

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
COLUMBUS DIVISION

A No.: 

NGUYEN TAM VAN
Petitioner,

v.

ALEJANDRO N. MAYORKAS
SECRETARY OF THE DEPARTMENT
OF HOMELAND SECURITY;
PATRICK J. LECHLIETNER
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT;
RUSSELL WASHBURN, U.S. ICE FIELD OFFICE
DIRECTOR FOR THE GEORGIA FIELD OFFICE and
WARDEN OF IMMIGRATION DETENTION FACILITY,
Respondents.

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Case No. _____

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PETITIONER FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. SECTION 2241

Petitioner, NGUYEN TAM VAN appearing hereby petitions this Court for a writ of habeas corpus to remedy Petitioner's unlawful detention by Respondents. In writ habeas corpus to remedy Petitioner's unlawful detention by Respondents. In support of this petition and complaint for injunctive relief, Petitioner alleges as follows:

CUSTODY

1. Petitioner is in the physical custody of Respondents and U.S. Immigration and Customs Enforcement ("ICE"). Petitioner is detained at the Stewart Detention Center Lumpkin, Georgia, pursuant to a contractual agreement with the Department of Homeland Security.

I.

JURISDICTION

2. This action arises under the constitution of the United States, and the Immigration and Nationality Act (“INA”), 8 U.C.S. Section 1101 et seq., as amended by the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (“IIRIRA”) Pub. L. No. 104 – 208, 110 Stat. 1570, and the Administrative Procedure Act (“APA”), 5 U.S.C. Section 701 et seq.

3. This Court has jurisdiction under 28 U.S.C. Section 2241; art. I Section 9, cl. 2 of the United States Constitution (“Suspension Clause”); and 28 U.S.C. Section 1331, as Petitioner is presently in custody under color of the authority of the United States, and such custody is in the violation of the Constitution, laws, all treaties of the United States. This court may grant relief pursuant to 28 U.S.C. Section 2241, 5 U.S.C. Section 702, and the All Writs Act, 28 U.S.C. Section 1651.

4. Petitioner has exhausted any and all administrative remedies to the extent required by law.

VENUE

5. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493 – 500 (1973), venue Lies in the United States District Court for the Georgia, the judicial district in which Petitioner resides.

PARTIES

6. Petitioner is a native and citizen of Vietnam who entered the United States at San Francisco, California on February 4, 1994. Petitioner was first taken into ICE custody on July 11, 2024, and has remained in ICE custody continuously since that date. Petitioner was ordered removed on September 3rd, 2002. See **Exhibit – A, Warrant of Removal/Deportation**; See also **Exhibit – B, U.S. Department of Homeland Security/Warning for Failure to Depart**.

7. Respondent Merrick Garland is the Attorney General of the United States and is responsible for the administration of ICE and the Implementation and Enforcement of the Immigration and Naturalization Act (INA). As such Respondent Pam Bondi has ultimate custodial authority over Petitioner.

8. Respondent Alejandro N. Mayorkas is the Secretary of the Department of Homeland Security. He is responsible for the administration of ICE and the implementation and enforcement of the INA. As such Alejandro Mayorkas is the legal custodian of Petitioner.

9. Respondent Russell Washburn is the Field Officer Director of the Atlanta Field Office of ICE and is Petitioner's immediate custodian. See *Vasquez v. Reno*, 233 F.3d 688, 690 (1st Cir. 2000), cert. Denied, 122 S.Ct. 43 (2001).

10. Respondent Warden of Stuart Detention Center, where Petitioner is currently detained under the authority of ICE, alternatively may be considered to be Petitioner's immediate custodian.

FACTUAL ALLEGATIONS

11. Petitioner, Nyuyen Tam Van is a native and citizen of Vietnam. Petitioner has been in ICE custody since July 11, 2024. An Immigration Judge ordered the Petitioner removed on September 3rd, 2002. The petitioner do have two pending charges for shoplifting and gun possession. See **Exhibit – C, First Appearance Hearing Order.**

12. Regarding the instant case the Petitioner has no intention on seeking any other remedy for relief except for prolong detention as stating within this “Petition For A writ of Habeas Corpus. The petitioner has two pending charges as listed above which are not aggravated offenses.

13. Petitioner was taken into custody by ICE on July 11, 2024 and has been in the custody of ICE for more than six months since his removal/deportation exclusion order became final.

14. Petitioner 90 days Custody Review by the Department of Homeland Security Headquarter Post-Order Detention Unit (“HQCDU”) in Washington DC was reviewed on September 26th, 2024. The decision to Continue Detention was served to the petitioner on January 28, 2025. If is order to be release in the U.S., Petitioner will reside with his mother at: [REDACTED] Lawrenceville, Georgia 30044. See **Exhibit – D, Decision to Continue Detention.**

15. To date, however, ICE has been unable to remove Petitioner to Vietnam or any other country. 1) On September 3rd, 2002 a final order of removal was issued by an Immigration Judge at Diagnostic and Classification state prison, located at: 2978, GA-36, Jackson, Georgia 30233. Petitioner entered the United States on February 4th, 1994. The law clearly states pursuant to the “War Program” any national

of the Vietnamese entered the United States before July 1st, 1995, Vietnam will not issue any travel documents. Therefore, because petitioner is a native citizen of Vietnam and entered the U.S. before July 1st, 1995 Vietnam will not issue petitioner's travel documents to ICE/U.S. pursuant to the "War Program.

16. Petitioner has fully cooperated with ICE regarding his removal from the United States. Petitioner signed his deportation papers and conducted his finger prints with ICE; Petitioner had his family contacted the Vietnam embassy to furnish them with information to obtain his travel documents, but the Vietnam embassy was unable to help petitioner retrieve such documents.

17. Petitioner's custody status was first reviewed in January 17th, 2025, and on January 28th, 2025 Petitioner was served a written decision ordering his continued detention. See **Exhibit – D**.

18. On or about July 11, 2024, Petitioner was transferred authority over his custody status to ICE HQPDU.

LEGAL FRAMEWORK FOR RELIEF SOUGHT

19. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that six months is the presumptively reasonable period during which ICE may detain aliens in order to effectuate their removal. *Id. at 702*. In *Clark v. Martinez*, 543 U.S. 371 (2005), the Supreme Court held that its ruling in *Zadvydas* applies equally to inadmissible aliens. Department of Homeland Security Administrative regulations also recognize that the HQPDU has a six month period for determining whether there is a significant likelihood of an alien's removal in the reasonably foreseeable future. 8 U.F.R. Section

241.13(b)(ii).

20. Petitioner was ordered removal on September 3rd, 2002, and the removal order became final on September 3rd, 2002. Therefore, the six-month presumptively reasonable removal period for Petitioner ended on or about March 3rd, 2003. Regarding the case at hand, petitioner has been in detention since July 11, 2024, for seven months, exceeding the six months period.

CLAIMS FOR RELIEF

COUNT ONE

STATUTORY VIOLATION

21. Petitioner's re-alleges and incorporates by reference paragraphs 1 through 20 above.

22. Petitioner's continued detention by Respondents is unlawful and contravenes 8 U.S.C. Section 1231(a)(6) as interpreted by the Supreme Court in *Zadvydas*. The six-month presumptively reasonable period for removal efforts has expired. Petitioner still has not been removed, and Petitioner continues to languish in detention. Petitioner's removal to Vietnam or any other country is not significant likely to occur in the reasonably foreseeable future. The Supreme Court held in *Zadvydas* and *Martinez* that ICE's continued detention of someone like Petitioner under such circumstances is unlawful.

COUNT TWO

SUBSTANTIVE DUE PROCESS VIOLATION

23. Petitioner re-alleges and incorporates by reference paragraphs 1 through 22 above.

24. Petitioner's continued detention violates Petitioner's right to substantive due process through a deprivation of the core liberty interest in freedom from bodily restraint.

25. The Due Process Clause of the Fifth Amendment requires that the deprivation of Petitioner's liberty be narrowly tailored to serve a compelling government interest. While Respondents would have an interest in detaining Petitioner in order to effectuate removal, that interest does not justify the indefinite detention of Petitioner, who is not significantly likely to be removed in the reasonably foreseeable future. *Zadvydas* recognized that ICE may continue to detain aliens only for a period reasonably necessary to secure the alien's removal. The presumptively reasonable period during which ICE may detain an alien is only six months. Petitioner has already been detained in excess of six months and Petitioner's removal is not significant likely to occur in the reasonably foreseeable future.

COUNT THREE

PROCEDURAL DUE PROCESS VIOLATION

26. Petitioner re-alleges and incorporates by reference paragraphs 1 through 25 above.

27. Under the Due Process Clause of the Fifth Amendment, an alien is entitled to a timely and meaningful opportunity to demonstrate that s/he should not be detained. Petitioner in this case had been denied that opportunity. ICE does not make decisions concerning aliens' custody status in a neutral and impartial manner. The failure of Respondents to provide a neutral decision-maker to review the continued custody of Petitioner violates Petitioner's right to procedural due process. Ice has detained Petitioner for more than six months since the issuance of his final order of removal. There is no significant likelihood that Petitioner removal will occur in the reasonably foreseeable future.

Petitioner does not pose a danger to the community or a risk for flight, and no special circumstances exist to justify his continued detention. As petitioner is not dangerous, not a flight risk, and cannot be removed, his indefinite detention is not justified and violates substantive due process. See *Zadvydas*, 533 U.S. At 690-91

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- 1) Assume jurisdiction over this matter;
- 2) Grant Petitioner a Writ of Habeas Corpus directing the Respondents to immediately release Petitioner from custody;
- 3) Enter preliminary in permanent injunctive relief enjoining Respondents from further unlawful detention of Petitioner;
- 4) Award Petitioner Attorney's fees and cost under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. Section 504 and 28 U.S.C. Section 2412, and on any other basis justified under law;
- 5) Grant any other and further relief that Court deems just and proper.

I affirm, under penalty of perjury, that foregoing is true and correct.

Signature: _____

Nguyen Tam Van

Petitioner's Name: _____

NGUYEN, TAM VAN

Date: _____

FEB 7-2025

A No.: _____



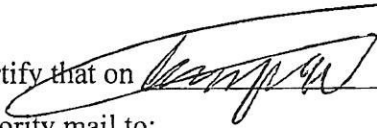
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Lumpkin, Georgia 31815

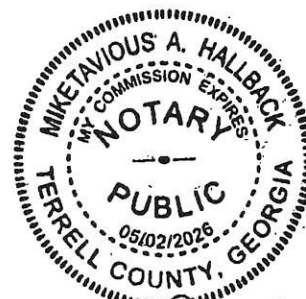
PUBLIC NOTARY

Signature

CERTIFICATE OF SERVICE

I NGUYEN TAM VAN hereby certify that on  a copy of this Petition for Writ Habeas Corpus which it was send via priority mail to:

United States District Court
For the Middle District of Georgia
Columbus Division
P.O. Box 124
Columbus, Georgia 31902




2/7/25