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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

HOANG TRINH, *et al.*,

Petitioners,

v.

TAE D. JOHNSON, Acting Director,  
U.S. Immigration and Customs  
Enforcement, *et al.*,

Respondents.

Case No. 8:18-cv-316-CJC-GJS

**ORDER ON JOINT MOTION  
FOR ENTRY OF  
STIPULATED DISMISSAL**

Hon. Cormac J. Carney

1 Petitioners Hoang Trinh, Vu Ha, Long Nguyen, Ngoc Hoang, Dai Diep, Bao  
2 Duong, and Sieu Nguyen (“Petitioners”) and Respondents Tae D. Johnson,  
3 Alejandro Mayorkas, Merrick Garland, David Marin, and DOE 1 Warden  
4 (“Respondents”) (Petitioners and Respondents shall collectively be referred to as  
5 “Parties”) respectfully move this Court to enter the following stipulated dismissal:

6 **STIPULATED DISMISSAL**

7 WHEREAS, Petitioners filed this action on February 22, 2018;

8 WHEREAS, on May 11, 2018, Petitioners filed their First Amended Habeas  
9 Corpus Class Action Petition and Class Action Complaint (the “Complaint”) (Dkt.  
10 27);

11 WHEREAS, the Complaint asserts two claims, Counts One and Two;

12 WHEREAS, on June 11, 2020, the Court granted summary judgment in  
13 substantial part to Respondents on Count One (Dkt. 146);

14 WHEREAS, on October 18, 2018, the Court certified three classes, two of  
15 which correspond to Count One, and one of which—the “Prolonged Detention  
16 Class”—corresponds to Count Two (Dkt. 75);

17 WHEREAS, the Prolonged Detention Class consists of all Vietnamese  
18 nationals who arrived in the United States before July 12, 1995 and are subject to  
19 final orders of removal (“pre-1995 Vietnamese immigrants”), and who have been  
20 or will be detained by ICE for more than 180 days without a bond hearing (Dkt.  
21 75);

22 WHEREAS, Count Two is based in part on the opinion in *Diouf v.*  
23 *Napolitano*, 634 F.3d 1081 (9th Cir. 2011) (“*Diouf*”), in which the Court of Appeals  
24 for the Ninth Circuit determined that a noncitizen who faces prolonged detention  
25 under 8 U.S.C. § 1231(a)(6) is entitled to a bond hearing;

26 WHEREAS, in *Guerrero-Sanchez v. Warden York Cty. Prison*, 905 F.3d 208  
27 (3d Cir. 2018) (“*Guerrero-Sanchez*”), the Court of Appeals for the Third Circuit  
28 adopted the Ninth Circuit’s holding in *Diouf*;

1 WHEREAS, on October 11, 2019, the Court ordered that Count Two be held  
2 in abeyance to allow the Ninth Circuit to issue a decision in *Aleman Gonzalez v.*  
3 *Barr*, No. 18-16465 (9th Cir.), which presented the question of whether *Diouf*  
4 remained good law after the Supreme Court’s decision in *Jennings v. Rodriguez*,  
5 138 S. Ct. 830 (2018) (“*Jennings*”);

6 WHEREAS, in *Aleman Gonzalez v. Barr*, 955 F.3d 762 (9th Cir. 2020)  
7 (“*Aleman Gonzalez*”), the Ninth Circuit held that *Diouf* remained good law after  
8 *Jennings*;

9 WHEREAS, since *Aleman Gonzalez* was decided, the Parties have engaged  
10 in extensive discussions in an effort to resolve Count Two without further litigation;

11 WHEREAS, the Parties have negotiated in good faith and voluntarily agreed  
12 to settle this action on the terms and conditions set forth herein;

13 WHEREAS, the Parties agree and represent that, because this stipulation  
14 does not preclude any claims of absent class members (§ 5), it need not be subject  
15 to the procedures set forth in Federal Rules of Civil Procedure 23(e)(1) or 23(e)(2);  
16 *see* Fed. R. Civ. P. 23(e)(1)(B) (requiring notice “to all class members who would  
17 be bound by the proposal”); Fed. R. Civ. P. 23(e)(2) (requiring a court to conduct a  
18 fairness hearing and make a fairness finding “[i]f the proposal would bind class  
19 members”); 3 Newberg on Class Actions § 8:14 (5th ed.) (explaining that notice is  
20 not required if “the settlement binds only the individual class representatives”)  
21 (quoting Fed. R. Civ. P. 23 advisory committee’s note(2003)); *Kim v. Space Pencil,*  
22 *Inc.*, 2012 WL 5948951, at \*1, \*4 (N.D. Cal. Nov. 28, 2012) (concluding that a  
23 fairness hearing was not required where the settlement proposal provided that only  
24 the named plaintiffs released their claims);

25 WHEREAS, the Parties agree and represent that, although Federal Rule of  
26 Civil Procedure 23(e)(2) does not apply, this stipulation is “fair, reasonable, and  
27 adequate” under that provision;

28 WHEREAS, nothing in this stipulation shall be construed as an admission of

1 law or fact or an acknowledgement of liability, wrongdoing, or violation of law by  
2 Respondents, or as an admission or acknowledgement by Respondents that  
3 Petitioners are the prevailing party in this action;

4 WHEREAS, no party hereto is an infant or incompetent;

5 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by  
6 and among the Parties to this Stipulated Dismissal, subject to the Court’s approval,  
7 in consideration of the benefits flowing to the Parties hereto from this stipulation,  
8 that Count Two be compromised, settled, forever released, barred, and dismissed  
9 with prejudice, upon the following terms and conditions:

10 1. Respondents will provide immigration court bond hearings, after 180  
11 days of continuous detention under 8 U.S.C. § 1231, to Prolonged Detention Class  
12 members who are detained in the Ninth Circuit or Third Circuit and who otherwise  
13 meet the requirements to receive a bond hearing pursuant to *Diouf*, *Aleman*  
14 *Gonzalez*, or *Guerrero-Sanchez*.

15 2. Paragraph 1 will expire as to Prolonged Detention Class members  
16 detained in the Ninth Circuit or Third Circuit if, as agreed upon by the Parties or  
17 determined by the Court pursuant to Paragraph 7, a subsequent change in law such  
18 as a decision by the Supreme Court or an amendment to 8 U.S.C. § 1231  
19 undermines the legal basis for providing bond hearings to Prolonged Detention  
20 Class members in that Circuit.

21 3. Respondents will notify Petitioners promptly, and no later than one  
22 month after the policy change, if U.S. Immigration and Customs Enforcement  
23 (“ICE”) changes its current policy of generally finding that “pre-1995 Vietnamese  
24 immigrants” (as defined in the *Trinh* Class Certification Order, Dkt. 75 at 2) are not  
25 likely to be removed in the reasonably foreseeable future and generally releasing  
26 pre-1995 Vietnamese immigrants within 90 days of the entry of their final orders of  
27 removal. This term will expire 60 months after this stipulation is approved.  
28

1           4.     In December 2021, March 2022, June 2022, September 2022,  
2 December 2022, March 2023, June 2023, and September 2023, ICE will produce  
3 reports to Petitioners, containing:

4           A.     The following information for all pre-1995 Vietnamese immigrants  
5 who, as of the reporting date, have been detained at least 91 consecutive days  
6 under 8 U.S.C. § 1231:

- 7                   i.    Name
- 8                   ii.   A number
- 9                   iii.   Date of final order
- 10                  iv.   Date last detained by ICE
- 11                  v.    Date of last travel document request, if this information is  
12 recorded in a database that is accessible to ICE-Law  
13 Enforcement Systems and Analysis Division (“ICE-  
14 LESA”)
- 15                  vi.    Date of travel document issuance, if this information is  
16 recorded in a database that is accessible to ICE-LESA

17           B.     The following information for all pre-1995 Vietnamese  
18 immigrants who have been issued travel documents since the last report:

- 19                   i.    Name
- 20                   ii.   A number
- 21                   iii.   Date of final order
- 22                  iv.   Date last detained by ICE
- 23                  v.    Date of last travel document request, if this information is  
24 recorded in a database that is accessible to ICE-LESA
- 25                  vi.    Date of travel document issuance, if this information is  
26 recorded in a database that is accessible to ICE-LESA
- 27                  vii.   Date of removal, if applicable

1           5.     Upon approval of this stipulation, the named Petitioners release  
2 Respondents from any and all claims for habeas, injunctive, and declaratory relief  
3 arising from the facts and circumstances alleged in the Complaint that were or could  
4 have been brought prior to approval of the stipulation. Class counsel will not seek  
5 to designate new class representatives in the above-captioned case. This stipulation  
6 shall not preclude any Prolonged Detention Class members, other than the named  
7 Petitioners, from bringing claims of any nature against Respondents.

8           6.     This stipulation will conclude the *Trinh* case, except that the Court will  
9 retain jurisdiction to enforce this stipulation. Each Party shall bear its own costs and  
10 attorneys' fees, including those under the Equal Access to Justice Act or any other  
11 provision of law.

12           7.     The Court retains jurisdiction to enforce this stipulation on its own  
13 motion, or upon a motion pursuant to Subparagraph C of the dispute resolution  
14 process below:

15               A.     In the event of any problem or dispute concerning the terms of  
16 this stipulation, including without limitation that a Party failed to comply  
17 with the terms of this stipulation, or violated the terms of the stipulation, or  
18 in the event of a dispute about whether Paragraph 1 has expired pursuant to  
19 Paragraph 2, the alleging Party shall first identify the problem or dispute in  
20 writing to the non-alleging Party and provide a detailed explanation of the  
21 problem or dispute. The non-alleging Party shall respond in writing within a  
22 reasonable period, but no later than ten (10) business days. The parties will  
23 then make good faith attempts to promptly meet and confer to resolve the  
24 issues informally.

25               B.     If any dispute cannot be resolved informally by the Parties  
26 pursuant to Subparagraph A within ten (10) business days of the deadline for  
27 the non-alleging Party's response, the alleging Party may but is not required  
28 to file a request for mediation by a mediator on the Court's Mediation Panel.

1 If no Panel Mediator acceptable to the Parties is available within thirty (30)  
2 days from the date of the request for a mediator, or no Panel Mediator  
3 consents to serve as a mediator, the Parties may refer the unresolved dispute  
4 to a private mediator if the Parties mutually agree on the mediator and the  
5 mediator consents.

6 C. If the dispute is not resolved within forty-five (45) days of the  
7 request for a mediator pursuant to Subparagraph B, or if ten (10) business  
8 days have elapsed after the deadline for the non-alleging Party's informal  
9 response and the alleging Party chooses not to pursue mediation, the alleging  
10 Party may file a motion in the above-captioned case requesting that the Court  
11 resolve the dispute. The non-alleging Party may file an opposition thereto no  
12 later than ten (10) business days after a motion is filed pursuant to this  
13 paragraph. The dispute will be deemed submitted at 12 am on the day after  
14 the filing deadline for the non-alleging Party's opposition brief.

15 8. Paragraph 7 does not apply to any problem or dispute concerning  
16 Paragraph 3 or Paragraph 4 of this stipulation. However, the Court retains  
17 jurisdiction to enforce Paragraph 3 for 60 months after this stipulation is approved,  
18 and retains jurisdiction to enforce Paragraph 4 for 24 months after this stipulation  
19 is approved.



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Date: October 5, 2021

/s/ Jarrad L. Wood  
Raymond A. Cardozo  
Jarrad L. Wood  
REED SMITH, LLP

/s/ Phi U. Nguyen  
Phi U. Nguyen  
ASIAN AMERICANS ADVANCING  
JUSTICE – ATLANTA

/s/ Jingni (Jenny) Zhao  
Jingni (Jenny) Zhao  
Anoop Prasad  
Kevin Chun Hoi Lo  
Winifred Kao  
ASIAN AMERICANS ADVANCING  
JUSTICE - ASIAN LAW CAUCUS

/s/ Jesse A. Davis III  
Jesse A. Davis III  
DAVIS ADAMS, LLC

*Counsel for Petitioners*

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District Court Section

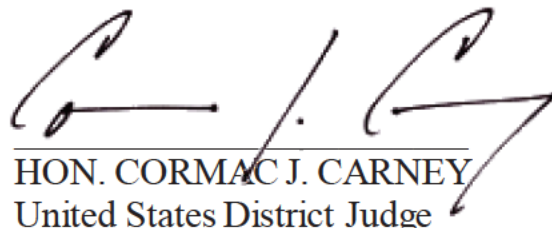
JEFFREY S. ROBINS  
Deputy Director

/s/ Julian M. Kurz  
JULIAN M. KURZ<sup>1</sup>  
Trial Attorney

*Counsel for Respondents*

IT IS SO ORDERED.

Date: October 7, 2021

  
HON. CORMAC J. CARNEY  
United States District Judge

<sup>1</sup> Pursuant to Local Rule 5-4.3.4(a)(2)(i), the filer hereby attests that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.