

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
(602) 382-2700 voice
5 keith_hilzendeger@fd.org
6 *Attorneys for Petitioner Nguyen*

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

9 Hung Ba Nguyen,

10 Petitioner,

11 vs.

12 David R. Rivas, Warden, et al.,

13 Respondents.
14

No.

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

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

1 The allegations in the petition come from counsel's interview with Mr. Nguyen, a review
2 of the history of U.S. immigration policy toward Vietnamese people in the 1970s and 1980s, and a
3 search of publicly available court and immigration records. Owing to his current custody status,
4 Mr. Nguyen does not have access to documents that may substantiate the allegations in the
5 petition; as a result, many crucial facts in the petition are alleged on information and belief.
6 Respondents, however, are certain to have these documents in their possession. Mr. Nguyen
7 respectfully asks the Court to provide those documents to his counsel so that he may amend his
8 petition as necessary.

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

- 18 1. Mr. Nguyen's entire A-file;
- 19 2. Any and all requests from ICE to any diplomatic representative of the Socialist
20 Republic of Vietnam pertaining to travel documents that would "facilitate" Mr.
21 Nguyen's removal to Vietnam, and any responsive or related correspondence to
22 or from those diplomatic representatives pertaining to these requests for travel
23 documents;
- 24 3. Any and all requests from ICE to any diplomatic representative of any country
25 other than the Socialist Republic of Vietnam pertaining to travel documents that
26 would "facilitate" Mr. Nguyen's removal to that other country, and any
27 responsive or related correspondence to or from those diplomatic representatives
28 pertaining to these requests for travel documents;
4. A full and complete copy of the memorandum of understanding signed on
November 21, 2020, between the governments of the United States and the
Socialist Republic of Vietnam, a redacted copy of which was attached to the
petition filed in this matter;

1 5. Any and all documents relating to the periodic custody reviews described in 8
2 C.F.R. § 241.4 for all periods of time that Mr. Nguyen has been in ICE custody;
and

3 6. Any and all documents relating to any determination under 8 C.F.R. § 241.13 and
4 8 C.F.R. § 241.14, whenever made, regarding whether there is a significant
likelihood of removing Mr. Nguyen in the reasonably foreseeable future.

5 Mr. Nguyen respectfully asks the Court to order the government to furnish these
6 documents to his counsel by the close of business on Friday, January 9, 2025. Mr. Nguyen has
7 good cause for the Court to allow discovery. *Cf. Bracy*, 520 U.S. at 909 (guarantee of success on
8 the merits of a habeas claim is not required for allowing discovery). The deportation officers who
9 have been and are now responsible for assisting Mr. Nguyen in obtaining a passport or other
10 travel documents have likely been privy to information about efforts to obtain those documents
11 have been unsuccessful. Because Mr. Nguyen cannot obtain travel documents, further such
12 efforts are likely to prove not to be fruitful.

13 In sum, the discovery Mr. Nguyen is requesting may help him establish that there is no
14 reasonable likelihood of his removal in the foreseeable future. This Court should grant the
15 motion and order the government to provide the requested documents to Mr. Nguyen and his
16 counsel.

17 A proposed order is being lodged herewith.

18 Respectfully submitted:

December 17, 2025.

19 JON M. SANDS
20 Federal Public Defender

21 *s/Keith J. Hilzendege*
22 KEITH J. HILZENDEGER
23 Assistant Federal Public Defender
24 *Attorney for Petitioner Nguyen*