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

Hung Ba Nguyen,

Petitioner,

vs.

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; and


Kristi Noem, Secretary of Homeland
Security,

Respondents.

No.

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

Technical Data

1. Mr. Nguyen is challenging the validity of his detention in immigration custody. His A-number is 
2. Mr. Nguyen is challenging his continued detention in immigration custody after he was ordered removed to Vietnam and then returned to ICE custody after being released on an order of supervision.

1 11. Mr. Nguyen has suffered the following criminal history:

- 2 a. On June 15, 1998, Mr. Nguyen was convicted in Davidson County, Tennessee,
3 Circuit Court of “License - No Driver’s License.” The publicly available court
4 record does not disclose the outcome of the case.
- 5 b. On July 29, 2005, Mr. Nguyen pleaded guilty in Orange County Superior Court to
6 one count of unauthorized possession of a hypodermic needle, in violation of Cal.
7 Business & Professional Code § 4140(a) (2005). He was sentenced to three years’
8 probation, participation in a drug program, and a \$100 fine. According to Mr.
9 Nguyen, his probation was revoked after being convicted of a traffic offense in
10 Biloxi, Mississippi, and he was sent to state prison in California. He believes that it
11 was during this stint in prison that he was ordered removed from the United
12 States.
- 13 c. On December 29, 2010, Mr. Nguyen pleaded guilty in Orange County Superior
14 Court to one count of unlawful possession of a controlled substance, in violation of
15 Cal. Health & Safety Code § 11350(a), and one count of driving under the
16 influence of alcohol or drugs, in violation of Cal. Vehicle Code § 23152(a). On
17 February 2, 2011, he was sentenced to 16 months in state prison.
- 18 d. On December 20, 2017, Mr. Nguyen pleaded guilty in Orange County Superior
19 Court to one count of possession of a controlled substance, in violation of Cal.
20 Health & Safety Code § 11377(a). He was sentenced to 30 days in jail.
- 21 e. On April 12, 2018, Mr. Nguyen pleaded guilty in Orange County Superior Court
22 to one count of resisting a peace officer, in violation of Cal. Penal Code
23 § 148(a)(1), and one count of brandishing a weapon, in violation of Cal. Penal
24 Code § 417(a)(1). He was sentenced to 180 days in jail and three years of
25 probation.
- 26 f. On September 21, 2021, Mr. Nguyen pleaded guilty in Orange County Superior
27 Court to one count of driving on a suspended license, in violation of Cal. Vehicle
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1 Code § 14601.1(a), and one count of possession of drug paraphernalia, in violation
2 of Cal. Health & Safety Code § 11364(a). He was sentenced to a total of six days in
3 jail.

4 g. On May 10, 2024, Mr. Nguyen pleaded guilty in Orange County Superior Court
5 to one count of possession of drug paraphernalia, in violation of Cal. Health &
6 Safety Code § 11364(a), and one count of possession of a controlled substance, in
7 violation of Cal. Health & Safety Code § 11350(a). He was sentenced to eight days
8 in jail on both counts.

9 h. On August 5, 2025, Mr. Nguyen was charged in Orange County Superior Court
10 with two counts of possession of hard drugs with two or more prior convictions, in
11 violation of Cal. Health & Safety Code § 11395(b)(1). He pleaded not guilty. The
12 publicly available court records do not indicate any kind of resolution of these
13 charges.

14 12. Upon information and belief, Mr. Nguyen was ordered removed to Vietnam based on the
15 2005 conviction. The order was issued by an immigration judge at what is now the
16 immigration court in Adelanto, California, on October 26, 2009. He did not appeal the
17 removal order, and so it became final on November 25, 2009. *See* 8 C.F.R. § 1003.38(b).

18 13. Upon information and belief, Mr. Nguyen complied with his orders of supervision issued
19 between his release from ICE custody following his removal order and when he was
20 arrested and taken into ICE custody on August 14, 2025.

21 14. While Mr. Nguyen was in ICE custody following his 2009 removal order, ICE was not
22 able to obtain travel documents for him from the Vietnamese government. Upon
23 information and belief, he was released on an order of supervision for this reason.

24 a. “After the Vietnam War, the North Vietnamese government established the
25 current Socialist Republic of Vietnam. Around that time, waves of people from the
26 former Republic of Vietnam (South Vietnam) fled the country to escape political
27 persecution. Under various humanitarian programs, the United States accepted
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1 hundreds of thousands of Vietnamese refugees.” *Trinh v. Homan*, 466 F. Supp. 3d
2 1077, 1083 (C.D. Cal. 2020) (cleaned up and citations to court filings omitted).

- 3 b. “Between the end of the Vietnam War and 2008, Vietnam refused to repatriate
4 any Vietnamese immigrants who had been ordered removed from the United
5 States. Before a Vietnamese immigrant without a passport or other travel
6 document can be repatriated, Vietnam must issue a passport or other travel
7 document in response to a request from ICE. In 2008, the United States and
8 Vietnam reached a diplomatic agreement pursuant to which Vietnam agreed to
9 start considering repatriation requests for certain Vietnamese immigrants.
10 Specifically, the agreement obligated Vietnam to consider repatriation requests for
11 Vietnamese immigrants who had arrived in the United States after July 12, 1995.
12 The agreement also provided that Vietnamese citizens are not subject to return to
13 Vietnam under this agreement if they arrived in the United States before July 12,
14 1995. Relying on this provision, Vietnam maintained its policy of nonrepatriation
15 for pre-1995 Vietnamese immigrants after signing the 2008 agreement.” *Id.*
16 (cleaned up and citations to court filings omitted).
- 17 c. Mr. Nguyen was not eligible for the 2008 repatriation program because he arrived
18 in the United States in approximately 1975, well before July 12, 1995.
- 19 d. “Prior to 2017, U.S. Immigration and Customs Enforcement (“ICE”) maintained
20 that the removal of pre-1995 Vietnamese immigrants was unlikely given Vietnam’s
21 consistent refusal to repatriate them. Accordingly, ICE adopted a policy of
22 detaining pre-1995 Vietnamese immigrants for no longer than ninety days after
23 their removal orders became final. After ninety days, ICE generally released them
24 into the community on orders of supervision.” *Id.* (cleaned up and citations to
25 court filings omitted).
- 26 e. “In 2017, ICE entered into negotiations with Vietnam that were aimed at
27 amending the 2008 Agreement and developing a new policy that would allow for
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1 pre-1995 Vietnamese immigrants to be repatriated. These negotiations were
2 somewhat successful. Although the 2008 agreement was not officially amended,
3 Vietnamese officials verbally committed to begin considering ICE travel
4 document requests for pre-1995 Vietnamese immigrants on a case-by-case basis,
5 without explicitly committing to accept any of them.” *Id.* (cleaned up and
6 citations to court filings omitted).

7 f. “After receiving this verbal commitment in 2017, ICE departed from its
8 longstanding practice of releasing pre-1995 Vietnamese immigrants with final
9 orders of removal after ninety days of detention. Instead, it began detaining them
10 for more than ninety days based on the possibility that Vietnam might issue the
11 requisite travel documents. ICE also began redetaining some pre-1995 Vietnamese
12 immigrants who had previously been released on orders of supervision.” *Id.* at
13 1183–84 (cleaned up and citations to court filings omitted).

14 g. “On August 6, 2018, ICE met with Vietnamese officials again to continue
15 discussions about the status of pre-1995 Vietnamese immigrants. After that
16 meeting, ICE reversed its position again. ICE conceded that, despite Vietnam’s
17 verbal commitment to consider travel document requests for pre-1995
18 immigrants, in general, the removal of these individuals was still not significantly
19 likely. In October 2018, ICE instructed field offices to resume the practice of
20 releasing pre-1995 Vietnamese immigrants within 90 days of a final order of
21 removal. That policy” remained in place as of June 11, 2020, the date of the
22 court’s order in *Trinh*. 466 F. Supp. 3d at 1084.

23 h. On November 21, 2020, the Department of Homeland Security and the Ministry
24 of Public Security of the Socialist Republic of Vietnam (which is responsible for
25 immigration matters in that country) reached a memorandum of understanding
26 regarding the repatriation of Vietnamese citizens who had entered the United
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1 States before July 12, 1995, and who had been ordered removed from the United
2 States.

3 i. The Vietnamese government agreed to issue travel documents for, and accept the
4 removal of, Vietnamese citizens who meet all of the following criteria:

5 i. The person “has Vietnamese citizenship and does not have
6 citizenship of any other country at the same time.” (MOU at 2,
7 § 4)¹

8 ii. The person has “violated U.S. law,” been ordered removed by a
9 “competent authority,” and has been released from prison by
10 virtue of either the completion of a penal sentence or the reduction
11 of such sentence that allowed for the person’s release. (MOU at 2–
12 3, § 4)

13 iii. The person resided in Vietnam “prior to arriving in the United
14 States and currently has no right to reside in any other country.”
15 (MOU at 3, § 4)

16 iv. There is a fourth criterion, but it was redacted from the copy of the
17 MOU submitted with this petition as authorized by 5 U.S.C.
18 § 552(b)(7)(E) (permitting redaction from documents provided
19 under the Freedom of Information Act when failing to redact
20 “would disclose techniques and procedures for law enforcement
21 investigations or prosecutions, or would disclose guidelines for law
22 enforcement investigations or prosecutions if such disclosure could
23 reasonably be expected to risk circumvention of the law”). For this
24 reason, the accompanying motion for limited discovery includes a
25 request for an unredacted copy of the memorandum of
26 understanding.

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¹ This memorandum of understanding is attached to this filing as an exhibit.

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

3 i. DHS will only request travel documents for individuals who meet
4 all four of the criteria set forth above. (MOU at 4, § 8)

5 ii. The request for travel documents was expected to include:

6 1. a cover letter that requests MPS to accept the return of one
7 of its citizens;

8 2. a self-declaration form of the individual to be removed (the
9 form provided in the annex to the MOU);

10 3. a copy of the final order or removal, sentence imposed,
11 copies or summary of criminal judgment and conviction
12 documents if the crimes were the basis for removal;

13 4. decision of discharge from prison or reduction or sentence;
14 and

15 5. copies of other identity or citizenship documents as
16 appropriate and available. (MOU at 4, § 8)

17 6. Documents in English must be translated into Vietnamese
18 and certified by a competent authority. (MOU at 4, § 8)

19 iii. The Vietnamese government reserved the right to “request
20 additional information derived from official records to confirm an
21 individual’s identity and citizenship.” (MOU at 4, § 8) DHS
22 agreed to respond to such requests in a manner “consistent with
23 U.S. law, regulation, and policy.” (MOU at 4, § 8)

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

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

5 15. After his arrest on August 14, 2025, Mr. Nguyen was transferred to the San Luis Regional
6 Detention Center in San Luis, Arizona.

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

11 17. ICE has deported some Vietnamese citizens to Eswatini earlier this year. *See* John Eligon
12 & Hamed Aleaziz, *African Nation Says It Will Repatriate Migrants Deported by U.S.*, N.Y.
13 Times (Jul. 16, 2025). There is no reason to believe that, if ICE chooses, it may also try to
14 remove Mr. Nguyen to that country. There is similarly no reason to believe that ICE may
15 not try to remove Mr. Nguyen to any other country that it deems fit. Mr. Nguyen fears
16 removal to these third countries because of the conditions of confinement in those
17 countries, including the potential for being tortured or killed in those countries’ prisons.

18 **Grounds for Relief**

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

23 18. Mr. Nguyen cannot be removed to Vietnam. He was ordered removed in 2009, when
24 Vietnam was regularly refusing to repatriate Vietnamese citizens who departed that
25 country before July 12, 1995. As alleged above, Vietnam would have refused to issue travel
26 documents any time ICE may have asked before November 2020. Even now, ICE does
27 not have documentation that would satisfy the Vietnamese Embassy under the criteria
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1 laid out in the November 2020 memorandum of understanding. Travel documents are
2 not immediately available for Mr. Nguyen. *See* 8 C.F.R. § 241.4(e)(1).

3 19. Mr. Nguyen was ordered removed from the United States in 2009. That order triggered a
4 statutory 90-day period (the “removal period”) within which the government was
5 required to remove him from the United States. *See* 8 U.S.C. § 1231(a)(1)(A), (B)(i). He
6 was not removed during that time; rather, he was later released from immigration
7 detention. He remained at liberty under ICE supervision until his arrest by ICE officials
8 on or about August 14, 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. Nguyen has not been in ICE custody for six months since his arrest on
18 August 14, 2025, this petition is not premature. Mr. Nguyen cannot be returned to his
19 country of origin, because ICE does not have documentation that would satisfy the
20 Vietnamese government under the terms of the November 2020 memorandum of
21 understanding. For that reason, the Vietnamese Embassy will continue to refuse to issue
22 him a passport or other travel documents. His continued detention in immigration
23 custody thus violates the Due Process Clause of the Fifth Amendment.

1 **Ground Two: Mr. Nguyen’s detention in immigration custody pending removal to any third**
2 **country violates the Due Process Clause of the Fifth Amendment because**
3 **ICE has not given him sufficient notice of the proposed third country and an**
4 **opportunity to request relief from removal to that country, either from an**
5 **immigration officer, an immigration judge, or a federal court.**

6 23. “It is well established that the Fifth Amendment entitles aliens to due process of law in
7 the context of removal proceedings.” *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025) (per
8 curiam) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). Mr. Nguyen thus is entitled to
9 “notice and an opportunity to be heard appropriate to the nature of the case.” *Id.*
10 (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). As
11 relevant here, this means that Mr. Nguyen is entitled to notice that he is to be removed to
12 a third country “within a reasonable time and in such a manner as will allow [him] to
13 actually seek habeas relief in the proper venue before such removal occurs.” *Id.*

14 24. Mr. Nguyen has not been formally ordered removed to any country other than Vietnam.
15 As such, he has never had an opportunity to contest removal to any third country on the
16 ground that he may face persecution or torture if he is removed to that country.

17 25. To the extent that Mr. Nguyen’s detention is meant to facilitate his removal to a third
18 country, *see generally Zadvydas*, 533 U.S. at 690 (suggesting that detention following a
19 removal order is intended to facilitate removal), if such a removal is accomplished in
20 violation of his due-process rights, then his detention is illegal. This due-process claim
21 “necessarily impl[ies] the invalidity of [his] confinement and removal” to a third country
22 not yet named in any removal order. *J.G.G.*, 145 S. Ct. at 1005. Thus his due-process
23 claim is properly brought in a habeas petition, and a court order that he be released from
24 detention is a proper remedy for such a violation.

25 **Prayer for Relief**

26 26. Mr. Nguyen is being illegally detained, in violation of statute, the Due Process Clause of
27 the Fifth Amendment. He respectfully asks this Court to:

28 a. order the respondents to answer the petition;

