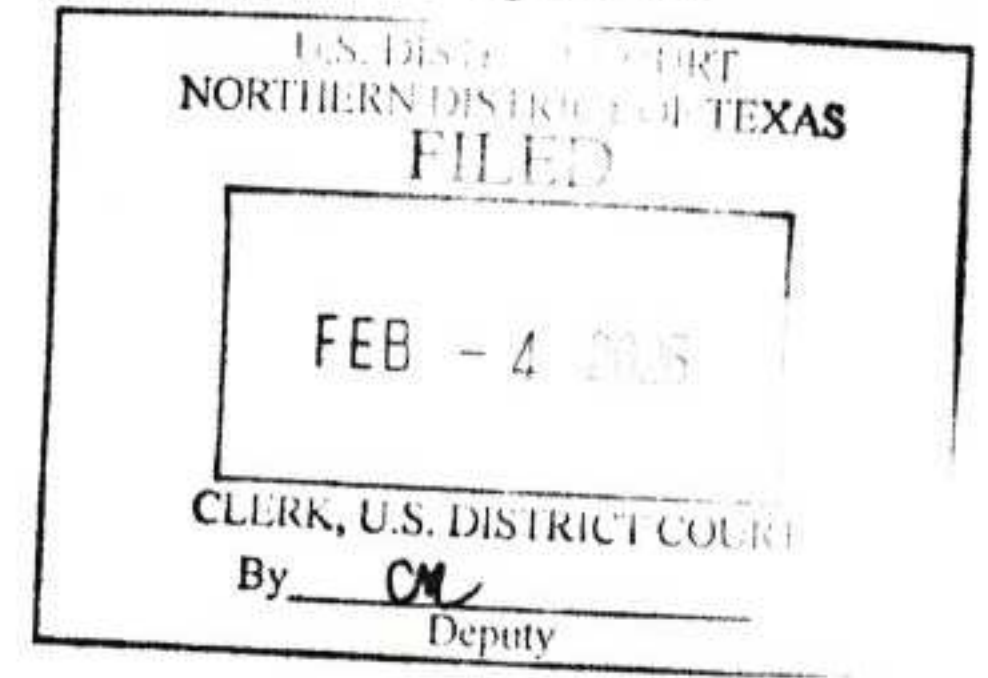


UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS



HAI TU DOAN,  
Petitioner

v.

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

Brantley Davit Starr, Warden  
Prairieland Detention Center,  
Respondent

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EMERGENCY MOTION FOR APPOINTMENT OF COUNSEL  
PURSUANT TO THE CRIMINAL JUSTICE ACT (CJA) 18 U.S.C. 3006A(a)(2)(B)

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Comes now, Hai Tu Doan, pro se, petitioner (Doan herein) to respectfully request this Court grant him appointment of counsel to argue his motion pursuant to 28 U.S.C. Section 2241 for a STAY or alternatively, a POSTPONEMENT, of an order of deportation from the Immigration and Customs Enforcement Agency (ICE) until the outcome of his pending New Jersey Post Conviction Relief (PCR). Doan makes this request due to the complex legal issues in the 2241 motion, in conjunction with the fact that Doan is indigent and a Viet Nam national and not proficient in law nor the English language (Section 2241 Motion, **Attached**). Doan makes this requests for injunctive relief under 28 U.S.C. 3006(a)(2)(B) "in the interest of justice."

JURISDICTION:

This Court has jurisdiction pursuant to CJA Section 300A(a)(2)(B) to appoint counsel for a petitioner filing a motion pursuant to 28 U.S.C. Section 2241 where a litigant is indigent and "in

the interest of justice” require it. See, *United States v. Golston*, Case No. 12-51 (E.D. La 2020) (holding that, “Under 18 U.S.C. 3006A(a)(2)(B) federal courts are granted discretionary power to appoint counsel to indigent individuals seeking relief under 28 U.S.C. Sections 2241, 2254 or 2255 when “in the interest of justice so requires.” *Id.*

STANDARD:

The standard for granting appointment of counsel pursuant to 18 U.S.C. Section 3006A(a)(2)(B) is that the individual is indigent and that the Court, using its discretionary power, determines the “interest of justice so requires.” Here, Doan’s financial affidavit will establish is indigency, he is a Vietnamese petitioner and not proficient in law nor the English Language, and the issues raise are extremely complex including changed Diplomatic Relations between the United States and Viet Nam that lasted 30 years, thus Doan does not have the legal knowledge or comprehension qualified to represent himself.

SALIENT FACTUAL BACKGROUND

Doan entered the United States, legally, in 1993 and was given Legal Permanent Residence status. (All Documents included with Section 2241 motion and Memorandum of law, **Attached**). In 1993 Viet Nam was not accepting Vietnamese citizens to repatriate from the United States. Things changed in 2008 when the United States and Viet Nam entered into a Diplomatic Agreement whereby Viet Nam would only repatriate citizens who arrived in the United States on or after July, 1995, which was the date on which the diplomatic relations between the two

countries was restored. Relevant here, nowhere in either the 1995 nor the 2008 agreement did it mention that Viet Nam citizens who had committed aggravated felonies in the United States *could never be deported*, nor did any agreement between the countries mention that the law of 8 U.S.C. Section 1101(a)(43) would be flexible to Viet Nam refugees, *forever*. The agreement did, however, at that time, protect Viet Nam LPR's from being deported even those who have committed aggravated felonies, which almost always requires removal from the United States. This fact was due to Viet Nam not issuing the necessary travel documents of expatriated citizens.

In 2004 Doan committed an aggravated felony of selling a small amount of ecstasy pills in a club in the state of New Jersey, where he was living at that time. Defense counsel advised Doan to plead guilty to the charge and advised him that he *"could never be deported."* Based upon Counsel's advice Doan pled guilty and served 2 years in New Jersey State's prison system. Doan's Green Card was thereby revoked and LPR status voided. Doan was released in 2006 and has never committed any other penalty of law, misdemeanor nor felony. He has built a family here and for the past 20 years has built a family and remained gainfully employed. Upon Doan's release, in addition to revocation of his Green Card and LPR status, he was ordered to report to ICE Court annually. Doan reported as required faithfully for 20 years and each time was told to go home.

In June, 2025 the newly elected Presidential Administration in the United States changed the Policy and made a subsequent agreement with Viet Nam that it would repatriate citizens who came to the United States before 1995 and that those who have committed aggravated felonies were now removable under 8 U.S.C. Section 1101(a)(43), which was never amended to conform

with the policy prior to this administration's change in June, 2025. This change in policy in conjunction with defense counsel's unconstitutional advice that Doan "*could never be deported*" is the subject of Doan's pending Motion for Post-Conviction Relief (PCR) pending in the state of New Jersey (Pending New Jersey, Post- Conviction Relief Motion, **Attached**).

Doan now seeks habeas corpus relief pursuant to 28 U.S.C. Section 2241 for a STAY or alternatively, POSTPONEMENT pursuant to the Administrative Procedure Act, Section 705 pending the outcome of the pending New Jersey PCR motion, which, if granted, would return Doan to LPR status and void the Removal Order. Due to the complexity of the above issues Doan seeks appointment of counsel along with his indigency status and his lack of legal knowledge to argue these complex issues, Infra.

#### DISCUSSION

Doan is Vietnamese and has been in the United States since 1993. Despite this length of time Doan is not proficient in the English language and, more importantly, he cannot afford to pay for an attorney to argue this complex case. Specifically, that Doan had to file his PCR motion in New Jersey 19 years later is only due to the change in law which qualifies as newly discovered evidence rendering his New Jersey PCR motion timely as it was filed within 5 months of the change in law. Doan's PCR motion also fits within 2 other New Jersey timely exceptions to filing a PCR motions (See, PCR Motion, **Attached**). And, if the motion is dismissed for timeliness, Doan's New Jersey PCR Motion would be allowed to be heard in federal Court under 28 U.S.C. Section 2254(d)(1) & (2) (i.e. state decision was based on unreasonable application of clearly

established law (timeliness of newly discovered evidence) or decision was based on unreasonable determination of facts in light of the evidence presented). Thus, because Doan filed within five months of the change of law it is unlikely that his PCR motion would be denied for any procedural default in the state of New Jersey.

Turning to the merits of Doan's PCR motion pending in the State of New Jersey, based on the established facts in that case, there is a reasonable probability that Doan will prevail and that conviction for an aggravated felony will be vacated. Specifically, because of the inflexibility of the removal statute (8 U.S.C. 1101(a)(43) counsel's advice to plead guilty because Doan "could never be deported") was patently false. The facts that Doan's Green Card and LPR status was revoked and that he had to report to ICE court, annually, in-and-of-itself rendered defense counsel's advice constitutionally deficient under the Sixth Amendment because his status was compromised from the outset of the guilty plea and having to report to ICE court annually is evidence of the inevitability that counsel's advice was based on false information. That the prejudice did not surface until 21 years later (i.e. from 2004 conviction to June, 2025) is inconsequential. Counsel's advice in 2004 to plead guilty for that reason (i.e. "would never be deported") lit the fuse for a bomb that could eventually explode. Doan's English is not that great now, thus in 2004 when his defense counsel was giving him advice, it was even less formidable. In addition, Doan did not have an interpreter during critical stages of his state proceedings. Finally, the bomb exploded in June, 2025 when the policy changed, ante, causing extreme and actual prejudice to Doan by ruining the life he had built for over 30 years in the United States and will cause further prejudice to his family if he is removed prior to having his

due process rights upheld by allowing his PCR motion to be adjudicated in the State of New Jersey prior to the enforcement of the ICE removal order.

In Post-Conviction proceedings in most states, an evidentiary hearing is required when a petitioner makes a colorable claim. Here, Doan's family was witness to counsel's advice and statements in 2004, which will provide significant evidence to support his PCR claim. Even stronger, the laws that existed at that time (8 U.S.C. Section 1101(a)(43), mandatory removal) coupled with the facts that Doan's LPR status and Green Card were immediately revoked and that he had to report to ICE court annually, where migrants who reported are regularly detained and deported, serve as testimonial that counsel's performance was constitutionally deficient, and the removal order is constitutionally sufficient to establish actual prejudice under the necessary standards of *Strickland v. Washington*, 466 US 668 (1984). Thus, Doan's New Jersey PCR motion has an excellent chance of success on the merits showing his Sixth Amendment Right to counsel and Fifth and Fourteenth Amendment rights to due process were violated because had Doan known that there was always a potential to be removed, permanently, from his family, he would not have pled guilty and insisted on proceeding to trial.

Finally, Doan has several liabilities which meet the standard in support of his request to appoint counsel. The financial affidavit speaks for itself to suffice that standard. Further, Doan is not proficient in the English language and has zero legal knowledge of how present this case in court, thus creating extraordinary circumstances. Doan has only one (1) aggravated felony and, if vacated, his status returns to a Legal Permanent Resident which should compel this Court to grant him an attorney to argue his motion pursuant to 28 U.S.C. Section 2241 for STAY or POSTPONEMENT so that he can apply for the collateral benefit afforded immigrants or

alternatively allow the Court to utilize the APA, Section 705 and provide injunctive relief and preserve the inalienable rights of due process and allow Doan the benefit until his full panoply of due process rights have been exhausted in the State of New Jersey. The above facts and law should also be sufficient to allow this Court to apply the "in the interest of justice" standard and appoint counsel to argue this complex case to uphold Doan's right to apply for the collateral benefit afforded immigrant persons or for counsel to argue to this Court for injunctive relief that is available under the Administrative Procedure Act, Section 705 for Doan to remain in the United States pending the outcome of his New Jersey PCR motion to avoid the irreparable harm that Doan and his entire family will suffer of losing their breadwinner that has been in the United States for over 30 years, legally.

The facts and circumstances presented herein should allow this Court to exercise its discretionary powers and grant appointment of counsel. See, *Mendoza v. Stephens*, No. 3:14-cv-3690-N-BN (N.D. TX 2015) (holding that; "The exercise of discretion in this area is guided by...certain basic principles. When applying the standard and exercising its discretion in this field, the Court should determine both whether the petition *presents significant legal issues*, and appointment of counsel benefit both petitioner and the court in addressing the claim.") citing, *Jackson v. Coleman*, Civil No. 3:11-cv-1837 (M.D. Pa 2012). Also citing, *Whisenant v. Yuam*, 739 F. 2d 160, 163 (4<sup>th</sup> Cir. 1994) (holding, "the decision to appoint counsel hinges on the characteristics of the claim and the litigant") *Mendoza, supra*.

Applying these standards, the facts and circumstances here favor granting Doan's requests for appointment of counsel, First, Doan's characteristics include (1) Doan is an indigent litigant

(See Financial Affidavit); (2) deficiency in the English language and deficient in law; (3) Doan has had no other incidents with the law, whatsoever, since his conviction in 2004).


In terms of the characteristics of the claim; (1) Doan is trying to prevent a manifest injustice in requesting the stay. Specifically, the New Jersey Court records reflect that Doan's Sixth Amendment right to counsel along with his Fifth and Fourteenth Amendment right to due process were violated; (2) The STAY or POSTPONEMENT, or any form of injunctive relief that can be applied would be ordered in fairness in protecting Doan's inalienable rights, ante, by allowing the New Jersey Court to complete the pending Post Conviction Relief process; (3) The fact of the irreparable harm that will be done to Doan and his family in-and-of-itself gives this Court firmer ground to stand on in granting appointment of counsel to avoid a manifest injustice.

Accordingly, because Doan is indigent, the case presents significant and complex legal issues, along with the characteristics of the claim and the litigant fit into the ambit of the standards cited above for discretionary grant of appointment of counsel, this Court can apply those standards and grant appointment of counsel in this case.

#### CONCLUSION

For the foregoing reasons Doan respectfully requests the Court appoint counsel to argue his habeas corpus 28 U.S.C. Section 2241 motion.

Respectfully Submitted,

Hai Tu Doan  
Hai Tu Doan, pro se  
ID #:   
Prairieland Detention Center  
1209 Sunflower Lane  
Alvarado, TX 76009

Hai Tu Doan  
Dated

CERTIFICATE OF SERVICE

I, Hai Doan, declare that on this 27<sup>th</sup> 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 27<sup>th</sup> day of January, 2026

Hai T. Doan

Hai T. Doan,  
ID No.   
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Alvarado, TX 76009