

1 JON M. SANDS  
Federal Public Defender  
2 KEITH J. HILZENDEGER #023685  
Assistant Federal Public Defender  
3 250 North 7th Avenue, Suite 600  
4 Phoenix, Arizona 85007  
5 (602) 382-2700 voice  
keith\_hilzendeger@fd.org  
6 *Attorneys for Petitioner Ly*

7 **IN THE UNITED STATES DISTRICT COURT**  
8 **FOR THE DISTRICT OF ARIZONA**

9 Chai Ly,  
10  
11 Petitioner,  
12  
13 vs.  
Luis Rosa, Jr., Warden, et al.,  
14  
15 Respondents.

No. 2:25-cv-3443-PHX-KML (JZB)

**Motion for Limited Discovery in  
Support of Petition for a Writ of Habeas  
Corpus and Motion for a Preliminary  
Injunction**

16 In his petition for a writ of habeas corpus, Mr. Ly contends that his prolonged detention  
17 by immigration officials pending an attempt to remove him to Vietnam amounts to  
18 unconstitutional indefinite detention, in violation of the Due Process Clause of the Fifth  
19 Amendment as interpreted in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Under *Zadvydas*, an alien  
20 who has been ordered removed from the United States may be detained only “during a period  
21 reasonably necessary to bring about that alien’s removal from the United States.” *Id.* at 689.  
22 After six months of post-removal-period detention, there arises a presumption that the detention  
23 is unlawful; however, even after that six-month period, “an alien may be held in confinement  
24 until it has been determined that there is no significant likelihood of removal in the reasonably  
25 foreseeable future.” *Id.* at 701. Mr. Ly contends that the Vietnamese Embassy will not issue  
26 travel documents for him, such that there is no likelihood of his removal in the reasonably  
27 foreseeable future. Accordingly, his detention in respondents’ custody violates the Fifth  
28 Amendment as interpreted in *Zadvydas*.

1 The allegations in the petition come from counsel's interview with Mr. Ly and a review of  
2 the history of U.S. immigration policy toward Vietnamese people. Owing to his current custody  
3 status, Mr. Ly does not have access to documents that may substantiate the allegations in the  
4 petition; as a result, many crucial facts in the petition are alleged on information and belief.  
5 Respondents, however, are certain to have these documents in their possession. Mr. Ly  
6 respectfully asks the Court to provide those documents to his counsel so that he may amend his  
7 petition as necessary.

8 Where "specific allegations before the court show reason to believe that the petitioner  
9 may, if the facts are fully developed, be able to demonstrate that he is entitled to relief, it is the  
10 duty of the court to provide the necessary facilities for an adequate inquiry." *Bracy v. Gramley*,  
11 520 U.S. 899, 909 (1997) (quoting *Harris v. Nelson*, 394 U.S. 286, 300 (1969)). The facts as they  
12 stand now are not fully developed, because the government presumably possesses information  
13 that bears on whether Mr. Ly's due process claims are likely to succeed. This information is  
14 likely contained in Mr. Ly's A-file, or in other files or databases maintained by the Departments  
15 of Justice and Homeland Security, to which neither he nor his counsel have access. The relevant  
16 documents include, but are not limited to, the following:

- 17 1. Mr. Ly's entire A-file;
- 18 2. A transcript (or, failing that, a recording) of any and all hearings in Mr. Ly's case  
19 before the immigration courts that led to his being ordered removed from the  
20 United States;
- 21 3. Any and all requests from ICE to any diplomatic representative of the Socialist  
22 Republic of Vietnam pertaining to travel documents that would "facilitate" Mr.  
23 Ly's removal to Vietnam, and any responsive or related correspondence to or  
24 from those diplomatic representatives pertaining to these requests for travel  
25 documents;
- 26 4. A full and complete copy of the memorandum of understanding signed on  
27 November 21, 2020, between the governments of the United States and the  
28 Socialist Republic of Vietnam, a redacted copy of which was attached to the  
second amended petition filed in this matter;
5. Any and all documents relating to the periodic custody reviews described in 8  
C.F.R. § 241.4 for all periods of time that Mr. Ly has been in ICE custody; and

