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

12 CHUNY TOUCH,¹

13 Petitioner,

14 v.

15 MARKWAYNE MULLIN, Secretary of
16 the Department of Homeland Security,
17 TODD BLANCHE, Acting Attorney
18 General, TODD M. LYONS, Acting
19 Director, Immigration and Customs
20 Enforcement, JESUS ROCHA, Acting
21 Field Office Director, San Diego Field
22 Office, CHRISTOPHER LAROSE,
23 Warden at Otay Mesa Detention Center,

24 Respondents.

CIVIL CASE NO.:

'26CV2607 RBM MSB

**Petition for Writ
of
Habeas Corpus**

**[Civil Immigration Habeas,
28 U.S.C. § 2241]**

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28 ¹ Federal Defenders of San Diego, Inc., is filing the instant petition with
provisional appointment under Chief Judge Order No. 134.

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I. Introduction

In *Touch v. Noem, et al*, 26-cv-3118-RBM-AHG (S.D. Cal.), this Court granted Mr. Touch's pro se habeas petition on the basis that his redetention violated the regulations. *See* 26-cv-3118-RBM-AHG, Dkt. 12, 14. Mr. Touch was released around November 26, 2025.

On March 31, 2026, Respondents redetained Mr. Touch and committed similar regulatory violations. Additionally, Respondents failed to deport Mr. Touch before his travel document expired on April 12, 2026:

Temporary Travel Document/Laissez-Passer
លិខិតអនុញ្ញាតដំណើររបស់រដ្ឋាភិបាលកម្ពុជា

Surname and Given Name	: TOUCH CHUNY	
នាមត្រកូល និងនាមខ្លួន	: តូច ឈុនធី	
Nationality	: Cambodian	Sex : Male
សញ្ជាតិ	: ខ្មែរ	ភេទ : ប្រុស
Date of Birth	: [REDACTED]	
ថ្ងៃខែឆ្នាំកំណើត	: ០៥ ខែកក្កដា ឆ្នាំ១៩៧២	
Place of Birth	: Cambodia	
ទីកន្លែងកំណើត	: ប្រទេសកម្ពុជា	
Date of Expiry	: 12 April 2026	
ថ្ងៃផុតកំណត់	: ១២ ខែមេសា ឆ្នាំ២០២៦	

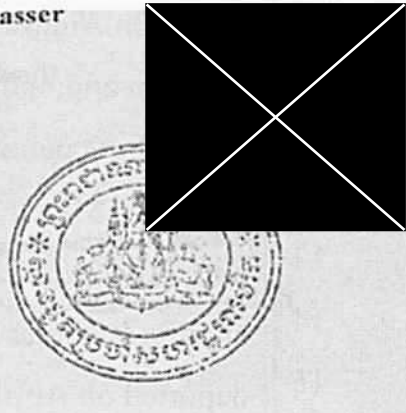


Exhibit B, Expired Travel Document.

Because Mr. Touch's redetention violated his regulatory rights, and the expiration of his travel document means his removal is not significantly likely in the reasonably foreseeable future, this Court should again grant his petition and order his release.

II. Statement of Facts

Mr. Touch was born in Cambodia and came to the United States in 1984 as a refugee with his mother and five siblings. Declaration of Chuny Touch, Exhibit A ("Exh. A"), at ¶ 1. His father was killed in the Cambodian conflict. *Id.* at ¶ 1. Mr. Touch became a lawful permanent resident soon after he arrived. *Id.* at ¶ 1.

In approximately 1995 when he was in my early twenties, Mr. Touch was convicted of a serious crime. *Id.* at ¶ 2. As a result, he was put into removal

1 proceedings. *Id.* at ¶ 2. On June 16, 2020, an immigration judge ordered him
2 removed on this basis. *Id.* at ¶ 3.

3 After he was ordered removed, ICE tried to deport Mr. Touch to Cambodia.
4 *Id.* at ¶ 4. However, Cambodia did not issue him travel documents. *Id.* at ¶ 4. ICE
5 continued to detain him for about three months before releasing him on an order
6 of supervision. *Id.* at ¶ 4. Since his release from ICE custody, Mr. Chuny has not
7 been convicted of any other crimes and has never missed a check-in appointment.
8 *Id.* at ¶ 5.

9 On August 21, 2025, Mr. Touch went to the ICE office for his regular
10 check-in appointment and was taken into ICE custody. *Id.* at ¶ 6. He was released
11 on a habeas petition on approximately November 26, 2025. *Id.* at ¶ 6.

12 On March 31, 2026, ICE told Mr. Touch to come into the office and took
13 him into custody. *Id.* at ¶ 7. He does not believe they gave him written notice or
14 an informal interview. *Id.* at ¶ 7. However, they told him that he was going to be
15 deported on April 7, 2026. *Id.* at ¶ 7.

16 But ICE did not deport Mr. Touch on April 7, 2026. They told him that this
17 was because they had “lost” his original travel document. *Id.* at ¶ 8. His travel
18 document then expired on April 12, 2026, and ICE has not told him when they
19 expect to have a new travel document. *Id.* at ¶ 8.

20 **III. Legal Analysis.**

21 This Court should grant this petition and order Mr. Touch’s immediate
22 release because 1) ICE failed to follow its own regulations and 2) the expiration
23 of Mr. Touch’s travel document means there is not a “significant likelihood of
24 removal in the reasonably foreseeable future.” 533 U.S. 678, 701 (2001).
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A. Claim One: ICE failed to comply with its own regulations when it re-detained Mr. Touch, violating his rights under applicable regulations and due process.

Two regulations establish the process due to someone who is re-detained in immigration custody following a period of release. 8 C.F.R. § 241.4(l) applies to all re-detentions, generally. 8 C.F.R. § 241.13(i) applies as an added, overlapping framework to persons released upon good reason to believe that they will not be removed in the reasonably foreseeable future, as Mr. Touch was. *See Nguyen v. Noem*, 2025 WL 2898977, No. 25-CV-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025) (explaining this regulatory framework and granting a habeas petition for ICE’s failure to follow these regulations for a refugee of Laos who entered the United States before 1995); *Rokhfirooz*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165 at *2 (same as to an Iranian national).

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

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

In the case of someone released under § 241.13(i), the regulations also explicitly require the interviewer to allow the re-detained person to “submit any evidence or information that he or she believes shows there is no significant

1 likelihood he or she be removed in the reasonably foreseeable future, or that he or
 2 she has not violated the order of supervision.” § 241.13(i)(3).

3 ICE is required to follow its own regulations. *United States ex rel. Accardi*
 4 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150,
 5 1162 (9th Cir. 2004) (“The legal proposition that agencies may be required to
 6 abide by certain internal policies is well-established.”). A court may review a re-
 7 detention decision for compliance with the regulations, and “where ICE fails to
 8 follow its own regulations in revoking release, the detention is unlawful and the
 9 petitioner’s release must be ordered.” *Rokhfirooz*, 2025 WL 2646165 at *4
 10 (collecting cases); *accord Touch*, 2025 WL 2898977 at *5.

11 ICE did not follow its regulatory prerequisites to re-detention here. First,
 12 Mr. Touch does not believe that ICE provided him adequate written notice of the
 13 reason for his redetention at the time he was taken into custody. Second,
 14 Mr. Touch does not believe he received an informal interview.

15 Numerous courts have released re-detained immigrants after finding that
 16 ICE failed to comply with applicable regulations. These have included courts in
 17 this district,² as well as courts outside this district.³

18
 19 ² *Constantinovici v. Bondi*, ___ F. Supp. 3d ___, 2025 WL 2898985, No. 25-cv-
 20 2405-RBM (S.D. Cal. Oct. 10, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-
 21 RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Touch v. Noem*, 2025 WL
 22 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025); *Sun v.*
 23 *Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van*
 24 *Tran v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29,
 25 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal. Oct. 10,
 26 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12 (S.D.
 27 Cal. Oct. 9, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal.
 28 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).

³ *Grigorian*, 2025 WL 2604573; *Delkash v. Noem*, 2025 WL 2683988; *Ceesay v.*
Kurzdorfer, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F.
 Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387

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

5 **B. Claim Two: Mr. Touch’s detention violates *Zadvydas* and 8**
 6 **U.S.C. § 1231.**

7 Respondents redetained Mr. Touch on March 31, 2026, purportedly to
 8 remove him to Cambodia on April 7, 2026. Exh. A at ¶ 7. But when Respondents
 9 failed to do so, Mr. Touch’s travel document expired on April 12, 2026. *See* Exh.
 10 B. Because there is no indication how long it will take to get a new travel
 11 document, this Court should order Mr. Touch’s immediate release unless and until
 12 Respondents provide evidence of a new, unexpired travel document and a
 13 scheduled date for his removal.

14 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered
 15 a problem affecting people like Mr. Touch: Federal law requires ICE to detain an
 16 immigrant during the “removal period,” which typically spans the first 90 days
 17 after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-
 18 day removal period expires, detention becomes discretionary—ICE may detain
 19 the migrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily,
 20 this scheme would not lead to excessive detention, as removal happens within
 21 days or weeks. But some detainees cannot be removed quickly. Perhaps their
 22 removal “simply require[s] more time for processing,” or they are “ordered
 23 removed to countries with whom the United States does not have a repatriation

24 _____
 25 (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,
 27 2025 WL 2430267, at *10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No.
 28 9:25-CV-00182-MJT, 2025 WL 2491782, at *2–3 (E.D. Tex. July 18, 2025);
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 agreement,” or their countries “refuse to take them,” or they are “effectively
2 ‘stateless’ because of their race and/or place of birth.” *Kim Ho Ma v. Ashcroft*,
3 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances, detained
4 immigrants can find themselves trapped in detention for months, years, decades,
5 or even the rest of their lives. If federal law were understood to allow for
6 “indefinite, perhaps permanent, detention,” it would pose “a serious constitutional
7 threat.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided the
8 constitutional concern by interpreting § 1231(a)(6) to incorporate implicit limits.
9 *Id.* at 689.

10 *Zadvydas* held that § 1231(a)(6) presumptively permits the government to
11 detain an immigrant for 180 days after his or her removal order becomes final.
12 After those 180 days have passed, the immigrant must be released unless his or
13 her removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 701. After six
14 months have passed, the petitioner must only make a prima facie case for relief—
15 there is “good reason to believe that there is no significant likelihood of removal
16 in the reasonably foreseeable future.” *Id.* Then the burden shifts to “the
17 Government [to] respond with evidence sufficient to rebut that showing.” *Id.*

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

25 Mr. Touch can make all the threshold showings needed to prove his
26 *Zadvydas* claim and shift the burden to the government.

27 First, the six-month grace period has long since ended. The *Zadvydas* grace
28 period is linked to the date the final order of removal is issued. It lasts for “six

1 months after a final order of removal—that is, *three months* after the statutory
 2 removal period has ended.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th
 3 Cir. 2001); *see also* 8 U.S.C. § 1231(a)(1)(B) (linking the statutory removal
 4 period to issuance of the final order and other proceedings associated with the
 5 original removal order).

6 Here, Mr. Touch’s order of removal was entered on June 16, 2020. Exh. A
 7 at ¶ 3. Accordingly, his 90-day removal period began then. 8 U.S.C.
 8 § 1231(a)(1)(B). The *Zadvydas* grace period thus expired in December 2020, three
 9 months after the removal period ended. *See, e.g., Tadros v. Noem*, 2025 WL
 10 1678501, No. 25-cv-4108(EP), *2–*3.⁴ Yet ICE has now had six years to deport
 11 him and has not done.

12 ICE has failed to deport Mr. Touch even though it has had ample
 13 opportunity since August 2025. For instance, ICE claimed that it had “rebooked
 14 the Petitioner for travel to Cambodia on December 3, 2025,” yet it failed to
 15 remove him on that date, even though this Court’s stay was no longer in effect.
 16 *See* 25-cv-3118-RBM-AHG, Dkt. 10 at 4; Dkt. 10-6 at ¶ 20. And when ICE took
 17 Mr. Touch into custody on March 31, 2026, it said it was going to deport him on

18
 19 ⁴ The government has sometimes argued that release and rearrest resets the six-
 20 month grace period completely, taking the clock back to zero. “Courts . . . broadly
 21 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).

22 It has also sometimes argued that rearrest creates a new three-month grace
 23 period. As a court explained in *Bailey v. Lynch*, that view cannot be squared with
 24 the statutory definition of the removal period in 8 U.S.C. § 1231(a)(1)(B). No. CV
 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 April 7, 2026—yet it failed to do so. Exh. A at ¶ 7, 8. In other words, ICE has a
2 pattern and practice of claiming it will execute Mr. Touch’s removal order and
3 then failing to do so. And now that Mr. Touch’s travel document has expired, his
4 removal is even less likely, since there is no indication of when or if he will
5 receive a new one. Exh. B. Thus, unless the government can prove a “significant
6 likelihood of removal in the reasonably foreseeable future,” Mr. Touch must be
7 released. *Zadvydas*, 533 U.S. at 701.

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

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

12 **V. Prayer for relief**

13 For the foregoing reasons, Petitioner respectfully requests that this Court:

- 14 1. Order and enjoin Respondents to immediately release Petitioner from
15 custody;
- 16 2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.
17 § 1231(a)(6) unless and until Respondents obtain an *unexpired* travel
18 document for his removal and provide evidence of his scheduled
19 departure date;
- 20 3. Enjoin Respondents from re-detaining Petitioner without first following
21 all procedures set forth in 8 C.F.R. §§ 241.4(l), 241.13(i), and any other
22 applicable statutory and regulatory procedures;
- 23 4. Order all other relief that the Court deems just and proper.

24 Respectfully submitted,

25
26 Dated: April 24, 2026

s/ Kara Hartzler
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Touch
Email: kara_hartzler@fd.org

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: April 24, 2026

/s/ Kara Hartzler
Kara L. Hartzler