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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10 SOUTHERN DIVISION – RONALD REAGAN FEDERAL BUILDING

11 HOANG TRINH, VU HA, LONG  
12 NGUYEN, NGOC HOANG, DAI  
DIEP, BAO DUONG, and SIEU  
13 NGUYEN, on behalf of themselves and  
all of those similarly situated,

14 Petitioners,

15 v.

16 THOMAS D. HOMAN, Deputy  
Director and Senior Official Performing  
17 Duties of the Director, United States  
Immigration and Customs Enforcement;  
18 KIRSTJEN M. NIELSEN, Secretary,  
United States Department of Homeland  
19 Security; JEFFERSON B. SESSIONS  
III, United States Attorney General;  
20 DAVID MARIN, Field Office Director,  
Los Angeles Field Office, United States  
21 Immigration and Customs Enforcement;  
SANDRA HUTCHENS, Sheriff,  
22 Orange County, Calif.; and DOE 1,  
Warden, Adelanto ICE Processing  
23 Center,

Respondents.

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

**FIRST AMENDED HABEAS  
CORPUS CLASS ACTION  
PETITION AND CLASS ACTION  
COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

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**INTRODUCTION**

1  
2 1. This class action habeas petition and complaint for declaratory and  
3 injunctive relief is brought on behalf of Petitioners, who fled war-torn Vietnam, were  
4 accepted by the United States as refugees before July 12, 1995 and have resided in  
5 the United States since they were young children or teenagers. As a result of abrupt  
6 and unlawful actions by Respondents, Petitioners currently face unwarranted and  
7 indefinite immigration detention.

8 2. Petitioners became lawful permanent residents of this country many  
9 years ago but, based on criminal convictions, lost their green cards and were ordered  
10 removed from the United States. Although Petitioners have final orders of removal,  
11 they cannot be repatriated under the existing repatriation agreement between the  
12 United States and Vietnam. *See* Agreement Between the Government of the United  
13 States and the Government of the Socialist Republic of Vietnam on the Acceptance  
14 of the Return of Vietnamese Citizens.<sup>1</sup> The agreement does not allow for the  
15 repatriation of Vietnamese immigrants who came to the United States before July 12,  
16 1995 (“pre-1995 Vietnamese immigrants”), a population that is largely comprised of  
17 refugees who fled Vietnam after the war to escape persecution under the new  
18 communist regime.

19 3. United States Immigration and Customs Enforcement (“ICE”) has had a  
20 longstanding practice of releasing pre-1995 Vietnamese immigrants with final orders  
21 of removal due to legal constraints on their detention authority. Recognizing that pre-  
22 1995 Vietnamese immigrants are “not subject to return to Vietnam” under the  
23 repatriation agreement, ICE has typically released these immigrants on orders of  
24 supervision within 90 days of their removal orders becoming final. The repatriation

25  
26  
27 <sup>1</sup> This agreement can be found on the U.S. Department of State’s website. *See*  
28 Attachment A (Agreement Concerning the Acceptance of the Return of Vietnamese  
Citizens, U.S.- NAM., Jan. 22, 2008, 08 – 43, <https://www.state.gov/documents/organization/108921.pdf>).

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1 agreement has thus given thousands of pre-1995 Vietnamese immigrants the  
2 opportunity to return to their families and communities to rebuild their lives.

3 4. In 2017, ICE abruptly departed from past enforcement practices  
4 pertaining to pre-1995 Vietnamese immigrants with final orders of removal. ICE  
5 began subjecting pre-1995 Vietnamese immigrants to much longer periods of post-  
6 removal order detention, in some cases as long as eleven months. ICE also began re-  
7 detaining without notice pre-1995 Vietnamese immigrants all across the United  
8 States who had been living peaceably in their communities on orders of supervision  
9 for years or decades.

10 5. ICE’s enforcement tactics have sown fear in Vietnamese refugee  
11 communities around the country. Immigrants from other countries that have also  
12 historically refused to accept immigrants for repatriation, including Cambodia,  
13 Somalia, and Iraq, are similarly experiencing indiscriminate ICE arrests, which are  
14 the subjects of pending legal actions as well. *See, e.g., Nak Kim Chhoeun v. David*  
15 *Marin*, United States District Court, Central District of California, Case No. 8:17-cv-  
16 01898-CJC (GJSx).

17 6. When this action was filed on February 22, 2018, Petitioners’ counsel  
18 were aware of approximately 40 pre-1995 Vietnamese immigrants with final orders  
19 of removal across the country who were beyond 90 days of post-removal order  
20 detention. The total number of similarly situated individuals was likely much larger.  
21 Since then, Petitioners’ counsel have learned of additional pre-1995 Vietnamese  
22 immigrants who have reached 90 days of post-removal order detention. On  
23 information and belief, ICE intends to continue to detain pre-1995 Vietnamese  
24 immigrants with final orders of removal. The number of Vietnamese with final  
25 orders of removal who are at risk of future detention is between 8,000 and 10,000.  
26 Based on ICE estimates from 2008, an overwhelming percentage of these individuals  
27 arrived in the United States before July 12, 1995.

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1 7. ICE has undertaken its detention campaign without any evidence that  
2 Vietnam will accept pre-1995 Vietnamese immigrants that have been or will be  
3 detained. The repatriation agreement has not been rescinded or modified by either  
4 country. Given Vietnam’s longstanding policy of categorically denying repatriation  
5 to pre-1995 Vietnamese immigrants, memorialized in the existing and valid  
6 repatriation agreement, detention of Petitioners without an individualized and  
7 specific showing that Vietnam actually intends to accept them is unlawful.

8 8. Additionally, ICE has kept pre-1995 Vietnamese immigrants in  
9 detention past 180 days without providing them any meaningful custody review to  
10 determine whether continued detention is warranted because they pose a danger or  
11 flight risk. ICE cannot lawfully hold Petitioners in prolonged detention absent an  
12 individualized showing of danger or flight risk before a neutral decision maker.

13 **JURISDICTION**

14 9. This Court has subject matter jurisdiction under 28 U.S.C. § 2241  
15 (habeas corpus), the Suspension Clause of Article I of the United States Constitution,  
16 28 U.S.C. § 1331 (federal question), and 28 U.S.C. § 1361 (mandamus). The Court  
17 may also grant relief under 28 U.S.C. §§ 2201-02 (Declaratory Judgment Act) and  
18 28 U.S.C. § 1651 (All Writs Act).

19 **VENUE**

20 10. Venue is proper in the Central District of California under 28 U.S.C. §  
21 1391(e) because Respondents are federal officers sued in their official capacity;  
22 Respondents Marin and Hutchens are based in this district; Petitioners Hoang Trinh,  
23 Vu Ha, and Dai Diep and numerous class members reside in this district; Petitioners  
24 Dai Diep, Bao Duong, and Sieu Nguyen and numerous class members are currently  
25 detained in this district; Petitioners Hoang Trinh and Vu Ha were previously  
26 detained in this district; and a substantial part of the events or omissions giving rise  
27 to these claims occurred in this district. Venue is also proper under 28 U.S.C. §§  
28

1 2241 *et seq.*, as Respondents exercise control over Petitioners. *Armentero v. INS*, 340  
2 F.3d 1058, 1069-70 (9th Cir. 2003), *withdrawn on reh’g*, 382 F.3d 1153 (9th Cir.  
3 2004) (explaining why “practicality, efficiency, and the interests of justice” demand  
4 relaxation of immediate custodian rule in habeas challenges to immigration  
5 detention); *see also Roman v. Ashcroft*, 340 F.3d 314, 319 (6th Cir. 2003)  
6 (recognizing that while ICE Field Office Director is generally the proper respondent  
7 for immigration habeas petitioners, higher level ICE officials may be proper  
8 respondents in extraordinary circumstances); *Vasquez v. Reno*, 233 F.3d 688, 696  
9 (1st Cir. 2000).

10 **PARTIES**

11 11. Petitioner Hoang Trinh is a 41-year-old resident of Orange County,  
12 California who legally entered the United States from Vietnam as a four-year-old  
13 refugee in 1980. He subsequently adjusted his status to become a lawful permanent  
14 resident. His parents, now married for more than 50 years, raised a large Catholic  
15 family—Hoang and his six sisters—that centered around helping build a thriving  
16 family business: a neighborhood bakery. Hoang later married and now has two  
17 children, an 18-year-old daughter who attends California State University, Long  
18 Beach, and a 13-year-old son. Hoang’s wife, two children, parents, and six sisters are  
19 all United States citizens. Hoang has no remaining family in Vietnam. In early 2015,  
20 Hoang was arrested on a drug charge, for which he served one year in prison. After  
21 allegedly being found in possession of a marijuana plant in 2017, Hoang was  
22 incarcerated in Orange County before being transferred to ICE custody in June 2017.  
23 He was ordered removed from the United States on July 27, 2017 and remained  
24 incarcerated at the Theo Lacy Facility in Orange County until April 16, 2018, when  
25 he was released on an order of supervision. During this time, he was never afforded a  
26 bond hearing before an immigration judge to determine whether his prolonged  
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1 detention was justified. He was also never interviewed by the Vietnamese  
2 government regarding repatriation to Vietnam.

3 12. Petitioner Vu Ha is a 37-year-old resident of Orange County, California  
4 who legally entered the United States from Vietnam as a 10-year-old refugee in  
5 1990. He became a lawful permanent resident shortly after his arrival to the United  
6 States. His parents are United States citizens, as are his sister and his 18-year-old  
7 daughter. An artist and avid runner, Vu has primarily worked at the nail salon his  
8 mother owns. He was arrested three times as a young adult between the years 2000  
9 and 2005, with the most serious offense being robbery. In 2017, Vu was arrested and  
10 detained for failing to pay a citation for driving without a license. He was then  
11 transported from a county jail to ICE custody in May 2017. He was ordered removed  
12 from the United States on September 19, 2017 and remained incarcerated at the  
13 Adelanto ICE Processing Center in Adelanto, California until April 13, 2018, when  
14 he was released on an order of supervision. Vu has never been interviewed by the  
15 Vietnamese government regarding repatriation to Vietnam. While detained, Vu was  
16 never afforded a bond hearing before an immigration judge to determine whether his  
17 prolonged detention was justified.

18 13. Petitioner Long Nguyen is 41-year-old resident of Charleston, South  
19 Carolina, who legally entered the United States as an eleven-year-old refugee in  
20 1987. He became a lawful permanent resident the following year. He is now married  
21 to a United States citizen and has a two-year-old daughter and three stepdaughters  
22 who are all United States citizens. His parents also reside in the United States as  
23 lawful permanent residents. The Nguyen family is active in their local Catholic  
24 church, and Long and his wife have worked together for many years at a nail salon  
25 his wife manages. Long’s only felony offense involved a nonviolent drug charge in  
26 Kansas in 2006. In 2011 or 2012, ICE detained Long upon his reentry to the United  
27 States after traveling abroad. He was ordered to be removed from the United States  
28

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1 on April 18, 2012 but was released on an order of supervision after Vietnam would  
2 not accept his deportation. Even though he reliably reported to ICE for years under  
3 his order of supervision, Long was suddenly pulled over on his way to work and re-  
4 detained by ICE officers on October 19, 2017. He was held at the Stewart Detention  
5 Center in Lumpkin, Georgia until March 23, 2018, when he was released on an order  
6 of supervision.

7 14. Petitioner Ngoc Hoang is a 44-year-old resident of Gwinnett County,  
8 Georgia who legally entered the United States in 1990 as a refugee. Both of his  
9 parents and his only sibling are United States citizens. Ngoc was married to a United  
10 States citizen with whom he has four children, ages 16, 14, 13 and 11, all of whom  
11 are United States citizens. Ngoc works as a nail salon technician, helping to provide  
12 for his four children, as well as his current partner and her young son. He has no  
13 family remaining in Vietnam. In 1994, Ngoc pleaded guilty to check fraud in  
14 Washington, and in 2010, he was placed on probation in Georgia for simple assault  
15 and simple battery. He was ordered removed from the United States on  
16 December 12, 2012 and released on an order of supervision approximately two  
17 months later. Over the next almost five years, Ngoc consistently complied with the  
18 requirements of his order of supervision. On the morning of November 6, 2017,  
19 Ngoc was suddenly re-arrested by ICE officers at his home. He was held at the  
20 Stewart Detention Center in Lumpkin, Georgia and the Irwin County Detention  
21 Center in Ocilla, Georgia in ICE custody until April 23, 2018, when he was released  
22 on an order of supervision. Ngoc has never been interviewed by the Vietnamese  
23 government regarding repatriation to Vietnam.

24 15. Petitioner Sieu Nguyen is a 32-year-old resident of Sacramento,  
25 California. He, his parents, and his four older brothers escaped Vietnam by boat  
26 when Sieu was three years old. They were accepted to the United States as refugees  
27 in September 1989, and Sieu became a lawful permanent resident shortly thereafter.  
28



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1 The rest of Sieu’s family—his parents, his four older brothers, and his three younger  
2 siblings—are all United States citizens. Sieu was convicted of robbery in 2007 and  
3 burglary and receipt of stolen property in 2010. After serving time in prison, Sieu  
4 was transferred to Adelanto ICE Processing Center in Adelanto, California on  
5 November 21, 2017 for the initiation of removal proceedings. Sieu was ordered  
6 removed to Vietnam on December 19, 2017 and remains detained in Adelanto. He  
7 has never been interviewed by the Vietnamese government regarding repatriation to  
8 Vietnam.

9 16. Petitioner Dai Diep is a 46-year-old resident of Santa Ana, California,  
10 who legally entered the United States as a refugee in May 1995. He became a lawful  
11 permanent resident the following year. Dai came to the United States with his  
12 mother, stepfather, and two half-siblings, all of whom are now U.S. citizens living in  
13 the United States. In November 2015, he pleaded guilty to second-degree robbery,  
14 second-degree burglary, and vandalism and was sentenced to a total of two years of  
15 imprisonment. In April 2017, he was released on parole from state prison and  
16 transferred to ICE custody. He was ordered removed from the United States on  
17 October 26, 2017, and he remains incarcerated at the Adelanto ICE Processing  
18 Center in Adelanto, California. Dai has never been interviewed by the Vietnamese  
19 government regarding repatriation to Vietnam.

20 17. Petitioner Bao Duong is a 42-year-old resident of San Diego, California,  
21 who legally entered the United States as a refugee in 1980 and became a lawful  
22 permanent resident the same year. His mother and father are also lawful permanent  
23 residents, and his three sisters, two of whom were born in the United States, are U.S.  
24 citizens. In 2013, Bao was convicted on robbery charges that resulted in him being  
25 imprisoned for three years. He was paroled from prison in June 2016. In September  
26 2017, Bao was arrested for allegedly being in possession of marijuana and was  
27 transferred to ICE custody after posting bail. He was ordered removed from the  
28

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1 United States on November 14, 2017 and has remained incarcerated at the Adelanto  
2 ICE Processing Center in Adelanto, California since then. The Vietnamese  
3 government has not interviewed Bao regarding repatriation to Vietnam. Bao has not  
4 been afforded a bond hearing before an immigration judge to determine whether his  
5 prolonged detention is justified.

6 18. Respondent Thomas D. Homan is the Deputy Director and Senior  
7 Official Performing Duties of the Director of ICE. As the head of ICE, an agency  
8 within the United States Department of Homeland Security that detains and removes  
9 noncitizens, Respondent Homan is a legal custodian of Petitioners and all class  
10 members. Respondent Homan is an appropriate respondent for this habeas action  
11 because, on information and belief, decisions regarding the detention of pre-1995  
12 Vietnamese immigrants are being made at ICE Headquarters and because Petitioners  
13 and class members are often transferred between different regions of the country.

14 19. Respondent Kirstjen M. Nielsen is the Secretary of the United States  
15 Department of Homeland Security. She is responsible for the implementation and  
16 enforcement of the immigration laws and oversees ICE. Respondent Nielsen has  
17 ultimate custodial authority over Petitioners and all class members.

18 20. Respondent Jefferson B. Sessions III is the Attorney General of the  
19 United States. As the head of the United States Department of Justice, which  
20 oversees the immigration courts, Respondent Sessions shares responsibility for  
21 enforcement of the immigration laws with Respondents Kirstjen M. Nielsen and  
22 Thomas D. Homan.

23 21. Respondent David Marin is the Field Office Director for ICE’s Los  
24 Angeles, California, Field Office, which has detention authority over noncitizens in  
25 ICE custody at Adelanto ICE Processing Center in Adelanto, California and Theo  
26 Lacy Facility in Orange, California.

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1 22. Respondent Sandra Hutchens is the Sheriff of Orange County,  
2 California, which holds a contract with ICE to detain noncitizens. Respondent  
3 Hutchens is responsible for the operation of the Theo Lacy Facility in Orange,  
4 California, where Petitioner Hoang Trinh was detained.

5 23. Respondent Doe 1 is the warden at the Adelanto ICE Processing Center,  
6 a private detention facility owned by The GEO Group, Inc., which holds a contract  
7 with ICE to detain noncitizens. Respondent Doe 1 is responsible for the operation of  
8 the Adelanto ICE Processing Center in Adelanto, California, where Petitioners Dai  
9 Diep, Bao Duong, and Sieu Nguyen are detained and where Petitioner Vu Ha was  
10 detained. On information and belief, the identity of the warden is not public  
11 information, and therefore, Petitioners intend to name this Respondent at a later time.

12 24. All Respondents are sued in their official capacity.

13 **LEGAL BACKGROUND**

14 *Detention*

15  
16 25. Following a final order of removal, ICE is directed by statute to detain  
17 an individual for 90 days in order to effectuate removal. 8 U.S.C. § 1231(a)(2). This  
18 90-day period, also known as “the removal period,” generally commences as soon as  
19 a removal order becomes administratively final. *Id.* § 1231(a)(1)(A), §  
20 1231(a)(1)(B).

21 26. If ICE fails to remove an individual during the 90-day removal period,  
22 the law requires ICE to release the individual under conditions of supervision,  
23 including periodic reporting. *Id.* § 1231(a)(3) (“If the alien . . . is not removed within  
24 the removal period, the alien, pending removal, shall be subject to  
25 supervision.”). Limited exceptions to this rule exist. Specifically, ICE “may” detain  
26 an individual beyond 90 days if the individual was ordered removed on criminal  
27 grounds or is determined to pose a danger or flight risk. *Id.* § 1231(a)(6). However,  
28 ICE’s authority to detain an individual beyond the removal period under such

1 circumstances is not boundless. Rather, it is constrained by the constitutional  
2 requirement that detention “bear a reasonable relationship to the purpose for which  
3 the individual [was] committed.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)  
4 (citations omitted). Because the principal purpose of the post-final-order detention  
5 statute is to effectuate removal, detention bears no reasonable relation to its purpose  
6 if removal cannot be effectuated. *Id.* at 697.

7  
8 27. The United States Supreme Court has accordingly construed Section  
9 1231(a)(6) as authorizing post-final order detention only for a “period reasonably  
10 necessary to secure removal,” a period that the Court determined to be presumptively  
11 six months. *Id.* at 699-701. After this six month period, if a detainee provides “good  
12 reason” to believe that his or her removal is not significantly likely in the reasonably  
13 foreseeable future, “the Government must respond with evidence sufficient to rebut  
14 that showing.” *Id.* at 701. If the government cannot do so, the individual must be  
15 released.

16  
17 28. However, detainees are entitled to release even before six months of  
18 detention, as long as removal is not reasonably foreseeable. *See* 8 C.F.R. §  
19 241.13(b)(1) (authorizing release after 90 days where removal not reasonably  
20 foreseeable). Moreover, as the period of post-final-order detention grows, what  
21 counts as “reasonably foreseeable” must conversely shrink. *Zadvydas*, 533 U.S. at  
22 701.

23  
24 29. Even where detention meets the *Zadvydas* standard for reasonable  
25 foreseeability, detention violates the Due Process Clause unless it is “reasonably  
26 related” to the government’s purpose, which is to prevent danger or flight risk. *See*  
27 *Zadvydas*, 533 U.S. at 700 (“[I]f removal is reasonably foreseeable, the habeas court  
28 should consider the risk of the alien’s committing further crimes as a factor  
*potentially* justifying confinement within that reasonable removal period”) (emphasis  
added); *id.* at 699 (purpose of detention is “assuring the alien’s presence at the

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1 moment of removal”); *id.* at 690-91 (discussing twin justifications of detention as  
2 preventing flight and protecting the community). Thus, due process requires a  
3 meaningful determination that Petitioners pose a danger or flight risk that would  
4 warrant post-final-order detention, regardless of whether their removal can be  
5 effectuated within a reasonable period of time.

6 30. The government’s own regulations contemplate this requirement. They  
7 dictate that even after ICE determines that removal is reasonably foreseeable—and  
8 that detention therefore does not *per se* exceed statutory authority—the government  
9 must still determine whether continued detention is warranted based on flight risk or  
10 danger. *See* 8 C.F.R. § 241.13(g)(2) (providing that where removal is reasonably  
11 foreseeable, “detention will continue to be governed under the established standards”  
12 in 8 C.F.R. § 241.4).

13 31. The regulations, at 8 C.F.R. § 241.4, set forth the custody review  
14 process that existed even before the Supreme Court’s decision in *Zadvydas*. This  
15 mandated process, known as the post-order custody review, requires ICE to conduct  
16 “90-day custody reviews” prior to expiration of the 90-day removal period and to  
17 consider release of individuals who pose no danger or flight risk, 8 C.F.R. §  
18 241.4(e)-(f). Among the factors to be considered in these custody reviews are “ties to  
19 the United States such as the number of close relatives residing here lawfully”;  
20 whether the noncitizen “is a significant flight risk”; and “any other information that  
21 is probative of whether” the noncitizen is likely to “adjust to life in a community,”  
22 “engage in future acts of violence,” “engage in future criminal activity,” pose a  
23 danger to themselves or others, or “violate the conditions of his or her release from  
24 immigration custody pending removal from the United States.” *Id.*

25 32. Individuals with final orders who are released after a post-order custody  
26 review are subject to orders of supervision. 8 C.F.R. § 241.4(j). After an individual  
27  
28

1 has been released on an order of supervision, ICE cannot revoke such an order  
2 without cause or adequate legal process.

3  
4 **FACTS**

5 ***Vietnam’s Repatriation Agreement with the United States***

6 33. In 2008, after ten years of negotiation, Vietnam and the United States  
7 executed a repatriation agreement to govern the repatriation of certain Vietnamese  
8 immigrants with final orders of removal to Vietnam. Before this agreement was  
9 negotiated, Vietnam refused to repatriate the overwhelming majority of Vietnamese  
10 immigrants ordered removed from the United States.

11 34. Vietnam and the United States stipulated that the repatriation agreement  
12 would be valid for five years from the date of its execution and then automatically  
13 extended for successive three-year terms thereafter absent at least six months written  
14 notice of an intent to terminate from one government to the other. *See* Agreement,  
15 Article 6, Entry into Force and Duration.

16 35. Upon information and belief, the repatriation agreement has not been  
17 terminated or modified by either Vietnam or the United States.

18 36. The repatriation agreement does not permit the repatriation of  
19 Vietnamese immigrants who came to the United States before July 12, 1995. It  
20 expressly stipulates that “Vietnamese citizens are not subject to return to Vietnam  
21 under this Agreement if they arrived in the United States before July 12, 1995.” *See*  
22 Agreement, Article 2: Removable Persons and Conditions of Acceptance. The  
23 categorical exemption of pre-1995 Vietnamese immigrants from repatriation reflects  
24 humanitarian considerations related to the United States’ role in the Vietnam War,  
25 the subsequent resettlement of Vietnamese refugees in America, and the continuing  
26 tension between the Vietnamese government and the Vietnamese refugees who were  
27 forced to flee their homes to avoid profound hardship and persecution after the war.

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1           37. The end of the Vietnam War caused hundreds of thousands of South  
 2 Vietnamese refugees to flee to the United States by boat or by air to escape political  
 3 persecution and death. Other Vietnamese immigrants who resettled in America  
 4 before July 12, 1995 were accepted to the United States to reunite with their loved  
 5 ones or for other humanitarian reasons. The Vietnamese refugees who fled to the  
 6 United States in the 20 years following the Vietnam War included those with close  
 7 ties to the United States military or South Vietnamese government who feared for  
 8 their lives under the new communist government and the hundreds of thousands of  
 9 “Boat People” who poured out of Vietnam in rickety, wooden boats, desperate to  
 10 escape communist re-education camps and other forms of political persecution.

11           38. Abandoned children of American soldiers and Vietnamese women—  
 12 known as “Amerasians” and pejoratively referred to as the “dust of life” in  
 13 Vietnam—were also among the waves of Vietnamese immigrants who resettled in  
 14 the United States before July 12, 1995. In addition to growing up fatherless,  
 15 Amerasians were roundly shunned by Vietnamese society for being mixed race and  
 16 born out of wedlock and in many cases rejected by their own mothers. These  
 17 punishing circumstances set Amerasians on a trajectory of homelessness and abject  
 18 poverty. With physical features that betrayed them as the children of American  
 19 soldiers, Amerasians became even more vulnerable to mistreatment after communist  
 20 takeover of Vietnam in 1975, as they carried the faces of those who had fought  
 21 against the North Vietnamese. After 1975, many were imprisoned in labor or  
 22 reeducation camps. Recognizing the extreme persecution faced by Amerasians and  
 23 acknowledging its responsibility towards these half-American children, the United  
 24 States in the 1980s enacted laws that gave thousands of Vietnamese Amerasians the  
 25 opportunity to leave behind a country that never accepted them in order start anew in  
 26 the homeland of their fathers.

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1           39. These early Vietnamese refugees to America lacked resources—formal  
2 education, English-language proficiency, a supportive ethnic community, or mental  
3 health services to help cope with war-related trauma—to ease their transition to an  
4 unfamiliar country. In addition, ad hoc resettlement practices dispersed these  
5 refugees, often pushing them into economically deteriorating, high-crime  
6 neighborhoods with under-resourced schools. While many Vietnamese refugees beat  
7 the odds stacked against them to pursue higher education, start successful small  
8 businesses, and build families in their new homeland, some were convicted of crimes  
9 that resulted in orders of removal.

10           40. Vietnam’s longstanding practice of refusing repatriation has for years  
11 protected pre-1995 Vietnamese immigrants from being removed to the country they  
12 fled to escape starvation, violence, and death. The exclusion of pre-1995 Vietnamese  
13 immigrants from the repatriation agreement is central to maintaining human rights  
14 protections for this population. According to the U.S. Department of State’s 2016  
15 Human Rights Report on Vietnam, the most significant human rights problems in  
16 Vietnam are severe government restrictions of citizens’ political rights.<sup>2</sup> Most pre-  
17 1995 Vietnamese immigrants are ex-citizens of South Vietnam, a country that ceased  
18 to exist after North Vietnam prevailed in the war in April 1975, leaving hundreds of  
19 thousands of South Vietnamese stateless. Many of those who were not immediately  
20 evacuated from Vietnam were incarcerated for months or years in re-education  
21 prisons, where they endured political indoctrination and forced physical labor  
22 because of their perceived threat and lack of loyalty to the new communist  
23 government.

24           41. The repatriation agreement has also profoundly impacted the way pre-  
25 1995 Vietnamese immigrants have handled their removal proceedings. Many of  
26

27 <sup>2</sup> U.S. Dep’t of State, *Vietnam 2016 Human Rights Report*, <https://www.state.gov/documents/organization/265598.pdf>.



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1 these immigrants, who faced the possibility of years in detention while litigating  
2 their removal cases at great financial cost which most could not afford, chose instead  
3 to forego the pursuit of meritorious defenses based on the reasonable expectation that  
4 they would not be deported to Vietnam.

5 42. Although the repatriation agreement officially opened the door for  
6 repatriation of Vietnamese immigrants who arrived to the United States on or after  
7 July 12, 1995, Vietnam continues to accept only a very limited number of persons  
8 for repatriation each year and still regularly refuses to issue travel documents. Based  
9 on publicly available information from ICE and from the Executive Office for  
10 Immigration Review, from 2008 to 2016, Vietnam only accepted an average of 13  
11 percent of individuals ordered removed to Vietnam each year. On information and  
12 belief, a negligible percentage of the removals to Vietnam have been removals of  
13 pre-1995 Vietnamese immigrants, consistent with the repatriation agreement.

14 43. Because of the exclusion of pre-1995 immigrants from the repatriation  
15 agreement and the overall lack of cooperation from the Vietnamese government, the  
16 United States government has been unable to carry out most orders of removal to  
17 Vietnam. Consequently, ICE has for years routinely released pre-1995 Vietnamese  
18 immigrants with final orders of removal from immigration custody upon or even  
19 before expiration of the 90-day removal period. Thousands of Vietnamese returned  
20 to their families, their jobs, and their communities and built productive, peaceful  
21 lives following completion of their removal proceedings.

22 44. Currently, between 8,000 and 10,000 Vietnamese Americans are living  
23 in the United States with final orders of removal. According to ICE estimates, 6,200  
24 of the 7,700 Vietnamese who had final orders of removal in 2008 came to the United  
25 States before 1995, indicating that the vast majority of the 8,000 to 10,000  
26 Vietnamese with final orders of removal today are pre-1995 Vietnamese immigrants.

*Unlawful Detention in Violation of the Repatriation Agreement*

1  
2 45. Signed in January 2017, Executive Order 13768 announced a massive  
3 expansion of immigration enforcement. Exec. Order No. 13,768, 82 Fed. Reg. 8799  
4 (Jan. 25, 2017), The order identified “recalcitrant” countries that refuse repatriation  
5 as a problem area and directed the Secretary of Homeland Security and the Secretary  
6 of State to implement sanctions on these countries. *Id.* § 12.

7  
8 46. ICE soon after began conducting widespread arrests of immigrants from  
9 “recalcitrant” countries, including Iraq, Cambodia, and Somalia, without requisite  
10 evidence that these countries would repatriate the individuals arrested, often  
11 followed by prolonged detention without due consideration to whether detention was  
12 necessary to effectuate their removal. Immigrants from these countries filed class  
13 action lawsuits around the country challenging ICE’s unlawful denial of due process  
14 to their communities.

15 47. ICE likewise aggressively stepped up enforcement against the  
16 Vietnamese community in 2017. It ended its practice of releasing pre-1995  
17 Vietnamese immigrants from detention promptly following their orders of removal.  
18 Instead, deportation officers began holding pre-1995 Vietnamese immigrants for  
19 longer than 90 days, and often longer than 180 days, citing a directive from ICE  
20 Headquarters.

21 48. In March 2017, ICE also began re-arresting pre-1995 Vietnamese  
22 immigrants with final orders of removal whom it had previously released. Many  
23 were transported to Krome Detention Center in Miami, Florida to be interviewed by  
24 the Vietnamese Consulate between March 20 and 31, 2017.

25 49. On September 21, 2017, the United States submitted 95 cases of  
26 Vietnamese immigrants with final orders of removal to the Vietnamese government  
27 to consider for repatriation.  
28

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1           50. In October 2017, ICE again carried out mass arrests of Vietnamese  
2 immigrants with final orders of removal who had returned to their communities on  
3 orders of supervision—including pre-1995 Vietnamese immigrants. Arrests occurred  
4 in several states across the country, including Georgia, Pennsylvania, Texas,  
5 Colorado, and California. Many of the individuals arrested were transported to  
6 Stewart Detention Center in Lumpkin, Georgia to be interviewed by the Vietnamese  
7 Consulate between the end of October and beginning of November, 2017.  
8 Afterwards, they were transported to various detention centers for continued  
9 detention.

10           51. In defense of ICE’s abrupt change in policy and violation of the  
11 repatriation agreement, the United States government claims that Vietnam is now  
12 “willing to consider” repatriation of Vietnamese who came to the United States  
13 before July 12, 1995. However, the government has not substantiated this claim with  
14 any official document memorializing Vietnam’s alleged change in policy, and the  
15 repatriation agreement remains in effect. Further, the Vietnamese government’s  
16 conduct does not signal any meaningful departure from its categorical refusal to  
17 repatriate pre-1995 Vietnamese immigrants, despite continued pressure from the  
18 United States.

19           52. On information and belief, the Vietnamese government has only issued  
20 travel documents to seven pre-1995 Vietnamese immigrants. Moreover, on  
21 information and belief, Vietnam will not accept the deportation of any pre-1995  
22 individuals without an interview. Some Petitioners and class members have never  
23 been interviewed by the Vietnamese Consulate and are therefore not being  
24 considered for repatriation, yet remain in ICE custody.

25           53. During interviews conducted by the Consulate, Vietnamese officials  
26 questioned individuals about whether they have any family living in Vietnam who  
27 can support them if deported; whether they have any family living in the United  
28

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1 States who will be impacted if deported; and whether they are willing to accept their  
2 deportation. On information and belief, Vietnam is extremely reluctant to issue travel  
3 documents to individuals like Petitioners who have no family in Vietnam; whose  
4 families in the United States will suffer hardship as a result of their deportation;  
5 and/or who do not wish to return to Vietnam.

6 54. Despite the United States government’s vague representations, the  
7 Vietnamese government’s conduct does not indicate that it truly intends to repatriate  
8 the hundreds of pre-1995 Vietnamese whom ICE is currently detaining or will likely  
9 detain under its current detention campaign.

10 55. ICE lacks any particularized evidence that Vietnam will accept  
11 Petitioners’ or class members’ repatriation. Despite this lack of proof that  
12 Petitioners’ and class members’ repatriation is significantly likely in the reasonably  
13 foreseeable future, ICE has detained Petitioners and class members more than 90  
14 days or 180 days beyond the date of their removal orders.

15 56. Furthermore, Petitioners and class members are being detained for more  
16 than 180 days without an individualized hearing before a neutral decision maker to  
17 assess whether detention is warranted due to danger or flight risk. This includes class  
18 members who for years consistently and reliably reported to ICE as required under  
19 their orders of supervision.

20 57. To the extent that ICE has been conducting any 90-day post-order  
21 custody reviews for Petitioners and class members, they have been perfunctory,  
22 resulting in boilerplate decisions that merely rubberstamp continued detention. Some  
23 class members have been told by ICE employees that Vietnamese with final orders  
24 of removal will continue to be detained until the Vietnamese government issues a  
25 travel document, though some requests for travel documents have been pending  
26 since late October or early November 2017 and others since March 2017. On  
27 information and belief, the refusal to release any pre-1995 Vietnamese immigrants  
28

1 after 90 days is driven by an ICE Headquarters policy being uniformly implemented  
2 across the United States.

3 **CLASS ALLEGATIONS**

4 58. Petitioners bring this action on behalf of themselves and all other  
5 similarly situated persons pursuant to Federal Rules of Civil Procedure 23(a) and  
6 23(b)(2), and as a representative habeas class action for similarly situated persons  
7 pursuant to a procedure analogous to Rules 23(a) and 23(b)(2). *See Ali v. Ashcroft*,  
8 346 F.3d 873, 889-91 (9th Cir. 2003) (holding that the district court did not exceed  
9 its habeas jurisdiction in certifying a nationwide habeas class), *withdrawn and*  
10 *amended on other grounds on reh’g, Ali v. Gonzales*, 421 F.3d 795 (9th Cir. 2005);  
11 *see also Geraghty v. U.S. Parole Commission*, 429 F. Supp. 737, 740 (M.D. Pa.  
12 1977) (noting that “procedures analogous to a class action have been fashioned in  
13 habeas corpus actions where necessary and appropriate”).

14 59. Petitioners seek to represent the following classes: (1) all Vietnamese  
15 nationals who arrived in the United States before July 12, 1995 and who have been  
16 or will be detained by ICE for more than 90 days after receiving final orders of  
17 removal (“90-Day Class”); (2) all Vietnamese nationals who arrived in the United  
18 States before July 12, 1995 and who have been or will be detained by ICE for more  
19 than 180 days after receiving final orders of removal (“180-Day Class”); and (3) all  
20 Vietnamese nationals who arrived in the United States before July 12, 1995, who are  
21 subject to final orders of removal, and who have been or will be detained by ICE for  
22 more than 180 days without a bond hearing to determine whether their prolonged  
23 detention is justified (“Prolonged Detention Class”).

24 60. Members of each proposed class are so numerous that joinder is  
25 impracticable. Petitioners identified at least 45 pre-1995 Vietnamese immigrants  
26 with final orders of removal who, at the time this action was filed on February 22,  
27 2018, were in ICE custody in just 20 of ICE’s 111 detention facilities. At least 37 of  
28 the 45 had been detained for more than 90 days after receiving removal orders; 18 of

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1 those 37 had been detained for more than 180 days after receiving removal orders.  
2 The total numbers of 90-Day Class members and 180-Day Class members were  
3 likely much higher. Since the filing of this action, Petitioners have learned of  
4 additional pre-1995 Vietnamese immigrants who have reached 90 or 180 days of  
5 post-order detention. The Prolonged Detention Class is at least as numerous as the  
6 180-Day Class because all individuals who have reached 180 days of post-order  
7 detention have also exceeded 180 days of total detention. Further, 8,000 to 10,000  
8 Vietnamese immigrants in the United States currently have final orders of removal.  
9 ICE's aggressive detention of these individuals as part of a Headquarters-driven  
10 decision means the classes will continue to grow.

11 61. Petitioners' claims are typical of the claims of the proposed classes. In  
12 addition, Petitioners will fairly and adequately represent the interests of all members  
13 of the proposed classes. Petitioners seek relief that is identical to the relief sought by  
14 members of each class, and they have no interests that are adverse to other class  
15 members. Petitioners have retained counsel who have experience in immigration law  
16 and class action litigation and will adequately represent the interests of the classes.

17 62. Multiple questions of law and fact are common to members of the  
18 proposed classes, including:

- 19 a. Whether the 90-Day Class members and 180-Day Class members have  
20 shown good reason to believe that their removal is not reasonably foreseeable;
- 21 b. Whether Respondents have sufficient evidence that the 90-Day Class  
22 members' and 180-Day Class members' removal is reasonably foreseeable to justify  
23 continued detention given that they are specifically excluded from repatriation under  
24 the repatriation agreement; and
- 25 c. Whether Respondents have afforded Prolonged Detention Class members  
26 individualized determinations of the need for detention that satisfy Section 1231 and  
27 due process.
- 28

1 Respondent’s conduct and refusal to act apply generally to the 90-Day  
2 Class, 180-Day Class, and Prolonged Detention Class, thereby making the final  
3 injunctive relief and declaratory relief sought by the Petitioners appropriate with  
4 respect to the classes as a whole.  
5

6 **CLAIMS FOR RELIEF**

7 ***Count One: Unlawful Detention Where***  
8 ***Removal Is Not Reasonably Foreseeable***

9 64. The foregoing allegations are realleged and incorporated herein.

10 65. Post-removal order detention violates Section 1231 where removal is  
11 not significantly likely to occur in the reasonably foreseeable future. *Zadvydas*, 533  
12 U.S. at 678. Detention under these circumstances also violates constitutional due  
13 process.

14 66. The removal of Petitioners, 90-Day Class members, and 180-Day Class  
15 members is not significantly likely to occur in the reasonably foreseeable future  
16 because they are specifically excluded from repatriation under the repatriation  
17 agreement.

18 67. The 90-Day Class members’ *Zadvydas* claim is ripe because the six-  
19 month period set forth in *Zadvydas* is a rebuttable presumption, not a rule. The  
20 presumption is rebutted by a repatriation agreement that expressly excludes pre-1995  
21 Vietnamese immigrants from repatriation, along with Vietnam’s historical refusal to  
22 accept them.

23 68. Through the repatriation agreement and Vietnam’s historical practice,  
24 Petitioners and class members have made their initial showing under *Zadvydas* of  
25 “good reason to believe” that their removal is not reasonably foreseeable. *Id.* at 701.

26 69. Petitioners, 90-Day Class members, and 180-Day Class members have  
27 shifted the burden to Respondents to produce individualized evidence that their  
28 removal is reasonably foreseeable. Respondents lack such evidence, yet continue to

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1 detain Petitioners, 90-Day Class members, and 180-Day Class members in violation  
2 of Section 1231 and constitutional due process.

3 70. Petitioners, 90-Day Class Members, and 180-Day Class members are  
4 entitled under the law to immediate release on orders of supervision.  
5

6 ***Count Two: Unlawful Detention Without***  
7 ***Determinations of Danger and Flight Risk***

8 71. The foregoing allegations are realleged and incorporated herein.

9 72. Even when removal is reasonably foreseeable, detention violates  
10 Section 1231 and due process under the United States Constitution unless it is  
11 reasonably related to the government’s purposes of preventing flight and protecting  
12 the community. *Zadvydas*, 533 U.S. at 690-91.

13 73. Respondents are subjecting Petitioners and Prolonged Detention Class  
14 members to over 180 days of detention without any individualized determination that  
15 they pose a danger or flight risk that would justify their detention.

16 74. The only procedure the government has provided—administrative post-  
17 order custody reviews—is inadequate to satisfy the requirements of due  
18 process. Moreover, the government is not meaningfully conducting these post-order  
19 custody reviews in compliance with its own regulations but is merely  
20 rubberstamping continued detention with respect to the Petitioners and Prolonged  
21 Detention Class members as a whole.

22 75. Respondents may not continue to detain Petitioners and Prolonged  
23 Detention Class members without individualized determinations by impartial  
24 adjudicators of whether detention is justified based on danger or flight risk.

25 **PRAYER FOR RELIEF**

26 76. WHEREFORE, Petitioner respectfully requests that the Court grant the  
27 following relief:

- 28 a. Assume jurisdiction over this matter;



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b. Certify this matter as a class action, name Petitioners Vu Ha, Long Nguyen, Ngoc Hoang, and Sieu Nguyen as class representatives of the 90-Day Class, name Petitioners Hoang Trinh, Dai Diep, and Bao Duong as class representatives of the 180-Day Class, name Petitioners Hoang Trinh, Vu Ha, and Bao Duong as class representatives of the Prolonged Detention Class, and appoint Petitioners’ counsel as class counsel;

c. Declare that Respondents have violated the rights of the classes;

d. Order Respondents to release from detention Petitioners and all 90-Day Class members and 180-Day Class members for whom Respondents lack individualized evidence that removal is significantly likely to occur in the reasonably foreseeable future;

e. Order Respondents to release Petitioners and all Prolonged Detention Class members from detention absent an individualized determination by an impartial adjudicator that their detention is justified based on danger or flight risk, which cannot be sufficiently addressed by alternative conditions of release and/or supervision;

f. Award Petitioners reasonable attorneys’ fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and on any other basis justified under law; and

g. Grant any other and further relief as the Court deems just and proper.

Dated: May 11, 2018

Respectfully submitted,

/S/ Tuan V. Uong  
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Farah Tabibkhoei  
Christopher M. Butler  
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