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

SON TAN NGUYEN,¹

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of
the Department of Homeland Security,
TODD BLANCHE, Acting 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.: '26CV2815 JAO JLB

**Petition for Writ
of
Habeas Corpus**

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

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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1 **I. Introduction**

2 Mr. Nguyen was born in Vietnam and came to the United States as a
3 refugee in 1985. In 2013, Mr. Nguyen was ordered removed. But Vietnam
4 wouldn't accept him, and Mr. Nguyen was then released on an order of
5 supervision.

6 In 2017, Mr. Nguyen hired an immigration lawyer to try to get his green
7 card back, and surprisingly, USCIS sent him a new copy of his green card. But on
8 April 23, 2026, masked agents stopped him and dragged him out of his car.
9 Contrary to regulation, ICE did not notify Mr. Nguyen of any changed
10 circumstances that made his removal more likely, like receiving news from
11 Vietnam that it would now accept Mr. Nguyen despite not accepting him 13 years
12 ago. Nor did it give Mr. Nguyen an informal interview or a meaningful
13 opportunity to contest his re-detention. Mr. Nguyen's detention thus violates his
14 statutory and regulatory rights, *Zadvydas v. Davis*, 533 U.S. 678 (2001), and the
15 Fifth Amendment.

16 **II. Statement of Facts**

17 Mr. Nguyen was born in Vietnam and came to the United States as a
18 refugee in 1985 with his family. Exhibit A, Declaration of Son Tan Nguyen, at ¶
19 1. Soon thereafter, he became a lawful permanent resident. *Id.* at ¶ 1.

20 In about 1990, Mr. Nguyen was convicted of a serious crime and sentenced
21 to life in prison. *Id.* at ¶ 2. He served 21 years and then was granted parole in
22 2011. *Id.* at ¶ 2. On January 22, 2013, an immigration judge ordered him removed
23 as a result of this conviction. *Id.* at ¶ 2.

24 After the immigration judge ordered Mr. Nguyen removed, ICE continued
25 to detain him. *Id.* at ¶ 3. But because they were not able to deport him to Vietnam,
26 they eventually released him on an order of supervision. *Id.* at ¶ 3. He has no
27 criminal convictions since that time. *Id.* at ¶ 3.

1 Several years after Mr. Nguyen was ordered removed, he hired an
2 immigration lawyer to see if it was possible to get his green card back. *Id.* at ¶ 4.
3 He believes his lawyer simply applied for a new copy of his green card, and for
4 unknown reasons, the agency sent him one. *Id.* at ¶ 4. Because of that,
5 Mr. Nguyen's immigration officer told him that he didn't need to check in
6 anymore. *Id.* at ¶ 4.

7 On April 23, 2026, Mr. Nguyen was driving to work when several vehicles
8 surrounded him and stopped him; one actually ran into his front bumper. *Id.* at ¶
9 5. A number of masked agents jumped out and dragged him out of his car. *Id.* at ¶
10 5. Mr. Nguyen did not resist in any way. *Id.* at ¶ 5. After officers arrested him,
11 Mr. Nguyen does not believe he received notice of why he was being redetained,
12 nor did he receive an informal interview at which he could contest his arrest. *Id.* at
13 ¶ 6.

14 **III. Legal Analysis.**

15 This Court should grant this petition and order Mr. Nguyen's immediate
16 release. ICE failed to follow its own regulations requiring changed circumstances
17 before re-detention, as well as a chance to promptly contest a re-detention
18 decision. And *Zadvydas v. Davis* holds that immigration statutes do not authorize
19 the government to detain immigrants like Mr. Nguyen, for whom there is "no
20 significant likelihood of removal in the reasonably foreseeable future." 533 U.S.
21 678, 701 (2001).

22 **A. Claim One: ICE failed to comply with its own regulations when** 23 **it re-detained Mr. Nguyen, violating his rights under applicable** **regulations and due process.**

24 Two regulations establish the process due to someone who is re-detained in
25 immigration custody following a period of release. 8 C.F.R. § 241.4(l) applies to
26 all re-detentions, generally. 8 C.F.R. § 241.13(i) applies as an added, overlapping
27 framework to persons released upon good reason to believe that they will not be
28 removed in the reasonably foreseeable future, as Mr. Nguyen was. *See Phan v.*

1 *Noem*, 2025 WL 2898977, No. 25-CV-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct.
2 10, 2025) (explaining this regulatory framework and granting a habeas petition for
3 ICE’s failure to follow these regulations for a refugee of Vietnam who entered the
4 United States before 1995); *Rokhfirooz*, No. 25-CV-2053-RSH-VET, 2025 WL
5 2646165 at *2 (same as to an Iranian national).

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

12 No matter the reason for re-detention, the re-detained person is entitled to
13 certain procedural protections. For one, “[u]pon revocation,’ the noncitizen ‘will
14 be notified of the reasons for revocation of his or her release or parole.’” *Phan*,
15 2025 WL 2898977 at *3, *4 (quoting §§ 241.4(l)(1), 241.13(i)(3)). Further, the
16 person “‘will be afforded an initial informal interview promptly after his or her
17 return’ to be given ‘an opportunity to respond to the reasons for revocation stated
18 in the notification.’” *Id.*

19 In the case of someone released under § 241.13(i), the regulations also
20 explicitly require the interviewer to allow the re-detained person to “submit any
21 evidence or information that he or she believes shows there is no significant
22 likelihood he or she be removed in the reasonably foreseeable future, or that he or
23 she has not violated the order of supervision.” § 241.13(i)(3).

24 ICE is required to follow its own regulations. *United States ex rel. Accardi*
25 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150,
26 1162 (9th Cir. 2004) (“The legal proposition that agencies may be required to
27 abide by certain internal policies is well-established.”). A court may review a re-
28 detention decision for compliance with the regulations, and “where ICE fails to

1 follow its own regulations in revoking release, the detention is unlawful and the
2 petitioner's release must be ordered." *Rokhfirooz*, 2025 WL 2646165 at *4
3 (collecting cases); *accord Phan*, 2025 WL 2898977 at *5.

4 ICE followed none of its regulatory prerequisites to re-detention here.

5 First, ICE did not give Mr. Nguyen adequate notice or an opportunity to
6 respond. Mr. Nguyen was not given a reason for revoking his supervision, or if he
7 was, he didn't understand. *Id.* at ¶ 6.

8 Second, Mr. Nguyen does not believe he received an informal interview
9 where an officer explained the purported "changed circumstances" underlying his
10 revocation. "Simply to say that circumstances had changed or there was a
11 significant likelihood of removal in the foreseeable future is not enough." *Sarail*
12 *A. v. Bondi*, No. 25-CV-2144, 2025 WL 2533673, at *3 (D. Minn. Sept. 3, 2025).
13 Rather, "Petitioner must be told *what* circumstances had changed or *why* there
14 was now a significant likelihood of removal in order to meaningfully respond to
15 the reasons and submit evidence in opposition, as allowed under § 241.13(i)(3)." *Id.*
16 By "identif[ying] the category—'changed circumstances'—but fail[ing] to
17 notify [Petitioner] of the reason—the circumstances that changed and created a
18 significant likelihood of removal in the reasonably foreseeable future—[ICE]
19 failed to follow the relevant regulation." *Id.* This failure to identify any changed
20 circumstances also means he has he been afforded a meaningful opportunity to
21 respond to the reasons for revocation or submit evidence rebutting his re-
22 detention. Exh. A at ¶ 6.

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

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

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

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered a problem affecting people like Mr. Nguyen: Federal law requires ICE to detain an immigrant during the “removal period,” which typically spans the first 90 days

² *Constantinovici v. Bondi*, ___ F. Supp. 3d ___, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Nguyen v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Nguyen v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal. 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. Cal. 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 (D. Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7–9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 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 after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-
2 day removal period expires, detention becomes discretionary—ICE may detain
3 the migrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily,
4 this scheme would not lead to excessive detention, as removal happens within
5 days or weeks. But some detainees cannot be removed quickly. Perhaps their
6 removal “simply require[s] more time for processing,” or they are “ordered
7 removed to countries with whom the United States does not have a repatriation
8 agreement,” or their countries “refuse to take them,” or they are “effectively
9 ‘stateless’ because of their race and/or place of birth.” *Kim Ho Ma v. Ashcroft*,
10 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances, detained
11 immigrants can find themselves trapped in detention for months, years, decades,
12 or even the rest of their lives. If federal law were understood to allow for
13 “indefinite, perhaps permanent, detention,” it would pose “a serious constitutional
14 threat.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided the
15 constitutional concern by interpreting § 1231(a)(6) to incorporate implicit limits.
16 *Id.* at 689.

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

25 Further, even before the 180 days have passed, the immigrant must still be
26 released if he *rebutts* the presumption that his detention is reasonable. *See, e.g.,*
27 *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal. 2020) (collecting cases
28 on rebutting the *Zadvydas* presumption before six months have passed); *Zavvar v.*

1 *Scott*, Civil No. 25-2104-TDC, 2025 WL 2592543, *6 (D. Md. Sept. 8, 2025)
 2 (finding the presumption rebutted for a person who was immediately released
 3 after being ordered removed and, years later, re-detained for less than six months).

4 Mr. Nguyen can make all the threshold showings needed to prove his
 5 *Zadvydas* claim and shift the burden to the government because the six-month
 6 grace period has long since ended. The *Zadvydas* grace period is linked to the date
 7 the final order of removal is issued. It lasts for “*six months* after a final order of
 8 removal—that is, *three months* after the statutory removal period has ended.” *Kim*
 9 *Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001); *see also* 8 U.S.C. §
 10 1231(a)(1)(B) (linking the statutory removal period to issuance of the final order
 11 and other proceedings associated with the original removal order).

12 Here, Mr. Nguyen’s order of removal was entered on January 22, 2013.
 13 Exh. A at ¶ 2. Accordingly, his 90-day removal period began then. 8 U.S.C.
 14 § 1231(a)(1)(B). The *Zadvydas* grace period thus expired in June 2013, three
 15 months after the removal period ended. *See, e.g., Tadros v. Noem*, 2025 WL
 16 1678501, No. 25-cv-4108(EP), *2–*3.⁴

18 ⁴ The government has sometimes argued that release and rearrest resets the six-
 19 month grace period completely, taking the clock back to zero. “Courts . . . broadly
 20 agree” that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *7 n.6
 21 (W.D. La. Oct. 15, 2019), *report and recommendation adopted*, 2019 WL
 22 6037220 (W.D. La. Nov. 13, 2019); *see also Sied v. Nielsen*, No. 17-CV-06785-
 23 LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018) (collecting cases).

24 It has also sometimes argued that rearrest creates a new three-month grace
 25 period. As a court explained in *Bailey v. Lynch*, that view cannot be squared with
 26 the statutory definition of the removal period in 8 U.S.C. § 1231(a)(1)(B). No. CV
 27 16-2600 (JLL), 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016). “Pursuant to the
 28 statute, the removal period, and in turn the [six-month] presumptively reasonable
 period, begins from the latest of ‘the date the order of removal becomes
 administratively final,’ the date of a reviewing court’s final order where the
 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

1 This Court uses a burden-shifting framework to evaluate Mr. Nguyen's
2 *Zadvydas* claim. At the first stage of the framework, Mr. Nguyen must "provide[]
3 good reason to believe that there is no significant likelihood of removal in the
4 reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. This standard can be
5 broken down into three parts.

6 **"Good reason to believe."** The "good reason to believe" standard is a
7 relatively forgiving one. "A petitioner need not establish that there exists no
8 possibility of removal." *Freeman v. Watkins*, No. CV B:09-160, 2009 WL
9 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does "[g]ood reason to
10 believe' . . . place a burden upon the detainee to demonstrate no reasonably
11 foreseeable, significant likelihood of removal or show that his detention is
12 indefinite; it is something less than that." *Rual v. Barr*, No. 6:20-CV-06215 EAW,
13 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401
14 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
15 Petitioners need only give a "good reason"—not prove anything to a certainty.

16 **"Significant likelihood of removal."** This component focuses on whether
17 Mr. Nguyen will likely be removed: Continued detention is permissible only if it
18 is "significant[ly] like[ly]" that ICE will be able to remove him. *Zadvydas*, 533
19 U.S. at 701. This inquiry targets "not only the *existence* of untapped possibilities,
20 but also [the] probability of *success* in such possibilities." *Elashi v. Sabol*, 714 F.
21 Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added). In other words,
22 even if "there remains *some* possibility of removal," a petitioner can still meet its
23 burden if there is good reason to believe that successful removal is not
24 significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL
25 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

26
27
28 has nothing to do with release and rearrest, releasing and rearresting the
immigrant cannot reset the removal period.

1 **“In the reasonably foreseeable future.”** This component of the test
2 focuses on when Mr. Nguyen will likely be removed: Continued detention is
3 permissible only if removal is likely to happen “in the reasonably foreseeable
4 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s
5 removal efforts. If the Court has “no idea of when it might reasonably expect
6 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal
7 is likely to occur—or even that it might occur—in the reasonably foreseeable
8 future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3
9 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL
10 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d
11 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that Mr. Nguyen
12 “would *eventually* receive” a travel document, he can still meet his burden by
13 giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*,
14 2016 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

15 Mr. Nguyen satisfies this standard for two reasons.

16 First, Mr. Nguyen’s own experience bears this out. ICE has now had 13
17 years to deport him, including five years under the MOU. He has cooperated with
18 ICE’s removal efforts throughout that time. Yet ICE has proved unable to remove
19 him.

20 Second, the general experience of other Vietnamese immigrants also bears
21 this out. Even after Vietnam signed the 2020 MOU, ICE had to admit that there
22 was no reasonable likelihood of removing such immigrants in the reasonably
23 foreseeable future, Order on Joint Motion for Entry of Stipulated Dismissal,
24 *Trihn*, 18-CV-316-CJC-GJS, Dkt. 161 at 3 (C.D. Cal. Oct. 7, 2021)—an
25 admission backed up by two years’ experience under the MOU, Asian Law
26 Caucus, *Resources on Deportation of Vietnamese Immigrants Who Entered the*
27 *U.S. Before 1995* (Jul. 15, 2025) (providing links to all quarterly reports). Though
28 the Trump administration rescinded this admission, *Nguyen*, 2025 WL 2419288,

at *7, several courts have explained that barriers continue to obstruct removal for people like Mr. Nguyen. *See Nguyen*, 2025 WL 2419288; *Hoac*, 2025 WL 1993771; *Nguyen*, 2025 WL 1725791; *see also Than Nguyen*, No. 25-CV-2760-TWR at ECF No. 12 (minute order noting grant of *Zadvydas* petition as to pre-1995 Vietnamese immigrant on October 23, 2025); *Ho*, No. 25-cv-2453-BAS at ECF No. 11 (granting preliminary injunction ordering release as to pre-1995 Vietnamese immigrant on October 20, 2025).

Thus, Mr. Nguyen has met his initial burden, and the burden shifts to the government. Unless the government can prove a “significant likelihood of removal in the reasonably foreseeable future,” Mr. Nguyen must be released. *Zadvydas*, 533 U.S. at 701.

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

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

V. Prayer for relief

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

1. Order and enjoin Respondents to immediately release Petitioner from custody;
2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C. § 1231(a)(6) unless and until Respondents obtain a travel document for his removal;
3. Enjoin Respondents from re-detaining Petitioner without first following all procedures set forth in 8 C.F.R. §§ 241.4(I), 241.13(i), and any other applicable statutory and regulatory procedures;

1 4. Order all other relief that the Court deems just and proper.

2 Respectfully submitted,

3
4 Dated: May 4, 2026

s/ Kara Hartzler

Federal Defenders of San Diego, Inc.

Attorneys for Mr. Nguyen

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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: May 4, 2026

/s/ Kara Hartzler

Kara L. Hartzler