

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA**

**ALEXANDRIA DIVISION**

Phong PHAN,

Petitioner,

v.

Kristi NOEM, Secretary, U.S. Department of  
Homeland Security

Melissa HARPER, Field Office Director of  
Enforcement and Removal Operations, New  
Orleans Field Office, Immigration and Customs  
Enforcement;; Pamela BONDI, U.S. Attorney  
General; Shad RICE, Facility Administrator at  
the GEO Group

Respondents.

Case No.

**PETITION FOR WRIT OF  
HABEAS CORPUS**

**PETITION FOR WRIT OF HABEAS CORPUS  
PURSUANT TO 28 U.S.C. § 2241 AND COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

PART I

INTRODUCTION

1. Petitioner Phong PHAN is unlawfully detained by U.S. Immigration and Customs Enforcement (“ICE”) at the LaSalle ICE Processing Center in Jena, Louisiana, and as such files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief.
2. Petitioner has been held in ICE custody without a constitutionally adequate hearing and his removal is not reasonably foreseeable.
3. Petitioner’s detention is unlawful because it is indefinite, imposed without due process, and contrary to Supreme Court precedent (*Zadvydas v. Davis*, 533 U.S. 678 (2001)).
4. Petitioner respectfully seeks a writ of habeas corpus ordering his immediate release, or in the alternative, a prompt hearing before a neutral adjudicator to determine whether his continued detention is justified.

JURISDICTION AND VENUE

5. This Court has jurisdiction under 28 U.S.C. §§ 2241 and 1331.
6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e) because Petitioner is detained at the LaSalle ICE Processing Center in Jena, Louisiana, within the Western District of Louisiana, Alexandria Division.

## PARTIES

7. **Petitioner:** Phong Phan currently detained by ICE at LaSalle ICE Processing Center, Jena, Louisiana. He is a Vietnamese national who was previously a Lawful Permanent Resident of the United States. He was ordered removed on August 19, 2022, by an immigration judge and was released on an order of supervision. He was re-detained on June 3, 2025, by ICE and has been detained since that date.
8. Respondent Melissa Harper is the Director of the New Orleans Field Office of ICE's Enforcement and Removal Operations division. As such, Ms. Harper is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.
9. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.
10. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.
11. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.
12. Shad Rice, Facility Administrator at the GEO Group, is effectively the "Warden" of the detention center where Mr. Phan is currently detained located in Jena, Louisiana.

### FACTUAL BACKGROUND

13. Petitioner entered the United States as a refugee from Vietnam in or around 1981 at the age of ten and subsequently became a lawful permanent resident.
14. In 1992, Petitioner was convicted in California of offenses under Penal Code §§ 187(a), 664/187(a), with an enhancement under § 12022.5(a). He served nearly 29 years in California state prison.
15. In 2021, the California Board of Parole Hearings and the Governor determined Petitioner was rehabilitated and not a danger to the community, and released him on parole.
16. Following his release from state custody, ICE detained Petitioner and placed him in removal proceedings. Although Petitioner expressed fear of return to Vietnam, he accepted a removal order to Vietnam because he knew he was protected by the U.S.– Vietnam Repatriation Agreement, which bars the return of Vietnamese nationals who entered before July 12, 1995.
17. In July 2021, ICE released Petitioner under an Order of Supervision (OSUP) because his removal was not reasonably foreseeable. For nearly four years, Petitioner complied fully with OSUP conditions, checked in regularly with ICE, and secured employment with the nonprofit Urban Alchemy, which assists formerly incarcerated individuals with reintegration.
18. On June 3, 2025, Petitioner attended a routine ICE check-in in San Francisco. Without notice or hearing, ICE re-detained him, citing only a longstanding removal order. His OSUP was never revoked.

19. Petitioner was then transferred between facilities, including Florence, Arizona, Alexandria, Louisiana, and now remains detained at LaSalle ICE Processing Center in Jena, Louisiana.
20. ICE did not provide any due process to him regarding his detention status.
21. ICE has never obtained travel documents from Vietnam for Petitioner. On information and belief, the Vietnamese government has not and will not issue such documents under the binding repatriation agreement.
22. By statute and regulation, ICE has the authority to re-detain a noncitizen previously ordered removed only in specific circumstances, including where an individual violates any condition of release or the individual's conduct demonstrates that release is no longer appropriate. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2). That authority, however, is proscribed by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. In turn, to protect that interest, on the particular facts of Mr. Phan's case, due process required notice and a hearing, prior to any re-arrest, at which he was afforded the opportunity to advance his arguments as to why he should not be re-detained.
23. Respondents created a reasonable expectation that Mr. Phan would be permitted to live and work in the United States without being subject to arbitrary arrest and removal.
24. Further, the Supreme Court has limited the potentially indefinite post-removal order detention to a maximum of six months, because removal is not reasonably foreseeable. *Zadvydas v. Davis*, 533 U.S. 678 (2001).
25. Moreover, under the INA, Respondents have a statutory obligation to remove Mr. Phan only to the designated country—in this case, Vietnam. 8 U.S.C. § 1231(b)(2)(A)(ii). If

Mr. Phan is to be removed to a third country, Respondents must first assert a basis under 8 U.S.C. § 1231(b)(2)(C) and ICE must provide him with sufficient notice and an opportunity to respond and apply for fear-based relief as to that country, in compliance with the INA, due process, and the binding international treaty: The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>1</sup> Currently, DHS has a policy of removing or seeking to remove individuals to third countries without first providing constitutionally adequate notice of third country removal, or any meaningful opportunity to contest that removal if the individual has a fear of persecution or torture in that country.

26. Mr. Phan submits that he cannot be removed to any third country unless he is first provided with adequate notice and a meaningful opportunity to apply for protection under the Convention Against Torture

27. Petitioner's detention is therefore indefinite, with no significant likelihood of removal in the reasonably foreseeable future.

28. Mr. Phan is also at risk of being unlawfully removed to a third country without constitutionally adequate notice and a meaningful opportunity to apply for protection under the Convention Against Torture, in violation of the INA, binding international treaty, and due process.

## CLAIMS FOR RELIEF

### COUNT 1

<sup>1</sup> United Nations, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Dec. 10, 1984), available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>.

29. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

**30. Procedural Due Process - Unlawful Indefinite Detention – Violation of Due Process**

**Clause and *Zadvydas v. Davis*.** Under *Zadvydas*, detention beyond six months is presumptively unreasonable unless removal is significantly likely in the reasonably foreseeable future. ICE cannot meet that burden here.

COUNT 2

PRAYER FOR RELIEF

31. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

**32. Unlawful Re-Detention Without Due Process -** The Fifth Amendment requires that a noncitizen released on OSUP cannot be re-detained absent notice and a hearing before a neutral adjudicator. Petitioner was seized during a check-in without due process.

33. Petitioner was previously released by Respondents because he did not pose a danger or flight risk. As long as he complies with the conditions of his release, Respondents have authority to revoke release only if circumstances have changed. 8 C.F.R. § 241.13(i)(2); 8 C.F.R. § 1231(a)(6).

COUNT 3

34. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

**35. Violation of Immigration and Nationality Act (INA) and Implementing Regulations**

36. The INA provides for detention during the ninety (90) day “removal period” that begins immediately after a noncitizen’s order of removal becomes final. 8 U.S.C. § 1231(a)(1). After the ninety (90) day removal period, the INA and its applicable regulations provide that detaining noncitizens is generally permissible only upon notice to the noncitizen and after an individualized determination of dangerousness and flight risk. See 8 U.S.C. § 1231(a)(6). ICE has failed to follow required procedures under 8 U.S.C. § 1231 and 8 C.F.R. § 241.13 for custody determinations when removal is not reasonably foreseeable.

### **PRAYER FOR RELIEF**

WHEREFORE, Petitioner prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Issue a writ of habeas corpus requiring that Respondents release Petitioner or provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within 14 days;
- c. Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act (“EAJA”), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- d. Grant any other and further relief that this Court deems just and proper.

DATED this 22 date of September 2025.

Respectfully submitted,

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