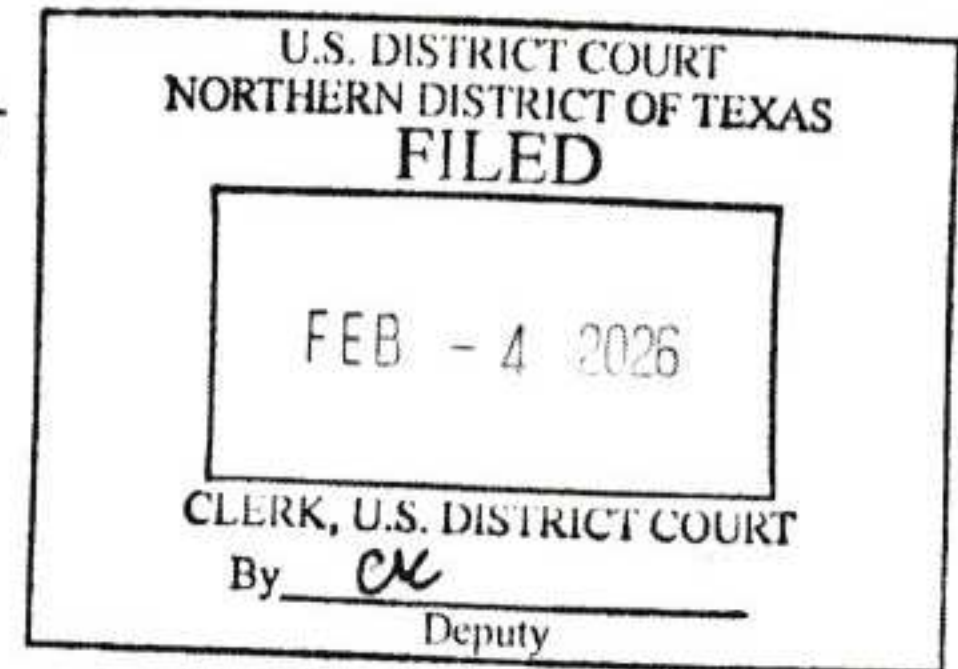


UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS, TEXAS



HAI T. DOAN,
Petitioner

v.

Brantley David Starr, Warden
Prairieland Detention Center
Respondent

3 - 26 CV - 286 - X
Case No. _____

MEMORANDUM OF LAW IN SUPPORT OF
EMERGENCY MOTION FOR HABEAS CORPUS RELIEF,
PURSUANT TO 28 U.S.C. SECTION 2241

Comes now, Hai T. Doan (Doan herein) pro se, petitioner, to respectfully request this Court allow him the right to apply for *collateral benefit* by granting a STAY or POSTPONEMENT, to the order of removal due to his pending Post-Conviction Relief motion (PCR) for violation of his Fifth and Sixth Amendment Rights guaranteed by the United States Constitution in the State of New Jersey, which is likely to prevail on the merits and if granted will return his status to Permanent Legal Resident thereby quashing the removal order.

In support thereof Doan puts forth the following:

JURISDICTION:

Under INA Sections 242(g) and 242(a)(5) and (b)(9) District Courts do NOT have jurisdiction to hear cases arising from ICE's decision to execute removal orders against noncitizens. However,

District Courts can procure jurisdiction to hear a lawsuit to protect a noncitizen's right to apply for a collateral immigration benefit. Here, Doan is not requesting this Court to address ICE's removal order but only stay, or postpone deportation, within the parameters of its jurisdiction and hear his right to apply for a collateral benefit afforded noncitizens. Thus, this claim **does not** arise from ICE's decision to execute its removal order. Further, the district court has jurisdiction over this claim presented under the Administration Procedure Act (APA) Section 705 to issue any order necessary order to "postpone the effective date of an agency action or to preserve status or rights" Id. As such, this Court can procure jurisdiction and hear this **Emergency Motion** allowing Doan to apply for and obtain the collateral benefit, or to postpone deportation, to avoid a miscarriage of justice.

GROUND ONE:

Doan requests this Court grant a STAY or, alternatively, Postponement, for the right to apply for and obtain the collateral benefit afforded non-citizens or, alternatively, a POSTPONEMENT under the Administrative Procedure Act, Section 705 thus having the same injunctive relief effect, so that he may remain in the United States pending the outcome of his pending Post Conviction Relief (PCR) motion in the State of New Jersey which, if granted, will return his status to Permanent Legal Resident.

RELEVANT FACTUAL BACKGROUND

Doan legally entered the United States in 1993 and was given Legal Permanent Residence status (LPR status). (Documents, **Attached**). At that time Viet Nam was not accepting Vietnamese citizens to repatriate. In 2008 Viet Nam and the United States entered an agreement whereby Viet Nam would only repatriate citizens who arrived in the United States on or after July, 1995 the date which diplomatic relations between the countries was restored. This agreement effectively protected Viet Nam immigrants who came as refugees before July 12, 1995 from deportation, even if they committed aggravated felonies. In 2017 the United States changed its stance and began detaining some Vietnamese, but did not begin removal until 2020 based on a Memorandum of Understanding (MOU) signed in 2020. However, Viet Nam still must issue necessary travel documents for removal to occur.

In 2004 Doan pled guilty to an aggravated felony in the State of New Jersey of conspiracy to possess with intent to distribute a controlled substance (i.e. Ecstasy). Doan obtained an attorney who advised him to plead guilty to the charges. Doan pled guilty and received 2 year of incarceration and was incarcerated from 2004 -2006. More Important here, Doan's attorney told him that he could **never be deported** but failed to inform him of the actual law of deportation of an LPR person based on the law that any person who commits an aggravated felony is subject to deportation. (PCR Motion, Affidavit, Para. 7 & 9). The attorney never informed Doan that this law does not make any exceptions. (See, 8 U.S.C. Section 1101(a)(43)). The statute is inflexible. However, because of the spirit of the agreement between the United

States and Viet Nam, ante, Immigration Customs Enforcement (ICE) was not deporting Vietnamese persons who entered the United States prior to 1993.

However, recently, in June, 2025 the inevitable happened and ICE **formally** rescinded its policy generally finding that pre-1995 Vietnamese Lawful permanent Residents (LPR) convicted of aggravated felonies may be deported. There are two critical determinative facts here (1) Defense counsel led Doan to believe that he could **Never** be deported, and (2) the change in ICE policy in **June, 2025**.

Doan was told by his attorney that he "could never be deported." ante. After Doan had committed the offense in this case, his only offense, **ever committed**, his LPR status was revoked and he had to report to immigration once a year which he faithfully did since his release from NJ prison in or about 2006. At this point Doan had every right to think that his status in the United States was protected because he was never detained after his release from NJ state custody despite appearing in ICE court annually. Thus, when ICE changed its policy and began a new process of deporting pre-1995 Vietnamese LPR who have committed aggravated felonies this fact rendered his attorney's advice constitutionally deficient and Doan's Fifth and Fourteenth Amendment right to due process and his Sixth Amendment right to effective assistance of counsel were violated. This is the premise of Doan's Post Conviction Relief Motion pending in the State of New Jersey filed in December, 2025 which, due to the above facts fit squarely into 3 exceptions to any filing limitations in the State of New Jersey. (**PCR Motion & supporting affidavit, ATTACHED**).

Doan then retained an attorney who attempted to file a Motion for Stay to ICE's removal order. (Application for Stay and supporting documents, **Attached**). However, the attorney

attempted to file it online he was told that Doan must bring it to his next reported date and hand it to them in person.

Doan was ordered to report to ICE on December 18, 2025 to the ICE Dallas, TX office. He went there with his STAY application in hand and supporting documents. At that ICE meeting he was detained and is now in the Prairieland Detention Center in the Dallas, TX area. The officers there took possession of his STAY application and all supporting documents (i.e. N.J. PCR Motion and all supporting affidavits). Currently, Doan remains in ICE custody at that facility. The purpose of this filing is to respectfully requests this Court review the Motion to Stay/ Postponement, the Post- Conviction Relief Motion in the state of New Jersey and procure jurisdiction based on the above cited laws and doctrines and afford Doan the right to apply and obtain the collateral benefit afforded noncitizens, or alternatively, order a postponement (i.e. injunctive relief) to preserve Doan's constitutional rights.

STANDARD:

The Fifth Circuit Court of Appeals and most other Circuits have rejected the government's argument relying on INA Sections 242(f)(2) stating: "Notwithstanding any other provision of law, no court shall enjoin the removal of any alien pursuant to a final order under this section unless the alien shows by *clear and convincing evidence* that the entry or execution of such order is prohibited as a matter of law."

Instead, this Circuit and most others have rejected the government's position and have adopted a more practical position reasoning it would render the application for Stay a mere

nullity, and adopting the more rational approach of the standard used before the enactment of the IIRIRA when Stays were *discretionary*. See, *Tesfamichael v. Gonzales*, 411 F.3d 169, 172 (5th Cir. 2005) “whether to grant a discretionary stay of deportation would be based on the familiar four-factor test applied to preliminary injunctions: (1) a likelihood of success on the merits; (2) that irreparable harm would occur if the stay is not granted; (3) that potential harm to the [alien] outweighs the harm to the [government] if he stay is not granted; and (4) that granting of the stay would serve the public interest.” Citing *Ignacio v. INS*, 955 F.2d 295, 299 (5th Cir. 1992). The Court reasoned that this standard is less demanding on petitioners than is the “clear and convincing evidence” standard urged by the government in cases involving whether to grant a stay. The *Tesfamichael* Court reasoned that the “clear and convincing” standard would be virtually impossible for an alien to obtain a stay because he would be unable to show that the IJ and BIA’s denial of relief was unsupported by substantial evidence. And, that “such a conclusion would run counter to Section 242(b)(3(B)’s allowance for such stays by court order.” *Tsfamichael*, supra, 411 F.3d at 173.

DISCUSSION

Applying the above standards to this case this Court can procure jurisdiction and allow Doan the right to apply and obtain collateral benefit and enforce his *attached* Application for Stay or, alternatively, utilize the Administrative Procedure Act, Section 705 and issue a Postponement thus providing injunctive relief, in the interest of justice.

First, a review of Doan's Post Conviction Relief (PCR) motion in the state of New Jersey shows he has a very high likelihood on the merits. (PCR Motion **Attached**). He fits squarely into 3 of the limitations exceptions and has, perhaps, the most unusual circumstance of any case because of the aberrant relationship between the United States and Viet Nam, post war. Summarily, Doan pled guilty to a small drug offense based on the advice of counsel that he "could never be deported back to Viet Nam." (See, Doan's PCR Affidavit). The plain language of the law (i.e. 8 U.S.C. 1101(a)(43)) is inflexible. Thus, the attorneys advice was unconstitutionally deficient. Two facts establish Doan's New Jersey attorney was ineffective and that he can prevail on his PCR motion; (1) Doan was ordered to report to Court annually; (2) Doan's Green Card was revoked. These facts in-and-of-itself, in conjunction with the plain language of the statute, ante, establish the inevitability that this day could eventually come rendering Doan's attorney ineffective causing the violation of Doan's Fifth, Sixth and Fourteenth Amendment rights. Thus, Doan's pending New Jersey PCR motion has a great chance of success on the merits.

Second, it is without question that Doan would suffer irreparable harm if the Stay is not granted. Doan has been in the United States, legally, since 1993. In that time he has been with his current wife for 27 year, a United States citizen, (officially married in 2018), has children and now a grandchild. He is the primary breadwinner for his family. He has not committed any crime since his conviction in 2004. He has no ties to Viet Nam because of his over 30 years in the United States. His family would be without its primary breadwinner and guidance that a father provides.

Third, based on the facts above, the harm to Doan heavily outweighs the harm it would do to the government if the Stay is not granted. Doan is not a violent criminal nor menace to society

in the United States. He has shown great remorse for the crime he committed some 23 years ago. He has no other arrest and is not a danger to the community in any way. If the Stay or Postponement is not granted Doan will be deported and fracture his entire family. Conversely, based on Doan's post-conviction conduct some 23 years ago, the government has nothing to lose by allowing Doan to remain in the United States and allow to apply for the Collateral Benefit afforded aliens to protect their constitutional rights and have his New Jersey PCR motion completed which would renew his LPR status.

Fourth and last, Granting the Stay would be in the Public Interest. Today, everything we read and all reputable statistics establish that the American public has lost measurable confidence in the United States Judicial system, in terms of protecting alien and inalienable rights. Granting this Stay, or at least a postpone of deportation, Infra, will, perhaps, restore some confidence that the judicial system is not merely a rubber stamp for the executive branch, a sentiment shared by all too many United States citizens today.

Based on the above Doan has met the standards for this Court to apply the collateral benefit and allow the Stay or alternatively a postponement of deportation to allow the Fifth Circuit Court of Appeals to decide on the Stay, otherwise, Doan will be irreparably harmed.

Tesfamichael, v. Gonzales, 411 F. 3d at 172. See, *Texas Gun Rights v. Bureau of Alcohol and Tobacco*, 697 F. Supp 3d 593, (N.D. TX, Fort Worth (2023) (Granting injunctive relief holding that the "relevant factors favor granting injunctive relief to the plaintiffs" relying of the four factors in *Tesfamichael*, and placing great weight on the strength of the merits on pending filing as determination to grant injunctive relief and that in the "absence of the Court's intervening relief, Plaintiffs' are substantially threatened with irreparable harm..."). See also, *American*

Counsel of Life Insurers v. United States Department of Labor, Civil Action NO. 4:24-cv-00482-O (N.D. TX Fort Worth, 2024) (relying on the holdings *Daniels Health Sciences, LLC v. Vascular Health Services, LLC*, 716 F.3d 579 (5th Cir. 2013) (applying the 4 prong standard of *Tesfamichael* for injunctive relief and holding that the prevail on the merits [of collateral pending litigation] need only show that petitioner has shown a “prima facie case in that filing but need not prove entitled to summary judgment).

The above case law establishes several facts; (1) the Fifth Circuit Court of Appeals and District Courts within this Circuit rely on the 4 prong standard of *Tesfamichael* in determining whether injunction relief is warranted; and, (2) the Fifth Circuit has rejected the government rigid standard, ante, in applying the 4 prong standard of *Tesfamichael* , in determining whether to grant injunctive relief. See, *Texas v. United States*, 809 F. 3d 134 (5th Cir. 2015) (affirming the district court’s grant of a Stay holding that the states have standing and have established a likelihood of success on the merits of their procedural substantive APA claims and have satisfied the other elements required for an injunction. (i.e. *Tesfamichael* 4-prong standard).

CONCLUSION

For the foregoing reasons and in-light-of the emergency of a prospective deportation this Court should order a Stay or injunctive relief via the Administrative Procedure Act, Section 705 and postpone the effective deportation date as allowed in the above captioned case of *Texas v. United States*, supra.

Respectfully Submitted,

Hai Doan

Hai T. Doan
7065 Angelina Drive
Irving, TX 76039

01/27/2026

Dated

CERTIFICATE OF SERVICE

I, Hai Doan, declare that on this 27th day of January 2026 I served a copy of a Habeas Corpus Motion and Memorandum of Law and a motion for appointment of counsel (CJA) to the following parties:


Warden, Brantley David Starr
Prairieland Detention Center
1209 Sunflower Lane
Alvarado, TX 76009

U.S. Attorneys Office
Northern District of Texas
1100 Commerce Street, Suite 300
Dallas, TX 75242

I make this declaration with the understanding of the penalty of perjury, pursuant to 28 U.S.C. Section 1746. and N.J.S.A. 2C:28-1.

Dated this 27th day of January, 2026

Hai T. Doan

Hai T. Doan,
ID No. 
Prairieland Detention Center
1209 Sunflower Lane
Alvarado, TX 76009