of *Cuba* had issued travel documents for him and that he would be removed to Cuba expeditiously. *Id.* The Notice of Revocation also advised Mr. McSweeney that under 8 C.F.R. § 241.4, he was entitled to a prompt informal interview where he could have the opportunity to respond to the reasons for the revocation. *Id.* at ¶ 6.

It turns out ICE did not have travel documents for Mr. McSweeney. *Id.* at ¶ 7. After months of being detained, he learned from an immigration officer that the Notice of Revocation was incorrect. *Id.* The government of Cuba had not issued travel documents for him. *Id.* He also learned that ICE did not have travel documents to remove him to the Bahamas. *Id.* at 10. What's more, Mr. McSweeney

never received the *prompt interview* or the opportunity to respond to the reasons for the revocation of release as required under 8 C.F.R. § 241.4. *Id.* at ¶ 7.

What followed was a chaotic and confusing six months. After Mr. McSweeney was detained in March of this year, he was sent to the Krome Detention Center in Miami, Florida. *Id.* at ¶ 8. He was placed in a cell with over 60 men in a cell that was meant for 25. The men in the cell were wearing the same clothes they were arrested in. Some of them men had not showered in weeks. For five days, Mr. McSweeney remained in the same clothes he was arrested in and was not allowed to shower. He slept on the floor and was given bagged lunches for breakfast, lunch, and dinner. *Id.* at ¶ 8. During his time in that detention center, he did not speak to an immigration officer.

On or about March 25, 2025, Mr. McSweeney was then placed on an airplane and not told where he was going. *Id.* at ¶ 9. He then arrived at the Otay Detention Center in San Diego. *Id.*

About two months after being detained was the first time Mr. McSweeny spoke to an officer about his detention. *Id.* at ¶ 10. At that meeting, he was told that the Bahamas was not accepting him and would not issue travel documents. *Id.* at ¶ 10. Mr. McSweeney was told that immigration would attempt to get travel documents from Haiti a country he has never been to. *Id.*

II. Mr. McSweeney is indigent and lacks the education, experience, and language skills needed to litigate this habeas petition.

Mr. McSweeney has a high school education. *Id.* at ¶ 12. He does not have the legal education or training needed to litigate a complex habeas petition. *Id.* He worked multiple jobs, including construction. *Id.* at ¶ 11. He does not make a lot of money and has no savings. He helps support two young children, ages two and six. Since his detention, he has not been able to work. *Id.*

Accordingly, Mr. McSweeney requests that this Court appoint the Federal Defenders of San Diego, Inc., to represent him in the instant habeas action. That

office stands ready and able to assist him in this Petition.

ARGUMENT

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

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

A. Mr. McSweeney will likely succeed on the merits.

Zadvydas held that federal law does not authorize the government to detain an immigrant indefinitely pending removal. Rather, 8 U.S.C. § 1231(a)(6) 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 immigrant must be released unless his or her removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 701.

Thus, 180 days after a removal order becomes final, an immigrant facing indefinite detention may give "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* If the immigrant meets their initial burden, "the Government must respond with evidence sufficient

to rebut that showing." *Id.* Otherwise, the immigrant must be released. *See id.*

Here, Mr. McSweeney order of removal became final on April 20, 2021. For over five years, ICE has not been able to obtain travel documents to the Bahamas. Despite the lack of any travel document, ICE revoked Mr. McSweeney's immigration stating that the reason for revocation was because they had travel documents. McSweeney Decl. ¶ 5. ICE, however, does not have any travel documents. Mr. McSweeney has now been detained for over six months.

There is good reason to believe that he will not be removed in the reasonably foreseeable future. ICE has proved unable to remove him for five years.

In addition to the length of time, the detention of Mr. McSweeney earlier this year was unlawful. When an immigrant is under immigration supervision, like Mr. McSweeny was here between 2020 and 2025, additional regulations apply: ICE may revoke a noncitizen's release and return them to ICE custody due to failure to comply with conditions of release, 8 C.F.R. § 241.13(i)(1), or if, "on account of changed circumstances," a noncitizen likely can be removed in the reasonably foreseeable future. *Id.* § 241.13(i)(2).

The regulations further provide noncitizens with a chance to contest a re-detention decision. ICE must "notif[y] [the person] of the reasons for revocation of his or her release." *Id.* § 241.13(i)(3). ICE must then "conduct an initial informal interview promptly" after re-detention "to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." *Id.* During the interview, the person "may submit any evidence or information" showing that the prerequisites to re-detention have not been met, and the interviewer must evaluate "any contested facts." *Id.*

Here, ICE did not comply with its own regulations. Mr. McSweeney was incorrectly told that the changed circumstances was that ICE had travel documents from Cuba. In fact, ICE did not have *any* travel documents. Nor did Mr. McSweeney ever get an opportunity to contest the reasons for his detention. As

District Judge Hui recently reinforced, "Government agencies are required to follow their own regulations." *Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *4 (S.D. Cal. Sept. 15, 2025) (citing *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). When the government do no follow those regulations, the detention is unlawful. *Rokhfirooz*, 2025 WL 2646165, at *4.

B. Mr. McSweeney cannot adequately articulate his claims in the absence of counsel, in light of the complexity of the legal issues involved in his habeas petition.

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

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

Mr. McSweeney lacks experience and legal training to contend with this complicated area of law. McSweeney Dec. at ¶ 12. Nor does he have free access to the internet. *Id.* He also lacks the funds needed to hire a lawyer. *Id.* at ¶11. Accordingly, he would very likely prove unable to litigate his habeas petition

effectively.

Additionally, professional assistance may be "necessary for the effective utilization of discovery procedures" in this case. *Weygandt*, 718 F.2d at 954. In order to prove his eligibility for *Zadvydas* relief, Mr. McSweeney may well need to view evidence in the government's possession—for example, communications between ICE and the government of the Bahamas or internal paperwork documenting ICE's removal efforts. *See, e.g.*, *Lopez-Cacerez v. McAleenan*, No. 19-CV-1952-AJB-AGS, 2020 WL 3058096, at *4 n.1 (S.D. Cal. June 9, 2020) (relying on ICE's "internal documentation" to reject ICE's noncooperation defense and find that the petitioner was fully cooperating with ICE's efforts to remove him). Mr. McSweeney would likely have to litigate his entitlement to any such discovery, because at least some courts have required immigrants to show good cause before obtaining discovery in a habeas case. *See Toolasprashad v. Tryon*, No. 12CV734, 2013 WL 1560176, at *2 (W.D.N.Y. Apr. 11, 2013) (collecting cases). Moreover, Mr. McSweeney is entitled to an evidentiary hearing on any material factual disputes, *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009), meaning that "an evidentiary hearing [may be] required." *Weygandt*, 718 F.2d at 954. Those considerations also support the need for appointment of counsel. *See id.*

If any doubt remained, the procedural history of this case already confirms the need for the appointment of legal counsel. Mr. McSweeney initially used a habeas form that was created by the U.S. District Court for the Eastern District of California and was captioned as such. ECF 1. As a result, the filing of his petition was delayed and had to be transferred to this district by Magistrate Judge Erica P. Grosjean. ECF 2, 3. To avoid future delays and conserve judicial resources, this Court should appoint Federal Defenders to represent Mr. McSweeney in this matter.

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. McSweeney in litigating this habeas petition.

Respectfully submitted,

DATED: September 14, 2025

E. McSweeney

Emmanuel McSweeney
Petitioner

EXHIBIT

A

Emmanuel McSweeney
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Pro Se[1]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

EMMANUEL MCSWEENEY,

Petitioner,

v.

KRISTI NOEM, Secretary of the Department of Homeland Security, PAMELA JO BONDI, Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, JESUS ROCHA, Acting Field Office Director, San Diego Field Office, CHRISTOPHER LAROSE, Warden at Otay Mesa Detention Center,

Respondents.

CIVIL CASE NO.: 25-cv-02488-RBM-DEB

Declaration of Emmanuel McSweeney in Support of Petition for a Writ of Habeas Corpus

[1] Mr. McSweeney attempted to file a pro se motion on his own. Despite him sending it has made attempts to mail in a pro se petition on his own. Despite him singing the petition weeks ago, it appears that it has not arrived to the Clerk's Office in the Southern District. He is now filing this petition for a writ of habeas corpus and all associated documents with the assistance of the Federal Defenders of San Diego, Inc. Federal Defenders has consistently used this procedure in seeking appointment for immigration habeas cases. The Declaration of Zandra L. Lopez in Support of Appointment Motion attaches case examples.

I, Emmanuel McSweeney, declare:

1. I came to the United States with my mother in 1998 from the Bahamas. I was one year old at the time. I have lived in the state of Florida ever since I arrived in the United States.

2. I was ordered removed on May 21, 2020. My appeal was dismissed on April 20, 2021.

3. I was released from immigration custody in 2020. I have been reporting to an immigration officer every year since my release.

4. On March 18, 2025, I went to my yearly check-in with immigration officials in Florida and I was detained.

5. At the time I was detained, I was given a document titled Notice of Revocation of Release. The document stated that the reason for my revocation was that the government of Cuba has issued travel documents for me and that I would be removed to that country.

6. The Notice of Revocation of Release also stated that under 8 C.F.R. §§ 241.4, I would be "promptly afforded an informal interview" where I would have the "opportunity to respond to the reasons for the revocation."

7. I never got the opportunity to respond to the reasons for the revocation. After being detained for months, I learned from an officer that the Notice of Revocation of Release was incorrect and that Cuba had not issued travel documents for me.

8. After I was detained, I was sent to Krome Detention Center in Miami, Florida. The first night I slept in a visitation room. I was then placed in a cell that was meant for 25 men but there were at least 60 men in the cell. People were wearing the clothes they were arrested. Some of them men had not showered in weeks. I was not processed for 5 days. That means that I remained in the same clothes I was arrested in for five days and was not allowed to shower. I slept on the floor and was given bagged lunch for

breakfast, lunch, and dinner. When my family came to see me at the detention center, they were told by officers that they did not know where I was located. The conditions were very difficult.

9. On or about March 25, 2025, I was placed on an airplane and not told where I was going. I then arrived at the Otay Detention Center in San Diego.

10. In May 2025, I spoke to a deportation officer for the first time. I was told that Bahamas was not accepting me and would not issue travel documents. I have cooperated in obtaining my travel documents. I was told they would try to get travel documents to Haiti, a country I have never been to.

11. I have two young children at home. I support my family financially by working multiple jobs like construction. I make very little money and do not have savings or property.

12. I graduated high school and have no legal education or training. I also do not have free access to the internet in custody.

I declare under penalty of perjury that the foregoing is true and correct, executed on 9/14/2025, in San Diego, California.

Emmanuel McSweeney
Declarant

EXHIBIT

B

Emmanuel McSweeney
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Pro Se

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

EMMANUEL MCSWEENEY,

Petitioner,

v.

WARDEN, Otay Mesa Detention Facility; FIELD OFFICE DIRECTOR, San Francisco Field Office, United States Immigration and Customs Enforcement; DIRECTOR, United States Immigration and Customs Enforcement; SECRETARY, United States Department of Homeland Security; and UNITED STATES ATTORNEY GENERAL,

Respondents.

CIVIL CASE NO.: 25-cv-02488-RBM-DEB

Declaration of Zandra L. Lopez in Support of Motion for Appointment of Counsel

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

I declare under penalty of perjury that the foregoing is true and correct, executed on September 25, 2025, in San Diego, California.

ZANDRA LUZ LOPEZ
Declarant