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

9 Vinh Van Phan,

10 Petitioner,

11 vs.

12 David R. Rivas, Warden, San Luis Regional
13 Detention Center;

14 Gregory J. Archambeault, San Diego Field
15 Office Director, U.S. Immigration and
Customs Enforcement;

16 Pamela Jo Bondi, Attorney General of the
17 United States; and


18 Kristi Noem, Secretary of Homeland
19 Security,

20 Respondents.

No.

Petition for a Writ of Habeas Corpus
Under 28 U.S.C. § 2241

21 **Technical Data**

- 22 1. Petitioner Vinh Phan is challenging the validity of his detention in immigration custody.
23 His A-number is 
- 24 2. Mr. Phan is challenging the decision of U.S. Immigration and Customs Enforcement to
25 revoke his release on an order of supervision and order him detained pending removal to
26 Vietnam.
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3. The decision to detain Mr. Phan beyond the removal period, *see* 8 U.S.C. § 1231(a)(6), is discretionary. As such, there are no administrative remedies available to him to exhaust.

Parties, Jurisdiction, and Venue

4. Petitioner Vinh Phan is a citizen of the Socialist Republic of Vietnam. He was ordered removed to Vietnam by an immigration judge in San Diego, California, on October 28, 2004.
5. Respondent David R. Rivas, is the Warden of the San Luis Regional Detention Center. He is Mr. Phan's immediate custodian, and thus a proper respondent in this matter. *See Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004).
6. Respondent Gregory Archambeault is the San Diego Field Office Director for U.S. Immigration and Customs Enforcement. He is responsible for Mr. Phan's detention, and thus a proper respondent in this matter.
7. Respondents Pamela Jo Bondi and Kristi Noem are, respectively, the Attorney General of the United States and the Secretary of Homeland Security. As such, they are responsible for maintaining the immigration detention system. They are thus legal custodians of Mr. Phan, and proper respondents in this matter.
8. This Court has jurisdiction under 28 U.S.C. §§ 2241 *et seq.*; the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*; the All Writs Act, 28 U.S.C. § 1651; and the Fifth Amendment to the U.S. Constitution.
9. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) and (e)(1)(B) because a substantial part of the events or omissions giving rise to the claims for relief set forth in this petition occurred in this district.

Background

10. Mr. Phan was born in Da Nang, Vietnam, in 1980. He was granted lawful permanent resident status in the United States on April 9, 1981. He came with his family and settled initially in the Los Angeles area. They moved to San Diego when he was three or four years old.

1 11. Mr. Phan has suffered the following criminal convictions:

- 2 a. On March 12, 1999, he was convicted in San Diego County Superior Court of one
3 misdemeanor count of forgery with intent to defraud. He was sentenced to one
4 day in jail followed by three years of probation.
- 5 b. On June 16, 2003, he was convicted in San Diego County Superior Court of one
6 count of felony forgery, in violation of Cal. Penal Code § 470(a). He was
7 sentenced to 120 days in jail followed by three years of probation.
- 8 c. On July 22, 2004, he was convicted in San Diego County Superior Court of one
9 count of accessing a computer with intent to defraud, in violation of Cal. Penal
10 Code § 502(c)(1). He was sentenced to two years in prison.
- 11 d. On July 22, 2005, he was convicted in San Diego County Superior Court of one
12 count of felony forgery, in violation of Cal. Penal Code § 470(a), and one count of
13 fraudulent use of an access card, in violation of Cal. Penal Code § 484g(a). He was
14 sentenced to a total of two years in prison.
- 15 e. On May 1, 2008, he was convicted of possession of methamphetamine for sale, in
16 violation of Cal. Health & Safety Code § 11378. He was sentenced to two years in
17 prison.
- 18 f. On August 18, 2010, he was convicted in San Diego County Superior Court of
19 possession of a controlled substance, in violation of Cal. Health & Safety Code
20 § 11377(a). He was sentenced to eight months in prison.
- 21 g. On January 28, 2011, he was convicted in San Diego County Superior Court of
22 one count of possession of a controlled substance, in violation of Cal. Health &
23 Safety Code § 11377(a). He was sentenced to three years of probation.
- 24 h. On September 5, 2012, he was convicted in Orange County Superior Court of one
25 count of possession of a controlled substance, in violation of Cal. Health & Safety
26 Code § 11350(a). He was sentenced to 16 months in prison.
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- 1 i. On August 17, 2015, he was convicted in the United States District Court for the
2 Southern District of California of one count of being a felon in possession of a
3 firearm, in violation of 18 U.S.C. § 922(g)(1), and one count of witness tampering,
4 in violation of 18 U.S.C. § 1512(a)(2)(C). He was sentenced to a total of 57 months
5 in prison followed by three years of supervised release.
- 6 j. On January 12, 2021, the probation office in the Southern District petitioned to
7 revoke Mr. Phan's supervised release. The basis for the petition was an allegation
8 that he had committed willful infliction of corporal injury on a spouse, in violation
9 of Cal. Penal Code § 273.5(a). The court revoked his supervised release on
10 November 17, 2021, and sentenced him to 8 months in prison followed by 24
11 months of supervised release.
- 12 k. On June 3, 2022, the probation office in the Southern District petitioned to revoke
13 Mr. Phan's supervised release. The basis for the petition was a termination from a
14 drug rehabilitation program. Two months later, the court revoked his supervised
15 release and sentenced him to 6 months in prison followed by 24 months of
16 supervised release.
- 17 l. On February 8, 2024, the probation office in the Southern District petitioned to
18 revoke Mr. Phan's supervised release. The bases for the petition were a positive
19 drug-test result and a failure to provide a urine specimen when directed to do so.
20 On June 14, 2024, the court revoked his supervised release and sentenced him to
21 10 months in prison with no further supervision to follow.
- 22 12. According to the Bureau of Prisons's online inmate locator, Mr. Phan was released from
23 prison on January 24, 2025.
- 24 13. Mr. Phan was ordered removed on October 28, 2004, at the immigration court in San
25 Diego, California. Upon information and belief, the removal order was based on at least
26 two prior convictions for crimes involving moral turpitude. *See* 8 U.S.C.
27 § 1227(a)(2)(A)(ii). He did not appeal the removal order.
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1 14. Upon information and belief, ICE took Mr. Phan into custody after he was released from
2 state prison on the burglary conviction. ICE was not able to obtain travel documents for
3 him from the Vietnamese government, and so he was released on an order of supervision.

4 15. According to Mr. Phan, he was arrested on July 25, 2025, in front of his home in San
5 Diego. He was scheduled for an ICE checkin on July 29, 2025. He had been reporting
6 regularly under the terms of one or more earlier orders of supervision except when he was
7 in prison.

8 a. “After the Vietnam War, the North Vietnamese government established the
9 current Socialist Republic of Vietnam. Around that time, waves of people from the
10 former Republic of Vietnam (South Vietnam) fled the country to escape political
11 persecution. Under various humanitarian programs, the United States accepted
12 hundreds of thousands of Vietnamese refugees.” *Trinh v. Homan*, 466 F. Supp. 3d
13 1077, 1083 (C.D. Cal. 2020) (cleaned up and citations to court filings omitted).

14 b. “Between the end of the Vietnam War and 2008, Vietnam refused to repatriate
15 any Vietnamese immigrants who had been ordered removed from the United
16 States. Before a Vietnamese immigrant without a passport or other travel
17 document can be repatriated, Vietnam must issue a passport or other travel
18 document in response to a request from ICE. In 2008, the United States and
19 Vietnam reached a diplomatic agreement pursuant to which Vietnam agreed to
20 start considering repatriation requests for certain Vietnamese immigrants.
21 Specifically, the agreement obligated Vietnam to consider repatriation requests for
22 Vietnamese immigrants who had arrived in the United States after July 12, 1995.
23 The agreement also provided that Vietnamese citizens are not subject to return to
24 Vietnam under this agreement if they arrived in the United States before July 12,
25 1995. Relying on this provision, Vietnam maintained its policy of nonrepatriation
26 for pre-1995 Vietnamese immigrants after signing the 2008 agreement.” *Id.*
27 (cleaned up and citations to court filings omitted).
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- 1 c. Mr. Phan was not eligible for the 2008 repatriation program because he arrived in
2 the United States in 1981, well before July 12, 1995.
- 3 d. “Prior to 2017, U.S. Immigration and Customs Enforcement (“ICE”) maintained
4 that the removal of pre-1995 Vietnamese immigrants was unlikely given Vietnam’s
5 consistent refusal to repatriate them. Accordingly, ICE adopted a policy of
6 detaining pre-1995 Vietnamese immigrants for no longer than ninety days after
7 their removal orders became final. After ninety days, ICE generally released them
8 into the community on orders of supervision.” *Id.* (cleaned up and citations to
9 court filings omitted).
- 10 e. “In 2017, ICE entered into negotiations with Vietnam that were aimed at
11 amending the 2008 Agreement and developing a new policy that would allow for
12 pre-1995 Vietnamese immigrants to be repatriated. These negotiations were
13 somewhat successful. Although the 2008 agreement was not officially amended,
14 Vietnamese officials verbally committed to begin considering ICE travel
15 document requests for pre-1995 Vietnamese immigrants on a case-by-case basis,
16 without explicitly committing to accept any of them.” *Id.* (cleaned up and
17 citations to court filings omitted).
- 18 f. “After receiving this verbal commitment in 2017, ICE departed from its
19 longstanding practice of releasing pre-1995 Vietnamese immigrants with final
20 orders of removal after ninety days of detention. Instead, it began detaining them
21 for more than ninety days based on the possibility that Vietnam might issue the
22 requisite travel documents. ICE also began redetaining some pre-1995 Vietnamese
23 immigrants who had previously been released on orders of supervision.” *Id.* at
24 1183–84 (cleaned up and citations to court filings omitted).
- 25 g. “On August 6, 2018, ICE met with Vietnamese officials again to continue
26 discussions about the status of pre-1995 Vietnamese immigrants. After that
27 meeting, ICE reversed its position again. ICE conceded that, despite Vietnam’s
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1 verbal commitment to consider travel document requests for pre-1995
2 immigrants, in general, the removal of these individuals was still not significantly
3 likely. In October 2018, ICE instructed field offices to resume the practice of
4 releasing pre-1995 Vietnamese immigrants within 90 days of a final order of
5 removal. That policy” remained in place as of June 11, 2020, the date of the
6 court’s order in *Trinh*. 466 F. Supp. 3d at 1084.

- 7 h. On November 21, 2020, the Department of Homeland Security and the Ministry
8 of Public Security of the Socialist Republic of Vietnam (which is responsible for
9 immigration matters in that country) reached a memorandum of understanding
10 regarding the repatriation of Vietnamese citizens who had entered the United
11 States before July 12, 1995, and who had been ordered removed from the United
12 States.
- 13 i. The Vietnamese government agreed to issue travel documents for, and accept the
14 removal of, Vietnamese citizens who meet all of the following criteria:
- 15 i. The person “has Vietnamese citizenship and does not have citizenship of
16 any other country at the same time.” (MOU at 2, § 4)¹
- 17 ii. The person has “violated U.S. law,” been ordered removed by a
18 “competent authority,” and has been released from prison by virtue of
19 either the completion of a penal sentence or the reduction of such sentence
20 that allowed for the person’s release. (MOU at 2–3, § 4)
- 21 iii. The person resided in Vietnam “prior to arriving in the United States and
22 currently has no right to reside in any other country.” (MOU at 3, § 4)
- 23 iv. There is a fourth criterion, but it was redacted from the copy of the MOU
24 submitted with this petition as authorized by 5 U.S.C. § 552(b)(7)(E)
25 (permitting redaction from documents provided under the Freedom of
26 Information Act when failing to redact “would disclose techniques and
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28 ¹ This memorandum of understanding is attached to this filing as an exhibit.

1 procedures for law enforcement investigations or prosecutions, or would
2 disclose guidelines for law enforcement investigations or prosecutions if
3 such disclosure could reasonably be expected to risk circumvention of the
4 law”). For this reason, the accompanying motion for limited discovery
5 includes a request for an unredacted copy of the memorandum of
6 understanding.

- 7 j. The parties to the memorandum of understanding agreed on the following
8 procedure for verification and issuance of travel documents:
- 9 i. DHS will only request travel documents for individuals who meet all four
10 of the criteria set forth above. (MOU at 4, § 8)
- 11 ii. The request for travel documents was expected to include:
- 12 1. a cover letter that requests MPS to accept the return of one of its
13 citizens;
- 14 2. a self-declaration form of the individual to be removed (the form
15 provided in the annex to the MOU);
- 16 3. a copy of the final order or removal, sentence imposed, copies or
17 summary of criminal judgment and conviction documents if the
18 crimes were the basis for removal;
- 19 4. decision of discharge from prison or reduction or sentence; and
20 5. copies of other identity or citizenship documents as appropriate
21 and available. (MOU at 4, § 8)
- 22 6. Documents in English must be translated into Vietnamese and
23 certified by a competent authority. (MOU at 4, § 8)
- 24 iii. The Vietnamese government reserved the right to “request additional
25 information derived from official records to confirm an individual’s
26 identity and citizenship.” (MOU at 4, § 8) DHS agreed to respond to such
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1 requests in a manner “consistent with U.S. law, regulation, and policy.”
2 (MOU at 4, § 8)

3 iv. “When the individual for whom the travel document has been requested
4 does not meet these eligibility criteria, [the Vietnamese government]
5 intends to notify DHS of the eligibility criteria that have not been met,
6 and/or if any additional information is needed to determine eligibility.”
7 (MOU at 4, § 8)

8 k. The memorandum of understanding could be suspended or cancelled upon 60
9 days’ notice by either party. (MOU at 6, § 13)

10 16. Upon information and belief, Mr. Phan has cooperated with ICE’s efforts to obtain travel
11 documents by filling in the form described and attached to the November 2020
12 memorandum of understanding (*see* MOU at 7–8). As of the time of filing, no travel
13 documents have been produced by the Vietnamese Embassy.

14 17. ICE has deported some Vietnamese citizens to Eswatini earlier this year. *See* John Eligon
15 & Hamed Aleaziz, *African Nation Says It Will Repatriate Migrants Deported by U.S.*, N.Y.
16 Times (Jul. 16, 2025). There is no reason to believe that, if ICE chooses, it may also try to
17 remove Mr. Phan to that country, or to any other country it may identify under 8 U.S.C.
18 § 1231(b)(2)(E)(vii).

19 Grounds for Relief

20 **Ground One: Mr. Phan’s detention in immigration custody violates the Due Process**
21 **Clause of the Fifth Amendment because he does not have satisfactory**
22 **documentation for the Vietnamese Embassy to issue travel documents**
23 **pursuant to the November 2020 memorandum of understanding.**

24 18. Mr. Phan cannot be removed to Vietnam. He was ordered removed in 2004, when
25 Vietnam was regularly refusing to repatriate Vietnamese citizens who departed that
26 country before July 12, 1995. As alleged above, Vietnam would have refused to issue travel
27 documents any time ICE may have asked before November 2020. Even now, ICE does
28 not have documentation that would satisfy the Vietnamese Embassy under the criteria

1 laid out in the November 2020 memorandum of understanding. Travel documents are
2 not immediately available for Mr. Phan. *See* 8 C.F.R. § 241.4(e)(1).

3 19. Mr. Phan was ordered removed from the United States in 2004. That order triggered a
4 statutory 90-day period (the “removal period”) within which the government had to
5 remove him from the United States. *See* 8 U.S.C. § 1231(a)(1)(A), (B)(i). He was not
6 removed during that time; rather, he was later released from immigration detention. He
7 remained at liberty under ICE supervision (except when he was incarcerated) until his
8 arrest by ICE officials on or about July 25, 2025.

9 20. The Due Process Clause of the Fifth Amendment limits “an alien’s post-removal-period
10 detention to a period reasonably necessary to bring about that alien’s removal from the
11 United States.” *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). Because of this
12 constitutional limitation, § 1231 “does not permit indefinite detention.” *Id.*

13 21. Detention following the removal period is presumptively limited to six months. “After
14 this 6-month period, once the alien provides good reason to believe that there is no
15 significant likelihood of removal in the reasonably foreseeable future, the Government
16 must respond with evidence sufficient to rebut that showing.” *Id.* at 701.

17 22. Even though Mr. Phan has not been in ICE custody for six months since his arrest on July
18 25, 2025, this petition is not premature. Mr. Phan cannot be returned to his country of
19 origin, because ICE does not have documentation that would satisfy the Vietnamese
20 government under the terms of the November 2020 memorandum of understanding. For
21 that reason, the Vietnamese Embassy will continue to refuse to issue him a passport or
22 other travel documents. His continued detention in immigration custody thus violates the
23 Due Process Clause of the Fifth Amendment.

- b. permit him to file a reply in support of the petition;
- c. allow him to conduct discovery in support of the allegations in his petition;
- d. convene an evidentiary hearing, if necessary to resolve disputed facts;
- e. order him released from respondents' custody on an order of supervision; and
- f. grant him any other relief that is just and practicable.

Respectfully submitted:

November 18, 2025.

JON M. SANDS
Federal Public Defender

s/Keith J. Hilzendeger
KEITH J. HILZENDEGER
Assistant Federal Public Defender
Attorney for Petitioner Phan

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Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s): **Vinh Van Phan , ;**

David R. Rivas , Warden, San Luis Regional Detention Center; Gregory J. Archambeault , San Diego Field Office Director, U.S. Immigration and Customs Enforcement; Pamela Jo Bondi , Attorney General of the United States; Kristi Noem , Secretary of Homeland Security;

County of Residence: Yuma

County of Residence: Yuma

County Where Claim For Relief Arose: Yuma

Plaintiff's Atty(s):

Defendant's Atty(s):

Keith James Hilzendeger , Assistant Federal Public Defender
Federal Public Defender, District of Arizona
250 North 7th Avenue, Suite 600
Phoenix, Arizona 85007
6023822700

IFP REQUESTED

REMOVAL FROM COUNTY, CASE #

II. Basis of Jurisdiction:

2. U.S. Government Defendant

III. Citizenship of Principal Parties(Diversity Cases Only)

Plaintiff:-

N/A

Defendant:-

N/A

IV. Origin :

1. Original Proceeding

V. Nature of Suit:

463 Alien Detainee

VI.Cause of Action:

28 U.S.C. 2241

VII. Requested in Complaint

Class Action:

No

Dollar Demand:

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Jury Demand:

No

VIII. This case is not related to another case.

Signature: s/Keith J. Hilzendeger

Date: 11/18/2025

Case 2:25-cv-04316-DJH--JZB Document 1-2 Filed 11/18/25 Page 2 of 2

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Revised: 01/2014