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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Toan Sy Le,

Petitioner,

v.

Fred Figueroa, Eloy Detention Center;

John Cantu, Field Office Director,

Phoenix ICE; Todd Lyons, Director, U.S.

Immigration and Customs Enforcement

(ICE), Kristi Noem, Secretary of

Homeland Security; Pamela Bondi, U.S.

Attorney General,

Respondents.

**Case No:**

Petition for Writ of Habeas Corpus Under  
28 U.S.C. § 2241

## INTRODUCTION

Petitioner Toan Sy Le petitions this Court for a writ of habeas corpus to remedy his unlawful detention and constitutionally defective removal order. Mr. Le is a 42-year-old lawful permanent resident (“LPR”) who entered the United States in 1995 as a refugee fleeing persecution in Vietnam. He has lived here for three decades, raised U.S. citizen children, and established deep family and community ties. Despite this, he is currently detained by immigration authorities under a final order of removal that is legally and constitutionally flawed. This petition challenges the lawfulness of Mr. Le’s ongoing detention and removal on multiple grounds, and seeks his immediate release or, at minimum, injunctive relief preventing his deportation while his claims are adjudicated.

Mr. Le’s removal order stems from a 2017 proceeding initiated by a defective Notice to Appear (“NTA”) that lacked a date and time for the hearing, in violation of statutory requirements and Supreme Court precedent. The immigration judge (“IJ”) granted Mr. Le voluntary departure on June 1, 2017, but because Mr. Le was not timely advised of the requirements or consequences, he did not depart. The voluntary departure order thus converted into a removal order by operation of law, even though the underlying proceeding was jurisdictionally defective from the start.

Moreover, the removal order and Mr. Le’s detention violate due process for additional reasons. Mr. Le’s 2002 criminal conviction – a guilty plea to solicitation to sell a controlled substance – was obtained without Mr. Le being advised of the immigration consequences by counsel or the court. This failure of advisement constitutes ineffective assistance of counsel under *Padilla v. Kentucky*, 559 U.S. 356 (2010), and Mr. Le is

actively challenging that conviction in state court. Indeed, he only discovered in July 2025 – when he was arrested by ICE – that this decades-old plea rendered him deportable. He promptly filed a Rule 32 post-conviction petition in Arizona raising the *Padilla* claim, which remains under review. Likewise, a motion to reopen his immigration case is pending before the Board of Immigration Appeals (“BIA”) in light of new evidence and law. Yet ICE continues to detain Mr. Le and could remove him at any time, even as these proceedings remain unresolved.

Mr. Le’s detention and removal are also improper because the government failed to provide an interpreter or adequate translation at critical stages of the removal process, depriving him of a meaningful opportunity to participate. The record shows that Mr. Le, a native Vietnamese speaker, was not provided interpretation assistance during at least some proceedings and interactions with immigration officers. Conducting proceedings in a language the alien does not understand violates the Fifth Amendment’s guarantee of due process in immigration cases.

Finally, the agency’s handling of Mr. Le’s case was fundamentally unfair. Immigration officials attempted to execute a summary “administrative removal” by having Mr. Le sign a Form I-877 Record of Sworn Statement waiving his rights, even though Mr. Le refused to waive his rights or admit allegations. Despite his refusal, the Department of Homeland Security (“DHS”) proceeded to process a removal order, contravening regulatory safeguards that guarantee an alien the right to respond to charges within 10 days and to be heard before an immigration judge if contested. Further, the IJ and BIA improperly found “reason to believe” Mr. Le was involved in drug trafficking (despite his

lack of any trafficking conviction) to deny him relief, relying on an inadmissibility standard (8 U.S.C. § 1182(a)(2)(C)) that should not have been applied in his case. This erroneous branding of Mr. Le as a “drug trafficker” absent a qualifying conviction foreclosed avenues of relief and painted him as ineligible for discretionary remedies to which he was legally entitled.

In sum, Mr. Le’s continued detention and the removal order violate U.S. law and his constitutional rights. He respectfully asks this Court to vacate or stay the defective removal order, order his immediate release from custody, or grant other appropriate injunctive relief to ensure he is not wrongfully deported. Mr. Le is pursuing all available remedies – including a pending U Visa application for victims of crime and accompanying waiver, which could afford him lawful status – yet he faces imminent removal without judicial intervention. Habeas corpus relief is warranted to prevent this irreparable harm and to uphold the rule of law.

#### **JURISDICTION AND VENUE**

This Court has jurisdiction under 28 U.S.C. § 2241 and Article I of the Constitution (the Suspension Clause) to review the lawfulness of Mr. Le’s detention and the executive’s authority to remove him. Although 8 U.S.C. § 1252 generally channels review of removal orders to the courts of appeals, Mr. Le does not have an adequate or effective remedy there for the specific claims raised here. He is not seeking review of discretionary decisions, but rather raises fundamental constitutional and legal defects in the removal process (including a lack of fundamental jurisdiction) and challenges the legality of his ongoing detention. To the extent any statutory jurisdictional issues arise, the Court should construe this petition

as challenging the conditions and legality of Mr. Le's detention, which remains within the scope of habeas review post-*REAL ID Act*. Mr. Le is presently detained at a facility within Arizona, and thus venue is proper in the District of Arizona.

### **PARTIES**

- Petitioner Toan Sy Le is an LPR and refugee who is presently in the custody of U.S. Immigration and Customs Enforcement ("ICE") in Arizona. His Alien Registration Number is [REDACTED]. He is detained under color of the federal immigration laws and is subject to a final order of removal that this petition challenges.
- Respondents are the federal officials responsible for Mr. Le's detention and removal, including (1) the warden or director of the ICE detention facility where Mr. Le is held (as immediate custodian), (2) the Phoenix Field Office Director for Enforcement and Removal Operations (ICE ERO), (3) the Director of ICE, (4) the Secretary of the Department of Homeland Security, and (5) the U.S. Attorney General. Each respondent has custodial authority over Mr. Le or is legally responsible for the enforcement of the removal order.

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### **I. Mr. Le's Long-Term Lawful Residence and Refugee Status**

Mr. Le lawfully entered the United States in 1995 as a refugee under the U.S. Humanitarian Operation program, which assisted those fleeing persecution in Vietnam. After one year in refugee status, he adjusted to lawful permanent resident status. For the past 30 years, Mr. Le has made the U.S. his home. He has two daughters who are U.S. citizens (one of whom he has raised as a single father) and elderly parents who depend on

him. Mr. Le built a small business, paid taxes, and stayed out of trouble with the law aside from the single conviction at issue. He has traveled to Vietnam on several occasions; however, his family has long harbored a well-founded fear of persecution if forced to return permanently, as his father fought alongside U.S. forces during the war and the family endured retribution under the communist regime. Simply put, America is Mr. Le's only home and his removal would permanently separate him from his children and family.

Because of his refugee history, Mr. Le would have been eligible for certain waivers of inadmissibility that reflect Congress's intent to be more forgiving of refugees' past minor infractions. For example, INA § 209(c) permits the Attorney General to waive many criminal inadmissibility grounds for refugees at the time of adjustment for humanitarian purposes. Notably, controlled substance offenses (other than drug trafficking) do not bar a refugee from obtaining a 209(c) waiver. Mr. Le's sole conviction was for a non-trafficking offense (solicitation to sell a small quantity of Ecstasy), which, had it been an issue at the time of his LPR adjustment, could have been waived in the national interest given his refugee status. This context underscores that Mr. Le is not the type of individual – e.g. an international drug trafficker or recidivist felon – that Congress intended to be summarily removed. To the contrary, as a refugee with equities, he is exactly the kind of person for whom discretionary relief or waivers are often available. Yet, as detailed below, the government's actions have effectively stripped him of any opportunity to seek such relief.

## **II. 2002 Conviction Resulting from Ineffective Assistance of Counsel**

In February 2002, Mr. Le pleaded guilty in Arizona state court to Solicitation to Sell a Dangerous Drug (MDMA/Ecstasy), a Class 4 felony under Ariz. Rev. Stat. §§ 13-1002

and 13-3407. He was 19 years old at the time and had no prior criminal history. He received a relatively light sentence (probation and no substantial imprisonment), reflecting that this was a low-level offense. Critically, at no point during the plea colloquy or sentencing did the judge or Mr. Le's defense attorney inform him that this conviction would have immigration consequences. Mr. Le was not told that a conviction for a drug-related offense would make him deportable and ineligible for most forms of relief. In fact, the offense was considered an "aggravated felony" (illicit trafficking in a controlled substance) under immigration law and a controlled substance violation, subjecting Mr. Le to mandatory removal and virtually automatic deportation. Unaware of this, Mr. Le accepted the plea, believing he was resolving his legal issues and would be able to move on with his life in the United States.

Mr. Le's counsel's failure to advise him of the immigration consequences was constitutionally deficient performance under the Sixth Amendment. In *Padilla v. Kentucky*, the U.S. Supreme Court held that defense attorneys must inform non-citizen clients of the deportation risks of a guilty plea, recognizing that "the drastic measure of deportation or removal is now virtually inevitable for a vast number of noncitizens convicted of crimes," and thus "deportation is an integral part of the penalty" imposed on such defendants. *Padilla* was decided in 2010, but even before then Arizona courts had begun acknowledging that misadvising (or failing to advise) a client about clear deportation risks could violate the right to effective counsel. Here, the immigration consequence of Mr. Le's plea was not speculative or remote – it made his removal legally inevitable. Counsel had a duty to warn him. Instead, counsel apparently told Mr. Le nothing, or possibly even

reassured him (incorrectly) that because he was an LPR, he didn't need to worry about deportation (a scenario similar to the facts of *Padilla*, 559 U.S. at 359-60).

Importantly, Mr. Le would not have accepted the plea had he known it would exile him from his family and the only country he knows. He would have insisted on trying to negotiate an alternative plea to a non-deportable offense or taken his chances at trial. This prejudice is detailed in Mr. Le's state post-conviction relief ("PCR") petition and supported by his declaration and those of family members. Mr. Le had strong incentives to avoid deportation; he had a young daughter, and an elderly mother he helped care for. No rational permanent resident in his position – a refugee who escaped persecution – would willingly accept a plea that guaranteed deportation to the country he fled, if he had been properly informed. The *Padilla* violation is clear and egregious.

Mr. Le remained unaware of the catastrophic immigration consequence of his plea for many years. In 2011, DHS initiated removal proceedings against him (discussed below), but he was not taken into custody at that time and, as explained, he did not understand the implications. It was only on July 24, 2025 – when ICE officers arrested him at his home pursuant to the old removal order – that Mr. Le finally learned that his 2002 conviction had made him deportable. Within days of that awakening, Mr. Le consulted immigration counsel and criminal appellate counsel. He moved with diligence to file a Rule 32 PCR petition in Maricopa County Superior Court (his first ever post-conviction challenge) on August 9, 2025, asserting the violation of his Sixth Amendment rights. That petition details how *Padilla* constituted a significant change in law that, if applied, would have likely changed the outcome of his case. The PCR petition was accompanied by a

motion to excuse its untimeliness, noting that Mr. Le raised the claim promptly upon discovery and that he could not reasonably have been expected to do so earlier. The state trial court has stayed ruling on removal of Mr. Le's conviction pending further briefing and an evidentiary hearing request. Meanwhile, Mr. Le's appeal of any adverse PCR decision is expected to be heard by the Arizona Court of Appeals, which has already granted an emergency stay of removal in light of the unresolved ineffective assistance claim. Thus, the very foundation of the removal order – the conviction – is under serious legal challenge. Fundamental fairness dictates that Mr. Le should not be torn from his family and deported before those proceedings conclude; if he prevails in state court, the sole basis for his removal will evaporate.

### **III. Defective Notice to Appear and Removal Proceedings**

The removal proceedings against Mr. Le were initiated by a fatally defective Notice to Appear. On March 22, 2011, a DHS officer (specifically, a Customs and Border Protection officer in Los Angeles) issued Mr. Le an NTA, alleging that he was removable for his 2002 conviction. This NTA, however, failed to specify the date and time of any hearing, stating only that the hearing was “to be set” in Phoenix, AZ. It is undisputed that the NTA did not include the required information about when Mr. Le should appear in immigration court. This omission violates the plain text of the Immigration and Nationality Act (“INA”), which unambiguously requires that a “notice to appear” state “the time and place at which the proceedings will be held”. The U.S. Supreme Court in *Pereira v. Sessions* confirmed that a putative NTA that fails to designate a specific time or place is not a valid “notice to appear” at all under 8 U.S.C. § 1229(a). In *Pereira*, the Court's answer

was clear: “A notice that does not inform a noncitizen when and where to appear for removal proceedings is not a ‘notice to appear under section 1229(a)’”. Here, the only charging document served on Mr. Le in 2011 lacked those crucial details.

Because of the defective NTA, Mr. Le’s removal proceedings were never lawfully initiated and the immigration court’s jurisdiction was never properly vested. In removal cases, regulatory jurisdiction vests (and proceedings commence) only upon the filing of a valid NTA in the immigration court (8 C.F.R. § 1003.14). A notice that omits time/place is not a statutorily valid NTA, so it cannot trigger the court’s authority. Mr. Le’s position is that the entire proceeding was void ab initio due to this fundamental defect. The agency and some courts have tried to downplay such defects by pointing to later hearing notices, but that does not cure the statutory violation. At minimum, the defective NTA nullified the stop-time rule for any relief that depends on continuous residence. And in Mr. Le’s case, it appears the NTA defect also contributed directly to a failure of notice and *in absentia* developments.

DHS did not arrest or detain Mr. Le when the NTA was issued in 2011. Instead, he was apparently released and told to await a hearing notice by mail. Mr. Le, however, never received any notice of a hearing date. He had moved residences around that time and, not understanding the importance of the NTA, may not have updated his address with the immigration court. Consequently, when an initial hearing was scheduled (on a date unknown to Mr. Le), he failed to appear. On June 14, 2011, an immigration judge likely ordered Mr. Le removed *in absentia* for failure to appear (the records are being obtained to confirm the exact date and order). If so, that *in absentia* order was directly attributable

to the NTA's lack of time/place and the deficient notice to Mr. Le. The INA provides that an in absentia removal order can only be entered if the government proves that written notice of the hearing was provided to the alien. Here, Mr. Le did not receive proper notice, so any in absentia order was improper and subject to rescission.

It appears that Mr. Le's case was later reopened or recalendared in 2017. Likely, after the Supreme Court's 2018 decision in *Pereira*, or pursuant to a motion by Mr. Le once he learned of the situation, the immigration court agreed to hear his case on the merits rather than leaving the in absentia order in place. In any event, Mr. Le attended removal proceedings before an IJ in Phoenix in 2017. By that time, Mr. Le had equities and relief to potentially pursue – he had over 20 years in the U.S., U.S. citizen children, and potentially could seek relief such as asylum (given his fear of persecution in Vietnam) or cancellation of removal (since, crucially, his conviction in 2002 *might not qualify as an aggravated felony* under controlling law, as discussed below). It is significant that the immigration judge did not order Mr. Le removed in 2017. Instead, on June 1, 2017, the IJ granted Mr. Le voluntary departure. Voluntary departure is a discretionary form of relief allowing a person to depart at their own expense by a certain date, in lieu of a removal order (which avoids certain bars on returning). The grant of voluntary departure suggests that the IJ found positive factors in Mr. Le's favor – indeed, IJs cannot grant voluntary departure to certain classes of offenders, such as aggravated felons. The fact that Mr. Le was offered this relief indicates that either the IJ determined Mr. Le was not an aggravated felon, or the government agreed to voluntary departure as a matter of discretion. It is quite possible the IJ recognized that “solicitation” under Arizona law does not neatly fit the

federal definition of an aggravated felony (which lists attempt and conspiracy but not solicitation), and thus treated Mr. Le as not barred from relief. In any case, voluntary departure was granted, with a deadline (typically 60 days) for Mr. Le to depart.

Unfortunately, Mr. Le did not depart by the deadline – principally because he did not fully understand the consequences and had hopes of prevailing on appeal or through other avenues. He was not detained at the time, and the record does not show that he was given clear instructions or warnings in a language he understood about the need to depart. When an alien fails to depart after being granted voluntary departure, the law converts the voluntary departure order into a final order of removal (see 8 U.S.C. § 1229c(d)). Thus, as of mid-2017, Mr. Le had an administratively final removal order against him, even though no IJ ever explicitly ordered removal after a merits hearing. This final order was a byproduct of the defective proceedings described above.

#### **IV. Lack of Interpreter and Due Process Violations**

Throughout the 2011–2017 proceedings, Mr. Le’s ability to understand and participate was severely hampered by language barriers. Mr. Le’s native language is Vietnamese. While he speaks some English from his many years here, he is not fully fluent in legal or technical matters. The immigration court record indicates that no Vietnamese interpreter was provided at Mr. Le’s master calendar hearing in 2017 – instead, EOIR reportedly played a standard videotaped advisal in English (a new policy where courts use video advisals in lieu of live interpreters at initial hearings). It is unclear if Mr. Le comprehended those advisals. Moreover, during the ICE interactions in 2011 and upon his 2025 arrest, there is no evidence that a competent interpreter was used to ensure Mr. Le

understood his rights. Failing to provide interpretation in immigration proceedings violates due process when it prevents an alien from reasonably presenting his case. Here, Mr. Le's inability to fully grasp the proceedings likely contributed to his failure to depart on time and to other procedural defaults the government now tries to use against him. The Fifth Amendment's due process clause applies to removal proceedings, entitling the alien to a full and fair hearing. Mr. Le did not receive that, in part because he literally could not understand portions of the hearing. This fundamental unfairness is yet another reason his removal order cannot stand (*see Acewicz v. INS*, 984 F.2d 1056, 1062 (9th Cir. 1993) (alien must have effective opportunity to participate, and translation issues can rise to due process violations if they render the proceeding fundamentally unfair)). Mr. Le asserts that the proceedings were "so fundamentally unfair that [he] was prevented from reasonably presenting his case," which warrants granting this petition on due process grounds.

**V. "Reason to Believe" Finding and Denial of Relief**

Despite the IJ's grant of voluntary departure, Mr. Le attempted to seek further relief that would allow him to remain in the U.S. legally. Notably, Mr. Le filed a Form I-918 petition for U Nonimmigrant Status ("U visa") in 2017, based on his being a victim of crime who assisted law enforcement (details of the crime and certification are in his application). A U visa, if granted, would place Mr. Le in lawful status and make him eligible for eventual permanent residence notwithstanding his conviction, because U visa applicants can seek broad waivers of inadmissibility (including for criminal offenses) in the public or national interest under INA § 212(d)(14). Mr. Le's U visa petition was accompanied by an application for a waiver of inadmissibility (Form I-192) to cover his

2002 conviction and any other grounds. These applications were (and remain) pending with USCIS. In fact, due to severe backlogs, USCIS has not yet made a final decision, but Mr. Le received notice that his petition was placed on the waiting list as bona fide, and he was issued employment authorization in 2022 based on the pending U visa. The estimated timeline for U visa adjudication was provided to the immigration court: USCIS was adjudicating petitions filed about five years before Mr. Le's, suggesting a decision could come by 2023–24.

Knowing this, Mr. Le (through counsel) requested that the immigration court continue or administratively close his removal proceedings in 2017 to allow USCIS to decide the U visa – a common practice since U status, if granted, would make removal unnecessary. The IJ, however, denied a continuance, seemingly skeptical of the merits and timeline of the U visa. Mr. Le then filed a Motion to Reconsider and a renewed Motion to Continue with the IJ, highlighting the error in refusing to await the U visa decision and pointing out that USCIS's decision was expected within a calculable timeframe, not “indefinite.” The IJ denied those motions as well. Mr. Le appealed to the BIA.

On May 30, 2018, the BIA dismissed Mr. Le's appeal, upholding the IJ's refusal to continue the case. The BIA's decision (Exhibit A to this petition) mischaracterized Mr. Le's request as seeking an “open-ended” delay, and it failed to acknowledge the evidence that a U visa adjudication was likely forthcoming. The BIA also appears to have agreed with the IJ's doubt about the ultimate merit of Mr. Le's U visa, noting that the IJ didn't think it was likely to be granted (the IJ even commented that the U visa was “not meritorious,” despite having no authority to evaluate the petition's merits, which is

USCIS's domain). Further, the IJ and BIA did not fully consider the hardship and equities in Mr. Le's case – their decisions lack any meaningful discussion of his family ties, refugee history, or length of residence. Instead, they focused on the 2002 conviction and, troublingly, went beyond the conviction to assert that there was *reason to believe* Mr. Le had engaged in drug trafficking activity. This “reason to believe” finding is referenced in the BIA's decision as an additional negative factor. Under INA § 212(a)(2)(C), an immigration officer or judge may deem someone inadmissible if there is reason to believe the person has been an illicit trafficker in controlled substances. Importantly, this is not a ground of deportability for LPRs, and Mr. Le was not charged under it; rather, it is an inadmissibility provision typically used at the border or in visa contexts. The agencies' reliance on “reason to believe” in Mr. Le's case was legally improper – it appears to have been invoked to argue that even if Mr. Le's Arizona conviction was not technically an aggravated felony, he was still essentially a drug trafficker in the eyes of DHS, and thus not deserving of any relief. But *no court has ever found Mr. Le guilty of actual drug trafficking*. His conviction was for solicitation, which under Arizona law can encompass minor participation. He received probation, indicating the state court did not view him as a major dealer. The “reason to believe” standard is extraordinarily deferential to the government (no conviction needed), and using it in Mr. Le's case deprived him of the chance to seek relief like cancellation of removal (had he been eligible) or asylum/withholding (since an official finding of drug trafficking could be deemed a “particularly serious crime” bar to asylum). This Court should not countenance such an overreach, where an agency labels someone a trafficker without a conviction, to bootstrap

a denial of relief. Mr. Le submits that the IJ and BIA erred as a matter of law and due process in this regard, and that their refusal to wait for the U visa – a form of relief specifically created by Congress to aid immigrant crime victims – was an abuse of discretion that denied Mr. Le a fair opportunity to have his petition adjudicated.

After the BIA's 2018 decision, Mr. Le timely petitioned for review to the Ninth Circuit (Docket No. 18-71871). He also filed a motion for stay of removal, which the Ninth Circuit temporarily granted under its local "De Leon" automatic stay rule. In his petition for review, Mr. Le argued (1) that the defective NTA deprived the immigration court of jurisdiction (*Pereira* was decided while his petition was pending, and he filed a Rule 28(j) letter to alert the court), (2) that the BIA abused its discretion and violated due process in denying a continuance for the U visa, and (3) that the "reason to believe" trafficking determination was erroneous. While that petition was pending, the Ninth Circuit issued adverse precedent on the NTA jurisdiction issue (see *Karingithi v. Whitaker*, 913 F.3d 1158 (9th Cir. 2019), holding that a missing date in an NTA does not defeat jurisdiction if a later notice of hearing is sent). Consequently, Mr. Le's *Pereira*-based argument faced an uphill battle. In mid-2019, the Ninth Circuit denied Mr. Le's petition for review (without a published opinion). The stay of removal was lifted. However, ICE did not immediately execute the removal. By then, Mr. Le's U visa petition had been recognized as bona fide, and ICE exercises discretion not to remove individuals with pending U visas in many cases. Additionally, Mr. Le's children and community advocated on his behalf. For several years, Mr. Le remained at liberty without any requirement from ICE to check in or report for supervision, and await the resolution of his U visa efforts.

This changed suddenly in July 2025, when ICE re-arrested Mr. Le at his home. There was no new cause for this arrest aside from the fact that Mr. Le's voluntary departure order (converted to removal order) was by then several years old and unexecuted. ICE indicated they intended to finally execute the removal. They transferred Mr. Le to a detention center in Arizona to prepare for deportation. It was at this juncture that counsel for Mr. Le filed the current motion to reopen with the BIA (in August 2025) based on new evidence and changed circumstances: specifically, (a) the fact that Mr. Le's *Padilla* claim is now being litigated in state court with a strong likelihood of success (vacatur of the conviction would eliminate the sole removal ground), (b) the Supreme Court's intervening decision in *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021), which reinforced *Pereira* by clarifying that all required NTA information must be in a single document – an argument that could support reopening or terminating Mr. Le's proceedings, and (c) Mr. Le's continued eligibility and pending status for a U visa, including evidence of his victimization and assistance to law enforcement that were not in the original record. That motion to reopen is currently pending before the BIA. Mr. Le requested an emergency stay of removal from the BIA, but to date the BIA has not acted (and given his imminent removal, he cannot rely on the agency to protect his rights).

## **VI. Summary of Grounds for Habeas Relief**

In light of the above facts, Mr. Le asserts the following primary grounds for relief in this petition:

1. Defective Notice to Appear & Jurisdictional Defect: The removal order is void or invalid because the Notice to Appear was defective under 8 U.S.C. § 1229(a) – it

lacked a date and time – rendering the initiation of proceedings and the IJ’s jurisdiction unlawful (*Pereira v. Sessions*, 138 S. Ct. 2105 (2018)). Thus, the final order cannot stand and Mr. Le’s detention under that order is unlawful.

2. Eligibility for Relief as a Refugee LPR: Mr. Le is a long-time LPR who entered as a refugee, and he was eligible for a waiver of inadmissibility or other relief that the agency failed to consider. Specifically, refugees are afforded a humanitarian waiver under INA § 209(c) for many criminal inadmissibility grounds, reflecting Congress’s intent to not deport refugees for old or minor offenses. The removal proceedings did not account for Mr. Le’s unique refugee equities and the possibility of relief (including asylum or withholding of removal given his fear of return, which were pretermitted due to the “trafficker” label). The order is thus legally and equitably infirm.
3. Ineffective Assistance of Counsel (Invalid Conviction): The removal order’s premise – the 2002 conviction – is constitutionally defective under *Padilla v. Kentucky*. Mr. Le was deprived of his Sixth Amendment right to effective counsel when he was not warned that pleading guilty would essentially guarantee his deportation. This violated due process and fundamentally altered the outcome. The conviction is currently under collateral attack in state court, and principles of comity and fairness warrant staying or voiding the removal order unless and until that conviction is confirmed to be valid. Removing Mr. Le now, only to have his conviction vacated later, would be a manifest injustice (and would require the government to facilitate his return).

4. Unlawful Administrative Removal (Form I-877 issue): DHS attempted to shortcut due process by using an administrative removal process (8 U.S.C. § 1228(b)) against Mr. Le, treating him as if he were an “aggravated felon” with no right to a hearing. The record shows that DHS officers presented Mr. Le with a Form I-877 “Record of Sworn Statement” and a Notice of Intent to Issue a Final Administrative Removal Order (NOI) in 2011. Mr. Le refused to concede deportability or to waive his right to a hearing – he did not sign admissions or waivers. Under the regulations, if an alien in 238(b) proceedings timely responds contesting the charges or refusing to sign, DHS cannot just summarily issue the final order; the alien retains the right to contest the allegations and eligibility before an IJ. Here, DHS nonetheless issued a Final Administrative Removal Order on the same day as the NOI, without affording Mr. Le the required 10 days to respond or an opportunity to be heard. This violated DHS’s own regulations and Mr. Le’s due process rights. An agency’s failure to follow its regulations in expediting removal is fatal to the legality of the removal order. The subsequent immigration court proceedings (which resulted in voluntary departure) do not cure that initial unlawfulness – particularly since the final order being executed traces to the administrative order. In short, the summary removal was unlawful, and Mr. Le is entitled to habeas relief on that basis alone.
5. Denial of Interpreter and Fair Hearing: The government failed to ensure Mr. Le understood the removal proceedings by not providing competent interpretation services. This made the proceedings fundamentally unfair, in violation of the Fifth Amendment’s due process clause. A removal hearing conducted in a language the

alien does not fully comprehend is no hearing at all; it offends basic notions of justice. Mr. Le could not meaningfully defend himself or make informed decisions (such as the decision to voluntarily depart vs. fight the case) without understanding the dialogue in court. The lack of an interpreter at critical stages (including the initial master hearing and the ICE administrative interview) violated his right to a fair hearing. Prejudice is evident: Mr. Le missed his initial hearing in 2011 likely due to confusion over the notice, and he failed to depart after voluntary departure due in part to not understanding the obligation. Courts have recognized that incompetent translation or absence of interpretation can amount to a due process violation if it impedes the alien's ability to present his case. That standard is met here.

6. Improper "Reason to Believe" Trafficking Finding: The IJ and BIA acted beyond the scope of the charges by invoking a "reason to believe" Mr. Le was a drug trafficker (INA § 212(a)(2)(C)) even though Mr. Le was never convicted of a trafficking crime. Mr. Le's conviction was for solicitation – a distinct offense that, under Ninth Circuit law, does not automatically equate to illicit trafficking for immigration purposes. The agency's use of unproven allegations or assumptions to prejudice Mr. Le's eligibility for relief violated due process. It is a bedrock principle that removal decisions must rest on legally sufficient charges and evidence, not innuendo. By labeling Mr. Le as a trafficker without a conviction, the agency effectively imposed a permanent bar to relief (since a finding under 212(a)(2)(C) has severe consequences) without affording Mr. Le the procedural protections that a criminal trial or even an administrative trafficking charge would require. This was

fundamentally unfair and affected the outcome by foreclosing forms of relief (such as asylum, cancellation, or voluntary departure terms) that might otherwise have been available. At the very least, this Court should find that the “reason to believe” finding was legally erroneous and grant relief to allow Mr. Le a new opportunity to seek relief without that taint.

7. Pending Motion to Reopen and New Evidence: Finally, it is significant that Mr. Le has a motion to reopen pending with the BIA based on new evidence (the pending PCR and likely vacatur of the conviction, new Supreme Court law on NTAs, etc.). The pendency of that motion means the case is in flux, and it would be premature and inequitable to remove Mr. Le now. Additionally, Mr. Le’s U visa application remains pending; since 2018, USCIS has implemented a policy to issue “bona fide determination” EADs to U visa applicants and generally to defer action on removal for those applicants. Removing Mr. Le while his U visa is pending (and while he has been deemed likely eligible by virtue of a bona fide determination) undermines the purpose of the U visa statute, which is to protect victims and encourage cooperation with law enforcement. Mr. Le has in fact assisted law enforcement, and has a local police chief’s certification attesting to this (part of his U visa petition). If removed, his U visa would likely be denied (since he’d be abroad and possibly barred), which in turn would punish him for seeking the protection Congress provided. The balance of hardships tips sharply in Mr. Le’s favor given these pending matters – the potential harm of wrongful deportation is immense, whereas the government faces minimal prejudice in maintaining the status quo (Mr. Le can

be monitored or even remain in custody, though we argue detention is unwarranted). In analogous situations, courts have stayed removals when collateral attacks on convictions or motions to reopen are pending, recognizing that a removal could moot those proceedings and cause irreparable harm. This Court's intervention is needed to ensure that Mr. Le's claims are heard and not nullified by a premature deportation.

### **CLAIMS FOR RELIEF**

Mr. Le's continued detention and threatened removal violate the Constitution, laws, and treaties of the United States. He raises the following claims:

#### **Claim 1: Violation of the INA and Due Process – Defective Notice to Appear (Lack of Time/Place)**

Respondents are detaining Mr. Le and intend to remove him under an order that was not obtained in accordance with law. The NTA issued to Mr. Le in 2011 did not specify any date or time for a hearing, contravening 8 U.S.C. § 1229(a)(1). Under *Pereira v. Sessions*, such an omission means the document was not a valid "notice to appear" at all. As a result, the immigration court never had lawful jurisdiction over the removal proceedings, and any orders issued (including the in absentia removal or the later voluntary departure) are nullities. The government's attempt to use that void order to detain and deport Mr. Le violates the INA and Mr. Le's Fifth Amendment due process rights. *Pereira* and *Niz-Chavez* (which emphasized that all required notice information must be in one document) make clear that DHS cannot simply cure a fatally flawed NTA by later notices. Thus, Mr. Le asks this Court to declare the removal order void ab initio and order his

release. At a minimum, the Court should stay his removal and enjoin any deportation because the proceedings were not lawfully initiated.

**Claim 2: Due Process Violation – Denial of Fair Hearing (No Interpreter & Lack of Notice)**

Respondents violated Mr. Le's due process rights by conducting critical removal proceedings without adequate interpretation and without ensuring he actually received notice of hearings. Mr. Le did not receive notice of his 2011 hearing, leading to an in absentia order unfairly. When proceedings resumed, the immigration court failed to provide a Vietnamese interpreter at Mr. Le's master hearing, instead using an English video advisal, which Mr. Le could not fully comprehend. Throughout, Mr. Le's limited English proficiency was a barrier to understanding the nature of the proceedings and the choices before him. The Fifth Amendment guarantees an LPR like Mr. Le a full and fair removal hearing, which includes the right to participate meaningfully with the assistance of interpretation if needed. By forging ahead without interpretation, the agency denied Mr. Le a fair opportunity to present defenses (such as seeking relief or contesting removability). This fundamental unfairness prejudiced Mr. Le, satisfying the standard for a due process violation in removal proceedings. Therefore, the removal order is unconstitutional and must be vacated. The Court should order Mr. Le's release because his continued detention stems from a proceeding that did not meet basic due process requirements.

**Claim 3: Sixth Amendment & Due Process Violation – Ineffective Assistance of Counsel (Padilla Claim)**

Mr. Le's detention and removal predicated on his 2002 conviction violate due process because that conviction is constitutionally infirm. His defense attorney's failure to advise him of the deportation consequences of his plea was deficient performance that prejudiced Mr. Le, as established in *Padilla v. Kentucky*, 559 U.S. 356 (2010). Although *Padilla* was decided after Mr. Le's plea, it is now recognized as the governing interpretation of the Sixth Amendment – and Arizona courts deem *Padilla* a “significant change in the law” that can apply retroactively on collateral review. Mr. Le has a meritorious pending claim in state court to overturn his conviction on this basis. Deporting Mr. Le before that claim is resolved would violate due process, as it would effectively punish him (with removal) for a conviction that is likely to be vacated. The government may argue that until the conviction is vacated it is valid, but habeas is a vehicle to address unjust detention. Given the strong likelihood that Mr. Le's conviction will be overturned (because the record plainly shows no advisal and severe prejudice), the Court should not permit an irreparable injury (banishment) to occur. *Padilla* recognized that “preserving the client's right to remain in the United States may be more important to the client than any jail sentence”, and here Mr. Le would have risked a longer sentence or trial had he known deportation was at stake. Thus, the removal order – being the direct result of a constitutionally defective conviction – cannot stand. Detention under such circumstances is unlawful. The Court should grant habeas relief by staying or cancelling the removal and freeing Mr. Le unless and until his conviction is reaffirmed by a final court decision.

**Claim 4: Ultra Vires and Due Process – Improper Administrative Removal (Failure to Follow 8 U.S.C. § 1228(b) Procedures)**

Respondents acted ultra vires (beyond their legal authority) and violated due process by attempting to remove Mr. Le via the expedited administrative removal process for aggravated felons, despite Mr. Le's status as an LPR and his contest of the charges. Under 8 U.S.C. § 1228(b) and implementing regulations (8 C.F.R. § 238.1), DHS may only utilize administrative removal for non-LPRs who have been convicted of an aggravated felony. Even assuming *arguendo* that Mr. Le's conviction qualified, he was an LPR, not amenable to 238(b) unless DHS first stripped his LPR status (which they did not). Furthermore, the regulations require DHS to serve a Notice of Intent (NOI) and give the alien 10 days to respond, during which the alien can contest the allegations or eligibility. If the alien denies the charges or refuses to respond, DHS must not issue the final removal order immediately; the case can be referred for a hearing or the alien's response must be considered. In Mr. Le's case, ICE officers issued a Final Administrative Removal Order (FARO) the same day as the NOI, without waiting for any response, and despite Mr. Le not signing the form or waiving his rights. This shortcut deprived Mr. Le of the chance to be heard and to seek relief before an IJ, which is especially egregious given he was an LPR with potential reliefs available. By not observing its own required procedures, DHS violated Mr. Le's right to due process. As the Tenth Circuit noted in a similar context, an alien does "not waive or forfeit his due process claim by failing to respond to the NOI" when the agency failed to provide the full response period, and issuing a FARO without awaiting the response deadline or providing an opportunity to rebut the charges is a denial of the regulatory

guarantees. The result is that Mr. Le's removal order was unlawfully obtained. The Court should hold that the 2011 administrative removal order (which later merged with the IJ's order) is invalid. Consequently, Mr. Le's detention and threatened removal pursuant to that order are unlawful. Habeas relief is warranted to release Mr. Le and/or remand for a proper hearing.

**Claim 5: Abuse of Discretion and Due Process – Denial of Continuance/Opportunity to Pursue Relief (U Visa & Waiver)**

The conduct of Mr. Le's removal case by the IJ and BIA violated his statutory and due process rights by arbitrarily cutting off his pursuit of lawful immigration status. Despite Mr. Le's prima facie eligibility for a U visa (as evidenced by law enforcement certification and DHS's issuance of a bona fide determination EAD), the IJ and BIA refused to continue proceedings to allow USCIS to adjudicate that application. This denial was an abuse of discretion and deprived Mr. Le of an opportunity for relief that Congress intended U visa applicants to have. The BIA's decision rested on an error of fact (calling the waiting period "open-ended" when Mr. Le had provided expected timelines) and an error of law (failing to consider the factors for continuances set forth in cases like *Matter of Hashmi* and *Matter of Sanchez Sosa* concerning pending collateral relief). Moreover, by effectively making a negative judgment about the merits of the U visa and I-192 waiver without jurisdiction, the agency violated Mr. Le's right to a full and fair hearing on his application by the proper forum (USCIS). The cumulative effect of these missteps was to wrongly deem Mr. Le "unqualified" for any relief and rush to removal, contrary to immigration law's purpose of aligning deportation with humanitarian considerations. Due process requires at least that

removal not occur while a colorable avenue to lawful status is pending. Here, DHS's own regulations (8 C.F.R. § 214.14) encourage a stay of removal for U visa petitioners. The failure to do so for Mr. Le, and the active opposition to a short continuance, was fundamentally unfair. This Court should find that the agency's handling of the continuance request violated Mr. Le's rights and contributed to an unlawful detention and order. The proper remedy is to stay removal until USCIS decides the U visa, or to order Mr. Le's release so he can pursue that relief. If the U visa is granted, Mr. Le would be eligible to adjust status and the removal order would be moot; thus, removing him now defeats the remedial scheme Congress created for people like him.

**Claim 6: Eighth Amendment Violation – Excessive Detention (in the Alternative)**

In the alternative, even if the removal order were lawfully obtained (it was not), Mr. Le's continued civil detention is unreasonably prolonged and punitive, in violation of the Fifth Amendment's Due Process Clause and analogous Eighth Amendment principles. Mr. Le has now been detained since July 24, 2025 – over three months – with no end in sight because his legal proceedings (PCR, BIA motion) are ongoing and may continue for many months or even years. He is not detained under § 1226(c) (since he has a final order), but his removal is effectively stayed by circumstance and the government's own delays. Under *Zadvydas v. Davis*, 533 U.S. 678 (2001), once it becomes clear that removal cannot be accomplished in the reasonably foreseeable future, continued detention of an alien with a final order violates due process. Here, there are strong reasons to believe removal is not imminent: the BIA may yet reopen the case, the state courts may vacate the conviction, or the U visa could be granted – any of which would stop or reverse the removal. Vietnam,

the designated country of removal, also often refuses or delays issuance of travel documents for its nationals with criminal records; repatriation is not always swift or assured. Mr. Le's detention has passed the 90-day removal period and is approaching the 6-month mark where *Zadvydas* creates a presumption of unreasonableness. Further detention without a bond hearing or individualized finding of danger or flight risk is unlawful. Mr. Le has a stable U.S. address, family support, and is willing to comply with conditions of release. There is no legitimate purpose served by continuing to incarcerate him while his legal challenges pend. Thus, the Court should order Mr. Le's immediate release under reasonable conditions of supervision, even if it does not vacate the order outright. Continued detention would amount to punishment and is grossly disproportionate to any conceivable regulatory goal, especially given Mr. Le's rehabilitation and low flight risk (he has every incentive to appear and fight for lawful status).

**PRAYER FOR RELIEF**

**WHEREFORE**, Petitioner Toan Sy Le respectfully requests that this Court grant the following relief:

- A writ of habeas corpus releasing Mr. Le from ICE custody immediately, on his own recognizance or under reasonable conditions of supervision, on the ground that his detention is unlawful due to the defects in the removal order and/or its prolonged nature.
- Declaratory relief declaring that the removal order against Mr. Le is void and/or invalid because of the defective Notice to Appear and lack of jurisdiction, and that enforcing such an order violates due process and the INA.

- Injunctive relief enjoining Respondents from removing or deporting Mr. Le to Vietnam (or any other country) while this Court's order is in effect, and specifically until his pending legal proceedings – including his state post-conviction petition and BIA motion to reopen – are resolved and any new proceedings comply with all legal requirements.
- In the alternative, an order temporarily staying Mr. Le's removal and tolling the removal period, combined with an order for a prompt bond hearing before an immigration judge (or a conditional release by this Court) to determine if continued detention is justified. The bond hearing should place the burden on DHS to prove by clear and convincing evidence that Mr. Le's detention is necessary due to flight risk or danger (which evidence we submit is lacking).
- An order vacating the final administrative removal order issued by DHS in 2011 as unlawful, and remanding the matter to the agency for further proceedings consistent with due process (with the opportunity for Mr. Le to fully contest removability and seek relief, if necessary, in a new hearing), should this Court find that remedy appropriate.
- Any other relief the Court deems just and proper to ensure the fair and lawful treatment of Petitioner. This may include, for example, ordering DHS to defer action on Mr. Le's removal until USCIS adjudicates his U visa, or ordering DHS to facilitate Mr. Le's return to the United States should he be removed before this petition is decided (to restore the status quo ante).

Petitioner prays that this Court will intervene to prevent his unlawful deportation and detention. Mr. Le has demonstrated strong grounds for relief: a removal order founded on a void notice, a constitutional violation surrounding his conviction, and procedural shortcuts that trampled his rights. The balance of hardships tips sharply in his favor – he faces life-altering exile and persecution, whereas the government faces at most a temporary delay in execution of removal (during which Mr. Le can be monitored). The public interest is served by ensuring that our removal system operates within the bounds of the law and that refugees who have lived in this country for decades are not deported without due process. Mr. Le respectfully asks this Court to grant the writ, free him from detention, and safeguard his ability to pursue the American justice available to correct the wrongs in his case.

This 5th day of November, 2025

Respectfully submitted,

*/s/Daniel M Huynh*

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Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

**The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.**

**Plaintiff(s):** Toan S Le , ; **Defendant(s):** Fred Figueroa , Warden Elby Detention Center; John Cantu , Field Office Director, Phoenix ICE; Todd Lyons , Director, U.S. Immigration and Customs Enforcement (ICE); Kristi Noem , Secretary of Homeland Security; Pamela Bondi , U.S. Attorney General;

**County of Residence:** Pinal **County of Residence:** Maricopa

**County Where Claim For Relief Arose:** Maricopa

**Plaintiff's Atty(s):** Daniel Minh Huynh ,  
Law Office of Daniel Huynh  
4709 Wilson Blvd  
Arlington, VA 22203  
4085693932  
**Defendant's Atty(s):** ,  
,

**IFP REQUESTED**

**REMOVAL FROM COUNTY, CASE #**

II. Basis of Jurisdiction:

2. U.S. Government Defendant

III. Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff:-

N/A

Defendant:-

N/A

IV. Origin :

1. Original Proceeding  
463 Alien Detainee

V. Nature of Suit:

VI. Cause of Action:

28 U.S.C. § 2241

VII. Requested in Complaint

Dollar Demand:

Jury Demand:

No

VIII. This case is not related to another case.

Signature: /s/Daniel M Huynh

Date: 11/05/2025

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the Back button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014