

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

Phuc Ngoc Huynh
Petitioner,

v.

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

Todd Lyons, Acting Director, U.S.
Immigration and Customs
Enforcement (ICE)

Marcos Charles, Acting Executive
Associate Director, ICE and Removal
Operations

Warden
Port Isabel Detention Center

Pamela Bondi, U.S. Attorney General

Respondents.

Cause No. _____

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

1. Petitioner Phu Ngoc Huynh, through counsel, seeks a writ of habeas corpus under 28 U.S.C. § 2241, challenging the legality of his continued detention by Immigration and Customs Enforcement (“ICE”). Petitioner is a former permanent resident of the United States and a citizen of Vietnam who has resided in the United States since he was a child. He initially entered the United States on an refugee visa on November 19, 1981. He was ordered removed from the United States in 1997 and Respondents have been unable to effectuate the removal since that date. Petitioner has been in custody, constructive or physical, since his final order of removal in 1997. In September of 2025, Petitioner’s manner of custody was arbitrarily changed from constructive to physical. Accordingly, the Petitioner is left with no recourse but to file this a writ of habeas corpus and seek his release from physical custody.

PARTIES

1. Petitioner, Phu Ngoc Huynh (A# ) , is a non-citizen from the Vietnam who is currently detained by ICE at the Port Isabel Detention Center in Los Fresnos, Texas.
2. Respondent Kristi Noem is the Secretary of the Department of

- Homeland Security (“DHS”). She is the cabinet-level secretary responsible for all immigration enforcement in the United States. She is sued in her official capacity only.
3. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement (“ICE”). He is the head of the federal agency responsible for all immigration enforcement in the United States. He is sued in his official capacity only.
 4. Respondent Marcos Charles is the Acting Executive Associate Director of ICE Enforcement and Removal Operations. He is the head of the ICE office that carries out arrests of noncitizens and removals from the United States. He is sued in his official capacity only.
 5. Warden Port Isabel Detention Center is the head of the facility that currently maintains physical custody of the Petitioner. He is sued in his official capacity only.
 6. Defendant Pamela Bondi is the Attorney General of the United States. The Immigration Judges who decide removal cases and application for relief from removal do so as her designees. She is sued in her official capacity only.

JURISDICTION

7. This Court has jurisdiction to hear this case under *28 U.S.C. § 2241* and *28 U.S.C. § 1331*, Federal Question Jurisdiction, as Petitioner is

presently in custody under color of authority of the United States and such custody is in violation of the U.S. Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to *28 U.S.C. § 2241*, and the *All Writs Act, 28 U.S.C. § 1651*.

CUSTODY

8. Petitioner is under the Physical custody of the Respondents and is currently detained at the Port Isabel Detention facility in Los Fresnos, Texas. Petitioner was previously reporting to ICE on an “Order of Supervision” in constructive custody since 1997 with restrictions on travel.

VENUE

9. Venue is proper in this court, pursuant to *28 USC §1391(e)*, in that this is an action against officers and agencies of the United States in their official capacities, brought in the District where the Petitioner is detained.

REQUIREMENTS SET FOR IN 28 U.S.C 2243

10. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. *28 U.S.C. § 2243*. If an order to show

cause is issued, the Court must require respondents to file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

11. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

FACTS

12. Petitioner is a native and citizen of Vietnam. He was admitted to the United States as a refugee on or about November 19, 1981. He shortly thereafter adjusted status to permanent resident.

13. The Petitioner subsequently pled guilty to three crimes: kidnapping on May 25, 1988; burglary of a vehicle on December 15, 1989; and possession of a controlled substance on December 29, 1994

14. He was incarcerated for less than five years for each offense and satisfactorily completed his parole.

15. On August 21, 1996, the Petitioner was sent an Order to Show Cause declaring him removable based on his crimes. Specifically, deportation proceedings were based on former Section 241 (a)(2)(B)(i) of the

Immigration and Nationality Act (INA), controlled substance offense; former Section 241 (A)(2)(A)(iii), conviction of multiple crimes involving moral turpitude; former Section 241 (a)(2)(A)(iii), convicted of an aggravated felony. At the time, the Petitioner conceded that he was subject to deportation. A deportation order was issued on May 1, 1997.

16. Then in 2001, the Supreme Court issued a decision that held that noncitizens who entered into plea agreements before the enactment of the Antiterrorism and Effective Death Penalty Act of 1996 remain eligible to apply for 212(c) waivers. *See INS v. St. Cyr*, 533 U.S. 289 (2001). In light of this holding, the Petitioner filed a motion applying for such a waiver on April 22, 2005. This motion was granted, but additional charges of deportability were issued on May 21, 2005. Subsequently, an Immigration Judge pretermitted the Petitioner's 212(c) Waiver and ordered him deported on June 28, 2005.

17. Petitioner, through prior counsel, appealed the denial of the 212(c) waiver. The BIA dismissed the appeal and denied his motion to remand. The Petitioner then filed a motion to Reopen his removal proceedings based on an approved I-130 Immigrant Petition for Relative, which was granted. On June 17, 2009, an IJ again ordered the Petitioner to be deported, denied his application for a 212(c) waiver, and denied his application to adjust status.

18. After issuance of the final order DHS was unable to remove the Petitioner to Vietnam and allowed him to report on an Order of Supervision "OSUP". The Petitioner successfully reported on OSUP for nearly 15 years with out issue.
19. In 2011, the Supreme Court of the United States decided a case, *Judulang v. Holder*, 565 U.S. 42 (2011), that broadened the applicability of Section 212(c) waivers. This expansion applies to the Petitioner due to the nature of his crimes and the date of their occurrence. Petitioner was unaware of this precedential decision and how it would now make him eligible to file a standalone I-212(c) waiver.
20. In 2025, while working on a fishing boat off the coast of Texas, the Petitioner was brought into custody by the Coast Guard and then taken to Port Isabel Service Detention Center under custody of Immigration and Customs Enforcement (ICE).
21. Following his arrest, the Petitioner's sister, retained current counsel, and the Petitioner first learned he was eligible for a stand-alone I-212c wavier under the Supreme Court Decision Judlang.
22. A motion to reopen Petitioner's removal proceedings was filed in October of 2025 and remains pending at the time of filing of this Petition.
23. The Petitioner has begun a family and has held down a full-time job since his release on OSUP. The Petitioner has not violated the conditions of

his OSUP or been arrested or charged with any violation or state, federal or immigration law.

CAUSE OF ACTION I

Due Process U.S. Constitution, 5th Amendment

24. Petitioner incorporates by reference paragraphs 1 – 23.
25. The Fifth Amendment guarantees liberty and requires that immigration detention be reasonably related to a legitimate governmental purpose. Petitioner's detention, in light of the bond order, is arbitrary and capricious.
26. Under the Fifth Amendment to the United States Constitution, those threatened with the loss of liberty or property due to actions by the federal government are entitled to due process of law. The Petitioner's continued physical detention is in violation of the fifth amendment.
27. Detention is not a requirement of deportation. To the contrary, detention is a deprivation of liberty that carries with it serious consequences independent of any decision to deport. The Petitioner's current detention serves only to take away the liberty of a non-citizen, separating him from his family and community and jeopardizing his ability to pursue pending legal avenues for relief. Because "[f]reedom from imprisonment . . . lies at the heart of the liberty [the Due Process] Clause protects," *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) the Petitioner should be immediately

released and declare that any revocation of his order of supervised release was unlawful without a constitutionally adequate hearing.

28. An orderly departure, commonly provided to noncitizens by sending a Form I-166 (colloquially referred to as a “bag and baggage letter”)¹, is a process by which ICE directs an individual to appear for removal at a particular date and time. When an individual is ordered removed and either was never detained or has been previously released from custody, it is standard for ICE to provide the individual with an orderly departure as this process saves enforcement and detention resources, and affords an individual the opportunity to put their affairs in order and pursue any further relief for which they may be eligible. Instead of following this common and humane removal procedure, ICE arbitrarily arrested the Petitioner after being flagged by Coast Guard, handcuffed him and quickly shuttled him to the Port Isabel Detention Center, without any assertion that he was a flight risk or danger. In doing so, ICE violated its own regulations, statutory authority, and the Petitioner’s constitutionally protected rights.

CAUSE OF ACTION II

Habeas Corpus Under 28 U.S.C. § 2241

29. Petitioner incorporates by reference paragraphs 1 – 23.

¹ A bag and baggage order “issues once the government determines that there is no further administrative relief available to an alien who is subject to an order of removal, and instructs the alien to appear at a specified location and time for removal.” *Singh v. Gonzales*, 494 F.3d 1170, 1772 n.3 (9th Cir. 2007).

30. Petitioner is in custody in violation of federal law and the Constitution.

a. Indefinite Detention Violates Zadvydas v. Davis

28 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that post-removal-order detention is limited to six months, and continued detention is only lawful if removal is reasonably foreseeable.

29 Here, the Respondents have tried to remove the Petitioner for decades, and removal remains impossible. Vietnam to this date has not provided recognition of the Petitioner a national or citizen nor have they provided any travel documents that would allow the Petitioner to return.

30 Petitioner has faithfully reported to his order of supervision, for over a decade and half, since his release from criminal custody. There is no change in circumstances regarding the Petitioner's matter, he is not a flight risk and there is no significant likelihood of removal of the Petitioner in the foreseeable future.

31 Continued detention therefore violates both *Zadvydas* and the Immigration and Nationality Act.

b. Constructive Custody and Arbitrary Detention

31. For years, Petitioner lived under an Order of Supervision, constituting constructive custody because he remained under ICE control.²

² Plaintiff was geographically restricted and must seek prior approval to travel outside of a set area.

32. ICE's sudden decision to re-detain him, absent new evidence or changed circumstances, is arbitrary and capricious, violating substantive due process and a violation of 8 CFR § 241.13.

REQUEST FOR RELIEF

Petitioner pray for judgment against Respondents and respectfully request that the Court enters an order:

1. Issue a writ of habeas corpus directing Respondents to immediately release Petitioner from detention and reinstate his prior Order of Supervision;
2. Order Respondents to provide a status report on Petitioner's Removal;
3. Order Respondents to not transfer the Petitioner out of the Southern District of Texas while this Habeas Petition is pending.
4. Enjoin Respondents from further holding the Petitioner in physical custody absent evidence of imminent ability to remove Petitioner;
5. Enjoin Respondents from removing Petitioner to a third country without affording him notice and the ability to challenge third country removal;
6. Declare that Petitioner's continued detention violates federal law and the Constitution;
7. Award reasonable attorney's fees and costs under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412.
8. Grant any other relief the Court deems just and proper.

Respectfully submitted,

November 1, 2025

/s/Javier Rivera
Javier Rivera. Esq.
Lead Counsel for Petitioner
Texas Bar No. 24070508
Rivera & Shirhatti, PC
PO Box 848
Houston, Texas 77001
jrivera@rsimmilaw.com
(P): (832) 991-1105

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Phuc Ngoc Huynh, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 1st day of November, 2025.

/s/ Javier Rivera
Javier Rivera