

## **Center for Constitutional Rights Synopsis of *Nguyen Da Yen v. Kissinger*, filed in April of 1975:**

*Nguyen Da Yen, et al. v. Kissinger* is a class action suit in which the Center for Constitutional Rights (CCR) in cooperation with attorneys in California argued that the detention of Vietnamese children was unconstitutional.

### **Description**

One of the final acts of the U.S government at the end of the Vietnam War was the mass uprooting of some 2,700 Vietnamese children considered to be orphans by U.S. officials. Dubbed the “*Babylift*,” it constituted nothing more than a final, cynical attempt by the administration to put public relations pressure on Congress in order to win eleventh-hour military aid for the Thieu regime.

Many of the children had living parents in Vietnam, and the extended family culture of the Vietnamese does not recognize the Western concept of being an orphan. Nevertheless, no attempt was made to locate the families or friends of many of the children before placing them on the *Babylift*.

The CCR, with the assistance of California lawyers, filed a class action on the children’s behalf, seeking to reunite them with their families and prevent the finalization of any adoptions. The suit was based on the theory that the children were being detained in violation of their rights to liberty and due process of law under the Fifth Amendment.

The then-new government of South Vietnam, via telegram, indicated its desire for the children’s return and its commitment to assist them in rejoining their families. CCR attorneys initially sought preliminary relief requiring the government to interview the children, photograph, and otherwise identify them and immediately examine the files and make tentative finding concerning their family status.

When the federal government reneged on its initial agreement, the federal district court in San Francisco refused to enter a consent order which would have substantially provided the preliminary relief required.

However, after hearing the testimony of Vietnamese-speaking people who

had interviewed the children in the San Francisco Presidio as well as one Vietnamese mother seeking her child, the Court did enter an order directing the then-Immigration and Naturalization Service (INS) to check the files of every Babylift child, interview the children, determine whether they are eligible for adoption, and develop a plan for repatriating those whose parents wish their return.

The court only provided for review of one-third of the files and set forth a far too lengthy timetable. As a result, both CCR and the government appealed to the U.S. Court of Appeals for the Ninth Circuit (with the government claiming the Court had no jurisdiction to enter any order at all). The case was heard in August by that Circuit, which, without writing an opinion, affirmed the District Court's order, adding a month to the timetable for checking records.

On November 5, 1975, the Ninth Circuit issued a remarkable written opinion, reversing its earlier one. This opinion recognized that some of the children may be here in violation of their constitutional rights and international law, granted plaintiffs' request to review the documents of all the children, asserted the court's right to make determination of the eligibility, and conceded that many children were put on planes by parents who did not realize the full impact of their actions.

Meanwhile, the INS had proceeded with the record checks and, according to the testimony of an INS commissioner before the House Subcommittee on Immigration, had concluded that of 1,830 children investigated, at least 274 were not eligible for adoption. In addition, the Commissioner indicated that the INS had learned that some of the records were falsified, and acknowledged that the investigation would never have been done if not for this lawsuit.

In December 1975, having established that many of the children were not properly released for adoption, CCR attorneys obtained the court's agreement to send a notice to all Vietnamese refugees in this country indicating that if they are looking for children brought here on the Babylift, they should contact the court.

In February 1976, the court seemed to take several steps backward, ruling the case would no longer be considered a class action (it had been designated a class action for the purposes of discovery, both by the district court and Court of Appeals), despite the fact that discovery had not been completed.

After an appeal to the Ninth Circuit was pending for three years, in March 1979, an order was entered indicating that the three circuit court judges, who heard the first appeal in the case and retained control of the case, had relinquished that control and the case would be reassigned to a different panel.

Because the children by this time had lived with their American families for four years, it was unlikely that they would be reunited with their Vietnamese families. However, CCR attorneys continued to offer informal assistance and information to the attorneys in the individual cases.