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12 Attorneys for Petitioners

13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA

15 HOANG TRINH, VU HA, LONG  
16 NGUYEN, and NGOC HOANG, on  
behalf of themselves and all of those  
17 similarly situated,

18 Petitioners,

v.

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

27 Respondents.

Case No. 8:18-cv-316

**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  
22 removal of pre-1995 Vietnamese immigrants are “not subject to return to Vietnam”  
23 under the repatriation agreement, ICE has typically released these immigrants on  
24 orders of supervision within 90 days of their removal orders becoming final. The  
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26 <sup>1</sup> This agreement can be found on the U.S. Department of State’s website. *See*  
27 Attachment A (Agreement Concerning the Acceptance of the Return of Vietnamese  
28 Citizens, U.S.- NAM., Jan. 22, 2008, 08 – 43, <https://www.state.gov/documents/organization/108921.pdf>.)

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1 repatriation agreement has thus given thousands of pre-1995 Vietnamese immigrants  
2 the 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, et al. v.*  
15 *David Marin, et al.*, United States District Court, Central District of California, Case  
16 No. 8:17-cv-01898-CJC (GJSx).

17 6. At the time of this filing, Petitioners' counsel are aware of  
18 approximately 40 pre-1995 Vietnamese immigrants with final orders of removal  
19 across the country who are beyond 90 days of post-removal order detention. The  
20 total number of similarly situated individuals is likely much larger. Furthermore, on  
21 information and belief, ICE intends to continue to detain pre-1995 Vietnamese  
22 immigrants with final orders of removal. The number of Vietnamese with final  
23 orders of removal who are at risk of future detention is between 8,000 and 10,000.  
24 Based on ICE estimates from 2008, an overwhelming percentage of these individuals  
25 arrived in the United States before July 12, 1995.

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

6 8. Additionally, ICE has kept pre-1995 Vietnamese immigrants in  
7 detention past 90 days, and often past 180 days, without providing them any  
8 meaningful custody review to determine whether continued detention is warranted  
9 because they pose a danger or flight risk. ICE cannot lawfully detain Petitioners  
10 absent an individualized showing of danger or flight risk before a neutral decision  
11 maker, especially as their detention becomes more prolonged.

12 **JURISDICTION**

13 9. This Court has subject matter jurisdiction under 28 U.S.C. § 2241  
14 (habeas corpus), the Suspension Clause of Article I of the United States Constitution,  
15 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1361 (mandamus), and 5 U.S.C. §§  
16 701 *et seq.* (Administrative Procedures Act). The Court may also grant relief under  
17 28 U.S.C. §§ 2201-02 (Declaratory Judgment Act) and 28 U.S.C. § 1651 (All Writs  
18 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 and Vu Ha and numerous class members reside in this district; Petitioners Hoang  
24 Trinh and Vu Ha and numerous class members are currently detained in this district;  
25 and a substantial part of the events or omissions giving rise to these claims occurred  
26 in this district. Venue is also proper under 28 U.S.C. §§ 2241 *et seq.*, as Respondents  
27 exercise control over Petitioners. *Armentero v. INS*, 340 F.3d 1058, 1069-70 (9th Cir.  
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1 2003), *withdrawn on reh’g*, 382 F.3d 1153 (9th Cir. 2004) (explaining why  
 2 “practicality, efficiency, and the interests of justice” demand relaxation of immediate  
 3 custodian rule in habeas challenges to immigration detention); *see also Roman v.*  
 4 *Ashcroft*, 340 F.3d 314, 319 (6th Cir. 2003) (recognizing that while ICE Field Office  
 5 Director is generally the proper respondent for immigration habeas petitioners,  
 6 higher level ICE officials may be proper respondents in extraordinary  
 7 circumstances); *Vasquez v. Reno*, 233 F.3d 688, 696 (1st Cir. 2000).

### PARTIES

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

25 12. Petitioner Vu Ha is a 37-year-old resident of Orange County, California  
 26 who legally entered the United States from Vietnam as a 10-year-old refugee in  
 27 1990. He became a lawful permanent resident shortly after his arrival to the United  
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1 States. His parents are United States citizens, as are his sister and his 13-year-old  
2 daughter. An artist and avid runner, Vu has primarily worked at the nail salon his  
3 mother owns. He was arrested three times as a young adult between the years 2000  
4 and 2005, with the most serious offense being robbery. In 2017, Vu was arrested and  
5 detained for failing to pay a citation for driving without a license. He was then  
6 transported from a county jail to ICE custody in May 2017. He was ordered removed  
7 from the United States on September 19, 2017 and has remained incarcerated at the  
8 Adelanto ICE Processing Center in Adelanto, California for the past five months. Vu  
9 has never been interviewed by the Vietnamese government regarding repatriation to  
10 Vietnam.

11 13. Petitioner Long Nguyen is 41-year-old resident of Charleston, South  
12 Carolina, who legally entered the United States as an eleven-year-old refugee in  
13 1987. He became a lawful permanent resident the following year. He is now married  
14 to a United States citizen and has a two-year-old daughter and three stepdaughters  
15 who are all United States citizens. His parents also reside in the United States as  
16 lawful permanent residents. The Nguyen family is active in their local Catholic  
17 church, and Long and his wife have worked together for many years in the nail salon  
18 he manages. Long's only felony offense involved a nonviolent drug charge in 2006,  
19 in Kansas City, Missouri. In September or October 2011, ICE detained Long upon  
20 his reentry to the United States after traveling abroad. He was ordered to be removed  
21 from the United States on April 18, 2012 and subsequently released on an order of  
22 supervision under which he consistently and reliably reported to ICE. Then, on  
23 October 19, 2017, Long was pulled over while driving to work and re-detained by  
24 ICE officers. He has been held at the Stewart Detention Center in Lumpkin, Georgia  
25 since then, for the past four months.

26 14. Petitioner Ngoc Hoang is a 44-year-old resident of Gwinnett County,  
27 Georgia who legally entered the United States in 1990 as a refugee. Both of his  
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1 parents and his only sibling are United States citizens. Ngoc was married to a United  
2 States citizen with whom he has four children, ages 16, 14, 13 and 11, all of whom  
3 are United States citizens. All of his children now live with Ngoc and his second  
4 wife; he is the primary provider for his family, working as a nail salon technician. He  
5 has no family remaining in Vietnam. In 1994, Ngoc pleaded guilty to check fraud in  
6 Washington, and in 2010, he was placed on probation in Georgia for simple assault  
7 and simple battery. He was ordered removed from the United States on  
8 December 12, 2012 and subsequently released on an order of supervision  
9 approximately two months later. Over the next almost five years, Ngoc consistently  
10 complied with the requirements of his order of supervision. On the morning of  
11 November 6, 2017, Ngoc was suddenly re-arrested by ICE officers at his home and  
12 has been held at the Stewart Detention Center in Lumpkin, Georgia or the Irwin  
13 County Detention Center in Ocilla, Georgia in ICE custody for the past almost four  
14 months. Ngoc has never been interviewed by the Vietnamese government regarding  
15 repatriation to Vietnam and has not been given a 90-day custody review by ICE.

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

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



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

18. Respondent David Marin is the Field Office Director for ICE’s Los Angeles, California, Field Office, which has detention authority over non-citizens in ICE custody at Adelanto ICE Processing Center in Adelanto, California, including Petitioner Vu Ha, as well as detention authority over non-citizens in ICE custody at ICE’s Theo Lacy Facility in Orange, California, including Petitioner Hoang Trinh.

19. 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 is detained.

20. 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 Petitioner Vu Ha is detained. On information and belief, the identity of the warden is not public information, and therefore, Petitioner intends to amend the complaint to add this respondent at a later time.

21. All Respondents are sued in their official capacity.

**LEGAL BACKGROUND**

***Detention***

22. 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

1 90-day period, also known as “the removal period,” generally commences as soon as  
2 a removal order becomes administratively final. § 1231(a)(1)(A), § 1231(a)(1)(B).

3 23. If ICE fails to remove an individual during the 90-day removal period,  
4 the law requires ICE to release the individual under conditions of supervision,  
5 including periodic reporting. § 1231(a)(3) (“If the alien . . . is not removed within the  
6 removal period, the alien, pending removal, shall be subject to  
7 supervision.”). Limited exceptions to this rule exist. Specifically, ICE “may” detain  
8 an individual beyond 90 days if the individual was ordered removed on criminal  
9 grounds or is determined to pose a danger or flight risk. § 1231(a)(6). However,  
10 ICE’s authority to detain an individual beyond the removal period under such  
11 circumstances is not boundless. Rather, it is constrained by the constitutional  
12 requirement that detention “bear a reasonable relationship to the purpose for which  
13 the individual [was] committed.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)  
14 (citations omitted). Because the principal purpose of the post-final-order detention  
15 statute is to effectuate removal, detention bears no reasonable relation to its purpose  
16 if removal cannot be effectuated. *Id.* at 697.

17 24. The United States Supreme Court has accordingly construed Section  
18 1231(a)(6) as authorizing post-final order detention only for a “period reasonably  
19 necessary to secure removal,” a period that the Court determined to be presumptively  
20 six months. *Id.* at 699-701. After this six month period, if a detainee provides “good  
21 reason” to believe that his or her removal is not significantly likely in the reasonably  
22 foreseeable future, “the Government must respond with evidence sufficient to rebut  
23 that showing.” *Id.* at 701. If the government cannot do so, the individual must be  
24 released.

25 25. However, detainees are entitled to release even before six months of  
26 detention, as long as removal is not reasonably foreseeable. *See* 8 C.F.R. §  
27 241.13(b)(1) (authorizing release after 90 days where removal not reasonably  
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1 foreseeable). Moreover, as the period of post-final-order detention grows, what  
2 counts as “reasonably foreseeable” must conversely shrink. *Zadvydas* at 701.

3 26. Even where detention meets the *Zadvydas* standard for reasonable  
4 foreseeability, detention violates the Due Process Clause unless it is “reasonably  
5 related” to the government’s purpose, which is to prevent danger or flight risk. *See*  
6 *Zadvydas*, 533 U.S. at 700 (“[I]f removal is reasonably foreseeable, the habeas court  
7 should consider the risk of the alien’s committing further crimes as a factor  
8 *potentially* justifying confinement within that reasonable removal period”) (emphasis  
9 added); *id.* at 699 (purpose of detention is “assuring the alien’s presence at the  
10 moment of removal”); *id.* at 690-91 (discussing twin justifications of detention as  
11 preventing flight and protecting the community). Thus, due process requires a  
12 meaningful determination that Petitioners pose a danger or flight risk that warrant  
13 post-final-order detention, regardless of whether their removal can be effectuated  
14 within a reasonable period of time.

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

22 28. The regulations, at 8 C.F.R. § 241.4, set forth the custody review  
23 process that existed even before the Supreme Court’s decision in *Zadvydas*. This  
24 mandated process, known as the post-order custody review, requires ICE to conduct  
25 “90-day custody reviews” prior to expiration of the 90-day removal period and to  
26 consider release of individuals who pose no danger or flight risk, 8 C.F.R. §  
27 241.4(e)-(f). Among the factors to be considered in these custody reviews are “ties to  
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1 the United States such as the number of close relatives residing here lawfully”;  
2 whether the noncitizen “is a significant flight risk”; and “any other information that  
3 is probative of whether” the noncitizen is likely to “adjust to life in a community,”  
4 “engage in future acts of violence,” “engage in future criminal activity,” pose a  
5 danger to themselves or others, or “violate the conditions of his or her release from  
6 immigration custody pending removal from the United States.” *Id.*

7 29. Individuals with final orders who are released after a post-order custody  
8 review are subject to orders of supervision. 8 C.F.R. § 241.4(j). After an individual  
9 has been released on an order of supervision, ICE cannot revoke such an order  
10 without cause or adequate legal process.

## 11 FACTS

### 12 *Vietnam’s Repatriation Agreement with the United States*

13 30. In 2008, after ten years of negotiation, Vietnam and the United States  
14 executed a repatriation agreement to govern the repatriation of certain Vietnamese  
15 immigrants with final orders of removal to Vietnam. Before this agreement was  
16 negotiated, Vietnam refused to repatriate the overwhelming majority of Vietnamese  
17 immigrants ordered removed from the United States.

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

23 32. Upon information and belief, the repatriation agreement has not been  
24 terminated or modified by either Vietnam or the United States.

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

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

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

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

16         37. Vietnam’s longstanding practice of refusing repatriation has for years  
17 protected pre-1995 Vietnamese immigrants from being removed to the country they  
18 fled to escape starvation, violence, and death. The exclusion of pre-1995 Vietnamese  
19 immigrants from the repatriation agreement is central to maintaining human rights  
20 protections for this population. According to the U.S. Department of State’s 2016  
21 Human Rights Report on Vietnam, the most significant human rights problems in  
22 Vietnam are severe government restrictions of citizens’ political rights.<sup>2</sup> Most pre-  
23 1995 Vietnamese immigrants are ex-citizens of South Vietnam, a country that ceased  
24 to exist after North Vietnam prevailed in the war in April 1975, leaving hundreds of  
25 thousands of South Vietnamese stateless. Many of those who were not immediately  
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27 <sup>2</sup>U.S. Dept. of State, *Vietnam 2016 Human Rights Report, 2016*,  
28 <https://www.state.gov/documents/organization/265598.pdf>.

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1 evacuated from Vietnam were incarcerated for months or years in re-education  
2 prisons, where they endured political indoctrination and forced physical labor  
3 because of their perceived threat and lack of loyalty to the new communist  
4 government.

5 38. The repatriation agreement has also profoundly impacted the way pre-  
6 1995 Vietnamese immigrants have handled their removal proceedings. Many of  
7 these immigrants, who faced the possibility of years in detention while litigating  
8 their removal cases, at great financial cost which most could not afford, chose  
9 instead to forego the pursuit of meritorious defenses based on the reasonable  
10 expectation that they would not be deported to Vietnam.

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

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

1 41. Currently, between 8,000 and 10,000 Vietnamese Americans are living  
2 in the United States with final orders of removal. According to ICE estimates, 6,200  
3 of the 7,700 Vietnamese who had final orders of removal in 2008 came to the United  
4 States before 1995, indicating that the vast majority of the 8,000 to 10,000  
5 Vietnamese with final orders of removal today are pre-1995 Vietnamese immigrants.

6 ***Unlawful Detention in Violation of the Repatriation Agreement***  
7

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

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

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

26 45. In March 2017, ICE also began re-arresting pre-1995 Vietnamese  
27 immigrants with final orders of removal whom it had previously released. Many  
28

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1 were transported to Krome Detention Center in Miami, Florida to be interviewed by  
2 the Vietnamese Consulate between March 20 and 31, 2017.

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

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

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

24 49. On information and belief, the Vietnamese government has only issued  
25 travel documents to seven pre-1995 Vietnamese immigrants. Moreover, on  
26 information and belief, Vietnam will not accept the deportation of any pre-1995  
27 individuals without an interview. Some Petitioners and class members have never  
28

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1 been interviewed by the Vietnamese Consulate and are therefore not being  
2 considered for repatriation, yet remain in ICE custody.

3 50. During interviews conducted by the Consulate, Vietnamese officials  
4 questioned individuals about whether they have any family living in Vietnam who  
5 can support them if deported; whether they have any family living in the United  
6 States who will be impacted if deported; and whether they are willing to accept their  
7 deportation. On information and belief, Vietnam is extremely reluctant to issue travel  
8 documents to individuals like Petitioners who have no family in Vietnam; whose  
9 families in the United States will suffer hardship as a result of their deportation;  
10 and/or who do not wish to return to Vietnam. In addition to Petitioners, the pre-1995  
11 Vietnamese immigrants detained by ICE include at least four Amerasians whom  
12 Vietnam is highly unlikely to repatriate.

13 51. Despite the United States government's vague representations, the  
14 Vietnamese government's conduct does not indicate that it truly intends to repatriate  
15 the hundreds of pre-1995 Vietnamese whom ICE is currently detaining or will likely  
16 detain under its current detention campaign.

17 52. ICE lacks any particularized evidence that Vietnam will accept  
18 Petitioners' or class members' repatriation. Despite this lack of proof that  
19 Petitioners' and class members' repatriation is significantly likely in the reasonably  
20 foreseeable future, ICE has kept all Petitioners and class members past 90 days and  
21 some past 180 days.

22 53. Furthermore, Petitioners and class members are being detained without  
23 an individualized hearing before a neutral decision maker to assess whether detention  
24 is warranted due to danger or flight risk. This includes Petitioners Ngoc Hoang and  
25 Long Nguyen and class members who for years consistently and reliably reported to  
26 ICE as required under their orders of supervision.

1 54. To the extent that ICE has been conducting any 90-day post-order  
2 custody reviews for Petitioners and other class members, they have been perfunctory,  
3 resulting in boilerplate decisions that merely rubberstamp continued detention. Some  
4 class members have been told by ICE employees that Vietnamese with final orders  
5 of removal will continue to be detained until the Vietnamese government issues a  
6 travel document, though some requests for travel documents have been pending  
7 since late October or early November 2017 and others since March 2017. On  
8 information and belief, the refusal to release any pre-1995 Vietnamese immigrants  
9 after 90 days is driven by an ICE Headquarters policy being uniformly implemented  
10 across the United States.

### 11 CLASS ALLEGATIONS

12 55. Petitioners bring this action on behalf of themselves and all other  
13 similarly situated persons pursuant to Federal Rules of Civil Procedure 23(a) and  
14 23(b)(2), and as a representative habeas class action for similarly situated persons  
15 pursuant to a procedure analogous to Rules 23(a) and 23(b)(2). *See Ali v. Ashcroft*,  
16 346 F.3d 873, 889-91 (9th Cir. 2003) (holding that the district court did not exceed  
17 its habeas jurisdiction in certifying a nationwide habeas class), *withdrawn and*  
18 *amended on other grounds on reh'g, Ali v. Gonzales*, 421 F.3d 795 (9th Cir. 2005);  
19 *see also Geraghty v. U.S. Parole Commission*, 429 F. Supp. 737, 740 (M.D. Pa.  
20 1977) (noting that “procedures analogous to a class action have been fashioned in  
21 habeas corpus actions where necessary and appropriate”).

22 56. Petitioners seek to represent the following classes: (1) all Vietnamese  
23 nationals who arrived in the United States before July 12, 1995 and who have been  
24 or will be detained by ICE for more than 90 days after receiving final orders of  
25 removal (“90-Day Class”); and (2) all Vietnamese nationals who arrived in the  
26 United States before July 12, 1995 and who have been or will be detained by ICE for  
27 more than 180 days after receiving final orders of removal (“180-Day Class”).  
28

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1 57. Members of each proposed class are so numerous that joinder is  
2 impracticable. Petitioners have identified at least 45 pre-1995 Vietnamese  
3 immigrants with final orders of removal presently in ICE custody in just 20 of ICE's  
4 111 detention facilities. At least 37 of the 45 have been detained for more than 90  
5 days; 18 of those 37 have been detained for more than 180 days. The total numbers  
6 of 90-Day Class members and 180-Day Class members are likely much higher.  
7 Further, 8,000 to 10,000 Vietnamese immigrants in the United States currently have  
8 final orders of removal. ICE's aggressive detention of these individuals as part of a  
9 Headquarters-driven decision means the 90-day Class and 180-day Class will  
10 continue to grow.

11 58. 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 59. 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 90-Day Class members and 180-  
26 Day Class members individualized determinations of the need for detention that  
27 satisfy Section 1231 and due process.
- 28

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

5    **CLAIMS FOR RELIEF**

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

7           61.    The foregoing allegations are realleged and incorporated herein.

8           62.    Post-removal order detention violates Section 1231 where removal is  
9 not significantly likely to occur in the reasonably foreseeable future. *Zadvydas v.*  
10 *Davis*, 533 U.S. 678 (2001). Detention under these circumstances also violates  
11 constitutional due process.

12           63.    Petitioners’ and class members’ removal is not significantly likely to  
13 occur in the reasonably foreseeable future because they are specifically excluded  
14 from repatriation under the repatriation agreement.

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

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

23           66.    Petitioners and class members have shifted the burden to Respondents  
24 to produce individualized evidence that their removal is reasonably  
25 foreseeable. Respondents lack such evidence, yet continue to detain Petitioners and  
26 class members in violation of Section 1231 and constitutional due process.

27           67.    Petitioners and class members are entitled under the law to immediate  
28 release on orders of supervision.

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

68. The foregoing allegations are realleged and incorporated herein.

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

70. Respondents are subjecting Petitioners and class members to months of detention without any individualized determination that they pose a danger or flight risk that would justify their detention.

71. The only procedure the government has provided—administrative post-order custody reviews—is inadequate to satisfy the requirements of due process. Moreover, the government is not meaningfully conducting these post-order custody reviews in compliance with its own regulations but is merely rubberstamping continued detention with respect to the Petitioners and class members as a whole.

72. Respondents may not continue to detain Petitioners and class members without individualized determinations by impartial adjudicators of whether detention is justified based on danger or flight risk.

**PRAYER FOR RELIEF**

73. WHEREFORE, Petitioner respectfully requests that the Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Certify this matter as a class action, name Petitioners Vu Ha, Long Nguyen, and Ngoc Hoang as class representatives of the 90-Day Class, name Petitioner Hoang Trinh as class representative of the 180-Day Class, and appoint Petitioners’ counsel as class counsel;
- c. Declare that Respondents have violated the rights of the class;

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1 d. Order Respondents to release from detention Petitioners and all class  
2 members for whom Respondents lack individualized evidence that removal is  
3 significantly likely to occur in the reasonably foreseeable future;

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

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

11 g. Grant any other and further relief as the Court deems just and proper.  
12

13 Dated: February 22, 2018

Respectfully submitted,

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15 Tuan V. Uong  
16 Farah Tabibkhoei  
17 Christopher M. Butler  
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20 /S/ Phi U. Nguyen  
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22 ASIAN AMERICANS ADVANCING JUSTICE-ATLANTA

23 /S/ Laboni Hoq  
24 Laboni Hoq  
25 Christopher Lapinig  
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27 /S/ Jingni Zhao  
28 Jingni (Jenny) Zhao  
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# **ATTACHMENT A**



**AGREEMENT**  
BETWEEN  
THE GOVERNMENT OF THE UNITED STATES OF AMERICA  
AND  
THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM  
ON  
THE ACCEPTANCE OF THE RETURN OF VIETNAMESE CITIZENS

The Government of the United States of America (hereinafter called "the U.S. Government") and the Government of the Socialist Republic of Vietnam (hereinafter called "the Vietnamese Government"),

With a wish of developing friendly relations between the two countries, and to establish procedures for competent authorities of both countries on the prompt and orderly acceptance of Vietnamese citizens who have been ordered removed by the U.S. Government,

In order to establish common procedures for the relevant authorities based on the legal principles of each country and the international responsibility to accept the return of repatriated citizens; and to follow recognized principles of international law, to allow for a case-by-case determination of repatriation, and to recognize the right of the receiving country to determine nationality,

Have agreed to the following:

**Article 1**  
**General Provisions**

1. The U.S. Government will carry out the repatriation of Vietnamese citizens who violated U.S. law in accordance with U.S. and international law and the provisions of this Agreement. The repatriation should take into account the humanitarian aspect, family unity and circumstances of each person in each individual case.

2. The Vietnamese Government may consider the return of its citizens who violated U.S. law based on the consideration of legal procedures and the

status and circumstances of each individual case. The subject individuals and the acceptance procedure will be based on the terms of this Agreement.

3. Repatriation will be carried out in an orderly and safe way, and with respect for the individual human dignity of the person repatriated. The U.S. Government will allow Vietnamese citizens who have been ordered removed a reasonable time to arrange their personal affairs before returning them to Vietnam.

4. Persons repatriated under this Agreement have the right to transfer their legal money and personal property to Vietnam.

5. The U.S. Government will pay for the cost of returning to Vietnam persons repatriated under this Agreement, as provided in Article 5 and Annex 1. The U.S. Government will also pay for the cost of returning to the United States any person who was mistakenly repatriated, in accordance with Article 3 of this Agreement.

## **Article 2**

### **Removable Persons and Conditions of Acceptance**

1. The Vietnamese Government will accept the return of Vietnamese citizens in accordance with Article 1 and item 2 of Article 2 of this Agreement, if upon investigation the individual meets the following requirements:

(a) The individual is a citizen of Vietnam and is not a citizen of the United States or of any other country;

(b) The individual previously resided in Vietnam and has no current residence in a third country;

(c) The individual has violated U.S. laws and has been ordered by competent authority removed from the United States; and

(d) If the individual has been convicted of a criminal offense (including immigration violation), the person will have completed any imprisonment before removal, and any reduction in sentence will have been ordered by competent authority.

2. Vietnamese citizens are not subject to return to Vietnam under this Agreement if they arrived in the United States before July 12, 1995, the date on which diplomatic relations were re-established between the U.S.



Government and the Vietnamese Government. The U.S. Government and the Vietnamese Government maintain their respective legal positions relative to Vietnamese citizens who departed Vietnam for the United States prior to that date.

3. In the case of a citizen of Vietnam who immigrated to the United States from a third country where that person had a permanent residence and who has been ordered removed from the United States, the U.S. Government will seek to return that person to the third country or consider allowing that person to stay in the United States, before requesting removal to Vietnam.

4. In any case where the Vietnamese Government obtains information relevant to the repatriation of an individual that was not previously considered by the U.S. Government, the Vietnamese Government may request a humanitarian reconsideration based on the specific circumstances of the repatriated person in accordance with United States law.

### **Article 3**

#### **Return of Persons Repatriated in Error**

Upon notice by the Vietnamese Government that a person returned to Vietnam by the U.S. Government does not meet all criteria mentioned in Article 2 of this Agreement, the U.S. Government should promptly receive the return of that person to the United States without any special procedure.

### **Article 4**

#### **Acceptance Procedures**

1. When the U.S. Government believes that a removable person is a citizen of Vietnam and meets all criteria within Article 2 of this Agreement, the U.S. Department of Homeland Security, on behalf of the U.S. Government, will request appropriate travel documents from the Vietnamese Government and will forward the appropriate files to that Government. Such files will include three sets of documents, the original and two copies. The original and one copy shall be forwarded to the Vietnamese Ministry of Public Security (Immigration Department) by the U.S. Embassy in Vietnam, and the other copy will be sent to the Vietnamese Ministry of Foreign Affairs (Consular Department).

Each file will contain a diplomatic note which requests that the Vietnamese Government accept the returnee, the name of the person the U.S. Government believes should be repatriated to Vietnam, the appropriate forms completed by such person (an example of which is provided in Annex 2 of

this Agreement), a copy of the order of removal, and other documents regarding the person's biography, citizenship, criminal history, sentence imposed, and decision of amnesty or reduction of criminal sentence. The order of removal will be translated into Vietnamese on the standard form, and the criminal history will include a National Crime Information Center (NCIC) record in English accompanied by a code key translated into Vietnamese. All documents and translations will be certified by the competent U.S. authorities.

2. Upon request by the Vietnamese Government, the U.S. Government will arrange and facilitate the interview of persons who fall within Article 2(1) of this Agreement by Vietnamese immigration officials to determine information regarding the Vietnamese citizenship, biographical data, and last place of residence of such persons. The U.S. Department of Homeland Security will arrange a venue for those interviews. The U.S. Government also will facilitate interviews by U.S.-based consular officers of the Vietnamese Government of deportable persons whom the U.S. believes to be Vietnamese citizens.

3. The Vietnamese Government will provide a prompt response to the U.S. Government on cases referred under this Article after the Vietnamese verification is made. If it is determined that a person whose name and file has been provided to the Vietnamese Government in accordance with this Article meets the requirements of Article 2, the Ministry of Public Security of the Vietnamese Government will issue a travel document authorizing that person's return to Vietnam, and will provide written notification to the U.S. Embassy in Vietnam.

4. When the Vietnamese Government has issued a travel document under this Agreement, the U.S. Government will provide at least fifteen (15) days notice of the flight and travel arrangements by which the person will be returned to Vietnam. The U.S. Embassy in Vietnam will inform the Ministry of Public Security (Immigration Department) and the Ministry of Foreign Affairs (Consular Department) of the date and number of the flight, the time of arrival, the port of entry (Noi Bai Airport in Hanoi or Tan Son Nhat Airport in Ho Chi Minh City), and the details regarding any U.S. officers escorting the person to be returned (such as names, dates of birth, passport numbers, estimated times of stay in Vietnam, etc), and allow the Vietnamese side to confirm receipt of the returnees.

When a person under medical treatment is returned to Vietnam under this Agreement, the escorting U.S. officers will provide a copy of the person's health record to the receiving Vietnamese officials at the port of entry. The

escorting and receiving officers will sign a joint report verifying the person's repatriation.

### **Article 5 Expenses**

1. The U.S. Government will pay for the cost of transporting Vietnamese citizens to Vietnam under this Agreement.

2. The U.S. Government will pay for the costs of receiving repatriated persons including: verifying fee, the receipt at the airport and transportation of the persons from airport to the place of residences in accordance with the enclosed Annex 1.

3. The U.S. Government will pay for the cost of arranging interviews by relevant Vietnamese officials of persons whom the U.S. Government believes to be Vietnamese citizens and subject to repatriation under this Agreement.

4. The U.S. Government will pay for the cost of returning to the United States persons who were repatriated in error, as provided in Article 3 of this Agreement.

### **Article 6 Entry into Force and Duration**

1. This Agreement will enter into force sixty (60) days from the date of signature by both Governments.

2. Upon entry into force, this Agreement will be valid for five years. The Agreement will be extended automatically for terms of three years thereafter unless written notice not to extend is given by one Government to the other at least six months prior to the expiration date of the Agreement.

### **Article 7 Amendment and Supplementation**

This Agreement may be amended or supplemented by written agreement of the Vietnamese Government and the U.S. Government through appropriate diplomatic channels.

**Article 8  
Resolution of Disputes**

Any disputes regarding the interpretation and implementation of this Agreement will be resolved through appropriate diplomatic channels.

**Article 9  
Suspension or Termination**

This Agreement may be suspended or terminated by either Government. Such suspension or termination of this Agreement will come into effect after thirty days (30) from the date one Government receives the written notification from the other Government of its intention to suspend or terminate.

Done at Hanoi, on 22 January 2008 in duplicate in the English and Vietnamese languages, both texts being equally authentic.

**FOR THE GOVERNMENT OF  
THE UNITED STATES OF  
AMERICA**

*Julie Meyer*

**FOR THE GOVERNMENT OF  
THE SOCIALIST REPUBLIC OF  
VIETNAM**

*[Signature]*

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Annex 1

**EXPENSES FOR REPATRIATION**

Content	Expenses for Repatriation
1/ Expenses for verification (including verification through the Vietnamese Embassy in the U.S.) and receipt at airports in Vietnam	\$140/person
2/ Transportation fee for the repatriated person from airport to the place of residence	\$10/person
Total:	\$150/person