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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)

**MOTION TO AMEND AND
SUPPLEMENT PETITION FOR WRIT
OF HABEAS CORPUS**

I. NOTICE OF MOTION

PLEASE TAKE NOTICE that Petitioner Van Phung Vo, through newly retained counsel, respectfully moves this Court for leave to amend and supplement his Petition for Writ of Habeas Corpus pursuant to:

- 28 U.S.C. § 2242
- Federal Rule of Civil Procedure 15(a)
- This Court's equitable habeas authority

Petitioner seeks to file a First Amended and Supplemental Petition to clarify claims, supplement the factual record, and incorporate legal arguments not fully developed in his prior pro se filing.

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1
2 **II. INTRODUCTION**

3 Petitioner originally filed his habeas petition pro se while detained in immigration custody
4 and without the assistance of counsel.

5 Undersigned counsel was retained only recently and has since reviewed the procedural
6 posture, detention history, and legal issues presented.

7 Petitioner now seeks leave to amend and supplement the petition to ensure that the Court
8 adjudicates this matter on a fully developed factual and legal record particularly given the
9 ongoing deprivation of liberty at stake.

10 Amendment will not prejudice Respondents and will aid the Court in resolving the legality
11 of Petitioner's continued detention.

12 **III. LEGAL STANDARD**

13 Habeas petitions may be amended or supplemented as provided in the rules of civil
14 procedure.

15 28 U.S.C. § 2242 expressly permits amendment of habeas pleadings.

16 Additionally, Federal Rule of Civil Procedure 15(a)(2) provides that courts should "freely
17 give leave when justice so requires."

18 Courts routinely allow amendment where:

- 19 • Petition was filed pro se.
20 • Counsel is newly retained.
21 • Liberty interests remain ongoing.

22
23 **IV. BASIS FOR AMENDMENT AND SUPPLEMENTATION**

24 Petitioner respectfully seeks leave to amend for the following reasons:

25
26 **A. Prior Petition Was Filed Pro Se**

27 Petitioner prepared and filed the original habeas petition without legal training or the
28 assistance of counsel.

1 While detained, Petitioner had limited access to legal resources and lacked the ability to
2 fully develop legal theories, supporting evidence, and procedural arguments relevant to his
3 detention.

4
5 **B. Newly Retained Counsel**

6 Undersigned counsel was retained only recently and brings this motion at the earliest
7 practicable opportunity.

8 Counsel has identified additional legal and factual grounds that warrant supplementation
9 of the record, including:

- 10
- Updated detention duration.
 - Lack of travel document progress.
 - Procedural defects in re-detention.
 - Expanded constitutional claims.
- 13

14 **C. Clarification and Expansion of Legal Claims**

15 The proposed amended petition will clarify and expand upon existing grounds, including:

- 16
1. Prolonged post-order detention under *Zadvydas v. Davis*.
 - 17 2. Lack of significant likelihood of removal in the reasonably foreseeable
18 future.
 - 19 3. Procedural violations in revocation of release.
 - 20 4. Due process violations arising from indefinite civil detention.

21 These claims were raised in substance but require fuller development.

22
23 **D. Supplementation of Factual Record**

24 Since the original filing:

- 25
- Additional time in detention has accrued.
 - 26 • No removal date has been issued.
 - 27 • No travel documents have been secured.

28 Supplementation ensures the Court evaluates detention based on current facts.

E. No Prejudice to Respondents

Amendment will not prejudice the Government because:

- The case remains pending.
- No evidentiary hearing has occurred.
- Respondents may respond to the amended petition.

Courts favor resolving habeas claims on their merits rather than on technical pleading limitations.

V. RELATION TO EMERGENCY INJUNCTIVE RELIEF

Petitioner has contemporaneously filed an Emergency Motion for Temporary Restraining Order and Preliminary Injunction.

This Motion to Amend does not seek to delay emergency adjudication but instead ensures the Court has a complete record while evaluating the legality of detention.

VI. REQUEST FOR LEAVE

Petitioner respectfully requests leave to file a First Amended and Supplemental Petition for Writ of Habeas Corpus attached hereto as **Exhibit A**.

VII. CONCLUSION

Because Petitioner filed his original habeas petition pro se, has now retained counsel, and continues to suffer ongoing unlawful detention, leave to amend and supplement should be freely granted.

Petitioner respectfully requests that the Court grant this Motion and deem the attached Amended Petition filed.

Date: February 11, 2026

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**FIRST AMENDED AND
SUPPLEMENTAL PETITION
FOR WRIT OF HABEAS CORPUS
(28 U.S.C. § 2241)**

I. JURISDICTION

1. This Court has jurisdiction pursuant to 28 U.S.C. § 2241 because Petitioner is in federal immigration custody in violation of the Constitution and laws of the United States.

2. Jurisdiction is also proper under 28 U.S.C. § 1331 and the Fifth Amendment Due Process Clause.

II. VENUE

3. Venue lies in this District because Petitioner is detained within this judicial district at Golden State McFarland Detention Facility.

1
2 **III. PARTIES**

3 4. Petitioner Van Phung Vo is a native and citizen of Vietnam currently
4 detained by ICE.

5 5. Respondents are federal officials responsible for Petitioner's custody.

6
7 **IV. PROCEDURAL BACKGROUND**

8 6. Petitioner previously filed a habeas petition pro se while detained and
9 without the assistance of counsel.

10 7. Undersigned counsel was retained on or about February 10, 2026.

11 8. This First Amended Petition supplements and clarifies the prior pro se
12 filing to ensure adjudication on a fully developed record.

13 **V. FACTUAL BACKGROUND**

14
15 **A. Final Order of Removal**

16 9. Petitioner is subject to a final order of removal issued April 24, 2001.

17
18 **B. Prior Post-Order Release**

19 10. Following immigration custody, Petitioner was released under an Order of
20 Supervision in or about 2007.

21 11. He complied with ICE reporting requirements and lived in the community.

22
23 **C. Re-Detention**

24 12. ICE re-detained Petitioner on or about June 18, 2025.

25 13. He was taken into custody without meaningful notice or opportunity to
26 challenge the revocation of release.

27 **D. Length of Detention**
28

1 14. Petitioner has now been detained approximately eight months post-re-
2 detention.

3 15. This exceeds the six-month presumptive detention limit recognized by the
4 Supreme Court.

5
6 **E. Lack of Foreseeable Removal**

7 16. ICE has not obtained travel documents.

8 17. No removal flight has been scheduled.

9 18. No consular acceptance has been confirmed.

10 19. No removal timeline has been provided.

11 **VI. CLAIMS FOR RELIEF**

12
13 **CLAIM ONE**

14 **Prolonged Post-Order Detention**

15 (Violation of 8 U.S.C. § 1231 and Fifth Amendment)

16 20. Petitioner re-alleges prior paragraphs.

17 21. Under *Zadvydas v. Davis*, post-order detention is presumptively reasonable
18 for six months.

19 22. After six months, continued detention is lawful only if removal is
20 significantly likely in the reasonably foreseeable future.

21 23. Petitioner's detention exceeds that period.

22 24. Respondents cannot demonstrate a significant likelihood of removal.

23 25. Continued detention is therefore unlawful.

24
25 **CLAIM TWO**

26 **Lack of Significant Likelihood of Removal**

27 26. ICE has failed to secure travel documents.

28 27. No removal date exists.

1 28. Courts have granted habeas relief under similar circumstances involving
2 Vietnamese nationals where removal was not foreseeable.

3 29. Petitioner is effectively confined in “removable-but-unremovable limbo.”
4

5 **CLAIM THREE**

6 **Unlawful Re-Detention / Revocation of Release**

7 30. ICE previously released Petitioner under supervision.

8 31. To revoke release, ICE must comply with regulatory procedures, including:

- 9 • Individualized review
10 • Evidence of changed circumstances
11 • Assessment of removal likelihood

12 32. ICE failed to provide meaningful process before re-detaining Petitioner.

13 33. Failure to follow governing regulations renders detention unlawful.
14

15 **CLAIM FOUR**

16 **Violation of Procedural Due Process**

17 34. Civil detention must bear a reasonable relation to its purpose effectuating
18 removal.

19 35. Where removal is not foreseeable, detention becomes punitive.

20 36. Indefinite detention without process violates the Fifth Amendment.
21

22 **CLAIM FIVE**

23 **Statutory and Regulatory Violations**

24 37. ICE is bound by post-order custody review regulations.

25 38. Continued detention without demonstrable removal likelihood violates
26 these statutory limits.

27 **VII. IRREPARABLE HARM**

28 39. Petitioner suffers ongoing deprivation of physical liberty.

40. Continued detention causes psychological, emotional, and familial harm.

41. No post-hoc remedy can cure unlawful incarceration.

VIII. EXHAUSTION

42. Petitioner has no meaningful administrative remedy to challenge prolonged detention.

43. Habeas corpus is the only effective avenue for relief.

IX. REQUEST FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Grant the Petition for Writ of Habeas Corpus.
2. Order Petitioner's immediate release under appropriate supervision.
3. Declare his continued detention unlawful.
4. Grant any further relief deemed just and proper.

Date: February 11, 2026

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