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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9
10 **QUANG LE PHAN,**
11 Petitioner

12 v.

13 **Christopher LAROSE,** Senior Warden,
14 Otay Mesa Detention Center;

15 **Todd LYONS,** Acting Director,
16 U.S. Immigration and Customs Enforcement;

17 **Patrick DIVVER,** Field Office Director,
18 San Diego Field Office, U.S. Immigration and
Customs Enforcement;

19 **Kristi NOEM, Secretary,** U.S. Department of
20 Homeland Security;

21 **Sirce OWEN,** Acting Director of the Executive
22 Office for Immigration Review (EOIR),
U.S. Department of Justice;

23 **Pamela BONDI,** Attorney General,
24 U.S. Department of Justice;

25 Respondents.
26
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Case No.: '26CV1386 JES MSB

Agency File No: 

**PETITION FOR WRIT OF
HABEAS CORPUS AND ORDER
TO SHOW CAUSE**

1 **INTRODUCTION**

2 1. Petitioner Quang Le Phan is a native and citizen of Vietnam and a former lawful
3 permanent resident of the United States who has been detained by U.S. Immigration and
4 Customs Enforcement (“ICE”) at the Otay Mesa Detention Center since March 25, 2025.
5 Petitioner was taken into custody after appearing for a routine ICE supervision check-in, despite
6 having lived in the community under ICE supervision for more than twenty years.

7 2. This case presents a highly unusual detention scenario. More than two decades ago, the
8 Government exercised its immigration detention authority over Petitioner following a criminal
9 conviction and removal order. Because the Government was unable to effectuate Petitioner’s
10 removal to Vietnam, however, ICE released him under an Order of Supervision (Form I-220B).
11 For the next twenty years, Petitioner complied fully with all supervision requirements, attended
12 every ICE reporting appointment, maintained employment authorization issued by the
13 Government, and incurred no additional criminal history.

14 3. On March 25, 2025, Petitioner again appeared for a routine ICE check-in—exactly as
15 he had done for more than two decades. At that appointment, ICE abruptly detained him and
16 transferred him to the Otay Mesa Detention Center. The Government now seeks to impose
17 mandatory detention based on the same decades-old conviction that formed the basis of
18 Petitioner’s original removal proceedings.

19 4. Petitioner subsequently filed a motion to reopen his removal proceedings, which the
20 Immigration Court granted. As a result, the prior removal order is no longer final and Petitioner
21 is again in active removal proceedings under INA § 240. Nevertheless, the Immigration Court
22 concluded that it lacked jurisdiction to conduct a bond hearing because Petitioner was subject to
23 mandatory detention under INA § 236(c). As a result, no neutral adjudicator has ever considered
24 whether Petitioner’s continued confinement is necessary to serve any legitimate governmental
25 purpose.

1 5. Petitioner’s detention has now become unreasonably prolonged in violation of the Due
2 Process Clause of the Fifth Amendment. Civil immigration detention is permissible only when
3 reasonably related to its limited purposes of ensuring appearance at proceedings or protecting the
4 community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Singh v. Holder*, 638 F.3d 1196,
5 1203–05 (9th Cir. 2011). Yet the Government itself allowed Petitioner to live openly in the
6 community under its supervision for more than twenty years without incident. The Constitution
7 does not permit the Government to resurrect mandatory detention authority decades after it has
8 affirmatively allowed settled liberty to exist.

9 6. Absent habeas review, Petitioner will remain imprisoned without any individualized
10 determination of whether his continued detention is justified. Meanwhile, Petitioner is actively
11 pursuing lawful relief in reopened removal proceedings. Petitioner therefore respectfully seeks a
12 writ of habeas corpus ordering his immediate release from custody or, in the alternative,
13 directing Respondents to provide him with a constitutionally adequate bond hearing within
14 fourteen (14) days at which the Government bears the burden of proving by clear and convincing
15 evidence that continued detention is justified.

16 **JURISDICTION AND VENUE**

17 7. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in the custody
18 of the Department of Homeland Security within this District and he challenges the legality of
19 that custody.

20 8. This Court also has jurisdiction under 28 U.S.C. § 1331 because this action arises
21 under the Constitution and laws of the United States, including the Immigration and Nationality
22 Act and the Due Process Clause of the Fifth Amendment.

23 9. Neither 8 U.S.C. § 1252(g) nor § 1252(b)(9) strips this Court of jurisdiction. Section
24 1252(g) bars only challenges to the Attorney General’s discretionary decisions to “commence
25 proceedings, adjudicate cases, or execute removal orders,” not independent challenges to
26 unlawful detention. Likewise, § 1252(b)(9) consolidates review of removal orders in the courts
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1 of appeals, but does not foreclose habeas review of detention claims, which are collateral to the
2 removal proceedings.

3 10. Venue is proper in this District under 28 U.S.C. § 1391(e) because Petitioner is
4 detained at the Otay Mesa Detention Center, which lies within the jurisdiction of this Court.

5 **PARTIES**

6 11. Petitioner, Quang Le Phan, is a native and citizen of Vietnam currently detained at
7 the Otay Mesa Detention Center in San Diego, California.

8 12. Respondent Christopher LaRose is the Senior Warden of the Otay Mesa Detention
9 Center.

10 13. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland
11 Security (DHS).

12 14. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs
13 Enforcement (ICE).

14 15. Respondent Patrick Divver is the Director of the San Diego Field Office of U.S.
15 Immigration and Customs Enforcement.

16 16. Respondent Sirce Owen is the Acting Director of the Executive Office for
17 Immigration Review (EOIR).

18 17. Respondent Pamela Bondi is the Attorney General of the United States and the head
19 of the U.S. Department of Justice (DOJ).

20 18. All Respondents are named in their official capacities.

21 **FACTS**

22 19. Petitioner, Quang Le Phan, is a native and citizen of Vietnam and a former lawful
23 permanent resident of the United States.

24 20. Petitioner entered the United States in 1993 as a Vietnamese refugee and became a
25 lawful permanent resident in 1994.

1 28. In granting reopening, the Immigration Judge recognized that Petitioner has not yet
2 been removed due to Vietnam’s longstanding reluctance to accept his repatriation and
3 acknowledged that Petitioner has accrued significant equities during the more than twenty years
4 his removal order remained deferred, including his U.S. citizen spouse and children. The Court
5 further noted that Petitioner has no additional criminal history since his 2003 conviction.

6 29. Petitioner subsequently sought custody redetermination before the Immigration
7 Court. On August 29, 2025, the Immigration Court denied the request, concluding that it lacked
8 jurisdiction under INA § 236(c). See *Exhibit 2* (Immigration Judge Order Denying Custody
9 Redetermination).

10 30. Petitioner is currently pursuing immigration relief in reopened removal proceedings,
11 including adjustment of status based on an approved Form I-130 filed by his U.S. citizen spouse
12 and a waiver of inadmissibility under INA § 212(h). See *Exhibit 3* (Form I-130 Approval
13 Notice).

14 31. Petitioner has now been detained for approximately eleven months.

15 32. Petitioner’s continued incarceration is particularly troubling because the Government
16 itself allowed him to live at liberty under ICE supervision for more than twenty years without
17 incident before suddenly detaining him in 2025.

18 **REQUIREMENTS OF 28 U.S.C. § 2243**

19 33. The Court must grant the petition for writ of habeas corpus or issue an Order to Show
20 Cause (“OSC”) to Respondents “forthwith,” unless it appears from the petition that the petitioner
21 is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require
22 Respondents to file a return “within three days unless for good cause additional time, not
23 exceeding twenty days, is allowed.” *Id.* (emphasis added).

24 34. Courts have long recognized the significance of the habeas statute in protecting
25 individuals from unlawful detention. As the Supreme Court explained, the Great Writ is “perhaps
26 the most important writ known to the constitutional law of England, affording as it does a swift
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1 and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S.
2 391, 400 (1963).

3 35. The statutory design makes clear that habeas corpus must remain a swift remedy.
4 “The statute itself directs courts to give petitions for habeas corpus ‘special, preferential
5 consideration to insure expeditious hearing and determination.’” *Yong v. INS*, 208 F.3d 1116,
6 1120 (9th Cir. 2000) (internal citations omitted). The Ninth Circuit has expressly cautioned
7 against undue delay that would frustrate the remedial purpose of habeas corpus, warning against
8 any action creating the perception “that courts are more concerned with efficient trial
9 management than with the vindication of constitutional rights.” *Id.* at 1121.

10 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

11 36. For habeas claims, exhaustion of administrative remedies is prudential, not
12 jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may waive the
13 prudential exhaustion requirement where “administrative remedies are inadequate or not
14 efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will
15 result, or the administrative proceedings would be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d
16 994, 1000 (9th Cir. 2004)). Petitioner respectfully submits that exhaustion should be excused
17 here because administrative remedies are futile and because his continued detention results in
18 irreparable harm.

19 37. Exhaustion here would be futile. After the Immigration Court granted reopening,
20 Petitioner sought custody redetermination. The Immigration Judge concluded that Petitioner is
21 subject to mandatory detention under the Immigration and Nationality Act and therefore that the
22 court lacked authority to provide meaningful custody review. Because the agency maintains that
23 Petitioner is categorically subject to mandatory detention, further administrative attempts to
24 obtain release would serve no purpose and exhaustion should be excused.

25 38. More importantly, every additional day Petitioner remains detained inflicts
26 irreparable harm that cannot be remedied after the fact. Prolonged civil detention imposes severe
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1 psychological and emotional strain and deprives Petitioner of the liberty he enjoyed for more
2 than twenty years while living under ICE supervision in the community.

3 **CLAIM FOR RELIEF**

4 **COUNT 1**

5 **Violation of the Due Process Clause of the Fifth Amendment**

6 39. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth
7 herein.

8 40. The Fifth Amendment to the United States Constitution provides that “[n]o person
9 shall be deprived of life, liberty, or property, without due process of law.”

10 41. “Freedom from imprisonment—from government custody, detention, or other form of
11 physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533
12 U.S. 678, 690 (2001).

13 42. Civil immigration detention is constitutionally permissible only when reasonably
14 related to legitimate governmental objectives, such as ensuring appearance at proceedings or
15 protecting the community. *Demore v. Kim*, 538 U.S. 510, 528 (2003). However, detention that is
16 prolonged, unnecessary, or based solely on categorical statutory rules—without any
17 individualized assessment—ceases to be regulatory and becomes punitive in effect, violating the
18 Due Process Clause.

19 43. This case does not present a typical prolonged immigration detention challenge.
20 Rather, it concerns the Government’s attempt to resurrect mandatory detention authority more
21 than twenty years after it exercised its detention power, released Petitioner under supervision,
22 and permitted him to live at liberty in the community. The Constitution does not permit the
23 Government to re-trigger mandatory incarceration decades after it has affirmatively created
24 settled expectations of liberty.

25 44. Here, Petitioner has now been detained for nearly eleven months without any neutral
26 adjudicator assessing whether his continued confinement is necessary. The Government itself
27 permitted Petitioner to live at liberty under ICE supervision for more than twenty years without

1 incident before suddenly detaining him in 2025 based on a conviction from 2003. During those
2 two decades, Petitioner consistently complied with all supervision requirements and incurred no
3 additional criminal history.

4 45. The Government's continued detention of Petitioner, without affording him a
5 constitutionally adequate bond hearing where the government bears the burden of proof by clear
6 and convincing evidence, violates his rights under the Due Process Clause of the Fifth
7 Amendment.

8 **COUNT 2**

9 **Violation of the Immigration and Nationality Act (INA)**

10 46. Petitioner incorporates by reference the allegations of fact set forth in the preceding
11 paragraphs.

12 47. The Immigration and Nationality Act does not authorize the Government to resurrect
13 mandatory detention authority decades after it has already exercised its detention power, released
14 the individual under supervision, and allowed settled liberty to exist for more than twenty years.

15 48. Petitioner was detained by immigration authorities in 2003–2004 following his
16 criminal conviction and removal proceedings. When the Government was unable to effectuate
17 his removal to Vietnam, ICE released him under an Order of Supervision and permitted him to
18 live in the community for more than two decades.

19 49. Construing the immigration detention statutes to permit mandatory incarceration
20 under these circumstances would raise serious constitutional concerns. The INA therefore cannot
21 be interpreted to authorize the Government to re-trigger mandatory detention authority based
22 solely on a decades-old conviction after twenty years of government-approved liberty.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Petitioner respectfully requests that this Court:

- 25 A) Assume jurisdiction over this matter;
26 B) Direct Respondents to refrain from transferring Petitioner outside the jurisdiction of this
27 District while these proceedings are pending;

1 C) Declare that Petitioner’s continued detention without an individualized custody determination
2 violates the Immigration and Nationality Act and the Due Process Clause of the Fifth
3 Amendment;

4 D) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately from
5 custody; or, in the alternative, order Respondents to provide Petitioner with a constitutionally
6 adequate bond hearing before an Immigration Judge within fourteen (14) days at which the
7 Government bears the burden of proving by clear and convincing evidence that continued
8 detention is justified;

9 E) Award Petitioner attorney’s fees and costs, including under the Equal Access to Justice Act
10 (“EAJA”), 28 U.S.C. § 2412, to the extent applicable, and on any other basis authorized by law;

11 F) Grant such other and further relief as the Court deems just and proper;

12 Respectfully submitted,

13 /s/ Alejandro J. Monsalve, Esq. CA SBN 324958

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19 Counsel for Petitioner

20 Dated: March 4, 2026

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification because I am Petitioner’s attorney in this action. I have personally spoken with Petitioner regarding the facts and events described in the Petition, and the factual allegations contained in the Petition are based on Petitioner’s own statements to me as well as my review of relevant immigration records and documents, including the motion to reopen, the Immigration Court’s order granting reopening, the approved Form I-130, and other related records. Based on my communications with Petitioner, and to the best of my knowledge, information, and belief, the factual statements in the Petition accurately reflect Petitioner’s account of events.

Executed on this 4th day of March, 2026, in San Diego, California.

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