

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.

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HEARING REQUESTED  
TEMPORARY RESTRAINING  
ORDER REQUESTED

Case No.: 2:25-cv-1202

PETITIONER'S EMERGENCY MOTION FOR  
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION  
(Fed. R. Civ. P. 65(b); Local Rule 3.01(f))  
(EXPEDITED CONSIDERATION REQUESTED)

Petitioner, by and through his undersigned counsel, respectfully moves this Court for an emergency temporary restraining order ("TRO") without notice, followed by a preliminary injunction, ordering his **immediate release** from "ICE" custody pending full adjudication of the accompanying Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241(Dkt. 1). In support thereof, Petitioner states:

## I. LEGAL STANDARD

1. Fed. R. Civ. P. 65(b)(1) authorizes a TRO without written or oral notice if “specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition.”

2. The Eleventh Circuit evaluates TROs and preliminary injunctions under the same four-factor test: (a) substantial likelihood of success on the merits; (b) irreparable injury absent injunctive relief; (c) the threatened injury outweighs whatever damage the proposed injunction may cause the opposing party; and (d) the injunction would not be adverse to the public interest. *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1225–26 (11th Cir. 2005).

## II. PETITIONER SATISFIES EVERY FACTOR

### A. Substantial Likelihood of Success on the Merits

3. Petitioner’s detention is governed exclusively by INA § 241 and 8 U.S.C. § 1231, because his removal order became administratively final in December 5, 2002.

4. The Supreme Court has held that detention under § 241(a)(6) becomes presumptively unreasonable six months after the removal order becomes final if there is “no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

5. The *Zadvydas* presumption applies with full force to aggravated felons whose removal is impossible in fact. *Clark v. Martinez*, 543 U.S. 371, 378 (2005).

6. Here, INS, the precursor to DHS, itself determined in June, 2003 that it is not significantly likely in the reasonably foreseeable future that Petitioner could be removed to Vietnam when they allowed his release under supervision. See Exhibit A, attached hereto and incorporated herein by reference. That finding is entitled to issue-preclusion effect. *United States v. Valdiviez-Garza*, 669 F.3d 1199 (11th Cir. 2012).

7. Over twenty years have passed since that release. Memorandums of Understanding have been issued with Vietnam in 2008 and 2020. Petitioner has been under an Order of Supervision since 2003. DHS can offer nothing to demonstrate that there is any likelihood of Petitioner being issued travel documents to Vietnam. Further, it has been more than 30 days since Petitioner executed the required "Self Declaration Form." See Exhibit B, attached hereto and incorporated herein by reference. there has been no indication from Vietnam that they will issue a travel document, under the terms of Section 8, Paragraph 3, of the 2020 Memorandum. See Exhibit C, attached hereto and incorporated herein by reference. Respondents cannot rebut the *Zadvydas* presumption, for if there had been any change in Petitioner's removability, or travel documents issued by

Vietnam, it would have been a simple matter to gather the appropriate documents and remove Petitioner.

**B. Irreparable Injury Absent Immediate Relief**

8. “The loss of liberty is a quintessential irreparable injury.” *Roman v. Wolf*, 977 F.3d 935, 939 (9th Cir. 2020) (citing cases). Every additional day Petitioner remains detained constitutes irreparable harm.

9. Petitioner has been separated from his community since on or about October 29, 2025, and is held in prison-like conditions at Everglades Detention Facility.

10. Delay in granting relief will cause additional irreparable harm that cannot be undone by a later favorable judgment.

**C. Balance of Equities and Public Interest**

11. The Government has no legitimate interest in continuing to detain an individual it has already determined cannot be removed and who has fully complied with supervision for over sixteen years.

12. Re-incarcerating a compliant supervisee sixteen years after conceding removal is impossible serves no civil immigration purpose and is merely for impermissibly punitive effect. *Kansas v. Hendricks*, 521 U.S. 346, 368 (1997).

13. The public interest is served by preventing unconstitutional detention and by ensuring the Government follows Supreme Court and Eleventh Circuit

precedent.

14. Respondents will suffer no cognizable harm from releasing Petitioner under the same Order of Supervision that governed him successfully from 2003 to 2025.

#### **D. No Security Is Required**

15. This Court has discretion to require no bond when the restrained party is the United States or its officers. *See* Fed. R. Civ. P. 65(c).

### **III. EX PARTE RELIEF IS WARRANTED**

16. Immediate and irreparable injury will result before Respondents can be heard in opposition because Petitioner is suffering ongoing unconstitutional detention.

17. Counsel certifies that she is currently in contact with Attorney Chad Spraker at [Chad.Spraker@usdoj.gov](mailto:Chad.Spraker@usdoj.gov), who opposes this motion. A courtesy copy of this motion and the Petition will be delivered immediately upon filing to Chad Spraker.

### **IV. RELIEF REQUESTED**

WHEREFORE, Petitioner respectfully requests that this Court:

18. **Immediately issue** a Temporary Restraining Order, without notice or with the shortest possible notice, ordering Respondents, their officers, agents, employees, and all persons acting in concert with them to **release Petitioner**

**forthwith** from ICE custody under the same or equivalent conditions as his 2009 Order of Supervision;

19. Set this matter for a preliminary injunction hearing at the earliest possible date;

20. Waive any bond requirement; and

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

Dated: December 22, 2025.

**BRENNAN, MANNA AND DIAMOND, PL**

*/s/ Jessica K. Hew*

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**CERTIFICATE OF SERVICE**

I hereby certify that on this, the 22<sup>nd</sup> 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](mailto:Chad.Spraker@usdoj.gov).

/s/ Jessica K. Hew  
Jessica K. Hew