

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

PHONG TAN LAM,

Petitioner,

v.

JOSEPH B. EDLOW, Director, Immigration
And Customs Enforcement;

GARRETT RIPA, Director, Miami Field
office, Enforcement and Removal
Operations, Immigrations and Customs
Enforcement; and

KRISTI NOEM, Secretary, United States
Department of Homeland Security,

Respondents.

**EMERGENCY HEARING
REQUESTED
TEMPORARY RESTRAINING
ORDER REQUESTED**

Case No.:

**EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS,
PURSUANT TO 28 U.S.C. § 2241**

COMES NOW, Petitioner herein, by and through his undersigned Counsel of record, and submits this Petition challenging his ongoing detention at the Everglades Detention Facility.

I. INTRODUCTION

1. Petitioner is a 52-year-old native of Vietnam. He was lawfully admitted to the United States as a permanent resident on November 3, 1980. *See* Exhibit A, attached hereto and incorporated herein by reference.

2. As a native of Vietnam, removal of the Petitioner is governed by the 2020 Memorandum of Understanding entered into by the Department of Homeland Security and the Ministry of Public Security of the Socialist Republic of Vietnam (MOU). *See* Exhibit B, attached hereto and incorporated herein by reference.

3. An Immigration Judge ordered Petitioner removed on December 5, 2004. *See* Exhibit C, attached hereto and incorporated herein by reference.

4. On June 4, 2003, INS, precursor to DHS, determined that Petitioner was eligible for release under conditions. *See* Exhibit D, attached hereto and incorporated herein by reference.

5. Petitioner has been under an Order of Supervision since at least June 29, 2016. *See* Exhibit E.

6. Pursuant to Section 8 of the 2020 MOU, ICE obtained a "Self Declaration Form" from Petitioner on November 1, 2025. Exhibit A.

7. Petitioner has at all times fully complied with the Order of Supervision and conditions for release since June, 2003.

8. On or about October 29, 2025 ICE re-detained Petitioner. Respondents have provided no evidence of any change in circumstances that warrant his detention. Respondents have offered no evidence to indicate removal to Vietnam is significantly likely in the reasonably foreseeable future.

9. Petitioner's current detention is governed exclusively by INA § 241, 8 U.S.C. § 1231, as construed by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), and *Clark v. Martinez*, 543 U.S. 371 (2005). Because there is no significant likelihood of removal in the reasonably foreseeable future, continued detention violates both the statute and the Due Process Clause of the Fifth Amendment.

II. JURISDICTION

10. Petitioner is in the physical custody of Respondents, United States Immigration and Customs Enforcement ("ICE") through its division Enforcement and Removal Operations ("ERO"), both divisions of the Department of Homeland Security (DHS). This chain will be referred to herein as "ICE-ERO[.]"

11. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA) 8 U.S.C. § 1101, *et seq.*

12. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 2241, 28 U.S.C. § 1331, and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause) and its inherent equitable powers.

13. Nothing in 8 U.S.C. § 1252 strips this Court of jurisdiction to hear constitutional or legal challenges to prolonged immigration detention. *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018); *Demore v. Kim*, 538 U.S. 510, 517 (2003).

III. VENUE

14. Petitioner is detained by ICE-ERO at the Everglades Detention Facility, located at 54575 Tamiami Trail, E, Ochopee, FL, 34141.

IV. PARTIES

15. Petitioner is currently detained at Everglades Detention Facility, located at 54575 Tamiami Trail, E, Ochopee, FL, 34141.


16. Respondent **Kristi Noem** is the Secretary of the Department of Homeland Security (DHS) and is sued in her official capacity as a legal custodian of Petitioner.

17. Respondent **Todd Lyons** is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity as a legal custodian of Petitioner.

18. Respondent **Garrett Ripa** is the Field Office Director of the Miami Field Office of Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement. He is Petitioner's immediate custodian and is sued in his official capacity.

19. Respondents Department of Homeland Security and U.S. Immigration and Customs Enforcement are the federal agencies responsible for Petitioner's detention.

V. FACTUAL ALLEGATIONS

17. Petitioner was born in the country of Vietnam on 

Petitioner departed Vietnam in 1979. Petitioner has no legal status in Vietnam. *See* Exhibit A.

18. Petitioner was admitted to the United States on November 3, 1980 as a lawful permanent resident. *See* Exhibit A.

19. Petitioner was charged with violations of Florida State law in 1999. *See* Exhibit F, attached hereto and incorporated herein by reference. He was charged with possession of cocaine and possession of drug paraphernalia. Petitioner entered a plea of guilty to the charged offenses. Adjudication was withheld pending completion of 18 months of probation. Petitioner successfully completed probation. Ex. F.

21. Petitioner was ordered removed from the United States on December 5, 2002. *See* Exhibit C, attached hereto and incorporated herein by reference.

22. INS, precursor to DHS, previously determined Petitioner was eligible for release from custody on June 4, 2003. Ex. D.

24. Petitioner has remained in the United States, under this Order of Supervision until on or about October 29, 2025, when ICE-ERO decided to re-detain him.

VI. LEGAL ARGUMENT

29. INA § 241(a)(1)(B)(i) and 8 U.S.C. § 1231(a)(1)(B)(i), provides that the removal period begins on “the date the order of removal becomes administratively

final.” The order became final on December 5, 2002.

30. The mandatory 90-day removal period and the presumptively reasonable six-month period recognized in *Zadvydas* expired in June, 2003, when INS, precursor to DHS, determined Petitioner was eligible for release.

31. INS precursor to DHS, June 4, 2003 factual finding that removal was not significantly likely in the reasonably foreseeable future is entitled to issue-preclusion effect in this *habeas* proceeding. *United States v. Valdiviez-Garza*, 669 F.3d 1199 (11th Cir. 2012).

32. INA § 236(c) mandatory detention applies only “when the alien is released” from criminal custody. 8 U.S.C. § 1226(c)(1). Should DHS argue that probation under a deferred adjudication of guilt is tantamount to criminal custody, that trigger expired when Respondent was released from the supervision of State of Florida probation in 2003. *Jennings v. Rodriguez*, 138 S. Ct. 830, 847 (2018).

33. Respondents cannot revive expired § 1226(c) authority over 20 years later.

34. *Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001), holds that detention under INA § 241(a)(6) is presumptively unreasonable after six months if there is no significant likelihood of removal in the reasonably foreseeable future.

35. *Clark v. Martinez*, 543 U.S. 371, 378 (2005), extended *Zadvydas* to aggravated felons whose removal is impossible in fact.

36. The Eleventh Circuit enforces this framework. *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (per curiam) (burden shifts to government after petitioner shows no significant likelihood of removal); *see also Farah v. U.S. Att'y Gen.*, 12 F.4th 1312, 1319–20 (11th Cir. 2021) (applying *Akinwale* to require government's evidentiary rebuttal).

37. Petitioner can easily meet his initial burden. Respondents have produced no evidence of any travel documents, or response from Vietnam under the terms of the 2020 MOU. As Section 8, Paragraph 3 of that document notes, Vietnam is obligated to provide an answer within 30 days of any travel document request. Petitioner complied with his duty and executed the mandated "Self Declaration Form" on November 1, 2025. Ex. A. There has been no response from Vietnam provided by Respondents.

38. Civil detention that serves no legitimate civil purpose and is punitive in effect violates substantive due process. *Kansas v. Hendricks*, 521 U.S. 346, 368 (1997); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

39. Re-incarcerating a fully compliant supervisee more than twenty years after INS, precursor to DHS, conceded removal is improbable serves no civil immigration purpose and is purely punitive.

40. Petitioner incorporates all prior paragraphs and moves for a temporary restraining order pursuant to Fed. R. Civ. P. 65(b) ordering his

immediate release pending adjudication of this petition.

41. Petitioner satisfies every factor: (1) overwhelming likelihood of success on the merits under *Zadvydas, Clark, and Benitez*; (2) irreparable injury each day he remains detained; (3) the balance of equities and public interest strongly favor liberty over indefinite detention when removal is impossible.

VII. RELIEF REQUESTED

WHEREFORE, Petitioner respectfully requests that this Court:

A. Issue the writ of *habeas corpus* and order Petitioner's **immediate release** under the same or equivalent conditions as his 2006 Order of Supervision;

B. In the alternative, order an individualized bond hearing within seven (7) days at which Respondents bear the burden of proving by clear and convincing evidence that Petitioner poses a danger or flight risk justifying continued detention, or that there is a significant likelihood of removal in the reasonably foreseeable future;

C. Grant the Emergency Motion for Temporary Restraining Order and order Petitioner's immediate release pending full adjudication;

D. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and

E. Grant such other relief as the Court deems just and proper.

Dated: December 22, 2025.

Respectfully submitted,

BRENNAN, MANNA & DIAMOND, P.L

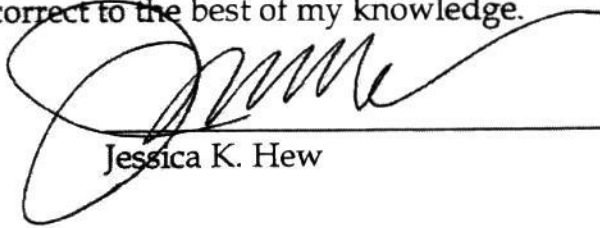
/s/ Jessica K. Hew

Jessica K. Hew – Florida Bar No.: 958018
D. Kim Radcliffe – Florida Bar No.: 83135
255 S. Orange Ave., Suite 700
Orlando, FL 32801-5007
Phone: (407) 392-0318
Primary Email: jkhew@bmdpl.com
Primary Email: dkradcliffe@bmdpl.com
Secondary: mbfernandes@bmdpl.com

VERIFICATION

I, Jessica K. Hew, Counsel for Petitioner, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Date: December 22, 2025



Jessica K. Hew

CERTIFICATE OF SERVICE

I hereby certify that on this, the 22nd day of December, 2025, I have caused to be served via email and first class, United States Mail a copy of this pleading with all exhibits to the United States Attorney's office for the Middle District of Florida, Fort Myers Division at U.S. Attorney's Office, U.S. Attorney's Office, 2110 First Street, Suite 3-137, Ft. Myers, FL 33901, together with a copy emailed to Chad Spraker at Chad.Spraker@usdoj.gov.

/s/ Jessica K. Hew

Jessica K. Hew