

Robert G. Cummings
Lead Attorney
Law Offices of Robert G. Cummings
2000 Broadway Street
Redwood City, CA 94063
650-363-7280
rgc@rgclegal.org

DETAINED

Attorney for Petitioner, Vo Van Phung,

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

VO, VAN PHUNG,

Petitioner,

vs.

Warden of the Golden State Annex Detention
Facility, et al.

Respondents.

Case No. 1:25-cv-01870-JLT-SKO(HC)

**EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

I. NOTICE OF MOTION

PLEASE TAKE NOTICE that Petitioner Van Phung Vo, through newly retained counsel, respectfully moves this Court for issuance of a **Temporary Restraining Order (“TRO”) and Preliminary Injunction** pursuant to Federal Rule of Civil Procedure 65, 28 U.S.C. §§ 2241 and 2243, and this Court’s inherent equitable authority, seeking immediate release from immigration detention or, alternatively, an order enjoining continued detention absent lawful statutory and constitutional justification.

This Motion is based upon the accompanying Memorandum of Points and Authorities, Petitioner’s Declaration, the pleadings on file, and any argument permitted by the Court.

1 **II. INTRODUCTION**

2 Petitioner has now been detained by Immigration and Customs Enforcement (“ICE”) for
3 more than six months following a final order of removal, with no significant likelihood that
4 removal will occur in the reasonably foreseeable future.

5 His continued detention violates the Fifth Amendment Due Process Clause and exceeds
6 the statutory limitations recognized in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

7 Petitioner was previously released from post-order custody and later re-detained without
8 meaningful procedural safeguards, individualized findings, or evidence that removal is
9 significantly likely to occur.

10 Absent emergency intervention, Petitioner will continue to suffer unlawful civil detention
11 in violation of federal law and the Constitution.

12 **III. PROCEDURAL POSTURE AND RECENT RETENTION OF COUNSEL**

13 Petitioner respectfully informs the Court that the present Emergency Motion is being filed
14 immediately upon the recent retention of undersigned counsel.

15 Until this time, Petitioner had been proceeding in this matter **pro se while detained in**
16 **immigration custody**. As an unrepresented, detained noncitizen without formal legal training,
17 Petitioner was unaware of his right to seek emergency injunctive relief including a Temporary
18 Restraining Order and Preliminary Injunction to challenge the legality of his continued post-
19 order detention.

20 Petitioner’s prior habeas filings were prepared without the assistance of counsel and
21 without a full understanding of the procedural mechanisms available to secure immediate judicial
22 intervention. His detention significantly limited his access to legal materials, communication
23 resources, and the ability to investigate and develop the evidentiary record necessary to support
24 emergency relief.

25 Undersigned counsel was retained only recently and now brings this Motion at the earliest
26 practicable opportunity after reviewing the detention history, procedural posture, and
27 constitutional violations at issue. The timing of this filing reflects not delay, but rather
28 Petitioner’s prior unrepresented status and lack of awareness of his right to seek expedited

injunctive protection from ongoing unlawful detention.

Courts routinely recognize that newly retained counsel may supplement pro se habeas pleadings and seek emergency relief where fundamental liberty interests remain at stake.

IV. FACTUAL BACKGROUND

A. Final Order of Removal

Petitioner is a native and citizen of Vietnam subject to a final order of removal issued April 24, 2001.

B. Prior Release From Post-Order Detention

After completing a criminal sentence, Petitioner was released from ICE custody in 2007 under an Order of Supervision and remained living in the community for about 20 years.

C. Re-Detention

ICE re-detained Petitioner on or about June 18, 2025, revoking his prior release.

He has remained continuously detained since that date.

D. Length of Detention

As of February 11, 2026, Petitioner has been detained approximately eight months following re-detention well beyond the six-month presumptive detention period recognized by the Supreme Court.

E. Lack of Foreseeable Removal

To date:

- No travel document has been issued.
- No removal flight scheduled.
- No consular acceptance confirmed.
- No removal timeline provided.

Respondents rely solely on speculative assertions that removal may occur.

V. LEGAL STANDARD

A Temporary Restraining Order and Preliminary Injunction may issue where the movant demonstrates:

1. Likelihood of success on the merits
2. Likelihood of irreparable harm
3. Balance of equities tips in petitioner's favor
4. Injunction serves the public interest

Winter v. NRDC, 555 U.S. 7 (2008).

Unlawful civil detention constitutes irreparable harm as a matter of law.

VI. ARGUMENT

A. Petitioner Is Likely To Succeed On The Merits

1. Detention Exceeds Zadvydas Presumptive Limit

Under Zadvydas v. Davis:

- Post-order detention is presumptively reasonable for six months.
- After six months, continued detention is permissible only where removal is significantly likely in the reasonably foreseeable future.

Petitioner's detention exceeds that threshold.

2. Government Has Not Rebutted Lack of Foreseeable Removal

Respondents offer only generalized statements that travel documents are being pursued.

Courts consistently hold such assertions insufficient. See:

- Hoac v. Becerra, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771 (E.D. Cal. Jul. 16, 2025)
- Phan v. Becerra, No. 2:25-cv-01757-DC-JDP, 2025 WL 1993735

(E.D. Cal. Jul. 16, 2025).

3. Petitioner Is Stuck In “Removable-But-Unremovable Limbo”

The Ninth Circuit recognizes habeas relief where removal is not realistically achievable. Petitioner’s prolonged detention without travel documents demonstrates precisely such limbo.

B. Re-Detention Violated Governing Regulations

ICE previously released Petitioner.

To revoke release, ICE must:

- Make individualized determination.
- Show changed circumstances.
- Demonstrate likelihood of removal.
- Provide notice and opportunity to respond.

See 8 C.F.R. §§ 241.4, 241.13.

No such process occurred.

Failure to follow governing regulations independently warrants habeas relief.

C. Continued Detention Violates Due Process

Civil immigration detention must bear a reasonable relation to its purpose effectuating removal.

Where removal is not foreseeable, detention becomes punitive and unconstitutional.

Zadvydas, 533 U.S. at 690.

VII. IRREPARABLE HARM

Petitioner suffers ongoing irreparable harm:

- Loss of physical liberty.
- Prolonged civil incarceration.
- Psychological and emotional distress.
- Separation from family and community.

1 No post-hoc remedy can cure unlawful detention.

2
3 **VIII. BALANCE OF EQUITIES**

4 The equities strongly favor release:

- 5 • Petitioner previously lived in the community under supervision.
- 6 • Government shows no imminent removal.
- 7 • Continued detention serves no statutory purpose.

8
9 **IX. PUBLIC INTEREST**

10 The public interest is served by:

- 11 • Enforcing constitutional protections.
- 12 • Preventing unlawful civil detention.
- 13 • Ensuring agency compliance with federal law.

14 **X. REQUEST FOR RELIEF**

15 Petitioner respectfully requests that this Court:

- 16 1. Issue a Temporary Restraining Order.
- 17 2. Enjoin Respondents from continuing to detain Petitioner.
- 18 3. Order Petitioner's immediate release under appropriate supervision.
- 19 4. Alternatively, order Respondents to show cause within 48–72 hours.
- 20 5. Convert the TRO to a Preliminary Injunction.
- 21 6. Grant any further relief deemed just and proper.

22
23 **XI. REQUEST FOR EXPEDITED CONSIDERATION**

24 Given the ongoing deprivation of liberty, Petitioner requests emergency adjudication

25 without awaiting full briefing.

26
27 **XII. CONCLUSION**

28 Petitioner's prolonged post-order detention absent any significant likelihood of removal.

violates federal statutory and constitutional law.

Emergency injunctive relief is necessary to prevent continued unlawful incarceration.

Date: February 11, 2026

/S/RobertG.Cummings
Robert G. Cummings
Attorney for Petitioner

LAW OFFICES OF ROBERT G. CUMMINGS
The Fitzpatrick Building
2000 Broadway Street
Redwood City, CA 94063

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Lead Attorney
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**DECLARATION OF VAN PHUNG VO
IN SUPPORT OF EMERGENCY MOTION
FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

I, **Van Phung Vo**, declare as follows:

1. Personal Background

1. My name is Van Phung Vo.

2. I am a native and citizen of Vietnam.

3. I am currently detained in the custody of Immigration and Customs
Enforcement (ICE) at the Golden State McFarland Detention Facility in McFarland,
California.

4. I make this declaration in support of my Emergency Motion for Temporary

1 Restraining Order and Preliminary Injunction seeking release from prolonged immigration
2 detention.

3
4 **2. Final Order of Removal**

5 5. I am subject to a final order of removal that was issued on or about April
6 24, 2001.

7 6. I understand that this order has been final for many years.

8
9 **3. Prior Release From Immigration Custody**

10 7. After completing my criminal sentence, I was taken into ICE custody.

11 8. In or around 2007, ICE released me from detention under an Order of
12 Supervision.

13 9. While on supervision, I complied with ICE reporting requirements.

14 10. I lived in the community and did not attempt to abscond or evade
15 immigration authorities.

16 **4. Re-Detention by ICE**

17 11. On or about June 18, 2025, ICE re-detained me.

18 12. I was taken back into custody without warning.

19 13. I was not provided a meaningful explanation as to why my release was
20 revoked.

21 14. I was not given an opportunity to challenge my re-detention before being
22 taken into custody.

23
24 **5. Length of Current Detention**

25 15. Since June 18, 2025, I have remained continuously detained.

26 16. As of the date of this declaration, I have been detained for approximately
27 eight months.

28 17. I understand that this exceeds the six-month period referenced in

1 immigration detention case law.

2
3 **6. Lack of Travel Documents or Removal Date**

- 4 18. To my knowledge, ICE has not obtained travel documents for my removal.
5 19. I have not been told that a travel document has been issued.
6 20. I have not been given a date for removal.
7 21. I have not been told that my removal is scheduled.
8 22. I am not aware of any country agreeing to accept me at this time.

9
10 **7. Hardship of Continued Detention**

- 11 23. My continued detention has caused me severe emotional and psychological
12 hardship.
13 24. Being detained for months without knowing if or when I will be released
14 has caused me stress and anxiety.
15 25. I am separated from my family and community.
16 26. I worry daily about how long I will remain detained.
17 27. Civil immigration detention feels like punishment even though I am not
18 serving a criminal sentence.

19 **8. Prior Pro Se Status and Lack of Legal Knowledge**

- 20 28. Before retaining my current attorney, I was representing myself in this
21 habeas case.
22 29. I do not have legal training.
23 30. I filed my petition without the assistance of a lawyer.
24 31. While detained, my access to legal materials and legal guidance has been
25 extremely limited.

26 **9. Lack of Awareness of Right to Seek Emergency Relief**

- 27 32. Until recently, I was unaware that I had the right to request emergency
28

1 relief such as a Temporary Restraining Order or Preliminary Injunction.

2 33. I did not know I could ask the Court to intervene immediately to review my
3 detention.

4 34. I believed I had to wait for the normal court process to conclude.

5
6 **10. Recent Retention of Counsel**

7 35. I only recently retained undersigned counsel to represent me in this matter.

8 36. After reviewing my case, my attorney informed me that I could seek
9 emergency injunctive relief.

10 37. This motion is being filed promptly after counsel was retained and after my
11 legal options were explained to me.

12 **11. Desire for Release Under Supervision**

13 38. If released, I am willing to comply with any conditions imposed by the
14 Court or ICE.

15 39. I am willing to report as required.

16 40. I am willing to follow all supervision rules.

17
18 **12. Continuing Harm**

19 41. Every additional day I remain detained causes further harm to my liberty
20 and well-being.

21 42. I respectfully request that the Court order my release while my habeas case
22 proceeds.

23 I declare under penalty of perjury under the laws of the United States that the foregoing is
24 true and correct to the best of my knowledge.

25 **Executed on:** February 11, 2026

26 **At:** Golden State McFarland Detention Facility, California

27 /s/Van Phung Vo____
28 Van Phung Vo
Petitioner, Declarant