

1 PETER J. ELIASBERG (SBN 189110)  
2 AHILAN T. ARULANANTHAM (SBN 237841)  
3 RANJANA NATARAJAN (SBN 230149)  
4 ACLU FOUNDATION OF  
5 SOUTHERN CALIFORNIA  
6 1616 Beverly Boulevard  
7 Los Angeles, California 90026  
8 Tel: (213) 977-9500  
9 Fax: (213) 250-3919

10 Attorneys for Petitioner  
11 (Additional counsel listed on following page)

12 **UNITED STATES DISTRICT COURT**  
13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
14 **WESTERN DIVISION**

FILED  
2006 SEP 25 PM 3:38  
CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

15 EBRAHIM MOHAMMED MUSSA, )  
16 A# 29-477-055; JOHN IDRIS )  
17 RASHEED, A# 75-657-846; )  
18 AMADOU LAMINE DIOUF, A# 79- )  
19 768-086; RAYMOND GERALD )  
20 AUGUSTINO SOEOTH, A# 75-694- )  
21 789; VICTOR MARTINEZ, A# 30- )  
22 700-636; RUDOLF STEPANIAN, A# )  
23 30-916-353, )

24 Plaintiff-Petitioners,

25 vs.

26 ALBERTO GONZALES, United )  
27 States Attorney General; MICHAEL )  
28 CHERTOFF, Secretary, Department )  
of Homeland Security; JULIE L. )  
MYERS, Assistant Secretary, United )  
States Immigration and Customs )  
Enforcement; NORMA BONALES- )  
GARIBAY, Field Office Director )  
U.S. Immigration and Customs )  
Enforcement; GEORGE MOLINAR, )  
Chief of Detention and Removal )  
Operations, San Pedro Detention )  
Facility; STUART CORTEZ, Officer- )  
In-Charge, San Pedro Detention )  
Facility; JOHN ZUETEL, U.S. )  
Immigration and Customs )  
Enforcement Officer-in-Charge, Mira )  
Loma Detention Center; and IRMA )  
BECERRA, Los Angeles County )  
Sheriff's Department Captain, Mira )  
Loma Detention Center )

Defendant-Respondents.

Case No.: CV-06-2749-TJH (JTL)

First <sup>erm</sup>

**AMENDED COMPLAINT AND  
PETITION FOR WRIT OF HABEAS  
CORPUS**

**CLASS ACTION**

Hearing Date: None  
[Magistrate Judge Jennifer T. Lum]

1 Additional counsel:

2 CECILLIA D. WANG (CSB #187782)  
3 MONICA M. RAMIREZ (CSB #234893)\*  
4 AMERICAN CIVIL LIBERTIES UNION  
5 FOUNDATION  
6 IMMIGRANTS' RIGHTS PROJECT  
7 39 Drumm Street  
8 San Francisco, CA 94111  
9 Telephone: (415) 343-0775  
10 Facsimile: (415) 395-0950

11 JAYASHRI SRIKANTIAH (CSB #189566)  
12 STANFORD LAW SCHOOL IMMIGRANTS'  
13 RIGHTS CLINIC  
14 Crown Quadrangle  
15 559 Nathan Abbott Way  
16 Stanford, CA 94305-8610  
17 Telephone: (650) 724-2442  
18 Facsimile: (650) 723-4426

19 JUDY RABINOVITZ\*\*  
20 AMERICAN CIVIL LIBERTIES FOUNDATION  
21 IMMIGRANTS' RIGHTS PROJECT  
22 125 Broad Street, 18th Floor  
23 New York, NY 10004  
24 Telephone: (212) 549-2618  
25 Facsimile: (212) 549-2654

26 \*Pending admission to Central District of California  
27 \*\*Application for admission *pro hac vice* forthcoming  
28

## JURISDICTION

1  
2       1.     Plaintiff-Petitioners challenge the Government’s interpretation of the  
3 immigration detention statutes on statutory and constitutional grounds. They  
4 contend that the general detention statutes (those applicable to cases not involving  
5 national security concerns) do not authorize prolonged immigration detention –  
6 longer than about six months – pending completion of removal proceedings,  
7 unless there is a significant likelihood of removal in the reasonably foreseeable  
8 future. See Nadarajah v. Gonzales, 443 F.3d 1069 (9th Cir. 2006). They also  
9 argue that if the general detention statutes did authorize such detention they would  
10 be unconstitutional, at least absent substantially greater procedural protections  
11 than those currently available. See Zadvydas v. Davis, 533 U.S. 678, 692 (2001)  
12 (prolonged detention of aliens whose removal is not reasonably foreseeable under  
13 administrative procedures presents “obvious” constitutional problem).

14       2.     Because Plaintiff-Petitioners assert that the federal government has  
15 detained them in violation of federal statutory and constitutional law, this Court  
16 has jurisdiction to hear their challenge under the federal habeas corpus statute and  
17 the Suspension Clause. See 28 U.S.C. 2241(c)(1); 28 U.S.C. 2241 (c)(3); U.S.  
18 Const. Art. I., cl.9; INS v. St. Cyr, 533 U.S. 289, 304 (2001). In addition, this  
19 Court has jurisdiction to hear these statutory and constitutional claims under the  
20 statute conferring general federal question jurisdiction. See 28 U.S.C. 1331;  
21 Walters v. Reno, 145 F.3d 1032, 1052 (9th Cir. 1998) (holding that Section 1331  
22 authorizes review of ‘general collateral challenges to unconstitutional practices  
23 and policies used by the agency’ in the immigration context).<sup>1</sup>

24       3.     This Court may grant relief under the habeas corpus statute, 28 U.S.C.  
25 2241 et seq., the general federal question statute, 28 U.S.C. 1331, the Declaratory  
26

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27       <sup>1</sup>The Due Process Clause and Article III of the Constitution also require that  
28 some judicial forum remain available for Plaintiff-Petitioners to challenge the  
lawfulness of their detention.

1 Judgment Act, 28 U.S.C. 2201 et seq., and the All Writs Act, 28 U.S.C. 1651.

2 VENUE

3 4. Venue is proper in this district because at least one of the Defendants  
4 resides in this district and because a substantial part of the events giving rise to the  
5 action occurred in this district. 28 U.S.C. 1391(e). Venue is also proper because  
6 all of the Defendant-Respondents are amenable to service of process in this  
7 district. See Braden v. 30th Judicial Circuit Court of Ky., 410 U.S. 484, 485  
8 (1973) (“So long as the custodian can be reached by service of process, the court  
9 can issue a writ ‘within its jurisdiction’ . . .”).

10 INTRODUCTION

11 5. Six years after the Supreme Court effectively banned unreasonably  
12 prolonged and indefinite detention in the immigration context, the government  
13 continues to engage in a policy of de facto indefinite detention. Petitioner  
14 Ebrahim Mohammed Mussa originally filed this habeas petition to challenge  
15 unlawful prolonged detention under the government’s policy. Rather than defend  
16 its policy, the government released him. This pattern is not unique. The  
17 government has repeatedly released non-citizens who file habeas petitions  
18 challenging their prolonged detention rather than defend its policy, while  
19 nonetheless keeping in detention those who fail to file such lawsuits.<sup>2</sup>

20 6. As a result, dozens of non-citizens in this District remain locked away  
21 in immigration detention centers for years, under circumstances legally identical to  
22 those faced by Mr. Mussa. In each of these cases, as with Mr. Mussa’s, the  
23 government has made an initial determination to detain, but has utterly failed to

24  
25 <sup>2</sup>Examples of such cases in which counsel undersigned have been involved  
26 include Molina v. Ashcroft, CV 04-6656 TJH (MLG) (C.D. Cal. 2004),  
27 Thangarajah v. Gonzales, et al., CV 05-1608 BEN (POR) (S.D. Cal. 2005), and  
28 Bravo Pedroza v. Atunez, et al., No. 06-cv-1176-W (LSP) (S.D. Cal., Pet. for Writ  
of Habeas Corpus Pursuant to 28 U.S.C. § 2241 filed Sept. 1, 2006). In each of  
these cases, the government released the petitioner before the district court had an  
opportunity to rule on the validity of prolonged detention pending completion of  
removal proceedings.

1 assess whether continued detention remains authorized by law as detention  
2 becomes prolonged. In response, Mr. Mussa now amends his complaint to add  
3 several other Plaintiff-Petitioners who remain detained subject to the  
4 government's draconian detention policy. These Plaintiff-Petitioners will also  
5 seek to represent a class of similarly-situated non-citizens who are subject to  
6 unreasonably prolonged and indefinite detention in violation of controlling  
7 authority.

8         7. Plaintiff-Petitioners are all non-citizens in removal proceedings  
9 whom the government has detained for over six months, and in most cases for  
10 years, even though there is no significant likelihood that their removal will occur  
11 (and that their detention will end) in the reasonably foreseeable future.

12 Controlling authority establishes that the government may only detain non-citizens  
13 in removal proceedings for a reasonable period of time for the purpose of effecting  
14 removal – generally about six months – under the statutes at issue here. Congress  
15 has authorized more prolonged detention only in rare circumstances when the  
16 general statutes authorizing immigration detention may be supplanted by specific  
17 statutes enacted to address national security concerns. See Nadarajah v. Gonzales,  
18 443 F.3d 1069 (9th Cir. 2006) (general immigration detention statutes do not  
19 authorize prolonged detention); Clark v. Martinez, 543 U.S. 371, 379 n.4 (2005)  
20 (prolonged detention authorized only under “special” circumstances involving  
21 national security statutes). Cf. Zadvydas v. Davis, 533 U.S. 678, 692 (2001)  
22 (prolonged detention of aliens whose removal is not reasonably foreseeable under  
23 administrative procedures presents “obvious” constitutional problem).

24 Nonetheless, the government's detention policy neither respects nor recognizes  
25 any limit on its power to detain non-citizens pending completion of removal  
26 proceedings against them. Indeed, the government has failed to provide any of the  
27 Plaintiff-Petitioners with a hearing to determine whether their prolonged detention  
28 remains justified. For that reason, the government's detention policy violates the

1 federal immigration laws. Moreover, were the immigration statutes to permit such  
2 prolonged and indefinite detention, they would violate the Fifth Amendment's  
3 Due Process Clause.

4 8. Although seven Plaintiff-Petitioners are named in this complaint,  
5 dozens of others in this judicial district alone have been detained for similar  
6 periods, and face a similar prospect of prolonged indefinite detention. The  
7 Plaintiff-Petitioners bring this action on behalf of themselves and other non-  
8 citizens similarly situated, seeking freedom from the government's de facto policy  
9 of indefinite detention.

## 10 PARTIES

### 11 Plaintiff-Petitioners

12 9. Petitioner, Ebrahim Mohammed Mussa, is a refugee from Ethiopia  
13 who was detained for over two years without a hearing under the general  
14 immigration detention statutes. He was released shortly after the original  
15 complaint in this case was filed.

16 10. Petitioner John Idriss Rasheed is a citizen of Nigeria who has been  
17 detained for over two years without a hearing under the general detention statutes,  
18 and who is not likely to be removed in the reasonably foreseeable future. He is  
19 currently detained at the San Pedro detention facility, which is located in this  
20 judicial district.

21 11. Petitioner Amadou Lamine Diouf is a citizen of Senegal who has  
22 been detained for nearly eighteen months without a hearing under the general  
23 detention statutes, and who is not likely to be removed in the reasonably  
24 foreseeable future. He is currently detained at the San Pedro detention facility.

25 12. Petitioner Raymond Gerald Augustino Soeoth is a citizen of  
26 Indonesia who has been detained for two years without a hearing under the general  
27 detention statutes, and who is not likely to be removed in the reasonably  
28 foreseeable future. He is currently detained at the San Pedro detention facility.

1           13.    Petitioner Victor Martinez is a citizen of Ecuador who has been  
2 detained for four years without a hearing under the general detention statutes, and  
3 who is not likely to be removed in the reasonably foreseeable future. He is  
4 currently detained at the San Pedro detention facility.

5           14.    Petitioner Rudolf Stepanian is a citizen of Iran who has been detained  
6 for nearly ten months under the general detention statutes, and who is not likely to  
7 be removed in the reasonably foreseeable future. He is currently detained at the  
8 Mira Loma detention facility, which is located within this judicial district.

9    **Defendant-Respondents** (sued in their official capacity)

10          15.    Respondent, Alberto Gonzales, is the Attorney General of the United  
11 States and, as such, he is responsible for the administration of the U.S.  
12 Immigration and Customs Enforcement (“ICE”) and the implementation and  
13 enforcement of the immigration laws. In his official capacity, he is the ultimate  
14 legal custodian of the Plaintiff-Petitioners.

15          16.    Respondent, Michael Chertoff, is the Secretary of the U.S.  
16 Department of Homeland Security (“DHS”), the agency charged with enforcement  
17 of the nation’s immigration laws. In his official capacity, he is a legal custodian of  
18 the Plaintiff-Petitioners.

19          17.    Respondent, Julie L. Myers, is the Assistant Secretary of the ICE, the  
20 arm of DHS charged with detaining and removing aliens pursuant to federal  
21 immigration law. In her official capacity, Ms. Myers is a legal custodian of the  
22 Plaintiff-Petitioners.

23          18.    Respondent, Norma Bonales-Garibay, is ICE’s Field Office Director  
24 for the Los Angeles District. In her official capacity, Ms. Bonales-Garibay is  
25 authorized to release Mr. Mussa, and she is the local ICE official who has legal  
26 custody of the Plaintiff-Petitioners.

27          19.    Respondent, George Molinar, is ICE’s Chief of Detention and  
28 Removal Operations at San Pedro Detention Facility in San Pedro, California. As

1 such, he is the local ICE official who has immediate custody of some of the  
2 Plaintiff-Petitioners.

3 20. Respondent, Stuart Cortez, is ICE's Officer-in-Charge of Detention  
4 and Removal Operations at San Pedro Detention Facility in San Pedro, California.  
5 As such, he is the local ICE official who has immediate custody of some of the  
6 Plaintiff-Petitioners.

7 21. Respondent, John Zuetel, is the ICE's Officer-in-Charge of the Mira  
8 Loma Detention Center in Lancaster, California. As such, he is the local ICE  
9 official who has immediate custody of some of the Plaintiff-Petitioners.

10 22. Respondent, Irma Becerra, is the Los Angeles County Sheriff's  
11 Department Captain of the Mira Loma Detention Center in Lancaster, California.  
12 As such, she is the local Los Angeles County Sheriff's Department official who  
13 has immediate custody of some of the Plaintiff-Petitioners.

#### 14 LEGAL FRAMEWORK

15 23. The general immigration detention statutes authorize the detention of  
16 non-citizens in removal proceedings under certain circumstances. See 8 U.S.C.  
17 1225 (authorizing detention of aliens seeking admission), 8 U.S.C. 1226  
18 (authorizing detention of aliens admitted to the United States), 8 U.S.C. 1231  
19 (authorizing detention of aliens with final order of removal). Both the Supreme  
20 Court and the Ninth Circuit have construed these statutes narrowly, reading them  
21 to permit detention only for reasonable periods of time for the purpose of effecting  
22 removal, in part because of the serious constitutional problems associated with  
23 prolonged detention outside the criminal context. See generally Zadvydas v.  
24 Davis, 533 U.S. 678, 692 (2001) (prolonged and potentially indefinite detention of  
25 alien ordered removed not authorized by statute); Demore v. Kim, 538 U.S. 510,  
26 513 (2003) (mandatory detention authorized for the "brief" period necessary to  
27 complete removal proceedings); Nadarajah v. Gonzales, 443 F.3d 1069 (9th Cir.  
28 2006) (prolonged detention pending completion of removal proceedings not



1 authorized under general detention statutes); Tijani v. Willis, 430 F.3d 1241, 1242  
2 (9th Cir. 2005) (mandatory detention not authorized for prolonged period pending  
3 completion of removal proceedings).

4 24. Plaintiff-Petitioners' primary legal claim is simple: Congress has not  
5 authorized the government to detain immigrants where their removal is not  
6 reasonably foreseeable, and has therefore limited detention pending completion of  
7 removal proceedings to a presumptively-reasonable six-month period except in  
8 cases involving national security concerns, when it may invoke special statutes  
9 authorizing more prolonged detention. See Nadarajah v. Gonzales, 443 F.3d 1069,  
10 1078 (9th Cir. 2005) (holding that "the general immigration detention statutes do  
11 not authorize the Attorney General to incarcerate detainees for an indefinite  
12 period"). Under the statutes at issue here, where the length of detention has  
13 exceeded six months Congress has authorized continued detention only if there is  
14 a significant likelihood of removal in the reasonably foreseeable future.  
15 Nadarajah, 443 F.3d at 1080-81 ("After a presumptively reasonable six-month  
16 detention, once the alien provides good reason to believe that there is no  
17 significant likelihood of removal in the reasonably foreseeable future, the  
18 Government must respond with evidence sufficient to rebut that showing.").

19 25. Despite this clear legal authority, the government routinely detains  
20 non-citizens for far longer than six months under the general detention statutes,  
21 without ever assessing whether there is a significant likelihood of removal in the  
22 reasonably foreseeable future such that their detention remains authorized by law.

23  
24 26. The government holds detainees for years under the general statute  
25 authorizing detention of aliens seeking admission, 8 U.S.C. 1225(b), the general  
26 statute authorizing detention of admitted aliens convicted of certain crimes  
27 (including aggravated felonies), 8 U.S.C. 1226(c), and the general detention  
28 statute authorizing detention of aliens whose removal orders have become

1 administratively final, 8 U.S.C. 1231. As a result, dozens of non-citizens remain  
2 detained beyond six months under these general detention statutes, even though  
3 there is no significant likelihood of their removal in the reasonably foreseeable  
4 future, because the government simply fails to assess the continuing validity of  
5 their detention after six months.

6 27. Because the general immigration detention statutes do not authorize  
7 detention for more than a reasonable period of time, which is presumptively not  
8 longer than six months, they do not authorize the continued incarceration of any of  
9 the Plaintiff-Petitioners. As explained in the Statement of Facts, *infra*, the  
10 Plaintiff-Petitioners have all been detained for far longer than the presumptively  
11 reasonable six-month period. While detention for a short period beyond six  
12 months might be authorized if removal were imminent, there is no indication that  
13 any of the Plaintiff-Petitioners is significantly likely to be removed in the  
14 reasonably foreseeable future.

15 28. The government's detention policy also violates the Due Process  
16 rights of the named Plaintiff-Petitioners and the class of long-term detainees they  
17 seek to represent. As the government currently interprets the law, it can detain  
18 aliens in removal proceedings for a prolonged and indefinite period – even for  
19 years – without any kind of procedure to determine that their detention remains  
20 reasonably related to its purpose as it becomes prolonged. However, the  
21 government's position is contrary to controlling authority. Prolonged detention  
22 without sufficient procedural protections of aliens who pose no special danger  
23 clearly violates the Due Process Clause. See *Zadvydas v. Davis*, 533 U.S. 678,  
24 690-91 (2001) (holding that prolonged non-criminal detention violates the Due  
25 Process Clause unless accompanied by both “a special justification, such as  
26 harm-threatening mental illness” and “strong procedural protections.”).

27 29. Controlling Supreme Court authority thus makes clear that Plaintiff-  
28 Petitioners' detention violates the Due Process Clause. None of the Plaintiff-

1 Petitioners' removal will occur in the reasonably foreseeable future, if ever, and  
2 for that reason their detention is not related to any legitimate purpose. Moreover,  
3 even if removal were reasonably foreseeable for some of the Plaintiff-Petitioners,  
4 any detainee subject to prolonged non-criminal detention must still be afforded  
5 constitutionally-adequate procedural protections. Yet not a single immigrant  
6 subject to prolonged detention pending completion of proceedings has received a  
7 hearing where the government has justified the prolonged and indefinite detention.

8  
9 **STATEMENT OF FACTS**

10 30. The following statement describes the cases of several Plaintiff-  
11 Petitioners who seek to represent a class of similarly-situated non-citizens in this  
12 case. Each Petitioner is a non-citizen who has been detained for well over six  
13 months under general immigration detention statutes that do not authorize  
14 prolonged detention. For each of them, there is no significant likelihood that they  
15 will be removed, and that their detention will end, in the reasonably foreseeable  
16 future. In some cases they face prolonged and indefinite detention because they  
17 continue to litigate their cases before tribunals that do not render decisions in a  
18 fixed or rapid period of time. In others it is because they have already won relief  
19 from removal, and although the government has kept them detained while it  
20 pursues an appeal, the likelihood of their ever being ordered removed is small  
21 because they will probably win their cases. In still others removal is not  
22 reasonably foreseeable because there is no country to which they can be legally  
23 removed that is likely to accept them for deportation. Yet, despite the fact that  
24 their removal is not reasonably foreseeable, none of the Plaintiff-Petitioners has  
25 received a hearing concerning whether their detention remains justified as it has  
26 become prolonged.

27 **Ebrahim Mohammed Mussa**

28 31. Petitioner Ebrahim Mohammed Mussa is a citizen of Ethiopia and

1 lawful permanent resident of the United States. He was detained for two years  
2 while challenging his removal from the United States.

3 32. Mr. Mussa first came to the United States as a refugee in 1989, when  
4 he was found at a refugee camp in Kenya after suffering horrific abuse and tragedy  
5 in the war in Ethiopia. He eventually decided to make the United States his  
6 permanent home and adjusted his status from refugee to lawful permanent  
7 resident.

8 33. After living in the United States for 15 years, Mr. Mussa was  
9 convicted of a stalking offense under California law. Shortly afterward, the DHS  
10 initiated removal proceedings against him. The DHS proceeded to detain him,  
11 asserting that it had authority under 8 U.S.C. 1226(c), which authorizes mandatory  
12 detention of aliens convicted of certain crimes, including aggravated felonies. Mr.  
13 Mussa did not receive a hearing as to whether he posed a danger to the community  
14 or a flight risk.

15 34. One year after Mr. Mussa was first incarcerated, an immigration  
16 judge granted his application for relief from removal under the Convention  
17 Against Torture ("CAT"), but denied his applications for asylum and withholding  
18 of removal. Even after this decision, however, the DHS continued to detain him,  
19 presumably because it intended to appeal the decision.

20 35. The government did not release Mr. Mussa from immigration  
21 detention until after he filed the instant habeas petition challenging the lawfulness  
22 of his detention, and after the Board of Immigration Appeals affirmed the  
23 Immigration Judge's decision to grant relief under CAT. Upon finally releasing  
24 Mr. Mussa after two years of incarceration, the government moved to dismiss the  
25 instant case as moot.

26 36. During the two years he was incarcerated by the government, Mr.  
27 Mussa never received any hearing as to whether his prolonged detention was  
28 justified.

1 **John Idriss Rasheed**

2 37. Petitioner John Idriss Rasheed is a citizen of Nigeria. He is married  
3 to a U.S. citizen. He and his wife have a four-year-old daughter. Mr. Rasheed has  
4 been detained for two years while he has challenged the government's efforts to  
5 remove him from the United States.

6 38. Mr. Rasheed fled to the United States in 1999, fearing torture and  
7 political instability in his home country. Upon his arrival, he applied for  
8 protection as a refugee under the asylum laws, but was denied relief by an  
9 Immigration Judge. He appealed the decision to the Board of Immigration  
10 Appeals. The Board failed to decide his case for three years, until, in 2003, it  
11 affirmed the Immigration Judge's decision without opinion in a one-line order.  
12 Despite the long pendency of the case, the Board's decision was so baseless that  
13 when Mr. Rasheed appealed to the Ninth Circuit, the government was unwilling to  
14 defend the agency's decision on appeal and agreed to remand for a new hearing.  
15 At the new hearing, the Immigration Judge granted him relief under the  
16 Convention Against Torture – nearly seven years after he first applied for asylum.

17 39. Mr. Rasheed has been incarcerated under the immigration laws since  
18 2004, when he was convicted of forgery and finished serving a sentence of 364  
19 days in jail. In making its decision to detain, the government relied on 8 U.S.C.  
20 1231, a general detention statute that authorizes post-final order detention. The  
21 government did not even consider that Mr. Rasheed did not pose a danger to the  
22 community or a flight risk, based on the strong merits of his CAT claim, his  
23 marriage to a U.S. citizen, and the fact that he has a dependent U.S. citizen  
24 daughter. Even when the Immigration Judge granted CAT relief, the government  
25 continued to keep Mr. Rasheed in detention while it pursued the appeal - just as in  
26 Mr. Mussa's case. Mr. Rasheed's case remains pending before the Board of  
27 Immigration Appeals.

28 40. Mr. Rasheed has never had an individualized hearing as to whether

1 his detention is justified.

2 **Amadou Lamine Diouf**

3 41. Petitioner Amadou Lamine Diouf is a citizen of Senegal. He came to  
4 the United States as a student in February of 1996. He has been in immigration  
5 detention for over eighteen months while fighting a removal order infected by  
6 ineffective assistance of counsel.

7 42. In 2003, the government started removal proceedings against Mr.  
8 Diouf for overstaying his student visa. Mr. Diouf was granted a voluntary  
9 departure, but married his long-time American fiancée before the appointed date  
10 of his departure. After his marriage, in June of 2003, he asked his immigration  
11 attorney to file a petition to adjust his status based on his marriage, and also to file  
12 a motion to reopen his proceedings on that basis. His attorney filed the petition,  
13 but (unbeknownst to Mr. Diouf) not the motion to reopen. Thus, his voluntary  
14 departure order automatically became a removal order without his knowing it.  
15 Nearly two years later, on March 29, 2005, the government arrived at his  
16 apartment and arrested him. He has been detained ever since.

17 43. Since his arrest, Mr. Diouf has hired a new attorney who has sought  
18 to reopen Mr. Diouf's case based on, inter alia, ineffective assistance of counsel.  
19 That claim is currently pending before the Ninth Circuit, which has stayed his  
20 removal. Such appeals typically can take a year or more to complete. See Tijani,  
21 430 F.3d at 1242 (foreseeable process on petition for review in Ninth Circuit is a  
22 year or more); Administrative Office of the United States Courts, Federal Court  
23 Management Statistics 2005, U.S. Court of Appeals Judicial Caseload Profile at 2  
24 (median time from filing of notice of appeal to disposition for Ninth Circuit in  
25 2005 was 16.1 months), available at  
26 <http://www.uscourts.gov/cgi-bin/cmsa2005.pl>.

27 44. Mr. Diouf does not pose a danger to the community or a flight risk, in  
28 light of his marriage to a U.S. citizen, the absence of any conviction for a

1 removable offense, a stay of removal, and a strong claim for ineffective assistance.  
2 Nonetheless, Mr. Diouf remains subject to continued detention.

3 45. Mr. Diouf has never had a hearing to determine whether or not he  
4 should be detained at all, let alone a hearing to determine whether his continued  
5 detention remains justified despite its length.

6 **Raymond Gerald Augustino Soeoth**

7 46. Petitioner Raymond Gerald Augustino Soeoth is a citizen of  
8 Indonesia. He has been incarcerated by immigration authorities for two years  
9 while fighting his removal and asserting his claim for asylum.

10 47. Mr. Soeoth and his wife came to the United States in February of  
11 1999 on visitors' visas. After arriving, he affirmatively applied for asylum based  
12 on his fear of persecution in Indonesia because of his Christian religious activities.  
13 His claim was denied by an Immigration Judge and then the Board of Immigration  
14 Appeals. He then filed a petition for review in the Ninth Circuit, which also  
15 denied his claim in June of 2004. Shortly afterward, in September of 2004, the  
16 government arrested him.

17 48. While his case wended its way through appeals, conditions for  
18 Christians in Indonesia substantially worsened because of the ascendancy of a  
19 more pro-Muslim government. The Ninth Circuit has recognized the danger that  
20 Chinese Christians now face in Indonesia. See Sael v. Ashcroft, 386 F.3d 922 (9th  
21 Cir. 2004). Based on the changed circumstances, Mr. Soeoth filed a motion to  
22 reopen his case to allow the immigration courts to consider the new evidence. The  
23 motion was denied by the Board of Immigration Appeals, relying in part on  
24 evidence that was not in the record. Mr. Soeoth then filed a petition for review  
25 challenging the Board's denial, which is currently pending before the Ninth  
26 Circuit.

27 49. The government has detained Mr. Soeoth for two years, presumably  
28 under the general detention statute 8 U.S.C. 1231, since the Ninth Circuit initially

1 affirmed his removal order. Mr. Soeoth remains detained even though he poses no  
2 danger to the community or flight risk, as evidenced by his lack of any criminal  
3 record and the strength of his claims pending at the Ninth Circuit.

4 50. During the two years Mr. Soeoth has been incarcerated, he has never  
5 received a hearing concerning whether or not he should be detained, let alone a  
6 hearing concerning whether his detention remains justified given its length.

7 **Victor Martinez**

8 51. Petitioner Victor Martinez is a citizen of Ecuador. He has been a  
9 lawful permanent resident of the United States for over 35 years, and has a nine-  
10 year-old daughter who is a U.S. citizen. He has been detained for four years  
11 without ever having received a hearing concerning whether or not he should be  
12 detained.

13 52. In November 2002, an Immigration Judge ordered Mr. Martinez  
14 removed on the basis of his convictions for second-degree burglary and petty theft.  
15 The Immigration Judge erroneously held that he was ineligible for any relief from  
16 removal, despite a clear regulation to the contrary. Mr. Martinez filed a habeas  
17 petition challenging his removal in March of 2005, which was transferred to the  
18 Ninth Circuit pursuant to the REAL ID Act. The petition for review is now  
19 pending before the Ninth Circuit.

20 53. Despite strong arguments that Mr. Martinez's conviction does not  
21 render him ineligible for all relief from removal, he has remained detained during  
22 the entire four years that he has litigated his removal case.

23 54. Mr. Martinez has never been offered an individualized hearing as to  
24 whether his four-year-long detention is justified. At the beginning of his  
25 detention, in 2002, an Immigration Judge denied his request for review of his  
26 custody status. On information and belief, the government kept no record of that  
27 proceeding, and the basis for the immigration judge's ruling is unknown. Since  
28 that initial hearing, Mr. Martinez has had no further opportunity to challenge his



1 continued detention.

2 **Rudolf Stepanian**

3 55. Petitioner Rudolf Stepanian is an Armenian Christian from Iran who  
4 entered the United States as a lawful permanent resident in 1974 – over thirty  
5 years ago. His mother worked for the United States embassy in Iran in the 1970's,  
6 while his father worked in the government of the Shah of Iran. Mr. Stepanian has  
7 a ten-year-old daughter who is a U.S. citizen.

8 56. The government first detained Mr. Stepanian in December 2005,  
9 charging him with removal based on a five-year-old conviction for domestic  
10 violence in 2000. Mr. Stepanian has been detained for over ten months, even  
11 though the government has conceded that he cannot be removed to Iran and even  
12 though both the Immigration Judge and the Board of Immigration Appeals have so  
13 ruled, granting his application for relief under the CAT.

14 57. Mr. Stepanian's daughter Chelsea will be eleven years old soon. He  
15 spent the entire tenth year of her life in detention, despite the fact that the  
16 government had no intention of removing him to Iran at any point during the  
17 removal proceedings. Had it held a hearing to determine whether or not his  
18 removal was reasonably foreseeable, he would no doubt have been released long  
19 ago; however, no such hearing was ever held.

20 **Class-Wide Allegations**

21 58. The government has a policy or practice of detaining non-citizens  
22 under the general detention statutes for unreasonably prolonged and indefinite  
23 periods of time pending completion of their removal proceedings. Specifically,  
24 the government detains non-citizens for well beyond the six-month period found  
25 presumptively reasonable for completing removal proceedings, without regard to  
26 whether their removal is significantly likely in the reasonably foreseeable future.

27 59. In response, Plaintiff-Petitioners bring this action on behalf of  
28 themselves and all other persons similarly situated, pursuant to Federal Rules of

1 Civil Procedure 23(a) and 23(b)(2). Plaintiff-Petitioners propose to represent a  
2 class of all non-citizens within this district who are or will be 1) detained for  
3 longer than six months pursuant to a general immigration detention statute  
4 pending completion of removal proceedings, and 2) whose prolonged detention is  
5 not justified because their removal is not significantly likely in the reasonably  
6 foreseeable future. Included in this class are individuals whose removal is not  
7 significantly likely in the reasonably foreseeable future because (a) their removal  
8 proceedings are still pending before an Immigration Judge, the Board of  
9 Immigration Appeals or the Ninth Circuit Court of Appeals, such that the date of  
10 any final resolution of their removal cases is indefinite, (b) there is a significant  
11 likelihood that they will never be ordered removed because they have already won  
12 some form of relief from removal before some tribunal, and (c) their ultimate  
13 removal is not significantly likely to occur because there is no country to which  
14 they can be legally removed that will accept them for deportation.

15 60. The proposed class meets the requirements of Fed. R. Civ. Pro. 23(a)  
16 and 23(b)(2). Plaintiff-Petitioners' counsel is aware of more than thirty-five other  
17 class members in this district who seek the same relief as the named Plaintiff-  
18 Petitioners. In addition, the class will include people subject to the government's  
19 prolonged detention policy in the future.

20 61. There are several common questions of law and fact in the action.  
21 These include 1) whether the government has a policy or practice of detaining  
22 non-citizens in removal proceedings for longer than six months under the general  
23 detention statutes without providing a hearing to determine whether such detention  
24 is justified because there is a significant likelihood of their removal in the  
25 reasonably foreseeable future, 2) whether such a detention policy or practice  
26 would be authorized by statute, 3) whether such a detention policy or practice  
27 would violate the Due Process Clause.

28 62. The claims of the named Plaintiff-Petitioners are typical of the claims

1 of the proposed class. Like all of the proposed class members, the named  
2 Plaintiff-Petitioners have been detained for more than six months under general  
3 detention statutes, but there is no significant likelihood of their being removed in  
4 the reasonably foreseeable future.

5 63. The named Plaintiff-Petitioners will fairly and adequately represent  
6 the interests of all members of the proposed class because they seek relief identical  
7 to the relief sought by all class members, and because they have no interests  
8 adverse to other class members. Moreover, the named Plaintiff-Petitioners are  
9 represented by pro bono counsel from the ACLU of Southern California, the  
10 ACLU Immigrants' Rights Project, and the Stanford Law School Immigrants'  
11 Rights Clinic. These organizations and the attorneys working for them have  
12 extensive experience litigating on behalf of detained immigrants and similar  
13 experience litigating in the class action context.

14 64. Defendant-Respondents' policy or practice of detaining non-citizens  
15 in removal proceedings for longer than six months under the general detention  
16 statutes without providing a hearing to assess whether there is a significant  
17 likelihood of their removal in the reasonably foreseeable future applies generally  
18 to all class members, making class-wide injunctive relief appropriate.

### 19 **FIRST COUNT**

#### 20 **Violation of Immigration and Nationality Act and Regulations**

21 65. Plaintiff-Petitioners reallege and incorporate by reference each and  
22 every allegation contained in the preceding paragraphs as if set forth fully herein.

23 66. Defendant-Respondents' continued detention of Plaintiff-Petitioners  
24 under the general immigration detention statutes violates the Immigration and  
25 Nationality Act, insofar as the statutes under which they are detained do not  
26 authorize detention beyond a presumptively reasonable six-month period  
27 necessary to complete removal proceedings where there is no significant  
28 likelihood of removal in the reasonably foreseeable future.

1 **SECOND COUNT**

2 **Violation of Fifth Amendment Due Process**

3 67. Plaintiff-Petitioners reallege and incorporate by reference each and  
4 every allegation contained in the preceding paragraphs as if set forth fully herein.

5 68. Defendant-Respondents' continued detention of Plaintiff-Petitioners  
6 without a hearing to determine whether their prolonged detention is justified  
7 violates their right to be free of prolonged non-criminal detention without  
8 adequate justification and sufficient procedural safeguards, as guaranteed by the  
9 Due Process Clause of the Fifth Amendment to the United States Constitution.

10 **THIRD COUNT**

11 **Violations of International Law**

12 69. Plaintiff-Petitioners reallege and incorporate by reference each and  
13 every allegation contained in the preceding paragraphs as if set forth fully herein.

14 70. Defendant-Respondents' prolonged detention of Plaintiff-Petitioners  
15 violates their rights to be free from arbitrary detention under Article 9, Section 1  
16 of the International Covenant on Civil and Political Rights ("ICCPR"), opened for  
17 signature Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976), as  
18 interpreted through Article 2, Section 1 of the ICCPR.

19 71. These sections of international law have been incorporated into  
20 domestic law and are binding upon Defendant-Respondents.

21  
22 **PRAYER FOR RELIEF**

23 Wherefore, Plaintiff-Petitioners respectfully request that the Court grant the  
24 following relief:

25 (1) Assume jurisdiction over this matter and grant the named Plaintiff-  
26 Petitioners' requests for a writ of habeas corpus;

27 (2) Pursuant to the accompanying request for preliminary injunctive  
28 relief, order that Plaintiff-Petitioners be immediately released under reasonable

1 conditions of supervision, including electronic monitoring if necessary. See  
2 Nadarajah, 443 F.3d at 1084 (holding that Petitioner is entitled to “immediate  
3 release” because he has been detained for far beyond a reasonable period of time).

4 (3) In the alternative, if the Court finds that immediate release is not  
5 required under the law, order the government to hold individualized hearings to  
6 determine whether Plaintiff-Petitioners’ continued detention is justified. Such  
7 hearings should conform to those procedures required by the Due Process Clause.

8 (4) Certify a class, as described supra, pursuant to a motion for class  
9 certification to be filed shortly.

10 (5) Prohibit the government from transferring class members beyond this  
11 judicial district in order to attempt to frustrate this Court’s jurisdiction.<sup>3</sup>

12 (6) Order that the government adopt a policy of identifying and releasing  
13 under reasonable conditions of supervision all class members by providing  
14 hearings for all non-citizens detained under the general detention statutes for  
15 longer than six months pending completion of removal proceedings. Require at  
16 the hearing that the government determine whether continued detention remains  
17 authorized by the statute.

18 (7) In the alternative, if the Court finds that the class members’ detention  
19 is authorized by the immigration statutes, order the government to hold hearings as  
20 set forth in paragraph (3) of this Prayer for Relief.

21 (8) Declare that Defendant-Respondents’ continued detention of  
22 Plaintiff-Petitioners under the existing procedures violates the Immigration and  
23 Nationality Act, the Due Process Clause of the Fifth Amendment, and Article 9,  
24 Section 1 of the International Covenant on Civil and Political Rights;

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25  
26 <sup>3</sup>Because custody attaches at the time a habeas petition is filed, Carafas v.  
27 Lavallee, 391 U.S. 234, 238 (1968), this Court would retain jurisdiction over any  
28 class members transferred outside of the district as long as they were in the district  
as of the time this complaint was filed. Nonetheless, it would be much more  
difficult for the government to implement class-wide relief if it transfers detainees  
outside the district.

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(9) Grant Plaintiff-Petitioners reasonable attorneys' fees, costs, and other disbursements pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, because the government's position is not substantially justified; and

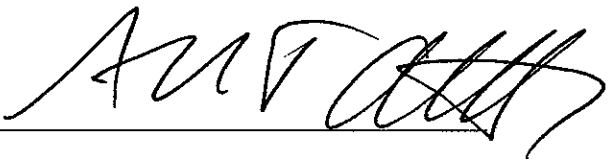
(10) Grant such other relief as this Court may deem appropriate.

///  
///

Dated: September 25<sup>th</sup>, 2006

Respectfully submitted,

ACLU FOUNDATION OF  
SOUTHERN CALIFORNIA

By: 

Ahilan T. Arulanantham

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## PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1616 Beverly Boulevard, Los Angeles, California 90026. I am employed in the office of a member of the bar of this court at whose direction the service was made.

On September 25, 2006, I served the foregoing document:

**AMENDED COMPLAINT AND PETITION FOR WRIT OF HABEAS  
CORPUS**

on the parties in this action by electronic mail, facsimile and by placing a true and correct copy of each document thereof, enclosed in a sealed envelope, addressed as follows:

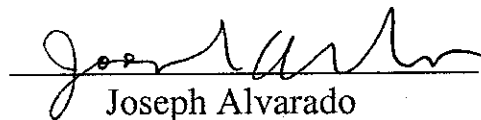
Debra Wong Yang  
Leon Weidman  
Robert I. Lester  
300 North Los Angeles Street  
Room 7516  
Los Angeles, CA 90012

Fax: (213) 894-7819

robert.lester@usdoj.gov

I am readily familiar with the business' practice of collection and processing correspondence for mailing with the United States Postal Service. I know that the correspondence is deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at Los Angeles, California.

Executed on September 25, 2006, at Los Angeles, California.

  
Joseph Alvarado