

1 **Sisawang Khambounheuang**

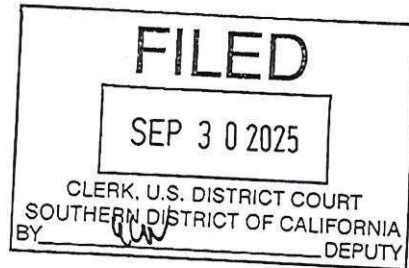
2 A# 

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 **SISAWANG KHAMBOUNHEUANG,**

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.: '25CV2575 JO SBC

**Motion for Appointment
of Counsel**

23 Sisawang Khambounheuang respectfully moves this court to appoint
24 Federal Defenders of San Diego, Inc., as counsel for petitioner.

25 Mr. Khambounheuang has a strong claim to release under *Zadvydas v. Davis*, 533
26 U.S. 678 (2001), the agency's own regulations, and the Fifth Amendment. But
27 these issues are complex, implicating constitutional, statutory, regulatory, and
28 immigration law. Additionally, an evidentiary hearing is sometimes required to

¹ Mr. Khambounheuang is filing this motion with the assistance of the Federal Defenders of San Diego, Inc., who also drafted it. Federal Defenders has consistently used this procedure in seeking appointment for immigration habeas cases. The Declaration of Kara Hartzler in Support of Appointment Motion attaches case examples.

1 resolve *Zadvydas* petitions. For these reasons, **Federal Defenders of San Diego,**
2 **Inc. is routinely appointed to represent immigrants in bringing *Zadvydas***
3 **claims.** See Exhibit A, Declaration of Kara Hartzler in Support of Appointment
4 Motion (“Hartzler Dec.”), ¶¶ 2–3 (attaching appointment orders from 2006 to
5 2024). This Court should follow that practice and appoint Federal Defenders of
6 San Diego, Inc. to represent Mr. Khambounheuang in this habeas case.

7 STATEMENT OF FACTS

8 I. Mr. Khambounheuang is detained indefinitely.

9 Sisawang Khambounheuang was born in Laos; his father was killed in the
10 Vietnam War fighting alongside the U.S. army. Declaration of Sisawang
11 Khambounheuang attached to habeas petition as Exhibit A (“Khambounheuang
12 Dec”), at ¶ 1. After spending several years in a Thai refugee camp, he arrived in
13 the United States in 1979. *Id.*

14 After sustaining an assault conviction, Mr. Khambounheuang was ordered
15 removed in 2000. *Id.* at ¶ 3. ICE detained him for two years while attempting to
16 remove him. *Id.* at ¶ 4. But when the Laotian consulate did not issue travel
17 documents for him, ICE finally released him on an order of supervision. *Id.*

18 Since then, Mr. Khambounheuang has always complied with his annual
19 check in requirements and has no subsequent criminal convictions. But when he
20 went for his annual check in on August 13, 2025, ICE arrested him. After failing
21 to attend a check in appointment in 2011 or 2012, he was again detained for about
22 90 days. *Id.* at ¶ 6. But since then, he has complied with his check in
23 requirements.

24 ICE’s inability to remove Mr. Khambounheuang over the last 22 years
25 reflects Laos’s reticence to accept deportee. As detailed in Mr.
26 Khambounheuang’s habeas petition, no repatriation agreement exists between
27 Laos and the United States. Laos has also been historically unwilling to accept
28 deportees from the United States through informal negotiations. As a result, there

1 are around 4,800 nationals of Laos living in the United States with final removal
2 orders who have not been removed. Asian Law Caucus, *Status of Ice*
3 *Deportations to Southeast Asian Countries: Laos* (July 29, 2025).

4 **II. Mr. Khambounheuang is indigent and lacks the education,**
5 **experience, and language skills needed to litigate this habeas**
6 **petition.**

7 Mr. Khambounheuang did not graduate from high school and has limited
8 English skills. Khambounheuang Dec. at ¶ 9. Nor does he have the legal
9 education or training needed to litigate a complex habeas petition. *Id.*

10 Accordingly, Mr. Khambounheuang requests that this Court appoint the
11 Federal Defenders of San Diego, Inc., to represent him in the instant habeas
12 action. That office stands ready and able to assist him in this Petition.

13 **ARGUMENT**

14 “Habeas corpus proceedings are of fundamental importance . . . in our
15 constitutional scheme because they directly protect our most valued rights.”
16 *Brown v. Vasquez*, 952 F.2d 1164, 1169 (9th Cir. 1991) (quoting *Bounds v. Smith*,
17 430 U.S. 817, 827 (1977)) (citations and internal quotations omitted).
18 Consequently, federal law permits a district court to appoint counsel in a habeas
19 proceeding under 28 U.S.C. § 2241 when the “interests of justice so require,” if a
20 Petitioner has shown that he is unable to afford an attorney. 18 U.S.C.
21 § 3006A(a)(2)(B). To make this decision, this Court must “evaluate [1] the
22 likelihood of success on the merits as well as [2] the ability of the Petitioner to
23 articulate his claims pro se in light of the complexity of the legal issues involved.”
24 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983); accord *Rand v. Rowland*,
25 113 F.3d 1520, 1525 (9th Cir. 1997).

26 Mr. Khambounheuang is likely to succeed on the merits of his claim, but he
27 will be unable to effectively articulate his claims without assistance. And he
28 cannot afford to retain paid counsel to litigate his petition for a writ of habeas

1 corpus under 28 U.S.C. § 2241. Thus, the appointment of counsel is appropriate.

2 **I. Mr. Khambounheuang will likely succeed on the merits.**

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

11 Thus, 180 days after a removal order becomes final, an immigrant facing
12 indefinite detention may come forward with "good reason to believe that there is
13 no significant likelihood of removal in the reasonably foreseeable future." *Id.* If
14 the immigrant meets their initial burden, "the Government must respond with
15 evidence sufficient to rebut that showing." *Id.* Otherwise, the immigrant must be
16 released. *See id.*

17 Here, Mr. Khambounheuang was ordered removed in 2000, and he spent
18 two years in custody before ICE released him. *Id.* at ¶ 4. He has also been
19 detained for over six weeks, since August 13, 2025. *Id.* at ¶ 6. Thus, he has been
20 detained for more than six months.

21 There is good reason to believe that he will not be removed in the
22 reasonably foreseeable future. ICE has proved unable to remove him for 23 years.
23 The Laotian consulate rejected a travel documents request. Thus, this Court will
24 likely grant *Zadvydas* relief, just like other courts. *See Nguyen v. Scott*, No. 2:25-
25 CV-01398, 2025 WL 2419288, at *17 (W.D. Wash. Aug. 21, 2025); *Hoac v.*
26 *Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July
27 16, 2025); *Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at *5 (D.
28 Mass. June 20, 2025).

1 What's more, the regulations do not permit Mr. Khambounheuang's re-
2 detention. ICE may revoke a noncitizen's release and return them to ICE custody
3 due to failure to comply with conditions of release, 8 C.F.R. § 241.13(i)(1), or if,
4 "on account of changed circumstances, the Service determines that there is a
5 significant likelihood that the [noncitizen] may be removed in the reasonably
6 foreseeable future." *Id.* § 241.13(i)(2). The regulations further provide noncitizens
7 with a chance to contest a re-detention decision. 8 C.F.R. § 241.13(i)(3).

8 Neither of these regulations were followed here. Mr. Khambounheuang did
9 not violate the conditions of his release. And there are no changed circumstances
10 that justify re-detaining him. Thus, he is likely to succeed on the merits of his
11 petition.

12 **II. Mr. Khambounheuang cannot adequately articulate his claims in the**
13 **absence of counsel, in light of the complexity of the legal issues involved**
14 **in his habeas petition.**

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

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

1 omitted). “A lawyer is often the only person who could thread the labyrinth.” *Id.*

2 Mr. Khambounheuang lacks experience and legal training to contend with
3 this complicated area of law. Khambounheuang Dec. at ¶ 9. He did not graduate
4 from high school and does not speak English very well. *Id.* at ¶ 9. Accordingly, he
5 would likely be unable to litigate his habeas petition effectively.

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

1 **CONCLUSION**

2 For those reasons, this Court should follow the regular practice of courts in
3 this district and appoint Federal Defenders of San Diego, Inc. to represent
4 Mr. Khambounheuang in litigating this habeas petition.
5
6

7 DATED: 9-19-25

Respectfully submitted,

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11 **SISIWANG KHANMOUNHEUANG**

12 Petitioner
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PROOF OF SERVICE

I, the undersigned, caused to be served the within Motion for Appointment of

Counsel by email to:

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

Date: 9-30-25

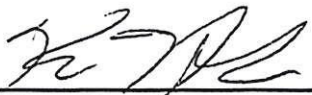

Kara Hartzler

EXHIBIT A

1 **Sisawang Khambounheuang**

2 A# 

3 Otay Mesa Detention Center

4 P.O. Box 439049

5 San Diego, CA 92143-9049

6 Pro Se

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

10 HAI THAI,

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.:

**Declaration of Kara Hartzler
in Support of Motion for
Appointment of Counsel**

- 1
2 1. My name is Kara Hartzler. I am an appellate attorney at Federal
3 Defenders of San Diego, Inc. In that capacity, I was assigned to
4 investigate Mr. Khambounheuang's immigration habeas case to
5 determine whether—in keeping with longstanding district practice—
6 Federal Defenders 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 2024.
- 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 I declare under penalty of perjury that the foregoing is true and correct,
21 executed on September 30, 2025, in San Diego, California.
22

23
24 
25 **KARA HARTZLER**
26 Declarant
27
28