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

9 Tanh Van Tran,

10 Petitioner,

11 vs.

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

14 Patrick Divver, San Diego Field Office  
15 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**

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- 23 1. Mr. Tran is challenging the validity of his detention in immigration custody. His A-  
24 number is 
  - 25 2. Mr. Tran is challenging the decision of U.S. Immigration and Customs Enforcement to  
26 revoke his release on an order of supervision and order him detained pending removal to  
27 Vietnam.  
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- 1 11. On December 1, 1994, Mr. Tran was convicted in the San Diego County Superior Court  
2 of second-degree burglary, in violation of Cal. Penal Code § 459. He was sentenced to 16  
3 months in prison.
- 4 12. On March 2, 1998, Mr. Tran was convicted in the San Diego County Superior Court of  
5 assault with a semi-automatic firearm, in violation of Cal. Penal Code § 245(a)(2). He was  
6 sentenced to five years in prison.
- 7 13. On February 12, 2002, an INS officer met with Mr. Tran while he was serving his  
8 sentence at the Centinela State Prison in Imperial, California. A week later, a notice to  
9 appear was issued, charging him with being removable by virtue of a prior conviction for  
10 an aggravated felony and another for possession of a firearm. *See* 8 U.S.C.  
11 § 1227(a)(2)(A)(iii) (conviction for an aggravated felony is a removable offense),  
12 1227(a)(2)(C) (possession of a firearm is a removable offense).
- 13 14. On March 14, 2002, an immigration judge in El Centro, California, ordered Mr. Tran  
14 removed to Vietnam. On March 20, 2002, a form prepared by the Department of Justice  
15 entitled “Information for Travel Document or Passport” was completed. The form notes  
16 that he has no passport.
- 17 15. On August 26, 2002, INS determined that it could not remove Mr. Tran as ordered. On  
18 September 12 or 18, 2002, Mr. Tran was released from INS custody on an order of  
19 supervision. He reported regularly through 2002 and 2003, and cooperated with a request  
20 to obtain travel documents.
- 21 16. On January 27, 2003, the Vietnamese Consulate in San Francisco informed Mr. Tran that  
22 there was no agreement in force between the United States and Vietnam that would allow  
23 for travel documents to issue.
- 24 17. On July 13, 2004, a form prepared by the Department of Justice entitled “Information for  
25 Travel Document or Passport” was completed. The form notes that he has no passport.  
26 On October 28, 2004, ICE determined that it was unable to remove Mr. Tran to Vietnam  
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1 and ordered him released from custody on an order of supervision. He reported regularly  
2 in 2004, 2005, and 2006.

3 18. ICE located Mr. Tran at the San Diego County Jail on July 10, 2007, and again on April  
4 26, 2008. A detainer was lodged with the jail.

5 19. On November 16, 2007, Mr. Tran was released from ICE custody on an order of  
6 supervision.

7 20. ICE located Mr. Tran at the San Diego County Jail on April 26, 2008. A detainer was  
8 lodged with the jail.

9 21. On August 22, 2008, Mr. Tran was released from ICE custody on an order of supervision.  
10 On November 28, 2008, Mr. Tran was given another order of supervision. He reported  
11 regularly as required.

12 22. Mr. Tran was arrested by San Diego police on November 4, 2009, on suspicion of driving  
13 under the influence of a controlled substance, in violation of Cal. Health & Safety Code  
14 § 11550. He was released from the county jail on November 30, and his order of  
15 supervision was reinstated. He reported as required on December 28, 2009, and January  
16 28, 2010.

17 23. On February 10, 2010, Mr. Tran was given another order of supervision.

18 24. On November 1, 2010, the order of supervision was revoked when ICE located Mr. Tran  
19 in the San Diego County Jail following an arrest on a charge of burglary. On November 16,  
20 2010, he applied for travel documents using what appears to be a form approved by the  
21 Vietnamese Embassy.

22 25. On January 19, 2011, ICE determined that it would release Mr. Tran from custody. Two  
23 days later, Mr. Tran was released from ICE custody on an order of supervision. He  
24 reported regularly until he missed a scheduled checkin on October 4, 2013.

25 26. On January 31, 2013, Mr. Tran was convicted in San Diego County Superior Court of one  
26 count of burglary, in violation of Cal. Penal Code § 459, and one count of possession of a  
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1 controlled substance, in violation of Cal. Health & Safety Code § 11377(a). He was  
2 sentenced to a year and four months in prison.

3 27. On May 7, 2019, Mr. Tran was released from ICE custody on an order of supervision.

4 28. ICE arrested Mr. Tran on June 17, 2025, at his home in San Diego, California. He was  
5 taken first to the Otay Mesa Detention Center in San Diego, and then transferred to the  
6 San Luis Regional Detention Center in San Luis, Arizona. He remains there to this day.

7 29. This history of post-war diplomatic relations between the governments of the United  
8 States and the Republic of Vietnam suggests why travel documents have not been  
9 forthcoming for Mr. Tran.

10 a. “After the Vietnam War, the North Vietnamese government established the  
11 current Socialist Republic of Vietnam. Around that time, waves of people from the  
12 former Republic of Vietnam (South Vietnam) fled the country to escape political  
13 persecution. Under various humanitarian programs, the United States accepted  
14 hundreds of thousands of Vietnamese refugees.” *Trinh v. Homan*, 466 F. Supp. 3d  
15 1077, 1083 (C.D. Cal. 2020) (cleaned up and citations to court filings omitted).

16 b. “Between the end of the Vietnam War and 2008, Vietnam refused to repatriate  
17 any Vietnamese immigrants who had been ordered removed from the United  
18 States. Before a Vietnamese immigrant without a passport or other travel  
19 document can be repatriated, Vietnam must issue a passport or other travel  
20 document in response to a request from ICE. In 2008, the United States and  
21 Vietnam reached a diplomatic agreement pursuant to which Vietnam agreed to  
22 start considering repatriation requests for certain Vietnamese immigrants.  
23 Specifically, the agreement obligated Vietnam to consider repatriation requests for  
24 Vietnamese immigrants who had arrived in the United States after July 12, 1995.  
25 The agreement also provided that Vietnamese citizens are not subject to return to  
26 Vietnam under this agreement if they arrived in the United States before July 12,  
27 1995. Relying on this provision, Vietnam maintained its policy of nonrepatriation  
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1 for pre-1995 Vietnamese immigrants after signing the 2008 agreement.” *Id.*  
2 (cleaned up and citations to court filings omitted).

- 3 c. Mr. Tran was not eligible for the 2008 repatriation program because he arrived in  
4 the United States in 1979, well before July 12, 1995.
- 5 d. “Prior to 2017, U.S. Immigration and Customs Enforcement (“ICE”) maintained  
6 that the removal of pre-1995 Vietnamese immigrants was unlikely given Vietnam’s  
7 consistent refusal to repatriate them. Accordingly, ICE adopted a policy of  
8 detaining pre-1995 Vietnamese immigrants for no longer than ninety days after  
9 their removal orders became final. After ninety days, ICE generally released them  
10 into the community on orders of supervision.” *Id.* (cleaned up and citations to  
11 court filings omitted).
- 12 e. “In 2017, ICE entered into negotiations with Vietnam that were aimed at  
13 amending the 2008 Agreement and developing a new policy that would allow for  
14 pre-1995 Vietnamese immigrants to be repatriated. These negotiations were  
15 somewhat successful. Although the 2008 agreement was not officially amended,  
16 Vietnamese officials verbally committed to begin considering ICE travel  
17 document requests for pre-1995 Vietnamese immigrants on a case-by-case basis,  
18 without explicitly committing to accept any of them.” *Id.* (cleaned up and  
19 citations to court filings omitted).
- 20 f. “After receiving this verbal commitment in 2017, ICE departed from its  
21 longstanding practice of releasing pre-1995 Vietnamese immigrants with final  
22 orders of removal after ninety days of detention. Instead, it began detaining them  
23 for more than ninety days based on the possibility that Vietnam might issue the  
24 requisite travel documents. ICE also began redetaining some pre-1995 Vietnamese  
25 immigrants who had previously been released on orders of supervision.” *Id.* at  
26 1183–84 (cleaned up and citations to court filings omitted).
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- 1 g. “On August 6, 2018, ICE met with Vietnamese officials again to continue  
2 discussions about the status of pre-1995 Vietnamese immigrants. After that  
3 meeting, ICE reversed its position again. ICE conceded that, despite Vietnam’s  
4 verbal commitment to consider travel document requests for pre-1995  
5 immigrants, in general, the removal of these individuals was still not significantly  
6 likely. In October 2018, ICE instructed field offices to resume the practice of  
7 releasing pre-1995 Vietnamese immigrants within 90 days of a final order of  
8 removal. That policy” remained in place as of June 11, 2020, the date of the  
9 court’s order in *Trinh*. 466 F. Supp. 3d at 1084.
- 10 h. On November 21, 2020, the Department of Homeland Security and the Ministry  
11 of Public Security of the Socialist Republic of Vietnam (which is responsible for  
12 immigration matters in that country) reached a memorandum of understanding  
13 regarding the repatriation of Vietnamese citizens who had entered the United  
14 States before July 12, 1995, and who had been ordered removed from the United  
15 States.
- 16 i. The Vietnamese government agreed to issue travel documents for, and accept the  
17 removal of, Vietnamese citizens who meet all of the following criteria:
- 18 i. The person “has Vietnamese citizenship and does not have citizenship of  
19 any other country at the same time.” (MOU at 2, § 4)<sup>1</sup>
- 20 ii. The person has “violated U.S. law,” been ordered removed by a  
21 “competent authority,” and has been released from prison by virtue of  
22 either the completion of a penal sentence or the reduction of such sentence  
23 that allowed for the person’s release. (MOU at 2–3, § 4)
- 24 iii. The person resided in Vietnam “prior to arriving in the United States and  
25 currently has no right to reside in any other country.” (MOU at 3, § 4)
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28 <sup>1</sup> A copy of this memorandum of understanding is attached to this filing as an exhibit.

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iv. There is a fourth criterion, but it was redacted from the copy of the MOU submitted with this petition as authorized by 5 U.S.C. § 552(b)(7)(E) (permitting redaction from documents provided under the Freedom of Information Act when failing to redact “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law”). For this reason, the accompanying motion for limited discovery includes a request for an unredacted copy of the memorandum of understanding.

j. The parties to the memorandum of understanding agreed on the following procedure for verification and issuance of travel documents:

- i. DHS will only request travel documents for individuals who meet all four of the criteria set forth above. (MOU at 4, § 8)
- ii. The request for travel documents was expected to include:
  1. a cover letter that requests MPS to accept the return of one of its citizens;
  2. a self-declaration form of the individual to be removed (the form provided in the annex to the MOU);
  3. a copy of the final order or removal, sentence imposed, copies or summary of criminal judgment and conviction documents if the crimes were the basis for removal;
  4. decision of discharge from prison or reduction or sentence; and
  5. copies of other identity or citizenship documents as appropriate and available. (MOU at 4, § 8)
  6. Documents in English must be translated into Vietnamese and certified by a competent authority. (MOU at 4, § 8)



1 country before July 12, 1995. As alleged above, Vietnam would have refused to issue travel  
2 documents any time ICE may have asked before November 2020. Even now, ICE does  
3 not have documentation that would satisfy the Vietnamese Embassy under the criteria  
4 laid out in the November 2020 memorandum of understanding. Travel documents are  
5 not immediately available for Mr. Tran. *See* 8 C.F.R. § 241.4(e)(1).

6 33. Mr. Tran was ordered removed from the United States in 2002. That order triggered a  
7 statutory 90-day period (the “removal period”) within which the government had to  
8 remove him from the United States. *See* 8 U.S.C. § 1231(a)(1)(A), (B)(i). He was not  
9 removed during that time; rather, he was later released from immigration detention. He  
10 remained at liberty under INS and ICE supervision (except when he was incarcerated)  
11 until his arrest by ICE officials on or about June 17, 2025.

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

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

20 36. Even though Mr. Tran has not been in ICE custody for six months since his arrest on June  
21 17, 2025, this petition is not premature. Mr. Tran cannot be returned to his country of  
22 origin, because ICE does not have documentation that would satisfy the Vietnamese  
23 government under the terms of the November 2020 memorandum of understanding. For  
24 that reason, the Vietnamese Embassy will continue to refuse to issue him a passport or  
25 other travel documents. His continued detention in immigration custody thus violates the  
26 Due Process Clause of the Fifth Amendment.  
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- 1 b. permit him to file a reply in support of the petition;  
2 c. allow him to conduct discovery in support of the allegations in his petition;  
3 d. convene an evidentiary hearing, if necessary to resolve disputed facts;  
4 e. order him released from respondents' custody on an order of supervision; and  
5 f. grant him any other relief that is just and practicable.

6 Respectfully submitted:

November 19, 2025.

7 JON M. SANDS  
8 Federal Public Defender

9 *s/Keith J. Hülzendege*  
10 KEITH J. HILZENDEGER  
11 Assistant Federal Public Defender  
12 *Attorney for Petitioner Tran*  
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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): **Tanh Van Tran , ;**

Defendant(s): **David R. Rivas , Warden, San Luis Regional Detention Center; Patrick Divver , 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, AZ 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:

**0**

Jury Demand:

**No**

VIII. This case is not related to another case.

**Signature: s/Keith J. Hilzendeger**

**Date:** 11/19/2025

**Case 2:25-cv-04329-MTL--CDB Document 1-2 Filed 11/19/25 Page 2 of 2**

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014