UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Thien Cong Ho,

Petitioner,

v.

Markwayne Mullin, Secretary, U.S. Department of Homeland Security,

David J. Venturella, Senior Official Performing the Duties of the Director of Immigration and Customs Enforcement,

David Easterwood, Acting Director, St. Paul Field Office Immigration and Customs Enforcement,

and,

Joel Brott, Sheriff of Sherburne County.

Respondents.

Case No.: 0:26-cv-3926

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Respondents are detaining Petitioner, Mr. Thien Cong Ho, ("Petitioner"), who is subject to a final order of removal from September 21, 2011.

2. Respondents detained Petitioner on January 21, 2026. However, since they did not have travel documents to support his removal, the Western District of Texas, El Paso Division, granted a habeas petition for his release. *See* Exh. A., *Ho v. De Anda-Ybarra*, 3:26-CV-00487-DCG, (W.D. Tex. May 5, 2026). Respondents released Petitioner the same day.

3. Respondents have now re-detained Petitioner a second time this year at his ICE check-in on or about August 19, 2026, and he has remained in Respondents' custody ever since.

4. The prolonged post-removal order detention, which follows nearly fifteen years after a final removal order, violates the Due Process Clause of the United States Constitution in light of the absence of any travel document to remove Petitioner to Vietnam.

5. The continued detention of Petitioner serves no legitimate purpose.

6. To remedy this unlawful detention, Petitioner seeks declaratory and injunctive relief in the form of immediate release from detention.

7. Pending the adjudication of his Petition, Petitioner seeks an order restraining the Respondents from transferring him to a location where he cannot reasonably consult with counsel, such a location to be construed as any location outside of the geographic jurisdiction of the day-to- day operations

of U.S. Customs and Immigration's ("ICE") Fort Snelling, Minnesota of the Office of Enforcement and Removal Operations in the State of Minnesota.

8. Pending the adjudication of this Petition, Petitioner also respectfully requests that Respondents be ordered to provide seventy-two (72) hour notice of any movement of Petitioner.

9. Petitioner requests the same opportunity to be heard in a meaningful manner, at a meaningful time, and thus requests 72-hour notice prior to any removal or movement of him away from the State of Minnesota.

JURISDICTION AND VENUE

10. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question), § 1361 (federal employee mandamus action), § 1651 (All Writs Act), and § 2241 (habeas corpus); Art. I, § 9, cl. 2 of the United States Constitution ("Suspension Clause"); 5 U.S.C. § 702 (Administrative Procedure Act); and 28 U.S.C. § 2201 (Declaratory Judgment Act). This action further arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), specifically, 8 U.S.C. § 1101-1537.

11. Because Petitioner seeks to challenge his custody as a violation of the Constitution and laws of the United States, jurisdiction is proper in this court. *See Zadvydas, v. Davis*, 533 U.S. 678 (2001).

12. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness or constitutionality of their detention by DHS. *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Jennings v. Rodriguez*, 583 U.S. 281, 290-94 (2018); *Nielsen v. Preap*, 586 U.S. 392, 399, 399-401 (2019)

13. Venue is proper in this Court pursuant to 28 USC §§ 1391(b), (e)(1)(B), and 2241(d) because Petitioner is detained within this District. He is currently detained at the Sherburne County Jail, in Elk River, Minnesota. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(A) because Respondents are operating in this district.

PARTIES

14. Petitioner is a citizen and national of Vietnam and a resident of Minnesota. Petitioner is currently in Immigration and Customs Enforcement ("ICE") custody at the Sherburne County Jail, in Elk River, Minnesota. On or about August 19, 2026, Petitioner was detained by Respondents, where he has remained in detention since.

15. Petitioner is currently in custody at the Immigration and Customs Enforcement ("ICE") detention center in Elk River, Minnesota, pursuant to a final order of removal.

16. Respondent Markwayne Mullin is being sued in his official capacity as the Secretary of the Department of Homeland Security. In this capacity, Secretary Mullin is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), routinely transacts business in the District of Minnesota, supervises the Fort Snelling ICE Field Office, and is legally responsible for pursuing Petitioner's detention. As such, Respondent Mullin is a legal custodian of Petitioner.

17. Respondent David J. Venturella is the Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement, which oversees the detention of aliens in the United States. Mr. Venturella is sued in his official capacity. Respondent Venturella is responsible for Petitioner's detention. As such, Respondent Venturella is a legal custodian of Petitioner.

18. Respondent David Easterwood is being sued in his official capacity as the Acting Field Office Director for the Fort Snelling Field Office for ICE within DHS. In that capacity, Field Director Easterwood has supervisory authority over the ICE agents responsible for detaining Petitioner. The address for the Fort Snelling Field Office is 1 Federal Drive, Fort Snelling, Minnesota 55111, and it is the field office with jurisdiction over Petitioner's detention in Minnesota. As such, Respondent Easterwood is a legal custodian of Petitioner.

19. Respondent Sheriff Joel Brott is being sued in his official capacity as the Sheriff responsible for the Sherburne County Jail. Because Petitioner is detained in the Sherburne County Jail, Respondent has immediate day-to-day control over Petitioner.

EXHAUSTION

20. A final order of removal has been entered against Petitioner.

21. There are no legal proceedings pending in any other federal court or state court. There is no proceeding that is seeking to change the existence of a final order of removal.

22. Notably, no statutory exhaustion requirement applies to Petitioner's claim of unlawful detention. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992); 8 U.S.C. § 1252(d)(1) (requiring exhaustion of administrative remedies only where requesting review of a final removal order).

23. Furthermore, prudential "[e]xhaustion is not required when the issue presented to the court … involves purely legal issues." *Trinity Indus. v. Reich*, 901 F. Supp. 282, 286 (E.D. Ark. 1993), aff'd, 33 F.3d 942 (8th Cir. 1994) (citing *Bethlehem Steel v. E.P.A.*, 669 F.2d 903, 907 (3rd Cir.1982)).

24. This is a purely legal issue relating to prolonged detention under the Fifth Amendment.

25. "Further, exhaustion is not required when the nonjudicial remedy is clearly shown to be inadequate to prevent irreparable injury." *Id.* (citing *Miss America Organization v. Mattel*, 945 F.2d 536, 545 (2nd Cir.1991)).

26. Unlawful, going on indefinite, detention is clearly an irreparable injury given that "a loss of liberty … is perhaps the best example of irreparable harm." *Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018). "Freedom from imprisonment lies at the heart of the liberty protected by the Due Process Clause." *Zadvydas v. Davis*, 533 U.S. 678, 679 (2001).

27. "In addition, exhaustion is not required where administrative proceedings involve questions of significant national interest or where the agency has clearly violated rights secured by the Constitution, statutes, or administrative regulations." *Trinity Indus.*, 901 F. Supp. at 286 (citing *Philip Morris v. Block*, 755 F.2d 368, 370 (4th Cir.1985)).

28. Respondents have now detained Petitioner beyond the 6 months after his final order of removal, which is presumptively unreasonable. *See Zadvydas*, 533 U.S. at 701.

29. Petitioner cannot seek release under 8 U.S.C. 1226 because he remains subject to § 1231.

FACTUAL ALLEGATIONS & PROCEDURAL HISTORY

30. Petitioner is a citizen and national of Vietnam.

31. Petitioner entered the United States in or around 1988 as a refugee.

32. Subsequently, Respondents placed Petitioner in removal proceedings.

33. On September 21, 2011, the Immigration Judge ordered Petitioner's removal.

34. Petitioner was detained until December 29, 2011, when Respondents concluded his removal was not foreseeable at the time. Petitioner was released under an order for supervision (OSUP).

35. On January 21, 2026, Respondents revoked Petitioner's OSUP and detained him.

36. Respondents moved Petitioner from Minnesota to Texas shortly after detaining him.

37. Respondents did not have travel documents to effectuate his removal and had no timeline for when they would receive travel documents.

38. On February 18, 2026, Petitioner filed a habeas corpus petition in the Western District of Texas, El Paso Division. *See* Exh. A.

39. On May 5, 2026, the Court granted Petitioner's habeas petition and he was released within a day.

40. Petitioner was placed back on OSUP and had an ankle monitor. Petitioner continued to comply with his supervision requirements.

41. On August 19, 2026, Petitioner attended his typical ICE check-in.

42. The ICE officer flashed a document at Petitioner, claiming it was a travel document for his removal to Vietnam.

43. Respondents detained Petitioner at his August 19, 2026, check-in.

44. Since Petitioner's re-detention, he learned from ICE officers at his facility that Respondents do not have travel documents for his removal.

45. Respondents have not produced a Form I-205 warrant for Petitioner's arrest.

46. Petitioner has not received a notice revoking his supervision, nor did Respondents provide him any reason why he was being detained.

47. To date, Respondents have not identified a third country, to which they intend to remove Petitioner.

48. To date, Respondents have not received authorization or permission from Vietnam or any third country willing to accept Petitioner.

49. Respondents have not obtained a travel document that would permit them to remove Petitioner to Vietnam or a third country.

50. Petitioner has not been made aware of any specific plans to remove him to Vietnam or any specific, identified, third country.

51. Petitioner remains in detention at Sherburne County Jail, in Elk River, Minnesota.

LEGAL FRAMEWORK

52. As the constitution states, "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the Public Safety may require it." U.S. Const. art. I, § 9 cl. 2.

53. "[W]hen an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the "removal period")." 8 U.S.C. § 1231(a)(1)(A).

54. The removal period begins on the latest of the following:

> (i) The date the order of removal becomes administratively final.
>
> (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.

8 U.S.C. § 1231(a)(1)(B).

55. Such an order "shall become final upon the earlier of—

> (iii) a determination by the Board of Immigration Appeals affirming such order; or
>
> (iv) the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals.

8 U.S.C. § 1011(a)(47).

56. As such, the "order of removal" became administratively final on October 16, 2007.

57. The removal period may be extended beyond a period of 90 days if the alien "fails or refuses to make timely application in good faith for travel or other documents necessary to [his] departure," or otherwise fails to cooperate in the removal process. 8 U.S.C. § 1231(a)(1)(C).

58. "If the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General. The regulations shall include provisions requiring the alien—

> (A) to appear before an immigration officer periodically for identification;
>
> (B) to submit, if necessary, to a medical and psychiatric examination at the expense of the United States Government;
>
> (C) to give information under oath about the alien's nationality, circumstances, habits, associations, and activities, and other information the Attorney General considers appropriate; and
>
> (D) to obey reasonable written restrictions on the alien's conduct or activities that the Attorney General prescribes for the alien."

8 U.S.C. § 1231(a)(3).

59. "If the HQPDU determines at the conclusion of the review that there is no significant likelihood that the alien will be removed in the reasonably foreseeable future, despite the Service's and the alien's efforts to effect removal, then the HQPDU shall so advise the alien. Unless there are special circumstances justifying continued detention, the Service shall promptly

make arrangements for the release of the alien subject to appropriate conditions, as provided in paragraph (h) of this section." 8 C.F.R. § 241.13(g)(1).

60. The termination of release is also outlined by regulation and "[t]he Service may, in the exercise of its discretion, withdraw approval for release of any alien under this section prior to release in order to effect removal in the reasonably foreseeable future or where the alien refuses to comply with the conditions of release." 8 C.F.R. § 241.13(h)(4).

61. Furthermore, "[a]ny alien who has been released under an order of supervision under this section who violates any of the conditions of release may be returned to custody." 8 C.F.R. § 241.13(h)(4)(i)(1).

62. The arrest of an alien with a removal order cannot be made pursuant to Form I-200 and must be made using Form I-205. *See Inti C.-L. v. Blanche et al.*, No. 0:26-cv-2777-PJS-SGE, ECF No. 10 (D. Minn. June 9, 2026)

63. "The Service may revoke an alien's release under this section and return the alien to custody if, **on account of changed circumstances**, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(h)(4)(i)(2) (emphasis added).

64. "Upon revocation, the alien will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision." 8 C.F.R. § 241.13(h)(4)(i)(3).

65. As the full body of the Supreme Court has recognized, "[w]here detention is incident to removal, the detention cannot be justified as punishment nor can the confinement or its conditions be designed in order to punish." *Zadvydas*, 533 U.S. at 721 (J. Kennedy, dissenting) (citing *Wong Wing v. United States*, 163 U.S. 228 (1896)). *Id.* at 694 ("punitive measures could not be imposed upon aliens ordered removed because 'all persons within the territory of the United States are entitled to the protection" of the Constitution.'") (citing *Wong Wing*, 163 U.S. at 238 (majority opinion)).

66. The writ of habeas Corpus is the "fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action. *Harris v. Nelson*, 394 U.S. 286, 291 (1969).

67. "The scope and flexibility of the writ – its capacity to real all manner of illegal detention – its ability to cut through barriers of form and procedural mazes – have always been emphasized and jealously guarded by courts and lawmakers." *Id.*

68. Hence, "the very nature of the writ demands that it be administered with the initiative and flexibility essential to ensure the miscarriages of justice within its reach are surfaced and corrected." *Id.*

69. The Due Process Clause of the Fifth Amendment requires that "[n]o person shall… be deprived of liberty… without due process of law." U.S. Const. amend. 5.

70. It is well-established that the Fifth Amendment entitled aliens to due process of Law[.]" *Demore v. Kim*, 528 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)).

71. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that Clause protects." *Zadvydas,* 533 U.S. at 690 (2001).

72. Due process therefore requires "adequate procedural protections" to ensure that the government's asserted justification for its conduct infringing on protected interests 'outweighs the individual's constitutionally protected

interest in avoiding physical restraint.'" *Id.* (citing *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)).

73. As such, "Congress previously doubted the constitutionality of detention for more than six months." *Zadvydas*, 533 U.S. at 701 (2001).

74. "After this 6–month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.*

75. "[A]s the period of prior postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Id.* at 701.

76. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528.

77. Other than punishment for a crime, due process permits the government to take away liberty only "in certain special and narrow nonpunitive circumstances . . . where a special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (quotation marks omitted).

78. Such special justification exists only where a restraint on liberty bears a "reasonable relation" to permissible purposes. *Jackson v. Indiana*, 406 U.S.

715, 738 (1972); *see also Foucha v. Louisiana*, 504 U.S. 71, 79 (1992); *Zadvydas*, 533 U.S. at 690.

CAUSE OF ACTION

COUNT ONE: DETENTION AS STATUTORY VIOLATION OF 8 U.S.C. § 1231

79. Petitioner re-alleges and incorporates by reference each allegation.

80. Petitioner's continued detention by Respondents is unlawful and contravenes 8 U.S.C. § 1231.

81. The 90 day "removal period" has expired, Petitioner still has not been removed, and no other removal is in any way foreseeable, yet Petitioner continues to languish in detention.

82. Petitioner has complied with the mandate of 8 U.S.C. § 1231(a)(3) since he was ordered removed.

COUNT TWO: DETENTION AS REGULATORY VIOLATION OF 8 C.F.R. § 241.13

83. Petitioner re-alleges and incorporates by reference each allegation.

84. Under the applicable regulation "[u]pon revocation, the alien will be notified of the reasons for revocation of his or her release." 8 C.F.R. § 241.13(h)(4)(i)(3).

85. Viable reasons for the withdrawal of release relate to the "effect[uation of] removal in the reasonably foreseeable future or where the alien refuses to comply with the conditions of release." 8 C.F.R. § 241.13(h)(4).

86. Respondents have not alleged that any changes justify the withdrawal of release relating to either removal in the reasonably foreseeable future or any refusal to comply with the conditions of his release.

87. Respondents have not complied with 8 C.F.R. § 241.13(h)(i)(4) as they have not provided a reason, consistent with the regulation, for the withdrawal of his release.

88. The burden to establish circumstances that make removal significantly likely in the reasonably foreseeable future belongs to Respondents. Respondents have not compiled with its regulations. *See Sarail A. v. Bondi*, No. 25-cv-2144 (ECT/JFD), ECF No. 9 at 5 (D. Minn. June 17, 2025) (recommending habeas relief when ICE provided a notice that only parroted the regulatory text); *Mahamed Roble v. Bondi*, No. 25-CV-3196 (LMP/LIB), 2025 WL 2443453, at *3 (D. Minn. Aug. 25, 2025) (granting habeas relief when ICE failed to provide notice of the changed circumstances that related particularly to Respondent).

89. Respondents notified Petitioner of travel documents to Vietnam but later rescinded these claims, stating they do not have the travel documents.

90. Respondents did not notify Petitioner that it designated an alternative country of removal consistent with 8 C.F.R. § 1240.12(d) and secured the necessary travel authorization for removal to a third country.

91. Respondents' failure also violates the mandate of *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

92. Respondents cannot prove that Petitioner's removal is reasonably foreseeable or imminent, and they have not pointed to a refusal to comply with the terms of his release, so Petitioner's ongoing detention is therefore unreasonable and a violation of 8 C.F.R. § 241.13.

COUNT THREE: VIOLATION OF THE FIFTH AMENDMENT

93. Petitioner re-alleges and incorporates by reference each allegation.

94. The Fifth Amendment Due Process Clause protects against arbitrary detention by the executive branch. *Zadvydas*, 533 U.S. at 699.

95. "[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized." *Id.*

96. "After this 6–month period [of detention], once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing. *Id.* at 701.

97. "[F]or detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Id.*

98. Courts in Minnesota "have found no significant likelihood of removal … where … no country will accept him." *Ahmed v. Brott*, 2015 WL 1542131, at *4 (D. Minn. Mar. 17, 2015).

99. Petitioner has been detained for more than six months after the administrative finality of his removal order.

100. To Petitioner's knowledge, no country has issued a travel document.

101. Continued detention violates the Fifth Amendment and Petitioner's writ of habeas corpus must issue.

COUNT FOUR: VIOLATION OF ADMINISTRATIVE PROCEDURES ACT

102. Petitioner re-alleges and incorporates by reference each allegation.

103. Under the APA, "the reviewing court shall … interpret constitutional … provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall … hold unlawful and set aside agency action, findings, and conclusions found to be … contrary to constitutional right." 5 U.S.C. § 706 (2)(B).

104. "[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Zadvydas*, 533 U.S. at 699.

105. "Congress previously doubted the constitutionality of detention for more than six months. … After this 6–month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the

reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.* at 701.

106. Petitioner's detention is unreasonable, no country has accepted him, and more than six months have elapsed since Petitioner's removal order became administratively final. Petitioner's ongoing detention is therefore unreasonable, and violative of his Fifth Amendment guarantee of due process, as well as the Administrative Procedures Act.

PRAYER FOR RELIEF

WHEREFORE, Petitioner, asks this Court for the following relief:

1. Assume jurisdiction over this matter.
2. Issue an order restraining Respondents from attempting to move Petitioner from the State of Minnesota during the pendency of this Petition.
3. Issue an order requiring Respondents to provide 72-hour notice of any intended movement of Petitioner.
4. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under 28 U.S.C., chapter 153 related to habeas actions.
5. Order Respondents to show cause for their continued detention of Petitioner within three days pursuant to 28 U.S.C. § 2243.
6. Grant the writ of habeas corpus.

7. Order Petitioner's release from custody under an order of supervision or other condition as set by the Court and consistent with 8 U.S.C. § 1231.

8. Declare that Respondents' action is arbitrary and capricious in violation of the Administrative Procedures Act.

9. Declare that Respondents failed to comply with the regulatory mandates in violation of the Administrative Procedures Act.

10. Declare that Petitioner's detention beyond the 6-month period violates the Due Process Clause of the Fifth Amendment where travel arrangements have not been made.

11. Grant Petitioner reasonable attorney fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A).

12. Grant all further relief this Court deems just and proper.

DATED: September 4, 2026

Respectfully submitted,

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Verification by Someone Acting on Petitioner's Behalf Pursuant to 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioner because I am one of Petitioner's attorneys. I and others working under my supervision have discussed with the Petitioner the events described in this Petition. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding Petitioner's detention status, are true and correct to the best of my knowledge.

/s/ David L. Wilson Date: September 4, 2026