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Attorney for Petitioner,
PHONG BA TRAN

FILED
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RICHARD W. WIEBING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

PHONG BA TRAN,

Petitioner,

v.

CJOM
Nancy Alcantar, Field Office Director
Immigration & Customs Enforcement
DHS, Department of Homeland Security
Attorney General,

Respondent.

Case No. CV083805 MHP

Next Court Deadline: None

MOTION TO DISMISS WRIT OF HABEAS CORPUS

Petitioner Phong Ba Tran, through his undersigned counsel, moves this Court to dismiss the Writ of Habeas Corpus based on the fact that he is not detained.

BACKGROUND

Petitioner is a former lawful permanent resident who initially entered the United States on September 11, 1981 but was subsequently ordered removed from the United States on April 26, 2005 by an Immigration Judge presiding in San Francisco, CA. Thereafter, Petitioner filed an appeal to the order but said appeal was dismissed by the

Board of Immigration Appeals. Petitioner was eventually sent a notice of surrender, form I-166, to appear at the San Francisco DRO on August 11, 2008.

On August 8, 2008, Petitioner filed a Writ of Habeas Corpus with the United States District Court, Northern District of California to prevent his removal from the United States. Thereafter, Petitioner appeared at the San Francisco DRO on August 11, 2008 as instructed by the notice of surrender but travel documents were not obtained to effect his removal. Travel documents were not issued because Petitioner is a Vietnamese National who entered the United States before July 12, 1995 and is not an individual who falls under the Memorandum of Understanding entered into between the United States and Vietnam on January 22, 2008.

ARGUMENT

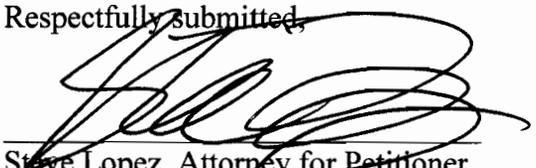
A Writ of Habeas Corpus seeks relief from unlawful detention of a person. Petitioner's Writ of Habeas Corpus Petition should be dismissed because Petitioner is not detained.

A party may seek to dismiss a complaint for "failure to state a claim upon which relief may be granted." Fed. R. Civ. P. 12(b)(6). Since Petitioner is not detained dismissal is proper because the relief sought against unlawful detention is moot.

WHEREFORE, Petitioner respectfully requests that this Court dismiss the Writ of Habeas Corpus Petition without prejudice.

DATED: September 18, 2008

Respectfully submitted,


Steve Lopez, Attorney for Petitioner

ORDER

The Petitioner's Motion to Dismiss the Writ of Habeas Corpus Petition is hereby GRANTED.

It is so ORDERED.

Date: 9/24/2008



CERTIFICATE OF SERVICE

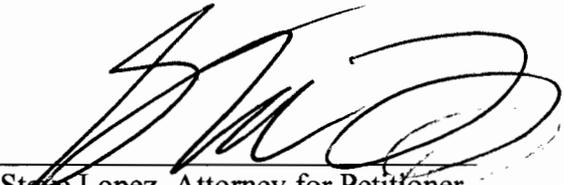
I hereby certify that the foregoing:

MOTION TO DISMISS WRIT OF HABEAUS CORPUS

was served on to U.S. Department of Justice by First Class Mail to:

Ila Deiss
United States Attorney
U.S. Department of Justice
450 Golden Gate Avenue, Box 36055
San Francisco, CA 94102-3495

Dated this 18th day of September 2008


Steve Lopez, Attorney for Petitioner

CERTIFICATE OF SERVICE

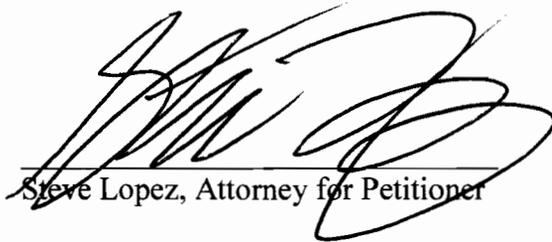
I hereby certify that the foregoing:

MOTION TO DISMISS WRIT OF HABEAUS CORPUS

was served on to Department of Homeland Security by First Class Mail to:

Nancy Alcantar
Field Office Director
Office of Attorney General
Immigration and Customs Enforcement – DHS
630 Sansome Street, Room 590
San Francisco, CA 94111-2206

Dated this 18th day of September 2008



Steve Lopez, Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that the foregoing:

MOTION TO DISMISS WRIT OF HABEAUS CORPUS

was served on to Attorney General of United States of America by First Class Mail to:

Attorney General
Joseph P. Russoniello
United States of America
450 Golden Gate Avenue
San Francisco, CA 94102

Dated this 18th day of September 2008



Steve Lopez, Attorney for Petitioner