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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**

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

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INTRODUCTION

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

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

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

¹ This agreement can be found on the U.S. Department of State’s website. *See* 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>).

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.
28

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 The repatriation agreement has not been rescinded or modified by either country.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

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

JURISDICTION

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

VENUE

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

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
27

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

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

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

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.

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

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

24. All Respondents are sued in their official capacity.

LEGAL BACKGROUND

Detention

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

26. If ICE fails to remove an individual during the 90-day removal period, the law requires ICE to release the individual under conditions of supervision, including periodic reporting. *Id.* § 1231(a)(3) (“If the alien . . . is not removed within the removal period, the alien, pending removal, shall be subject to supervision.”). Limited exceptions to this rule exist. Specifically, ICE “may” detain an individual beyond 90 days if the individual was ordered removed on criminal grounds or is determined to pose a danger or flight risk. *Id.* § 1231(a)(6). However, 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 28. However, detainees are entitled to release even before six months of
17 detention, as long as removal is not reasonably foreseeable. *See* 8 C.F.R. §
18 241.13(b)(1) (authorizing release after 90 days where removal not reasonably
19 foreseeable). Moreover, as the period of post-final-order detention grows, what
20 counts as “reasonably foreseeable” must conversely shrink. *Zadvydas*, 533 U.S. at
21 701.

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

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
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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.

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.

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

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

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

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

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.
27
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Unlawful Detention in Violation of the Repatriation Agreement

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

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

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

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

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

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
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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
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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

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

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

CLAIMS FOR RELIEF

Count One: Unlawful Detention Where Removal Is Not Reasonably Foreseeable

64. The foregoing allegations are realleged and incorporated herein.

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

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

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

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

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

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;

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,

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