UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

Phu Cao,

Petitioner

v.

Pamela Bondi, Attorney General; Kristi Noem, Secretary of Homeland Security; Todd M. Lyons, Acting Director of U.S. Immigration & Customs Enforcement; Marcos Charles, Acting Executive Associate Director for Enforcement and Removal Operations; Mark Siegel, Field Office Director for Enforcement and Removal Operations; U.S. Immigration & Customs Enforcement; U.S. Department of Homeland Security; Scarlet Grant, Warden of Cimarron Correctional Facility.

Respondents.

Case No.: _____

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

EXPEDITED HANDLING REQUESTED PURSUANT TO 28 U.S.C. § 1657

INTRODUCTION

1. Respondents are detaining Petitioner, Phu Cao (A[redacted], in violation of law.

2. Cao is a citizen of Vietnam who entered the United States on March 25, 1985 and admitted as a lawful permanent resident. Cao is subject to the 2020 Memorandum of Understanding ("MOU") between Vietnam and the United States relating to repatriation of pre-1995 Vietnamese immigrants. *See generally Tran v. Scott*, No. 2:25-cv-01886-TMC-BAT, 2025 WL 2898638, at *2 (W.D. Wash. Oct. 12, 2025).

3. Cao was ordered removed from the United States on February 22, 2007. Both parties

waived appeal, rendering the removal order administratively final on February 22, 2007.

4. Cao remained in ICE detention for more than six months until his release on an Order of Supervision ("OOS") on August 31, 2007. *See Cao v. Gonzales*, No. 07-CV-937-C (W.D. Okla., petition filed Aug. 22, 2007).

5. As of November 24, 2025, Cao's aggregate post-order detention time is 266 days (190 days from Feb. 22, 2007 – Aug. 31, 2007 + 76 days from Sept. 9, 2025 – Nov. 24, 2025). Cao's post-order detention time continues to accumulate. With each passing day, the period that constitutes the "reasonably foreseeable future" shrinks.

6. Prior to his initial release on an OOS, Cao filed a petition for a writ of habeas corpus. The habeas petition set forth a variety of factual allegations indicating there was no significant likelihood of Cao's removal in the reasonably foreseeable future. *See id.*, ECF No. 1, ¶¶ 15-25.

7. The OOS issued pursuant to 8 C.F.R. § 241.4(e) and 8 C.F.R. § 241.13 because it was determined there was no significant likelihood of removal in the reasonably foreseeable future. It was necessarily determined at that time that Cao did not present an ongoing danger or a flight risk. *See* 8 C.F.R. § 241.4(e)(2)-(6); 8 C.F.R. § 241.13.

8. Cao was required to complete regular check ins with ICE from when he was placed on an OOS and when he was redetained in violation of law in 2025. Cao complied with all check in requirements and made sure to update his address with ICE every time he moved.

9. On September 9, 2025, Cao was picked up and redetained by ICE at a scheduled check-in appointment despite having done nothing wrong and remaining in compliance with his OOS.

10. Cao has previously applied for travel documents from Vietnam on multiple occasions. Cao applied for Vietnam travel documents just three weeks prior to his arrest on September 9, 2025. Prior to Cao's arrest on September 9, 2025, he provided immigration officials with proof of his recent application for a travel document to Vietnam. Cao also provided ICE officials with his Vietnamese birth certificate.

11. Cao wants to return to Vietnam. If the government is able to obtain a travel document for him after he is released, he will happily appear for deportation. Every request for travel documents ever made by Cao or on Cao's behalf has been denied.

12. Cao does not have a valid Vietnamese passport.

13. Roughly three weeks after Cao was most recently detained by immigration officials, Cao completed another travel document request for submission to Vietnam. Cao has been told by local ICE officials that his paperwork was already submitted to the Vietnamese embassy, but Cao is unable to confirm whether this is true, or whether the travel document request has simply been forwarded to Enforcement & Removal Operations ("ERO") Headquarters ("ERO HQ") for eventual submission to the Vietnamese embassy.

14. If Cao's travel document has been submitted to the embassy, no response has yet been received. Cao has not received a response to the prior request he made for

travel documents on his own roughly three weeks prior to being rearrested.

15. Since being detained in 2025, no government agent has expressed to Cao that a third-country removal is being attempted, much less expected to be successful.

16. Since being arrested on September 9, 2025, Cao has not received any Notice of Revocation of Release informing him of the reasons for his redetention. Similarly, Cao has not received a notice of Custody Determination or any other written decision explaining what changed circumstances allegedly justified or currently justify his redetention.

17. Cao remains detained at this time. He is housed in Cimarron Correctional Facility in Cushing, OK, a facility designed to house and punish convicted criminals. Cao's conditions of confinement are indistinguishable from those of convicted criminals.

18. The government is not in possession of any credible or persuasive documents or evidence that Cao's removal is likely to occur in the reasonably foreseeable future. This was true on September 9, 2025, and it remains true at the time of this petition's filing.

19. It remains true at the time of this filing that Cao cannot be deported to his country of origin, Vietnam, because he does not have a valid travel document and there is no significant likelihood that Vietnam will issue one to him in the reasonably foreseeable future.

20. The redetention of Cao serves no legitimate purpose. Instead, his detention is punitive. The redetention of Cao is designed to send a message to other individuals

with final orders of removal that they need to leave the United States or they will be jailed indefinitely and without any process. This is especially obvious because Cao wants to return to Vietnam and is more than willing to show up for deportation if and when a travel document is obtained; detention for the purpose of facilitating removal is unnecessary.

21. Federal statutes and regulations require ICE to follow certain procedures before they redetained Cao. ICE failed to comply with these laws prior to redetaining Cao. These failures include:

a. Cao's redetention has not been reviewed or authorized by any member of the Headquarters Post-order Detention Unit ("HQPDU") or ERO HQ. *See* 8 C.F.R. §§ 241.13(b)(2), (c), (d), (e), (f), (g), (h)(1), (h)(4)(i), (j) (all restricting ability to perform certain functions relevant to this petition to the HQPDU); 8 C.F.R. § 241.4(c)(2)-(3), (d)(2), (e), (g)(2)-(3), (i)(1)-(3), (i)(7), (k)(2)-(4), (l)(3) (same).

b. Cao's redetention has not been reviewed or authorized by the Executive Associate Commissioner or District Director. *See* 8 C.F.R. §§ 241.4(1), (c)(2)-(4), (d)(1)-(2), (i)(1), (i)(6), (j)(1)-(4), (k)(2), (k)(4), (l)(2)-(3).

c. Cao has been redetained in the absence of changed circumstances capable of rebutting his prior showing of no significant likelihood of removal in the reasonably foreseeable future. *See* 8 C.F.R. § 241.13(i)(2); *Zadvydas v. Davis*, 533 U.S. 678, 699-700 (2001).

d. Cao has not received a written decision stating the reasons for his redetention.

See 8 C.F.R. § 241.13(g); *Momennia v. Bondi*, 2025 WL 3011896, at *6 (W.D. Okla. Oct. 15, 2025) ("ICE is required to issue a written decision. § 241.13(g)."); 8 C.F.R. § 241.4(h)(4), (k)(1)(i), (k)(2)(iii); 8 C.F.R. §§ 241.13(e)(1), (e)(2), (e)(6); *Pham v. Bondi*, No. 25-CV-1157-SLP, 2025 WL 3243870, at *1 n.2 and accompanying text (W.D. Okla. Nov. 20, 2025).

e. Cao has not received an individualized post-detention interview to determine whether his OOS should be reinstated or to otherwise allow Cao to provide information to demonstrate there is no significant likelihood of his removal in the reasonably foreseeable future. *See* 8 C.F.R. § 241.13(i)(2)-(3).

22. To remedy his unlawful detention, Cao seeks declaratory and injunctive relief in the form of immediate release from detention.

23. Pending the adjudication of his Petition, Cao seeks an order restraining the Respondents from transferring him to a location where he cannot reasonably consult with counsel, such a location to be construed as any location outside of the geographic jurisdiction of the day-to- day operations of U.S. Immigration & Customs Enforcement's ("ICE") Oklahoma City Office of Enforcement and Removal Operations in the State of Oklahoma.

24. Pending the adjudication of this Petition, Petitioner also respectfully requests that Respondents be ordered to provide seventy-two (72) hour notice of any movement of Cao.

25. Cao requests the same opportunity to be heard in a meaningful manner, at a meaningful time, and thus requests 72-hour notice prior to any removal or

movement of him away from the State of Oklahoma.

26. Cao requests an emergency preliminary order requiring Respondents to give Cao due process prior to removing him to an allegedly safe third country in the form of a full merits hearing for asylum, withholding of removal, and DCAT before an immigration judge relating to the proposed country of removal with a right to an administrative appeal to the Board of Immigration Appeals, and further requests that this injunction be made permanent.

27. Cao requests an order compelling Respondents to release him pending the outcome of this petition.

28. In accordance with 28 U.S.C. § 1657, Cao requests that the district court issue an Order to Show Cause ("OSC") giving the government no more than 7 days to file evidence and argument in response to the OSC. Cao further requests that the magistrate judge shorten the time for making any objections to the magistrate's forthcoming Report & Recommendation from 14 days to 5 days.

29. Cao requests that the Court order his immediate release and return him to the conditions of his prior OOS subject to one caveat. Upon his release, Cao intends to move to New York to be with his wife (who relocated from Oklahoma to New York after Cao was redetained), and therefore requests that the Court order that his OOS permit him to reside in New York.

JURISDICTION AND VENUE

30. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question), § 1361 (mandamus action), § 1651 (All Writs Act), and § 2241 (habeas

corpus); Art. I, § 9, cl. 2 of the U.S. Constitution ("Suspension Clause"); 5 U.S.C. § 702 (Administrative Procedure Act); and 28 U.S.C. § 2201 (Declaratory Judgment Act). This action further arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), specifically, 8 U.S.C. § 1231(a)(1)-(3) and 8 C.F.R. §§ 241.4, 241.13.

31. Because Cao seeks to challenge his custody as a violation of the Constitution and laws of the United States, jurisdiction is proper in this court.

32. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness or constitutionality of their detention by DHS. *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Jennings v. Rodriguez*, 138 S. Ct. 830, 839–41 (2018); *Nielsen v. Preap*, 139 S. Ct. 954, 961–63 (2019); *Sopo v. U.S. Attorney Gen.*, 825 F.3d 1199, 1209-12 (11th Cir. 2016).

33. Under 28 U.S.C. § 1657, Cao's petition "**shall**" be expedited for good cause. (emphasis added). The good cause consists of Cao's credible and detailed allegations of indefinite and prolonged unlawful and unconstitutional civil confinement. Numerous other courts around the country, and in this district, have expedited these types of matters recently. *See Roble v. Bondi*, No. 25-cv-3196, 2025 WL 2443453 (D. Minn. Aug. 25, 2025); *Sarail A. v. Bondi*, No. 25-CV-2144, 2025 WL 2533673 (D. Minn. Sept. 3, 2025); *Sonam T. v. Bondi*, No. 25-CV-2834, *slip op.*, ECF No. 19 (D. Minn. Sept. 16, 2025); *see also Sonam T. v. Bondi*, No. 25-CV-2834, ECF No. 25 (D. Minn. Sept. 19, 2025) (ordering release); *Mehran S. v. Bondi*, No. 25-CV-3724, ECF No. 6 (D. Minn. Sept. 29, 2025) (providing 7 days

to respond to OSC); *Mehran S. v. Bondi*, No. 25-CV-3724, ECF No. 11 (D. Minn. Sept. 29, 2025) (ordering release); *Omar J. v. Bondi*, No. 25-CV-3719 (D. Minn. Sept. 29, 2025), ECF No. 11; *Constantinovici v. Bondi*, No. 3:25-CV-02405-RBM-AHG (S.D. Cal. Sept. 17, 2025), ECF No. 5 (OSC gave the government 48 hours to respond); *Constantinovici v. Bondi*, No. 3:25-CV-02405-RBM-AHG (S.D. Cal. Oct. 10, 2025), ECF No. 15 (granting habeas petition less than one month after filing); *Momennia v. Bondi*, No. 5:25-CV-1067-J, ECF No. 9 (giving the government just 14 days to respond to OSC) (W.D. Okla. Sept. 17, 2025); *Momennia v. Bondi*, No. 5:25-CV-1067-J, ECF No. 12 at 1 n.1 (W.D. Okla. Oct. 3, 2025) ("This Order is in furtherance of the need recognized by the Magistrate Judge to proceed in this case in an expedited manner."); *Momennia v. Bondi*, No. 5:25-CV-1067-J, ECF No. 16 (W.D. Okla. Oct. 9, 2025) (granting motion to expedite in part); *Pham v. Bondi*, No. 5:25-CV-01157-SLP, ECF No. 14 (Oct. 8, 2025) (ordering government just 7 days to respond to OSC); *Yee S. v. Bondi*, No. 25-CV-02782-JMB-DLM, ECF No. 13 (D. Minn. Oct. 9, 2025) (granting habeas petition 4 days after TRO and motion to expedite was filed).

34. Venue is proper in this Court pursuant to 28 USC §§ 1391(b), (e)(1)(B), and 2241(d) because Cao is detained within this District. He is currently detained at the Cimarron Correctional Facility in Cushing, Oklahoma. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(A) because Respondents are operating in this district.

PARTIES

35. Petitioner Cao is a citizen of Vietnam who entered the United States on March 25, 1985 as a child. Cao lacks a valid Vietnamese passport. Cao has provided his Vietnamese birth certificate to immigration officials. Cao's Alien Registration Number ("A number") is A[redacted] Petitioner Cao is an alien with an administratively final removal order. Cao is currently in custody at the Immigration and Customs Enforcement ("ICE") detention center in Cushing, Oklahoma. Cao's aggregate period of civil immigration confinement exceeds six months and continues to grow. Cao is married to Celeste Li, who is in breast cancer remission. After Cao was detained in September 2025, Cao's wife disposed of the couple's shared residence and moved to Fresh Meadows, New York. Upon his release, Cao intends to move to New York to be with his wife, and therefore requests that the Court order that his OOS permit him to reside in New York.

36. Respondent Pamela Bondi is being sued in her official capacity as the Attorney General of the United States and the head of the Department of Justice, which encompasses the BIA and the immigration judges through the Executive Office for Immigration Review. Attorney General Bondi shares responsibility for implementation and enforcement of the immigration detention statutes, along with Respondent Noem. Attorney General Bondi is a legal custodian of Cao.

37. Respondent Kristi Noem is being sued in her official capacity as the Secretary of the Department of Homeland Security. In this capacity, Secretary Noem is responsible for the administration of the immigration laws pursuant to § 103(a) of

the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1103(a), routinely transacts business in the District of Oklahoma, supervises the Oklahoma City ICE Field Office, and is legally responsible for pursuing Cao's detention and removal. As such, Respondent Noem is a legal custodian of Cao.

38. Respondent Department of Homeland Security ("DHS") is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

39. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity. Defendant Lyons is responsible for Petitioner's detention.

40. Respondent Immigration and Customs Enforcement ("ICE") is the subagency within the Department of Homeland Security responsible for implementing and enforcing the Immigration & Nationality Act, including the detention of noncitizens.

41. Respondent Marcos Charles is the Acting Executive Associate Director for ICE Enforcement and Removal Operations ("ERO").

42. Respondent Mark Siegel is being sued in his official capacity as the Field Office Director for the Oklahoma City Field Office for ICE within DHS. In that capacity, Field Director Siegel has supervisory authority over the ICE agents responsible for detaining Cao.

43. Respondent Scarlet Grant is being sued in her official capacity as the Warden of the

Cimarron Correctional Facility. Because Petitioner is detained in the Cimarron Correctional Facility, Respondent Grant has immediate day-to-day control over Petitioner.

EXHAUSTION

44. ICE asserts authority to jail Cao pursuant to the mandatory detention provisions of 8 U.S.C. § 1231(a)(1). No statutory requirement of exhaustion applies to Cao's challenge to the lawfulness of his detention. *See, e.g.*, *Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014) ("There is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention."); *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *11 (W.D. Wash. Apr. 24, 2025) (citing *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 962 (N.D. Cal. 2019) ("this Court 'follows the vast majority of other cases which have waived exhaustion based on irreparable injury when an individual has been detained for months without a bond hearing, and where several additional months may pass before the BIA renders a decision on a pending appeal.'"); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025) ((citing *Portela-Gonzalez v. Sec'y of the Navy*, 109 F.3d 74, 77 (1st Cir. 1997) (quoting *McCarthy v. Madigan*, 503 U.S. 140, 146 (1992)).

45. To the extent that prudential consideration may require exhaustion in some circumstances, Cao has exhausted all effective administrative remedies available to him as he has previously demonstrated to ICE's satisfaction that his removal is not substantially likely to occur in the reasonably foreseeable future. ICE has never

rebutted this showing. Any further efforts would be futile.

46. Prudential exhaustion is not required when to do so would be futile or "the administrative body . . . has . . . predetermined the issue before it." *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992), *superseded by statute on other grounds as stated in Woodford v. Ngo*, 548 U.S. 81 (2006).

47. Prudential exhaustion is also not required in cases where "a particular plaintiff may suffer irreparable harm if unable to secure immediate judicial consideration of his claim." *McCarthy*, 503 U.S. at 147. Every day Cao is unlawfully detained causes him and his family irreparable harm. *Jarpa v. Mumford*, 211 F. Supp. 3d 706, 711 (D. Md. 2016) ("Here, continued loss of liberty without any individualized bail determination constitutes the kind of irreparable harm which forgives exhaustion."); *Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018) (explaining that "loss of liberty" is "perhaps the best example of irreparable harm"); *Hamama v. Adducci*, 349 F. Supp. 3d 665, 701 (E.D. Mich. 2018) (holding that "detention has inflicted grave" and "irreparable harm" and describing the impact of prolonged detention on individuals and their families).

48. Prudential exhaustion is additionally not required in cases where the agency "lacks the institutional competence to resolve the particular type of issue presented, such as the constitutionality of a statute." *McCarthy*, 503 U.S. at 147–48. Immigration agencies have no jurisdiction over constitutional challenges of the kind Cao raises here. *See, e.g., Matter of C-*, 20 I. & N. Dec. 529, 532 (BIA 1992) ("[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the

constitutionality of the Act and the regulations."); *Matter of Akram*, 25 I. & N. Dec. 874, 880 (BIA 2012); *Matter of Valdovinos*, 18 I. & N. Dec. 343, 345 (BIA 1982); *Matter of Fuentes-Campos*, 21 I. & N. Dec. 905, 912 (BIA 1997); *Matter of U-M-*, 20 I. & N. Dec. 327 (BIA 1991).

49. Because requiring Cao to exhaust administrative remedies would be futile, would cause him irreparable harm, and the immigration agencies lack jurisdiction over the constitutional claims, this Court should not require exhaustion as a prudential matter.

50. In any event, Cao has indeed exhausted all remedies available to him.

51. ICE has denied Cao release because: (A) it incorrectly believes Cao is responsible for reestablishing that removal is not substantially likely to occur in the reasonably foreseeable future, (B) ICE seeks to punish Cao for remaining in the United States after previously having been ordered removed, and (C) ICE seeks to punish Cao to send a message to similarly situated persons who have not yet been detained as a way to encourage those similarly situated people to immediately leave the United States to avoid Cao's fate.

FACTUAL ALLEGATIONS & PROCEDURAL HISTORY

52. Cao re-alleges and incorporates by reference each allegation contained in ¶¶ 1-51 as if set forth fully herein.

53. On September 9, 2025, Cao was picked up and redetained by ICE at a scheduled check-in while doing nothing wrong and without being in violation of any condition of his OOS. He has remained detained in Respondents' custody since that date.

54. Each time ICE or Cao have tried to obtain a travel document for Cao, they have failed.

55. Cao was never served with a Notice of Revocation of Release ("Notice") purporting to revoke his OOS, nor does he recall having been given any sort of informal interview to challenge the Notice.

56. Assuming *arguendo* that Cao may have been served with a Notice, revoking his OOS, the Notice has not been reviewed by Petitioner's counsel, but likely claims in a conclusory manner that "ICE has determined there is a significant likelihood of removal in the reasonably foreseeable future in your case" based on unidentified "changed circumstances."

57. The Notice, if any, does not provide a reasoned basis for believing that there is now a significant likelihood of removal in the reasonably foreseeable future.

58. The Notice, if any, does not provide Cao with sufficient information to be in a position to rebut the factual allegations underlying the Notice at an informal interview.

59. The Notice, if any, does not provide enough information or detail to allow this Court to meaningfully review the relevant claims made in the Notice.

60. Cao does not understand the reason ICE now believes that there is a significant likelihood he will be removed in the reasonably foreseeable future.

61. The Notice, if any, does not allege that Cao has failed to comply with any of the terms of his OOS.

62. The Notice, if any, does not allege that Respondents have obtained a travel document allowing for Cao's immediate removal from the United States.

63. The Notice, if any, does not allege any new facts that might form an independent basis for taking Cao into custody.

64. At the time of Cao's arrest, up through the present, ICE has no information that could reasonably lead it to believe changed circumstances exist that justify redetention under 8 C.F.R. § 241.13(i)(2)-(3).

65. Cao satisfies the criteria for release at 8 C.F.R. § 241.4(e).

a. Travel documents for Cao are not available.

b. Removal of Cao is not practicable or in the public interest.

c. Cao is presently a non-violent person.

d. Cao is likely to remain nonviolent if released.

e. Cao is not likely to pose a threat to the community following release.

f. On March 21, 2023, Cao was granted a full and unconditional pardon from the Governor of Oklahoma after it was found he "has satisfactorily complied with all rules and conditions imposed, and the evidence presented… indicates that [Cao] has demonstrated exemplary conduct." *See* Exhibit 2, Certificate of Pardon.

g. Cao has not been convicted of any new offenses since his release on an OOS in 2007.

h. Cao is not likely to violate the conditions of release.

i. Cao does not pose a significant flight risk if released. He wishes to return to

Vietnam and would have already self-deported if he were able to get a travel document.

66. The factors for consideration at 8 C.F.R. § 241.4(f) all favor releasing Cao.

a. Cao has no disciplinary infractions or incident reports received while incarcerated in Service custody.

b. Cao's Oklahoma convictions have been pardoned based on his post-conviction exemplary conduct. *See* Exhibit 2, Certificate of Pardon. This pardon grant demonstrates complete rehabilitation and no risk of recidivism. This pardon was, in part, a function of Cao's lack of new criminal history.

c. No psychiatric or psychological reports indicate Cao's mental health poses a risk to any person.

d. Cao's grant of a pardon from the Governor of Oklahoma demonstrates extraordinarily compelling proof of rehabilitation.

e. Cao's wife is a citizen of the United States. Cao's U.S. citizen stepson is getting married in February 2026 and wants his stepdad there to celebrate his union.

f. Cao previously entered the United States lawfully and maintained lawful permanent residence for a period of years before getting into criminal trouble and getting ordered deported. Since his release from custody on an OOS in 2007, his conduct has been exemplary and he has complied with all OOS requirements.

g. Cao is not a flight risk. He was arrested *at a scheduled check-in*. Cao wishes

to return to Vietnam and will happily turn himself in for deportation if a travel document is obtained.

h. Cao's post-OOS conduct and 2023 receipt of a pardon demonstrates that he has managed to adjust to life in a community, avoid engaging in acts of violence or criminal activity, does not pose a danger to the safety of anyone, and is unlikely to violate the conditions of his release from custody pending removal.

67. At the time of redetention, ICE had not yet begun the steps of having Cao apply for a travel document from detention for Vietnam nor some other allegedly safe third country. ICE waited for three weeks to take the initial steps in submitting a travel document even though Cao was redetained in violation of regulation after having served more than 6 months in post-final-order immigration custody and after having previously established that there is no significant likelihood of his removal in the reasonably foreseeable future.

68. Respondents maintain Cao is ineligible for release from custody.

69. On April 30, 2025, the Department of Homeland Security issued a press release entitled *100 Days of Fighting Fake News.*[1] In that document, DHS referenced civil immigration detention and the present administration's heavy reliance on civil detention to accomplish its political aims. Specifically, the document states:

> The reality is that **prison isn't supposed to be fun. It's a necessary measure to** protect society and **punish bad guys.** It is not meant to be

[1] Available at: https://www.dhs.gov/news/2025/04/30/100-days-fighting-fake-news (attached as Exhibit 1).

> comfortable. **What's more: prison can be avoided by self-deportation.** CBP Home makes it simple and easy. If you are a criminal alien and we have to deport you, you could end up in Guantanamo Bay or CECOT. **Leave now.**
>
> Exhibit 1 (emphasis added).

70. Myriad courts around the country have granted habeas corpus petitions and/or enjoined the current administration's attempts to use civil detention punitively against noncitizens. *See, e.g.*, *Mohammed H. v. Trump*, No.: 25-CV-1576-JWB-DTS, --- F. Supp. 3d ---, 2025 WL 1692739, at *5 (D. Minn. June 17, 2025) ("Punishing Petitioner for protected speech or **using him as an example to intimidate other students into self-deportation is abusive and does not reflect legitimate immigration detention purposes**.") (emphasis added); *Mahdawi v. Trump*, 781 F. Supp. 3d 214, 231-32 (D. Vt. Apr. 30, 2021) (recognizing that immigration detention cannot be motivated by the desire to punish speech or to deter others from speaking); *Ozturk*, 779 F. Supp. 3d 462, 493 ("So long as detention is motivated by those goals, and not a desire for punishment, the Court is generally required to defer to the political branches on the administration of the immigration system."); *see also Fong Yue Ting v. United States*, 149 U.S. 698, 730 (1893) ("The order of deportation is not a punishment"); *See Roble v. Bondi*, No. 25-cv-3196, 2025 WL 2443453 (D. Minn. Aug. 25, 2025) (ordering release and characterizing the government's actions as "Kafkaesque"); *Sarail A. v. Bondi*, No. 25-CV-2144, 2025 WL 2533673 (D. Minn. Sept. 3, 2025) (ordering release); *Sonam T. v. Bondi*, No. 25-CV-2834, *slip op.*, ECF No. 19 (D. Minn. Sept. 16, 2025) (R&R recommending order of release); *see also Sonam T. v. Bondi*, No. 25-CV-2834,

ECF No. 25 (D. Minn. Sept. 19, 2025) (ordering release); *Mehran S. v. Bondi*, No. 25-CV-3724, ECF No. 11 (D. Minn. Sept. 29, 2025) (ordering release); *Omar J. v. Bondi*, No. 25-CV-3719 (D. Minn. Sept. 29, 2025), ECF No. 11 (ordering release); *Yee S. v. Bondi*, No. 25-CV-02782-JMB-DLM (D. Minn. Oct. 9, 2025), ECF No. 13 (granting habeas petition 4 days after TRO and motion to expedite was filed); *Constantinovici v. Bondi*, No. 3:25-CV-02405-RBM-AHG (S.D. Cal. Oct. 10, 2025), ECF No. 15 (granting habeas petition less than one month after filing).

LEGAL FRAMEWORK

71. Petitioner's present detention is governed by 8 U.S.C. § 1231 and its implementing regulations at 8 C.F.R. pt. 241.

72. Section 1231 mandates detention "[d]uring the removal period." *Accord* 8 U.S.C. § 1231(a)(1)(A), (a)(2). However, the same sections also require the government to actually remove the alien during this removal period. 8 U.S.C. § 1231(a)(1)(A).

73. The "removal period" is "90 days." 8 U.S.C. § 1231(a)(1)(A). Petitioner's "removal period" ended on May 23, 2007.

74. Detention past the removal period can be lawful in circumstances not presented here. *See* 8 U.S.C. § 1231(a)(1)(C), (a)(6).

75. After a noncitizen has been detained past the removal period, they may seek and obtain their release by demonstrating "there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future." 8 C.F.R. § 241.13(a).

76. Once a noncitizen is released on an OOS, they are subject to certain conditions of

release. *See* 8 C.F.R. § 241.13(h)(1).

77. Redetention is permitted where it is alleged a noncitizen violated the conditions of release. *See* 8 C.F.R. § 241.13(h)(2), (i).

78. Regulations also permit the government to withdraw or otherwise revoke release under specific circumstances. *See* 8 C.F.R. § 241.13(h)(4). One permissible reason to revoke release occurs when, "on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). Once such a determination is made, the noncitizen must "be notified of the reasons for revocation of [their] release" and must be provided with "an initial informal interview… to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.13(i)(3). "The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release." *Id.* If a noncitizen is not released following the informal interview, "the provisions of [8 C.F.R. § 241.4] shall govern the alien's continued detention pending removal." 8 C.F.R. § 241.13(i)(2). Once the provisions of § 241.4 take effect, it appears that the consequence is a total reset of the 90-day removal period under 8 U.S.C. § 1231(a), though Cao respectfully submits the regulation is *ultra vires* to statute as an arbitrary or capricious interpretation of statute that exceeds statutory authority. *See* 8 C.F.R. § 241.4(b)(4).

79. Under the Supreme Court's decision in *Zadvydas v. Davis*, a person subject to a final order of removal cannot, consistent with the Due Process Clause, be detained indefinitely pending removal. 533 U.S. 678, 699-700 (2001). *Zadvydas* established a temporal marker: post-final order of removal detention of six months or less is presumptively constitutional. Detention periods of less than six months can be unconstitutional if the presumption of reasonableness is rebutted.

80. The 6-month *Zadvydas* clock does not reset upon every new iteration of detention. It is instead measured in the aggregate. At minimum, the 6-month *Zadvydas* clock must be measured in the aggregate when the required prerequisites for redetention, as identified by 8 C.F.R. §§ 241.13(g) and (i)(2)-(3) (*inter alia*) are not satisfied prior to redetention.

81. *Zadvydas* also stated:

> After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, **the Government must respond with evidence sufficient to rebut that showing. And for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the "reasonably foreseeable future" conversely would have to shrink.**
>
> 533 U.S. at 701 (emphasis added).

82. *Zadvydas* further held that civil detention violates due process unless special, nonpunitive circumstances outweigh an individual's interest in avoiding restraint. 533 U.S. at 690 (**immigration detention must remain "nonpunitive in purpose and effect"**) (emphasis added).

REMEDY

83. Respondents' detention of Cao violates the Due Process Clause of the United States Constitution. Cao's ongoing detention violates the Fifth Amendment's guarantee that "[n]o person shall be . . . deprived of life, liberty, or property without due process of law." U.S. Const., amend. V.

84. Due Process requires that detention "bear [] a reasonable relation to the purpose for which the individual [was] committed." *Zadvydas, v. Davis*, 533 U.S. 678, 690 (2001) (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

85. Cao seeks immediate release to the extent that Respondents justify his detention on the idea that Petitioner has failed to demonstrate that there is no significant likelihood of his removal in the reasonably foreseeable future; Respondents bear the burden of rebutting the prior showing made by Petitioner. 8 C.F.R. § 241.13(i)(2)-(3). Respondents have failed to meet this burden.

86. Cao seeks immediate release subject to the same conditions as his prior OOS, with the caveat that he must be allowed to move to New York to live with his wife.

87. Cao seeks immediate release to the extent that Respondents have violated his due process rights by failing to comply with 8 C.F.R. §§ 241.4 and/or 241.13.

88. Cao seeks immediate release to the extent that Respondents have redetained him for the purpose of punishing him for remaining in the United States despite his final order of removal.

89. Cao seeks immediate release to the extent that Respondents have redetained him for

the purpose of punishing him to send a message to similarly situated individuals for the purpose of encouraging those similarly situated persons to leave the United States before they share Cao's fate.

90. Although neither the Constitution nor the federal habeas statutes delineate the necessary content of habeas relief, *I.N.S. v. St. Cyr*, 533 U.S. 289, 337 (2001) (Scalia, J., dissenting) ("A straightforward reading of [the Suspension Clause] discloses that it does not guarantee any content to . . . the writ of habeas corpus"), implicit in habeas jurisdiction is the power to order release. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) ("[T]he habeas court must have the power to order the conditional release of an individual unlawfully detained.").

91. The Supreme Court has noted that the typical remedy for unlawful detention is release from detention. *See, e.g.*, *Munaf v. Geren*, 553 U.S. 674 (2008) ("The typical remedy for [unlawful executive detention] is, of course, release."); *see also Wajda v. United States*, 64 F.3d 385, 389 (8th Cir. 1995) (stating the function of habeas relief under 28 U.S.C. § 2241 "is to obtain release from the duration or fact of present custody.").

92. That courts with habeas jurisdiction have the power to order outright release is justified by the fact that, "habeas corpus is, at its core, an equitable remedy," *Schlup v. Delo*, 513 U.S. 298, 319 (1995), and that as an equitable remedy, federal courts "[have] broad discretion in conditioning a judgment granting habeas relief [and are] authorized . . . to dispose of habeas corpus matters 'as law and justice require.'" *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987) (quoting 28 U.S.C. § 2243). An order

of release falls under court's broad discretion to fashion relief. *See, e.g., Jimenez v. Cronen*, 317 F. Supp. 3d 626, 636 (D. Mass. 2018) ("Habeas corpus is an equitable remedy. The court has the discretion to fashion relief that is fair in the circumstances, including to order an alien's release.").

93. Immediate release is an appropriate remedy in this case.

CAUSE OF ACTION

COUNT ONE: DECLARATORY RELIEF

94. Cao re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

95. Cao requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Cao is detained pursuant to 8 U.S.C. § 1231(a)(1).

96. Cao requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Cao has previously demonstrated to ICE's satisfaction that there is no significant likelihood of his removal in the reasonably foreseeable future ("NSLRRFF").

97. Cao requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that ICE did not rebut Cao's prior NSLRRFF showing prior to redetaining him.

98. Cao requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that until ICE rebuts Cao's prior NSLRRFF showing, Cao may not be redetained.

COUNT TWO: VIOLATION OF THE IMMIGRATION & NATIONALITY ACT – 8 C.F.R. § 241.13(i)(2)-(3)

99. Cao re-alleges and incorporates by reference each allegation contained in ¶¶ 1-93 as if set forth fully herein.

100. Section 1231(a)(1)-(3) of Title 8 of the U.S. Code and 8 C.F.R. § 241.13(i)(2)-(3) governs the detention, release, and redetention of aliens with final orders of removal.

101. Respondents have failed to comply with these provisions prior to redetaining Petitioner after Petitioner's release on an OOS.

102. No independent alternative basis supports Respondents' decision to redetain Petitioner.

103. Petitioner is therefore detained in violation of the INA.

COUNT THREE: VIOLATION OF THE FIFTH AMENDMENT

104. Cao re-alleges and incorporates by reference each allegation contained in ¶¶ 1-93 as if set forth fully herein.

105. The Fifth Amendment Due Process Clause protects against arbitrary detention and requires that detention be reasonably related to its purpose and accompanied by adequate procedures to ensure that detention is serving its legitimate goals. It further requires that detention cease when a noncitizen has established to the government's satisfaction that there is no significant likelihood of removal in the reasonably foreseeable future after the noncitizen has been ordered removed and has served six months in post-removal-order custody.

106. Cao is no longer subject to mandatory custody under the Immigration & Nationality Act. He has served more than six months in civil immigration detention. In order to terminate his prior detention, he established to the government's satisfaction that there was no significant likelihood of removal in the reasonably foreseeable future.

The government has not rebutted this with credible evidence. The government does not presently have a travel document for Cao. There are no new circumstances that otherwise justify Cao's redetention. Thus, Respondents have violated Cao's Fifth Amendment guarantee of due process.

107. Respondents have also independently violated Cao's Fifth Amendment due process right by incarcerating him to punish him and to otherwise send a message to similarly situated individuals that they must leave the United States to avoid a similar fate.

COUNT FOUR: VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT – CONTRARY TO LAW AND ARBITRARY AND CAPRICIOUS AGENCY POLICY

108. Cao re-alleges and incorporates by reference each allegation contained in ¶¶ 1-93 as if set forth fully herein.

109. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

110. Respondents have failed to articulate any reasoned explanation for redetaining Petitioner.

111. Respondents have failed to articulate any reasoned explanation for deviating from or otherwise ignoring or failing to comply with the plain language of 8 C.F.R. § 241.13(i)(2)-(3).

112. Respondents' decisions, which represent changes in the agencies' policies and

positions, have considered factors that Congress did not intend to be considered, have entirely failed to consider important aspects of the case, and have offered explanations for their decisions that run counter to the evidence before the agencies.

113. Respondents' decision to redetain Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

PRAYER FOR RELIEF

WHEREFORE, Petitioner, Phu Cao, asks this Court for the following relief:

1. Assume jurisdiction over this matter.

2. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under 28 U.S.C. Ch. 153.

    a. Issue an Order to Show Cause ordering Respondents to state the true cause of Petitioner's detention within 7 days of the Court's issuance of the OSC.

    b. Pursuant to 28 U.S.C. § 1657, issue an Order shortening the time for making any objections to the magistrate's forthcoming Report & Recommendation from 14 days to 5 days

3. Issue an emergency preliminary order restraining Respondents from attempting to move Cao from the State of Oklahoma during the pendency of this Petition.

4. Issue an emergency preliminary order requiring Respondents to provide 72-hour notice of any intended movement of Cao.

5. Issue an emergency preliminary order requiring Respondents to give Cao due process prior to removing him to an allegedly safe third country in the form of a full merits hearing for asylum, withholding of removal, and DCAT before an

immigration judge relating to the proposed country of removal with a right to an administrative appeal to the Board of Immigration Appeals.

6. Order Cao's immediate release subject to the conditions of his prior OOS and add that Cao must be permitted to move to New York to live with his wife.

7. Declare that Respondents' action is arbitrary and capricious.

8. Declare that Respondents failed to adhere to binding regulations and precedent.

9. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

10. Permanently enjoin Respondents from redetaining Cao under 8 C.F.R. § 241.13(i)(2)-(3) unless and until Respondents have obtained a travel document allowing for Respondent's removal from the United States.

11. Permanently enjoin Respondents from redetaining Cao under 8 C.F.R. § 241.13(i)(2)-(3) for more than three days after receiving a travel document.

12. Permanently enjoin Respondents from deporting Cao to an allegedly safe third country without first giving Cao due process in the form of a full merits hearing for asylum, withholding of removal, and DCAT before an immigration judge relating to the proposed country of removal with a right to an administrative appeal to the Board of Immigration Appeals.

13. Grant Cao reasonable attorney fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A).

14. Grant all further relief this Court deems just and proper.

DATED: November 22, 2025

Respectfully submitted,

RATKOWSKI LAW PLLC

/s/ Nico Ratkowski

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Attorney for Petitioner

Verification by Petitioner Pursuant to 28 U.S.C. § 2242

I am submitting this verification because I am the Petitioner. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding my detention status, are true and correct to the best of my knowledge. I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that all of the factual allegations and statements in the Petition are true and correct to the best of my knowledge and belief.

/s/ Phu Cao Dated: November 22, 2025
Phu Cao